

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1248

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

LESSOR: FMC IDAHO LLC
C/O JOHN STILLMUN
2929 WALNUT ST
PHILADELPHIA, PA 19104-5054

RECEIVED
MAR 08 2021
DEPT OF WATER RESOURCES

RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources and received by the Department on October 09, 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)
29-11342	9/1/1953	GROUND WATER	1.10	Not Stated	Not Stated
Combined Lease Totals			1.10	Not Stated	Not Stated

Summary of Water Rights Elements Rentable From the Bank

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (Limited) (AC)
29-11342	1.10	796	Not Stated
Combined Limit Totals	1.10	796	Not Stated

*** The water right elements rentable are based on a prior determination by IDWR that the diversion volume limit acceptable for municipal use purposes is 796 af.**

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

Minimum Payment Acceptable: Current Rental Rate

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DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1248

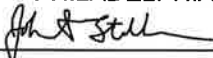
3. **TERM OF LEASE:** The term of this lease shall be January 1, 2020 to December 31, 2023. This Lease shall bind the parties and take effect when both parties have signed it.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water 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

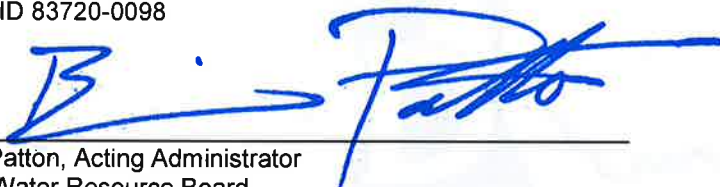
WATER SUPPLY BANK LEASE CONTRACT No. 1248

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

LESSOR: FMC IDAHO LLC
C/O JOHN STILLMUN
2929 WALNUT ST
PHILADELPHIA, PA 19104-5054

By 
Title Secretary
Date 03/05/2021

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

By  Date 3/16/21
Brian Patton, Acting Administrator
Idaho Water Resource Board

Lease approved by IDWR  Date 3/16/21

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1248

**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): 29-11342

GROUND WATER NESE Sec. 12 Twp 06S Rge 33E BANNOCK County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
29-11342	MUNICIPAL	1/01	to	12/31	1.10 cfs	Not Stated
Totals:					1.10 cfs	Not Stated

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

No POUs found for this water right

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.
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:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1248

- 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. Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.
13. The 796 af diversion volume limit acceptable for rental is for municipal purposes.
14. Use of water under this right will 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. 120.

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

OCT 09 2020

DEPARTMENT OF
WATER RESOURCES**AMENDED APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANK**Designated Applicant FMC Idaho, LLC

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

Water Right No. 29-11342

(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 CHECKLISTAll 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>Ku</u>	Date Received: <u>10.9.2020</u>	Receipt # <u>C109353</u>
W-9 received? Yes ☒ No ☐	(Route W-9 to Fiscal)	Name on W-9: <u>FMC IDAHO LLC</u>	

1786

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 FMC Idaho, LLC

Mailing Address 2929 Walnut Street Philadelphia PA 19104
Street City State Zip Code

Email Address JOHN.STILLMUN@fmc.com Phone Number 215-299-6989

☒ 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 2319, 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**.

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APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

4. GENERAL INFORMATION

- A. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 4A).

If your water right is delivered through a canal, lateral or ditch operated by a canal company, irrigation district, or similar delivery entity, your lease request must include written consent from the company, district, or similar entity for your removal of water from its system pursuant to Section 42-108, Idaho Code and IDAPA WSB Rule 37.02.03.25.02e.

- B. Please provide a description of the current water diversion and delivery system.

This water right, with 29-2255c and 29-2255e, are part of the mitigation plan agreement dated 01/13/2014
between the IDWR and FMC - rights have been held as mitigation for remediation actions as required by IDWR.

- 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. See the response to 4B.

- 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. A portion of water right no. 29-2255c (approx. 13 ac-ft) is being withheld from the application and will continue to be used as mitigation under the above identified Agreement dated Jan. 13, 2014.

- 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. Since 2014, this right has been retained and held for mitigation as required by the Agreement dated January 13, 2014.

- 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. This right with other rights identified in the January 13, 2014 Agreement have continuously been used for mitigation.

The Department conducted a review in 2020 of the rights and concluded 29-2255c and 29-11342 were not subject to forfeiture. The documentation for 29-2255e historical use is attached.

- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan?

If yes, describe.

Yes ☒ No ☐

See the response to 4B.

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: 2020 to 2023 (maximum lease period 5 calendar years).
(Year) (Year)

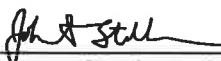
B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

Current rental rate. See attached lease between FMC and the American Falls Ground Water District.

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.

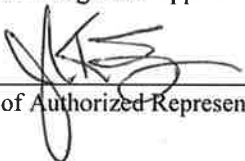

Signature of Designated Applicant

John F. Stillmun

Printed Name

10/08/2020

Date


Signature of Authorized Representative

John K. Simpson
Printed Name

10/9/2020
Date

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

IDAHO Department of Water Resources



WATER RIGHT REPORT

3/4/2020

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 29-11342

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	FMC IDAHO LLC C/O JOHN STILLMUN 2929 WALNUT ST PHILADELPHIA, PA 19104-5054 2152996347
Attorney	JOHN K SIMPSON BARKER ROSHOLT & SIMPSON LLP 1010 W JEFFERSON ST STE 102 PO BOX 2139 BOISE, ID 83701-2139 2083360700
Original Owner	FMC IDAHO LLC C/O JOHN STILLMUN 2929 WALNUT ST PHILADELPHIA, PA 19104-5054 2152996347

Priority Date: 09/01/1953

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MUNICIPAL	1/01	12/31	1.1 CFS	
Total Diversion			1.1 CFS	

Location of Point(s) of Diversion:

GROUND WATER|NESE|Sec. 12|Township 06S|Range 33E|BANNOCK County

Place(s) of use: No POUs found for this right

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. 124 Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law.
3. P21 This right is for water originally developed under right 29-2338.

