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DEPARTMENT OF
WATER RESOURCES

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)
A. Subcase Number: 37-02223
(Insert water right number)
STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho,
Department of Lands
Address: 600 N. 6th St.
P. O. Box 83720
Boise, Idaho 83720-0050
Daytime Phone: (208) 334-0200

Name and Address of Attorney, if any:

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID I. STANISH (ISB # 7310)
Deputy Attorney General
Attorney Address: Office of the Attorney General
JRW Building, Second Floor
700 West State Street
P.O. Box 44449
Boise, ID 83711-4449
Attorney Phone No. (208) 334-2400

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Thomas M O Gara Family Trust
c/o Brian Barsotti
Address: PO Box 370
Ketchum, ID 83340

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☒ **Name and Address**
Should be: State of Idaho, Department of Lands, 600 N. 6th St., P.O. Box 83720, Boise, ID 83720-0050 should be designated as a joint owner of this water right because the State of Idaho, Department of Lands, hereinafter the "IDL," owns the point of diversion and portions of the place of use.
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: IDL owns the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of section 36, T01S, R19E, B.M.. The claimant has no authorization to claim these lands as a point of diversion for this water right. These lands should either be deleted from this water right or be included in a water right under joint ownership with IDL.
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: Not applicable
7. ☐ **Purpose of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: IDL owns the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 36, T01S, R19E, B.M.. The claimant has no authorization to claim these lands as a portion of its

place of use for this water right. These lands should either be deleted from this water right or be included in a water right under joint ownership with IDL.

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

On July 3, 1890, the State of Idaho obtained title to T01S R19E S36 NWNW and NENW. The priority date for the above-entitled water right is October 14, 1911. Idaho law has long provided that a water right can not be initiated in trespass. *Bassett v. Swensen*, 51 Idaho 256 (1931).

On November 4, 2003, Robert Gardner entered into State Land Lease No. G-7259. This lease includes lands described as the point of diversion and portions of the place of use. The Claimant's relationship with Mr. Gardner and with Lease No. G-7259 is unclear at this time. Lease No. G-7259 includes paragraph 9, which addresses the issue of water rights:

No water rights are included in this Lease. The establishment of any new water rights during the term of this Lease shall be by and for Lessor and no claim thereto shall be made by Lessee. Such water rights shall attach to and become appurtenant to the leased land.

IDL proposes that the water right be split. The first water right that includes the state lands should have joint ownership under the claimant and IDL. A remark should be included indicating that ownership is subject to a private agreement executed between the claimant and IDL. The second water right that includes only the private lands should have the claimant as the sole owner. Because the sole point of diversion involved here is located on state lands, this second water right would also include a remark indicating that ownership is subject to a private agreement executed between the claimant and IDL.

Attached hereto is a map that shows the land owned by IDL and the water right claimed by the claimant. Additional supporting documents are also attached.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

DAVID I. STANISH, Deputy Attorney General, duly sworn, upon oath, deposes and says:

That the State of Idaho, Department of Lands, in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, Department of Lands, which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

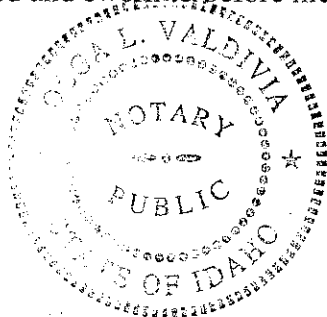
LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID I. STANISH
Deputy Attorney General

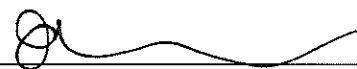


By Attorney signing in representative capacity

Subscribed and sworn to before me on: November 8, 2007

(Insert Date)





Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: 2/8/2012

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on November 8, 2007 I caused the original and the copies of this objection, including all attachments, to be served on the following persons by the method designated:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

FEDERAL EXPRESS

2. One copy to the owner of the water right at the following address:

Thomas M O Gara Family Trust
c/o Brian Barsotti
PO Box 370
Ketchum, ID 83340

U.S. MAIL

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

STATEHOUSE MAIL

State of Idaho
Department of Lands
300 N. 6th St.
Boise, Idaho 83720-0050

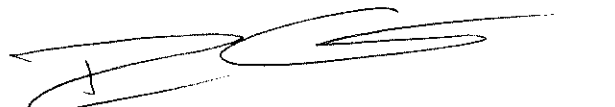
STATEHOUSE MAIL

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

U.S. MAIL

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

(not applicable)



Signature of Objector or attorney
Mailing on Objector's behalf

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-2223

NAME AND ADDRESS: THOMAS M O GARA FAMILY TRUST
C/O BRIAN BARSOTTI
PO BOX 370
KETCHUM ID 83340

SOURCE: SPRINGS

TRIBUTARY: SINKS

QUANTITY: 0.120 CFS
6.70 AFY

The quantity of water under this right shall not exceed 13,000 gallons per day.

PRIORITY DATE: 10/14/1911

POINT OF
DIVERSION: T01S R19E S36 SWNW Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.120 CFS 6.70 AFY

PLACE OF USE: STOCKWATER in BLAINE County

T01S R19E S25 SWSW T01S R19E S36 NWNW

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

The remainder of this right was forfeited for non-use from 1979 to 1988.

The quantity of water decreed for this water right is not a determination of historical beneficial use.

