

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

AUG 23 2012

Department of Water Resources
Eastern Region

Notice of Change in Water Right Ownership

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?
34-322	Yes ☐		Yes ☐		Yes ☐
34-323	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐

2. Previous Owner's Name: Russell K and Virginia Hanks
Name of current water right holder/claimant

3. New Owner(s)/Claimant(s): Paul and Marianne Lanier
Name of each new owner as listed on the conveyance document

New owner continued Name connector ☐ and ☐ or ☒ and/or
3820 W 4400 N
Mailing address
Mackay ID 83251
City State ZIP
208-589-5773
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: August 16, 2012

6. 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.

7. Signature: Paul M. Lanier Title, if applicable _____ Date 8/20/12
Signature of new owner/claimant
Signature: Marianne Lanier Title, if applicable _____ Date 8/20/12
Signature of new owner/claimant

For IDWR Office Use Only:

Received by SE Date 8/28/12 Receipt No. E037949 Receipt Amt. 3950.00
Approved by JB Processed by JB Date 9/4/2012 but 50.00 is for C/O.

AFTER RECORDING RETURN TO:

Nathan M. Olsen
PETERSEN MOSS HALL & OLSEN
485 "E" Street
Idaho Falls, ID 83402
(208)523-4650

246124
Custer County Reg. of
Paul & Marianne Lanier
Time 3:30 PM Date 8/17/2012
Barbara C. Tiemey, Clerk
Una Baker 10⁰⁰
Deputy

NO. **0049845**
RECORDED

AUG 17 2012

AM 1:06 PM
BUTTE COUNTY RECORDER
[Signature]

QUITCLAIM DEED

QUITCLAIM DEED made this 16th Day of August, 2012, between **Russell K. Hanks and Virginia Hanks**, husband and wife, herein referred to as "Transferor," and **Paul Lanier and Marianne Lanier**, husband and wife, referred to herein as "Transferee," whose mailing address is 3820 W. 4400 N., Mackay, ID 83251, WITNESSETH:

That Transferor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to them in hand paid by Transferee, the receipt whereof is acknowledged, does by these presents remise, release and forever quitclaim unto Transferee and to their heirs and assigns all of certain water rights, specifically described as follows:

- 1) IDWR #34-322, including 40 miners inches Bug Lost River Irrigation District priority 7/21/1886, and
- 2) IDWR # 34-323, including 40 miners inches Big Lost River Irrigation District priority 6/1/1889

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

TO HAVE AND TO HOLD, all and singular, the property together with the appurtenances unto Transferee and to his heirs and assigns forever.

IN WITNESS WHEREOF Transferor has hereunto set their hand the day and year first above written.

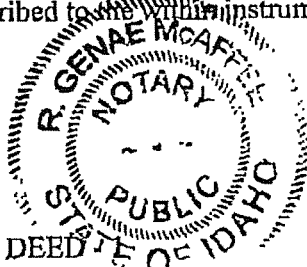
Russell K. Hanks
Russell K. Hanks

Virginia Hanks
Virginia Hanks

STATE OF IDAHO)
County of Custer) ss.
Belleville

On August 16, 2012, before me, the undersigned Notary Public in and for the State of Idaho, personally appeared Russell K. Hanks, and Virginia Hanks known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

(SEAL)



R. Genae McAfee
Notary Public for State of Idaho
Residing at: Idaho
My Commission Expires: 4/1/2015

QUITCLAIM DEED

JUL 23 REC'D

BUTTE COUNTY

2012 JUL 20 11:04

FILED BY

AKG

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE

PAUL LANIER and MARIANNE LANIER, a
married couple, and RUSSELL HANKS and
VIRGINA HANKS, a married couple,

Plaintiff,

v.

LYNN METCALF and VELMA METCALF,

Defendants.

Case No. CV-2010-100

ORDER

THIS MATTER is before the Court on the motion of Plaintiffs for entry of partial summary judgment based on the Court's prior decision.¹ The Defendants have objected to the request.

