

FEB 01 2021

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**WATER SUPPLY BANK LEASE CONTRACT No. 1288**

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

LESSOR: JOHN R ZIRKER
415 E 1ST N
REXBURG, ID 83440-1601

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

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

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

Summary of Water Rights or Portions Leased to the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
22-7163	9/4/1975	GROUND WATER	0.09	17.5	5.0
Lease Totals			0.09	17.5	5.0

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

Minimum Payment Acceptable: Current Rental Rate

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2021 to December 31, 2023. This Lease shall bind the parties and take effect when both parties have signed it.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.

STATE OF IDAHO
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WATER SUPPLY BANK LEASE CONTRACT No. 1288

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.



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

LESSOR: JOHN R ZIRKER

415 E 1ST N

REXBURG, ID 83440-1601

By John R Zirker
Title owner
Date 1-27-21

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 02/01/21

Lease approved by IDWR Patton

Date 02/01/21

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1288

**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): 22-7163

GROUND WATER NWNWNW Sec. 19 Twp 07N Rge 42E FREMONT County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
22-7163	IRRIGATION	04/01	to	10/31	0.09 cfs	17.5 AF
Totals:					0.09 cfs	17.5 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	
07N	42E	19		5.0															5.0

Total Acres: 5.0

ADDITIONAL CONDITIONS OF ACCEPTANCE

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

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

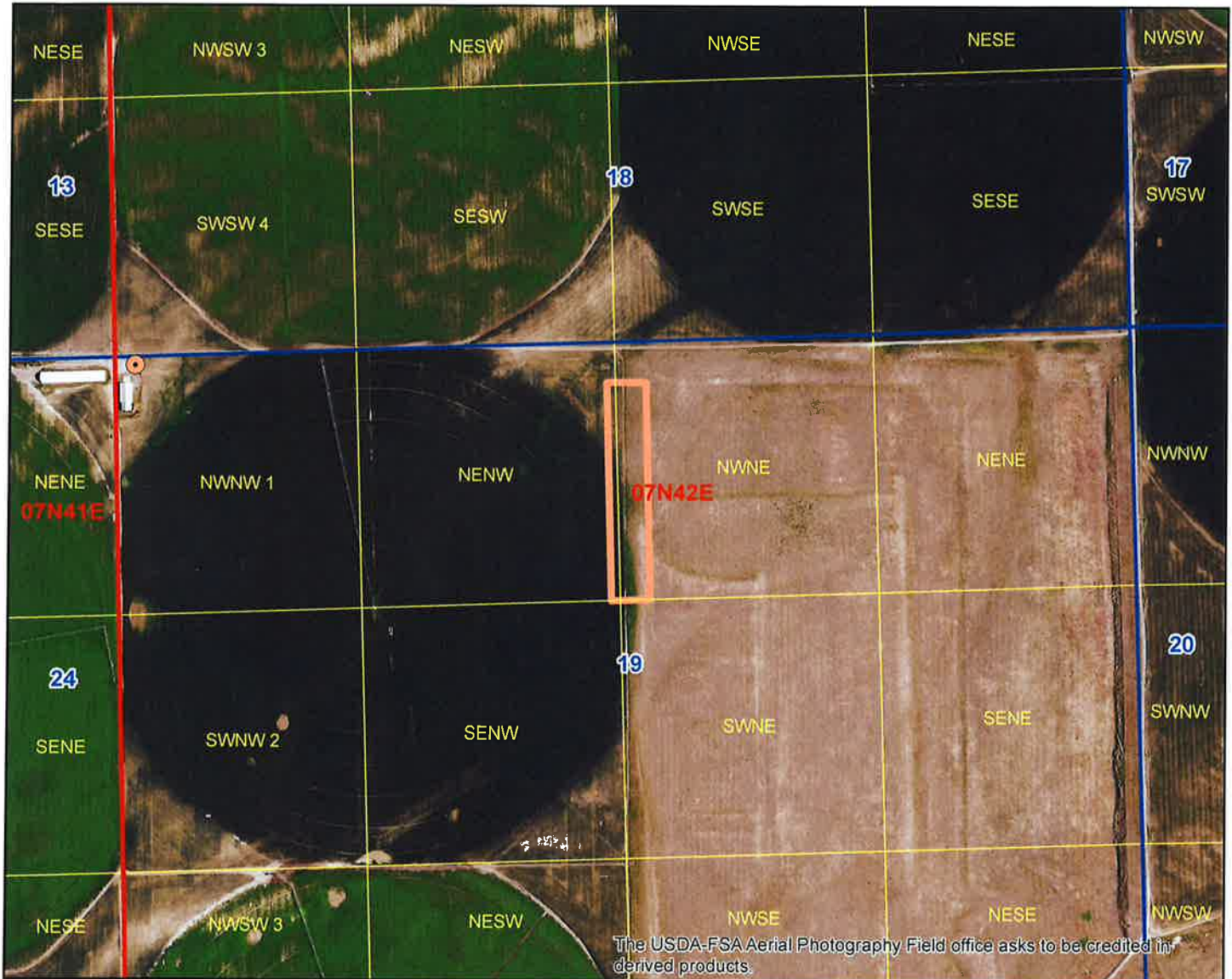
WATER SUPPLY BANK LEASE CONTRACT No. 1288

