

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 439

RECEIVED
APR 12 2021
DEPT OF WATER RESOURCES

This is to certify that:

ABERDEEN AMERICAN FALLS GROUND WATER DISTRICT
PO BOX 70
AMERICAN FALLS, ID 83211

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

Summary of Water Rights or Portions Rented from the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
29-2255C	5/22/1939	GROUND WATER	0.50	50.0	Not Stated
29-2255E	9/16/1949	GROUND WATER	0.04	8.0	2.0
29-11342	9/1/1953	GROUND WATER	1.10	796.0	Not Stated
Combined Rental Totals			1.64	854.0	2.0

Term of Rental: This rental agreement shall take effect when all parties have signed it and shall continue in effect until October 31, 2022. Use of rental water shall be authorized as of either the date this rental agreement takes effect or the first day of the rental season of use, in 2020, whichever occurs last.

Annual Rental Fee:

2020 - 2022: \$1,708.00 annually

The full fee for the rental of the above-described right(s) is \$1,708.00 per year for years 2020 - 2022. The rental fee includes an administrative fee of \$1,708.00 per year for years 2020 - 2022. Note that the renter is obligated to pay only the administrative fees associated with the water right(s): 29-2255 C, 29-2255 E, 29-11342.

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

Detailed water right conditions are attached.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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DEPARTMENT OF
WATER RESOURCES

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

Timothy P. Deeg
Signature of Renter

4-7-2021
Date

Timothy P. Deeg
Printed Name

Chairman of Board
Title

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

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

By Brian Patton
BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Date 5/6/21

Rental approved by IDWR Phmm

Date 5/6/21

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 439

WATER USE DETAILS

LOCATION OF POINT(S) OF DIVERSION

Water Will Remain Undiverted

BENEFICIAL USE

MITIGATION BY NON-USE

DIVERSION RATE

1.64 CFS

VOLUME

854.0 AF

SEASON OF USE

From	To
1/1	12/31

No place of use for this rental

RENTAL AGREEMENT CONDITIONS OF ACCEPTANCE

1. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
2. Rental of the specified right from the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other department application process.
3. Use of water under this agreement does not constitute a dedication of the water to renter's place of use, and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
4. Use of water under this agreement shall not prejudice any action of the Department in its consideration of an application for transfer or permit filed by the applicant for this same use.
5. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
6. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water.
7. Renter acknowledges and agrees that the Director may terminate authorization for the use of a water right based on a water right's priority date.
8. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
9. 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

APR 16 2020

DEPT OF WATER RESOURCES

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

Applicant Name: American Falls-Aberdeen Ground Water District

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

Yes ☒ No ☐

If yes, specify companion water rights in Section 4

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

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

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

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

MINIMUM REQUIREMENT CHECKLIST

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

Yes

Completed *Application to Rent Water from the Board's Water Supply Bank*

Confirmation that this form has been printed single sided, per requirement of the Water Supply Bank

Attachment N/A Yes

2



A map showing the proposed point(s) of diversion, place(s) of use, and water diversion and distribution systems proposed to be used with your rental request

3A



Detailed information on a proposed use of rental water

3F



Authorization from the owner/operator of the rental point(s) of diversion

3H



Water modeling to account for the impacts of the rental request

3J



Documents justifying a rate of flow greater than 0.02 cfs/acre

3K



Authorization from the owner/operator of the property at the proposed rental place(s) of use

4B



Explanation of how the rental water will sufficiently accomplish your rental purposes

4C



Explanation of consumptive use amounts for water rights experiencing a change in nature of use

Department Use Only – Proposed Water Right(s)

**STATE OF IDAHO
WATER RESOURCE BOARD**

Application to Rent Water (Continued)

1. CONTACT INFORMATION

- A. Applicant American Falls-Aberdeen Ground Water District
- Mailing Address PO Box 70, American Falls, ID 83211
- Street City State Zip Code
- Email Address americanfalls.aberdeen.gwd@gmail.com Phone Number 208-226-5914
- B. Is this application being completed by an authorized representative on behalf of the applicant? Yes ☒ No ☐
- If yes, representatives (includes company employees if the applicant is a corporation, as well as legal counsel or consultants) should provide their information below if they desire to be included on correspondence with the rental applicant.
- Representative Heather Rice Professional Title District Manager
- Organization American Falls-Aberdeen GWD Relationship to Applicant _____
- Mailing Address PO Box 70, American Falls, ID 83211
- Email Address heatherr@afagroundwater.com Phone Number 208-844-0419

2. MAP

Create a map of the proposed point(s) of diversion, place(s) of use and water diversion, delivery and distribution systems. Make sure the rental place of use is outlined and annotated with legal land descriptions (Township, Range, Section and Quarter-Quarters) or with GPS coordinates. For irrigation purposes, mark the number of acres you desire to irrigate. Attach the map to this application and label it **Attachment 2**.

