

DEC 16 2013

DEPARTMENT OF
WATER RESOURCES**WATER SUPPLY BANK LEASE CONTRACT**

This Lease Contract ("**Lease**") is effective October 3, 2013 between the Idaho Water Resource Board ("**Board**"), and

Lessor: Darrel Ker
4851 N 44th E
Idaho Falls, ID 83401
208-313-3492

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>
25-14392	1.58 CFS	316.1 AF	NA	79 AC
Combined Lease Totals:	1.58 CFS	316.1 AF	NA	79 AC

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

Authorized Period of Use under Lease: April 1st to October 31st

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.

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

Darrel Ker
4851 N 44th E
Idaho Falls, ID 83401

By 
Printed Name Darrel Ker

Date 12/12/13
Title Owner

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 12/17/13

Lease approved by IDWR 

Date 12/17/13

WR

ATTACHMENT A
WATER RIGHT NO. 25-14392
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

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

Lessor: **Darrel Ker**
4851 N 44th E
Idaho Falls, ID 83401
208-313-3492

Priority Date: 12/16/1977

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	1.58 CFS	316.1 AF
	Total:		1.58 CFS	316.1 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NWSENE	Sec. 31	Twp 03N	Rge 29E	BONNEVILLE County
GROUND WATER	SWSWNW	Sec. 32	Twp 03N	Rge 39E	BONNEVILLE County

PLACE OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

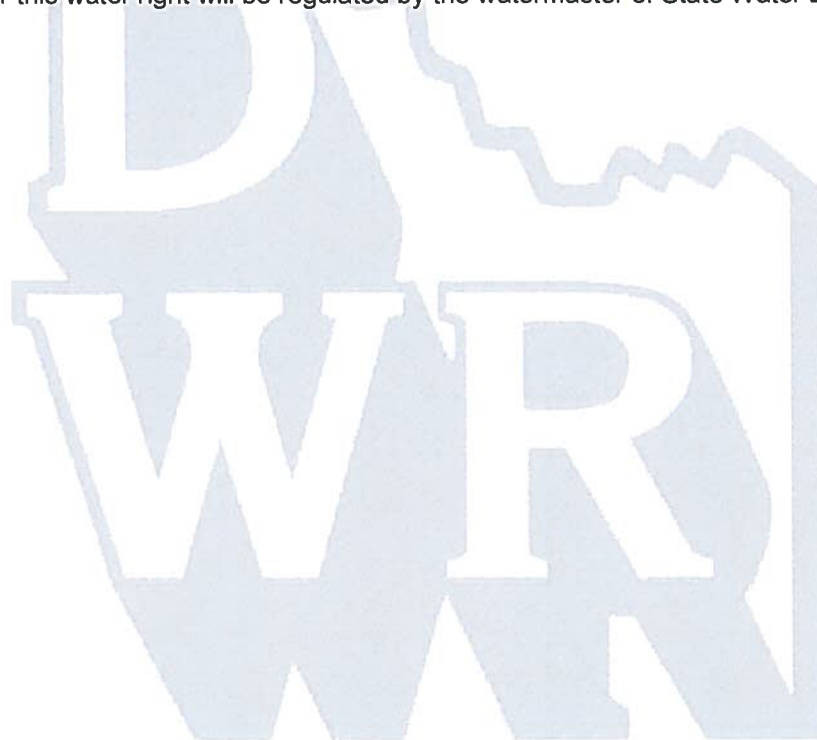
			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	39E	29										40.0	39.0						79.0

Total Acres: 79

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. Use of water under this water right will be regulated by the watermaster of State Water District No. 120.



RECEIVED

OCT 3 2013

STATE OF IDAHO
WATER RESOURCE BOARD

Department of Water Resources

APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKReceipt No. E039184
Fee Amount \$ 250.00
Date/by 10/3/13
(For Department Use Only)

RECEIVED

JUL 23 2013

Department of Water Resources
Eastern RegionName of Seller/Lessor Darrel Ker Phone 208-313-3492
Mailing address 4851 North 44th East, Idaho Falls, ID 83401 Email _____

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
25- <u>14392</u>	<u>1,580</u>	Irrigation	4/1 to 10/31
			to
			to

Total Amount: 1,580 cfs.2. Source of water Ground Water tributary to _____

3. Point(s) of Diversion:

Twp	Rge	Sec	Lot	1/4	1/4	1/4	County

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	

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

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. o/c pending in Eastern - Completed 8-16-2013
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.

well to sprinklers

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

None

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. _____

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 (attached). 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
- ☒
- ?

