STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1902

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

LESSOR: UNITED STATES OF AMERICA
ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR
CPN-6300
1150 N CURTIS RD STE 100
BOISE, ID 83706-1234

RECEIVED
DEC 16 2024
DEPARTMENT OF
WATER RESOURCES

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 and received by the Department on October 03, 2024.

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

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
85-16	7/14/1904	SWEETWATER CREEK, tributary to LAPWAI CREEK	5.89	Not Stated	412.0
85-4483	6/1/1907	LINDSAY CREEK, tributary to CLEARWATER RIVER	5.89	2,068.5	412.0
		Combined Limit Totals	**5.89**	**2,068.5**	**412.0**
85-2049	5/26/1915	WAHA LAKE, tributary to SINKS	1.07	Not Stated	412.0
85-2063	8/24/1923	WAHA LAKE, tributary to SINKS	1.07	Not Stated	412.0
		Combined Limit Totals	**1.07**	**Not Stated**	**412.0**
85-2065	1/30/1924	WEBB CREEK, tributary to SWEETWATER CREEK	2.04	Not Stated	412.0
Combined Lease Totals			**9.00**	**2,068.5**	**412.0**

SUPPORT DATA
IN FILE # 85-16

WATER SUPPLY BANK LEASE CONTRACT No. 1902

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**: The term of this lease shall be January 1, 2024 to December 31, 2026. This Lease shall bind the parties and take effect when both parties have signed it.

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. **CHANGE OF WATER RIGHT:** This lease specifies water right elements including but not limited to: diversion rates; diversion volumes; number of acres authorized to be irrigated; places of use; points of diversion; beneficial uses; and seasons of use. During the term of this lease, if a water right is administratively changed due to a water right split and renumbering, this lease may be reduced by an equal amount to reflect the water right elements as legally defined under the water right. If a lease contract cannot be reduced sufficient to reflect the legal definition of a water right as amended through a water right split and/or water right transfer, the Board may release the water right from the Water Supply Bank.

6. **ASSIGNMENT OF CONTRACT:** This lease is between the Board and the Lessor, who is the recognized owner or designated representative of the recognized owners of water rights described herein. Should ownership of any part of a water right herein described change during the term of this lease, either through a water right split, a water right transfer, sale of property to which the water right is appurtenant, or through any other recognized water right reassignment, the lease benefits and obligations to the conditions of acceptance for any such water rights will be assigned to the new owners.

7. **DUPLICATE ORIGINAL**: This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1902

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

LESSOR: UNITED STATES OF AMERICA
ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR
CPN-6300
1150 N CURTIS RD STE 100
BOISE, ID 83706-1234

By JENNIFER CARRINGTON Digitally signed by JENNIFER CARRINGTON Date: 2024.12.13 11:27:38 -07'00'

Title Regional Director

IDAHO WATER RESOURCE BOARD
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

By _____ Date 12/18/24
Brian Patton, Executive Manager
Idaho Water Resource Board

Lease approved by IDWR _____ Date 12/18/24

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1902

ATTACHMENT A
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE

The water rights or portions thereof leased to the bank are described as follows:

Source and Location of Point(s) of Diversion for Water Right No(s): 85-4483

LINDSAY CREEK	L18(SESE)	Sec. 17	Twp 35N	Rge 04W	NEZ PERCE County

Source and Location of Point(s) of Diversion for Water Right No(s): 85-4483, 85-16, 85-2049, 85-2063, 85-2065

SWEETWATER CREEK	L3(NWSW)	Sec. 21	Twp 34N	Rge 04W	NEZ PERCE County

Source and Location of Point(s) of Diversion for Water Right No(s): 85-16, 85-2049, 85-2063, 85-2065

SWEETWATER CREEK	L18(SESE)	Sec. 17	Twp 35N	Rge 04W	NEZ PERCE County

Source and Location of Point(s) of Diversion for Water Right No(s): 85-2049

WAHA LAKE	L5(SESE)	Sec. 9	Twp 33N	Rge 04W	NEZ PERCE County

Source and Location of Point(s) of Diversion for Water Right No(s): 85-2049, 85-2063

WAHA LAKE	NWNW	Sec. 9	Twp 33N	Rge 04W	NEZ PERCE County

Source and Location of Point(s) of Diversion for Water Right No(s): 85-2063

WAHA LAKE	L5(SESE)	Sec. 9	Twp 33N	Rge 04W	NEZ PERCE County

Source and Location of Point(s) of Diversion for Water Right No(s): 85-2065

WEBB CREEK	L2(NWNE)	Sec. 6	Twp 33N	Rge 03W	NEZ PERCE County
WEBB CREEK	NENE	Sec. 34	Twp 34N	Rge 04W	NEZ PERCE County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
85-16	IRRIGATION	03/15	to	11/15	5.89 CFS	Not Stated
85-16	MUNICIPAL	01/01	to	12/31	5.89 CFS	Not Stated
85-2049	IRRIGATION	03/15	to	11/15	1.07 CFS	Not Stated
85-2049	MUNICIPAL	01/01	to	12/31	1.07 CFS	Not Stated
85-2063	IRRIGATION	03/15	to	11/15	1.07 CFS	Not Stated
85-2063	MUNICIPAL	01/01	to	12/31	1.07 CFS	Not Stated
85-2065	IRRIGATION	03/15	to	11/15	2.04 CFS	Not Stated
85-2065	MUNICIPAL	01/01	to	12/31	2.04 CFS	Not Stated
85-4483	IRRIGATION STORAGE	01/01	to	12/31	Not Stated	1,576.0 AF
85-4483	IRRIGATION FROM STORAGE	03/15	to	11/15	Not Stated	1,576.0 AF
85-4483	STOCKWATER STORAGE	01/01	to	12/31	Not Stated	197.0 AF
85-4483	STOCKWATER FROM STORAGE	01/01	to	12/31	Not Stated	197.0 AF
85-4483	MUNICIPAL STORAGE	01/01	to	12/31	Not Stated	295.5 AF
85-4483	MUNICIPAL FROM STORAGE	01/01	to	12/31	Not Stated	295.5 AF
85-4483	DIVERSION TO STORAGE	01/01	to	12/31	5.89 CFS	Not Stated
Totals:					**9.00 CFS**	**2068.5 AF**

Total Acres: 412.0

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1902

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, or the lease term expires. A right may be released from the bank upon request, 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 pursuant to Idaho Code § 42-223(5).
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, even if the Department processes a Notice of Change in Water Right Ownership during the rental season.
    b. New lessor(s) of record will receive payment for any subsequent rental seasons.
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. Place of use is within the service area of Lewiston Orchards Irrigation District as provided for under Idaho law. The place of use is generally described as within the city limits of Lewiston and the surrounding service area.
13. Municipal use includes domestic use, industrial use and fire protection as claimed.
14. The unleased portions of water right nos. 85-16 and 85-4483 are limited to a total combined diversion rate of 49.11 cfs.
15. Water right Nos. 85-2146, 85-2147, 85-11087 and 85-15424 when combined with the unleased extent of water rights 85-16, 85-4483, 85-2049, 85-2063 and 85-2065 are limited to the irrigation of a combined total of 3,433.0 acres in a single irrigation season.

