

WATER SUPPLY BANK LEASE CONTRACT

This Lease Contract ("**Lease**") is effective February 10, 2014, between the Idaho Water Resource Board ("**Board**"), and

Lessor: OLD WEST BUSINESS PARK LLC
9842 NICOVA AVE
LAS VEGAS NV 89148
(702) 498-4048
gardner.judy36@gmail.com

RECEIVED

MAR 24 2014

**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>
22-12775	1.91 CFS	NA	NA	108.3 AC
Combined Lease Totals:	1.91 CFS	NA	NA	108.3 AC

The water rights described herein shall be available for rental from the Bank as follows:
Authorized Period of Use under Lease: April 15 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, 2014.
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.

OLD WEST BUSINESS PARK

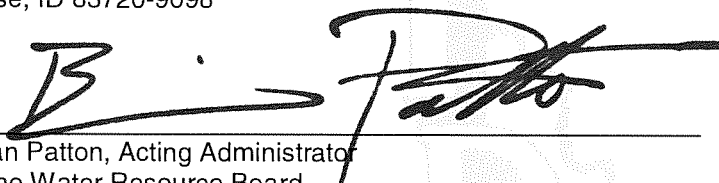
9842 NICOVA AVE
LAS VEGAS NV 89148

By 
Printed Name JUDY GARDNER

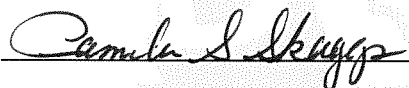
Date 3/17/14
Title MANAGER

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 03-24-2014

Lease approved by IDWR 

Date 03-24-2014

ATTACHMENT A
WATER RIGHT NO. 22-12775
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: OLD WEST BUSINESS PARK
9842 NICOVA AVE
LAS VEGAS NV 89148
(702) 498-4048

Priority Date: 06/01/1891

Source: BADGER 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	10/31	1.91 CFS	NA
	Total:		1.91 CFS	NA

LOCATION OF POINT(S) OF DIVERSION:

BADGER CREEK NW¼NW¼SW¼ Sec. 9 Twp 06N Rge 45E 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	
06N	45E	17															2.4	5.7	8.1
06N	45E	20	40.0	14.0	6.2	40.0													100.2

Total Acres: 108.3

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. Water is delivered through Phillips Ditch.



RECEIVED

FEB 10 2014

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
WATER RESOURCE BOARD

WSB No. _____

Receipt No. CO98305Date/by 2/10/14 CS

(For Department Use Only)

APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKName of Seller/Lessor Old West Business Park, LLC Phone (702) 498-4048Mailing address 3900 S. Hualapai Way, Ste. 200, Las Vegas, NV 89147 Email gardner.judy36@gmail.com9842 NICOJA AVE LAS VEGAS NV 89148
A. DESCRIPTION OF WATER RIGHT, OR PORTION THEREOF, OFFERED TO THE BANKIf the entire right is for sale or lease, check here ☒, list the water right number, and skip to Part B.

1. <u>Water Right Number</u>	<u>Amount (cfs/ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>22-12775</u>	_____	_____	_____ to _____
_____	_____	_____	_____ to _____
_____	_____	_____	_____ to _____

Total Amount: _____

2. Source of water _____ tributary to _____

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County

4. Lands irrigated or place of use: *See Part D for additional information regarding place of use.

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

If the right is for irrigation, show total number of acres offered to the bank. Total Acres _____

B. OWNERSHIP

1. Are you currently listed in IDWR's records as the owner of the water right being offered to the bank? Yes ☒ No ☐

If no, provide documentation of your authority to sign on behalf of the right holder OR attach a Notice of Change in Water Right Ownership form along with the required documentation and fee.

2. 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 to the proposed sale or lease and list name of entity:

C. GENERAL INFORMATION

1. Please provide a description of the current diversion system.
The water right is diverted from Badger Creek at a splitter structure, which is regulated by a sophisticated diversion structure equipped with two headgates and fish screens, and from there is conveyed to the Phillips Ditch for delivery to the property.
2. Describe any other water rights used for the same purpose or at the same place of use as described above.
An exempt domestic groundwater right exists on the property to which water right 22-12775 is appurtenant, and is used to fill a fire pond under the legal terms, conditions, and restrictions associated with that right.
3. Will the present place of use continue to receive water from any source? Yes ☒ No ☐
If yes, describe. see above
4. 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 right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code. Partial decree for this water right was issued on November 24, 2008. The water right was subsequently enrolled in the Idaho Water Supply Bank in 2013, therefore forfeiture is not an issue.
5. Is this water right involved in any other Department process such as an application for transfer or a mitigation plan? Yes ☐ No ☒
If yes, describe. N/A

D. REQUIRED ITEMS

This form must be signed and submitted with the following REQUIRED items:

1. Plat map, survey map or aerial photograph clearly showing the specific acres proposed to be idled by this lease application.
2. Filing fee of \$250.00. If you are submitting more than one lease application and the rights have a common place of use or common diversion rate or common diversion volume, the combined maximum fee is \$500.00.

