

WSB No. _____
Receipt No. 0096079
Date/by 3-12-13 HP
(For Department Use Only)

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANK

RECEIVED
MAR - 6 2013
DEPARTMENT OF
WATER RESOURCES

Name of Seller/Lessor Mitchell Smaellie Phone 208-521-1719
Mailing address P.O. Box 165, Tetonia, Idaho, 83452 Email _____

A. DESCRIPTION OF WATER RIGHT, OR PORTION THEREOF, OFFERED TO THE BANK

If the entire right is for sale or lease, check here ☒, list the water right number, and skip to Part B.

1. Water Right Number 22-00380B Amount (cfs/ac-ft) _____ Nature of Use _____ Period of Use _____
_____ to _____
_____ to _____
_____ to _____
Total Amount: _____

2. Source of water _____ tributary to _____

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	1/4	1/4	1/4	County

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

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				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:
Please see attached document providing written consent from Tetonia Canal Company.

C. GENERAL INFORMATION

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

The diversion system consists of a headgate structure, with two gates, located off of Spring Creek at the point of diversion described above.

2. Describe any other water rights used for the same purpose or at the same place of use as described above.

N/A

3. Will the present place of use continue to receive water from any source?

Yes ☐ No ☒

If yes, describe.

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.

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.

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 4/15/2013 to 10/31/2017 (not to exceed 5 years).
(Month / Day / Year) (Month / Day / Year)

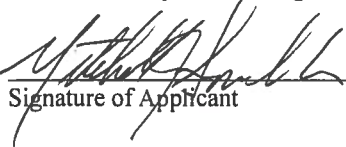
2. Show the minimum payment acceptable to the Seller/Lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

This water right shall be rented by the Idaho Water Resource Board, through Idaho's Water Transaction Program.

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

Mitch Smaellie owner
Printed Name and Title*

2/10/2012
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

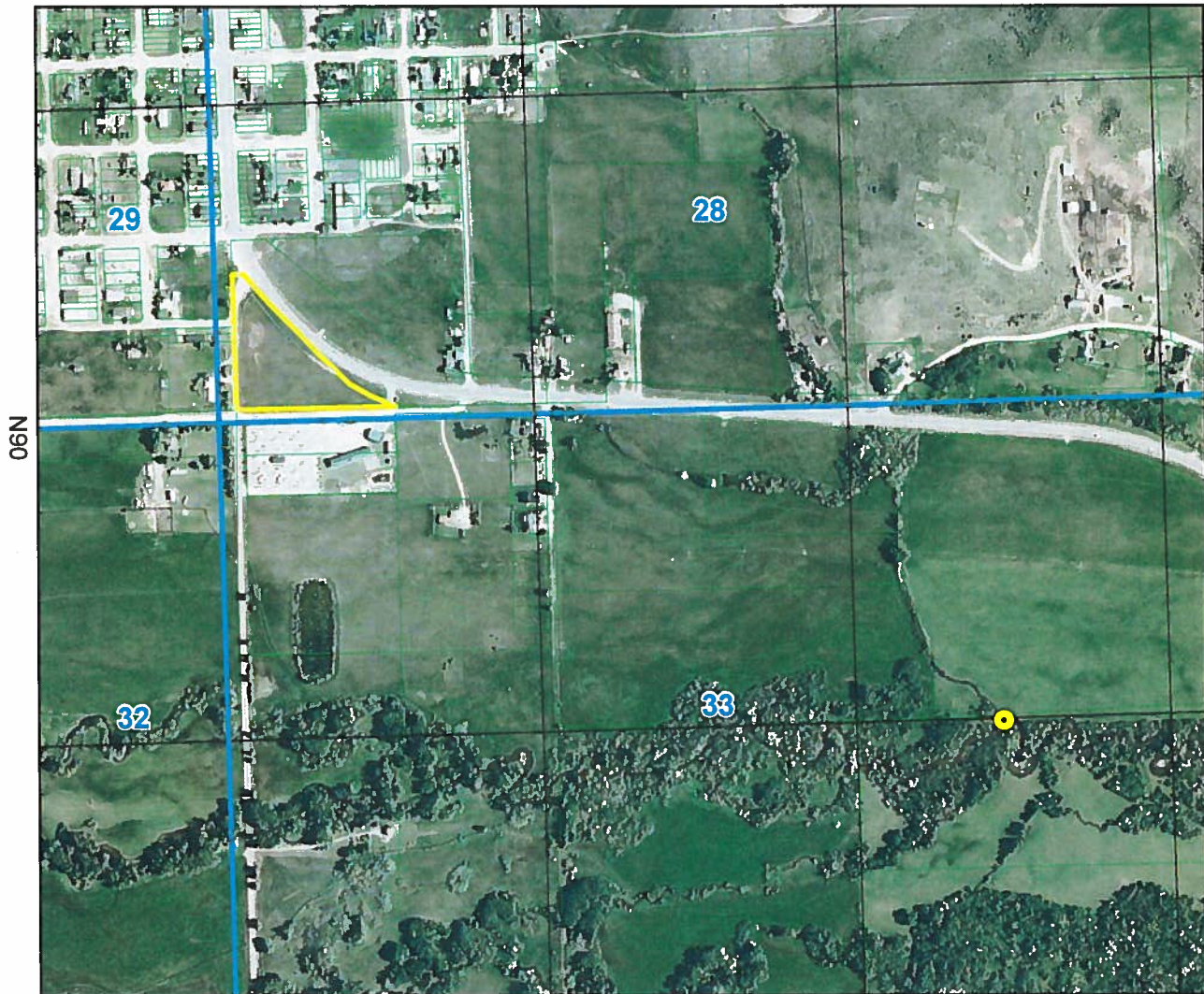
State of Idaho
Department of Water Resources

