

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1827

This Lease Contract ("Lease") is between the Idaho Water Resource Board ("Board"), and

LESSOR: CLOUD BERRY LLC
1191 E IRON EAGLE DR STE 100
EAGLE, ID 83616-5139

RECEIVED

MAR 18 2024

SUPPORT DATA
IN FILE # 63-5092

DEPARTMENT OF
WATER RESOURCES

RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources and received by the Department on December 28, 2023.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

NOW, THEREFORE, in consideration of the mutual covenants and contracts herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **WATER RIGHTS:** The Lessor shall lease and the Board shall accept into the Bank the Applicant's water rights described as follows:

Summary of Water Rights or Portions Leased to the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
63-5092	1/1/1962	GROUND WATER	0.04	74.3	16.5
63-31970	12/26/1969	GROUND WATER	0.337	75.8	16.5
Combined Lease Totals			0.337	75.80	16.5

Summary of Water Rights Elements Rentable From the Bank

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (Limited) (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
63-5092	0.04	74.3	16.5	0.002	4.50
63-31970	0.33	74.3	16.5	0.020	4.50
Combined Limit Totals	0.33	74.3	16.5	0.020	4.50

** The water right elements rentable have been reduced from the water right elements leased to account for combined limits.*

2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

Minimum Payment Acceptable: Current Rental Rate

WATER SUPPLY BANK LEASE CONTRACT No. 1827

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2024 to December 31, 2028. This Lease shall bind the parties and take effect when both parties have signed it.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.
5. **CHANGE OF WATER RIGHT:** This lease specifies water right elements including but not limited to: diversion rates; diversion volumes; number of acres authorized to be irrigated; places of use; points of diversion; beneficial uses; and seasons of use. During the term of this lease, if a water right is administratively changed due to a water right split and renumbering, this lease may be reduced by an equal amount to reflect the water right elements as legally defined under the water right. If a lease contract cannot be reduced sufficient to reflect the legal definition of a water right as amended through a water right split and/or water right transfer, the Board may release the water right from the Water Supply Bank.
6. **ASSIGNMENT OF CONTRACT:** This lease is between the Board and the Lessor, who is the recognized owner or designated representative of the recognized owners of water rights described herein. Should ownership of any part of a water right herein described change during the term of this lease, either through a water right split, a water right transfer, sale of property to which the water right is appurtenant, or through any other recognized water right reassignment, the lease benefits and obligations to the conditions of acceptance for any such water rights will be assigned to the new owners.
7. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1827

IN WITNESS WHEREOF, the parties have executed this Contract on the date following their respective signatures.

LESSOR: CLOUD BERRY LLC
1191 E IRON EAGLE DR STE 100
EAGLE, ID 83616-5139

By [Signature]
Title Member
Date 3-13-24

IDAHO WATER RESOURCE BOARD

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

By [Signature] Date 3/21/24
Brian Patton, Acting Administrator
Idaho Water Resource Board

Lease approved by IDWR [Signature] Date 3/21/24

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1827

ATTACHMENT A
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

The water rights or portions thereof leased to the bank are described as follows:

Source and Location of Point(s) of Diversion for Water Right No(s): 63-5092, 63-31970

GROUND WATER NENE Sec. 11 Twp 04N Rge 01W ADA County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
63-5092	IRRIGATION	03/01	to	11/15	0.04 cfs	74.3 AF
63-31970	IRRIGATION	03/15	to	12/01	0.33 cfs	74.3 AF
	STOCKWATER	01/01	to	12/31	0.007 cfs	1.5 AF
Totals:					0.337 cfs	75.8 AF

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION & STOCKWATER

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01W	11	16.5																16.5

Total Acres: 16.5

ADDITIONAL CONDITIONS OF ACCEPTANCE

1. The water rights referenced above will be rented from the bank at the current rental rate.
2. There is no rental payment to the lessor of the water right if the right or a part thereof is not rented from the bank.
3. While a right is in the bank, the lessor may not use the right without approval of the Department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B.
4. A right accepted into the bank stays in the bank until the Board releases it, or the lease term expires. A right may be released from the bank upon request, provided the Board approves the release. Unless approved by the Department, leased rights may not be immediately available for release.
5. While a water right is in the bank, forfeiture provisions are stayed pursuant to Idaho Code § 42-223(5).
6. Rental of water under this right is subject to the limitations and conditions of approval of the water right.
7. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.
8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other Department application process.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

