

WATER SUPPLY BANK LEASE CONTRACT

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

Lessor: RICHARD F SMITH
PO BOX 8
REXBURG ID 83440
(208) 390-7000
rsmith@cableone.net

RECEIVED

FEB 05 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>Acre Limit</u>	<u>Total Leased Acres</u>
22-2175B	0.62 CFS	136.5 AF	NA	39.0 AC
Combined Lease Totals:	0.62 CFS	136.5 AF	NA	39.0 AC

The water rights described herein shall be available for rental from the Bank as follows:

Authorized Period of Use under Lease: 04/01 to 10/31

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.

RICHARD F SMITH
PO BOX 8
REXBURG ID 83440

By 
Printed Name RICHARD F. SMITH

Date 2 February 2015
Title _____

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 5, 2015

Lease approved by IDWR 

Date 2/5/2015

ATTACHMENT A
WATER RIGHT NO. 22-2175B
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: RICHARD F SMITH
 PO BOX 8
 REXBURG ID 83440
 (208) 390-7000

Priority Date: 02/23/1960

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01 to	10/31	0.62 CFS	136.5 AF
	Total:		0.62 CFS	136.5 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE¼NE¼SE¼ Sec. 31 Twp 06N Rge 40E MADISON 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	
06N	40E	32											39.0						39.0

Total Acres: 39.0

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 unleased portion of this right is limited to irrigation of 39.0 acres, a diversion rate of 0.62 cfs and an annual diversion volume of 136.5 af.

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

DEC 23 2014

DEPARTMENT OF
WATER RESOURCESWATER 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 Richard F. SmithWater Right No. 22-10021

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 \$ 500Received By: [Signature]Date Received: 12-23-14Receipt # C099744W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)Name on W-9: Richard F. Smith

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

DEC 23 2014

DEPARTMENT OF
WATER RESOURCESAPPLICATION 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 Richard F. Smith Email Address rsmith@cableone.net
Mailing Address P.O. Box 8, Rexburg, ID 83440 Phone Number 208-390-7000

☒ 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 _____ Organization _____
Professional Title _____ Email Address _____
Mailing Address _____ Phone Number _____

☐ 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 22-10021 ☐ 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.
In recent years, the pivots and irrigation equipment has been removed due to intended development of the
lands upon which the water is authorized to be applied.
- 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.
The only water rights used for the same purpose are also being placed into the water bank.

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 12/20/2014 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.

