

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
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601 West Bannock Street
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Boise, Idaho 83701-2720
Office: (208) 388-1200
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Attorneys for Claimant Robert & Kathi Meyers Ltd. Family Partnership

1-28
RECEIVED

JAN 28 2011

**DEPARTMENT OF
WATER RESOURCES**

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

In Re SRBA

Case No. 39576

Subcase No. 47-15262

**AFFIDAVIT OF MICHAEL C.
CREAMER**

State of Idaho)
) ss.
County of Ada)

MICHAEL C. CREAMER, being first duly sworn upon oath, deposes and states:

1. I am an attorney with Givens Pursley LLP, counsel to Robert & Kathi Meyers Ltd. Family Partnership.
2. I make this affidavit based on my own personal knowledge.
3. Attached hereto as Exhibit A is a true, correct, and complete copy of the Warranty Deed from Ronald C. Yanke and Linda L. Yanke to Ken Mulberry Enterprises dated December 11, 2089, obtained from the online database records of the Idaho Department of Water Resources.
4. Attached hereto as Exhibit B is a true, correct, and complete copy of the Warranty Deed from Ronald C. Yanke and Linda L. Yanke to Lex R. Christiansen and Pam Christiansen

dated January 22, 1991, obtained from the online database records of the Idaho Department of Water Resources.

5. Attached hereto as Exhibit C is a true, correct, and complete copy of the Real Estate Purchase & Sale Agreement & Receipt for Earnest Money by and between Lex R. Christiansen and Pam Christiansen, as Buyers, and Ronald C. & Linda L. Yanke, as Sellers, dated January 7, 1991, obtained from the office of the general counsel for Yanke Machine Shop, Inc.

6. Attached hereto as Exhibit D is a true, correct, and complete copy of the Memorandum – Change in Ownership from A. René Martin, Deputy Attorney General, to Legal File and Steve Clelland, IDWR Southern Region, dated May 6, 1991, obtained from the online database records of the Idaho Department of Water Resources.

7. Attached hereto as Exhibit E is a true, correct, and complete copy of the letter dated 20-May-1991 from Steve Clelland, Water Agent, Sr., Idaho Department of Water Resources, Southern Region, to Lex R. Christiansen, obtained from the online database records of the Idaho Department of Water Resources.

8. Attached hereto as Exhibit F are true, correct, and complete copies of the Affidavit of Don Dean dated March 13, 1995, Affidavit of Doug Mathers dated March 13, 1995, and Affidavit of Lex R. Christiansen dated March 13, 1995, obtained from the online database records of the Idaho Department of Water Resources.

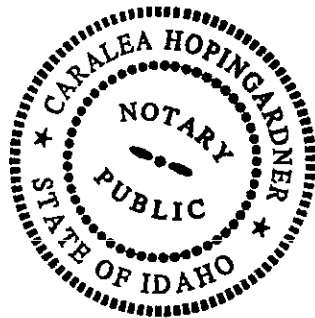
9. Attached hereto as Exhibit G is a true, correct, and complete copy of the Idaho Department of Water Resources' Order to Show Cause In The Matter Of Application For Transfer No. 4002 Of Water Right No. 47-2137 In The Name Of Ken Mulberry Enterprises, dated November 8, 2010, obtained from the online database records of the Idaho Department of Water Resources.

DATED this 27th day of January, 2011.



Michael C. Creamer

Subscribed and sworn to before me this 27th day of January, 2011.



Caralea Hopingardner
Notary Public for Idaho
Residing at Boise, ID
My Commission expires: 5/21/2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2011, the foregoing was filed, served, or copied as follows:

ORIGINAL FILED

Clerk of Fifth Judicial District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
Fax: 208-736-2121

☐ U. S. Mail
☐ Hand Delivered
☒ Overnight Mail
☐ Facsimile
☐ E-mail

SERVICE COPIES

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098
Fax: 208-287-6700

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

Chief of Natural Resource Division
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449
Fax: 208-334-2690

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

United States Department of Justice
Environment & Nat'l Resource Div
550 West Fort Street, MSC 033
Boise, ID 83724

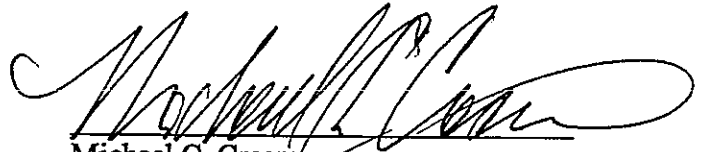
☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

Kirk L. Christiansen
PO Box 950
Twin Falls, ID 83303

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

Pamela J. Christiansen
3175 N. 3600 E.
Kimberly, ID 83341

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail



Michael C. Creamer

#28591-FC

TITLEFACT, INC.
A LAND TITLE COMPANY

POOR ORIGINAL

WARRANTY DEED

For Value Received

RONALD C. YANKE and LINDA L. YANKE, husband and wife

Hereinafter called the grantor, hereby grants, bargains, sells and conveys unto
KEN MULBERRY ENTERPRISES, a partnership composed of Kenneth A.
Mulberry and Jennifer Mulberry
whose address is: Box H, Kimberly, Idaho 83341

Hereinafter called the grantee, the following described premises, in Twin Falls County, Idaho,
to-wit:

Per Exhibit -A- attached hereto and made a part hereof

TOGETHER WITH THE FOLLOWING:

40 shares of stock in the Twin Falls Canal Company

0.78 c.f.s. of water from Rock Creek, License No. 47-2502, formerly
No. 45-2208, priority date 6/4/49.

