

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 81594

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

RECEIVED
APR 19 2017

Department of Water Resources

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 www.idwr.idaho.gov.

Name of Applicant(s) Larry Chapple dba Rolling Hills Development

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 www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm.
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☒ ☐ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System ([GIS](#)) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. 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: 2017 Annual Report for Rolling Hills Development, L.L.C.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Larry Chapple dba Rolling Hills Development Phone 208-745-8199

Mailing address PO Box 465, Rigby, ID 83442 Email chapple@cableone.net

- ☐ 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 523-0620

Mailing address PO 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.

Larry Chapple
Signature of Applicant or Authorized Representative

Larry Chapple
Print Name and Title if applicable

April 11, 2017
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**.

This transfer proposes to move 25 acres of groundwater rights to be used for outside irrigation of the Rolling Hills
Subdivision (which consists of a 54.9-acre PPOU) in compliance with Water Right No. 35-13522. This transfer also
will resolve the protests to Application 35-14474, and if the transfer is approved, 35-14474 will be withdrawn.

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 ☐ ☒	35-2576B	.38/100	irrigation	4/1 to 10/31	groundwater
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights .38 cfs and/or 100 acre-feet.

2. Total amount of water proposed to be transferred or changed .38 cubic feet per second and/or 100 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 #
N		SE	SE	NE	34	4N	37E	Jefferson	groundwater	D0037240
Y		SE	SE	NE	34	4N	37E	Jefferson	groundwater	

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	
4N	37E	34	30.7	5.4		18.8													54.9
				25	ACR	ES		WITH	IN	A	PP	OU	OF	54.9	AC	RES			
Total Acres (for irrigation use)																			54.9

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:
Well and pump into subdivision water system. An additional well is planned to be drilled on the same well lot that the current well is located on. Existing well has measuring device.

- b. Who owns the property at the point(s) of diversion? Rolling Hills Development, L.L.C.
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:
The applicant is the manager of this LLC. See attached Secretary of State 2017 Annual Report (Attachment 10).

- 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:
The lands will be irrigated with water allocated to shares in the Butte and Market Lake Canal Company which the applicant is trading to Mickelsen for the for the ground water right subject to this transfer.

- 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:
Permit No. 35-13522; Application No. 35-14474; Butte and Market Lake Canal Company shares (these shares are being traded for the ground water rights).

- 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:

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

4/10/2017

WATER RIGHT NO. 35-2576B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MICKELSEN PROPERTIES LLC PO BOX 438 RIGBY, ID 83442 (208)745-6626
Original Owner	TAMCO INC
Original Owner	J ED BROWNING & SONS INC , ID
Original Owner	DAVID O KINGSTON DBA D & D INVESTMENT PO BOX 158 UCON, ID 83454
Original Owner	PERRY DYER RISENMAY 64 E 6400 S STE 220 MURRAY, UT 84107 (801)264-8808

Priority Date: 04/15/1959

Basis: Decreed

Status: Active

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

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	10/31	3.59 CFS	940 AFA
Total Diversion			3.59 CFS	

Location of Point(s) of Diversion:

81594

GROUND WATER|NESENW|Sec. 34|Township 04N|Range 37E|JEFFERSON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION JEFFERSON 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>
04N	37E	34		NWNE	25		SWNE	40		SENE	10			
				NENW	40		NWNW	40		SWNW	40		SENE	40

Total Acres: 235

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. RIGHT NO. 35-02576B IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

Dates:

Licensed Date:

Decreed Date: 01/31/2002

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: 120

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:

81594

81594

Attachment No. 2a Water Right Ownership Documentation

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

4/10/2017

WATER RIGHT NO. 35-2576B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MICKELSEN PROPERTIES LLC PO BOX 438 RIGBY, ID 83442 (208)745-6626
Original Owner	TAMCO INC
Original Owner	J ED BROWNING & SONS INC , ID
Original Owner	DAVID O KINGSTON DBA D & D INVESTMENT PO BOX 158 UCON, ID 83454
Original Owner	PERRY DYER RISENMAY 64 E 6400 S STE 220 MURRAY, UT 84107 (801)264-8808

Priority Date: 04/15/1959

Basis: Decreed

Status: Active

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

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	10/31	3.59 CFS	940 AFA
Total Diversion			3.59 CFS	

Location of Point(s) of Diversion:

81594

GROUND WATER|NESENW|Sec. 34|Township 04N|Range 37E|JEFFERSON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION JEFFERSON 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>
04N	37E	34		NWNE	25		SWNE	40		SENE	10			
				NENW	40		NWNW	40		SWNW	40		SENW	40