Dates:

Licensed Date:

Decreed Date: 09/28/2007

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: 120

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:

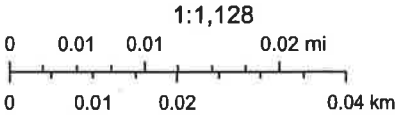
Mitigation Plan: False

29-11342



3/4/2020, 1:29:57 PM

- POU - Water Rights
- All Other POU (non-provider)
 - Irrigation Providers and Municipal Service Areas
 - POD - Water Rights
 - Quarter Quarter
 - Section
 - Township/Range



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LEASE OF WATER RIGHTS

April
THIS LEASE OF WATER RIGHTS AGREEMENT ("Lease") made and entered into this March 9, 2020, by and between FMC Idaho LLC, whose address is 2929 Walnut Street, Philadelphia, PA 19104-5054 (hereinafter "Lessor") and American Falls Aberdeen GWD, whose address is P.O. Box 70, American Falls, ID 83211 (hereinafter "Lessee"):

RECITALS:

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain water right(s) identified by the records of the Idaho Department of Water Resources ("IDWR") as follows:

Water Right No(s).	Priority	Quantity	Purpose	Period of Use
29-11342	09/01/1953	1.1 cfs	Municipal	1/1-12/31
29-2255c	05/22/1939	0.64 cfs	Industrial	1/1-12/31
29-2255e	09/16/1949	0.04 cfs	Irrigation	4/1-10/31

2. **Term.** The term of this lease shall be for a term of three (3) years, commencing on April 15, 2020, and terminating on April 14, 2023. Thereafter, this lease will only be renewed with the written approval of both parties. Annually, either party may terminate this lease upon not less than ninety (90) days advance written notice prior to April 14th of each year.

3. **Rent.** For use of the leased property, Lessee shall rent pay to Lessor on or before April 15 of each year. The annual rental amount of Twelve Thousand Eight Hundred Ten dollars (\$12,810) shall be due upon approval of the lease by IDWR allowing the use of the water by Lessee for mitigation purposes consistent with the deadlines herein.

- 3.1 The calculated amount of ground water pursuant to this Lease for water right 29-11342 is 2.18 AF per day or 796 AF per year based upon the decreed year-round use of this right.
- 3.2 The calculated amount of ground water pursuant to this Lease for water right 29-2255c is 63 AFA based upon the decree. Of this amount Lessor agrees to lease 50 ac-ft.¹
- 3.3 The calculated amount of ground water pursuant to this Lease for water right 29-2255e is 8 AFA based upon the decreed irrigation season of use for this right.
- 3.4 The agreed rental rate for ground water is [REDACTED] acre-foot.

¹ 13 ac-ft. of water right 29-2255c is being withheld by Lessor for mitigation for remediation actions.

- 3.5 The decreed purpose of use of water right 29-11342 is municipal, which is considered a fully consumptive use to the ground water source.
- 3.6 The decreed purpose of use for water right 29-2255c is industrial, which is considered a fully consumptive use to the ground water source.
- 3.7 The decreed purpose of use for water right 29-2255e is irrigation.

4. **Non-Use by Lessor.** Lessor covenants that it will not divert or utilize the described water rights during the term of this Lease.

5. **Use by Lessee.** During the term of this Lease, Lessee shall utilize said water rights for mitigation of District members' irrigation ground water pumping, ensuring that all waters approved for use under the water rights are protected and shall comply with all applicable federal, state and local laws and all rules and regulations of any agency, including IDWR applicable to such water rights, together with all state and federal environmental and water quality laws.

6. **Representations by Lessor.** Lessor covenants and represents that it is the true and lawful owners of the water rights and the land to which they are appurtenant, that these water rights have not lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights.

7. **Water Supply Bank Application and Lease Approval.** The parties acknowledge and agree that it will be necessary to submit a Water Supply Bank application, this lease and necessary documentation to IDWR, and obtain IDWR approval of the use of said water rights by Lessee for mitigation purposes.

- 7.1 Lessee and Lessor will jointly seek approval of this Lease from IDWR and will cooperate with each other in securing such approval consistent with the provisions of Section 3.
- 7.2 Lessee shall be responsible for all costs associated with accomplishing the approval of this lease and, including but not limited to, paying all applicable Water Bank and other administrative fees owing to IDWR.
- 7.3 This lease is conditioned upon IDWR's approval of the use of the water rights as identified herein by Lessee for mitigation purposes and acknowledgment by IDWR that Lessee's use of the water under the lease and/or placement of the water in the state water bank constitutes beneficial use of the water and will not subject the rights to forfeiture. In the event the approval is not obtained, the lease may be terminated by either party.

8. **Indemnification of Lessor.** Lessee agrees to indemnify and hold harmless Lessor from any and all claims and demands, including legal attorney fees and costs, which may

arise directly or indirectly as a result of this lease or the transfer or use of the water rights by Lessee pursuant to this lease.

9. **Breach.** In the event either party breaches this lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect to terminate this lease and recover any damages or pursue any other remedy under Idaho law by reason of such breach.

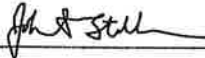
10. **Assignment.** This Agreement may not be assigned by Lessee without the express written consent of Lessor.

11. **Attorney Fees.** In the event of any litigation over this lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

12. **Binding Effect.** This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

LESSOR:

FMC IDAHO LLC

By 

Date 04/09/2020

LESSEE:

AMERICAN FALLS ABERDEEN GWD

By  - Chairman

Date 4/9/2020

Site Water Usage Summary 2009 - 2019

Year	Usage (gal)		Average (gpm)		Comments
2009	692,500		1.3		Based on water truck loads
2010	471,250		0.9		Based on water truck loads
2011	626,000		1.2		Based on water truck loads
2012	718,850		1.4		Based on water truck loads
2013	705,600		1.3		Based on water truck loads
2014	10,248,390		19.5		Based on water truck loads. Soil remeddy in progress.
2015	49,189,700		93.6		Based on water truck loads. Soil remeddy in progress.
2016	61,045,000		116.1		Based on water truck loads. Soil remeddy in progress.
2017	12,464,260		23.7		Based on water truck loads. Soil remeddy in progress.
2018	1,264,049		2.4		Flow meters in place
2019	843,633		1.6		Flow meters in place

