

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1423

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

RECEIVED

JUL 26 2021

DEPARTMENT OF
WATER RESOURCES

LESSOR: BIG CREEK RANCH LLC
PO BOX 5987
KETCHUM, ID 83340-5987

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 June 01, 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)
73-12214	11/20/1885	BIG CREEK, tributary to PAHSIMEROI RIVER	0.35	Not stated	36
73-12215	3/27/1888	BIG CREEK, tributary to PAHSIMEROI RIVER	0.23	Not stated	36
73-12216	3/1/1890	BIG CREEK, tributary to PAHSIMEROI RIVER	0.35	Not stated	36
73-12217	3/1/1890	MILL CREEK, tributary to BIG CREEK	0.35	Not stated	36
73-12212	5/1/1917	BIG CREEK, tributary to PAHSIMEROI RIVER	0.22	Not stated	36
73-12213	5/1/1917	BIG CREEK, tributary to PAHSIMEROI RIVER	0.17	Not stated	36
Combined Limit Totals			1.32	Not stated	36
Combined Lease Totals			1.32	126	36

SUPPORT DATA
IN FILE # 73-12212

WATER SUPPLY BANK LEASE CONTRACT No. 1423

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)
73-12214	0.35	60.6	17.3	0.02	3.5
73-12215	0.23	40.3	11.5	0.02	3.5
73-12216	0.35	60.6	17.3	0.02	3.5
73-12217	0.35	60.6	17.3	0.02	3.5
73-12212	0.22	50.4	14.4	0.02	3.5
73-12213	0.17	40.3	11.5	0.02	3.5
Combined Limit Totals	1.32	126	36	0.04	3.5

** The water right elements rentable have been reduced from the water right elements leased to account for combined limits.*

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

Minimum Payment Acceptable: Current Rental Rate
3. **TERM OF LEASE:** The term of this lease shall be January 1, 2021 to December 31, 2023. 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.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1423

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

LESSOR: BIG CREEK RANCH LLC
PO BOX 5987
KETCHUM, ID 83340-5987

By [Signature]
Title Manager
Date 7/22/21

IDAHO WATER RESOURCE BOARD

322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

By [Signature]
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 7/26/21

Lease approved by IDWR [Signature]

Date 7/26/21

WATER SUPPLY BANK LEASE CONTRACT No. 1423

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): 73-12212, 73-12213, 73-12214, 73-12215, 73-12216

BIG CREEK SESW Sec. 12 Twp 13N Rge 23E LEMHI County

Source and Location of Point(s) of Diversion for Water Right No(s): 73-12217

MILL CREEK NWNESW Sec. 12 Twp 13N Rge 23E LEMHI County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
73-12212	IRRIGATION	04/01	to	10/31	0.22 cfs	60.6 AF
73-12213	IRRIGATION	04/01	to	10/31	0.17 cfs	40.3 AF
73-12214	IRRIGATION	04/01	to	10/31	0.35 cfs	60.6 AF
73-12215	IRRIGATION	04/01	to	10/31	0.23 cfs	60.6 AF
73-12216	IRRIGATION	04/01	to	10/31	0.35 cfs	50.4 AF
73-12217	IRRIGATION	04/01	to	10/31	0.35 cfs	40.3 AF
Totals:					1.32 cfs	126 AF

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	
13N	23E	11				5.1													5.1
13N	23E	12							16 L2			11		3.9					30.9

Total Acres: 36

ADDITIONAL CONDITIONS OF ACCEPTANCE

- The water rights referenced above will be rented from the bank at the current rental rate.
- 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.
- 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.
- 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.
- While a water right is in the bank, forfeiture provisions are stayed pursuant to Idaho Code § 42-223(5).

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1423

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.
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. 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. 73.

