

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

## WATER SUPPLY BANK LEASE CONTRACT No. 1064

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

**LESSOR:** UNITED STATES OF AMERICA  
ACTING THROUGH THE BUREAU OF RECLAMATION  
REGIONAL DIRECTOR PN CODE-3100  
1150 N CURTIS RD STE 100  
BOISE, ID 83706-1234

RECEIVED

NOV 25 2020

DEPARTMENT OF  
WATER RESOURCES

IN FILE #  
RECITALS

SUPPORT DATA

85-16

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 31, 2019.
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)
85-16	7/14/1904	Sweetwater Creek, tributary to Lapwai Creek	2.95	Not Stated	206
85-4483	6/1/1907	Lindsay Creek, tributary to Clearwater River	2.95	1,034	206
Combined Limit Totals			2.95	1,034	206
85-2049	5/26/1915	Waha Lake, tributary to Sinks	0.54	Not Stated	206
85-2063	8/24/1923	Waha Lake, tributary to Sinks	0.54	Not Stated	206
Combined Limit Totals			0.54	Not Stated	206
85-2065	1/30/1924	Webb Creek, tributary to Sweetwater Creek	1.02	Not Stated	206
Combined Lease Totals			4.50	1,034	206

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, 2019 to December 31, 2020. This Lease shall bind the parties and take effect when both parties have signed it.

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**WATER SUPPLY BANK LEASE CONTRACT No. 1064**

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  
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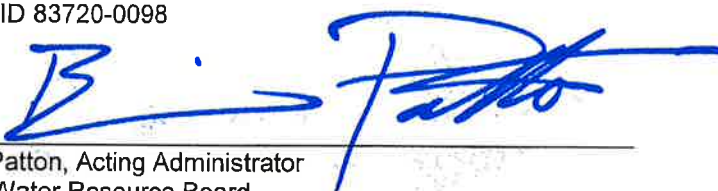
**WATER SUPPLY BANK LEASE CONTRACT No. 1064**

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


**LESSOR:** UNITED STATES OF AMERICA  
ACTING THROUGH BUREAU OF RECLAMATION  
REGIONAL DIRECTOR PN CODE-3100  
1150 N CURTIS RD STE 100  
BOISE, ID 83706-1234

By LORRI GRAY Digitally signed by LORRI GRAY  
Date: 2020.11.23 08:46:55 -07'00'  
Title Regional Director  
Date \_\_\_\_\_

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

By   
Brian Patton, Acting Administrator  
Idaho Water Resource Board

Date 11/30/20

Lease approved by IDWR 

Date 11/30/20

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

## WATER SUPPLY BANK LEASE CONTRACT No. 1064

### 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): 85-4483**

Lindsay Creek      L 18SESE      Sec. 17      Twp 35N      Rge 04W      NEZ PERCE County

**Source and Location of Point(s) of Diversion for Water Right No(s): 85-4483, 85-16, 85-2049, 85-2063, 85-2065**

Sweetwater Creek      L 3NWSW      Sec. 21      Twp 34N      Rge 04W      NEZ PERCE County

**Source and Location of Point(s) of Diversion for Water Right No(s): 85-16, 85-2049, 85-2063, 85-2065**

Sweetwater Creek      L 18SESE      Sec. 17      Twp 35N      Rge 04W      NEZ PERCE County

**Source and Location of Point(s) of Diversion for Water Right No(s): 85-2049, 2063**

Waha Lake      L 5SESE      Sec. 9      Twp 33N      Rge 04W      NEZ PERCE County  
Waha Lake      NWNW      Sec. 9      Twp 33N      Rge 04W      NEZ PERCE County

**Source and Location of Point(s) of Diversion for Water Right No(s): 85-2065**

WEBB CREEK      L 2NWNW      Sec. 6      Twp 33N      Rge 03W      NEZ PERCE County  
WEBB CREEK      NENE      Sec. 34      Twp 34N      Rge 04W      NEZ PERCE County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
85-16	IRRIGATION	03/15	to	11/15	2.95 cfs	Not Stated
85-16	MUNICIPAL	01/01	to	12/31	2.95 cfs	Not Stated
85-4483	DIVERSION TO STORAGE	01/01	to	12/31	2.95 cfs	Not Stated
85-4483	IRRIGATION STORAGE	01/01	to	12/31	Not Stated	788 AF
85-4483	IRRIGATION FROM STORAGE	03/15	to	11/15	Not Stated	788 AF
85-4483	MUNICIPAL STORAGE	01/01	to	12/31	Not Stated	148 AF
85-4483	MUNICIPAL FROM STORAGE	01/01	to	12/31	Not Stated	148 AF
85-4483	STOCKWATER STORAGE	01/01	to	12/31	Not Stated	98.5 AF
85-4483	STOCKWATER FROM STORAGE	01/01	to	12/31	Not Stated	98.5 AF
85-2049	IRRIGATION	03/15	to	11/15	0.54 cfs	Not Stated
85-2049	MUNICIPAL	01/01	to	12/31	0.54 cfs	Not Stated
85-2063	IRRIGATION	03/15	to	11/15	0.54 cfs	Not Stated
85-2063	MUNICIPAL	01/01	to	12/31	0.54 cfs	Not Stated
85-2065	IRRIGATION	03/15	to	11/15	1.02 cfs	Not Stated
85-2065	MUNICIPAL	01/01	to	12/31	1.02 cfs	Not Stated
<b>Totals:</b>					4.50 cfs	1,034 AF

**PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION, IRRIGATION FROM STORAGE, STOCKWATER, STOCKWATER FROM STORAGE, MUNICIPAL, MUNICIPAL FROM STORAGE, ALL WITHIN THE BOUNDARIES OF THE LEWISTON ORCHARDS IRRIGATION DISTRICT**

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
35N	04W	18							1.4			37		4.2					45.9
35N	05W	7		0.1	37			12	39	39	35	3.3		2.6	40	40	40	40	328

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35N	05W	8			0.1	0.3			0.1		28	39	40	40	40	40	40	39	306.5
35N	05W	9										10	10	5.2			0.1		25.3
35N	05W	10											0.4	0.5			0.4		1.3
35N	05W	13						2.2	1.1	9.1	40	38	2	1.1		2	2.2		97.8
35N	05W	14			2	0.6		0.2	25	7.5	40	40	38	37	19	38	40	40	327.3
35N	05W	15	2.5	40	41	27	40	38	40	40	41	40	41	41	41	41	41	41	595.5
35N	05W	16	1.1	28	34	0.6	40	40	40	40	40	36	36	40	39	40	40	40	534.7
35N	05W	17	40	40	40	40	40	40	40	40	39	40			36		31	0.5	466.5
35N	05W	18	40	40	40	40	2.1			1.5					27	10			200.6
35N	05W	20	0.3			0.1													0.4
35N	05W	21	40	40	40	40	40	28	33	39		0.1			0.1				284.3
35N	05W	22	40	41	40	34	41	41	40	40									317
35N	05W	23	39	41	28	38	1.1			0.3									147.4
35N	06W	12				1.5									0.1				1.6

### ADDITIONAL CONDITIONS OF ACCEPTANCE

1. The water rights referenced above will be rented from the bank at the current rental rate.
2. There is no rental payment to the lessor of the water right if the right or a part thereof is not rented from the bank.
3. While a right is in the bank, the lessor may not use the right without approval of the Department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B.
4. A right accepted into the bank stays in the bank until the Board releases it, or the lease term expires. A right may be released from the bank upon request, provided the Board approves the release. Unless approved by the Department, leased rights may not be immediately available for release.
5. While a water right is in the bank, forfeiture provisions are stayed pursuant to Idaho Code § 42-223(5).
6. Rental of water under this right is subject to the limitations and conditions of approval of the water right.
7. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.
8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other Department application process.
9. In accordance with Idaho Code § 42-248 and § 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.

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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. Place of use is within the service area of Lewiston Orchards Irrigation District as provided for under Idaho law. The place of use is generally described as within the city limits of Lewiston and the surrounding service area.
13. Municipal use includes industrial use, domestic use, and fire protection as claimed.
14. The leased extent of water rights 85-2049 and 85-2063 are limited to a total combined diversion rate of 0.54 cfs.
15. The unleased extent of water rights 85-2049 and 85-2063 are limited to a total combined diversion rate of 9.46 cfs.
16. The leased extent of water rights 85-16 and 85-4483 are limited to a total combined diversion rate of 2.95 cfs.
17. The unleased extent of water rights 85-16 and 85-4483 are limited to a total combined diversion rate of 52.05 cfs.
18. Water rights 85-2146, 85-2147, 85-11087 and 85-15424, when combined with the unleased extent of water rights 85-16, 85-4483, 85-2049, 85-2063 and 85-2065, are limited to the irrigation of a combined total of 3,639 acres in a single irrigation season.
19. Water rights 85-2146, 85-2147, 85-11087 and 85-15424, when combined with the unleased extent of water rights 85-16, 85-4483, 85-2049, 85-2063, 85-2065 and permit 85-15755 shall not exceed a total diversion rate of 110.3 cfs or a total storage volume of 19,306.0 acre-feet.