9. In accordance with Idaho Code § 42-248 and § 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.
10. If a water right leased into the Water Supply Bank is sold or conveyed during the lease term, and if the leased right was rented, the rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:
 - a. Rental payments will go to the lessor(s) of record at the beginning of the rental season, even if the Department processes a Notice of Change in Water Right Ownership during the rental season.
 - b. New lessor(s) of record will receive payment for any subsequent rental seasons.
11. The water right(s) is leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.
12. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 100.
13. The unleased portion of this right is limited to a diversion rate of 4.08 cfs for the irrigation of 232 acres in a single irrigation season.
14. If any portion of water right 22-13019 is to be rented from the Water Supply Bank, the leased portion of water right 22-7163 is to be rented at the same time, for the same use. Water right 22-13019 is an enlargement of water right 22-7163.

Idaho Water Resource Board
Water Supply Bank Lease Contract No. 1288

22-7163
Effective until December 31, 2023

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
- QQ



0 0.1 0.2 0.3 0.4 Miles

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

NOV 09 2020

DEPARTMENT OF
WATER RESOURCESAPPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKRECEIVED
OCT 29 2020
Department of Water Resources
Eastern Region

Designated Applicant John and Gerry Zirker

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

Water Right No. 22-7163

(One water right per application)

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

Yes ☐ No ☒

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

MINIMUM REQUIREMENT CHECKLIST

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

Yes

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

Attachment N/A Yes

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

Department Use Only

Fee Amount \$ 250.00

Received By: C. H.

Date Received: 10/29/2020

Receipt # E046399

W-9 received? Yes ☒ No ☐

(Route W-9 to Fiscal)

Name on W-9:

John Zirker

1806
1831

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 John and Gerry Zirker

Mailing Address 415 E. 1st N. Rexburg ID 83440
Street City State Zip Code

Email Address _____ Phone Number (208) 356-6951

☐ 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 Robert L. Harris Organization Holden Kidwell Hahn & Crapo, PLLC

Professional Title Attorney Email Address rharris@holdenlegal.com

Mailing Address 1000 Riverwalk Dr. Idaho Falls, ID 83405 Phone Number (208) 523-0620

☒ 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.
Well and pump into pivots.

- 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. 22-13019

- 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 portion of 22-7163 proposed for lease was under an approved request for extension of time to avoid forfeiture. See attached.

- 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. See attached request for extension of time to avoid forfeiture. Additionally, 170 acres of 22-13019, a stacked water right of 22-7163, is designated for mitigation of a water right permit (22-7648).

- 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 ☐
Yes. A 170-acre portion serves as mitigation for 22-7648. The 5 acre portion offered for lease is not subject to a mitigation plan.

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 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.

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 rights.

John Zirker
Signature of Designated Applicant

John Zirker
Printed Name

10/29/2020
Date

Signature of Authorized Representative

Printed Name

Date

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

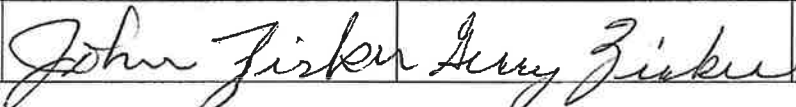
ATTACHMENT 1A

Additional Water Right Holders Party to the Lease Application

For the water right on this application, list all owners (individuals or business entities) of the right or the property to which it is appurtenant. All water right holders must sign a Water Supply Bank Lease Application. However, only the Designated Applicant needs to provide a completed IRS Form W-9 (Attachment 1B). **All correspondence and any financial payment associated with the rental of this water right will be directed to the Designated Applicant.** If additional space is needed to list any other water right holders, attach a second copy of Attachment 1A.

