

Jan 5 2008 RECEIVED BY

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MAIL 97912

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

In Re SRBA) Subcase No. 79-10206
)
) AFFIDAVIT OT THOM HAWKINS DATED
) DECEMBER 20, 2007
Case No. 39576)
)
)
)

STATE OF IDAHO)
) ss
County of Lewis)

1. I am a competent adult, over the age of eighteen years, and have personal knowledge of the facts stated herein.

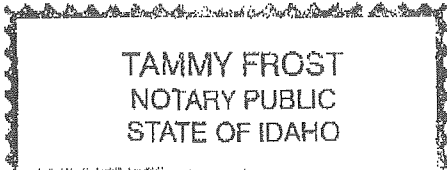
2. I am employed by the Idaho Department of Lands, hereinafter referred to as "IDL," and have been so employed since 1975. My present position is the Area Supervisor for the Craigmont Area, which includes within its administrative boundaries the place of use for water right no. 79-10206.

3. Mr. Andrew Dahlquist, the claimant of water right no. 79-10206, leased from the IDL some real property in the vicinity of the place of use for water right no. 79-10206. I directed the staff of the IDL to conduct a search of the records of the IDL to find the lease records related to Mr. Dahlquist. Those records have not been found. The references that were found include a 1980 lease indentifying Andrew Dahlquist & Phillip Wimer as lessce's, a letter September 20th 1989 to Phillip Wimer to pay the lease as it had not been being used and a letter dated April 15, 1994, which indicated that the lease to Mr. Dahlquist was in the process of being assigned to Myrtic Hagen.

4. State of Idaho Grazing Lease No. G-4590 included within the leased land the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 36, Twp. 29 North, Rge. 01 East, B.M., which is the place of use for water right no. 79-10206. The Idaho State Board of Land Commissioners cancelled Grazing Lease No. G-4590 for this land on December 31, 1999 and executed a new Grazing Lease No. G-4590 with Myrtie Hagen for a term from January 1, 2000 through December 31, 2009, which was limited to the E $\frac{1}{2}$ E $\frac{1}{2}$ of section 36, Twp. 29 North, Rge. 01 East, and to the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of sec. 30, Twp. 29 North, Rge. 02 East, all in the Boise Meridian. Steve Hagen, executor of the Myrtie Hagen Estate, subsequently assigned Grazing Lease No. G-4590 to Heather & Les Killgore and to Carl Killgore in 2006. A true and correct copy of the assigned lease to Heather & Les Killgore and Carl Killgore is attached as Attachment I. Thus, the IDL does not presently

have a lease for the NW¼NW¼ of section 36, Twp. 29 North, Rgc. 01 East, B.M., which is the place of use for water right no. 79-10206.

5. Further your affiant sayeth naught.



Thom Hawkins
THOM HAWKINS

SUBSCRIBED AND SWORN to before me this 20th day of December 2007.

Tammy Frost
Notary Public for: the State of Idaho
Residing at: Grangeville
Commission expires: February 01, 2012

CERTIFICATE OF SERVICE

I certify that on the 14th day of ~~December~~ January 2007, I caused to be served the original and/or copy of this AFFIDAVIT OF THOM HAWKINS DATED DECEMBER __, 2007 on each of the following persons by the indicated method.

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☒ ~~U.S. Mail, postage prepaid~~
☐ Hand Delivery
☒ Federal Express
☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to

Andrew L. Dahlquist
206 Hillcrest Road
Lewiston, ID 83501

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

Heather & Les Killgore
Carl Killgore
HC01 Box 160
Whitebird, ID 83554

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

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

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

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

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

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

Not Applicable


DAVID J. BARBER
Deputy Attorney General

ATTACHMENT I



BUREAU OF SURFACE AND MINERAL RESOURCES
APPLICATION FOR ASSIGNMENT OF
GRAZING / CROPLAND LEASES

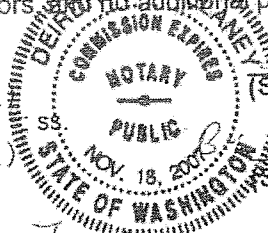
For and in consideration of 0.00 dollars, paid for the lease and 0.00 dollars paid for improvements and/or personal property, the receipt of which is hereby acknowledged, we hereby sell, assign and transfer unto: (name) HEATHER & LES KILLGORE, CARL KILLGORE
(addr) 4001 BOX 160 WHITE BIRD ID 83554, Telephone (208) 839 2255
all of my/our right, title and interest in State of Idaho Lease # G-4590
(If only part of lease is being assigned, list or attach a legal description of all lands being assigned;
OR if all of lease is being assigned write 'All Lands Within Lease'.)

