

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**WATER SUPPLY BANK LEASE CONTRACT No. 1195**

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

**LESSOR:** IDAHO WATER COMPANY  
PO BOX 191190  
BOISE, ID 83719-1190

**RECEIVED**

**JUN 16 2020**

**DEPARTMENT OF  
WATER RESOURCES**

**SUPPORT DATA**  
**IN FILE #** 35212

**RECITALS**

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources and received by the Department on April 23, 2020.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

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

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

**Summary of Water Rights or Portions Leased to the Bank**

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
35-2122	12/24/1948	GROUND WATER	0.39	77.1	19.3
35-7417	5/27/1974	GROUND WATER	0.22	90.8	24.2
<b>Combined Lease Totals</b>			<b>0.61</b>	<b>162.9</b>	<b>40.7</b>

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, 2020 to December 31, 2020. This Lease shall bind the parties and take effect when both parties have signed it.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**WATER SUPPLY BANK LEASE CONTRACT No. 1195**

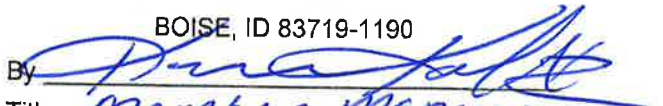
5. **CHANGE OF WATER RIGHT:** This lease specifies water right elements including but not limited to: diversion rates; diversion volumes; number of acres authorized to be irrigated; places of use; points of diversion; beneficial uses; and seasons of use. During the term of this lease, if a water right is administratively changed due to a water right split and renumbering, this lease may be reduced by an equal amount to reflect the water right elements as legally defined under the water right. If a lease contract cannot be reduced sufficient to reflect the legal definition of a water right as amended through a water right split and/or water right transfer, the Board may release the water right from the Water Supply Bank.
6. **ASSIGNMENT OF CONTRACT:** This lease is between the Board and the Lessor, who is the recognized owner or designated representative of the recognized owners of water rights described herein. Should ownership of any part of a water right herein described change during the term of this lease, either through a water right split, a water right transfer, sale of property to which the water right is appurtenant, or through any other recognized water right reassignment, the lease benefits and obligations to the conditions of acceptance for any such water rights will be assigned to the new owners.
7. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**WATER SUPPLY BANK LEASE CONTRACT No. 1195**

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

**LESSOR:** IDAHO WATER COMPANY  
PO BOX 191190  
BOISE, ID 83719-1190

By   
Title Member-Manager  
Date 6-16-20

**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 07/02/20

Lease approved by IDWR 

Date 07/02/20

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

## WATER SUPPLY BANK LEASE CONTRACT No. 1195

### 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): 35-2122, 35-7417**

GROUND WATER	NENW	Sec. 21	Twp 03S	Rge 33E	BINGHAM County
GROUND WATER	NENWNW	Sec. 22	Twp 03S	Rge 33E	BINGHAM County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
35-2122	IRRIGATION	04/01	to	10/31	0.39 cfs	77.4 AF
35-7417	IRRIGATION	04/01	to	11/01	0.22 cfs	91.0 AF
<b>Totals:</b>					0.61 cfs	162.8 AF

**PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION**

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03S	33E	21			8	2.1													10.1
03S	33E	22	1.3	19.8	1.3		3.2		5.0										30.6

