

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 83293

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 idwr.idaho.gov.

Name of Applicant(s) Prometierra, LLC

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.
- ☒ * 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 #1-10.

- ☐ ☒ #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 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).**
** Additional fee(s) required for water right ownership changes; see fee schedule.
- ☒ ☐ #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 idwr.idaho.gov/water-rights/transfers/resources.html.
- ☐ ☒ #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. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.
- ☐ ☒ #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.) Additional fee required for proposed changes to nature of use; see [fee schedule](#).
- ☐ ☒ #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 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. ([Attachment WSB](#))
- ☒ ☐ #10 Other. Please describe: Draft Final Plat for Drake Creek Reserve Subdivision; Map of 2.5 acres of 22-14026.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAY 24 2019

Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Prometierra, LLC Phone (650) 906-2247
Mailing address 761 Southhampton Dr., Palo Alto, CA 94303 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 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.

Robert L. Harris Robert L. Harris, Attorney May 21, 2019
Signature of Applicant or Authorized Representative Print Name and Title if applicable Date

Signature of Applicant or Authorized Representative Print Name and Title if applicable Date

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
- Is this a transfer for changes pursuant to Idaho Code § 42-221.O.8?
If yes, ☐ attach an explanation and any supporting documentation labeled as **Part 1A.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.3**.
This transfer proposes to change the POD and POU for a 2.5-acre portion of 22-14026 to be authorized for use within a PPOU of 153 acres associated with the 5 subdivision lots in the Drake Creek Reserve Subdivision and/or possibly the subdivision common area.

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 ☐ ☒	22-14026	0.03cfs/7.5AF	Irrigation	1/1 to 12/31	Ground water
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 0.03 cfs and/or 7.5 acre-feet.

2. Total amount of water proposed to be transferred or changed 0.03 cubic feet per second and/or 7.5 acre-feet per year.

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 #
			NE	NW	18	03N	45E	TETON	GROUND WATER	D0004881

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	
03N	45E	7													40		10	40	90
03N	45E	8										40	23						63
Total Acres (for irrigation use)																			153

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 will be diverted from an existing regulated water system (PWS#ID7410010; see Beneficial Use Field Exam for 22-7798). Water will be delivered through a pipeline to the Drake Creek Reserve Subdivision.

- 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: _____

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. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?

If yes, ☐ complete Attachment WSB.

- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

2.5-acre portion of 22-14026 identified in this transfer will no longer be used on the property.

- f. 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 Nos. 22-10297, 22-7798, 22-13673, and 22-13674.

- g. 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:

**Attachment No. 2a
Water Right Ownership
Documentation**

IDAHO Department of Water Resources



WATER RIGHT REPORT

5/21/2019

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 22-14026

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	GARY SUMMERS
Current Owner	SHANNON SUMMERS 1177 E 9TH N REXBURG, ID 83440 2083510077

Priority Date: 06/19/1961

Basis: Decreed

Status: Active

Water Supply Bank 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	04/15	10/15	2.2 CFS	546.9 AFA
Total Diversion			2.2 CFS	

Location of Point(s) of Diversion:

GROUND WATER | NENE | Sec. 12 | Township 05N | Range 45E | TETON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
05N	45E	11		SWNE	26.5		SENE	24.7						
		12		NENE	35		NWNE	37.8						
				SWNW	23.3		SENE	35						

Total Acres: 182.3

Conditions of Approval:

1. S37 The use of water for irrigation under this right may continue to as late as October 31, provided other elements of the right are not exceeded. The use of water after October 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than November 24, 2008.
2. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

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: AND

Water District Number: TBD

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 3.5

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

Water Supply Bank:

83293

Lessor Name(s): GARY SUMMERS
SHANNON SUMMERS

Lease Status: Active

Lease Amount: 1.58cfs

Rental Availability: 1.58cfs

Date Received: 7/18/2016

Lease Begin Date: 1/1/2016

Expiration Date: 12/31/2020

Attachment No. 3
Documentation of Authority -
Applicant NOT Water Right
Owner

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT

THIS AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT (this "Agreement") is made and entered to be effective as of the ____ day of April, 2018 (the "Effective Date"), by and between **Gary Summers and Shannon Summers**, husband and wife, whose address is 1177 E. 9th N., Rexburg, Idaho 83440 (hereinafter "Seller"), and **Prometierra, LLC**, an Idaho limited liability company, whose address is c/o Charles A. Homer, Holden, Kidwell, Hahn & Crapo, P.L.L.C., 1000 Riverwalk Dr. Suite 200, Idaho Falls, Idaho 83402 (hereinafter "Buyer"). Buyer and Seller are individually a "Party" and together the "Parties".

RECITALS:

- A. Seller owns Water Right No. 22-14026 (the "Water Right"), which was decreed on November 24, 2008 in the Snake River Basin Adjudication by the District Court for the Fifth Judicial District of Idaho for irrigation purposes with a priority date of June 19, 1961. The current description of the Water Right is more fully set forth in the report obtained from the Idaho Department of Water Resources ("IDWR" or the "Department") attached hereto as **Exhibit 1**.
- B. Seller desires to sell, and Buyer desires to buy, a 2.5-acre portion of the Water Right. Buyer has agreed to purchase the 2.5-acre portion of the Water Right from Seller as set forth in the terms and provisions of this Agreement.

AGREEMENT:

IN CONSIDERATION of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

- 1. Property Purchased. Seller hereby agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions herein specified, the following-described portion of the Water Right.

Source:	Ground water
Purpose:	Irrigation
Priority:	June 19, 1961
Quantity (Diversion Rate):	0.03 cfs of the total authorized 2.20 cfs
Quantity (Volume):	7.5 acre-feet per annum
Place of Use (Acreage):	2.5 acres of the 182.3 authorized acres identified on Exhibit 2 .

The above-described portion of the Water Right is referred to hereafter as the "Purchased Water Right."

