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RECEIVED
JUN 25 2010
DEPARTMENT OF
WATER RESOURCES

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Attorneys for Raymond C. Barker, Jr.
Charles J. Kritz, Jr. and Diane B. Kritz

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

In Re SRBA

Case No. 39576

)
) Subcase No. 2-2318A
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**AFFIDAVIT OF DEBRA K. ELLERS
IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO)

COUNTY OF ADA)

) ss.
)
)
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)
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)
)

COMES NOW, Debra K. Ellers, being first duly sworn upon oath, deposes and says:

1. I am one of the attorneys of record for Objectors Mr. and Mrs. Kritz and Mr. Barker,
and make this affidavit based upon my personal knowledge.

**AFFIDAVIT OF DEBRA K. ELLERS IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT - 1**

2. On April 8, 2010, I took the deposition of Peggy Jackson in this matter. True and correct copies of the excerpts referred to in Mrs. Jackson's deposition are attached hereto as Exhibit A.

3. Attached hereto as Exhibit B is a true and correct copy of Exhibit 4 to Mrs. Jackson's deposition, the Real Estate Purchase and Sale Agreement dated July 2, 1991.

4. On May 18, 2010, I took the deposition of Ronald Brumley in this matter. True and correct copies of the excerpts referred to in Mrs. Jackson's deposition are attached hereto as Exhibit C.

5. Attached hereto as Exhibit D is a true and correct copy of Exhibit 2 to Mr. Brumley's deposition, his affidavit filed in the Easement Case on August 17, 2007 to which was attached an Exhibit A, the State of Idaho Easement No. 5910.

6. Attached hereto are true and correct copies of the following deeds conveying the property identified as the "Property" in the Affidavit of William R. Wilkerson, Sr. filed herein on or about June 10, 2010 as follows:

(a) Warranty Deed from Loren R. Wittrock and Pamela Wittrock to William F. Spellman and Charlene W. Spellman dated March 7, 1994, Exhibit E;

(b) Quit-Claim Deed from William F. Spellman and Charlene W. Spellman to Launie T. Mashburn and Kristina L. Mashburn dated May 19, 1995, Exhibit F;

(c) Quit-Claim Deed from Launie T. Mashburn to Kristina L. Mashburn and William F. Spellman and Charlene W. Spellman dated November 26, 1996, Exhibit G;

(d) Warranty Deed from William F. Spellman and Charlene W. Spellman dated April 16, 1998 to W.R. Wilkerson, Sr., Exhibit H.

7. Attached hereto as Exhibit I is a true and correct copy of IDWR's Claim Adjudication Report for Water Right 02-2318A faxed from IDWR on August 29, 2005, which was produced as part of Claimant's Discovery Responses herein on or about June 16, 2010.

8. Attached hereto as Exhibit J is true and correct copy of Plaintiff William Wilkerson's Verified Complaint filed on May 24, 2006 against Objectors and the LLC which operates the RV Park on their property, Snake River RV Resort, LLC, in the District Court of the Third Judicial District of the State of Idaho, In and For the County of Owyhee, Case No. CV-06-05541 (hereafter the 'Easement Case').

9. Attached hereto as Exhibit K is a true and correct copy of the Affidavit of Dean Benton filed in the Easement Case on March 12, 2007. Although the Affidavit of Dean Benton does not bear a filing stamp, I contacted the Owyhee County District Clerk on June 22, 2010, who verified that it was filed on March 12, 2007 and in the clerk's file.

10. Attached hereto as Exhibit L is a true and correct copy of the Affidavit of Doug Larzelier in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment filed on August 17, 2007 in the Easement Case.

11. Attached hereto as Exhibit M is a true and correct copy of the Memorandum Decision and Order Upon Motions for Summary Judgment filed on October 18, 2007 in the Easement Case.

12. Attached hereto as Exhibit N is a true and correct copy of the IDWR's letter dated February 27, 2001, enclosing the Notice of Claim to Water Right 02-2318A, from the SRBA file on IDWR's internet website.

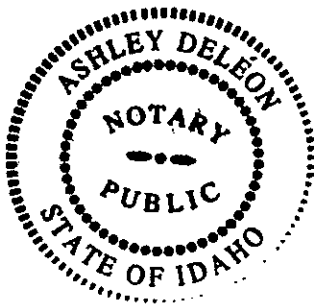
13. On March 2, 2007, I took the deposition of Mr. Wilkerson in the Easement Case. True and correct copies of the excerpts from his deposition are attached hereto as Exhibit O.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 23rd day of June, 2010.

Debra K. Ellers
Debra K. Ellers

SUBSCRIBED AND SWORN to before me this 23 day of June, 2010.



[Signature]
Notary Public in and for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 30, 2013

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June, 2010, I caused to be served copies of the foregoing Affidavit of Debra K. Ellers in Opposition to Motion for Summary Judgment by the method(s) indicated below:

IDWR Director
P. O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Jon Gould Facsimile No. (208) 342-4657
Ringert Law
P.O. Box 2773
Boise, ID 83701-2773
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Debra K. Ellers
Debra K. Ellers

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

In Re SRBA)
Case No. 39576.) Subcase No. 2-2318A

VIDEOTAPED DEPOSITION OF PEGGY JACKSON
APRIL 8, 2010

REPORTED BY:

TAUNA K. TONKS, CSR No. 276, RPR
Notary Public

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1 THE VIDEOTAPED DEPOSITION OF
2 PEGGY JACKSON was taken on behalf of the
3 Objectors Raymond C. Barker, Jr., Charles Kritz
4 and Diane B. Kritz at a residence of Snake River
5 RV Resort, 4028 River Resort Road, Homedale,
6 Idaho, commencing at 9:55 a.m. on April 8, 2010,
7 before Tauna K. Tonks, Certified Shorthand
8 Reporter and Notary Public within and for the
9 State of Idaho, in the above-entitled matter.

11 APPEARANCES:

12 For the Objectors Raymond C. Barker, Jr., Charles
13 Kritz and Diane B. Kritz:
14 MS. DEBRA K. ELLERS
15 Attorney at Law
16 P.O. Box 1030
17 McCall, Idaho 83638
18 For William Wilkerson:
19 Ringert Clark, Chartered
20 BY MR. JON C. GOULD
21 455 South Third Street
22 P.O. Box 2773
23 Boise, Idaho 83701-2773

25 ALSO PRESENT: Dan Sullivan, Videographer.

(208) 345-9611

M & M COURT REPORTING

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EXHIBITS

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11 1.	Colored Site Layout of Snake River RV, Owyhee County	11
13 2.	Document entitled Application for Permit to Appropriate the Public Waters of the State of Idaho, dated 6/5/64	16
17 3.	Document entitled State of Idaho, Department of Reclamation, Boise, Report of Examiner, with attachments	21
21 4.	Real Estate Purchase and Sale Agreement and Receipt for Earnest Money, dated 7/2/91	40
24 5.	Warranty Deed, dated 7/16/91, with attached Exhibit A	48

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EXHIBITS (Continued)

3 6.	Document entitled State of Idaho, Department of Reclamation, Proof of Application of Water to Beneficial Use, dated 7/10/70	69
7 7.	Document entitled Notice of Claim to a Water Right Acquired Under State Law, dated 1/19/90	72
10 8.	Warranty Deed, dated 4/24/78	79
11 9.	Warranty Deed, dated 3/12/81	80
12 10.	Warranty Deed, dated 7/18/91	84



(208) 345-8800 (fax)

1 affidavits that you provided?

2 A. Yes. Yes, that's what I'm thinking of.

3 Q. Yeah. A deposition is sworn testimony

4 --

5 A. Oh, I see. No, I did not. I'm sorry, I
6 misunderstood your question. I just knew that I
7 had given details.

8 Q. Yes. And I just wanted to let you know
9 about the procedures we're following here, is
10 that you're under oath. The court reporter has
11 sworn you in.

12 A. Yes.

13 Q. This is just as if you were testifying
14 in a court of law and has the same effect.

15 A. Yes.

16 Q. And where did you grow up, Mrs. Jackson?

17 A. I grew up in California, and I came to
18 Idaho in the '50s.

19 Q. And what was your occupation?

20 A. I worked for the telephone company,
21 commercial office.

22 Q. And what's your level of education?

23 A. Two years of college, approximately.

24 Q. And at some point did you become married
25 to a Mr. James Jackson?

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1 A. Yes.

2 Q. And when was that?

3 A. In 1965.

4 Q. And, Mrs. Jackson, we're going to be
5 talking about a 50-acre parcel that included
6 both, eventually, an RV park and 13 acres south
7 of a railroad right-of-way; we'll -- we'll
8 discuss that. But when you married Mr. Jackson,
9 did he already have that 50-acre parcel?

10 A. Yes. And he also had the park that
11 belongs to Arvin Millwork.

12 Q. I will represent to you that we're
13 really mostly concerned about the 50-acre --

14 A. All right.

15 Q. -- parcel.

16 A. Yes. Sorry.

17 Q. When I talk about "your parcel," that's
18 what --

19 A. Okay.

20 Q. -- I'll be referring to.

21 A. Very good.

22 Q. So that we are on the same page, I'll
23 give you a map so we can refer, generally, to
24 where we are, and give you some reference.

25 MS. ELLERS: May we have this marked as

1 Exhibit 1, please.

2 (Exhibit 1 was marked.)

3 Q. (BY MS. ELLERS) Now, Mrs. Jackson, I've
4 handed you what's been marked as Exhibit 1 to
5 your deposition. And I'll represent to you that
6 this is just a picture, aerial photo, of a
7 recent -- taken within the last several years of
8 the premises where we are.

9 And that outlined in yellow is what's
10 demarked as the SRRV property, outlined in black
11 is what's called the Wilkerson property. And
12 associated with the SRRV property is
13 approximately 37 acres that borders the Snake
14 River to the north.

15 A. Yes.

16 Q. And then the Wilkerson parcel is
17 approximately 13.3 acres.

18 A. Yes.

19 Q. And so if we take the -- the property
20 outlined on Exhibit 1 in yellow and outlined in
21 black on Exhibit 1, that would constitute the
22 approximate 50-acre -- and I'll call it the
23 Jackson parcel -- that you and Mr. Jackson
24 owned --

25 A. Yes.

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1 Q. -- correct?

2 Now, at the time you married Mr. Jackson
3 in 1965, he then owned the entirety of the 50
4 acres, plus an additional 4-acre parcel you
5 mentioned, but he owned the entirety of the
6 50 acres --

7 A. Yes.

8 Q. -- represented in Exhibit 1?

9 Also, for the benefit of the court
10 reporter, it's helpful to wait until I finish my
11 question, so we have a clean record --

12 A. Oh, sorry.

13 Q. -- so she doesn't have to work quite as
14 hard trying to catch up.

15 A. Sorry.

16 Q. And I know it's -- it's not a normal
17 rule of conversation to have to pause and wait,
18 but this is not a -- a normal situation for folks
19 to be in, so we appreciate you bearing with us
20 here.

21 Okay. When you married Mr. Jackson in
22 1965, what was the status of this 50-acre parcel?
23 Was it being farmed?

24 A. It was used as a cattle ranch.

25 Q. Was there also any hay or other crops

1 associated with cattle growing?

2 A. Yes, there -- there was hay grown.

3 Q. Looking at Exhibit 1, was the entirety
4 in cattle pasture? Describe for me what you
5 would have seen in 1965 if we could go back in
6 time and look -- have Exhibit 1 magically
7 transformed in 1965.

8 A. This house would not exist here
9 (pointing). You would just drive in through a
10 gate, and there would be feed bunks along the
11 river. At that time we were allowed to let the
12 cattle get to the waterfront. And they did raise
13 hay to feed the cattle.

14 Q. Were there any residences at all on the
15 50-acre parcels when you --

16 A. Not to my knowledge.

17 Q. Were any of the parcels -- like, for
18 example, the acreage south of the railroad
19 right-of-way would be the 13 acres outlined in
20 black; right?

21 A. Yes.

22 Q. Yes. Were any of the parcels used for
23 particular pastures? Was there any sort of -- I
24 guess I'd say demarcation among pastures or units
25 of the farm?

1 A. As near as I can recall, that parcel
2 that's now Wilkersons was watered by the Gem
3 Irrigation. When we watered it, we would have
4 had to use their source of water.

5 Q. Okay. And what about the water source
6 for what I'll call the -- the Riverfront Parcel?

7 A. We used that from the river.

8 Q. Exhibit 1 currently has a notation for
9 the SRRV Pump Station, which I'll represent to
10 you is the point of diversion for the Riverfront
11 Parcel.

12 To your knowledge, has that been the
13 division point since you acquired an interest in
14 the property with your husband in 19-- in or
15 about 1965?

16 A. Would you restate that? I'm sorry.

17 Q. If you look at Exhibit 1, you'll see a
18 red dot --

19 A. Yes.

20 Q. -- called the SRRV Pump Station?

21 A. Yes.

22 Q. And that's -- I'll represent to you
23 that's where the current location is for the
24 diversion works for the irrigation ditch.

25 A. Yes.

1 Q. Do you recall in 1965, was there a point
2 of diversion in -- in or approximately that spot
3 as well?

4 A. I believe so.

5 Q. And I realize we're going way back --

6 A. Yeah.

7 Q. -- in time.

8 About how many cattle did your husband
9 have on the property in 1965 when you got
10 married?

11 A. I really -- I would have to guess.

12 Q. Okay.

13 A. Sorry.

14 Q. That's okay.

15 And the crops, you mentioned alfalfa
16 hay?

17 A. Yes.

18 Q. Anything else besides that grown for the
19 cattle?

20 A. No.

21 Q. Can you recall about how many cuttings
22 he was getting back when you first married him?

23 A. Probably three.

24 Q. And were those all for his own personal
25 use in the cattle operation?

1 A. Yes.

2 Q. He didn't sell them commercially to
3 other parties?

4 A. No.

5 MS. ELLERS: And if we could have this
6 marked as Exhibit 2, please.

7 (Exhibit 2 was marked.)

8 Q. (BY MS. ELLERS) Now, Mrs. Jackson,
9 you've been handed what's been marked as
10 Exhibit 2 to your deposition.

11 I want you to be sure and take all the
12 time you need to go through this; but I'll
13 represent to you it's from the Idaho Department
14 of Water Resource's records, and it's the
15 Application for Permit to Appropriate the Public
16 Waters of the State of Idaho, which appears to
17 have been signed by your husband Mr. Jackson,
18 J. C. Jackson & Sons, on or about June 5th, 1964.

19 A. Correct.

20 Q. Were you present when he applied for
21 that right?

22 A. No.

23 Q. So this was done before you were
24 married; correct?

25 A. Yes.

1 Q. If he signed it in 1964?

2 A. Yes.

3 Q. So you weren't personally involved, to
4 your recollection, preparing Exhibit 2?

5 A. Just a minute. March 25th...

6 No.

7 Q. The Exhibit 2, Application for Permit,
8 is in the name of J. C. Jackson & Sons,
9 Incorporated --

10 A. Yes.

11 Q. -- do you see that?

12 Is that how your husband conducted
13 business?

14 A. Yes.

15 Q. And did he actually have some sons
16 working with him in the business?

17 A. Yes.

18 Q. And what were their names?

19 A. At that time there was only one, and his
20 name was Jay R. Jackson, J-A-Y R. Jackson.

21 Q. And did he later have other sons join
22 him in the operation?

23 A. Yes.

24 Q. And who was that?

25 A. It would be James C. Jackson, Jr.;

1 Steven, S-T-E-V-E-N, Larzelier,
2 L-A-R-Z-E-L-I-E-R, a stepson; Douglas Larzelier,
3 L-A-R-Z-E-L-I-E-R, stepson; and Jerry Lynn
4 Jackson.

5 Q. So was James C. Jackson, Jr., and Jerry
6 Lynn Jackson the children that you had with
7 Mr. Jackson?

8 A. They were his biological sons --

9 Q. Okay.

10 A. -- and the Larzeliers are the stepsons.

11 Q. Okay. Are any of them your biological
12 children?

13 A. Yes, the two Larzeliers.

14 Q. So they came from a prior marriage?

15 A. Yes.

16 Q. But ultimately resided with you and
17 Mr. Jackson when you were married?

18 A. Yes. Their father is deceased.

19 Q. Okay. Now, how involved were you in the
20 farming operations, Mrs. Jackson?

21 A. Oh, probably 50 percent.

22 Q. And just describe generally, were you
23 bookkeeping; were you out there --

24 A. I was bookkeeping.

25 Q. Did you help throw hay?

1 A. I've done that too.

2 Q. Pretty much everything a farm wife does?

3 A. That's right.

4 Q. Did you keep the books, then, for
5 Mr. Jackson?

6 A. I didn't at first; we had a secretary.

7 And then when our company became -- it went into
8 telephone work, and we become contractors for a
9 telephone company. That was my previous
10 employment, and -- at that time. And we -- we
11 had help, and then I became the secretary when it
12 down-scaled.

13 So off and on, yes, I kept books.

14 Q. Now, at the time -- you may have
15 testified on this point, but I wanted to make
16 sure I understand it.

17 When you married Mr. Jackson in 1965,
18 looking at Exhibit 1, the south 13 acres, the 13
19 acres south of the railroad right-of-way --

20 A. Yes.

21 Q. -- was that being watered from the Snake
22 River?

23 A. I believe it was.

24 Q. You just -- you had mentioned something
25 about Gem Irrigation District a minute ago.

1 A. Well, that's for the other side, the --
2 Mr. Wilkerson's side.

3 Q. And that's what I'm talking about --

4 A. Oh.

5 Q. -- the 13 acres south of the railroad
6 right-of-way --

7 A. Okay. That was --

8 Q. -- outlined in black.

9 A. I'm sorry.

10 Q. Let's make sure we're looking at
11 Exhibit 1.

12 A. Yes.

13 Q. Do you have that?

14 A. That part, I understood, was being
15 watered by Gem Irrigation originally.

16 Q. The parcel outlined in black.

17 A. Yes.

18 Q. The parcel that is south of the railroad
19 right-of-way that appears on Exhibit 1.

20 A. Yes.

21 Q. And you understand where the railroad
22 right-of-way is, as depicted on Exhibit 1?

23 A. Yes.

24 Q. That basically looks like a diagonal
25 line going through --

1 A. As far as I can recall, yes.

2 Q. So Exhibit 3 is dated 1971. Had the
3 nature of the operation changed in any
4 significant way since the water right filing in
5 1964?

