

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 582

This is to certify that:

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE, ID 83720-0098

filed an application to rent water from the Water Supply Bank ("Bank"). The Idaho Water Resource Board ("Board"), being authorized to operate a Bank and to contract by and through the Director of the Idaho Department of Water Resources ("Director, Department") for rental of water from the Bank, agrees to rent water as follows:

Summary of Water Rights or Portions Rented from the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)	Rate Per Acre (CFS/AC)
75-14927	5/1/1916	FOURTH OF JULY CREEK, Tributary to Panther Creek; & PANTHER CREEK, Tributary to Salmon River	1.04	Not Stated	52.0	0.020
Rental Totals			1.04	Not Stated	52.0	0.020

Term of Rental: This rental agreement shall take effect when all parties have signed it and shall continue in effect until December 31, 2121. Use of rental water shall be authorized as of either the date this rental agreement takes effect or the first day of the rental season of use, in 2021, whichever occurs last.

Annual Rental Fee:

2021 - 2121: No Annual Fee

The full fee for the rental of the above-described right(s) is \$364. The rental fee includes a one-time administrative fee of \$364. Note that the renter is obligated to pay only the administrative fees associated with the water right(s): 75-14927.

An annual payment shall be received by the Department on or before December 31 each year preceding the use of the rented water rights. The agreement will be void if payment is not received by the due date in a given year. Rental fees are non-refundable. To voluntarily terminate the agreement early, notify the Department in writing prior to the rental fee due date.

Total Water Use Authorized Under Rental Agreement

Beneficial Use	Diversion Rate (CFS)	Diversion Volume (AF)
MINIMUM STREAM FLOW	0.51	130
Rental Total	0.51	130

* The authorized water usage reflects a reduction from the water right elements rented, to account for Change in Nature of Use and reduced Season of Use.

Detailed water right conditions are attached.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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The undersigned renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described in this agreement:

B. Patton FOR THE IDAHO WATER RESOURCE BOARD 2/17/22
Signature of Renter Date
Brian Patton EXECUTIVE OFFICER
Printed Name Title

*Title required if signing on behalf of a company or organization or with power of attorney

Having determined that this agreement satisfied the provisions of Idaho Code § 42-1763 and IDAPA 37.02.03.030 (Water Supply Bank Rule 30), for the rental and use of water under the terms and condition herein provided, and none other, I hereby execute this Rental Agreement on behalf of the Idaho Water Resource Board.

B. Patton 2/28/22
By Date
BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Flumma 2/28/22
Rental approved by IDWR Date

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 582

WATER USE DETAILS

LOCATION OF POINT(S) OF DIVERSION

PANTHER CREEK

NENW (E)

Sec. 35, Twp 20N, Rge 18E,

LEMHI County

Beneficial Use

	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
MINIMUM STREAM FLOW	5/1	5/31	0.35 CFS
MINIMUM STREAM FLOW	6/1	6/30	0.46 CFS
MINIMUM STREAM FLOW	7/1	7/31	0.51 CFS
MINIMUM STREAM FLOW	8/1	8/31	0.41 CFS
MINIMUM STREAM FLOW	9/1	9/30	0.34 CFS
MINIMUM STREAM FLOW	10/1	10/31	0.16 CFS
<u>Total Diversion</u>			0.51 CFS

RENTERS PLACE OF USE: MINIMUM STREAM FLOW

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
19N	18E	3	X		X	X				X	X		X			X			X
19N	18E	9													X		X	X	X
19N	18E	10					X	X	X			X							X
20N	18E	35					X			X	X	X	X						X

RENTAL AGREEMENT CONDITIONS OF ACCEPTANCE

1. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
2. Rental of the specified right from 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.
3. Use of water under this agreement does not constitute a dedication of the water to renter's place of use, and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
4. Use of water under this agreement shall not prejudice any action of the Department in its consideration of an application for transfer or permit filed by the applicant for this same use.
5. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
6. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water.
7. Renter acknowledges and agrees that the Director may terminate authorization for the use of a water right based on a water right's priority date.
8. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
9. Upon further finding and order of the director that gaging stations are required to maintain the approved minimum flows under this rental, such measuring devices shall be permanently installed and maintained as specified by the director.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

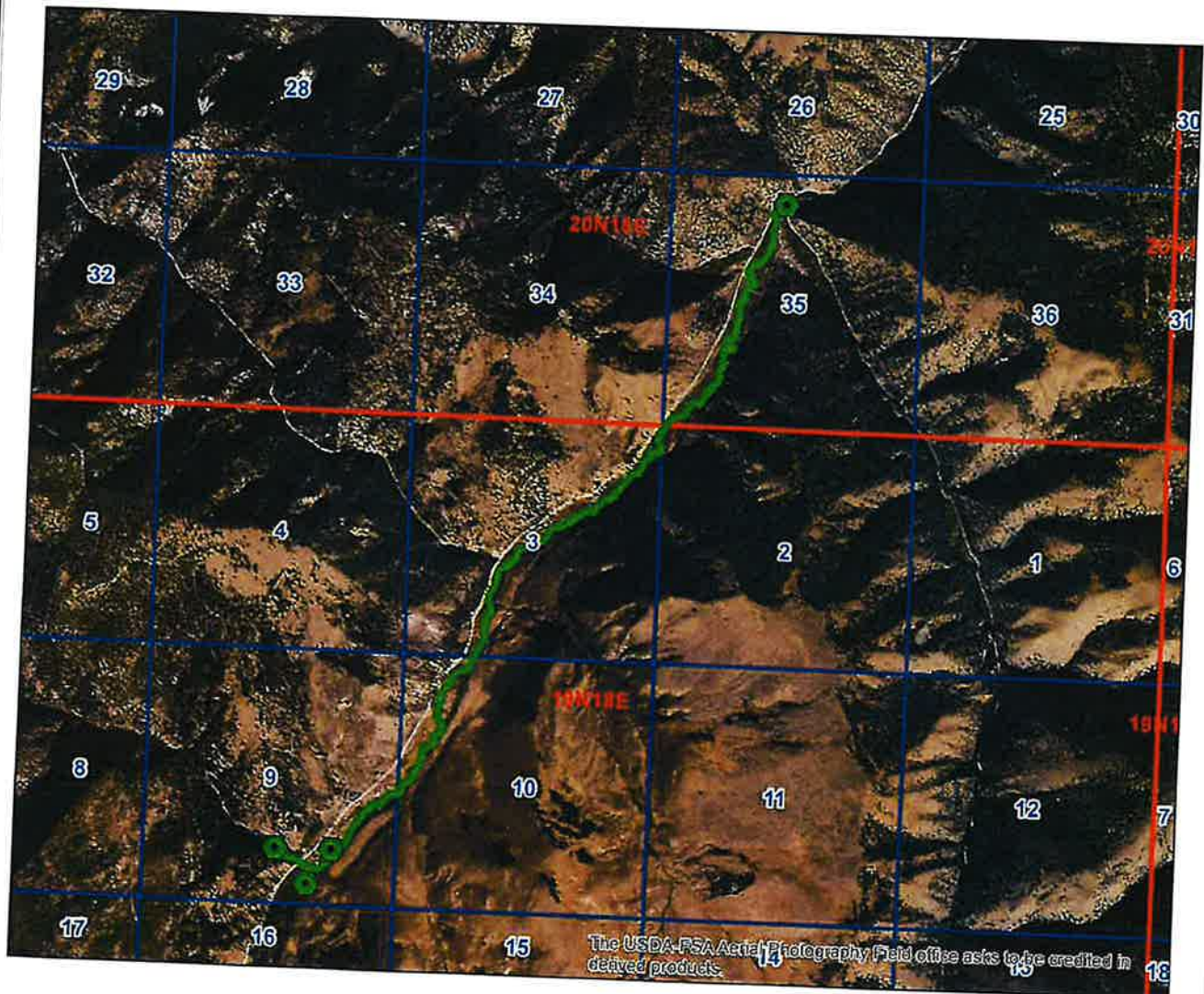
WATER SUPPLY BANK RENTAL AGREEMENT No. 582

10. There are no diversions associated with this rental. The quantification point for this instream flow rental is at the above ending point.
11. Use of water under this rental shall be non-consumptive.
12. Use of water under this rental is limited to those times when water is in priority and available under 75-14927 at the points of diversion listed on right 75-14927.
13. The extent of the beneficial use of water authorized under this rental is limited to the amount necessary to satisfy and maintain the minimum streamflow on Panther Creek pursuant to Water Right No. 75-14188.

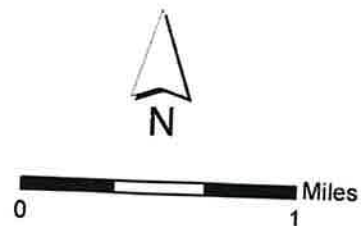
Idaho Water Resource Board
Attachment to Water Supply Bank Rental Agreement No. 582

Indefinite

This map depicts the **rental place of use** pursuant to the rental agreement and is attached to the agreement solely for illustrative purposes.



-  Authorized Rental Point of Diversion
-  Authorized Rental Place of Use
-  Township/Range
-  Sections



STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO RENT WATER FROM THE BOARD'S WATER SUPPLY BANK

Applicant Name: Idaho Water Resource Board

Is this application being submitted with a lease application as a lease/rental package?
If yes, specify companion water rights in Section 4

Yes ☐ No ☒

This application must be completed according to the minimum requirement checklist below. This checklist is part of the rental application and must be included with the rental application. Applications that do not meet the minimum requirements will not be placed in the processing queue and may be returned until all minimum requirements have been met.

Rental applications should be submitted well in advance of the desired start date for the use of rental water. Rental applications may be processed as early as November 1 of the year prior to the intended use of rental water. Any rental application received on or before November 1 for use in the next year will be assigned a received date of November 1. Rental applications submitted more than one year in advance of the proposed start date for the use of rental water will not be accepted and will be returned to applicants. Rental applications may be returned to applicants if the desired start date for the use of rental water cannot be accommodated by the Water Supply Bank. Rental requests will not be accepted once the rental season of use period has concluded.

