

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO RENT RIGHT
FROM THE WATER SUPPLY BANK

Name of Seller/Lessor City of Rexburg Phone (208) 359-3020

Mailing Address P.O. Box 280, Rexburg, ID 83440 Email johnm@rexburg.org

Prepared by: Keith C. Wilson c/o Rocky Mountain Environmental Associates Inc. Phone (208) 524-2353 / Fax 524-1795



482 Constitution Way, Ste 303, Idaho Falls, ID 83402 Email kwilson@rockymountainenvironmental.com

A. DESCRIPTION OF WATER SOUGH FOR RENT **Water Right 22-4130**

1.

<u>Maximum Flow Rate (cfs)</u>	<u>Maximum Volume (ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>	
<u>2.66 cfs</u>	<u>466 ac-ft</u>	<u>Irrigation</u>	<u>04/01</u>	to <u>10/31</u>
_____	_____	_____	_____	to _____
_____	_____	_____	_____	to _____

Total: 2.66 cfs 466 ac-ft

2. Source of water Ground Water tributary to _____

3. Point(s) of Diversion

Twp	Rge	Sec	Lot	¼	¼	¼	County
06N	40	30		NE	NE	NE	Madison

4. Lands 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 right is for irrigation, show total number of acres proposed through rental. **Total Acres** 133.0

B. OWNERSHIP - Attachment #1

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.

Attachment #1-Lease agreement between BYU Idaho and the City of Rexburg – Water Right 22-4130

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.

City of Rexburg is a municipal provider. Lease agreement BYU Idaho & City of Rexburg – Right 22-4130

C. MAP - Attachment #2

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 pump mainline to municipal water system for the City of Rexburg – for irrigation.
2. Describe any other water rights diverted through the same point(s) of diversion or used for the same purpose(s) as described above. Nature of Use 22-4130 - Irrigation. City of Rexburg is a municipal provider (Municipal includes irrigation) see Attachment #3
For a list of water rights for the City of Rexburg.
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. No change in Nature of Use. Point of Diversion Right 22-4130 is connected to municipal system mainline may need to be upgraded.
5. Are there any other applications pending before the Department, such as an application for permit or transfer, for the same uses(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 that there is not 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

RICHARD S. WOODLAND
Printed Name and Title* MAYOR

6-7-11
Date

Signature of Applicant

Printed Name and Title*

Date

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

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

AGREEMENT TO LEASE WATER RIGHT

THIS AGREEMENT is effective as of the 19th day of May, 2011, by and between **BRIGHAM YOUNG UNIVERSITY-IDAHO**, of 525 S. Center Street, Rexburg, Idaho 83460, hereinafter called "BYUI," and **CITY OF REXBURG**, of 35 N. 1st E., Rexburg, ID 83440, hereinafter referred to as "CITY."

WITNESSETH:

1. Water Right To Be Leased. For and in consideration of One Hundred Dollars (\$100.00) per year, and other good and valuable consideration, BYUI does hereby lease to the CITY, and the CITY does hereby assume the lease from BYUI, that certain ground water right partially decreed by the Snake River Basin Adjudication Court as water right number 22-4130, and more fully described as follows:

Ground water for irrigation in the amount of 2.66 CFS from 4/01 to 10/31 with an annual volume limitation of 466 AF. The present authorized point of diversion is located in the NENESE of Section 30, Twp. 6N, Rge. 40 E.B.M. and the present authorized place of use is for 133 acres located in Sections 30 and 31 (T6N, R40E). (hereinafter "Right")

Together with a right to make an application for a long-term lease with the Idaho Water Resource Board's "Water Bank" for use of the Right for municipal purposes (including irrigation) within the city limits of Rexburg, Idaho, including the lands to which the water right presently are appurtenant. The above lease and use of the Right are hereinafter referred to as Lease Agreement.

2. Term of Lease Agreement. This Lease Agreement is for a term of five years beginning immediately upon execution hereof and continuing until December 31, 2015, at which time, the

Lease Agreement shall automatically terminate unless the parties mutually agree to an extension.

3. Water Board Rental/Lease Fees, Water Lines, Equipment and Maintenance Costs, Supply of BYUI Irrigation Needs. It is understood and agreed that the CITY shall pay all costs associated with the intended Lease Agreement, Water Board rental/lease fees of the RIGHT for its intended uses set forth herein, including all legal and hydrological fees associated with the application for lease as may be required. CITY shall also pay all costs for installation and maintenance of water lines and equipment associated with the use of the Right.

BYUI agrees to allow the pumping facilities to remain connected to the BYUI power supply systems. Furthermore, the CITY agrees to meter the power usage and reimburse BYUI at the rate BYUI pays for power on a monthly basis.

