STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 821

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

RECEIVED
AUG 24 2018
DEPARTMENT OF
WATER RESOURCES

LESSOR: CITY OF TETONIA
PO BOX 57
TETONIA, ID 83452

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 12, 2018.

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)
22-11579	6/1/1896	SPRING CREEK, tributary to TETON RIVER	1.500	Not Stated	75.0
22-13536	1/22/1916	SPRING CREEK, tributary to TETON RIVER	2.500	Not Stated	125.0
Combined Limit Totals			**4.000**	**Not Stated**	**125.0**
Combined Lease Totals			**4.000**	**Not Stated**	**125.0**

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, 2018 to December 31, 2022. 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.

WATER SUPPLY BANK LEASE CONTRACT No. 821

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. 821

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

LESSOR: CITY OF TETONIA
PO BOX 57
TETONIA, ID 83452

By Gloria Hooper
Title Mayor
Date 8-22-18

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

By _____ Date 8/31/2018
Brian Patton, Acting Administrator
Idaho Water Resource Board

Lease approved by IDWR _____ Date 8-31-2018

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 821

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): 22-13536, 22-11579

SPRING CREEK NWSWNE Sec. 33 Twp 06N Rge 45E TETON County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
22-13536	IRRIGATION	04/15	to	10/31	2.500 cfs	437.5 AF
22-11579	IRRIGATION	04/15	to	10/31	1.500 cfs	262.5 AF
				Totals:	4.000 cfs	437.5 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	
06N	45E	28										29.0	23.0						52.0
06N	45E	29													37.0			36.0	73.0

Total Acres: 125.0

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 <u>not</u> 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.

WATER SUPPLY BANK LEASE CONTRACT No. 821

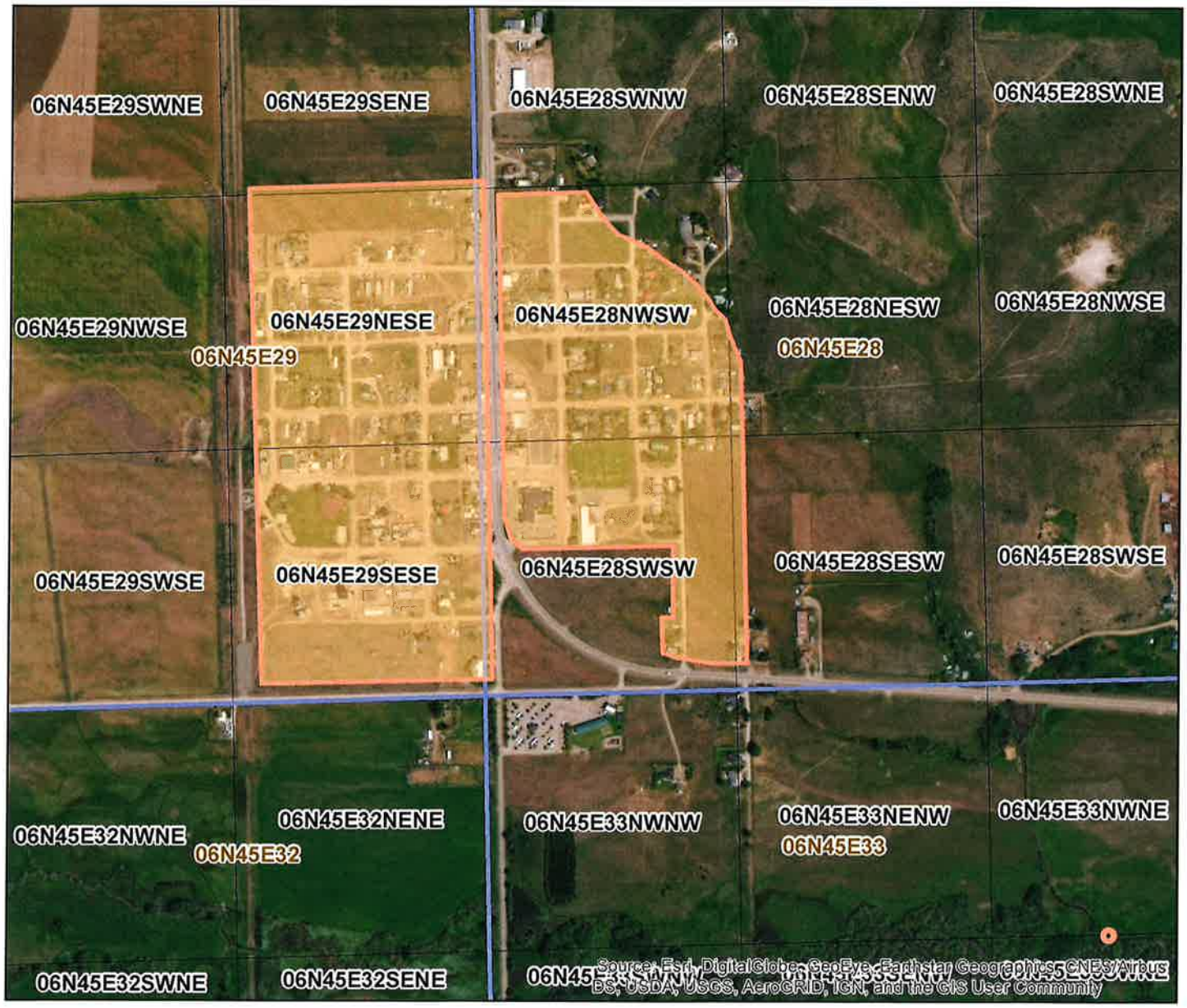
8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other 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 partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
13. Water is delivered through the Tetonia Canal.
14. Water right 22-11579 and right 22-13536 are limited to the irrigation of a combined total of 125 acres in a single irrigation season.
15. Water right 22-11579 and right 22-13536 are subject to regulation by the Watermaster of Water District 01.