One rental application per beneficial use of water. For multiple beneficial uses of water, separate rental requests should be submitted for each unique beneficial use of water. One rental application can be submitted if you propose to rent water from multiple sources.

For additional instructions on completing a rental application, visit the Bank's website at http://idwr.idaho.gov/water_supply_bank.

MINIMUM REQUIREMENT CHECKLIST

Check All Items as Either Attached (Yes) or Not Applicable (N/A)

Yes

- ☒ Completed *Application to Rent Water from the Board's Water Supply Bank*
- ☒ Confirmation that this form has been printed single sided, per requirement of the Water Supply Bank

Attachment N/A Yes

- | | | |
|----|-------------------------------------|--|
| 2 | ☒ | A map showing the proposed point(s) of diversion, place(s) of use, and water diversion and distribution systems proposed to be used with your rental request |
| 3A | ☐ | ☒ Detailed information on a proposed use of rental water |
| 3F | ☒ | ☐ Authorization from the owner/operator of the rental point(s) of diversion |
| 3H | ☒ | ☐ Water modeling to account for the impacts of the rental request |
| 3J | ☒ | ☐ Documents justifying a rate of flow greater than 0.02 cfs/acre |
| 3K | ☒ | ☐ Authorization from the owner/operator of the property at the proposed rental place(s) of use |
| 4B | ☒ | ☐ Explanation of how the rental water will sufficiently accomplish your rental purposes |
| 4C | ☐ | ☒ Explanation of consumptive use amounts for water rights experiencing a change in nature of use |

Department Use Only – Proposed Water Right(s)

75-14927

**STATE OF IDAHO
WATER RESOURCE BOARD**

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant Idaho Water Resource Board

Mailing Address 322 E Front Street, PO Box 83720 Boise Idaho 83720
Street City State Zip Code
 Email Address _____ Phone Number 208-287-4800

B. Is this application being completed by an authorized representative on behalf of the applicant? Yes ☒ No ☒
 If yes, representatives (includes company employees if the applicant is a corporation, as well as legal counsel or consultants) should provide their information below if they desire to be included on correspondence with the rental applicant.

Representative _____ Professional Title _____
 Organization _____ Relationship to Applicant _____
 Mailing Address _____
 Email Address _____ Phone Number _____

2. MAP

Create a map of the proposed point(s) of diversion, place(s) of use and water diversion, delivery and distribution systems. Make sure the rental 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 irrigate. Attach the map to this application and label it **Attachment 2**.

3. DESCRIPTION OF PROPOSED USE FOR RENTAL WATER

A. Describe why you desire to rent water and provide a detailed description of your proposed use. If the proposed use is not for irrigation, describe in detail how you determined the amount of rental water required. If the space below is insufficient, attach additional sheets as required and label them **Attachment 3A**:

The rental of this water is intended to supply flow to the existing minimum stream flow water right on Panther Creek No. 75-14188. The rental to the MSF is intended to increase the natural flow and reduce stream temperatures in Panther Creek to improve habitat for ESA-listed steelhead and non-listed Chinook salmon.

B. Enter the desired and/or minimum rates of flow, volume, or irrigable acres requested for your rental purposes:

Desired Rate (Cubic Feet/Second)	Desired Volume (Acre-Foot)	Minimum Rate* (Cubic Feet/Second)	Minimum Volume* (Acre-Foot)	Desired Acres (if applicable)
1.09 CFS	182 AF	CFS	AF	52 AC

* Sometimes water rights provide an exceptionally low rate per acre and/or low volume per acre. This section is meant to establish an acceptable range of water sufficient for your proposed water use. Please see question 4B and complete if necessary.

C. This section must be completed in full. Enter the proposed start date and latest possible start date for using rental water as well as the number of years you would like to rent water. The latest possible start is the latest possible date by which you would be willing to pay for a rental and be able to benefit from utilizing rental water.

Desired Start Date (month/day/year)	Latest Possible Start Date (month/day/year)	*Mark Desired Rental Duration (Calendar Years)	**Applicant's preference if rental application cannot be processed prior to the latest possible start?	
6/01/2021	8/01/2021	PERMANENT	☒ Process application as soon as possible	☐ Return application to applicant

* The number of years permissible for a rental is subject to the lease contract duration for the water right(s) being rented.

** Per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right. Water Supply Bank rental applicants are not authorized to utilize rental water prior to the execution of an approved rental agreement. Rental requests may be returned to applicants if no water is available from the Bank to fulfill a rental request.

*Pursuant to IDAPA 37.02.03.30.06 the IWRB wishes to rent the water in perpetuity. See IWRB funding resolutions dated ().

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

- D. Describe your water distribution system and how rental water will be delivered from the point(s) of diversion (POD) to the proposed place of use (POU):

No irrigation of POU. Purpose of use is instream flow with delivery to the Minimum Stream Flow water right 75-14188 on Panther Creek.

- E. Describe the physical type (pump, headgate, etc.) and location of the POD from which rental water is proposed to be diverted:

POD Description	Water Source	Other Water Rights Diverted from this POD
headgates	Panther Creek	75-10125, 75-11133, 75-10788
headgate	Fourth of July Creek	75-10125, 75-11133, 75-10788

If the POD(s) above are located where water is turned into a canal, lateral or ditch, or if they are located on your property but are serviced by water that is delivered via a canal, lateral or ditch, your rental request must include documented authorization from all relevant canal companies, irrigation districts and/or water delivery entities, confirming that they consent to your diversion of water from their system.

- F. Has documented consent from all relevant water delivery entities been obtained? Yes ☐ N/A ☒
If yes, include documented consent as Attachment 3F.

- G. Do any POD(s) identified in Question 3E divert from a water source that may require water modeling? Yes ☐ No ☒
Refer to the Water Modeling Requirements Information Sheet to determine if a rental POD may require water modeling.

- H. Has water modeling been provided with your rental request? Yes ☐ N/A ☒
If yes, label modeling Attachment 3 H.
Rental applications that require modeling will be returned if modeling is not provided.

- I. Specify the desired beneficial use of water and the requested season of use or number of acres required:

- ☐ Irrigation _____ (number of acres) Duration: Subject to IDWR standard seasons of use
☐ Commercial from: _____ (mm/dd) to: _____ (mm/dd)
☐ Stockwater from: _____ (mm/dd) to: _____ (mm/dd)
☐ Industrial from: _____ (mm/dd) to: _____ (mm/dd)
☒ Other: instream flow from: 7/15 (mm/dd) to: 9/30 (mm/dd)

- J. For irrigation uses, do you propose to divert water at a rate greater than 0.02 cfs/acre? N/A ☒ Yes ☐ No ☐
If yes, justify the rate of flow and attach any supporting documents as Attachment 3J. Justification may include information on soil composition, conveyance losses, crop type, irrigation systems, public access areas, etc. A rate of 0.03 cfs/acre is permissible for irrigation of 5 acres or less.

- K. Do you own the land at the proposed rental place of use (POU)? Yes ☐ No ☒
If no, attach documentation from the POU owner/operator confirming your authorization to use the POU and label it Attachment 3K.
POU is instream

- L. List all other water rights and sources of water at the rental place of use for the same purpose, including privately owned water rights and water received from a municipal supplier, an irrigation district, a canal company or any other water delivery entity. Explain why additional water is required:

There are no other water rights rented to meet the MSF 75-14188 on Panther Creek.

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

4. RENTAL REQUESTS FOR SPECIFIC WATER RIGHTS

A. Are you requesting to rent specific water rights?

Yes ☒ No ☐

If yes, specify below the elements of the water rights you are requesting to rent. If no, continue to Question 4B.

Important Information: Diversion rates and volumes sought for rent must be proportionate to the per acre diversion rates and per acre volume limits of the water right under lease contract to the Water Supply Bank. Prior to completing this section, applicants should review all water right lease contracts and any active rental agreements to determine which elements of a water right are available to satisfy a rental request. Lease and rental documents are searchable via [IDWR's website](#).

Water rights identified below must either already be leased to the Bank or a lease proposal should accompany this rental request. **Rental requests for water rights not yet leased to the Bank will be returned if companion lease applications are not provided with the rental request.** For leased rights featuring combined limits, rentals must be consistent with combined diversion rate, volume or acre limits. Combined limits should be listed on a row below water right numbers.

Water Right Elements Leased to Water Supply Bank					Leased totals, minus water right elements involved in active rental agreements, equals water right elements available for rent	Water Supply Bank Rental Request		
Water Right Number (leave blank if sub-total of combined limits)	Nature of Use	Diversion Rate (CFS)	Volume (AF)	Acres (AC)		Diversion Rate (CFS)	Volume (AF)	Acres (AC)
75-14927	irrigation	1.09	182	52		1.09	182	52
Applicants must ensure the requested rate per acre and volume per acre do not exceed the rate per acre and volume per acre limits of water rights leased to the Water Supply Bank					TOTAL	1.09	182	52
						CFS	AF	AC

**Attach multiple copies of this page if space above is insufficient to list all water rights requested to be rented on this application.*

B. If water right conditions, combined limits, or the sum of all water right elements being requested provide an unconventional duty of water (e.g., an unusually low rate per acre or volume per acre for irrigation use), explain how your proposed rental will sufficiently accomplish your intended purposes. Attach a separate page if space is insufficient and label it **Attachment 4B**:

C. Does your rental request propose to change the nature of use for any water right(s) being rented?

Yes ☒ No ☐

If yes, explain how the water right(s) will be converted to new uses. Include the historic, consumptive use amounts for the water right being rented if you have it, as well as the new consumptive use amount for your proposed beneficial use. If space below is insufficient, attach a separate page and label it **Attachment 4C**:

The rental proposes to rent the full standard head gate requirement of 3.5AF/Acre at the POD and deliver the standard consumptive volume of 2.5 AF/Acre to the Panther Creek MSF 75-14188.

