

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 80150

RECEIVED

AUG 31 2017

Department of Water Resources
Eastern Region**AMENDED**

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at www.idwr.idaho.gov.

Name of Applicant(s) Lynn and Robin Herbst

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A * Means the item is always required and must be included with the application.

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a [Part 2A](#) report describing each water right in the transfer as currently recorded.
- ☒ ☐ Complete and attach an Application for Transfer [Part 2B](#) for each water right for which only a portion is proposed to be changed through this transfer application.
- ☒ * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ * Correct fee submitted with transfer application form. ([Fee schedule](#) is on website and instructions for application for transfer.)

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-10.

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the applicant as the current water right owner. **
- ☒ ☐ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s).**
** Additional fee(s) required for water right ownership changes; see fee schedule.
- ☐ ☒ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☒ ☐ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☒ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm.
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☒ ☐ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System ([GIS](#)) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.
- ☐ ☒ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see [fee schedule](#).
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☒ #9 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. ([Attachment WSB](#))
- ☐ ☒ #10 Other. Please describe: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Lynn and Robin Herbst Phone 208-756-2584
Mailing address PO Box 21, Tendoy, ID 83468 Email _____

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative Robert L. Harris, Holden, Kidwell, Hahn & Crapo, P.L.L.C. Phone 208-523-0620
Mailing address 1000 Riverwalk Dr., Idaho Falls, ID 83405 Email rharris@holdenlegal.com

- ☐ Send all correspondence for this application to the representative and not to the applicant.
OR
- ☐ Send original correspondence to the applicant and copies to the representative.
- ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.
OR
- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). 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.

Robert L. Harris
Signature of Applicant or Authorized Representative

Robert L. Harris, Attorney
Print Name and Title if applicable

August 31, 2017
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☒ Other Create stacked POU

2. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**.

This transfer proposes to create a combined place of use of 186.2 acres for the listed water rights. This transfer is a necessary first step in order to allow for a settlement agreement to be implemented for a protested water right application for the same 186.2 acres (74-16008, which will be amended to then be a supplemental water right).

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APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	<u>Right Number</u>	<u>Amount</u> (cfs/ac-ft)	<u>Nature of Use</u>	<u>Period of Use</u>	<u>Source & Tributary</u>
All or Part ☒ ☐	See Attached	Spreadsheet		_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____

Total authorized under rights 5.76 cfs and/or _____ acre-feet.

2. Total amount of water proposed to be transferred or changed 5.76 cubic feet per second and/or _____ acre-feet per year.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
								SEE ATTACHED	SPREADSHEET	

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
19N	24E	17			.2					17.4	31.4			36.1		3.2	1.6		89.9
19N	24E	20					33.9	15	12.1	27.9	6.2	1.2							96.3
Total Acres (for irrigation use)																			186.2

LYNN & ROBIN HERBST WATER RIGHTS

BEFORE TRANSFER

Type	Basin	Sequence	Priority Date	Basis	Div. Rate (cfs)	Period of Use	Source	Water Use	Acre Limit	Combined Acre Limit	Point(s) of Diversion
WR	74	740	4/1/1961	Decreed	0.2	3/15 to 11/15	LEMHI RIVER	IRRIGATION	7	None	SENW, Sec. 29, T19N, R24E (L-31)
WR	74	741	1/8/1908	Decreed	4.3	3/15 to 11/15 1/1 to 12/31	LEMHI RIVER	IRRIGATION, STOCKWATER	143.1		SENW, Sec. 29, T19N, R24E (L-31)
WR	74	742	6/1/1871	Decreed	0.38	3/15 to 11/15	LEMHI RIVER	IRRIGATION	12.5		SENW, Sec. 29, T19N, R24E (L-31)
WR	74	7147	11/16/1981	Decreed	0.88	3/15 to 11/15	LEMHI RIVER	IRRIGATION	44.1		NESW, Sec. 20, T19N, R24E (A-21, located above Agency Ck. fish screen) NWSW, Sec. 20, T19N, R24E (Herbst Agency Ck. Diversion west of Hwy) SENW, Sec. 29, T19N, R24E (L-31)
TOTAL					5.76				206.7		

