

WATER SUPPLY BANK LEASE CONTRACT

This Lease Contract ("**Lease**") is effective April 23, 2014, between the Idaho Water Resource Board ("**Board**"), and

Lessor: FOSTER LAND & CATTLE
PO BOX 40
RIRIE ID 83443

RECEIVED

MAY 27 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>
35-13944	0.27 CFS	NA	32.0 AC	32.0 AC
35-13946	0.23 CFS	51.2 AF	12.8 AC	12.8 AC
35-13948	0.11 CFS	22.8 AF	5.7 AC	5.7 AC
Combined Lease Totals:	0.61 CFS	128.0 AF	32.0 AC	32.0 AC

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

Authorized Period of Use under Lease: 04/01 to 10/31

2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

Minimum Payment Acceptable: Current Rental Rate

3. **TERM OF LEASE:** This Lease shall take effect when both parties have signed it and shall continue in effect until December 31, 2014.
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.

SUPPORT DATA

IN FILE # 35-13944

Page 1 of 8

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

FOSTER LAND & CATTLE

PO BOX 40
RIRIE ID 83443

By Burl Foster
Printed Name Burl Foster

Date 5/28/14
2:27 pm
Title Partner

IDAHO WATER RESOURCE BOARD

322 East Front Street
P.O. Box 83720
Boise, ID 83720-9098

By Brian Patton
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 05-27-2014

Lease approved by IDWR Camille S. Skaggs

Date 05-27-2014

ATTACHMENT A
WATER RIGHT NO. 35-13944
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: FOSTER LAND & CATTLE
 PO BOX 40
 RIRIE ID 83443

Priority Date: 8/4/1979

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	to 10/31	0.27 CFS	NA
	Total:		0.27 CFS	NA

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NENENW	Sec. 24, Twp 01S, Rge 34E, BINGHAM County
GROUND WATER	SESESW	Sec. 24, Twp 01S, Rge 34E, BINGHAM 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	
01S	34E	24						32.0											32.0

Total Acres: 32.0

Limited to acres within place of use described above: 32.0 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>
35-13944, 35-13946, and 35-13948	NA	128.0 AF	32 AC	32 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. Portions of Rights 35-13944, 35-13946 and 35-13948 under this agreement are limited to the irrigation of a combined total of 32.0 acres in a single season and a total combined annual diversion volume of 128.0 acre-feet.
13. Unleased portions of Rights 35-13944, 35-13946 and 35-13948 are limited to the irrigation of a combined total of 356.0 acres in a single season and a total combined annual diversion volume of 1,424.0 acre-feet.
14. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No.120.

ATTACHMENT A
WATER RIGHT NO. 35-13946
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: FOSTER LAND & CATTLE
PO BOX 40
RIRIE ID 83443

Priority Date: 2/24/1953

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	to 10/31	0.23 CFS	51.2 AF
	Total:		0.23 CFS	51.2 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NENENW	Sec. 24, Twp 01S, Rge 34E, BINGHAM County
GROUND WATER	SESESW	Sec. 24, Twp 01S, Rge 34E, BINGHAM 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	
01S	34E	24						32.0											32.0

Total Acres: 32.0

Limited to acres within place of use described above: 12.8

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>
35-13944, 35-13946, and 35-13948	NA	128 AF	32 AC	32 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 lease of this right is limited to 12.8 acres within the leased place of use described above in a single irrigation season.
13. Portions of Rights 35-13944, 35-13946 and 35-13948 under this agreement are limited to the irrigation of a combined total of 32.0 acres in a single season and a total combined annual diversion volume of 128.0 acre-feet.
14. Unleased portions of Rights 35-13944, 35-13946 and 35-13948 are limited to the irrigation of a combined total of 356.0 acres in a single season and a total combined annual diversion volume of 1,424.0 acre-feet.
15. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No.120.

ATTACHMENT A
WATER RIGHT NO. 35-13948
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: FOSTER LAND & CATTLE
 PO BOX 40
 RIRIE ID 83443

Priority Date: 6/7/1957

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	to 11/01	0.11 CFS	22.8 AF
	Total:		0.11 CFS	22.8 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	SESESW	Sec. 24, Twp 01S, Rge 34E, BINGHAM County
GROUND WATER	NENENW	Sec. 24, Twp 01S, Rge 34E, BINGHAM 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	
01S	34E	24						32.0											32.0

Total Acres: 32.0

Limited to acres within place of use described above: 5.7 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>
35-13944, 35-13946, and 35-13948	NA	128 AF	32 AC	32.0 AC

ADDITIONAL CONDITIONS OF ACCEPTANCE

- The water rights referenced above will be rented from the bank at the current rental rate.
- 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.
- 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.
- 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.
- While a water right is in the bank, forfeiture provisions are stayed.
- 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 lease of this right is limited to 5.7 acres within the leased place of use described above in a single irrigation season.
13. Portions of Rights 35-13944, 35-13946 and 35-13948 under this agreement are limited to the irrigation of a combined total of 32.0 acres in a single season and a total combined annual diversion volume of 128.0 acre-feet.
14. Unleased portions of Rights 35-13944, 35-13946 and 35-13948 are limited to the irrigation of a combined total of 356.0 acres in a single season and a total combined annual diversion volume of 1,424.0 acre-feet.
15. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No.120.

