

**STARTING
LEFT
SIDE OF
FILE**

Before the Idaho Water Resource Board

WATER SUPPLY BANK RENTAL AGREEMENT

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

1. Renter: Water Resource Board
2. Address: 1301 N Orchard, Boise Id 83706-2237
3. Source of water: Otter Creek
4. Volume of water rented: 212.5 AF (Based on consumptive use volume)
Max rate: 4.86 cfs
5. Diversion period: 2004 irrigation season
6. Use of water: Instream Flow
7. a) Renter's point of diversion:

Legal description: SW¼SW¼ Section 16, T24N, R21E, B.M., Lemhi County
(Beginning of Reach)
SE¼SE¼ Section 31, T25N, R25E, B.M., Lemhi County (Ending of
Reach)

- b) Renter's place of use:

Legal description: Instream flow in Otter Creek and the Salmon River

8. The rights from which water will be rented are:

<u>Water Right</u>	<u>Lease Rate</u>
72-171	0.78 cfs
72-172	0.37 cfs
72-173	0.26 cfs
72-174	0.37 cfs
72-16108	3.08 cfs
75-2169	1.72 cfs
Total Acres: 85 ac	
Total diversion rate when combined: 4.86 cfs	
Total diversion volume: 212.5 af	

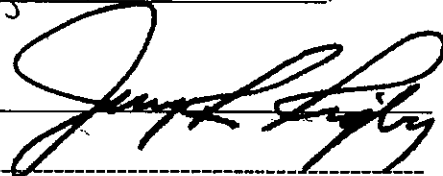
The undersigned renter agrees to pay \$7084.34 for rental of the above described water and agrees to use the water in compliance with the Water Supply Bank rules and in compliance with the conditions of water use shown below:

Conditions of water use under this agreement

1. Rental of the rights 72-171, 72-172, 72-173, 72-174, 72-16108 and 75-2169 is limited to a total combined diversion rate of 4.86 cfs and combined diversion volume of 212.5 afa, or a continuous diversion rate of 0.5 cfs for use during the irrigation season.
1. The use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code.
2. Upon Department request, the renter shall provide for the measurement of the water diverted in a manner acceptable to the Director and shall report the amount of water diverted at the end of the irrigation season.
3. Use of water under this agreement does not constitute a dedication of the water to renter's land and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to the licensed points of diversion and place of use and/or again be available to rent from the bank.
4. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
5. 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.
6. 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.
7. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party.
8. This rental does not authorize the construction of a well.

Dated this 6th day of August, 2004.

by _____
for _____



Having determined that this agreement satisfies the provisions of Section 42-1763, Idaho Code, and, IDAPA 37.02.03030 (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 6th day of August, 2004.


KARL J. DREHER, Director
Department of Water Resources

Before the Idaho Water Resource Board

**APPLICATION TO RENT WATER
FROM THE WATER SUPPLY BANK**Applicant **Idaho Water Resources Board** Phone **(208) 327-7900**Address **1301 N. Orchard** City **Boise** State **ID**Zip Code **83706****A. DESCRIPTION OF WATER SOUGHT TO RENT**

1. Source of water **Otter Creek**
tributary to **Salmon River**.
2. Maximum volume of water **297.5 AF**.
3. Maximum rate of diversion **4.86 cfs**.

B. DESCRIPTION OF USE PROPOSED

1. Nature of intended use **Instream flow**
2. Location of point of diversion **SW ¼ SW ¼, Section 16,**
Township T24N, Range R21E, B.M., Lemhi County (Beginning of
Reach).
SE ¼ SE ¼, Section 31, Township T25N, Range R25E, B.M., Lemhi
County (End of Reach)
3. Season of use: From **April 1 through October 31, 2003**
4. Description of diverting works:
Pump HP _____ Lift _____ Pump type _____
Canal name, if appropriate _____
5. Place of use:
 - a. If water is for irrigation, describe the number of acres to be irrigated by
40-acre tract, section, township and range.

- b. If water is not for irrigation, describe the nature of the intended use and the place of use.

Instream flow for Wild and Scenic River Claim for Salmon River (SRBA CLAIM NO. 75-13316)

Describe any other water rights used for the same purposes as rental water sought under this application.

6. Who owns the property at the point of diversion?
_____ **U.S. Forest Service**
7. Who owns the property at the place of use?
_____ **U. S. Forest Service**
8. Are you seeking a rental for more than one (1) year? **No** (yes or no)
If yes, for how many years? _____
9. Remarks: **No diversion. Flow for Wild and Scenic River Claim under direction of Karl Dreher, Director, Idaho Department of Water Resources (SRBA CLAIM NO. 75-13316)**

29 Jun 04
Date


Signature of Applicant

FOR DEPARTMENT USE ONLY

Received by CBC JUNE 29 PM Date _____ Time _____

Published in _____ Pub. dates _____

Protests filed by _____

Hearing held by _____

Action recommended _____

Water Transaction Checklist for Specific Water Transactions to Increase Tributary Flows

Instructions: The local entity should complete the following checklist as completely as possible when proposing a specific water transaction to the Columbia Basin Water Transactions Program (Columbia Basin WTP). Upon transaction completion, the checklist should be updated to reflect any changes to the transaction and a final version should be submitted to the Columbia Basin WTP.

Name of Transaction: **Otter Creek stream flow reconnect.**

Local Entity Proposing Transaction: **Idaho Department of Water Resources**

Entity Contact Person on Transaction: **Bill Graham, IDWR**

Date Transaction Proposal Submitted to the Columbia Basin WTP: **2004**

Total Amount of Landowner Payment: **\$6,375.**

Amount of Landowner Payment Requested from the Columbia Basin WTP: **\$ 6,375**

Principal Objective of the Transaction **Adding 4.0 cfs of flow to Otter Creek by leasing water right number 75-2169 from Verl Jones through the Idaho Water Resource Board Water Bank.**

ACCOUNTABILITY CRITERIA

1. Have the following documents been submitted to the Columbia Basin WTP as part of the proposal? If not, when will the document(s) be submitted?

- a. Contract with landowner detailing terms of the water right transaction:

Yes ☒ No ☐

Date Submitted: **1/20/04**

Comments:

- b. Water right certificate(s) included in the transaction.

Yes ☒ No ☐

Date Submitted: **1/20/04**

Comments:

- c. Application(s) submitted to the state water agency for transfer of the water right to instream flow (if applicable). **N/A**

Yes ☐ No ☐

Date Submitted:

Comments: **Water is being provided for instream flow through the IWRB Water Bank.**

- d. Approval order from the state water agency required to affect the transfer and change of use (or explanation as to how the water right will be protected instream without agency approval).

Yes ☒ No ☐

Date Submitted: **1/20/04**

Comments: **Approval is in the form of WRB water lease and rental documents.**

- e. A copy of a completed and signed National Environmental Policy Act (NEPA) checklist submitted to Bonneville Power Administration.

Yes ☒ No ☐

Date Submitted: **1/20/04**

Comments:

- f. Any other important documents to describe and record the transaction.

Yes ☐ No ☒

Date Submitted:

Comments:

2. What other information may assist the Columbia Basin WTP in evaluating this transaction or similar transactions in the future? **Not on SHIPUSS list of priority streams, but is within the Upper Salmon ESU.**

ADMINISTRATIVE CRITERIA

3. How did the water right holder use the water before the transaction? Is there evidence that water right(s) to be acquired was put to beneficial use during the relevant time period set forth by your state's abandonment statute? **Irrigation of hay fields.**
4. When was the application for the transfer of the water right to instream flow submitted to the applicable state agency (or other authority)? If the application has not yet been filed, what is the projected application submission date? When is the state agency expected to approve the transfer and finalize the amount of water that will be allocated to instream flow? **Application was made to the Water Board's Water Bank in Dec. 2003.**
5. Who will hold the water right once the water is secured for instream flow? **Idaho Water Resource Board**

HYDROLOGIC CRITERIA

6. What is the name of the stream(s) that will have increased instream flows as a result of the transaction? In what subbasin and watershed HUC is the stream(s) located? Please provide the NPCC Subbasin name and Watershed 5th Field HUC (10 digit) number. **Otter Creek, HUC 5th field number is 1706020309.**
7. What is the reach(es) of river that will benefit? (Please provide the approximate river mile of the upper and lower ends of the instream reach(es) and the Global Positioning System (GPS) coordinates of the existing point(s) of diversion.) **Otter Creek about two miles of stream.** (Please also provide legal description of existing point of diversion.) **Point of diversion is T18N R19E S29 SWSW, within Custer County. This is the corrected POD after my investigation. Note: no GPS data available.**

