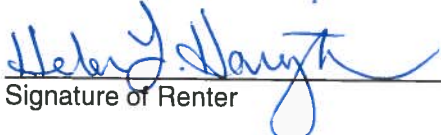


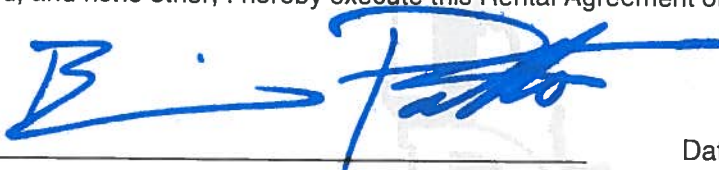
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WATER SUPPLY BANK RENTAL AGREEMENT

The undersigned renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described in this agreement:

 _____ Signature of Renter	<u>Helen L. Harrington</u> _____ Printed Name and Title* <u>Manager, Water Planning Section</u>	<u>6/23/14</u> _____ Date
_____ Signature of Renter	_____ Printed Name and Title*	_____ Date

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

Having determined that this agreement satisfied the provisions of Idaho Code § 42-1763 and IDAPA 37.02.03.030 (Water Supply Bank Rule 30), for the rental and use of water under the terms and condition herein provided, and none other, I hereby execute this Rental Agreement on behalf of the Idaho Water Resource Board.

By 

BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Date June 23, 2014

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WATER SUPPLY BANK RENTAL AGREEMENT

WATER USE DETAILS

LOCATION OF POINTS OF DIVERSION:

TETON RIVER (Beginning of Reach)	SESW	Sec 23	Twp 06N	Rge 44E	TETON County
TETON RIVER (End of Reach)	NWNE	Sec 20	Twp 07N	Rge 44E	TETON County

BENEFICIAL USE OF WATER:

INSTREAM FLOW

SEASON OF USE

04/15 TO 10/31

RENTER'S PLACE OF USE:

TETON RIVER WITHIN REACH DESCRIBED ABOVE

CONDITIONS APPLICABLE TO ALL RENTED WATER RIGHTS

1. The use of this agreement is limited to the consumptive amounts of the leased portions of rights 22-13436 and 22-13437.
2. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
3. Rental of the specified right from 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 any other department application process.
4. Use of water under this agreement does not constitute a dedication of the water to renter's place of use, and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
5. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party.
6. Use of water under this agreement shall not prejudice any action of the Department in its consideration of an application for transfer or permit filed by the applicant for this same use.
7. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
8. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water.
9. Renter acknowledges and agrees that 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.
10. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.

11. Use of water under this agreement will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 1.
12. The water right(s) referenced above is being rented in accordance with a private agreement formulated between the lessor and the renter. Administrative fees will be paid by the renter.
13. This rental is to provide water for minimum stream flow authorized under Water Right No 22-7369.

RECEIVED
MAR 21 2014
DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
WATER RESOURCE BOARD

Water Supply Bank No. _____
(For Department Use Only)

**APPLICATION TO RENT WATER
FROM THE WATER SUPPLY BANK**

Name of Renter Idaho Water Resource Board Phone 208-287-4800

Mailing address P.O. Box 83720, Boise, ID 83720-0098 Email _____

A. DESCRIPTION OF WATER SOUGHT FOR RENT

1. Maximum Flow Rate (cfs) Maximum Volume (ac-ft) Nature of Use Period of Use
0.11 cfs N/A Instream flow 04/15 to 10/31

Total: 0.11 cfs N/A

2. Source of water South Leigh Creek tributary to Teton River

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	¼	¼	¼	County
06N	44E	23			SE	SW	Teton (start of Stream Flow reach)
07N	44E	20			NW	NE	Teton (end of Stream Flow reach)

4. Lands to be irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

If the use is for irrigation, show total number of acres proposed through rental. Total Acres N/A

B. OWNERSHIP

1. Do you own the land at the proposed point of diversion? Yes ☐ No ☒
If no, list owner, contact information, and provide documentation of the authority to use the proposed point of diversion. The water is to be rented for the beneficial use of instream flow in the Teton River (22-7369).
2. Do you own the land at the proposed place of use? Yes ☐ No ☒
If no, list owner, contact information, and provide documentation of the authority to use the proposed place of use. N/A

