

RECEIVED

OCT 14 2009

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
SNAKE RIVER BASIN ADJUDICATION DIVISION

In RE: SRBA

) Subcase: 22-13955

Case No. 39576

) AFFIDAVIT OF KELLY SUMMERS
)
)
)

STATE OF IDAHO)

ss.

County of Madison)

Kelly Summers, having been duly sworn, states under oath as follows:

1. I am a resident of Madison County, Idaho and reside at 327 South 3000 East, Sugar City, ID 83448.

2. I was present and worked with my father, Frank Summers, when my father's corporation (along with my uncles' corporations) all purchased the lands known as the Harris place, which came with the following water rights: 22-2258 and 22-2183 appurtenant to the Harris lands.

3. From even before the day the Harris place was purchased in 1978, the two water rights described above were and had been pumped from two wells, located approximately 80 feet from each other and were and had been interconnected in a manner which combined the water pumped by both rights & wells and diverted onto the entire Harris lands purchased. In approximately 1995, my cousins (each a son of the original purchasers) as the new principals of the corporations which purchased the Harris place, then split the Harris lands into three

parcels. Summerco, Inc. and Frank Summers, Inc. each ended up with a parcel containing approximately 160 acres. See attached deed

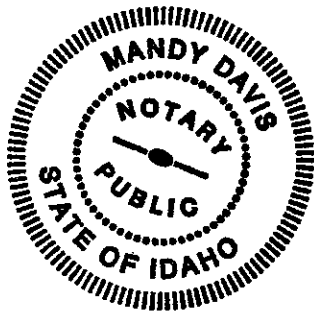
4. It was always intended to have the split of water between Summerco, Inc. and Frank Summers, Inc. to be as even as possible because historically the water rights of 22-2258 and 22-2183 were used evenly on both 160 acre parcels.

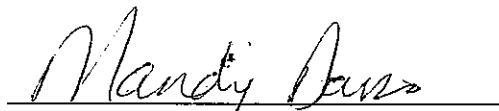
5. However, due in part to our failure to understand the enlargement statutes of the State of Idaho, when the rights were claims and divided, Frank Summers, Inc. claimed the 22-2183 which provided 2.0 cfs and the Summerco, Inc. claimed the 22-2258 which after another split with another cousin's corporation, ended up providing 3.1 cfs.

Respectfully submitted, this 6th day of October, 2009.


Kelly Summers

SUBSCRIBED AND SWORN to before me this 6th day of October, 2009.




Notary Public for Idaho
Residing at: St. Anthony
My Commission Expires: 6/24/2011

1-5-Summers-L
ALLIANCE TITLE & ESCROW
P.O. BOX 732
REXBURG, ID 83440

QUITCLAIM DEED

FOR VALUE RECEIVED, SUMMERS FARM & RANCH, INC., an Idaho corporation, with its principal office located at 4423 E. 1496 S., Sugar City, ID 83448, does hereby remise, release, and forever quitclaim unto FRANK SUMMERS, INC., an Idaho corporation, with its principal office located at 327 S. 3000 E., Sugar City, ID 83448, in and to the following described property in Madison County, State of Idaho, to-wit:

SW1/4 of Sec. 26., Twp. 6 N., Rge. 40 E.B.M.

SUBJECT to an easement between the parties dated December 13, 1995.

TOGETHER with any and all improvements and appurtenances thereto; rents, issues and profits thereof; and reversions and remainders.

DATED this 31st day of OCTOBER, 1995.

SUMMERS FARM & RANCH, INC.

By: Danny Summers, Pres.

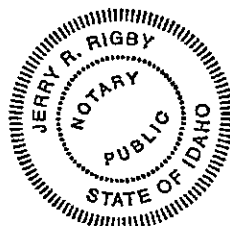
ATTEST:

Berniece Summers
Berniece Summers, Sec.

STATE OF IDAHO)
) ss.
County of Madison)

On this 19th day of MARCH, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared DANNY SUMMERS and BERNIECE SUMMERS, known to me to be the President and Secretary, respectively, of SUMMERS FARM & RANCH, the corporation that executed the foregoing instrument and acknowledged to me that such corporation 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.



pj:\sf&r2.qcd

[Signature]
Notary Public for Idaho
Residing at: REXBURG
Commission Expires: 11/01/05

Instrument # 288313
REXBURG, MADISON, IDAHO
2001-03-26 01:50:00 No. of Pages: 1
Recorded for: ALLIANCE TITLE & ESCROW
MARILYN R. RASMUSSEN Fee: 3.00
Ex-Officio Recorder Deputy [Signature]

QUITCLAIM DEED

FOR VALUE RECEIVED, SUMMERCO, INC., an Idaho corporation, with its principal office located at 2895 E. Sugar Cemetery Rd., Sugar City, ID 83448, does hereby remise, release, and forever quitclaim unto FRANK SUMMERS, INC., an Idaho corporation, with its principal office located at 327 S. 3000 E., Sugar City, ID 83448, in and to the following described property in Madison County, State of Idaho, to-wit:

SW1/4 of Sec. 26., Twp. 6 N., Rge. 40 E.B.M.

SUBJECT to an easement between the parties dated December 13, 1995.

TOGETHER with any and all improvements and appurtenances thereto; rents, issues and profits thereof; and reversions and remainders.

DATED this 31st day of October, 1995.

SUMMERCO, INC.

By: [Signature]
Gary Summers, Pres.

ATTEST:

[Signature]
Bud D. Summers, Sec.

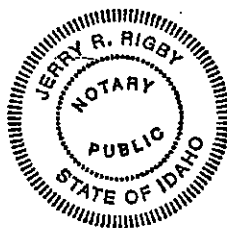
STATE OF IDAHO

)
ss.
)

County of Madison

On this 19th day of March, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared GARY SUMMERS and BUD D. SUMMERS, known to me to be the President and Secretary, respectively, of SUMMERCO, INC., the corporation that executed the foregoing instrument and acknowledged to me that such corporation 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.



pj:\summercl.qcd

[Signature]
Notary Public for Idaho
Residing at: Rebuck
Commission Expires: 11-09-05

Instrument # 288626

REXBURG, MADISON, IDAHO

2001-04-11 12:00:00 No. of Pages: 1

Recorded for: ALLIANCE TITLE AND ESCROW

MARILYN R. RASMUSSEN Fee: 3.00

Ex-Officio Recorder Deputy [Signature]