

Webster, Clay

From: Webster, Clay
Sent: Friday, February 27, 2015 9:47 AM
To: Palmer, Cherie
Subject: Deer Creek Ranch Inc WSB Leases 37-466, 37-11329 and 37-833R and Transfer 79711.

Cherie,

This transfer will cause an overlap problem with the way these rights are leased into the WSB. This causes an issue with the overlap in the SWSW of 03N17E, and in the SENW of 03N18E. On the Lease for 37-833R the entire right was placed in the bank Feb 23, 2011 through 2015. 37-466 and 37-11329 were leased in part, keeping portions of these sections out of the bank for irrigation. This could cause an enlargement to occur if these rights are rented before the leases are corrected to reflect the overlaps.

Clay

WATER SUPPLY BANK LEASE CONTRACT

This Lease Contract ("**Lease**") is effective January 1, 2015, between the Idaho Water Resource Board ("**Board**"), and

Lessor: DEER CREEK RANCH INC
PO BOX 3090
NEWPORT BEACH CA 92658
949-720-3400

RECEIVED

FEB 12 2015

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.
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>
37-466	3.65 CFS	Not Stated	182.7 AC
37-11329	0.92 CFS	Not Stated	53.4 AC
Combined Lease Totals:	4.57 CFS	Not Stated	182.7 AC

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

Authorized Period of Use under Lease: April 15 to October 31

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, 2019.
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.

SUPPORT DATA

IN FILE # 37-466

5. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

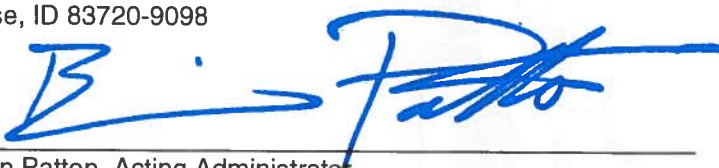
IN WITNESS WHEREOF, the parties have executed this Contract on the date following their respective signatures.

DEER CREEK RANCH INC
PO BOX 3090
NEWPORT BEACH CA 92658

By 
Printed Name JOHN FLYNN

Date 2/10/2015
Title EVP

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

By 
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date February 12, 2015

Lease approved by IDWR 

Date 2/12/2015

ATTACHMENT A
WATER RIGHT NO. 37-466
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: DEER CREEK RANCH INC
 PO BOX 3090
 NEWPORT BEACH CA 92658
 949-720-3400

Priority Date: 04/01/1880

Source: GROUND WATER
 DEER CREEK

Tributary to: DEER CREEK
 BIG WOOD RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
IRRIGATION	04/15	to 10/31	3.65 CFS
	Total:		3.65 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	SE¼SE¼SW¼	Sec. 30	Twp 03N	Rge 18E	BLAINE County
GROUND WATER	NE¼NE¼SE¼	Sec. 26	Twp 03N	Rge 17E	BLAINE County
GROUND WATER	NW¼NE¼SW¼	Sec. 30	Twp 03N	Rge 18E	BLAINE County
DEER CREEK	NE¼SE¼SE¼	Sec. 30	Twp 03N	Rge 18E	BLAINE County
GROUND WATER	NE¼SE¼SE¼	Sec. 30	Twp 03N	Rge 18E	BLAINE County
GROUND WATER	SE¼SE¼SE¼	Sec. 30	Twp 03N	Rge 18E	BLAINE 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	
03N	17E	25							2.9	9.9	25.4	26.2							64.4
03N	17E	26				1.7					3.3		22.7	23.4	36.8	19.6	10.8		118.3

Total Acres: 182.7

COMBINED LIMITS OF LEASED RIGHT:

<u>Combined Rights</u>	<u>Lease Rate</u>	<u>Lease Volume</u>	<u>Acre Limit</u>	<u>Total Leased Acres</u>
37-466 and 37-11329	4.57 CFS	Not Stated	182.7 AC	182.7 AC