Finally, the CITY shall insure that all necessary irrigation needs required by BYUI shall be made available to BYUI by the CITY.

4. Representations of BYUI. BYUI holds the Right without any encumbrance and has full legal authority to lease/rent the Right to CITY. BYUI knows of no facts which would lead to a claim by any third party or the Idaho Department of Water Resources to challenge the partial decree granted by the Snake River Basin Adjudication court to the Right. BYUI shall sign all necessary documentation in order to lease the Right to the CITY. BYUI acknowledges that should this Lease Agreement be terminated for any reason and BYUI is re-assigned the Right, then the CITY may NOT be obligated to provide water necessary for the irrigation of BYUI's lands as originally decreed in the Right.

5. Representations of CITY. CITY shall apply the water under the Right to the beneficial

use of irrigation (or municipal use if authorized) such that the full water right shall be beneficially applied in the required amounts and to the required number of acres in order to insure that the Right is not in jeopardy of forfeiture. CITY shall not encumber the Right in any manner which would impact BYUI's right of re-assignment. Furthermore, CITY shall do nothing which shall jeopardize the viability or active status of the Right. CITY shall follow all laws in obtaining a legal right to lease the Right to CITY.

Any application for lease or rental of the Right made by the City from the Water Board Rental Bank shall be subject to the following terms and restrictions:

A. The elements of the Right may only be temporarily modified as allowed by the Water Board Rental Rules.

B. CITY shall cause that BYUI be notified in writing as to any plans for the use of the Right, including the construction of any conveyance system and installation of any irrigation equipment.

C. CITY shall execute all documents necessary to accomplish the re-assignment of the Right from the CITY back to BYUI at the end of termination of this lease in a manner which will allow BYUI to, at a minimum, independently use the Right to irrigate lands owned by BYUI in the original number of acres granted in the partial decree of the Right.

6. CITY's Right to the Use of the Well and BYUI's Right of Examination. It is understood and agreed that the CITY intends to connect its present city ground water municipal system to the existing well located on BYUI's lands. For the term of this Lease Agreement, the CITY shall be granted an easement and limited Right for the use of the well and the necessary lands surrounding the well, including ingress and egress for installation and maintenance, to

install the necessary pumps, panels, pipes, valves, electrical connections and shed to house said equipment (hereinafter collectively referred to as "Equipment"). Any modifications to the Equipment must be approved by BYUI, which approval must not be unreasonably withheld. The use of the well and Equipment shall also include the right of the CITY to pump from the well any other water rights owned or leased by the CITY for any municipal purpose providing such use is authorized by Idaho Department of Water Resources as an additional point of diversion for such other water rights.

BYUI or its agents shall be permitted to enter its licensed property upon 1 day written or oral notice for the purpose of examining the use of the water works under the Right to insure proper beneficial use has or is occurring.

7. Non Assignment of Right. CITY shall not assign nor encumber this Lease Agreement nor the Right nor any portion of it nor any right or privilege connected with it without first obtaining the written consent of BYUI. CITY may not sublease or sub-license the Right or any part thereof without first obtaining the written approval of BYUI. An unauthorized assignment or encumbrance, sublease or use shall be void and shall terminate this Lease Agreement immediately at the option of BYUI. The interest of the CITY in this Lease Agreement is not assignable by operation of law without written consent of BYUI.

8. Taxes and Assessments. CITY shall pay all taxes and assessments, ordinary and extraordinary, general or specific, taxed or assessed against the Right and Equipment during the term of this Lease Agreement.

9. Default by the Parties. In the event of material default or breach of the terms and conditions of this Lease Agreement by the CITY, possession under the Right, at the option of

BYUI, shall terminate upon providing the CITY thirty (30) days written notice and opportunity to cure the default. In that event, BYUI shall have the right to re-claim and re-assign the Right and accept the surrender of the Right from the CITY. BYUI shall then have the right to terminate the Lease Agreement of the Right through the Water Board Rental Pool and proceed to re-assign the Right back to itself before the Idaho Department of Water Resources or any other state or local agency necessary to accomplish said task.

In the event of a material default or breach of the terms and conditions of this Lease Agreement by either party, the non-defaulting party shall be entitled to pursue any and all legal and equitable remedies available to it upon providing the defaulting party with thirty (30) days written notice and opportunity to cure the default.

10. Notices. Notices and demands by either BYUI or CITY shall be given by certified mail with prepaid postage addressed to BYUI or CITY at their respective addresses described above, subject to the right of either BYUI or CITY to designate by notice in writing a new address to which notice or demands must be sent.

11. Quiet Enjoyment. Subject to the terms of this Lease Agreement, and provided CITY is not in breach of this Lease Agreement, BYUI warrants CITY shall have quiet and peaceable possession of the Right during the term of this Lease Agreement or any extension of the term without any disturbance from BYUI or from any person claiming rights through BYUI.

