

Albert P. Barker
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John K. Simpson
Travis L. Thompson
Shelley M. Davis
*Paul L. Arrington**
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brs@idahowaters.com

Paul L. Arrington
pla@idahowaters.com

April 5, 2016

VIA EMAIL

Chris M. Bromley (cbromley@mchughbromley.com)
Garrick L. Baxter (Garrick.baxter@idwr.idaho.gov)

RE: Water Rights 37-22915, 37-22916, 37-22917, 37-22918 and 37-22919

Dear Mr. Bromley & Mr. Baxter:

This letter is in response to Mr. Bromley's March 31, 2016 letter regarding ownership of the above rights and challenging the Department's decision to change the ownership records of the above water rights to reflect that the owner is "South County Estate, LLC." Mr. Bromley demands that the Department's records show ownership of these water rights in First Security Corporation ("FSC"), as successor to Idaho Independent Bank ("IIB"). In essence, Mr. Bromley is asking the Department to make a determination of title to the rights, contrary to his argument that only the courts have that authority.

Mr. Bromley's entire argument rests on what he characterizes as "the clarity of deeds," alleging that the deeds show that South County Estate had conveyed some portion of the parent rights to John Scherer and Charles Holt. He concludes that these documents "clearly" conveyed water to Mr. Scherer and Mr. Holt before Belle Ranch acquired its interest in the water rights and that, therefore, Belle Ranch did not acquire this portion of the parent water rights.

The problem is that the deed is anything but clear, and this ambiguity was compounded by the actions and inactions of Scherer, Holt and IIB (FSC's purported predecessor). Indeed, a title report prepared in 2011 in association with Belle Ranch's acquisition of the property did not reveal any evidence of any attempted water right conveyance in 2009. **Attachment 1.** This is because the quitclaim deed allegedly conveying water to Mr. Scherer, Exhibit 1 to Mr. Bromley's December 22, 2014 Letter, was not recorded so that it appeared in the chain of title for the appurtenant property. This is so because the deed includes no property description on which to attach the recording. It is an attempt to have a water right appurtenant to nothing. Therefore this deed could not have "notified subsequent purchasers and all others that 7.5/289th

of the diversion rate of the Parent Water Rights were no longer owned by South County.” Indeed no one was aware of this little scheme other than Scherer, Holt and IIB.

Mr. Bromley points to Instrument No. 568681, a Partial Release of Lien, Exhibit 2 to Mr. Bromley’s December 22, 2014 Letter. This document was identified in the 2011 Title Report. However, that document did not put anyone on notice that Mr. Scherer had attempted to convey some portion of the water rights. Indeed, the Partial Release says nothing about any water right conveyance – it does not identify the deed, now relied upon by FSC, by which South County allegedly conveyed water to Mr. Scherer. There is no explanation on its face of any purpose for the release. It could easily have been because some portion of the debt was paid off. This documentation stands in stark contrast to other Partial Release of Lien documents filed on this same property. For example, on October 13, 2005, Mountain West Bank filed a partial release of lien “as it relates to the water rights appurtenant to the 1 acre of real property identified on the legal description attached hereto as Exhibit A ... which are the subject of a quitclaim deed dated March 17, 2008 to PENSICO Trust Company.” **Attachment 2**; *see also* **Attachment 3** (release lien on water rights following a “quitclaim deed dated August 8, 2008 to PENSICO Trust Company”). In short, the Partial Release identified by Mr. Bromley did not and does not purport to provide any notice of the deed from which FSC alleges to have acquired an interest in the water rights.

In 2011, at the time of the transfer from Mountain West Bank to Belle Ranch, TJ Budge, attorney for Mountain West Bank, reviewed the water rights appurtenant to the Belle Ranch property. He reviewed the Department’s water right files and title history. Based on his review, he concluded that “assuming that the legal description in those instruments encompasses all of the Belle Ranch Subdivision, then Mountain West Bank acquired all of the water rights described above.” **Attachment 4**.

As there is “clearly” no notice of Scherer and Holt’s claim on the water rights through the recorded history at the County, at the SRBA and at the Department, Belle Ranch was a bona fide purchaser of the water rights, without notice of any claim by Mr. Scherer, IIB or FSC.

To be bona fide purchasers, the [subsequent purchaser] must have purchased the property in good faith for valuable consideration. “Good faith means a party purchased the property without knowing of any adverse claims to the property.”

...

“The purpose of the recording act in a race-notice jurisdiction, like Idaho, is to allow recorded interests to be effective against unrecorded interests when the recorded interest is taken for a valuable consideration and in good faith, i.e., without knowledge, either actual or constructive, that unrecorded interests exist.” A purchaser of real property is “chargeable with notice of every matter affecting the estate, which appears on the face of any recorded deed forming an

essential link in his chain of title.” A purchaser is also chargeable with notice “of such matters as might be learned by inquiry which the recitals in such instruments made it a duty to pursue.”

Regan v. Jeff D., 157 Idaho 759, 763 (2014).

