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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
JUL 21 2023
Department of Water Resources

WATER SUPPLY BANK RENTAL AGREEMENT No. 779

This is to certify that:

POTTER CREEK RANCH LC
PO BOX 540478
N SALT LAKE, UT 84054-0478

filed an application to rent water from the Water Supply Bank ("Bank"). The Idaho Water Resource Board ("Board"), being authorized to operate a Bank and to contract by and through the Director of the Idaho Department of Water Resources ("Director, Department") for rental of water from the Bank, agrees to rent water as follows:

Summary of Water Rights or Portions Rented from the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
29-4406	1/1/1880	SPRINGS	0.60	105	30.0	0.02	3.5
29-4408	1/1/1880	SPRING	0.44	77.0	22.0	0.02	3.5
29-4423	1/1/1880	UNNAMED STREAM	0.60	105	30.0	0.02	3.5
29-12055	1/1/1880	SPRING	0.16	28.0	8.0	0.02	3.5
Combined Limit Totals			**1.09**	**216.3**	**61.8**	**0.02**	**3.5**

Term of Rental: This rental agreement shall take effect when all parties have signed it and shall continue in effect until December 31, 2023. Use of rental water shall be authorized as of either the date this rental agreement takes effect or the first day of the rental season of use, in 2023, whichever occurs last.

Annual Rental Fee:

2023: $497.49

The full fee for the rental of the above-described right(s) is $497.49 for 2023. The rental fee includes an administrative fee of $497.49 for 2023. The full fee and administrative fee required for this rental are calculated using more decimals than the rounded amounts recorded on this agreement. Note that the renter is obligated to pay only the administrative fees associated with the water right(s): 29-4406, 29-4408, 29-4423, 29-12055.

An annual payment shall be received by the Department on or before December 31 each year preceding the use of the rented water rights. The agreement will be void if payment is not received by the due date in a given year. Rental fees are non-refundable. To voluntarily terminate the agreement early, notify the Department in writing prior to the rental fee due date.

Total Water Use Authorized Under Rental Agreement

Beneficial Use	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)	Rate/Acre (CFS/AC)	Volume/Acre (AF/AC)
IRRIGATION	1.09	216.3	61.8	0.02	3.5
Combined Total	1.09	216.3	61.8	0.02	3.5

**** The authorized water usage reflects a reduction from the water right elements rented, to account for combined limits.***

Detailed water right conditions are attached.

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 779

The undersigned renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described in this agreement:

POTTER CREEK RANCH, L.C.

By: DocuSigned by: Christopher F. Robinson 4121EE7DE47848E — 07/21/2023

Signature of Renter — Date

Christopher F. Robinson — Mgr of Gen Ptr

Printed Name — Title

*Title required if signing on behalf of a company or organization or with power of attorney

Having determined that this agreement satisfied the provisions of Idaho Code § 42-1763 and IDAPA 37.02.03.030 (Water Supply Bank Rule 30), for the rental and use of water under the terms and condition herein provided, and none other, I hereby execute this Rental Agreement on behalf of the Idaho Water Resource Board.

By _____ Date 7/21/23
BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Rental approved by IDWR _____ Date 7/21/23

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 779

WATER USE DETAILS

LOCATION OF POINT(S) OF DIVERSION

MARSH CREEK SWNE Sec. 14, Twp 11S, Rge 36E, BANNOCK County

BENEFICIAL USE	DIVERSION RATE	VOLUME
IRRIGATION	1.09 CFS	216.3 AF

SEASON OF USE

Water Right No.	From	To
29-4406	4/1	10/31
29-4408	4/1	10/31
29-4423	4/1	10/31
29-12055	4/1	10/31

RENTERS PLACE OF USE: 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	
11S	36E	11												22.0					22.0
11S	36E	14					21.0			18.8									39.8

Total Acres: 61.8

RENTAL AGREEMENT CONDITIONS OF ACCEPTANCE

1. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
2. Rental of the specified right from 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.
3. Use of water under this agreement does not constitute a dedication of the water to renter's place of use, and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
4. Use of water under this agreement shall not prejudice any action of the Department in its consideration of an application for transfer or permit filed by the applicant for this same use.
5. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
6. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water.
7. Renter acknowledges and agrees that the Director may terminate authorization for the use of a water right based on a water right's priority date.
8. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 779

9. Use of water under this rental and Right 29-2295F when combined shall not exceed a total diversion rate of 1.09 cfs, a total annual maximum diversion volume of 216.3 af at the field headgate, and the irrigation of 61.8 acres.
10. Rental of rights 29-4406, 29-4408, 29-4423 and 29-12055 when combined shall not exceed a total diversion rate of 1.09 cfs, a total annual maximum diversion volume of 216.3 af at the field headgate, and the irrigation of 61.8 acres.
11. Right 29-4406 is limited to the irrigation of 30.0 acres within the place of use described above in a single irrigation season.
12. Right 29-4423 is limited to the irrigation of 30.0 acres within the place of use described above in a single irrigation season.
13. Right 29-4408 is limited to the irrigation of 22.0 acres within the place of use described above in a single irrigation season.
14. Right 29-12055 is limited to the irrigation of 8.0 acres within the place of use described above in a single irrigation season.
15. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
16. Use of water under this agreement will 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. 29H.
17. The diversion and use of water under this rental agreement shall only occur:
    a. When water is available and in priority at the original points of diversion of rights 29-4406, 29-4423, 29-4408, and 29-12055; and
    b. When all water rights with a source of Marsh Creek having existing authorized points of diversion in the reach downstream from the authorized rental point of diversion and upstream from the original water right sources and their confluence with Marsh Creek (reach beginning SWNE, S14, T11S, R36E and ending NESE, S1, T10S, R36E) are satisfied.

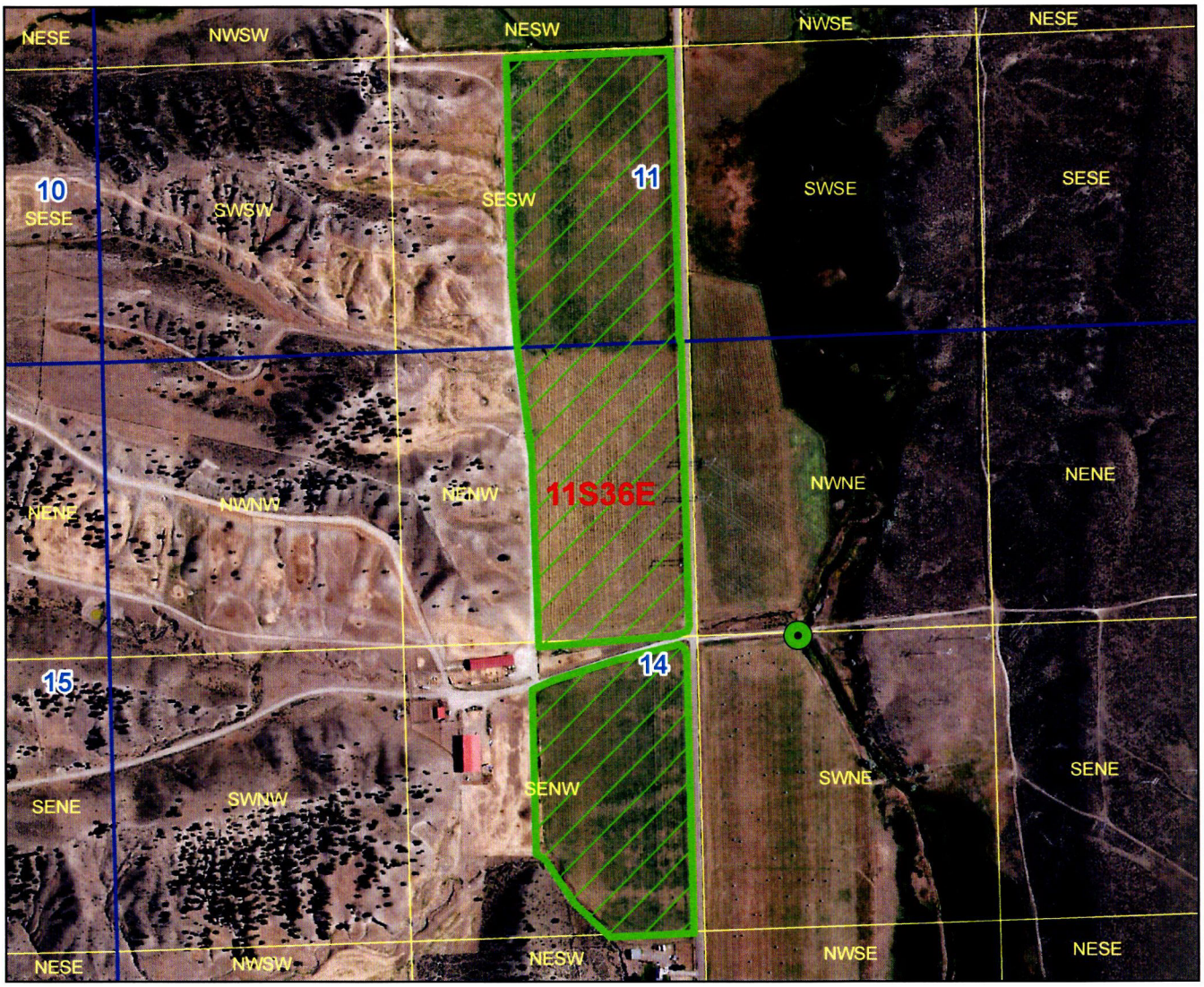
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Idaho Water Resource Board

Attachment to Water Supply Bank Rental Agreement No. 779

Effective until December 31, 2023

This map depicts the **IRRIGATION rental place of use** pursuant to the rental agreement and is attached to the agreement solely for illustrative purposes.



