

HUTCHINSON
&
BROWN, LLP

Keith E. Hutchinson, Esq.
Patrick D. Brown, Esq.

ATTORNEYS AT LAW
October 24, 2006

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MARSHALL & JOLENE OGDEN
HC 67 Box 550
Clayton ID 83227

RECEIVED
OCT 25 2006
DEPT. OF WATER RESOURCES
SOUTHERN REGION

Re: **Moore**, John & Gwen - Water Rights

Dear Mr. & Mrs. Ogden:

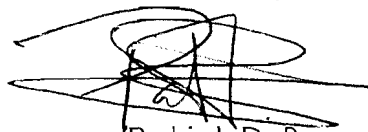
As you and I discussed, I have drafted an agreement which clarifies the scope of the easement for the pipeline and all rights and responsibilities of each party to the system. My clients have signed the agreement; it is enclosed.

If you would be so kind as to execute the agreement, have it notarized, and return it to me, it will dispose of my client's concerns with both the SRBA claims and the water right application.

I look forward to receiving the executed agreement from you soon and appreciate your attention to this matter.

Thank you.

Sincerely yours,



Patrick D. Brown

/cb

Enc.

cc: ✓ Allen Merritt, w/enc.

John & Gwen Moore, w/enc.

WATER RIGHTS & EASEMENT AGREEMENT

RECEIVED
OCT 25 2006
DEPT. OF WATER RESOURCES
SOUTHERN REGION

This agreement is entered in to on this 24 day of October, 2006, between Marshall and Jolene Ogden ("Ogdens") and John and Gwendolyn Moore ("Moores"), 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. Exhibit A is attached and incorporated into this agreement. Ogden's also own water rights (water right No. 72 – 4161A, 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. Exhibit B is attached 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 pursuant to a recorded easement granted by Ogden's 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.
5. The parties shall each pay for one half the costs of the maintenance, repairs, or replacement of the pipeline; the 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); and costs associated with BLM right-of-way. Provided, however, any costs incurred to install, maintain, or use water under Application for Permit No. 72-16692 shall be paid for solely by Ogden's. Further, provided that all such costs shall be paid by the party damaging the system if the damage results from the negligence or other fault of that party.
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, Ogden's shall not change the diversion and use of the 0.33 cfs presently decreed to water right No. 72-4161A in any manner which interferes with the amount or pressurization of water in the pipeline.

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 by 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.

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

Jolene Ogden

STATE OF IDAHO)
)
) ss:
County of _____)

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

My Commission Expires: _____

STATE OF IDAHO)
)
) ss:
County of _____)

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

My Commission Expires: _____

4



A Pioneer Company

PIONEER TITLE COMPANY

OF ADA COUNTY

8151 W. RIFLEMAN AVE. / Boise, Idaho 83704
(208) 377-2700**WARRANTY DEED**

For Value Received

Herman W. Pious

Hereinafter referred to as Grantor, does hereby grant, bargain, sell, warrant and convey unto

Marshall D. Ogden and Jekara Ogden, Husband and Wife

hereinafter referred to as Grantee, whose current address is Pious French Creek, Clayton, ID 83226
the following described premises, to-wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

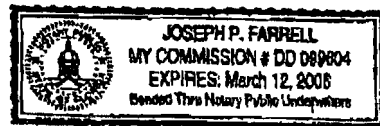
TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: April 15, 2005

Herman W. Pious
Herman W. Pious

STATE OF Florida County of Pasco, ss.

On this 16th day of April, in the year of 2005, before me the undersigned, notary public personally appeared Herman W. Pious known or identified to me to be the person/persons whose name is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.



