

COPY

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RECEIVED
SEP 06 2007
 DEPARTMENT OF
 WATER RESOURCES

Attorneys for the Estate of Clyde & Peggy Marchbanks

**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 No. 39576	)	
	)	Subcase No. 63-8413
IN THE MATTER OF MOTION TO FILE A	)	
LATE NOTICE OF CLAIM OF THE CLYDE L.	)	AFFIDAVIT OF ALAN K.
& PEGGY G. MARCHBANKS FAMILY	)	MARCHBANKS IN SUPPORT OF
TRUST	)	MOTION TO FILE A LATE
	)	NOTICE OF CLAIM
	)	

STATE OF IDAHO)
)ss
 County of Ada)

ALAN K. MARCHBANKS being first duly sworn on oath, deposes and says:

1. I am the executor of the Estate of Clyde & Peggy Marchbanks and the Trustee of the Clyde L. & Peggy G. Marchbanks Family Trust. I am over the age of 18 and state the following based upon my own personal knowledge.

2. I am the son of Clyde L. and Peggy G. Marchbanks. Clyde Marchbanks passed away on June 16, 2005. Peggy Marchbanks passed away on May 25, 2006. Attached hereto as Exhibit A, are true and correct copies of my parents' death certificates.

3. Upon their deaths, I was appointed the executor of their estates. Attached hereto as Exhibit B, are true and correct copies of Letter Testamentary, dated August 30, 2005, for my father's estate, and June 22, 2006, for my mother's estate.

4. Prior to their deaths, my parents owned license number 63-8413, and its appurtenant land. Prior to being appointed as the executor of the Estate, I had no dealings or responsibilities associated with license number 63-8413, or its appurtenant land. I do not know why license number 63-8413 was not previously claimed.

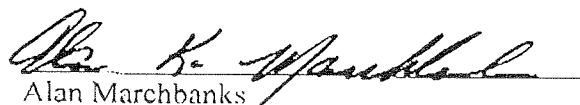
5. As executor and trustee, I am attempting to sell the property appurtenant to license number 63-8413, along with license number 63-8413. In the process of selling the property, I discovered that my parents failed to file a claim on license number 63-8413. As I was not involved in the management of the property and water prior to the death of my parents, I was not able to discover this discrepancy until after their deaths.

6. Upon discovering this discrepancy, I immediately sought out counsel to file this *Motion*.

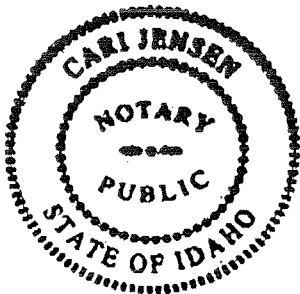
7. The water represented by license number 63-8413 has been continuously diverted since at least 1984. I currently rent the property to a third party who has farmed the property since before the death of my parents.

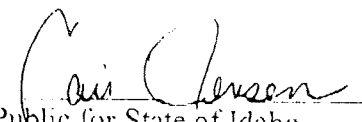
Further you affiant sayeth nought.

DATED this 4 day of September 2007


Alan Marchbanks

SUBSCRIBED AND SWORN to before me this 4th day of September, 2007.




Notary Public for State of Idaho
Residing at Rupert, Idaho.
Commission Expires: 8-28-12

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of Sept., 2007, I served a true and correct copy of the foregoing AFFIDAVIT OF ALAN K. MARCHBANKS IN SUPPORT OF MOTION TO FILE A LATE NOTICE OF CLAIM on the person(s) listed below, in the manner indicated

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
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United States Department of Justice
Environmental & Nat'l Resources Div.
550 W. Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
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☐ Email

Chief, Natural Resources Division
Office of Attorney General
P.O. Box 44449
Boise, ID 83711-4449