WATER SUPPLY BANK LEASE CONTRACT No. 1902

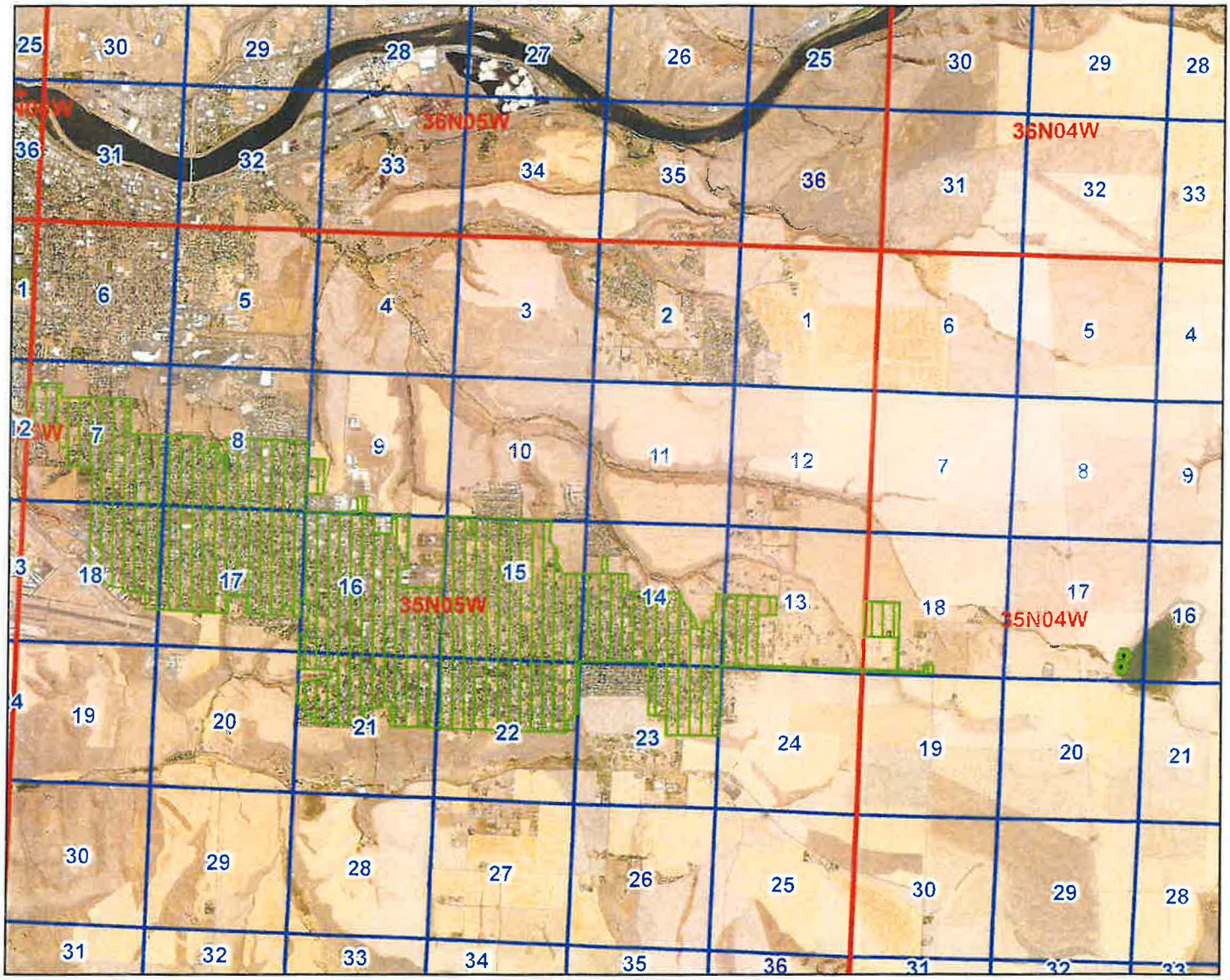
16. The unleased portions of water right Nos. 85-2049 and 85-2063 are limited to a total combined diversion rate of 8.93 cfs.
17. Water right Nos. 85-2146, 85-2147, 85-11087 and 85-15424 when combined with the unleased portions of water rights 85-16, 85-4483, 85-2049, 85-2063, 85-2065 and permit 85-15755 shall not exceed a total diversion rate of 110.3 cfs or a total storage volume of 19,306.0 acre-feet in a single season.

Idaho Water Resource Board

Water Supply Bank Lease Contract No. 1902

85-16. 85-4483, 85-2049, 85-2063, and 85-2065
Effective until December 31, 2026

This map depicts the place of use to be idled pursuant to the lease contract and is attached to the contract solely for illustrative purposes.



Active Water Supply Bank Lease POD

Active Water Supply Bank Lease POU

Township/Range

Sections

N

0 0.5 1 2 Miles

Form 42-1761-1 10/15

RECEIVED
OCT 03 2024
DEPT. OF WATER RESOURCES

STATE OF IDAHO
WATER RESOURCE BOARD

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

Designated Applicant Bureau of Reclamation
(Select one owner – see item 1A on the application)

Water Right No. 85-2049
(One water right per application)

Is this application being submitted with a rental application as a lease/rental package? Yes ☐ No ☑

This application must be prepared in accordance with the minimum requirement checklist below. Use this checklist to ensure all necessary documentation has been provided. This checklist is part of the lease application and must be included with the lease application. **Applications that do not meet the minimum requirements will not be processed and may be returned or denied.**

MIMUMUM REQUIREMENT CHECKLIST
All items must be checked as either *Attached* (Yes) or *Not Applicable* (N/A)

	Yes	
	☑	Completed *Application to Sell or Lease a Water Right to the Water Supply Bank.*
	☑	Application filing fee of $250.00 per water right. If you are submitting more than one lease application and the water rights have an overlapping, common place of use, or a common diversion rate or volume, the total fee for all water rights is $500.00. For places of use, multiple water rights must be used to irrigate the same lands in order to qualify for the joint filing fee. Individual filing fees are required for water rights that share a common permissible place of use but which cover separate acres within the permissible place of use.
	☑	Confirmation this form has been printed **single sided**, per requirement of the Water Supply Bank.

Attachment	N/A	Yes	
1A	☒	☐	Signatures and contact information for ***all owners*** of the water right to be leased or sold on this application.
1B	☑	☐	An Internal Revenue Service (IRS) Form W-9 for the Designated Applicant.
1C	☑	☐	*Notice of Change in Water Right Ownership* form (accessible from www.idwr.idaho.gov).
1D	☑	☐	Contact information for an authorized representative and documentary proof they are authorized to represent the Designated Applicant on this application. If the Designated Applicant is a business, partnership, municipality, organization or association, include documents identifying officers authorized to sign or act on behalf of the entity.
2	☐	☑	Description of a water right portion offered to the Water Supply Bank.
3	☑	☐	A map that clearly outlines the specific location where irrigated acres will be dried up, or where a beneficial use of water will be suspended. You have the option of printing a map using the map tool on IDWR's website at: www.idwr.idaho.gov.
4A	☐	☑	Written consent from irrigation district or water delivery company.
4G	☑	☐	Evidence demonstrating the water right has not been forfeited pursuant to Section 42-222(2), Idaho Code.

