

Water Supply Bank No. _____

Water Right No. _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

RECEIVED

MAY 30 2006

**DEPARTMENT OF
WATER RESOURCES**

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

Name of Seller/Lessor American Falls-Aberdeen GWD, Bingham
GWD, Bonneville-Jefferson GWD Phone 208-890-4014
Post office address c/o Lynn Tominaga, Idaho Ground Water Appropriators, Inc.
P.O. Box 2624, Boise, Idaho 83701-2624

1. DESCRIPTION OF WATER RIGHT:

Right evidenced by:

- a. Decree No. _____ Decreed to _____
(Name)
in case of _____ vs _____
dated _____ in _____ county of _____
(Name of court)
- b. License No. 29-2284; 29-2301; 29-11342 issued by the Idaho Department of Water Resources.
- c. Permit No. _____ issued by the Idaho Department of Water Resources.

2. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE: (If the entire right is for sale or lease,

show "all" on line a. below and skip the remainder of part 2.)

- a. Amount of water under right: All _____ cubic feet per second &/or
_____ acre-fee per annum
- b. Point of diversion: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____ Range
_____, B.M. in _____ County.
Additional points _____

c. Place of use: See attached partial decrees and claim.

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

If the right is for irrigation, show the number of acres for the part of the right to be put into the bank.

Total number of acres _____

3. ADDITIONAL INFORMATION ABOUT RIGHT, OR PORTION THEREOF, FOR SALE OR LEASE

- a. Explain how the seller/lessor acquired the right, or portion thereof, and attach a copy of the deed to the land to which it is appurtenant or other evidence of ownership of the right. If the right is not recorded in the name of the seller/lessor, attach a copy of a change of ownership form as required by Section 42-248 or 42-1409(6), Idaho Code, together with required documentation.

See attached.

- b. Describe the frequency of water user under the right, or portion thereof, during the past five (5) years of use. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture. (This information is not required if a partial decree has been issued on the right within the last 5 years.)

These water rights have been leased on an annual basis pursuant to the attached lease for use under Department approved mitigation plans. 2005 credit for mitigation was 6,024 acre-feet annually.

- c. If the right is from a surface water source, describe the period of the year that water is typically available to satisfy the right.

The attached lease includes up to 5000 AF of FMC storage in Palisades Reservoir, subject to fill.

IGWA will rent this storage for mitigation purposes through the Water District 01 Rental Pool.

- d. Describe any other water rights with the same purpose and place of use as the right, or portion thereof, offered for lease. Will the present place of use continue to receive water from any source? If so, describe

Per the attached lease, FMC has agreed not to divert water under the leased rights. No other water rights are known to be used for the same purpose as the leased water.

- e. If the water right is a permit, describe the work accomplished toward developing the right.

N/A

- f. If the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, a written consent of the sale or lease must be attached. N/A

4. REMARKS:

The lease authorizes the Ground Water Districts to arrange for lease/rental of these water rights through the Water Supply Bank for mitigation purposes. The Ground Water Districts as Lessees under a private lease are placing the leased natural flow from reach gains in the IWRB Water Bank for mitigation purposes to the extent that the Director determines that mitigation may be required during 2006. The 5,000 AF of storage water will be leased through the Water District 01 Rental Pool, per attached letter. Delivery of water for mitigation is contingent upon further instruction from the Ground Water Districts and concurrence by the Director.

5. SALE/LEASE AGREEMENT

1. The water right, or portion thereof, described above is offered to the Idaho Water Resource Board:

_____ For sale;
 X For lease for a period from April 15, 2006 to April 14, 2007
(Day, month, year) (Day, month, year)

(The lease period may be shown as "indefinite," if the total duration of lease is unknown); or

_____ As a gift to the state of Idaho.

2. Show the minimum payment acceptable to the Seller/Lessor. Include the method of determining the minimum payment. The minimum payment may be shown as the "current rental rate."

See attached Private Lease.

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities to off 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 of the right may not use the right even if the right is not rented
3. A right accepted into the bank stays in the bank until the Board releases it or until the lease term expires.
4. While a water 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.

