

WATER SUPPLY BANK LEASE CONTRACT

MAR 20 2015

DEPARTMENT OF
WATER RESOURCES

This Lease Contract ("**Lease**") is effective February 3, 2015, between the Idaho Water Resource Board ("**Board**"), and

Lessor: LINFORD INC
2145 S 106TH PL
MESA AZ 85209
208-313-6080
kyle@silverfarms.com

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.
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

<u>Water Right</u>	<u>Lease Rate</u>	<u>Lease Volume</u>	<u>Total Leased Acres</u>
31-7316	0.69 CFS	117.0 AF	39.0 AC
Combined Lease Totals:	0.69 CFS	117.0 AF	39.0 AC

The water rights described herein shall be available for rental from the Bank as follows:

Authorized Period of Use under Lease: April 1 to November 1

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:** This Lease shall take effect when both parties have signed it and shall continue in effect until December 31, 2015.
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.

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

LINFORD INC
2145 S 106TH PL
MESA AZ 85209

By *Diare Andrew*

Date *3-17-15*

Printed Name *Diare Andrew*

Title *Sec./Treasury*

IDAHO WATER RESOURCE BOARD
322 East Front Street
P.O. Box 83720
Boise, ID 83720-9098

By *Brian Patton*

Brian Patton, Acting Administrator
Idaho Water Resource Board

Date *March 20, 2015*

Lease approved by IDWR *Chris Palmer*

Date *2/20/2015*

ATTACHMENT A
WATER RIGHT NO. 31-7316
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: LINFORD INC
2145 S 106TH PL
MESA AZ 85209
208-313-6080

Priority Date: 05/10/1979

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	to 11/01	0.69 CFS	117.0 AF
	Total:		0.69 CFS	117.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SW¼NW¼NE¼ Sec. 25, Twp 08N, Rge 36E, JEFFERSON County

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	
08N	36E	25	2.6	2.0	3.2	3.2	5.0			6.0	4.5			4.0	3.1	1.1	1.1	3.2	39.0

Total Acres: 39.0

ADDITIONAL CONDITIONS OF ACCEPTANCE

1. The water rights referenced above will be rented from the bank at the current rental rate.
2. There is no rental payment to the lessor of the water right if the right or a part thereof is not rented from the bank.
3. While a right is in the bank, the lessor may not use the right without approval of the Department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B.
4. A right accepted into the bank stays in the bank until the Board releases it, the lease term expires, or upon request from the lessor to change the term of the lease, 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.
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.
 - b. If a change in ownership is processed by the Department during a rental season, rental payment will be made to the person or entity who is the lessor of record at the beginning of that rental season.
 - c. New lessor(s) of record will receive payment after the following rental season.
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. 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. 110.



STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

FEB 03 2015

DEPARTMENT OF
WATER RESOURCESWATER SUPPLY BANK LEASE OR SALE
APPLICATION CHECKLIST

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 Linford Inc.Water Right No. 31-7316One water right per applicationAll 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. If you are submitting more than one lease application and the water rights have a common place of use, or common diversion rate, or common diversion volume, the combined maximum fee is \$500.00.

Attachment N/A YES

- 1A ☐ ☒ Contact information for **all owners** of the water right that is being leased or sold on this application.
- 1B ☐ ☒ An Internal Revenue Service (IRS) Form W-9 for the Designated Applicant.
- 1C ☐ ☐ *Notice of Change in Water Right Ownership* form (accessible from www.idwr.idaho.gov).
- 1D ☒ ☐ 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.
- 3D ☐ ☒ Evidence demonstrating that a water right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code.
- 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. If you don't already have a detailed map, you can create one using IDWR's online General Mapping Tool (<http://maps.idwr.idaho.gov/mapall/>) to locate a water right place of use or point of diversion.

Department Use Only

Fee Amount \$ <u>250.00</u>	Received By: <u>J. Strange</u>	Date Received: <u>2-3-2015</u>	Receipt # <u>C099886</u>
W-9 received? Yes ☒ No ☐	(Route W-9 to Fiscal)	Name on W-9: <u>Linford Inc.</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 Linford Inc. Email Address kyle@silverkfarms.com
Mailing Address 2120 W 4200 S, Rexburg, ID 83440 Phone Number (208) 313-6080

☒ The Designated Applicant is the sole owner of the water right being sold or leased to the Water Supply Bank.

