

WATER SUPPLY BANK LEASE CONTRACT No. 666

RECEIVED

SEP 05 2017

DEPARTMENT OF
WATER RESOURCES

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

LESSOR: WESTERN RIVERS CONSERVANCY
71 SW OAK ST STE 100
PORTLAND, OR 97204

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 Monday, July 10, 2017.
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)
71-10969	5/1/1902	GOAT CREEK, tributary to VALLEY CREEK	0.860	Not Stated	140.10
71-10966	5/1/1902	GOAT CREEK, tributary to VALLEY CREEK	0.790	Not Stated	140.10
71-10971	8/1/1902	GOAT CREEK, tributary to VALLEY CREEK	2.300	Not Stated	140.10
71-10970	6/1/1902	GOAT CREEK, tributary to VALLEY CREEK	1.430	Not Stated	140.10
Combined Limit Totals			5.380	Not Stated	140.10
71-10964	5/1/1910	MEADOW CREEK, tributary to GOAT CREEK	1.440	Not Stated	156.10
71-10967	5/1/1910	MEADOW CREEK, tributary to GOAT CREEK	0.450	Not Stated	156.10
71-10968	7/1/1910	MEADOW CREEK, tributary to GOAT CREEK	1.800	Not Stated	156.10
71-10965	7/1/1910	MEADOW CREEK, tributary to GOAT CREEK	2.880	Not Stated	156.10
Combined Limit Totals			6.570	Not Stated	156.10
Combined Limit Totals			11.950	Not Stated	278.90
Combined Lease Totals			11.950	Not Stated	278.90

SUPPORT DATA

IN FILE # 71-10964

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.

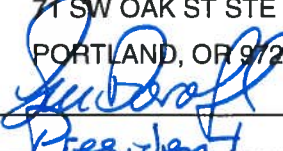
Minimum Payment Acceptable: Current Rental Rate

3. **TERM OF LEASE:** The Lessor has requested and the Board has approved for these water rights to be indefinitely leased into the Water Supply Bank. Therefore, the term of this lease shall be January 1, 2017 to an indefinite period of time. However, the term of lease for this contract shall be subject to review and reaffirmation every 100 years, with the first review possible after December 31, 2116. 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.

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

LESSOR: WESTERN RIVERS CONSERVANCY

71 SW OAK ST STE 100
PORTLAND, OR 97204

By 
Title President
Date 8/31/17

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 9/5/2017

Lease approved by IDWR 

Date 9-5-2017

ATTACHMENT A
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE
FOR LEASE CONTRACT NO. 666

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): 71-10964, 71-10965, 71-10967, 71-10968

MEADOW CREEK	SWNWNE	Sec. 20	Twp 10N	Rge 13E	CUSTER County
MEADOW CREEK	SESWNW	Sec. 20	Twp 10N	Rge 13E	CUSTER County

Source and Location of Point(s) of Diversion for Water Right No(s): 71-10966, 71-10969, 71-10970, 71-10971

GOAT CREEK	SENWNW	Sec. 17	Twp 10N	Rge 13E	CUSTER County
GOAT CREEK	SENWNW	Sec. 17	Twp 10N	Rge 13E	CUSTER County
GOAT CREEK	NWNENW	Sec. 17	Twp 10N	Rge 13E	CUSTER County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
71-10964	IRRIGATION	05/01	to	10/31	1.440 cfs	0.00 AF
71-10965	IRRIGATION	05/01	to	10/31	2.880 cfs	0.00 AF
71-10966	IRRIGATION	05/01	to	10/31	0.790 cfs	0.00 AF
71-10967	IRRIGATION	05/01	to	10/31	0.450 cfs	0.00 AF
71-10968	IRRIGATION	05/01	to	10/31	1.800 cfs	0.00 AF
71-10969	IRRIGATION	05/01	to	10/31	0.860 cfs	0.00 AF
71-10970	IRRIGATION	05/01	to	10/31	1.430 cfs	0.00 AF
71-10971	IRRIGATION	05/01	to	10/31	2.300 cfs	0.00 AF
Totals:					11.950 cfs	0.00 AF

