

WATER SUPPLY BANK LEASE CONTRACT

RECEIVED
NOV 09 2015
DEPARTMENT OF
WATER RESOURCES

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

Lessor: BLACK BUTTE HILLS LLC
PO BOX 1607
BELLEVUE WA 98009
425-460-2542

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 on August 13, 2015 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>Acre Limit</u>	<u>Total Leased Acres</u>
37-22771	4.49 CFS	1113.9 AF	NA	371.3 AC
Combined Lease Totals:	4.49 CFS	1113.9 AF	NA	371.3 AC

The water rights described herein shall be available for rental from the Bank as follows:
Authorized Period of Use under Lease: May 1 to October 1

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: NOT RENTABLE

3. **TERM OF LEASE:** This Lease shall take effect when both parties have signed it and shall continue in effect until December 31, 2015.
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.

BLACK BUTTE HILLS LLC

PO BOX 1607
BELLEVUE WA 98009

By 
Printed Name GREG VIK

Date 11-6-15
Title PRESIDENT

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 11/9/2015

Lease approved by IDWR 

Date 11-9-2015

ATTACHMENT A
WATER RIGHT NO. 37-22771
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: BLACK BUTTE HILLS LLC
 PO BOX 1607
 BELLEVUE WA 98009
 425-460-2542

Priority Date: 10/30/1974

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	05/01	10/01	4.49 CFS	1113.9 AF
	Total:		4.49 CFS	1113.9 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	SW¼NW¼	Sec. 01, Twp 02S, Rge 17E, BLAINE County
GROUND WATER	SW¼SE¼	Sec. 11, Twp 02S, Rge 17E, CAMAS 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	
02S	17E	1							6.2			1.1	5.9						13.2
02S	17E	2				0.4								13.4	1.0	1.1	33.2	3.8	52.9
02S	17E	11	25.5	34.0	28.0	17.7	31.9			15.0					16.3	12.0	19.0	27.0	226.4
02S	17E	12								0.8	14.7	24.3	28.0	11.0					78.8

Total Acres: 371.3

ADDITIONAL CONDITIONS OF ACCEPTANCE

1. The water rights referenced above will not be rentable from the bank.
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 water under this right will be regulated by a watermaster with responsibility of 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. 37.
13. Water rights 37-2211, 37-11989 and the unleased portion of water right 37-22771 when combined shall not exceed the irrigation of 377.2 acres.
14. This right when combined with all other rights shall provide no more than 0.02 cfs per acre or more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
15. The period of use for the irrigation described in this approval may be extended to a beginning date of 4/15 and an ending date of 10/31 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 5/1 and after 10/1 is subordinate to all water right having no subordinated early or late irrigation use and a priority date earlier than the date of the decree on February 3, 2010.

RECEIVED

AUG 13 2015

DEPARTMENT OF
WATER RESOURCES

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

An application to lease or sell a water right into the Water Supply Bank must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Use this checklist to ensure all necessary documentation has been provided. This checklist is part of the lease application and must be included with the lease application. **Incomplete applications will be returned to applicants for completion.**

Designated Applicant BLACK BUTTE HILLS LLC
C/O GREGORY VIK
(Select one owner – see item 1A on the application)

Water Right No. 37-22771
(One water right per application)

All items must be checked as either *Attached (Yes)* or *Not Applicable (N/A)*

YES

- ☒ Completed *Water Supply Bank Lease or Sale Application Checklist* (this form).
- ☒ Completed *Application to Sell or Lease a Water Right to the Water Supply Bank* (pages 2-3).
- ☐ Application filing fee of \$250.00 per water right. If you are submitting more than one lease application and the water rights have an overlapping, common place of use, or a common diversion rate or volume, the total fee for all water rights is \$500.00. For places of use, multiple water rights must be used to irrigate the same lands in order to qualify for the joint filing fee. Individual filing fees are required for water rights that share a common permissible place of use but which cover separate acres within the permissible place of use.

Attachment N/A YES

- | | | | |
|----|-------------------------------------|-------------------------------------|--|
| 1A | ☐ | ☒ | Contact information for <i>all owners</i> of the water right that is being leased or sold on this application. |
| 1B | ☐ | ☐ | An <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant. |
| 1C | ☒ | ☐ | <i>Notice of Change in Water Right Ownership</i> form (accessible from www.idwr.idaho.gov). |
| 1D | ☒ | ☐ | Written consent from irrigation district or water delivery company. |
| 1E | ☐ | ☒ | Contact information for an authorized representative and documentary proof they are authorized to represent the Designated Applicant on this application. If the Designated Applicant is a business, partnership, municipality, organization or association, include documents identifying officers authorized to sign or act on behalf of the entity. |
| 2 | ☐ | ☒ | Description of a water right portion offered to the Water Supply Bank. |
| 3E | ☐ | ☒ | Evidence demonstrating that a water right has not been lost through abandonment or forfeiture pursuant to <u>Section 42-222(2), Idaho Code</u> . |
| 4 | ☐ | ☒ | A map that clearly outlines the specific location where irrigated acres will be dried up, or where a beneficial use of water will be suspended. You have the option of printing a map using the map tool on IDWR's website at: www.idwr.idaho.gov . |

