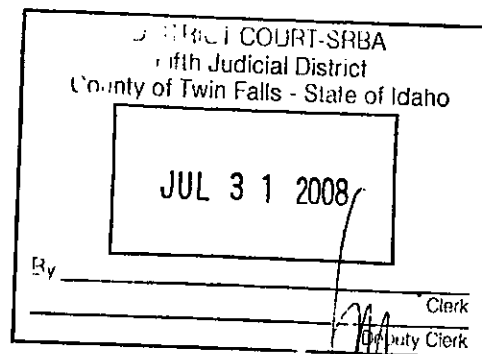


John M. Marshall, ISB # 5678
 J. Will Varin, ISB # 6981
 Givens Pursley LLP
 601 W. Bannock Street
 P.O. Box 2720
 Boise, Idaho 83701-2720
 Telephone: 208-388-1200
 Facsimile: 208-388-1300

Attorneys for Sarah Jane Smith



**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 No.: 63-7539

Case No. 39576

**AFFIDAVIT OF J. WILL VARIN IN
 SUPPORT OF SARAH JANE SMITH'S
 MOTION FOR SUMMARY JUDGMENT**

STATE OF IDAHO)
) ss.
 County of Ada)

J. WILL VARIN, being first duly sworn, deposes and says:

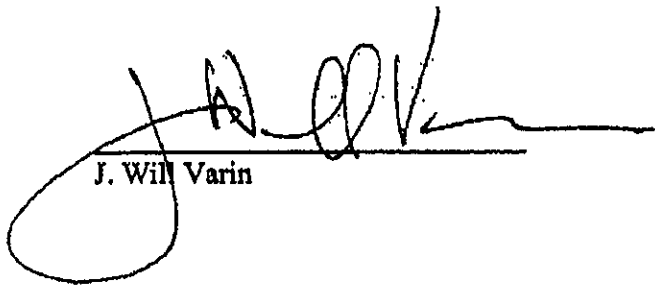
1. I am over 18 years old and otherwise competent to testify in this matter and make this affidavit based upon my own personal knowledge.
2. I am one of the attorneys of record for Claimant Sarah Jane Smith in this matter and am personally familiar with the facts of this matter and the documents that have been produced in discovery in this matter and make this affidavit based upon my own personal knowledge.
3. Attached hereto as Exhibit A is a true and correct copy of a statement of Carrie Cusic Moore that Objector Criag Whitted produced in discovery in this matter.
4. Attached hereto as Exhibit B is a true and correct copy of a Warranty Deed, dated November 14, 1973, Canyon County Instrument No. 719202, that conveys the parcel now owned

**AFFIDAVIT OF J. WILL VARIN IN SUPPORT OF SARAH JANE SMITH'S MOTION FOR SUMMARY
 JUDGMENT - 1**

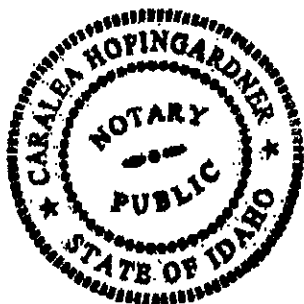
by Sarah Jane Smith from Rex S. Jensen and Roxy C. Jensen to Edward T. Evans, Catherine L. Evans, Rex E. Evans, and Maryon E. Evans.

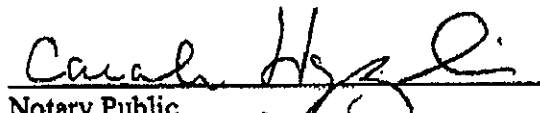
FURTHER, YOUR AFFIANT SAYETH NAUGHT.

Dated this 31st day of July, 2008


J. Will Varin

SUBSCRIBED AND SWORN before me this 31st day of July 2008.



