

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

SEP 09 2020

Department of Water Resources
DIVERSIONregion

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for a water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right. See the [Application for Transfer Instructions](#) for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

- ☐ Change diversion point(s) ☐ Add diversion point(s) ☐ Ownership change ☐ Ownership split
- ☒ Transfer is for changes pursuant to Idaho Code § 42-221.O.8. Attach an explanation and any supporting documentation.

1. **APPLICANT(S)** Bruce and Glenda McConnell Phone 208-768-2203

2. MAILING ADDRESS 100 Cotton Lane City Leadore

State Idaho Zip 83464 Email bar11ranch@hotmail.com

- ☐ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.
- ☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.
- ☐ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed. Additional fee(s) are required for water right ownership changes; see Item 9 for the fee schedule.

If the ownership change resulted in the water right(s) being split, how did the division occur? Mark one:

- ☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
- ☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

- ☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. LIST WATER RIGHT NUMBER(S) 74-361, 74-362, 74-363, 74-364, 74-365, 74-367, 74-368

- ☐ Attach a copy of the water right(s) as recorded, available at idwr.idaho.gov, *Water Right Transfers, Step 1*, or by contacting any Department office.

4. **TOTAL AMOUNT OF WATER** transferred is 15.2 cubic feet per second and/or _____ acre-feet per annum.
(diversion rate) (storage volume)

5. **POINT OF DIVERSION** – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

- ☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at idwr.idaho.gov, *Water Rights, Water Right Transfers, Modeling Resources*.

[illegible]

6. GENERAL INFORMATION

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Diversion from Lee Creek to property

- b. Who owns the property at the point(s) of diversion? BLM

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
Historic use of a pre-FLPMA ditch that does not require permitting.

- c. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right(s), or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

- d. Is any portion of the water right(s) proposed to be changed currently leased to the Water Supply Bank? ☐ Yes ☒ No

- ☐ If yes and there are multiple owners, attach a Lessor Designation form.
☐ If yes, the individual owner or designated lessor must complete, sign and attach an IRS Form W-9.
(Disregard if these items are on file and ownership has not changed.)

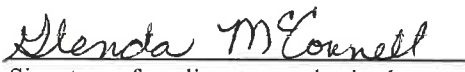
7. **MAP** – ☒ Attach a map of the diversion, measurement, control and distribution system. Include the place of use if a split of the water right occurred. Clearly label the map with township, range, section and $\frac{1}{4}$ $\frac{1}{4}$ of section information. You may create a map at idwr.idaho.gov, *Water Rights*, *Water Right Transfers*, *File a Transfer Application*, *Step 2C*.

8. **SIGNATURE** – The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.


Signature of applicant or authorized agent

Bruce McConnell
Print name and title if applicable

8/31/2020
Date


Signature of applicant or authorized agent

Glenda McConnell
Print name and title if applicable

8/31/2020
Date

9. **FEE** – ☒ The application filing fee provided in Idaho Code § 42-221.O, must be submitted with the application for transfer. Applications for changes pursuant to Idaho Code § 42-221.O.8. require a filing fee of \$50 per water right. All other application fees are based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The Fee Schedule is available at www.idwr.idaho.gov, *Water Right Transfers*, *Step 4* and in the Application for Transfer Instructions.