Department Use Only

Fee Amount \$ <u>1250.00</u>	Received By: <u>di</u>	Date Received: <u>8-13-15</u>	Receipt # <u>C100880</u>
W-9 received? Yes ☐ No ☒ (Route W-9 to Fiscal)		Name on W-9:	

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

1. CONTACT INFORMATION

- A. An application to sell or lease a water right to the Water Supply Bank must be completed by a Designated Applicant who is a recognized owner of the water right being sold or leased to the Water Supply Bank. If there are additional owners recorded for the property to which the water right is appurtenant, those individuals must authorize the Designated Applicant to represent them on this application BLACK BUTTE HILLS LLC Attachment 1A of this application package.

Designated Applicant C/O GREGORY VIK Email Address _____

Mailing Address PO BOX 1607 BELLEVUE, WA 98009 Phone Number (425) 460-2542

☒ The Designated Applicant is the sole owner of the water right being sold or leased to the Water Supply Bank.

OR

☐ The Designated Applicant is representing additional water right holders who have completed Attachment 1A.

- B. Has the designated applicant completed an IRS Form W-9 (Attachment 1B)? W-9 Form has previously been submitted Yes ☐ No ☒

- C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes ☒ No ☐
If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

- D. 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 authorizing the proposed sale or lease (Attachment 1D).

- E. Is this application being completed by an authorized representative of the Designated Applicant? Yes ☒ No ☐
If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1E).

Name of Representative Greg Sullivan Organization Brockway Engineering

Professional Title Engineer Email Address greg.sullivan@brockwayeng.com

Mailing Address 2016 N. Washington St Suite 4 Twin Falls, Id 83301 Phone Number 208-736-8543

☐ Send all correspondence for this application to the representative and not to the Designated Applicant.

OR

☒ Send original correspondence to the Designated Applicant and copies to the representative.

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

Water Right Number 37-22771 ☐ The full water right is being offered to the Bank.

OR

☒ A part of the water right is being offered to the Bank.
(If a portion of a water right is being offered, complete Attachment 2)

3. GENERAL INFORMATION

- A. Please provide a description of the current water diversion system.

Existing well, mainline and delivery systems.

- B. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank.

Water rights 37-2211 is an irrigation water right for 85.0 acres. None of the 85.0 acres under 37-2211 is being offered at this time. Water right 37-11989 provides irrigation storage, irrigation from storage and diversion to stora

- C. Are any of the water rights identified in question 3B stacked with the water right proposed for lease? Yes ☒ No ☐

Stacked water rights are water rights that are utilized together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of \$500.

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

Yes ☐ No ☒

If yes, describe. _____

E. 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 water right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code. _____

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

If yes, describe. _____

4. MAP

Plat map, survey map, or aerial photograph clearly showing the specific acres proposed to be idled by this lease application.

5. SALE/LEASE AGREEMENT

A. Is the water right, or portion thereof, offered to the Idaho Water Resource Board (IWRB) for sale ☐ or lease ☒?

If lease, specify the years when the use of water will be suspended: 2015 to 2018 (maximum lease period 5 years).
(Year) (Year)

B. 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 water right for sale or lease to the Idaho Water Resource Board.

The Designated Applicant acknowledges the following:

1. Payment to the Designated Applicant is contingent upon the sale or rental of the water right from the Bank.
2. While a water right is in the Bank, the seller/lessor of the water right may not use the water right even if the water right is not rented from the Bank.
3. A water right accepted into the Bank stays in the Bank until the Designated Applicant receives written confirmation from the Board or Water Supply Bank that the water right has been released from the Bank.
4. While a water right is in the Bank, forfeiture provisions are stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any elements of the water right.

