

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT NO. 194

This is to certify that:

FORMATION CAPITAL CORP
812 SHOUP ST
SALMON, ID 83467

RECEIVED

DEC 01 2017

**DEPARTMENT OF
WATER RESOURCES**

filed an application to rent water from the Water Supply Bank ("Bank"). The Idaho Water Resource Board ("Board"), being authorized to operate a Bank and to contract by and through the Director of the Idaho Department of Water Resources ("Director, Department") for rental of water from the Bank, agrees to rent water as follows:

Summary of Water Rights or Portions Rented from the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)
75-7073	11/23/1976	BUCKTAIL CREEK	1.00	724
Combined Rental Totals			1.00	724

Term of Rental: This rental agreement shall take effect when all parties have signed it and shall continue in effect until December 31, 2022. Use of rental water shall be authorized as of either the date this rental agreement takes effect or the first day of the rental season of use, in 2018, whichever occurs last.

Annual Rental Fee:

2018:	\$1,448.00
2019:	\$1,448.00
2020:	\$1,448.00
2021:	\$1,448.00
2022:	\$1,448.00

The full fee for the rental of the above-described right(s) is \$1,448.00 per year for years 2018 - 2022. The rental fee includes an administrative fee of \$1,448.00 per year for years 2018 - 2022. Note that the renter is obligated to pay only the administrative fees associated with water right 75-7073.

An annual payment shall be received by the Department on or before December 31 each year preceding the use of the rented water rights. The agreement will be void if payment is not received by the due date in a given year. Rental fees are non-refundable. To voluntarily terminate the agreement early, notify the Department in writing prior to the rental fee due date.

Detailed water right conditions are attached.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WATER SUPPLY BANK RENTAL AGREEMENT NO 194

The undersigned renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described in this agreement:

Michelle Tucker
Signature of Renter

11-20-17
Date

Michelle Tucker
Printed Name

Enviro Mgr
Title

*Title required if signing on behalf of a company or organization or with power of attorney

Having determined that this agreement satisfied the provisions of Idaho Code § 42-1763 and IDAPA 37.02.03.030 (Water Supply Bank Rule 30), for the rental and use of water under the terms and condition herein provided, and none other, I hereby execute this Rental Agreement on behalf of the Idaho Water Resource Board.

By Brian Patton
BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Date 12/4/2018

Rental approved by IDWR Cheryl Webb

Date 12-4-2018

WATER SUPPLY BANK RENTAL AGREEMENT NO. 194

WATER USE DETAILS

LOCATION OF POINT(S) OF DIVERSION

BUCKTAIL CREEK	NENE	Sec. 20, Twp 21N, Rge 18E,	LEMHI County
BUCKTAIL CREEK	NWNE	Sec. 17, Twp 21N, Rge 18E,	LEMHI County

Beneficial Use
MINING

Diversion Rate
1.00 CFS

Volume
724 AF

SEASON OF USE

Water Right No.	From	To
75-7073	1/1	12/31

RENTERS PLACE OF USE: MINING

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
21N	18E	20	X	X		X									X	X		X	
21N	18E	21	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	