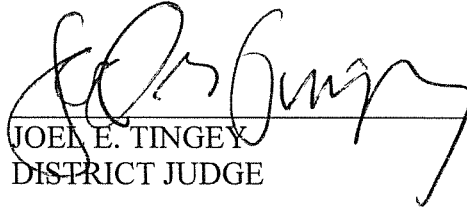
Specifically, on July 2, 2012, this Court entered its Memorandum Decision which included a finding that water rights 34-322 and 34-323 were reserved by Hanks notwithstanding a transfer of property to Defendants to which the water rights were attached. While it is true that the Plaintiffs had not moved for summary judgment, this Court in its discretion ruled as a matter of law that the Hanks effectively reserved those water rights. See *Sirius LC v. Erickson*, 144 Idaho 38, 156 P.3d 539 (2007) (holding the court has discretion to grant summary judgment for a non-moving party even if the non-moving party has not filed its own motion) (citation omitted).

¹ While the request was submitted in the form of a letter to the Court with a copy to opposing counsel, the Court will consider the letter and request as a motion. No oral argument was requested by either party.

Upon that basis, the Court finds that Plaintiff is entitled to an entry of partial summary judgment pursuant to the Court's Decision. Accordingly, Plaintiff's motion for entry of a partial summary judgment is granted and Defendant's objection and motion to strike is denied.

IT IS SO ORDERED.

DATED this 18 day of July, 2012.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 20 day of July, 2012, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Nathan M. Olsen
PETERSEN MOSS HALL
485 "E" Street
Idaho Falls, ID 83402

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, ID 83318-0248

Clerk of the District Court
Butte County, Idaho

By 
Deputy Clerk

JUL 23 REC'D

BUTTE COUNTY
2012 JUL 20 PM 1:04
FILED BY hes

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE

PAUL LANIER and MARIANNE LANIER, a
married couple, and RUSSELL HANKS and
VIRGINA HANKS, a married couple,

Plaintiff,

v.

LYNN METCALF and VELMA METCALF,

Defendants.

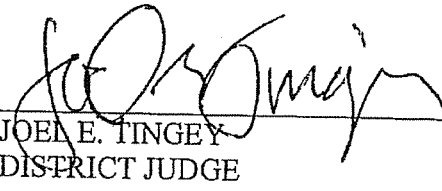
Case No. CV-2010-100

PARTIAL SUMMARY JUDGMENT

THIS COURT, having entered its Decision and Order on this matter, and good cause
appearing;

IT IS HEREBY ADJUDGED AND ORDERED that Plaintiffs have judgment against
Defendants to the effect that water rights 34-322 and 34-323 were reserved by Hanks
notwithstanding a transfer of property to Defendants by deed on July 3, 1997, Instrument No.
31479.

DATED this 18 day of July, 2012.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 20 day of July, 2012, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

Nathan M. Olsen
PETERSEN MOSS HALL
485 "E" Street
Idaho Falls, ID 83402

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, ID 83318-0248

Clerk of the District Court
Butte County, Idaho

By 
Deputy Clerk

N Olsen

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE

AM 6:41

DISTRICT COURT
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY ID

PAUL LANIER and MARIANNE LANIER, et.
al.,

Plaintiff,

v.

LYNN METCALF and VELMA METCALF,

Defendants.

Case No. CV-2010-100

**MEMORANDUM DECISION
AND ORDER**

THIS MATTER is before the Court on the motion of Defendants Lynn and Velma Metcalf's (hereinafter "Defendants") Motion for Summary Judgment wherein said Defendants seek summary judgment against Plaintiffs. Following the hearing on the motion, the Court took the motion under advisement.

I. FACTUAL BACKGROUND

On December 29, 1994, the Hanks purchased approximately 80 acres of agricultural property and a 3 acre corner piece of property with a shop and granaries in Custer County from the Farmers Home Administration through a foreclosure sale (this property is hereinafter referred to as the "Monson property"). The property, as outlined in the quitclaim deed, included the following water rights:

IDWR License # 34-02421 priority date 6/6/1961 – well License # 34-00322 40 miners inches Big Lost River Irrigation District priority 7/21/1886

License # 34-00323 40 miners inches Big Lost River Irrigation District priority 6/1/1889 with storage water of 1,510 inches.

