

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1027

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

LESSOR: SHAWN J WALTERS
PO BOX 156
NEWDALE, ID 83436

RECEIVED
OCT 07 2019
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 August 14, 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)
22-4046	4/1/1962	GROUND WATER	2.77	485.7	138.8
Combined Lease Totals			2.77	485.7	138.8

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, 2019. 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.

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DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1027

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

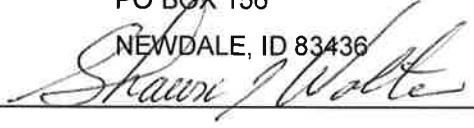
WATER SUPPLY BANK LEASE CONTRACT No. 1027

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

LESSOR: SHAWN J WALTERS

PO BOX 156

NEWDALE, ID 83436

By 

Title _____

Date 9-30-2019

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 10/7/2019

Lease approved by IDWR 

Date 10-7-2019

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1027

**ATTACHMENT A
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE**

The water rights or portions thereof leased to the bank are described as follows:

Source and Location of Point(s) of Diversion for Water Right No(s): 22-4046

GROUND WATER	SWSW	Sec. 20	Twp 07N	Rge 41E	FREMONT County
GROUND WATER	SWSE	Sec. 20	Twp 07N	Rge 41E	FREMONT County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
22-4046	IRRIGATION	04/01	to	10/31	2.77 cfs	485.7 AF
Totals:					2.77 cfs	485.7 AF

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N	41E	20											33.0	33.0	10.8		31.0	31.0	138.8

Total Acres: 138.8

ADDITIONAL CONDITIONS OF ACCEPTANCE

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

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1027

9. In accordance with Idaho Code § 42-248 and § 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.
10. If a water right leased into the Water Supply Bank is sold or conveyed during the lease term, and if the leased right was rented, the rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:
 - a. Rental payments will go to the lessor(s) of record at the beginning of the rental season, even if the Department processes a Notice of Change in Water Right Ownership during the rental season.
 - b. New lessor(s) of record will receive payment for any subsequent rental seasons.
11. The water right(s) is leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.
12. Use of this right is combined with water from Southeast Idaho Canal Co. and Wilford Irrigation & Mfg. Co.
13. The extent of this water right not considered a primary ground water right is considered supplemental to surface water use within the Southeast Idaho Canal Co. and Wilford Irrigation & Mfg. Co.

Idaho Water Resource Board
Water Supply Bank Lease Contract No. 1027

22-4046

Effective until December 31, 2019

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.



USDA FSA ISU GIS TRC
07N41E20SENE 07N41E20SWNW

-  Approved Lease Point of Diversion
-  Approved Lease Place of Use
-  Township/Range
-  Sections
-  QQ



0 1,000 2,000 Feet

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

AUG 14 2019

DEPARTMENT OF
WATER RESOURCES

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

Designated Applicant Shawn Walters

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

Water Right No. 22-4046

(One water right per application)

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

Yes ☐ No ☒

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

MINIMUM REQUIREMENT CHECKLIST

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

Yes

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

Attachment N/A Yes

- | | | | |
|----|-------------------------------------|-------------------------------------|--|
| 1A | ☐ | ☒ | Signatures and contact information for <i>all owners</i> of the water right to be leased or sold on this application. |
| 1B | ☐ | ☒ | An <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant. |
| 1C | ☒ | ☐ | <i>Notice of Change in Water Right Ownership</i> 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 <u>Section 42-222(2), Idaho Code</u> . |

Department Use Only

Fee Amount \$ <u>500</u>	Received By: <u>[Signature]</u>	Date Received: <u>8/14/19</u>	Receipt # <u>C107337</u>
W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)		Name on W-9: <u>Shawn Walters</u>	

1454

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 Shawn Walters

Mailing Address PO Box 156 Newdale ID 83436
Street City State Zip Code

Email Address _____ Phone Number (208) 458-4656

☐ 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 Kristin Moore Organization Rocky Mountain Environmental Assoc. Inc

Professional Title Senior Water Right Analyst Email Address kristin.rmea@gmail.com

Mailing Address 482 Constitution Way, Ste 303, Idaho Falls, ID 83402 Phone Number 208-524-2353

☐ 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 diverted from the well and pumped into open ditches or pipelines, depending on the acreage irrigated.

