STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

# WATER SUPPLY BANK LEASE CONTRACT No. 1040

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

**LESSOR:** BARRY J PETERSON
1111 POPLAR DR
MOUNTAIN HOME, ID 83647

SUPPORT DATA
IN FILE # 61-12145

RECEIVED
FEB 24 2020
DEPARTMENT OF
WATER RESOURCES

## RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.

2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources and received by the Department on July 03, 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) |
|---|---|---|---|---|---|
| 61-12145 | 4/1/1961 | GROUND WATER | 0.23 | 68.0 | 17.0 |
| 61-12310 | 3/24/1970 | GROUND WATER | 0.26 | 70.0 | 15.5 |
| **Combined Lease Totals** | | | **0.49** | **138** | **32.5** |

**Summary of Water Rights Elements Rentable From the Bank**

| Water Right | Diversion Rate (CFS) | Diversion Volume (AF) | Acres (Limited) (AC) | Rate Per Acre (CFS/AC) | Volume Per Acre (AF/AC) |
|---|---|---|---|---|---|
| 61-12145 | 0.23 | 68.0 | 17.0 | 0.01 | 4.0 |
| 61-12310 | 0.26 | 62.0 | 15.5 | 0.01 | 4.0 |
| **Combined Limit Totals** | **0.49** | **130** | **32.5** | **0.01** | **4.0** |

**** The water right elements rentable have been reduced from the water right elements leased to account for combined limits and the field headgate standard***

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

# WATER SUPPLY BANK LEASE CONTRACT No. 1040

3. **TERM OF LEASE**: The term of this lease shall be January 1, 2020 to December 31, 2024. This Lease shall bind the parties and take effect when both parties have signed it.

4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE**: The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.

5. **CHANGE OF WATER RIGHT:** This lease specifies water right elements including but not limited to: diversion rates; diversion volumes; number of acres authorized to be irrigated; places of use; points of diversion; beneficial uses; and seasons of use. During the term of this lease, if a water right is administratively changed due to a water right split and renumbering, this lease may be reduced by an equal amount to reflect the water right elements as legally defined under the water right. If a lease contract cannot be reduced sufficient to reflect the legal definition of a water right as amended through a water right split and/or water right transfer, the Board may release the water right from the Water Supply Bank.

6. **ASSIGNMENT OF CONTRACT:** This lease is between the Board and the Lessor, who is the recognized owner or designated representative of the recognized owners of water rights described herein. Should ownership of any part of a water right herein described change during the term of this lease, either through a water right split, a water right transfer, sale of property to which the water right is appurtenant, or through any other recognized water right reassignment, the lease benefits and obligations to the conditions of acceptance for any such water rights will be assigned to the new owners.

7. **DUPLICATE ORIGINAL**: This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

# WATER SUPPLY BANK LEASE CONTRACT No. 1040

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

**LESSOR:** BARRY J PETERSON
1111 POPLAR DR
MOUNTAIN HOME, ID 83647

By _____
Title _____
Date 2-21-2020

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

By _____ Date 03/05/20
Brian Patton, Acting Administrator
Idaho Water Resource Board

Lease approved by IDWR _____ Date 03/05/20

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

# WATER SUPPLY BANK LEASE CONTRACT No. 1040

## 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): 61-12145, 61-12310**

GROUND WATER SWNW Sec. 35 Twp 03S Rge 06E ELMORE County

| Water Right | Beneficial Use | Season of Use | | | Diversion Rate (CFS) | Volume (AF) |
|---|---|---|---|---|---|---|
| | | From | | To | | |
| 61-12145 | IRRIGATION | 03/15 | to | 11/15 | 0.23 cfs | 68.0 AF |
| 61-12310 | IRRIGATION | 04/01 | to | 10/31 | 0.26 cfs | 70.0 AF |
| | | | | **Totals:** | 0.49 cfs | 138 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 | 06E | 35 | | | 8.5 | | | | 5.0 | 19 | | | | | | | | | 32.5 |

Total Acres: 32.5

### 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.

# WATER SUPPLY BANK LEASE CONTRACT No. 1040

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. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.

13. The period of use for the irrigation described in this approval may be extended to a beginning date of 3/15 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/1 and after 10/31 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than October 26, 2000.

14. Right 61-12310 is limited to the irrigation of 15.5 acres within the authorized place of use in a single irrigation season.