At the time the Hanks purchased the Monson property they were living on property owned by the Defendants, on the Custer and Butte County line (hereinafter

referred to as the “Croft property”). Sometime in 1996, the Defendants approached the Hanks about swapping the Monson property with approximately 80 acres of the Croft property. Negotiations were ongoing for over a year.¹ The Croft property contained water rights that were several years junior of the rights on the Monson property.

In April 1997, both parties signed FHA form “Transfer of Real Estate Security” wherein it stated that the Defendants were transferring to the Hanks storage rights. Furthermore, water rights were added prior to the parties signing the form by way of the interlineation in section 1 of the form after the mention of storage rights—“+ or water rights”.

On July 3, 1997, the Hanks signed a warranty deed conveying the Monson property to Defendants including the water right listed as: License #34-2421 priority date 6/6/91. On that same day, the Defendants conveyed to the Hanks the Croft property by warranty deed. No steps were taken by either party to change the place of use for water rights 34-322 and 34-323 with the Idaho Department of Water Resources. Indeed, as late as 2009 the IDWR record for water rights 34-322 and 34-232 list the Hanks as the owner and list the Monson property as the place of use.

The Hanks utilized the 34-322 and 34-323 water rights on the Croft property for the years in which they owned the property without opposition from the Defendants. The Hanks remained the listed owners of the 34-322 and 34-323 rights with the Big Lost River Irrigation District as well as with the Idaho Department of Water Resources (IDWR).

¹ The Hanks contend that during the negotiations they were emphatic that the transfer allow the Hanks to reserve the senior water rights appurtenant to the Monson property, consisting of License 34-322 and 34-232.

In April 2006, the Hanks and Laniers negotiated an agreement to purchase the Croft property, excluding the lot with the Hanks' home but including the 3 acre corner piece with the granaries and shop. The record does not indicate that the Defendants participated at all in this negotiation. The written agreement between the Hanks and Laniers stated that the purchase was to include all the water rights. The Laniers claim to have checked the ownership of the 34-322 and 34-323 rights with both the Big Lost River Irrigation District and IDWR records, which indicated the Hanks were the owners of the rights. However, at the same time the Laniers allegedly confirmed the Hanks owned the water rights, IDWR records indicated those rights were not attached to the property purchased by the Laniers (i.e., the Croft property).

On August 1, 2006 the Hanks conveyed the Croft property as specified to the Laniers by way of warranty deed. The warranty deed does not identify specific water rights. The deed does convey "the said premises, with its appurtenances, unto the said Grantee..." The Laniers immediately began utilizing the property including water rights 34-322 and 34-323.

In October 2007, the Laniers attempted to change ownership of the 34-322 and 34-323 rights with IDWR to list them as owners. However, IDWR refused to process the Laniers' request. The letter to the Laniers from IDWR, dated August 30, 2007, explaining its decision states:

The department...acknowledges receipt of correspondence changing ownership of Water Rights 34-322 and 34-323, however in researching the deed provided we are unable to change the water rights into your name. If you did purchase the land associated with these water rights, please submit a deed including that property. ...

See Aff. of Kent Fletcher in support of Mot. for Summ. Jud., Exhibit 11,
p. 3.

Upon receiving the letter from IDWR, the Laniers approached the Defendants about helping the Laniers resolve the issues surrounding rights 34-322 and 34-323. In November 2007, the Defendants bought the 3 acre parcel that the Hanks had originally reserved for themselves in the Metcalf-Hanks transaction.²

The Laniers aver that in the spring of 2010, after years of unopposed water usage, Lynn Metcalf informed Paul Lanier that he was going to take back the water rights. In 2010, without the knowledge or authorization of either the Laniers or the Hanks, the Defendants changed the ownership of the water rights from Hanks to the Defendants on the records of IDWR.³ As part of their application for change of water right ownership, Defendants attached the 1997 warranty deed wherein the Hanks conveyed the Monson property to the Defendants (which also allegedly reserved 34-322 and 34-232) as proof of ownership of the water rights. The Laniers eventually sold their property in 2011 for \$119,8000, which they claim was at a much lower market value as it did not have the senior water rights.

