

RECEIVED

MAY 23 2005

Department of Water Resources

Water Supply Bank No. _____

Water Right No. _____

**STATE OF IDAHO
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 to the Ground Water Districts on an annual basis pursuant to the attached lease for use under Department approved mitigation plans. Prior credit for mitigation has been 6,819.87 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.

To the extent storage does fill in 2005, the Ground Water Districts may elect to lease this storage through the Water District 01 Water Bank.

- 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. The Ground Water Districts as Lessees under a private lease are placing the leased rights in the IWRB Water Bank for mitigation purposes to the extent that the Director determines that mitigation is required during 2005. 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;

_____ For lease for a period from April 15, 2005 to April 14, 2006
(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.

May 23, 2005

Date


Signature

FOR DEPARTMENT USE ONLY

Received by ML Date 5/23/05 Preliminary check by RECEIPT # CD78041

Watermaster recommendation requested on _____ Received _____

Recommended for _____ approval _____ denial by _____

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: *5-22-02*

**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

PAGE 1
Mar-16-2004

2004 MAR 22 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO , IDAHO
FILED _____

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 29-02301

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

SOURCE: GROUND WATER

QUANTITY: 4.00 CFS
2895 90 AFY

PRIORITY DATE: 04/24/1951

POINT OF DIVERSION: 106S R33E S13 NWNWNE Within Power County
NWNWNW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Industrial	01-01 TO 12-31	4.00 CFS 2895 90 AFY

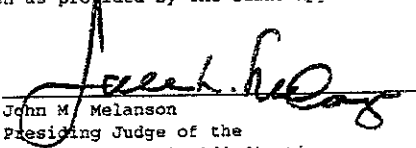
PLACE OF USE:	Industrial		Within Power County
	106S R33E S12	SWSW	SESW
		SWSE	SESE
	S13	NENE	NWNE
		SWNE	SENE
		NENW	NWNW
		SWNW	SENW
		NESE	NWSE

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

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

IN THE DISTRICT COURT OF THE
STATE OF IDAHO, IN AND FOR

ORIGINAL

F THE
LS

39576

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEMDate Received
Receipt NumberNOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) FMC Corporation Phone (208) 236-8216
Mailing 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.

IWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
<u>68</u>	<u>33E</u>	<u>12</u>				<u>C</u>													

Total number of acres irrigated 1, Commercial use11. In which county (ies) are lands listed above as place of use located? Power12. 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:

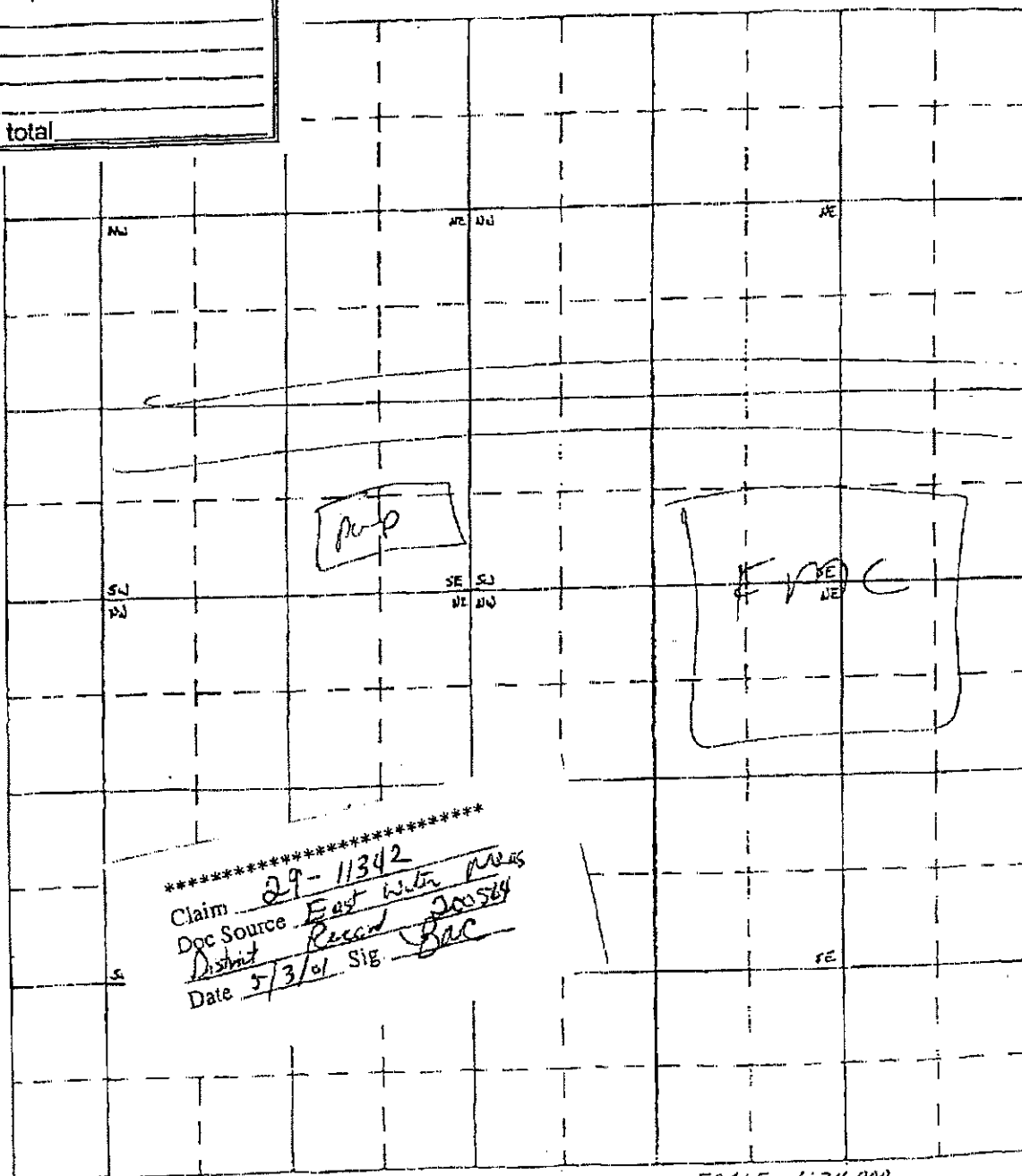
Last Name _____ Ident No. _____

EASTERN WATER MEASUREMENT DISTRICT

SUPPLEMENTAL DATA FORM A

SKETCH OF IRRIGATED LANDS AND MAJOR COMPONENTS OF DELIVERY SYSTEM/S

crop	acres
1	
2	
3	
4	
total	



SCALE 1:24,000

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
 Title
 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

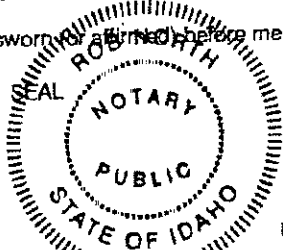
and that the statements contained in the foregoing document are true and correct

Signature of Authorized Agent Rob J. Hartman

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

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

Subscribed and sworn to before me this 9th day of May 2005



Notary Public Rob J. Hartman

Residing at Bannock County

My 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 S. M. Davis

Address Barker Posholt & Son, LLP, P.O. Box 2139, 205 N 10th St, Ste 520
Boise, ID 83701-2139

Date 5/9/05

Last Name _____ Ident. Number _____