Water Wagon Use for Dust Control - 2009

Date	# Loads	Volume Gallons
20-Apr	6	15000
21-Apr	7	17500
25-Apr	4	10000
26-Apr	2	5000
27-Apr	7	17500
28-Apr	4	10000
29-Apr	6	15000
30-Apr	11	27500
1-May	3	7500
18-May	2	5000
19-May	2	5000
21-May	3	7500
29-May	2	5000
30-May	3	7500
1-Jun	2	5000
4-Jun	2	5000
9-Jun	2	5000
24-Jun	1	2500
26-Jun	2	5000
27-Jun	2	5000
28-Jun	2	5000
29-Jun	12	30000
30-Jun	8	20000
1-Jul	2	5000
2-Jul	7	17500
6-Jul	2	5000
7-Jul	2	5000
8-Jul	4	10000
9-Jul	7	17500
11-Jul	2	5000
12-Jul	2	5000
13-Jul	2	5000
14-Jul	4	10000
15-Jul	6	15000
16-Jul	6	15000
17-Jul	3	7500
20-Jul	2	5000
21-Jul	2	5000
22-Jul	6	15000
23-Jul	7	17500
25-Jul	3	7500
27-Jul	2	5000
31-Jul	5	12500

Water Wagon Use for Dust Control - 2009

Date	# Loads	Volume Gallons
1-Aug	5	12500
2-Aug	5	12500
4-Aug	5	12500
5-Aug	5	12500
10-Aug	5	12500
11-Aug	2	5000
13-Aug	2	5000
17-Aug	1	2500
19-Aug	1	2500
21-Aug	4	10000
22-Aug	2	5000
25-Aug	3	7500
26-Aug	3	7500
27-Aug	4	10000
29-Aug	10	25000
30-Aug	6	15000
1-Sep	3	7500
4-Sep	2	5000
5-Sep	2	5000
8-Sep	5	12500
10-Sep	4	10000
11-Sep	3	7500
12-Sep	2	5000
13-Sep	2	5000
18-Sep	2	5000
19-Sep	2	5000
21-Sep	3	7500
22-Sep	3	7500
23-Sep	3	7500
24-Sep	3	7500
29-Sep	3	7500
30-Sep	1	2500
Total		692,500

Water Wagon Use for Dust Control - 2010

Date	# Loads	Volume Gallons
3/24/10	7	17500
4/9/10	6	15000
4/14/10	3	7500
4/15/10	8	20000
4/16/10	8	20000
4/19/10	5.5	13750
4/23/10	2	5000
4/26/10	2	5000
5/5/10	1	2500
5/7/10	1	2500
5/12/10	5	12500
5/13/10	5	12500
5/17/10	3	7500
6/7/10	2	5000
6/9/10	3	7500
6/14/10	2	5000
6/16/10	3	7500
6/17/10	3	7500
6/22/10	2	5000
6/24/10	2	5000
6/26/10	2	5000
7/11/10	3	7500
7/15/10	4	10000
7/17/10	3	7500
7/18/10	3	7500
7/19/10	1	2500
7/24/10	4	10000
7/26/10	4	10000
7/28/10	2	5000
7/29/10	3	7500
8/7/10	4	10000
7/30/10	1	2500
7/31/10	2	5000
8/1/10	2	5000
8/2/10	3	7500
8/4/10	2	5000
8/5/10	5	12500
8/7/10	4	10000
8/8/10	3	7500
8/10/10	2	5000
8/11/10	2	5000
8/13/10	4	10000
8/18/10	2	5000

Water Wagon Use for Dust Control - 2010		
Date	# Loads	Volume Gallons
8/19/10	2	5000
8/20/10	2	5000
8/22/10	3	7500
8/24/10	3	7500
8/25/10	4	10000
9/17/10	3	7500
9/19/10	1	2500
9/21/10	3	7500
9/22/10	3	7500
9/23/10	3	7500
9/27/10	3	7500
9/28/10	3	7500
9/29/10	3	7500
9/29/10	3	7500
9/30/10	3	7500
10/2/10	3	7500
10/4/10	2	5000
10/5/10	2	5000
10/13/10	1	2500
Total		471,250

Water Wagon Use for Dust Control - 2011		
Date	# Loads	Volume Gallons
04/29/11	3	7500
05/02/11	13	32500
05/03/11	11	27500
05/04/11	6	15000
05/05/11	5	12500
06/13/11	2	5000
06/15/11	3	7500
06/17/11	2	5000
06/20/11	2	5000
06/21/11	2	5000
06/22/11	5	12500
06/27/11	5	12500
06/28/11	4	10000
06/29/11	2	5000
06/30/11	7	17500
07/01/11	3	7500
07/03/11	3	7500
07/04/11	3	7500
07/05/11	6	15000
07/06/11	4	10000
07/07/11	4	10000
07/12/11	2	5000
07/13/11	3	7500
07/15/11	3	7500
07/16/11	3	7500
07/18/11	7	17500
07/19/11	5	12500
07/20/11	9	22500
07/21/11	10	25000
07/22/11	4	10000
07/23/11	4	10000
07/24/11	4	10000
07/25/11	3	7500
07/26/11	4	10000
07/27/11	4	10000
08/03/11	4	10000
08/07/11	5	12500
08/08/11	7	17500
08/11/11	3	7500
08/14/11	2	5000
08/16/11	2	5000
08/17/11	4	10000
08/18/11	2	5000

Water Wagon Use for Dust Control - 2011		
Date	# Loads	Volume Gallons
08/19/11	3	7500
08/20/11	3	7500
08/21/11	3	7500
08/23/11	3	7500
08/24/11	1	2500
08/27/11	4	10000
08/29/11	2	5000
08/30/11	1	2500
08/31/11	2	5000
09/02/11	4	10000
09/03/11	4	10000
09/06/11	3	7500
09/09/11	3	7500
09/11/11	3	7500
09/14/11	3	7500
09/18/11	3	7500
09/20/11	2	5000
09/26/11	3	7500
09/27/11	6	15000
09/29/11	1	2500
09/30/11	1	2500
10/01/11	1	2500
10/02/11	1	2500
10/03/11	1	2500
10/04/11	1	500
10/05/11	1	500
		0
Total		626,000

