

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

JUL 22 2021

WATER SUPPLY BANK LEASE CONTRACT No. 1491

DEPARTMENT OF
WATER RESOURCES

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

LESSOR: CLEAR LAKE RANCH P U D MASTER ASSN INC
C/O MICHAEL COWAN
223 CLEAR LAKE LN
BUHL, ID 83316-5275

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 December 29, 2020.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

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

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

Summary of Water Rights or Portions Leased to the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
36-16236	9/19/1912	CLEAR SPRINGS, tributary to CLEAR LAKES	0.16	Not Stated	8
Combined Lease Totals			0.16	Not Stated	8

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, ~~2022~~ ²⁰²¹. 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.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1411

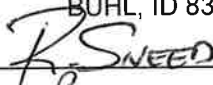
5. **CHANGE OF WATER RIGHT:** This lease specifies water right elements including but not limited to: diversion rates; diversion volumes; number of acres authorized to be irrigated; places of use; points of diversion; beneficial uses; and seasons of use. During the term of this lease, if a water right 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. 1411

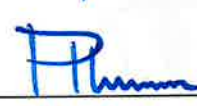
IN WITNESS WHEREOF, the parties have executed this Contract on the date following their respective signatures.

LESSOR: CLEAR LAKE RANCH P U D
MASTER ASSN INC
C/O MICHAEL COWAN 223
CLEAR LAKE LN
BUHL, ID 83316-5275

By 
Title PRESIDENT
Date 7/19/21

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

By  Date 7/23/21
Brian Patton, Acting Administrator
Idaho Water Resource Board

Lease approved by IDWR  Date 7/23/21

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1411

ATTACHMENT A WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Source and Location of Point(s) of Diversion for Water Right No(s): 36-16236

CLEAR SPRINGS L 5SESENE Sec. 2 Twp 09S Rge 14E GOODING County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
36-16236	IRRIGATION	03/15	to	11/15	0.16 cfs	Not Stated
Totals:					0.16 cfs	Not Stated

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	14E	1									5.0 L13	1.5 L12	0.7 L15						7.2
09S	14E	2																0.8 L9	0.8

Total Acres: 8.0

ADDITIONAL CONDITIONS OF ACCEPTANCE

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

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1411

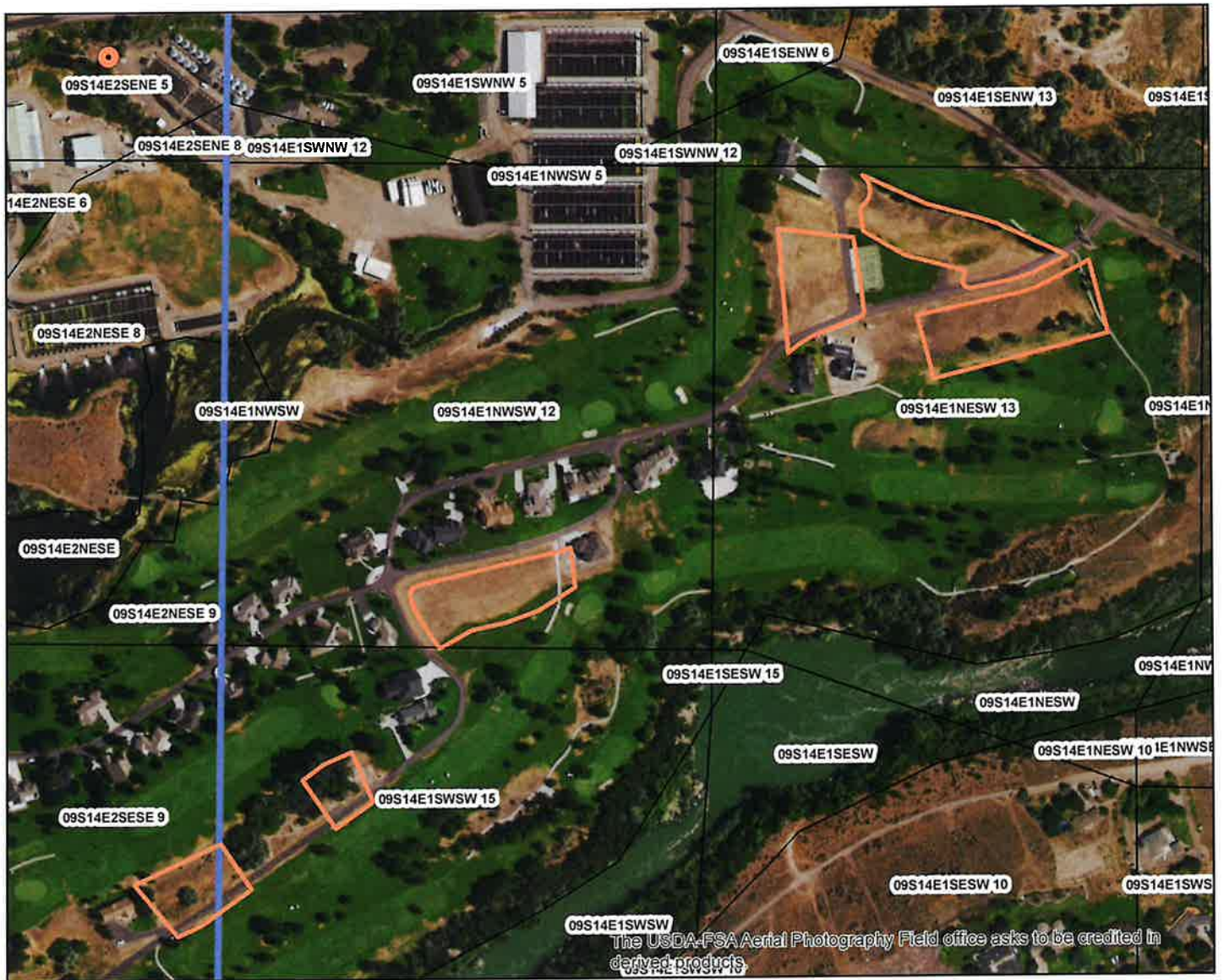
8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other 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.

