

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

JUN 29 2020

WATER SUPPLY BANK LEASE CONTRACT No. 1217

DEPARTMENT OF
WATER RESOURCES

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

LESSOR: LESTER A HARTVIGSEN TRUST
JAMES L HARTVIGSEN, TRUSTEE
120 S 800 E
CENTERVILLE, UT 84014

SUPPORT DATA

IN FILE # 29-11177

RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources and received by the Department on April 10, 2020.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

NOW, THEREFORE, in consideration of the mutual covenants and contracts herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **WATER RIGHTS:** The Lessor shall lease and the Board shall accept into the Bank the Applicant's water rights described as follows:

Summary of Water Rights or Portions Leased to the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
29-11177	4/1/1897	GOODENOUGH CREEK, tributary to MARSH CREEK	3.00	Not Stated	263.0
29-11178	5/1/1901	GOODENOUGH CREEK, tributary to MARSH CREEK	3.06	Not Stated	263.0
Combined Limit Totals			5.60	Not Stated	263.0
Combined Lease Totals			5.60	Not Stated	263.0

Summary of Water Rights Elements Rentable From the Bank

Water Right	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (Limited) (AC)	Rate Per Acre (CFS/AC)	Volume Per Acre (AF/AC)
29-11177	0.94	287.0	82.0	0.011	3.5
29-11178	0.95	287.0	82.0	0.012	3.5
Combined Limit Totals	1.89	287.0	82.0	0.021	3.5

** The water right elements rentable have been reduced from the water right elements leased to account for combined limits.*

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1217

2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

Minimum Payment Acceptable: Current Rental Rate

3. **TERM OF LEASE:** The term of this lease shall be January 1, 2020 to December 31, 2024. This Lease shall bind the parties and take effect when both parties have signed it.
4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.
5. **CHANGE OF WATER RIGHT:** This lease specifies water right elements including but not limited to: diversion rates; diversion volumes; number of acres authorized to be irrigated; places of use; points of diversion; beneficial uses; and seasons of use. During the term of this lease, if a water right is administratively changed due to a water right split and renumbering, this lease may be reduced by an equal amount to reflect the water right elements as legally defined under the water right. If a lease contract cannot be reduced sufficient to reflect the legal definition of a water right as amended through a water right split and/or water right transfer, the Board may release the water right from the Water Supply Bank.
6. **ASSIGNMENT OF CONTRACT:** This lease is between the Board and the Lessor, who is the recognized owner or designated representative of the recognized owners of water rights described herein. Should ownership of any part of a water right herein described change during the term of this lease, either through a water right split, a water right transfer, sale of property to which the water right is appurtenant, or through any other recognized water right reassignment, the lease benefits and obligations to the conditions of acceptance for any such water rights will be assigned to the new owners.
7. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.

STATE OF IDAHO
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WATER SUPPLY BANK LEASE CONTRACT No. 1217

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

LESSOR: LESTER A HARTVIGSEN TRUST
JAMES L HARTVIGSEN, TRUSTEE
120 S 800 E
CENTERVILLE, UT 84014

By James L Hartvigsen Trustee
Title Lester A Hartvigsen Trust
Date 6/23/20

IDAHO WATER RESOURCE BOARD

322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

By 
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 07/31/20

Lease approved by IDWR 

Date 07/31/20

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK LEASE CONTRACT No. 1217

**ATTACHMENT A
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE**

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

Source and Location of Point(s) of Diversion for Water Right No(s): 29-11177, 29-11178

GOODENOUGH NESE Sec. 8 Twp 09S Rge 36E BANNOCK County
CREEK

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
29-11177	IRRIGATION	03/15	to	11/15	3.00 cfs	Not Stated
29-11178	IRRIGATION	03/15	to	11/15	3.06 cfs	Not Stated
Totals:					5.60 cfs	Not Stated

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	36E	8													4.0				4.0
09S	36E	9									39.0	20.0			40.0	40.0		40.0	179.0
09S	36E	10										40.0	40.0						80.0

Total Acres: 263.0

ADDITIONAL CONDITIONS OF ACCEPTANCE

1. The water rights referenced above will be rented from the bank at the current rental rate.
2. There is no rental payment to the lessor of the water right if the right or a part thereof is not rented from the bank.
3. While a right is in the bank, the lessor may not use the right without approval of the Department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B.
4. A right accepted into the bank stays in the bank until the Board releases it, or the lease term expires. A right may be released from the bank upon request, provided the Board approves the release. Unless approved by the Department, leased rights may not be immediately available for release.
5. While a water right is in the bank, forfeiture provisions are stayed pursuant to Idaho Code § 42-223(5).
6. Rental of water under this right is subject to the limitations and conditions of approval of the water right.
7. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