Water Wagon Use for Dust Control - 2012

Date	# Loads	Volume Gallons	Comments
04/11/12	4	10000	KW Water Truck, 2500 gallons
04/24/12	5	12500	
04/25/12	4	10000	
05/11/12	6	15000	
05/12/12	4	10000	
05/13/12	3	7500	
05/14/12	6	15000	
05/15/12	5	12500	
05/15/12	2	5000	
05/16/12	7	17500	
05/16/12	3	7500	
05/17/12	3	7500	
05/17/12	3	7500	
05/17/12	3	7500	
05/18/12	5	12500	
05/18/12	3	7500	
05/21/12	1	700	
06/08/12	3	7500	
06/15/12	1	2500	
06/16/12	3	7500	
06/17/12	3	7500	
06/05/12	14	56000	Idaho Power Water Truck 4,000 gallons
06/06/12	25	100000	Idaho Power Water Truck 4,000 gallons
06/07/12	4	16000	Idaho Power Water Truck 4,000 gallons
06/20/12	3	7500	
06/21/12	5	12500	
06/25/12	3	7500	
06/26/12	5	12500	
07/03/12	7	17500	
07/04/12	4	10000	
07/09/12	3	7500	
07/12/12	4	10000	
07/25/12	3	7500	
07/29/12	2	5000	
07/30/12	4	10000	
08/25/12	2	5000	
07/31/12	5	12500	
08/02/12	5	12500	
08/04/12	5	12500	
08/09/12	4	10000	
08/11/12	3	7500	
08/12/12	3	7500	
08/13/12	4	10000	

Water Wagon Use for Dust Control - 2012

Date	# Loads	Volume Gallons	Comments
08/14/12	2	5000	
08/15/12	5	12500	
08/17/12	4	10000	
08/25/12	5	12500	
08/25/12	2	5000	
08/26/12	6	15000	
08/26/12	4	10000	
08/27/12	6	15000	
08/30/12	3	7500	
09/02/11	1	2500	
09/03/11	1	2500	
09/04/12	2	5000	
09/05/12	2	5000	
09/06/12	2	5000	
09/07/12	2	5000	
09/08/12	1	2500	
09/09/12	1	2500	
09/10/12	3	7500	
09/11/12	2	5000	
09/12/12	2	5000	
09/13/12	1	2500	
09/14/12	2	5000	
09/15/12	3	7500	
09/19/12	5	12500	
09/20/12	3	500	
09/25/12	1	500	
09/26/12	1	2500	
11/21/12	1	150	Lift station filling
Total		718,850	

Water Wagon Use for Dust Control - 2013

Date	# Loads	Volume Gallons	Comments
04/22/13	2	5000	Prep for MgCl2
04/23/13	7	17500	Prep for MgCl2
04/24/13	12	45600	Idaho Power MgCl2 Prep
04/24/13	5	12500	Prep for MgCl2
04/25/13	7	17500	Prep for MgCl2
04/26/13	5	12500	Prep for MgCl2
04/27/13	5	12500	Prep for MgCl2
04/28/13	5	12500	Prep for MgCl2
04/29/13	2	5000	Prep for MgCl2
05/10/13	1	2500	Roads
05/13/13	2	5000	Roads
05/14/13	1	2500	Roads
05/15/13	2	5000	Roads
05/16/13	1	2500	Roads
05/22/13	1	2500	Roads
05/23/13	2	5000	Roads
05/25/13	1	2500	Roads
05/30/13	3	7500	Roads
06/03/13	3	7500	Roads
06/03/13		1000	Container for well treatment
06/04/13	1	2500	Roads
06/05/13	1	2500	Roads
06/06/13	3	7500	Roads
06/22/13	6	15000	Chill pile
06/23/13	6	15000	Chill pile
06/24/13	2	5000	Chill pile
06/25/13	3	7500	Chill pile
06/26/13	1	2500	Chill pile
07/01/13	1	4000	Roads
07/09/13	3	12000	Roads
07/11/13	2	8000	Roads
07/17/13	4	10000	Roads
07/19/13	2	5000	Chill pile
07/22/13	1	2500	Roads
07/23/13	2	5000	Roads
07/25/13	2	5000	Chill pile
07/28/13	2	5000	Roads
08/05/13	1	2500	Roads
08/06/13	4	10000	Roads
08/07/13	6	15000	Roads
08/08/13	4	10000	Chill pile
08/09/13	4	10000	Roads
08/12/13	1	2500	Roads
08/13/13	2	5000	Roads
08/14/13	3	7500	Roads
08/15/13	2	5000	Roads
09/11/13	6	15000	Cap Project Burm
09/12/13	11	27500	Cap Project Burm
09/13/13	12	30000	Cap Project Burm/Roads
09/14/13	6	15000	Cap Project Burm/Roads
09/15/13	6	15000	Cap Project Burm/Roads
09/16/13	19	47500	Cap Project Burm/Roads
09/17/13	17	42500	Cap Project Burm/Roads
09/18/13	6	15000	Cap Project Burm/Roads
09/19/13	14	35000	Cap Project Burm/Roads
09/30/13	2	5000	Cap Project Burm/Roads
10/01/13	6	15000	Cap Project Burm/Roads
10/07/13	9	22500	Cap Project Burm/Roads
10/08/13	8	20000	Cap Project Burm/Roads
10/09/13	9	22500	Cap Project Burm/Roads
10/10/13	1	2500	Cap Project Burm/Roads
11/11/13	1	2500	Lift station filling/Roads
11/12/13	2	5000	Roads
11/13/13	1	2500	Roads
		0	
Total		705,600	