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

Right includes accomplished change in purpose of use pursuant to Section 42-1425, Idaho Code.

Stockwater use is for 500 range cattle.

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Place of Use
Basin 37 Part 3 Report Area 16
Sequence Number 2223
T01S19E – SEC36

TOWNSHIP	RANGE	SEC	QQ	GOVTLOTNUM	BASINNO	SEQNO	COUNTY	ACRES	ENDOWMENT	ACQ Date
01S	19E	36	NVNW		37	2223	BLAINE	40	PUBLIC SCHOOLS	7/03/1890

Point of Diversion
Basin 37 Report Area 16
Sequence Number 2223
T01S19E – SEC36

TOWNSHIP	RANGE	SEC	QQ	GOVTLOTNUM	BASINNO	SEQNO	COUNTY	ACRES	ENDOWMENT	ACQ Date
01S	19E	36	NENW		37	2223	BLAINE	40	PUBLIC SCHOOLS	7/03/1890

T01S19E SECTION 36



Town / Range	Section	Activity	Instrument Number	Acquired Acres	Construction Sale Acres	Remaining State Acre
01S 19E	36	Public Schools				
	10	STATE GRANT		640.00	0.00	640.00

Remarks: Date of Grant 7-3-1890

Town / Range	Section	Sequence	Ownership	Activity	Instrument Number	Acquired Acres	Construction Sale Acres	Remaining State Acre
01S 19E	36	20	Public Schools	GRAZING LEASE	7259	0.00	0.00	640.00

Remarks:



STATE OF IDAHO
STATE LAND LEASE

LEASE NO. G-7259

This lease agreement is made and entered into by and between the State of Idaho, acting by and through the State Board of Land Commissioners (lessor) and Robert E. Gardner (lessee) PO Box 1200, Hailey, ID 83333 (Address).

This lease shall commence January 1, 2004 and terminate December 31, 2013.

The annual rent payment is due on May 1st of each year.

The lessor, in consideration of the rental paid and the covenants, conditions and restrictions hereinafter set forth, in attachment B, does hereby lease and demise unto the lessee the lands described, and the special provisions identified, in attachment A at the uses specified herein; grazing 1,280.00 acres containing 130.00 AUMs, cropland 0 acres of dryland at 0 per acre, 0 acres irrigated land at 0 per acre, 0 acres of wasteland at 0 per acre, miscellaneous 0 per annum, or 0 premium bid.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

COUNTERSIGNED:

Ben Ysursa
Secretary of the State of Idaho
Winston A. Wiggins
Director Department of Lands

STATE BOARD OF LAND COMMISSIONERS OF THE
STATE OF IDAHO
By Dirk Kempthorne
President of the State Board of Land Commissioners
and Governor of the State of Idaho

STATE OF IDAHO

COUNTY OF Ada

On this 4th day of Nov, in the year 2003 before me, a Notary Public in and for said State, personally appeared Dirk Kempthorne, known to me to be the president of the State Board of Land Commissioners of the state of Idaho and the Governor of the state of Idaho; and Ben Ysursa, known to me to be the Secretary of the State of Idaho and Winston A Wiggins, known to me to be the Director, that executed the within instrument, and acknowledged to me that the State Board of Land Commissioners of the State of Idaho and the State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

Residing at Boise, Idaho, Commission expires 12-16-2007

Susan Moore
Notary Public for Idaho

*****LESSEE*****

x Robert E. Gardner
(Lessee)

STATE OF Idaho

x _____
(Lessee)

COUNTY OF Blaine

On this 27th day of October, in the year 2003, before me, a Notary Public in and for said State, personally appeared and provided me with a DL licence

me to be the lessee that executed the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

Residing at 309 Cross Dr
Letchum Commission expires 4/13/09

M. Carmen Thomas
Notary Public

W. Arthur Thompson
Notary Public for Idaho

STATE OF IDAHO
STATE LAND LEASE

LEASE NUMBER: 3 7259

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ATTACHMENT A

SPECIAL PROVISIONS:

SEE ATTACHMENT A-1.

DESCRIPTION OF PROPERTY:

COUNTY	ACRES	SUBDIVISION DESCRIPTION	SEC.	TWP.	RGE.	ENDOW.
BLAINE	640.00	ALL	36 00	1 S	19.0 E	PS
BLAINE	640.00	ALL	16 00	2 S	19.0 E	PS

STATE OF IDAHO
STATE LAND LEASE

ATTACHMENT A-1

SPECIAL PROVISIONS
GRAZING MANAGEMENT PROPOSAL

Lease Number: G-7259
Lease Applicant: Robert Gardner
Allotment Name: Picabo & private

Number of livestock by class:

Cow/calf pairs 250 yearlings _____ bulls 25
Sheep 1,000 horses 2 other (specify) _____

Season of Use (specific dates and total number of days): 4-25 thru 8-15

1. MANAGEMENT PROPOSAL

The following is a summary of the grazing management proposal submitted by the lease applicant. If acceptable by the Department, the proposal will be incorporated into the grazing lease as an enforceable provision of the lease.

We normally turn cattle onto the south side of the allotment early in May. This year due to the cool spring and rains we won't turn out until about May 17.

The sagebrush spring state section is apart of the joint pasture managed by the BLM. We would put about 25 pair in that pasture. The time of grazing is determined by the BLM, duration would normally be about 1 month.

