

WATER SUPPLY BANK LEASE CONTRACT

This Lease Contract ("**Lease**") is effective January 1, 2015, between the Idaho Water Resource Board ("**Board**"), and

Lessor: FARM DEVELOPMENT CORP

PO BOX 1201
BOISE ID 83702
(208) 991-2701

RECEIVED

FEB 10 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 to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

NOW, THEREFORE, in consideration of the mutual covenants and contracts herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **WATER RIGHTS:** The Lessor shall lease and the Board shall accept into the Bank the Applicant's water rights described as follows:

Summary of Water Rights or Portions Leased to the Bank

<u>Water Right</u>	<u>Lease Rate</u>	<u>Lease Volume</u>	<u>Total Leased Acres</u>
63-33384	0.48 CFS	112.5 AF	25.0 AC
Combined Lease Totals:	0.48 CFS	112.5 AF	25.0 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.

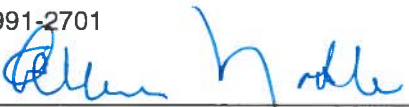
Minimum Payment Acceptable: Current Rental Rate

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

FARM DEVELOPMENT CORP

PO BOX 1201
BOISE ID 83702
(208) 991-2701

By 

Date 2/9/2015

Printed Name Allen Noble

Title President

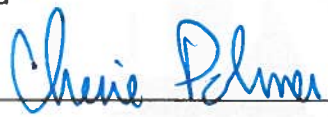
IDAHO WATER RESOURCE BOARD

322 East Front Street
P.O. Box 83720
Boise, ID 83720-9098

By 

Date 2/10/2015

Brian Patton, Acting Administrator
Idaho Water Resource Board

Lease approved by IDWR 

Date February 10, 2015

ATTACHMENT A
WATER RIGHT NO. 63-33384
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: **FARM DEVELOPMENT CORP**
 PO BOX 1201
 BOISE ID 83702
 (208) 991-2701

Priority Date: 04/16/1967

Source: GROUNDWATER **Tributary to:**

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/015	to 11/15	0.48 CFS	112.5
	Total:		0.48 CFS	112.5

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NE¼SE¼	Sec. 15	Twp 02N	Rge 03W	CANYON County
GROUND WATER	SW¼SE¼	Sec. 15	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	15													20.0			5.0	25.0

Total Acres: 25.0

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 3/19/2009.
13. Use of water under this right will be 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 (Boise River).

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

JAN 12 2015

DEPARTMENT OF
WATER RESOURCES

WATER SUPPLY BANK LEASE OR SALE
APPLICATION CHECKLIST

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 Farm Development Corp

Water Right No. 63-33384
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. If you are submitting more than one lease application and the water rights have a common place of use, or common diversion rate, or common diversion volume, the combined maximum fee is \$500.00.

Attachment N/A YES

- | | | | |
|----|-------------------------------------|-------------------------------------|---|
| 1A | ☐ | ☒ | Contact information for all owners 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. |
| 3D | ☐ | ☒ | Evidence demonstrating that a water right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code. |
| 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. If you don't already have a detailed map, you can create one using IDWR's online General Mapping Tool (http://maps.idwr.idaho.gov/mapall/) to locate a water right place of use or point of diversion. |

Department Use Only

Fee Amount \$ <u>250.00</u>	Received By: <u>SP</u>	Date Received: <u>1-12-15</u>	Receipt # <u>C099806</u>
W-9 received? Yes ☒ No ☐	(Route W-9 to Fiscal)	Name on W-9: <u>Farm Development Corp</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 Farm Development Corp Email Address john@jmarshalllaw.com
Mailing Address PO Box 1201, Boise, ID 83702 Phone Number 208-991-2701

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

☐ 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 ☐
, 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 ☒
, 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 ☐
, 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 Allen Noble Organization Farm Development Corp
Professional Title President Email Address _____
Mailing Address PO Box 1201, Boise, ID Phone Number 208-342-6524

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

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

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

Water Right Number 63-33384 ☒ The full water right is being offered to the Bank.

☐ 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.
Ground water well

- 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.
N/A

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

Yes ☐ No ☐

No
, describe. _____

D. Has any portion of this water right undergone a period of five or more consecutive years of non-use?

Yes ☐ No ☒

, 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. The SRBA partial decree for this right was issued on March 19, 2009

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

, describe. _____

4. SALE/LEASE AGREEMENT

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

, for a period from 1/1/2015 to 12/31/2015 (maximum lease period 5 years).
(Month / Day / Year) (Month / Day / 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

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 ank does not, in itself, confirm the validity of the water right or any elements of the water right.

