

WATER SUPPLY BANK LEASE CONTRACT No. 1370

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

LESSOR: 2+RANCH LLC
3751 S 2400 E
JEROME, ID 83338

SUPPORT DATA
IN FILE # 36-16158

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 08, 2021.
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)
36-16158	1/24/1972	GROUND WATER	0.12	Not Stated	11.3
36-16161	8/9/1975	GROUND WATER	0.08	Not Stated	11.3
Combined Lease Totals			0.20	Not Stated	11.3

Summary of Water Rights Elements Rentable From the Bank

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (Limited) (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
36-16158	0.12	45.2	11.3	0.01	4.0
36-16161	0.08	45.2	11.3	0.01	4.0
Combined Limit Totals	0.20	45.2	11.3	0.02	4.0

** The water right elements rentable have been reduced from the water right elements leased to account for a field headgate standard of 4 af/ac*

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

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3. **TERM OF LEASE:** The term of this lease shall be January 1, 2021 to December 31, 2025. This Lease shall bind the parties and take effect when both parties have signed it.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.
5. **CHANGE OF WATER RIGHT:** This lease specifies water right elements including but not limited to: diversion rates; diversion volumes; number of acres authorized to be irrigated; places of use; points of diversion; beneficial uses; and seasons of use. During the term of this lease, if a water right is administratively changed due to a water right split and renumbering, this lease may be reduced by an equal amount to reflect the water right elements as legally defined under the water right. If a lease contract cannot be reduced sufficient to reflect the legal definition of a water right as amended through a water right split and/or water right transfer, the Board may release the water right from the Water Supply Bank.
6. **ASSIGNMENT OF CONTRACT:** This lease is between the Board and the Lessor, who is the recognized owner or designated representative of the recognized owners of water rights described herein. Should ownership of any part of a water right herein described change during the term of this lease, either through a water right split, a water right transfer, sale of property to which the water right is appurtenant, or through any other recognized water right reassignment, the lease benefits and obligations to the conditions of acceptance for any such water rights will be assigned to the new owners.
7. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

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

LESSOR: 2+RANCH LLC
3751 S 2400 E
JEROME, ID 83338

By 
Title Partner
Date 7-12-21

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 7/23/21

Lease approved by IDWR 

Date 7/23/21

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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): 36-16158, 36-16161

GROUND WATER	NWSE	Sec. 2	Twp 09S	Rge 15E	GOODING County
GROUND WATER	NWSW	Sec. 1	Twp 09S	Rge 15E	GOODING County
GROUND WATER	L 4NWNW	Sec. 1	Twp 09S	Rge 15E	GOODING County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
36-16158	IRRIGATION	03/15	to	11/15	0.12 cfs	Not Stated
36-16161	IRRIGATION	03/15	to	11/15	0.08 cfs	Not Stated
Totals:					0.20 cfs	Not Stated

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	
09S	15E	1									1.3	2.6	7.1						11.0
09S	15E	2																0.1 L5 0.2 L6	0.3

Total Acres: 11.3

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.

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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 right(s) is leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.
12. The unleased portions of water rights 36-16158 and 36-16161 when combined shall not exceed a total diversion rate of 6.72 cfs, a total annual maximum diversion volume of 1,540 af at the field headgate, and the irrigation of 384.2 acres for the period of this lease.
13. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.

Idaho Water Resource Board

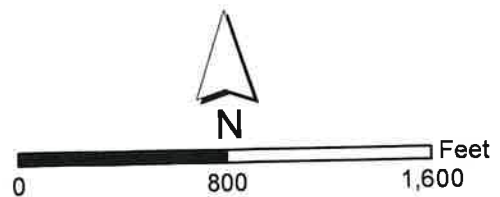
Water Supply Bank Lease Contract No. 1370

36-16158 & 36-1661
Effective until December 31, 2025

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



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



STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

JAN 08 2021

DEPARTMENT OF
WATER RESOURCES

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

Designated Applicant 2+ Ranch
(Select one owner – see item 1A on the application)

Water Right No. 36-16161
(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.**

MIMUMUM 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>1.8.21</u>	Receipt # <u>C109789</u>
W-9 received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	(Route W-9 to Fiscal)	Name on W-9: <u>2+ Ranch LLC</u>	

1943

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 2+ Ranch LLC
Mailing Address 3751 S 2400 E Jerome Idaho ID 83338
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.**

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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 wells, mainlines and delivery systems.