6 A. Yes. My husband put a pipeline under
7 the -- at the time of the railroad, to irrigate
8 the property that is now considered
9 Mr. Wilkerson's, the one that's outlined in
10 black, the 13 acres.

11 Q. Okay. And about when did your husband
12 put the pipe under the railroad right-of-way?

13 A. I actually can't tell you the year. I
14 think it was probably in the '70s, maybe.

15 Q. Had you and he discussed that he was
16 planning to do that?

17 A. I don't know that I knew he was going to
18 do that until it was done, but he did do it.

19 Q. You found out one way or the other?

20 A. Yes.

21 Q. Did he tell you for what purpose he was
22 doing that?

23 A. Well, he was going to irrigate over
24 there, but it turned out that -- that we quit
25 using that method, eventually, because it was too

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1 expensive to pump the water that far.

2 And so then a later date we got a -- a
3 large generator and we pumped out of Sucker
4 Creek. I think that's the creek.

5 Q. Jump Creek?

6 A. Jump Creek, I'm sorry.

7 Q. So let's try to break that down. About
8 how long do you recall that your husband was
9 irrigating the 13-acre parcel with water from the
10 Snake River?

11 A. I would guess maybe a season or two.

12 Q. Which would bring us up to about what
13 year? Best approximation.

14 A. Just in the '70s. I can't really be
15 sure.

16 Q. Early '70s, mid '70s?

17 A. Early '70s to mid '70s, because we...

18 Q. Okay. So is it your testimony, then,
19 that the irrigation of the 13-acre parcel
20 outlined in black on Exhibit 1 had quit being
21 watered from the Snake River as of about 1980?

22 A. I'm thinking that, yes, because at that
23 time our son, Douglas Larzelier and Mary Jo
24 Larzelier, had the property, and I don't think
25 they farmed. The house was built early '70s

1 here, and that was their home.

2 Q. And when your husband put the pipe under
3 the railroad right-of-way, was it still an active
4 railroad at the time?

5 A. Yes.

6 Q. Was it an active railroad as long as you
7 were here as an owner of the property?

8 A. Yes.

9 Q. Which was through 1992; correct?

10 A. There was a period of time before '92
11 that Doug Larzelier and Mary Jo Larzelier owned
12 the property.

13 Q. You got it back and then --

14 A. Yes. We deeded to them, they deeded it
15 back. We have a thing about doing that in the
16 family.

17 Q. When the 13-acre parcel outlined in
18 black on Exhibit 1 was being watered from the
19 Snake River, what was being produced there?

20 A. Hay.

21 Q. Were there also cattle over there?

22 A. No.

23 Q. While your husband was watering the
24 13-acre parcels from the Snake River, was he
25 continuing to farm what I'll call the Riverfront

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1 Parcel, as well, outlined in yellow on Exhibit 1?

2 A. Yes.

3 Q. Any change in use, or was it still
4 cattle and hay?

5 A. No. By that time, we had started
6 developing it into a trailer park.

7 Q. And what's your best recollection of
8 when you started making it into a trailer park?

9 A. I'm trying to think when it was. It
10 must have been in the late '70s, maybe '80s. I'd
11 have to go back on records. It would have been
12 many transactions.

13 Q. You mentioned your son took over the
14 property in the early '80s.

15 A. Yes.

16 Q. Did you start developing the RV park
17 before your son took it over?

18 A. No. Not that I recall.

19 Q. In any event, your son -- and this is
20 Douglas?

21 A. Yes.

22 Q. Is it Larzelier, is that --

23 A. Yes.

24 Q. -- how you pronounce it?

25 Douglas Larzelier and his wife took

1 over -- was it the entire 50 acres that they took
2 over?

3 A. Originally it was the home, and two or
4 three acres were deeded to them. And then the
5 entire parcel was deeded to them.

6 Q. The entire 50 acres?

7 A. Yes.

8 Q. And how much of a time lag are we
9 talking between just the home and a few acres and
10 then the entire parcel being deeded to them?

11 A. A few years. I have no -- I don't know,
12 six years. I don't know. I can't tell you for
13 sure without checking records.

14 Q. Were you and your husband wanting to get
15 out of farming? What was the reason for this
16 transaction?

17 A. We were exchanging property.

18 Q. Did you continue to farm elsewhere,
19 then?

20 A. We had a farm, yes.

21 Q. Did you also continue to work for the
22 phone company?

23 A. I worked there off and on part-time.

24 Q. And what did your son do, and his wife,
25 after they took over the property in about the

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1 early 1980s?

2 A. They were in construction along with us,
3 and they traveled in their construction, were in
4 Guam for awhile. I can't just give you dates off
5 the top of my head, I'm sorry.

6 Q. I'm actually more interested in what he
7 was doing with the property. So was he
8 continuing to farm it as well, or did you --

9 A. No, I don't think he farmed the
10 property. He just had the property.

11 Q. Do you know if he was irrigating the
12 south 13 acres that's outlined in black on
13 Exhibit 1?

14 A. I don't believe he ever did, to my
15 recollection.

16 Q. And how involved were you? Did you come
17 and visit him --

18 A. Yes.

19 Q. -- for example, when he was here?

20 A. Um-hmm.

21 Q. So you observed the condition of the
22 land when you were here?

23 A. Um-hmm.

24 Q. We need to answer -- have you answer --

25 A. Oh, I'm sorry. Yes.

(208) 345-9611

1 Q. -- yes or no.

2 A. Yes, I'm sorry.

3 Q. It's hard for us to interpret "uh-huh."

4 A. Okay.

5 Q. Thank you.

6 And how frequently did you visit your --
7 your son and his wife when they had the 50-acre
8 parcel?

9 A. Probably weekly or several times a
10 month.

11 Q. Do you recall, during the time of your
12 son's ownership in about sometime during the
13 1980's, was he maintaining the irrigation conduit
14 to that south 13 acres?

15 A. Oh, he probably watered -- I think there
16 was some actual fruit trees planted by that time,
17 and I think he probably watered fruit trees.

18 Q. On which parcel?

19 A. On the large, the -- the river frontage.

20 Q. My question has to do with maintaining
21 the irrigation works for the 13 acres. Do you
22 know if that was being done?

23 A. No, I don't think he -- I don't think he
24 watered the 13 acres.

25 Q. Okay.

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1 A. He was never a farmer.

2 Q. And where is he now, incidentally?

3 A. He's in Albania.

4 Q. And how long is he expected to be there,
5 if you know?

6 A. Until sometime this summer.

7 Q. Does he have any contact information, a
8 way to get ahold of him?

9 A. By Skype.

10 Q. Do you happen to know the number?

11 A. No.

12 Q. Would you be able to get that for us if
13 we asked you to do that?

14 A. I could try.

15 Q. At some point your son, Douglas, and his
16 wife conveyed the property back to you and
17 Mr. Jackson?

18 A. Yes. And I think that was in the '80s.

19 Q. Can you recall the time of year?

20 A. No.

21 Q. And what did you and your husband do
22 with the property -- and we're talking about the
23 whole 50 acres now -- once you got it back?

24 A. We were developing the trailer park, and
25 Wittrocks, which were our neighbors, wanted the

1 13 acres, and they approached us on selling them
2 that parcel.

3 Q. Okay. We'll get to that in just a
4 minute, but I'm kind of trying to keep myself
5 chronologically --

6 A. All right.

7 Q. -- so if I could follow my outline. But
8 we'll get to the Wittrocks, and we will have a
9 discussion about them and how you came to sell a
10 parcel to them.

11 When you took back the property from
12 your son and his wife in the '80s, did you use
13 any irrigation water from the Snake River on the
14 13 acres south of the railroad right-of-way?

15 A. I don't believe so. I think that's the
16 time we were using -- if -- no, I don't think we
17 even farmed it. If we did, we used the
18 generator, because it seems to me like the
19 generator was sitting there when we talked to
20 Wittrocks, or it had been used. Now, that's all
21 I can tell you. I don't know if it was there or
22 gone when Wittrocks approached us to buy.

23 Q. Was the generator used to pump water out
24 of Jump Creek?

25 A. Yes.

1 Q. And if you look at Exhibit 1, which is
2 our map, Jump Creek borders to the east --

3 A. Yes.

4 Q. -- the properties?

5 And it borders both the parcel outlined
6 in black and the parcel outlined in yellow;
7 correct?

8 A. Yes.

9 Q. Actually goes through the parcel
10 outlined in yellow; correct?

11 A. Yes.

12 Q. Describe the pumping out of Jump Creek
13 for me, if you would. How frequent was it, for
14 example?

15 A. Well, at the time we were using the
16 generator, it was probably pumped maybe two or
17 three times a month, I would assume, for...

18 Q. And, physically, how did the water get
19 from the generator on Jump Creek to the places
20 where it was being used to water?

21 A. There were ditches. And there was big
22 pipes placed into the water and then transferred
23 into the ditches.

24 Q. And what was --

25 A. There was probably a concrete ditch. I

1 can't recall if we had a concrete ditch; it seems
2 like we did. And then there were -- and it could
3 have been a water ditch -- I mean, a dirt ditch.
4 I -- I'm not sure on that.

5 Q. So it's your recollection that water was
6 pumped out of Jump Creek two to three times per
7 month, and how -- over how many months?

8 A. For the season of that year, whatever
9 that would be from April till, say, September.

10 Q. Do you recall encountering any problems
11 with sedimentation during that pumping?

12 A. No.

13 Q. Any other type of problems with the
14 water from that pumping out of Jump Creek?

15 A. No.

16 Q. What was being produced on the property?

17 A. Hay. I think that's all we have
18 produced over there.

19 Q. Was the pumping out of Jump Creek only
20 one season, or did it go on for more than one
21 season?

22 A. I believe it was only one season. By
23 that time we were developing the trailer park and
24 really didn't have too much interest in that
25 portion of the ground.

1 Q. So that leads us into where you were
2 going before with the Wittrocks. There came a
3 time when you decided you were going to sell that
4 13 acres south of the railroad?

5 A. Wittrocks came to us and asked us if we
6 would sell it to them.

7 Q. How did you know the Wittrocks?

8 A. I knew her through my church, but then
9 they were our neighbors, so...

10 Q. How long had you known them?

11 A. I've known her for quite awhile. I --
12 Mr. Wittrock, I didn't know him until he became
13 our neighbor.

14 Q. So they approached you and Mr. Jackson?

15 A. Yes.

16 Q. And what do you recall them saying?

17 A. I recall they came to our home, and they
18 wanted to buy the parcel. We thought about it;
19 they came back. We told them that we would sell
20 the parcel to them.

21 They wanted us to give them a
22 right-of-way to use that underground, under the
23 railroad track, water supply from the river. We
24 told them that we would oblige them for three
25 years, as near as I can recall, and at which

1 time, then, they would need to find a way to
2 water from Jump Creek, as we had with the
3 generator, or put power in there and get their
4 pump set there, and make some sort of
5 arrangements. And they agreed to that.

6 At the time, they wanted a right-of-way
7 into their place from the trailer park, and we
8 didn't want to give that to them either, because
9 we felt that would not -- it would devalue the
10 property should we want to sell. And that was
11 our intent at our age, to develop the park and
12 sell it.

13 And so they agreed that they could not
14 have access into their property, though it does
15 join it at a point. And so that's the way the
16 papers were written up. And in three years, then
17 they would have other ways of getting their
18 water, and they would never have water -- road
19 access.

20 Q. Okay. Let's break down and get some of
21 the details of that, then.

22 A. All right.

23 Q. About how many meetings can you recall
24 with the Wittrocks before you actually
25 consummated the sale?

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1 A. Probably three.

2 Q. In person?

3 A. Yes.

4 Q. And were those meetings -- where were
5 those meetings held?

6 A. At our house over on Riverview Drive.

7 Q. And can you recall -- can you recall
8 separate meetings distinctly?

9 A. Yes. The last one I don't think Pam was
10 there.

11 Q. Okay. So let's talk about the first
12 one. Who was present at the first meeting?

13 A. The two of them, I recall, and my
14 husband and myself.

15 Q. And the Wittrocks' first names were...

16 A. I don't know his. Her name is Pam.

17 Q. Loren, I've seen?

18 A. Loren.

19 Q. So the -- the two Wittrocks and yourself
20 and Mr. Jackson. What was discussed at the first
21 meeting?

22 A. That they would like to buy the parcel.

23 Q. Did they have a price in mind?

24 A. I think we agreed on a price right off
25 the -- because we really weren't interested in

1 that piece of par- -- property, and we -- they
2 wanted it, and it seemed like it would be good
3 for both of the parties concerned.

4 Q. Can you recall about how long the first
5 meeting was?

6 A. No, not really. I'm assuming it wasn't
7 30 minutes, an hour.

8 Q. When did the topic of the irrigation
9 under the railroad right-of-way come up?

10 A. When we agreed to sell the property,
11 then that's when we had to talk about the source
12 of water supply. And that's the time it came up.

13 Q. At the first meeting or a later one?

14 A. Probably at the first meeting.

15 Q. And can you recall specifically what
16 either of the Wittrocks said about their desire
17 to use water?

18 A. Well, they just wanted an easy way to
19 water the ground. And we discussed the reason
20 why we wouldn't want to give them whole rights to
21 use it from the river going through the trailer
22 park, and they could understand that.

23 Q. Did you discuss why you didn't want to
24 give the water, or was it Mr. Jackson who
25 discussed it; or was it both of you?

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1 A. We both discussed it.

2 Q. And what do you recall saying?

3 A. I just remember saying that I wouldn't
4 be interested in selling the parcel if we had to
5 give them permanent water rights, because it
6 would affect the value of the property and we had
7 no desire to do that. It would not be good for
8 future development of our trailer park.

9 Q. And do you recall Mr. Jackson saying
10 anything in addition or differently?

11 A. No. He -- he definitely thought the
12 same thing.

13 Q. So if I understand, you didn't list this
14 property with a Realtor?

15 A. No. Not that I recall.

16 MS. ELLERS: Why don't we go off the
17 record here and take a break.

18 VIDEOGRAPHER: Okay. The time is 10:32
19 and we're off the record.

20 (A brief recess was taken.)

21 VIDEOGRAPHER: Time is 10:34 and we are
22 on the record.

23 MS. ELLERS: May we have this marked as
24 Exhibit 4 to the deposition, please.

25 (Exhibit 4 was marked.)

1 Q. (BY MS. ELLERS) Mrs. Jackson, I've
2 handed you what's been marked as Exhibit 4 to
3 your deposition. Would you take a minute and
4 review that document.

5 A. (Examining document) Yes. It looks
6 familiar.

7 Q. Now, I'll represent to you Exhibit 4 is
8 what I've gotten apparently from your records,
9 but I believe it's a fax of a fax, so it's not
10 real clear. Do you have a better copy of
11 Exhibit 4 somewhere?

12 A. I don't think I brought that in this --

13 Q. Okay.

14 A. -- today.

15 Q. All right. We'll just do the best we
16 can off this copy, but I might ask you to get a
17 better copy for us in the future so we can read
18 the fine print, so to speak.

19 Now, Exhibit 4 is a Real Estate Purchase
20 and Sale Agreement and Receipt for Earnest Money.
21 That's the title of the document. And it's dated
22 July 2, 1991, if you look on the upper right-hand
23 corner.

24 A. Yes.

25 Q. (As read): "Loren Wittrock and Pamela

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1 Wittrock" -- that's the Wittrocks who you're
2 referring to; correct?

3 A. Correct.

4 Q. -- "for the approximate 13 acres south
5 of railroad in Lots 6 to 14, 35 North, 5 West,
6 Township."

7 And that would be the parcel outlined in
8 black on Exhibit 1; correct?

9 A. Yes.

10 Q. What is now called the Wilkerson parcel;
11 correct?

12 A. Correct.

13 Q. This is what you were selling to the
14 Wittrocks then?

15 A. Yes.

16 Q. And going further down in Exhibit 4, the
17 total purchase price is \$15,000 with the
18 Wittrocks.

19 A. Yes.

20 Q. Do you feel like that was a -- a fair
21 price for that?

22 A. At the time.

23 Q. Did you negotiate over the price, or did
24 they propose that to you off the bat?

25 A. I really can't recall. I don't think

1 there was any real issue about the cost or the
2 price.

3 Q. And the Wittrocks were friends and
4 neighbors; correct?

5 A. Yes.

6 Q. But they weren't related to you in any
7 way, were they?

8 A. No.

9 Q. Were they any kind of position of
10 authority over you or your husband?

11 A. No.

12 Q. Did you feel like you were under any
13 pressure to sell the 13 acres?

14 A. No.

15 Q. It was your own decision?

16 A. Correct.

17 Q. And then item 4, if you could take a
18 look at item 4 on Exhibit 4?

19 A. (Examining document) Yes.

20 Q. Okay. Could you read that for the
21 record, please.

22 A. Are you referring to the "16 horsepower
23 pump"?

24 Q. Yes.

25 A. And the -- the --

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1 Q. If you could just read that for the
2 record.

3 A. (As read): "The Wittrock split of
4 13 acres of water, Snake River. Each to pay half
5 the power for three years." And then the use
6 would be deter -- would -- pardon me -- would be
7 terminated. "Three years use and then to
8 terminate," is what it says.

9 Q. Do you know, Mrs. Jackson, who actually
10 filled out that line in Section 4?

11 A. I'm assuming that we had someone draw
12 this up, either a Realtor or someone representing
13 real estate. Maybe an attorney. I can't recall.

14 Q. I just wondered if you knew the source
15 of the language of Exhibit 4. Did -- I mean,
16 were you dictating to somebody; did you talk to
17 somebody?

18 A. Yes. We -- and, you know, I may have
19 typed it up; I don't know. I -- I can't tell
20 you. It's been too long ago.

21 Q. Did Section 4 of Exhibit 4 represent
22 your intent with the Wittrocks as to --

23 A. Yes. And their intent to accept.

24 Q. The Wittrocks did sign this document;
25 correct?

1 A. Yes. Again, if we couldn't have gotten
2 that agreement, we wouldn't have sold the
3 property, including that right-of-way end to the
4 road.

