

WATER SUPPLY BANK LEASE CONTRACT

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

Lessor: BIG CREEK RANCH LLC
PO BOX 5987
KETCHUM ID 83340-5987
208-788-1771

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>Total Leased Acres</u>
73-12247	1.59 CFS	280 AF	80.0 AC
Combined Lease Totals:	1.59 CFS	280 AF	80.0 AC

The water rights described herein shall be available for rental from the Bank as follows:
Authorized Period of Use under Lease: April 1st to October 31st

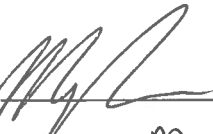
2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

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.

BIG CREEK RANCH LLC
PO BOX 5987
KETCHUM ID 83340-5987

By 
Printed Name Michael Page

Date 1/30/15
Title Manager

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. 73-12247
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: **BIG CREEK RANCH LLC**
 PO BOX 5987
 KETCHUM ID 83340-5987
 208-788-1771

Priority Date: 5/1/1900

Source: PAHSIMEROI RIVER

Tributary to: SALMON RIVER

BENEFICIAL USE

IRRIGATION

From

04/01 to 10/31

To

Diversion Rate

1.59 CFS

Volume

280 AF

Total: **1.59 CFS**

280 AF

LOCATION OF POINT(S) OF DIVERSION:

PAHSIMEROI RIVER

L4(SWSWNE)

Sec. 29, Twp 04N, Rge 46E, TETON County

PLACE OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14N	22E	7									14.0			16.0		14.1	35.6		79.7
14N	22E	18		0.3															0.3

Total Acres: 80.0

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. 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 place of use.
13. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
14. 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. 73.

STATE OF IDAHO
WATER RESOURCE BOARDWATER SUPPLY BANK LEASE OR SALE
APPLICATION CHECKLIST

RECEIVED

DEC 30 2014

DEPARTMENT OF
WATER RESOURCES

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 Big Creek Ranch LLCWater Right No. 73-12247

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 \$ 250.00Received By: dgDate Received: 12/30/14Receipt # 0099775W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)Name on W-9: Big Creek Ranch, LLC.

**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 Big Creek Ranch LLC Email Address _____
Mailing Address P.O. Box 5987, Ketchum, ID 83340-5987 Phone Number (208) 788-1771

☒ 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 _____ Email Address rbrown@spfwater.com
Mailing Address 300 E. Mallard Dr., Suite 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 73-12247 ☒ 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 current water diversion system lacks the required headgate, measuring device, and fish screen.

- 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 land was irrigated using the water rights of Roy M. Hoffman, Jr. prior to land acquisition by the applicant (including the parent of water right 73-12247). No other water rights are now appurtenant to the land.

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. Water right 73-12247 is the subject of a future water transaction in cooperation with IDWR, Federal agencies, and private organizations.

4. SALE/LEASE AGREEMENT

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

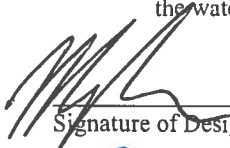
If lease, for a period from 1/1/2015 to 12/31/2019 (maximum lease period 5 years).
(Month / Day / Year) (Month / Day / Year)

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.

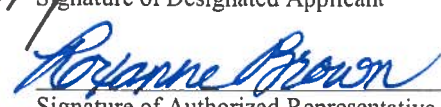
The Designated Applicant acknowledges the following:

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.