0.6 c.f.s. of water from West Rock Creek, License No. 47-2137,
priority date 4/29/18.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee
and to the Grantee's heirs and assigns forever. And the said Grantor does hereby
covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises;
that they are free from all incumbrances except as described above and that Grantor will warrant
and defend the same from all lawful claims whatsoever.

Dated: December 11, 1989

Ronald C. Yanke
RONALD C. YANKE

Linda L. Yanke
LINDA L. YANKE

EXHIBIT

A

STATE OF IDAHO, COUNTY OF Ada

On this 13th day of December, 1989,
before me, a notary public in and for said State, per-
sonally appeared Ronald C. Yanke and
Linda L. Yanke, husband and wife

known to me to be the persons whose names are
subscribed to the within instrument, and acknowledged to
me that they executed the same.

[Signature]
Notary Public
Residing at Meridian, Idaho
Comm. Expires July 12, 1995

STATE OF IDAHO, COUNTY OF Twin Falls

I hereby certify that this instrument was filed for record at
the request of TitleFact, Inc.
at 50 minutes past 11:00 o'clock A.m.
this DEC 14 1989 day of
19 . In my office, and duly recorded in Book
of Deeds at page

RICHARD A. PENCE

Ex-Officio Recorder

By [Signature]
Fees \$ 6.00 Deputy.
Mail to: Grantee above

INSTRUMENT NO.

984025

EXHIBIT -A-

Township 11 South, Range 18 E., B.M., Twin Falls County, Idaho
Section 22: Part of the NW1/4NW1/4 and part of the NE1/4NW1/4
described as follows:

BEGINNING at the North 1/4 section corner of Section 22 said
corner marked by a 1/2" rebar which shall be the POINT OF
BEGINNING;

THENCE South 0°11'28" West along the 1/4 section line for
1319.45 feet to a 5/8" rebar at the SE corner of the
NE1/4NW1/4;

THENCE North 89°16'37" West along the east line of the
NE1/4NW1/4 for 20.00 feet to a point;

THENCE North 0°11'28" West parallel to the east line of the
NE1/4NW1/4 for 208.71 feet to a point;

THENCE North 89°16'37" West for 208.71 feet to a 1/2" rebar;

THENCE South 0°11'28" East for 199.51 feet to a 1/2" rebar;

THENCE South 0°11'28" East for 9.20 feet to a point on the
south line of the NE1/4NW1/4;

THENCE North 89°16'37" West along the south line of the
NE1/4NW1/4 for 1098.92 feet to a 5/8" rebar at the SW
corner of the NE1/4NW1/4;

THENCE North 0°07'52" West along the west line of the
NE1/4NW1/4 for 199.39 feet to a 1/2" rebar;

THENCE South 80°33'44" West for 535.18 feet to a 1/2" rebar;

THENCE South 88°44'27" West for 799.40 feet to a P.K. Nail on
section line;

THENCE North 0°04'18" West along section line for 1006.61 feet
to a P.K. Nail, said nail lying South 0°04'18" East for
235.00 feet from the NW corner of Section 22;

THENCE South 89°17'15" East for 235.00 feet to a 1/2" rebar;

THENCE North 0°04'18" West for 235.00 feet to a P.K. Nail on
section line;

THENCE South 89°17'15" East along section line for 2417.48 feet
to the POINT OF BEGINNING.

SUBJECT TO: A county road right-of-way along the west and north
sides.

TOGETHER WITH: An easement for ingress and egress described as
follows:

BEGINNING at the north 1/4 section corner of Section 22,
Township 11 South, Range 18 E., B.M. said corner marked by a
1/2" rebar which shall be the POINT OF BEGINNING;

THENCE South 0°11'28" East along the 1/4 section line for
1095.63 feet to a point;

THENCE North 89°16'37" West for 20.00 feet to a point;

THENCE South 0°11'28" East for 208.71 feet to a point on the
south line of the NE1/4NW1/4;

THENCE South 89°16'37" East along the south line of the
NE1/4NW1/4 for 20.00 feet to a 5/8" rebar at the SE corner
of the NE1/4NW1/4;

THENCE South 89°13'44" East along the south line of the
NW1/4NE1/4 for 25.00 feet to a point;

THENCE North 0°11'28" West for 1319.44 feet to a point on
section line;

THENCE North 89°11'58" West along section line for 25.00 feet to
the POINT OF BEGINNING.

PROFILMED

Consumer Affairs Department
Lawyers Title Insurance Corporation
P.O. Box 27587

TITLEFACT, INC.

150 FOURTH AVENUE NORTH
O.G. BOX 486
TWIN FALLS, IDAHO 83303

29907FC

*****SPACE ABOVE FOR "ENDORSEMENT"*****

WARRANTY DEED

FOR VALUE RECEIVED RONALD C. YANKE AND LINDA L. YANKE, husband and wife hereinafter called the grantor, hereby grants, bargains, sells and conveys unto LEX R. CHRISTIANSEN AND PAM CHRISTIANSEN, husband and wife whose address is: 323 CRESTVIEW DRIVE, TWIN FALLS, IDAHO 83301 hereinafter called grantees, the following described premises, in TWIN FALLS, County, Idaho to-wit:

Township 11 South, Range 18 E., B.M., Twin Falls County, Idaho
Section 21: SE1/4NE1/4

EXCEPT

COMMENCING at the Northeast corner of the SE1/4NE1/4 of Section 21;
THENCE South along the East boundary line of said SE1/4NE1/4 a distance of 71 feet to a point which is the REAL POINT OF BEGINNING;
THENCE West parallel with the North boundary line of said SE1/4NE1/4 a distance of 125 feet;
THENCE South parallel with the East boundary line of said SE1/4NE1/4 a distance of 115 feet;
THENCE East parallel with the North boundary line of said SE1/4NE1/4 a distance of 125 feet;
THENCE North along the East boundary line of said SE1/4NE1/4 a distance of 115 feet to the REAL POINT OF BEGINNING.

