

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 785

This is to certify that:

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
ATTN CYNTHIA BRIDGE CLARK
PO BOX 83720
BOISE, ID 83720-0098

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)
71-59	12/31/1912	SALMON RIVER, Tributary to SNAKE RIVER	25.6	4,431.3	1,477.1	0.017	3.0
71-61	8/30/1933	SALMON RIVER, Tributary to SNAKE RIVER	40.0	4,431.3	1,477.1	0.027	3.0
Combined Limit Rental Totals			65.6	3,642.3	1,214.1	0.054	3.0

Term of Rental: This rental agreement shall take effect when all parties have signed it and shall continue in effect, in perpetuity, and subject to review every one-hundred years, with the first review scheduled prior to December 31, 2122. 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 2022, whichever occurs last.

One-Time Rental Fee:

\$7,284.60

The rental fee is a one-time administrative fee of \$7,284.60. Note that the renter is obligated to pay only the administrative fees associated with the water right(s): 71-59, 71-61.

Total Water Use Authorized Under Rental Agreement

Beneficial Use	Diversion Rate (CFS)	Diversion Volume (AF)
MINIMUM STREAM FLOW	13.3	2,430
Total	13.3	2,430

*** The authorized water usage reflects a diversion volume limited to the historical consumptive use associated with 1,214.1 acres of irrigation at 2.0 afa/acre. 13.3 cfs is the diversion rate, applied continuously that would produce the consumptive volume over the course of the 92-day period of use.**

Detailed water right conditions are attached.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 785

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:

 1/19/2024
Signature of Renter Date
BRIAN PATTON EXECUTIVE OFFICER
Printed Name ID Water Resource Board
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.

 1-19-24
By Date
BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Cody 1-19-24
Rental approved by IDWR Date

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT No. 785

WATER USE DETAILS

LOCATION OF POINT(S) OF DIVERSION

Beginning Point	SALMON RIVER	SESW	Sec. 10, Twp 07N, Rge 14E,	CUSTER County
Ending Point	SALMON RIVER	L5(NESW)	Sec. 22, Twp 11N, Rge 18E,	CUSTER County

<u>BENEFICIAL USE</u>	<u>FROM</u>	<u>TO</u>	<u>DIVERSION RATE</u>
MINIMUM STREAM FLOW	07/01	09/30	13.3 CFS

RENTERS PLACE OF USE: **MINIMUM STREAMFLOW**

The place of use for this rental is the reach above the point of quantification for water right 72-16668. The quantification point is located at the point of diversion described above in Sec. 22, Twp 11N, Rge 18E.

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.
9. The duration of this rental shall be indefinite. The rental agreement may be reviewed every 100 years.
10. There are no diversions associated with this rental. The quantification point for this instream flow rental is at the above ending point.
11. Use of water under this rental shall be non-consumptive.
12. Use of water under this rental agreement is limited to those times when water is available and in priority at the points of diversion listed on water rights 71-59 and 71-61.
13. Use of water under this rental agreement shall be junior and subordinate to all uses of water with priority dates senior to April 1, 2005, diverting from sources tributary to the reach of the Salmon River between the beginning and ending points described above.
14. Use of water under this rental agreement shall be subordinated to all DCMI uses established after April 1, 2005.

STATE OF IDAHO
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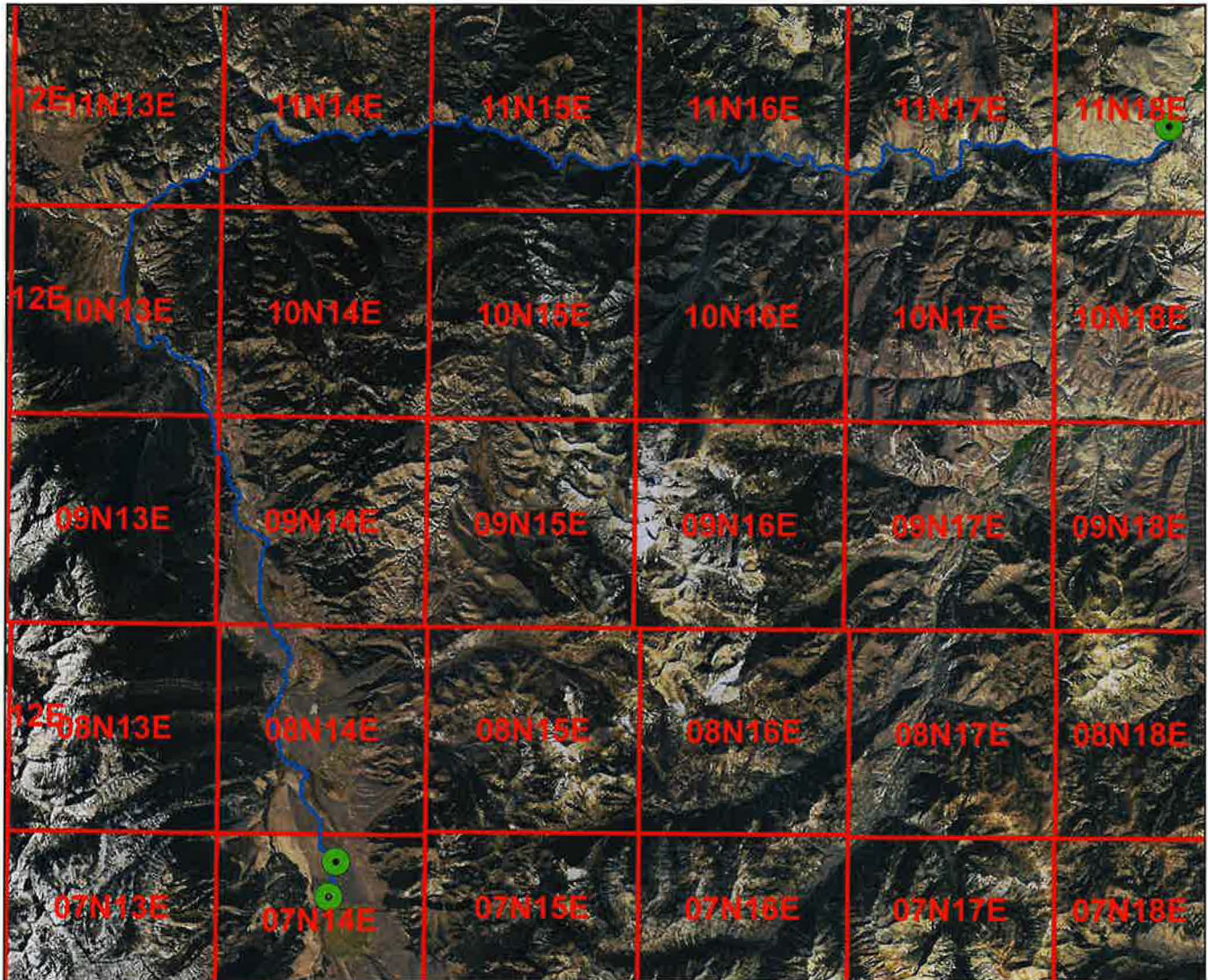
WATER SUPPLY BANK RENTAL AGREEMENT No. 785

15. This rental agreement will be administered consistent with Wild and Scenic Flows from the North Fork Salmon to Long Tom Bar. This water right is subordinated to the extent necessary to permit full utilization of the future water development preserved by the subordinations contained within the description of the Wild and Scenic River water rights for the Salmon River, water right numbers 75-13316 and 77-11941.
16. 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. 170 (71 & 72D).
17. The extent of the beneficial use of water authorized under this rental is limited to the amount necessary to satisfy and maintain the Minimum Stream Flow Right No. 72-16668 on Salmon River. Upon finding and order of the Director, the renter may be required to install and maintain gaging stations on the Salmon River at or near the original point(s) of diversion of the leased right(s) to ensure measurement and maintenance of the relevant minimum stream flows.

