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

In Re SRBA	)	Subcase Nos. 65-4213A, 65-4213B,
	)	65-4213C, 65-4214, and 65-4214A
	)	
Case No. 39576	)	AFFIDAVIT OF VERLA WITT
_____	)	

STATE OF IDAHO	)	
	) ss:	
COUNTY OF VALLEY	)	

I, Verla Witt, after first being duly sworn upon oath, depose and state that:

(1) My name is Verla Witt, and I am competent to testify to the matters set forth herein.

(2) In November 2002, I purchased 4.56 acres of property in Valley County near McCall, Idaho. The 4.56 acres are in the SE ¼ SW ¼ Sec 34, T18N R3E, Lot 1 of the Betzold Subdivision. A certified copy of the recorded deed is attached as Exhibit A. I bought the property from Michael and Jenna Bailey, who had purchased the property from Jeff and Kimberly Clark in August 2001. The Clarks bought the property in 1997. Certified copies of those recorded deeds are attached as Exhibits B and C. Part of my property is covered by a very old pond that attracted me to purchase the property and remains an important part of what I enjoy most about the property. I knew the pump in the pond had been used to irrigate some of the property by all of the previous owners going back to the 1950s or 1960s. The pond supports a variety of wildlife including ducks, geese, native non-migratory birds, raccoons, foxes, deer, elk,

a resident muskrat, and an occasional otter. I use the pump from the pond to irrigate approximately two acres of my property. I enjoy watching the wildlife that lives in and around the pond and that visits the pond during the different seasons of the year. My family and I also enjoy boating and canoeing in the pond. My home is located on Turner Road, and locally the pond is known as Turner Pond.

(3) Turner Pond spans about three acres, including the stream bed of an unnamed stream which flows into and fills the pond behind a five-foot high dike that extends more than the length of a football field at the lower end of the pond. At one end of the dike, a concrete spillway has check boards to control the pond level and the flow of the unnamed stream back into the downstream channel. This lower part of the pond is on my property and the property of the Bowker family. The upper part of the pond is on Mickey and Daryl Hart's property and the Bowker family property. The pond fills during the spring run-off and then empties gradually by late fall because the flow of the unnamed stream generally ceases by August 1. The pond level is maintained by the check boards and any flow over those check boards has ceased by early August. We understand from the Bowker family that the pond (with its dike) dates from the 1950s or 1960s when the Bowker, Witt, and Hart properties were owned and farmed by members of the Heckathorn family. The Bowker family property is across the unnamed stream from the Hart and Witt properties.

(4) I did not know that my property was part of a 20-acre irrigation water right from the unnamed stream, that the water right (65-4213) had been decreed in 1986 in the Payette Adjudication, but only partially claimed (65-4213A) in the Snake River Basin Adjudication (SRBA), and that my portion of 65-4213 had not been claimed in the SRBA. I learned from Mickey Hart that the Idaho Department of Water Resources (IDWR) had no record of a water right for the pond. I also learned from Mickey Hart that the Bowker family property had a

19-acre irrigation water right from the unnamed stream (65-4214) that had been claimed in the SRBA.

(5) I visited IDWR with Mickey Hart. We were told there was no water right record for the pond and no means of establishing an historic priority date for the pond, independent of the Bowker family's claim to 65-4214. The Bowker irrigation right 65-4214 had a 1928 priority date, so we began discussing deeding part of 65-4214 to a water users' association to be formed by the landowners whose homes border the pond: the Harts, the Bowkers, and me. The water users' association would then seek to transfer that portion of 65-4214 to a year round aesthetic/recreational/wildlife use for the pond.

(6) Faustino Ramos owns property immediately downstream of Turner Pond. The Ramos property also underlies a portion of the dike for the Turner pond, adjacent to my property. In 2003, I learned from Mickey Hart that Mr. Ramos wanted to put a pond in front of the house he just built. I knew that the Harts were going to have their attorney Richard Cummings meet with an attorney who specializes in water rights.

(7) In December 2003 and January 2004, Mickey Hart discussed with me information which her attorney Richard Cummings had learned in a meeting with water rights attorney Josephine P. Beeman. We discussed how a water users' association, with consent from the Bowker family, might establish a water right for Turner Pond using a portion of the Bowker irrigation right 65-4214. We also discussed moving forward with a written agreement to allow Mickey and Daryl Hart to seek a water right for Turner Pond, based on a transfer of part of 65-4214. The place of use for the pond's water right would include all of the property underlying the pond: Harts, Bowkers, and Verla Witt. In late January, Mickey Hart informed me that the Bowker family had hired Jo Beeman to pursue a transfer of 65-4214 to confirm the pond as part of the water right.

(8) In late February 2004, I learned from Mickey Hart that water right 65-4213 which was decreed in the Payette Adjudication with a 1959 priority date, listed my property as part of the place of use for irrigation. I also learned that the portion of water right 65-4213 for my property had not been claimed in the SRBA. I learned that 65-4213A, presumably for another part of 65-4213, was currently claimed in the SRBA under the name of Faustino Ramos and that it had a different place of use and point of diversion from the original water right 65-4213 decreed in the Payette Adjudication.

