

# WATER SUPPLY BANK LEASE CONTRACT

This Lease Contract ("**Lease**") is effective January 27, 2014, between the Idaho Water Resource Board ("**Board**"), and

**Lessor:** BROWN FARMS LLC  
764 TROUTNER WAY  
BOISE ID 83712  
(208) 386-9119

RECEIVED  
NOV 05 2014  
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>Acre Limit</u> | <u>Total Leased Acres</u> |
|-------------------------------|-------------------|---------------------|-------------------|---------------------------|
| 61-02154                      | 1.92 CFS          | 378.4 AF            | NA                | 94.6 AC                   |
| 61-10378                      | 0.25 CFS          | Not Stated          | NA                | 16.3 AC                   |
| Combined Limit                | 1.92 CFS          | 378.4 AF            | NA                | NA                        |
| 61-07005                      | 1.81 CFS          | 445.2 AF            | NA                | 111.3 AC                  |
| 61-07119                      | 1.85 CFS          | 364.4 AF            | 47.6 AC           | 91.1 AC                   |
| 61-07396                      | 0.76 CFS          | 222.8 AF            | NA                | 55.7 AC                   |
| <b>Combined Lease Totals:</b> | <b>4.49 CFS</b>   | <b>1302.3 AF</b>    | <b>325.5 AC</b>   | <b>369.0 AC</b>           |

The water rights described herein shall be available for rental from the Bank as follows:  
Authorized Period of Use under Lease: 03/15 to 11/15

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, 2014.

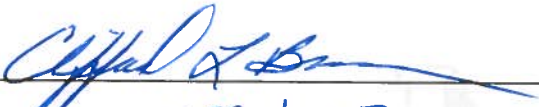
SUPPORT DATA

IN FILE # 61-02154

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.

**BROWN FARMS LLC**  
764 TROUTNER WAY  
BOISE ID 83712

By   
Printed Name Clifford L. Brown

Date 10/31/14  
Title Member

**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 November 5, 2014

Lease approved by IDWR 

Date 11/5/2014

**ATTACHMENT A**  
**WATER RIGHT NO. 61-02154**  
**WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE**

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

**Lessor:** BROWN FARMS LLC  
764 TROUTNER WAY  
BOISE ID 83712  
(208) 386-9119

**Priority Date:** 1/14/1963

**Source:** GROUND WATER

| <u><b>BENEFICIAL USE</b></u> | <u><b>From</b></u> | <u><b>To</b></u> | <u><b>Diversion Rate</b></u> | <u><b>Volume</b></u> |
|------------------------------|--------------------|------------------|------------------------------|----------------------|
| IRRIGATION                   | 03/15              | to 11/15         | 1.92 CFS                     | 378.4 AF             |
|                              | <b>Total:</b>      |                  | <b>1.92 CFS</b>              | <b>378.4 AF</b>      |

**LOCATION OF POINT(S) OF DIVERSION:**

|              |            |                                          |
|--------------|------------|------------------------------------------|
| GROUND WATER | L1(SENWNW) | Sec. 19, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SWNWNW     | Sec. 20, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | NWSENE     | Sec. 20, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SWNESW     | Sec. 19, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SESESE     | Sec. 18, Twp 04S, Rge 06E, ELMORE County |

**PLACE OF USE TO BE IDLED UNDER THIS LEASE:** IRRIGATION

|     |     |     | NE   |      |     |     | NW  |      |      |      | SW |    |      |      | SE   |     |     |      | Totals |
|-----|-----|-----|------|------|-----|-----|-----|------|------|------|----|----|------|------|------|-----|-----|------|--------|
| Twp | Rng | Sec | NE   | NW   | SW  | SE  | NE  | NW   | SW   | SE   | NE | NW | SW   | SE   | NE   | NW  | SW  | SE   |        |
| 04S | 06E | 17  |      |      |     |     |     |      |      |      |    |    | 15.0 | 15.0 |      |     |     |      | 30.0   |
| 04S | 06E | 18  |      |      |     |     |     |      | 43.0 | 40.0 |    |    |      |      | 9.0  | 9.0 | 9.0 | 9.0  | 119.0  |
|     |     |     |      |      |     |     |     |      | L2   |      |    |    |      |      |      |     |     |      |        |
| 04S | 06E | 19  |      |      |     |     |     | 44.0 |      |      |    |    |      |      | 40.0 |     |     | 10.0 | 94.0   |
|     |     |     |      |      |     |     |     | L1   | L2   |      |    | L3 | L4   |      |      |     |     |      |        |
| 04S | 06E | 20  | 40.0 | 40.0 | 5.0 | 5.0 | 9.0 | 9.0  | 9.0  | 9.0  |    |    |      |      |      |     |     |      | 126.0  |

Total Acres: 369.0

Limited to acres within place of use described above: 325.5 AC

**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> |
|---------------------------------------------------------|-------------------|---------------------|-------------------|---------------------------|
| 61-02154, 61-07005, 61-07119,<br>61-07396, and 61-10378 | 4.49 CFS          | 1302.3 AF           | 325.5 AC          | 369 AC                    |

| <u>Combined Rights</u>                    | <u>Lease Rate</u> |
|-------------------------------------------|-------------------|
| 61-2154, 61-7119, 61-7396<br>and 61-10378 | 4.03 CFS          |

### 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. The leased portion of this right is limited to the irrigation of 94.6 acres within the place of use described above in a single irrigation season.

**ATTACHMENT A**  
**WATER RIGHT NO. 61-07005**  
**WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE**

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

**Lessor:** BROWN FARMS LLC  
764 TROUTNER WAY  
BOISE ID 83712  
(208) 386-9119

**Priority Date:** 8/23/1967

**Source:** GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u>   | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u>   |
|-----------------------|---------------|-----------|-----------------------|-----------------|
| IRRIGATION            | 03/01         | to 10/15  | 1.81 CFS              | 445.2 AF        |
|                       | <b>Total:</b> |           | <b>1.81 CFS</b>       | <b>445.2 AF</b> |

**LOCATION OF POINT(S) OF DIVERSION:**

|              |            |                                          |
|--------------|------------|------------------------------------------|
| GROUND WATER | L1(SENWNW) | Sec. 19, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SWNWNW     | Sec. 20, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | NWSENE     | Sec. 20, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SWNESW     | Sec. 19, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SESESE     | Sec. 18, Twp 04S, Rge 06E, ELMORE County |

**PLACE OF USE TO BE IDLED UNDER THIS LEASE:** IRRIGATION

|     |     |     | NE   |      |     |     | NW  |      |      |      | SW |    |      |      | SE   |     |     |      | Totals |
|-----|-----|-----|------|------|-----|-----|-----|------|------|------|----|----|------|------|------|-----|-----|------|--------|
| Twp | Rng | Sec | NE   | NW   | SW  | SE  | NE  | NW   | SW   | SE   | NE | NW | SW   | SE   | NE   | NW  | SW  | SE   |        |
| 04S | 06E | 17  |      |      |     |     |     |      |      |      |    |    | 15.0 | 15.0 |      |     |     |      | 30.0   |
| 04S | 06E | 18  |      |      |     |     |     |      | 43.0 | 40.0 |    |    |      |      | 9.0  | 9.0 | 9.0 | 9.0  | 119.0  |
|     |     |     |      |      |     |     |     |      | L2   |      |    |    |      |      |      |     |     |      |        |
| 04S | 06E | 19  |      |      |     |     |     | 44.0 |      |      |    |    |      |      | 40.0 |     |     | 10.0 | 94.0   |
|     |     |     |      |      |     |     |     | L1   | L2   |      |    | L3 | L4   |      |      |     |     |      |        |
| 04S | 06E | 20  | 40.0 | 40.0 | 5.0 | 5.0 | 9.0 | 9.0  | 9.0  | 9.0  |    |    |      |      |      |     |     |      | 126.0  |