15. Right 61-12145 is limited to the irrigation of 17 acres within the place of use described above in a single irrigation season.

16. Pursuant to Idaho Code § 42-1412(6), 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.

17. 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 lands above.

18. 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. 161.

## Idaho Water Resource Board

# Water Supply Bank Lease Contract No. 1040

61-12145 & 61-12310

Effective until December 31, 2024

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

N

Feet

0 400 800

Form 42-1761-1 10/15

**STATE OF IDAHO**
**WATER RESOURCE BOARD**

RECEIVED
JUL 03 2019
DEPARTMENT OF WATER RESOURCES

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

**Designated Applicant** Barry J Peterson
(Select one owner – see item 1A on the application)

**Water Right No.** 61-12310
(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.**

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

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

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

**Department Use Only**

| | | | |
|---|---|---|---|
| Fee Amount $ 250.00 | Received By: S. Shaul | Date Received: 7/3/19 | Receipt # C107138 |
| W-9 received? Yes ☒ No ☐ | (Route W-9 to Fiscal) | Name on W-9: Barry J. Peterson | |

1444

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 Barry J Peterson

Mailing Address 1111 Poplar Dr Mtn Home, Id 83647
Street City State Zip Code

Email Address little petersonranch@msn.com Phone Number 208 954 3717

☑ 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.

well & and underground pipe

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. 61-12145, 61-12147 & 61-12310 all to the water supply bank are assigned to the same well

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

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

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

**If yes**, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased.

F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. in water supply bank 61-12145 & 61,12147
Transfer of 61-12310 in 2016 to POU to be idled

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: 2020 (Year) to 2024 (Year) (maximum lease period 5 calendar years).

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

current rental rate

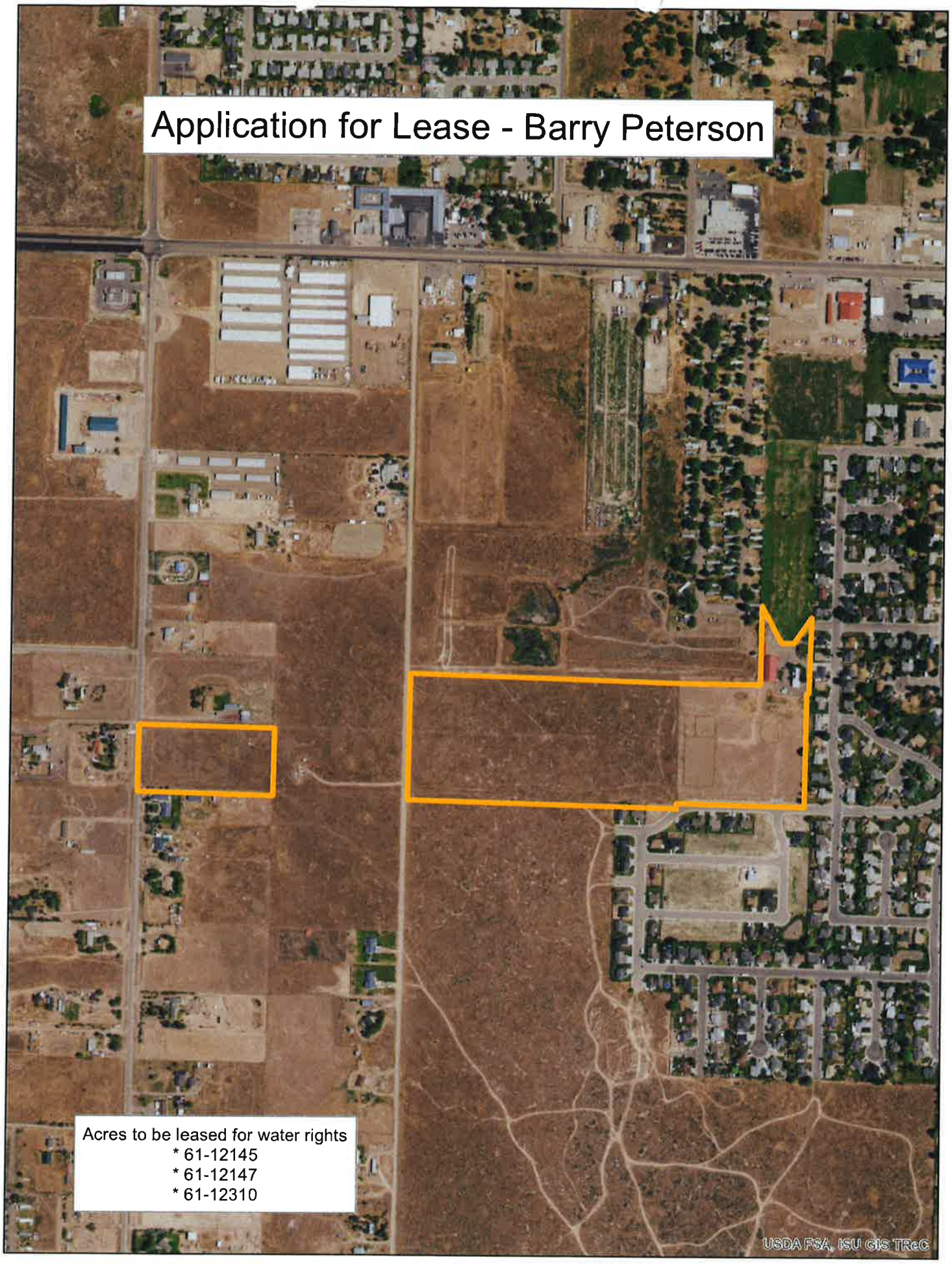
**I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this water right for sale or lease to the Idaho Water Resource Board.**

