

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1542

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

LESSOR: HOLBROOK FARM LLC
1291 US HIGHWAY 258 NORTH
KINSTON, NC 28504

SUPPORT DATA
IN FILE # 17-2028

RECEIVED
AUG 24 2022
DEPARTMENT OF
WATER RESOURCES

RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources and received by the Department on January 10, 2022.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

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

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

Summary of Water Rights or Portions Leased to the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
17-2028	7/30/1953	GROUND WATER	1.19	432	157.8
17-2030	3/4/1954	GROUND WATER	0.83	161	46.1
17-2045	7/24/1959	GROUND WATER	1.61	251	154.2
17-7007	8/24/1970	GROUND WATER	3.20	881	332.1
Combined Limit Totals			6.62	1,720	492.7
Combined Lease Totals			6.84	1,720	690.2

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

Minimum Payment Acceptable: Current Rental Rate

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2022 to December 31, 2022. This Lease shall bind the parties and take effect when both parties have signed it.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.

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WATER SUPPLY BANK LEASE CONTRACT No. 1542

5. **CHANGE OF WATER RIGHT:** This lease specifies water right elements including but not limited to: diversion rates; diversion volumes; number of acres authorized to be irrigated; places of use; points of diversion; beneficial uses; and seasons of use. During the term of this lease, if a water right is administratively changed due to a water right split and renumbering, this lease may be reduced by an equal amount to reflect the water right elements as legally defined under the water right. If a lease contract cannot be reduced sufficient to reflect the legal definition of a water right as amended through a water right split and/or water right transfer, the Board may release the water right from the Water Supply Bank.
6. **ASSIGNMENT OF CONTRACT:** This lease is between the Board and the Lessor, who is the recognized owner or designated representative of the recognized owners of water rights described herein. Should ownership of any part of a water right herein described change during the term of this lease, either through a water right split, a water right transfer, sale of property to which the water right is appurtenant, or through any other recognized water right reassignment, the lease benefits and obligations to the conditions of acceptance for any such water rights will be assigned to the new owners.
7. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

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

LESSOR: HOLBROOK FARM LLC
1291 US HIGHWAY 258 NORTH
KINSTON, NC 28504

By 
Title PARTNER
Date 8/9/2022

IDAHO WATER RESOURCE BOARD
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

By 
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 8/24/22

Lease approved by IDWR 

Date 8/24/22

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1542

ATTACHMENT A WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Source and Location of Point(s) of Diversion for Water Right No(s): 17-2028, 17-2045, 17-2030, and 17-7007

GROUND WATER	NENE	Sec. 8	Twp 15S	Rge 33E	ONEIDA County
GROUND WATER	L 1(NWNW)	Sec. 18	Twp 15S	Rge 33E	ONEIDA County
GROUND WATER	SESW	Sec. 8	Twp 15S	Rge 33E	ONEIDA County
GROUND WATER	NWNE	Sec. 8	Twp 15S	Rge 33E	ONEIDA County
GROUND WATER	NWNE	Sec. 8	Twp 15S	Rge 33E	ONEIDA County
GROUND WATER	SWSE	Sec. 7	Twp 15S	Rge 33E	ONEIDA County

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
15S	33E	7	38	9.6	10	39	9.3	43 L1	41 L2	8.4	8.4	44 L3		4.3	39	13	38	32	377.0
15S	33E	8					3.1	8.1	7.0	3.6	3.8	8.1	1.9	2.3	2.1	2.8	1.0	1.9	45.7
15S	33E	9											0.2						0.2
15S	33E	17					1.3	0.8											2.1
15S	33E	18	28	36	0.2		3.5												67.7

Total Acres: 492.7

ADDITIONAL CONDITIONS OF ACCEPTANCE

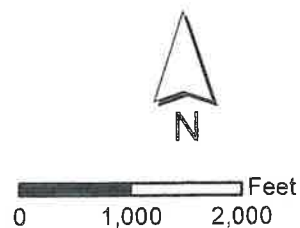
1. The water rights referenced above will be rented from the bank at the current rental rate.
2. There is no rental payment to the lessor of the water right if the right or a part thereof is not rented from the bank.
3. While a right is in the bank, the lessor may not use the right without approval of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

