

FEB 09 2015

DEPARTMENT OF
WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT

This Lease Contract ("**Lease**") is effective January 26, 2015, between the Idaho Water Resource Board ("**Board**"), and

Lessor: WARM SPRINGS CREEK RANCH LLC
700 EMERSON ST
PALO ALTO CA 94301
650-614-6234
mark@gatesland.com

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>
34-469	2.57 CFS	Not Stated	171.0 AC
34-471	0.64 CFS	Not Stated	171.0 AC
Combined Lease Totals:	3.21 CFS	602.3 AF	171.0 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 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.

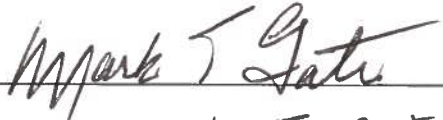
SUPPORT DATA

IN FILE # 34-469

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.

WARM SPRINGS CREEK RANCH LLC
700 EMERSON ST
PALO ALTO CA 94301

By 
Printed Name MARK T. GATES d/e

Date 2-3-15
Title MANAGING MEMBER

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 February 9, 2015

Lease approved by IDWR 

Date 2/9/2015

ATTACHMENT A
WATER RIGHT NO. 34-469
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: WARM SPRINGS CREEK RANCH LLC
 700 EMERSON ST
 PALO ALTO CA 94301
 650-614-6234

Priority Date: 11/01/1892

Source: WARM SPRINGS CREEK **Tributary to:** BIG LOST RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	05/01	to 10/15	2.57 CFS	NA
	Total:		2.57 CFS	NA

LOCATION OF POINT(S) OF DIVERSION:

WARM SPRINGS CREEK SW ¼ NE ¼ SE ¼ Sec. 34 Twp 08N Rge 22E CUSTER 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	
07N	22E	1			40.0														40.0
07N	23E	6					5.0	41.0	5.0										51.0
07N	23E	31											40.0	40.0					80.0

Total Acres: 171.0

COMBINED LIMITS OF LEASED RIGHT:

<u>Combined Rights</u>	<u>Lease Rate</u>	<u>Lease Volume</u>	<u>Acre Limit</u>	<u>Total Leased Acres</u>
34-469 and 34-471	3.21 CFS	602.3	NA	171.0 AC

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 unleased portions of water rights 34-469 and 34-471 when combined shall not exceed a total maximum diversion volume of 147.9 af at the field headgate for the irrigation of 42 acres.
13. The period of use for irrigation described above may be extended in season of unusual characteristics to a beginning date of 4-20 and an ending date of 10-31 at the discretion of the director of the Idaho Department of Water Resources.
14. Use of water under this right will be regulated by the watermaster of State Water District No. 34.
15. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

ATTACHMENT A
WATER RIGHT NO. 34-471
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: WARM SPRINGS CREEK RANCH LLC
 700 EMERSON ST
 PALO ALTO CA 94301
 650-614-6234

Priority Date: 07/12/1907

Source: WARM SPRINGS CREEK **Tributary to:** BIG LOST RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
IRRIGATION	05/01 to	10/15	0.64 CFS
	Total:		0.64 CFS

LOCATION OF POINT(S) OF DIVERSION:

WARM SPRINGS CREEK SW¼NE¼SE¼ Sec. 34 Twp 08N Rge 22E CUSTER 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	
07N	22E	1			40.0														40.0
07N	23E	6					5.0	41.0	5.0										51.0
07N	23E	31											40.0	40.0					80.0

Total Acres: 171.0

COMBINED LIMITS OF LEASED RIGHT:

<u>Combined Rights</u>	<u>Lease Rate</u>	<u>Lease Volume</u>	<u>Acre Limit</u>	<u>Total Leased Acres</u>
34-469 and 34-471	3.21 CFS	602.3	NA	171.0 AC

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 unleased portions of water rights 34-469 and 34-471 when combined shall not exceed a total maximum diversion volume of 147.9 af at the field headgate for the irrigation of 42 acres.
13. The period of use for irrigation described above may be extended in season of unusual characteristics to a beginning date of 4-20 and an ending date of 10-31 at the discretion of the director of the Idaho Department of Water Resources.
14. Use of water under this right will be regulated by the watermaster of State Water District No. 34.
15. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