Idaho Water Resource Board
Water Supply Bank Lease Contract No. 1411

36-16236
Effective until December 31, 2022

2021 29

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



The USDA-FSA Aerial Photography Field office asks to be credited in derived products.

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



0 500 1,000 Feet

STATE OF IDAHO
WATER RESOURCE BOARD

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

RECEIVED
DEC 29 2020
DEPARTMENT OF
WATER RESOURCES

Designated Applicant Clear Lake Ranch P.U.D. Master Association, Inc.
(Select one owner – see item 1A on the application)

Water Right No. 36-16236
(One water right per application)

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

Yes ☐ No ☒

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

MIMUMUM REQUIREMENT CHECKLIST

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

Yes

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

Attachment N/A Yes

- | | | | |
|----|-------------------------------------|-------------------------------------|--|
| 1A | ☒ | ☐ | Signatures and contact information for <i>all owners</i> of the water right to be leased or sold on this application. |
| 1B | ☐ | ☒ | An <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant. |
| 1C | ☒ | ☐ | <i>Notice of Change in Water Right Ownership</i> 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 <u>Section 42-222(2), Idaho Code</u> . |

Department Use Only

Fee Amount \$ <u>250.00</u>	Received By: <u>KM</u>	Date Received: <u>12.29.2020</u>	Receipt # <u>C109740</u>
W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)		Name on W-9: <u>Clear Lake Ranch PUD Master Association Inc</u>	

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

1. CONTACT INFORMATION

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

Designated Applicant Clear Lake Ranch P.U.D. Master Association, Inc.

Mailing Address 223 Clear Lake Ln., Buhl, Idaho 83316

Street

City

State

Zip Code

Email Address millionid@yahoo.com; idahofishguy@gmail

Phone Number (208) 543-4859

☒ 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 John K. Simpson Organization Barker Rosholt & Simpson LLP

Professional Title Attorney Email Address jks@idahowaters.com

Mailing Address P.O. Box 2139, Boise, ID 83701-2139 Phone Number 208.336.0700

☐ 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 pump.

- 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. North Side Canal Co. LTD owns multiple overlapping irrigation rights at the rental POU but these rights are not pertinent to the rental POU.

- 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. Within the authorized POU for right 36-16236, there are 8 or more acres that will not be irrigated.

- 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. Pursuant to exchange agreement with Riverence (formerly Clear Springs Foods, Inc.), 0.16 cfs/32 AF have been irrigating 8 acres for previous five year period.

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

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

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

5. SALE/LEASE AGREEMENT

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

If lease, specify the years when the use of water will be suspended: 2021 to 2022 (maximum lease period 5 calendar years).
(Year) (Year)

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

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

The Designated Applicant acknowledges the following:

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

Michael C. Cowan Clear Lake Ranch PUD M.C. COWAN
Signature of Designated Applicant Printed Name

12/28/20
Date

[Signature]
Signature of Authorized Representative

John K. Simpson
Printed Name

12/28/2020
Date

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

STATE OF IDAHO
WATER RESOURCE BOARD

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

ATTACHMENT 2

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

1. <u>Water Right Number</u>	<u>Nature of Use</u>	<u>Leased Rate</u> (cfs)	<u>Leased Volume</u> (af)	<u>Leased Acres</u> (ac)
36-16236	Irrigation	.16 cfs		
	Total Amounts:	.16 cfs		

2. Source of water Clear Springs tributary to Clear Lakes

3. Point(s) of diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
09S	14E	2	5	SE	SE	NE	Gooding



IDWR offices are open to the public and following the CDC guidelines for wearing masks and observing social distancing. For in-person visits, we encourage you to call ahead for an appointment.

