

5-20-2016

Westover v. Cundick Clerk's Record Dckt. 44046

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Val D Westover, Laree H Westover vs. Jase D Cundick, Franklin County Assessor, John Does 1 And 2

Date	Code	User	Judge
7/30/2015	NCOC	KROBINSON	New Case Filed - Other Claims
	SMIS	KROBINSON	Summons Issued
		KROBINSON	Filing: AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1) Paid by: Atkin Law Office Receipt number: 0002007 Dated: 7/30/2015 Amount: \$221.00 (Check) For: Westover, Val D (plaintiff)
8/11/2015	APER	HAMPTON	Defendant: Cundick, Jase Appearance Bruce J. Castleton
	APER	HAMPTON	Defendant: Franklin County Assessor Appearance Bruce J. Castleton
	NOAP	HAMPTON	Notice Of Appearance for Defendant
8/14/2015	ORDR	HAMPTON	Order for Submission of Information for Scheduling Order
8/20/2015	AMCO	HAMPTON	Amended Complaint Filed
8/25/2015	MISC	HAMPTON	Joint Statement
	MISC	HAMPTON	Plaintiffs' First Set of Discovery Requests-Atkin
8/28/2015	AMEN	HAMPTON	AMENDED Joint Statement
9/11/2015	HRSC	HAMPTON	Hearing Scheduled (Jury Trial 07/19/2016 09:00 AM)
	HRSC	HAMPTON	Hearing Scheduled (Jury Trial 10/17/2016 09:00 AM)
	ORDR	HAMPTON	Scheduling Order, Notice of Trial Setting and Initial Pretrial Order
9/14/2015	MOTN	HAMPTON	Defendant's Motion to Dismiss-Castleton
9/25/2015	NOTC	HAMPTON	Notice of Service RE: Defendant's Answers to Plaintiff's First Set of Discovery Requests-Castleton
9/28/2015	HRSC	HAMPTON	Hearing Scheduled (Motion to Dismiss 10/22/2015 02:00 PM) Bruce Castleton
	MEMO	HAMPTON	Defendant's Memorandum in Support of Motion to Dismiss-Castleton
	NOTC	HAMPTON	Notice of Hearing - Castleton
9/30/2015	NOTC	HAMPTON	Notice of Deposition-Atkin
10/2/2015	AMEN	HAMPTON	AMENDED Notice of Hearing - Castleton
10/8/2015	NOTC	HAMPTON	Notice of Deposition-Atkin
	SUBP	HAMPTON	Subpoena issued - Atkin
10/9/2015	NOTC	HAMPTON	Notice of Deposition-Atkin
10/13/2015	ACSV	HAMPTON	Acceptance Of Service - Atkin
10/19/2015	CONT	HAMPTON	Continued (Motion to Dismiss 11/12/2015 02:00 PM) Bruce Castleton
10/23/2015	MOTN	HAMPTON	Plaintiffs' Motion for Summary Judgment-Atkin

Val D Westover, Laree H Westover vs. Jase D Cundick, Franklin County Assessor, John Does 1 And 2


Date	Code	User		Judge
10/23/2015	MEMO	HAMPTON	Memorandum in Support of Plaintiffs' Motion for Summary Judgment and in Response to Motion to Dismiss-Atkin	Mitchell W. Brown
	AFFD	HAMPTON	Affidavit of Craig Bolton-Atkin	Mitchell W. Brown
	AFFD	HAMPTON	Affidavit of Val D. Westover-Atkin	Mitchell W. Brown
	CERT	HAMPTON	Certificate of Service-Atkin	Mitchell W. Brown
11/9/2015	MISC	HAMPTON	Plaintiffs' Request for Oral Argument and Notice Setting Hearing on Plaintiffs' Motion of Summary Judgment-Atkin	Mitchell W. Brown
11/10/2015	REPL	HAMPTON	Defendants' Reply Memorandum in Support of Motion to Dismiss-Castleton	Mitchell W. Brown
11/12/2015	DCHH	HAMPTON	Hearing result for Motion to Dismiss scheduled on 11/12/2015 02:00 PM: District Court Hearing Held Court Reporter: Rodney Felshaw Number of Transcript Pages for this hearing estimated: less than 100 pages Bruce Castleton	Mitchell W. Brown
12/7/2015	MEOR	HAMPTON	Minute Entry And Order held November 12, 2015	Mitchell W. Brown
1/6/2016	MOTN	HAMPTON	Motion for Issuance of Writ of Mandamus and Prohibition and to Dismiss Remaining Claims Without Prejudice-Atkin	Mitchell W. Brown
	MEMO	HAMPTON	Memorandum in Support of Request for Entry of Judgment and Motion to Dismiss Remaining Claims Without Prejudice-Atkin	Mitchell W. Brown
	CERT	HAMPTON	Certificate of Service-Atkin	Mitchell W. Brown
1/7/2016	NOTC	HAMPTON	Notice of Hearing - Atkin	Mitchell W. Brown
	HRSC	HAMPTON	Hearing Scheduled (Motion 02/11/2016 02:00 PM)	Mitchell W. Brown
1/28/2016	RESP	HAMPTON	Defendant's Response to Plaintiff's Motion for Issuance of Writs and to Dismiss-Castleton	Mitchell W. Brown
	MISC	HAMPTON	Declaration of Jase Cundick in Response to Plaintiff's Motion for Issuance of Writs and to Dismiss-Castleton	Mitchell W. Brown
	MISC	HAMPTON	Declaration of Tyler D. Williams in Support of Defendant's Response to Plaintiff's Motion for Issuance of Writs and to Dismiss-Castleton	Mitchell W. Brown
2/2/2016	REPL	HAMPTON	Reply to Motion for Entry of Judgment-Atkin	Mitchell W. Brown
	AFFD	HAMPTON	Affidavit of Blake Atkin-Atkin	Mitchell W. Brown
	AFFD	HAMPTON	Affidavit of Laree Westover-Atkin	Mitchell W. Brown
2/11/2016	DCHH	HAMPTON	Hearing result for Motion scheduled on 02/11/2016 02:00 PM: District Court Hearing Held Court Reporter: Rodney Felshaw Number of Transcript Pages for this hearing estimated: less than 100 pages	Mitchell W. Brown
2/17/2016	JDMT	HAMPTON	Final Judgment	Mitchell W. Brown