☐ 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 ☐
, 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 ☒
, 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 ☒
, 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.

☐ Send original correspondence to the Designated Applicant and copies to the representative.

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

Water Right Number 31-7316 ☐ The full water right is being offered to the Bank.

☒ 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.
Ground water well and sprinkler irrigation.

- 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.

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

Yes ☐ No ☒

, describe. _____

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

Yes ☐ No ☒

, 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. See previous lease agreements

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

, describe. _____

4. SALE/LEASE AGREEMENT

A. Is the water right, or portion thereof, offered to the Idaho Water Resource Board (IWRB) for sale ☐ or lease ☒?

, for a period from 04/01/2015 to 11/01/2015 (maximum lease period 5 years).
(Month / Day / Year) (Month / Day / 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.
Current lease rental rate. _____

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 ank does not, in itself, confirm the validity of the water right or any elements of the water right.



Signature of Designated Applicant

Linford Inc.

Printed Name

01/07/2015

Date



Signature of Authorized Representative

Kirk M Jacobs

Printed Name

01/07/2015

Date

:

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

ATTACHMENT 1A**Additional Water Right Holders Party to the Lease Application**

List all individuals or business entities that are owners of the property to which the water right on this application is appurtenant. All water right holders must be signatories to a Water Supply Bank Lease Application however only the Designated Applicant needs to provide a completed IRS Form W-9 (Attachment 1B).

. If additional space is needed to list any other water right holders, attach a second copy of Attachment 1A.

Water Right No. 31-7316

		Applicant #2	Applicant #3
Name			
Mailing Address			
Phone Number			
Email Address			
Applicant Declaration	As Designated Applicant, I submit this lease application on behalf of all other water right holders.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.

	Applicant #4	Applicant #5	Applicant #6
Name			
Mailing Address			
Phone Number			
Email Address			
Applicant Declaration	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.

DESCRIPTION OF A WATER RIGHT PORTION OFFERED TO THE WATER SUPPLY BANK

- 3. Point(s) of Diversion:**

Twp	Rge	Sec	Lot	¼	¼	¼	County
08N	36E	25		SW	NW	NE	JEFFERSON
08N	36E	25		NE	SE	SW	JEFFERSON

4. Lands irrigated or place of use:

[illegible]

