

Holliday, Michael

From: Bromley, Chris
Sent: Friday, July 09, 2004 4:07 PM
To: Holliday, Michael
Subject: RE: Posted Notice Recording Date

OK, I think you could go with the notary date, February 28, 1886, and recommend it as a posted notice right assuming the purpose hasn't changed.

Chris

-----Original Message-----

From: Holliday, Michael
Sent: Friday, July 09, 2004 3:43 PM
To: Bromley, Chris
Subject: RE: Posted Notice Recording Date

hi chris. according to the bingham county clerk's office, the notice was recorded on march 5, 1886 at 11 a.m.

-----Original Message-----

From: Bromley, Chris
Sent: Friday, July 09, 2004 3:12 PM
To: Holliday, Michael
Subject: Posted Notice Recording Date

Michael, in thinking about this again I realized that you didn't tell me when the posted notice was recorded. The date that it was recorded is very important in determining whether it's a valid posted notice right.

The right at issue was posted either January 28, 1886 (date on top right corner of document) or February 28, 1886 (date document was notarized stating it was posted in a conspicuous place). In order for an 1886 posted notice right to be valid, it must have been recorded within 15 days of posting at the recorder's office.

Therefore, if the notice was posted on February 28, 1886, the notice must have been recorded before March 14/15 1886 (not sure whether February 1886 was a leap year), to be valid. If the posted notice was not recorded within 15 days of posting, the posted notice claim cannot be recognized and the claim should proceed as a claim for beneficial use.

I'd be interested to know the date the notice was recorded.

Thanks,

Chris

-----Original Message-----

From: Bromley, Chris
Sent: Friday, July 09, 2004 2:15 PM
To: Holliday, Michael
Subject: RE: Priority for 25-4034A

One more thing I would recommend on this is to make sure that the posted notice purpose, "domestic and agricultural," is the same as the claimed purpose.

According to the Claims Investigation Manual, "If the claimed purpose of use is the same as the purpose of use shown on a . . . posted notice . . . then no further review of this item is generally required. If the agent's review reveals that the claimed purpose of use is inaccurate, the agent may wish to contact the claimant to verify the purpose of use information."

If the purpose is no longer consistent with the posted notice, you should treat the claim as one for beneficial use.

Chris

-----Original Message-----

From: Bromley, Chris
Sent: Wednesday, July 07, 2004 10:46 AM
To: Holliday, Michael
Subject: RE: Priority for 25-4034A

If you have a record that it was actually recorded, then I would say that it meets the requirements of the posted notice statute and can be recommended as a posted notice right.

Chris

-----Original Message-----

From: Holliday, Michael
Sent: Thursday, July 01, 2004 4:47 PM
To: Bromley, Chris
Subject: RE: Priority for 25-4034A

hi chris. you said that the notice was not recorded with the county recorder. according to a warranty deed found in the file, the notice of water location is "shown upon the Records of Bingham County, Idaho in Record of Water Location, page 195 thereof."

based on the .pdf files that were sent, do we have enough evidence to recommend a priority date, or do i need to solicit additional evidence? obviously, obtaining affidavits from individuals with personal knowledge back to the 19th century is out of the question. thanks for your help. michael

-----Original Message-----

From: Bromley, Chris
Sent: Wednesday, June 23, 2004 4:15 PM
To: Holliday, Michael
Subject: FW: Priority for 25-4034A

-----Original Message-----

From: Bromley, Chris
Sent: Wednesday, June 23, 2004 11:47 AM
To: Carlsen, Ernie
Cc: McHugh, Candice; Music, Vicky
Subject: RE: Priority for 25-4034A

While the posted notice seems to meet most of the statutory requirements, it does not appear that the notice was ever recorded with the county recorder of the county in which the land was located at the time the notice was posted. (Contrast this document with the Dewey posted notice that Michael sent me, which was signed by the county recorder, acknowledging that it was duly recorded. Also, the heading of that document is "Water Location Record."). Therefore, the notice does not comply with the statutory requirements and should be considered a claim for beneficial use.

According to the Claim's Manual, "A posted notice is evidence of the intent to appropriate water, but it is not evidence of application of water to beneficial use nor due diligence in completing the appropriation. Some evidence of completion of the appropriation within a reasonable time after the date of posting will therefore be required before a claim may be recommended. Completion within 5 years will be deemed reasonable; the reasonableness of longer periods will depend on the circumstances."