Val D Westover, Laree H Westover vs. Jase D Cundick, Franklin County Assessor, John Does 1 And 2

Date	Code	User	Judge
2/17/2016	STAT	HAMPTON	Case Status Changed: Closed Mitchell W. Brown
2/24/2016	MEOR	HAMPTON	Minute Entry And Order held on February 11, 2016 Mitchell W. Brown
3/11/2016		HAMPTON	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Atkin, Blake S. (attorney for Westover, Val D) Receipt number: 0000577 Dated: 3/11/2016 Amount: \$129.00 (Check) For: Westover, Laree H (plaintiff) and Westover, Val D (plaintiff) Mitchell W. Brown
	BNDC	HAMPTON	Bond Posted - Cash (Receipt 578 Dated 3/11/2016 for 192.00) Mitchell W. Brown
	NOTA	HAMPTON	NOTICE OF APPEAL Mitchell W. Brown
	APSC	HAMPTON	Appealed To The Supreme Court Mitchell W. Brown
	STAT	HAMPTON	Case Status Changed: Inactive Mitchell W. Brown
3/15/2016	CCOA	HAMPTON	Clerk's Certificate Of Appeal mailed to SC and counsel Mitchell W. Brown
4/5/2016	AMAP	HAMPTON	Amended Notice of Appeal Mitchell W. Brown
4/12/2016	CCOA	HAMPTON	Clerk's Certificate Of Appeal - Amended sent Mitchell W. Brown
4/28/2016	NOTC	HAMPTON	Notice of Lodging Mitchell W. Brown

ORIGINAL

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

FILED
15 JUL 30 PM 3:40
FRANKLIN COUNTY CLERK

DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
LaRee H. Westover,
Plaintiffs

v.

Jase D. Cundick,
Franklin County Assessor,

Defendant.

COMPLAINT

Case No. CV-2015-312

Judge



PARTIES

1. Plaintiffs Val D Westover and LaRee H. Westover are individuals residing in Franklin County, Idaho, at 500 North Main Highway, Clifton, ID 83228.
2. Defendant Jase D. Cundick is the County Assessor for Franklin County, State of Idaho and is being sued in his official capacity as County Assessor for Franklin County, Idaho.

JURISDICTION AND VENUE

3. The cause of action set out in this Complaint arose in Franklin County, Idaho.
4. This Court has jurisdiction of this action pursuant to Idaho Code § 7-302 and § 7-402, which give the district court jurisdiction to issue writs of mandate and prohibition.

5. Venue is proper in this Court pursuant to Idaho Code § 5-404, because Plaintiffs and Defendant are residents of and the cause of action arose in Franklin County, Idaho.

GENERAL ALLEGATIONS

6. In a Real Estate Sales Contract, dated November 15, 2007, sellers Don A. Westover and Connie V. Westover conveyed real property to buyers Val D Westover and LaRee H. Westover.

7. A memorandum of that contract was filed on November 15, 2007 with the Franklin County Recorder. A true and correct copy of that Memorandum is attached hereto as Exhibit A.

8. The Memorandum put the public on notice that Val and LaRee Westover are the owners of the property.

9. After the filing of the Memorandum of the Real Estate Sales Contract, any later attempts to convey the property by Don A. Westover did not affect Val and LaRee Westover's title.

10. In 2015, Val and LaRee Westover entered into a contract with Rocky Mountain Power for an underground right-of-way easement.

11. Rocky Mountain Power's easement was recorded April 20, 2015. A true and correct copy of this grant of easement is attached hereto as Exhibit B.

12. A letter dated May 29, 2015, from Franklin County Assessor Jase Cundick to Rocky Mountain Power declared that Val and LaRee Westover were not the owners of the property where the easement runs. Exhibit C.

13. As a result of this letter, Rocky Mountain Power has threatened to cut off power, remove its equipment, and declare Val and LaRee Westover in breach of contract.

14. Through their attorney, Val and LaRee Westover sent Jase Cundick a letter, dated June 24, 2015, detailing the above allegations and requesting that he retract his slander of title.

15. Jase Cundick has failed to respond to any communication and has refused to retract his slander of title.

16. Jase Cundick has acted without or in excess of authority in slandering the property title of Val and LaRee Westover by sending a letter to Rocky Mountain Power purporting to determine the genuine ownership of the property.

