

RECEIVED

JAN 29 2007

Department of Water Resources
Eastern Region

Form 2-222

12/99

Fee \$100.00

Water Right No.: 35-8001A

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**APPLICATION FOR EXTENSION OF TIME TO AVOID
FORFEITURE OF A WATER RIGHT**

Section 42-222, Idaho Code, provides that a water right shall be lost and forfeited and the water right revert tot the state upon the failure of a water user to apply the water to beneficial use for a period of five (5) years. The Director may allow an additional five (5) year period of non-use without forfeiture upon a showing of reasonable cause.

1. Name of Water Right Holder: Derlin L. & DeOn Campbell
2. Mailing Address: 241 N. Scenic Dr.W., Washington, UT 84780
3. The right was obtained or is evidenced by:
 - a. Decree to: 35-8001A in Case of in Re SRBA
vs. , Dated Jan. 31, 2002, in Fifth Judicial District
Court, County of Twin Falls. Fully describe decree
 - b. License No.:
 - c. Claim No.:
 - d. SRBA No.:
4. Source of Water: Groundwater tributary to:
5. Date of Priority of right: 10/26/1981
6. Description of Right:
Amount: 0.1 cfs For Irrigation Purposes from 04/01 to 11/01
Amount: For Purposes from to
7. Point of Diversion: NW¼ NE¼ NW¼ of Sec. 13, Twp. 2N, Rge. 36E, County Bonneville
Point of Diversion: NW¼ NW¼ NW¼ of Sec. 13, Twp. 2N, Rge. 36E, County Bonneville
8. Lands Irrigated or Place(s) of Use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
2N	36E	13					29	20	1	1									51

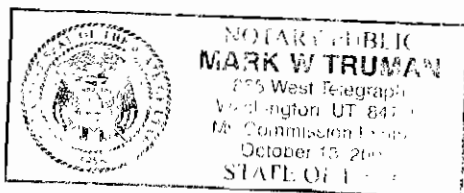
Total Acres: 51

9. Give the last date when water was put to beneficial use: October 15, 2001
Length of extension of time request 5 Years, or until January 16, 2012.
10. Explain fully your reasons for requesting an extension of time within which to resume the use of your water right and reasons for non-use. See attached statement

The information contained in this application is true to the best of my knowledge.

[Signature] DeOn Campbell
Signature of Applicant

Subscribed and sworn to before me this 22 day of January, 2007.



[Signature]
Notary Public for Utah
Residing at: St. George
My Commission Expires: 10/15/10

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined this application for extension of time within which to resume the use of a water right and I hereby approve Said application subject to the following conditions or reasons: The right holder shall resume beneficial use of water on or before January 1, 2012.

Signed this 12th day of December, 2008.

[Signature]
Chief, Water Allocation Bureau

FOR DEPARTMENT USE ONLY

Date Received: 5c Fee Received by: 5c Date: 1/29/07 Receipt No.: E032575

Preliminary ☒ by: 5c Publication prepared by: 5c Pub. Approved by: _____ Date: _____

Published in Post Register Dates Published: 2/15 & 2/22/07

Protests filed by: _____

Copies of protests forwarded by: _____ Hearing held by: _____ Date: _____

Recommended for - APPROVAL / DENIAL By: _____

SCANNED
FEB 05 2007

STATEMENT

Derlin & DeOn Campbell own property west of Idaho Falls, Idaho. This property is depicted in the enclosed map. In 2005, the Campbells conveyed a portion of the property to Caroline Phillips. The portion conveyed is depicted on the map. As you can see, the mainline from the well crosses the Caroline Phillips property, and in addition, a riser to which surface mainline is attached in order to irrigate the West Property is also located upon the Caroline Phillips property.

After the property was conveyed, dispute arose concerning access roads to the property. As a result, the Phillipses filed suit, and there is pending litigation between the parties over a number of issues. A copy of the Complaint filed by the Phillipses, along with our Answer and Counterclaim, is attached to this statement.

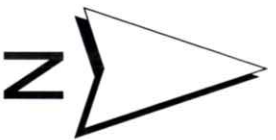
Last year, in the course of the disputes between the parties, the Campbells recognized that they had not irrigated the portion of their property called "The West Property" on the map for four years, and that they risked partial forfeiture of their water rights. As you can see on the map, the authorized water right place of use for the West Property is serviced by surface mainline. One of the disputes between the parties addressed in the lawsuit concerns the Campbell's attempt to irrigate the West Property earlier this summer. The Campbells were aware that they had not irrigated the West Property since the end of 2001. Unfortunately, when they attempted to attach the surface mainline to the riser that is located upon the Caroline Phillips property to irrigate the West Property, Mr. Phillips proceeded to run over the surface mainline and completely destroy it while the Campbells were present. In short, there are some real hostilities between the parties, and these hostilities prevented the Campbells from irrigating the West Property in order to avoid forfeiture.

As to the East Property, as you can see on the enclosed map, which contains a background photo from 2004, the East Property has been irrigated recently. Thus, the potential forfeiture issue pertains only to the West Property. As to the individual water rights owned by the Campbells, Water Right No. 35-8001A and 35-8001B were both partially decreed by the SRBA Court on January 31, 2002. The other two water rights appurtenant to the property, Water Rights Nos. 35-8957 and 35-8865, were both licensed on May 10, 1995. All of these water rights are of particular importance to the Campbells. As such, we request the extension of time indicated and are happy to provide any additional information that may be necessary in making your determination.

