



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

C.L. "BUTCH" OTTER

Governor

GARY SPACKMAN

Director

May 6, 2013

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

RE: APPLICATION TO LEASE WATER RIGHT 22-42 AND 22-616 TO THE WATER SUPPLY BANK

Dear Lessor:

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 copies of a Water Supply Bank Lease Contract for your review and signature.** Please sign and return **BOTH** Lease Contracts. 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, 2017**, unless the rights are released earlier by the Board, or upon your request. To change the term of the lease or to release the rights from the Bank, you must submit a request in writing, along with all applicable fees, to the Department prior to the release date. Please note your rights may not be available for immediate release if they have been rented to someone else.

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."

Contact me at (208) 287-4944 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Cherie Palmer".

Cherie Palmer, Sr. Water Resource Agent
Water Allocation Bureau

Enclosure: Proposed Lease Contracts

c: Erick Powell-Brockway Engineering PLLC

WATER SUPPLY BANK LEASE CONTRACT

This Lease Contract ("**Lease**") is effective April 8, 2013, between the Idaho Water Resource Board ("**Board**"), and

Lessor: THE BOYD CHARLES SMITH & JILL JOHNSON SMITH TRUST
C/O HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405
208-523-0620

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>
22-42	0.37 CFS	64.8 AF	NA	18.5 AC
22-616	3.06 CFS	534.8 AF	NA	152.8 AC
Combined Lease Totals:	3.43 CFS	599.6 AF	NA	171.3 AC

The water rights described herein shall be available for rental from the Bank as follows:
Authorized Period of Use under Lease: 4/15 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 12/31/2017.
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.

THE BOYD CHARLES SMITH & JILL JOHNSON SMITH TRUST
C/O HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405
208-523-0620

By _____

Date _____

Printed Name _____

Title _____

IDAHO WATER RESOURCE BOARD

322 East Front Street
P.O. Box 83720
Boise, ID 83720-9098

By _____

Date _____

Brian Patton, Acting Administrator
Idaho Water Resource Board

Lease approved by IDWR _____

Date _____

ATTACHMENT A
WATER RIGHT NO. 22-42
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: THE BOYD CHARLES SMITH & JILL JOHNSON SMITH TRUST
C/O HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405
208-523-0620

Priority Date: 1/22/1916

Source: SOUTH LEIGH 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	0.37 CFS	64.8 AF
	Total:		0.37 CFS	64.8 AF

LOCATION OF POINT(S) OF DIVERSION:

SOUTH LEIGH CREEK L1(NE¼NW¼NE¼) Sec. 32 Twp 06N 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	
06N	46E	30										1.1		0.9	4.9	0.7	0.4	1.1	9.1
06N	46E	31					7.2	2.2											9.4

Total Acres: 18.5 AC

ADDITIONAL CONDITIONS OF ACCEPTANCE

1. The water rights referenced above will be rented from the bank at the current rental rate. 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.
2. 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.
3. 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.
4. While a water right is in the bank, forfeiture provisions are stayed.
5. While this right is leased to the bank, the unleased portion of rights 22-42, 22-160, 22-545, 22-616, and 22-13160 are limited when combined to a total of 517.6 acres in a single irrigation season.
6. While this right is leased to the bank, the unleased portion of rights 22-312, 22-487C, 22-13016, 22-42, 22-160, 22-545, 22-616, and 22-13160 are limited when combined to a total of 565.0 acres in a single irrigation season.

ADDITIONAL CONDITIONS OF ACCEPTANCE

7. While this right is leased to the bank, the unleased portion of rights 22-312, 22-487C, 22-13016, 22-42, 22-160, 22-545, 22-616, 22-13160, 22-13144, 22-13148, 22-130B, 22-481A, 22-482A, 22-483A, 22-2029D, 22-130D, 22-136C, 22-515B, 22-516B, and 22-517B are limited when combined to a total of 814 acres in a single irrigation season and the diversion of 27.74 cfs.
8. Rental of water under this right is subject to the limitations and conditions of approval of the water right.
9. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.
10. 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.
11. Water is delivered through Killpack Pipeline.
12. 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. 01.
13. 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.
14. 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).
15. 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.
16. 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.
17. 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 A
WATER RIGHT NO. 22-616
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: THE BOYD CHARLES SMITH & JILL JOHNSON SMITH TRUST
C/O HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS ID 83405
208-523-0620

Priority Date: 1/22/1916

Source: SOUTH LEIGH 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	3.06 CFS	534.8 AF
	Total:		3.06 CFS	534.8 AF

LOCATION OF POINT(S) OF DIVERSION:

SOUTH LEIGH CREEK L1(NE¼NW¼NE¼) Sec. 32 Twp 06N 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	
06N	45E	36							1.1	9.8	40					39			98.9
06N	46E	31	9.4	1.3		2			2.5	7.9									23.1
06N	46E	32			11.2		5.3	3.4								9.6	1.3		30.8

Total Acres: 152.8 AC

ADDITIONAL CONDITIONS OF ACCEPTANCE

1. The water rights referenced above will be rented from the bank at the current rental rate. 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.
2. 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.
3. 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.
4. While a water right is in the bank, forfeiture provisions are stayed.
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6. While this right is leased to the bank, the unleased portion of rights 22-312, 22-487C, 22-13016, 22-42, 22-160, 22-545, 22-616, and 22-13160 are limited when combined to a total of 565.0 acres in a single irrigation season.

ADDITIONAL CONDITIONS OF ACCEPTANCE

7. While this right is leased to the bank, the unleased portion of rights 22-312, 22-487C, 22-13016, 22-42, 22-160, 22-545, 22-616, 22-13160, 22-13144, 22-13148, 22-130B, 22-481A, 22-482A, 22-483A, 22-2029D, 22-130D, 22-136C, 22-515B, 22-516B, and 22-517B are limited when combined to a total of 814 acres in a single irrigation season and the diversion of 27.74 cfs.
8. Rental of water under this right is subject to the limitations and conditions of approval of the water right.
9. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.
10. 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.
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