

Scott

RECEIVED

JUL 29 2002

MATT J. HOWARD

Department of Water Resources

ATTORNEY AT LAW

P. O. BOX 190012

BOISE, IDAHO 83719

TELEPHONE (208) 333-0622

FACSIMILE (208) 333-8409

EMAIL: MHOWARD@FIBERPIPE.NET

July 29, 2002

Hand-Delivered

David R. Tuthill, Jr., P.E. *Dr*
Adjudication Bureau Chief
Idaho Department of Water Resources
1301 N. Orchard St.
Boise, Idaho 83704

RE: Change of Ownership Form / Notice of Appearance – 63-3221

Dear Dave:

Enclosed is a Notice of Change in Water Right Ownership executed by my client, Michael Homan, for water right and SRBA claim no. 63-3221. As the enclosed chain of title documents reflect, Mr. Homan is the successor in interest to Theron Robert's "undivided one-third interest" in water right 63-3221. The current claimants of 63-3221 hold, at most, an undivided two-thirds interest in the water right. Under Idaho law, the various interest holders are tenants in common with respect to the water right.

By filing this ownership change notice, Mr. Homan is not asking IDWR to partition, move, or otherwise transfer the water right. Rather, as an undivided one-third interest holder in the water right, Mr. Homan properly seeks to have his name added under the heading of "current owner" to the SRBA claim and subsequent director's report for 63-3221.

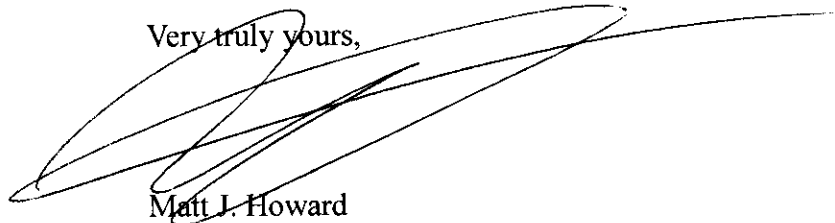
I recognize this water right claim raises unique issues for your Department. To help facilitate your investigation of this water right, I am enclosing a short chronology of relevant events relating to the water right and chain of title documents. This chronology was prepared based upon the enclosed chain of title documents and the license file 63-3221. Also, enclosed is a list of citations to relevant Idaho Supreme Court cases and a 1986 district court decision factually analogous in relevant respects to this matter.

There also is the issue involving the overlap with water right 63-7325. I understand that you will investigate this issue as part of your investigation of 63-3221. I also understand that you expect to have a preliminary director's report for 63-3221 completed by this Fall.

JULY 29, 2002

Please consider this letter as my notice of appearance on behalf of Mr. Homan. If you require additional information or have questions, please feel free to contact me.

Very truly yours,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Matt J. Howard

Enclosures

Cc: Client

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
 Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
63-3221	A63-3221	☐			☐
		☐			☐
		☐			☐
		☐			☐
		☐			☐

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).
OR
 If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) Judith Roberts, Marcia Ann Blom, Daniel Robert,
and Holly Marie Simon
4. New Owner/Claimant(s) Michael S. Homan
 Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
- New Mailing Address 2229 W. State St., Ste. B
- City, State and ZIP Code Boise, Idaho 83702
- New Telephone Number (208 429-1900
5. Date you acquired the property July 8, 2002

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number <u>n/a - "undivided" one-third interest in water right</u>		
See attached deeds.		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s) Michael S. Homan
(include title if applicable) _____

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only			
Received by _____	Date _____	Fee _____	
Receipted by _____	Date _____	Receipt No. _____	
Processed by _____ AJ	Date _____	WR _____	Date _____

755995

79 825

Form 1860-8
(January 1965)
(formerly 4-1044)

Idaho 011553

STATE OF IDAHO, COUNTY OF ADA, ss.

Filed for record at the request of Gary Owen Wolake

55 Min. past 1 o'clock P.M. this 12 day of Nov 1970

CLARENCE A. PLANTING, Recorder

\$1.00

By Beta J. J. J. Deputy

Rrc 2 Kuna 8313x

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS

Fred Howard Wolake

is entitled to a Land Patent pursuant to the Desert Land Act of March 3, 1877, as amended and supplemented; 43 U.S.C. 321, et. seq., for the following described lands:

Boise Meridian, Idaho

T. 2 N., R. 1 E.

Sec. 26, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 35, NE $\frac{1}{4}$ NE $\frac{1}{4}$

Containing 320 acres;

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES, unto the above named claimant the land above described; TO HAVE AND TO HOLD the said land with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant, his successors and assigns, forever;

EXCEPTING AND RESERVING TO THE UNITED STATES:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945;
2. All the oil and gas in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of July 17, 1914, 38 Stat. 509, as supplemented; 30 U.S.C. 121-124; and
3. A road right-of-way over and across a 25 foot strip measured parallel and adjacent to north boundary of the N $\frac{1}{2}$ NE $\frac{1}{4}$ Sec. 26, for access and use of the people of the United States generally, in accordance with the Consent to Reservation dated December 20, 1962, filed in case record Idaho 011553.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Boise, Idaho the THIRD day of NOVEMBER in the year of our Lord one thousand nine hundred and SEVENTY and of the Independence of the United States the one hundred and NINETY-FIFTH.

By

Curtis R. Taylor

Acting Manager, Idaho Land Office

Patent Number 11-71-0052

16-7841-1
850-748

WARRANTY DEED

79 826

For Value Received

FRED HOWARD WOLSKE and PHYLLIS E. WOLSKE,
husband and wife,

the grantors, do hereby grant, bargain, sell and convey unto

GARY OWEN WOLSKE and TERRI ANNE WOLSKE,
husband and wife,

the grantees, the following described premises, to-wit: Ada County Idaho, to wit:

Northeast quarter, the North half of the Southeast quarter; the Southeast quarter of the Southeast quarter of Section 26, township 2 North, Range 1 East, Boise Meridian, and the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 1 East, Boise Meridian, containing 320 acres.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that said premises are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: November 12, 1970

Fred H. Wolske
FRED HOWARD WOLSKE

Phyllis E. Wolske
PHYLLIS E. WOLSKE

STATE OF IDAHO, COUNTY OF ADA

On this 12th day of November 1970,
before me, a notary public in and for said State, personally
appeared

FRED HOWARD WOLSKE and
PHYLLIS E. WOLSKE,
husband and wife,

known to me to be the persons whose names are
subscribed to the within instrument, and acknowledged to
me that they executed the same.

Theron E. Roberts
Notary Public
Residing at BOISE, Idaho
Comm. Expires 1-17-73

STATE OF IDAHO, COUNTY OF Ada

I hereby certify that this instrument was filed for record at
the request of Gary Owen Wolske

at 55 minutes past 4 o'clock P. M.,
this 12th day of November
1970, in my office, and duly recorded in Book
of Deeds at page

GARRENCE A. PLANTING

Ex-Officio Recorder

By *Bruce Warner* Deputy.

Fees \$1.00

Mail to: Rm 2 Kuna

INSTRUMENT NO. 755396

WARRANTY DEED

For Value Received

GARY OWEN WOLSKE and TERRI ANNE WOLSKE,
husband and wife,

the grantor s, do hereby grant, bargain, sell and convey unto

THERON E. ROBERTS

the grantee, the following described premises, to-wit: Ada County Idaho, to wit:

The Northeast quarter, the North half of the Southeast quarter; the Southeast quarter of the Southeast quarter of Section 26, township 2 North, Range 1 East, Boise Meridian, and the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 1 East, Boise Meridian, containing 320 acres.

together with all water and water rights appurtenant to said land.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that he be the owner in fee simple of said premises; that said premises are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: MARCH 3, 1971

GARY OWEN WOLSKE

TERRI ANNE WOLSKE

STATE OF TEXAS COUNTY OF BEXAR
On this 2nd day of MARCH, 19 71
before me, a notary public in and for said State, personally
appeared
GARY OWEN WOLSKE

known to me to be the person whose name is
subscribed to the within instrument, and acknowledged to
me that he executed the same.

Alvin D. Rivera
Notary Public
Residing at San Antonio, Texas.
Comm. Expires October 1971

STATE OF IDAHO, COUNTY OF

I hereby certify that this instrument was filed for record at
the request of

at _____ minutes past _____ o'clock m.,
this _____ day of _____
19 _____ in my office, and duly recorded in Book
of Deeds at page _____

Ex-Officio Recorder

By _____ Deputy.
Fees \$ _____
Mail to: _____

INSTRUMENT NO.

874583

171 1702

QUITCLAIM DEED

THIS INDENTURE, Made this 5th day of February, in the year of our Lord one thousand nine hundred and seventy-four between THERON E. ROBERTS and JUDITH V. ROBERTS, husband and wife, P. O. Box 1346, Boise, Idaho, the parties of the first part, and GARY OWEN WOLSKE and TERRI ANNE WOLSKE, husband and wife, Route 2, Kuna, Idaho, the parties of the second part.

