

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1**

Name of Applicant(s) Lee Sutton Phone: (208) 356-6392
 Mailing Address: 1577 E. 10000 S., Rexburg, ID 83440 Email: _____

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

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

- ☐ No Representative

Name of representative Robert L. Harris Phone: (208) 523-0620
 Mailing Address: P.O. Box 50130, Idaho Falls, ID 83405 Email: rharris@holdenlegal.com

- ☐ Send all correspondence for this application to the representative and not the applicant.

OR

- ☒ Send original correspondence to the applicant and copies to the representative.

- ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.

OR

- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Robert L. Harris, Attorney
 Signature of Applicant or Authorized Representative

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

June 7, 2012
 Date

 Signature of Applicant or Authorized Representative

 Print Name and Title if applicable

 Date

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change Place of use
☐ Change nature of use ☒ Change period of use ☒ Other: Create permissible place of use
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 if **Part 1A.2**. See attached sheet

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.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or part					
☒ ☐	22-2242B	6.16 cfs / 1435 AF	Irrigation	04/01 to 10/31	Ground water
☒ ☐	22-10897	5.52 cfs / 1288 AF	Irrigation	04/01 to 10/31	Ground water
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights: 6.16 cfs and/or 2723 ac-ft.

2. Total amount of water being transferred or changed 6.16 Cubic feet per second and/or 2723 acre-feet 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 for diversion

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	

SEE SPREADSHEET ON FOLLOWING PAGE

Total Acres (for irrigation use) _____

NARRATIVE OF TRANSFER

After receiving a potential Notice of Violation from the Idaho Department of Water Resources, the Applicant has undertaken a number of measures to address the potential violation, including submitting for and receiving approval for a water bank rental. This transfer is the next step in ensuring that the place of use of the Applicant's water rights matches actual irrigation practices, particularly because a number of pivots now irrigate the property.

Water Right Nos. 22-2242B and 22-10897 were decreed to Lee Sutton. The water right allows for the irrigation of lands leased by Sutton from a number of other landowners. Because Sutton owns the water right, no consent is necessary to rearrange the place of use on the lands of those that previously consented to the water right. However, the Applicant is under a 5 year lease for lands that he now proposes to newly irrigate, which consists of two 80 acre parcels owned Robert and Sally Smith (the N1/2NE1/4 of Section 3, Township 4N, Range 40E, and the E1/2NE1/4 of Section 2 of the same Township and Range). They have consented to the transfer, as evidenced by the enclosed consents. Also, a small portion of the proposed new permissible place of use is on land owned by Joyce Burne (a small part of the NW1/4SE1/4 of Section 3, Township 4N, Range 40E), and she has likewise consented to the transfer.

Overall, the Applicant proposes to irrigate 884 acres on farmground that he either owns or leases. Of the 884 acres, 60 of those acres are covered under Water Right No. 22-2242A, which is owned by a relative, Randall Sutton, and is irrigated with the same diversion system. No changes are proposed to Water Right No. 22-2242A, which has a place of use consisting of the entirety of the NE1/4SW1/4, Township 4 N, Range 40 E, Section 2, and the Western half (20 acres) of the NW1/4SE1/4 of said section.

Due to the installation of a new pivot, the applicant needs additional acres for lands located on one of the Smith parcels and the Byrne parcel. The Applicant was successful in obtaining a water bank rental for Water Right No. 22-7336, which authorizes the irrigation of 46 acres at this location. This, in combination with acres being rearranged under this transfer, will be enough to irrigate under the pivots.

The other parcel that will be newly irrigated is the other 80-acre parcel owned by Smith. The Applicant will use an existing pivot which will track onto the Smith property and irrigate it.

As contained in the Smith consents, whether or not the Applicant can irrigate the Smith parcels beyond their 5 year lease agreement is an issue between them, but the Applicant would not object to a condition in the transfer approval indicating that the use of the water on the Smith parcel is subject to the water right holder being under a valid land lease for the property.

Because of the newly installed pivots, and limitation on acres under the water rights, the Applicant has elected to only irrigate those lands located underneath existing center pivots, and will dry up corners that have historically been irrigated. Therefore, it has become necessary to rearrange the place of use of the water right subject to this transfer, and in order to capture the water bank approval of 46 acres, it will be necessary to create a permissible place of use of 824 acres, within which 778 acres will be authorized for irrigation of Water Rights Nos. 22-2242B

and 22-10897. The additional 46 acres will need to be authorized under some other water right, or pursuant to a water bank authorization.

Overall, 69 acres of the place of use of Water Right Nos. 22-2242B and 22-10897 will be rearranged, and the filing fee is based on this amount.

Additionally, Water Right No. 22-2242B has a season of use that ends on November 1st. To make this right consistent with Water Right No. 22-10897, the season of use clerical error for 22-2242B should be corrected.

PERMISSIBLE PLACE OF USE DESCRIPTION AFTER PROPOSED CHANGES

TWP	RGE	SEC	NE 1/4			NW 1/4			SW 1/4			SE 1/4			TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	40E	1						23	40			29	0.4		92.4
		2	38	21	24	39						39	40	37	354
		3	32	36	38	36	5.1			5.9		33	19	40	225.7
		10	12		0.5	26									38.5
		11		7.6			28	37	31	9.8					113.4
TOTAL															824

PLACE OF USE DESCRIPTION BEFORE PROPOSED CHANGES

TWP	RGE	SEC	NE 1/4			NW 1/4			SW 1/4			SE 1/4			TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	40E	1						35	40			28	1		104
		2	40			40						40	40	40	320
		3				37	38			5.1				35	158.7
		10	31	7.3	1	32								4.6	71.3
		11		15			37	35	28	9					124
TOTAL															778

CHANGE IN ACRES

TWP	RGE	SEC	NE 1/4			NW 1/4			SW 1/4			SE 1/4			TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	40E	1						-12				1	-0.6		-11.6
		2	-2	21	24	-1						-1		-3	34
		3	32	36	1	-2	5.1			0.8				-1	67
		10	-19	-7.3	-0.5	-6								-2	-32.8
		11		-7.4			-9	2	3	0.8					-10.6
TOTAL															46

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. Well and Pump

- b. Who owns the property at the point(s) of diversion? Applicant
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?
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: The Bank of Commerce; Mortgage. See Attachment #6. Consent will be provided.

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 or 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: The transfer will create an 824 acre permissible place of use, within which 778 acres will be irrigated. The description of the 778 acres is the place of use description after the transfer, minus the approved water bank acres listed on the water bank approval for Water Right No. 22-7336.

- 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) of use: Water Right Nos. 22-2242A and 22-7336 (Water Bank Lease). See spreadsheet on next page.

- 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: _____

LEE SUTTON WATER RIGHTS

Water Right No.	Name on Water Right	Basis	Priority Date	Source	Beneficial Use	Individual Diversion Rate Limitation (cfs)	Combined Diversion Rate (cfs)	Individual Volume Limitation (AF-A)	Combined Volume Limitation (AF-A)	Individual Acre Limitation	Combined Place of Use	Point of Diversion	Notes
22-22428	Richard Sutton Lee Sutton Estate of Jesse Sutton Kent Sutton	Partial Decree	Jan. 28, 1965	Ground water	Irrigation	6.16	6.16	1435	2723	410	778	NWSESW, Sec. 2, 4N, 40E	
22-10897	Lee Sutton		June 20, 1976			5.52		1288		368			

Additional Water Rights Used on Farm (NO CHANGES TO THESE)	22-2242A	Randall Sutton	Partial Decree	Jan. 28, 1965	Ground water	Irrigation	0.9	None	210	None	60	None	NWSESW, Sec. 2, 4N, 40E	
	22-7336	Robert Smith Sally Smith	Water Bank	June 20, 1976			0.92		161	None	46			
TOTALS					7.98			3094		884				

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

For each water right listed in Part 1B.1. of the application, attach a **Part 2A** report obtained from 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.

☐ 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 _____

1. Amount _____ (cfs/ac-ft) for _____ Purposes from _____ to _____
 Amount _____ (cfs/ac-ft) for _____ Purposes from _____ to _____
 Amount _____ (cfs/ac-ft) for _____ Purposes from _____ to _____
 Amount _____ (cfs/ac-ft) for _____ Purposes from _____ to _____
 Amount _____ (cfs/ac-ft) for _____ Purposes from _____ to _____
 Amount _____ (cfs/ac-ft) for _____ Purposes from _____ to _____
 Amount _____ (cfs/ac-ft) for _____ Purposes from _____ to _____
 Amount _____ (cfs/ac-ft) for _____ Purposes from _____ to _____
2. Lands irrigated or place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract)

[illegible]

Total Acres (for irrigation use) _____

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3**

- ✓ Attach a map of the diversion, measurement, control, and distribution system. Label it **Attachment #7a**.
- ✓ If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. Label it **Attachment #7b**. If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

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

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

- [illegible]

Transfer contains _____ pages and _____ attachments.

Received by: _____ Date: _____ Prelim. Check by _____ Date: _____
 Fee paid: \$580.00 Date: 6/21/2012 Received by: *Glade* Receipt # E037722
 Add'l fee paid _____ Date: _____ Received by: _____ Receipt # _____

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Attachment No. 2a Water Right Ownership Documentation

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

6/7/2012

WATER RIGHT NO. 22-2242B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	RICHARD THOMAS SUTTON 7586 W PORTNEUF RD POCATELLO, ID 83204 (208)232-3227
Current Owner	LEE H SUTTON 1577 E 10000 S REXBURG, ID 83440 (208)356-6392
Current Owner	ESTATE OF JESSE L SUTTON
Current Owner	KENT V SUTTON 9471 S 600 E REXBURG, ID 83440 (208)356-6392
Security Interest	THE BANK OF COMMERCE C/O WESTERN AG CREDIT 10980 W SOUTH JORDAN GATEWAY PO BOX 95850 SOUTH JORDAN, UT 84095-0850

Priority Date: 01/28/1965

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	11/01	6.16 CFS	1435 AFA
Total Diversion			6.16 CFS	

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Location of Point(s) of Diversion:

GROUND WATER	NWSESW	Sec. 02	Township 04N	Range 40E	MADISON County
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IRRIGATION Use:

Acre Limit: 410

Place(s) of use:

Place of Use Legal Description: IRRIGATION MADISON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	40E	1	4	NWNW	35		SWNW	40						
				NWSW	28		SWSW	1						
		2	1	NENE	40		SENE	40						
				NWSW	40		SWSW	40		SESW	40			
				NESE	40		NWSE	20		SWSE	40		SESE	20
		3		SWNE	37		SENE	38						
				SENE	5.1									
				NESE	35		SWSE	4.6		SESE	39			
		10		NENE	31		NWNE	7.3		SWNE	1		SENE	32
		11		NWNE	15									
				NENW	37		NWNW	35		SWNW	28		SENE	9

Total Acres: 778

Conditions of Approval:

1.	C05	Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
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.
3.	E61	The rights listed below are limited to a total combined diversion rate of 6.16 cfs and to a total combined annual diversion volume of 2723 AF. Combined Right Nos.: 22-2242B and 22-10897.
4.	K06	This right is limited to the irrigation of 410 acres within the place of use described above in a single irrigation season.
5.	E56	The rights listed below are limited to the irrigation of a combined total of 778 acres in a single irrigation season. Combined Right Nos.: 22-2242B and 22-10897.
6.	K01	Right No. 22-10897 is an enlargement of this right pursuant to Section 42-1426, Idaho Code.

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7.	F05	Right Nos. 22-2242A, 22-2242B, and 22-10897 are also diverted through point of diversion described above.
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Dates:

Licensed Date:

Decreed Date: 11/24/2008

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: OR

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 778

Combined Volume Limit: 2723

Combined Rate Limit: 6.16

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

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Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

6/7/2012

WATER RIGHT NO. 22-10897

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	LEE H SUTTON 1577 E 10000 S REXBURG, ID 83440 (208)356-6392
Security Interest	THE BANK OF COMMERCE C/O WESTERN AG CREDIT FLCA 10980 W SOUTH JORDAN GATEWAY PO BOX 95850 SOUTH JORDAN, UT 84095-0850

Priority Date: 06/20/1976

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	5.52 CFS	1288 AFA
Total Diversion			5.52 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NWSESW	Sec. 02	Township 04N	Range 40E	MADISON County
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IRRIGATION Use:

Acre Limit: 368

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Place(s) of use:

Place of Use Legal Description: IRRIGATION MADISON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	40E	1	4	NWNW	35		SWNW	40						
				NWSW	28		SWSW	1						
		2	1	NENE	40		SENE	40						
				NWSW	40		SWSW	40		SESW	40			
				NESE	40		NWSE	20		SWSE	40		SESE	20
		3		SWNE	37		SENE	38						
				SENE	5.1									
				NESE	35		SWSE	4.6		SESE	39			
		10		NENE	31		NWNE	7.3		SWNE	1		SENE	32
		11		NWNE	15									
				NENW	37		NWNW	35		SWNW	28		SENE	9

Total Acres: 778

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.	E61	The rights listed below are limited to a total combined diversion rate of 6.16 cfs and to a total combined annual diversion volume of 2723 AF. Combined Right Nos.: 22-2242B and 22-10897.
3.	E56	The rights listed below are limited to the irrigation of a combined total of 778 acres in a single irrigation season. Combined Right Nos.: 22-2242B and 22-10897.
4.	F05	Right Nos. 22-2242A, 22-2242B, and 22-10897 are also diverted through point of diversion described above.
5.	K09	This right is for an enlargement of 368 acres within the place of use described for this right.
6.	K02	This right is based upon an enlargement of Right No. 22-2242B pursuant to Section 42-1426, Idaho Code.
7.	C11	This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

Dates:

Licensed Date:

Decreed Date: 11/24/2008

Enlargement Use Priority Date:

Enlargement Statute Priority Date: 4/12/1994

Water Supply Bank Enrollment Date Accepted:
Water Supply Bank Enrollment Date Removed:
Application Received Date:
Protest Deadline Date:
Number of Protests: 0

Other Information:

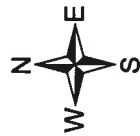
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Combined Acres Limit: 778
Combined Volume Limit: 2723
Combined Rate Limit: 6.16
Civil Case Number:
Old Case Number:
Decree Plaintiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

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Attachment No. 7a

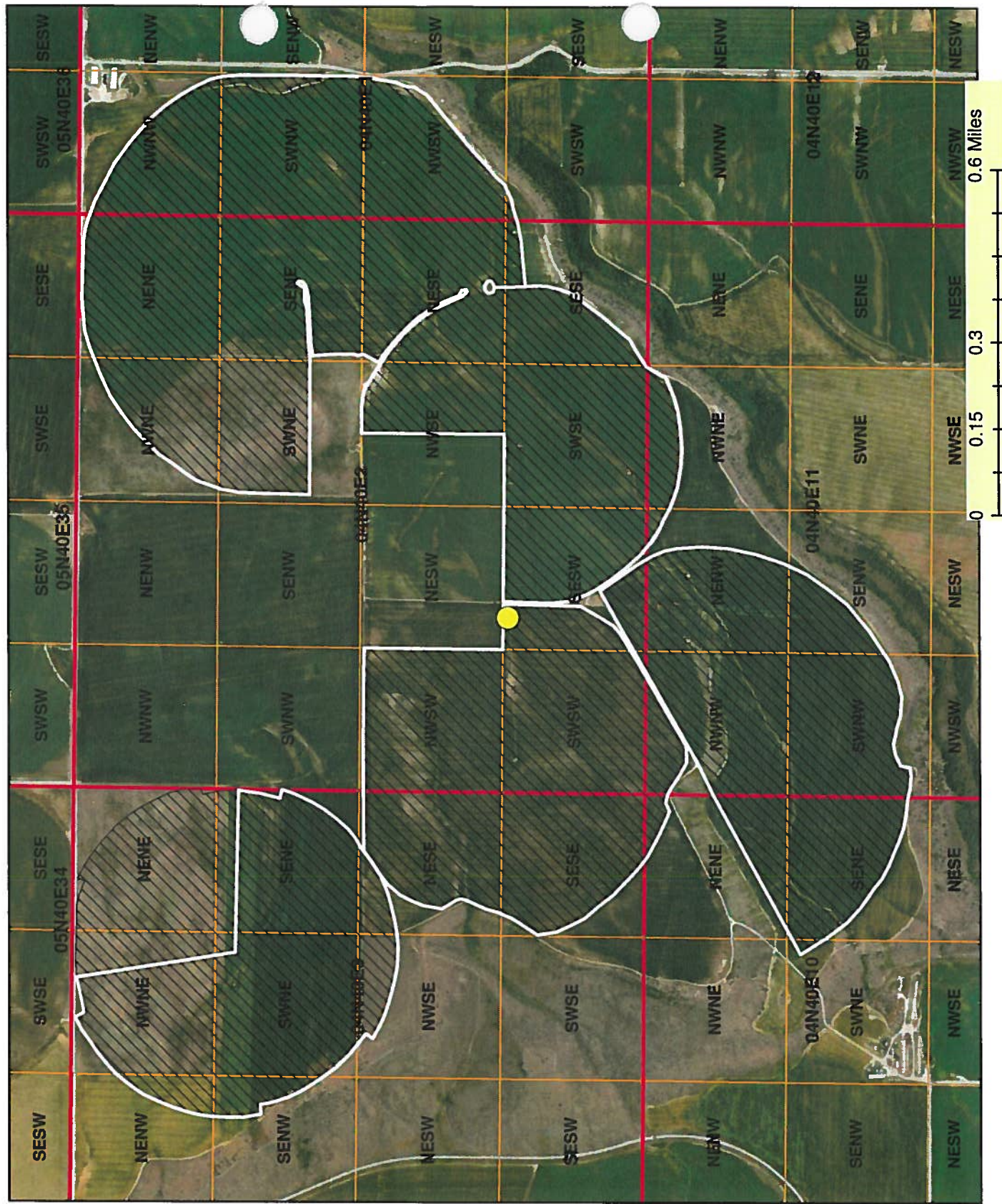
Map - Proposed POD

SUTTON WATER RIGHT TRANSFER



Legend

- POD
- 778 Acre POU
- Permissible_POU
- Section Lines
- Quarter Quarters



77997

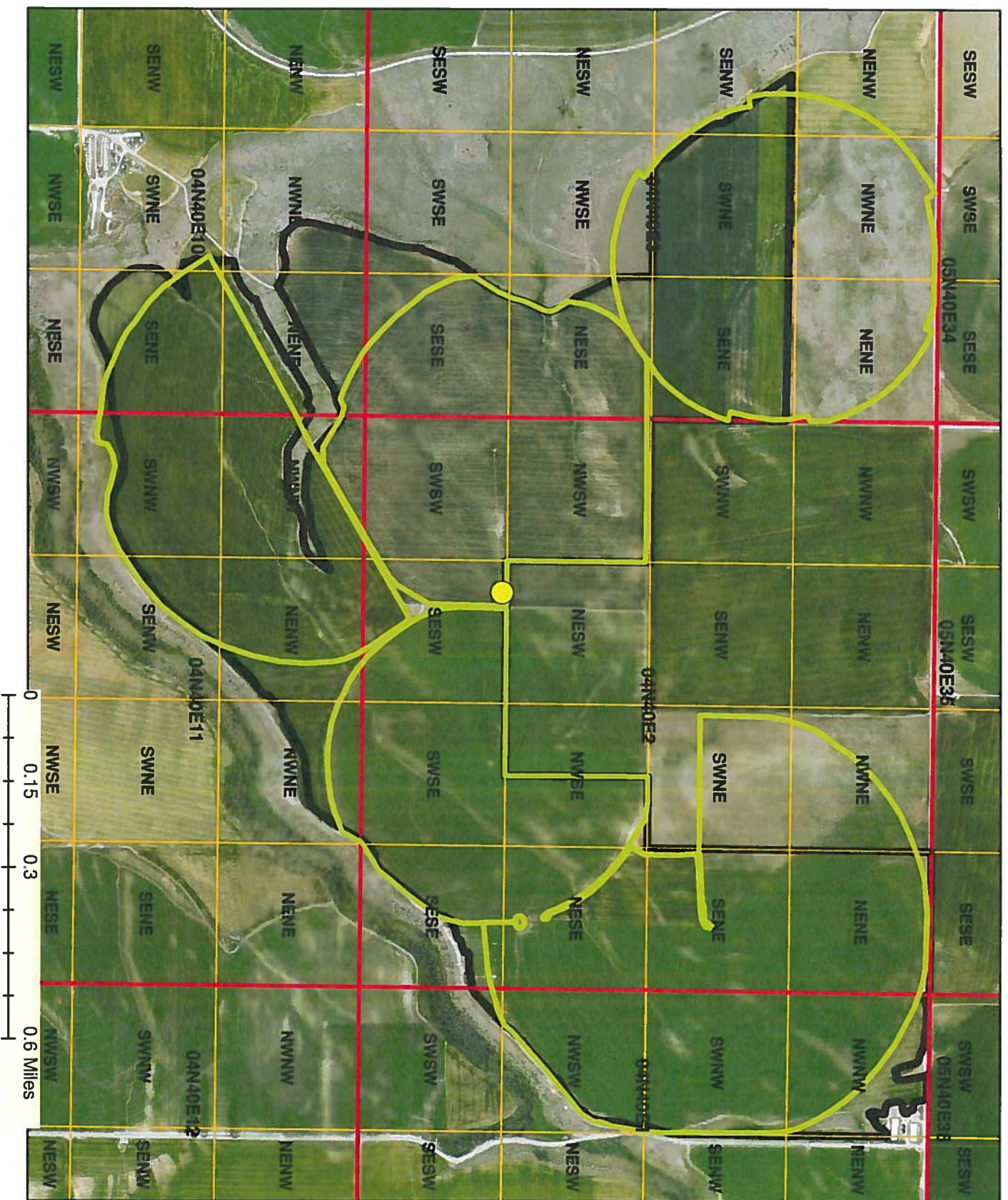
Prepared by:
Robert L. Harris
June 2012

SUTTON WATER RIGHT TRANSFER



Legend

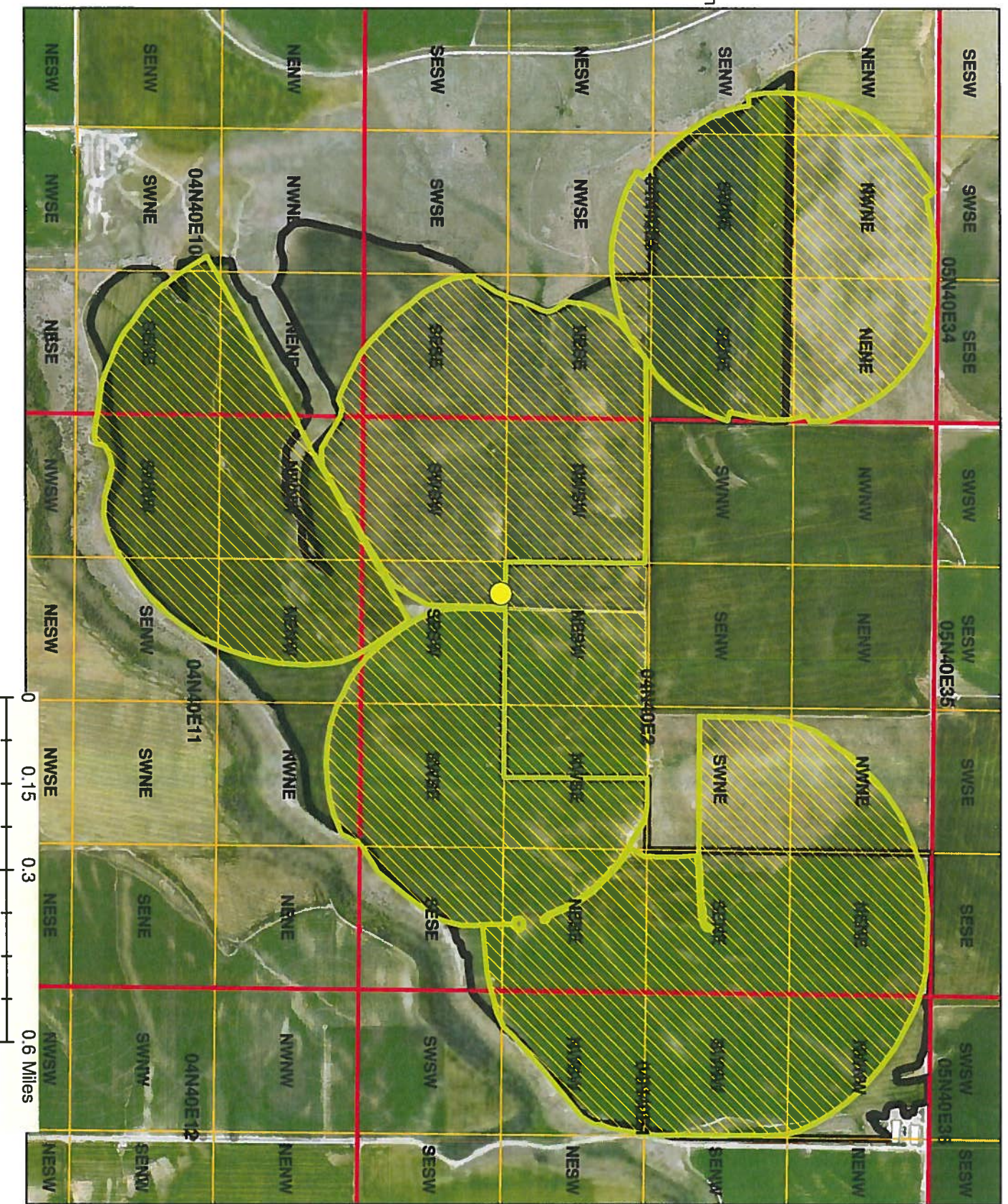
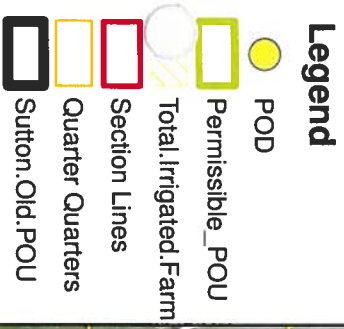
- POD
- Permissible_POU
- Section Lines
- Quarter Quarters
- Sutton.Old.POU



Prepared by:
Robert L. Harris
June 2012

Attachment No. 7b

GIS Shape File



April 30, 2012

Idaho Department of Water Resources
To Whom It May Concern:

We, Robert and Sally Smith, have rented 80 acres of land located in Madison County, Idaho, to Lee and Heddy Sutton for 5 years. The location of the 80 acres is in the NW1/4NE1/4 and SW1/4NE1/4 of Section 2, Township 4N., Range 40E of the Boise Meridian.

We have no objection to Lee and Heddy Sutton obtaining a water right to cover this property for 5 years (which is the term of the lease), with the understanding that if the lease is not renewed, that the water right would need to be removed from our property, and no permanent water right would remain on these 80 acres.

Robert E. Smith 4-30-2012
Robert E. Smith
512 South Mill Hollow Road
Rexburg, ID 83440
(208) 356-7552

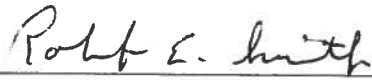
Rob Smith
512 South MillHollow Road
Rexburg, ID 83440
(208) 356-7552

December 8, 2011

Idaho Department of Water Resources
To Whom It May Concern:

We, Robert and Sally Smith, have rented 80 acres of land located in Madison County, Idaho, to Lee and Heddy Sutton for 5 years. The location of the 80 acres is in Madison County, Idaho, Section 3, Township 4, North Range, 40 East of the Boise Meridian.

The term of the lease is a cash lease paid in April of each year for 5 years beginning with the 2012 crop year. We would have no objection to Lee and Heddy Sutton obtaining a temporary water right to our property for 5 years with the understanding that we would not acquire a permanent water right to this 80 acres of property.



Robert E. Smith

Dated: 12-8-2011

JOYCE BYRNE
8633 SOUTH 1600 EAST
REXBURG, ID 83440
(208) 356-6176

Idaho Department of Water Resources

To Whom It May Concern:

Lee and Heddy Sutton have agreed to purchase approximately 12 acres of ground from Joyce Byrne and family. The ground is located in Madison County, Idaho, Section 3, Township 4 North, Range 40 East of the Boise Meridian.

We have agreed to a price and are to have a transaction closing date on or before January 15, 2012. We would not have any objection to Lee and Heddy Sutton obtaining a water right to this property whether temporary or permanent.

Lee Sutton has notified me that he is putting in a new circle and he must have a water right for the ground they will water. He plans to water approximately 10 acres of the ground that they are purchasing.

Joyce Byrne
Joyce Byrne

12-5-11
Dated

77997



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
Interim Director

May 16, 2012

LEE SUTTON
1577 E 10,000 S
REXBURG ID 83440

**RE: APPLICATION TO RENT WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO. 22-7336**

Dear Renter:

I have enclosed a Water Supply Bank Rental Agreement for your review and signature. Upon signature and return of the original agreement, together with the rental fee described below, the Department will also sign the original agreement and return an executed copy to you. Execution of the agreement and compliance with the conditions of approval authorize diversion and use of water as provided in the agreement.

A rental fee of \$3,404.80 for year 2012 was calculated based on the current rental rate of \$14.00 per acre-foot times a diversion volume of 243.2 acre-feet. An annual payment shall be received by the Department prior to the execution of this agreement and prior to April 1, the beginning of the irrigation season, in all subsequent years for the duration of the rental period. The agreement will be void if payment is not received prior to the due date in a given year. If you would like to terminate the agreement prior to the end of the rental period, written notice is needed of your intent to the Department at least 30 days prior to the rental fee due date.

Please send a check made payable to the Idaho Department of Water Resources, together with the signed rental agreement, to my attention within 14 days so I can complete the processing.

If you have any questions, please contact me at (208) 287-4949.

Sincerely,

Nicholas Van Dyke
Sr. Water Resource Agent

Enclosure(s)

c: Lyle Swank – IDWR Eastern Regional Office
James Cefalo – Watermaster, Water District 110

77997

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WATER SUPPLY BANK RENTAL AGREEMENT**

This is to certify that: LEE SUTTON
1577 E 10,000 S
REXBURG ID 83440
(208) 356-6392
LHSUTT@IDA.NET

filed an application to rent water from the Water Supply Bank ("Bank"). The Idaho Water Resource Board ("Board") being authorized to operate a Bank and to contract by and through the Director of the Idaho Department of Water Resources ("Director, Department") for rental of water from the Bank agrees to rent water as follows:

Summary of Water Rights or Portions Rented from the Bank

Water Right	Rented Rate	Annual Rented Volume	Total Rented Acres
22-7336	1.39 CFS*	243.2 AF*	69.5 AC*
COMBINED			
RENTAL TOTALS:	1.39 CFS*	243.2 AF*	69.5 AC*

*Actual diversion under this rental limited to 0.92 cfs, 161.0 AF and the irrigation of 46 acres annually.

TERM OF RENTAL: April 1, 2012 to October 31, 2012
April 1, 2013 to October 31, 2013
April 1, 2014 to October 31, 2014
April 1, 2015 to October 31, 2015

RENTAL FEE: \$3,404.80 in 2012
\$4,134.40 in 2013, 2014 and 2015

The total fee for rental of the above-described water is **\$3,404.80 in 2012 and \$4,134.40 every year thereafter**. An annual payment shall be received by the Department of Water Resources prior to April 1, the start of the irrigation season, each year for the duration of the rental period. The agreement will be void if the payment is not received in a given year.

Detailed water right specific limitations and conditions attached.

The undersigned renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described in this agreement:

Dated this _____ day of _____, 20_____.

By: _____
(Print Name) (Signature)

(Title if on behalf of company or organization)

Having determined that this agreement satisfies the provisions of Idaho Code § 42-1763 and IDAPA 37.02.03.030 (Water Supply Bank Rule 30), for the rental and use of water under the terms and conditions herein provided, and none other, I hereby execute this Rental Agreement on behalf of the Idaho Water Resource Board this ____ day of _____, 20_____.

GARY SPACKMAN, Interim Director
Department of Water Resources

WATER RIGHT NO. 22-7336
WATER SUPPLY BANK RENTAL AGREEMENT

The renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described below:

Renter: LEE SUTTON
 1577 E 10,000 S
 REXBURG ID 83440
 (208) 356-6392
LHSUTT@IDA.NET

Priority Date: 10/22/1980

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01 to	11/01	0.92 CFS	161.0 AF
MITIGATION	04/01 to	11/01	0.47 CFS	82.2 AF
	Total:		1.39 CFS*	243.2 AF*

LOCATION OF RENTER'S POINT(S) OF DIVERSION:

GROUND WATER NW¼SE¼SW¼ Sec. 2 Twp 04N Rge 40E MADISON County

RENTER'S PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
04N	40E	3	31.7	36.4	7.9		5.1			5.9									87

Total Acres: 87

Acre Limit within Place of Use described: 46

CONDITIONS OF WATER USE

1. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
2. Rental of the specified right from 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.
3. Use of water under this agreement does not constitute a dedication of the water to renter's place of use and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
4. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party.
5. This rental agreement does not authorize the construction of a well.
6. Use of water under this agreement shall not prejudice any action of the Department in its consideration of an application for transfer or permit filed by the applicant for this same use.
7. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
8. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water.

**WATER RIGHT NO. 22-7336
WATER SUPPLY BANK RENTAL AGREEMENT**

CONDITIONS OF WATER USE

9. Renter acknowledges and agrees that the Director may terminate diversion of water if the Director determines there is not a sufficient water supply for the priority of the right or portion thereof being rented.
10. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
11. Use of water under this agreement will be 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. 110.
12. *Diversion under this rental is limited to 0.92 cfs, an annual diversion volume of 161.0 AF and the irrigation of 46 acres within the place of use described above in a single irrigation season.
13. The water rented under this agreement is appurtenant to irrigation of 69.5 acres.



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
Interim Director

May 24, 2012

LEE SUTTON
1577 E 10,000 S
REXBURG ID 83440

RECEIVED
JUN 08 2012
Department of Water Resources
Eastern Region

**RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK
WATER RIGHT NO. 22-7336**

Dear Renter:

I have enclosed an executed copy of your Water Supply Bank Rental Agreement for your records. I have also included a copy of the receipt of payment for the rental application in the amount of \$3,404.80. Upon your receipt of the executed copy, you are authorized to divert water in compliance with the conditions of water use described in the agreement.

If you have any questions, please contact me at (208) 287-4949.

Nicholas Van Dyke
Sr. Water Resource Agent

Enclosures: Rental Agreement
Receipt Copy

c: Lyle Swank – IDWR Eastern Regional Office
James Cefalo – Watermaster, Water District 110

Receipt # 6095400

77997

Attachment No. 6

Lien Holder Authorization

THE BANK OF COMMERCE IS A LIENHOLDER ON A PORTION OF WATER RIGHTS NOS. 22-2242B AND 22-10897.

WE ARE IN THE PROCES OF OBTAINING A CONSENT FROM THEM, AND WILL PROVIDE IT ONCE IT IS RECEIVED.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAR 22 2012

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Notice of Security Interest in a Water Right

And Request for Notification of a Change in Ownership or Any Proposed
Or Final Action to Amend, Transfer, or Otherwise Modify a Water Right

Please print or type. Attach pages with additional information. Instructions are on the back of this page
Incomplete forms will be returned

1. Water Right No(s): A portion of 22-10897 consisting of 402.85 acre-feet for the irrigation of 115.1 acres and a portion of 22-2242B consisting of 402.85 acre-feet for the irrigation of 115.1 acres.
2. The following **REQUIRED** information must be submitted with this form:
- A) Evidence of the security interest. This may be a copy of a **DEED of TRUST, MORTGAGE, CONTRACT OF SALE** or other legal document indicating your interest in the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**
- B) A **FEE** of \$25.00 per water right or adjudication claim.
3. Name and Mailing Address of Person or Company holding Security Interest:

The Bank of Commerce
c/o Western AgCredit
10980 South Jordan Gateway
P.O. Box 95850
South Jordan, UT 84095-0850.

4. Name of Water Right Owner/Claimant(s):

LEE H. SUTTON and HEDDY R. SUTTON

5. Expiration Date of Notification Period: March 1, 2027

6. Is this a Renewal of Request for Notification () YES (X) NO

The Bank of Commerce
By: Western AgCredit, FLCA, Servicing Agent

7. Signature(s) (and title if applicable): By: [Signature]

David G. Brown
Vice President - Credit Services

For Office Use Only

Received by [Signature]
Receipted by [Signature]
Processed by [Signature]

Date 3/23/12
Date 3/23/12
Date 3/23/12

Fee 4 50.00
Receipt No. 3032433
WR 3032433 Date 3/23/12

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RECEIVED

Page 6 of 6

Transfer No.

77997

JUN 08 2012

Department of Water Resources
Eastern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

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

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

*Means the item is always required and must be included with the application.

Yes N/A

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of Applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded.
- ☐ ☒ Complete and attach an Application for Transfer Part 2B for each water right for which only a portion is proposed to be changed through this transfer application. Part 2B forms are available on the Department's website at: http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/PDFs/TransferApp_Part2B.pdf.
- ☒ * 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/wrt_default.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: _____

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Release or Satisfaction of Mortgage

KNOW ALL MEN BY THESE PRESENTS, That a certain mortgage, executed on the 23rd day of March, 2005, which was duly recorded in the records of Madison County, in the state of Idaho on the 24th day of March, 2005 as Instrument No. 318484 which was given to secure L & H Sutton Farms, LLC which was executed by Lee H, and Heddy R. Sutton, Husband and Wife; Randall D. and Jill Sutton, Husband and Wife; Richard Thomas and Ruth Sutton, Husband and Wife in favor of The Bank of Commerce, is fully released and satisfied. REAL PROPERTY DESCRIBED AS:

See attached Exhibit 'A'

IN WITNESS WHEREOF, These presents are signed and sealed this 28th day of March, 2012

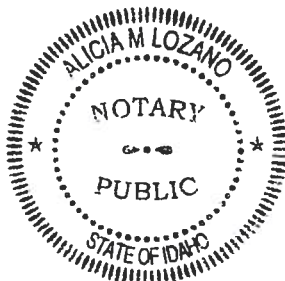

Chad Dance
Sr.V.P. / Branch Manager

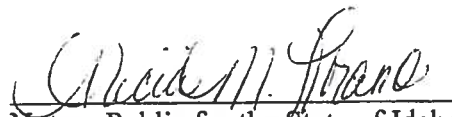
STATE OF IDAHO

COUNTY OF BONNEVILLE

On this 28th day March, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Chad Dance, known to me to be the Sr.V.P./ Branch Manager of the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.




Notary Public for the State of Idaho
Residing in Idaho Falls, Idaho,
Commission Expires July 6, 2015
MY COMMISSION EXPIRES
BONDED THRU NOTARY PUBLIC UNDERWRITERS

Commencing at a point that is 1357.93 feet South of the Northwest corner of said section; and running thence East 182 feet; thence North 05°55' East 213 feet; thence North 26° 25' East 255.56 feet; thence South 79°49'57" East 885.69 feet along the centerline of a canal; thence South 02°38'03" West 275.50 feet, to the TRUE POINT OF BEGINNING; thence South 89°57'17" East 1476.86 feet along the center line of said canal to the North-South line of the center of the section.

Excepting the following described property:

BEGINNING AT A POINT THAT IS S.89°48'41"W. ALONG THE SECTION LINE 609.00 FEET FROM THE NORTH ¼ CORNER OF SECTION 16, TOWNSHIP 4 NORTH, RANGE 40 EAST OF THE BOISE MERIDIAN, MADISON COUNTY, IDAHO; RUNNING THENCE S.89°48'41"W. ALONG SAID SECTION LINE 333.59 FEET; THENCE S.00°59'37"W. 287.19 FEET; THENCE S.45°46'57"E. 8.33 FEET; THENCE N.89°39'16"E. 333.57 FEET; THENCE N.00°11'19"W. 292.04 FEET TO THE POINT OF BEGINNING.

TRACT 11:

Beginning at a point that is S.89°25'12"W. along the Section line 696.89 feet from the Northeast corner of Section 17, Township 4 North, Range 40 East of the Boise Meridian; Madison County, Idaho, running thence S.00°34'48"E. 33.51 feet; thence S.66°04'11"W. 81.52 feet; thence S.17°26'51"E. 148.96 feet; thence S.10°50'20"E. 164.16 feet; thence S.10°38'04"E. 194.65 feet; thence S.89°25'12"W. 77.56; thence South 750.69 feet to the South line of the Northeast 1/4 of the Northeast 1/4 of said Section 17; thence S.89°25'12"W. 585.73 feet to the Southwest corner of the Northeast 1/4 of the Northeast 1/4 of said Section 17; thence North along the West line of said Northeast 1/4 of the Northeast 1/4 a distance of 1312.29 feet to the North line of said Section 17; thence N.89°25'12"E. 626.01 feet to the POINT OF BEGINNING.

SUBJECT TO: existing County road Right-of-Way, Canal Right-of-way and easements of record.

ALSO SUBJECT TO an access easement described as follows:

Beginning at a point that is S.89°25'12"W. along the Section line 753.25 feet from the Northeast corner of Section 17, Township 4 North, Range 40 East of the Boise Meridian, Madison County, Idaho; running thence South 33.50 feet; thence N.89°25'12"E. 56.73 feet; thence S.66°04'11"W. 75.69 feet; thence S.89°25'12"W. 17.54 feet; thence North 63.50 feet to the North line of said Section 17; thence N.89°25'12"E. 30.00 feet to the POINT OF BEGINNING.

LEGAL DESCRIPTION

Title to the estate or interest in the land is vested in:

Tracts 1, 2, 3, 4, 5, 6, 7, 8 & 11:

Lee H. Sutton and Heddy R. Sutton, husband and wife

The Insured Mortgage, and Assignments thereof, if any, are described as follows:

Real Estate Mortgage dated March 23, 2005 to secure an indebtedness of 1,124,740.00

Recorded: March 24, 2005 as Instrument No. 318484

Mortgagor: Lee H. Sutton and Heddy R. Sutton, husband and wife; Randall D. Sutton and Jill Sutton, husband and wife; Richard Thomas Sutton and Ruth Sutton, husband and wife

Mortgagee: The Bank of Commerce- Administration, its successors and/or assigns as their respective interests may appear.

The amount of this policy is less than the face amount of the Insured Real Estate Mortgage. The insured represents the difference between the amount of this policy and the amount of the Real Estate Mortgage is secured by other real property and/or personal property. The insurer's liability under this policy is reduced by the ratio of the amount of insurance over the full principal debt of the loan insured at the date of policy.

The land referred to in this policy is described as follows:

TOWNSHIP 4 NORTH, RANGE 40 EAST, BOISE MERIDIAN, MADISON COUNTY, IDAHO.

TRACT 1: Section 2: S1/2SW1/4SW1/4; SE1/4SW1/4

TRACT 2: Section 2: E1/2NW1/4SE1/4; SW1/4SE1/4

TRACT 3: Section 3: E1/2E1/2SW1/4SE1/4; SE1/4SE1/4

TRACT 4: Section 11: N1/2NW1/4

TRACT 5:

Section 15: Commencing at the Northwest corner of said section; and running thence East 300 feet; thence South 400 feet; thence Southwesterly 350 feet; thence North 535 feet to the point of Beginning.

TRACT 6:

Section 16: Commencing at the Northeast corner of said section; and running thence West 150 feet; thence South 635 feet; thence Northeasterly 180 feet; thence North 535 feet to the point of beginning.

TRACT 7:

Section 16: Commencing at a point which is North 89°33' East 497.82 feet from the Northwest corner of said section; and running thence South 00°43' West 948.99 feet; thence South 79°49'57" East 682.96 feet along the center line of a canal; thence South 02°38'03" West 275.50 feet; thence South 89°57'17" East to a point which is 110 feet West of the East line of Lot 5; thence North 1357.93 feet, more or less, to the North section line of said section 16; thence West 712.18 feet to the point of beginning.

TRACT 8:

Section 16: Commencing at the Northwest corner of the NE1/4 of the NW1/4 of said section; and running thence West 110 feet; thence due South 1320 feet to the South line of the NW1/4 of the NW1/4 of said section; thence East 1430 feet to the SE corner of said NE1/4 of the NW1/4 of said section; thence North approximately 1221 feet to a point in the irrigation ditch 99 feet South of the NE corner of said NE1/4 of the NW1/4; thence meandering along said irrigation ditch Southwesterly, Westerly, and Southwesterly approximately 510 feet to a point 499 feet West and 183 feet South of the NE corner of said NE1/4 of the NW1/4; thence due West 110 feet; thence North approximately 183 feet to the North line of said section; thence due West along said section line approximately 711 feet to the point of beginning.

ALSO:

Section 16: All that portion of Lpt 4 and Lot 5 lying North of the following described line:

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