

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1364

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

LESSOR: TETON ISLAND FEEDER CANAL CO
386 N 2400 E
ST ANTHONY, ID 83445

RECEIVED
APR 21 2021
DEPARTMENT 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 January 12, 2021.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

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

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

Summary of Water Rights or Portions Leased to the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
22-12694	3/1/1883	TETON RIVER, tributary to HENRYS FORK	1.61	Not Stated	1,261.7
22-288	5/15/1883	TETON RIVER, tributary to HENRYS FORK	0.43	Not Stated	1,261.7
22-12695	5/22/1884	TETON RIVER, tributary to HENRYS FORK	10.28	Not Stated	1,261.7
22-589B	6/1/1884	TETON RIVER, tributary to HENRYS FORK	3.38	Not Stated	1,261.7
22-12696	6/1/1885	TETON RIVER, tributary to HENRYS FORK	32.60	Not Stated	1,261.7
22-571	6/1/1888	TETON RIVER, tributary to HENRYS FORK	0.45	Not Stated	1,261.7
22-12697	4/1/1898	TETON RIVER, tributary to HENRYS FORK	31.17	Not Stated	1,261.7
Combined Limit Totals			79.92	Not Stated	1,261.7
Combined Lease Totals			79.92	Not Stated	1,261.7

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1364

Summary of Water Rights Elements Rentable From the Bank

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (Limited) (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
22-12694	1.61	683	1,261.7	0.001	0.54
22-288	0.43	183	1,261.7	0.000	0.14
22-12695	10.3	4,360	1,261.7	0.008	3.46
22-589B	3.38	1,430	1,261.7	0.003	1.14
22-12696	32.6	4,410	1,261.7	0.026	3.50
22-571	0.45	191	1,261.7	0.000	0.15
22-12697	31.2	4,410	1,261.7	0.025	3.50
Combined Limit Totals	79.9	4,420	1,261.7	0.063	3.50

** The water right elements rentable feature a rentable diversion volume, calculated as either the maximum volume divertible based on the leased diversion rate over the entire season of use, or, calculated based on the regional field headgate standard of 3.5 afa/ac.*

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

Minimum Payment Acceptable: Current Rental Rate

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2021 to December 31, 2025. 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. 1364

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

LESSOR: TETON ISLAND FEEDER CANAL CO
386 N 2400 E

ST ANTHONY, ID 83445
By *Rodney Callum*
Title *President*
Date *14 Apr. 2021*

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

By *Brian Patton*
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date *4/23/21*

Lease approved by IDWR *FP*

Date *4/23/21*

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1364

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): 22-288, 22-571, 22-12694, 22-12695, 22-12696, 22-12697, 22-589B

TETON RIVER NWSENW Sec. 36 Twp 07N Rge 40E FREMONT County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
22-288	IRRIGATION	04/01	to	10/31	0.43 cfs	183 AF
22-571	IRRIGATION	04/01	to	10/31	0.45 cfs	191 AF
22-12694	IRRIGATION	04/01	to	10/31	1.61 cfs	683 AF
22-12695	IRRIGATION	04/01	to	10/31	10.28 cfs	4,360 AF
22-12696	IRRIGATION	04/01	to	10/31	32.60 cfs	4,410 AF
22-12697	IRRIGATION	04/01	to	10/31	31.17 cfs	4,410 AF
22-589B	IRRIGATION	04/01	to	10/31	3.38 cfs	1,430 AF
Totals:					79.92 cfs	4,416 AF