Legend

- Authorized Rental Point of Diversion
- Authorized Rental Place of Use
- Township/Range
- Sections
- QQ

N

0 0.15 0.3 Miles

Form 42-1761-2 10/15

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED
DEC 06 2022
DEPARTMENT OF
WATER RESOURCES

APPLICATION TO RENT WATER FROM THE BOARD'S WATER SUPPLY BANK

Applicant Name: Potter Creek Ranch, LC

Is this application being submitted with a lease application as a lease/rental package? Yes ☑ No ☐
If yes, specify companion water rights in Section 4

This application must be completed according to the minimum requirement checklist below. This checklist is part of the rental application and must be included with the rental application. **Applications that do not meet the minimum requirements will not be placed in the processing queue and may be returned until all minimum requirements have been met.**

Rental applications should be submitted well in advance of the desired start date for the use of rental water. Rental applications may be processed as early as November 1 of the year prior to the intended use of rental water. Any rental application received on or before November 1 for use in the next year will be assigned a received date of November 1. Rental applications submitted more than one year in advance of the proposed start date for the use of rental water will not be accepted and will be returned to applicants. Rental applications may be returned to applicants if the desired start date for the use of rental water cannot be accommodated by the Water Supply Bank. Rental requests will not be accepted once the rental season of use period has concluded.

One rental application per beneficial use of water. For multiple beneficial uses of water, separate rental requests should be submitted for each unique beneficial use of water. One rental application can be submitted if you propose to rent water from multiple sources.

For additional instructions on completing a rental application, visit the Bank's website at http://idwr.idaho.gov/water_supply_bank.

MINIMUM REQUIREMENT CHECKLIST

Check All Items as Either Attached (Yes) or Not Applicable (N/A)

Attachment	N/A	Yes	
		Yes	
		☑	Completed *Application to Rent Water from the Board's Water Supply Bank*
		☑	Confirmation that this form has been printed single sided, per requirement of the Water Supply Bank
Attachment	**N/A**	**Yes**	
2		☑	A map showing the proposed point(s) of diversion, place(s) of use, and water diversion and distribution systems proposed to be used with your rental request
3A	☐	☑	Detailed information on a proposed use of rental water
3F	☑	☐	Authorization from the owner/operator of the rental point(s) of diversion
3H	☑	☐	Water modeling to account for the impacts of the rental request
3J	☑	☐	Documents justifying a rate of flow greater than 0.02 cfs/acre
3K	☑	☐	Authorization from the owner/operator of the property at the proposed rental place(s) of use
4B	☑	☐	Explanation of how the rental water will sufficiently accomplish your rental purposes
4C	☑	☐	Explanation of consumptive use amounts for water rights experiencing a change in nature of use

Department Use Only – Proposed Water Right(s)
29-4411
29-4424

2519

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant Potter Creek Ranch, LC

Mailing Address PO Box 540478 (Street) North Salt Lake (City) UT (State) 84054 (Zip Code)

Email Address _____ Phone Number _____

B. Is this application being completed by an authorized representative on behalf of the applicant? Yes ☑ No ☐

If yes, representatives (includes company employees if the applicant is a corporation, as well as legal counsel or consultants) should provide their information below if they desire to be included on correspondence with the rental applicant.

Representative Luke H. Marchant Professional Title Attorney

Organization Holden, Kidwell, Hahn & Crapo Relationship to Applicant Attorney

Mailing Address PO Box 50130, Idaho Falls, ID 83405

Email Address lmarchant@holdenlegal.com Phone Number (208) 523-0620

2. MAP

Create a map of the proposed point(s) of diversion, place(s) of use and water diversion, delivery and distribution systems. Make sure the rental 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 irrigate. Attach the map to this application and label it **Attachment 2**.

3. DESCRIPTION OF PROPOSED USE FOR RENTAL WATER

A. Describe why you desire to rent water and provide a detailed description of your proposed use. If the proposed use is not for irrigation, describe in detail how you determined the amount of rental water required. If the space below is insufficient, attach additional sheets as required and label them **Attachment 3A**:

The proposed place of use is productive ground that has a late priority water right. This companion lease/rental package will move senior priority water rights to the proposed place of use so that the Applicant will be able to irrigate the ground in the event of a priority cutoff of the appurtenant water right.

B. Enter the desired and/or minimum rates of flow, volume, or irrigable acres requested for your rental purposes:

Desired Rate (Cubic Feet/Second)	Desired Volume (Acre-Foot)	Minimum Rate* (Cubic Feet/Second)	Minimum Volume* (Acre-Foot)	Desired Acres (if applicable)
2.04 CFS	AF	2.04 CFS	AF	57.4 AC

* ***Sometimes water rights provide an exceptionally low rate per acre and/or low volume per acre. This section is meant to establish an acceptable range of water sufficient for your proposed water use. Please see question 4B and complete if necessary.***

C. This section must be completed in full. Enter the proposed start date and latest possible start date for using rental water as well as the number of years you would like to rent water. The latest possible start is the latest possible date by which you would be willing to pay for a rental and be able to benefit from utilizing rental water.

Desired Start Date (month/day/year)	Latest Possible Start Date (month/day/year)	*Mark Desired Rental Duration (Calendar Years)					**Applicant's preference if rental application cannot be processed prior to the latest possible start?	
		☐ 1	☐ 2	☐ 3	☐ 4	☑ 5		
04/01/2023	ASAP						☑ Process application as soon as possible	☐ Return application to applicant

* ***The number of years permissible for a rental is subject to the lease contract duration for the water right(s) being rented.***

** ***Per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right. Water Supply Bank rental applicants are not authorized to utilize rental water prior to the execution of an approved rental agreement. Rental requests may be returned to applicants if no water is available from the Bank to fulfill a rental request.***

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

D. Describe your water distribution system and how rental water will be delivered from the point(s) of diversion (POD) to the proposed place of use (POU):
Diversion structure in Marsh Creek into private ditch.

E. Describe the physical type (pump, headgate, etc.) and location of the POD from which rental water is proposed to be diverted:

POD Description	Water Source	Other Water Rights Diverted from this POD
Headgate	Marsh Creek	29-2295F

If the POD(s) above are located where water is turned into a canal, lateral or ditch, or if they are located on your property but are serviced by water that is delivered via a canal, lateral or ditch, your rental request must include documented authorization from all relevant canal companies, irrigation districts and/or water delivery entities, confirming that they consent to your diversion of water from their system.

F. Has documented consent from all relevant water delivery entities been obtained? Yes ☐ N/A ☑
If yes, include documented consent as **Attachment 3F**.

G. Do any POD(s) identified in Question 3E divert from a water source that may require water modeling? Yes ☐ No ☑
Refer to the Water Modeling Requirements Information Sheet to determine if a rental POD may require water modeling.

H. Has water modeling been provided with your rental request? Yes ☐ N/A ☑
If yes, label modeling Attachment 3 H.
Rental applications that require modeling will be returned if modeling is not provided.

I. Specify the desired beneficial use of water and the requested season of use or number of acres required:

☑ Irrigation 57.4 (number of acres) Duration: Subject to IDWR standard seasons of use

☐ Commercial from: _____ (mm/dd) to: _____ (mm/dd)

☐ Stockwater from: _____ (mm/dd) to: _____ (mm/dd)

☐ Industrial from: _____ (mm/dd) to: _____ (mm/dd)

☐ Other: _____ from: _____ (mm/dd) to: _____ (mm/dd)

J. For irrigation uses, do you propose to divert water at a rate greater than 0.02 cfs/acre? N/A ☐ Yes ☐ No ☑
If yes, justify the rate of flow and attach any supporting documents as **Attachment 3J**. Justification may include information on soil composition, conveyance losses, crop type, irrigation systems, public access areas, etc. A rate of 0.03 cfs/acre is permissible for irrigation of 5 acres or less.

K. Do you own the land at the proposed rental place of use (POU)? Yes ☑ No ☐
If no, attach documentation from the POU owner/operator confirming your authorization to use the POU and label it **Attachment 3K**.

L. List all other water rights and sources of water at the rental place of use for the same purpose, including privately owned water rights and water received from a municipal supplier, an irrigation district, a canal company or any other water delivery entity. Explain why additional water is required:
Water Right No. 29-2295F is appurtenant to the proposed place of use. It has a priority date of 11/27/1950. It is likely that this water right will be unavailable for most of the irrigation season due to priority administration.