17. Idaho Code § 63-703(1) gives an assessor the authority to “ascertain the current ownership of land” for tax purposes, but it does not give an assessor authority to make judicial or quasi-judicial determinations about the genuineness or legal effect of documents of title filed with the county recorder. Rather, Idaho statutes require that an assessor’s office change ownership on its records whenever presented with a deed, title, or contract. I.C. § 63-703(2). There is no authority to make a determination whether a contract is genuine. That power is reserved for the judiciary. Therefore, in making a judicial determination of true ownership—by telling the power company that Val Westover and LaRee Westover were not the owners of the property upon which they conveyed an easement to the power company—Jase Cundick acted without or in excess of authority.

18. Similarly, the statute gives an assessor no authority whatsoever to slander an owner’s title by informing parties who file documents of conveyance that, in the assessor’s view, the document cannot be given legal effect.

FIRST CAUSE OF ACTION
(Slander of Title)

19. Plaintiffs incorporate by reference all of the allegations contained in paragraphs 6–18 above in this cause of action.

20. Jase Cundick published a slanderous statement by sending a letter to Rocky Mountain Power, dated May 29, 2015, claiming that Val and LaRee Westover were not the true owners of their property.

21. The Memorandum of Real Estate Sales Contract filed with Franklin County proves that the statements by Jase Cundick to Rocky Mountain Power were false.

22. Jase Cundick had access to the county records, and Val and LaRee Westover, by their attorney, sent all pertinent documents to Mr. Cundick, attached to the June 24, 2015 letter. Therefore, Jase Cundick's letter and his refusal to retract it were done with a reckless disregard for the truth or falsity of his statement.

23. Val and LaRee Westover have suffered special damages with Rocky Mountain Power threatening to remove its equipment and to declare Val and LaRee Westover in breach of contract. There have also been special damages in removing the cloud to the title.

SECOND CAUSE OF ACTION
(Writs of Mandate and Prohibition)

24. Plaintiffs incorporate by reference all of the allegations contained in paragraphs 6–23 above in this cause of action.

25. A writ of mandate is issued by Idaho Supreme Court or any district court to any “corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station.” I.C. § 7-302.

26. A writ of prohibition is the counterpart to the writ of mandate and is issued to “arrest[] the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction.” I.C. § 7-401.

27. A writ of mandate or prohibition “must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.” I.C. § 7-303.

28. There is no “plain, speedy and adequate remedy in the ordinary course of law” for the slander of title occurring in this case, which the County Assessor has refused to correct. *Id.* Slander of title is an intentional tort, and government entities and employees are immune from suits alleging intentional torts. I.C. § 6-904(3).

29. Additionally, there are no administrative remedies available since appeals regarding actions taken by an assessor’s office are appealed to the Board of Equalization and the Idaho Tax Commission. However, the Assessor’s actions, in excess of his authority in determining property ownership and informing third parties of his opinion that the plaintiffs do not own the property on which they conveyed an easement and that therefore the easement was not a valid conveyance of property, do not regard tax issues and, therefore, cannot be appealed through existing administrative channels.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. For writ of mandate, ordering Jase Cundick, Franklin County Assessor, to retract his slander of title;
2. For writ of prohibition, prohibiting Jase Cundick, Franklin County Assessor, from exceeding his authority in making property ownership determinations for purposes beyond those required for taxes, and from communicating those determinations to third parties;
3. For writ of prohibition, prohibiting Jase Cundick, Franklin County Assessor, from refusing to change ownership of property on his records when presented with documents showing a conveyance of property.
4. For Plaintiff’s costs, including attorney’s fees, as are provided in I.C. § 7-312; and

5. For such other and further relief as the court deems just and equitable.

Dated this 30th day of July, 2015.

Atkin Law Offices, P.C.

/s/ Blake S. Atkin
Blake S. Atkin
Attorneys for the Plaintiff

Exhibit A

239763 1-4

Memorandum of Real Estate Sales Contract

Be it known that on this 15th day of November 2007, Don A. Westover and Connie V. Westover as sellers and Val D Westover and LaRee H. Westover as buyers entered into a Real estate sales contract providing for a warranty deed with respect to the following described tract of land in Franklin County Idaho:

See, Exhibit A

Recorded at the request of

Val Westover

Dated this 26 day of November, 2007

12:24
a.m. NOV 26 2007 p.m.

Don A. Westover
Don A. Westover

V. ELLIOTT LARSEN, RECORDER
By Shauna Gades Deputy
FRANKLIN COUNTY, IDAHO

Connie V. Westover
Connie V. Westover

Val D. Westover
Val D. Westover

LaRee H. Westover
LaRee H. Westover

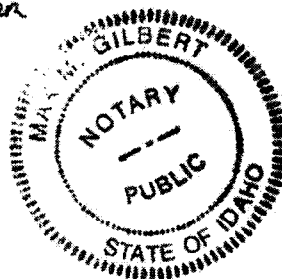
STATE OF Idaho)
: SS
COUNTY OF Franklin)

On this the _____ day of November, 2007, personally C, W, appeared before me Don A. Westover and Connie V. Westover, ~~Val D Westover and LaRee H. Westover,~~ the signers of this memorandum, who acknowledged to me that they executed the same.