FOR DEPARTMENT USE ONLY

Transfer includes _____ pages of attachments. Received by _____ Date _____

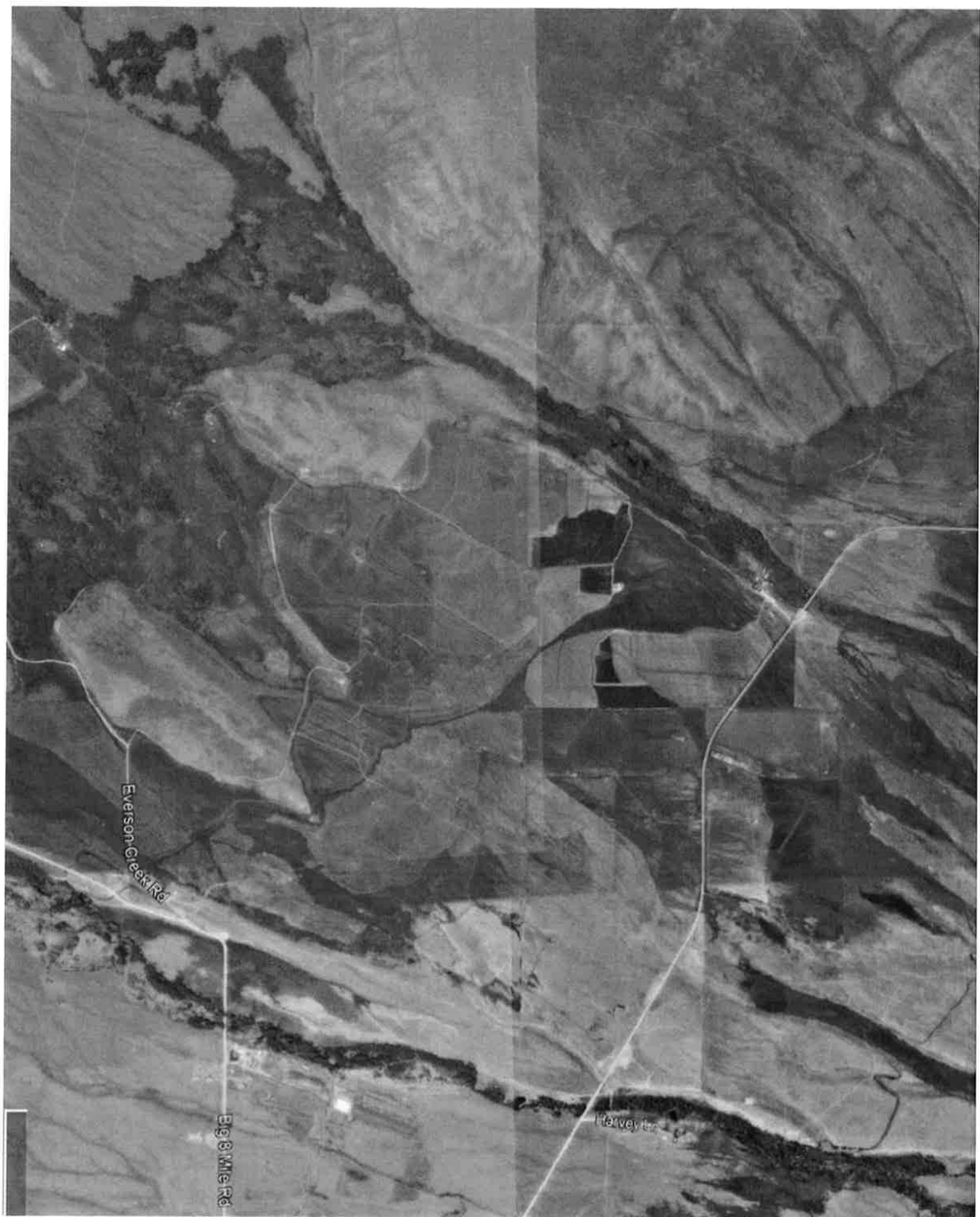
Fee paid \$350.00 Date 9/9/2020 Receipted by CA dh Receipt # E046272

Preliminary review by _____ Date _____ Active in the Water Supply Bank? Yes ☐ No ☐

W-9 received? Yes ☐ No ☐ Name on W-9 _____ W-9 forwarded to fiscal? Yes ☐ No ☐

(Do NOT scan the W-9 – confidential information is held by fiscal only)