Total Acres: 235

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. RIGHT NO. 35-02576B IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

Dates:

Licensed Date:

Decreed Date: 01/31/2002

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: 120

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:

81594

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

WATER RIGHT AND CANAL SHARES AGREEMENT

THIS WATER RIGHT AND CANAL SHARES AGREEMENT (this "Agreement") is made and entered into this 18th day of April, 2017 (the "Effective Date"), by and between **Larry Chapple**, an individual, d/b/a Rolling Hills Development, whose address is P.O. Box 465, Rigby, Idaho 83442, (hereinafter "Chapple"), and **Mickelsen Properties, L.L.C.**, an Idaho limited liability company, whose address is P.O. Box 438, Rigby, Idaho 83442 (hereinafter, "Mickelsen"). Chapple and Mickelsen are individually a "Party" and together the "Parties".

RECITALS:

A. Mickelsen is the owner of Water Right No. 35-2576B (the "Water Right"), which is a water right that was decreed on January 31, 2002 in the Snake River Basin Adjudication by the District Court for the Fifth Judicial District of the State of Idaho. The Water Right is more fully described in the report obtained from the Idaho Department of Water Resources ("Department" or "IDWR") attached hereto as **Exhibit 1**.

B. Chapple is the owner of 3.3 shares of stock in the Butte & Market Lake Canal Company evidenced by Certificate No. 1236 issued to Chapple on January 18, 2010 (the "Canal Shares"). A copy of said certificate is attached hereto as **Exhibit 2**.

C. Chapple is the holder of Permit No. 35-13522 (hereinafter, simply "35-13522"), which authorizes Chapple to develop a water right 0.45 cfs of ground water for use within a 94-lot subdivision known as the "Rolling Hills Subdivision." 35-13522 only allows for the diversion of ground water for in-house use, and not for lawn, garden, landscape or other types of irrigation. 35-13522 provides that such irrigation is to be accomplished with the Canal Shares.

D. The ditch that historically transported water allocated to the Canal Shares to the property that now consists of the Rolling Hills Subdivision has been altered such that delivery of surface water is no longer feasible. As a result, Chapple filed Application for Water Right Permit No. 35-14474 (hereinafter, simply "35-14474"), which sought water for both in-house and irrigation uses within the Rolling Hills Subdivision. 35-14474 proposed to utilize ground water recharge as mitigation for the modeled depletive effects of ground water pumping occurring under 35-14474.

E. 35-14474 was protested pursuant to Idaho law (Idaho Code § 42-203A(4)) by several irrigation companies and ground water districts. Mickelsen became aware of such protests as it owns land adjacent to the Rolling Hills Subdivision.

F. To aid in the resolution of the protests filed to 35-14474, Mickelsen has agreed to convey a 25-acre portion of the Water Right to Chapple in exchange for conveyance of the Canal

Shares from Chapple to Mickelsen, subject to the provisions of this Agreement. The result of this exchange of water entitlements is that 35-14474 will no longer be necessary to pursue and will be withdrawn provided that the Parties receive acceptable approvals of the water right transfers described herein.

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

AGREEMENTS:

1. Mickelsen Water Right Portion to Be Conveyed to Chapple. Mickelsen hereby agrees to convey to Chapple, in exchange for the Canal Shares as described in Paragraph 2 below, on the terms and conditions herein specified, the following-described portion of the Water Right:

WATER RIGHT NO. 35-2576B

<u>Diversion Rate:</u>	0.38 cfs
<u>Diversion Volume:</u>	100 acre-feet per year
<u>Irrigated Acres:</u>	25 acres

This portion of the Water Right is referred to hereafter as the "Water Right Portion."

2. Canal Shares to Be Conveyed to Mickelsen. Chapple agrees to convey to Mickelsen, in exchange for the Water Right Portion, the entirety of the Canal Shares.

3. Property Retained. Mickelsen reserves and retains unto Mickelsen all remaining portions of the Water Right, together with any and all portions of any other water rights that may be appurtenant to the authorized place of use for the Water Right other than the Water Right Portion. No land, easements, or other property interests are included in this Agreement. Chapple reserves and retains any and all portions of other water rights, water right permits, or applications for water right permit that may be appurtenant to the Rolling Hills Subdivision. No land, easements, or other property interests are included in this Agreement.