Notary Public

ACKNOWLEDGMENT

State of IDAHO
County of FRANKLIN
On this 26 day of NOV 2007, VAL D Westover & LaRee H Westover
personally appeared before me,
 who is personally known to me,
 whose identity I verified on the basis of _____
 whose identity I verified on the oath/affirmation of _____
a credible witness,
to be the signer of the foregoing document, and I have acknowledged that
he/she signed it. Maureen Gilbert
Notary Signature
My Commission Expires: 3-6-2012



239763

2-4

Exhibit A

E1/2NE1/4, SW1/4NE1/4, E1/2SE1/4, SECTION 20, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN.

NW1/4, NW1/4NE1/4 SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN,

N1/2NE1/4 SECTION 29, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN.

ALSO, COMMENCING AT A POINT 1320 FEET WEST AND 300.2 FEET SOUTH OF THE NE CORNER OF SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN, THENCE RUNNING SOUTH 34 DEGREES 54 MINUTES EAST 318.5 FEET; THENCE SOUTH 67 DEGREES 58 MINUTES WEST 96 FEET; THENCE SOUTH 8 DEGREES 55 MINUTES WEST 63.5 FEET; THENCE SOUTH 39 DEGREES 27 MINUTES WEST 48.6 FEET; THENCE SOUTH 66 DEGREES 21 MINUTES WEST 57.3 FEET THENCE NORTH 420.5 FEET TO THE PLACE OF BEGINNING.

Also excepting therefrom the following tract, to-wit:

Commencing at a point 1580 feet West and 729 feet South of the NE corner of Section 21, Township 14 South, Range 38 East, Boise Meridian, to the point beginning, thence running South 40 degrees 50 minutes East 440 feet; thence South 65 degrees 40 minutes West 512 feet; Thence North 20 degrees 12 minutes East 605 feet, more or less, to the point of beginning; Also Including, all water rights appurtenant to the property including but not limited to the following water stock, to wit: 2 3/4 shares in the Rushville irrigation company. Excepting therefrom portions deeded for road or road purposes.

239763 3-4



Acknowledgment by Individual

State of Idaho County of Franklin

On this 17 day of November, 2007, before me, Colleen Firth
Name of Notary Public

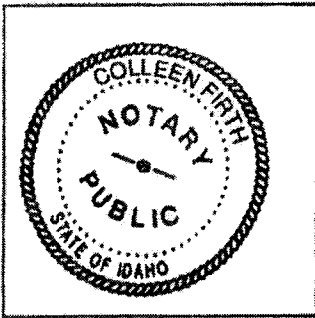
the undersigned Notary Public, personally appeared Don A Westover

Name of Signer(s)

- Proved to me on the oath of _____
- Personally known to me
- Proved to me on the basis of satisfactory evidence _____
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Notary Seal

Colleen Firth
(Signature of Notary Public)
My commission expires 06/10/2011

Optional

Though the information in this section is not required by law, it may prevent fraudulent removal and reattachment of this form to another document and could prove valuable to persons relying on the document.

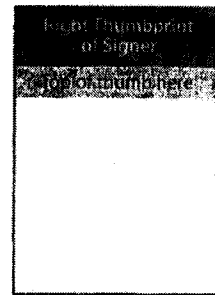
Description of Attached Document

Type or Title of Document
Memorandum of Real Estate Sales Contract

Document Date
November 17, 2007

Number of Pages
2

Signer(s) Other Than Named Above
Connie V Westover, Val D Westover, LaRae H Westover



Scanner Enabled Users should scan this form
Manual Submission Users to Deposit Operations

0565350 (8-07 11/077)

FO01-00000DSG5350-01

239763 4-4



Acknowledgment by Individual

State of Idaho County of Franklin

On this 17 day of November, 20 07, before me, Colleen Firth
Name of Notary Public

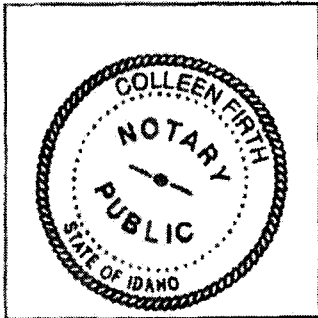
the undersigned Notary Public, personally appeared Connie V Westover

Name of Signer(s)

- Proved to me on the oath of _____
- Personally known to me
- Proved to me on the basis of satisfactory evidence _____
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Notary Seal

Colleen Firth
(Signature of Notary Public)
My commission expires 06/10/2011

Optional

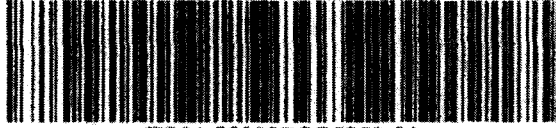
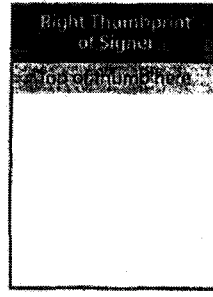
Though the information in this section is not required by law, it may prevent fraudulent removal and reattachment of this form to another document and could prove valuable to persons relying on the document.

