

FEB 12 2016

DEPARTMENT OF
WATER RESOURCES**WATER SUPPLY BANK LEASE CONTRACT**

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

LESSOR: BYU-IDAHO
525 S CENTER ST 1695
REXBURG IDAHO 83460
208-496-1901

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. On January 21, 2016, the Lessor filed an application to lease the water right described below into the Water Supply Bank.
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 the 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 RIGHT:** The Lessor shall lease and the Board shall accept into the Bank the Applicant's water right described as follows:

Summary of Water Right or Portion Leased to the Bank

Water Right	Priority Date	Source	Tributary	Leased Rate	Annual Leased Volume	Total Leased Acres
22-4130	06/01/1956	GROUND WATER	NA	2.66 cfs	466.0 af	133.0 ac

Lease Totals 2.66 cfs 466.0 af 133.0 ac

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: Negotiated Rental Rate \$100 with City of Rexburg

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2016 to December 31, 2020. 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. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

WATER SUPPLY BANK LEASE CONTRACT

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

BYU-IDAHO
525 S CENTER ST 1695
REXBURG IDAHO 83460

By 

Printed Name Charles Andersen

Date 2/5/16

Title VP- University Resources

IDAHO WATER RESOURCE BOARD
322 EAST FRONT ST
PO BOX 83720
BOISE ID 83720-0098

By 
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 2/12/2016

Lease approved by IDWR 

Date 2-12-2016

ATTACHMENT A

WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

WATER RIGHT NO. 22-4130

The water right or portion thereof leased to the bank is described as follows:

Lessor: BYU-IDAHO
525 S CENTER ST 1695
REXBURG IDAHO 83460
208-496-1901

Location of Point(s) of Diversion for Water Right 22-4130

GROUND WATER NENESE Sec. 30, Twp 06N, Rge 40E, MADISON County

<u>Water Right</u>	<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
22-4130	IRRIGATION	04/01	to 10/31	2.66 cfs	466.0 af
Total:				2.66 cfs	466.0 af

Place of Use to be Idled Under This Lease: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	40E	30													21.0			35.0	56.0
06N	40E	31	38.0	39.0															77.0

Total Acres: 133.0

Conditions Applicable to Leased Water Right

1. The water right(s) referenced above is accepted into the bank and rented in accordance with a private agreement formulated between the lessor and the renter. The right will be rented from the bank at \$100.
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.