Department Use Only

Fee Amount $ 500	Received By: KM	Date Received: 10.3.24	Receipt # 2119013
W-9 received? Yes ☐ No ☑	(Route W-9 to Fiscal)	Name on W-9:	

3070

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

1. CONTACT INFORMATION

A. This application must be completed by a Designated Applicant who is a current owner of the water right being sold or leased to the Water Supply Bank. If there are additional current owners, those individuals must authorize the Designated Applicant to represent them on this application by completing and signing Attachment 1A of this application package.

Designated Applicant Bureau of Reclamation, Columbia-Pacific Northwest Region, Gail McGarry, CPN 6300

B. Mailing Address 1150 N. Curtis Rd (Street) Boise (City) ID (State) 83706 (Zip Code)

Email Address emcgarry@usbr.gov Phone Number 208-378-5306

☑ The Designated Applicant is the sole owner of the water right being sold or leased to the Water Supply Bank.

OR

☐ The Designated Applicant is representing additional water right holders who have completed Attachment 1A.

B. Has the Designated Applicant submitted an IRS Form W-9 to this Department within the last 2 years? Yes ☐ No ☑
If no, complete the form and attach to this application (Attachment 1B).

C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes ☑ No ☐
If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).

D. Is this application being completed by an authorized representative of the Designated Applicant? Yes ☐ No ☑
If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1D).

Name of Representative _____ Organization _____

Professional Title _____ Email Address _____

Mailing Address _____ Phone Number _____

☐ Send all correspondence for this application to the representative and not to the Designated Applicant.

OR

☐ Send original correspondence to the Designated Applicant and copies to the representative.

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

☐ The full water right is being offered to the Bank.

OR

☑ A part of the water right is being offered to the Bank.
If a portion of the water right is being offered, **complete Attachment 2.**

3. MAP

Attach a map of the point(s) of diversion and place(s) of use proposed to be idled by this lease application. Make sure the idled place of use is outlined and annotated with legal land descriptions (Township, Range, Section and Quarter-Quarters) or with GPS coordinates. For irrigation purposes, mark the number of acres you desire to idle. If the water right proposed for lease is located within a permissible place of use (PPU) and portions of the PPU will continue to receive water from non-leased water rights, clearly outline on a map the acres within the PPU that will continue to be irrigated, as well as acres that will be idled during the lease term. Label the map **Attachment 3.**

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

4. GENERAL INFORMATION

A. 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 authorizing the proposed sale or lease (Attachment 4A).

If your water right is delivered through a canal, lateral or ditch operated by a canal company, irrigation district, or similar delivery entity, your lease request must include written consent from the company, district, or similar entity for your removal of water from its system pursuant to Section 42-108, Idaho Code and IDAPA WSB Rule 37.02.03.25.02e.

B. Please provide a description of the current water diversion and delivery system.
Water is delivered by the Lewiston Orchards Irrigation District from project reservoirs and creeks via Webb and Sweetwater creek canal diversions through the Sweetwater canal to Mann Lake (aka "Reservoir A")

C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank. All Lewiston Orchards Project water rights are used by LOID for the same purposes and at the same place of use: 85-16, 85-2049, 85-2063, 85-2065, 85-2146, 85-2147, 85-4483, 85-11087, 85-15424, 85-15755.

D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? Yes ☑ No ☐
Stacked water rights are used together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of $500.

E. Will the present place of use continue to receive water from any other source? Yes ☑ No ☐
If yes, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased. The portion of the place of use subject to this lease will continue to receive water under Permit 85-15755; no enlargement will occur pursuant to compliance with condition #15 of Permit 85-15755.

F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. This application is intended to prevent partial forfeiture of the LOP water rights while the parties to the LOP Exchange Project continue to fund and develop a well field that will allow for full replacement of the LOP water rights pursuant to Section 6.3.1.5 of the Water Exchange Appendix (attached)

G. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☐ No ☑
If yes, describe the circumstances and attach evidence to demonstrate how the water right has not been lost through forfeiture (Attachment 4G). See Section 42-223, Idaho Code for exceptions to forfeiture. Your application may be denied if forfeiture concerns are not addressed.

H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan?
If yes, describe. Yes ☐ No ☑

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

5. SALE/LEASE AGREEMENT

A. Is the water right, or portion thereof, offered to the Idaho Water Resource Board (IWRB) for sale ☐ or lease ☑?

If lease, specify the years when the use of water will be suspended: 2024 (Year) to 2026 (Year) (maximum lease period 5 calendar years).

B. 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.

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 water right for sale or lease to the Idaho Water Resource Board.

The Designated Applicant acknowledges the following:

1. Payment to the Designated Applicant is contingent upon the sale or rental of the water right from the Bank.
2. While a water right is in the Bank, the seller/lessor of the water right may not use the water right, even if the water right is not rented from the Bank.
3. A water right accepted into the Bank stays in the Bank until the Designated Applicant receives written confirmation from the Board or Water Supply Bank that the water right has been released from the Bank.
4. While a water right is in the Bank, forfeiture is stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any element of the water right.

Signature of Designated Applicant	Jennifer J. Carrington, Regional Director Printed Name	10/1/2024 Date
Signature of Authorized Representative	Printed Name	Date

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

LOID Idaho Water Supply Bank Lease Summary Table

WR	Type	Priority	Leased Rate (cfs)	Combined Leased Rate (cfs)	Leased Storage Volume (ac-ft)	Principal Uses	POU	Acres	Combined Acres	Rate/Acre	Vol/Acre
85-16	Natural Flow	7/14/1904	5.893	5.893	n/a	Irrigation & Municipal	LOID	412	411.964	0.014	n/a
85-4483	Storage	6/1/1907	5.893		2068.5	Irrigation & Municipal from Storage	LOID	412		0.014	5.021
85-2049	Natural Flow	5/26/1915	1.071	1.071	n/a.	Irrigation & Municipal	LOID	412		0.003	n/a
85-2063	Natural Flow	8/24/1923	1.071		n/a	Irrigation & Municipal	LOID	412		0.003	n/a
85-2065	Natural Flow	1/30/1924	2.036	2.036	n/a	Irrigation & Municipal	LOID	412		0.005	n/a
85-2146	Storage	5/24/1922	Not Leased								
85-2147	Storage	12/4/1934	Not Leased								
85-15424	Storage	12/1/1935	Not Leased								
85-11087	Storage	12/31/1935	Not Leased								
Totals				**9.00**	**2068.50**						

Attachment 2

Description of water right portion offered to the water supply bank

Natural Flow

1. Water Right Description (see attached for calculations)

WR#	Nature of Use	Leased Rate	Leased Volume	Leased Acres
85-16	Irrigation/Municipal	5.893 cfs	N/A	269.739
85-2049	Irrigation/Municipal	1.071 cfs	N/A	49.043
85-2063	Irrigation/Municipal			
85-2065	Irrigation/Municipal	2.036 cfs	N/A	93.182
Totals		**9.000 cfs**		**411.964**

