

WATER SUPPLY BANK LEASE CONTRACT

RECEIVED
DEC 08 2015
DEPARTMENT OF
WATER RESOURCES

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

LESSOR: CLOUD BERRY LLC
6401 W FLOATING FEATHER RD
EAGLE ID 83616
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. On December 16, 2015, the Lessor filed an application to lease the water right(s) described below into the Water Supply Bank.
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 the 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

Water Right	Priority Date	Source	Tributary	Leased Rate	Annual Leased Volume	Total Leased Acres
63-5094	01/01/1962	GROUND WATER		1.0 cfs	360.0 af	80.0 ac
63-32958	01/01/1900	WASTE WATER	BOISE RIVER	5.83 cfs	152.1 af	338.0 ac
63-32960	10/06/1973	GROUND WATER		3.7 cfs	1822.6 af	444.0 ac
Total Annual Combined Limits of these water rights				8.88 cfs	1998.0 af	444.0 ac

63-10700	09/12/1988	GROUND WATER		2.09cfs	1019.7 af	262.0 ac
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Lease Total **IN FILE # 63-5094** 2.09cfs 1019.7 af 262.0 ac

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, 2017.
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.

WATER SUPPLY BANK LEASE CONTRACT

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 LLC
6401 W FLOATING FEATHER RD
EAGLE ID 83616

By [Signature]
Printed Name Justin Martin

Date 11-16-2015
Title Mgr

IDAHO WATER RESOURCE BOARD
322 EAST FRONT ST
PO BOX 83720
BOISE ID 83720-0098

By [Signature]
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 12/8/2015

Lease approved by IDWR [Signature]

Date 12-8-2015

ATTACHMENT A

WATER RIGHT NO(S). 63-5094, 63-32958, 63-32960 and 63-10700 WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: CLOUD BERRY LLC
6401 W FLOATING FEATHER RD
EAGLE ID 83616
208-890-0451

Location of Point(s) of Diversion for Water Right 63-5094,

GROUND WATER	SESW	Sec. 03, Twp 04N, Rge 01W, ADA County
GROUND WATER	NENW	Sec. 10, Twp 04N, Rge 01W, ADA County

Location of Point(s) of Diversion for Water Right 63-32958

WASTE WATER	SWSE	Sec. 02, Twp 04N, Rge 01W, ADA County
WASTE WATER	NWNE	Sec. 11, Twp 04N, Rge 01W, ADA County

Location of Point(s) of Diversion for Water Right 63-32960

GROUND WATER	SESW	Sec. 03, Twp 04N, Rge 01W, ADA County
GROUND WATER	NWNE	Sec. 10, Twp 04N, Rge 01W, ADA County
GROUND WATER	NWNW	Sec. 11, Twp 04N, Rge 01W, ADA County
GROUND WATER	SESW	Sec. 02, Twp 04N, Rge 01W, ADA County

Location of Point(s) of Diversion for Water Right 63-10700

GROUND WATER	NENE	Sec. 10, Twp 04N, Rge 01W, ADA County
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<u>Water Right</u>	<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
63-5094	IRRIGATION	03/01 to	11/15	1.0 cfs	360.0 af
63-5094	STOCKWATER	01/01 to	12/31	0.22 cfs	Not Stated
63-32958	IRRIGATION	03/01 to	11/15	5.83 cfs	152.1 af
63-32960	IRRIGATION	03/15 to	11/15	3.7 cfs	1822.6 af
63-32960	STOCKWATER	01/01 to	12/31	0.43 cfs	26.2 af
Combined Annual Total:				8.88 cfs	1998.0 af
63-10700	IRRIGATION	03/15 to	11/15	2.09 cfs	1019.7 af
Total:				2.09 cfs	1019.7 af

Place of Use to be Idled Under This Lease for Water Right 63-5094: IRRIGATION AND STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Total s
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01W	3											5.5	8.5					14.0
04N	01W	10					10.0	33.0											66.0

Total Acres: 80.0

Place of Use to be Idled Under This Lease for Water Right 63-32958: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Total s
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01W	2											9.5	4.0					13.5
04N	01W	3															1.5		1.5
04N	01W	10	36.0	36.0	35.0	39.0													146.0
04N	01W	11		31.0			33.0	35.0	39.0	39.0									177.0

Total Acres: 338.0

Place of Use to be Idled Under This Lease for Water Right 63-32960: IRRIGATION AND STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Total s
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01W	2											9.5	4.0					13.5
04N	01W	3											5.5	8.5			1.5		15.5
04N	01W	9	18.0																18.0
04N	01W	10	36.0	36.0	35.0	39.0	37.0	37.0											220.0
04N	01W	11		31.0			33.0	35.0	39.0	39.0									177.0

Total Acres: 444.0

Conditions Applicable to All Leased Water Rights

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, or the lease term expires. A right may be released from the bank upon request, 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 pursuant to Idaho Code § 42-223(5).
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, nor does it improve the status of the right or accomplish the 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, even if the Department processes a Notice of Change in Water Right Ownership during the rental season.
 - b. New lessor(s) of record will receive payment after the following rental season.