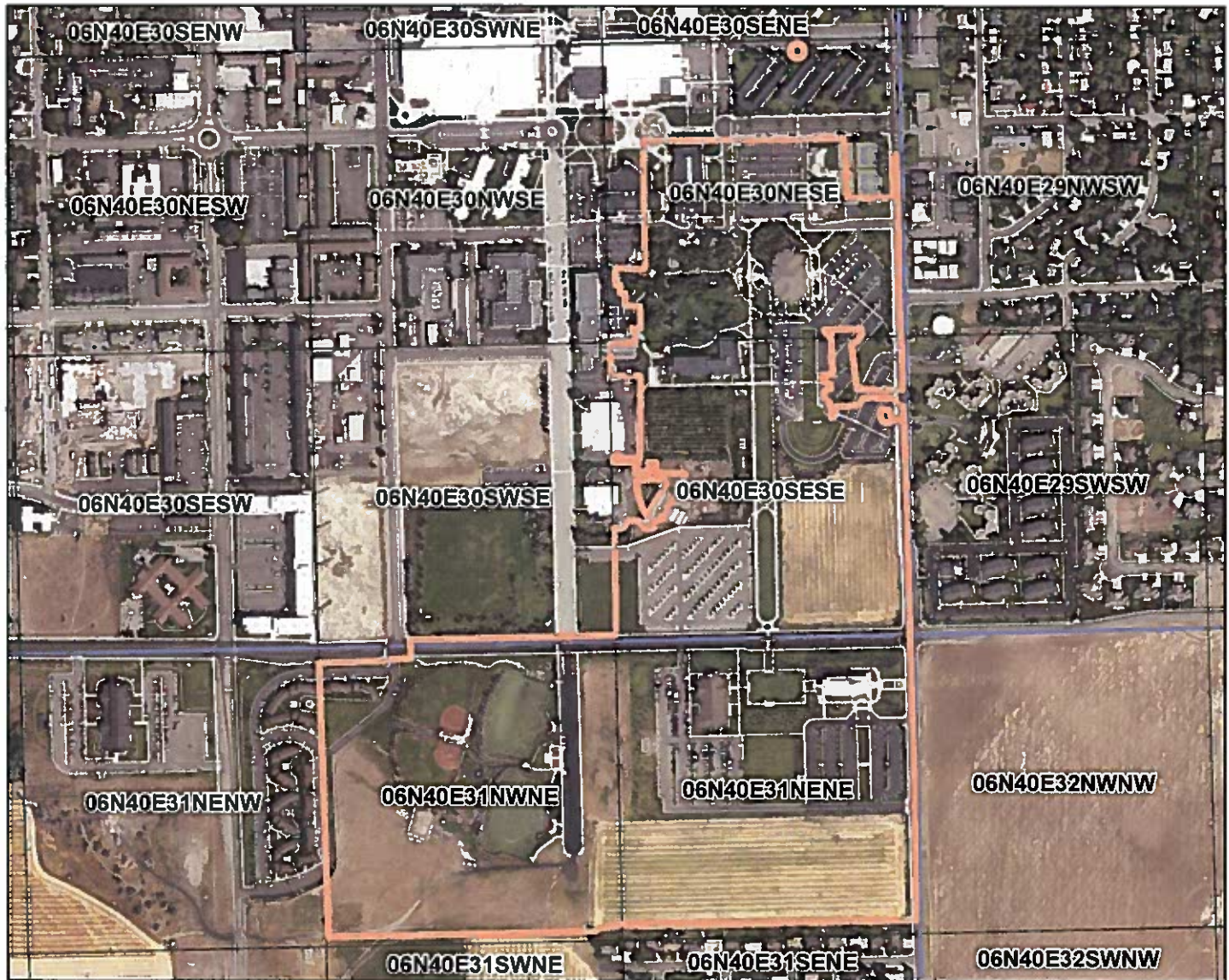
8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, nor does it improve the status of the right or accomplish the resumption of use. It does not preclude the opportunity for review of the validity of this water right in any 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 after the following rental season.
11. The water right leased to the bank is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Idaho Water Resource Board Water Supply Bank Lease

22-4130

Effective until December 31, 2020

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.



2013 USDA-FSA Aerial Photography

-  Approved Lease Point of Diversion
-  Approved Lease Place of Use
-  Townships
-  PLS Sections
-  Quarter Quarters



0 500 1,000 Feet

JAN 21 2016

DEPARTMENT OF
WATER RESOURCES

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

An application to lease or sell a water right into the Water Supply Bank must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. 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. **Incomplete applications will be returned to applicants for completion.**

Designated Applicant BYU-Idaho
(Select one owner – see item 1A on the application)

Water Right No. 22-4130
(One water right per application)

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

YES

- ☒ Completed *Water Supply Bank Lease or Sale Application Checklist* (this form).
- ☒ Completed *Application to Sell or Lease a Water Right to the Water Supply Bank* (pages 2-3).
- ☒ 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.