3. DESCRIPTION OF PROPOSED USE FOR RENTAL WATER

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

The water rented through this agreement will be used for mitigation purposes by the District.

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

Desired Rate (Cubic Feet/Second)	Desired Volume (Acre-Foot)	Minimum Rate* (Cubic Feet/Second)	Minimum Volume* (Acre-Foot)	Desired Acres (if applicable)
CFS	854 AF	CFS	AF	AC

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

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

Desired Start Date (month/day/year)	Latest Possible Start Date (month/day/year)	*Mark Desired Rental Duration (Calendar Years)					**Applicant's preference if rental application cannot be processed prior to the latest possible start?	
4/15/2020	2020	☐ 1	☐ 2	☒ 3	☐ 4	☐ 5	☒ Process application as soon as possible	☐ Return application to applicant

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

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

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

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

No diversion system is necessary since water is proposed to be used for mitigation only.

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

POD Description	Water Source	Other Water Rights Diverted from this POD

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

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

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

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

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

- ☐ Irrigation _____ (number of acres) Duration: Subject to IDWR standard seasons of use
- ☐ Commercial from: _____ (mm/dd) to: _____ (mm/dd)
- ☐ Stockwater from: _____ (mm/dd) to: _____ (mm/dd)
- ☐ Industrial from: _____ (mm/dd) to: _____ (mm/dd)
- ☒ Other: Mitigation from: 01/01 (mm/dd) to: 12/31 (mm/dd)

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

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

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

N/A

**STATE OF IDAHO
WATER RESOURCE BOARD**

Application to Rent Water (Continued)

4. RENTAL REQUESTS FOR SPECIFIC WATER RIGHTS

A. Are you requesting to rent specific water rights?

Yes ☒ No ☐

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

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

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

Water Right Elements Leased to Water Supply Bank					Leased totals, minus water right elements involved in active rental agreements, equals water right elements available for rent	Water Supply Bank Rental Request		
Water Right Number (leave blank if sub-total of combined limits)	Nature of Use	Diversion Rate (CFS)	Volume (AF)	Acres (AC)		Diversion Rate (CFS)	Volume (AF)	Acres (AC)
29-11342	Municipal	1.1	796			1.1	796	
29-2255C	Industrial	0.64	63			0.51	50	
29-2255E	Irrigation	0.04	8	2		0.04	8	2
Applicants must ensure the requested rate per acre and volume per acre do not exceed the rate per acre and volume per acre limits of water rights leased to the Water Supply Bank					TOTAL	1.65	854	2
						CFS	AF	AC

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

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

N/A

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

Yes ☒ No ☐

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

We propose to change the nature of use from Municipal (29-11342), Industrial (29-2255C) and Irrigation (29-2255E) to Mitigation. These rights have previously been held for mitigation purposes (see attached MOA).

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

5. ADDITIONAL INFORMATION

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

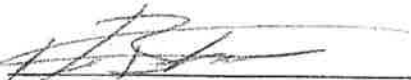
- B. Have you or do you intend to submit an application for permit or transfer proposing a similar use as this rental? Yes ☐ No ☒
If yes, describe:

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

- D. Additional Information

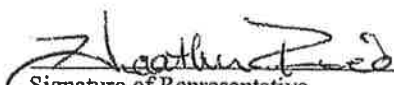
DECLARATION

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


Signature of Applicant

Nic Behrend
Printed Name of Applicant

4/14/2020
Date


Signature of Representative

Heather Rice
Printed Name of Representative

4/14/20
Date

Mail to:

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

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

1:1,128

0 0.01 0.01 0.02 mi

Esri, HERE, Garmin, (c) OpenStreetMap contributors, Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Idaho Department of