Idaho Water Resource Board

Water Supply Bank Lease Contract No. 821

22-11579 & 22-13536
Effective until December 31, 2022

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 Place of Use
Townships
PLS Sections
Quarter Quarters

N

Feet
0 250 500

Form 42-1761-1 10/15

RECEIVED
JUL 11 2018
DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO
WATER RESOURCE BOARD

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

Designated Applicant City of Tetonia
(Select one owner – see item 1A on the application)

Water Right No. 22-11579
(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	Received By: AV	Date Received: 07/11/18	Receipt # C105354
W-9 received? Yes ☑ No ☐	(Route W-9 to Fiscal)	Name on W-9: City of Tetonia	

1122

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 City of Tetonia

Mailing Address PO Box 57, Tetonia, ID 83452
Street City State Zip Code

Email Address _____ Phone Number 208-459-2249

☑ 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 Gloria Hoopes Organization City

Professional Title Mayor Email Address tetoniagov@silverstar.com

Mailing Address P.O. Box 57, Tetonia, Id. 83452 Phone Number 208-456-2249

☐ 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.
The diversion consists of a headgate structure, with two gates, located off of Spring Creek at the point of diversion described below.

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 Right 22-13536 is also used to irrigate appurtenant to the place of use associated with Water Right 22-11579. Water Right 22-13536 is also being leased into the Idaho Water Supply Bank.

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. The water right has been enrolled in the Idaho Water Supply Bank for the past 5 years.

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. As discussed above, the water right has been enrolled in the Idaho Water Supply Bank for the past five years. During that time, no water has been diverted or applied to the designated place of use. However, enrollment in the Idaho Water Supply Bank is a statutory exception to forfeiture, in accordance with Idaho Code 42-223(5).

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: 2018 (Year) to 2022 (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.
This water right is part of a lease/rental package, it is to be rented to IWRB to support flow restoration in Spring Creek and Teton River. The water right is a donation, so the standard rental rate fee of $2.00/AF shall apply.

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
Gloria Hoopes	GLORIA Hoopes	6-14-18
Signature of Authorized Representative	Printed Name	Date