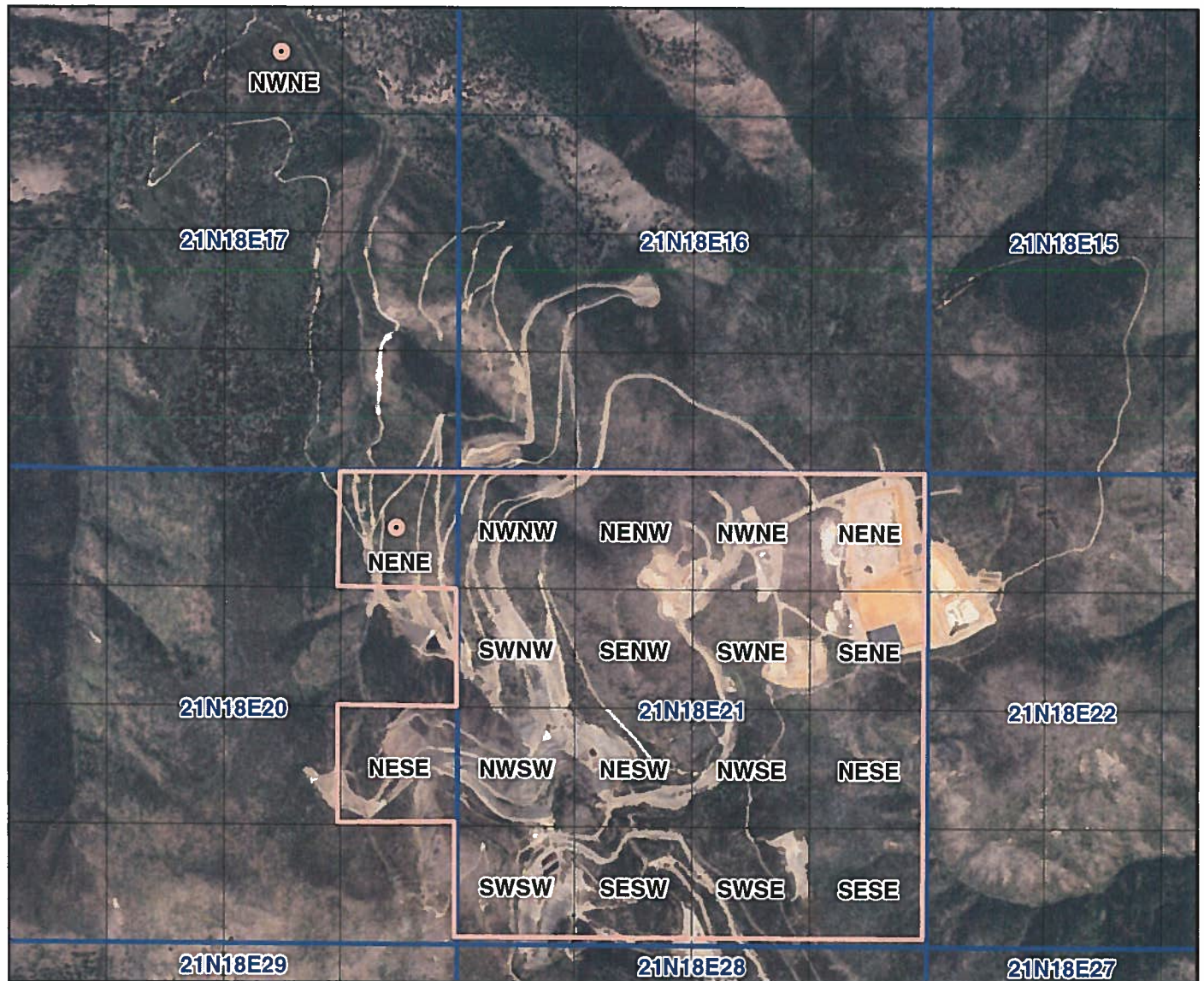
RENTAL AGREEMENT CONDITIONS OF ACCEPTANCE

1. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
2. Rental of the specified right from 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.
3. Use of water under this agreement shall not prejudice any action of the Department in its consideration of an application for transfer or permit filed by the applicant for this same use.
4. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
5. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water.
6. Renter acknowledges and agrees that the Director may terminate authorization for the use of a water right based on a water right's priority date.
7. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
8. 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.
9. This rental does not grant any right-of-way or easement on the property of another party.

Idaho Water Resource Board
Water Supply Bank Rental Agreement No. 194

Effective until December 31, 2022

This map depicts the **rental place of use** pursuant to the rental agreement and is attached to the agreement solely for illustrative purposes.



- Authorized Rental Point of Diversion
- Authorized Rental Place of Use
- PLS Sections
- Quarter Quarters



0 0.25 0.5 0.75 Miles

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

OCT 02 2017

DEPARTMENT OF
WATER RESOURCESAPPLICATION TO RENT WATER
FROM THE BOARD'S WATER SUPPLY BANK

Applicant Name: Formation Capital Corporation, U.S.