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

Richard F. Smith
Printed Name

12-18-14
Date

Signature of Authorized Representative

Printed Name

Date

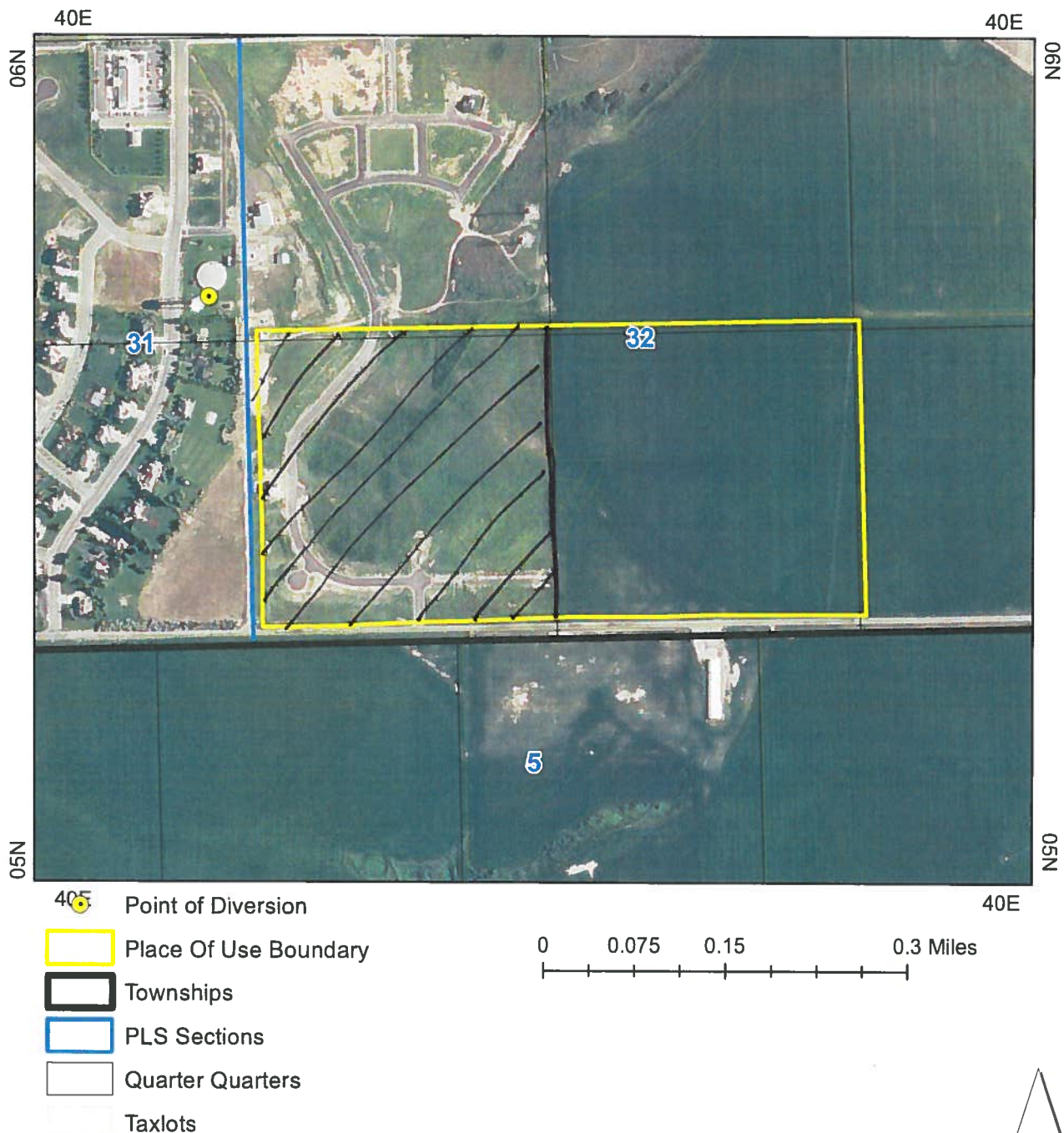
Mail to:

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

State of Idaho
Department of Water Resources
Adjudication Claim
22-10021

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.





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 6, 2015

RICHARD F SMITH
PO BOX 8
REXBURG ID 83440

RE: WATER SUPPLY BANK LEASE CONTRACT FOR RIGHTS 22-2175B

Dear Lessor:

Water Rights **22-2175B** 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 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: Jerry Rigby- Rigby Andrus & Rigby Law
IDWR Eastern 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 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

January 30, 2015

RICHARD F SMITH
PO BOX 8
REXBURG ID 83440

RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 22-2175B 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 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

c. Jerry R Rigby- Rigby Andrus & Rigby Law

Skaggs, Pam

From: Cefalo, James
Sent: Thursday, January 29, 2015 4:48 PM
To: Skaggs, Pam
Subject: RE: Eastern Region Comment Request - WSB Lease 22-2175B (part) Smith

Pam,

I don't have any concerns with the Smith water rights (22-2175A or 22-2175B) being accepted into the WSB. We are working with Mr. Smith and Mr. Rigby to get water right 22-7502 licensed. It is located nearby, in the SWSE of Section 32, T06N, R40E. We recently came across some other ground being irrigated by Mr. Smith without a water right. I was going to notify Jerry Rigby of the unauthorized acres in our next conversation about licensing. We may find that Mr. Smith ends up renting his own rights out of the bank to cover the violation acres in 2015.

James

From: Skaggs, Pam
Sent: Thursday, January 29, 2015 4:23 PM
To: Cefalo, James
Subject: Eastern Region Comment Request - WSB Lease 22-2175B (part) Smith

James,

This is one of two leases from Mr. Smith. He is also proposing to put all of 22-2175A in the Bank pending ownership documentation showing he retained ownership of the water right when he sold the land for development. A document was submitted for 22-2175B, so I am moving forward.

I have attached the application map labeled 22-10021 that was renumbered to 22-2175B. Only the SWSW is proposed leased.

Let me know if you have any comments or concerns.

