

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

OCT 20 2008

WATER RESOURCES
WESTERN REGION

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application for Transfer No 75059

2. Name of protestant Kim Schultzmeier

3. Protestant's Representative for service (If different than protestant)

4. Service mailing address 8393 Southside Blvd. Nampa, ID 83686

5. Service telephone no. 208-461-8084 Email Address: _____

6. Basis of protest (including statement of facts and law upon which the protest is based)

See attached

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? See attached

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 19 day of October, 2008

Protestant Kim Schultzmeier

Protestant's Representative

NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. 15059 in the name of Kuna City."
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
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FOR DEPARTMENT USE ONLY

Received by Jmh Date 10-20-08 Time 8:09 AM
\$25.00 fee Receipted by Jmh # W036994 Date 10-20-08

RECEIVED

OCT 20 2008

WATER RESOURCES
WESTERN REGION

State of Idaho
Department of Water Resources
RE: Application for Transfer No. 75059

Kim Schultsmeier's Notice of Protest (attachment)

6. Basis of protest (including statement of facts and law upon which the protest is based).

On March 2, 2005 the attached agreement was reached to resolve the protest of the City of Kuna's application for Water Right Permit 63-31741, which provides for the mitigation and impacts to my private well. Impact(s) are defined as "drying up" or a reduction in the water volume/flow caused by the City's wells.

It is for the same reasons and concerns regarding the well located on my property at 1030 West Hubbard Road, which is why I am protesting this application.

7. What would resolve your protest?

Provide for a settlement agreement with the same protection and time frame as the one dated March 2, 2005 with an effective date beginning the day the application for transfer no 75059 is approved.

**Protest of Application for Water Right No. 63-31741
Settlement Agreement**

COMES NOW the City of Kuna, through its Mayor upon the authority granted him by the City Council, and the undersigned Protestants to the City's application for Water Right No. 63-31741 enter into this Settlement Agreement (hereafter Agreement) effective this 2 day of March, 2005;

Whereas, the parties to this Agreement, the City of Kuna and the undersigned Protestants in order to resolve the protests of the City of Kuna's application for Water Right Permit 63-31741 agree as follows:

1. The City of Kuna, through the authority granted to its Mayor by the City Council and City Resolution hereby agrees to establish a Special Fund within the City of Kuna's books to be known as the Well Mitigation Fund (hereafter referred to as "Fund").
2. The Fund shall be financed by the assessment of a water hookup fee for all new lots developed or annexed within the City of Kuna that use Kuna city water.
3. The Fund shall be used to mitigate Impacts to the Protestants' wells from the City's development of Water Right No. 63-31741 as such Impacts are determined from the monitoring program baseline. "Impact(s)" shall be defined as "drying up", or a reduction in the water volume/flow of the Protestants' wells caused by the City's wells associated with Water Right No. 63-31741. "Impact" shall not include injury or damage to the Protestants' wells due to the failure of Protestants' pumps, Protestants' failure to adequately maintain the Protestants' wells and associated pumps, acts by the Protestants, including, but not limited to, allowing the development of other wells on or adjacent to the Protestants' wells, or other matters beyond the control of the City of Kuna.

3a. The City shall upon the effective date of this Agreement begin monitoring Protestants' wells for degradation of Protestants' wells. Initial monitoring of Protestants' wells for water level will include a mechanical inspection of wellhead and well casing to detect any defects in the wells or casings with any defects noted in writing submitted to the applicable Protestant. The City shall not be liable for any defective items noted in the initial well inspection report. All wells with four (4) inch well casings are specifically excluded from this Agreement.

3b. Protestants' wells shall be monitored for Two (2) successive years from the effective date of this Agreement and shall be monitored at least 4 times per year. Should the City place a new City water well in service before all the monitoring is completed then the monitoring data already completed shall be used to establish the baseline and once the baseline is established it will remain fixed. The goal of the monitoring for this time period is to document or otherwise determine a baseline for the water levels, and water flow volume for the future determination of the City's responsibility for any Impact to any of the Protestants' wells. That water level shall be established at the static water level or at the pump level as determined by the average of the measurements taken during the monitoring that is completed before the new City water well is placed into service.