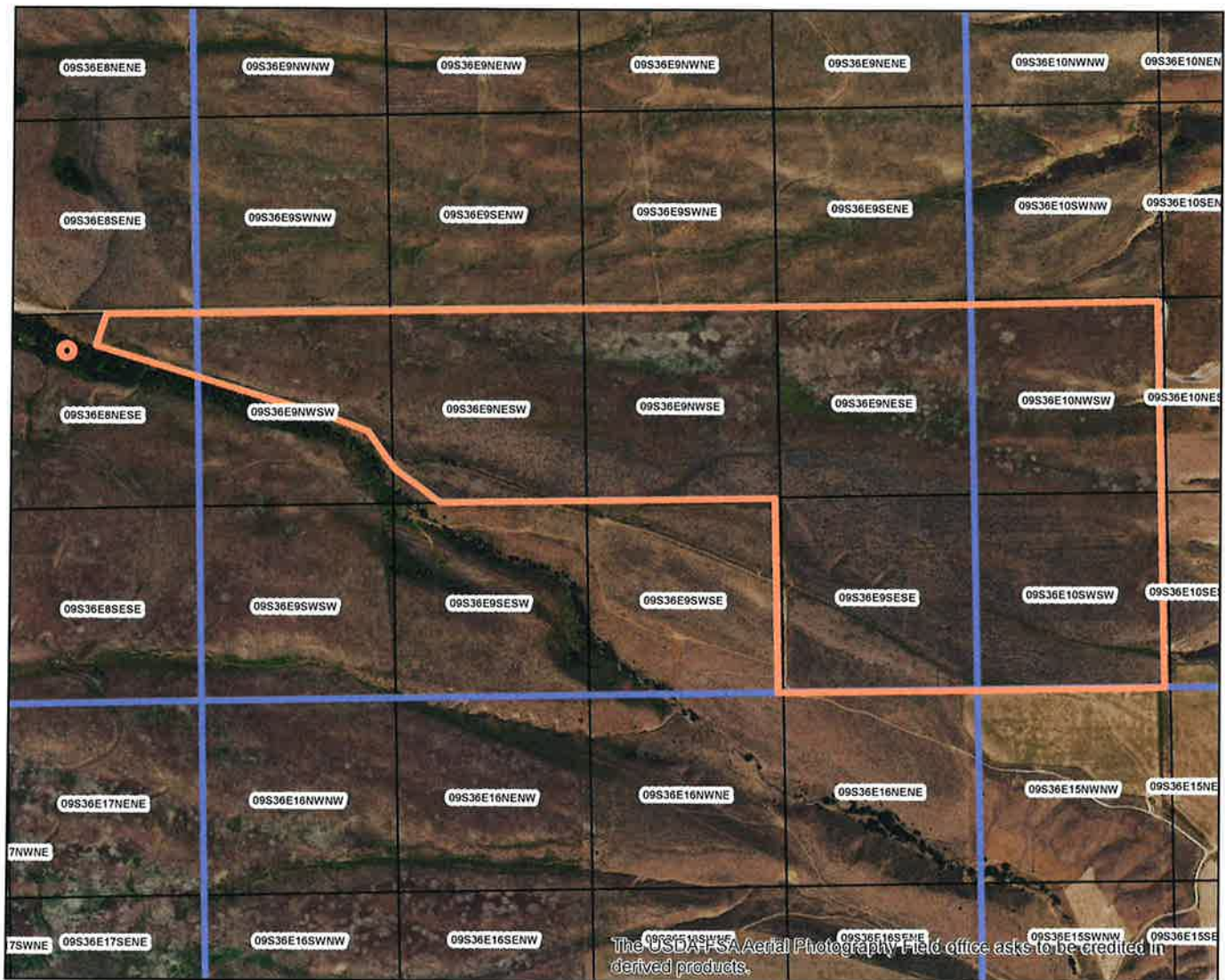
WATER SUPPLY BANK LEASE CONTRACT No. 1217

8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other Department application process.
9. In accordance with Idaho Code § 42-248 and § 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.
10. If a water right leased into the Water Supply Bank is sold or conveyed during the lease term, and if the leased right was rented, the rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:
 - a. Rental payments will go to the lessor(s) of record at the beginning of the rental season, even if the Department processes a Notice of Change in Water Right Ownership during the rental season.
 - b. New lessor(s) of record will receive payment for any subsequent rental seasons.
11. The water right(s) is leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.
12. Use of this right and the use of the rights listed below is limited to the irrigation of a combined total of 280 acres in a single irrigation season. Combined right nos.: 29-2365a, 29-2365b, 29-11177, 29-11178
13. Water rights 29-11777 & 29-11778 are limited to a total combined diversion rate of 5.6 cfs and the irrigation combined total of 263 acres.
14. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
15. The rights listed below are limited to the irrigation of a combined total of 280 acres in a single irrigation season. Combined right nos.: 29-2365A, 29-2365B, 29-11177, 29-11178. During the term of this lease, water rights 29-2365A & 29-2365B are limited to the irrigation of 198 acres.

Idaho Water Resource Board
Water Supply Bank Lease Contract No. 1217

29-11177 & 29-11178
Effective until December 31, 2024

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



● Approved Lease Point of Diversion

Approved Lease Place of Use

Township/Range

Sections

QQ



0 0.25 0.5 Miles

STATE OF IDAHO
WATER RESOURCE BOARDRECEIVED
APR 10 2020
DEPARTMENT OF
WATER RESOURCESAPPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKDesignated Applicant James L. Hartvigsen, Trustee

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

Water Right No. 29-11177

(One water right per application)

Is this application being submitted with a rental application as a lease/rental package?

Yes ☐ No ☒

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

MINIMUM REQUIREMENT CHECKLIST

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

Yes

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

Attachment N/A Yes

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

Department Use Only

Fee Amount \$ <u>500.00</u>	Received By: <u>KM</u>	Date Received: <u>4-10-2020</u>	Receipt # <u>C108590</u>
W-9 received? Yes ☒ No ☐	(Route W-9 to Fiscal)	Name on W-9: <u>James L Hartvigsen</u>	

1695

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

1. CONTACT INFORMATION

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

Designated Applicant James L. Hartvigsen, Trustee of the Lester A. Hartvigsen Trust
Mailing Address 120 South 800 East Centerville Utah 84014
Street City State Zip Code
Email Address jhartvigsen@comcast.net Phone Number 801-809-1611

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

OR

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

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

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

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

Name of Representative David B. Hartvigsen Organization Smith Hartvigsen, PLLC
Professional Title Attorney Email Address david@SHutah.law
Mailing Address 257 South 200 East, Suite 500, Salt Lake City, UT 84111 Phone Number 801-413-1600

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

OR

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

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

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

OR

☐ A part of the water right is being offered to the Bank.

If a portion of the water right is being offered, **complete Attachment 2.**

3. MAP

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

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

4. GENERAL INFORMATION

- A. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☐ No ☒
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 4A).

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

- B. Please provide a description of the current water diversion and delivery system.