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

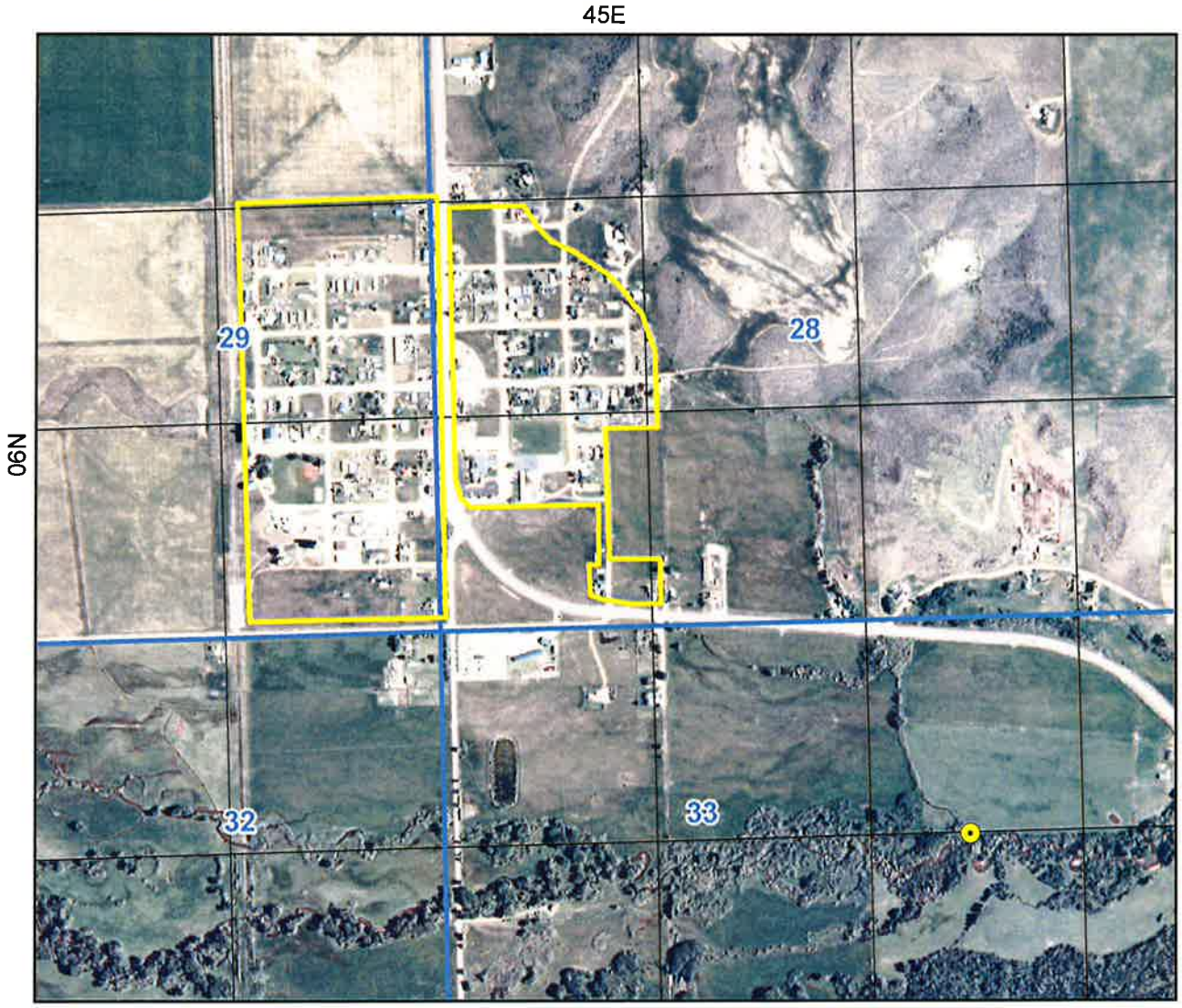
Attachment 3

State of Idaho
Department of Water Resources

Water Right
22-11579

IRRIGATION

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



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

0 0.125 0.25 0.5 Miles

N

Map produced on May 08, 2018

ATTACHMENT 4A

Tetonia Canal Company, Limited
PO Box 11
Tetonia, Idaho 83452

June 14, 2018

Idaho Water Resource Board
322 East Front Street
PO Box 83720
Boise, Idaho 83720-0098

Letter of Consent

To Whom It May Concern:

The Tetonia Canal Company, Limited is a registered entity within the State of Idaho.

The City of Tetonia, Mitchell Smaellie, Richard Lavere Beard, and Ella Beard own certain water rights, more particularly described below, which have historically been delivered by the Tetonia Canal Company, Limited, through a common ditch system. The aforementioned water users wish to lease the water rights owned by them into the Water Supply Bank for a term of five (5) years.

The delivery of other water rights historically delivered by the Tetonia Canal Company, Limited, specifically those water rights owned by Delvan & Julia Hibbert, R.K. & Ardell Smellie, and the Lorna Fullmer Family Trust, will continue as set forth in their respective water rights and in accordance with applicable law.

The Tetonia Canal Company, Limited hereby authorizes and provides written consent for the aforementioned water users to lease those water rights described below into the Idaho Water Supply Bank.

