



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

October 23, 2014

BRYCE & MARY FIELDING
720 N. 1100 E,
SHELLEY ID 83274

RE: Application to lease water right 27-7003 to the Water Supply Bank

Mr. Fielding,

The Water Supply Bank (Bank) received your proposal to lease a portion of water right 27-7003 into the Water Supply Bank in 2014. Due to concerns about the validity of this groundwater right, the Bank is electing to not lease this water right into the Water Supply Bank.

To evaluate a proposed lease of water to the Water Supply Bank, the Idaho Water Resource Board must consider whether information indicates a water right has been forfeited or abandoned (IDAPA 30.02.03, Water Supply Bank Rule 25.06.C). The validity of water right 27-7003 is a concern because groundwater has not been diverted under this right within the past five years. Though irrigation has occurred upon the lands to which water right 27-7003 is appurtenant, the use of water did not originate from groundwater. The Bank does not find that irrigation from a surface water source is sufficient evidence to overcome the forfeiture concerns associated with the non-use of ground water under water right 27-7003. As such, your lease proposal is being denied.

Please feel free to contact me if you have any questions about this decision, I can be reached at 208-287-4918, or at remington.buyer@idwr.idaho.gov.

Regards,

Remington Buyer
Water Supply Bank Coordinator

Cc: IDWR Eastern Region
Rob Harris, Holden Kidwell Hahn & Crapo PLLC



Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

Email: rharris@holdenlegal.com

August 28, 2014

RECEIVED

SEP 02 2014

DEPARTMENT OF
WATER RESOURCES

Remington Buyer
Idaho Water Supply Bank
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

RE: Combined Applications to Lease and Rent Water Right from the Idaho Water Supply Bank for Tanner Lane Ranch, LLLP.

Dear Remington:

Enclosed for processing is an executed *Application to Lease Water Rights to the Water Supply Bank* executed by Bryce and Mary Fielding for Water Right No. 27-7003. Also enclosed is an *Application to Rent Water from the Water Supply Bank* in order to rent the Fielding water right which has been executed by Tanner Lane Ranch, LLLP by Chris Drakos, its general partner. We have also included a copy of a *Consent Order and Agreement* entered into between the Department and Chris Drakos. Paragraph 4 of the terms of the agreement and order specifically contemplates submission of these types of water supply bank applications.

As you know, the Department did analysis on rental of other water rights appurtenant to land near the Blackfoot Reservoir, but determined that the connection between those water rights and the Blackfoot River was too tenuous to approve the rental. Fortunately, we have been able to locate a water right that is very close to Tanner Lane's place of use, and think it is a good fit. 27-7003 is used in association with surface water at its original place of use, and the acres which we have designated in the rental application are acres that are covered by surface water right as well. Because of delivery issues, the water right is currently not being used, thereby making Water Right No. 27-7003 available as a supplemental right on these acres. Use of this water right for this year was at least preliminarily thought to work by Rob Whitney and James Cefelo at our compliance conference, and we therefore do not anticipate any significant issues with this lease-rental combination.

If either application is not accepted, please be advised that the other should likewise not be accepted as these two applications are entirely tied together. As you can also see from the consent order and agreement, time is of the essence, and we therefore request that these applications be processed as soon as practicable.

Established in 1896

Remington Buyer
August 28, 2014
Page 2 of 2

Lastly, while the prior water bank applications were not accepted, we would still request that they remain on hold for now, and not returned just yet until the enclosed applications are reviewed and hopefully approved. We have also included the \$250.00 filing fee for the lease application for the Fielding water right.

If you have any questions or concerns, please let me know.