Total Acres: 369.0

Limited to acres within place of use described above: 325.5 AC

**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> |
|---------------------------------------------------------|-------------------|---------------------|-------------------|---------------------------|
| 61-02154, 61-07005, 61-07119,<br>61-07396, and 61-10378 | 4.49 CFS          | 1302.3 AF           | 325.5 AC          | 369.0 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. The leased portion of this right is limited to the irrigation of 111.3 acres within the place of use described above in a single irrigation season.
13. The period of use for the irrigation described in this approval may be extended to an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water 10/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than 2/27/2003.

**ATTACHMENT A**  
**WATER RIGHT NO. 61-07119**  
**WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE**

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

**Lessor:** BROWN FARMS LLC  
764 TROUTNER WAY  
BOISE ID 83712  
(208) 386-9119

**Priority Date:** 7/10/1972

**Source:** GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u>   | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u>   |
|-----------------------|---------------|-----------|-----------------------|-----------------|
| IRRIGATION            | 03/15         | to 11/15  | 1.85 CFS              | 364.4 AF        |
|                       | <b>Total:</b> |           | <b>1.85 CFS</b>       | <b>364.4 AF</b> |

**LOCATION OF POINT(S) OF DIVERSION:**

|              |            |                                          |
|--------------|------------|------------------------------------------|
| GROUND WATER | L1(SENWNW) | Sec. 19, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SWNWNW     | Sec. 20, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | NWSENE     | Sec. 20, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SWNESW     | Sec. 19, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SESESE     | Sec. 18, Twp 04S, Rge 06E, ELMORE County |

**PLACE OF USE TO BE IDLED UNDER THIS LEASE:** IRRIGATION

|     |     |     | NE   |      |     |     | NW  |      |      |      | SW |    |      |      | SE   |     |     |      | Totals |
|-----|-----|-----|------|------|-----|-----|-----|------|------|------|----|----|------|------|------|-----|-----|------|--------|
| Twp | Rng | Sec | NE   | NW   | SW  | SE  | NE  | NW   | SW   | SE   | NE | NW | SW   | SE   | NE   | NW  | SW  | SE   |        |
| 04S | 06E | 17  |      |      |     |     |     |      |      |      |    |    | 15.0 | 15.0 |      |     |     |      | 30.0   |
| 04S | 06E | 18  |      |      |     |     |     |      | 43.0 | 40.0 |    |    |      |      | 9.0  | 9.0 | 9.0 | 9.0  | 119.0  |
|     |     |     |      |      |     |     |     |      | L2   |      |    |    |      |      |      |     |     |      |        |
| 04S | 06E | 19  |      |      |     |     |     | 44.0 |      |      |    |    |      |      | 40.0 |     |     | 10.0 | 94.0   |
|     |     |     |      |      |     |     |     | L1   | L2   |      |    | L3 | L4   |      |      |     |     |      |        |
| 04S | 06E | 20  | 40.0 | 40.0 | 5.0 | 5.0 | 9.0 | 9.0  | 9.0  | 9.0  |    |    |      |      |      |     |     |      | 126.0  |

Total Acres: 369.0

Limited to acres within place of use described above: 325.5 AC

**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> |
|---------------------------------------------------------|-------------------|---------------------|-------------------|---------------------------|
| 61-02154, 61-07005, 61-07119,<br>61-07396, and 61-10378 | 4.49 CFS          | 1302.3 AF           | 325.5 AC          | 369.0 AC                  |

| <u>Combined Rights</u>                    | <u>Lease Rate</u> | <u>Lease Volume</u> | <u>Acre Limit</u> | <u>Total Leased Acres</u> |
|-------------------------------------------|-------------------|---------------------|-------------------|---------------------------|
| 61-2154, 61-7119, 61-7396<br>and 61-10378 | 4.03 CFS          |                     |                   |                           |

### 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. Leased portion of this right is limited to the irrigation of 91.1 acres within the place of use described above in a single irrigation season.

**ATTACHMENT A**  
**WATER RIGHT NO. 61-07396**  
**WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE**

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

**Lessor:** BROWN FARMS LLC  
764 TROUTNER WAY  
BOISE ID 83712  
(208) 386-9119

**Priority Date:** 1/4/1980

**Source:** GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u>   | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u>   |
|-----------------------|---------------|-----------|-----------------------|-----------------|
| IRRIGATION            | 03/15         | to 11/15  | 0.76 CFS              | 222.8 AF        |
|                       | <b>Total:</b> |           | <b>0.76 CFS</b>       | <b>222.8 AF</b> |

**LOCATION OF POINT(S) OF DIVERSION:**

|              |            |                                          |
|--------------|------------|------------------------------------------|
| GROUND WATER | L1(SENWNW) | Sec. 19, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SWNWNW     | Sec. 20, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | NWSENE     | Sec. 20, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SWNESW     | Sec. 19, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SESESE     | Sec. 18, Twp 04S, Rge 06E, ELMORE County |

**PLACE OF USE TO BE IDLED UNDER THIS LEASE:** IRRIGATION

|     |     |     | NE   |      |     |     | NW  |      |      |      | SW |    |      |      | SE   |     |     |      | Totals |
|-----|-----|-----|------|------|-----|-----|-----|------|------|------|----|----|------|------|------|-----|-----|------|--------|
| Twp | Rng | Sec | NE   | NW   | SW  | SE  | NE  | NW   | SW   | SE   | NE | NW | SW   | SE   | NE   | NW  | SW  | SE   |        |
| 04S | 06E | 17  |      |      |     |     |     |      |      |      |    |    | 15.0 | 15.0 |      |     |     |      | 30.0   |
| 04S | 06E | 18  |      |      |     |     |     |      | 43.0 | 40.0 |    |    |      |      | 9.0  | 9.0 | 9.0 | 9.0  | 119.0  |
|     |     |     |      |      |     |     |     |      | L2   |      |    |    |      |      |      |     |     |      |        |
| 04S | 06E | 19  |      |      |     |     |     | 44.0 |      |      |    |    |      |      | 40.0 |     |     | 10.0 | 94.0   |
|     |     |     |      |      |     |     |     | L1   | L2   |      |    | L3 | L4   |      |      |     |     |      |        |
| 04S | 06E | 20  | 40.0 | 40.0 | 5.0 | 5.0 | 9.0 | 9.0  | 9.0  | 9.0  |    |    |      |      |      |     |     |      | 126.0  |

Total Acres: 369.0

Limited to acres within place of use described above: 325.5 AC

**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> |
|------------------------------------------------------|-------------------|---------------------|-------------------|---------------------------|
| 61-02154, 61-07005, 61-07119, 61-07396, and 61-10378 | 4.49 CFS          | 1302.3 AF           | 325.5 AC          | 369.0 AC                  |

| <u>Combined Rights</u>                 | <u>Lease Rate</u> | <u>Lease Volume</u> | <u>Acre Limit</u> | <u>Total Leased Acres</u> |
|----------------------------------------|-------------------|---------------------|-------------------|---------------------------|
| 61-2154, 61-7119, 61-7396 and 61-10378 | 4.03 CFS          |                     |                   |                           |

### 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. Leased portions of this right is limited to the irrigation of 55.7 acres within the place of use described above in a single irrigation season.

