

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



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

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. **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,

CEL - 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

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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.

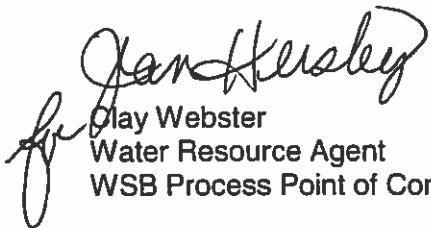
Please sign ALL original Lease Contracts and return them to the Department within ten (10) days of this letter to complete processing. The Lease Contract is not considered final until both you and the Department have signed.

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.

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

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.

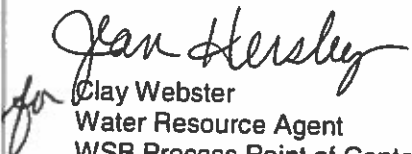
Also, you will notice the Department included water rights 63-5094 and 63-32960 on the contract with 63-32958 and 63-10700. Water rights 63-5094 and 63-32960 were leased to the Bank in 2013. These four rights should have been leased to the Bank together as they are all overlapping rights. Water rights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

MEMORANDUM

To: Water Right No(s). 63-5094, 63-10700, 63-32958 and 63-32960
From: Jean Hersley
Date: June 17, 2015
Re: Review of Applications to Lease Water Rights to the State Water Supply Bank

PURPOSE/NARRATIVE: The application for 63-10700 was originally received on November 7, 2013 and returned because we needed additional information that was never provided. The Department received the application again on December 16, 2014 including the information needed. The applicant wishes to place the entire right, 262 acres, 2.09 cfs and 1019.7 af, in the Bank for 5 years.

This is a supplemental right. The place of use will continue to receive surface water from Middleton Irrigation Assoc., New Dry Creek Ditch co and Foothill Ditch Co. This right is overlapped with the other three rights listed above. Therefore, the lease will include all four rights and this lease will supersede the existing lease for these rights. This lease will only be approved through 2017 to coincide with the leases approved for the other three rights.

AUTHORITY TO FILE: Justin Martin, manager, signed the application.

WATER RIGHT VALIDITY: Water right was licensed in 1994 and aerial suggests irrigation has taken place as recently as 2013.

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 not subject any Water District at this time.

MEMORANDUM

To: Water Right No(s). 63-10700, 63-5094, 63-32958 + 63-32960
From: Jean Hersley
Date: ~~January 28, 2014~~ updated 11-4-15
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 back to SPF Engineering and then to the State Office on November 18, 2013. Place of use will continue to receive surface from Middleton Irrigation Association, New Dry Creek Ditch Co. and Foothill Ditch Co. The lease will expire December 31, 2017 to match two other overlapping rights that are already in the Bank.

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

WATER RIGHT VALIDITY: This water right was licensed in 1994. Aerial photography indicates irrigation has occurred in the last 5 years,

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 not subject to any Water District at this time (groundwater).

It appears this right was not included in the lease of overlapping rights 63-5094 and 63-32960 because of this right being 100% supplemental in accordance with conditions of the license. At this point we are being asked to place this right into the bank. Typically, supplemental rights are not accepted into the bank unless evidence is presented that quantifies how much water has historically been used under the right. In this case overlapping rights 63-5094 and 63-32960 were accepted into the bank based on 40% usage in combination with surface water. Since no information was submitted that addresses this issue, this right will be accepted into the bank and limited to the amount of ground water that was found under the overlapped rights, 799.2 af. Essentially, this right will be un-rentable. Also note that the term requested was thru 2018; however, we will match the term of the overlapped rights 2017 expiration. If these rights are leased again, they should be evaluated together. ~Cherie Palmer

No. W 132865	Due no later than Jan 31, 2015 Annual Report Form		2. Registered Agent and Address (NO PO BOX)			
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE	1. Mailing Address: Correct in this box if needed. CLOUD BERRY, LLC BRIAN F MCCOLL 3858 N GARDEN CENTER WAY STE 200 BOISE ID 83703		BRIAN F MCCOLL 3858 N GARDEN CENTER WAY STE 200 BOISE 83703			
			3. <u>New</u> Registered Agent Signature:*			
4. Limited Liability Companies: Enter Names and Addresses of at least one Member or Manager.						
Office Held MANAGER	Name JUSTIN MARTIN	Street or PO Address 539 E. KALIBAB TRAIL DR.	City MERIDIAN	State ID	Country USA	Postal Code 83646
5. Organized Under the Laws of: WY W 132865		6. Annual Report must be signed.* Signature: Brian F. McColl Name (type or print): Brian F. McColl Date: 11/17/2014 Title: Attorney				
Processed 11/17/2014		* Electronically provided signatures are accepted as original signatures.				

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.

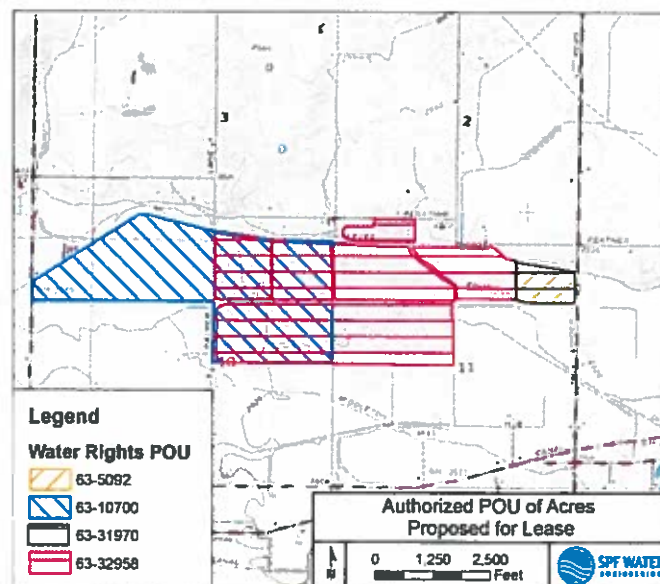


Figure 1

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