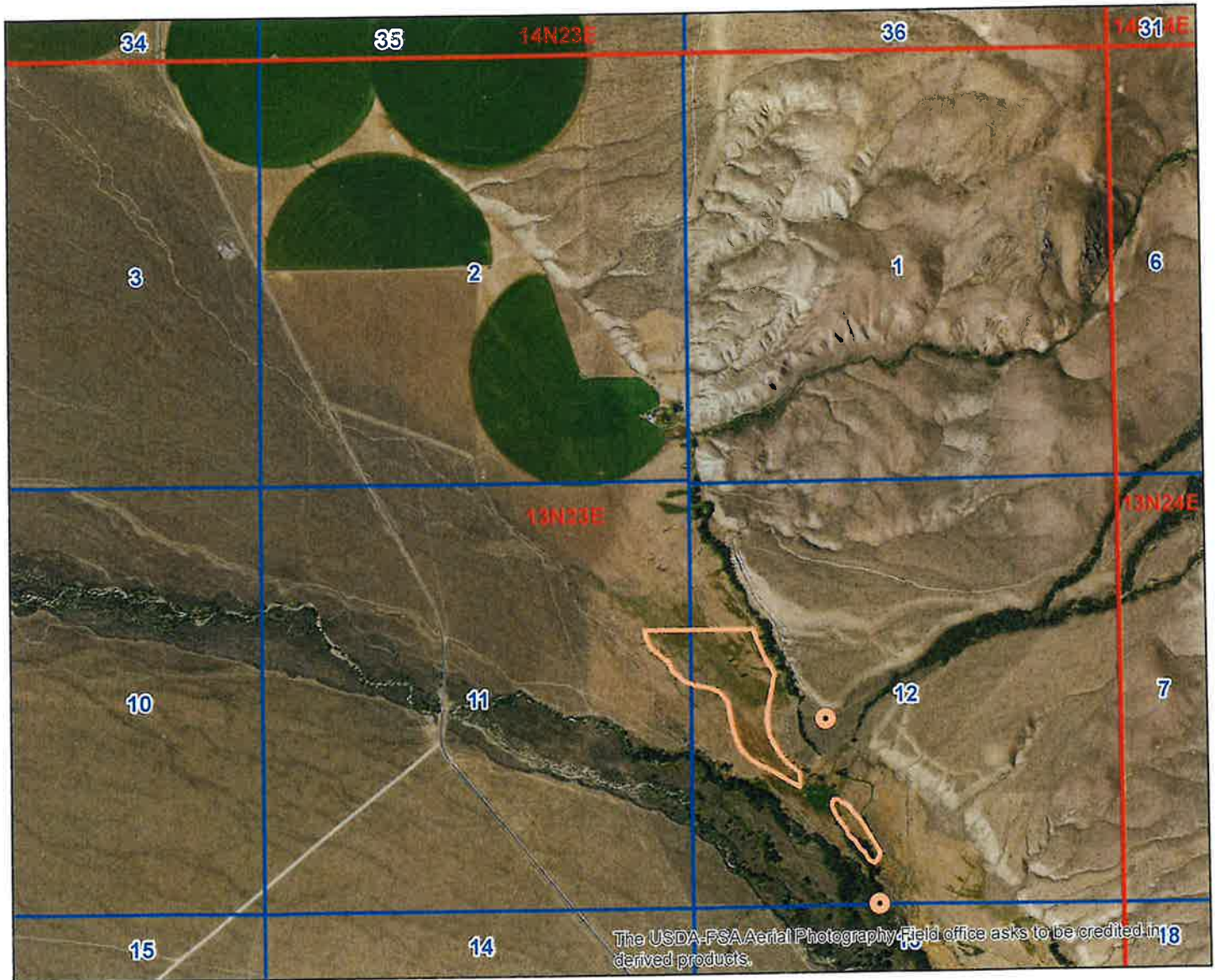
Idaho Water Resource Board

Water Supply Bank Lease Contract No. 1423

73-12212, 73-12213, 73-12214, 73-12215, 73-12216, & 73-12217

Effective until December 31, 2023

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



-  Approved Lease Points of Diversion
-  Approved Lease Place of Use
-  Township/Range
-  Sections



STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

JUN 01 2021

DEPARTMENT OF
WATER RESOURCESAPPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKDesignated Applicant Big Creek Ranch LLC

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

Water Right No. 73-12216

(One water right per application)

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

Yes ☒ No ☐

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

MINIMUM REQUIREMENT CHECKLIST

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

Yes

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

Attachment N/A Yes

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

Department Use Only

Fee Amount \$ <u>250</u>	Received By: <u>km</u>	Date Received: <u>6.1.21</u>	Receipt # <u>C110474</u>
W-9 received? Yes ☐ No ☒ (Route W-9 to Fiscal)		Name on W-9:	