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. Diversion of groundwater is limited to those times water is available for diversion under this right and priority from Deer Creek.
13. The unleased portions of Rights 37-466 and 37-11329 when combined shall not exceed a total diversion rate of 5.21 cfs and the irrigation of 306.3 acres.
14. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
15. Use of this 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. 37.
16. The diversion of up to 9.77 cfs of ground water shall be contingent upon an equivalent amount of water being measured at a point in Deer Creek within the SESW, S26, T03N, R17E.
17. If flows less than 9.77 cfs are measured, the ground water diversions shall be reduced accordingly. Such pumping reductions must be made within 24 hours of the measurement showing reduced flows.
18. Any subsequent transfer of the point of diversion described under this right will require the right holder to provide evidence that the new point of diversion has a direct and immediate hydraulic connection to Deer Creek.

ATTACHMENT A
WATER RIGHT NO. 37-11329
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: DEER CREEK RANCH INC
 PO BOX 3090
 NEWPORT BEACH CA 92658
 949-720-3400

Priority Date: 07/21/1956

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
IRRIGATION	04/15	to 10/31	0.92 CFS
	Total:		0.92 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 26 Twp 03N Rge 17E BLAINE 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	
03N	17E	25							2.9	9.9	25.4	15.2							53.4

Total Acres: 53.4

COMBINED LIMITS OF LEASED RIGHT:

<u>Combined Rights</u>	<u>Lease Rate</u>	<u>Lease Volume</u>	<u>Acre Limit</u>	<u>Total Leased Acres</u>
37-466 and 37-11329	4.57 CFS	NA	182.7 AC	182.7 AC

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. This right when combined with other right shall provide no more than 0.02 cfs per acre.
13. The unleased portions of the right listed below are limited to the irrigation of a combined total of 306.3 acres in a single irrigation season. Combined Right No. 37-466 and 37-11329.
14. The right holder shall make full beneficial use of right 37-466 prior to diversion and use under this right. The right holder shall limit the diversion of ground water under this right to those time when right 37-466 is not available or is not reasonable sufficient to irrigate the place of use authorized under this right.
15. The unleased portion of the rights listed below are limited to a total combined diversion rate of 5.21 cfs. Combined right nos. 37-466 and 37-11329.
16. The unleased portion of this right is limited to the irrigation of 89.6 acres within the place of use described above in a single irrigation season.

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

RECEIVED

JAN 29 2015

DEPARTMENT OF
WATER RESOURCES

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 DEER CREEK RANCH, INC.
(Select one owner – see item 1A on the application)

Water Right No. 37-11329
(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 all owners 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 \$	Received By:	Date Received:	Receipt #
W-9 received? Yes ☒ No ☐	(Route W-9 to Fiscal)	Name on W-9: <u>New Deer Creek Ranch 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 DEER CREEK RANCH, INC. Email Address _____
Mailing Address PO BOX 3090, NEWPORT BEACH, CA 92658 Phone Number 949-720-3400

☒ 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 PAUL ARRINGTON Organization BARKER ROSHOLT & SIMPSON, LLP
Professional Title _____ Email Address PLA@IDAHOWATERS.COM
Mailing Address 195 RIVER VISTA PLACE, SUITE 204, TWIN FALLS, ID Phone Number 208-733-0700

☐ 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 37-11329 ☐ 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.

WATER IS PUMPED FROM WELLS AND DIVERTED THROUGH PIPELINES TO PIVOTS AND OTHER
SPRINKLERS THROUGHOUT THE POU

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.
NON

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. _____

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](#). RIGHTS DECREED IN 2009

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. APPLICANT IS CREATING A PPU WITH THE WATER RIGHTS. THE TRANSFER APPLICATION WAS FILED CONCURRENTLY WITH THIS APPLICATION

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: 2015 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.

CURRENT RENTAL RATE

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.