WITNESSETH That the said parties of the first part, for and in consideration of the sum of Ten and No/100 Dollars, and other valuable considerations, lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release and forever QUITCLAIM, unto the said parties of the second part, and to their heirs and assigns all that certain lot, piece or parcel of land, situate, lying and being in the County of Ada, State of Idaho, bounded and particularly described as follows, to-wit:

The East Half of Section 26 and the Northeast Quarter of the Northeast Quarter of Section 35, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, EXCEPT for the following described parcels, to-wit:

1. The Southwest Quarter of the Southeast Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho; and

2. Beginning at a brass cap, the N E corner of Section 26, T-2-N, R-1-E, B.M. Ada County, Idaho, and the real point of beginning; thence S. 60° 19' 07" E. 2664.30 feet along the section line which is the centerline of Maple Grove Road to a point the one-quarter corner; thence S. 89° 51' 07" W. 1266.03 feet along the one-quarter line to a point; thence N. 23° 06' 57" W. 2222.34 feet to a point; thence N. 66° 53' 03" E. 103.98 feet to a point; thence N. 00° 09' 07" W. 578.53 feet to a point on the section line; thence N. 89° 56' 28" E. 2032.34 feet along the section line which is the centerline of Kuna Road to a point, the real point of beginning, Ada County, State of Idaho, containing ~~192.8~~ acres more or less, and

EXCEPT for an easement over, above and upon the following described property situate in Ada County, State of Idaho, to-wit:

Commencing at a brass cap, the NE corner of Section 26, Township 2 N., Range 1 East, B.M., Ada County, Idaho; thence S. 89° 56' 28" W. 2647.84 feet to the true place of beginning; thence S. 00° 09' 07" E. 336.72 feet to a point; thence N. 66° 53' 03" E. 658.93 feet to a point; thence N. 00° 09' 07" W. 573.58 feet to a point on the section line; thence S. 89° 56' 28" W. 615 feet to the true place of beginning, containing 9.94 acres more or less,

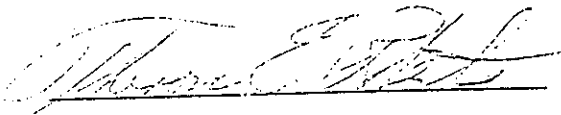
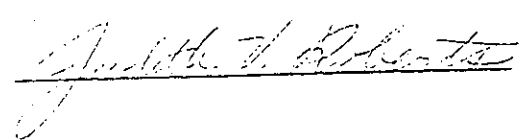
which easement is for the purpose of constructing, operating and maintaining a sewer plant and facilities and which easement is for the further purpose of entry and ingress from said ground on foot or with vehicles for any and all purposes in connection with the construction, operation and maintenance of said sewer facilities and is for the purpose of permanently using all or any portion of said tract fully and without reservation for the construction, maintenance and operation of sewer and related facilities, and

EXCEPT for an undivided one-third interest in the pump, well, well casing and parts and water rights filed on with the State of Idaho in connection with said well which well is now located and existing in the Northeast Quarter of the Southwest Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian, and which water is filed on with the State of Idaho under Idaho State Reclamation Permit No. 63-3221, together with an easement for the purpose of installing and laying pipelines underground and otherwise across the Northeast Quarter of the Southwest Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian to transport water from the existing well to property hereinabove excepted in Exception No. 2. above and to lands described in the preceding reservation and for the further purpose of maintaining said well and water pipes and other facilities for the purpose of transporting said water.

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

STATE OF IDAHO)
County of Ada) ss.

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

David H. L...
Notary Public for State of Idaho
Residing at Boise, Idaho

STATE OF IDAHO, COUNTY OF ADA: ss. Gene Owen Wallace
 filed for record at the residence of Gene Owen Wallace
20 March 1962 at 12 o'clock P. M. 7th
 before me, the undersigned, a Justice of the Peace.

\$3.00 Returned

QUITCLAIM DEED

THIS INDENTURE, Made this 6th day of February, in the year of our Lord one thousand nine hundred and seventy-four between GARY OWEN WOLSKE and TERRI ANNE WOLSKE, husband and wife, Route 2, Kuna, Idaho, the parties of the first part, and FRED H. WOLSKE and PHYLLIS E. WOLSKE, husband and wife, Route 2, Kuna, Idaho, parties of the second part.

WITNESSETH That the said parties of the first part, for and in consideration of the sum of Ten and No/100 Dollars, and other valuable considerations, lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release and forever QUITCLAIM, unto the said parties of the second part, and to their heirs and assigns all that certain lot, piece or parcel of land, situate, lying and being in the County of Ada, State of Idaho, bounded and particularly described as follows, to-wit:

The East Half of Section 26 and the Northeast Quarter of the Northeast Quarter of Section 35, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, EXCEPT for the following described parcels, to-wit:

1. The Southwest Quarter of the Southeast Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho; and

2. Beginning at a brass cap, the N E corner of Section 26, T-2-N, R-1-E, B.M. Ada County, Idaho, and the real point of beginning; thence S. 00° 09' 07" E. 2664.30 feet along the section line which is the centerline of Maple Grove Road to a point the one-quarter corner; thence S. 89° 51' 07" W. 1266.05 feet along the one-quarter line to a point; thence N. 23° 06' 57" W. 2222.56 feet to a point; thence N. 66° 53' 03" E. 108.98 feet to a point; thence N. 00° 09' 07" W. 578.58 feet to a point on the section line; thence N. 89° 56' 28" E. 2032.84 feet along the section line which is the centerline of Kuna Road to a point, the real point of beginning, Ada County, State of Idaho, containing 108.8 acres more or less, and

EXCEPT for an easement over, above and upon the following described property situate in Ada County, State of Idaho, to-wit:

Commencing at a brass cap, the NE corner of Section 26, Township 2 N., Range 1 East, B.M., Ada County, Idaho; thence S. 89° 56' 28" W. 2647.84 feet to the true place of beginning; thence S. 00° 09' 07" E. 836.72 feet to a point; thence N. 66° 53' 03" E. 658.98 feet to a point; thence N. 00° 09' 07" W. 578.58 feet to a point on the section line; thence S. 89° 56' 28" W. 615 feet to the true place of beginning, containing 9.94 acres more or less,

which easement is for the purpose of constructing, operating and maintaining a sewer plant and facilities and which easement is for the further purpose of entry and ingress from said ground on foot or with vehicles for any and all purposes in connection with the construction, operation and maintenance of said sewer facilities and is for the purpose of permanently using all or any portion of said tract fully and without reservation for the construction, maintenance and operation of sewer and related facilities, and

EXCEPT for an undivided one-third interest in the pump, well, well casing and parts and water rights filed on with the State of Idaho in connection with said well which well is now located and existing in the Northeast Quarter of the Southwest Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian, and which water is filed on with the State of Idaho under Idaho State Reclamation Permit No. 63-3221, together with an easement for the purpose of installing and laying pipelines underground and otherwise across the Northeast Quarter of the Southwest Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian to transport water from the existing well to property hereinabove excepted in Exception No. 2. above and to lands described in the preceding reservation and for the further purpose of maintaining said well and water pipes and other facilities for the purpose of transporting said water.

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the parties of the second part, and to their heirs and assigns forever.

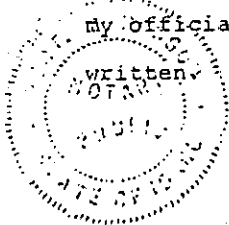
IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

David D. Walsh
Levi A. Miller

STATE OF IDAHO)
 : ss.
 County of Ada)

On this 14th day of February, 1974, before me, the under-
 signed, a Notary Public in and for said State, personally
 appeared GARY OWEN WOLSKE and TERRI ANNE WOLSKE, known to me to
 be the persons whose names are subscribed to the within instru-
 ment, 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



[Signature]
 Notary Public for State of Idaho
 Residing at Boise, Idaho

STATE OF IDAHO, COUNTY OF ADA, ss. CAPITAL TRUST CO.
 Filed for record at this office on 16 April 1974.
46 16 11 2 74
 CLARENCE A. [Signature]
 By [Signature] County

73

780766
780766

364 375

DEED

THIS INDENTURE Made the 2 day of February, 1979, between

THE IDAHO FIRST NATIONAL BANK, N.A., as Personal Representative of the Estate of Theron E. Roberts, deceased, the party of the first part, and JUDITH VIVIAN ROBERTS, the party of the second part,

WITNESSETH, That the said party of the first part, for value received, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, and to her heirs and assigns, an undivided 33.31 percent interest in and to that certain real property situate in Ada County, State of Idaho, more particularly described as follows, to-wit:

That portion of the Northeast Quarter (NE $\frac{1}{4}$) and the North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B.M., Ada County, Idaho, more particularly described as follows: BEGINNING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 E. B.M., Ada County, Idaho, and the REAL POINT OF BEGINNING: THENCE South 00°09'07" East 2664.30 feet along the section line which is the centerline of Maple Grove Road to a point, the one-quarter corner; THENCE South 89°51'07" West 1266.05 feet along the one-quarter line to a point; THENCE North 23°06'57" West 2222.56 feet to a point; THENCE North 66°53'03" East 108.98 feet to a point; THENCE NORTH 00°09'07" West 578.58 feet to a point on the section line; THENCE North 89°56'28" East 2032.84 feet along the section line which is the centerline of Kuna Road to a point, the REAL POINT OF BEGINNING, Ada County, Idaho, containing 108.8 acres, more or less; and

An EASEMENT over, above and upon the following described property in the Northeast Quarter (NE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B.M., as follows, to-wit: COMMENCING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 E. B.M., Ada County, Idaho; THENCE South 89°56'28" West 2647.84 feet to the TRUE PLACE OF BEGINNING: THENCE South 00°09'07" East 836.72 feet to a point; THENCE North 66°53'03" East 658.98 feet to a point; THENCE North 00°09'07" West 578.58 feet to a point on the section line; THENCE South 89°56'28" West 615 feet to the TRUE PLACE OF BEGINNING: Containing 9.94 acres, more or less; and

An undivided one-third interest in the pump, well, well casing and parts and water rights filed on with the State of Idaho in connection with said well which well is now located and existing on the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B.M., and which water is filed on with the State of Idaho under Idaho State Reclamation Permit No. 63-3221,

together with an easement for the purpose of installing and laying pipelines underground and otherwise across the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B. M. to transport water from the existing well to the property hereinabove described and for the further purpose of maintaining said well and water pipes and other facilities for the purpose of transporting said water.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the said party of the second part and to her heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the day and year first above written.

THE IDAHO FIRST NATIONAL BANK, N.A.
as Personal Representative of the Estate of
Theron E. Roberts, deceased,

By Bradley M. Bengson
Bradley M. Bengson, Trust Officer

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 27th day of February, in the year 1978, before me, a

Notary Public in and for said state, personally appeared BRADLEY M. BENGSON, known to me to be the Trust Officer of the National Banking Association that executed the foregoing instrument and the person who executed said instrument on behalf of said National Banking Association, and acknowledged to me that said National Banking Association executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year first hereinabove written.

Margaret L. Benoit
Notary Public for Idaho
Residing at Boise, Idaho

STATE OF IDAHO, COUNTY OF ADA, Idaho First Natl Bank
Filed for record at the request of Idaho First Natl Bank
10 Min. past 2 o'clock P. M. this 13 day of Feb 19 78
By Clarance A. Edwards County Clerk
2.00

Box 7928
Boise 83707

DEED

THIS INDENTURE, Made the 2 day of ^{ANN} ~~November~~ ^{February}, 1979, between
 THE IDAHO FIRST NATIONAL BANK, N.A., as Personal Representative of the
 Estate of Theron E. Roberts, deceased, the party of the first part, and MARCIA
 ANN BLOM, the party of the second part,

WITNESSETH, That the said party of the first part, for value received, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, and to her heirs and assigns, an undivided 22.23 percent interest in and to that certain real property situate in Ada County, State of Idaho, more particularly described as follows, to-wit:

That portion of the Northeast Quarter (NE $\frac{1}{4}$) and the North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B. M., Ada County, Idaho, more particularly described as follows: BEGINNING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 E. B. M., Ada County, Idaho, and the REAL POINT OF BEGINNING: THENCE South 00°09'07" East 2664.30 feet along the section line which is the centerline of Maple Grove Road to a point, the one-quarter corner; THENCE South 89°51'07" West 1266.05 feet along the one-quarter line to a point; THENCE North 23°06'57" West 2222.56 feet to a point; THENCE North 66°53'03" East 108.98 feet to a point; THENCE NORTH 00°09'07" West 578.58 feet to a point on the section line; THENCE North 89°56'28" East 2032.84 feet along the section line which is the centerline of Kuna Road to a point, the REAL POINT OF BEGINNING, Ada County, Idaho, containing 108.8 acres, more or less; and

An EASEMENT over, above and upon the following described property in the Northeast Quarter (NE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B. M., as follows, to-wit: COMMENCING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 E. B. M., Ada County, Idaho; THENCE South 89°56'28" West 2647.84 feet to the TRUE PLACE OF BEGINNING: THENCE South 00°09'07" East 836.72 feet to a point; THENCE North 66°53'03" East 658.98 feet to a point; THENCE North 00°09'07" West 578.58 feet to a point on the section line; THENCE South 89°56'28" West 615 feet to the TRUE PLACE OF BEGINNING: Containing 9.94 acres, more or less; and

An undivided one-third interest in the pump, well, well casing and parts and water rights filed on with the State of Idaho in connection with said well which well is now located and existing in the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B. M., and which water is filed on with the State of Idaho under Idaho State Reclamation Permit No. 63-3221,

together with an easement for the purpose of installing and laying pipelines underground and otherwise across the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B. M. to transport water from the existing well to the property hereinabove described and for the further purpose of maintaining said well and water pipes and other facilities for the purpose of transporting said water.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the said party of the second part and to her heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the day and year first above written.

THE IDAHO FIRST NATIONAL BANK, N.A.,
as Personal Representative of the Estate of
Theron E. Roberts, deceased,

By Bradley M. Bengson
Bradley M. Bengson, Trust Officer

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 27th day of February, in the year 1978, before me, a

Notary Public in and for said state, personally appeared BRADLEY M. BENGSON, known to me to be the Trust Officer of the National Banking Association that executed the foregoing instrument and the person who executed said instrument on behalf of said National Banking Association, and acknowledged to me that said National Banking Association executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year first hereinabove written.

Margaret B. Bennett
Notary Public for Idaho
Residing at Boise, Idaho.

STATE OF IDAHO, COUNTY OF ADA

Filed for record at the request of Idaho First Nat'l Bank
10 Min. past 2 o'clock P.M. this 13 day of Feb 1978

Clarence A. Plummer Recorder
By Christine Edwards Deputy

Box 7928 - Boise 83707

DEED

THIS INDENTURE, Made the 2 day of ^{Nov}~~November~~, ¹⁹⁷⁸~~1977~~, between

THE IDAHO FIRST NATIONAL BANK, N.A., as Personal Representative of the Estate of Theron E. Roberts, deceased, the party of the first part, and THE IDAHO FIRST NATIONAL BANK, N.A. as trustee for Daniel T. Roberts and Holly Marie Roberts, the party of the second part,

WITNESSETH, That the said party of the first part, for value received, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, and to its heirs and assigns, an undivided 44.46 percent interest in and to that certain real property situate in Ada County, State of Idaho, more particularly described as follows, to-wit:

That portion of the Northeast Quarter (NE $\frac{1}{4}$) and the North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B.M., Ada County, Idaho, more particularly described as follows: BEGINNING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 E. B.M., Ada County, Idaho, and the REAL POINT OF BEGINNING: THENCE South 00°09'07" East 2664.30 feet along the section line which is the centerline of Maple Grove Road to a point, the one-quarter corner; THENCE South 89°51'07" West 1266.05 feet along the one-quarter line to a point; THENCE North 23°06'57" West 2222.56 feet to a point; THENCE North 66°53'03" East 108.98 feet to a point; THENCE NORTH 00°09'07" West 578.58 feet to a point on the section line; THENCE North 89°56'28" East 2032.84 feet along the section line which is the centerline of Kuna Road to a point, the REAL POINT OF BEGINNING, Ada County, Idaho, containing 108.8 acres, more or less; and

An EASEMENT over, above and upon the following described property in the Northeast Quarter (NE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B.M., as follows, to-wit: COMMENCING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 E. B.M., Ada County, Idaho; THENCE South 89°56'28" West 2647.84 feet to the TRUE PLACE OF BEGINNING: THENCE South 00°09'07" East 836.72 feet to a point; THENCE North 66°53'03" East 658.98 feet to a point; THENCE North 00°09'07" West 578.58 feet to a point on the section line; THENCE South 89°56'28" West 615 feet to the TRUE PLACE OF BEGINNING: Containing 9.94 acres, more or less; and

An undivided one-third interest in the pump, well, well casing and parts and water rights filed on with the State of Idaho in connection with said well which well is now located and existing on the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B.M., and where water is filed on with the State of Idaho, under Idaho State Reclamation Permit No. 63-3221,

together with an easement for the purpose of installing and laying pipelines underground and otherwise across the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E. B.M. to transport water from the existing well to the property hereinabove described and for the further purpose of maintaining said well and water pipes and other facilities for the purpose of transporting said water.

TO HAVE AND TO HOLD, All and singular the said premises, together with the appurtenances, unto the said party of the second part and to its heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the day and year first above written.

THE IDAHO FIRST NATIONAL BANK, N.A.
as Personal Representative of the Estate of
Theron E. Roberts, deceased.

By Bradley M. Bengson
Bradley M. Bengson, Trust Officer

STATE OF IDAHO)
COUNTY OF ADA) ss.

On this 2 day of February, 1978, before me, a Notary Public in and for said state, personally appeared BRADLEY M. BENGSON, known to me to be the Trust Officer of the National Banking Association that executed the foregoing instrument and the person who executed said instrument on behalf of said National Banking Association, and acknowledged to me that said National Banking Association executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year first hereinabove written.

Margaret H. Bennett
Notary Public for Idaho
Residing at Boise, Idaho

STATE OF IDAHO, COUNTY OF ADA, ss.
Filed for record at the request of Idaho First Natl Bank
10 Min. passed 12 day of Feb 1978
CLARENCE A. FLEMING, Notary
By Terrence Edwards Deputy

Box 7928 - Boise, ID.
83707

8678106

9300001368

D E E D

THIS INDENTURE, made the 24th day of November, 1986, between THE IDAHO FIRST NATIONAL BANK, N.A., as Trustee of the Theron E. Roberts Trust, the Party of the First Part, for DANIEL T. ROBERTS, the Party of the Second Part, whose address is 2713 Wymer Street
Boise, ID 83705

WITNESSETH, that said Party of the First Part, for value received, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the Party of the Second Part, and to his heirs and assigns, an undivided 22.23 percent interest in and to that certain real property situate in Ada County, State of Idaho, more particularly described as follows, to-wit:

That portion of the Northeast Quarter (NE $\frac{1}{4}$) and the North Half of the Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E.B.M., Ada County, Idaho, more particularly described as follows: BEGINNING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 E.B.M., Ada County, Idaho, and the REAL POINT OF BEGINNING: THENCE South 00°09'07" East 2664.30 feet along the section line which is the centerline of Maple Grove Road to a point, the one-quarter corner; THENCE South 89°51'07" West 1266.05 feet along the one-quarter line to a point; THENCE North 23°06'57" West 2222.56 feet to a point; THENCE North 66°53'03" East 108.98 feet to a point; THENCE NORTH 00°09'07" West 578.58 feet to a point on the section line; THENCE North 89°56'28" East 2032.84 feet along the section line which is the centerline of Kuna Road to a point, the REAL POINT OF BEGINNING, Ada County, Idaho, containing 108.8 acres, more or less; and

An EASEMENT over, above and upon the following described property in the Northeast Quarter (NE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 E.B.M., as follows, to-wit: COMMENCING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 E.B.M., Ada County, Idaho; THENCE South 89°56'28" West 2647.84 feet to the TRUE PLACE OF BEGINNING; THENCE South 00°09'07" East 836.72 feet to a point; THENCE North 66°53'03" East

9300001369

658.98 feet to a point; THENCE North
00°09'07" West 578.58 feet to a point on the
section line; THENCE South 89°56'28" West 615
feet to the TRUE PLACE OF BEGINNING:
Containing 9.94 acres, more or less; and

An undivided one-third interest in the pump,
well, well casing and parts and water rights
filed on with the State of Idaho in connec-
tion with said well which well is now located
and existing on the Northeast Quarter of the
Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26,
Township 2 North, Range 1 E.B.M., and which
water is filed on with the State of Idaho,
under Idaho State Reclamation Permit No.
63-3221, together with an easement for the
purpose of installing and laying pipelines
underground and otherwise across the North-
east Quarter of the Southeast Quarter
(NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North,
Range 1 E.B.M. to transport water from the
existing well to the property hereinabove
described and for the further purpose of
maintaining said well and water pipes and
other facilities for the purpose of trans-
porting said water.

