

AFFIDAVIT OF STAN WALLERSTEDT

RECEIVED

FEB 23 2018

Department of Water Resources
Eastern Region

State of Idaho)
 :ss
County of Bannock)

The undersigned, Stan Wallerstedt, being first duly sworn under oath deposes and states that the following facts are true and correct to the best of my knowledge, information and belief:

1. My name is Stan Wallerstedt and my address is P.O. Box 218, Inkom, Idaho 83245, phone (208) 775-4908. I am married to Marlene N. Wallerstedt and we live together in our home in Inkom, Idaho.

2. I have a "Total Disability" from the US Military as a result of injuries sustained while serving in the Army during the Vietnam War. In 1969 I was injured in a vehicle accident, resulting in a broken neck. The following year, 1970, I was shot and severely wounded which caused partial paralysis of my left side and spinal column nerve injury. Following a year of rehabilitation at the Army's Madagan Hospital in Tacoma, Washington, I received a "Total Disability" discharge from the Army and have since remained totally disabled and have not been employed. As a result of these injuries I have limited ability to read or write and rely upon my wife, Marlene, for these needs. Attached as Exhibit A is a true and correct copy of my Military ID Card evidencing my Total Disability and Award of Silver Star.

3. On February 11, 2002 pursuant to Warranty Deed Instrument No. 20202962, a copy of which is attached, we acquired a 40 acre parcel described as the SW1/4NE1/4, Section 33, Township 11 South, Range 37 East, B.M., Bannock County, Idaho (the "Property"). At the time of the purchase the Property the prior owner indicated it had been irrigated from ground water to raise hay, with water pumped from a well located approximately 1/8th mile to the east of the southwest corner of the Property, being in the NE1/4SW1/4 of said Section 33. The property where the well is located has changed ownership several times, with the current owner being David Peterson.

4. Attached as Exhibit B is a current water right report on water right no. 29-2426B, the water right decreed appurtenant to the Property on March 22, 2004. Sometime shortly after I received paper work in the mail confirming that this water right

had been decreed to me, I went to the office of the Idaho Department of Water Resources in Idaho Falls, Idaho to investigate this water right as we had plans to sell the Property. I met with a water right agent whose name I do not recall. He confirmed that water right no. 29-2426B was a valid water right for irrigation purposes that went with the Property. He also stated that this was a very good water right with an early priority date that could irrigate the full 40 acres, that the water right could never be taken away and that we did not need to worry about anything.

5. Over the course of following years we listed the Property and water rights for sale with four different realtors. Each of these realtors looked at the water right, indicated that I had a good water right and listed the Property for sale as irrigated farmland.

6. During the summer of 2017 we received an offer from Bradley Hoggan of Fielding, Utah to purchase the Property. The closing was conditional upon Mr. Hoggan confirming that the water right was valid and suitable for irrigation of the Property. While inspecting the Property and well with Mr. Hoggan, I discovered for the first time that the mainline which delivered water from the well to the Property had been cut and removed. I do not know when that occurred.

7. Mr. Hoggan indicated he had met with the Department of Water Resources that would issue a well drilling permit so he could drill a new well on the Property. He also indicated that it would be necessary to file an application for transfer of water right to move the point of diversion from the old well to the place where he intended to drill a new well on the Property. It is my understanding that Mr. Hoggan filed the necessary Transfer Application and paid the filing fees. The sale of the property to Mr. Hoggan is contingent upon securing a well drilling permit and transfer of the point of diversion from the old well to the Property so he can drill a new will and use the water right to irrigate the full 40 acres.

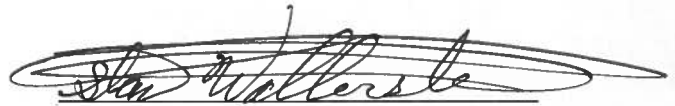
8. When Mr. Hoggan showed me the January 29, 2018 letter sent to him by Dennis N. Dunn, a copy of which is attached hereto as Exhibit C, it was the first time I learned there may be an issue regarding the forfeiture of our water right. Since the water right was decreed by the court and the water right agent at the Department of Water Resources, as well as several realtors, indicated I had a valid water right, I had no

knowledge or reason to believe that the water right could be forfeited for non-use. No one has ever indicated to me that my water right could be forfeited for non-use. Had I known that I would have tried to use the water or taken action to prevent it from being forfeited.