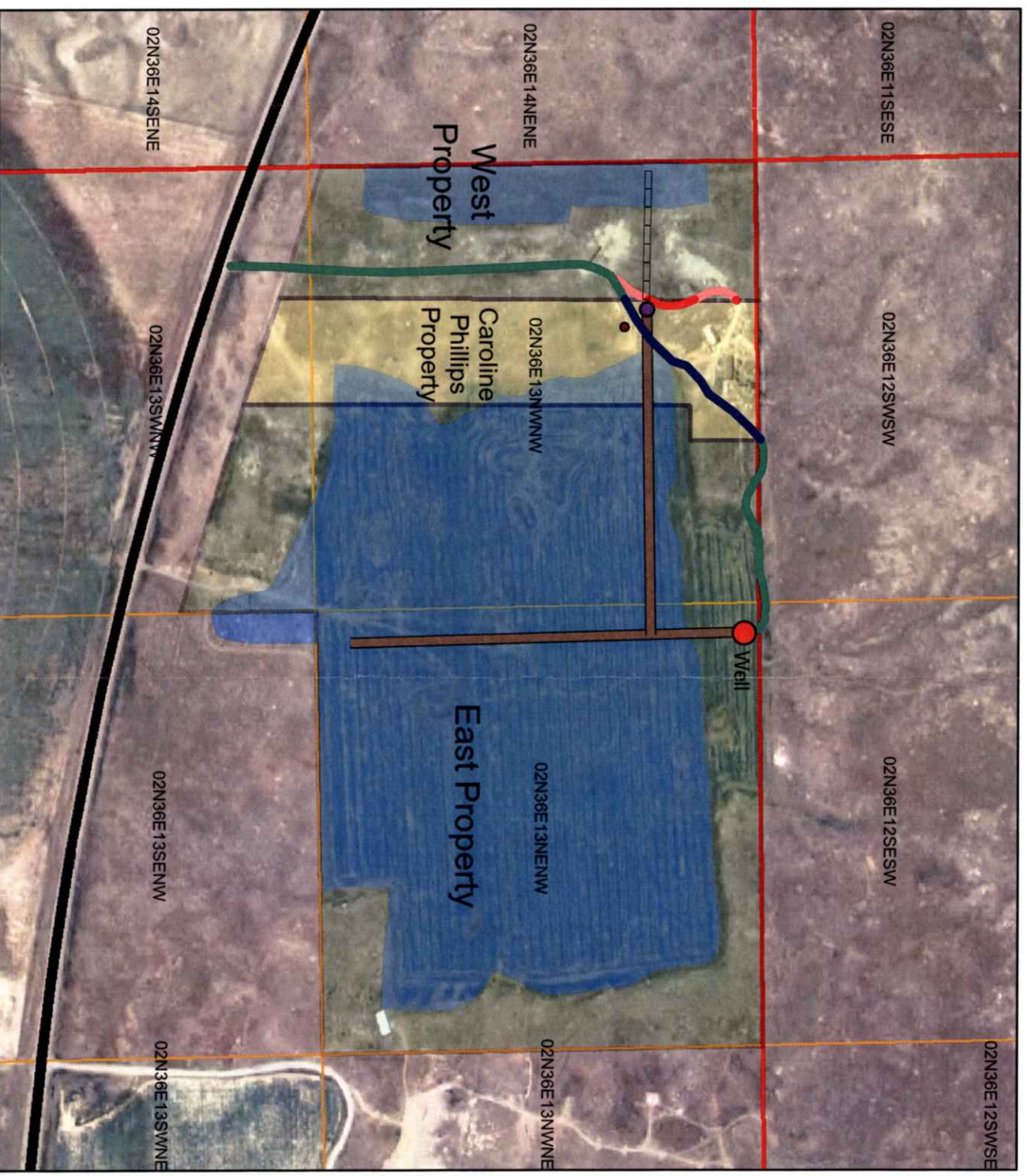
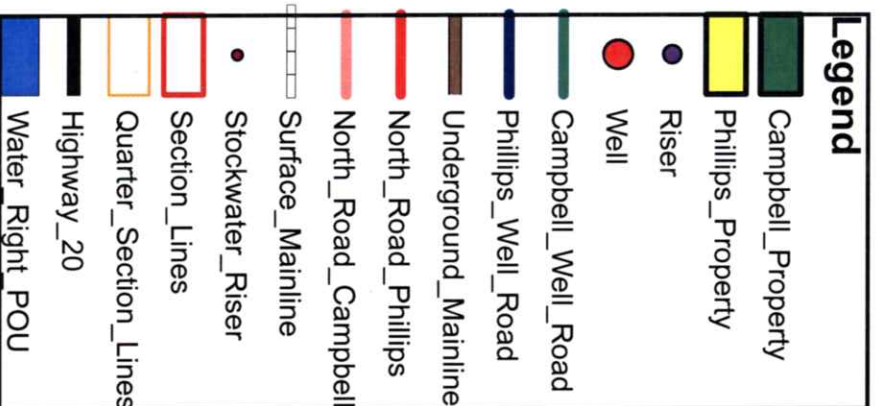
As to each individual application, please direct all correspondence on this issue to Mr. Robert L. Harris, Holden, Kidwell, Hahn & Crapo, PLLC, PO Box 50130, Idaho Falls, ID 83405-0130.

C:\Documents and Settings\Owner\Local Settings\Temporary Internet Files\Content IE5\5H13M2RM\Statement,011607[1].wpd.cdv

Campbell and Phillips Property



Background Image is from
a 2004 NAIP Aerial Photo.



CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

CHAD O. PHILLIPS and CAROLINE
PHILLIPS, husband and wife,

Plaintiffs,

vs.

DERLIN CAMPBELL and DEON
CAMPBELL, husband and wife,

Defendants.

Case No. CV-06-3573

SUMMONS

TO: DERLIN CAMPBELL and DEON CAMPBELL, husband and wife

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF. THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN TWENTY (20) DAYS. READ THE INFORMATION BELOW.

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated Court within twenty (20) days after service of this Summons on you. If you fail to so respond, the Court may enter judgment against you as demanded by the plaintiff in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other rules of the Idaho Rules of Civil Procedure, and shall also include:

1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named Court.

WITNESS my hand and the seal of this District Court, and dated this 27 day of June, 2006.

RONALD LONGMORE
CLERK OF THE DISTRICT COURT

Ronald Longmore

AE

DEPUTY CLERK

ASSIGNED TO Richard St Clair

Served 12-29-06

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE

CHAD O. PHILLIPS and CAROLINE	)	
PHILLIPS, husband and wife,	)	
	)	
Plaintiffs,	)	Case No. CV-06- <u>3573</u>
	)	
vs.	)	VERIFIED COMPLAINT
	)	
DERLIN CAMPBELL and DEON	)	Fee Category: A.1.
CAMPBELL, husband and wife,	)	Fee: \$82.00
	)	
Defendants.	)	
	)	

Plaintiffs, for a cause of action against Derlin Campbell and DeOn Campbell, complains and alleges as follows.

1. Phillips at all times relevant here was a resident of Bonneville County, Idaho and owns that certain real property in Bonneville County, Idaho described as:

Beginning at a point that lies North 89°29'50" East 416.00 feet along the Section line from the Northwest corner of Section 13, Township 2 North, Range 36 East of the Boise Base line and Meridian and running thence North 89°29'50" East 416.00 feet along said the Section line; thence South 00°05'29" West 208.00 feet; thence South 89°29'50" West 104.00 feet; thence South 00°05'29" West 1322.61 feet to a point on a curve on the Northerly right of way of U.S Highway 20; thence along said curve, to the right a distance of 329.06 feet, said curve having a radius of 11259.16 feet, a central angle of 1°40'28" and a chord that bears North 71°22'40" West 329.04 feet; thence North 00°05'29" East 1422.79 feet to the point of beginning

2. Derlin Campbell and DeOn Campbell are husband and wife and at all times relevant here were believed to be residents of the state of Utah.

3. On January 28, 2005 Phillips and the Campbells entered into a real estate purchase and sale agreement where the Campbells agreed to sell and Phillips agreed to buy the property identified in paragraph 2.

4. Ultimately, the sale transaction was consummated and the Campbells executed a warranty deed to Phillips recorded March 8, 2005 as Instrument No. 1179525 in the Recorder's Office for Bonneville County, Idaho.

5. Prior to the sale transaction, the Campbells were the common owners of both Phillips' parcel and an adjacent parcel of property to the west (west parcel).

6. Running north from U.S. Highway 20 on the southern boundary of the west parcel is a gravel road coursing generally north through the west parcel providing ingress and egress to the west parcel and continuing northeasterly to Phillips' parcel.

7. At the time of the sale transaction, the gravel road was and continues to be the only source of access to the west parcel and Phillips' parcel.

8. Upon information and belief, the gravel road has been used to access the west parcel and Phillip's parcel for over 20 years prior to the sale transaction.

9. By letter dated April 1, 2006 the Campbells notified Phillips of their intent to prohibit Phillips from further using the gravel road.

COUNT I

10. Phillips restates the allegations in paragraphs 1 through 9.

11. Phillips and her predecessors in interest have openly, notoriously, continuously, under a claim of right, with knowledge of the Campbells, used the gravel road for a period of five years or more.

12. Phillips has a prescriptive easement for ingress and egress to the gravel road as it courses through the Campbells' property.

COUNT II

13. Phillips restates the allegations in paragraphs 1 through 12.

14. Phillips has an implied easement by prior use for ingress and egress to the gravel road as it courses through the Campbells' property.

COUNT III

15. Phillips restates the allegations in paragraphs 1 through 14.

16. Phillips has an implied easement by necessity for ingress and egress to the gravel road as it courses through the Campbells' property.

COUNT IV

17. Phillips restates the allegations in paragraphs 1 through 16.
18. The use of the gravel road is essential to the benefit and enjoyment to Phillips' land and said road is a necessity in order to reach the state highway from Phillips' property.
19. The Campbells' attempt to prohibit Phillips' use of the gravel road constitutes immediate and irreparable harm to Phillips.
20. No adequate remedy at law exists to protect Phillips' use of the gravel road to access her residence and property.
21. Phillips is entitled to a temporary restraining order and preliminary injunction, and after hearing a permanent injunction, enjoining the Campbells from interfering in any manner with Phillips' ingress and egress on the gravel road.

ATTORNEY FEES

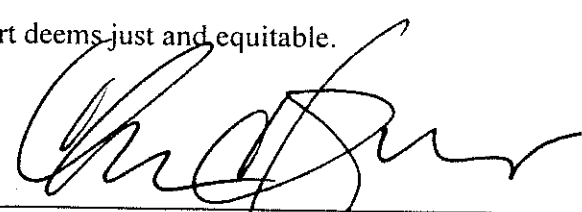
Phillips has retained the services of Just Law Office to prosecute this action and in accordance with I.C. §§ 12-120, 121 is entitled to an award of all court costs and reasonable attorney fees incurred.