Water Right
22-380B

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

45E



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters
- Taxlots

0 0.075 0.15 0.3 Miles



Water Right Lease Agreement
with
Mitchell Smaellie

This lease agreement ("Agreement") is made and entered into by and between the Idaho Water Resource Board, ("Board") and Mitchell Smaellie, ("Lessor")

RECITALS

- A. WHEREAS, the Board has entered into contract with National Fish and Wildlife Foundation, under the authority of the Department of Energy, Bonneville Power Administration ("BPA"), which recognizes that the Board intends to develop and operate the Water Transaction Program ("Program") to lease water from willing Idaho water right owners to address water shortages including flow augmentation for Yellowstone cutthroat trout, an Idaho *Species of Greatest Conservation Need*. Under this Program, water right owners will forego irrigation of land and place their water rights into the Idaho Water Supply Bank ("Bank") operated by the Idaho Department of Water Resources ("Department") on behalf of the Board.
- B. WHEREAS, the Board solicited offers from the public to sell or lease water to facilitate the flow of additional water in the Teton River and tributaries. In response, the Lessor submitted a proposal for participation in the Program. The proposal shows that the Lessor has a right to use water for irrigation, stockwater, or other consumptive purposes. Placing a portion of the Lessor's water in the Bank during the 2013 irrigation season and subsequent years will result in additional water in Spring Creek and the Teton River for Yellowstone cutthroat trout, an Idaho *Species of Greatest Conservation Need*.

AGREEMENT

NOW THEREFORE, in consideration of the mutual and dependent covenants herein contained, the parties agree as follows:

I. Description of Lease

- A. Lessor agrees to lease to the Board water right no. 22-00380 B appurtenant to the 3.5 acres further described in the map incorporated herein, which is attached and labeled as Attachment A. Lessor agrees not to divert water under the right and to idle the land identified in Attachment A between April 15 and October 31 for the duration of the lease.
- B. The Lessor acknowledges and agrees that the water acquired under this Lease Agreement will be placed in the Bank for a term of five (5) years, and that the Lessor is offering the water rights described herein to the Bank by signing this Agreement. The Lessor agrees to provide any additional information that the Department may require to process or facilitate acceptance of the water rights into the Bank. Failure to comply with Department requests for information or other requirements is cause for termination of this Agreement.