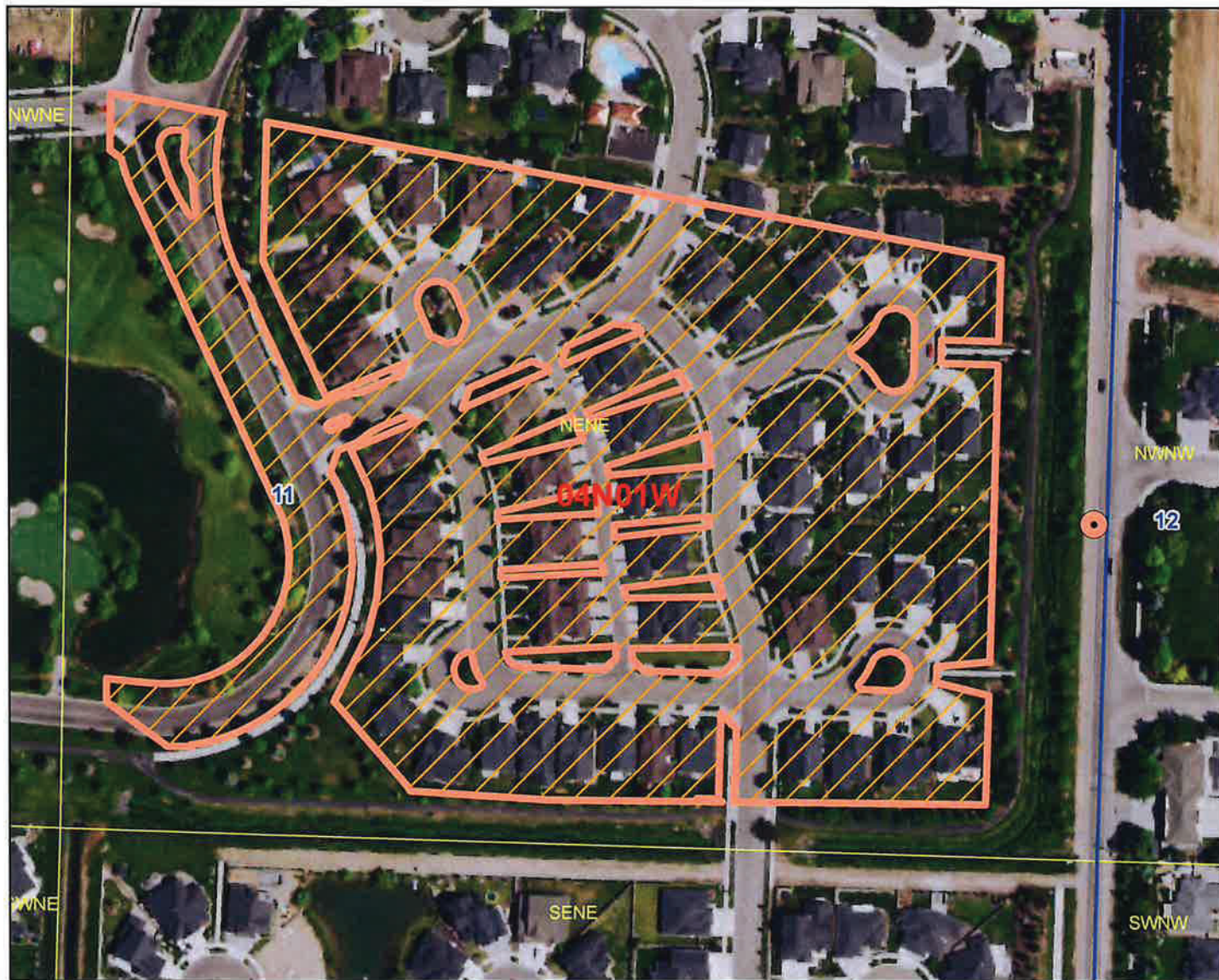
WATER SUPPLY BANK LEASE CONTRACT No. 1827