The Designated Applicant acknowledges the following:

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

| | | |
|---|---|---|
| Barry Peterson | Barry Peterson | 7-3-19 |
| Signature of Designated Applicant | Printed Name | Date |
| | | |
| Signature of Authorized Representative | Printed Name | Date |

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


Application for Lease - Barry Peterson
Acres to be leased for water rights
* 61-12145
* 61-12147
* 61-12310
USDA FSA, ISU GIS TReC

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

March 6, 2020

BARRY J PETERSON
1111 POPLAR DR
MOUNTAIN HOME, ID 83647

**RE: WATER SUPPLY BANK LEASE CONTRACT 1040**
**FOR WATER RIGHTS 61-12145, 61-12310**

Dear Lessor:

Water rights **61-12145, 61-12310** 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, 2024,** unless the rights are released earlier by the Water Resource Board (Board). On behalf of the Board, the Department of Water Resources (Department) can evaluate an early release of the lease contract upon your request. To release the water rights from the Bank prior to the release date, submit a written request on the *Request to Release a Water Right from the Bank* form. This form is available on our public website at www.idwr.idaho.gov. **Please note your water rights may not be available for immediate release if they have been rented or are being considered for a future rental. Furthermore, it is at the discretion of the Department whether or not a water right can be released early from a lease contract.**

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

Sincerely,

Meredith Vabell

for Water Supply Bank

Enclosure: Executed Lease Contract

c: Nick Miller - IDWR Western Region

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700
Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

February 19, 2020

BARRY J PETERSON
1111 POPLAR DR
MOUNTAIN HOME, ID 83647

**RE: APPLICATION TO LEASE WATER RIGHT 61-12145, 61-12310 TO THE WATER SUPPLY BANK**

**CONTRACT 1040**

******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, 2024,** unless the right is released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. To propose a new lease period, submit a new Application to Sell or Lease a Water Right to the Water Supply Bank form along with applicable fees to the Department. These forms are available from any IDWR office or from our public website at http://www.idwr.idaho.gov. Please note your right may not be available for immediate release if it has been rented.

Please review the conditions of acceptance listed on the Lease Contract, including #3 which says:

> "While a right is in the bank, **the lessor may not use the right** without approval of the department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B."

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

Sincerely,

Amanda Weibell

Water Supply Bank

Enclosures: Proposed Lease Contracts
Receipt # C107138

## Ferguson, Justin

**From:** Ferguson, Justin
**Sent:** Tuesday, January 7, 2020 12:50 PM
**To:** Miller, Nick
**Subject:** WSB Lease Contract - Barry Peterson & The John & Ann Wind Trust
**Attachments:** Draft Lease Contract John and Ann Wind Trust 61-12084.docx; John and Ann Wind Trust 61-12084.pdf; Lease Review Memo.docx; Peterson 61-12145, 61-12147, 61-12310.pdf; Draft Lease Contract Peterson 61-12145, 61-12147, 61-12310.docx; Lease Review Memo.docx

Afternoon!

Attached are the draft lease contract, map, and review memo for Barry Peterson and The John & Ann Wind Trust. Please let me know if you have any comments or concerns

Thank you!