Web AppBuilder for ArcGIS

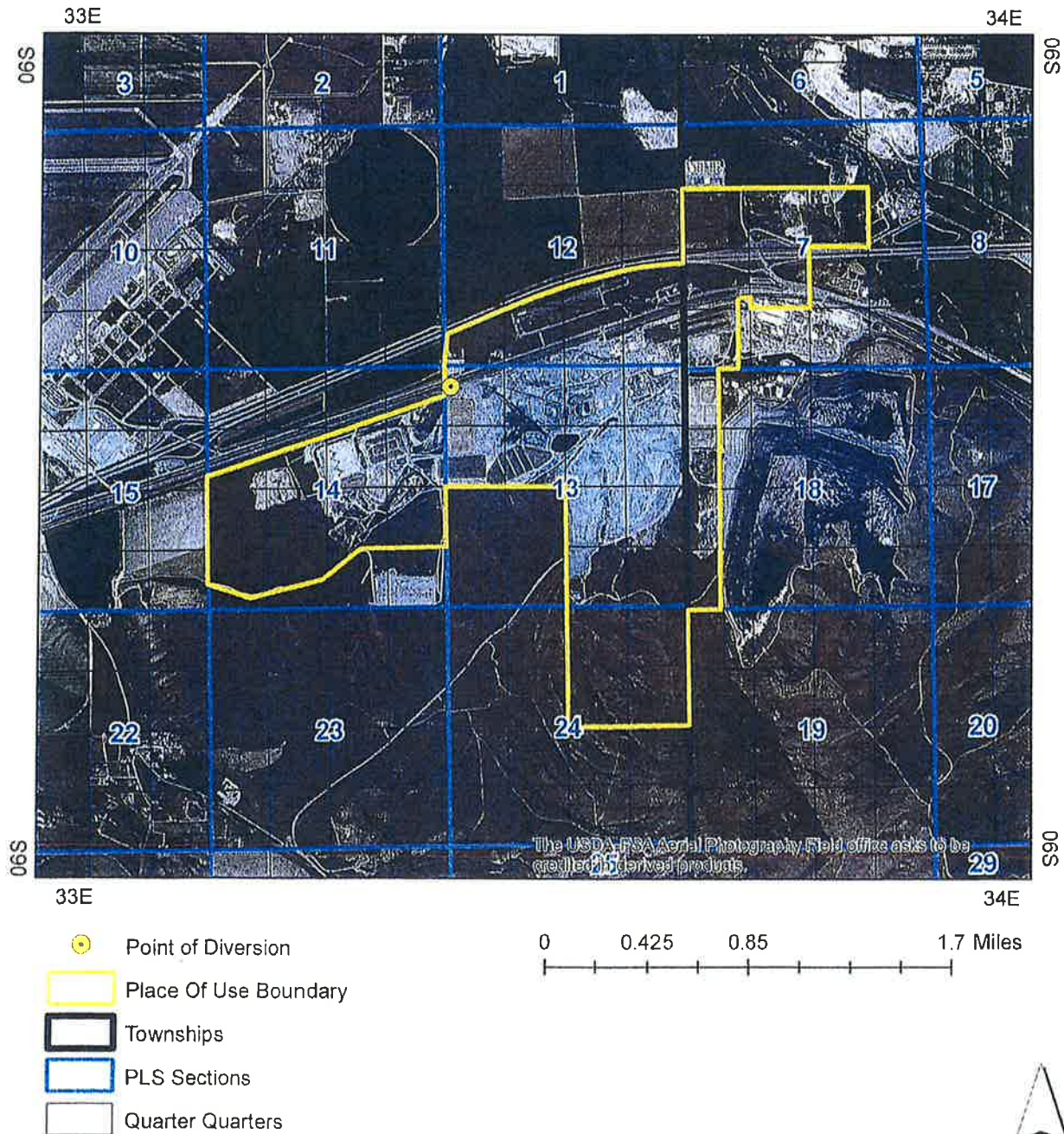
Esri, HERE, iPC | DigitalGlobe | USGS TNM – National Hydrography Dataset. Data Refreshed January, 2020. | Idaho Department of Water Resources | Esri, HERE, Garmin, iPC |

State of Idaho
Department of Water Resources

Water Right 29-2255C

INDUSTRIAL

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.



State of Idaho
Department of Water Resources

Water Right
29-2255E

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.