DEC 08 2014

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 Warm Springs Creek Ranch LLC

Water Right No. 34-469
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 [Internal Revenue Service \(IRS\) Form W-9](#) for the Designated Applicant.
- 1C *Notice of Change in Water Right Ownership* 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</u>	Received By: <u>[Signature]</u>	Date Received: <u>12-8-14</u>	Receipt # <u>C099670</u>
W-9 received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	(Route W-9 to Fiscal)	Name on W-9: <u>Warm Springs Creek Ranch</u>	

STATE OF IDAHO
WATER RESOURCE BOARD

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 Warm Springs Creek Ranch LLC Email Address Mark@gatesland.com
Mailing Address 700 Emerson St., Palo Alto, CA 94301 Phone Number 650-614-6234

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 Mark Gates Organization Warm Springs Creek Ranch LLC
Professional Title Managing partner Email Address Mark@gatesland.com
Mailing Address 700 Emerson, Palo Alto CA 94301 Phone Number 650-614-6234

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 34-469 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.
Ditch and flood irrigation

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.
34-471

C. Will the present place of use continue to receive water from any other source? Yes No

If yes, describe. _____

D. 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. _____

E. 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. 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, for a period from 1/1/2015 to 1/1/2020 (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. _____

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.

<u>See power of Attorney</u>	Mark Gates	_____
Signature of Designated Applicant	Printed Name	Date
<u>Jim Gregory</u>	Jim Gregory	12/2/14
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 2

DESCRIPTION OF A WATER RIGHT PORTION OFFERED TO THE WATER SUPPLY BANK

1. Water Right Number Amount (cfs/ac-ft) Nature of Use Period of Use
34-469 3.2 Irrigation 05/01 to 10/15
 _____ to _____
 _____ to _____
 _____ to _____
 _____ to _____

Total Amount: _____

2. Source of water Warm Springs Creek tributary to Mackay Reservoir

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
08N	22E	34		SW	NE	SE	Custer

4. Lands irrigated or place of use:

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N	22E	1			40														40
07N	23E	6					5	41	5	0									51
08N	23E	31											40	40					80

If the water right is for irrigation, show total number of acres offered to the Bank. **Total Acres** 171