The Hailey Canyon pasture is located on the north slopes so we normally graze them late in the season. We might leave cattle in Hailey Canyon for a couple of days in the spring. That lets the animals rest and mothers up before pushing them over the top to the south pastures. When we graze later in the summer we leave about 50-60 pairs from mid July to mid August.

We graze Hailey Canyon and the land to the west which is the Gannett allotment controlled by the BLM. We normally consult with Dean Brown, BLM about these recommendations of grazing timing.

Both pastures we place the salt away from water to help keep the cattle dispersed.

Weeds and thistles are monitored and treated as necessary.

Our grazing times are varied and adjusted as needed by the weather, plant conditions or needs.

STATE OF IDAHO
STATE LAND LEASE
ATTACHMENT B

1. **Use of Land**

- 1.1 Grazing Use. The leased land shall be used by Lessee for the purpose of grazing domestic livestock, as specified in this Lease and Lessee's approved Grazing Management Plan, attached hereto as Attachment A-1 Special Provisions Grazing Management Plan Summary. No other uses shall be made of the leased land by Lessee without prior written approval of Lessor. At all times Lessee shall practice good husbandry on the leased land.
- 1.2 Cropland Use. In addition to or in lieu of the use authorized in Paragraph 1.1 of this Lease, the Lessee is authorized to use the number of acres identified on the signature page of this lease as cropland. The location and management of said acres shall be designated in the written Grazing Management Plan. Said use shall be in accordance with this Lease, the Lessee's approved Grazing Management Plan, and any special provisions attached hereto. No use of the leased land for cropping purposes shall occur prior to the final approval of the written Grazing Management Plan by Lessor. Lessee shall pay to Lessor an additional rental for the identified acres of cropland whether cultivated or not in an amount determined by Lessor pursuant to Lessor's current cropland rental policy, along with the annual base rental payment as set forth in Section 2 herein.

2. **Rental Rate and Modification of Rent**

- 2.1 Annual Rent Payment. Lessee agrees to pay to Lessor, in lawful money of the United States, each year's rent for every AUM covered by this Lease, in an amount to be calculated pursuant to Lessor's most current formulas for each applicable use at the time the rental is calculated or recalculated. The rent shall be payable on or before May 1 of each successive year. Lessee shall pay the annual rental to Lessor without abatement, offset, or deduction of any kind, unless otherwise authorized by the Lessor through a completed Lease Adjustment form provided by the Lessor. Lessor reserves the right to increase or decrease the annual rent. Lessee will be notified one hundred eighty (180) calendar days in advance of the first payment of any increase in rental.
- 2.2 Late Payment Charge. If annual rental is not paid in full by the date it is due, Lessor may terminate the Lease upon thirty (30) calendar days written notice to Lessee. In addition, in the event any rent due hereunder is not paid in full when due, Lessee shall pay, in addition to such rent, a late charge in the first calendar month of such delinquency equal to the greater of Twenty-five Dollars (\$25.00) or one percent (1%) of the unpaid rent. For each subsequent calendar month of such delinquency, Lessee shall pay an additional late charge equal to one percent (1%) of the then unpaid rent. The parties acknowledge and agree that the late charge described herein is a reasonable attempt to estimate and to compensate Lessor for higher administration costs associated with administering such late payments and is not intended as a penalty. By assessing this late charge, Lessor does not waive any right to declare a breach and to pursue any right or remedy available to Lessor by reason of such breach, after expiration of any applicable notice or cure period.
- 2.3 Lien. The amount of the rent, late charge, and interest shall constitute a lien in favor of the State of Idaho against all of Lessee's improvements and other property on the leased land, including, but not limited to, crops and livestock.

3. **Livestock Carrying Capacity.**

- 3.1 The grazing period, AUM's, and the number of stock shall be determined by Lessor and may be adjusted from time to time after giving Lessee thirty (30) calendar days notice of any such modifications. Lessee shall furnish such information as may be required to assist Lessor in determining the grazing period and number of stock to be grazed.

4. **Grazing Management Plan**

- 4.1 Grazing Management Plan Required – Content. Prior to issuance of this Lease, Lessee and Lessor must agree to a written Grazing Management Plan. The content of the plan shall address all activities that may take place under this Lease and include, but not be limited to, consideration of the kind and number of livestock, the season of use, the movement of livestock, the construction of improvements, the vegetation, noxious weed control and other factors identified by Lessor as necessary for inclusion in the plan based on the specific

characteristics of the leased land and/or of Lessee's use of the premises. If the leased land is used in conjunction with federal lands, the Grazing Management Plan prepared for the federal land may be deemed by Lessor, at its discretion, to satisfy the requirements of this section.

