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In File

APR 27 2004

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:

1. Renter: Idaho Water Resources Board
2. Address: 1301 N Orchard
3. Source of water: Fourth of July Creek
4. Volume of water rented: 129 3 AF per year Max rate: 2.97 cfs
5. Diversion period: 2004 and 2005 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 Fourth of July Creek and the Salmon River
8. The right(s) from which water will be rented are 71-2014 and 71-10762

The undersigned renter agrees to pay \$4,788.89 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 use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code.

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 those authorized under the water right 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 27<sup>th</sup> day of April, 2004.

by

Jerry R. Rigby  
JERRY R. RIGBY, Chairman

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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 29<sup>th</sup> day of April, 2004.

Karl J. Dreher

for  
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**

**RECEIVED**  
FEB 6 - 2004  
Department of Water Resources

**A. DESCRIPTION OF WATER SOUGHT TO RENT**

1. Source of water **Fourth of July Creek**  
tributary to **Salmon River**.
2. Maximum volume of water **387.9 AF**.
3. Maximum rate of diversion **2.9 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 **May 1 through October 31**

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.

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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? **Yes** (yes or no)  
If yes, for how many years? **2**
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)**

Date 2-6-04

  
Signature of Applicant  
Chairman, Idaho Water Resource Board

**FOR DEPARTMENT USE ONLY**

Received by \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Published in \_\_\_\_\_ Pub. dates \_\_\_\_\_

Protests filed by \_\_\_\_\_

Hearing held by \_\_\_\_\_

Action recommended

Water Supply Bank No \_\_\_\_\_

Water Right No. 71-10762

RECEIVED

DEC 31 2003

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

Department of Water Resources

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

Name of Seller/Lessor William H. and Ann S. Vanderbilt Phone (208) 726-5339

Post office address P.O. Box 4740, Ketchum, ID 83340

1 DESCRIPTION OF WATER RIGHT:

Right evidenced by.

- a. Decree No 71-10762 Decreed to William and Ann Vanderbilt  
(Name)  
in case of SRBA vs \_\_\_\_\_  
dated \_\_\_\_\_ in \_\_\_\_\_ county of \_\_\_\_\_  
(Name of court)
- b. License No \_\_\_\_\_ 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: 1.47 cubic feet per second &/or  
\_\_\_\_\_ acre-feet per annum
- b. Point of diversion: SW 1/4 of SE 1/4 of Section 10 Township 08N  
Range 14E, B M in Custer County.  
Additional points \_\_\_\_\_

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	
08N	14E	09													14.2	6.4	12	10.5	43.1

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 43.1

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.

See attached tax notice      See attached copy of deed to land.

- 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).

For the past 5 years, excluding 2003, we have leased our pasture to Syd Dowten for cattle grazing. He has made full use of our right from June through September to keep the leased pasture irrigated. In 2003 we irrigated pasture for the beneficial use of wildlife since we have put our land into a wildlife easement. We installed a measuring device at our head 2 gate on the 4th of July Creek and can provide records of water use in 2003, if required.

- 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.

Water is typically available for the entire irrigation season

- 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.

Decreed right 71-2014 is appurtenant to same place of use and is also being offered for lease to the State Water Bank.

- 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



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 of two years to \_\_\_\_\_  
(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"

Lease of water to irrigate 43.1 acres over a 2-year period at \$50/acre/year  
= \$4,310. Payment does not include administrative fee. This agreement covers  
this right (71-10762) as well as Right 71-2014.

**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

Dec 30 2003  
Date

[Signature]  
Signature

---

FOR DEPARTMENT USE ONLY

Received by \_\_\_\_\_ Date \_\_\_\_\_ Preliminary check by \_\_\_\_\_

Watermaster recommendation requested on \_\_\_\_\_ Received \_\_\_\_\_

Recommended for \_\_\_\_\_ approval \_\_\_\_\_ denial by \_\_\_\_\_

# WARRANTY DEED

For Value Received Jack B. Furey and Nancy J. Furey, husband and wife, and Louis F. Racine, Jr., and Jean Racine, husband and wife,

the grantors, do hereby grant, bargain, sell and convey unto William H. Vanderbilt and Ann S. Vanderbilt, husband and wife,

whose current address is

COPY

the grantees, the following described premises, in Custer County Idaho, to wit:

Township 8 N., Range 14 E., B.M., SW $\frac{1}{4}$  Section 10 and SE $\frac{1}{4}$  Section 9, and a fraction of the S $\frac{1}{2}$ NE $\frac{1}{4}$  said Section 9, described as follows: Commencing at the Northeast corner of said Section 9; thence South 0°02' East along the East boundary of said Section 9 a distance of 2,382.22 feet to the True Point of Beginning; thence West 577.83 feet, more or less along the South boundary of the land described in the deed from Stanley Basin Corporation, an Idaho corporation, to Stanley B. Mitchell, et.ux., recorded March 20, 1970, as instrument No. 128250, to the Southeast corner of Lot 23 of White Cloud Subdivision as shown by the official plat on record with the Custer County Recorder, records of Custer County, Idaho; thence South 89°42'10" West, 1301.07 feet to the Southwest corner of said subdivision; thence South 1°56' East 250 feet, more or less to the North boundary of the Southeast quarter said Section 9; thence East along the North boundary of said Southeast quarter a distance of 1,890 feet, more or less, to the East quarter corner of said Section 9; thence North 0°02' West 270 feet, more or less to the TRUE POINT OF BEGINNING.