John Flynn
Signature of Designated Applicant

JOHN FLYNN
DIRECTOR AND EXECUTIVE VP
DEER CREEK RANCH INC
Printed Name

1/23/2015
Date

Signature of Authorized Representative

Printed Name

Date

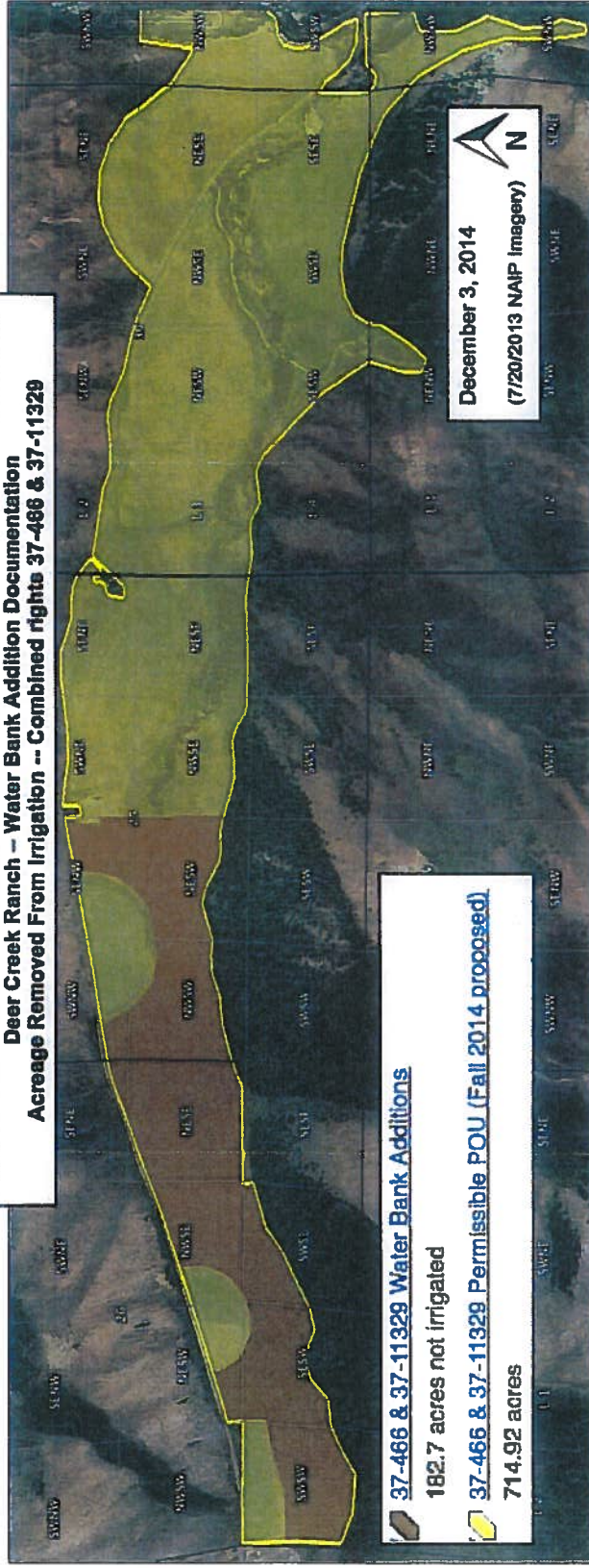
Mail to:
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

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

- [illegible]

If the water right is for irrigation, show total number of acres offered to the Bank. Total Acres 53.4

Deer Creek Ranch – Water Bank Addition Documentation
Acres Removed From Irrigation -- Combined rights 37-466 & 37-11329



37-466 & 37-11329 Water Bank Additions

182.7 acres not irrigated

37-466 & 37-11329 Permissible POU (Fall 2014 proposed)

714.92 acres

December 3, 2014

(7/20/2013 NAIP Imagery)