Joseph P. Farrell
Notary Public of
Florida
Residing at
1940 Pepperell Dr New Port Richey FL
Commission expires
March 12, 2006

EXHIBIT

A

tabbies

Memorandum of Sale

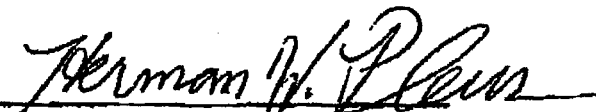
Herman W. Pleus entered into a Real Estate Purchase and Sale Agreement on April 7, 2005 and received Earnest Money from Marshall and Jolene Ogden for the following described real property:

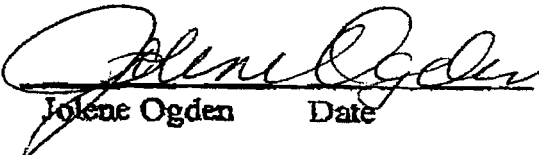
See attached Exhibit A

Located in Custer County, Idaho. Buyer reserved the right to complete a 1031 Tax Free Exchange at no expense or liability to the seller.

Seller

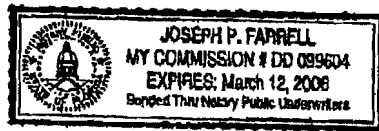
Buyer(s)


Herman W. Pleus Date
4/16/05


Marshall Ogden Date

Jolene Ogden Date

STATE OF Florida County of Pasco, ss.

On this 16th day of April, in the year of 2005, before me the undersigned, notary public personally appeared Herman W. Pious known or identified to me to be the person/persons whose name is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.



Joseph P. Farrell
Notary Public of
Florida
Residing at
1940 Pepperell Dr Newport Richey FL
Commission expires:
March 12, 2006

NATIONAL HEADQUARTERS
RICHMOND, VIRGINIA

Exhibit
A-1

190086

EXHIBIT A - (PARCEL I)

TOWNSHIP 11 NORTH, RANGE 17 EAST, BOISE MERIDIAN, CUSTER COUNTY
IDAHO.

SECTION 28: That part of the NW1/4SW1/4 said Section 28 described as: Beginning at the Quarter Corner between said Section 28 and Section 29; thence North 89 degrees 58' East, 852.0 feet to the Smith-Leigh line fence, thence South 80 degrees 25' West, 852.7 feet to Section line between said Sections; thence North 0 degrees 03' West, 140 feet to Quarter Corner between said Sections, the PLACE OF BEGINNING. That part of Lot 2 South of State Highway 75 (Formerly U. S. 93).

Also:

A fraction of the Northwest Quarter Southwest Quarter (NW1/4SW1/4), Section 28, Township 11 North, Range 17 East, Boise Meridian, Custer County, Idaho, described as: Beginning at the West Quarter corner of said Section 28; thence South 0 degrees 03' East, along the West boundary of said Section 28, 140 feet to the TRUE POINT OF BEGINNING; thence continuing South 0 degrees 03' East, along said West boundary line 253.26 feet; thence North 73 degrees 06' 09" East, 735 feet, more or less, to a point on the westerly boundary line of the land described in the deed to Leonard Bradshaw, et ux, recorded January 14, 1972, as Instrument No. 132901, records of Custer County, Idaho; thence North 13 degrees 30' West along the westerly boundary line of said Bradshaw land 150 feet, more or less, to the most northerly corner thereof; thence South 80 degrees 25' West, 640 feet, more or less, to the TRUE POINT OF BEGINNING.

SECTION 29: NE1/4SE1/4, and that part of Lots 9 and 10, South of State Highway 75 (Formerly U. S. 93).

EXCEPTING THEREFROM any land North of said Highway 75.