Signature of Designated Applicant

Printed Name

Date

Signature of Authorized Representative

Printed Name

Date

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

ATTACHMENT 1A

Additional Water Right Holders Party to the Lease Application

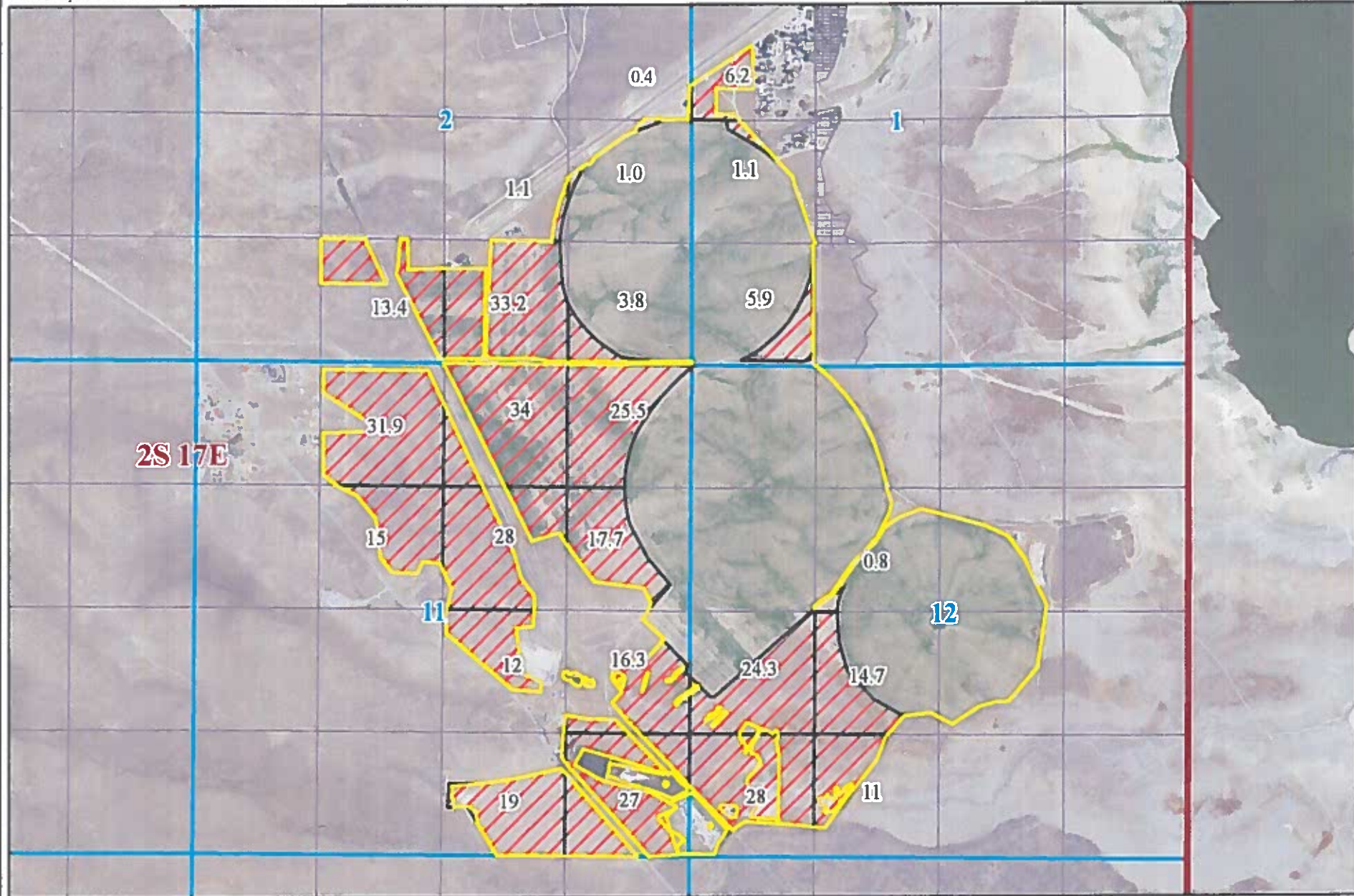
List all individuals or business entities that are owners of the property to which the water right on this application is appurtenant. All water right holders must be signatories to a Water Supply Bank Lease Application however only the Designated Applicant needs to provide a completed IRS Form W-9 (Attachment 1B). All correspondence and any financial payment associated with the rental of this water right will be directed to the Designated Applicant. If additional space is needed to list any other water right holders, attach a second copy of Attachment 1A.

If submitting multiple applications, it is only necessary to complete one Attachment 1A for the group of applications. List each water right below.

Water Right No(s). 37-22771

		Applicant #2	Applicant #3
Name	BLACK BUTTE HILLS LLC C/O GREGORY VIK		
Mailing Address	PO BOX 1607 BELLEVUE, WA 98009		
Phone Number	(425) 460-2542		
Email Address			
Applicant Declaration	As Designated Applicant, I submit this lease application on behalf of all other water right holders.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature			

	Applicant #4	Applicant #5	Applicant #6
Name			
Mailing Address			
Phone Number			
Email Address			
Applicant Declaration	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature			



