

WATER SUPPLY BANK LEASE CONTRACT

This Lease Contract ("**Lease**") is effective January 1, 2014, between the Idaho Water Resource Board ("**Board**"), and

Lessor: D & C PROPERTIES LLC
PO BOX 390
REXBURG ID 83440
208-356-5491

RECEIVED

JAN 30 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>
22-7394	0.64 CFS	147.0 AF	49.0 AC
22-11900	0.70 CFS	not stated	49.0 AC
Combined Lease Totals: 0.98 CFS		not stated	49.0 AC

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

Authorized Period of Use under Lease: April 15th to October 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, 2016.
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 # 22-7394

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.

D & C PROPERTIES LLC
PO BOX 390
REXBURG ID 83440

By David J. Walters
Printed Name DAVID J. WALTERS

Date 1-26-15
Title Manager

IDAHO WATER RESOURCE BOARD
322 East Front Street
P.O. Box 83720
Boise, ID 83720-9098

By Brian Patton
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date January 30, 2015

Lease approved by IDWR Cherie Palmer

Date 1/30/2015

ATTACHMENT A
WATER RIGHT NO. 22-7394
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: D & C PROPERTIES LLC
 PO BOX 390
 REXBURG ID 83440
 208-356-5491

Priority Date: 04/22/1982

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	to 10/15	0.64 CFS	146.8 AF
	Total:		0.64 CFS	146.8 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SENESE Sec. 30 Twp 05N Rge 46E TETON 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	
05N	46E	30									37.0				12.0				49.0

Total Acres: 49.0

Limited to acres within place of use described above: 49.0 AC

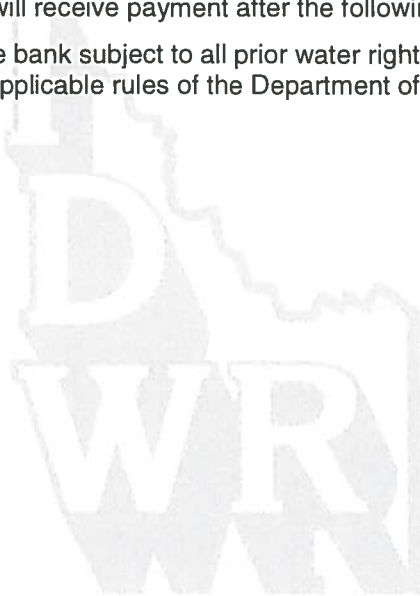
COMBINED LIMITS OF LEASED RIGHT:

<u>Combined Rights</u>	<u>Lease Rate</u>	<u>Lease Volume</u>	<u>Acre Limit</u>	<u>Total Leased Acres</u>
22-7394 and 22-11900,	0.98 CFS	not stated	NA	49.0 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.



ATTACHMENT B
WATER RIGHT NO. 22-11900
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: D & C PROPERTIES LLC
PO BOX 390
REXBURG ID 83440
208-356-5491

RECEIVED

JAN 30 2015

DEPARTMENT OF
WATER RESOURCES

Priority Date: 04/15/1970

Source: TETON CREEK

Tributary to: TETON RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15 to	10/15	0.70 CFS	not stated
	Total:		0.70 CFS	

LOCATION OF POINT(S) OF DIVERSION:

TETON CREEK L3(SENWSE) Sec. 29 Twp 05N Rge 46E TETON County

PLACE OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

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	
05N	46E	30									37.0				12.0				49.0

Total Acres: 49.0

Limited to acres within place of use described above: 49.0 AC

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>
22-7394 and 22-11900,	0.98 CFS	147.0 AF	NA	49.0 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.
12. 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.
13. The point of diversion for this water right is in Wyoming in T44N R118W.
14. This water right is also recorded as Wyoming Certificated Water Right No. 7308E.
15. This water right is subject to the delivery provisions contained in *Roxana Canal Co. v. Daniels, Equity No. 2447* (D. Wy. Feb. 4, 1941) ("Roxana decree"). Nothing in this Partial Decree is intended to relieve or alter the state of Idaho nor the state of Wyoming from their obligations contained in the Roxana decree.
16. The quantity of water diverted under this water right shall be from the portion awarded to Idaho and deducted there from as set forth in *Roxana Canal Co. v. Daniels, Equity No. 2447* (D. Wy. Feb. 4, 1941).