Description of Attached Document

Type or Title of Document Memorandum of Real Estate Sales Contract

Document Date November 17, 2007 Number of Pages 2

Signer(s) Other Than Named Above Don A Westover, Val D Westover, LaRee H Westover



Scanner Enabled Stores should scan this form
Manual Submission Route to Deposit Operations
DS68350 (9-07 111077)

FO01-00000DSG5350-01

Exhibit B

REV101512
Return to:
Rocky Mountain Power
Craig Bolton
509 S 2nd E
Preston, ID 83263

264205 1-4

Recorded at the request of
PacifiCorp
Time 4:43 Amount \$ 19.00

APR 20 2015

SHAUNA T. GEDDES, RECORDER
By [Signature] Deputy
Franklin County, Idaho

Project Name:
Tract NO.:
WO#:
RW#:

UNDERGROUND RIGHT WAY OF EASEMENT

For value received, Val D. Westover ("Grantor"), hereby grants to PacifiCorp, an Oregon Corporation, d/b/a Rocky Mountain Power its successors and assigns, ("Grantee"). An easement for a right of way 10 feet in width and 339 feet in length, more or less, for the construction, reconstruction, operation, maintenance, repair, replacement, enlargement, and removal of underground electric power transmission, distribution and communication lines and all necessary or desirable accessories and appurtenances thereto, including without limitation: wires, fibers, cables, and other conductors and conduits therefor; and pads, transformers, switches, cabinets, and vaults on, across, or under the surface of the real property of Grantor in Franklin County, State of Idaho more particularly described as follows and as more particularly described and/or shown on Exhibit(s) (Insert ALL Exhibit References i.e. A,B) attached hereto and by this reference made a part hereof:

This Property description does not include a blanket easement, but does specify property upon which this proposed easement is located: The easement is strictly limited to a 10 FT wide path from PacifiCorp's power pole located in Hwy D1 right of way in a westerly direction 339 FT to and including the site of the transformer that will be located on the east side of the new warehouse.

Legal Description:

E1/2NE1/4, SW1/4NE1/4, E1/2SE1/4, SECTION 20, TOWNSHIP 14 SOUTH RANGE 38 EAST, BOISE MERIDIAN.
NW1/4, NW1/4NE1/4 SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN,
N1/2NE1/4 SECTION 29, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN.
ALSO, COMMENCING AT A POINT 1320 FEET WEST AND 300.2 FEET SOUTH OF THE NE CORNER OF SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN, THENCE RUNNING SOUTH 34 DEGREES 54 MINUTES EAST 318.5 FEET; THENCE SOUTH 67 DEGREES 58 MINUTES WEST 96 FEET; THENCE SOUTH 8 DEGREES 55 MINUTES WEST 63.5 FEET; THENCE SOUTH 39 DEGREES 27 MINUTES WEST 48.6 FEET; THENCE SOUTH 66 DEGREES 21 MINUTES WEST 57.3 FEET THENCE NORTH 420.5 FEET TO THE PLACE OF BEGINNING.

Assessor Parcel No.

844.0

**** (CHOOSE APPROPRIATE ACKNOWLEDGEMENT AND DELETE THE OTHERS) *******

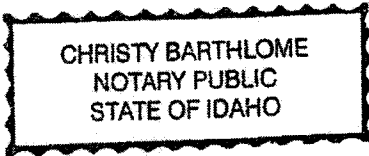
Acknowledgement by an Individual Action on His own Behalf:

STATE OF Idaho

County of Franz Klux

On this 1st day of April, 2015 before me, the undersigned Notary Public in and for said State, personally appeared Val D Westover (name), known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that (he/she/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.



Christy Barthlome
(notary signature)

NOTARY PUBLIC FOR Idaho (state)
Residing at : Preston, Idaho (city, state)
My Commission Expires: 11-26-16 (d/m/y)