The lack of notice through the chain of title was magnified by Scherer and Holt’s failure to submit any notice to the Department or the Court regarding the alleged conveyance of any portion of the water rights in 2009 or 2010 when they received the partial decree. Indeed, until at least 2014, long after Belle Ranch had acquired the water rights, nothing was in the Department’s backfiles for the parent water right to reflect that Mr. Scherer, IIB, FSC or anyone else had any interest in any portion of the parent rights. This is evidenced by the fact that, in 2012, Belle Ranch filed a transfer (Transfer No. 77878) to change the elements of the parent water rights (including the portion now claimed by FSC). As there was nothing in the file indicating any interest in anyone other than Belle Ranch, the transfer was approved by the Department.

Mr. Bromley points to a Notice of Security Interest in a Water Right that was allegedly submitted to the Department in 2009 by IIB. However, that document was not included in the file of the water rights until 2014. In early 2014, our office again searched the backfiles for the parent water rights. IIB’s Notice of Security Interest was not included in the backfile of any of the parent water rights. Nor was there any record of any attempted transfer of title from South County to Scherer. We inquired on this matter because of the claims made by IIB in 2014 and were informed by the Department in April, 2014, that the security interest document was only posted to the water rights’ backfiles after our 2014 inquiry. Prior to that time, there was no notice through the Department’s files of any claimed interest in the parent rights.

In February, 2014, we were contacted by counsel for IIB, regarding the water rights, who advised that IIB intended to foreclose on a mortgage held by Mr. Scherer and questioned whether there was any dispute that IIB held an interest in a portion of the water rights. We responded advising that IIB did not have any interest in the water rights. This was consistent with the Title Report and Mr. Budge’s findings, each discussed above. The company financing the purchase of Belle Ranch also came to the same conclusion and so advised IIB’s counsel. We heard nothing back from IIB’s counsel.¹

Mr. Scherer was the managing member of South County Estates, LLC, according to the Secretary of State’s records. He received notice of all filings relative to the SRBA process on the

¹ Mr. Bromley complains that he was not notified our March 17, 2016 letter prior to its submission. However, Mr. Bromley failed to notify the Department of any of the communications between IIB and Belle Ranch over the ownership of these rights in his December 22, 2014 Letter and did not notify this office that he intended to seek a change of ownership even though we had been communicating with the bank’s attorneys prior to that time on this very issue and even though the Department’s records had already been updated to reflect Belle Ranch’s ownership of the water rights.

water rights. Even though the SRBA process to decree the water rights continued for more than a year after the alleged 2009 conveyance, Mr. Scherer did nothing to correct the record or the Court's determination that South County owned the entirety of the water rights. He took no action to correct the ownership records even while he received notice from the Court that the rights, in their entirety, were being decreed in the name of South County Estate.

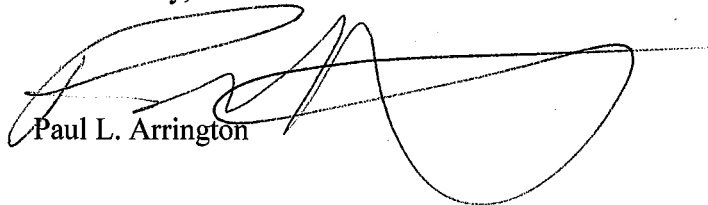
Nothing in the Court's file, the chain of title or the Department's records indicated that Mr. Scherer had any interest in any part of the water rights. Accordingly, Belle Ranch acquired title to all the water rights appurtenant to the Belle Ranch property.

Mr. Bromley's Letter agrees that the SRBA is a quiet title action, but that the Court did not actually quiet title to the water rights it decreed. He points to the *Facility Volume* case and certain statutes, concluding that the SRBA "did not examine ownership." Nothing in the *Facility Volume* decision indicates that the Court was limiting the "quiet title" nature of the SRBA to issues of forfeiture. Indeed, such an argument conflicts with Mr. Bromley's subsequent reliance on Section 6-401 – as that list includes more elements of the water right than merely whether or not the right was forfeited.

In the end, the relevant statutes require that the "claimant" provide information supporting the development and use of the water right in the SRBA. *See* I.C. § 42-1411(2) & 42-1411(5). It is the claimant that is then decreed the water right by the SRBA Court and it is the claimant that uses that water.

Accordingly, please return the Department's records of ownership of the above water rights to reflect Belle Ranch's ownership of the entire water rights. If FSC wishes to bring an action before an appropriate forum under Chapter 4, Title 6 of the Idaho Code to argue its legal position, we would be more than happy to defend the ownership of these water rights in such a forum. If you have any questions, please don't hesitate to give me a call at 208-733-0700.

Yours Truly,



Paul L. Arrington

PLA/jn
Attachments

cc: Client (via email)

Attachment 1

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE
Issued by



STEWART TITLE GUARANTY COMPANY, a Texas Corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

This Commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

A handwritten signature in dark ink, appearing to read "Stewart Morris Jr.", written over a horizontal line.

Chairman of the Board

A handwritten signature in dark ink, appearing to read "Malcolm S. Morris", written over a horizontal line.

President

A handwritten signature in dark ink, appearing to read "Zeng Washburn", written over a horizontal line.

Authorized Countersignature

Blaine County Title Associates
360 Sun Valley Rd/PO Box 3176
Ketchum ID 83340 Phone (208) 726-0700

CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and Stipulations and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. *The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.alta.org/>>.*



All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252.