33E



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

0 0.035 0.07 0.14 Miles



ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
SHELLEY M. DAVIS
PAUL L. ARRINGTON
SCOTT A. MAGNUSON
SARAH W. HIGER



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195 River Vista Place, Suite 204
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(208) 733-0700 telephone
(208) 735-2444 facsimile

John K. Simpson
jks@idahowaters.com

January 17, 2014

VIA HAND DELIVERY

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

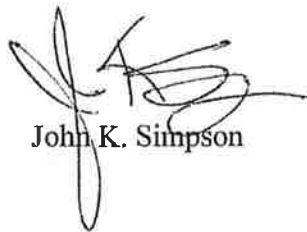
***Re: Memorandum of Agreement between the Idaho Department of Water Resources
and FMC Idaho, LLC***

Dear Garrick:

Enclosed please find the original of the above-referenced Memorandum of Agreement which has been executed by FMC Idaho, LLC.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson

JKS/jlw
Enclosure

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") is made and entered into by the Idaho Department of Water Resources ("IDWR") and FMC Idaho LLC ("FMC"), collectively referred to herein as the "Parties" and individually as "Party."

RECITALS:

WHEREAS, the United States Environmental Protection Agency ("EPA") has issued an Interim Record of Decision ("IROD") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") to amend the Record of Decision ("ROD") dated June 8, 1998 associated with the release of hazardous substances at the FMC Plant Operable Unit of the Eastern Michaud Flats Superfund Site ("FMC Plant Site"). One element of the IROD addresses groundwater contamination and requires groundwater extraction and treatment from the shallow aquifer to provide hydraulic containment and remediation of contamination at the FMC Plant Site. The IROD identifies two options for management of the extracted groundwater.

WHEREAS, the proposed ground water extraction wells required under the IROD are situated within the FMC Plant Site approximately 1 mile up-gradient from Portneuf River near the Power County and Bannock County boundary.

WHEREAS, IDWR has identified wells and water rights owned by others within a 1-mile radius of the FMC Plant Site.

WHEREAS, FMC is authorized to divert and use ground water under water right nos. 29-2255C, 29-2255E and 29-11342 in limited amounts for industrial, irrigation and municipal purposes respectively from wells in the vicinity of the proposed ground water extraction wells required under the IROD.

WHEREAS, IDWR regulates the diversion of water within the state of Idaho.

WHEREAS, Section 42-226, Idaho Code provides in relevant part, "All ground waters in this state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same for beneficial use."

WHEREAS, Section 42-201 of Idaho Code provides in relevant part:

No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

WHEREAS, Section 42-103 of Idaho Code provides:

The right to the use of the unappropriated waters of rivers, streams, lakes, springs and of subterranean waters or other sources within this state shall hereafter be acquired only by appropriation under the application, permit and license procedure as provided for in this title, unless hereinafter in this title excepted.

WHEREAS, Section 121(e)(1) of CERCLA provides that "No federal, state, or local permit shall be required for the portion of any removal or remedial action conducted entirely onsite, where such remedial action is selected and carried out in compliance with this section."

WHEREAS, the Parties recognize that a question may exist concerning whether CERCLA Section 121(e)(1) preempts procedural state water law requirements. However, the Parties agree that any diversion of water for remedial actions cannot injure pre-existing water rights without the provision of appropriate mitigation.

WHEREAS, IDWR finds that the interests of the State of Idaho in the protection of groundwater and surface water rights and the interests of existing water users can be adequately protected by entering into this MOA.

AGREEMENT:

NOW, THEREFORE, IT IS HEREBY AGREED among the Parties as follows:

This MOA shall act in lieu of the requirements of Idaho Code § 42-201 *et. seq.*

The diversion of groundwater associated with the IROD implementation is unlikely to injure other water rights given the proximity of the wells to the Portneuf River, the fact that the water will be discharged to on-site percolation basins or through the City of Pocatello Publicly Owned Treatment Works (POTW) directly to the Portneuf River, and the generally non-consumptive nature of the remedial ground water diversions. However, given the number of nearby water rights and uncertainty regarding the final design of the remedial action plan, it is prudent to require that FMC retain ownership and sufficient control over water right nos. 29-2255C, 29-2255E, and 29-11342 in case injury to pre-existing water rights occurs.