WHEREFORE, Phillips requests relief as follows:

1. Judgment declaring Phillips has a prescriptive easement to the gravel road as it courses through the Campbells' property.
2. Judgment declaring Phillips has an implied easement by prior use to the gravel road as it courses through the Campbells' property.
3. Judgment declaring Phillips has an implied easement by necessity to the gravel road as it courses through the Campbells' property.
4. Issuance of a temporary restraining order and preliminary injunction enjoining the Campbells from interfering in any manner with Phillips use of the gravel road until trial on the merits of this complaint.
5. An award of Phillips court costs and reasonable attorney fees.
6. For such further and other relief as the court deems just and equitable.

DATED this ____ day of June, 2006.

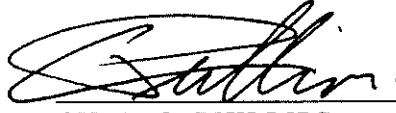



KIPP L. MANWARING, ESQ.
Attorney for the Plaintiffs

VERIFICATION

STATE OF IDAHO)
 : SS
County of Bonneville)

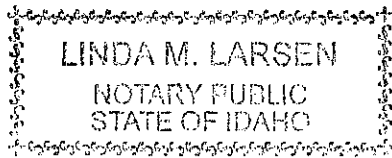
WE, **CHAD O. PHILLIPS** and **CAROLINE PHILLIPS**, being first duly sworn, depose and say: that we are the Plaintiffs in the foregoing action, that we have read the within Complaint, know the contents thereof, and that the same is true and correct as we verily believe.

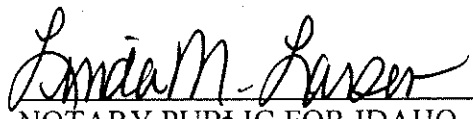


CHAD O. PHILLIPS


CAROLINE PHILLIPS

SUBSCRIBED AND SWORN TO before me this 20th day of June, 2006.





NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello
My commission expires: 2-12-2010

06 NOV 13 PM 58

Robert L. Harris, Esq.
rharris@holdenlegal.com
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

Attorneys for Defendants

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

CHAD O. PHILLIPS and CAROLINE
PHILLIPS, husband and wife,

Plaintiff/Counterdefendant

v.

DERLIN CAMPBELL and DEON
CAMPBELL, husband and wife.

Defendant/Counterclaimant

Case No. CV-06-3573

**ANSWER TO VERIFIED COMPLAINT
AND VERIFIED COUNTERCLAIM**

Filing Category: I.5.a

Filing Fee: \$52.00

Defendants Derlin Campbell and Deon Campbell ("Defendants"), by and through their attorneys of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C. hereby answers the Verified Complaint of Chad O. Phillips and Caroline Phillips ("Plaintiffs") as follows:

FIRST DEFENSE

Plaintiff's Verified Complaint fails to state a cause of action against the answering Defendants upon which relief may be granted.

COPY

SECOND DEFENSE

Defendants deny each and every allegation contained in plaintiff's Verified Complaint not specifically admitted herein.

THIRD DEFENSE

1. Defendants admit that Plaintiff Caroline Phillips owns the property described in Paragraph 1 of Plaintiffs Verified Complaint to the extent that the legal description contained in said paragraph is consistent with the legal description contained in the Warranty Deed recorded as Instrument No. 1179526 in the records of Bonneville County, Idaho, a copy of which is attached hereto as Exhibit A and is incorporated herein by reference, to the extent said Warranty Deed does not contain any errors. Defendants deny that Plaintiff Chad O. Phillips owns the described property, as evidenced by Exhibit A, and the Quitclaim deed recorded as Instrument No. 1179526 in the records of Bonneville County, a copy of which is attached hereto as Exhibit B and is incorporated herein by reference, as he has quitclaimed any right, title, or interest in the described property to Plaintiff Caroline Phillips as evidenced by Exhibit B.
2. Defendants admit that they are husband and wife, deny that they are residents of the state of Utah, and affirmatively allege that they are residents of the state of Idaho.
3. Defendants admit that they entered into a purchase and sale agreement wherein Defendants agreed to sell and Plaintiff Caroline Phillips agreed to buy the property described in Exhibit A. Defendants admit that the purchase and sale agreement was entered into on January 28, 2005.
4. Defendants admit to the allegations contained in Paragraph 4, except for the claim that Defendants executed a warranty deed to Plaintiff Chad O. Phillips, and affirmatively allege that the Defendants executed a warranty deed to Plaintiff Caroline Phillips only, as shown on Exhibit A.
5. Defendants admit to the allegations contained in Paragraph 5, and affirmatively allege that they are owners of another parcel of property of approximately 55 acres located directly east of Plaintiff Caroline Phillips' parcel.
6. Defendants admit that there is a road running north from U.S. Highway 20, but denies Plaintiffs' description of the road to the extent it is inconsistent with the map and aerial photo

depicting the road and both Plaintiff Caroline Phillips' property and Defendants property attached hereto as Exhibit C. As to the location and direction of the road, Exhibit C speaks for itself.