Pam

Pam Skaggs
Water Rights Supervisor
(208) 287-4951

Skaggs, Pam

From: Skaggs, Pam
Sent: Thursday, January 29, 2015 8:02 AM
To: 'Jerry Rigby RAR'
Cc: 'rfsmith@cableone.net'
Subject: RE: Water Supply Bank Lease Information Request - 22-2175A & 22-2175B

Jerry,

Thank you for your prompt response in this matter. The deed you have submitted is representative of the required documentation conveying property from the right holder to the new property owner and clearly reserving the water rights. I will hold the applications as noted in my letter at least until February 10th to allow time for all the documents to be submitted.

Pam

Pam Skaggs
Water Rights Supervisor
(208) 287-4951

From: Jerry Rigby RAR [mailto:jrigby@rex-law.com]
Sent: Thursday, January 29, 2015 7:45 AM
To: Skaggs, Pam
Subject: FW: Water Supply Bank Lease Information Request - 22-2175A & 22-2175B

Pam,
Attached please find a copy of the recorded deed to one parcel of land which is subject to the water banking application. We are in the process of locating the balance of the land's deed.
As you can see from this deed, the water rights were clearly reserved.
Thanks

Jerry R. Rigby
Rigby, Andrus & Rigby Law, PLLC
P.O. Box 250
25 N. 2nd E.
Rexburg, ID 83440
208-356-3633
Fax (208-356-0768)

From: Skaggs, Pam [mailto:Pam.Skaggs@idwr.idaho.gov]
Sent: Tuesday, January 27, 2015 9:26 AM
To: rfsmith@cableone.net
Cc: jrigby@rex-law.com
Subject: Water Supply Bank Lease Information Request - 22-2175A & 22-2175B

Mr. Smith,

I have requested additional information related to ownership of the rights you have proposed for lease to the Water Supply Bank. The letter will be dropped in the mail today, but since you had provided an email address I also sent you an e-copy to provide more time for you to respond.

Please let me know if you have any questions regarding the request.

Pam

Pamela S. Skaggs
Water Rights Supervisor
Idaho Department of Water Resources
322 E Front St
PO Box 83720
Boise ID 83720-0098
Phone (208) 287-4951
Fax (208) 287-6700

AND WHEN RECORDED MAIL TO:

First American Title Company
127 East Main
Rexburg, ID 83440

Instrument # 333811

REXBURG, MADISON, IDAHO

2007-01-02 10:27:00 No. of Pages 3

Recorded for : FIRST AMERICAN TITLE

MARILYN R. RASMUSSEN

Fee: 9.00

Ex-Officio Recorder Deputy

First American Title Company

Space Above This Line for Recorder's Use Only

WARRANTY DEED

File No.: **187533-RX (ns)**

Date: **December 21, 2006**

For Value Received, **Dick Smith Farms, Inc., Retirement Plan, Richard F. Smith, Beneficiary and Richard F. Smith and Jill Smith, husband and wife**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **Sky Meadows Development, LLC**, hereinafter called the Grantee, whose current address is **365 Granite Creek Road, Sana Cruz, CA 95060**, the following described premises, situated in **Madison County, Idaho**, to-wit:

Township 6 North, Range 40 E.B.M., Madison County, Idaho

Section 32: SW $\frac{1}{4}$ SW $\frac{1}{4}$, EXCEPT that portion of Lots 10, 11 and 12, Block 11 of Valley View Estates Subdivision, Division No. 3, City of Rexburg, Madison County, Idaho, which extends over the West Section line of the land described hereinabove.

ALSO EXCEPT: Commencing at the Southwest corner of said Section 32; thence N00°00'00"E a distance of 1265.88 feet along the west line of said Section 32; thence S89°57'46"E a distance of 45.57 feet to the Point of Beginning; thence N00°00'00"E a distance of 50.00 feet along the east line of Lot 12, Blk 11 of the Valley View Estates Subdivision, Division No. 3 to a $\frac{1}{2}$ inch rebar found in the North line of said Southwest Quarter of the Southwest Quarter (per ROS Inst. No. 230039); thence S89°57'46"E a distance of 60 feet along said North Line to a $\frac{1}{2}$ inch rebar; thence S00°00'00"W a distance of 50.00 feet to a $\frac{1}{2}$ inch rebar; thence North 89°57'46"W a distance of 60.00 feet to the Point of Beginning.

ALSO EXCEPT Pole Line Road.