**ATTACHMENT A**  
**WATER RIGHT NO. 61-10378**  
**WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE**

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

**Lessor:** BROWN FARMS LLC  
764 TROUTNER WAY  
BOISE ID 83712  
(208) 386-9119

**Priority Date:** 4/30/1974

**Source:** GROUND WATER

| <u>BENEFICIAL USE</u> | <u>From</u>   | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> |
|-----------------------|---------------|-----------|-----------------------|---------------|
| IRRIGATION            | 03/15         | to 11/15  | 0.25 CFS              | NA            |
|                       | <b>Total:</b> |           | <b>0.25 CFS</b>       | <b>NA</b>     |

**LOCATION OF POINT(S) OF DIVERSION:**

|              |            |                                          |
|--------------|------------|------------------------------------------|
| GROUND WATER | L1(SENWNW) | Sec. 19, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SWNWNW     | Sec. 20, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | NWSENE     | Sec. 20, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SWNESW     | Sec. 19, Twp 04S, Rge 06E, ELMORE County |
| GROUND WATER | SESESE     | Sec. 18, Twp 04S, Rge 06E, ELMORE County |

**PLACE OF USE TO BE IDLED UNDER THIS LEASE:** IRRIGATION

|     |     |     | NE   |      |     |     | NW  |      |      |      | SW |    |      |      | SE   |     |     |      | Totals |
|-----|-----|-----|------|------|-----|-----|-----|------|------|------|----|----|------|------|------|-----|-----|------|--------|
| Twp | Rng | Sec | NE   | NW   | SW  | SE  | NE  | NW   | SW   | SE   | NE | NW | SW   | SE   | NE   | NW  | SW  | SE   |        |
| 04S | 06E | 17  |      |      |     |     |     |      |      |      |    |    | 15.0 | 15.0 |      |     |     |      | 30.0   |
| 04S | 06E | 18  |      |      |     |     |     |      | 43.0 | 40.0 |    |    |      |      | 9.0  | 9.0 | 9.0 | 9.0  | 119.0  |
|     |     |     |      |      |     |     |     |      | L2   |      |    |    |      |      |      |     |     |      |        |
| 04S | 06E | 19  |      |      |     |     |     | 44.0 |      |      |    |    |      |      | 40.0 |     |     | 10.0 | 94.0   |
|     |     |     |      |      |     |     |     | L1   | L2   |      |    | L3 | L4   |      |      |     |     |      |        |
| 04S | 06E | 20  | 40.0 | 40.0 | 5.0 | 5.0 | 9.0 | 9.0  | 9.0  | 9.0  |    |    |      |      |      |     |     |      | 126.0  |

Total Acres: 369.0

Limited to acres within place of use described above: 325.5 AC

**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> |
|---------------------------------------------------------|-------------------|---------------------|-------------------|---------------------------|
| 61-02154, 61-07005, 61-07119,<br>61-07396, and 61-10378 | 4.49 CFS          | 1302.3 AF           | 325.5 AC          | 369.0 AC                  |

| <u>Combined Rights</u>    | <u>Lease Rate</u> | <u>Lease Volume</u> | <u>Acre Limit</u> | <u>Total Leased Acres</u> |
|---------------------------|-------------------|---------------------|-------------------|---------------------------|
| 61-2154, 61-7119, 61-7396 | 4.03 CFS          |                     |                   |                           |

and 61-10378

### 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. Right 61-10378 is an enlargement of Right 61-2154 pursuant to Section 42-1426, Idaho Code.
13. This right is for an enlargement of the place of use described above.

RECEIVED

JAN 27 2014

DEPARTMENT OF  
WATER RESOURCESSTATE OF IDAHO  
WATER RESOURCE BOARDReceipt No. C098235Fee Amount \$ 500.00Date/by 1/27/14

(For Department Use Only)

APPLICATION TO SELL OR LEASE A WATER RIGHT  
TO THE WATER SUPPLY BANKName of Seller/Lessor Brown Farms, L.L.C.Phone 208-386-9119Mailing address 764 Troutner Way, Boise, Idaho 83712Email cliffbrown@cableone.net

## A. DESCRIPTION OF WATER RIGHT, OR PORTION THEREOF, OFFERED TO THE BANK

If the entire right is for sale or lease, check here ☐, list the water right number, and skip to Part B.

| 1. Water Right Number    | Amount (cfs/ac-ft) | Nature of Use | Period of Use |
|--------------------------|--------------------|---------------|---------------|
| 61-2154                  | 1.61/320.4         | Irrigation    | 3/15 to 11/15 |
|                          |                    |               | to            |
|                          |                    |               | to            |
| Total Amount: 1.61/320.4 |                    |               |               |

2. Source of water Ground water tributary to \_\_\_\_\_

3. Point(s) of Diversion:

| Twp | Rge | Sec | Lot | 1/4 | 1/4 | 1/4 | County |
|-----|-----|-----|-----|-----|-----|-----|--------|
| 04S | 06E | 18  |     | SE  | SE  | SE  | Elmore |
| 04S | 06E | 19  |     | SE  | NW  | NW  | Elmore |
| 04S | 06E | 19  |     | SW  | NE  | SW  | Elmore |
| 04S | 06E | 20  |     | NW  | SE  | NE  | Elmore |

4. Lands irrigated or place of use: \*See Part D for additional information regarding place of use.

| Twp | Rge | Sec | NE 1/4 |    |    |    | NW 1/4 |    |    |    | SW 1/4 |    |    |    | SE 1/4 |    |    |    | Totals |
|-----|-----|-----|--------|----|----|----|--------|----|----|----|--------|----|----|----|--------|----|----|----|--------|
|     |     |     | NE     | NW | SW | SE | NE     | NW | SW | SE | NE     | NW | SW | SE | NE     | NW | SW | SE |        |
| 04S | 06E | 17  |        |    |    |    |        |    |    |    |        |    | 15 | 15 |        |    |    |    | 30     |
| 04S | 06E | 18  |        |    |    |    |        |    | 43 | 40 |        |    |    |    | 9      | 9  | 9  | 9  | 119    |
| 04S | 06E | 19  |        |    |    |    |        | 44 |    |    |        |    |    |    | 40     |    |    | 10 | 94     |
| 04S | 06E | 20  | 40     | 40 | 5  | 5  | 9      | 9  | 9  | 9  |        |    |    |    |        |    |    |    | 126    |
|     |     |     |        |    |    |    |        |    |    |    |        |    |    |    |        |    |    |    |        |
|     |     |     |        |    |    |    |        |    |    |    |        |    |    |    |        |    |    |    |        |

If the right is for irrigation, show total number of acres offered to the bank. Total Acres 369

## B. OWNERSHIP

1. Are you currently listed in IDWR's records as the owner of the water right being offered to the bank? Yes ☐ No ☒  
If no, provide documentation of your authority to sign on behalf of the right holder OR attach a Notice of Change in Water Right Ownership form along with the required documentation and fee.
2. 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 to the proposed sale or lease and list name of entity:

**C. GENERAL INFORMATION**

1. Please provide a description of the current diversion system.

Five ground water wells, interconnected piping system, wheel lines and 5 pivots.