TOGETHER with all ditches and ditch rights, water and water rights, and minerals and mineral rights appurtenant thereto or used in connection therewith.

SUBJECT to attached Exhibit "A" incorporated herein by reference.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that the owner in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: September 15, 1984

Jack B. Furey  
Jack B. Furey  
Nancy J. Furey  
Nancy J. Furey

Louis F. Racine, Jr.  
Louis F. Racine, Jr.  
Jean Racine  
Jean Racine

STATE OF IDAHO, COUNTY OF BANNOCK  
On this 15th day of Sept., 1984,  
before me, a Notary Public in and for said State, personally  
appeared JACK B. FUREY and NANCY J. FUREY,  
husband and wife, and  
Louis F. Racine, Jr., and  
Jean Racine, husband and  
wife  
known to me to be the persons whose names  
subscribed to the within instrument, and acknowledged to  
me that they executed the same.

Robin L. Collins  
Residing at Pocatello  
Comm. Expires 12/4/84  
Notary Public  
Idaho

STATE OF IDAHO )  
COUNTY OF BANNOCK ) ss

This instrument was filed for record  
at the Custer County Title  
office on Oct 1 1984  
and is a part of the Records of Custer  
County.

Ethel M. Reck  
Rich Peterson Deputy  
400

EXHIBIT "A"

GRANTORS covenant and agree that no structures will be placed on land of Grantors not included in this conveyance and described as S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 9, Township 8 North, Range 14 East, Boise Meridian, Custer County, Idaho, (20 acres), which structures are visible from approved homesites in that portion of the lands herein conveyed, described as SE $\frac{1}{4}$ , Section 9, and SW $\frac{1}{4}$ , Section 10, Township 8 North, Range 14 East, Boise Meridian, Custer County, Idaho, (320 acres), said covenant to run with and benefit said 320 acres herein described and to run with and burden said 20 acres herein described.

GRANTORS further covenant and agree that Grantees have the right to build such structures as are permitted under Sawtooth National Recreation Area Certification of Compliance No. 209, dated December 5, 1979, and such structures as otherwise may be permitted under Scenic Easement recorded December 29, 1975, as instrument No. 141456, Official Records of Custer County, Idaho, applicable to the conveyed premises described as SE $\frac{1}{4}$ , Section 9, and SW $\frac{1}{4}$ , Section 10, Township 8 North, Range 14 East, Boise Meridian, Custer County, Idaho.

WARRANTY DEED

EXHIBIT "A"

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 )  
Case No. 39576 )  
\_\_\_\_\_ )  
PARTIAL DECREE PURSUANT TO  
I.R.C.P. 54(b) FOR  
Water Right 71-10762

NAME AND ADDRESS: ANN S VANDERBILT  
PO BOX 4740  
KETCHUM, ID 83340

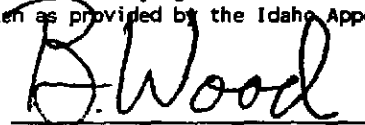
WILLIAM H VANDERBILT  
PO BOX 4740  
KETCHUM, ID 83340

SOURCE: FOURTH OF JULY CREEK      TRIBUTARY: SALMON RIVER  
QUANTITY: 2.90 CFS  
PRIORITY DATE: 08/11/1927  
POINT OF DIVERSION: T08N R14E S10      SESWSE      Within Custer County  
PURPOSE AND  
PERIOD OF USE: PURPOSE OF USE      PERIOD OF USE      QUANTITY  
Irrigation      05-01 TO 10-31      2.90 CFS  
PLACE OF USE: Irrigation      Within Custer County  
T08N R14E S09      NESE 31.0      NWSE 21.3  
SWSE 19.2      SESE 13.6  
85.1 Acres Total

USE OF THIS RIGHT WITH RIGHT NO. 71-02014 IS LIMITED TO THE  
IRRIGATION OF A COMBINED TOTAL OF 85.1 ACRES IN A SINGLE  
IRRIGATION SEASON.

