

Cefalo, James

From: Rob Harris <rharris@holdenlegal.com>
Sent: Tuesday, September 26, 2017 10:10 AM
To: Cefalo, James
Subject: RE: Application for Transfer 81026 (Roberts)
Attachments: Joint Use & Easement Agremt RECORDED 8.4.17.pdf

James:

Attached is the recorded agreement. I apologize for forgetting to email this to you.

Rob Harris

From: Cefalo, James [mailto:James.Cefalo@idwr.idaho.gov]
Sent: Monday, September 25, 2017 12:40 PM
To: Rob Harris <rharris@holdenlegal.com>
Subject: Application for Transfer 81026 (Roberts)

Rob,

I am just going through some of the older files in my office. It's been a couple of weeks since we spoke about this application. You mentioned that a settlement agreement had been signed. Randy Budge confirmed that James Allen signed the agreement. I still haven't received a copy of the agreement. Because the application was not protested, I don't need a withdrawal of protest. I just need a copy of the access agreement. Please feel free to send me a copy by email.

James Cefalo
Water Resources Program Manager
IDWR Eastern Region
(208) 525-7161

271618 1-8

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Robert L. Harris
Holden, Kidwell, Hahn & Crapo
PO Box 50130
Idaho Falls, ID 83405

Recorded at the request of
Holden, Kidwell, Hahn & Crapo, PLLC
Time 10:01 Amount \$ 31.00

AUG 04 2017

SHAUNA T. GEDDES, RECORDER
By C. Carter Deputy
Franklin County, Idaho

(Space Above For Recorder's Use)

JOINT USE AND EASEMENT AGREEMENT

THIS JOINT USE AND EASEMENT AGREEMENT (this "Agreement") is made and executed this 1 day of August, 2017 (the "Effective Date") by and between Earl Roberts and Mary Roberts, husband and wife (together, the "Roberts"), and Jim Allen and Kathy Allen, husband and wife (together, the "Allens"). These parties are hereinafter collectively referred to as the "Parties" (and each a "Party").

RECITALS:

- A. The Parties own adjacent property in Franklin County, Idaho. The Allens own approximately 21 acres in the SE¼SW¼ of Section 12, Township 16 South, Range 40 East, Boise Meridian. The Roberts own slightly less than 5 acres that are adjacent to the Allens' property.
- B. There is a certain spring (the "Spring") located on what is, according to the recorded deeds, the Allens' property.
- C. There have been disputes between the Parties regarding the ownership and use of the Spring, which have included, for example: boundary by agreement, boundary by acquiescence, license, etc. The Parties have also disputed the effectiveness and equity of the water distribution system in place on and around the Spring.
- D. Pursuant to the terms and conditions hereof, the Parties desire to enter into an agreement governing the use, repair, maintenance, allocation of costs, and other related issues as to the spring.
- E. In consideration of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

JOINT USE AND EASEMENT AGREEMENT

AGREEMENTS:**1. Ownership.**

- a. **Spring.** The Spring is located on the Allens' property and is owned by the Allens, subject to the easement granted to the Roberts below.
- b. **Collection Facilities.** Ownership of the boxes, mainline, and fixed attendant facilities (whether now existing or as renovated or repaired, improved, or replaced as hereinafter provided) necessary to collect water from the Spring and for conveyance to each Party (the "Collection Facilities") shall be an undivided ½ in each of the Parties.
- c. **Fixtures.** The Allens and the Roberts (within the easement provided below) will each separately own their water distribution systems that convey water from the Collection Facilities (the "Fixtures") to their respective properties.

2. Facility Renovation. The Parties agree that it is necessary to renovate the Collection Facilities that are now existing as soon as reasonably possible (the "Collection Facility Renovation"). The Parties agree to share all costs of the Collection Facility Renovation. If agreeable to both Parties, either Party may undertake the renovation work itself, for which the working party will be entitled to reimbursement of half (½) the cost of necessary materials and a labor fee of \$7.50 per person-hour of labor provided by the working party. Absent agreement for a Party to do the work, the Renovation Plan will be bid out with both parties to approve of the award of bid and work. The Collection Facility Renovation will require the following steps:

- a. **Removal.** First, the Parties agree to remove the currently-existing Collection Facilities in such a manner as will not harm the Spring or its water-producing capacity.
- b. **Inspection.** After the currently-existing Collection Facilities are removed, the Parties agree to inspect the layout of the Spring and to arrive at a mutually-agreeable final plan for the construction of the renovated Collection Facilities (the "Renovation Plan"). Neither Party may unreasonably withhold their consent to the Renovation Plan. The Renovation Plan shall take into account and accomplish the following goals:
 - i. Getting all the water from the Spring into one mainline for allocation and distribution to the Parties;
 - ii. Moving the collection box away from the Spring in order to protect the Spring bed;

- iii. Covering the Spring bed as necessary to protect it; and
 - iv. Having a serviceable system that delivers clean water effectively and equally to both Parties.
- c. **Upgrade.** The Parties shall both agree to a Renovation Plan by September 1, 2017, and the upgrade (*i.e.*, the actual work to build the renovated Collection Facilities) will be complete by December 1, 2017.

3. **Joint Use of Collection Facilities.** The Parties agree that they will jointly use the Collection Facilities to obtain water from the Spring. The Parties further agree that they will each be entitled to one half (½) of the water flowing from the Spring. Neither Party will take any action that will cause the amount of water flowing from the Spring to decrease. As relating to the Collection Facilities:

- a. **Operation, Maintenance, Repairs, Improvement, and Replacement.** With respect to operation, maintenance, repair, improvement, and (if necessary) replacement of the Collection Facilities, the Parties agree to share all such costs equally, with each party paying 50% of such costs.
- b. **Decision-making.** All decisions with respect to operation, maintenance, repair, improvement, and replacement of the Collection Facilities shall be made only after unanimous agreement between the Parties, which (except for emergencies) must be obtained in writing in advance and cannot reasonably be withheld by either Party. The Party incurring any expense for operation, maintenance, repair, and/or replacement shall present to the other Party a copy of any maintenance notice, invoice, or any charge record and the Party to whom it is presented shall pay their proportionate share to the other within thirty (30) days.
- c. **Emergencies.** As described in Paragraph b., above, an emergency requiring the expenditure of funds that will bind both Parties without advanced consent in writing is deemed to exist only when a Party discovers:
 - i. Damage to the Collection Facilities, causing the loss or diminishment of more than one-third ($\frac{1}{3}$) of the water flowing from the Spring; or
 - ii. A binding order from the State of Idaho, or any political subdivision or agency thereof, requiring specified actions to be taken with respect to the Collection Facilities.

4. **Fixtures.** Each Party shall own the Fixtures, which are necessary to convey water from the Collection Facilities to each Party's respective property (*i.e.*, valves and pipes). Each

Party shall be responsible for their own expenses relating to the installation, operation, maintenance, repairs, improvement, and replacement of each Parties' Fixtures.

5. **Grant of Easements.**

- a. **Collection Facility Easement.** The Spring and the Collection Facilities are located on the Allens' property described in recorded deeds. The Allens hereby grant the Roberts an exclusive access easement over, on, across, and through the Allens' property for the Collection Facilities as they exist at the date of this Agreement or may be renovated, repaired, improved, or replaced in accordance with this Agreement.
- b. **Fixture Easement.** The Allens also grant the Roberts an exclusive access easement over, on, across, and through the Allens' property for the Roberts' Fixtures as they exist at the date of this Agreement or may be reasonably repaired, replaced, or improved by the Roberts.
- c. **Secondary Easements.** The Parties additionally recognize the Roberts secondary easement rights as contained in Idaho Code § 42-1102 and other applicable Idaho law relating to the right to access the Collection Facilities and the Fixtures.

6. **Right of Relocation.** In the event of existential problems with the Spring or the Spring's ability to produce water for the Parties' use, the Parties may unanimously agree to relocate the Collection Facilities and obtain water from another source as necessary. All of the costs and expenses associated with such a relocation shall be shared by the Parties as outlined in Section 3, above.