Best Regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK

RECEIVED

SEP 02 2014

DEPARTMENT OF
WATER RESOURCES

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

Name of Renter(s) Tanner Lane Ranch LLLPMailing Address PO Box 793, Blackfoot, Idaho 83221

Phone _____

Email _____

A. DESCRIPTION OF WATER SOUGHT FOR RENT

1. <u>Maximum Flow Rate (cfs)</u>	<u>Maximum Volume (ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>2.31</u>	<u>447.6</u>	<u>Irrigation</u>	<u>03/01</u> to <u>11/30</u>
<u>.10</u>	<u>18.7</u>	<u>Mitigation</u>	<u>03/01</u> to <u>11/30</u>
_____	_____	_____	_____ to _____
Total: _____			

2. Source of water Ground water tributary to _____

3. Point(s) of Diversion:

TWP	RGE	SEC	GOVT LOT	1/4	1/4	1/4	County
2S	36E	34			NE	NE	Bingham

4. Lands to be irrigated or place of use:

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
2S	36E	35					18.4	28.2	40	26.6		2.8		.3					116.3
2S	36E	34	1.2			2.5													3.7

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

Total Acres 120**B. OWNERSHIP**

1. Do you own the land at the proposed point of diversion?

Yes ☒ No ☐

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

2. Do you own the land at the proposed place of use?

Yes ☒ No ☐

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

C. MAP

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

D. GENERAL INFORMATION

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

Well and pump into main lines, which feed pivots.

2. Describe any other water rights diverted through the same point(s) of diversion or used for the same purpose(s) as described above.
Permit No. 27-7549 and Water Right No. 27-13B. 27-13B is not being diverted this year.

3. Will the proposed place of use receive water from any other source?

Yes ☐ No ☒

If yes, describe. _____

4. If the proposed use is not for irrigation, please provide a detailed description of the proposed use and how you determined the amount of water required. Attach additional sheets if needed. N/A

5. Are there any other applications pending before the Department, such as an application for permit or transfer, for the same use(s) proposed by this rental?

Yes ☒ No ☐

If yes, describe. Permit No. 27-7549.

6. Was this rental application submitted in response to a Notice of Violation or a pending Notice of Violation? Yes ☒ No ☐

If yes, describe. See attached consent order. This rental is contemplated by paragraph 4 of the "Terms and Agreement and Order."

E. RENTAL TERM

Do you wish to rent water from the Board's bank for more than one (1) year?

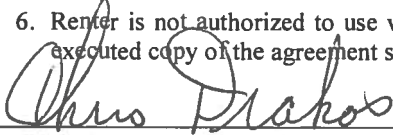
Yes ☐ No ☒

If yes, please specify the number of years desired through proposed rental. 1 year (2014)

