

WATER SUPPLY BANK LEASE CONTRACT No. 704

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

LESSOR: HABITAT HOLDINGS LLC
2164 S FOX GLEN WAY
EAGLE, ID 83616

RECEIVED

JAN 16 2018

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 December 20, 2017.
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)
77-4207	7/12/1922	KNAPP CREEK, tributary to MARSH CREEK	7.45	477.0	NA
Combined Lease Totals			7.45	477.0	159.0

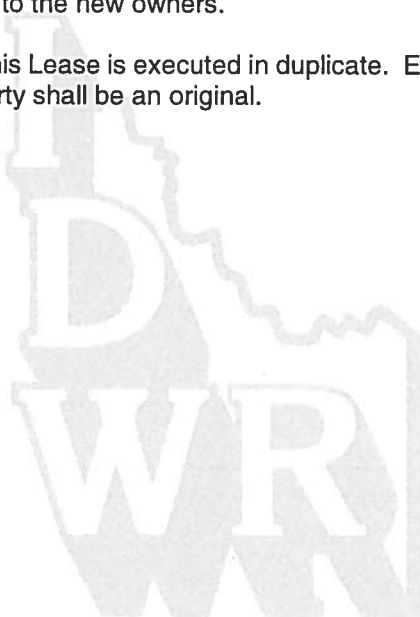
2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

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.

LEASE CONTRACT NO. 704

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.



LEASE CONTRACT NO. 704

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

LESSOR: HABITAT HOLDINGS LLC

2164 S FOX GLEN WAY

EAGLE, ID 83616

By [Signature]

Title MANAGER

Date 1/12/18

IDAHO WATER RESOURCE BOARD

322 East Front Street

P.O. Box 83720

Boise, ID 83720-0098

By [Signature]

Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 1/16/2018

Lease approved by IDWR [Signature]

Date 1-16-2018

**ATTACHMENT A
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE
FOR LEASE CONTRACT NO. 704**

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): 77-4207

KNAPP CREEK NWNWNE Sec. 18 Twp 12N Rge 12E CUSTER County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
77-4207	IRRIGATION	05/01	to	10/31	7.45 cfs	477.0 AF
	STOCKWATER	04/15	to	10/15	7.45 cfs	Not Stated
Totals:					7.45 cfs	477.0 AF

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION and STOCKWATER

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12N	11E	13			18.0				12.0	35.0	40.0	14.0		13.0		27.0			159.0

Total Acres: 159.0

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 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.
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. Property is known as Homestead Entry Survey No. 575.
13. The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

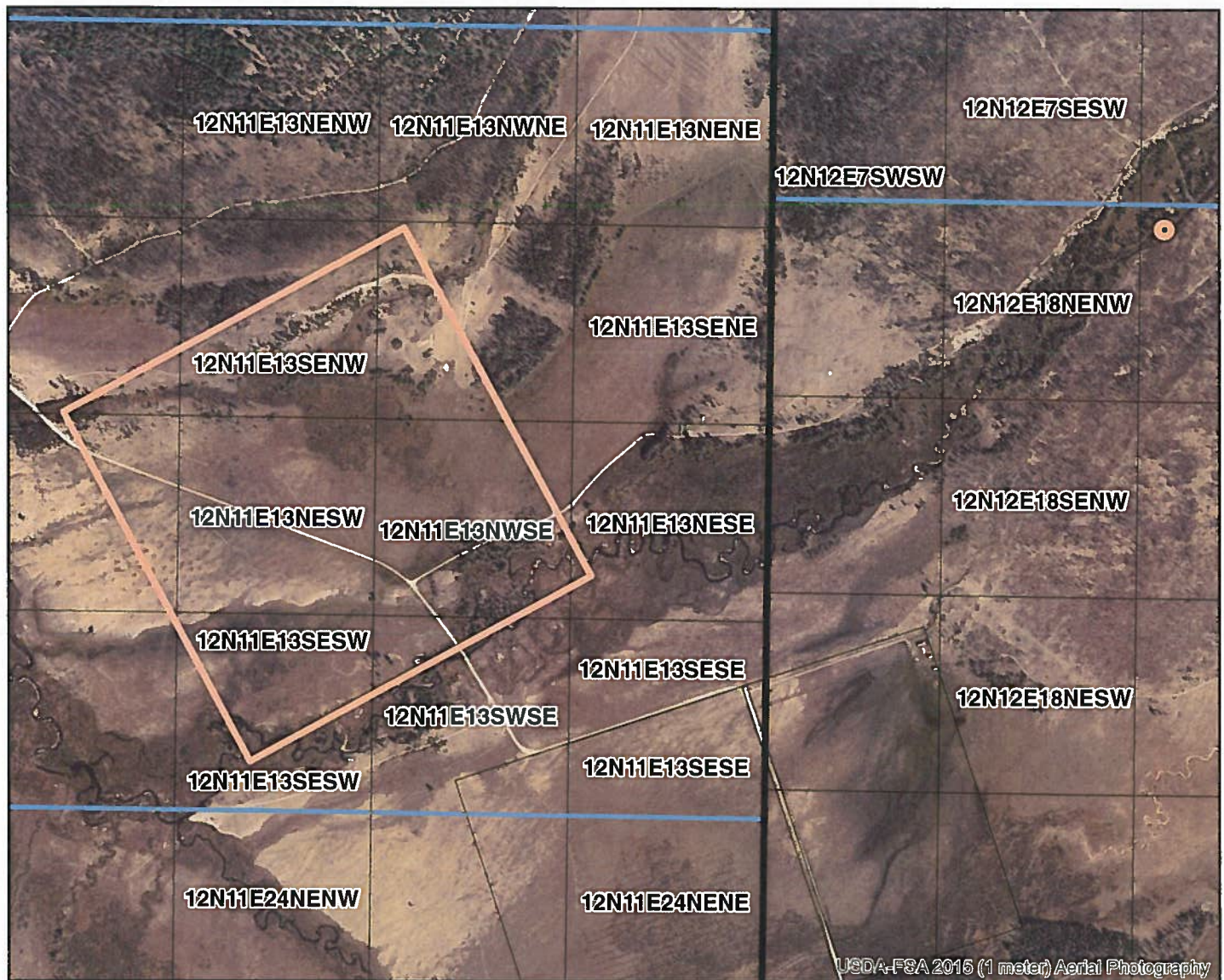


Idaho Water Resource Board
Water Supply Bank Lease Contract No. 704

77-4207

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 Point of Diversion

Approved Lease Place of Use

Townships

PLS Sections

Quarter Quarters



0 0.25 0.5 Miles

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

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

DEC 20 2017

DEPARTMENT OF
WATER RESOURCESDesignated Applicant Habitat Holdings, L.L.C.

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

Water Right No. 77-4207

(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 *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:

Date Received: 12/20/17Receipt # C104428W-9 received? Yes ☒ No ☐

(Route W-9 to Fiscal)

Name on W-9: Habitat Holdings LLC

938

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 Habitat Holdings, L.L.C.