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

4. RENTAL REQUESTS FOR SPECIFIC WATER RIGHTS

A. Are you requesting to rent specific water rights? Yes ☑ No ☐

If yes, specify below the elements of the water rights you are requesting to rent. **If no,** continue to Question 4B.

Important Information: Diversion rates and volumes sought for rent must be proportionate to the per acre diversion rates and per acre volume limits of the water right under lease contract to the Water Supply Bank. Prior to completing this section, applicants should review all water right lease contracts and any active rental agreements to determine which elements of a water right are available to satisfy a rental request. Lease and rental documents are searchable via IDWR's website.

Water rights identified below must either already be leased to the Bank or a lease proposal should accompany this rental request. **Rental requests for water rights not yet leased to the Bank will be returned if companion lease applications are not provided with the rental request**. For leased rights featuring combined limits, rentals must be consistent with combined diversion rate, volume or acre limits. Combined limits should be listed on a row below water right numbers.

Water Right Elements Leased to Water Supply Bank					Leased totals, minus water right elements involved in active rental agreements, equals water right elements available for rent	Water Supply Bank Rental Request		
Water Right Number (leave blank if sub-total of combined limits)	Nature of Use	Diversion Rate (CFS)	Volume (AF)	Acres (AC)		Diversion Rate (CFS)	Volume (AF)	Acres (AC)
29-4411	Irrigation	0.92				0.92		
29-4424	Irrigation	1.12		57.4		1.12		57.4
Applicants must ensure the requested rate per acre and volume per acre do not exceed the rate per acre and volume per acre limits of water rights leased to the Water Supply Bank					TOTAL	2.04		57.4
						CFS	AF	AC

**Attach multiple copies of this page if space above is insufficient to list all water rights requested to be rented on this application.*

B. If water right conditions, combined limits, or the sum of all water right elements being requested provide an unconventional duty of water (e.g., an unusually low rate per acre or volume per acre for irrigation use), explain how your proposed rental will sufficiently accomplish your intended purposes. Attach a separate page if space is insufficient and label it **Attachment 4B**:

C. Does your rental request propose to change the nature of use for any water right(s) being rented? Yes ☐ No ☑

If yes, explain how the water right(s) will be converted to new uses. Include the historic, consumptive use amounts for the water right being rented if you have it, as well as the new consumptive use amount for your proposed beneficial use. If space below is insufficient, attach a separate page and label it **Attachment 4C**:

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

5. ADDITIONAL INFORMATION

A. Is this the first time that rental water is being requested for this purpose at the rental place of use? Yes ☑ No ☐
If no, list previous rental requests/agreements and explain why you have not secured a permanent water right for your needs:

B. Have you or do you intend to submit an application for permit or transfer proposing a similar use as this rental? Yes ☐ No ☑
If yes, describe:

C. Was this rental application submitted in response to a Notice of Violation (NOV) or a pending NOV? Yes ☐ No ☑
If yes, describe the date and location of the NOV.

D. Additional Information

DECLARATION

I hereby assert that the information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval. I understand that if this rental application is approved, it will be subject to the provisions of Section 42-1766, Idaho Code and all applicable state and federal laws. I understand that the submission of a rental application provides no guarantee for approval of a rental agreement. I also understand that, per Idaho Code 42-201, it is unlawful to divert or use water without a valid water right and that I am not authorized to utilize water as proposed in this application prior to the execution of an approved rental agreement.

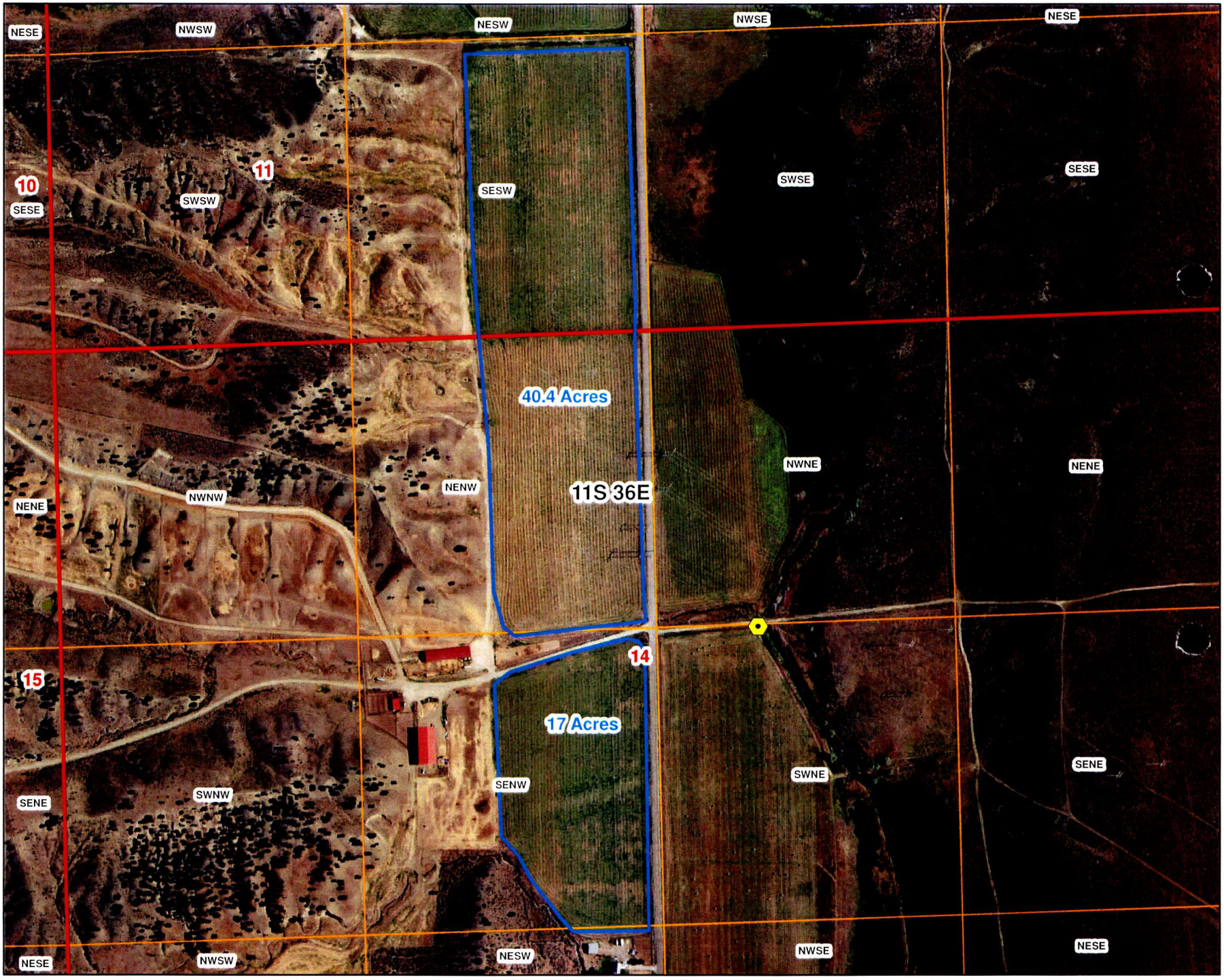
Luke H. Marchant	Luke H. Marchant, Attorney	November 21, 2022
Signature of Applicant	Printed Name of Applicant	Date
Potter Creek Ranch, L.C. By: Christopher F. Robinson Mgr of GP	Christopher F. Robinson	01/18/2023
Signature of Representative	Printed Name of Representative	Date

Mail to:

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

ATTACHMENT 2
GIS Maps

WATER RIGHT NOS. 29-4411 & 29-4424 WSB RENTAL



2021 NAIP Photo

Prepared by:
Luke H. Marchant
11/18/2022

WSB Mailing Checklist for Rentals

(For use on all new rental applications)

Key: Who Completes What?
CLERICAL STAFF: MK
REVIEWER: MK

Received Date: 12/6/2022
Latest Start Date: 4/1/2023
Renter: Potter Creek Ranch, LC
Rental Expiration Date 12/31/2023
Lease/Rental Package (Y) N

Executed 7/21/23

Application # 2519
Agreement # 779

Water Right	Lease Contract ID
# ~~29-4411~~	
# ~~29-4424~~	
# 29-4406	
# 29-4408	
# 29-4423	1722
# 29-12055	
#	
#	
#	
#	
#	
#	
#	
#	

Applicant Authorized?	(Y) / N
Map of POU and POD	(Y) / N
POD consent?	(Y) / N
ESPA Modeling?	Y / N (NA)
Application Complete?	(Y) / N
Minimum Checklist in database?	☐
Request for additional information letter sent:	Y NA
WSB Action Request for deficiencies	☐

Comments:

Mailings (per application)	Original	CC	Email or Address
Renter: Potter Creek Ranch, LC	☒	☐	
Attorney: Luke H Marchant -	☐	☒	
~~Consultants~~ Name: Holden, Kidwell, Hahn & Crapo	☐	☐	
Conveyence Entity: (Ex. Irrigation Dist. of Canal Co.)	(final only)	☐	
(Ground) Water Dist: WD 29H	(final only)	☐	
Other: WD Snake 01, Boise, Payette, and Bear River	(final only)	☐	
Region: Eastern	(final only)	☒	
Watermaster: Kristin Evans	(final only)	☒	
Compliance:	(final only)	☐	

Resolving NOV? Y / (N)
#

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

July 25, 2023

POTTER CREEK RANCH LC
C/O CHRISTOPHER F ROBINSON
PO BOX 540478
N SALT LAKE, UT 84054-0478

RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 29-4406, 29-4408, 29-4423 & 29-12055, AGREEMENT 779

Dear Renter:

Please find enclosed a receipt in the amount of **$497.49** and a copy of a fully executed Water Supply Bank Rental Agreement in connection with the rental of 216.3 acre-feet of water for irrigation of 61.8 acres during 2023. Upon receipt of this fully executed agreement, you are authorized to divert water in compliance with the conditions of water use described in the agreement.