3c. An Impact to a Protestant's well must occur before the City is responsible herein for mitigation of the Protestant's well. Mitigation is required by the City when the water level drops Fifteen (15) feet below the average water level as documented during the City's well monitoring program required by this Agreement. Furthermore, the City is responsible for mitigation whenever the water level, or water volume drops below a

Protestant's well average pump level, as such level is documented by the City's well monitoring program required by this Agreement.

3d. The City shall mitigate the loss of Protestants' well water by providing water from the City's wells. The City shall provide to each Impacted Protestant the needed water and sewer by providing at City expense all necessary piping or plumbing to within three (3) feet of the Protestants' home connection point with an easement to be provided by the Protestant homeowner. If City water service is not economically feasible, then the City shall drill a new well, or drill a deeper well that is able to sustain an adequate water supply for the benefit of the Protestants. If the City elects to drill a new or deeper well for any Protestant, the Protestant is not obligated to connect to City sewer at that time.

3e. One of the existing Protestant's is a dairy farm. The dairy farm well has different water requirement than the other Protestants. Should the City Impact the dairy well, then, the City in that case shall provide water requirements for the continuation of the dairy business by providing access to one of the City's wellheads for a source of non-chlorinated water. It shall be the responsibility of the dairy owner to transport said water to and from the well source to the dairy. The City shall use the City well located closest to the dairy, limited to that well capacity at present time and water right.

3f. If the City supplies the water service as part of its mitigation obligation, the City shall charge Protestants the same domestic rate for water use as it charges all Kuna residents. However, the City shall not charge the Protestants extra for any excess water usage or excess consumption charge that the City may otherwise charge other Kuna residents until such time as a Protestant's water consumption volume exceeds the water

volume granted or permitted by the Idaho Department of Water Resources at the time this Agreement is executed.

When a Protestant's residence is connected to City sewer, the monthly service fee paid by the Protestants shall be at the same rate as all other residential users in Kuna pay.

4. The Fund shall be maintained and is to be perpetually appropriated for the period herein stated and is dedicated exclusively to paying the costs of mitigation of the impacts to the Protestants' wells for a period of Twelve and one-half (12 ½) years from the effective date of this Agreement.

4b. Funding of the Fund shall come from the City's increase in residential water hookup fees collected from all new lots developed or annexed within the City after the effective date of this Agreement in the additional amount of \$250.00/per home. The additional hookup fees shall accumulate in the Special Fund designated "Well Mitigation Fund" until the Fund reaches a total amount of \$250,000.00.

4c. After the Fund reaches a total amount of \$250,000.00, the \$250.00/ per home hookup fee shall be dropped. The Fund shall accrue interest and all interest shall accrue and be paid into the Fund until used by the Protestants' or 12 ½ years have expired. At that time, any unobligated money in the Fund shall be deposited into the City of Kuna General Water Fund.

4d. All mitigation claims made by the Protestants shall be submitted to the City for payments from the Fund in accordance with this Agreement. Should the City deny payment, either in whole or in part, such denial shall be made in writing and shall clearly set forth the reason for the denial. The Protestant shall submit within twenty (20) calendar days from the date of the written denial a written request to the City seeking

binding arbitration of the dispute. The City and Protestant shall share equally the cost of binding arbitration which arbitration shall be conducted by a panel of arbitrators selected as outlined herein. The City shall select one arbitrator and the Protestant shall select one arbitrator and the two arbitrators shall select the third arbitrator. The arbitration shall utilize the American Arbitration Rules for Commercial Arbitration and shall be conducted as expeditiously as possible and in no event later than thirty (30) days from the written request for arbitration.

5. The City further agrees to submit to the Idaho Department of Water Resources a monitoring program to monitor water levels in the City's wells and the results of the Protestants' well monitoring program. All Data and reports from the monitoring program will be written and provided to the Department and to each of the Protestants.

6. The Protestants agree to withdraw their protest to the application of Water Right No. 63-31741. If the well sites changes, then the Water Right number does not apply, but the agreement in its entirety remains in effect.

7. The Protestants agree to provide access to the Protestants' wells associated with the monitoring program.

8. The City shall be liable for damage to the Protestants' wells during the monitoring process when caused by the City, except as noted in paragraph 3a of this Agreement.