5 Q. Where it says: "Each to pay one-half
6 power for three years," tell me how that
7 arrangement was intended to work.

8 A. Just that way because we had no way of
9 knowing how much water they would use, how much
10 we would use, because there was no amount
11 established prior. And it was an agreement that
12 they would pay half the power for using the --
13 the existing pump and -- that was there, and
14 that's the way that was set up. It was just an
15 agreement.

16 Q. Now, there was only one pump for sharing
17 the irrigation pumping?

18 A. I think there were two pumps. I'm --
19 I'm not sure at this point. It's talking about a
20 16-horsepower pump, so that's the only thing I
21 can refer to at this time.

22 Q. Okay. And was there a separate power
23 meter at the pumping station?

24 A. I can't answer that. I don't think
25 ~~there was, because why would we be splitting the~~

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1 power?

2 Q. Well, that's what -- I'm trying to
3 understand the arrangement, so that's why I'm
4 asking you.

5 A. Yeah. I'm just -- I want to be truthful
6 and I'm not -- it's really taxing my memory to
7 answer you correctly. I'm assuming not. Only
8 one meter.

9 Q. And how was the billing to work? Were
10 they supposed to pay monthly, quarterly? Do you
11 recall that being discussed?

12 A. They would be paying monthly when the
13 bill come out each month because that's the way
14 our power bills.

15 Q. Okay. So would you or Mr. Jackson, or
16 whoever owned the -- I'll call it the Riverfront
17 Parcel, provide that bill to the Wittrocks?

18 A. Yes.

19 Q. And they were then supposed to pay
20 one-half?

21 A. Correct.

22 Q. And this was to go on for three years
23 under your arrangement?

24 A. Yes.

25 Q. And then to terminate. What -- what was

1 going to happen when the termination occurred?
2 A. They were to get their own source of --
3 of water supply out of the -- what did we call
4 the creek down here?

5 Q. Jump?

6 A. -- Jump Creek, or they could go to maybe
7 Gem Irrigation and get their water through their
8 other part of their property that they owned.
9 They had another parcel attached to the 13 acres
10 now.

11 And that would be the Gem Irrigation.
12 And I'm not sure but what they couldn't still do
13 that.

14 Q. Okay. We talked about meetings you had
15 with the Wittrocks. We talked about the first
16 meeting. When was the second meeting, if you can
17 recall, in relation to Exhibit 4, which is dated
18 July --

19 A. Oh, it wasn't very long. Maybe a few
20 days, a week; I -- I don't know. Because they
21 were interested in getting it, and, you know,
22 when people are talking real estate, they usually
23 want things to move along pretty quickly.

24 Q. How about the third meeting that you
25 referred to; was that when the property actually

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1 closed?

2 A. Yes.

3 Q. Was there further discussion about
4 either water or easements at that third meeting?

5 A. Oh, I think it was already probably
6 established. We might have gone over the
7 paperwork when we signed it, but that would be
8 all.

9 Q. This three-year arrangement, from what
10 date was it going to be?

11 A. From the date that they received the
12 property. I don't know what that date was.

13 Q. Well, I happen to have it here. Get
14 this marked as Exhibit 5 for you.

15 (Exhibit 5 was marked.)

16 Q. (BY MS. ELLERS) Okay. You've been
17 handed what's been marked as Exhibit 5 to your
18 deposition, Mrs. Jackson. That's a document
19 entitled Warranty Deed?

20 A. Yes.

21 Q. And if you look in the notary section
22 down on the first page to your left, the notary
23 for your signatures appears to be July 16th,
24 1991?

25 A. Yes.

1 Q. Does that jog with your recollection of
2 when you signed this --

3 A. That sounds right.

4 Q. Were you together with the Wittrocks
5 when you actually signed the Warranty Deed?

6 A. I'm assuming. I can't be sure.

7 Q. Were there any other people present
8 besides yourself, Mr. Jackson, and the Wittrocks
9 at the closing?

10 A. Not that I recall.

11 Q. And had the Wittrocks specifically
12 requested an easement across the Riverfront
13 Parcel?

14 We talked about the irrigation water.
15 Now we're talking about an easement for access.

16 A. I don't recall ever talking about that.
17 I assumed we just thought it would go with it
18 while they were trying to come in to -- because
19 they had to check the pump or turn it on or
20 whatever they might be doing. But we didn't give
21 them, I don't think, any particular right to come
22 through, just that they had the water right
23 usage.

24 Q. Okay. And that's my next area of
25 questioning. After the deal was done and closed

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1 and it was sold, the 13-acre parcel was sold to
2 the Wittrocks, you con -- you and Mr. Jackson
3 continued to own the Riverfront Parcel; correct?

4 A. For awhile, yes.

5 Q. And so did this splitting the power bill
6 arrangement start to proceed with the Wittrocks?

7 A. I believe so.

8 Q. Do you recall sending the power bill to
9 them and receiving payment?

10 A. I actually don't recall doing that. I
11 know that it happened.

12 Q. How about the irrigation water; do you
13 remember seeing it going over, being delivered to
14 that parcel?

15 A. No.

16 Q. Do you recall them coming in -- the
17 Wittrocks coming into the Riverfront Parcel to
18 work on the irrigation conduit or work --

19 A. No.

20 Q. And what were you and Mr. Jackson doing
21 on the parcel you retained, the Riverfront
22 Parcel, after you sold it to the Wittrocks?

23 A. We were developing the trailer park
24 and -- and after that, we sold it to Harlans.
25 And I don't think it was very long after that.

1 Q. So let's get back to our -- our
2 three-year arrangement and then to terminate.

3 So based on the Warranty Deed's date of
4 July 16th, 1991, what was your intent about the
5 termination of the water usage?

6 A. At that time they would no longer use
7 the water from the Snake River through our
8 property, the yellow portion, the river frontage.
9 And they would obtain their irrigation by another
10 source, either through a creek or through Gem
11 Irrigation.

12 Q. So if we take it three years out from
13 the date of the Warranty Deed, through July 1994
14 they could have the split power arrangement, I'll
15 call it?

16 A. Yes. And they did pay the people,
17 Harlans, for awhile, but somewhere -- I don't
18 know if it was -- I don't know who because I
19 don't know the dates.

20 But it was my understanding they had
21 trouble collecting half of the power from some
22 source, and I don't know -- the ownership has
23 changed since we sold it to Harlans, so I don't
24 know when this happened, but I had heard of the
25 confusion of not meeting the obligation. But I

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1 can't go into details because I don't have that.

2 And so as far as I knew, it would just
3 run out the time until the three years were up.
4 And at that time that would be the end of that
5 agreement.

6 Q. So you and Mr. Jackson ended up selling
7 the Riverfront Parcel to the Harlans?

8 A. Yes.

9 Q. At a later date?

10 A. Yes. Not long after. I don't know the
11 date of Harlans' contract.

12 Q. If I represented to you, I have a copy
13 here --

14 A. Yes.

15 Q. -- which we can get into evidence if
16 Mr. Gould wants. But it's dated the 2nd day of
17 April 1992; would that sound right?

18 A. All right. That would be a year later.
19 That's what I was thinking, it wasn't very long
20 after that they -- so that's why we didn't have
21 too much time to collect power from them in my
22 recollection of whether I delivered the bill or
23 it was mailed to them, because it was
24 short-lived.

25 It was only a season for the irrigation.

1 anyway. And it would only be so many months that
2 summer that we would have dealt with Wittrocks
3 before Harlans took over.

4 Q. So in or about April 1992 you sold the
5 Riverfront Parcel, which is outlined in yellow on
6 Exhibit 1 --

7 A. Yes.

8 Q. -- to the Harlans?

9 A. Yes.

10 Q. And that would be Charles Harlan and
11 Marlene Harlan?

12 A. Correct.

13 Q. And what, if anything, do you recall
14 telling the Harlans about the arrangement on the
15 13 acres regarding irrigation?

16 A. They knew all about that, and that was
17 agreed and we had no problem at all with Harlans
18 and Wittrocks. And then after Wittrocks and the
19 new party -- I can't remember who Harlans sold
20 to, and then I think there's been three sales at
21 least.

22 Q. Did you or Mr. Jackson specifically
23 discuss the three-year arrangement with the
24 Harlans?

25 A. Yes, we did. They -- Harlan, he would

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1 definitely know.

2 Q. And what do you recall telling the
3 Harlans?

4 A. Just exactly what this agreement says;
5 that they would be able to split the power and
6 pay them half for the electrical portion, and use
7 that pump that's in the river and irrigate
8 through that source for the remaining of the
9 three years.

10 Q. And you're referring to Exhibit 4?

11 A. Yes.

12 Q. Do you recall giving a copy of Exhibit 4
13 to the Harlans, as part of your --

14 A. I don't recall giving it to them, but I
15 know that they had to have some verification, and
16 so I'm assuming we did.

17 Q. So in or around April 1992, you sell the
18 Riverfront Parcel to the Harlans. And that takes
19 care of your ownership interest of the entire
20 50-acre parcel.

21 A. Absolutely. Correct.

22 Q. Have you had any discussions since 1992
23 about the use of Snake River water for the
24 13 acres with any of the later owners?

25 A. Yes, I have.

1 Q. And who would that be?

2 A. Diane -- and her last name is...

3 Q. Kritz?

4 A. Yes.

5 Q. Any of the other owners?

6 A. I think maybe we talked to the previous
7 owners, but I don't know which one it was, that
8 the people owning the 13 acres didn't pay them.
9 But it didn't concern me, I had no control over
10 their payment or anything, but I knew there was
11 some confusion there on the paying them part on
12 their power.

13 And so it was my understanding that they
14 stopped letting them use the water. And I don't
15 know how they worked that out, but there was some
16 confusion; I remember a conversation to that
17 effect.

18 Q. How about Mr. Wilkerson or
19 Mrs. Wilkerson; have you spoken with either of
20 them about the 13-acre parcel and whether there
21 are any rights to use the Snake River water for
22 irrigating it?

23 A. I don't believe they've ever contacted
24 me. I know that they're concerned and their
25 concerns, but I don't believe I've ever talked to

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1 them directly. I wouldn't say I hadn't, but it
2 would have been by phone if I did.

3 Q. What about Mr. Wilkerson's attorney,
4 Mr. Gould, who is sitting here; have you -- do
5 you recall any conversations with him?

6 A. I don't recall.

7 Q. Mrs. Jackson, is there anything else you
8 think we should know about the 13 acres and its
9 access to the Riverfront Parcel to reach the
10 Snake River for irrigation, that I haven't asked
11 you about?

12 A. No. I just know that that was -- all
13 parties agreed to that three-year termination,
14 and that's all I know.

15 Q. Okay.

16 MS. ELLERS: Those are all the questions
17 I have. I may have more after Mr. Gould --

18 THE WITNESS: All right.

19 MS. ELLERS: -- spends some time with
20 you.

21 MR. GOULD: Well, thanks for allowing
22 this to happen and thanks for attending and
23 participating. You've done a excellent job.

24 So I'm going to just -- I have a few
25 questions of my own, but, first, I'm just going

1 use letters or...

2 COURT REPORTER: You can, or you can
3 use --

4 MR. GOULD: Oh. Yeah, I'm sorry. I'm
5 not used to having both of us present exhibits.
6 I didn't think about that.

7 I -- I guess this will be Exhibit No. 6.
8 (Exhibit 6 was marked.)

9 Q. (BY MR. GOULD) And, Mrs. Jackson, I'll
10 represent to you that this is the State of Idaho,
11 Department of Reclamation, Proof of Application
12 of Water for Beneficial Use, commonly referred to
13 as a -- a proof of permit or application.

14 And on page 2, can you see the date that
15 this was executed?

16 A. Yes.

17 Q. And what date is that?

18 A. July the 10th, 1970.

19 Q. And do you recognize that signature?

20 A. Yes.

21 Q. And who is that?

22 A. That was my husband, James C. Jackson.

23 Q. And -- and then going back to the front
24 page at No. 6, under 6(a), with that description,
25 would you recognize that as being this property?

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1 A. Yeah -- yes, I'm assuming.

2 Q. Okay. And then for 6(b), is it correct
3 that that states that Mr. Jackson applied for
4 water 12 years ago and that he's pumped out of
5 the Snake River ever since?

6 A. Yes.

7 Q. And 7(a) recognizes that -- that the --
8 the pump referenced is a 7 -- or I'm sorry, a
9 12-horsepower --

10 A. Yes.

11 Q. -- Parma pump?

12 And I just -- I thought we had the
13 acreage somewhere.

14 And then if we switch to No. 9 on
15 page 2, how -- how many total acres are
16 irrigated?

17 A. 54.44.

18 Q. Okay. And -- and this property and the
19 Wilkerson property is approximately how many
20 acres?

21 A. The Wilkersons is 13 something, 13 point
22 something.

23 Q. And do you know how many --

24 A. That would be the river.

25 Q. Okay. And if I represent to you that

1 the -- the river property is approximately 37,
2 does that sound correct?

3 A. Yes.

4 Q. Okay. And then in 1990, do you recall
5 filing a notice of claim to water right under
6 State law?

7 A. That's after adjudication; was that the
8 year? Yes, I do. Because I had to file it on
9 the Snake River for our home place at that time.

10 We had moved from Reed and Garnet and
11 lived on Riverview Drive, and I filed there, as
12 well as for pumps, you know, water rights, out of
13 the river, and then I had to file over here
14 (indicating).

15 Q. Okay.

16 A. So that's when I think I filed in -- but
17 I know -- yes, so that's what I know.

18 Q. And -- and -- let's make sure I have
19 some copies.

20 A. It's before we sold the property to
21 Wittrocks, so that's why it was all out of the
22 river.

23 Q. Okay.

24 MR. GOULD: And -- and I'm going to have
25 this document be Exhibit 7, unless -- you didn't

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1 enter this as an exhibit, did you?

2 MS. ELLERS: I didn't.

3 MR. GOULD: Okay. This is -- what
4 you'll be handed is Exhibit 7, which is a -- a --
5 a Notice of Claim to a Water Right Acquired Under
6 State Law.

7 (Exhibit 7 was marked.)

8 Q. (BY MR. GOULD) Do you recognize this
9 exhibit?

10 A. Well, it looks right, but I don't
11 remember it particularly.

12 Q. Okay. I'm just going to ask you if
13 there's a couple of things you do recognize. And
14 if we go to No. 5: "Description of diverting
15 works," when you review that, does that -- does
16 that description accurately represent how the
17 water was diverted from the Snake River?

18 A. I believe so.

19 Q. And it -- if you -- from No. 5, it's
20 continued on to No. 14. So if you read those
21 two, 5 and then 14, that -- that might make it
22 slightly clear.

23 A. (Examining documents) Yes.

24 Q. And -- and if we look at No. 10 under
25 the "Place of Use," it represents that this --

1 this -- this claim for water was to irrigate
 2 50 acres; is that correct?
 3 A. Yes, I believe so because the property
 4 hadn't been divided then.
 5 Q. Okay. And then if we go back to what is
 6 marked as Exhibit 6 and look at No. 2 of
 7 Exhibit 6, has a Permit No. of 31931?
 8 A. Yes.
 9 Q. And then No. 02-2318?
 10 A. Yes.
 11 Q. And if you look now on No. 15 of
 12 Exhibit 7 for the water right number, that number
 13 corresponds to the permit number; correct?
 14 A. Yes.
 15 Q. Okay. So I have a question now that --
 16 and I'm -- I'm done with that exhibit -- asking
 17 what was J. C. Jackson & Sons? And you've
 18 answered it in most, but maybe -- I mean --
 19 A. It was a corporation. It was a
 20 construction corporation --
 21 Q. Okay.
 22 A. -- basically. And then they bought into
 23 some farm ground.
 24 Q. And now going back to irrigating out of
 25 Jump Creek, do you know if Mr. Jackson had

Page 74

1 authority or the right to irrigate out of Jump --
 2 or utilize Jump Creek water?
 3 A. As far as I knew, he did.
 4 Q. Okay. And do you have any records
 5 regarding how much water was taken out of Jump
 6 Creek or -- or maybe power records or --
 7 A. No, I don't.
 8 Q. -- use for the generator?
 9 A. That's too many years ago.
 10 Q. Okay. And -- and just regarding your
 11 irrigation practices on this -- on the entire
 12 50 acres, do you guys have any records of
 13 irrigation practices or...
 14 A. No, nothing in the file.
 15 Q. Okay. And now I'm going to -- going to
 16 talk -- talk about your son, Doug. And every
 17 time I look at that last name --
 18 A. Larzelier?
 19 Q. Larzelier.
 20 A. Just leave off the R, and you can
 21 pronounce it however you like.
 22 Q. Doug Larzelier. That's much easier.
 23 Thank you.
 24 So between 1970 and 1990, where did Doug
 25 live?

(208) 345-9611

1 A. He lived in this house. This house was
 2 built for him and his wife.
 3 Q. Well, when was the house built?
 4 A. Probably in 1970- -- I don't know what
 5 year they got married; I have to really think.
 6 Probably around '73, something like that.
 7 Q. So in the mid '70s --
 8 A. Maybe '70- -- as early as '71.
 9 Q. -- he lived on this property?
 10 A. Um-hmm. Yes.
 11 Q. And up until you sold the property to
 12 the Harlans; is that correct?
 13 A. No.
 14 Q. When did he move off the property?
 15 A. When he went to Guam. And then he came
 16 back and he went to Portland and back and forth.
 17 So I can't be sure, just because his work took
 18 him places.
 19 Q. So he traveled a lot?
 20 A. Yes.
 21 Q. And what type of work did he do?
 22 A. He was in construction and, basically,
 23 telephone construction and...
 24 Q. How frequently did he travel?
 25 A. Well, his job, when he left, they would

Page 76

1 take him for maybe a year or two, depending.
 2 Q. And -- and do you know when --
 3 A. Or a month.
 4 Q. -- his first job took him away from this
 5 area?
 6 A. No, I don't.
 7 Q. Okay. Do you know Joe Asumendi?
 8 A. Joe?
 9 Q. Joseph, Mr. Asumendi?
 10 A. I know Asumendis, I know a lot of
 11 Asumendis; but Joseph, I don't know.
 12 Q. Okay. And -- and do you have any
 13 knowledge of him ever irrigating the 13 acres?
 14 A. No.
 15 Q. Okay. Do you have any knowledge of
 16 Mr. Asumendi working with your son, Doug?
 17 A. You know, there's a Mark Asumendi.
 18 Could you have a wrong name?
 19 Q. I certainly could. Well, let's talk
 20 about Mark, then.
 21 A. All right.
 22 Q. Did Mark ever work with Doug?
 23 A. Yes. They're brother-in-laws.
 24 Q. Okay. And -- and would they have ever
 25 farmed together?