Since you are both the lessor and the renter of the right(s), **you are only obligated to pay the 10% administrative fee or $497.49** for 2023.

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

Sincerely,

Mackenzie Kienholz
Water Supply Bank Specialist

Enclosures: Receipt No. E049362
Rental Agreement (copy)

c: Sascha Marston – Fiscal
IDWR – Eastern Region Office
Luke Marchant – Holden, Kidwell, Hahn & Crapo
Water District No. 29H

IDAHO DEPARTMENT
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

July 21, 2023

POTTER CREEK RANCH LC
C/O CHRIS ROBINSON
925 W 100 N STE F
PO BOX 540478
NORTH SALT LAKE, UT 84054

RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 29-4406, 29-4408, 29-4423 & 29-12055, AGREEMENT 779

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

Dear Applicant:

The Department of Water Resources acknowledges receipt of your application to rent water from the Water Supply Bank. **I have enclosed a Water Supply Bank Rental Agreement for your review and signature.** Upon signature and return of the original agreement, together with the rental fee described below, the Department will also sign the original agreement and return an executed copy to you. Execution of the agreement and compliance with the conditions of approval authorize diversion and use of water as provided in the agreement.

A rental fee of **$4,974.90 per year** was calculated based on the current rental rate of $23.00 per acre-foot times a diversion volume of 216.3 acre-feet. Since you are both the lessor and the renter of the right(s), **you are only obligated to pay the 10% administrative fee or $497.49.** An annual payment shall be received by the Department prior to the execution of this agreement and prior to January 1 in all subsequent years for the duration of the rental period. The agreement will be void if payment is not received prior to the due date in a given year. If you would like to terminate the agreement prior to the end of the rental period, you must submit written notice of your intent to the Department at least 30 days prior to the rental fee due date.

Please send a check in the amount of $497.49 for 2023 made payable to the Idaho Department of Water Resources, **together with the signed rental agreement, within 14 days** so I can complete processing.

If you have any questions, please contact this office at (208) 287-4800.

Sincerely,

Mackenzie Kienholz
Water Supply Bank Specialist

Enclosures: Proposed Rental Agreement

c: IDWR Front Desk
Luke Marchant – Holden, Kidwell, Hahn & Crapo

Kienholz, Mackenzie

From: Cefalo, James
Sent: Tuesday, July 18, 2023 11:53 AM
To: Kienholz, Mackenzie; Kristin Evans
Subject: RE: Request for Comment: Potter Creek Ranch-Arimo Corp WSB Package

Mackenzie,

Thank you for allowing me to be part of the review process. I don't have any concerns with the proposed WSB lease or rental.

James

From: Kienholz, Mackenzie <Mackenzie.Kienholz@idwr.idaho.gov>
Sent: Tuesday, July 18, 2023 9:23 AM
To: Kristin Evans <watermaster29h@gmail.com>; Cefalo, James <James.Cefalo@idwr.idaho.gov>
Subject: Request for Comment: Potter Creek Ranch-Arimo Corp WSB Package

Good morning, Kristin and James,

Attached are the review documents for the Arimo Corp. WSB lease and associated Potter Creek Ranch WSB rental. Phill Hummer is planning to review these today, so there may still be some edits (especially to rental conditions), but I want to request comments from you so we can address them and turn this around as soon as possible. The goal is to have an executed agreement by the end of the week. Please read through the attached documents and provide any comments as soon as you are able. I appreciate the time you both have spent with this package and am hopeful we will be able to move on soon.

Thank you,

Mackenzie Kienholz
Water Supply Bank Specialist

IDAHO DEPARTMENT OF WATER RESOURCES

Planning & Projects
Mackenzie.kienholz@idwr.idaho.gov
Phone: (208) 287-4822

Kienholz, Mackenzie

From: Kristin Evans <watermaster29h@gmail.com>
Sent: Tuesday, July 18, 2023 11:43 AM
To: Kienholz, Mackenzie
Subject: Re: Request for Comment: Potter Creek Ranch-Arimo Corp WSB Package

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Mackenzie,
After reviewing the documents you provided everything looks good to me. Please let me know if there are any changes or edits. Also, please let me know when everything is approved so that I am aware that Potter Creek Ranch is able to divert. I appreciate all you have done and continue to do. Please let me know if you need anything else.
Thank you,
Kristin Evans
Watermaster 29H
208-540-1781
watermaster29H@gmail.com

On Tue, Jul 18, 2023 at 9:23 AM Kienholz, Mackenzie <Mackenzie.Kienholz@idwr.idaho.gov> wrote:

Good morning, Kristin and James,

Attached are the review documents for the Arimo Corp. WSB lease and associated Potter Creek Ranch WSB rental. Phill Hummer is planning to review these today, so there may still be some edits (especially to rental conditions), but I want to request comments from you so we can address them and turn this around as soon as possible. The goal is to have an executed agreement by the end of the week. Please read through the attached documents and provide any comments as soon as you are able. I appreciate the time you both have spent with this package and am hopeful we will be able to move on soon.

Thank you,

Mackenzie Kienholz

Water Supply Bank Specialist

IDAHO DEPARTMENT OF WATER RESOURCES

Planning & Projects

Mackenzie.kienholz@idwr.idaho.gov

Phone: (208) 287-4822

MEMORANDUM FOR APPLICATIONS #2519 & #2698

To: Water Right(s) 29-4406, 29-4408, 29-4423, 29-12055

From: Mackenzie Kienholz

Date: 7/18/2023

Re: Review & Analysis of Applications to Lease Water to and Rent Water from the State Water Supply Bank

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PURPOSE/NARRATIVE: Lease application #2698 was submitted by Christopher F. Robinson (President) on behalf of Arimo Corporation and was received by the Department on 7/17/2023. This lease was submitted to satisfy rental application #2519 for Potter Creek Ranch which was submitted by Luke H. Marachant (Holden, Kidwell, Hahn & Crapo) and received by the Department on 12/6/2022. Chris Robinson is an authorized representative of both Arimo Corp (lessor) and Potter Creek Ranch (renter);this is essentially a self-serve package. The proposed rental POD and POU are the same as the POD and POU of right 29-2295F. Right 29-2295F has a 1950 priority date which is curtailed for the majority of the season, so the applicant wishes to move senior rights (1880 priority) to this location. In the last few years, the rights on Marsh Creek have been administered with Snake River rights. Twin Falls Canal Company's irrigation right 1-209 is diverted from the Snake River downstream from where Marsh Creek water eventually meets the Snake River. This right has a priority date of 10/11/1900 and is authorized to divert 3,000 cfs, so this date is often the curtailment priority date for users on Marsh Creek.

Originally, rights 29-4411 and 29-4424 were offered for lease, however they are stacked with surface water shares and unstacking the groundwater rights from the surface water shares would constitute an enlargement (3G AG LLC v. IDWR). Right 29-4409 was then suggested, however it is stacked with junior rights and would not provide the acreage the applicant needs to satisfy the rental.

Rights 29-4406, 29-4408, 29-4423, and 29-12055 are now being offered for lease. They all have a priority date of 1/1/1880 and are limited to the irrigation of 61.8 acres, which is the approximate acreage requested for the rental. These rights' sources are springs tributary to Marsh Creek.

Water district #29H watermaster Kristin Evans visited the lease location on 7/14/2023 and confirmed that rights 29-4406, 29-4408, 29-4423, and 29-12055 have not been used in 2023.

Both the lease and rental are in Water District #29H and the IDWR Eastern Region.

AUTHORITY TO FILE: Both the lease application for Arimo Corp. and the rental application for Potter Creek Ranch were signed by Christopher F. Robinson. Mr. Robinson is listed as an authorized member of Arimo Corporation on the company's most recent ID SOS filing (1/4/2023). The land at the lease POU is owned by Arimo Corporation.

Mr. Robinson is listed as an authorized agent of Potter Creek Ranch, LC on the Utah Division of Corporations and Commercial Code website (last renewed 1/24/2023). The land at the rental POU is owned by Potter Creek Ranch, LC. No concerns with authority to file.

WATER RIGHT VALIDITY: The applicant stated that the rights offered to the Bank have been fully diverted in the last five years but have not been used in 2023. The water right POU is adjacent to Marsh Creek and is flood irrigated from the springs tributary to Marsh Creek.

