

SCANLAN ENGINEERING

Groundwater and Environmental Engineering

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AUG 04 2003
WATER RESOURCES
WESTERN REGION

August 1, 2003

Dan Nelson
Western Region Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: Application for Permit – Shirley Adams Sharp

Dear Dan:

Enclosed please find the proof of ownership information that you requested for the water right applications by Shirley Sharp.

Sincerely,



Terry Scanlan

Cc: Mark Adams
Shirley Adams Sharp

AMENDED AND RESTATED WATER RIGHT PURCHASE AND SALE AGREEMENT

THIS WATER RIGHT PURCHASE AND SALE AGREEMENT ("Agreement") is entered into effective this 6 day of April, 2003 ("Effective Date") by and between Carlos L. and Laura E. Post, husband and wife ("Seller"), whose address is 1265 South Crane Road, Midvale, Idaho 83645 and Shirley Adams Sharp, ("Buyer"), whose address is 10686 Pattie St., Boise, Idaho 83713. In consideration of the sums to be paid by Buyer to Seller, and the mutual covenants herein contained, the parties hereby agree as follows:

RECITALS

1. Seller owns a water right to divert ground water within the Boise River Basin, which water right is represented by license number 63-31494 issued by the Idaho Department of Water Resources ("Department"). License No. 63-31494 authorizes diversion of ground water for irrigation at a total annual diversion volume of four and one half (4.5) acre-feet per acre per year.
2. Seller desires to sell that portion of Seller's water right (hereinafter the "Water Right") appurtenant to and beneficially used on the following lands owned by Seller:
i) Fifteen (15) acres situated in the SW1/4SE1/4 of Section 36, T6N R3W, Boise Meridian, Gem County, Idaho; and four (4) acres situated in the NE1/4SE1/4 Section 36, T6N R3W, Boise Meridian, Gem County, Idaho (the "Nineteen Acre Tract").
3. Buyer desires to purchase the Water Right and to change the point of diversion and place of use thereof to Buyer's property and use ("Transfer").
4. Seller and Buyer acknowledge that the Transfer will require formal application to, and approval by, the Department.
5. Seller and Buyer previously entered into a Water Right Purchase And Sale Agreement, effective the 21st day of February, 2003 (herein the "Previous Agreement"). Such Previous Agreement provided for the transfer of 15 acres of water and the parties desire to increase the amount of water to be sold to 19 acres. The Previous Agreement is currently held in escrow at Weiser Valley Title, Inc., 124 East Main, Weiser, Idaho, with the [REDACTED] in earnest money paid by Buyer. This agreement shall replace such Previous Agreement, and upon execution of this Agreement, an

original shall be placed with Weiser Valley Title, Inc., and Weiser Valley Title, Inc. is hereby instructed by both parties to substitute this agreement for the Previous Agreement. This agreement shall fully supersede and replace the Previous Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions set forth below, Seller agrees to sell and Buyer agrees to purchase the Water Right.

1. Purchase Price. The purchase price for the Water Right is [REDACTED], payable as follows:
 - a. Earnest Money Deposit. Upon execution of this Agreement by Seller and Buyer, Buyer shall deposit with the Escrow Agent (defined below) the sum of [REDACTED] Dollars (\$[REDACTED]) as earnest money ("Earnest Money"). Seller acknowledges that this provision has been satisfied. The Earnest Money shall be applied towards the purchase price at Closing, and shall be non-refundable in the event the purchase and sale does not close, unless the reason that the purchase and sale does not close is due to the non-occurrence of a condition precedent which has not been waived by Buyer or if the failure to close is caused by the Seller, in which case the Earnest Money, together with accrued interest thereon, shall be refunded to Buyer by the Escrow Agent.
 - b. Balance of Purchase Price. [REDACTED] Dollars (\$[REDACTED]), being the balance of the Purchase Price, shall be due and payable to Seller at Closing.
2. Escrow Agent. The Escrow Agent shall be Weiser Valley Title, Inc., P.O. Box 591, 124-128 East Main Street, Weiser, Idaho 83672.
3. Escrow Fees and Costs. Seller and Buyer shall each be responsible for one-half of the Escrow Agent's fees and

costs.