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

5. ADDITIONAL INFORMATION

- A. Is this the first time that rental water is being requested for this purpose at the rental place of use? Yes ☒ No ☐
If no, list previous rental requests/agreements and explain why you have not secured a permanent water right for your needs:

- B. Have you or do you intend to submit an application for permit or transfer proposing a similar use as this rental? Yes ☐ No ☒
If yes, describe:

- C. Was this rental application submitted in response to a Notice of Violation (NOV) or a pending NOV? Yes ☐ No ☒
If yes, describe the date and location of the NOV.

- D. Additional Information

DECLARATION

I hereby assert that the information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval. I understand that if this rental application is approved, it will be subject to the provisions of Section 42-1766, Idaho Code and all applicable state and federal laws. I understand that the submission of a rental application provides no guarantee for approval of a rental agreement. I also understand that, per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right and that I am not authorized to utilize water as proposed in this application prior to the execution of an approved rental agreement.


Signature of Applicant

Brian Patton, Executive Officer, IWRB
Printed Name of Applicant

5/26/2021
Date

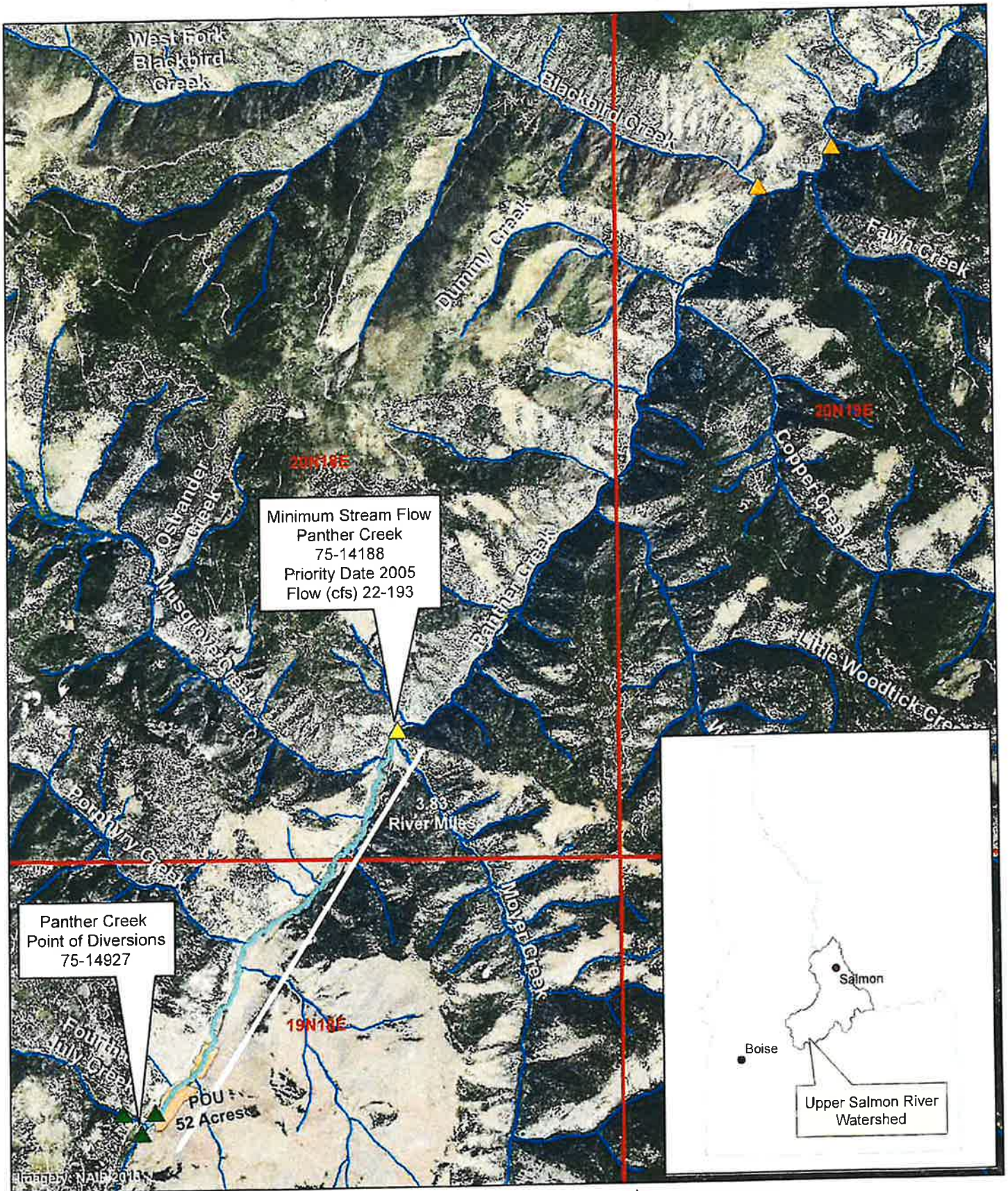
Signature of Representative

Printed Name of Representative

Date

Mail to:

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



Attachment 2

Panther Creek Minimum Stream Flow Permanent Rental Idaho Water Supply Bank Rental Application



0 0.25 0.5 1 1.5 2 Miles

- USGS Stream Gages
- Upper Panther Creek MSF Water Right 75-14188
- Point of Diversions for Water Right 75-14927
- Water Right 75-14927: Pre-Aquisition Irrigation POU
- Water Right 75-14927: POU for MSF
- Township/Range

Map Date: 05/03/2021

Attachment 3A

Memorandum

To: Water Supply Bank

From: Amy Cassel

Date: May 3, 2021

Re: Panther Creek Minimum Stream Flow WR No. 75-14188



The IWRB's MSF 75-14188 is located approximately 9.5 river miles upstream of the USGS 13306370 PANTHER CREEK AT COBALT, ID stream gage. Blackbird Creek is tributary to Panther Creek and flows into Panther just upstream of the Panther Creek at Cobalt gage. USGS 13306336 BLACKBIRD CREEK NEAR COBALT, ID was discontinued in 2020, but the period of record provides almost 10 years of data (2011 -2020).

USGS 13306370 PANTHER CREEK AT COBALT, ID

https://waterdata.usgs.gov/id/nwis/uv/?site_no=13306370&PARAMeter_cd=00065,00060,00010

USGS 13306336 BLACKBIRD CREEK NEAR COBALT, ID

https://waterdata.usgs.gov/nwis/inventory?agency_code=USGS&site_no=13306336

Because there is no stream gage at the quantification point for MSF 75-14188, the USGS 13306370 PANTHER CREEK AT COBALT, ID and the USGS 13306336 BLACKBIRD CREEK NEAR COBALT, ID were used to estimate flows at MSF 75-14188.

The table below represents a good-faith estimation of whether or not the Upper Panther Creek MSF is currently being met during naturally flow-limited months. Mean monthly discharges (cfs) for May through October at USGS 13306370 PANTHER CREEK AT COBALT, ID (P @ C) and USGS 13306336 BLACKBIRD CREEK NEAR COBALT, ID (BB) gage stations are compared to the May through October minimum stream flows for MSF 75-14188.

The difference between discharges observed at Panther Creek and Blackbird Creek gage stations represents *estimated* flow at the Panther Creek MSF 75-14188 (*May – October Difference*). This difference is then compared to the monthly MSF 75-14188 flow amounts and represents the deficit or surplus flow in Panther Creek needed to meet the Upper Panther Creek MSF. For example, in May 2012 the MSF of 193 cfs was met, plus an additional 95.9 cfs. Whereas, in June 2013, the estimated flow in Panther Creek was 68.73 cfs short of meeting the June Upper Panther Creek MSF of 173 cfs. Out of 54 cumulative months over nine years, IWTP staff estimated the monthly MSF was not met four times, an additional 18 months were within 15.2 cfs of not meeting the MSF. There are four additional unmeasured tributaries between the USGS 13306370 PANTHER CREEK AT COBALT, ID and MSF 75-14188. These tributaries (Woodtick, Copper, Dummy, and Fawn Creeks) are relatively small contributors but may add up to 15 cfs within the reach. For this analysis, *MSF differences less than 15.2 cfs (highlighted in yellow)* were considered insufficient to meet the Upper Panther Creek MSF.

Gage Station/MSF	2012	2013	2014	2015	2016	2017	2018	2019	2020
May - P @ C	322.2	232.7	589.1	306	359.7	576.1	666.8	256.5	426.5
May - BB	33.3	33.2	96.6	35.1	41.4	68.2	74.6	31.9	40.6
May - Difference	288.9	199.5	492.5	270.9	318.3	507.9	592.2	224.6	385.9
May - MSF	193	193	193	193	193	193	193	193	193
May MSF Difference	95.9	6.5	299.5	77.9	125.3	314.9	399.2	31.6	192.9

