



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

May 17, 2015

TELFORD LANDS LLC
1450 W HWY 24
PAUL ID

**RE: APPLICATION TO LEASE AND RENT WATER RIGHT NOS. 34-2459 AND 34-2460
THROUGH THE WATER SUPPLY BANK**

Dear Applicant:

The Department of Water Resources ("Department") has completed its review of your application(s) to lease water right(s) to the Water Supply Bank ("Bank") and rent water rights from the Bank. Based on that review, the Department cannot accept water right(s) 34-2459 & 34-2460 into the Bank.

In accordance with Bank Rules, IDAPA 37.02.03, water rights may be leased to the Bank and made available for rent provided: the change does not cause injury to other right holders or enlargement of use of the water rights, and the change is in the local public interest. These criteria are used in evaluating whether it is appropriate to authorize the rental of a water right which has been leased to the Bank.

On April 16, 2015 the Department sent you a letter requesting information addressing public interest concerns as well as concerns about the omission of overlapping rights in this application package. As of the date of this letter you have provided no response to the Bank to address those concerns.

On April 23, 2015 the Department received a Temporary Change Application. This application was approved on April 28, 2015. This achieved the move that you had proposed in the Bank along with water right 34-10925.

This letter is notice that the attached application(s) to lease water to the Bank and rent those water rights from the Bank are **denied**.

If you have any questions, please contact me at (208) 287-4910.

Sincerely,

Clay Webster
Water Resource Agent
WSB Process Point of Contact

Enclosure: Lease Applications and Rental Applications

c: Robert L Harris – Holden Kidwell Hahn & Crapo

RECEIVED

JAN 20 2015

DEPARTMENT OF
WATER RESOURCES

APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK

This application must be prepared in accordance with the minimum requirements listed to be acceptable for processing by the Department. Incomplete applications will be returned.

Name of Renter(s) Telford Lands LLC

Mailing Address 1450 W. Hwy 24

Phone (208) 431-5957

Email telfordsunvalleyseed@gmail.com

A. DESCRIPTION OF WATER SOUGHT FOR RENT

1. <u>Maximum Flow Rate (cfs)</u>	<u>Maximum Volume (ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>
8.34		Irrigation	4/01 to 11/01
			to
			to
Total: 8.34			

2. Source of water Ground water tributary to _____

3. Point(s) of Diversion:

TWP	RGE	SEC	GOVT LOT	¼	¼	¼	County
3N	26E	2		SW	SE	NW	BUTTE
3N	26E	2		SE	NE	SW	BUTTE
3N	26E	1		SW	SE	SW	BUTTE
3N	26E	12		NW	NW	NW	BUTTE

4. Lands to be irrigated or place of use:

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	26E	14					39	36	40	40	40	40	40	40					315
		15	39	40	40	40	39	39	40	40	40	40	40	40	40	40	40	40	637
		16	39	39	40	40									40	40	39	39	316
		22	40	40	40	40	40	40	40	40									320
		23					40	40	40	40	40			33	39	40	40	40	392

If the use is for irrigation, show total number of acres proposed through rental.

Total Acres 1980

B. OWNERSHIP

1. Do you own the land at the proposed point of diversion? Yes ☒ No ☐

If no, list owner, contact information, and attach a copy of the agreement or other written authority to use the proposed point of diversion. The Big Hole is owned by applicant, and Mark's well is owned by a member of the LLC applicant.

2. Do you own the land at the proposed place of use? Yes ☒ No ☐

If no, list owner, contact information, and attach a copy of the agreement or other written authority to use the proposed place of use.

C. MAP

Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described by this application in section A. Include legal description labels.

D. GENERAL INFORMATION

1. Please provide a description of the proposed diversion system.
Wells and pumps into pipelines and ditches to the place of use.
2. Describe any other water rights diverted through the same point(s) of diversion or used for the same purpose(s) as described above.
34-2459, 34-2460, 34-2461, 34-2462, 34-10925, 34-7037, and 34-7138.
3. Will the proposed place of use receive water from any other source? Yes ☒ No ☐
If yes, describe. Because this is a combined lease-rental, the only change is to authorize the use of two additional wells to irrigate the place of use of the water rights.
4. If the proposed use is not for irrigation, please provide a detailed description of the proposed use and how you determined the amount of water required. Attach additional sheets if needed.
5. Are there any other applications pending before the Department, such as an application for permit or transfer, for the same use(s) proposed by this rental? Yes ☐ No ☒
If yes, describe.
6. Was this rental application submitted in response to a Notice of Violation or a pending Notice of Violation? Yes ☐ No ☒
If yes, describe.

