



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

September 20, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

PURITY SWEET INC
315 E AVE H
JEROME ID 83338

RE: APPLICATION TO LEASE AND RENT WATER FROM THE WATER SUPPLY BANK: WATER
RIGHT NO. 51-4037

Dear Lessor/Renter:

The Department of Water Resources ("Department") acknowledges receipt of your applications to lease and rent water from the Water Supply Bank ("Bank"). The offered water right is accepted into the Bank in accordance with the attached Water Supply Bank Lease Acceptance. If you do not agree with the conditions of the Lease Acceptance and would like to withdraw your water right from the Bank, you must contact the Department within thirty (30) days of receipt of this notification. The right will automatically be released from the bank on September 1, 2010.

In addition, you will find 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 \$7.00 per year was calculated based on the current rental rate of \$14.00 per acre-foot times a diversion volume of 0.5 acre-feet. Since you are the lessor and the renter, you only need pay a 10% administrative fee of \$0.70. The payment is due within 14 days of your receipt of this letter. The agreement will be void if payment is not received.

Please send a check made payable to the Idaho Department of Water Resources, together with the signed rental agreement, to my attention within 14 days so I can complete the processing.

If you have any questions, please contact me at (208) 287-4907.

Sincerely,

Monica Van Bussum
Sr. Water Resource Agent

Enclosure(s)

c: John Westra – IDWR Western Regional Office
John Homan – State of Idaho, Office of the Attorney General
C. Tom Arkoosh – Capitol Law Group

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WATER SUPPLY BANK RENTAL AGREEMENT**

This is to certify that: PURITY SWEET INC
315 E AVE H
JEROME ID 83338
(208) 438-5821

filed an application to rent water from the Water Supply Bank ("Bank"). The Idaho Water Resource Board ("Board") being authorized to operate a Bank and to contract by and through the Director of the Idaho Department of Water Resources ("Director, Department") for rental of water from the Bank agrees to rent water as follows:

Summary of Water Rights or Portions Rented from the Bank

	<u>Water Right</u>	<u>Rented Rate</u>	<u>Annual Rented Volume</u>	<u>Total Rented Acres</u>
	51-4037	0.02 CFS	0.5 AF	NA
COMBINED RENTAL TOTALS:		0.02 CFS	0.5 AF	NA

TERM OF RENTAL: September 1, 2009, to August 31, 2010

RENTAL FEE: \$7.00

The total fee for rental of the above-described water is \$7.00. The undersigned renter is also the lessor under this agreement, and is therefore obligated to pay only the administrative fee of \$ 0.70.

Detailed water right specific limitations and conditions attached.

The undersigned renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described in this agreement:

Dated this _____ day of _____, 20_____.

By: _____
(Print Name) (Signature)

(Title if on behalf of company or organization)

Having determined that this agreement satisfies the provisions of Idaho Code § 42-1763 and IDAPA 37.02.03.030 (Water Supply Bank Rule 30), for the rental and use of water under the terms and conditions herein provided, and none other, I hereby execute this Rental Agreement on behalf of the Idaho Water Resource Board this ____ day of _____, 20____.

GARY SPACKMAN, Interim Director
Department of Water Resources

WATER RIGHT NO. 51-4037
WATER SUPPLY BANK RENTAL AGREEMENT

The renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described below:

Renter: PURITY SWEET INC
 315 E AVE H
 JEROME ID 83338
 (208) 438-5821

Priority Date: 06/20/1885

Source: MURPHY HOT SPRINGS

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
COMMERCIAL	09/01	to 08/31	0.02 CFS	0.5 AF
	Total:		0.02 CFS	0.5 AF

LOCATION OF RENTER'S POINT(S) OF DIVERSION:

MURPHY HOT SPRINGS NW¼NW¼ Sec. 24 Twp 16S Rge 09E OWYHEE County

RENTER'S PLACE OF USE: COMMERCIAL

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
16S	09E	24						X											

CONDITIONS OF WATER USE

1. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
2. Rental of the specified right from 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.
3. Use of water under this agreement does not constitute a dedication of the water to renter's place of use and upon expiration of this agreement, the points of diversion, place of use and nature of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
4. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party.
5. Use of water under this agreement shall not prejudice any action of the Department in its consideration of an application for transfer or permit filed by the applicant for this same use.
6. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
7. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water.
8. Renter acknowledges and agrees that 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.
9. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.