Water Use for Dust Control - FMC Plant Site - 2014			
Date	# Loads	Volume Gallons	Comments
03/24/14	1	2,500	Roads
03/25/14	1	2,500	Roads
03/26/14	5	12,500	Roads
03/28/14	1	2,500	Roads
03/31/14	1	2,500	Roads
04/11/14	2	5,000	Roads
04/12/14	2	5,000	Roads
04/13/14	1	2,500	Roads
04/15/14	2	5,000	Roads
04/16/14	1	2,500	Roads
04/16/14		1,000	Drilling
04/17/14	2	5,000	Roads
04/17/14		1,000	Drilling
04/21/14	6	15,000	Roads
04/23/14	3	7,500	Roads
04/24/14	1	2,500	Roads
04/29/14	5	12,500	Roads
04/29/14	22	90,200	Idaho Power MgCl2 Prep
04/30/14	4	10,000	Roads
04/30/14	7	17,500	Drilling
05/01/14	4	10,000	Prep for MgClO
05/02/14	3	7,500	Prep for MgCl1
05/03/14	4	10,000	Prep for MgCl2
05/04/14	5	12,500	Prep for MgCl2
05/05/14	2	5,000	Prep for MgCl2
05/05/14	6	24,000	rent truck - roads
05/06/14	3	12,000	rent truck - roads
05/07/14	10	25,000	Drilling
05/07/14	10	25,000	Roads
05/07/14	7	28,000	rent truck - roads
05/08/14	10	25,000	Drilling
05/08/14	23	92,000	rent truck - roads
05/09/14	4	10,000	Roads
05/09/14	22	88,000	rent truck - roads
05/10/14	14	56,000	rent truck - roads
05/17/14	6	15,000	Chill pile
05/19/14	1	2,500	Chill pile
06/04/14	2	5,000	Roads
06/05/14	1	2,500	Roads
06/24/14	2	5,000	Roads
07/01/14	3	7,500	Chill pile
07/02/14	2	5,000	Roads
07/02/14	4	10,000	Chill pile
07/09/14	4	10,000	Roads
07/11/14		170	Lift station filling
07/14/14	3	7,500	Chill pile
07/17/14	1	2,500	Chill pile
07/21/14		20	Lift station filling
07/21/14	1	2,500	Chill pile
07/21/14	4	10,000	Roads
07/24/14	1	2,500	RR Tracks
07/25/14	1	2,500	RR Tracks
07/30/14	1	2,500	RR Tracks
07/31/14	2	5,000	RR Tracks
08/01/14	3	7,500	Roads
08/02/14	3	7,500	Roads
08/05/14	1	2,500	Septic tank
09/03/14	6	15,000	Chill pile
09/04/14	6	15,000	Chill pile
09/05/14	7	17,500	Chill pile
09/08/14	6	15,000	Chill pile
09/09/14	6	15,000	Roads
09/14/14	2	5,000	Roads
09/16/14	3	7,500	Roads
09/26/14	1	2,500	Roads
09/29/14	1	2,500	Tree removal
10/20/14	1	2,500	Chill pile
10/30/14	1	2,500	Roads
12/20/14		9,398,500	CB&I site grading - dust control
Total		10,248,390	
Total	w/o Pump Test	9,948,390	For annual Report

Water Use for Dust Control - FMC Plant Site - 2015

Date	# Loads	Volume Gallons	Comments
02/24/15	3	7,500	General dust control gravel roads
02/25/15	1	2,500	General dust control gravel roads
03/10/15	8	20,000	General dust control gravel roads
03/11/15	6	15,000	General dust control gravel roads
03/31/14	2	5,000	General dust control gravel roads
03/31/15	Month	1,726,000	CB&I site grading - dust control
04/03/15	2	5,000	General dust control gravel roads
04/04/15	3	7,500	General dust control gravel roads
04/08/15	2	5,000	General dust control gravel roads
04/10/15	3	7,500	General dust control gravel roads
04/11/15	4	10,000	General dust control gravel roads
04/12/15	2	5,000	General dust control gravel roads
04/28/15	2	5,000	General dust control gravel roads
04/30/15	Month	7,366,000	CB&I site grading - dust control
05/04/15	3	7,500	Storm Water Pipe Cleanout
05/05/15	3	7,500	Storm Water Pipe Cleanout
05/06/15	4	10,000	Storm Water Pipe Cleanout
05/07/15	3	7,500	Storm Water Pipe Cleanout
05/08/15	3	7,500	Storm Water Pipe Cleanout
05/18/15	2	8,200	Storm Water Pipe Cleanout
05/19/15	1	2,500	Storm Water Pipe Cleanout
05/20/15	2	5,000	Storm Water Pipe Cleanout
05/21/15	2	5,000	Storm Water Pipe Cleanout
05/22/15	1	2,500	Storm Water Pipe Cleanout
05/31/15	Month	5,464,000	CB&I site grading - dust control
06/30/15	Month	8,854,000	CB&I site grading - dust control
07/31/15	Month	7,902,000	CB&I site grading - dust control
08/31/15	Month	8,354,000	CB&I site grading - dust control
09/30/15	Month	2,332,500	CB&I site grading - dust control
10/31/15	Month	5,193,000	CB&I site grading - dust control
11/30/15	Month	1,840,000	CB&I site grading - dust control
Total		49,189,700	

Water Use for Dust Control - FMC Plant Site - 2015

Date	Volume Gallons	Truck Loads	Comments
January	0		
February	10,000	4	General dust control gravel roads
March	1,766,000	294	Grading Project and General dust control
April	7,411,000	1,235	Grading Project and General dust control
May	5,527,200	921	Grading Project and General dust control
June	8,854,000	1,476	Grading Project and General dust control
July	7,902,000	1,317	Grading Project and General dust control
August	8,354,000	1,392	Grading Project and General dust control
September	2,332,500	389	Grading Project and General dust control
October	5,193,000	866	Grading Project and General dust control
November	1,840,000	307	Grading Project and General dust control
December	0		
Total	49,189,700	8,201	

Water Use for Dust Control - FMC Plant Site - 2016

Date	Volume Gallons	Truck Loads	Comments
January	0	0	
February	0	0	
March	20,000	8	General dust control
April	4,020,000	503	General dust control
May	4,964,000	621	Capping Project Dust Control and Soil Conditioning
June	5,528,000	691	Capping Project Dust Control and Soil Conditioning
July	9,996,000	1,250	Capping Project Dust Control and Soil Conditioning
August	15,288,000	1,911	Capping Project Dust Control and Soil Conditioning
September	11,908,000	1,489	Capping Project Dust Control and Soil Conditioning
October	7,815,000	977	Capping Project Dust Control and Soil Conditioning
November	1,478,000	185	Capping Project Dust Control and Soil Conditioning
December	28,000	5	Capping Project Dust Control and Soil Conditioning
Total	61,045,000	7,637	

Water Use for Dust Control - FMC Plant Site - 2017

Date	Volume Gallons	Truck Loads	Comments
January	0	0	
February	0	0	
March	0	0	General dust control
April	1,034,460	129	Capping Project Dust Control and Soil Conditioning
May	1,955,000	244	Capping Project Dust Control and Soil Conditioning
June	1,207,000	151	Capping Project Dust Control and Soil Conditioning
July	2,235,000	279	Capping Project Dust Control and Soil Conditioning
August	2,007,000	251	Capping Project Dust Control and Soil Conditioning
September	1095000	137	Capping Project Dust Control and Soil Conditioning
October	912000	114	Capping Project Dust Control and Soil Conditioning
November	2011000	251	Capping Project Dust Control and Soil Conditioning
December	7800	1	Capping Project Dust Control and Soil Conditioning
Total	12,464,260	1,558	