ACCEPTANCE AND ASSUMPTION BY ASSIGNOR:

I/We hereby swear and affirm that the consideration stated herein is the full and complete amount paid by the assignees to the assignors, and no additional payment has been or will be made.

STATE OF WASHINGTON

County of WALLA WALLA



[Signature]
(Signature of Assignor / Current Lessee)

[Signature] P O A
(Signature of Assignor / Current Lessee)

On this 19 day of JULY in the year 2006 before me a Notary Public, in and for the State of WA personally appeared STEVE HAGREN and acknowledged to me that he executed the foregoing instrument.

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

[Signature]
Notary Public

WALLA WALLA
Residing at

11-18-07
My Commission Expires

ACCEPTANCE AND ASSUMPTION BY ASSIGNEE:

I/We hereby swear and affirm that the consideration stated herein is the full and complete amount paid by the assignees to the assignors, and no additional payment has been or will be made.

STATE OF IDAHO)
NOTARY PUBLIC)
County of IDAHO) ss.

[Signature]
(Signature Of Assignee / New Lessee)

[Signature]
(Signature Of Assignee / New Lessee)

On this 19th day of December in the year 2006 before me a Notary Public, in and for the State of IDAHO personally appeared Heather & Lesly R. Killgore, Carl Killgore and acknowledged to me that he executed the foregoing instrument.

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

Notary Public

White Bird, ID
Residing at

6/13/08
Commission Expires

Recorded this 14th day of March, 20 07.

IDL Form 1520 (4/03)

[Signature]
For Chief, Bureau of Surface and Mineral Resources

STATE OF IDAHO
STATE LAND LEASE

LEASE NUMBER: Q-4530

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 Myrtie Hagen (lessee)
512 West South 1st Grangeville, D ID 83510
(Address) (City) (State) (Zip)

This lease shall commence January 1, 2000, and terminate December 31, 2009.

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

Assigned to Heather and Les Killgore and Carl Killgore
of HC 01 Box 160
Whiteland ID 83554
Recorded March 14 2007

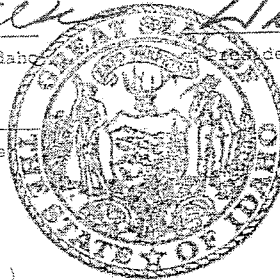
The lessor, in consideration of the rental paid and the covenants, conditions and restrictions hereinafter set forth, in attachment B, does hereby lease and demise unto the lessee the lands described in attachment A at the rates and uses specified herein: grazing 161.83 acres containing 22.00 AUMs, cropland 0.00 acres of dryland at 0.00 per acre, 0.00 acres irrigated land at 0.00 per acre and 0.00 acres of wasteland at 0.00 per acre, miscellaneous 0.00 per annum, or 0.00 premium bid.

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

COUNTERSIGNED:

STATE BOARD OF LAND COMMISSIONERS OF THE STATE OF IDAHO

Pete T. Cenarrusa Secretary of the State of Idaho
Stanley F. Hamilton Director Department of Lands
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 26th day of June, in the year 2000, 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 Pete T. Cenarrusa, known to me to be the Secretary of the State of Idaho; and Stanley F. Hamilton, 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 Busa, Idaho, Commission expires 6-8-2001

Susan Moore
NOTARY PUBLIC
STATE OF IDAHO
Notary Public for Idaho

***** L E S S E E *****

Myrtie Hagen (lessee)

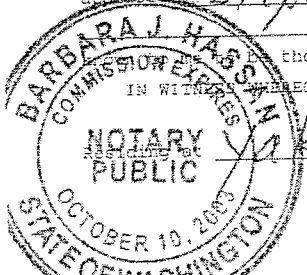
Washington
STATE OF ~~IDAHO~~

Stephen J. Hagen POA (lessee)

COUNTY OF Yakima

On this 1 day of June, in the year 2000, before me, a Notary Public in and for said State, personally appeared Stephen J. Hagen

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.