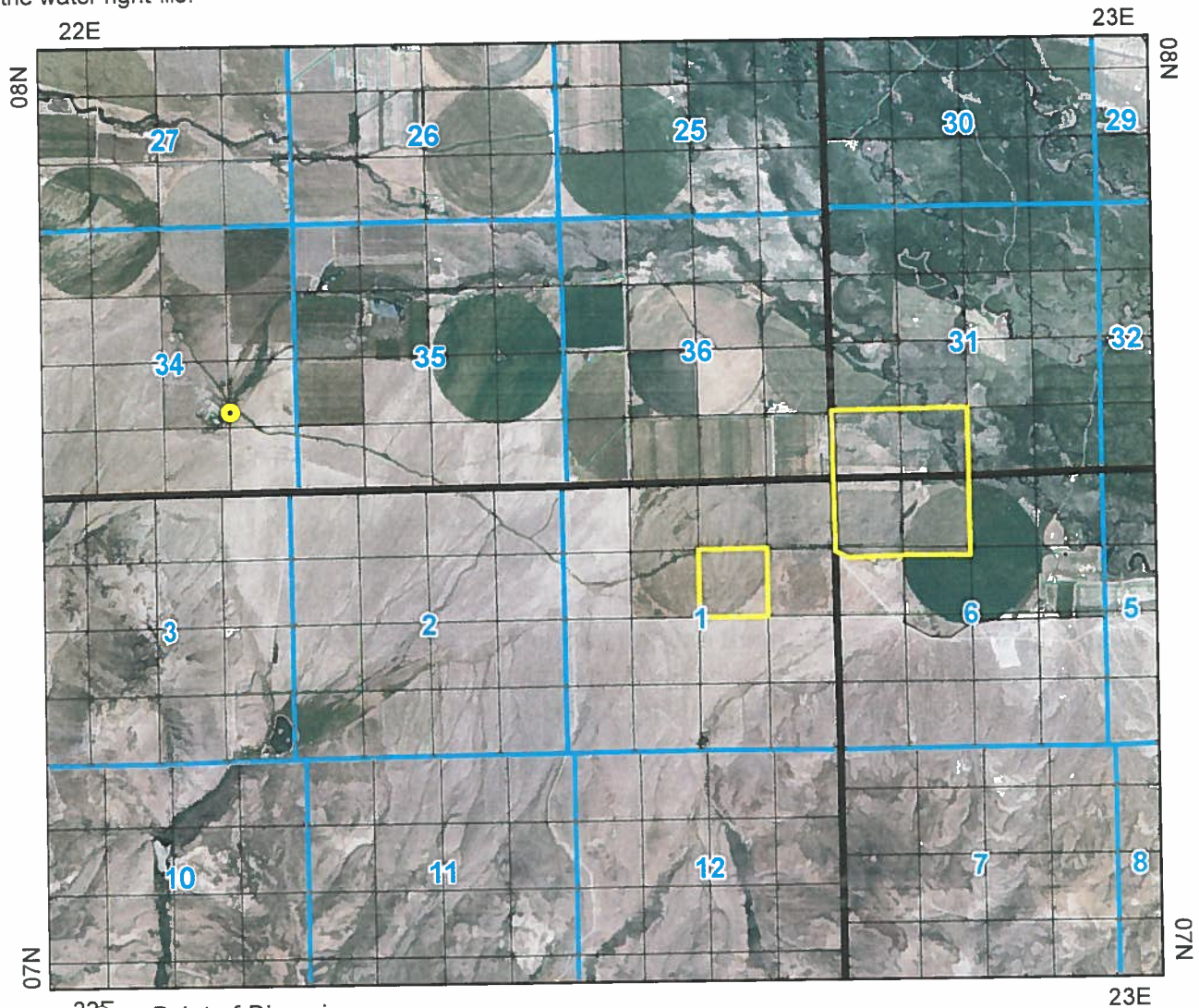
State of Idaho
Department of Water Resources

Water Right

34-469

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.



225 Point of Diversion

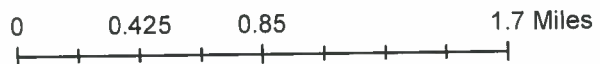
Place Of Use Boundary

Townships

PLS Sections

Quarter Quarters

Taxlots





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

January 30, 2015

WARM SPRINGS CREEK RANCH LLC
700 EMERSON ST
PALO ALTO CA 94301

RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 34-467, 34-468, 34-469 and 34-471 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 four 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, 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,

Handwritten signature of Jay Webster

Jay Webster
Water Resource Agent
WSB Process Point of Contact

Enclosure: Proposed Lease Contracts
Receipt #C099670 and C099853

c. Jim Gregory

MEMORANDUM

To: Water Right No(s). 34-469 and 34-471
From: Jean Hersley
Date: 1/29/2015
Re: Review of Applications to Lease Water Rights to the State Water Supply Bank

PURPOSE/NARRATIVE: The Department received these applications on December 8, 2014. During the initial review, it was determined that additional fees were needed. Those fees were received on January 26, 2015. The applicant wishes to place 176 acres of the 213 acres described in these water rights in the Bank. 32 acres will remain in production in the NENW and 5 acres will remain in the SENW of Section 6, Township 7N, Range 23E for a total of 37 acres remaining on the property for both water rights. There will be 2.57 cfs placed into the Bank from water right 34-469 and 0.63 cfs will remain on the property. There will be 0.64 cfs placed into the Bank from Water right 34-471 and 0.16 cfs will remain on the property.

AUTHORITY TO FILE: Jim Gregory, Ranch manager signed the applications. He is listed on the IDSOS site.

WATER RIGHT VALIDITY: These water rights were decreed in 1997 but have been in the Bank since 2009. 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 will be solicited.