Total Acres: 40.7

### 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.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

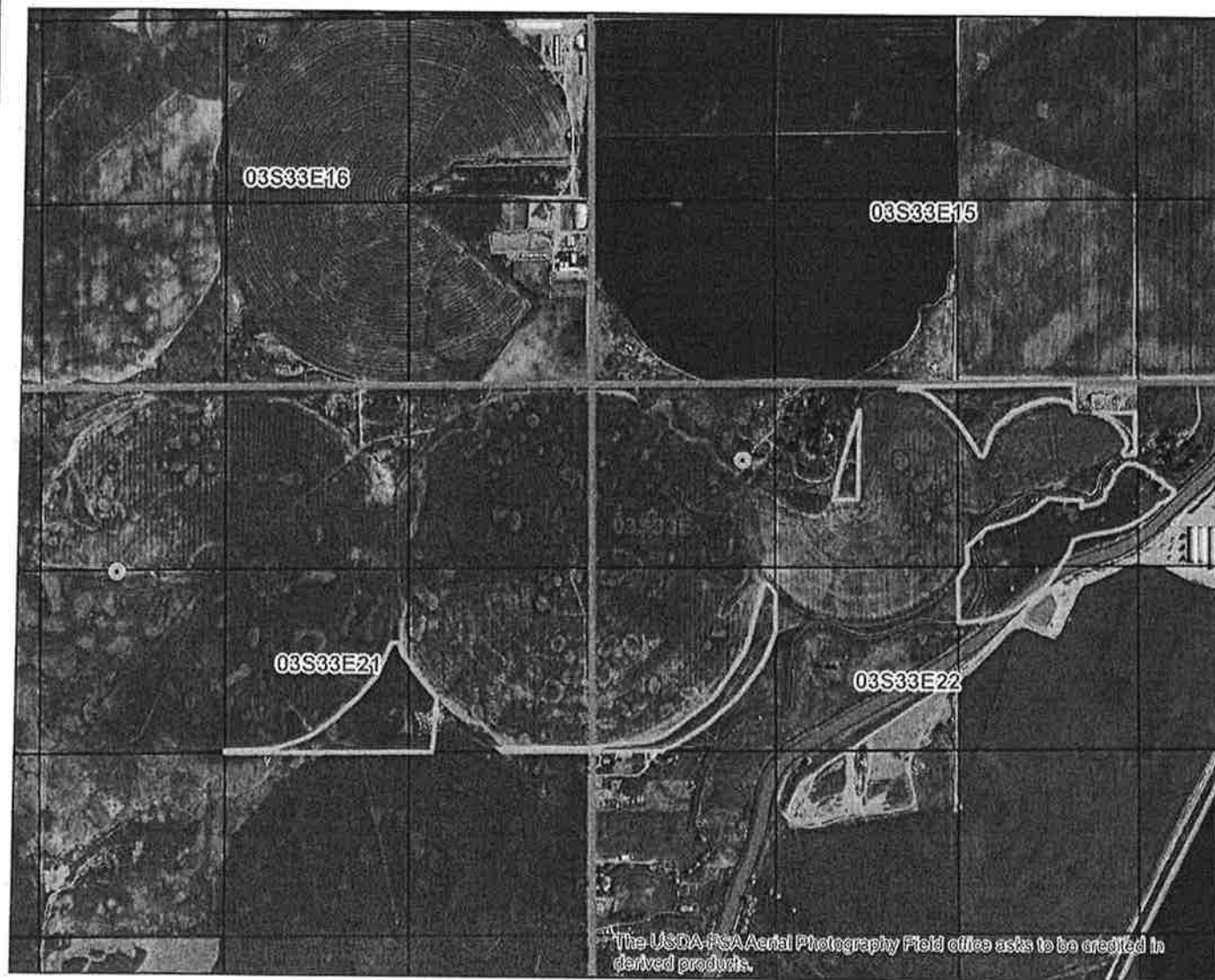
**WATER SUPPLY BANK LEASE CONTRACT No. 1195**

8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other Department application process.
9. In accordance with Idaho Code § 42-248 and § 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.
10. If a water right leased into the Water Supply Bank is sold or conveyed during the lease term, and if the leased right was rented, the rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:
  - a. Rental payments will go to the lessor(s) of record at the beginning of the rental season, even if the Department processes a Notice of Change in Water Right Ownership during the rental season.
  - b. New lessor(s) of record will receive payment for any subsequent rental seasons.
11. The water right(s) is leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.
12. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
13. The unleased portions of water rights 35-2122 & 35-7417, when combined, are limited to 0.21 cfs and 60.3 af for the irrigation of 15.1 acres in a single season.
14. The unleased portion of water right 35-2122 is limited to 0.14 cfs, 28.7 afa, and the irrigation of 7.2 acres.
15. The unleased portion of water right 35-7417 is limited to 0.07 cfs, 33.4 afa, and the irrigation of 8.9 acres.
16. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 120.
17. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
18. Prior to the diversion and use of water under Transfer approval 78473, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.
19. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

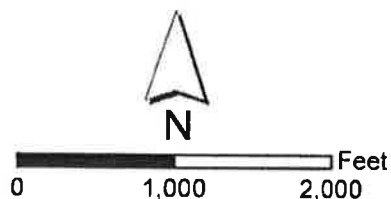
Idaho Water Resource Board  
**Water Supply Bank Lease Contract No. 1195**