11. The water rights leased to the bank are 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. Water right 63-10700 may only be rented for use as a supplemental right in conjunction with a primary surface water right.
13. Use of water under water right 63-32958 is regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.
14. When combined, water rights 63-10700, 63-32959 and 63-32960 shall provide not more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
15. Water Rights 63-5094, 63-32958 and 63-32960, when combined are limited to a total combined annual diversion volume of 1998.0 af, a total combined annual diversion rate of 8.88 cfs and a combined total of 444.0 acres in a single irrigation season.
16. The quantity of water under water right 63-5094 for stockwater shall not exceed 13,000 gallons per day

RECEIVED

DEC 16 2014

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
WATER RESOURCE BOARD
 812 2785
 Receipt No. W041637
 Fee Amount \$ 250.00
 Date/by 11/7/2017
 (For Department Use Only)

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

NOV 07 2013

 Name of Seller/Lessor Cloud Berry, LLC Phone 208-890-0451 WATER RESOURCES
 Mailing address PO Box 1359, Caldwell, ID 83606 6401 W. FLOATING Email FEATHER RD., EAGLE ID 83616
WESTERN REGION

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. Water Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use
63-32958	5.83 cfs	Irrigation	3/1 to 11/15
			to
			to
Total Amount: 5.83 cfs			

 2. Source of water Waste Water tributary to

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	1/4	1/4	1/4	County
4N	1W	2			SW	SE	Ada
4N	1W	11			NW	NE	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	2											9.5	4					13.5
		3															1.5		1.5
		10	36	36	35	39													146
		11		31			33	35	39	39									177

 If the right is for irrigation, show total number of acres offered to the bank. Total Acres 338

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.
-
- 63-32960, 63-5094

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
Printed Name and Title*12-5-2014
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

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

8/23/2013

WATER RIGHT NO. 63-32958

<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	CRAWFORD MOORE BOISE, ID

Priority Date: 01/01/1900

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
WASTE WATER	BOISE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/01	11/15	5.83 CFS	
Total Diversion			5.83 CFS	

Location of Point(s) of Diversion:

WASTE WATER	SWSE	Sec. 02	Township 04N	Range 01W	ADA County
WASTE WATER	NWNE	Sec. 11	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	2		SWSW	9.5		SESW	4						
		3		SWSE	1.5									
		10		NENE	36		NWNE	36		SWNE	35		SENE	39
		11		NWNE	31									
				NENW	33		NWNW	35		SWNW	39		SENW	39

Total Acres: 338

Conditions of Approval:

- 1 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.
- 2 E56 USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED
TOTAL OF 444 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 63-32958, 63-05094, AND
63-32960.
- 3 E52 USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF
8.88 CFS. COMBINED RIGHT NOS.: 63-32958, 63-05094, AND 63-32960.
- 4 F06 The following rights are diverted through point(s) of diversion described above: 63-32957

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: 63

Generic Max Rate per Acre:

Generic Max Volume per Acre:

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](#)

MEMORANDUM

To: Water Right No(s). 63-32958

From: Jean Hersley

Date: ~~January 28, 2014~~ Nov 4-2015 updated

Re: Review of Applications to Lease Water Rights to the State Water Supply Bank

PURPOSE/NARRATIVE: This application was received at Western Region on November 7, 2013. It was routed to BSU who returned it to SPF Engineering LLC. The applications were received at the State Office on November 18, 2013. Since this right has combined limits with two other rights already in the Bank and the leases expire in 2017, the end date of this lease will be December 31, 2017.

AUTHORITY TO FILE: The application was signed by Justin Martin, Manager of Cloud Berry LLC, verified IDSOS.

WATER RIGHT VALIDITY: This parent of this right was decreed in 2007. Aerial photography indicates irrigation has taken place in the last 5 years. This right has combined use limits with 63-5094 and 63-32960, which are leased to the Bank until the end of 2017.

INJURY TO OTHER WATER RIGHTS: No injury is apparent.

ENLARGEMENT OF USE: No enlargement is evident through the lease alone. Proper rental review should protect against enlargement.

LOCAL PUBLIC INTEREST: Review staff has no information to suggest this application is inconsistent with the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: The lease appears consistent with the conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The leased right(s) are subject to Water District # 63. Rex Barrie returned his recommendation for all the rights Cloud Berry LLC are leasing to the Bank. The only water right that needed comments at this time was 63-32958 since it has a waste water source.

http://www.sos.idaho.gov/xt/?xp=%5C20141117%5CXMLPORTS_W132865_1411171507... 7/7/2015

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.

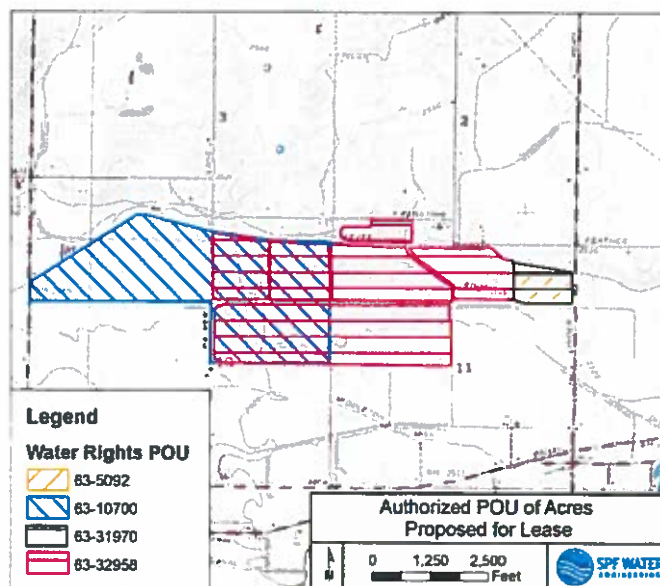


Figure 1

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