EXCEPTING THEREFROM:

A parcel of land being a portion of Government Lots 9 and 10 of Section 29, Township 11 North, Range 17 East, Boise Meridian, described as follows, to-wit:

Commencing at the Southwest corner of Government Lot 9 of Section 29, Township 11 North, Range 17 East, Boise Meridian; thence South 89 degrees 52' 56" East along the South line of said

NATIONAL HEADQUARTERS
SACRAMENTO, CALIFORNIA

Exhibit A-2

190086

Government Lot 9 a distance of 450.0 feet to the REAL POINT OF BEGINNING;

Thence continuing South 89 degrees 51'56" East along the South line of Government Lots 9 and 10 of said Section 29 a distance of 1,229.57 feet;

Thence North 0 degrees 07'04" East, 593.34 feet to a point in the Southwesterly right-of-way line of existing Highway No. 75;

Thence North 64 degrees 13'20" West along said existing Southwesterly right-of-way line 1,314.05 feet;

Thence South 0 degrees 07'04" West, 1,056.95 feet to the REAL POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM:

A parcel of land located in U. S. Government Lot 9, Section 29, T 11 N., R. 17 E., B.M., Custer County, Idaho, more particularly described as follows:

Commencing at the North Quarter Corner of said Section 29, a distance of 3679.51 feet on a bearing of S. 0 degrees 04'31" W., to the Southwest corner of Lot 9, the center of section, and being the REAL POINT OF BEGINNING.

Thence N. 80 degrees 04'31" E., 945.52 feet

Thence N. 68 degrees 22'12" E., 319.12 feet

Thence S. 17 degrees 19'25" E., 72.23 feet

Thence S. 79 degrees 42'37" E., 162.89 feet

Thence S. 56 degrees 03'37" E., 85.60 feet

Thence S. 00 degrees 30'06" W. 884.10 feet to a point on the South boundary of said Lot 9;

Thence N. 89 degrees 32'19" W., 450.00 feet along the South boundary of Lot 9 to the REAL POINT OF BEGINNING.

ALSO FURTHER EXCEPTING THEREFROM:

A parcel of land located in U. S. Government Lot 9, Section 29, T, 11 N., R. 17 E., B.M., Custer County, Idaho, more particularly described as follows:

Commencing at the North Quarter Corner of said Section 29, a distance of 1448.87 feet on a bearing of S. 0 degrees 04' 31" W., along the center of section line to a point on the south right-of-way of U. S. Highway No. 75 and the REAL POINT OF BEGINNING.

Thence S. 68 degrees 49' 59" E. 890.73 feet along said south right-of-way of U. S. Highway No. 75;

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20 38-2573 NO. 489 IP. 6/6

NATIONAL HEADQUARTERS

RICHMOND, VIRGINIA

Thence S. 0 degrees 30' 06" W. 173.00 feet to the Northe
corner of the existing Clay Parcel;
Thence N. 56 degrees 03' 37" W., 85.60 feet;
Thence N. 79 degrees 42' 37" W., 162.89 feet;
Thence N. 17 degrees 19' 25" W., 72.23 feet;
Thence S. 68 degrees 22' 12" W., 219.12 feet;
Thence N. 0 degrees 04' 31" E., 285.12 feet to the R
POINT OF BEGINNING.

Exhibit A-3

190086

CUSTER COUNTY
REQUEST OF *Anna*
Land Title

'88 SEP 2 PM 4 5A

ETHEL M. PECK CLERK
E. M. Peck DEPUTY
FFFS 5/2 48

PERSONAL REPRESENTATIVE'S DEED

THIS DEED, made by TRACEY L. KEHNE WALTHER, whose address is
2209 S. Crosscreek Lane, Boise, ID 83706,
as Personal Representative of the estates of KATHRYN S. HERRICK, deceased, AND
GERALD D. HERRICK, deceased, Grantors, to JOHN M. MOORE AND GWENDOLYN
L. MOORE, husband and wife, whose address 8811 HIGHWAY 45,
NAMPA, IDAHO 83686, Grantees.

WHEREAS, Grantor is the qualified personal representative of said estates, filed
as Probate Numbers SP IE 0000456M and SP IE 9800022M, respectively, both in Ada
County, Idaho;

THEREFORE, for valuable consideration received, Grantor sells and conveys to
Grantees the following described real property in Custer County, Idaho, to-wit:

See Exhibit "A" attached hereto and incorporated by reference
herein as though fully set forth.