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	
10N	13E	8															1.9		1.9
10N	13E	17		33.7	40.0		10.2			27.4	30.1			26.0		40.0	34.6		242.0
10N	13E	20		26.5			8.5												35.0

Total Acres: 278.9

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.
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 water under these rights is regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 170 (Upper Salmon River Basin) and Water Sub-District 71 (Stanley Are).
13. The term of lease for this lease contract shall be indefinite, however the lease may be reviewed every 100 years, with the first review commencing after December 31, 2116.
14. The term of this lease is subject to an August 15, 2017 purchase and sale agreement from Western Rivers Conservancy to the Idaho Water Resource Board. If the purchase and sale transaction is not completed prior to March 31, 2018, Western Rivers Conservancy may request that these water rights be released from the Water Supply Bank and that this indefinite lease contract be terminated.

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

JUL 10 2017

DEPARTMENT OF
WATER RESOURCESAPPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANKDesignated Applicant Western Rivers Conservancy
(Select one owner – see item 1A on the application)Water Right No. 71-10967
(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>1,000</u>	Received By: <u>VC</u>	Date Received: <u>7/10/17</u>	Receipt # <u>C103824</u>
W-9 received? Yes ☐ No ☐	(Route W-9 to Fiscal)	Name on W-9:	

855

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 Western Rivers Conservancy

Mailing Address <u>71 SW Oak Street, Suite 100</u>	Portland	Oregon	97204
Street	City	State	Zip Code
Email Address <u>sdoroff@westernrivers.org</u>	Phone Number <u>503-241-0151</u>		

☒ 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 <u>Sue Doroff</u>	Organization <u>Western Rivers Conservancy</u>
Professional Title <u>President</u>	Email Address <u>sdoroff@westernrivers.org</u>
Mailing Address <u>71 SW Oak Street, Suite 100, Portland, OR 97204</u>	Phone Number <u>503-241-0151</u>

☒ 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.

The Meadow Creek water right in this application and the additional Meadow Creek rights listed in 4.C. are diverted with check dams and then conveyed in an open ditch to the place of use.

- 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. Goat Creek 71-10966, 71-10969, 71-10970, 71-10971; Meadow Creek 71-10964, 71-10965, 71-10968

- 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. See Attachment A for explanation of beneficial use

- 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: 2017 to indefinite (minimum 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.
The IWRB will rent the water in 2017 at the current rental rate. Commencing in 2018, the IWRB will hold title to the water rights and thus it will not charge itself to rent the water.

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



Printed Name

Sue Doroff

Date

7/6/17

Signature of Authorized Representative

Printed Name

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). Meadow Creek 71-10964, 71-10965, 71-10967, 71-10968 and Goat Creek 71-10966, 71-10969, 71-10970, 71-10971

	Designated Applicant	Applicant #2	Applicant #3
Name			
Mailing Address			
Phone Number			
Email Address			
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			

