ev. 07/11

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 79876

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

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

lame of Applicant(s) BNH PROPERTIES LLC

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

es 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 portionis 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 #1-9.

☐ ☑ #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 transfer 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).

☐ ☒ #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 http://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.

☐ ☒ #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.)

☐ ☒ #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 Other. Please describe: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of Applicant BNH PROPERTIES LLC Phone (801)427-6006

Mailing Address PO BOX 367, SPANISH FORK UT 84660 Email brettwherbst@gmail.com

☐ 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 _____ Phone _____

Mailing Address _____ Email _____

☐ 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.

Signature of Applicant or Authorized Representative	Print Name and Title if applicable	Date
[signature]	Brett Herbst	7/28/20

A. PURPOSE OF TRANSFER

1.

Right	Split	POD	POU	Add POD	Period of Use	Nature of Use
74-2165B	No	No	Yes	Yes	No	No
74-15672	No	No	Yes	No	No	No
74-15708	No	No	Yes	Yes	No	No

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

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**

It is the same existing mainline system and pumping system. We are just trading acres for acres under the existing system.

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

1. Detailed Water Right Description(s) Attached labeled Part 1.

Summary of Water Rights After the Approved Change

Transferred Right (All or Part)	Transfer Rate	Transfer Volume	Acre Limit	Total Acres	Original Right (Remaining Portion)	Remaining Rate	Remaining Volume	Remaining Acre Limit	Remaining Total Acres
74-15708	6.950 cfs	N/A	231.5	319.6		N/A	N/A	N/A	N/A
74-2165B	2.080 cfs	N/A	88.1	319.6		N/A	N/A	N/A	N/A
74-15672	0.790 cfs	N/A	76.3	76.3		N/A	N/A	N/A	N/A
COMBINED TOTALS	9.030 cfs	N/A	319.6	319.6		N/A	N/A	N/A	N/A

2. Total amount of water proposed to be transferred or changed 9.03 cubic feet per second and/or _____ acre-feet per annum

3. Points(s) of Diversion:
   - ☐ No changes to point(s) of diversion are proposed-the following chart is therefore not completed. (Proceed to #4.)
   - ☑ As shown in Part 1.
   - ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5.**

4. Place of Use:
   - ☐ No changes to place of use are proposed. (Proceed to #5.)
   - ☑ As shown in Part 1.
   - ☐ See Attachment.

IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Transfer Right After Requested Changes

Proposed Water Right No. 74-15708

Current Water Right Owner
BNH PROPERTIES LLC
PO BOX 367
SPANISH FORK, UT 84660

Priority Date: 8/18/1915
Origin: Water Right
Basis: Decreed
Status Active
Source: LEMHI RIVER **Tributary:** SALMON RIVER

Beneficial Use	From	To	Diversion Rate	Subuse Code
IRRIGATION	03/15	11/15	6.950 CFS	
Total Diversion			6.950 CFS	

Source and Point(s) of Diversion:

LEMHI RIVER	SENE	Sec. 25 Twp 20N Rge 23E LEMHI County
LEMHI RIVER	SENW	Sec. 3 Twp 20N Rge 23E LEMHI County

Place of Use: IRRIGATION

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
20N	23E	4			23	6.7			25	16	33	28		23	18	40	26		238.7
20N	23E	5	12.0		0.4	35.0									33.0	0.5			80.9
			L 1																

Right Acre Limit: 231.5
POU Total Acres: 319.6

 Transfer No. 79876

IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Transfer Right After Requested Changes

Proposed Water Right No. 74-2165B

Current Water Right Owner
BNH PROPERTIES LLC
PO BOX 367
SPANISH FORK, UT 84660

Priority Date: 11/6/1913
Origin: Water Right
Basis: Decreed
Status Active
Source: LEMHI RIVER **Tributary:** SALMON RIVER

Beneficial Use	From	To	Diversion Rate	Subuse Code
IRRIGATION	03/15	11/15	2.080 CFS	
Total Diversion			2.080 CFS	

Source and Point(s) of Diversion:

LEMHI RIVER	SENW	Sec. 03 Twp 20N Rge 23E LEMHI County
LEMHI RIVER	SENE	Sec. 25 Twp 20N Rge 23E LEMHI County

Place of Use: IRRIGATION

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
20N	23E	4			23	6.7			25	16	33	28		23	18	40	26		236.7
20N	23E	5	12.0		0.4	35.0									33.0	0.5			80.9
			L 1																

Right Acre Limit: 88.1
POU Total Acres: 319.6

IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Transfer Right After Requested Changes

Proposed Water Right No. 74-15672

Current Water Right Owner

BNH PROPERTIES LLC
PO BOX 367
SPANISH FORK, UT 84660

Priority Date: 4/15/1885
Origin: Water Right
Basis: Decreed
Status Active
Source: WITHINGTON CREEK **Tributary:** LEMHI RIVER

Beneficial Use	From	To	Diversion Rate	Subuse Code
IRRIGATION	03/15	11/15	0.790 CFS	
Total Diversion			0.790 CFS	

Source and Point(s) of Diversion:
WITHINGTON CREEK SESE Sec. 4 Twp 20N Rge 23E LEMHI County

Place of Use: IRRIGATION

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
20N	23E	4			23.0	6.7									18.0	28.0	0.6		76.3

Right Acre Limit: 76.3
POU Total Acres: 76.3

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

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

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
No, ☑ 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:
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. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

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

f. 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:

IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A

Current Water Right No. 74-15708

Current Water Right Owner
BNH PROPERTIES LLC
PO BOX 367
SPANISH FORK, UT 84660

Priority Date: 8/17/1915
Origin: Water Right
Basis: Decreed
Status: Active
Source: LEMHI RIVER **Tributary:** SALMON RIVER

Beneficial Use	From	To	Diversion Rate	Subuse Code
IRRIGATION	03/15	11/15	6.950 CFS	
Total Diversion			6.950 CFS	

Source and Point(s) of Diversion:
LEMHI RIVER SENW Sec. 3 Twp 20N Rge 23E LEMHI County

Place of Use: IRRIGATION

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
20N	23E	4			26.7	8.3			27.0	21.0	20.0				21.5	38.0	15.0		177.5
20N	23E	5	13.0		1.0	40.0													54.0
			L1																

POU Total Acres: 231.5

Conditions/Remarks:

1. 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. This right is a split from former right 74-15674 .

IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A

Current Water Right No. 74-2165B

Current Water Right Owner
BNH PROPERTIES LLC
PO BOX 367
SPANISH FORK, UT 84660

Priority Date: 11/6/1913
Origin: Water Right
Basis: Decreed
Status: Active
Source: LEMHI RIVER **Tributary:** SALMON RIVER

Beneficial Use	From	To	Diversion Rate	Subuse Code
IRRIGATION	03/15	11/15	2.080 CFS	
Total Diversion			2.080 CFS	

Source and Point(s) of Diversion:
LEMHI RIVER SENW Sec. 25 Twp 20N Rge 23E LEMHI County

Place of Use: IRRIGATION

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
20N	23E	4									10.0	25.0		20.0					55.0
20N	23E	5													34.0				34.0

POU Total Acres: 89.0

Conditions/Remarks:

1. 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. This right authorizes the irrigation of 88.1 total acres.

IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A

Current Water Right No. 74-15672

Current Water Right Owner
BNH PROPERTIES LLC
PO BOX 367
SPANISH FORK, UT 84660

Priority Date: 4/15/1885
Origin: Water Right
Basis: Decreed
Status: Active
Source: WITHINGTON CREEK **Tributary:** LEMHI RIVER

Beneficial Use	From	To	Diversion Rate	Subuse Code
IRRIGATION	03/15	11/15	0.790 CFS	
Total Diversion			0.790 CFS	

Source and Point(s) of Diversion:
WITHINGTON CREEK SESE Sec. 4 Twp 20N Rge 23E LEMHI County

Place of Use: IRRIGATION

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
20N	23E	4			26.7	8.3									21.3	20.0			76.3

POU Total Acres: 76.3

Conditions/Remarks:

1. 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.

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.

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 rights(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.**

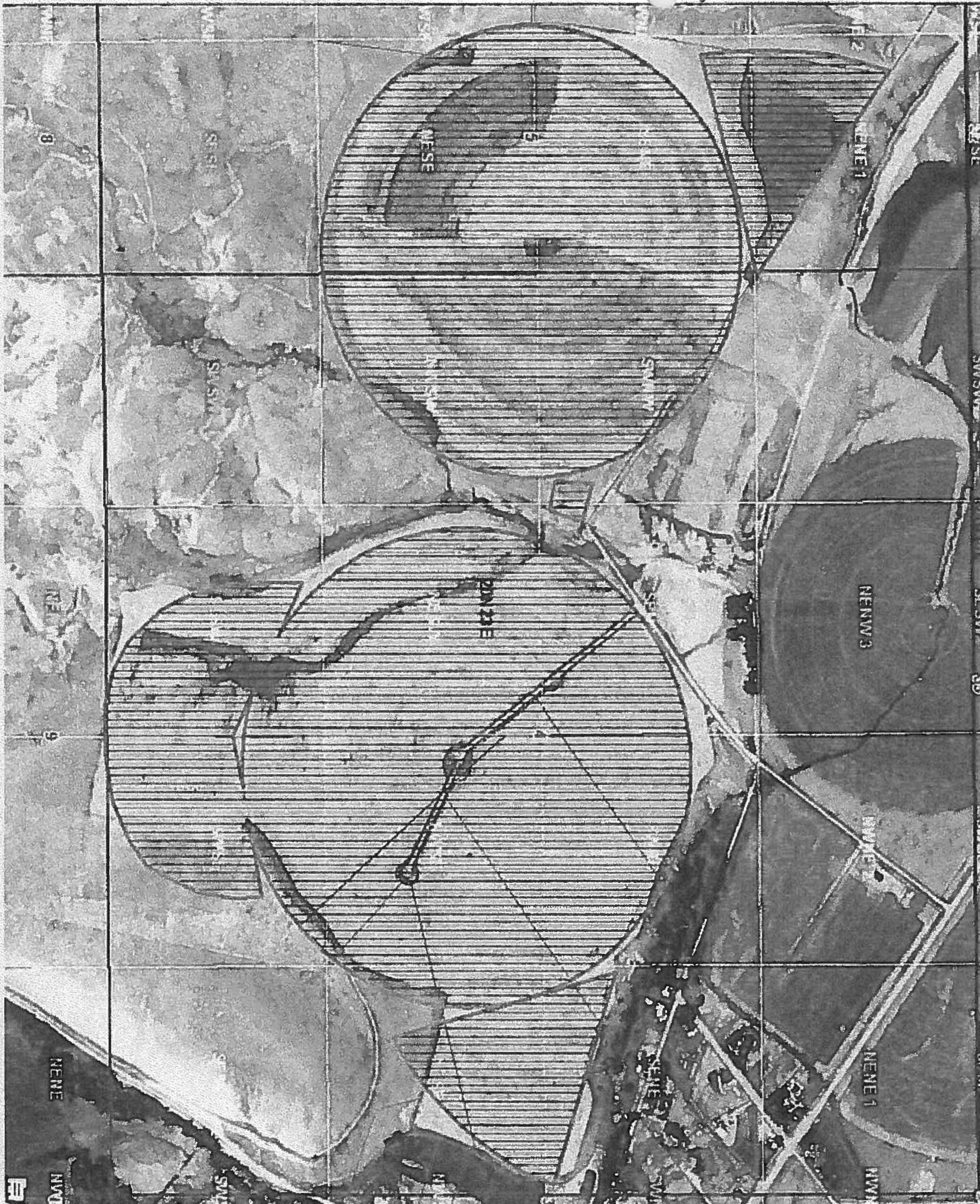
C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

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

1. 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.:

FOR DEPARTMENT USE ONLY

Transfer Contains 11 pages and _____ attachments.
Received By _____ Date 2/26/2015 Prelim. Check By _____ Date _____
Fee Paid _____ Date _____ Receipted By _____ Receipt # C100739
Add'l Fee Paid _____ Date _____ Receipted By _____ Receipt # _____


NESE
NENE 1
NENW 3
NENE 1
NENE

Withington 2
L-13
L-22

RECEIVED
FEB 26 2015
Department of Water Resources
Eastern Region

RECEIVED
MAR 02 2015
DEPARTMENT OF WATER RESOURCES

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 79876

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of Applicant(s) BNH Properties LLC Phone 801 427 6006

Mailing address PO Box 367, Spanish Fork UT 84660 Email brettwherbst@gmail.com

- ☐ 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 _____ Phone _____

Mailing address _____ Email _____

SUPERCEDED

- ☐ 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.