- 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. Water from Wilford Irrigation & Mfg. Co. and Southeast Idaho Canal Co. is now used on this property for irrigation. The ground water right 22-4046 is a primary water right, and was always used as a primary water right until water delivery improved enough to deliver canal water to all of the property.

- 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. Yes, shares of canal water will be delivered through the Wilford Canal or Fall River Canal.

- F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. The full proportionate share of the water right was used on these acres in 2016 and earlier.

- 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 2023 ^{2019 SJW} (maximum lease period 5 calendar years).
(Year) (Year)

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

Current Rental Rate _____

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

The Designated Applicant acknowledges the following:

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

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

ATTACHMENT 1A

Additional Water Right Holders Party to the Lease Application

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

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

Water Right No(s). 22-4046

	Designated Applicant	Applicant #2	Applicant #3
Name	Shawn Walters	Mona Walters	Patrice Walters
Mailing Address	PO Box 156 Newdale, ID 83436	~~PO Box 156~~ 1250 S. 2 nd E Newdale, ID 83436 Rexburg, ID 83440	PO Box 156 Newdale, ID 83436
Phone Number	208-458-4656	~~208-458-4656~~ 757-3336	208-458-4656
Email Address			
Applicant Declaration	As Designated Applicant, I submit this lease application on behalf of all other water right holders.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature		<i>Mona Walters</i>	<i>Patrice Walters</i>

	Applicant #4	Applicant #5	Applicant #6
Name	W Jeffrey Walters		
Mailing Address	~~PO Box 156~~ 1250 S. 2 nd E Newdale, ID 83436 Rexburg, ID 83440		
Phone Number	~~208-458-4656~~ 390-8851		
Email Address	<i>Jeffreyw@cableone.net</i>		
Applicant Declaration	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature	<i>W Jeffrey Walters</i>		

TO: IDAHO DEPARTMENT OF WATER RESOURCES

FROM: SHAWN WALTERS

RE: Authorized Representatives

Rocky Mountain Environmental Associates, Inc.
482 Constitution Way 303
Idaho Falls, ID 83402
(208) 524-2353 / (208) 524-1795 Fax

The following are designated representative of Rocky Mountain Environmental Associates, Inc.:

John R. Rice, Jr. _____ President

W. Roger Warner _____ Vice-President

Kristin M. Moore _____ Senior Water Rights Analyst _____ (PRIMARY CONTACT)

This authorizes these individuals to act as Representatives on behalf of Shawn Walters, Patrice Walters, W Jeffrey Walters, and Mona Walters. These representatives may submit information for the Walters, but are not authorized to sign on their behalf. This designation is only for the Water Banking of the following water rights or any subsequent splits of the rights for years 2019-2023: **22-4046 and 22-14206**