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

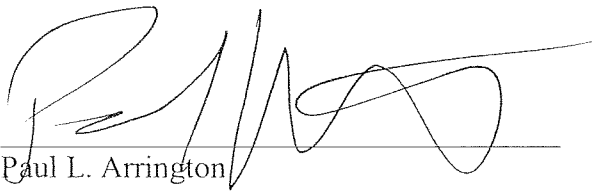

Paul L. Arrington

Exhibit A

CERTIFICATION OF VITAL RECORD

STATE OF IDAHO IDAHO DEPARTMENT OF HEALTH AND WELFARE BUREAU OF HEALTH POLICY AND VITAL STATISTICS

DATE FILED BY STATE REGISTRAR:

CERTIFICATE OF DEATH

STATE FILE NO.

Local Reg. No. **3-483**

DECEDENT	* 1. DECEDENT'S LEGAL NAME (Include AKA's if any) (First, Middle, Last, Suffix) Clyde Leroy Marchbanks		2. SEX Male	3. SOCIAL SECURITY NUMBER 555-55-5555
	4a. AGE-Last Birthday 81 (Years)	4b. UNDER 1 YEAR Months Days Hours Minutes	4c. UNDER 1 DAY Hours Minutes	5. DATE OF BIRTH (Mo/Day/Yr) Feb. 9, 1924
MORTICIAN: Complete/Verify and File Within 5 Days of Death	7a. RESIDENCE - STATE OR FOREIGN COUNTRY Idaho		7b. COUNTY Canyon	
	7c. CITY OR TOWN Caldwell		7d. APT. NO.	7e. ZIP CODE 83607
PARENTS	8. MARITAL STATUS AT TIME OF DEATH ☒ Married ☐ Married, but separated ☐ Widowed ☐ Divorced ☐ Never married ☐ Unknown		9. SURVIVING SPOUSE'S NAME (If wife, give maiden name) Peggy Lewis	
	10. EVER IN U.S. FORCES? ☒ Yes ☐ No		11a. BIRTHPLACE (State, Territory, or Foreign Country) Texas	
INFORMANT	11b. BIRTHPLACE (State, Territory, or Foreign Country) Colorado		12a. MOTHER'S MAIDEN NAME (First, Middle, Last, Suffix) Susan Esser	
	12b. MOTHER'S MAIDEN NAME (First, Middle, Last, Suffix) Susan Esser		13a. INFORMANT'S NAME (Type or print) Peggy Marchbanks	
DISPOSITION	13b. RELATIONSHIP TO DECEDENT Wife		13c. MAILING ADDRESS (Street and Number, City, State, Zip Code) 25254 Wagner Rd., Caldwell, ID 83607	
	14. METHOD OF DISPOSITION ☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from Idaho ☐ Other (Specify) Lower Boise Cemetery, Payson, Idaho		15. PLACE OF DISPOSITION (Name and address of cemetery, crematory, other place) Lower Boise Cemetery, Payson, Idaho	
PLACE OF DEATH	16. SIGNATURE OF FUNERAL SERVICE LICENSEE OR PERSON ACTING AS SUCH <i>[Signature]</i>		17b. LICENSE NUMBER (Of licensee) M-587	
	17a. SIGNATURE OF FUNERAL SERVICE LICENSEE OR PERSON ACTING AS SUCH <i>[Signature]</i>		18. WAS CORONER CONTACTED? ☒ Yes ☐ No	
DATE OF DEATH	19a. IF DEATH OCCURRED IN A HOSPITAL: ☒ Inpatient ☐ ER/Outpatient ☐ D.O.A. ☐ Hospice facility ☐ Nursing home/Long term care facility ☐ Other (Specify)		19b. IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☒ Decedent's home ☐ Other (Specify)	
	20. FACILITY NAME (If not facility, give street and number) At home - 25254 Wagner RD		21. CITY, TOWN, OR LOCATION OF DEATH, AND ZIP CODE Caldwell	