Signature of Applicant or Authorized Representative	Print Name and Title if applicable	Date
[signature]	Brett Herbst President	1/22/15

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 _____

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.** we eliminated several wheel lines and replaced with windshield wiper pivot.

* Rather than draft an amended application & seek the applicant's approval of that doc this application was amended based on email exchange Refer to email dated 6/12/2015 for POU confirmation Refer to email dated 7/4/2015 for POD & WR confirmation MEdl 7/21/2015

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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. All or Part	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
☐ ☒	74-15708	6.95	cropland	3/15 to 11/15	Lemhi River / Salmon River
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 6.95 cfs and/or ____ ac-ft

2. Total amount of water proposed to be transferred or changed .13 ? cubic feet per second and/or ? acre-feet per annum.

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 #

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	
20N	23E	4															X		4.5

Total Acres (for irrigation use) 4.5 acres

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: It is the same existing mainline system & pumping system we are just trading acres for acres under the existing system.

b. Who owns the property at the point(s) of diversion? BNH Properties LLC same
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system: _____

c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? no
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: _____

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. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer: none

e. 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: We own 74-2165B that is used on existing land also. No changes required

f. 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: _____

IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A

Current Water Right No.: 74-2165b

Current Owner: BNH PROPERTIES LLC

Priority Date: 11/6/1913

Origin: Water Right

Status: Active

Basis: Decreed

Source	Tributary
LEMHI RIVER	SALMON RIVER

Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION	03/15 to 11/15	2.08 CFS	
	Total Diversion	2.08 CFS	

Location of Point(s) of Diversion

LEMHI RIVER SE1/4NW1/4 Sec. 25, Twp 20N, Rge 23E B.M.
LEMHI County

Place of Use

IRRIGATION Within LEMHI County

T20N R23E S4	NESW	10.00	T20N R23E S4	NWSW	25.00
T20N R23E S4	SESW	20.00	T20N R23E S5	NESE	34.00

Total Acres: 89

Conditions of Approval:

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. E64 This right authorizes the irrigation of 88.1 total acres.

Decreed Date: 9/19/2007

IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A

Current Water Right No.: 74-15708

Current Owner: BNH PROPERTIES LLC

Priority Date: 8/17/1915

Origin: Water Right

Status: Active

Basis: Decreed

Source	Tributary
LEMHI RIVER	SALMON RIVER

Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION	03/15 to 11/15	6.95 CFS	
	Total Diversion	6.95 CFS	

Location of Point(s) of Diversion

LEMHI RIVER SE1/4NW1/4 Sec. 3, Twp 20N, Rge 23E B.M.
LEMHI County

Place of Use

IRRIGATION Within LEMHI County

T20N R23E S4		SWNE	26.70	T20N R23E S4		SENE	8.30
T20N R23E S4		SWNW	27.00	T20N R23E S4		SENW	21.00
T20N R23E S4		NESW	20.00	T20N R23E S4		NESE	21.50
T20N R23E S4		NWSE	38.00	T20N R23E S4		SWSE	15.00
T20N R23E S5	Lot 1	NENE	13.00	T20N R23E S5		SWNE	1.00
T20N R23E S5		SENE	40.00				

Total Acres: 231.5

Conditions of Approval:

1. This right is a split from former right 74-15674 .

2. 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.

Decreed Date: 11/6/2007

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2

A. DESCRIPTION OF RIGHT(S) AS RECORDED

For each water right listed in Part 1B.1 of the application, attach a **Part 2A** report obtained from any Department office or from the Department's website @ http://www.idwr.idaho.gov/ , Water Right Transfers, Step 1.
Insert Part 2A reports into the application following Part 1.

B. IF ONLY A PORTION OF THE RIGHT IS PROPOSED TO BE CHANGED, DESCRIBE THE PORTION BEING CHANGED AS IT APPEARS BEFORE THE REQUESTED CHANGES

☐ Complete and attach one copy of Part 2B for each right for which only a portion is proposed to be changed. If the entire right is proposed to be changed, Part 2B is not applicable. Additional copies of the **Part 2B** form can be obtained from any Department office or from the Department's website @ http://www.idwr.idaho.gov/ , Water Right Transfers, Step 3, or Water Right Forms, Changes in Use. Insert completed Part 2B forms into the application following Part 2A of the same water right.

Right Number: 74-15708

1. amount 6.95 (cfs/ac-ft) for irrigations purposes from 3/15 to 11/15
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____

2. Lands irrigated or place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

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	
20N	23E	4							2										2
20N	23E	4								2.5									2.5

Total Acres (for irrigation use) 4.5 acres

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.

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 rights(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**.

1. 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.:_____

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments.

Received by _____ Date _____ Prelim. Check by _____ Date _____

Fee Paid 100 Date 2/24/15 Receipted by SC Receipt # E040684

Add'l Fee Paid 100 Date 3/13/15 Receipted by SC Receipt # E40736

Lemhi River Drainage

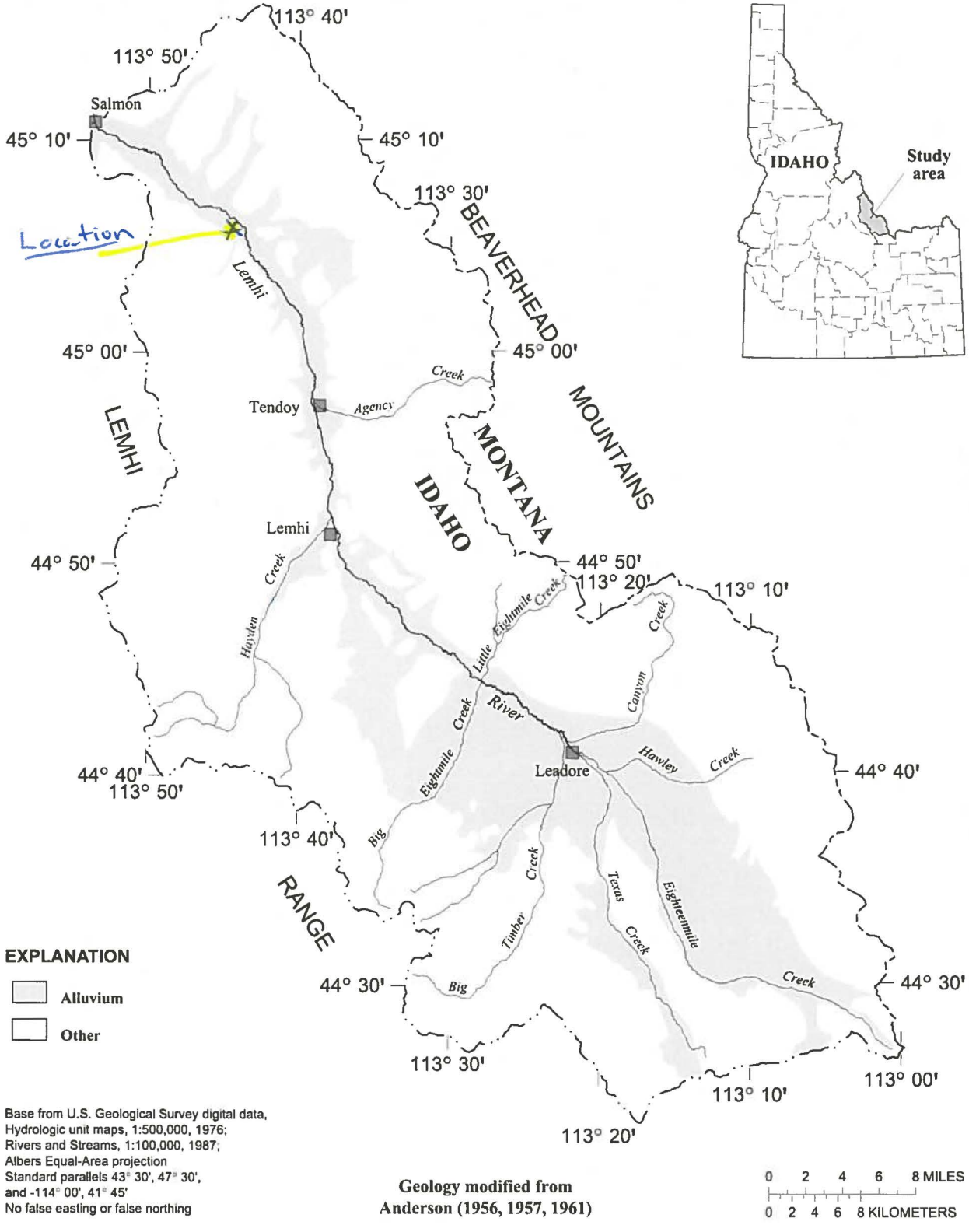
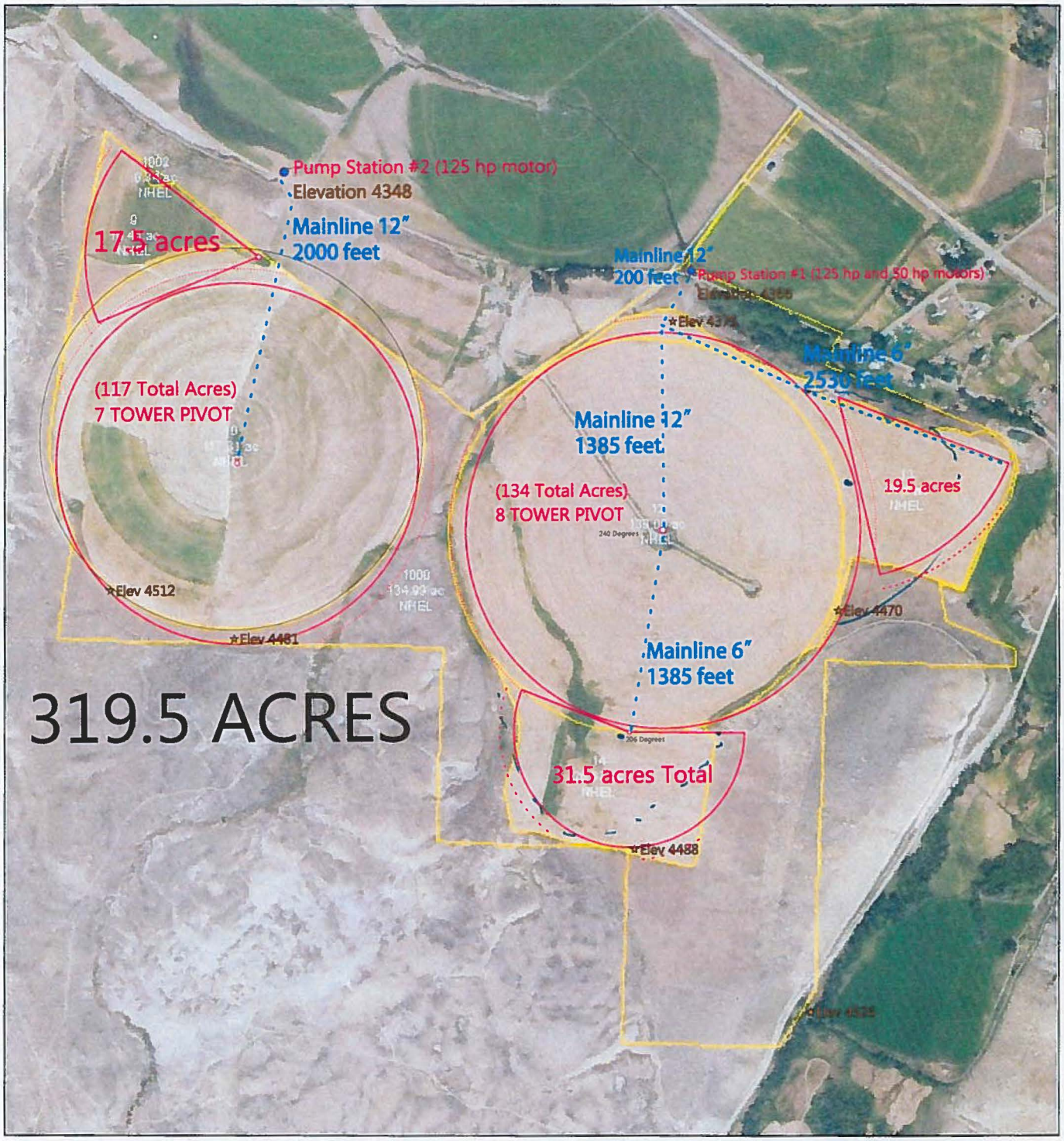


