

Buyer, Remington

From: Buyer, Remington
Sent: Tuesday, July 08, 2014 3:49 PM
To: 'Rob Harris'
Subject: RE: Boyd Smith Rental Agreement

Hi Rob,

That is regretful that recharge was not possible this year. The Bank will begin processing rental applications for 2015 on November first. Please have your client resubmit a rental application on/after that date to set up a rental agreement for 2015-2017.

Remington
287-4918

From: Rob Harris [<mailto:rharris@holdenlegal.com>]
Sent: Tuesday, July 08, 2014 2:28 PM
To: Buyer, Remington
Subject: RE: Boyd Smith Rental Agreement

Remington:

I forgot to email you back last week, but the day we received the rental agreement, the priority date cutoff had dropped to below 1916, and is below there now. We appreciate your work on this, but we simply did not get it in time for 2014. My client has decided not to sign the agreement for this year.

However, we do note that the agreement goes through 2017. We would like to have it in place for 2015. What do you think the best way to handle this would be? You could amend the current agreement to be for next year, but the rental price may change, so I assume the best thing to do is to have you send a revised rental after November of this year. What do you think about that approach?

Thanks,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518
E-Mail: rharris@holdenlegal.com

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From: Buyer, Remington [mailto:Remington.Buyer@idwr.idaho.gov]
Sent: Wednesday, June 25, 2014 11:42 AM
To: Rob Harris
Cc: 'erick.powell@brockwayeng.com'
Subject: Boyd Smith Rental Agreement

Hi Rob,

A copy of the attached rental agreement is en route to you in the mail. As the recharge is being accomplished through a POD from South Leigh Creek, the rental agreement includes only the water rights diverted from South Leigh Creek. To expedite the process, please sign and return to our office the attached copy, along with the rental payment.

Feel free to call me if you have questions.

Remington Buyer
Water Supply Bank Coordinator
Idaho Department of Water Resources
322 East Front Street, Boise, ID, 83720
T: (208) 287-4918 | F: (208) 287-6700



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

July 8, 2014

THE BOYD CHARLES SMITH & JILL JOHNSON SMITH TRUST
C/O HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405

**RE: REQUEST FOR RETURN OF SIGNED RENTAL AGREEMENT AND PAYMENT FOR
WATER RIGHT(S) 22-42 AND 22-616**

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

Dear Applicant:

The Department of Water Resources ("department") mailed a **Water Supply Bank Rental Agreement ("agreement") for your review and signature** on June 18, 2014. The signed agreement and rental fee has not been returned to the department.

Please sign the rental agreement and return it with the rental payment in the amount of \$1,019.32 within ten (10) days of this letter to complete processing. Diversion and use of the water right(s) is not authorized under the proposed agreement until it has been signed by both the renter and the department. Any use associated with your proposed rental request before it has been executed is considered unauthorized and, if occurring, will be subject to any necessary enforcement action.

If the signed rental agreement and fee is not received by the department within the 10-day period, the rental application will be returned, and the proposed rental right(s) made available for other rental applicants. You can reapply to rent water from the Bank again in the future by submitting a new rental application form that will be processed in turn with other pending applications.

If you have questions regarding this matter, please contact me at 287-4918.

Sincerely,

for 

Remington Buyer
Water Supply Bank Coordinator



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

June 18, 2014

THE BOYD CHARLES SMITH & JILL JOHNSON SMITH TRUST
C/O HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID

**RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 22-42 AND 22-616**

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

Dear Applicant:

The Department of Water Resources acknowledges receipt of your application to rent multiple water rights from the Water Supply Bank. Your rental request to recharge groundwater with surface water diverted from South Leigh Creek is approved. Water rights 22-42 and 22-616 originate from South Leigh Creek and are thus the two water rights made available under this rental. **I have enclosed a Water Supply Bank Rental Agreement for your review and signature.** Upon signature and return of the original agreement, together with the rental fee described below, the Department will also sign the original agreement and return an executed copy to you. Execution of the agreement and compliance with the conditions of approval authorize diversion and use of water as provided in the agreement.