Shawn J. Walters
Signature

Shawn J. Walters
Printed Name

7-23-19
Date

W. Jeffrey Walters
Signature

W. Jeffrey Walters
Printed Name

7-24-19
Date

Mona Walters
Signature

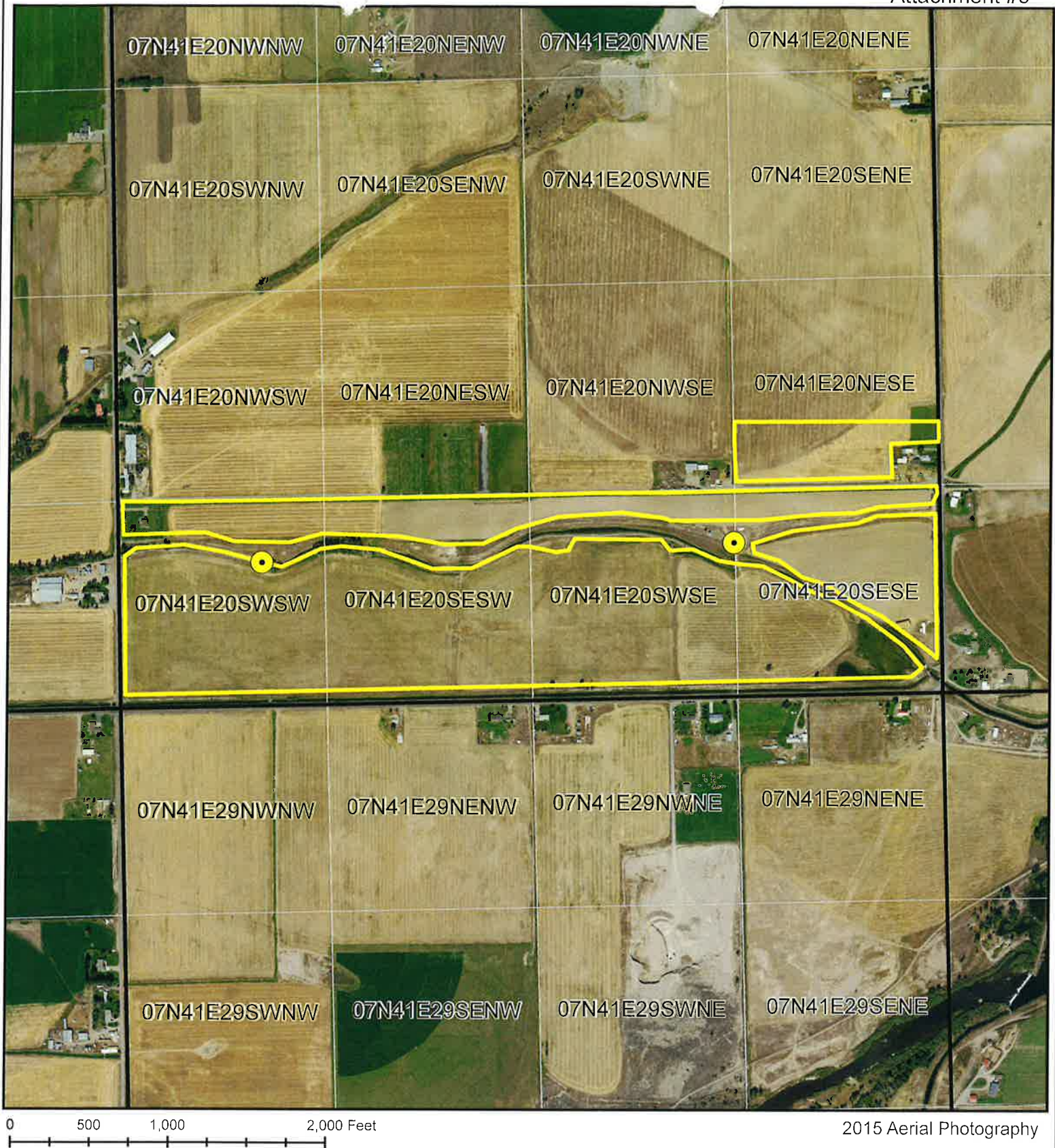
Mona Walters
Printed Name

7-24-19
Date

Patrice Walters
Signature

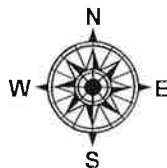
Patrice Walters
Printed Name

7-29-19
Date



Legend

-  Point of Diversion
-  WR POU 22-4046
-  Twp & Rng
-  Section
-  QQ



WSB Lease Application Water Right No. 22-4046 *Shawn Walters*

RMEA #12-0065

by: KM

Date: 7/23/2019





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

October 8, 2019

SHAWN J WALTERS
PO BOX 156
NEWDALE ID 83436

**RE: WATER SUPPLY BANK LEASE CONTRACT 1027
FOR WATER RIGHT 22-4046**

Dear Lessor:

Water right **22-4046** was leased into the Water Supply Bank (Bank) as of August 14, 2019, in accordance with the enclosed executed lease contract. **Your water right, as described on the lease contract, is considered leased into the Bank and should remain unused until it is formally released from the Bank.** More information and further restrictions placed on your water right while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The right will automatically be released from the Bank on **December 31, 2019**, unless the right is 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 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. This form is available on our public website at www.idwr.idaho.gov. **Please note your water right may not be available for immediate release if it has been rented or is 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 287-4800.

Sincerely,

Water Supply Bank

Enclosure: Executed Lease Contract

c: James Cefalo - IDWR Eastern Region
Tony Olenichak - Water District 01
Blake Jordan - Water District 100
Henry's Fork GWD
Kristin Moore - Rocky Mountain Environmental



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 25, 2019

SHAWN J WALTERS
PO BOX 156
NEWDALE ID 83436

RE: APPLICATION TO LEASE WATER RIGHT 22-4046 TO THE WATER SUPPLY BANK
CONTRACT 1027

****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, 2019**, 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 287-4800.