2. Describe any other water rights used for the same purpose or at the same place of use as described above.

Combined with 61-2155, 61-7005, 61-7119, 61-7396, and 61-10378

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

Yes ☐ No ☒

If yes, describe.

4. 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 right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code.

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

If yes, describe. Pending Transfer Application 78356. See attached consent to placing right into the Bank for 2014.

**D. REQUIRED ITEMS**

This form must be signed and submitted with the following REQUIRED items:

1. Plat map, survey map or aerial photograph clearly showing the specific acres proposed to be idled by this lease application.
2. Filing fee of \$250.00. If you are submitting more than one lease application and the rights have a common place of use or common diversion rate or common diversion volume, the combined maximum fee is \$500.00.
3. A completed [Internal Revenue Service \(IRS\) Form W-9](#). If your water right is rented, we will be unable to issue payment to you without a current W-9 form.

**E. SALE/LEASE AGREEMENT**

1. Is the water right, or portion thereof, described above offered to the Idaho Water Resource Board (IWRB) for sale
- ☐
- or lease
- ☐
- .

If lease, for a period from 01/01/2014 to 12/31/2014 (not to exceed 5 years).  
(Month / Day / Year) (Month / Day / Year)

2. 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 right for sale or lease to the Idaho Water Resource Board.**

The owner/lessor acknowledges the following:

1. Payment to the owner/lessor is contingent upon the sale or rental of the right from the bank.
2. While a right is in the bank, the owner/lessor of the right may not use the right even if the right is not rented from the bank.
3. A right accepted into the bank stays in the bank until the Board releases it or the lease term expires.
4. While a right is in the bank, forfeiture provisions are stayed.
5. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right.


  
Signature of Applicant

Clifford Brown, manager

Printed Name and Title\*

1-24-14

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

Additional point of diversion

| <b>TWP</b> | <b>RGE</b> | <b>SEC</b> | <b>LOT</b> | <b>¼</b> | <b>¼</b> | <b>¼</b> | <b>County</b> |
|------------|------------|------------|------------|----------|----------|----------|---------------|
| 4S         | 6E         | 20         |            | SW       | NW       | NW       | Elmore        |

Attachment D



Legend  
 ● WR\_POD'S  
 ■ place of use  
 ■ Sec. Lines  
 ■ 104s08e

Idaho Water Company - (From, Bernard Brown)  
 T. 04S., R. 06E. Elmore County, Idaho  
 Naip 2004 Aerial Photo  
 Water Right: 61-7119, 61-7396, 61-2154,  
 61-10378, 61-7005, 61-2155

00 Remaining Irrigation  
 00 Acres to be dried up

BROCKWAY ENGINEERING, PLLC.  
 ALR - Dec 1, 2005



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](http://www.idwr.idaho.gov)

GARY SPACKMAN

Director

November 6, 2014

C.L. "BUTCH" OTTER

Governor

BROWN FARMS LLC  
764 TROUTNER WAY  
BOISE ID 83712

**RE: WATER SUPPLY BANK LEASE CONTRACT FOR RIGHTS 61-02154, 61-10378, 61-07005, 61-07119, & 61-07396**

Dear Lessor:

Water Rights **61-02154, 61-10378, 61-07005, 61-07119, & 61-07396** were leased into the Water Supply Bank on January 27, 2014 in accordance with the executed original Lease Contract enclosed. **Your water rights as described on the Lease Contract are considered leased into the Bank and should remain unused until they are formally released from the Bank.**

The rights will automatically be released from the Bank on **December 31, 2014**, unless the rights are released earlier by the Board, or upon your request. **Please note your rights may not be available for immediate release if they have 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](http://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 287-4944.

Sincerely,

for Cherie Palmer  
Water Rights Supervisor  
WSB Process Point of Contact

Enclosure: Executed Lease Contract

c: John M Marshall – John Marshall Law PLLC  
Rachel Sommer – IDWR Western 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](http://www.idwr.idaho.gov)

GARY SPACKMAN  
Director

C.L. "BUTCH" OTTER  
Governor

October 24, 2014

BROWN FARMS LLC  
764 TROUTNER WAY  
BOISE ID 83712

**RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 61-2154, 61-10378, 61-7005, 61-7119 AND 61-7396 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. You also provided a lease application for water right 61-2155. This water right was found to be a stand-alone water right and was not needed to complete this lease. Therefore, the application for that right is being returned to you unprocessed. **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, 2014**, 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 287-4944.

Sincerely,

Clay Webster  
Water Resource Agent

Enclosure: Proposed Lease Contracts  
c. John M Marshall – John Marshall Law PLLC

## MEMORANDUM

**To:** Water Right No(s). 61-2154, 61-7005, 61-7119, 61-7396 and 61-10378  
**From:** Clay Webster and Cherie Palmer  
**Date:** Oct 20, 2014  
**Re:** Review of Applications to Lease Water Rights to the State Water Supply Bank

---

**PURPOSE/NARRATIVE:** The department received applications to lease 369 acres of these rights into the WSB on Jan 27, 2014 from John Marshall of Marshall Law PLLC on behalf of Brown Farms. These rights also have a transfer application at the Western Regional Office. We waited to process this lease due to ownership issues that were pending at the regional office. On August 21, 2014 I sent a letter explaining to the applicant that the likelihood of this water right being rented is very low. I explained that a withdrawal would allow a refund of application fees. On August 29, 2014, the applicants attorney informed us that the applicant wishes to proceed with this one-year lease for 2014.

After reviewing the file, transfer # 78356 has been protested and is the subject of ongoing hearings. **See page two for special instructions for rental processing.**

Water right 61-2155 is an additive (stand alone) water right and does not need to be in the bank with the other rights. The lease application will be returned unprocessed for this right.

According to the map provided by the applicant and the satellite imagery, they are still irrigating 1090 acres. When I remove the 308 acres covered by 61-2155, this will leave 154 acres to be leased into the bank out of the combined limit of 936 acres. After the lease went out, I was contacted by John Marshall, that they were not irrigating 1090 acres. They submitted a new map of irrigated acres on October 17, 2014. This map shows 826 irrigated acres.

826 acres irrigated-308 acres from water right 61-2155 = 518 acres  
936 acre limit – 518 acres = 418 available acres for lease to the WSB. Their application was to lease 369 acres into the bank.