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

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

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


Signature of Applicant

General Partner
Printed Name and Title*

Aug. 25, 2014
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

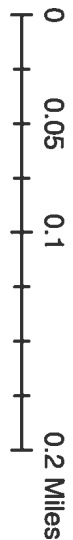
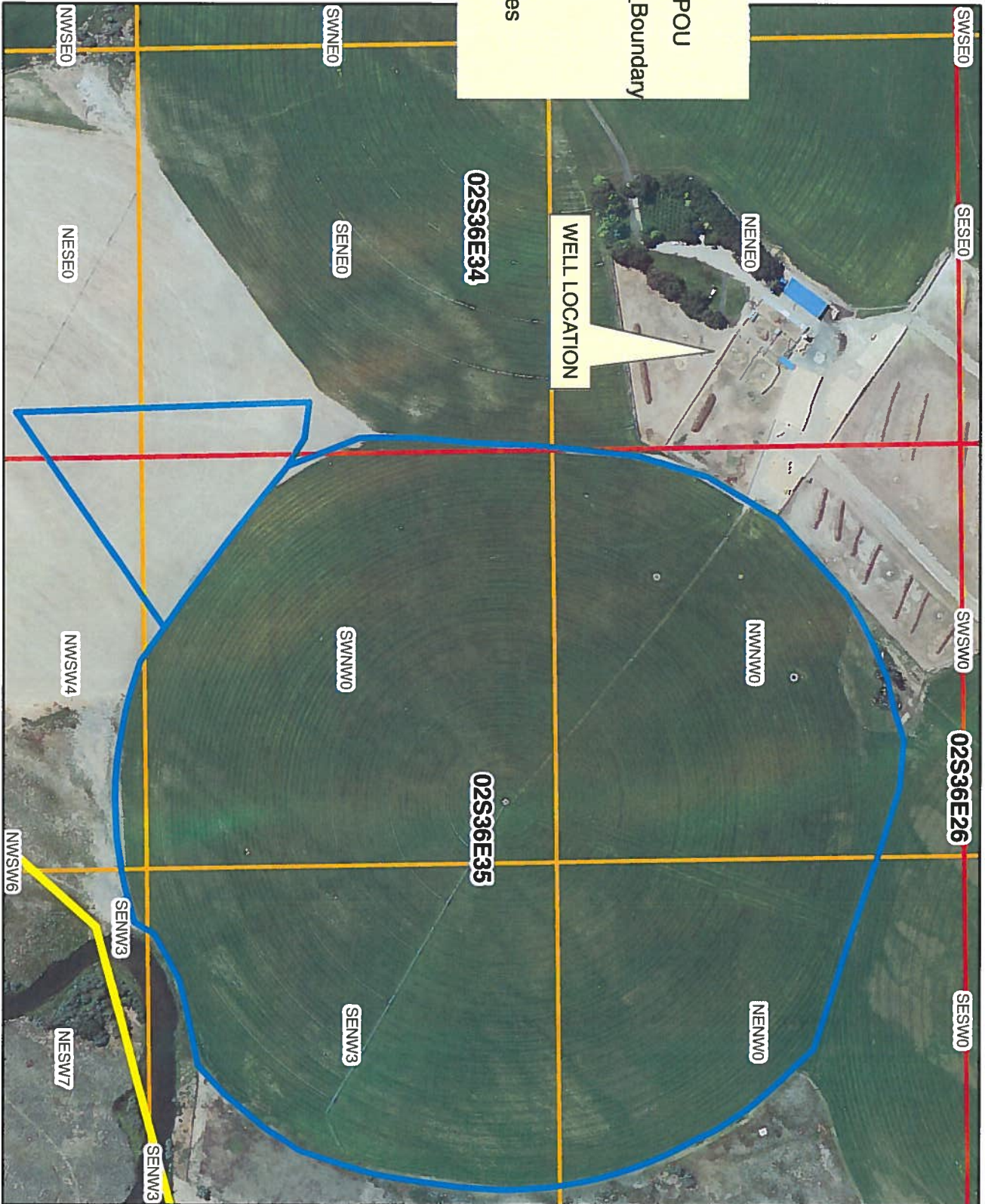
Mail to: Idaho Department of Water Resources, P.O. Box 83720, Boise, ID 83720-0098

IANNER LANE RANCH LLP WATER BANK APPLICATION Fielding Water Rights



Legend

- WB 120 acre Rental POU
- Ianner_Lane_Pship_Boundary
- gcdb_sections
- gcdb_qq
- 27-7003 125 WB Acres
- 27-7003_POU