Water is diverted from Goodenough Creek into a ditch to be used for flood irrigating the designated land under
Water Right No. 29-11177.

- C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank. Water Right No. 29-11178. An additional Applications to Sell or Lease a Water Right is being filed for
Water Right No. 29-11178.

- D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? Yes ☒ No ☐

Stacked water rights are used together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of \$500.

- E. Will the present place of use continue to receive water from any other source? Yes ☐ No ☒

If yes, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased. _____

- F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. ~~The full amount of water under Water Right No. 29-11177 has been used in each of the last 5 years~~
to the extent available and to the extent that it has not been participating in the federal CRP Program

- G. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☐ No ☒

If yes, describe the circumstances and attach evidence to demonstrate how the water right has not been lost through forfeiture (Attachment 4G). See Section 42-223, Idaho Code for exceptions to forfeiture. Your application may be denied if forfeiture concerns are not addressed. _____

- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan?

If yes, describe. Yes ☐ No ☒

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

5. SALE/LEASE AGREEMENT

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

If lease, specify the years when the use of water will be suspended: 2020 to 2024 (maximum lease period 5 calendar years).
(Year) (Year)

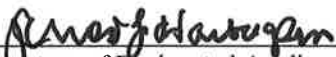
B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

Current rental rate.

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this water right for sale or lease to the Idaho Water Resource Board.

The Designated Applicant acknowledges the following:

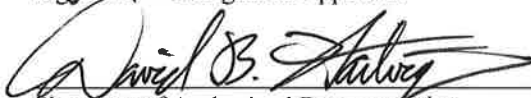
1. Payment to the Designated Applicant is contingent upon the sale or rental of the water right from the Bank.
2. While a water right is in the Bank, the seller/lessor of the water right may not use the water right, even if the water right is not rented from the Bank.
3. A water right accepted into the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


Signature of Designated Applicant

James L. Hartvigsen, Trustee

Printed Name

April 2/20
Date


Signature of Authorized Representative

David B. Hartvigsen

Printed Name

4/1/2020
Date

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

**STATE OF IDAHO
WATER RESOURCE BOARD**

ATTACHMENT 1A

Additional Water Right Holders Party to the Lease Application

For the water right on this application, list all owners (individuals or business entities) of the right or the property to which it is appurtenant. All water right holders must sign a Water Supply Bank Lease Application. However, only the Designated Applicant needs to provide a completed IRS Form W-9 (Attachment 1B). **All correspondence and any financial payment associated with the rental of this water right will be directed to the Designated Applicant.** If additional space is needed to list any other water right holders, attach a second copy of Attachment 1A.

If submitting multiple applications, it is only necessary to complete one Attachment 1A for the group of applications. List each water right below.

Water Right No(s). 29-11177, 29-11178

	Designated Applicant	Applicant #2	Applicant #3
Name	James L. Hartvigsen, Trustee of the Lester A. Hartvigsen Trust	Kim R. Hartvigsen, Trustee of the Lester A Hartvigsen Trust	
Mailing Address	120 South 800 East Centerville Utah 84014	1210 North 100 East Layton, Utah 84041	
Phone Number	801-809-1611	801-628-5657	
Email Address	jhartvigsen@comcast.net	KimH@dmba.com	
Applicant Declaration	As Designated Applicant, I submit this lease application on behalf of all other water right holders.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature			

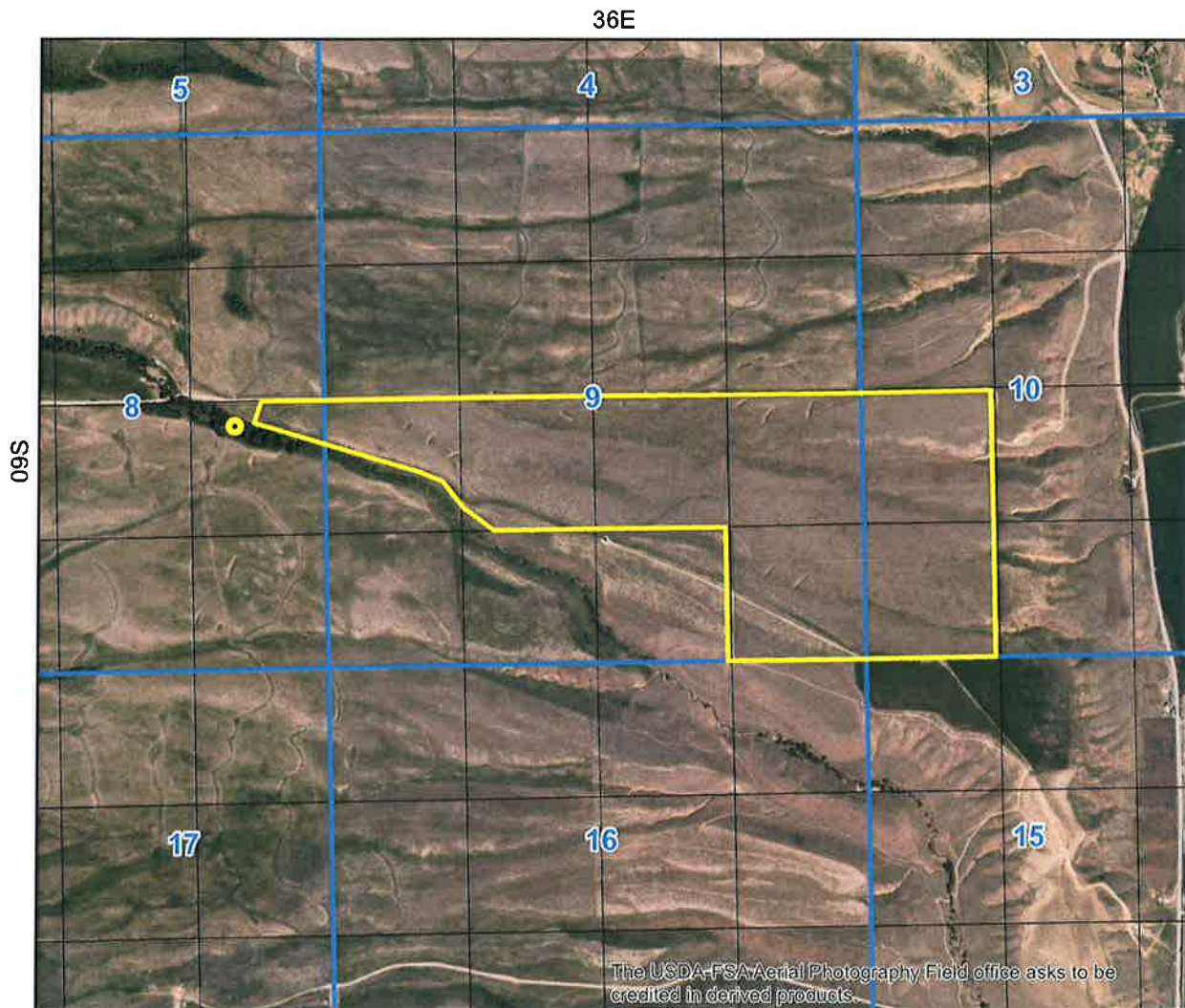
	Applicant #4	Applicant #5	Applicant #6
Name			
Mailing Address			
Phone Number			
Email Address			
Applicant Declaration	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.	I authorize the Designated Applicant to submit this application on my behalf.
Signature			