2. Property Retained. Other than the Purchased Water Right, Seller reserves and retains unto Seller all remaining portions of the Water Right and any other water rights that may be appurtenant to the authorized place of use for the Water Right. No land, easements, or other property interests, other than the Purchased Water Right, are included in this Agreement.
3. Purchase Price. The purchase price for the Purchased Water Right is _____ (the "Purchase Price").
4. Earnest Money Deposit. Contemporaneous with the execution of this Agreement, Buyer shall deliver to Seller earnest money in the amount of 10% of the Purchase Price, which is _____ (the "Earnest Money"). The Earnest Money shall be applied towards the Purchase Price at closing, or otherwise disposed of as provided herein.
5. Transfer Application. Within 30 days after both Parties sign this Agreement, Buyer will file with IDWR an *Application for Transfer of Water Right* (the "Transfer") to amend and move the Purchased Water Right to Buyer's desired location. The Parties will cooperate in obtaining IDWR approval of the Transfer and will provide and execute any necessary documents requested by IDWR. Buyer will be responsible for the costs to file the Transfer, including all attorney fees, consultant fees, and filing fees associated with preparation of the Transfer. In the event this Agreement is terminated pursuant to paragraph 6 of this Agreement, Buyer shall at its sole expense take such action as may be required to void or reverse the Transfer in order to return the Purchased Water Right to the condition it existed on the Effective Date, upon completion of which the Earnest Money will be returned by Buyer within 14 days of such completion.
6. Transfer Contingencies.
 - (a) No Protests. If no protests or other objections to the Transfer are filed with IDWR, but the Transfer is (i) denied, (ii) approved by IDWR for less than 2.5 acres, or (iii) approved by IDWR with conditions that materially devalue the Purchased Water Right for Buyer's intended use thereof; then Buyer may terminate this Agreement within 14 days after the date of the IDWR approval notice by providing written notice of termination to Seller. Within 14 days of receipt of the notice of termination, Seller shall refund the Earnest Money to Buyer. If Buyer does not terminate this Agreement as provided herein, the Parties shall proceed to Closing as set forth in paragraph 7.
 - (b) Protest Filed. If a protest or other objection to the Transfer is filed with IDWR, then Buyer may terminate this Agreement within 180 days after the protest is filed with IDWR. If Buyer does elect to terminate this Agreement, Seller shall refund the Earnest Money to Buyer within 14 days of receipt of the notice of termination.

7. Closing.

- (a) Water Bank Release. If necessary and prior to Closing, Seller shall undertake all necessary actions and file all necessary documents with the Department and the Idaho Water Resource Board to release the Purchased Water Right from the Idaho Water Supply Bank on or before June 15, 2018. If the Purchased Water Right is not released from the Idaho Water Supply Bank on or before June 15, 2018, Buyer may, in Buyer's sole and absolute discretion, terminate this Agreement, and in such instance, the Earnest Money shall be returned to Buyer within 14 days of receipt of notice of termination.
- (b) Closing Date. If (1) no protest to the Transfer is filed with IDWR; and (2) Buyer does not exercise the contingency set forth in paragraph 6(a) of this Agreement; and (3) the Idaho Water Supply Bank release is obtained prior to June 15, 2018, then Closing on the Purchased Water Right shall occur within 30 days after the date all of the above three items are satisfied. If a protest or other objection to the Transfer is filed with IDWR and Buyer does not exercise the contingency set forth in paragraph 6(b) of this Agreement, the Closing shall occur with 14 days after the 180-day termination period expires. Notwithstanding the above, the Parties may mutually agree to another date for the Closing.
- (c) Closing Location. The Closing shall occur at the offices of Holden, Kidwell, Hahn & Crapo, P.L.L.C, or at another location mutually agreed by the Parties.
- (d) Documents to be Delivered at Closing.
 - (1) At Closing, Buyer shall deliver the Purchase Price less the Earnest Money.
 - (2) At Closing, Seller shall deliver to Buyer the Special Warranty Deed (the "Deed") substantially in the form attached to this Agreement as **Exhibit 3** for the Purchased Water Right, and any lien release or other documents reasonably requested to confirm the conveyance of the Purchased Water Right free and clear of encumbrances.
- (e) Fees and Costs of Closing. The cost of recording the Deed after Closing shall be paid by Buyer. All other expenses not specifically referenced in this Agreement but related to the Transfer and incurred by Seller or Buyer with respect to this transaction shall be borne and paid exclusively by the Party incurring the same, without reimbursement.

8. Default. In addition to either Party's failure to perform any material term or condition of this Agreement or a Party's breach of any of such Party's representations or warranties (in which event the non-defaulting party may pursue any available remedy, including equitable relief), Buyer shall be deemed in default hereof if Buyer files a petition in bankruptcy or is adjudicated bankrupt or insolvent, Buyer makes an assignment for the benefit of its creditors, or consents to the appointment of a receiver of itself or of its

property, or institutes proceedings for its reorganization, in which case, in addition to any other remedies or rights Seller might have, Seller shall have the power and authority to notify the Department that the Application for Transfer has been withdrawn.

9. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, as of the Effective Date and again as of the Closing as follows:

- (a) Authority. Seller has the full legal right, power and authority to enter into and perform this Agreement, and will obtain good marketable title to the Purchased Water Right in fee simple, and Seller (at its expense) shall remove, or shall exercise commercially reasonable efforts to cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Purchased Water Right on or before Closing. If, after exercising commercially reasonable efforts, the liens, claims, or encumbrances are not removed by Closing, Seller may terminate this Agreement.
- (b) Conveyance. Seller shall then convey the Purchased Water Right free and clear of all liens, encumbrances and restrictions, except such restrictions on the use of water as may appear on the Water Right Report contained at **Exhibit 1**.
- (c) Appurtenance. The Purchased Water Right is appurtenant to and has been beneficially used as the water source to irrigate its place of use and/or been properly preserved for future use consistent with Idaho law.
- (d) Not Forfeited. No portion of the Purchased Water Right has not been forfeited or abandoned in whole or in part.
- (e) No Representation or Warranty Concerning Suitability for Buyer's Intended Use. Seller has not made, and hereby makes, no representation or warranty to Buyer except as expressly contained in this Agreement.

10. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller as of the Effective Date and again as of the Closing for the Purchased Water Right, as follows:

- (a) Authority. Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder.
- (b) Buyer's Due Diligence. Buyer and Buyer's consultants and counsel have had a full opportunity to review all documents, records and other information made available to Buyer by Seller and/or otherwise reasonably available to Buyer through public or other sources, related to the nature and extent of the Purchased Water Right, the laws and rules affecting their transfer and use by Buyer, and the suitability or fitness of the Purchased Water Right for Buyer's intended purposes.