4. Purchase Price. There shall be no purchase price for the Water Right Portion or the Canal Shares. Consideration for this Agreement shall consist of the exchange of these water entitlements and other actions of the Parties described herein.

5. Closing.

(a) Closing Date. Closing on the Water Right Portion shall occur within thirty (30) days of the date of a final order in which the second of the two applications for transfer to be filed by Chapple (pursuant to paragraph 6 herein) are approved, and after the contingencies described in paragraph 7 are met. The closing shall occur at the offices of Holden, Kidwell, Hahn & Crapo, PLLC, or another place mutually agreed to by the Parties.

(b) Documents to be Delivered at Closing by Mickelsen. At closing, Mickelsen and Chapple shall execute (with acknowledgements, as needed) and/or deliver all

instruments and documents necessary to complete this Agreement. The documents Mickelsen shall deliver to Chapple at closing shall be: (i) a Special Warranty Deed (the "Deed") substantially in the form attached to this Agreement as **Exhibit 3**; and (ii) any lien release or other documents reasonably requested to confirm the conveyance of the Water Right Portion free and clear of encumbrances. The Parties understand that the result of one of the approved water right transfers will be that the Water Right Portion will be assigned a new identification number by IDWR, and that new identification number identifying the Water Right Portion shall then be included in the Deed.

(c) Documents Delivered at Closing by Chapple. At closing, Chapple shall execute (with acknowledgements, as needed) and/or deliver all instruments and documents necessary to complete this Agreement. The documents Chapple shall deliver to Mickelsen at closing shall be: (i) a properly endorsed original Canal Shares certificate (identified as Certificate No. 1236) assigning title to the Canal Shares to Mickelsen; and (ii) any lien release or other documents reasonably requested to confirm the conveyance of the Water Right Portion free and clear of encumbrances.

(d) Fees and Costs of Closing. The cost of recording the Deed shall be paid by Chapple. Any fee required by the Butte and Market Lake Canal Company to transfer ownership of the Canal Shares to Mickelsen shall either (i) be paid by Chapple; or (ii) shall initially be paid by Mickelsen and then reimbursed by Chapple with fourteen (14) days of receiving proof of payment from Mickelsen.

6. Transfer Applications for Water Right Portion and for Butte and Market Lake Water Rights.

(a) Transfer Application to the Department for Water Right Portion. It is understood and agreed that within thirty (30) days after execution of this Agreement, Chapple, on behalf of Mickelsen, shall file an application for transfer of a water right under Idaho law of the Water Right Portion with the Department. Chapple and Mickelsen agree to cooperate in obtaining Department approval of this transfer. The application for transfer of the Water Right Portion shall identify the Chapple's proposed points of diversion for the Water Right Portion and the Rolling Hills Subdivision as the place of use. Chapple may provide a copy of this Agreement as evidence of Mickelsen's consent to the transfer as required in the transfer application, which consent is objectively evidenced by Mickelsen's signature of this Agreement.

(b) Transfer Application to the Department for Butte and Market Lake Water Rights. It is understood and agreed that within thirty (30) days after execution of this Agreement, Chapple shall prepare and file, on behalf of the Butte and Market Lake Canal Company, an application for transfer of a water right under Idaho law of the company's water rights to amend its service area to (i) include the portion of the Mickelsen property from which the Water Right Portion is being moved from, and (ii) to remove the Rolling Hills Subdivision Property from the company's service area. The Butte and Market Lake Canal Company board met and approved Chapple's preparation of this amendment to its water rights in March of 2017.

(c) Transfer Costs. Chapple shall be responsible for all the costs necessary to prepare both the transfers, including all consultant fees for preparation of the transfer applications and filing fees associated with submitting the transfers to the Department. Chapple

shall prosecute and defending the transfer applications, including payment of all attorney fees, in the event the transfers are protested and the subsequent administrative process associated with such protest(s) is undertaken. Mickelsen and Chapple shall use best efforts and shall cooperate in good faith to obtain timely transfer approvals.

7. Contingencies and Conditions Precedent.

(a) Satisfactory Transfer Approval Contingency. The Parties expressly acknowledge and agree that performance under this Agreement is fully contingent upon the approval of the transfers by the Department in a manner reasonably satisfactory to Chapple for the Water Right Portion transfer and Butte and Market Lake Canal Company on the transfer amending its water rights, unless such contingency is waived Chapple or the Butte and Market Lake Canal Company, respectively.

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), each Party shall be deemed in default hereof if such Party files a petition in bankruptcy or is adjudicated bankrupt or insolvent, a Party 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 the other Party might have, the other Party shall have the power and authority to notify the Department that the applications for transfer have been withdrawn.