2083

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 Big Creek Ranch LLC

Mailing Address <u>PO Box 5987</u>	Ketchum	ID	83340-5987
Street	City	State	Zip Code

Email Address <u>pageshouse@msn.com</u>	Phone Number <u>208-788-1771</u>
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☒ 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 Lori Graves Organization SPF Water Engineering

Professional Title Water Rights Specialist Email Address lgraves@spfwater.com

Mailing Address 300 E Mallard Dr, Ste 350, Boise, ID 83706 Phone Number 208-383-4140

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

OR

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

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

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

OR

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

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

3. MAP

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

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

4. GENERAL INFORMATION

- A. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 4A).
If your water right is delivered through a canal, lateral or ditch operated by a canal company, irrigation district, or similar delivery entity, your lease request must include written consent from the company, district, or similar entity for your removal of water from its system pursuant to [Section 42-108, Idaho Code](#) and [IDAPA WSB Rule 37.02.03.25.02e](#).
- B. Please provide a description of the current water diversion and delivery system.
Irrigation conveyance system owned and operated by Big Creek Ranch LLC, pursuant to SRBA "Stipulation to Resolve Objections" dated 11/1/2011.
- 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. Combined rights 73-12181, 73-12183, 73-12185, 73-12187, 73-12189, 73-12191, and 73-12212 through 73-12217 each have acre limits for irrigation of a combined total of 469.5 acres within a 572.9-acre ppu. Upon lease approval, applicant will limit the water rights' total combined irrigation to 433.5 acres for the 3-year term.
- 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. Stacked water rights 73-12212 through 73-12217 are limited to 36 acres irrigation when combined. To prevent enlargement, all six rights are proposed for lease to allow BLM rental of 36 acres.
- 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. As decreed
- 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.

5. SALE/LEASE AGREEMENT

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

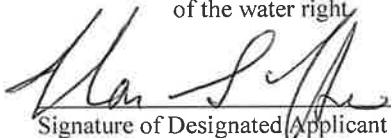
If lease, specify the years when the use of water will be suspended: 2021 to 2024 (maximum lease period 5 calendar years).
(Year) (Year) (3 years)

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.
Lease/rental of this water right is part of a BLM restoration project. Rental is to be subject to Department
administrative costs only.