5/30/06
Date

[Signature]
Signature, On Behalf of Applicant Ground Water Districts

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Preliminary check by _____
Watermaster recommendation requested on _____ Received _____
Recommended for _____ approval _____ denial _____ by _____

GIVENS PURSLEY LLP

LAW OFFICES
601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Gary G. Allen
Kristen A. Atwood
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W. Hugh O'Riordan, LL.M.
Bradley V. Sneed
H. Barton Thomas, LL.M.

J. Will Varin
Conley E. Ward
Robert B. White

Kenneth L. Pursley
RETIRED

Raymond D. Givens
RETIRED

James A. McClure
RETIRED

Via Facsimile & U.S. Mail

May 30, 2006

Lyle Swank
Idaho Department of Water Resources
Eastern Regional Office
900 North Skyline Dr.
Idaho Falls, ID 83402-6105

Re: FMC, Idaho L.L.C. 2006 Lease

Dear Mr. Swank:

I am writing on behalf of the American Falls, Bingham and Bonneville-Jefferson Ground Water Districts ("Districts") to advise you that they have renewed a private lease of water rights from FMC, Idaho L.L.C. for 2006, and wish to arrange for the 5,000 acre-feet of Palisades storage included in the lease to be delivered by Water District 01 for mitigation purposes in 2006 as directed by the Districts. A copy of the FMC Lease is enclosed.

Arrangements have been made with the North Side Canal Company, and the Districts intend that this water will be made available, for delivery into North Side's system as may be necessary to provide irrigation water for lands in Water District 130 converted from ground water to surface water supplies and/or for other mitigation actions.

The Districts agree to pay the appropriate rental pool costs for this storage water.

Please direct any questions you may have concerning this request and concerning payment of the rental pool fees to Mr. Lynn Tominaga, Executive Director of Idaho Ground Water Appropriators, Inc. ("IGWA").

Sincerely,



Michael C. Creamer

Enclosure

cc: Craig Evans
Lynn Tominaga

Tim Deeg
Lynn Carlquist

William Taylor
Orlo Maughan

Randy Budge

MCC:kdt SACLIENTS\3915178\MCC Letter to Lyle Swank re FMC Storage Rental.DOC

LEASE OF WATER RIGHTS

Lease Agreement made and entered into May 22nd, 2002, between FMC IDAHO, L.L.C., whose address is P.O. Box 4111, Pocatello, Idaho 83202 (hereinafter "Lessor") and AMERICAN FALLS-ABERDEEN AREA GROUND WATER DISTRICT, BINGHAM GROUND WATER DISTRICT, and BONNEVILLE-JEFFERSON GROUND WATER DISTRICT, whose address is in care of Timothy P. Deeg, P.O. Box 70, American Falls, Idaho 83211 (hereinafter "Lessee"):

1. **Leased Property.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor certain water rights identified by the records of the Idaho Department of Water Resource ("IDWR") as follows:

Water Right No.	Priority	Quantity	Purpose
A29-02284	3/02/49	4.5 cfs	Industrial
A29-2301	4/24/51	3.82 cfs*	Industrial
A29-11342	7/24/52	<u>1.10 cfs</u>	Municipal
		9.42 cfs	

(*FMC retaining 0.18 cfs for continuing plant needs.)

Together with 5000 AF of Palisades Storage pursuant to U.S. Department of Interior, Bureau of Reclamation, Contract No. 14-06-100-1836, Palisades Water Users, Inc. - A01-10214.

2. **Term.** The term of this Lease shall be for a term of one (1) year, commencing April 15, 2002, and terminating on April 14, 2003. Thereafter, this Lease will be automatically renewed and extended for successive additional one-year terms, unless and until terminated by either party as hereafter provided.

Either party may terminate this Lease at the end of any lease term upon not less than ninety (90) days advance written notice.

3. **Rent.** For the use of the lease property Lessee shall pay to Lessor on or before April 15 of each year rent in the amount of \$2.95 per acre foot for ground water and \$3.45 per acre foot for Palisades Storage. The rent shall be due upon approval of the lease by IDWR allowing the use of the water by Lessee for mitigation purposes.