Mailing Address <u>2164 S. Fox Glen Way</u>	Eagle	Idaho	83616
Street	City	State	Zip Code
Email Address <u>johnsandy2020@gmail.com</u>	Phone Number <u>208-869-9950</u>		

☒ 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 <u>John A. Sandy</u>	Organization <u>Habitat Holdings, L.L.C.</u>
Professional Title <u>General Partner, Manager</u>	Email Address <u>johnsandy2020@gmail.com</u>
Mailing Address <u>2164 S. Fox Glen Way, Eagle, Idaho 83616</u>	Phone Number <u>208-869-9950</u>

☒ 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.

Headgate is located on Knapp Creek in Section 18, Township 12 North, Range 12 E in Custer County.

- 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. None.

- 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. Applicant has diverted 7.45 cubic feet per second from Knapp Creek when available to irrigate the subject property.

- 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: 2018 to 2022 (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.

To be negotiated with owner. 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.

John A. Sandy
Signature of Designated Applicant

John A. Sandy
Printed Name

11/16/17
Date

Signature of Authorized Representative

Printed Name

Date

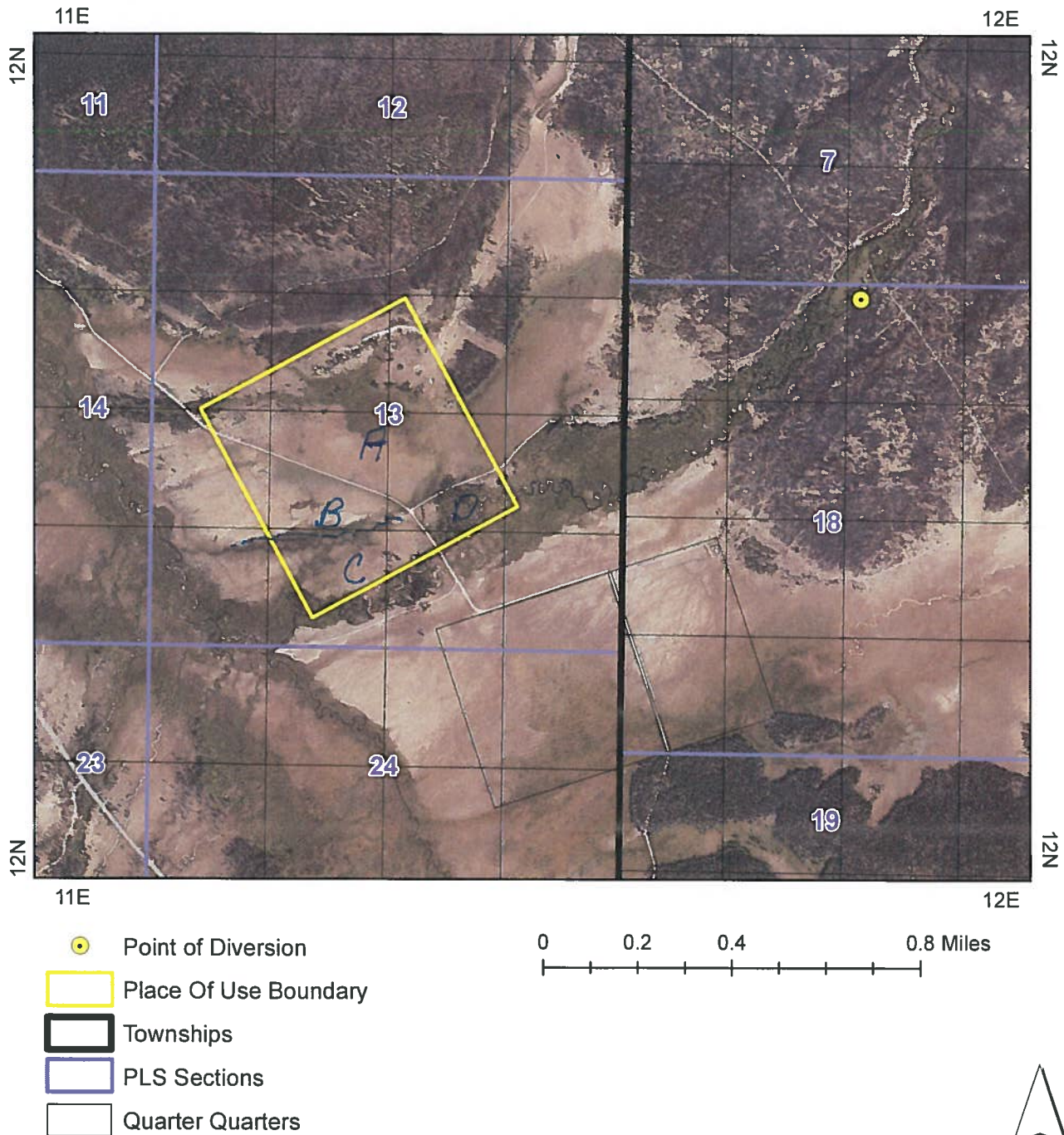
Mail to:
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

State of Idaho
Department of Water Resources

Water Right
77-4207

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.