Yakima Washington
Commission expires 10-10-2003

Barbara J. Nassan
Notary Public for Idaho

STATE OF IDAHO
STATE LAND LEASE

LEASE NUMBER: G-4590
PAGE 2

ATTACHMENT A

SPECIAL PROVISIONS:

161.83 acres with 22 will be grazed in accordance with the approved grazing management proposal.

Hagens are responsible for fencing, water development and working with the Salmon River Weed Management Zone to control noxious weeds.

Approximately 40-50 pair of Rich Anderson's cattle will run on state and private leased lands for a 35-day period in the spring, beginning in early or mid-April.

DESCRIPTION OF PROPERTY:

COUNTY	ACRES	SUBDIVISION DESCRIPTION	SEC.	TWP.	RGE.	ENDOW.
IDAHO	145.00	PT E2E2	36 00	29 N	1.0 E	PS
IDAHO	16.83	PT SENW	30 05	29 N	2.0 E	AC

STATE OF IDAHO
STATE LAND LEASE

Lease Number G-4590
Page 1 of 2

ATTACHMENT B

This lease is made pursuant to the laws of the State of Idaho and the Rules and Regulations governing grazing leases and cropland leases, IDAPA 20.03.14

1. **USE OF LAND**

The lands herein described shall be used for the purpose of grazing and farming as specified on the signature page; no other uses shall be made of these lands without the prior written approval of the lessor.

2. **RECLASSIFICATION OF LAND USE**

At the sole discretion of the lessor, lands under this lease may be reclassified in whole or in part for agricultural, commercial, homesite, or other purposes that would result in increased rentals to the lessor. For uses other than cropland or grazing the lands affected will be dropped from the lease.

3. **RATE OF RENT – CHANGE OF RENT**

Lessee agrees to pay to the lessor, in lawful money of the United States, each year's rent in advance, and prior to the legal possession of the property for such year, an annual rent for each acre of cropland and every AUM covered by this lease. The rent shall be payable on or before the date specified on the signature page. The lessor reserves the right to increase or decrease the annual rent, and the lessee will be notified six months in advance of the first payment of any increase.

4. **RIGHT OF LESSOR TO SELL – APPRAISAL OF IMPROVEMENTS – APPROVAL OF IMPROVEMENTS REQUIRED**

The lessor reserves the right to sell all or any portion of the land herein described and the lessee agrees to deliver immediate possession unless the lessee is to be permitted to harvest a growing crop. In such event, lessee shall have possession of only the land on which such crops are growing. The lessee will be notified of a scheduled sale at least thirty (30) days prior to sale date. When creditable improvements or growing crops are present, they will be appraised in accordance with Idaho Code, Section 58-313, by the lessor and the lessee will be paid for the improvements or crops by the purchaser on the day of sale; lessor's appraisal shall be conclusive.

Prior written approval of lessor is required to make permanent range improvements, construct permanent buildings, or clear the land for agricultural uses. Failure to secure such written approval shall constitute forfeiture of the value of such improvement in case of sale or lease conflict.

5. **RENEWAL OF LEASE – APPRAISAL OF IMPROVEMENTS**

If the lessee is not the successful bidder at the expiration of this lease then the value of improvements recognized in Section 4 above shall be paid by the successful bidder to the lessee prior to possession provided no delinquent rent is owed. Improvement payments shall be applied towards any rent due before being disbursed to lessee.

6. **RELINQUISHMENT OF RIGHTS**

The lessee agrees to relinquish possession of the leased premises upon breach of any of the conditions herein set forth, with all permanent improvements thereon in good order and condition when such breach results in cancellation or forfeiture of this lease.