Idaho Water Resource Board  
Water Supply Bank Lease Contract No. 1064

85-16, 85-2049, 85-2063, 85-2065, 85-4483  
Effective until December 31, 2020

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



0 5,000 10,000 Feet

STATE OF IDAHO  
WATER RESOURCE BOARD

RECEIVED  
OCT 31 2019  
DEPARTMENT OF  
WATER RESOURCES

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

Designated Applicant Bureau of Reclamation

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

Water Right No. 85-16

(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 | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Signatures and contact information for <i>all owners</i> of the water right to be leased or sold on this application.  |
| 1B | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | An <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant.  |
| 1C | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <i>Notice of Change in Water Right Ownership</i> form (accessible from <a href="http://www.idwr.idaho.gov">www.idwr.idaho.gov</a> ).   |
| 1D | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 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  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Description of a water right portion offered to the Water Supply Bank.   |
| 3  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 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: <a href="http://www.idwr.idaho.gov">www.idwr.idaho.gov</a> .  |
| 4A | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Written consent from irrigation district or water delivery company.  |
| 4G | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Evidence demonstrating the water right has not been forfeited pursuant to <u>Section 42-222(2), Idaho Code</u> .   |

#### Department Use Only

Fee Amount \$ 500.00Received By: dhDate Received: 10/31/19Receipt # 0107908W-9 received? Yes ☐ No ☒

(Route W-9 to Fiscal)

Name on W-9:

1495



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 Bureau of Reclamation, Pacific Northwest Region, Gail McGarry, PN 6300

Mailing Address 1150 N. Curtis Rd Boise ID 83706  
Street City State Zip Code

Email Address emcgarry@usbr.gov Phone Number 208-378-5306

☒ 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 \_\_\_\_\_ Organization \_\_\_\_\_

Professional Title \_\_\_\_\_ Email Address \_\_\_\_\_

Mailing Address \_\_\_\_\_ Phone Number \_\_\_\_\_

☐ 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.

Water is delivered by the Lewiston Orchards Irrigation District from project reservoirs and creeks via Webb and Sweetwater creek canal diversions through the Sweetwater canal to Mann Lake (aka "Reservoir A")

- 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. All Lewiston Orchards Project water rights are used by LOID for the same purposes and at the same place of use: 85-16, 85-2049, 85-2063, 85-2065, 85-2146, 85-2147, 85-4483, 85-11087, 85-15424, 85-15755.

- 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. The portion of the place of use subject to this lease will continue to receive water under Permit 85-15755; no enlargement will occur pursuant to compliance with condition #15 of Permit 85-15755.

- 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. This application is intended to prevent partial forfeiture of the LOP water rights while the parties to the LOP Exchange Project continue to fund and develop a well field that will allow for full replacement of the LOP water rights pursuant to Section 6.3.1.5 of the Water Exchange Appendix (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.

- 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: 2019 to 2020 (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

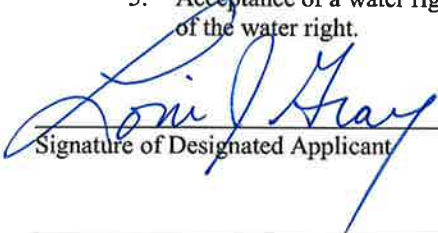
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**I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this water right for sale or lease to the Idaho Water Resource Board.**

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

Lorri Gray, Regional Director

Printed Name

OCT 24 2019

Date

Signature of Authorized Representative

Printed Name

Date

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

**LOID Idaho Water Supply Bank Lease Summary Table**

WR	Type	Priority	Leased Rate (cfs)	Combined Leased Rate (cfs)	Leased Storage Volume (ac-ft)	Principal Uses	POU	Acres	Combined Acres	Rate/Acre	Vol/Acre
85-16	Natural Flow	7/14/1904	2.946	2.946	n/a	Irrigation & Municipal	LOID	206	205.982	0.014	n/a
85-4483	Storage	6/1/1907	2.946		1034.25	Irrigation & Municipal from Storage	LOID	206		0.014	5.021
85-2049	Natural Flow	5/26/1915	0.536	0.536	n/a	Irrigation & Municipal	LOID	206		0.003	n/a
85-2063	Natural Flow	8/24/1923	0.536		n/a	Irrigation & Municipal	LOID	206		0.003	n/a
85-2065	Natural Flow	1/30/1924	1.018	1.018	n/a	Irrigation & Municipal	LOID	206		0.005	n/a
85-2146	Storage	5/24/1922	Not Leased								
85-2147	Storage	12/4/1934	Not Leased								
85-15424	Storage	12/1/1935	Not Leased								
85-11087	Storage	12/31/1935	Not Leased								
Totals				4.5	1034.25						



## Attachment 2

Description of water right portion offered to the water supply bank

### Natural Flow

1. Water Right Description (see attached for calculations)

WR#	Nature of Use	Leased Rate	Leased Volume	Leased Acres
85-16	Irrigation/Municipal	2.946 cfs	N/A	134.869
85-2049	Irrigation/Municipal	0.536 cfs	N/A	24.522
85-2063	Irrigation/Municipal			
85-2065	Irrigation/Municipal	1.018 cfs	N/A	46.591
<b>Totals</b>		<b>4.500 cfs</b>		<b>205.982</b>

2. Source of Water

WR#	Source	Tributary To
85-16	Sweetwater Creek	Lapwai Creek
85-2049	Waha Lake	Sinks
85-2063	Waha Lake	Sinks
85-2065	Webb Creek	Sweetwater Creek

3. Points of Diversion

WR#	T	R	S	Lot	¼	¼	County
85-16	34N	4W	21	3	NW	SW	Nez Perce
85-2049	33N	4W	9	5	SE	SE	Nez Perce
85-2063	33N	4W	9	5	SE	SE	Nez Perce
85-2065	33N	3W	6	2	NW	NE	Nez Perce

## Storage

### 1. Water Right Description (see attached for calculations)

WR#	Nature of Use	Leased Rate	Leased Volume
85-4483	Irrigation/Municipal/Stockwater from Storage	2.946 cfs	1034.250 ac-ft
85-2146	Irrigation/Municipal from Storage	Not leased	
85-2147	Irrigation/Municipal from Storage		
85-15424	Irrigation/Municipal from Storage		
85-11087	Irrigation/Municipal from Storage		
<b>Totals</b>		<b>2.946 cfs</b>	<b>1034.250 ac-ft</b>

### 2. Source of Water

WR#	Source	Tributary To	Storage Body
85-4483	Lindsay Creek Sweetwater Creek	Clearwater River Lapwai Creek	Mann Lake
85-2146	Webb Creek	Sweetwater Creek	Soldiers Meadow
85-2147	Browns Creek Unnamed Stream	Captain John Creek Browns Creek	Soldiers Meadow
85-15424	Waha Lake	Sinks	Lake Waha
85-11087	West Fork Sweetwater Creek	Sweetwater Creek	Lake Waha

### 3. Points of Diversion

WR#	T	R	S	Lot	¼	¼	County
85-4483	34N	4W	21	3	NW	SW	Nez Perce
	35N	4W	17	18	SE	SE	Nez Perce
85-2146	33N	3W	29		SE	SW	Nez Perce
85-2147	32N	4W	2		SW	NE	Nez Perce
	33N	3W	29		SE	SW	Nez Perce
85-15424	33N	4W	9	5	SE	SE	Nez Perce
85-11087	33N	4W	14		SW	SW	Nez Perce

## Analysis

This analysis describes the approach to lease 4.5 cfs of the Lewiston Orchards Irrigation District (LOID) natural flow water rights and 1,034.25 ac-ft of LOID storage allocation into the Idaho Water Supply Bank (IWSB). The purpose of the IWSB lease is to protect that portion of the LOID water right portfolio from forfeiture as the new ground water well has now replaced 4.5 cfs of surface water usage with 4.5 cfs of ground water usage. The following describes the steps used in this process:

### Step 1: Determine the LOID natural flow water rights

WR#	Priority Date	Flow Rate	Source	Use	Acres	T	R	S	Lot	County
85-16	7/14/1904	55 cfs	Sweetwater Creek	Irrigation/ Municipal	3,845	34N	4W	21	3	Nez Perce
85-2049	5/26/1915	10 cfs	Waha Lake	Irrigation/ Municipal	3,845	33N	4W	9	5	Nez Perce
85-2063	8/24/1923		Waha Lake	Irrigation/ Municipal	3,845	33N	4W	9	5	Nez Perce
85-2065	1/30/1924	19 cfs	Webb Creek	Irrigation/ Municipal	3,845	33N	3W	6	2	Nez Perce
<b>Totals</b>		<b>84 cfs</b>			<b>3,845</b>					

### Step 2: Determine flow rate per acre (cfs/acre)

$$\frac{84 \text{ cfs}}{3,845 \text{ acres}} = 0.02185 \text{ cfs/acre}$$

### Step 3: Determine proportionate share of each water right to get to 4.5 cfs conversion total.

$$\frac{4.5 \text{ cfs}}{84 \text{ cfs total}} = 0.05357$$

WR#	Proportionate Share
85-16	$55 \text{ cfs} \times 0.05357 = 2.946 \text{ cfs}$
85-2049/2063	$10 \text{ cfs} \times 0.05357 = 0.536 \text{ cfs}$
85-2065	$19 \text{ cfs} \times 0.05357 = 1.018 \text{ cfs}$
<b>Total</b>	<b>4.500 cfs</b>

Step 4: Determine the number of acres converted from surface water to groundwater

WR#	Proportionate Share
85-16	$\frac{2.946 \text{ cfs}}{0.02185 \text{ cfs/acre}} = 134.869 \text{ acres}$
85-2049/2063	$\frac{0.536 \text{ cfs}}{0.02185 \text{ cfs/acre}} = 24.522 \text{ acres}$
85-2065	$\frac{1.018 \text{ cfs}}{0.02185 \text{ cfs/acre}} = 46.591 \text{ acres}$
Total	205.982 cfs

$$\frac{4.5 \text{ cfs}}{0.02185 \text{ cfs/acre}} = 205.982 \text{ acres}$$

Step 5: Determine the amount of storage per acre and amount of storage applicable to the acres converted from surface water to groundwater

WR#	Storage Right
85-2146	2,000 ac-ft
85-2147	2,000 ac-ft
85-4483	10,500 ac-ft
85-11087	1,308.5 ac-ft
85-15424	3,497.5 ac-ft
Total	19,306 ac-ft

$$\frac{19,306 \text{ ac} - \text{ft}}{3,845 \text{ acres}} = 5.02107 \text{ ac} - \text{ft/acre}$$

$$205.982 \text{ acres} \times 5.02107 \text{ ac} - \text{ft per acre} = 1,034.250 \text{ ac} - \text{ft}$$



**Step 6:** Determine where the storage allocation will come from

[illegible]

# **Water Exchange Appendix**

October 31, 2014

## **1. Introduction**

### **1.1. Summary**

This Water Exchange Appendix (Appendix) was prepared by the Lewiston Orchards Irrigation District (LOID), the Nez Perce Tribe (the Tribe), the Bureau of Indian Affairs (BIA), and the Bureau of Reclamation (Reclamation); these organizations are referred to in this Appendix as the Parties. The Parties have been consulting with the other Lower Clearwater Exchange Project (LCEP) Partners (Lewis Clark Valley Chamber of Commerce, City of Lewiston, and Nez Perce County) in development of this Appendix, consistent with the 2014 Term Sheet.

Under the January 2011 Term Sheet Agreement, Reclamation agreed to actively advance a study and investigation of the LCEP. In 2010, LOID, acting with the understanding that it served as a fiscal agent for a local stakeholder group, the LCEP stakeholders, was awarded a grant through Reclamation's Rural Water Supply Program (RWSP) to conduct an appraisal investigation of the LCEP concept. The final LCEP Appraisal Report was approved in February 2012.

Reclamation developed the Lewiston Orchards Project (LOP) Water Exchange concept. The LOP Water Exchange concept involves replacing the existing surface water system with an off-Reservation groundwater source. This concept is consistent with the groundwater alternative included in the final LCEP Appraisal Report.

If this process proceeds, and in accordance with the environmental compliance decision documentation process, the preferred alternative would involve a Water Exchange that could be constructed in phases, as funding becomes available. Future phases could be incremental as funding allows, up to and including the single funding of a multi-well field to complete the project in one construction stage. As groundwater wells come online, diversions of surface water from the LOP would be reduced in an amount equal to an agreed upon in-lieu water exchange quantity, to be left instream through the Idaho State Water Bank for instream flows. Once existing diversions from the LOP are replaced by groundwater well withdrawals, the title transfer process for Reclamation-owned facilities would be completed, subject to all necessary approvals and processes. New facilities would be owned, operated, and maintained by LOID.

Implementation of the Water Exchange and the associated Title Transfer is a critical element in reaching a final settlement of pending litigation, including potential damages and other claims regarding the Lewiston Orchards Project.

National Environmental Policy Act (NEPA) compliance will be conducted on the proposed federal action or actions outlined in this Appendix. The NEPA compliance

documents will likely include title transfer and water exchange actions and their respective alternatives. These actions will be evaluated in a single NEPA compliance document if it is determined that these actions are interrelated and interdependent. The title transfer process is described in the Title Transfer Appendix. The proposed water exchange action may have multiple alternatives based on the aquifer outcomes, and on two timetable scenarios, one aimed at completion by 2020, the other aimed at completion by 2026. NEPA work will also examine: 1) a no-action alternative based on the most likely future without the project, 2) will include discussion of other water supply alternatives previously considered but eliminated, based on information developed in the 2012 Appraisal Study, and 3) any other options identified during the NEPA scoping process. Section 7 of this Appendix describes the environmental compliance process in more detail.

NOAA Fisheries also made commitments in the 2014 Term Sheet. NOAA will act within its statutory authorities (e.g., ESA, Mitchell Act, Pacific Coastal Salmon Recovery Fund), to actively assist with the study and investigation of the LCEP and Water Exchange concept in good faith. NOAA's statutory authority includes assisting with the LCEP and Water Exchange concept by providing scientific expertise and information as appropriate before and during consultation under Section 7 of the ESA. NOAA will at the earliest opportunities engage and collaborate in the identification of opportunities for additional funding from any potentially available sources within or under its control to assist with the LCEP and Water Exchange concept.

After the completion of the water exchange and title transfer, the Tribe would pursue restoration activities to improve habitat. These activities are not defined in detail at this time. They would follow any appropriate environmental compliance and other applicable procedures.

## **1.2. Background**

The LCEP stakeholder group in the 2012 Appraisal Study established broad screening criteria in addition to the three objectives upon which the LCEP concept was founded. An array of alternatives was screened, and four sets of alternatives were developed.

### **1.2.1. Future-Without-the-Project**

The Future-Without-the-Project alternative is the most reasonable prediction of what would happen in the project area if no actions were taken. The Future-Without provides the basis to which the other alternatives are compared.

Under this alternative, the existing facility configuration would remain in place and operations are assumed to be maintained in approximately the same manner. Reclamation and LOID would continue in their respective roles. Roles associated with operational requirements and project costs may evolve.

### **1.2.2. Clearwater River Pump Station Attenuated System (three options)**

Under each of these three alternatives, a pump station would be located on the southern bank of the Clearwater River which would provide water to LOID, operating year-round to refill Reservoir A storage, in lieu of the current source. This concept has received attention in numerous studies dating back to 1972. Water intake screens would address impacts to both anadromous and resident fish.

The Clearwater alternatives included three preliminary system connection scenarios based on various pipe route options and different reliability levels for LOID water supplies (see section 4 of the Appraisal Study):

**1.2.3. Snake River Pump Station Attenuated System (two options)**

Under these alternatives, a pump station would be located on the eastern bank of the Snake River to provide water to LOID, which would operate year-round to refill Reservoir A storage, in lieu of the current source. Intake screens would address both anadromous and resident fish. The Snake River alternatives included two preliminary system connection scenarios based on various pipe route options (see section 4 of the Appraisal Study).

**1.2.4. Tammany Well Field Attenuated System (one option); the location has since been modified to be closer to the LOID distribution system, which slightly reduces total costs but the general engineering elements of this alternative remain the same.**

The Tammany Well Field alternative was developed because it provides a potential water supply that is closer to the LOID service area, thereby reducing the length of pipe required, eliminating in-river work and the need for intake screens, and avoiding culturally and/or biologically sensitive areas along the rivers. The proposed well field would be sited near Tammany Creek Road because of the proximity to the LOID area and potential to penetrate the Lewiston Basin regional aquifer. The well field site is relatively distant from other large production wells and is located at a relatively low elevation, which provides shallower static water levels, reduced well depths, and more pump options.

