

WATER SUPPLY BANK LEASE CONTRACT No. 1702

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

LESSOR: THOMAS H TOXBY
5200 N 1100 E
TETONIA, ID 83452

RECEIVED

Aug 08, 2023

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 March 02, 2023.
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)
22-13620	6/1/1898	SOUTH LEIGH CREEK, tributary to TETON RIVER	0.11	Not Stated	5.0
Combined Lease Totals			0.11	Not Stated	5.0

Summary of Water Rights Elements Rentable From the Bank

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (Limited) (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
22-13620	0.11	17.5	5.0	0.022	3.5
Combined Limit Totals	0.11	17.5	5.0	0.022	3.5

** The water right elements rentable have been changed from the water right elements leased to account for the inclusion of a diversion volume.*

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

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WATER SUPPLY BANK LEASE CONTRACT No. 1702

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2023 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.

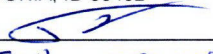
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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

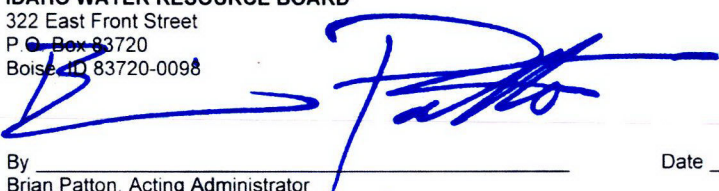
WATER SUPPLY BANK LEASE CONTRACT No. 1702

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

LESSOR: THOMAS H TOXBY
5200 N 1100 E
TETONIA, ID 83452

By 
Title Tom Toxby - property owner
Date 8/8/2023

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

By 
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 8/8/23

Lease approved by IDWR 

Date 8/8/23

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1702

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): 22-13620

SOUTH LEIGH CREEK NWNWSW Sec. 32 Twp 06N Rge 46E TETON County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
22-13620	IRRIGATION	04/15	to	10/31	0.11 cfs	Not Stated
Totals:					0.11 cfs	Not Stated

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	46E	31											5.0						5.0
													L4						

Total Acres: 5.0

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.

WATER SUPPLY BANK LEASE CONTRACT No. 1702

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. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
13. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 1.
14. Water is delivered through Desert Ditch.

Idaho Water Resource Board
Water Supply Bank Lease Contract No. 1702

22-13620

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.



STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED
MAR 02 2023
DEPARTMENT OF
WATER RESOURCES

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

Designated Applicant Thomas H Toxby

(Select one owner – see item 1A on the application)

Water Right No. 22-13620

(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.**

MINIMUM 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 <u>Internal Revenue Service (IRS) Form W-9</u> for the Designated Applicant. |
| 1C | ☒ | ☐ | <i>Notice of Change in Water Right Ownership</i> 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 <u>Section 42-222(2), Idaho Code</u> . |

Department Use Only

Fee Amount \$ <u>250</u>	Received By: <u>KM</u>	Date Received: <u>3.2.23</u>	Receipt # <u>C115436</u>
W-9 received? Yes ☐ No ☒ (Route W-9 to Fiscal)		Name on W-9: <u>Thomas H. Toxby</u>	

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AUG 09 2023

2618

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 Thomas H Toxby

Mailing Address 5200 N 1100 E Tetonia ID 83452

Street City State Zip Code
Email Address tomtoxby@gmail.com Phone Number 303-842-0151

☒ 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 Michelle Mortimer Organization Rigby Andrus & Rigby Law
Professional Title Attorney Email Address mmortimer@rex-law.com
Mailing Address 25 N 2nd E Rexburg ID 83440 Phone Number 208-356-3633

☐ 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**.

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AUG 09 2023

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.

The current water diversion and delivery system to the original POU is through a headgate and an open ditch.

Applicants land was split from the original POU and does not currently have access to an irrigation ditch.

- 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. No other water rights are being used for irrigation at the same POU.

- 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.

- 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. The full amount of water is diverted through the headgate of Desert Ditch.