Section 22: SW1/4NW1/4, NW1/4NW1/4

EXCEPT that part thereof described as follows:

BEGINNING at the Northwest corner of said Section 22;
THENCE East along the North boundary line of said Section a distance of 235 feet to a point;
THENCE South parallel with the West boundary line of said Section a distance of 235 feet to a point;
THENCE West parallel with the North boundary line of said Section a distance of 235 feet to a point;
THENCE North along the West boundary line of said Section a distance of 125 feet to the POINT OF BEGINNING.

Section 22: NE1/4NW1/4

EXCEPT that part thereof described as follows:

BEGINNING at a point 20 feet West of the Southeast corner of said NE1/4NW1/4;
THENCE North 208.71 feet;
THENCE West 208.71 feet;
THENCE South 208.71 feet;
THENCE East 208.71 feet to the POINT OF BEGINNING.

SUBJECT TO: Twin Falls County Highway Right of Way

EXCEPT:

Township 11 South, Range 18 E., B.M., Twin Falls County, Idaho
Section 22: Part of the NW1/4NW1/4 and part of the NE1/4NW1/4 described as follows:
BEGINNING at the North 1/4 section corner of Section 22 said corner marked by a 1/2" rebar which shall be the POINT OF BEGINNING;
THENCE South 0°11'28" West along the 1/4 section line for 1319.47 feet to a 3/8" rebar at the SE corner of the NE1/4NW1/4;

EXHIBIT

B

THENCE North 89°16'37" West along the west line of the NE1/4NW1/4 for 208.71 feet to a point;
 THENCE North 0°11'28" East parallel to the east line of the NE1/4NW1/4 for 208.71 feet to a point;
 THENCE North 89°16'37" West for 208.71 feet to a 1/2" rebar;
 THENCE South 0°11'28" East for 199.5 feet to a 1/2" rebar;
 THENCE South 0°11'28" East for 9.20 feet to a point on the south line of the NE1/4NW1/4;
 THENCE North 89°16'37" West along the south line of the NE1/4NW1/4 for 106.61 feet to a 5/8" rebar at the SW corner of the NE1/4NW1/4;
 THENCE North 0°07'52" West along the west line of the NE1/4NW1/4 for 106.61 feet to a 1/2" rebar;
 THENCE South 80°33'44" West for 535.27 feet to a 1/2" rebar;
 THENCE South 80°44'27" West for 799.54 feet to a 1/2" Nail on section line;
 THENCE North 0°04'18" West along section line for 1006.61 feet to a P.K. Nail said nail lying South 0°04'18" East for 335.00 feet from the NW corner of Section 22;
 THENCE South 89°17'15" East for 235.00 feet to a 1/2" rebar;
 THENCE North 0°04'18" West for 235.00 feet to a P.K. Nail on section line;
 THENCE South 89°17'15" East along section line for 2417.48 feet to the POINT OF BEGINNING.

SUBJECT TO: A county road right-of-way along the west and north sides.

TOGETHER WITH: An easement for ingress and egress described as follows:
 BEGINNING at the north 1/4 section corner of Section 22, Township 11 South, Range 18 E., R.M. said corner marked by a 1/2" rebar which shall be the POINT OF BEGINNING;

THENCE South 0°11'28" East along the north section line for 1095.63 feet to a point;
 THENCE North 89°16'37" West for 208.71 feet to a point;
 THENCE South 0°11'28" East for 208.71 feet to a point on the south line of the NE1/4NW1/4;
 THENCE South 89°16'37" East along the south line of the NE1/4NW1/4 for 106.61 feet to a 5/8" rebar at the SE corner of the NE1/4NW1/4;
 THENCE South 80°33'44" East along the south line of the NW1/4NE1/4 for 535.27 feet to a point;
 THENCE North 0°11'28" West for 1312.44 feet to a point on section line;
 THENCE North 89°11'58" West along section line for 15.00 feet to the POINT OF BEGINNING.