CAUSE OF DEATH	22. COUNTY OF DEATH Canyon		23. DATE OF DEATH (Mo/Day/Yr) (Spell month) June 16, 2005	
	24. TIME OF DEATH (24hr) 2130		25. DATE PRONOUNCED DEAD (Mo/Day/Yr) (Spell month) June 17, 2005	
CERTIFIER: Complete Within 72 Hours of Death	26. TIME PRONOUNCED DEAD (24hr) 0755		27. CAUSE OF DEATH PART I. Enter the chain of events - diseases, injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventilator fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line: IMMEDIATE CAUSE (Final disease or condition resulting in death) a. Congestive Heart Failure Sequitely list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (Last disease or injury that initiated the events resulting in death) b. Hypertension c. d. PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in Part I: 28. DID TOBACCO USE CONTRIBUTE TO DEATH? ☒ Yes ☐ Probably ☐ No ☐ Unknown 29. IF FEMALE (Aged 10-54): ☐ Not pregnant within past year ☐ Not pregnant, but pregnant 43 days to 1 year before death ☐ Not pregnant, but pregnant within 42 days of death ☐ Unknown if pregnant within the past year 30. DATE OF INJURY (Mo/Day/Yr) (Spell month) 31. TIME OF INJURY (24hr) 32. PLACE OF INJURY (Decedent's home, farm, street, construction site, nursing home, restaurant, forest, etc.) 33. HURRY AT WORK? ☐ Yes ☐ No 34. LOCATION OF INJURY: State _____ City/Town or County _____ Zip Code _____ Street and Number or Location _____ Apartment Number _____ 35. DESCRIBE HOW INJURY OCCURRED. IF TRANSPORTATION INJURY, STATE THE TYPE(S) OF VEHICLE(S) INVOLVED (Automobile, pickup, motorcycle, ATV, bicycle, etc.) SPECIFY WHICH VEHICLE DECEDENT OCCUPIED, if applicable 36. TRANSPORTATION INJURY ONLY ☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify) 37. WHAT SAFETY DEVICE(S) DID DECEDENT USE/EMPLOY? ☐ Seat belt ☐ Child safety seat ☐ Helmet ☐ Air bag ☐ None ☐ Unknown 38a. CERTIFIER - To the best of my knowledge, death occurred at the time, date, and place, and due to the natural cause(s)/manner stated. 38b. CORONER - On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated. Signature and Title of Certifier: W. J. Davis - M.D. 39a. NAME, ADDRESS, AND ZIP CODE OF CERTIFIER (Type or print) 39b. CORONER'S SIGNATURE IF NECESSARY: The coroner's signature in this item supercedes that of the physician, and the coroner becomes the certifier of record. I have reviewed and if necessary attended the medical section: 40a. REGISTRAR'S SIGNATURE <i>[Signature]</i>	
	39c. DATE SIGNED 06/20/2005		40b. DATE SIGNED 06/20/2005	