The well field would connect to the existing distribution system and provide a new supply near the center of the distribution system. The system would operate year-round, refilling Reservoir A for storage. Six wells were considered to provide a similar level of reliability to river pump stations that contained six pumps.

**1.3. Purpose of the Appendix**

In Section II.C.2 of the 2014 Term Sheet Agreement between the Nez Perce Tribe, the U.S. Bureau of Reclamation, and NOAA Fisheries committed to work with LOID, LCEP Partners and other appropriate parties to develop a Water Exchange Appendix that addresses the construction elements of the full Water Exchange and the full water



exchange water quantity sufficient for development of a proposed federal action for purposes of environmental review.

This Appendix describes the steps that the Tribe, Reclamation, BIA, LOID, and the LCEP Partners will take to prepare the information needed for the environmental review.

#### **1.4. LCEP Partners Involvement.**

The Parties that prepared this Appendix (the Tribe, LOID, BIA, and Reclamation) consulted with the other LCEP Partners (Lewis Clark Valley Chamber of Commerce, City of Lewiston, and Nez Perce County) and collaborated in providing monthly stakeholder updates. The LCEP Partners will have the option to endorse this Appendix and incorporate it as an addendum to the 2009 MOU.

#### **1.5. Contents of this Appendix**

Section 1 provides a summary and overview of the Appendix. Section 2 describes the management and organization of the Water Exchange Project. Section 3 describes the project objectives. Section 4 addresses the potential scenarios that could come as a result of the pilot well that is currently being constructed. Section 5 describes the design and construction elements for the full water exchange.

Section 6 describes the water exchange quantity, the methodology for water exchanges values for successive wells after the pilot well, and the methods that the Parties will pursue to ensure that the exchanged water would be protected for instream flows.

Section 7 describes the environmental compliance actions, including the schedule, process and criteria, public meetings and scoping, and environmental analysis. This section also includes a description of the relevant provisions of the Endangered Species Act, the Clean Water Act, the National Historic Preservation Act, and the Fish and Wildlife Coordination Act.

Section 8 describes the state and local requirements for the water exchange project. Section 9 describes the process to develop a workplan that will include the steps and schedule and potential funding sources for the implementation of the project. Section 10 describes general provisions regarding dispute resolution and Federal anti-deficiency requirements. Section 11 addresses the approval process for this Appendix. Section 12 addresses the signing and execution of the Appendix.

## **2. Management and Organization**

**2.1.** The Parties will form a Management Team to oversee the implementation of the Appendix. As part of the implementation each Party will appoint representatives with the appropriate expertise. Implementation is likely to involve, but is not limited to, the following types of teams:

**2.1.1.** Water rights team to address the completion of the water transfer.

- 2.1.2. Operations and technical team to develop water operations scenarios; this information will be used in the environmental compliance process.
- 2.1.3. Environmental compliance team to oversee the environmental compliance process.
- 2.1.4. Design and construction team for the potential well field and LOP facilities.
- 2.1.5. Budget and administration team to assist in the implementation of the Water Exchange.
- 2.1.6. Legal team to be available during the implementation process.
- 2.1.7. Title transfer team (see Title Transfer Appendix)

2.2. The Parties will consult with the LCEP during the implementation of the Appendix.

### **3. Project Objectives**

The objectives of this project are to: 1) create a reliable, quality water supply for LOID; 2) permanent resolution of ESA issues surrounding the LOP; 3) and permanent resolution of federal-tribal trust issues surrounding the LOP.

As part of the project, the Parties intend that all Reclamation facilities and assets would be transferred to other Parties.

The objectives of this Appendix are to address the construction elements of the full Water Exchange and the full water exchange water quantity sufficient for development of a proposed federal action for purposes of environmental review. In developing the Water Exchange Appendix, the Parties have consulted with the LCEP Partners and other appropriate parties to obtain information and viewpoints on the matters being addressed in the Appendix.

### **4. Potential Scenarios from Pilot Well**

- 4.1. **Pilot well does not provide adequate water quantity; there is a need to reconsider approach.** The Parties would review the data from the test pilot well to be incorporated into the appraisal study and an evaluation of the options and conduct further analysis. The first determination is whether this is a non-productive zone or a poor drill by the contractor. A hydrogeologist would need to determine if there is something geomorphically inconsistent with this area for water production based upon the details of the drill. Drill data would need to be incorporated into the appraisal study to guide decisions of changing the location of the drill, changing the location of the well field, or examining the other options that were presented in the appraisal study for completion of the water exchange.

**4.2. Pilot well provides adequate water quantity, but there is a need to separate wells to avoid adverse ground water impacts.** The exchange project continues, but with renewed analyses of the hydrogeology and where well placement can resolve cones of depression influences from well to well. The second task would be to determine if well spacing can be accommodated with the current landowner or whether the LOID would have to engage new land owners in the land acquisition and management process. The third task would be to determine transmission line paths and associated obstacles that an alteration would bring to the project. The various pumps necessary to elevate and move water, plus location and pathways in non-established right of ways, and necessary engineering and legal processes would need to occur. This solution, depending on spacing, could lengthen the project timeline. However, an analysis may have to occur to determine that this is the solution for all parties over other alternatives to the appraisal study.

**4.3. Pilot well provides adequate water quantity and there are no conflicts with locating other wells in the immediate area.** The project continues as funds become available and the other processes identified within this document are completed.

## **5. Design and Construction Elements of Full Water Exchange**

This section describes the design and construction elements of the potential wells and distribution system. It includes a description of the well fields, distribution and storage system, land for facilities, and electricity supplies. Several of the elements are described in detail in other parts of this Appendix.

### **5.1. Design and Construction Elements of Potential Wells and Distribution System**

#### **5.1.1. Well Field**

Well field would be developed consisting of wells, or combination of wells and new storage, including pumps and appurtenant structures, capable of delivering 8,500 acre feet per year to the LOID service area.

#### **5.1.2. Distribution System and Storage**

5.1.2.1. The new source of water would be connected to the existing irrigation distribution system.

5.1.2.2. Water would be supplied to each well site for drilling purposes.

5.1.2.3. Mann Lake/Reservoir A of the existing LOP system would be used, as needed, for storage of groundwater produced by the well field system. This may require structural intake improvements at the Reservoir A outlet. Mann Lake recreational and fishing uses are intended to be maintained status quo.

#### **5.1.3. Land for facilities, identification, purchase, zoning, and improvements**

Land acquisition suitable for wells, piping, and appurtenant facility construction would be executed by LOID for ownership by LOID. LOID purchased 3.3 acres for the Pilot well site and access in fee title. The Pilot Well outcome would determine whether the Pilot site is suitable, or another landowner/site would be located and engaged. City/County/State development requirements would need to be met. The Pilot required a land use zoning change and Conditional Use Permit from the City of Lewiston, a process that requires neighborhood meetings, public noticing, and public hearings prior to approval. Subsequent building permit requirements would be met upon design review by the City development staff. If a new location is needed, other jurisdictional requirements may be necessary.

#### **5.1.4. Electricity and Substation**

An adequate power supply is not available using existing infrastructure. A small substation is required. Power provider and owner of transmission infrastructure in the area of the pilot well is Avista Utilities. If a new location is needed, other entities, namely, Clearwater Power may be the provider/owner. LOID also has the option to form its own public utility district and purchase power directly from the Bonneville Power Administration.

#### **5.2. Interim Operations**

After the pilot well is completed, by April 1<sup>st</sup> of each year, LOID, in consultation with the other Parties, will develop an annual plan using modeling and analysis to characterize the water year and how LOID operations are projected to meet the flows determined in Section 6.2. If there are concerns, the Parties will meet to resolve the issue, and if necessary, will use the dispute resolution process in Section 10.1.

#### **5.3. Water Right Element**

See Section 6.

#### **5.4. Title Transfer of LOP System Assets After Well Field is Operational.**

See Title Transfer Appendix for title transfer process.

### **6. Water Right Element**

#### **6.1. New water rights**

This project is based on the development of a new water supply system capable of delivering 8500 AF annually to the LOID service area. LOID applied for a water permit from IDWR consistent with this concept. The IDWR issued a permit for the project on July 18, 2014 with a priority date of May 8, 2014. The permit includes 8500 AF for municipal use annually within the LOID service area. The application includes an additional storage right in Mann Lake in a quantity of 3043 AF, based on reservoir size plus seepage and evaporation. The 3043 AF storage right would have an alternative



permitted use for fire protection. The total diversion rate in the LOID application is 18 CFS. The application has been publicly supported by the Tribe, Reclamation, IDFG and IDEQ.