- C. Lessor warrants that it is the owner of the water right and land identified herein and possesses the right, title, and interest in the water and land or has obtained any necessary consent or approval to enter into this Agreement. Lessor further warrants that it has not entered into any other type of agreement that would prohibit the Lessor from placing the water into the Bank.

II. Additional Conditions

- A. If it is determined after the execution of this Lease Agreement that certain acres are not eligible under the Program because of a mistake, error, or misrepresentation in the Lessor's application, compensation will be reduced accordingly.
- B. The Lessor's idled land will be monitored in accordance with Water Transaction Program requirements. The monitoring may include field visits, the collection and analysis of satellite data, and related flow measurements collected at the Board's discretion. The Lessor agrees to allow the collection of data and access for field visits.
- C. The Lessor shall immediately notify the Board if there are any changes in ownership, or any encumbrances or liens placed upon, any of the real property or water right covered by this contract during the term of this Lease Agreement.

III. Payments

- A. The Lessor agrees to lease and the Board agrees to compensate the Lessor for the administrative cost of leasing and renting the water rights through the Bank in the amount of \$324.38, which shall be paid directly to the Department by the Board in payment of the lease application fee (\$250.00) and ten percent rental administration fee (\$74.38), based on the current rental fee rate of \$1.70 per acre-foot, in accordance with Water Supply Bank Rules, IDAPA 37.02.03.

IV. Term, Termination of Agreement and Remedies

- A. This Lease Agreement shall become effective on the date of the last signature hereto and shall extend through October 31, 2017.
- B. At the Board's discretion, this Lease Agreement may be terminated upon:
 - (1) Failure of the Lessor to abide by the terms and conditions of the Lease Agreement;
 - (2) Refusal of the Lessor to allow representatives of the Board access to the land to monitor compliance with the Lease Agreement;
 - (3) Application of water by the Lessor to the lands during the period of this Lease Agreement, except in emergency situations where the application of water is required for public safety reasons;
 - (4) Discovery of fraudulent information submitted in the Lessor's Application.

- C. If this Lease Agreement is terminated for any reason listed under section IV.B, or by the Lessor for any other reason, prior to its ending date, the Lessor shall reimburse the Board for the amount stated in Section III.A of the Lease Agreement, as determined by the Board.

V. Miscellaneous

- A. The Landowner or Lessor is responsible for all taxes, assessments, soil conservation measures such as weed and erosion control and other obligations related to any of the lands described under this Lease Agreement.
- B. The Landowner will indemnify and hold harmless the Board and the Department from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death, or property damage of any nature caused by the landowner or any person, firm, or corporation acting on the landowner's behalf related to or arising out of this Lease Agreement.
- C. Lessor acknowledges and agrees that a memorandum of this Lease Agreement will be executed simultaneously herewith and a copy thereof will be recorded in the records of the county.
- D. The terms of this Lease Agreement shall constitute a distinct transaction separate and apart from any potential efforts the Board may pursue in the future to purchase the water rights from the Lessor.

VI. Duplicate Originals

- A. This contract is executed in duplicate. Each of the contracts with an original signature of each party shall be an original.

Signatures

Lessor

Print Name(s): Mitchell J. Smaellie

Mailing address: PO Box 165
Tetonia 83452

Phone: 208-456-2901

Signed [Signature]

Date: 3-1-13

Signed _____

Date: _____

Title: _____

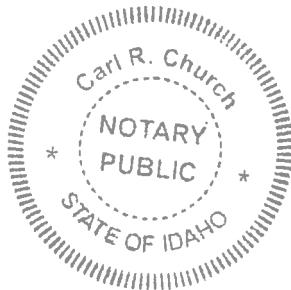
State of Idaho)

S.S.

County of TETON

On this 1 day of MARCH 2013, before me, the undersigned Notary Public, in and for said county and state, personally appeared MITCHELL J. SMAELLIE, known to be the person whose name is subscribed to within instrument and acknowledged to me that he/she executed the same.

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



[Signature]

Notary Public in and for Idaho

Commission Expires:

State of Idaho
Idaho Water Resource Board

Signed *Brian Patton*
Chairman, Idaho Water Resource Board

Date: 3/5/13

State of Idaho)

S.S.