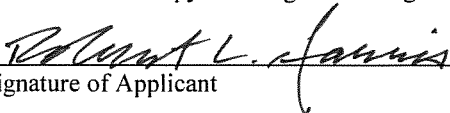
E. RENTAL TERM

- Do you wish to rent water from the Board's bank for more than one (1) year? Yes ☐ No ☒
If yes, please specify the number of years desired through proposed rental.

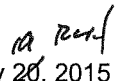
I hereby assert that the information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

If this application is approved, the applicant agrees to the following:

1. The use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code.
2. Renter shall comply with all applicable state and federal laws while using water under this agreement.
3. Renter shall hold the Board, the Director, and the state of Idaho harmless from all liability on account of negligent acts of the renter.
4. The Director may terminate diversion of water if the Director determines there is not a sufficient water supply for the priority of the right or portion thereof being rented.
5. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
6. Renter is not authorized to use water proposed by this application until the rental fees are paid in full and the renter receives an executed copy of the agreement signed by the Director.


Signature of Applicant

Robert L. Harris, Attorney
Printed Name and Title*


January 20, 2015
Date

Signature of Applicant

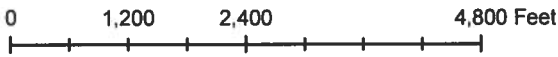
Printed Name and Title*

Date

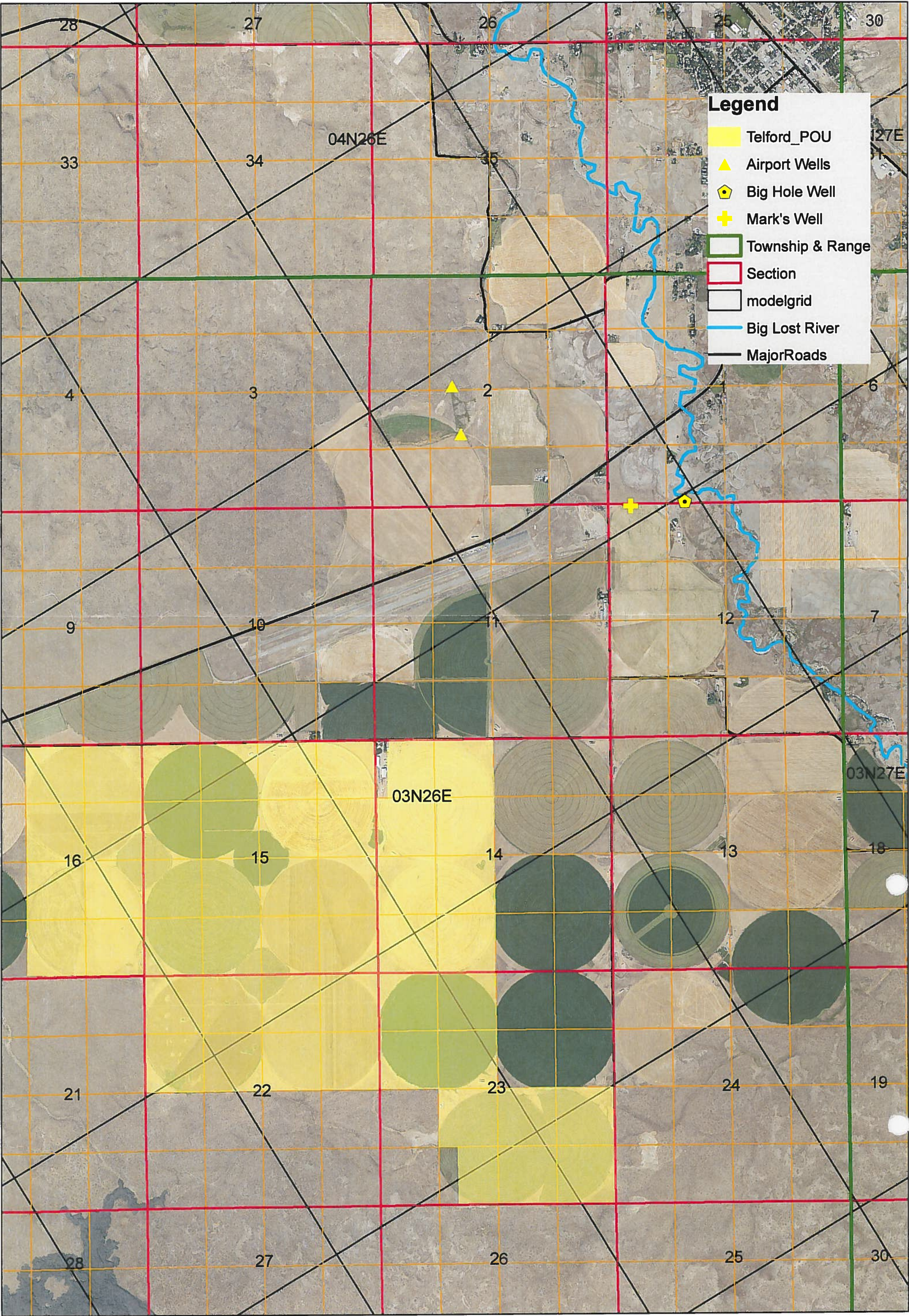
*Please provide title of signatory if signing on behalf of a company or organization or with power of attorney