Sincerely,


Water Supply Bank

Enclosures: Proposed Lease Contracts
Receipt # C107387

c. Kristin Moore – Rocky Mountain Environmental

MEMORANDUM

To: Water Right No(s). 22-4046

From: Justin Ferguson

Date: August 16, 2019

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

PURPOSE/NARRATIVE: The application was received on August 14, 2019 to place the entirety of water right number 22-4046 into the bank for 2019 only. The rights were previously in the bank, for 2017 under Shawn Walters and 2016 under the previous owner, Dale Daw. The groundwater use was initially in response to the Teton Dam flood and which destroyed the surface water canal systems in the area; groundwater was the primary water source until recently and surface water systems are now rebuilt.

AUTHORITY TO FILE: The application was submitted on behalf of Mr. Walters by Kristin Moore of Rocky Mountain Environmental Association as the authorized representative. While Mr. Walters does not own the land appurtenant to the water right, he is the owner of the water rights. A warranty deed from 2015 indicates that Mr. Daw sold only the water rights to the Walters family, making it explicitly known that no land was pursuant to the deed. No concerns at this time.

WATER RIGHT VALIDITY: This right was decreed in 2012 for 355.5 acres and 1244 acre-feet/year. A split in 2016 decreased the right to 138.8 acres and 485.7 acre-feet, of which 101 acres was lease to the bank in 2016 and 116 acres again in 2017.

Year	Action
2012	Decreed
2013	Minimal ground water use (47.5AF)
2014	Surface water becomes sole/primary water source
2016	Partial lease protecting 101 acres
2017	Partial lease protecting 116 acres
2018	Final year to protect full right as primary ground water right
2019	Lease proposal to put the extent into the bank

The applicant wishes to lease into the bank the entire right, again for a single year. The portions leased to the bank in 2016 and 2017 are illustrated below:



Place of use leased to the bank for 2016

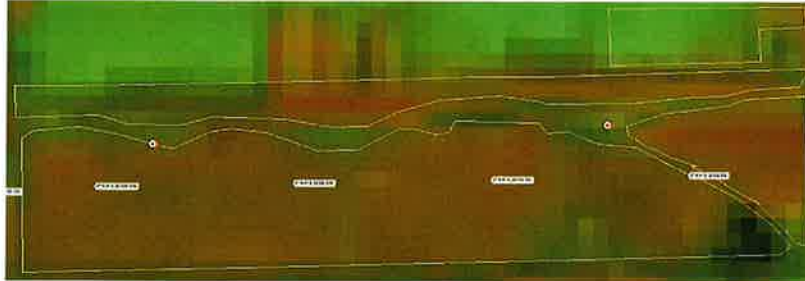


Place of use leased to the bank for 2017



Full place of use for right no. 22-4046

Through the review of Sentinel imagery below, we can see that irrigation has occurred on the acres appurtenant to the water right. Review of WMIS data indicates that the two points of diversion for the groundwater have not been used since approximately 2013 although only 47.5 AF appears to have been diverted, indicating that any irrigation in the area would have come from surface water.