TO HAVE AND TO HOLD, all and singular the said premises,
together with the appurtenances, unto the said Party of the
Second Part and to his heirs and assigns forever.

IN WITNESS WHEREOF, the said Party of the First Part has
hereunto set its hand and seal the day and year first above writ-
ten.

THE IDAHO FIRST NATIONAL BANK, N.A.,
Trustee of the Theron E. Roberts Trust

By 

Trust Officer

STATE OF IDAHO)

County of Ada)

) ss:

On this 24th day of December, in the year 1986, before
me, Kevin Thomas, notary public, personally
appeared Theron E. Roberts,
known or identified to me to be the Trust Officer of the National
Banking Association that executed the instrument or the person

9300001370

who executed the instrument on behalf of said National Banking Association, and acknowledged to me that such National Banking Association 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.



Kevin L. Jones
Notary Public for Idaho
Residing at Boise
My Commission Expires 7-29-87

Ada County, Idaho, ss
Request of

Idaho First

TIME 10:40 AM

DATE 12-30-86

JOHN BASTIDA

RECORDER

By Saxland

Deputy

6⁰⁰

1100020532

8902440

D E E D

THIS INDENTURE, made the 11th day of January, 1989, between THE IDAHO FIRST NATIONAL BANK, N.A., as Trustee of the Theron E. Roberts Trust, the Party of the First Part, and HOLLY M. ROBERTS, the Party of the Second Part, whose address is 5010 Risser, Madison, Wisconsin 53705;

WITNESSETH, That the said Party of the First Part, for value received, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the Party of the Second Part, and to her heirs and assigns, an undivided 22.23 percent interest in and to that certain real property situate in Ada County, State of Idaho, more particularly described as follows, to-wit:

That portion of the Northeast Quarter (NE 1/4) and the North Half of the Southeast Quarter (N 1/2 SE 1/4) of Section 26, Township 2 North, Range 1 E.B.M., Ada County, Idaho, more particularly described as follows: BEGINNING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 E.B.M., Ada County, Idaho, and the REAL POINT OF BEGINNING: THENCE South 00°09'07" East 2664.30 feet along the section line which is the centerline of Maple Grove Road to a point, the one-quarter corner; THENCE South 89°51'07" West 1266.05 feet along the one-quarter line to a point; THENCE North 23°06'57" West 2222.56 feet to a point; THENCE North 66°53'03" East 108.98 feet to a point; THENCE North 00°09'07" West 578.58 feet to a point on the section line; THENCE North 89°56'28" East 2032.84 feet along the section line which is the centerline of Kuna Road to a point, the REAL POINT OF BEGINNING, Ada County, Idaho, containing 108.8 acres, more or less; and

An EASEMENT over, above and upon the following described property in the Northeast Quarter (NE 1/4) of Section 26, Township 2 North, Range 1 E.B.M., as follows, to-wit: COMMENCING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 E.B.M., Ada County, Idaho; THENCE South 89°56'28" West 2647.84 feet to the TRUE PLACE OF BEGINNING; THENCE South 00°09'07" East 836.72 feet to a point; THENCE North 66°53'03" East 658.98 feet to a point; THENCE North 00°09'07" West 578.58 feet to a point on the section line; THENCE South 89°56'28" West 615 feet to the TRUE PLACE OF BEGINNING: Containing 9.94 acres, more or less; and

1100020533

An undivided one-third interest in the pump, well, well casing and parts and water rights filed on with the State of Idaho in connection with said well which well is now located and existing on the Northeast Quarter of the Southeast Quarter (NE 1/4 SE 1/4) of Section 26, Township 2 North, Range 1 E.B.M., and which water is filed on with the State of Idaho, under Idaho State Reclamation Permit No. 63-3221, together with an easement for the purpose of installing and laying pipelines underground and otherwise across the Northeast Quarter of the Southeast Quarter (NE 1/4 SE 1/4) of Section 26, Township 2 North, Range 1 E.B.M. to transport water from the existing well to the property hereinabove described and for further purpose of maintaining said well and water pipes and other facilities for the purpose of transporting said water.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said Party of the Second Part and to her heirs and assigns forever.

IN WITNESS WHEREOF, the Party of the First Part has hereunto set its hand and seal the day and year first above written.

THE IDAHO FIRST NATIONAL BANK, N.A.,
Trustee of the Theron E. Roberts Trust

By Karen Thomas

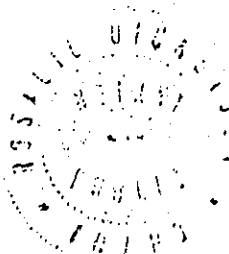


1100000534

STATE OF IDAHO)
) ss:
County of Ada)

On this 16 day of January, in the year 1989, before me,
Rosalie Dickerson, notary public, personally appeared
Karen Thomas, known or identified to me to be the
Asst. Proprietor - Trust, of the National Banking Association that executed the instrument or the person who executed the instrument on behalf of said National Banking Association, and acknowledged to me that such National Banking Association 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.



Rosalie Dickerson
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires 1-27-93

Ada County, Idaho

Request of

Adair's Natl Bank

TIME 8:55 A.M.

DATE 1-18-89

JOHN EASTDA

RECORDER

By A. J. Bates
Deputy 9:00

ACA COUNTY RECORDER
DAVID NAVARRO
THIS FORM FURNISHED COURTESY OF BOISE, IDAHO

FEE 9.00 DEPUTY Mason (6)
101049077

2001 MAY 22 PM 2:58

ALLIANCE TITLE & ESCROW CORP.

ALLIANCE TITLE

READ & APPROVED BY GRANTEE(S): MSH

{1050}

SPACE ABOVE THIS LINE FOR RECORDING DATA

Order No.: 00089647 JG/PB

WARRANTY DEED

FOR VALUE RECEIVED JUDITH VIVIAN ROBERTS, AN UNMARRIED PERSON AS TO AN UNDIVIDED 33.31 PERCENT; MARCIA ANN BLOM, A MARRIED PERSON AS HER SOLE AND SEPARATE PROPERTY AS TO AN UNDIVIDED 22.23 PERCENT; DANIEL T. ROBERTS, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY AS TO AN UNDIVIDED 22.23 PERCENT AND HOLLY MARIE SIMON, AN UNMARRIED PERSON AS TO AN UNDIVIDED 22.23 PERCENT (WHO ACQUIRED TITLE AS HOLLY MARIE ROBERTS)
GRANTOR(S), does(do) hereby GRANT, BARGAIN, SELL and CONVEY unto MICHAEL S. HOMAN, AN UNMARRIED PERSON

GRANTEE(S), whose current address is: 2229 W. STATE, #B, BOISE, ID 83702

the following described real property in ADA County, State of Idaho, more particularly described as follows, to wit:

As set forth on the attached EXHIBIT "A", which by this reference becomes a part hereof.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s) heirs and assigns forever. And the said Grantor(s) does(do) hereby covenant to and with the said Grantee(s), that Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

Dated: May 09, 2001

JUDITH VIVIAN ROBERTS

Marcia Ann Blom, by Pearl Simon, her attorney in fact
MARCIA ANN BLOM, BY PEARL SIMON, HER ATTORNEY IN FACT

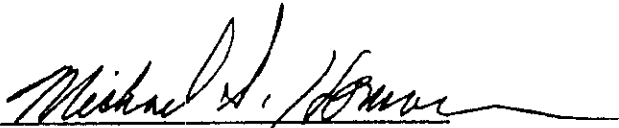
Daniel T. Roberts, by Pearl Simon, his attorney in fact
DANIEL T. ROBERTS, BY PEARL SIMON, HIS ATTORNEY IN FACT

Holly Marie Simon, by Pearl Simon, her attorney in fact
HOLLY MARIE SIMON, BY PEARL SIMON, HER ATTORNEY IN FACT

EXHIBIT "A"

That portion of the Northeast Quarter and the North Half of the Southeast Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

BEGINNING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho and the REAL POINT OF BEGINNING, thence South 00 degrees 09'07" East 2664.30 feet along the Section line which is the centerline of Maple Grove Road to a point, the One-Quarter corner; thence South 89 degrees 51'07" West 1266.05 feet along the One-Quarter line to a point; thence North 23 degrees 06'57" West 2222.56 feet to a point; thence North 66 degrees 53'03" East 108.98 feet to a point; thence North 00 degrees 09'07" West 578.58 feet to a point on the section line; thence North 89 degrees 56'28" East 2032.84 feet along the Section line which is the centerline of Kuna Road to a point, the REAL POINT OF BEGINNING, Ada County, Idaho.



