

ORIGINAL

STATE OF IDAHO
WATER RESOURCE BOARD

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

RECEIVED

APR 13 2020

DEPARTMENT OF
WATER RESOURCES

Designated Applicant FMC Idaho, LLC

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

Water Right No. 29-2255e

(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 type="checkbox"/> | <input checked="" 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 www.idwr.idaho.gov). |
| 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 type="checkbox"/> | <input checked="" 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: www.idwr.idaho.gov . |
| 4A | <input checked="" type="checkbox"/> | <input 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 \$ <u>750</u>	Received By: <u>KM</u>	Date Received: <u>4-13-2020</u>	Receipt # <u>C108605</u>
W-9 received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	(Route W-9 to Fiscal)	Name on W-9: <u>FMC IDAHO LLC</u>	

Returned 9/16/2020

SCANNED
SEP 16 2020

1697

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

1. CONTACT INFORMATION

- A. This application must be completed by a Designated Applicant who is a current owner of the water right being sold or leased to the Water Supply Bank. If there are additional current owners, those individuals must authorize the Designated Applicant to represent them on this application by completing and signing Attachment 1A of this application package.

Designated Applicant FMC Idaho, LLC

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

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

☒ The Designated Applicant is the sole owner of the water right being sold or leased to the Water Supply Bank.

OR

☐ The Designated Applicant is representing additional water right holders who have completed Attachment 1A.

- B. Has the Designated Applicant submitted an IRS Form W-9 to this Department within the last 2 years? Yes ☐ No ☒

If no, complete the form and attach to this application (Attachment 1B).

- C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes ☒ No ☐

If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

- D. Is this application being completed by an authorized representative of the Designated Applicant? Yes ☐ No ☒

If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1D).

Name of Representative John K. Simpson Organization Barker Rosholt & Simpson LLP

Professional Title Attorney Email Address jks@idahowaters.com

Mailing Address P.O. Box 2319, Boise, ID 83701-2139 Phone Number 208.336.0700

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

OR

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

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

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

OR

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

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

3. MAP

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

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.

This water right, with 29-11342 and 29-2255c, are part of the mitigation plan agreement dated 01/13/2014 between the IDWR and FMC - rights have been held as mitigation for remediation actions as required by IDWR.

- C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank. See the response to 4B.

- D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? Yes ☐ No ☒

Stacked water rights are used together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of \$500.

- E. Will the present place of use continue to receive water from any other source? Yes ☒ No ☐

If yes, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased. A portion of water right no. 29-2255c (approx. 13 ac-ft) is being withheld from the application and will continue to be used as mitigation under the above identified Agreement dated Jan. 13, 2014.

- F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. Since 2014, this right has been retained and held for mitigation as required by the Agreement dated January 13, 2014.

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

If yes, describe the circumstances and attach evidence to demonstrate how the water right has not been lost through forfeiture (Attachment 4G). See Section 42-223, Idaho Code for exceptions to forfeiture. Your application may be denied if forfeiture concerns are not addressed. This right with other rights identified in the January 13, 2014 Agreement have continuously been used for mitigation.

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

If yes, describe.

See the response to 4B.

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

B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.
Current rental rate. See attached lease between FMC and the American Falls Ground Water District.

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

The Designated Applicant acknowledges the following:

1. Payment to the Designated Applicant is contingent upon the sale or rental of the water right from the Bank.
2. While a water right is in the Bank, the seller/lessor of the water right may not use the water right, even if the water right is not rented from the Bank.
3. A water right accepted into the Bank stays in the Bank until the Designated Applicant receives written confirmation from the Board or Water Supply Bank that the water right has been released from the Bank.
4. While a water right is in the Bank, forfeiture is stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any element of the water right.




Signature of Designated Applicant

John Stillmun

Printed Name

04/07/2020

Date



Signature of Authorized Representative

John K. Simpson

Printed Name

04/10/2020

Date

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

IDAHO Department of Water Resources



WATER RIGHT REPORT

3/4/2020

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 29-2255E

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

Priority Date: 09/16/1949

Basis: Decreed

Status: Active

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

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	0.04 CFS	8 AFA
Total Diversion			0.04 CFS	8 AFA

Location of Point(s) of Diversion:

GROUND WATER|SESWSW|Sec. 12|Township 06S|Range 33E|POWER County

Place(s) of use:

Place of Use Legal Description: IRRIGATION POWER County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
06S	33E	12		SWSW	2									

Total Acres: 2

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Dates:

Licensed Date:

Decreed Date: 08/27/2004

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 120

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

3/4/2020

Water Right Report

Cary Act Number:

Mitigation Plan: False

State of Idaho
Department of Water Resources

Water Right
29-2255E

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

33E



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

0 0.035 0.07 0.14 Miles



LEASE OF WATER RIGHTS

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

RECITALS:

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

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

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

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

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

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

3.5 The decreed purpose of use of water right 29-11342 is municipal, which is considered a fully consumptive use to the ground water source.

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

3.7 The decreed purpose of use for water right 29-2255e is irrigation.

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

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

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

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

7.1 Lessee and Lessor will jointly seek approval of this Lease from IDWR and will cooperate with each other in securing such approval consistent with the provisions of Section 3.

7.2 Lessee shall be responsible for all costs associated with accomplishing the approval of this lease and, including but not limited to, paying all applicable Water Bank and other administrative fees owing to IDWR.

7.3 This lease is conditioned upon IDWR's approval of the use of the water rights as identified herein by Lessee for mitigation purposes and acknowledgment by IDWR that Lessee's use of the water under the lease and/or placement of the water in the state water bank constitutes beneficial use of the water and will not subject the rights to forfeiture. In the event the approval is not obtained, the lease may be terminated by either party.

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

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

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

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

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

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

LESSOR:

FMC IDAHO LLC

By

[Signature]

Date 04/09/2020

LESSEE:

AMERICAN FALLS ABERDEEN GWD

By

[Signature] - Chairman

Date

4.9.2020



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

September 16, 2020

FMC IDAHO, LLC
2929 WALNUT ST.
PHILADELPHIA, PA 19104

RE: RETURNED APPLICATION(S) TO LEASE WATER RIGHT NO(S) 29-2255C, 29-2255E, & 29-11342 TO THE WATER SUPPLY BANK

Dear Applicant:

The Idaho Department of Water Resources (Department) received three applications to lease water rights 29-2255C, 29-2255E & 29-11342 to the Water Supply Bank from Mr. John Stillmun on behalf of FMC Idaho, LLC. After reviewing the request, it was determined that additional information was needed to process your request.

Correspondence was sent on August 15, 2020, requesting the required information. As of the date of this letter, the information requested has not been received. This letter is notice that the attached applications to lease water rights to the Bank are being returned.

The Bank rules provide criteria to be considered when determining whether to accept a water right into the Bank. One of the criteria for consideration is information that the water right is not subject to forfeiture is provided. As that information was not able to be provided, the applications have been determined to be incomplete.

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.

If you have questions regarding this matter, please contact me at (208) 287-4936.

Justin Ferguson
Water Supply Bank Specialist

Enclosure: Original Lease Applications

cc : John Simpson – Barker, Rosholt, & Simpson
Lizanne Davis – FMC Corporation
Heather Rice – American Falls Aberdeen Ground Water District