9. Mickelsen's Representations and Warranties. Mickelsen hereby represents and warrants to Chapple, as of the effective date of this Agreement and again as of the closing as follows:

(a) Authority. Mickelsen has the full legal right, power and authority to enter into and perform this Agreement, and has or will obtain good marketable title to the Water Right Portion in fee simple, and Mickelsen (at its expense) shall remove, or cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Water Right Portion on or before closing.

(b) Conveyance. Provided that the contingencies in Paragraph 7 are satisfied, Mickelsen shall then convey the Water Right Portion free and clear of all liens, encumbrances and restrictions, except such restrictions on the use of water as may appear on the water right record contained in **Exhibit 1** and in the transfer approved by the Department for the Water Right Portion.

(c) Appurtenance. The Water Right Portion 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 (i.e., placed in the Idaho water supply bank) consistent with Idaho law.

(d) Not Forfeited. The Water Right Portion has not been forfeited or abandoned in whole or in part.

(e) No Representation or Warranty Concerning Suitability for Chapple's Intended Use. Mickelsen has not made, and hereby makes, no representation or warranty to Chapple except as expressly contained in this Agreement.

10. Chapple's Representations and Warranties. Chapple hereby represents and warrants to Mickelsen as of the effective date of this Agreement and again as of the closing, as follows:

(a) Authority. Chapple has the legal power, right and authority to enter into this Agreement and to perform Chapple's obligations hereunder.

(b) Chapple's Due Diligence. Chapple and Chapple's consultants and counsel have had a full opportunity to review all documents, records and other information reasonably available to Chapple through public or other sources, related to the nature and extent of the Water Right Portion, the laws and rules affecting its transfer and use by Chapple, and the suitability or fitness of the Water Right Portion for Chapple'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 by reason 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:

Chapple

Larry Chapple
P.O. Box 465
Rigby, ID 83442

Mickelsen

Mickelsen Properties, L.L.C.
P.O. Box 438
Rigby, ID 83442

Chapple's Representative

Robert L. Harris
Holden, Kidwell, Hahn & Crapo,
P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, ID 83405
(208) 523-0620

Mickelsen's Representative

(c) Merger. This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding the Water Right Portion. Neither Mickelsen nor Chapple shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.

(d) Broker. It is understood and agreed by and between the Parties that the transaction herein contemplated does not involve a broker for either Chapple or Mickelsen. To the extent any broker commissions are owed as a result of this transaction by Mickelsen, Mickelsen agrees to be solely liable therefore, and Mickelsen agrees to indemnify Chapple from any such commissions. To the extent any broker commissions are owed as a result of this transaction by Chapple, Chapple agrees to be solely liable therefore, and Chapple agrees to indemnify Mickelsen from any such commissions.

(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 FOLLOWING PAGE]

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

"MICKELSEN"

MICKELSEN PROPERTIES, L.L.C.

By: 
Mark Mickelsen, Manager

"CHAPPLE"

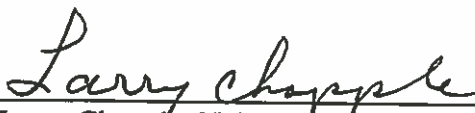

Larry Chapple d/b/a Rolling Hills Development

Exhibit 1 Water Right Report

4/11/2017

Water Right Report

Close

IDAHO DEPARTMENT OF WATER RESOURCES Water Right Report

4/11/2017

WATER RIGHT NO. 35-2576B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MICKELSEN PROPERTIES LLC PO BOX 438 RIGBY, ID 83442 (208)745-6626
Original Owner	TAMCO INC
Original Owner	J ED BROWNING & SONS INC , ID
Original Owner	DAVID O KINGSTON DBA D & D INVESTMENT PO BOX 158 UCON, ID 83454
Original Owner	PERRY DYER RISENMAY 64 E 6400 S STE 220 MURRAY, UT 84107 (801)264-8808

Priority Date: 04/15/1959

Basis: Decreed

Status: Active

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

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	10/31	3.59 CFS	940 AFA
Total Diversion			3.59 CFS	

Location of Point(s) of Diversion:

4/11/2017

Water Right Report

GROUND WATER|NESENW|Sec. 34|Township 04N|Range 37E|JEFFERSON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION JEFFERSON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	37E	34		NWNE 25			SWNE 40			SENE 10				
				NENW 40			NWNW 40			SWNW 40			SENW 40	