35-2122 & 35-7417  
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
- QQ





STATE OF IDAHO  
WATER RESOURCE BOARD

RECEIVED

APR 23 2020

DEPARTMENT OF  
WATER RESOURCES

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

Designated Applicant IDAHO WATER COMPANY LLC

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

Water Right No. 35-2122

(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 <b>all owners</b> 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 type="checkbox"/>            | <input checked="" 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 type="checkbox"/>            | <input checked="" 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: <a href="http://www.idwr.idaho.gov">www.idwr.idaho.gov</a> .  |
| 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 <a href="#">Section 42-222(2), Idaho Code</a> .  |

#### Department Use Only

Fee Amount \$ <u>500.00</u>	Received By: <u>LM</u>	Date Received: <u>4-23-2020</u>	Receipt # <u>C108655</u>
W-9 received? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	(Route W-9 to Fiscal)	Name on W-9: <u>Delbert G. Kohtz</u>	

1767

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 IDAHO WATER COMPANY LLC

Mailing Address 1135 VALLEY ROAD SOUTH EDEN ID 83325  
Street City State Zip Code

Email Address INFO@IDAHOWATERCOMPANY.COM Phone Number (208) 968-0099

☒ 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 Kevin G. Kohtz, Esq. Organization Law Offices of Kevin G. Kohtz, PLLC

Professional Title Attorney Email Address kevin@myidaho.law

Mailing Address PO BOX 191190 BOISE IDAHO 83719 Phone Number (208) 968-0099

☒ 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.

Recent transfer approval authorized a new system layout including new mainlines and center pivot system.

- 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. 35-7417 and 35-2122 when combined shall not exceed a total annual diversion volume of 1350 acre-ft for the irrigation of 337.5 acres. An appropriate fraction of each right is offered for lease.

- 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. These water rights have never been used together with or supplemental to any other source.

- 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. Certain areas authorized by recent transfer approval cannot be irrigated the way the pivots were installed. This application seeks to protect those areas and provide the water rights for beneficial use by others.

- 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 ☐

Since 2016, diversion volume has been reduced below the authorized total volume as part of participation with Bingham Groundwater District's mitigation efforts.

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 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 IDWR rental rate~~ \_\_\_\_\_

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

The Designated Applicant acknowledges the following:

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

  
\_\_\_\_\_  
Signature of Designated Applicant

Del Kohtz  
\_\_\_\_\_  
Printed Name

04/15/2020  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature of Authorized Representative

Kevin G. Kohtz  
\_\_\_\_\_  
Printed Name

04/15/2020  
\_\_\_\_\_  
Date

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

**ATTACHMENT 1D**

DOCUMENTARY PROOF &

CONTACT INFORMATION FOR AUTHORIZED REPRESENTATIVE



0003820839

**STATE OF IDAHO***Office of the secretary of state, Lawrence Denney***ANNUAL REPORT**

Idaho Secretary of State

PO Box 83720

Boise, ID 83720-0080

(208) 334-2301

Filing Fee: \$0.00

*For Office Use Only***-FILED-**

File #: 0003820839

Date Filed: 3/27/2020 3:48:26 PM

## Entity Name and Mailing Address:

IDAHO WATER COMPANY, LLC

The file number of this entity on the records of the Idaho Secretary of State is: 0000102618

Address

DELBERT KOHTZ  
1135 VALLEY RD  
EDEN, ID 83325-5245

## Entity Details:

Entity Status

Active-Existing

This entity is organized under the laws of:

IDAHO

If applicable, the old file number of this entity on the records of the Idaho Secretary of State was: W29874

## The registered agent on record is:

Registered Agent

DELBERT G KOHTZ

Registered Agent

Physical Address

1135 VALLEY RD SOUTH  
EDEN, ID 83325

Mailing Address

## The name and street address of the new registered agent and office in Idaho is:

Registered Agent

Registered Agent

Law Offices of Kevin G. Kohtz PLLC

Physical Address:

KEVIN G KOHTZ  
9490 W FAIRVIEW AVE.  
BOISE, ID 83704

Mailing Address:

KEVIN G KOHTZ  
PO BOX 191190  
BOISE, ID 83719-1190☒ I affirm that the registered agent appointed has consented to serve as registered agent for this entity.