9. When the City connects any of the Protestants' residences to City water and sewer, all the connection fees for water and sewer, however labeled shall be waived, but the City could at its option annex a Protestant's property located at the residence is

limited to a maximum of five (5) acres.

10. This Agreement is effective when executed by all the parties. The City's obligation to provide water for the well mitigation does not become effective until a new City well is producing within $\frac{3}{4}$ mile of a Protestant's well.

11. This Agreement covers all the Protestants' wells that are within $\frac{3}{4}$ mile radius of any new City well.

12. The obligations of the City to establish the Mitigation Fund and/or use it to mitigate impacts to the Protestants' wells shall immediately cease, if the Protestants do not adhere to the requirements of this Agreement. Upon breach by the Protestants the City shall be entitled to use the remaining balance of the Fund for any and all purposes deemed appropriate by the City.

13. This Agreement constitutes the full Agreement between the City and the Protestants and supersedes all prior written documents, understandings and all verbal discussions. This Agreement may only be modified in writing approved and consented to by all parties.

14. The City and the Protestants shall have no commitments or obligations beyond those set forth in the Agreement.

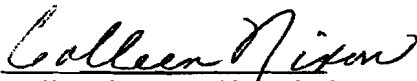
15. This Agreement is binding upon the assigns, successors in interests of the parties. This Agreement is enforceable by the City or any one Protestant individually or all of the Protestants collectively.

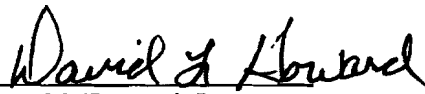
DATED this 2 day of March, 2005.

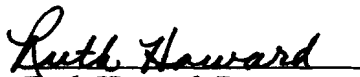
City of Kuna

ATTEST:

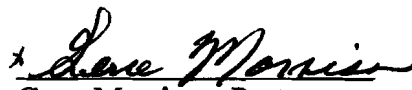

Dean Obray, Mayor

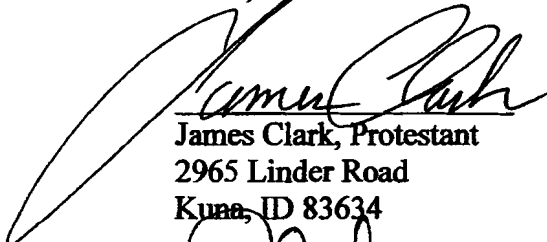

Colleen Nixon, City Clerk

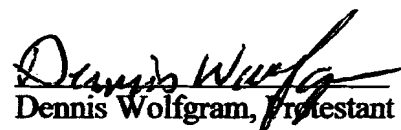

David Howard, Protestant
2161 Ardell Road
Kuna, ID 83634

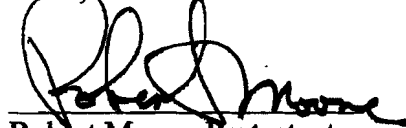

Ruth Howard, Protestant
2161 Ardell Road
Kuna, ID 83634

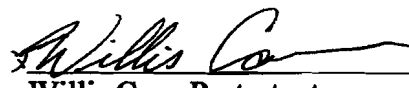

Kim Schultsmeir, Protestant
1030 West Hubbard Road
Kuna, ID 83634

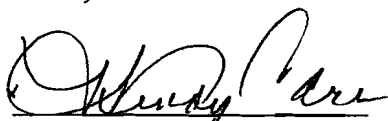

Gene Morrison, Protestant
1640 West Hubbard Road
Kuna, ID 83634

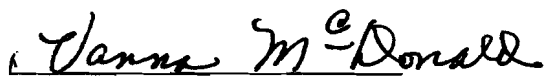

James Clark, Protestant
2965 Linder Road
Kuna, ID 83634

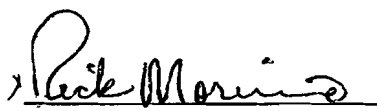

Dennis Wolfgram, Protestant
1901 West Hubbard Road
Kuna, ID 83634


Robert Moore, Protestant
2955 North Attwood Lane
Kuna, ID 83634


Willis Carr, Protestant
2082 North McClure Lane
Kuna, ID 83634


Wendy Carr, Protestant
2082 North McClure Lane
Kuna, ID 83634


Vanna McDonald, Protestant
1055 West Hubbard Road
Kuna, ID 83634


Rick Morino, Protestant
855 West Hubbard Road
Kuna, ID 83634


Kenneth D. Emmons
2835 West Hubbard Road
Kuna, ID 83634

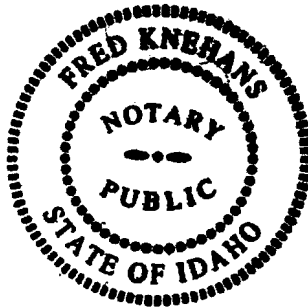
State of Idaho)

S.S.