9. In accordance with Idaho Code § 42-248 and § 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.
10. If a water right leased into the Water Supply Bank is sold or conveyed during the lease term, and if the leased right was rented, the rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:
 - a. Rental payments will go to the lessor(s) of record at the beginning of the rental season, even if the Department processes a Notice of Change in Water Right Ownership during the rental season.
 - b. New lessor(s) of record will receive payment for any subsequent rental seasons.
11. The water right(s) is leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.
12. The use of water for irrigation under this right may begin as early as March 1 provided other elements of the right are not exceeded. The use of water before March 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.
13. 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.
14. Water rights 63-5092 & 63-31970 when combined shall not exceed a total diversion rate of 0.33 cfs, a total annual maximum diversion volume of 74.3 af at the field headgate, and the irrigation of 16.5 acres.

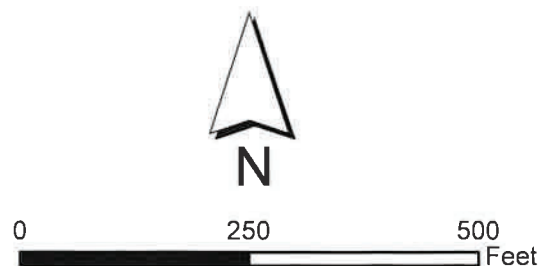
Idaho Water Resource Board
Water Supply Bank Lease Contract No. 1827

63-5092 & 63-31970
Effective until December 31, 2028

This map depicts the **place of use** to be idled pursuant to the lease contract and is attached to the contract solely for illustrative purposes.



-  Approved Lease Point of Diversion
-  Approved Lease Place of Use
-  Township/Range
-  Sections
-  QQ



STATE OF IDAHO
WATER RESOURCE BOARD

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

RECEIVED
DEC 28 2023
DEPARTMENT OF
WATER RESOURCES

Designated Applicant Cloud Berry, LLC

(Select one owner – see item 1A on the application)

Water Right No. 63-31970

(One water right per application)

Is this application being submitted with a rental application as a lease/rental package?

Yes ☒ No ☐

This application must be prepared in accordance with the minimum requirement checklist below. Use this checklist to ensure all necessary documentation has been provided. This checklist is part of the lease application and must be included with the lease application. **Applications that do not meet the minimum requirements will not be processed and may be returned or denied.**

MINIMUM REQUIREMENT CHECKLIST

All items must be checked as either *Attached (Yes)* or *Not Applicable (N/A)*

Yes

- ☒ Completed *Application to Sell or Lease a Water Right to the Water Supply Bank*.
- ☒ Application filing fee of \$250.00 per water right. If you are submitting more than one lease application and the water rights have an overlapping, common place of use, or a common diversion rate or volume, the total fee for all water rights is \$500.00. For places of use, multiple water rights must be used to irrigate the same lands in order to qualify for the joint filing fee. Individual filing fees are required for water rights that share a common permissible place of use but which cover separate acres within the permissible place of use.
- ☒ Confirmation this form has been printed **single sided**, per requirement of the Water Supply Bank.

Attachment N/A Yes

- | | | | |
|----|-------------------------------------|-------------------------------------|--|
| 1A | ☒ | ☐ | Signatures and contact information for all owners of the water right to be leased or sold on this application. |
| 1B | ☒ | ☐ | An <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant. |
| 1C | ☒ | ☐ | <i>Notice of Change in Water Right Ownership</i> form (accessible from www.idwr.idaho.gov). |
| 1D | ☐ | ☒ | Contact information for an authorized representative and documentary proof they are authorized to represent the Designated Applicant on this application. If the Designated Applicant is a business, partnership, municipality, organization or association, include documents identifying officers authorized to sign or act on behalf of the entity. |
| 2 | ☒ | ☐ | Description of a water right portion offered to the Water Supply Bank. |
| 3 | ☐ | ☒ | A map that clearly outlines the specific location where irrigated acres will be dried up, or where a beneficial use of water will be suspended. You have the option of printing a map using the map tool on IDWR's website at: www.idwr.idaho.gov . |
| 4A | ☒ | ☐ | Written consent from irrigation district or water delivery company. |
| 4G | ☒ | ☐ | Evidence demonstrating the water right has not been forfeited pursuant to Section 42-222(2), Idaho Code . |

Department Use Only

Fee Amount \$ <u>500-</u>	Received By: <u>KM</u>	Date Received: <u>12.28.29</u>	Receipt # <u>C117585</u>
W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)		Name on W-9: <u>Cloud Berry LLC</u>	

2873

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

1. CONTACT INFORMATION

- A. This application must be completed by a Designated Applicant who is a current owner of the water right being sold or leased to the Water Supply Bank. If there are additional current owners, those individuals must authorize the Designated Applicant to represent them on this application by completing and signing Attachment 1A of this application package.