WATER RIGHT REPORT

12/17/2020

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 36-16236

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CLEAR LAKE RANCH P U D MASTER ASSN INC 313 CLEAR LAKE LN BUHL, ID 83316 2085434056
Original Owner	L & M INC 307 CLEAR LAKE LN BUHL, ID 83316 2085434859

Priority Date: 09/19/1912

Basis: Decreed

Status: Active

Water Supply Bank Status: Active

<u>Source</u>	<u>Tributary</u>
CLEAR SPRINGS	CLEAR LAKES

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	0.9 CFS	
Total Diversion			0.9 CFS	

Location of Point(s) of Diversion:

CLEAR SPRINGS|SESENE Lt 5|Sec. 02|Township 09S|Range 14E|GOODING County

Place(s) of use:

Place of Use Legal Description: IRRIGATION GOODING County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
09S	14E	1	13	NESW	11.4	12	NWSW	11.3	11	SWSW	6.3			
		2		NESE	0.1	9	SESE	15.5						
		11	5	NENE	0.1									

Total Acres: 44.7

Conditions of Approval:

1. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.
2. X36 Rights 36-2048, 36-2659, 36-2703, 36-4013A, 36-4013B, 36-4013C, 36-4076, 36-4148B, 36-7004, and 36-16237 are also diverted through the point of diversion described above.

Dates:

Licensed Date:

Decreed Date: 08/27/2001

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 130

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Water Supply Bank:

Lessor Name(s): CLEAR LAKE RANCH P U D MASTER ASSN INC

Lease Status: Active

Lease Amount: All

Rental Availability: None

Date Received: 7/22/2005

Lease Begin Date: 7/22/2005

Expiration Date: 12/31/2020

State of Idaho
Department of Water Resources

Water Right

36-16236

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

14E



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.1 0.2 0.4 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 28, 2021

CLEAR LAKE RANCH P U D MASTER ASSN INC
C/O MICHAEL COWAN
223 CLEAR LAKE LN
BUHL, ID 83316-5275

**RE: WATER SUPPLY BANK LEASE CONTRACT 1411
FOR WATER RIGHTS 36-16236**

Dear Lessor:

Water right **36-16236** 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, 2021**, 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- Southern Region
John Simpson
Water District 130



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 1, 2021

CLEAR LAKE RANCH P U D MASTER ASSN INC
C/O MICHAEL COWAN
223 CLEAR LAKE LN
BUHL, ID 83316-5275

**RE: APPLICATION TO LEASE WATER RIGHT 36-16236 TO THE WATER SUPPLY BANK
CONTRACT 1411**

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

Dear Applicant:

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

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

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

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

Sincerely,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosures: Proposed Lease Contracts

C: John K Simpson

MEMORANDUM FOR APPLICATION # 1184

To: Water Right(s) 36-16236

From: Scott Storms

Date: April 20, 2021

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

PURPOSE/NARRATIVE: On December 29, 2020 the Department of Water Resources (Department) received application to lease a portion of water right (WR) 36-16236 to the Water Supply Bank (Bank). The application was submitted by John K. Simpson of Baker Rosholt & Simpson LLP on behalf of the Clear Lake Ranch P.U.D. Masters Association, INC. The original application included the selection of the full water right to be leased to the Bank, however further descriptions on the application referred to only the 8 acres that had previously been leased to the Bank. Clarification was requested from John K. Simpson, the response of which was that only a portion of the right was being offered to the Bank. The response included a list of specific lots as well as a map outlining those lots, which were to be offered to the Bank. Upon examination of these lots, it was determined that the total are equaled 11.9 acres and it appeared none of the lots had been irrigated for a term of 5 years or more. Because only 8 acres were included in prior contract 545, the remaining 3.9 acres appeared unacceptable to the Bank due to potential issues of validity without a defense to forfeiture. A series of correspondence took place (further outlined in the validity review section) which eventually concluded in the applicant offering 8 acres to the Bank, as was included in the prior contract.