9. I am providing this Affidavit at the request of Mr. Hoggan's attorney who indicated that there was an exception or defense to forfeiture if the non-use resulted from "circumstances over which the water right owner has no control," determined on a case by case basis. Given my total disability and limited ability to read or write as a result of being injured in the Vietnam War, my lack of knowledge or notice that my water right could be forfeited and the information I previously was given by the Department of Water Resources and several realtors that I had a valid water right to irrigate the property which I didn't need to worry about and could never be taken away, I believe I have a valid and meritorious defense exists to forfeiture and that an exception should be granted. For these reasons I respectfully request that the Department grant an exception to forfeiture and proceed to process and grant Mr. Hoggan's Transfer Application so I can complete the sale of the property to him.

FURTHER YOUR AFFIANTS SAYETH NAUGHT.

Dated this 2 / day of February, 2018.


STAN WALLERSTEDT

SUBSCRIBED AND SWORN TO BEFORE ME this 21st day of February, 2018.



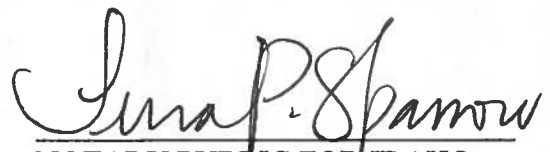

NOTARY PUBLIC FOR IDAHO,
Residing at: Bannock County
My Commission Expires: 10/05/2021

EXHIBIT A

DATE OF BIRTH		BENEFITS NUMBER	
[REDACTED]		[REDACTED]	
[Barcode]			
DATE OF ISSUE	MEDICAL	CIVILIAN	EFF DATE
2011DEC07	DIRECT: YES	YES	1971SEP30
		EXP DATE	2013MAY31
[Barcode]			
DD FORM 2 (RETIRED)		OCT 93	PROPERTY OF US GOVERNMENT

UNITED STATES UNIFORMED SERVICES	
	
U.S. ARMY RETIRED	
RANK / PAY GRADE	EXPIRATION DATE
SP4 / E4	INDEF
SIGNATURE	NUMBER
	4160/56809
WALLERSTEDT, STANLEY A	
IDENTIFICATION CARD	

SCANNED
APR 06 2018

DEPARTMENT OF THE ARMY
HEADQUARTERS, II FIELD FORCE VIETNAM
APO San Francisco 96266

201 FILE

GENERAL ORDERS
NUMBER 3448

26 August 1970

AWARD OF THE SILVER STAR

1. TC 439. The following AWARD is announced.

~~WALLERSTEDT, STANLEY A 535 43 8225~~ PRIVATE FIRST CLASS United States Army COMPANY E
2D BATTALION 47TH INFANTRY 3D BRIGADE 9TH INFANTRY DIVISION APO 96371

Awarded: Silver Star

Date of service: 6 June 1970

Theater: Republic of Vietnam

Reason: For gallantry in action while engaged in military operations involving conflict with an armed hostile force in the Republic of Vietnam: Private First Class Wallerstedt distinguished himself by exceptionally valorous actions on 6 June 1970 while serving as a machinegunner with Company E, 2d Battalion (Mechanized), 47th Infantry, 3d Brigade, 9th Infantry Division, in the Republic of Vietnam. On this date, the First Platoon of Company E was on patrol when they suddenly received intense enemy small arms and machinegun fire. Although suffering from a severe arm wound sustained in the initial moments of contact, Private Wallerstedt placed effective fire on the enemy until his weapon malfunctioned. Still under heavy enemy fire, he identified and corrected the cause of the malfunction and again brought fire on the enemy positions. When additional forces arrived to help evacuate the more seriously wounded, Private Wallerstedt remained to place covering fire on the enemy and eliminate one enemy soldier who was attempting to flank his position. Only when the evacuation party was well to the rear did Private Wallerstedt begin his own withdrawal, even then stopping periodically to return fire on the enemy. Private First Class Wallerstedt's gallantry in action was in keeping with the highest traditions of the military service and reflects great credit upon himself, his unit and the United States Army.