**WATER RIGHT NO. 51-4037
WATER SUPPLY BANK RENTAL AGREEMENT
CONDITIONS OF WATER USE**

10. The renter must diligently pursue a permanent water right to provide for the uses authorized under this rental agreement.
11. Commercial use is for a water bottling plant.
12. In the event that continued water use is not authorized, the renter agrees to hold the Board, the Director and the state of Idaho harmless from any claim for reimbursement or expenses associated with the development of new and supplemental water uses.
13. Future rentals for the use authorized under this agreement may be subject to further review and notice requirements.
14. Future rentals for the purpose authorized under this agreement may require review of historic beneficial use associated with the water right rented to determine the consumptive volume of water available.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WATER SUPPLY BANK LEASE ACCEPTANCE

This is to certify that: PURITY SWEET INC.
315 E AVE H
JEROME ID 83338
(208) 438-5821

has requested to lease the water right(s) listed below to the Water Supply Bank ("Bank"). The Idaho Water Resource Board ("Board") being authorized to operate a bank and to contract by and through the Director of the Idaho Department of Water Resources ("Director", "Department") the acquisition of water rights for the Board's Bank, agrees to lease the water right to the Bank as follows:

Summary of Water Rights or Portions Leased to the Bank

Water Right	Lease Rate	Lease Volume	Acre Limit	Total Leased Acres
51-4037	0.02 CFS	0.5 AF	NA	NA
COMBINED LEASE TOTALS:	0.02 CFS	0.5 AF	NA	NA

TERM OF LEASE:

Lease Begin Date: September 1, 2009

Expiration Date: August 31, 2010

RENTAL AVAILABILITY:

Season of Use: September 1, 2009 to August 31, 2010

MINIMUM PAYMENT ACCEPTABLE:

Current Rental Rate

Detailed Lease Acceptance attached.

Dated this 17th day of September, 20 10


for GARY SPACKMAN, Interim Director
Department of Water Resources

WATER RIGHT NO. 51-4037 **WATER SUPPLY BANK LEASE ACCEPTANCE**

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

Lessor: PURITY SWEET INC.
 315 E AVE H
 JEROME ID 83338
 (208) 438-5821

Priority Date: 06/20/1885

Source: MURPHY HOT SPRINGS

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
COMMERCIAL	09/01	to 08/31	0.02 CFS
	Total:		0.02 CFS

LOCATION OF POINT(S) OF DIVERSION:

MURPHY HOT SPRINGS NW¼NW¼ Sec. 24 Twp 16S Rge 09E OWYHEE County

PLACE OF USE TO BE IDLED UNDER THIS LEASE: COMMERCIAL

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16S	09E	24						X											

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.
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.

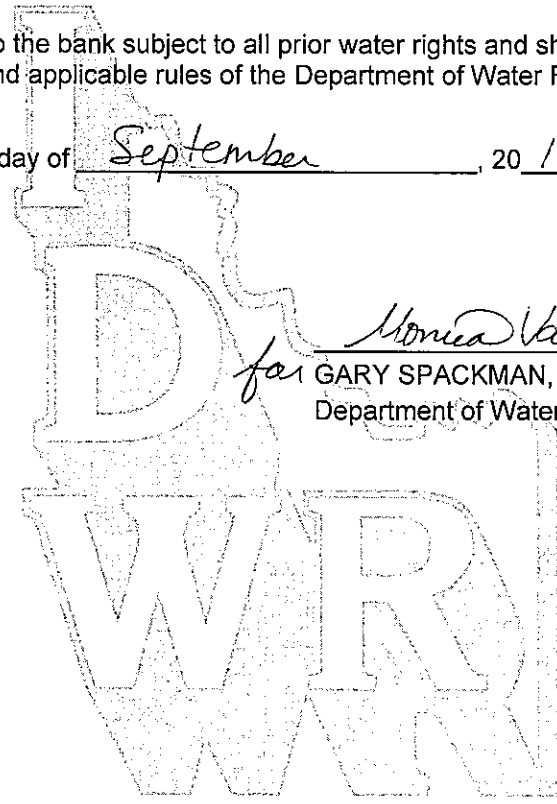
**WATER RIGHT NO. 63-295
WATER SUPPLY BANK LEASE ACCEPTANCE**

CONDITIONS OF ACCEPTANCE

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. Upon acceptance of a water right into the Board's water supply bank, the owner of the right may withdraw the right within thirty (30) days of acceptance into the bank if the owner does not agree with the conditions of acceptance.
11. Rental of this right from the bank may require additional review to confirm the availability of the surface water sources and the extent of beneficial use.

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.

Dated this 17th day of September, 20 10


Monica VanBuren
for GARY SPACKMAN, Interim Director
Department of Water Resources

MEMORANDUM

TO: Water Right File 51-4037
C: John Homan, Office of the Attorney General
FROM: Monica Van Bussum
DATE: September 16, 2010
SUBJECT: Purity Sweet Water Supply Bank Rental Application

SUMMARY

On September 3, 2009, the Department received a lease/rental combination application for 51-4037 from Purity Sweet. Matt Olivas signed for Purity Sweet. A check of the Secretary of State's website indicates Matt Olivas is President of Purity Sweet.