While that statement applies to posted notice claims, it would appear that the posted notice document should not be treated as de facto proof of beneficial use. You will need to conduct further research into the right to ensure that the diversion structures were completed and the extent of the appropriation. However, the posted notice document can be used as a part of your analysis in determining the priority date, just not the entire basis.

As for priority of the beneficial use claim, the posted notice document alleges that the claimant

"ha[s] this day claimed and appropriated and do hereby claim and appropriate five hundred inches of water" Based on the tense, it could be argued that an appropriation was made and the water put to a beneficial use the date the document was signed, January 28, 1886.

The other document you gave me, the Patent, does not specifically state whether there were diversion structures or ditches on the property. Instead, the second paragraph in "Description and Remarks" appears to use general boilerplate statements that the property is "[s]ubject to any vested and accrued water rights" Therefore, it does not appear that the Patent could be used as evidence of priority.

Based on the documents you've given to me, I would say that the best evidence you have of a priority date is the posted notice, which states that water was put to use sometime in the late 19th century. It appears that a site analysis may be needed to determine the age of the diversion structures, as well as having the claimants obtain affidavits from individuals in the area with personal knowledge of when the water was put to use.

Let me know if that answered your question or if you need further comment.

Thanks,

Chris

-----Original Message-----

From: Carlsen, Ernie
Sent: Tuesday, June 01, 2004 11:57 AM
To: McHugh, Candice
Cc: Holliday, Michael
Subject: Priority for 25-4034A

Candice the attached PDF file contains three documents from claim 25-4034A. One of the documents is a copy of a posted notice that appears to comply with all the requirements of a posted notice as outlined in the claims review manual, and which was posted by James Sibbetts on 28 February 1886. The other document indicates James Sibbetts acquired patent to the property on 30 August 1904. The third page is simply a map of the property in question, included under SRBA claims 25-4034A and 25-4034B. There are no other documents that indicate when beneficial use first occurred. The question we have is whether or not the 18 years between the posting of the posted notice and the patent date is greater than what we could consider to be due diligence in development of the irrigation system? What priority date should we recommend?

<< File: 0001 (2).PDF >>

Ernie

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Section 42-225a, Idaho Code

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

Notice is hereby given that Raymond H. Ostler,
(name of claimant)
of Wayan, Idaho 83285, claims a right to the diversion and beneficial use of
(mailing address)
the public water of the State of Idaho

The extent and nature of said claim is as follows:

- (1) Describe source of water: (name of stream, lake, spring, etc., or ground water) Eagle Creek (South Fork Of)
_____, tributary to _____ Grays Lake

- (2) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Amount	5.00	Use	Irrigation	Period of Use:	From	June 1	To	Nov. 1
Amount	0.05	Use	Stockwater	Period of Use:	From	May 1	To	Nov. 1
Amount		Use		Period of Use:	From		To	
	(cfs, gpm or a/f)		(dom., irri., stock, etc.)					(both dates inclusive)

- (3) Total quantity of water claimed: 5.05 cubic feet per second, or _____ acre feet per annum, and/or _____ gallons per minute.

- (4) Priority claimed: (the date water was first applied to beneficial use) May 1, 1886

A claim is not acceptable on a ground-water source with a priority later than March 25, 1963 or on a surface-water source with a priority later than May 20, 1971. An exception to this rule is that a claim may be filed on domestic use from a ground-water source.

- (5) A) Point of diversion: (give location of point where water is diverted from its source)

SE ¼ SE ¼, Sec. 14 Twp. 4S Rge. 43E B.M. County of Bonneville

Additional points of diversion:

- B) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. dam across creek into a ditch to the
place of use, 4' wide x 2' deep

