

WATER SUPPLY BANK LEASE CONTRACT No. 289

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

LESSOR: US DEPT OF AGRICULTURE
FOREST SERVICE
324 25TH ST
OGDEN, UT 84401

RECEIVED

DEC 20 2016

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 November 22, 2016.
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)
71-7002	7/7/1968	UNNAMED DRAIN, tributary to WILLIAMS CREEK	1.800	60.30	20.10
Combined Limit Totals			1.800	60.30	20.10
Combined Lease Totals			1.800	60.30	20.10

Summary of Water Rights Elements Rentable From the Bank

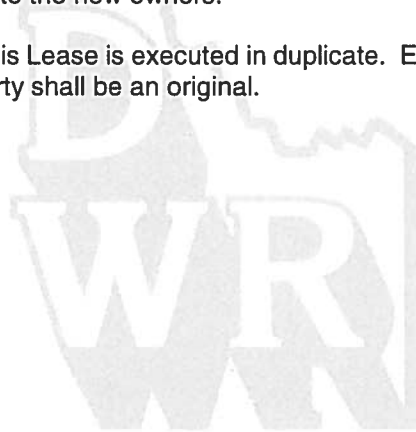
Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (Limited) (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
71-7002	1.370	60.30	20.10	0.068	3.00
Combined Limit Totals	1.370	60.30	20.10	0.090	3.00

** The water right elements rentable have been reduced from the water right elements leased to account for conveyance losses.*

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.

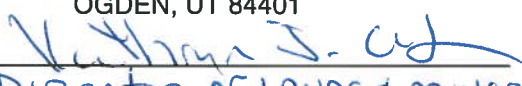
Minimum Payment Acceptable: Current Rental Rate

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2017 to December 31, 2021. This Lease shall bind the parties and take effect when both parties have signed it.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.
5. **CHANGE OF WATER RIGHT:** This lease specifies water right elements including but not limited to: diversion rates; diversion volumes; number of acres authorized to be irrigated; places of use; points of diversion; beneficial uses; and seasons of use. During the term of this lease, if a water right is administratively changed due to a water right split and renumbering, this lease may be reduced by an equal amount to reflect the water right elements as legally defined under the water right. If a lease contract cannot be reduced sufficient to reflect the legal definition of a water right as amended through a water right split and/or water right transfer, the Board may release the water right from the Water Supply Bank.
6. **ASSIGNMENT OF CONTRACT:** This lease is between the Board and the Lessor, who is the recognized owner or designated representative of the recognized owners of water rights described herein. Should ownership of any part of a water right herein described change during the term of this lease, either through a water right split, a water right transfer, sale of property to which the water right is appurtenant, or through any other recognized water right reassignment, the lease benefits and obligations to the conditions of acceptance for any such water rights will be assigned to the new owners.
7. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

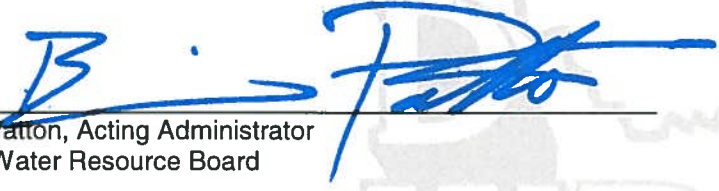


IN WITNESS WHEREOF, the parties have executed this Contract on the date following their respective signatures.

LESSOR: US DEPT OF AGRICULTURE
FOREST SERVICE
324 25TH ST
OGDEN, UT 84401

By 
Title DIRECTOR OF LANDS & MINERALS
Date 12-16-16

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

By 
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 12/22/2016

Lease approved by IDWR 

Date 12-22-2016

**ATTACHMENT A
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE
FOR LEASE CONTRACT NO. 289**

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): 71-7002

UNNAMED DRAIN SWNWSW Sec. 20 Twp 09N Rge 14E CUSTER County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
71-7002	IRRIGATION	4/01	to	10/15	1.800 cfs	60.30 AF
Totals:					1.800 cfs	60.30 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	
09N	14E	19													18.2	1.3	0.3	0.3	20.1

Total Acres: 20.1

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. The use of water for irrigation under this right may begin as early as April 1 and may continue to as late as October 31, provided other elements of the right are not exceeded. The use of water after October 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.
13. This right remains subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place or manner of wasting it, or to recapture it.
14. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 71.