8. For what term will the transaction secure water for instream flow (e.g., two years, ten years, in perpetuity)? **One year.**
9. What is the priority date of the water right(s) secured for instream flow? What is the authorized period of use for the water right(s)? Is the water right(s) typically satisfied during this period of use each irrigation season? If not, what is the actual period of use before the water right(s) is restricted? **09/17/1961; April 1 to October 31. Only diverter from Otter Creek.**
- ~~10.~~ What is the proposed period of use of the instream right(s) (e.g., July 1st-September 30th)? What is the period during which the benefits of the proposed use is most ecologically significant (e.g. August 1 to September 5)? **April 1 until October 31.**
11. What is the rate in cfs that will be protectable instream? Will the established rate vary throughout the reach(es)? Will the established rate vary during the period of use? If so, describe the amount(s) by which the established rate will vary and the location and/or time of the variance. **The rate protected is 4.0 cfs, and should not vary during the period of use.**
12. What is the total quantity of water in acre-feet to be put instream during the term of the transaction? Will the established duty vary throughout the reach(es)? If so, describe the amount(s) by which the established duty will vary and the location of the variance. If the transaction is for more than one year, please give an annual quantity in acre-feet (show calculation). **His right is for an allowed standard rate, 3.5 acre feet per acre per annum in this area plus conveyance losses. Hence, 3.5 acre feet per annum/acre X 85 acres = 297.5 acre feet per annum for irrigation.**
13. What percentage increase of the historical base flow will the acquired water provide in the primary reach during the instream period of use? **100% during irrigation season.** What percentage of the minimum biological flow target will the acquired water provide in the primary reach during the instream period of use? (A range is acceptable.) **N/A – Full natural flow remains in the stream.**

BIOLOGICAL CRITERIA

14. What are the species name and ESA status (endangered, threatened) of the anadromous fish, specifically Evolutionary Significant Units (ESUs), expected to benefit by the increased flow? What life stages of the fish present will benefit from the increased flows? **Bull trout resident all life stages, ESA Threatened. Spring chinook salmon juvenile rearing, ESA threatened, steelhead juvenile rearing, ESA Threatened could be benefited in lower Panther Creek. Numerous wildlife species including large mammals would also be benefited in Otter Creek.**
15. What other fish (i.e., Distinct Population Segment) and wildlife species are expected to benefit? How? **Westslope cutthroat and redband rainbow, species of special concern, all life stages would benefit. Wildlife species including large mammals would benefit.**

~~16.~~ How is water quality expected to improve as a result of the transaction **Higher flows will enhance stream habitat quality and should reduce water temperature in the summer.**

17. What is the current condition of the riparian zone and stream channel in the affected reach(es)? Are there other projects planned or in effect to address degraded riparian areas or stream habitat? Include photographs of the affected reach(es), with a listing of the approximate river mile of the site. **Land use dispersed grazing on public National Forest land. The stream riparian zone is not fenced.**

18. Do the riparian zone and stream channel have the immediate potential to create additional high quality fish and wildlife habitat with the increase in stream flow? If high quality habitat is not immediately available, what are the other limiting factors **Yes.**

19. Is the stream reach fenced to create a riparian buffer? If so, what are the set-back distances from the stream? **Land use is dispersed grazing on public National Forest land. The stream riparian zone is not fenced.**

INNOVATION CRITERIA

20. Name what tool(s) and/or strategies were used in developing this transaction? **This transaction was first discussed in the summer of 2003.**

21. Explain what new information has been learned by use of these tool(s) and/or strategies? **As more of these projects are done, word of mouth and public contacts result in more landowners coming forward willing to participate.**

22. What is:

- a. total cost of the water to be acquired; **\$7,125**
- b. total amount paid to the water right holder from all funding sources; **\$6,375**
- c. amount of landowner payment requested from the Columbia Basin WTP; **\$6,375**
- d. estimated transaction costs related to this transaction and the portion (in \$) of these costs paid by BPA; **\$750**
- e. total cost of the transaction (water cost and transaction costs). **\$7,125**

If the water right is donated (partially or totally) and/or the water right holder payment is from more than one source, please approximate the value donated and/or the source and the amount of cost-share funds.

23. What method was used for determining the value of the water right? **Value of land to be irrigated.**

24. What incentive(s) motivated the water right holder to enter into the transaction? **Economic gain.**

MONITORING CRITERIA

25. How will the increases in flow be documented and monitored? **Stream Gauge.**
26. How will benefits to fish and/or wildlife be documented and monitored? **Photo points will show stream channel and riparian habitat improvements. Aerial photos will help to monitor compliance.**
27. How will increases in water quality be documented and monitored? **Otter Creek is not listed as water quality impaired.**
Please provide key contact information if another agency, program, or individual will be collecting and evaluating the flow, biological and water quality data)
28. Is the anticipated increase in streamflow sufficiently great to alter the physical shape of stream beds and floodplains? If so, have factors such as bank erosion, flooding, and other effects of streamflow change been taken into account for both their positive and negative impacts for fish and wildlife and related water uses? **The streambed and floodplain will not be altered. Bank erosion will not be a problem.**

WATERSHED CONTEXT

29. What does the Northwest Power and Conservation Council's relevant Subbasin Plan state regarding instream flows and water transactions in the watershed? **The NWPCC Subbasin Plan for the Upper Salmon is not yet completed.**
30. Are there other existing watershed assessments or comprehensive planning efforts under which your water transactions are being implemented? If so, please describe the assessment(s) and/or effort(s). **N/A**
31. Have regulatory instream or minimum flows been set in the watershed or are there other limitations on new appropriations (i.e., has the basin been closed to new appropriations)? **No instream or minimum flows have been established in the Panther Creek watershed which includes Otter Creek. The IDWR Upper Salmon River Basin Plan could include recommendations for new instream flows if unallocated water is available.**
32. What kind of water resource planning efforts is ongoing in the basin, if any? What is the status of those efforts? Are those efforts attempting to address instream flows? **IDWR's Basin planning efforts are starting this year in the Upper Salmon River Basin.**
33. Are the benefits anticipated from water transactions part of or tied to other habitat improvement projects in the watershed? If so, please describe the relationship and briefly describe the other projects necessary to achieve the habitat goals. **The USBWP is doing habitat improvement projects throughout the Upper Salmon River Basin.**

Form 42-1761
01/03

Water Supply Bank No. _____

Water Right No. _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

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

Name of Seller/Lessor **Clay or Verl Jones**Phone **(208) 390-6547**Post office address **HC Box 4020, Challis, Idaho 83226**

1. DESCRIPTION OF WATER RIGHT:

Right evidenced by:

- a. Decree No. 75-2169 Decreed to Verl and Tuddie Jones
(Name)
in case of: Clay Jones vs _____
dated 3/31/04 in Lemhi county of SRBA
(Name of court)
- b. License No **75-2169**, issued by the Idaho Department of Water Resources.
- c. Permit No. 75-2169 issued by the Idaho Department of Water Resources.

2. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE: (If the entire right is for sale or lease, show "all" on line a. below and skip the remainder of part 2.)

- a. Amount of water under right: **4.8** cubic feet per second &/or 297.5 acre-feet per annum
- b. Point of diversion Point of diversion is **T18N R19E S29 SWSW, Otter Creek within Custer County.**

Additional points **T17N 19E S20 SESESW; T17N 19E S29 NWSW; T17N19E S32 NWSWNW**

c. Place of use:

TWP	RGE	SEC	N E				N W				S W				S E				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
T17N	R19E	29											6.0						6
		30															9.0	12.0	21
		31	20.0	13.0	1.0	12.0									12.0				58

If the right is for irrigation, show the number of acres for the part of the right to be put into the bank.

Total number of acres **85**

3. ADDITIONAL INFORMATION ABOUT RIGHT, OR PORTION THEREOF, FOR SALE OR LEASE

- a. Explain how the seller/lessor acquired the right, or portion thereof, and attach a copy of the deed to the land to which it is appurtenant or other evidence of ownership of the right. If the right is not recorded in the name of the seller/lessor, attach a copy of a change of ownership form as required by Section 42-248 or 42-1409(6), Idaho Code, together with required documentation.

A claim to this right was filed in the Snake River Basin Adjudication (SRBA) by Verl and Tuddie Jones.

- b. Describe the frequency of water use under the right, or portion thereof, during the past five (5) years of use. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture. (This information is not required if a partial decree has been issued on the right within the last 5 years).