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

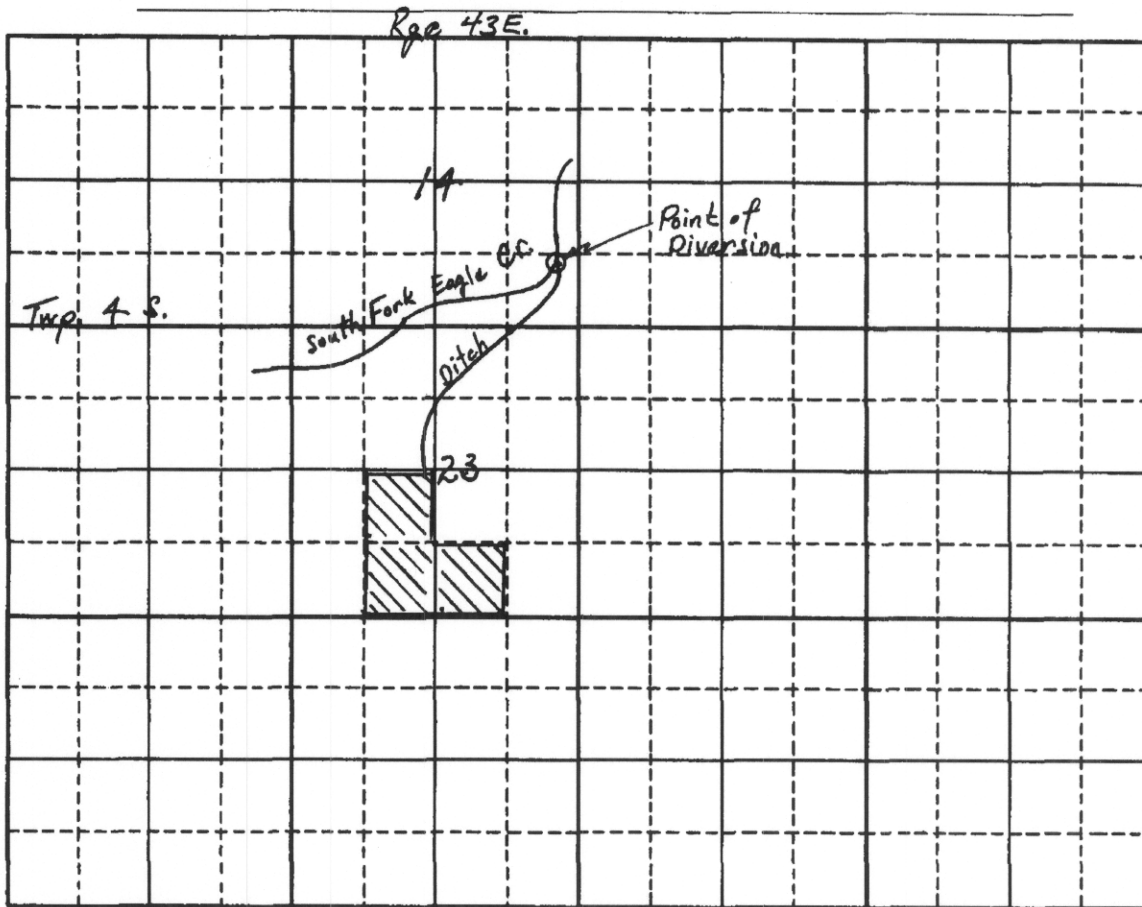
[illegible]

Total No. of acres 120

- B) If the water is used for other than irrigation, fully describe that use, being as specific as possible: stockwater for 200 head beef cattle

- (7) If you are claiming water as a member of an organization, list name of organization: _____

(8) Remarks _____



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
) ss.
County of Carbon)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

Sworn to before me this 23rd day of May, 1978.

Raymond H. Cutler
(Claimant)

John L. Rhodes
Notary Public

Residing at Soda Springs, ID

My commission expires 5-13-81

For Department Use Only			
5-25-78			
Received by <u>BR</u>	Date <u>4-7-78</u>	Exception filed by:	Forwarded to
Prelim. check by <u>LHJ</u>	Date <u>4-10-78</u>		claimant by:
\$10.00 fee received by <u>BR</u>	Date <u>4-7-78</u> #9922		
Approved for publication by <u>cw</u>	<u>5-09-78</u>		
Published in <u>Post Register</u>			
Dates <u>April 20 & 27, 1978</u>			

No. 13,153

ABSTRACT OF TITLE

to

The following described Real Estate:

The East Half of the Southwest Quarter ($E\frac{1}{2} SW\frac{1}{4}$); Southwest Quarter of the Southeast Quarter ($SW\frac{1}{4} SE\frac{1}{4}$); of Section Twenty-three (23); the Northeast Quarter of the Northwest Quarter ($NE\frac{1}{4} NW\frac{1}{4}$) of Section Twenty-six (26); Township Four (4) South, Range Forty-three (43) East, Boise Meridian.