Designated Applicant Cloud Berry, LLC
Mailing Address 1191 E Iron Eagle Dr Suite 100 Eagle, ID 83616
Street City State Zip Code
Email Address Justin@legacyidaho.com Phone Number 208-286-9344

☒ The Designated Applicant is the sole owner of the water right being sold or leased to the Water Supply Bank.

OR

☐ The Designated Applicant is representing additional water right holders who have completed Attachment 1A.

- B. Has the Designated Applicant submitted an IRS Form W-9 to this Department within the last 2 years? Yes ☒ No ☐
If no, complete the form and attach to this application (Attachment 1B).

- C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes ☒ No ☐
If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

- D. Is this application being completed by an authorized representative of the Designated Applicant? Yes ☒ No ☐
If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1D).

Name of Representative Justin Martin Organization _____
Professional Title Manager Email Address Justin@legacyidaho.com
Mailing Address 1191 E Iron Eagle Dr Suite 100 Eagle, ID 83616 Phone Number 208-286-9344

☒ Send all correspondence for this application to the representative and not to the Designated Applicant.

OR

☐ Send original correspondence to the Designated Applicant and copies to the representative.

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

☒ The full water right is being offered to the Bank.

OR

☐ A part of the water right is being offered to the Bank.

If a portion of the water right is being offered, **complete Attachment 2.**

3. MAP

Attach a map of the point(s) of diversion and place(s) of use proposed to be idled by this lease application. Make sure the idled place of use is outlined and annotated with legal land descriptions (Township, Range, Section and Quarter-Quarters) or with GPS coordinates. For irrigation purposes, mark the number of acres you desire to idle. If the water right proposed for lease is located within a permissible place of use (PPU) and portions of the PPU will continue to receive water from non-leased water rights, clearly outline on a map the acres within the PPU that will continue to be irrigated, as well as acres that will be idled during the lease term. Label the map **Attachment 3.**

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

4. GENERAL INFORMATION

- A. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 4A).

If your water right is delivered through a canal, lateral or ditch operated by a canal company, irrigation district, or similar delivery entity, your lease request must include written consent from the company, district, or similar entity for your removal of water from its system pursuant to [Section 42-108, Idaho Code](#) and [IDAPA WSB Rule 37.02.03.25.02e](#).

- B. Please provide a description of the current water diversion and delivery system.

Groundwater

- C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank. 63-5092

- D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? Yes ☒ No ☐
Stacked water rights are used together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of \$500.

- E. Will the present place of use continue to receive water from any other source? Yes ☒ No ☐
If yes, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased. New Dry Creek & Middleton Mill

- F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. Amounts vary based on surface water delivery

- G. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☐ No ☒
If yes, describe the circumstances and attach evidence to demonstrate how the water right has not been lost through forfeiture (Attachment 4G). See [Section 42-223, Idaho Code](#) for exceptions to forfeiture. Your application may be denied if forfeiture concerns are not addressed.

- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan?

If yes, describe.

Yes ☐ No ☒

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

5. SALE/LEASE AGREEMENT

A. Is the water right, or portion thereof, offered to the Idaho Water Resource Board (IWRB) for sale ☐ or lease ☒.

If lease, specify the years when the use of water will be suspended: 2024 to 2029 (maximum lease period 5 calendar years).
(Year) (Year)

B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

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 water right for sale or lease to the Idaho Water Resource Board.

The Designated Applicant acknowledges the following:

1. Payment to the Designated Applicant is contingent upon the sale or rental of the water right from the Bank.
2. While a water right is in the Bank, the seller/lessor of the water right may not use the water right, even if the water right is not rented from the Bank.
3. A water right accepted into the Bank stays in the Bank until the Designated Applicant receives written confirmation from the Board or Water Supply Bank that the water right has been released from the Bank.
4. While a water right is in the Bank, forfeiture is stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any element of the water right.


