

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Notice of Change in Water Right Ownership

RECEIVED
APR 20 2018
IDWR/NORTHERN

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column.

Water Right/Claim No.	Split?	Water Right/Claim No.	Split?	Water Right/Claim No.	Split?
95-14251	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐

2. Previous Owner's Name:

BAYAN / PENELOPE FAMILY TRUST
Name of current water right holder/claimant

3. New Owner(s)/Claimant(s):

BRYAN A. POLAND TRUST
New owner(s) as listed on the conveyance document

Name connector ☐ and ☐ or ☐ and/or

SAME
Mailing address

City

State

ZIP

Telephone

Email

4. If the water rights and/or adjudication claims were split, how did the division occur?

- ☐ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

5. Date you acquired the water rights and/or claims listed above: AUG. 15, 1997

6. If the water right described herein has been rented from the Water Supply Bank, rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:

- Rental payments will go to the lessor(s) of record at the beginning of the rental season.
- If a change in ownership is processed by the Department during a rental season, rental payment will be made to the person or entity who is the lessor of record at the beginning of that rental season.
- New lessor(s) of record will receive payment after the following rental season.

7. This form must be signed and submitted with the following **REQUIRED** items:

- A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
- Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
- Filing fee (see instructions for further explanation):
 - \$25 per undivided water right.
 - \$100 per split water right.
 - No fee is required for pending adjudication claims.

8. Signature:

Bryan A. Poland
Signature of new owner/claimant

Title, if applicable

Date

4-19-18

Signature:

Signature of new owner/claimant

Title, if applicable

Date

For IDWR Office Use Only:

Received by

N/A

Date

N/A

Receipt No.

N/A

Receipt Amt.

N/A

Approved by

JD

Processed by

JD

Date

5-17-2018

1317406

WARRANTY DEED

For Value Received ROBERT W. PERO and DEBORAH E. PERO, husband and wife

The grantor, do hereby grant, bargain, sell and convey unto BRYAN POLAND, a single man

the grantee, whose current address is 34 Rancho Laguna
Pamona, CA 91766
the following described premises, in Kootenai

County Idaho, to-wit:

(Continued)

STATE OF IDAHO
COUNTY OF KOOTENAI } SS

AT THE REQUEST OF
SECURITY TITLE COMPANY

At 25 minutes past 1 o'clock P.M.

Aug 23, 1993

By Tom Teggart
Deputy

Fee \$ 15.00

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee
his heirs and assigns forever. And the said Grantor, do hereby covenant to and
with the said Grantee, that they are the owners, in fee simple of said premises; that they are free
from all incumbrances EXCEPT: current year taxes, conditions, covenants, restric-
tions, reservations, easements, rights and rights of way, apparent or of record

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: August 18, 1993

Robert W. PERO
ROBERT W. PERO

Deborah E. PERO
DEBORAH E. PERO

(Single Form)
Effective 1/1/91

STATE OF CALIFORNIA }
COUNTY OF SONOMA } SS.

On 8-18-93 before me, the undersigned, a Notary Public in and for said State,
personally appeared ROBERT PERO Deborah PERO

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/
her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Patricia McPhee

Name PATRICIA MCPHEE

(typed or printed)



OFFICIAL SEAL
PATRICIA MC PHEE
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SONOMA COUNTY
My Commission Expires July 2, 1994

(This area for official notarial seal)

PTG-3197

INSTRUMENT NO.

Filed for record at the

o'clock M.,

004

Deputy.

PARCEL 1:

A portion of Tax No. 5018 as described in Book 180 of Deeds at Page 329 as a portion of the East half of Section 33, Township 52 North, Range 3 West, Boise Meridian, Kootenai County, Idaho and further described as follows:

COMMENCING at the East quarter corner of said Section 33; thence

South $00^{\circ}03'25''$ West along the East line of said Section 33, a distance of 96.59 feet (Record South $01^{\circ}26'$ East, 96.0 feet) to a 1 1/2 inch iron pipe and the PLACE OF BEGINNING; thence

CONTINUING South $00^{\circ}03'25''$ West, a distance of 366.91 feet (Record South $01^{\circ}26'$ East, 367.50 feet) to a 1/2 inch iron pin; thence