II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is only appropriate if “the pleadings, depositions, and admissions on file, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), Idaho Rules

² The parties dispute the facts surrounding this transaction. The Laniers contend that they reduced the fair market price of the parcel in exchange for the Defendants promising to resolve the water rights issue to give the Laniers the rights. The Defendants state that the purported agreement is not in writing and appears nowhere in the record.

³ Defendants claim they intended to change the ownership of the water rights with IDWR back in 1997 when the Hanks conveyed the Monson place by warranty deed but failed to make the appropriate filing until 2010 (i.e., 13 years later).

Civil Procedure. When considering a motion for summary judgment, any disputed facts are construed in favor of the nonmoving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the nonmoving party. *Finholt v. Cresto*, 143 Idaho 894, 896, 155 P.3d 695, 697 (2007). If reasonable minds might come to different conclusions, summary judgment is inappropriate. *McPheters v. Maile*, 138 Idaho 391, 394, 64 P.3d 317, 320 (2003).

The party moving for summary judgment bears the burden of proving that no genuine issue of material fact exists. *Cramer v. Slater*, 146 Idaho 868, 873, 204 P.3d 508, 513 (2009). Once the moving party establishes the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007). In order to survive a motion for summary judgment, the nonmoving party must show that there is a triable issue. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 524, 808 P.2d 851, 861 (1991). “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *McGilvray v. Farmers New World Life Ins. Co.*, 136 Idaho 39, 42, 28 P.3d 380, 383 (2001), quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552 (1986). The non-moving party’s case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue. *Corbridge v. Clark Equip. Co.*, 112 Idaho 85, 87, 730 P.2d 960, 963 (1994).

II. ANALYSIS

1. Water rights as to the Hanks – Metcalf transaction

As indicated above, in transferring the Monson property to the Defendants, the Hanks signed a warranty deed which expressly included water right License #34-2421,

but did not reference water rights 34-322 and 34-323. In giving effect to the transfer of property and any appurtenant water rights, the Court will first consider the language of the deed. “In interpreting a deed of conveyance, the primary goal is to seek and give effect to the real intention of the parties.” *C & G, Inc. v. Rule*, 135 Idaho 763, 766, 25 P.3d 76, 79 (2001). Whether a deed is ambiguous is a question of law. *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 243-44, 16 P.3d 915, 919-20 (2000). “Where a deed is unambiguous, ‘the parties’ intent must be ascertained from the language of the deed as a matter of law.” *Lattin v. Adams County*, 149 Idaho 497, 236 P.3d 1257 (2010) (quoting *C & G, Inc.*, 135 Idaho at 766, 25 P.3d at 79). In *City of Kellogg*, the Court stated:

In construing a deed the trial court should, if possible, give effect to the intent of the parties. When issues arise concerning the meaning of language used and its operation upon the property being conveyed, the general rule is that *the intent of a plain and unambiguous deed must be ascertained from the deed, and parol evidence is not admissible.*

135 Idaho at 243, 16 P.3d at 919 (emphasis added); see *Neider v. Shaw*, 138 Idaho 503, 509, 65 P.2d 525, 530 (2003) (“The intent of the parties is determined by viewing the conveyance instrument as a whole.”) (citation omitted).

As to the intent to reserve appurtenant water rights, in *Joyce Livestock Co. v. United States*, 144 Idaho 1, 56 P.3d 502 (2007) the court stated:

Unless they are expressly reserved in the deed *or it is clearly shown that the parties intended that the grantor would reserve them*, appurtenant water rights pass with the land even though they are not mentioned in the deed and the deed does not mention “appurtenances.” Thus, the inquiry is not whether there is evidence indicating that the grantor intended to convey the water rights with the land. Rather, the inquiry is whether the water rights were expressly reserved in the deed conveying the land *or whether there is clear evidence that the parties intended that the grantor would reserve them.*

Id., at 14, 56 P.3d at 515 (internal citations omitted) (emphasis added).