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. N/A
2. Describe any other water rights diverted through the same point(s) of diversion or used for the same purpose(s) as described above. Water right nos. 22-11579, 22-13536, 22-00380B, 22-00380C, and 22-11993 were previously rented by the IWRB for the beneficial use of instream flow, through the Idaho Water Transaction Program.
3. Will the proposed place of use receive water from any other source? Yes ☐ No ☐
If yes, describe. N/A
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. The water is to be rented for the beneficial use of instream flow in the Teton River (22-7369), through the Idaho Water Transaction Program. The water right is a donation, so the standard rental rate fee (\$1.70/AF) will apply.
5. Are there any other applications pending before the Department, such as an application for permit or transfer, for the same use(s) proposed by this rental? Yes ☐ No ☒
If yes, describe. _____
6. Was this rental application submitted in response to a Notice of Violation or a pending Notice of Violation? Yes ☐ No ☒
If yes, describe. _____

E. RENTAL TERM

1. 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. 5

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.

Helen L. Harrington
Signature of Applicant

Helen L. Harrington
Sec. Mgr., Water Planning Sect.
Printed Name and Title*

3/21/2014
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

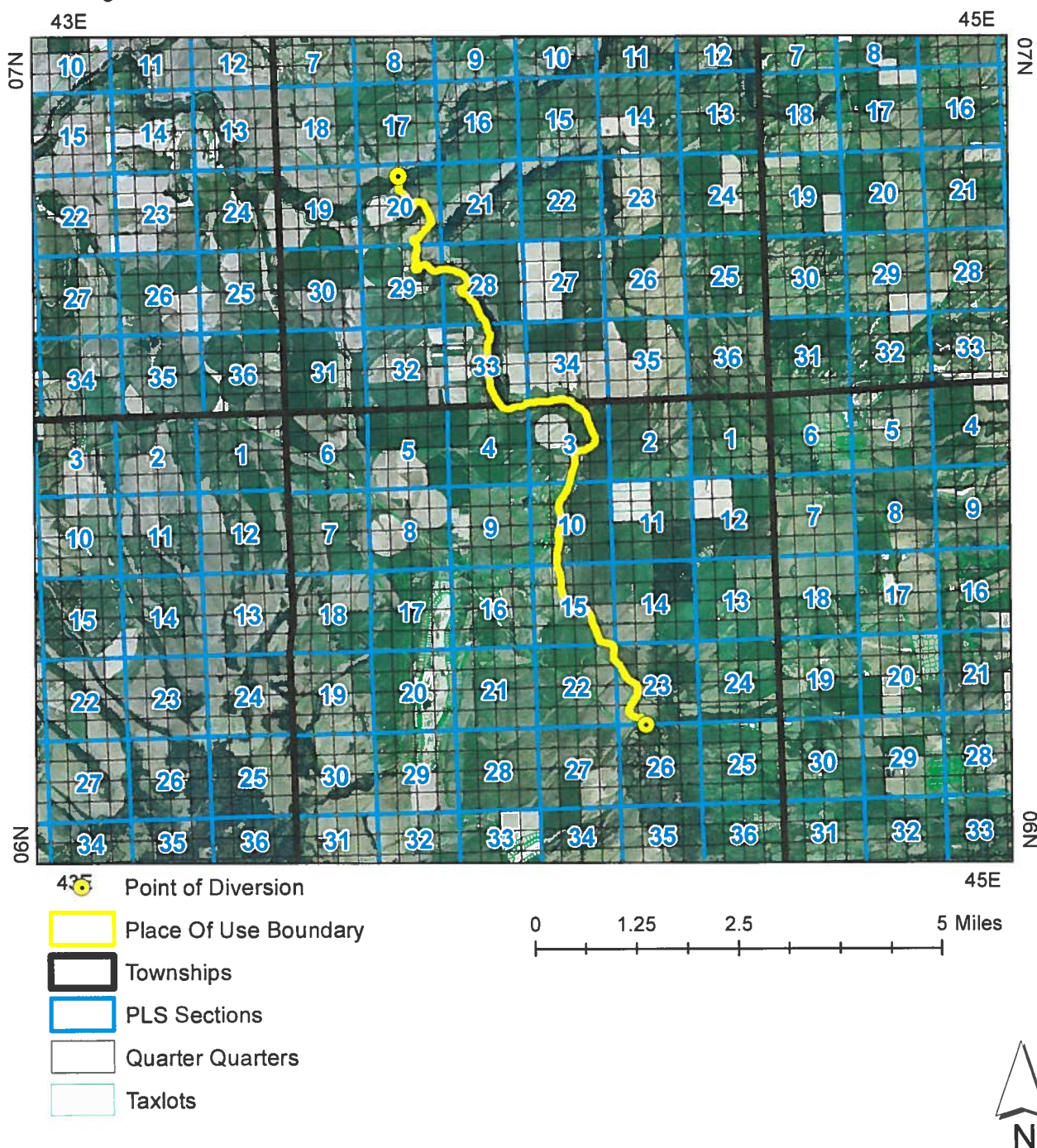
Attachment A

State of Idaho
Department of Water Resources

Water Right 22-7369

MINIMUM STREAM FLOW

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





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

June 24, 2014

IDAHO WATER RESOURCE BOARD
PO BOX 83720
BOISE ID 83702-0098

**RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 22-13436 and 22-13437**

Dear Renter:

Please find enclosed a copy of a fully executed Water Supply Bank Rental Agreement in connection with the rental of 17.85 acre-feet of water for in-stream flow from 2014 through 2018. You are authorized to use water in compliance with the conditions of water use described in the agreement.

Pursuant to the Water Supply Bank Rules, the rental fee in the amount of **\$35.80 annually** will be retained by the Department to offset administrative costs since you have a private agreement with the lessor of the right(s). This annual fee will be transferred to the Department's Water Supply Bank Administrative fee account as soon as the fees are available per arrangements through other programs and Water Supply Bank staff will be notified.

If you have any questions, please contact me at (208) 287-4944.