AUTHORITY TO FILE: The application was submitted by John K. Simpson of Baker Rosholt & Simpson LLP on behalf of the Clear Lake Ranch P.U.D. Masters Association, INC and was signed by Michael Cowan. The owner of record is Clear Lake Ranch P.U.D. Masters Association, INC and review of the 2020 Idaho Secretary of State annual business report shows Mike Cowan as Director. There are no concerns of authority to file.

WATER RIGHT VALIDITY: Parent right 36-4148B was decreed in 2001 and an 8 acre portion of the parent right was placed in the Bank in 2006 for an indefinite time period. The parent right was split as part of Transfer 71435 which created WR 36-16236, which included the 8 acre portion which was in the Bank. In 2015 the water right owners opted to keep those 8 acres in the Bank for a 5 year term, which expired in 2020.

The initial application submitted on December 29, 2020, in section 2, had the selection of the entire right being offered to the Bank, however section 4 referred to the 8 acres previously leased to the Bank. Clarification was requested from John Simpson as to whether the entire right or an 8 acre portion was being offered to the Bank. The initial response included a list of specific lots within the development that were being offered to the Bank, as well as a map outlining those lots. A review of this information revealed the total area of these lots to equal 11.9 acres, 3.9 acres more than the prior lease. Review of aerial imagery provided evidence that the additional 3.9 acres had not been irrigated over the term of the prior 5 years or more, nor were they protected by any additional lease.

The issue of validity on the additional 3.9 acres was brought forth to John Simpson's office and a request was made to provide a defense to forfeiture if Clear Lake Ranch wished to submit the full 11.9 acres to the Bank. In response, as a defense to forfeiture of the 3.9 additional acres, John Simpson offered that Clear Lakes Ranch was a municipal provider and the right was

therefore protected from forfeiture under provision 42-223(2), which outlines protection for municipal rights developed for Reasonably Anticipated Future Needs (RAFN).

It was subsequently explained to John that the RAFN provision was specific to municipal water rights and is a way of developing a municipal right that includes provisions in the conditions of the right that provide for future development and protects those yet undeveloped areas from forfeiture. It was further explained that, because WR 36-16236 is not a municipal right and was not developed with such provisions, it does not qualify for such protection from forfeiture. At that point, an official information request letter was sent, requesting either a qualifying defense to forfeiture for the 3.9 acres or to only include the original 8 acres in the lease. On April 13, 2021 an email was received with an updated lot list and map which outlined only the 8 acres originally protected under the prior lease. There are no further concerns as to the validity of the 8 acres of WR 36-16236 that are now offered to the Bank.

INJURY TO OTHER WATER RIGHTS: Lease of this water right would not cause injury to other water rights. Proper review to prevent injury if rented.

ENLARGEMENT OF USE: The only other irrigation rights that overlap the lease place of use are owned by North Side Canal Company and the application stated that those rights are not used at the lease POU. Water right 36-8329, also held by Clear Lakes Ranch, includes a domestic use that overlaps the lease POU, however conditioning on that right states the domestic use is for 85 homes and does not include any form of irrigation. The lots offered to the Bank do not appear to have had any prior irrigation and as long as they are not developed and irrigated in 2021 or 2022 there are no concerns of enlargement.

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: The location for the rental POD is subject to Water District # 130. Watermaster Nathen Ericson and eastern regional contact James Cefalo have been provided this review for comment.

Storms, Scott

From: Jessica Witt <jlw@idahowaters.com>
Sent: Tuesday, April 13, 2021 2:49 PM
To: Storms, Scott
Cc: John Simpson
Subject: Lease Application 36-16236
Attachments: 20210413 Revised_WSB Lease Application_36-16236 with attachments_executed.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Storms,

Please find attached *revised* lease application on behalf of Clear Lake. If you'd like a hard copy mailed to your attention, please let me know. Please contact John should you have any questions or concerns.

Sincerely,
Jessica

Jessica L. Witt
Legal Assistant to John K. Simpson
Barker Rosholt & Simpson LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, Idaho 83701-2139
Phone: 208.336.0700
Fax: 208.344.6034
www.idahowaters.com

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Clear Lake Ranch Planned Unit Development Master Association, Inc.

Application to Lease a Water Right to the Water Supply Bank

Additional information for 4. E.

Clear Lake has 16 lots have subdivision stub-in status tapped to each lot from the water system. The acreage on these lots is eight (8 acres). They are lots owned by Associated members as described in property covenants, they await the owners build and the lost are not being irrigated. Attached map shows lots not irrigated outlined in dark black. They are lots 34, 35, 38, 47, 48, 49, 50, 58, 59, 60, 61, 64, 65, 67, 68 and 69.