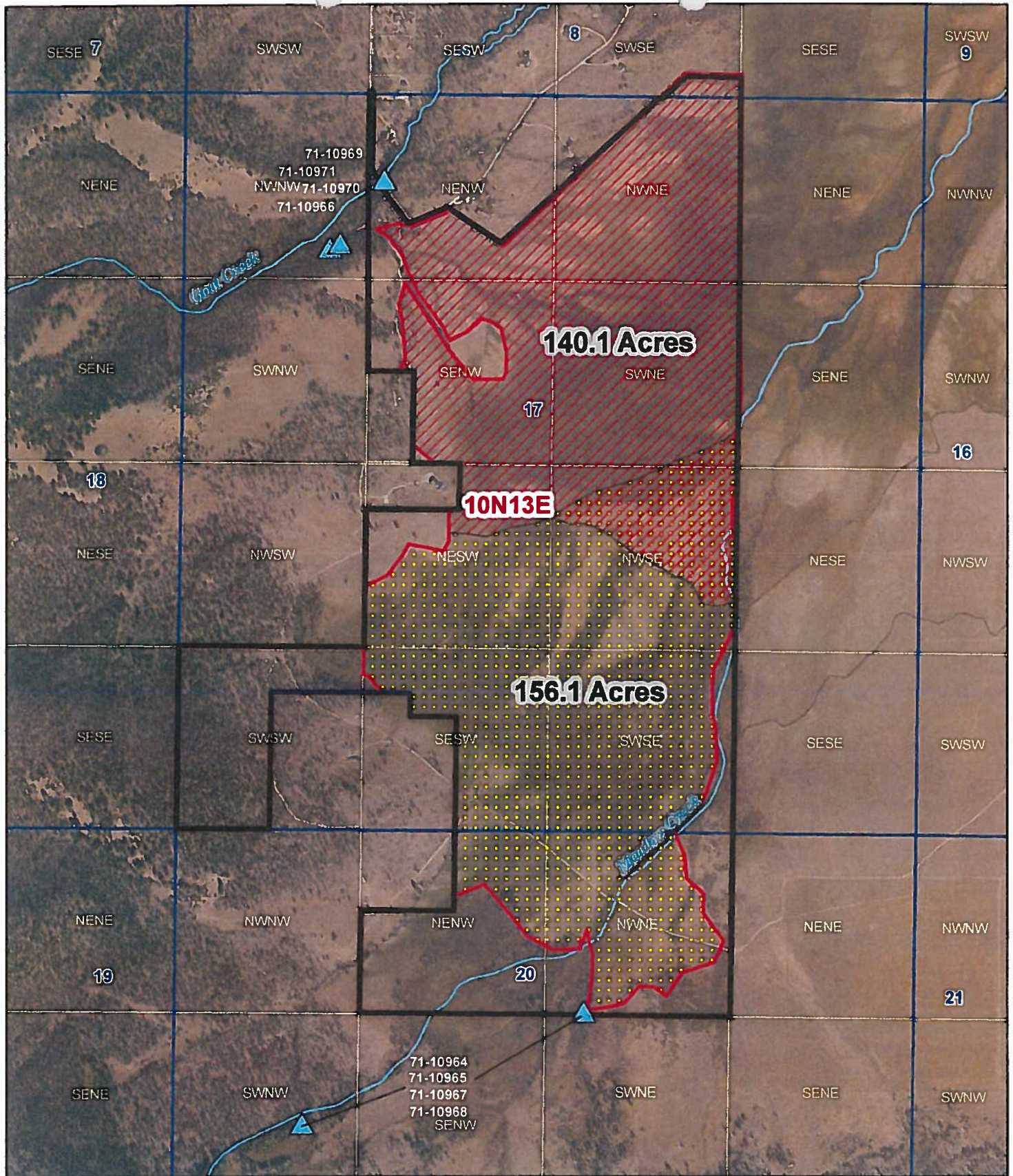
**WESTERN RIVERS CONSERVANCY
SECRETARY'S CERTIFICATE**

I, Juliette Harding, certify that I am the duly elected Secretary of Western Rivers Conservancy, a nonprofit corporation organized under the laws of the State of Oregon. I further certify that Sue Doroff is the duly elected and acting President of Western Rivers Conservancy and is authorized to executed documents and act on behalf of Western Rivers Conservancy.

Executed at Portland, Oregon this 5th day of July, 2017.



Juliette Harding
Secretary



Attachment 3

0 0.075 0.15 0.3 0.45 0.6 Miles
 Map Date: 5/26/2017 Imagery: 2015 NAIP

- WRC_POD
- WRC_property
- Idle POU
- GOAT CREEK POU
- MEADOW CREEK POU
- Streams
- Township/Range
- Sections
- QQ

Attachment A

Lease application for water right nos:

71-10964, 71-10965, 71-10967, 71-10968, 71-10966, 71-10969, 71-10970, 71-10971

Q 4.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.*

Landsat imagery from September 5, 2014 indicates that within the Goat Falls Ranch property boundary 298 acres (and arguably more) were irrigated within the 399 acre property boundary of the ranch (see Map 1). However, while some of that active irrigation did not take place within the POU (see Map 2), the full acreage under the water rights for Goat Falls Ranch were put to beneficial use as is shown in the September 5, 2014 Landsat 8 image.