SCHEDULE A

Order Number: 1117502

Commitment Number: 1117502tw

1. Effective Date: December 13, 2011 at 8:00 AM
2. Policy or Policies to be issued: Amount of Insurance
 - (a) ☒ ALTA Owner's Policy - (6/17/06) \$1,600,000.00
Proposed Insured: Justin Stevenson
 - (b) ☐ ALTA Loan Policy - (6/17/06) - 0 -
Proposed Insured: NONE
3. The estate or interest in the land described or referred to in this Commitment is Fee Simple.
4. Title to the fee simple estate or interest in the land is at the effective date vested in:
GBCI Other Real Estate, LLC, a Montana limited liability company
5. The land referred to in this Commitment is described as follows:

Parcel 1 and Parcel 2, Block 1 of BELLE RANCH SUBDIVISION, according to the official plat thereof, recorded as Instrument No. 563443, Records of Blaine County, Idaho.

EXCEPTING a portion of said Parcel 1 more particularly described as follows: COMMENCING at an iron pin marking the North ¼ Corner of Section 7 Township 1 North, Range 19 East, Boise Meridian, Blaine County, Idaho; thence North 89°58'18" West, 1,317.24 feet along the Northerly boundary of the E½NW¼, Section 7, to an iron pin marking the Northwest corner of said E½NW¼, Section 7, said pin also being the REAL POINT OF BEGINNING;

Thence continuing North 89°58'18" West, 34.73 feet along the Northerly boundary of the W½NW¼, Section 7, to an iron pin on the intersection of the Northeasterly boundary of the Union Pacific Railroad and said Northerly boundary of the W½NW¼, Section 7;

Thence South 31°10'34" East, 67.81 feet along said Northeasterly Railroad boundary to an iron pin on the intersection of said Northeasterly Railroad boundary and the Westerly boundary of said E½NW¼ of Section 7;

Thence North 0°22'13" West, 58.00 feet along said Westerly boundary of the E½NW¼ to the Point of Beginning. (Tax Lot 4913)

Purported Address:
105, 183 Gannett Road
Bellevue, Idaho 83313

STATEMENT OF CHARGES

These charges are due and payable before a Policy can be issued:

Owner's Policy:	\$3,980.00
Underwriter remittance	
\$477.60	

SCHEDULE B

PART I & II

Order Number: 1117502

Commitment Number: 1117502tw

I. The following requirements must be met:

1. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
5. Release of Mortgage from South County Estates, LLC, an Idaho Limited Liability Company to Mountain West Bank recorded 10/14/2005 as Instrument No. 527439, securing a note in the original principal sum of \$2,850,000.00, and other obligations described therein

Modified by the instrument recorded 12/01/2006 as Instrument No. 542378, records of Blaine County, Idaho.

Partial Release of Lien as to Water Rights recorded as Instrument No's 568681, 574996, 574997, 574998, 574999, 575000, 575001, records of Blaine County, Idaho.

6. Release of Mortgage from South County Estates, LLC, an Idaho Limited Liability Company to Mountain West Bank recorded 6/13/08 as Instrument No. 558904, securing a note in the original principal sum of \$1,040,000.00, and other obligations described therein
7. Release of Mortgage from South County Estates, LLC, an Idaho Limited Liability Company to Mountain West Bank recorded 10/24/2008 as Instrument No. 562481, securing a note in the original principal sum of \$1,040,000.00, and other obligations described therein
8. Delivery to the Company of the Affidavit as to Debts and Liens. Upon acceptance and review of said Affidavit, title will be subject to such further matters as appear necessary and appropriate following such review.
9. Pursuant to the State of Idaho Insurance Regulations, a cancellation fee is to be charged on all cancelled orders. Unless otherwise advised, orders will be considered cancelled six months after the effective date on the Commitment. The amount of the fee assessed shall be in accordance with our rate filing with the Idaho Department of Insurance.

If you should decide to change lenders within six months, this commitment can be transferred to avoid a cancellation charge.

THIS COMMITMENT (substitute preliminary report or binder where appropriate) IS NOT AN ABSTRACT, EXAMINATION, REPORT, OR REPRESENTATION OF FACT OR TITLE AND DOES NOT CREATE AND SHALL NOT BE THE BASIS OF ANY CLAIM FOR NEGLIGENCE, NEGLIGENT MISREPRESENTATION OR OTHER TORT CLAIM OR ACTION. THE SOLE LIABILITY OF COMPANY AND ITS TITLE INSURANCE AGENT SHALL ARISE UNDER AND BE GOVERNED BY THE CONDITIONS OF THE COMMITMENT.

SCHEDULE B

PART I & II

Order Number: 1117502

Commitment Number: 1117502tw

II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by Public Records.
2. Any facts, rights, interests, or claims which are not shown by the Public Records, but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, liens, or encumbrances, or claims thereof, which are not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims, or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
7. General taxes for the year 2011, a lien in the amount of \$ 400.50, of which the first installment is due on or before December 20, 2011 and the second installment is due on or before June 20, 2012.
(Parcel No. RP000450010010)
8. General taxes for the year 2011, a lien in the amount of \$ 200.42, of which the first installment is due on or before December 20, 2011 and the second installment is due on or before June 20, 2012.
(Parcel No. RP000450010020)
9. Any adverse claim arising from the fact that the Blaine County Assessor may require a survey before they will recognize the transfer of the property described herein.
10. Notes, Easements and Restrictions as shown on the plat of Belle Ranch Subdivision, recorded December 12, 2008 as Instrument No. 563443, records of Blaine County, Idaho.
11. Notices of liens if any, in favor of the State Tax Commission, the Department of Labor and Department of Health and Welfare of the State of Idaho filed in the office of the Secretary of State pursuant to Chapter 19, Title 45, Idaho Code. (The Idaho State Tax Commission electronically files liens with the office of the Secretary of State and not with the Blaine County Recorder. Until final review at closing, title may be subject to such further matters as appear necessary and appropriate following such review.)