M & M COURT REPORTING

(208) 345-8800 (fax)



REAL ESTATE PURCHASE AND SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY



PK 31

REV 2/00

This contract represents the terms of sale of the property. Read carefully before signing. It contains important information about the sale. This is a legally binding contract. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY BEFORE SIGNING.

Leron Mitterack and Pamela Mitterack Monkdale Mon July 2 1981

Property address: Approximate 19 Acres South of RR in lot 8 - 14 - 245M
City of: Dwyer State: Idaho

A FULL AND COMPLETE LEGAL DESCRIPTION MUST BE PREPARED, ATTACHED ON SEPARATE SHEET, AND THE PROPERTY MUST BE DESCRIBED BY REFERENCE TO THE LEGAL DESCRIPTION. Buyer hereby acknowledges that he has read the legal description of the property and understands its contents, and he agrees to accept the legal description as set forth in the legal description.

EARNEST MONEY

(a) Buyer hereby deposits with seller a sum of money and a receipt is hereby acknowledged as Three Thousand

\$ 3,000.00 (b) Seller hereby acknowledges receipt of the earnest money and agrees to hold it in escrow for the purpose of completing the purchase of the property.

(c) The earnest money shall be held by the seller until the completion of the purchase of the property.

(d) If the purchase is completed, the earnest money shall be applied to the purchase price of the property.

(e) If the purchase is not completed, the earnest money shall be returned to the buyer.

(f) The parties agree that the earnest money shall be held by the seller until the completion of the purchase of the property.

(g) The parties agree that the earnest money shall be held by the seller until the completion of the purchase of the property.

1. TOTAL PURCHASE PRICE IS Eighteen Thousand \$ 18,000.00

2. 2,000.00 \$ 2,000.00 (a) Down payment, including earnest money (b) Seller's share of the purchase price (c) Buyer's share of the purchase price

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Fax (208) 337-3333

Exh. No. 4
Date 4-8-10
Name Jackson
M & M Court Reporting

EXHIBIT

B

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

In Re SRBA)
Case No. 39576) Subcase No. 2-2318A

DEPOSITION OF RONALD E. BRUMLEY
MAY 18, 2010

REPORTED BY:
MONICA M. ARCHULETA, CSR NO. 471
NOTARY PUBLIC

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THE DEPOSITION OF RONALD E. BRUMLEY was
taken on behalf of Raymond C. Barker, Jr.,
Charles J. Kritz and Diane B. Kritz, at the
Caldwell County Courthouse, 1115 Albany Street,
Caldwell, Idaho, commencing at 10:00 a.m. on
May 18, 2010, before Monica M. Archuleta,
Certified Shorthand Reporter and Notary Public
within and for the State of Idaho, in the
above-entitled matter.

APPEARANCES:

For Raymond C. Barker, Jr., Charles J. Kritz and
Diane B. Kritz:

ATTORNEY AT LAW

BY: MS. DEBRA K. ELLERS

P.O. Box 1030

McCall, Idaho 83638

Page 4

RONALD E. BRUMLEY,
first duly sworn to tell the truth relating to
said cause, testified as follows:

(Exhibits 1 and 2 premarked.)

EXAMINATION
QUESTIONS BY MS. ELLERS:

Q. Let the record reflect that this is
the deposition of Mr. Ronald Brumley being
taken pursuant to notice in both SRBA Subcase
No. 02-2318A and Owyhee County Case No. CV
06-05541.

Mr. Brumley, are you here pursuant to
a subpoena, sir?

A. Yes.

Q. Would you please spell your name for
the record?

A. R-o-n-a-l-d, initial "E,"
B-r-u-m-l-e-y.

Q. What is your address, Mr. Brumley?

A. I guess this one will work for this.
23952 Howe, H-o-w-e, Road, Caldwell, 83607.

Q. And what is your date of birth, sir?

A. 5-31-41.

1 Q. The subpoena indicates that it was
2 served on you April 16, 2010 with a check for
3 witness fees in the amount of \$23. Is that
4 correct, sir?

5 A. I think so.

6 Q. Have you ever had your deposition taken
7 before, Mr. Brumley?

8 A. Oh, it's been a long time.

9 Q. Okay. Just so you understand the
10 procedures. This has the same effect as if we
11 were in court. I'm asking you questions in which
12 you are sworn to answer truthfully under oath.

13 A. Yes.

14 Q. My intention is just to find out
15 information on certain topics that are at issue
16 in a lawsuit in which I represent Mr. and
17 Mrs. Kritz, Mr. Barker, and the Snake River RV
18 Park in related matters in both the SRBA Subcase,
19 which has to do with water rights. And the
20 Owyhee County case, which has to do with easement
21 issues.

22 You'll need to answer either "yes" or
23 "no" to the questions so the court reporter here
24 can take down a clear record for us.

25 A. Okay.

1 Q. If at any time you don't understand my
2 question, please ask me to rephrase it, and I'll
3 do the best we can. Okay?

4 A. Um-hmm.

5 Q. Answer "yes," if you could.

6 A. Yes.

7 Q. It seems like it should be a normal
8 conversation, but it is kind of a formal
9 procedure. Now, what is your occupation,
10 Mr. Brumley?

11 A. I own rental property I guess is
12 probably the closest way to describe it.

13 Q. Do you travel frequently, sir?

14 A. Yes.

15 Q. Is there a good phone number where we
16 can reach you?

17 A. (208) 697-0169.

18 Q. Do you know where you are going to be
19 on September 2, 2010?

20 A. If the good Lord be willing, and the
21 creek don't rise, I'll be in New Mexico.

22 Q. The reason I ask, sir, is the trial in
23 the SRBA matter is set for then. And if you are
24 around we can subpoena you for that. But if not
25 your deposition may very well take your place of

1 live testimony. So it's important that you give
2 us accurate and complete answers for us today,
3 sir.

4 A. All right.

5 Q. What brings us here today is your
6 ownership of the Snake River RV park, as it is
7 currently called, which is situated in Homedale,
8 Idaho. And I'm handing you what has been marked
9 as Exhibit 1 to your deposition, sir.

10 Would you take a look at that? And
11 I'll represent to you that is an aerial photo
12 of what is currently called the Snake River RV
13 Resort on the banks of the Snake River. The
14 southerly banks outlined in yellow on Exhibit 1.
15 Would that be the parcel of property that you
16 owned in the 1990's?

17 A. Yes.

18 Q. And adjacent to that, across what has
19 been called the old railroad right-of-way, is
20 outlined in black. And that is a 13-acre parcel
21 currently owned by Mr. Wilkerson, who is a party
22 in these matters.

23 And does that jibe with your
24 recollection as to adjacent property being about
25 13 acres?

1 A. It seems like Lonnie or someone told me
2 twenty. But I never was over there. I seen it
3 and that was it.

4 Q. But for our purposes today when we talk
5 about descriptions --

6 A. That's fine.

7 Q. Okay. So let's talk about when you
8 acquired what is outlined in yellow, which is now
9 called the SRRV property. I'll represent to you
10 there is a warranty deed in Owyhee County,
11 Instrument No. 245367, which bears a notary date
12 of September 30, 1993, from the Harlans to you
13 and other family members.

14 Does that jibe with your recollection?

15 A. Yes.

16 Q. How did you come to acquire the RV park
17 parcel?

18 A. Okay. I own a mobile home park here --

19 Q. "Here" being Caldwell?

20 A. Yes. And there is a guy on the other
21 side of the railroad tracks. Holmes I think is
22 his name. He had a billboard out there that said
23 "RV Park for Sale." So I whipped in there and
24 talked to him. And 60 days later we had bought
25 it.

1 Q. So September 30, 1993 seems about right
2 for your memory when you bought it from the
3 Harlans?

4 A. Um-hmm.

5 Q. Did you have any discussions with the
6 Harlans or anybody else in this time frame about
7 this adjacent parcel having any access or water
8 rights?

9 A. No.

10 Q. I'll represent to you, sir, that the
11 owner of what I'm calling the 13-acre parcel was
12 the Wittrocks. Did you meet the Wittrocks at any
13 time?

14 A. That being Lonnie Mashburn's in-laws?

15 Q. No, it was not. It was prior to them.

16 A. No, I had never met the Whitlocks
17 (sic).

18 Q. So from the time of your purchase of
19 the RV park -- what was the name, by the way,
20 when you bought it?

21 A. The name of it?

22 Q. Yes.

23 A. Snake River RV.

24 Q. So it stayed the same all throughout
25 the years, as far as you know?

1 A. Yeah.

2 Q. So when you bought that were you
3 actually managing it?

4 A. No. When we first bought it my
5 daughter and son-in-law come up. And they
6 stayed, give or take, a year, year and a half,
7 and we discovered that my son-in-law had cancer.

8 Q. And what were their names?

9 A. Rhonda, my daughter. And Gary Martin,
10 my son-in-law.

11 Q. And you mentioned them coming up.
12 Where did they come from?

13 A. California.

14 Q. And did they actually do the hands-on
15 management when they first arrived?

16 A. Yes.

17 Q. So from about September 1993 for a year
18 or so they were managing?

19 A. Yes.

20 Q. At the time you bought the RV park in
21 1993 did you do an inspection of the premises?

22 A. Yes.

23 Q. Walk around and look at things?

24 A. Yeah.

25 Q. Did you notice any irrigation conduit

1 or equipment serving the parcel across the
2 railroad tracks?

3 A. No.

4 Q. Did you see any water actually going to
5 irrigate that adjacent parcel?

6 A. No.

7 Q. You mentioned your son-in-law had
8 cancer. So what did that mean in terms of
9 management of the park?

10 A. Well, we discovered it at that point.
11 And they decided that they would go -- his folks
12 lived in California. And he wanted to go back to
13 California for doctors and treatment there. And
14 at that point in time the wife and I moved in and
15 took over. And the kids went back to California.

16 Q. Mr. Brumley, I'm going to hand you what
17 has been marked as Exhibit 2 to your deposition.
18 Would you take a moment and review that document,
19 sir?

20 A. Okay.

21 Q. Do you recognize what Exhibit 2 is,
22 Mr. Brumley?

23 A. Yes.

24 Q. And what is that document?

25 A. Well, it is just stating that -- or I

1 suppose what you are after is what transpired.

2 Q. That's an affidavit you previously
3 provided in one of the matters?

4 A. Yes.

5 Q. And as you have read through Exhibit 2
6 is that still your testimony today? Do you stand
7 by the statements in Exhibit 2?

8 A. Yes. Although, I might correct some of
9 it.

10 Q. All right. Well, we can go through it,
11 sir. What would you like to correct in Exhibit
12 2?

13 A. I think to really clarify it --

14 Q. Which paragraph? The numbered
15 paragraph?

16 A. Where it says "I do not recall" in
17 No. 3. I mean, that didn't happen, period. It
18 is not that I don't recall. There was never any
19 pipelines or water diverted in any way whatever.
20 That is definite, if you will. It is not one of
21 those things of do I remember or don't remember.

22 Q. So in Paragraph 3 of Exhibit 2 is it
23 accurate to say after you began residing at the
24 property in 1994 there was no water being pumped
25 or diverted --

1 A. Right.

2 Q. -- from the Snake River into any
3 conduits or pipelines on the Snake River RV
4 property for the purpose of irrigating the
5 adjacent 13-acre parcel --

6 A. Correct.

7 Q. -- across the old railroad
8 right-of-way?

9 A. Um-hmm.

10 Q. That's correct?

11 A. Yes.

12 Q. Is there any other correction you would
13 like to make to Exhibit 2 while we are going
14 through it?

15 A. That's it.

16 Q. Now, prior to your becoming the on-site
17 manager sometime in mid to late 1994 do you have
18 any knowledge of your son-in-law observing any
19 water going to irrigate the adjacent 13 acres?

20 A. Now, repeat that.

21 Q. Do you have any knowledge of your
22 son-in-law, prior to the time you showed up and
23 became the on-site manager, allowing any
24 irrigation of the adjacent 13 acres?

25 A. No. The way that came about is we came

Page 14

1 up -- and, like I say, my son-in-law was a nice,
2 giving person. And I, an old hard-nosed Missouri
3 boy, they say, told him when I found out, "From
4 this point forward any decision you make on this
5 property you call me first and get my approval."
6 And I said, "That's the end of that." And I
7 said, "The thing about it, Gary, is I just
8 experienced a right-of-way in California on a
9 piece of property." And I said, "One thing will
10 lead to another. And these things I don't need."
11 And he gave me the bills. And, like I say,
12 Lonnie wrote the hot checks. And I said that is
13 good enough for me. That is the end of that.

14 Q. So apparently prior to the time you
15 showed up in August or September of 1994 to be on
16 the on-site manager your son-in-law had permitted
17 some type of arrangement with Mr. Mashburn?

18 A. Yes. And, like I say, I got mad. And
19 Gary was not a very vocal person. And he would
20 let me blow up. And he would just stand there
21 and take it. And I just told him it is never
22 going to happen again. And I try to go on and
23 not dwell on things.

24 Q. After you showed up in or around August
25 or September of 1994 did you ever allow

1 Mr. Mashburn or anything else to use the Snake
2 River point of diversion to irrigate that
3 adjacent parcel?

4 A. Absolutely not.

5 Q. Did you ever meet Mr. Mashburn?

6 A. He came over on maybe three or four
7 occasions.

8 Q. And let's try to -- I realize we are
9 talking about events from a long time ago. But
10 if you think about when you showed up to take on
11 the management in or about August or September
12 1994, when did you first meet Mr. Mashburn?

13 A. Probably the spring of the following
14 year.

15 Q. So that would put us in about spring of
16 '95?

17 A. Yeah. And he come over and I was
18 pretty nasty to him, I suppose. But he came in
19 drinking beer and threw the beer can out in my
20 driveway. And then after he told me what he
21 wanted I told him to pick the beer can up and
22 take it home and come back when you are sober.

23 Q. And what did Mr. Mashburn want?

24 A. He wanted to talk about irrigating.

25 Q. Can you recall what he said,

Page 16

1 Mr. Brumley?

2 A. Something like, "We need to make a deal
3 on the water." And my remark was, "You are in no
4 condition to make a deal." And I just turned
5 around and went back in my office.

6 Q. Did Mr. Mashburn believe -- did he
7 indicate he believed he had any right to use that
8 point of diversion?

9 A. No, he didn't.

10 Q. About how long did this interaction
11 last?

12 A. About three minutes.

13 Q. Was anybody else present?

14 A. No.

15 Q. Did he resume the conversation later
16 when he was more sober?

17 A. Oh, he came back in a couple months, I
18 suppose it was.

19 Q. So this would put us in about mid 1995?

20 A. Yeah. And he asked about it. And I
21 said no. So then he said he was going to get an
22 attorney. And I said that's fine. That is the
23 thing to do.

24 Q. Did he ever get an attorney?

25 A. Not to my knowledge.

1 Q. Did you ever suggest that Mr. Mashburn
2 investigate alternative sources of irrigation for
3 his property?

4 A. Well, I had told him at that point -- I
5 said, "You know, Lonnie, all you got to do is get
6 two or three poles and put you down a pump on
7 Jump Creek." Because the creek went through both
8 of the properties. And I said, "You can have
9 your own pump. And you can irrigate when you
10 wanted."

11 Q. Did he have any response to your
12 suggestion?

13 A. "Well, that cost money." And my remark
14 to that was, "Everything costs money."

15 Q. Did Mr. Mashburn propose any specific
16 arrangements for you to allow him to use that
17 point of diversion on the Snake River?

18 A. No.

19 Q. After about mid 1995 do you recall
20 meeting Mr. Mashburn again to talk about
21 irrigation for his property?

22 A. Well, the thing that really stands out
23 in my mind is he came over with a pump in the
24 back of his pickup. And he was going to go put
25 it on my platform. And I said, "Lonnie, I bought

1 and paid for that. If you have water rights I'm
2 not disputing that. What I'm saying is you are
3 not going to put a pump on my platform. And you
4 are not going to run my electricity. It is that
5 simple." So he gets mad and throws the pump out
6 on the ground. And that basically was the last
7 time I seen him and heard anything about it until
8 his in-laws came --

9 Q. Was this incident you have been
10 describing for us, was that after you rebuilt the
11 pier?

12 A. Yes.

13 Q. Would you describe what happened there?
14 It is set forth in your affidavit. But
15 apparently there was a flood of the Snake River?

16 A. The sheriff's department came by one
17 day, one of the sheriffs, and he says, "Now, Ron,
18 if you have any irrigation pumps --" and his
19 words were -- "that you like you better get them
20 off the river, because the water is coming up
21 fast."

22 Q. And can you recall about when that was,
23 Mr. Brumley?

24 A. You know, datewise, I want to say it
25 was late spring. With the snow melt and all is

1 kind of what I'm thinking. It was before
2 irrigation time. So I'm thinking, February,
3 March, April. That time of the year.

4 Q. And what happened when the Snake River
5 went into flood?

6 A. It washed the old platform down the
7 river. Four of the telephone poles went south.

8 Q. Would you describe what that previous
9 pier was like, sir?

10 A. It was two telephone poles sticking up.
11 They were sitting on the river bottom sticking up
12 in the air. And then two more on the bank. And
13 they were attached, bolted together, to the two
14 that were upright.

15 Q. And that was the pier that existed when
16 you purchased the property in 1993?

17 A. Right.

18 Q. Did you use that platform for
19 irrigating your own parcel?

20 A. Yes.

21 Q. Did anybody else have any other
22 equipment located on that pier?

23 A. No.

24 Q. And after the flood in possibly early
25 spring of 1995 I think we have placed it,

1 possibly '96, but '95, '96 time frame, what
2 happened? Did you build a new pier?