- 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. See attachment 4G

- 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 ☒

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STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

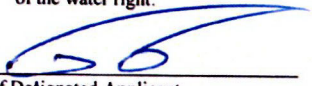
5. SALE/LEASE AGREEMENT

- 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: 2023 to 2026 (maximum lease period 5 calendar years).
(Year) (Year)
- 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.

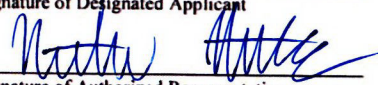
The Designated Applicant acknowledges the following:

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

Thomas Toxby
Printed Name

2/24/23
Date


Signature of Authorized Representative

Michelle Mortimer
Printed Name

2/24/23
Date

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

TO: IDAHO DEPARTMENT OF WATER RESOURCES

FROM: THOMAS H TOXBY

RE: Authorized Representatives

Rigby Andrus & Rigby Law, PLLC
25 North 2nd East
Rexburg, ID 83440
(208) 356-3633 / (208) 356-0768 Fax

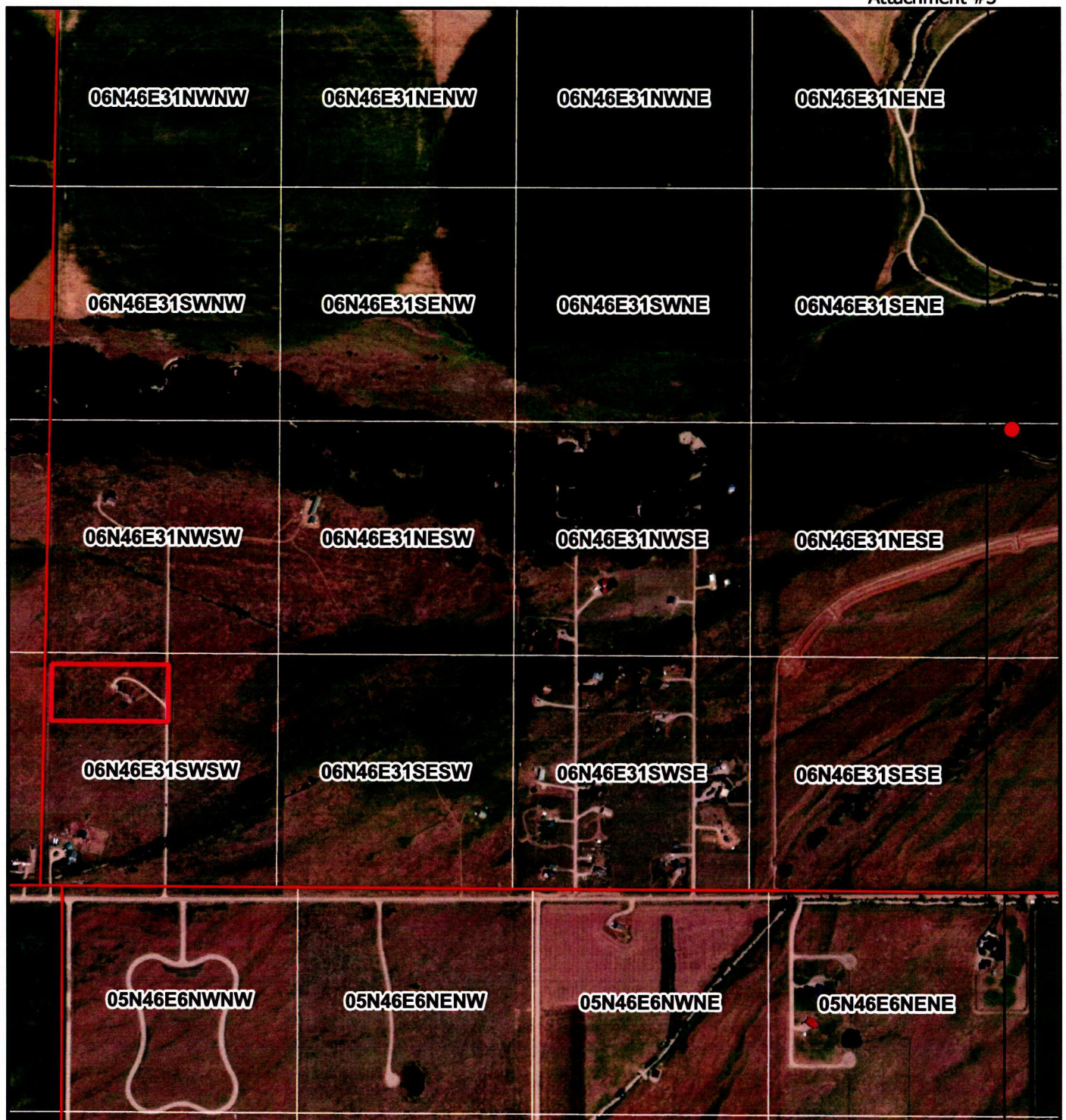
Rigby Andrus & Rigby Law, PLLC is hereby authorized to act on behalf of Thomas H Toxby regarding Water Supply Bank Application(s) for water right(s).