June - P @ C	200.1	113.3	278.8	161.4	172.5	420.9	274	183.3	329.4
June - BB	14.3	9.03	24.4	11	12.5	31.5	25.7	15.2	23.8
June - Difference	185.8	104.27	254.4	150.4	160	389.4	248.3	168.1	305.6
June - MSF	173	173	173	173	173	173	173	173	173
June MSF Difference	12.8	-68.73	81.4	-22.6	-13	216.4	75.3	-4.9	132.6
July - P @ C	82	57.5	84.5	71.1	66.1	111	99.7	63.6	126.7
July - BB	5.91	4.44	6.65	4.66	4.19	7.4	9.12	4.7	No Data
July - Difference	76.09	53.06	77.85	66.44	61.91	103.6	90.58	58.9	-
July - MSF	45	45	45	45	45	45	45	45	45
July MSF Difference	31.09	8.06	32.85	21.44	16.91	58.6	45.58	13.9	-
August - P @ C	42.2	33.9	57.7	42	35.6	54	55.2	43	57.7
August - BB	3.08	3.1	4.92	2.95	2.48	3.88	4.17	2.88	No Data
August - Difference	39.12	30.8	52.78	39.05	33.12	50.12	51.03	40.12	-
August - MSF	24	24	24	24	24	24	24	24	24
Aug MSF Difference	15.12	6.8	28.78	15.05	9.12	26.12	27.03	16.12	-
Sept. - P @ C	32.1	30.8	46.9	36	31.9	42.8	42.5	39.6	42.3
Sept. - BB	2.97	3.93	3.75	2.68	2.42	3.35	3.27	2.46	No Data
Sept. - Difference	29.13	26.87	43.15	33.32	29.48	39.45	39.23	37.14	-
Sept. - MSF	22	22	22	22	22	22	22	22	22
Sept. MSF Difference	7.13	4.87	21.15	11.32	7.48	17.45	17.23	15.14	-
Oct. - P @ C	32.8	35.4	44.2	33.4	No Data	No Data	42.3	40.3	No Data
Oct. - BB	3.11	4.69	3.73	2.52	2.72	3.34	3.18	2.67	No Data
Oct. - Difference	29.69	30.71	40.47	30.88	-	-	39.12	37.63	-
Oct. - MSF	24	24	24	24	24	24	24	24	24
Oct. MSF Difference	5.69	6.71	16.47	6.88	-	-	15.12	13.63	-

COPY

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE BOARD PURCHASE
OF WATER RIGHT NO. 75-14927 FROM
WESTERN RIVERS CONSERVANCY

RESOLUTION TO MAKE A FUNDING
COMMITMENT

1 WHEREAS, steelhead, bull trout, and Chinook salmon habitat in Panther Creek is limited
2 by low flow in the upper reaches of Panther Creek; and
3

4 WHEREAS, Panther Creek provides steelhead, bull trout, and Chinook salmon habitat and
5 the 2004 Snake River Water Rights ("Nez Perce") Agreement commits the state to providing
6 incentives for improving fish habitat which includes improving or protecting flow conditions to
7 augment stream flows; and
8

9 WHEREAS, it is in the interest of the State of Idaho to increase flow in Panther Creek to
10 encourage recovery of ESA-listed steelhead, bull trout, and Chinook salmon; and
11

12 WHEREAS, Water Right No. 75-14927 has been historically diverted from Panther Creek
13 for irrigation purposes; and
14

15 WHEREAS, the Idaho Water Resource Board (IWRB), pursuant to Section 42-1734, Idaho
16 Code, has the authority to acquire, purchase, lease, or exchange land, rights, water rights,
17 easements, franchises, and other property deemed necessary or proper for the construction,
18 operation, and maintenance of water projects; and
19

20 WHEREAS, the Water Right owner desires to sell to IWRB all their legal interests in Water
21 Right No. 75-14927 appurtenant to 52 acres, so that the water may remain in Panther Creek to
22 enhance fish habitat; and
23

24 WHEREAS, upon acquisition, Water Right No. 75-14927 may be rented out through the
25 Idaho Water Supply Bank for permanent delivery to Minimum Stream Flow Water Right No. 75-
26 14188 on Panther Creek;
27

28 WHEREAS, funds are available from Columbia Basin Water Transaction Program Fund for
29 purchase of the water right; and
30

31 WHEREAS, the Panther Creek transaction is in the public interest and is consistent with
32 the State Water Plan; and
33

34 NOW THEREFORE BE IT RESOLVED that the IWRB hereby agrees to purchase the
35 assignment of Water Right 75-14927 for seventy-five thousand dollars (\$75,000) contingent upon

36 the IWRB and the Water Right Owner executing a written agreement governing the rights and
37 responsibilities of the parties resulting from the assignment of the water right; and
38

39 NOW THEREFORE BE IT FURTHER RESOLVED that the IWRB authorizes the Chairman, or
40 his assigns, to pay a one-time permanent rental fee of three-hundred sixty four dollars (\$364.00)
41 to the Idaho Water Supply Bank; and
42

43 NOW THEREFORE BE IT FURTHER RESOLVED that this resolution is subject to the condition
44 that the IWRB receives the requested funding from the Bonneville Power Administration through
45 the Columbia Basin Water Transaction Program in the amount of seventy five thousand, three
46 hundred sixty-four dollars (\$75,364.00).

DATED this 19th day of March, 2021.



JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST


Jo Ann Cole-Hansen, Secretary



IDAHO DEPARTMENT OF
WATER RESOURCES

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

March 1, 2022

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE, ID 83720-0098

**RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 75-14927 AGREEMENT 582**

Dear Renter:

Please find enclosed a copy of a fully executed Water Supply Bank Rental Agreement in connection with a rental for minimum stream flow during 2021. Upon receipt of this fully executed agreement, you are authorized to divert water in compliance with the conditions of water use described in the agreement.

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

Sincerely,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosures: Rental Agreement (copy)

c: Sascha Marston – Fiscal

TO: Water Supply Bank

FROM: Amy Cassel, Program Manager, Idaho Water Transactions Program

CC: Cynthia Bridge Clark, Brian Patton

DATE: February 11, 2022

RE: Rental Agreement No. 582 – Request for potential review and amendment

On behalf of the Idaho Water Resource Board, please see the attached signed Water Supply Bank (WSB) Rental Agreement (rental). Funding and other agreements associated with the water transaction accomplished through this rental are time sensitive, requiring execution of the rental agreement as drafted. However, the following is a request for clarification and review of elements of the approval, including the authorized season of use and diversion rate.

Rental Application

Rental application No. 2079 (application) proposed to rent the full standard head gate requirement of 3.5 AF/Acre at the POD for irrigation Water Right No. 75-14927 and deliver the standard consumptive volume of 2.5 AF/Acre to Panther Creek Minimum Stream Flow Water Right No. (MSF) 75-14188. The application proposed a reduced season of use for this rental from 7/15 to 9/30 based on the period of ecological significance for ESA-listed juvenile steelhead rearing and non-listed adult Chinook salmon spawning in Panther Creek. This season of use corresponds to the most flow-limited and thermally impaired (high water temperature) conditions in Panther Creek, both of which are lethal for salmonids. Furthermore, the requested season of use corresponds to a period of time when historic flow measurements indicate that MSF 75-14188 is not met (see Attachments 3A and 4C in the rental application).

MSF 75-14188, Condition 1, states “when this water right is not capable of being maintained using existing flows, Idaho Code Section 42-1507 authorized the Idaho Water Resource Board to maintain the flow through operation of the water supply bank authorized by Section 42-1761 through 42-1765...” Condition 3 states “the purpose of this instream flow is to preserve fish and wildlife, scenic, and recreation values and to protect and enhance water quality...”

Application Review Process & Analysis

An initial analysis of the application was performed by the Water Supply Bank Coordinator (Coordinator) and a draft Rental Agreement No. 582 (previously rental application no. 2079) and review memo were submitted for final review by IDWR staff in the Water Allocation Bureau. Subsequent versions of the agreement were shared with IWRB staff, all of which authorized the requested season of use (7/15 to 9/30), a diversion rate of 0.85 cfs, and an annual volume of 130 AF. The analyses performed to determine the recommended diversion rate and volume were consistent with five similar applications filed by the IWRB in the past (these are all active rental agreements).

A fourth and final version of the rental agreement (attached) was later provided to IWRB staff with significant changes. The final version reflects the irrigation season of use of 5/1 to 10/31 and monthly diversion rates ranging from 0.35 cfs to 0.51 cfs. The annual volume is 130 AF. IDWR staff indicated the revised diversion rate was determined by applying the historic monthly consumptive use diversion rate and volume rather than a maximum diversion rate and volume based on annual historic consumptive use. The change in the method of

analysis represents a notable departure from previous IWRB rental agreements and has significant implications for the MSF and partners in the effort to secure additional instream flow to meet ecological objectives.

Approach to Evaluation of Injury and Enlargement

The initial analysis by the Coordinator and other IDWR staff found the proposed shortened season of use – 7/15 to 9/30 – was not expected to cause injury, and diversion under the rental would be limited to the times when flows are available at the original point of diversion. It is worth mentioning the application proposes to change the nature of use from a consumptive to non-consumptive use, and that other than three de minimis stockwater rights held by the United States Forest Service, there are no active irrigation diversions on Panther Creek between the proposed rental POD and MSF 75-14188. Thus, injury or a reduction in the quantity of water under an existing water right does not seem likely as a result of the proposed rental.

Initial analyses by the Coordinator and IDWR staff also determined the proposed application would not constitute enlargement. Based on IDWR's Transfer Processing Memo No. 24, the change in nature of use and season of use would not be an enlargement provided the maximum diversion rate and maximum annual volumes are not increased, and if the change would not cause injury to junior priority water rights that rely on surface water during the time period outside the historic period of use. The Coordinator's analysis resulted in a total annual volume equal to the consumptive use of the leased right and a single reduced diversion rate. This approach was consistent with the review performed for previous rental applications to provide flows to meet a IWRB MSF water right.

This rental application was filed based on existing policy and precedent set in previously approved rental agreements. Inconsistency in the analysis by IDWR is problematic and IWRB staff were not aware of changes in evaluation standards. Due to time constraints and the need to satisfy the interested parties and the funding deadlines associated with the approval of Rental Agreement No. 582, requesting a formal hearing before the Director under Idaho Code § 42-1701A, subsection (3), is not realistic at this time. Through this memo, we are requesting clarification of any policy or methodology changes and possible review or reconsideration of the attached agreement. Our intent is to ensure flow enhancement projects developed on behalf of the IWRB are viable and meet funding partners expectations. These changes will have lasting impacts on the Idaho Water Transactions Program.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

December 23, 2021

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE, ID 83720-0098

RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 75-14927, AGREEMENT 582

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

Dear Applicant:

The Department of Water Resources acknowledges receipt of your application to rent water from the Water Supply Bank. **I have enclosed a Water Supply Bank Rental Agreement for your review and signature.** Upon signature and return of the original agreement, together with the rental fee described below, the Department will also sign the original agreement and return an executed copy to you. Execution of the agreement and compliance with the conditions of approval authorize diversion and use of water as provided in the agreement.