AFTER TRANSFER

Type	Basin	Sequence	Priority Date	Basis	Div. Rate (cfs)	Period of Use	Source	Water Use	Acre Limit	Combined Acre Limit	Point(s) of Diversion Point(s) of Rediversion
WR	74	740	4/1/1961	Decreed	0.2	3/15 to 11/15	LEMHI RIVER	IRRIGATION	7	186.2	POINT OF DIVERSION: SENW, Sec. 29, T19N, R24E (L-31)
WR	74	741	1/8/1908	Decreed	4.3	3/15 to 11/15 1/1 to 12/31	LEMHI RIVER	IRRIGATION, STOCKWATER	143.1		POINT OF INJECTION: NESW, Sec. 20, T19N, R24E
WR	74	742	6/1/1871	Decreed	0.38	3/15 to 11/15	LEMHI RIVER	IRRIGATION	12.5		POINTS OF REDIVERSION: NESW, Sec. 20, T19N, R24E (A-21, located above Agency Ck. fish screen)
WR	74	7147	11/16/1981	Decreed	0.88	4/1 to 11/1	LEMHI RIVER	IRRIGATION	44.1		NWSW, Sec. 20, T19N, R24E (Herbst Agency Ck. Diversion west of Hwy 28)
TOTAL					5.76				206.7	186.2	

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

5. 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:

Diversions are L-31, A-21 (on Agency Creek), and a diversion west of Highway 28. L-31 has a measuring device; A-21 has one that was installed under 74-16008; and the diversion west of Highway 28 has a measuring device installed under 74-16008

- b. Who owns the property at the point(s) of diversion? Not sure on L-31; Applicant owns property at A-21 and west div.

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system: L-31 is a recognized existing and regulated diversion from the Lemhi River. Applicant's water rights are already authorized to be diverted at this diversion, which is regulated by the Basin 74 watermaster.

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

If yes, ☐ attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: No.

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?

If yes, ☐ complete Attachment WSB.

- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

Overall, there is actually a reduction in total authorized acres of the water rights by 20.5 acres. This is to take into account a 20.5 acre overlap with Water Right Nos. 74-741 and 74-7147 to ensure there is no enlargement of acres.

- f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:

L-31 water rights; also 74-250.

- g. 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 leased to the Water Supply Bank,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right, or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the rights?

If yes, describe:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT PART 3

A. PLAT MAP (See Part 3A of Instructions for application for transfer for complete requirements.)

- ☒ Attach a map of the diversion, measurement, control, and distribution system. Label it **Attachment #7a**.
- ☒ If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System ([GIS](#)) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. Label it **Attachment #7b**.

If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

If any part of the irrigation water right is leased to the Water Supply Bank, you must also specify the location and number of acres that will remain idled for the duration of the lease contract at the new, proposed place of use.

B. CHANGES IN NATURE OF USE (Water Balance)

- ☐ If you propose to change the nature of use or period of use of all or part of the right(s) listed in this application, attach documentation describing the extent of historic beneficial use of the portion of the right(s) proposed to be changed. Also attach documentation showing that the portion of the right(s) to be changed will not be enlarged in rate, volume, or consumptive use through the proposed change. Label it **Attachment #8a**.

C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

- ☐ If you propose to change the place of use of a supplemental irrigation right, answer below and attach supporting documentation. Label it **Attachment #8b**.

Describe how the supplemental water rights have been used historically in conjunction with other water rights at the existing place of use. Describe the time during the irrigation season that the supplemental rights have been used. Include information about the availability or reliability of the primary right(s) being supplemented, both before and after the change. If the applicant is proposing to change a supplemental irrigation right to a primary right, provide the information required on Part 3B above:

[illegible]

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments.

Received by _____ Date _____ Preliminary check by _____ Date _____

Fee paid _____ Date _____ Received by _____ Receipt # _____

Add'l fee paid 50- Date 9/1/17 Received by SC Receipt # 043342

Check all that apply: Attachment WSB ☐ (copy sent to state office) Lessor Designation form ☐ &/or W-9 ☐ (originals to state office)

Attachment No. 4

Power of Attorney

[Search again](#)

Results (as of 8/24/17)

Robert Lynn Harris

Status

Active

ISB Membership Number

7018

Admittance Date

09/30/2004

Firm

Holden, Kidwell, Hahn & Crapo, PLLC

Address

PO Box 50130 Idaho Falls, ID 83405

Phone

(208) 523-0620

Phone Ext**Fax**

(208) 523-9518

Email Address

rharris@holdenlegal.com

Website Address

www.holdenlegal.com

Need a correction?