SNAKE RIVER CANYON CLEAR LAKE



planned community featuring leisure fairway living in scenic south central Idaho.



BRAD LITTLE
Governor

GARY SPACKMAN
Director

March 22, 2021

CLEAR LAKES RANCH P.U.D. MASTERS ASSOC.
INC.
223 CLEAR LAKE LN.
BUHL, ID 83316

RESPONSE DEADLINE:
April 23, 2021

RE: Action Required on WSB Application 1911

Dear Applicant,

On December 29, 2020 the Department of Water Resources (Department) received from Clear Lakes Ranch P.U.D. Masters Association (CLRMA) a request to lease water right 36-16236 to the Water Supply Bank (Bank), from 2021 through 2022. The lease proposal (application 1911) is to place a portion of this water right into the Bank, however the initial application did not include any description of what proposition of the water right were being offered to the Bank.

On February 19, 2021 an emailed request was sent to the contact emails listed on the application, including John K. Simpson of Barker Rosholt & Simpson LLP, the listed representative on the application, in order to request specific information as to what portions of the water right were being offered to the Bank. Response to that initial request was received on March 2, 2021 from the office of John K. Simpson, which included a list of lots within the subdivision and a map outlining said lots, which were to be offered for lease to the Bank.

Upon Department review of the lots offered for lease to the Bank, it was determined the total acreage of these lots to be 11.9 acres. Furthermore, historical aerial imagery review of these 11.9 acres revealed no signs of irrigation having taken place on those lots for a term of five years or more. Prior lease contract 545, which ran from June 2005 through December 2020, included 8 acres of the aforementioned water right. Per Idaho code §42-222(2) any water right or portion thereof that has not been applied to its beneficial use for a period of 5 years or more may be subject to forfeiture, unless otherwise protected by other circumstances outlined in Idaho Code §42-223. Additionally, per Water Supply Bank standard procedures, any right or portion thereof that may be subject to forfeiture will not be accepted for lease to the Bank.

Given that the entire 11.9 acres currently offered for lease to the Bank appear to have not been irrigated for a term of 5 years or more, and that there were only 8 acres protected under prior lease contract 545, there are currently 3.9 acres that may not be acceptable for lease. The purpose of this letter is to request from CLRMA one of the following:

1. Evidence that the additional 3.9 acres beyond the 8 acres leased to the Bank under contract 545 would fit one of the exceptions or defenses to forfeiture as found in Idaho Code §42-223 <https://legislature.idaho.gov/statutesrules/idstat/Title42/T42CH2/SECT42-223/>
2. Acknowledgement from the Clear Lakes Ranch P.U.D. Masters Association that it only wishes to lease 8 acres of water right 36-16236 and include a description and map in said response outlining where those 8 acres shall be located.

To continue processing of applications 1911, the Department requests that the above information be provided within the next thirty days (deadline of April 23rd, 2021). If the information requested above is

not received prior to the established deadline, the Department will continue review of the lease application including only the 8 acres as were outlined and included on the prior lease contract.

If you have any questions, please contact me at (208) 287-4915.

Regards,

Scott Storms
Water Resource Agent, Senior

CC: John K. Simpson – Representing Attorney for CLRMA

From: Storms, Scott
Sent: Tuesday, March 23, 2021 8:54 AM
To: 'John Simpson'
Subject: RE: Lease application for 36-16236
Attachments: Information Request - Clear Lakes Ranch.pdf

Dear Mr. Simpson,

First I would like to be sure I am clear as to how many acres Clear Lake Ranch is offering for lease to the Bank. If the proposal is for 8 acres only, then there are no issues moving forward, as lease contract 545 leased in and protected 8 acres from forfeiture from 2005 to 2020. If the proposal is to lease the full 11.9 acres as outlined on the amended application received March 2, 2021 in attachments 3 and 5, then the additional 3.9 acres are what would require an exception or defense to forfeiture.

In response to the defense that Clear Lakes Ranch is a municipal provider and therefore not subject to forfeiture under exception §42-223(2), water right 36-16236 would not fit under this exception because it is a right with an irrigation purpose of use and was not developed as a municipal use right with reasonably anticipated future use specifications. Statute §42-223(2) specifically outlines the exception for a "municipal provider to meet reasonably anticipated future use..."

Idaho Code 42-202B. DEFINITIONS. Section (5) states :

- (5) "Municipal provider" means:
- (a) A municipality that provides water for municipal purposes to its residents and other users within its service area;
 - (b) Any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area; or
 - (c) A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(12), Idaho Code.