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

TELFORD LANDS LLC WATER BANK RENTAL



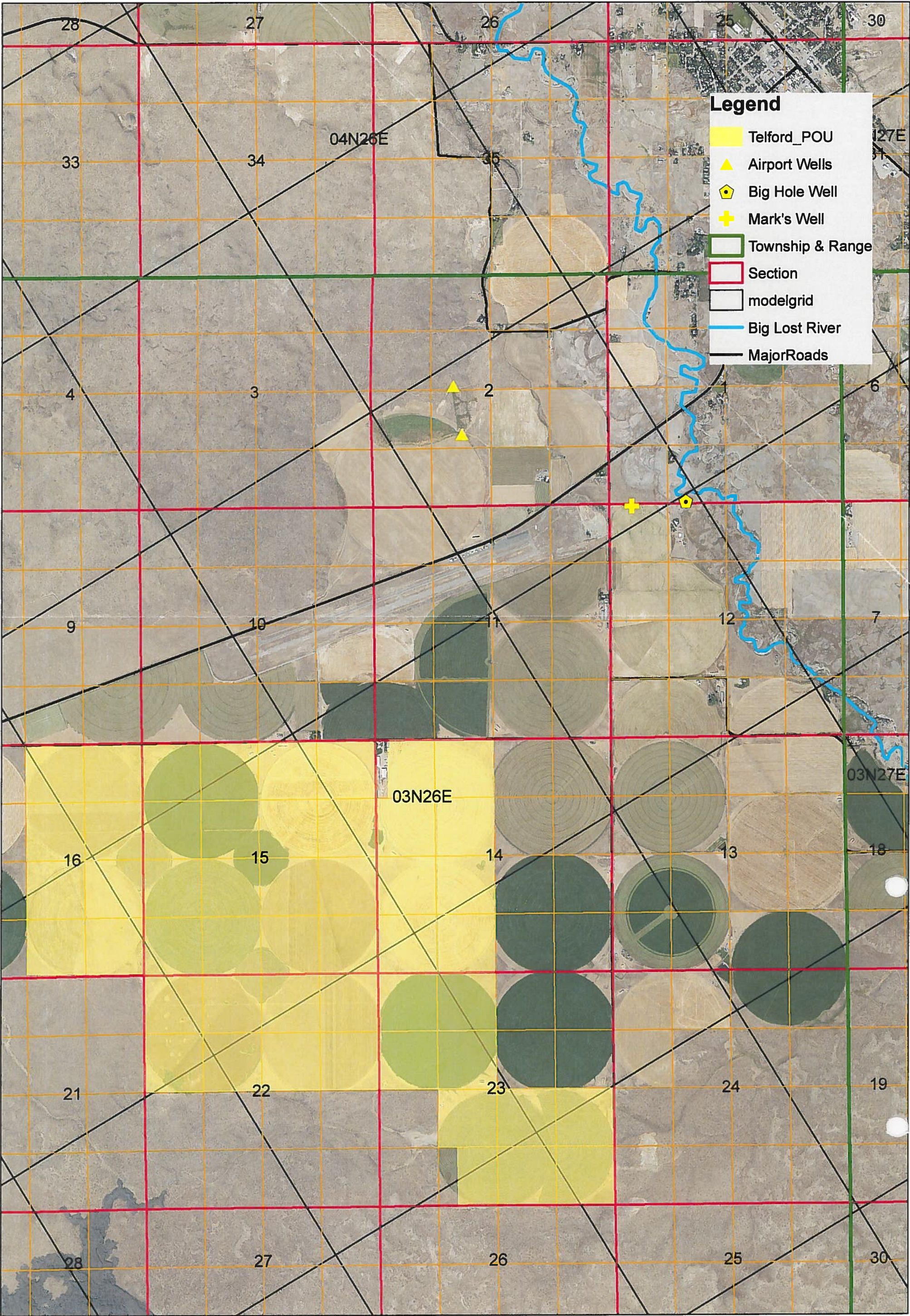
Prepared by:
Robert L. Harris
Jan. 19, 2015