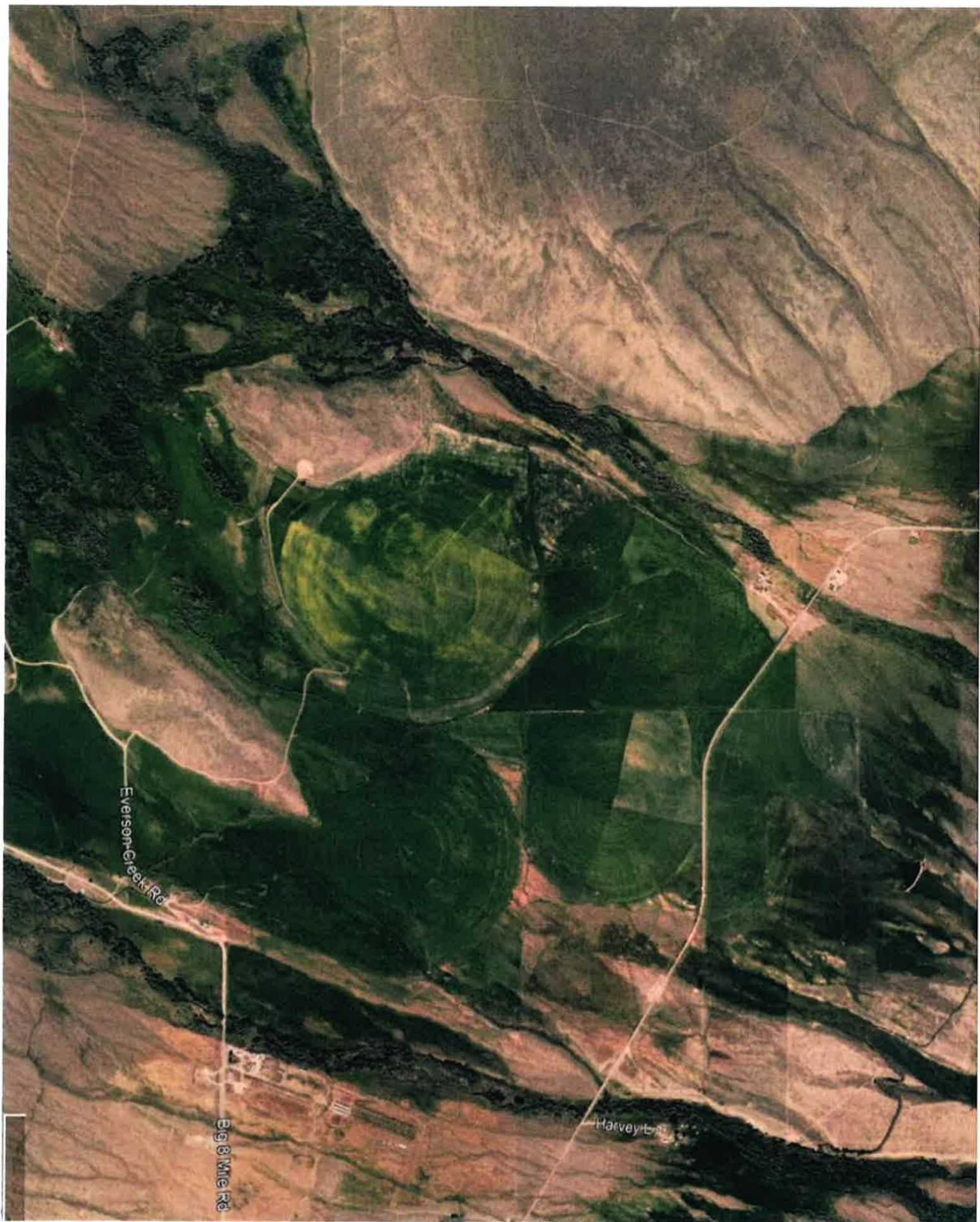












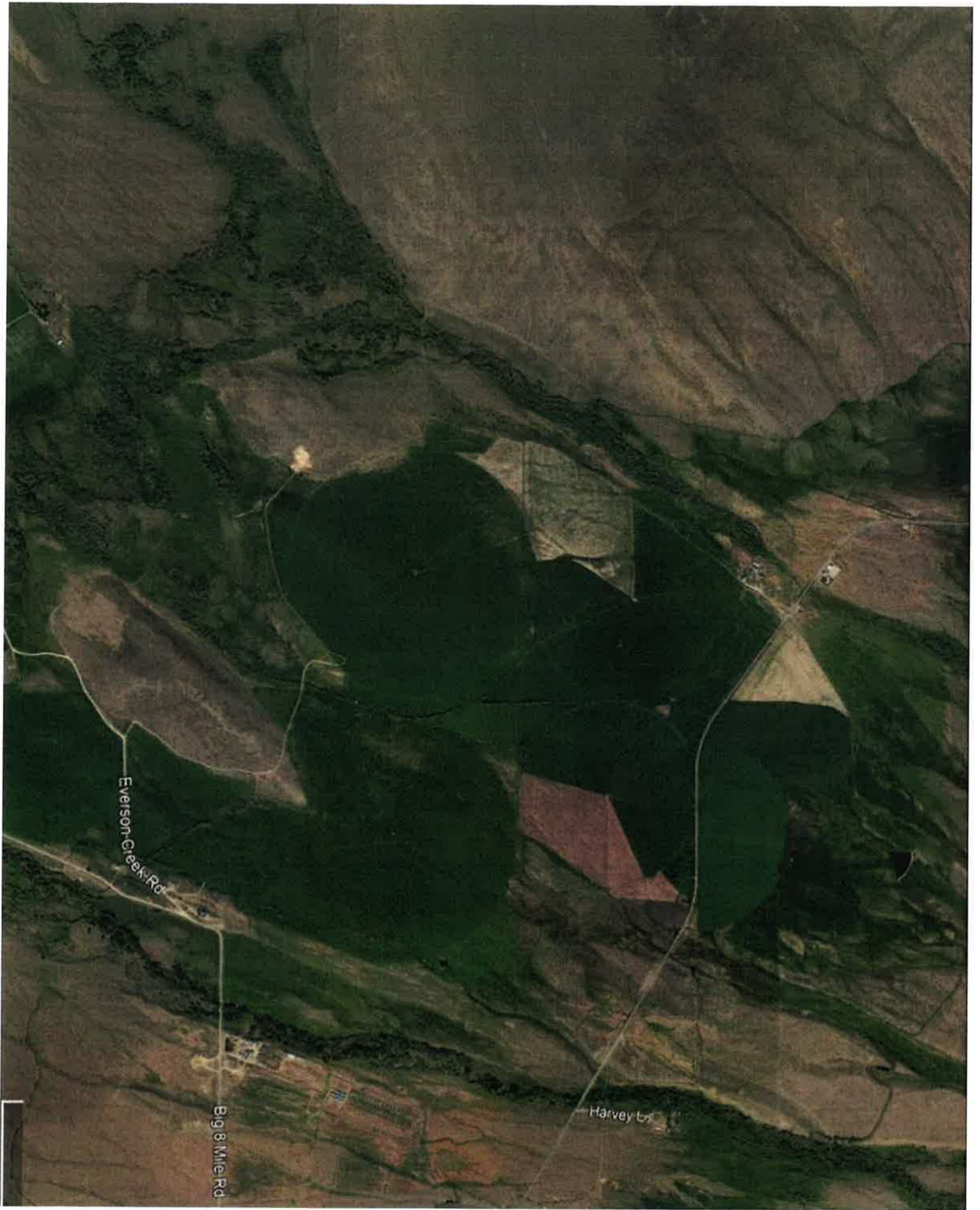
Eversongreen Rd

Big M Rd

Harvey Rd







Everson Creek Rd

Big 8 Mile Rd

Harvey Ln

McHUGH BROMLEY

ATTORNEYS AT LAW, PLLC

RECEIVED

SEP 09 2020

Department of Water Resources
Eastern Region

Candice M. McHugh
cmchugh@mchughbromley.com

380 S. 4th Street, Ste. 103
Boise, Idaho 83702
(208) 287-0991

Chris M. Bromley
cbromley@mchughbromley.com

September 8, 2020

James Cefalo
IDWR Eastern Region
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402-1718
james.cefalo@idwr.idaho.gov

Re: Error in Point of Diversion Element for Water Right Nos. 74-361, 74-362,
74-363, 74-364, 74-365, 74-367, and 74-368

Dear Mr. Cefalo:

Recently, it came to the attention of my clients, Bruce and Glenda McConnell, that there is an error in the legal description for the point of diversion element for water right nos. 74-361, 74-362, 74-363, 74-364, 74-365, 74-367, and 74-368 ("Water Rights"). The Water Rights divert from Lee Creek, tributary to the Lemhi River, and were partially decreed by the Snake River Basin Adjudication ("SRBA") district court in 2014. The SRBA partial decrees list the point of diversion as T.16N, R.25E, S.30, SENE ("SENE"). In reality, the point of diversion has, to the best of my clients' knowledge, always been located in T.16N, R.25E, S.30, NENE ("NENE"). The purpose of this letter is to explain why the transfer can be approved pursuant to I.C. § 42-221.O.8, without advertising.

Enclosed herewith is an *Application for Transfer of Water Right – Point(s) of Diversion* ("Application"), the *Declaration of Bruce McConnell* (August 31, 2020) in support, and a check in the amount of \$350 to cover the \$50 filing fee for each water right.

As you are aware, Basin 74 was the subject of a general stream adjudication, known as the Lemhi Adjudication. The Lemhi Adjudication predated commencement of the SRBA. Prior to the Lemhi Adjudication, the Water Rights were first decreed by the Lemhi County district court in *Reddington v. Bohannon* (July 1, 1912). *Affidavit of Chris M. Bromley*, Exhibit A (April 25, 2014).¹ The *Bohannon* decree did not describe a point of diversion.

In the Lemhi Adjudication, the Water Rights were claimed by Parley A. Arave and/or Robert T. Hemming ("Lemhi Claims") in 1972. *Affidavit of Chris M. Bromley*, Exhibit B (April 28, 2014).