7. **TIMBER ON LAND UNDER LEASE – STATE FIRE LAWS**

This lease is made subject to all present and future timber sale contracts. The lessor reserves the right to restrict or prohibit grazing use on all or portions of the land leased for timber management purposes. The lessee will be given one hundred eighty (180) days written notice, prior to turn out of livestock on lands leased, of any such restrictions or termination of grazing use, together with a map of the restricted area. This lease does not authorize the 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 his lease without notice, and said lessee shall be responsible for treble damages to said timber. Lessee is subject to the provisions of state fire laws except for fire protection charges.

8. **MINERAL RESERVATIONS**

This lease is subject to any mineral lease (including oil, gas and geothermal resource leases) that is now in force or effect or that may hereafter be granted on the lands or any part thereof included herein as provided by Title 47, Idaho Code; provided, however, when a mineral lease is granted after the granting of this lease, the mineral lessee shall give a good and sufficient bond to protect the lessee herein from all damage occasioned to the surface of the lands embraced in this lease, or improvements thereon, whether the damage is due to mineral extraction or rights-of-way or other activities incident to mineral extraction.

9. **GRAZING REGULATIONS**

For grazing use, the grazing period and the number of stock may be fixed and determined by the lessor. The grazing lessee shall furnish such information as may be required from time to time, to assist in determining the grazing period and number of stock to be grazed. A lessee may be required to participate in a resource management plan which includes all or part of the lands described herein. Any written agreement concerning a management plan will be a condition of this lease.

Where sheep are grazed on land included in this lease, they shall not be bedded more than two nights consecutively on the same bedding ground without prior approval of the lessor.

10. PAYMENTS OF TAXES AND WATER CHARGES

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

11. SUBLEASING – ASSIGNMENT

The lessee shall not sublease any of the land embraced in this lease without prior written approval of lessor. The lessee shall not assign this lease except upon the written approval of the lessor on forms provided for that purpose, and only where the rent owing has been paid in full, except that if a rental extension has been granted, such extension shall be assumed by the assignee and if improvements exist, such will be purchased by the assignee.

12. RIGHT OF ENTRY AND INSPECTION – ABANDONMENT

The lessor reserves the right to enter upon land, or any portion thereof, during the term of this lease for the purpose of inspecting the property. Should any of the property covered by this lease be abandoned, or the lease cancelled or forfeited for any breach of condition herein contained, all improvements placed upon the property by the lessee shall remain a part of the realty and title thereto shall vest in the State of Idaho.

13. LESSOR PROTECTED AGAINST WASTE – NOXIOUS WEED CONTROL

The lessee shall use the property under this lease in such manner as will best protect the State of Idaho against loss or waste, and shall cooperate with the lessor or any other agency authorized to undertake programs for control or eradication of noxious weeds. The lessee shall take measures to control noxious weeds on the leased land in accordance with Title 22, Chapter 24, Idaho Code. Control of noxious weeds on state grazing lands shall be shared jointly by the lessee and lessor with the lessor's share subject to funds appropriated for that purpose.

14. FORFEITURE OF LEASE

In case the lessee fails to comply with any of the covenants, terms or conditions of this lease, the lessor may forfeit or cancel the lease upon ten days notice to the lessee and the lessee shall not, during the period of notice, remove any of the improvements or crops thereon, whether the crops have been harvested or not. The lessee shall, upon lease expiration, deliver immediate possession of the lands herein to the lessor without further notice or demand.

15. EASEMENTS

The lessor reserves the right to grant easements and rights-of-way across or upon the land described in this lease and to grant immediate possession thereof to the grantee of such easement. The lessor shall coordinate with the lessee before processing any easement applications on the leased land. The grantee of such easement shall, before exercising the same, pay to the lessee the reasonable value of the growing and immature crops and improvements, as determined by the lessor's appraisal; lessor's appraisal shall be conclusive. This lease is subject to any right-of-way or easement heretofore granted over the lands embraced by this lease.