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

Thomas S. Page, Member, Big Creek
Printed Name
Ranch, LLC

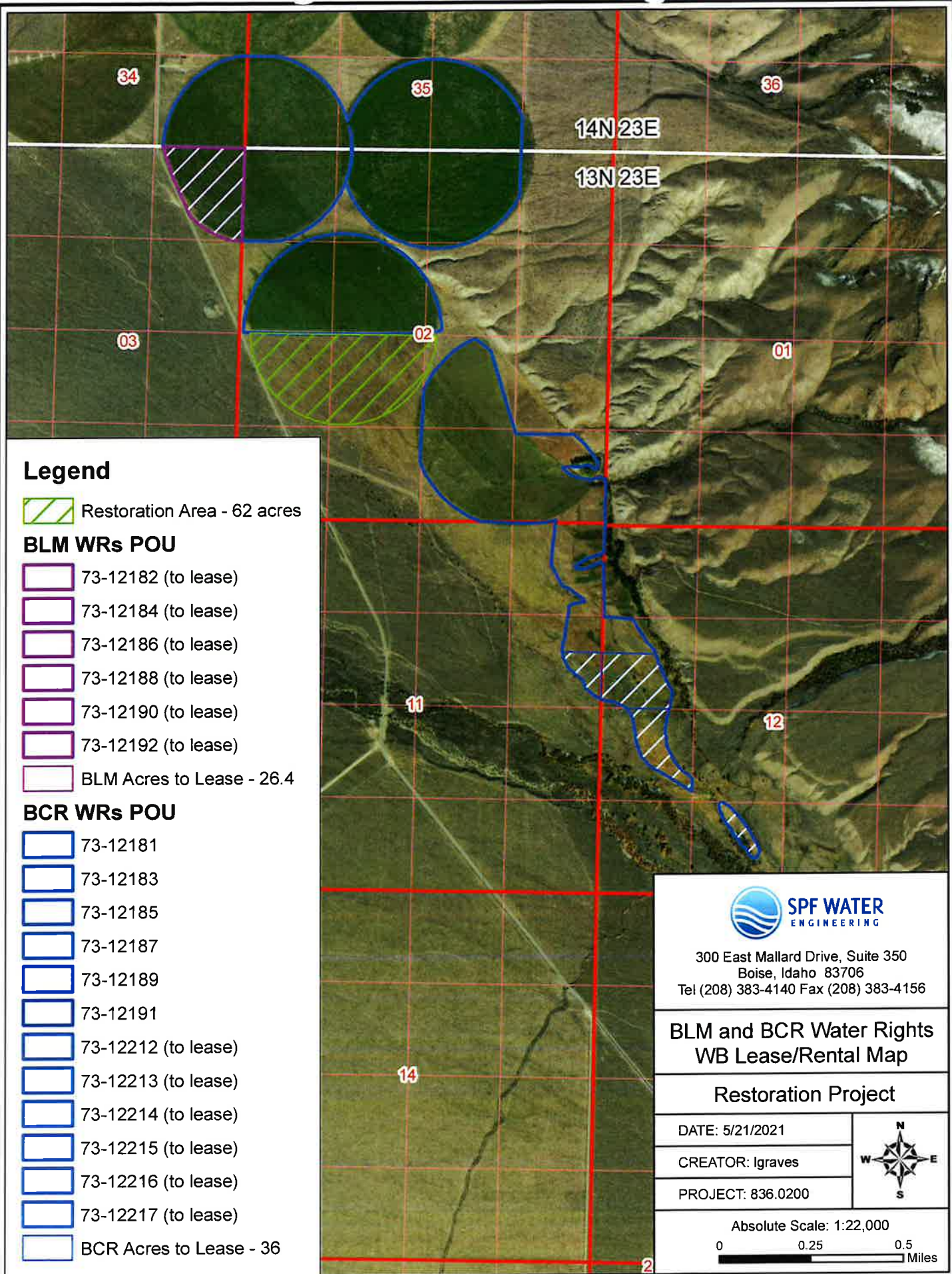
5/24/2021
Date

Signature of Authorized Representative

Printed Name

Date

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



Legend

 Restoration Area - 62 acres

BLM WRs POU

-  73-12182 (to lease)
-  73-12184 (to lease)
-  73-12186 (to lease)
-  73-12188 (to lease)
-  73-12190 (to lease)
-  73-12192 (to lease)
-  BLM Acres to Lease - 26.4

BCR WRs POU

-  73-12181
-  73-12183
-  73-12185
-  73-12187
-  73-12189
-  73-12191
-  73-12212 (to lease)
-  73-12213 (to lease)
-  73-12214 (to lease)
-  73-12215 (to lease)
-  73-12216 (to lease)
-  73-12217 (to lease)
-  BCR Acres to Lease - 36



300 East Mallard Drive, Suite 350
Boise, Idaho 83706
Tel (208) 383-4140 Fax (208) 383-4156

BLM and BCR Water Rights WB Lease/Rental Map

Restoration Project

DATE: 5/21/2021

CREATOR: Igraves

PROJECT: 836.0200



Absolute Scale: 1:22,000

0 0.25 0.5
Miles



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

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

July 27, 2021

BIG CREEK RANCH LLC
PO BOX 5987
KETCHUM, ID 83340-5987

**RE: WATER SUPPLY BANK LEASE CONTRACTS 1423
FOR WATER RIGHTS 73-12214, 73-12215, 73-12216, 73-12217, 73-12212 & 73-12213**

Dear Lessor:

Water right **73-12214, 73-12215, 73-12216, 73-12217, 73-12212 & 73-12213** were leased into the Water Supply Bank (Bank) as of January 1, 2021, in accordance with the enclosed executed lease contract. **Your water rights, as described on the lease contract, are considered leased into the Bank and should remain unused until they are formally released from the Bank.** More information and further restrictions placed on your water rights while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The rights will automatically be released from the Bank on **December 31, 2023**, unless the rights are released earlier by the Water Resource Board (Board). On behalf of the Board, the Department of Water Resources (Department) can evaluate an early release of the lease contract upon your request. To release the water rights from the Bank prior to the release date, submit a written request on the *Request to Release a Water Right from the Bank* form. This form is available on our public website at www.idwr.idaho.gov. **Please note your water rights may not be available for immediate release if they have been rented or are being considered for a future rental. Furthermore, it is at the discretion of the Department whether or not a water right can be released early from a lease contract.**