State of Idaho
Department of Water Resources

Water Right 29-11177

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.2 0.4 0.8 Miles



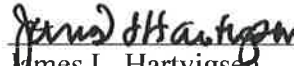
AFFIDAVIT OF JAMES L. HARTVIGSEN

STATE OF UTAH }
 : ss.
COUNTY OF DAVIS }

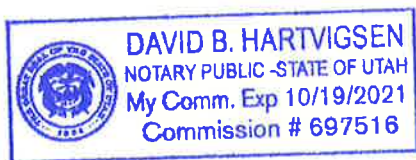
I, James L. Hartvigsen, hereby declare under oath and the penalty of perjury:

1. I am over the age of eighteen and have personal knowledge about the matters addressed herein.
2. I am a Co-Trustee of the Lester A. Hartvigsen Trust, which owns Idaho Water Right Nos. 29-11177 and 29-11178, which provide a total combine diversion rate of 5.6 cfs from Goodenough Creek to irrigate 263 acres of land in Bannock County, Idaho ("**Goodenough Creek Rights**").
3. Lester A. Hartvigsen conveyed the Goodenough Creek Rights into the Lester A. Hartvigsen Trust in 1992.
4. Since 1992, the trustees and beneficiaries of the Lester A. Hartvigsen Trust have routinely diverted and used all available water under the Goodenough Creek Rights each year to farm the authorized 263 acres of land to the extent that this acreage was not participating in, and protected against nonuse by, the federal Conservation Reserve Program ("CRP").
5. We have retained and authorized Smith Hartvigsen PLLC to be our legal counsel and authorized representative in connection with this application.

DATED this 2nd day of April, 2020.


James L. Hartvigsen

On this 2nd day of April, 2020, James L. Hartvigsen personally appeared before me and, being duly sworn, acknowledged to me that he voluntarily executed the foregoing document for the purposes stated therein.




Notary Signature



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

August 3, 2020

LESTER A HARTVIGSEN TRUST
JAMES L HARTVIGSEN, TRUSTEE
120 S 800 E
CENTERVILLE UT 84014

**RE: WATER SUPPLY BANK LEASE CONTRACT 1217
FOR WATER RIGHTS 29-11177 & 29-11178**

Dear Lessor:

Water rights **29-11177 & 29-11178** were leased into the Water Supply Bank (Bank) as of January 1, 2020, in accordance with the enclosed executed lease contract. **Your water rights, as described on the lease contract, are considered leased into the Bank and should remain unused until they are formally released from the Bank.** More information and further restrictions placed on your water rights while leased can be found in conditions of acceptance of the lease contract. Read the conditions of acceptance carefully.

The rights will automatically be released from the Bank on **December 31, 2024**, unless the rights are released earlier by the Water Resource Board (Board). On behalf of the Board, the Department of Water Resources (Department) can evaluate an early release of the lease contract upon your request. To release the water rights from the Bank prior to the release date, submit a written request on the *Request to Release a Water Right from the Bank* form. This form is available on our public website at www.idwr.idaho.gov. **Please note your water rights may not be available for immediate release if they have been rented or are being considered for a future rental. Furthermore, it is at the discretion of the Department whether or not a water right can be released early from a lease contract.**

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

Sincerely,


Amanda Johnson-Webb
Water Supply Bank

Enclosure: Executed Lease Contract

c: IDWR- Eastern Region
Water District No. 29H
Smith Hartvigsen, PLLC- David B Hartvigsen

Hersley, Jean

From: Cefalo, James
Sent: Wednesday, June 17, 2020 8:48 AM
To: Hersley, Jean
Subject: RE: WSB Lease for Hartvigsen 29-11177 & 29-11178

No. I don't have any strong objections. It is unlikely that the water rights will even be rented. There is very little rental activity in this part of Basin 29. So, limiting the rights to 82 acre is probably the best outcome for the time being. Ultimately, the water right owners will have to wrestle over how the acre limit gets divided.

From: Hersley, Jean
Sent: Wednesday, June 17, 2020 8:29 AM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Subject: FW: WSB Lease for Hartvigsen 29-11177 & 29-11178

In this email chain is a history of the water rights and what's been going on with them. There are also a few responses. We are going to move forward with the lease contract as it stands with only 82 acres available for rent. Unless you have strong objections.