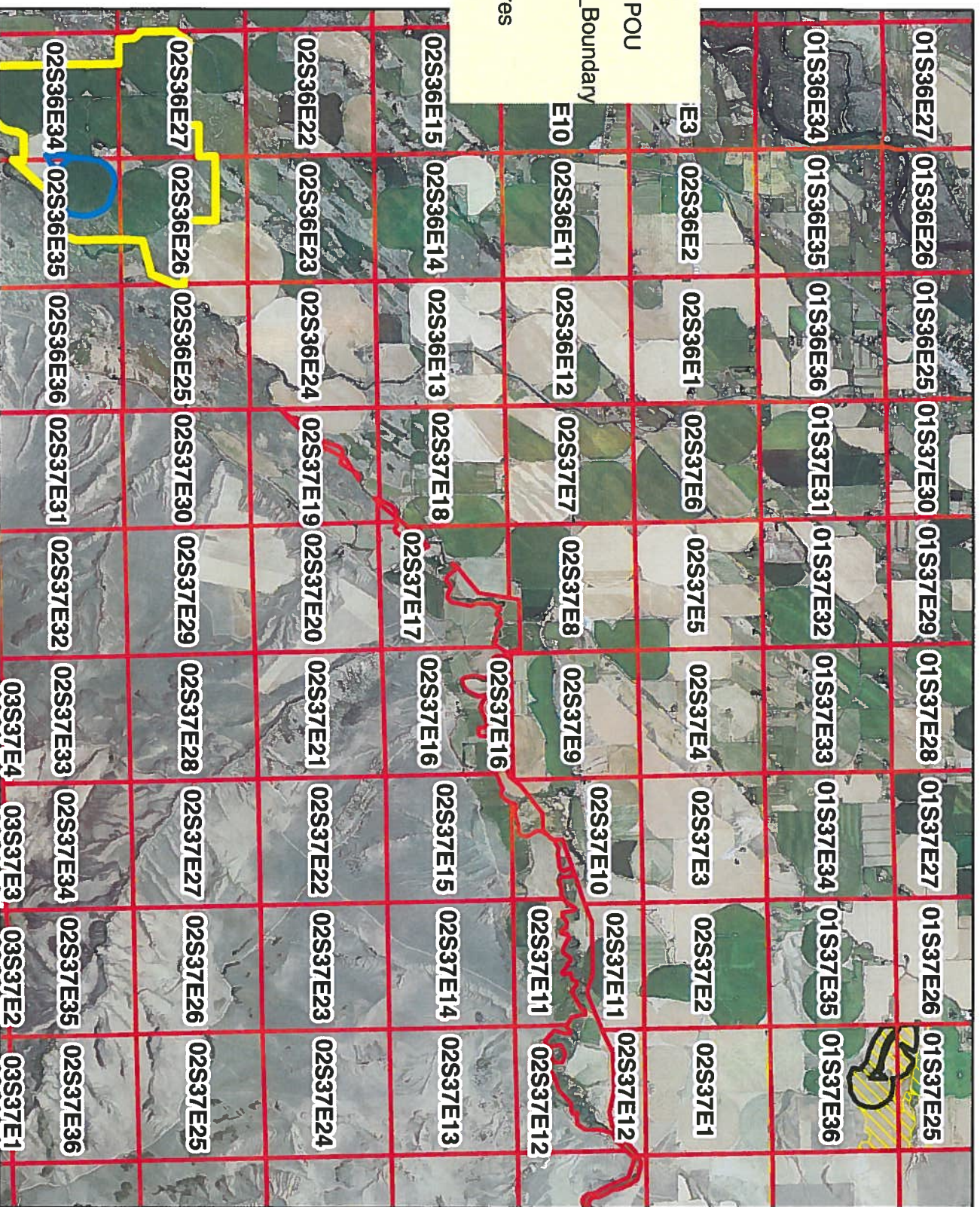


Fielding Water Rights



Legend

- WB 120 acre Rental POU
Tanner_Lane_Pship_Boundary
gcdb_sections
27-7003 125 WB Acres
27-7003_POU



A horizontal number line representing distance in miles. The line starts at 0 on the left and ends at 2 Miles on the right. Major tick marks are labeled at 0, 0.5, 1, and 2 Miles. There are 10 smaller tick marks between each major tick mark, representing increments of 0.1 miles.