In *Paddock v. Clark*, 22 Idaho 498, 126 P. 1053 (1912), the court addressed situations in which a deed expressly conveys certain water rights but remains silent as to others:

The expression in the deed that certain specific water rights shall pass has been held per se a reservation of all others not mentioned; that is, *the expression of one is sufficient evidence to exclude any presumption of intent to include others not mentioned*. Where a deed to land specifically described the water rights granted, the grantee did not take by implication additional water rights to irrigate a part of the land which could not be irrigated from the rights granted, even though the parties did not adhere in their use strictly to the terms of the grant.

The court in *Joyce* stated in the disjunctive that appurtenant water rights pass with land unless expressly reserved in the deed *or* “it is clearly shown that the parties intended that the grantor would reserve them.” While this seemingly indicates that this Court may look beyond the language in the deed to determine if the water rights were conveyed or reserved, the court in *City of Kellogg* held that the intent of the parties as to the operation of the deed was evidenced by the deed itself, without regard for extrinsic evidence.

As per *City of Kellogg*, *supra*, this Court need not look beyond the four corners of the deed to ascertain the intent of the parties as to ownership of the water rights at issue in this action. The warranty deed executed on July 3, 1997, wherein the Hanks conveyed the Monson property to the Defendants, expressly conveyed water right 34-2421, while remaining silent as to water rights 34-322 and 34-323. The *Paddock* case constrains the Court to find that water rights 34-322 and 34-323 were reserved by Hanks notwithstanding a transfer of property to which the water rights were attached. This Court adopts the rationale in *Paddock*, wherein the Supreme Court held:

This language, to our minds, clearly indicates that the water intended to be conveyed is the specific water described in the deed and used in connection with said land, and that in placing said language in the deed the intention of the parties was to limit the water rights conveyed to the specific descriptions given, and that all other and different water rights were excluded from such conveyance, and that this intention is in no way modified or conditioned by the language, “together with all and singular appurtenances thereto belonging or in any wise appertaining.”

22 Idaho 498, 126 P. at 1055.

While the parties reference the Transfer of Real Estate Security contract between the Hanks and the Defendants, the 1997 warranty deed is clear in its effects as a matter of law. Thus, the Court need not go beyond the four corners of the deed. See *C & G, Inc.*, 135 Idaho at 766, 25 P.3d at 79 (holding that where the deed is unambiguous as a matter of law, the intent of the parties is found within the deed without resort to extrinsic evidence). That deed did not transfer the subject water rights to Defendants.

2. Water rights as to the Laniers

In considering the claim of the Laniers, the first issue is to consider their standing as to the subject water rights. “Standing is a subcategory of justiciability, and the standing inquiry is focused on the party seeking relief,” and not on the merits of the case. *Taylor v. AIA Servs. Corp.*, 151 Idaho 552, 564, 261 P.3d 829, 841 (2011) (citation omitted); *Abolafia v. Reeves*, ___ P.3d ___, 2012 WL 1434340 *3 (Idaho 2012). “Where a plaintiff does not have standing it cannot be said that the ‘case and controversy’ requirement has been satisfied; therefore the judiciary lacks jurisdiction to hear the case.” *Martin v. Camas County ex rel. Bd. Com’rs*, 150 Idaho 508, 512, 248 P.3d 1243, 1247 (2011).

Standing is jurisdictional and as such, may be raised at any time. *Koch v. Canyon County*, 145 Idaho 158, 162, 177 P.3d 372, 376 (2008). “In order to satisfy the [case and controversy] requirement of standing, the petitioner must allege or demonstrate a distinct

palpable injury in fact; that the injury is fairly traceable to the challenged conduct; and that there is a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury.” *Arambarri v. Armstrong*, 152 Idaho 734, 274 P.3d 1249 (2012). A plaintiff cannot recover by showing the existence of a cause of action in another. *Uhlig v. Diefendorf*, 53 Idaho 676, 26 P.2d 801 (1933).