0223547

with all appurtenances.

Custer County Reg. of.
Custer County, Idaho
11:22 A.M. Date 9-26-01
Deputy Clerk
Barbara C. Budstone 9⁰⁰
Deputy

EXECUTED this 26th day of September, 2001.

Tracey L. Kehne Walther
TRACEY L. KEHNE WALTHER
Personal Representative of the Estates of
Kathryn S. Herrick and Gerald D. Herrick

STATE OF IDAHO)
: ss
County of Custer)

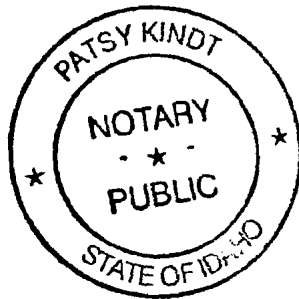
On this 26 day of September, 2001, before me, PATSY KINOT,

EXHIBIT

B

1 a notary public in and for said State, personally appeared Tracey L. Kehne Walther, known
2 to me to be the person whose name is subscribed to the within instrument, as personal
3 representative of the Estates of Kathryn S. Herrick and Gerald D. Herrick, and
4 acknowledged to me that she executed the same as such personal representative.

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



Patsy Kindt
Notary Public for Idaho
Residing at Challis
Commission Expires: 3/12/04

A parcel of land being a portion of U.S. Government Lot 2, Section 28, and a portion of U.S. Government Lots 9 and 10, Section 29, Township 11 North, Range 17 East, Boise Meridian, Custer County, Idaho, being more described as follows:

Commencing at the 1/4 corner common to Sections 28 and 29, Township 11 North, Range 17 East, Boise Meridian, thence North $89^{\circ}56'30''$ East 841.84 feet along the south line of U.S. Government Lot 2, Section 28, to a point on the northerly right-of-way line of State Highway 75, said point being on a curve; thence Northwesterly along said Northerly right-of-way line along a curve to the left having a radius of 2,964.85 feet, an arc length of 134.15 feet, a central angle of $02^{\circ}35'33''$ tangents of 67.09 feet, and a chord which bears North $66^{\circ}36'23''$ West 134.14 feet to the Real Point of Beginning of this description; thence continuing northwesterly along said Northerly right-of-way line along a curve to the left, having a radius of 2,964.85 feet, an arc length of 47.86 feet, a central angle of $00^{\circ}55'29''$ tangents of 23.93 feet, and a chord which bears North $68^{\circ}21'54''$ West 47.86 feet to a point; thence North $68^{\circ}49'39''$ West, 3,061.97 feet along said northerly right-of-way line to a point; thence North $00^{\circ}04'31''$ East, 256.18 feet to a point on the right bank (downstream) of the Salmon River; thence along the right bank (downstream) of the Salmon River the following courses and distances:
thence South $84^{\circ}28'48''$ East 101.57 feet to a point;
thence South $89^{\circ}28'48''$ East 304.06 feet to a point;
thence North $81^{\circ}01'12''$ East 396.60 feet to a point;
thence North $67^{\circ}16'12''$ East 588.29 feet to a point;
thence South $89^{\circ}28'48''$ East 274.31 feet to a point;
thence South $53^{\circ}58'48''$ East 475.92 feet to a point;
Thence South $39^{\circ}58'48''$ East 285.55 feet to the meander corner of fractional Sections 28 and 29;
thence South $38^{\circ}30'00''$ East 471.24 feet to a point;
thence South $52^{\circ}00'00''$ East 363.00 feet to a point;
thence South $68^{\circ}45'00''$ East 354.01 feet to a point;
thence leaving the right bank of the Salmon River South $23^{\circ}50'35''$ West 475.22 feet to the Real Point of Beginning, as shown by the record of survey filed 11-23-94, as instrument No. 207837, records of Custer County, Idaho.

EXHIBIT "A"