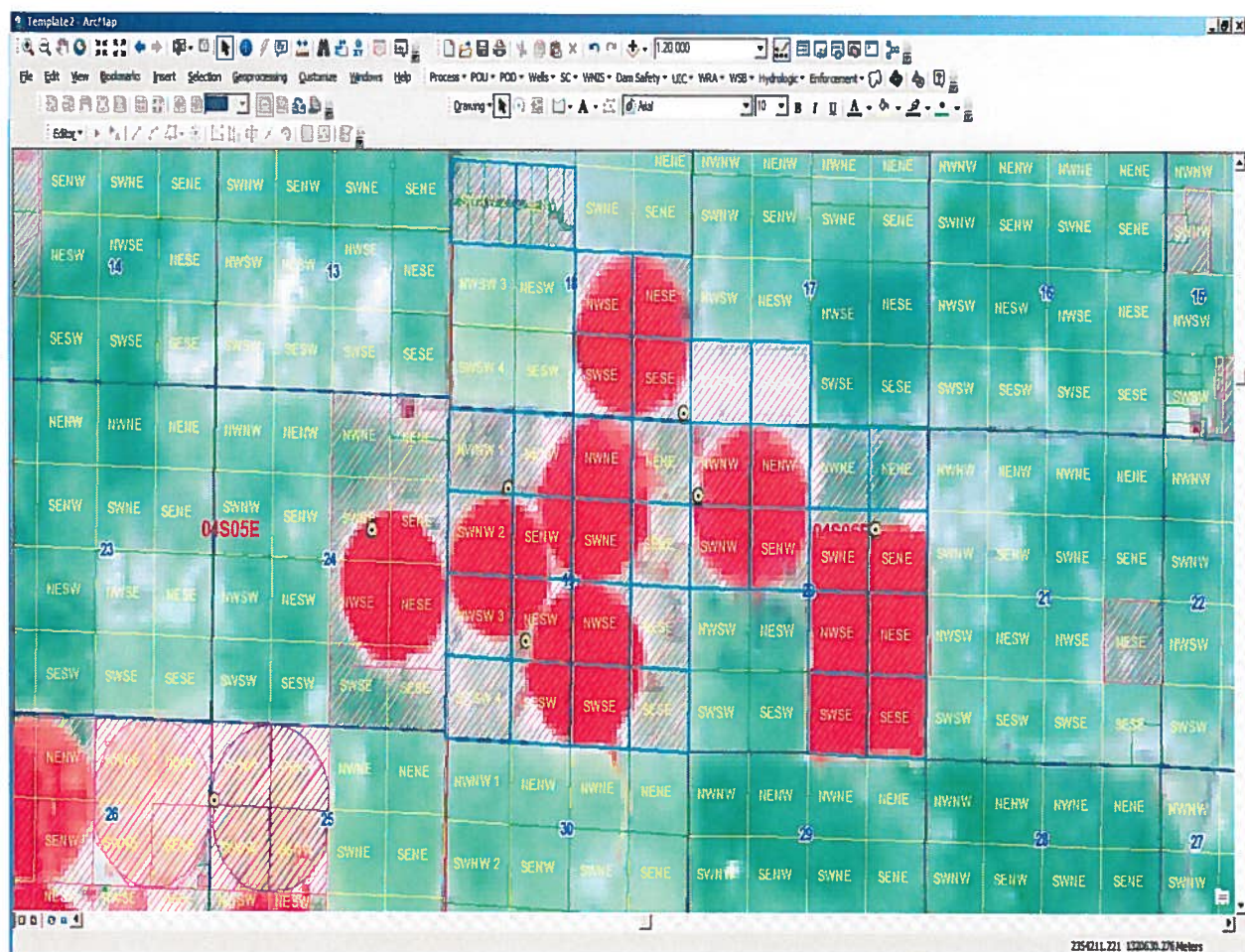
**AUTHORITY TO FILE:** These applications were signed by Clifford Brown. According to the IDSOS web site he is the manager of Brown Farms LLC, the Current owner of these water rights.

**WATER RIGHT VALIDITY:** These rights were all partially decreed in the SRBA between 2000 and 2003. The un-irrigated acres of these rights (at that time) were leased into the WSB in 2004 for an indefinite period. They were then released from the bank per owner's request in 2011. These acres offered to the bank are identified again by the applicant as un-irrigated acres. This lease was processed to protect the rights from forfeiture while the transfer application is still pending. Forfeiture is not an issue at this time.

**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. I checked satellite imagery to make sure that the acres identified were not irrigated during 2014. (see attached)

**DEPARTMENT STAFF OR WATERMASTER COMMENTS:** The leased right(s) are not subject any Water District. Steve Lester from the Western region had concerns that we should be sure to get written ok from protestants of Transfer 78356. **This should be obtained prior to any rentals being processed on these leased rights prior to the resolution of the transfer.**



| Basin          | Sequence | Priority Date | Diversion Rate | Total Acres | Acre Limit | Volume  |
|----------------|----------|---------------|----------------|-------------|------------|---------|
| 61             | 2154     | 1/14/1963     | 5.440          | 1,459.0     | 272.0      | 1,088.0 |
| 61             | 2155     | 1/14/1963     | 5.860          | 1,459.0     | 308.0      | 1,232.0 |
| 61             | 7005     | 8/23/1967     | 5.240          | 1,459.0     | 320.0      | 1,280.0 |
| 61             | 7119     | 7/10/1972     | 5.240          | 1,459.0     | 262.0      | 1,048.0 |
| 61             | 7396     | 1/4/1980      | 2.200          | 1,459.0     | 160.0      | 640.0   |
| 61             | 10378    | 4/30/1974     | 0.800          | 1,459.0     | 47.0       |         |
| Totals         |          |               | 24.780         | 1,459.0     | 1,369.0    | 5,288.0 |
| Combined Limit |          |               | 18.740         | 1,244.0     |            | 4,976.0 |

61-2155 is a stand alone water right it is additive to all the other water rights (does not need to be leased)

|                |       |           |        |         |         |         |
|----------------|-------|-----------|--------|---------|---------|---------|
| 61             | 2154  | 1/14/1963 | 5.440  | 1,459.0 | 272.0   | 1,088.0 |
| 61             | 7005  | 8/23/1967 | 5.240  | 1,459.0 | 320.0   | 1,280.0 |
| 61             | 7119  | 7/10/1972 | 5.240  | 1,459.0 | 262.0   | 1,048.0 |
| 61             | 7396  | 1/4/1980  | 2.200  | 1,459.0 | 160.0   | 640.0   |
| 61             | 10378 | 4/30/1974 | 0.800  | 1,459.0 | 47.0    | 0.0     |
| Totals         |       |           | 18.920 | 1,459.0 | 1,061.0 | 4,056.0 |
| Combined Limit |       |           | 12.880 | 936.0   |         | 3,744.0 |

ac cfs af  
 369 Total Leased acres  
 94.6 1.92 378.4  
 111.3 1.81 445.2  
 91.1 1.85 364.4  
 55.7 0.76 222.8  
 16.3 0.25 0  
 369 6.59 1410.8

12.88/18.92= 0.680761 X 6.59= 4.49 cfs

3744/4056= 0.9230769 X 1410.8= 1302.3 af

936/1061= 0.8821866 X 369= 325.5 ac

61-7119 is limited right on Acres added 137 acres to rights below 137/1061= .1291234 X 369= 47.6 ac

|                |       |           |        |         |       |         |
|----------------|-------|-----------|--------|---------|-------|---------|
| 61             | 2154  | 1/14/1963 | 5.440  | 1,459.0 | 272.0 | 1,088.0 |
| 61             | 7005  | 8/23/1967 | 5.240  | 1,459.0 | 320.0 | 1,280.0 |
| 61             | 7396  | 1/4/1980  | 2.200  | 1,459.0 | 160.0 | 640.0   |
| 61             | 10378 | 4/30/1974 | 0.800  | 1,459.0 | 47.0  | 0.0     |
| Totals         |       |           | 13.680 | 1,459.0 | 799.0 | 3,008.0 |
| Combined Limit |       |           | 12.880 | 799.0   |       | 3,196.0 |