12. Indemnification. BYUI and CITY agree to indemnify and save the other harmless against and from all costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, claims, and demands of every kind or nature, including reasonable attorneys' fees, by or on behalf of any person, party or governmental authority whatsoever arising out of any failure

by CITY or BYUI to perform any of the terms of this Lease Agreement or any accident, injury or damage which shall happen in or about the Right and lands associated with the well from which the Right is pumped, arising out of the respective negligence of BYUI or CITY.

13. Rules of Construction.

- a. Time is of the essence of this Lease Agreement.
- b. This Lease Agreement shall be governed, construed and enforced in accordance with the laws of the State of Idaho and the rules of the Idaho Water Board and the Idaho Department of Water Resources.
- c. In construing this Lease Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.
- d. If either party commences an action against the other party arising out of or in connection with this Lease Agreement, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys fees and costs of suit.
- e. This Lease Agreement contains the entire agreement between the parties and any executory agreement later made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the party against whom enforcement of the change, modification or discharge is sought.

- f. The covenants and conditions of this Lease Agreement apply to and bind the legal representatives, successors, and assigns of the parties.

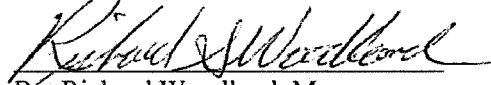
IN WITNESS WHEREOF, the parties have executed this Lease Agreement.

BYUI:



By: Charles N. Andersen, University
Resources Vice President

CITY:

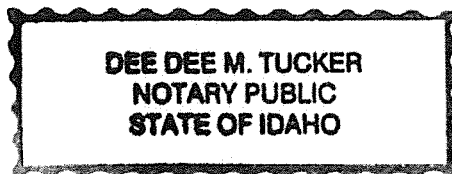


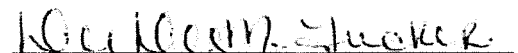
By: Richard Woodland, Mayor

Acknowledgment

STATE OF IDAHO)
 ss.
County of Madison.)

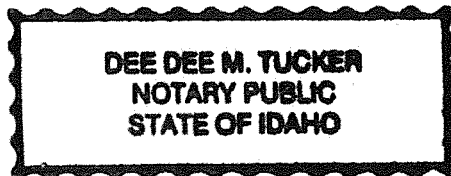
On this 19th day of May, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared **Charles N. Andersen**, known to me to be the University Resources Vice President, of **Brigham Young University-Idaho**, that he executed the foregoing instrument, and acknowledged to me that he executed the same.




Notary Public for Idaho
Residing at: Madison
My Commission expires: 05/02/17

STATE OF IDAHO)
 ss.
County of Madison)