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MAY 26 2004

Department of Water Resources
Eastern Region

IDAHO TITLE AND TRUST COMPANY
IDAHO FALLS, IDAHO

IDAHO TITLE AND TRUST COMPANY

THE UNITED STATES OF AMERICA
By the President: T. Roosevelt
F. V. McKean, Secretary.
C. H. Brush, Recorder of the General
Land Office.

(SEAL)

Grantors

TO

JAMES SIBBETT,

Grantees

Instrument— U. S. PATENT.

Date— August 30, 1904.

Recorded— July 27, 1934 at 9:12 A.M.

Book 33 of Deeds, at Page 471
Records of Bonneville County, Idaho

Transcribed from Book Page
Records of Bingham County, Idaho

Consideration— Full payment.

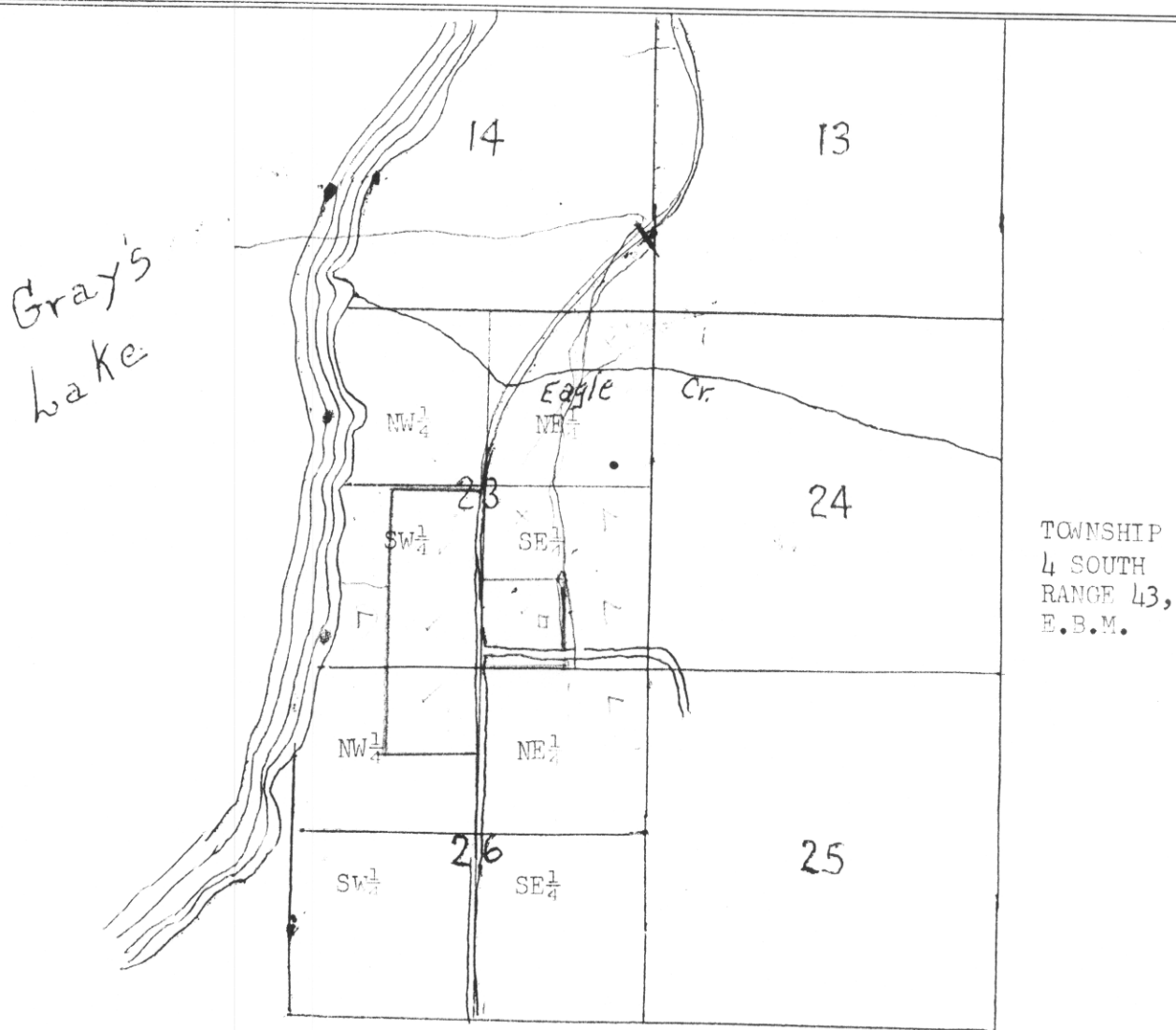
Date of Acknowledgment— None.
Name and Title of Officer—
Address of Officer—
Official Seal Attached?
Is Wife Separately Examined
Granting Words—
Covenants—
Conditions, Limitations and Recitals—