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  
Interim Presiding Judge of the  
Snake River Basin Adjudication

## MEMORANDUM

**TO:** Debbie Allen  
**FROM:** Cynthia Bridge Clark  
**RE:** WATER SUPPLY BANK RENTAL FEE - 71-2014 AND 71-10762  
**DATE:** October 4, 2004

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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 \$4,788.89. The portion of the rental payment to be issued to the lessor is \$4,310.00 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 \$478.89. The W-9 form submitted by the applicant is attached.

Please have a state warrant prepared in the amount of \$4,310.00 and sent to the owner of the water right at the following address:

WILLIAM H AND ANN S VANDERBILT  
PO BOX 4740  
KETCHUM ID 83340

Attach: 1

c Bill Graham – IDWR State Office

SUPPORT DATA  
IN FILE # 71-2014



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

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

Phone: (208) 327-7900 FAX: (208) 327-7866

October 4, 2004

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

WILLIAM H AND ANN S VANDERBILT  
PO BOX 4740  
KETCHUM ID 83340

**RE: RENTAL OF WATER RIGHTS LEASED TO THE WATER SUPPLY  
BANK. WATER RIGHT NO(S). 71-2014 AND 71-10762**

Dear Lessor(s):

The department has requested the issuance of a state warrant in the amount of \$4,310.00 as payment to you for the rental of 129.3 acre-feet of the above referenced water right from the Water Supply Bank for the 2004 and 2005 irrigation seasons.

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 \$4,788.89 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

SUPPORT DATA

IN FILE # 71-2014

## COMMENTS

- ① NEED PAYMENT
- ② ISSUE PAYMENT



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](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

May 3, 2004

WILLIAM H AND ANN S VANDERBILT  
PO BOX 4740  
KETCHUM ID 83340

**RE: LEASE OF WATER RIGHT NO(S). 71-2014 AND 71-10762 TO THE  
WATER SUPPLY BANK. SUBMITTAL OF IRS W-9 FORM.**

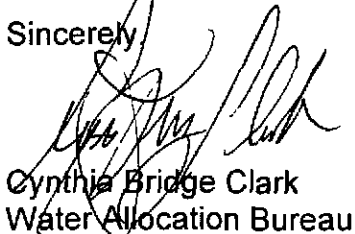
Dear Lessors:

As you are aware, the water right(s) referenced above are currently leased to the Water Supply Bank ("bank"). The Department of Water Resources ("department") is required to file an information return with the Internal Revenue Service ("IRS") for all rental payments issued to lessors of water rights in the bank. Enclosed is a copy of the Internal Revenue Service Request for Taxpayer Identification and Certification, Form W-9.

Please return this form to my attention. 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.

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  
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](http://www.idwr.state.id.us)

**DIRK KEMPTHORNE**  
Governor

**KARL J. DREHER**  
Director

May 3, 2004

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

**RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK. WATER  
RIGHT NO(S). 71-2014 & 71-10762**

Dear Renter:

Please find enclosed a signed copy of a Water Supply Bank Rental Agreement in connection with the rental of 129.3 acre-feet of surface water from Fourth of July Creek for instream flow use through December 31, 2005. Upon receipt of the rental payment of \$4,788.89, you will be authorized to divert water in compliance with the conditions of water use described in the agreement.

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](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

April 26, 2004

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

**RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK.  
WATER RIGHT NO(S). 71-2014 AND 71-10762**

Dear Renter:

The 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, together with the rental fee described below, 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.

The rental fee is **\$4,788.89** and was calculated based on the \$50.00 per acre requested by the lessor, plus the ten percent administrative fee authorized under Water Supply Bank rule 035.01, *IDAPA 37.02.03*. Please send a check made payable to the Idaho Department of Water Resources together with the signed rental agreement. Also return the signed agreement and fee 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: Allen Merritt – IDWR Southern 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: Idaho Water Resources Board
2. Address: 1301 N. Orchard
3. Source of water: Fourth of July Creek
4. Volume of water rented: 129.3 AF per year      Max rate: 2.97 cfs
5. Diversion period: 2004 and 2005 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 Fourth of July Creek and the Salmon River
8. The right(s) from which water will be rented are 71-2014 and 71-10762

The undersigned renter agrees to pay \$4,788.89 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 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 those authorized under the water right 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



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](http://www.idwr.state.id.us)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

April 26, 2004

WILLIAM H AND ANN S VANDERBILT  
PO BOX 4740  
KETCHUM ID 83340

**RE: APPLICATION TO LEASE PART OF WATER RIGHT NOS. 71-2014  
AND 71-10762 TO THE WATER SUPPLY BANK**

Dear Lessor:

The Department of Water Resources ("department") has completed its review of the Applications to Sell or Lease Water Right(s) to the Water Supply Bank ("bank"). Please consider that the offered water right(s) are accepted into the bank.