¹ I assisted the McConnells in the SRBA with late claims that were filed for the Water Rights and ultimately decreed. In this letter, I will cite to a number of documents that I filed with IDWR and the SRBA in 2014 on behalf of the McConnells. The documents are easily accessible in IDWR's digital water right backfile, as well as the SRBA website known as IWTRS.

The point of diversion in the Lemhi Claims was listed as SENE. In the Idaho Department of Water Resources' ("IDWR") *Proposed Finding of Water Rights in the Lemhi River Basin*, also known as the "Green Book," the point of diversion for the Water Rights was recommended in SENE, consistent with the Claims. *Affidavit of Chris M. Bromley*, Exhibit C (April 28, 2014). In the document labeled *Water Rights in the Lemhi River Drainage Basin* ("Lemhi Decree"), the point of diversion for the Water Rights were decreed in SENE, consistent with the Claims and the Green Book. *Affidavit of Chris M. Bromley*, Exhibit D (April 28, 2014). Neither the Lemhi Claims nor the Lemhi Decree show where within SENE the point of diversion was located.

In the SRBA, the late claims that were filed ("SRBA Claims") and partially decreed ("SRBA Decrees") were patterned off of the Lemhi Decree for the Water Rights. *Declaration of Bruce McConnell* ¶ 9. Like the Lemhi Decree, the SRBA Decrees defined the point of diversion for the Water Rights as SENE, but did not locate the point of diversion within SENE.

Today, using modern GPS, the point of diversion for the Water Rights is in NENE. The purpose of the Application is to correct the error in the SRBA Decrees for the Water Rights.

According to I.C. § 42-221.O.8, IDWR is authorized to approve a transfer for a change in the point of diversion element of a water right "when there will be no physical change in the location of the place of use or the point of diversion and no unauthorized physical change in the location of the place of use or the point of diversion has occurred inconsistent with the decree, license or transfer defining the water right, the total filing fee shall be \$50.00 per water right." Here, the standards are met.

As explained by Mr. McConnell, who bought the property from the estate of Mr. Arave, the point of diversion was shown to him in 1993 by Darrell Nef. *Declaration of Bruce McConnell* ¶ 2-3. Since that time, Mr. McConnell has diverted Lee Creek from NENE. *Id.* at ¶ 4.

Because there was no reason to believe the Lemhi Decree was incorrect, and because Mr. McConnell had been diverting water consistent with the point of diversion that was shown to him by Mr. Nef in 1993, the legal description was not double-checked on the ground by my clients. *Id.* ¶ 9. Based on what is available on IDWR's public website in the Water Rights backfiles, it appears the point of diversion was not checked by IDWR either. *See GIS Layout*, prepared by Carter Fritschle (June 16, 2014). Rather, the focus appeared centered on place of use. *Id.* and *Affidavit of Roxanne Brown* (April 28, 2014). Based on my years of experience in the SRBA, and for water rights that were previously decreed, it was not unusual for some elements to be presumed correct.

Because the Lemhi Claims and Lemhi Decree do not locate the point of diversion to a more localized point within SENE, I obtained the maps prepared by IDWR staff during the Lemhi Adjudication and shared them with my clients. Sometimes, the Lemhi maps are quite detailed and helpful for answering questions. There does not appear to be evidence for or against the

legal description for the point of diversion element for the Water Rights. *Declaration of Bruce McConnell* ¶ 8.

That it was understood that there was lack of specificity in the actual point of diversion is consistent with how IDWR plots the point of diversion today. Using IDWR's online mapping tool, it can be seen below that the point of diversion is placed more or less in the center of SENE. In my experience, when a point of diversion is placed in the center of a quarter-quarter, it sometimes means IDWR did not know where within the forty-acre tract the point of diversion was actually located.



There are at least two reasons why the point of diversion was incorrectly described in SENE when it should have been described in NENE. First, the area where the point of diversion is located is heavily willowed. *Declaration of Bruce McConnell* ¶ 10. Aerial photography included herewith, dating from 1984 through 2014, confirms Mr. McConnell's observation. Because of the vegetation, and without modern GPS, it would be difficult to know if you were in SENE or NENE, *Declaration of Bruce McConnell* ¶ 10, much less use aerial images to find the diversion within the willows. Second, as many of us in this field know, digital map layers "shift."² It is entirely plausible that when the Lemhi Claims were filed, Mr. Arave either: (a)

² Shifting map layers were a reason for enactment of I.C. § 42-221.O.8: "Sometimes water right owners need to update their water right places of use or points of diversion to achieve consistency with the Public Land Survey rather than for actual physical changes to their water diversion and use locations. Currently, the only administrative process available for such updates is the transfer process set forth in section 42-222, Idaho Code, for changing the elements The quantity-based, sliding-scale transfer filing fee, which can be hundreds or thousands of dollars, deters some water right owners from seeking to update their water rights. When no update is sought inaccurate water right records complicate property transactions and cause water right administration difficulties for the Idaho

mistakenly believed the point of diversion was in SENE; or, (b) the map he was using placed him in SENE, only for the mapping layer to subsequently “shift” the point of diversion to NENE.