June 3, 2014



July 21, 2014



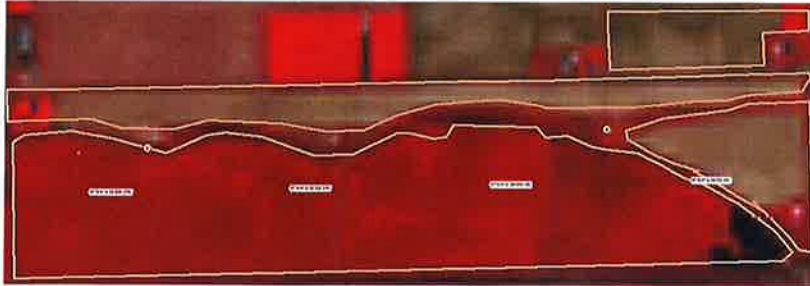
June 6, 2015



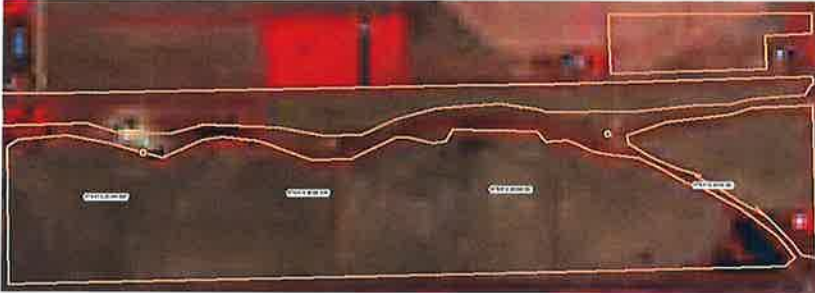
July 24, 2015



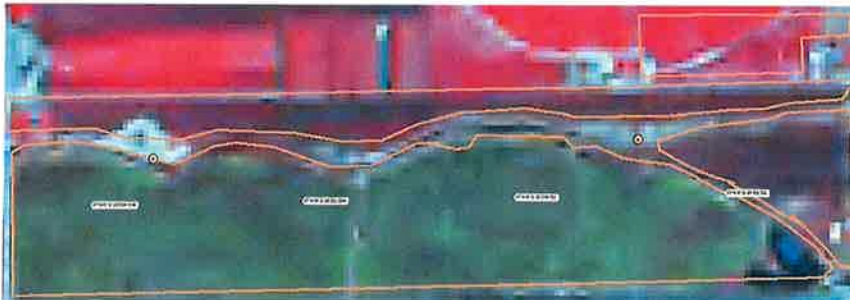
June 25, 2016



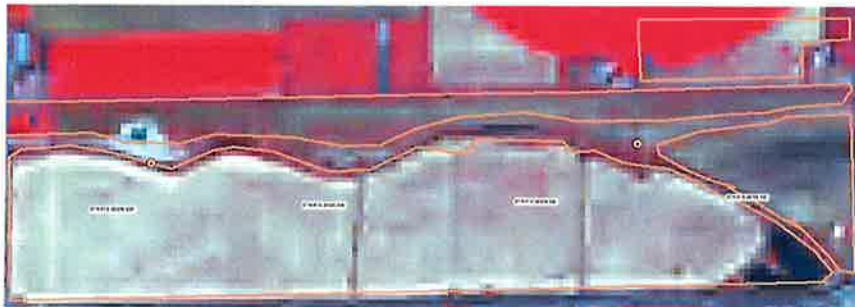
May 5 2017



October 18 2017



July 20, 2018



August 14, 2018

Taking into account IC 42-222, we find that "[rights]...shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated". When read replacing "it" with "water" we find that the right may not be subject to forfeiture if "water" has been applied for the purpose for which the "water" was appropriated. In this case, the land owner has chosen to use their canal shares to irrigate the acres and thus, has achieved beneficial use.

The remaining balance of the acreage then is found to either be stacked as a supplemental groundwater right to the surface water or partially forfeited through non-use.

However, we must consider whether the actions of a third party can be a defense against forfeiture. Should the land owner have chosen not to irrigate the area with their shares of the canal water, we would in fact be able to find that forfeiture of the unprotected acres had occurred through non-use. Idaho codes 42-222 and 42-223 do not contain language differentiating the beneficial use to have to come from the right holder, only that the water has to be used for its intended purpose on the authorized acreage.

At this time, through the above interpretation, we can find that, in this situation the right remains valid because the actions taken by the land owner. Water was applied for the appropriated purpose for the place of use accomplishing beneficial use.

INJURY TO OTHER WATER RIGHTS: No injury is apparent through the lease alone as the purpose is to discontinue the use of water for the place of use. Should the right be rented or transferred, the consumptive use of the acres not protected by the bank in 2016 and 2017 should be evaluated. Because the groundwater was not used for the irrigation of the acreage we can infer that the consumptive use rentable would be negligible if rented outside the irrigation district as a primary groundwater right.

ENLARGEMENT OF USE: No enlargement is evident through the lease alone as the entire right is being accepted to the bank. Should there be a rental or transfer request we must determine the extent to which water is available. Since the acres not protected by the bank in past years appear to have become supplemental to the surface water, conditions will be added to address the extent rentable as a primary right while also addressing the extent rentable within the irrigation district as supplemental to surface water.

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

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

DEPARTMENT STAFF OR WATERMASTER COMMENTS: Watermaster and regional comments will be requested.