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

Yes ☒ No ☐

If yes, specify companion water rights in Section 4

This application must be completed according to the minimum requirement checklist below. This checklist is part of the rental application and must be included with the rental application. Applications that do not meet the minimum requirements will not be placed in the processing queue and may be returned until all minimum requirements have been met.

Rental applications should be submitted well in advance of the desired start date for the use of rental water. Rental applications may be processed as early as November 1 of the year prior to the intended use of rental water. Any rental application received on or before November 1 for use in the next year will be assigned a received date of November 1. Rental applications submitted more than one year in advance of the proposed start date for the use of rental water will not be accepted and will be returned to applicants. Rental applications may be returned to applicants if the desired start date for the use of rental water cannot be accommodated by the Water Supply Bank. Rental requests will not be accepted once the rental season of use period has concluded.

One rental application per beneficial use of water. For multiple beneficial uses of water, separate rental requests should be submitted for each unique beneficial use of water. One rental application can be submitted if you propose to rent water from multiple sources.

For additional instructions on completing a rental application, visit the Bank's website at http://idwr.idaho.gov/water_supply_bank.

MINIMUM REQUIREMENT CHECKLIST

Check All Items as Either Attached (Yes) or Not Applicable (N/A)

Yes

- ☒ Completed *Application to Rent Water from the Board's Water Supply Bank*
- ☒ Confirmation that this form has been printed single sided, per requirement of the Water Supply Bank

Attachment N/A Yes

- | | | |
|----|-------------------------------------|--|
| 2 | ☒ | A map showing the proposed point(s) of diversion, place(s) of use, and water diversion and distribution systems proposed to be used with your rental request |
| 3A | ☐ | ☒ Detailed information on a proposed use of rental water |
| 3F | ☐ | ☒ Authorization from the owner/operator of the rental point(s) of diversion |
| 3H | ☒ | ☐ Water modeling to account for the impacts of the rental request |
| 3J | ☒ | ☐ Documents justifying a rate of flow greater than 0.02 cfs/acre |
| 3K | ☐ | ☒ Authorization from the owner/operator of the property at the proposed rental place(s) of use |
| 4B | ☒ | ☐ Explanation of how the rental water will sufficiently accomplish your rental purposes |
| 4C | ☒ | ☐ Explanation of consumptive use amounts for water rights experiencing a change in nature of use |

Department Use Only – Proposed Water Right(s)

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant Formation Capital Corporation, U.S.

Mailing Address 812 Shoup Street, Salmon, Idaho 83467

Street

City

State

Zip Code

Email Address shilton@formcap.com

Phone Number 208-756-4578

B. Is this application being completed by an authorized representative on behalf of the applicant?

Yes ☐ No ☒

If yes, representatives (includes company employees if the applicant is a corporation, as well as legal counsel or consultants) should provide their information below if they desire to be included on correspondence with the rental applicant.

Representative _____

Professional Title _____

Organization _____

Relationship to Applicant _____

Mailing Address _____

Email Address _____

Phone Number _____

2. MAP

Create a map of the proposed point(s) of diversion, place(s) of use and water diversion, delivery and distribution systems. Make sure the rental 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 irrigate. Attach the map to this application and label it **Attachment 2**.

3. DESCRIPTION OF PROPOSED USE FOR RENTAL WATER

A. Describe why you desire to rent water and provide a detailed description of your proposed use. If the proposed use is not for irrigation, describe in detail how you determined the amount of rental water required. If the space below is insufficient, attach additional sheets as required and label them **Attachment 3A**:

See Attached

B. Enter the desired and/or minimum rates of flow, volume, or irrigable acres requested for your rental purposes:

Desired Rate (Cubic Feet/Second)	Desired Volume (Acre-Foot)	Minimum Rate* (Cubic Feet/Second)	Minimum Volume* (Acre-Foot)	Desired Acres (if applicable)
1.0 CFS	724 AF	CFS	AF	AC

* Sometimes water rights provide an exceptionally low rate per acre and/or low volume per acre. This section is meant to establish an acceptable range of water sufficient for your proposed water use. Please see question 4B and complete if necessary.