STATE OF IDAHO
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8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other Department application process.
9. In accordance with Idaho Code § 42-248 and § 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.
10. If a water right leased into the Water Supply Bank is sold or conveyed during the lease term, and if the leased right was rented, the rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:
 - a. Rental payments will go to the lessor(s) of record at the beginning of the rental season, even if the Department processes a Notice of Change in Water Right Ownership during the rental season.
 - b. New lessor(s) of record will receive payment for any subsequent rental seasons.
11. The water rights are leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.
12. The unleased portions of right 17-2028 is limited to the irrigation of 236.2 acres within the authorized place of use in a single irrigation season.
13. The unleased portions of right 17-2030 is limited to the irrigation of 68.9 acres within the authorized place of use in a single irrigation season.
14. The unleased portions of right 17-2045 is limited to the irrigation of 230.8 acres within the authorized place of use in a single irrigation season.
15. The unleased portions of right 17-7007 is limited to the irrigation of 496.9 acres within the authorized place of use in a single irrigation season.
16. These rights when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
17. The unleased portions of rights 17-2028, 17-2030, 17-2045 and 17-7007 when combined shall not exceed a total diversion rate of 9.91 cfs and the irrigation of 737.3 acres.
18. The unleased portions of rights 17-2028, 17-2045 and 17-7007 when combined shall not exceed the irrigation of 668.4 acres.
19. The unleased portions of rights 17-2028 and 17-7007 when combined shall not exceed the irrigation of 612.6 acres.
20. The unleased portions of rights 17-2028 and 17-2045 when combined shall not exceed the irrigation of 291.9 acres.
21. The unleased portions of rights 17-2045 and 17-7007 when combined shall not exceed a total diversion rate of 6.88 cfs.
22. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.

17-2028, 17-2030, 17-2045, and 17-7007
Effective until December 31, 2022



STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

JAN 10 2022

DEPARTMENT OF
WATER RESOURCES

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

Designated Applicant Holbrook Farm, LLC

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

Water Right No. 17-2045

(One water right per application)

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

Yes ☒ No ☐

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

MINIMUM REQUIREMENT CHECKLIST

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

Yes

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

Attachment N/A Yes

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

Department Use Only

Fee Amount \$ <u>500 -</u>	Received By: <u>Ku</u>	Date Received: <u>1.10.22</u>	Receipt # <u>C111675</u>
W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)		Name on W-9: <u>US Farming Realty Trust II LP</u>	

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

1. CONTACT INFORMATION

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

Designated Applicant Holbrook Farm, LLC

Mailing Address 1291 US Highway 258 North Kinston, NC 28504

Street

City

State

Zip Code

Email Address _____

Phone Number _____

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

OR

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

- B. Has the Designated Applicant submitted an IRS Form W-9 to this Department within the last 2 years? Yes ☐ No ☒

If no, complete the form and attach to this application (Attachment 1B).

- C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes ☒ No ☐

If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

- D. Is this application being completed by an authorized representative of the Designated Applicant? Yes ☒ No ☐

If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1D).

Name of Representative Greg Sullivan

Organization Brockway Engineering

Professional Title Engineer

Email Address greg.sullivan@brockwayeng.com

Mailing Address 2016 N. Washington St. Ste 4 Twin Falls, Idaho 83301

Phone Number 208-736-8543

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

OR

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

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

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

OR

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

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

3. MAP

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

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

4. GENERAL INFORMATION

- A. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 4A).
If your water right is delivered through a canal, lateral or ditch operated by a canal company, irrigation district, or similar delivery entity, your lease request must include written consent from the company, district, or similar entity for your removal of water from its system pursuant to [Section 42-108, Idaho Code](#) and [IDAPA WSB Rule 37.02.03.25.02e](#).
- B. Please provide a description of the current water diversion and delivery system.
Existing well, motor, pump and delivery system.