- 4.2 Modification of Plan. Lessor may review and modify any Grazing Management Plan upon changes in conditions, laws, or regulations, provided that Lessor shall give Lessee thirty (30) calendar days notice of any such modifications prior to the effective date thereof. Prior to instituting any management changes, Lessee must submit, in writing, the proposed changes to the Grazing Management Plan to Lessor for approval. No management changes shall occur prior to Lessor's written approval of the amended Grazing Management Plan. Modifications mutually agreeable to both Lessor and Lessee may be made at any time.
- 4.3 Annual Plan - Incorporation By Reference. Lessor may require that the Grazing Management Plan be supplemented by Lessee annually through an approved, written Annual Plan, which shall be developed and approved in the same manner as the Grazing Management Plan set forth in paragraphs 4.1 and 4.2 above. The Grazing Management Plan together with any and all subsequently approved amendments thereto and any Annual Plans are hereinafter referred to collectively as the Grazing Management Plan, and shall be incorporated by reference into this Lease.
- 4.4 Compliance Required. Lessee shall abide by all provisions of the Grazing Management Plan. If Lessee fails to abide by the Grazing Management Plan, Lessee will be deemed in breach of this Lease and the lease will be subject to cancellation in accordance with Section 18 of this lease.
- 4.5 Records to be Retained. Lessee must keep records showing the numbers and class of livestock on the leased land and the dates put on and removed from the leased land, as well as records relating to the construction of improvements. Lessor may require Lessee to produce these records.
- 4.6 See Attachment A of this Lease for a summary of the Grazing Management Plan in effect as of the date of execution of this Lease.

5. **Subleasing or Assignment**

- 5.1 Written Approval Required. Lessee shall not sublease or authorize another person to graze livestock on all or any part of Lessee's interest under this Lease, or assign this Lease, without the prior written consent of Lessor to be evidenced by Lessor's execution of consent forms provided by Lessor for that purpose. Any request for approval of a sublease or assignment must be in writing, complying with the statutes or rules governing subleasing, and accompanied by a copy of the proposed sublease agreement and the appropriate processing fee. Lessor may withhold consent for any reason. Any attempt by Lessee to sublease Lessee's interest in the leased land or any part of the leased land or to assign this Lease, shall be void unless Lessor has given such prior written consent. No request for Lessor's approval of any assignment or sublease will be considered unless all rent due has been paid in full, and Lessee is in good standing under the terms of the Lease. No sublease will act as a release of Lessee's obligations hereunder unless Lessor executes a separate written release of Lessee. Lessor has no obligation to so release Lessee, and Lessor can withhold such release at Lessor's sole discretion. Any sublease or assignment will be subject to the provisions of this Lease, including, but not limited to, the existing written Grazing Management Plan. The sublease will only be approved on an annual basis.
- 5.2 Additional Rental Due. In the event the leased land is subleased in accordance with Section 5 for an amount greater than the base rental, Lessee shall in addition to Lessee's annual base rental pay to Lessor an amount equal to one-half (1/2) the difference between Lessee's base rental rate herein established, and the rental rate paid by Sublessee.
- 5.3 Improvements. Upon approved sublease or assignment, ownership of any existing Lessee-owned improvements under this Lease must be separately negotiated between Lessee and such Sublessee or Assignee.
- 5.4 Copies to be Filed. Copies of all assignments, subleases, pasturage or any other agreement of any kind or nature involving the use of the leased land by another person shall be timely filed with Lessor.

6. **Leasehold Mortgage.**

- 6.1 Lessee shall not mortgage, pledge or otherwise dispose of Lessee's interest in the Lease, or any portion thereof, without prior written consent of Lessor. Lessee shall use mortgage or deed of trust forms provided by Lessor, and shall submit completed forms and appropriate fee to Lessor for review and approval. The term of a mortgage agreement shall not exceed the lease term. Lessor may accept or reject a leasehold mortgage at its discretion.

7. **Environmental, Safety and Sanitary Requirements**

- 7.1 No Hazardous Materials. Lessee shall neither commit nor permit the use, placement, transport or disposal of any hazardous waste, including, but not limited to, petroleum products, such as oil, gasoline, or any other substance that is or is suspected to be a hazardous substance or material on the leased land except the customary use associated with machinery, equipment and vehicles. Lessee shall be responsible, and shall pay all costs for the removal or other appropriate remedial action regarding any hazardous waste, substances, or materials which Lessee may have caused to be introduced on the land. Any such remediation or removal or storage must be conducted in accordance with applicable federal, state, or local law, regulation, rule or ordinance and Lessee shall immediately, upon the introduction of any hazardous waste, substances or materials onto the leased premises, contact the Idaho Department of Environmental Quality (DEQ) and enter into a consent order for remediation with DEQ, provided however, Lessee shall not forestall commencing any necessary remediation while negotiating the terms of any consent order with DEQ, unless Lessee is so authorized in writing by Lessor. In event of introduction of any hazardous waste, substances or materials, Lessor may also require Lessee to enter into consent orders or other agreements with any other relevant agency. Lessee shall indemnify, defend and hold Lessor harmless from all costs, expenses, damages or fines relating to pollution and hazardous materials including, without limiting the generality of the foregoing, attorney fees and costs of defense or of enforcement of Lessor's rights hereunder. The amount of any costs incurred by Lessor due to Lessee's violation of this provision shall constitute a lien in favor of the State of Idaho against all of the Lessee's improvements and other property on the leased land including, but not limited to, crops and livestock.
- 7.2 Fire and Safety Regulations. Lessee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, including, but not limited to, the Idaho Department of Lands for fire protection and prevention. Lessee agrees to keep the land free from fire hazards as determined by Lessor. Lessee is prohibited from burning garbage or household trash and any burning on the land, including the burning of wood, weeds or other debris, but excepting campfires necessary for the use under this Lease, requires the prior written permission of Lessor. Any burning must comply with applicable federal, state or local law, regulation, rule or ordinance.
- 7.3 Sanitary Requirements. Concerning activities authorized under this lease, Lessee shall at all times keep the land in a clean and sanitary condition, free of trash, garbage and litter so the land is maintained in the same or better condition as when this Lease was issued. Lessee shall not dispose of sewage except in conformity with applicable federal, state, and local law, rules and regulations pertinent to Lessee's use and shall dispose of sewage on the leased land only if specifically authorized by Lessor. The Lessee shall not store trash on the leased land nor transport trash, garbage, litter or debris onto the leased land. Lessee shall dispose of all trash, garbage and carcasses in conformity with all legal requirements. Lessee is responsible for all costs associated with sewage, garbage and litter disposal.
8. **No Warranty of Suitability - Quiet Enjoyment - Public Use**
- 8.1 No Warranty. Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the land or concerning the suitability of the land for the uses intended by Lessee. Lessee acknowledges that it has accepted the land in an AS IS CONDITION, accepting any and all known or unknown faults therein.
- 8.2 Quiet Enjoyment. Lessor agrees that Lessee, upon payment of the rent and performing the terms of this Lease, may quietly have, hold and enjoy the land, for the purposes and uses allowed hereunder, during the term hereof. Lessee acknowledges that the Lease is non-exclusive, and Lessor retains the right to use of the land, or to grant rights to others for use of the land, to the extent any such use does not materially interfere with Lessee's purpose and uses allowed hereunder, unless otherwise provided for in this Lease.
- 8.3 Public Use. Lessee must allow the general public the right to use the leased land for any lawful use available to the public for lands owned by the State of Idaho. However, nothing in this Lease authorizes or purports to