TELFORD LANDS LLC WATER BANK RENTAL

0 1,200 2,400 4,800 Feet

Prepared by:
Robert L. Harris
Jan. 19, 2015



Telford Lands LLC Water Bank Applications

WATER RIGHTS BEFORE WATER BANK

Water Right No.	Name on Water Right	Basis	Priority Date	Source	Beneficial Use	Individual Diversion Rate Limitation (cfs)	Combined Diversion Rate Limitation (cfs)	Individual Volume Limitation (AFA)	Combined Volume Limitation (AFA)	Individual Acre Limitation	Total Permissible Place of Use	Point of Diversion	Notes
34-2459	Telford Lands LLC	Partial Decree	April 19, 1965	Ground water	Irrigation	4.17	12.5 (with other water rights not listed)	None	8441.5 (with other water rights not listed)	238	1980 (with other water rights not listed)	SWSENW, 3N, 26E, Sec. 2 (Airport Well) SESESW, 3N, 26E, Sec. 2 (Airport Well)	
34-2460			April 19, 1966			4.17		None		238			

WATER RIGHTS AFTER WATER BANK

34-2459	Telford Lands LLC	Partial Decree	April 19, 1965	Ground water	Irrigation	4.17	12.5	None	8441.5	238	1980	SWSENW, 3N, 26E, Sec. 2 (Airport Well) SESESW, 3N, 26E, Sec. 2 (Airport Well) SWSESW, 3N, 26E, Sec. 1 (Big Hole) NWNWNW, 3N, 26E, Sec. 12 (Mark's Well)	
34-2460			April 19, 1966			4.17		None		238			

Edl, Michele

From: Rob Harris [rharris@holdenlegal.com]
Sent: Wednesday, April 22, 2015 2:28 PM
To: Edl, Michele
Subject: RE: 2015 WSB lease/rental

Michele:

Thanks for your letter. We will work on a response and get back to you.

Can you give me a status update on the other Telford water bank application—the one that we are simply trying to continue for another 5 years? (34-618 et al).

Thanks,

Rob Harris

From: Edl, Michele [<mailto:Michele.Edl@idwr.idaho.gov>]
Sent: Thursday, April 16, 2015 1:45 PM
To: telfordsunvalleyseed@gmail.com
Cc: Rob Harris
Subject: 2015 WSB lease/rental

Mr. Telford, Mr. Harris,

I have attached an early-bird copy of a letter which will be mailed from the state office tomorrow morning.

Respectfully,

Michele Edl



State of Idaho

DEPARTMENT OF WATER RESOURCES

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GARY SPACKMAN

Director

April 16, 2015

C.L. "BUTCH" OTTER

Governor

TELFORD LANDS LLC

1450 W HWY 24

PAUL ID 83347

RESPONSE DEADLINE

May 1, 2015

RE: Water Supply Bank Lease and Rental Application of Water Rights 34-2459, and 34-2460 – Additional Information Required

Dear Applicant:

On January 20, 2015 the Department of Water Resources (Department) received your applications to lease and rent water into and from the Water Supply Bank (WSB).

In accordance with Bank Rules, IDAPA 37.02.03, water rights may be leased to the Bank and made available for rent provided: the change does not cause injury to other right holders or enlargement of use of the water rights, and the change is in the local public interest. These criteria are used in evaluating whether it is appropriate to authorize the rental of a water right which has been leased to the Bank.