Idaho Water Resource Board
Attachment to Water Supply Bank Rental Agreement No. 785

Indefinite

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



Legend

-  Water Supply Bank Rental POD
-  Water Supply Bank Rental POU
-  Township/Range



0 5 10
Miles

STATE OF IDAHO
WATER RESOURCE BOARDAPPLICATION TO RENT WATER
FROM THE BOARD'S WATER SUPPLY BANKRECEIVED
SEP 07 2021
DEPARTMENT OF
WATER RESOURCESApplicant Name: Idaho Water Resource Board.

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)		
	Yes	
	☒	Completed <i>Application to Rent Water from the Board's Water Supply Bank</i>
	☒	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)		
71-64B	71-68	71-61
71-66	71-59	

STATE OF IDAHO
WATER RESOURCE BOARD

Application to Rent Water (Continued)

1. CONTACT INFORMATION

A. Applicant Idaho Water Resource Board

Mailing Address 322 E Front Street, PO Box 83720 Boise Idaho 83720
Street City State Zip Code
Email Address _____ Phone Number 208-287-4800

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 _____ Professional Title _____
Organization _____ Relationship to Applicant _____
Mailing Address _____
Email Address _____ Phone Number _____

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 rental of this water is intended to supply flow to the existing minimum stream flow water rights on Alturas
Lake Creek No. 71-10890 and Salmon River No. 72-16668 to increase natural flows, reduce stream
temperatures, and improve habitat for ESA-listed Chinook salmon.

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)
20.98 CFS	3738.8 AF	CFS	AF	1869.4 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?	
7/01/2021	8/01/2021	PERMANENT	☒ 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.

***Pursuant to IDAPA 37.02.03.30.06 the IWRB wishes to rent the water in perpetuity. See IWRB funding resolutions dated (5/21/2021).**

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):

No irrigation of POU. Purpose of use is instream flow with delivery to the Minimum Stream Flow water right
71-10890 on Alturas Lake Creek and 72-16668 on the Salmon River.

- 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
headgates	Salmon River	
headgates	Alturas Lake Creek	

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 _____ (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: instream flow from: 7/01 (mm/dd) to: 9/30 (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.

POU is instream

- 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:

Public research indicates there are no other water rights rented to meet the MSF 71-10890 on Alturas Lake
Creek.

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)
71-64B	irrigation	6.25	2391.9	797.3		6.25	2391.9	797.3
71-66	irrigation	10.75	2391.9	797.3		10.75	2391.9	797.3
71-68	irrigation	12.32	2391.9	797.3		12.32	2391.9	797.3
71-59	irrigation	25.6	4431.3	1477.1		25.6	4431.3	1477.1
71-61	irrigation	40	4431.3	1477.1		40	4431.3	1477.1
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	94.92	5608.2	1869.4
						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**:

The rental proposes to rent the full standard head gate requirement of 3.5AF/Acre at the POD and deliver the standard consumptive volume of 2.0 AF/Acre to the Alturas Lake Creek and Salmon River MSFs.

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:

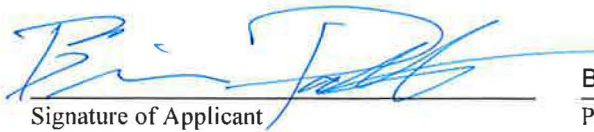
- C. Was this rental application submitted in response to a Notice of Violation (NOV) or a pending NOV? Yes ☐ No ☒
If yes, describe the date and location of the NOV.

- D. Additional Information

These water rights are currently leased into the water supply bank under contract no. 338. The USFS has submitted an amended lease contract to lease these rights indefinitely.

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.


Signature of Applicant

Brian Patton, Executive Officer, IWRB
Printed Name of Applicant

9/7/21
Date

Signature of Representative

Printed Name of Representative

Date

Mail to:

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

Water Modeling Requirement Information Sheet

Information on water modeling requirements for rental requests within special administrative areas

Important information on requesting rental water within special administrative areas: Refer to the information below to determine whether the modeling of potential impacts from your rental request is necessary. Use Section 4 of the rental application to identify selected water rights. **If you submit an application to rent water from within a special administrative area and water modeling is required, your rental request will be returned if water modeling is not provided.**

Water modeling may be required when an application to rent water involves one of two scenarios:

Scenario 1: The rental request proposes to divert water from a regulated water source and/or within a special administrative area AND the distance between the rental point(s) of diversion (POD) and the POD(s) for the leased water right(s) is greater than the administratively established, acceptable distance.

Regulated water sources may areas include:

- A. Ground water resources within the modeled area of the Eastern Snake Plain Aquifer (ESPA) and tributary aquifers;
- B. Ground water within Ground Water Management Areas (GWMAs) or Critical Ground Water Areas (CGWAs);
- C. Water resources within other specified administrative areas, as established by the Idaho Water Resource Board (IWRB) or the Idaho Department of Water Resources.

The distance between any rental POD(s) and the POD(s) for a leased water right to be rented is important. On the ESPA, distance is measured in terms of model cells that cover an area of one square mile. Ground water modeling is not required if lease POD(s) and rental POD(s) are located within the same model cell or within adjacent model cells. If the lease and rental PODs are separated by more than one model cell groundwater modeling must be completed using the IDWR ESPA Transfer Tool and modeling results must be submitted with the rental application. ESPA modeling tools can be accessed and freely downloaded from IDWR's website by visiting: www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm.

Ground water modeling may be required within GWMAs, CGWAs or other regulated administrative areas. Applicants who desire to rent water within an established GWMA, CGWA or other regulated administrative area should consult IDWR's website before submitting their application to review the current status of administrative orders related to regulated administrative areas. Consult www.idwr.idaho.gov/WaterInformation/GroundWaterManagement/designated_areas.htm for information on GWMAs or CGWAs, visit <https://idwr.maps.arcgis.com/home/> to use mapping tools to find other regulated areas.

Applicants interested in renting water within a GWMA, CGWA or other regulated administrative areas should request water rights that have been leased into the Bank from within the same administrative area. Generally, the Bank will not permit a rental of water within a regulated administrative area if the leased water rights are not located within that same administrative area.

Scenario 2: A rental request proposes to divert water from a different but hydraulically connected water source.