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

Sincerely,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosure: Executed Lease Contract

c: IDWR- Eastern Region



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

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

July 16, 2021

BIG CREEK RANCH LLC
PO BOX 5987
KETCHUM ID 83340-5987

RE: APPLICATION TO LEASE WATER RIGHTS 73-12212, 73-12213, 73-12214, 73-12215, 73-12216 & 73-12217 TO THE WATER SUPPLY BANK CONTRACT 1423

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

Dear Applicant:

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

The right will automatically be released from the Bank on **December 31, 2023**, unless the right is released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. To propose a new lease period, submit a new Application to Sell or Lease a Water Right to the Water Supply Bank form along with applicable fees to the Department. These forms are available from any IDWR office or from our public website at <http://www.idwr.idaho.gov>. Please note your right may not be available for immediate release if it has been rented.

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

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

Sincerely,

Jean Hersley

for
Water Supply Bank

Enclosures: Proposed Lease Contracts

C: SPF Water Engineering LLC

MEMORANDUM FOR APPLICATION # 2083

To: Water Rights 73-12212, 73-12213, 73-12214, 73-12215, 73-12216, 73-12217

From: Dave Betts

Date: July 1, 2021

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

PURPOSE/NARRATIVE: Big Creek Ranch LLC submitted an application to lease water right 73-12181 on December 17, 2020, through Lori Graves (SPF Engineering). Graves included a cover letter that describes the proposed lease and associated applications that were submitted at the same time. Right 73-12181 cannot be leased alone without risk of enlargement because it has overlapping combined use with 5 additional rights.

In response to these concerns of enlargement, the applicants withdrew their proposed lease of 73-12181, and submitted replacement applications to lease water rights 73-12212, 73-12213, 73-12214, 73-12215, 73-12216, and 73-12217. The applicants submitted the replacement applications on June 01, 2021, with a similar cover letter from Lori Graves describing the proposed leases. The \$250 fee for the original application, and an additional \$250 submitted with the replacement applications cover the required \$500 fee to lease the overlapping water rights.

The proposed leases are part of a lease-rental package intended to provide water for a restoration project from the Bureau of Land Management (BLM). The BLM submitted application to rent no. 1877 to rent water for the irrigation of 62 acres for the establishment of native seedlings. Big Creek Ranch and the BLM have proposed leasing water to the Bank to fulfill the requested rental. The proposed lease-rental package is for three years (2021-2023). According to the cover letters submitted with the applications, Big Creek Ranch has agreed to pay the administrative fees for the rentals.

AUTHORITY TO FILE: The applications were signed by Thomas Page, who is a co-owner of Big Creek Ranch, LLC. The acres to be idled for the lease are on property owned by the applicants. The applicants are the owners and managers of the diverting works. The same works will be used for the rental portion of the lease-rental package. Authority to file is not a concern.

WATER RIGHT VALIDITY: The satellite imagery of the acres proposed for lease suggest that irrigation may have occurred on those acres. In order to address validity concerns, I requested additional information from the applicants. On May 03, 2021, Thomas Page (Big Creek Ranch, LLC) confirmed that the proposed acres to be idled for the lease have been flood irrigated each year for pasture grass. Between the satellite imagery and the information provided by the applicant, the water rights appear to be valid and can be leased to the Bank.

INJURY TO OTHER WATER RIGHTS: The proposed leases are part of a lease-rental package. The proposed rental would use the same point of diversion and diverting works. Because the quantity of water to be diverted for the rental is the same and the diverting works are the same, there should be no risk of injury to other rights as long as the acres for lease are idled.

ENLARGEMENT OF USE: Big Creek Ranch has 12 water rights that combined are authorized to irrigate 469.5 acres. The twelve rights have acre limits that can be split into two groups:

Overlapping Water Rights	Combined Diversion Rate	Combined Acre Limit
73-12181, 73-12183, 73-12185, 73-12187, 73-12189, and 73-12191	15.92	433.5
73-12212, 73-12213, 73-12214, 73-12215, 73-12216, and 73-12217	1.32	36.0
Combined Limits of all water rights	17.24	469.5

The proposed water rights for lease have a combined acre limit of 36 acres, which can be separated from the remaining 433.5 acres. Because all six of these six rights are proposed for lease, enlargement is not a concern.