Items 1-4 and 6 may be removed upon issuance of any ALTA Extended Coverage Policy.

Copies of all recorded documents outlined in this section are available upon request.

STG Privacy Notice 2 (Rev 01/26/09) Independent Agencies and Unaffiliated Escrow Agents

WHAT DOES BLAINE COUNTY TITLE DO WITH YOUR PERSONAL INFORMATION?

Federal and applicable state law and regulations give consumers the right to limit some but not all sharing. Federal and applicable state law regulations also require us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand how we use your personal information. This privacy notice is distributed on behalf of Blaine County Title and its affiliates, pursuant to Title V of the Gramm-Leach-Bliley Act (GLBA).

The types of personal information we collect and share depend on the product or service that you have sought through us. This information can include social security numbers and driver's license number.

All financial companies, such as Blaine County Title, need to share customers' personal information to run their everyday business—to process transactions and maintain customer accounts. In the section below, we list the reasons that we can share customers' personal information; the reasons that we choose to share; and whether you can limit this sharing.

Reasons we can share your personal information	Do we share?	Can you limit this sharing?
For our everyday business purposes — to process your transactions and maintain your account. This may include running the business and managing customer accounts, such as processing transactions, mailing, and auditing services, and responding to court orders and legal investigations.	Yes	No
For our marketing purposes — to offer our products and services to you.	Yes	No
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes — information about your transactions and experiences. Affiliates are companies related by common ownership or control. They can be financial and nonfinancial companies.	Yes	No
For our affiliates' everyday business purposes — information about your creditworthiness.	No	We don't share
For our affiliates to market to you	Yes	No
For nonaffiliates to market to you. Nonaffiliates are companies not related by common ownership or control. They can be financial and nonfinancial companies.	No	We don't share

We may disclose your personal information to our affiliates or to nonaffiliates as permitted by law. If you request a transaction with a nonaffiliate, such as a third party insurance company, we will disclose your personal information to that nonaffiliate. [We do not control their subsequent use of information, and suggest you refer to their privacy notices.]

Sharing practices	
How often does Blaine County Title notify me about their practices?	We must notify you about our sharing practices when you request a transaction.
How does Blaine County Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal and state law. These measures include computer, file, and building safeguards.
How does Blaine County Title collect my personal information?	We collect your personal information, for example, when you • request insurance-related services • provide such information to us We also collect your personal information from others, such as the real estate agent or lender involved in your transaction, credit reporting agencies, affiliates or other companies.
What sharing can I limit?	Although federal and state law give you the right to limit sharing (e.g., opt out) in certain instances, we do not share your personal information in those instances.

Contact Us

If you have any questions about this privacy notice, please contact us at: Blaine County Title, 360 Sun Valley Road, P.O. Box 3176, Ketchum, ID 83340

Attachment 2

Instrument # 574998

HAILEY, BLAINE, IDAHO

2-10-2010 02:54:55 No. of Pages: 3

Recorded for : LAWSON LASKI CLARK POGUE, PLLC

JOLYNN DRAGE Fee: 9.00

Ex-Officio Recorder Deputy

Index to: PARTIAL SATISFACTION OF MORTGAGE

PARTIAL RELEASE OF LIEN

The undersigned beneficiary under that certain Mortgage October 13, 2005, recorded as Instrument No. 527439 as modified pursuant to that Modification of Mortgage dated November 28, 2006 recorded as Instrument No. 542378 in the official records of Blaine County, Idaho (collectively the "Mortgage"), hereby agrees that the lien of the Mortgage be released as it relates to the Water Rights appurtenant to the 1 acre of real property identified on the legal description attached hereto as Exhibit "A" and incorporated herein by this reference which are the subject of a quitclaim deed dated March 17, 2008 to PENSICO Trust Company Custodian FBO Richard D. Fosbury IRA#F01EC and that the Notice of Security Interest in a Water Right filed with the Idaho Department of Water Resources be waived to the limited extent it relates to the Water Rights described above.

Dated: October 19, 2009

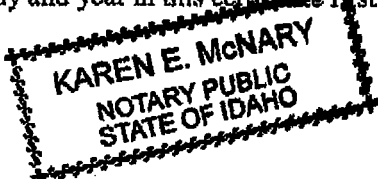
MOUNTAIN WEST BANK

By: Dale Chaisey
Its: VICE PRES

STATE OF IDAHO)
) ss.
County of Blaine)

On this 19 day of OCTOBER, 2009, before me, KAREN E. McNARY, a Notary Public in and for said State, personally appeared DALE CHAISEY, known or identified to me to be the VICE PRESIDENT of MOUNTAIN WEST BANK, the banking association that executed the within instrument or the person who executed the instrument on behalf of said association and acknowledged to me that such association 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.