Authority: By direction of the President under the provisions of the Act of Congress, approved 9 July 1918.

FOR THE COMMANDER:



F. J. ROBERTS
Brigadier General, GS
Chief of Staff

E. C. LYTLE
LTC, AGC
Adjutant General

DISTRIBUTION:

5-Indiv
5-UPO, 3/9th Inf Div, APO 96371
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2-IO, HQ, 3/9th Inf Div, APO 96371
2-CO, Unit concerned
1-CG, USARV, APO 96375

SPECIAL DISTRIBUTION:

2-AGPERSCEN, ATTN: AGPE-F, Ft Ben Harrison, Ind 46216

EXHIBIT B

WARRANTY DEED

For Value Received LINDA KAY BEAMAN, KNOW KNOWN AS LINDA KAY BEAMAN STOREY, A
MARRIED WOMAN DEALING WITH HER SOLE AND SEPARATE PROPERTY

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

STAN ARLEY WALLERSTEDT and MARLENE N. WALLERSTEDT, HUSBAND AND WIFE

whose address is: P.O. Box 205, Interm. ID 83245

Hereinafter called the Grantee, the following described premises situated in Bannock County, Idaho, to-wit:

SW 1/4 NE 1/4, SECTION 33, TOWNSHIP 11 SOUTH, RANGE 37 EAST, BOISE MERIDIAN,
BANNOCK COUNTY, IDAHO.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

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 said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: February 11, 2002

Linda Kay Beaman Storey
LINDA KAY BEAMAN known as LINDA KAY BEAMAN STOREY

STATE OF Idaho

COUNTY OF BANNOCK

On this 12th day of February, 2002, before me LINDA CHIVERS, personally appeared LINDA BEAMAN KNOW KNOWN AS LINDA KAY BEAMAN STOREY, known or identified to me (or proved to me on the oath of), to be the person(s) whose name(s) IS subscribed to the within instrument, and acknowledged to me that SHE executed the same.

Linda Chivers
Notary Public of Idaho

Residing at: POCATELLO, Idaho

Commission Expires: 02/18/05

NO 20202962
RECORDED AT REQUEST OF
FIRST AMERICAN TITLE
2002 FEB 12 PM 2 24

BOOK NO 807
PAGE 1
IDAHO
COUNTY OF BANNOCK
307

EXHIBIT C



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 North Skyline Drive, Suite A • Idaho Falls, ID 83402-1718
Phone: (208) 525-7161 • Fax: (208) 525-7177 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

January 29, 2018

Mr. Bradley R Hoggan
PO Box 174
Fielding UT 84311

RE: Application for Transfer, Water Right 29-2624B ²⁴²⁶

Dear Mr. Hogan,

I made a mistake when I looked at the fee schedule. I was unaware that the legislature had split the fees for transfers and applications. The correct fee is five hundred (\$500) dollars. Please remit an additional two hundred fifty (\$250) dollars to the Department. Enclosed is a copy of the transfer fee schedule.

Michael Holiday, Water Rights Supervisor for the Eastern Region, has reviewed the transfer. He has asked for evidence that the water has been used on the pasture since June 2004. It appears from the available aerial photography that forfeiture may be an issue. This evidence may include power records, NRCS records, or a notarized statement from the owner attesting to the fact.

As you are aware five years of nonuse may constitute forfeiture of the water right. Enclosed are copies of the aerial photography the Department is reviewing and the years it was photographed.

If you have any questions please contact me or Mr. Holiday in this office.

Sincerely,

Dennis M. Dunn
Sr. Water Resource Agent, IDWR
900 N Skyline, Suite A
Idaho Falls ID 83402

PH: 208 525 7161