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DEC 08 2015

DEPARTMENT OF  
WATER RESOURCES**WATER SUPPLY BANK LEASE CONTRACT**

This Lease Contract ("**Lease**") is effective between the Idaho Water Resource Board ("**Board**"), and

**Lessor:** CLOUD BERRY LLC  
PO BOX 1359  
CALDWELL ID 83606  
(208) 890-0451

**RECITALS**

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

NOW, THEREFORE, in consideration of the mutual covenants and contracts herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **WATER RIGHTS:** The Lessor shall lease and the Board shall accept into the Bank the Applicant's water rights described as follows:

**Summary of Water Rights or Portions Leased to the Bank**

| <u>Water Right</u>            | <u>Lease Rate</u> | <u>Lease Volume</u> |
|-------------------------------|-------------------|---------------------|
| 63-10557                      | 0.27 CFS          | 19.5 AF             |
| <b>Combined Lease Totals:</b> | <b>0.27 CFS</b>   | <b>19.5 AF</b>      |

The water rights described herein shall be available for rental from the Bank as follows:

Authorized Period of Use under Lease: January 1 to December 31- Stockwater  
July 1 to October 31- Industrial

2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

**Minimum Payment Acceptable:** Current Rental Rate

3. **TERM OF LEASE:** This Lease shall take effect when both parties have signed it and shall continue in effect until December 31, 2018.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.
5. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

IN WITNESS WHEREOF, the parties have executed this Contract on the date following their respective signatures.

**CLOUD BERRY**  
PO BOX 1359  
CALDWELL ID 83606

By 

Date 11-16-2015

Printed Name Justin Mauter

Title Mgr

**IDAHO WATER RESOURCE BOARD**  
322 East Front Street  
P.O. Box 83720  
Boise, ID 83720-9098

By   
Brian Patton, Acting Administrator  
Idaho Water Resource Board

Date 12/8/2015

Lease approved by IDWR 

Date 12-8-2015

**ATTACHMENT A**  
**WATER RIGHT NO. 63-10557**  
**WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE**

The water right or portion thereof leased to the bank is described as follows:

**Lessor:** CLOUD BERRY  
 PO BOX 1359  
 CALDWELL ID 83606  
 (208) 890-0451

**Priority Date:** 01/05/1988

**Source:** GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u> | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u>  |
|-----------------------|-------------|-----------|-----------------------|----------------|
| STOCKWATER            | 01/01       | 12/31     | 0.11 CFS              | 6.7 AF         |
| INDUSTRIAL            | 07/01       | 10/31     | 0.27 CFS              | 12.8 AF        |
| <b>Total:</b>         |             |           | <b>0.27 CFS</b>       | <b>19.5 AF</b> |

**LOCATION OF POINT(S) OF DIVERSION:**

GROUND WATER SE¼SE¼ Sec. 3 Twp 04N Rge 01W ADA County

**PLACE OF USE TO BE IDLED UNDER THIS LEASE:** INDUSTRIAL AND STOCKWATER

| Twp | Rge | Sec | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
|     |     |     | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 04N | 01W | 3   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | X  |        |

**ADDITIONAL CONDITIONS OF ACCEPTANCE**

1. The water rights referenced above will be rented from the bank at the current rental rate.
2. There is no rental payment to the lessor of the water right if the right or a part thereof is not rented from the bank.
3. While a right is in the bank, the lessor may not use the right without approval of the Department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B.
4. A right accepted into the bank stays in the bank until the Board releases it, the lease term expires, or upon request from the lessor to change the term of the lease, provided the Board approves the release. Unless approved by the Department, leased rights may not be immediately available for release.
5. While a water right is in the bank, forfeiture provisions are stayed.
6. Rental of water under this right is subject to the limitations and conditions of approval of the water right.
7. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.