C. This section must be completed in full. Enter the proposed start date and latest possible start date for using rental water as well as the number of years you would like to rent water. The latest possible start is the latest possible date by which you would be willing to pay for a rental and be able to benefit from utilizing rental water.

Desired Start Date (month/day/year)	Latest Possible Start Date (month/day/year)	*Mark Desired Rental Duration (Calendar Years)					**Applicant's preference if rental application cannot be processed prior to the latest possible start?	
1/1/2018	4/15/2018	☐ 1	☐ 2	☐ 3	☐ 4	☒ 5	☒ Process application as soon as possible	☐ Return application to applicant

* The number of years permissible for a rental is subject to the lease contract duration for the water right(s) being rented.

** Per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right. Water Supply Bank rental applicants are not authorized to utilize rental water prior to the execution of an approved rental agreement. Rental requests may be returned to applicants if no water is available from the Bank to fulfill a rental request.

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

- D. Describe your water distribution system and how rental water will be delivered from the point(s) of diversion (POD) to the proposed place of use (POU):

portable pump with intake pipes in Bucktail Creek

- E. Describe the physical type (pump, headgate, etc.) and location of the POD from which rental water is proposed to be diverted:

POD Description	Water Source	Other Water Rights Diverted from this POD
1	Bucktail Creek	
2	Bucktail Creek	

If the POD(s) above are located where water is turned into a canal, lateral or ditch, or if they are located on your property but are serviced by water that is delivered via a canal, lateral or ditch, your rental request must include documented authorization from all relevant canal companies, irrigation districts and/or water delivery entities, confirming that they consent to your diversion of water from their system.

- F. Has documented consent from all relevant water delivery entities been obtained? Yes ☐ N/A ☒
If yes, include documented consent as **Attachment 3F**.

- G. Do any POD(s) identified in Question 3E divert from a water source that may require water modeling? Yes ☐ No ☒
Refer to the Water Modeling Requirements Information Sheet to determine if a rental POD may require water modeling.

- H. Has water modeling been provided with your rental request? Yes ☐ N/A ☒
If yes, label modeling Attachment 3 H.
Rental applications that require modeling will be returned if modeling is not provided.

- I. Specify the desired beneficial use of water and the requested season of use or number of acres required:

- ☐ Irrigation _____ (number of acres) Duration: Subject to IDWR standard seasons of use
- ☐ Commercial from: _____ (mm/dd) to: _____ (mm/dd)
- ☐ Stockwater from: _____ (mm/dd) to: _____ (mm/dd)
- ☐ Industrial from: _____ (mm/dd) to: _____ (mm/dd)
- ☒ Other: Mining from: 01/01 (mm/dd) to: 12/31 (mm/dd)

- J. For irrigation uses, do you propose to divert water at a rate greater than 0.02 cfs/acre? N/A ☒ Yes ☐ No ☐
If yes, justify the rate of flow and attach any supporting documents as **Attachment 3J**. Justification may include information on soil composition, conveyance losses, crop type, irrigation systems, public access areas, etc. A rate of 0.03 cfs/acre is permissible for irrigation of 5 acres or less.

- K. Do you own the land at the proposed rental place of use (POU)? Yes ☐ No ☒
If no, attach documentation from the POU owner/operator confirming your authorization to use the POU and label it **Attachment 3K**.

- L. List all other water rights and sources of water at the rental place of use for the same purpose, including privately owned water rights and water received from a municipal supplier, an irrigation district, a canal company or any other water delivery entity. Explain why additional water is required:

75-13977 - Ground water right for storage into two holding ponds

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

4. RENTAL REQUESTS FOR SPECIFIC WATER RIGHTS

A. Are you requesting to rent specific water rights?

Yes ☒ No ☐

If yes, specify below the elements of the water rights you are requesting to rent. If no, continue to Question 4B.

Important Information: Diversion rates and volumes sought for rent must be proportionate to the per acre diversion rates and per acre volume limits of the water right under lease contract to the Water Supply Bank. Prior to completing this section, applicants should review all water right lease contracts and any active rental agreements to determine which elements of a water right are available to satisfy a rental request. Lease and rental documents are searchable via [IDWR's website](#).