Water Use at Site Tipple - FMC Plant Site - 2018

McCrometer Ultra Mag 6-inch meter

Date	Totalizer Reading (Gallons)	Volume (Gallons)	Comments
January	128,502,380	-	Old Propellor meter, no water usage
February	128,502,380	-	Old Propellor meter, no water usage
March	128,502,380	-	Old Propellor meter, no water usage
April	15,598	15,598	Dust Control and Site Work (i.e. Drilling Support) New meter 3/28/18
May	19,733	4,135	Dust Control and Site Work (i.e. Drilling Support)
June	104,684	84,951	Dust Control and Site Work (i.e. Drilling Support)
July	227,899	123,215	Dust Control and Site Work (i.e. Drilling Support)
August	307,563	79,664	Dust Control and Site Work (i.e. Drilling Support)
September	410,608	103,045	Dust Control and Site Work (i.e. Drilling Support)
October	468,891	58,283	Dust Control and Site Work (i.e. Drilling Support)
November	505,706	36,815	Dust Control and Site Work (i.e. Drilling Support)
December	859,412	353,706	Dust Control and Site Work (i.e. Drilling Support)
Total		859,412	

Water Use for Training Center/ValleyAg - FMC Plant Site - 2018

NETOFIM Octane 10-inch meter

Date	Totalizer Reading (Gallons)	Volume (Gallons)	Comments/Date Meter Reading Recorded
January	N/A	-	No meter
February	N/A	-	No meter
March	-	-	Meter installed on line 3/25/18
April	15,985	15,985	March Actual Usage/4-2-18
May	42,565	26,580	April Actual Usage/5-1-18
June	65,892	23,327	May Actual Usage/6-4-18
July	155,195	89,303	June Actual Usage/7-3-18
August	265,701	110,506	July Actual Usage/8-1-18
September	335,596	69,895	August Actual Usage/9-1-18
October	351,324	15,728	September Actual Usage/10-1-18
November	376,555	25,231	October Actual Usage/11-1-18
December	404,637	28,082	November Actual Usage/11-30-18
Total		404,637	
Grand Total		1,264,049	

Water Use at Site Tipple - FMC Plant Site - 2019

McCrometer Ultra Mag 6-inch meter

Date	Totalizer Reading (Gallons)	Volume (Gallons)	Comments
December	876,229		Reading on 1/2/2019
January	878,956	2,727	January 2019 Actual Usage
February	878,956	0	February 2019 Actual Usage
March	878,956	0	March 2019 Actual Usage
April	903,286	24,330	April 2019 Actual Usage
May	925,957	22,671	May 2019 Actual Usage
June	936,577	10,620	June 2019 Actual Usage
July	1,045,901	109,324	July 2019 Actual Usage
August	1,101,161	55,260	August 2019 Actual Usage
September	1,108,129	6,968	Sept 2019 Actual Usage
October	1,273,790	165,661	October 2019 Actual Usage
November	1,352,635	78,845	November 2019 Actual Usage
December	1,362,669	10,034	December 2019 Actual Usage
Total		486,439	

Water Use for Training Center/ValleyAg - FMC Plant Site - 2019

NETOFIM Octane 10-inch meter

Date	Totalizer Reading (Gallons)	Volume (Gallons)	Comments/ Date Meter Reading Recorded
	413,427		Reading on 1-2-19
January	416,796	3,369	January 2019 Actual Usage/2-1-19
February	418,064	1,268	February 2019 Actual Usage/3-1-19
March	424,664	6,600	March 2019 Actual Usage/4-1-19
April	459,039	34,375	April 2019 Actual Usage/5-1-19
May	519,795	60,756	May 2019 Actual Usage/6-1-19
June	560,167	40,372	June 2019 Actual Usage/7-1-19
July	681,394	121,227	July 2019 Actual Usage/8-1-19
August	727,857	46,463	August 2019 Actual Usage/9-3-19
September	739,667	11,810	September 2019 Actual Usage/10-1-19
October	751,136	11,469	October 2019 Actual Usage/11-1-19
November	769,263	18,127	November 2019 Actual Usage/12-2-19
December	770,620	1,357	December 2019 Actual Usage/1-3-20
Total		357,193	
Grand Total		843,633	



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

May 6, 2021

FMC IDAHO LLC
C/P JOHN STILLMUN
2929 WALNUT ST
PHILADELPHIA, PA 19104-5054

**RE: WATER SUPPLY BANK LEASE CONTRACTS 1243, 1247 & 1248
FOR WATER RIGHTS 29-2255C, 29-2255E & 29-11342**

Dear Lessor:

Water right **29-2255C, 29-2255E & 29-11342** 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
Water District 120
John Simpson



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

January 13, 2021

FMC IDAHO LLC
C/O JOHN STILLMUN
2929 WALNUT ST
PHILADELPHIA, PA 19104-5054

RE: APPLICATION TO LEASE WATER RIGHT 29-2255C, 29-2255E & 29-11342 TO THE WATER SUPPLY BANK CONTRACT 1243, 1247, & 1248

******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,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosures: Proposed Lease Contracts
Receipt # C109353

C: John K Simpson – Barker Rosholt & Simpson



**Barker Rosholt
& Simpson LLP**

RECEIVED
DEC 04 2020
**DEPARTMENT OF
WATER RESOURCES**

Boise

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December 1, 2020

Justin Ferguson
Water Supply Bank Specialist
Idaho Department of Water Resources
Idaho Water Center
322 East Front Street, Ste. 648
P.O. Box 83720
Boise, Idaho 83720-0098

*Re: FMC Idaho LLC Applications to Lease Water Right Nos. 29-2255C, 29-2255E and
29-11342 to Water Supply Bank*

Dear Justin:

Please accept this as FMC Idaho LLC's ("FMC") formal request for reconsideration of the Water Supply Bank's valuation in terms of the annual volume credit for the Pilot House water right (29-11342).

Beginning in the early 2000s, FMC began leasing water rights in its water right portfolio through the Water Supply Bank for mitigation. In 2001, the groundwater users' appropriators leased the entirety of FMC's water rights for groundwater and the Palisades storage water for mitigation pursuant to the Director's 2001 *Order* regarding a local groundwater management area (retaining 29-2255e for onsite use). This lease included water right no. 29-11342 ("Pilot House") and FMC's primary groundwater rights 29-2301 and 29-2284. These rights were historically exercised by FMC's consistent operations at its Pocatello facility beginning in the 1950s. All of these rights were very senior in terms of ground water priority and successfully adjudicated as a part of the Snake River Basin Adjudication.