Sincerely,

Cherie Palmer
Senior Water Resource Agent
WSB Process Point of Contact

Enclosure(s): Rental Agreement (copy)

c: Sascha Marston – Fiscal
James Cefalo – IDWR Eastern Regional Office
Tony Olenichak – Watermaster, Water District No. 1

MEMORANDUM

To: Water Right(s).
From: Remington Buyer
Date: March 25, 2014
Re: Review & Analysis of Application to Rent Water from the State Water Supply Bank

PURPOSE/NARRATIVE: The Idaho Water Resource Board seeks to rent water rights 22-13436 and 22-13437 and use the flow authorized under these water rights to augment the instream flow of water right 22-7369.

AUTHORITY TO FILE: A rental application has been submitted on behalf of the Idaho Water Resource Board by IDWR Planning Bureau Chief Brian Patton.

WATER RIGHT VALIDITY: These water rights are valid and available for rental.

INJURY TO OTHER WATER RIGHTS: No injury is apparent from the rental of water to meet instream flow needs.

ENLARGEMENT OF USE: These rights are in the Bank and will not be used in 2014. Enlargement is not a concern.

LOCAL PUBLIC INTEREST: It is in the local public interest to encourage the beneficial use of water. The rental of these water rights will help satisfy instream flow of the Teton River, a recognized beneficial use. This rental is thus in the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: This rental satisfies a beneficial use and recognized conservation of water.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: Water District No 1 Program Manager and IDWR Eastern Regional staff Tony Olenichak has reviewed the proposed lease and rental companion application and approved of the rental.



208 354 3871
www.tetonwater.org

18 North Main Street, Suite 310
PO Box 768
Driggs, Idaho 83422

March 19, 2014

Helen Harrington
Idaho Department of Water Resources
P.O. Bo 83720
Boise, Idaho 83720-0098

RECEIVED
MAR 21 2014
DEPARTMENT OF
WATER RESOURCES

Re: Teton River Basin Water Transaction Documents

Dear Helen,

Please find enclosed the following documents relevant to the Teton River Basin water transactions:

- Osagia, LLC Transaction:
 - Water Supply Bank Lease Application for 22-13815
 - Water Supply Bank Lease Application for 22-13817
 - Agreement Not to Divert Water From South Leigh Creek
- Burr Transaction:
 - Water Supply Bank Lease Application for 22-13436
 - Water Supply Bank Lease Application for 22-13437
 - Water Supply Bank Rental Application

Additionally, I have prepared a memorandum for the Idaho Water Supply Bank providing some background on the transactions and information about how the lease/rental fees were calculated.