<u>Description of Water Rights to be Leased in to the Water Supply Bank</u>

Water Right Number: 22-11579
- Owner: City of Tetonia
- Quantity: 1.50 cfs
- Priority: 06/01/1896

Water Right Number: 22-13536
- Owner: City of Tetonia
- Quantity: 2.50 cfs
- Priority: 01/22/1916

Water Right Number: 22-00380B
- Owner: Mitchell Smaellie
- Quantity: 0.07 cfs
- Priority: 06/01/1896

Water Right Number: 22-00380C
- Owner: Richard Lavere Beard
- Quantity: 0.11 cfs
- Priority: 06/01/1896

Water Right Number: 22-11993
- Owner: Ella Beard
- Quantity: 0.17 cfs
- Priority: 01/22/1916

Sincerely,

LaVere Beard

Lavere Beard
Director/Secretary, Tetonia Canal Company, Limited

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 31, 2018

CITY OF TETONIA
PO BOX 57
TETONIA ID 83452

RE: WATER SUPPLY BANK LEASE CONTRACT FOR WATER RIGHTS 22-11579 and 22-13536

Dear Lessor:

Water rights **22-11579 and 22-13536** were leased into the Water Supply Bank (Bank) as of July 12, 2018, 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, 2022,** 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 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 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 287-4800.

Sincerely,

Debbie Dudd

for Water Supply Bank

Enclosure: Executed Lease Contract

c: James Cefalo - IDWR Eastern Region
Lyle Swank – Water District 01
Sarah Lien – Friends of the Teton River

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 10, 2018

CITY OF TETONIA
PO BOX 57
TETONIA ID 83452

RE: APPLICATIONS TO LEASE WATER RIGHTS 22-11579 and 22-13536 TO THE WATER SUPPLY BANK

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

Dear Applicant:

The Department of Water Resources has completed its review of your applications to lease the above-mentioned water rights 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 rights will automatically be released from the Bank on **December 31, 2022,** unless the rights are released earlier by the Board, or upon your request. To release the 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. 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 rights may not be available for immediate release if they have 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,

Debbi Gudd
for Water Supply Bank

Enclosures: Proposed Lease Contracts
Receipt # C105354

C. Sarah Lien – Friends of the Teton River

Memorandum

To: Water Rights 22-380B, 22-380C, 22-11579, 22-11993, 22-13536

From: Remington Buyer

Date: August 2, 2018

Re: Water Supply Bank Lease Applications 1119, 1120, 1121 and 1124

Purpose/Narrative: The above listed water rights have been proposed for lease to the Water Supply Bank (Bank), as part of a five year, Idaho Water Resource Board (IWRB; Board) supported water transaction in partnership with the Friends of the Teton River (FTTR) organization, which aims to increase flows in Spring Creek (a tributary of the Teton River), to aid in the recovery of Yellowstone cutthroat trout. According to information provided with the lease application, low flow conditions in Spring Creek occasionally prevent juvenile Yellowstone cutthroat trout from out-migrating to the Teton River in the fall, and fish-rearing habitat is compromised by elevated stream temperatures.

To address fish habitat and fish propagation concerns, it is proposed that the above listed water rights be leased into the Bank and then rented out to satisfy the IWRB minimum stream flow water right 22-7369. This review is specific to the lease of the water rights, not the rental. Although the above listed water rights are held by different entities and are not "stacked" together, they are diverted from a common source, conveyed via a common canal system and used for a common purpose. As such, a single lease review memo can and is being completed for all five water rights. A separate review memo will be provided for the IWRB minimum stream flow rental request (WSB Applications 1120, 1125, 1126 and 1127).

Authority to File: The following are the listed owners, as recorded by IDWR on today's date:

Water Right	Owner	Water Right	Owner	Water Right	Owner
22-380B	Mitchell Smaellie	22-11579	City of Tetonia	22-11993	Ella K Beard
22-380C	Richard Lavere Beard	22-13536	City of Tetonia		

Ella Beard is the widow of Richard Samuel Beard, who passed away in 2013. Teton County Assessor Office records still list Sam Beard as the owner of land to which water right 22-11993 is appurtenant, however IDWR water right ownership records have been updated to reflect Ella as the sole owner of water right 22-11993. No concerns about authority to file for water right 22-11993.

The City of Tetonia is the IDWR owner of record for water rights 22-11579 and 22-13536. These water rights collectively authorize irrigation of up to 125 acres on lands within the municipal boundaries of the City of Tetonia. Although the City does not own the individual parcels within the city limits that are authorized to be irrigated with Spring Creek water rights 22-11579 and 22-13536, the city claimed these water rights in the Snake River Basin Adjudication (SRBA) and the SRBA court decreed sole ownership of these water rights to the city. No concerns about the city's authority to file for lease of these water rights.