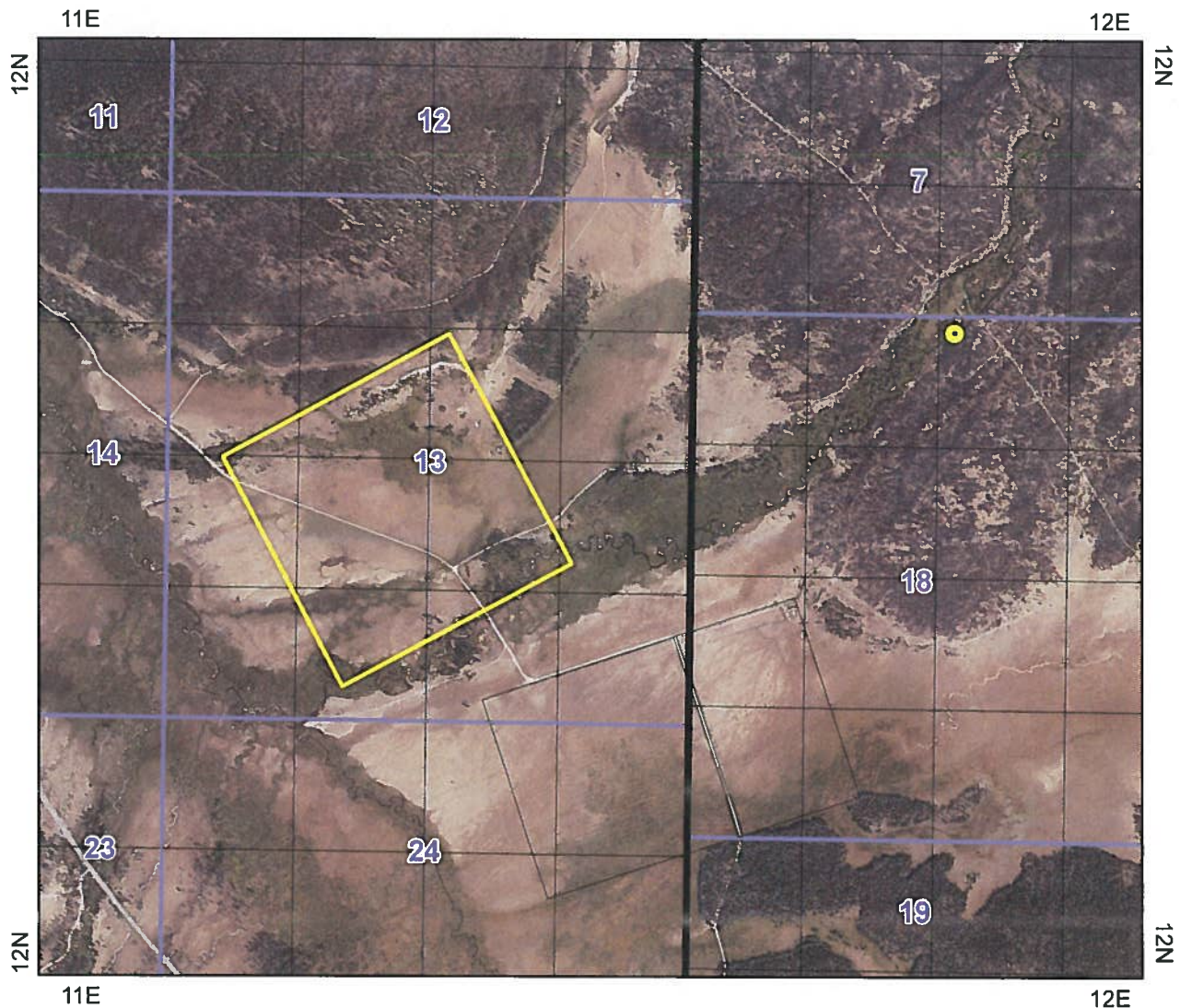


State of Idaho
Department of Water Resources

**Water Right
77-4207**

STOCKWATER

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 0.2 0.4 0.8 Miles



**AFFIDAVIT OF JOHN A. SANDY
IN SUPPORT OF APPLICATION TO PLACE WATER RIGHT NO. 77-04207 IN THE
IDAHO WATER RESOURCE BOARD WATER SUPPLY BANK**

STATE OF IDAHO)
) ss.
County of Ada)

John A. Sandy, being first duly sworn upon oath deposes and states as follows:

1. My name is John A. Sandy. I am a General Partner of Habitat Holdings, L.L.C. I reside at 2164 S. Fox Glen Way, Eagle, Idaho, 83616. I have legal authority to transact business on behalf of Habitat Holdings, L.L.C.
2. I submit this affidavit in support of Habitat Holdings, L.L.C., application to place water right no. 77-04207 in the Idaho Water Resource Board's water supply bank for rental for instream flow maintenance.
3. Habitat Holdings, L.L.C. owns 158.52 acres (Cape Horn Parcel) in Section 13, Township 12N, Range 11E in Custer County.
4. My grandfather, John W. Jones, Senior, acquired the Cape Horn Parcel in 1922, and perfected a water right to irrigate the Parcel with a priority date of July 12, 1922. Title to the Cape Horn Parcel has remained in family ownership since its acquisition by my grandfather.
5. Habitat Holdings, L.L.C., received title to the Cape Horn Parcel on April 13, 2004.
6. The SRBA District Court decreed water right no. 77-04207 on October 10, 2006, in the amount of 7.45 cubic feet per second.
7. I am personally familiar with the irrigation of the Cape Horn Parcel having irrigated the Parcel in my youth and also either irrigated or engaged others to irrigate the Parcel from 1982 until 1995.
8. In 1995, I placed water right no. 77-04207 in the Idaho Water Resource Supply Bank until June 27, 2005.
9. From 2005 to 2009, I either irrigated or engaged others to irrigate the Parcel.
10. From March 23, 2009 through the 2016 irrigation season I leased the Cape Horn Parcel to Denis Kowitz for sheep grazing. The lease required Denis Kowitz "to irrigate the land in a husband-like manner." Paragraph 6 of Grazing Lease, attached hereto as Attachment 1. I personally inspected the Cape Horn Parcel on numerous occasions to ensure the Parcel was being irrigated by Denis Kowitz and, at times, assisted with the irrigation of the Parcel.

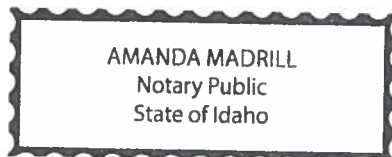
11. In 2017, I personally irrigated the Cape Horn Parcel throughout the irrigation season.
12. Attachment 2 to this Affidavit is an aerial photograph upon which I have drawn the ditches I use to irrigate the Cape Horn Parcel and identified the Areas I use in this Affidavit to describe irrigation of the Parcel. The road running from the northwest to the southeast in the middle of the photograph is the Cape Horn Road. The road running from the intersection to the northeast is the access road to the U.S. Forest Service Ranger Station, hereinafter referred to the "guard station road." For purposes of this affidavit, I will refer to the land owned by Habitat Holdings, L.L.C. that lies above the Cape Horn Road and west of the guard station road as Area A. The land owned by Habitat Holdings, L.L.C. below the Cape Horn Road and above the slope running west of the intersection of the Cape Horn and guard station roads as Area B. The land owned by Habitat Holdings, L.L.C. lying below the Cape Horn Road and south of Area B will be referred to as Area C. Finally, the land owned by Habitat Holdings, L.L.C. south of the guard station road and east of the Cape Horn Road will be referred to as Area D.
13. Area A is irrigated by a ditch that runs along the sheep corral road that branches off of the guard station road. The sheep corral road forms the boundary between Habitat Holding, L.L.C.'s ownership and U.S. Forest Service lands and where the water diverted from Knapp Creek enters the property. Four separate ditches distribute water into Area A from the primary ditch that runs along the sheep corral road. The return flow from the four ditches is captured by internal ditches in Area A and the perimeter ditch along the guard station road and redistributed west throughout Area A. Direct diversion and return flow is also distributed to Area A through the ditch that runs along the guard station road and along the Cape Horn Road. Water distributed through these ditches onto the southern and western portion of Area A adjacent to the Cape Horn Road. Attachment 3 contains photographs that document the irrigation of Area A. The portion of Area A on the northside of Asher Creek has not been irrigated.
14. Area B is irrigated by the ditch that runs along the guard station road. Water is conveyed through this ditch to a culvert that runs under the Cape Horn road near the intersection of the two roads. One ditch runs along the southside of the Cape Horn Road and irrigates the upper portion of parcel B. Another ditch runs along the ridge that divides Area B and C and has three ditches that branch out into Area B to irrigate the lower portion of Area B. Area B is rocky soil requiring heavy application of water to produce vegetation for sheep grazing. Attachment 4 contains photographs that document irrigation of Area B.
15. Area C lies below Area B and west of the Cape Horn Road. Area C is irrigated by water that is conveyed through the ditch running along the guard station road through a culvert under the guard station road near the intersection with the Cape Horn. The culvert conveys the water along the northside of the Cape Horn Road to another culvert that runs beneath the Cape Horn Road into Area C. The ditch once entering Area C splits into two ditches that are used to irrigate Area C. Attachment 5 contains photographs that document irrigation of Area C.