BLACK BUTTE HILLS LLC - MAGIC RANCH
37-22771 WATER BANK LEASE 2015
NAIP 2013 AERIAL

Legend

- 37-22771_POU_Update
- WSB_2015_37-22771
- twship
- Sections
- lades

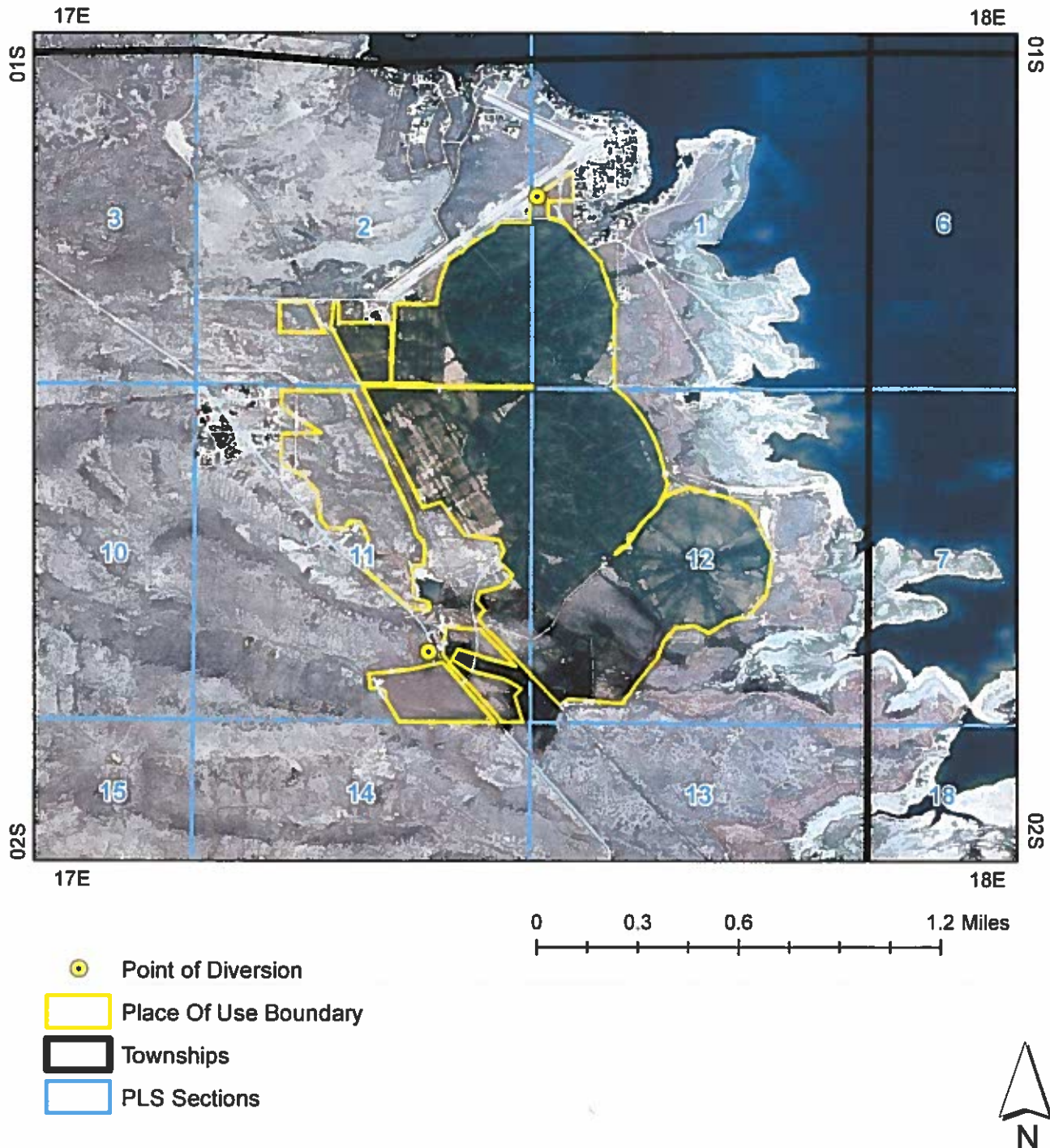