7. Defendants deny the allegations contained in Paragraph 7.
8. In response to the allegations contained in Paragraph 8, Defendants are without sufficient knowledge to either admit or deny, and therefore deny the same.
9. Defendants admit the allegations contained in Paragraph 9 wherein they revoked their permission to allow Plaintiffs to use the road to access the Caroline Phillips property. However, Defendants have never closed the gate preventing Plaintiffs from using the road.
10. In response to the allegations contained in Paragraph 10, Defendants incorporate by reference previous responses to the allegations contained in Paragraphs 1 through 9.
11. In response to the allegations contained in Paragraph 11, Defendants deny the allegations.
12. In response to the allegations contained in Paragraph 12, Defendants deny the allegations and affirmatively allege that both the Defendants' property and Plaintiff Caroline Phillips property were a single parcel previous to Defendants' sale of Plaintiff Caroline Phillips property in 2005, and therefore, it is factually impossible for a prescriptive easement to exist on the property under Idaho law because the road was used to access the entire property previous to the Defendants' sale of the property to Plaintiff Caroline Phillips. Further, Defendants affirmatively allege that any use of the road by Plaintiffs after the property was sold to Plaintiff Caroline Phillips has been with Defendants' permission until permission was revoked.
13. In response to the allegations contained in Paragraph 13, Defendants incorporate by reference previous responses to the allegations contained in Paragraphs 1 through 12.
14. In response to the allegations contained in Paragraph 13, Defendants deny the allegations, and affirmatively allege that it is factually impossible for Plaintiffs to establish an implied easement by prior use because Plaintiffs are the alleged dominant estate as to their claim, and under Idaho law, must show unity of title or ownership and a subsequent separation by grant of the alleged dominant estate. Separation of the properties at issue was made by Defendants, the alleged servient estate in this case, and not by Plaintiffs. Defendants also affirmatively allege that it is factually impossible for Plaintiffs to establish apparent

continuous use of the road long enough before separation of the dominant estate to show that the use was intended to be permanent, as required by Idaho law.

15. In response to the allegations contained in Paragraph 15, Defendants incorporate by reference previous responses to the allegations contained in Paragraphs 1 through 14.
16. In response to the allegations contained in Paragraph 16, Defendants deny the allegations, and affirmatively allege that there was no necessity of the claimed easement at the time of severance, and further, that there is no great present necessity for the road at issue.
17. In response to the allegations contained in Paragraph 10, Defendants incorporate by reference previous responses to the allegations contained in Paragraphs 1 through 16.
18. In response to the allegations contained in Paragraph 18, Defendants deny the allegations.
19. In response to the allegations contained in Paragraph 19, Defendants deny the allegations.
20. In response to the allegations contained in Paragraph 20, Defendants deny the allegations.
21. In response to the allegations contained in Paragraph 21, Defendants deny the allegations.

WHEREFORE, having answered the Plaintiffs' Verified Complaint:

1. Defendants pray that Plaintiffs' Verified Complaint be dismissed with prejudice as to them and that the Plaintiffs take nothing thereby;
2. That a temporary restraining order not be issued;
3. That a preliminary injunction not be issued;
4. That a permanent injunction not be issued.
5. That Defendants be awarded their attorney's fees and costs pursuant to Idaho Code § 12-121 or other applicable law.

COUNTERCLAIMS

Defendants Derlin Campbell and DeOn Campbell ("Defendants"), by and through their attorneys of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C. hereby counterclaim against Chad O. Phillips and Caroline Phillips ("Plaintiffs") as follows:

1. Plaintiffs are individuals and residents of Bonneville County, Idaho, and Plaintiff Caroline Phillips owns the real property described in the Warranty Deed attached hereto as Exhibit A.
2. This Court has jurisdiction to grant the relief prayed for in the following counterclaims.
3. Venue is proper in Bonneville County pursuant to Idaho Code § 5-404 as Plaintiffs reside in Bonneville County, Idaho.

COUNTERCLAIM NO. 1 - IMPLIED EASEMENT BY PRIOR USE

4. Defendants realleges the allegations of paragraphs 1 through 3 above herein as though the same were here set in forth in full.
5. Previous to 2005, Defendants were owners of certain real property located in Bonneville County, Idaho, which they purchased in 1973, to wit:
Township 2 North, Range 36 East, Section 13, NW1/4 NW1/4, NE1/4 NW1/4, and
the SW1/4 NW1/4 north of the right of way of U.S. Highway 20.
6. On or about March 4, 2005, Defendants conveyed the property described in the deed attached hereto as Exhibit A while retaining the remainder of the property identified above in Paragraph 5. The property conveyed was a portion of Township 2 North, Range 36 East, Section 13, NW1/4 NW1/4. Said conveyance split the property described in Paragraph 5 into three (3) parcels:
 - (1) An approximate 12-acre parcel owned by Defendants (the "West Property")
 - (2) An approximate 11-acre parcel owned by Plaintiff Caroline Phillips (the "Caroline Phillips Property").
 - (3) An approximate 55-acre parcel owned by Defendants (the "East Property").
7. As depicted on Exhibit C, there is a road running north from U.S. Highway 20 on the southern boundary of the West Property, which turns northeast and runs across the Caroline Phillips Property onto the East Property, stopping at a point along the northern portion of the East Property (hereinafter referred to as the "Well Road"). This road has constructed by Defendants in 1974. The point at which the road stops is where Defendants own a well from which Defendants divert water for irrigation purposes pursuant to Water Right Nos. 35-8957, 35-8865, 35-08001A, and 35-08001B. Said well is depicted on Exhibit C.