The full fee for the rental of the above-described right(s) is \$364.00. The rental fee includes a one-time administrative fee of \$364.00. Note that the renter is obligated to pay only the administrative fees associated with the water right(s): 75-14927.

Please send a check for \$364.00 made payable to the Idaho Department of Water Resources, **together with the signed rental agreement, within 14 days** so I can complete processing.

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

Sincerely,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosure(s)

c: IDWR Front Desk

Hansen, Angela

From: Hansen, Angela
Sent: Thursday, December 23, 2021 8:57 AM
To: Cassel, Amy
Cc: Hummer, Phill; Clark, Cynthia Bridge; Parker, Cody; Keen, Shelley
Subject: RE: Draft Rental no. 2079
Attachments: Injury and Enlargement Supplemental Memo.pdf; Rental Agreement - 582 Final.pdf

Amy,

I offer the following in *response* to your four **questions**:

- 1. Could you please explain why the draft approval of rental application No. 2079 is quantified by a monthly volume? What is the legal or policy guidance supporting the decision to use monthly volumes? How were each of the monthly volumes determined?**

The rental agreement for rental application no. 2079 as currently drafted authorizes a unique rate for each month during the rental period of use. Each rate corresponds to the rate at which one can divert constantly, but not exceed the monthly consumptive volume required to grow alfalfa in the Panther Creek vicinity per the ET Idaho Salmon station. Transfer Processing Memo No. 7 in conjunction with Miscellaneous Memo No. 16 guide staff to use ET Idaho data to estimate the consumptive use associated with specific crop types. The monthly consumptive volume associated with the presumed historic use of the rental water right was considered in the case of rental application no. 2079 to alleviate injury concerns related to the rental proposal.

Idaho Code § 42-1763 affords the opportunity to reject and refuse approval or partially approve a water supply bank ("WSB") rental application upon conditions if the rental reduces the quantity of water available under existing water rights, the water supply is insufficient for the rental purpose, the rental would result in enlargement of the water right rented, or if the rental is inconsistent with the local public interest. These statutory criteria are similar to the criteria IDWR staff evaluate for water right transfer applications. As such, IDWR staff often rely on IDWR administrative processing memorandum written for water right transfer application processing. Administrative Transfer Processing Memorandum No. 24 ("Transfer Memo No. 24") is often referenced for policy considerations when evaluating the criteria listed for a WSB rental application. Transfer Memo No. 24 supports the decision to use monthly volume in that it guides staff to consider timing and location of return flows both before and after the proposed change and to consider the historic beneficial use of the water right being changed. The timing and quantities to consider are not expressly stated or limited to specific time periods, the guidance simply instructs staff to consider "timing". Rental application no. 2079 contemplates changing the nature of use of an irrigation water right to a minimum stream flow use on a creek that has limited or no storage. On a surface water system without storage, water supplies change throughout the year. In accordance with Transfer Memo No. 24's guidance to consider timing, it is appropriate to consider how use of the irrigation right changes throughout the irrigation season and analyzing monthly consumptive use values allows for consideration of timing in terms of potential impacts and historic use.

Transfer Memo No. 24 guides staff to avoid enlargement of the historic extent of beneficial use under the water right being changed. More specifically, it states staff should rely on cropping patterns of the previous five consecutive years to calculate the consumptive water use of the water right being changed. In the case of WSB rentals, the historic use data is often not available considering the

individual applying to rent the water right typically is not the same individual who historically used the right. That being the case with rental application no. 2079, IDWR presumed alfalfa may have been grown historically at the rented water right's place of use. This presumption is favorable for the IWRB (as the renter), because it assumes a greater historic use than may have actually occurred. The volume calculations are further explained and illustrated in the attached memo, Phill Hummer's Injury and Enlargement Concerns Supplemental Memo for IWRB Rental Application No. 2079 (Phill's memo). Phill's memo also provides additional information and further explains answers given to this and the other three questions you asked.

2. Could you please identify and explain how this rental will reduce the quantity of water available to existing water rights?

If the rental is limited to the monthly rates in the current draft rental agreement, the rental should not reduce the quantity of water available to existing water rights. If the rental allocates rates greater than those proposed in the current draft rental agreement, the allocation will exceed the amount presumed to have been historically used, which will reduce the quantity of water previously available to other water rights on Panther Creek upstream of minimum stream flow water right 75-14188's quantification point. The historic consumptive use represents the amount of water the rented water right (75-14927) holder historically used that was not available to other water users on Panther Creek. While the rented water right holder may have historically diverted more water into the delivery system, the water not consumed would have returned to Panther Creek as direct return flows or potentially as conveyance losses through the ground back to the Panther Creek drainage. Furthermore, junior users on the Panther Creek system should not be required to curtail their use to provide more water than is needed for the senior user to accomplish the irrigation beneficial use and the holder of water right 75-14927 is not entitled to divert water not being used for the irrigation beneficial use (Idaho Code § 42-104). Transfer Memo No. 24 states the consumptive use is the measure of the historic extent of use. Allocating more than the historic consumptive use to the proposed minimum stream flow use would require junior water right holders to curtail during periods when the irrigation beneficial use was not occurring. The extent of historic use, in terms of quantity and timing, can not be enlarged, because doing so would subject other users to a priority they were not subject to at specific times of the year and in essence reduce the juniors' right to divert. To rephrase, the irrigator (75-14927) historically had the right to the water when he was using the water for irrigation. When he wasn't irrigating, the right to the use of that water went to the junior water users. Converting irrigation to a minimum stream flow use, which is being made whenever water is in the creek, would take away the historical right to the water that the juniors had when the senior irrigator wasn't irrigating. The rental agreement as drafted reduces this injury potential by limiting the minimum stream flow use to the irrigation consumptive use in terms of both timing and quantity.

3. Could you please explain how this rental will constitute an enlargement of use?

If the rental is limited to the monthly rates in the current draft rental agreement, the rental should not enlarge the use of water right 75-14927. As stated above, the historic extent of use should not be enlarged. Per Transfer Memo No. 24, the historic extent of use for an irrigation right is the consumptive use. The consumptive use should not be enlarged and limiting the minimum stream flow use to rates derived from monthly consumptive use volumes accomplishes this goal in terms of quantity and timing.

4. Could you please explain if there were other concerns that prompted the changes made in the draft rental?

The attached draft rental with monthly diversion rates seeks to address enlargement and injury concerns discussed above.

As mentioned above, Phill Hummer's memo and the draft rental agreement are attached to this email. The rental agreement was emailed to Brian Patton for his signature on behalf of the IWRB as the rental applicant.

Regards,
Angie



IDAHO DEPARTMENT OF
WATER RESOURCES

Angela Hansen | Water Rights Section Manager

322 E Front St, PO Box 83720, Boise, ID 83720

(208) 287-4951 | www.idwr.idaho.gov

From: Cassel, Amy <Amy.Cassel@idwr.idaho.gov>
Sent: Friday, December 17, 2021 1:51 PM
To: Hansen, Angela <Angela.Hansen@idwr.idaho.gov>
Cc: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Clark, Cynthia Bridge <Cynthia.Clark@idwr.idaho.gov>
Subject: Draft Rental no. 2079

Angie,

Regarding the processing of the Panther Creek rental application No. 2079, I wanted to bring several items to your attention.

The IWRB is currently renting irrigation water rights for instream flow beneficial uses for periods of time that are quantified at less than the irrigation season of use:

Rental no.	Rental – beneficial use	Rental Season of Use	Irrigation Season of Use	Rental Agreement Term
334	Minimum Stream Flow	7/1 – 9/30 (92 days)	5/1 – 10/31	2019 - 2038
337	Minimum Stream Flow	7/1 – 9/30 (92 days)	5/1 – 10/31	2019 - 2038
273	Minimum Stream Flow	7/1 – 9/30 (92 days)	5/1 – 10/31	2018 - 2117
186	Minimum Stream Flow	7/1 – 9/30 (92 days)	5/1 – 10/31	2017 - 2116
347	Fish Habitat	5/15 – 9/15 (123 days)	4/1 – 10/31	2019 - 2023

Due to the precedent that has been set by these current rentals, I was surprised by the draft rental approval provided to me on November 26, 2021. Specifically, I am concerned about the way that draft is structured because it is a big departure from how these long-term rentals for minimum streamflows have been done in the past. If approved as suggested in the draft, this rental will not accomplish the goals for which it was created, i.e. supporting instream flows for fish and wildlife habitat on Panther Creek late in the irrigation season when flows are lowest. I would like more information from you about the following:

1. Could you please explain why the draft approval of rental application No. 2079 is quantified by a monthly volume? What is the legal or policy guidance supporting the decision to use monthly volumes? How were each of the monthly volumes determined?
2. Could you please identify and explain how this rental will reduce the quantity of water available to existing water rights?

3. Could you please explain how this rental will constitute an enlargement or use?
4. Could you please explain if there were other concerns that prompted the changes made in the draft rental?

I would really appreciate an answer to these questions by next week if possible. I am requesting a quick turnaround due to the following:

The rental application was reviewed by WSB staff and then sent to water rights staff on September 20, 2021. Based on emails I received from water rights staff in early November, it was my understanding that the rental was basically completed and awaiting your final review.

Western Rivers Conservancy, which currently owns WR No. 75-14927 and the associated property, informed the United States Forest Service Intermountain Region (Ogden, UT) that the rental agreement was imminent and closing on the sale of both the property and water right was proceeding with a closing date scheduled for December 31, 2021. On November 24, 2021, the USFS placed their money to purchase the property in escrow.