## Limited Liability Company Managers and Members

Name	Title	Business Address
DELBERT G KOHTZ	Member	1135 VALLEY RD SOUTH EDEN, ID 83325
FRANCES L KOHTZ	Member	1135 VALLEY RD SOUTH EDEN, ID 83325
KEVIN G KOHTZ	Member	PO BOX 191190 BOISE, ID 83719

The annual report must be signed by an authorized signer of the entity.

Delbert G. Kohtz

Sign Here

03/27/2020

Date

Job Title: Manager

B0496-6165 03/27/2020 3:48 PM Received by ID Secretary of State Lawrence Denney

**STATE OF IDAHO  
WATER RESOURCE BOARD**

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

**ATTACHMENT 2**

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

1. <u>Water Right Number</u>	Nature of Use	Leased Rate (cfs)	Leased Volume (af)	Leased Acres (ac)
<u>35-2122</u>	<u>IRRIGATION</u>	<u>.38</u>	<u>76.4</u>	<u>19.1</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Total Amounts:		<u>.38</u>	<u>76.4</u>	<u>19.1</u>

2. Source of water GROUNDWATER tributary to ESPA

3. Point(s) of diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
03S	33E	21			NE	NW	BINGHAM
03S	33E	22		NE	NW	NW	BINGHAM

# ATTACHMENT 3 - MAP



0 1320ft .5 mi.

- Existing point of diversion
- Proposed lease areas
- Currently described PPU
- BLM PLSS quarter-quarters

SEC 21			WSB	SEC 22			WSB
NENE	33.8		0	NENE	1.2		1.2
NWNE	33.2		0	NWNE	33.5		16.4
SWNE	40		8	SWNE	4.6		4.6
SENE	38.1		2.1	NENW	28.4		3
NENW	33.1		0	NWNW	34		0
SENW	15.9		0	SWNW	34.3		5
				SENW	7.4		0

Water Supply Bank Lease Application  
T3S R33E, Bingham County, ID  
ESPA MODEL CELL 79,125







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

July 7, 2020

IDAHO WATER COMPANY  
PO BOX 191190  
BOISE, ID 83719-1190

**RE: WATER SUPPLY BANK LEASE CONTRACT 1195  
FOR WATER RIGHTS 35-2122, 35-7417**

Dear Lessor:

Water rights **35-2122, 35-7417** were leased into the Water Supply Bank (Bank) as of January 1, 2020, 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-Vahill  
Water Supply Bank

Enclosure: Executed Lease Contract

c: IDWR- EASTERN REGION  
WATER DISTRICT NO. 120  
Kevin G Kohtz, Esq. – Law Offices of Kevin G. Kohtz, PLLC



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

June 16, 2020

IDAHO WATER COMPANY  
PO BOX 191190  
BOISE, ID 83719-1190

**RE: APPLICATION TO LEASE WATER RIGHT 35-2122, 35-7417 TO THE WATER SUPPLY BANK  
CONTRACT 1195**

**\*\*\*\*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 Verbeke  
Water Supply Bank

Enclosures: Proposed Lease Contracts  
Receipt # C108655

## Memorandum

**To:** Water Right 37-2122 & 37-7417  
**From:** Justin Ferguson  
**Date:** May 28, 2020  
**Re:** Water Supply Bank Lease Application 1707

**Purpose/Narrative:** An application was received from Mr. Kohtz on behalf of the Idaho Water Company, offering portions of water rights 35-2122 & 35-7417 for lease to the Bank. The lease comes as a package to facilitate rentals for both Mr. Taylor and the Snake River School District. Prior to receiving the lease applications, Mr. Kohtz corresponded with Bank staff to identify the portions of the water rights that would be available after an ownership change and split was processed. Mr. Kohtz was able to identify and provide details on areas that would be irrigated by the land owner, Kip Hunter, using water rights held by the City of Heyburn as well as the remaining portions held by the Idaho Water Company.

The current land owner, Mr. and Ms. Hunter, were also able to provide an affidavit to the Department affirming that their intended irrigation practices were in line with the prior year and that the ground water rights had never been co-mingled with the canal surface water. As such, these two rights can be leased to the Bank as primary rights, provided a large enough portion is left out and made available for Mr. Hunter to use.

**Authority to File:** While the land is still held by Mr. and Ms. Hunter, the water rights have been split and are not held by the Idaho Water Company and city of Heyburn respectively. No concerns at this time.