2. Source of Water

WR#	Source	Tributary To
85-16	Sweetwater Creek	Lapwai Creek
85-2049	Waha Lake	Sinks
85-2063	Waha Lake	Sinks
85-2065	Webb Creek	Sweetwater Creek

3. Points of Diversion

WR#	T	R	S	Lot	¼	¼	County
85-16	34N	4W	21	3	NW	SW	Nez Perce
85-2049	33N	4W	9	5	SE	SE	Nez Perce
85-2063	33N	4W	9	5	SE	SE	Nez Perce
85-2065	33N	3W	6	2	NW	NE	Nez Perce

Storage

1. Water Right Description (see attached for calculations)

WR#	Nature of Use	Leased Rate	Leased Volume
85-4483	Irrigation/Municipal/Stockwater from Storage	5.893 cfs	2068.50 ac-ft
85-2146	Irrigation/Municipal from Storage	Not leased	
85-2147	Irrigation/Municipal from Storage		
85-15424	Irrigation/Municipal from Storage		
85-11087	Irrigation/Municipal from Storage		
Totals		**5.893 cfs**	**2068.50 ac-ft**

2. Source of Water

WR#	Source	Tributary To	Storage Body
85-4483	Lindsay Creek Sweetwater Creek	Clearwater River Lapwai Creek	Mann Lake
85-2146	Webb Creek	Sweetwater Creek	Soldiers Meadow
85-2147	Browns Creek Unnamed Stream	Captain John Creek Browns Creek	Soldiers Meadow
85-15424	Waha Lake	Sinks[1]	Lake Waha
85-11087	West Fork Sweetwater Creek	Sweetwater Creek	Lake Waha

3. Points of Diversion

WR#	T	R	S	Lot	¼	¼	County
85-4483	34N	4W	21	3	NW	SW	Nez Perce
	35N	4W	17	18	SE	SE	Nez Perce
85-2146	33N	3W	29		SE	SW	Nez Perce
85-2147	32N	4W	2		SW	NE	Nez Perce
	33N	3W	29		SE	SW	Nez Perce
85-15424	33N	4W	9	5	SE	SE	Nez Perce
85-11087	33N	4W	14		SW	SW	Nez Perce

Analysis

This analysis describes the approach to lease 9.0 cfs of the Lewiston Orchards Irrigation District (LOID) natural flow water rights and 2,068.50 ac-ft of LOID storage allocation into the Idaho Water Supply Bank (IWSB). The purpose of the IWSB lease is to protect that portion of the LOID water right portfolio from forfeiture as the new ground water well has now replaced 9.0 cfs of surface water usage with 9.0 cfs of ground water usage. The following describes the steps used in this process:

Step 1: Determine the LOID natural flow water rights

WR#	Priority Date	Flow Rate	Source	Use	Acres	T	R	S	Lot	County
85-16	7/14/1904	55 cfs	Sweetwater Creek	Irrigation/ Municipal	3,845	34N	4W	21	3	Nez Perce
85-2049	5/26/1915	10 cfs	Waha Lake	Irrigation/ Municipal	3,845	33N	4W	9	5	Nez Perce
85-2063	8/24/1923		Waha Lake	Irrigation/ Municipal	3,845	33N	4W	9	5	Nez Perce
85-2065	1/30/1924	19 cfs	Webb Creek	Irrigation/ Municipal	3,845	33N	3W	6	2	Nez Perce
Totals		**84 cfs**			**3,845**					

Step 2: Determine flow rate per acre (cfs/acre)

$$\frac{84\ cfs}{3{,}845\ acres} = 0.02185\ cfs/acre$$

Step 3: Determine proportionate share of each water right to get to 9.0 cfs conversion total.

$$\frac{9.0\ cfs}{84\ cfs\ total} = 0.10714$$

WR#	Proportionate Share
85-16	$55\ cfs \times 0.10714 = 5.893\ cfs$
85-2049/2063	$10\ cfs \times 0.10714 = 1.071\ cfs$
85-2065	$19\ cfs \times 0.10714 = 2.036\ cfs$
Total	9.000 cfs

Step 4: Determine the number of acres converted from surface water to groundwater

WR#	Proportionate Share
85-16	$\frac{5.893\ cfs}{0.02185\ cfs/acre} = 269.739\ acres$
85-2049/2063	$\frac{1.071\ cfs}{0.02185\ cfs/acre} = 49.043\ acres$
85-2065	$\frac{2.036\ cfs}{0.02185\ cfs/acre} = 93.182\ acres$
Total	411.964 acres

$$\frac{9.0\ cfs}{0.02185\ cfs/acre} = 411.964\ acres$$

Step 5: Determine the amount of storage per acre and amount of storage applicable to the acres converted from surface water to groundwater

WR#	Storage Right
85-2146	2,000 ac-ft
85-2147	2,000 ac-ft
85-4483	10,500 ac-ft
85-11087	1,308.5 ac-ft
85-15424	3,497.5 ac-ft
Total	19,306 ac-ft

$$\frac{19{,}306\ ac-ft}{3{,}845\ acres} = 5.02107\ ac-ft/acre$$

$$411.964\ acres \times 5.02107\ ac-ft\ per\ acre = 2{,}068.50\ ac-ft$$

Step 6: Determine where the storage allocation will come from

WR#	Priority Date	Flow Rate	Volume Limit	Source	Use	Acres	Rate Leased	Volume Leased
85-4483	6/1/1907	55 cfs	10,500 AFY	Lindsay Creek Sweetwater Creek	Irrigation from Storage Municipal from Storage Stockwater from Storage	3,845	5.893 cfs (combined with WR 85-16 leased as part of Natural Flow)	2,068.50 ac-ft
85-2146	**Not Leased**							
85-2147	**Not Leased**							
85-15424	**Not Leased**							
85-11087	**Not Leased**							

Domestic and Irrigation Water

1520 Powers Avenue Lewiston, ID 83501 (208)746-8235

Mathew Weaver
Idaho Department of Water Resources
Director
Idaho Water Center
322 E. Front Street
Suite 648
Boise, ID 83702-7371

Subject: Attachment 4A – Consent for Application to Lease Water Rights into the Water Supply Bank

Dear Director Weaver:

The letter constitutes LOID's consent for the Bureau of Reclamation to lease a portion of the Lewiston Orchards Project water rights totaling 9.0 cfs and 2,068.50 af into the Idaho Water Supply Bank for calendar years 2024-2026.

Sincerely,

Barney Metz
LOID General Manager

Water Exchange Appendix

October 31, 2014

1. Introduction

1.1. Summary

This Water Exchange Appendix (Appendix) was prepared by the Lewiston Orchards Irrigation District (LOID), the Nez Perce Tribe (the Tribe), the Bureau of Indian Affairs (BIA), and the Bureau of Reclamation (Reclamation); these organizations are referred to in this Appendix as the Parties. The Parties have been consulting with the other Lower Clearwater Exchange Project (LCEP) Partners (Lewis Clark Valley Chamber of Commerce, City of Lewiston, and Nez Perce County) in development of this Appendix, consistent with the 2014 Term Sheet.