AND EXCEPT:

Township 11 South, Range 18 E., R.M., Falls County, Idaho

Section 22: A parcel of land located in the NW1/4NW1/4 and more particularly described as follows:

COMMENCING at the northwest corner of said Section 22;

THENCE South 0°04'18" East along the west boundary of Section 22 for a distance of 1241.61 feet to the TRUE POINT OF BEGINNING;

THENCE North 80°44'27" East for a distance of 799.54 feet;

THENCE North 80°32'48" East for a distance of 535.27 feet to a point on the east boundary of the NW1/4NW1/4 of Section 22;

THENCE South 0°05'04" East along the east boundary of the NW1/4NW1/4 of Section 22 for a distance of 17.67 feet to a point on the northerly rim of Rock Creek Canyon;

THENCE along the northerly rim of Rock Creek Canyon on approximately the following courses:

North 89°30'49" West 84.57 feet;
 South 72°03'54" West, 278.18 feet;
 South 76°43'12" West, 163.15 feet;
 South 71°36'42" West, 120.30 feet;
 South 79°48'01" West, 112.18 feet;
 South 84°34'21" West, 133.75 feet;
 South 51°51'51" West, 231.43 feet;
 South 15°09'18" West, 235.44 feet;
 South 45°09'14" West, 70.80 feet;
 South 57°57'07" West, 77.85 feet;

THENCE leaving the northerly rim of Rock Creek Canyon, South 89°03'39" West for a distance of 101.31 feet to a point on the west boundary of Section 22;

THENCE NORTH 0°04'18" East along the west boundary of Section 22 for a distance of 564.42 feet to the TRUE POINT OF BEGINNING.

SUBJECT TO: A 25.00 foot wide county road right of way along the western boundary of the described parcel.

AND SUBJECT TO: A 25.0 foot wide access easement for the purpose of ingress and egress, said easement is centered on the following described line:

COMMENCING at a point that is South 0°04'18" East, 13.64 feet from the northwest corner of the afore described parcel and being the point of beginning of said easement:

THENCE along the centerline of the easement on the following courses:

South 83°39'11" East, 81.16 feet;

South 55°54'03" East, 51.23 feet;

South 48°25'46" East, 39.05 feet;

South 37°37'10" East, 137.45 feet;

South 62°00'46" East, 36.03 feet;

South 89°17'53" East, 42.03 feet;

North 75°37'00" East, 41.30 feet to a point on the easterly boundary of the afore described parcel and being the terminus of said easement.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all incumbrances except as described above, and except easements and encumbrances of record as of this date, and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: JANUARY 22, 1991

Ronald C. Yanke

RONALD C. YANKE

Linda L. Yanke

LINDA L. YANKE

STATE OF IDAHO

County of Ada

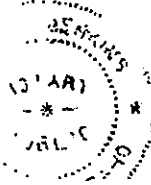
On this 22nd day of January, 1991, before me, a Notary Public in and for said State, personally appeared RONALD C. YANKE and LINDA L. YANKE, husband and wife, known to me to be the persons whose name are subscribed to the foregoing instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and official seal the day and year first above written.

[Signature]
Notary Public for Idaho

Residing in: Boise

Commission Expires: 7/12/95



RECEIVED
JAN 25 1991
TITELFACT, Inc.
Linda L. Yanke
Ronald C. Yanke
7/12/95

988757



REAL ESTATE PURCHASE & SALE AGREEMENT & RECEIPT

EARNEST MONEY

THIS IS A LEGALLY BINDING CONTRACT. THE ENTIRE DOCUMENT, INCLUDING THE GENERAL PROVISIONS ON THE REVERSE SIDE, MUST BE READ CAREFULLY. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY OR REALTOR.

1. This form is printed and distributed by the Idaho Association of REALTORS. This form has been designed for and is provided only for use by real estate professionals licensed by the Idaho Real Estate Commission who are also members of the National Association of REALTORS. Use by any other person is prohibited.

2. **L&K R. CHRISTIANSEN AND PAM CHRISTIANSEN, husband and wife** (hereinafter called "Seller") agree to sell the following property located in **Twin Falls**, Idaho, **January 7, 1991**.

3. **Ronald C. & Linda L. Yanke** (hereinafter called "Buyer") agree to purchase, and County of **Twin Falls**, State of Idaho, commonly known as **Part of 21-11-18 and 22-11-18**.

4. (A) FULL AND COMPLETE LEGAL DESCRIPTION MUST BE INSERTED OR ATTACHED HERETO PRIOR TO EXECUTION BY SELLER. Buyer hereby authorizes Broker to insert over Seller's signature the correct legal description of the property if it is unavailable at the time of signing, or to correct the legal description previously entered if erroneous or incomplete.

5. (a) Buyer hereby deposits and receipt is hereby acknowledged of **10,000.00 Ten Thousand and 00/100** Dollars (\$ **10,000.00**) in the form of ☐ Cash, ☐ Personal Check, ☐ Cashier's Check, ☐ Note Due ☐ , or ☐ .

6. (b) Said Earnest Money to be deposited in trust account, ☐ upon acceptance by all parties, or ☐ , 10 , and held by ☐ Listing Broker, ☐ Selling Broker, ☐ Other ☐ for the benefit of the parties hereto, and the Broker shall hold the fully executed broker's copy of this agreement.

7. 2. TOTAL PURCHASE PRICE IS **Seventy-five thousand and 00/100** Dollars (\$ **75,000.00**) payable as follows:

8. (a) \$ **15,000.00** Cash down, including the above deposited Earnest Money.

9. (b) \$ **60,000.00** Balance of the purchase price which does not include Mortgage Insurance Premium where applicable, which will be paid as follows:

10. **monthly payment of \$752.60 which includes 10% interest for 10 years, to be carried on mortgage by seller, to be held by seller.**

11. 3. This agreement ☐ is, ☐ is not contingent upon Buyer qualifying for: ☐ FHA, ☐ VA, ☐ Conventional, ☐ FmHA, ☐ HA, ☐ Assumption of existing loan(s).