IDWR personnel have viewed the aerial photos and visited the site to confirm use. Landowner has stated he irrigated land yearly until 2002. The SRBA claim has been investigated by IDWR and a copy of the recommendation for the claim is attached to this application. A partial decree for the place of use of this right was issued November 17, 2000 under associated rights 72-171, 72-172, 72-173, 72-174, 72-10412A, 72-10413A, 72-16107 and 72-16108.

- c. If the right is from a surface water source, describe the period of the year that water is typically available to satisfy the right. Unknown; the standard irrigation season for the right is

April 1 through October 31

- d. Describe any other water rights with the same purpose and place of use as the right, or portion thereof, offered for lease. Will the present place of use continue to receive water from any source? If so, describe.

The present place of use will not receive water from any source for the term of the lease.

- e. If the water right is a permit, describe the work accomplished toward developing the right.

- f. If the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, a written consent of the sale or lease must be attached.

4. REMARKS:

This lease is under the Columbia River Basin Water Transaction Program. The intent of the program is to experiment with ways to enhance tributary flows for fish. This could include leasing water from the landowner and use of the Idaho Water Bank.

5. SALE/LEASE AGREEMENT

1. The water right, or portion thereof, described above is offered to the Idaho Water Resource Board:

_____ For sale;

X For lease for a period from 01, 04, 2004 to 31, 10, 2004
(Day, month, year) (Day, month, year)
(The lease period may be shown as "indefinite", if the total duration of lease is unknown); or
 As a gift to the state of Idaho.

2. Show the minimum payment acceptable to the Seller/Lessor. Include the method of determining the minimum payment. The minimum payment may be shown as the "current rental rate".
- _____
- _____

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 of the right may not use the right even if the right is not rented.
3. A right accepted into the bank stays in the bank until the Board releases it or until the lease term expires.
4. While a water 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.

3-31-04
Date

Clay A Jones
Signature

FOR DEPARTMENT USE ONLY

Received by CRC Date 6/4/04 Preliminary check by _____

Watermaster recommendation requested on _____ Received _____

Recommended for _____ approval _____ denial by _____

RECEIVED

OCT 20 2003

Department of Water Resources

Before the Idaho Water Resource Board

WATER SUPPLY BANK RENTAL AGREEMENT

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

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4. Volume of water rented: 297.5 AF Max rate: 4.86 cfs
5. Diversion period: 2003 irrigation season
6. Use of water: Instream Flow
7. a) Renter's point of diversion:

Legal description: SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16, T24N, R21E, B.M., Lemhi County
(Beginning of Reach)
SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 31, T25N, R25E, B.M., Lemhi County (Ending of
Reach)

- b) Renter's place of use:

Legal description: Instream flow in Otter Creek and the Salmon River

8. The rights from which water will be rented are:

<u>Water Right</u>	<u>Rental Rate</u>
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72-174	0.37 cfs
72-16108	3.08 cfs
75-2169	1.72 cfs
Total diversion rate when combined: 4.86 cfs	
Total diversion volume: 297.5 af	

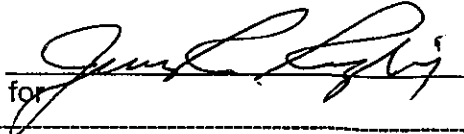
The undersigned renter agrees to pay \$ 7083.33 for rental of the above described water and agrees to use the water in compliance with the Water Supply Bank rules and in compliance with the conditions of water use shown below:

Conditions of water use under this agreement

1. The portions of the rights rented from the bank are limited to a total combined diversion rate of 4.86 cfs and diversion volume of 297.5 acre-feet.
2. The use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code.
3. Upon Department request, the renter shall provide for the measurement of the water diverted in a manner acceptable to the Director and shall report the amount of water diverted at the end of the irrigation season.
4. Use of water under this agreement does not constitute a dedication of the water to renter's land and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to the licensed points of diversion and place of use and/or again be available to rent from the bank.
5. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
6. 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.
7. 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.
8. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party.
9. This rental does not authorize the construction of a well.

Dated this 17th day of OCTOBER, 2003.

by


for

Having determined that this agreement satisfies the provisions of Section 42-1763, Idaho Code, and, IDAPA 37.02.03030 (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 22nd day of December, 2003.


for KARL J. DREHER, Director
Department of Water Resources

**STARTING
RIGHT
SIDE OF
FILE**



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 8, 2005

Mr. Clay Jones
HC 82 Box 4019
Challis, ID 83226

Dear Mr. Jones:

In April of 2004 the Idaho Department of Water Resources (Department) entered into a formal agreement with you to lease water appurtenant to 85 acres of hay ground on Morgan Creek. The land would normally be irrigated with water from Otter Creek, tributary to Panther Creek and Morgan Creek. The lease was executed because you did not have sufficient Morgan Creek water to irrigate the 85-acre parcel in question, and you were enjoined under court order from using your Otter Creek water. As consideration for the lease payment, you agreed not to irrigate the 85-acre parcel during 2004. In return for the lease and subsequent rental of your water, you were to receive \$6,375.00 from the Idaho Water Resource Board (Board) using funding from the Bonneville Power Administration. The Department and the Board had executed a similar transaction with you in 2003, for which you were paid.

Bonneville requires that all entities working with them in implementing the Columbia Basin Water Transactions Program engage in close monitoring of transactions to ensure that water leased through the Program remains in-stream, as required by the terms of the lease agreement. Consistent with this mandate, the Department monitored the parcel from which the water was leased, and have significant reason to believe that you irrigated the land during the lease period. This conclusion is based on both site review and satellite imagery of your land.

The Department is currently holding your lease payment for 2004 to provide you with the opportunity to show that you were abiding by the terms of your lease agreement. If this evidence is not provided to the Department by February 28, 2005, the Department will have no choice but to return the rental payment of \$6,375.00 to the Bonneville Power Administration.

Sincerely,

Bill Graham, Chief
Water Planning Bureau

Cc Thomas Grant, Planning
Cynthia Clark, Water Bank
Bob Foster, DWR, Salmon
Tim Luke, Water Distribution
Roxanne Brown, Adjudications
A Purkey, CBWTP Coordinator

Clark, Cynthia (Bridge)

From: Luke, Tim
Sent: Thursday, January 20, 2005 6:43 PM
To: Graham, Bill
Cc: Clark, Cynthia (Bridge); Brown, Roxanne; Spackman, Gary; Foster, Bob
Subject: Jones NOV

Bill,

Yesterday I revisited this potential NOV issue of Clay Jones regarding the water supply bank rental agreement with Gary, Cynthia, Roxanne and Bob Foster. After looking at the files in more detail, we have concluded that we should not send an NOV to Jones. IDWR did not actually accept Jones' water rights into the bank until August 4, 2004, which was well after Jones' application date of March, 2004. While there may have been some verbal commitments or understandings between you and Jones regarding non-irrigation of certain lands during 2004, we felt that there was little basis for sending an NOV when we did not even accept his rights into the bank until late in the irrigation season. We would have little defense at any compliance conference - Jones did not have any formal indication or notice during much of the irrigation season that his rights were accepted into the bank, nor was there any condition in place prior to August 4 that would have prohibited his use of the rights.

It was our opinion that you may wish to simply forego payment of the lease and leave it at that. We thought that it may be more appropriate for you to send correspondence to Jones directly and advise that due to the late acceptance of the rights to the bank, and the evidence that the lands were irrigated anyway, that IDWR/Board would simply not make payment for the lease. Jones may argue for compensation for not diverting water from Otter Creek, but we understood he was prohibited from doing that anyway under court order. If Jones insists on payment, then it is probably up to you to negotiate any payment with him or determine what, if anything, is reasonable given that he irrigated all of the lands under the rights. We estimated he irrigated up to 185 acres total (upper and lower Morgan Creek places) based on digitizing fields using ArcView.

Tim

Tim Luke
Idaho Department of Water Resources
322 E Front St
PO Box 83720
Boise, ID 83720-0098
208-2874959
tim.luke@idwr.idaho.gov

Memo

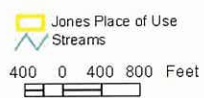
To: Bill Graham
From: Morgan Case and Liz Robbins
CC: Hal Anderson
Date: 1/19/2005
Re: 2004 Otter Creek Lease

Evidence of Irrigation on lands in the Water Transaction Program

On August 26, 2004 Liz Robbins and Morgan Case visited the site of the Otter Creek Water Transaction Program project. The ditch from Otter Creek was not diverting water into Morgan Creek. There was not evidence that any water had been diverted through that ditch in the recent past. There was evidence that the fields corresponding to the leased water were being irrigated. The fields appeared to have had hay cut recently. The following sheet shows the July 16, 2004 LANDSAT imagery for the fields in question. Note the solid red color of the field, indicative of irrigation.