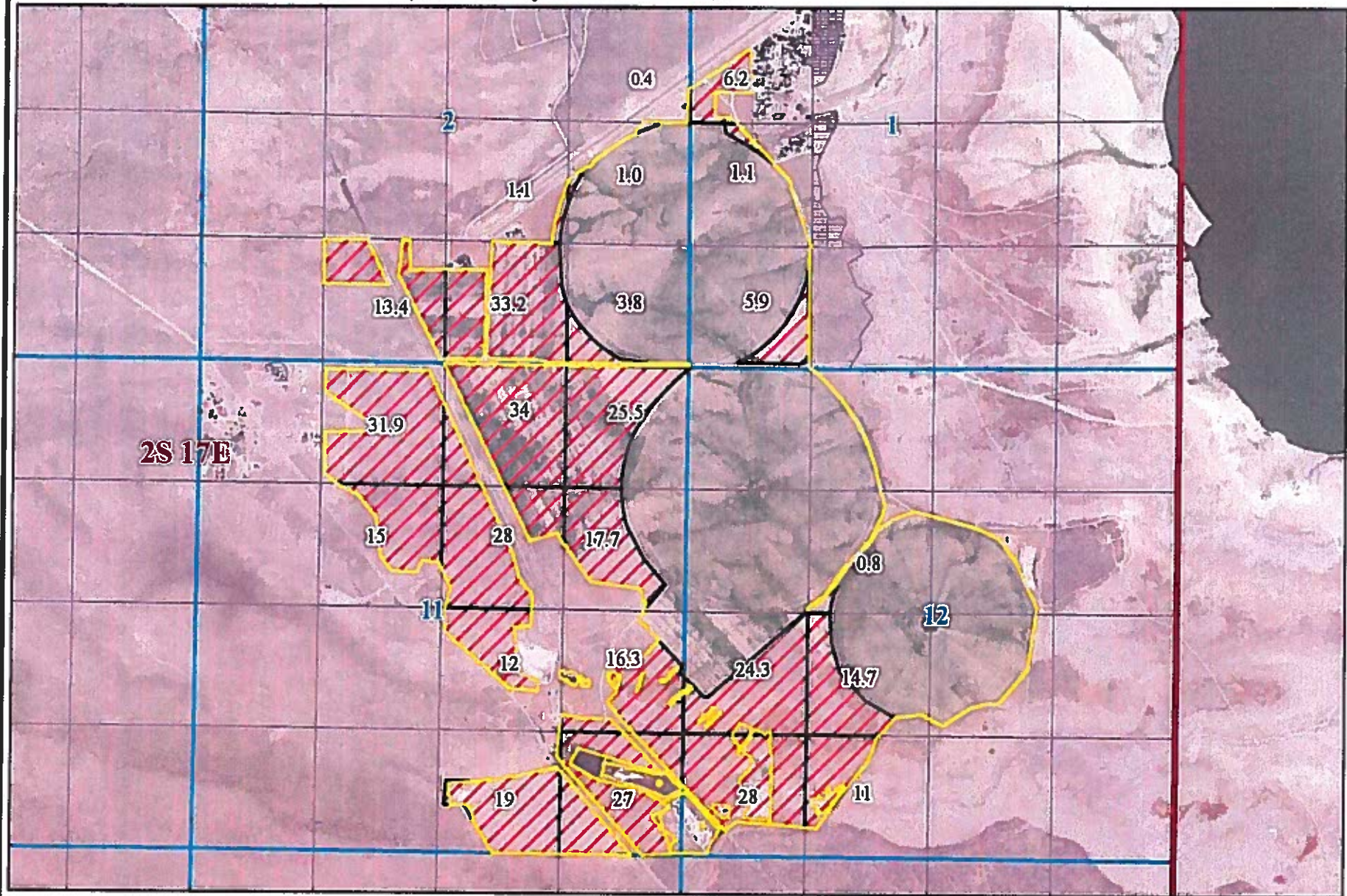
State of Idaho
Department of Water Resources

Water Right
37-22771

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.