Modeling situations may include:

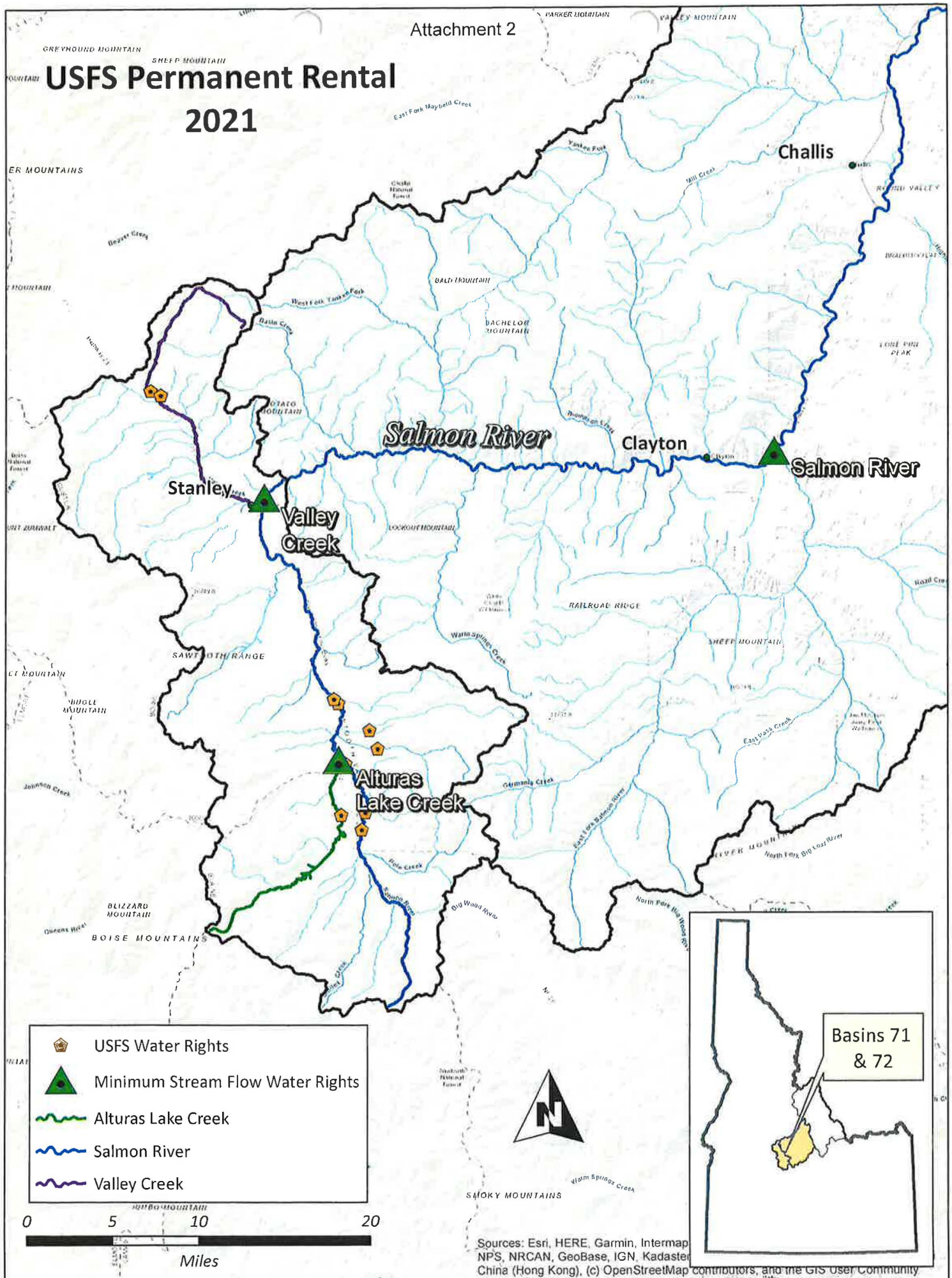
- A. Rental requests that propose to divert surface water rights via ground water POD(s) (wells); and
- B. Rental requests that propose to divert ground water from one aquifer when the right being rented authorizes the diversion of ground water from a hydraulically connected, tributary aquifer.

Rental requests that propose to divert surface water rights from ground water points of diversion may be considered if ground water modeling establishes that the surface and ground water resources are directly and immediately hydraulically connected. An acceptable hydraulic connection occurs when at least 50 percent of the total depletions from a well are detectable from the original water source within a 24 hour period. The existing (leased) POD and proposed (rental) POD must be proximate such that diversion and use of water from the proposed POD would have substantially the same effect on the hydraulically-connected source as diversion and use of water from the original POD.

Requests to rent ground water across tributary aquifer sources may be considered if ground water modeling is provided to demonstrate that two aquifers are hydraulically connected and the anticipated impacts of diverting ground water from one source through the other is modeled accordingly.

For more information about rental application requirements, contact IDWR at (208) 287-4800.

USFS Permanent Rental 2021



Attachment 3A

Memorandum

To: Water Supply Bank

From: Amy Cassel

Date: August 30, 2021

Re: Alturas Lake Creek Minimum Stream Flow WR No. 71-10890



The IWRB's Minimum Stream Flow (MSF) WR No. 71-10890 is located approximately 1.73 river miles downstream of IDWR 435857114504401 ALTURAS LAKE CREEK stream gage while it was maintained, 2006–2015.

IDWR 435857114504401 ALTURAS LAKE CREEK

<https://research.idwr.idaho.gov/apps/hydrologic/aquainfo/Home/Data#!/>

The table below represents a good-faith estimation of whether or not the Alturas Lake Creek Minimum Stream Flow (MSF) is currently being met during naturally flow-limited months (Table 1). Monthly mean discharges (ft^3/s) June through October at IDWR 435857114504401 are compared to the June through October minimum stream flows for WR No. 71-10890.

The discharges observed at the Alturas Lake Creek gage station represent *estimated* flow at Alturas Lake Creek MSF 71-10890. Observed discharge is compared to the minimum stream flows for WR No. MSF 71-10890 and represents the deficit or surplus flow in Alturas Lake Creek needed to meet the Alturas Lake Creek MSF. For example, in July 2006–2015 the MSF was met, plus an additional 37 cfs above the MSF. Whereas in June, August and September 2006–2015, the estimated flow in Alturas Lake Creek was, on average, 6–28 cfs short of meeting the Alturas Lake Creek MSF. Additionally, over the ten year period of record, on average the October MSF was met by only 1.85 cfs. Out of 49 cumulative months over 10 years, IWTP staff estimated monthly MSFs were not met 31 times. For example, 3 out of 10 July MSFs were not met in Alturas Lake Creek and September MSF was never met in Alturas Lake Creek over the ten year period of record.

The United States Forest Service owns water right nos. 71-64B, 71-66, and 71-66, source Alturas Lake Creek. They also own 71-59 and 71-61, source the Salmon River (see Attachment 3A under the Salmon River application package for details regarding the Salmon River MSF). These rights are available for rental and delivery to the minimum stream flows on Alturas Lake Creek and the Salmon River. Idaho Fish and Game's Region 7 (Salmon) Regional Supervisor has provided a statement attesting to the biological justification of the Alturas Lake Creek water right rental for late-season MSFs to benefit migrating adult Chinook salmon (Figure 1).

Month	Monthly Average Discharge 2006–2015	MSF 71-10890	Difference
June	284.27	313	-28.73
July	119.15	82	37.15
August	28.32	35	-6.68
September	18.63	26	-7.37
October	25.85	24	1.85

Table 1. Monthly average discharge June–October, 2006–2015 (10 years) in Alturas Lake Creek 1.73 mi upstream from confluence with Salmon River. This record of historic discharge is compared to the monthly minimum stream flow required by water right 71-10890.