- C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank. 17-7007, 17-2028, 17-2045, 17-2030

- D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? Yes ☒ No ☐
Stacked water rights are used together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of \$500.
- E. Will the present place of use continue to receive water from any other source? Yes ☐ No ☒
If yes, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased. _____

- F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. Portions of this water right have been leased into the Idaho Water Supply Bank annually for the past several years. Portions of this water right not leased into the Water Supply Bank have been used for irrigation annually.

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

- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan?
If yes, describe. Yes ☐ No ☒

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

5. SALE/LEASE AGREEMENT

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

If lease, specify the years when the use of water will be suspended: 2022 to 2022 (maximum lease period 5 calendar years).
(Year) (Year)

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

Current rental rate.

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this water right for sale or lease to the Idaho Water Resource Board.

The Designated Applicant acknowledges the following:

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



Signature of Designated Applicant

GABRIELE ONORATO

Printed Name

12-1-2021

Date

Signature of Authorized Representative

Printed Name

Date

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

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

ATTACHMENT 2

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

1. <u>Water Right Number</u>	Nature of Use	Leased Rate (cfs)	Leased Volume (af)	Leased Acres (ac)
17-2045	Irrigation	1.64	254.4	156.3
	Total Amounts:	1.64	254.4	156.3

2. Source of water Ground Water tributary to _____

3. Point(s) of diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
15S	33E	7			SW	SE	Oneida
15S	33E	8			NE	NE	Oneida
15S	33E	8			NW	NE	Oneida
15S	33E	8			NW	NE	Oneida
15S	33E	18			NW	NW	Oneida



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

Governor Brad Little

Director Gary Spackman

August 30, 2022

HOLBROOK FARM LLC
11291 US HIGHWAY 258 NORTH
KINSTON, NC 28504

**RE: WATER SUPPLY BANK LEASE CONTRACTS 1542 & 1543
FOR WATER RIGHTS 17-2028, 17-2030, 17-2045 & 17-7007**

Dear Lessor:

Water rights **17-2028, 17-2030, 17-2045 & 17-7007** were leased into the Water Supply Bank (Bank) as of January 1, 2022, in accordance with the enclosed executed lease contract. **Your water rights, as described on the lease contract, are considered leased into the Bank and should remain unused until they are formally released from the Bank.** More information and further restrictions placed on your water rights while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The rights will automatically be released from the Bank on **December 31, 2022**. If you would like the right(s) to remain leased to the Bank, please complete a new Application to Sell or Lease a Water Right to the Water Supply Bank and remit the applicable filing fee. You can find new applications at the Department's website at www.idwr.idaho.gov.

A water right is not protected from forfeiture unless it is accepted into the Bank or unless an exception or defense to forfeiture applies as described under Idaho Code § 42-223. The five-year period of nonuse related to forfeiture of a water right shall begin to accrue upon release of the right from the bank or shall continue to accrue if a period of nonuse occurred prior to the lease date of the right to the Bank.

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

Sincerely,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosure: Executed Lease Contract

c: IDWR- Eastern Region
Greg Sullivan



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

RECEIVED

AUG 24 2022

DEPARTMENT OF
WATER RESOURCES

August 18, 2022

Mary Condon
Idaho Water Supply Bank
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Re: Holbrook Farm Lease Application

Dear Ms. Condon:

Attached is the signed lease contract #1542 and #1543. Please continue to process the lease and rentals for these water rights.

Please copy our office on all correspondence regarding this applications.

Sincerely,

Greg Sullivan, M.S., Engineer

Cc: Cody Seamons via email
Enc: Lease Contracts

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506



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

Governor Brad Little

Director Gary Spackman

August 4, 2022

HOLBROOK FARM LLC
1291 US HIGHWAY 258 NORTH
KINGSTON, NC 28504

RE: APPLICATION TO LEASE WATER RIGHTS 17-2052, 17-7063, 17-2028, 17-2030, 17-2045 & 17-7007 TO THE WATER SUPPLY BANK CONTRACTS 1542 & 1543

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

Dear Applicant:

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

The right will automatically be released from the Bank on **December 31, 2022**, unless the right is released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. To propose a new lease period, submit a new Application to Sell or Lease a Water Right to the Water Supply Bank form along with applicable fees to the Department. These forms are available from any IDWR office or from our public website at <http://www.idwr.idaho.gov>. Please note your right may not be available for immediate release if it has been rented.