16. Area D lies South of the guard station road and east of the Cape Horn Road. Area D is subirrigated with water from a culvert at the intersection of the guard station and sheep corral roads and also from the ditch running along the guard station road to Area C. Attachment 6 documents irrigation of Area D.
17. In summary, based upon my personal knowledge, I represent that the Cape Horn Parcel other than the land lying North of Asher Creek has been continuously irrigated except for the period of time in which water right 77-04207 was assigned to the Idaho Water Resource Board Water Supply Bank.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


JOHN A. SANDY

SUBSCRIBED AND SWORN to before me this 16th day of December, 2017.





Notary Public for Idaho
Residing at: Boise, Idaho

My commission expires: My Commission Expires
July 28, 2023

GRAZING LEASE

THIS LEASE is made effective this 23 day of march, 2009, between Habitat Holdings L.L.C, of 13348 W. Redwick Dr., Boise, Idaho 83713, Landlord, and Denis Kowitz, of 171 N. Hwy 77, Declo, Idaho 83323, Tenant.

1. **Description of Property.** Landlord, in consideration of the agreements and stipulations hereinafter mentioned to be kept and performed by Landlord and Tenant, does hereby lease to Tenant use for grazing purposes the following property situated in the County of Custer, state of Idaho: 160 acres more or less located in Section 13, Twp. 12 No., Range 11 E.B.M, Custer County, Idaho and further described as HES 575 on Attachment A of this document.
2. **Length of Lease.** Tenant to have the right to graze approximately 2000 ewe sheep and their lambs on said property for a term of one (1) year beginning on the first (1st) day of April 1, 2009 and ending on the thirty first (31st) day of March 2010, and from year to year thereafter unless written notice of termination is given by either party to the other at which time lease shall terminate.
3. **Payment of Rent.** For the occupancy and use of the real estate as herein described tenant agrees to pay Landlord, his heirs or assigns, and annual amount of one thousand two hundred fifty dollars (\$1250.00) to be due and payable on or before the first (1st) day of the grazing season during the term of this lease. By mutual consent Tenant and Landlord may negotiate changes in lease dollar amount as necessary.
4. **Landlord's Contribution.** Landlord will furnish the above described real estate and water for irrigation and livestock drinking purposes.
5. **Tenant.** Tenant is allowed to park camp wagons, camp trailer homes, and miscellaneous machinery on property, location to be my mutual agreement of Tenant and Landlord.
6. **Tenant's Contribution.** Tenant agrees to irrigate the land in a husband-like manner.
7. **Right to Make Improvements.** If Tenant desires to make improvements at his own expense, he shall obtain from Landlord written consent and conditions prior to making the improvements.
8. **Right of Entry.** Landlord retains the right to enter and use the property for purposes other than grazing.
9. **Subleasing.** Tenant will not release or sublet the grazing of said property or any part thereof without the prior written consent of Landlord.
10. **Effective Date of Agreement.** This lease agreement becomes effective upon the signing by both Denis Kowitz and Habitat Holdings LLC.

IN WITNESS WHEREOF, the parties have signed this lease on the dates below.

LANDLORD:

Habitat Holdings LLC

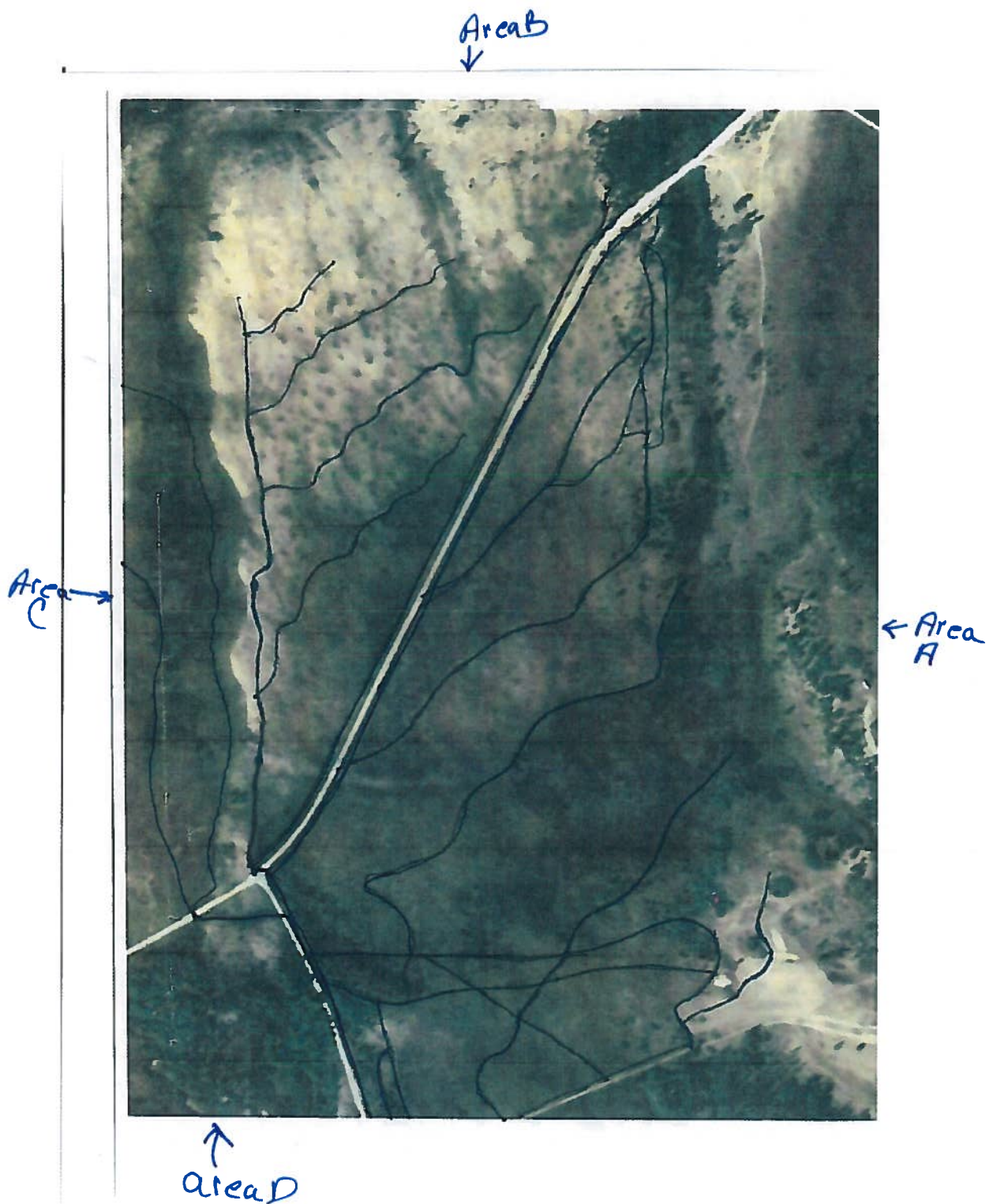
By *John A. Sandy* Date 3/19/09
It's Manager