Lee Creek flows first through SENE then through NENE, making those quarter-quarters adjacent. *Declaration of Bruce McConnell* ¶ 7. A map layer would not have to shift very far for the Lee Creek diversion to be legally described in SENE when it is now in NENE. Using IDWR’s online mapping tool, the point of diversion in NENE that was established by GPS is approximately 550 feet from the line that today establishes SENE.



According to Mr. McConnell, who has experience as a rancher first in the Yaak River Valley in Montana, then in the Lemhi since 1993, *Affidavit of Glenda McConnell* ¶ 3 (April 28, 2014), he has found no evidence of a point of diversion anywhere in SENE, *Declaration of Bruce McConnell* ¶ 11. Therefore, the only point of diversion for Lee Creek in this general vicinity is the diversion that Mr. McConnell has been using since 1993 when it was shown to him by Mr. Nef, *id.* at ¶ 4, and which in Mr. McConnell’s opinion has been used for over a century, *id.* at ¶ 15.

Lastly, an important point to consider is there are no intervening points of diversion on Lee Creek between the “diversion” that is legally described in SENE and the actual diversion in NENE. This is confirmed not only by IDWR’s online mapping tool, but also by Mr. McConnell’s personal observations. *Declaration of Bruce McConnell* ¶ 13. That there are no

Department of Water Resources (IDWR) and water districts.” *Statement of Purpose, RS25629* (2018) (emphasis added). Whether with IDWR or representing private clients, many of us have experienced the headache that a shift in the mapping layer that can cause. Depending on where the line is drawn, a place of use or point of diversion may end up in a different Township, Range, Section, or quarter-quarter though nothing has changed on the ground.

intervening points of diversion should allow IDWR to approve the Application with knowledge that the change is being made to "achieve consistency with the Public Lands Survey," *Statement of Purpose, RS25629*, to reflect how water has been actually diverted for over one-hundred years, and importantly, with no possibility of injury to other water rights.

Please take your time to review the information in this letter and enclosures. If you have any questions, please do not hesitate to contact me. If, for some reason, you cannot approve the Application without advertising, please let me know before taking any further steps on your end.

Sincerely,



CHRIS M. BROMLEY

Encls.

c.c. Cindy Yenter, IDWR

CHRIS M. BROMLEY
IDAHO STATE BAR NO. 6530
CANDICE MCHUGH
IDAHO STATE BAR NO. 5908
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380 S. 4th St., Ste. 103
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Facsimile: (208) 287-0864
cmchugh@mchughbromley.com
cbromley@mchughbromley.com

Attorneys for Bruce and Glenda McConnell

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF WATER RIGHT
NOS. 74-361, 74-362, 74-363, 74-364, 74-
365, 74-367, and 74-368

**DECLARATION OF BRUCE
MCCONNELL**

BRUCE MCCONNELL under penalty of perjury states as follows:

1. I am over the age of eighteen and state the following based upon my own personal knowledge.
2. I purchased the property that is irrigated with the above-captioned water rights ("Water Rights") in the spring of 1993 from the estate of Parley A. Arave.
3. In April 1993, Darrell Nef took me to the diversion on Lee Creek. Mr. Nef has been deceased for many years.
4. Since I bought the property, and during the irrigation seasons of 1993 through 2020, I have used the same diversion from Lee Creek for the Water Rights that Mr. Nef showed me in late April of 1993.