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	39E	1																	1.2
06N	39E	12				0.9							0.1	0.4			4.5	22	27.9
06N	39E	13	5.6		13	1.5	4.7	30	33	36						5.3	0.5		129.6
06N	39E	14				0.7												6	6.7
06N	39E	22				2.4													2.4
06N	39E	23					0.2			0.7									0.9
06N	40E	2					0.9 GL3	5.7 GL4											6.6
06N	40E	3	0.6 GL1				4.8 GL3	1 GL4	1.4	1.7		0.3					0.8	2.9	13.5
06N	40E	4		0.4		26	16 GL3	35 GL4	27	11	29	24	11	35	38	40	39	13	344.4
06N	40E	5	20 GL1	1.2 GL2	0.8	10									4.3		0.1	0.7	37.0
06N	40E	6				3.3							3.2 GL7	0.5			16	16	39.0
06N	40E	7	0.1	1		6.9					10					1.7			19.7
06N	40E	8	5.9	14			0.4		2.3				23	0.8	2.8	6	5.5	0.7	61.4
06N	40E	9	9.5	27			39	11	0.8	5									92.3
06N	40E	10	1.5		0.5			0.9			1.9				2.4				7.2
06N	40E	15										0.7	2.2						2.9
06N	40E	16			11			0.1	2.7		0.2	0.4	11	0.2	0.4	22			48.0
06N	40E	17				1.6	6.1	32	7.1	0.3	8.1	1.9	5.5	0.8					63.4
06N	40E	18	2.3	2.2	3	1.9	6.7	0.2 GL1		0.4	0.2				5.5	6.9	0.9	1.8	32.0

WATER SUPPLY BANK LEASE CONTRACT No. 1364

Total Acres: 1,261.7

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:
 - 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. Water is delivered through Teton Island Feeder Canal.
13. The following rights are all diverted through point of diversion described above: 22-288, 22-571, 22-589B, 22-12694 through 22-12697.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

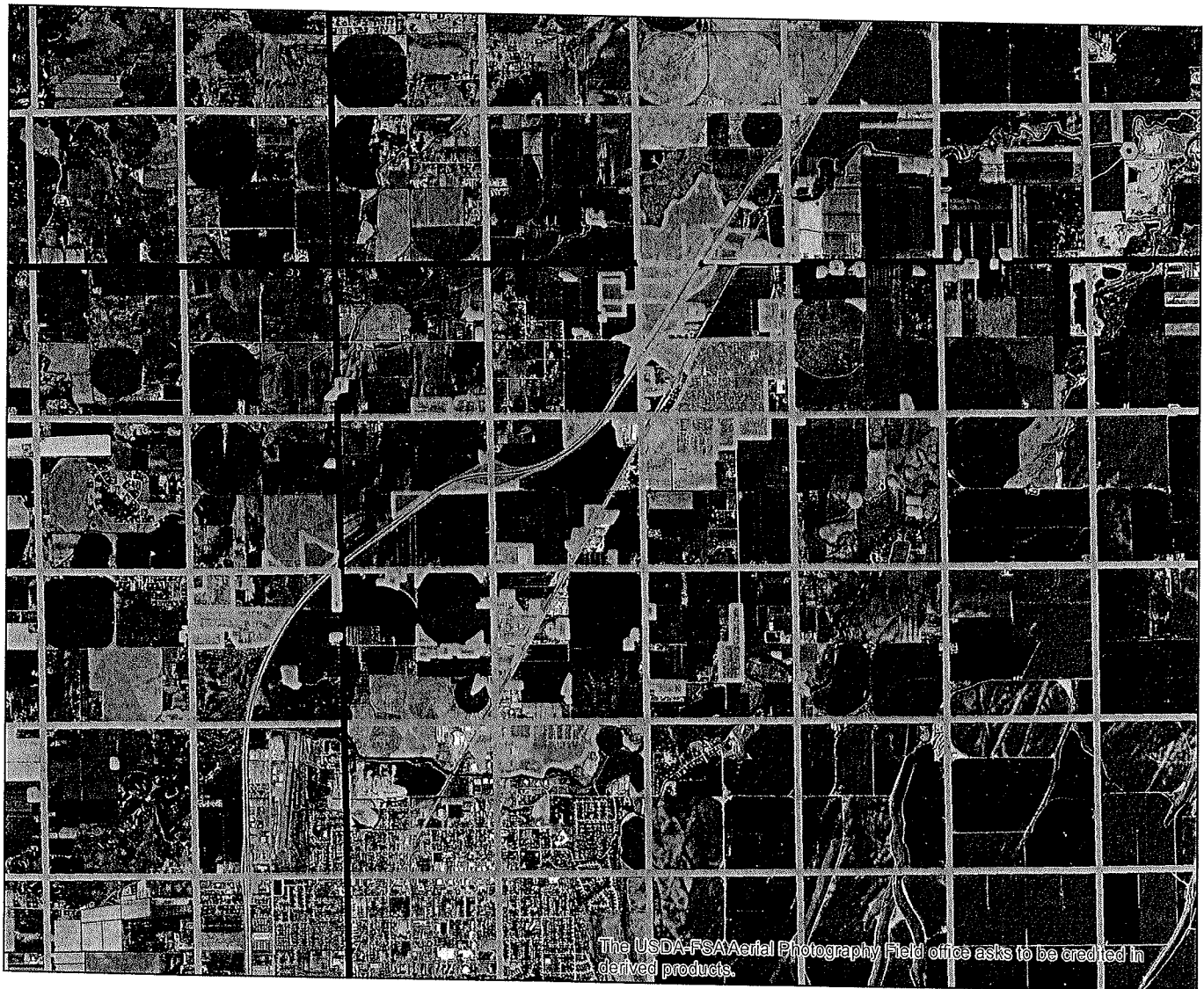
WATER SUPPLY BANK LEASE CONTRACT No. 1364