Under the January 2011 Term Sheet Agreement, Reclamation agreed to actively advance a study and investigation of the LCEP. In 2010, LOID, acting with the understanding that it served as a fiscal agent for a local stakeholder group, the LCEP stakeholders, was awarded a grant through Reclamation's Rural Water Supply Program (RWSP) to conduct an appraisal investigation of the LCEP concept. The final LCEP Appraisal Report was approved in February 2012.

Reclamation developed the Lewiston Orchards Project (LOP) Water Exchange concept. The LOP Water Exchange concept involves replacing the existing surface water system with an off-Reservation groundwater source. This concept is consistent with the groundwater alternative included in the final LCEP Appraisal Report.

If this process proceeds, and in accordance with the environmental compliance decision documentation process, the preferred alternative would involve a Water Exchange that could be constructed in phases, as funding becomes available. Future phases could be incremental as funding allows, up to and including the single funding of a multi-well field to complete the project in one construction stage. As groundwater wells come online, diversions of surface water from the LOP would be reduced in an amount equal to an agreed upon in-lieu water exchange quantity, to be left instream through the Idaho State Water Bank for instream flows. Once existing diversions from the LOP are replaced by groundwater well withdrawals, the title transfer process for Reclamation-owned facilities would be completed, subject to all necessary approvals and processes. New facilities would be owned, operated, and maintained by LOID.

Implementation of the Water Exchange and the associated Title Transfer is a critical element in reaching a final settlement of pending litigation, including potential damages and other claims regarding the Lewiston Orchards Project.

National Environmental Policy Act (NEPA) compliance will be conducted on the proposed federal action or actions outlined in this Appendix. The NEPA compliance

documents will likely include title transfer and water exchange actions and their respective alternatives. These actions will be evaluated in a single NEPA compliance document if it is determined that these actions are interrelated and interdependent. The title transfer process is described in the Title Transfer Appendix. The proposed water exchange action may have multiple alternatives based on the aquifer outcomes, and on two timetable scenarios, one aimed at completion by 2020, the other aimed at completion by 2026. NEPA work will also examine: 1) a no-action alternative based on the most likely future without the project, 2) will include discussion of other water supply alternatives previously considered but eliminated, based on information developed in the 2012 Appraisal Study, and 3) any other options identified during the NEPA scoping process. Section 7 of this Appendix describes the environmental compliance process in more detail.

NOAA Fisheries also made commitments in the 2014 Term Sheet. NOAA will act within its statutory authorities (e.g., ESA, Mitchell Act, Pacific Coastal Salmon Recovery Fund), to actively assist with the study and investigation of the LCEP and Water Exchange concept in good faith. NOAA's statutory authority includes assisting with the LCEP and Water Exchange concept by providing scientific expertise and information as appropriate before and during consultation under Section 7 of the ESA. NOAA will at the earliest opportunities engage and collaborate in the identification of opportunities for additional funding from any potentially available sources within or under its control to assist with the LCEP and Water Exchange concept.

After the completion of the water exchange and title transfer, the Tribe would pursue restoration activities to improve habitat. These activities are not defined in detail at this time. They would follow any appropriate environmental compliance and other applicable procedures.

1.2. Background

The LCEP stakeholder group in the 2012 Appraisal Study established broad screening criteria in addition to the three objectives upon which the LCEP concept was founded. An array of alternatives was screened, and four sets of alternatives were developed.

1.2.1. Future-Without-the-Project

The Future-Without-the-Project alternative is the most reasonable prediction of what would happen in the project area if no actions were taken. The Future-Without provides the basis to which the other alternatives are compared.

Under this alternative, the existing facility configuration would remain in place and operations are assumed to be maintained in approximately the same manner. Reclamation and LOID would continue in their respective roles. Roles associated with operational requirements and project costs may evolve.

1.2.2. Clearwater River Pump Station Attenuated System (three options)

Under each of these three alternatives, a pump station would be located on the southern bank of the Clearwater River which would provide water to LOID, operating year-round to refill Reservoir A storage, in lieu of the current source. This concept has received attention in numerous studies dating back to 1972. Water intake screens would address impacts to both anadromous and resident fish.

The Clearwater alternatives included three preliminary system connection scenarios based on various pipe route options and different reliability levels for LOID water supplies (see section 4 of the Appraisal Study).:

1.2.3. Snake River Pump Station Attenuated System (two options)

Under these alternatives, a pump station would be located on the eastern bank of the Snake River to provide water to LOID, which would operate year-round to refill Reservoir A storage, in lieu of the current source. Intake screens would address both anadromous and resident fish. The Snake River alternatives included two preliminary system connection scenarios based on various pipe route options (see section 4 of the Appraisal Study).

1.2.4. Tammany Well Field Attenuated System (one option); the location has since been modified to be closer to the LOID distribution system, which slightly reduces total costs but the general engineering elements of this alternative remain the same.

The Tammany Well Field alternative was developed because it provides a potential water supply that is closer to the LOID service area, thereby reducing the length of pipe required, eliminating in-river work and the need for intake screens, and avoiding culturally and/or biologically sensitive areas along the rivers. The proposed well field would be sited near Tammany Creek Road because of the proximity to the LOID area and potential to penetrate the Lewiston Basin regional aquifer. The well field site is relatively distant from other large production wells and is located at a relatively low elevation, which provides shallower static water levels, reduced well depths, and more pump options.

The well field would connect to the existing distribution system and provide a new supply near the center of the distribution system. The system would operate year-round, refilling Reservoir A for storage. Six wells were considered to provide a similar level of reliability to river pump stations that contained six pumps.

1.3. Purpose of the Appendix

In Section II.C.2 of the 2014 Term Sheet Agreement between the Nez Perce Tribe, the U.S. Bureau of Reclamation, and NOAA Fisheries committed to work with LOID, LCEP Partners and other appropriate parties to develop a Water Exchange Appendix that addresses the construction elements of the full Water Exchange and the full water

exchange water quantity sufficient for development of a proposed federal action for purposes of environmental review.

This Appendix describes the steps that the Tribe, Reclamation, BIA, LOID, and the LCEP Partners will take to prepare the information needed for the environmental review.

1.4. LCEP Partners Involvement.

The Parties that prepared this Appendix (the Tribe, LOID, BIA, and Reclamation) consulted with the other LCEP Partners (Lewis Clark Valley Chamber of Commerce, City of Lewiston, and Nez Perce County) and collaborated in providing monthly stakeholder updates. The LCEP Partners will have the option to endorse this Appendix and incorporate it as an addendum to the 2009 MOU.

1.5. Contents of this Appendix

Section 1 provides a summary and overview of the Appendix. Section 2 describes the management and organization of the Water Exchange Project. Section 3 describes the project objectives. Section 4 addresses the potential scenarios that could come as a result of the pilot well that is currently being constructed. Section 5 describes the design and construction elements for the full water exchange.