Karen E. McNary
Notary Public for IDAHO
Residing at HAILEY, ID
My commission expires 9-28-10

PARTIAL RELEASE OF LIEN

30169-033 FOSBURY IRA #1

**A WATER RIGHT LEGAL DESCRIPTION FOR
PENSCO TRUST FBO
RICHARD D. FOSBURY IRA#F01EC
(Belle Ranch Subdivision, South County Estates, LLC)**

A LEGAL DESCRIPTION FOR A PARCEL OF LAND LOCATED IN SECTION 7,
TOWNSHIP 1N, RANGE 19E, B.M., IN BLAINE COUNTY, IDAHO, AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" PIN WITH NO CAP MARKING THE NORTH 1/16
CORNER OF SECTION 7; THENCE ALONG THE SECTION LINE COMMON
TO SECTION 7 AND SECTION 8 S 00°07'22" W, 1311.44 FEET TO A
BRASS CAP MARKING THE EAST 1/4 CORNER OF SECTION 7; THENCE
LEAVING SAID SECTION LINE S 11°24'48" W, 465.89 FEET TO THE TRUE
POINT OF BEGINNING.

THENCE S 59°24'28" W, 1483.51 FEET;

THENCE N 88°05'01" W, 53.82 FEET;

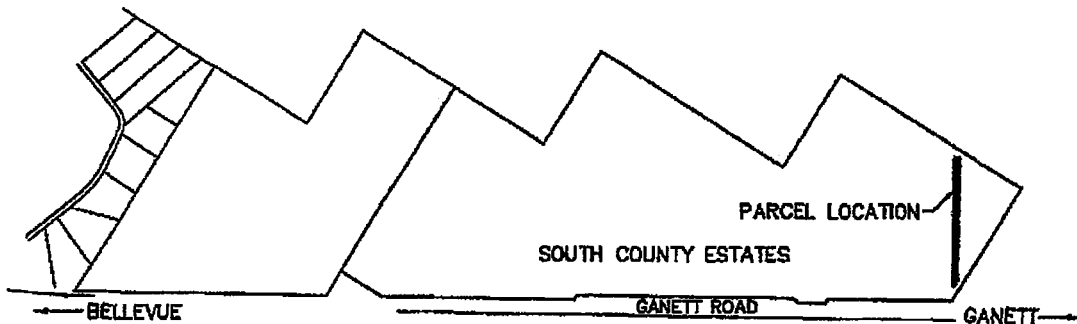
THENCE N 59°24'28" E, 1528.61 FEET;

THENCE S 31°10'18" E, 28.92 FEET TO THE TRUE POINT OF
BEGINNING.

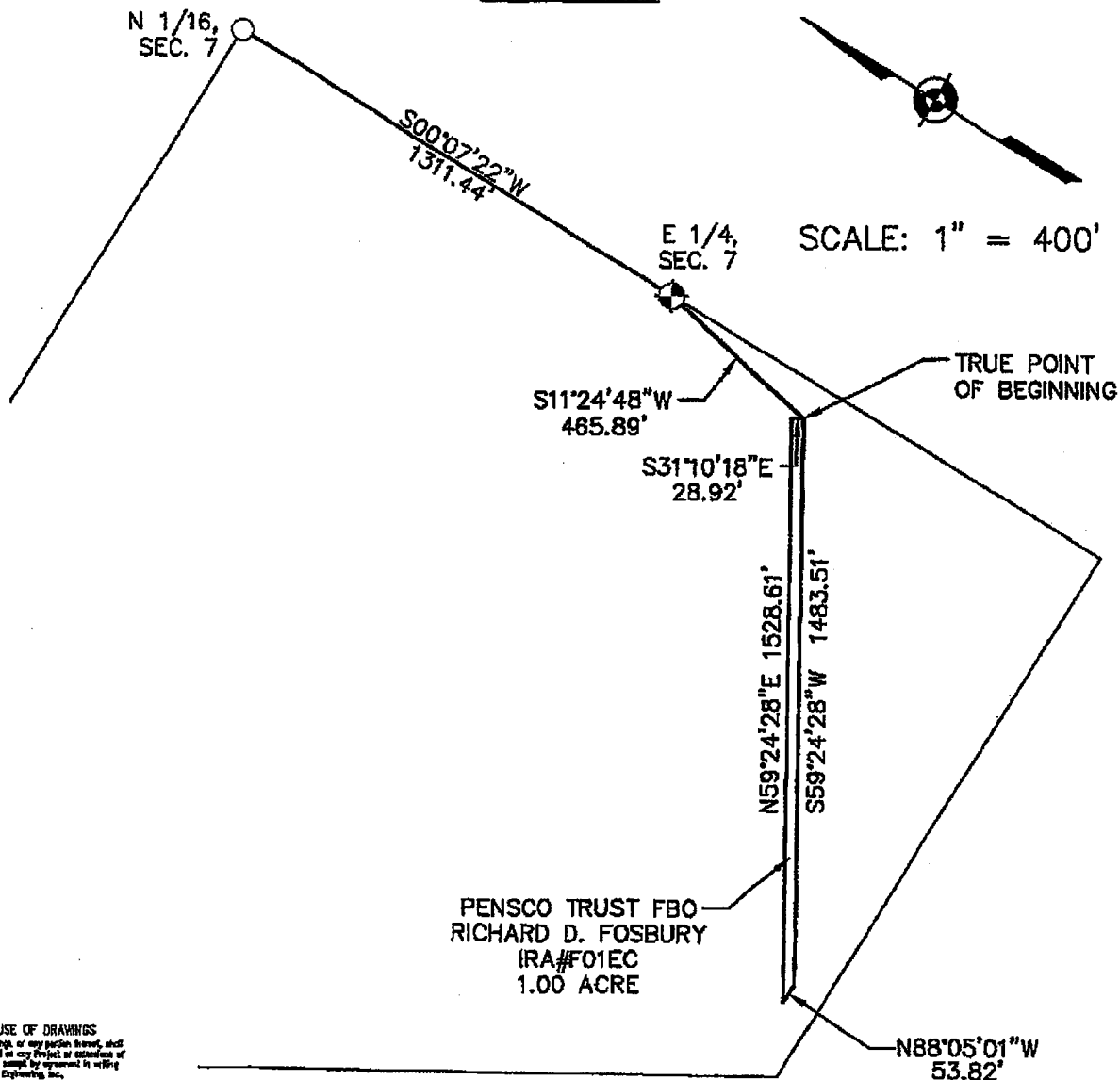
SAID PARCEL CONTAINS 1.00 ACRE, MORE OR LESS.