The Laniers base their claims against Defendants on theories of conversion, promissory estoppel, and misrepresentation. Specifically, the Laniers claim that in negotiating with the Defendants for the sale of the 3 acre parcel originally reserved by the Hanks, the Defendants orally contracted or otherwise promised to convey the water rights. However, as part of Mr. Lanier’s deposition testimony, he admitted that the Defendants did not promise to transfer the water rights to him as part of the sale for the 3 acres. As the deposition testimony is undisputed, the Laniers’ claims of promissory estoppel and misrepresentation must be dismissed. While the Laniers have standing on these claims, they are not supported by the evidence.

Conversely, Laniers do not have standing to assert a claim of conversion based on any ownership interest in the water rights. First, the evidence establishes that the Hanks did not transfer the water rights to the Laniers. The subject water rights were not attached to the property purchased by the Laniers. Not surprisingly, IDWR refused to change ownership of the water rights to the Laniers’ name. To the extent the purchase agreement between Lanier and Hanks was to include the subject water rights, that is an issue between those parties and not Defendant. As a corollary, the record does not establish some duty owed by Defendants to Laniers.

Second, the Laniers no longer have any interest in the Croft property. In fact, in 2011 they sold the Croft place for \$119,800 (\$31,800 more than the purchase price in 2006). Hence, the Laniers have no evidence that they have an ownership interest in the water rights and have disavowed any interest in the property to which they are appurtenant. See *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007) (holding that as plaintiffs disavowed any interest in the subject property, they then had no standing to challenge the judgment entered by the district court); *Pro Indiviso, Inc v. Mid-Mile Holding Trust*, 131 Idaho 741, 963 P.2d 1178 (1998) (holding that without any ownership interest in the subject property, plaintiffs could not show injury sufficient to confer standing).

Therefore, the Laniers lack standing to bring their conversion claim. Accordingly, all claims personal to the Laniers will be dismissed.⁴

3. Current status of Hanks' interest in the water rights.

It is the Court's opinion that many unresolved and unaddressed issues remain in this case. For instance, in 2010, the Defendants submitted an application to IDWR to change the ownership for those rights, and attached the 1997 warranty deed between Hanks and the Defendants as evidence of ownership. IDWR accepted the Defendants' application and changed the listed owner of the water rights to the Defendants. However, as discussed supra, this Court rules herein as a matter of law that the 1997 warranty deed which the Defendants attached to its application in fact establishes that those water rights were reserved by the Hanks.

Thus, the discrepancy between the law and IDWR's action raises a number of issues:

⁴ Although the Laniers may remain as proper parties to the extent they are the assignees of Hanks' claims.

1. Why did IDWR reassign the water rights to Defendants?
2. Have the parties, and particularly the Hanks sought clarification, adjudication, or any type of administrative remedy from IDWR regarding the status of ownership of the water rights?
3. Have the parties exhausted their administrative remedies?
4. Is there a reason the Court should defer to IDWR and it's determination that Defendants own the water rights?

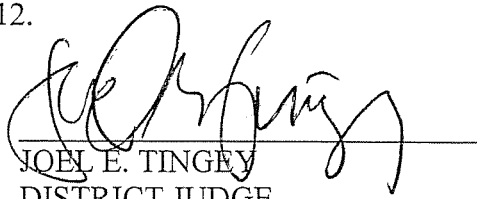
Again, it is the Court's opinion that the transfer of the Monson property to Defendants did not transfer the subject water rights. If Hanks remains as the proper owner of those water rights, such will significantly affect the claims asserted, the application of statutes of limitations, etc. The Court believes that these issues have not been adequately addressed and preclude further consideration of summary judgment.