Section (6) goes on to define municipal purposes as:

(6) "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

Finally, Section (8) defines reasonably anticipated future needs as:

(8) "Reasonably anticipated future needs" refers to future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of population and other planning data, are reasonably expected to be required within the planning horizon of each municipality within the service area not inconsistent with comprehensive land use plans approved by

each municipality. Reasonably anticipated future needs shall not include uses of water within areas overlapped by conflicting comprehensive land use plans.

Because municipal purpose is a specifically defined beneficial use described by Idaho statute and reasonably anticipated future needs is a specifically defined planning procedure for municipal use rights, requiring a land use plans and timelines and including specific condition language on the permit and license, irrigation water right 36-16236 does not qualify for the exception to forfeiture outlined in Idaho Code §42-223(2).

Again, if Clear Lakes Ranch only wishes to submit 8 acres to the Water Supply Bank, then we have no further issues. The issue lies with the 3.9 acre portion above and beyond the prior leased 8 acres if 11.9 acres is being proposed for lease. To accept those additional acres, I will still need to see evidence of a qualifying exception to forfeiture for water right 36-16236 as outlined in Statute §42-223.

I am attaching an Information Request letter to this email which provides an additional 30 days to determine what action Clear Lakes Ranch would like to take. If no response is received at the end of that 30 days, I will move forward processing the application with the 8 acres that were included on prior lease 545.

Thanks again,

Scott Storms
Senior Water Resource Agent
Idaho Department of Water Resources
208-287-4915
Scott.Storms@idwr.idaho.gov

From: John Simpson [mailto:jks@idahowaters.com]
Sent: Monday, March 22, 2021 3:01 PM
To: Storms, Scott <Scott.Storms@idwr.idaho.gov>
Subject: Lease application for 36-16236

Dear Mr. Storms,

Thank you for bringing this concern to our attention, however, the Clear Lake Ranch is not subject to 42-222(2) because they are a subdivision municipal water provider under the following exemption in Idaho Code § 42-223(2):

(2) A water right held by a municipal provider to meet reasonably anticipated future needs shall be deemed to constitute beneficial use, and such rights shall not be lost or forfeited for nonuse unless the planning horizon specified in the license has expired and the quantity of water authorized for use under the license is no longer needed to meet reasonably anticipated future needs.

Clear Lake is listed with the IDEQ as PWSN ID5240033 and conforms to the requirements as a Public Drinking Water System. I trust that this will allay the concerns about forfeiture. Please advise if you still require Clear Lake to designate 8 acres specifically, otherwise, the 11.9 acres is more than enough to cover the 8 acres proposed.

Thanks

John Simpson

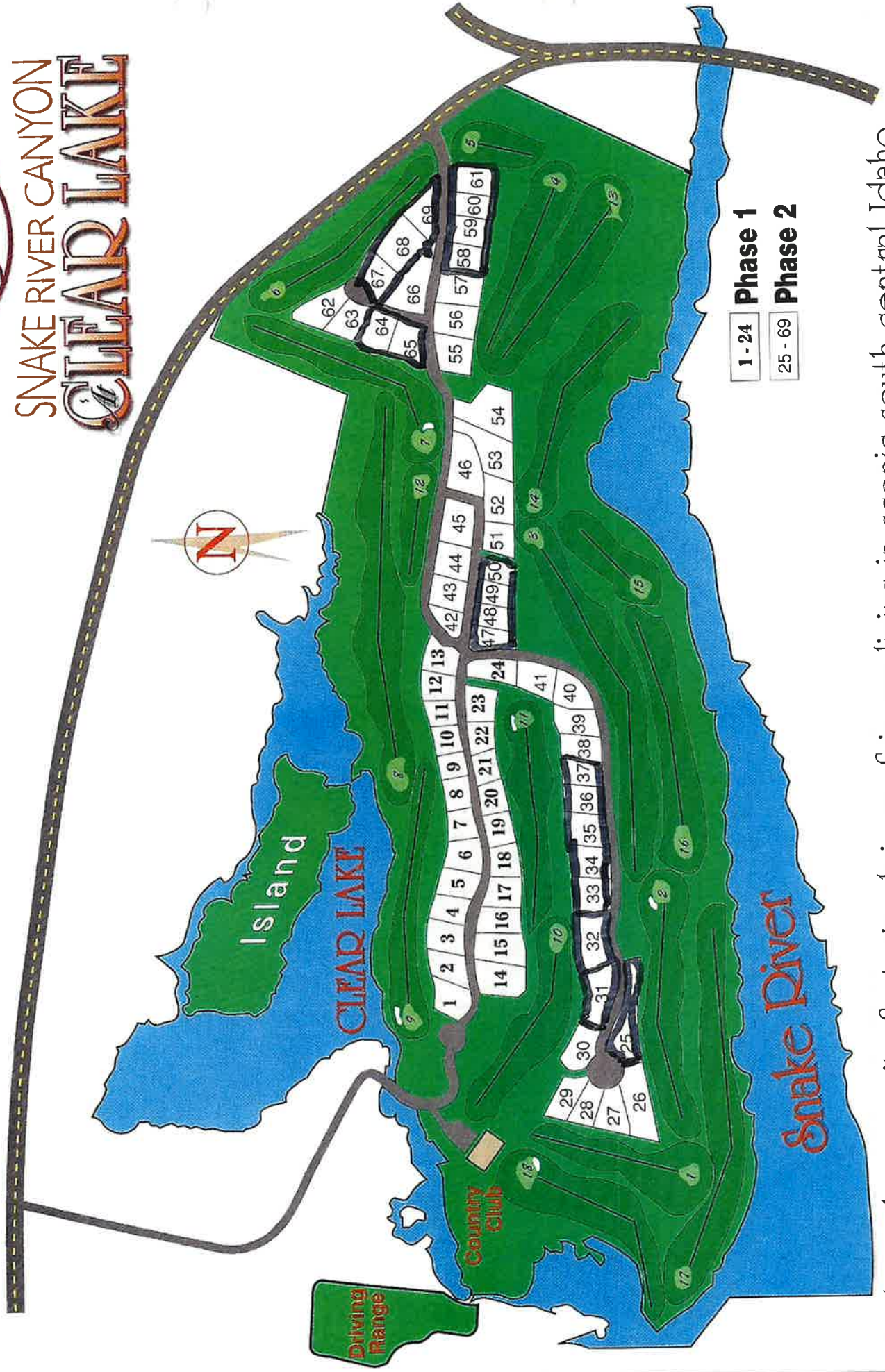
Additional information for 4. E.