Description and Remarks

The E $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 23, and the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26, in Township 4 South of Range 43, East of Boise Meridian in Idaho, containing 160 acres according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor General:

Subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law. And there is reserved from the land hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

IDAHO TITLE & TRUST COMPANY



The E $\frac{1}{2}$ of the SW $\frac{1}{4}$; SW $\frac{1}{4}$ of the SE $\frac{1}{4}$; of Section 23; the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26; Township 4 South, Range 43, East, Boise Meridian.

IDAHO TITLE AND TRUST COMPANY

JAMES SIBBETT, SR., and wife ALMEDA
SIBBETT,

Grantors

TO

ALMEDA SIBBETT,

Grantees

Instrument— Warranty Deed.

Date— June 21, 1922.

Recorded— June 23, 1922 at 9:10 A.M.

Book 12 of Deeds, at Page 469
Records of Bonneville County, Idaho

Transcribed from Book Page
Records of Bingham County, Idaho

Consideration— \$1.00 o.v.c.

No. I.R.S. attached.

Date of Acknowledgment— June 21, 1922.
Name and Title of Officer— J. T. Torgesen, Notary Public for Caribou County, Idaho.
Address of Officer— Soda Springs, Idaho.
Official Seal Attached? Yes.
Is Wife Separately Examined
Granting Words— Grant, bargain, sell, convey and confirm.
Covenants— Warrant and defend.
Conditions, Limitations and Recitals—

Description and Remarks

The $E\frac{1}{2}$ of the $SW\frac{1}{4}$; the $SW\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 23, the
 $NE\frac{1}{4}$ of the $NW\frac{1}{4}$ of Section 26, Township 4 South, Range 43,
East Boise Meridian. Containing 160 acres.

IDAHO TITLE AND TRUST COMPANY

ALMEDA SIBBETT, a widow,

Grantors

TO

EARL SIBBETT,

Grantees

Instrument— Warranty Deed.

Date— June 16, 1936.

Recorded— June 19, 1936 at 3:20 P.M.

Book 37 of Deeds, at Page 375
Records of Bonneville County, Idaho

Transcribed from Book _____ Page _____
Records of Bingham County, Idaho

Consideration— \$1.00 o.v.c.

No. I.R.S. attached.

Date of Acknowledgment— June 16, 1936.

Name and Title of Officer— D. K. McLean, Notary Public for Caribou County, State of Idaho.

Address of Officer— Soda Springs, Idaho.

Official Seal Attached? Yes.

Is Wife Separately Examined

Granting Words— Grant, bargain, sell, convey and confirm.

Covenants— Warranty and defend.

Conditions, Limitations and Recitals—

Description and Remarks

The E $\frac{1}{2}$ of the SW $\frac{1}{4}$; SW $\frac{1}{4}$ of the SE $\frac{1}{4}$; of Section 23; the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26; Township 4 South, Range 43, East, Boise Meridian, and containing 160 acres.

IDAHO TITLE & TRUST COMPANY

TAX REPORT.

Taxes for 1958 and prior years are paid.

Taxes for 1959 are now a lien, but not yet due or payable.

SPECIAL ASSESSMENTS.

We do not certify as to Irrigation District Assessments or Special Assessments of any nature.

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IDAHO TITLE & TRUST COMPANY

TAX REPORT

Taxes for 1959 and prior years are paid.

Taxes for 1960 are a lien, but not yet due or payable.

IRRIGATION DISTRICT ASSESSMENTS

We do not certify as to irrigation district assessments or special assessments of any nature.