Total Acres: 235

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. RIGHT NO. 35-02576B IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

Dates:

Licensed Date:

Decreed Date: 01/31/2002

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: 120

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:

<http://www.idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=35&SequenceNumber=2576&SplitSuffix=B%20&TypeWaterRight=True>

2/3

4/11/2017

Water Right Report

Mitigation Plan: False

Close

<http://www.idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=35&SequenceNumber=2576&SplitSuffix=B%20&TypeWaterRight=True>

3/3

Exhibit 2—CANAL SHARES CERTIFICATE

INCORPORATED JUNE 13, 1891 • STATE OF IDAHO

NUMBER

1236

SHARES

3 3/100

BUTTE & MARKET LAKE CANAL COMPANY

ROBERTS, JEFFERSON COUNTY, IDAHO

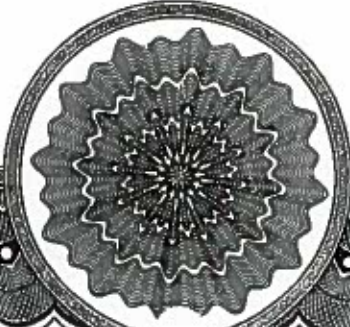
~~This Certifies that~~ Larry Chapple is the
registered holder of Three and 30/100 Shares

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed
this 18 day of January A. D. 2010

Albert H. Hekker
PRESIDENT

M. J. Wells
SECRETARY



81594

Exhibit 3—FORM OF 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 RIGHT

Mickelsen Properties, L.L.C., an Idaho limited liability company, whose address is P.O. Box 438, Rigby, Idaho 83442, ("Grantor") does hereby grant, bargain, sell, assign, and convey unto **Larry Chapple**, an individual, d/b/a Rolling Hills Development, whose address is P.O. Box 465, Rigby, Idaho 83442 ("Grantee") and to Grantee's heirs and assigns forever, all of Grantor's right title and interest in the Water Right described in Exhibit A hereto (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 April, 2017.

MICKELSEN PROPERTIES, L.L.C.

By: _____

Mark Mickelsen, Manager

81594

STATE OF IDAHO)

County of BONNEVILLE) ss.
)

On this _____ day of April, 2017, before me, a Notary Public for said County and State, personally appeared **MARK MICKELSEN**, known or identified to me, to be one of the members of the limited liability company of **MICKELSEN PROPERTIES, L.L.C.**, and the member or one of the members who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he executed the same in said limited liability company name.

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

NOTARY PUBLIC FOR IDAHO

Residing at: _____

My commission expires: _____

EXHIBIT A

**(WATER RIGHTS DESCRIPTION WITH NEW WATER RIGHT NUMBER COMPLETED
UPON TRANSFER APPROVAL)**

81594

Attachment No. 4

Power of Attorney

Attorney Roster Search - Individual Attorney (as of 4/5/17)

Robert Lynn Harris

Address: PO Box 50130

Idaho Falls, ID 83405

Firm: Holden, Kidwell, Hahn & Crapo, PLLC

Phone: (208) 523-0620

Phone Ext:

Fax: (208) 523-9518

Email Address: rharris@holdenlegal.com

Website Address: www.holdenlegal.com

ISB Membership Number: 7018

Admittance Date: Sep/30/2004

Status: Active

Address Change Form

The information above is based on the Idaho State Bar records as of the date of the online [Address Change Form](#) or send an email to the [Licensing Department](#) if the attorney's information is incorrect. Questions on attorney status and go to 334-4500.

Current Status Definitions

Contact the [Bar Counsel's Office](#) at (208) 334-4500 to request a disciplinary action.

Information on former members of the Idaho State Bar is limited to names going back to approximately 1994. Records on former members from before 1994 are in the [Licensing Department](#) for more information on former members.

P.O. Box 895 Boise Idaho 83701 ph:(208) 334-4500 fax:(208) 334-4515

[Idaho State Bar](#) | [Idaho Law Foundation](#) | [Idaho.gov](#) | [Site Map](#) | [Contact Us](#) | [f](#) [in](#) [t](#)

Attachment No. 5

ESPA Analysis and Mitigation Plan

ESPA ANALYSIS

No ESPA analysis is required. Ground water modeling is not required if the current point(s) of diversion and the new point(s) of diversion are located within the same or adjacent model cells. See *Administrator's Memorandum*, Transfer Processing No. 24, December 21, 2009, at 13. As shown on the map included with the transfer, the current point of diversion is located within the same model cell as the proposed points of diversion.