authorize trespass on private lands to reach state-owned lands. Public use of State lands shall not be restricted without prior written approval of Lessor. This Lease is not an exclusive control lease as described under Idaho Code § 36-1603(b).

9. **Water Right and Water Use**

- 9.1 Water Rights. No water rights are included in this Lease. The establishment of any new water rights during the term of this Lease shall be by and for Lessor and no claim thereto shall be made by Lessee. Such water rights shall attach to and become appurtenant to the leased land.
- 9.2 Water Use Generally. Lessee shall be entitled to use the water on the leased land, but only for the use allowed in this Lease and only insofar as permitted under Idaho water law. Lessee must receive the prior written consent of Lessor or its authorized agent, and the prior written consent of any department or agency of the State of Idaho having jurisdiction to regulate water rights in and for the State of Idaho for any of the following:
- A. To drill and use a water well,
 - B. To develop and use any source of water,
 - C. To cause any water to be conveyed off the land,
 - D. To bring water onto the leased land.
- 9.3 Water Systems. If water is supplied to the land by a water system operated by the State of Idaho, the use of such system and the supply of water provided thereby may be curtailed or terminated upon thirty (30) calendar days written notice to Lessee from Lessor or its authorized agent. Neither Lessor nor its agents and employees nor any entity of the State of Idaho shall be liable in any manner for damage or inconvenience to the Lessee by reason of failure of, damage to, or termination or curtailment of the operation of any water system or source supplying water to the land.

10. **Noxious Weeds**

- 10.1 Lessee shall cooperate with Lessor or any other agency authorized to undertake programs for control or eradication of noxious weeds. Lessee shall take measures to control noxious weeds on the leased land in accordance with Title 22, Chapter 24, Idaho Code, except those resulting from activities beyond the Lessee's control. The cost of control of noxious weeds on the leased land shall be shared by Lessee and Lessor with Lessor's share subject to funds appropriated for that purpose.

11. **Construction of Improvements**

- 11.1 Permit Required. Lessee shall not construct or place improvements or structures of any character (herein referred to as "improvements") on the leased land without the prior express, and written permission of Lessor. Said permission shall be in the form of a permit issued by Lessor, and shall be required for any improvement or structure on the leased land including, but not limited to, range improvements, buildings or other structures, water developments, fences, or the clearing of land. Lessee shall submit construction plans to the Lessor. Once the construction plans are approved and permitted by Lessor, then Lessee shall construct the improvements in full compliance with the approved plans, the permit and all applicable building codes, rules and laws. Permitted improvements shall be the property of Lessee, unless otherwise provided in the permit or approved Grazing Management Plan. Any improvement associated with the uses authorized in this lease and placed on endowment land prior to January 1, 1970 is considered grandfathered and properly authorized even though there may be no documentation of authorization.
- 11.2 Condition of Improvements. At all times during the term of this Lease, Lessee shall keep all improvements in good repair and functional condition to the satisfaction of Lessor. Any and all fences shall be neat, stock-proof, lawful fences and gates.
- 11.3 Maintenance of Improvements. Lessee may be required to remove or reconstruct improvements in poor or non-servicable condition. Existing maintenance agreements on lands acquired from the federal government shall remain in effect until amended by the parties involved. If maintenance is not being accomplished, Lessor shall

provide a letter to Lessee informing Lessee of the lease violation. If work is not begun within thirty (30) calendar days, Lessor may contract repairs and add the amount to the annual rental.