Clear Lake has 21 lots that have water tapped to each lot from the water system. The acreage on these lots is 8 acres or more. They are awaiting building and the lots are not being irrigated.

Attached map shows lots not irrigated outlined in dark black. They are lots 25, 31, 32, 34, 35, 36, 37, 38, 47, 78, 49, 50, 58, 59, 60, 61, 64, 65, 67, 68 and 69.



SNAKE RIVER CANYON CLEAR LAKE



A planned community featuring leisure fairway living in scenic south central Idaho.

Storms, Scott

From: Storms, Scott
Sent: Thursday, March 4, 2021 6:33 AM
To: Jessica Witt
Cc: John Simpson
Subject: RE: Clarification on lease application for 36-16236

Jessica,

Thank you for the response. The signature on the revised application looks fine. After reviewing the newly submitted map and lot list, I do have one concern.

The concern is over how many acres are currently being offered for lease to the Water Supply Bank (Bank). When I select out and calculate acres for all the lots listed on the revised application, I come to a total of 11.9 acres. The prior lease contract was only for 8 acres. In comparing current aerial imagery with historical imagery, from 2004 through 2019, it appears those acres currently offered to the Bank in excess of 8 acres were also not irrigated during the entire time period. Per Idaho code [§42-222\(2\)](#) any water right or portion thereof that has not been applied to its beneficial use for a period of 5 years or more may be subject to forfeiture, unless otherwise protected by other circumstances outlined in Idaho Code [§42-223](#). Per Water Supply Bank standard procedures, any right or portion thereof that may be subject to forfeiture will not be accepted for lease to the Bank. As such, at this point, unless Clear Lake Ranch P.U.D. Masters Association can show proof of how additional acres are not subject to forfeiture per the conditions outlined in [§42-223](#), I will only be able to accept a maximum of 8 acres of water right 36-16236 into the Bank.

If Clear Lake Ranch wishes to move forward submitting only 8 acres, I will also need a description of which 8 acres of the approx. 12 already described that the Association would like to submit.

Please respond within the next 7 days to ensure timely processing of the application.

Thank you,

Scott Storms
Senior Water Resource Agent
Idaho Department of Water Resources
208-287-4915
Scott.Storms@idwr.idaho.gov

From: Jessica Witt [<mailto:jlw@idahowaters.com>]
Sent: Tuesday, March 2, 2021 9:51 AM
To: Storms, Scott <Scott.Storms@idwr.idaho.gov>
Cc: John Simpson <jks@idahowaters.com>
Subject: RE: Clarification on lease application for 36-16236
Importance: High

Dear Mr. Storm,

Please find attached *revised* WSB application on behalf of Clear Lake Ranch P.U.D. executed by President, Michael Cowan. We are only leasing an 8 acre portion. If you require John's signature as well, please let me know and I will secure it as soon as he returns from traveling. The map requested is also included.