MICHAEL S. HOMAN

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

THIS FORM FURNISHED COURTESY OF:

2001 MAY 22 PH 2:58

FEE 9.00 DEPUTY Plow ⑦
101049078

ALLIANCE TITLE & ESCROW CORP.

ALLIANCE TITLE

READ & APPROVED BY GRANTEE(S):

SPACE ABOVE THIS LINE FOR RECORDING DATA

(1050)

Order No.: 00089647 JG/PB

WARRANTY DEED

FOR VALUE RECEIVED JUDITH VIVIAN ROBERTS, AN UNMARRIED PERSON AS TO AN UNDIVIDED 33.31 PERCENT; MARCIA ANN BLOM, A MARRIED PERSON AS HER SOLE AND SEPARATE PROPERTY AS TO AN UNDIVIDED 22.23 PERCENT; DANIEL T. ROBERTS, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY AS TO AN UNDIVIDED 22.23 PERCENT AND HOLLY MARIE SIMON, AN UNMARRIED PERSON AS TO AN UNDIVIDED 22.23 PERCENT (WHO ACQUIRED TITLE AS HOLLY MARIE ROBERTS)

GRANTOR(S), does(do) hereby GRANT, BARGAIN, SELL and CONVEY unto MICHAEL S. HOMAN, AN UNMARRIED PERSON

GRANTEE(S), whose current address is: 2229 W. STATE, #B, BOISE, ID 83702

the following described real property in ADA County, State of Idaho, more particularly described as follows, to wit:

As set forth on the attached EXHIBIT "A", which by this reference becomes a part hereof.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantee(s) heirs and assigns forever. And the said Grantor(s) does(do) hereby covenant to and with the said Grantee(s), that Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and general taxes and assessments, (including irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

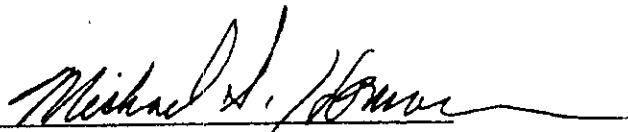
Dated: May 09, 2001

X Judith Vivian Roberts
JUDITH VIVIAN ROBERTS

EXHIBIT "A"

That portion of the Northeast Quarter and the North Half of the Southeast Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

BEGINNING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho and the REAL POINT OF BEGINNING; thence South 00 degrees 09'07" East 2664.30 feet along the Section line which is the centerline of Maple Grove Road to a point, the One-Quarter corner; thence South 89 degrees 51'07" West 1266.05 feet along the One-Quarter line to a point; thence North 23 degrees 06'57" West 2222.56 feet to a point; thence North 66 degrees 53'03" East 108.98 feet to a point; thence North 00 degrees 09'07" West 578.58 feet to a point on the section line; thence North 89 degrees 56'28" East 2032.84 feet along the Section line which is the centerline of Kuna Road to a point, the REAL POINT OF BEGINNING, Ada County, Idaho.



MICHAEL S. HOMAN

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

2002 JUL 12 PM 4:35

RECORDED-REQUEST OF

FEE 6 DEPUTY John

102078692

TRANSACTION

8/45
(Space above line for recording)

QUITCLAIM DEED

FOR One Dollar (\$1.00) and other good and valuable consideration, JUDITH VIVIAN ROBERTS, an unmarried person, Grantor, does hereby convey, release, remise and forever quitclaim unto MICHAEL S. HOMAN, Grantee, whose current address is 2229 W. State St., #B, Boise ID 83702, the following described real property in Ada County, State of Idaho, more particularly described as follows, to wit:

As set forth on the attached EXHIBIT "A" which by this reference becomes a part hereof.

TOGETHER with appurtenances.

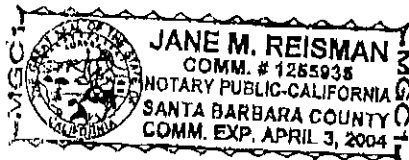
IN WITNESS WHEREOF, Grantor has hereunto set her hand and seal the day, month, and year first below written.

Judith Vivian Roberts July 8th 2002
JUDITH VIVIAN ROBERTS Date

STATE of California

County of Santa Barbara SS.

On this 8th July, 2002 day of December, 2001, before me, the undersigned, a Notary Public in and for the State, personally appeared the Grantor known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.



Jane M. Reisman
Notary Public for California
Residing at Santa Barbara
My commission expires: April 3, 2004

EXHIBIT A

That portion of the Northeast Quarter and the North Half of the Southeast Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

BEGINNING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho and the REAL POINT OF BEGINNING; thence
South 00 degrees 09' 07" East 2664.30 feet along the Section line which is the centerline of Maple Grove Road to a point, the One-Quarter corner; thence
South 89 degrees 51' 07" West 1266.05 feet along the One-Quarter line to a point; thence
North 23 degrees 06' 57" West 2222.56 feet to a point; thence
North 66 degrees 53' 03" East 108.98 feet to a point; thence
North 00 degrees 09' 07" West 578.58 feet to a point on the section line; thence
North 89 degrees 56' 28" East 2032.84 feet along the Section line which is the centerline of Kuna Road to a point, the REAL POINT OF BEGINNING, Ada County, Idaho; AND

An undivided one-third interest in the pump, well, well casing and parts and water rights filed on with the State of Idaho in connection with said well which well is now located and existing on the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 East, B. M., and which water is filed on with the State of Idaho under Idaho State Reclamation Permit No. 63-3221, together with an easement for the purpose of installing and laying pipelines underground and otherwise across the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 East, B. M., to transport water from the existing well to the property hereinabove described and for the further purpose of maintaining said well and water pipes and other facilities for the purpose of transporting said water.

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

2002 JUN 24 PM 4:18

RECORDED - REQUEST OF

FEE 6⁰⁰ DEPUTY Khang

102070964

TRANSACTION

8034
(Space above line for recording)

QUITCLAIM DEED

FOR One Dollar (\$1.00) and other good and valuable consideration, MARCIA ANN BLOM, a married person as to her sole and separate property, Grantor, does hereby convey, release, remise and forever quitclaim unto MICHAEL S. HOMAN, Grantee, whose current address is 2229 W. State St., #B, Boise ID 83702, her 22.23 PERCENT interest in the following described real property in Ada County, State of Idaho, more particularly described as follows, to wit:

As set forth on the attached EXHIBIT "A" which by this reference becomes a part hereof.

TOGETHER with appurtenances.

IN WITNESS WHEREOF, Grantor has hereunto set her hand and seal the day, month, and year first below written.

Marcia Ann Blom
MARCIA ANN BLOM

4-22-02
Date

STATE of Colorado)
County of Mesa) ss.

On this 22 day of April, 2002, before me, the undersigned, a Notary Public in and for the State, personally appeared the Grantor known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

Debra J. Duncan
Notary Public for State of Colorado
Residing at 2924 Iron Horse Grand Jet
My commission expires: 7-30-04

EXHIBIT A

That portion of the Northeast Quarter and the North Half of the Southeast Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

BEGINNING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho and the REAL POINT OF BEGINNING; thence
South 00 degrees 09' 07" East 2664.30 feet along the Section line which is the centerline of Maple Grove Road to a point; the One-Quarter corner; thence
South 89 degrees 51' 07" West 1266.05 feet along the One-Quarter line to a point; thence
North 23 degrees 06' 57" West 2222.56 feet to a point; thence
North 66 degrees 53' 03" East 108.98 feet to a point; thence
North 00 degrees 09' 07" West 578.58 feet to a point on the section line; thence
North 89 degrees 56' 28" East 2032.84 feet along the Section line which is the centerline of Kuna Road to a point, the REAL POINT OF BEGINNING, Ada County, Idaho; AND

An undivided one-third interest in the pump, well, well casing and parts and water rights filed on with the State of Idaho in connection with said well which well is now located and existing on the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 East, B. M., and which water is filed on with the State of Idaho under Idaho State Reclamation Permit No. 63-3221, together with an easement for the purpose of installing and laying pipelines underground and otherwise across the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 East, B. M., to transport water from the existing well to the property hereinabove described and for the further purpose of maintaining said well and water pipes and other facilities for the purpose of transporting said water.

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED - REQUEST OF

FEE 6⁰⁰ DEPUTY H. Vaughn

2002 JUN 24 PM 4:18

102070965

TRANSACTION

8034
(Space above line for recording)

QUITCLAIM DEED

FOR One Dollar (\$1.00) and other good and valuable consideration, DANIEL T. ROBERTS, a married person, Grantor, does hereby convey, release, remise and forever quitclaim unto MICHAEL S. HOMAN, Grantee, whose current address is 2229 W. State St., #B, Boise ID 83702, the following described real property in Ada County, State of Idaho, more particularly described as follows, to wit:

As set forth on the attached EXHIBIT "A" which by this reference becomes a part hereof.

TOGETHER with appurtenances.

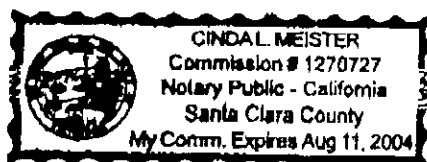
IN WITNESS WHEREOF, Grantor has hereunto set his hand and seal the day, month, and year first below written.

Daniel T. Roberts
DANIEL T. ROBERTS

2/04/2002
Date

STATE of California)
County of Santa Clara) ss.

On this 4 day of ~~December~~ ^{February}, 2002, before me, the undersigned, a Notary Public in and for the State, personally appeared the Grantor known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.