11. Warranties to Survive Closing. All representations and warranties made by the Parties herein are also covenants, and each Party shall take all such actions as may be required to satisfy said covenants and to cause the representations and warranties to be true on and as

of the Closing. The Parties' respective obligations to close and consummate the transaction contemplated herein are contingent upon the representations, warranties and covenants contained in this Agreement being true, valid and satisfied on and as of the Closing. All such representations and warranties shall survive the Closing.

12. Miscellaneous.

- (a) Attorneys' Fees. If either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages because of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.
- (b) Notices. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

<u>Seller</u>	<u>Buyer</u>
Gary Summers and Shannon Summers 1177 E. 9 th N. Rexburg, ID 83440	Prometeirra, LLC c/o Charles Homer Holden, Kidwell, Hahn & Crapo, P.L.L.C. P.O. Box 50130 Idaho Falls, ID 83405
<u>Seller's Representative</u>	<u>Buyer's Representative</u>
	Robert L. Harris Holden, Kidwell, Hahn & Crapo, P.L.L.C. P.O. Box 50130 Idaho Falls, ID 83405

- (c) Merger. This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding the Purchased Water Right. Neither Buyer nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.
- (d) Broker.
- (1) Buyer shall and does hereby indemnify Seller against, and agrees to hold Seller harmless from, any claim, demand or suit for any brokerage commission, finder's fee or similar charge with respect to the execution of this Agreement or the transaction based on any act by or agreement or contract with Buyer, and for all losses, obligations, costs, expenses and fees (including attorneys' fees)

incurred by Seller on account of or arising from any such claim, demand or suit.

- (2) Seller shall and does hereby indemnify Buyer against, and agrees to hold Buyer harmless from, any claim, demand or suit for any brokerage commission, finder's fee or similar charge with respect to the execution of this Agreement or this transaction based on any act by or agreement or contract with Seller, and for all losses, obligations, costs, expenses and fees (including attorneys' fees) incurred by Buyer on account of or arising from any such claim, demand or suit.
- (e) Remedies Cumulative. Upon any breach, any and all rights and remedies which either Party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said Party or not, shall be deemed to be in exclusion of any other right or remedy, any two or more of all such rights and remedies may be exercised at the same time or separately as desired.
- (f) Further Documents. The Parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.
- (g) Enforceability. The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.
- (h) Counterparts. This Agreement may be executed in any number of counterparts for all the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.
- (i) Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
- (j) Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.
- (k) Essence of Time. Time is of the essence in this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

"SELLER"



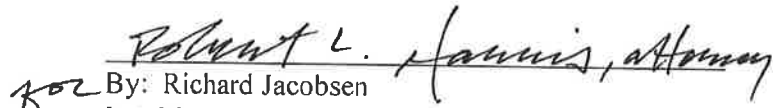
Gary Summers



Shannon Summers

"BUYER"

PROMETIERRA, LLC



for By: Richard Jacobsen
Its: Manager

Exhibit 1 The "Water Right"

4/11/2018

Water Right Report

[Close](#)

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

4/11/2018

WATER RIGHT NO. 22-14026

Owner Type	Name and Address
Current Owner	GARY SUMMERS
Current Owner	SHANNON SUMMERS
	1177 E 9TH N
	REXBURG, ID 83440
	2083510077

Priority Date: 06/19/1961
Basis: Decreed
Status: Active
Water Supply Bank Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/15	2.2 CFS	546.9 AFA
Total Diversion			2.2 CFS	

Location of Point(s) of Diversion:

GROUND WATER|NENE|Sec. 12|Township 05N|Range 45E|TETON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
05N	45E	11		SWNE	26.5		SENE	24.7						
		12		NENE	35		NWNE	37.8						

<http://www.idwr.idaho.gov/epps/ExtSearch/RightReportAJ.asp?BasinNumber=22&SequenceNumber=14026&SplitSuffix=%20%20&TypeWaterRight=True>

AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHT - 8

83293

4/11/2018

Water Right Report

| SWNW | 23.3 |

| SENW | 35 |

Total Acres: 182.3

Conditions of Approval:

1. S37 The use of water for irrigation under this right may continue to as late as October 31, provided other elements of the right are not exceeded. The use of water after October 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than November 24, 2008.
2. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

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: AND

Water District Number:

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 3.5

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

Water Supply Bank:

Lessor Name(s): GARY SUMMERS

SHANNON SUMMERS

Lease Status: Active

Lease Amount: 1.58cfs

Rental Availability: 1.58cfs

Date Received: 7/18/2016

Lease Begin Date: 1/1/2016

<http://www.idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BeginNumber=22&SequenceNumber=14026&SplitSuffix=%20%20&TypeWaterRight=True>

Exhibit 2
Map of 2.5 Acres—the “Purchased Water Right”