8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other Department application process.
9. In accordance with Idaho Code §§ 42-248 and 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.
10. If a water right leased into the Water Supply Bank is sold or conveyed during the lease term, and if the leased right was rented, the rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:
  - a. Rental payments will go to the lessor(s) of record at the beginning of the rental season.
  - b. If a change in ownership is processed by the Department during a rental season, rental payment will be made to the person or entity who is the lessor of record at the beginning of that rental season.
  - c. New lessor(s) of record will receive payment after the following rental season.
11. The water right(s) is leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

RECEIVED

JAN 10 2014

DEPARTMENT OF  
WATER RESOURCES

RECEIVED

DEC 16 2014

DEPARTMENT OF  
WATER RESOURCES  
STATE OF IDAHO  
WATER RESOURCE BOARD

Receipt No. CO98161-CO98256  
 Fee Amount \$ pd \$200.00 50.00  
 Date/by 1/10/14 dg 1-3-14  
 (For Department Use Only)

## APPLICATION TO SELL OR LEASE A WATER RIGHT TO THE WATER SUPPLY BANK

Name of Seller/Lessor Cloud Berry, LLC Phone 208-890-0451

Mailing address PO Box 1359, Caldwell, ID 83606 4401 W. FLOATING Email \_\_\_\_\_  
FEATHER RD., EAGLE ID 83616

### A. DESCRIPTION OF WATER RIGHT, OR PORTION THEREOF, OFFERED TO THE BANK

If the entire right is for sale or lease, check here ☐, list the water right number, and skip to Part B.

| 1. <u>Water Right Number</u> | <u>Amount (cfs/ac-ft)</u> | <u>Nature of Use</u> | <u>Period of Use</u>       |
|------------------------------|---------------------------|----------------------|----------------------------|
| <u>63-10557</u>              | <u>0.11 cfs/6.7 afa</u>   | <u>Stockwater</u>    | <u>1/1</u> to <u>12/31</u> |
|                              | <u>0.31 cfs/12.8 afa</u>  | <u>Industrial</u>    | <u>7/1</u> to <u>10/31</u> |
|                              |                           |                      | to _____                   |

Total Amount: 0.31 cfs/19.5 afa

2. Source of water Ground Water tributary to \_\_\_\_\_

3. Point(s) of Diversion:

| Twp | Rge | Sec | Lot | 1/4 | 1/4 | 1/4 | County |
|-----|-----|-----|-----|-----|-----|-----|--------|
| 4N  | 1W  | 3   |     |     | SE  | SE  | Ada    |
|     |     |     |     |     |     |     |        |
|     |     |     |     |     |     |     |        |
|     |     |     |     |     |     |     |        |

4. Lands irrigated or place of use: \*See Part D for additional information regarding place of use.

| Twp | Rge | Sec | NE 1/4 |    |    |    | NW 1/4 |    |    |    | SW 1/4 |    |    |    | SE 1/4 |    |    |    | Totals |
|-----|-----|-----|--------|----|----|----|--------|----|----|----|--------|----|----|----|--------|----|----|----|--------|
|     |     |     | NE     | NW | SW | SE | NE     | NW | SW | SE | NE     | NW | SW | SE | NE     | NW | SW | SE |        |
| 4N  | 1W  | 3   |        |    |    |    |        |    |    |    |        |    |    |    |        |    |    | X  |        |
|     |     |     |        |    |    |    |        |    |    |    |        |    |    |    |        |    |    |    |        |
|     |     |     |        |    |    |    |        |    |    |    |        |    |    |    |        |    |    |    |        |
|     |     |     |        |    |    |    |        |    |    |    |        |    |    |    |        |    |    |    |        |
|     |     |     |        |    |    |    |        |    |    |    |        |    |    |    |        |    |    |    |        |

If the right is for irrigation, show total number of acres offered to the bank. Total Acres \_\_\_\_\_

### B. OWNERSHIP

- Are you currently listed in IDWR's records as the owner of the water right being offered to the bank? Yes ☒ No ☐  
 If no, provide documentation of your authority to sign on behalf of the right holder OR attach a Notice of Change in Water Right Ownership form along with the required documentation and fee.
- Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒  
 If yes, provide written consent from the company, corporation or irrigation district to the proposed sale or lease and list name of entity:  
 \_\_\_\_\_

**C. GENERAL INFORMATION**

1. Please provide a description of the current diversion system.

Well

2. Describe any other water rights used for the same purpose or at the same place of use as described above.

3. Will the present place of use continue to receive water from any source?

Yes ☐ No ☒

If yes, describe.