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

From: Grimm, Angie
Sent: Wednesday, June 17, 2020 8:21 AM
To: Buyer, Remington <Remington.Buyer@idwr.idaho.gov>; Hersley, Jean <Jean.Hersley@idwr.idaho.gov>; Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Ferguson, Justin <Justin.Ferguson@idwr.idaho.gov>
Subject: RE: WSB Lease for Hartvigsen 29-11177 & 29-11178

Jean,

I agree with Remington. Unless Hartvigsen is able to reach an agreement with the other irrigators to reduce their irrigation, the only way to avoid enlargement is to limit the acres we can rent. We can give Hartvigsen the chose to either pursue such an agreement or accept the 82 acre limitation on any future rentals. That's my two cents.

Thanks,
Angie

From: Buyer, Remington
Sent: Tuesday, June 16, 2020 4:05 PM
To: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>; Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>; Ferguson, Justin <Justin.Ferguson@idwr.idaho.gov>
Subject: RE: WSB Lease for Hartvigsen 29-11177 & 29-11178

Provided no injury or enlargement will result from the lease of water rights 29-11177 and 29-11178 into the Bank, it doesn't appear that there is any issue in fully brining the water rights into the Bank. However, because of that combined limit condition, we can't fully rent out the water right unless we have certainty that there would be a proportionate reduction in use under water rights 29-2365A and 29-2365B.

If the Hartvigsen, Harris and Wheatley come to an agreement amongst themselves to share in the combined limit for the water right, we could increase the amount rentable under the Hartvigsen lease. However, I don't see how the Bank could compel Harris or Wheatley to do that. Until the water users decide on an agreed course of action to address the combined limit, and as long as Wheatley and Harris will continue to fully irrigate their properties, it seems to me that we need to prevent a larger rental of 29-11177 and 29-11178, to avoid enlargement under all four water rights.

From: Hersley, Jean

Sent: Tuesday, June 16, 2020 2:51 PM

To: Hummer, Phill <Phill.Hummer@idwr.idaho.gov>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>; Buyer, Remington <Remington.Buyer@idwr.idaho.gov>; Ferguson, Justin <Justin.Ferguson@idwr.idaho.gov>

Subject: FW: WSB Lease for Hartvigsen 29-11177 & 29-11178

Below are some thoughts James had with the Hartvigsen lease. This is the lease of water rights that are combined with 2 other rights not owned by the Hartvigsen's. A reminder, water rights 29-11177 and 29-11178 have been offered to the Bank in full. These two rights, which have been in the CRP program since before they were decreed, are limited to the irrigation of 263 acres when combined. There is also a condition that limits these two rights with water rights 29-2365A and 29-2365B to the irrigation of 280 acres. My thought was to put the entirety of the rights in the Bank but limit any rental to 82 acres so water rights 29-2365A and 29-2365B could be used in full.

Hartvigsen purchased the parent of these rights in 1978 and transferred them to the current place of use in 1981. The combined condition with rights 29-2015 & 29-2365 was added to the approval of the transfer. Originally, these rights had the same place of use but did not have a combined condition until the transfer, which moved the 29-437 to 29-440 to a new place of use. 29-2015 was disallowed in the SRBA. 29-2365 was split into 29-2365A & 29-2365B.

Claims were filed in 1990 for water rights 29-437, 29-438, 29-439 & 29-440. Water rights 29-437 & 29-439 were combined into 29-11177 and 29-438 and 29-440 were combined into 29-11178. The combined use condition was carried forward in the decreed rights. There are letters in the adjudication backfile as of 9-17/2019 for 29-11177 questioning the combined condition.

Water Rights 29-11177 and 29-11178 have been in the CRP program since before they were decreed. The water has never been used on the current place of use. The land appurtenant to water rights 29-2365A and 29-2365B have been fully irrigated for years. Question is, do we place the entirety of 29-11177 & 11178 in the Bank with a rental limit of 159.8 acres as James says below, which is a proportionate amount and let the other owners know they can only irrigate a portion of their property? If none of this makes sense, let's meet and discuss this.

FYI, these contracts have not been sent out yet.

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

From: Cefalo, James

Sent: Wednesday, June 10, 2020 9:38 AM

To: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>

Subject: RE: WSB Lease for Hartvigsen 29-11177 & 29-11178

Jean,

I have a few thoughts on the number of acres available under the WSB lease. According to the partial decrees, water rights 29-2365A, 29-2365B, 29-11177 and 29-11178 are limited to the irrigation of 280 acres. Based on aerial photos, the authorized places of use for water rights 29-2365A (112 acres) and 29-2365B (86 acres) are fully irrigated. This

would only leave only 82 irrigated acres available for water rights 29-11177 and 29-11178. You were proposing to accept these rights into the WSB with an 82-acre limit.

The water rights are separately owned. Hartvigsen Trust owns 29-11177 and 29-11178. Jeffrey and Kathleen Harris own 29-2365A. Ralph Wheatley owns 29-2365B. My question is why Harris and Wheatley get to irrigate their entire places of use and Hartvigsen has to suffer the shortage. Have you found something in the water right records that requires the shortage in irrigated acres to be borne exclusively by Hartvigsen? If not, shouldn't the combined acre limit be shared equally between the water rights? I don't know how we ended up with four separately owned water rights with a common combined acre limit. Unfortunately, I don't have time to investigate the history of these four rights to better understand the origin of the 280 combined acre limit. Perhaps the WSB staff could look into the combined acre limit history.

If the 280 acre limit were shared proportionately between the property owners, the Hartvigsen rights would be entitled to more acres.

Water Right	POU Acres	% of POU Acres	Proportionate Share of Irrigated Acres
11177/11178	263	57.0%	159.8
2365A	112	24.3%	68.0
2365B	86	18.7%	52.2
Total	461		280

If we end up accepting more than 82 acres into the WSB, then Harris and Wheatley need to be notified that the number of acres they can irrigate has been reduced. I am interested to hear how the 280 combined acre limit will be handled.

