



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
Interim Director

August 19, 2010

IDAHO WATER RESOURCE BOARD
PO BOX 83720
BOISE ID 83720-0098

RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 74-2320 AND 74-15190

Dear Renter:

Please find 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 **\$1,777.78** was calculated based on an agreement between you and the water right owner. Please send a check made payable to the Idaho Department of Water Resources together with the signed rental agreement to my attention within ten (10) days of receipt of this letter so I can complete the processing.

If you have any questions, please contact me at (208) 287-4943.

Sincerely,

A handwritten signature in black ink, appearing to read 'Monica P. Van Bussum', with a long horizontal flourish extending to the right.

Monica Van Bussum
Sr. Water Resource Agent

Enclosure(s)

c: Morgan Case – IDWR Planning Bureau

MEMORANDUM

Date: August 19, 2010
To: Water Right File(s) 74-2320 and 74-15190
From: Monica Van Bussum
MVB
Re: Water Supply Bank Rental

Pursuant to the stipulated agreement, signed May 25th, 2010, between the Idaho Water Resource Board and Robert L. Harris (representing James Whittaker), a rental agreement can be executed for 2010 for instream flow in the Lemhi River.

Water rights 74-2320 and 74-15190 apparently overlap on the 26.5 acres of land idled for the Water Supply Bank lease. There is no annual volume limit listed on these rights. In the Lemhi River basin, the standard field headgate requirement is 3.5 acre-feet per acre while the standard consumptive irrigation requirement is 2.5 acre-feet per acre. The irrigation season authorized by these rights is from March 15 through November 15, a period of 246 days. The rental period is from June 1 through November 15, a period of 168 days. Based on the consumptive irrigation requirement, the portions of these rights leased to the Bank could provide up 66.25 acre-feet per year (26.5 ac x 2.5 af/ac) over the entire irrigation season. However, due to the reduced season of use, the volume of water available under this rental is 45.2 acre-feet (66.25 af x (168 days/246 days)). This volume of water can provide a continuous flow rate of approximately 0.14 cfs (45.2 af / 1.9835 af/day/cfs / 168 days) from June 1 to November 15. Based on the standard field headgate requirement, the total volume of water that will be rented during the abbreviated season of use is 63.3 af (45.2 af x (3.5 af/ac / 2.5 af/ac)). The delivery of water under the rental will be limited to the consumptive portion from June 1 to November 15; 0.14 cfs and 45.2 af.

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

This is to certify that: IDAHO WATER RESOURCE BOARD
PO BOX 83720
BOISE ID 83720-0098

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

	Water Right	Rented Rate	Annual Rented Volume	Total Rented Acres
	74-2320	0.53 CFS	63.3 AF	26.5 AC
	74-15190	0.19 CFS	63.3 AF	26.5 AC
COMBINED RENTAL TOTALS:		0.53 CFS	63.3 AF	26.5 AC

TERM OF RENTAL: June 1, 2010 to November 15, 2010

TOTAL RENTAL FEE: \$1,777.78

Under a private agreement between the lessor and renter, the total fee for this rental is \$1,777.78 and the negotiated payment to the lessor is \$1,600.00.

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 Section 42-1763, Idaho Code, 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. 74-2320
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: IDAHO WATER RESOURCE BOARD
PO BOX 83720
BOISE ID 83720-0098

Priority Date: 11/08/1957

Source: EIGHTEENMILE CREEK
TEXAS CREEK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
INSTREAM FLOW	06/01	to 11/15	0.53 CFS	63.3 AF
	Total: 0.53 CFS*			63.3 AF*

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

Under Water Right No. 74-14993:

LEMHI RIVER SW¼SE¼SE¼ Sec. 24 Twp 21N Rge 22E LEMHI County
(Beginning of Reach)

LEMHI RIVER L9 (SW¼SW¼SW¼) Sec. 32 Twp 22N Rge 22E LEMHI County
(Ending of Reach)