Please let us know if you have any further questions.

Sincerely,
Jessica

Jessica L. Witt
Legal Assistant to John K. Simpson
Barker Rosholt & Simpson LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, Idaho 83701-2139
Phone: 208.336.0700
Fax: 208.344.6034
www.idahowaters.com

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From: Storms, Scott <Scott.Storms@idwr.idaho.gov>
Sent: Tuesday, March 2, 2021 9:06 AM
To: John Simpson <jks@idahowaters.com>
Cc: millionid@yahoo.com; idahofishguy@gmail.com
Subject: RE: Clarification on lease application for 36-16236

Hello John,

I am attempting to reach out again to see if you received the email below regarding the Clear Lake Ranch P.U.D. Masters Association application to lease its water right to the Water Supply Bank. Please review the prior email for the full question but the basic question was if the intent was to lease the entire water right to the Bank, or only an 8 acre portion. If you could please send a reply to acknowledge receipt of this email that would be greatly appreciated.

Scott Storms
Senior Water Resource Agent
Idaho Department of Water Resources
208-287-4915
Scott.Storms@idwr.idaho.gov

From: Storms, Scott
Sent: Friday, February 19, 2021 11:47 AM
To: 'jks@idahowaters.com' <jks@idahowaters.com>

Cc: 'millionid@yahoo.com' <millionid@yahoo.com>; 'idahofishguy@gmail.com' <idahofishguy@gmail.com>

Subject: Clarification on lease application for 36-16236

John,

I am reviewing lease application 1911, to lease water right 36-16236 owned by the Clear Lakes ranch PUD Masters Association to the Water Supply Bank and I believe I need a little more clarification on what is being offered to the Bank. On section 2. of the application, you check to offer to lease the full right to the Bank. However, in section 4.E., the question of "*Will the present place of use continue to receive water from any other source*" you checked Yes, and under the explanation stated "Within the authorized POU for right 36-16236, there are 8 or more acres that will not be irrigated." Also, in review of prior lease contract 545, initiated in 2005, I see there was only an 8 acre portion of the right leased to the Bank. Is the current application proposal to lease the entire 44.7 acres of the right to the Bank, or only an 8 acre portion of the right? If it is only an 8 acre portion, can you please supply a map that outlines those 8 acres that will not be irrigated.

Thank you,

Scott Storms
Senior Water Resource Agent
Idaho Department of Water Resources
208-287-4915
Scott.Storms@idwr.idaho.gov



**Barker Rosholt
& Simpson LLP**

RECEIVED

JAN 11 2021

**DEPARTMENT OF
WATER RESOURCES**

Boise

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Boise, Idaho 83702
p. 208.336.0700
f. 208.344.6034

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John A. Rosholt
(1937-2019)

John K. Simpson

EMAIL: jks@idahowaters.com
PHONE: 208.336.0700
WEB: idahowaters.com

January 7, 2021

Idaho Department of Water Resources
Water Supply Bank
322 E. Front Street, Ste. 648
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Clear Lake Ranch P.U.D. Master Association, Inc.

Dear Water Supply Bank:

Please find enclosed supplement to the water supply bank application filed on December 29th on behalf of Clear Lake Ranch P.U.D. Master Association, Inc. concerning water right no. 36-16236. This document should be included as Attachment 1D to the water supply bank application.

Thank you for your assistance. Please contact me with any questions.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Jessica L. Witt

/jlw

Enclosure



**Barker Rosholt
& Simpson LLP**

RECEIVED

JAN 11 2021

**DEPARTMENT OF
WATER RESOURCES**

Boise

1010 W. Jefferson St. Suite 102

Boise, Idaho 83702

p. 208.336.0700

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(1937-2019)

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PHONE: 208.336.0700

WEB: idahowaters.com

December 22, 2020

Idaho Department of Water Resources
Water Supply Bank
322 E. Front Street, Ste. 648
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Representation regarding Clear Lake Ranch P.U.D. Master Association, Inc.

Dear Water Supply Bank:

Please be advised that Barker Rosholt & Simpson LLP represents Clear Lake Ranch P.U.D. Master Association, Inc. concerning its water rights, and specifically the enclosed Water Supply Bank application, Water Right No. 36-16236.

Please ensure all correspondence and notices are copied to me at the Boise address reflected above.

Thank you for your assistance. Please contact me with any questions.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

/s/ John K. Simpson

John K. Simpson

JKS/jlw

Signature

Michael C Cowan

(printed name)

On behalf of Clear Lake Ranch P.U.D.
Master Association, Inc.