STATE OF IDAHO
WATER RESOURCE BOARD

**WATER SUPPLY BANK LEASE OR SALE
APPLICATION CHECKLIST**

RECEIVED
NOV 10 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 D & C Properties, LLCWater Right No. 22-11900

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. |
| 5 | ☐ | ☐ | Warranty Deed showing water right reservation on Lot 4 Old Farm Subdivision. |

Department Use Only

Fee Amount \$ <u>500.00</u>	Received By: <u>[Signature]</u>	Date Received: <u>11/10/14</u>	Receipt # <u>C099592</u>
W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)		Name on W-9: <u>D & C Properties LLC</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 D & C Properties, LLC Email Address _____
Mailing Address PO Box 390, Rexburg, ID 83440 Phone Number 208-356-5491

☐ 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 Kristin Moore Organization Rocky Mountain Environmental Assoc.
Professional Title Water Rights Analyst Email Address kristin.rmea@gmail.com
Mailing Address 482 Constitution Way Ste 303, Idaho Falls, ID 83402 Phone Number 208-524-2353

☐ 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 22-11900 ☐ 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.

Water is diverted from Teton Creek through the South Side Ditch and is delivered into the mainline.

- 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.
Water right no. 22-7394, a ground water right, is co-mingled with this water right in the mainline.

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 04/01/2014 to 10/31/2016 (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.

David Z. Walters
Signature of Designated Applicant

DAVID Z. WALTERS
Printed Name

10-22-14
Date

Signature of Authorized Representative

Printed Name

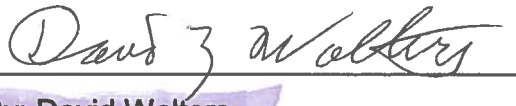
Date

Mail to:

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

Authority to Act on Behalf

D & C Properties LLC hereby authorize Rocky Mountain Environmental Associates to act on our behalf regarding the Water Supply Bank applications for Water Right Nos. 22-7394 and 22-11900 in Teton County.



By: David Walters

For: D & C Properties LLC

**STATE OF IDAHO
WATER RESOURCE BOARD**

ATTACHMENT 2

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

- | 1. <u>Water Right Number</u> | <u>Amount (cfs/ac-ft)</u> | <u>Nature of Use</u> | <u>Period of Use</u> |
|------------------------------|---------------------------|----------------------|----------------------|
| 22-11900 | 0.70 cfs | Irrigation | 4/15 to 10/31 |
| | | | to |
| | | | to |
| | | | to |
| | | | to |
| | | | to |
| Total Amount: | 0.70 cfs | | |

2. Source of water Teton Creek tributary to Teton River

3. Point(s) of Diversion:

[illegible]

4. Lands irrigated or place of use:

[illegible]

If the water right is for irrigation, show total number of acres offered to the Bank. Total Acres 49



201477 NOV 25 08 PM 2:36

Attachment # 5
1-35-Walters-KL
ALLIANCE TITLE & ESCROW
P.O. BOX 732
REXBURG, ID 83440

WARRANTY DEED

FOR VALUE RECEIVED

D & C Properties, LLC, an Idaho Limited Liability Company

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Dave Z. Walters and Charlene B. Walters, Husband and Wife

whose current address is

342 W 4th N Rexburg, Idaho 83440

the grantee(s), the following described premises, in Teton County, Idaho, TO WIT:

Lot 4 of the Final Plat of Old Farm Subdivision, as per the recorded plat, Instrument No. 201107

All water rights are reserved to the grantor

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that they will warrant and defend the same from all lawful claims whatsoever.

Dated: 11-24-08

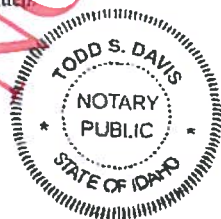
Dave Z. Walters, member

Charlene B. Walters, member

State of Idaho
County of Madison

On this 24 day of November 2008, before me, a Notary Public in and for said state, personally appeared Dave Z. Walters and Charlene B. Walters known or identified to me to be the Managing Members in the Limited Liability Company known as D & C Properties, LLC who executed the foregoing instrument, and acknowledged to me that they executed the same in said LLC name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for the State of
Residing at:
Commission Expires:

Residing in Sugar City ID
Commission exp 12-21-2011

This instrument filed
as an accommodation only.
It has not been examined
as to its execution, insurability
or effect on title.

Instrument # 201477

TETON COUNTY, IDAHO

11-25-2008 02:36:00

No. of Pages: 2

Recorded for: ALLIANCE TITLE

MARY LOU HANSEN

Ex-Officio Recorder Deputy

Fee: \$ 6.00

Instrument # 201477

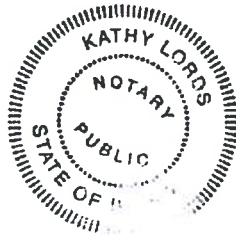
State of Idaho }
 } ss.
County of Madison }

On this 24 day of November, in the year 2008, before me, a Notary Public in and for said state, personally appeared _____ Charlene B. Walters _____ known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Notary Public for the State of Idaho
Residing at: Bozeman, Id
Commission Expires: 4/23/2011



NOT A LEGAL COPY