Signature of Designated Applicant

Justin Martin
Printed Name

12-24-2023
Date

Signature of Authorized Representative

Printed Name

Date

Mail to:
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

**STATE OF IDAHO
WATER RESOURCE BOARD**

ATTACHMENT 1A

Additional Water Right Holders Party to the Lease Application

For the water right on this application, list all owners (individuals or business entities) of the right or the property to which it is appurtenant. All water right holders must sign a Water Supply Bank Lease Application. However, only the Designated Applicant needs to provide a completed IRS Form W-9 (Attachment 1B). **All correspondence and any financial payment associated with the rental of this water right will be directed to the Designated Applicant.** If additional space is needed to list any other water right holders, attach a second copy of Attachment 1A.

If submitting multiple applications, it is only necessary to complete one Attachment 1A for the group of applications. List each water right below.

Water Right No(s). 63-31970, 63-10557, 63-5092

	Designated Applicant	Applicant #2	Applicant #3
Name	Justin Martin		
Mailing Address	1191 E. Iron Eagle Dr. Shoshone Eagle ID 83616		
Phone Number	208-286-9344		
Email Address	Justin@legacyidaho.com		
Applicant Declaration	As Designated Applicant, I submit this lease application on behalf of all other water right holders.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature			

	Applicant #4	Applicant #5	Applicant #6
Name			
Mailing Address			
Phone Number			
Email Address			
Applicant Declaration	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature			

**STATE OF IDAHO
WATER RESOURCE BOARD**

Complete Attachment 2 if only a portion of the water right is offered to the Bank.

ATTACHMENT 2

DESCRIPTION OF A WATER RIGHT PORTION OFFERED TO THE WATER SUPPLY BANK

1. <u>Water Right Number</u>	Nature of Use	Leased Rate (cfs)	Leased Volume (af)	Leased Acres (ac)
<u>63-31970</u>	<u>Irrigation</u>	<u>0.11</u>	<u>24.8</u>	<u>5.5</u>
	Total Amounts:			

2. Source of water Ground Water tributary to _____

3. Point(s) of diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
4N	1W	1			SE	SW	ADA

63-31970 Cloud Berry & LCA Portions

[illegible]

Split Analysis

Water Right Number: 63-31970
 Diversion Rate: 0.46 CFS
 Reviewer Name: SPF
 Date: 11/15/2018

Acreage Analysis

[illegible]

Water Right Number: 63-31970
 Diversion Rate: 0.46 CFS
 Reviewer Name: SPF
 Date: 11/15/2018

Split Tree

Cloud Berry
(5.5 ac & 0.11 cfs)
LCA
(6.5 ac & 0.13 cfs)
Remaining
(11.0 ac & 0.22 cfs)

Summary

Right No:	Diversion Rate	Irrigated Acres	CFS / Acre
63-31970	0.46	23	0.020
Cloud Berry	0.11	5.5	0.020
LCA	0.13	6.5	0.020
Remaining	0.22	11	0.020

63-31970
 (23.0 ac & 0.46 cfs)

State of Idaho
Department of Water Resources

Water Right
63-31970

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

01W



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.1 0.2 0.4 Miles



State of Idaho
Department of Water Resources

Water Right

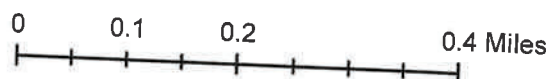
63-31970

STOCKWATER

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters





IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

March 26, 2024

CLOUD BERRY LLC
1191 E IRON EAGLE DR STE 100
EAGLE, ID 83616-5139

**RE: WATER SUPPLY BANK LEASE CONTRACT 1827
FOR WATER RIGHT 63-5092, 63-31970**

Dear Lessor:

Water rights **63-5092, 63-31970** is leased into the Water Supply Bank (Bank) as of January 2024 in accordance with the enclosed executed lease contract. **Your water rights, as described on the lease contract, are considered leased into the Bank and should remain unused until they are formally released from the Bank.** More information and further restrictions placed on your water rights while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The right(s) will automatically be released from the Bank on **December 31, 2028** unless the rights are released earlier by the Water Resource Board (Board). To release the water rights from the Bank prior to the release date, submit a written request on the *Request to Release a Water Right from the Bank* form. This form is available on our public website at www.idwr.idaho.gov. **Please note your water rights may not be available for immediate release if they are rented.**

If you have questions regarding this matter, please contact this office at bank@idwr.idaho.gov or 208-287-4800.