## **6.2. Methodology for water exchange values for successive wells after pilot well**

**6.2.1.** The 2010 NOAA Fisheries LOP Biological Opinion (BiOp) is the overriding document with regard to operation of the LOP, and interim operations would not violate its terms and conditions. The water quantities to be protected and left instream for successive wells coming into production after the pilot well would be based on the following factors:

6.2.1.1. The water quantities to be protected for successive wells coming on line after the pilot well (that methodology is set out in the 2014 Term Sheet at p.4) would be based on two factors: 1) the well's full productive capacity defined as the maximum flow capable of being sustained by the installed well pumping system (not how it is discretionarily operated by LOID) which is 2) applied as additional quantities to be protected and left instream from February through October. Based on the effect of the exchange on the Tribe's Reservation and resources, Reclamation would as a federal trustee consult with the Tribe on the final quantification and timing of these exchange values.

6.2.1.2. Each well's full productive capacity would be determined by a subject matter expert based on information from the Supervisory Control And Data Acquisition (SCADA) system that LOID would install, maintain, and operate. LOID will make the SCADA data available to the other Parties to show each well's full productive capacity.

6.2.1.3. Water quantities for successive wells determined under 6.2.1.1 for bypass and protection would be converted into acre foot (AF) volumes. These water volumes would be released for fish protection at rates that would not exceed the maximum cubic foot per second (cfs) capacity of the installed well pumping system. The water quantities to be bypassed and protected under this Section would replace the 90 AF annually delineated in the 2014 Term Sheet.

6.2.1.4. The LOID, the Tribe, NOAA, and Reclamation would coordinate the delineation of the bypass flows at the Sweetwater and Webb Creek diversion dams on an annual basis, and develop a plan accordingly identifying how to allocate the available water between Sweetwater and Webb Creeks.

6.2.1.5 If inflows as defined in the BiOp at page 9, to either Sweetwater or Webb diversion dams are below the specified minimum flows that would result from the methodology of 6.2.1.1, LOID would bypass all flows past the diversion. LOID would not be required to pump water from Lake Waha to meet minimum flows identified in the 6.2.1.1 methodology.

6.2.1.6 Exceptions would be made under 6.2.1 for failure of well infrastructure due to causes beyond LOID's control, as distinct from foreseeable maintenance requirements. During such unforeseeable events, BiOp requirements would dictate minimum flows.

6.2.2 As described for the pilot well, as each successive well comes into production, for purposes of understanding incremental portion of the entire water right exchange project that has been accomplished, a quantity also would be assigned to that well for the purpose based on the full productive capacity of the well.

### **6.3 Options for ensuring interim and then permanent protection of LOP water rights from forfeiture and any future appropriation.**

#### **6.3.1 Interim Protections**

6.3.1.5 During the time prior to project completion, LOP water right quantities would be incrementally left instream as successive wells come on line, as described in Section 6.2. During this time, to the extent LOP water rights are available for protection under Section 6.2, they will be leased into the state water bank to protect them from forfeiture.

6.3.1.6 In addition, Reclamation would continue, as under the BiOp, to use the rental process of the state water bank for LOP water rights to meet available Snake River Basin Adjudication (SRBA)-decreed, Idaho Water Resources Board (IWRB)-held minimum stream flows in the Lapwai Creek watershed.<sup>1</sup> Reclamation, subject to Idaho Department of Water Resources' (IDWR) approval, could also choose to use the state water bank to rent LOP storage water rights during this interim period for streamflow maintenance, mitigation, or other appropriate beneficial use. The Parties understand that there is some risk that some of the exchange water could be rented for other beneficial uses.

#### **6.3.2 Permanent Protections**

6.3.2.5 At project completion LOP water rights would be transferred from Reclamation to BIA in trust for the Tribe. The Parties will work in good faith to develop an agreement by September 30, 2015 that will describe with certainty the method of this transference so as to allow for permanent protection of these water rights as described below.

6.3.2.6 Some LOP water rights may be retired, such as the storage right at Mann Lake/Reservoir A from the Sweetwater diversion. Some LOP water rights

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<sup>1</sup> The water bank rental rate is currently \$17 per acre foot for a rental with 10% of the amount levied to the administrative account of the IWRB and the remaining 90% transferred to the water right owner. If a water right owner leases in and rents out its own water rights, only the administrative fee of \$1.70/AF is collected.

may be maintained at the existing point of diversion or place of use, for example, the West Fork Sweetwater Creek diversion into Lake Waha, but may need to be transferred to other beneficial uses. However, most of the water rights would be permanently protected from forfeiture and from any future appropriation through one or more of the following possible means:

- 6.3.2.6.1 BIA and the Tribe could apply to transfer water rights to new beneficial uses at new places of use in the Lapwai Creek watershed. This would occur at their discretion but would likely include Nez Perce culturally appropriate water uses that would align with beneficial water uses such as fish and wildlife, aesthetic, recreational, and, for storage rights, streamflow maintenance. The Parties agree to support an application for transfer to such uses to the maximum extent practicable. It is understood that depending on proposed changes in points of diversion for such new uses, a mitigation plan addressing impacts to any affected junior water rights holders may be required. It is contemplated that transfer of some storage water right quantities could form the basis for such mitigation, if needed.
- 6.3.2.6.2 BIA and the Tribe could use a lease-in/rent-out process with the state water bank to meet available SRBA-decreed, IWRB-held minimum stream flows in the Lapwai Creek watershed, or available minimum stream flows in the main Clearwater River, or, for storage rights, for purposes of streamflow maintenance in the Lapwai Creek watershed.
- 6.3.2.6.3 As needed to assist in this option, the Parties could choose to petition the IWRB to amend the SRBA-decreed minimum stream flows in the Lapwai Creek watershed to allow protection of the full amount of the transferred LOP water rights.
- 6.3.2.6.4 As needed to assist in this option, the Parties could choose to petition the Idaho legislature to establish new minimum stream flows in the Lapwai Creek watershed sufficient to protect the full amount of the transferred LOP water rights.

**6.3.3 Other options:**

- 6.3.3.1 The water rights are made available through the State Water Bank to meet Upper Snake River flow augmentation targets pursuant to the the Nez Perce Water Rights Settlement Agreement.

6.3.3.2 Other options that may be identified.

## **7 Environmental Compliance**

### **7.1. National Environmental Policy Act (NEPA)**

#### 7.1.1. Summary and Background

An Environmental Assessment (EA) is used to determine if a Finding of No Significant Impact (FONSI) can be made or whether an Environmental Impact Statement (EIS) needs to be prepared. An EA evaluates the proposed action and its alternatives to determine if they would cause any impacts to various resource areas. Concurrently with the NEPA process, other laws may need to be complied with and this compliance must be summarized in the NEPA document.

#### 7.1.2. Schedule

The preparation of EA can range from 18 months to 3 years to complete. The steps for completing the document at a minimum would include a scoping period, draft document preparation, public draft review, final document preparation, and completion of the decision document.

#### 7.1.3. Process and Criteria

The NEPA process is intended to clarify whether an action proposed by a Federal agency is a major Federal action significantly affecting the quality of the human environment, and, if so, to disclose the potential impacts to the public and to agency decision makers. Steps for preparing a NEPA document can include but is not limited to the following:

- Form an interdisciplinary team (Policy, NEPA, ESA, NHPA, etc)
- Determine the potential affected resources areas
- Determine the geographical scope for both the proposal and affected resources
- Evaluate environmental conditions
- Predict the proposals potential impacts
- Confirm level of compliance required
- Determine cooperating agencies and necessary consultations
- Identify data gaps
- Estimate the data collection requirements
- Determine what additional studies are needed
- Establish roles and responsibilities
- Determine the decision authority for NEPA compliance
- Develop a communications plan (internal and external)

#### 7.1.4. Public Meeting and Scoping

Scoping is conducted in preparation of NEPA documents in order to determine which issues need to be evaluated and which issues do not. The types of scoping used in the NEPA process include intra-agency, interagency, and public. Through the scoping process, various resource areas that maybe potentially impacted would be identified and analyzed in the NEPA document. Public meetings can be held during the scoping process to communicate with the public and gather

information. Additionally, a public meeting maybe held during the draft stage of the environmental document to gather public comments and concerns.