Signature of Designated Applicant

Michael E. Page
Printed Name

12/24/14
Date

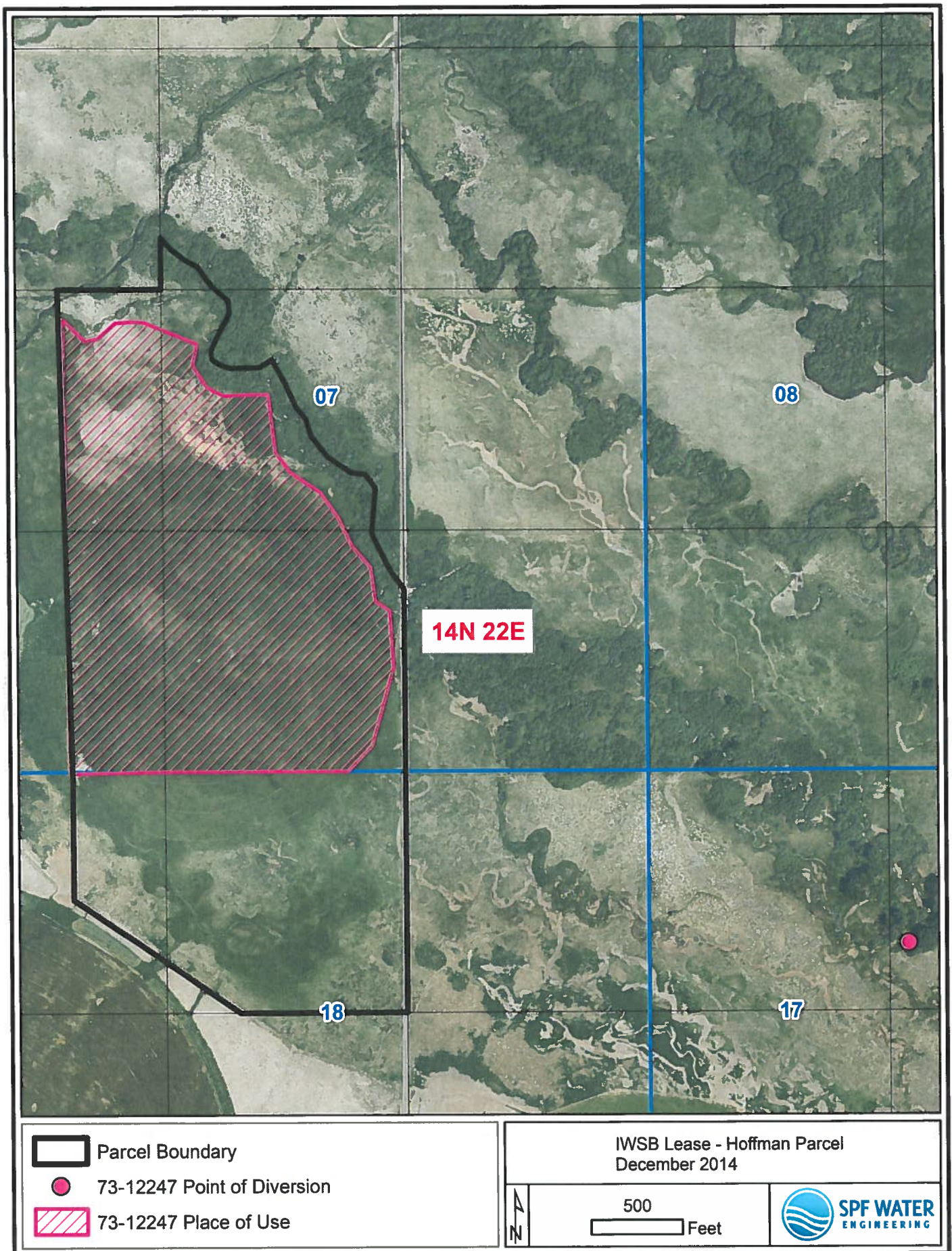

Signature of Authorized Representative

Roxanne Brown
Printed Name

12/29/2014
Date

Mail to:

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





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

BIG CREEK RANCH LLC
PO BOX 5987
KETCHUM ID 83340-5987

RE: WATER SUPPLY BANK LEASE CONTRACT FOR RIGHT 73-12247

Dear Lessor:

Water Rights **73-12247** 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, 2019**, 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: Roxanne Brown- SPF Water Engineering LLC
IDWR Eastern Region
Ted O Neal – Water District No. 73



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 22, 2015

BIG CREEK RANCH LLC
PO BOX 5987
KETCHUM ID 83340-5987

RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 73-12247 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, 2019**, unless the right is 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 right may not be available for immediate release if it has 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 # C099775

c. SPF Water Engineering LLC



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

21 January 2015

TED ONEAL
81 FUREY LANE
MAY ID 83253

RE: Water Supply Bank Lease Application – Big Creek Ranch LLC

Dear Mr. ONeal,

I am writing to solicit your (watermaster) comments on the attached Water Supply Bank lease application. Please respond by February 3, 2015. You may return the form to me via postal mail at the following address:

Idaho Dept. of Water Resources
ATTN: Ashley Newbry
PO Box 83720
Boise, ID 83720

You may also fax the form back to me at (ATTN: Ashley Newbry) 208-287-6700 or email ashley.newbry@idwr.idaho.gov.