Sincerely,
Signature

Catalina Beck

Enclosure: Executed Lease Contract

c: IDWR- Western Region Office

WATER SUPPLY BANK		Quick Tools	
Lease Review Checklist		Decreed Year	No Forfeiture Concerns Thru:
<u>Applicant(s) Name: Cloud Berry</u>		2011	2017
<u>Memo Date: February 16, 2024</u>		2012	2018
<u>Water Right Number(s): 63-5092 & 63-31970</u>		2013	2019
		2014	2020
		2015	2021
Reviewers Name: Bob Howe			
		Check box	
1	Fill out WSB Data Entry Checklist for Leases (Front of File)	x	COMMENTS/CONCERNS:
2	Reason for lease of water rights (Brief description of lease proposal in narrative)		
	Portion of right	x	
	All of right		
3	Check GWMA/CGWA/ADC and basin 63 areas of concern (note area in comments)		
		Yes	No
4	Rentable? (If no explain in comments or narrative)		Needs further review
5	Authority to file		
	Current owner or designated applicant	x	
	SOS Web site checked for business entity	x	Added 2024 Annual Report
	Other (explain in comments)		
6	Water Right validity		
	Decreed/Licensed/Statutory claim date (write in comments section)		2007
	Past irrigation to ensure forfeiture is not an issue if decreed or licensed over 7 years ago (consider transfers that changed the POU, rentals to the POU etc.)		
	Has this right previously been leased to the bank or in CREP?	x	Leased into the WSB since 2014
7	Injury to other water rights		
	If the POD is through a delivery entity, was consent provided?		na
	If the POD is through a delivery entity, was holdback required? (percentage in comments)		%
	Any other concerns		
8	Enlargement concerns	Check box	
	Complete a POU comparison overlap analysis	x	
	Complete a combined limits review	x	
	Complete POD overlap analysis (if there is an overlap add condition to lease)	x	
		Yes	No
	Are there overlapping rights that need to be placed in the bank also?		x
	Will the place of use continue to receive water? (if yes explain in comments)	x	
9	Local Public Interest		
	Does the processor know of any problems this action will cause for the local public?		x
10	Have you contacted regional office and watermaster for comment/concerns?	x	
	Send the watermaster comment request form or e-mail request		na
11	Area Headgate requirement (write in Comments)		4.5
12	Is water right involved in any other department action? Pull file and check database () Ownership Change () Transfer () Mitigation () Other - Explain in comments		x
13	Narrative: The Department received lease applications for rights 63-5092 & 63-31970 on December 28, 2023. The applicant wishes to place both full rights 63-5092 & 63-31970 into the Water Supply Bank (WSB) for a 5-year term ending 2028. The combined irrigation limit for the rights will be rentable. The applications were signed by Justin Martin, Manager of Cloud Berry LLC. An IDSOS Business Search produced a 2024 Annual Report verifying Justin Martin's authority to Lease the rights. Both rights were decreed in 2007 and have been leased into the WSB since 2014. A review of imagery from 2008-2013 did not provide evidence of irrigation. However, the application was received in 2013 (action taken) and the rights were accepted into the bank for the start of 2014. These rights overlap with rights from Drainage District No. 2, New Dry Creek Ditch Co., and/or Middleton Irrigation District/Middleton Mill Ditch Co., and the City of Eagle. The applicant stated on section 4.E. of the application that the Mill Ditch and Dry Creek Ditch are used when available. Rights 63-5092 & 63-31970 are for a subdivision. Cloud Berry, LLC does not own any property in this subdivision but is the current owner of these water rights. The use of the leased rights for any irrigation is very unlikely. GIS measurements of the hardscape and structures within the NENE, found that the areas combine for 16.5 acres idled area. The rights for the proposed lease divert groundwater which is not currently administered by a water district. Further review will be necessary for any rental to occur as the rights use are supplemental to surface water. In previous reviews documentation was provided that Cloud Berry has permission from other companies to protect the water rights from forfeiture.		



IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098

Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

March 6, 2024

Director Mathew Weaver

CLOUD BERRY LLC
1191 E IRON EAGLE DR STE 100
EAGLE, ID 83616-5139

RE: APPLICATION TO LEASE WATER RIGHT 63-5092, 63-31970-CONTRACT 1827, WATER RIGHT 63-10557- CONTRACT 1825 TO THE WATER SUPPLY BANK

******TIME SENSITIVE RESPONSE REQUIRED******

Dear Applicant:

The Department of Water Resources has completed its review of your application to lease the above-mentioned water right to the Water Supply Bank. **I have enclosed two original of each Water Supply Bank Lease Contracts for your review and signature. Please sign and return ALL Lease Contracts within 14 days.** Upon signature and return of the contracts, the Department will also sign the original contracts and return an executed copy to you. The Lease Contract is not considered final until you and the Department have both signed.

The right will automatically be released from the Bank on **December 31, 2028**, unless the right is released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. To propose a new lease period, submit a new Application to Sell or Lease a Water Right to the Water Supply Bank form along with applicable fees to the Department. These forms are available from any IDWR office or from our public website at <http://www.idwr.idaho.gov>. Please note your right may not be available for immediate release if it has been rented.

Please review the conditions of acceptance listed on the Lease Contract, including #3 which says:

"While a right is in the bank, **the lessor may not use the right** without approval of the department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B."

A refund of \$500 has been requested due to overpayment of filing fees. The refund will be sent under separate cover from the Idaho State Controller's Office.

If you have questions regarding this matter, please contact this office at 287-4800.

Sincerely,

Water Supply Bank

Enclosures: Proposed Lease Contracts
C: Western Regional Manager- Nick Miller

Howe, Bob

From: Howe, Bob
Sent: Wednesday, March 6, 2024 9:20 AM
To: Miller, Nick
Cc: Bank
Subject: Comment Requested-Lease Contract 1827-Cloud Berry LLC
Attachments: Lease Application Review.pdf; Lease Contract 1827.pdf; Lease 1827 Map.pdf

Good Morning Nick:

The Department of Water Resources is seeking comment from your agency, regarding the Water Supply Bank (WSB) Lease Contract 1827, for Cloud Berry LLC. The lease is for the same right and portion in the previous lease for right 63-5092 & 63-31970 (Contract 1037-ending 12/31/2023), for a new term from 2024-2028. A copy of the proposed lease contract, the lease review, and map are attached for your reference. To avoid confusion, please note that I sent you a separate email for Cloud Berry LLC Lease Contract 1825 a couple of days ago, due to a difference in approval dates.

Please submit your comments within 14 days, no later than March 20, 2024. If we do not hear from you by that date, we will assume that no comment from you means you have no objection to, concerns about, or conditions pertaining to the execution of the lease.

Comments are preferred to be received by e-mail to bob.howe@idwr.idaho.gov. However, comments by regular mail and/or FAX to 208-287-6700 are acceptable.

If you have any questions, don't hesitate to contact me at the State Office at (208) 287-4847.

Best Regards,

Bob Howe

 IDAHO DEPARTMENT OF
WATER RESOURCES
Bob Howe | Water Resource Agent
322 E Front St, PO Box 83720, Boise, ID 83720
(208) 287-4800 | www.idwr.idaho.gov

Howe, Bob

From: Howe, Bob
Sent: Wednesday, March 6, 2024 9:44 AM
To: justin@legacyidaho.com
Cc: Bank
Subject: Water Supply Bank-Lease Contracts 1825 and 1827-Cloud Berry LLC-Mailed for Signature
Attachments: Lease Cover Letter-Proposed Lease Contract 1825-14-days.pdf; Lease Contract 1827.pdf; Lease 1827 Map.pdf; Lease Contract 1825.pdf; Lease 1825 Map.pdf

Good Morning Justin,

Water Supply Bank Lease Contracts 1825 & 1827 for rights 63-10557, 63-5092, & 63-31970 has been submitted for mailing to the address on the lease application for signature and return. I have attached the mailed documents for your records. Feel free to reach out with any questions or concerns. Thank you and have a great day.

Bob Howe

 IDAHO DEPARTMENT OF
WATER RESOURCES
Bob Howe | Water Resource Agent
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