Allen Noble
Signature of Designated Applicant

Allen Noble
Printed Name

January 7, 2015
Date

Signature of Authorized Representative

Printed Name

Date

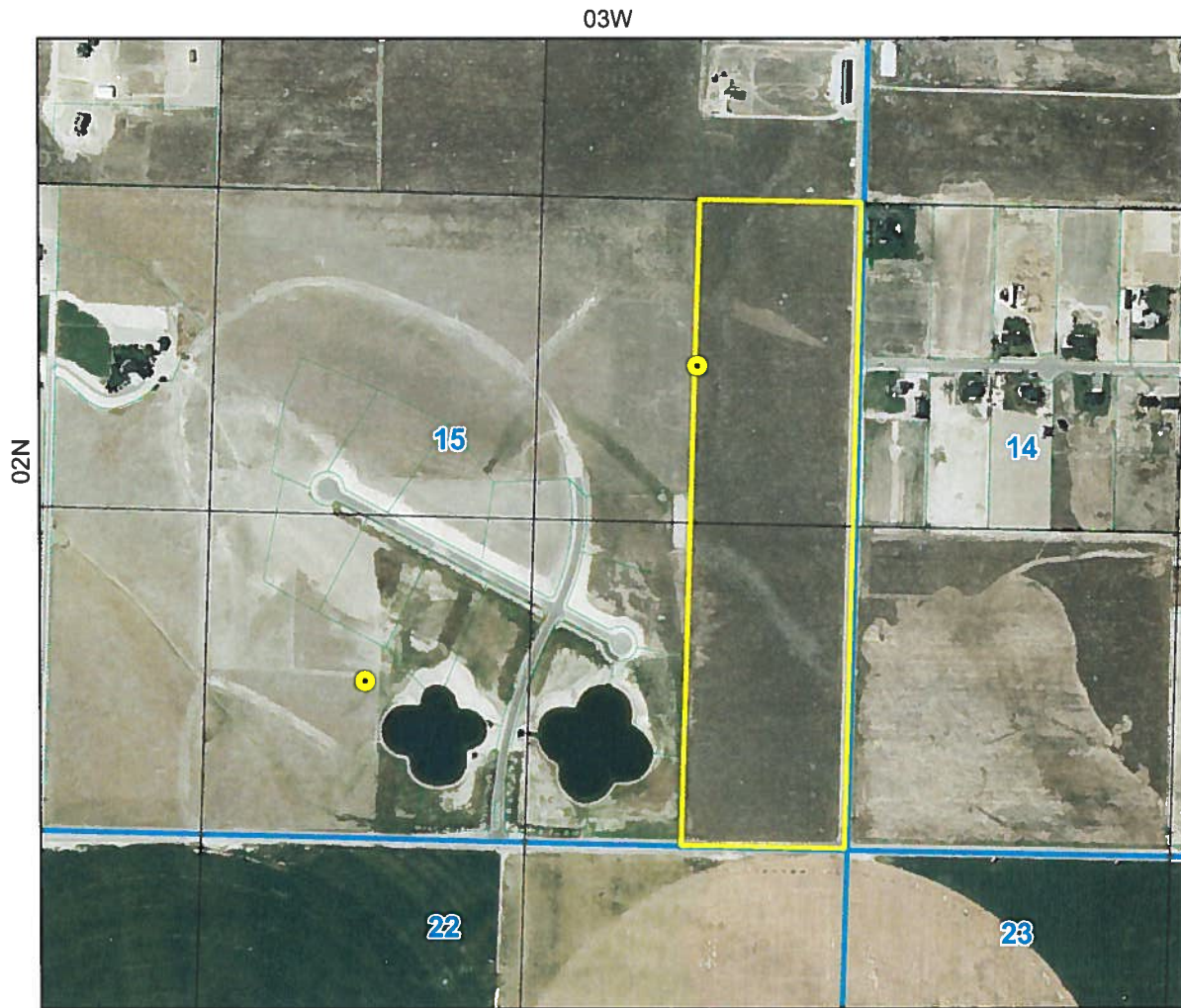
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

State of Idaho
Department of Water Resources

Water Right
63-33384

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.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters
- Taxlots

0 0.075 0.15 0.3 Miles





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

February 12, 2015

FARM DEVELOPMENT CORP
PO BOX 1201
BOISE ID 83702

RE: WATER SUPPLY BANK LEASE CONTRACT FOR RIGHT 63-33384

Dear Lessor:

Water Rights **63-33384** was leased into the Water Supply Bank on January 1, 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.**

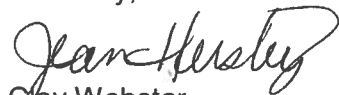
The right will automatically be released from the Bank on **December 31, 2015**, unless the right is released earlier by the Board, or upon your request. **Please note your right may not be available for immediate release if it has been rented.** To release the right from the Bank prior to the release 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,



for Clay Webster
Water Resource Agent
WSB Process Point of Contact

Enclosure: Executed Lease Contract

c: John Marshall Law PLLC
IDWR Western Region
Rex Barrie – Water District No. 63

John Marshall Law PLLC

575 W Bannock, Suite B
Boise, ID 83702

phone 208-991-2701
fax 208-906-8043
john@jmarshalllaw.com

February 9, 2015

Clay Webster
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

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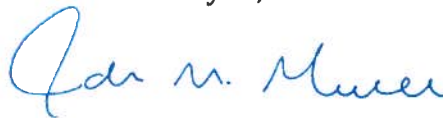
FEB 10 2015
DEPARTMENT OF
WATER RESOURCES

Re: Farm Development Corp Water Bank Lease Contract for 63-33384

Dear Clay,

Enclosed please find the executed copies of the Water Supply Bank Lease Contract for right 63-33384.