Please review the conditions of acceptance listed on the Lease Contract, including #3 which says:
"While a right is in the bank, **the lessor may not use the right** without approval of the department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B."

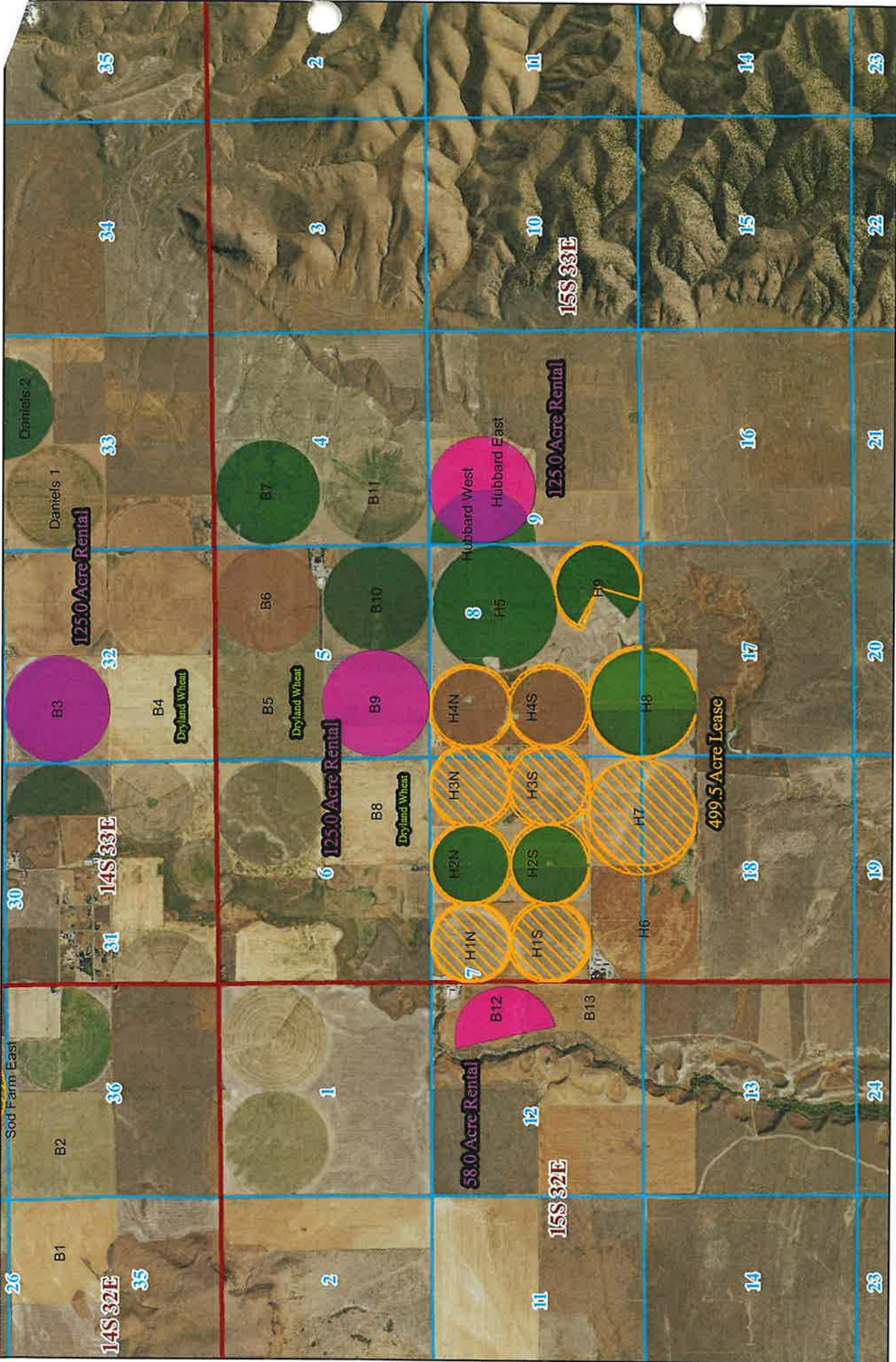
If you have questions regarding this matter, please contact this office at bank@idwr.idaho.gov or 208-287-4800.