In February 2017, Goat Falls Ranch sold 361 acres and the appurtenant water rights to Western Rivers Conservancy (see Map 3). An additional 5 acre lot and the appurtenant 3.2 acres of irrigation is under contract and Western Rivers Conservancy is expected to take title to the land and water rights in July 2017 (see Map 4). A change of ownership will be submitted to IDWR and presumably the water rights will receive new numbers in Western Rivers Conservancy's name. Additional lease applications will be submitted for the newly acquired 3.2 acres. Those lease application(s) will contain the same beneficial use analysis as this one.

The language from the IDWR memo dated July 10, 2008 provides guidance on whether or not a water right holder risks the forfeiture of their water right when they use it in a manner other than was authorized by their license or decree. In this case Goat Falls Ranch irrigated acreage outside their decreed POU. That memo concludes that "*Absent circumstances such as those in McCray, it is likely that an Idaho court would not find a water right forfeited because of an unauthorized change in point of diversion, place of use, or period of use.*"

The full memo is attached to the lease application.

MEMORANDUM

TO: Phil Rassier
FROM: Ann Yribar
DATE: July 10, 2008
RE: Forfeiture and Unauthorized Use of a Water Right.

Question Presented:

Whether a water right holder risks the forfeiture of their water right when they use it in a manner other than was authorized by their license or decree.

Discussion:

In Idaho, it is unlawful for a water right holder to use their water in any way that does not conform with their valid water right, and the director of the department of water resources is authorized to file an action seeking injunctive relief should the person fail to cease the unauthorized use. Idaho Code § 42-351. Any person may, however, make a lawful change to the point of diversion, period of use, or nature of use of their water right by first filing an application with the director of the department of water resources and by showing that no other water right holders will be injured by the change. Idaho Code § 42-108, § 42-222. Accomplished transfers, changes to an element of a water right that occurred prior to November 19, 1987, can be adjudicated and decreed as used even though they failed to comply the requirements of §§ 42-108 and 42-222.

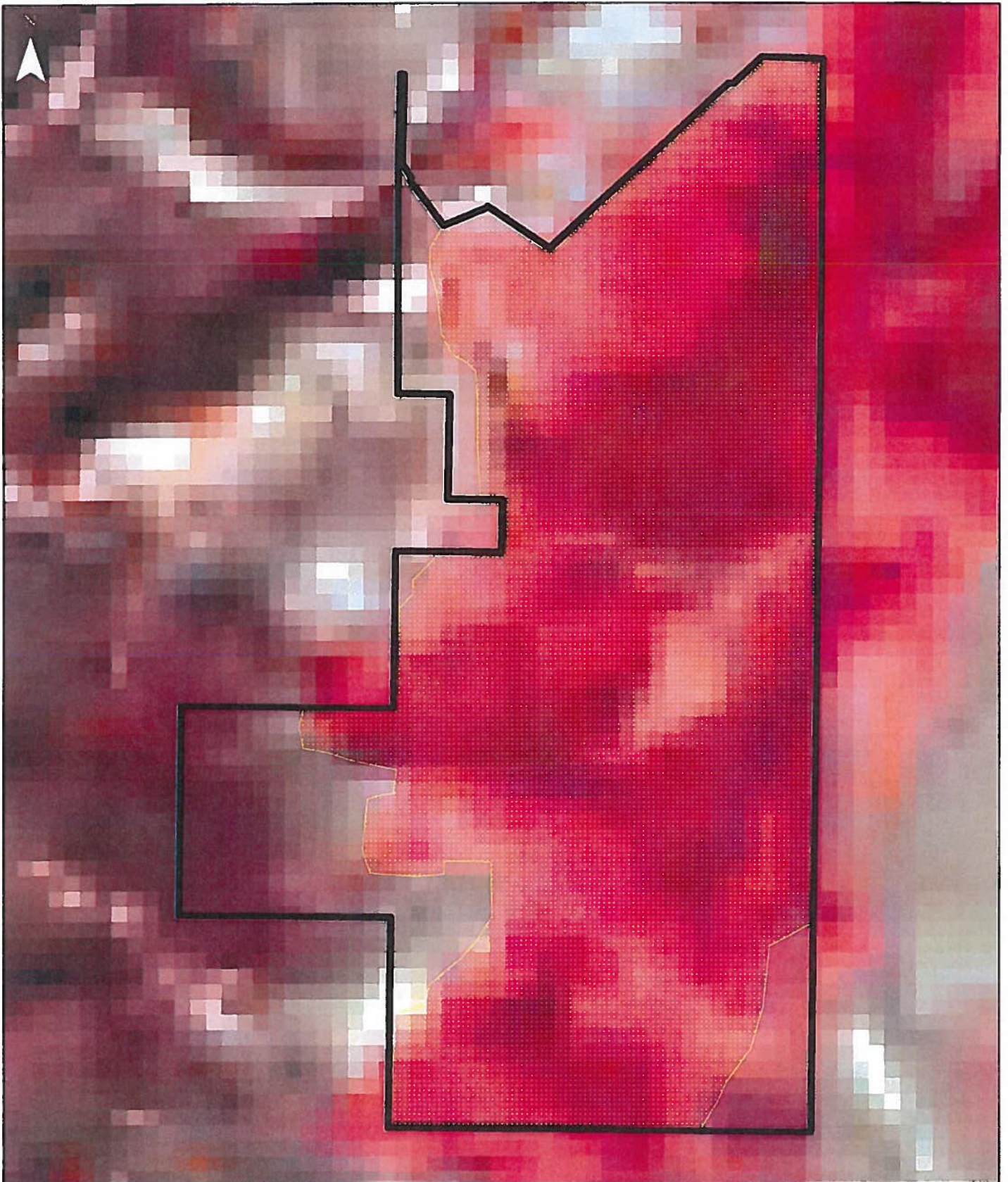
Change in a point of diversion, period of use, or nature of use of a water right does not result in forfeiture. In *Joyce v. Rubin*, a water user moved his point of diversion 1800 feet upstream from where it was originally located. The court found that the water users had the right to move the point of diversion as long as the change did not injure any other water users. 23 Idaho 296, 130 P. 793, 797 (1913). The court stated that even: "if a change is made without proper application to the state engineer . . . that would not forfeit the right to the use of such water. *Id.* See also *Harris v. Chapman*, 51 Idaho 283, 5 P.2d 733 (1931).