The Agreement Not to Divert and Water Supply Bank Lease Applications have been signed by the water right holders. It is my understanding that Mr. Patton's signature is needed on the Agreement Not to Divert Water From South Leigh Creek and Water Supply Bank Rental Application. The Burr's Water Right Lease Agreement has yet to be signed by them, and thus will be mailed to you separately.

Thank you very much for your help and please do not hesitate to contact me with any questions.

Best,

Sarah Lien
Water Resources Director and Staff Attorney
Friends of the Teton River

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE
SOUTH LEIGH CREEK
WATER USE AGREEMENT

)
)
)
)
A RESOLUTION TO MAKE
A FUNDING COMMITMENT

WHEREAS, South Leigh Creek is a tributary to the Teton River that provides quality spawning and rearing habitat for Yellowstone cutthroat trout and other resident fish, but is flow and passage limited at certain times of the year; and

WHEREAS, it is in the interest of the State of Idaho to increase stream flow in the Teton River and its tributaries to encourage recovery of Yellowstone cutthroat trout, which are currently designated as an Idaho Species of Greatest Conservation Need; and

WHEREAS, staff has developed a one-year water use agreement with Osagia, LLC to improve stream flow for native fish in South Leigh Creek; and

WHEREAS, the water rights shall be leased into the Board's Idaho Water Supply Bank, for a period of one year; and

WHEREAS, a proposal to fund the Osagia, LLC water use agreement in the amount of \$3,902.00 has been submitted to the Columbia Basin Water Transaction Program, to be used to pay the Idaho Water Supply Bank Application Fee (\$500.00), 10% Administrative Fee (\$221.00), Recording Fee (\$25.00), and payment to the water right holder (\$3,156.00); and

WHEREAS, staff anticipates the funds being placed into the IWRB Revolving Development Account for payment to the water right holder; and

WHEREAS, the South Leigh Creek transaction is in the public interest and in compliance with the State Water Plan.

NOW THEREFORE BE IT RESOLVED that the IWRB authorizes the Chairman to enter into water use agreement/lease with Osagia, LLC, and/or its successors for water rights 22-13815 and 22-13817, using an amount not to exceed \$3,902.00.

NOW THEREFORE BE IT FURTHER RESOLVED that this resolution is subject to the condition that the IWRB receives the requested funding from the Columbia Basin Water Transaction Program in the amount of \$3,902.00.

DATED this 24th day of January, 2014.

ROGER CHASE, Chairman
Idaho Water Resource Board

ATTEST: _____
BOB GRAHAM, Secretary



MEMORANDUM

To: Idaho Water Resource Board

From: Sarah Lien, Friends of the Teton River

Date: January 10, 2014

Re: Water Transactions Program – Teton River Basin – South Leigh Creek Transactions

Action Item: Attached are two expenditure of fund resolutions. The first resolution authorizes the Board to expend \$704.00 to pay for the application and administrative fees associated with the donation of South Leigh Creek water rights for a term of five years. The second resolution authorizes the Board to expend \$3,902.00 to fund the lease of South Leigh Creek water rights for a term of 1 year.

Background and Ecological Significance of South Leigh Creek

South Leigh Creek is a tributary to the Teton River located in the upper Teton Valley. The tributary runs from east to west, originating in the Teton Range and flowing towards the Teton River. The tributary offers excellent fish and wildlife habitat and supports a Yellowstone cutthroat trout (YCT) population.

Currently, irrigation withdrawals result in the annual dewatering of the stream, and each year the stream is subject to the futile call doctrine. Pervasive yearly dewatering serves to restrict fish movement and migration, reduce valuable habitat, and elevate stream temperatures. Restoring flow to specific reaches in South Leigh Creek will have a positive impact on the YCT fishery in that tributary, serving to create valuable habitat, allowing for fish passage and migration, decreasing stream temperatures, and ultimately helping to encourage the recovery of YCT populations in the upper Teton Valley.