- 11.4 Removing Improvements. Lessee shall not remove, relocate or otherwise alter any improvements without prior written permission from Lessor.
- 11.5 Cost of Improvements. Any permitted improvement constructed by or at the request of Lessee, shall be constructed at Lessee's own expense, unless Lessor and Lessee shall have entered into a prior written cost sharing agreement for construction of such improvement.
- 11.6 Permitted Improvements At Lease Expiration/Termination. Upon expiration or termination of this Lease for any reason, other than a default by Lessee, and in the event Lessor leases the land to a new lessee, Lessor shall require the new lessee to pay Lessee the then existing value of the permitted improvements in accordance with the then existing statutes and rules. Said value shall be determined through an appraisal conducted by Lessor. Improvement payments shall be first applied towards any rent or other monies due to Lessor before being disbursed to Lessee. Lessor does not hereby agree or become obligated to pay any such value to Lessee, such obligation shall be solely on the subsequent lessee, if any. Any improvement which Lessee is entitled or required to remove upon expiration of the lease must be removed within six (6) months of the expiration of the lease, otherwise it is deemed abandoned and title to such abandoned improvement shall vest in the State of Idaho. Provided, however, Lessor may authorize, in writing, prior to the expiration of the six (6) month time period, additional time for removal of improvement(s) by Lessee. Failure of Lessee to remove any such improvement within the extended time period established by Lessor shall constitute an abandonment of Lessee's rights to such improvement.
- 11.7 Improvements Not Approved. At any time during the term of the Lease, or upon expiration or termination of this Lease for any reason, Lessor may require, at Lessor's sole discretion, that Lessee remove any improvement placed on the leased land without a prior permit from Lessor. The full cost of such removal, including the restoration of the leased land, shall be solely Lessee's. In the event Lessor does not elect to require such removal, Lessee's failure to secure such permit shall constitute forfeiture. Title to any improvement placed on the leased land without a permit from Lessor shall, at Lessor's option, immediately vest in Lessor without waiver of Lessor's right to require removal of the same by Lessee.
- 11.8 Lessor's Removal of Improvement. Lessor may, at its discretion, remove or have removed the abandoned or non-permitted improvement and Lessee shall be responsible for the full cost of removal and restoration of the leased land. Nothing in this Section shall relieve Lessee from the obligation to remove any improvement as required by Lessor under other terms within this Lease.

12. No Liens

- 12.1 Lessee will not permit or suffer any liens of any kind or nature to be effected on or enforced against the leased land, including, but not limited to, any mechanics' liens or material suppliers' liens for any work done or materials furnished on the leased land at Lessee's instance or request. Lessee shall ensure that full payment is made for any and all materials joined or affixed to the leased land pursuant to this Lease and for any and all persons who perform labor on the land.

13. Sale Or Reclassification Of Leased Land.

- 13.1 Sale. Lessor may sell all or any portion of the leased land during the term of this Lease. Lessor will notify Lessee that the leased lands are being considered for sale prior to submitting the sale plan to the Land Board for approval. Lessee will be notified of a scheduled sale at least thirty (30) calendar days prior to sale date. Lessee shall deliver immediate possession of the land sold unto Lessor, or to the person or party as may be specified in writing by Lessor or Lessor's designee, unless the land remains subject to the Lease, or unless Lessee is to be permitted to harvest a growing crop before surrendering possession. In the event of a growing crop, Lessee shall have possession of only the land on which the crops are growing, and shall deliver possession of the land upon harvest of the crop. When creditable improvements or growing crops are present, and Lessee delivers possession of the land, Lessor shall appraise them in accordance with Idaho Code § 58-313, or the then existing applicable statute or rule, and Lessee shall be paid for the improvements or crops by the purchaser on the day of sale. Lessee shall have the rights provided by paragraph 11.6, and the then

existing statutes or rules with respect to compensation for permitted improvements placed upon the leased land by Lessee.

- 13.2 Reclassification. The Lease may be cancelled in whole or in part upon one hundred eighty (180) calendar days written notice by Lessor if the leased lands are reclassified for any other use as designated by Lessor. In the event of early cancellation due to reclassification, Lessee will be entitled to a prorata refund of the premium bid for a conflicted lease.

14. Relationship of the Parties

- 14.1 Lessee is not an officer, employee or agent of Lessor. In no event shall any official, officer, employee or agent of Lessor or of the State of Idaho be in any way personally liable or responsible for any covenant or obligation contained in this Lease, express or implied, nor for any statement, representation or warranty made in connection herewith.

15. Reservations by Lessor

- 15.1 Lessor expressly reserves and excepts the following rights:

A. To enter upon the leased land, or any portion thereof, during the term of this Lease for any purpose, including, but not limited to, the purpose of inspecting the leased land.

B. All rights not expressly granted to Lessee under this Lease, including, but not limited to, all rights to timber, oil and gas, geothermal rights, mineral rights, easements and rights-of-way, water, and fee title to the leased land, and title to all appurtenances and improvements placed thereon by Lessor.

C. To grant easements and rights-of-way over and across the leased land. Lessor shall coordinate with Lessee before processing any easement applications on the leased land. The grantee of such easement shall, before exercising the same, pay Lessee the reasonable value of any permitted improvements and any growing and immature crops, if crops or improvements are impacted by the easement. Said value shall be determined by Lessor's appraisal.