North $57^{\circ}11'23''$ West, a distance of 205.81 feet (Record North $57^{\circ}19'$ West, 195.04 feet) to a 1 inch pipe; thence

North $21^{\circ}14'57''$ West, a distance of 76.70 feet (Record North $23^{\circ}14'$ West, 76.76 feet) to a 1 inch pipe; thence

North $35^{\circ}45'22''$ West, a distance of 96.05 feet (Record North $37^{\circ}43'$ West, 95.98 feet) to a 1 inch pipe; thence

North $25^{\circ}01'42''$ East, a distance of 311.41 feet to a 1/2 inch iron pin; thence

South $35^{\circ}27'49''$ East, a distance of 216.34 feet (Record South $35^{\circ}21'$ East, 214.21 feet) to the PLACE OF BEGINNING.

(Continued)

PARCEL 2:

A portion of the East half of Section 33, Township 52 North, Range 3 West, Boise Meridian, Kootenai County, Idaho and further described as follows:

COMMENCING at the East quarter corner of said Section 33; thence

South $00^{\circ}03'25''$ West along the East line of said Section 33, a distance of 463.50 feet to a 1/2 inch iron pin and the PLACE OF BEGINNING; thence

CONTINUING South $00^{\circ}03'25''$ West, a distance of 854.32 feet to a 5/8 inch iron pin at the South 1/16 corner of said Section 33; thence

South $89^{\circ}58'29''$ West, a distance of 462.35 feet to a point on the Easterly right-of-way of the County Road; thence

Along said right-of-way North $18^{\circ}38'36''$ West, a distance of 133.48 feet to a point of curve; thence

Around a curve to the left, having a delta angle of $12^{\circ}43'25''$, an arc length of 61.07 feet, a radius of 275.00 feet, and a chord of North $25^{\circ}00'18''$ West, a distance of 60.94 feet to a point of tangent; thence

North $31^{\circ}22'00''$ West, a distance of 122.99 feet to a point; thence

North $22^{\circ}13'56''$ East, a distance of 895.30 feet to a 1 inch pipe; thence

South $35^{\circ}45'22''$ East, a distance of 96.05 feet (Record South $37^{\circ}43'$ East, 95.98 feet) to a 1 inch pipe; thence

South $21^{\circ}14'57''$ East, a distance of 76.70 feet (Record South $23^{\circ}15'$ East, 76.76 feet) to a 1 inch pipe; thence

South $57^{\circ}11'23''$ East, a distance of 205.81 feet (Record South $57^{\circ}19''$ East, 195.04 feet) to the PLACE OF BEGINNING.

(Continued)

COMMITMENT FOR TITLE INSURANCE

File No.: 94680

SCHEDULE A (Continued)

Legal Description (continued)

PARCEL 3:

A portion of the East half of Section 33, Township 52 North, Range 3 West, Boise Meridian, Kootenai County, Idaho described in Book 197 of Deeds at Page 288 and further described as follows:

COMMENCING at the East quarter corner of said Section 33; thence

South 00°03'25" West along the East line of said Section 33, a distance of 96.59 feet (Record South 96 feet) to a 1 1/2 inch iron pipe for the PLACE OF BEGINNING; thence

North 35°27'49" West, a distance of 216.32 feet to a 1/2 inch iron pin (Record North 35°21' West, 214.21 feet); thence

North 31°54'07" East, a distance of 122.70 feet (Record North 32°01' East, 121.50 feet) to a 1 1/4 inch iron pipe on the shore line of Hayden Lake; thence

South 39°14'33" East along said shore line, a distance of 93.50 feet (Record South 41°00' East, 92.51 feet) to a 1 1/2 inch iron pipe on the East line of said Section 33; thence

South 00°50'12" East along said East line, a distance of 111.38 feet (Record South, 112.10 feet) to the East quarter corner of said Section 33; thence

South 00°03'25" West, a distance of 96.59 feet (Record South, 96.0 feet) to the PLACE OF BEGINNING.