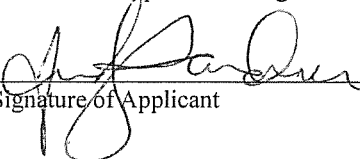
E. SALE/LEASE AGREEMENT

1. Is the water right, or portion thereof, described above offered to the Idaho Water Resource Board (IWRB) for sale ☐ or lease ☒?
If lease, for a period from 1/1/2014 to 12/31/2014 (not to exceed 5 years).
(Month / Day / Year) (Month / Day / Year)
2. 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 as established by the IWRB.

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 right for sale or lease to the Idaho Water Resource Board.

The owner/lessor acknowledges the following:

1. Payment to the owner/lessor is contingent upon the sale or rental of the right from the bank.
2. While a right is in the bank, the owner/lessor of the right may not use the right even if the right is not rented from the bank.
3. A right accepted into the bank stays in the bank until the Board releases it or the lease term expires.
4. While a right is in the bank, forfeiture provisions are stayed.
5. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right.


Signature of Applicant

Judy Gardner, Managing Member
Printed Name and Title*

2/5/14
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



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

March 25, 2014

OLD WEST BUSINESS PARK LLC
9842 NICOVA AVE
LAS VEGAS NV 89148

RE: WATER SUPPLY BANK LEASE CONTRACT FOR RIGHTS 22-12775

Dear Lessor:

Water Right 22-12775 was leased into the Water Supply Bank on February 10, 2014 in accordance with the executed original Lease Contract enclosed. **Your water rights as described on the Lease Contract are considered leased into the Bank and should remain unused until they are formally released from the Bank.**

The rights will automatically be released from the Bank on **December 31, 2014**, unless the rights are released earlier by the Board, or upon your request. **Please note your rights 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 287-4944.

Sincerely,


for Cherie Palmer
Senior Water Resource Agent
WSB Process Point of Contact

Enclosure: Executed Lease Contract

c: Lyle Swank- IDWR Eastern Regional Manager
Tony Olenichak- Water District 01



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

March 10, 2014

OLD WEST BUSINESS PARK LLC
9842 NICOVA AVE
LAS VEGAS NV 89148

RE: APPLICATION TO LEASE WATER RIGHT 22-12775 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, 2014**, 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 287-4944.

Sincerely,

for 
Cherie Palmer

Senior Water Resource Agent
WSB Process Point of Contact

Enclosure: Proposed Lease Contracts

MEMORANDUM

To: Water Right No(s). 22-12775
From: Jean Hersley
Date: March 6, 2014
Re: Review of Applications to Lease Water Rights to the State Water Supply Bank

PURPOSE/NARRATIVE: The Department received this application on February 10, 2014. The applicant wants the entire right leased to the Bank. It is an irrigation right for 108.3 acres. The source is Badger Creek, a tributary to Teton River. Water is delivered through the Phillips Ditch.

AUTHORITY TO FILE: The application was signed by Judy Gardner, managing member.

WATER RIGHT VALIDITY: The water right was decreed in 2008 but was leased to the Bank for the 2013 season.

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 is subject to Water District # 01.

Hersley, Jean

From: Olenichak, Tony
Sent: Thursday, March 06, 2014 4:56 PM
To: Hersley, Jean; Swank, Lyle
Subject: RE: WSB Lease Water right 22-12775

Jean,

I don't see any reason why the 22-12775 couldn't be extended through the end of 2014.

However, I do have a request for you when you send Water District #1 WSB lease information in the future.....Sometimes it is not perfectly clear to me whether the purpose of the lease is to simply deposit the water right into the WSB (i.e. the water right is not currently being used while deposited into the WSB) or it is a WSB lease to temporarily change a characteristic described in the water right. It would be helpful if you could include a short summary describing what is happening with the water right in your email description. For example, here are two possible summaries for WSB activity for 22-12775:

1. Attached is the lease application for water right 22-12775 to deposit the water right into the WSB that will effectively cease delivery of the water right to the water right's POD and POU for a two-year period.
2. Attached is a WSB lease application for water right 22-12775 to temporarily change the water right POU to the new lease POU of 22 acres in the SESW Sec. 22, T4N, R38E for a two-year period. No change in the water right POD is occurring.

These types of short summaries would be very helpful to ensure the water district properly accounts for the delivery (or non-delivery) of the water right when it is leased through the WSB.

Thanks.
Tony

From: Hersley, Jean
Sent: Thursday, March 06, 2014 3:16 PM
To: Swank, Lyle
Cc: Olenichak, Tony
Subject: WSB Lease Water right 22-12775

Old West Business Park LLC is wanting to extend their WSB Lease through the end of 2014. Your comments or concerns are needed before we can process the application. I have attached a copy of the review memo and the application for you benefit. Please respond within 5 days.
Thank you.

*Jean Hersley
Idaho Dept Water Resources
Technical Records Specialist II
208-287-4942*