3.1 The calculated amount of ground water pursuant to this Lease is 18.68 AF per day or 6,819.87 AF per year based upon the historic year-round use of these rights. This amount is subject to adjustment to the actual amount which IDWR will credit Lessee for mitigation purposes.

3.2 Lessor has retained all of Water Right No. A29-02255E and A29-2255C, plus 0.18 cfs of Water Right No. A29-2301 to meet continuing water needs at Lessor's Pocatello plant for culinary purposes, irrigation of

landscaping, dust control and other industrial purposes calculated by Lessor to be necessary for such purposes.

4. Non-Use by Lessor. Lessor covenants that it will not divert or utilize the described water right during the term of this Lease.

5. Use by Lessee. During the term of this Lease and during any extension, Lessee shall place to beneficial use each year, all waters approved for use under the water rights and shall comply with all applicable federal, state and local laws and all rules and regulations of any agency, including IDWR applicable to such water rights, together with all state and federal environmental and water quality laws.

6. Representations by Lessor. Lessor covenants and represents that it is the true and lawful owners of the water rights and the land to which they are appurtenant, that these water rights have not lapsed, been abandoned, or forfeited, either in whole or in part and that nothing restricts or precludes Lessor from entering into this Lease and Lessee utilizing the described water rights.

7. Transfer Application. The parties acknowledge and agree that it will be necessary to submit this Lease and obtain IDWR approval of the use of said water rights by Lessee for mitigation purposes.

7.1 Lessee and Lessor will jointly seek approval of this Lease from IDWR and will cooperate with each other in securing such approval.

7.2 Lessee shall be responsible for all costs associated with accomplishing the approval of this lease and, including but not limited to, paying all applicable Water Bank and other administrative fees owing to IDWR.

7.3 This Lease is conditioned upon IDWR's approval of the use of the water by Lessee for mitigation purposes, and acknowledgment by IDWR that Lessee's use of the water under the Lease and/or placement of the water in the state water bank constitutes beneficial use of the water and will not subject any of the rights to forfeiture. In the event the approval is not obtained, the Lease may be terminated by either party.

8. Indemnification of Lessor. Lessee agrees to indemnify and hold harmless Lessor from any and all claims and demands, including legal attorney fees and costs, which may arise directly or indirectly as a result of this lease or the transfer or use of the water rights by Lessee pursuant to this Lease.

9. Breach. In the event either party breaches this Lease and such defaults are not cured within thirty (30) days after receipt of written notice thereof, the non-breaching party, at their option, may elect to terminate this Lease and recover any damages or pursue any other remedy available under Idaho law by reason of such breach.

10. Assignment. This Agreement may not be assigned by Lessee without the express written consent of Lessor.

11. Attorney Fees. In the event of any litigation over this Lease the prevailing party shall be entitled to recover reasonable attorney fees and costs.

12. Binding Effect. This Agreement shall be binding upon the respective heirs, successors and assigns of the parties.

LESSOR:

FMC IDAHO, L.L.C.

By Rob J. Hartman
Rob J. Hartman
Vice President

Date: May 22, 2002

LESSEE:

AMERICAN FALLS-ABERDEEN
AREA GROUND WATER DISTRICT

By _____
KEVIN MICHAELSON, President
Date:

BINGHAM GROUND WATER
DISTRICT

By _____
CRAIG EVANS, President
Date:

BONNEVILLE-JEFFERSON GROUND
WATER DISTRICT

By _____
WILLIAM TAYLOR,
President
Date:

LESSOR:

FMC IDAHO, L.L.C.