TENANT:

Denis Kowitz

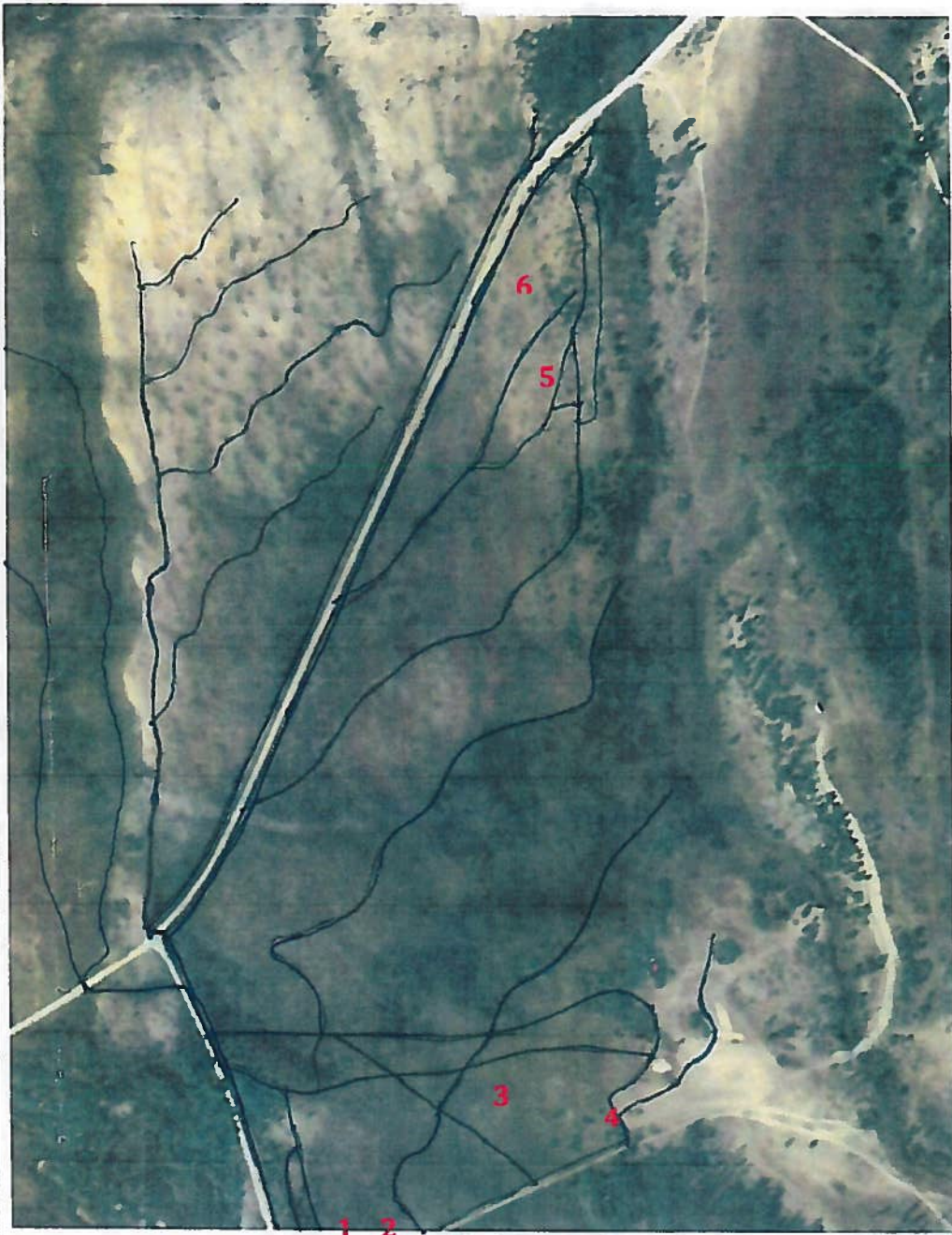
By *Denis Kowitz* Date 3/23/09
Owner

Page 2, Grazing Lease between Habitat Holdings LLC and Denis Kowitz



Aerial photograph of Cape Horn Parcel showing ditches used to irrigate the Cape Horn Parcel and the Areas used in the Affidavit of John A. Sandy.

ATTACHMENT 2 TO AFFIDAVIT OF JOHN A. SANDY, IN SUPPORT OF
APPLICATION TO PLACE WATER RIGHT NO. 77-04207 IN THE IWRB WATER
SUPPLY BANK



Numbers on the aerial photograph identify the location where photographs in this Attachment were taken.

ATTACHMENT 3 TO AFFIDAVIT OF JOHN A. SANDY, IN SUPPORT OF APPLICATION TO PLACE WATER RIGHT NO. 77-04207 IN THE IWRB SUPPLY BANK



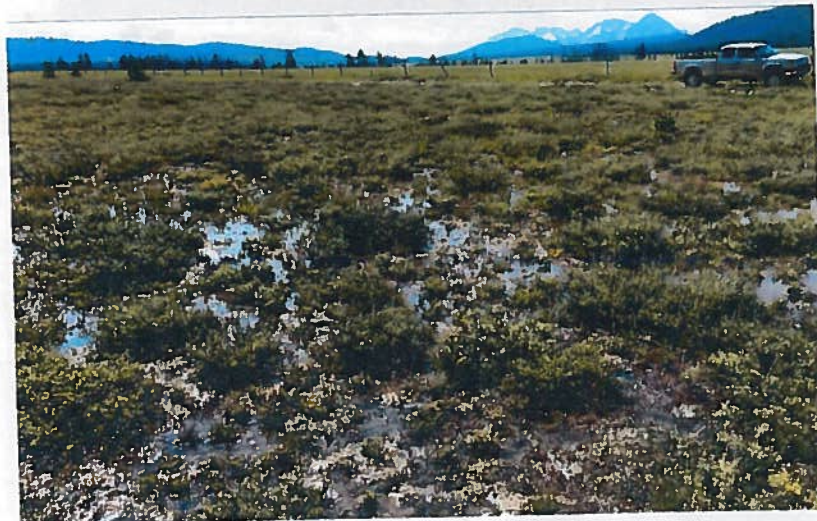
These two photographs were taken at location 1 on the aerial photograph looking north by northwest into Area A along the sheep corral road.



