

AFFIDAVIT

STATE OF Arizona)
COUNTY OF Maricopa) SS

Entry No. 191077 Fee \$ 11.50
Recorded at Request of LAWYERS TITLE CO.
Date JAN 25 1978 at 8:50 A.M.
Book 231 Page 164-170
H. Hunt
Washington County Recorder

N. W. WALKER, being first duly sworn, upon his oath deposes and says:

I am a citizen of the United States and a resident of Phoenix,
Maricopa County, State of Arizona, over 50 years of
age. I am the predecessor in interest of V. PERSHING NELSON in the ownership
and possession of approximately 160 acres of land in Washington County, State of
Utah comprised in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15, the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, the NE $\frac{1}{4}$
NE $\frac{1}{4}$ of Section 21, the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 22, all
in Township 42 South of Range 15 West, Salt Lake Base and Meridian, together
with certain springs, reservoirs, and impounding distribution facilities and water
rights appurtenant to said land and arising, primarily, in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section
16 of said Township and Range. That said spring and spring area are unnamed, but
developed and are located at a point approximately North 564 feet and West 428
feet from the Southeast corner of said Section 16.

That said spring and spring area were developed and the waters therefrom
were impounded in about the year 1871 by JOSEPH E. JOHNSON for irrigation of
approximately 160 acres of land known as the "JOHNSON FARM" comprised in the
SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 15; SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16; NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21; and W $\frac{1}{2}$ NW $\frac{1}{4}$
of Section 22, in Township 42 South, Range 15 West, Salt Lake Base and Meridian,
and for incidental stock watering and domestic purposes. That a plat of said land
showing the approximate location of said springs and the impounding reservoirs
and the land upon which said waters were and are employed is attached hereto as
Exhibit 1 and by this reference made a part of this affidavit.

That said property and the water rights appurtenant thereto were conveyed by the said JOSEPH E. JOHNSON, through various mesne conveyances, to WALTER A. SCHMUTZ between the years 1913 and 1923. That the said WALTER A. SCHMUTZ continuously occupied and farmed said land from the date of his initial acquisition of the same in 1913 until his sale and conveyance of the same to PAUL M. STIRLING and LEOLA E. STIRLING, his wife, on or about December 21, 1942. That the said PAUL M. STIRLING continued to occupy, farm, and cultivate said land and to utilize beneficially all of the waters from the springs located thereon until the 18th day of February, 1949, on which last mentioned date, the said PAUL M. STIRLING and wife conveyed the same to this affiant (who is also known and identified as NORMAN W. WALKER) and HELEN R. WALKER, his wife, by deed of conveyance filed for record March 8, 1949, and recorded in Book R-3 at Page 613 in the office of the Recorder of Washington County, Utah.

191027 That following the acquisition of said property by the undersigned on or about February 18, 1949, this affiant continued to occupy the said land and to farm and cultivate the same and to beneficially use all of the waters from said springs and impounding facilities in connection therewith, except only certain small tracts and portions thereof conveyed by the affiant at various times and to various grantees, as follows:

That on or about February 11, 1952, this affiant and his wife, conveyed to JACOB ALLAN MOORE a tract of land containing 7.43 acres situate in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 16 and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 21, and with said conveyance of said land conveyed and transferred to said grantee the flow from that certain spring of the grantors located approximately 500 feet from the center of the Northerly boundary line of the land hereinabove described, for six (6) hours per week. That no other water right whatever in or to said springs was ever conveyed or transferred to the said grantee.

That on or about January 22, 1960, this affiant and his wife conveyed to JACOB ALLAN MOORE and EDITH MARY P. MOORE, as joint tenants, a small triangular tract of land comprising 0.62 of an acre, but without any water right.

That on or about April 19, 1956, this affiant and his wife, HELEN R. WALKER, conveyed to ETHEL B. MC CALEB a small tract of land containing 5.019 acres comprised in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, including the right to install and maintain a one-inch water pipe from the spring located at a point Northerly from the Northeast corner of said tract of land to the said tract for culinary purposes and also to install and maintain a two-inch water pipe in the Westerly pond on said property for irrigation purposes.

That except for the foregoing conveyances and certain conveyances of rights of way for road purposes, without water right, this affiant conveyed no part of said land or water right to any other person or business entity until the sale and conveyance by this affiant to V. PERSHING NELSON of the entire residue of said land and water rights and impounding facilities on or about the 5th day of April, 1965.

That during the period from the acquisition of said property by the affiant in 1949 until the sale and conveyance of the same in 1965, this affiant farmed and cultivated the said land and utilized the waters from said spring and spring area, ponds, reservoirs, and impounding and irrigating facilities to irrigate land both North and South of the highway dividing said farm. That said water was beneficially used for the production of crops and forage continuously during said period of time, except only for small quantities of water used by MR. MOORE and MRS. MC CALEB for culinary purposes and a small garden plot irrigated by MR. MOORE.