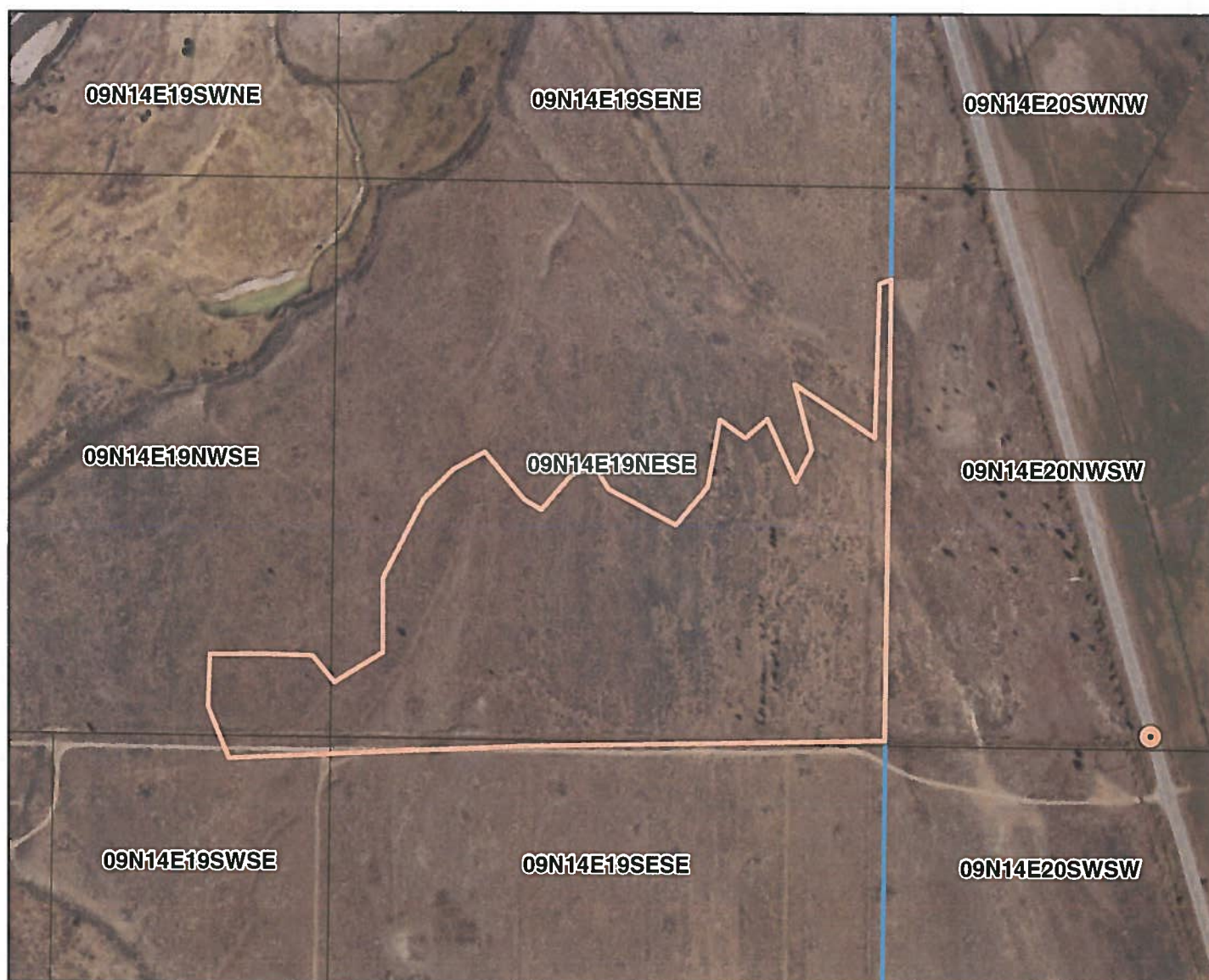


Idaho Water Resource Board Water Supply Bank Lease

71-7002

Effective until December 31, 2021

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



0 500 1,000 Feet

12/6/2016



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 23, 2016

US DEPT OF AGRICULTURE
FOREST SERVICE
324 25TH ST
OGDEN UT 84401

RE: WATER SUPPLY BANK LEASE CONTRACTS FOR WATER RIGHTS 71-41, 71-42B, 71-43B, 71-49B, 71-50, 71-59, 71-61, 71-64B, 71-66, 71-68, 71-2004D, 71-7002, 71-10277, 71-10278, 71-10728, 71-10766, 71-10772 and 71-10871