YCT are currently listed as a "species of greatest concern" for the Teton River Basin in the Idaho Comprehensive Wildlife Conservation Strategy (February 2006), and by consequence garner management priority throughout their historic range, including the Teton Basin. South Leigh Creek is incredibly valuable for YCT. The perennial, mountain section of South Leigh Creek houses a genetically pure population of YCT.

A great deal of effort has been committed to restoring and improving fish habitat, and preventing fish entrainment in irrigation diversions on South Leigh Creek. FTR has conducted three stream restoration projects on South Leigh Creek, restoring and stabilizing over 1,350 feet of stream and re-vegetating over 6,755 square feet of stream bank. Substantial stream restoration work has also been conducted by private landowners. Additionally, FTR worked with irrigators to rebuild the largest diversion on South Leigh Creek, the Hog Canal diversion. The rebuild not only incorporated modern diversion works but solar operated fish screens. Building from the success of that project, FTR is currently working with irrigators to install fish screens on the Desert Canal. The project is tentatively scheduled for construction in the fall of 2014.

attached map entitled South Leigh Creek Transaction Map.) Because this transaction involves a water right historically diverted at the upper end of a futile call reach, it is proposed that the IWRB enter into an agreement not to divert with Osagia, LLC, formalized in part by leasing the water right into the Water Supply Bank and restricting rental of the water right (as opposed to utilizing the Water Supply Bank to rent the water to the Teton River minimum streamflow reach). This transactional structure will ensure that the water right is legally deliverable to the historic point of diversion, at the Desert Canal, regardless of whether the stream has been deemed futile or not. This structure satisfies the objectives of the Idaho Water Transactions Program by ensuring that South Leigh Creek remains wetted to the Desert Canal diversion and that the Osagia, LLC water right is left in stream, serving to increase available habitat for Yellowstone cutthroat trout.

Bob Loucks valued the water right at \$87.65/acre. The valuation is based upon the historical use of the water rights, which included generating one cutting of hay and then pasturing the aftermath. The valuation was presented to the water right owner and found acceptable. This is the same valuation and pricing structure utilized to value the Spring Creek water transactions and serves to keep pricing consistent in the upper Teton Valley.

Osagia, LLC also has a groundwater right appurtenant to this parcel of land, water right number 22-13815. It is proposed that this water right also be leased into the Idaho Water Supply Bank for a one year term, to protect the water right from claims of forfeiture and ensure that neither ground nor surface water are utilized to irrigate the property. (See, attached email from Tony Olenichak.)

A proposal to fund these transactions has been submitted to the Columbia Basin Water Transaction Program in the amount of \$3,902.00. The requested funds will be placed into the Board's revolving development water transaction subaccount which will be used to compensate the water right owner and cover the recording fee, as follows: Water Right Application Fee: (\$500.00); 10% Administrative Fee (\$221.00); Payment to Water Right Holder (\$3,156.00); and Recording Fee (\$25.00).

Monitoring and Contract Compliance

Monitoring and contract compliance will be conducted by the local water district (WD 01) and Friends of the Teton River. It is anticipated that the point of diversion associated with these water rights, as well as all other diversions on the tributary, will be monitored by WD 01 on a weekly basis to ensure that the water rights remain in stream. Ecological and fisheries benefits will be monitored by Friends of the Teton River, in conjunction with Idaho Department of Fish and Game.

Letters of Support and Public Outreach

Water District 01: The proposed transactions have been reviewed by Lyle Swank and Tony Olenichak of WD 01. No concerns have been raised with the transactions from either a water delivery or an injury perspective. Correspondence from Mr. Swank and Mr. Olenichak regarding this matter has been attached to this briefing memorandum.

Idaho Fish and Game: Each of the water transactions has been reviewed by Dan Garren, Regional Fisheries Manager for Idaho Fish and Game. Mr. Garren has submitted a letter of support which has been attached to this briefing memorandum.

Informational Open House: FTR hosted an informational open house on Wednesday, December 4, 2013 in Driggs, Idaho at the Driggs City Center to provide members of the public with an opportunity to learn about the proposed water leases discussed in this memorandum. The event was held in an effort to educate the water users and citizens of Teton Valley about the Idaho Water Transaction Program generally, and address any questions or concerns about the South Leigh water leases contemplated in this memorandum. The event was publicized in the Teton Valley Citizen on November 27, 2013. The Teton