A rental fee of \$10,193.20 was calculated based on the current rental rate of \$17.00 per acre-foot times a diversion volume of 599.6 AF. Because the renter of these water rights is also the lessor, only the Idaho Water Resource Board's 10% administrative fee is required. The administrative fee for this rental agreement is \$1,019.32. Payment for 2014's rental shall be received by the Department prior to the execution of this agreement and payment for subsequent rental years shall be received prior to February 15 for the duration of the rental agreement. The agreement will be void if payment is not received prior to the due date in a given year. If you would like to terminate the agreement prior to the end of the rental period, you must submit written notice of your intent to the Department at least 30 days prior to the rental fee due date.

Please send a check for \$1,019.32 made payable to the Idaho Department of Water Resources, **together with the signed rental agreement, within 14 days** so I can complete processing.

If you have any questions, please contact me at (208) 287-4918.

Sincerely,

Remington Buyer
Water Supply Bank Coordinator

Enclosure(s): Rental Agreement
c: IDWR Front Desk

MEMORANDUM

To: Water Right(s) 22-42 and 22-616
From: Remington Buyer
Date: June 18, 2014
Re: Review & Analysis of Application to Rent Water from the State Water Supply Bank

PURPOSE/NARRATIVE: The holder of the above water rights, The Boyd Charles Smith & Jill Johnson Smith Trust (Trust), seeks to rent their water rights which are currently leased into the Water Supply Bank. The applicant is seeking a four year rental. The purpose of the rental is to provide water to undertake groundwater recharge at Teton Ranch, a property owned by the lessor/renter.

The Trust holds two permits, 22-13689 and 22-13690, authorizing groundwater recharge at Teton Ranch. A third permit, 22-13691, permits irrigation from groundwater at the ranch, based on the recharge accomplished under 22-13689 and 22-13690. These permits hold junior priority dates (May 4, 2006), thus the Trust is seeking to rent the above water rights to continue recharging after their permits are no longer in priority.

AUTHORITY TO FILE: The application has been submitted by Robert Harris of Holden Kidwell Hahn and Crapo, attorney for the Trust in conjunction with Erick Powell at Brockway Engineering.

WATER RIGHT VALIDITY: These rights are in the Bank. Their validity is not a concern.

INJURY TO OTHER WATER RIGHTS: To avoid injury to other water users, the maximum diversion of water should not exceed 12 cfs at the POD when recharge is being undertaken through permit 22-13690 and water is available under this rental. When 22-13690 is not in priority, the maximum diversion at the POD should be no greater than 3.43 cfs, which is the rate of flow for water being rented from the Bank.

ENLARGEMENT OF USE: The use of water under this rental request will supplement ground water recharge that is permitted under 22-13690. Condition 15 of permit 22-13690 requires an annual report is submitted to IDWR detailing any recharge accomplished during the year. To avoid an enlargement of permit 22-13690, this rental will be conditioned to require that the annual report separately specify the length of time and volume of water recharged under the permit from that of the water recharged under rental agreement.

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 rental appears consistent with the conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The rented right(s) subject to regulation by the Watermaster of Water District # 01. Comments were sought from the Watermaster and IDWR Eastern Region Program Manager Tony Olenichak. Neither the Watermaster, nor the Program Manager had issue with using rental water to undertake recharge.



Holden Kidwell
Hahn & Crapo P.L.L.C.
LAW OFFICES

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

Email: rharris@holdenlegal.com

RECEIVED
APR 17 2014
DEPARTMENT OF
WATER RESOURCES

April 15, 2014

Ms. Pam Skaggs
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

RE: Water Bank Rental Application for The Boyd Charles Smith and Jill Johnson Smith Trust.

