

Before the Idaho Water Resource Board

APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK

RECEIVED
MAY 23 2005
Department of Water Resources

Applicant American Falls-Aberdeen GWD, Bingham GWD, Bonneville-Jefferson GWD Phone 208-890-4014

Address c/o Lynn Tominaga, Idaho Ground Water Appropriators, Inc.

City P.O. Box 2624 State ID Zip Code 83701-2624

A. DESCRIPTION OF WATER SOUGHT TO RENT

1. Source of water Groundwater – See attached Private Lease
tributary to _____.
2. Maximum volume of water 6820 AF.
3. Maximum rate of diversion _____ cfs.

B. DESCRIPTION OF USE PROPOSED

1. Nature of intended use 2005 Mitigation
2. Location of point of diversion ¼ ¼, Section _____,
Township _____, Range _____, B.M. _____ County.
3. Season of use: From _____ to _____.
4. Description of diverting works:
Pump HP _____ Lift _____ Pump type _____.
Canal name, if appropriate _____.
5. Place of use:
a. If water is for irrigation, describe the number of acres to be irrigated by
40-acre tract, section, township and range.
See attached partial decrees and claim

- b. If water is not for irrigation, describe the nature of the intended use and the place of use.

2005 Mitigation

6. Describe any other water rights used for the same purposes as rental water sought under this application.

See attached partial decrees and claim

7. Who owns the property at the point of diversion?

N/A

8. Who own the property at the point of use?

N/A

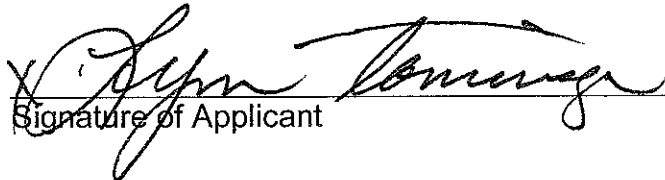
9. Are you seeking a rental for more than one (1) year? No (yes or no)

If yes, for how many years? _____

10. Remarks:

Ground Water Districts renting through IWRB Water Bank per May 6, 2005 Order of Director IDWR for potential 2005 mitigation

May 23, 2005
Date


Signature of Applicant

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Time _____

Published in _____ Pub. Dates _____

Protests filed by _____

Hearing held by _____

Action recommended _____

MC = 5/23/05 = 0078041

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 H. 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
POCAHELLO ID 83202

SOURCE: GROUND WATER

QUANTITY: 4.50 CFS
3257 90 AFY

PRIORITY DATE: 03/02/1949

POINT OF DIVERSION: 106S R33E S12 SESESW Within Power County
S13 NENWNW

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

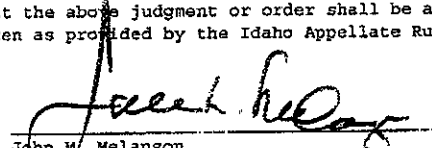
PLACE OF USE:	Industrial		Within Power County
	106S R33E S12	SWSW	SESW
		SWSE	SESE
	S13	NENE	NWNE
		SWNE	SENE
		NENW	NWNW
		SWNW	SENW
		NESE	NWSE

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

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

PLACE OF USE:	Industrial		Within Power County
	R06S R33E S12	SWSW	SESW
		SWSE	SESE
	S13	NENE	NWNE
		SWNE	SENE
		NENW	NWNW
		SWNW	SENW
		NESE	NWSE

THIS PARITAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WAIVER 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)

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

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

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

IN 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) 236-8216

Mailing Address P.O. Box 4111, Pocatello, ID Zip 83205

2. Date of Priority (Only one (1) per claim) September 1, 1953

3. 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 of

1/4, Govt Lot B.M., County of

5. 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	
68	33E	12				C													

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. _____

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License ☒ 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

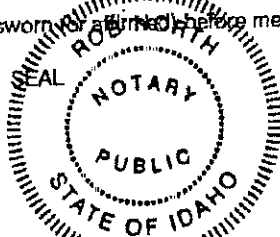
Signature of Claimant (s) _____ Date _____
 _____ Date _____

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 [Signature]
 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 [Signature]
 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 [Signature]

Address Barber Post #11, Sengler, LLP, P.O. Box 2139, 205 N. 10th St, Ste 520
Boise, ID 83701-2139

Date 5/9/05

Last Name _____ Ident. Number _____