The SRBA court also decreed water rights 22-380B and 22-380C to Mitchell Smaellie and Richard Lavere, respectively. Richard is the recognized owner of land to which water right 22-380C is appurtenant. No concerns about his authority to file for water right 22-380C. Teton County Assessor Office records indicate that the land to which water right 22-380B is appurtenant is owned by Robert Foster. FTTR Water Resources Director Sarah Lien has provided a copy of a Warranty Deed (see below) between Mitchell

Smaellie and Robert Foster, dated 9/23/2005, in which Mr. Smaellie apparently conveyed to Mr. Foster and his wife, Lisa Foster, a 50% interest in the place of use property for water right 22-380B. No water right ownership change records have been recorded with IDWR for water right 22-380B and it is therefore presumed that Mr. Smaellie is still a 50% owner of the land to which water right 22-380B is appurtenant. Moreover, like the City of Tetonia, the SRBA court decreed sole ownership of water right 22-380B to Mitchell Smaellie. No concerns about Mr. Smaellie's authority to file for a lease of water right 22-380B.

Water Right Validity/Forfeiture Evaluation: All five of the above listed water rights were decreed by the SRBA court on November 24, 2008 and then leased to the Water Supply Bank from 2013 through 2017. Five years did not elapse between the time of decree and the time of original lease to the Bank, and the water rights are now again proposed for lease. No concerns about water right validity or forfeiture.

Injury Evaluation: The non-use of irrigation water at the respective places of use for the above listed five water rights should not cause injury to any prior-appropriated water right and a letter from the Tetonia Canal Company has been provided to affirm no hold back is being requested to account for conveyance losses in the canal system. No injury is apparent through a lease of these water rights to the Bank.

Enlargement of Use: Enlargement in water use should not occur through a lease of these water rights. Proper review of rentals associated with the lease of these water rights should guard against enlargement.

Local Public Interest: There appears to be local public interest in leasing these water rights to the Bank to support the regional Yellowstone cutthroat trout fishery and staff are not aware of any local public interests counter to the lease of these water rights to the Bank.

Beneficial Use/Conservation of Water Resources: The lease of water should not negatively impact other beneficial uses of water or water resource conservation practices.

Department/Watermaster Comments: Water District 1 and IDWR Eastern Regional office comments were received with the initial lease of these water rights in 2013 and staff will follow up for additional comments for these 2018-2022 water right leases.

Water Supply Bank Evaluation: Subject to comments from Water District 1 and IDWR Eastern Region Office, it is recommended that these water rights be leased to the Bank.

RECEIVED
SEP 3 0 2005
TETON CO., ID
CLERK RECORDER

171404

WARRANTY DEED

Order No.:3050513887-T

Instrument # 171404
DRIGGS, TETON, IDAHO
2005-09-30 04:15:03 No. of Pages: 1
Recorded for : ALLIANCE TITLE & ESCROW
NOLAN G. BOYLE Fee: 3.00
Ex-Officio Recorder Deputy
Index to: DEED WARRANTY

FOR VALUE RECEIVED

Mitchell J. Smaellie, an unmarried person

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Robert E. Foster and Lisa L. Foster, Husband and Wife, as to an undivided 50% interest; Mitchell J. Smaellie, an unmarried person, as to an undivided 50% interest

whose current address is PO Box 401, Driggs ID 83422 LF

the grantee(s), the following described premises, in Teton County, Idaho, TO WIT:

Beginning 40 feet North and 40 feet East of the Southwest corner of the SW ¼ of Section 28, Township 6 North, Range 45 East, Boise Meridian, and running thence East 574 feet, thence in a Northwesterly direction 840 feet, more or less, to a point 574 feet North of the point of beginning, thence South 574 feet to the point of beginning.

Less: That portion of the above described property Deeded to the State of Idaho, Idaho Transportation Board for Division of Highways, recorded January 27, 1989, as Instrument No. 103787.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: 9/23/2005

Mitchell J. Smaellie

State of Idaho }
County of Teton } ss

On this 23 day of Sept, in the year 2005 before me, a Notary Public in and for said state, personally appeared Mitchell J. Smaellie known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public for the State of Idaho
Residing at: Driggs
Commission Expires: 11/19/05

CARLA C. JONES
NOTARY PUBLIC
STATE OF IDAHO
MY COMMISSION EXPIRES NOV. 19, 2005

NOT A LEGAL COPY