Sentinel imagery in 2022 suggests that the lands were irrigated, however due to the POU's location this could appear to be the case whether a crop was grown or not. Based on information from the applicant and available imagery, it appears that irrigation for crop production did occur in the last five years. No concerns with validity of the water right and portion offered to the bank.

INJURY TO OTHER WATER RIGHTS: A concern with all of the rights that have been proposed for lease is their location in relation to the rental. The rights are about 6.5 miles from the rental location (directly, not considering meanders in the creek). The rental POD is upstream from the lease PODs, and the lease PODs are tributary to Marsh Creek while the rental proposes to divert directly from Marsh Creek.

The source for the rights offered to the Bank are springs tributary to Marsh Creek. During Watermaster Kristin Evans' visit to the lease location on 7/14/2023, flows from the springs were measured at 1.3 cfs. This is sufficient as the applicant proposes to lease 1.24 cfs to the Bank. Kristin Evans also confirmed that this spring water reaches Marsh Creek. Kristin informed review staff of this via phone call on 7/17/2023.

Because the leased rights are diverted from springs not Marsh Creek, timing is also an important consideration for evaluating potential injury. Review staff discussed the historic availability of the leased rights at their original PODs with the applicant. The applicant stated that there are four springs that divert the rights to ditches for flood irrigation. He stated that there are two main channels (with measuring devices), and that these two channels alone typically have enough supply to fill the rights throughout the whole season. Watermaster measurements taken 7/14/2023 showed that there was more than enough flow to fill the rights, as mentioned above. There will be a condition added to the rental stating that diversions at the rental POD are only authorized when available at the original location.

There are many users with diversions between the lease and rental PODs. Only about three of these rights have a priority date senior to the 1900 Twin Falls Canal Co. right, and thus are the few that are typically able to divert for the entire season. Some of the other rights are in priority for portions of the season. The applicant has agreed to make this rental subordinate to any existing water rights that are in priority at any given time. This will prevent injury to the users who fall below the rental POD but above the lease POD.

Finally, while originally five years was requested, this rental will be limited to 2023 only. This was agreed to by the applicant. The applicant is expecting to seek to make this change permanent through the transfer or exchange process for 2024 and beyond.

ENLARGEMENT OF USE: Each of the four water rights has a specific acre limit but are all part of a 61.8 combined limit place of use. The four rights also have a combined limit of 1.24 cfs, and three of the rights have stockwater as well as irrigation. The stockwater portions will not be leased to the Bank per email correspondence from the applicant, so the total rate authorized for any stockwater portions will be subtracted from the 1.24 cfs combined rate limit. The irrigation portion of all four rights will be leased and rented in full for the use of 1.09 cfs and 61.8 acres. There is no volume specified on the rights. The standard at the location is 3.5 af/acre which is equivalent to 216.3 af. All four rights have a priority date of 1/1/1880. Each of the four rights has its own POD(s), none of which divert other rights. The place of use is within the Portneuf Irrigating Co. boundary, but it does not receive any shares. There are no other rights overlapping the lease POU.

The rental POD and POU are the same as the POD and POU for right 29-2295F. Right 29-2295F is owned by Potter Creek Ranch and has a duty of 0.02 cfs/acre. When this right is in priority, it will be diverted instead of the rented rights. The rights being leased and rented have a

duty of 0.02 cfs/acre and will not be used at the same time as 29-2295F, so no enlargement is anticipated.

As mentioned above, because the lease source is springs tributary to Marsh Creek while the rental source is Marsh Creek, timing is important. While the information available suggests that the full amount of water being leased/rented is available for the full irrigation season, this concern will also be addressed with the condition limiting use at the rental location to times when the water is available at the lease location.

LOCAL PUBLIC INTEREST: This section of Marsh Creek has been a fairly contentious area since Marsh Creek started being administered with Snake River Rights in the last few years. Because of the large Twin Falls Canal Company right, many Marsh Creek users with priority dates like 1910, 1926, 1936, 1942, etc. are now often curtailed. Between the lease and rental PODs there are also losing and gaining reaches, and there are points where flows are occasionally minimal. Some users on Marsh Creek rent storage water to offset their impacts on the Twin Falls Canal Co. Snake River right. This allows them to divert their right out of priority when sufficient flow is available in Marsh Creek. Because this rental would be diverting from a point upstream of these users, there will be a lesser flow available which could affect user's ability to rent mitigation water and continue to divert out of priority. There are also potential impacts in general when moving a right upstream and when moving from a tributary source to a mainstem source.

To address these items from a local public interest perspective, review staff requested that the applicant notify the users between the lease and rental PODs of the application, its purpose, and the conditions being placed on the rental to prevent injury. The applicant contacted users via email and cc'd review staff (email sent 7/15 by Chris Robinson). At the time of this review no response has been received from local users.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES: The lease appears consistent with the conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS: The location for the rental PD is subject to Water District #29H. The Water District #29H watermaster, Kristin Evans, as well as IDWR Eastern Region Manager James Cefalo, amongst other IDWR staff, were consulted at various points throughout the review of this application. An official request for comments was sent to Kristin Evans and James Cefalo on 7/18/2023.

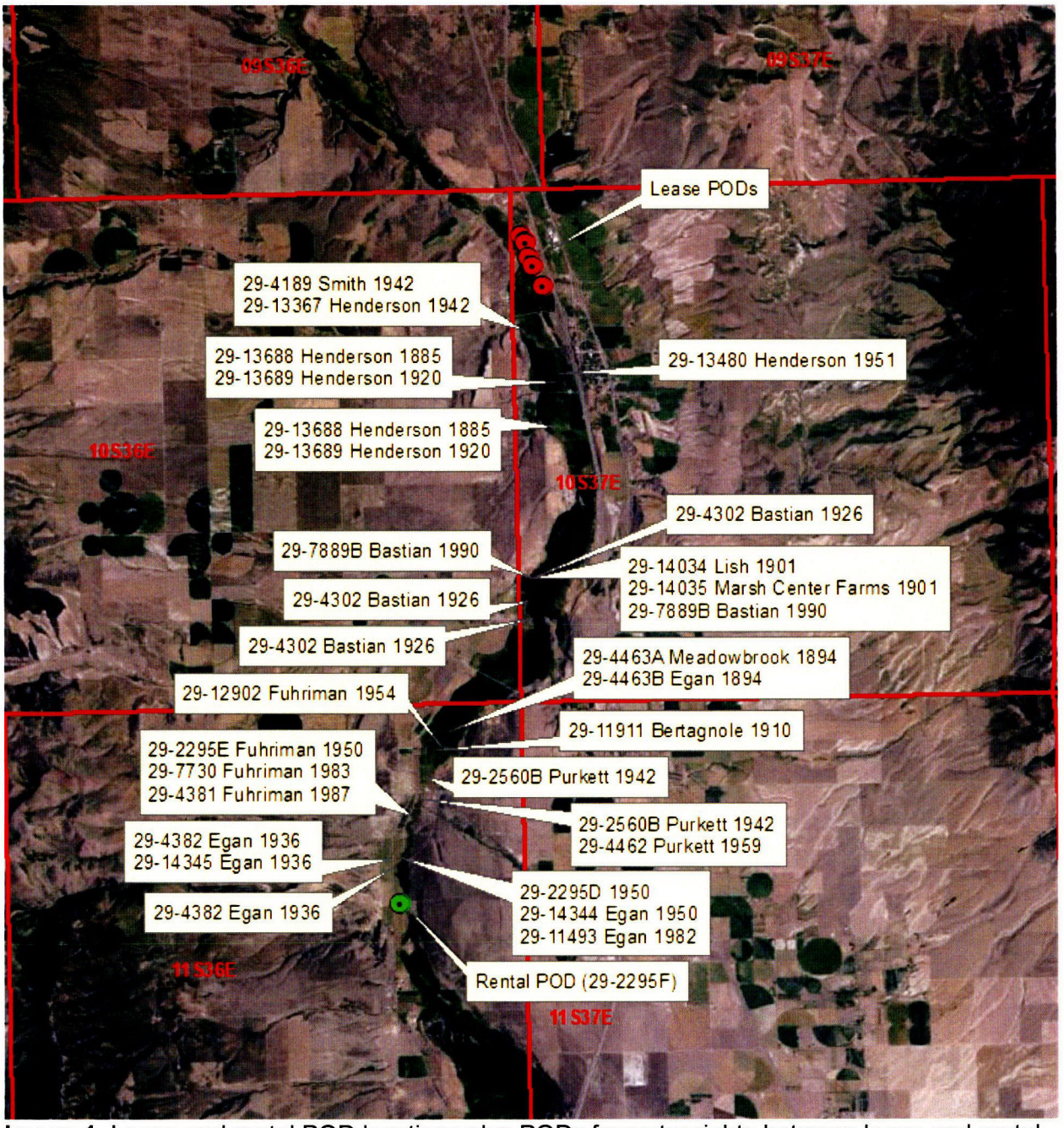


Image 1. Lease and rental POD locations plus PODs for water rights between lease and rental. Please note that this map is meant for reference and may not be comprehensive.