16. PUBLIC USE

The lessee must allow the general public the right to use the lands described in the lease for outdoor recreation. However, nothing in this lease authorizes or purports to authorize trespass on private lands to reach state-owned lands. State lands shall not be restricted without prior written approval of the lessor. Grazing or cropland leases will not be considered exclusive use leases as described under Idaho Code, Section 36-1603.

17. WATER RIGHTS

The establishment of any water right or rights shall be by and for the lessor, and no claim thereto shall be made by the lessee; such rights shall attach to and become appurtenant to said land. The lessee shall not cause any water to be conveyed off the land without prior written approval of the lessor.

18. SEED HARVEST

The lessor reserves the right to harvest seed from plants on land not under a cropland lease. The lessor will coordinate the harvesting activities with lessee to minimize impacts on livestock operations.

19. ROAD CLOSURE

The lessor reserves the right to close roads for road protection, wildlife protection or administrative purposes. Planned road closures will be reviewed with lessee prior to action. The lessee will have the right to appeal to the Land Board decisions affecting his use.

20. LIABILITY

The lessee shall indemnify and hold harmless the lessor, its departments, agencies and employees for any and all claims, actions, damages, costs and expenses which may arise by reason of lessee's occupation of the leased premises, or the occupation of the leased premises by any of the lessee's agents, or by any person occupying the same with the lessee's permission.

21. BINDING ON HEIRS

All of the terms, covenants, and conditions of this lease shall be binding upon the heirs, executors and assigns of the lessee.

22. CIVIL RIGHTS

The lessee shall not discriminate against any person on the basis of such person's race, creed, color, sex, national origin or handicap.

STATE OF IDAHO
STATE LAND LEASE

ATTACHMENT A-1
SPECIAL PROVISIONS
GRAZING / CROPLAND MANAGEMENT PROVISION

Lease Number: G-4590

Lease Applicant: Les and Heather Kilgore, and Carl Kilgore

Allotment Name: White Bird Hill

Cropland (if applicable):

Crops planted _____.

Crop rotation schedule _____.

Grazing (if applicable):

	<u>(Number of Livestock by Class)</u>				
cow/calf pairs	<u>14</u>	yearlings	<u>3</u>	bulls	_____
sheep	_____	horses	_____	other (specify)	_____

(Number of AUMs by Class for Billing)

cattle	_____
sheep	_____

Season of Use (specific dates and total number of days): April 10 -May15 and October15 -Nov. 15

MANAGEMENT PROVISION

The following Management Provision is a summary of the grazing and/or cropland management strategy agreed to by the Lessee and Idaho Department of Lands to address identified resource concerns and management objectives.

This parcel is fenced in with approximately 474 acres of private deeded land. Cows are turned out approximately April 10 to May 15 and then may be returned in the fall from Oct. 15 to Nov. 15, depending upon range conditions. The lessees will actively participate in the Salmon River Weed Management Zone. Star thistle is already present, but lessee will monitor for new invaders.

Dated: _____

Lease No _____



LAND EXCHANGE ADDENDUM

Les and Heather Kilgore and Carl Kilgore, holder(s) of State Lease G-4590, does/do hereby acknowledge that land described as Section 36, Pts. E2E2 and Section 30, Pts. SENW is included in our lease, and is proposed for land exchange.

We agree that the lands above-referenced may be deleted from our lease by the Department of Lands upon thirty (30) days written notice from the Director, Department of Lands, upon the consummation of the proposed land exchange.

Our signature on this document constitutes the necessary agreement to the land exchange in accordance with Section 58-138, Idaho Code.

We understand that we may continue to use the lands described above in accordance with our state lease for the balance of the year in which the lands are deeded, unless otherwise notified, in writing, by the Department of Lands.

This Land Exchange Addendum, upon the signature of the LESSEE and the approval of the Director, Department of Lands, will become a part of the above referenced state lease and will be binding (as a provision of the lease) upon the LESSEE, his heirs, successors and assigns.

Vivian Kilgore
LESSEE

3/5/07
DATE

LESSEE

DATE

John W. H.
Witnessed by

3-5-07
DATE

APPROVED Tracy Behrens
For Director, Department of Lands

3-13-07
DATE