12.88/13.68= 0.9415204 X 1.99= 1.87 cfs

3196/3008= 1.0625 X 436= 463.3 af

799/799= 1 X 154= 154 ac

|                |    |       |           |        |         |       |         |
|----------------|----|-------|-----------|--------|---------|-------|---------|
|                | 61 | 2154  | 1/14/1963 | 5.440  | 1,459.0 | 272.0 | 1,088.0 |
|                | 61 | 7119  | 7/10/1972 | 5.240  | 1,459.0 | 262.0 | 1,048.0 |
|                | 61 | 7396  | 1/4/1980  | 2.200  | 1,459.0 | 160.0 | 640.0   |
|                | 61 | 10378 | 4/30/1974 | 0.800  | 1,459.0 | 47.0  | 0.0     |
| Totals         |    |       |           | 13.680 | 1,459.0 | 741.0 | 2,776.0 |
| Combined Limit |    |       |           | 8.100  |         |       |         |

8. 1/741x369=4.03 cfs

|                |    |       |           |       |         |       |         |
|----------------|----|-------|-----------|-------|---------|-------|---------|
|                | 61 | 2154  | 1/14/1963 | 5.440 | 1,459.0 | 272.0 | 1,088.0 |
|                | 61 | 10378 | 4/30/1974 | 0.800 | 1,459.0 | 47.0  | 0.0     |
| Totals         |    |       |           | 6.240 | 1,459.0 | 319.0 | 1,088.0 |
| Combined Limit |    |       |           | 5.440 |         |       | 1,276.0 |

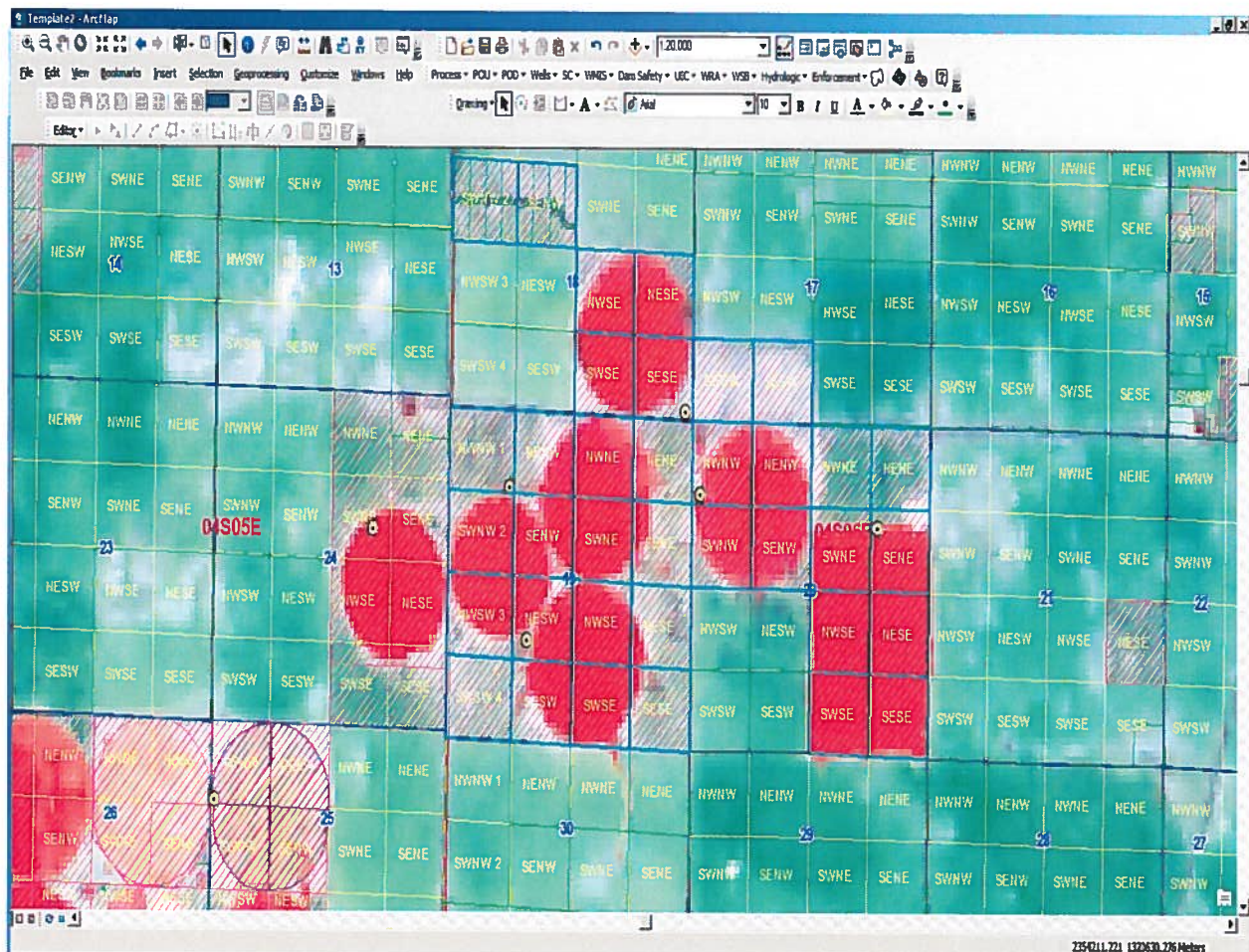
5.44/6.24= 0.8717948 X 0.91= 0.79 cfs  
 1276/1088=1.1727941 X 158= 185.3 af

61-10378 is an enlargement right of  
 61-2154 Rate is limited to 5.440  
 Combined Volume limit # is erroneous

5.44/1459= 0.004 X 154= 0.57 cfs  
 1088/1459=0.75 X 154= 114.8 af

**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 not subject any Water District. Steve Lester from the Western region had concerns that we should be sure to get written ok from protestants of Transfer 78356. **This should be obtained prior to any rentals being processed on these leased rights prior to the resolution of the transfer.**



## Webster, Clay

---

**From:** John Marshall [john@jmarshalllaw.com]  
**Sent:** Friday, October 17, 2014 3:37 PM  
**To:** Webster, Clay  
**Subject:** Re: FW: Brown Farms LLC Basin 61 water bank applications  
**Attachments:** 2014 irrigated acres.pdf

Clay,

Attached is a marked up version of the satellite map showing that there are 826 acres of irrigation on the farm. If you have any questions, please contact me.

Thanks, John

On Tue, Oct 7, 2014 at 10:06 AM, Webster, Clay <[Clay.Webster@idwr.idaho.gov](mailto:Clay.Webster@idwr.idaho.gov)> wrote:

---

**From:** Webster, Clay  
**Sent:** Tuesday, October 07, 2014 9:35 AM  
**To:** 'john@jmarshalllaw.com'  
**Cc:** Palmer, Cherie; 'cliffbrown@cablone.net'  
**Subject:** RE: Brown Farms LLC Basin 61 water bank applications

John,

Attached you will find Attachment D (the map) that was submitted for these lease applications. This map shows remaining irrigation in the red numbers. These numbers add up to the 1090 acres mentioned in my letter dated September 24, 2014. We used satellite imagery to verify that the acres identified to be dried up, on this map, were being idled. If this information is incorrect, please submit a new map with the correct numbers to allow an evaluation of those numbers. Thank you for your assistance with this.