ENHANCED GROUND-WATER RIGHTS TRANSFER

UNIVERSITY OF IDAHO - IDAHO WATER RESOURCES RESEARCH INSTITUTE

IDAHO DEPARTMENT OF AGRICULTURE

Cells this color are set up for user entries

ENTER STARTING DATE FOR SIMULATION. THEN PUSH "UPDATE DATES" BUTTON

YEAR

1968

SEASON

SPRING

TRANSFER NO:

TRANSFER NAME

Fielding

ENTER CELL LOCATIONS:

	TO CELL	FROM1 CELL	FROM2 CELL	FROM3 CELL
ROW	85	83		
COLUMN	143	152		

TRIMESTER OF ACTIVITY	TO WELL Projected Usage AF/TRIMESTER	FROM1 WELL		FROM2 WELL		FROM3 WELL	
		With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER	With Transfer AF/TRIMESTER	Without Transfer AF/TRIMESTER
SPR 1968	0	156	156	0	0	0	0
SUM 1968	0	156	156	0	0	0	0
WIN 1968	0	156	156	0	0	0	0
SPR 1969	0	156	156	0	0	0	0
SUM 1969	0	156	156	0	0	0	0
WIN 1969	0	156	156	0	0	0	0
SPR 1970	0	156	156	0	0	0	0
SUM 1970	0	156	156	0	0	0	0
WIN 1970	0	156	156	0	0	0	0
SPR 1971	0	156	156	0	0	0	0
SUM 1971	0	156	156	0	0	0	0
WIN 1971	0	156	156	0	0	0	0
SPR 1972	0	156	156	0	0	0	0
SUM 1972	0	156	156	0	0	0	0
WIN 1972	0	156	156	0	0	0	0
SPR 1973	0	156	156	0	0	0	0
SUM 1973	0	156	156	0	0	0	0
WIN 1973	0	156	156	0	0	0	0
SPR 1974	0	156	156	0	0	0	0
SUM 1974	0	156	156	0	0	0	0
WIN 1974	0	156	156	0	0	0	0
SPR 1975	0	156	156	0	0	0	0
SUM 1975	0	156	156	0	0	0	0
WIN 1975	0	156	156	0	0	0	0
SPR 1976	0	156	156	0	0	0	0
SUM 1976	0	156	156	0	0	0	0
WIN 1976	0	156	156	0	0	0	0
SPR 1977	0	156	156	0	0	0	0
SUM 1977	0	156	156	0	0	0	0
WIN 1977	0	156	156	0	0	0	0
SPR 1978	0	156	156	0	0	0	0
SUM 1978	0	156	156	0	0	0	0
WIN 1978	0	156	156	0	0	0	0
SPR 1979	0	156	156	0	0	0	0
SUM 1979	0	156	156	0	0	0	0
WIN 1979	0	156	156	0	0	0	0
SPR 1980	0	156	156	0	0	0	0
SUM 1980	0	156	156	0	0	0	0
WIN 1980	0	156	156	0	0	0	0
SPR 1981	0	156	156	0	0	0	0
SUM 1981	0	156	156	0	0	0	0