IDAHO DEPARTMENT OF FISH AND GAME

SALMON REGION
99 Highway 93 North
Salmon, Idaho 83467

Brad Little / Governor
Ed Schriever / Director

Jeff Raybould, Chairman
Idaho Water Resource Board
332 E Front Street
Boise, ID 83720

June 30, 2021

**RE: PERMANENT RENTAL OF SAWTOOTH VALLEY WATER RIGHTS TO MEET
UPPER SALMON BASIN MINIMUM STREAM FLOWS**

Dear Chairman Raybould,

It is widely understood that Chinook and Sockeye salmon, steelhead, and bull trout habitat in the Upper Salmon River basin is limited by low flow conditions and high temperatures. Therefore, it is in the interest of the State of Idaho to augment streamflows and provide habitat in the Upper Salmon River Basin to encourage recovery of ESA-listed Chinook and sockeye salmon, steelhead, and bull trout.

The 2004 Snake River Water Rights ("Nez Perce") Agreement commits the state to providing incentives for improving fish habitat which includes improving or protecting flow conditions to augment stream flows. In the Sawtooth Valley, at the headwaters of the Salmon River; Alturas Lake Creek, Valley Creek, and the Upper Salmon River have been identified as high priority streams for flow restoration efforts to provide high quality habitat for anadromous Chinook and sockeye salmon, steelhead and resident bull trout. As provided for in the Nez Perce Agreement, the Idaho Water Resource Board (Board) established minimum streamflow Water Rights 71-10890 on Alturas Lake Creek, 71-10886 on Valley Creek, and 72-16668 on the Salmon River to be met through water right rentals or acquisitions under state law.

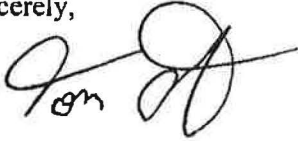
Since the mid-1990's the United States Forest Service (USFS) owns Water Right Nos: 71-41, 71-42B, 71-43B, 71-49B, 71-50, 71-59, 71-61, 71-64B, 71-66, 71-68, 71-2004D, 71-2053A, 71-7002, 71-10277, 71-10278, 71-10728, 71-10766, 71-10772 and 71-10871 (Water Rights) on Alturas Lake Creek, Valley Creek, the Salmon River, and several Salmon River tributaries, and has leased the referenced rights into the Idaho Water Supply Bank. The Board, pursuant to Section 42-1734, Idaho Code, has the authority to acquire, purchase, lease, or exchange land, rights, water rights, easements, franchises, and other property deemed necessary or proper for the construction, operation, and maintenance of water projects; and the USFS desires to protect the Water Rights in stream and has offered them to the Board for rental and permanent delivery to Board minimum stream flow Water Right Nos. 71-10890 (Alturas Lake Creek), 71-10886 (Valley Creek), and 72-16668 (Salmon River above East Fork Salmon River).

It is the opinion of the Idaho Department of Fish and Game that the permanent rental of these Water Rights is in the public interest, is consistent with the State Water Plan, intent of the Nez Perce Agreement, and aligns with the mission statement of Idaho Fish and Game to preserve,

Keeping Idaho's Wildlife Heritage

protect, and perpetuate all wildlife within the State of Idaho. As such the Department extends our support for the permanent rental of the Water Rights into the water supply bank and rented by the Board for 90 days (July 1 – October 1) to meet late-season minimum stream flows on Alturas Lake Creek, Valley Creek, and on the Salmon River above the East Fork Salmon River in order to facilitate upstream migration and spawning of Snake River Spring/Summer-run Chinook salmon.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom" followed by a stylized surname.

Tom Curet, IDFG Regional Supervisor – Salmon Region



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 Mathew Weaver

August 26, 2024

IDAHO WATER RESOURCE BOARD
C/O CYNTHIA BRIDGE CLARK
PO BOX 83720
BOISE ID 83720-0098

**RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO(S). 71-59, 71-61, 71-64B, 71-66, 71-68, 71-2004D, 71-2053A, 71-7002,
71-10277, 71-10278, 71-10772, 71-10871, AGREEMENTS 667, 786, 813, 814, 785, & 658**

Dear Renter:

The total rental fee amount of **\$11,918.00**, in connection with the enclosed copies of six fully executed Water Supply Bank Rental Agreements for the rental of 5,959 acre-feet annually for Minimum Streamflow Maintenance, has been received.

Name	WR No(s).	Volume Rented	Admin Fee Due	Owner Payment	Amount Received
Rental Agreement 667 - USFS SNRA (Champion Creek – Salmon River)	WR 71-10277 & 71-10278	27.9 AF	\$55.80	N/A	\$55.80
Rental Agreement 786 - USFS SNRA (4 th of July Creek – Salmon River)	WR 71-2004D & 71-10772	32.1 AF	\$64.20	N/A	\$64.20
Rental Agreement 813 - USFS SNRA (Unnamed Drain - Salmon River)	WR 71-2053A & 71-7002	90.3 AF	\$180.60	N/A	\$180.60
Rental Agreement 814 - USFS SNRA (Salmon River)	WR 71-10871	200.4 AF	\$400.80	N/A	\$400.80
Rental Agreement 785 - USFS SNRA (Busterback Ranch - Salmon River)	WR 71-59 & 71-61	3,642.3 AF	\$7,284.60	N/A	\$7,284.60
Rental Agreement 658 - USFS SNRA (Busterback Ranch - Alturas Lake Creek)	WR 71-64B, 71-66, 71-68	1,966 AF	\$3,932.00	N/A	\$3,932.00

Pursuant to the Water Supply Bank Rules and IWRB Resolution No. 16-2021, the rental fee will be retained by the Department to offset administrative costs as a one-time fee for the indefinite terms of these rental agreements.

Sincerely,

Water Supply Bank Program Coordinator

Enclosures: Executed Rental Agreements 667, 786, 813, 814, 785, & 658 (copies)

c: Sascha Marston – IDWR Fiscal
John Loffredo – IDWR Water Transactions Program Manager

Hersley, Jean

From: Hersley, Jean
Sent: Wednesday, October 12, 2022 1:32 PM
To: legalnotices@postregister.com
Subject: Legal Notice- WSB Rentals
Attachments: DRAFT - Legal Notice - Rental Application 2138 2139 2140 (002).docx

Enclosed you will find a legal notice which we wish to have published in the Post Register on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact me immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office, IDWR, PO Box 83720, Boise, ID, 83720-0098 on or before November 7, 2022. Please let me know if you have any questions.



*Jean Hersley
Technical Records Specialist II
Idaho Dept Water Resources
(208) 287-4942*

NOTICE OF PROPOSED RENTAL FROM WATER SUPPLY BANK

Notice is hereby given pursuant to [IDAPA Rule 37.02.03.030.02 \(Water Supply Bank Rule 30.02\)](#) that the Idaho Water Resource Board, PO BOX 83720, Boise, ID, 83702-0098, filed an application on September 7, 2021 (Water Supply Bank Rental Application No. 2138), to rent Water Right No(s). 71-64B, 71-66 and 71-68 from the Water Supply Bank for an indefinite period of time. The proposed rental in Blaine and Custer County would provide for the permanent dedication of 29.32 cfs from Alturas Lake Creek, for maintenance of minimum stream flow water right 71-10890 on Alturas Lake Creek, which is tributary to the Salmon River.