In a more recent 2002 order, SRBA Presiding Judge Burdick held that a water right was not forfeited simply because the point of diversion had been changed without authorization by

the department of water resources. *In Re SRBA, No. 39576, Wood v. Troutt, Subcase No. 65-05663B*, (SRBA Dist. Ct., Idaho, May 9, 2002). In that case, Troutt had been forced to move his point of diversion when Wood erected an electric fence which blocked access to the original point of diversion. *Id.* at 26. Wood argued, based on *McCray v. Rosenkrance*, that this change in the point of diversion began a consecutive five-year period of non-use that resulted in forfeiture. 135 Idaho 509, 20 P.3d 693 (2001). (Water right was forfeited through five years of non-use. Place of use was then changed to land not appurtenant to water right. Court held this use insufficient to show resumption of use; forfeiture not defeated). The SRBA court rejected this argument stating *McCray* cannot be said to stand for the proposition that "the automatic sanction for failing to receive proper authorization prior to changing any element of a water right is forfeiture upon accrual of the five-year period of such unauthorized use." *Wood v. Trout* at 34. There are some changes in use that may result in forfeiture, as in *McCray* where the water right was not used for five years and the resumption of use defense failed because use was resumed on land to which the right was not appurtenant. Here, however, Troutt was using the water on the appurtenant land, his place of diversion was downstream from the decreed place of diversion, the pump was in the same ditch, and there was no evidence that injury to other water rights would occur because of the move. *Id.* at 35. The court noted its decision did not insulate Troutt from any sanctions that the department of water resources might wish to impose for the unauthorized change, but simply meant Troutt had not forfeited his water right.

Absent circumstances such as those in *McCray*, it is likely that an Idaho court would not find a water right forfeited because of an unauthorized change in point of diversion, place of use, or period of use. The sanctions afforded to the department of water resources in Idaho Code § 42-351 include providing notice of the violation in use of a water right and, if necessary, action for injunctive relief. If the legislature had contemplated forfeiture as a sanction for violation of §§ 42-222 or 42-108, it is likely it would have been stated more explicitly in the sanctions set out in § 42-351.