14. For the duration of this lease contract, the unleased portions of the water rights listed below are limited to a diversion rate of 519 cfs for the irrigation of a combined total of 8,180 acres in a single irrigation season, and 522 cfs for stockwatering and subirrigation during the non-irrigation season. Combined Right Nos.: 22-288, 22-571, 22-589B, 22-12694, 22-12695, 22-12696 and 22-12697.
15. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 01.

Idaho Water Resource Board
Water Supply Bank Lease Contract No. 1364

22-12694, 22-12695, 22-12696, 22-12697, 22-288, 22-571, 22-589B
Effective until December 31, 2025

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



⊙ Approved Lease Point of Diversion

▭ Approved Lease Place of Use

▭ Township/Range

▭ Sections



■ Feet
2500

STATE OF IDAHO
WATER RESOURCE BOARD

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

RECEIVED
JAN 12 2021
DEPARTMENT OF
WATER RESOURCES

Designated Applicant Teton Island Feeder Canal Company

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

Water Right No. 22-12696

(One water right per application)

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

Yes ☒ No ☐

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

MINIMUM REQUIREMENT CHECKLIST

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

Yes

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

Attachment N/A Yes

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

Department Use Only

Fee Amount \$ 500Received By: KuDate Received: 1.12.21Receipt # C109799W-9 received? Yes ☐ No ☒ (Route W-9 to Fiscal)

Name on W-9:

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 Teton Island Feeder Canal Company

Mailing Address 386 North 2400 East Saint Anthony Idaho 83445
Street City State Zip Code

Email Address aaron.fmid@myidahomail.com Phone Number 208-624-3381

☒ 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 Aaron Dalling Organization FMID

Professional Title Executive Director Email Address aaron.fmid@myidahomail.com

Mailing Address PO BOX 15 St. Anthony Idaho 83445 Phone Number 208-403-8474

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

OR

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

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

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

OR

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

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

3. MAP

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

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

4. GENERAL INFORMATION

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

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

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

The water is diverted from the North Fork of the Teton River. The water is used irrigate land in the Sugar City, Salem and Rexburg areas.

- 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. There are a few overlapping canals and at least one groundwater irrigation right however the field those water rights apply to are not included in this application.

- 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.

- 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. The average annual diversion over the last 5 years has been 97,799 Acre Feet.

- G. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☐ No ☒

If yes, describe the circumstances and attach evidence to demonstrate how the water right has not been lost through forfeiture (Attachment 4G). See Section 42-223, Idaho Code for exceptions to forfeiture. Your application may be denied if forfeiture concerns are not addressed.

