



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

April 29, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

FORMATION CAPITAL CORPORATION US
812 SHOUP ST
SALMON ID 83467

RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK.
WATER RIGHT NO(S). 75-7073

Dear Renter:

The Department of Water Resources ("Department") acknowledges receipt of your application to rent water from the Water Supply Bank ("Bank"). Please find enclosed a Water Supply Bank Rental Agreement for your review and signature. Upon signature and return of the original agreement, together with the rental fee described below, the Department will also sign the original agreement and return an executed copy to you. Execution of the agreement and compliance with the conditions of approval authorize diversion and use of water as provided in the agreement.

A total rental fee of \$5,068.00 per year was calculated based on the current rental rate of \$14.00 per acre-foot times a diversion volume of 362.0 acre-feet. Ten percent (10%) of the total rental fee is retained by the Department for administrative fees in accordance with Water Supply Bank rules, IDAPA 37.02.03.01. The remaining ninety percent (90%) is issued back to the lessor of the above referenced water right(s) in the form of a warrant. Since you are the lessor and the renter under this agreement, the Department requires that you submit only the portion of the total payment to be retained for administrative fees. Therefore, a rental fee of **\$506.80 per year** must be paid in accordance with the rental agreement. An annual payment shall be received by the Department prior to the execution of this agreement and prior to January 1 in all subsequent years for the duration of the rental period. The agreement will be void if the payment is not received for a given year. Please send a check made payable to the Idaho Department of Water Resources together with the signed rental agreement so I can complete the processing.

Please note that applications for rental of water must be reviewed in accordance with Section 42-1763, Idaho Code, and the Department's Water Supply Bank Rule 30 (IDAPA 37.02.03.030). This includes consideration of whether there will be injury to other water rights, whether the proposal would constitute an enlargement of the water rights, whether the water will be put to a beneficial use, whether the water supply available from applicable rights in the Bank is sufficient for the use intended and whether the proposal is in the local public interest. While a one-year rental usually involves a general review of the water rights and proposed use, rental of water over multiple years may require more comprehensive review, notice to advise anyone who desires to protest the proposed water use, and approval by the Idaho Water Resource Board.

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

Sincerely,

Aaron Marshall
Water Allocation Bureau

Enc: 1

c: Lyle Swank – IDWR Eastern Regional Office
Scott L Campbell – Moffatt Thomas Barrett Rock & Fields, Chtd

DAVID R. TUTHILL, JR., Director
Department of Water Resources

WATER RIGHT NO. 75-7073
WATER SUPPLY BANK RENTAL AGREEMENT

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

Renter: FORMATION CAPITAL CORPORATION US
 812 SHOUP ST
 SALMON ID 83467
 (208) 756-4578

Priority Date: 11/23/1976

Source: BUCKTAIL CREEK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MINING	01/01 to	12/31	0.50 CFS	362.0 AF
DIVERSION TO STORAGE	01/01 to	12/31	0.50 CFS	362.0 AF
MINING STORAGE	01/01 to	12/31	0.50 CFS	50.0 AF
MINING FROM STORAGE	01/01 to	12/31	0.50 CFS	50.0 AF
Total:			0.50 CFS	362.0 AF

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

BUCKTAIL CREEK	NW¼NE¼	Sec. 17	Twp 21N	Rge 18E	LEMHI County
BUCKTAIL CREEK	NE¼NE¼	Sec. 20	Twp 21N	Rge 18E	LEMHI County

RENTER'S PLACE OF USE: MINING, DIVERSION TO STORAGE, MINING STORAGE,
 MINING FROM STORAGE

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
21N	18E	21	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
21N	18E	20	X												X				

CONDITIONS OF WATER USE

- The use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code.
- Rental of the specified right from the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication or any other department application process.
- Use of water under this agreement does not constitute a dedication of the water to renter's place of use and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
- This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party.
- Use of water under this agreement shall not prejudice any action of the Department in its consideration of a permanent application for transfer or permit filed by the applicant for this same use.
- Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
- 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.
- 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.
- Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
- The renter is limited to diversion of 362.0 acre-feet per year for the uses authorized under this agreement.