
AGREEMENT TRANSFERRING BLACKWELL DAM AND
FOREST SERVICE SPECIAL USE PERMIT

By and Between

J.B. SCOTT

And

LAKE RESERVOIR COMPANY

Dated this 19 day of July, 2006

**AGREEMENT TRANSFERRING BLACKWELL DAM AND
FOREST SERVICE SPECIAL USE PERMIT**

THIS AGREEMENT TRANSFERRING BLACKWELL DAM AND FOREST SERVICE SPECIAL USE PERMIT (hereinafter referred to as "Agreement") is made and entered into this 19 day of July, 2006, and effective this 19 day of July, 2006, (hereinafter referred to as "Effective Date") by and between J.B. SCOTT, a single man, (hereinafter referred to as "Scott") and LAKE RESERVOIR COMPANY, an Idaho corporation, (hereinafter referred to as "Company").

W I T N E S S E T H:

WHEREAS, Scott is the holder of a special use permit issued by the Forest Service, U.S. Department of Agriculture, Number 5210-01 for the Blackwell Dam located on approximately thirty-seven (37) acres of Forest Service real property constituting of a portion of the NW ¼ and SW ¼ of Section 20, T19N, R4E, B.M., at the Blackwell or Fall Creek Lake (hereinafter referred to as "Forest Service Permit"); and

WHEREAS, Scott is permitted to use the masonry dam at the Blackwell or Fall Creek Lake pursuant to the Forest Service Permit which dam is approximately 6.1 feet in height with associated gates, spillways, and reservoir, for the purpose of controlling flood waters for irrigation, fish habitat improvement, and domestic purposes (hereinafter referred to as "Blackwell Dam"); and

WHEREAS, Company desires to acquire all of Scott's rights in the Forest Service Permit and all of Scott's rights in and to the Blackwell Dam; and

WHEREAS, Scott desires to transfer all of his right, title, and interest in and to the Forest Service Permit and Blackwell Dam in accordance with the terms, conditions, restrictions, and indemnities as provided herein.

NOW THEREFORE, in consideration of the mutual terms, conditions, and restrictions as set forth herein, \$10.00 in hand paid by the Company to Scott, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, it is hereby agreed between the parties as follows:

1. Forest Service Permit.

The Forest Service Permit is not assignable in accordance with the rules and regulations of the Forest Service, but nevertheless, in order to facilitate the Company acquiring a new

Forest Service permit in lieu of the Scott permit, Scott does hereby transfer, assign, and convey to Company, without warranty or recourse, all of Scott's right, title, and interest in and to the Forest Service Permit as referenced above. Company hereby accepts this assignment of the foregoing Forest Service Permit and agrees that Company shall hereafter fully comply with all of the terms, conditions, and restrictions as may be set forth in such Forest Service Permit and related regulations. Company further agrees that it shall immediately apply to the Forest Service for the approval of a new Forest Service permit in place of Scott's permit. Company agrees that it shall pay all costs, expenses, and transfer fees, if any, which may be assessed by the Forest Service or which are necessary in order to effectuate the transfer and/or issuance of a replacement Forest Service Permit to the Company. Under no circumstances shall Scott be obligated to pay any fee, cost, or charge for the transfer and/or issuance of the Forest Service Permit to Company. Company hereby confirms that it is aware that the Forest Service Permit is not assignable and that if there are any special conditions attached to the approval of the new permit, the Company agrees that it shall comply with all such requirements without financial contribution from Scott. Company agrees and acknowledges that the Forest Service Permit for the Blackwell Dam is not exclusive and that the Forest Service has reserved the right to use or allow others to use any part of the permit area where the Blackwell Dam is located for any purpose.

2. Blackwell Dam.

Scott hereby transfers, assigns, and quitclaims to Company, without warranty or recourse, all of Scott's right, title, and interest in and to the Blackwell Dam, including any and all gates, spillways, and associated fixtures in any way pertaining to the Blackwell Dam and located at the Blackwell or Fall Creek Lake. Scott agrees to execute a Bill of Sale at the time of the execution of this Agreement in the form as attached hereto as Exhibit "A" further memorializing the transfer and assignment of the Blackwell Dam to the Company. The transfer of ownership of the Blackwell Dam shall be effective as of the Effective Date of this Agreement and shall include a transfer of all water storage rights currently owned by Scott insofar as they pertain to water storage at the Blackwell Dam.

3. Repairs and Maintenance.

From and after the Effective Date, it shall be the sole obligation of the Company without contribution from Scott to repair, maintain, and replace, if required, the Blackwell Dam in compliance with the requirements of the Forest Service Permit. The Company agrees that it shall maintain the dam, associated improvements, and the permit area to the standards of repair, orderliness, neatness, and safety acceptable to the Forest Service and consistent with applicable federal, state, and local health and safety requirements. If the Forest Service requires the Company to perform any studies, inspections, or evaluations of the Blackwell Dam, then the cost thereof, and any repairs or modifications to the Blackwell Dam necessitated by such investigations, shall be

performed by Company without contribution from Scott.