8. Also depicted on Exhibit C is a road that runs off of the Well Road to the northern portion of the West Property (hereinafter referred to as the "North Road"). A small portion of the North Road runs onto the Caroline Phillips property. This portion located on the Caroline Phillips Property is depicted on Exhibit C.
9. Defendants divert water from the well described in Paragraph 7 into an underground mainline to irrigate the West Property and the East Property.
10. Once the water is pumped by the well, in order to irrigate the West Property, water is conveyed through an underground pipe running south and then west across the East Property and continuing west across most of what is now the Caroline Phillips property, until said pipe ends and conveys water to an irrigation riser located above ground at a point approximately 60 feet east of the west property line of the Caroline Phillips property. Said riser is depicted on Exhibit C.
11. Since the underground pipe and riser described in the above paragraph were installed, Defendants have ran irrigation pipe from said riser to the west in order to irrigate an agricultural field located on the West Property.
12. Plaintiffs have refused to allow Defendants to use the Well Road on the Caroline Phillips Property to access the well and the North Road portion located on the Caroline Phillips Property to access the northern portion of the West Property, have threatened Defendants with trespass, and have called the police to report alleged trespassing by Defendants. Similarly, as to the riser and above-ground irrigation pipe, Plaintiffs have refused to allow Defendants to use the Well Road to access the riser, have threatened Defendants with trespass, and have called the police to report alleged trespassing by Defendants
13. Defendants, at one time, had unity of title or ownership in the property described in Paragraph 5 above, and separated said property by grant to Plaintiff Caroline Phillips.
14. Defendants have apparently and continuously used the Well Road and the North Road located upon the Caroline Phillips Property to access the well and point of diversion previous to and subsequent to the sale of the Caroline Phillips Property.
15. Defendants have apparently and continuously used the underground pipe, riser, and approximate 60-foot portion of what is now the Caroline Phillips Property to lay surface

irrigation lines and have done so for decades in order to irrigate the field on the West Property.

16. Defendants have used the Well Road and the North Road described in Paragraph 8 and the irrigation route described in Paragraph 9 in such a manner that it is clear their use of said roads and irrigation route was intended to be permanent.
17. The Well Road, the North Road, and irrigation route are reasonably necessary for Defendants' enjoyment of the East Property and the West Property.
18. Defendants have an implied easement by prior use to use the Well Road and North Road located on the Caroline Phillips Property and the irrigation route running across the Caroline Phillips Property to convey water to the West Property.
19. Furthermore, because Defendants have an implied easement for the irrigation route across the Caroline Phillips Property, pursuant to Idaho Code § 42-1102, Defendants also have a right-of-way described in said section, commonly referred to as a "secondary easement", in particular:

The right-of-way shall include, but is not limited to, the right to enter the land across which the right-of-way extends, for the purposes of cleaning, maintaining and repairing the ditch, canal or conduit, and to occupy such width of the land along the banks of the ditch, canal or conduit as is necessary to properly do the work of cleaning, maintaining and repairing the ditch, canal or conduit with personnel and with such equipment as is commonly used, or is reasonably adapted, to that work. The right-of-way also includes the right to deposit on the banks of the ditch or canal the debris and other matter necessarily required to be taken from the ditch or canal to properly clean and maintain it, but no greater width of land along the banks of the canal or ditch than is absolutely necessary for such deposits shall be occupied by the removed debris or other matter. Idaho Code § 42-1102

COUNTERCLAIM NO. 2 - EASEMENT BY NECESSITY

20. Defendants reallege the allegations of paragraphs 1 through 19 of the Counterclaims as though the same were here set in full.
21. In the alternative to Counterclaim No. 1, Defendants have an easement by necessity for both the portions of the Well Road and North Road located upon the Caroline Phillips Property and the irrigation route.

COUNTERCLAIM NO. 3 - PROPERTY DAMAGE

22. Defendants reallege the allegations of paragraphs 1 through 21 of the Counterclaims as though the same were here set in full.
23. On or about October 14, 2006, Plaintiff Chad O. Phillips damaged the surface irrigation pipe Defendants had placed from the riser identified in Exhibit C by continuously running over said surface irrigation pipe with a vehicle.
24. Defendants tried to stop Plaintiff Chad O. Phillips from damaging the irrigation pipe, but were unsuccessful as Plaintiff Chad O. Phillips continued to run back and forth with his vehicle over said irrigation pipe while Defendants were present. Defendants called the police, who did respond, and a summary of their visit is attached hereto as Exhibit D.
25. As a result of Plaintiff Chad O. Phillips actions, Defendants' irrigation pipe has been destroyed and Defendants have been damaged in an amount to be proven at trial.
26. Defendants reserve the right to amend this Complaint to bring further causes of action, including a count for punitive damages pursuant to Idaho Code § 6-1604.

COUNTERCLAIM NO. 4 - BREACH OF ORAL AGREEMENT

27. Defendants reallege the allegations of paragraphs 1 through 26 of the Counterclaims as though the same were here set in full.
28. Prior to Defendants' sale of the Caroline Phillips Property, Plaintiffs and Defendants had numerous conversations about how Plaintiffs would access the Caroline Phillips Property.
29. In negotiating the purchase price of the Caroline Phillips Property, Plaintiffs did not bargain for access to the Caroline Phillips Property through the Well Road. Plaintiffs clearly and unequivocally informed Defendants of Plaintiffs' intention to build their own road to access the Caroline Phillips Property.
30. Defendants offered to assist Plaintiffs with construction of the road, but Plaintiff Chad O. Phillips informed Defendants that he had friends with equipment to build the road, and did not need Defendants' help.
31. At the time of the negotiations, the Caroline Phillips Property was muddy because of spring snow melt, and Defendants gave their permission to Plaintiffs for Plaintiffs to use the Well Road to access the Caroline Phillips Property until the Caroline Phillips Property dried out

