

WATER SUPPLY BANK LEASE CONTRACT

This Lease Contract ("Lease") is effective February 17, 2015, between the Idaho Water Resource Board ("Board"), and

Lessor: EDWARD RAY MONTIERTH
825 HEARTLAND DR
NAMPA ID 83686
(208) 463-8163

RECEIVED

JUL 20 2015

DEPARTMENT OF
WATER RESOURCES

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 February 17, 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>
63-32689	0.09 CFS	21.0 AF	4.7 AC	14.0 AC
Combined Lease Totals:	0.09 CFS	21.0 AF	4.7 AC	14.0 AC

The water rights described herein shall be available for rental from the Bank as follows:
Authorized Period of Use under Lease: March 15 to November 15

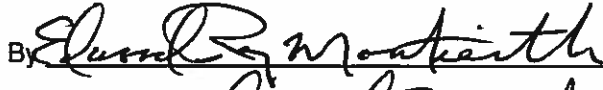
2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

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, 2019.
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.

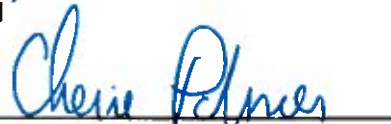
EDWARD RAY MONTIERTH
825 HEARTLAND DR
NAMPA ID 83686

By  Date 7/11/15
Printed Name Edward Ray Montierth Title owner

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 July 21, 2015

Lease approved by IDWR 

Date 7/21/2015

ATTACHMENT A
WATER RIGHT NO. 63-32689
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: EDWARD RAY MONTIERTH
825 HEARTLAND DR
NAMPA ID 83686
(208) 463-8163

Priority Date: 04/13/1967

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15 to	11/15	0.09 CFS	21.0 AF
	Total:		0.09 CFS	21.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NE¼NE¼ Sec. 14, Twp 02N, Rge 03W, CANYON 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	
02N	03W	14	14.0																14.0

Total Acres: 14.0

Limit to acres within the place of use described above: 4.7

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. 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.

RECEIVED

FEB 17 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 Edward Ray Montierth
(Select one owner – see item 1A on the application)

Water Right No. 63-32689
(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>250.00</u>	Received By: <u>YSH</u>	Date Received: <u>2-17-15</u>	Receipt # <u>CB99926</u>
W-9 received? Yes ☒ No ☐	(Route W-9 to Fiscal)	Name on W-9: <u>Ray Montierth</u>	

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 by completing and signing Attachment 1A of this application package.

Designated Applicant Edward Ray Montierth Email Address _____
Mailing Address 825 Heartland Dr., Nampa, ID 83686 Phone Number (208) 463-8163

☐ 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)? 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 Roxanne Brown Organization SPF Water Engineering, LLC
Professional Title Sr. Water Rights Specialist Email Address rbrown@spfwater.com
Mailing Address 300 E. Mallard Dr., Ste. 350, Boise, ID 83706 Phone Number (208) 383-4140

☐ 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 63-32689 ☒ 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.

The water right was reserved at the time of land sale to Barron Development LLC as described in the attached
Warranty Deed and Option Contract. There is no water diversion system at this time.

- 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.
63-32685, 63-32687, 63-32689, 63-32691, 63-32693

- 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. A Partial Decree for this right was issued in the SRBA on March 9, 2010.

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 2019 (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

Ray Montierth

Printed Name

Date

2/6/15


Signature of Authorized Representative


Printed Name

Date

2/6/15

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

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 63-32689

NAME AND ADDRESS: HERBERT R. MONTIERTH JR
6312 S ZITHER AVE
BOISE, ID 83709

EDWARD RAY MONTIERTH
ESTATE OF GOLDA D MONTIERTH
SUSAN L MONTIERTH
825 HEARTLAND DR
NANPA, ID 83686

SOURCE: GROUND WATER

QUANTITY: 0.09 CFS
21.00 AFY

PRIORITY DATE: 04/13/1967

POINT OF DIVERSION: T02N R03W S14 NENE Within Canyon County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-15 TO 11-15	0.09 CFS 21.00 AFY

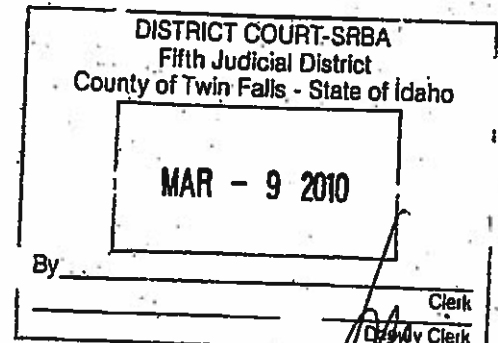
The use of water for irrigation under this right may begin as early as March 1, provided other elements of the right are not exceeded. The use of water before March 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.