3 A. Yes, I did.

4 Q. And tell me how you went about doing
5 that?

6 A. Kurt Fink -- or Paul Fink was the mayor
7 and owned the welding shop in Homedale. And I
8 went down and I had a little drawing and I said,
9 "This is what I want." And the first thing he
10 says is, "Oh, so you're an engineer?" So we
11 started off, I guess, on the wrong foot with one
12 another. I told him, "I'm not an engineer, but I
13 know what I want. And it is my money. So humor
14 me and build me what I want." He did. When he
15 completed it I called and got a crane out of
16 Boise to come out. And then Paul brought the
17 platform out and the crane set it in the river.
18 And I poured some big concrete piers. And Paul
19 welded the platform to the iron on the piers.

20 Q. And how did your new pier differ from
21 the old one?

22 A. It was all iron as opposed to a couple
23 of old telephone poles and a little plywood.

24 Q. Attached to your affidavit, which has
25 been introduced as Exhibit 2 to your deposition,

1 and Exhibit A, which is an easement from the
2 State of Idaho, Easement No. 5910, which was
3 granted to you from the State of Idaho, was this
4 in connection with your new pier, sir?

5 A. The best I recall. And I don't
6 remember just the exact sequence of it. I don't
7 know if someone called them or -- maybe I was
8 told to. Or whatever. But that kind of all came
9 along about the same time. So I went to Boise.
10 The Department of Lands, I believe, if my memory
11 serves me right is where you go see about the
12 irrigation. And so the fellow says, "Well, you
13 need to transfer that into your name." And on
14 and on. "And we need the exact location of the
15 new platform." And I don't recall if -- I
16 remember the guy came out twice.

17 Q. "The guy" being from the the Department
18 of Lands?

19 A. Yeah. And the first time he came we
20 didn't have the platform up. But the second time
21 we did. And he walked right out to the end of it
22 and got all of the information that he needed.
23 And then, if I recall, in a few days they sent me
24 a letter stating that the platform was whatever
25 latitude and longitude. Which didn't mean a

1 whole lot to me.

2 Q. In connection with getting this
3 easement from the State of Idaho did you intend
4 to confer any rights on the adjacent parcel
5 owners to use that pier?

6 A. No.

7 Q. Did you even have discussions with them
8 before you built the new pier?

9 A. No.

10 Q. Was the only interaction you had with
11 Mr. Mashburn attempting to put the pump on the
12 new pier in terms of somebody trying to use it
13 after you built the new one?

14 A. Yes, that one time.

15 Q. I'll represent to you, Mr. Brumley,
16 that the public records of Owyhee County disclose
17 a change of ownership from the Spellmans to
18 Mr. Wilkerson of the adjacent parcel in or about
19 April 16, 1998. Okay? Just assuming that is the
20 case. Just trying to fix that in your mind.

21 Had you dealt with Mr. Mashburn after
22 the one incident where he tried to put the pump
23 on the platform?

24 A. No.

25 Q. Was there any electricity to run

1 somebody else's pump from that platform that
2 didn't connect with yours?

3 A. No.

4 Q. Was there any generator available for
5 somebody else to use that wasn't --

6 A. No.

7 Q. So going back. After Mr. Mashburn
8 departed the scene -- and apparently he went
9 through a divorce. Did you have an understanding
10 of that?

11 A. His ex-mother and father-in-law came
12 over --

13 Q. And that would be the Spellmans;
14 correct?

15 A. Yes.

16 Q. They came in the office there one day
17 and they introduced themselves. And long story
18 short they were whining that they had spent their
19 life savings on this property for their
20 son-in-law, and bought cattle, and he sold the
21 cattle, and now he's leaving their daughter. So
22 they wanted to irrigate. And then I explained to
23 them the same thing like I had told Lonnie. If
24 you have the necessary papers showing me that you
25 have water rights you can build a platform and

1 you can put electric down there. But you are not
2 going to use my pump, period. And that kind of
3 ended that conversation.

4 Q. Was anybody else present besides
5 yourself and the Spellmans?

6 A. I don't know whether my wife -- I think
7 she was outside at that time.

8 Q. Did the Spellmans bring a piece of
9 paper to show you that they had any rights?

10 A. No.

11 Q. Did they say they had rights?

12 A. They said they understood they did.
13 And I said, "Well, the last time I talked to
14 Lonnie he was going to get an attorney. So maybe
15 you can follow up with his attorney."

16 Q. So their interest apparently was to get
17 use of your pump?

18 A. Yes.

19 Q. They weren't interested in putting a
20 separate pump?

21 A. No.

22 Q. Or separate electricity?

23 A. No.

24 Q. Did you make any suggestions to them
25 about alternative sources of irrigation?

1 A. No. And when I read generator in
2 there -- and I told them. I said, "I told Lonnie
3 he could put a pump down there on Jump Creek.
4 And it will cost you 1,500 bucks a pole, I think
5 is what I had to pay for them, give or take, and
6 that is what Idaho Power will charge you."

7 Q. After this conversation with the
8 Spellmans did you have anymore? Or was it just a
9 single incident?

10 A. That was just one time.

11 Q. Did they ever follow up in any way?

12 A. No.

13 Q. So getting back to my original
14 chronology here of the Spellmans selling to
15 Mr. Wilkerson in about April of 1998.

16 Did you ever meet with Mr. Wilkerson?

17 A. I talked to him on the telephone.

18 Q. Assuming that the transfer was in April
19 1998, can you fix it in your mind when about that
20 was that you spoke with him on the telephone?

21 A. Okay. And I'm trying to think. We
22 sold the place the last part of '99. It was
23 August, I think. And I'm trying to recall in my
24 mind exactly how -- okay, what happened is I
25 bought the railroad property.

1 Q. In about when?

2 A. I'm thinking about a year before I sold
3 out. And this is what happened there. And this
4 is what brought on the phone call. First of all,
5 I had the property leased from the railroad.
6 When they removed the tracks I talked to the
7 attorneys in Omaha for the Union Pacific. Beings
8 I had it leased I had the first right of refusal.
9 So the guys at the truss plant, Filler King, they
10 wanted part of it. And I said, "Well, let's not
11 get in a bidding war. I've already got it going
12 with the attorneys. And I'll buy it." And what
13 they wanted is they wanted half of it from the
14 road to the RV park. And I said, "That's fine.
15 I'll buy it and I'll let you have it for whatever
16 it cost per acre."

17 Well, when it was all done I sent them
18 a check. And it took about four months for the
19 title company to get it done. Because it was on
20 a back burner. So then Filler King had the
21 little piece surveyed that they wanted. And that
22 was like \$1,500. So then I reneged on Filler
23 King. I said, "Now, wait a minute, guys. This
24 is how it should have been." And I wasn't
25 thinking proper. "I shouldn't have to buy the

1 property, and, really, in fact, give it to you.
2 You pay for the survey." In which they agreed
3 to. And they said, "Yeah, we understand that."
4 Now, me and this neighbor is getting along fine.

5 Q. "This neighbor" being Filler King?

6 A. Filler King. So I go down the railroad
7 property and I made humps to keep cars from
8 driving through there. So this Wilkerson calls
9 me and he says that I was working on his
10 property. And I said, "What are you talking
11 about?" So in his mind the railroad property
12 from the center of it over to him was his.
13 Because his story was that the railroad property
14 reverted back to the landowners. And I said,
15 "Well, that's not exactly how this case worked.
16 Because I bought and paid for it and I got title
17 to it." And he wanted to argue. And I said,
18 "Well, there is nothing to argue about. It is
19 all cut and dry. I own it and that's it,
20 period."

21 Q. You had a deed from the railroad?

22 A. Yeah. And from Pioneer Title Company.
23 So then he wanted to rant and rave and cuss at me
24 and I just hung up on him. That was the only
25 conversation me and him ever had.

1 Q. Did you ever have any conversations
2 with Mr. Wilkerson about his wish to use the
3 Snake River point of diversion for irrigation?

4 A. Never.

5 Q. Did he ever attempt to access the Snake
6 River RV Park for the purpose of irrigation?

7 A. Never.

8 Q. During the time Mr. Wilkerson was your
9 adjoining neighbor did he ever attempt to use the
10 irrigation equipment to cross the Snake River RV
11 parcel?

12 A. No. Never.

13 Q. Did he ever come on to maintain it
14 while you had ownership there?

15 A. Never.

16 Q. So in or around late August 1999 you
17 sold the Snake River RV Park parcel to the
18 Bentons; is that correct?

19 A. Yes. As a matter of fact -- yeah, that
20 is correct. I was trying to -- they bought
21 the -- it was a goofy piece of property. There
22 was like four or five deeds on it. And the one
23 on the railroad -- and like I told him. When I
24 leave a piece of property I don't want no strings
25 attached. And we didn't have some kind of a

1 final title, because Filler King wanted a little
2 adjustment. So that came probably two or three
3 months after Bentons had bought the property.

4 Q. So there was some ongoing title work
5 after the purchase occurred?

6 A. Right.

7 Q. But in terms of physically turning it
8 over it was about August of 1999?

9 A. Right.

10 Q. It could have been early September.
11 But right in that time frame. Right around Labor
12 Day of 1999?

13 A. Right.

14 Q. When you sold the property to the
15 Bentons did you discuss anything about the
16 adjacent property that was then owned by
17 Mr. Wilkerson and whether he tried to use it for
18 irrigation?

19 A. No. I never -- I didn't think of it.
20 And I didn't think it was worthwhile. It wasn't
21 that I was trying to hide it from them.

22 Q. It just wasn't something on your mind?

23 A. Exactly. And what was on my mind at
24 that point in time was -- we had to stay and
25 train them for 30 days. And he asked me one

Page 30

1 question in 30 days. And I thought well, this
2 guy is not going to make it.

3 Q. What was his question, if you recall?

4 A. About where one of the sprinkler lines
5 was. I take that back. He asked two questions.
6 And I said you will have to ask my wife, because
7 she takes care of the books. And then he
8 commenced to tell me that his wife has never
9 written a check. And on and on. And I said,
10 "Well, I couldn't live without my wife taking
11 care of the books." But we're all different.

12 Q. So it's a fair summary to say you
13 didn't discuss the adjacent landowner and their
14 attempts to use irrigation?

15 A. No. Like I say, it didn't mean a thing
16 to me. And had it been I would have told them
17 that this is the situation.

18 Q. If I can summarize your testimony.
19 From the time you showed up on-site at the Snake
20 River RV parcel in mid 1994, until you sold the
21 property in late 1999, there was no use of the
22 Snake River point of diversion for the adjoining
23 landowners?

24 A. Never one drop of water left that.

25 Q. Since you sold that RV park in 1999

1 have you spoken with Mr. Wilkerson or his
2 attorney since then?

3 A. No.

4 Q. Neither in person or by phone?

5 A. Neither phone nor in person.

6 Q. Is there anything else about the Snake
7 River RV Park parcel and the adjoining landowners
8 efforts or wishes to use the irrigation that I
9 haven't asked you about that you would like to
10 tell us?

11 A. Not that I can think of right off. I
12 have my feelings about it. They are wanting to
13 get something for nothing.

14 MS. ELLERS: I have no further
15 questions.

16 (Deposition concluded at 10:38 p.m.)

17 (Signature waived.)
18
19
20
21
22
23
24
25

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Attorneys for Defendants/Counterclaimants

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

WILLIAM WILKERSON,)

Plaintiff/Counterdefendant)

v.)

SNAKE RIVER R.V. RESORT, LLC,)
RAYMOND C. BARKER, JR.,)
CHARLES KRITZ, AND)
DIANE B. KRITZ,)

Defendants/Counterclaimants)

Case No. CV-06-05541

AFFIDAVIT OF RONALD BRUMLEY

STATE OF IDAHO)

COUNTY OF CANYON)

ss.

Ronald Brumley, being first duly sworn upon oath, deposes and says:

1. I am over the age of 18 years and make this affidavit based upon
personal information.

AFFIDAVIT OF RONALD BRUMLEY - Page 1

Exh. No.	2
Date	
Name	Brumley
M & M Court Reporting	
EXHIBIT	
D	

2. From approximately September 1993, until approximately August 1999, I and other family members owned the Snake River RV Park near Homedale, Idaho on approximately 37 acres along the Snake River.

3. From about August or September of 1994 through its date of sale in 1999, I lived on the RV Park Property, and managed the business operation. After I began residing at the Property in 1994, I do not recall any water being pumped or diverted from the Snake River into any conduits or pipelines on the Snake River RV Park property for the purpose of irrigating the adjacent 13 acre parcel across the old railroad right-of-way.

4. During my period of residency at the Property, no generator ran at the pumping station on the Snake River, and no overhead or underground power lines were located along the old conduit and pipelines that went from the Snake River to the 13 acre parcel.

5. In or about 1995, a flood washed away the pier where I had my irrigation pump, which was used to irrigate my RV Park Property from the Snake River.

6. I had a new pier rebuilt and set with a crane on the bank of the Snake River. I also obtained an easement from the State of Idaho for the RV Park's pipe used to pump irrigation water placed below the Snake River's highwater mark. A copy of this easement, which was granted November 19, 1996, is attached as Exhibit A.

7. A few months after I had the new pier in place, I recall that the owner of the adjoining 13 acres, Lennie Masburn, showed up on my property with an irrigation pump in the back of his pickup. I refused to let Mr. Masburn place the pump on the new pier, and asked him to leave. He left, and neither he nor anyone else associated with the 13 acre parcel ever again attempted to place a pump on the pier during my ownership.

8. During my residence at the RV Park Property, no pump, no electrical power and no generator were ever used on the new pier or elsewhere on the Snake River RV Property for the purpose of diverting water from the Snake River into any conduit to the adjacent 13 acre parcel.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 16th day of April 2007.


Ronald Brumley

SUBSCRIBED AND SWORN to before me this 16th day of April, 2007.




Notary Public in and for the State of Idaho
Residing at: Nampa, Idaho
My Commission Expires: 07-01-08

My Commission Expires On
July 1, 2008

STATE OF IDAHO
EASEMENT NO. 5910

THIS INDENTURE, made this 19th day of November, 1996, by and between the STATE OF IDAHO, Department of Lands, 954 West Jefferson Street, P.O. Box 83720, Boise, Idaho 83720-0050, acting by and through the State Board of Land Commissioners, as party of the first part (Grantor), and RON BRUMLEY, Route 1, Hornedale, Idaho 83628, as party of the second part (Grantee);

WITNESSETH: That for and in consideration of a one-time administrative fee of THREE HUNDRED DOLLARS and NO/100ths (\$300.00), lawful money of the United States of America, receipt whereof is hereby acknowledged, the Grantor does hereby grant to the Grantee an easement for the purpose of constructing, using, and maintaining a buried waterline and pump over and across the following described lands situated in OWYHEE COUNTY, State of Idaho, so much of the following described lands which were below the natural or ordinary high water line on the date the State of Idaho was admitted to the Union with the right to additions thereto and subject to deletions therefrom which have occurred, causing the boundary of the state's ownership to change, to-wit:

A strip of land ten (10.00) feet wide, being five (5.00) feet on each side of the following described centerline:

Commencing at the west one quarter (1/4) corner of Section 14, Township 3 North, Range 5 West, Boise Meridian, thence North 45°02'59" East a distance of 1,937.56 feet; thence North 2°57'08" West, 10.00 feet, more or less, to a point on the ordinary high water mark on the south (left) bank of the Snake River, said point being the REAL POINT OF BEGINNING; thence, continuing North 2°57'08" West, 35.00 feet, more or less, to a point of terminus of said easement, the above described area containing 0.01 of an acre, more or less.

It is understood and agreed that the waterline and pump are to be constructed and maintained in such a manner that will not obstruct or hinder or affect navigation, recreation, or other authorized and customary use of the Snake River. The State Board of Land Commissioners reserves the right to terminate this easement for failure to construct and maintain the waterline and pump as herein provided, upon thirty (30) days written notice to the Grantee.

Subject to the following terms:

It is understood and agreed that this easement authorizes use of these waterline and pump only on the lands lying below the ordinary high water mark.

The Grantee shall comply with all state laws and with all rules and regulations of the State Board of Land Commissioners pertaining to watershed protection and with the Stream Channel Protection Act as designated in Chapter 38, Title 42 of the Idaho Code.



State of Idaho
Easement No. 5910
Page 2 of 3

The Grantee shall indemnify and hold harmless the State of Idaho and its representatives against and from any and all demands, claims, or liabilities of every nature whatsoever, arising directly or indirectly from or in any way connected with the use authorized under this easement.

Upon termination or abandonment, the Grantee shall have six (6) months from the date of receipt of the final notice to remove all facilities or improvements.

This easement is issued by the authority of the Rules for Easements on Submerged Lands and Formerly Submerged Lands (IDAPA 20.03.08) dated September 9, 1992.

If the easement is not used for the specified purpose for any five (5) year period, the Grantor may declare, in writing, such easement forfeited and the use of the lands shall revert to the Grantor or to the record owner of the lands.

If the easement is not used for the specified purpose within five (5) years from the date the easement is issued, then in such event the said lands so granted shall automatically revert to the Grantor without any further action required by Grantor.

FILED-RECORDED

'97 JAN 10 AM 10 18

JIM HUNT: T. J.
DIVISION OF LAND & REVENUE
SAC, BOISE
RECEIVED

220672

State of Idaho
J. B. Hunt

State of Idaho
Easement No. 5910
Page 3 of 3

IN WITNESS WHEREOF, the State Board of Land Commissioners has caused these presents to be executed by its President, the Governor of the State of Idaho, and countersigned by the Secretary of State and the Director, Department of Lands.

STATE BOARD OF LAND COMMISSIONERS

Philip E. Batt
Governor of the State of Idaho and President
of the State Board of Land Commissioners

Countersigned:

Pete T. Cenarrusa
Secretary of State

Stanley F. Hamilton
Director, Department of Lands



STATE OF IDAHO)
COUNTY OF ADA) ss.

On this 19th day of November, 1996, before me, a Notary Public in and for said State, personally appeared PHILIP E. BATT, known to me to be the Governor of the State of Idaho and President of the State Board of Land Commissioners; PETE T. CENARRUSA, known to me to be the Secretary of State of the State of Idaho; and STANLEY F. HAMILTON, known to me to be the Director of the Department of Lands of the State of Idaho, that executed the said instrument and acknowledged to me that such State of Idaho and State Board of Land Commissioners executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last written above.