- enough for Plaintiffs to build their access road. Defendants did so as an accommodation to Plaintiffs so that Plaintiffs could finish remodeling the house located on the Caroline Phillips Property as soon as possible.
32. Plaintiffs orally agreed to build their own access road once the ground on the Caroline Phillips Property was sufficiently dried out.
33. Neither Exhibit A or Exhibit B contain any description or reference to an easement or road access for the Caroline Phillips Property. No reference was made in those deeds because Plaintiffs had agreed to build their own access road across their own property.
34. Defendants would never have sold the property to Plaintiffs if Plaintiffs were going to use the West Property road to access the Caroline Phillips Property beyond the time permission was granted by Defendants.
35. The purchase price for the Caroline Phillips Property was well below the market value for the property, and was priced below market value partly because it did not come with a direct access and because of Plaintiffs' representation that they would build their own access road.
36. In June 2005, Defendants excavated a significant amount of rock while digging a trench for a water line on the West Property.
37. Defendants offered the rock to the Plaintiffs as fill and road base for the Plaintiffs' access road.
38. Plaintiffs accepted the rock, and even showed Defendant Derlin Campbell where to place the rock on the Caroline Phillips Property.
39. On or about June 24, 2005, approximately two days after Defendants accepted the rock, Plaintiffs informed Defendants that they were not going to build an access road.
40. By not building their own access road, Plaintiffs have breached the oral agreement made between them and Defendants.
41. As a result, Defendants have been damaged in an amount to be proven at trial.

COUNTERCLAIM NO. 5 - EASEMENT SCOPE

42. Defendants reallege the allegations of paragraphs 1 through 41 of the Counterclaims as though the same were here set in full.

43. Upon information and belief, Plaintiffs own and operate businesses on the Caroline Phillips Property known as "CP Saddlery" and "Warthog Taxidermy".
44. Without permission of Defendants, business patrons have used and continue to use the Well Road to access the Caroline Phillips Property.
45. Despite Defendants' objections, Plaintiffs' business patrons have continued to use the Well Road to access Plaintiff's taxidermy business.
46. To the extent the court determines that an easement exists across the West Property, any use of the West Property road by anyone other than Plaintiffs for access to their home exceeds the scope of the easement under Idaho law.
47. Consequently, Defendants are entitled to a judgment limiting the scope an easement, if any.

**COUNTERCLAIM NO. 6 - PRELIMINARY AND INJUNCTIVE RELIEF AS TO
EASEMENTS**

48. Defendants reallege the allegations of paragraphs 1 through 47 of the Counterclaims as though the same were here set in full.
49. Plaintiffs are presently preventing Defendants from using the Well Road that is located on the Caroline Phillips Property, and are preventing Defendants from accessing the riser located on the Caroline Phillips Property, and are preventing Defendants from laying irrigation pipe where they have historically laid said pipe in order for Defendants to convey water to the West Property for irrigation.
50. Owners of property with appurtenant irrigation rights who are prevented from using those rights suffer severe damages, for which there is no adequate remedy at law.
51. Defendants will suffer immediate and irreparable injury and loss if Plaintiffs are not immediately enjoined from preventing Defendants from accessing their well, from accessing their riser, from laying irrigation pipe as they have done historically, and from accessing their well and riser for repair and maintenance as provided for under Idaho Code § 42-1102.
52. Defendants are entitled to preliminary and permanent injunctive relief enjoining Plaintiffs from denying Defendants the access specified in Paragraph 50.

53. Defendants allege that a bond should not be required in this case due to Plaintiffs' wrongful acts. In the alternative, Defendants assert that a bond should be determined at a hearing before the Court for the entry of injunctive relief.

**COUNTERCLAIM NO. 7 - PERMANENT INJUNCTIVE RELIEF AS TO PLAINTIFFS'
USE OF THE ROAD LOCATED ON THE WEST PROPERTY**

54. Defendants reallege the allegations of paragraphs 1 through 53 of the Counterclaims as though the same were here set in full.
55. In selling the Caroline Phillips Property to Plaintiff Caroline Phillips, Defendants did not bargain for Plaintiffs' continued use of the Well Road.
56. Said road runs directly next to Defendants' trailer house, and traffic from Plaintiffs' business patrons and from Plaintiffs themselves are preventing Defendants from use and enjoyment of their property because of the excessive traffic noise.
57. Defendants have suffered and will continue to suffer damages, for which there is no adequate remedy at law, if Plaintiffs are to continue use of the Well Road for their own use and/or use by their business patrons.
58. Defendants will suffer immediate and irreparable injury and loss if Plaintiffs and/or their business patrons are not permanently enjoined from using said road.
59. However, Defendants do not wish to deny Plaintiffs access to the Caroline Phillips Property through the Well Road during the course of these proceedings. Defendants hereby grant Plaintiffs permission to use said road only until this case is adjudicated or resolved, and thereafter request permanent injunctive relief against Plaintiffs' personal and business use of the Well Road.
60. Defendants are entitled to permanent injunctive relief enjoining Plaintiffs' and Plaintiffs' patrons' use of the West Property road.