Notice is hereby given pursuant to [IDAPA Rule 37.02.03.030.02 \(Water Supply Bank Rule 30.02\)](#) that the Idaho Water Resource Board, PO BOX 83720, Boise, ID, 83702-0098, filed an application on September 7, 2021 (Water Supply Bank Rental Application No. 2139), to rent Water Right No(s). 71-59, 71-61, 71-2004D, 71-2053A, 71-7002, 71-10277, 71-10278, 71-10728, 71-10766, 71-10772 and 71-10871 from the Water Supply Bank for an indefinite period of time. The proposed rental in Custer County would provide for the permanent dedication of 0.3 cfs from Champion Creek, 0.9 cfs from Fourth of July Creek, 2.48 cfs from an Unnamed Drain and 73.32 cfs from the Salmon River, for maintenance of minimum stream flow water right 72-16668 on the Salmon River, which is tributary to the Snake River.

Notice is hereby given pursuant to [IDAPA Rule 37.02.03.030.02 \(Water Supply Bank Rule 30.02\)](#) that the Idaho Water Resource Board, PO BOX 83720, Boise, ID, 83702-0098, filed an application on September 7, 2021 (Water Supply Bank Rental Application No. 2140), to rent Water Right No(s). 71-41, 71-42B, 71-43B, 71-49B and 71-50 from the Water Supply Bank for an indefinite period of time. The proposed rental in Custer County would provide for the permanent dedication of 18.59 cfs from Valley Creek for maintenance of minimum stream flow water right 71-10886 on Valley Creek, which is tributary to the Salmon River.

Comments may be submitted based on the criteria of Section 42-1763, Idaho Code. Comments should be filed in writing to the Idaho Department of Water Resources, PO Box 83720, Boise, ID 83720-0098, or emailed to Bank@idwr.idaho.gov on or before November 7, 2022. For more information, visit www.idwr.idaho.gov/water-supply-bank.

Gary Spackman, Director

Published on 10/19 and 10/26

Hersley, Jean

From: Hersley, Jean
Sent: Wednesday, October 12, 2022 1:32 PM
To: info@challismessenger.com
Subject: Legal Notice for the Challis Messenger
Attachments: DRAFT - Legal Notice - Rental Applications custer.docx

Enclosed you will find a legal notice which we wish to have published in the Idaho Statesman, Times News, and the Lewiston Tribune, respectively, on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact me immediately. An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office, IDWR, PO Box 83720, Boise, ID, 83720-0098 on or before November 7, 2022. Please let me know if you have any questions.



*Jean Hersley
Technical Records Specialist II
Idaho Dept Water Resources
(208) 287-4942*

Hersley, Jean

From: Hersley, Jean
Sent: Wednesday, October 12, 2022 1:33 PM
To: BOI Legals; TWF Legals; LT Legals
Subject: Legal Notice - For Water Supply Bank Rental Applications
Attachments: DRAFT - Legal Notice - Rental Application 2138 2139 2140.docx

Enclosed you will find a legal notice which we wish to have published in the Idaho Statesman, Times News, and the Lewiston Tribune, respectively, on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact me immediately. An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office, IDWR, PO Box 83720, Boise, ID, 83720-0098 on or before November 7, 2022. Please let me know if you have any questions.

Sincerely,



*Jean Hersley
Technical Records Specialist II
Idaho Dept Water Resources
(208) 287-4942*

NOTICE OF PROPOSED RENTALS FROM WATER SUPPLY BANK

Notice is hereby given pursuant to IDAPA Rule 37.02.03.030.02 (Water Supply Bank Rule 30.02) that the Idaho Water Resource Board, PO BOX 83720, Boise, ID, 83702-0098, filed an application on September 7, 2021 (Water Supply Bank Rental Application No. 2138), to rent Water Right No(s). 71-64B, 71-66 and 71-68 from the Water Supply Bank for an indefinite period of time. The proposed rental in Blaine and Custer County would provide for the permanent dedication of 29.32 cfs from Alturas Lake Creek, for maintenance of minimum stream flow water right 71-10890 on Alturas Lake Creek, which is tributary to the Salmon River.

Notice is hereby given pursuant to IDAPA Rule 37.02.03.030.02 (Water Supply Bank Rule 30.02) that the Idaho Water Resource Board, PO BOX 83720, Boise, ID, 83702-0098, filed an application on September 7, 2021 (Water Supply Bank Rental Application No. 2139), to rent Water Right No(s). 71-59, 71-61, 71-2004D, 71-2053A, 71-7002, 71-10277, 71-10278, 71-10728, 71-10766, 71-10772 and 71-10871 from the Water Supply Bank for an indefinite period of time. The proposed rental in Custer County would provide for the permanent dedication of 0.3 cfs from Champion Creek, 0.9 cfs from Fourth of July Creek, 2.48 cfs from an Unnamed Drain and 73.32 cfs from the Salmon River, for maintenance of minimum stream flow water right 72-16668 on the Salmon River, which is tributary to the Snake River.

Notice is hereby given pursuant to IDAPA Rule 37.02.03.030.02 (Water Supply Bank Rule 30.02) that the Idaho Water Resource Board, PO BOX 83720, Boise, ID, 83702-0098, filed an application on September 7, 2021 (Water Supply Bank Rental Application No. 2140), to rent Water Right No(s). 71-41, 71-42B, 71-43B, 71-49B and 71-50 from the Water Supply Bank for an indefinite period of time. The proposed rental in Custer County would provide for the permanent dedication of 18.59 cfs from Valley Creek for maintenance of minimum stream flow water right 71-10886 on Valley Creek, which is tributary to the Salmon River.

Comments may be submitted based on the criteria of Section 42-1763, Idaho Code. Comments should be filed in writing to the Idaho Department of Water Resources, PO Box 83720, Boise, ID 83720-0098, or emailed to Bank@idwr.idaho.gov on or before November 7, 2022. For more information, visit www.idwr.idaho.gov/water-supply-bank.