Water rights identified below must either already be leased to the Bank or a lease proposal should accompany this rental request. **Rental requests for water rights not yet leased to the Bank will be returned if companion lease applications are not provided with the rental request.** For leased rights featuring combined limits, rentals must be consistent with combined diversion rate, volume or acre limits. Combined limits should be listed on a row below water right numbers.

Water Right Elements Leased to Water Supply Bank					Leased totals, minus water right elements involved in active rental agreements, equals water right elements available for rent	Water Supply Bank Rental Request		
Water Right Number (leave blank if sub-total of combined limits)	Nature of Use	Diversion Rate (CFS)	Volume (AF)	Acres (AC)		Diversion Rate (CFS)	Volume (AF)	Acres (AC)
75-7073	Mining	1.0				1.0	724	
Applicants must ensure the requested rate per acre and volume per acre do not exceed the rate per acre and volume per acre limits of water rights leased to the Water Supply Bank					TOTAL			
						CFS	AF	AC

**Attach multiple copies of this page if space above is insufficient to list all water rights requested to be rented on this application.*

B. If water right conditions, combined limits, or the sum of all water right elements being requested provide an unconventional duty of water (e.g., an unusually low rate per acre or volume per acre for irrigation use), explain how your proposed rental will sufficiently accomplish your intended purposes. Attach a separate page if space is insufficient and label it **Attachment 4B**:

C. Does your rental request propose to change the nature of use for any water right(s) being rented?

Yes ☐ No ☒

If yes, explain how the water right(s) will be converted to new uses. Include the historic, consumptive use amounts for the water right being rented if you have it, as well as the new consumptive use amount for your proposed beneficial use. If space below is insufficient, attach a separate page and label it **Attachment 4C**:

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

5. ADDITIONAL INFORMATION

- A. Is this the first time that rental water is being requested for this purpose at the rental place of use? Yes ☐ No ☒

If no, list previous rental requests/agreements and explain why you have not secured a permanent water right for your needs:

Rental agreement was released due to interim shutdown of mine construction.

- B. Have you or do you intend to submit an application for permit or transfer proposing a similar use as this rental?

If yes, describe:

Yes ☐ No ☒

- C. Was this rental application submitted in response to a Notice of Violation (NOV) or a pending NOV?

Yes ☐ No ☒

If yes, describe the date and location of the NOV.

- D. Additional Information

DECLARATION

I hereby assert that the information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval. I understand that if this rental application is approved, it will be subject to the provisions of Section 42-1766, Idaho Code and all applicable state and federal laws. I understand that the submission of a rental application provides no guarantee for approval of a rental agreement. I also understand that, per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right and that I am not authorized to utilize water as proposed in this application prior to the execution of an approved rental agreement.

Shana Hilton
Signature of Applicant

Shana Hilton Admin Dir. 9/26/2017
Printed Name of Applicant Date

Signature of Representative

Printed Name of Representative Date

Mail to:

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

ATTACHMENT 3A

Application to Rent Water From the Water Supply Bank Formation Capital Corporation, U.S.

B. Description of Use Proposed

1. Nature of intended use

Mining (1.0 cfs)
Diversion to storage (1.0 cfs)
Mining storage (50 AF)
Mining from storage (50 AF)

2. Location of points of diversion

T21N, R18E, S17, NWNE (Lemhi County)
T21N, R18E, S20, NENE (Lemhi County)