Kienholz, Mackenzie

From: Chris Robinson <crobinson@theensigngroup.com>
Sent: Saturday, July 15, 2023 7:31 PM
To: Merle Henderson; Randy Wheatley; Wade Egan; Dale Lish; Randy Bertagnole; Craig Smith; Lynn Bastian; Rick Fuhriman
Cc: Chris Redman; Cade Willoughby; Kristin Evans; Kienholz, Mackenzie; Visosky, Steven; Jeff Young
Subject: Arimo Ranch's 2023 Water Supply Bank Lease
Attachments: Marsh Creek Water Rights Sorted Priority Date 7 14 2023.pdf

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[Re-sent to correct Rick Fuhriman's email address]

Dear Neighbors and Fellow Water Users:

A few years ago, we purchased from Phil Adams his ranch (dry farm), which includes about 60 acres of Marsh Creek irrigated lands along the west side of South Marsh Creek Road (intersection with Shrives Creek Rd) having a 1950 priority date water right. It's held under the name of Potter Creek Ranch, L.C.

As you all know, for the last three years since the Portneuf Basin WD 29 has been regulated in priority with the rest of the Snake River in WD 01, many of us with junior water rights on Marsh Creek or its tributaries have been out of luck.

Some have cured/mitigated for this by leasing Tribal or other out of Basin storage water.

We attempted to self-mitigate within Basin 29 by having our Potter Creek Ranch lease through the Water Supply Bank some 1880 priority water rights for 1.25 CFS from our Arimo Corporation (Arimo Ranch). We filled to do so last December, but for a variety of reasons, we are just now progressing towards a Water Supply Bank lease for 2023 only.

There is approximately 6.5 miles along Marsh Creek (not counting meanders) between the Arimo Ranch and Potter Creek points of diversion.

The attached table shows the various water right holders listed in order of priority along that stretch of Marsh Creek (as best we can tell).

I believe with the exception of Bret David Purkett, whom I don't know and whose contact info I don't have, all of you on this email or your family members are on this list. [Please forward this to Mr. Purkett if you have his contact info.]

In order to avoid impacting you all, we have told the Water Supply Bank that we're fine with having our use of this water subordinate to all of the water users along this stretch of Marsh Creek based upon priority date. This will be a condition of the Water Supply Bank lease.

So even though the Arimo Corp water rights Potter Creek would be leasing have an 1880 priority, they would not be senior to any later deliverable water right.

The water bank application would only be for 2023 and would allow us to salvage a little out of our 60 acres at Potter Creek for the last half of the season.

Because we are neighbors and we interact with most of you in irrigation companies and grazing associations, we wanted to reach out to you and let us know what we're trying to accomplish.

Please let me know if you have any questions or concerns.

Respectfully,

Chris Robinson
801-599-4397

Kienholz, Mackenzie

From: Chris Robinson <crobinson@theensigngroup.com>
Sent: Tuesday, July 11, 2023 9:05 AM
To: Kienholz, Mackenzie
Cc: Condon, Mary; Luke Marchant; Kristin Evans; Kristin Evans; Chris Redman; Jeff Young
Subject: Re: Potter Creek Ranch Water Supply Bank Rental Application - Injury Concerns
Attachments: Marsh Creek Water Rights Sorted Priority Date L Marchant 4 19 2023.pdf

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Mackenzie,

Thanks for speaking with me this morning.

As we discussed, we are willing to condition and make subordinate our Water Supply Bank arrangement to the water deliveries to existing water right holders between our current and proposed points of diversion.

I am re-attaching the list of water right holders that we have assembled that would fit into this category.

This should remove any concerns relating to impairing the existing water right holders.

We would like to reiterate our desire for a five year lease/rental with the Water Supply Bank.

This season is about half over and we need would really like to know if we can proceed.

I will cancel the zoom meeting that I was proposing for this afternoon at 4:00 pm because you and Mary are unavailable.

Thanks for your help.

Best,

Chris
801-599-4397

From: Mackenzie Kienholz <Mackenzie.Kienholz@idwr.idaho.gov>
Date: Monday, June 26, 2023 at 1:46 PM
To: Christopher Robinson <crobinson@theensigngroup.com>
Cc: Mary Condon <Mary.Condon@idwr.idaho.gov>, Luke Marchant <lmarchant@holdenlegal.com>
Subject: Potter Creek Ranch Water Supply Bank Rental Application - Injury Concerns

Good morning, Chris,

Thank you for submitting additional information as we try to navigate a way forward for the Potter Creek Ranch Water Supply Bank rental application. After discussions with the watermaster and other IDWR staff members, I would like to explain where we are with the Potter Creek Ranch rental application and what concerns still need to be addressed.

Injury can occur when moving upstream, so the concern is not just related to priority dates. We have been informed that there are gains to Marsh Creek from tributary streams for a portion of the reach of Marsh Creek between your proposed lease POD and proposed rental POD. Specifically, it appears that between Lynn Bastian and the POD for 29-4409, Marsh Creek benefits from these gains and as such the current POD for 29-4409 may in part rely on these gains as well. This creates injury concerns for the users between the proposed upstream *rental* POD and where the gains occur. Historically, when 29-4409 has been diverted at its current location, it has come from a mix of water available at the proposed rental POD and gains that join Marsh Creek downstream. The rental proposes to divert only water that is available before the gains, which means there will be less available for users between the rental POD and the gaining reach.

Moving forward, we need to receive an operation plan or other documentation from Potter Creek Ranch discussing how these injury concerns will be addressed. Four users were specifically identified by the watermaster as being prone to injury: Bret Purkett, Egan Farms LLC, Meadowbrook Ranch, and Lynn Bastian. Once solution may be to discuss the rental with them and come up with an agreed upon plan for the rental that satisfies any concerns these users may have. If an agreement can be reached with those who would potentially be injured, we may be able to move forward. If Potter Creek Ranch comes up with another plan or proposal that does not involve discussing the rental with these users, we may still notify users on that reach of the rental proposal. Besides injury, one of the other criteria we are obligated to consider in our reviews is local public interest. We may also limit the rental to one year for now unless the users agree to a longer term.

Please let me know if you are able to come to an agreement with the users between the rental and lease PODs, or if you have a different operation plan that mitigates for these injury concerns.

Thank you,

Mackenzie Kienholz
Water Supply Bank Specialist

IDAHO DEPARTMENT OF WATER RESOURCES

Planning & Projects
Mackenzie.kienholz@idwr.idaho.gov
Phone: (208) 287-4822

Kienholz, Mackenzie

From: Chris Robinson <crobinson@theensigngroup.com>
Sent: Monday, July 10, 2023 6:31 PM
To: Kienholz, Mackenzie; Kristin Evans; Kristin Evans
Cc: Condon, Mary; Luke Marchant
Subject: Re: Potter Creek Ranch Water Supply Bank Rental Application - Injury Concerns

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Mackenzie, Mary, Kristin, and Luke,

Could we have a zoom meeting tomorrow at 4:00 pm tomorrow to go over this?

Best,

Chris
801-599-4397

From: Mackenzie Kienholz <Mackenzie.Kienholz@idwr.idaho.gov>
Date: Monday, June 26, 2023 at 1:46 PM
To: Christopher Robinson <crobinson@theensigngroup.com>
Cc: Mary Condon <Mary.Condon@idwr.idaho.gov>, Luke Marchant <lmarchant@holdenlegal.com>
Subject: Potter Creek Ranch Water Supply Bank Rental Application - Injury Concerns

Good morning, Chris,

Thank you for submitting additional information as we try to navigate a way forward for the Potter Creek Ranch Water Supply Bank rental application. After discussions with the watermaster and other IDWR staff members, I would like to explain where we are with the Potter Creek Ranch rental application and what concerns still need to be addressed. Injury can occur when moving upstream, so the concern is not just related to priority dates. We have been informed that there are gains to Marsh Creek from tributary streams for a portion of the reach of Marsh Creek between your proposed lease POD and proposed rental POD. Specifically, it appears that between Lynn Bastian and the POD for 29-4409, Marsh Creek benefits from these gains and as such the current POD for 29-4409 may in part rely on these gains as well. This creates injury concerns for the users between the proposed upstream *rental* POD and where the gains occur. Historically, when 29-4409 has been diverted at its current location, it has come from a mix of water available at the proposed rental POD and gains that join Marsh Creek downstream. The rental proposes to divert only water that is available before the gains, which means there will be less available for users between the rental POD and the gaining reach.

Moving forward, we need to receive an operation plan or other documentation from Potter Creek Ranch discussing how these injury concerns will be addressed. Four users were specifically identified by the watermaster as being prone to injury: Bret Purkett, Egan Farms LLC, Meadowbrook Ranch, and Lynn Bastian. Once solution may be to discuss the rental with them and come up with an agreed upon plan for the rental that satisfies any concerns these users may have. If an

agreement can be reached with those who would potentially be injured, we may be able to move forward. If Potter Creek Ranch comes up with another plan or proposal that does not involve discussing the rental with these users, we may still notify users on that reach of the rental proposal. Besides injury, one of the other criteria we are obligated to consider in our reviews is local public interest. We may also limit the rental to one year for now unless the users agree to a longer term.