The top photograph was taken at location 2 on the aerial photograph and shows the diversion dam into the third ditch located along the sheep corral road. The lower photograph was taken at location 3 on the aerial photograph and shows area the south of the laterals that cross in the middle of Area A.



The top photograph was taken at location 3 on the aerial photograph and shows the portion of Area A to the northwest irrigated through the ditches in the middle of Area A. The lower photograph was taken at location 4 and shows the diversion that brings water to the Cape Horn Parcel from Knapp Creek.



These pictures were taken at location 5 on aerial photograph and show irrigation of the western corner of Area A.



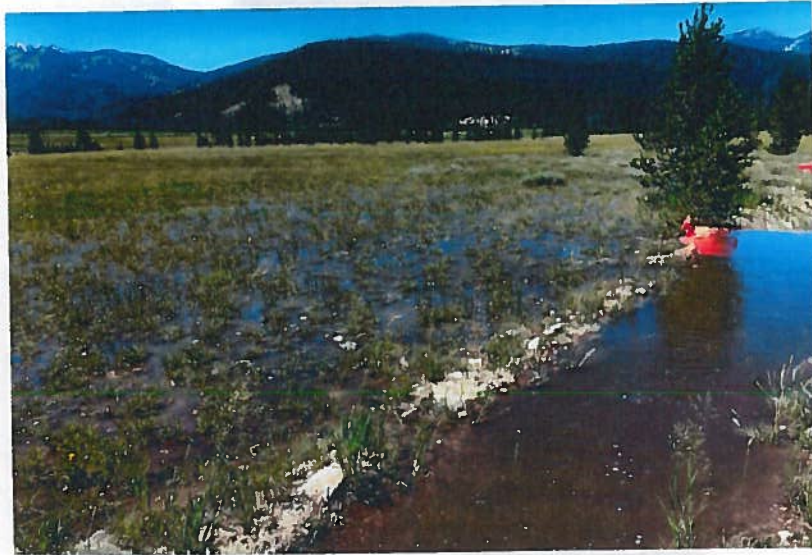
These photographs were taken at location 6 and show irrigation of the western corner of Area A.



Top photograph was taken at location 1 on the aerial photograph and shows the culvert used to deliver water to Area B. The lower photograph was taken at location 2 and shows the main ditch used to deliver water to area B and some of the grasses irrigated by the diversion.



The top photograph was taken at location 3 and shows irrigated pasture in area B. The lower photograph was taken at location 4 and shows diversion dams used to irrigate Area B.



This photograph was taken at location 5 on the aerial map and shows irrigation of the western portion of Area B.

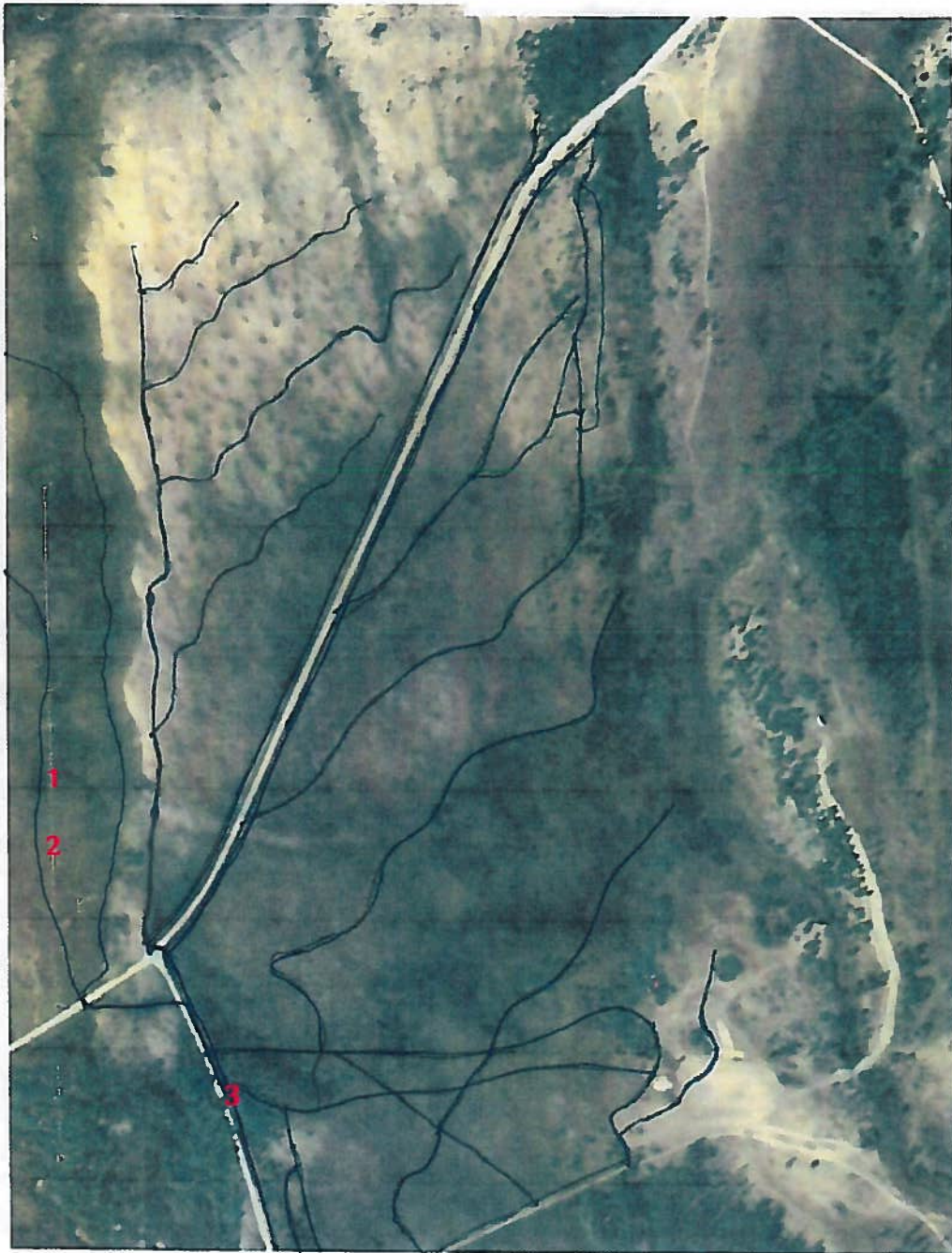


Numbers on the aerial photograph identify the location where photographs in this Attachment were taken.

