

RECEIVED

APR 26 2011

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

77205

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

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

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

Yes N/A

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

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded.
- ☐ ☒ Complete and attach an Application for Transfer Part 2B for each water right for which only a portion is proposed to be changed through this transfer application. Part 2B forms are available on the Department's website at http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/PDF/09/WaterRight_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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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 77205

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

DEPARTMENT OF
WATER RESOURCES

Name of Applicant(s) Big Springs Creek, LLC

Phone (406) 551-4104

Mailing address 7 West Main Street, Suite 202, Bozeman, MT 59715

Email court.smith@beartoothcap.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

Carl Palmer, Managing Partner
Print Name and Title if applicable

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 _____
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 propose transferring the current Place of Use (POU) associated with water right 73-44 and -46. The new location for the proposed POU will be irrigated by two pivots and will greatly enhance the irrigation efficiency of the ranch.

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 ☒ ☐	73-44	6.0	Irrigation	04/01 to 10/31	Patterson Creek, Pahsimeroi
☒ ☐	73-46	1.0	Irrigation	04/01 to 10/31	Patterson Creek, Pahsimeroi
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 7.0 cfs and/or _____ ac-ft

2. Total amount of water proposed to be transferred or changed 7.0 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	
15N	21E	25																32	32
15N	21E	36	32																32
15N	22E	30											32						32
15N	22E	31					18	32											50

Total Acres (for irrigation use) 146

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: Water from Mayrick Creek will be pumped to the proposed POU via a ~30-hp and a ~50-hp pump with 8" mainline to 2 pivots. There will be a lockable control valve and a rate/volume flow meter on the mainline about 25 feet from the pump.
- b. Who owns the property at the point(s) of diversion? Ben O'Neal or Big Springs Creek, LLC
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system: Big Springs Creek, LLC has a ditch right-of-way easement to access the ditch and headgate.
- 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: Howard R. Cutler and Zella M. Cutler (husband and wife), mortgage to secure indebtedness. A statement from the lien holder is not needed since the transfer will not adversely impact the value of the water right or the property.
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: Portions of the ground irrigated in the current POU will still be irrigated by the proposed POU. The portions of the current POU not under the pivots will no longer be irrigated by water rights 73-44 and 73-46.
- 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: Water right 73-60 (source Falls Creek, tributary to Patterson Creek) is supplemental to 73-44 and is associated with the same POU as 73-44.

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: _____

Total Acres (for irrigation use)

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 \$490- Date 4/26/2011 Received by SK7 Receipt # C092949

Add'l Fee Paid	Date	Received by	Receipt #
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Attachment 1

ACTION TAKEN BY WRITTEN CONSENT
OF THE
SOLE MEMBER
OF
BIG SPRINGS CREEK, LLC
(a Delaware limited liability company)

The undersigned, being the Sole Member of Big Springs Creek, LLC, a Delaware limited liability company (the "Company"), does hereby consent to and adopt the following resolutions:

WHEREAS, pursuant to Section 6 of the Limited Liability Company Agreement, the Sole Member may appoint officers of the Company when deemed to be necessary and advisable;

AND WHEREAS, it is in the best interest of the Company to appoint the following officer:

Carl PalmerManaging Director

AND WHEREAS, it is in the best interest of the Company to authorize Mr. Palmer to act on behalf of the Company;

NOW, THEREFORE, BE IT RESOLVED that Carl Palmer is hereby elected Managing Director and is further authorized, directed and empowered to: (1) execute, endorse, acknowledge and deliver on behalf of the Company, any document, covenant, lease, application, instrument, set-aside letter, letter agreement, authorization, check, draft, letter of credit, bond, agreement, note, deed of trust, certificate, consent, affidavit, tax form or other writing; (2) to negotiate with any attorney, agent, guild or other person or persons, whether for the purposes of collective bargaining or individual agreement; and (3) to further advance the business and purpose of the Company, without limitation.

IN WITNESS WHEREOF, the undersigned has executed this Action Taken By Written Consent as of the January 30, 2008.

SOLE MEMBER

BEARTOOTH CAPITAL I, L.P.

BY: BEARTOOTH CAPITAL GP, LLC
its General Partner

BY:



Carl Palmer, Managing Director

LIMITED LIABILITY COMPANY AGREEMENT**OF****BIG SPRINGS CREEK, LLC**

This Limited Liability Company Agreement (this "Agreement") of Big Springs Creek, LLC (the "Company"), is entered into and is effective as of January 30, 2008, by Beartooth Capital I, L.P., a Delaware limited partnership, as the sole member (the "Member").

The Member hereby forms a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. §18-101, et seq.), as amended from time to time (the "Act"), and hereby agrees as follows:

Section 1. **Name.** The name of the limited liability company formed is and continues to be Big Springs Creek, LLC.

Section 2. **Purpose.** The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities necessary or incidental to the foregoing.

Section 3. **Registered Office.** The address of the registered office of the Company in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Section 4. **Registered Agent.** The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

Section 5. **Members.** The name and address of the Member is as follows:

Name	Address
Beartooth Capital I, L.P.	402 North 5 th Avenue Bozeman, MT 59715

Section 6. **Powers.** The Company shall be wholly managed by its Member. The Member may appoint officers of the Company from time to time, as the Member deems appropriate, to perform the duties and management of the Company on behalf of the Member pursuant to the provisions of this Agreement and the Act.

Section 8. **Dissolution.** The Company shall dissolve and its affairs shall be wound up upon the first to occur of the following: (a) the unanimous written consent of the members to dissolve the Company, (b) at any time there are no members unless there is an agreement in writing to continue the Company as provided in Section 18-801(a)(4) of the Act, or (c) the entry of a decree of judicial dissolution under Section 18-802 of the Act.

Unless otherwise provided by this Agreement, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the Company to be dissolved or its affairs to be wound up, unless within 90 days following the occurrence of such event, the members agree in writing to dissolve the Company as provided in Section 18-801(b) of the Act.

Section 9. Capital Contributions. The Member has contributed the following amounts, in cash, and no other property, to the Company:

Beartooth Capital I, L.P. \$1,000.00

Section 10. Additional Contributions. No member is required to make any additional capital contribution to the Company.

Section 11. Allocation of Profits and Losses. Allocation of the Company's profits and losses shall be allocated to the members pro rata according to their respective membership percentages.

Section 12. Distributions. Distributions shall be made to the members at the times and in the aggregate amounts determined by the Member.

Section 13. Assignments. A member may not assign in whole or in part his or her limited liability company interest without the prior written consent of the Member, which consent may be given or withheld in the sole and absolute discretion of the Member.

Section 14. Admission of Additional Members. One or more additional members of the Company may be admitted to the Company with the consent of the Member provided that such new member executes this Agreement.

Section 15. Liability of Members. The members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act.

Section 16. Amendment. This Agreement may be amended by the consent of the Sole Member but any amendment to this Agreement must be in writing and signed by the Member.

Section 17. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed and delivered this Agreement as of the 30th day of January, 2008.

MEMBER:

Beartooth Capital I, L.P.
a Delaware limited partnership

By: Beartooth Capital GP, LLC
Its: General Partner

By: 
Name: Carl Palmer
Title: Managing Director

Attachment 2A

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

3/24/2011

WATER RIGHT NO. 73-44

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BIG SPRINGS CREEK RANCH LLC 7 W MAIN ST STE 202 BOZEMAN, MT 59715 (406)551-4104
Directors Report Owner	SPRING CREEK GRAZING ASSN C/O HOWARD CUTLER HC 67 BOX 2066 CHALLIS, ID 83226 (208)838-2366
Original Owner	WOOD LIVE STOCK CO LTD SPENCER, ID

Priority Date: 04/01/1895

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
PATTERSON CREEK	PAHSIMEROI RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	6 CFS	
Total Diversion			6 CFS	

Location of Point(s) of Diversion:

PATTERSON CREEK	SWSW	Sec. 09	Township 14N	Range 22E	LEMHI County
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Place(s) of use:

Place of Use Legal Description: IRRIGATION LEMHI County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
15N	21E	25		SESE	20									
		36		NENE	13									
	22E	30	4	SWSW	38									
		31	1	NWNW	38									

Total Acres: 109

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.	B01	Source is also known as Spring Creek.

Dates:

Licensed Date:

Decreed Date: 06/10/2009

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:

Water District Number: 73

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 109

Combined Volume Limit:

Combined Rate Limit: 6

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

Close

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

3/24/2011

WATER RIGHT NO. 73-46

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BIG SPRINGS CREEK RANCH LLC 7 W MAIN ST STE 202 BOZEMAN, MT 59715 (406)551-4104
Directors Report Owner	SPRING CREEK GRAZING ASSN C/O HOWARD CUTLER HC 67 BOX 2066 CHALLIS, ID 83226 (208)838-2366
Original Owner	FRANCIS GRUBB

Priority Date: 07/10/1895

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
PATTERSON CREEK	PAHSIMEROI RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	1 CFS	
Total Diversion			1 CFS	

Location of Point(s) of Diversion:

PATTERSON CREEK	SWSW	Sec. 09	Township 14N	Range 22E	LEMHI County
-----------------	------	---------	--------------	-----------	--------------

Place(s) of use:

Place of Use Legal Description: IRRIGATION LEMHI County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
15N	22E	31		SWNE	1.2									
				NENW	4.3		SENE	32						

Total Acres: 37.5

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.	B01	Source is also known as Spring Creek.

Dates:

Licensed Date:

Decreed Date: 06/10/2009

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:

Water District Number: 73

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

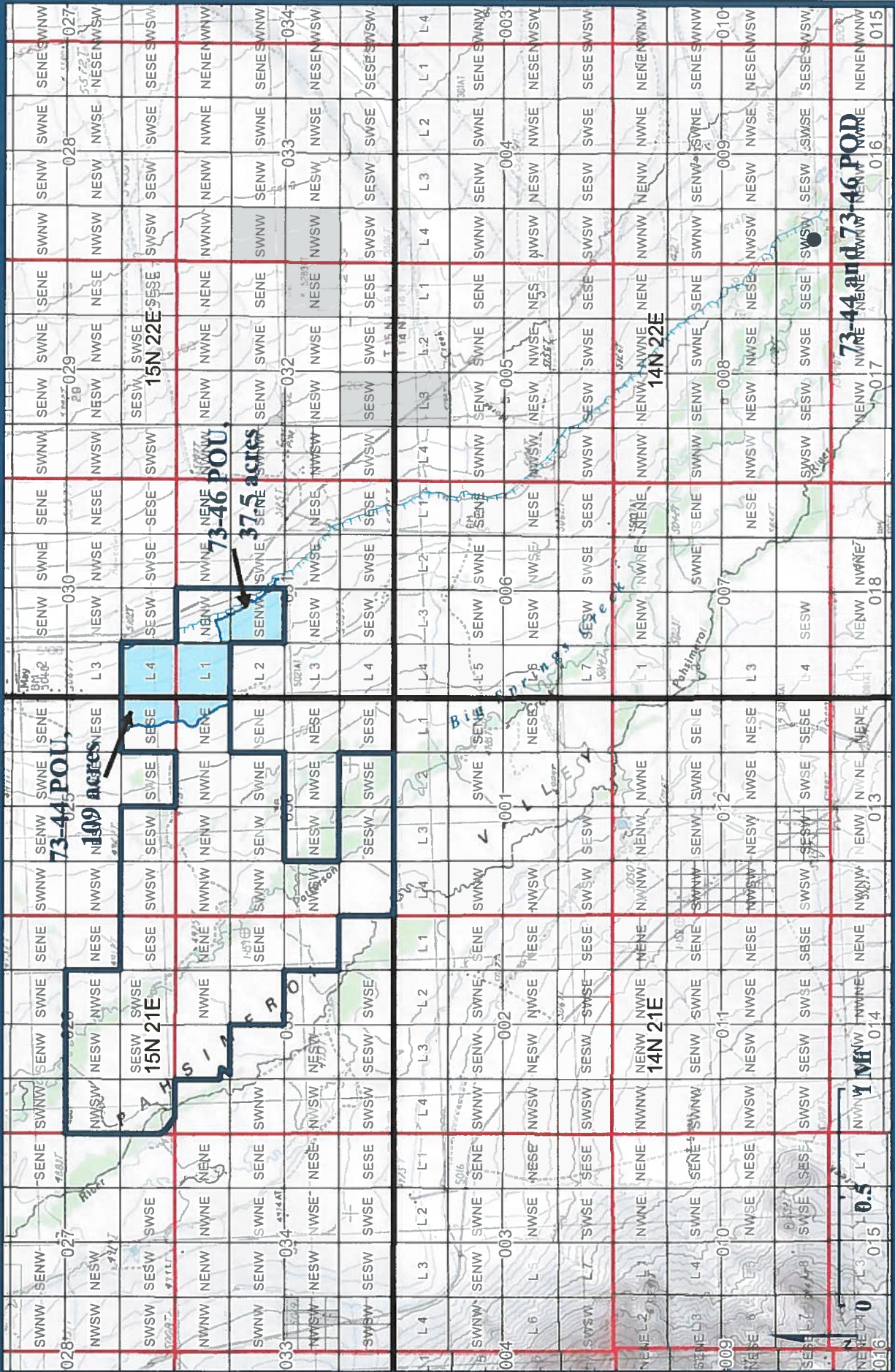
DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

BIG SPRINGS CREEK RANCH
Pahsimeroi River Valley, Idaho





BIG SPRINGS CREEK RANCH Pahsimeroi River Valley, Idaho

73-44 and 73-46
 POU Detail