SUBJECT TO: a mainline easement described as follows: Commencing at the Southwest corner of said Section 32; thence N00°00'00"E a distance of 1265.88 feet along the west line of said Section 32; thence S89°57'46"E a distance of 45.57 feet to the Point of Beginning. Thence S89°57'46"E a distance of 60.00 feet; thence N00°00'00"E a distance of 50.00 feet to the North line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence N89°57'46"E along said North line a distance of 1274.43 feet more or less to the Northeast corner of said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence S00°00'00"E a distance of 12.00 feet; thence S89°57'46"W a distance of 1262.43 feet; thence S00°00'00"E a distance of 50.00 feet; thence S89°57'46"W a distance of 72.00 feet; thence N00°00'00"E a distance of 12.00 feet to the Point of Beginning.

SUBJECT TO: Memorandum of Leases upon the terms, conditions, and covenants contained in the Memorandum of Leases recorded May 16, 2003 as instrument #303716 and #303717

ALL WATER RIGHTS APPURTENANT TO THE ABOVE DESCRIBED PROPERTY ARE SPECIFICALLY EXCLUDED FROM THIS CONVEYANCE.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

RECEIVED

JAN 29 2015

**DEPARTMENT OF
WATER RESOURCES**

TO HAVE AND TO HOLD the said premises, with its appurtenances, unto the said Grantee, and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dick Smith Farms, Inc., Retirement Plan

By: 

Richard F. Smith, Trustee



Richard F. Smith

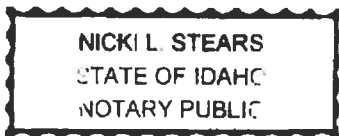


Jill Smith

STATE OF Idaho)
SS.

COUNTY OF Madison)

On this 28th day of December, 2006, before me, a Notary Public in and for said State, personally appeared **Richard F. Smith**, known or identified to me to be the person(s) whose name(s) is subscribed to the within instrument as Trustee of the **Dick Smith Farms, Inc., Retirement Plan Trust**, and acknowledged to me that he executed the same as such Trustee.



Notary Public of Idaho

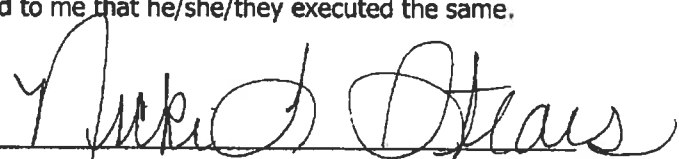
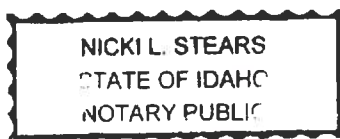
Residing at: Idaho Falls, Idaho

Commission Expires: 1-3-2012

STATE OF Idaho)
SS.

COUNTY OF Madison)

On this 28th day of December, 2006, before me, a Notary Public in and for said State, personally appeared **Richard F. Smith and Jill Smith**, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.



Notary Public for the State of Idaho

Residing at: Idaho Falls, Idaho

My Commission Expires: 1-3-2012



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 27, 2015

RICHARD F SMITH
PO BOX 8
REXBURG ID 83440

COPY

**RE: APPLICATION(S) TO LEASE A WATER RIGHT TO THE WATER SUPPLY BANK
FOR WATER RIGHT NO(S). 22-2175A (All) & 22-2175B (Part)**

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

Dear Lessor:

The Department of Water Resources received applications to Lease Water Rights 22-2175A and 22-2175B (previously numbered 22-10021). These rights are Snake River Basin Adjudication decreed rights, considered real property and appurtenant to the land described as the place of use. The place of use under both these rights is under multiple ownership by city, corporations and individuals according to Madison County records. The only portion of land I identified in the applicants name is the portion of Right 22-2175B not offered for lease in the SESW, Section 32, T06N, R40E.

I understand from the application that these irrigation rights are being replaced as development of the platted subdivisions occur by the municipal system of the City of Rexburg. Please correct me if I am wrong. I assume the rights were withheld from the initial land sale to developers, but don't have any documentation of this. **Please provide conveyance documentation** (warranty deed, quitclaim deed, court decree, contract of sale, etc.) to show that the rights were withheld from sale of land.