The operation of ground water diversion works shall proceed as described in Attachment A and as limited below:

CONDITIONS OF OPERATION

1. FMC shall be allowed to divert up to 530 gpm of groundwater from not more than five (5) wells located approximately as depicted in Figure 1 attached hereto. These numbers are based on FMC's initial conceptual remedial action plan. The quantity of water and the number of extraction wells may be increased through an amendment to this MOA once the remedial action plan is finalized.

2. FMC shall notify the IDWR of the final location of each well constructed for the remedial action plan.

3. The construction and decommissioning of wells associated with the remedial action plan shall comply with IDWR's Well Construction Standards Rules, IDAPA 37.03.09. All as-built diagrams and driller reports shall be provided to IDWR within 30 days of completing each well.

4. FMC shall provide appropriate mitigation if the remediation activity injures pre-existing water rights as determined by IDWR. If appropriate mitigation is not provided, curtailment may be ordered. The Parties agree that reducing or ceasing pumping of existing water rights described herein, or leasing of water through the State's Water Supply Bank, are mitigation options available to FMC if mitigation is required in the future. FMC has the right to appeal any decision or action of IDWR as provided by Idaho Code § 42-1701A or otherwise provided by Idaho law.

5. For the duration of this MOA, FMC shall retain ownership and sufficient control over water right nos. 29-2255C, 29-2255E, and 29-11342 to make available water for use as mitigation in the event pre-existing water rights are injured by the diversion of groundwater from wells located on the FMC Plant Site associated with the Proposed Plan. This condition may be removed through an amendment to this MOA once the remedial action plan is finalized.

6. FMC shall hold IDWR and the Idaho Water Resource Board harmless from any liability due to the planned remedial action or the negligent discharge of water.

7. Every five (5) years, starting five (5) years from the date of the last signature executing this MOA, FMC shall submit a report to IDWR describing the ongoing remediation efforts and documenting the continuing need for water at the FMC Plant Site for remediation.

ADDITIONAL PROVISIONS

The Director retains jurisdiction over the diversion of ground water authorized pursuant to this MOA. The Director may issue an order requiring mitigation, modification or cessation if appropriate mitigation is not provided of any diversion the Director determines is injuring an existing water right. This MOA shall automatically terminate once the ground water remediation efforts at the FMC Plant Site have been completed, the diversion of the water is no longer necessary to comply with CERCLA or the necessity of a water right for remediation is addressed by Idaho statute.

The covenants in this MOA are unique to the CERCLA Response Action at the FMC Plant Site. The provisions of this MOA shall have no effect and shall not bind or limit the Parties with regard to other remediation projects in the state in the future.

Notwithstanding the terms and conditions of this MOA, the Parties reserve all rights under State and Federal laws and expressly do not waive any legal claims or defenses available to them.

This MOA is entered for purposes of resolving a potential legal dispute and is subject to the provisions of Federal Rule of Evidence 408 and Idaho Rule of Evidence 408 and shall not be admissible in any court for the purpose of establishing a waiver of any legal rights or defenses.

AGREEMENT EXECUTION

Idaho Department of Water Resources



Gary Spackman, Director
12/21/2013

Date

FMC Idaho LLC



Name
FMC CORP
1735 MARKET ST PHILADELPHIA PA 19103

Address
215-299-6347

Telephone No.
1/13/14

Date

ATTACHMENT A

EPA Proposed Groundwater Remedial Action for Hydraulic Containment and Remediation of Contaminated Groundwater at the FMC Plant Site Boundary FMC Plant Operable Unit of the Eastern Michaud Flats Superfund Site

The United States Environmental Protection Agency (EPA) has issued an Interim Record of Decision (IROD) for remedial action (cleanup) of the FMC Plant Operable Unit of the Eastern Michaud Flats (EMF) Superfund Site. One element of the EPA IROD addresses groundwater remediation and requires groundwater extraction from the shallow aquifer to provide hydraulic containment and remediation of contaminated groundwater at the FMC Plant Site. Specifics of this element of the groundwater remedial action are described below.