4. Has any portion of this water right undergone a period of five or more consecutive years of non-use?

Yes ☐ No ☒

If yes, describe and attach watermaster records or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code.

5. Is this water right involved in any other Department process such as an application for transfer or a mitigation plan? Yes
- ☐
- No
- ☒

If yes, describe.

**D. REQUIRED ITEMS**

This form must be signed and submitted with the following REQUIRED items:

1. Plat map, survey map or aerial photograph clearly showing the specific acres proposed to be idled by this lease application.
2. Filing fee of \$250.00. If you are submitting more than one lease application and the rights have a common place of use or common diversion rate or common diversion volume, the combined maximum fee is \$500.00.
3. A completed Internal Revenue Service (IRS) Form W-9 (attached). If your water right is rented, we will be unable to issue payment to you without a current W-9 form.

**E. SALE/LEASE AGREEMENT**

1. Is the water right, or portion thereof, described above offered to the Idaho Water Resource Board (IWRB) for sale
- ☐
- or lease
- ☒
- .

If lease, for a period from submittal date to 5 years (not to exceed 5 years).  
(Month / Day / Year) (Month / Day / Year)

2. Show the minimum payment acceptable to the Seller/Lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.
- 
- current rental rate

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this right for sale or lease to the Idaho Water Resource Board.

The owner/lessor acknowledges the following:

1. Payment to the owner/lessor is contingent upon the sale or rental of the right from the bank.
2. While a right is in the bank, the owner/lessor of the right may not use the right even if the right is not rented from the bank.
3. A right accepted into the bank stays in the bank until the Board releases it or the lease term expires.
4. While a right is in the bank, forfeiture provisions are stayed.
5. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right.

Signature of Applicant

Justin Martin, member

Printed Name and Title\*

12-31-2013

Date

Signature of Applicant

Printed Name and Title\*

Date

\*Please provide title of signatory if signing on behalf of a company or organization or with power of attorney

Mail to: Idaho Department of Water Resources, P.O. Box 83720, Boise, ID 83720-0098



State of Idaho

## DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

December 9, 2015

CLOUD BERRY LLC  
PO BOX 1359  
CALDWELL ID 83606

**RE: WATER SUPPLY BANK LEASE CONTRACT(S) FOR WATER RIGHT(S) 63-5092, 63-31970, 63-10557, 63-5094, 63-32958, 63-32960, AND 63-10700**

Dear Lessor:

Water right(s) 63-5092, 63-31970, 63-10557, 63-5094, 63-32958, 63-32960, AND 63-10700 were leased into the Water Supply Bank (Bank) as of December 8, 2015, in accordance with the enclosed executed lease contract(s). **Your water right(s), as described on the lease contract(s), is considered leased into the Bank and should remain unused until it is formally released from the Bank.** More information and further restrictions placed on your water right(s) while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The right(s) will automatically be released from the Bank on **December 31, 2017 for 63-5094, 63-32958, 63-32960, and 63-10700, and on December 31, 2018 for all others** unless the right is released earlier by the Water Resource Board (Board). On behalf of the Board, the Department of Water Resources (Department) can evaluate an early release of the lease contract upon your request. To release the water right from the Bank prior to the release date, submit a written request on the *Request to Release a Water Right from the Bank* form. This form is available on our public website at [www.idwr.idaho.gov](http://www.idwr.idaho.gov). **Please note your water right may not be available for immediate release if it has been rented or is being considered for a future rental. Furthermore, it is at the discretion of the Department whether or not a water right can be released early from a lease contract.**

If you have questions regarding this matter, please contact me at 287-4910.