4. Forest Fire Cleanup.

As additional material consideration for the terms of this Agreement, Company agrees that it shall cause the area covered by the Forest Service Permit to be cleaned of dead and burned out trees from recent forest fires. Within a reasonable time after the Effective Date of this Agreement, Company shall cause the cleanup work to be performed in a manner consistent with good post-forest fire cleanup practices. The work to be performed by the Company or its subcontractors shall be under the sole and exclusive management of the Company and not Scott. Upon satisfactory completion of the cleanup operations which are estimated to generally to consist of collecting, cutting, and burning dead and burned out trees and associated by-products, Scott agrees that he shall pay one-half of the reasonable out-of-pocket expenses incurred in such work, but under no circumstances shall Scott's portion of the costs exceed in the aggregate the sum of \$5,000.00. Upon completion of the work and the inspection thereof by Scott, then the Company agrees that it shall provide a full and complete accounting (along with copies of any receipts showing the work actually performed, if so requested by Scott) and Scott agrees that he shall pay his one-half of the foregoing sum within thirty (30) days of receipt of the billing and the requested documentation. The Company agrees that it shall at all times require any contractors performing the foregoing cleanup work to have liability insurance coverage in place in an amount of not less than \$1,000,000.00 and that all cleanup work shall have the prior approval of the Forest Service and be performed in compliance with the terms of the Forest Service Permit.

5. "AS-IS" "WHERE-IS" Condition.

5.1 Company hereby accepts the Blackwell Dam, Forest Service Permit, and any related rights "AS-IS" "WHERE-IS" subject to all latent and patent defects. Scott specifically disclaims all warranties, express or implied, with regard to the Blackwell Dam and the Forest Service Permit, including but not limited to the WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Scott specifically disclaims any warranties, express or implied, with regard to the (1) structural integrity of the Blackwell Dam, (2) the conformity of the Blackwell Dam to any permits, plans, or specifications, (3) conformity of the Blackwell Dam to any past, present, or future applicable federal, state, or local zoning, building, structural, or other dam requirements, (4) the existence of soil stability or instability, or the suitability of the soils for the placement of the Blackwell Dam thereon, (5) the existence or non-existence of hazardous waste or materials at the Blackwell Dam or in the area encompassed by the Forest Service Permit, (6) any other matter affecting the stability or integrity of the Blackwell Dam or the improvements constituting part of the Blackwell Dam, (7) or any other character or trait pertaining to the Blackwell Dam and its surrounding area.

5.2 Company acknowledges that it has had an adequate opportunity to investigate the Blackwell Dam, Forest Service Permit, and all rights associated therewith prior to acquiring the same pursuant to the terms of this Agreement. Company confirms that it is relying solely upon its own investigation in acquiring the rights as set forth in this Agreement. As a material term of this Agreement, the Company has assumed full responsibility for becoming informed with respect to all zoning, regulations, governmental requirements, Forest Service requirements, site and physical conditions of the Blackwell Dam, and other matters affecting the use and condition of the Blackwell Dam and agrees that it is acquiring the property rights pursuant to the terms hereof as such rights and conditions currently exist.

6. Indemnification.

Company promises and agrees unconditionally and irrevocably to hold harmless, protect, and indemnify Scott and his insureds from and against any all direct or indirect liabilities, losses, damages, expenses, and charges, including but not limited to attorneys' fees, court costs, expert witness fees, and other expenses of litigation which Scott or his insureds may sustain as a result of the Company owning, maintaining, repairing, operating, and managing the Blackwell Dam and exercising the Company's rights pursuant to the Forest Service Permit.

7. Insurance.

Company agrees that it shall at all times maintain bodily injury and property damage insurance with limits of not less than \$1,000,000.00 per person and \$3,000,000.00 per occurrence insuring against any and all liability of the Company with respect to the Blackwell Dam or in any way arising out of the exercise of the Company's rights pursuant to the Forest Service Permit. A certificate of insurance concerning such coverage shall be delivered to Scott at the time of the execution of this Agreement by the Company.

8. Additional Actions.

Each of the parties hereto agree that they shall execute such other and additional documents as may be necessary in order to effectuate the terms of this Agreement.

9. Attorneys' Fees.

If either party shall default in the full and timely performance of this Agreement and the default is cured with the assistance of an attorney for the other party and before the commencement of a suit thereon, as a part of curing the default, the reasonable attorneys' fees incurred by the other party shall be reimbursed to the other party upon demand. In the event that either party to this Agreement shall file suit or an action at law or equity to interpret or enforce this

Agreement, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party, including the same with respect to an appeal.

10. Succession.

This Agreement shall be binding upon and shall inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns.

11. Governing Law.

This Agreement shall be governed by the laws of the State of Idaho.

12. Entire Agreement.

This Agreement and the instruments and documents referred to herein or contemplated hereby constitute the entire agreement between the parties concerning the subject matter covered hereby and supersede all prior oral and written agreements between the parties, which prior agreements are merged herein and of no further force or effect; there are no oral or parol agreements existing between Scott and the Company relative to the subject matter hereof which are not expressly set forth herein or in the instruments or documents referred to herein or contemplated hereby. The obligations and agreements as herein set forth shall survive the closing of this transaction.