(9) I knew that Mickey and Daryl Hart met with Jo Beeman and Norm Young in Boise in early March to provide information to help file a water right for the pond, using part of the Bowkers' 65-4214, and that the Harts also discussed the pump which I use for irrigation from Turner Pond.

(10) After the Harts' trip to Boise, I learned that Faustino Ramos had a water right claim just below Turner Pond that had been moved from upstream of the pond. Apparently, there was no limit on the claim to prevent it from taking water from the pond even when there was no water upstream of the pond.

(11) Later, in the middle of March, I learned from Mickey Hart that the Bowker family had put a "hold" on the water rights work because their property had a pending sale, but then the sale fell through. Then, I heard that Dorothy Bowker died in early April and that her son Bob Bowker didn't know if he could sign any of the documents which were nearly completed for a water right for the pond. I talked with the Harts on April 5 and April 6 and agreed to join them in protesting Mr. Ramos's claim 65-4213A and in claiming portions of the Bowker right 65-4214 and right 65-4213 for the pond, as well as a portion of 65-4213 for my pump from Turner Pond. I talked with Jo Beeman on April 7 about the objections and the claims.

(12) On April 8, Jo Beeman forwarded Bob Bowker's reply that he did not oppose the Harts and me claiming 3 acres of 65-4214 for the surface area of the pond and four acres of 65-4213 for the area of the pond; that it was the "prudent course of action" since we were underlying land owners with the Bowkers. I also learned that Mr. Ramos was the prospective buyer of the Bowker property. The Harts and I received draft claims 65-4214A and 65-4213B for the pond on April 8, as well as draft claim 65-4213C for my pump. I signed and notarized these documents on Friday, April 9.

(13) I pay an assessment to Lake Irrigation District for supplemental water on my property.

(14) I have not previously filed claims for water rights in the SRBA.

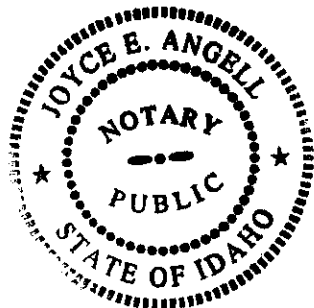
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 20 day of April 2004.

V. Witt

VERLA WITT

SUBSCRIBED AND SWORN before me on this 20 day of April 2004.



Joyce E. Angell
Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires: 7-29-08

CERTIFICATE OF SERVICE

The undersigned certifies that on the 23rd day of April 2004, a true and correct copy of the foregoing **AFFIDAVIT OF VERLA WITT** document was sent to the following entities by

U. S. Mail:

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

United States Department of Justice
Environment & Natural Resources Div
550 West Fort Street, MSC 033
Boise, ID 83724
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

James C. Heckathorn
RT 1 Box 46A
McCall, ID 83638
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Faustino Ramos
P.O. Box 1543
McCall, ID 83638
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Dorothy A. Bowker & John R. Bowker
821 S.W. 12th Street
Troutdale, OR 97060
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Dorothy A. and John S. Bowker
P. O. Box 68
McCall, ID 83638
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


JOSEPHINE P. BEEMAN

Z:\3035\6185A

WARRANTY DEED

For Value Received **Michael D. Bailey and Jenna R. Bailey, husband and wife**

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

Verla Witt, an unmarried woman

whose address is: 217 Potter Ln., McCall, ID 83638

Hereinafter called the Grantee, the following described premises situated in Valley County, Idaho, to-wit:

Lot 1 of BETZOLD SUBDIVISION according to the official plat thereof, on file and of record in the office of the Recorder, Valley County, Idaho, in Book 8 of Plats at page 50.

Instrument # 266461
VALLEY COUNTY, CASCADE, IDAHO
2002-11-01 03:10:47 No. of Pages: 1
Recorded for : FIRST AMERICAN TITLE
LELAND G. HEINRICH
Ex-Officio Recorder Deputy
Index to: DEEDS

STATE OF IDAHO, County of Valley) ss.
I hereby certify that the foregoing is a true
copy of the original on file and of record in
this office.

Dated: 4-13-04

Clerk, Auditor & Recorder *Lee Heened*
By *Lee Heened* Deputy

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: 11/1/02
Michael D. Bailey
Michael D. Bailey

Jenna R. Bailey
Jenna R. Bailey

STATE OF Idaho
)ss.
COUNTY OF Valley

On this 1st day of November, 2002, before me Christine D. Gustin, personally appeared Michael D. Bailey and Jenna R. Bailey, known or identified to me (or proved to me on the oath of), to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they executed the same.