STATE OF IDAHO
WATER RESOURCE BOARD

WATER SUPPLY BANK LEASE OR SALE APPLICATION CHECKLIST

RECEIVED
APR 23 2014
DEPARTMENT OF
WATER RESOURCES

An application to lease or sell a water right into the Water Supply Bank must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Use this checklist to ensure all necessary documentation has been provided. This checklist is part of the lease application and must be included with the lease application. **Incomplete applications will be returned to applicants for completion.**

Designated Applicant Foster Land & CattleWater Right No. 35-13948One water right per application

All items must be checked as either *Attached (Yes)* or *Not Applicable (N/A)*

YES

- ☒ Completed *Water Supply Bank Lease or Sale Application Checklist* (this form).
- ☒ Completed *Application to Sell or Lease a Water Right to the Water Supply Bank* (pages 2-3).
- ☒ Application filing fee of \$250.00. If you are submitting more than one lease application and the water rights have a common place of use, or common diversion rate, or common diversion volume, the combined maximum fee is \$500.00.

Attachment N/A YES

- 1A ☒ ☐ Contact information for *all owners* of the water right that is being leased or sold on this application.
- 1B ☒ ☐ An Internal Revenue Service (IRS) Form W-9 for the Designated Applicant.
- 1C ☒ ☐ *Notice of Change in Water Right Ownership* form (accessible from www.idwr.idaho.gov).
- 1D ☒ ☐ Written consent from irrigation district or water delivery company.
- 1E ☐ ☒ Contact information for an authorized representative and documentary proof they are authorized to represent the Designated Applicant on this application. If the Designated Applicant is a business, partnership, municipality, organization or association, include documents identifying officers authorized to sign or act on behalf of the entity.
- 2 ☐ ☒ Description of a water right portion offered to the Water Supply Bank.
- 3D ☒ ☐ Evidence demonstrating that a water right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code.
- 4 ☒ ☐ A map that clearly outlines the specific location where irrigated acres will be dried up, or where a beneficial use of water will be suspended. If you don't already have a detailed map, you can create one using IDWR's online General Mapping Tool (<http://maps.idwr.idaho.gov/mapall/>) to locate a water right place of use or point of diversion.

Department Use Only

Fee Amount \$ <u>500⁰⁰</u>	Received By: <u>OS</u>	Date Received: <u>4/23/14</u>	Receipt # <u>C098726</u>
W-9 received? Yes ☒ No ☐ (Route W-9 to Fiscal)		Name on W-9: <u>Brad Foster / Foster Land and Cattle</u>	

STATE OF IDAHO
WATER RESOURCE BOARD

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

RECEIVED
APR 23 2014
DEPARTMENT OF
WATER RESOURCES

1. CONTACT INFORMATION

- A. An application to sell or lease a water right to the Water Supply Bank must be completed by a Designated Applicant who is a recognized owner of the water right being sold or leased to the Water Supply Bank. If there are additional owners recorded for the property to which the water right is appurtenant, those individuals must authorize the Designated Applicant to represent them on this application by completing and signing Attachment 1A of this application package.

Designated Applicant Foster Land & Cattle Email Address _____
Mailing Address PO Box 40, Ririe, ID 83443 Phone Number _____

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

OR

☐ The Designated Applicant is representing additional water right holders who have completed Attachment 1A.

- B. Has the designated applicant completed an IRS Form W-9 (Attachment 1B)? Yes ☒ No ☐

- C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes ☒ No ☐
If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

- D. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 1D).

- E. Is this application being completed by an authorized representative of the Designated Applicant? Yes ☒ No ☐
If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1E).

Name of Representative Luke H. Marchant Organization Holden, Kidwell, Hahn & Crapo, P.L.L.C.
Professional Title Attorney Email Address lmarchant@holdenlegal.com
Mailing Address P.O. Box 50130, Idaho Falls, ID 83405 Phone Number (208) 523-0620

☐ Send all correspondence for this application to the representative and not to the Designated Applicant.

OR

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

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

Water Right Number 35-13948 ☐ The full water right is being offered to the Bank.

OR

☒ A part of the water right is being offered to the Bank.
(If a portion of a water right is being offered, complete Attachment 2)

3. GENERAL INFORMATION

- A. Please provide a description of the current water diversion system.
Water is diverted through two existing wells and pumps.

- B. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank.
Water Right Nos. 35-13944 and 35-13946 are also used for the same purpose and place of use as this right.

C. Will the present place of use continue to receive water from any other source? Yes ☐ No ☒

If yes, describe. _____

D. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☐ No ☒

If yes, describe and attach Watermaster records or other evidence to demonstrate that the water right has not been lost through abandonment or forfeiture pursuant to Section 42-222(2), Idaho Code. _____

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

If yes, describe. _____

4. SALE/LEASE AGREEMENT

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

If lease, for a period from 04/01/2014 to 12/31/2014 (maximum lease period 5 years).
(Month / Day / Year) (Month / Day / Year)

B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

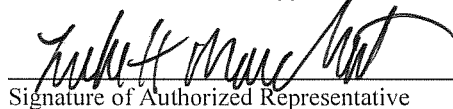
Current Rental Rate _____

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this water right for sale or lease to the Idaho Water Resource Board.