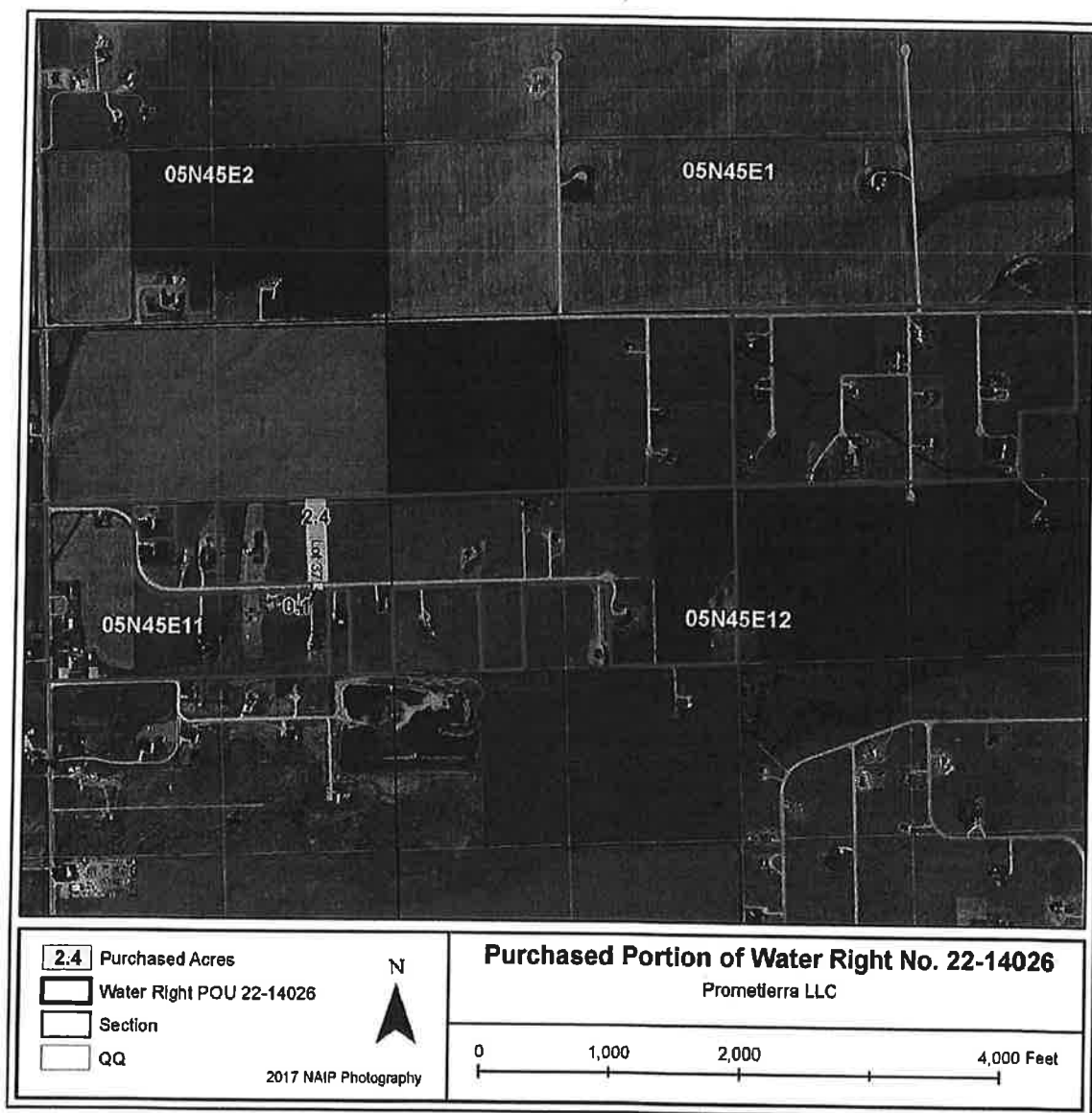


**Exhibit 3
Form of the Deed**

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Robert L. Harris
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
PO Box 50130
Idaho Falls, ID 83405

(Space Above for Recorder's Use)

SPECIAL WARRANTY DEED FOR WATER RIGHTS

Gary Summers and Shannon Summers, husband and wife, whose address is 1177 E. 9th N., Rexburg, Idaho 83440 (hereinafter collectively "Grantor") does hereby grant, bargain, sell, assign, and convey unto **Prometierra, LLC**, an Idaho limited liability company, whose address is c/o Charles A. Homer, Holden, Kidwell, Hahn & Crapo, P.L.L.C., 1000 Riverwalk Dr. Suite 200, Idaho Falls, Idaho 83402 (hereinafter "Grantee") and to Grantee's heirs and assigns forever, all of Grantor's right, title, and interest in water right described on Exhibit A attached hereto (hereinafter the "Water Right").

Grantor hereby covenants and warrants to Grantee as follows:

- (A) Grantor is the owner of the Water Right;
- (B) Grantor has not conveyed any of the Water Right to anyone other than Grantee;
- (C) The Water Right is free from all liens, claims, or encumbrances; and
- (D) Grantor has the authority to convey the Water Right to Grantee.

Grantor makes no other covenants or warranties as to the Water Right.

IN WITNESS WHEREOF, the undersigned authorized officer of Grantor, acting on behalf of Grantor, has caused his name to be hereunto subscribed.

DATED this _____ day of _____, 20_____.

"GRANTOR"

Gary Summers

Shannon Summers

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____,
2018, by **GARY SUMMERS**.

Notary Public for Idaho
My Commission Expires: _____

STATE OF IDAHO)
)ss.
County of _____)

This record was acknowledged before me on the _____ day of _____,
2018, by **SHANNON SUMMERS**.

Notary Public for Idaho
My Commission Expires: _____

GRANT DEED

FOR VALUE RECEIVED, Richard Wayne Hughes, Jr. and Caroline A. Hughes, husband and wife, of 5010 Largo Dr., Granbury, TX 76049, hereinafter called "Grantors"; do hereby grant and convey, to Gary Summers and Shannon Summers, husband and wife, of 27 N 3000 E, Sugar City, ID 83448, hereinafter called "Grantees".

WITNESSETH, that the Grantors, for and in consideration of the sum of Five Hundred Dollars (\$500.00), lawful money of the United States of America, and other good and valuable consideration, to the Grantors in hand paid by the Grantees, the receipt whereof is hereby acknowledged, have granted, and by these presents do grant and confirm unto the Grantees, and to Grantees' successors and assigns forever, the following described water property right, to-wit:

Any and all Grantors' interest in Water Right No. 22-14026 (together with its parent right numbers 22-12527 & 22-2208) attributed to Four Peaks Estates, located within the NE1/4 of Section 11 and the N1/2 of Section 12, Twp. 5 N., Rge. 45 E.B.M., Teton County, Idaho.

IN WITNESS WHEREOF, The Grantors have hereunto set their hands this day.

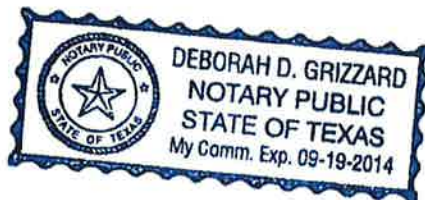
DATED this 41 day of May, 2012

Richard Wayne Hughes, Jr.
Richard Wayne Hughes, Jr.
Caroline A. Hughes
Caroline A. Hughes

STATE OF Texas)
County of Hood)
ss.

On this 4 day of May 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared **Richard Wayne Hughes, Jr. and Caroline A. Hughes**, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they 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.



Deborah D. Grizzard
Notary Public for: Granbury, Texas
Residing at: Granbury
My Commission Expires: Sept. 19, 2014

EXHIBIT A
WATER RIGHT DESCRIPTION
(TO BE COMPLETED AFTER APPROVED TRANSFER)

Attachment No. 4

Power of Attorney

[Search again](#)

Results (as of 5/17/19)

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.