Christine D. Gustin
Notary Public of Idaho
Residing at McCall, Idaho
Commission Expires: 10/27/06

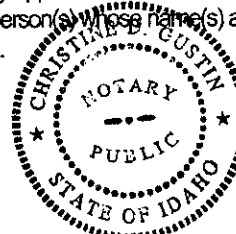


Exhibit A to
Affidavit of Verla Wit
(65-4213A, et al.)

WARRANTY DEED

For Value Received **Jeffrey J. Clark and Kimberly K. Clark, husband and wife**

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

Michael D. Bailey and Jenna R. Bailey, husband and wife

whose address is: P.O. Box 1902, McCall, ID 83638

Hereinafter called the Grantee, the following described premises situated in Valley County, Idaho, to-wit:

Lot 1 of Betzold Subdivision, according to the official plat thereof, on file and of record in the office of the Recorder, Valley County, Idaho, in Book 8 of Plats, at Page 50.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: 8/21/01

Jeffrey J. Clark
Kimberly K. Clark
 Jeffrey J. Clark
 Kimberly K. Clark

Instrument # 256500

VALLEY COUNTY, CASCADE, IDAHO
 2001-08-22 03:15:00 No. of Pages: 1
 Recorded for : FIRST AMERICAN TITLE
 LELAND G. HEINRICH Fee: 3.00
 Ex-Officio Recorder Deputy [Signature]
 Index to: DEEDS

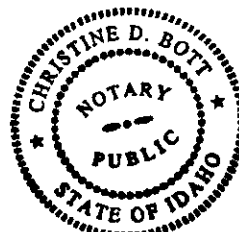
STATE OF Idaho

ss.

COUNTY OF Valley

On this 21st day of August, 2001, before me Christine D. Bott, personally appeared Jeffrey J. Clark and Kimberly K. Clark, known or identified to me (or proved to me on the oath of), to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they executed the same.

Christine D. Bott
 Notary Public of Idaho
 Residing at McCall, Idaho
 Commission Expires: 10/27/06



STATE OF IDAHO, County of Valley) ss.
 I hereby certify that the foregoing is a true
 copy of the original on file and of record in
 this office.

Dated: 4-13-04

Clerk, Auditor & Recorder Lee Hummel

By [Signature] Deputy

Exhibit B to
 Affidavit of Verla Witt
 (65-4213A, et al.)

1271

WARRANTY DEED

For Value Received John L. Ramos and Frances M. Ramos, husband and wife, as to an undivided 1/2 interest; and Faustino Ramos and Maurene Ramos, husband and wife, as to an undivided 1/2 interest

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto Jeffrey J. Clark and Kimberly K. Clark, husband and wife, whose address is P.O. Box 4069, McCall, ID 83638

Hereinafter called the Grantee, the following described premises situated in Valley County, Idaho, to-wit:

Lot 1 of Betzold Subdivision, according to the official plat thereof, on file and of record in the Office of the Recorder, Valley County, Idaho, in Book 8 of Plats, at Page 50.

Subject to current year's taxes, irrigation district assessments, public utility easements, subdivision restrictions and U.S. Patent reservations.

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, the Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: 8/19/97

John L. Ramos by Faustino Ramos
John L. Ramos by Faustino Ramos
his attorney-in-fact

Faustino Ramos
Faustino Ramos

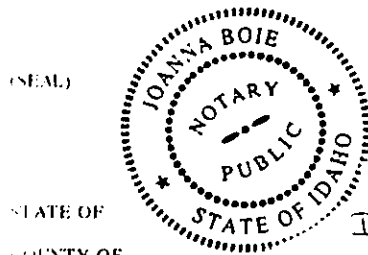
Frances M. Ramos by Faustino Ramos
Frances M. Ramos by Faustino Ramos
her attorney-in-fact

Maurene Ramos
Maurene Ramos

STATE OF Idaho

COUNTY OF Valley

On this 19th day of August, 1997 before me, Joanna Boie personally appeared Faustino Ramos and Maurene Ramos known or identified to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they executed the same.

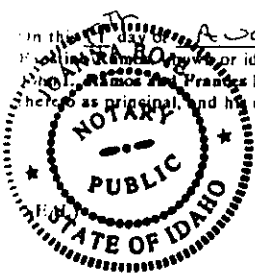


Joanna Boie
Notary Public State of Idaho
Residing at: McCall
Comm. Expires: 03-25-2000

STATE OF

COUNTY OF

On this 19th day of August, 1997 before me, Joanna Boie personally appeared Faustino Ramos and Frances M. Ramos known or identified to me to be the person whose name is subscribed to the within instrument as attorney-in-fact of John L. Ramos and Frances M. Ramos and acknowledged to me that he subscribed the name(s) of John L. Ramos and Frances M. Ramos here to as principal, and his own name as attorney in fact.



Joanna Boie
Notary Public State of Idaho
Residing at: McCall
Comm. Expires: 03-25-2000

Exhibit C to
Affidavit of Verla Witt
(65-4213A, et al.)