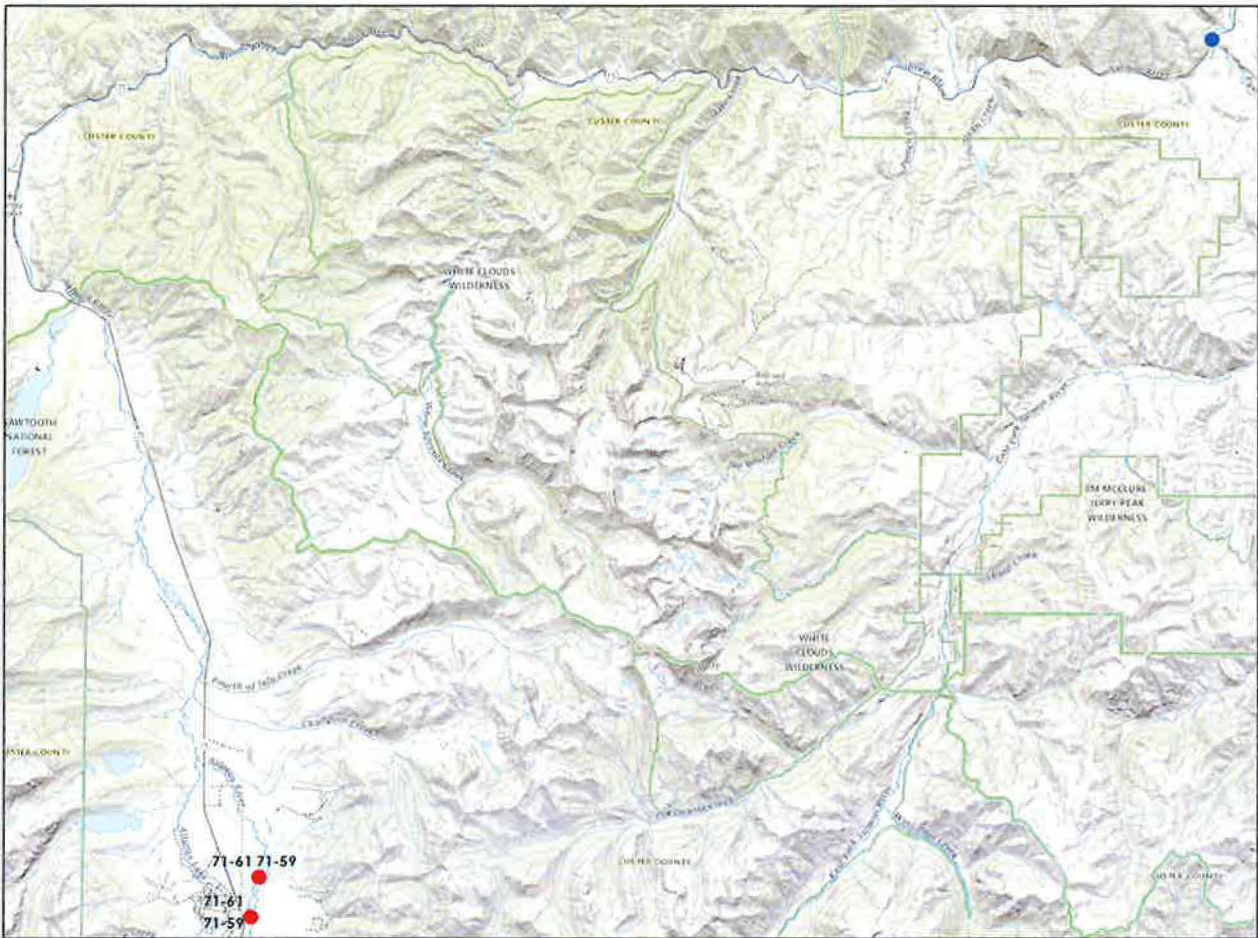
Gary Spackman, Director

Published on 10/20 and 10/27

MEMORANDUM

TO: water rights 71-59 and 71-61
FROM: Cody Parker
RE: Evaluation of WSB Rental Application 2139
DATE: December 22, 2023

Background



Historical irrigation PODs displayed in red. The rental POD is shown in blue.

The purpose of this rental agreement is to rent irrigation water rights 71-59 and 71-61 and devote them to minimum stream flow use quantified at a location roughly 55 miles downstream on the Salmon River. The source for the two water rights included on this agreement is the Salmon River, so no change in source is contemplated. The applicant proposes to condense the season of use from the standard irrigation season to a 92 day period from July 1 through September 30 annually.

Injury

Historical return flows benefitting downstream junior water users

The lease review memo for these two water rights explains that the historical diversions for irrigation have dewatered the Salmon River “for a distance downstream”, which is later clarified to be up to 2 miles downstream. The irrigation place of use associated with these two water rights runs adjacent to the Salmon river for almost three miles downstream of the historical diversions. Therefore, the two-mile dewatering of the Salmon River is not sufficient evidence that downstream users have not come to rely on return flows from the historical irrigation practice. Its possible that excess water from irrigation returns to the Salmon River at the northern end of the place of use roughly two to three miles downstream of the diversions.

Approving the rental agreement without any consideration of consumptive use would allow the renter to call for the full volume of water past junior users which have historically benefited from some amount of return flow. Mary Condon, the reviewer for this agreement, suggested limiting the total annual volume to the annual consumptive use associated with the historical irrigation practice. However, this could result in more of the annual consumptive use volume being appropriated by the renter in the late summer season when water is most scarce, which would take water from junior users during a part of the year when they could have potentially shared some of that volume. Put another way, we would be allowing the renter to use a higher volume of water during a period of water scarcity than the historical irrigation practice would have required during that same period, which could cause injury to junior water users.

To account for this potential for injury, I have chosen to define the rental quantities in terms of monthly consumptive use values associated with the historical irrigation practice during the period requested. I calculated consumptive use based on the most consumptive alfalfa dataset (less frequent cuttings, Galena NWS station). The consumptive use data does not predict any consumptive use associated with irrigation for the month of September. The rental will only authorize the use of water for MSF during July and August.

	May	June	July	August	September	October
Historical Consumption (afa)	0	235	412	29.6	0	0
Historical Consumption (cfs)	0	3.96	6.7	0.48	0	0

Consumptive use associated with the historical irrigation practice in acre-feet and cfs (assuming the most consumptive alfalfa crop). The time period requested is highlighted in yellow.

Compression of the season of use

The applicant proposes to condense the season of use from the full irrigation season to an annual period between July 1 and September 30. The review memo suggests that the full quantities of the irrigation water for water rights 71-59 and 71-61 have historically been diverted during an 80 – 100 day period each year. Therefore, there should be no real injury from

compressing the season of use since the compressed season mirrors the historical irrigation practice. However, as I discuss above there is no predicted consumption of water associated with the historical irrigation practice during the month of September, which means that any water diverted for irrigation during September should have been realized as return flow downstream for the benefit of junior water users. Therefore, while no injury occurs from compressing the season, no diversion rate is authorized for the month of September under the rental agreement.

[Tributaries downstream of the historical points of diversion](#)

The quantification point for the MSF use is located downstream of the historical points of diversion by roughly 55 miles. Junior users on sources tributary to the reach of the Salmon River between the historical PODs and the quantification point could not be curtailed to provide water to the historical PODs since water left undiverted on those tributaries would contribute to the Salmon River downstream of the historical PODs. Therefore, the rental can not call for water against those tributary users without reducing the amount of water historically available to those tributary water users, which is injury. To address this issue, a condition is included on the rental agreement stating:

“Use of water under this rental agreement shall be junior and subordinate to all uses of water with priority dates senior to April 1, 2005 diverting from a source tributary to the reach of the Salmon River between the points of diversion for water rights 71-59 and 71-61, and the ending point for water right 72-16668.”

Water rights junior to April 1, 2005 are excluded from this subordination language because they would historically have been curtailed to provide water at the quantification point for water right 71-10890.

[Other considerations](#)

§ 42-1507 states in part that:

“Any minimum stream flow water rights...that are not capable of being maintained may be satisfied and maintained through operation of the water supply bank...”

The language of the statute implies that the water rented through the water supply bank is meant to satisfy the original water right as is not meant to be a new or separate right. It follows then that the rentals should be subject to the same restrictions and conditions as the base MSF water right.