IV. CONCLUSION AND ORDER

Based on the foregoing, Defendants' Motion for Summary Judgment is granted in part, and denied in part. The Court grants Defendants motion insofar as the Laniers' claims are dismissed. The Court further holds that the Hanks reserved water rights 34-322 and 34-323 in the July 1997 warranty deed to Defendants and accordingly, the remainder of Defendants' motion for summary judgment is denied without prejudice to renew.

IT IS SO ORDERED.

DATED this 28 day of June, 2012.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 28 day of June, 2012, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, ID 83318-0248

Nathan M. Olsen, Esq.
PETERSEN MOSS HALL & OLSEN
485 "E" Street
Idaho Falls, ID 83402

RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By ms
Deputy Clerk

COPY

Position 5

208050

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

QUITCLAIM DEED

The UNITED STATES OF AMERICA, acting through the Administrator of the Farmers Home Administration, United States Department of Agriculture, CONVEYS and QUITCLAIMS to

RUSSELL K. HANKS and VIRGINIA HANKS, husband and wife

Grantee, for the sum of THIRTY THOUSAND SIX HUNDRED DOLLARS

all interest in the following described real estate situated in the County of BUTTE and CUSTER

State of IDAHO

, to-wit:

Township 6 North, Range 25 East Boise Meridian, Butte & Custer Counties, Idaho.

Section 12: W $\frac{1}{2}$ NW $\frac{1}{4}$; EXCEPTING THEREFROM: A parcel of land situated in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 12, Township 6 North, Range 25 EBM, Custer County; more particularly described as follows: Beginning at a point that is North 0.05 feet and East 5.56 feet from the Southwest corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$; Said point lies on the South line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 12; Thence N 1°35'2" W 207.46 feet along a fence to a point; Thence N 89°26'52" E 210 feet to a point; thence S 1°35'2" E 207.46 feet to a point lying on the South line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 12; Thence S 89°26'52" W 210 feet along said line to the point of beginning. Containing 1.00 acres, more or less.

ALSO EXCEPTING THEREFROM: an undivided one-half interest in the following land Beginning at a point 486 feet South and 25 feet East of the Northwest corner of said Section 12; thence East 1 rod; thence South 1 rod; thence West 1 rod; thence North 1 rod to the Point of Beginning. (This describes a parcel of land where the irrigation pump and well are located, it is a parcel of land 16.5 feet square.)

TOGETHER with the following water rights:

IDWR license #34-02421 priority date 6/6/1961 - well

License # 34-00322 40 miners inches Big Lost River Irrigation District priority 7/21/1886 with storage water of 1,248 inches

License # 34-00323 40 miners inches Big Lost River Irrigation District priority 6/1/1889 with storage water of 1,510 inches

TOGETHER with all irrigation equipment presently located on the property.

0208050

Custer County Reg. of
Idaho Titles
Trust Co.

Time 11:17 A.M.

12-30-94

Robert M. Peck, Clerk
Wendy Murphy
602 Deputy

NO. 028718

FILED

DEC 29 1994

11:20 A.M. P.M.
BUTTE COUNTY RECORDER
Judith A. Bailey

Exhibit No. 1
Date: 9-20-11
Hanks
T&T REPORTING

208050

This deed is executed and delivered pursuant to the provisions of the credit sale of inventory property formerly owned by Terry Monson, former case #12-12-519477820 advise #12-12-12306 and the

authority set forth in 7 CFR 1900, Subpart A.

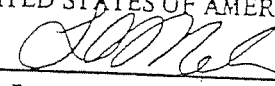
No member of Congress shall be admitted to any share or part of this deed or to any benefit that may arise therefrom.

Dated June 21

, 1993 .