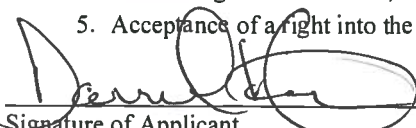
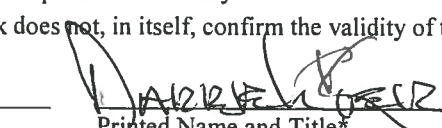
If lease, for a period from today to 12/31/2013 (not to exceed 5 years).
(Month / Day / Year) (Month / Day / Year)

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.

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
Printed Name and Title*7/23/13
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

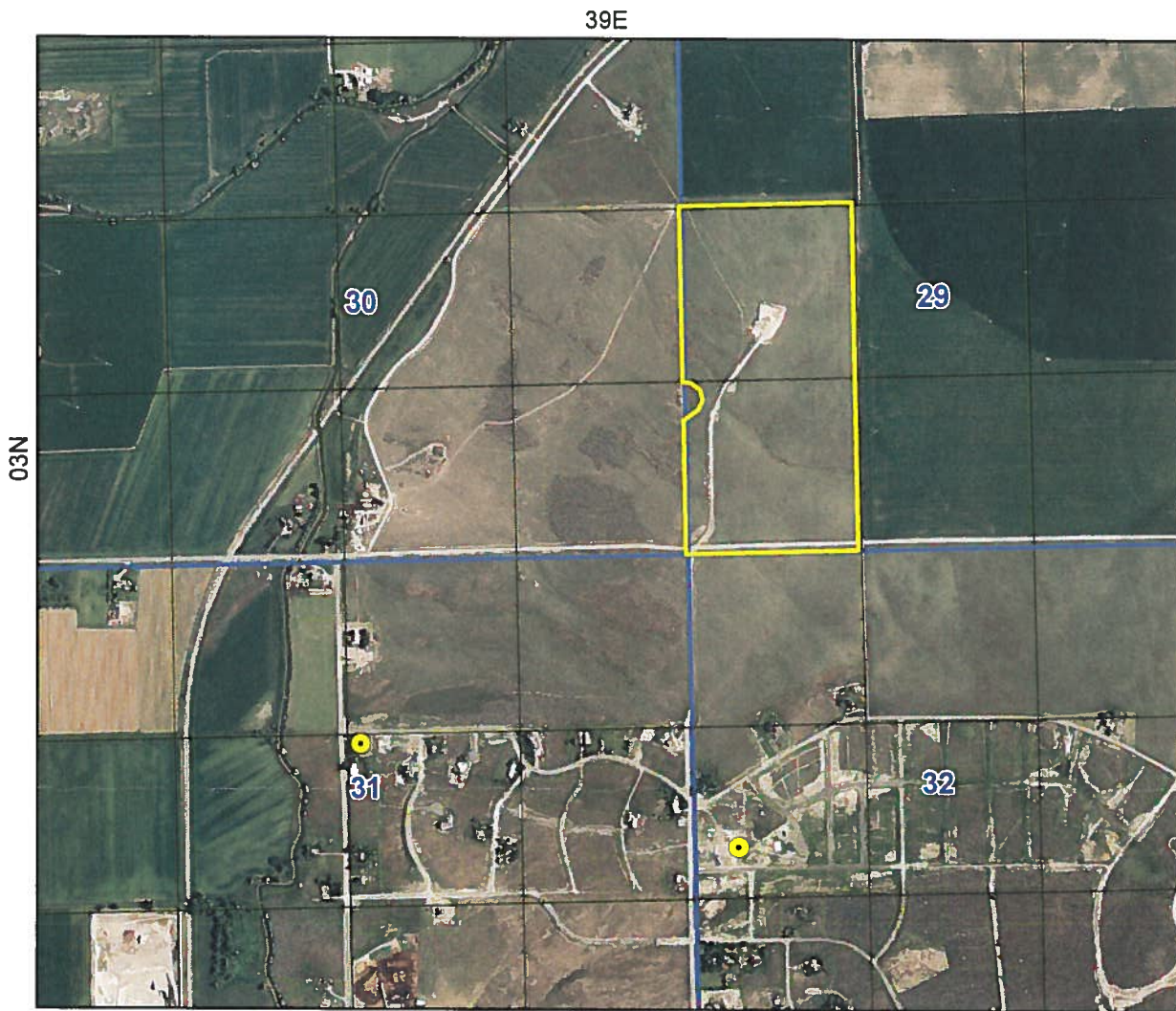
Mail to: Idaho Department of Water Resources, P.O. Box 83720, Boise, ID 83720-0098