 _____ Signature	 _____ Printed Name	<u>2/27/23</u> _____ Date
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AUG 09 2023



0 0.2 0.4 0.6 mi

ESRI Satellite

Legend

- 22-13620 POD □ Sec
- 22-13620 POU QQ
- TR



Thomas Toxby

IWRB WSB Lease Application

SCANNED
AUG 09 2023

RECEIVED

Mar 15, 2023

DEPARTMENT OF
WATER RESOURCES

TO: IDAHO DEPARTMENT OF WATER RESOURCES
FROM: FREMONT MADISON IRRIGATION DISTRICT
RE: Consent to Lease Water Right No. 22-13620

Fremont Madison Irrigation District hereby provides written consent for Tom Toxby to lease water right no. 22-13620 to the Water Supply Bank in the amount of 0.11 cfs delivered to the Desert Ditch in Teton County.

 Aaron Delling 3-13-23
Signature Printed Name Date

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AUG 09 2023

Attachment 4G Narrative

There is no forfeiture concern for this water right. This water right is a split from former right 22-297A. The original water right was appurtenant to 90 acres. Tom purchased 5 acres of the original POU and received a proportional share of water. The current POU for water right 22-13620 is not appurtenant to the ditch for the original POU. Several other individuals have purchased parts of the POU for the original water right making delivery of water over their land difficult. In high water years, Tom's neighbor can divert extra water for flood irrigation from the existing ditch to his land and let excess water flow to Tom's land for irrigation. The last year Tom's land received water in this way was 2019.

It is not possible to deliver water this way in short water years when the volume of water needed to push water over his neighbor's land to his isn't available. In short water years, Tom uses buckets and other containers to deliver water to his land. Tom has not abandoned or forfeited this water right. Tom wants to place his water right in the Water Supply Bank while he gets easement agreements in place to allow him to dig a ditch that can deliver water to his property directly.

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WSB Mailing Checklist for Leases

Instructions: Staple to outside of lowest numbered water right file during processing.

Key: Who Completes What?

CLERICAL STAFF: MK

REVIEWER:

Received Date

3/2/2023

Desired Lease Duration

2023 - 2026

Lease / Rental Package

Y

N

If yes, Renter Name:

Application # 2618

Contract # 1702

WR#s		#
		22-13620
#		#
#		#
#		#
#		#
#		#
#		#

Applicant Authorized?

Y / N

Multiple owners, Attach 1A included?

Y / N NA

If portion is offered, Attach 2 included?

Y / N NA

Map of POU and POD?

Y / N NA

POD Consent (if required)?

Y / N NA

Application Complete?

Y / N

Minimum checklist in data base?

☒

Request for additional information letter sent:

Y NA

Stacked Water Rights Need to be Leased?

☐

WSB Action Request for deficiencies

☐

If checked, list water rights:

If the WR owner provided a different address on the application than what's in our database, update address in workflow.