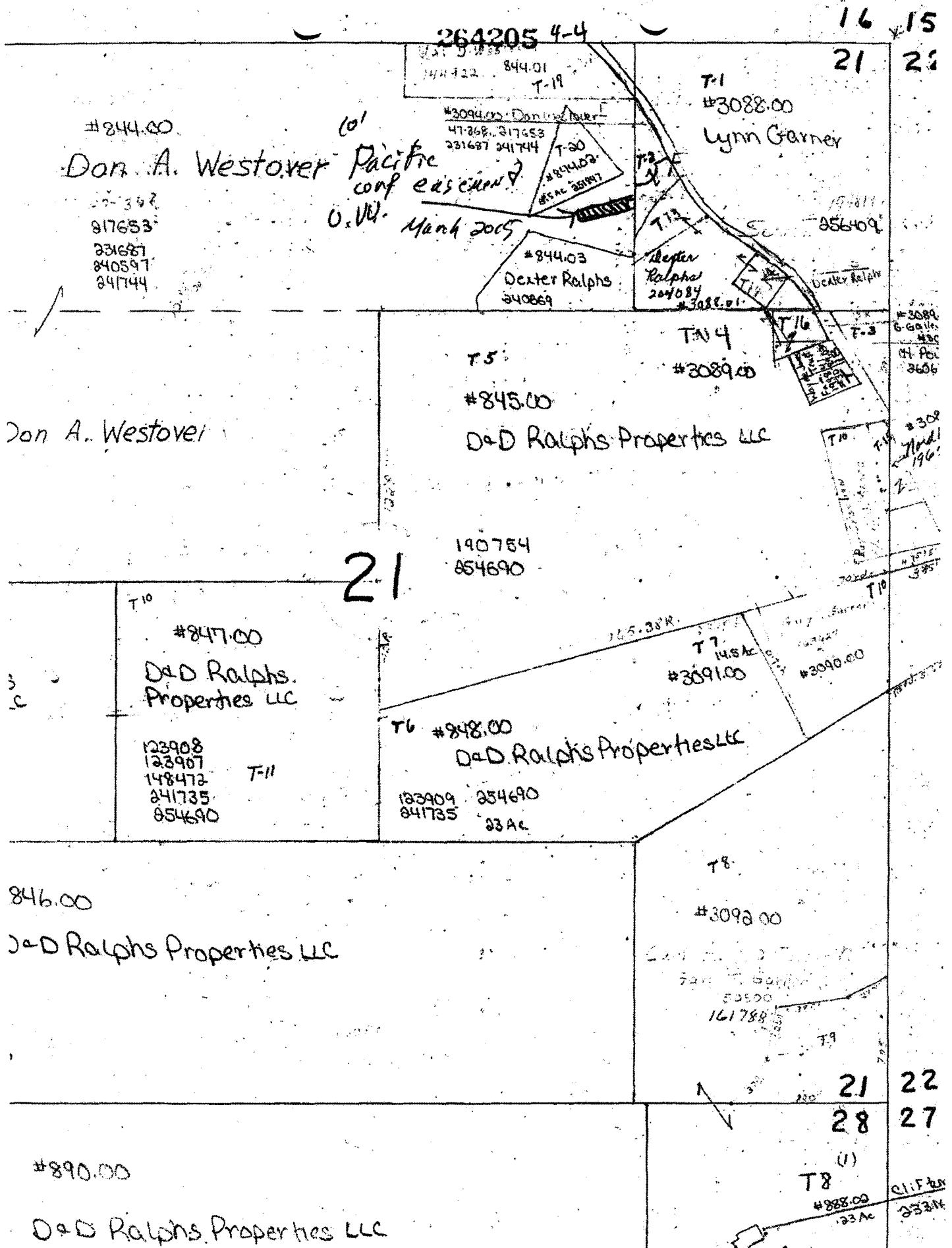


Exhibit C

Franklin County



51 West Oneida St.
Preston, Idaho 83263
(208) 852-1091
Fax (208) 852-1096

Jase D. Cundick
Assessor

Assessor

May 29, 2015

Rocky Mountain Power
Craig Bolton
509 So. 2nd E.
Preston, ID 83263

and

Val D. Westover
500 No. Main Hwy.
Clifton, ID 83228

RE: Underground Right of Way of Easement recorded on April 20, 2015

In reviewing the document referenced above, the following concerns(s) have come to our attention:

- The property description included in the document is not owned by the Grantor.

For further clarification of the ownership of property please contact our office.

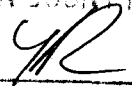
Sincerely,

A handwritten signature in cursive script that reads "Jase Cundick".

Jase D. Cundick
Franklin County Assessor

ORIGINAL

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

FILED
15 JUL 30 PM 3:40
FRANKLIN COUNTY CLERK

DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and)
LaRee H. Westover,)
Plaintiffs)
v.)
Jase D. Cundick,)
Franklin County Assessor,)
Defendant.)

SUMMONS

Case No. CV-2015-312

Judge Mitchell Brown

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

**To: JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR
51 WEST ONEIDA STREET
PRESTON, IDAHO 83263**

You are hereby notified that in order to defend this lawsuit, an appropriate
written response must be filed with the above designated court within 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 Plaintiffs in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of 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.

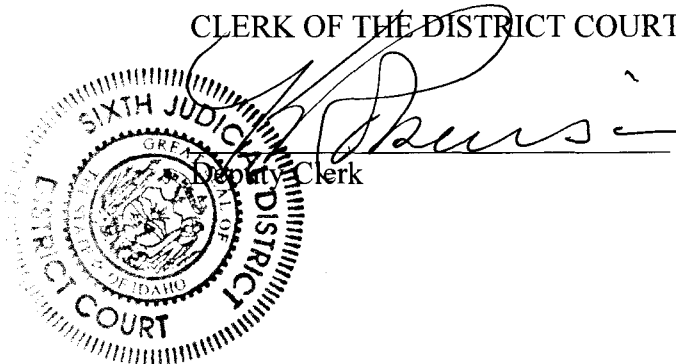
An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and shall also include:

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 Plaintiffs attorney, as designated above.

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

DATED this 30th day of July, 2015.

CLERK OF THE DISTRICT COURT



FILED
15 AUG 11 PM 5:03
FRANKLIN COUNTY CLERK
DEPUTY

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: bjc@naylorhales.com; tdw@naylorhales.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER and
LaREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No. CV-2015-312

**NOTICE OF GENERAL
APPEARANCE**

Filing Fee Waived per I.C. § 31-3212(2)

**TO: PLAINTIFFS AND THEIR ATTORNEY OF RECORD, BLAKE S. ATKIN, OF
ATKIN LAW OFFICES, P.C.**

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that, pursuant to I.R.C.P. 4(i)(1), the law firm of Naylor & Hales, P.C. appears as attorney of record for Defendant Jase D. Cundick, Franklin County Assessor, in the above-entitled action, preserving all defenses and objections which said Defendant may have to the Plaintiffs' Complaint filed in this action.

NOTICE OF GENERAL APPEARANCE - 1.

DATED this 11th day of August, 2015.