Section 6 describes the water exchange quantity, the methodology for water exchanges values for successive wells after the pilot well, and the methods that the Parties will pursue to ensure that the exchanged water would be protected for instream flows.

Section 7 describes the environmental compliance actions, including the schedule, process and criteria, public meetings and scoping, and environmental analysis. This section also includes a description of the relevant provisions of the Endangered Species Act, the Clean Water Act, the National Historic Preservation Act, and the Fish and Wildlife Coordination Act.

Section 8 describes the state and local requirements for the water exchange project. Section 9 describes the process to develop a workplan that will include the steps and schedule and potential funding sources for the implementation of the project. Section 10 describes general provisions regarding dispute resolution and Federal anti-deficiency requirements. Section 11 addresses the approval process for this Appendix. Section 12 addresses the signing and execution of the Appendix.

2. Management and Organization

2.1. The Parties will form a Management Team to oversee the implementation of the Appendix. As part of the implementation each Party will appoint representatives with the appropriate expertise. Implementation is likely to involve, but is not limited to, the following types of teams:

2.1.1. Water rights team to address the completion of the water transfer.

2.1.2. Operations and technical team to develop water operations scenarios; this information will be used in the environmental compliance process.

2.1.3. Environmental compliance team to oversee the environmental compliance process.

2.1.4. Design and construction team for the potential well field and LOP facilities.

2.1.5. Budget and administration team to assist in the implementation of the Water Exchange.

2.1.6. Legal team to be available during the implementation process.

2.1.7. Title transfer team (see Title Transfer Appendix)

2.2. The Parties will consult with the LCEP during the implementation of the Appendix.

3. Project Objectives

The objectives of this project are to: 1) create a reliable, quality water supply for LOID; 2) permanent resolution of ESA issues surrounding the LOP; 3) and permanent resolution of federal-tribal trust issues surrounding the LOP.

As part of the project, the Parties intend that all Reclamation facilities and assets would be transferred to other Parties.

The objectives of this Appendix are to address the construction elements of the full Water Exchange and the full water exchange water quantity sufficient for development of a proposed federal action for purposes of environmental review. In developing the Water Exchange Appendix, the Parties have consulted with the LCEP Partners and other appropriate parties to obtain information and viewpoints on the matters being addressed in the Appendix.

4. Potential Scenarios from Pilot Well

4.1. Pilot well does not provide adequate water quantity; there is a need to reconsider approach. The Parties would review the data from the test pilot well to be incorporated into the appraisal study and an evaluation of the options and conduct further analysis. The first determination is whether this is a non-productive zone or a poor drill by the contractor. A hydrogeologist would need to determine if there is something geomorphically inconsistent with this area for water production based upon the details of the drill. Drill data would need to be incorporated into the appraisal study to guide decisions of changing the location of the drill, changing the location of the well field, or examining the other options that were presented in the appraisal study for completion of the water exchange.

4.2. Pilot well provides adequate water quantity, but there is a need to separate wells to avoid adverse ground water impacts. The exchange project continues, but with renewed analyses of the hydrogeology and where well placement can resolve cones of depression influences from well to well. The second task would be to determine if well spacing can be accommodated with the current landowner or whether the LOID would have to engage new land owners in the land acquisition and management process. The third task would be to determine transmission line paths and associated obstacles that an alteration would bring to the project. The various pumps necessary to elevate and move water, plus location and pathways in non-established right of ways, and necessary engineering and legal processes would need to occur. This solution, depending on spacing, could lengthen the project timeline. However, an analysis may have to occur to determine that this is the solution for all parties over other alternatives to the appraisal study.

4.3. Pilot well provides adequate water quantity and there are no conflicts with locating other wells in the immediate area. The project continues as funds become available and the other processes identified within this document are completed.

5. Design and Construction Elements of Full Water Exchange

This section describes the design and construction elements of the potential wells and distribution system. It includes a description of the well fields, distribution and storage system, land for facilities, and electricity supplies. Several of the elements are described in detail in other parts of this Appendix.

5.1. Design and Construction Elements of Potential Wells and Distribution System

5.1.1. Well Field

Well field would be developed consisting of wells, or combination of wells and new storage, including pumps and appurtenant structures, capable of delivering 8,500 acre feet per year to the LOID service area.

5.1.2. Distribution System and Storage

5.1.2.1. The new source of water would be connected to the existing irrigation distribution system.

5.1.2.2. Water would be supplied to each well site for drilling purposes.

5.1.2.3. Mann Lake/Reservoir A of the existing LOP system would be used, as needed, for storage of groundwater produced by the well field system. This may require structural intake improvements at the Reservoir A outlet. Mann Lake recreational and fishing uses are intended to be maintained status quo.

5.1.3. Land for facilities, identification, purchase, zoning, and improvements

Land acquisition suitable for wells, piping, and appurtenant facility construction would be executed by LOID for ownership by LOID. LOID purchased 3.3 acres for the Pilot well site and access in fee title. The Pilot Well outcome would determine whether the Pilot site is suitable, or another landowner/site would be located and engaged. City/County/State development requirements would need to be met. The Pilot required a land use zoning change and Conditional Use Permit from the City of Lewiston, a process that requires neighborhood meetings, public noticing, and public hearings prior to approval. Subsequent building permit requirements would be met upon design review by the City development staff. If a new location is needed, other jurisdictional requirements may be necessary.

5.1.4. Electricity and Substation

An adequate power supply is not available using existing infrastructure. A small substation is required. Power provider and owner of transmission infrastructure in the area of the pilot well is Avista Utilities. If a new location is needed, other entities, namely, Clearwater Power may be the provider/owner. LOID also has the option to form its own public utility district and purchase power directly from the Bonneville Power Administration.

5.2. Interim Operations

After the pilot well is completed, by April 1st of each year, LOID, in consultation with the other Parties, will develop an annual plan using modeling and analysis to characterize the water year and how LOID operations are projected to meet the flows determined in Section 6.2. If there are concerns, the Parties will meet to resolve the issue, and if necessary, will use the dispute resolution process in Section 10.1.

5.3. Water Right Element

See Section 6.

5.4. Title Transfer of LOP System Assets After Well Field is Operational.

See Title Transfer Appendix for title transfer process.

6. Water Right Element

6.1. New water rights

This project is based on the development of a new water supply system capable of delivering 8500 AF annually to the LOID service area. LOID applied for a water permit from IDWR consistent with this concept. The IDWR issued a permit for the project on July 18, 2014 with a priority date of May 8, 2014. The permit includes 8500 AF for municipal use annually within the LOID service area. The application includes an additional storage right in Mann Lake in a quantity of 3043 AF, based on reservoir size plus seepage and evaporation. The 3043 AF storage right would have an alternative

permitted use for fire protection. The total diversion rate in the LOID application is 18 CFS. The application has been publicly supported by the Tribe, Reclamation, IDFG and IDEQ.