PARCEL 4:

A 40 foot Access Easement across a portion of the East half of Section 33, Township 52 North, Range 3 West, Boise Meridian, Kootenai County, State of Idaho. The centerline being described as follows:

COMMENCING at the quarter corner between Sections 33 and 34; thence

Along the East line of said Section 33 South 00°03'25" West, a distance of 143.93 feet to a point for the PLACE OF BEGINNING; thence

North 41°36'41" West, a distance of 385.49 feet to a point; thence

North 55°45'03" West, a distance of 74.55 feet to a point; thence

North 66°39'31" West, a distance of 115.54 feet to a point; thence

(Continued)

SCHEDULE A (Continued)

Legal Description (continued)

North 37°13'46" West, a distance of 217.67 feet to a point; thence

North 64°46'59" West, a distance of 193.51 feet to a point (said point also being the point of intersection with sewer line easement No. 1); thence

CONTINUING North 64°46'59" West, a distance of 156.94 feet to a point (said point also being the point of intersection with sewer line easement No. 2); thence

CONTINUING North 64°46'59" West, a distance of 36.13 feet to a point; thence

North 61°32'31" West, a distance of 196.37 feet to a point; thence

North 34°58'29" East, a distance of 140.81 feet to a point; thence

North 09°06'29" East, a distance of 68.45 feet to a point; thence

North 30°21'36" East, a distance of 137.96 feet to a point; thence

North 56°19'40" West, a distance of 43.44 feet to a point; thence

South 47°07'42" West, a distance of 189.67 feet to a point; thence

South 75°09'33" West, a distance of 74.54 feet to a point; thence

North 36°09'51" West, a distance of 62.04 feet to a point; thence

North 19°30'53" East, a distance of 66.58 feet to a point; thence

North 38°35'31" East, a distance of 186.09 feet to a point; thence

North 08°45'07" East, a distance of 161.57 feet to a point on the Southernly right-of-way of the County road and the PLACE OF ENDING.

BRYAN AND PENELOPE POLAND FAMILY TRUST

COPY

This Trust Agreement is made by Bryan Allen Poland and Penelope Jean Fahy. They plan to marry on November 2, 2006. They shall be referred to as "husband" and "wife" as well as "Grantors" and "Trustees" in this document. They both reside in Kootenai County, Idaho.

The Grantors convey, transfer, assign, set over, and deliver to the Trustee the property itemized on the INVENTORY attached hereto and incorporated by reference; and

All of this property, together with other property that may be added to this Trust by the Grantors, or either of them, or other person(s), shall constitute the Trust Estate and shall be held, managed, and distributed by the Trustees as provided below.

The Grantors hereby revoke any prior trusts that may have executed by the Grantors.

This Trust shall be known as the Bryan and Penelope Poland Family Trust.

The number that shall be used for tax purposes regarding this Trust is 550 86 1937.

The parties mutually agree as follows:

ARTICLE I

The Grantors reserves the right to:

1. Direct the distribution of net income and principal
2. Add other property acceptable to the trustee to the Trust Estate
3. Amend this Agreement in any respect.
4. Revoke this Trust entirely, or withdraw at any part of the Trust Estate.
5. Direct the Trustee in writing, from time-to-time, to distribute any part of the Trust funds, or any part thereof, as the Grantors may designate.

ARTICLE II

Distribution from the Trust Estate:

1. The Trustee shall pay to the Grantors, or their order, so much of the net income or principal, or both, as the Grantors shall direct.