ATTACHMENT 4 TO AFFIDAVIT OF JOHN A. SANDY, IN SUPPORT OF
APPLICATION TO PLACE WATER RIGHT NO. 77-04207 IN THE IWRB
WATER SUPPLY BANK

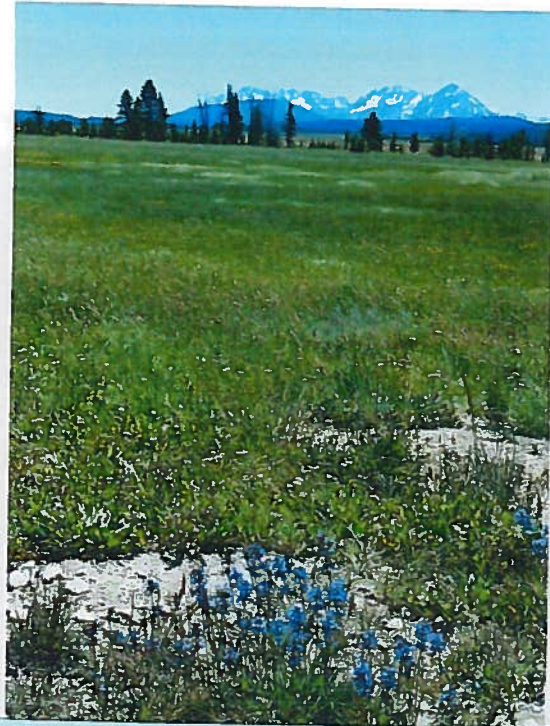


This picture was taken at location 6 on the aerial photograph and shows irrigation of the grass pasture in the northwest end of Area B.



Numbers on the aerial photograph identify the location where photographs in this Attachment were taken.

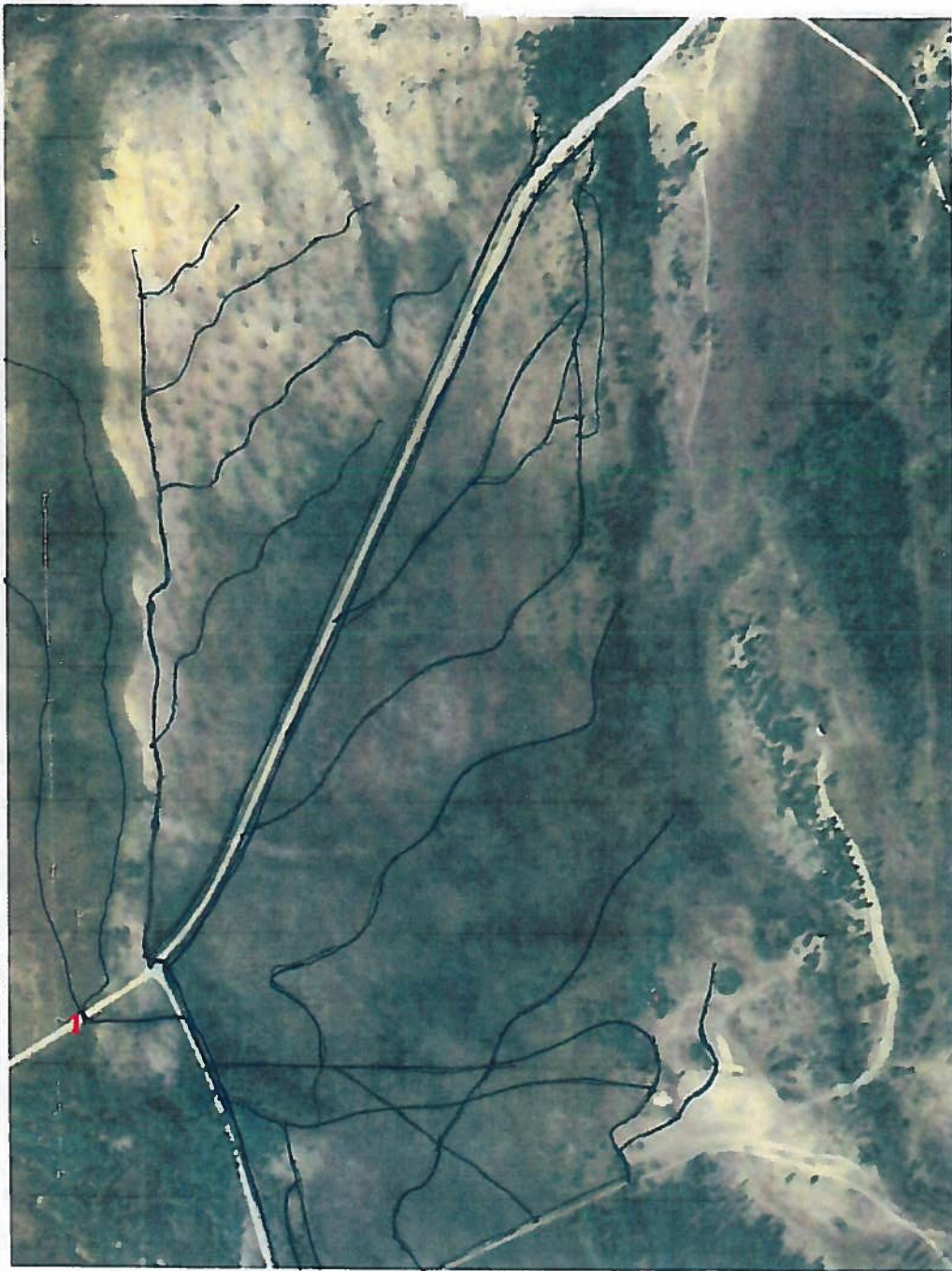
ATTACHMENT 5 TO AFFIDAVIT OF JOHN A. SANDY, IN SUPPORT OF
APPLICATION TO PLACE WATER RIGHT NO. 77-04207 IN THE IWRB
SUPPLY BANK



These photographs of Area C were taken at locations 1 and 2 on the aerial photograph facing south.



This photograph was taken at location 3 on the Cape Horn Road where water is diverted under the guard station road to Area C.



Numbers on the aerial photograph identify the location where photographs in this Attachment were taken.

ATTACHMENT 6 TO AFFIDAVIT OF JOHN A. SANDY, IN SUPPORT OF
APPLICATION TO PLACE WATER RIGHT NO. 77-04207 IN THE IWRB
SUPPLY BANK



This photograph was taken at location 1 on the aerial photograph from the Cape Horn Road looking east at Area D. The culvert leads to Area C.