EXHIBIT

"A"



VICINITY MAP



REUSE OF DRAWINGS
These drawings, or any portion thereof, shall not be used on any project or occasion of this project except by agreement in writing with Galena Engineering, Inc.

Galena Engineering Inc.

Civil Engineers & Land Surveyors
809 Second Avenue North
P.O. Box 425
Kelowna, Idaho 83840
(208) 725-4723
(208) 725-4753 fax
email galena@galena-engineering.com

**EXHIBIT MAP OF A WATER RIGHT TRANSFER LEGAL DESCRIPTION FOR
PENSICO TRUST FBO RICHARD D. FOSBURY IRA#F01EC
WITHIN S 6, T.1N., R.19E, B.M., BLAINE COUNTY, IDAHO
PREPARED FOR SOUTH COUNTY ESTATES, LLC**

PROJECT INFORMATION

P:\SDSKPROJ\5689\dwg\Exhibits\5689_water_rights_percola.dwg 10/10/2008 10:13:23 AM MDI

SHT 1 OF 1

Attachment 3

Instrument # 574999

HAILEY, BLAINE, IDAHO

2-10-2010 02:58:07 No. of Pages: 3

Recorded for : LAWSON LASKI CLARK POGUE, PLLC

JOLYNN DRAGE Fee: 9.00

Ex-Officio Recorder Deputy

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The undersigned beneficiary under that certain Mortgage October 13, 2005, recorded as Instrument No. 527439 as modified pursuant to that Modification of Mortgage dated November 28, 2006 recorded as Instrument No. 542378 in the official records of Blaine County, Idaho (collectively the "Mortgage"), hereby agrees that the lien of the Mortgage be released as it relates to the Water Rights appurtenant to the 1 acre of real property identified on the legal description attached hereto as Exhibit "A" and incorporated herein by this reference which are the subject of a quitclaim deed dated August 8, 2008 to PENSICO Trust Company Custodian FBO Charles Holt IRA#H01NV and that the Notice of Security Interest in a Water Right filed with the Idaho Department of Water Resources be waived to the limited extent it relates to the Water Rights described above.

Dated: October 14, 2009

MOUNTAIN WEST BANK

By: Dale Chaney

Its: VICE PRES

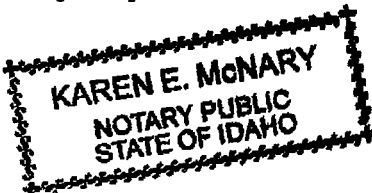
STATE OF IDAHO)

) ss.

County of Blaine)

On this 14 day of OCTOBER, 2009, before me, KAREN E. McNARY, a Notary Public in and for said State, personally appeared DALE CHANEY, known or identified to me to be the VICE PRESIDENT of MOUNTAIN WEST BANK, the banking association that executed the within instrument or the person who executed the instrument on behalf of said association and acknowledged to me that such association 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.



Karen E. McNary
Notary Public for IDAHO
Residing at HAILEY, ID
My commission expires 9-28-10

PARTIAL RELEASE OF LIEN

30169-033 HOLT IRA #2

**A WATER RIGHT LEGAL DESCRIPTION FOR
PENSCO TRUST FBO CHARLES HOLT IRA#H01NV
(Belle Ranch Subdivision, South County Estates, LLC)**

A LEGAL DESCRIPTION FOR A PARCEL OF LAND LOCATED IN SECTION 7,
TOWNSHIP 1N, RANGE 19E, B.M., IN BLAINE COUNTY, IDAHO, AND MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8" PIN WITH NO CAP MARKING THE NORTH 1/16
CORNER OF SECTION 7; THENCE ALONG THE SECTION LINE COMMON
TO SECTION 7 AND SECTION 8 S 00°07'22" W, 1311.44 FEET TO A
BRASS CAP MARKING THE EAST 1/4 CORNER OF SECTION 7; THENCE
LEAVING SAID SECTION LINE S 06°48'59" W, 512.20 FEET TO THE TRUE
POINT OF BEGINNING.