#### **7.1.5. Environmental Analysis**

The EA is prepared by an interdisciplinary team to provide appropriate information and analysis on various resources affected by the proposed action. The analysis should include a description of the affected environment and the environmental consequences of the action. Potential beneficial and adverse impacts should be presented. The EA should address short- and long-term impacts, direct and indirect impacts, and residual or net (those remaining after all mitigation measures are implemented) impacts. If appropriate, the EA should also discuss potential cumulative impacts resulting from actions taken by Reclamation, other Federal agencies, and State and local agencies, and how they relate to the action being considered. The resources areas evaluated in a NEPA document can include but are not limited to the following: land use, hydrology, water quality, fish and wildlife threatened and endangered species, historic resources, vegetation, cultural resources, Indian sacred sites, Indian trust assets, noise, air quality, hazardous materials and waste, wetlands, soil quality and erosion, economics, recreation, climate change, realty, water rights, aesthetics, environmental justice, safety, infrastructure, and cumulative impacts.

#### **7.2. Endangered Species Act (ESA)**

Section 7(a)(2) of the ESA requires consultation with the Fish and Wildlife Service and/or NOAA Fisheries for any Reclamation action which may affect a species federally listed as threatened or endangered (listed species). The initiation of Section 7 consultation requires the identification of a proposed Federal action. This consultation process may result in the Service and/or NOAA-NMFS issuing a biological opinion containing actions to be undertaken to avoid jeopardizing a species or to reduce the level of take associated with the proposed action.

#### **7.3. Clean Water Act (CWA)**

**7.3.1.** The Clean Water Act (CWA) regulates water quality standards for surface waters and regulates discharge of pollutants into waters of the United States.

The Environmental Protection Agency or a delegated state water quality agency regulates these discharges into waters of the United States through CWA Section 402 permits.

**7.3.2.** An NPDES permit is expected to be required for discharge of pumped water into Reservoir A; temporary discharge permits may be required for aquifer testing during the pilot phase and discharge testing into Reservoir A.

**7.3.3.** Additionally, if the project removes or places and fill material in waters of the United States, a CWA Section 404 permit for dredge and fill would be required. These permits are administered by the Army Corps of Engineers. Section 401, of

the CWA, is a state water quality agency certification of any 402 or 404 permit issued by the administering federal agency. These 401 certificates document terms and conditions required by the state to ensure that the permitted activity would not violate the applicable state water quality standards. In addition, if the construction site, or aggregation of construction sites, within a project is greater than one acre in size, then a storm water discharge permit is required under CWA Section 402 with an accompanying 401 certification.

#### **7.4. National Historic Preservation Act (NHPA)**

Section 106 of NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties. The Section 106 process involves consultation with the appropriate SHPO or, for projects occurring on or affecting historic properties on tribal lands, the Tribal Historic Preservation Officer(s) (THPO).

#### **7.5. Fish and Wildlife Coordination Act (FWCA)**

Consultation under the FWCA is triggered "whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or any public agency or private agency under Federal permit or license" If the proposed action triggers compliance with the FWCA, the United States Fish and Wildlife Service would have legal jurisdiction and special expertise and must be invited to be a cooperating agency.

#### **7.6. Other**

During the preparation of the NEPA document, it may be determined that compliance with other laws is necessary. Compliance with those laws would be completed prior to the conclusion of the NEPA process and results would be summarized in the NEPA document.

### **8. State and Local Requirements**

LOID, as proposed owner of all new infrastructure, will procure the appropriate permits from the appropriate state and local entity in a timely manner so as not to impede the flow of work.

### **9. Implementation**

The Parties will develop a detailed workplan that will include 1) the actions to implement the LCEP, including the actions in this Appendix and the Title Transfer Appendix; 2) the roles and responsibilities of each Party to implement the actions; 3) schedule for the actions by October 30, 2014.

### **10. General Provision**

#### **10.1. Dispute Resolution**

If a dispute arises and the Parties regarding the implementation of this Appendix are unable to resolve the dispute, the Parties agree that any Party may request mediation with the Magistrate Judge to resolve the dispute. The Parties agree that good faith efforts to resolve any disagreements shall be exhausted prior to requesting mediation. The Parties further agree that the party intending to request mediation shall first provide seven (7) days notice to counsel for each party to this Appendix prior to contacting the Court. The Parties may also utilize the procedures described in the 2014 Term Sheet to address concerns that may arise.

#### **10.2. Anti Deficiency**

The Parties agree that nothing in this Appendix shall be interpreted as or constitutes a commitment or requirement that Reclamation or BIA pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

### **11. Approval Process**

**11.1.** This Appendix has been reviewed and approved by the Parties.

**11.1.1.** LOID Board reviewed and approved the Appendix using its standard decision making process.

**11.1.2.** The Nez Perce Tribal Executive Committee reviewed and approved the Appendix using its standard decision making process.

**11.1.3.** Reclamation and BIA reviewed and approved the Appendix using its standard decision making process, in consultation with the Solicitor's Office. The Department of the Interior conferred with the Department of Justice to ensure that the Appendix is consistent with the 2014 Term Sheet.

**11.1.4.** The Parties would work to coordinate their reviews and would work to address any issues that come up during the reviews.

**11.2.** The LCEP Partners will have the option to endorse this Appendix and incorporate it as an addendum to the 2009 MOU using their standard decision making processes.

### **12. Execution of Appendix**

#### **12.1. Authority**

Each signatory to this Appendix certifies that he or she is authorized to execute this Appendix and to legally bind the Party he or she represents. As of the Effective Date, this binding effect applies to all obligations which legally may be performed under existing authorities.



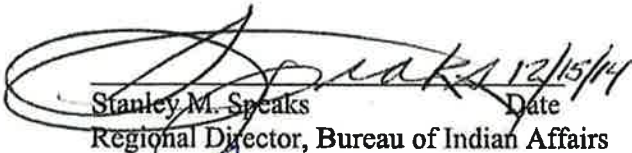
**12.2. Counterpart**

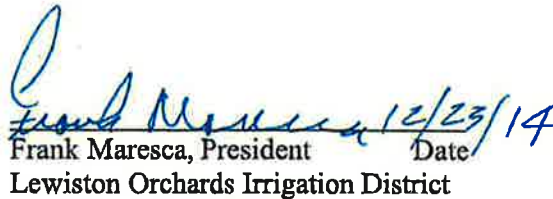
This Appendix may be executed in counterparts. Each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same document.


**12.3. Effective Date.**

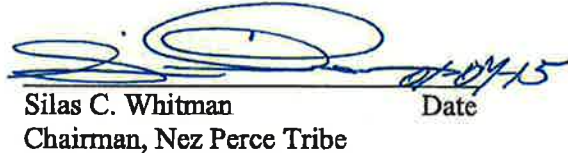
The Effective Date shall be the latest date that the signatory Parties listed in Section 1.1 have signed this Appendix.

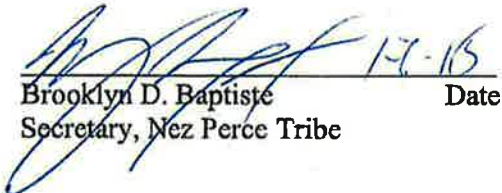
**Signatures of Parties to this Appendix**

  
Stanley M. Speaks  
Regional Director, Bureau of Indian Affairs  
Date 12/15/14

  
Frank Maresca, President  
Lewiston Orchards Irrigation District  
Date 12/23/14

  
Lorri J. Lee  
Regional Director, Bureau of Reclamation  
Date 12/18/14

  
Silas C. Whitman  
Chairman, Nez Perce Tribe  
Date 01-04-15

  
Brooklyn D. Baptiste  
Secretary, Nez Perce Tribe  
Date 1-7-15

**Endorsements by other LCEP Partners**

  
Jerry Klemm, Chair  
Lower Clearwater Exchange Project Partners  
Date 1/14/15



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](http://idwr.idaho.gov) • Email: [idwrinfo@idwr.idaho.gov](mailto:idwrinfo@idwr.idaho.gov)

BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

December 1, 2020

UNITED STATES OF AMERICA  
ACTING THROUGH THE BUREAU OF RECLAMATION  
REGIONAL DIRECTOR PN CODE-3100  
1150 N CURTIS RD STE 100  
BOISE, ID 83706-1234

RE: **WATER SUPPLY BANK LEASE CONTRACT 1064  
FOR WATER RIGHTS 85-16, 85-4483, 85-2049, 85-2063 & 85-2065**

Dear Lessor:

Water rights **85-16, 85-4483, 85-2049, 85-2063 & 85-2065** were leased into the Water Supply Bank (Bank) as of January 1, 2019, 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, 2020**, 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](http://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](mailto:bank@idwr.idaho.gov) or 208-287-4800.