Sincerely,

  
Clay Webster

Water Resource Agent  
WSB Process Point of Contact

Enclosure: Executed Lease Contract

c: Lori Graves – SPF Water Engineering LLC  
Angela Grimm – IDWR Western Region



State of Idaho

## DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER

Governor

November 30, 2015

GARY SPACKMAN

Director

CLOUD BERRY LLC  
6401 FLOATING FEATHER RD  
EAGLE ID 83616

**RE: REQUEST FOR RETURN OF SIGNED WATER SUPPLY BANK LEASE CONTRACTS FOR WATER RIGHT(S) 63-5092, 63-31970, 63-10557, 63-10700, 63-32958, 63-5094 and 63-32960**

**\*\*\*TIME SENSITIVE RESPONSE REQUIRED\*\*\***

Dear Applicant,

The Department of Water Resources (Department) mailed **two original of several contracts Water Supply Bank Lease Contracts for your review and signature** on November 10, 2015. The signed contracts have not been returned to the Department.

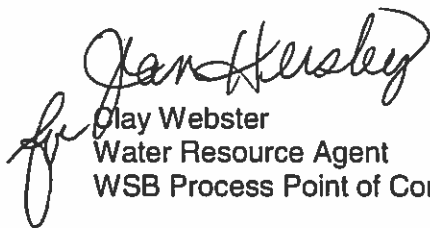
**Please sign ALL original Lease Contracts and return them to the Department within ten (10) days of this letter to complete processing.** The Lease Contract is not considered final until both you and the Department have signed.

If the signed lease contracts are not received by the Department within the 10-day period, the lease application(s) will be returned, and the application fee will not be refunded. You can reapply to lease the water right(s) in the future by submitting new application form(s) along with applicable fees.

Please note the forfeiture period is not tolled unless a right is accepted into the Bank, or unless an exception or defense to forfeiture applies as described under Idaho Code § 42-223. If forfeiture is a concern, you may consider filing an Application for Extension of Time to Avoid Forfeiture of a Water Right form. This and other water right forms are available from the Department's web site at [www.idwr.idaho.gov](http://www.idwr.idaho.gov).

If you have questions regarding this matter, please contact me at 287-4910.

Sincerely,

  
Clay Webster  
Water Resource Agent  
WSB Process Point of Contact

c: SPF Water Engineering LLC



State of Idaho

## DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

November 10, 2015

CLOUD BERRY LLC  
6401 FLOATING FEATHER RD  
EAGLE ID 83616

**RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 63-5092, 63-31970, 63-10557, 63-32958 and 63-10700  
TO THE WATER SUPPLY BANK**

**\*\*\*\*TIME SENSITIVE RESPONSE REQUIRED\*\*\***

Dear Applicant:

The Department of Water Resources has completed its review of your application to lease the above-mentioned water right(s) to the Water Supply Bank. **I have enclosed two original of each Water Supply Bank Lease Contracts for your review and signature. Please sign and return ALL Lease Contracts within 14 days.** Upon signature and return of the contracts, the Department will also sign the original contracts and return an executed copy to you. The Lease Contract is not considered final until you and the Department have both signed.

Water rights 63-5092, 63-31970 and 63-10557 will automatically be released from the Bank on **December 31, 2018**, unless the rights are released earlier by the Board, or upon your request. Water rights 63-32958 and 63-10700 will automatically be released from the Bank on **December 31, 2017**, to match the release of overlapping water rights 63-5094 and 63-32960 that were leased to the Bank in 2013. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. To propose a new lease period, submit a new Application to Sell or Lease a Water Right to the Water Supply Bank form along with applicable fees to the Department. These forms are available from any IDWR office or from our public website at <http://www.idwr.idaho.gov>. Please note your rights may not be available for immediate release if they have been rented.

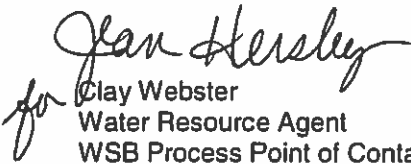
Also, you will notice the Department included water rights 63-5094 and 63-32960 on the contract with 63-32958 and 63-10700. Water rights 63-5094 and 63-32960 were leased to the Bank in 2013. These four rights should have been leased to the Bank together as they are all overlapping rights. Water rights 63-5094, 63-10700, 63-32958 and 63-32960 will all be released from the Bank at the end of 2017.