By _____

Rob J. Hartman
Vice President

Date:

LESSEE:

**AMERICAN FALLS-ABERDEEN
AREA GROUND WATER DISTRICT**

By *Kevin Michaelson*
KEVIN MICHAELSON, President

Date: 5-27-02

**BINGHAM GROUND WATER
DISTRICT**

By *Craig Evans*
CRAIG EVANS, President

Date: May 22, 2002

**BONNEVILLE-JEFFERSON GROUND
WATER DISTRICT**

By *William L. Taylor*
WILLIAM TAYLOR,
President

Date: May 22, 2002

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 29-02284

NAME AND ADDRESS: F M C CORP
PO BOX 4111
BOCAIELLO, ID 83202

SOURCE: GROUND WATER

QUANTITY: 4.50 CFS
3257 90 APY

PRIORITY DATE: 03/02/1949

POINT OF DIVERSION: 106S R33E S12 SESEW Within Power County
S13 NENWNH

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Industrial	01-01 TO 12-31	4.50 CFS 3257 90 APY

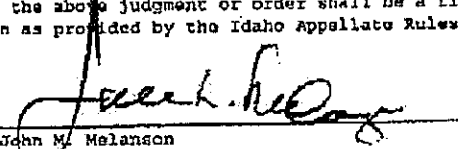
PLACE OF USE:	Industrial		Within Power County
	106S R33E S12	SWSW	SESW
		SWSE	SESE
	S13	NENE	NWNE
		SWNE	SENE
		NENW	NWNW
		SWNW	SENW
		NESE	NWSE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

NAME AND ADDRESS: F H C CORP
PO BOX 4111
POCATELLO. ID 83202

PLACE OF USE:	Industrial		Within Power County
	T06S R31E S12	SWSH	SESH
		SWSE	SESE
	\$13	NENE	NWNE
		SWNE	SENE
		NENW	NWNW
		SWNW	SENW
		NWSE	NWSE

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(5)

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

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MAR-16-2004

Form No. 42-1409 (2) & 1/88 (Internet)

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number _____

Date Received _____

Receipt Number _____

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) FMC Corporation Phone (208) 236-8216Mailing Address P.O. Box 4111, Pocatello, ID Zip 832052. Date of Priority (Only one (1) per claim) September 1, 19533. Source of water supply (a) groundwater
which is tributary to (b) _____4. a. Location of existing point of diversion is: Township 06S Range 33E Section 12,
1/4 of NE 1/4 of SE 1/4, Govt. Lot, B.M., County of Power

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, 1/4 of 1/4 of 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, 1/4 of 1/4 of1/4, Govt. Lot B.M., County of5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.1 well (#11), pumps, pipes

6. Water is claimed for the following purposes: (both dates are inclusive) (cfs) (acre feet)
- For Commercial purposes from 1/01 to 12/31 amount 1.100 or _____
- For _____ purposes from _____ to _____ amount _____ or _____
- For _____ purposes from _____ to _____ amount _____ or _____
- For _____ purposes from _____ to _____ amount _____ or _____
7. Total quantity claimed (a) 1.100 (cfs) and/or (b) _____ (acre feet)
8. Total consumptive use claimed is _____ acre feet per annum.
9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____
10. Description of place of use:
- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
68	33E	12				C													

Total number of acres irrigated 8, Commercial use

11. In which county (ies) are lands listed above as place of use located? Power
12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.
13. Describe any other water rights used at the same place and for the same purposes as described above. _____ or None ()
14. Remarks: _____

Last Name _____ Ident No. _____

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License X Permit G24451
 Decree _____
 If applicable provide IDWR Water Right Number _____
 Court _____ Case Number _____ Decree Date _____
 Plaintiff vs Defendant _____

16. Signature (s)

(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date _____

Date _____

For Organizations: I do solemnly swear or affirm that I am Vice President
 of FMC Idaho LLC that I have signed the foregoing
 Organization
 document in the space below as Vice President of FMC Idaho LLC
 Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Rob J. Hartman

Title and Organization Vice President, FMC Idaho LLC Date May 9, 2005

State of Idaho/or _____ } SS.
 County of Bannock

Subscribed and sworn to before me this _____ day of _____, 2005

Notary Public Pat N...Residing at Bannock CountyMy Commission Expires 6/16/09

Please Print Name

17. Notice of Appearance

Notice is hereby given that I, Shelley M. Davis will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature Shelley M. Davis

Address Banker Ruston H. Sengler, LLP, P.O. Box 2139, 205 N. 10th St., Ste 520
Boise, ID 83701-2139

Date 5/9/05

Last Name _____ Ident. Number _____