- 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. N/A

- 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. The same 11.3 acres were under lease contract from 2015-2019.

- 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? Yes No
If yes, describe. _____

STATE OF IDAHO
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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: 2021 to 2025 (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.
-
-

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

Ken Boer
Printed Name

12-21-20
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

<u>1. Water Right Number</u>	<u>Nature of Use</u>	<u>Leased Rate</u> (cfs)	<u>Leased Volume</u> (af)	<u>Leased Acres</u> (ac)
36-16161	Irrigation	0.08	45.2	11.3
	Total Amounts:	0.08	45.2	11.3

2. Source of water Ground Water tributary to _____

3. Point(s) of diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
09S	15E	1	L4		NW	NW	Gooding
09S	15E	1			NW	SW	Gooding
09S	15E	2			NW	SE	Gooding

Memorandum

To: Water Right 36-16158 & 36-16161
From: Justin Ferguson
Date: April 20, 2021
Re: Water Supply Bank Lease Application 1943

Purpose/Narrative: The Department received an application to Lease or Sell a Water Right to the Water Supply Bank January 8, 2021 on behalf of 2+ Ranch LLC from their representatives at Brockway Engineering offering portions of water rights 36-16158 & 36-16161 for lease to the Bank through the end of 2025. The application is effectively a continuation of their prior contract from 2015 through the end of 2019 protecting the acreage from forfeiture and making the volume available for rent.

Authority to File: The application was prepared by the applicant's representative at Brockway Engineering PLLC and signed by Mr. Ken Boer. Review of the Idaho Secretary of State information affirms Mr. Boer as an authorized agent for 2+ Ranch. No concerns at this time.

Water Right Validity/Forfeiture Evaluation: Water rights 36-16158 and 36-16161 were initially developed through transfer number 69200 in May 2003. Prior to the initial 2015 application, the water rights were observed to have been used in full as of 2010 with portions continuing to receive irrigation through the end of 2014. As with the other water rights held by 2+ Ranch LLC that have been offered again for lease to the Bank, the rights were released from the Bank in 2019 and a lack of irrigation in 2020 would constitute the sixth year of non-use. Further, as noted in the enlargement section of this review, there does not appear to have been irrigation on these specific acres in 2020 as the total amount of acreage observed irrigated corresponds to the total volume of ground water used. Per administrative memo "*Multiple Programs Memo No. 2 – Forfeiture Review Period*", a water right holder would have to take action on the year *after* a five year period of non-use elapsed, to prevent a water right from becoming subject to forfeiture. Because this would constitute the sixth year of non-use and an action was taken to protect the unused portions of 36-16158 & 16161 being offered for lease, the portions of these rights can be considered as valid.

Injury Evaluation: No injury is apparent through the lease as the intent is to idle acreage that would otherwise be irrigated. Additionally, because the water rights have been rented during the time they have been leased to the Bank, the volume associated has been put to beneficial use. As such, there does not appear to be a cause for injury both in leasing the rights to the Bank and, if they were subject to a rental request.

Enlargement of Use: Because the water rights had been released from the Bank further analysis was necessary to determine whether a portions had become comingled with shares from the North Side Canal Company.

Review of the data captures within the Water Management Information System found that, between the two points of diversion used by 2+ Ranch, an approximate total of 505 acre-feet of water has been used in 2020. Spatially, approximately 380 acres appears to have been irrigated in the 2020 season. Using the area consumptive use divided by the field headgate standard ((3 af/annually) / (4 af/annually)) approximately 380 acres should be observed as irrigated. As such, it does not appear surface water has been used to irrigate and the two water rights can be leased to the Bank as primary water rights.

Local Public Interest: Staff are unaware of any local public interests that are averse to the lease.

Beneficial Use/Conservation of Water Resources: The lease appears consistent with the conservation of water resources in Idaho.

Department/Watermaster Comments: Comments were requested from IDWR's Southern Region as well as the Watermaster for District 130 on April 20, 2021

Water Supply Bank Evaluation: Based on the information presented by the applicant, staff recommend the proposal be approved for 2+ Ranch through the end of 2025.