UNITED STATES OF AMERICA (Grantor)

By


Loren A. Nelson

Farmers Home Administration
United States Department of Agriculture

In the presence of:

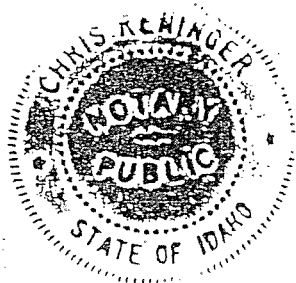
ACKNOWLEDGMENT

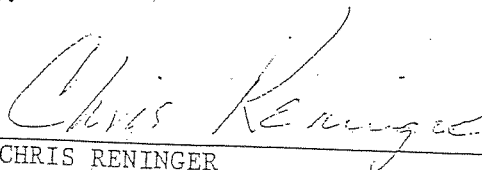
STATE OF Idaho)

County of Ada)

On this 21st day of June, 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared Loren A. Nelson, known to me to be the State Director, Farmers Home Administration, USDA, and 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 on the day and year last above mentioned.




CHRIS RENINGER

Notary Public in and for State of Idaho
Residing at Meridian, Idaho
My Bond Expires 7/6/94

208050

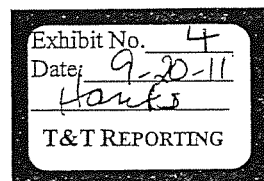
INSTRUMENT No. 31479

WARRANTY DEED

FOR VALUABLE CONSIDERATION RECEIVED RUSSELL K. HANKS and
VIRGINIA HANKS, husband and wife, the Grantor,
does hereby grant, bargain, sell and convey unto LYNN J. METCALF and
VELMA L. METCALF, husband and wife, the Grantee,
whose current address is _____,
the following described real estate situated in BUTTE & CUSTER County,
State of Idaho, to-wit:

See attached EXHIBIT 'A'

SUBJECT TO: all easements, rights of way, covenants, restrictions,
patent reservations, applicable building and zoning ordinances and
use regulations and restrictions and accruing taxes, of record.



TO HAVE AND TO HOLD the said premises, together with all tenements, hereditaments and appurtenances
thereunto belonging, unto the said Grantee, his successors and assigns forever. Grantor does hereby covenant
to and with the said Grantee that IT is the owner in fee simple of said premises and that IT will warrant and
defend the same from all lawful claims whatsoever.

In construing this Deed and where the context so requires, the singular includes the plural and the
masculine, the feminine and neuter.

DATED: 7/3/97
Russell K. Hanks
Russell K. Hanks

Virginia Hanks
Virginia Hanks

STATE OF IDAHO, County of BUTTE

On this 3rd day of July 19 97
before me, Lyle B. Boyer
Notary Public in and for the said State personally
appeared

Russell K. Hanks
Virginia Hanks

THIS SPACE FOR COUNTY RECORD'S USE ONLY.

NO. 31479
RECORDED

JUL 3 1997

ALL 23 PM
BUTTE COUNTY RECORDER

Known to me to be the person(s) whose name(s) are
subscribed to the within instrument and acknowledged

TOWNSHIP 6 NORTH, RANGE 25 EAST BOISE MERIDIAN, BUTTE & CUSTER COUNTIES, IDAHO.

SECTION: 12

The W1/2NW1/4;

EXCEPTING THEREFROM:

A parcel of land situated in the SW1/4NW1/4, Section 12, T6N, R25E, D.M., Custer County, State of Idaho; more particularly described as follows:

Beginning at a point that is North 0.05 Feet and East 5.56 feet from the Southwest corner of the SW1/4NW1/4, Section 12, T6N, R25E, D.M.; said point lies on the South line of the SW1/4NW1/4, Section 12; thence N 1°35'02" W 414.92 feet along a fence to a point; thence N 09°26'52" E 420.0 feet to a point, thence S 1°35'02" E 414.92 feet to a point lying on the South line of the SW1/4NW1/4, Section 12; thence S 09°26'52" W 420.0 feet along said line to the point of Beginning. Containing 4.0 acres, more or less.

Including the following well site: Beginning at a point 486 feet South and 25 feet East of the Northwest corner of said Section 12; thence East 1 rod; thence South 1 rod; thence West 1 rod; thence North 1 rod to the Point of Beginning.

Together with the following water right:

IDWR LICENSE #34-02421 priority date 6/6/91 - well

The following equipment:

1 US Motor, 50 hp #1251072

1 Johnston Turbine Pump: 125', #IFS264