NAYLOR & HALES, P.C.

By 

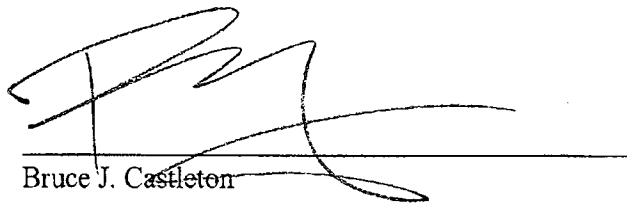
Bruce J. Castleton, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of August, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

- U.S. Mail
- Federal Express
- Fax: 1-801-533-0380
- Email: batkin@atkinlawoffices.net


Bruce J. Castleton

FILED

15 AUG 14 PM 3:48

FRANKLIN COUNTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

eh
DEPUTY

VAL D. WESTOVER and LAREE H.
 WESTOVER,

 Plaintiffs,

 vs.

 JASE D. CUNDICK,
 FRANKLIN COUNTY ASSESSOR,

 Defendant.

Case No: CV-2015-312

**ORDER FOR SUBMISSION
OF INFORMATION FOR
SCHEDULING ORDER**

A Complaint was filed in this matter on July 30, 2015. The Defendant has now appeared and/or answered and the case is at issue.

IT IS HEREBY ORDERED, pursuant to I.R.C.P. 16, that the parties, through their counsel (or the parties themselves if self-represented), confer and submit to the Court, within fourteen (14) days of the date of this Order, a joint statement containing the following information:

1. Whether this matter is to be tried to the Court or to a jury.
2. Whether any service is still needed upon any unserved parties.
3. Whether motions to add new parties or otherwise amend the pleadings are contemplated.
4. Whether the parties currently contemplate or anticipate any pre-trial motions.
5. Whether the case presents any unusual time requirements for trial preparation.
6. The agreed amount of time required for trial.
7. Whether the case presents any unusual times requirements for discovery.
8. Whether any party requests court-ordered mediation.
9. Two stipulated trial dates, one no less than nine (9) months and no more than twelve (12) months from the date of this Order, and a second no less than twelve (12) months and no more than fifteen (15) months from the date of this Order.
10. Whether there are other matters conducive to determination of the action that the parties agree should be brought to the attention of the Court prior to entering a Scheduling Order.

The parties shall agree as to which party shall make the joint submission but, if they cannot agree, Plaintiff shall be responsible to make the submission.

Upon receipt of this joint submission the Court will issue an Order setting the matter for trial with appropriate dates for discovery, disclosure of witnesses, etc.

The submissions requested in the Order are deemed by the Court to constitute the scheduling conference required by IRCP 16(a). However, if either party wishes a more formal scheduling conference, please contact the Court's clerk, Linda Hampton at 852-0877 and one will be scheduled.

IT IS FURTHER ORDERED that if the parties do not file the stipulation required herein, within the fourteen (14) days set forth, the Court will set this matter for trial on the first date available to the Court.

IT IS FURTHER ORDERED that unless the Court receives written notification to the contrary, all future documents sent by the Court to counsel will be delivered electronically. Counsel is hereby instructed to provide the Court with an email address they wish to have documents delivered to. This email shall be included in the parties' response to this Order of Submission. Counsel will also have the continuing obligation to notify the Court upon any change to the email address submitted.

Dated this 14th day of August, 2015.



MITCHELL W. BROWN
District Court

CERTIFICATE OF MAILING/SERVICE

I HEREBY CERTIFY that on the 14th day of August, 2015, I mailed/served a true copy of the foregoing Order for Submission of Information for Scheduling Order on the attorney(s)/person(s) listed below by the method indicated:

Attorney(s)/Person(s):

Blake S. Atkin
Counsel for Plaintiff

Bruce J. Castleton
Counsel for Defendant

Method of Service:

Faxed: (801) 533-0380

Faxed: (208) 383-9516

By: Linda Hampton, Deputy Clerk

TRANSACTION REPORT

AUG/14/2015/FRI 03:55 PM

FAX (TX)

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	AUG/14	03:52PM	18015330380	0:01:10	4	MEMORY OK	ECM 3614

MITCHELL W. BROWN

District Judge
Sixth Judicial District
State of Idaho

Franklin County Courthouse
39 West Oneida
Preston, ID 83263
(208) 852-0877
Fax: (208) 852-2926
Linda Hampton, District Court Clerk

Resident Chambers
Caribou County Courthouse
159 South Main
Soda Springs, ID 83276
(208) 547-2146
Fax: (208) 547-2147
Sheila Downs, District Court Clerk

CONFIDENTIAL - FAX

August 14, 2015

TO: Blake S. Atkin (801) 533-0380
Bruce J. Castleton (208) 383-9516

TRANSACTION REPORT

AUG/14/2015/FRI 04:22 PM

FAX (TX)

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MITCHELL W. BROWN

District Judge
Sixth Judicial District
State of Idaho

Franklin County Courthouse
39 West Oneida
Preston, ID 83263
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Sheila Downs, District Court Clerk

CONFIDENTIAL - FAX

August 14, 2015

TO: Blake S. Atkin (801) 533-0380
Bruce J. Castleton (208) 383-9516

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

FILED
15 AUG 20 PM 12:47
FRANKLIN COUNTY CLERK
lh
DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and)
LaRee H. Westover,)
Plaintiffs)

**AMENDED COMPLAINT
(Jury Trial Demanded)**

v.)