Figure 1. Lemhi River Basin study area, east-central Idaho.



USDA

United States Department of Agriculture
Farm Service Agency

December 4, 2013

Farm: 968
Tract: 1155

Lemhi/North Custer FSA

1 in = 923 ft

N
W E
S

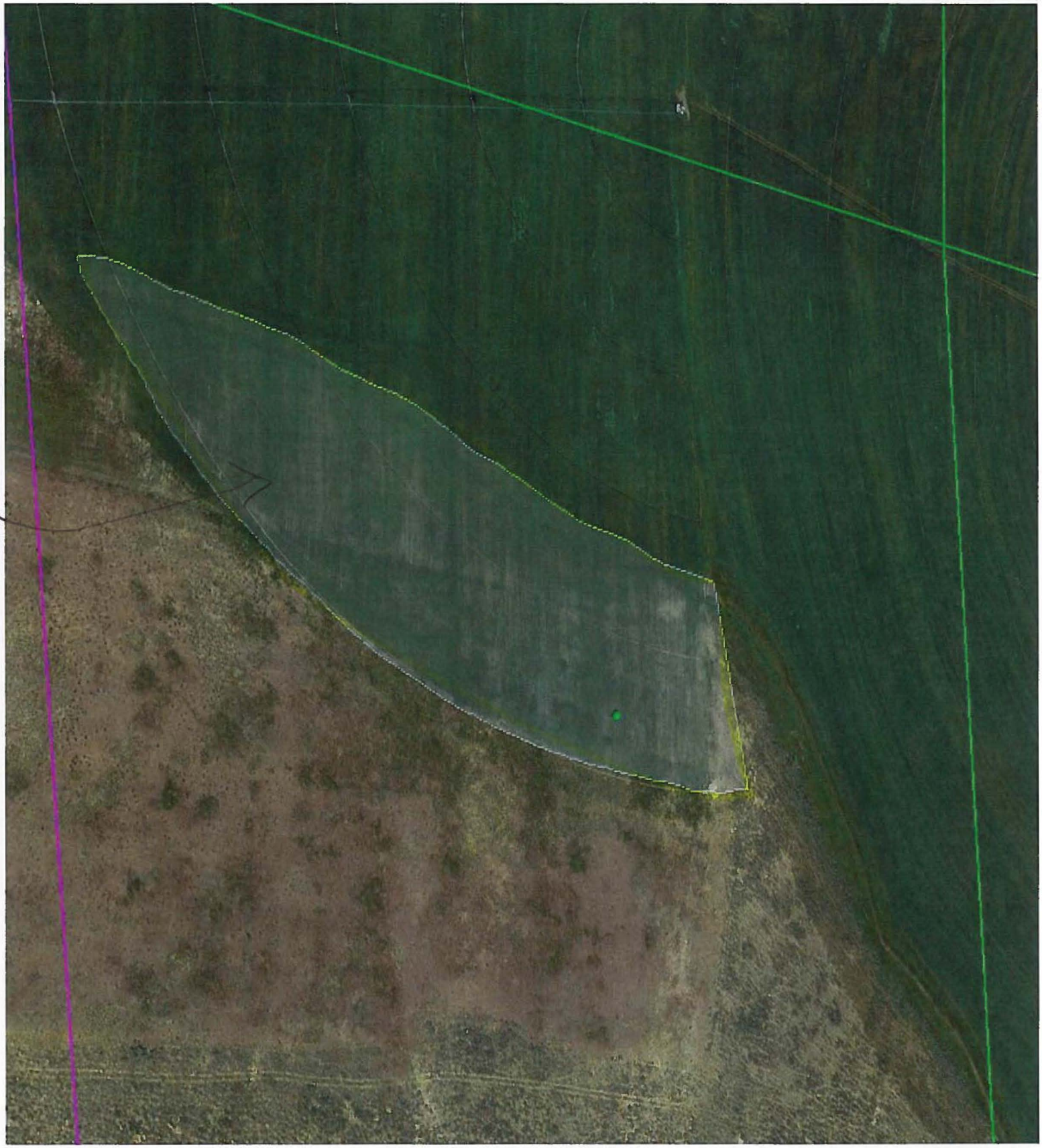
Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS. This acreage is for FSA purposes only. No warranty is made for any other use.