Murray A. Baker
NOTARY PUBLIC for Idaho
Residing at Murdock, Idaho
My Commission expires 5/23/2001

01580

WARRANTY DEED

FOR VALUE RECEIVED,
LOREN R. WITTROCK and PAMELA R. WITTROCK, husband and wife,

the Grantors, do hereby grant, bargain, sell and convey unto
WILLIAM F. SPELLMAN and CHARLENE W. SPELLMAN, husband and
wife,

the Grantees, whose current address is 1112 W. 17th St.
Tempe, AZ 85281

the following described real property, located in Owyhee
County, Idaho, to-wit:

EXHIBIT "A", Parcels I, II and III, attached hereto:

Together with all and singular the tenements, hereditaments
and appurtenances thereunto belonging or in anywise
appertaining, including all water and ditch rights and
rights of way for water and ditches.

TO HAVE AND TO HOLD the said premises, with their
appurtenances unto said Grantees, their heirs and assigns
forever. And the said Grantors do hereby covenant to and
with the said Grantees, that they are the owners in fee
simple of said premises; that said premises are free from
all encumbrances except: None.

Subject to such rights, easements, covenants, restrictions
and zoning regulations as appear of record or by use upon
the premises.

Taxes and assessments of all taxing units not yet due and
payable.

Reservations in patents or state grants or in acts
authorizing the issuance thereof.

FILED-RECORDED

212229

94 MAR 8 AM 9 14

BARBARA JATO

OWYHEE COUNTY RECORDER

BY *[Signature]*

DEPUTY

REQUEST OF

[Signature]
FEE 12.00

EXHIBIT

E

Recording No. 5208

All repayment contracts between any irrigation district within which the premises are situated and any government or agency.

The bonded debt of all taxing units within which said premises are located.

Restrictions imposed by law, ordinance, or regulation imposed by any governmental entity, department or agency.

Restrictions contained in any covenants of record affecting the premises.

All rights of way or easements affecting the premises regardless of how evidenced or acquired and whether the same appear of record or not.

DATED: March 7, 1994

Loren R. Wittrock
Loren R. Wittrock

Pamela R. Wittrock
Pamela R. Wittrock

STATE OF IDAHO, COUNTY OF OWYHEE, ss.

On this day of March, 1994, before me, a Notary Public, in and for the State, personally appeared LOREN R. WITTROCK and PAMELA R. WITTROCK, known or identified to me to be the persons whose names are subscribed to the within 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 date and year in this certificate first above written.

Nicholas K. Phil
Notary Public for Idaho
Residing at Murphy, Idaho
Commission Expires: 1/31/2000

Phil

Exhibit "A" Land Description:

PARCEL I

IN TOWNSHIP 3 NORTH, RANGE 5 WEST, B. M., OWYHEE COUNTY, IDAHO

Section 14: That portion of Government Lots 5 and 6 lying Southwesterly of the right of way of the Union Pacific Railroad (formerly Oregon Shortline Railroad) as described in Book 16 of Deeds pages 333, 335 and 365, Owyhee County records.

EXCEPTING THEREFROM:

BEGINNING at the quarter corner of Sections 14 and 15, Township 3 North, Range 5 West, B. M., being also the Southwest corner of Government Lot 6 of said section 14; thence North along the Westerly boundary of said Lot 6 to its intersection with the Southwesterly right of way of the Union Pacific Railroad (formerly Oregon Shortline Railroad) as described in Book 16 of Deeds, pages 333, 335 and 365; thence South $52^{\circ}23'27''$ East, 1348.93 feet (formerly South $52^{\circ}37'00''$ East, 1346.00 feet); thence leaving said right of way South $00^{\circ}20'$ West, 104.00 feet; thence continuing South $0^{\circ}08'00''$ West (formerly South $0^{\circ}20'00''$ West) 550.00 feet; thence South $52^{\circ}24'00''$ East 630.52 feet to a point on the South line of Government Lot 5 of said Section 14; thence North $89^{\circ}48'00''$ West along the Southerly boundary of said Government Lots 5 and 6 to the POINT OF BEGINNING.

PARCEL II

A tract of land situate in Government Lot 6, Section 14, Township 3 North, Range 5 West, B. M., Owyhee County, Idaho, more particularly described as follows:

COMMENCING at the SW corner of the NW $\frac{1}{4}$ (W $\frac{1}{4}$ cor.); thence North $0^{\circ}00'14''$ East 934.00 feet; thence South $89^{\circ}29'00''$ East, 981.00 feet to the REAL POINT OF BEGINNING; thence continuing South $89^{\circ}29'00''$ East, 87.00 feet; thence North $0^{\circ}20'00''$ East, 104.00 feet to a point on the southwesterly right of way of the Union Pacific Railroad; thence North $52^{\circ}23'27''$ West, 69.00 feet along said southwesterly right of way; thence leaving said right of way South $12^{\circ}46'20''$ West, 149.01 feet to the TRUE POINT OF BEGINNING.

PARCEL III

A parcel of land situate in Lot 6 (SW1NW1) and Lot 5 (SE1NW1), Section 14, Township 3 North, Range 5 West, B. M., Owyhee County, Idaho, more particularly described as follows:

COMMENCING at the SW corner of said SW1NW1; thence South 89°48'00" East along the South boundary of said SW1NW1, a distance of 625.00 feet to the TRUE POINT OF BEGINNING; thence North along a line parallel with the Western boundary of said SW1NW1, a distance of 348.48 feet; thence South 89°48'00" East along a line parallel with said South boundary, a distance of 481.43 feet; thence South 52°24'00" East, a distance of 573.74 feet to a point on the said South boundary; thence North 89°48'00" West along said South boundary, a distance of 936.00 feet to the TRUE POINT OF BEGINNING.

STATE OF IDAHO) I hereby certify that the within instrument was filed and recorded
) ss.
COUNTY OF OWYHEE) in DOCKET and indexed in DEEDS

Witness my hand and official seal.

By

Quit-Claim Deed

For the consideration of Ten Dollars, and other valuable considerations, I or we,

William F. Spellman and Charlene W. Spellman

hereby quit-claim to

Launie T. Mashburn and Kristina L. Mashburn

RTI Box 10638 Homedale ID 83428
all right, title, or interest in the following real property situated in Owyhee County, Idaho:

Property as described in Owyhee County records as Parcel Number RP03N05W143611A

See exhibit "A"

Dated this 19th day of May 1995

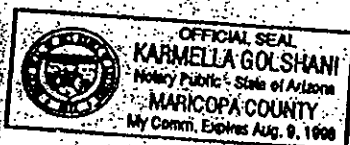
William F. Spellman
William F. Spellman
Charlene W. Spellman
Charlene W. Spellman

STATE OF ARIZONA)
) ss.
County of MARICOPA)

This instrument was acknowledged before me
this 19th day of May, 1995 by
William F. Spellman and Charlene W. Spellman

William F. Spellman & Charlene W. Spellman
Notary Public

My Commission will expire Aug 9, 1998



A
A tract of land situated in Government Lots 566, Section 14, Township
3 North, Range 5 West, B.M., Owyhee County, Idaho, more particularly
described as follows;

Commencing at the SW Corner of the NW1, thence N 89°34'36" E 625 feet
to the Point of Beginning, thence N 89°34'36" E 1,769.26 feet,
thence N 52°23'27" W 1,749 feet, thence S 12°46'20" W 149.01 feet,
thence S 89°28'60" E 87 feet, thence S 0°07'60" W 550 feet,
thence S 52°23'27" E 56.78 feet, thence S 89°48'00" W 481.43 feet,
thence S 0°0'0" W 348 feet to the Point of Beginning.

FILED - RECORDED

55 JUN 9 PM 3 56

215836

JIM HUNT, JR.
OWYHEE COUNTY CLERK
BY E. Sullivan
DEPUTY

WITNESSES
JAMES J. McLaughlin
JUN 6 1900

QUITCLAIM DEED

For Value Received

I, LAUNIE T. MASHBURN
do hereby convey, release, remise and forever quit claim
unto KRISTINA L. MASHBURN
WILLIAM F. SPELLMAN AND CHARLENE W. SPELLMAN
the following described premises to-wit:

SEE ATTACHED SHEETS.

FILED-RECORDED

220392

96 NOV 29 PM 1 58

JIM HUNTLEY JR.
OWYHEE COUNTY RECORDER
BY *[Signature]*
Notary Public
FEB 4 1996
[Signature]

together with their appurtenances

DATED: *26 Nov 96*

STATE OF IDAHO, COUNTY OF OWYHEE

On this *26th* day of *November*, 19*96*,
before me, a notary public in and for said
State, personally appeared *Launie T.*

Mashburn, known to me to be the
person whose name subscribed to the within
instrument, and acknowledged to me that
Launie T. Mashburn executed the same.

JIM HUNTLEY JR.

Clerk of the District Court
County of Owyhee, State of Idaho

[Signature] Deputy Clerk

Exhibit "A" Land Description:

PARCEL I

IN TOWNSHIP 3 NORTH, RANGE 5 WEST, B. M., OWYHEE COUNTY,
IDAHO

Section 14: That portion of Government Lots 5 and 6 lying Southwesterly of the right of way of the Union Pacific Railroad (formerly Oregon Shortline Railroad) as described in Book 16 of Deeds pages 333, 335 and 365, Owyhee County records.

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WARRANTY DEED

FOR VALUE RECEIVED WILLIAM F. SPELLMAN and CHARLENE W. SPELLMAN, husband and wife

the Grantors, do hereby grant, bargain, sell and convey unto W.R. WILKERSON,^{/SR.} A MARRIED MAN
the Grantee, whose address is 2520 SO POWERLINE RD, NAMPA, ID 83686

the following described premises, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE:

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances; except for general taxes and assessments for the year 1998 and subsequent years, covenants, conditions, restrictions and easements of record; and that they will warrant and defend the same from all lawful claims whatsoever.

DATED: April 15, 1998

William F. Spellman
WILLIAM F. SPELLMAN

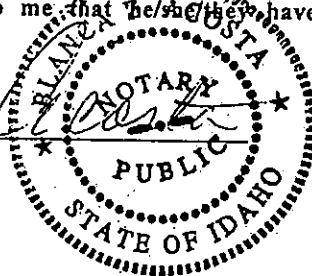
Charlene W. Spellman
CHARLENE W. SPELLMAN

234583

STATE OF IDAHO
COUNTY OF CANYON

On this 16 day of April, 1998, before me a notary public, personally appeared WILLIAM F. SPELLMAN AND CHARLENE W. SPELLMAN, known or identified to me to be the person(s) who(se) name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they have executed the same.

Danica E. Costa
Notary Public
Residing at GREENLEAF, Idaho
My commission expires: 9-1-99



PIONEER TITLE COMPANY
OF CANYON COUNTY

100 10TH AVE SOUTH
NAMPA, IDAHO 83651

423 SOUTH KIMBALL
CALDWELL, ID 83605

EXHIBIT
H

224582

FILED - RECORDED

98 APR 16 PM 4:19

JIM HUNTLEY JR.
OWYHEE COUNTY RECORDER
BY B. W. Huntley
DEPUTY

REQUEST OF

FEE

PARCEL I

TOWNSHIP 3 NORTH, RANGE 5 WEST, B.M., OWYHEE COUNTY, IDAHO
 Section 14: That portion of government Lots 5 and 6 lying Southwesterly of the right of way of the Union Pacific Railroad (formerly Oregon shortline Railroad) as described in Book 16 of Deeds at pages 333, 335, and 365, Owyhee County records.

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 Thence leaving said right of way South 00°20' West, 104.00 feet; thence continuing South 0°08' 00" West (formerly South 0°20'00" West) 550.00 feet; thence South 52°24'00" East 630.52 feet to a point on the South line of Government Lot 5 of said section 14; thence North 89°48'00" West along the Southerly boundary of said Government Lots 5 and 6 to the POINT OF BEGINNING.

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A tract of land situated in Government Lot 6 Section 14, Township 3 North, Range 5 West, B. M., Owyhee County, Idaho and more particularly described as follows:
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WJH
CWA

2005-12:51PM

Idaho Dept. of Water Resources

No. 2188 P. 1

BWD Ex 3

Page 1

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 2-2318A

WATER RIGHT NUMBER: 2-2318A

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	DOUGLAS D LARZELIER PO BOX 323 HOMEDALE, ID 83628 (208)337-4700
Original Owner	PEGGY J JACKSON PO BOX 245 HOMEDALE, ID 83628 (208)337-4444
Original Owner	J C JACKSON & SONS INC HOMEDALE, ID
Original Owner	MARY JO LARZELIER PO BOX 323 HOMEDALE, ID 83628 (208)337-4700
Original Owner	LOREN R WITTROCK 2475 E SPRING CREEK RD CLARK FORK, ID 83811 (208)266-0390
Original Owner	PAMELA WITTROCK PO BOX 2123 HOMEDALE, ID 83628 (208)337-4858
Original Owner	WILLIAM F SPELLMAN 1112 W 17TH ST TEMPE, AZ 85281 (802)967-0309
Current Owner	WILLIAM R WILKERSON SR 2520 S POWERLINE RD NAMPA, ID 83686 (208)466-2175
Current Owner	IMOGENE E WILKERSON 2520 S POWERLINE RD NAMPA, ID 83686 (208)466-2175

Priority Date: 08/05/1964

Basis: License

Status: Active

Source

SNAKE RIVER

Tributary

COLUMBIA RIVER

Beneficial Use

IRRIGATION

From To

3/15 to 11/15

Diversion Rate

0.270 CFS

Annual Volume

Total Diversion:

0.270 CFS

Location of Point(s) of Diversion

SNAKE RIVER

OWYHEE County

NW1/4NW1/4

Sec. 14, Twp 03N, Rge 05W, B.M.

Blumberg No. 5208

EXHIBIT

I

FILED

A.M. / P.M.

MAY 24 2006

CHARLOTTE SHERBURN, CLERK

TRINA AMAN

Deputy Clerk

JON C. GOULD (ISB # 6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Plaintiff

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

WILLIAM WILKERSON,

Plaintiff,

v.

SNAKE RIVER R.V. RESORT, LLC,
RAYMOND C. BARKER, JR., CHARLES
KRITZ, and DIANE B. KRITZ.

Defendants.

Case No. CV-06-05941

VERIFIED COMPLAINT

COMES NOW the plaintiff in the above entitled matter, and complains and alleges as follows:

I. GENERAL ALLEGATIONS

1. Plaintiff, William Wilkerson, is the owner of certain real property in Owyhee County, Idaho, (hereinafter "the Wilkerson Property") for which a true and correct legal description is attached hereto as Exhibit A. Plaintiff intends to farm and irrigate his property.

COPY

EXHIBIT

J

2. Defendants are the owners of certain real property in Owyhee County, Idaho (hereinafter "the Resort Property") that is adjacent to and north of the Wilkerson Property. The relative locations of the Wilkerson and the Resort Properties are shown on a maps attached hereto as Exhibit B and Exhibit C, respectively.

3. The Wilkerson Property and the Resort Property historically were held by the same owner, J.C. Jackson & Sons, Inc., as an undivided parcel (hereinafter "Jackson Parcel").

4. The Wilkerson Property is back from the banks of the Snake River and there are no other convenient sources of water available to the plaintiff.

5. Water right number 02-2318 allowed for the diversion of water from the Snake River for the beneficial use of water on the Jackson Parcel including the irrigation of 50 acres.

6. Historically, for a period of ten years or more, owners delivered water right number 02-2318 to what is now the Wilkerson Property by a buried conduit running from the point of diversion on the Snake River, across what is now the Resort Property.

7. Water right number 02-2318 had a priority date of June 5, 1964.

8. The Jackson Parcel was split into what is now the Wilkerson Property and what is now the Resort Property. Water right number 02-2318 was split into water right numbers 02-2318A, being appurtenant to the Wilkerson Property, and 02-2318B, being appurtenant to the Resort Property.

9. Mr. Wilkerson owns water right no. 02-2318A. A claim for water right no. 02-2318A has been filed in the Snake River Basin Adjudication.

10. Mr. Wilkerson must be able to access the buried conduit and irrigation facilities to operate, clean, maintain and repair the buried conduit and irrigation facilities and deliver water under

water right number 02-2318A to his property.

11. The conduit has been used by Plaintiff's predecessors to deliver water right numbers 02-2318 and 02-2318A to the Plaintiff's property for a period of at least 30 years.

12. The use of water right numbers 02-2318 and 02-2318A by Plaintiff's predecessors has been open, notorious, and under a claim of right as it respects other potential claimants, including Defendant's predecessors.

13. The existence of the conduit provided notice to the Defendants that Plaintiff has the right-of-way and incidental rights confirmed or granted by Idaho Code § 42-1102.

14. Defendants refuse to acknowledge Plaintiff's easement across the Resort Property.

II. QUIET TITLE TO EASEMENT

15. Plaintiff hereby incorporates and realleges paragraphs 1 through 14 of this Complaint as if set forth in full hereat.

16. Mr. Wilkerson owns an easement across the Resort Property for the delivery of water right number 02-2318A from the point of diversion on the Snake River to his property under either the theory of an implied easement by prior use or a prescriptive easement; or in accordance with Idaho Code § 42-1102.

17. Plaintiff is entitled to a decree of this Court quieting in the Plaintiff title to an easement allowing for delivery of irrigation water through the buried conduit, including but not limited to the right to enter the Resort Property across which the easement extends, for the purposes of operating, cleaning, maintaining and repairing the buried conduit and irrigation facilities, and to occupy such width of the land overlying the conduit as is necessary to properly do the work of operating, cleaning, maintaining and repairing the conduit and irrigation facilities with personnel and

equipment as is commonly used, or is reasonably adapted to that work. Plaintiff is entitled to such easement, free and clear of claims of Defendants or their predecessors or successors. Furthermore, Plaintiff should recover attorneys' fees and all costs of suit.

III. INJUNCTION

18. Plaintiff hereby incorporates and realleges paragraphs 1 through 17 of this Complaint as if set forth in full hereat.

19. Defendants are denying Mr. Wilkerson the use and enjoyment of his easement by refusing Mr. Wilkerson access across the Resort Property to operate, clean, maintain, and repair the irrigation facilities located on the Resort Property, including the point of diversion for water right number 02-2318 and preventing the delivery of water across the Resort Property.

20. Through its past, present and continuing actions, Defendants have interfered and continue to interfere with Plaintiff's use of his easement, and has thereby injured and continue to injure Plaintiff.