THENCE S 59°24'28" W, 1388.94 FEET;

THENCE N 88°05'01" W, 57.36 FEET;

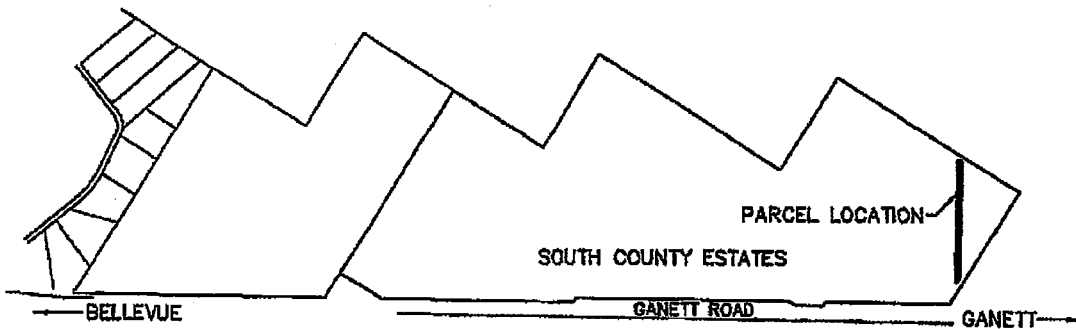
THENCE N 59°24'28" E, 1437.01 FEET;

THENCE S 31°10'18" E, 30.83 FEET TO THE TRUE POINT OF
BEGINNING.

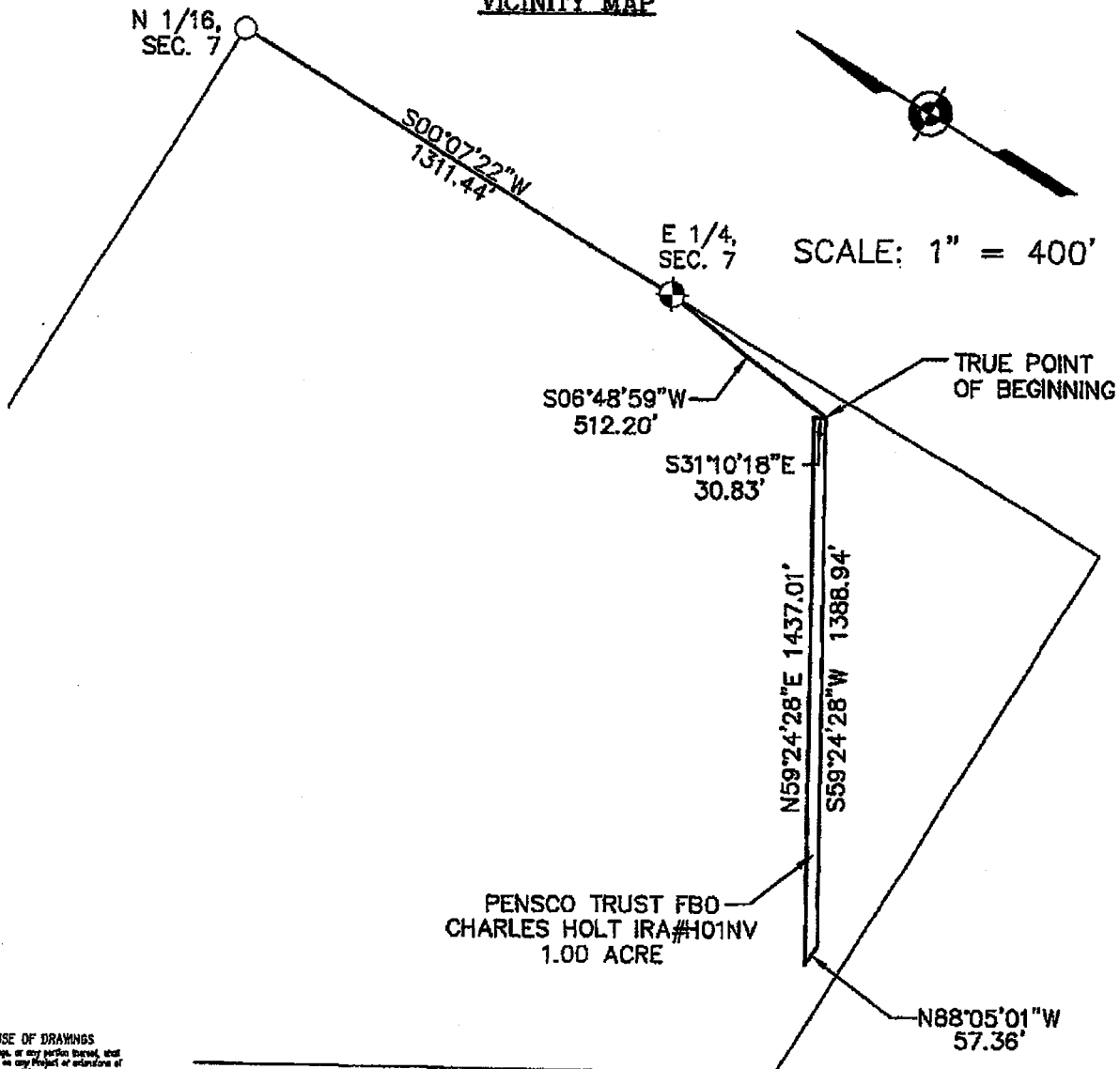
SAID PARCEL CONTAINS 1.00 ACRE, MORE OR LESS.