currently H_2O is allocated to this Parcel



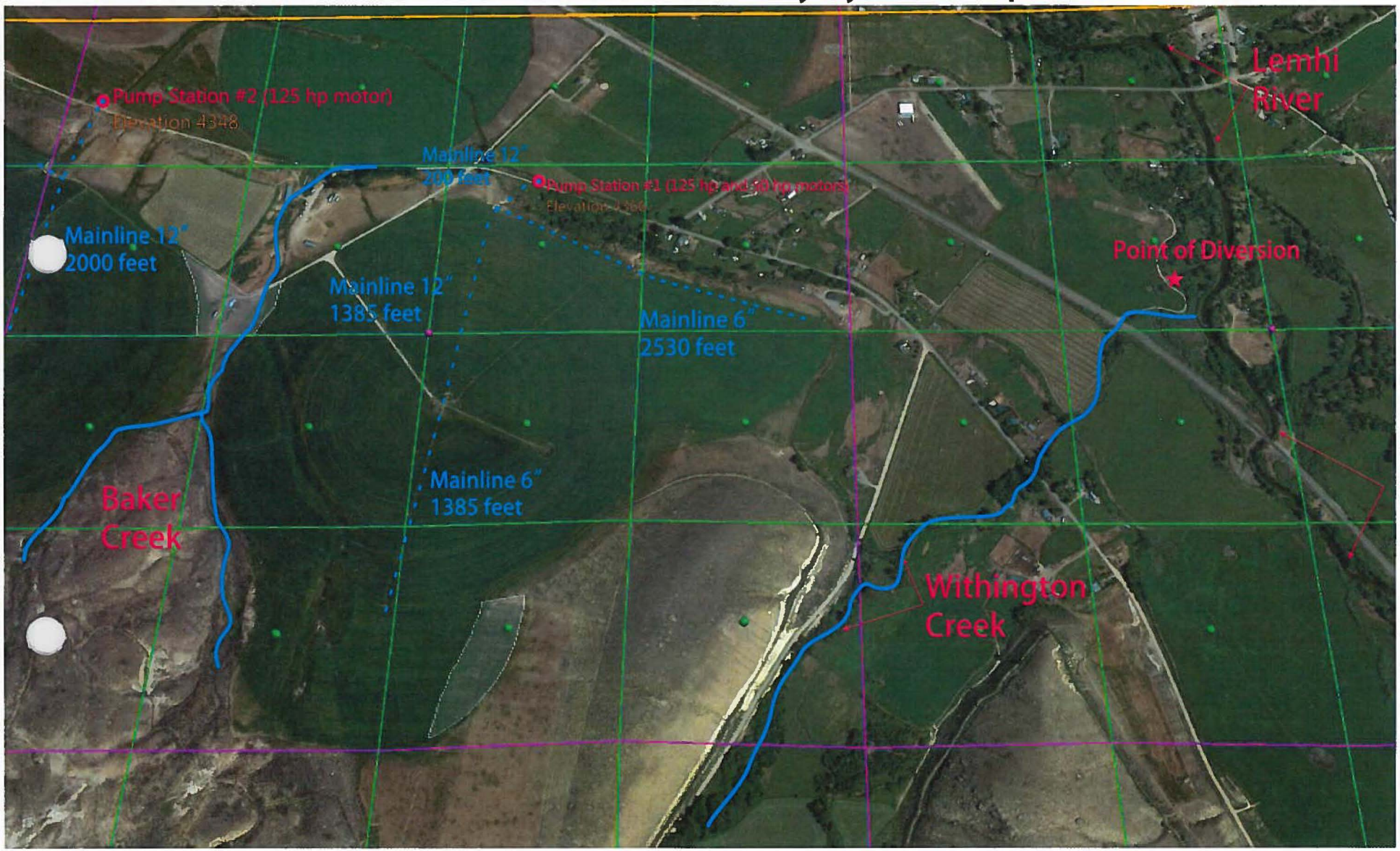
4.5 acres

Change to use here



#7a

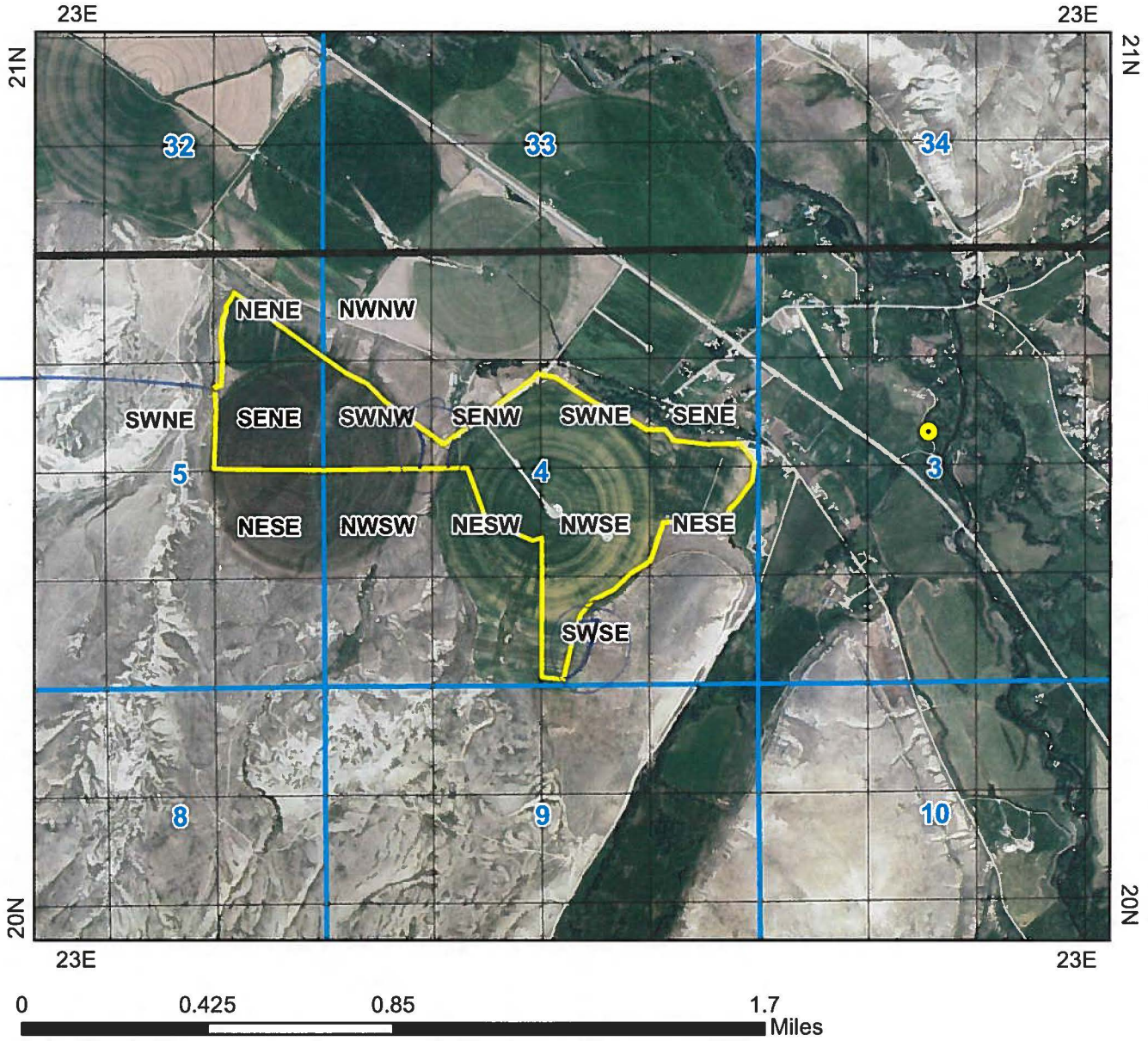
Water Diversion and Delivery System Map



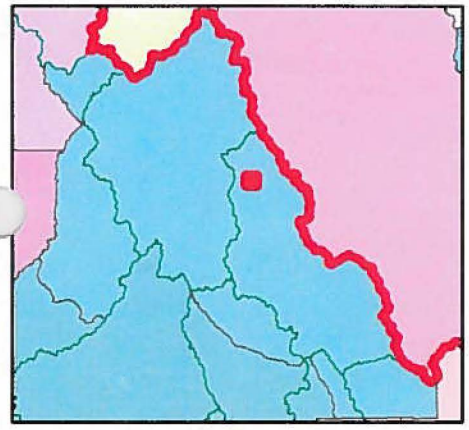
Idaho Department of Water Resources

Water Right
74-15708
(IRRIGATION)

- Point of Diversion
- Place of Use
- State Outline
- Townships
- PLS Sections
- Quarter Quarters



Place of Use



Lemhi County
IDWR Basin 74

N

Prepared by Bohac, Heather

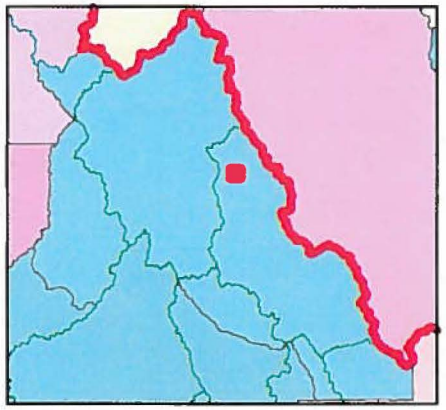
2009 Aerial Photography

Proposed Changes to Water Right 74-15708

Idaho Department of Water Resources

Water Right
74-15708
(IRRIGATION)

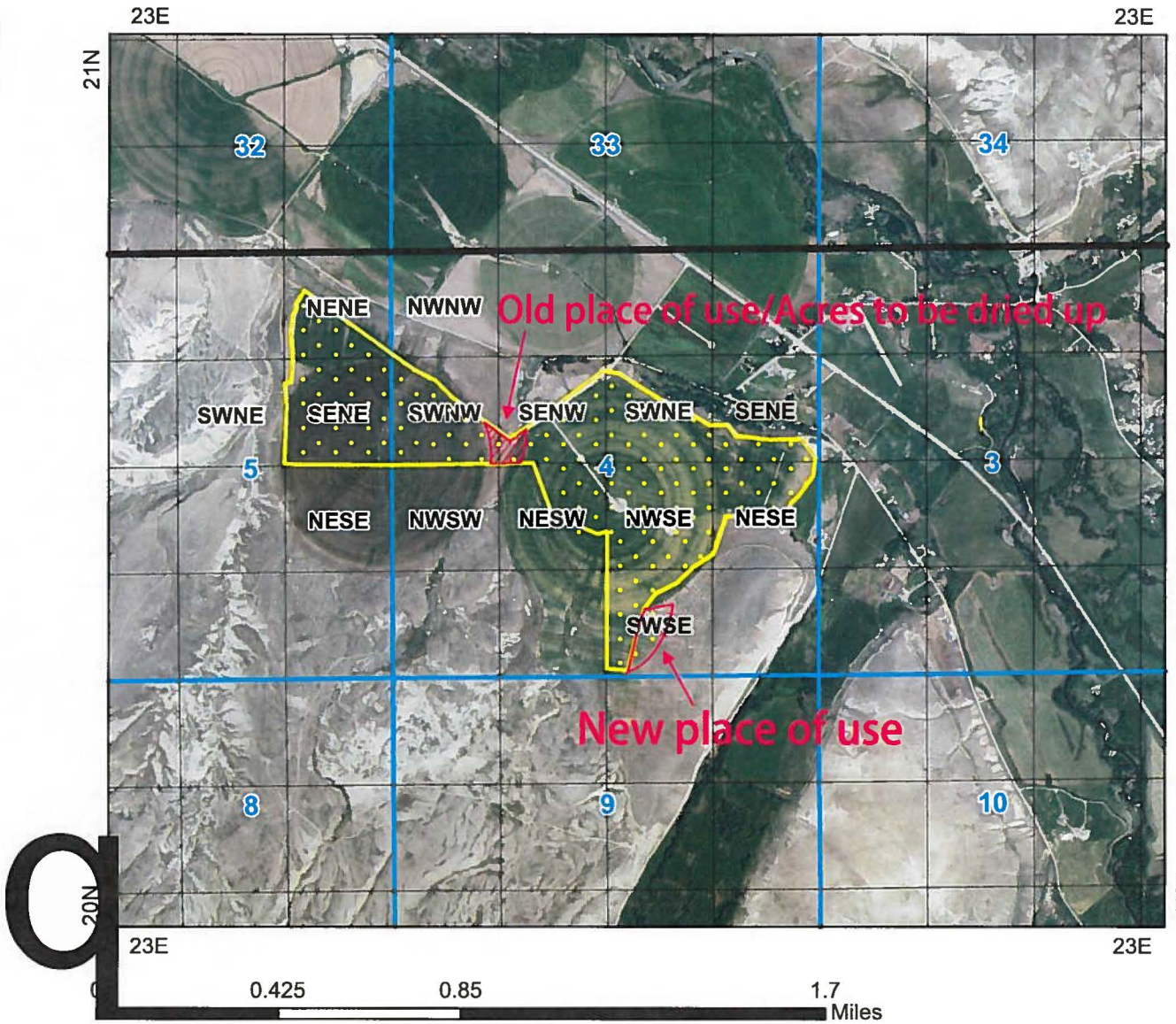
- Point of Diversion
- Place of Use
- State Outline
- Townships
- PLS Sections
- Quarter Quarters



Lemhi County
IDWR Basin 74

Prepared by Bohac, Heather

2009 Aerial Photography



231.5 acres of Irrigated land under this right.

Attachment #7b

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

August 13, 2015

ROBBIE JENSEN
WATER DISTRICT NO. 74J
184 WITHINGTON CREEK RD
SALMON ID 83467

RE: Transfer No. 79876

Dear Watermaster:

A copy of the above referenced application is enclosed. Please review the application, then complete the enclosed recommendation form and return it to this office within 21 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's regional offices 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 21 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,

Jean Hersley
Technical Records Specialist

Enclosure(s)

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 4, 2015

RICK SAGER
WATER DISTRICT NO. 74
985 HWY 28
SALMON ID 83467

RE: Transfer No. 79876

Dear Watermaster:

A copy of the above referenced application is enclosed. Please review the application, then complete the enclosed recommendation form and return it to this office within 21 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.

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Sincerely,

Jean Hersley

Jean Hersley
Technical Records Specialist

Enclosure(s)

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 4, 2015

JEREMY DRAKE
WATER DISTRICT NO. 74J
15 SKINNER LN
SALMON ID 83467

RE: Transfer No. 79876

Dear Watermaster:

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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.

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Sincerely,

Jean Hersley
Technical Records Specialist

Enclosure(s)

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

July 29, 2015

BNH PROPERTIES LLC
PO BOX 367
SPANISH FORK, UT 84660

RE: Transfer No. 79876
Water Right No(s). 74-15672, 74-15708, 74-2165B

Dear Applicant(s):

The Department of Water Resources has received your water right transfer application. Please refer to the transfer number referenced above in all future correspondence regarding this transfer.

A legal notice of the application has been prepared and is scheduled for publication in the RECORDER HERALD on 8/6/2015 and 8/13/2015. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the approval document.

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

Sincerely,

Jean Hersley
Technical Records Specialist

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

July 29, 2015

IDAHO DEPARTMENT OF FISH & GAME
ATTN: TOM BASSISTA
4279 COMMERCE WAY
IDAHO FALLS ID 83401

RE: Transfer No. 79876
Water Right No. 74-2165B, 74-15672 and 74-15708

Dear Interested Party:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right transfer. A copy of the application is enclosed for your reference.

This office can publish notice of the application as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a $25.00 filing fee within 10 days after final publication.

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

Sincerely,

Jean Hersley
Technical Records Specialist II

Enclosure(s)

c: Dept of Fish & Game- Salmon office

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

July 29, 2015

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY
900 NORTH SKYLINE SUITE B
IDAHO FALLS, ID 83402

RE: Transfer No. 79876
Water Right Nos. 74-2165B, 74-15672 and 74-15708

Dear Interested Party:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right transfer. I have enclosed a copy of the application for your reference.

This office can publish notice of the application as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a $25.00 filing fee within 10 days after final publication.

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

Sincerely,

Jean Hersley
Technical Records Specialist II

Enclosure(s)

July 29, 2015

Legal Notice Department
Recorder Herald
PO Box 310
Salmon ID 83467

RE: Legal Ad for your paper

Dear LEGAL NOTICE DEPARTMENT:

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

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before August 24, 2015. Your cooperation is appreciated.