Attachment No. 5

ESPA Analysis and Mitigation Plan

Attachment No. 7a

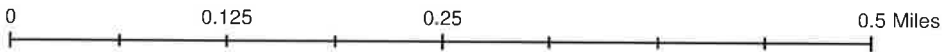
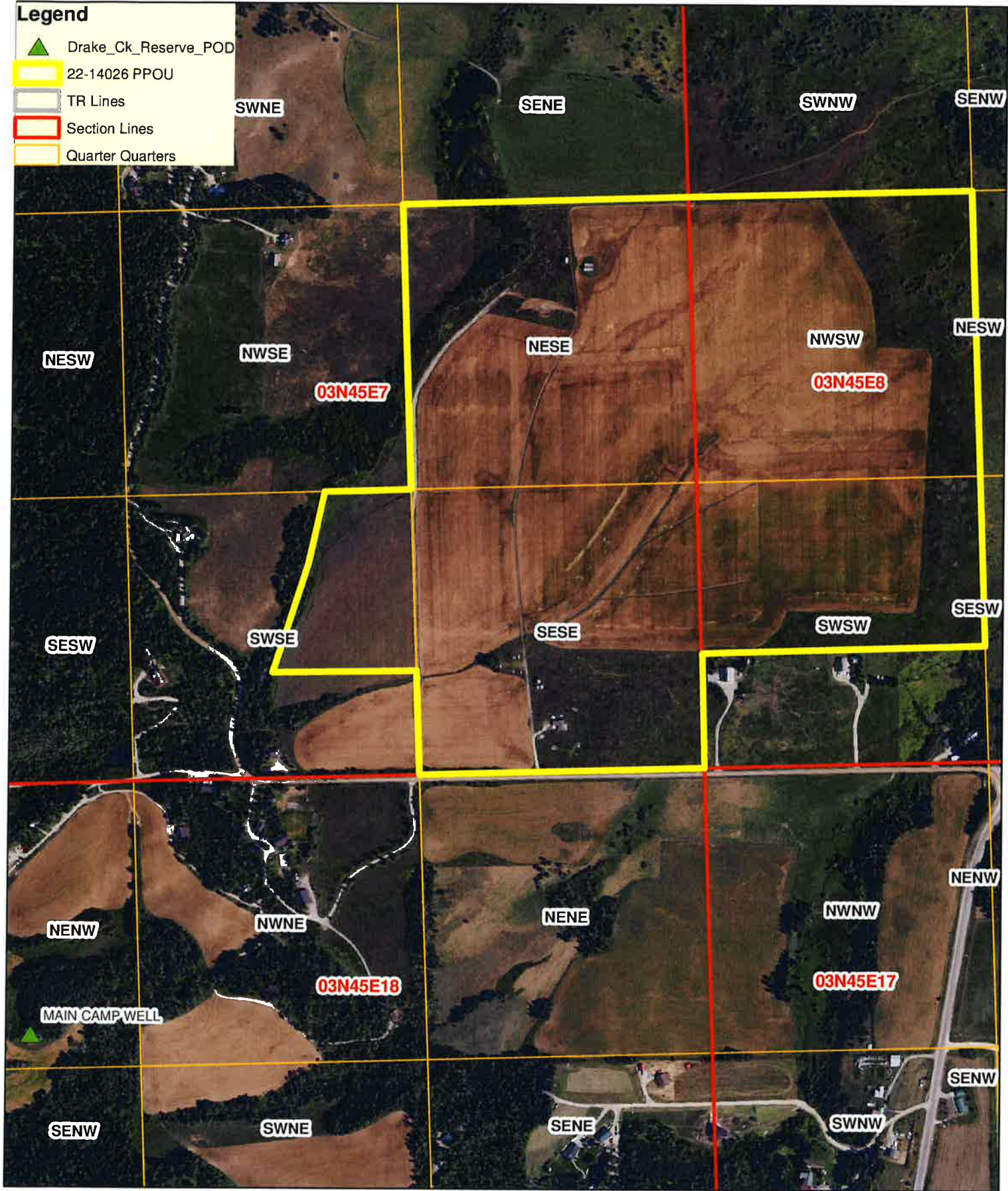
Map

PROMETIERRA, LLC APPLICATION FOR TRANSFER



Legend

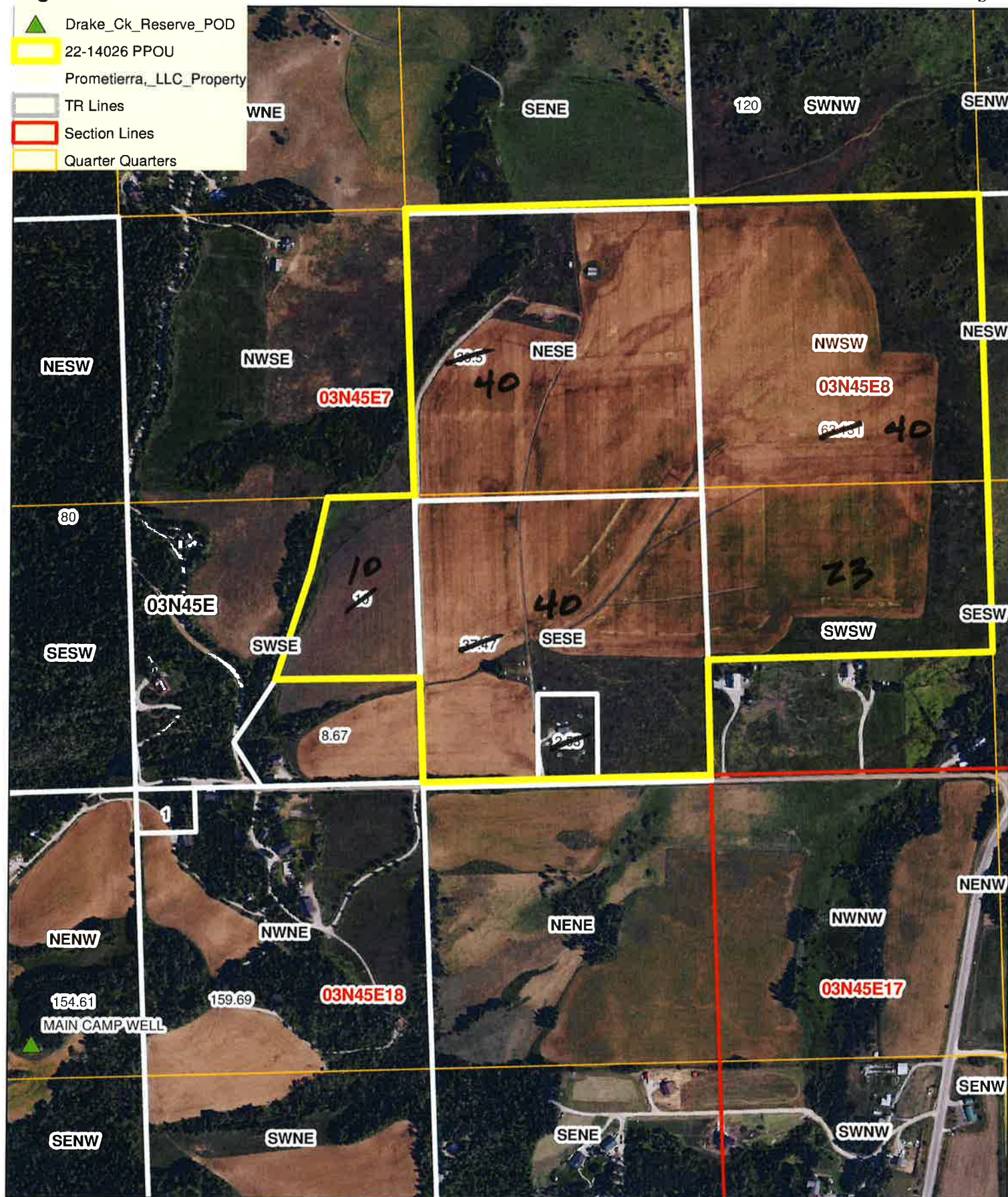
- Drake_Ck_Reserve_POD
- 22-14026 PPOU
- TR Lines
- Section Lines
- Quarter Quarters