Sincerely,

*Amanda Johnson- Veibell*

for  
Water Supply Bank

Enclosure: Executed Lease Contract

c: IDWR- Northern Region



# United States Department of the Interior

BUREAU OF RECLAMATION  
1150 North Curtis Road  
Boise, ID 83706-1234



IN REPLY REFER TO:

CPN-6130  
2.2.4.23

RECEIVED

NOV 25 2020

DEPARTMENT OF  
WATER RESOURCES

Idaho Department of Water Resources  
Remington Buyer  
322 E Front Street  
Boise, ID 83702

Subject: Water Supply Bank Lease Contract No. 1064

Dear Mr. Buyer:

Please find enclosed signed duplicate originals of Water Supply Bank Lease Contract No. 1064. After execution by your office, please return one fully executed original lease to our office.

If you have questions, please feel free to contact Gail McGarry, Reclamation Law Administration Program Manager, at (208) 378-5306

Sincerely,

LORRI  
GRAY

Digitally signed by LORRI  
GRAY  
Date: 2020.11.23  
08:47:28 -07'00'

Lorri J. Gray  
Regional Director

Enclosure

---

INTERIOR REGION 9 • COLUMBIA-PACIFIC NORTHWEST

IDAHO, MONTANA\*, OREGON\*, WASHINGTON

\* PARTIAL

## **Veibell, Amanda**

---

**From:** Buyer, Remington  
**Sent:** Saturday, November 14, 2020 12:14 PM  
**To:** Bank; Veibell, Amanda  
**Subject:** FW: [EXTERNAL] FW: Please Respond by 11/16 - BLM Lease 1064

**From:** Howard, Matt J [mailto:MHoward@usbr.gov]  
**Sent:** Saturday, November 14, 2020 5:59 AM  
**To:** Buyer, Remington <Remington.Buyer@idwr.idaho.gov>  
**Cc:** Sagrero, Ashley I <Asagrero@usbr.gov>; McGarry, Elizabeth G <EMcgarry@usbr.gov>  
**Subject:** Re: [EXTERNAL] FW: Please Respond by 11/16 - BLM Lease 1064

Good morning, Remington -

COVID slowed the review process a bit -- but we have now received concurrence from LOID, the Tribe, and our Solicitor's Office. The Lease is being routed to the Regional Director for signature, and it should be mailed out to you next week. I am also copying Ashley Sagrero, who is our administrative assistant who will be routing the Lease for signature and mailing back to you.

Thanks,  
Matt

---

**From:** Buyer, Remington <[Remington.Buyer@idwr.idaho.gov](mailto:Remington.Buyer@idwr.idaho.gov)>  
**Sent:** Friday, November 13, 2020 2:10 PM  
**To:** McGarry, Elizabeth G <[EMcgarry@usbr.gov](mailto:EMcgarry@usbr.gov)>; Howard, Matt J <[MHoward@usbr.gov](mailto:MHoward@usbr.gov)>  
**Subject:** [EXTERNAL] FW: Please Respond by 11/16 - BLM Lease 1064

**This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.**

Gail, Matt,

Where are we at with signatures on the 2020 lease contract for the LOID lease of water rights 85-16 et al? Our office is looking to finalize processing of the lease application ASAP. Can you get the documents back to us in the coming week?

Thanks,

Remington

**From:** Veibell, Amanda

**Sent:** Friday, November 13, 2020 11:52 AM

**To:** Ferguson, Justin <[Justin.Ferguson@idwr.idaho.gov](mailto:Justin.Ferguson@idwr.idaho.gov)>; Buyer, Remington <[Remington.Buyer@idwr.idaho.gov](mailto:Remington.Buyer@idwr.idaho.gov)>

**Cc:** Parker, Cody <[Cody.Parker@idwr.idaho.gov](mailto:Cody.Parker@idwr.idaho.gov)>; Hummer, Phill <[Phill.Hummer@idwr.idaho.gov](mailto:Phill.Hummer@idwr.idaho.gov)>

**Subject:** Please Respond by 11/16 - BLM Lease 1064

Afternoon Gents.

BLM has not returned Lease Contract 1064. The 10 day request letter was mailed on 10/29/2020. Please let me know by 11/16 if you have gotten word from a representative from BLM. If I do not get any response, I will draft the cancelation letter and get the file up to Justin for a final attempt at getting the lease returned.

Thanks.

**Amanda Johnson-Veibell**

Technical Records Specialist I

Idaho Dept Water Resources

PO Box 83720 Boise ID 83720-0098

208-287-4945



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](http://idwr.idaho.gov) • Email: [idwrinfo@idwr.idaho.gov](mailto:idwrinfo@idwr.idaho.gov)

BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

October 29, 2020

UNITED STATES OF AMERICA  
ACTING THROUGH THE BUREAU OF RECLAMATION  
REGIONAL DIRECTOR PN CODE-3100  
1150 N CURTIS RD STE 100  
BOISE, ID 83706-1234

**RE: REQUEST FOR RETURN OF SIGNED WATER SUPPLY BANK LEASE CONTRACTS 1064  
FOR WATER RIGHT 85-16, 85-4483, 85-2049, 85-2063 & 85-2065**

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

Dear Applicant,

The Department of Water Resources (Department) mailed **two original Water Supply Bank Lease Contracts for your review and signature** on September 30, 2020. The signed contracts have not been returned to the Department.

**Please sign both original Lease Contracts and return them to the Department within ten (10) days** of this letter to complete processing. The Lease Contract is not considered final until both you and the Department have signed.

If the signed lease contracts are not received by the Department within the 10-day period, the lease application will be returned, and the application fee will not be refunded. You can reapply to lease the water right in the future by submitting new application form along with applicable fees.

Please note the forfeiture period is not tolled unless a right is accepted into the Bank, or unless an exception or defense to forfeiture applies as described under Idaho Code § 42-223. If forfeiture is a concern, you may consider filing an Application for Extension of Time to Avoid Forfeiture of a Water Right form. This and other water right forms are available from the Department's web site at [www.idwr.idaho.gov](http://www.idwr.idaho.gov).

If you have questions regarding this matter, please contact this office at [bank@idwr.idaho.gov](mailto:bank@idwr.idaho.gov) or 208-287-4800.

Sincerely,

*Amanda Johnson- Veibell*

for  
Water Supply Bank





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](http://idwr.idaho.gov) • Email: [idwrinfo@idwr.idaho.gov](mailto:idwrinfo@idwr.idaho.gov)

BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

September 30, 2020

UNITED STATES OF AMERICA  
ACTING THROUGH THE BUREAU OF RECLAMATION  
REGIONAL DIRECTOR PN CODE-3100  
1150 N CURTIS RD STE 100  
BOISE, ID 83706-1234

**RE: APPLICATION TO LEASE WATER RIGHT 85-16, 85-4483, 85-2049, 85-2063 & 85-2065 TO  
THE WATER SUPPLY BANK**

**CONTRACT 1064**

**\*\*\*\*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, 2020**, 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](mailto:bank@idwr.idaho.gov) or 208-287-4800.

Sincerely,

*Amanda Johnson- Veibell*

for

Water Supply Bank

Enclosures: Proposed Lease Contracts  
Receipt # C107908



## Memorandum

**To:** Water Rights 85-16, 85-2049, 85-2063, 85-2065, & 85-4483  
**From:** Justin Ferguson  
**Date:** February 6, 2020  
**Re:** Water Supply Bank Lease Application 1475

**Purpose/Narrative:** An application was received by the Department on October 31, 2019 to lease into the Bank portions of water rights associated with the Lewiston Orchards Irrigation District (LOID), which are decreed to the United States Bureau of Reclamation (USBOR). Currently USBOR, in conjunction with the Nez Perce Tribe (Tribe) and LOID, are working on a water exchange, to cease delivery of surface water to LOID, while moving LOID entirely to groundwater. Once LOID is provided with sufficient water supplies from ground water wells, the surface water rights used by LOID will be transferred to the Tribe. From the information provided in the application, the purpose for the lease is to protect portions of USBOR/LOID's surface water rights from being combined with ground water that is newly being developed under permit 85-15755. It is intended that the lease will keep the water rights as proportionately close to the decreed amounts as possible so that, as ground water permits are developed by LOID, the maximum extent of Reclamation's storage and natural flow water rights portfolio may be deeded to the Tribe at a later date.