Sincerely

Jean Hersley
Technical Records Specialist II
IDWR State Office
322 E Front St
Boise ID 83720
208-287-4942
jean.hersley@idwr.idaho.gov

****

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 79876
BNH PROPERTIES LLC, PO BOX 367, SPANISH FORK, UT 84660; has filed Application No. 79876 for changes to the following water rights within LEMHI County(s): Right No(s). 74-15672, 74-15708, 74-2165B; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/wr/QueryNewTransfers/QueryNewTransfers.aspx. The purpose of the transfer is to change a portion of the above rights as follows:
This transfer proposes to add existing points of diversion to each right and change the place of use for the combined rights in the existing pivot system.
Protests may be submitted based on the criteria of Idaho Code Sec. 42-222.
Any protest against the proposed change must be filed with the Department of Water Resources, 322 E Front St, PO Box 83720, Boise ID 83720-0098 together with a protest fee of $25.00 for each application on or before 8/24/2015.
The protestant must also send a copy of the protest to the applicant.
GARY SPACKMAN, Director Published on 8/6/2015 and 8/13/2015

Hersley, Jean

From: Hersley, Jean
Sent: Wednesday, July 29, 2015 10:32 AM
To: 'rhlegals@custertel.net'
Subject: Legal Notice Transfer No. 79876
Attachments: Legal Notice.docx

RE: Transfer No. 79876,
Water Right No(s): 74-15672, 74-15708, 74-2165B

Dear Legal Notice Department:

Please publish the enclosed legal notice on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 8/24/2015. Your cooperation is appreciated.

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

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 79876

BNH PROPERTIES LLC, PO BOX 367, SPANISH FORK, UT 84660; has filed Application No. 79876 for changes to the following water rights within LEMHI County(s): Right No(s). 74-15672, 74-15708, 74-2165B; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/wr/QueryNewTransfers/QueryNewTransfers.aspx. The purpose of the transfer is to change a portion of the above rights as follows:

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GARY SPACKMAN, Director

Published on 8/6/2015 and 8/13/2015

Edl, Michele

From: Judd, Debbi
Sent: Wednesday, July 29, 2015 7:55 AM
To: Edl, Michele
Subject: FW: Fax Forward
Attachments: Fax.pdf

From IDWR Fax

-----Original Message-----
From: idwr.fax@idwr.idaho.gov [mailto:idwr.fax@idwr.idaho.gov]
Sent: Tuesday, July 28, 2015 5:42 PM
To: IDWR Fax
Subject: Fax Forward

Three steps above stone tablets, I present to you a fax from days gone by.

Attachment File Type: pdf, Multi-Page

Multifunction Device Location: Water Rights 8R904
Device Name: Copier_507

FAX

Date:	07/28/2015
Pages including cover sheet:	*14*

To:	+12082876700
Phone	
Fax Number	*+12082876700*

From:	The MAiZE
	The Maze Company
	PO Box 367
	Spanish Fork
	UT 84660
Phone	*(888) 798-0596 * 100*
Fax Number	*(888) 798-0596*

NOTE:	

Fax for Michelle Edl

Send and receive faxes with RingCentral, www.ringcentral.com

RingCentral

Edl, Michele

From: Edl, Michele
Sent: Tuesday, July 28, 2015 12:24 PM
To: 'Brett Herbst'
Subject: RE: transfer 79876
Attachments: DOC005.pdf; DOC004.pdf; DOC006.pdf

Mr. Herbst,
As you have requested, I have changed the location of the 1-acre home-site block and I have carried that change through to the grid on the transfer application. I have attached the revised transfer application and a couple maps to this email and I will also fax them to 208-745-0443.

One map shows the six place-of-use shapes at relatively close range. The other map is larger scale and shows both the place-of-use shapes and the points-of-diversion.
Please review this latest and hopefully final edition of your transfer application. The database entry I've made fills in most but not all of the boxes on the application. Please complete the checklists on page 1 and page 2 and if all is well, then please sign page 2 and return the application to me.

Michele Edl
208-287-4946
Idaho Department of Water Resources
322 E Front St
Boise ID 83720

From: Brett Herbst [mailto:brett@themaize.com]
Sent: Tuesday, July 28, 2015 8:23 AM
To: Edl, Michele
Subject: Re: transfer 79876

Everything looks great, except the 1 acre block I want to move toward the bottom next to the fence. It will be easier to have a small pasture etc there so if we could move that down toward the fence that would be great, I have attached a pictures....

Have a Farmtastic Day!

Brett Herbst
The MAiZE Inc.
Owner/Operator
brett@themaize.com
www.themaize.com
www.farmtasticfun.com **(Jumbo Jumper Air-Pillow, Spider Webs, & More)**
Main: 1-888-798-0596
Office: 801-798-0596
Fax: 801-798-0597
Cell: 801-427-6006

On Fri, Jul 24, 2015 at 5:06 PM, Edl, Michele <Michele.Edl@idwr.idaho.gov> wrote:

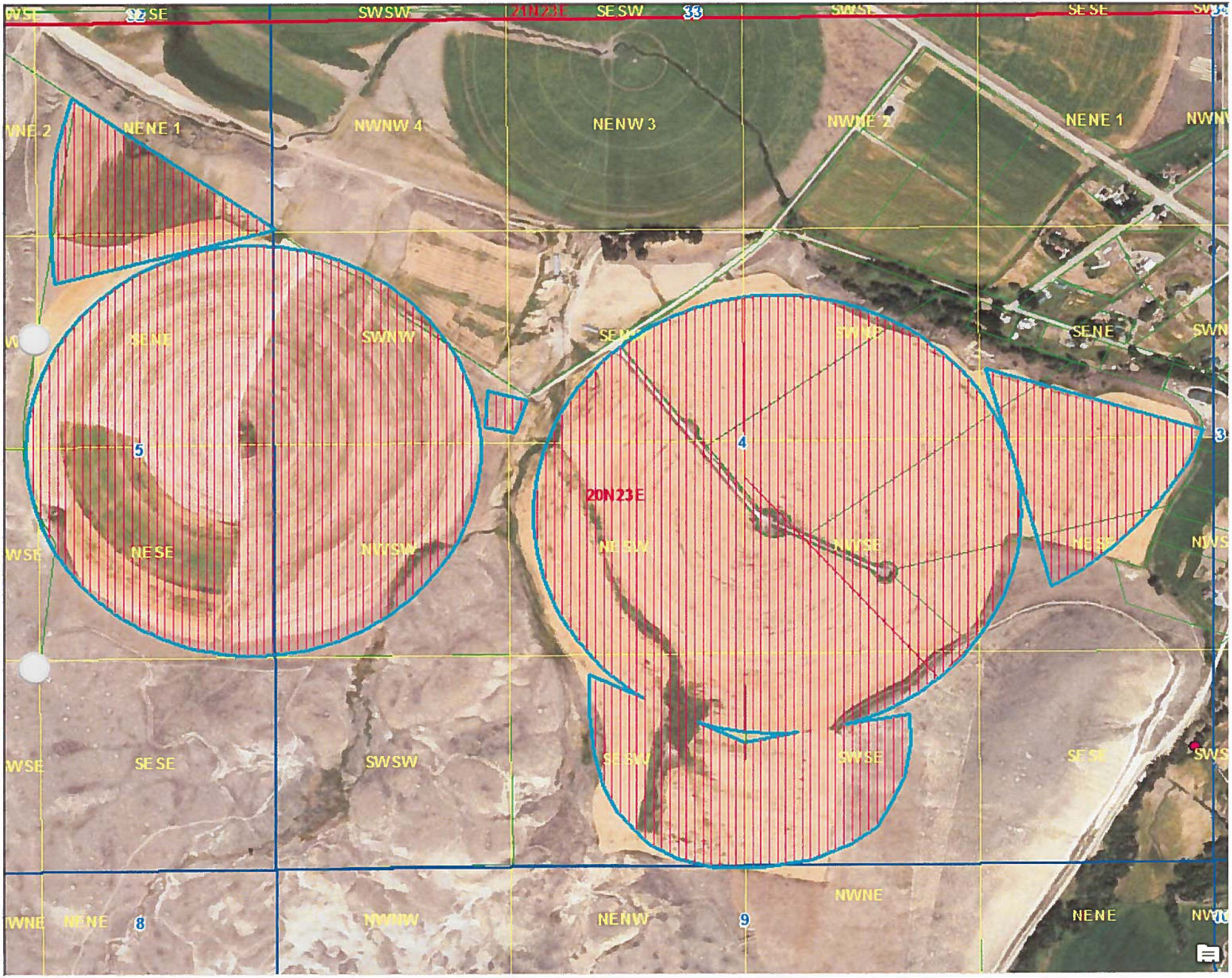
Here are the documents I promised to send. Doc003 is a map of the place of use shapes for all the rights. Let me know if I got the Withington Creek right correct. It has to overlap but you may be thinking a different overlap than I am.

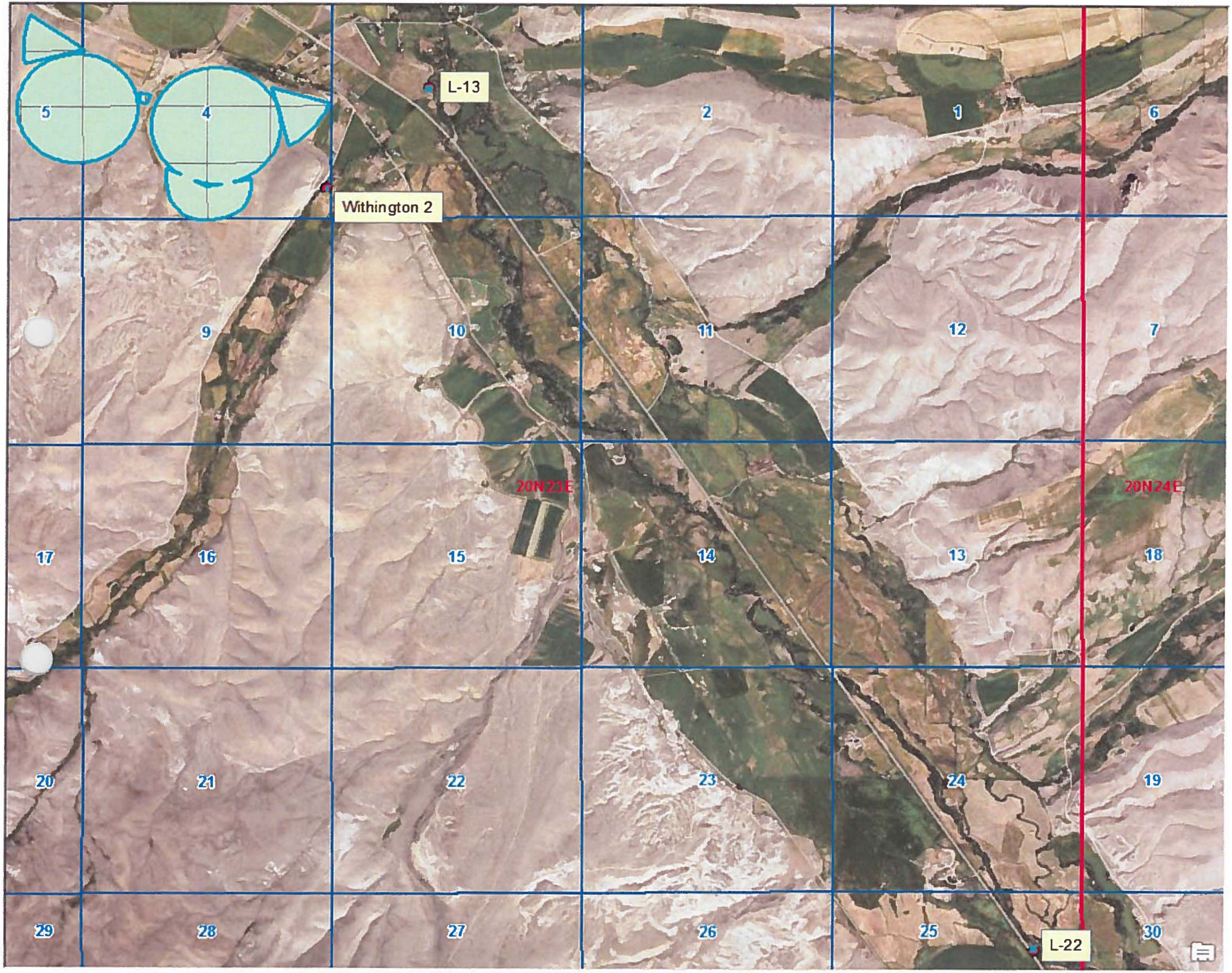
The other doc is how the transfer application now appears. Please look it over, call me with questions or sign it if is acceptable.