Please let me know if you are able to come to an agreement with the users between the rental and lease PODs, or if you have a different operation plan that mitigates for these injury concerns.

Thank you,

Mackenzie Kienholz
Water Supply Bank Specialist

IDAHO DEPARTMENT OF WATER RESOURCES

Planning & Projects
Mackenzie.kienholz@idwr.idaho.gov
Phone: (208) 287-4822

Kienholz, Mackenzie

From: Condon, Mary
Sent: Friday, June 16, 2023 10:15 AM
To: Kienholz, Mackenzie
Subject: RE: Potter Creek Ranch Water Supply Bank Rental

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Essentially, if the four users (or any portion thereof) have senior to 1909 water rights, then they should still be in priority through most of the season. Through the rental (or temp change in effect last year): if the four are in priority but can't get their water because the rental is taking it, then they are being injured by the move and it's a valid call for injury. If they are in priority but can't get the water because there just isn't enough in the creek regardless of upstream diversions, then it's a futile call.

Arimo/Potter Creek provided a lot of information in response to possibly returning the application, but by Kristins response, they didn't mitigate for possible injury to middle reach. I don't think it's unreasonable for Arimo/Potter to talk to the middle folks about their plans and get some way to move forward that is less likely to injure people. Maybe they need to install a stream gauge above the first person in middle reach and can only divert when stream flows are above the additive of the four plus the rental, before they can divert at the rental.

I've been taking a look at the 29H 2022 annual report, where some users are renting offset water from the Tribe. DownloadDoc (idaho.gov) Take a look at some of the offset rentals and where they are in the reach, and also the rights requested for the lease rental and when they were shut-off, and the four properties Kristin mentioned below, to see about their diversions/curtailed or through season. The list is by source then priority, I think.

It may be helpful to map it with some points to get a good picture. Without stream gauge measurements in the area, it's hard to condition the rental to streamflow's at the rental location to avoid injury.

Mary

From: Kienholz, Mackenzie <Mackenzie.Kienholz@idwr.idaho.gov>
Sent: Friday, June 16, 2023 8:51 AM
To: Condon, Mary <Mary.Condon@idwr.idaho.gov>
Subject: FW: Potter Creek Ranch Water Supply Bank Rental

Any thoughts on how we should move forward with Potter Creek Ranch?

From: Kristin Evans <watermaster29h@gmail.com>
Sent: Wednesday, June 14, 2023 10:57 AM
To: Kienholz, Mackenzie <Mackenzie.Kienholz@idwr.idaho.gov>
Subject: Re: Potter Creek Ranch Water Supply Bank Rental

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Mackenzie,

The concern I have is that water downstream does not mean there is water upstream. The stream gains below the water users I am worried about being injured. The stream seems to gain reach below Lynn Bastian's. Bret Purkett, Eagen Farms LLC, Meadow Brook Ranch, and Lynn Bastian are the water users in the middle that I am worried about being injured. If Arimo Ranch wants to get permission from these water users then I would be okay with that. Let me know if this helps out at all. Also, please let me know if there is anything else I can do to help out with this rental application. I appreciate you keeping me up to date with this process.

Thank you,
Kristin Evans
Watermaster 29H
208-540-1781
watermaster29h@gmail.com

On Tue, Jun 13, 2023 at 10:44 AM Kienholz, Mackenzie <Mackenzie.Kienholz@idwr.idaho.gov> wrote:

Good morning Kristin,

We are still trying to reach a resolution for the Potter Creek Ranch WSB rental application. The applicants have now been asking about using right 29-4409 due to enlargement concerns with the original rights proposed. They have not filed a new application yet, but nonetheless, do you think there would be a way to condition this rental to reach an approval without injuring other users on Marsh Creek? I have copied a condition below that we use when moving from a tributary to a main stem for example. Would something like this potentially resolve injury concerns?

> G23 Diversion of water under this right is limited to those times when water is available for diversion under the priority of this right at the original point of diversion from [insert source] in the T___, R___, S__, ____.

Thank you for your help with this,

Mackenzie Kienholz

Water Supply Bank Specialist

IDAHO DEPARTMENT OF WATER RESOURCES

Planning & Projects

Mackenzie.kienholz@idwr.idaho.gov

Phone: (208) 287-4822

From: Kristin Evans <watermaster29h@gmail.com>
Sent: Monday, May 1, 2023 12:09 PM
To: Kienholz, Mackenzie <Mackenzie.Kienholz@idwr.idaho.gov>
Subject: Re: Potter Creek Ranch Water Supply Bank Rental

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Mackenzie,

Sounds good and thank you! Let me know if you need anything else.

Thank you,

Kristin Evans

Watermaster 29H

208-540-1781

On Mon, May 1, 2023, 11:52 AM Kienholz, Mackenzie <Mackenzie.Kienholz@idwr.idaho.gov> wrote:

Hi Kristin,

Thank you so much for your phone call. I appreciate you looking at this again when you are so busy, I am just making sure to cover our bases with this application. In summary, nothing has changed with the application since your original

email noting your concerns with injury, I just wanted to confirm your comments after the applicant asked us to reconsider not allowing the lease/rental as proposed. I will make sure to note that your concerns have not changed, and that there are concerns that water users between the lease and rental will be injured.

Thanks again,

Mackenzie

From: Kienholz, Mackenzie
Sent: Monday, May 1, 2023 8:27 AM
To: watermaster29h@gmail.com
Subject: Potter Creek Ranch Water Supply Bank Rental

Good morning Kristin,

I have attached correspondence between yourself and Water Resource Agent Skyler Cheever regarding a Water Supply Bank rental application for Potter Creek Ranch. Skyler had recommended we return the application due to injury concerns, but the applicant has responded with information asking us to reconsider. I have attached a copy of the message from the applicant as well as the documents he sent us. Would you be willing to look at this again and to possibly elaborate on any injury concerns? One possible way of moving forward with the application would be to apply a condition only authorizing the rental when the water is available at the original point of diversion. We are going to meet to discuss this this afternoon, but please do not feel rushed to respond by then.

Thank you,

Mackenzie Kienholz

Water Supply Bank Specialist

Planning & Projects

Mackenzie.kienholz@idwr.idaho.gov

Phone: (208) 287-4822

Kienholz, Mackenzie

From: Cefalo, James
Sent: Tuesday, May 9, 2023 11:36 AM
To: Kienholz, Mackenzie
Cc: Parker, Cody
Subject: RE: Water Supply Bank Applications - Arimo Corp & Potter Creek Ranch

Follow Up Flag: Follow up
Flag Status: Flagged

Mackenzie,

I spoke with Chris Robinson about his WSB applications yesterday. He said the Water Supply Bank has concerns about impacts to senior water rights on Marsh Creek. In my discussions with water users over the years and my personal observations of Marsh Creek, I have never heard of or seen Marsh Creek entirely diverted. I do not visit Marsh Creek every day throughout the summer, however, and have not spent much time near the proposed point of diversion. I would defer to the watermaster on questions of available flow. Perhaps the rental could be conditioned to make the diversion at the proposed POD subordinate to all Marsh Creek rights (that are not curtailed due to a call from the Snake River).

As I read through the lease applications, I have one other concern. The lease applications state that the existing place of use will continue to be irrigated with water from Portneuf Irrigating Company (PIC), if there is an adequate supply of water for the company. The existing place of use was included in the calculation of irrigated acres for PIC in the SRBA. It is highly likely that there are PIC shares appurtenant to the existing place of use. PIC has senior rights on the Portneuf River and, after piping the canal a while ago, has a great water supply. A recent decision from the Idaho Supreme Court confirms that unstacking two full supply water rights to irrigate double the acres is enlargement. If the WSB lease/rental package is approved, the existing place of use cannot be irrigated.

James

IDAHO DEPARTMENT OF WATER RESOURCES
James Cefalo | Regional Manager
900 N Skyline Drive, Idaho Falls, ID 83402
(208) 525-7161 | www.idwr.idaho.gov

From: Kienholz, Mackenzie <Mackenzie.Kienholz@idwr.idaho.gov>
Sent: Tuesday, May 9, 2023 9:29 AM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Cc: Parker, Cody <Cody.Parker@idwr.idaho.gov>
Subject: FW: Water Supply Bank Applications - Arimo Corp & Potter Creek Ranch

Good morning, James,

We received a Water Supply Bank package for Arimo Corp (lease) and Potter Creek Ranch (rental). Kristin Evans for Water District 29H and staff at the State Office have concerns with injury and local public interest. The rental application was to be returned to the applicant, unprocessed, however we have been asked to reconsider. Chris Robinson (managing member of both Arimo Corp and Potter Creek Ranch) specifically requested your input on the matter. If you

would be willing, I would appreciate any feedback from you in favor or opposition of this rental application. The applicant has stated they will protest if the decision is made to deny the rental, just so you are aware.