Cinda R. Meister
Notary Public for Santa Clara County, CA
Residing at Morgan Hill, CA
My commission expires: Aug 11, 2004

EXHIBIT A

That portion of the Northeast Quarter and the North Half of the Southeast Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

BEGINNING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho and the REAL POINT OF BEGINNING; thence
South 00 degrees 09' 07" East 2664.30 feet along the Section line which is the centerline of Maple Grove Road to a point, the One-Quarter corner; thence
South 89 degrees 51' 07" West 1266.05 feet along the One-Quarter line to a point; thence
North 23 degrees 06' 57" West 2222.56 feet to a point; thence
North 66 degrees 53' 03" East 108.98 feet to a point; thence
North 00 degrees 09' 07" West 578.58 feet to a point on the section line; thence
North 89 degrees 56' 28" East 2032.84 feet along the Section line which is the centerline of Kuna Road to a point, the REAL POINT OF BEGINNING, Ada County, Idaho; AND

An undivided one-third interest in the pump, well, well casing and parts and water rights filed on with the State of Idaho in connection with said well which well is now located and existing on the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 East, B. M., and which water is filed on with the State of Idaho under Idaho State Reclamation Permit No. 63-3221, together with an easement for the purpose of installing and laying pipelines underground and otherwise across the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 East, B. M., to transport water from the existing well to the property hereinabove described and for the further purpose of maintaining said well and water pipes and other facilities for the purpose of transporting said water.

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED - REQUEST OF

FEE 6⁰⁰ DEPUTY K. Hough

2002 JUN 24 PM 4:18

102070963

TRANSACTION

8034

(Space above line for recording)

QUITCLAIM DEED

FOR One Dollar (\$1.00) and other good and valuable consideration, HOLLY MARIE SIMON, an unmarried person, (who acquired title as HOLLY MARIE ROBERTS) Grantor, does hereby convey, release, remise and forever quitclaim unto MICHAEL S. HOMAN, Grantee, whose current address is 2229 W. State St., #B, Boise ID 83702, the following described real property in Ada County, State of Idaho, more particularly described as follows, to wit:

As set forth on the attached EXHIBIT "A" which by this reference becomes a part hereof.

TOGETHER with appurtenances.

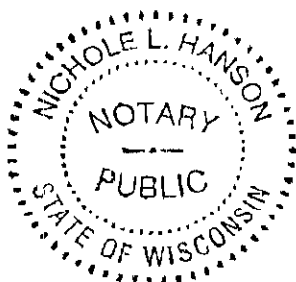
IN WITNESS WHEREOF, Grantor has hereunto set her hand and seal the day, month, and year first below written.

Holly Marie Simon
HOLLY MARIE SIMON

3.18.02
Date

STATE of Wisconsin)
County of Dane) ss.

On this 18th day of March, 2002, before me, the undersigned, a Notary Public in and for the State, personally appeared the Grantor known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.



Nichole L. Hanson
Notary Public for UW Credit Union
Residing at Madison, WI 53711
My commission expires: 3/19/06

EXHIBIT A

That portion of the Northeast Quarter and the North Half of the Southeast Quarter of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

BEGINNING at a brass cap, the Northeast corner of Section 26, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho and the REAL POINT OF BEGINNING; thence
South 00 degrees 09' 07" East 2664.30 feet along the Section line which is the centerline of Maple Grove Road to a point; the One-Quarter corner; thence
South 89 degrees 51' 07" West 1266.05 feet along the One-Quarter line to a point; thence
North 23 degrees 06' 57" West 2222.56 feet to a point; thence
North 66 degrees 53' 03" East 108.98 feet to a point; thence
North 00 degrees 09' 07" West 578.58 feet to a point on the section line; thence
North 89 degrees 56' 28" East 2032.84 feet along the Section line which is the centerline of Kuna Road to a point, the REAL POINT OF BEGINNING, Ada County, Idaho; AND

An undivided one-third interest in the pump, well, well casing and parts and water rights filed on with the State of Idaho in connection with said well which well is now located and existing on the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 East, B. M., and which water is filed on with the State of Idaho under Idaho State Reclamation Permit No. 63-3221, together with an easement for the purpose of installing and laying pipelines underground and otherwise across the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section 26, Township 2 North, Range 1 East, B. M., to transport water from the existing well to the property hereinabove described and for the further purpose of maintaining said well and water pipes and other facilities for the purpose of transporting said water.

Memorandum Opinion, *Glaser Land & Livestock, Inc. v. Skeem*, Case No. 37669 (Dist. Ct. 5th Jud. District – Idaho) (Apr. 9, 1986) (attached).

Paddock v. Clark, 22 Idaho 498 (1912);

Speer v. Stephenson, 16 Idaho 707 (1909);

Big Wood Canal Company, 45 Idaho 380 (1927);

Hidden Springs Trout Ranch, Inc. v. Allred, 102 Idaho 623 (1981);

Basinger v. Taylor, 30 Idaho 289 (1917);

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APR 10 1986
Hepworth, Nungester and Felton

Department of Water Resources

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

GLASER LAND & LIVESTOCK,
INC., a Nevada
corporation,

Plaintiff,

vs.

DANIEL C. SKEEM and DARLENE
SKEEM, husband and wife; and
WAYNE B. SKEEM, ARLENE SKEEM,
and DANIEL C. SKEEM dba
S & S LIMITED PARTNERSHIP,
and ZIONS LEASING CORPORATION,
a Utah corporation,

Defendants.

Case No. 37669

MEMORANDUM OPINION GRANT-
ING IN PART AND DENYING
IN PART PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

Glaser Land & Livestock, Inc. has moved this court for summary judgment against Zions Leasing Company. Zions survives as the only remaining defendant inasmuch as default judgments and a decree quieting title in the plaintiff has been granted against all other defendants.

Glaser's motion for summary judgment is one for the right to foreclose on approximately 158 acres of land. Said property is the subject of an installment land sale contract, including amendments, entered into between plaintiff and defendants Daniel and Darlene Skeem. The

Skeems have defaulted on the contract. Plaintiff wants to to foreclose on the underlying real property, as well as water permits, a power sale agreement, a FERC exception, as well as equipment and improvements.

Zions contend they are able to compel plaintiff to sell them that property, within the 158 acres, in which they claim they had a "secured interest." Said interest arises by virtue of having financed the construction and operation of a hydroelectric plant.

DISCUSSION OF LEGAL ISSUES

Basic contract principles must be considered by the court in determining the merits of both parties' contentions.

There is no doubt the underlying land sale contract is enforceable. The contract between Glaser and Skeems was complete and definite in all its material terms and, therefore, is enforceable. Wood v. Simonsen, 108 Idaho 699, 701 P.2d 317 (Ct. App. 1985). A land sale contract whereunder prospective vendors agree to sell the land in question and prospective purchasers obligated themselves to pay by a down payment and an agreement to pay the remaining balance, together with interest, in annual installments meets the requirement for "mutuality of obligation." McCandless v. Schick, 85 Idaho 509, 380 P.2d 893 (1963). In order to ascertain the intent of the parties to a contract, the contract as a whole must be construed. Wing v. Martin,

107 Idaho 267, 688 P.2d 1172 (1984). Whether a contract is ambiguous is a question of law. Wood v. Simonsen, supra, at 701. The Glaser-Skeem contract is not ambiguous. The interpretation and legal effect of an unambiguous contract are questions of law to be resolved by the court. Luzar v. Western Sur. Co., 107 Idaho 693, 692 P.2d 337 (1984).

In order to be able to compel performance under a contract, one must be in "privity." Privity refers to those who exchange contractual promissory words or those to whom promissory words are directed. Wing v. Martin, supra at 272. Zions is not a party to the contract entered into between Glaser and Skeem. Zions is not in privity with the vendor and, therefore, cannot sue to enforce performance pursuant to the terms of the underlying contract.

A party must look to the person with whom he is in a direct contractual relationship for relief, in the event his expectations under the contract are not met. Id.

Therefore, Glaser cannot compel Zions performance to be substituted for Skeems. Nor can Zions compel Glaser to perform under the terms of the contract. Zions cannot compel Glaser to sell Zions that portion of the total 158-acre parcel in which Zions claims an interest.

Further, Zions cannot be construed as a third-party beneficiary to the Glaser-Skeem contract. Obviously, the land sale contract was not entered into to directly benefit Zions. I.C. Sec. 29-102.

Absent fraud or overreaching, a court cannot modify express terms of an agreement lawfully entered into by two competent persons. Knoke v. Charlebois, 107 Idaho 427, 690 P.2d 392 (Ct. App. 1984).

The court is without jurisdiction to make a contract between Glaser and Zions. Minidoka County For Use and Benefit of Detweiler Bros., Inc. v. Krieger, 88 Idaho 395, 399 P.2d 962 (1964).

While a party to a contract may agree to accept the performance different in form from that recited in the contract, there is not evidence to support a finding by this court that the Glasers agreed to accept Zions' performance of the land sale contract.

Glaser's only remedy is against the defaulting buyers. Glasers cannot insist Zions pay the full balance due and owing under the contract, nor can Zions, not a party or a third-party beneficiary of the contract, insist on Glaser's performance under the partial release provisions of the contract.

In concluding the discussion as to the land itself, there is no doubt Glasers validly asked this court to treat the installment land sale contract as a mortgage and allow the vendors to foreclose.¹

¹By asking the court to treat this contract as a
(Footnote Continued)

Given that the Glasers can proceed to foreclose on the real property, the next question for this court concerns Zions' asserted rights, via assignment by Skeems, in the water rights, a power contract and a FERC permit exemption.

A. Water Rights.

The Skeems applied for and obtained water permits no. 47-7700, 47-7702 and 47-7705.