Map 1



Imagery: Landsat 8 September 5, 2014
Source: p41r29_l8_20140905_b543.sid

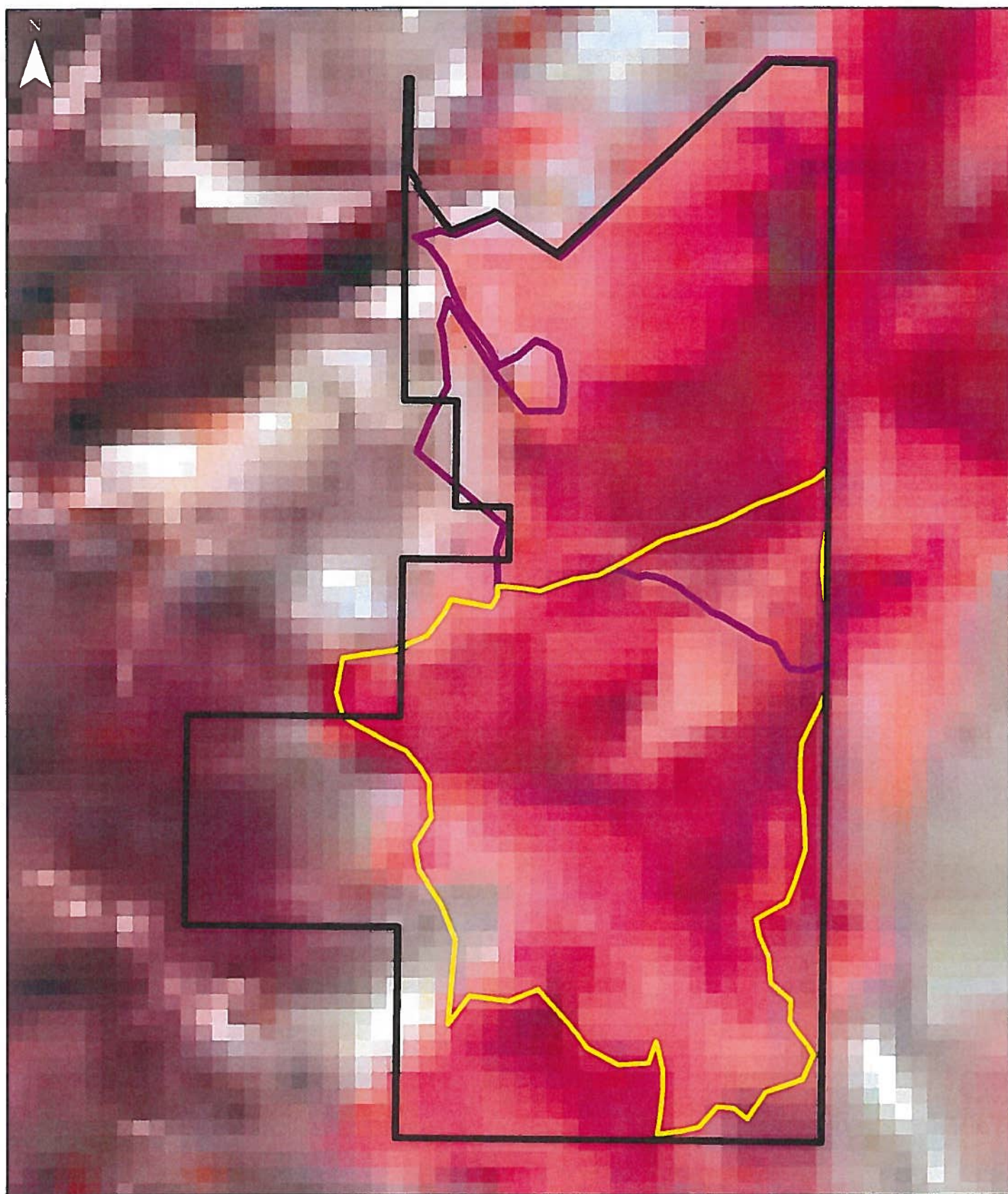


Goat Falls Ranch boundary 2014



Irrigated_acres