COUNTERCLAIM NO. 8 - QUIET TITLE IN WATER RIGHTS

61. Defendants reallege the allegations of paragraphs 1 through 60 of the Counterclaims as though the same were here set in full.
62. Defendants are the owners of certain water rights, descriptions of which are attached hereto as Exhibit E. Said water rights have a permissible place of use for irrigation of approximately 59 acres.
63. Defendants have inquired of the Idaho Department of Water Resources ("IDWR") concerning the exact location of said 59 acres. IDWR has provided Defendants with a GIS shapefile depicting the place of use for said water rights. A map with said place of use description depicted is attached hereto as Exhibit F.
64. Based on the place of use shapefile, which is indicated in blue on Exhibit F, there is an approximate 1.72-acre portion of the place of use of said water rights on the Phillips property. Said 1.72-acre portion is indicated on Exhibit F.
65. At the time that Defendants deeded the Caroline Phillips Property to Caroline Phillips, the transfer of water rights was never discussed and no water rights were to be conveyed along with the property to Caroline Phillips.
66. By inadvertence or mistake, the deed of the Property by Defendants to Caroline Phillips did not specifically reserve to Defendants the portion of Defendants' water rights appurtenant to the Caroline Phillips Property (the 1.72-acre portion).
67. Defendants did not intend to convey property to Plaintiff with appurtenant irrigation water rights owned by Defendants.
68. Defendants are entitled to have title to the portion of the water rights appurtenant to the Caroline Phillips Property quieted in Defendants as alleged and prayed for based upon the fact of mistake justifying reformation of the deed from Defendants to Plaintiff Caroline Phillips.
69. Defendants are entitled to a decree quieting title to said 1.72-acre portion water rights in Defendants' name.

COUNTERCLAIM NO. 9 - ATTORNEY'S FEES

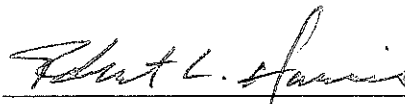
70. Defendants reallege the allegations of paragraphs 1 through 69 of the Counterclaims as though the same were here set in full.
71. As a result of Plaintiffs' allegation contained in their Verified Complaint, Defendants have retained the services of Holden, Kidwell, Hahn & Crapo, P.L.L.C. to defend this action, and, as to the counterclaims, have likewise been required to retain the services of said law firm to prosecute the above counterclaims.
72. Pursuant to Idaho Code § 12-121 and other applicable Idaho law, Defendants are entitled to an award of reasonable attorney's fees and costs.

WHEREFORE, Defendants pray the judgment, order and decree of this Court as follows:

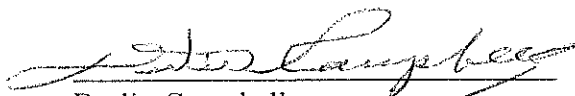
1. Judgment declaring that Defendants are entitled to an easement by prior use, or, in the alternative, an easement by necessity, for the irrigation route described above and for the portions of the Well Road and North Road located upon the Caroline Phillips Property;
2. For property damages caused by Plaintiff Chad O. Phillips to Defendants' irrigation pipe;
3. For damages caused by Plaintiffs' breach of oral agreement;
4. For damages caused by Plaintiffs' actions of exceeding the scope of any easement that may exist;
5. For preliminary and permanent injunctive relief enjoining Plaintiffs from preventing Defendants from accessing their well through the Well Road, from accessing their riser, from laying irrigation pipe as they have done historically, from accessing their well and riser for repair and maintenance as provided for under Idaho Code § 42-1102 and from using the North Road to access the northern portion of the West Property;
6. For permanent injunctive relief enjoining Plaintiffs and Plaintiffs' business patrons from using the Well Road;
7. For a Court order and decree that the portion of the water rights in Exhibit F appurtenant to Plaintiffs' property belong to Defendants, and that all right, title and interest to such water rights currently belongs to and is owned by Defendants free and clear of any right, title and interest of Plaintiffs.

8. That Defendants be awarded their attorney's fees and costs pursuant to Idaho Code § 12-121 or other applicable law;
9. For such other and further relief as the court deems just and equitable.

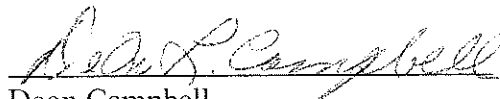
DATED this 10th day of November, 2006.



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.



Derlin Campbell

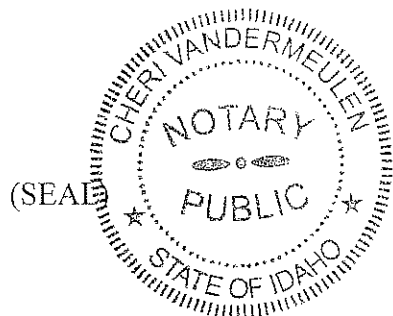


Deon Campbell

STATE OF IDAHO)
)ss.
County of Bonneville)

On this 10th day of November, 2006, before me, the undersigned, a notary public, in and for said State, personally appeared DERLIN and DEON CAMPBELL, husband and wife, known or identified to me to be the persons whose name is subscribed to the within instrument and acknowledged to me that they 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.





Notary Public for Idaho

Residing at Idaho Falls, Idaho

My Commission Expires: July 7, 2009

CERTIFICATE OF SERVICE

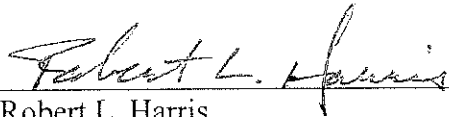
I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof on this 13th day of November, 2006.

DOCUMENT SERVED: **ANSWER TO VERIFIED COMPLAINT AND VERIFIED COUNTERCLAIM**

ATTORNEYS SERVED:

Charles C. Just
Kipp L. Manwaring
Just Law Office
PO Box 50271
Idaho Falls, ID 83405-0271

() U.S. Mail () Facsimile ☒ Hand


Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\RLH\Campbell\Answer to Verified Complaint and Verified Counterclaim.wpd:sm