James

From: Hersley, Jean
Sent: Wednesday, June 10, 2020 7:45 AM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>; evankris@isu.edu
Subject: WSB Lease for Hartvigsen 29-11177 & 29-11178

Please let me know if you have any comments or concerns with the attached lease within 7 days. Thank you.

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



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

June 10, 2020

LESTER A HARTVIGSEN TRUST
JAMES L HARTVIGSEN, TRUSTEE
120 S 800 E
CENTERVILLE UT 84014

**RE: APPLICATION TO LEASE WATER RIGHT 29-11177 & 29-11178 TO THE WATER SUPPLY BANK
CONTRACT 1217**

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

Dear Applicant:

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

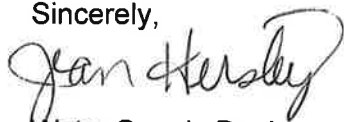
The right will automatically be released from the Bank on **December 31, 2024**, unless the right is released earlier by the Board, or upon your request. To release the right from the Bank prior to the release date, submit a written request on the Request to Release a Water Right from the Bank form. To propose a new lease period, submit a new Application to Sell or Lease a Water Right to the Water Supply Bank form along with applicable fees to the Department. These forms are available from any IDWR office or from our public website at <http://www.idwr.idaho.gov>. Please note your right may not be available for immediate release if it has been rented.

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

"While a right is in the bank, **the lessor may not use the right** without approval of the department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B."

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

Sincerely,



Water Supply Bank

Enclosures: Proposed Lease Contracts

c. Smith Hartvigsen, PLLC- David B Hartvigsen

Hersley, Jean

From: Hersley, Jean
Sent: Wednesday, June 10, 2020 7:45 AM
To: Cefalo, James; 'evankris@isu.edu'
Subject: WSB Lease for Hartvigsen 29-11177 & 29-11178
Attachments: Idled Acres.pdf; Lease Application Review Checklist July 2017.xls; Report - Lease Contract - 1217.docx

Please let me know if you have any comments or concerns with the attached lease within 7 days. Thank you.

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

WATER SUPPLY BANK

Lease Review Checklist

Applicant(s) Name: Lester A Hartvigsen Trust

Memo Date: June 1, 2020

Water Right Number(s): 29-11177 & 29-11178

Reviewers Name: Jean

Quick Tools

Decreed Year	No Forfeiture Concerns Thru:
2011	2017
2012	2018
2013	2019
2014	2020
2015	2021

		Check box		COMMENTS/CONCERNS:
1	Fill out WSB Data Entry Checklist for Leases (Front of File)	x		
2	Reason for lease of water rights (Brief description of lease proposal in narrative)			
	Portion of right			
	All of right	x		
3	Check GWMA/CGWA/ADC and basin 63 areas of concern (note area in comments)			
		Yes	No	
4	Rentable? (If no explain in comments or narrative)	x		
5	Authority to file			
	Current owner or designated applicant	x		
	SOS Web site checked for business entity		na	
	Other (explain in comments)		x	
6	Water Right validity			2004
	Decreed/Licensed/Statutory claim date (write in comments section)			
	Past irrigation to ensure forfeiture is not an issue if decreed or licensed over 7 years ago (consider transfers that changed the POU, rentals to the POU etc.)			
	Has this right previously been leased to the bank or in CREP?	x		CRP 1980's-2020
7	Injury to other water rights			
	If the POD is through a delivery entity, was consent provided?		na	
	If the POD is through a delivery entity, was holdback required? (percentage in comments)			%
	Any other concerns		x	
8	Enlargement concerns	Check box		
	Complete a POU comparison overlap analysis	x		
	Complete a combined limits review	x		
	Complete POD overlap analysis (if there is an overlap add condition to lease)	x		
		Yes	No	
	Are there overlapping rights that need to be placed in the bank also?		x	
	Will the place of use continue to receive water? (if yes explain in comments)		x	
9	Local Public Interest			
	Does the processor know of any problems this action will cause for the local public?		x	
10	Have you contacted regional office and watermaster for comment/concerns?	x		
	Send the watermaster comment request form or e-mail request	x		
11	Area Headgate requirement (write in Comments)			3.5
12	Is water right involved in any other department action? Pull file and check database () Ownership Change () Transfer () Mitigation () Other - Explain in comments		x	

Narrative: The Department received these applications on April 10, 2020. The applicant wishes to place the entirety of both rights in the Bank. These rights were decreed in 2004 but have been in the CRP program even before they were decreed. WR 29-437 & 29-439 were combined in the SRBA into 29-11177. WR 29-438 & 29-440 were combined in the SRBA into 29-11178. There are no other overlapping rights that need to be placed in the Bank. There is, however, a combined condition with 29-2365A and 29-2365B that limits all 4 rights to 280 acres. Water Rights 29-11177 and 29-11178 are limited to the irrigation of 263 acres so these rights will be limited to the rental of 82 acres to avoid enlargement. $280(4 \text{ rights}) - 263(2 \text{ rights}) = 17$. $198(\text{total of acres for 2365A \& B}) - 17 = 181$. $263 - 181 = 82$. That would 82 acres available for rent.

13

Hersley, Jean

From: David B. Hartvigsen <david@water.law>
Sent: Friday, May 29, 2020 4:16 PM
To: Hersley, Jean
Subject: RE: Water Supply Bank Lease Application on 29-11177 and 29-11178
Attachments: Hartvigsen Brothers CRP Contract 970.pdf; Map of CRP Contract 970.pdf; Water Right 29-11177 Map.pdf; Water Right 29-11178 Map.pdf

Hi Jean.

Thank you for your questions. Please understand that the Hartvigsen Brothers submitted Water Bank applications on two separate groups of water rights for two entirely separate farms. There are different CRP contracts for each farm, just as there are different water rights for each farm.