Thank you,

Mackenzie Kienholz
Water Supply Bank Specialist

IDAHO DEPARTMENT OF WATER RESOURCES

Planning & Projects
Mackenzie.kienholz@idwr.idaho.gov
Phone: (208) 287-4822

From: Kienholz, Mackenzie
Sent: Friday, April 28, 2023 10:45 AM
To: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Parker, Cody <Cody.Parker@idwr.idaho.gov>
Subject: FW: Water Supply Bank Applications - Arimo Corp & Potter Creek Ranch

From: Chris Robinson <crobinson@theensigngroup.com>
Sent: Thursday, April 20, 2023 7:32 PM
To: Kienholz, Mackenzie <Mackenzie.Kienholz@idwr.idaho.gov>; Cheever, Skyler <Skyler.Cheever@idwr.idaho.gov>
Cc: Luke Marchant <lmarchant@holdenlegal.com>; Chris Redman <credman@theensigngroup.com>; Jeff Young <jyoung@theensigngroup.com>
Subject: Re: Water Supply Bank Applications - Arimo Corp & Potter Creek Ranch

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.

Mackenzie and Skyler,

I hope you're both doing well.

I am an officer and owner of both Arimo Corporation and Potter Creek Ranch, L.C., which entities filed the attached lease and rental applications (using our legal counsel Luke Marchant).

Mackenzie and I discuss these applications while I was in Boise in January attending IWUA meetings.

An email was sent to Luke back in January with a defective email address so we are late to reply to IDWR personnel on this matter. Please forgive.

My understanding is that the Department doesn't want to process these applications because of the potential impact on other water right holders along Marsh Creek between our two ranches.

Please refer to the attached table showing the third party water rights, organized according to priority date and located between the current and proposed points of diversion.

There are 21 water rights on this list, of which only three have a priority date earlier than October 1900, after which date IDWR has curtailed water rights in District 29H the past two years and will likely be the curtailment date in future dry years as District 29 and its sub-districts are managed in priority with District 01 water rights.

The 10 youngest (most junior) water rights on the list have the same or later priority dates to Potter Creek Ranch's WR 29-2295F which has a priority date of November 27, 1950, and which serves the same lands upon which Potter Creek wishes to rent the Arimo Corp water rights.

In other words, for seven decades, Potter Creek and its predecessors have been withdrawing water at the requested point of diversion in the rental application.

Potter Creek seeks this rental application so that it can continue to irrigate its lands, even in years when there is a curtailment.

We had temporary approval to do so last year (see attached temporary approval) with no ill effects.

So we see the interference with other water right holders to be minimal and respectfully request that you process our applications.

We are also available to have a zoom meeting to discuss this.

Please let us know.

Best,

Chris
801-599-4397

From: Mackenzie Kienholz <Mackenzie.Kienholz@idwr.idaho.gov>
Date: Thursday, April 20, 2023 at 8:52 AM
To: Christopher Robinson <crobinson@theensigngroup.com>, Luke Marchant <lmarchant@holdenlegal.com>
Subject: RE: Water Supply Bank Applications - Arimo Corp & Potter Creek Ranch

Good morning, Chris,

I am not available for a zoom call this morning, but do you have a summary of some questions? I will do my best to answer anything over email that I can. Also, Skyler Cheever was the agent who reviewed the application, so some of the questions he may have to answer. His email is Skyler.Cheever@idwr.idaho.gov if you would like to reach out to him directly.

Thank you,
Mackenzie

From: Chris Robinson <crobinson@theensigngroup.com>
Sent: Wednesday, April 19, 2023 6:20 PM
To: Luke Marchant <lmarchant@holdenlegal.com>; Kienholz, Mackenzie <Mackenzie.Kienholz@idwr.idaho.gov>
Subject: Re: Water Supply Bank Applications - Arimo Corp & Potter Creek Ranch

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Mackenzie,

I hope you're doing well.

I enjoyed meeting you in January while I was in Boise at the IWUA conference.

Luke sent me the email below which somehow he didn't receive due to an incorrect email address.

Luke and I would like to get on a zoom meeting with you to go over this water bank application.

Would you have any time tomorrow morning at either 10:00 am or 11:30 am for such a meeting?

Please let me know.

Best,

Chris
801-599-4397

From: Kienholz, Mackenzie <Mackenzie.Kienholz@idwr.idaho.gov>
Sent: Wednesday, April 12, 2023 12:16 PM
To: Luke Marchant <lmarchant@holdenlegal.com>
Subject: Water Supply Bank Applications - Arimo Corp & Potter Creek Ranch

Hello Luke,

The attached pdf is a copy of an email sent by water resource agent Skyler Cheever on 1/23/2023 regarding the Water Supply Bank lease/rental application package submitted for Arimo Corp and Potter Creek Ranch. The rights proposed for lease, 29-4411 and 29-4424, will not be able to be used to satisfy Potter Creek Ranch's rental application. As Skyler mentioned, Lease Contract #1663 (water right 29-11911 owned by Randy Burtagnole) is currently pending signature, but upon its execution will have 25.0 acres available. I believe Potter Creek had originally looked at renting from Mr. Burtagnole.

Please let me know **within 14 days** if Arimo Corp would still like to move forward with leasing rights 29-4411 and 29-4424 even if they may not be rented. Also, please let me know how Potter Creek Ranch would like to move forward.

Thank you,

Mackenzie Kienholz
Water Supply Bank Specialist

IDAHO DEPARTMENT OF WATER RESOURCES

Planning & Projects
Mackenzie.kienholz@idwr.idaho.gov

Phone: (208) 287-4822

Priority Date	Owner	Water Right	Diversion Rate (cfs unless otherwise noted)
6/1/1885	HENDERSON RANCHES INC	29-13688	2.13
1/1/1894	MEADOWBROOK RANCH	29-4463A	1.87
1/1/1894	EGAN FARMS LLC	29-4463B	1.6
11/6/1901	MARSHA LISH	29-14034	0.04
11/6/1901	MARSH CENTER FARMS INC	29-14035	1.42
4/1/1910	RANDY BERTAGNOLE	29-11911	0.5
4/1/1920	HENDERSON RANCHES INC	29-13689	1.04
6/1/1926	CHRISTINE BASTIAN	29-4302	6.26
4/1/1942	T CRAIG SMITH	29-4189	0.62
5/10/1942	BRET DAVID PURKETT	29-2560B	4.8 AFA
6/1/1942	HENDERSON RANCHES INC	29-13367	0.26
11/27/1950	EGAN FARMS LLC	29-2295D	1
11/27/1950	FUHRIMAN RANCH INC	29-2295E	0.6
6/1/1951	HENDERSON RANCHES INC	29-13480	0.7
8/30/1954	FUHRIMAN RANCH INC	29-12902	0.74
4/1/1959	BRET DAVID PURKETT	29-4462	1.06
6/1/1982	EGAN FARMS LLC	29-11493	0.13
6/13/1983	FUHRIMAN RANCH INC	29-7730	0.76
4/1/1987	FUHRIMAN RANCH INC	29-4381	0.1
1/16/1990	MERLIN S BASTIAN	29-7889A	0.66
1/16/1990	LYNN S BASTIAN	29-7889B	0.08

Cheever, Skyler

From: Kristin Evans <watermaster29h@gmail.com>
Sent: Wednesday, January 25, 2023 4:29 PM
To: Cheever, Skyler
Subject: Re: Water Supply Bank Rental Bank Rental 2519

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Skyler,

After researching water rights 29-4411, 29-4424, and 29-2295F, I do believe the rental point of diversion being roughly 8.5 miles upstream of the lease point of diversion would cause immediate injury to water users in-between. Marsh Creek runs low during the irrigation season upstream from the lease POD to the rental POD.
Please let me know if you have any other questions.

Thank you,
Kristin Evans
Watermaster 29H
208-540-1781
watermaster29h@gmail.com

On Mon, Jan 23, 2023 at 12:06 PM Kristin Evans <watermaster29h@gmail.com> wrote:
Skyler,

I will look into this and get back to you by the end of the week.

Thank you,
Kristin Evans

On Fri, Jan 20, 2023, 3:14 PM Cheever, Skyler <Skyler.Cheever@idwr.idaho.gov> wrote:

Hello Ms. Evans,

I have begun my preliminary review of water a water supply bank lease and rental package within your water district, 29H. However, I discovered the rental has injury concerns that need to be addressed before I continue processing. The lease proposes to place water rights 29-4411 and 29-4424 into the water supply bank. These rights are authorized for use of water from an Unnamed Creek, tributary to Marsh Creek. The rental proposes to use water from these rights when the water right appurtenant to the place of use 29-2295F is curtailed by priority. The rental point of diversion authorizes use of water from Marsh Creek, tributary to the Portneuf River. The possible injury concern I have are the rental point of diversion is roughly 8.5 miles upstream of the lease POD. Please let me know if there would be any immediate injury concerns with this proposal to users in-between the lease and rental POD. If you have any questions or need clarification, please let me know.

Best,

Skyler

Skyler Cheever

Water Resource Agent, State Office

Email: skyler.cheever@idwr.idaho.gov

Phone: 208-287-4913