County of Ada)

On this 1st day of ^{MARCH}~~February~~, in the year of 2005, before me, FRED KNEHANS
a notary public, personally appeared **David Howard**, proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is subscribed to the within
instrument, and acknowledged that he (she) executed the same.

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Fred Knehan

Notary Public

My Commission Expires on 10-28-2010

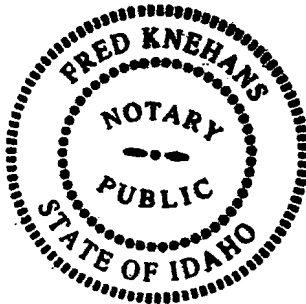
State of Idaho)

S.S.

County of Ada)

On this 1st day of ^{MARCH}~~February~~, in the year of 2005, before me, FRED KNEHANS
a notary public, personally appeared **Ruth Howard**, proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is subscribed to the within instrument, and
acknowledged that he (she) executed the same.

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Fred Knehan

Notary Public

My Commission Expires on 10-28-2010

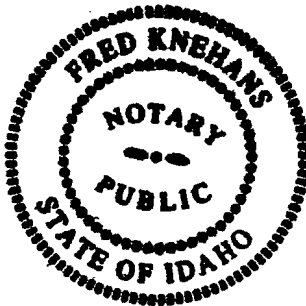
State of Idaho)

S.S.

County of Ada)

On this 28TH day of February, in the year of 2005, before me, FRED KNEHANS
a notary public, personally appeared **Kim Schultsmeir**, proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is subscribed to the within
instrument, and acknowledged that he (she) executed the same.

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Fred Knehaus

Notary Public

My Commission Expires on 10-28-2010

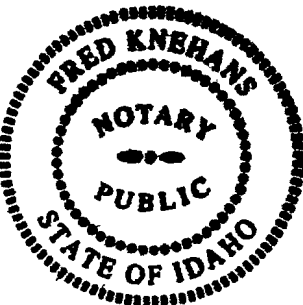
State of Idaho)

S.S.

County of Ada)

On this 28TH day of February, in the year of 2005, before me, FRED KNEHANS
a notary public, personally appeared **Gene Morrison**, proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is subscribed to the within
instrument, and acknowledged that he (she) executed the same.

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Fred Knehaus

Notary Public

My Commission Expires on 10-28-2010

State of Idaho)

S.S.

County of Ada)

On this 29th day of February, in the year of 2005, before me, FRED KNEHANS
a notary public, personally appeared **James Clark**, proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is subscribed to the within instrument, and
acknowledged that he (she) executed the same.

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Fred Knehan

Notary Public

My Commission Expires on 10-29-2010

State of Idaho)

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County of Ada)

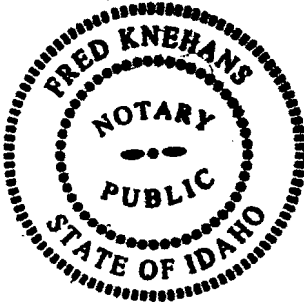
On this 25th day of February, in the year of 2005, before me, FRED KNEHANS
a notary public, personally appeared **Dennis Wolfram**, proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is subscribed to the within
instrument, and acknowledged that he (she) executed the same.

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Fred Knehan

Notary Public

My Commission Expires on 12-29-2010

State of Idaho)

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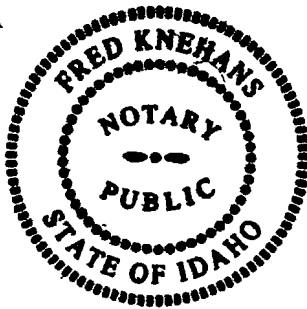
On this 25TH day of February, in the year of 2005, before me, FRED KNEHANS
a notary public, personally appeared **Robert Moore**, proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is subscribed to the within
instrument, and acknowledged that he (she) executed the same.