**Attachment No. 7b
Map (GIS shapefile)**

***GIS shapefile will be emailed
to IDWR agent.***

 Drake_Ck_Reserve_POD
 22-14026 PPOU
 Prometierra, LLC_Property
 TR Lines
 Section Lines
 Quarter Quarters

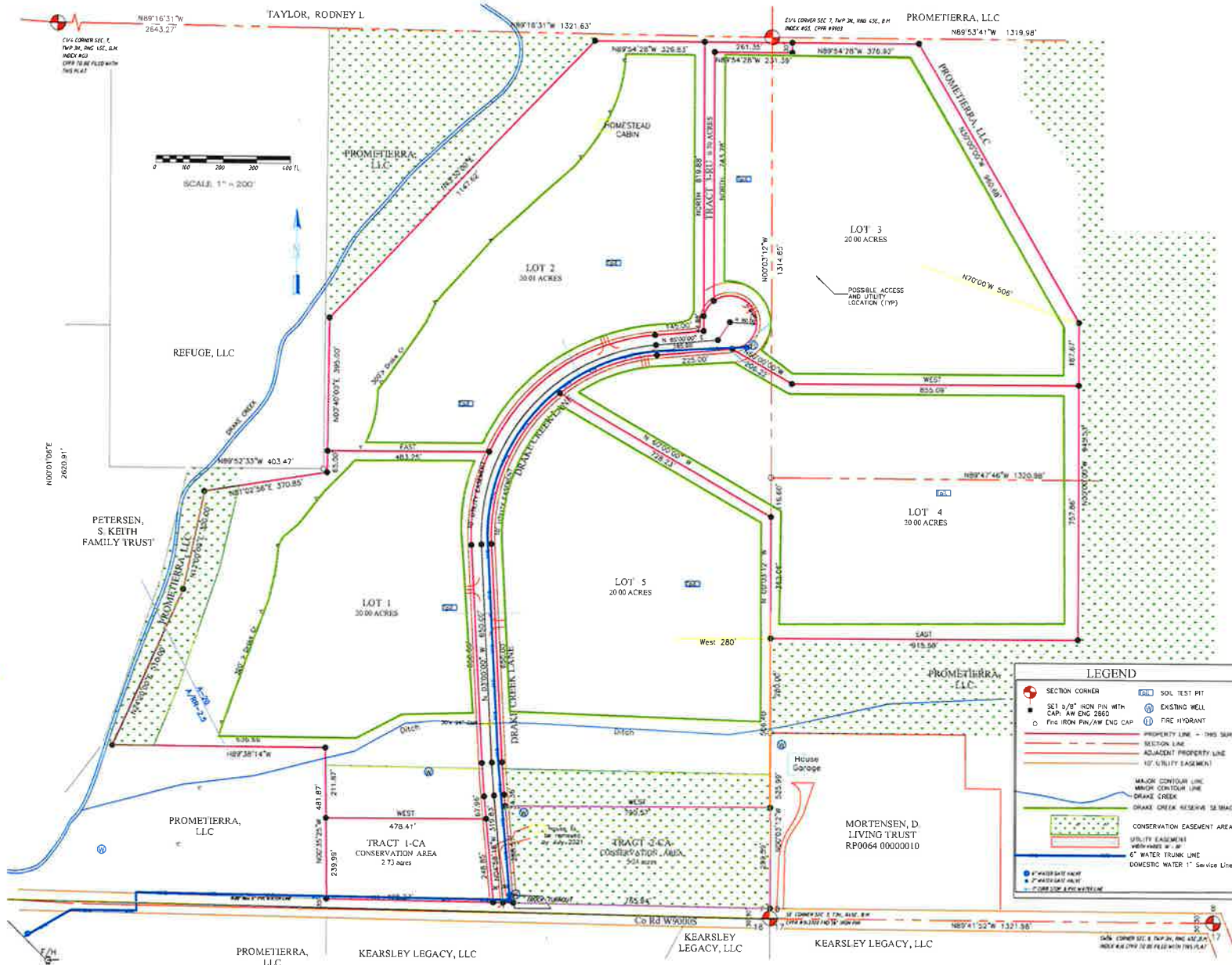


0 0.125 0.25 0.5 Miles

83 29 3

Attachment No. 10

Other



CURVE TABLE					
CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LINE
C1	108.98	285.11	22.00° 01'	N 04°00'00" W	189.80
C2	874.75	569.54	88°00'01"	N 41°00'00" E	791.27
C3	148.34	283.70	23°00'00"	N 04°00'00" W	98.94
C4	513.30	539.54	84°22'32"	N 24°15'18" E	494.18
C5	315.38	539.54	33°22'20"	N 86°12'18" E	370.97
C6	255.77	80.00	211°49'38"	N 07°54'49" W	153.87
C7	58.10	80.00	40°10'04"	N 33°04'55" E	54.90
C8	834.02	599.54	80°20'27"	N 54°42'17" E	804.89
C9	880.81	599.54	27°24'33"	N 10°42'17" E	284.08
C10	101.04	2854.20	2°00'01"	N 04°00'00" W	101.03