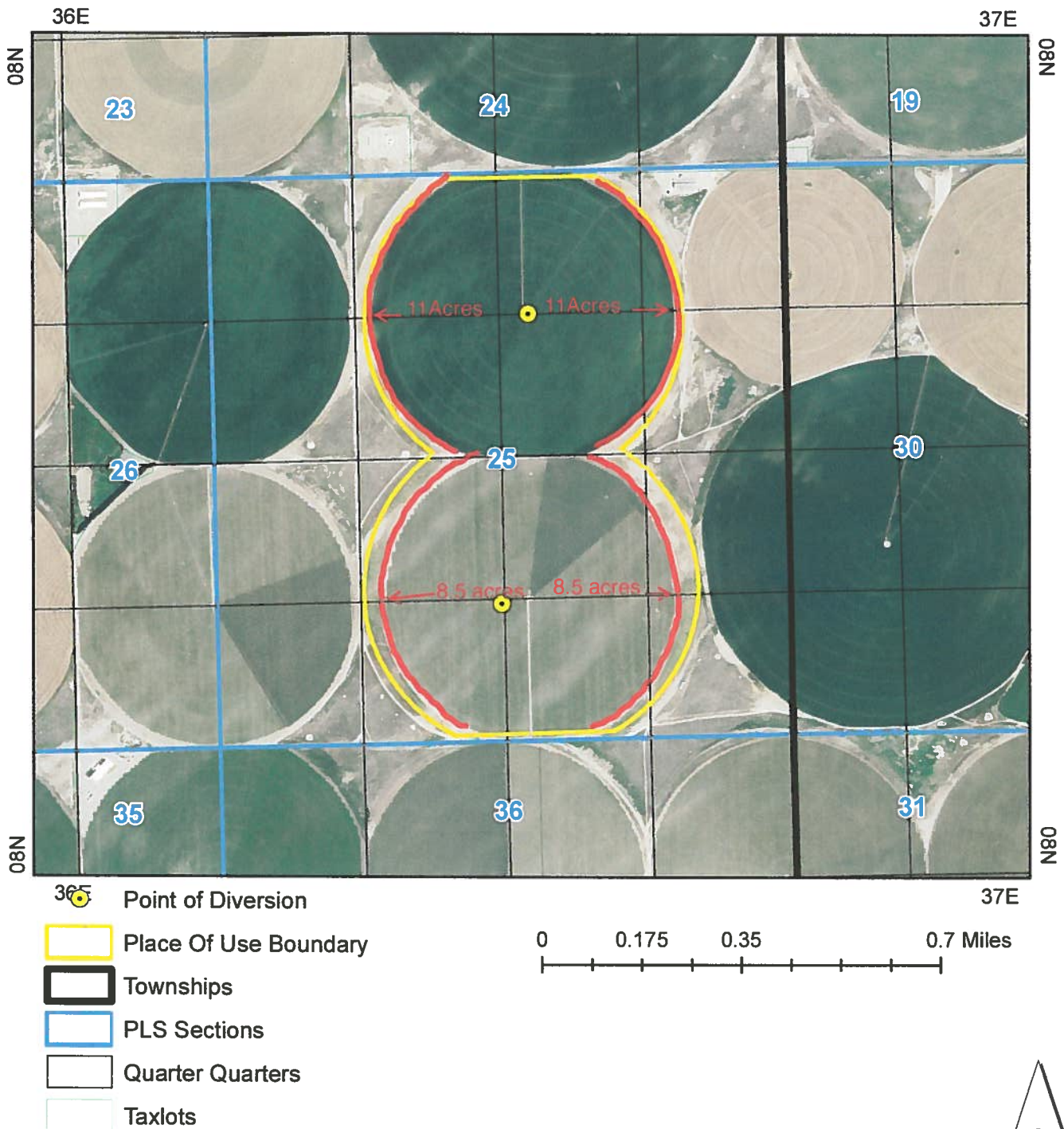
39

State of Idaho
Department of Water Resources

Water Right 31-7316

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

March 23, 2015

LINFORD INC
2145 S 106TH PL
MESA AZ 85209

RE: WATER SUPPLY BANK LEASE CONTRACT FOR RIGHTS 31-7316

Dear Lessor:

Water Rights **31-7316** was leased into the Water Supply Bank on February 3, 2015 in accordance with the executed original Lease Contract enclosed. **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.**

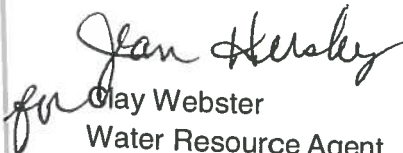
The right will automatically be released from the Bank on **December 31, 2015**, unless the right is released earlier by the Board, or upon your request. **Please note your right may not be available for immediate release if it has been rented.** To release the right from the Bank prior to the release date, submit a written request on the *Request to Release a Water Right from the Bank* form. This form is available from our public website at www.idwr.idaho.gov.

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,


Clay Webster

Water Resource Agent
WSB Process Point of Contact

Enclosure: Executed Lease Contract

c: IDWR Eastern Region
James Cefalo – Water District No.110
Kyle Jacobs



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

March 9, 2015

LINFORD INC
2145 S 106TH PL
MESA AZ 85209

RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 31-7316 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(s) to the Water Supply Bank. **I have enclosed two original Water Supply Bank Lease Contracts for your review and signature. Please sign and return BOTH 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 rights will automatically be released from the Bank on **December 31, 2015**, unless the rights are 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
WSB Process Point of Contact

Enclosure: Proposed Lease Contracts

c. Kyle Jacobs

MEMORANDUM

To: Water Right No(s). 31-7316
From: Jean Hersley
Date: 3/5/2015
Re: Review of Applications to Lease Water Rights to the State Water Supply Bank

PURPOSE/NARRATIVE: This application was received on February 3, 2015. Applicant wishes to place 39 acres, 0.82 cfs and 144 af into the Bank. The correct proportions are 0.69 cfs and 117.0 af for 39 acres.

AUTHORITY TO FILE: Kent Linford, who is listed as president of the company on the IDSOS page, signed the application.

WATER RIGHT VALIDITY: this right has been in the Bank previously and forfeiture is not an issue. Satellite imagery indicates leased portions were not irrigated.