IDAHO TITLE AND TRUST COMPANY

Certificate of Abstracter

No. 13,153

STATE OF IDAHO }
County of Bonneville } ss.

Idaho Title and Trust Company, Abstracters of Titles in and for said County, does hereby certify that the foregoing abstract, consisting of -6- entries, numbered from -1- to -6- inclusive, sets forth a true and correct abstract of the records in the office of the County Recorder of Bonneville County, Idaho, which in any way affect the title to the property described in the caption of this abstract. to-wit: The E $\frac{1}{2}$ of the SW $\frac{1}{4}$; SW $\frac{1}{4}$ of the SE $\frac{1}{4}$; of Section 23; the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26; Township 4 South, Range 43, East, Boise Meridian.

We further certify that there are no judgments or other liens of record in the office of the Recorder or Clerk of the District Court of said County, which are a lien against the said lands described in caption of this abstract, except as herein shown. Further, that there are no taxes due and unpaid upon the lands described in the caption of this abstract at the date hereof, except:

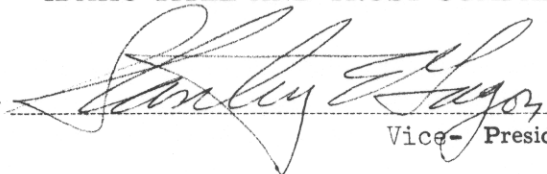
As shown herein.

~~Further, that there are no special assessments by the City of Idaho Falls, Idaho, against the property described in the caption of this Abstract, at the date hereof, appearing of record in the office of the County Treasurer of Bonneville County, Idaho, or in the office of the Clerk or Treasurer of the City of Idaho Falls, Idaho, except:~~

This certificate is made to EARL SIBBETT.
at the request of EARL SIBBETT.
Witness our hands this 14th day of SEPTEMBER, 195 9, at 8:00 o'clock A.M.

IDAHO TITLE AND TRUST COMPANY

By



Vice-President

IDAHO TITLE AND TRUST COMPANY

Certificate of Abstracter

No. 13,285.....

STATE OF IDAHO }
County of Bonneville } ss.

Idaho Title and Trust Company, Abstracters of Titles in and for said County, does hereby certify that the foregoing abstract, consisting of -1- entries, numbered from -7- to -7- inclusive, sets forth a true and correct abstract of the records in the office of the County Recorder of Bonneville County, Idaho, which in any way affect the title to the property described in the caption of this abstract. to-wit: The E $\frac{1}{2}$ of the SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 23; the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 26; Township 4 South, Range 43 East, Boise Meridian.

Since last certificate dated September 14, 1959, at 8:00 A.M.

We further certify that there are no judgments or other liens of record in the office of the Recorder or Clerk of the District Court of said County, which are a lien against the said lands described in caption of this abstract, except as herein shown. Further, that there are no taxes due and unpaid upon the lands described in the caption of this abstract at the date hereof, except:

As Shown Herein.

~~Further, that there are no special assessments by the City of Idaho Falls, Idaho, against the property described in the caption of this Abstract, at the date hereof, appearing of record in the office of the County Treasurer of Bonneville County, Idaho, or in the office of the Clerk or Treasurer of the City of Idaho Falls, Idaho, except:~~

This certificate is made to EARL SIBBETT
at the request of BETTILYON'S, INC.
Witness our hands this 10th day of October, 1960, at 8:00 o'clock A.M.

IDAHO TITLE AND TRUST COMPANY

By

Norma Ford
Secretary

President

THIS INDENTURE, Made this 16th. day of June
 in the year of our Lord one thousand nine hundred and thirty-six
 between Almeda Sibbett, a widow
 of Gray, County of Bonneville
 State of Idaho, the part Y of the first part, and
Earl Sibbett
 of Gray, County of Bonneville
 State of Idaho, the part Y of the second part:

WITNESSETH, That the said part Y of the first part, for and in consideration of the sum of
One Dollar and other valuable considerations ~~BOEARS~~
lawful money of the United States of America, to her in hand paid by the
 said part Y of the second part, the receipt whereof is hereby acknowledged, ha s granted, bargained and
 sold, and by these presents do es grant, bargain, sell, convey and confirm unto the said part Y of the second
 part, and to his heirs and assigns forever, all the following described real estate, situated
 in County of Bonneville
 State of Idaho, to-wit: The East Half of the Southwest quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$); South-
west quarter of the Southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$); of Section Twenty-three
(23); the Northeast quarter of the Northwest quarter (NE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section
Twenty-six (26); Township Four (4) South, Range Forty-three (43) East,
Boise Meridian, and containing 160 acres.