0 750 1,500 3,000 Feet

**BLACK BUTTE HILLS LLC - MAGIC RANCH
37-22771 WATER BANK LEASE 2015
NAIP 2013 AERIAL**

Legend

- 37-22771_POU_Update
- WSB_2015_37-22771
- twship
- Sections
- ladeso

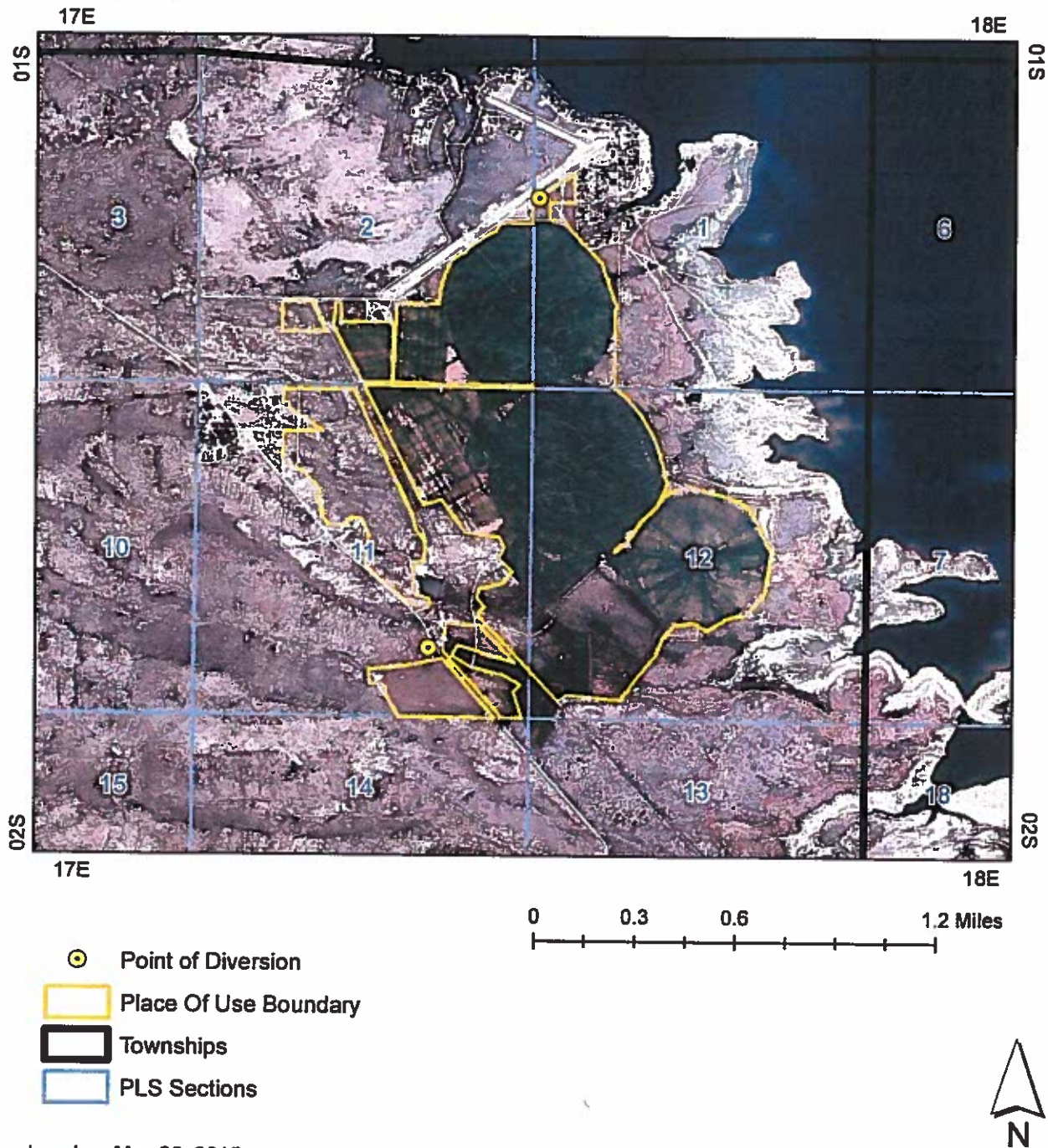


State of Idaho
Department of Water Resources

Water Right
37-22771

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



Map produced on May 29, 2015



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

BLACK BUTTE HILLS LLC
PO BOX 1607
BELLEVUE WA 98009

RE: WATER SUPPLY BANK LEASE CONTRACT FOR RIGHT 37-22771

Dear Lessor:

Water Right **37-22771** was leased into the Water Supply Bank on August 13, 2015 in accordance with the executed original Lease Contract enclosed. **Your water right as described on the Lease Contract is considered leased into the Bank and should remain unused until it is formally released from the Bank.**

The rights will automatically be released from the Bank on **December 31, 2015**, unless the right is released earlier by the Board, or upon your request. **Please note your right may not be available for immediate release if it has been rented.** 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. This form is available from our public website at www.idwr.idaho.gov.

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: Executed Lease Contract

c: Greg Sullivan – Brockway Engineering PLLC
Allen Merritt - IDWR Southern Region
Kevin Lakey – Water District 37

Webster, Clay

Subject: FW: Water Supply Bank Lease Contract - Black Butte Hills LLC 37-22771

From: Merritt, Allen
Sent: Tuesday, November 10, 2015 2:41 PM
To: Judd, Debbi
Subject: RE: Water Supply Bank Lease Contract - Black Butte Hills LLC 37-22771

I do not have an issue with this lease.

From: Judd, Debbi
Sent: Monday, November 09, 2015 3:19 PM
To: Merritt, Allen; (WATERMANAGER@CABLEONE.NET)
Subject: Water Supply Bank Lease Contract - Black Butte Hills LLC 37-22771

Debbi Judd
Technical Records Specialist
debbi.judd@idwr.idaho.gov

Idaho Department of Water Resources
322 E Front St
PO Box 83720
Boise, ID 83720-0098
208-287-4800
www.idwr.idaho.gov

Nancy Lukacs

From: Greg Sullivan <greg.sullivan@brockwayeng.com>
Sent: Wednesday, October 07, 2015 2:45 PM
To: 'Rod Gonsales'; Nancy Lukacs
Subject: RE: 37-22771

Rod and Nancy,

I have been talking with Cherie at the Water Supply Bank regarding this water right and in an effort to protect the 371.3 acres currently not irrigated under 37-22771. The Water Bank is going to process the lease application for 2015 but make the water unavailable to rent due to the stacked nature of the spring fed water right 37-11989. This will protect the water right from any forfeiture concerns for 2015. It is too late in the season to rent the water anyway.

In an effort to make water right 37-22771 available for possible mitigation scenarios due to the water call in the area. The lease period for 37-22771 will be for 1 year at a time and will have to be renewed annually. By doing so, 37-22771 is available for possible irrigation transfers or mitigation for the next year beyond the lease period.

This approach will not affect the current irrigation practices as described to me by Rod.