Sincerely,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosures: Proposed Lease Contracts



CSS POTATO FARMS, LLC

WATER BANK 2022
NAIP 2019 AERIAL

- Legend**
- 2022_Rental_Acres
 - 2022_Lease_Acres

MEMORANDUM FOR LEASE CONTRACT 1542 AND RENTAL AGREEMENT 643

To: Water Right(s) 17-2028, 17-2030, 17-2045 and 17-7007

From: Michele Edl

Date: July 6, 2022

Re: Review & Analysis of Companion Applications to Lease and Rent Water from the State Water Supply Bank ('Main Farm' lease-rental for 2022)

PURPOSE/NARRATIVE: Companion lease-rental applications were received on January 10, 2022. The applications were submitted by Greg Sullivan (engineer, Brockway Engineering) on behalf of Holbrook Farm, LLC, lessor and CSS Farms, LLC, renter. The renter wishes to minimize potato pests by planting potatoes in fields that have not had them before.

A private agreement is in place for payment to the water right owner. Only the administrative fee will apply to the rental.

The lease application sought to lease 499.5 acres worth of water appurtenant to fields or portions of fields that were formerly irrigated by pivots with end guns. The end guns have been retired and 5 pivots will be idled for 2022. But the lease shapes provided by the consultant totaled 492.7 acres which is fewer acres than was proposed to be idled. I notified the consultant that the leased elements of the rights will be reduced and that that change would not require that the lease application be refiled.

The rental application requests to rent less than the leased amounts of the rights. The existing limits on the lease rights will be carried on the contract and the rental agreement will be made proportionate to avoid enlargement. The water will be applied to lands which don't have appurtenant water rights but there is no change to the points of diversion (PODs). The rented water will be diverted from the same wells as are authorized for diversion of the leased water. CSS Farms plans to use the existing wells but move the pivot systems and pipelines.

AUTHORITY TO FILE: Concerns with authority to file the lease and rental applications have been resolved. A business search through the Idaho Secretary of State's office shows that both CSS Farms, LLC and Holbrook Farm, LLC are currently registered to do business in Idaho.

Lease

Water rights 17-2028, 17-2030, 17-2045 and 17-7007 are owned by Holbrook Farm, LLC. The applications to lease portions of the rights were signed by Gabriele Onorato for Holbrook Farm, LLC. Holbrook Farm, LLC is a member of U.S. Farming Realty Trust II, LP and an internet search on U.S. Farming Realty Trust II, LP indicated that Gabriele Onorato is an executive officer.

Oneida County parcel data shows that the lease places-of-use (POUs) are owned by Holbrook Farm, LLC.

Water rights 17-2028, 17-2030, 17-2045 and 17-7007 are authorized to divert from six PODs. However, current and legacy lease applications have consistently listed only five PODs. The transfer-authorized POD located in SESW of Sec 8, Twp 15S, Rge 33E has not been listed in applications but it appears as one of the shapes that the consultant provided to me on 6/28/2022. I consider its absence from the current list of lease and rental PODs to be an oversight.

In addition, two of the six authorized POD's have the same PLSS address (NWNE of Sec 8, Twp 15S, Rge 33E) but only one of those twin POD's is an active well. And only one of the twin PODs (SpatialDataID 504380) should be considered as an accurate POD for either a lease or rental.

Rental

Much of the original rental application has been superseded.