The Designated Applicant acknowledges the following:

1. Payment to the Designated Applicant is contingent upon the sale or rental of the water right from the Bank.
2. While a water right is in the Bank, the seller/lessor of the water right may not use the water right even if the water right is not rented from the Bank.
3. A water right accepted into the Bank stays in the Bank until the Designated Applicant receives written confirmation from the Board or Water Supply Bank that the water right has been released from the Bank.
4. While a water right is in the Bank, forfeiture provisions are stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any elements of the water right.

Signature of Designated Applicant



Signature of Authorized Representative

Printed Name

Luke H. Marchant

Printed Name

Date

03/24/2014

Date

Mail to:

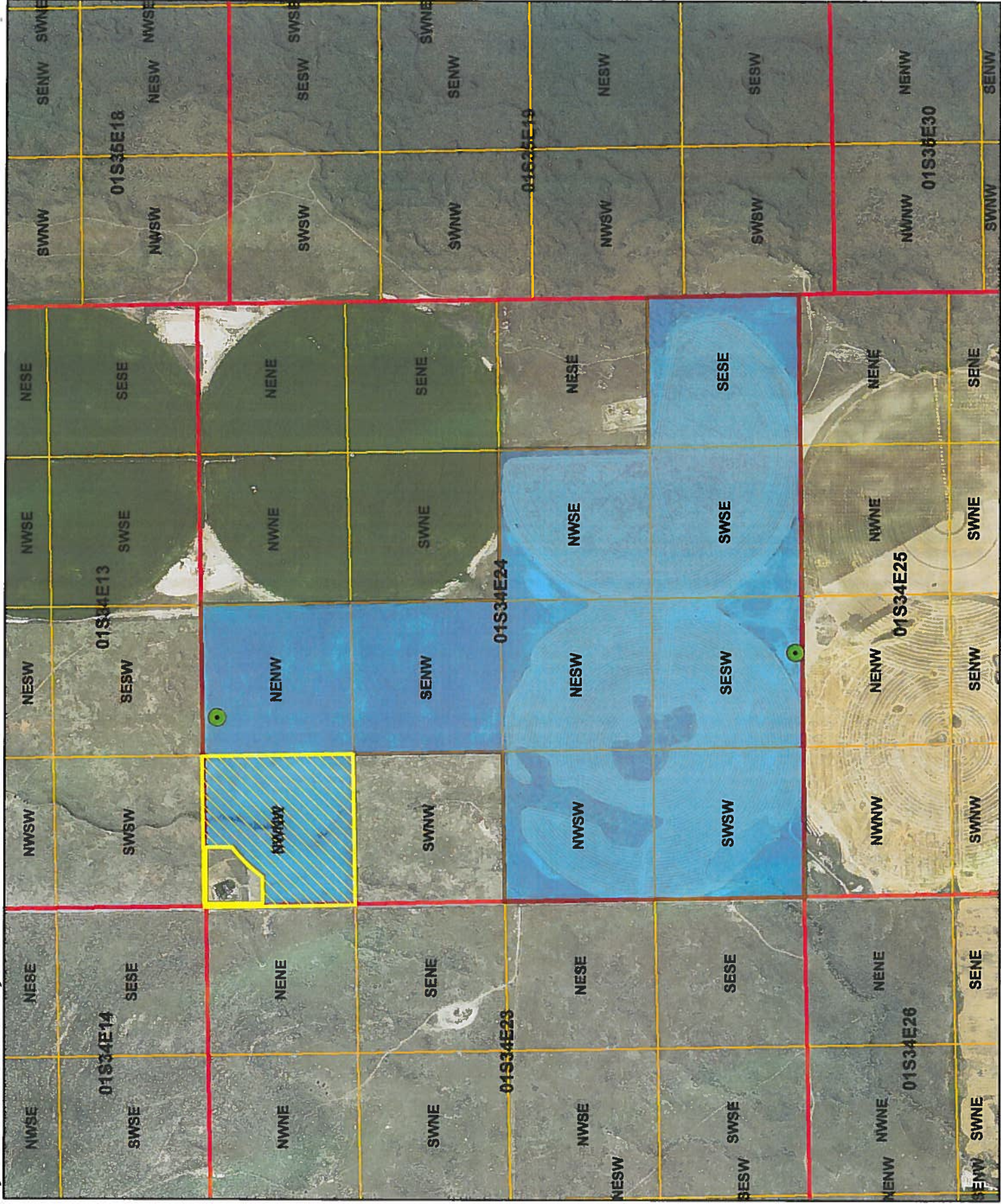
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

35-13944, 35-13946, 35-13948 WATER BANK LEASE



Legend

- PODs
- Leased Portion
- POU
- Sections
- Quarter Quarters



2013 NAIP Photo



Prepared by:
Luke H. Marchant
03/24/2014