WIN 1981	0	156	156	0	0	0	0
SPR 1982	0	156	156	0	0	0	0
SUM 1982	0	156	156	0	0	0	0
WIN 1982	0	156	156	0	0	0	0
SPR 1983	0	156	156	0	0	0	0
SUM 1983	0	156	156	0	0	0	0
WIN 1983	0	156	156	0	0	0	0
SPR 1984	0	156	156	0	0	0	0
SUM 1984	0	156	156	0	0	0	0
WIN 1984	0	156	156	0	0	0	0
SPR 1985	0	156	156	0	0	0	0
SUM 1985	0	156	156	0	0	0	0
WIN 1985	0	156	156	0	0	0	0
SPR 1986	0	156	156	0	0	0	0
SUM 1986	0	156	156	0	0	0	0
WIN 1986	0	156	156	0	0	0	0
SPR 1987	0	156	156	0	0	0	0
SUM 1987	0	156	156	0	0	0	0
WIN 1987	0	156	156	0	0	0	0
SPR 1988	0	156	156	0	0	0	0
SUM 1988	0	156	156	0	0	0	0
WIN 1988	0	156	156	0	0	0	0
SPR 1989	0	156	156	0	0	0	0
SUM 1989	0	156	156	0	0	0	0
WIN 1989	0	156	156	0	0	0	0
SPR 1990	0	156	156	0	0	0	0
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WIN 1990	0	156	156	0	0	0	0
SPR 1991	0	156	156	0	0	0	0
SUM 1991	0	156	156	0	0	0	0
WIN 1991	0	156	156	0	0	0	0
SPR 1992	0	156	156	0	0	0	0
SUM 1992	0	156	156	0	0	0	0
WIN 1992	0	156	156	0	0	0	0
SPR 1993	0	156	156	0	0	0	0
SUM 1993	0	156	156	0	0	0	0
WIN 1993	0	156	156	0	0	0	0
SPR 1994	0	156	156	0	0	0	0
SUM 1994	0	156	156	0	0	0	0
WIN 1994	0	156	156	0	0	0	0
SPR 1995	0	156	156	0	0	0	0
SUM 1995	0	156	156	0	0	0	0
WIN 1995	0	156	156	0	0	0	0
SPR 1996	0	156	156	0	0	0	0
SUM 1996	0	156	156	0	0	0	0
WIN 1996	0	156	156	0	0	0	0
SPR 1997	0	156	156	0	0	0	0
SUM 1997	0	156	156	0	0	0	0
WIN 1997	0	156	156	0	0	0	0
SPR 1998	0	156	156	0	0	0	0
SUM 1998	0	156	156	0	0	0	0
WIN 1998	0	156	156	0	0	0	0
SPR 1999	0	156	156	0	0	0	0
SUM 1999	0	156	156	0	0	0	0
WIN 1999	0	156	156	0	0	0	0
SPR 2000	0	156	156	0	0	0	0
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WIN 2000	0	156	156	0	0	0	0
SPR 2001	0	156	156	0	0	0	0
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WIN 2002	0	156	156	0	0	0	0
SPR 2003	0	156	156	0	0	0	0
SUM 2003	0	156	156	0	0	0	0
WIN 2003	0	156	156	0	0	0	0
SPR 2004	0	156	156	0	0	0	0
SUM 2004	0	156	156	0	0	0	0
WIN 2004	0	156	156	0	0	0	0
SPR 2005	0	156	156	0	0	0	0
SUM 2005	0	156	156	0	0	0	0
WIN 2005	0	156	156	0	0	0	0
SPR 2006	0	156	156	0	0	0	0

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO
CONSENT ORDER AND AGREEMENT

In the Matter of Notice of Violation No. E2014-656 dated July 15, 2014.

BACKGROUND

- 1) Tanner Lane Ranch, LLLP (“TLR”) is the owner of approximately 600 acres of irrigated land (“subject land”) located within Sections 26, 27, 34 and 35, Township 2 South, Range 36 East, Bingham County, Idaho.
- 2) The Idaho Department of Water Resources (“Department”) issued a Notice of Violation (“NOV”) to TLR on July 15, 2014. The NOV alleged that TLR had irrigated the subject land without a valid water right in 2013 and 2014.
- 3) At the request of TLR’s attorney, Robert L. Harris, a compliance conference concerning the NOV was held on August 11, 2014.
- 4) TLR owns water right permit number 27-7549 (“the permit”) that authorized development of ground water wells to irrigate 480 acres partly within and adjacent to the subject land boundary. The required Proof of Beneficial Use (“proof”) for the permit was submitted to the Department on June 17, 1994. Through review of historic aerial photography, the Department has concluded that the majority of the development under the permit occurred after submittal of the proof and cannot be recognized on a subsequent water right license.
- 5) In February 2014, an application for amendment of the permit for licensing of the water right was conveyed by the Department to TLR. The application for amendment proposed licensing the permit for 25 acres of irrigation. The application for amendment has not been submitted to the Department and a water right license has not been issued.
- 6) The permit currently appears in Department records as a valid or active permit.
- 7) TLR also owns water right number 27-13B that authorizes irrigation of 314.1 acres within the subject land boundary from the Blackfoot River. This water right was not used to irrigate the subject land in 2013 or 2014.
- 8) On April 14, 2014, TLR submitted an application to rent water from the Water Supply Bank (“WSB”) intended to authorize irrigation of 288 acres of the subject land. TLR assumed this to be the deficit balance of water needed between water right number 27-13B and the approximate 600 acre place of use. The WSB rental application remains pending before the Department.
- 9) The Department has concluded that water right number 27-13B is not applicable in this case because it has not been diverted from the authorized location on the Blackfoot River.