7. **Withdrawal.** Should any Party decide to withdraw from the Collection Facilities' system and elect to receive water from another water delivery system, such Party must give thirty (30) days' notice to the other Party. The withdrawing Party will be solely responsible for all costs associated with the withdrawal, including, but not limited to: all excavation costs and other removal costs associated with the withdrawal. If withdrawal from this water system requires disturbing the property of the other Party, the withdrawing Party shall restore the disturbed property to its previous condition, as nearly as practicable, and shall reimburse the other Party for any losses proximately caused by its withdrawal.

8. **General Provisions.**

- a. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable

provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there shall be automatically added as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid, and enforceable.

- b. **Costs and Attorney Fees.** Should any Party default in the performance of any of the covenants or agreements contained herein, such defaulting Party shall pay to the other Party all costs and expenses, including, but not limited to, a reasonable attorney fee, including such fees on appeal, which the offended party may incur in enforcing this agreement or in pursuing any remedy allowed by law for breach hereof, whether such is incurred by the filing of suit or otherwise.
- c. **Drafting and Interpretation.** The Parties have each retained their own counsel and made this Agreement after negotiation. This Agreement is the joint product of the Parties, and each provision hereof has been subject to the mutual consultation, negotiation, and agreement of the Parties, and shall not be construed for or against any Party hereto. The Section Headings are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

9. **Complete Agreement.** This Agreement sets forth the entire agreement between the parties and supersedes any and all prior and contemporaneous oral or written agreements or understandings among the parties, if any. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement signed by all of the parties.

10. **Binding Effect.** This Agreement shall be recorded in the official records of Franklin County, Idaho, and shall be binding upon and inure to the benefit of the heirs, successors, administrators, executors, and assigns of the Parties hereto and shall run with the land.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.


 Earl Roberts


 Jim Allen

JOINT USE AND EASEMENT AGREEMENT


Mary Roberts

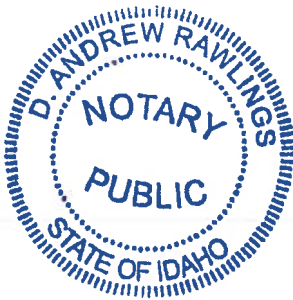
\\Law\data\WPDATA\RLH\19066-000 Roberts, Earl & Mary\Agreement v01.docx


Kathy Allen

STATE OF IDAHO)
)ss.
 County of Bonneville)

On this 1st day of August, 2017, before me, the undersigned, a notary public in and for said State, personally appeared **Earl Roberts**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

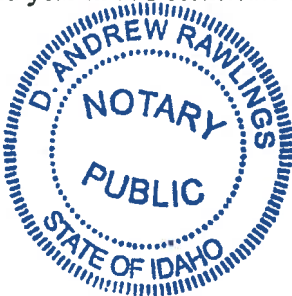


[Signature]
 Notary Public for Idaho
 Residing at Idaho Falls, Idaho
 My Commission Expires: 19 Aug. 2021

STATE OF IDAHO)
)ss.
 County of Bonneville)

On this 1st day of August, 2017, before me, the undersigned, a notary public in and for said State, personally appeared **Mary Roberts**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



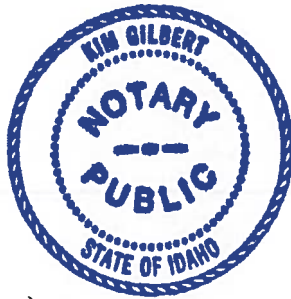
[Signature]
 Notary Public for Idaho
 Residing at Idaho Falls, Idaho
 My Commission Expires: 19 Aug. 2021

JOINT USE AND EASEMENT AGREEMENT

STATE OF IDAHO)
)ss.
 County of Franklin)

On this 20th day of July, 2017, before me, the undersigned, a notary public in and for said State, personally appeared **Jim Allen**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



Kim Gilbert
 Notary Public for Idaho
 Residing at 2405 W Hwy 36 Idaho
 My Commission Expires: 01-26-22

STATE OF IDAHO)
)ss.
 County of Franklin)

On this 20th day of July, 2017, before me, the undersigned, a notary public in and for said State, personally appeared **Kathy Allen**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



Kim Gilbert
 Notary Public for Idaho
 Residing at 2405 W Hwy 36 Idaho
 My Commission Expires: 01-26-22

JOINT USE AND EASEMENT AGREEMENT