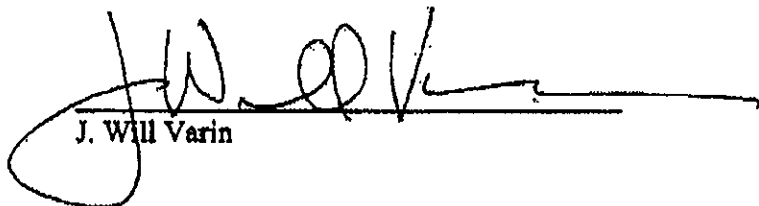

Notary Public
Residing at: Boise, ID
My Commission Expires: 5/8/2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Craig Whitted
7144 Warren Spur Road
Melba, Idaho 83641-5228

☒ U.S. Mail
☐ By hand
☐ Overnight
☐ Facsimile



J. Will Varin

22

I Carrie Cusic Moore, to the best of my recollection concerning the well under the rim on my parent's property, Earl and Doris Cusic (7120 Warren Spur Rd., Melba).

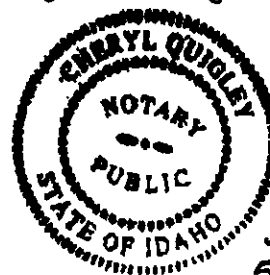
I was living at home at the time the well was drilled. My father was upset because the neighbor was setting up to drill a well. He went to the neighbor and said he was setting up the rig on his property (Earl's). The neighbor drilled the well anyway on Earl's property. My father was angry at the trespassing. Because of financial reasons he didn't pursue it, any farther.

I personally seen the well rig there, and was aware of the well being drilled on my father's property.

Cheryl Quigley

Carrie Cusic Moore

Carrie Cusic Moore



exp.
5-18-13

EXHIBIT

A

INSTRUMENT NO 719202

WARRANTY DEED

THIS INDENTURE, Made this 14 day of November, 1973, by and between REX S. JENSEN and ROXY C. JENSEN, husband and wife, of Malba, Canyon County, Idaho, the "Grantors", and EDWARD T. EVANS, CATHERINE L. EVANS, REX E. EVANS and MARYON E. EVANS, current address 9990 Roan Meadows Drive, Boise, Ada County, Idaho, the "Grantees";

WITNESSETH, that the Grantors, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, lawful money of the United States of America, and other good and valuable consideration, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto each the said Grantees, an undivided ten percent (10%) fractional ownership interest, being a total of 40%, in and to the following described real property located in Canyon County, State of Idaho, to wit:

In Township 1 South, Range 2 West of the Boise Meridian
Section 14 and 23: Beginning at the quarter corner
common to Sections 14 and 23, Township 1 South, Range 2
West, B.M.; thence Westerly along the section line common
to Sections 14 and 23 a distance of 335 feet more or less to the
point where said section line intersects the centerline of
the old Union Pacific Railroad grade; thence Southerly along sa.
centerline a distance of 115 feet more or less to the point
where the centerline of the said railroad grade intersects
with the centerline of the oiled highway or Warrans Spur
Road; thence Westerly along said highway 125 feet more or
less to a bolt set in the center of said highway; thence
Northwesterly along a service road 800 feet more or less to
a spike set in concrete in the shoulder of said road;
thence Southwesterly 300 feet more or less to a steel post
set in concrete on the Northerly shoulder of the oiled
highway; thence Northwesterly along the Northerly edge of
said oiled highway 1168 feet more or less to a steel
post set in concrete; thence Southerly 722 feet more or less
to a steel post set in concrete; thence Westerly 167 feet more
or less to a steel post set in concrete; thence Southerly 800
feet more or less to a steel post set in concrete at the foot
of a butte which extends in an Easterly direction; thence in
a Southeasterly direction following the base of said butte
a distance of 1800 feet more or less to a steel post set in
concrete at the North end of a North-South fence line;
thence Southerly along said fence line 700 feet more or less
to the point where said fence intersects the South boundary
of the Northwest Quarter of Section 23; thence Easterly
along said South boundary to the Southeast corner of said
Northwest Quarter of Section 23; thence Northerly along
the East boundary of the Northwest Quarter of Section 23
to the quarter corner common to Sections 14 and 23, the
point of beginning.