Thanks

Michele Edl

208-287-4946


SESE
SWSW
20N23E
SESW
33
NENE 1
NWNW 4
NENW 3
NWNE 2
SENE
SWNW
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L-13
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MEMORANDUM

Date: July 28, 2015

To: Transfer 79876

From: Michele Edl

Re: Review & Evaluation of Sufficiency of Information

The original application requested small acreage changes to only one of two Lemhi River water rights held by the applicant. However in my review of the application, I found that significant changes to more than one right were required to accomplish the intended result. Until I shared maps of the decreed POU shapes with the applicant, on 5/26/2015, he did not realize how different his current practices were from the decrees for his rights. The applicant and I discussed the additional changes needed and exchanged several emails. As a result, the transfer application was amended as follows:

- A second right 74-2165B, also sourced from the Lemhi River, and 74-15672, a right sourced from Withington Creek have been brought into the application and will be acted on by transfer 79876.
- 74-2165B has a single POD which is actually located in SENE section 25 rather than in the SENW as the partial decree states. The corrected POD for 74-2156B and the existing POD for 74-15708 will be authorized for both of these Lemhi River rights. There are no changes to the Withington Creek POD.
- 6 shapes now represent the 319.6-acre POU for both of the Lemhi River rights, 74-2156B and 74-15708.
- 2 shapes now represent the overlapping 76.3-acre POU for the Withington Creek right, 74-15672.

Additional fees were required and were submitted.

The original application map showed five place-of-use shapes which totaled 319.5 acres. Water rights 74-15708 and 74-2156B are limited to the irrigation of 319.6 acres within a 320.5-acre permissible place-of-use. The 0.9 acre difference (320.5 - 319.6 = 0.9 acres) is less than 0.5% of the total acres involved in the transfer and easily within the margin of error for confirmation by aerial photography. Therefore, I eliminated the permissible place-of-use and the conditions which would have resulted from trying to maintain 0.9 acres of flexibility to the authorized place-of-use.
In my discussions with the applicant, he also requested that an additional one-acre shape, representing the location of his future home, be created. He requested that it be placed between the large pivots and that the other irrigation shapes be shrunk to accommodate it. The home-site shape is the small polygon on the QQ line of SWNW and SENW in section 4.

Authority to File: BNH Properties, LLC is the right holder of record. IDSOS shows that it is an active entity and identified as W141261. The application was signed by Brett Herbst who is listed as a member of BNH Properties, LLC.

Water Right Validity: Water Right 74-15708 was decreed in the SRBA on November 6, 2007.
Water Right 74-2165B was decreed in the SRBA on September 19, 2007. Aerial photography shows that the places-of-use have been regularly irrigated.
Water Right 74-15672 was decreed in the SRBA on November 6, 2007. This right is from a different source and is delivered by a different system but overlaps the POU for the above rights.

Injury to Other Water Rights: Each of the rights which are acted on by this transfer have a single existing POD. The locations of the PODs are not changing. After the transfer, each of the Lemhi River rights will be authorized to divert from either or both of the two PODs which are locally known as L13 and L22. Many other water rights also divert from these two PODs. The applicant stated that he has conferred with the watermaster about the transfer.

Enlargement of Use: No enlargement is evident through the transfer. The rights will subject to control by

the watermaster of WD #74, Lemhi River and the watermaster of WD #74J, Withington Creek. Although the partial decrees of the three rights do not recognize any connection between the rights, the POU of 74-15672 has overlapped 74-15708 and will continue to overlap the POU for the transferred rights.

Local Public Interest: Review staff has no information to suggest this application is inconsistent with the local public interest.

Beneficial Use/Conservation of Water Resources: The transfer appears consistent with the conservation of water resources in Idaho.

Effect on Economy the Local Area: Review staff has no information to suggest this transfer will negatively impact the economy of the local area.

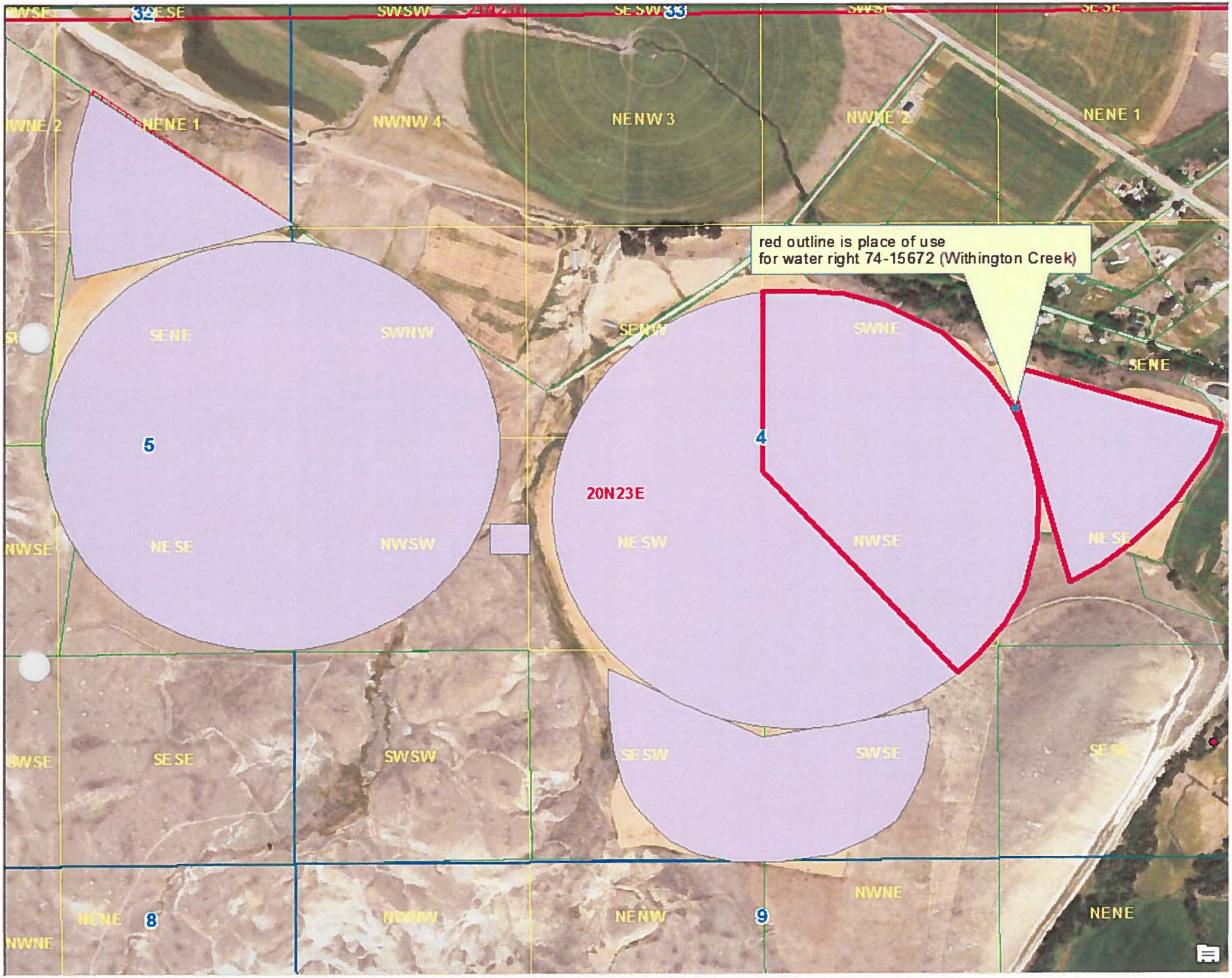
Effect on Agricultural Base of the Local Area: Review staff has no information to suggest this transfer will negatively impact the economy of the local area.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

Edl, Michele

From: Edl, Michele
Sent: Friday, July 24, 2015 5:07 PM
To: 'brett@themaize.com'
Subject: transfer 79876
Attachments: DOC.pdf; DOC003.pdf

Here are the documents I promised to send. Doc003 is a map of the place of use shapes for all the rights. Let me know if I got the Withington Creek right correct. It has to overlap but you may be thinking a different overlap than I am.
The other doc is how the transfer application now appears. Please look it over, call me with questions or sign it if is acceptable.
Thanks
Michele Edl
208-287-4946


red outline is place of use
for water right 74-15672 (Withington Creek)
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MEMORANDUM

Date: July 24, 2015

To: Transfer 79876

From: Michele Edl

Re: Administrative Area Analysis

The PODs for 74-15708 and 74-2165B are located on the Lemhi River which is within the Wild and Scenic Watersheds of the Salmon River. They are subject to the WD74 watermaster.
Right 74-15672 diverts from Withington Creek, which is also within the Wild and Scenic Watersheds of the Salmon River but it is subject to a different watermaster. Transfer 79876 will change the POU but not the POD for water right 74-15672.
Only the Lemhi River, WD74 watermaster will be asked to provide comments on this transfer. The Withington Creek, WD74J watermaster will receive a copy of the transfer approval.

Edl, Michele

From: Brett Herbst [brett@themaize.com]
Sent: Monday, July 06, 2015 1:22 PM
To: Edl, Michele
Subject: Re: transfer 79876 update

1) I have created the place of use shapes based on the map that you emailed me. It looks like you shorted yourself a little. Both of your water rights from the Lemhi River are now being acted on by this transfer. Your water rights, 74-15708 and 74-2165B total 320.5 acres. The shape you sent to me totals only 319.5. That's a simple fix. I will add an acre to the 17.5 ac wiper pivot so that you will have another acre in the SENE of section 5.

That is great, I would like to put it in the middle between the two full pivots as I would like to have a little water there if I build a house there down the road it that is okay.....

2) Water right 74-15672 from Withington Creek is not brought into this transfer. It is a separate source and a separate system. So although the place-of-use is partially overlapped by the pivots and I will need to mention that in the conditions of use, it remains a stand-alone water right.

(Sounds Great)

3) Water right 74-15708 has its point of diversion (POD) at L-13, which is located in SENW of section 25. While water right 74-2165B has its point of diversion(POD) at L-22, which is located in SENW of section 3. Is it possible for the system to divert water from just one of the two PODs and deliver it to a specific pivot or pivots? I understood from our last conversations that you have constructed or intend to construct a single system which diverts water from both of the POD locations on the Lemhi river and then combine that water into a single system which serves all the pivots. (I would like to keep the POD from L-13 and L-22 if possible for the 74-15708)

But there is at least one other possibility. I need to know if the 3 pivots in the east are instead actually a separate system from the 2 pivots in the west. I need to know whether each your water rights serves only some but not all the pivots.

(there is a seperate pump system for these two systems, I would like to combine them eventually but not now and both currently pump out of L-13 a two different spots but would like to combine to one pump station in a few years)

4) I also need to know if you are maintaining both PODs from the Lemhi River and if you want to have both PODs authorized for both of your water rights instead of only one authorized POD for each water right as they are now. (both)

5) Lastly.. through this transfer you are moving a total of 22.5 acres which is the equivalent of 78.75 acre-feet. The $200 fee you have already paid was sufficient for the 4.5 acre (15.75 acre-feet) transfer that you originally submitted. The fee to complete processing of this revised transfer is $500. And IDWR will need to receive the additional $300 before I can complete this transfer. (No problem)

Have a Farmtastic Day!

Brett Herbst
The MAiZE Inc.
Owner/Operator
brett@themaize.com
www.themaize.com
www.farmtasticfun.com **(Jumbo Jumper Air-Pillow, Spider Webs, & More)**
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Office: 801-798-0596
Fax: 801-798-0597
Cell: 801-427-6006

On Tue, Jun 30, 2015 at 3:04 PM, Edl, Michele <Michele.Edl@idwr.idaho.gov> wrote:

Mr. Herbst,

I left you a brief voicemail message a few moments ago. The purpose of my call and this email is to update you about the progress of your transfer application and to ask a few clarifying questions.

1) I have created the place of use shapes based on the map that you emailed me. It looks like you shorted yourself a little. Both of your water rights from the Lemhi River are now being acted on by this transfer. Your water rights, 74-15708 and 74-2165B total 320.5 acres. The shape you sent to me totals only 319.5. That's a simple fix. I will add an acre to the 17.5 ac wiper pivot so that you will have another acre in the SENE of section 5.

2) Water right 74-15672 from Withington Creek is not brought into this transfer. It is a separate source and a separate system. So although the place-of-use is partially overlapped by the pivots and I will need to mention that in the conditions of use, it remains a stand-alone water right.

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But there is at least one other possibility. I need to know if the 3 pivots in the east are instead actually a separate system from the 2 pivots in the west. I need to know whether each your water rights serves only some but not all the pivots.

4) I also need to know if you are maintaining both PODs from the Lemhi River and if you want to have both PODs authorized for both of your water rights instead of only one authorized POD for each water right as they are now.

5) Lastly.. through this transfer you are moving a total of 22.5 acres which is the equivalent of 78.75 acre-feet. The $200 fee you have already paid was sufficient for the 4.5 acre (15.75 acre-feet) transfer that you originally submitted. The fee to complete processing of this revised transfer is $500. And IDWR will need to receive the additional $300 before I can complete this transfer.

I know that item 5) is not good news. So, help me to help you make the most of this transfer and get all the fixes done that are needed.

Don't hesitate to call me. I would be happy to visit with you on the phone about any of this.

Sincerely,

Michele Edl

208-287-4946

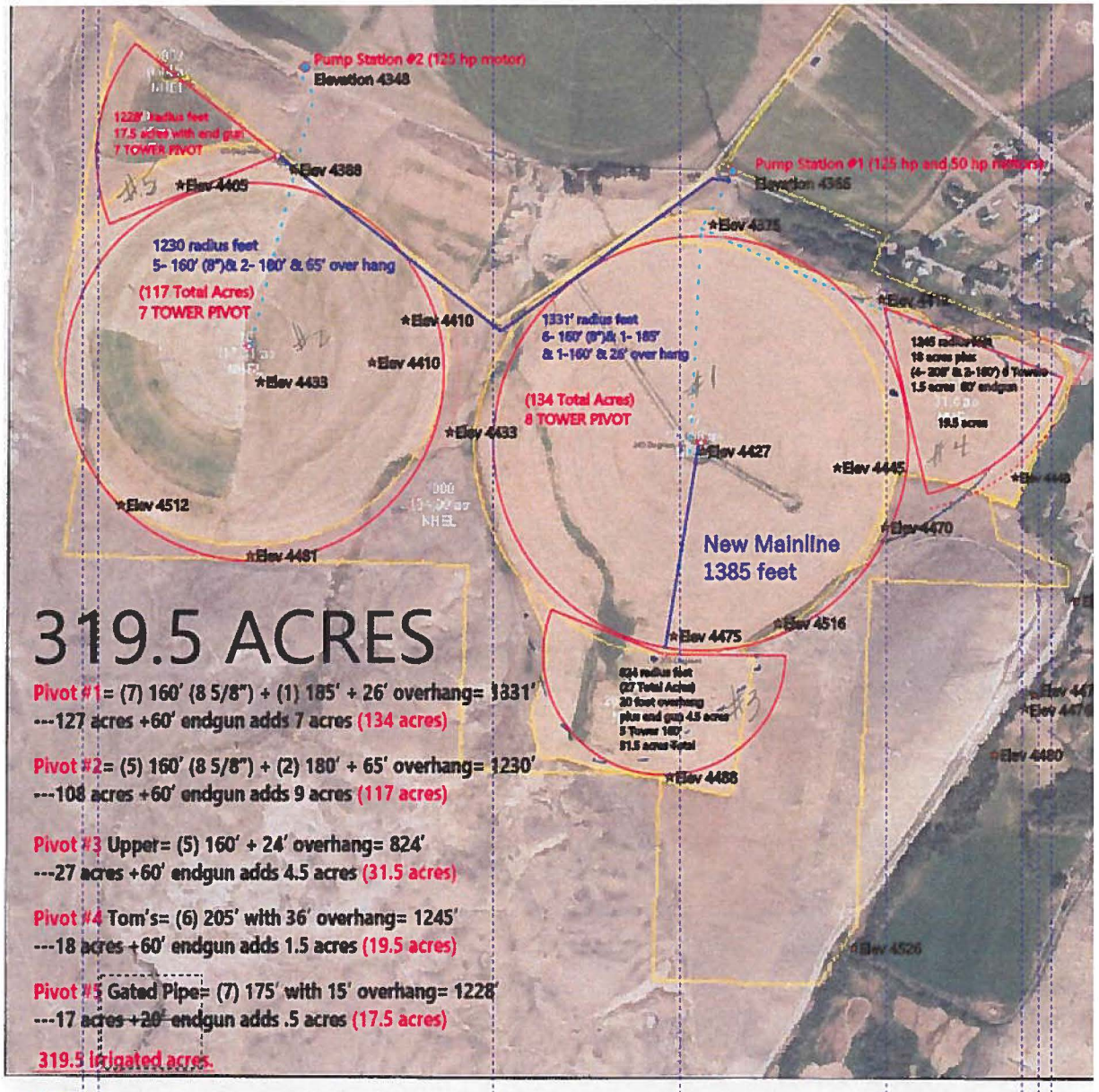
Edl, Michele

From: Edl, Michele
Sent: Tuesday, June 30, 2015 3:04 PM
To: 'brett@themaize.com'
Subject: transfer 79876 update

Mr. Herbst,
I left you a brief voicemail message a few moments ago. The purpose of my call and this email is to update you about the progress of your transfer application and to ask a few clarifying questions.

1) I have created the place of use shapes based on the map that you emailed me. It looks like you shorted yourself a little. Both of your water rights from the Lemhi River are now being acted on by this transfer. Your water rights, 74-15708 and 74-2165B total 320.5 acres. The shape you sent to me totals only 319.5. That's a simple fix. I will add an acre to the 17.5 ac wiper pivot so that you will have another acre in the SENE of section 5.
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I know that item 5) is not good news. So, help me to help you make the most of this transfer and get all the fixes done that are needed.
Don't hesitate to call me. I would be happy to visit with you on the phone about any of this.
Sincerely,
Michele Edl
208-287-4946



USDA United States Department of Agriculture
Farm Service Agency

December 4, 2013

Edl, Michele

From: Brett Herbst [brett@themaize.com]
Sent: Friday, June 12, 2015 1:00 PM
To: Edl, Michele
Subject: Re: Application for transfer 79876
Attachments: Idaho.pdf

Here is the other one, both show what we are irrigating.....

Have a Farmtastic Day!

Brett Herbst
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Office: 801-798-0596
Fax: 801-798-0597
Cell: 801-427-6006

On Fri, Jun 12, 2015 at 12:29 PM, Edl, Michele <Michele.Edl@idwr.idaho.gov> wrote:

I received both messages, but only the first one had an attachment. And that attachment looks to be the same NRCS map that you have already submitted. (I understood that that one was incorrect)

The state limits the size of mail that I can receive to 8MB. Maps can easily be more than that. Maybe that's what happened to your previous messages

Try again and, as backup, stick a copy in the US post.

From: Brett Herbst [mailto:brett@themaize.com]
Sent: Friday, June 12, 2015 12:02 PM
To: Edl, Michele
Subject: Re: Application for transfer 79876

I sent those 15 minutes after I talked to you, and I just resent, did you get them..???

Have a Farmtastic Day!

Brett Herbst
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On Fri, Jun 12, 2015 at 11:58 AM, Edl, Michele <Michele.Edl@idwr.idaho.gov> wrote:

Mr. Herbst,

I'm glad you asked. I'm waiting for you to provide me with a map of the place-of-use for the irrigation as you want it to appear. As we have previously discussed, the legal place-of-use for irrigation does not match the actual irrigation places. We need to make them match through the transfer process.

You stated that the NRCS maps which are provided with the application for transfer aren't correct. I am willing to give you another 14 days to provide a map or maps which show the places of use as you want them to appear. If I don't receive it before June 29, I will take steps to return the application.

Michele Edl

From: Brett Herbst [mailto:brett@themaize.com]
Sent: Friday, June 12, 2015 6:28 AM
To: Edl, Michele
Subject: Re: Application for transfer 79876

Just touching base to see if you have made any headway on the water rights and transfers....?

Have a Farmtastic Day!

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Edl, Michele

From: Edl, Michele
Sent: Tuesday, May 26, 2015 3:06 PM
To: 'brettwherbst@gmail.com'
Subject: Application for transfer 79876
Attachments: POU for 74-15708 15672 & 2165B.jpg

Mr. Brett Herbst,
I left a voice mail message on (801)-427-6006 a few moments ago. Because the vacation season is upon us, I am duplicating my message via this media.
I have been assigned to review and if possible, to process the application for transfer #79876 which acts on water right 74-15708. I have completed an initial review of the application.