- 10) Since the permit remains valid in the Department's records for irrigation of 480 acres, diversion under the permit should be recognized until the permit is either void or amended and licensed. Therefore, the deficit balance of water needed for irrigation of the subject land in 2013 and 2014 is understood between the Department and TLR to be 120 acres.

APPLICABLE LAW

- 1) Diversion of water and irrigation of land without a valid water right or use of water not in conformance with a water right constitutes a violation of Idaho Code §42-351.
- 2) The Department, on behalf of the director, may initiate an administrative enforcement action for designated violations of Title 42 of the Idaho Code pursuant to Idaho Code §42-1701B.
- 3) Idaho Code §42-1701B allows the director to seek civil penalties and other redress pursuant to a NOV and to execute a Consent Order and Agreement between the Department and the alleged violator to resolve a NOV.
- 4) For violations of Idaho Code §42-351, the Department may seek civil penalties up to three hundred dollars (\$300) annually for each acre irrigated without a valid water right or not in conformance with a water right.
- 5) Idaho Code §42-1701B(4) provides that the Department and the NOV recipient may enter into a consent order formalizing an agreement to remedy the violation and assure future compliance.

TERMS OF AGREEMENT AND ORDER

- 1) The Department agrees to recognize diversion under permit number 27-7549 in 2013 & 2014 applicable to 480 acres within the subject land boundary (existing 600 acre place of use).
- 2) The Department agrees to not issue an order to void the permit (or issue the license described below) until after November 1, 2014.
- 3) TLR agrees to pay a civil penalty in the amount of twenty four thousand four hundred eighty dollars (\$24,480) for the unauthorized irrigation of 120 acres in 2013 (\$204/acre). This amount is due and payable within 14 days of execution of this agreement by TLR.
- 4) TLR agrees to pay a civil penalty in the amount of \$300/acre for any acres that cannot be authorized under a WSB rental agreement for 2014 (\$36,000 max). Any applicable penalty amount due after WSB action on a related rental application for 2014, must be paid within 14 days of approval or denial of the rental.
- 5) If TLR does not want permit number 27-7549 to be voided, TLR must have a signed amendment for licensing submitted and the fee paid by October 31, 2014.

- 6) TLR agrees that if the terms of this agreement are not met in full and/or the agreed civil penalty is not paid, the Department may initiate a civil action in the district court.
- 7) Upon execution of this agreement, compliance with the terms contained herein and the Department's receipt of the agreed civil penalty as described above, NOV number E2014-656 will be considered resolved.

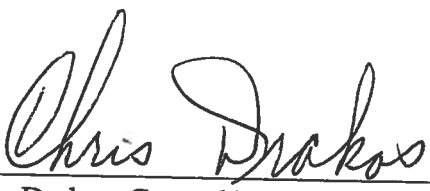
Dated this _____ day of _____, 2014

ROBERT B. WHITNEY
Water Compliance Bureau

CONSENT

Respondent acknowledges in general the facts set forth herein and accepts fully the terms and conditions of this Order. These terms shall become effective upon execution by the parties. Respondent waives any right to contest this Order and consents to the issue hereof.

Dated this 25th day of AUGUST, 2014



Chris Drakos, General Partner, Tanner Lane Ranch, LLLP