D. To issue other leases on the leased premises. Such other leases may be for any purpose deemed appropriate by Lessor, including, but not limited to, the exploration and development of oil, gas, geothermal and mineral resources as provided by Title 47, Idaho Code. In the event any such other Lease is granted by Lessor, the other lessee shall, before exercising the same, pay Lessee the reasonable value of any permitted improvements and any growing and immature crops, if crops or improvements are impacted by the other lease. Said value shall be determined by Lessor's appraisal. If the other lease conflicts with the grazing use or makes consumptive use of forages, the grazing rental will be adjusted to reflect such loss of use.

E. To require that changes be made in the use under this Lease, and/or to the improvements on the leased premises, including, but not limited to, the sanitation or other facilities for the protection of public health, safety, preservation of property or water quality.

F. To reserve as Lessor's sole property any and all water appurtenant to Lessor's land or from any source arising thereon and to hold water rights for any beneficial use that may be developed as a result of this Lease, and as further provided in Section 9 herein.

G. Rights of ingress, egress, and access, over and across the leased land for Lessor and its lessees, permittees, contractors, and assigns on existing roads, or on suitable alternative roads provided by Lessee.

H. To reclassify the land, in whole or in part, for other uses that will better achieve the objective of Lessor. Upon reclassification this Lease may, at Lessor's discretion, be terminated in whole or as to the affected part. In the event of any such termination due to reclassification, the provisions of Section 11 relating to compensation for permitted improvements shall apply.

I. To sell timber on the leased land or otherwise conduct forest management activities, Lessor reserves the right to restrict or prohibit grazing use on all or portions of the leased land for timber management

purposes. Lessee will be given not less than one hundred eighty (180) calendar days written notice of any such restrictions or termination of grazing use, together with a map of the restricted area.

J. To restrict or prohibit grazing on all or any portion thereof of the leased land in response to emergency conditions such as, but not limited to, fires, flooding and drought.

K. To sell all or any portion of the leased land at any time during the term of this Lease, and as further provided in Section 13 herein.

L. To harvest seed from plants on land not under a cropland lease. Lessor will coordinate the harvesting activities with Lessee to minimize impacts on livestock operations or farming operations.

M. To close roads for road protection, wildlife protection or administrative purposes. Planned road closures will be reviewed with Lessee prior to action by Lessor.

N. To claim all permanent improvements placed upon the leased land remaining after six (6) months in cases of abandonment by Lessee or to take possession immediately in cases of cancellation upon breach of any of the conditions of the Lease. No improvements will be disposed of by Lessor until all appeals have been exhausted.

16. Indemnification

16.1 Lessee shall indemnify, defend and hold harmless Lessor, the State of Idaho, its officers, agents and employees from and against any liability, claims, actions, damages, costs, expenses or losses, including reasonable attorney's fees and costs caused by or arising out of the performance, acts or omissions of Lessee, Lessee's agents, officers or employees, or persons using the leased land with Lessee's permission, or otherwise arising out of Lessee's use or occupation of the land; or arising from the failure of the same to comply with any applicable state, federal, local, law, statute, rule, regulation, act, or provision of this lease. This duty to indemnify, defend and hold harmless shall encompass any claims which include or allege negligence of Lessor, its agents, officers or employees other than claims which arise solely out of negligence on the part of Lessor, and this duty shall survive the termination or expiration of this Lease.

17. Payment of Taxes, Assessments or Fees - Lien

17.1 Unless otherwise provided, Lessee shall pay all water charges, fees, assessments or taxes of whatsoever nature that may be legally levied or assessed against the land herein described, or any portion thereof or on any improvements thereto. If the same is not paid, it shall constitute a lien in favor of the State of Idaho against all improvements, livestock or crops growing on the leased land.

18. Lessee's Default

- 18.1 Lessee's Failure to Comply. Lessee's failure to comply with any of the terms of this Lease or the Grazing Management Plan shall be a breach giving rise to a basis for termination of the Lease. Lessor shall provide Lessee thirty (30) calendar days written notice of the cancellation and, if applicable, the corrective action required of Lessee. The notice shall specify a reasonable time to make a correction or cure the violation or breach, if such breach is subject to correction or cure. If the corrective action or cure is not taken within the specified time or does not occur, then the Lease shall be automatically terminated on the date specified in the written cancellation notice without any further notice or demand, unless otherwise agreed by Lessor in writing. Lessee shall not, while in default, remove any of the improvements, livestock or crops thereon, whether crops are harvested or not unless directed by Lessor. In addition to the rights and remedies specifically granted to Lessor under this Lease, Lessor shall have such other rights and remedies against Lessee as are available at law or in equity, and Lessor's pursuit of any particular remedy for breach shall not, in and of itself, constitute a waiver or relinquishment of any other compatible claim of Lessor against Lessee.
- 18.2 Lessor's Performance Upon Lessee Default. In the event Lessee fails to perform any act or do anything which Lessee is required to do under the terms of this Lease, Lessor shall have the right, but not the obligation, to perform on behalf of Lessee, any such action. Lessee shall immediately reimburse Lessor for all costs and expenses, including attorney fees, (including fees from the Office of the Attorney General of the State of Idaho),

incurred by Lessor in performing any such act or thing. Lessee's obligation to pay costs hereunder shall be deemed to be additional rent fully due and payable on demand from Lessor.