During my review of this year's rental application documents, I found that the renter listed on the application, the authorization for Cody Seamons and the blocks for his signature were all in the name of CSS Potato Farms, LLC. But CSS Potato Farms, LLC, is no longer an active business entity in Idaho. The correct name for the renter is CSS Farms, LLC.

I requested and received updated authorization for Cody Seamons on June 16, 2022. I also requested that the consultant provide pages of the rental application listing the correct name for the renter.

The corrected application to rent portions of rights 17-2028, 17-2030, 17-2045 and 17-7007 is in the name of CSS Farms, LLC and was signed by Cody Seamons, farm manager. Cody Seamons is granted authority for water right applications, transactions and management through Steven Gangwish, Chief Executive Officer of CSS Farms, LLC.

Oneida County parcel data shows that the proposed POU's for the rented water are properties owned by Brad Woolstenhulme and Leann Woolstenhulme or CSS Farms, LLC.

A full pivot identified as Hubbard West and Hubbard East on the application map is located on CSS Farms, LLC property. The other three rental POU's are within property owned by Brad Woolstenhulme and Leann Woolstenhulme. Those POU's are:

- a wiper pivot (labeled B12 on the application map)
- two full pivots (labeled B9 and B3 on the application map).

I requested and received a second set of the relevant executed Farm Lease agreements between Brad Woolstenhulme and CSS Farms (represented by Cody Seamons) for each of those fields. The first set agreements for both lease-rental proposals were provided en masse and were obscured by extra and inaccurate application documents. The agreements indicate that WSB rental water is expected for irrigation in 2022.

WATER RIGHT VALIDITY: There are no concerns related to the validity of the water rights offered to the bank. Transfer 78281 acted on 17-2028, 17-2030, 17-2045 and 17-7007 and was approved in 2013. The transfer stacked the four rights in a 1230-acre POU and authorized a new POD. Together rights 17-2028, 17-2030, 17-2045 and 17-7007 are limited to 16.53 cfs and 4305.0 af or 0.013 cfs per acre and 3.5 afa per acre combined.

Varying quantities of the rights have been leased into the WSB on an annual basis 2016-2021. And sufficient portions of the rights have been offered to the bank for the companion 2022 rental.

INJURY TO OTHER WATER RIGHTS: No injury to other water rights is expected through this lease-rental proposal. Six POD's are authorized for the four rights (17-2028, 17-2030, 17-2045 and 17-7007) involved in this companion lease-rental. Only five of the PODs are active production wells. Those five active wells are within Holbrook Farms, LLC property and are interconnected through a network of piping. The distribution pipe from the wells to the pivots has been changed frequently. But I believe that the same five wells have been both the lease and rental diversion points.

No foreign water rights are brought into the area through this lease-rental package. Only portions the existing rights will be rented. And the rental water and the lease water are diverted from the same existing wells which are the authorized PODs for the water rights.

The well-POD is within the Curlew Valley Critical Ground Water Management Area. The area was designated a critical ground water area (CGWA) in 1976 but a management plan has not been developed. Nor has an advisory committee been formed.

IDWR maintains a ground water level monitoring network in the Curlew Valley. The most recent IDWR report summarizing the water levels in this area was written by Denis Owsley (technical hydrogeologist with IDWR) in 2012¹. The measurement information available at the time of the report indicated that water levels are declining.

One of the areas where ground water levels have changed the most encompasses the POU's and PODs for this lease-rental². The rights involved in this lease-rental package were developed before the CGWA was designated. The lessor and renter are likely aware of the water levels in the aquifer beneath the Curlew Valley and whether the levels are continuing to decline. But by Idaho Code, they are entitled to a 'reasonable pumping level'³. And this lease-rental package represents a voluntary reduction in the amounts of water used compared to the amount of water authorized.

ENLARGEMENT OF USE: No enlargement is anticipated through this lease-rental package. More acres are to be idled for the lease than are to be irrigated through the rental. The revised lease-rental proposes to lease 492.7 acres worth of water and rent back 433 acres worth of water from a proportional combination of the same four water rights: 17-2028, 17-2030, 17-2045 and 17-7007.