The funding for the acquisition of the water right will be provided to the IWRB by Bonneville Power Administration via the Columbia Basin Water Transactions Program. BPA expects a closing date for this acquisition on December 31, 2021. The IWRB passed a funding resolution for this acquisition on March 19, 2021.

As you can see, there are a number of agencies and organizations that are affected by the execution of the rental agreement and there is a significant amount of financial resources committed to complete this acquisition. Western Rivers Conservancy, BPA, USFS, and the IWRB endeavored this transaction to benefit fish listed under the Federal Endangered Species Act, and the expectation of the parties was a rental agreement that reflected past practices and precedent set by water rights staff.

Thanks, I look forward to your response.

Amy Cassel | Program Manager
Idaho Water Transactions Program
Idaho Department of Water Resources
102 S. Warpath | Salmon, ID 83467
tel: (208) 742-0656 cell: (208) 577-1565

MEMORANDUM

DATE: 11/24/2021

TO: IWRB Rental Application No. 2079

FROM: Phill Hummer (Water Right Supervisor)

RE: Injury and Enlargement Concerns Supplemental Memo

Introduction

Securing water to maintain flows in minimum streamflow reaches through the water supply bank rental process was anticipated as evidenced by the conditions on several MSF water rights and by the language of the statute (§ 42-1507). However, like any other application proposing rental of water rights, a rental of water to sustain and maintain minimum streamflow water rights should not be approved unless the proposed rental meets the criteria established by Idaho Code § 42-1763. The rental must not reduce the quantity of water available under existing rights, the water supply must be sufficient for the use, the proposed use must not cause or provide opportunity to enlarge the use of the right being rented, and the proposed use of water must not in conflict with local public interest. Providing water to maintain the minimum flows in Panther Creek supports fish habitat and recreation and is within the local public interest. The rights being rented authorize diversion from Panther Creek and the proposed use is non-consumptive so there are no concerns with the sufficiency of supply. Therefore, this supplemental memo will focus on injury and enlargement concerns.

Location and Existing Water Rights

This rental application proposes an indefinite rental of water right 75-14927. Water right 75-14927 authorizes the diversion of water from Panther Creek from two points of diversion within the SESE and SWSE of section 9, township 19 N, range 18E, and from Fourth of July Creek within the SWSE of the same section. The proposal is to maintain flows associated with MSF water right 75-14188. The MSF water right does not have a point of diversion because the right authorizes instream flow. But it was issued with a quantification point in Panther Creek in the NENW of section 35, township 20N, range 18E. See Figure 3 attached to this memo for a map showing these points and the POD of other water rights along Panther Creek, figure 4 lists the water rights with nearby POD color coded to match the map.

According to current IDWR records there are two rights with points of diversion in between the POD of the rental right and the MSF quantification point. Both are owned by the BLM and have priority dates senior to both the MSF right and the rental right. There are two other water rights of note in this area. Water right 75-10788 authorizes diversion from Fourth of July Creek, IDWR records indicate the point of diversion is the same POD as the rental right. Right 75-10788 has a priority date of 5/10/1910 which is senior to both the MSF right and the rental right. Right 75-10125 authorizes diversion from both Fourth of July Creek and Panther Creek and is the parent of the rental right, which was split pursuant to the sale of appurtenant property in 2017. There are nine rights senior to the rental right, five of which have points of

diversion down stream from 75-14927. There are 15 rights junior to the rental right including both MSF rights (75-14186 and 75-14188), of which seven are located downstream of the rental right. Figure 4 below shows all the rights from Panther Creek.

Injury Analysis

Transfer Processing Memo No. 24 provides policies and procedures for processing applications proposing to transfer existing water rights, those same policies are applied to applications to lease and rent water rights. Section 5 outlines the steps for processing and details the review criteria pursuant to § 42-222 Idaho Code. Part 5c(1) (page 24) provides factors to consider when evaluating potential injury. One factor that must be considered is:

Whether the amount of water available under an existing water right, senior or junior in priority, will be reduced below the amount recorded by permit, license, decree, or valid claim, or the historical amount beneficially used by the right holder.

To properly evaluate potential injury of a proposed change to a surface water irrigation use, the amount of water actually put to beneficial use and the timing of that use must be considered. Traditionally irrigation water is required at those times of the year when evapotranspiration exceeds the amount of water available in the soil. Without data demonstrating the historic use of water right 75-14927, it is assumed the diversion and application of water was conducted during the authorized season of use in response to water demands (see Figure 1 below for precipitation deficit information). This means that under normal practice water diverted under right 75-14927 would have been removed from Panther Creek and not available to downstream users beginning in April and continuing through October and junior users upstream would be required to pass water to satisfy the rental right during those times. The greatest use occurs in the months of June and July (Figure 1). If the use of water under the right changes through the rental process such that it changes the timing of use and the availability of water, that could potentially cause injury. If water is appropriated under the rental in greater amounts than historically consumed that would reduce the quantity of water available to downstream users and junior upstream users would be required to pass more water than previously required to satisfy the rental. The neither the timing nor amount of the historic use can be changed through the rental process if the change disrupts the amount of water available to other users of the same source.

The amount of water in a natural flow system such as Panther Creek (watershed without storage large storage reservoirs) varies throughout the year and water that is available during one part of the year is often not available at later times. Similarly, water made available at one period of time in the year is typically not available for use later in the year as that water would be either diverted by other appropriators or flows down stream and out of the system. Rental Application No. 2079 proposes this situation. The applicant has requested to idle irrigation water right no. 75-14927 and appropriate the unused water in greater amounts later in the season when the flows in Panther Creek are low. The proposal to continually divert 0.85 cfs during the months of July, August, and September would result in a greater volume appropriated in those months than would normally be made unavailable by the historic irrigation use (Figure 1, last row "0.85 cfs proposed SOU). This change to the timing in use could injure downstream users relying on water normally available and to upstream junior users that could be made to pass water to satisfy the proposed in-stream use. Since the proposed use is in-stream there is no diversion in the traditional sense, so the removal of water can not be regulated, an in-stream use continually

accrues when in priority. Without methods to regulate the appropriation of water under the rental the use must be limited such that it does not exceed the historic use. One method would be to limit the rate so that when accrued constantly the amount does not exceed the historic use. Calculating the monthly historic consumptive use volume and an equivalent daily rate provides one method to ensure injury does not occur due to changes in timing.

Although, the proposed use is non-consumptive, the right to water exists and should still be considered an appropriation and dedication of water to a use that makes it so that water is not available at that time to other users. Additionally, Panther Creek water idled in April, May, and June is not still available for use in July, August, and September. Free flowing water in a system without supplementation by storage reservoirs does not work that way and moving a block of water from the spring and earlier summer to be available at a different time of year can be done on paper but does translate to an increase in availability of real water.

Enlargement Analysis

Transfer Processing Memo No. 24 details the review criteria and considerations for analyzing proposed changes to water rights and the potential for enlargement of the right. The following are specific parts relied upon in this review. For additional discussion see the initial review (See review memo by Mary Condon dated August 27, 2021 – September 20, 2021

Part 5d (page 28) states:

Enlargement will occur if the total diversion rate, annual diversion volume, or extent of beneficial use, exceeds the amounts or beneficial use authorized under the water right prior to the proposed transfer.

Part 5d(5) states:

The highest-year, historic consumptive use (i.e. highest-use crop rotation using a climatic average for crop water use estimates), except for supplemental rights, will be the basis for annual volume of consumptive use available to transfer.

Part 5d(1) states:

If the annual diversion volume is not specifically stated on the license or decree for a ground water right, then the amount will be based on the most current standards adopted by the department unless the applicant can show a larger amount has been reasonably diverted and beneficially used.

The use proposed in the rental application involves changing the nature of use of right 75-14927 from irrigation to dedicate it to non-use. Since the use of water for minimum streamflow can not be established through the rental process, the proposed use is not strictly for minimum streamflow but calling the use minimum streamflow is appropriate. As stated in the above reference to the Memo 24, the highest historic consumptive use is the amount of water available for change and the volume is not specified on the right so an appropriate climatic average can be used.

Without historic use data from the water right owner, it is appropriate to use climatic data to calculate the historic use. Using the ETIdaho precipitation deficit calculations, which uses statistical summaries based on thirty year normal spans from 1983 to 2016

(<http://data.kimberly.uidaho.edu/ETIdaho/>), for the Salmon area and assuming values for alfalfa provides a good estimate of the historic consumptive amounts at the place of use of right 75-14927.

	February	March	April	May	June	July	August	September	October	November	Growing Season
deficit in mm	0.10	0.03	1.68	4.91	5.30	5.89	4.76	3.99	1.94	0.10	875.00
deficit in ac-ft	0.48	0.16	8.60	25.97	27.13	31.15	25.17	20.42	10.26	0.51	149.85
deficit w/in SOU	0.00	0.00	4.30	25.97	27.13	31.15	25.17	20.42	4.96	0.00	139.10
0.85 cfs (entire SOU)			25.29	52.26	50.58	52.26	52.26	50.58	26.13		309.37
0.85 cfs proposed SOU						27.04	52.39	50.70			130.13

Figure 1. Precipitation deficit data from ETIdaho, converted to acre feet, and compared to the proposed diversion rate and season of use.

The precipitation deficit calculations can be used as the value of consumptive use. Figure 1 provides those values for the year (January and December were negative and therefore are not listed) and for the season of use of the water right. Using these values the total consumptive use for the season of use would be 139.10 acre feet. The standard diversion volume amount for the place of use is 2.5 af per acre, the right authorizes irrigation of 52 acres. Using the standard headgate value the total volume would be 130 af. Since it is the standard practice to use the headgate value, the total volume available for change through the rental process is 130 acre feet. Changing 130 acre feet from irrigation use to a dedication to non use would not constitute an enlargement of the original right.