Otter Creek - Jones
Landsat July 16, 2004




Prepared by: Morgan Case
December 6, 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 16, 2004

VERL JONES
HC 82 BOX 4019
CHALLIS ID 83226

**RE: RENTAL OF WATER RIGHTS LEASED TO THE WATER SUPPLY
BANK. WATER RIGHT NO(S). 72-171, 72-172, 72-173, 72-174, 72-
16108 AND 75-2169**

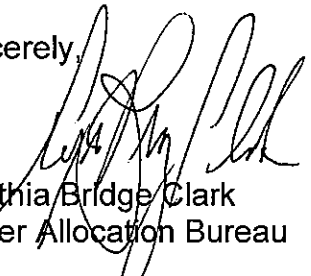
Dear Mr. Jones:

The department has requested the issuance of a state warrant in the amount of \$6,375.91 as payment to you for the rental of 212.5 acre-feet of the above referenced water right from the Water Supply Bank for the 2004 irrigation season.

In accordance with Water Supply Bank rule 35.01, *IDAPA 37.02.03*, return for the rental is ninety percent (90%) of the gross amount of \$7,084.34 received. The Controller's office will issue the warrant within the next twenty (20) days.

If you have questions, please feel free to contact me.

Sincerely,


Cynthia Bridge Clark
Water Allocation Bureau

c: Allen Merritt – IDWR Southern Regional Office
Bill Graham – IDWR State Office
Debbie Allen - Fiscal

MEMORANDUM

TO: Debbie Allen
FROM: Cynthia Bridge Clark
RE: **WATER SUPPLY BANK RENTAL FEE – 72-171, 72-172, 72-173, 72-174, 72-16108 AND 75-2169**
DATE: November 16, 2004

The following information is provided to document the request for a state warrant compensating the owner of the above referenced water right(s) for rental of a portion of the right(s) from the Water Supply Bank. The rental payment is \$7,084.34. The portion of the rental payment to be issued to the lessor is \$6,375.91 and was submitted by BPA in conjunction with the Water Planning Bureau's Transaction Program. I do not believe the department has received the administrative fee of \$708.43. The W-9 form submitted by the applicant is on file.

Please have a state warrant prepared in the amount of \$6,375.91 and sent to the owner of the water right at the following address:

VERL JONES
HC 82 BOX 4019
CHALLIS ID 83226

Attach: 1

c: Bill Graham – IDWR State Office

Before the Idaho Water Resource Board

WATER SUPPLY BANK RENTAL AGREEMENT

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

1. Renter: Water Resource Board
2. Address: 1301 N Orchard, Boise Id 83706-2237
3. Source of water: Otter Creek
4. Volume of water rented: 212.5 AF (Based on consumptive use volume)
Max rate: 4.86 cfs
5. Diversion period: 2004 irrigation season
6. Use of water: Instream Flow
7. a) Renter's point of diversion:
Legal description: SW¼SW¼ Section 16, T24N, R21E, B.M., Lemhi County
(Beginning of Reach)
SE¼SE¼ Section 31, T25N, R25E, B.M., Lemhi County (Ending of
Reach)
- b) Renter's place of use:
Legal description: Instream flow in Otter Creek and the Salmon River
8. The rights from which water will be rented are:

<u>Water Right</u>	<u>Lease Rate</u>
72-171	0.78 cfs
72-172	0.37 cfs
72-173	0.26 cfs
72-174	0.37 cfs
72-16108	3.08 cfs
75-2169	1.72 cfs
Total Acres: 85 ac	
Total diversion rate when combined: 4.86 cfs	
Total diversion volume: 212.5 af	

The undersigned renter agrees to pay **\$7084.34** for rental of the above described water and agrees to use the water in compliance with the Water Supply Bank rules and in compliance with the conditions of water use shown below:



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 19, 2004

VERL JONES
HC BOX 4050
CHALLIS ID 83226

**RE: LEASE OF WATER RIGHT NO(S). 72-171, 72-172, 72-173, 72-174,
72-16108 AND 75-2169 TO THE WATER SUPPLY BANK. SUBMITTAL
OF IRS W-9 FORM.**

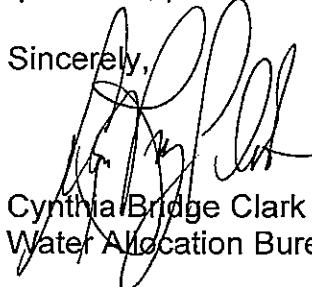
Dear Mr. Jones:

As you are aware, the water right(s) referenced above is currently leased to the Water Supply Bank ("bank"). Enclosed is a copy of the Internal Revenue Service Request for Taxpayer Identification and Certification, Form W-9. The department is required to file an information return with the Internal Revenue Service ("IRS") for all payments issued to for water rented from the bank. Payments for the rental of a water right or a part thereof cannot be issued to the lessor unless the department has received a completed IRS W-9 form.

Additionally, documentation of authority to receive payment must be submitted if the name provided on the W-9 form does not match the name of the lessor. The address associated with the water right leased to the bank will be updated in the department database to the address provided on the W-9 form unless otherwise requested by the lessor. If you no longer have an interest in the water right, please contact the department.

Return this form and any additional documentation to my attention. If you have questions, please feel free to contact me.

Sincerely,


Cynthia Bridge Clark
Water Allocation Bureau

Encl: 1

c: Allen Merritt – IDWR Southern Regional Office



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

August 4, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

IDAHO WATER RESOURCE BOARD
C/O BILL GRAHAM
1301 N ORCHARD
BOISE ID 83706

RE: APPLICATION TO RENT PART OF WATER RIGHT NOS. 72-171, 72-172, 72-173, 72-174, 72-16108 AND 75-2169 FROM THE WATER SUPPLY BANK

Gentlemen:

The Department of Water Resources (department) acknowledges receipt of your application to rent water from the Water Supply Bank. Please find enclosed a Water Supply Bank Rental Agreement for your review and signature. Upon signature and return of the agreement, the department also will sign the agreement and will 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. Payment of the rental fee described below is required to validate the rental agreement.

The rental fee of **\$7083.34** is based on documentation provided with the application. Please send a check made payable to the Idaho Department of Water Resources together with the signed rental agreement. They should be returned to my to my attention so I can complete the processing.

If you have questions, please feel free to contact me.

Sincerely,

Cynthia Bridge Clark
Water Allocation Bureau

Encl: 1

c: IDWR Eastern Regional Office

Before the Idaho Water Resource Board

WATER SUPPLY BANK RENTAL AGREEMENT

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

1. Renter: Water Resource Board
2. Address: 1301 N Orchard, Boise Id 83706-2237
3. Source of water: Otter Creek
4. Volume of water rented: 212.5 AF (Based on consumptive use volume)
Max rate: 4.86 cfs
5. Diversion period: 2004 irrigation season
6. Use of water: Instream Flow
7. a) Renter's point of diversion:

Legal description: SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 16, T24N, R21E, B.M., Lemhi County
(Beginning of Reach)
SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 31, T25N, R25E, B.M., Lemhi County (Ending of
Reach)

- b) Renter's place of use:

Legal description: Instream flow in Otter Creek and the Salmon River

8. The rights from which water will be rented are:

<u>Water Right</u>	<u>Lease Rate</u>
72-171	0.78 cfs
72-172	0.37 cfs
72-173	0.26 cfs
72-174	0.37 cfs
72-16108	3.08 cfs
75-2169	1.72 cfs
Total Acres: 85 ac	
Total diversion rate when combined: 4.86 cfs	
Total diversion volume: 212.5 af	

The undersigned renter agrees to pay **\$7084.34** for rental of the above described water and agrees to use the water in compliance with the Water Supply Bank rules and in compliance with the conditions of water use shown below:

Conditions of water use under this agreement

1. Rental of the rights 72-171, 72-172, 72-173, 72-174, 72-16108 and 75-2169 is limited to a total combined diversion rate of 4.86 cfs and combined diversion volume of 212.5 afa, or a continuous diversion rate of 0.5 cfs for use during the irrigation season.
1. The use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code.
2. Upon Department request, the renter shall provide for the measurement of the water diverted in a manner acceptable to the Director and shall report the amount of water diverted at the end of the irrigation season.
3. Use of water under this agreement does not constitute a dedication of the water to renter's land and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to the licensed points of diversion and place of use and/or again be available to rent from the bank.
4. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
5. 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.
6. 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.
7. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party.
8. This rental does not authorize the construction of a well.