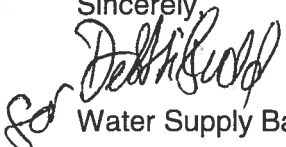
Dear Lessor:

Water rights **71-41, 71-42B, 71-43B, 71-49B, 71-50, 71-59, 71-61, 71-64B, 71-66, 71-68, 71-2004D, 71-7002, 71-10277, 71-10278, 71-10728, 71-10766, 71-10772 and 71-10871** were leased into the Water Supply Bank (Bank) as of November 22, 2016, in accordance with the enclosed executed lease contracts. **Your water rights, as described on the lease contracts, 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 contracts. Read the conditions of acceptance carefully.

The rights will automatically be released from the Bank on **December 31, 2021**, 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,


Water Supply Bank

Enclosure: Executed Lease Contract

c: Corey Skinner - IDWR Southern Region
Morgan V Miller – Water District 71
Cindy Yenter – Water District 170

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right 71-7002

12/6/2016

4. 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.
FOREST SERVICE RECORD ID = 041417060201490033 01 0.43 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT.
THE FOLLOWING RIGHTS ARE DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 71-07002 & 71-02053A.
5. G17 THIS RIGHT IS SUBJECT TO ADMINISTRATION AS PART OF THE NATURAL SOURCE TO WHICH THE WASTE IS TRIBUTARY.
6. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
7. G16 THIS RIGHT REMAINS SUBJECT TO THE RIGHT OF THE ORIGINAL APPROPRIATOR, IN GOOD FAITH AND IN COMPLIANCE WITH STATE LAWS GOVERNING CHANGES IN USE AND/OR EXPANSION OF WATER RIGHTS, TO CEASE WASTING WATER, TO CHANGE THE PLACE OR MANNER OF WASTING IT, OR TO RECAPTURE IT.
8. C03 RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.

Comments:

1. AMERRITT 6/8/1998 COPIED FROM REMARKS
FOREST SERVICE RECORD ID = 041417060201490033 01 0.43 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT. THE FOLLOWING RIGHTS ARE DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 71-07002 & 71-02053.
2. AJU10-DS 7/21/1998 AJU10 CONDITION UPDATE
CONDITION CODE(S) C13 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.
3. DSHAFF 11/5/1998 REMARK
RECORD WAS MODIFIED TO ADD EXTENDED IRR. SEASON REMARK.
4. AJU10-DS 6/19/2000 AJU10 CONDITION UPDATE
CONDITION CODE(S) C18 ADDED IF NOT ALREADY PART OF RECORD THRU AJU10.
5. dmaline 11/29/2016 Address Change
See additional info scanned under 71-41 regarding address change.

Dates and Other Information

Decreed Date: 3/16/1999
Civil Case Number: 39576
Judicial District: FIFTH
State or Federal: S
Water District Number: 71
Mitigation Plan: False

Combined Use Limits

N/A

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right 71-7002

12/6/2016

SubCase:

N/A

Water Supply Bank:

Lessor Name: UNITED STATES OF AMERICA ACTING THROUGH

Lease Status: Active

Lease Amount: All

Rental Availability: All

Date Received: 12/11/2008

Lease Begin Date: 1/1/2009

Expiration Date: 12/31/2016

Penston - 2004 to 2009

WSB- 2009 to 2016



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 13, 2016

USDA FOREST SERVICE
ATTN: KATHRYN J CONANT
324 25TH ST
OGDEN UT 84401

RE: APPLICATIONS TO LEASE WATER RIGHT 71-41, 71-42B, 71-43B, 71-49B, 71-50, 71-59, 71-61, 71-64B, 71-66, 71-68, 71-2004D, 71-2053A, 71-7002, 71-10277, 71-10278, 71-10728, 71-10766, 71-10772 and 71-10871 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 of 12 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.

