

To: Allen Merritt 1-208-736-3037

From: Marshall Ogden

Subject: Moores protest to Application

# 72-16692 & Transfer # 72496

Copy of Agreement resolving  
Protest

Date: Apr. 3/2007

Pages # 6 including cover

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DEPT. OF WATER RESOURCES  
SOUTHERN REGION

## WATER RIGHTS & EASEMENT AGREEMENT

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DEPT. OF WATER RESOURCES  
SOUTHERN REGION

This agreement is entered into on this 30 day of March, 2007, between Marshall and Jolene Ogden ("Ogdens") and John and Gwendolyn Moore ("Moore's") in exchange for the promises and covenants set forth in this agreement and other good and valuable consideration, the receipt of which each party to this agreement acknowledges. The parties agree to the following:

1. Ogdens own certain real property located on French Creek in Custer County, Idaho, which is more particularly described in Exhibit "A" which is attached hereto and incorporated into this agreement. Ogdens also own water rights (Water Right No. 72-4161A) and water right claims, and are in process of seeking additional rights through Application for Permit No. 72-16692, all for use on portions of the property described in Exhibit "A".

2. Moore's owned certain real property located on French Creek and along the Salmon River, which is more particularly described in Exhibit "B" which is attached hereto and incorporated into this agreement. Moore's also own water rights (Water Right No. 72-4161B) which is used on portions of the property described in Exhibit "B".

3. Water is conveyed to and used on the above properties through an existing pipeline which diverts water from French Creek at the point of diversion for the water rights of both parties and conveys water, under gravity flow pressure sufficient to operate sprinkling systems on the above properties, pursuant to a "Grant of Easement" recorded as Instrument No. 206064, of the records of Custer County, Idaho, a copy of which is attached hereto as Exhibit "C", which was granted by Ogdens' predecessors in interest to Moore's predecessors in interest in March of 1994, and a right-of-way (Dept. of Interior right-of-way IDI-33668) across land administered by the Bureau of Land Management.

4. The purpose of this agreement is to resolve disputes and protests which now exist or may arise concerning the use of water, the maintenance and use of the pipeline, and matters concerning the diversion, measurement and use of the water. Upon the execution of this agreement, Ogdens shall cause the proceeding which they initiated in the SRBA court to be terminated, and Moore's shall withdraw their protests to Ogdens' Application for a Permit No. 72-16692 and Application for Transfer of Water Right No. 72-4161A.

5. The parties shall each pay for one-half the costs of the maintenance, repairs or replacement of the pipeline, as well as costs relating to installation and maintenance of diversion and measurement devices (including any required by IDWR and any reasonably needed to control, measure and apportion diverted water among the parties), together with costs associated with the BLM right-of-way, to the point where the pipeline splits into two branches, one which serves the Ogden property and the other of which continues across the Ogden property and crosses under State Highway No. 75 to the Moore property which it serves. From the point where the pipeline splits into two branches, each party shall be solely responsible for the costs of maintenance, use, repair or replacement of the branch which serves the property of such party. Moore's shall have the right of reasonable access upon and across the property of Ogdens for such maintenance, use, repair or replacement of the pipeline from the diversion structure and

across the Ogdens property. Provided, however, any costs incurred to install, maintain or use water under Application for Permit No. 72-16692 shall be paid for solely by Ogdens. Further, provided that in the event the common pipeline or either branch is damaged as a result of the negligence or fault of either party, such party shall pay all costs resulting from such damage.

6. The use of any water junior in priority to Water Right No. 72-4161B, and any amount decreed in excess of the 0.33 cfs presently decreed to Water Right No. 72-4161A, shall be subordinate to the use of water under Water Right No. 72-4161B, and shall not be permitted to be diverted in any manner which interferes with the amount or pressurization of water in the pipeline. Additionally, neither party shall change the diversion and use of water rights pursuant to which water is diverted into and through the pipeline in any manner which interferes with the amount or pressurization of water in the pipeline. The parties agree that any applications for permits or transfers will conform to this paragraph.

7. Each party agrees not to file, pursue, object to or contest proceedings in the Snake River Basin Adjudication, with IDWR, or elsewhere, regarding any applications or claims made by the parties to this agreement to the water rights covered, to the extent such claim, objection, response or other position would be inconsistent with this agreement.

8. Each party agrees to cooperate to accomplish the purposes of this agreement, including but not limited to allowing the other party and that party's agent all reasonable access to the water conveyance systems, and by timely preparing and filing all documents necessary to communicate and accomplish the purposes and terms of this agreement.

9. This agreement and related documents have been prepared through negotiations among the parties and counsel. Each party has had the opportunity to investigate, discover the facts, seek legal advice and otherwise understand and negotiate the terms of the agreement. The agreement shall not be interpreted for or against any party on account of who drafted the documents.