Dear Pam:

Enclosed with this letter is an application to rent water from the water supply bank for groundwater recharge. You may recall that in 2012, The Boyd Charles Smith and Jill Johnson Smith Trust offered portions of several water rights to be leased to the water supply bank. Portions of 12 different irrigation water rights in Teton County were offered to the water bank for a total combined flow rate of 4.69 cfs. These rights were accepted into the water bank and the expiration date for the lease is 12/31/2017. The following table contains a summary of the portions of the water rights accepted into the water bank.

WR No.	Nature of Use	Lease Amount	Combined Limit	Priority	Source
22-42	Irrigation	0.37 cfs		1/22/1916	South Leigh Creek
22-130D	Irrigation	0.04 cfs		1/22/1916	North Leigh Creek
22-136C	Irrigation	0.07 cfs		1/22/1916	North Leigh Creek
22-515B	Irrigation	0.03 cfs		6/1/1899	North Leigh Creek
22-516B	Irrigation	0.02 cfs		6/1/1900	North Leigh Creek
22-517B	Irrigation	0.03 cfs		6/1/1901	North Leigh Creek
22-616	Irrigation	3.06 cfs		1/22/1916	South Leigh Creek
22-130B	Irrigation	0.34 cfs	1.07 cfs	1/22/1916	North Leigh Creek
22-481A	Irrigation	0.15 cfs		4/1/1898	North Leigh Creek
22-482A	Irrigation	0.44 cfs		6/1/1900	North Leigh Creek
22-483A	Irrigation	0.15 cfs		6/1/1904	North Leigh Creek
22-2029D	Irrigation	0.35 cfs		1/20/1908	North Leigh Creek

Established in 1896

Pam Skaggs
Idaho Department of Water Resources
April 15, 2014
Page 2 of 2

Please note that five water rights (22-130B, 481A, 482A, 483A, and 2029D) have a water right condition that limits the combined flow on 41 acres to 2.18 cfs. A total of 20.2 acres were dried up and submitted to the water bank; the resulting combined limit of the combined leased rights is 1.07 cfs (20.2 acres/41 acres * 2.18 cfs = 1.07 cfs). The flow rates of the remaining leased water rights are additive and total 3.62 cfs. Added together, the total flow rate for leased rights is 4.69 cfs.

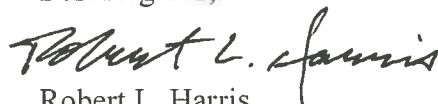
In 2006, the Boyd Charles Smith and Jill Johnson Smith Trust applied for two water right permits to recharge surface water (Permit Nos. 22-13689 and 22-13690), which were approved. Recharge has been occurring regularly since the permit approval. However, in 2013, the recharge water right permits were never in priority and no recharge water was diverted. The applicant wishes to rent the leased water rights (4.69 cfs) with earlier priority dates to recharge water when the late priority permits have been curtailed. When the recharge permits are in priority, no more than 12 cfs will be diverted for recharge use. When the recharge permits are out of priority, but the leased water rights are in priority, the maximum diversion rate will be 4.69 cfs.

It is proposed that the current conditions associated with the recharge permits remain enforce with this rental water, specifically the stipulated agreement that the minimum stream flow on South Leigh Creek at the state line must be at least 100 cfs before recharge can occur.

The water recharged to the aquifer will improve the local aquifer. No consumptive use will be associated with this rental, as there is currently no system to extract and use the recharged groundwater. The desire for a longer recharge period is because we are reading transducer placed in monitoring wells once the recharge occurs to determine if we can drill a well to recover the recharged water. Before spending the money necessary to drill a new production well, we need to determine how long the recharge "mound" remains.

I look forward to working with you to finalize this application. If you have any questions, please contact Erick Powell at Brockway Engineering at 208-736-8543, or call me at 208-523-0620.

Best Regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK

RECEIVED
APR 17 2014
DEPARTMENT OF
WATER RESOURCES

This application must be prepared in accordance with the minimum requirements listed to be acceptable for processing by the Department. Incomplete applications will be returned.