That for many years preceding the date of the acquisition by the affiant of the Middleton property described above and during the time said property was owned and occupied by this affiant and farmed and cultivated by him, this affiant was a

partner of JACOB ALLAN MOORE in the manufacturing business under the name and style of NORWALK FOUNDRY & MACHINE COMPANY, originally in Anaheim, California and later in Washington, Washington County, Utah. That when this affiant was away from the premises on business, the property was attended, farmed and irrigated for this affiant by the said JACOB ALLAN MOORE. That on or about December 31, 1964, the said JACOB ALLAN MOORE called at the home of this affiant in Phoenix, Arizona, and informed this affiant that certain attempts were being made by one DARREL HAFEN and others to intrude upon and interfere with and appropriate some of the water right of this affiant. The said JACOB ALLAN MOORE further informed and advised this affiant that to protect the water right of this affiant against the said intrusions of the said DARREL HAFEN and others, and for the account and benefit of this affiant, he had filed an application to establish the exclusive rights of this affiant to the waters from the said springs on this affiant's Middleton property. He informed this affiant that he had discovered that the water right of this affiant was predicated upon diligence use prior to 1880, but that no filing in the office of the State Engineer had been made and that he had accomplished this on behalf of this affiant. The said JACOB ALLAN MOORE further told this affiant that he had taken all steps possible to protect and preserve the water right for this affiant and on affiant's behalf and this affiant was totally unaware that the said JACOB ALLAN MOORE had filed any application to appropriate the water in his own name or for his own use. At no time after December 31, 1964, did the said JACOB ALLAN MOORE advise this affiant to the contrary, but, in fact, during the pendency of Civil Action No. 3072 in the District Court of the Fifth Judicial District in and for Washington County, State of Utah, in which this affiant counter-claimed to quiet title to said land and water right against DARREL G. HAFEN and others, the said JACOB ALLAN MOORE again reiterated his previous conversations with this affiant regarding said water right and assured this affiant and his attorney once again that he had taken all necessary steps on behalf

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of this affiant to protect and preserve said water right for this affiant.

That at all times while said measures were being taken by the said JACOB ALLAN MOORE in connection with said water right and while said representations and assurances were being made by him to this affiant, the said JACOB ALLAN MOORE occupied a close working and personal relationship to this affiant and attended to many of the business affairs and properties of this affiant in Washington County during temporary absences of this affiant therefrom and particularly attended to and irrigated the land of the affiant at Middleton, employing for that purpose the waters from said springs and impounding facilities. That until the widow of the said JACOB ALLAN MOORE filed her application for change of point of diversion and place and nature of use of waters from said springs, this affiant had no knowledge or intimation whatever that MR. MOORE had attempted to appropriate said water in his own right or for his own use and on the contrary, the said JACOB ALLAN MOORE repeatedly assured this affiant that all actions taken by him were designed to protect and preserve the water rights in said springs and impounding facilities for this affiant and this affiant relied upon such representations and assurances.

That on or about October 14, 1957, MR. and MRS. MOORE conveyed 5.43 acres of their original 7.43 acres of said land to B. L. COVINGTON by warranty deed recorded in Book S-13 at Page 350 in the office of the recorder of Washington County, Utah. That said deed recites that said property was conveyed "together with the amount that will run through a one-inch pipe from the water system of the grantors, but not to exceed 8 gallons of water per minute".

That again on August 15, 1960, MR. and MRS. MOORE conveyed 0.644 acre to VIRGINIA C. GOBAR out of the original 7.43 acre tract aforesaid, leaving title in MR. and MRS. MOORE to 1.356 acres of said land. That the conveyance

to MRS. GOBAR, aforesaid, included the following provisions:

"Together, also, with the following water rights: A one-inch pipe of culinary water for domestic use. Also, a one-inch pipe of water from the springs to the North of the above described land for irrigation use. In the event the present lake water is not available for use by the grantees, the grantors hereby give the grantees the right to attach a one-inch pipe for irrigation water on to the two-inch water pipe now used by the grantors."

That when this affiant, some time in the latter part of 1964 or the early part of 1965 learned of these conveyances by MR. MOORE, he advised MR. MOORE that he had conveyed more water right than he was entitled to convey and was assured by MR. MOORE that the conveyances of the water right were inadvertent and that the water right of the affiant would not be adversely affected thereby.

That in connection with the Civil Suit No. 3072 pending in the District Court of Washington County, in which the undersigned counter-claimed against DARREL G. HAFEN and others, it was established and decreed under said counter-claim and cross claim of this affiant that this affiant and his wife, HELEN R. WALKER, were the owners of said real property comprising approximately 200 acres and the water rights appurtenant thereto, except only certain specific tracts and water rights theretofore conveyed by this affiant. That said decree was signed by the District Judge of the Fifth Judicial District in and for Washington County on March 22, 1965.

That by virtue of the foregoing facts and circumstances, the purported appropriation of water from such springs under application number 34353(81-591) was accomplished by the said JACOB ALLAN MOORE, as the agent of this affiant, and any such appropriation was and is held by him and his successors in interest as constructive trustees for this affiant and his successors in interest and such purported appropriation was and is subject to the prior vested and accrued rights of this affiant and his successors in interest in and to the waters from said springs by virtue of the diligence appropriation and use thereof, and the interest

of this affiant and his successor in interest thereto is superior and paramount to any right or claim of JACOB ALLAN MOORE or any of his successors or assigns.

Further deponent saith naught.

N W Walker

Sworn to and subscribed before me this 4th day of December,

A.D., 1968.

Norman W Walker

Phelma Suddif
Notary Public

1-First National Bank of Arizona-1, Phoenix, Ariz.

Residing at: 411 N. Central Ave
Phoenix, Arizona
85004

My commission expires: My Commission Expires Dec. 12, 1969



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