Dated this _____ day of _____, 2004.

by _____
for _____

Having determined that this agreement satisfies the provisions of Section 42-1763, Idaho Code, and, IDAPA 37.02.03030 (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 _____, 2004.

KARL J. DREHER, Director
Department of Water Resources

MEMORANDUM

To: Files 72-171, 72-172, 72-173, 72-174, 72-16108 and 75-2169

From: Cynthia Bridge Clark

Date: August 4, 2004

Re: Lease and Rental of Water Rights from the State Water Supply Bank

The Department of Water Resources Planning Division initiated an agreement with Mr. Verl Jones to lease irrigation water for in stream flow use on Otter Creek under the Columbia River Basin Water Transaction Program. According to department staff, the intent of the program is to enhance tributary flows for fish augmentation.

An application was filed with the Water Supply Bank (bank) to lease portions of the above referenced rights (associated with 85 acres) through the 2004 irrigation season. A companion rental application was filed in the name of the Idaho Water Resource Board to rent the same rights for in stream flow use under the Federal Reserve Wild and Scenic River Snake River Basin Adjudication (SRBA) Claim no. 75-13316. The claim identifies a beneficial use of "Wild and Scenic River" on the Salmon River. The federal claim was determined to be valid by the Idaho Supreme Court in *Potlatch v. U.S.*, 134 Idaho 912, 12 P.3d 1256 (2000) (Wild and Scenic) and *Potlatch v. U.S.*, 134 Idaho 916, 12 P.3d 1260 (2000) (Hells Canyon). The claim is currently in litigation to substantiate authorized quantities. The rental application was filed to ensure that the water associated with the rights remain in Otter Creek rather than being diverted by the holders of junior water rights.

The application proposes a change in nature of use from irrigation to in stream flow. To avoid enlargement of the rights, the volume available for rent was limited to the consumptive use. Evidence of historical beneficial use was not required for the determination of the consumptive volume for the short-term rental lease/rental. The consumptive use was calculated based on the number of acres leased and the standard consumptive irrigation requirement (2.5 afa per acre). The diversion rate was also a consideration given that the new use will require continuous flow. The continuous flow rate is limited to 0.5 cfs (total consumptive volume/(1.984 x 214 days)).

The right numbers and corresponding portions leased/rented are listed below:

<u>Water Right</u>	<u>SRBA Claims</u>	<u>Rate Leased/Rented</u>	<u>Source</u>
72-171	Decreed 2000	0.78 cfs	Morgan Creek
72-172	Decreed 2000	0.37 cfs	Morgan Creek
72-173	Decreed 2000	0.26 cfs	Morgan Creek
72-174	Decreed 2000	0.37 cfs	Morgan Creek
72-16108	Decreed 2000	3.08 cfs	Morgan Creek
75-2169	Draft Preliminary Rec.	1.72 cfs	Otter Creek
Total Acres: 85 ac			
Total diversion rate when combined: 4.86 cfs			
Total diversion volume: 212.5 af			

The payment rate was negotiated between the water right owner and the department's planning division in conjunction with the Columbia River Basin Water Transaction Program (see Water Transaction Checklist provided with lease application). See also review memo from 2003 lease/rental application review for description of water right review dated September 4, 2003.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

August 4, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

VERL JONES
HC BOX 4050
CHALLIS ID 83226

RE: APPLICATION TO LEASE PART OF WATER RIGHT NOS. 72-171, 72-172, 72-173, 72-174, 72-16108 AND 75-2169 TO THE WATER SUPPLY BANK

Dear Mr. Jones:

The department has completed its review of the Application to Sell or Lease Water Right(s) to the Water Supply Bank ("bank") that you submitted to this office. Please consider that the offered water right(s) are accepted into the bank in the portions listed below.

Several items to keep in mind in connection with the lease of a water right to the bank are as follows:

1. Portion(s) of the above referenced water right(s) are leased to the bank as follows:

<u>Water Right</u>	<u>Lease Rate</u>
72-171	0.78 cfs
72-172	0.37 cfs
72-173	0.26 cfs
72-174	0.37 cfs
72-16108	3.08 cfs
75-2169	1.72 cfs
Total Acres: 85 ac	
Total diversion rate when combined: 4.86 cfs	
Total diversion volume: 212.5 af	

2. Rental of the rights 72-171, 72-172, 72-173, 72-174, 72-16108 and 75-2169 is limited to a total combined diversion rate of 4.86 cfs and combined diversion volume of 212.5 afa, or a continuous diversion rate of 0.5 cfs for use during the irrigation season.
3. The water rights referenced above will be rented from the bank for a total of **\$7084.34** as specified in documentation submitted with the application to lease water rights to the bank.
4. There is not rental payment to the owner of the right if the right or part thereof is not rented from the bank.

5. While a right is in the bank, the owner of the right may not use the right even if the right is not rented.
6. 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.
7. While a water right is in the bank, forfeiture provisions are stayed.
8. Prior to rental of the right from the bank, additional review may be required to confirm the validity of the right and availability of the surface water source.
9. 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 the ongoing Snake River Basin Adjudication or any other department application process.
10. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.
11. 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.

Additionally, in accordance with the draft preliminary recommendation issued by Snake River Basin Adjudication staff for water right no. 75-2169, the following conditions apply with regard to overlapping water rights:

1. Use of the unrented portions of the rights listed below is limited to a total combined diversion rate of 4.41 cubic feet per second (cfs) and irrigation of 77 acres in a single irrigation season. Combined right nos.: 72-171, 72-172, 72-173, 72-174, 72-16108 and 75-2169.
2. Use of the rights listed below is limited to a total combined diversion rate of 3.28 cfs and irrigation of 35 acres in a single irrigation season. Combined right nos.: 72-10412A, 72-10413A, 72-16107 and the unrented portion of 75-2169.
3. Right no. 75-2169 is limited to a diversion rate of 2.28 cfs when combined with right nos. 72-10412A, 72-10413A, and 72-16107.
4. Use of the unrented portions of right nos. 72-171, 72-172, 72-173, 72-174, 72-16108, 75-2169, and right nos. 72-10412A, 72-10413A, and 72-16107 is limited to a total combined annual diversion volume of 396.2 acre-feet.

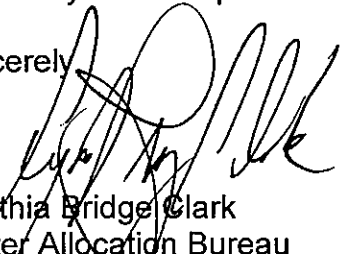
The right(s) will automatically be released from the bank on **December 31, 2004**, unless the right(s) are released earlier by the Board, or upon request by the lessor. To change the term of the lease or to release the right(s) from the bank, the lessor must submit a request in writing to the department prior to the release date.

Enclosed is a copy of the Internal Revenue Service Request for Taxpayer Identification and Certification, Form W-9. The department is required to file an information return with the Internal Revenue Service ("IRS") for all payments issued to for water rented from the bank. Payments for the rental of a water right or a part thereof cannot be issued to the lessor unless the department has received a completed IRS W-9 form.

Additionally, documentation of authority to receive payment must be submitted if the name provided on the W-9 form does not match the name of the lessor. The address associated with the water right leased to the bank will be updated in the department database to the address provided on the W-9 form unless otherwise requested by the lessor. If you no longer have an interest in the water right, please contact the department. Return this form and any additional documentation to my attention.

If you have questions, please feel free to contact me.

Sincerely,



Cynthia Bridge Clark
Water Allocation Bureau

c: IDWR Regional Office
Bill Graham – IDWR State Office



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 26, 2004

VERL JONES
HC BOX 4050
CHALLIS ID 83226

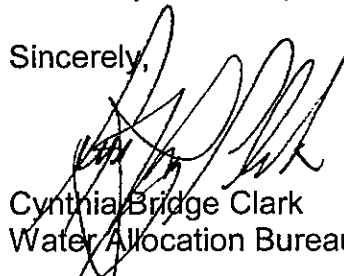
RE: RELEASE OF LEASED WATER RIGHT NO. 72-171, 72-172, 72-173, 72-174, 72-16108, & 75-2169 FROM THE WATER SUPPLY BANK

Dear Sir:

This letter is notice that on December 31, 2003, the water right(s) referenced above were released from the Water Supply Bank ("bank") as requested in the application to the bank. The five (5) year period of nonuse related to forfeiture of a water right shall begin to accrue upon release of the right from the bank or shall continue to accrue if a period of nonuse occurred prior to the lease date of the right to the bank.