As part of my review of your application package, I sought comment from Compliance Bureau Chief, Tim Luke. Mr. Luke has responded to my request. He is opposed to approval of your proposed lease and rental package. He has two concerns.

- 1) He has received numerous complaints related to water use in this area. He has concerns about allowing this proposed lease-rental package to substitute for a transfer which requires public notice, while WSB processing typically does not.
- 2) Mr. Luke is also concerned that regulation of this proposed water use would not be possible. It appears that seven rights are commingled in a shared system but only two of the rights are included in this proposal. It is not clear from the lease-rental package why the other five rights, which are also appurtenant to the POU, are not involved in the lease and rental proposal. Nor is it clear how the Department will limit the water use from the two wells to 476 acres with the 1980 acre POU.

This letter is notice that your applications to lease and rent water right 34-2459 and 34-2560 cannot be processed until Mr. Luke's concerns are addressed.

Although I have been directed to give you additional time within which to respond to this letter, it may not be feasible to assemble the necessary documents at this time. So you may want to explore other options such as a "water right transfer" or a "temporary transfer." A "water right transfer" is the process which authorizes a change to a water

right's point of diversion, place of use, period of use, and/or nature of use. A "temporary transfer" can be utilized to change point of diversion, place of use, or purpose of use of a water right upon declaration of a drought emergency, in accordance with Idaho Code 42-222A.

You requested use of this water for the 2015 irrigation season, which began on April 1, 2015 in your area. Please note that any diversion in connection with this rental application is not authorized and diverting water prior to receiving an executed rental agreement is cause for a notice of violation.

I will place your application on hold in order to give you an opportunity to submit additional information. Please provide information addressing Mr. Luke's concerns within fourteen (14) days. If I have not received your response on or before May 1, 2015, your applications will be denied.

If you have any questions regarding this matter, please contact me at (208) 287-4946.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Edl".

Michele Edl

ec: Rob Harris
rharris@holdenlegal.com

Luke, Tim

From: Luke, Tim
Sent: Saturday, April 11, 2015 4:32 PM
To: Edl, Michele
Cc: Palmer, Cherie; Keen, Shelley; Buyer, Remington
Subject: Telford WSB Lease/Rental

Michele,

I have reviewed the Telford 2015 WSB Lease/Rental package involving water rights 34-22459 and 34-2460. I offer the following comments and questions:

1. Telford is merely using the WSB lease/rental to add two points of diversion to the two rights above. Does IDWR WSB policy commonly allow users to use the WSB for adding wells or POD's to water rights as opposed to requiring a transfer. I don't quite understand why we would allow this arrangement instead of or in lieu of a transfer.
2. The rental POU is for 1980 acres that have seven different appurtenant ground water rights, including the two rights referenced above. Why is Telford only adding the two additional wells to rights 34-2459 and 34-2460, and not the other five water rights? Shouldn't we require the other five rights to be included in the lease/rental package? Perhaps alternatively, the rental POU should be limited to 476 acres only, which is the acre limit under rights 34-2459 and 34-2460 (238 acres for each right). I would not suggest this alternative because rights 34-2459 and 34-2460 are used with the other five rights in one big POU, and all seven rights share the same POD's. I believe all the water is commingled into a shared system so I don't see how one could limit or regulate the two additional wells to be used on only 476 acres within the maximum 1980 acre POU.
3. I looked at the 2014 WMIS volumes for the rights on the permissible POU. It looks like Telford is irrigating only about 1628 acres out of the total 1980 acres. The well volumes from the four wells for the seven rights and 1980 acres were also well under the water right volume limits. The 2014 volume for permit 34-2486 and one of the wells to be added through this WSB transaction (Mark's Well), was 356 acre feet, which is under the maximum volume limit for the 200 acres authorized under the permit (the permit POU is a stand-alone system and POU, separate from the seven gw rights used on the 1980 acre POU).
4. Your memo of 4/10/2015 states that ground water rights in Basin 34 or this area of Basin 34 are not subject to watermaster control. This is not correct, all ground water rights in Basin 34 (except de-minimis domestic and stock) are subject to watermaster control; ground water wells are actively measured by the water district and the district makes assessments against ground water rights based on water use.