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

If yes, describe. Yes ☐ No ☒

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

5. SALE/LEASE AGREEMENT

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

If lease, specify the years when the use of water will be suspended: 2021 to 2025 (maximum lease period 5 calendar years).
(Year) (Year)

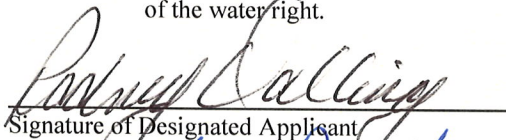
B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

There is not a minimum payment as we will be leasing the water back.

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

Rodney Dalling-President

Printed Name

12-31-2020

Date


Signature of Authorized Representative

Aaron Dalling

Printed Name

12-31-2020

Date

Mail to:

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

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

ATTACHMENT 2

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

1. <u>Water Right Number</u>	<u>Nature of Use</u>	<u>Leased Rate</u> (cfs)	<u>Leased Volume</u> (af)	<u>Leased Acres</u> (ac)
<u>22-12695</u>	<u>Irrigation</u>	<u>35.01</u>	<u>5811.9</u>	<u>552.5</u>
	Total Amounts:	<u>35.01</u>	<u>5811.9</u>	<u>552.2</u>

2. Source of water North Fork of the Teton River tributary to Henry's Fork

3. Point(s) of diversion:

TwP	Rge	Sec	Lot	¼	¼	¼	County
7N	40E	36		NW	SE	NW	Fremont County



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

April 23, 2021

TETON ISLAND FEEDER CANAL CO
386 N 2400 E
ST ANTHONY, ID 83445

**RE: WATER SUPPLY BANK LEASE CONTRACT 1364
FOR WATER RIGHTS 22-12694, 22-288, 22-21695, 22-589B, 22-12696, 22-571 & 22-12697**

Dear Lessor:

Water rights **22-12694, 22-288, 22-21695, 22-589B, 22-12696, 22-571 & 22-12697** 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, 2025**, 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 01
Aaron Dalling



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

April 8, 2021

TETON ISLAND FEEDER CANAL CO
386 N 2400 E
ST ANTHONY, ID 83445

RE: APPLICATION TO LEASE WATER RIGHTS 22-12694, 22-288, 22-12695, 22-589B, 22-12696, 22-571 & 22-12697 TO THE WATER SUPPLY BANK CONTRACT 1364

******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, 2025**, 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: C109779

C: Aaron Dalling

MEMORANDUM FOR APPLICATION # 1951

To: Water Supply Bank Lease Application 1951
From: Remington Buyer
Date: March 1, 2021
Re: Review & Analysis of Application to Lease Portions of Water Rights 22-288, 22-571, 22-589B, 22-12694, 22-12695, 22-12696 and 22-12697 to the Water Supply Bank

PURPOSE/NARRATIVE: The Department received lease application 1951 from Teton Island Feeder Canal Company (TIFCC) on January 12, 2021, proposing to lease back into the Water Supply Bank (Bank) approximately 1,354 irrigable acres of these seven irrigation water rights. Portions of these seven water rights, equivalent to the irrigation of 1,354 acres, were previously leased into the Bank under Contract 990, which recently expired on December 31, 2020.

These seven water rights, when combined, authorize irrigation of 9,448.2 acres within the service area of TIFCC, during the irrigation season (April 1st through October 31st). TIFCC's service area, as defined by IDWR's shapefile for the water right, sums to 10,936.1 acres (a difference of 1,487.9 acres).

In addition to irrigation, five of the water rights proposed for lease also authorize sub-irrigation of lands within the boundaries of TIFCC during the non-irrigation season (November 1st through March 31st) and three of the water rights authorize year-round diversions of water for stock watering purposes. Neither the stockwater nor sub-irrigation uses were proposed for lease. Stockwater diversion rates for water rights 22-288 and 22-12694 are equivalent to the diversion rates for irrigation use under these rights, so the applicant will be required to reduce their overall diversion rates for both stockwater and irrigation during the irrigation season, equivalent to the portions of their irrigation water rights accepted for lease to the Bank. The applicant was contacted to ascertain whether they wanted to lease into the Bank year-round the stockwater diversion rate equivalent to their irrigation diversion rate under water rights 22-288 and 12694, however they elected not to do so.