In this case, the base MSF water right is 72-16668. This base right is subordinated to future DCMI uses, and is additionally subordinated to the extent necessary for full development of the resource under the future use provisions of the Salmon River Wild and Scenic River water rights.

Since the rental is meant to contribute to the fulfillment of the base right, the rental should give no greater right to water than the base right allows, except perhaps with respect to the senior priority date of the rented water right. Therefore, the rental should maintain the same subordination conditions as 72-16668, namely conditions 144 and 145.

Cheever, Skyler

From: Cheever, Skyler
Sent: Thursday, December 14, 2023 3:03 PM
To: Skinner, Corey; watermanager
Subject: Water Supply Bank Lease Applications 2795 and 2794 City of Hailey
Attachments: Lease Review Memo 2795.docx; Lease Review Memo 2794.docx; Lease 1785 Map.pdf; Lease 1784 Map.pdf

Hello Corey and Sunny,

I have finished my review of two water supply bank lease application within basin 37 and Water District 37. The applicant is the City of Hailey. Application 2794 proposes to lease the entirety of water rights 37-22311, 37-22316, and 37-22321 into the water supply bank from 2024-2028. Application 2795 proposes to lease the irrigation portion of water rights 37-22773, 37-22774, 37-22775, and 37-22776 into the water supply bank from 2024-2028. Attached are review memos and maps of the place of use. If there are any comments that need to be made, please do so within 7 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



IDAHO WATER RESOURCE BOARD

Brad Little
Governor

Jeff Raybould
Chairman
St. Anthony
At Large

Roger W. Chase
Vice-Chairman
Pocatello
District 4

Jo Ann Cole-Hansen
Secretary
Lewiston
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Dale Van Stone
Hope
District 1

Albert Barker
Boise
District 2

Dean Stevenson
Paul
District 3

Peter Van Der Meulen
Hailey
At Large

Brian Olmstead
Twin Falls
At Large

August 30, 2021

RE: Applications to Rent WR Nos. 71- 41, 71-42B, 71-43B, 71-49B, 71-50 for delivery to the Valley Creek Minimum Stream Flow Water Right 71-10886, WR Nos. 71-64B, 71-66, and 71-68 for delivery to the Alturas Lake Creek Minimum Stream Flow Water Right 71-10890, and WR Nos. 71-59, 71-61, 71-10277, 71-10278, 71-2004D, 71-10772, 71-1072B, 71-10871, 71-10766, 71-7002, and 71-2053 for delivery to the Salmon River Minimum Stream Flow Water Right 71-16668

Enclosed please find applications to permanently rent the above-mentioned water rights numbers for delivery to the Idaho Water Resource Board's minimum stream flow water rights on Valley Creek, Alturas Lake Creek, and the Salmon River. The purpose of this rental is to improve flows to facilitate the spawning and rearing of fish species listed under the Endangered Species Act.

The water rights are owned by the United States Forest Service (USFS) and are currently leased into the water supply bank. On August 31, 2021, the USFS submitted lease applications to amend the current lease contracts from 5 years to indefinite. The Idaho Water Resource Board passed a resolution on May 21, 2021, approving the indefinite rental and the one-time rental fee (attached).

Also attached is correspondence between the USFS Acting Regional Forester – Intermountain Region and the Idaho Water Resource Board. The correspondence indicates the wishes of both parties to pursue a permanent rental of the water rights.

Please copy all correspondence regarding this rental to:

Gayla (Jamie) Gough
Water Rights Specialist
Forest Service
Intermountain Region
p: 208-204-4571
gayla.gough@usda.gov

If you have any questions or need further clarification regarding the rental application, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy Cassel", with a stylized, flowing script.

Amy Cassel

Program Manager, Idaho Water Transactions Program
Idaho Department of Water Resources
102 S. Warpath
Salmon, ID 83467

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE PERMANENT RENTAL OF
SAWTOOTH VALLEY WATER RIGHTS

RESOLUTION TO MAKE A FUNDING
COMMITMENT

1 WHEREAS, Chinook and Sockeye salmon, steelhead, and bull trout habitat in the Upper Salmon
2 River basin is limited by low flow conditions and high water temperatures; and
3

4 WHEREAS, it is in the interest of the State of Idaho to augment stream flows and provide habitat
5 in the Upper Salmon River Basin to encourage recovery of ESA-listed Chinook and Sockeye salmon,
6 steelhead, and bull trout fish; and
7

8 WHEREAS, the 2004 Snake River Water Rights ("Nez Perce") Agreement commits the state to
9 providing incentives for improving fish habitat which includes improving or protecting flow conditions to
10 augment stream flows; and
11

12 WHEREAS, Alturas Lake Creek, Valley Creek, and the Upper Salmon River have been identified as
13 high priority streams for flow restoration efforts, to provide high quality habitat for anadromous Chinook
14 and Sockeye salmon, steelhead and resident bull trout; and
15

16 WHEREAS, as provided for in the Nez Perce Agreement, the Idaho Water Resource Board (Board)
17 established minimum streamflow Water Rights 71-10890 on Alturas Lake Creek, 71-10886 on Valley
18 Creek, and 72-16668 on the Salmon River to be met through water right rentals or acquisitions under state
19 law; and
20

21 WHEREAS, the United States Forest Service (USFS) owns Water Right Nos. 71-41, 71-42B, 71-43B,
22 71-49B, 71-50, 71-59, 71-61, 71-64B, 71-66, 71-68, 71-2004D, 71-2053A, 71-7002, 71-10277, 71-10278,
23 71-10728, 71-10766, 71-10772 and 71-10871 (Water Rights) on Alturas Lake Creek, Valley Creek, the
24 Salmon River, and several Salmon River tributaries, and has leased the referenced rights into the Idaho
25 Water Supply Bank; and
26

27 WHEREAS, the Board, pursuant to Section 42-1734, Idaho Code, has the authority to acquire,
28 purchase, lease, or exchange land, rights, water rights, easements, franchises, and other property deemed
29 necessary or proper for the construction, operation, and maintenance of water projects; and
30

31 WHEREAS, the USFS desires to protect the Water Rights in stream and offers them to the Board
32 for rental and permanent delivery to Board minimum stream flow Water Right Nos. 71-10890, 71-10886,
33 and 72-16668; and
34

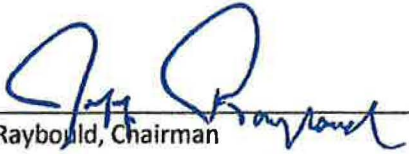
35 WHEREAS, the permanent rental of the Water Rights is in the public interest, and is consistent
36 with the State Water Plan and intent of the Nez Perce Agreement; and
37

38 WHEREAS, the total rate of the flow from the Water Rights is 124 cfs, resulting in a one-time rental
39 fee of \$14,941.20 to be paid to the Idaho Water Supply Bank; and
40

41 WHEREAS, funds are available in the Board's Revolving Development Account to cover the cost of
42 the one-time rental fee; and
43

44 NOW THEREFORE BE IT RESOLVED that the Board authorizes expenditure of a one-time rental fee
45 in the amount of fourteen thousand, nine hundred forty-one dollars and twenty cents (\$14,941.20) to the
46 Idaho Water Supply Bank from the Board's Revolving Development Account.
47
48

DATED this 21st day of May 2021.