ARTICLE III
#3 (P 5)
ALLOWS REVOCATION BY EITHER PART. THIS TRUST WAS REVOKED ON NOV. 20

2. During the period in which the Grantors, whether because of illness or for any other reason, are determined to be incapable of managing financial affairs, Leslie McAnallen, Kay Poland, Mathew Dill, and Benjamin Dill shall be appointed Successor Trustee and may, in their discretion, discontinue any payments being made under Article II, paragraph 1 of this Trust. The determination of incapacity shall be made by a physician after examination of the Grantors. The determination shall be in writing, and must find that the Grantors are incapable of making or communicating responsible decisions about their property.
3. The Successor Trustee is hereby authorized during such period to distribute to the Grantors, or for their benefit, as much of the net income or principal, or both, as the Successor Trustee deems best for the maintenance, education, support and health of the Grantors.
4. Upon the death of either of the Grantors, the Trust shall continue for the benefit of the surviving spouse, who shall have all the powers of the Grantors as indicated in this Agreement, and shall act as the remaining Trustee, with all the powers indicated in this Agreement.
5. Except in the case of the Grantors' beneficial interest, neither the principal nor the income of any trust herein created shall be liable for the debts of any beneficiary, nor shall the same be subject to seizure by any creditor of any beneficiary under the writ of proceedings at law or in equity, nor bankruptcy proceedings, nor other legal process. Except in the case of the Grantors' beneficial interest, no beneficiary shall have the power to sell, assign, transfer, encumber or in any other manner to anticipate disposition of his or her interest in the trust estate or the income produced thereby.
6. Upon the death of the Bryan Allen Poland, the trustee shall make the following distributions from the trust.
 - a. A lot that is one and a half (1.5) acres in size shall be designated (formed out of existing acreage of the residence of the grantors) for each of the sisters of Bryan Allen Poland. If a sister should predecease Bryan Allen Poland, then the remaining sister shall be entitled to the deceased sister's share. The lots shall be located at the uppermost portion of the property in trust located on Hayden Lake. The sisters shall direct the trustee whether they wish to have the property transferred to them or remain in the trust. If the property remains in trust, each sister shall be entitled to enjoy the property as though it belonged to her so long as she pays all of the expenses associated with her lot. In the event that there isn't a residence of the grantors located on Hayden Lake at the time of the demise of Bryan Allen Poland, or in the event that Bryan Allen Poland has transferred the above-described real estate to his sisters during his lifetime, then the sisters

of Bryan Allen Poland shall not receive anything from the trust, except for the provisions below

- b. The trustee shall transfer, subject to the approval of Penelope Jean Fahy, to the parents and sisters of Bryan Allen Poland any memorabilia, personal effects, and family keepsakes which they may request.
 - c. The Trustee is hereby given notice that Bryan Allen Poland may have already made or may make in the future a separate written list disposing of certain tangible personal property that has been or will be transferred into the Trust. The Trustee is directed that the terms of said list shall be carried into effect. In the event that any person named in said written list should predecease Bryan Allen Poland, then the distribution to him/her shall lapse and go to increase the residue provisions of the Trust.
7. Upon the death of Penelope Jean Fahy, the trustee shall make the following distributions from the trust.
- a. The trustee shall transfer, subject to the approval of Bryan Allen Poland, to the children of Penelope Jean Fahy any memorabilia, personal effects, and family keepsakes which they may request.
 - b. The Trustee is hereby given notice that Penelope Jean Fahy may have already made or may make in the future a separate written list disposing of certain tangible personal property that has been or will be transferred into the Trust. The Trustee is directed that the terms of said list shall be carried into effect. In the event that any person named in said written list should predecease Penelope Jean Fahy, then the distribution to him/her shall lapse and go to increase the residue provisions of the Trust.
 - c. The trustee shall provide Bryan Allen Poland the income from the Mannon oil investment for the lifetime of Bryan Allen Poland. After the demise of Bryan Allen Poland, the oil investment shall be transferred to Mathew Dill and Benjamin Dill.
8. Upon the death of the surviving Grantor, Leslie McAnallen, Kay Poland, Mathew Dill, and Benjamin Dill shall be appointed Co-Successor Trustees and shall have all the powers of a trustee. Leslie McAnallen, Kay Poland, Mathew Dill, and Benjamin Dill shall pay the debts, obligations, and expenses of the last illness of the surviving Grantor. Upon the death of the surviving Grantor, Successor Trustee shall terminate this Trust after paying over and delivering the whole of said Trust Estate then remaining, including all accumulated and accrued income to the beneficiaries, Leslie McAnallen, Kay Poland, Mathew Dill and Benjamin Dill, as follows.

- a. The grantors wish, but do not direct, the beneficiaries below to financially support the parents of the grantors to the extent that it is reasonable and practical for each of the beneficiaries.
- b. The grantors wish, but do not direct, the beneficiaries to continue this trust for the purpose of using, enjoying and managing the real estate located on Hayden Lake, Idaho. The property may also be used to generate income as a weekend, weekly, or monthly rental. Mathew Dill should be the manager of the business responsibility of such rental, including the right to hire a property manager. All beneficiaries should have equal use of the property. The following personal property shall be kept in trust for the usage with the real estate: furniture, quad, snowplows, 1992 Toyota truck, water vehicles, boats, and items essential to operate the home.