My Recommendation:

I **do not recommend approving** this WSB lease/rental package based on my concerns or observations expressed in items 1 and 2 above. At a minimum, I think IDWR should understand why the other ground water rights that are appurtenant to the 1980 acre rental POU are not included in the lease/rental package, or else require the other rights to be included in an amended lease/rental application package. Additionally, I suggest IDWR could not even consider processing any WSB transactions merely to add POD's since a water right transfer seems to be the more appropriate process to accomplish that objective.

Based on the numerous complaints and concerns made to me by Big Lost users over the past few years involving particularly water use in this area of the Big Lost near Arco, and including specific complaints alleged against Mr. Telford, I am concerned that this WSB lease/rental package may be an attempt by Mr. Telford to cut some corners and delay a transfer application that really should be subject to advertisement and a normal review process. My opinion may be counter to WSB policy, but given the sensitivity in this area, I feel we should not use the WSB to add PODs to water

rights but rather adhere to the wrong transfer process. Seems like we are just doubling our workload by doing WSB transactions that are followed by a transfer.

Tim

MEMORANDUM

To: Water Right No(s): 34-2459 and 34-2460

From: Michele Edl

Date: April 11, 2015

Re: Review of Applications to Lease and Rent Water Rights through the State Water Supply Bank

PURPOSE/NARRATIVE: On January 20, 2015, IDWR received applications to lease and rent the above rights to the WSB for 2015 season. The applications were submitted by Robert Harris (attorney with Holden Kidwell Hahn & Crapo) on behalf of Telford Lands, LLC.

This is a self-serve water use package. The applicant proposes to lease and rent the entirety of both rights to and from the WSB with no changes to the authorized POU for the rights. The purpose of these lease-rentals is to add two diversion points to the two PODs already authorized for these two rights.

Transfer 78363 (a.k.a. 77933), which would have acted on both of the above rights, was withdrawn on January 20, 2015. The transfer proposed changes to the PODs and delivery systems for both the upper and lower Telford Lands farms. This WSB lease-rental package involves only the lower farms and is intended to bridge the 2015 irrigation while another less complex transfer proposal is drafted and provided to IDWR.

AUTHORITY TO FILE: According to IDWR's database, the current owners of the water rights are Telford Lands, LLC. Telford Lands, LLC. is listed with ISOS as W23489.

Rob Harris signed the applications. He is the authorized representative for Telford Lands, LLC. According to available Butte County taxlot information, the POU is property owned by Telford Lands, LLC.

The two proposed rental PODs are existing wells located on properties which are owned by the Telford family. One well (the Big Hole well) is not an authorized POD for any water right. But it has been used for previous WSB rentals. It is WMIS well 1001749.

The other POD (Mark's well) is the preliminary POD for draft licensed right 34-2486. It is a WMIS well with tag A0003601.

The two authorized lease PODs for WR 34-2459 and 34-2460 are also the authorized PODs for 34-2461, 34-2462, and 34-10925. They are also WMIS wells and are identified as A0010087, Isom North Well and A0010086, Isom South Well. They will continue to act as diversion points for all five rights.

WATER RIGHT VALIDITY: Water right 34-2459 and water right 34-2460 were decreed on December 16, 1997 through the SRBA. Both were decreed with the same two points-of diversion.

Both rights are limited to 238.0 acres within the same 1980-acre PPU. A review of aerial photography shows regular irrigation of the POU. Forfeiture is not an issue.

INJURY TO OTHER WATER RIGHTS: No injury is apparent. The lease PODs and the proposed rental PODs are located within adjacent ESPA grid cells. ESPA modeling of the impact was not required.

ENLARGEMENT OF USE: No enlargement is evident. Other rights are authorized to irrigate the POU and to divert from the lease PODs. Existing combined use limits will be maintained on the lease contracts and the rental agreement.

LOCAL PUBLIC INTEREST: Transfer 78363 (a.k.a. 77933) was withdrawn because it proposed moving PODs further up the Big Lost River valley and the Director had denied a similar protested transfer on May 29, 2014. (See Transfer 77610 in the name of Parkinson Farms.)

This lease-rental package doesn't change the POU. It authorizes the applicant to access 2 additional PODs which are on property managed by the applicant.

Review staff has no information to suggest this application is inconsistent with the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: The lease appears consistent with the conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The rights are not subject to watermaster control. However, because management of water in B34 the Big Lost River basin been subject to several recent protests, I have consulted with Bureau Chief, Tim Luke about this lease-rental package. He is opposed to this lease-rental package.