21. No adequate remedy exists at law.

22. Plaintiff is entitled to an order from the Court requiring Defendants to refrain from further interfering with Plaintiff's use of his easement.

ATTORNEYS FEES

The Plaintiff has been required to retain the services of Ringert Clark Chartered, and has and will continue to incur attorneys fees and legal costs in prosecution of this action. Plaintiff is entitled to recover his reasonable attorneys fees and legal costs incurred herein, pursuant to Idaho Code Sections 12-120 and 12-121, and the applicable provisions of the Idaho Rules of Civil Procedure and case law.

WHEREFORE, Plaintiff prays that he be adjudged to be the owner and holder of an easement through the Resort Property, free and clear of the rights of Defendants, their predecessors or successors, of whatsoever kind and character; for a Judgment quieting title to such easement in the Plaintiff; for an injunction preventing Defendants from interfering with Plaintiff's use of his easement right to receive water through the unnamed conduit describe above; and for such other and further relief as may seem just and equitable.

Dated this 23rd day of May, 2006

RINGERT CLARK CHARTERED

By

J. J. Gould
Jon C. Gould

Attorneys for Plaintiff

State of Idaho)
) ss
County of Ada)

William R. Wilkerson, being first duly sworn on oath, deposes and says:

That he is the plaintiff above named. That he has read the above and foregoing Complaint, knows the contents thereof, and believes the facts therein stated to be true and correct to the best of his knowledge.

William R. Wilkerson
William R. Wilkerson

Subscribed and sworn to before me on: May 23, 2006

Layne Harmon

Notary Public for Idaho

Residing at: Logan, Idaho

My Commission Expires: 7/20/10

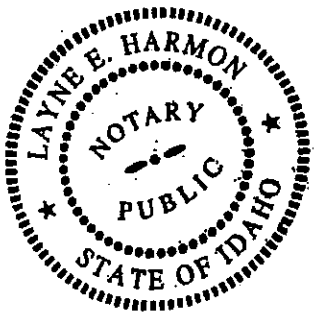


Exhibit A

WRW

WARRANTY DEED

FOR VALUE RECEIVED WILLIAM F. SPELLMAN and CHARLENE W. SPELLMAN, husband and wife

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DATED: April 15, 1998

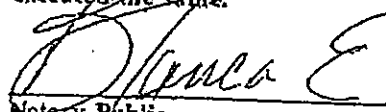

WILLIAM F. SPELLMAN

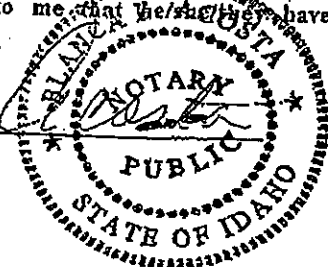

CHARLENE W. SPELLMAN

STATE OF IDAHO

COUNTY OF CANYON

On this 16 day of April, 1998, before me a notary public, personally appeared WILLIAM F. SPELLMAN AND CHARLENE W. SPELLMAN, known or identified to me to be the person(s) who(se) name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they have executed the same.


Notary Public
Residing at GREENLEAF, Idaho
My commission expires: 9-1-99



PIONEER TITLE COMPANY
OF CANYON COUNTY

100 10TH AVE SOUTH
NAMPA, IDAHO 83651

423 SOUTH KIMBALL
CALDWELL, ID 83605

Section 14

PARCEL I

TOWNSHIP 3 NORTH, RANGE 5 WEST, B.M., OWYHEE COUNTY, IDAHO
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WJD
CWA

Exhibit B

Idaho Department of Water Resources



0

0.25

0.5

Claim Number: 02-2318a
Legal: T03N, R05W, S14
Reviewed By: MRM 10/05/05

- Point of Diversion
- Place of Use
- Section Lines
- Quarter Quarter Lines

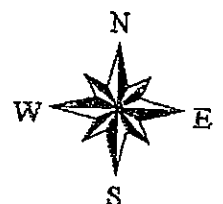


Exhibit C

Idaho Department of Water Resources

1987 NAFF Image



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Dana L. Hofstetter, ISB No. 3867
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 McCall, Idaho 83638
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Attorneys for Defendants

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

WILLIAM WILKERSON,
Plaintiff,

vs.

SNAKE RIVER R.V. RESORT, LLC,
RAYMOND C. BARKER, JR.,
CHARLES KRITZ, AND
DIANE B. KRITZ,

Defendants.

Case No. CV-06-05541

AFFIDAVIT OF DEAN BENTON

STATE OF IDAHO

COUNTY OF OWYHEE

ss.

Dean Benton, being first duly sworn upon oath, deposes and says:

**1. I am over the age of 18 years and make this affidavit based upon
 personal information.**

EXHIBIT

K

Blumberg No. 5208

2. From approximately August, 1999 until October, 2003, the Floyd Wayne and Bonnie Marie Benton Revocable Trust, of which certain of my family members were the trustee and beneficiaries, owned the Snake River RV Park near Homedale, Idaho on approximately 37 acres along the Snake River.

3. During this period of time, I assisted my family in running the Snake River RV Park. I lived on the RV Park Property, and managed the business operation. To my knowledge and observation, during the Benton Revocable Trust's ownership of this property, no water from the Snake River was diverted into any conduits or pipelines on the Snake River RV Park property for the purpose of irrigating the adjacent 13 acre parcel. Further, during this period of time, I never observed or became aware of any person associated with the 13 acre parcel accessing the pumping station or any conduit or pipelines on the Snake River RV Park property for the purpose of irrigating the adjacent 13 acre parcel.

4. During this period of time, no generator ran at the pumping station on the Snake River, and no overhead or underground power lines were located along the old conduit and pipelines that went from the Snake River to the 13 acre parcel.

5. The Floyd Wayne and Bonnie Marie Benton Revocable Trust sold the approximately 37 acre Snake River RV Park riverfront parcel to Mr. and Mrs. Kritz and Mr. Barker, in or around October, 2003.

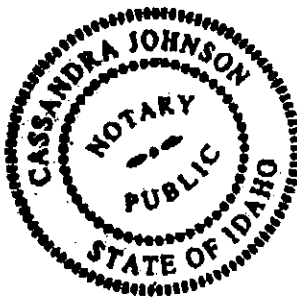
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 8th day of March 2007.



Dean Benton

SUBSCRIBED AND SWORN to before me this 8th day of March, 2007.





Notary Public in and for the State of Idaho
Residing at: Bozeman, Montana, Idaho
My Commission Expires 02/06/2012

CERTIFICATE OF SERVICE

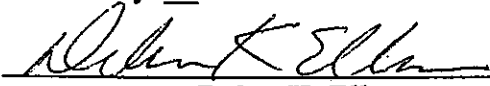
I hereby certify that on this 9th day of March, 2007, I caused to be served a copy of the foregoing document on the following by the postage pre-paid method below:

Jon C. Gould
Charles L. Honsinger
RINGERT CLARK CHARTERED
455 S. Third
P.O. Box 2773
Boise, ID 83701-2773

☐ U.S. Mail ☒ Overnight Delivery ☐ Hand-Delivery ☐ Facsimile

Hon. James C. Morfitt
Third District Court
1115 Albany
Caldwell, ID 83605

☐ U.S. Mail ☒ Overnight Delivery ☐ Hand-Delivery ☐ Facsimile


Debra K. Ellers

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Attorneys for Defendants/Counterclaimants

FILED

A.M. / P.M.

AUG 17 2007

CHARLOTTE SHERBURN, CLERK

Deputy Clerk

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

WILLIAM WILKERSON,

Plaintiff/Counterdefendant

v.

**SNAKE RIVER R.V. RESORT, LLC,
RAYMOND C. BARKER, JR.,
CHARLES KRITZ, AND
DIANE B. KRITZ,**

Defendants/Counterclaimants

Case No. CV-06-05541

**AFFIDAVIT OF DOUG LARZELIER
IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AND IN OPPOSITION
TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO

COUNTY OF OWYHEE

ss.

Doug Larzelier, being first duly sworn upon oath, deposes and says:

**AFFIDAVIT OF DOUG LARZELIER IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT— Page 1**

EXHIBIT

L

1. I am over the age of 18 years and make this affidavit based upon personal information.

2. I am the son of Peggy Jackson and the stepson of James Jackson, who formerly owned 50 acres on the Snake River near Homedale, Idaho (the "Property"). My parents developed an RV Park on the 37 acre portion of the 50 acres along the Snake River (the "Riverfront Parcel"), sometime in the 1970s. From about 1971 through about 1987, I lived in a house on the Riverfront Parcel. A pump was used to provide irrigation water from the Snake River to the portions of the Property being used for the RV Park and for farming. The 50 acres included the 13 acre parcel across the old railroad right of way currently owned by Mr. Wilkerson (the "13 Acre Parcel").

3. After my wife, Mary Jo Larzelier and I gained title to the Property until we turned it back over to my parents in or around 1987, we ran the RV Park on the Riverfront Parcel. As described in my statement addressed to the Idaho Department of Water Resources, dated on or about November 11, 2005, a copy of which is attached as Exhibit A, during these approximately 5 years, I have no records that we farmed the 13 Acre Parcel or applied irrigation water from the pumping station on the Snake River to it. During this time, I was farming an orchard elsewhere in the Homedale area that was not on the Property.

4. For one or two irrigation seasons in the late 1980s or around 1990, my stepfather, James Jackson, did irrigate the 13 Acre Parcel from Jump Creek, which borders the 13 Acre Parcel. He placed a generator by Jump Creek, and pumped water for irrigation from there to the 13 Acre Parcel.

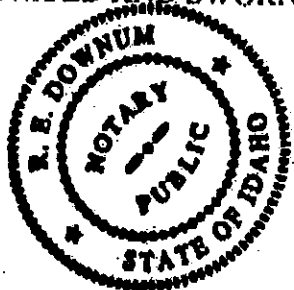
5. When the Wittrocks purchased the 13 Acre Parcel in or about July, 1991 from my parents, I was present when the Wittrocks requested both an easement to use the irrigation conduit to deliver water from the Snake River and an access easement across the Riverfront Parcel. My parents refused to grant either easement to the Wittrocks, but instead gave the Wittrocks limited permission of a few years' duration to use the irrigation pump and pay for 1/2 of the power at the point of diversion on the Snake River. The limited time period was intended to give the Wittrocks time to take any necessary steps to obtain irrigation water for the 13 Acre Parcel from Jump Creek or another source besides one that required crossing the Riverfront Parcel.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 15 day of August, 2007.

Doug Larzelier
Doug Larzelier

SUBSCRIBED AND SWORN to before me this 15 day of August, 2007.



R.E. Downum
Notary Public in and for the State of Idaho
Residing at: Home, Idaho
My Commission Expires: 10-27-12

**AFFIDAVIT OF DOUG LARZELIER IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO**

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2007, I caused to be served a copy of the foregoing document on the following by the postage pre-paid method below:

Jon C. Gould
Charles L. Honsinger
RINGERT CLARK CHARTERED
455 S. Third
P.O. Box 2773
Boise, ID 83701-2773

☐ U.S. Mail ☐ Overnight Delivery ☒ Hand-Delivery ☐ Facsimile


Debra K. Ellers

5
TO: STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RE: WATER RIGHT NO. 2-2318

BETWEEN THE DATES OF 1982 AND 1987.

WE OWNED THE PROPERTY ON THE SNAKE RIVER (OWYHEE COUNTY)
DESCRIBED AS

WATER RIGHT # 2-2318A - APPX. 13.3 ACRES

TOWNSHIP 03N RANGE 05W

SECTION 14

LOT 5 LOT 6

(SOLD EVENTUALLY TO S.R.R.V. LLC. // KRITZ & BARKER)

I/WE DID NOT IRRIGATE THE SOUTH 13 ACRES #2-2318A BETWEEN THE
YEARS OF 1982 AND 1987, ACCORDING TO OUR RECORDS.

I/WE DID IRRIGATE THE PARK SECTION #2-2318B.

Sincerely,

DOUG LARZELIER



FILED

A.M. 2:20 P.M.

OCT 18 2007

CHARLOTTE SHERBURN, CLERK

Deputy Clerk

Rec'd 10/19/07
DKE

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

WILLIAM WILKERSON,

Plaintiff/Counterdefendant,

vs.

SNAKE RIVER R.V. RESORT, LLC,
RAYMOND C. BARKER, JR.,
CHARLES KRITZ, AND
DIANE B. KRITZ,

Defendants/Counterclaimants.)

Case No. CV 2006-05541*M

MEMORANDUM DECISION
AND ORDER UPON MOTIONS
FOR SUMMARY JUDGMENT

BACKGROUND AND PROCEDURAL HISTORY

On June 27, 2007, the plaintiff filed his Motion for Summary Judgment together with supporting affidavits and a supporting memorandum seeking quiet title to an easement allowing for delivery of irrigation water to plaintiff's property. Plaintiff filed a Supplemental Memorandum in Support of Motion for Summary Judgment on July 3, 2007.

MEMORANDUM DECISION AND ORDER
UPON MOTIONS FOR SUMMARY JUDGMENT - 1

EXHIBIT

M

Bloomberg No. 5208

On August 17, 2007, defendants filed a Motion for Summary Judgment together with supporting affidavits and a supporting memorandum seeking dismissal of all claims in the Verified Complaint. Defendants' supporting memorandum was also in opposition to plaintiff's motion. Plaintiff filed his Response to Defendants' Motion for Summary Judgment on August 30, 2007 and his Reply to Defendants' Brief in Opposition to Plaintiff's Motion for Summary Judgment on September 6, 2007. Defendants filed their Reply Brief on Motion for Summary Judgment on September 7, 2007.

The parties' cross-motions for summary judgment came on for hearing on September 14, 2007. Appearing for the Plaintiff was Jon C. Gould and appearing for the Defendants was Debra K. Ellers. The Court has reviewed all briefing, affidavits, and exhibits in favor and in opposition to the motions and it finds as follows.

**RELEVANT FACTS SET FORTH IN
THE PLEADINGS & AFFIDAVITS**

This case arises out of a dispute between neighboring landowners over plaintiff's claimed easement that runs across defendants' parcel from the Snake River to plaintiff's property. Both parcels were previously owned by James and Peggy Jackson (or their son, Doug Larzelier) as one 50 acre parcel from the early 1960's until 1991. This property had an old railroad right of way that ran through it, with 13-acres located to the south and 37-acres to the north. In the late 1960s or early 1970s, the Jacksons ran an irrigation conduit from the Snake River under the old railroad right of way to the 13-acres to provide water for cattle and crops. The Jacksons had water right 02-2318 which was used for a pump on the Snake River to provide water for both parcels. In the mid-1970s, the Jacksons quit farming and developed an RV park on the 37-acres which they continued to irrigate.

In 1991, the Jacksons sold the property to the Wittrocks. As part of the sale agreement, the Wittrocks could use the irrigation conduit for a three year period after which time the use was to terminate. In 1992, the Jacksons sold the 37-acre parcel to the Harlans. Both parcels have subsequently been transferred multiple times. Plaintiff currently owns the 13-acre parcel while defendants own and manage the 37-acre parcel. The current dispute arises over plaintiff claiming an easement across defendants' property for use of the conduit to irrigate his property and access in order to maintain it. Both parties have moved for summary judgment on plaintiff's claims.

STANDARD OF REVIEW

Summary judgment is appropriate where the pleadings, depositions, admissions and affidavits on file show that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c); *City of Idaho Falls v. Home Indemnity Co.*, 126 Idaho 604, 606 (1995). At all times, the burden of proving the absence of a genuine issue of material fact rests upon the moving party. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517 (1991).

In consideration of the motion, the court must liberally construe the facts and inferences contained in the existing record in favor of the party opposing the motion. *Bonz v. Sudweeks*, 119 Idaho 539, 541 (1991). To withstand a motion for summary judgment, the non-moving party's case must be anchored in something more solid than speculation. A mere scintilla of evidence is not enough to create a genuine issue. *Edwards v. Conchemco Inc.*, 111 Idaho 851 (Ct. App. 1986). The party opposing the motion for summary judgment may not merely rest on the allegations contained in the pleadings; rather, evidence by way of affidavit or deposition must be produced to contradict the assertions of the moving party. I.R.C.P. 56(e); *Ambrose v.*

Buhl School Dist. #412, 126 Idaho 581 (Ct. App. 1995).

The existence of disputed facts will not defeat summary judgment when the plaintiff fails to make a showing sufficient to establish the existence of an element essential to his case, and on which he will bear the burden of proof at trial. *Mallonee v. State*, 139 Idaho 615, 618 (2004). Facts in dispute cease to be “material” facts when the plaintiff fails to establish a prima facie case. In such cases, there can be “no genuine issue of material fact,” since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial. *Garzee v. Barkley*, 121 Idaho 771 (Ct. App. 1992); citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986). This rule facilitates the dismissal of factually unsupported claims prior to trial. *Id.* Summary judgment dismissing a claim is appropriate when the plaintiff fails to submit evidence to establish an essential element of the claim. *Primary Health Network, Inc. v. State, Dept. of Admin.*, 137 Idaho 663, 666 (2002).

ANALYSIS

I. Plaintiff’s Motion for Summary Judgment sets forth three theories upon which he bases his claim for an easement across the Defendants’ real property. Those theories are: A) a statutory right-of-way pursuant to I.C. § 42-1102; B) an easement by implication resulting from the land and water right severance in 1991; and C) an easement by prescription. Each will be discussed in turn.

A. Statutory Right-of-Way pursuant to I.C. § 42-1102

I.C. § 42-1102 states in part:

Owners of Land – Right to Right-of-Way

When any such owners or claimants to land have not sufficient length of frontage on a stream to afford the requisite fall for a ditch, canal or other conduit on their own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of such stream, and convenient facilities

otherwise for the watering of said lands cannot be had, such owners or claimants are entitled to a right-of-way through the lands of others, for the purposes of irrigation.

The existence of a visible ditch, canal or conduit shall constitute notice to the owner, or any subsequent purchaser, of the underlying servient estate, that the owner of the ditch, canal or conduit has the right-of-way and incidental rights confirmed or granted by this section.

Plaintiff argues that this Idaho law demands that a party have a means to transfer water from the point of diversion to the place of use. He claims that I.C. § 42-1102 grants a right-of-way across defendants' property because plaintiff's property is not adjacent to the Snake River and the presence of the conduit (which has existed since 1964) on defendants' property provided notice to defendants of its existence.