The Skeems have until various dates in 1987 to submit proof of application of the water to a beneficial use to the Department of Water Resources. There is evidence to support a finding by this court that the water has, in fact, been put to beneficial use.

In regard to water permit 47-7700, Skeems had until on or before February 1, 1987, to submit proof of application of beneficial use. Water permit 47-7702, Skeems had until on or before May 1, 1987, to submit proof. Water permit 47-7705, Skeems had until on or before May 1, 1987, to submit proof. This "outside" time frame does not preclude the Skeems from submitting proof earlier. Nor does it preclude the Department of Water Resources itself from being requested by Glaser to make such a finding.

These water rights are not adjudicated, licensed or unadjudicated "constitutional" rights. Nor is this mere

(Footnote Continued)
mortgage, the Skeems obviously have a statutory right to redeem. I.C. Sec. 11-402.

initiation of the statutory process by the filing of an application for an appropriation permit. See Matter of Hidden Springs Trout Ranch, Inc. v. Allred, 102 Idaho 623, 636 P.2d 745 (1981). Skeems have already procured water appropriation permits. The defendants cite Big Wood Canal Co. v. Chapman, 45 Idaho 380, 263 P. 45 (1921), as precedent for characterizing Skeems' permits as inchoate rights and, therefore, not real property. However, Big Wood Canal Co. also stands for the proposition that substantial compliance with the statutory conditions in regard to proof of application to beneficial use will suffice.

"The purpose and object for requiring proof of completion of works is to ascertain whether or not they conform to the terms of the application and permit, and are capable of diverting the amount of water intended. Substantial conformity with such application and permit is all that is required." Big Wood Canal Co. v. Chapman, *supra* at 394-395.

It appears from the record that Skeem has diverted and put the water to beneficial use. This court finds Skeem has substantially complied with the statutory mandates and, therefore, the water rights must be considered as having vested in the Skeems. Case law indicates that this court has jurisdiction to make such a finding by considering the entire record. See Glendale Ranches, Inc. v. Schaub, 94 Idaho 585, 494 P.2d 1029 (1972). By virtue of the rights

having vested, the rights are appurtenant to the property to which the water has been beneficially applied. Clearly, water rights are within the definition of real property. I.C. Sec. 55-101 and cases cited under "Ditches and Water Rights".

Therefore, Glaser can proceed to foreclose upon the water permits.

B. The FERC Exemption and the Idaho Power Contract.

The FERC exemption is federal authorization to operate the "Mud Creek Project." The "project" involves some parcels of land not subject to, nor which can ever be subject to Glaser's foreclosure action. The exemption is appurtenant to the entire three parcels of land on which the project is located.

An essential element of a license or a license coupled with an interest is the right to use land in the possession of another. Shultz v. Atkins, 97 Idaho 770, 554 P.2d (1976). The FERC exemption is analogous to a license. The court agrees with Zions that the exemption should be characterized as a general intangible. Glaser cannot foreclose on the FERC exemption.

The Idaho Power contract is an agreement to sell power produced from the Mud Creek Project. The rights under the contract have been validly assigned to Zions. Contract

rights are also general intangibles and, therefore, Glaser cannot foreclose on the power sales contract.

C. Other Improvements, Etc.

The record is insufficient as to other improvements, related equipment, structures, etc. for this court to make a determination of whether any of the aforementioned are subject to foreclosure. Therefore, summary judgment is denied, pending augmentation of the record so as to put enough evidence before this court with which to make a competent decision.

EMINENT DOMAIN

The question of whether Zions can succeed with an action for eminent domain is not before this court. However, the court notes that it agrees with Zions' position that Zions does not have to have an ownership interest in the water rights, which supply the source of energy for the Mud Creek Project, prior to being able to go forward with an action for eminent domain. Bassett v. Swenson, 51 Idaho 256, 5 P.2d 722 (1931).

Therefore, summary judgment will be granted to plaintiff as to the underlying real property and the water permits.

Summary judgment is denied as to the FERC exemption and the Idaho Power contract.

Summary judgment is denied as to the related equipment, improvements, etc. pending augmentation of the record.

Counsel for plaintiff is asked to prepare an order of partial summary judgment.

DATED this 9th day of April, 1986.


DANIEL B. MEEHL
District Judge

CERTIFICATE OF MAILING

The undersigned certifies that on the 9 day of April, 1986, she caused to be mailed a copy of the foregoing memorandum opinion to:

Holland & Hart, Langroise, Sullivan
Attorneys at Law
P. O. Box 2527
Boise, Idaho 83701

Hepworth, Nungester & Felton
Attorneys at Law
P. O. Box 589
Buhl, Idaho 83316



1/19/61	Fred Wolske	• Filed Application for water right no. 63-3221 • POD – T2N R1E § 35 NENE • POU – (Same as patent lands below) • Permit was issued to Wolske in connection with Desert Land Entry		
1969	Finished construction of well. (see proof of bene use dated 1975)			
1970	• <i>Tim Boyle Affidavit</i> (dated 10/27/72) – states that Oil company provided fuel for pumping water for crops in the NESE, SESE § 26, and NENE § 35 containing 180 acres during 1970. • <i>Kevin Wolske Affidavit</i> (dated 10/27/72) – states that he is the son of Fred, and that he and his brother, Gary Wolske, irrigated the NESE, SESE § 26, and NENE § 35 containing 180 acres during 1970, and they harvested 66 tons of grain and 60 acres of sugar beets. • <i>Agreement</i> dated 5/1/1970, between Fred Wolske and Nichols for Nichols to farm 60 acres of Wolske's land during 1970.			
10/16/70	Fred Wolske	• Filed Proof of Beneficial Use for 6.4 cfs for 320 acres -- states that "all 320 acres can and will be irrigated by a sprinkler system"		
11/3/70	United States	Patent	T2N R1E § 26 NE¼, N½SE¼, SESE, § 35 NENE	Fred Wolske
11/12/70	Fred Wolske	Warranty Deed	Same as above	Gary and Terri Wolske
3/2/71	Gary & Terri Wolske	Warranty Deed	Same as above "together with all water rights appurtenant to the land."	Theron Roberts
5/22/72	IDWR Field Exam • "No beneficial use this year. Probably none last year." • "Recommend this permit be cancelled. No water. No bene use. System was installed at one time but has not been used recently." • "I was unable to determine who actually owns this land at this time as a number of legal actions are pending against the applicant."			
10/24/72	IDWR cancelled permit no. 63-3221 (but see subsequent 5/74 order).			
2/5/74	Theron & Judith Roberts	Quitclaim Deed	§ 26 – East ½ and § 35 NENE <i>except</i> – the Homan Parcel <i>except</i> – for an undivided 1/3 rd interest in the pump, well, well casing, . . . and water rights . . . well located . . . in the NESW of Section 26 T2N R1E, . . . which was is filed on . . . under . . . Permit No. 63-3221.	Gary & Terri Wolske

2/6/74	Gary & Terri Wolske	Quitclaim Deed	Same as above quitclaim deed from Roberts	Fred & Phyllis Wolske
5/22/74	IDWR Order - Whereas, on 5/22/72 – Dept field exam found no bene use - Whereas on 10/24/72 – Dept “inadvertently cancelled permit 63-3221” - Whereas on 11/8/72 and 5/17/74, permit holder submitted affidavits from disinterested parties indicating that water had been used for the irrigation of 180 acres of land - Therefore, ordered that Permit 63-3221 is reinstated without a loss of priority.			
4/3/75	Fred Wolske	Filed Proof of Beneficial Use 6.4 cfs; 240 acres		
7/13/76	IDWR Field Exam 162 acres; 2.94 cfs / 729AF			
11/4/76	Fred Wolske	- License No. 63-3221 issued to Fred Wolske - POD - § 26 NESE - POU - § 26 SWNE (10), NESE (32), NWSE (40), SESE (40) § 35 NENE (40) - Total acres: 162 - Quantity: 2.94 cfs / 729 afa		
2/2/78	Roberts Estate	Deed	33.21% interest in - Homan parcel 1/3rd interest in 63-3221.	Judith Vivian Roberts
2/2/78	Roberts Estate	Deed	22.23% interest in: - Homan parcel 1/3rd interest in 63-3221	Marcia Ann Blom
2/2/78	Roberts Estate	Deed	44.46% interest in: - Homan parcel 1/3rd interest in 63-3221	Idaho First National Bank as Trustee for Daniel T. Roberts and Holly Marie Roberts
12/24/86	Idaho First National Bank, as Trustee of Theon Roberts Trust	Deed	22.23% interest in: - Homan parcel 1/3rd interest in 63-3221	Daniel T. Roberts
1/16/89	Idaho First National Bank, as Trustee of Theon Roberts Trust	Deed	22.23% interest in: - Homan parcel 1/3rd interest in 63-3221	Holly M. Roberts
2002	Judith Roberts, Marcia Blom, Dan Roberts, Holly Roberts	Quitclaim Deed	Entire interest in: - Homan parcel 1/3rd interest in 63-3221	Mike Homan