Because the Department cannot process the Applications to lease these water rights without the information requested, we will hold any action on your applications pending receipt of the necessary information. If we do not receive the necessary information within **14 days** these applications will be denied because they cannot be processed without the requested information.

If you have any questions or no longer have an interest in leasing the water rights, please contact me at (208) 287-4951.

Sincerely,

Pam Skaggs
Water Rights Supervisor

c: Jerry R Rigby, Rigby Andrus & Rigby Law PLLC

MEMORANDUM

To: Water Right No. 22-2175B

From: Pam Skaggs

Date: 1/27/2015

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

PURPOSE/NARRATIVE: This application was received on December 23, 2014. The subdivided half of this right is proposed leased to the bank for the 2015 irrigation season. Use of the 1960 irrigation right has been reduced to accommodate subdivision development. The place of use is within the service boundary of the City of Rexburg municipal water rights and within the Madison Ground Water District.

AUTHORITY TO FILE: The applicant Richard F. Smith is the currently authorized water right owner per Department records and the SRBA Partial Decree. The application was submitted by Mandy Davis, Assistant to attorney Jerry Rigby, along with the required fee.

Property within the proposed lease place of use is owned by multiple owners according to 2013 Madison County tax records available through ArcMap taxlot layer. The remaining portion of the place of use where irrigation will continue is identified as owned by Mr. Smith. Information will be requested from the applicant to verify that ownership of the right has been retained separate from the land prior to lease approval.

WATER RIGHT VALIDITY: A partial decree was issued for this right in 2008 and irrigation appears to have occurred in years following. No forfeiture concerns at this time.

INJURY TO OTHER WATER RIGHTS: No injury is apparent. The right has slowly been separated from the land as development has proceeded.

ENLARGEMENT OF USE: No enlargement is evident through the lease alone. The right has slowly been separated from the land as development has proceeded and incorporated into the municipal system. 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 is not currently subject to any Water District. Eastern Region comments will be requested.

12/30/2014

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	RICHARD F SMITH PO BOX 8 REXBURG, ID 83440 (208)356-4912

Status: Active

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	1.250 CFS	273.0 AF
	Total Diversion		1.250 CFS	273.0 AF

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
06N	40E	32											39.0	39.0					78.0

2015 Lease Review 22-2175B

IDAHO DEPARTMENT OF WATER RESOURCES

12/23/2014

Adjudication Recommendation 22-10021 V1

Owner Type **Name and Address**
 Current Owner GRANT H RICKS
 3366 S 1400 W
 REXBURG, ID 83440
 (208)356-4191

Priority Date: 8/1/1962**Basis:** Beneficial Use**Status:** See Remarks

Source
 GROUND WATER

Tributary

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	10/31	1.560 CFS	273.0 AF
	Total Diversion		1.560 CFS	273.0 AF

Source and Point(s) of Diversion

GROUND WATER SENESE Sec. 31, Twp 06N, Rge 40E, MADISON County

Place Of Use

IRRIGATION within MADISON County

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	40E	32											39.0	39.0					78.0

POU Total Acres: 78.0

Conditions of Approval:

1. P06 Recommended as Right No. 22-2175B.
2. P16 Recommended as Right No. 22-2175B: This is included for a claim that is proposed to be disallowed because the right claimed is recommended pursuant to another right. The remark indicates the water right number of the other right that is proposed to be recommended. If you are not mailed a notice of the recommendation of the other right, then the other right is recommended in another claimants name.

Comments:**Combined Use Limits**

N/A

SubCase:

N/A

Water Supply Bank:

N/A

RECEIVED

DEC 23 2014

DEPARTMENT OF
WATER RESOURCES

Law Offices

RIGBY, ANDRUS & RIGBY LAW, PLLC

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G. Rich Andrus
Jerry R. Rigby
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Rexburg, ID 83440*

*Telephone: (208) 356-3633
Fax: (208) 356-0768
jrigby@rex-law.com*

December 18, 2014

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

Re: Water Supply Bank

To Whom it May Concern:

I have enclosed herewith two Water Supply Applications to Sell or Lease a Water Right to the Water Supply Bank. I have also enclosed a check for the associated fees.

If you have any questions, please contact our office. Thanks.

Sincerely,



Mandy Davis
Assistant to Jerry R. Rigby

/md
Enclosures

sb/smithrichard.lt8

22-2175A & 22-10021/22-2175B