The extraction wells would be located in the northeastern corner of the former FMC Plant Site to capture impacted shallow groundwater before it can migrate down-gradient beyond the FMC Plant Site boundary and subsequently discharge through springs and base flow to the Portneuf River. The attached Figure 1 shows the location of the FMC Plant Site, shallow groundwater elevation contours, and groundwater flow to the Portneuf River. Initial groundwater modeling indicates that five (5) extraction wells would be sufficient for hydraulic capture (containment) of the remaining plume before it leaves the FMC Plant Site. Based on FMC's groundwater model capture simulations, a total combined extraction rate of approximately 530 gallons per minute (gpm) in this area is predicted to fully capture migration of impacted groundwater (as defined by arsenic above the Federal drinking water standard maximum contaminant level [MCL]) beyond the FMC Plant Site. The approximate locations of the proposed extraction wells on the FMC Plant Site are also depicted on the attached Figure 1.

The IROD identifies two options for management of the extracted groundwater: A) discharge to the City of Pocatello POTW for treatment and discharge to the Portneuf River under the City's NPDES permit, or B) on-site treatment and discharge to an on-site percolation basin(s) located in the western undeveloped portion of the FMC Plant Site where percolated water would recharge the groundwater system upgradient of the extraction zone. Under scenario A, the extracted groundwater would be discharged to the Portneuf River, where the groundwater would otherwise manifest itself as surface water if not extracted. Under scenario B, the extracted groundwater would be returned to the originating shallow groundwater system via percolation.

Following EPA approval of the final remedial design and remedial action plan, FMC will be required to install and operate the groundwater extraction system continuously (except for downtime for scheduled maintenance or any upset conditions) until EPA determines that the system can be permanently shutdown. EPA will perform a review of the performance of the remedial action every five years ("5-year review") and any determination regarding the continuing need to operate or shutdown the groundwater extraction system would likely occur in conjunction with the 5-year reviews.

SHALLOW MONITORING WELL
AND GROUNDWATER
ELEVATION

POTENTIOMETRIC CONTOUR
1 FOOT INTERVAL

FMC PLANT OU

ALL ELEVATIONS IN FEET
ABOVE MEAN SEA LEVEL.



SCALE

0 (In Feet) 1000

FMC CORPORATION-POCATELLO, IDAHO
2007 GROUNDWATER
MONITORING ASSESSMENT

INFERRED SHALLOW GROUNDWATER FLOW PATHS

FIGURE

2.2-2

Hydrometrics, Inc.
Consulting Scientists and Engineers

UPDATE TIME: 4:22PM
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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

ABERDEEN AMERICAN FALLS GROUND WATER DISTRICT
PO BOX 70
AMERICAN FALLS, ID 83211

RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 29-2255C, 29-2255E & 29-11342, AGREEMENT 439

Dear Renter:

Please find enclosed two receipts in the amounts of **\$697.20 & \$2,370.20** and a copy of a fully executed Water Supply Bank Rental Agreement in connection with the rental of 854.0 acre-feet of water for mitigation by non-use during. Upon receipt of this fully executed agreement, you are authorized to divert water in compliance with the conditions of water use described in the agreement.

Since you are both the lessor and the renter of the right(s), **you are only obligated to pay the 10% administrative fee or \$1,708.00 per year.**

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

Sincerely,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosures: Receipt Nos. C109902 & C110225
Rental Agreement (copy)

c: Sascha Marston – Fiscal
IDWR Eastern Regional Office



State of Idaho

DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

March 5, 2021

ABERDEEN AMERICAN FALLS GROUND WATER DISTRICT
PO BOX 70
AMERICAN FALLS, ID 83211

RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 29-2255C, 29-2255E & 29-11342 UPDATED AGREEMENT 439

TIME SENSITIVE RESPONSE REQUIRED

Dear Applicant:

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

A rental fee of **\$1,708.00** was calculated based on the current rental rate of \$20.00 per acre-foot times a diversion volume of 854 acre-feet. Since you have a private agreement with the lessor **you are only obligated to pay the 10% administrative fee or \$1,708.00.** An annual payment shall be received by the Department prior to the execution of this agreement and prior to January 1 in all subsequent years for the duration of the rental period. The agreement will be void if payment is not received prior to the due date in a given year. If you would like to terminate the agreement prior to the end of the rental period, you must submit written notice of your intent to the Department at least 30 days prior to the rental fee due date.

Please send a check for the additional fee of \$3,067.40 for both the 2020 and 2021 seasons made payable to the Idaho Department of Water Resources, **together with the signed rental agreement, within 14 days** so I can complete processing.