Mailings (per lease application)

CC

Original

Designated

Applicant: Thomas H Toxby

☐
☐

EMAIL:

Attorney:

Michelle Mortimer - Rigby, Andrus,
& Rigby Law

☐
☐

EMAIL:

Consultants

Name:

☐

Comments:

Watermaster:

☐

Delivery Entity:

☐

Water District:

☐

Ground Water District: Fremont - Madison

☐

Region:

☐

Other:

☐
☐

Address:

Call up Date:

DO NOT SCAN



IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

August 9, 2023

THOMAS H TOXBY
5200 N 1100 E
TETONIA ID 83452

**RE: WATER SUPPLY BANK LEASE CONTRACT 1702
FOR WATER RIGHTS 22-13620**

Dear Lessor:

Water right(s) **22-13620** was/were leased into the Water Supply Bank (Bank) as of January 1, 2023, in accordance with the enclosed executed lease contract. **Your water rights, as described on the lease contract, are considered leased into the Bank and should remain unused until they are formally released from the Bank.** More information and further restrictions placed on your water rights while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The right(s) will automatically be released from the Bank on **December 31, 2026**, unless the rights are released earlier by the Water Resource Board (Board). On behalf of the Board, the Department of Water Resources (Department) can evaluate an early release of the lease contract upon your request. To release the water rights from the Bank prior to the release date, submit a written request on the *Request to Release a Water Right from the Bank* form. This form is available on our public website at www.idwr.idaho.gov. **Please note your water rights may not be available for immediate release if they have been rented or are being considered for a future rental. Furthermore, it is at the discretion of the Department whether or not a water right can be released early from a lease contract.**

If you have questions regarding this matter, please contact this office at [bank @idwr.idaho.gov](mailto:bank@idwr.idaho.gov) or 208-287-4800.

Sincerely,

Jean Hersley

for
Water Supply Bank

Enclosure: Executed Lease Contract

c: IDWR- Eastern Region Office
Rigby Andrus & Rigby Law

SCANNED
AUG 09 2023

Hersley, Jean

From: Tom Toxby <tomtoxby@gmail.com>
Sent: Tuesday, August 8, 2023 10:48 AM
To: IDWR File; Hummer, Phill; Michelle Mortimer
Subject: Thomas Toxby WSB Lease App2618
Attachments: Toxby Lease of Water Right (22-13620 Contract 1702) Signed.pdf

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Dear Mr. Hummer,

Attached, please find my signed Water Lease Contracts as requested. I am also dropping the originals in the mail to you.

Regards,

Tom Toxby



Governor Brad Little

Director Gary Spackman

August 3, 2023

THOMAS H TOXBY
5200 N 1100 E
TETONIA, ID 83452

RE: APPLICATION TO LEASE RIGHT 22-13620 CONTRACT 1702

******TIME SENSITIVE RESPONSE REQUIRED******

Dear Applicant:

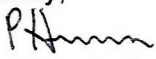
The Department of Water Resources has completed its review of your application to lease the above-mentioned water right to the Water Supply Bank. **I have enclosed two original Water Supply Bank Lease Contracts for your review and signature. Please sign and return ALL Lease Contracts within 14 days.** Upon signature and return of the contracts, the Department will also sign the original contracts and return an executed copy to you. The Lease Contract is not considered final until you and the Department have both signed.

The right will automatically be released from the Bank on **December 31, 2026**, unless the right is released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. To propose a new lease period, submit a new Application to Sell or Lease a Water Right to the Water Supply Bank form along with applicable fees to the Department. These forms are available from any IDWR office or from our public website at <http://www.idwr.idaho.gov>. Please note your right may not be available for immediate release if it has been rented.

Please review the conditions of acceptance listed on the Lease Contract, including #3 which says:
"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."

If you have questions regarding this matter, please contact this office at bank@idwr.idaho.gov or 208-287-4800.