This 2002 lease continued for a number of years until at such time that 29-2301 and 29-2284 were sold. These three primary groundwater rights, including the Pilot House right, were

given full volumetric calculations by the Water Supply Bank in terms of mitigation for junior groundwater pumping and mitigation said pumping owed pursuant to the Director's *Orders*.¹

In following the history of water right numbers 29-2301 and 29-2284, these rights were transferred through multiple owners but continued to be leased through the Water Supply Bank for mitigation. Most recently, these rights have been leased from Power County, the present owner, to the American Falls Aberdeen Groundwater District for mitigation pursuant to the SWC/IGWA Agreement. A sublease of these rights has been ongoing from the groundwater district to Lance Funk for mitigation for certain new water rights granted Mr. Funk for groundwater withdrawals for irrigation. The ongoing calculated mitigation benefit through the leasing of these two water rights has consistently been approximately 6,000 ac-ft. annually.² This figure is consistent with the historical mitigation provided these rights from the early 2000s.

Likewise, the Pilot House right was consistently in the Water Supply Bank until 2014. At that time, through a Memorandum of Understanding ("MOU") between FMC and the Department, FMC was required to retain control of the Pilot House right as mitigation for ongoing remediation measures on site. Essentially, instead of providing mitigation through the Water Supply Bank for other rights, similar to the Funk water rights, FMC was required to maintain control of the Pilot House right in order to ensure it had adequate mitigation for actions on its property. The potential volume available for mitigation was 796 ac-ft. These remediation actions on the property were not for the original water right purpose, i.e., industrial, but instead for remediation purposes. Any volume of water not required for mitigation of FMC's remediation actions went to the benefit of the ESPA. Again, this was a requirement of the MOU that FMC not lease the excess volume until the final remediation volume was more defined. To comply with the MOU requirements, FMC lost the opportunity to lease the full volume available.

The Pilot House right and water rights 22-9955c and 29-2255e have remained in and under control of FMC since 2014 for said remediation purposes in compliance with the MOU. It should be noted that historically the Pilot House right was provided consumptive mitigation value of 796 ac-ft.

In the recent application to the Water Supply Bank of the Pilot House right and the 29-2255c and 29-2255e rights, the Water Supply Bank issued credit for the Pilot House right of approximately 180 ac-ft. This value is inconsistent with prior determinations by the Water Supply Bank, the spirit and intent of the MOU, and is inconsistent with the valuation/credit

¹ The American Falls-Aberdeen Groundwater District ("District") was part of the 2002 lease of the Pilot House water right. Hence, the ground water district received full volumetric credit for the Pilot House right (796 ac-ft). The District is presently leasing the Pilot House right for the same mitigation purpose in 2020.

² The District sub-leases these water rights to Lance Funk in exchange for over 6,000 ac-ft of recharge annually.

being provided the water rights now leased and being utilized for mitigation of the Funk water rights.

FMC would assert that these inconsistencies need to be remedied. Hence, the Pilot House right should be provided the historical value given it, even though it has now been removed from the Water Supply Bank since 2014 but retained its use as mitigation consistent with the prior submittal to the Water Supply Bank.

I look forward to your review. Please contact me to discuss the same at your soonest opportunity.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to be 'JKS' with a large loop and a horizontal line extending to the right.

John K. Simpson

JKS/jlw



Memorandum

To: Water Rights 29-2255C, 29-2255E, & 29-11342
From: Justin Ferguson
Date: November 29, 2020
Re: Water Supply Bank Lease Applications 1786, 1797 and 1798

Purpose/Narrative: The Department received an amended application on October 9, 2020, proposing to place 50 af of ground water right 29-2255C, and the entirety of water rights 29-2255E & 29-11342, into the Bank, to accommodate a rental of the water rights by the Aberdeen-American Falls Ground Water District. The initial application, number 1697, was received April 13, 2020 however, it was found to be incomplete and returned. While there were not concerns of the validity of water rights 29-2255C and 29-11342, use and validity could not be established for 29-2255E. As such, because the water rights were offered together, the application, and all three water rights, were returned as 29-2255E was unable to be leased.

With the updated application the applicant was able to provide historic use of water right 29-2255E allowing for a new lease proposal. Further, although the rights were offered together again, they do not feature any kind of combined limit and will be separated into three distinct contracts. This review memo will address the leasing of all three water rights based on their commonality; water right 29-2255C is being leased via application 1798, water right 29-2255E is being leased via application 1786 and water right 29-11342 is being leased via application 1797.

All three water rights authorize diversions and uses of ground water on lands that are owned by the FMC Corporation. The FMC land is also associated with the Eastern Michaud Flats (EMF) Superfund Site, designated by the United States Environmental Protection Agency (EPA). The ground water below the FMC EMF Superfund Site is contaminated. To address ground water contamination, and to prevent further contamination of ground water resources, ground water is pumped from below the FMC facility and it is either treated on site, through percolation basins, or it is delivered to the City of Pocatello's publicly owned treatment works (POTW).

It is possible that ground water pumping, as required under the contamination remediation effort, might injure prior appropriated water rights. As such, in 2014, a memorandum of agreement (MOA) was entered into between FMC and IDWR, which committed to leaving water rights 29-2255C, 29-2255E & 29-11342 as unused, so that the diversion rates and volumes associated with these water rights could be used as mitigation for water rights that otherwise might have been injured due to ground water pumping at the Superfund Site.

It appears that extent to which mitigation is required for Superfund Site ground water pumping is now quantified as being 13 af annually, and this will be provided through the continued non-use of a portion of water right 35-2255C. However, the remaining water use authorized under water right 29-2255E (50 af), and the full extent of 29-2255C & 29-11342 are now proposed for lease into the Bank.

Authority to File: The applications were signed by Mr. John Stillmun, General Counsel for FMC Idaho LLC and prepared by their representative at Barker, Rosholt, & Simpson. No concerns at this time.

Water Right Validity/Forfeiture Evaluation: The water rights were decreed as follows:

Water Right	Priority Date	Water Use	Diversion Rate	Diversion Volume	Acres
29-2255C	5/22/1939	Industrial	0.64 cfs	63 AF	Not Applicable
29-2255E	9/16/1649	Irrigation	0.04 cfs	8.0 AF	2.0 Acres

Water right 29-2255C is an industrial right used for dust suppression and environmental remedial analysis. This right was originally developed as an irrigation water right, authorizing a diversion of 128 af for the irrigation of 32 acres. In 1999, IDWR transfer 5359 authorized the conversion of the water right irrigation to industrial use and 49.2% of the diversion volume (63 af) was authorized to be used for industrial purposes. This 63 af amount can therefore be considered a fully consumptive volume.