Review of this lease proposal also revealed that approximately 83 acres within the larger 1,354 acres may have been irrigated or provided with water during Lease Contract 990. The applicant subsequently asked that the acres in question be removed from the overall acreage proposed for lease in application 1951. Once the acres in question were removed, the actual acreage proposed for lease summed to 1,259.1 acres.

AUTHORITY TO FILE: The application was signed by Rodney Dalling, President of TIFCC, as well as Aaron Dalling, Executive Director of TIFCC. No concerns about authority to file.

WATER RIGHT VALIDITY: TIFCC's seven water rights were decreed in 2010. Within the canal company's service area, during the five year period preceding Lease Contract 990 (2014-2018), it was calculated that a maximum of 8,337.5 acres were irrigated (in 2014), based on an analysis of the United States Department of Agriculture's (USDA's) Cropland Data Layer (CDL).

In light of the USDA CDL calculations, prior to approving Lease Contract 990, the Water Supply Bank might have established that the maximum irrigation extent of TIFCC's water rights found to be valid was 8,337.5 acres, and from this amount, a lease of 1,354 could have been subtracted. However, when Lease Contract 990 was finalized in 2019, the Water Supply Bank refrained from making a determination as to whether any actual diminishment of TIFCC's water rights had occurred; it was determined that at least 8,337.5 acres of their water rights were valid, and therefore, because the lease of 1,354 acres was less than 8,337.5 acres, the lease of 1,354 acres was permissible.

Condition 14 of Lease Contract 990 limited TIFCC to the irrigation of no more than 8,094.2 acres during the two year term of the lease (equivalent to the combined limited maximum of 9,448.2 acres – 1,354 acres = 8,094.2 acres). At this time, it is accepted that the two year lease of 1,354 acres under Lease Contract 990 protected these portions of their water rights from any diminishment, and these acres thus remain valid and acceptable for lease at the present time.

The actual maximum extent of irrigation use under TIFCC's water rights is again before the Department for consideration. It appears that the maximum irrigation extent accomplished by TIFCC between 2016 and 2018 was 8,144.8 acres (in 2018) and on February 23rd, 2021, the applicant affirmed that 8,094 acres were irrigated in 2019 and 2020. An analysis of 2019-2020 irrigation data remotely sensed from within TIFCC's service area found that approximately 9,584.7 acres were irrigated within the boundaries of TIFCC's service area. The difference between the acres irrigated with TIFCC water (8,094 acres) and the overall acres observed irrigated as calculated by IDWR (9,584.7 acres) is 1,490.7 acres. It is presumed that these additional 1,490.7 acres, if irrigated, were irrigated with other appurtenant municipal or irrigation water rights. Based on information from the applicant and analysis by the Department, there are no validity concerns with TIFCC's irrigation water rights.

It is notable that the acres being considered for lease have been reduced from 1,354 acres to 1,261.7 acres leaving a balance of 8,186.5 acres that are authorized to be irrigated under the unleased extent of TIFCC's water rights. In their February 23rd, 2021 response to IDWR, the applicant affirmed that a maximum of 8,177 acres would be irrigated during the term of the new lease, which is a difference of 9.5 acres from the maximum irrigation authorized under the unleased extent of their water rights. If no action is taken to protect these 9.5 acres, or if the maximum irrigation accomplished during the term of the lease is not increased to 8,186.5 acres, the validity of these 9.5 acre portions of TIFCC's water rights could in the future be called into question.

INJURY TO OTHER WATER RIGHTS: No injury is apparent under this lease.

ENLARGEMENT OF USE: A review of satellite imagery from 2020 for the 1,354 acres leased and proposed to be idled under Contract 990 revealed that approximately 82.6 acres appeared to have been irrigated. Approximately 7.4 acres of land which appears to be owned by BREJ INC (Madison County Parcel ID: RP06N04E100700) is authorized to be irrigated under water rights 22-13137, 13139 and 13141, while the remaining 75.2 acres are largely residential properties located within the municipal boundaries of Sugar City, and which are authorized to be irrigated under the City's municipal water rights. All of the 82.6 acres are also authorized to be irrigated under natural flow and storage water rights belonging to the United States Bureau of Reclamation, as well as the Fremont Madison Irrigation District (FMID).