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, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the
 said part Y of the first part:

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with
 the appurtenances, unto the part Y of the second part, and to his heirs and assigns forever. And
 the said part Y of the first part, and her heirs, the said premises in the quiet and peaceable pos-
 session of the said part Y of the second part, his heirs and assigns, against the said part Y of
 the first part, and her heirs, and against all and every person and persons whomsoever, lawfully
 claiming or to claim the same, shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said part Y of the first part ha s hereunto set her hand
 and seal the day and year first above written.

Signed, Sealed and Delivered in the Presence of:

[Signature]

mrs Almeda sibbett [SEAL]

[SEAL]

[SEAL]

[SEAL]

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MAY 26 2004
Department of Water Resources
Eastern Region

SEARCHED	INDEXED
SERIALIZED	FILED
JUN 1 2004	
FBI - DENVER	

WARRANTY DEED

Almeda Sibbett

TO

Earl Sibbett

Dated June, 16th, 19 36

STATE OF IDAHO,
COUNTY OF Caribou } ss.

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

at 20 minutes past 3
o'clock P. M., this 19 day
of June, A.D. 1936,
in my office, and duly recorded in Book
37 of Deeds at page 375.

W. I. Brewrink
Ex-Officio Recorder.

By J. A. Slope, Deputy.
Fees, \$ 1.20

STAS-YORK CO. PRINTERS & BINDERS, NOISE 122904

Gray

STATE OF IDAHO,
COUNTY OF Caribou } ss.
On this 16th day of June, 19 36, before me,
D.K. McLean, a Notary Public for said State,
Almeda Sibbett personally appeared
known to me (or proved to me on the oath of
person whose name is subscribed to the within instrument,
and acknowledged to me that she 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.
Notary Public in and for the State of Idaho, residing at
Soda Springs, County therein.

AGREEMENT

THIS AGREEMENT, Made and entered into the **First** day of **April** in the year of our Lord one thousand nine hundred and **sixty** (1960) between **Earl Sibbett and Elaine Sibbett, husband and wife** of **Soda Springs**, County of **Caribou**, State of **Idaho** part ~~ies~~ of the first part, and **HERMAN WAKEMAN and VERDA WAKEMAN, husband and wife** of **Soda Springs**, County of **Caribou**, State of **Idaho** the part ~~ies~~ of the second part.

WITNESSETH, That the said part ~~ies~~ of the first part, in consideration of the covenants and agreements on the part of the said part ~~ies~~ of the second part, hereinafter contained, agree to sell and convey unto the said part ~~ies~~ of the second part, and the second part ~~ies~~ agree to buy all that certain lot, piece or parcel of land, situate, lying and being in **Bonneville** County of the ~~State~~ State of Idaho, and bounded and particularly described as follows, to-wit:

The East Half of the Southwest Quarter (~~E $\frac{1}{2}$~~ -SW $\frac{1}{4}$); Southwest Quarter of the Southeast Quarter (SW $\frac{1}{4}$ -SE $\frac{1}{4}$) of Section Twenty-three (23); the Northeast Quarter of the Northwest Quarter (NE $\frac{1}{4}$ -NW $\frac{1}{4}$) of Section Twenty-six (26); Township Four (4) South, Range Forty-three (43) East of the Boise Meridian, in Bonneville County, State of Idaho:

Together with all water and ditch rights of every nature and kind, including culinary water, however evidenced, used on said lands and premises, or in connection therewith, INCLUDING, but not limited to, all water, ditch and canal rights used under that certain Notice of Water Location, dated January 28th, 1886 upon the waters of Eagle Creek as shown upon the Records of Bingham County, Idaho in Record of Water Locations, page 195 thereof; and ALSO all water and transmission system used under Permit No. 11963, as approved by the State Engineer of the State of Idaho and recorded in Boise, Idaho in Book 41, Page 11963 and approved by said State Engineer under date of February 26, 1916.

RECEIVED

MAY 26 2004

Department of Water Resources
Eastern Region