12. (a) ☐ NEW FINANCING Purchase loan of not less than \$ _____ at _____ % interest per annum with a _____ year term. If FHA or VA loan is sought, read the applicable provisions on the reverse side hereof. Buyer to pay no more than _____ points plus origination fee, if any. Seller to pay the discount points necessary in order to obtain above described interest rate but points not to exceed _____.

13. (b) ☐ ASSUMPTION of existing loan of approximately \$ _____ at no more than _____ % interest.

14. This agreement ☐ is, ☐ is not contingent upon the sale and closing on property owned by Buyer described as **N/A** before _____ listed with _____.

15. If there are contingencies stated herein, Seller ☐ shall, ☐ shall not have the right to continue to offer the property for sale. If the property is to remain on the market, the provisions of Paragraph J on page 2 hereof will apply and the number of days applicable to Paragraph J shall be _____ calendar days.

16. The following items are specifically EXCLUDED FROM THE SALE: **NONE**

17. The following items are specifically INCLUDED IN THE SALE: **NONE**

18. COSTS in addition to those listed below may be incurred by Buyer and Seller. Any costs or fees necessary to the closing of this transaction are not included in the purchase price and shall be borne 50% by the Seller and 50% by the Buyer, unless otherwise agreed herein, or provided by law or required by lender. Buyer shall purchase Seller's reserve account if loan assumption.

Costs Paid By:	Appraised	Loan Assumption	Well Inspection	Permit/Report Study	Government Code Impact if required	Contract and/or Document Prep.	Closing Agent's Fee	Long Term Easement Fee	Lender or Code Repairs				
Buyer													
NA	X	X	X	X	X	1/2	1/2		X				
Seller						1/2	1/2						
Share Equally						X	X						

19. Buyer shall pay for fuel in tank, amount to be determined by the supplier at Seller's expense. Discount points to be paid as agreed herein. As a result of any governmental inspections SELLER MAY BE REQUIRED TO MAKE REPAIRS to the property in order to comply with the housing code and Seller agrees to hold the Buyer, the Listing Broker, and/or their representatives harmless for any such required repairs or upgrade WHETHER A SALE IS COMPLETED UNDER THIS AGREEMENT OR NOT. Cost of agreed repairs, if any, not to exceed \$ _____ N/A

20. Here, as to any and all defects in title to the property which are to be discharged by Seller, assumed or waived by the Buyer or which title will be taken subject to by the Buyer (not otherwise set forth herein) are: **subject to preliminary title report**

21. **TitleFact, Inc.** Title Company shall provide the title policy and preliminary report of commitment required herein.

22. If a long term escrow/collection is involved, the escrow holder shall be **NA**

23. CLOSING: The "closing agent" shall be **TitleFact, Inc.** responsible for closing is _____ The Broker

24. agent shall execute and instruments necessary to complete the sale. The closing date shall be on or before **January 25, 1991** On or before the closing date, Buyer and Seller shall deposit with the closing agent all funds and instruments necessary to complete the sale.

25. 11. POSSESSION: Seller shall deliver possession to Buyer on or before **January 25, 1991** , and taxes and water assessments (using the last available assessment as a basis), taxes, insurance premiums, interest and reserves on loans, liens, or obligations assumed or taken subject to, and utilities shall be prorated as of _____ except:

26. 12. The following additional terms and conditions apply to this agreement: **N/A**

27. 13. AGENCY DISCLOSURE: At the time of the signing of this agreement the agent working with the Buyer represented **NA** and the agent working with the Seller represented **NA** Each party signing this document confirms that prior written disclosure of agency was provided to him/her in this transaction. Each party to this transaction has read and understands the contents of the agency disclosure brochure previously received.

28. 14. ACCEPTANCE: Seller shall have until the _____ day of _____ 19 _____ o'clock ☐ AM, ☐ PM, local time at the location of the subject property to accept this offer. Unless accepted, this offer shall lapse and the Broker shall return the Earnest Money to the Buyer.

29. 15. BUYER'S SIGNATURE: Buyer **Pam Christiansen** Address: **323 Crestview Dr., Twin Falls, ID 83301**

30. Buyer **NA** Phone: (F) **733-3360** (W) _____

31. 16. ACCEPTANCE BY SELLER: The undersigned Seller accepts Buyer's offer the _____ day of _____ 19 _____ o'clock ☐ AM, ☐ PM, and further agrees to pay a total brokerage fee of \$ **NA** to **NA** (Brokerage fee for services, payable at closing.)

32. Seller **NA** Address: **P. O. Box 3405, Boise, ID 83705**

33. Seller **NA** Phone: (F) _____ (W) _____

34. Listing Brokerage: **NA** Selling Brokerage: **NA**

35. STATE OF **IDAHO** County of **TWIN FALLS**

36. On this _____ day of _____, 19 _____, before me, _____, personally appeared **RONALD C. YANKE**

37. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

38. NOTARY PUBLIC FOR _____ Residing at _____ My Bond Expires: _____, 19 _____

39. DOCUMENT RECEIPT: (Alternative A or B must be completed.)

40. ☐ A. I/we acknowledge receipt of a complete copy of the foregoing Agreement bearing all signatures above this line: SIGNATURE OF SELLER(S) _____ Date _____ SIGNATURE OF BUYER(S) _____ Date _____

41. ☐ B. I personally caused a true, correct and complete copy of the foregoing agreement bearing all signatures to be mailed on _____ by Certified Mail, return receipt requested to the ☐ Seller, ☐ Buyer. Sent by _____