Docs shown d
w/ ID card
7/26/02

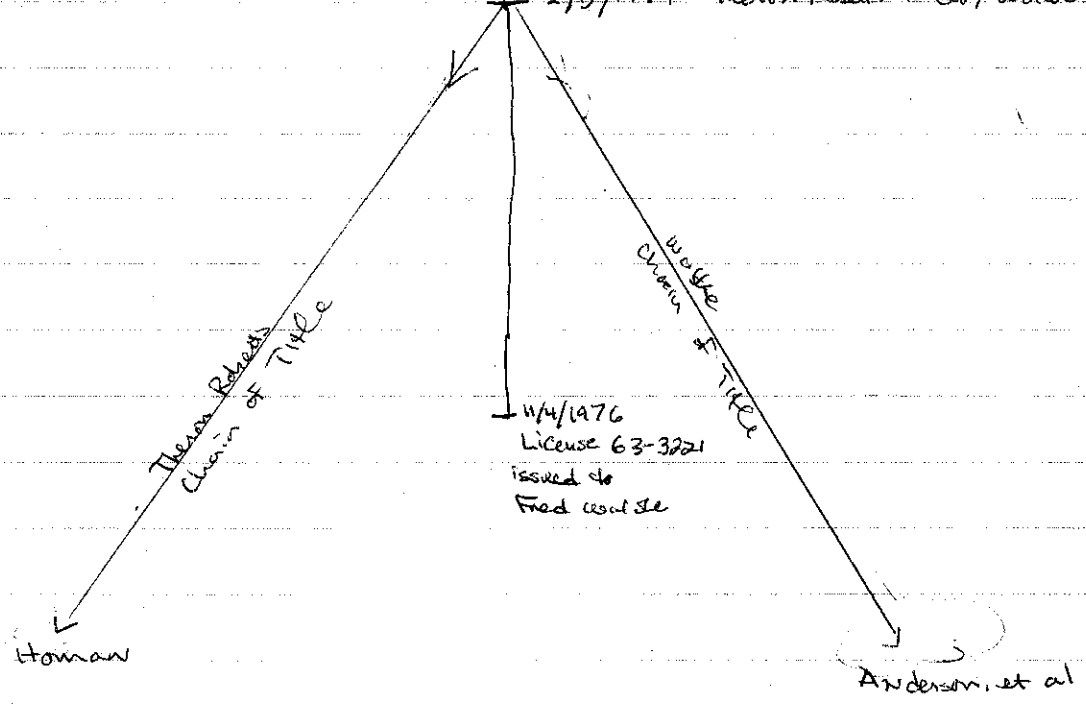
Permit 63-3221 - 1/30/1961
constructed well - 1969
Irrigated 180 acres - 1970

4/3/1970 - U.S. Patent to Fred Wolke

4/12/1970 - Fred Wolke to Gary Wolke "w/Agreements"

3/2/1971 - Gary Wolke to Theron Roberts "Together w/ all
w/2's agreements
to land"

2/5/1974 - Theron Roberts to Gary Wolke - ~~Expt~~
- Homestead
- undivided 1/3
interest in
w/2.



1/19/61	Fred Wolske	• Filed Application for water right no. 63-3221 • POD – T2N R1E § 35 NENE • POU – (Same as patent lands below) • Permit was issued to Wolske in connection with Desert Land Entry		
1969	Finished construction of well. (see proof of bene use dated 1975)			
1970	• <i>Tim Boyle Affidavit</i> (dated 10/27/72) – states that Oil company provided fuel for pumping water for crops in the NESE, SESE § 26, and NENE § 35 containing 180 acres during 1970. • <i>Kevin Wolske Affidavit</i> (dated 10/27/72) – states that he is the son of Fred, and that he and his brother, Gary Wolske, irrigated the NESE, SESE § 26, and NENE § 35 containing 180 acres during 1970, and they harvested 66 tons of grain and 60 acres of sugar beets. • <i>Agreement</i> dated 5/1/1970, between Fred Wolske and Nichols for Nichols to farm 60 acres of Wolske's land during 1970.			
10/16/70	Fred Wolske	• Filed Proof of Beneficial Use for 6.4 cfs for 320 acres -- states that "all 320 acres can and will be irrigated by a sprinkler system"		
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11/12/70	Fred Wolske	Warranty Deed	Same as above	Gary and Terri Wolske
3/2/71	Gary & Terri Wolske	Warranty Deed	Same as above " <i>together with all water rights appurtenant to the land.</i> "	Theron Roberts
5/22/72	IDWR Field Exam • "No beneficial use this year. Probably none last year." • "Recommend this permit be cancelled. No water. No bene use. System was installed at one time but has not been used recently." • "I was unable to determine who actually owns this land at this time as a number of legal actions are pending against the applicant."			
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5/22/74	IDWR Order - Whereas, on 5/22/72 – Dept field exam found no bene use - Whereas on 10/24/72 – Dept “inadvertently cancelled permit 63-3221” - Whereas on 11/8/72 and 5/17/74, permit holder submitted affidavits from disinterested parties indicating that water had been used for the irrigation of 180 acres of land - Therefore, ordered that Permit 63-3221 is reinstated without a loss of priority.			
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11/4/76	Fred Wolske	- License No. 63-3221 issued to Fred Wolske - POD - § 26 NESE - POU - § 26 SWNE (10), NESE (32), NWSE (40), SESE (40) § 35 NENE (40) - Total acres: 162 - Quantity: 2.94 cfs / 729 afa		
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2/2/78	Roberts Estate	Deed	22.23% interest in: - Homan parcel 1/3rd interest in 63-3221	Marcia Ann Blom
2/2/78	Roberts Estate	Deed	44.46% interest in: - Homan parcel 1/3rd interest in 63-3221	Idaho First National Bank as Trustee for Daniel T. Roberts and Holly Marie Roberts
12/24/86	Idaho First National Bank, as Trustee of Theon Roberts Trust	Deed	22.23% interest in: - Homan parcel 1/3rd interest in 63-3221	Daniel T. Roberts
1/16/89	Idaho First National Bank, as Trustee of Theon Roberts Trust	Deed	22.23% interest in: - Homan parcel 1/3rd interest in 63-3221	Holly M. Roberts
2002	Judith Roberts, Marcia Blom, Dan Roberts, Holly Roberts	Quitclaim Deed	Entire interest in: - Homan parcel 1/3rd interest in 63-3221	Mike Homan

Idaho Department of Water Resources

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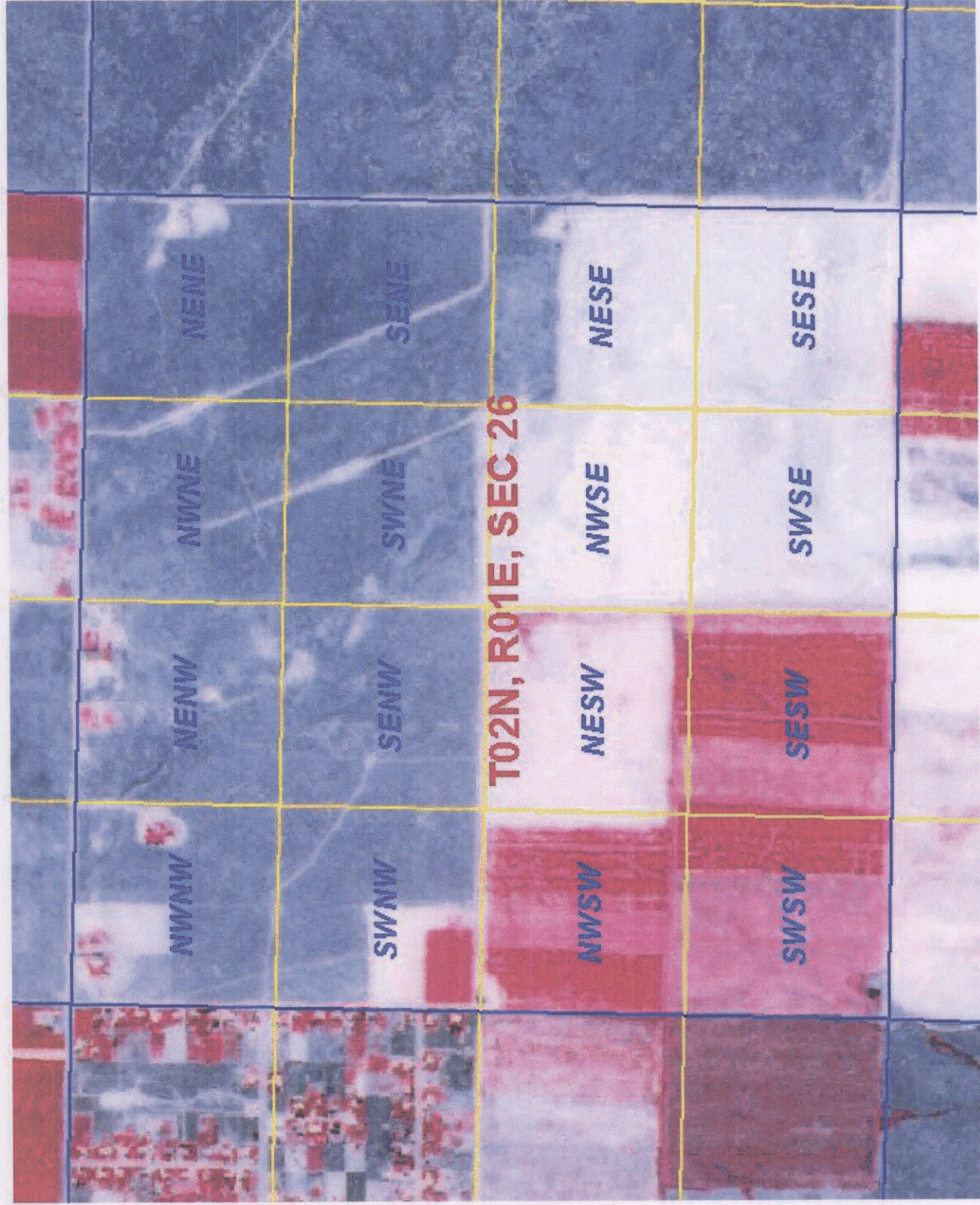
63-3221
Prepared for:
Matt Howard
Date: Nov 9, 01

 SECTION LINES

 1/4 1/4



1987 NAPP



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