State of Idaho
Department of Water Resources

Water Right
25-14392

IRRIGATION

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.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters
-  Taxlots

0 0.15 0.3 0.6 Miles





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

December 18, 2013

DARREL KER
4851 N 44TH E
IDAHO FALLS ID 83401

RE: WATER SUPPLY BANK LEASE CONTRACT FOR RIGHTS 25-14392

Dear Lessor:

Water Right 25-14392 was leased into the Water Supply Bank on October 3, 2013 in accordance with the executed original Lease Contract enclosed. **Your water right as described on the Lease Contract is considered leased into the Bank and should remain unused until it is formally released from the Bank.**

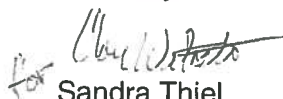
The rights will automatically be released from the Bank on **December 31, 2014**, unless the rights are released earlier by the Board, or upon your request. **Please note your rights may not be available for immediate release if they have been rented.** To release the right from the Bank prior to the release date, submit a written request on the *Request to Release a Water Right from the Bank* form. To request an extension of the lease period, submit a *Request to Extend the Lease Term* form along with applicable fees to the Department prior to the release date. These forms are available from our public website at 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 287-4879.

Sincerely,



Sandra Thiel
Water Resource Planner

Enclosure: Executed Lease Contract

c: James Cefalo- IDWR Eastern 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

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

November 25, 2013

DARREL KER
4851 N 44TH E
IDAHO FALLS ID 83401

RE: APPLICATION(S) TO LEASE WATER RIGHT(S) 25-1439 TO THE WATER SUPPLY BANK
******TIME SENSITIVE RESPONSE REQUIRED******

Dear Mr. Ker:

The Department of Water Resources has completed its review of your application to lease the above-mentioned water right to the Water Supply Bank. **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 request an extension of the lease period, submit a Request to Extend the Lease Term form along with applicable fees to the Department prior to the release date. 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 287-4879.

Sincerely,

Sandra Thiel
Water Resource Planner
WSB Process Point of Contact

Enclosure: Proposed Lease Contracts
Receipt #E039186

MEMORANDUM

To: Water Right No. 25-14392
From: Sandy Thiel
Date: November 21, 2013
Re: Review of Applications to Lease Water Rights to the State Water Supply Bank

PURPOSE/NARRATIVE: Darrel Ker submitted an application to lease water under right 25-14392. The entire right will be leased to the bank until December 31, 2014.

AUTHORITY TO FILE: Darrell Ker is the current water right holder.

WATER RIGHT VALIDITY: This water right was decreed in 2007 and is not subject to forfeiture.

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.

LOCAL PUBLIC INTEREST: Review staff has no information to suggest this application is inconsistent with the local public interest.

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 rights are subject to Water District #120. Comments have been requested of the watermaster and region on November 4, 2013. James Cefalo responded positively to the lease. A copy of the email is included.

During a conversation with Darrel Ker on November 21, 2013, Mr. Ker changed the dates for the lease period from 12/31/2013 to 12/31/2014.

Note that this application was originally submitted under parent right 25-7100, prior to the ownership change/split. Because right 25-7100 was not in the name of the applicant the application to lease the right was returned, unprocessed.

**Cherie Palmer*

Thiel, Sandra

From: Cefalo, James
Sent: Monday, November 04, 2013 4:22 PM
To: Thiel, Sandra
Subject: RE: Water supply bank lease

Thanks for the notice. I don't have any concerns about this water right being leased to the bank. In fact, because I am now very familiar with this right, I very much support its acceptance into the bank.

James

From: Thiel, Sandra
Sent: Monday, November 04, 2013 1:41 PM
To: Cefalo, James
Subject: Water supply bank lease

Hello James, I am processing an application to lease water right 25-14392 into the water supply bank. They requested to lease the entire right through the end of this year, 12/31/2013. The right was decreed in 2007 for 1.58 cfs. Do you have any concerns that I should be aware of? Thanks for your help in advance.

Sandra Beer Thiel
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83720-0098
(208)287-4881
sandra.thiel@idwr.idaho.gov

During a conversation with Mr. Ker on 11/21/2013 he indicated that the actual point of diversion is located here

03N39E30

03N39E29

Place of Use

Point of Diversion

03N39E31

Point of Diversion

03N39E32