PLACE OF USE: Irrigation Within Canyon County
T02N R03W S14 NENE 14.0
14.0 Acres Total

This right is limited to the irrigation of 4.7 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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. I.C. SECTION 42-1412(6).



SCANNED
MAR-10 2010



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 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

July 22, 2015

EDWARD RAY MONTIERTH
825 HEARTLAND DR
NAMPA ID 83686

RE: WATER SUPPLY BANK LEASE CONTRACT FOR RIGHTS 63-32685, 63-32687, 63-32689, 63-32691 and 63-32693

Dear Lessor:

Water Rights 63-32685, 63-32687, 63-32689, 63-32691 and 63-32693 were leased into the Water Supply Bank on February 17, 2015 in accordance with the executed original Lease Contract enclosed. **Your water rights as described on the Lease Contract are considered leased into the Bank and should remain unused until they are formally released from the Bank.**

The rights will automatically be released from the Bank on **December 31, 2019**, unless the rights are released earlier by the Board, or upon your request. **Please note your rights may not be available for immediate release if they have 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,


for Clay Webster

Water Resource Agent
WSB Process Point of Contact

Enclosure: Executed Lease Contract

c: SPF Water Engineering LLC
IDWR Western Region



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

C.L. "BUTCH" OTTER
Governor

CARY SPACKMAN
Director

July 8, 2015

EDWARD RAY MONTIERTH
825 HEARTLAND DR
NAMPA ID 83686

**RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 63-32685, 63-32687, 63-32689, 63-32691
and 63-32693 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 each water right 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, 2019**, 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,

for Clay Webster
Water Resource Agent
WSB Process Point of Contact

Enclosure: Proposed Lease Contracts
Receipt # C099926

c. SPF Water Engineering LLC

MEMORANDUM

To: Water Right No(s). 63-32685, 63-32687, 63-32689, 63-32691 and 63-32693

From: Jean Hersley

Date: June 24, 2015

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

PURPOSE/NARRATIVE: These application(s) were received February 17, 2015. The applicant wants to place the entirety of all rights in the Bank. Montierth withheld these rights in a land sale to Barron Development in 2005. The land is now owned by Frank Tiegs LLC, who has their own water rights for the land. As of today, these are paper rights. Refer to review memo for transfer 76427, that the new owner will not be using any of Montierth's water rights to irrigate.

AUTHORITY TO FILE: Edward Ray Montierth signed the applications as one of the current owners.

WATER RIGHT VALIDITY: These water rights were decreed in 2010 and have not been put to beneficial use since they were decreed. Forfeiture is not an issue. See email from SPF Water Engineering LLC.

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.

Hersley, Jean

From: Roxanne Brown [RBrown@spfwater.com]
Sent: Thursday, June 25, 2015 11:51 AM
To: Hersley, Jean
Subject: RE: Montierth WSB Lease Applications

Jean –

Montierth withheld these water rights at the time of land sale to Barron Development. The documentation is located in the Department's file for the Change in Ownership filed by Barron. The water rights have not been used on this land since the date the decree was issued.

Let me know if you have any other questions.

Roxanne

From: Hersley, Jean [<mailto:Jean.Hersley@idwr.idaho.gov>]
Sent: Thursday, June 25, 2015 11:36 AM
To: Roxanne Brown
Subject: Montierth WSB Lease Applications

Roxanne,

I am in the process of reviewing the WSB Lease Applications for water rights 63-32685, 63-32687, 63-32689, 63-32691 and 63-32693. Has any irrigation taken place since these water rights were decreed in 2010?

The land appurtenant to water rights 63-32685, 63-32689, 63-32691 and 63-32693 is owned by Frank Tiegs LLC, so I assume the irrigation happening on the lands are from his water rights.

Land appurtenant to water right 63-32687 is now Wild Prairie Estates with houses that were built in 2008. Is this water right providing the irrigation water for this subdivision? The Montierth's own one parcel which is 3 acres in this subdivision.

Please respond within 7 days so the Department can continue reviewing these applications. Thank you.

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



SPF WATER
ENGINEERING

RECEIVED

FEB 17 2015

DEPARTMENT OF
WATER RESOURCES

February 13, 2015

Remington Buyer
Idaho Department of Water Resources
State Office
322 E. Front St.
P.O. Box 83720
Boise, ID 83720-0098

*Re: Application for Lease to the Idaho Water Supply Bank
Water Right Nos. 63-32685, 63-32687, 63-32689, 63-32691, 63-32693*

Dear Remington,

We have enclosed five applications to place water rights in the Idaho Water Supply Bank. The rights are owned by Ray and Susan Montierth, Herbert Montierth, and the Estate of Golda Montierth. The parties have designated Edward (Ray) Montierth to act on behalf of the lessors.

We have also enclosed a check for \$1,250.00 for the filing fees.

Please contact me if you have any questions.

Sincerely,

Roxanne Brown

cc: Ray Montierth

SPF Job No.: 1058.0040