INJURY TO OTHER WATER RIGHTS: No injury is apparent.

ENLARGEMENT OF USE: No enlargement is evident through the lease alone. Proper rental review should protect against enlargement.

LOCAL PUBLIC INTEREST: 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 leased right(s) are subject to Water District # 110. Comments were requested from watermaster and region.

Hersley, Jean

From: Hersley, Jean
Sent: Thursday, March 05, 2015 11:53 AM
To: Cefalo, James
Subject: Comments or concerns with WSB Lease 31-7316 for Linford Inc
Attachments: Lease Contract.docx; Lease Review Memo.docx

Linford Inc is requesting to renew their lease of water right 31-7316 into the Bank. Portions of these request have been leased to the Bank since 2010. I have attached the draft lease contract and review memo for your consideration. Thank you.

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

Hersley, Jean

From: Kyle Jacobs [kyle@silverkfarms.com]
Sent: Thursday, March 05, 2015 11:35 AM
To: Hersley, Jean
Subject: Re: Water Right 31-7316

Jean,

Thank you very much for getting back to me. The at lease for this year will be exactly the same as last year. If you can process it for this year I will make sure we fix it on next years application if there is any other further problems please let me know.

Best,

Kyle Jacobs

On Mar 5, 2015, at 9:43 AM, Hersley, Jean <Jean.Hersley@idwr.idaho.gov> wrote:

I am processing the Lease applications for Linford Inc. I am writing to clarify what I was requesting with the letter that was sent on February 20, 2015.

On attachment 2 of the application, you listed all 308 acres. I need to know how many acres per quarter quarter (QQ) you will be idling. The maps that accompanied the application is not broken down by the QQ.

I am assuming the acres are the same as last year's lease. I can take the number of acres from that lease. In the future, we need the number of acres to be idled, not the total number of acres for the water right.

I will need know if the acres are the same as the previous lease before I can continue processing the lease.

Thank you.

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

From: Thiel, Sandra
Sent: Thursday, March 05, 2015 9:13 AM
To: Hersley, Jean
Subject: FW: Water Right 31-7316
Importance: High

Thank you Kyle

From: Kyle Jacobs [<mailto:kyle@silverkfarm.com>]
Sent: Thursday, March 05, 2015 9:11 AM
To: Thiel, Sandra
Subject: Water Right 31-7316
Importance: High

Sandra,

As per our conversation I have attached the application. Please confirm you received this from me.

Thank you for your assistance.

<image005.jpg>

Kyle J Jacobs
Office: 208-662-5810
Fax: 208-662-5813
Cell: 208-390-8298

<2015 Water Bank Lease_complete copy.pdf>



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 20, 2015

LINFORD INC
2120 W 4200 S
REXBURG ID 83440

**RE: ADDITIONAL INFORMATION REQUEST FOR PROCESSING APPLICATION(S) TO LEASE
WATER RIGHT NO(S). 31-7316 TO THE WATER SUPPLY BANK**

*****TIME SENSITIVE RESPONSE REQUIRED*****

Dear Applicant:

The Idaho Department of Water Resources (Department) acknowledges receipt of the application(s) to lease the above referenced water right(s) to the Idaho Water Resource Board's Water Supply Bank (Bank). The Department will review your application as resources allow.

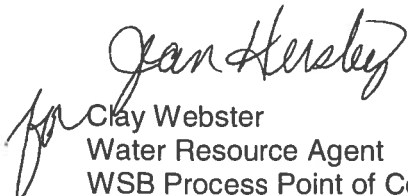
If the right(s) is determined to be eligible for acceptance into the Bank, the right will be entered as of the date of receipt of the application. The acceptance date may be adjusted when additional information is required. A preliminary review of your application(s) has been completed and it has been determined that additional information is required to continue processing.

Please provide the following information within 14 days of the date of this letter or the application will be denied:

- Complete Attachment 2 listing which 39 acres will be idled

The department will continue processing your application(s) once you have submitted the requested information. Water right forms are available from the Department's web site at www.idwr.idaho.gov. If you have any questions, please contact me at (208) 287-4910.

Sincerely,


Clay Webster
Water Resource Agent
WSB Process Point of Contact

Enclosure: Receipt # C099886

c: Linford Inc
2145 S 106th PI
Mesa AZ 85209