The trustee shall sell the real estate and above described personal property if there are more than nine votes in support of selling by the beneficiaries. Each beneficiary shall have the following number of votes.

Six votes for Leslie McAnallen
Six votes for Kay Poland
Three votes for Mathew Dill
Three votes for Benjamin Dill

If the real estate (and above described personal property) is sold, the beneficiaries shall receive the proceeds from the real estate in the following proportions.

One third to Leslie McAnallen
One third to Kay Poland
One sixth to Mathew Dill
One sixth to Benjamin Dill

The beneficiaries shall receive the proceeds from the sale of the personal property equally.

If any of the beneficiaries should pass away before receiving his/her share, then the share of the deceased beneficiary shall be transferred to the sibling of the deceased beneficiary. If that deceased beneficiary isn't survived by a sibling, then the remaining beneficiaries shall receive the share of that deceased beneficiary.

ARTICLE III

1. To carry out the purposes of the Trust created under this Declaration of Trust, and subject to any limitations stated elsewhere herein, the Trustee is vested with all of the powers and authority as set forth in the Uniform Trustees' Powers Act

of Chapter 1, Title 68 of the Idaho Code, as now in effect, and as it may be hereafter amended.

2. All receipts and expenditures shall be administered by the Trustee, and allocated as to income and principal, as provided in the Uniform Principal and Income Act of Chapter 10, Title 68 of the Idaho Code, as now in effect, and as it may hereafter be amended.
3. For the period of time during which both Grantors are the Trustees, each Trustee is authorized to act individually, independently, and without the consent of the other Trustee for all purposes related to the Trust.
4. In the event that either Leslie McAnallen, Kay Poland, Mathew Dill or Benjamin Dill are unwilling or unable to serve as Successor Trustee, then the remaining ones of them shall serve as Successor Trustee and shall have all the powers of a Trustee.
9. Notwithstanding any other Trust provision to the contrary, the Trustee (or Successor Trustee) shall have the authority to make gifts, provided that due care is given to the Grantors' future needs regarding health, education and welfare or the possibility of incapacity or disability. The Trustee has the authority to make gifts to him/herself or his/her family. Gifting for the purpose of establishing eligibility for public benefits shall be considered a reasonable option to provide care for the Grantors' future needs.

DATED October 25, 2006

Bryan Allen Poland
Bryan Allen Poland
Grantor & Trustee

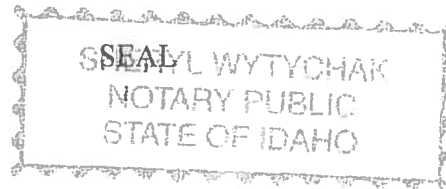
DATED October 25, 2006

Penelope Jean Fahy
Penelope Jean Fahy
Grantor & Trustee

STATE OF Idaho)
)ss.
County of Kootenai)

On this 25 day of October, 2006 before me, the undersigned, a Notary Public in and for said State, personally appeared Bryan Allen Poland and Penelope Jean Fahy, known to me to be the persons whose names are subscribed to the within instrument, and acknowledge to me that they executed the same.

Sheryl Wytchak
Notary Public
Residing at Collier's Lane
My commission expires: 2-7-2010



State of Idaho
County of Kootenai
FILED: SS

2016 APR -5 AM 9:48

CLERK DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI
MAGISTRATE'S DIVISION

PENELOPE POLAND, Plaintiff, v. BRYAN A. POLAND, Defendant.	CASE NO. CV-2014-3069 MEMORANDUM OPINION
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This matter came on for a Court Trial the 4th through the 6th day of August, 2015, and the 15th and 16th of December, 2015. The Plaintiff was present and represented by ANNE SOLOMON, and the Defendant was present and represented by ERIC P. SMITH.