This lease-rental utilizes the native rights which have been diverted and used successfully on this farm for many years. The existing combined limit on the rights will be carried through the lease and rental approvals. The total unleased portion of these rights will be limited to 737.3 acres and 9.91 cfs.

The rental rates and volumes requested from the four rights will be made proportionate to the leased elements of those rights. The total volumetric flow rate authorized by the rental package will be 0.013 cfs/ac which is sufficient for pivot irrigation.

The end guns have been retired and vegetation visible in aerial photography of the idled fields has been adequately justified. The fields are not always absolutely idled but instead are 'dry farmed'.

LOCAL PUBLIC INTEREST: Review staff has no information to suggest this application is inconsistent with the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: This lease and rental package appears consistent with beneficial use and conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The lease and rental well-PODs are located within the Curlew Valley CGWMA but are not subject to a Water District or watermaster. Measurement devices are not yet required on wells.

¹ Find the report at <https://idwr.idaho.gov/wp-content/uploads/sites/2/publications/201205-OFR-curlew-valley-cgwa-water-conditions-update.pdf>

² Ibid see figure 3, p 8

³ <https://legislature.idaho.gov/statutesrules/idstat/title42/t42ch2/sect42-226/>

WSB review staff and the consultants have been casual about correctly listing and identifying the locations of the five wells which are the PODs for the yearly WSB leases and rentals. Rather than reusing existing spatial data shapes, new and often inaccurate POD shapes have been created for legacy leases and rentals. Those excess WSB POD shapes have made it difficult to select the correct ones in current processing.

In a phone conversation with Greg Sullivan on 6/28/2022, I requested that he consult with the farm manager and provide me more accurate POD shapes and a map showing the locations of the active wells. The POD shapes I received in response are consistent with the legal addresses and an improvement over the existing records. Ideally these corrected PODs should be applied to each of the water rights. And if that can be done, subsequent leases will need fewer POD editing.

Otherwise, I recommend that the PODs for this 2022 lease-rental be used in future lease-rentals.

The authorized SOU for the four rights is 4/15-10/15 which is less than the current SOU for the area (04/01-10/31).

Request for comment was sent via email to the Eastern Region manager. He responded and had no concerns about this lease-rental.



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Hydraulics

Hydrology

Water Resources

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JAN 10 2022

DEPARTMENT OF
WATER RESOURCES

January 5, 2022

Mary Condon
Idaho Water Supply Bank
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Re: Holbrook Farm Lease Application and CSS Potato Rental

Dear Ms. Condon:

Holbrook Farm, LLC desires to lease 499.5 acres of 17-7007, 17-2028, 17-2030 and 17-2045 in 2022 into the Idaho Water Supply Bank. The 499.5 acres to be leased are comprised of acres that were previously irrigated by end guns and a pivot systems. The lease applications propose to lease the water for only the 2022 irrigation season.

CSS Potato Farms, LLC has entered into a farm lease contract for the property. CSS Potato Farms LLC desires to rent 433.0 acres from water rights 17-7007, 17-2028, 17-2030 and 17-2045 for the 2022 irrigation season.

Holbrook Farm, LLC and CSS Potato Farms, LLC have entered into an agreement that states that Holbrook Farm, LLC has already been paid by CSS Potato Farms, LLC for the rental of the 308.0 acres. No rental payment will be made to the Idaho Water Supply Bank for the 90% of the rental amount that would normally go to the water right owner. A 10% rental processing fee will be paid to the Idaho Water Supply Bank when the final rental agreement is signed for 2022.

Please copy our office on all correspondence regarding this applications.

Sincerely,

Greg Sullivan, M.S., Engineer

Cc: Toby McKay, Cody Seamons

Enc: Lease Applications, Rental Application, Aerial Maps, Contract of Agreement, Designation of Agent, CSS Farms Letter, Action of Managers and of Directors, Brockway Engineering Check # 10747 for \$1,000.00

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