If submitting multiple applications, it is only necessary to complete one Attachment 1A for the group of applications. List each water right below.

Water Right No(s). 22-13019

	Designated Applicant	Applicant #2	Applicant #3
Name	John Zirker	Gerry Zirker	
Mailing Address	415 E. 1st N. Rexburg, ID 83440	415 E. 1st N. Rexburg, ID 83440	
Phone Number	208-356-6951	208-356-6951	
Email Address			
Applicant Declaration	As Designated Applicant, I submit this lease application on behalf of all other water right holders.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature			

	Applicant #4	Applicant #5	Applicant #6
Name			
Mailing Address			
Phone Number			
Email Address			
Applicant Declaration	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature			

**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>	Nature of Use	Leased Rate (cfs)	Leased Volume (af)	Leased Acres (ac)
<u>22-7163</u>	<u>Irrigation</u>	<u>.09</u>	<u>17.5</u>	<u>5</u>
Total Amounts:		<u>.09</u>		

2. Source of water Ground water tributary to _____

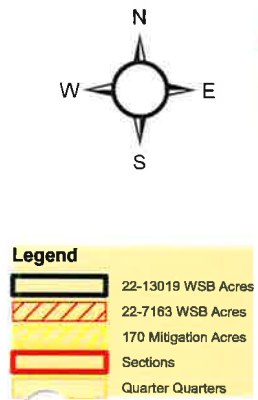
3. Point(s) of diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
07N	42E	19		NW	NW	NW	FREMONT

ATTACHMENT 3

GIS Maps

WATER SUPPLY BANK 22-7163 & 22-13019



Prepared by
Robert L. Harris
2019 NAIP Aerial

A horizontal number line representing distance in miles. It starts at 0 on the left and ends at 0.5 Miles on the right. There are major tick marks labeled 0, 0.125, 0.25, and 0.5 Miles. Between each of these major tick marks, there are three smaller, unlabeled tick marks, dividing each 0.125-mile segment into four equal parts of 0.03125 miles each.

ATTACHMENT 5
Evidence of No Forfeiture

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR EXTENSION OF TIME TO AVOID
FORFEITURE OF A WATER RIGHT

RECEIVED
NOV 12 2015
Department of Water Resources
Eastern Region

Section 42-222(4), Idaho Code, provides that a water right holder may apply to protect a valid water right from forfeiture. Upon a showing of reasonable cause, the Director may grant one (1) extension of five (5) years in which to resume use.

1. Water Right No. 22-7163 (portion) (one right per application)

☒ Attach a copy of the water right record, available at <http://www.idwr.idaho.gov>, *Water Right Transfers, Step 1*, or by contacting any Department office.

2. Applicant John R. Zirker Phone (208) 356-6951

3. Are you the current water right holder of record? Yes ☒ No ☐

☐ If no, provide documentation of your authority to sign on behalf of the right holder -- OR -- attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee.

4. Mailing address ☒ Same as water right record -- OR -- complete the following information:

Address _____ City _____
State _____ Zip code _____ Email _____

5. Give the last date water was beneficially used September 30, 2013 for some corners, July 30, 2012 for the others.

6. Explain your reasons for non-use of the water right and your reasons for requesting an extension of time.

Attach additional documentation if needed.

The pivot corners identified on attached map of 35.6 acres are not currently being irrigated under 22-7163 by the tenant who is leasing the property. It is unclear at this time when they will be irrigated again, but the applicant would like to protect the water rights on the pivot corners from an argument that they have been partially forfeited.

The information contained in this application is true to the best of my knowledge.

John R. Zirker
Signature of applicant or authorized agent

John Zirker
Print name (and title, if applicable)

November 4, 2015
Date

Signature of applicant or authorized agent

Print name (and title, if applicable)

Date

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined this application for extension of time within which to resume the use of a water right and I hereby APPROVE said application, subject to the following conditions or reasons:

The right holder shall resume beneficial use of water on or before Oct 31, 2020

Signed this 16th day of December, 2015. [Signature]

Title: Water Resources Program Manager

Stamped received ☒ Fee received by Se Date 11/12/15 Receipt # EO4417ED

NOV 13 2015



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

February 3, 2021

JOHN R ZIRKER
415 E 1ST N
REXBURG, ID 83440-1601

**RE: WATER SUPPLY BANK LEASE CONTRACTS 1288
FOR WATER RIGHTS 22-7163**

Dear Lessor:

Water right **22-7163** will be leased into the Water Supply Bank (Bank) as of January 1, 2021, in accordance with the enclosed executed lease contract. **Your water rights, as described on the lease contract, are considered leased into the Bank and should remain unused until they are formally released from the Bank.** More information and further restrictions placed on your water rights while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

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

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

Sincerely,

Amanda Johnson-Veibell

for
Water Supply Bank

Enclosure: Executed Lease Contract

c: IDWR- Eastern Region
State Water District 100
Robert L Harris



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 20, 2021

JOHN R ZIRKER
415 E 1ST N
REXBURG ID 83440-1601

**RE: APPLICATION TO LEASE WATER RIGHT 22-7163 TO THE WATER SUPPLY BANK
CONTRACT 1288**

******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 # E046399

C: Robert L Harris – Holden Kidwell Hahn & Crapo

MEMORANDUM FOR APPLICATION Nos. 1831 & 1805

To: Water Rights 22-7163 and 22-13019

From: Dave Betts

Date: January 14, 2021

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

PURPOSE/NARRATIVE: Water rights 22-7163 & 22-13019 were granted extensions of time to avoid forfeiture in 2015. The owners of the water rights were required to resume use on or before October 31, 2020, which is the last day of the irrigation season in their locality. On October 29, 2020, the owners of the water rights, John and Gerry Zirker (22-7163), and JKC Farms, et al. (22-13019), submitted applications to lease portions of their water rights to the Water Supply Bank. This review memo will address both water rights, because water right 22-13019 is a 229.9 acre enlargement of right 22-7163 and because the two rights share a place of use (POU).

Combined, water rights 22-7163 and 22-13019 are authorized to irrigate a Total Acre Limit of 466.9 acres. Approximately 234.9 acres of the 466.9 acre POU overlap with land that belongs to the Bureau of Reclamation (BoR). The BoR has elected to no longer lease this land for irrigation. The water right owners have submitted applications to lease the portions of their rights that they are currently unable to put to beneficial use.

Of the combined 234.9 acres that overlap with BoR lands, 170 acres of 22-13019 have been dedicated to mitigation by non-use. Subtracting the 170 acres that are used for mitigation leaves 64.9 acres of the POU that cannot be put to beneficial use. JKC Farms, LLC, et al. propose the lease the remaining of 59.9 acres of 22-13019 that are not dedicated to mitigation, and John and Gerry Zirker propose the lease of 5.0 acres of 22-7163 to complete the total of 64.9 acres that cannot be put to use on BoR lands.

The proposed term for the leases is January 2021 through December 2023.

AUTHORITY TO FILE: John R. and Gerry Zirker are the owners of record of water right 22-7163. According to Fremont County data, the Zirkers own the parcels containing the remainder of the POU that does not overlap with BoR lands. John and Gerry signed Attachment 1A authorizing the application for lease (Application to Lease 1831).

Water right 22-13019 is owned by JKC Farms LLC, Fromover 9 LLC, Juniper View LLC, RGC Farms LLC, and Unit 2 LLC. The water right owners identified JKC Farms LLC as the designated applicant, and the registered agents for each organization signed Attachment 1A (Application to Lease 1805). Based on information from the applications for lease, all of the lands pertaining to the POU of 22-13019 overlap with BoR lands.

Applications to lease (1831 and 1805) were submitted by the water right owners' representative, Robert L. Harris of Holden Kidwell Hahn & Crapo. Mr. Harris submitted cover letters with the applications describing the purpose of the applications.

WATER RIGHT VALIDITY: Water rights 22-7163 and 22-13019 were protected by extensions of time to avoid forfeiture from the end of 2015 through the end of the irrigation season in 2020. Both water rights were found to be valid in 2015 when the extensions of time were granted. There are no concerns about the validity of the water rights proposed for lease.

INJURY TO OTHER WATER RIGHTS: No injury is apparent through the lease of these rights.

ENLARGEMENT OF USE: Water rights 22-7163 and 22-13019 have a combined limit for the irrigation of 466.9 acres. The two rights share a POU, but do not appear to overlap. The conditions for approval for water right 22-13019 state that the right is "for an enlargement of 229.9 acres within the place of use described for this right." When 170 acres of irrigation of water right 22-13019 were dedicated to mitigation through non-use, it appears that the diversion rate and diversion volume for non-use were split based on a calculation of the proportion of 170 acres out of 229.9 acres. If 22-13019 is limited to 229.9 acres of irrigation, there is no overlap between the POUs of rights 22-7163 & 22-13019.