Thank you,

Ashley Newbry
Engineer Associate

enclosures

MEMORANDUM

To: Water Right No(s). 73-12247
From: Ashley Newbry, Engineer Associate
Date: 1/22/2015
Re: Review of Applications to Lease Water Rights to the State Water Supply Bank

PURPOSE/NARRATIVE: The Department received a WSB lease application from Big Creek Ranch LLC (73-12247) on December 30, 2014. Water Right 73-12247 is a surface water right for irrigation. It is diverted from the Pahsimeroi River. This water right falls into the Wild & Scenic category in Water District 73.

AUTHORITY TO FILE: Per the Idaho Secretary of State website, Michael Page has authority to sign for Big Creek Ranch LLC.

WATER RIGHT VALIDITY: Aerial photography reveals evidence of irrigation within the last 5 years. The water right is valid.

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 any Water District or are subject to Water District 73.

Northern Region Comments:

WD 73 Comments:

IDWR Transaction Pgm. Comments:

I've been working with Big Creek Ranch on a suite of potential water transactions, but we don't have anything that has been approved by the Board yet. In fact, flow restoration is challenging in the Pahsimeroi because the only MSF is always met. If we end up doing a transaction, it would most likely be to rent the water for delivery to a minimum stream flow. In the mean time, the landowners want to protect the rights from forfeiture. So, I think that it would be fine to accept the rights as usual. We would then specify the rights to be rented if we came to an agreement.

Newbry, Ashley

From: Case, Morgan
Sent: Tuesday, January 13, 2015 4:20 PM
To: Newbry, Ashley
Cc: Buyer, Remington
Subject: RE: WSB Application for WR 73-12247 Big Creek Ranch LLC

Ashley,

Thanks for following up with me. I've been working with Big Creek Ranch on a suite of potential water transactions, but we don't have anything that has been approved by the Board yet. In fact flow restoration is challenging in the Pahsimeroi because the only MSF is always met. If we end up doing a transaction, it would most likely be to rent the water for delivery to a minimum stream flow. In the mean time, the landowners want to protect the rights from forfeiture. So...I think that it would be fine to accept the rights as usual. We would then specify the rights to be rented if we came to an agreement.

Thanks,

Morgan

From: Newbry, Ashley
Sent: Tuesday, January 13, 2015 1:43 PM
To: Case, Morgan
Cc: Buyer, Remington
Subject: FW: WSB Application for WR 73-12247 Big Creek Ranch LLC

Hello Morgan,

I asked Remington for a little direction on this WSB application. He said it sounds this is a pending CBWTP transaction. Do you know if there is a rental which is going to match up with this application? We were thinking you might not want it to go right into the Bank like a regular lease.

Thank you,

Ashley Newbry, EiT
Water Rights Section
Idaho Dept. of Water Resources
State Office
322 E. Front Street
PO Box 83720
Boise, ID 83720-0098
(208) 287-4800 X 4846



From: Roxanne Brown [<mailto:RBrown@spfwater.com>]
Sent: Monday, January 12, 2015 11:41 AM

To: Newbry, Ashley
Subject: RE: WSB Application for WR 73-12247 Big Creek Ranch LLC

Ashley,

The reference is to the Water Transactions group at IDWR (Morgan Case). A future transaction may be an agreement not to divert, seasonal lease, etc. as a response to flow requirements for anadromous fish in the Pahsimeroi Valley. Such projects can be funded by several state or federal agencies (IDFG, BOR, BLM), or private organizations (The Nature Conservancy, Trout Unlimited).

In the case of this right, a specific transaction has not yet been determined and is not expected for several years. I hope this explanation helps!

Roxanne

From: Newbry, Ashley [<mailto:Ashley.Newbry@idwr.idaho.gov>]
Sent: Monday, January 12, 2015 11:03 AM
To: Roxanne Brown
Cc: Webster, Clay
Subject: WSB Application for WR 73-12247 Big Creek Ranch LLC

Hello Roxanne,

I am reviewing the Water Supply Bank application for WR 73-12247 for Big Creek Ranch LLC. On the application, you mention, "Water right 73-12247 is the subject of a future water transaction in cooperation with IDWR, Federal agencies, and private organizations." The statement raised a bit of a flag for me, but I wasn't quite sure what transaction coordination efforts you might be referring to here. Could you please elaborate a bit more as to the future transaction that this water right might be associated with?

Thank you,

Ashley Newbry, EIT
Water Rights Section
Idaho Dept. of Water Resources
State Office
322 E. Front Street
PO Box 83720
Boise, ID 83720-0098
(208) 287-4800 X 4846