Jeff Raybould, Chairman
Idaho Water Resource Board

ATTEST 

Jo Ann Cole Hansen, Secretary



IDAHO WATER RESOURCE BOARD

Brad Little
Governor

October 1, 2020

Roger W. Chase
Chairman
Pocatello
District 4

Frank Beum
Acting Regional Forester
Intermountain Region
324 25th Street
Ogden, UT 84401

Jeff Raybould
Vice-Chairman
St. Anthony
At Large

Dear Mr. Beum:

Vince Alberdi
Secretary
Kimberly
At Large

The Idaho Water Resource Board (IWRB) holds Minimum Stream Flow Water Right Nos. 71-10886 for Valley Creek and 72-16668 for the Salmon River. These minimum stream flow water rights were issued following the Snake River Water Rights Agreement of 2004 with the intent "to preserve fish and wildlife, scenic, and recreational values and to protect and enhance water quality..." IWRB staff has determined that the minimum flow rates authorized under water rights 71-10886 and 72-16668 are not always met. Therefore, any available water that is leased into the Idaho Water Supply Bank that could be rented to meet the minimum stream flows would be beneficial to the State of Idaho and aid the in the recovery of fish species listed under the Endangered Species Act.

Peter Van Der Meulen
Hailey
At Large

Albert Barker
Boise
District 2

The United States Forest Service (USFS) currently holds 13 separate lease agreements through the water supply bank that total approximately 123 cfs and 2,490 acres and consist of 19 individual water rights. The rights are not currently rented and are therefore available for a rental to meet instream flows in Valley Creek and the Salmon River.

John "Bert" Stevenson
Rupert
District 3

Dale Van Stone
Hope
District 1

The IWRB would like to formally request that the USFS consider renting these leased water rights, in perpetuity, to the IWRB in order to help meet the minimum stream flow water rights in Valley Creek and the Salmon River. The USFS will retain ownership of the 19 water rights and a permanent rental will not require a new lease application or the associated five-year administrative costs. A proposal will be made to use funding from the Columbia Basin Water Transactions Program (CBWTP) to cover all fees associated with this transaction, including a one-time permanent rental fee and any water district administration fees. The IWRB is the only Qualified Local Entity in the state of Idaho to receive CBWTP funding. The goals of the CBWTP are to increase streamflow in the Columbia River Basin to increase the productivity and resiliency of Pacific salmon, steelhead trout, and a host of resident fish species, and the IWRB believes this transaction is consistent with those goals and the intent of the minimum streamflow water rights.

Jo Ann Cole-Hansen
Lewiston
At Large

If you have questions about the IWRB's interest in collaboration on this effort, please feel free to contact Amy Cassel, Idaho Water Transactions Program Manager for the IWRB, at (208) 742-0656.

Sincerely,

A handwritten signature in blue ink that reads "Roger Chase". The signature is fluid and cursive, with the first name "Roger" and the last name "Chase" clearly distinguishable.

Roger Chase
Chairman, Idaho Water Resource Board

Cc: Jim DeMaagd, Sawtooth National Forest Service
Kathryn Conant, National Forest Service

United States
Department of
Agriculture

Forest
Service

Intermountain Region

324 25th Street
Ogden, UT 84401

RECEIVED

DEC 02 2020

IDAHO WATER
RESOURCE BOARD

File Code: 2540

Date: November 10, 2020

Roger Chase, Chairman
Idaho Water Resources Board
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Dear Mr. Chase:

Thank you for your October 1, 2020, letter regarding your request that the U.S. Department of Agriculture, U.S. Forest Service (Forest Service) consider a permanent rental of 19 water rights currently leased into the Idaho Water Supply Bank to the Idaho Water Resources Board (IWRB). We view this proposal as a win-win opportunity for the State of Idaho and the Forest Service working together in support of minimum streamflow's which aid in the recovery of fish species listed under the Endangered Species Act (ESA).

In 1992, the Forest Service purchased the Busterback Ranch, which included five irrigation water rights in the Upper Salmon River Basin for the purpose of enhancing flows for salmon migration. The cost of this acquisition was \$3.2 million. The Bonneville Power Administration contributed \$769,000 toward the purchase in order to dedicate the water rights to instream flow, as agreed to in a Memorandum of Understanding. Unfortunately, after the purchase was completed, the Forest Service learned that Idaho state law provides no mechanism for the Forest Service to convert the irrigation water rights to instream flow water rights. Thus, the intent of the purchase could not be fulfilled.

The ESA prohibits federal action that may jeopardize the existence of any threatened or endangered species. Chinook salmon, sockeye salmon, steelhead trout, and bull trout spend part of their life cycle in and around Valley Creek and the upper Salmon River. These species are listed as threatened or endangered under the ESA. An endangered plant, the Ute ladies'-tresses, is also known to grow in riparian habitat in the area. Had the Forest Service undertaken historic irrigation withdrawals from 1992 through the 2020 irrigation seasons, such diversions would have constituted a federal action and could have resulted in the destruction of, or adverse modification of, critical habitat. Moreover, such action could have jeopardized the continued existence of the listed species. Finally, such diversions may have placed the Forest Service at risk of violating the take prohibitions of the ESA.

Under state law, water rights must be applied to beneficial use at least once every five years in order to prevent forfeiture. Over the years, the Forest Service worked closely with the State of Idaho to protect these water rights in accordance with state and federal law. In 1999, these water rights were decreed to the United States in the Snake River Basin Adjudication. In March 2004, the Forest Service received five-year extensions of time to avoid forfeiture for non-use.



Those extensions expired in March 2009, and there were no provisions under state law to allow for further extensions. The rights became subject to immediate forfeiture for non-use.

At that time, the State of Idaho requested that the Forest Service consider leasing the water rights into the Idaho Water Supply Bank where they could be protected from forfeiture for a longer period of time. That action was taken, and the rights have been in the Idaho Water Supply Bank for the last 11 years. During that time, no one has applied to rent the rights from the Idaho Water Supply Bank. The current five-year lease contract for the five Busterback water rights (as well as 14 other irrigation rights) are set to expire on December 31, 2021.

The intent of the Forest Service in leasing these water rights to the Idaho Water Supply Bank is to protect instream flows for fish that are listed under the ESA. Entering into a permanent rental agreement with the IWRB would provide long-term protection from forfeiture for the water rights and would contribute to the State of Idaho's minimum streamflow program, which support threatened or endangered fish. Working with the IWRB to achieve these common goals also supports the values of shared stewardship between the Forest Service and the State of Idaho.

We look forward to working with your staff to coordinate on the rental contracts for the 19 water rights associated with the 13 lease agreements. Please coordinate with Jamie Gough, Idaho Forest Service Water Rights Coordinator, at jamic.gough@usda.gov or 208-204-4571.

Sincerely,

JAMES
DEMAAGD

Digitally signed by JAMES
DEMAAGD
Date: 2020.11.10
14:11:21 -07'00'

/s/ James Demaagd (for)

FRANK R. BEUM
Acting Regional Forester, Intermountain Region

Enclosure: USFS Letter from IWRB

cc: Kathryn Conant, Regional Director, Lands and Minerals, Intermountain Region