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

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: The lease appears consistent with the conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: A request for comments was submitted to the water districts (WD 73 and WD 170) and Region on March 26, 2021, on the original application for the lease of 73-12181. No comments were received from the Region (Southern) or from WD 73. The watermaster for WD 170 had concerns about the validity of the acres to be idled, and concerns regarding enlargement. Validity has been confirmed through satellite imagery and additional information provided by Thomas Page. In her email from April 6, 2021, the water master for WD 170 said that she could support the proposed lease of six water rights (73-12212 etc.) in place of the proposed lease of the single right 73-12181. The submitted concerns appear to have been addressed. This review assumes that Southern Region staff and WD 73 do not have concerns with the proposed leases.



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DEPARTMENT OF
WATER RESOURCES

May 27, 2021

Dave Betts
IDWR State Office
PO Box 83720
Boise, ID 83720-0098

**Subject: *Water Bank Lease Applications – Big Creek Ranch
Amended Water Bank Rental Application - BLM***

Dear Dave,

Based on your injury analysis and in accordance with our discussions, enclosed on behalf Big Creek Ranch LLC (BCR) are six water bank lease applications for water rights 73-12212 through 73-12217 to replace the water bank lease application 73-12181 previously submitted last December.

These six rights, when combined, are limited to 36 acres irrigation within BCR's 572.9-acre permissible place of use. Since this group of water rights appear to overlap based on their accumulative acre limits, to prevent enlargement of use, the six rights are being leased to the bank in their entirety for three years. These 36 acres, along with 26.4 acres proposed for previously proposed for lease under BLM water rights, will be rented by BLM to establish native seedlings within a 62-acre restoration project area. Upon lease approval, BCR's remaining 6 associated water rights will be limited to irrigation of 433.5 acres within the 572.9-acre ppu for the 3-year requested lease period. BCR paid \$250 for original lease application 73-12181 that cannot be processed. Enclosed is check #4064 for the remaining \$250 balance due. Per agreement between BLM and BCR, costs associated with rental of this water will be paid by BCR and only include the Department's administrative costs.

For clarification, enclosed is an amended BLM water bank rental application signed by Fred Price that has been updated with the BCR six water rights and amounts. Also enclosed is an updated water bank map for the application package. Please use this map as the updated "206 map", required by the BCR water right's condition no. 206, indicating the 433.5-acres to be irrigated for the next 3 years upon lease approvals. Electronic shape files can be provided upon request.

Thank you very much for your consideration and assistance in this matter. Please call me if you have any questions.

Sincerely,



Lori Graves
Water Rights Specialist

Cc: Tom Page, Big Creek Ranch LLC
Fred Price, BLM Authorized Water Rights Agent

Enclosures

SPF file number: 836.0200

Betts, David

From: Tom Page <pageshouse@msn.com>
Sent: Monday, May 03, 2021 1:48 PM
To: Betts, David
Cc: Lori Graves; fwprice@blm.gov; Branz, Hannah M; Michael Page; John Brown
Subject: Re: Big Creek Ranch LLC - Application to lease no. 1878 (Water right no. 73-12181)

Hello David - Thanks for checking in on the water right application concerns. I've cc'd Hannah B from the Challis FO, along with John Brown (Big Creek Ranch Manager).

It sounds like Lori has spoken with you regarding the overlapping water rights, but I wanted to respond to your questions around the acres to be idled on private lands and the BLM.

Private land acres to be idled: These acres have been consistently flood-irrigated every year via control structures installed by BCR on the ditch leading from Big Creek to the houses. However, these pastures aren't grazed every year, so there is a fair amount of residual dry grass which may obscure the satellite photos. I'm happy to do a field visit if there is a need for verification on this point, or you can speak with Curtis Harwood/John Brown of BCR, who are the individuals doing this work each day (primarily Curtis). I will also say that since the efficiency projects that have gone in at this general location (new bubbler and other infrastructure, Mill Creek reconnect project, new headgate) there has been a drop in the overall diversion from Big Creek since 2011, from approximately 30 cfs nearly year-round (when such water was available), to approximately 12 cfs, which is the amount currently allowed through the pipe under the Mill Cr channel. So, the acres in question now receive less overall water for a shorter time period than under previous ownership, which may also be part of the reason it appears drier in the photos.