No. W 7297	Due no later than Nov 30, 2017 Annual Report Form		2. Registered Agent and Office (NOT A P.O. BOX) JOHN A SANDY 553 RIVERCHASE WAY EAGLE ID 83616 2164 S Fox Glen WAY																												
Return to: SECRETARY OF STATE 450 N 4th STREET PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE	1. Mailing Address: Correct in this box if needed. HABITAT HOLDINGS L.L.C. JOHN A SANDY 553 RIVERCHASE WAY 2164 S Fox Glen WAY EAGLE ID 83616 USA		3. <u>New</u> Registered Agent Signature.																												
4. Limited Liability Companies: Enter Names and Addresses of Managers OR Members. See Instructions.																															
<table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 15%;">Manager or Member</th> <th style="width: 25%;">Name</th> <th style="width: 30%;">Street or PO Address</th> <th style="width: 10%;">City</th> <th style="width: 10%;">State</th> <th style="width: 10%;">Country</th> <th style="width: 10%;">Postal Code</th> </tr> </table>				Manager or Member	Name	Street or PO Address	City	State	Country	Postal Code																					
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Manager ☐ Member ☐																															
Manager ☐ Member ☐																															
5. Organized Under the Laws of: 6. Signature: Date: <u>9/29/17</u> Name (type or print): <u>John A. Sandy</u> Title: <u>manager</u> IDAHO W 7297																															
Issued 09/29/2017 by TLB 123966																															

INSTRUCTIONS FOR THE IDAHO ANNUAL REPORT FORM



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

January 16, 2018

HABITAT HOLDINGS LLC
2164 S FOX GLEN WAY
EAGLE ID 83616

RE: WATER SUPPLY BANK LEASE CONTRACT FOR WATER RIGHT 77-4207

Dear Lessor:

Water right 77-4207 was leased into the Water Supply Bank (Bank) as of January 1, 2018, 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, 2022**, 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: Angie Grimm - IDWR Western Region



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 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

January 9, 2018

HABITAT HOLDINGS LLC
2164 S FOX GLEN WAY
EAGLE ID 83616

RE: APPLICATIONS TO LEASE WATER RIGHT 77-4207 TO THE WATER SUPPLY BANK

****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, 2022**, 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 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,

Water Supply Bank

Enclosure: Proposed Lease Contracts
Receipt # C104428

WATER RESOURCES
RIGHTS SECTION
PO BOX 83720
SE, ID 83720-0098

RECEIVED

JAN 09 2018

DEPARTMENT OF
WATER RESOURCES

NO SUCH
NUMBER

252

RECEIVED

JAN 09 2018

DEPARTMENT OF
WATER RESOURCES

HABITAT HOLDINGS LLC
2165 S FOX GLEN WAY
EAGLE ID 83616

resend to 2164 S Fox Glen Way
Eagle 1-10-18

C3-42

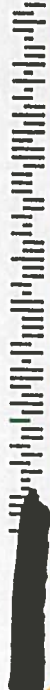
836 836 83616



6020171226-132748406

6

RETURN SERVICE REQUESTED



POST FIRST-CLASS MAIL
U.S. POSTAGE PAID
EAGLE ID
PERMIT NO. 1

NIXIE

808 DC 1

0001/00/18

RETURN TO SENDER
NO SUCH NUMBER
UNABLE TO FORWARD

0159N006705-01803



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 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

December 26, 2017

HABITAT HOLDINGS LLC
2165 S FOX GLEN WAY
EAGLE ID 83616

RE: APPLICATIONS TO LEASE WATER RIGHT 77-4207 TO THE WATER SUPPLY BANK

****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, 2022**, 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 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,

Water Supply Bank

Enclosure: Proposed Lease Contracts
Receipt # C104428

WATER SUPPLY BANK
Lease Review Checklist
Applicant(s) Name: Habitat Holdings LLC

Memo Date: December 22, 2017

Water Right Number(s): 77-4207

Reviewers Name: Jean

Quick Tools

Decreed Year	No Forfeiture Concerns Thru:
2011	2017
2012	2018
2013	2019
2014	2020
2015	2021

	Check box		COMMENTS/CONCERNS:
1	☒	Fill out WSB Data Entry Checklist for Leases (Front of File)	
2		Reason for lease of water rights (Brief description of lease proposal in narrative)	
		Portion of right	
	☒	All of right	
3		Check GWMA/CGWA/ADC and basin 63 areas of concern (note area in comments)	
	☒	Rentable? (If no explain in comments or narrative)	
5		Authority to file	
	☒	Current owner or designated applicant	
		SOS Web site checked for business entity	
		Other (explain in comments)	
6		Water Right validity	
		Decreed/Licensed/Statutory claim date (write in comments section)	2006
		Past irrigation to ensure forfeiture is not an issue if decreed or licensed over 7 years ago (consider transfers that changed the POU, rentals to the POU etc.)	
	☒	Has this right previously been leased to the bank or in CREP?	1995-2006
7		Injury to other water rights	
		If the POD is through a delivery entity, was consent provided?	na
		If the POD is through a delivery entity, was holdback required? (percentage in comments)	%
		Any other concerns	
8		Enlargement concerns	
	☒	Complete a POU comparison overlap analysis	
	☒	Complete a combined limits review	
	☒	Complete POD overlap analysis (if there is an overlap add condition to lease)	
	☒	Are there overlapping rights that need to be placed in the bank also?	x
	☒	Will the place of use continue to receive water? (if yes explain in comments)	x
9		Local Public Interest	
	☒	Does the processor know of any problems this action will cause for the local public?	x
10	☒	Have you contacted regional office and watermaster for comment/concerns?	
		Send the watermaster comment request form or e-mail request	
11		Area Headgate requirement (write in Comments)	3
12		Is water right involved in any other department action? Pull file and check database () Ownership Change () Transfer () Mitigation () Other - Explain in comments	x
13		Narrative: The Department received this application on December 20, 2017. The applicant wishes to place the entire right in the Bank. John Sandy, registered agent and manager, signed the application. This right was decreed in 2006. It was in the Bank from 1995 to 2005. From the time the right was decreed, the water has been put to beneficial use (see affidavit attached to application) either by the right holder or parties that have rented the land. There is no delivery entity and no overlapping rights that need to be placed in the Bank. This right is not currently within a WD. Region comments will be requested.	

No. W 7297		Due no later than Nov 30, 2017 Annual Report Form		2. Registered Agent and Office (NOT A P.O. BOX) JOHN A SANDY 555 RIVERCHASE WAY EAGLE ID 83616 <i>2164 S Fox Glen WAY</i>	
Return to: SECRETARY OF STATE 450 N 4th STREET PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE		1. Mailing Address: Correct in this box if needed. HABITAT HOLDINGS L.L.C. JOHN A SANDY 555 RIVERCHASE WAY <i>2164 S Fox Glen WAY</i> EAGLE ID 83616 USA		3. <u>New</u> Registered Agent Signature.	
4. Limited Liability Companies: Enter Names and Addresses of Managers OR Members. See Instructions.					
Manager or Member		Name		Street or PO Address	City State Country Postal Code
Manager ☒ Member ☐		John A Sandy		2164 S Fox Glen WAY	Eagle Id U.S.A 83616
Manager ☒ Member ☐		Robin J. Sandy		11	
Manager ☐ Member ☐					
Manager ☐ Member ☐					
5. Organized Under the Laws of: IDAHO W 7297		6. Signature: <i>John A Sandy</i> Name (type or print): John A. Sandy		Date: 9/29/17 Title: Manager	
Issued 09/29/2017 by TLB					

INSTRUCTIONS FOR THE IDAHO ANNUAL REPORT FORM