BACKGROUND

The parties were married on the 2nd of November, 2006. As with most soon-to-be-newlyweds, the parties immediately prior to marriage appeared to be quite in love and excited about their future. In anticipation of marriage, they made various financial decisions, including purchasing property (a truck), paying off debt, and even created a revocable family trust which was to take effect upon the date of their marriage.

MEMORANDUM OPINION - 1

another. The Court finds these payments were gifts from Petitioner to Respondent. Additionally, the checks to pay for these items came from the Global Credit Union Account. This account started out as Petitioner's sole and separate account; however, she put Respondent on this Account in March of 2005 (unrefuted testimony of Bryan Poland August 5, 2015 @ 10:40 a.m.), some 19 months before marriage. It seems logical, if she did not tender these funds as a gift, some notation would have been made on the check, some payments would have been during their 8 year marriage, or some discussion would have taken place regarding repayment of a loan.

There is no evidence of this.

B. Revocable Trust

The parties created a Revocable Family Trust on October 25, 2006, which was to take effect on the date of the parties' marriage. Mary Cusack, an Attorney specializing in trust and estate planning testified that simply placing property into a trust will not change the character of that property. There was no evidence presented to refute this contention. Hence, the character of property into the Poland Family Trust equals the character of property out. Therefore, unless the parties did something to change the character of the property, the simple fact the property was placed into their trust did not change the property's character.

C. Petitioner's payment to HELOC

On November 14, 2006 and December 4, 2006, Petitioner argues the sums of \$21,500 and \$1,441.99, respectively, were paid from her separate property (USAA) to the Washington Mutual HELOC (Home Equity Line of Credit) which is a loan secured by Respondent's separate property. See Petitioner's Exh. 1 Bates 6, 12, 22, and 223. These payments were written out of the Global Checking Account; however, Ms. Metzger was able to trace these payments to

Petitioner's Fed Ex Pension is hereby confirmed as her sole and separate property, and Respondent's CALPERS and Workman's Comp are hereby confirmed as his sole and separate property.

H. Wildcat Property and Quasi-Estoppel

It is undisputed that when the parties married on November 2, 2006, Defendant owned real property located at 15250 North Wildcat Creek Road, Hayden, Idaho. "The character of property vests at the time the property is acquired." *Kraly v. Kraly*, 147 Idaho 299, 303, 208 P.3d 281, 285 (2009) (citing *Winn v. Winn*, 105 Idaho 811, 815, 673 P.2d 411, 415 (1983)). Pursuant to Idaho Code § 32-903, this is Defendant's separate property, absent an agreement to transmute the character of the property from separate to community. See *Stockdale v. Stockdale*, 102 Idaho 870, 872, 643 P.2d 82, 84 (Ct. App. 1982). Idaho law does not recognize transmutation of real property by oral agreement. *Id.* at 873, 643 P.2d at 85. The burden is on the party asserting a spouse intended to transmute property to "prove the intent in question by clear and convincing evidence." *Ustick*, 104 Idaho at 222, 657 P.2d at 1083.

Although the Plaintiff does not argue the property was transmuted, she does allege the conducted of the parties indicated they were co-owners of the Wildcat property. (*Petitioner's Post Trial Brief and Closing Argument*, p. 5.) In support of this contention, Plaintiff directs the Court to the Trust. On December 14, 2006, the Wildcat Property was placed into the trust. (Petitioners Exh. 4, Bate pp. 564-65.) Plaintiff alleges that she "believed that all steps were taken to accomplish Respondent's promise to place Petition on title to the real property. The real property stayed in the Bryan and Penelope Poland Family trust after this divorce action was filed." (*Petitioner's Post Trial Brief and Closing Argument*, p. 6.) She claims "[t]he Trust

document itself shows a reasonable basis for [Plaintiff's] belief that the deed of the real property into the Trust transferred title into both parties' names." (*Id.* at 7.)

Moreover, Plaintiff alleges the conduct of the parties demonstrates that they believed the Wildcat Property was jointly owned. In support of this she directs the Court to the following evidence: the assessor's office addressed tax notices to the Trust; the parties began the application process for a loan from USAA Federal Savings Bank as individual borrowers, not trustees; the parties hired an attorney, Charles Dodson, to defend an easement action regarding the Wildcat Property; the parties paid Mr. Dodson's legal fees using joint funds; the parties signed a Joint Application for Permits with the U.S. Army Corps of Engineers; and the parties received communication from the Idaho Department of Lands as individuals regarding an encroachment permit at the Wildcat Property. (*Id.* at 8-9.)