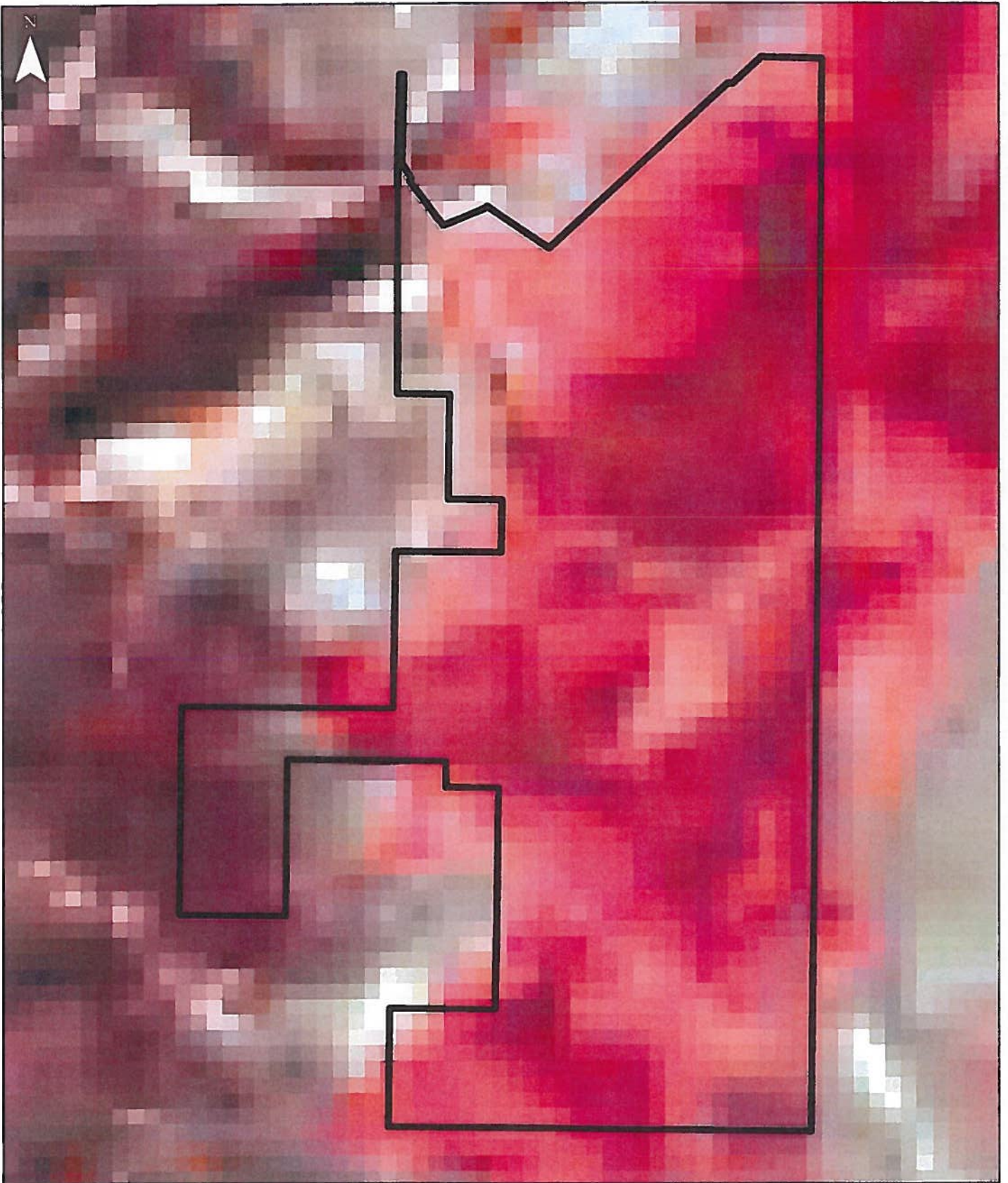
Map 2



Imagery: Landsat 8 September 5, 2014
Source: p41r29_l8_20140905_b543.sid

-  Goat Falls Ranch boundary 2014
-  Meadow Creek_Furey_POU
-  Goat Creek_Furey_POU