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

Sincerely,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosure(s)

c: IDWR Front Desk



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 14, 2021

ABERDEEN AMERICAN FALLS GROUND WATER DISTRICT
PO BOX 70
AMERICAN FALLS, ID 83211

RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 29-11342, 29-2255C & 29-2255E, AGREEMENT 439

TIME SENSITIVE RESPONSE REQUIRED

Dear Applicant:

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

A rental fee of **\$348.60** was calculated based on the current rental rate of \$20.00 per acre-foot times a diversion volume of 174.3 acre-feet. Since you have a private agreement with the lessor **you are only obligated to pay the 10% administrative fee or \$348.60.** An annual payment shall be received by the Department prior to the execution of this agreement and prior to January 1 in all subsequent years for the duration of the rental period. The agreement will be void if payment is not received prior to the due date in a given year. If you would like to terminate the agreement prior to the end of the rental period, you must submit written notice of your intent to the Department at least 30 days prior to the rental fee due date.

Please send a check for \$697.20 for both the 2020 and 2021 season made payable to the Idaho Department of Water Resources, **together with the signed rental agreement, within 14 days** so I can complete processing.

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

Sincerely,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosure(s)

c: IDWR Front Desk

Memorandum

To: Rental Application 1703

From: Justin Ferguson

Date: December 8, 2020

Re: Water Supply Bank Rental Request for Ground Water Mitigation through Non-use

Purpose/Narrative: An application was received by the Department on April 16, 2020 from the Aberdeen-American Falls Ground Water District (AAFGWD), as part of a lease rental package of water rights 29-2255C, 29-2255E and 29-11342, held by FMC Idaho LLC. Through this application the Ground Water District intends to rent FMC's water rights to offset the mitigation obligations, agreed to under a private negotiated settlement between the Ground Water District and various surface water delivery entities (known as the Surface Water Coalition, or SWC).

While the Bank does not recognize any form of mitigation credits or what the actual value of the water rented toward the mitigation obligation amounts to, the Bank can review this application because the applicant has provided documentation as to the extent of their mitigation obligation owned to the SWC. The applicant has an obligation to achieve an annual ground water diversion reduction of 35,243 acre feet. Through this rental, the applicant is able to secure a guaranteed mitigation rental of 854 af.

Authority to File: The application was signed by Heather Rice, District Manager, for the Aberdeen-American Falls Ground Water District and submitted by their representative at Barker, Rosholt, & Simpson. No concerns at this time.

Water Right Validity/Forfeiture Evaluation: The three requested water rights are currently leased to the Bank and there are no further concerns about their validity.

Injury Evaluation: No injury is apparent as the intent of the rental is to achieve mitigation by leaving ground water undiverted, within the aquifer.

Enlargement of Use: The three water rights being rented authorize three different beneficial uses of water (industrial, irrigation and municipal uses). While the rental proposes a change in nature of use, the volume rented by the applicant will remain undiverted and unused. As such, an evaluation of the consumptive use is not necessary and the full amount can be rented.

Water right 29-2255C is a fully consumptive, industrial use water right, so the full, leased diversion volume of 50 af can be rented and dedicated to mitigation purposes without causing enlargement. Water right 29-2255E is an irrigation water right that authorizes a diversion volume of 4 afa/ac. Based on information provided during the lease review of water right 29-2255E, it appears irrigation has not recently occurred at the water right's authorized place of use. However, ground water diversion have been undertaken through a use of this water right (as well as through a use of water rights 29-2255C and 29-11342) and it was accepted that 8 af of ground water has recently been diverted under this water right, and 8 af can thus be rented for this rental.

Water right 29-11342 is a municipal water right and historically, municipal water rights are considered to be fully consumptive. Historically water right 29-11342 authorized municipal diversions and uses of water at the Pocatello municipal airport via the Pilot House well. Effluent water collected from the airport was

treated at the City of Pocatello's waste water treatment facility, before being discharged to the Portneuf River. As such, it does not appear that municipal water right 29-11342 features a significant consumptive use volume. Furthermore, water right 29-11342 was decreed without a diversion volume. Per an agreement later provided by FMC, the Department has affirmed that a volume of 796 af can be considered for mitigation. In summation, 854 af (50 af + 8 af + 796 af) of water will be rented from these three water rights.