Analyses of the divisions of the acres of irrigation are below.

Division of the combined place of use (POU)

POU total acres	= 466.9 acres
- 22-7163 (acre limit)	= 237.0 acres
= 22-13019 (enlargement)	= 229.9 acres

Overlap with BoR lands

Total Overlap with BoR lands	= 234.9 acres
- 22-13019 (enlargement)	= 229.9 acres
= 22-7163 overlap with BoR	= 5.0 acres (Application for lease 1831)

Acres to lease from 22-13019 (JKC Farms)

22-13019 (total authorization)	= 229.9 acres
- Mitigation-by non-use	= 170.0 acres
= Remaining overlap with BoR	= 59.9 acres (Application for lease 1805)

The proposed leases of 5.0 acres of irrigation from 22-7163 plus 59.9 acres of irrigation from 22-13019, if approved, would account for the remaining acres that overlap with BoR lands that the water right owners are unable to make beneficial use of at this time.

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

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

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The location of the POD for the proposed lease is subject to Water District 100 (WD 100). On January 4, 2021, comments were requested from the Watermaster (WD 100) and from Regional Staff (Eastern). As of the date of this memo, neither WD 100 nor Regional Staff have replied to the request for comments. The Department will assume that there are no concerns with the proposed lease.

MAPS OF ACRES TO BE LEASED: There is a disagreement between the legal descriptions of the acres to be leased, and the reference maps attached to the lease contracts. There is an apparent shift in the projection of the PLS boundaries compared to the Department's data for tax parcel boundaries. The POUs of the water rights, which were used to create the attached maps, are linked to the tax parcel boundaries. The PLS legal descriptions on the contracts are the correct description of the acres to be leased. The maps are only a general reference.

Betts, David

From: Betts, David
Sent: Monday, January 04, 2021 4:17 PM
To: Cefalo, James; Jordan, Blake
Subject: Two Applications to Lease to WSB (Basin 22)
Attachments: Lease Review Memo - Zirker & JKC Farms - 22-7163 & 22-13019.docx; LeaseMap_1805.pdf; LeaseMap_1831.pdf

Hello James and Blake,

John and Gerry Zirker (Water right 22-7163), and JKC Farms LLC, et al. (Water right 22-13019) have submitted applications to lease portions of their water rights to the Water Supply Bank. I have reviewed the two applications together because they share a permissible place of use, and 22-13019 is an enlargement of 22-7163.

Please review the attached documents and let me know if you have any comments or concerns regarding the proposed leases. Please respond within 7 days. If you do not submit any comments to me within the next 7 days, I will assume that you have no concerns with the proposed leases.

Thank you for your help,

--
Dave Betts - *Water Resource Agent*

Water Rights Section | Idaho Department of Water Resources

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Holden Kidwell
Hahn & Crapo P.L.L.C.
LAW OFFICES

RECEIVED

NOV 09 2020

DEPARTMENT OF
WATER RESOURCES

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PO Box 50130
Idaho Falls, Idaho 83405

RECEIVED

OCT 29 2020

Department of Water Resources
Eastern Region

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Email: rharris@holdenlegal.com

October 29, 2020

Remington Buyer
Idaho Water Supply Bank
PO Box 83720
Boise, ID 83720-0098

Re: Water Supply Bank Lease Applications for Portions of WR 22-7163 and WR 22-13019.

Dear Remington:

Enclosed for processing are two (2) *Applications to Lease Water into the Idaho Water Supply Bank*. The history of these water rights is a little complicated, and the purpose of my letter is to provide you some background. WR 22-7163 is the parent right of an enlargement right, WR 22-13019. WR 22-13019 clearly states that it is for an enlargement of 229.9 acres. However, both rights are combined with a 466.9-acre permissible place of use. A 170-acre portion of WR 22-13019 has been designated as mitigation for a ground water right permit, 22-7648, which was being held in the moratorium hold file until mitigation was provided. Accordingly, several LLCs, which are all associated with the Crapo family, have purchased this enlargement right to mitigate for the permit. However, the Zirkers remain the owners of WR 22-7163 (the base right).

Because these water rights are stacked, the total amount that will be offered into the bank is a 0.09 cfs-portion of these combined rights, with a combined acre-foot amount of 227.1 acre-feet for the irrigation of 35.6 acres. Because they are stacked, we have included a filing fee in the amount of \$500.00.

We appreciate your attention to this matter. If you have any questions or concerns, please let me know.

Best regards,

for Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

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