EXHIBIT

C

ATTORNEY WORK PRODUCT - CONFIDENTIAL

TO: LEGAL FILE and
Steve Clelland, IDWR Southern Region

DATE: May 6, 1991

FROM: A. Rene' Martin
Deputy Attorney General

RE: Ownership of water right between two claimants to change
in ownership of same water right

*Send to
Steve Clelland
at Southern*

RECEIVED

MAY 08 1991

Department of Resources
Southern Region Office

Notices of change in ownership as required by Idaho Code § 42-1409(7) have been filed with IDWR by both Ken Mulberry and Lex R. Christiansen to the same claim to a water right, SRBA Claim No. A47-02137. Said water right is for .60 cfs for irrigation use from 3/5 to 11/15 in the SW 1/4 NW 1/4 Section 22, T. 11 S., R. 18 E., B.M., Twin Falls County. The previous owner of said right, Ronald C. Yanke, filed an SRBA claim for said right based on a license on December 13, 1988.

Both Mulberry and Christiansen in filing their notices submitted proof of ownership as required by the statute. Mr. Mulberry's proof of ownership included a warranty deed dated December 11, 1989 by which Yanke conveyed to Mulberry "Part of the NW 1/4 NW 1/4 and part of the NE 1/4 NW 1/4" of Section 22, T. 11 S., R. 18 E., B.M., Twin Falls County, as well as certain water rights, including "0.6 c.f.s. of water from West Rock Creek, License No. 47-2137, priority date 4/29/18." Christiansen's proof of ownership included a warranty deed dated January 22, 1991 by which Yanke conveyed to Christiansen certain land in Section 22, including the "SW 1/4 NW 1/4." To summarize, the previous owner sold the SW 1/4 NW 1/4 to Christiansen, but in a prior transaction had sold the water right appurtenant to that land to Mulberry in connection with the sale of another piece of property. Both Christiansen and Mulberry are now claiming a change in ownership to the same water right.

It is a fixed principle in Idaho law that the owner of a water right may sell the right separate from the land. Because the previous owner had already sold the water right to Mulberry prior to selling the property to which the right was originally appurtenant to Christiansen, IDWR is unable to accept the change in ownership of claim to a water right filed by Christiansen. If Christiansen wishes to challenge this determination, he can file an additional claim and pay appropriate fees.

A letter should be written by IDWR to Mr. Mulberry stating that notice of change in ownership to a claim to a water right has been received by IDWR from both him and Mr. Christiansen, and that the right has been changed to Mr. Mulberry's name. Mr. Mulberry must file a transfer with IDWR pursuant to Idaho Code § 42-222 before

MEMORANDUM - Change in ownership
Page 1

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EXHIBIT

D

he can use the water elsewhere. Also, a letter should be written to Mr. Christiansen stating that IDWR cannot accept his change in ownership to a claim to a water right, as a deed submitted by Mr. Mulberry shows that the right was previously conveyed to him. If Mr. Christiansen wants to challenge Mr. Mulberry's claim to ownership, he must file a claim in his own name and pay appropriate fees, and the matter will be determined in the SRBA.

MICROFILMED
OCT 27 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

20-May-1991 09:18

R. KEITH HIGGINSON
Director

LEX R. CHRISTIANSEN
323 CRESTVIEW
TWIN FALLS ID 83301

RE: A47-02137 CHANGE OF OWNERSHIP

DEAR MR. CHRISTIANSEN,

YOU RECENTLY SUBMITTED A CHANGE OF OWNERSHIP FOR THE ABOVE CLAIM TO OUR OFFICE. THIS CLAIM ALSO HAD A CHANGE OF OWNERSHIP FILED BY KEN MULBERRY ENTERPRISE. TO RESOLVE THIS SITUATION THE FILE WAS REVIEWED BY OUR LEGAL STAFF. BASED ON THIS LEGAL REVIEW IDWR CANNOT ACCEPT YOUR CHANGE OF OWNERSHIP SINCE THE WATER RIGHT WAS PREVIOUSLY SOLD BY WARRANTY DEED TO KEN MULBERRY ENTERPRISE.

IF YOU WISH TO PURSUE THIS WATER RIGHT AND CHALLENGE MR. MULBERRY'S CLAIM TO OWNERSHIP, YOU MUST FILE A CLAIM IN YOUR NAME AND PAY THE APPROPRIATE FEES. THE MATTER WOULD THEN BE DETERMINED IN THE SRBA.

IF YOU HAVE FURTHER QUESTIONS PLEASE CONTACT OUR OFFICE.

SINCERELY,

STEVE CLELLAND
WATER AGENT, SR.

ENC:

MICROFILMED
OCT 27 1994

EXHIBIT

E

AFFIDAVIT

IN THE MATTER OF:)
Claim #A47-15262)
STATE OF IDAHO)
COUNTY OF Twin Falls)

DON DEAN

BEING FIRST DULY SWORN,

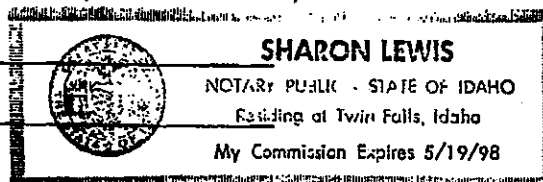
DEPOSES AND SAYS: I personally irrigated and cleaned feed
ditches on property located in Twin Falls County, that property
being in T11S R18E S22 and T11S R18E S23 within the quarters
listed in the attached Adjudication Claim Profile Report.
I began irrigating the above property in 1947. The water source
that was used originated from groundwater springs, unnamed stream
and waste water from claim #A47-02479A. Prior to the above
date, my grandfather Edward McCarty irrigated with the same
water since 1942. I have lived on the described area for the
past 47 years and am still living there.