PROPERTY USAGE	
USE	ACREAGE
RESIDENTIAL LOTS	100.01 ACRES
ROAD & UTILITY EASEMENTS	4.00 ACRES
RESERVED OPEN SPACE	7.97 ACRES
COUNTY ROAD DEDICATION	0.92 ACRES
TOTAL ACREAGE	112.89 ACRES

LEGEND

- SECTION CORNER
- SET 1/8" IRON PIN WITH CAP: AW END 2860
- FIELD IRON PIN/AW END CAP
- SOL TEST PIT
- EXISTING WELL
- FIRE HYDRANT
- PROPERTY LINE - THIS SURVEY
- SECTION LINE
- ADJACENT PROPERTY LINE
- 10' UTILITY EASEMENT
- MAJOR CONTOUR LINE
- MINOR CONTOUR LINE
- DRAKE CREEK
- DRAKE CREEK RESERVE SETBACKS
- CONSERVATION EASEMENT AREA
- UTILITY EASEMENT
- NEW 48" W. 30'
- 6" WATER TRUNK LINE
- DOMESTIC WATER 1" Service Line
- 4" WATER GATE VALVE
- 6" WATER GATE VALVE
- 6" WATER TRUNK LINE

PROJECT NOTES

- ALL OF THE SUBDIVISION LIES WITHIN COUNTY ZONE A-20, EXCEPT FOR THE SOUTHWEST CORNER OF LOT 1 IS IN ZONE A/RP 2-5. BUILDING SET BACKS TO MEET COUNTY A-20 ZONING: -FRONT & SIDES -30', REAR -40', CREEKS =50', CANALS 15', LEACHFIELDS = 500'.
- TRACTS 1CA & 2CA ARE OPEN SPACE CONSERVATION AREAS AND NO RESIDENTIAL STRUCTURES ARE ALLOWED.
- R.O.W. PRIVATE ROAD & UTILITY RIGHT OF WAY TO ACCESS LOTS 1-5, AND TO ACCESS THE PROPERTY TO THE NORTH OF THIS SUBDIVISION.
- ALL OF THE SUBDIVISION LIES WITHIN COUNTY ZONE A-20, EXCEPT FOR THE SOUTHWEST CORNER OF LOT 1, WHICH IS ZONED A/RP-2-5.
- DRAKE CREEK LANE SHALL BE A PRIVATE ROAD AND UTILITY RIGHT OF WAY, OWNED AND CONTROLLED BY DRAKE CREEK RESERVE H.O.A.
- DRAKE CREEK LANE LYING WITHIN TRACT H.O.W. SHALL REPLACE THE 30' INGRESS & EGRESS NORTH SOUTH ROAD EASEMENT DEPICTED ON THE BOUNDARY ADJUSTMENT SURVEY, RECORDED IN TETON COUNTY, ID, INSTRUMENT #243364 AND SUCH 30 FOOT ROAD EASEMENT DEPICTED ON SAID BOUNDARY LINE ADJUSTMENT RECORD OF SURVEY IS VACATED AND ABANDONED.
- PROJECT IS NOT WITHIN FEMA FLOODPLAIN ZONES.
- TWO SUBDIVISIONS LIE WITHIN 1 MILE OF THIS PARCEL OF LAND.
- DOMESTIC WATER: CULINARY WATER TO BE PROVIDED BY WATER SYSTEM OWNED & MANAGED BY DRAKE CREEK RESERVE H.O.A.
- FIRE PROTECTION: SERVED BY 65000 GALLON TANK & FIRE HYDRANT.
- IRRIGATION: ALL WATER RIGHTS APPURTENANT TO PARCELS 1-5 SHALL BE OWNED BY DRAKE CREEK RESERVE H.O.A. INC. SUCH WATER RIGHTS SHALL NOT TRANSFER WITH TITLE TO PARCELS 1-5. SUCH WATER RIGHTS SHALL BE USED AND MANAGED PURSUANT TO RULES AND REGULATIONS OF DRAKE CREEK RESERVE H.O.A. INC.
- SANITARY SERVICE: INDIVIDUAL SEPTIC TANK & LEACH BED, TANKS AND LEACH FIELD MEETING DISTRICT 7 HEALTH DEPARTMENT PERMIT.
- SOLID WASTE: SERVICED BY COUNTY FRANCHISE CONTRACTOR.
- PUBLIC OPEN SPACE: NONE