BLM acres to be idled: Currently there are two pivot stops on the half-pivot adjacent to the project area. I would expect that these stops will be removed from the half pivot and placed on the public/private boundary you reference, in order to create a 3/4 pivot, thus idling the BLM acreage. These 26.4 acres, initially irrigated by previous ownership, are part of a longstanding agricultural lease application that BCR submitted to the BLM in approximately 2012. It is my hope that if this water-lease application is approved for the next three years, that would be long enough to re-establish perennial plants on the project site, without creating another cheatgrass site on the idled 26.4 acres. If the BLM were to approve our ag-lease application, we would then ideally be able to run that pivot all the way round once again. If the lease were to be denied, I would assume that there would be some sort of perennial plant restoration project similar to what is ongoing to the southeast. We haven't received any indication from BLM as to when that application might be processed.

Hope this helps and let me know if there's anything else you need.

Tom Page
Big Creek Ranch
208-721-8987

From: Betts, David <David.Betts@iuwr.idaho.gov>
Sent: Friday, April 30, 2021 3:12 PM
To: pageshouse@msn.com <pageshouse@msn.com>
Cc: Lori Graves <LGraves@spfwater.com>; fwprice@blm.gov <fwprice@blm.gov>
Subject: Big Creek Ranch LLC - Application to lease no. 1878 (Water right no. 73-12181)

Dear Applicants,

There are a few concerns with Big Creek Ranch's application to lease to the Water Supply Bank (application no. 1878) and the associated lease-rental package that was submitted together with the Bureau of Land Management (BLM).

Overlapping water rights

Big Creek Ranch's application proposes to lease water right 73-12181, which shares a combined place of use with 11 other water rights. Although the overlapping rights have individual acre limits, these limits are not additive. As such, a single water right cannot be separated for use without risk of enlargement. I cannot recommend the lease of water right 73-12181 on its own.

If Big Creek Ranch wants to pursue this lease, a set of stacked rights should be submitted together for rental. Big Creek Ranch can select from two different groups within the 469.5 acre combined place of use:

1. Rights 73-12181, 73-12183, 73-12185, 73-12187, 73-12189, and 73-12191, which are authorized to irrigate a combined 433.5 acres
2. Rights 73-12212, 73-12213, 73-12214, 73-12215, 73-12216 and 73-12217, which are authorized to irrigate a combined 36 acres.

An equal proportion of each of the overlapping rights in a given set should be proposed for lease. The quantities from each right would be based on the desired total number of acres for lease (e.g. 35.6 acres) as a proportion of the overall combined acre limit of their set of water rights (433.5 acres or 36 acres).

Acres to be idled for the lease

I am having difficulty confirming that the proposed acres for lease have been irrigated during the past 5 years. My assessment is based on the acres identified in the map of the place of use submitted with the lease application (attached). It is possible that some irrigation has occurred on these acres, but the extent of irrigation is not clear. Using satellite imagery, I am unable to distinguish between actively irrigated lands and greening that may have occurred because of waste water run-off or seepage from the surrounding canals and stream channels. The difficulty in determining the extent of irrigation that has occurred in the past will make it difficult for the Department and Water District staff to confirm that the acres are being idled for the duration of the proposed lease. Before a rental is approved, the Water Supply Bank makes an assessment as to whether or not the leased rights are being idled.

Please provide information on how the acres proposed for lease have been irrigated in the past. What are Big Creek Ranch's plans to ensure that sufficient acres are being idled to provide the water to rent?

Idling of BLM's acres

During my initial review of the lease-rental package, concerns were submitted by the watermaster about the acres to be idled by the BLM (lease application no. 1884). The BLM proposes to idle a 26.4 acre portion of a pivot. I am addressing my questions to you, because Lori Graves stated in the cover letter for these applications that Big Creek Ranch manages the point of diversion and the irrigation works for these rights. Water district staff asked for information on how Big Creek Ranch plans to idle that portion of the pivot. Will you use pivot stops, or walk the pivot dry over that quarter? Please provide the Department with additional information on how the BLM acres will be idled.

Thank you for your attention to these matters. If we do not receive the necessary information by May 15, the lease application will be denied because it cannot be processed without the requested information. Your responses will help the Water Supply Bank maintain the beneficial uses of Idaho's water resources.