4. Pre-Closing Obligations. Seller and Buyer agree to cooperate in obtaining Department approval of the Transfer. Seller agrees to provide Buyer with any information concerning Seller's ownership and the historical beneficial use of the Water Right that Buyer may reasonably request to perform Buyer's due diligence and to respond to any Department requests for information or documentation supporting the Transfer application. Buyer will prepare, file, and prosecute the Transfer Application with the Department and use its reasonable best efforts to obtain the Transfer Approval contemplated by the parties. Promptly after the execution of this Agreement, Buyer shall file with the Department an application to transfer the Water Right.
5. Delivery into Escrow. Prior to Closing Seller and Buyer shall deliver the following to the Escrow Agent:
 - a. Seller.
 - i. Executed and acknowledged Water Right General Warranty Deed and Assignment conveying the Water Right to Buyer free and clear of all claims, liens and encumbrances;
 - ii. Executed and acknowledged Notice of Change of Ownership confirming Buyer's ownership of the Water Right and the assignment of any associated Snake River Basin Adjudication Claim ("SRBA Claim"); and
 - iii. Such other documents as Buyer may reasonably request to confirm Buyer's ownership of the Water Right and SRBA Claim as of Closing.
 - b. Buyer
 - i. Written notice of the Department's Transfer Approval; and
 - ii. The balance of the Purchase Price.
6. Conditions Precedent. The Closing, and Buyer's obligation to purchase the Water Right are subject to the following conditions precedent:
 - a. Seller is not in default and each of Seller's representations and warranties remain true and

accurate.

- b. Issuance of the Transfer Approval authorizing diversion and use of ground water at a rate of not less than 0.307 cfs and a total annual volume of not less than 85.5 acre-feet, and subject only to such conditions as Buyer, in Buyer's sole discretion deems will not interfere with or impair Buyer's intended use of the Water Right ("Transfer Approval").
 - c. Demonstration by Seller of Seller's clear and marketable title to the Water Right, free of any claims, including rights of redemption.
 - d. Seller's delivery into escrow of the documents described in Paragraph 5 hereto.
 - e. Seller's approval of any condition of the Transfer Approval which does, or could, impact Seller's remaining water rights and farming operations.
7. Buyer's Termination. If the foregoing conditions precedent are neither satisfied or waived by Buyer, or in the event of any default by Seller, or the, breach by Seller of any representation or warranty of Seller herein, and provided Buyer is not otherwise in default hereunder, Buyer may terminate the escrow and this Agreement by giving written notice of termination to Seller with a copy thereof to the Escrow Agent. Provided further, that if the foregoing conditions precedent have not been met by December 1, 2003, Buyer may terminate this Agreement by providing Seller notice thereof, with a copy thereof to the Escrow Agent. If Buyer gives Seller notice of termination, the Escrow Agent shall return any funds, including the Earnest Money, together with any documents delivered into escrow by Buyer, to Buyer, and shall return any documents delivered into escrow by Seller to Seller.
8. Buyer's Waiver of Transfer Approval. Seller and Buyer expressly agree that Buyer shall have the right to waive the conditions precedent set forth in 6 above and close the Water Right purchase, to the extent that the Department's

Transfer Approval reduces the rate or annual volume authorized to be diverted at Buyer's point of diversion and place of use, and Buyer, in Buyer's sole discretion, deems the diversion rate and/or volume actually authorized by the Transfer Approval to be sufficient for Buyer's intended use. If Buyer so waives any condition precedent, Buyer shall remain obligated to pay the Purchase Price for the Water Right. In the event Buyer completes the closing of this transaction, all conditions precedent shall be deemed waived.

9. Closing. Closing shall occur within fifteen (15) days of the date of Buyer's written notice to Seller and the Escrow Agent that the Department has granted the Transfer Approval. Upon receipt by the Escrow Agent of Buyer's notice of the Transfer Approval, and of all funds and documents required by this Agreement to be delivered into escrow, the Escrow Agent shall:

- a. Deliver the Purchase Price, less Seller's share of the escrow fees and costs to Seller;
- b. Record the Water Right General Warranty Deed and Assignment and any Release of Lien or other such recordable instrument in the real property records of Gem County, Idaho; and Deliver the recorded instruments and the Notice of Change of Ownership to Buyer.