19. **Surrender of Land**

- 19.1 Lessee shall, at the termination or expiration of this Lease, deliver immediate possession and vacate the leased land, leaving it in the same or better condition than it was in at the time of Lessee's entry on such premises under this agreement, except for reasonable use and wear, acts of God, or damage by causes beyond the control of Lessee, and upon vacating shall leave the demised land free and clear of all rubbish and debris, and with all improvements in good order and condition.

20. **Cancellation By Mutual Agreement**

- 20.1 Leases may be cancelled by mutual agreement between the Lessor and the Lessee. The Lessor will not unreasonably withhold approval of a request for cancellation by a Lessee.

21. **Notices**

- 21.1 Notices. Any notice or any demand given under the terms of this Lease shall be deemed given and delivered on the date when personally delivered or if mailed, the date same is deposited in the United States Mail, and mailed by regular or certified mail, postage prepaid and properly addressed to the appropriate party.
- 21.2 Addresses. Until changed by notice in writing, notice, demands, and communications under this Lease shall be addressed to Lessor at:

Idaho State Board of Land Commissioners
954 W. Jefferson Street
PO Box 83720
Boise, Idaho 83720-0050

and to Lessee at the address set forth at the beginning of this Lease. Any notice or correspondence mailed to Lessee at the last identified address shall be deemed effective delivery. It is Lessee's duty to notify Lessor, in writing, of any change in mailing address.

22. **Waiver**

- 22.1 The waiver by Lessor of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of any past, present or future breach of the same or any other term, covenant or condition of this Lease. The acceptance of rent by Lessor hereunder shall not be construed to be a waiver of any violation of the term(s) of this Lease. No payment by the Lessee of a lesser amount than shall be due according to the terms of this Lease shall be deemed or construed to be other than a part payment on account of the most recent rent due, nor shall any endorsement or statement of any check or letter accompanying any payment be deemed to create an accord and satisfaction.

23. **Attorneys' Fees and Costs**

- 23.1 In the event Lessor initiates a legal proceeding of any kind instituted under this Lease or to obtain performance of any kind under this Lease, and Lessor prevails, Lessor shall be awarded such additional sums as the court may adjudge for reasonable attorney's fees (including fees from the Office of the Attorney General of the State of Idaho) and to pay all costs and disbursements incurred in such proceeding, including, but not limited to, accountants' fees and fees of appraisers or other experts.

24. **Lessee's Compliance with Applicable Laws and Rules**

- 24.1 Full compliance. Lessee shall fully comply with all applicable federal, state, or local statutes, ordinances, rules, regulations and laws now existing or hereafter enacted. This shall include, but not be limited to, all applicable rules and regulations and standards promulgated by the State Board of Land Commissioners or the Idaho Department of Lands, including but not limited to, the rules governing grazing leases and cropland leases, IDAPA 20.03.14.

- 24.2 No Waste or Nuisance. Lessee shall not use the land in any manner that would constitute loss or waste, nor shall Lessee allow the same to be committed thereon. Lessee shall not do anything which will create a nuisance or a danger to persons or property.
25. **Miscellaneous**
- 25.1 No Trespass. Lessee shall not use nor allow Lessee's livestock to graze or run at large over lands belonging to Lessor not under lease to Lessee or approved within the Grazing Management Plan.
- 25.2 Appraisals and Valuations. Any appraisal or valuation by Lessor called for in this Lease shall be done by Lessor in accordance with applicable state law and regulations, and the then existing policy of Lessor. Lessor's appraisals and valuations shall be conclusive.
- 25.3 Subject to Existing Leases/Easements. This Lease is expressly subject to any right-of-way, easement, lease or contract, including, but not limited to, any present or future timber sale contract, that are now in force and effect or that may hereafter be granted relating to the leased land.
- 25.4 Timber. This Lease does not authorize Lessee to cut any timber growing on the land leased. Any unauthorized use of such timber by the Lessee or with his knowledge or consent, shall work a forfeiture of this Lease without notice, and said Lessee shall be responsible for damages in the amount of treble the value of the timber used or taken and all other damages. Said timber value to be determined by Lessor.
- 25.5 Modification. This Lease may be modified only by a fully executed Lease adjustment on a form provided by Lessor.
- 25.6 Binding on Heirs and Successors. This Lease, including the Grazing Management Plan, shall inure to the benefit and be binding upon the heirs, executors, successors, sublessees, and assigns of the parties.
- 25.7 Lessee's Non-Discrimination. Lessee shall not discriminate against any person because of race, creed, religion, color, sex, national origin or disability.
- 25.8 Paragraph Headings. The paragraph headings, titles and captions used in this Lease are for convenience only and are not part of the Lease.
- 25.9 Entire Agreement. This Lease, including all exhibits attached hereto, contains the entire agreement between the parties concerning the subject matter hereof and supersedes any and all prior agreements. The execution of this Lease has not been induced by either party, or any agent of either party, by representations, promises or undertakings not expressed herein and, further, there are no collateral agreements, stipulations, covenants, promises, inducements or undertakings whatsoever between the respective parties concerning this Lease except those which are expressly contained herein.
- 25.10 Governing Law and Forum. This Lease shall be construed in accordance with and governed by the laws of the State of Idaho and the parties consent to the jurisdiction of Idaho State courts located in Ada County in the event of any dispute with respect to this Lease.
- 25.11 Severability. In the event any provision of this Lease shall be held invalid or unenforceable according to law, for any reason whatsoever, then the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.
- 25.12 Counterparts. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.