The applicant proposes a reduced diversion rate of 0.85 cfs and a daily volume of 1.69 ac-ft per day for 77 days of the year, from 7/15 to 9/30. While this would provide a rental total annual volume of less than the calculated historic use (1.69 ac-ft * 77 days = 130.13 afa), it would provide greater volume in August and September than historically consumed. As discussed previously, increased appropriation in the later months and other changes to the timing of use could injure existing rights.

To ensure the historic use of right 75-14927 is not exceeded, the rental should not be issued with a diversion rate that when considered continuously, allows for an accrued volume greater than the amount used in any one month or for the entire season of use. This can be accomplished with a rate and volume that varies by month as follows:

	February	March	April	May	June	July	August	September	October	November	Growing Season
equivalent rate	0.00	0.00	0.00	0.35	0.46	0.51	0.41	0.34	0.16	0.00	
adjusted acft/day	0.00	0.00	0.00	0.69	0.90	1.00	0.81	0.68	0.32	0.00	
adjusted vol	0.00	0.00	0.00	21.33	27.13	31.15	25.17	20.42	4.80	0.00	130.00

Figure 2. Precipitation deficit data during the season of use converted to constant rate and the equivalent volume.

This type of season of use restricts the amounts that can be accrued to the rental to those amounts historical consumed in each month and the total volume to 130 ac-ft while providing as much water as possible in the months the applicant request (July, August, and September). This tiered season of use also reflects the season of use of the MSF right 75-14188.

By issuing a rental agreement using a tiered season of use, we can be assured existing rights are not injured by changes in timing of appropriation and the potential for enlargement due to constant appropriation associated with the proposed nature of use change.

Attached Map and Water Right Table.

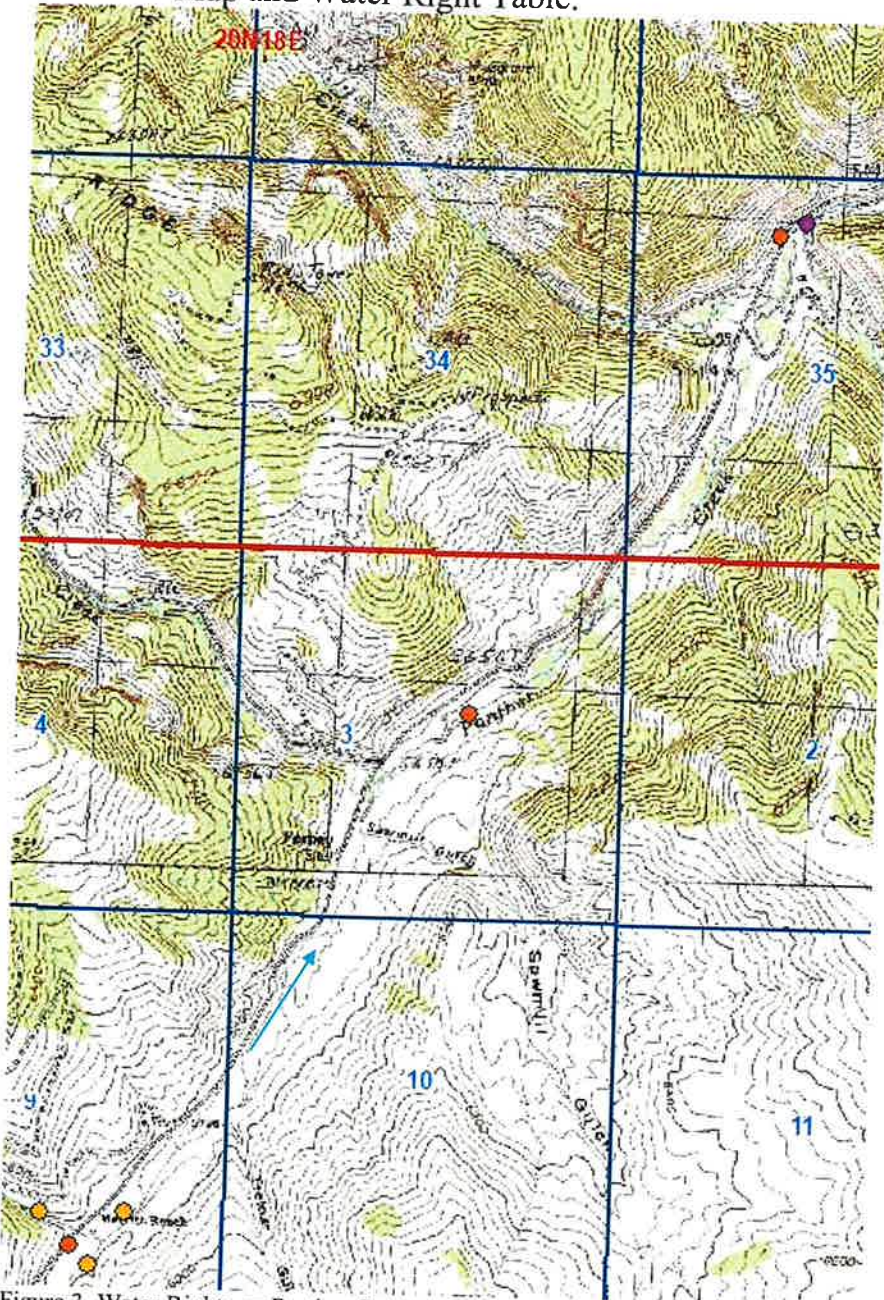


Figure 3. Water Rights on Panther Creek near the proposed rental. The red dots show the POD for rights in the name of the BLM, Purple the MSF water right quantification points, orange show the POD of the rental water. These POD are also shared with 75-10788 and 75-10125.

Basin	Sequence	Priority	Date	Water Use List	Diversion Rate	Total Acres	Acre Limit	Volume
75	4006	5/1/1891		IRRIGATION	0.10	5.0		
75	11129	6/1/1882		STOCKWATER	0.02			
75	11131	6/1/1882		STOCKWATER	0.02			
75	11132	6/1/1882		STOCKWATER	0.02			
75	11133	6/1/1882		STOCKWATER	0.02			
75	11134	6/1/1890		STOCKWATER	0.02			
75	10626	1/25/1906		IRRIGATION, STOCKWATER	0.20	10.0		
75	4164	11/5/1906		IRRIGATION	0.25			
75	13802	11/5/1906		ADMINISTRATIVE	0.08	6.2		
75	10125	5/1/1916		IRRIGATION, STOCKWATER	0.50	24.0		
75	14927	5/1/1916		IRRIGATION, STOCKWATER	1.09	52.0		
75	4486	5/1/1918		IRRIGATION	0.88	44.0		
75	10562	2/15/1919		DOMESTIC, IRRIGATION	0.27	11.3		
75	14909	2/15/1919		IRRIGATION	0.02	1.0		
75	14967	2/15/1919		IRRIGATION	0.03	1.5		
75	15020	2/15/1919		IRRIGATION	0.02	1.2		
75	14603	6/1/1919		IRRIGATION	0.08	4.6		
75	14226	5/1/1920		IRRIGATION	1.40	70.0		
75	4114	10/12/1923		IRRIGATION	0.13	4.3		
75	7033	12/18/1972		IRRIGATION	0.18	9.0		
75	14984	12/18/1972		IRRIGATION	0.05	2.5		
75	14998	12/18/1972		IRRIGATION	0.05	2.5		
75	7503	11/27/1991		DOMESTIC	0.04			1.2
75	7502	10/15/1992		IRRIGATION	0.06			11.3
75	14186	4/1/2005		MINIMUM STREAM FLOW	1,297	3.2		
75	14188	4/1/2005		MINIMUM STREAM FLOW	193			

Figure 4. Water rights on Panther Creek. Rights highlighted green are downstream from 75-14927, blue are upstream (75-10125 shares points of diversion with 75-14927).

MEMORANDUM FOR COMPANION LEASE 1432 RENTAL PACKAGE

To: Water Right(s) 75-14927

From: Mary Condon

Date: August 27, 2021-September 20, 2021

Re: Review & Analysis of Application to Lease and Rent Water from the State Water Supply Bank

PURPOSE/NARRATIVE: An amendment application (2125) for lease of right 75-14927 (contract 1251) with a new rental application (2079) from the Idaho Water Resource Board were received on August 11th and June 11th of 2021, respectively. The purpose of the package is for an indefinite lease rental of water right 75-14927 from Fourth of July Creek, tributary to Panther Creek, and from Panther Creek, tributary to Salmon River, a stretch of 3.2 miles to supplement a minimum streamflow Water Right 75-14188 on Panther Creek held by the Board. Review of the area finds a second minimum stream flow right 75-14186 beginning at the quantification point of 75-14188 to an end point 2.5 miles downstream, listed as the quantification point for 75-14186. The original lease application referred to the future rental application and purpose and was approved on December 3, 2020 for 2021 thru 2025. The amended lease application (2125) requested a start of 2022 – clarification from Sue Doroff that this should be 2021 was received via email on 9/1/2021.

This memo will cover the amendment of the lease contract 1251 via new contract 1432, the review of rental application 2079 through advertisement and adding the 100-year review cycle to both lease and rental.

AUTHORITY TO FILE: Application for the lease was submitted by Sue Doroff, President of Western Rivers Conservancy, owner of the entire water right as of 2020. Annual Report data from Idaho Secretary of State further confirms her position with the conservancy. Rental was signed by Brian Patton on behalf of the Board, and the Resolution No. 09-2021, was included, where the board has made funds available to rent the water indefinitely. No concerns with authority to file.

WATER RIGHT VALIDITY: Water Right 75-14927 is a split from parent right 75-10125, for irrigation and stockwater, and decreed in 2008. The stockwater portion prior to the split was limited to 13,000 gallons per day at .07 cfs. After the split, the use of stockwater between the two rights is still limited to combined 13,000 gallons per day and .05 cfs under 75-14927 and .02 cfs for right 75-10125.