--

Dave Betts - *Water Resource Agent*

Water Rights Section | Idaho Department of Water Resources

322 East Front St | P.O. Box 83720 | Boise, ID 83720

Phone: (208) 287-4826 | email: david.betts@idwr.idaho.gov

Betts, David

From: Yenter, Cindy
Sent: Tuesday, April 06, 2021 10:43 AM
To: Betts, David
Cc: Buyer, Remington; Cefalo, James; tedoneal1954@gmail.com
Subject: FW: Proposed Lease-Rental package - Basin 73 - BLM & Page

Dave - After a closer look, I see that BLM has submitted for lease 1884 all six stacked rights (73-12182 et al) on that quarter-pivot for lease of 26.4 acres – I do not object to this lease.

The BLM proposal does raise a question that I'd like answered: How does Page intend to prevent irrigation of those lands? (Page I'm sure has the ag lease from BLM) Is he putting up pivot stops, or walking the pivot dry over that quarter?

The Page lease proposal 1878 of 73-12181 may not be processed as filed. This right is stacked and combined with other rights. Page must lease a portion of all 6 stacked rights which carry the combined limit of 433.5 acres (12181, 12183, 12185, 12187, 12189, 12191). He cannot simply pull 36 acres from 12181 and reduce the total acres irrigated.

Do you suppose that Page intended to lease 12212, 12213, 12214, 12215, 12216 and 12217? If not, he should have. These six, also in the same PPU, have a combined acreage of 36 ac, combined flow of 1.32 cfs, and are additive with the 433.5 for a total acreage limit of 469.5 ac in the PPU. I believe these six could be leased independent of the other six, and they appear to be splits from the same rights so the priorities would be the same. I would support the revised lease of the above six rights 12212 et al.

The problems with stacked right is that we no longer know the relationship between all the stacked rights, or the historic proportional use in priority. The rights have been placed in a PPU and used together so long that those relationships are blurry. We can't assume that any of these rights may be used alone without causing an enlargement of use. Unstacking like this would not be permitted in a transfer unless the applicant can show how enlargement will not occur. That is unlikely here; unstacking cannot be permitted in the lease. The solution is to take proportional splits of all stacked rights, or to lease the entire package of rights.

I am still concerned that the 36 specific acres at the south end of the Page property which are proposed to be unirrigated during the lease period, do not appear irrigated for at least 5 years. Because this is a PPU and most of the rest of the PPU is regularly irrigated, perhaps this is not a problem. All rights under both leases do in fact use the same pods from Big Creek and Mill Creek.

Finally, what is the total rental request? Will the same PODs be used or are different diversions proposed? Based on both leases I'm presuming about 62 acres, but you haven't sent the rental packet over yet.

*Cindy Yenter
IDWR Salmon Field Office
102 S Warpath
Salmon ID 83467
208-742-0655
208-731-0901 cell*

From: Yenter, Cindy
Sent: Monday, April 5, 2021 4:21 PM
To: Betts, David <David.Betts@idwr.idaho.gov>
Subject: RE: Proposed Lease-Rental package - Basin 73 - BLM

David, at first glance both leases appear to have serious enlargement issues, as there are numerous overlaps on both Page and BLM, and overlapping rights don't appear to be included on the leases. Was this addressed in the applications or have you done a full water right analysis? I also don't see good evidence of irrigation on the Page acres since about 2009, so I would question lease eligibility. I will look harder at the overlaps and get back with you.

From: Betts, David
Sent: Friday, March 26, 2021 4:58 PM
To: Yenter, Cindy <Cindy.Yenter@idwr.idaho.gov>; Cefalo, James <James.Cefalo@idwr.idaho.gov>; Ted O'Neal (tedoneal1954@gmail.com) <tedoneal1954@gmail.com>
Subject: Proposed Lease-Rental package - Basin 73 - BLM

The Bureau of Land Management and Big Creek Ranch have submitted applications to lease and an application to rent. The applications are to assist with a restoration project by the BLM.

Please review the attached documents and let me know if you have any concerns or comments about the proposed leases or rental.

Thank you for your help,

--
Dave Betts - *Water Resource Agent*
Water Rights Section | Idaho Department of Water Resources
322 East Front St | P.O. Box 83720 | Boise, ID 83720
Phone: (208) 287-4826 | email: david.betts@idwr.idaho.gov