This is a true and correct reproduction of the document officially registered and placed on file with the IDAHO BUREAU OF HEALTH POLICY AND VITAL STATISTICS.

DATE ISSUED:

JUN 20 2005

This copy not valid unless prepared on engraved border displaying state seal and signature of the Registrar

JANE S. SMITH
STATE REGISTRAR



STATE OF IDAHO

CERTIFICATION OF VITAL RECORD

STATE OF IDAHO

IDAHO DEPARTMENT OF HEALTH AND WELFARE
BUREAU OF HEALTH POLICY AND VITAL STATISTICS

DATE FILED BY STATE REGISTRAR:

State of Idaho CERTIFICATE OF DEATH

STATE FILE NO.

Local Reg. No. 3-463

ONLY A COPY OF THIS DOCUMENT, CERTIFIED BY THE STATE REGISTRAR WITH THE DEPARTMENT OF HEALTH AND WELFARE RAISED SEAL, SHALL BE USED AS PROOF OF DEATH UNDER §29-241(1) AND §39-274, IDAHO CODE

DECEDENT TYPE OR PRINT IN PERMANENT BLACK INK DO NOT USE FELT TIP PEN FOR INSTRUCTIONS SEE HANDBOOKS	*1. DECEDENT'S LEGAL NAME (Include AKA's if any) (First, Middle, Last, Suffix) Peggy Gail Marchbanks		2. SEX Female	3. SOCIAL SECURITY NUMBER [REDACTED]
	4a. AGE-Last Birthday 83 (Years)		5. DATE OF BIRTH (Mo/Day/Yr) March 16, 1923	
	6. BIRTHPLACE (City and State, Territory, or Foreign Country) Notus, Idaho			
	7a. RESIDENCE - STATE OR FOREIGN COUNTRY Idaho		7b. COUNTY Canyon	
MORTICIAN: Complete/Verify and File Within 5 Days of Death	7c. CITY OR TOWN Caldwell		7d. STREET AND NUMBER 25254 Wagner Road	
	7e. APT. NO. [REDACTED]		7f. ZIP CODE 83607-	
	7g. INSIDE CITY LIMITS? ☐ Yes ☒ No			
	8. MARITAL STATUS AT TIME OF DEATH ☐ Married ☐ Married, but separated ☒ Widowed ☐ Divorced ☐ Never married ☐ Unknown			
PARENTS ARMED FORCES?	10. EVER IN U.S. ARMED FORCES? ☐ Yes ☒ No		9. SURVIVING SPOUSE'S NAME (If wife, give maiden name) [REDACTED]	
	11a. FATHER'S NAME (First, Middle, Last, Suffix) Gail B. Lewis		11b. BIRTHPLACE (State, Territory, or Foreign Country) Utah	
	12a. MOTHER'S MAIDEN NAME (First, Middle, Last, Suffix) Elva Hodgson		12b. BIRTHPLACE (State, Territory, or Foreign Country) Idaho	
	13a. INFORMANT'S NAME (Type or print) Alan Marchbanks		13b. RELATIONSHIP TO DECEDENT Son	
INFORMANT DISPOSITION	13c. MAILING ADDRESS (Street and Number, City, State, Zip Code) 2788 E Green Canton DR Meridian, ID 83642-			
	*14. METHOD OF DISPOSITION ☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from Idaho ☐ Other (Specify)		15. PLACE OF DISPOSITION (Name and address of cemetery, crematory, other place) Lower Boise Cemetery Parma, ID	
	*16. NAME AND COMPLETE ADDRESS OF FUNERAL FACILITY Flahiff Funeral Chapel 624 Cleveland Blvd. Caldwell, ID 83605-			
	*17a. SIGNATURE OF FUNERAL SERVICE LICENSEE OR PERSON ACTING AS SUCH [Signature]		*17b. LICENSE NUMBER (Of licensee) M-587	
PLACE OF DEATH DATE OF DEATH CAUSE OF DEATH	18. WAS CORONER CONTACTED? ☐ Yes ☒ No			
	PLACE OF DEATH (19-22) *19a. IF DEATH OCCURRED IN A HOSPITAL: ☐ Inpatient ☐ ER/Outpatient ☐ DGA ☐ Hospice facility ☐ Nursing home/Long term care facility ☒ Decedent's home ☐ Other (Specify) *20. FACILITY NAME (If not facility, give street and number) 25254 Wagner Road *21. CITY, TOWN, OR LOCATION OF DEATH, AND ZIP CODE Caldwell, 83607- *22. COUNTY OF DEATH Canyon			