Attachment N/A YES

- | | | |
|----|--|--|
| 1A | ☒ ☐ | Contact information for <i>all owners</i> of the water right that is being leased or sold on this application. |
| 1B | ☒ ☐ | An <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant. |
| 1C | ☒ ☐ | <i>Notice of Change in Water Right Ownership</i> form (accessible from www.idwr.idaho.gov). |
| 1D | ☒ ☐ | Written consent from irrigation district or water delivery company. |
| 1E | ☒ ☐ | 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. |
| 3E | ☒ ☐ | Evidence demonstrating that a water right has not been lost through abandonment or forfeiture pursuant to <u>Section 42-222(2), Idaho Code</u> . |
| 4 | ☒ ☐ | 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 . |

Department Use Only

Fee Amount \$ <u>250.00</u>	Received By: <u>[Signature]</u>	Date Received: <u>1-21-16</u>	Receipt # <u>0101442</u>
W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)		Name on W-9: <u>Brigham Young University-Idaho</u>	

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

1. CONTACT INFORMATION

- A. An application to sell or lease a water right to the Water Supply Bank must be completed by a Designated Applicant who is a recognized owner of the water right being sold or leased to the Water Supply Bank. If there are additional owners recorded for the property to which the water right is appurtenant, 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 BYU-Idaho Email Address gutierrezv@byu.edu

Mailing Address 525 S Center ST 1695, Rexburg, ID 83460 Phone Number 208-496-1901

☒ 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 completed an IRS Form W-9 (Attachment 1B)? Yes ☒ No ☐

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 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 1D).

E. 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 1E).

Name of Representative _____ Organization _____

Professional Title _____ Email Address _____

Mailing Address _____ Phone Number _____

☐ 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

Water Right Number 22-4130 ☒ 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 a water right is being offered, complete Attachment 2)

3. GENERAL INFORMATION

- A. Please provide a description of the current water diversion system.

Well water.

- B. 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.

City of Rexburg rental.

- C. Are any of the water rights identified in question 3B stacked with the water right proposed for lease? Yes ☐ No ☒

Stacked water rights are water rights that are utilized 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.

D. Will the present place of use continue to receive water from any other source?

Yes ☒ No ☐

If yes, describe. City of Rexburg rental.

E. Has any portion of this water right undergone a period of five or more consecutive years of non-use?

Yes ☐ No ☒

If yes, describe and attach Watermaster records or other evidence to demonstrate that the water right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code.

F. Is this water right involved in any other IDWR process such as an application for transfer or a mitigation plan? Yes ☐ No ☒

If yes, describe. _____

4. MAP

Plat map, survey map, or aerial photograph clearly showing the specific acres proposed to be idled by this lease application.

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: 2016 to 2020 (maximum lease period 5 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.

Agreement with City of Rexburg to rent these rights for \$100.

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 provisions are stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any elements of the water right.



Signature of Designated Applicant

CHARLES N. ANDERSEN

Printed Name

Nov 10, 2015

Date

Signature of Authorized Representative

Printed Name

Date

Mail to:

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



- WR POD 22-4130
- WR POU 22-4130
- Twp & Rng
- Section
- QQ



0 300 600 1,200 Feet
2013 NAIP Photography

WSB Rental Application

Water Right No. 22-4130

by: KM
November 9, 2015





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

February 16, 2016

BYU-IDAHO
525 S CENTER ST 1695
REXBURG ID 83460

RE: WATER SUPPLY BANK LEASE CONTRACT FOR WATER RIGHT 22-4130

Dear Lessor:

Water right 22-4130 was leased into the Water Supply Bank (Bank) as of January 21, 2016, 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, 2020**, 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 me at 287-4910.

Sincerely,

for

Clay Webster
Water Resource Agent
WSB Process Point of Contact

Enclosure: Executed Lease Contract

c: Kristin Moore – Rocky Mountain Environmental
James Cefalo - IDWR Eastern 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

February 2, 2016

BYU-IDAHO
525 S CENTER ST 1695
REXBURG ID 83460

RE: APPLICATIONS TO LEASE WATER RIGHT 22-4130 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, 2020**, 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 me at 287-4910.

Sincerely,

for 
Clay Webster
Water Resource Agent
Water Supply Bank Point of Contact

Enclosure: Proposed Lease Contracts

c: Rocky Mountain Environmental Associates, Inc

Hersley, Jean

From: Cefalo, James
Sent: Monday, February 01, 2016 2:59 PM
To: Hersley, Jean
Subject: RE: BYU-Idaho Lease Application 22-4130

Jean,

I don't have any comments or concerns about the proposed WSB Lease.