10. This agreement and all covenants, promises and representations herein shall survive the transfer or conveyance of any covered property. Neither the agreement nor any term within it shall be deemed waived or be merged into any such deed or other document.

11. This agreement may be specifically enforced by the parties to it, as damages at law are not an adequate remedy. Temporary or permanent equitable relief may be granted to accomplish its purposes or enforce its terms. This paragraph shall not be construed as a limitation on other rights and remedies any party may have. Each party specifically reserves all other rights and remedies.

12. If any legal action arises to enforce, interpret or avoid this agreement or the obligations, promises or covenants set forth herein, the prevailing party, in addition to being entitled to any judgment so entered, shall be entitled to the award of reasonable attorney fees and costs against the non-prevailing party.

13. This agreement may be modified only by a writing signed by each of the parties hereto.

14. This agreement is made and shall be construed under laws of the State of Idaho.

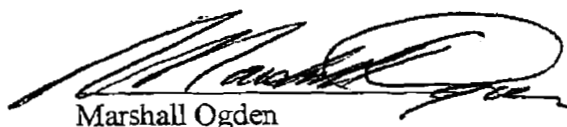


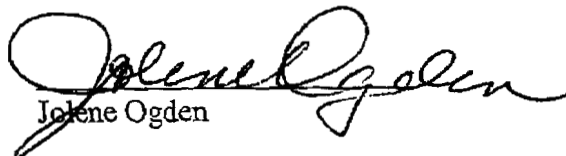
15. This agreement is the sole and entire agreement being entered into by and between the parties to it. Any descriptions, representations, agreements, negotiations or other discussions predating this agreement (specifically excluding the prior easement) are expressly waived and shall not be a part of this agreement.

16. This agreement shall run with the lands described in Exhibits "A" and "B", attached hereto, and shall benefit and burden those lands in perpetuity.

17. The parties agree that this document may be recorded with the Recorder's office in and for Custer County.

18. IN WITNESS WHEREOF, the persons identified below have caused this agreement to be executed.

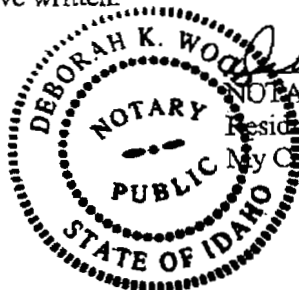
  
Marshall Ogden

  
Jolene Ogden

STATE OF IDAHO                    )  
                                          ss:  
County of Custer            )

On this 30 day of April, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **Marshall Ogden**, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same.

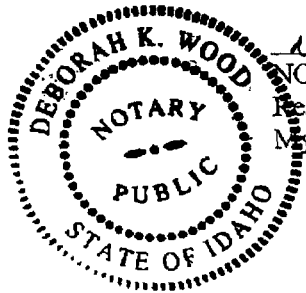
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

 Deborah K. Wood  
NOTARY PUBLIC FOR IDAHO  
Residing: Charles  
My Commission Expires: 2/2/13

STATE OF IDAHO )  
 )  
 County of Custer )  
 SS:

On this 30 day of March, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **Jolene Ogden**, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that she 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.



Deborah K. Wood  
 NOTARY PUBLIC FOR IDAHO  
 Residing: Challis  
 My Commission Expires: 2/2/13

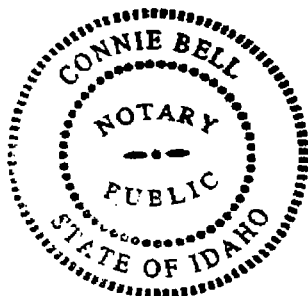
John Moore  
 John Moore

Gwendolyn Moore  
 Gwendolyn Moore

STATE OF IDAHO )  
 )  
 County of Twin Falls )  
 SS:

On this 26<sup>th</sup> day of March, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **John Moore**, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same.

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



Connie Bell  
 NOTARY PUBLIC FOR IDAHO  
 Residing: Twin Falls  
 My Commission Expires: 11-24-12

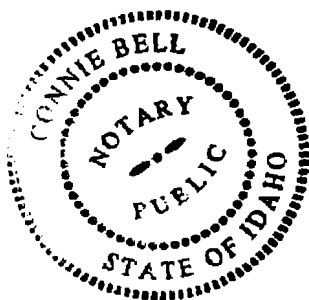
STATE OF IDAHO )

ss:

County of Twin Falls )

On this 26<sup>th</sup> day of March, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **Gwendolyn Moore**, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that she 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.

Connie Bell

NOTARY PUBLIC FOR IDAHO

Residing:

Twin Falls

My Commission Expires:

11-24-12