EXHIBIT

A



VICINITY MAP



REUSE OF DRAWINGS

These drawings, or any portion thereof, shall not be used on any project or in any other way without the express written consent of Galena Engineering, Inc.

**Galena
Engineering
Inc.**

Civil Engineers & Land Surveyors
250 Second Avenue North
P.O. Box 425
Ketchikan, Idaho 83340
(808) 728-4728
(208) 728-4728 fax
email galena@galena-engineering.com

EXHIBIT MAP OF A WATER RIGHT TRANSFER LEGAL DESCRIPTION FOR
PENSCO TRUST FBO CHARLES HOLT IRA#H01NV
WITHIN S 6, T.1N., R.18E., B.M., BLAINE COUNTY, IDAHO
PREPARED FOR SOUTH COUNTY ESTATES, LLC

PROJECT INFORMATION

P:\SOUTH\PROJ\5225\dwg\Exhibits\5225_water_rights_parcel.dwg 10/10/2008 10:13:23 AM MDT

SHT 1 OF 1

Attachment 4

Doro Schinella

From: Daryl Fauth [DaFauth@stewart.com]
Sent: Wednesday, December 21, 2011 9:31 AM
To: Doro Schinella
Subject: FW: Gannett Road Water Rights
Attachments: Belle Ranch Subdivision plat.pdf; WR Layout 37-577BT et al.pdf; WR Layout 37-2630.pdf; WR Layout (property line).pdf; IDWR WR Report 37-481C (20111220).pdf; IDWR WR Report 37-482H (20111220).pdf; IDWR WR Report 37-483C (20111220).pdf; IDWR WR Report 37-577BT (20111220).pdf; IDWR WR Report 37-2630 (20111220).pdf; South County Deed Info.pdf

From Kirby Robertson at MWB

Daryl Fauth

President/Partner

Blaine County Title

360 Sun Valley Road

PO Box 3176

Ketchum, ID 83340

Office (Main): 208.726.0700

Office (Direct): 208.806-3140

Mobile: 208.720.5110

eFax: 208.379.7920

e-mail: dafauth@stewart.com

 Please consider the environment before printing this email

From: T. J. Budge [mailto:tjb@racinelaw.net]
Sent: Tuesday, December 20, 2011 5:44 PM
To: Betty Trandem; Kirby Robertson
Cc: Dan Green
Subject: RE: Gannett Road Water Rights

Kirby,

Per your request, I looked into the water rights appurtenant to the Belle Ranch Subdivision (as shown on the attached plat). There are five appurtenant water rights (water right numbers 37-2630, 37-481C, 37-577BT, 37-482H and 37-483C). Attached are current Idaho Department of Water Resources (IDWR) Water Right Reports for each water right. As shown on the Reports, these water rights allow the irrigation of up to 289 acres. Also attached are three maps (WR Layouts) showing the place of use for

12/21/2011

these water rights. Note that the place of use shown on the maps corresponds with the plat for Belle Ranch.

As you know, Mountain West Bank acquired these water rights in 2010 from South County Estates, LLC, by a Deed in Lieu of Foreclosure as well as an Assignment and Deed (copies of which are attached). The Assignment specifically conveys the water right numbers described above. The Deed in Lieu specifically conveys "all appurtenances" including "all water, water rights, watercourses and ditch rights." Assuming that the legal description in those instruments encompasses all of the Belle Ranch Subdivision, then Mountain West Bank acquired all of the water rights described above.

Lastly, you raised a question as to whether there is sufficient water to irrigate the full 289 acres with these water rights. If all 289 acres have been irrigated in years past, then presumably the water rights are sufficient to irrigate the full 289 acres. Attached is an aerial photo titled "IDWR Aerial (20111220)" which I believe was taken in 2009 that indicates that all of the property is irrigated that year. In addition, the diversion rates of the water rights indicate that there is sufficient water to irrigate the full 289 acres. Thus, there does appear to be sufficient water under these water rights to irrigate the full 289 acres

Let me know if you have any questions.

Thanks,

T.J. BUDGE
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
201 East Center Street
Post Office Box 1391
Pocatello, Idaho 83204
(208) 232-6101 – phone
(208) 232-6109 – fax
www.racinelaw.net
tjb@racinelaw.net

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From: Betty Trandem [<mailto:BTrandem@mountainwestbank.com>]
Sent: Tuesday, December 20, 2011 4:17 PM
To: Dan Green; T. J. Budge
Cc: Kirby Robertson
Subject: Gannett Road Water Rights

Dan & TJ,

Kirby requested that I forward the attached information to your attention. We are in the process of finalizing a sale of the property and there is some question whether there was an additional split of one of the water rights from the full South County Estates parcel directly to John Scherer & Richard Fosbury individually. Will you please review and contact Kirby Robertson directly with your findings (208) 859-5699. Your immediate attention the matter is appreciated.

Thank you,
Betty

12/21/2011

Betty Trandem
Special Assets Assistant
Mountain West Bank
(208) 884-6837 Phone
(208) 855-9107 Fax

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12/21/2011