Local Public Interest: Reducing overall diversions of water from the aquifer is consistent with the State Water Plan objectives and therefore is within the local public interest.

Beneficial Use/Conservation of Water Resources: The applicant has a ground water reduction mitigation obligation of 35,243 af. Mitigation by non-use is a beneficial use. Through this rental, a mitigation by non-use beneficial use rental of 56 af will be approved for the applicant.

Department/Watermaster Comments: Watermaster and IDWR Eastern Region comments were requested on

Water Supply Bank Evaluation: Bank staff recommend the approval of this application for the Aberdeen-American Falls Ground Water District through 2022.

Buyer, Remington

From: Buyer, Remington
Sent: Thursday, April 16, 2020 5:43 PM
To: 'Heather Rice'
Cc: Bank
Subject: RE: Water Supply Bank Application
Attachments: ESPA GW Availability - April 16 - for consideration by AAFGWD.XLSX

Heather,

Thanks for reaching out. My apologies for not getting you the list of available rentable ESPA GW rights for this year; we've been slogging through some 11th hour ESPA GW rental applications during recent weeks which has kept the available list of WRS in flux. That said, I believe we have now identified all ESPA GW rights leased to the Bank which are likely to be rented in 2020, and we can make available for rental to AAFGWD the remaining balance of unrented ESPA WRs leased to the Bank. The attached excel workbook provides these water rights.

Here are my observations of AAFGWD's request to rent the FMC water rights 29-11342, 29-2255c and 29-2255e for mitigation purposes:

- This application requests a rental of ESPA GW rights equivalent to 854 af. To establish that leaving 854 af of ESPA GW un-diverted will accomplish a mitigation beneficial use, we'll need to confirm that 854 af of mitigation is required of the AAFGWD. Please provide us with any records your office might have that quantify the mitigation obligations of AAFGWD for this rental;
- The FMC water rights authorize municipal, industrial and irrigation uses. Because a rental for mitigation constitutes a change in the nature of use, it is relevant to evaluate for the consumptive use of these three water rights;
 - o Water right 29-2255c was formerly an irrigation water right, and the 63.0 af of decreed volume was calculated to be a fully consumptive use volume through transfer 5359, in 1999;
 - o Water right 29-2255e authorizes an irrigation diversion volume for irrigation of 4.0 afa/acre, and it may be possible to use near-infrared data and/or consumptive use calculations to establish a consumptive use for this volume;
 - o Water right 29-11342 is a municipal water right that was developed and licensed to the City of Pocatello, prior to being conveyed and decreed to FMC corporation. The right was decreed without a diversion volume and the consumptive use extent of this water right is unclear.
- Prior to approving a rental of water right 29-11342, IDWR will need to establish that no enlargement will occur through the rental of this water right for mitigation purposes by AAFGWD. Any additional water that might be provided to further contextualize the consumptive use of water under 29-11342 would be helpful for our review purposes.

Thanks for your consideration of the above, and the attached,

Remington

From: Heather Rice [mailto:heatherr@afagroundwater.com]
Sent: Thursday, April 16, 2020 11:10 AM
To: Buyer, Remington <Remington.Buyer@idwr.idaho.gov>
Subject: Water Supply Bank Application

Hi Remington,

Attached is an application for the American Falls-Aberdeen Ground Water District to rent FMC water rights 29-11342, 29-225C & 29-2255E from the water supply bank for mitigation purposes. If necessary, I can send a physical copy of the lease request. Please let me know if anything further is needed.

Thank you,

Heather Rice
District Manager
American Falls Aberdeen GWD
(208) 226-5914 office
(208)844-0419 cell

Buyer, Remington

From: Heather Rice <heatherr@afagroundwater.com>
Sent: Thursday, April 16, 2020 11:10 AM
To: Buyer, Remington
Subject: Water Supply Bank Application
Attachments: AFA WSB App- FMC Lease.PDF

Hi Remington,

Attached is an application for the American Falls-Aberdeen Ground Water District to rent FMC water rights 29-11342, 29-225C & 29-2255E from the water supply bank for mitigation purposes. If necessary, I can send a physical copy of the lease request. Please let me know if anything further is needed.

Thank you,

Heather Rice
District Manager
American Falls Aberdeen GWD
(208) 226-5914 office
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