6.2. Methodology for water exchange values for successive wells after pilot well

6.2.1. The 2010 NOAA Fisheries LOP Biological Opinion (BiOp) is the overriding document with regard to operation of the LOP, and interim operations would not violate its terms and conditions. The water quantities to be protected and left instream for successive wells coming into production after the pilot well would be based on the following factors:

6.2.1.1. The water quantities to be protected for successive wells coming on line after the pilot well (that methodology is set out in the 2014 Term Sheet at p.4) would be based on two factors: 1) the well's full productive capacity defined as the maximum flow capable of being sustained by the installed well pumping system (not how it is discretionarily operated by LOID) which is 2) applied as additional quantities to be protected and left instream from February through October. Based on the effect of the exchange on the Tribe's Reservation and resources, Reclamation would as a federal trustee consult with the Tribe on the final quantification and timing of these exchange values.

6.2.1.2. Each well's full productive capacity would be determined by a subject matter expert based on information from the Supervisory Control And Data Acquisition (SCADA) system that LOID would install, maintain, and operate. LOID will make the SCADA data available to the other Parties to show each well's full productive capacity.

6.2.1.3. Water quantities for successive wells determined under 6.2.1.1 for bypass and protection would be converted into acre foot (AF) volumes. These water volumes would be released for fish protection at rates that would not exceed the maximum cubic foot per second (cfs) capacity of the installed well pumping system. The water quantities to be bypassed and protected under this Section would replace the 90 AF annually delineated in the 2014 Term Sheet.

6.2.1.4. The LOID, the Tribe, NOAA, and Reclamation would coordinate the delineation of the bypass flows at the Sweetwater and Webb Creek diversion dams on an annual basis, and develop a plan accordingly identifying how to allocate the available water between Sweetwater and Webb Creeks.

6.2.1.5 If inflows as defined in the BiOp at page 9, to either Sweetwater or Webb diversion dams are below the specified minimum flows that would result from the methodology of 6.2.1.1, LOID would bypass all flows past the diversion. LOID would not be required to pump water from Lake Waha to meet minimum flows identified in the 6.2.1.1 methodology.

6.2.1.6 Exceptions would be made under 6.2.1 for failure of well infrastructure due to causes beyond LOID's control, as distinct from foreseeable maintenance requirements. During such unforeseeable events, BiOp requirements would dictate minimum flows.

6.2.2 As described for the pilot well, as each successive well comes into production, for purposes of understanding incremental portion of the entire water right exchange project that has been accomplished, a quantity also would be assigned to that well for the purpose based on the full productive capacity of the well.

6.3 Options for ensuring interim and then permanent protection of LOP water rights from forfeiture and any future appropriation.

6.3.1 Interim Protections

6.3.1.5 During the time prior to project completion, LOP water right quantities would be incrementally left instream as successive wells come on line, as described in Section 6.2. During this time, to the extent LOP water rights are available for protection under Section 6.2, they will be leased into the state water bank to protect them from forfeiture.

6.3.1.6 In addition, Reclamation would continue, as under the BiOp, to use the rental process of the state water bank for LOP water rights to meet available Snake River Basin Adjudication (SRBA)-decreed, Idaho Water Resources Board (IWRB)-held minimum stream flows in the Lapwai Creek watershed.[1] Reclamation, subject to Idaho Department of Water Resources' (IDWR) approval, could also choose to use the state water bank to rent LOP storage water rights during this interim period for streamflow maintenance, mitigation, or other appropriate beneficial use. The Parties understand that there is some risk that some of the exchange water could be rented for other beneficial uses.

6.3.2 Permanent Protections

6.3.2.5 At project completion LOP water rights would be transferred from Reclamation to BIA in trust for the Tribe. The Parties will work in good faith to develop an agreement by September 30, 2015 that will describe with certainty the method of this transference so as to allow for permanent protection of these water rights as described below.

6.3.2.6 Some LOP water rights may be retired, such as the storage right at Mann Lake/Reservoir A from the Sweetwater diversion. Some LOP water rights

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1 The water bank rental rate is currently $17 per acre foot for a rental with 10% of the amount levied to the administrative account of the IWRB and the remaining 90% transferred to the water right owner. If a water right owner leases in and rents out its own water rights, only the administrative fee of $1.70/AF is collected.

may be maintained at the existing point of diversion or place of use, for example, the West Fork Sweetwater Creek diversion into Lake Waha, but may need to be transferred to other beneficial uses. However, most of the water rights would be permanently protected from forfeiture and from any future appropriation through one or more of the following possible means:

6.3.2.6.1 BIA and the Tribe could apply to transfer water rights to new beneficial uses at new places of use in the Lapwai Creek watershed. This would occur at their discretion but would likely include Nez Perce culturally appropriate water uses that would align with beneficial water uses such as fish and wildlife, aesthetic, recreational, and, for storage rights, streamflow maintenance. The Parties agree to support an application for transfer to such uses to the maximum extent practicable. It is understood that depending on proposed changes in points of diversion for such new uses, a mitigation plan addressing impacts to any affected junior water rights holders may be required. It is contemplated that transfer of some storage water right quantities could form the basis for such mitigation, if needed.

6.3.2.6.2 BIA and the Tribe could use a lease-in/rent-out process with the state water bank to meet available SRBA-decreed, IWRB-held minimum stream flows in the Lapwai Creek watershed, or available minimum stream flows in the main Clearwater River, or, for storage rights, for purposes of streamflow maintenance in the Lapwai Creek watershed.

6.3.2.6.3 As needed to assist in this option, the Parties could choose to petition the IWRB to amend the SRBA-decreed minimum stream flows in the Lapwai Creek watershed to allow protection of the full amount of the transferred LOP water rights.

6.3.2.6.4 As needed to assist in this option, the Parties could choose to petition the Idaho legislature to establish new minimum stream flows in the Lapwai Creek watershed sufficient to protect the full amount of the transferred LOP water rights.

6.3.3 Other options:

6.3.3.1 The water rights are made available through the State Water Bank to meet Upper Snake River flow augmentation targets pursuant to the the Nez Perce Water Rights Settlement Agreement.

6.3.3.2 Other options that may be identified.

7 Environmental Compliance

7.1. National Environmental Policy Act (NEPA)

7.1.1. Summary and Background

An Environmental Assessment (EA) is used to determine if a Finding of No Significant Impact (FONSI) can be made or whether an Environmental Impact Statement (EIS) needs to be prepared. An EA evaluates the proposed action and its alternatives to determine if they would cause any impacts to various resource areas. Concurrently with the NEPA process, other laws may need to be complied with and this compliance must be summarized in the NEPA document.

7.1.2. Schedule

The preparation of EA can range from 18 months to 3 years to complete. The steps for completing the document at a minimum would include a scoping period, draft document preparation, public draft review, final document preparation, and completion of the decision document.