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Fred Knehan

Notary Public

My Commission Expires on 12-28-2010

State of Idaho)

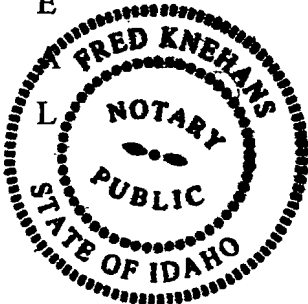
S.S.

County of Ada)

On this 28TH day of February, in the year of 2005, before me, FRED KNEHANS
a notary public, personally appeared **Willis Carr**, proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is subscribed to the within instrument, and
acknowledged that he (she) executed the same.

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Fred Knehan

Notary Public

My Commission Expires on 12-28-2010

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County of Ada)

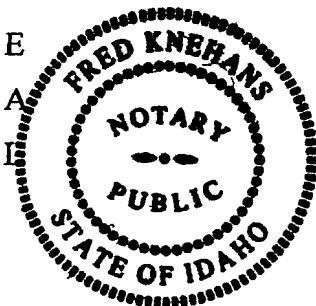
On this 28th day of February, in the year of 2005, before me, FRED KNEHANS
a notary public, personally appeared **Wendy Carr**, proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is subscribed to the within instrument, and
acknowledged that he (she) executed the same.

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Fred Knehan

Notary Public

My Commission Expires on 12-29-2010

State of Idaho)

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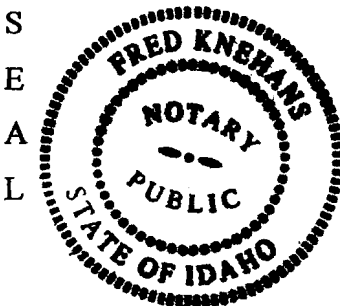
On this 28th day of February, in the year of 2005, before me, FRED KNEHANS
a notary public, personally appeared **Vanna McDonald**, proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is subscribed to the within
instrument, and acknowledged that he (she) executed the same.

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Fred Knehan

Notary Public

My Commission Expires on 12-28-2010

State of Idaho)

S.S.

County of Ada)

On this 28TH day of February, in the year of 2005, before me, FRED KNEHANS
a notary public, personally appeared **Rick Morino**, proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is subscribed to the within instrument, and
acknowledged that he (she) executed the same.

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Fred Knehans

Notary Public

My Commission Expires on 12-28-2010

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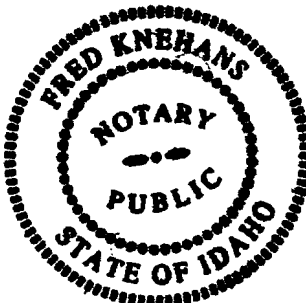
On this 25TH day of February, in the year of 2005, before me, ~~KENNETH~~ FRED KNEHANS
a notary public, personally appeared **Kenneth D. Emmons**, proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is subscribed to the within
instrument, and acknowledged that he (she) executed the same.

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Fred Knehans

Notary Public

My Commission Expires on 12-28-2010



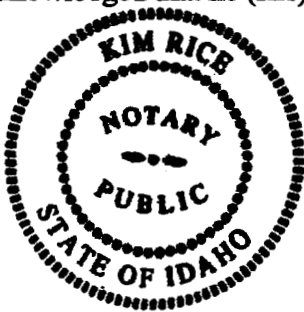
State of Idaho)

S.S.

County of Ada)

On this 7 day of ~~February~~ ^{MARCH}, in the year of 2005, before me, Kim Rice
a notary public, personally appeared **Dean Obray**, proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is subscribed to the within instrument, and
acknowledged that he (she) executed the same.

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Kim Rice

Notary Public

My Commission Expires on 2/5/2011

State of Idaho)

S.S.

County of Ada)

On this 7 day of ~~February~~ ^{MARCH}, in the year of 2005, before me, Kim Rice
a notary public, personally appeared **Colleen Nixon**, proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is subscribed to the within
instrument, and acknowledged that he (she) executed the same.

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Kim Rice

Notary Public

My Commission Expires on 2/9/2011