5. Using GPS, the location of that diversion is T.16N, R.25E, S.30, NENE (“NENE”).
6. While the Snake River Basin Adjudication (“SRBA”) partial decrees for the Water Rights describe a point of diversion from Lee Creek in T.16N, R.25E, S.30, SENE (“SENE”), I have looked for a diversion in what today’s mapping shows as SENE, and can find no evidence or remnants of a diversion in that location.
7. SENE and NENE are adjacent quarter-quarters, with Lee Creek running through SENE then through NENE.
8. I have looked at the Lemhi adjudication maps that may have been based on the claims filed by Mr. Arave and/or Robert T. Hemming (“Lemhi Claims”), which claimed the point of diversion as SENE. Based on my review, the Lemhi adjudication maps do not answer where the point of diversion is located.
9. I claimed the point of diversion in the SRBA for the Water Rights (“SRBA Claims”) the same way it was described in the Lemhi Claims. I had no reason to believe that the Lemhi Claims were incorrect, as I was shown by Mr. Nef in April of 1993 where Lee Creek was diverted, which is NENE, based on today’s mapping.
10. The area where the point of diversion is located is heavily willowed. Based on my experience in the area where the point of diversion is located, and without modern GPS, it is very difficult to know exactly where you are, to know if the actual point of diversion from Lee Creek is in SENE or NENE.
11. I can find no evidence of a diversion in what today’s mapping describes as SENE.
12. Using GPS, the actual point of diversion for the Water Rights is NENE, not SENE.

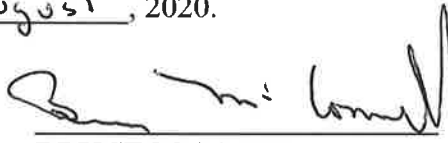
13. There are no other points of diversion between the incorrectly described point of diversion in SENE and the actual diversion in NENE.

14. It is my belief that the legal description for the point of diversion was either described in error starting with the Lemhi Claims, then claimed by me in the SRBA, then partially decreed in error by the SRBA, or the mapping used during the Lemhi Adjudication is different than the mapping used today.

15. It is my belief that water has been diverted from the ditch I use today for over a century.

16. I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 31 day of August, 2020.


BRUCE MCCONNELL

9/10/2020

9/10/2020

9/10/2020

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BRUCE MC CONNELL GLENDA MC CONNELL 100 COTTOM LN LEADORE, ID 83464

Status: Active

LEMHU RIVER

Volume

1.300 CFS

Sec. 30, Twp 16N, Rge 25E, LEMHI County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
16N	25E	9							3.1				34.7	8.3					46.1

POU Total Acres: 46.1

1.	C18	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.
2.	E55	Right Nos. 74-363 and 74-364 are limited to the irrigation of a combined total of 46.1 acres in a single irrigation season.
3.	PIN	Parcel Nos. RP16N25E090600 and RP16N25E092400

9/10/2020

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BRUCE MC CONNELL GLENDA MC CONNELL 100 COTTOM LN LEADORE, ID 83464

Status: Active

LEMHI RIVER

5,800 CFS

Sec. 30, Twp 16N, Rge 25E, LEMHI County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
16N	25E	17									8.8		40.0	28.2		5.7	13.8		96.5
16N	25E	18																38.4	38.4
16N	25E	19	26.3																26.3
16N	25E	20						40.0	39.1			28.5							107.6

1.	C18	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.
2.	E55	Right Nos. 74-367 and 74-368 are limited to the irrigation of a combined total of 268.8 acres in a single irrigation season.
3.	PIN	Parcel Nos. RP16N25E170001, RP16N25E189000, RP16N25E203000 and RP16N25E190000



State of Idaho

DEPARTMENT OF WATER RESOURCES

EASTERN Region • 900 N SKYLINE DR STE A • IDAHO FALLS, ID 83402-1718

Phone: (208)525-7161 • Fax: (208)525-7177 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

September 17, 2020

MERRITT UDY
PO BOX 145
LEADORE, ID 83464-0145

RE: Transfer No. 84367

Dear Watermaster:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendations from you regarding the above referenced water right application. You can find a copy of the application at:

<https://idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. Please review the application, then complete the enclosed recommendation form and return it to this office within 14 days of the date of this letter.

If the application is approved, IDWR will include appropriate standard conditions of approval for a water right located within a water district, such as regulation by the watermaster, lockable controlling works, and/or measuring devices. Any special conditions or other concerns you have related to this application should be specifically addressed in your recommendation.

IDWR can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered. If IDWR has not received your written recommendation within 14 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Sincerely,

Christina Henman
Administrative Asst. I

Enclosure(s)

Henman, Christina

From: Henman, Christina
Sent: Thursday, September 17, 2020 2:25 PM
To: Yenter, Cindy
Subject: Application for Transfer No. 84367
Attachments: RecommendationForm Transfer36.docx

Watermaster:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendations from you regarding the above referenced water right application. You can find a copy of the application at: <https://idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. Please review the application, then complete the enclosed recommendation form and return it to this office within 14 DAYS of the date of this letter.

If the application is approved, IDWR will include appropriate standard conditions of approval for a water right located within a water district, such as regulation by the watermaster, lockable controlling works, and/or measuring devices. Any special conditions or other concerns you have related to this application should be specifically addressed in your recommendation.