If you have questions, please feel free to contact me.

Sincerely,



Cynthia Bridge Clark
Water Allocation Bureau

c: IDWR Regional office



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 22, 2003

VERL JONES
HC BOX 4050
CHALLIS ID 83226

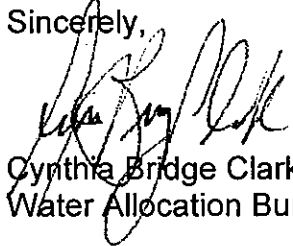
**RE: RENTAL OF WATER RIGHTS LEASED TO THE WATER SUPPLY BANK.
WATER RIGHT NOS. 72-171, 72-172, 72-173, 72-174, 72-16108 AND 75-2169**

Dear Mr. Jones:

The department has requested the issuance of a state warrant in the amount of \$6375.00 as payment to you for the rental of 297.5 acre-feet of the above referenced water right from the Water Supply Bank ("bank") managed by the Idaho Water Resource Board. The Controller's office will issue the warrant within the next twenty (20) days.

If you have questions, please feel free to contact me.

Sincerely,


Cynthia Bridge Clark
Water Allocation Bureau

c: Allen Merritt – IDWR Southern Region
Bill Graham – IDWR State Office

MICROFILMED

DEC 17 2003

MEMORANDUM

TO: Debbie Allen
FROM: Cynthia Bridge Clark
RE: **WATER SUPPLY BANK RENTAL FEE - 72-171, 72-172, 72-173, 72-174,
72-16108 AND 75-2169**
DATE: December 19, 2003

The following information is provided to document the request for a state warrant compensating the owner of the above referenced water right(s) for rental of a portion of the right(s) from the Water Supply Bank.

Please have a state warrant prepared in the amount of \$6375.00 and sent to the owner of the water right at the following address:

VERL JONES
HC BOX 4050
CHALLIS ID 83226

MICROFILMED
DEC 17 2003

Before the Idaho Water Resource Board

**APPLICATION TO RENT WATER
FROM THE WATER SUPPLY BANK**Applicant Idaho Water Resources Board Phone (208) 327-7900Address 1301 N. Orchard City Boise State IDZip Code 83706**A. DESCRIPTION OF WATER SOUGHT TO RENT**

1. Source of water **Otter Creek**
tributary to **Salmon River**.
2. Maximum volume of water **297.5 AF**.
3. Maximum rate of diversion **4.86 cfs**.

B. DESCRIPTION OF USE PROPOSED

1. Nature of intended use Instream flow
2. Location of point of diversion SW ¼ SW ¼, Section 16,
Township T24N, Range R21E, B.M., Lemhi County (Beginning of
Reach).
SE ¼ SE ¼, Section 31, Township T25N, Range R25E, B.M., Lemhi
County (End of Reach)
3. Season of use: From **April 1 through October 31, 2003**
4. Description of diverting works:
Pump HP _____ Lift _____ Pump type _____
Canal name, if appropriate _____
5. Place of use:
 - a. If water is for irrigation, describe the number of acres to be irrigated by
40-acre tract, section, township and range.

MICROFILMED

DEC 17 2003

b. If water is not for irrigation, describe the nature of the intended use and the place of use.

Instream flow for Wild and Scenic River Claim for Salmon River (SRBA CLAIM NO. 75-13316)

Describe any other water rights used for the same purposes as rental water sought under this application.

6. Who owns the property at the point of diversion?

U.S. Forest Service

7. Who owns the property at the place of use?

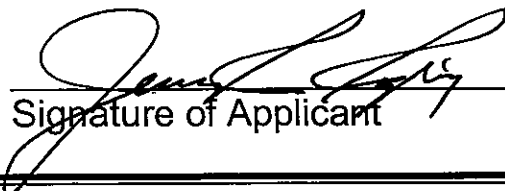
U. S. Forest Service

8. Are you seeking a rental for more than one (1) year? **No** (yes or no)

If yes, for how many years? _____

9. Remarks: **No diversion. Flow for Wild and Scenic River Claim under direction of Karl Dreher, Director, Idaho Department of Water Resources (SRBA CLAIM NO. 75-13316)**

10-10-03
Date


Signature of Applicant

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Time _____

Published in _____ Pub. dates _____

Protests filed by _____

Hearing held by _____

Action recommended _____

MICROFILMED

DEC 17 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 16, 2003

VERL JONES
HC BOX 4050
CHALLIS ID 83226

RE: APPLICATION TO LEASE PART OF WATER RIGHT NOS. 72-171, 72-172, 72-173, 72-174, 72-16108 AND 75-2169 TO THE WATER SUPPLY BANK

Dear Mr. Jones:

The department has completed its review of the Application to Sell or Lease Water Right(s) to the Water Supply Bank ("bank") that you submitted to this office. Please consider that the offered water right(s) are accepted into the bank in the portions listed below. The portions of the rights leased to the bank are limited to a total combined diversion rate of 4.86 cubic feet per second (cfs) and diversion volume of 297.5 acre-feet (af):

<u>Water Right</u>	<u>Lease Rate</u>
72-171	0.78 cfs
72-172	0.37 cfs
72-173	0.26 cfs
72-174	0.37 cfs
72-16108	3.08 cfs
75-2169	1.72 cfs

Total diversion rate when combined: 4.86 cfs

Total diversion volume: 297.5 af

Several items to keep in mind in connection with the lease of a water right to the bank are as follows:

1. There is no rental payment to the owner 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 owner of the right may not use the right even if the right is not rented.
3. A right accepted into the bank stays in the bank until the Board releases it or until the lease term expires.
4. While a water right is in the bank, forfeiture provisions are stayed.

MICROFILMED

DEC 17 2003

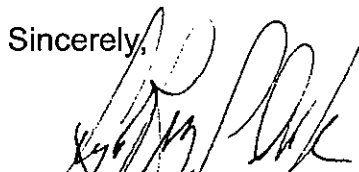
5. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right.
6. The lessor may be required to provide evidence of availability of the surface water source prior to rental of the right.

Additionally, in accordance with the draft preliminary recommendation issued by Snake River Basin Adjudication staff for water right no. 75-2169, the following conditions apply with regard to overlapping water rights:

1. The portions of the rights leased to the bank are limited to a total combined diversion rate of 4.86 cfs and diversion volume of 297.5 acre-feet.
2. Use of the unrented portions of the rights listed below is limited to a total combined diversion rate of 4.41 cubic feet per second (cfs) and irrigation of 77 acres in a single irrigation season. Combined right nos.: 72-171, 72-172, 72-173, 72-174, 72-16108 and 75-2169.
3. Use of the rights listed below is limited to a total combined diversion rate of 3.28 cfs and irrigation of 35 acres in a single irrigation season. Combined right nos.: 72-10412A, 72-10413A, 72-16107 and the unrented portion of 75-2169.
4. Right no. 75-2169 is limited to a diversion rate of 2.28 cfs when combined with right nos. 72-10412A, 72-10413A, and 72-16107.
5. Use of the unrented portions of right nos. 72-171, 72-172, 72-173, 72-174, 72-16108, 75-2169, and right nos. 72-10412A, 72-10413A, and 72-16107 is limited to a total combined annual diversion volume of 396.2 acre-feet.

If you have questions, please feel free to contact me.

Sincerely,



Cynthia Bridge Clark
Water Allocation Bureau

- c: Allen Merritt – IDWR Southern Regional Office
72-171, 72-172, 72-173, 72-174, 72-16108 and 75-2169
Bob Rohrer – IDWR State Office
Roxanne Brown – IDWR State Office

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Water Supply Bank No. _____

Water Right No. _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**RECEIVED
SEP 15 2003**

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

DEPARTMENT OF WATER RESOURCES

Name of Seller/Lessor **Verl Jones**

Phone **(208) 390-6547**

Post office address **HC Box 4020, Challis, Idaho 83226**

1. DESCRIPTION OF WATER RIGHT:

Right evidenced by:

- a. Decree No. _____ Decreed to _____
(Name)
in case of _____ vs _____
dated _____ in _____ county of _____
(Name of court)
- b. License No. **Portions of 75-2169, 72-171, 72-172, 72-173, 72-174, and 72-16108** issued by the
Idaho Department of Water Resources.
- c. Permit No. _____ issued by the Idaho Department of Water
Resources.

2. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE: (If the entire right is for sale or lease,
show "all" on line a. below and skip the remainder of part 2.)

- a. Amount of water under right: **4.8 cubic feet per second &/or 297.5 acre-feet per annum**
- b. Point of diversion **Point of diversion is T18N R19E S29 SWSW, Otter Creek within
Custer County.**
- Additional points **T17N 19E S20 SESESW; T17N 19E S29 NWSW; T17N19E S32 NWSWNW**

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c. Place of use:

TWP	RGE	SEC	N E				N W				S W				S E				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
T17N	R19E	29											6.0						6.0
		30															9.0	12.0	21.0
		31	20.0	13.0	1.0	12.0									12.0				58.0

If the right is for irrigation, show the number of acres for the part of the right to be put into the bank.

Total number of acres **85**

3. ADDITIONAL INFORMATION ABOUT RIGHT, OR PORTION THEREOF, FOR SALE OR LEASE

- a. Explain how the seller/lessor acquired the right, or portion thereof, and attach a copy of the deed to the land to which it is appurtenant or other evidence of ownership of the right. If the right is not recorded in the name of the seller/lessor, attach a copy of a change of ownership form as required by Section 42-248 or 42-1409(6), Idaho Code, together with required documentation.

A claim to this right was filed in the Snake River Basin Adjudication (SRBA) by Verl and Tuddie Jones.

- b. Describe the frequency of water use under the right, or portion thereof, during the past five (5) years of use. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture. (This information is not required if a partial decree has been issued on the right within the last 5 years).

IDWR personnel have viewed the aerial photos and visited the site to confirm use. Landowner has stated he irrigated land yearly until 2002. The SRBA claim has been investigated by IDWR and a copy of the recommendation for the claim is attached to this application. A partial decree for the place of use of this right was issued November 17, 2000 under associated rights 72-171, 72-172, 72-173, 72-174, 72-10412A, 72-10413A, 72-16107 and 72-16108.

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- c. If the right is from a surface water source, describe the period of the year that water is typically available to satisfy the right. Unknown; the standard irrigation season for the right is

April 1 through October 31

- d. Describe any other water rights with the same purpose and place of use as the right, or portion thereof, offered for lease. Will the present place of use continue to receive water from any source? If so, describe.

The present place of use will not receive water from any source for the term of the
lease.

- e. If the water right is a permit, describe the work accomplished toward developing the right.

- f. If the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, a written consent of the sale or lease must be attached.

4. REMARKS:

This lease is under the Columbia River Basin Water Transaction Program. The intent of the program is to experiment with ways to enhance tributary flows for fish. This could include leasing water from the landowner and use of the Idaho Water Bank.

5. SALE/LEASE AGREEMENT

1. The water right, or portion thereof, described above is offered to the Idaho Water Resource Board:

_____ For sale;

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X For lease for a period from 01, 04, 2003 to 31, 10, 2003
(Day, month, year) (Day, month, year)
(The lease period may be shown as "indefinite", if the total duration of lease is unknown); or

 As a gift to the state of Idaho.

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

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 of the right may not use the right even if the right is not rented.
3. A right accepted into the bank stays in the bank until the Board releases it or until the lease term expires.
4. While a water 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.

9-9-03
Date

Deird Jones
Signature

FOR DEPARTMENT USE ONLY

Received by CR Date _____ Preliminary check by _____

Watermaster recommendation requested on _____ Received _____

Recommended for _____ approval _____ denial by _____

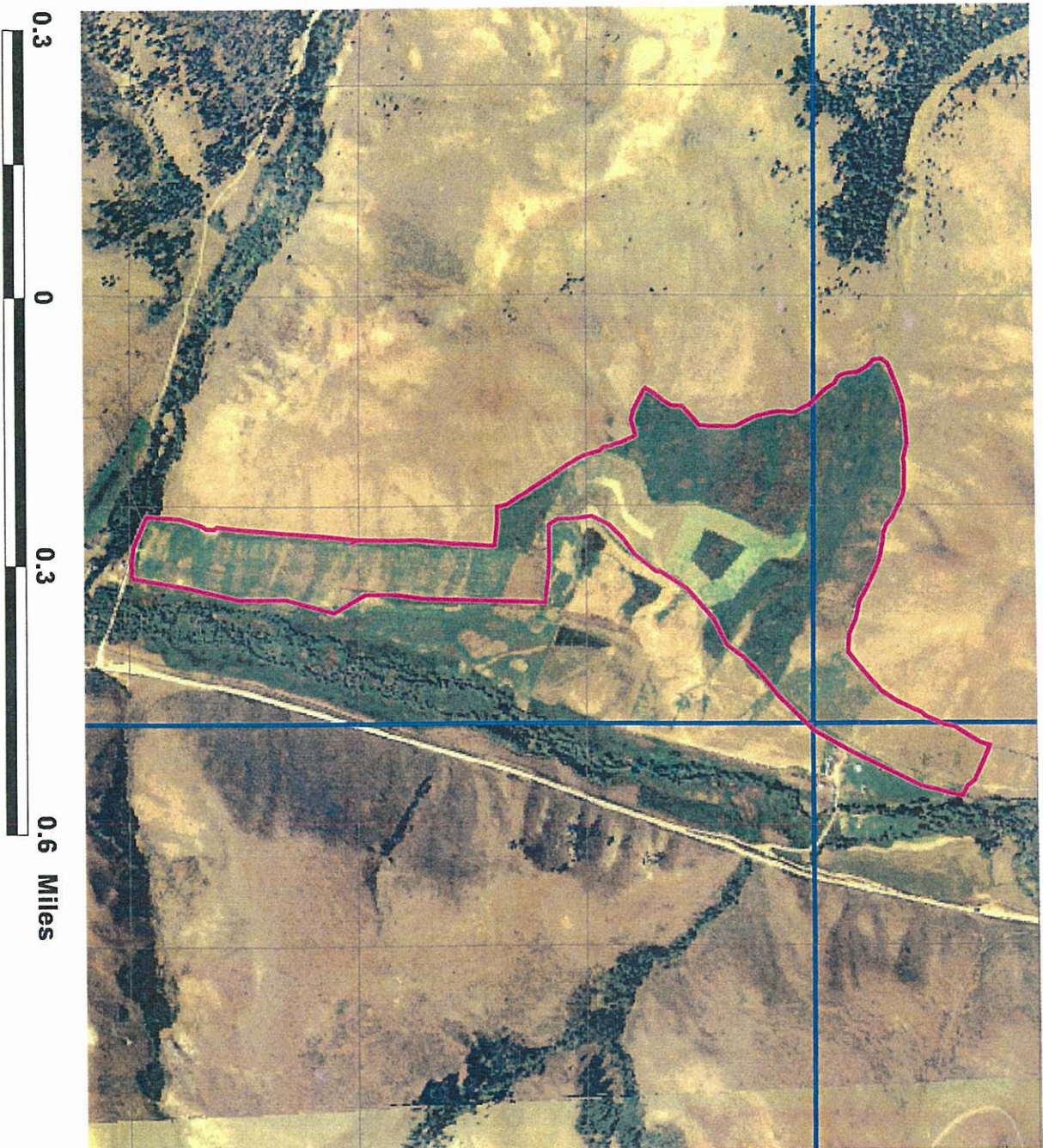
We believe the compensation for our farming operation is greater than the compensation being offered. We reserve the right to pursue additional funding.

V.J.

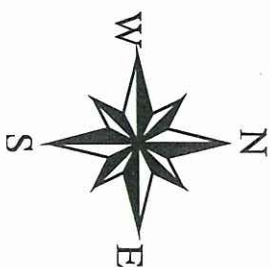
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Verl Jones' Upper Field 75-2169



 Jones upper field
 Sections



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09/04/2003

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 75-2169
NAME AND ADDRESS: TUDDIE JONES
HC 82 BOX 4020
CHALLIS ID 83226

VERL JONES
HC 82 BOX 4020
CHALLIS ID 83226

DRAFT

SOURCE: OTTER CREEK TRIBUTARY: PANTHER CREEK

QUANTITY: 4.0 CFS

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.27 CFS IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 72-00171, 72-00172, 72-00173, 72-00174, 72-16108
AND 75-02169.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 3.28 CFS. COMBINED RIGHT NOS.: 72-10412A,
72-10413A, 72-16107, & 75-02169.