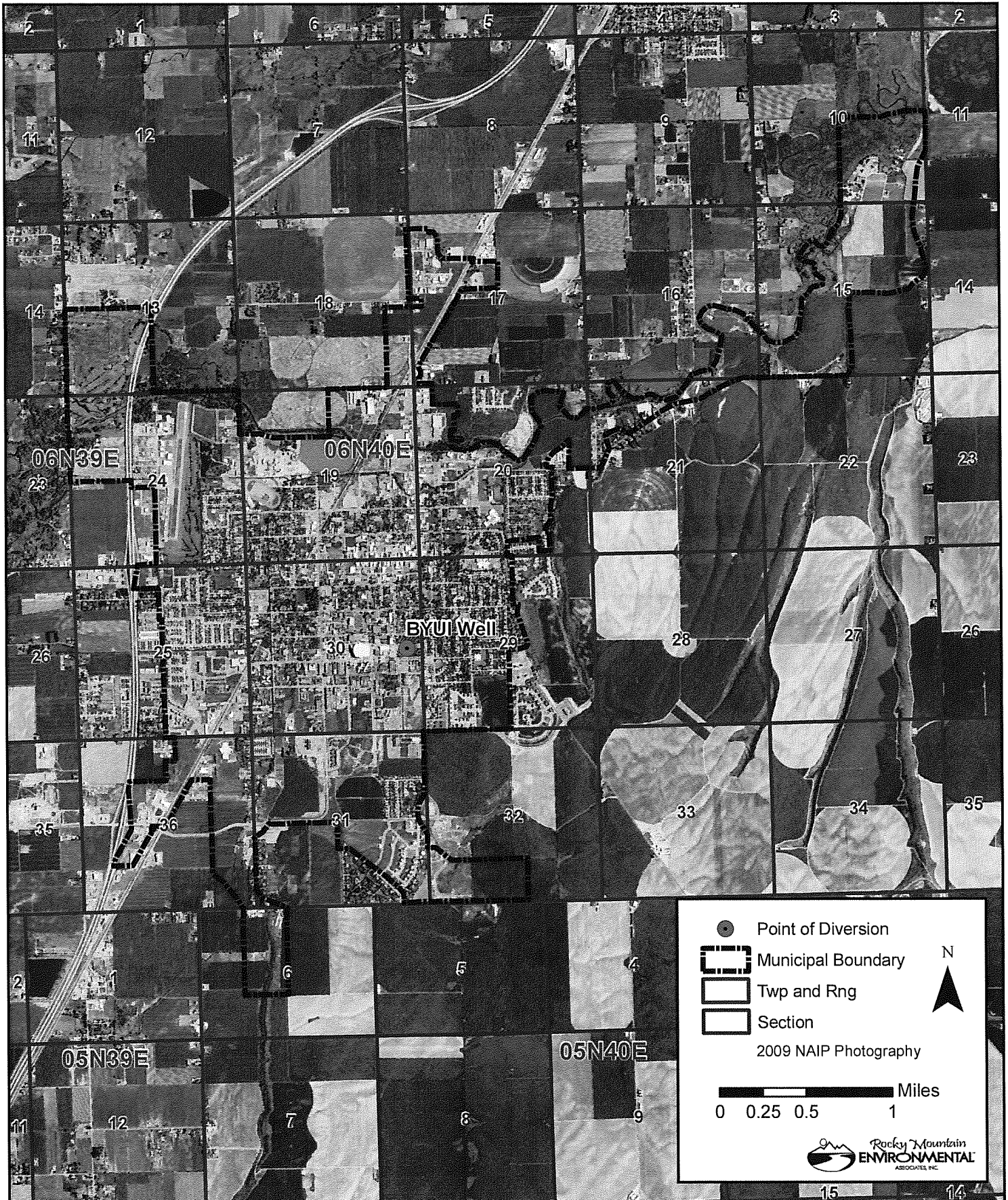
On this 19th of May, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard Woodland, known to me to be the Mayor, of The City of Rexburg, an Idaho Municipal Corporation, that executed the above Subordination Agreement, and acknowledged to me that The City of Rexburg, an Idaho Municipal Corporation, executed the same.



Dee Dee M. Tucker
Notary Public for Idaho
Residing at: Madison
My Commission expires: 05/02/17

Attachment #2

Application to Rent Right from the Water Supply Bank
City of Rexburg



Item D.2 - City of Rexburg – Water Rights**SURFACE WATER**

Information	Basin	Sequence	Basis	Priority	Div.Rate	Source List	Water Uses
	22	203	Decreed	1898-04-01	33.00	TETON RIVER	MUNICIPAL
	22	204 C	Decreed	1883-06-10	27.00	TETON RIVER	MUNICIPAL

GROUND WATER

Information	Basin	Sequence	Basis	Priority	Div.Rate	Source List	Water Uses
	22	7074	Decreed	1973-06-19	1.57	GROUND WATER	MUNICIPAL
	22	7175	Decreed	1976-02-04	5.61	GROUND WATER	MUNICIPAL
	22	7176	Decreed	1976-02-04	4.68	GROUND WATER	MUNICIPAL
	22	7571	License	1988-10-13	1.00	GROUND WATER	MUNICIPAL
	22	7617	Decreed	1950-10-31	2.20	GROUND WATER	MUNICIPAL
	22	7754	License	1992-12-17	2.77	GROUND WATER	MUNICIPAL
Recommendation	22	13790	Beneficial Use	1961-01-25	4.90	GROUND WATER	MUNICIPAL

Chlorination Lab	22	7386	Decreed	1981-12-17	0.02	GROUND WATER	DOMESTIC
Sewage Lift Station maintenance	22	13020	Decreed	1981-12-17	0.02	GROUND WATER	DOMESTIC
Golf Course Club House	22	13021	Decreed	1963-08-01	0.02	GROUND WATER	DOMESTIC
Rexburg Airport	22	13023	Decreed	1960-05-01	0.02	GROUND WATER	DOMESTIC
Irrigation 10.9 ac Smith Park	22	13130	Decreed	1967-03-28	0.22	GROUND WATER	MUNICIPAL
Municipal Golf Course	22	13131	Decreed	1959-06-01	1.24	GROUND WATER	MUNICIPAL

APPLICATIONS – GROUND WATER

Information	Basin	Sequence	Basis	Priority	Div.Rate	Source List	Water Uses
Application	22	13888	Application	2008-08-06	16.70	GROUND WATER	MUNICIPAL
Application - Mitigation	22	13975	Application	2010-07-21	4.18	WASTE WATER	MITIGATION