	*23. DATE OF DEATH (Mo/Day/Yr) (Spell month) May 25, 2006			
	24. TIME OF DEATH 03:50 (24 hr)			
ITEMS 32-38 TO BE USED FOR EXTERNAL CAUSES ONLY (CORONER) CERTIFIER	25. DATE PRONOUNCED DEAD (Mo/Day/Yr) (Spell month) May 25, 2006			
	26. TIME PRONOUNCED DEAD 03:50 (24 hr)			
	27. CAUSE OF DEATH PART I. Enter the chain of events—diseases, injuries, or complications—that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventricular fibrillation without showing the etiology. DO NOT ABBREVIATE. Enter only one cause on a line. IMMEDIATE CAUSE (Final disease or condition resulting in death) → a. <u>CEREBROVASCULAR INFARCTION</u> DUE TO (or as a consequence of): b. _____ c. _____ d. _____ SEQUENTIALLY list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (Last disease or injury that initiated the events resulting in death) PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in Part I			
	28a. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No			
REGISTRAR	28b. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☒ No			
	29. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☐ Probably ☒ No ☐ Unknown			
	30. IF FEMALE (Aged 10-54): ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant 43 days to 1 year before death ☐ Unknown if pregnant within the past year			
	31. MANNER OF DEATH ☒ Natural ☐ Homicide ☐ Accident ☐ Pending investigation ☐ Suicide ☐ Could not be determined			
32. DATE OF INJURY (Mo/Day/Yr) (Spell month) [REDACTED]				
33. TIME OF INJURY [REDACTED] (24 hr)				
34. PLACE OF INJURY (Decedent's home, farm, street, construction site, restaurant, forest, etc.) [REDACTED]				
35. INJURY AT WORK? ☐ Yes ☒ No				
36. LOCATION OF INJURY: State _____ City/Town or County _____ Zip Code _____ Street and Number or Location _____ Apartment Number _____				
37. DESCRIBE HOW INJURY OCCURRED. IF TRANSPORTATION INJURY, STATE THE TYPE(S) OF VEHICLE(S) INVOLVED (Automobile, pickup, motorcycle, ATV, bicycle, etc.) SPECIFY WHICH VEHICLE DECEDENT OCCUPIED, if applicable [REDACTED]				
38a. WAS DECEDENT: ☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify) _____				
38b. WHAT SAFETY DEVICE(S) DID DECEDENT USE/EMPLOY? ☐ Seat belt ☐ Child safety seat ☐ Helmet ☐ Air bag ☐ None ☐ Unknown				
39a. CERTIFIER (Check only one, based on official capacity for this certificate) ☒ PHYSICIAN - To the best of my knowledge, death occurred at the time, date, and place, and due to the <u>natural</u> cause(s)/manner stated. ☐ CORONER - On the basis of examination and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated.				
39b. LICENSE NUMBER M 8627				
39c. DATE SIGNED MM DD YYYY 05/26/2006				
40a. CORONER'S SUBSEQUENT SIGNATURE IF NECESSARY: The coroner's signature in this item supersedes that of the physician, and the coroner becomes the certifier of record. I have reviewed and if necessary amended the medical section →				
40b. DATE SIGNED MM DD YYYY 06/02/2006				
41a. REGISTRAR'S SIGNATURE Sharon L. Loherty, Assistant Registrar				
41b. DATE SIGNED MM DD YYYY 06/02/2006				