USE OF THIS RIGHT WITH RIGHT NOS. 72-171, 72-172, 72-173, 72-174,
72-10412A, 72-10413A, 72-16107 AND 72-16108 IS LIMITED TO A TOTAL
COMBINED ANNUAL DIVERSION VOLUME OF 693.7 AF.

PRIORITY DATE: 09/27/1961

POINT OF DIVERSION:

T15N R19E S14 SENSW Rediversion Within CUSTER County
T15N R19E S23 SWNWNE Rediversion Within CUSTER County
T17N R19E S20 SESESW Rediversion Within CUSTER County
T17N R19E S29 NWSWSW Rediversion Within CUSTER County
T17N R19E S32 NWSWNW Rediversion Within CUSTER County
T18N R19E S29 SWSW Within LEMHI County
T18N R19E S31 NESE Injection Within CUSTER County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4/1 10/31	4.0 CFS

PLACE OF USE:

IRRIGATION Within CUSTER County

T15N R19E S14	NESW	1.7	T15N R19E S14	NWSW	2.9
T15N R19E S14	SWSW	0.3	T15N R19E S14	SESW	18.2
T15N R19E S23	NWNE	4.3	T15N R19E S23	NENW	8.8
T17N R19E S29	SWSW	11.0	T17N R19E S30	SWSE	9.0
T17N R19E S30	SESE	12.0	T17N R19E S31	NENE	41.0
T17N R19E S31	NWNE	13.0	T17N R19E S31	SWNE	1.0
T17N R19E S31	SENE	35.0	T17N R19E S31	NESE	27.0
T17N R19E S32	NWNW	10.0	T17N R19E S32	SWNW	3.0

198.2 ACRES TOTAL

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IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 162 ACRES IN A SINGLE IRRIGATION SEASON.

COMBINED RIGHT NOS.: 72-00171, 72-00172, 72-00173, 72-00174,
72-16108 AND 75-02169.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 35 ACRES IN A SINGLE IRRIGATION SEASON.

COMBINED RIGHT NOS.: 72-10412A, 72-10413A, 72-16107, & 75-02169.
USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 36.2 ACRES IN A SINGLE IRRIGATION SEASON.

COMBINED RIGHT NOS.: 72-10412A, 72-10413A, 72-16107, 75-02169, &
72-04189.

USE OF WATER WITHIN T15N R19E S14 NESW IS LIMITED TO THE SWSW
OF THAT PLACE OF USE.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for
the definition of the rights or for the efficient administration of the water
rights as may be ultimately determined by the Court at a point in time no
later than the entry of a final unified decree. Section 42-1412(6), Idaho
Code.

EXPLANATORY MATERIAL: License

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT
TO SECTION 42-1425, IDAHO CODE.

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 72-00171

NAME AND ADDRESS: TUDDIE JONES
VERL JONES
HC 82 BOX 4020
CHALLIS, ID 83226

SOURCE: MORGAN CREEK TRIBUTARY: SALMON RIVER
QUANTITY: 1.50 CFS

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 9.27 CFS IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 72-00171, 72-00172, 72-00173, 72-00174,
72-16108 AND 75-02169.

PRIORITY DATE: 05/01/1898

POINT OF DIVERSION: T17N R19E S20 SESEW Within Custer County
S29 NWSW
S32 NWSNW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	1.50 CFS

PLACE OF USE:	Irrigation	Within Custer County
T17N R19E S29	SWSW 11.0	
S30	SWSE 9.0	SESE 12.0
S31	WENE 41.0	NWNE 13.0
	SWNE 1.0	SENE 35.0
	WESE 27.0	
S32	NWNW 10.0	SWNW 3.0
162.0 Acres Total		

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF
A COMBINED TOTAL OF 162 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 72-00171, 72-00172, 72-00173, 72-00174,
72-16108 AND 75-02169.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

RIGHTS HAVE ALSO BEEN CLAIMED TO WATER FROM BASIN 75 FOR THE
SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED ABOVE,
WHICH WILL BE INCLUDED IN A DIRECTOR'S REPORT TO BE FILED AT A
LATER DATE. ANY WATER RIGHTS RECOMMENDED IN THE BASIN 75 REPORT
FOR THE SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED
ABOVE WILL CONTAIN REMARKS LIMITING THE COMBINED USE OF THIS
RIGHT AND THE BASIN 75 RIGHTS.

PROPERTY IS ALSO KNOWN AS HOMESTEAD ENTRY NO. 70.

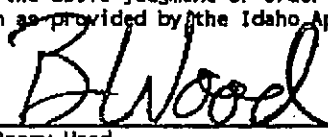
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

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DEC 17 2003

MEMORANDUM

To: Files 72-171, 72-172, 72-173, 72-174, 72-16108 and 75-2169

From: Cynthia Bridge Clark

Date: September 4, 2003

Re: Lease and Rental of Water Rights from the State Water Supply Bank

The Department of Water Resources Planning Division initiated an agreement with Mr. Verl Jones to lease irrigation water for in stream flow use on Otter Creek under the Columbia River Basin Water Transaction Program. According to department staff, the intent of the program is to enhance tributary flows for fish augmentation. An application to lease portions of the rights appurtenant to 85 acres was filed with the Water Supply Bank ("bank") in the name of Mr. Jones. A companion rental application was subsequently filed in the name of the Idaho Water Resource Board to rent the same rights for in stream flow use under the Federal Reserve Wild and Scenic River Snake River Basin Adjudication (SRBA) Claim no. 75-13316. The rental application was filed to ensure that the water associated with the rights remain in Otter Creek rather than being diverted by the holders of junior water rights. The right numbers and corresponding portions are listed below:

<u>Water Right</u>	<u>SRBA Claims</u>	<u>Rate Leased/Rented</u>	<u>Source</u>
72-171	Decreed 2000	0.78 cfs	Morgan Creek
72-172	Decreed 2000	0.37 cfs	Morgan Creek
72-173	Decreed 2000	0.26 cfs	Morgan Creek
72-174	Decreed 2000	0.37 cfs	Morgan Creek
72-16108	Decreed 2000	3.08 cfs	Morgan Creek
75-2169	Draft Preliminary Rec.	1.72 cfs	Otter Creek

Total diversion rate when combined: 4.86 cfs

Total diversion volume: 297.5 af

All of the rights, except right 75-2169, were decreed in the Snake River Basin Adjudication (SRBA) in 2000. Their source is Morgan Creek, tributary to the Salmon River, and they all have the same points of diversion and 162-acre permissible place of use.

The source of water right 75-2169 is Otter Creek. It has a 198.2-acre permissible place of use that includes the 162-acre place of use authorized under the Morgan Creek rights listed above. SRBA staff agent Roxanne Brown issued a draft preliminary recommendation for water right 75-2169 for the purposes of the lease agreement. It authorizes irrigation use on the place of use identified on the lease application to the bank, and recognizes accomplished transfers since the issuance of the license.

All of the rights listed above are appurtenant to the 85-acres identified on the lease application. As described on the partial decrees and draft preliminary recommendation issued by the SRBA, use of these rights is limited to irrigation of a combined total of 162 acres and a diversion rate of 9.27 cfs in a single irrigation season. Therefore, the total rate

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for lease of water associated with 85 acres was determined to be 4.86 cfs (9.27 cfs / 162 ac x 85 ac = 4.86 cfs). Water right 75-2169 is also limited when combined with other water rights on the remaining place of use outside the 162 acres associated with the Morgan Creek rights listed above. Conditions of use were added to the lease acceptance in accordance with those issued on the partial decrees and draft preliminary recommendation.

The volume leased/rented was calculated based on the department standard of 3.5 acre-feet per annum per acre, and in accordance with the conditions of the water rights.

The rental application was filed in the name of the Idaho Water Resource Board for in stream flow use under the Federal Reserve Wild and Scenic River SRBA Claim 75-13316. The claim identifies a beneficial use of "Wild and Scenic River" on the Salmon River. The federal claim was determined to be valid by the Idaho Supreme Court in *Potlatch v. U.S.*, 134 Idaho 912, 12 P.3d 1256 (2000) (Wild and Scenic) and *Potlatch v. U.S.*, 134 Idaho 916, 12 P.3d 1260 (2000) (Hells Canyon). The claim is currently in litigation to substantiate authorized quantities.

LANGUAGE

The payment rate was negotiated between the water right owner and the department's planning division in conjunction with the Columbia River Basin Water Transaction Program.

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