RENTER'S PLACE OF USE: INSTREAM FLOW

LEMHI RIVER WITHIN REACH DESCRIBED ABOVE

CONDITIONS OF WATER USE

- * The use of water under this agreement is limited to the consumptive amounts of the leased portions of rights 74-2320 and 74-15190; a combined annual volume of 45.3 af and a continuous flow rate of 0.14 cfs from June 1 to November 15.
- Delivery of water under this rental agreement is subject to the limitations and conditions of water right 74-14993.
- Use of water under this agreement 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. 74W and the renter's place of use is within State Water District No. 74.
- The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
- 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 the ongoing Snake River Basin Adjudication or any other department application process.
- 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 and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
- Renter agrees to comply with all applicable state and federal laws while using water under this agreement.

**WATER RIGHT NO. 74-2320
WATER SUPPLY BANK RENTAL AGREEMENT**

CONDITIONS OF WATER USE

8. 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.
9. 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.
10. 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. 74-15190
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: IDAHO WATER RESOURCE BOARD
PO BOX 83720
BOISE ID 83720-0098

Priority Date: 03/15/1966

Source: TEXAS CREEK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
INSTREAM FLOW	06/01	to 11/15	0.19 CFS	63.3 AF
	Total:		0.19 CFS*	63.3 AF*

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

Under Water Right No. 74-14993:

LEMHI RIVER SW¼SE¼SE¼ Sec. 24 Twp 21N Rge 22E LEMHI County
(Beginning of Reach)

LEMHI RIVER L9 (SW¼SW¼SW¼) Sec. 32 Twp 22N Rge 22E LEMHI County
(Ending of Reach)

RENTER'S PLACE OF USE: INSTREAM FLOW

LEMHI RIVER WITHIN REACH DESCRIBED ABOVE

CONDITIONS OF WATER USE

1. * The use of water under this agreement is limited to the consumptive amounts of the leased portions of rights 74-2320 and 74-15190; a combined annual volume of 45.3 af and a continuous flow rate of 0.14 cfs from June 1 to November 15.
2. Delivery of water under this rental agreement is subject to the limitations and conditions of water right 74-14993.
3. Use of water under this agreement 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. 74W and the renter's place of use is within State Water District No. 74.
4. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
5. 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 the ongoing Snake River Basin Adjudication or any other department application process.
6. 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 and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
7. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.

**WATER RIGHT NO. 74-15190
WATER SUPPLY BANK RENTAL AGREEMENT**

CONDITIONS OF WATER USE

8. 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.
9. 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.
10. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.

ORIGINAL

RECEIVED

MAY 26 2010

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General
State of Idaho

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

HARRIET A. HENSLEY, ISB # 5235
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Natural Resources Division
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Boise, Idaho 83720-0010
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Facsimile: (208) 854-8072
E-mail: harriet.hensley@ag.idaho.gov

Attorneys for the Idaho Water Resource Board

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION TO
RENT WATER FROM THE WATER
SUPPLY BANK NOS. 74-2320 AND 74-
15190 IN THE NAME OF THE IDAHO
WATER RESOURCE BOARD

STIPULATION

James Whittaker ("Whittaker"), by and through his counsel of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, P.L.L.C., and the Idaho Water Resource Board ("IWRB" or "Board"), by and through its counsel of record, Harriet A. Hensley, Deputy Attorney General for the State of Idaho, hereby stipulate as set forth below. This Stipulation is entered into for the purpose of settlement, in part, of the proceedings regarding the September 20, 2006 Water Supply Bank Rental Agreement for a portion of Water Right Nos. 74-2320 and 74-15190 (Rental

Agreement) and Whittaker's April 7, 2008 protest to the Rental Agreement ("Protest"). The Rental Agreement and the Protest are hereby attached as Appendix A and Appendix B.