10. Representations and Warranties.

a. By Seller:

- i. The Water Right is the sole and primary water right beneficially used to irrigate the Nineteen Acre Tract described in Recital 2 above, and there are no other water rights used upon or appurtenant to such lands;
- ii. Seller agrees that the Nineteen Acre Tract described in Recital 2 above will no longer be irrigated following the Transfer Approval and Closing, unless Seller develops or transfers a new water right to such lands for irrigation;
- iii. There are no contracts, actions, claims or proceedings pending that affect the Water Right;
- iv. Except as otherwise set forth herein, Seller is the current owner of the Water Right and has not conveyed the Water Right to any other person or

- entity;
- v. There are no liens, encumbrances, covenants, conditions or restrictions affecting the Water Right other than those that have previously been disclosed in writing to Buyer by Seller;
 - vi. Seller is not in default with respect to any of its obligations or liabilities pertaining to the Water Right;
 - vii. Seller has not engaged or dealt with any broker or finder in connection with the sale of the Water Right;
 - viii. Seller has the legal power, right and authority to enter into this Agreement and to perform Seller's obligations hereunder;
 - ix. The Water Right has been placed to continued beneficial use on the real property described in Recital 2 above, and Seller has no knowledge of any continuous five-year period of nonuse of the Water Right.

b. By Buyer.

- i. Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder; and
- ii. Buyer has not engaged any broker or finder in connection with the purchase of the Water Right.

11. General Provisions.

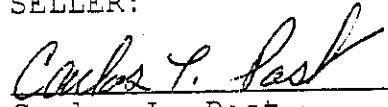
- a. This Agreement contains the entire agreement between the parties related to the purchase and sale of the Water Right, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.
- b. No modification, amendment discharge or change of this Agreement shall be valid unless the same is in writing and signed by both parties.
- c. If either party commences litigation for the judicial interpretation, enforcement or rescission of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs.
- d. Time is of the essence to this Agreement.
- e. All obligations referred to herein to be performed at a date or time or times after Closing, and all

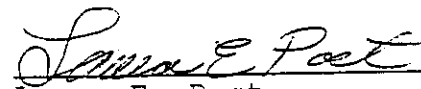
representations and warranties contained herein shall survive the Closing and delivery of Seller's Water Right General Warranty Deed and Assignment.

- f. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, representative, successors and assigns.
- g. All notices to be given to the parties or the Escrow Agent shall be in writing, delivered in hand, or by U.S. Mail, postage pre-paid directed to such parties address as contained herein unless such party shall have directed in writing that notice be sent to a different address.
- h. This Agreement may be executed in counterparts.

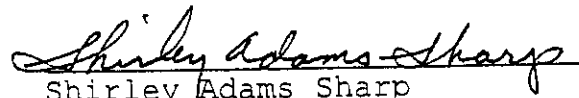
IN WITNESS WHEREOF, this Agreement has been executed by the parties, in the State of Idaho, as of the Effective Date set forth above.

SELLER:


Carlos L. Post


Laura E. Post

BUYER:


Shirley Adams Sharp

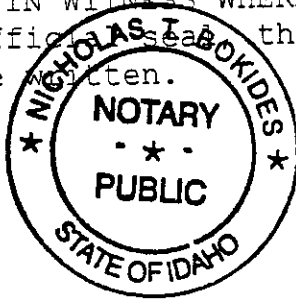
STATE OF IDAHO

COUNTY OF W. B. H. H.

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) ss:
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On this, the 10 day of April, 2003, before me a Notary Public, personally appeared CARLOS L. POST, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)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.



[Signature]
Notary Public of Idaho

Residing at W. B. H. H.

My Commission expires: April 1, 2009

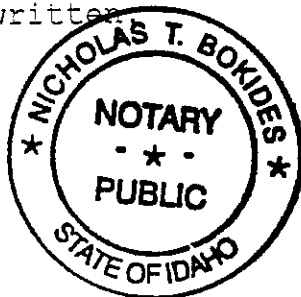
STATE OF IDAHO

COUNTY OF W. B. H. H.

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) ss:
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On this, the 10 day of April, 2003, before me a Notary Public, personally appeared LAURA E. POST, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)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.



[Signature]
Notary Public of Idaho

Residing at W. B. H. H.

My Commission expires: April 1, 2009

STATE OF IDAHO

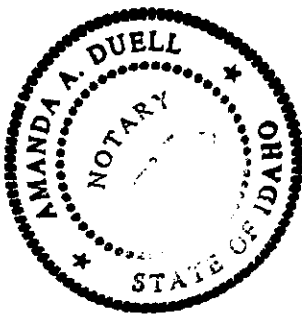
COUNTY OF

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On this, the 8th day of April, 2003, before me a Notary Public, personally appeared SHIRLEY ADAMS SHARP, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)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.



Amanda A. Duell

Notary Public of Idaho

Residing at Nampa, ID

My Commission expires: 5/5/2004