Is something not correct? Please use the [Address Change Form](#)

The information above is based on the Idaho State Bar records as of the date listed above. To send us an update on your own listing, please use the online [Address Change Form](#) or send an email to the Licensing Department. Please notify the Licensing Department if you find that another attorney's information is incorrect. Questions on attorney status and good standing should also be directed to the Licensing Department at (208) 334-4500.

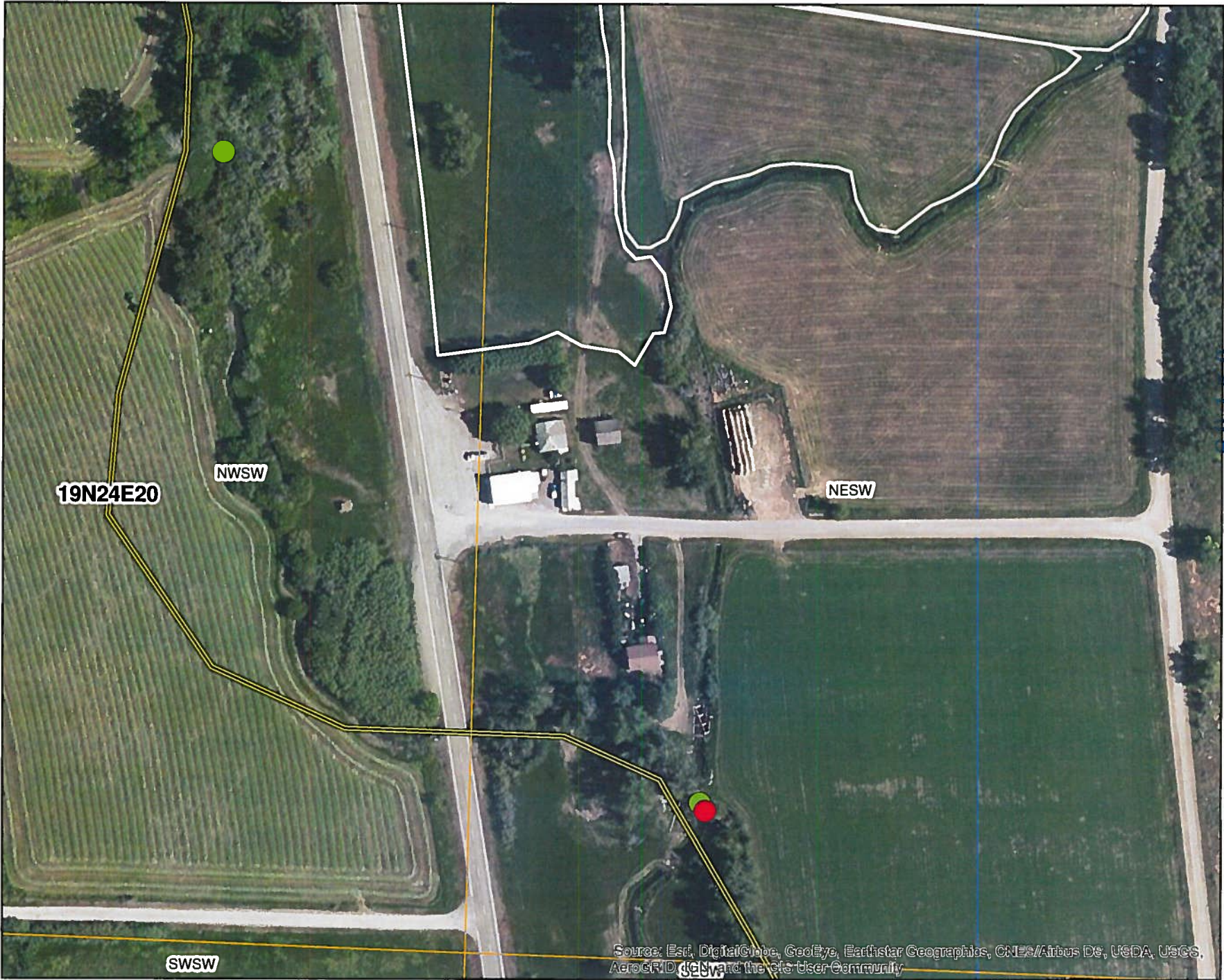
Attachment No. 7a

Map

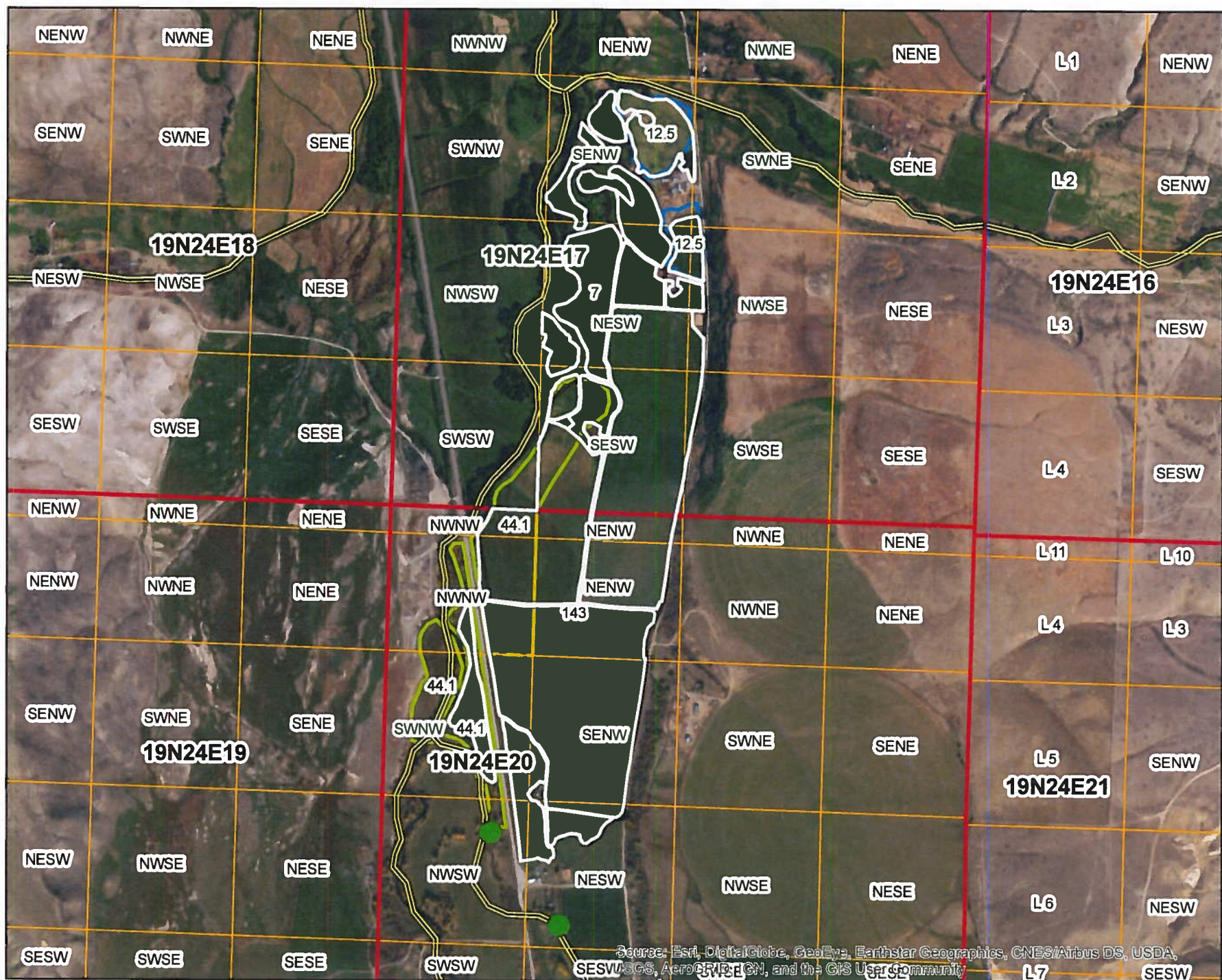
HERBST TRANSFER

Legend

- New POU FINAL
- Point of Injection
- Rediversion Points
- TR Lines
- Section Lines
- QQ
- Rivers_streams



- New POU FINAL
- Rediversion Points
- TR Lines
- Section Lines
- 2Q
- Rivers_streams
- 74-740
- 74-741
- 74-742.
- 74-7147