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 from the bank.
3. 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.
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.
6. Rental of the right from the bank may require additional review to confirm the availability of the surface water sources and the extent of beneficial use.
7. 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.

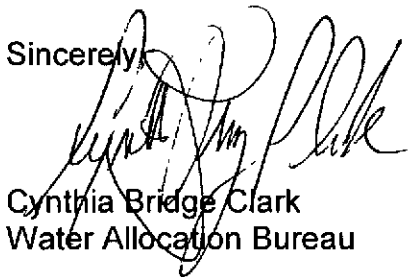
Please consider that the rights will automatically be released from the bank on

The right(s) will automatically be released from the bank on **December 31, 2005**, 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 rental payments issued to owners of water rights leased to the bank. Please return this form to my attention. 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.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Cynthia Bridge Clark', is written over the typed name and title.

Cynthia Bridge Clark  
Water Allocation Bureau

Encl: 1

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

## MEMORANDUM

**To:** Files 71-2014 & 71-10762

**From:** Cynthia Bridge Clark

**Date:** April 26, 2004

**Re:** Lease/Rental of Water Rights for Instream Flow Use through the State Water Supply Bank

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<u>Water Right</u>	<u>SRBA Claims</u>	<u>Lease/Rental:</u> <u>Rate</u>	<u>Volume</u>	<u>Acres</u>
71-2014	Decreed	1.5 cfs	129.3 af	43.1 ac
71-10762	Decreed	1.47 cfs	overlap	

The Department of Water Resources Planning Division initiated an agreement with the owners of the above referenced rights, Bill and Ann Vanderbilt, to lease irrigation and stockwater from Fourth of July Creek for instream flow use 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.

The Vanderbilts filed an application to lease portions of the rights appurtenant to 43.1 acres to the Water Supply Bank (bank) for two years. A rental application was filed in the name of the Idaho Water Resource Board for instream flow use under the Federal Reserve Wild and Scenic River 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.

Both rights have been decreed in the SRBA without a designated volume. The volume leased/rented was calculated based on the department standard of 3.0 acre-feet per annum per acre, and in accordance with the conditions of the water rights. The payment rate of \$50 per acre per year was negotiated between the water right owner and the department's planning division in conjunction with the Columbia River Basin Water Transaction Program. This rate does not include the bank's ten percent administration fee. The total payment is \$4,788.89; \$4310 will be issued to the lessor and \$478.89 retained for administrative fees.

The planning division is negotiating acquisition of the rights and a permanent or long-term rental of the rights through the bank. Jeff Peppersack, Bill Graham, Bob Rohrer and I, discussed the review and administration requirements of a permanent rental agreement. Review requirements may include establishing the extent of historic beneficial use due to the change in the nature of use, availability of the surface water source, and comments from the water master. The department is required to issue notice for a rental agreement of more than five years.

**WILLIAM H. VANDERBILT**

P O Box 4740  
Ketchum, Idaho 83340

RECEIVED  
DEC 31 2003  
Department of Water Resources

December 30, 2003

Bill Graham  
IDWR  
1301 N. Orchard Street  
Boise, ID 83706-2237

Dear Bill:

Please find enclosed the two signed lease agreements. We hope that everything is in order.

Should you need to reach us this winter, our address in Florida is: 2651 Coconut Drive, Sanibel, FL 33957. Telephone: 1-239-395-1325. Our FAX is the same number.

Thank you for all your help.

Sincerely yours,



Bill Vanderbilt



P.O. Box 4740  
Ketchum, Idaho 83340

RECEIVED

NOV 24 2003

Department of Water Resources

November 20, 2003

Bill Graham  
IDWR  
1301 N. Orchard  
Boise, ID 83706

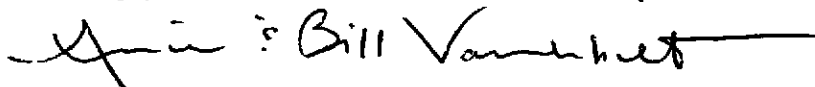
Dear Bill:

We apologize for the delay in sending you a copy of our applications. As you suggested in the telephone conversation with Annie earlier in the month, we are sending draft applications for you to look at, as well as Cynthia Clark in the water appropriations section. If the proof of water right use that we have hand written on Page 2 is acceptable, obviously this will be typed in on the signed application that we submit. Let us know if there is anything else we need to add or change in any of the sections. As soon as we receive your feedback, we will make any suggested changes, sign the documents, and return them to you.

We will be in Ketchum until the end of December, at which time we are flying to Florida for the winter. Hopefully we can get everything accomplished and ready to go before then.

Again we apologize for the delay. Some health issues with Annie's mother have slowed us down in the past few weeks.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Annie & Bill Vanderbilt", with a long horizontal flourish extending to the right.

Annie and Bill Vanderbilt