Respondent maintains the parties did not transmute the Wildcat Property from his separate property to community property. He contends placing the property into the Trust did not transmute the property from his separate property to community property. (*Defendant's Closing Argument*, p. 5.) Rather, he argues the trust was an estate planning document that lacked a transmutation deed that would change the character of the Wildcat Property to community property. (*Id.*) He claims "[t]here was no action by either party during the marriage that even implied or presumed the joint ownership of real property." (*Id.* at 8.)

The Court finds that Plaintiff has failed to meet her burden and demonstrate by clear and convincing evidence that the Wildcat Property was transmuted from Defendant's separate property to community property. There is no evidence in the record the Court can rely upon to make a finding that the formalities required for the transmutation of real property have been

followed. While Plaintiff may have believed that the parties were joint owners of the Wildcat Property, absent a written document manifesting the intent of the parties to change the character of the separate real property of the Defendant to community property, the Court is unable to hold that the parties did in fact transmute the property. As such, the Court finds the Wildcat Property is the separate property of Defendant.

Transmutation was addressed above. Even though Petitioner was not relying on that theory, the Court felt it was necessary to address the issue. Petitioner asserts quasi estoppel should apply asking the Court to find the actions of the parties as described above as well as the large sum of money she spent from her separate property for the home warrant the Court finding the Respondent should be estopped from claiming this property is his sole and separate property.

"The doctrine of quasi-estoppel requires that the offending party must have gained some advantage or caused a disadvantage to the party seeking estoppel; induced the party seeking estoppel to change its position to its detriment; and, it must be unconscionable to allow the offending party to maintain a position which is inconsistent from a position from which it has already derived a benefit." *Thomas v. Arkoosh Produce, Inc.*, 137 Idaho 352, 357, 48 P.3d 1241, 1246 (2002) (citing *City of Sandpoint v. Sandpoint Independent Highway Dist.*, 126 Idaho 145, 151, 879 P.2d 1078, 1084 (1994) (quoting *Tommerup v. Albertson's, Inc.*, 101 Idaho 1, 6, 607 P.2d 1055, 1060 (1980)). Decisions regarding whether estoppel applies are committed to the discretion of the trial court. *Mikesell v. Newworld Development Corp.*, 122 Idaho 868 (Ct. App. 1992).

In addition to the parties conduct described above, Petitioner presented a large amount of evidence showing purchases made at home improvement stores and checks and payments to

paid from the F & A Account. See Respondent's QQ and QQ2. Had the parties not been married, the Petitioner would have been solely responsible for these costs. The medical costs alone total \$167,000, not including anything for rent or a mortgage that Petitioner would have paid.

The Court cannot simply look at the money that came into and went out of the Global account. It has to look at the marriage as a whole and determine if Petitioner was truly disadvantaged. It is the Court's decision that Petitioner has not met her burden of proving quasi estoppel because she has not proven she was so disadvantaged by spending her separate property on the Respondent's separate property.

I. Reimbursement to Community for Community Funds Spent on Enhancements to Defendant's Separate Real Property Located at 15250 North Wildcat Creek Road, Hayden, Idaho

Since the Court found the parties commingled their separate and community funds into joint accounts and treated them as one community fund, not subject to tracing, the Court must now evaluate whether the community is entitled to reimbursement for community funds used to enhance Defendant's separate real property.

The community is entitled to reimbursement when community labor or funds enhances the value of separate property. *Josephson v. Josephson*, 115 Idaho 1142, 1146, 772 P.2d 1236, 1240 (Ct. App. 1989) (abrogated on other grounds by *Bell v. Bell*, 122 Idaho 520, 835 P.2d 1331 (Ct. App. 1992) (citing *Martsch v. Martsch*, 103 Idaho 142, 645 P.2d 882 (1982))). "The measure of reimbursement is the increase in value of the property attributable to the community contribution, not the amount of the community contribution itself." *Id.* The burden is on the spouse seeking community reimbursement to demonstrate the community enhanced the value of

DATED this 4th day of April, 2016.