The irrigation district has proposed to lease into the Bank 4.5 cfs of their irrigation and municipal water use under their surface water rights. They are not applying to lease into the Bank their storage water rights at this time. However, because surface water right 85-16 is combined limited with storage water right 85-4483, the applicant has also proposed to lease into the Bank a defined amount of that right.

Due to development of ground water under permit 85-15755, there is not anticipated to be any actual real reduction in total acreage being irrigated and provided with municipal water by LOID, however the sources of water (and water rights) which are the basis for the irrigation and municipal use will change. The purpose of the lease is thus to protect the decreed surface water supplies from becoming combined ("stacked") with the applicant's new ground water permit(s). We expect that if/as new permits are developed in the future, larger portions of the surface water rights will be offered for lease until such time as the permits are fully developed and the surface water rights can be transferred in full to the Tribe=.

Of importance, LOID provides municipal and irrigation water by storing water in Mann Lake (also known as Reservoir A), before distributing it to their patrons. Surface water has historically been diverted from the Lapwai Creek drainage to Mann Lake via the "Sweetwater Diversion". As new ground water permits are being developed, and pumped ground water is delivered to Mann Lake, surface water deliveries of Lapwai Creek water will be reduced.

**Authority to File:** The application was signed and submitted by Lorri Gray on behalf of the USBOR. Review of IDWR records show that USBOR are the current owner of the water rights and Ms. Gray is the Regional Director of the Pacific Northwest Office. A consent letter was provided by LOID allowing USBOR to lease portions of the water right portfolio to the Bank for 2019 & 2020. No concerns of about authority to file.

**Water Right Validity/Forfeiture Evaluation:** These rights were decreed in 2010 to the Bureau of Reclamation. Per the information provided on the lease application "water is delivered by the LOID system from project reservoirs and creeks via Webb and Sweetwater creek canal diversions through the Sweetwater canal to Mann Lake". As these rights were decreed in such a way that they provide service to the city of Lewiston, it is inferred that the rights have been used within the last five years throughout the municipality. Hence they are valid and not forfeited.

**Injury Evaluation:** The water rights proposed for lease provide Lapwai Creek surface water to LOID patrons, via the Sweetwater Diversion. Through this lease, less Lapwai Creek water will be provided to LOID patrons, however LOID will offset/replace the leased Lapwai Creek water with ground water, diverted under permit 85-15755. As such, no injury is apparent via this rental.

**Enlargement of Use:** Through this lease no acres are being idled. The source of the water is being switched to avoid the surface and ground water supplies from becoming comingled and inseparable. The table below is a summary of all the rights and permits associated with the LOID project:

WR	Priority	CFS Rate	Combined Rate	Storage Volume	Principal Uses	POU	Acres	Combined Acres	Rate/Acre	Vol/Acre
85-16	7/14/1904	55.0	55.0		Irrigation & Municipal	LOID	3,845.0		0.014	
85-4483	6/1/1907	55.0		10,500.0	Irrigation & Municipal from Storage	LOID	3,845.0		0.014	2.7
85-2049	5/26/1915	10.0			Irrigation & Municipal	LOID	3,845.0		0.003	
85-2063	8/24/1923	10.0			Irrigation & Municipal	LOID	3,845.0		0.003	
85-2146	5/24/1922			2,000.0	Irrigation & Municipal from Storage	LOID	3,845.0	3,845.0	0.000	0.5
85-2065	1/30/1924	19.0	19.0		Irrigation & Municipal	LOID	3,845.0		0.005	
85-2147	12/4/1934	6.3	6.3	2,000.0	Irrigation & Municipal from Storage	LOID	3,845.0		0.002	0.5
85-15424	12/1/1935			3,497.5	Irrigation & Municipal from Storage	LOID	3,845.0		0.000	0.9
85-11087	12/31/1935	20.0	20.0	1,308.5	Irrigation & Municipal from Storage	LOID	3,845.0		0.005	0.3
Natural Flow Water Rights			84.0		Irrigation & Municipal	LOID	3,845.0		0.022	
Storage Water Rights			81.3	19,306.0	Irrigation & Municipal from Storage	LOID	3,845.0	3,845.0	0.021	5.0
Combined Rights 85-16 & 85-4483			55.0	10,500.0	Irrigation & Municipal, from Storage	LOID	3,845.0		0.014	2.7
Total Surface Water Rights Portfolio			110.3	19,306.0	Irrigation & Municipal, from Storage	LOID	3,845.0	3,845.0	0.029	5.0
85-15755	5/8/2014	18.0	18.0	11,543.0	Fire Protection & Municipal from Storage	LOID	3,845.0	3,845.0	0.005	3.0
Total Water Rights Portfolio			110.3	19,306.0	Irrigation, Fire Protection & Municipal from Storage	LOID	3,845.0	3,845.0	0.029	5.0

Per the application information, 4.5 cfs of the overall surface water rights portfolio is being replaced with ground water under permit 85-15755. Hence, the applicant is proposing to reduce their deliveries of natural flow surface water to Mann Lake by 4.5 cfs, as follows:

Portions of LOID Water Rights Proposed for Lease										
WR	Priority	CFS Rate	Combined Rate	Storage Volume	Principal Uses	POU	Acres	Combined Acres	Rate/Acre	0
85-16	7/14/1904	2.946	2.946		Irrigation & Municipal	LOID	206.0		0.014	
85-4483	6/1/1907	2.946		1,034.3	Irrigation & Municipal from Storage	LOID	206.0		0.014	5.0
85-2049	5/26/1915	0.536			Irrigation & Municipal	LOID	206.0	206.0	0.003	
85-2063	8/24/1923	0.536			Irrigation & Municipal	LOID	206.0		0.003	
85-2065	1/30/1924	1.018	1.018		Irrigation & Municipal	LOID	206.0		0.005	
Natural Flow Water Rights			4.500		Irrigation & Municipal	LOID	206.0		0.022	0.0
Storage Water Rights			2.946	1,034.3	Irrigation & Municipal from Storage	LOID	206.0	206.0	0.014	5.0
Total Surface & Storage Water Rights			4.500	1,034.3		LOID	206.0	206.0	0.022	5.0

It may be noted that a lease of 1,034.3 af of storage water under water right 85-4483 will result in a change in the per-acre duty of water (from 2.7 afa/ac to 5.0 afa/ac), the leased diversion rate of 85-4483 (2.95 cfs) allows for a maximum annual diversion volume of 2,135.7 af (if the instantaneous diversion rate was in effect for 365 days in a year), so the proposed leased diversion rate is reasonable, and will not result in enlargement. The important factor here is the amount identified at the Sweetwater diversion such that the amount being exchanged from surface water to ground water can be measured. Based on the provided measurement from LOID that 4.5 cfs can be replaced with ground water, 1,034.3 ac-ft for 206 acres can be leased to the Bank. Moreover, conditions on the lease affirming the maximum diversion rates and volumes possible under the unleased extent of LOID's water rights will guard against enlargement.

**Local Public Interest:** Staff are unaware of any local public interests that are averse to the lease.

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

**Department/Watermaster Comments:** There is no water district. IDWR Northern Region comments were requested February 6, 2020

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

## **Ferguson, Justin**

---

**From:** Ferguson, Justin  
**Sent:** Thursday, February 6, 2020 2:57 PM  
**To:** Jones, Doug  
**Subject:** WSB Lease Application - Lewiston Orchards/Bureau of Reclamation  
**Attachments:** Draft Lease Bureau of Reclamation.pdf; Draft Lease USDI BoR LOID Final.docx; Lease Review Memo Final.docx

Afternoon!

Attached is the draft contract, map, and memo for the Lewiston Orchards/Bureau of Reclamation lease application. Please let me know if you have any comments or concerns, IDWR will assume you do not object to this application if a timely response is not received

Thank you!



*Domestic and Irrigation Water*

---

1520 Powers Avenue Lewiston, ID 83501 (208)746-8235

---

Gary Spackman  
Idaho Department of Water Resources  
Director  
Idaho Water Center  
322 E. Front Street  
Suite 648  
Boise, ID 83702-7371

Subject: Attachment 4A – Consent for Application to Lease Water Rights into the Water Supply Bank

Dear Director Spackman:

The letter constitutes LOID's consent for the Bureau of Reclamation to lease a portion of the Lewiston Orchards Project water rights totaling 4.5 cfs and 1,034.25 afa into the Idaho Water Supply Bank for calendar years 2019-2020.

Sincerely,

A handwritten signature in blue ink, which appears to read "Eugene B. Metz". The signature is fluid and stylized, with a long horizontal stroke extending from the end.

Barney Metz  
LOID General Manager