Sincerely,

for 
Water Supply Bank

Enclosures: Proposed Lease Contracts

C: Michelle Mortimer, Rigby Andrus & Rigby Law (service by email)

SCANNED

AUG 09 2023

MEMORANDUM FOR APPLICATION # 2618

To: Water Right No. 22-13620

From: Skyler Cheever – Water Resource Agent

Date: 3/9/2023

Re: Review & Analysis of Application to Lease Water to the State Water Supply Bank

PURPOSE/NARRATIVE:

Application 2618 was sent in by Thomas Toxby and received on March 2nd, 2023, with fee payment received the same date. The application proposes to lease water right 22-13620 into the water supply bank from 2023-2026. The applicant proposes to lease this water right because he does not have access to the point of diversion on the Desert Creek ditch system. The point of diversion is located within the Snake River Basin Moratorium and Non-Trust Water Area. This is the first time this water right has been leased into the water supply bank.

AUTHORITY TO FILE:

Thomas Toxby signed the application. Mr. Toxby has the authority to file this application because he is the current owner of water right 22-13620 according to Department records.

WATER RIGHT VALIDITY:

The parent water right, 22-297A was claimed in 1991, but then split before it was decreed. 5 acres of the water right was given to the previous owner and given the current water right number. The ownership changed to the current owner in 2017. When the water right was split, access to Desert Canal was made difficult. According to Attachment 4G, submitted with the application, the last time water was delivered to the place of use was in 2019. High flows allowed the applicant to access wastewater from ditches on his neighbor's property, with permission. GIS Sentinel Imagery from June 17th, 2019 confirms this assertion. Therefore, there are no validity concerns.

INJURY TO OTHER WATER RIGHTS:

Water right 22-13620 diverts water from the Fremont Madison Irrigation District canal system. Permission from the irrigation district is required as standard for water supply bank leases. Permission from the irrigation district was received on March 15th, 2023. According to the permission idling water from the point of diversion is unlikely to injure other canal users. Therefore, there are no other injury concerns.

ENLARGEMENT OF USE:

Since the full water right is being idled, there are no concerns with remaining water being spread to idle acres enlarging the water right. There are no other water rights with the same beneficial use overlapping the authorized place of use. Therefore, there are no other enlargement concerns.

LOCAL PUBLIC INTEREST:

Review staff has no information to suggest this application is inconsistent with the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES:

The lease appears consistent with the conservation of water resources in Idaho.

SCANNED

AUG 09 2023

DEPARTMENT STAFF OR WATERMASTER COMMENTS:

The point of diversion is within Basin 22 and Water District 1. The Watermaster and Eastern Regional Manager were contacted for comment on. No response was received, it is assumed there is no concern with this proposal.

Irrigation Map

Sentinel Imagery from June 17th, 2019, indicating some irrigation occurred at the place of use outlined in magenta.



SCANNED

AUG 09 2023

Cheever, Skyler

From: Cheever, Skyler
Sent: Tuesday, March 21, 2023 12:45 PM
To: Cefalo, James; Olenichak, Tony
Subject: Water Supply Bank Lease Application 2618
Attachments: Lease Map 1702.pdf; Lease Review Memo 2618.docx; Lease Contract 1702.docx

Hello James and Tony,

I have finished my review of a water supply bank lease application within basin 22 and Water District 1. The applicant is Thomas Toxby. The application proposes to lease water right 22-13620 into the water supply bank from 2023-2026. Attached is a draft lease contract, review memo, and map of the place of use. If there are any comments that need to be made, please do so within 14 days. If you have any questions, please let me know.

Best,

Skyler

Skyler Cheever
Water Resource Agent, State Office
Email: skyler.cheever@idwr.idaho.gov
Phone: 208-287-4913

RECEIVED

MAR 02 2023

DEPARTMENT OF
WATER RESOURCES

Law Offices

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February 27, 2023

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

**Re: Application to Sell or Lease a Water Right
Water Right 22-13620**

I have enclosed herewith for filing an Application to Sell or Lease a Water Right to the Water Supply Bank. I have also enclosed a check for the associated fees.

If you have any questions, please contact our office. Thanks.

Sincerely,



Mandy Davis
Assistant to Michelle M Mortimer

/md
Enclosures

mor/toxbytom_ltr.wpd

2618

SCANNED

AUG 09 2023