The first farm is the "Homestead" farm located about five miles south of Downey, Idaho. It's irrigated by the three Aspen Creek rights (Water Right Nos. 29-14278, 29-14279 & 29-14280). We withdrew the Water Bank applications on those three Aspen Creek rights because the CRP contract on the Homestead farm covering 154.3 acres of cultivated ground (Tract No. 961) is not going to be renewed by the FSA and the Aspen Creek water is needed to put that farm back into production. As you noted, the three Aspen Creek rights irrigate 62 acres of the 154.3-acre Homestead farm.

The second farm is the "McCammon" farm located about 3 miles west of McCammon, Idaho and about 22 miles northwest of the Homestead Farm. The McCammon farm is irrigated with the Goodenough Creek rights (Water Right Nos 29-11177 and 29-11178). The relevant CRP contract covering the McCammon farm is Contract No. 970 and it covers 926.20 acres of cultivated ground (Tract No. 486), 263 acres of which can be irrigated with the Goodenough Creek rights. Attached are copies of CRP Contract No. 970 and the map associated with that contract. Also attached are two maps showing the 263 acres of CRP ground that can be watered with the two Goodenough Creek rights. For your convenience, I have hand-drawn in green on the CRP map where the 263 acres shown on the two water right maps are located.

These two decreed rights are protected against forfeiture for nonuse under Section 42-223(1) of the Idaho Code while the land to which they are appurtenant is under a federal set-aside program such as the CRP program. As the attached documents show, all of the ground to which these two water rights are appurtenant have been under the CRP program from long before the time they were decreed in 2004.

I hope this addresses all of your concerns. If not, please let me know.

Thanks.

David B. Hartvigsen
SMITH HARTVIGSEN PLLC
801-413-1600
801-231-2240 cell
david@water.law

From: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>

Sent: Tuesday, May 26, 2020 1:52 PM

To: David B. Hartvigsen <david@water.law>

Subject: RE: Water Supply Bank Lease Applications for 29-14278-14280 and 29-11177-11178

Has any part of 29-11177 & 29-11178 been in the CRP program? The contract you sent is for 154.3 acres. The other rights, 29-14278, 29-14279 & 29-14280, are for a total of 62 acres. Water rights 29-11177 & 29-11178 together are limited to the irrigation of 263 acres. 92.3 acres may have been protected but that leaves 170.7 acres that should have been irrigated. It doesn't appear that any land has been irrigated since at least 2010.

Can you send more of the CRP contract that show which lands were enrolled in the program? And can you provide additional information that shows these acres are not subject to forfeiture?

Water Supply Bank Rule 25 (also known as IDAPA 37.02.03.025) requires the Department to evaluate whether the water right has been lost through abandonment or forfeiture as defined by Section 42-222(2), Idaho Code. Section 42-222(2) states, in part, "All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which is was appropriated."

Thank you.

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

From: David B. Hartvigsen [<mailto:david@water.law>]

Sent: Wednesday, May 20, 2020 1:34 PM

To: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>

Subject: RE: Water Supply Bank Lease Applications for 29-14278-14280 and 29-11177-11178

Hi Jean.

Yes, we still want to move forward with the WSB Leases on the Goodenough Creek rights (29-11177 and 29-11178). Thank you for refunding the application fee on the Aspen Creek rights (29-14278, 29-14279, and 29-14280).

Thanks.

David B. Hartvigsen
SMITH HARTVIGSEN PLLC
801-413-1600
801-231-2240 cell
david@water.law

From: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>

Sent: Wednesday, May 20, 2020 1:02 PM

To: David B. Hartvigsen <david@water.law>

Subject: RE: Water Supply Bank Lease Applications for 29-14278-14280

I'm sorry it took me so long to get back with you. I have returned to the office and have been trying to get things in order.

The Department will return the WSB applications and refund the application fee for water rights 29-14278, 29-14279 & 29-14280. Did you want to go forward with the WSB Leases for water rights 29-11177 & 29-11178?

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

From: David B. Hartvigsen [<mailto:david@water.law>]
Sent: Thursday, May 7, 2020 3:17 PM
To: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>
Cc: Dr. James L. Hartvigsen <jhartvigsen@comcast.net>
Subject: RE: Water Supply Bank Lease Applications for 29-14278-14280

Hi Jean.

Attached is a copy of the CRP contract that you requested (CRP Contract No. 961). As you can see from the contract, it's a 10-year contract that's expiring at the end of this coming September. James, Kim, and Eric Hartvigsen, doing business as Hartvigsen Brothers, have been pursuing the renewal of their soon to expire CRP contract with the Farm Service Agency at the same time as they have been applying to participate in the Water Supply Bank with the Department of Water Resources. It has recently become apparent that the Farm Service Agency will not be able to renew the CRP contract on this particular tract of land (Tract No. 8136). Therefore, the Hartvigsen Brothers will be resuming crop production on this land this fall and accordingly need to utilize Water Right Nos. 29-14278, 29-14279 & 29-14280 once again. Therefore, please accept this letter as an official withdrawal of their application to participate in the Water Supply Bank with respect to these three water rights.

Please let me know if you have any questions.

Thanks.