This is a true and correct reproduction of the document officially registered and placed on file with the IDAHO BUREAU OF HEALTH POLICY AND VITAL STATISTICS.

DATE ISSUED: JUN 02 2006

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JANE S. SMITH
STATE REGISTRAR

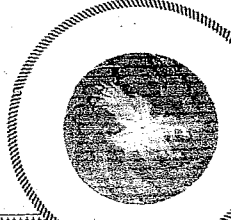


Exhibit B

FILED
7:45 A.M.
JUN 23 2006

CANYON COUNTY CLERK
C ROBINSON, DEPUTY

David P. McAnaney, ISB No. 4049
R. Greg Ferney, ISB No. 5706
McAnaney & Associates, PLLC
1101 W. River Street, Suite 100
Boise, Idaho 83702
Telephone: (208) 344-7500
Facsimile: (208) 344-7501

Attorneys for Applicant Alan K. Marchbanks

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

IN THE MATTER OF THE ESTATE OF,
PEGGY G. MARCHBANKS,
Deceased.

Case No.

CV06-6797

LETTERS TESTAMENTARY

Alan K. Marchbanks is hereby appointed personal representative of the Estate of Peggy G. Marchbanks, deceased, with all authority pertaining thereto. Administration of the estate is unsupervised.

These Letters are issued to evidence the appointment, qualification, and authority of the personal representative.

WITNESS: ROBERT M. TAISEY, Magistrate Judge of the Third District Court, County of Canyon, State of Idaho, with the seal of the Court affixed this 22 day of June, 2006.

State of Idaho }
County of Canyon } ss.

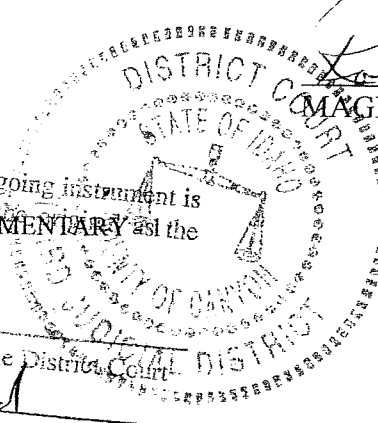
I hereby certify that the foregoing instrument is a true and correct copy of the same as it appears in the office.
LETTERS TESTAMENTARY

DATED

8-4-06

G. NOEL HALES, Clerk of the District Court

By T. Crump



MAGISTRATE JUDGE

Philip A. Peterson, ISB #2461
WHITE PETERSON
5700 East Franklin Road, Suite 200
Post Office Box 247
Nampa, Idaho 83653-0247
Telephone: (208) 466-9272/724-6649
Facsimile: (208) 466-4405
E-mail: pap@whitepeterson.com

Attorneys for Applicant

F I L E D
A.M. 2:30 P.M.

SEP 01 2005

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

Magistrate Division

In the Matter of the Estate of)

CLYDE LEROY MARCHBANKS,)

Deceased.)

Case No. CV05-8058

LETTERS TESTAMENTARY

(Idaho Code §§ 15-3-602 and 15-3-702)

 **COPY**

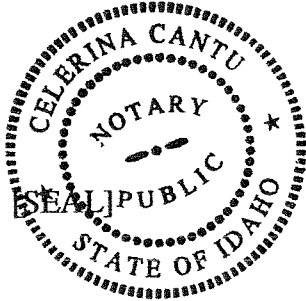
ACCEPTANCE

STATE OF IDAHO)
 :SS
County of Canyon)

I hereby accept appointment to the office of personal representative of the ESTATE OF CLYDE LEROY MARCHBANKS, deceased, and do solemnly swear that I will perform, according to law, the duties of personal representative of said estate.

Alan K. Marchbanks
Alan K. Marchbanks

SUBSCRIBED AND SWORN TO before me this 30th day of August, 2005.



Celena Cantu
Notary Public for Idaho
Residing at: Nampa, IDAHO
Commission expires: 10-07-09

State of Idaho }
County of Canyon } ss.

I hereby certify that the foregoing instrument is true and correct copy of the original as the same appears in this office.

DATED

9-1-05

G. NOEL HALES, Clerk of the District Court

By T. Crawford
Deputy

ALAN K. MARCHBANKS is hereby appointed personal representative of the ESTATE
OF CLYDE LEROY MARCHBANKS, deceased, with all authority pertaining thereto.
Administration of the estate is unsupervised.

These Letters are issued to evidence the appointment, qualification and authority of the
personal representative.

WITNESS: FRANK P. KELLER, Magistrate of the District Court,
County of Canyon, State of Idaho, with the seal of the Court affixed this 15th day of
Sept, 2005.

FRANK P. KELLER
Magistrate