Attachment No. 7a Map

ROLLING HILLS APPLICATION FOR TRANSFER



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

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

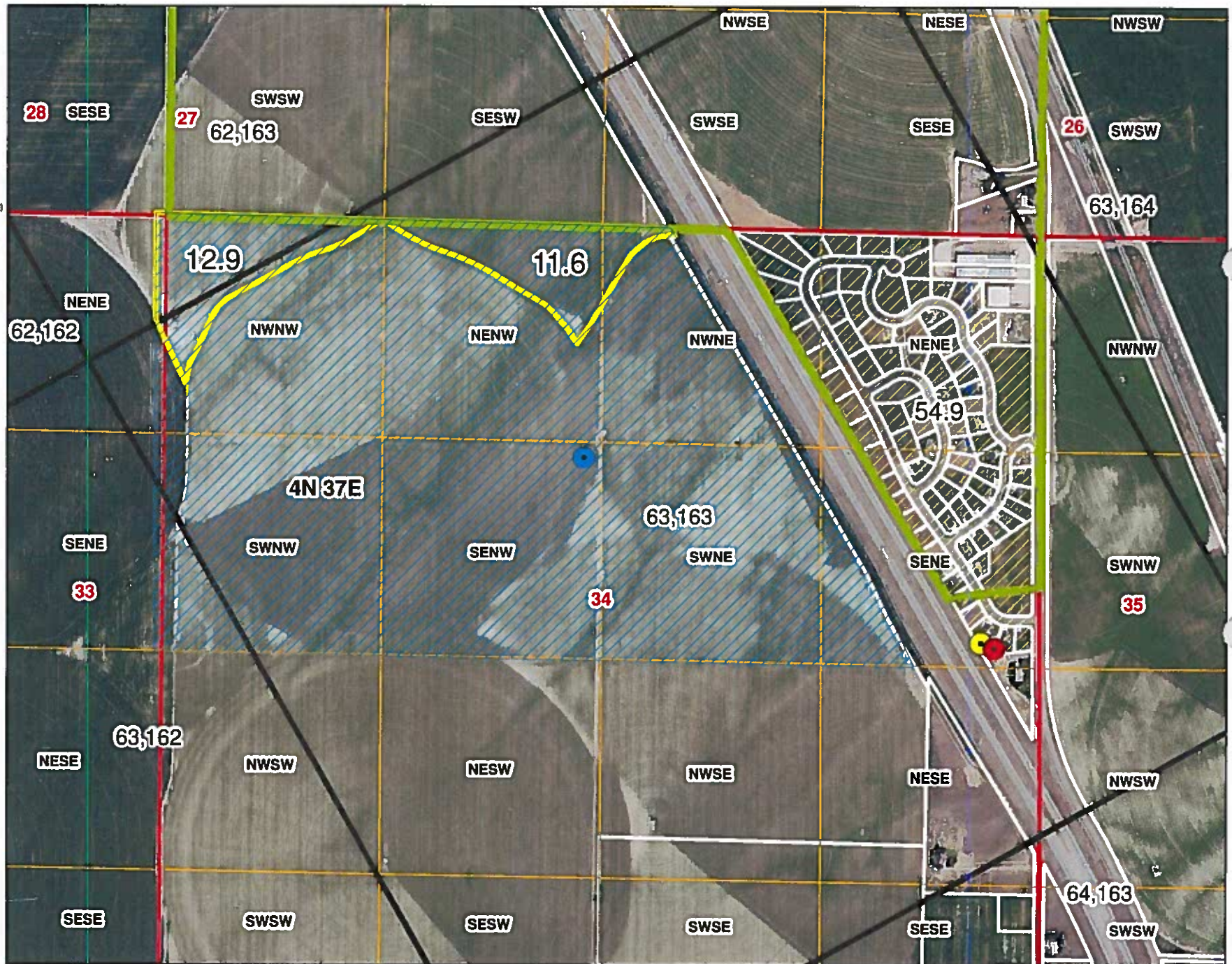
ROLLING HILLS APPLICATION FOR TRANSFER



Legend

- Existing Rolling Hills Well
- Future Rolling Hills Well
- Mickelsen Well
- 35-2576B
- Butte_ML_Service_Area
- New PPOU
- Acres To Be Moved
- modelgrid
- TR Lines_2014
- Section Lines_2014
- Quarter Quarters_2014
- Parcels

81594



2015 Aerial

Attachment No. 10

Other