Everyone should receive the lease contract for 37-22771 that Greg Vik needs to sign sometime next week.

Greg Sullivan
Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301
208-736-8543

From: Greg Sullivan [<mailto:greg.sullivan@brockwayeng.com>]
Sent: Friday, October 02, 2015 9:34 AM
To: Palmer, Cherie (Cherie.Palmer@idwr.idaho.gov) <Cherie.Palmer@idwr.idaho.gov>
Cc: 'Rod Gonsales' (camascreek@hughes.net) <camascreek@hughes.net>; 'Nancy Lukacs' (nancyl@pistolcreek.com) <nancyl@pistolcreek.com>
Subject: FW: 37-22771

Cherie,

I remembered this morning that Transfer 79430 was approved by IDWR in February of 2015. Transfer 79430 transferred 19.8 acres from 37-22771. Associated water rights were listed as 37-2211 and 37-11989 on the transfer. There were no enlargement issues with the transfer. There were no portions of 37-2211 or 37-11989 that were altered or changed with the approval of the transfer. The total combined acre limit of 37-22771, 37-2211 and 37-11989 was reduced from 768.3 acres to 748.5 acres.

Can the proposed temporary lease application be processed the same way the permanent transfer was processed?

Greg Sullivan

Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301
208-736-8543

From: Greg Sullivan [<mailto:greg.sullivan@brockwayeng.com>]
Sent: Thursday, October 01, 2015 2:59 PM
To: Palmer, Cherie (Cherie.Palmer@idwr.idaho.gov) <Cherie.Palmer@idwr.idaho.gov>
Cc: 'Rod Gonsales' (camascreek@hughes.net)' <camascreek@hughes.net>; 'Nancy Lukacs' (nancyl@pistolcreek.com) <nancyl@pistolcreek.com>
Subject: 37-22771

Cherie,

I am not sure I understand the purpose of your recent letter regarding the lease of 371.3 acres of water right 37-22771.

Water rights 37-22771, 37-2211 and 37-11989 are authorized to irrigated a combined 748.5 acres. Of which water rights 37-2211 (Irrigation of 85 acres) and 37-11989 (Irrigation Storage, Irrigation From Storage, Diversion to Storage) are limited to a diversion of 1.7 cfs. Based on the conditions of these two water rights, 37-2211 and 37-11989 can only irrigated a combined 85 acres.

Your option 1 listed in your letter is not appropriate because the 85.0 acres under 37-2211 and 37-11989 are stacked on the 377.2 acres (under 37-22771) not being offered to be lease to the Water Supply Bank. It is not the intent of Black Butte Hills LLC to lease any portion of 37-11989 into the Water Supply Bank. If a portion of 37-11989 was leased into the Water Supply Bank, then portions of the irrigation storage would also have to be dried up. There is no physical way to partially dry up a storage pond and still utilize it for irrigation purposes.

Your option 2 is irrelevant. Water right 37-22771 can only supply supplemental water on the 85.0 acres of 37-2211 and 37-11989. Which leaves 663.5 acres of primary water under 37-22771. From this 663.5 acres the 371.3 acres for lease are being offered.

Your option 3 is not a possibility either because the 371.3 acres needs to be available for possible mitigation option for an active water call in the region.

Please process the lease application for 371.3 acres.

If it would help the Water Supply Bank in their processing of this application, a new 206 map for water rights 37-22771, 37-2211 and 37-11989 can be submitted to IDWR that would identify where the 85.0 acres (under one of the large pivots) from 37-2211 and 37-11989 are located.

Greg Sullivan
Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301
208-736-8543



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

October 29, 2015

BLACK BUTTE HILLS LLC
PO BOX 1607
BELLEVUE WA 98009

RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 37-22771 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 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.

The rights will automatically be released from the Bank on **December 31, 2015**, unless the rights are released earlier by the Board, or upon your request. 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.

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: Brockway Engineering PLLC



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

September 28, 2015

BLACK BUTTE HILLS LLC
C/O GREGORY VIK
PO BOX 1607
BELLEVUE WA 98009

RE: ADDITIONAL INFORMATION REQUEST FOR PROCESSING APPLICATION(S)
TO LEASE WATER RIGHT NO. 37-22771 TO THE WATER SUPPLY BANK

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

Dear Applicant:

The Idaho Department of Water Resources (Department) acknowledges receipt of your application to lease the above referenced water right to the Water Supply Bank (Bank).

The Water Supply Bank Rules provide criteria to be considered when determining whether to accept a water right into the Bank. The criteria includes assessing whether enlargement will occur upon rental of the right. Water right 37-11989 has the same place of use as right 37-22771 and, if leased, rental of right 37-22771 alone may constitute an enlargement.

To avoid an enlargement of right 37-22771 there are a few options:

- Lease the overlapping portion of water right 37-11989 into the Bank. If this option is selected the proportionate diversion rate must also be leased. OR
- Submit records of the historic volume diverted under right 37-22771. Once the Department understands how much ground water has been supplementing 37-11989, the appropriate amount can be made available for rental. OR
- Lease 37-22771 as proposed but, make it unavailable for rental.