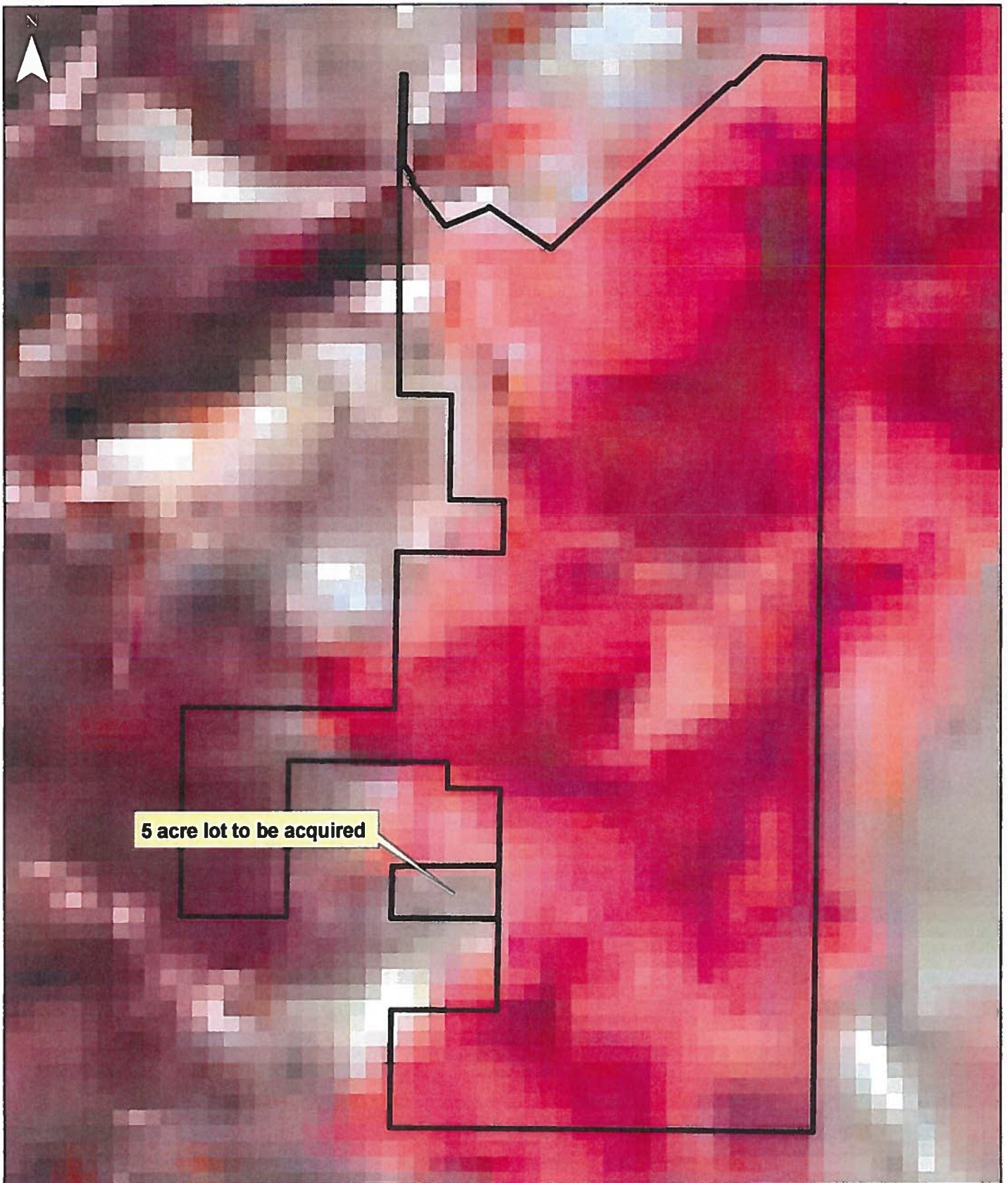
Map 3



Imagery: Landsat 8 September 5, 2014
Source: p41r29_l8_20140905_b543.sid

 WRC boundary 7.1.2017

Map 4



Imagery: Landsat 8 September 5, 2014
Source: p41r29_l8_20140905_b543.sid



WRC boundary exp. August 2017