IDWR can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered. If IDWR has not received your written recommendation within 14 DAYS from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Please contact this office if you have any questions regarding the application.

Henman, Christina

From: Henman, Christina
Sent: Thursday, September 17, 2020 2:24 PM
To: 'beyelerd@yahoo.com'
Subject: Application for Transfer No. 84367
Attachments: RecommendationForm Transfer35.docx

Hello,

I don't have an email address for Merritt, so I'm sending this to you for expediency; if you could please pass this information on to him, I would appreciate it. A hard copy will also be sent via postal mail.

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendations from you regarding the above referenced water right application. You can find a copy of the application at: <https://idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>. Please review the application, then complete the enclosed recommendation form and return it to this office within 14 days of the date of this letter.

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Your prompt response to this request will ensure that your recommendation can be considered. If IDWR has not received your written recommendation within 14 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Please contact this office if you have any questions regarding the application.

MEMORANDUM

Date: September 17, 2020
To: Transfer 84367
From: James Cefalo
Re: Legal Notice Not Required

Pursuant to Section 42-222, Idaho Code, the Department has discretion to provide public notice as deemed appropriate. The water right changes proposed through this transfer application do not appear to change the effect on the original or hydraulically connected water source or affect other water rights. Therefore, staff review of the transfer application found no cause to require public notice. This application will continue processing without advertisement and be forwarded for approval consideration.

Applicant, McConnell, asserts that the application is being filed to correct an error in the legal description for the point of diversion for seven water rights from Lee Creek. The water rights currently describe the point of diversion in the SENE of Section 30. Department employee, Cindy Yenter, conducted a site visit earlier this year and confirmed that the point of diversion is actually located in the NENE of Section 30. McConnell asserts that the point of diversion has been at the current location for the entire time they have owned the water rights (since 1993). Cindy Yenter confirmed that the point of diversion appears to be historical (no evidence of recent changes or construction activity). Partial decrees for the subject water rights were issued in 2014. The evidence available to the Department supports McConnell's assertion that the point of diversion has been in its current location (NENE of Section 30) since the beginning of the SRBA. Therefore, there will be no physical change in the point of diversion location.

The subject water rights were included in the Lemhi Decree. The Lemhi Decree described the authorized point of diversion in the SENE of Section 30. The rights were claimed in the SRBA as they were described in the Lemhi Decree. It appears the water rights were decreed as claimed in the SRBA. The point of diversion depicted in the Department's mapping software is a centroid (a digitized dot in the center of the SENE of Section 30). A centroid is used when the Department is unsure about the exact location of a point within a quarter-quarter. The use of a centroid on the Department's map indicates that the Department did not perform a field verification of the point of diversion during the SRBA claim review process.

There are no points of diversion or hydrologic features between the currently-authorized (decreed) point of diversion and the actual point of diversion.

The Department is aware of an ongoing water delivery dispute between McConnell and a neighboring property owner, Whittaker. Whittaker diverts water from Stroud Creek, a tributary of Lee Creek. Whittaker's rights are junior to some of McConnell's Lee Creek rights. According to the USGS topographic map, Stroud Creek used to connect to Lee Creek in the NESE of Section 30, upstream of the McConnell's decreed and actual points of diversion. During the field inspection, Cindy Yenter discovered that the Stroud Creek channel has changed course since the USGS map was created. Stroud Creek now flows into Lee Creek in the NENE of Section 30, downstream of the McConnell's decreed and actual points of diversion.

If Stroud Creek connects with Lee Creek above McConnell's existing and proposed points of diversion, then Whittaker's junior rights may be subject to a delivery call by McConnell. If Stroud Creek connects downstream of McConnell's existing and proposed points of diversion, then Whittaker is insulated from a delivery call. The changes proposed in this application will have no effect on the dispute between McConnell and Whittaker over Stroud Creek. The dispute between Whittaker and McConnell centers on

the proper location of the Stroud Creek/Lee Creek confluence, the meaning of a prior court order, and the existence of an unauthorized ditch operated by McConnell in the SWSW of Section 20. These issues are best addressed in another forum. They are not relevant to the changes proposed in the pending application.

McConnell has confirmed that he will file a future transfer application, proposing to add the unauthorized ditch (located in the SWSW of Section 20) as a point of diversion on the seven water rights described above. That application would require public notice and would provide a proper forum for McConnell and Whittaker to address their dispute about water deliveries on Stroud Creek and its tributaries.