3. Season of use

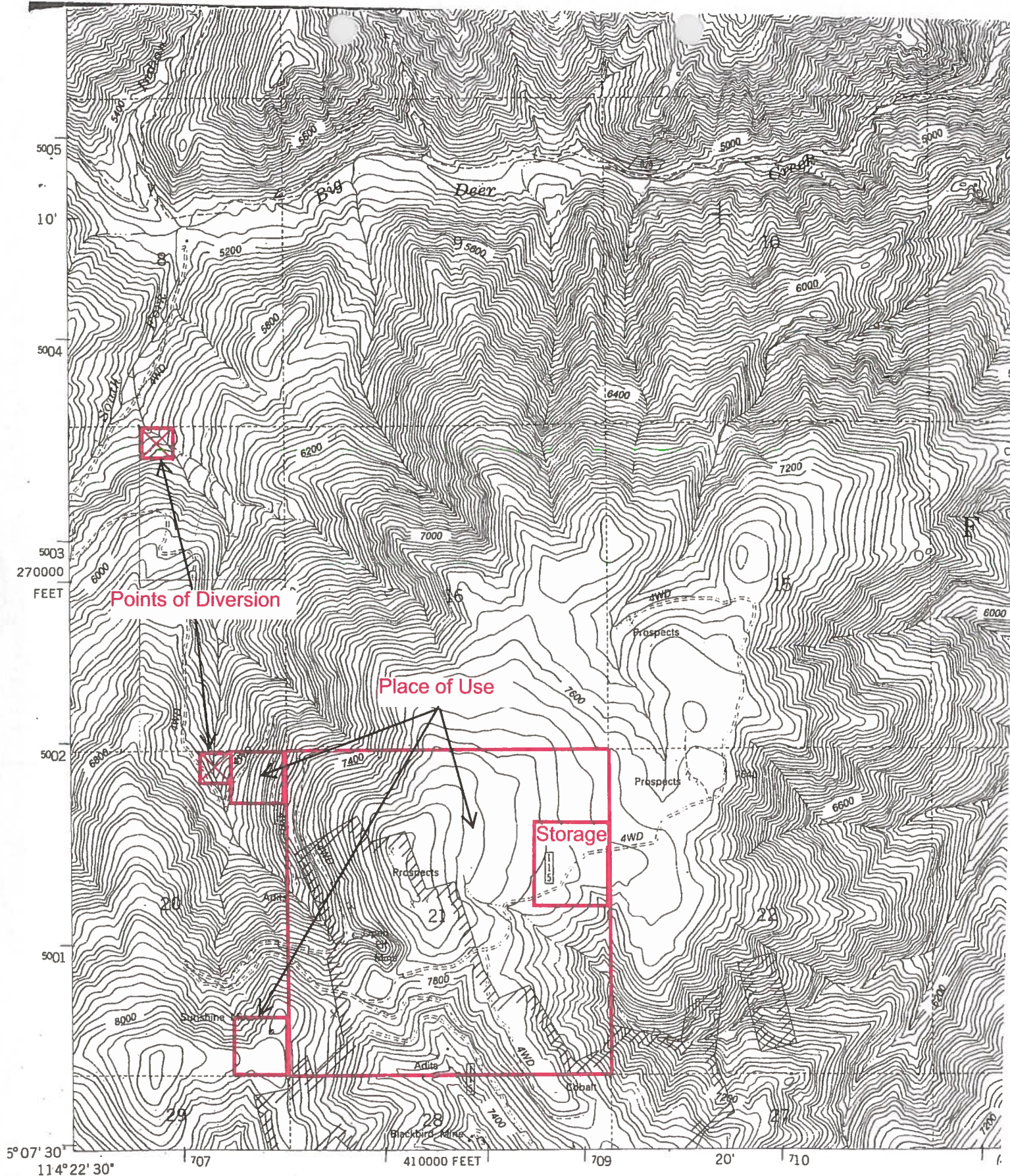
1/1 to 12/31, for all four uses.

4. Description of diverting works

The two points of diversion would be surface diversions directly from Bucktail Creek.

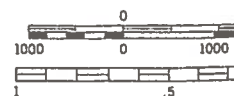
5. Place of use

The intended use of water is for various uses associated with a cobalt mine. The place of use would be all of T21N, R18E, S21, and the NENE and SESE quarter-quarter sections of T21N, R18E, S20.