Don Dean
(SIGNATURE)

SUBSCRIBED AND SWORN TO BEFORE ME THIS 13th DAY OF March,
1995.

Sharon Lewis
(NOTARY PUBLIC)

RESIDING AT _____
MY COMMISSION EXPIRES _____



EXHIBIT

F

MICROFILMED
DEC 1 1996

A47-15262

In 1979 and 1980 I, Doug Mathers, under the employment of Mathers Kono rented the title to the place from Mr. [unclear] the estate lawyer.

At that time I used waste water, seep water and spring water to irrigate pasture located south of Rock Creek and East of 3500 on 40 acres. I used waste water coming in from unknown source to water North East Corner of the same 40.

I also used waste water, seep water and spring water to irrigate 80 acres west side of Rock Creek and from Rick Beards' and seep.

Acknowledgment Certificate
(The individual is personally known by the notary)

State of IDAHO,
County of TWIN FALLS

ss. STEVE CLELAND

On this 13th day of MARCH, 1995, before me, Steve Cleland, a notary public, personally appeared Doug Mathers personally known to me to be the person(s) whose name(s) is (are) subscribed to this instrument, and acknowledged that he (they) executed the same.

Doug Mathers
Notary Public
My Commission Expires on 12/7/2000

3-13-12

AFFIDAVIT

IN THE MATTER OF:)

Claim # H47-15362)

STATE OF IDAHO)

COUNTY OF Twin Falls)

I Lex R. Christensen BEING FIRST DULY SWORN,
DEPOSES AND SAYS: I have assigned this said
property, since 1957 until present, with
wast water, unlined stream & groundwater, and
with waste water from claim # H47-02479A. We
also receive wast water off Redmonds, Charlin Bean
EL Chicketts, and the Sand Rock Place.
This is a Ranch we use the water
for the grass and to water the stock.
Some of the water runs year round. I was told
that this land was assigned with these waters since
the land was deeded the McCarty Place

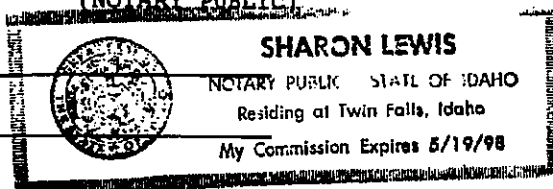
Lex R. Christensen
(SIGNATURE)

SUBSCRIBED AND SWORN TO BEFORE ME THIS 13th DAY OF March
19 95.

Sharon Lewis
(NOTARY PUBLIC)

RESIDING AT _____

MY COMMISSION EXPIRES _____



MICROFILMED
DEC 1 1996

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 4002 OF WATER RIGHT NO.
47-2137 IN THE NAME KEN MULBERRY
ENTERPRISES

ORDER TO
SHOW CAUSE

The Director of the Department of Water Resources (Department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the State of Idaho and the rules promulgated by the Department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On October 17th, 1919, the State of Idaho licensed a water right to Alice A. Pope for 0.60 cfs from an unnamed stream tributary to Rock Creek for irrigation and domestic purposes with a priority of April 29th, 1918. The purpose of use is for irrigation of 30 acres described within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of S22, T11S, R18E. The water is diverted from the stream within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of S23, T11S, R18E. The water right is now numbered 47-2137.
2. On December 13th, 1988, Ronald Yanke filed a claim in the Snake River Basin Adjudication (SRBA) for water right 47-2137 claiming the use as licensed.
3. On June 28th, 1990, Ken Mulberry Enterprises (applicant) filed a change of ownership notice for claim 47-2137.
4. On May 8th 1991, the Department received a memorandum from the state attorney general's office indicating two claimants had filed to change ownership of the same water right. The applicant's proof of ownership included a warranty deed dated December 11, 1989, by which the original claimant, Ronald Yanke, had conveyed to the applicant "part of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and part of the NE $\frac{1}{4}$ NW $\frac{1}{4}$ " of S22, T11S, R18E, along with water right License No. 42-2137. The other claimant, Lex R. Christiansen, provided a warranty deed dated January 22, 1991, where Mr. Yanke had conveyed to Mr. Christiansen lands that included the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of S22, T11S, R18E, which is the property that License No. 42-2137 was and remains appurtenant. As Idaho law allows water rights to be sold separately from the land, the water right was changed into the applicant's name. Memo advised the Department to contact applicant to inform him he was required to file a transfer prior to utilizing the water right.
5. On April 9th, 1992, Ken Mulberry Enterprises filed an application for transfer numbered 4002 (now numbered 67718 in transfer database) (application). The application involves moving water right 47-2137 from licensed lands within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of S22, T11S, R18E (30 acres) to lands within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of S22, T11S, R18E (30 acres). The application proposes to convey the water from the existing

diversion from the Unnamed Stream (locally known as the West Fork of Rock Creek) located within SW¼ SW¼SW¼ of S23, T11S, R18E and inject it into Rock Creek and then re-divert the water from Rock Creek within the NW¼ SE¼ NW¼ of S22, T11S, R18E for irrigation of the lands described above.