James

From: Hersley, Jean
Sent: Monday, February 01, 2016 1:58 PM
To: Cefalo, James
Subject: BYU-Idaho Lease Application 22-4130

This water right has been in the Bank since 2011 so this application is a renewal. Attached is the review memo, draft contract and map of the idled acres. This water right will be rented by the City of Rexburg.

*Jean Hersley
Idaho Dept Water Resources
Technical Records Specialist II
208-287-4942*

WATER SUPPLY BANK
Agent Lease Review Checklist
Applicant(s) Name: BYU-Idaho

Memo Date: February 1, 2016

Water Right Number(s): 22-4130

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?			
	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		
	Are there overlapping rights that need to be placed in the bank also?	Yes	No	
	Will the place of use continue to receive water?	X	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			
11	Area Headgate requirement			3.5
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 water right, 2.66 cfs, 466.0 af and 133.0 acres, in the Bank. The application was signed by Charles N Andersen, VP of services. This is a ground water right. The overlapping rights are the City of Rexburg municipal rights. This lease is part of a lease/rental package with the City of Rexburg. The right was decreed in 2008 and has been in the Bank since 2011. Forfeiture is not an issue. The place of use will continue to get water from the City of Rexburg. No WD at this time.			



CERTIFICATE OF ASSUMED BUSINESS NAME

Title 30, Chapter 21, Part 8, Idaho Code.

Filing fee: \$25.00.

FILED EFFECTIVE

2015 OCT -6 AM 8:28

1. The assumed business name which the undersigned use(s) in the transaction of business is: SECRETARY OF STATE
STATE OF IDAHO
- BYU-Idaho

2. The individual and/or entity names and business address(es) of those doing business under the assumed business name (do not include the name you listed in #1):

BRIGHAM YOUNG UNIVERSITY - IDAHO 525 S Center St 1695, Rexburg, ID 83460

(Name) (C 46399) (Address)

(Name) (Address)

(Name) (Address)

(Name) (Address)

3. The general type of business transacted under the assumed business name is:

- | | | |
|--|--|--|
| ☐ Retail Trade | ☐ Construction | ☐ Transportation and Public Utilities |
| ☐ Wholesale Trade | ☐ Agriculture | ☐ Mining |
| ☒ Services | ☐ Manufacturing | ☐ Finance, Insurance, and Real Estate |

4. Mailing address for future correspondence:

Brigham Young University-Idaho

(Name)

525 S Center St 1695

(Address)

Rexburg, ID 83460

(City) (State) (Zipcode)

5. Name and address for this acknowledgment copy is (if other than # 4):

(Name)

(Address)

(City) (State) (Zipcode)

Printed Name: Charles N. Andersen

Signature:

Printed Name: _____

Signature: _____

Printed Name: _____

Signature: _____

Secretary of State use only

IDAHO SECRETARY OF STATE

10/06/2015 05:00

CK:123679 CT:290747 BH:1495315

1@ 25.00 = 25.00 ASSUM NAME #2

D181866



RECEIVED

JAN 21 2016

DEPARTMENT OF
WATER RESOURCES

January 11, 2016

RMEA 11-0044

Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

Re: WSB Applications

Dear IDWR,

Please find enclosed a lease-rental package for water right # 22-4130, owned by BYU-Idaho, a check for \$250 for the filing fee. This package proposes to renew the lease-rental of this water right that expired in 2015, to be continued for another 5 years. An agreement between BYU-Idaho and the City of Rexburg is attached to the rental application.

If there are questions regarding these applications, please call our office. Please copy our firm in all correspondence.

Respectfully,

A handwritten signature in blue ink that reads "Kristin Moore".

Kristin Moore
Water Rights Analyst

Attachments: WSB Lease Application
 WSB Rental Application
 Check for Filing Fee