**Water Right Validity/Forfeiture Evaluation:** Based on the observed irrigation practices of Mr. Hunter and the affidavit affirming the water rights have been used, the water rights remain valid and can be leased to the Bank.

**Injury Evaluation:** No injury is apparent through the lease alone, proper rental review should protect against injury. Further, should injury occur, water users are provided an opportunity to petition the Director for reconsideration.

**Enlargement of Use:** No enlargement is evident as the acreage being leased to the Bank have been specifically identified by both the Bank staff and Mr. Kohtz such that irrigation can occur in line with the prior year. The acreage being leased to the Bank may still receive irrigation however, it will be under water rights held by the City of Heyburn. Figure 1 provides the acreage as identified by the review staff, being leased to the Bank. Figure 2 provides an illustration as to the specific acres, by quarter-quarter, available to the Idaho Water Company.

Place of Use leasable under Water Rights 35-2122/7417									
T & R	Section	NE				NW			
		NE	NW	SW	SE	NE	NW	SW	SE
03S 33E	21			8.0	2.1				
03S 33E	22	1.3	19.8	1.3		3.2		5.0	
									40.7

**Figure 1.** Specific acreage being offered to the Bank

**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:** Watermaster and IDWR Southern Region comments were requested

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

Place of Use for Water Rights 35-2122/7417 Post Transfer 78473										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21	33.8	33.2	40.0	38.1	33.1			15.9	194.1
03S 33E	22	1.3	33.3	1.4		29.2	34.0	34.3	9.9	143.4
										337.5

Place of Use to be Irrigated in 2019, and likely during 2020										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21	33.8	30.5	31.8	35.9	32.7			15.9	180.6
03S 33E	22		13.5	0.1		26.0	29.6	29.2	9.9	108.3
										288.9

Place of Use that can be leased										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21		2.7	8.2	2.2	0.4				13.5
03S 33E	22	1.3	19.8	1.3		3.2	4.4	5.1		35.1
										48.6

Place of Use for Water Rights 35-14680/14683 (City of Heyburn)										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21	33.8	33.2	32.0	36.0	33.1			15.9	184.0
03S 33E	22		2.6			25.5	34.0	29.3	6.3	97.7
										281.7

Place of Use Irrigated Under Water Rights 35-14680/14683										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21	33.8	30.5	31.8	35.9	32.7			15.9	180.6
03S 33E	22		2.6			25.5	29.6	29.2	6.3	93.2
										273.8

Place of Use leasable under Water Rights 35-14680/14683										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21		2.7	0.2	0.1	0.4				3.4
03S 33E	22					4.4	0.1			4.5
										7.9

Place of Use for Water Rights 35-2122/7417 (based on Heyburn splits)										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21		8.0	2.1						10.1
03S 33E	22	1.3	30.7	1.4		3.7		5.0	3.6	45.7
										55.8

Place of Use Irrigated Under Water Rights 35-2122/7417										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21									0.0
03S 33E	22		10.9	0.1		0.5			3.6	15.1
										15.1

Place of Use leasable under Water Rights 35-2122/7417										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21		8.0	2.1						10.1
03S 33E	22	1.3	19.8	1.3		3.2		5.0		30.6
										40.7

Place of Use for Water Rights 35-2122/7417 (based on POU for 7417)										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21		8.0	2.1						10.1
03S 33E	22	1.2	30.9	4.6		2.9		5.0	1.1	45.7
										55.8

Place of Use Irrigated Under Water Right 7417 POU										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21									0.0
03S 33E	22		10.9	0.1		0.5			1.1	12.6
										12.6

Place of Use leasable under Water Right 7417 POU										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21		8.0	2.1						10.1
03S 33E	22	1.2	20.0	4.5		2.4		5.0		33.1
										43.2

Differences between IWC's acreages following the recent splits										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21									0.0
03S 33E	22	-0.1	0.2	3.2		-0.8			-2.5	0.0
										0.0

Differences between irrigation authorized and possible in 2020										
T & R	Section	NE				NW				Sub Totals
		NE	NW	SW	SE	NE	NW	SW	SE	
03S 33E	21									0.0
03S 33E	22								2.5	2.5
										2.5

**Figure 2. Specific acreage held by the Idaho Water Company & the City of Heyburn**