**- FINAL PLAT/MASTER PLAN -
DRAKE CREEK RESERVE
- 1st Division -**

PART OF THE SE1/4 SECTION 7 AND THE SW1/4 SECTION 8, T4N, R45E, B1M, TETON CO, ID

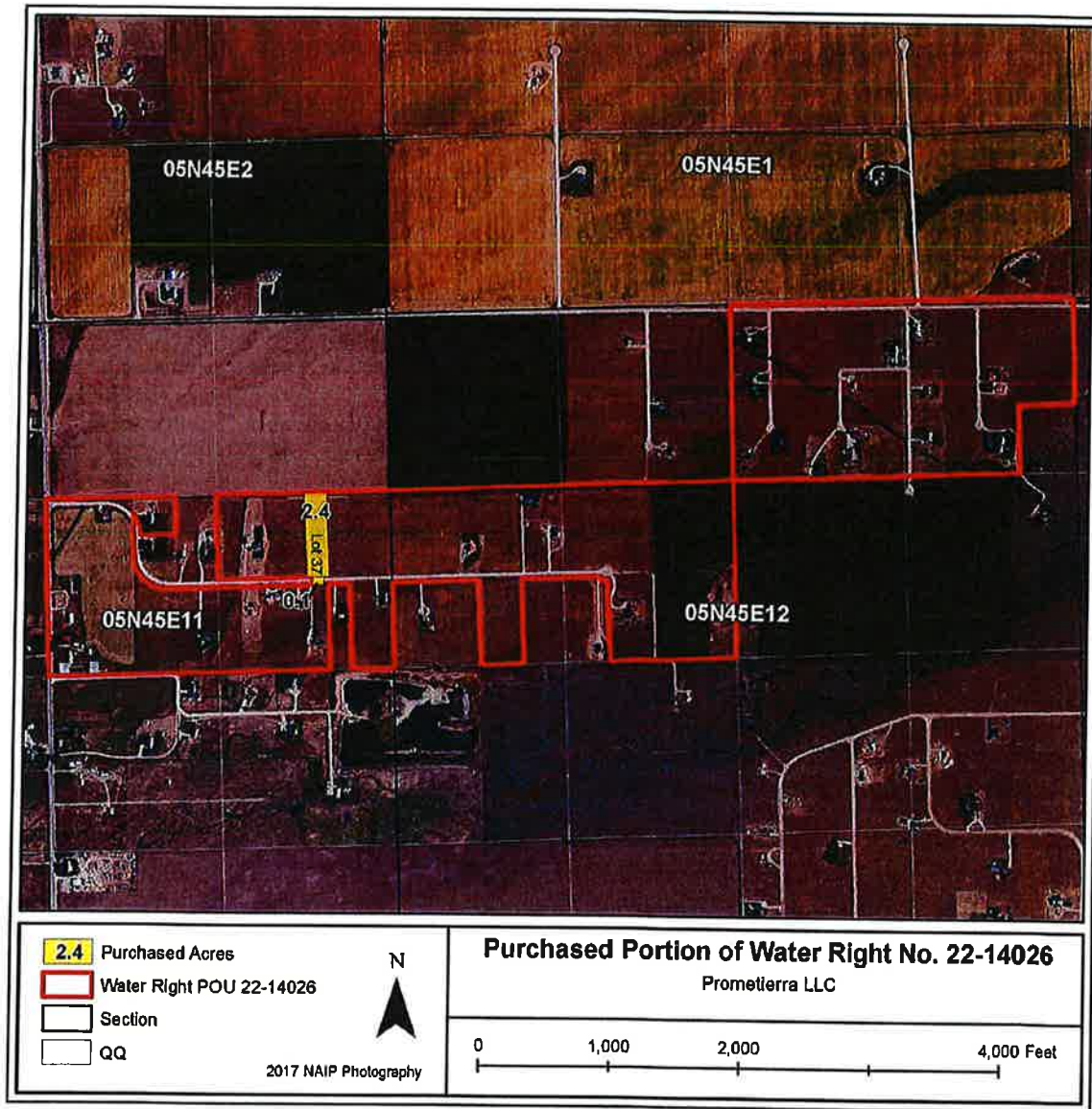
CLIENT:
PROMETERRA, LLC
RICHARD JACOBSEN, MANAGER
761 SOUTHAMPTON DR.
PALO ALTO, CA
94303

255 SOUTH MAIN, P.O. BOX 139
VICTOR, IDAHO 83455
(208) 787-2952 www.aveengineering.net

DATE: 05/15/18
SURVEY: 01/17/18
PROJECT: 17-003.TXT

BY: B.C. FINSL DWG
PROJECT: 17-003.TXT

Exhibit 2
Map of 2.5 Acres—the “Purchased Water Right”



Idaho Department of Water Resources Receipt

Receipt ID: E045017

Payment Amount	\$200.00	Date Received	5/24/2019	Region	EASTERN
Payment Type	Check	Check Number	058253		
Payer	HOLDEN, KIDWELL, HAHN & CRAPO PLLC				
Comments	TRANSFER APP WATER RIGHT #22-14026 CLIENT: 16798 - PROMETIERRA, LLC MATTER: 16798-001				

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$200.00	TRANSFERS	63105	0229	21		1155

mp

Signature Line (Department Representative)

83293



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

RECEIVED
MAY 24 2019

Department of Water Resources
Eastern Region

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

Email: rharris@holdenlegal.com

May 21, 2019

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

Re: Application for Permit and Two (2) Transfer Applications Associated with Property Owned by Prometierra, LLC.

Dear Blake:

Enclosed for processing is an *Application for Permit* for an in-house domestic use water right only, along with two (2) *Transfer Applications* that are associated with the proposed Drake Creek Reserve Subdivision in Teton County, Idaho. The subdivision has not yet received approval on the final plat, but the subdivision is far enough along that there will not be any changes to the lot configuration depicted on the plat included with the enclosed applications. I am directing these applications to you because you performed the field exam for Water Right No. 22-7798, which is diverted through a well consisting of a well drilled in 1998 and a storage tank that is approved and authorized under PWS #ID7410010 by the Idaho Department of Environmental Quality. This is the same system that is proposed to deliver the water rights subject to these applications. I recognize that you may assign this to other agents within the Department, but I wanted to bring it to your attention because of your familiarity with the water system.

The first *Transfer Application* simply proposes to change the authorized point of diversion and place of use for Water Right No. 22-10297, which is an existing domestic water right that was formerly associated with a home owned by the Boyle family. The transfer of this right is simply to designate it to be used within Lot 1 of the proposed subdivision, along with the change in the location of authorized point of diversion. The second *Application* proposes to move a 2.5-acre portion of Water Right No. 22-14026 to be used within a permissible place of use of 153 acres consisting of the boundaries of the subdivision. It is anticipated that each residential lot will irrigate up to 0.5 acre, with an extra 0.5 acre included to irrigate small common areas or other areas within the subdivision. Because it is unknown precisely what the irrigation plans are for each lot, the extra 0.5 acre may also be used to cover irrigation on a lot that may exceed 0.5 acre. This is why we have proposed to simply have a permissible place of use for this ground water right.

Blake Jordan
May 21, 2019
Page 2 of 2

Ideally, it seems that processing and advertising all three (3) of these transfers at the same time would be appropriate. Accordingly, if they could be processed in that manner, we would appreciate it. We have included the appropriate fees according to the Department's fee schedules for each application. Additionally, we have noted that we have prepared GIS shapefiles that we can email to the Department's reviewing agent upon emailed request. We appreciate your attention to this matter. Please let me know if you have questions or concerns.

Best regards,



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

Enclosures

g:\wpdata\rlh\16798-001 prometierra\correspondence\2019.05.21 jordan ltr.docx