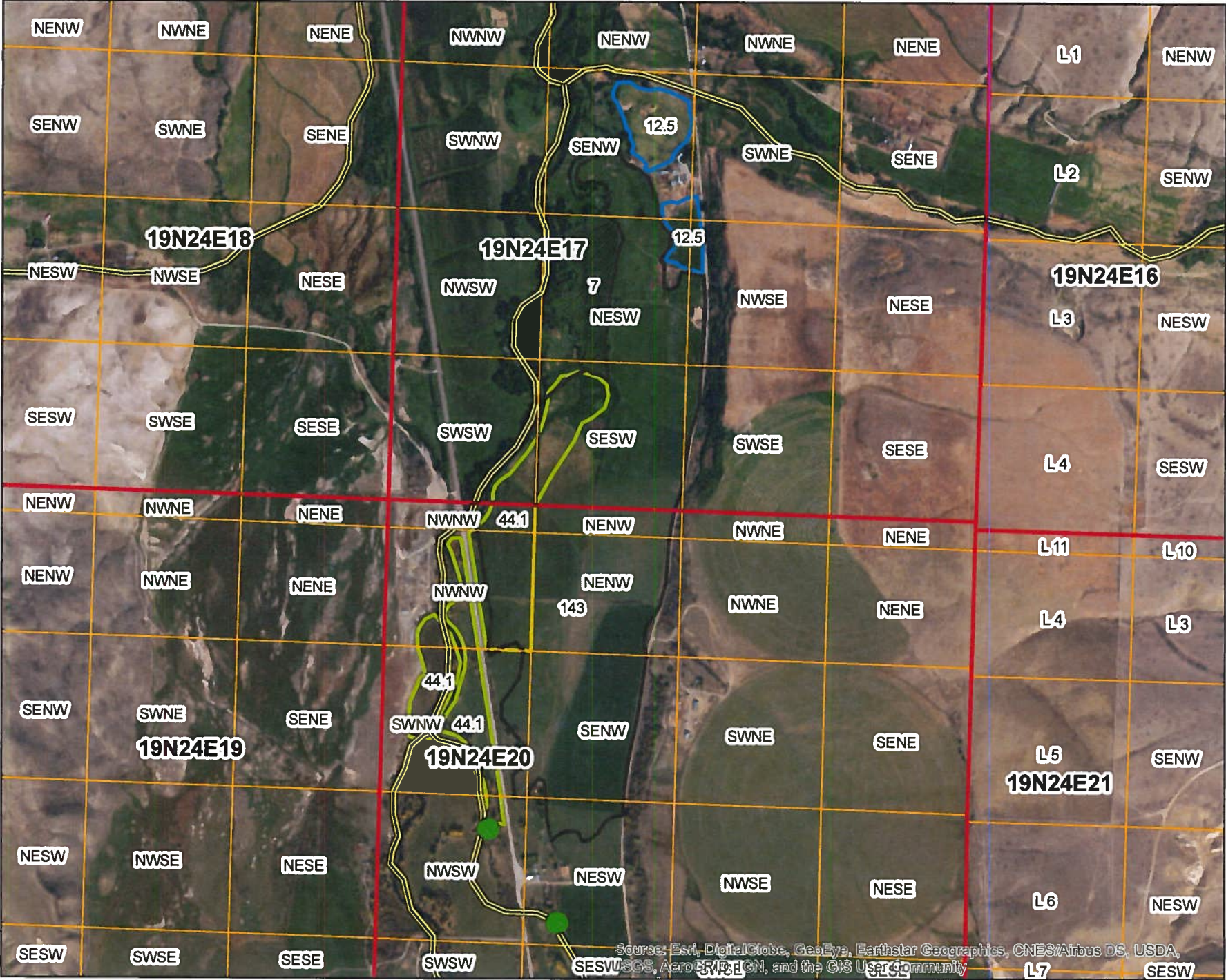
ESRI Basemap

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA
USGS, AeroGRID, IGN, and the GIS User Community

HERBST TRANSFER

Legend

- Rediversion Points
- ▭ TR Lines
- ▭ Section Lines
- ▭ 74-740
- ▭ 74-741
- ▭ 74-742.
- ▭ 74-7147



Attachment No. 7b
Map (GIS shapefile)

WILL BE EMAILED UP REQUEST