Defendants respond that plaintiff has failed to show lack of sufficient frontage on a stream. The plaintiff admitted at his deposition that Jump Creek borders his property. Defendants believe that irrigation water for the 13-acre parcel can be obtained from Jump Creek as was done in the past.

It is undisputed in this case that plaintiff has no current water right to Jump Creek although it does border on his property. Defendants have produced the affidavit of Steve Hannula. He is a licensed professional engineer and concludes that as an alternative to diversion of irrigation water from the Snake River through defendants' property, there is more than sufficient flow in Jump Creek for plaintiff's irrigation needs. Further, he opines that existing Idaho Department of Water Resources' procedures would permit a change of the point of diversion for the water right to Jump Creek. The court is not convinced from Mr. Hannula's affidavit that he possesses the expertise or knowledge of the administrative procedures that plaintiff would be required to follow in order to obtain a water right to divert water from Jump

Creek. Therefore, it is unclear to this court that a water right could be obtained to divert water from Jump Creek for irrigation. In the event that this administrative remedy was pursued and a right to divert water from Jump Creek was denied, this court believes that this statute is applicable to entitle the plaintiff to a right-of-way through the 37 acre parcel for the purpose of irrigation. In the event that the Department of Water Resources allows the plaintiff to divert water from Jump Creek for irrigation, then he will be deemed to have "sufficient length of frontage on a stream" and an easement by this statute is not available.

B. Easement by Implication

In order to establish an implied easement by prior use, the party asserting the easement must prove three elements: (1) unity of title or ownership and a subsequent separation by grant of the dominant estate; (2) apparent continuous use long enough before separation of the dominant estate to show that the use was intended to be permanent; and (3) the easement must be reasonably necessary to the proper enjoyment of the dominant estate. *Thomas v. Madsen*, 132 P.3d 392, 395 (2006). Strict necessity is not required for the creation of an implied easement by prior use. *Id.* All that is required is reasonable necessity. *Id.* Because the implied easement from prior use is created at the time of severance, the issue of reasonable necessity is based upon the circumstances that existed at that time. *Id.* A later change in circumstances is not relevant to the creation of the easement. *Id.*

One of the requirements for establishing an implied easement by prior use is that there has been open and continuous use of the easement prior to the severance of the dominant and servient estates. *Davis v. Peacock*, 133 Idaho 637, 641-642 (1999). This requirement ensures

that the buyer of the servient property will have notice of the preexisting use. *Id.* Consequently, it is equitable to impose an easement on a buyer who already had notice of its existence. *Id.*

Further, an implied easement by prior use is not later extinguished if the easement is no longer reasonably necessary. *Id.* at 643. This long standing rule is based on the theory that when someone conveys property, they also intend to convey whatever is required for the beneficial use and enjoyment of that property, and intends to retain all that is required for the use and enjoyment of the land retained. *Id.* Consequently, an easement implied by prior use is a true easement of a permanent duration, rather than a temporary easement which exists only as long as the necessity continues. *Id.* Additionally, an implied easement by prior use is appurtenant to the land and therefore passes with all subsequent conveyances of the dominant and servient estates. *Id.*

In this case, Defendants do not dispute that the first element of unity of title or ownership and a subsequent separation by grant of the dominant estate is met in this case. However, Defendants contest that the second and third elements have not been met and the Court tends to agree. The second element to be proven is continuous use of the easement long enough before separation of the dominant estate to show that the use was intended to be permanent. The Court has before it the affidavits of Peggy Jackson who owned the original 50-acres for more than two decades before separation of the dominant and servient estates in 1991. *See Affidavit of Peggy Jackson, filed July 17, 2006 and August 17, 2007.* She states that in the late 1960s or early 1970s, the Jacksons ran irrigation pipe under an old railroad right of way to the 13-acres to provide water for cattle and crops. The 13-acres had not been irrigated previously under their ownership and the Jacksons used the same water right from a pump on the Snake River to

provide for both the 13-acre and 37-acre parcels. In the mid 1970s, the Jacksons quit farming and developed the 37-acres into an RV park and irrigated it under WR 2-2318.

Of relevance to this issue, Ms. Jackson states that the 13-acres had not been irrigated from the Snake River for some period of time prior to the time her son, Doug Larzelier, took ownership in 1982. Larzelier did not irrigate the 13 acre parcel from 1982 to 1987. When the Jacksons got the property back in 1987, they didn't irrigate the 13-acres using the conduit to which the plaintiff claims an easement. She does admit that for one or two irrigation seasons in the late 1980s or 1990; her husband did irrigate the 13-acres from Jump Creek. So when the land was severed at the time of the sale of the 13 acre parcel to the Wittrocks, it had been at least ten years since the conduit had been used to irrigate.

When the Wittrocks purchased the 13-acres in 1991, they asked that they be granted an easement to use and maintain the conduit. However, it is clear from Ms. Jackson's affidavit that they refused to grant such an easement. Instead, the Jacksons agreed to give the Wittrocks permission to use the pump on the Snake River and the conduit to irrigate the 13 acre parcel for a three year period in return for paying ½ of the power.. Peggy Jackson claims that the three year period was intended to give the Wittrocks time to take any necessary preparations to divert irrigation water from Jump Creek to the 13-acres.

This is supported by the Affidavit of Doug Larzelier filed August 17, 2007. Mr. Larzelier is the son of Peggy Jackson and stepson of James Jackson, who formerly owned the 50-acres. His parents developed the RV Park on the 37-acre portion sometime in the 1970s. From 1971 to 1987, Mr. Larzelier lived on the 37-acre portion and he states that a pump was used to provide irrigation to the portions of the property being used for the RV Park and for farming. While he

owned the 37-acre parcel, he has no recollection that the Jacksons farmed the 13-acres or applied

irrigation water from the Snake River to it. Mr. Larzelier states that for one or two irrigation seasons in the late 1980s or 1990, James Jackson did irrigate the 13-acres by placing a generator by Jump Creek and pumping water for the 13-acres.

When the Wittrocks purchased the 13-acres in July 1991, Mr. Larzelier was present when his parents refused to grant an easement to use the irrigation conduit and an access easement across the 37-acres but instead gave them limited permission of a few years duration to use the irrigation pump and pay for ½ of the power at the point of diversion. He confirms that the three year period was intended to give them time to obtain irrigation water for the 13 acres from Jump Creek or another source.

The plaintiff has not presented any evidence that contradicts these facts. Consequently, there is no dispute of material fact. The plaintiff has failed to prove the second element of an easement by implication as there is no evidence to support a finding that there was apparent continuous use of the easement long enough before separation of the dominant estate in 1991. Instead, all evidence is contrary to a finding of continuous use or an intention that the use be permanent.

Therefore, summary judgment should be entered in favor of the defendants on this issue.

C. Easement by Prescription

To acquire a prescriptive easement, a claimant must present reasonably clear and convincing evidence of open, notorious, continuous, uninterrupted use, under claim of right, with the knowledge of the owner of the servient estate for the prescriptive period of five years.¹ I.C. § 5-203; *Brown v. Miller*, 140 Idaho 439, 443 (2004). A prescriptive right cannot be obtained if

¹ Although the prescriptive period is now twenty (20) years pursuant to I.C. § 5-203, at the time of filing the Verified Complaint the prescriptive period was five (5) years which Defendants concede in their briefing.

the use of the servient estate is by permission of the landowner. *Id.* Proof of open, notorious, continuous, uninterrupted use of the claimed right for the prescriptive period, without evidence as to how the use began, raises the presumption that the use was adverse and under claim of right. *Id.* The burden is then on the owner of the servient estate to show that the use was permissive, or by virtue of a license, contract or agreement. *Id.*

As the prescriptive period in this case is five years, the plaintiff must prove that he or his predecessors used the easement for some uninterrupted five-year period of time before the suit was filed. *Hodgins v. Sales*, 139 Idaho 225, 231, 76 P.3d 969, 975 (2003). Tacking is the concept that allows the current owner to combine his or her prescriptive use with that of a previous owner, in order to meet the five-year statutory requirement. *Id.* Thus, a claimant who has not owned the subject property for the statutory period may rely on the adverse use by the claimant's predecessor for the prescriptive period, or the claimant may combine such predecessor's use with the claimant's own use to establish the requisite five continuous years of adverse use. *Id.*

Adverse use, also referred to as hostile use or use under a claim of right, is just one of the five elements necessary to establish a prescriptive easement. *Hodgins v. Sales*, 139 Idaho 225, 231, 76 P.3d 969, 975 (2003). Adverse use has been characterized as an actual invasion or infringement made without permission of the owner. *Id.* Under a claim of right means that the claimant has used the way without recognition of the rights of the owner of the servient tenement. *Id.* The nature of the use is characterized as hostile in that it runs contrary to the servient owner's claims to the property. *Id.* However, the state of mind of the claimant is not controlling; the focus is upon the nature of the claimant's use. *Id.*

Plaintiff relies on the time period of 1991 through 1996 to establish a prescriptive easement and so the Court will focus on that time period first. The ownership of both parcels has been set out above. Through mid-1991, the Jacksons owned both parcels of land and in July sold the 13-acre parcel to the Wittrocks. As is set forth above, the Jacksons refused to grant the Wittrocks an easement over the 37-acre parcel to use the irrigation conduit; however, the Jacksons did give the Wittrocks permission to use the conduit for three years. Plaintiff has not set forth any evidence that the Wittrocks use of the irrigation conduit went outside the scope of the Purchase and Sale Agreement or was beyond the permission granted by the Jacksons in 1991. The Jacksons then sold the 37-acre parcel to the Harlans in 1992. Therefore, at least from mid-1991 to the sale of the 37-acres in 1992, there is no evidence that the prescriptive period had started to run as a prescriptive right cannot be obtained if the use of the servient estate is by permission of the landowner and the Wittrocks had permission from the Jacksons.

In furtherance of his claim, plaintiff submits the affidavit of Launie T. Mashburn filed July 3, 2007. Mashburn stated she irrigated the 13-acres using water right 02-2318A. The water was diverted from a point of diversion on the Snake River through the Snake River RV Resort (37-acres). In 1995 or 1996, the pump fell in the Snake River and had to be removed and rebuilt. In the fall of 1996, the owner of the 37-acres, Mr. Brumley, attempted to keep Mashburn from maintaining the irrigation system on the 37-acres. In November 1996, Mashburn quitclaimed his interest in the property to Kristina Mashburn, William Spellman and Charlene Spellman.

The use of the conduit from 1991 to 1994 was pursuant to the agreement between Jacksons and Wittrocks granting permission to use the conduit for a three year period. Mashburn's affidavit did apparently show continuous use of the irrigation conduit from 1994-1996. However, there is no evidence that the conduit was used from 1996 on until plaintiff

began his attempts to irrigate his land from the Snake River. In fact, the affidavit of Dean Benton goes against any claim that from August 1999 through October 2003, the Snake River was used to irrigate the 13-acres.

Based upon the record and evidence submitted, the Court fails to see a continuous five year period in which Plaintiff can satisfy the requirements for establishing a prescriptive easement. Therefore, summary judgment should be granted in favor of the defendants on this issue.

II. Defendants' Counterclaim

It became clear at oral argument that defendants were not seeking summary judgment on their counterclaim but instead were rebutting any such claim by the plaintiff that the counterclaim should be dismissed. The plaintiff did not provide any evidence or argument specifically in support of dismissal of the counterclaim and did not follow the procedures set out in Idaho Rules of Civil Procedure 56. Therefore, the Court declines to rule on the counterclaim as the question is not properly before the Court at this time.

Therefore,

ORDER

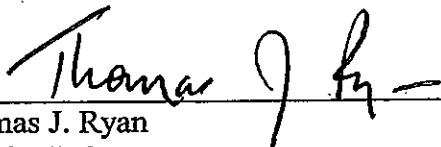
IT IS HEREBY ORDERED, and this does ORDER, that Plaintiff's Motion for Summary Judgment is hereby DENIED.

IT IS FURTHER ORDERED, and this does ORDER, that Defendants' Motion for Summary Judgment based on I.C. § 42-1102 is hereby DENIED.

IT IS FURTHER ORDERED, and this does ORDER, that Defendants' Motion for Summary Judgment based on an easement by implication is hereby GRANTED.

IT IS FURTHER ORDERED, and this does ORDER, that Defendants' Motion for Summary Judgment based on easement by prescription is hereby GRANTED.

DATED: 10/12/07


Thomas J. Ryan
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order on Motions for Summary Judgment is forwarded to the following persons on this 18th day of October, 2007.

Jon C. Gould
Ringert Clark Chtd.
P.O. Box 2773
Boise, ID 83701

Debra K. Ellers
Attorney at Law
P.O. Box 1122
McCall, ID 83638

Dana L. Hofstetter
Hofstetter Law Office, LLC
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CLERK OF THE DISTRICT COURT


Deputy Clerk



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

February 27, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

WILLIAM R WILKERSON SR
IMOGENE E WILKERSON
2520 S POWERLINE RD
NAMPA ID 83686

Re: Notice of Claim to a Water Right No. A02-02318A

Dear Claimants:

Enclosed is a copy of the above referenced claim, which reflects the change in ownership of the land and appurtenant water rights covered under the original filing.

The Department will contact you in the future concerning any requirements that may be needed in order to process this claim for final court decree.

Thank you for your patience and cooperation, as we have had several ownership changes to process. If you have any questions concerning the enclosed claim, please feel free to contact this office.

Sincerely,

Denise Buffington
Office Specialist I
Adjudication Section
Western Region Office

DB:db

Enclosure

Blumberg No. 5208

EXHIBIT

N

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 02-2318A
Date Received: 10/7/88
Receipt No: X777777
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s): WILLIAM R WILKERSON SR Phone: (208) 466-2175
2520 S POWERLINE RD
NAMPA ID USA 83686

IMOGENE E WILKERSON Phone: (208) 466-2175
2520 S POWERLINE RD
NAMPA ID USA 83686

2. Date of Priority: 06/05/1964

3. Source: SNAKE RIVER Trib. to: COLUMBIA RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
03N	05W	14	NW NW	OWYHIE	

5. Description of diverting works:

2 PUMPS ON PLATFORM W/PIPELINE TO POU. LARGE PUMP PUTS WATER—

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	3/15	11/15	0.27	

7. Total Quantity Appropriated is:
0.27 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
03N	05W	14	SW NW	6	IRRIGATION	1.7
			SE NW	5	IRRIGATION	8.6
			NW NW	6	IRRIGATION	3
					Section Acres	13.3
					Total Acres	13.3

11. Place of use in counties: OWYHEE

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

Ownership changed by DB 2/27/2001.

15. Basis of Claim: License

1 later cut?

2 A. No.

3 Q. Have you ever grown any crops with
4 water on the 13.3 acres from the Snake River?

5 A. No, because I haven't been allowed on
6 the property to get my water.

7 Q. Have you ever pastured any livestock on
8 the 13.3 acres using water from the Snake River
9 to water them or water the pasture?

10 A. There's never been any animals on the
11 13 acres until about a month ago.

12 Q. The question had to do with the use of
13 water. Have you used water from the Snake River
14 to water pasture on the 13.3 acres since you've
15 owned it?

16 A. I told you "No" the question just
17 before that.

18 Q. The request was about hay, not horses.

19 A. You asked the question about whether I
20 used water --

21 MS. ELLERS: Can we go off the record?

22 (Discussion held off the record).

23 Q. (BY MS. ELLERS) Based on the last
24 exchange, can I just summarize by saying you have
25 not used any water from the irrigation works to

1 pump and everything hooked back up.

2 Q. Do you recall the name of the pump man
3 who accompanied you?

4 A. Corby is his first name. I'm not sure
5 what his last name is.

6 Q. Do you know who he works for?

7 A. Agri Lines.

8 Q. When in 2006 was this visit?

9 A. I'm not sure of the date.

10 Q. Spring, summer, fall?

11 A. I would say probably late summer.

12 Q. And did you and Corby, in fact, get
13 onto the Snake River RV property at that time?

14 A. Yes.

15 Q. How long were you there?

16 A. Not very long.

17 Q. What happened?

18 A. Dave Ellis kicked us off.

19 Q. Do you recall what Mr. Ellis said to you?

20 A. It wasn't nice.

21 Q. You're under oath, so just, as best you
22 can, say what he said, please.

23 A. Well, I believe he told me to get my
24 "F-ing" ass off of his property.

25 Q. Did you leave?

1 the Snake River on your 13.3 acres since you've
2 owned it?

3 A. That's right.

4 MS. ELLERS: Is this for a good time
5 for a break, Counsel?

6 (Discussion held off the record).

7 (Recess taken).

8 MS. ELLERS: Let's go back on the record,
9 please.

10 Q. (BY MS. ELLERS) Mr. Wilkerson, before
11 the break we had gotten up, according to my notes,
12 to spring of 2005 a visit with Launie Mashburn to
13 the Snake River RV Park property.

14 A. Yes.

15 Q. Do you recall any accesses you made to
16 the Snake River RV property after that date?

17 A. In that year?

18 Q. In that year, yes.

19 A. I'm not sure whether I did or not.

20 Q. When is the next encounter that sticks
21 out in your mind?

22 A. I believe it was 2006.

23 Q. And what was the nature of that access?

24 A. To take a pump man down to get an
25 estimate of what it was going to cost to get my

1 A. Yes, we did.

2 Q. Did you come back that year, 2006?

3 A. Yes.

4 Q. With anybody else?

5 A. Yes.

6 Q. Who?

7 A. An Owyhee County Sheriff's Department
8 standby.

9 Q. And who was that person, if you recall?

10 A. I don't know.

11 Q. So was it yourself and this Deputy
12 Sheriff Standby who next went to the property?

13 A. And Corby.

14 Q. And Corby?

15 A. Um-hmm (nodding head). Yes.

16 Q. How soon after the visit where you were
17 kicked off by Mr. Ellis -- the next day, the next
18 week, the next month?

19 A. I'm not sure exactly.

20 Q. I'm just trying to get a feel for how
21 close in time. Within a day, two days, a week --
22 whatever you can remember. A year?

23 A. No. It was all in 2006.

24 Q. Okay. But you can't recall if it was a
25 day, a week, or a month when you next went back