The decree for 51-4037 lists 0.02 cfs for domestic and 0.04 commercial with the purpose of use remark, "Commercial use is for pool, baths, internal lodge use and 1 trailer."

The lease/rental application sought to convert 0.02 cfs of the commercial component from the previously described commercial use to a commercial use for "bottling and settling water." The application stated the period of use would be from 9/1/09 to 8/31/10.

A field exam done by Maria Minicucci of IDWR in March of 1994 indicated, "All uses are non-consumptive." Subsequent site visits by other IDWR personnel indicated the presence of a water bottling factory. This lease/rental is to provide some legal basis for the water bottling plant.

A challenge comes in this case with the previous commercial use being classified by Minicucci as non-consumptive. Clearly a bottling plant is entirely consumptive, so we have a transition from a non-consumptive use to a completely consumptive one. A rental agreement must contain a volume and generally the volume indicates the volume consumptively used under the leased right. In this case, the leased right is non-consumptive. On September 16, 2010, I attempted to determine current bottling volume. I called the phone numbers listed on the application but determined those were invalid numbers. I looked up Purity Sweet on the Idaho Secretary of State's website and found a contact address for Don Dozier in Paul, Idaho. I did an online search for contact information for Don Dozier and found a phone number – (208) 438-5821. I called this number and a machine picked up but there was no greeting, simply a few clicks and then a beep. I left a message. A few hours later I received a phone call from Don Dozier. I asked Mr. Dozier a number of times how much water the plant is currently bottling and he was repeatedly uncooperative, saying the Department had screwed up their paperwork and intentionally buried it because the Department did not want them to get water rights. Mr. Dozier said several times they were trying to get their Adjudication work done and the Bank applications were only supposed to be until the Adjudication work was complete. I asked Mr. Dozier for a water right number for the Adjudication and he was unable to provide one. I checked Workflow and found no active claims for Mr. Dozier or Purity Sweet.

I explained to Mr. Dozier that my purpose was just trying to quantify the appropriate volume for the Bank and not to deal with the Adjudication or any transfers. Mr. Dozier said whatever was on the application was what they needed because that's what the attorney put on there. I explained to Mr. Dozier that the application listed a flow rate (0.02 cfs) but no volume. He said 0.02 cfs is a volume and I explained to

Mr. Dozier that a rental agreement comes with a flow rate and a volume. Mr. Dozier said, "That is a volume. It's just math."

I told Mr. Dozier I needed some indication of the consumptive use on the right and asked him again how much is being used in the bottling plant. He said they are currently doing one pallet per month. I asked Mr. Dozier how many bottles of what size(s) are on the pallet. He explained that when they get their Bank agreement they will increase their volume considerably, so they "don't want to limit it to what we've been doing." Mr. Dozier explained the attorney, Pike, filled out the paperwork. He said Mr. Pike has since died and Tom Arkoosh is now their attorney and he would have Mr. Arkoosh call me.

Since the previous commercial use was considered non-consumptive and we must proceed with the agreements, the best way to determine volume is to look at the file resources available. A November 1999 Notice of Violation (NOV) signed by Gary Spackman, indicates Matt Olivas, who is currently President of Purity Sweet, testified that they were bottling 100 gallons per month at that time. Verbal communication from John Homan of the Idaho Attorney General's office (OAG) indicates they are currently filling one truck per week. An internet search for the various sizes of water trucks indicates a small water truck has a 3,000-gallon capacity. We can make the assumption that, at most, they are bottling 3,000 gallons per week. This is far below what Mr. Dozier indicates with one pallet per month, but far above the 1999 testimony from Mr. Olivas of 100 gallons per month. The annual volume based on 3,000 gallons per week is calculated:

$$\frac{3,000gal}{wk} * 52 \frac{wks}{yr} * 1 \frac{AF}{325,850gallons} = 0.5 AFA$$

We can recommend 0.5 AF per year under the rental agreement. This is also closely aligned what we might recommend for an in-home use only domestic right, which would be 0.6 AFA. Since the previous commercial use also contained some domestic components (lodge use and trailer), this adds further support to recommending 0.5 AFA.

Van Bussum, Monica

From: Homan, John
Sent: Tuesday, September 14, 2010 10:42 AM
To: Van Bussum, Monica
Cc: Peppersack, Jeff; Luke, Tim
Subject: Purity Sweet water bank application

Monica,

I visited with Jeff and he was okay with going forward with this application. Originally, we had the water bank processing contingent upon the Consent Order being signed and a transfer being filed. They filed a very poorly prepared application for transfer but never signed the Consent Order. Jeff and I agreed that although Purity Sweet has had a problem in the past reconciling its offsite use of water for bottling with the present condition on its water right restricting bottling to onsite use only, it was entitled to have the water bank application processed to address the issue.

John