No enlargement in the water rights proposed for lease would occur if these properties were irrigated under non-TIFCC water rights, or if in fact these acres were not irrigated. The applicant was contacted to affirm whether any TIFCC irrigation water was delivered to these lands for irrigation during 2019 or 2020 and they responded that no water was delivered to these lands. Nonetheless, the applicant also requested that these acres in question be removed from the lease proposal. Once the acres were removed, the acres proposed for lease were recalculated and it was determined that the lease proposal was actually 1,261.7 acres in size.

To avoid enlargement, a condition will be added to the lease contract to affirm that the maximum diversion rate permissible for irrigation and stockwatering under the unleased extent of the applicant's water rights will be limited to 518.83 cfs, for the irrigation of 8,186.5 acres during the irrigation season, and 521.57 cfs for stockwatering and subirrigation during the non-irrigation season. These limits are summarized in the table on the next page.

Water Right Portfolio, as proposed for lease							Water Right Portfolio remaining available during the WSB lease						
Water Right	Use	Rate	Vol	Acres	Rate/Ac	Vol/AC	Water Right	Use	Rate	Vol	Acres	Rate/Ac	Vol/AC
22-288	Irrigation	0.430	182.5	1261.7	0.000	0.14	22-288	Irrigation	2.770	8186.5	0.000		
	Stockwater	0.000						Stockwater	2.770				
	Total	0.430	182.5	1261.7	0.000	0.14		Total	2.770	8186.5	0.000		
22-571	Irrigation	0.450	191.0	1261.7	0.000	0.15	22-571	Irrigation	2.910	8186.5	0.000		
	Subirrigation	0.000						Subirrigation	2.910				
		0.450	191.0	1261.7	0.000	0.15			2.910	8186.5	0.000		
22-589B	Irrigation	3.380	1434.7	1261.7	0.003	1.14	22-589B	Irrigation	21.920	8186.5	0.003		
	Subirrigation	0.000						Subirrigation	21.920				
		3.380	1434.7	1261.7	0.003	1.14			21.920	8186.5	0.003		
22-12694	Irrigation	1.610	683.4	1261.7	0.001	0.54	22-12694	Irrigation	10.440	8186.5	0.001		
	Stockwater	0.000						Stockwater	10.440				
		1.610	683.4	1261.7	0.001	0.54			10.440	8186.5	0.001		
22-12695	Irrigation	10.280	4363.5	1261.7	0.008	3.46	22-12695	Irrigation	66.680	8186.5	0.008		
	Stockwater	0.000						Stockwater	34.750				
	Subirrigation	0.000						Subirrigation	42.210				
22-12696	Irrigation	32.600	4412.8	1261.7	0.026	3.50	22-12696	Irrigation	211.720	8186.5	0.026		
	Subirrigation	0.000						Subirrigation	244.320				
		32.600	4412.8	1261.7	0.026	3.50			244.320	8186.5	0.030		
22-12697	Irrigation	31.170	4412.8	1261.7	0.025	3.50	22-12697	Irrigation	202.390	8186.5	0.025		
	Subirrigation	0.000						Subirrigation	210.210				
		31.170	4412.8	1261.7	0.025	3.50			233.560	8186.5	0.029		
All Water Rights	Irrigation	79.920	4416.0	1261.7	0.063	3.50	All Water Rights	Irrigation	518.830	8186.5	0.063		
	Subirrigation	0.000						Subirrigation	521.570				
	Stockwater	0.000						Stockwater	47.960				
		79.920	4416.0	1261.7	0.063	3.50			521.570	8186.5	0.064		

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

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

DEPARTMENT STAFF OR WATERMASTER COMMENTS: These basin 22 water rights are subject to administration by Water District 1 and IDWR's Eastern Region. Comments were requested from Tony Olenichak and James Cefalo on March 5, 2021.