13. Execution in Counterparts.

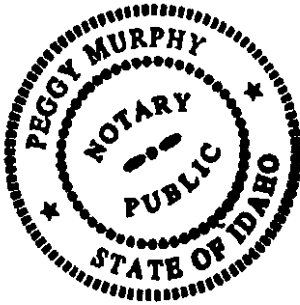
This Agreement may be signed by the parties in duplicate counterparts and if signed in duplicate counterparts shall constitute an agreement as fully binding upon the parties as if a single copy had been signed by the parties hereto.

14. Transfer of Only Forest Service Permit and Blackwell Dam.

Scott is not transferring any other rights, property, real estate, easements, or licenses except as specifically set forth in this Agreement and all such rights are reserved in Scott. The parties hereto acknowledge and agree that Scott is not transferring to Company any water rights to Company except insofar as such water rights may be specifically and directly associated with the Forest Service Permit for Blackwell Dam.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written .

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



Peggy Murphy
Notary Public
Residence: Fruitland, ID
Commission Expires: 7-9-07

EXHIBIT "A"

BILL OF SALE

BILL OF SALE

By this Bill of Sale given this 19 day of July, 2006, J.B. SCOTT, a single man, whose address is 501 Baybrook Court, Boise, Idaho, 83706, (the "Seller") in return for good and valuable consideration paid by LAKE RESERVOIR COMPANY, an Idaho corporation, whose address is 102 North Main, Payette, Idaho, 83661, (the "Buyer") to Seller, receipt of which is hereby acknowledged by the Seller, does assign and convey unto the Buyer and its assigns, without warranty or recourse, all of the Seller's right, title and interest, including any after-acquired title hereafter acquired by him, in and to a 6.1 foot high rock masonry dam known as the Blackwell Dam along with associated gates, spillways, and fixtures, and all water storage rights as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, currently held by Seller to the extent that such rights pertain to the Blackwell Dam.

The foregoing property is sold "AS IS" "WHERE IS" and the Seller makes no warranties or representations, expressed or implied, regarding the traits, ownership, or condition of the above property.

This transfer is effective as of the date shown above.

SELLER:

SCOTT

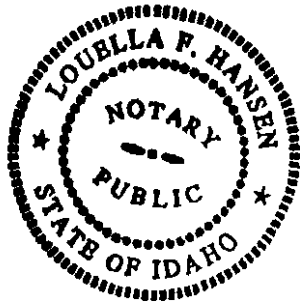


J.B. Scott

STATE OF IDAHO)
) ss.
County of Ada)

On this 19th day of July, in the year 2006, before me, Louella Hansen, a Notary Public in and for said State, personally appeared J.B. SCOTT, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



Louella F. Hansen
Notary Public for Idaho
Residence: Caldwell ID
Commission Expires: 12/02/2010

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 65-2923C

WATER RIGHT NUMBER: 65-2923C

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	DANIEL P OSTERMILLER PO BOX 741 MC CALL, ID 83638 (208)834-2428
Original Owner	C JOHN STRINGER 4535 QUARTER HORSE LN ONTARIO, OR 97914
Current Owner	J B SCOTT PO BOX 70001 BOISE, ID 83707-0101 (208)424-3840

Priority Date: 07/01/1929

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
FALL CREEK	PAYETTE LAKE

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
FISH HABITAT STORAGE	01/01 to 12/31		96.40 AF
FISH HABITAT FROM STORAGE	01/01 to 12/31		96.40 AF
<u>Total Diversion:</u>			96.40 AF

Location of Point(s) of Diversion

FALL CREEK	SW1/4SW1/4NW1/4	Sec. 20, Twp 19N, Rge 04E, 8.M.
VALLEY County		

Place of Use

FISH HABITAT STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
19N 04E 20							X	X			X						

FISH HABITAT FROM STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
19N 03E 26																X	

EXHIBIT A

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 65-2923C

Conditions of Approval:

1. T07 The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
2. T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
3. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.
4. X57 Approval of Transfer 66135 does not grant any right-of-way or easement across land of another.
5. 020 Use of water under this right may be affected by an agreement between the protestant and the right holder.
6. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the release of water from Blackwell Lake.
7. R05 Use of water under this right is subject to control by the watermaster of State Water District No. 65, Payette River.
8. That portion of Right 65-2923C described as a diversion rate of 1.52 cfs for irrigation use and all of Right 65-2923B have been abandoned, and Right 65-13597 has been relinquished through approval of Transfer 66135.
9. X23 When water is not available to fill this right, the right holder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate the depletion of water caused by this water use.
10. R40 The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.

Remarks:

Comments:

1. pskaggs 11/22/2002 11:42:43 AM Transferred Right
Comment: This is now an approved transfer, transfer number = 66135

Water Supply Bank: