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JUL 16 2025

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESDEPT. OF WATER RESOURCES
EASTERN REGION

APPLICATION FOR TRANSFER OF WATER RIGHT

GENERAL INFORMATION AND INSTRUCTIONS

Pursuant to Section 42-222(1), *Idaho Code*, a transfer application may be filed to change the point of diversion, place of use, period of use, or nature of use of all or part of an established water right. Any person proposing to make such a change is required to file a transfer application with the Department. "Such application shall be upon forms furnished by the department and shall describe the [water right] to be changed and the changes which are proposed and shall be accompanied by the statutory filing fee." *Idaho Code* § 42-222(1).

The Department has developed this application form to assist applicants in satisfying the requirements of Section 42-222(1). This application form requests information about the applicant's authority to file (Part 1), information about the current elements of the water right(s) to be changed (Part 2), information about the proposed changes (Part 3), information about the validity of the water right(s) and the effects of the proposed changes (Part 4), and confirmation that the information provided is truthful (Part 5).

The applicant or their representative must provide a response for all applicable questions, any additional information required, and the proper filing fee before this application will be considered complete. If an application is incomplete or more information is required, the Department will notify the applicant or representative and allow time for the application to be completed. An application that remains incomplete will be returned to the applicant and the filing fee will be refunded.

An application for transfer is limited to the changes proposed for a single water distribution system. A proposal to change two or more separate water distribution systems, that will remain separate after the transfer, must be filed as separate applications. Applicants may provide additional pages to supplement their responses to the questions posed on this application form. Supplemental forms for listing additional water rights, points of diversion, or places of use can be found on the Department's website (idwr.idaho.gov). If you need assistance understanding the questions on this form, generating current water right reports, determining legal descriptions, or accessing water measurement records feel free to contact the nearest regional office of the Department.

PART 1 – CONTACT INFORMATION, OWNERSHIP RECORDS, AUTHORITY TO FILE

Name(s) of Applicant(s) F. James WhittakerMailing Address P.O. Box 240, Leadore, ID 83464Email* fjwhitt@yahoo.com Phone _____Name of Representative (if any) Robert L. HarrisMailing Address HKHC, P.O. Box 50130, Idaho Falls, ID 83402Email* rharris@holdenlegal.com Phone 208-523-0620

*If an email address is provided, Department staff will use email as the primary method for corresponding with the applicant and representative about the application.

A. Representative. If the representative is authorized to sign or amend the application on behalf of the applicant, attach documents confirming that authority. Label documents as Attachment 1A.

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B. Current Owner. If the applicant is not the current owner of record for all water rights included in this application, attach documents showing that the applicant has the authority to make the proposed changes. Label documents as Attachment 1B.

C. Updating Ownership Records. Applicants needing to update the ownership records for any of the water rights included in this application must attach documents supporting the ownership change. Such documents must trace ownership of the subject water rights or the current place of use for the subject water rights from the current owner of record for the water rights to the applicant. Label documents as Attachment 1C.

D. Business Entities. If the applicant is a business entity (corporation, LLC, partnership, trust, etc.), is the entity currently registered with the Idaho Secretary of State?

☐ Yes. If this application is signed by someone other than a person listed on the most recent annual report filed with the Idaho Secretary of State, attach documents confirming the authority of the signer to sign on behalf of the business entity. Label documents as Attachment 1D.

☐ No. Attach documents confirming the authority of the signer to sign on behalf of the business entity. Label documents as Attachment 1D.

E. Approval of Irrigation Delivery Entity. Section 42-108, *Idaho Code*, states that a transfer application proposing to change water rights held by an irrigation company or district requires the consent of the irrigation entity. If this application proposes to change water rights held by an irrigation entity, attach a letter of consent from the entity (labeled as Attachment 1E) or have an authorized representative of the entity co-sign the application.

F. Encumbered Properties. If the current place of use for the water rights included in this application is subject to a lien, deed of trust, mortgage, or contract and the application proposes to change the nature of use of the water rights or to move water rights off the current place of use, attach a statement of consent for the change signed by the lien holder, trustee, mortgagor or contract holder. Label documents as Attachment 1F.

G. Legal Access. If the applicant is not the current owner of the proposed point(s) of diversion, conveyance system, or place(s) of use, provide evidence of legal access to the land or infrastructure not owned by the applicant. Label documents as Attachment 1G. For example, an applicant may provide a letter of consent from the owner of the land or conveyance system or may have the owner co-sign the application. For applications proposing to divert water on or convey water across federal land, an applicant is not required to demonstrate legal access to the federal land prior to approval. Instead, if the transfer application is approved, the applicant must obtain access authorization from the relevant federal agency prior to diverting water under the subject water rights.

PART 2 – WATER RIGHTS BEFORE PROPOSED CHANGES

A. Current Water Rights. For each water right proposed to be changed, attach a current water right report obtained from any Department office or from the Department's website (idwr.idaho.gov). Label water right reports as Attachment 2A.

B. Map of Current System. Attach a map of the current point(s) of diversion and place(s) of use for the water rights to be changed. The map should clearly depict the elements of the water rights to be changed. For example, if the application proposes to change the point of diversion for a water right, the map should display the current location of the point of diversion. For irrigation water rights, the map should also identify the location of the irrigated acres to be changed. Label map as Attachment 2B.

C. Current Location of Irrigated Acres. If this application proposes to change the place of use or nature of use for only a portion of an irrigation water right, use the following table to identify the current location of the irrigated acres to be changed. If additional pages are required, label additional pages as Attachment 2C. If this application proposes to change or rearrange the entire place of use for irrigation water right(s), skip to Part 3.

☒ **N/A.** This application does not propose to change the place of use or nature or use of an irrigation water right or this application proposes to change the place of use or nature of use for an entire irrigation right.

Current Location of Irrigated Acres to be Changed

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	

Total Irrigated Acres to be Changed: _____

PART 3 – DESCRIPTION OF PROPOSED CHANGES

A. Purpose of Transfer. Section 42-222(1), *Idaho Code*, states that transfer applications may only be filed to change the point of diversion, place of use, period of use, or nature of use of an established water right. Section 42-248(3), *Idaho Code*, authorizes water right ownership changes to be described on a transfer application. Identify the changes proposed in this application:

- | | |
|--|---|
| ☒ Change point(s) of diversion | ☐ Change place of use |
| ☐ Add point(s) of diversion | ☐ Change period of use |
| ☐ Change nature of use | ☐ Update water right ownership records |

B. Proposed Changes. Describe the proposed changes in narrative form:

Transfer is filed to incorporate terms of a settlement agreement to resolve a multi-year dispute. The transfer also will correct deficiencies in the SRBA decree for WR 74-157. The transfer removes "West Springs" as a source of water and limits source to "East Springs." Transfer proposes to add the following condition: "Source of water is known locally as 'East Springs'". Transfer also updates correct POD location for "East Springs" and eliminates POD for diversion location on "West Springs."

C. Summary of Proposed Changes.

1. Water Rights. Use the following table to list all water rights, or portions thereof, that are proposed to be changed as they would appear after the proposed changes. In the Amount column, list the volume in acre-feet (af) for storage uses or the rate in cubic feet per second (cfs) for all other uses.

All or Part	Right Number	Amount (cfs/af)	Nature of Use	Period of Use	Source
☒ ☐	74-157	3.2	Irrigation	03/15 to 11/15	Springs (East Springs)
☒ ☐	74-157	0.2	Stockwater	01/01 to 12/31	Springs (East Springs)
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

2. Total Amounts. Calculate the total quantity, in cfs or af, of water rights that are proposed to be changed through this application. For an application proposing to only change the place of use for irrigation rights, the total quantity of water is calculated by comparing the current place of use to the proposed place of use, summing the number of acres increased in each legal subdivision, and quantifying the proportional amount of diversion rate for the increased acres. For an application proposing to change or add points of diversion for irrigation or any other beneficial use, the total amount is the total diversion rate for the changed portion of the right.

Total Amount of Water Rights Proposed to be Changed: 3.2 cfs and/or _____ af.

3. Point(s) of Diversion. Use the following table to list all the proposed points of diversion for the water rights to be changed, including any current points of diversion that will continue to be used as part of the proposed water distribution system.

The legal description for the proposed point(s) of diversion must be to the nearest 40-acre subdivision (QQ) or U.S. Government Lot of the Public Land Survey System (PLSS). PLSS information is typically available from USGS topo maps, property deeds, tax bills or various mapping tools on the Department's website.

For points of diversion within platted subdivisions, list the lot and block number in the "Diversion Name/Number" column. An application proposing an injection into a stream and a re-diversion from that stream must list the source for the original diversion as the source for the injection and re-diversion points. If this application proposes construction of a new diversion structure (for example, a new ground water well or a new pump station on a creek), please indicate the status in the appropriate column.

☐ N/A. This application does not propose to add or change any points of diversion.

Proposed Points of Diversion

New?	Twp	Rge	Sec	Lot	1/4	1/4	1/4	County	Source	Diversion Name/Number
No	16N	25E	32		SW	NW	NW	LEMHI	SPRINGS (EAST SPRINGS)	

4. Place of Use. The proposed place of use must be described to the nearest 40-acre subdivision (QQ) or U.S. Government Lot of the Public Land Survey System. Government lot numbers can be noted in parenthesis below the approximate quarter-quarter location of the government lot. For water rights held by irrigation districts, municipal providers or irrigation companies, the proposed place of use may be generally described as authorized by Sections 42-202B, 42-219 and 42-222B, *Idaho Code*.

☒ N/A. This application does not propose to change the place of use.

Proposed Place of Use

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	

Total Irrigated Acres: _____

5. Map of Proposed System. Attach a map showing the location of the points of diversion, reservoirs, dams, canals, ditches, pipelines and other works proposed to divert and convey water. Also show the location of the place of use, including any lands to be irrigated. The map should delineate the legal subdivisions including townships, ranges, sections, quarter-quarters and government lots. Label map as Attachment 3C.

PART 4 – ADDITIONAL INFORMATION

Section 42-222(1), *Idaho Code*, establishes the criteria used to evaluate transfer applications. An applicant bears the burden of demonstrating that the water right to be changed is a valid right, that the proposed use is a beneficial use, and that the proposed changes will not injure other water rights, will not enlarge the use of the original rights, are in the local public interest, and are consistent with the conservation of water resources within the state of Idaho. To satisfy this burden, an applicant must provide sufficient data and information for the

Department to evaluate the effects of the proposed change. The Department may deny an application if the applicant fails to provide sufficient data and information to determine whether the criteria from Section 42-222(1) are satisfied. In addition to the information requested in Parts 1-3 of this application, the following information must be provided for an application to be considered complete. Department staff may request additional information or clarification as the application is processed.

A. Validity of Water Rights

1. If one or more of the water rights proposed to be changed is a statutory claim, established pursuant to Section 42-248, *Idaho Code*, attach evidence supporting the priority date claimed. Label documents as Attachment 4A-1. For statutory claims, the Department may conduct a field inspection as part of the application review process to evaluate the water right elements listed on the statutory claim.

2. Has any portion of the water right(s) proposed to be changed undergone a period of five or more consecutive years of non-use?

☐ Yes. Attach a statement describing the portion of the right(s) that were not used and the length of time of the non-use. In addition, identify any exception or defense to forfeiture and provide a detailed description as to why the water rights have not been lost and forfeited for non-use. Label documents as Attachment 4A-2. Statutory exceptions or defenses to forfeiture are set forth in Section 42-223, *Idaho Code*.

☒ No.

B. Injury to Other Water Rights

1. Identify any other water right(s) diverted at the current point(s) of diversion.

None.

2. Identify any other water right(s) diverted at the proposed point(s) of diversion.

None.

3. Is the proposed point of diversion within a state water district? ☒ Yes. Water District # 74Z. ☐ No.

4. If already constructed and in use, are the proposed points of diversion equipped with Department-approved measuring devices? ☒ Yes. ☐ No.

5. If this application proposes to divert a surface water right from a ground water well, attach a technical analysis evaluating the hydraulic connection between the proposed ground water point of diversion and the source of water listed on the right to be changed. Label technical analysis as Attachment 4B-5.

6. If this application proposes changing the point of diversion for a ground water right in the Eastern Snake Plain Aquifer (ESPA), attach a technical analysis of the anticipated depletions to reaches of the Snake River that are hydraulically connected to the ESPA using the Department's current ground water model for the ESPA. The technical analysis must evaluate depletion impacts in a time-series format at transient and steady state time steps. To assist applicants in preparing the required technical analysis, the Department has developed a transfer tool interface for the ESPA model. The transfer tool and user instructions can be downloaded from the Department's website (idwr.idaho.gov). If the proposed and current points of diversion are in the same or adjacent model cells, no technical analysis is required, unless specifically requested by the Department. Label technical analysis as Attachment 4B-6.

C. Enlargement in Use

1. Identify any other water rights used at the current place of use, including the number of shares in a canal company or acres assessed by an irrigation district.

74-369, 74-1136, 74-15788; 74-349, 74-338B, 74-1105, 74-15787

2. Identify any other water rights used at the proposed place of use, including the number of shares in a canal company or acres assessed by an irrigation district.

Same as above under no. 1.

3. If this application proposes changing the place of use or nature of use for irrigation water rights, will the current place of use, for the portion of the right to be changed, continue to be irrigated?

☐ Yes. Identify the water right(s) to be used for the continued irrigation.

☐ No. The place of use for the portion to be changed will no longer be irrigated.

☒ N/A. The application does not propose to change the place of use for irrigation rights.

4. Unstacking Water Rights for Irrigation. If this application proposes to change the place of use for an irrigation water right that is combined with other irrigation rights at the current place of use but does not propose to change the place of use for all the stacked irrigation rights, attach evidence of the historical consumptive use occurring under all water rights at the current place of use. For irrigation rights, this should include at least five years of diversion data and/or crop data and estimates of evapotranspiration. Label the information as Attachment 4C-4. Evapotranspiration data may be available on the Department's website (<http://et-idwr.idaho.gov>)

5. If the application proposes to change the nature of use for a water right, attach evidence of the historical consumptive use occurring under the portion of the water right to be changed. For irrigation rights, this should include diversion data, crop data and estimates of evapotranspiration. Label the information as Attachment 4C-5. Evapotranspiration data may be available on the Department's website (<http://et-idwr.idaho.gov>)

6. If the application proposes to change the nature of use of a water right to municipal use for reasonably anticipated future needs, complete the form titled "Municipal Water Right Application Checklist" found on the Department's website (idwr.idaho.gov). Label the form as Attachment 4C-6.

7. To your knowledge, are any portions of the water rights proposed to be changed:

Yes

No

☐
☒

currently leased to the Water Supply Bank?

If yes, complete the form titled "Application for Transfer of Water Right Attachment WSB" found on the Department's website (idwr.idaho.gov). Label the Form as Attachment 4C-7.

☐
☒

currently used in a mitigation plan limiting the use of water under the right?

☐
☒

subject to an agreement not to divert (CREP)?

☐
☒

currently enrolled in a federal set-aside program (CRP)?

D. Local Public Interest

The department must consider whether the proposed changes are in the local public interest as defined in Section 42-202B(3), *Idaho Code*. Some of the local public interest factors that may be considered in conjunction with a transfer application are (1) Recreation, fish, and wildlife impacts, (2) Water quality or contamination concerns, (3) Local and state ordinances, regulations, or policies related to water use, (4) Goals, requirements and limits set forth in the State Water Plan. If you choose to provide information about local public interest factors, label the information as Attachment 4D.

E. Conservation of Water Resources

Describe the diversion works and water delivery system. This may include sizes and dimensions of pumps, pipelines, headgates, ditches, dams, impoundments and irrigation equipment.

Springs into collection ditch. Headgate will be installed just above measuring device.

Measuring device (weir) is in place.

PART 5 – FILING FEE AND SIGNATURE

A. Filing Fee. Filing fees for transfer applications are set forth in Section 42-221.O, *Idaho Code*. A table summarizing the filing fees for transfer applications is also found on the Department's website (idwr.idaho.gov). Any application proposing to change the nature of use for one or more rights requires an additional filing fee of \$250. Applications proposing to update the ownership records for water rights must also include the appropriate filing fee to update the ownership records. For any application relying on the filing fee set forth in Section 42-221.O.8, *Idaho Code*, attach a statement describing how the application qualifies under Section 42-221.O.8. Label documents as Attachment 5A.

B. Affidavit of Applicant or Representative:

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.

<u>Robert L. Harris</u>	Robert L. Harris, Attorney	July 16, 2025
Signature of Applicant or Representative*	Print Name and Title, if applicable	Date
Signature of Applicant or Representative*	Print Name and Title, if applicable	Date

*If water rights included in this application are owned by multiple people or entities, each owner must sign the application form.

FOR DEPARTMENT USE ONLY

Fee Paid: \$ <u>740.00</u>	Receipt #: <u>E050994</u>	Date: <u>7/16/25</u>	Received by: <u>CTH</u>
Add'l Paid: \$ _____	Receipt #: _____	Date: _____	Received by: _____

Water Right Elements	Before Transfer	After Transfer
Current Owner	F. James Whittaker	F. James Whittaker
Priority Date	4/1/1916	4/1/1916
Source	Springs	Springs
Tributary	Lee Creek	Sinks
Point of Diversion	Springs 16N 25E 31 NENE Lemhi Springs 16N 25E 32 SWNNW Lemhi	Springs 16N 25E 32 SWNNWNW Lemhi
Beneficial Use	Irrigation Stockwater	Irrigation Stockwater
Season of Use	03/15 to 11/15 Irrigation 01/01 to 12/31 Stockwater	03/15 to 11/15 Irrigation 01/01 to 12/31 Stockwater
Diversion Rate	3.2 cfs 0.2 cfs Total: 3.2 cfs	3.2 cfs 0.2 cfs Total: 3.2 cfs
Place of Use	291 described acres	291 described acres
Total Irrigated Acres	291	291
Conditions:	(1) This right authorizes the irrigation of 291.7 total acres. (2) 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.	(1) This right authorizes the Irrigation of 291.7 total acres. (2) Source of water is known locally as "East Springs." (3) 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.

Attachment No. 1A

Documentation Authorizing Representative to Sign

[Search again](#)

Results (as of 7/11/25)

Robert Lynn Harris

Status Active
Admittance Date 09/30/2004

Firm Holden, Kidwell, Hahn & Crapo, PLLC
Mailing Address PO Box 50130
Idaho Falls, ID 83405

Phone (208) 523-0620
Phone Ext
Fax (208) 523-9518

Bar Email Address rharris@holdenlegal.com
Website Address www.holdenlegal.com
Court eService Email efiling@holdenlegal.com

Need a correction?

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

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

[Current Status Definitions](#)

Disciplinary History

Contact the Bar Counsel's Office at (208) 334-4500 to request a disciplinary history on an attorney.

Former Members

Information on former members of the Idaho State Bar is limited to name, admission date and status. The online records include former members going back to approximately 1994. Records on former members from before 1994 are not available online. Please contact the Licensing Department for more information on former members.

Attachment No. 2A

Current Water Rights

SCANNED
4/1/17

Water Right Report : 74-157(Decreed/Active)

Water Right Owners

Owner Type	Name	Address	City	State	Postal Code
Attorney	MOFFATT THOMAS BARRETT ROCK & FIELDS CHTD	C/O SCOTT L CAMPBELL PO BOX 829	BOISE	ID	83701-0829
Current Owner	WHITTAKER, F JAMES	PO BOX 240	LEADORE	ID	83464-0240
Current Owner	WHITTAKER, PAULA J	PO BOX 240	LEADORE	ID	83464-0240
Original Owner	WHITTAKER, FLOYD J	PO BOX 177	LEADORE	ID	83464

Water Right Status

Priority Date : 4/1/1916

Basis : Decreed

Status : Active

Water Source

Source	Source Qualifier	Tributary	Tributary Qualifier
SPRINGS		LEE CREEK	

Points Of Diversion (Location)

Source	Township	Range	Section	Govt. Lot	QQQ	QQ	Q	County	Diversion Type
SPRINGS	16N	25E	31	0		NE	NE	LEMHI	
SPRINGS	16N	25E	32	0		SW	NW	LEMHI	

Water Uses

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	03/15	11/15	3.20 CFS	
STOCKWATER	01/01	12/31	0.02 CFS	
TOTAL			3.20 CFS	

Places of Use



Place of Use Legal Description : IRRIGATION (LEMHI county)

Township	Range	Section	Lot	QQQ	QQ	Q	Acres
16N	25E	29			SW	NE	40.0
16N	25E	29			SW	NW	33.0
16N	25E	29			SE	NW	39.0
16N	25E	29			NE	SW	40.0
16N	25E	29			NW	SW	13.0
16N	25E	29			SW	SW	16.0
16N	25E	29			SE	SW	40.0
16N	25E	32			NE	NW	37.0
16N	25E	32			NW	NW	33.0

Irrigation Totals

Total Acres Acre Limit

291.00

Conditions

Code Conditions

- E64 This right authorizes the irrigation of 291.7 total acres.
- 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.

Dates

Licensed Date :
Decreed Date : 4/3/2012
Permit Proof Due Date :
Permit Proof Made Date :
Permit Approved Date :
Permit Moratorium Expiration Date :
Enlargement Use Priority Date :
Enlargement Statute Priority Date :
Application Received Date:
Protest Deadline Date:

Other Information

State or Federal : S
Water District Number : 74Z
Generic Max Rate Per Acre : 0
Generic Max Volume Per Acre : 0
Civil Case Number :
Decree Plaintiff :
Decree Defendant :
Swan Falls Trust or Nontrust :
Swan Falls Dismissed :
DLE Act Number :
Cary Act Number :
Mitigation Plan: False

IDAHO DEPARTMENT OF WATER RESOURCES

6/30/2025

Attachment No. 2B

Map of Current System

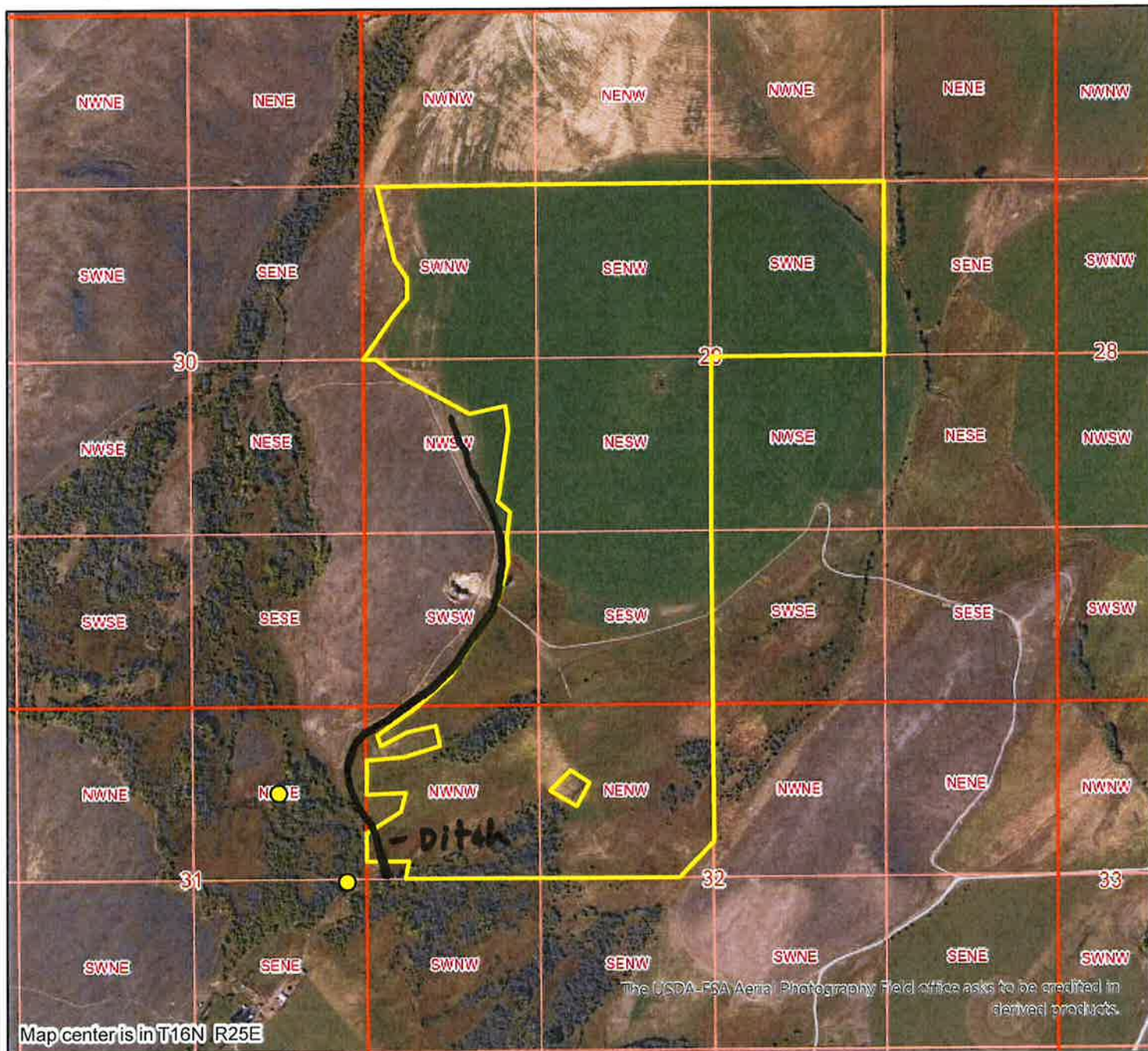
State of Idaho
Department of Water Resources

Water Right

74-157

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



Date created: 5/30/2025



Legend

- Quarter Quarters
- PLS Sections
- Townships
- Place of Use Boundary
- Point of Diversion



89926

Attachment No. 3C

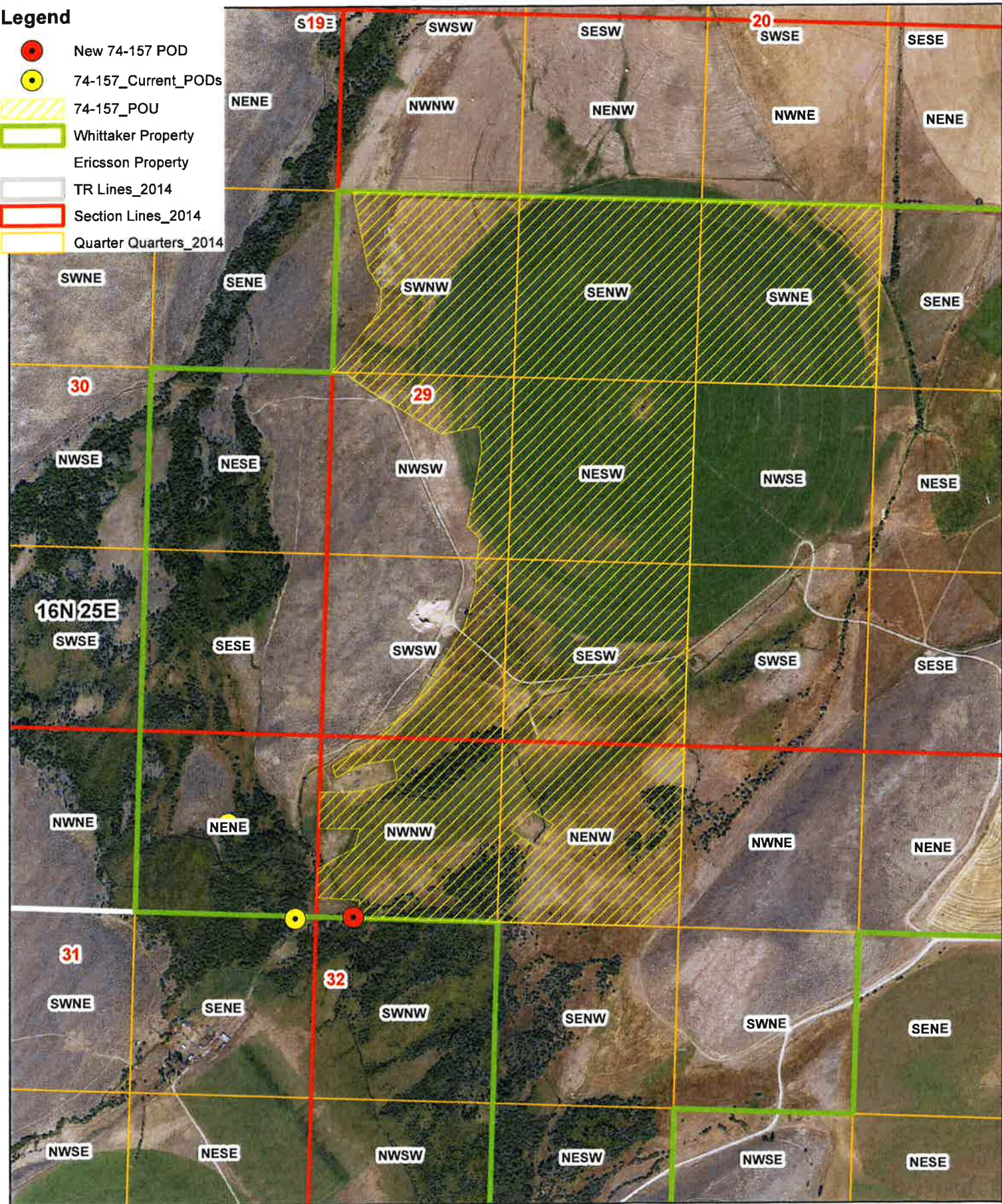
Map of Proposed System

WHITTAKER TRANSFER



Legend

- New 74-157 POD
- 74-157_Current_PODs
- 74-157_POU
- Whittaker Property
- Ericsson Property
- TR Lines_2014
- Section Lines_2014
- Quarter Quarters_2014



Prepared by:
Robert L. Harris
2021 Aerial Photo

9926

0 0.15 0.3 0.6 Miles

GIS shapefiles will be emailed upon request to the Applicant's representative.

RECEIVED

JUL 16 2025

DEPT. OF WATER RESOURCES
EASTERN REGION



Holden Kidwell
Hahn & Crapo P.L.L.C.
LAW OFFICES

Established in 1896

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405
Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com
rharris@holdenlegal.com

July 16, 2025

Eastern Region Office
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RE: Application for Transfer for WR 74-157 Filed in the Name of F. James Whittaker.¹

Dear Reviewing Agent:

Enclosed for processing is a completed *Application for Transfer* ("*Transfer*") for the above-referenced water right. WR 74-157 was previously a subject in two separate Idaho Supreme Court decisions (*Whittaker v. Kauer*, 78 Idaho 94, 298 P.2d 745 (1956) and *Whittaker v. Idaho Dep't of Water Res.*, 551 P.3d 729 (2024)). The *Transfer* is a critical component to a *Settlement Agreement* between the applicant (and other Whittaker business entities), Bruce and Glenda McConnell, and the Idaho Department of Water Resources. The *Settlement Agreement* resolved two separate district court lawsuits related to the 2024 Idaho Supreme Court decision (joined into one action—Lemhi County District Court Case Nos. CV30-24-0168 and CV30-22-0169).²

The purposes of the *Transfer* are to effectuate a critical term of the *Settlement Agreement* and correct deficiencies in how WR 74-157 was originally decreed in the Snake River Basin Adjudication. Attached to this letter is correspondence from former Water District 170 Watermaster Cindy Yenter that describes how one of the sources of WR 74-157, known locally as "east springs," is physically tributary to "sinks" (not Stroud Creek). Overall, the *Transfer* proposes to eliminate one of the sources of water for WR 74-157 (known locally as "west springs," which is physically tributary to Stroud Creek), eliminate the point of diversion for the "west springs" component of WR 74-157, to correct the tributary designation for the remaining source of WR 74-157 (to "sinks"), to add a condition that clearly describes the source of water as "east springs," and to correct the location of the point of diversion for "east springs" to the actual point of diversion location.

¹ In addition to F. James Whittaker, the records of IDWR list Paula Whittaker as one of the owners of WR 74-157. Ms. Whittaker passed away on November 26, 2016.

² A third filed, but unserved complaint, related to the overall dispute also resolved with the Settlement Agreement was assigned the number of CV30-25-0119.

IDWR
July 16, 2025
Page 2 of 2

Enclosed is a check in the amount of \$740.00 for the required filing fee (because the entire 3.2 cfs of WR 74-157 is proposed to be changed). Because of the important nature of this *Transfer*, we ask that it be processed as quickly as possible.

We appreciate your assistance in the review and processing of this *Transfer*. If you have any questions or concerns, or need any additional information for this *Transfer*, please let me know.

Best regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

Henman, Christina

From: Yenter, Cindy
Sent: Tuesday, November 24, 2020 4:49 PM
To: Henman, Christina
Cc: Cefalo, James
Subject: Watermaster Comment, transfer 84508, Whittaker

The two spring sources identified by right no. 74-157 do not appear to be hydraulically connected and should not have been decreed in a single right. For both springs, the named tributary, 'Lee Creek', is not completely correct and water right administration would be improved by clarification of the tributary. The location of the springs should be updated to a 10-acre tract. Water Appropriation Rule 35.0 3.b.ii requires that for an unnamed source, "the system or river to which it is tributary shall be identified. . . Only one source shall be listed on an application unless the application is for a single system which will have more than one source." Further, Rule 35.03.b.iii requires that "The location of springs shall be described to the nearest ten (10) acre tract." *IDAPA 37.03.08.35*. Even though this is not a new application, the Water Appropriation Rules provide minimum standards so that water right records meet statutory requirements and remain consistent, and the intent of the rules should be followed during transfer processing.

I am inclined to agree that, in the absence of development, flows from the "East Spring" in SWNW Sec 32 would run generally to the east/northeast and would sink long before reaching a named tributary. An appropriate tributary designation would be 'SINKS'. The lower end of the spring complex arises on NWSWNW S32. Applicant has developed a collection ditch to intercept numerous individual springs. The ditch may be artificially routed to the west, to commingle with Stroud Creek, or it may be routed to the northeast, as it was on the day of my last visit, where it encounters a dry channel and flows into applicant's diversion ditches from Stroud Creek.

The "West Spring" in NENE Sec 31 is clearly tributary to Stroud Creek. Stroud Creek was originally identified in some SRBA decrees as Left Fork Lee Creek, but appears on USGS quad maps as Stroud Creek, tributary to Lee Creek. As Stroud Creek is the first named stream below the West Spring, it is the appropriate tributary designation. The lower end of this spring complex arises in NENENE S31. A collection ditch has been developed to intercept spring flows. The spring collection ditch flows directly into applicant's ditch. The original Stroud Creek/ Left Fork Lee Creek channel has been manipulated below applicant's Stroud Creek diversion so that all flows of both Stroud Creek and the West Spring flow to applicant's ditches. Applicant has recently modified his ditch system so that flows may be bypassed back to lower Stroud Creek.

WD170 objects to the removal of the tributary designation entirely. Correct tributary designations are essential in proper administration of water rights from common or hydraulically related sources. 74-157 was decreed in both the Lemhi Adjudication and the SRBA as tributary to Lee Creek, and was not decreed as a separately administered right. Right holder cannot now claim exclusive use of the spring waters or leverage administration of the right simply by changing the tributary designation.

WD170 does not oppose approval of this application subject to the following conditions:

- 74-157 must be split so that a single spring system is shown on each right. Applicant can specify the proportion of the decreed flow rate that accompanies each split.
- Each spring must designate an appropriate tributary, as suggested above.
- Each spring must be identified to a 10-acre tract
- Both springs are within WD74Z, Big Eightmile and Lee Creeks. The resulting split rights will remain under the jurisdiction of this water district.
- An acceptable measuring device is required for both spring collection ditches, prior to the confluence of the collection ditch with a tributary stream or with any private ditch.

- An adjustable lockable control device is required on the Stroud Creek bypass from applicant's ditches, so that the WD74Z watermaster may control and regulate bypass of Stroud Creek and West Spring flows.
- Other measuring devices and lockable controls may be required as needed for administration by WD74Z or WD170.

*Cindy Yenter
Watermaster, Water District 170
IDWR Salmon Field Office
102 S Warpath, Salmon ID 83467
cindy.yenter@idwr.idaho.gov
208-742-0655
208-731-0901 cell*



IDAHO DEPARTMENT OF
WATER RESOURCES

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls, ID 83402-1718

Phone: 208-525-7161 • Fax: 208-525-7177 • Email: easterninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

July 23, 2025

F JAMES WHITTAKER
PO BOX 240
LEADORE, ID 83464-0240

RE: Transfer No. 89926
Water Right No(s). 74-157

Dear Applicant:

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 7/31/2025 and 8/7/2025. 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,

Christina Henman
Administrative Assistant

CC:
ROBERT L HARRIS
PO BOX 50130
IDAHO FALLS, ID 83402

Henman, Christina

From: Henman, Christina
Sent: Wednesday, July 23, 2025 4:12 PM
To: rhlegals@custertel.net
Subject: Legal Notice for Recorder Herald
Attachments: 89926, 75-15135, 75-15093 Recorder Herald.docx

LEGAL NOTICE DEPARTMENT
RECORDER HERALD
PO BOX 310
SALMON, ID 83467

RE: Transfer No. 89926, Permit Nos. 75-15135, 75-15093

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 8/18/2025. Your cooperation is appreciated.

Sincerely,

Thank You,



Christina Henman
Administrative Assistant
IDWR, Eastern Region
900 N Skyline Ste. A
Idaho Falls, ID 83402
Phone: (208) 525-7161

**NOTICE OF PROPOSED CHANGE OF WATER RIGHT
TRANSFER NO. 89926**

F JAMES WHITTAKER, PO BOX 240, LEADORE, ID 83464-0240 has filed Application No. 89926 for changes to the following water rights within LEMHI County(s): Right No(s). 74-157; to see a full description of these rights and the proposed transfer, please see <https://research.idwr.idaho.gov/apps/waterrights/querynewtransfers>. The purpose of the transfer is to change a portion of the above rights as follows: remove point of diversion, change point of diversion, and clarify the source and tributary designation. Proposed point of diversion is in SWNWNW Sec 32 T16N R25E for 3.20 cfs from Springs tributary to Sinks. For additional information concerning the property location, contact Eastern Region office at (208)525-7161. 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, Eastern Region, 900 N SKYLINE DR STE A, IDAHO FALLS ID 83402-1718 together with a protest fee of \$25.00 for each application on or before 8/18/2025. The protestant must also send a copy of the protest to the applicant.

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

75-15135

MYRNA R HARRIS, 100 WILLIAMS CREEK RD, SALMON, ID 83467-5279

Point of Diversion L4(NENW) S6 T20N R22E LEMHI County

Source WASTE WATER Tributary SALMON RIVER

Use: IRRIGATION

04/01 to 10/31

0.14 CFS

Total Diversion:

0.14 CFS

Date Filed: 07-17-2025

Place Of Use: IRRIGATION

T20N R22E S6

L5(NWNW)

Total Acres: 7

This application proposes the diversion and use of water from waste water tributary of the Salmon Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because the diversion rate and acres will be applied to the subordination amounts specified in the decree for the Wild & Scenic River listed above.

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

75-15093

SAMUEL LEE JONES & MARY KURTZ CROW, 5133 GROVETON FLAT PRAIRIE RD, GROVETON, TX 75845-3563

Point of Diversion NENW S26 T26N R21E LEMHI County

Source NORTH FORK Tributary SALMON RIVER

Use: IRRIGATION

04/01 to 10/31

0.1 CFS

Total Diversion:

0.1 CFS

Date Filed: 06-02-2025

Place Of Use: IRRIGATION

T26N R21E S25

SWSW

Place Of Use: IRRIGATION

T26N R21E S26

SESE

Total Acres: 5

This application proposes the diversion and use of water from North Fork Salmon River, a tributary of the Salmon Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because the diversion rate and acres will be applied to the subordination amounts specified in the decree for the Wild & Scenic River listed above.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact the Eastern office at (208)525-7161; or for a full description of the right(s), please see <https://idwr.idaho.gov/apps/ExtSearch/WRApplicationResults/>.

Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Eastern Region, 900 N SKYLINE DR STE A, IDAHO FALLS ID 83402-1718 together with a protest fee of \$25.00 for each application on or before 8/18/2025. The protestant must also send a copy of the protest to the applicant.

MATHEW WEAVER, Director

Published on 7/31/2025 and 8/7/2025