Thank you,



John M. Marshall



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

February 5, 2015

FARM DEVELOPMENT CORP
PO BOX 1201
BOISE ID 83702

RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 63-33384 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 to the Water Supply Bank. **I have enclosed two original Water Supply Bank Lease Contracts for your review and signature. Please sign and return BOTH 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.

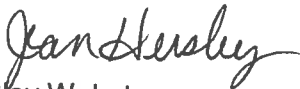
The rights will automatically be released from the Bank on **December 31, 2015**, unless the rights are released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. 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,

for 
Clay Webster

Water Resource Agent
WSB Process Point of Contact

Enclosure: Proposed Lease Contracts
Receipt # C099806

c. John Marshall Law PLLC

Kelly, Patrick

From: Grimm, Angie
Sent: Monday, February 02, 2015 11:15 AM
To: Kelly, Patrick
Subject: RE: 2015 water supply bank lease application review

Patrick,

Good morning! Steve asked me to respond to your request for comments. This water right is in the South Canyon County area within which Western is processing several large ground water diversion permit applications (Noble Farms, et. al over 98 cfs) where some areas have seen ground water declines (Dry Lake Area). This may be something to consider in processing a rental of this right should it be accepted into the bank, but would not be something to preclude it from being leased into the bank. The POU property for this right (63-33384) is not included in the proposed POU for those large ground water applications. There are no pending applications Western is processing for this property that I'm aware of.

Some general comments for your consideration: As a ground water right, I wouldn't think it'd be necessary to seek WD 63 Watermaster comments for this lease. The aerial photography doesn't look too good as far as showing irrigation of the POU, but with a decree date of 2009 resumption of use or a defense to avoid forfeiture action would need to occur within calendar year 2015, which this lease application would be.

Hope these comments are helpful. Thank you for the opportunity to comment. Happy Monday! =)

Angie

From: Kelly, Patrick
Sent: Friday, January 23, 2015 8:47 AM
To: Lester, Steve; Rex Barrie
Subject: FW: 2015 water supply bank lease application review

Good Morning,

A lease application for the water supply bank has been received and my review memo has been attached. Please review the information and provide comment. I will give you 14 days to return any comment before moving on with the lease. Thank you,

Patrick Kelly

Water Resource Agent
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83702
d: 208.287.4933
f: 208.287.6700
patrick.kelly@idwr.idaho.gov

Kelly, Patrick

From: Rex Barrie [waterdistrict63@qwestoffice.net]
Sent: Monday, January 26, 2015 7:23 AM
To: Kelly, Patrick
Cc: Lester, Steve
Subject: RE: 2015 water supply bank lease application review

Patrick,

I have no problem with this lease.

Rex R. Barrie
Boise River Watermaster

From: Kelly, Patrick [<mailto:Patrick.Kelly@idwr.idaho.gov>]
Sent: Friday, January 23, 2015 8:47 AM
To: Lester, Steve; Rex Barrie
Subject: FW: 2015 water supply bank lease application review

Good Morning,

A lease application for the water supply bank has been received and my review memo has been attached. Please review the information and provide comment. I will give you 14 days to return any comment before moving on with the lease. Thank you,

Patrick Kelly

Water Resource Agent
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83702
d: 208.287.4933
f: 208.287.6700
patrick.kelly@idwr.idaho.gov

MEMORANDUM

To: Water Right No(s). 63-33384

From: Patrick Kelly

Date: 1/22/2015

Re: Review of Application to Lease Water Right to the State Water Supply Bank

PURPOSE/NARRATIVE:

On January 12, 2015, IDWR received an application to lease the right 63-33384 into the WSB. This is a one year lease through Dec 31, 2015. The source is groundwater for irrigation of 25 acres within Ada County.

AUTHORITY TO FILE:

Allen Noble signed the bank lease application. Mr. Noble is the current listed agent for the company according to the 2014 ID Sec. of State business database.

WATER RIGHT VALIDITY:

Water right 63-33384 was decreed in 2009. There is evidence based on aerial photography that the POU has been irrigated within the last 5 years. 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.

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 leases appear consistent with the conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS:

The right is subject to Water District 63. Rex Barrie & Western Region will be contacted to request comment.

John Marshall Law PLLC

575 W Bannock, Suite B
Boise, ID 83702

phone 208-991-2701
fax 208-906-8043
john@jmarshalllaw.com

January 8, 2015

Cherie Palmer
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

RECEIVED

JAN 12 2015

DEPARTMENT OF
WATER RESOURCES

Re: 63-33384 Water Bank Lease Application

Dear Cherie,

Enclosed please find an executed Water Bank Application for water right 63-33384. I've also enclosed a check for \$250.00 to cover the required fee. Please contact me with any questions.

Thank you,



John M. Marshall