6. On April 24th, 1992, Ken Mulberry Enterprises amended claim 47-2137 changing the location of the lands irrigated and the means of diversion to match the way the transfer proposes the water to be used.

7. On October 15th, 1992 the Department advertised the transfer application. On October 21st, 1992, a formal protest was received from William J. Williams (protestant). Protestant objected on the basis that he felt more water was being diverted from Rock Creek than actually was necessary for irrigation. Protestant stated he would agree to this and other transfers on Rock Creek provided the volume of water was "checked" and that "there is in fact that much water available."

8. On November 17th, 1992, the Department mailed letters to protestant and applicant acknowledging receipt of the protest, describing Department actions concerning protests and applications, and suggesting they contact one another to determine the exact nature of the protest and to possibly resolve the matter.

9. On February 25th, 2002, the department contacted the applicant requesting information regarding their intent to proceed with this application. On March 18th, 2002, the Department received a letter from applicant stating they were still interested in pursuing the application. They asked the Department to hold the application until they had time to meet with the protestant concerning his protest.

10. On November 9th, 2005, the Department forwarded a letter to the applicant stating the Department would make a recommendation to the Snake River Basin Adjudication (SRBA) Court to license water right 47-2137 on the licensed place of use due to the fact that a transfer for this right had never been completed. Accordingly the Department has recommend right 47-2137 for 0.58 cfs for irrigation of 28 acres within the SW¼NW¼ of S22, T11S, R18E similar to the original license. (Acres were reduced from 30 to 28 based on GIS analysis of field boundary.)

11. The Department has also recommended right 47-15262 in the SRBA to Lex Christiansen for irrigation of the same 28 acres within the SW¼NW¼ of S22, T11S, R18E from wastewater. This right overlaps with right 47-2137 as recommended.

12. The Department has also recommended rights to the Twin Falls Canal Company for irrigation of the lands within their service area including the NW¼NW¼ of S22, T11S, R18E. The Twin Falls Canal Company records indicate there are currently canal shares associated with these lands. (Land which are proposed to be irrigated if transfer is approved.)

13. In 2007 the SRBA recommendation for right 47-02137 was objected to by the Twin Falls Canal Company and by Ken Mulberry Enterprises. These objections are not yet resolved.

14. On March 25th, 2010 the property which the applicant is seeking to transfer water right 27-2137 to (NW¼NW¼ of S22, T11S, R18E) was sold to Robert J. Meyers.

15. On June 29th, 2010, an unopposed motion for realignment of parties was filed on behalf of the applicant in the SRBA. Motion indicates that Robert Meyers has assigned and transferred interest to the following claims: 47-02137; 47-17301; and 47-17302. The motion states the Mulberry's are owners of record of the properties the above claims are appurtenant. Contrary to the motion, current records indicate the applicant owns the properties 47-17301 and 47-17302 are appurtenant, but only owns water right 47-2137, and not the property it is currently appurtenant nor the property it is proposed to be moved to pursuant to the transfer.

CONCLUSIONS

For applications that propose changing the place of use of a water right, the applicant not only needs to show that they own the right involved with the transfer &/or the land to which it is appurtenant, but they must also show that they own the land where they are proposing to move the water right to. If the land is owned by a party other than the applicant, then the applicant must have some sort of documentation from the current owner of the land allowing the applicant to move the water right(s) to their land. In addition, documentation must be included that addresses the ownership of the right(s) on the land. The documentation must clearly address the issue of whether the applicant will retain ownership of the right(s) on someone else's land, or whether the land owner will own the right(s) once the transfer is approved.

IT IS HEREBY ORDERED as follows:

1. Within 30 days of the date of this order Kenneth Mulberry Enterprises shall demonstrate to the satisfaction of the Director their continued interest in pursuing the application for transfer.

2. Within 30 days Kenneth Mulberry Enterprises shall also provide evidence to show that Kenneth Mulberry Enterprises has legal access to the property described in the application and clearly demonstrate the ownership of the right if it becomes appurtenant to the lands within the NW¼NW¼ of S22, T11S, R18E.

3. Failure to respond will provide cause for the application to be voided or rejected.

DATED this 8th day of November, 2010.



Allen Merritt
Southern Region Manager

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of November, 2010 a true and correct copy of the above and foregoing Order to Show Cause was forwarded with all required charges prepared, by the methods indicated below, to the parties listed:

KEN MULBERRY ENTERPRISES
PO BOX H
KIMBERLY ID 83341

Hand delivered _____
U.S. Mail-Regular _____
U.S. Mail-Certified X
Fax _____

WILLIAM L MAUK
MAUK & BURGOYNE
PO BOX 1743
BOISE ID 83701-1743

Hand delivered _____
U.S. Mail-Regular X
U.S. Mail-Certified _____
Fax _____

WILLIAM J WILLIAMS
WT WILLIAMS I NC
3094 N 3200 E
TWIN FALLS ID 83301

Hand delivered _____
U.S. Mail-Regular X
U.S. Mail-Certified _____
Fax _____

ROBERT MEYERS
3921 N 3300 E
TWIN FALLS ID 83301

Hand delivered _____
U.S. Mail-Regular X
U.S. Mail-Certified _____
Fax _____

MICHAEL C CREAMER
PO BOX 2720
BOISE ID 83701-2720

Hand delivered _____
U.S. Mail-Regular X
U.S. Mail-Certified _____
Fax _____



Mary A. Baldwin
Administrative Assistant I