County of)

On this 5th day of March 2013, before me, the undersigned Notary Public, in and for said county and state, personally appeared Brian Patton, known to be the person whose name is subscribed to within instrument and acknowledged to me that he/she executed the same.

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



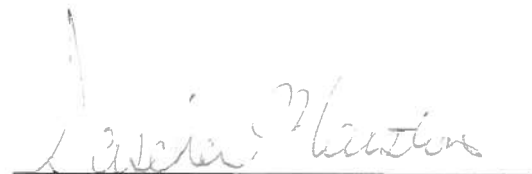
Deborah J. Gibson
Notary Public in and for Idaho
Commission Expires: 12/6/18

APPROVED AS TO FORM



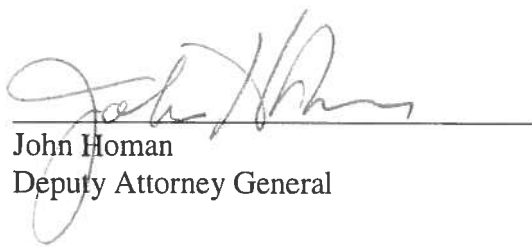
Brian Patton, Acting Administrator
Planning and Technical Services Div.

2/26/13
Date



Sascha Marston
Financial Officer

2-8-13
Date



John Homan
Deputy Attorney General

2-8-13
Date

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE SPRING CREEK WATER DONATION TRANSACTIONS

A RESOLUTION TO MAKE A FUNDING COMMITMENT

WHEREAS, Spring Creek is a tributary to the Teton River that provides quality spawning and rearing habitat for Yellowstone cutthroat trout and other resident fish, but is flow and passage limited at certain times of the year; and

WHEREAS, it is in the interest of the State of Idaho to increase stream flow in the Teton River and its tributaries to encourage recovery of Yellowstone cutthroat trout, which are currently designated as an Idaho Species of Greatest Conservation Need; and

WHEREAS, staff has developed a five-year donation agreement with the City of Tetonia to improve stream flow for fish in Spring Creek; and

WHEREAS, staff has developed a five-year donation agreement with Mitchell Smaellie to improve stream flow for resident in Spring Creek; and

WHEREAS, the donated water rights shall be leased into the Board's Idaho Water Supply Bank, to be rented by the Idaho Water Resource Board (IWRB) for the beneficial use of instream flow in the Teton River, for a period of five years; and

WHEREAS, a proposal to fund the City of Tetonia donation in the amount of \$3,156.25 has been submitted to the Columbia Basin Water Transaction Program, to be used to pay the Idaho Water Supply Bank Application Fees (\$500.00) and 10% Idaho Water Supply Bank Administrative Fee (\$2,656.25); and

WHEREAS, a proposal to fund the Smaellie donation in the amount of \$324.38 has been submitted to the Columbia Basin Water Transaction Program, to be used to pay the Idaho Water Supply Bank Application Fee (\$250.00) and 10% Idaho Water Supply Bank Administrative Fee (\$74.38); and

WHEREAS, staff anticipates the funds being placed into the IWRB Revolving Development Account for payment to the Idaho Water Supply Bank; and

WHEREAS, the Spring Creek donation transactions are in the public interest and in compliance with the State Water Plan.

NOW THEREFORE BE IT RESOLVED that the IWRB authorizes the Chairman to enter into a lease/rental agreement with the City of Tetonia, and/or its successors, and Mitchell Smaellie, and/or his successors, for water rights 22-11579, 22-13536, and 22-00380B for delivery to minimum stream flow 22-7369, using an amount not to exceed \$3,480.63.

NOW THEREFORE BE IT FURTHER RESOLVED that this resolution is subject to the condition that the IWRB receives the requested funding from the Columbia Basin Water Transaction Program in the amount of \$3,480.63.

DATED this 28th day of November, 2012.



TERRY T. UHLING, Chairman
Idaho Water Resource Board

ATTEST 

BOB GRAHAM, Secretary