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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>	<u>Total Leased Acres</u>
63-5092	0.06 CFS	103.5 AF	23.0 AC
63-31970	0.47 CFS	105.5 AF	23.0 AC
Combined Lease Totals:	0.46 CFS	103.5 AF	23.0 AC

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

Authorized Period of Use under Lease: March 1 to November 15 63-5092

March 15 to December 1 63-31970 (irrigation)

January 1 to December 31 63-31970 (stockwater)

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.

SUPPORT DATA

IN FILE #

63-5092

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 Martin Title mgr

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

By  Date 12/8/2015
Brian Patton, Acting Administrator
Idaho Water Resource Board

Lease approved by IDWR  Date 12-8-2015

ATTACHMENT A
WATER RIGHT NO. 63-5092
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: 01/01/1962

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/01	to 11/15	0.06 CFS	103.5
	Total:		0.06 CFS	103.5

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NE¼NE¼ Sec. 11 Twp 04N Rge 01W ADA County

PLACE OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

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	11	23.0																23.0

Total Acres: 23.0

COMBINED LIMITS OF LEASED RIGHT:

<u>Combined Rights for Irrigation</u>	<u>Lease Rate</u>	<u>Lease Volume</u>	<u>Acre Limit</u>	<u>Total Leased Acres</u>
63-5092 and 63-31970,	0.46 CFS	103.5 AF	23.0 AC	23.0 AC

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.
12. Use of this right with right no. 63-31970 is limited to the irrigation of a combined total of 23.0 acres in a single irrigation season.
13. Use of this right for irrigation purposes with right 63-31970 is limited to a total combined diversion rate of 0.46 cfs and to a total combined annual diversion volume of 103.5 af.

ATTACHMENT A
WATER RIGHT NO. 63-31970
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: 12/26/1969

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15 to	12/01	0.46 CFS	103.5 AF
STOCKWATER	01/01 to	12/31	0.01 CFS	2.0 AF
	Total:		0.47 CFS	105.5 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE¼SW¼ Sec. 01 Twp 04N Rge 01W ADA County

PLACE OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION 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	11	23.0																23.0
04N	01W	11	S																

Total Acres: 23.0

COMBINED LIMITS OF LEASED RIGHT:

<u>Combined Rights for Irrigation</u>	<u>Lease Rate</u>	<u>Lease Volume</u>	<u>Acre Limit</u>	<u>Total Leased Acres</u>
63-5092 and 63-31970,	0.46 CFS	103.5 AF	23.0 AC	23.0 AC

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.
12. Use of this right with right no. 63-31970 is limited to the irrigation of a combined total of 23.0 acres in a single irrigation season.
13. Use of this right for irrigation purposes with right 63-31970 is limited to a total combined diversion rate of 0.46 cfs and to a total combined annual diversion volume of 103.5 af.
14. Use of water for irrigation under this right may begin as early as March 1 provided other elements of the right are not exceeded. The use of water before March 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.

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DEC 16 2014

DEPARTMENT OF
STATE OF IDAHO WATER RESOURCES
WATER RESOURCE BOARD

Receipt No. W041637
 Fee Amount \$ 250.00
 Date/by 11/7/2013
 (For Department Use Only)

RECEIVED

NOV 07 2013

WATER RESOURCES
WESTERN REGION

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 Email 6401 W. FLOATING

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>63-31970</u>	<u>0.46 cfs/103.5 afa</u>	<u>Irrigation</u>	<u>3/1</u> to <u>11/15</u>
	<u>0.01 cfs/2.0 afa</u>	<u>Stockwater</u>	<u>1/1</u> to <u>12/31</u>
			to
Total Amount: <u>0.47 cfs/105.5 afa</u>			

2. Source of water Ground Water tributary to

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
4N	1W	1			SE	SW	Ada

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

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	1W	11	23																23
			S																

If the right is for irrigation, show total number of acres offered to the bank. Total Acres 23

B. OWNERSHIP

1. 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.
2. 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.

63-5092

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 mgr

Date

12-5-2014

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

[Close](#)IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

8/23/2013

WATER RIGHT NO. 63-31970

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CLOUD BERRY LLC PO BOX 1359 CALDWELL, ID 83606 (208)890-0451
Original Owner	QUARTER CIRCLE DJ RANCH CO PO BOX 279 EAGLE, ID 83616 (208)286-7131

Priority Date: 12/26/1969

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	12/01	0.46 CFS	103.5 AFA
STOCKWATER	01/01	12/31	0.01 CFS	2 AFA
Total Diversion			0.47 CFS	

Location of Point(s) of Diversion:

GROUND WATER|SESW|Sec. 01|Township 04N|Range 01W|ADA County

Place(s) of use:

Place of Use Legal Description: IRRIGATION ADA County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
04N	01W	11		NENE	23									

Place of Use Legal Description: STOCKWATER ADA County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>

04N 01W 11 NENE

Total Acres: 23

Conditions of Approval:

1. E55 USE OF THIS RIGHT WITH RIGHT NO. 63-05092 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 23.0 ACRES IN A SINGLE IRRIGATION SEASON.
2. X02 Stockwater use is for 150 range cattle.
3. E60 USE OF THIS RIGHT FOR IRRIGATION PURPOSES WITH RIGHT NO. 63-05092 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.46 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 103.5 AF.
4. S39 THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 1 PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE MARCH 15 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.
5. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Dates:

Licensed Date:

Decreed Date: 02/16/2007

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 23

Combined Volume Limit: 103.5

Combined Rate Limit: 0.46

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close