Review of the lease for 2021-2025 under original contract 1251 found no concerns with the validity of this right through irrigation. Review of satellite sentinel imagery for 2020 and 2018 shows mild to heavy vegetation within the areas for lease, as well as on the slopes above and outside of the leased area. Outlying vegetation levels consistent with the leased area makes it unclear whether the vegetation within the Place of Use is due to precipitation or diversion, or both. Precipitation and the reduced need to divert because of high water tables does not negate the validity of a water right but is worth mentioning. No further concerns with validity of the water right and portion offered to the bank for this amendment for perpetual lease and rental.

INJURY TO OTHER WATER RIGHTS: Established beneficial use has been for irrigation and stockwater. Rental will be to supplement the minimum streamflow rights held by the Board and requires a change in Nature of Use. Use of this right for supplementing the minimum stream

flow rights is limited to the flow rates available to this right at the original Point of Diversion minus any other existing water right diversions and channel losses between the decreed Point of Diversion and the quantification point for WR 75-14188. Point of Diversion of the leased/rented right on Fourth of July Creek is shared with WR 75-10788 and Parent right 75-10125, and on Panther Creek is shared with parent right 75-10125. Since the rental stays in stream with no diversion, no injury is expected from this indefinite lease rental package.

ENLARGEMENT OF USE: Water right 75-14927 beneficial use is for irrigation from 4/01 to 11/01 and stockwater from 01/01 to 12/31, whereas the rental is for Minimum Stream Flow from 7/15 to 9/30. As stated under Validity above, the stockwater portion is combined with 75-10125 and limited between the two rights for no more than 13,000 gallons per day. While there are no concerns with bringing the rate into the bank for the stockwater portion, it will not be included in the rental to prevent any enlargement.

Additionally, the change in nature of use requires a calculation of the consumptive use based on historic use, or the area headgate standard which is 3.5 af/ac and an area consumptive use standard of 2.5 af/acre. Even though the rental for supplementing the minimum streamflow is non-consumptive and will remain in stream, the calculated rental volume and rate are useful for water accounting and preventing injury to other rights between the original point of diversion and the quantification point. Leased portion of the irrigation is equal to 1.04 cfs and 52 acres, calculated to 182 af based on the area headgate standard. Rental will be reduced to the consumptive use value of 130 af, or 1.69 af per day for 77 days each year from 7/15 to 9/30, with a total instantaneous rate of .85 cfs.

LOCAL PUBLIC INTEREST: Review staff has no information to suggest this application is inconsistent with the local public interest. Notice of the rental was provided via advertisement in the local paper, Salmon Recorder-Herald for Lemhi County, per IDAPA Rule 37.02.03.030.02 (Water Supply Bank Rule 30.02). Advertised on the 16th and 23rd of September. The comment end date is October 4, 2021.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: The lease and rental for minimum streamflow maintenance on Panther Creek, tributary to Salmon River is a beneficial use and consistent with the conservation of water resources in Idaho. A memo submitted with the rental application by Amy Cassel, evaluates the measurements taken at the Panther Creek gauge and the Blackbird Creek gauge (discontinued July of 2020) to estimate flows on Panther Creek and whether they meet or fall short of the minimum streamflow right 75-14188 over 9 years, from 2012 to 2020. In 5 of the 9 years, the minimum streamflow was either not met, or barely met.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The location for the rental PD is in Eastern Region, and not subject to a Water District.

WATER SUPPLY BANK STAFF COMMENTS: The lease and rental for an indefinite period for the supplementation of the Board's minimum streamflow right 75-14188 should be approved and reviewed for re-approval every 100 years. There is a one-time administrative fee to the Bank, in the amount of \$364.00.

Condon, Mary

From: Condon, Mary
Sent: Monday, September 20, 2021 3:35 PM
To: Cefalo, James; Hummer, Phill
Cc: Bank
Subject: Western Rivers Conservancy Lease and IWRB Rental
Attachments: Amended Lease Rental Review Memo - IWRB.docx; NEW - Report - Lease Contract - 1432.docx; Report, Rental Agreement - 582.docx; Rental Application 2079.pdf

Hi James,

Please see the attached review memo, rental agreement and lease contract, and kindly respond in 10 days with any comments or concerns. I can send you the maps if you would like to see them as well. I did include the application with the data Amy submitted.

Phill – This is ready for your review.

Best,
Mary

Hersley, Jean

From: Hersley, Jean
Sent: Friday, September 10, 2021 2:01 PM
To: Recorder Herold
Subject: Legal Notice for your paper

A COPY WILL BE FAXED TO YOU ALSO. Thank you. Jean
September 10, 2021

208-756-2222 Page 1

Legal Notice Department

Recorder Herald
PO Box 310
Salmon ID 83467

RE: Legal Ad for your paper

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notices which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office, PO Box 83720, Boise, Idaho, 83720-0098 before October 4, 2021. Your cooperation is appreciated.

Sincerely

Jean Hersley
Technical Records Specialist II
IDWR State Office
322 E Front St
Boise ID 83720
208-287-4942
jean.hersley@idwr.idaho.gov

NOTICE OF PROPOSED RENTAL FROM WATER SUPPLY BANK

Notice is hereby given pursuant to [IDAPA Rule 37.02.03.030.02 \(Water Supply Bank Rule 30.02\)](#) that the Idaho Water Resource Board, PO BOX 83720, Boise, ID, 83702-0098, filed an application on June 11, 2021 (Water Supply Bank Rental Application No. 2079), to rent Water Right No(s). 75-14927 from the Water Supply Bank for an indefinite period of time. The proposed rental in Lemhi County would provide for the permanent dedication of 1.09 cfs from Fourth of July and Panther Creeks, for maintenance of minimum stream flow water right 75-14188 on Panther Creek, which is tributary to the Salmon River.

Comments may be submitted based on the criteria of Section 42-1763, Idaho Code. Comments should be filed in writing to the Idaho Department of Water Resources, PO Box 83720, Boise, ID 83720-0098, or emailed to Bank@idwr.idaho.gov on or before October 4, 2021. For more information, visit www.idwr.idaho.gov/water-supply-bank.
Gary Spackman, Director

Published Sept 16 and 23, 2021

Affidavit of Publication

STATE OF IDAHO

ss.

County of Lemhi

RECEIVED

SEP 27 2021

DEPARTMENT OF
WATER RESOURCES

NOTICE OF PROPOSED RENTAL FROM WATER SUPPLY BANK

Notice is hereby given pursuant to IDAPA Rule 37.02.03.030.02 (Water Supply Bank Rule 30.02) that the Idaho Water Resource Board, PO BOX 83720, Boise, ID, 83702-0098, filed an application on June 11, 2021 (Water Supply Bank Rental Application No. 2079), to rent Water Right No(s), 75-14927 from the Water Supply Bank for an indefinite period of time.

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RICKY G. HODGES being first duly sworn, deposes and says he is one of the publishers (printers) of The Recorder Herald, a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general circulation therein. That the **NOTICE OF PROPOSED RENTAL**, a true printed copy of which is attached to the margin hereof, has been and was correctly printed and published in the regular and entire issue of every number of said newspaper and not in any supplement thereof or thereto for **TWO (2)** consecutive issue(s), commencing with the issue dated **09-16-2021** and ending with the issue dated **09-23-2021**.

STATE OF IDAHO

ss.

County of Lemhi

On this **23rd day of September** in this year of 2021 before me, A Notary Public, personally appeared RICKY G. HODGES, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Residing At Salmon, Idaho

Notary Public for Idaho

My Commission expires: 4-10-2023

[Signature]
09-29-21

Publication Fee \$57.60



[Handwritten initials]

Condon, Mary

From: Condon, Mary
Sent: Thursday, September 9, 2021 1:24 PM
To: Hersley, Jean
Subject: Advertisement
Attachments: DRAFT - Legal Notice.docx

Hi Jean,

Here is the advertisement for Rental application 2079. I'm currently still working the review, but should be finished by end of day.

Thank you,
Mary

Condon, Mary

From: Sue Doroff <sdoroff@westernrivers.org>
Sent: Wednesday, September 1, 2021 3:53 PM
To: Condon, Mary
Cc: Cassel, Amy; Dieter Erdmann
Subject: Western Rivers Conservancy Application for Indefinite Rental of Water Right No. 75-14927

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mary,

I understand that you are processing Western Rivers Conservancy's application for the indefinite rental of water right no.75-14927 to the Water Supply Bank. The application submitted is intended to initiate an amendment to our existing Water Supply Bank Lease Contract No. 1251, and the start date is intended to be in calendar year 2021 as opposed to 2022 as indicated on the application.

Please don't hesitate to contact me with any questions,

Thank you,

Sue Doroff

Sue Doroff | President
Western Rivers Conservancy
t: 503-241-0151 x 212 | c: 503-504-4050 | www.westernrivers.org

Sometimes to save a river, you have to buy it.





IDAHO WATER RESOURCE BOARD

Brad Little
Governor

May 3, 2021

Jeff Raybould
Chairman
St. Anthony
At Large

RE: Application to Rent WR 75-14927 for delivery to the Panther Creek Minimum Stream Flow Water Right 75-14188

Roger W. Chase
Vice-Chairman
Pocatello
District 4

Enclosed please find an application to permanently rent Water Right No. 75-14927 for delivery to the Upper Panther Creek Minimum Stream Flow Water Right No. 75-14188. The purpose of this rental is to improve flows in Panther Creek to facilitate the spawning and rearing of fish species listed under the Endangered Species Act.

Jo Ann Cole-Hansen
Secretary
Lewiston
At Large

If you have any questions or need further clarification regarding the rental application, please feel free to contact me.

Dale Van Stone
Hope
District 1

Sincerely,

Albert Barker
Boise
District 2

Amy Cassel
Program Manager, Idaho Water Transactions Program
Idaho Department of Water Resources
102 S. Warpath
Salmon, ID 83467

Dean Stevenson
Paul
District 3

Peter Van Der Meulen
Hailey
At Large

Brian Olmstead
Twin Falls
At Large