Water right 29-2255C was decreed in 2004 and then placed into the Water Supply Bank in 2007. It is unclear if water right 29-2255C was used at all in 2005 and 2006, and it is possible that two years of non-use may have accrued to this water right during this time. The water right was fully protected from forfeiture through a full lease of the water right to the Bank from 2007 through 2014. In 2015, 12.5 % of the water right (0.08 cfs, and 7.9 afa) remained leased to the Bank, and the remaining 87.5 % of the water use was released from the Bank, and presumably made available for mitigation, as required under the FMC-IDWR MOA.

Under subsection 10 of Idaho Code 42-223, a water right will not become subject to forfeiture through non-use, if the water right is dedicated to a Director approved mitigation plan. Accordingly, it is accepted that no non-use should be considered as having accrued against water right 29-2255C, while it was dedicated to mitigation activities, as provided for under the FMC-IDWR MOA, during the period of 2014-2019.

Water right 29-2255E was developed as an irrigation water right, and it was decreed in August of 2004. The extent to which water was diverted and used for irrigation purposes under water right 29-2255E following the decree is unclear. The water right would have been protected from non-use while it was dedicated to the FMC-IDWR MOA (2014 through 2019) however it was unclear as to the extent the right had been used prior. Data was provided by the applicant affirming that the right had been used for dust suppression for the years prior.

Water right 29-11342 was developed as a municipal water right, to provide water for culinary purposes at a facility known as the "Pilot House", located on land that was historically part of the Pocatello Airport, and which is now owned by FMC. The water right was decreed in August of 2007, while the water right was already under lease to the Water Supply Bank. The water right was released from the Bank at the end of 2014, after which it was dedicated to the FMC-IDWR MOA. As such, no non-use appears to have accrued under the water right since the decree and it can be considered fully valid.

Injury Evaluation: Through this lease, ground water will not be diverted and no injury is foreseen through the lease alone.

Enlargement of Use: Water right 29-2255C can be considered to be fully consumptive and no enlargement will occur if the portion of the water right leased to the Bank (50 af) is fully exhausted through a rental.

Water right 29-2255E is an irrigation water right and data indicates that the full decreed 8.0 af of water proposed for lease may be available for rental, provided no enlargement occurs.

Water right 29-11342 was historically diverted and used for culinary (municipal) purposes at the "Pilot House" at the Pocatello Airport. This right does not feature a diversion volume. Although municipal water rights can be fully consumptive, per a phone conversation with the Waste Water Treatment Facility for the City of Pocatello, the Pocatello Airport facilities discharge into the municipal waste water collection and treatment (sewer) system. The FMC-IDWR MOA acknowledges that the City of Pocatello's waste water

treatment facility is largely non-consumptive, for treated effluent received at the facility is discharged into the Portneuf River under the City's National Pollution Discharge Elimination System (NPDES) permit.

The applicant provided diversion records, in gallons per year, outlining the extent to which ground water appears to have been diverted under water right 29-11342 during 2015 and 2016. The maximum extent diverted under the water right appears to have been 116.3 af in 2016. Per updated information provided by the applicant's representative, the Department affirmed that the mitigation volume associated with 29-11342 was in fact 796 af. While the rental is requesting a change in nature of use, because the use is completely non-consumptive, no injury is foreseeable as the volume will remain undiverted.

The table below outlines the extent to which diversion volume under the three water rights will be leased to the Water Supply Bank:

Water Right	Decreed Volume	Proposed for Lease	Amount Leased	Amount Rentable
29-2255C	63 af	50 af	50 af	50 af
29-2255E	8 af	8 af	8.0 af	8.0 af
29-11342	Not Stated	796 af	796 af	796 af
Total	Unknown	854 af	854 af	854 af

Figure 1. Summary of data provided by applicant outlining diversions for water rights 29-2255C, 29-2255E, & 29-11342. See Appendix A for further data

Public Interest: Staff are unaware of any local public interests that are averse to the lease. There is a local public interest in ensuring that effective mitigation remains available to offset injury attributable to ground water pumping and remediation at the FMC Superfund Site, however as described above, it is presumed that the 13 af of water right 29-2255C not being leased to the Bank is sufficient to do that.

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

Department/Watermaster Comments: Watermaster for District 120 and IDWR Eastern Region comments were requested November 5, 2020

Water Supply Bank Evaluation: Based on the information presented by the applicant, staff recommend the application be approved.

Appendix A – Water Diversion Volume Data Provided by the Applicant

As part of the proposal to lease water rights 29-2255C, 29-2255E, and 29-11342 to the Water Supply Bank during 220, FMC provided diversion volume records associated with the water rights, from the period of 2009 through 2019. The diversion volume information is understood to have occurred as follows:

Year	Gallons Diverted	AF Diverted	WR 29-2255C		WR 29-2255E		WR 29-11342	
			Decree Volume	Accounted Volume	Decree Volume	Accounted Volume	Decree Volume	Accounted Volume
2019	843,633	2.6	63.0 AF	0.0 AF	8.0 AF	2.6 AF	Not Stated	0.0 AF
2018	1,264,049	3.9		0.0 AF		3.9 AF		0.0 AF
2017	12,464,260	38.3		30.3 AF		8.0 AF		0.0 AF
2016	61,045,000	187.3		63.0 AF		8.0 AF		116.3 AF
2015	49,189,700	151.0		63.0 AF		8.0 AF		80.0 AF
2014	9,948,390	30.5		22.5 AF		8.0 AF		0.0 AF
2013	705,600	2.2		0.0 AF		2.2 AF		0.0 AF
2012	718,850	2.2		0.0 AF		2.2 AF		0.0 AF
2011	626,000	1.9		0.0 AF		1.9 AF		0.0 AF
2010	471,250	1.4		0.0 AF		1.4 AF		0.0 AF
2009	692,500	2.1		0.0 AF		2.1 AF		0.0 AF

Based on the highest diversion volume of 187.3 AF (61,045,000 gallons), review staff were able to determine the amount historically used and, the amount available for rent while avoiding a possibility of enlargement.