EXHIBIT

B

Section 14: A ten foot by ten foot parcel on which is located a well enclosed in a cement housing, which parcel is located approximately in the Southeast corner of the Southwest Quarter of said Section 14, and which well is connected by pipelines to the property first described hereinabove.

Section 23: A ten foot by ten foot parcel on which is located a well enclosed in a cement housing, which parcel is located approximately in the Northwest corner of the Northwest Quarter of said Section 23, and which well is connected by pipelines to the property first described hereinabove.

TOGETHER WITH:

(1) All water, water rights, ditches, irrigation pumps, pipelines and water works of all kinds and rights-of-way therefor appurtenant to or in anywise appertaining to said property.

(2) All and singular the buildings and improvements located thereon and the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, rents, issues and profits thereof.

(3) A right to use and maintain in the Easterly three of those certain four ensilage pits located approximately at the Northwest corner of the Southeast Quarter of the Southwest Quarter of Section 14, Township 1 South, Range 2 West, B.M., and an easement and right-of-way over and across the presently existing service road located in the East Half of the Southwest Quarter of said Section 14 for the purpose of access to said ensilage pits, which right and easement shall continue so long as Grantees or their issue and descendants own the property herein conveyed and keep the said easement, roadway, fence and bridge in good repair.

(4) A permanent easement and right-of-way over and across the Northwest Quarter of Section 23, Township 1 South, Range 2 West, B.M., for the purpose of maintaining, servicing and repairing that certain well conveyed herein and located approximately in the Northwest corner of said Northwest Quarter of Section 23 and all pipelines connected therewith.

(5) A permanent easement and right-of-way over and across the Southeast Quarter of the Southwest Quarter of Section 14, Township 1 South, Range 2 West, B.M., for the purpose of maintaining, servicing and repairing that certain well conveyed herein and located approximately in the Southeast corner of the Southwest Quarter of said Section 14, and all pipelines connected therewith.

(6) An easement and right-of-way 50 feet in width for the purpose of ingress and egress to and from the lands above conveyed, over and across the East Half of the Southwest Quarter of Section 14, Township 1 South, Range 2 West, B.M., which easement is located upon and shall run along the old or abandoned Union Pacific Railroad grade, which easement and right-of-way shall continue so long as Grantees or their issue and descendants own the property herein conveyed.

SUBJECT, however, to the following:

(1) All rights and reservations contained in Patents from the United States of America affecting the property hereinabove described.

(2) All recorded or visible easements and rights-of-way as the same now exist over and across the property hereinabove described for roads, public highways, ditches, pipelines, pole lines and public utilities;

TO HAVE AND TO HOLD said premises unto the Grantees and their heirs, executors, administrators, personal representatives, successors and assigns forever.

The Grantors covenant that the Grantees shall enjoy the quiet and peaceful possession of said premises; that the Grantors are lawfully seized of said interest in said premises; and the Grantors warrant that the title to said premises is merchantable and free from all liens and encumbrances excepting those to which this conveyance is expressly made subject, and those made, suffered, or done by, the Grantees.

IN WITNESS WHEREOF, this Warranty Deed has been duly executed on behalf of the Grantors the day and year first above written.

Rex S. Jensen
 REX S. JENSEN
Roxy C. Jensen
 ROXY C. JENSEN

STATE OF IDAHO)
 County of Ada) ss

On this 14 day of November, 1973, before me, a Notary Public in and for said State, personally appeared REX S. JENSEN and ROXY C. JENSEN, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument 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 written.

Robert L. Fry
 Notary Public for Idaho
 Residence: Boise



7:19202

FILED

Dec 7 4 18 PM '73

WALTER FRY
 CANYON COUNTY RECORDER
 BY *Theresa H. Fry*

RECORDED
 AT THE CLERK OF

Theresa H. Fry
 Clerk of

of *Boise*
 Fee *3.00*

Rex S. Jensen
 et al

Edward H. Green
 et al

W. D.

Book 1617