Please review the conditions of acceptance listed on the Lease Contract, including #3 which says:

"While a right is in the bank, **the lessor may not use the right** without approval of the department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B."

If you have questions regarding this matter, please contact me at 287-4910.

Sincerely,

  
Clay Webster  
Water Resource Agent  
WSB Process Point of Contact

Enclosure: Proposed Lease Contracts

c: SPF Water Engineering LLC

December 15, 2014

Jean Hersley  
IDWR State Office  
PO Box 83720  
Boise, ID 83720-0098

**Subject:** *Cloud Berry, LLC Amended Water Supply Bank Lease Applications & Change in Address Form*

Dear Jean,

On behalf of Cloud Berry, LLC, this letter provides additional information requested in your letter dated February 27, 2014, in support of Cloud Berry's applications to lease water rights 63-5092, 63-5093, 63-5098, 63-10700, 63-10557, 63-31970 and 63-32958 to the Water Supply Bank. The following information is provided in the order requested in your letter.

*Request 1: Has Cloud Berry or previous owners watered stock in the last 5 years under water rights 63-5093, 63-5098 and 31970? Not that we are aware of.*

*Request 2: The Department needs a map of the proposed acres to be idled under water rights 63-5092, 63-10700, 63-31970 and 63-32958 during the terms of the lease. All the irrigation place of use authorized under each right are proposed for lease as indicated in Figure 1.*

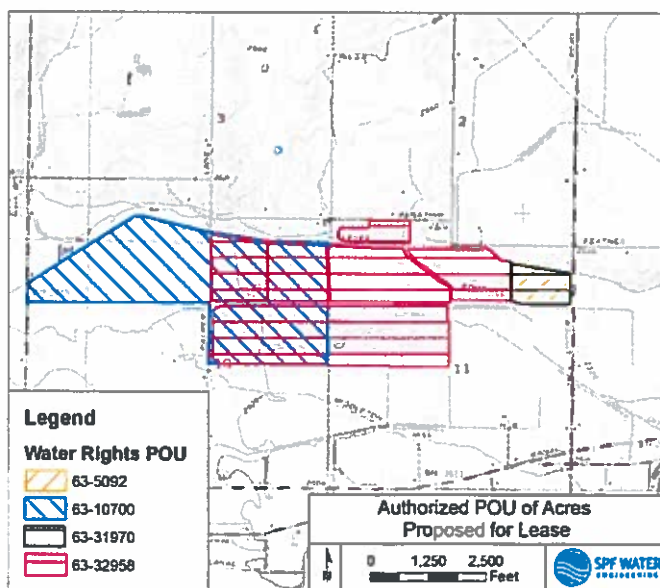


Figure 1

*Request 3: Where is the wastewater coming from under water right 63-32958? Is it from a common ditch that others utilize? The wastewater comes from a drain flowing north/south, tributary to a drain flowing east/west near N. Lanewood and Floating Feather Roads. The water right authorizes two points of diversion on the north/south drain and one point of diversion on the east/west drain and yes, they are common drains.*

*Request 4: Clarify if the present place of use under water right 63-10700 will continue to receive water from any source. Please update from "no", as submitted, to "yes". Done.*

*Request 5: The domestic use authorized under water right 63-10557 was not included. Correct.*

*Request 6: The domestic use authorized under water right 63-5098 was included. Please exclude domestic use. Done.*

In accordance with the above changes, enclosed are copies of the original water bank lease applications that have been amended as requested and re-signed. Also enclosed is a signed *Change in Address* form to allow the Department to update the applicant's water right records. Thank you for your attention to these matters. Please let me know if there are any further questions. Thanks Jean.

Sincerely,



Lori Graves  
Water Rights Specialist

Cc: Justin Martin, Farwest, LLC

Enclosures

SPF file number: 944.0010