Name of Renter(s) The Boyd Charles Smith & Jill Johnson Smith Trust

Mailing Address Holden Kidwell Hahn & Crapo; P.O. Box 50130; Idaho Falls, ID 83405

Phone 208-523-0620

Email _____

A. DESCRIPTION OF WATER SOUGHT FOR RENT

1. Maximum Flow Rate (cfs) 4.69 cfs Maximum Volume (ac-ft) _____ Nature of Use Groundwater Recharge Period of Use 4/15 to 10/31

_____ _____ _____ to _____

_____ _____ _____ to _____

Total: 4.69 cfs

2. Source of water South Leigh Creek tributary to Teton River

3. Point(s) of Diversion:

TWP	RGE	SEC	GOVT LOT	1/4	1/4	1/4	County
6N	46E	32	1	NE	NW	NE	Teton County

4. Lands to be 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	
6N	46E	31	E																

If the use is for irrigation, show total number of acres proposed through rental.

Total Acres _____

B. OWNERSHIP

1. Do you own the land at the proposed point of diversion?

Yes ☒ No ☐

If no, list owner, contact information, and attach a copy of the agreement or other written authority to use the proposed point of diversion. _____

2. Do you own the land at the proposed place of use?

Yes ☒ No ☐

If no, list owner, contact information, and attach a copy of the agreement or other written authority to use the proposed place of use. _____

C. MAP

Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described by this application in section A. Include legal description labels.

D. GENERAL INFORMATION

1. Please provide a description of the proposed diversion system.

It is proposed that the recharge water will be diverted from South Leigh Creek through an existing irrigation point of diversion, conveyed through existing ditches and pipes to a measuring device and finally to the recharge basin.

2. Describe any other water rights diverted through the same point(s) of diversion or used for the same purpose(s) as described above. Several other irrigation rights are diverted through the same POD (22-42, 160, 239B, 545, 616, 619B)

One recharge permit is diverted through the same POD (22-13690)

3. Will the proposed place of use receive water from any other source?

Yes ☐ No ☒

If yes, describe.

4. If the proposed use is not for irrigation, please provide a detailed description of the proposed use and how you determined the amount of water required. Attach additional sheets if needed. Water right permit (22-13690) is authorized for 12 cfs of water for recharge. This rental will not provide any additional water (limited to 12 cfs), but will provide more senior priority dates.

5. Are there any other applications pending before the Department, such as an application for permit or transfer, for the same use(s) proposed by this rental?

Yes ☐ No ☒

If yes, describe.

6. Was this rental application submitted in response to a Notice of Violation or a pending Notice of Violation? Yes ☐ No ☒

If yes, describe.

E. RENTAL TERM

Do you wish to rent water from the Board's bank for more than one (1) year?

Yes ☒ No ☐

If yes, please specify the number of years desired through proposed rental. 4 years (expires 12/17)

I hereby assert that the information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

If this application is approved, the applicant agrees to the following:

1. The use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code.
2. Renter shall comply with all applicable state and federal laws while using water under this agreement.
3. Renter shall hold the Board, the Director, and the state of Idaho harmless from all liability on account of negligent acts of the renter.
4. The Director may terminate diversion of water if the Director determines there is not a sufficient water supply for the priority of the right or portion thereof being rented.
5. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
6. Renter is not authorized to use water proposed by this application until the rental fees are paid in full and the renter receives an executed copy of the agreement signed by the Director.

Signature of Applicant

Printed Name and Title*

Date

Signature of Applicant

Printed Name and Title*

Date

*Please provide title of signatory if signing on behalf of a company or organization or with power of attorney

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



0 375 750 1,500 Feet

Legend

- Point of Diversion
- Water Bank Rental POU
- Township/Range
- Sections
- QQ

**TETON RANCH / BOYD C & JILL J. SMITH TRUST
WATER BANK RENTAL
NAIP 2013 AERIAL PHOTO**

BROCKWAY ENGINEERING, PLLC.
ALR - Date: 3/21/2014