*Sincerely,*

*Clay Webster*

Water Resource Agent

[clay.webster@idwr.idaho.gov](mailto:clay.webster@idwr.idaho.gov)

208-287-4910

Idaho Department of Water Resources (IDWR)

322 E. Front Street  
P.O. Box 83720  
Boise, ID 83720-0098

208-287-4800

[www.idwr.idaho.gov](http://www.idwr.idaho.gov)

---

**From:** Palmer, Cherie  
**Sent:** Monday, October 06, 2014 4:16 PM  
**To:** Webster, Clay  
**Subject:** FW: Brown Farms LLC Basin 61 water bank applications

Clay,

Can you please respond to John. Please let me know if you need anything from me. Thanks.

Cherie

---

**From:** John Marshall [<mailto:john@jmarshalllaw.com>]  
**Sent:** Monday, October 06, 2014 3:30 PM  
**To:** Palmer, Cherie  
**Cc:** Clifford Brown  
**Subject:** Brown Farms LLC Basin 61 water bank applications

Cherie,

We have reviewed the proposed water bank contract you sent along with a September 24, 2014 letter. Your letter explains that IDWR determined that 1090 acres were irrigated pursuant to the rights at issue in the bank applications, leaving 154 acres available for the bank. Brown Farms is surprised by this finding, as it believes only about 875 acres are being irrigated. Can you send a pdf showing where IDWR believes the irrigation is occurring? We will review and see if we can determine where the discrepancies are.

While we go through this review process, can you extend the deadline to sign and return the contracts?

Thank you,

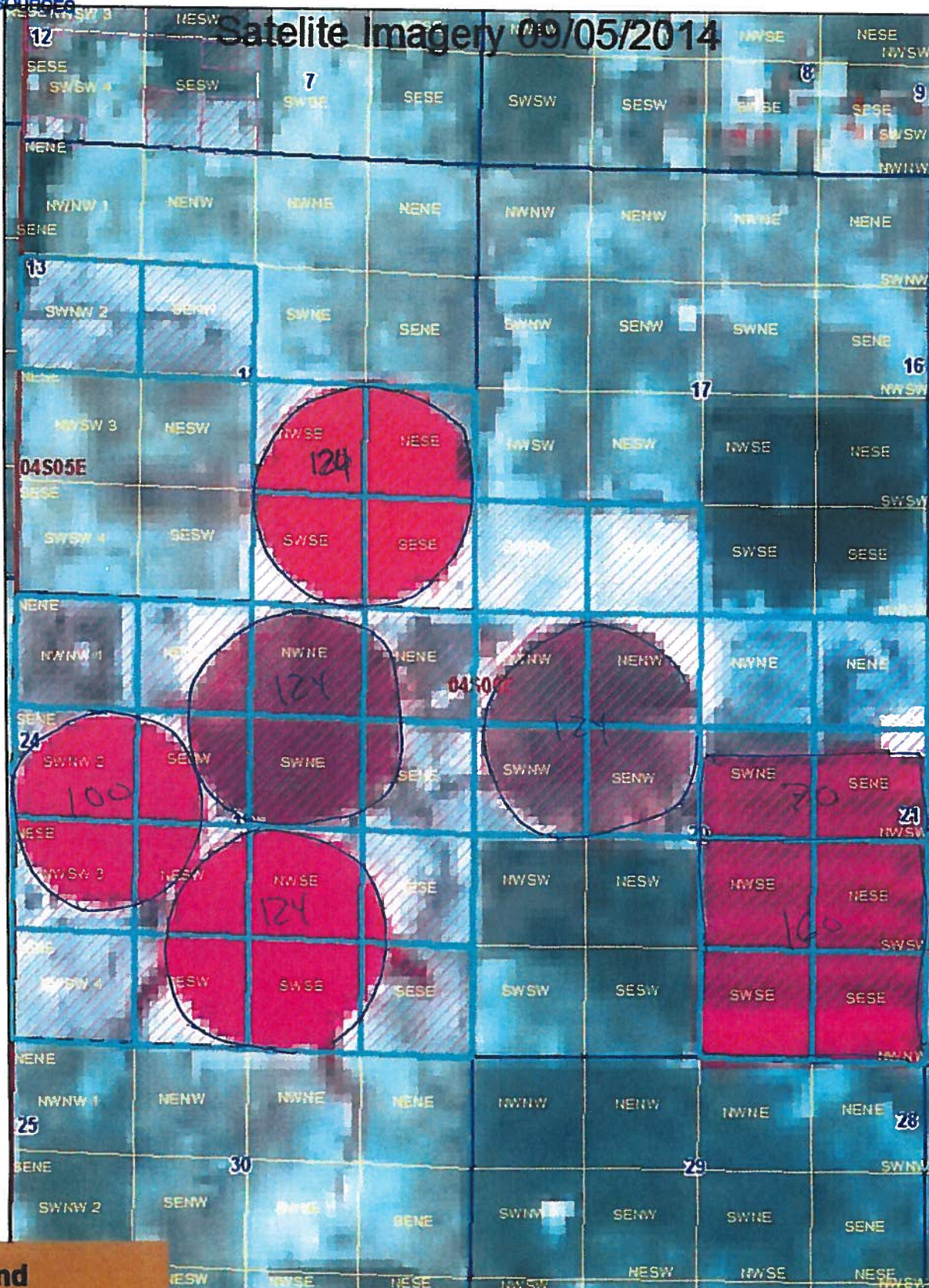
John

OCT 17 2014

DEPARTMENT OF  
WATER RESOURCES

# Brown Farms Lease 2014

Satellite Imagery 09/05/2014



Created by Clay Webster 10/7/2014:

82C aeris irrigated



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](http://www.idwr.idaho.gov)

GARY SPACKMAN  
Director

C.L. "BUTCH" OTTER  
Governor

September 24, 2014

BROWN FARMS LLC  
764 TROUTNER WAY  
BOISE ID 83712

**RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 61-2154, 61-10378, 61-7005, 61-7119 AND 61-7396 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. You also provided a lease application for water right 61-2155. This water right was found to be a stand-alone water right and was not needed to complete this lease. Therefore, the application for that right will be returned to you unprocessed. According to the map provided by you and the satellite imagery, you are still irrigating 1090 acres. When I remove the 308 acres covered by 61-2155, this will leave 154 acres to be leased into the bank out of the combined limit of 936 acres. **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, 2014**, 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 287-4944.

Sincerely,

Clay Webster  
Water Resource Agent

Enclosure: Proposed Lease Contracts

c. John M Marshall – John Marshall Law PLLC

## Webster, Clay

---

**From:** Lester, Steve  
**Sent:** Friday, September 12, 2014 11:28 AM  
**To:** Webster, Clay  
**Subject:** RE: Regional comments on WSB Lease Applications for Brown Farms LLC

Hi Clay:

Transfer 78356 is set for hearing mid-October, although we are getting impression they might settle instead.

The lease appl seems ok if we have written ok from protestants via their attorneys: Bruce Smith for Mayfield Townsite LLC & Norm Semanko for Nevid Inc.