A. TERMS AND CONDITIONS OF STIPULATION

1. Whittaker hereby agrees to withdraw his Protest to the Rental Agreement for the 2010 rental period only. Whittaker acknowledges that the Rental Agreement can be implemented beginning on June 1, 2010 and continue until and including November 15, 2009. Whittaker's Protest of the Rental Agreement for the remaining years shall remain in full force and effect, and Whittaker expressly reserves his Protest for the 2011-2015 time period. Notwithstanding the above, Whittaker is not prohibited under this Stipulation from filing a petition pursuant to Idaho Code § 42-1766 to revoke or modify the 2010 Rental Agreement upon a showing of injury to water rights to which he is entitled.
2. IDWR shall continue to collect flow data from the pressure transducer gage located just downstream of the Ellsworth diversion location on 18-mile creek. IDWR will take photographs (at least once during the irrigation season) of the reach below the transducer gage. IWRB will compile and provide this information to Whittaker by April 1, 2011, and will provide reported flow data to Whittaker upon reasonable demand during the 2010 irrigation season if requested by Whittaker.
3. The IWRB shall continue to take no position on the Motion For Independent Hearing Officer filed by Whittaker on May 1, 2009 or any future motion filed under IDAPA Rule 37.01.01.412 in this proceeding.

4. On or before December 15, 2010, Whittaker and the IWRB shall notify the hearing officer of any progress made in settlement discussions pertaining to the Rental Agreement and/or of the need for a contested case scheduling conference.

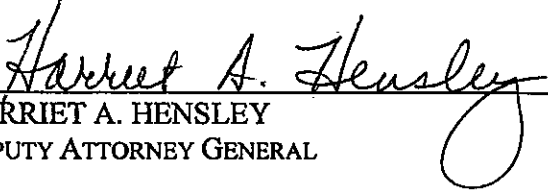
B. MISCELLANEOUS PROVISIONS

1. This Agreement shall bind and inure to the benefit of the respective successors and assigns of the Parties.
2. This Agreement sets forth all of the covenants, promises, provisions, agreements, conditions, and understandings between the Parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.
3. This Agreement represents a settlement of disputed issues reached as a result of good faith negotiations. This Agreement shall not be construed so as to waive or prejudice any contention or right by either Party except for purposes of effectuating this Agreement. No offers and/or compromises made in the course of negotiations shall be construed as admissions against interest or be used in any legal proceeding.
4. This Agreement shall be effective upon the last date executed by signature of the authorized representatives of both Parties as set forth below. This Agreement may be terminated or modified, but only by means of a written agreement signed by an authorized representative of each of the Parties hereto.
5. This Agreement may be executed in counterparts by the Parties and such counterparts, once executed, shall together constitute one final agreement binding the Parties to this Agreement as if one document had been signed by all Parties.

IN WITNESS WHEREOF, intending to be legally bound, the Parties have duly executed this agreement as set forth below.

Dated this 25th day of May, 2010.

IDAHO WATER RESOURCE BOARD


HARRIET A. HENSLEY
DEPUTY ATTORNEY GENERAL

Dated this 24th day of May, 2010.


ROBERT L. HARRIS, ESQ.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I certify that on the 25th day of May 2010 I caused to be served a true and correct original/copy of the foregoing STIPULATION upon the following parties by the method listed below:

1. The original to:

GARY SPACKMAN, HEARING OFFICER
IDAHO DEPT OF WATER RESOURCES
PO BOX 83720
BOISE ID 83720-0098

☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Fax

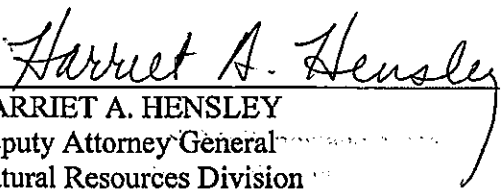
2. Copies to:

ROBERT L. HARRIS, ESQ.
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
P.O. BOX 50130
1000 RIVERWALK DRIVE, SUITE 200
IDAHO FALLS ID 83405

☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Fax

MORGAN CASE
IWRB
PO BOX 83720
BOISE ID 83720-0098

☒ U.S. Mail, postage prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Fax


HARRIET A. HENSLEY
Deputy Attorney General
Natural Resources Division