Please note that partial forfeiture could occur if a water right is not being used in a 5 year timeframe. If you select the 2nd or 3rd option, forfeiture protection would not apply to right 37-11989 and any idled acres at the place of use for rights 37-11989 and 37-22771 could become forfeited.

Please provide the following information within 14 days of the date. If the requested items are not submitted within 14 days, the Department will process this application using the 3rd option. If you have questions, please contact me at (208) 287-4944.

Sincerely,

Cherie Palmer, Water Rights Supervisor
Water Allocation Bureau

c: Greg Sullivan-Brockway Engineering

Hersley, Jean

From: Merritt, Allen
Sent: Wednesday, September 02, 2015 9:32 AM
To: Hersley, Jean
Subject: RE:

You might get Shelley involved but it seems if the use of 37-11989 and 37-2211 is limited to the remaining irrigated acres not leased under 37-22771 there should not be an issue. One might argue that you can enlarge the storage on to leased acres but in reality that water is probably used in the ponds for other uses and they would not mind that limitation since they do not appear to be irrigating that extra acres anyway if you look at the recent imagery.

From: Hersley, Jean
Sent: Wednesday, September 02, 2015 9:07 AM
To: Merritt, Allen
Subject:

Attached is an application to lease a portion of the irrigation use of water right 37-22771 to the Bank. The applicant wishes to place 371.3 acres in the Bank. This water right overlaps with 37-2211, which is an irrigation right for 85.0 acres and 1.7 cfs within the same POU as 37-22771. None of 37-2211 is being offered to the Bank. 37-22771 also overlaps with 37-11989 which provides irrigation storage, irrigation from storage and diversion to storage with a rate on the diversion to storage of 1.7 cfs. None of 37-11989 is being offered to the Bank. These rights have a combined use limit of 748.5 acres and a rate limit of 1.7 cfs. Can we lease 37-22771 without any portions of the others without enlargement issues?

Please let me know your concerns or if you have any comments.

*Jean Hersley
Idaho Dept Water Resources
Technical Records Specialist II
208-287-4942*

MEMORANDUM

To: Water Right No(s). 37-22771

From: Jean Hersley

Date: August 19, 2015

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

PURPOSE/NARRATIVE: This application was received on August 13, 2015. The applicant wishes to place a portion, 371.3 acres, 4.49 cfs and 113.9 af, in the Bank until the end of 2015. This water right overlaps with 37-2211, which is limited to 85 acres within the same POU. These 85 acres are not being leased to the Bank. This right also overlaps with 37-11989, which provides irrigation storage, irrigation from storage and diversion to storage. None of this right is being offered to the Bank. The applicant does not want to lease any of 37-11989 to the Bank so this water right will be leased but "unrentable".

AUTHORITY TO FILE: Gregory Vik, president, signed the application.

WATER RIGHT VALIDITY: The parent right 37-20556, was decreed in 2010. Forfeiture is not an issue.

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 # 37. Comments were received from Allen Merritt, Southern Region Manager.

Hersley, Jean

From: Greg Sullivan <greg.sullivan@brockwayeng.com>
Sent: Tuesday, August 18, 2015 2:46 PM
To: Hersley, Jean
Subject: RE: WSB Lease Applications for Black Butte Hills, Smokey Dome LLC and South Cove Ventures

Jean,

37-12007

Yes, it includes the stockwater use.

37-22771

Yes, just the irrigation portion should be leased to the Water Bank.

37-2726

Yes, just the irrigation portion of this right to be leased to the Water Bank.

37-8365

Yes, heating and aesthetic uses are to be leased into the Water Bank.

Greg Sullivan
Brockway Engineering
2016 North Washington Stree, Suite 4
Twin Falls, Idaho 83301
208-736-8543

From: Hersley, Jean [mailto:Jean.Hersley@idwr.idaho.gov]
Sent: Tuesday, August 18, 2015 10:58 AM
To: Greg Sullivan <greg.sullivan@brockwayeng.com>
Subject: WSB Lease Applications for Black Butte Hills, Smokey Dome LLC and South Cove Ventures

Just a few points of clarification with the leases submitted last week:

37-12007 the applications requested the entire water right be placed in the Bank. Does this include the stockwater use?

37-22771- I'm assuming a portion of the irrigation is the only use going in the Bank. Is that correct? This right includes stockwater and wildlife storage and diversion to storage.

37-2726- Irrigation only in the Bank? this right includes domestic and stockwater.

37-8365- Are the Heating and Aesthetic uses both being leased to the Bank?

If you can get back to me as soon as possible, I can get the contracts drawn up and sent. Thank you.

Jean Hersley
Idaho Dept Water Resources
Technical Records Specialist II
208-287-4942

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