WSB appl mentions "attached consent to placing right into the Bank for 2014." I didn't see that consent in email attachments. If you have that, ok. If not, seems like we would have to get it before it would be ok.

Steve

---

**From:** Webster, Clay  
**Sent:** Thursday, September 11, 2014 4:49 PM  
**To:** Lester, Steve  
**Subject:** Regional comments on WSB Lease Applications for Brown Farms LLC

Steve,

I am currently processing lease applications for these rights. These are the ones involved in transfer #78356. We do not have a rental for these rights at this time. Do you have any comments/concerns?

*Sincerely,*

*Clay Webster*

Water Resource Agent  
[clay.webster@idwr.idaho.gov](mailto:clay.webster@idwr.idaho.gov)  
208-287-4910  
Idaho Department of Water Resources (IDWR)  
322 E. Front Street  
P.O. Box 83720  
Boise, ID 83720-0098  
208-287-4800  
[www.idwr.idaho.gov](http://www.idwr.idaho.gov)

|                                                                                                                                                        |                                                                              |                                                                                                                                                   |                                                       |             |                |                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|-------------|----------------|----------------------|
| No. <b>W 10876</b>                                                                                                                                     | <b>Due no later than Jan 31, 2014</b><br><b>Annual Report Form</b>           |                                                                                                                                                   | 2. Registered Agent and Address<br><b>(NO PO BOX)</b> |             |                |                      |
| Return to:<br>SECRETARY OF STATE<br>700 WEST JEFFERSON<br>PO BOX 83720<br>BOISE, ID 83720-0080<br><br><b>NO FILING FEE IF<br/>RECEIVED BY DUE DATE</b> | <b>1. Mailing Address: Correct in this box if needed.</b>                    |                                                                                                                                                   | CLIFFORD L BROWN<br>1516 W HAYS<br>BOISE ID 83702     |             |                |                      |
|                                                                                                                                                        | BROWN FARMS, L.L.C.<br>C/O CLIFFORD L BROWN<br>1516 W HAYS<br>BOISE ID 83702 |                                                                                                                                                   | 3. <u>New</u> Registered Agent Signature:*            |             |                |                      |
| 4. Limited Liability Companies: Enter Names and Addresses of at least one Member or Manager.                                                           |                                                                              |                                                                                                                                                   |                                                       |             |                |                      |
| Office Held<br>MANAGER                                                                                                                                 | Name<br>CLIFFORD L BROWN                                                     | Street or PO Address<br>1516 W HAYS                                                                                                               | City<br>BOISE                                         | State<br>ID | Country<br>USA | Postal Code<br>83702 |
| 5. Organized Under the Laws of:<br><br><b>ID<br/>W 10876</b>                                                                                           |                                                                              | 6. Annual Report must be signed.*<br>Signature: Clifford L. Brown<br>Name (type or print): Clifford L. Brown<br>Date: 11/21/2013<br>Title: Member |                                                       |             |                |                      |
| Processed 11/21/2013                                                                                                                                   |                                                                              | * Electronically provided signatures are accepted as original signatures.                                                                         |                                                       |             |                |                      |

**Palmer, Cherie**

---

**From:** John Marshall [john@jmarshalllaw.com]  
**Sent:** Friday, August 29, 2014 3:32 PM  
**To:** Palmer, Cherie  
**Cc:** Clifford Brown  
**Subject:** Brown Farms water bank - 61-2154 et al.

Cherie,

Brown Farms has elected to proceed with placing the rights referenced above into the water bank. Please proceed with processing the applications.

Thank you,

John



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](http://www.idwr.idaho.gov)

GARY SPACKMAN  
Director

C.L. "BUTCH" OTTER  
Governor

August 21, 2014

BROWN FARMS  
764 N TOURTNER WAY  
BOISE ID 83712

**RE: ADDITIONAL INFORMATION REQUEST FOR PROCESSING APPLICATION(S) TO  
LEASE WATER RIGHT NO(S). 61-2154, 61-2155, 61-7005, 61-7396 & 61-10378 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 rights are 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 the likelihood of these rights being rented this season is very low. The department usually does not process transfers and leases at the same time. This causes a duplication of work from two different sections within the department causing an unnecessary drain on manpower. 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 returned:**

- Your intent to: proceed with this lease or withdraw the lease until completion of the transfer (a withdrawal will result in a refund of the lease application fees)

Failure to respond within 14 days will result in the department proceeding with processing these applications with a low probability of rental and retaining the application fees. If you have any questions, please contact me at (208) 287-4944.

Sincerely,

Cherie Palmer  
Water Rights Supervisor  
WSB Process Point of Contact

Enclosure: Receipt # C098235

c: John M. Marshall – John Marshall Law PLLC

# John Marshall Law PLLC

575 W Bannock, Suite B  
Boise, ID 83702

phone 208-991-2701  
fax 208-906-8043  
john@jmarshalllaw.com

January 24, 2014

**Via US mail**

Cherie Palmer  
Idaho Department of Water Resources  
322 East Front Street  
P.O. Box 83720  
Boise, ID 83720-0098

RECEIVED  
JAN 27 2014  
DEPARTMENT OF  
WATER RESOURCES

Re: Brown Farms, L.L.C. Water Bank Applications – 61-2154, 2155, 7005, 7119,  
7396 and 10378

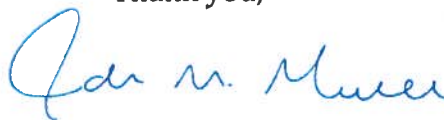
Dear Cherie,

Enclosed please find six related Applications to Sell or Lease A Water Right to the Water Supply Bank. I've also enclosed a check for \$500.00 to cover the required fee and a copy of the required W-9. The water rights involved all share an overlapping place of use, and the 369 acres identified in each application as the acreage to be dried up is the cumulative total dried up over all the rights.

The portions of these rights proposed for lease to the bank are the same portions of the rights that are the subject of transfer application no. 78356. I've included a consent from Shekinah Industries, the entity that will purchase the transferred portion of the rights, to placing the rights in the Bank for 2014.

I also include a copy of Notice of Change of Water Right Ownership the covers the six rights that was submitted in December 2013. At least accordingly the web-accessible records, the change has not processed. The applicant included the processing fee for the change of ownership with the application, so I have not included that fee with the lease applications.

Thank you,



John M. Marshall

Cc: Cliff Brown

W-9  
rcvd.  
CJ  
1/27/14

CONSENT TO LEASE WATER RIGHTS

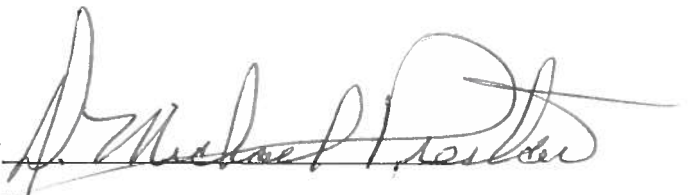
RECEIVED  
JAN 27 2014  
Department of Water Resources

The Undersigned, D. Michael Preston, as president of Shekinah Industries, Inc., does hereby consent to Brown Farms, LLC, leasing to the Idaho State Water Bank during 2014 those portions of water rights 61-2154, 2155, 7005, 7119, 7236, and 10378 that are the subject of transfer no. 78356.

Dated Jan 14, 2014

Shekinah Industries, Inc.

By

  
D. Michael Preston, President