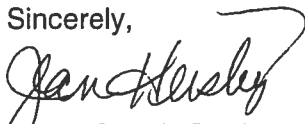
The right will automatically be released from the Bank on **December 31, 2021**, unless the right is released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. 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

WATER SUPPLY BANK
Agent Lease Review Checklist
Applicant(s) Name: USDA-FOREST SERVICE
Memo Date: December 6, 2016
Water Right Number(s): 71-7002
Reviewers Name: Jean
Quick Tools

Decreed Year	No Forfeiture Concerns Thru:
2009	2015
2010	2016
2011	2017
2012	2018
2013	2019

		Check box		COMMENTS/CONCERNS:
1	Fill out WSB Data Entry Checklist for Leases	x		
2	Reason for lease of water rights (Brief description of lease proposal in narrative)			
	Portion of right			
	All of right	x		
3	Check GWMA/CGWA/ADC and basin 63 areas of concern (note area in comments)			
		Yes	No	
4	Rentable? If no explain in comments	x		
5	Authority to file			
	Current owner or designated applicant	x		
	SOS Web site checked for business entity	x		
	Other (explain in comments)			
6	Water Right validity			
	Decreed/Licensed/Statutory claim date (write in comments section)			
	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?	x		
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)			%
8	Enlargement concerns	Check box		
	Complete a POU comparison overlap analysis	x		
	Complete a combined limits review	x		
	Complete POD overlap analysis (if there is an overlap add condition to lease)	x		
		Yes	No	
	Are there overlapping rights that need to be placed in the bank also?		x	
	Will the place of use continue to receive water?		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?	x		
	Send the watermaster comment request form or e-mail request	x		
11	Area Headgate requirement			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 applicant wishes to place the entire right in the Bank. Kathryn J Conant, Director of Lands, signed the application. This right was decreed in 1999. An Extension of Time to Avoid Forfeiture was approved in 2004 thru 2009. The right was accepted in the Bank in 2009 thru 2011 when an extension was approved thru 2016. Forfeiture is not an issue. This right is currently within WD 71 & 170.			



United States
Department of
Agriculture

Forest
Service

Intermountain Region

2425... Street
Ogden, UT 84401

HAND DELIVERED

File Code: 2540
Date: November 21, 2016

RECEIVED

NOV 22 2016

**DEPARTMENT OF
WATER RESOURCES**

Remington Buyer
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83702

Dear Mr. Buyer:

We are hand delivering 19 Applications to Lease Water Rights to the Idaho Water Supply Bank (Bank) for Water Right Numbers 71-00041, 71-00042B, 71-00043B, 71-00049B, 71-00050, 71-00059, 71-00061, 71-00064B, 71-00066, 71-00068, 71-02004D, 71-02053A, 71-07002, 71-10277, 71-10278, 71-10728, 71-10766, 71-10772 and 71-10871. These water rights have been in the Bank since 2009 and the current lease expires on December 31, 2016. We are also providing the associated filing fees in the total amount of \$4500.00.

In these new Applications we are seeking a 20 year term for the lease. Although the form suggests a 5 year maximum we understand that the Idaho Water Resources Board has approved longer periods of time in certain cases. We believe this would be the most efficient period of lease for these rights.

Regarding item 4 (G) in the Applications, we describe the documentation that demonstrates how the water right has not been lost through forfeiture. Rather than attaching hard copies of all those documents that are already on record with the Idaho Department of Water Resources we have attached the document listing for reference. If additional documentation is needed please let us know and we will provide that to you.

We also want to advise you that we filed Change of Address forms with the IDWR Southern Region for each of these rights on November 7, 2016. We are attaching those to this letter to ensure that the current address for these water rights is in place.

We appreciate the opportunity to continue working with the Department and the Board to lease these water rights to the Idaho Water Supply Bank. If you have any questions please contact Jamie Gough, Water Rights and Uses Program Manager at 801-625-5809 or jgough@fs.fed.us.

Sincerely,

KATHRYN J CONANT
Director Lands and Minerals

Enclosure(s)