Provisional base map prepared by the U. S. Geological Survey.
 Control by USGS and NOS/NOAA
 Topography by photogrammetric methods from aerial photographs
 taken 1985. Field checked 1986. Map edited 1989.
 Transverse Mercator Projection. 1927 North American datum
 10,000-foot grid based on Idaho coordinate system, central zone
 1000-meter Universal Transverse Mercator grid ticks, zone 11

T2IN R18E
 Archive 67-13
 USGS Topo w/T&P
 GN
 15 30'
 293 MILS
 1 54'



CONTO
 NATIONAL GEO

Attachment 2-2

National Forest Boundary



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

December 5, 2017

FORMATION CAPITAL CORP US
812 SHOUP ST
SALMON ID 83467

**RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO. 75-7073**

Dear Renter:

Please find enclosed a receipt in the amount of **\$1,448.00** and a copy of a fully executed Water Supply Bank Rental Agreement in connection with the rental of 724.0 acre-feet of water for mining use during 2018. Upon receipt of this fully executed agreement, you are authorized to divert water in compliance with the conditions of water use described in the agreement.

Pursuant to the Water Supply Bank Rules, the rental fee will be retained by the Department to offset administrative costs since you are the owner of the right.

If you have any questions, please contact this office at (208) 287-4800.

Sincerely,

 Water Supply Bank

Enclosures: Receipt No. C104357
Rental Agreement (copy)

c: Sascha Marston – Fiscal
James Cefalo – IDWR Eastern Regional Office

Memorandum

To: Water Rights 75-7073
From: Sandra Thiel
Date: November 6, 2017
Re: Water Supply Bank Lease/Rental Applications for Formation Capital

Purpose/Narrative: Formation Capital Corporation first leased water right 75-7073 to the water supply bank in 2008. This lease and the accompanying rental expired in 2013. Formation submitted a second lease/rental application in 2013. They intended to rent the water through 2017. However, in December 2015 Formation Capital requested to terminate their rental agreement. According to the most recent rental application the previous agreement was released because of interim shutdown of mine construction. The right remained leased to the Bank through 2017.

The application identified the same rental place of use as previous rentals. The US Forest Service owns the lease and rental places of use and points of diversion. The Salmon-Challis National Forest supervisor determined that Formation Capital's Idaho Cobalt Project required an environmental impact statement. The attached map is from the Environmental Protection Agency's (EPA) Record of Decision for the project.

According to the 2017 Lemhi County parcel data, Noranda Mining Inc. owns land within the proposed rental place of use. The EPA's Record of Decision required Formation Capital to obtain right-of-way or access agreements through patented lands owned by Noranda.

Formation Capital intends to put the entire right into the Bank for years 2018 through 2022.

Mining diversion rate 1.0 cfs

$1.0 \text{ cfs} \times 365 \text{ days (water right season of use is year round)} \times 1.9835 = 724 \text{ AF}$

Formation Capital owns ground water permit 75-13977 which overlaps the proposed rental place of use. Proof of beneficial use was due February 2, 2015. Formation Capital filed an extension of time to submit proof extending the date to 2020. Noranda Mining Inc. holds rights 75-2094 and 75-2117 within the same quarter quarter as the proposed rental. Preston Rufe, then representative of Formation Capital, sent an email to Department staff on March 4, 2013, explaining that Noranda Mining is a different company and not affiliated with Formation Capital. Noranda owns the Blackbird mine property adjacent to Formation Capital's Idaho Cobalt Project.

Authority to File: Formation Capital Corporation U.S. submitted both the lease and rental applications. Shana Hilton signed both applications. According to the Secretary of State's webpage, Shana Hilton is listed as the contact for Formation Capital.

Water Right Validity/Forfeiture Evaluation: Water right 75-7073 was decreed in 2008 and leased into the Bank that year. The initial lease was for 2008 through 2013. A second lease expires at the end of 2017. There are no forfeiture concerns.

Injury to Other Water Rights: The applications are for surface water and there are no diversions between the original water right point of diversion and the proposed rental points of diversion. Both lease and rental are for mining uses. There is no record of reported injury from past lease and rentals for the same water. No injury is expected.

Enlargement of Use: No enlargement is anticipated.

Local Public Interest: Staff has no information to suggest the rental is contrary to local public interests.

Beneficial Use/Conservation of Water Resources: The application includes an attachment describing the proposed uses. In addition to diverting water for mining uses, Formation Capital intends to divert water to mining storage, and divert from storage for mining.

Department/Watermaster Comments: The lease and rental are outside of existing water districts. Eastern region did not have concerns about the lease and rental.