7.1.3. Process and Criteria

The NEPA process is intended to clarify whether an action proposed by a Federal agency is a major Federal action significantly affecting the quality of the human environment, and, if so, to disclose the potential impacts to the public and to agency decision makers. Steps for preparing a NEPA document can include but is not limited to the following:

- Form an interdisciplinary team (Policy, NEPA, ESA, NHPA, etc)
- Determine the potential affected resources areas
- Determine the geographical scope for both the proposal and affected resources
- Evaluate environmental conditions
- Predict the proposals potential impacts
- Confirm level of compliance required
- Determine cooperating agencies and necessary consultations
- Identify data gaps
- Estimate the data collection requirements
- Determine what additional studies are needed
- Establish roles and responsibilities
- Determine the decision authority for NEPA compliance
- Develop a communications plan (internal and external)

7.1.4. Public Meeting and Scoping

Scoping is conducted in preparation of NEPA documents in order to determine which issues need to be evaluated and which issues do not. The types of scoping used in the NEPA process include intra-agency, interagency, and public. Through the scoping process, various resource areas that maybe potentially impacted would be identified and analyzed in the NEPA document. Public meetings can be held during the scoping process to communicate with the public and gather

information. Additionally, a public meeting maybe held during the draft stage of the environmental document to gather public comments and concerns.

7.1.5. Environmental Analysis

The EA is prepared by an interdisciplinary team to provide appropriate information and analysis on various resources affected by the proposed action. The analysis should include a description of the affected environment and the environmental consequences of the action. Potential beneficial and adverse impacts should be presented. The EA should address short- and long-term impacts, direct and indirect impacts, and residual or net (those remaining after all mitigation measures are implemented) impacts. If appropriate, the EA should also discuss potential cumulative impacts resulting from actions taken by Reclamation, other Federal agencies, and State and local agencies, and how they relate to the action being considered. The resources areas evaluated in a NEPA document can include but are not limited to the following: land use, hydrology, water quality, fish and wildlife threatened and endangered species, historic resources, vegetation, cultural resources, Indian sacred sites, Indian trust assets, noise, air quality, hazardous materials and waste, wetlands, soil quality and erosion, economics, recreation, climate change, realty, water rights, aesthetics, environmental justice, safety, infrastructure, and cumulative impacts.

7.2. Endangered Species Act (ESA)

Section 7(a)(2) of the ESA requires consultation with the Fish and Wildlife Service and/or NOAA Fisheries for any Reclamation action which may affect a species federally listed as threatened or endangered (listed species). The initiation of Section 7 consultation requires the identification of a proposed Federal action. This consultation process may result in the Service and/or NOAA-NMFS issuing a biological opinion containing actions to be undertaken to avoid jeopardizing a species or to reduce the level of take associated with the proposed action.

7.3. Clean Water Act (CWA)

7.3.1. The Clean Water Act (CWA) regulates water quality standards for surface waters and regulates discharge of pollutants into waters of the United States. The Environmental Protection Agency or a delegated state water quality agency regulates these discharges into waters of the United States through CWA Section 402 permits.

7.3.2. An NPDES permit is expected to be required for discharge of pumped water into Reservoir A; temporary discharge permits may be required for aquifer testing during the pilot phase and discharge testing into Reservoir A.

7.3.3. Additionally, if the project removes or places and fill material in waters of the United States, a CWA Section 404 permit for dredge and fill would be required. These permits are administered by the Army Corps of Engineers. Section 401, of

the CWA, is a state water quality agency certification of any 402 or 404 permit issued by the administering federal agency. These 401 certificates document terms and conditions required by the state to ensure that the permitted activity would not violate the applicable state water quality standards. In addition, if the construction site, or aggregation of construction sites, within a project is greater than one acre in size, then a storm water discharge permit is required under CWA Section 402 with an accompanying 401 certification.

7.4. National Historic Preservation Act (NHPA)

Section 106 of NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties. The Section 106 process involves consultation with the appropriate SHPO or, for projects occurring on or affecting historic properties on tribal lands, the Tribal Historic Preservation Officer(s) (THPO).

7.5. Fish and Wildlife Coordination Act (FWCA)

Consultation under the FWCA is triggered "whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or any public agency or private agency under Federal permit or license" If the proposed action triggers compliance with the FWCA, the United States Fish and Wildlife Service would have legal jurisdiction and special expertise and must be invited to be a cooperating agency.

7.6. Other

During the preparation of the NEPA document, it may be determined that compliance with other laws is necessary. Compliance with those laws would be completed prior to the conclusion of the NEPA process and results would be summarized in the NEPA document.

8. State and Local Requirements

LOID, as proposed owner of all new infrastructure, will procure the appropriate permits from the appropriate state and local entity in a timely manner so as not to impede the flow of work.

9. Implementation

The Parties will develop a detailed workplan that will include 1) the actions to implement the LCEP, including the actions in this Appendix and the Title Transfer Appendix; 2) the roles and responsibilities of each Party to implement the actions; 3) schedule for the actions by October 30, 2014.

10. General Provision

10.1. Dispute Resolution

If a dispute arises and the Parties regarding the implementation of this Appendix are unable to resolve the dispute, the Parties agree that any Party may request mediation with the Magistrate Judge to resolve the dispute. The Parties agree that good faith efforts to resolve any disagreements shall be exhausted prior to requesting mediation. The Parties further agree that the party intending to request mediation shall first provide seven (7) days notice to counsel for each party to this Appendix prior to contacting the Court. The Parties may also utilize the procedures described in the 2014 Term Sheet to address concerns that may arise.

10.2. Anti Deficiency

The Parties agree that nothing in this Appendix shall be interpreted as or constitutes a commitment or requirement that Reclamation or BIA pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

11. Approval Process

11.1. This Appendix has been reviewed and approved by the Parties.

11.1.1. LOID Board reviewed and approved the Appendix using its standard decision making process.

11.1.2. The Nez Perce Tribal Executive Committee reviewed and approved the Appendix using its standard decision making process.

11.1.3. Reclamation and BIA reviewed and approved the Appendix using its standard decision making process, in consultation with the Solicitor's Office. The Department of the Interior conferred with the Department of Justice to ensure that the Appendix is consistent with the 2014 Term Sheet.

11.1.4. The Parties would work to coordinate their reviews and would work to address any issues that come up during the reviews.

11.2. The LCEP Partners will have the option to endorse this Appendix and incorporate it as an addendum to the 2009 MOU using their standard decision making processes.

12. Execution of Appendix

12.1. Authority

Each signatory to this Appendix certifies that he or she is authorized to execute this Appendix and to legally bind the Party he or she represents. As of the Effective Date, this binding effect applies to all obligations which legally may be performed under existing authorities.

12.2. Counterpart

This Appendix may be executed in counterparts. Each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same document.

12.3. Effective Date.

The Effective Date shall be the latest date that the signatory Parties listed in Section 1.1 have signed this Appendix.

Signatures of Parties to this Appendix

12/15/14
Stanley M. Speaks — Date
Regional Director, Bureau of Indian Affairs

12/23/14
Frank Maresca, President — Date
Lewiston Orchards Irrigation District

12/18/14
Lorri J. Lee — Date
Regional Director, Bureau of Reclamation

01-09-15
Silas C. Whitman — Date
Chairman, Nez Perce Tribe

1-9-15
Brooklyn D. Baptiste — Date
Secretary, Nez Perce Tribe

Endorsements by other LCEP Partners

1/14/15
Jerry Klemm, Chair — Date
Lower Clearwater Exchange Project Partners