Anna M. Eckhart
Magistrate Judge #330

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served as indicated below upon the following persons on the 5 day of April 2016:

S. E. Anne Solomon

Attorney at Law

P. O. Box 1117

Coeur d'Alene ID 83816-1117

_____ U. S. Mail

X Fax: 667-3207

Eric P. Smith

Attorney at Law

311-B Coeur d'Alene Avenue

Coeur d'Alene ID 83814

_____ U. S. Mail

L Fax: 765-9110

JIM BRANNON

CLERK OF THE DISTRICT COURT

By: 
Deputy Clerk

THE BRYAN A. POLAND TRUST

DATED NOVEMBER 7, 2014

This Trust agreement is made by Bryan Allen Poland. He shall be referred to as "Grantor" and "Trustee" in this document. He resides in Kootenai County, Idaho.

The Grantor conveys, transfers, assigns, sets over, and delivers to the Trustee the property itemized on the INVENTORY attached hereto and incorporated by reference; and

All of this property, together with other property that may be added to this Trust by the Grantor, or other person(s), shall constitute the Trust Estate and shall be held, managed, and distributed by the Trustee as provided below.

The Grantor hereby revokes any prior trusts that may have been executed by the Grantor.

This Trust shall be known as the Bryan A. Poland Trust.

The number that shall be used for tax purposes regarding this Trust is 550 86 1937.

The party agrees as follows:

ARTICLE I

Grantor reserves the right to:

1. Direct the distribution of net income and principal from the Trust Estate.
2. Add other property acceptable to the trustee to the Trust Estate.
3. Amend this Agreement in any respect.
4. Revoke this Trust entirely, or withdraw at any time or from time-to-time any part of the Trust Estate.

TRUST AGREEMENT

Page 1 of 6

3. For the period of time during which the Grantor is the Trustee, the Trustee is authorized to act individually, independently, and without the consent of the any other for all purposes related to the Trust.

4. In the event that either Leslie McAnallen, Kay Poland, Allen or Anita Poland are unwilling or unable to serve as Successor Trustee, then the remaining ones of them shall serve as Successor Trustees and shall have all the powers of a Trustee.

5. Notwithstanding any other Trust provision to the contrary, the Trustee (or Successor Trustees) shall have the authority to make gifts, provided that due care is given to the Grantors' future needs regarding health, education and welfare or the possibility of incapacity or disability. The Trustee has the authority to make gifts to him or his family. Gifting for the purpose of establishing eligibility for public benefits shall be considered a reasonable option to provide care for the Grantors' future needs.

DATED APRIL 18, 201⁴ *BR*

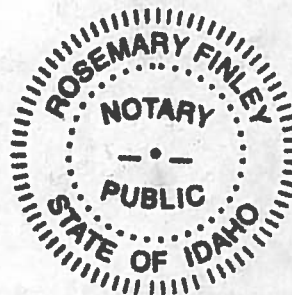
Bryan Allen Poland
Bryan Allen Poland

Grantor & Trustee

STATE OF IDAHO)

) ss.

COUNTY OF KOOTENAI)



On this 18th day of APRIL, 201⁴ *BR* before me, the undersigned, a Notary Public in and for said State, personally appeared Bryan Allen Poland, known to me to be the person whose name is subscribed to the within instrument, and acknowledge to me that he executed the same.

Rosemary Finley

Notary Public

Residing at Coeur d'Alene, Idaho

My commission expires: June 5, 2018



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region • 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815-7763

Phone: (208) 762-2800 • Fax: (208) 762-2819 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

May 17, 2018

BRYAN A POLAND TRUST
15250 N WILDCAT CREEK RD
HAYDEN ID 83835

SUBJECT: Ownership Change on Notice of Claim Number(s) 95-14251

Dear Mr. Poland:

We have processed your change of ownership request on the Notice of Claim to a Water Right Number(s) listed above. Enclosed is a copy of the claim showing such change; for your records. Also, this information can be accessed on our website at www.idwr.idaho.gov.

Sincerely,

Dawn R. Lenon
Technical Records Specialist I

Enclosure(s) Notice of Claim 95-14251