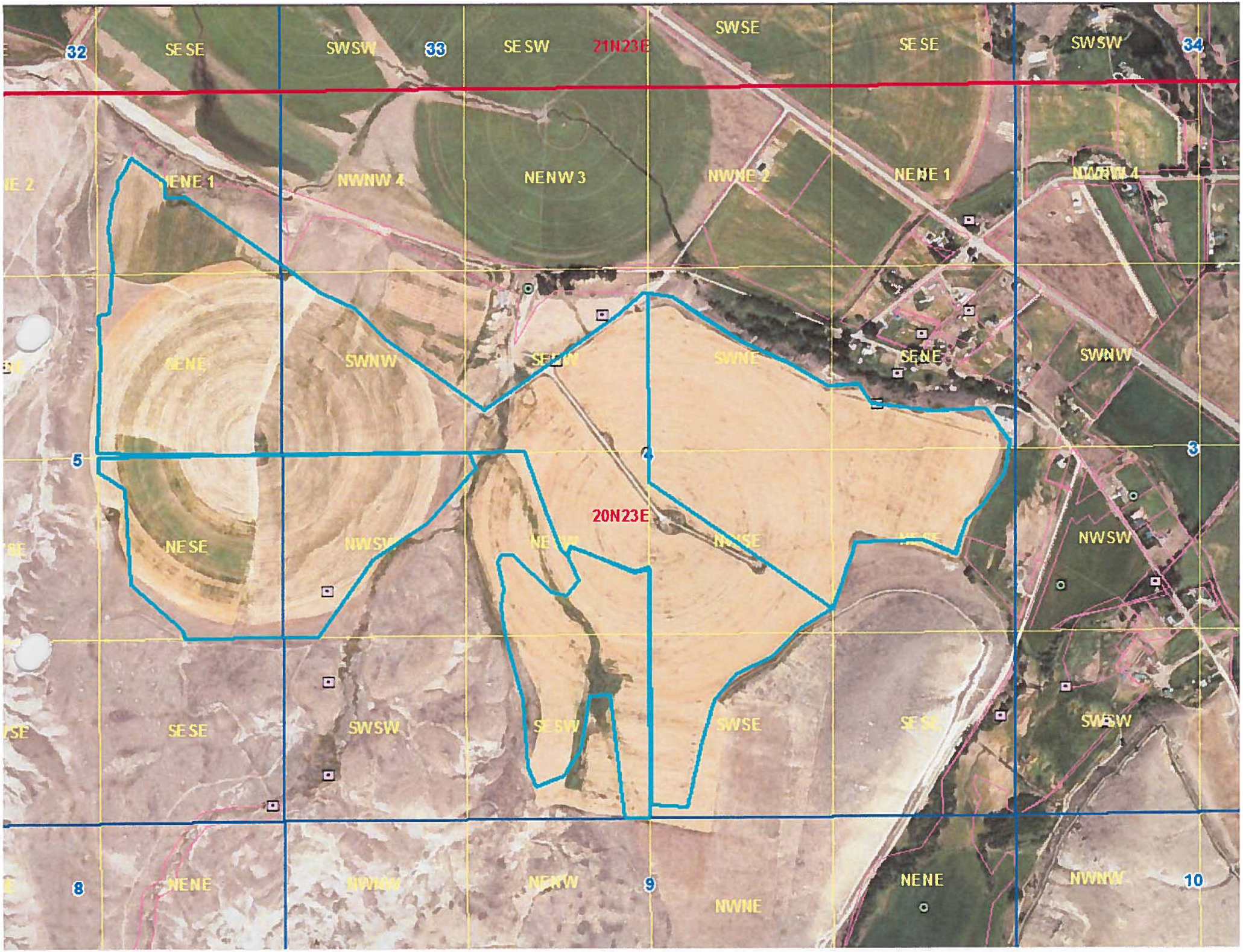
The application for transfer states that only the place-of-use for decreed right 74-15708 is to be changed. However, when I reviewed the authorized places-of-use for all of the water rights owned by BNH Properties LLC., I found inconsistencies between the aerial photography of the irrigated acres and the places-of-use which were authorized by the 2007 Snake River Basin Adjudication Court's decrees.

I have attached a .jpg image which I hope will illustrate the issues. Please let me know as soon as possible if you can't open the file. I'll be happy to try something else. The areas outlined in aqua are the places-of-use for BNH Properties LLC.'s 3 water rights for irrigation use: 74-15708, 74-15672 and 74-2165B. The outlined shapes do not cover all of the areas that are irrigated. Note that in the NESW quarter-quarter of section 4, there does not appear to be a water right covering approximately 10 acres under the pivot.

All three rights were decreed in 2007 to members of the Stephenson family. The rights became BNH Properties LLC's by an ownership change which was processed in 2014. So you may have acquired water right problems which should have been addressed by the previous owner.

In addition to the serious problem above, I have review aerial photography for several years since 2007. I have not found that the 4.5 acres which BNH Properties LLC. intends to dry up between the two pivots, was ever irrigated in that time frame. Because our photography can miss intermittent irrigation, I will need some additional assistance from you to confirm that that piece of property was in fact irrigated.

At your earliest convenience, please call (208-287-4946) or email me so that we can discuss a way forward.
Sincerely,
Michele Edl
Water Rights Section
Idaho Department of Water Resources
322 E Front St
Boise ID 83720


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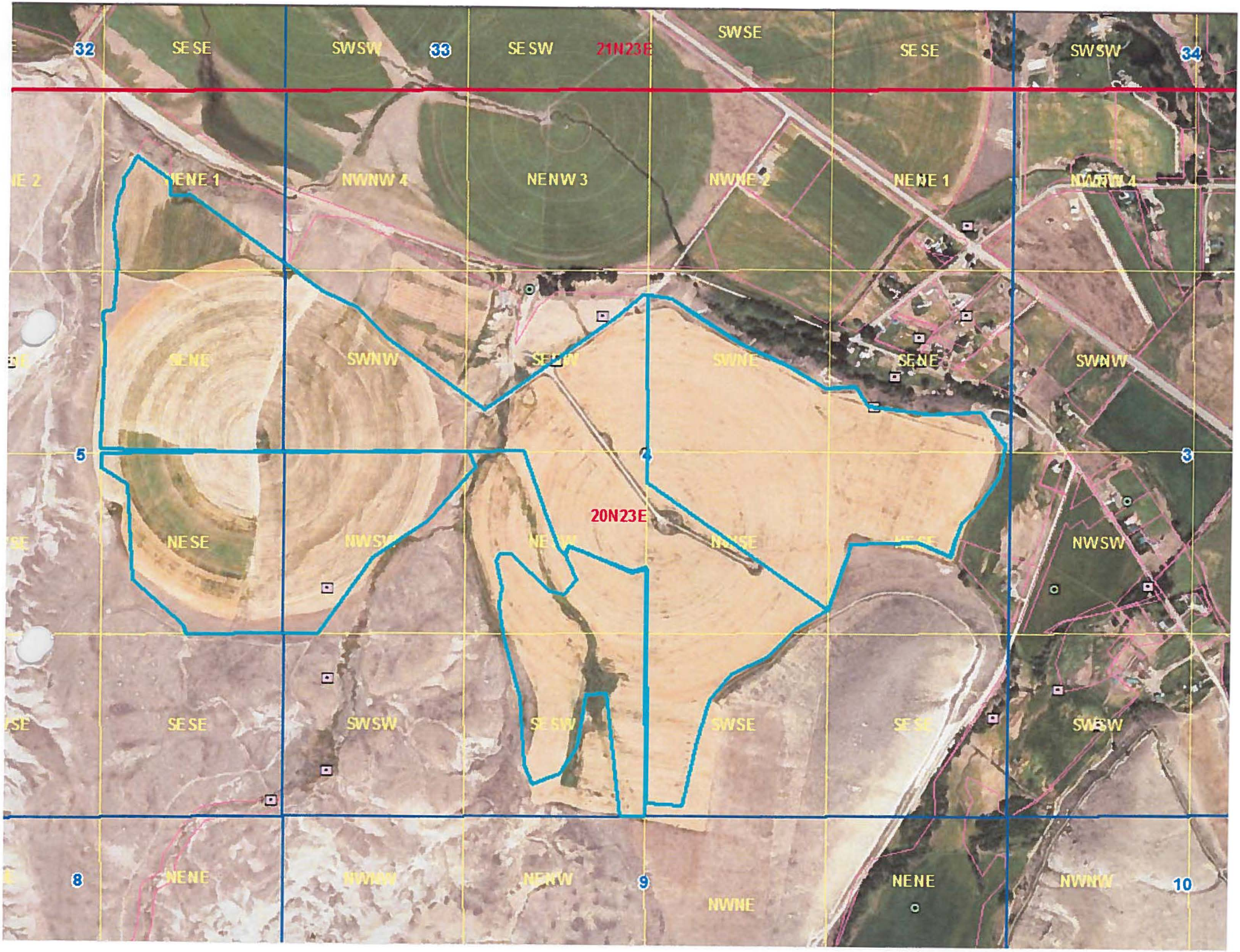
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I have attached a .jpg image which I hope will illustrate the issues. Please let me know as soon as possible if you can't open the file. I'll be happy to try something else. The areas outlined in aqua are the places-of-use for BNH Properties LLC.'s 3 water rights for irrigation use: 74-15708, 74-15672 and 74-2165B. The outlined shapes do not cover all of the areas that are irrigated. Note that in the NESW quarter-quarter of section 4, there does not appear to be a water right covering approximately 10 acres under the pivot.

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At your earliest convenience, please call (208-287-4946) or email me so that we can discuss a way forward.
Sincerely,
Michele Edl
Water Rights Section
Idaho Department of Water Resources
322 E Front St
Boise ID 83720


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State of Idaho

Office of the Secretary of State

CERTIFICATE OF AUTHORITY

OF

BNH PROPERTIES, LLC

File Number W 141261

I, BEN YSURSA, Secretary of State of the State of Idaho, hereby certify that an Application for Certificate of Authority, duly executed pursuant to the provisions of the Idaho Uniform Limited Liability Act, has been received in this office and is found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Authority to transact business in this State and attach hereto a duplicate of the application for such certificate.

Dated: August 18, 2014

GREAT SEAL OF THE STATE OF IDAHO

Ben Ysursa

SECRETARY OF STATE

By

253

APPLICATION FOR CERTIFICATE OF AUTHORITY FOR FOREIGN LIMITED LIABILITY COMPANY

(Instructions on back of application)

2014 AUG 18 AM 9:43

SECRETARY OF STATE
STATE OF IDAHO

1. The name of the limited liability company is:

BNH Properties, LLC

2. If the name of the limited liability company is not permissible or is not available in Idaho, the name the foreign limited liability company will use in Idaho is:

3. The jurisdiction under whose laws the limited liability company is formed is: Utah

4. The name and complete street address of the registered agent in Idaho is:

Steven Herbst 74 Lemhi Rd. Salmon, ID 83467

5. The street and mailing address of the limited liability company's principal office is:

5798 S. 3600 W. Spanish Fork, UT 84660
Street Address

Mailing Address, if different

6. The street and mailing address of the limited liability company's office in the jurisdiction under whose laws it is organized is:

5798 S. 3600 W. Spanish Fork, UT 84660
Street Address

Mailing Address, if different

7. The name and mailing address of at least one member or manager:

Brett W. Herbst 5798 S. 3600 W. Spanish Fork, UT 84660

8. The mailing address for future correspondence:

5798 S. 3600 W. Spanish Fork, UT 84660

Secretary of State use only

9. Signature of a manager, member or authorized person.

Signature

Brett W. Herbst
Typed Name

cert_auth_foreign_LLC Rev 07/2010

IDAHO SECRETARY OF STATE
08/18/2014 05:00
CK:1270 CT:85090 BH:1437767
1@ 100.00 = 100.00 REGFORGLLC #2

W141261

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

RECEIVED
MAR 18 2015
DEPARTMENT OF
WATER RESOURCES

March 3, 2015

BNH PROPERTIES LLC
PO BOX 367
SPANISH FORK UT 84660

RECEIVED
MAR 13 2015
Department of Water Resources
Eastern Region

Re: Application for Transfer No.: 79876
Water Right No(s).: 74-15708

Dear Applicant(s):

The Department of Water Resources received an application for transfer of water right 74-15708 on February 6, 2015. During the initial review, it was determined that additional fees are needed before we can begin processing your request.

You are requesting to move 4.5 acres and 0.14 cfs . The fee for transferring 0.00 cfs -0.20 cfs is $200. See enclosed fee schedule. The Department received $100 fee with this application but needs an additional $100 to process this application. If we do not receive the necessary fees within 30 days we will return your application and all attachments and your application will not be processed.

If you have any questions, please contact me at (208) 287-4942. Thank you.

Sincerely,

Jean Hersley

Jean Hersley
Technical Records Specialist II

Enclosure

Receipt
E0407316

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

March 3, 2015

BNH PROPERTIES LLC
PO BOX 367
SPANISH FORK UT 84660

Re: Application for Transfer No.: 79876
Water Right No(s).: 74-15708

Dear Applicant(s):

The Department of Water Resources received an application for transfer of water right 74-15708 on February 6, 2015. During the initial review, it was determined that additional fees are needed before we can begin processing your request.

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Enclosure