David B. Hartvigsen
SMITH HARTVIGSEN PLLC
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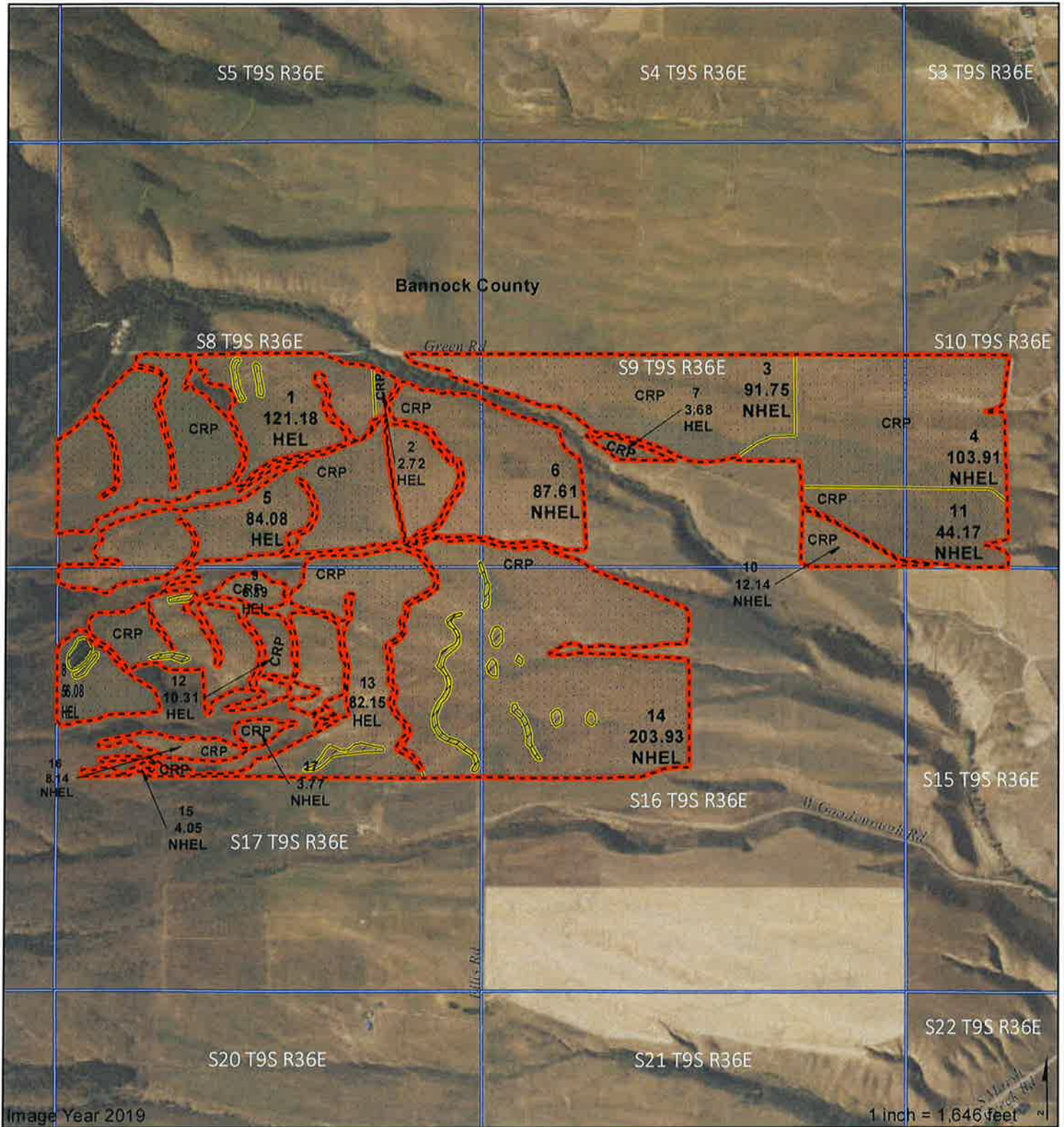
From: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>
Sent: Tuesday, April 21, 2020 9:05 AM
To: jhartvigsen@comcast.net
Cc: David B. Hartvigsen <david@shutah.law>
Subject: Water Supply Bank Lease Applications for 29-14278-14280

The Department of Water Resources(Department) is in the process of reviewing your applications to place water rights 29-14278, 29-14279 & 29-14280 in the Water Supply Bank(Bank). On your applications, you stated that the water rights have been used in the last 5 years to the extent available and to the extent they

have not been participating in the CRP program. Would you mind sending me a copy of the contract for the CRP Program? It will help in determining what years and what acres were involved in the program and protected from forfeiture. Please let me know if you have any questions. Thank you.

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

Bannock County, Idaho



Common Land Unit

 Non-Cropland
 Cropland

Wetland Determination Identifiers
 ● Restricted Use ▼ Limited Restrictions
 ■ Exempt from Conservation Compliance Provisions

Tract Cropland Total: 926.06 acres

2020 Program Year
 Map Created December 06, 2019

Farm 1187
Tract 486

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland Identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).

Hersley, Jean

From: David B. Hartvigsen <david@water.law>
Sent: Wednesday, May 20, 2020 1:34 PM
To: Hersley, Jean
Subject: RE: Water Supply Bank Lease Applications for 29-14278-14280 and 29-11177-11178

Hi Jean.

Yes, we still want to move forward with the WSB Leases on the Goodenough Creek rights (29-11177 and 29-11178). Thank you for refunding the application fee on the Aspen Creek rights (29-14278, 29-14279, and 29-14280).

Thanks.

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

From: David B. Hartvigsen [<mailto:david@water.law>]
Sent: Thursday, May 7, 2020 3:17 PM
To: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>
Cc: Dr. James L. Hartvigsen <jhartvigsen@comcast.net>
Subject: RE: Water Supply Bank Lease Applications for 29-14278-14280

Hi Jean.

Attached is a copy of the CRP contract that you requested (CRP Contract No. 961). As you can see from the contract, it's a 10-year contract that's expiring at the end of this coming September. James, Kim, and Eric

Hartvigsen, doing business as Hartvigsen Brothers, have been pursuing the renewal of their soon to expire CRP contract with the Farm Service Agency at the same time as they have been applying to participate in the Water Supply Bank with the Department of Water Resources. It has recently become apparent that the Farm Service Agency will not be able to renew the CRP contract on this particular tract of land (Tract No. 8136). Therefore, the Hartvigsen Brothers will be resuming crop production on this land this fall and accordingly need to utilize Water Right Nos. 29-14278, 29-14279 & 29-14280 once again. Therefore, please accept this letter as an official withdrawal of their application to participate in the Water Supply Bank with respect to these three water rights.

Please let me know if you have any questions.

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Technical Records Specialist II
Idaho Dept Water Resources
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Hersley, Jean

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