Case No. CV-2015-312

Jase D. Cundick, in his individual capacity)
And in his official capacity as)
Franklin County Assessor,)
John Does 1 and 2,)
Defendant.)

Judge Mitchell Brown

PARTIES

1. Plaintiffs Val D Westover and LaRee H. Westover are individuals residing in Franklin County, Idaho, at Clifton, ID 83228.

2. Defendant Jase D. Cundick is the County Assessor for Franklin County, Idaho. In this action he is being sued in his individual and official capacity.

3. John Does one and two are persons who work in the Franklin County Assessor's office who on information and belief were substantially instrumental in the torts that were committed by the Franklin County Assessor's office.

JURISDICTION AND VENUE

4. The cause of action set out in this Complaint arose in Franklin County, Idaho.

5. This Court has jurisdiction of this action both as a court of general jurisdiction in Franklin County and pursuant to Idaho Code § 7-302 and § 7-402, which give the district court jurisdiction to issue writs of mandate and prohibition.

6. Venue is proper in this Court pursuant to Idaho Code § 5-404, because Plaintiffs and Defendant are residents of and the cause of action arose in Franklin County, Idaho.

GENERAL ALLEGATIONS

7. In a Real Estate Sales Contract, dated November 15, 2007, sellers Don A. Westover and Connie V. Westover, the parents of Val D Westover, conveyed real property to buyers Val D Westover and LaRee H. Westover, Val's wife.

8. A memorandum of that contract was filed on November 15, 2007 with the Franklin County Recorder. A true and correct copy of that Memorandum is attached to the original complaint as Exhibit A.

9. The Memorandum put the public on notice that Val and LaRee Westover are the owners of the property.

10. After the filing of the Memorandum of the Real Estate Sales Contract, any later attempts to convey the property by Don A. Westover did not affect Val and LaRee Westover's title.

11. In 2012, there was an attempt by Don A. Westover to convey the property to a family trust with Val Westover as the trustee. That attempted transfer was rejected by the county assessor as lacking formalities necessary to make it an effective transfer. Thereafter no attempt was made by Don Westover to effect any other transfer.

12. In 2015, Val and LaRee Westover entered into a contract with Rocky Mountain Power for an underground right-of-way easement.

13. Rocky Mountain Power's easement was recorded April 20, 2015. A true and correct copy of this grant of easement was attached to the original Complaint as Exhibit B.

14. A letter dated May 29, 2015, from Franklin County Assessor Jase Cundick to Rocky Mountain Power declared that Val and LaRee Westover were not the owners of the property described in the easement grant.

15. As a result of this letter, Rocky Mountain Power has threatened to cut off power, remove its equipment, and declare Val and LaRee Westover in breach of contract.

16. Through their attorney, Val and LaRee Westover sent Jase Cundick a letter, dated June 24, 2015, detailing the above allegations and requesting that he retract his slander of title.

17. Jase Cundick has failed to respond to any communication and has refused to retract his slander of title. Mr. Cundick now takes the position that the slander of title was not his fault and he will take no action to clear the title and good name of the plaintiffs' vis-à-vis Rocky Mountain Power.

18. By their actions the county assessor's office and persons connected thereto have undertaken to interfere with the business relationships of persons involved in a real estate transaction without any justification whatever.

19. Jase Cundick has acted without or in excess of authority in slandering the property title of Val and LaRee Westover by sending a letter to Rocky Mountain Power purporting to determine the genuine ownership of the property.

20. Idaho Code § 63-703(1) gives an assessor the authority to "ascertain the current ownership of land" for tax purposes, but it does not give an assessor authority to make judicial or quasi-judicial determinations about the genuineness or legal effect of documents of title filed

with the county recorder. Rather, Idaho statutes require that an assessor's office change ownership on its records whenever presented with a deed, title, or contract. I.C. § 63-703(2).

21. In this case the assessor was not presented with a deed, title or contract that purported to change ownership of any property. Rather he was presented with a grant of an easement. An easement does not affect ownership of property and has absolutely no tax effect. There simply was no statutory or other legal authority for the assessor's office to interfere with the economic relationship between Val and LaRee Westover and the power company.

22. As a matter of fact, the assessor has now taken the position that his actions were not an official act of his office.

23. Jase Cundick and John Does one and two were acting outside the scope of their authority and therefore are personally liable to the Plaintiffs for the torts alleged herein.

24. There is no authority for the county assessor to make a determinations whether a contract is genuine. That power is reserved for the judiciary. Therefore, in making a judicial determination of true ownership—by telling the power company that Val Westover and LaRee Westover were not the owners of the property upon which they conveyed an easement to the power company—Jase Cundick acted without or in excess of authority.

25. Similarly, the statute gives an assessor no authority whatsoever to slander an owner's title by informing parties who file documents that, in the assessor's view, the document cannot be given legal effect, or that the property described is not owned by the grantor of an easement.

FIRST CAUSE OF ACTION
(Slander of Title)

26. Plaintiffs incorporate by reference all of the allegations contained in paragraphs 6–25 above in this cause of action.

27. Jase Cundick aided and abetted by John Does one and two published a slanderous statement by sending a letter to Rocky Mountain Power, dated May 29, 2015, claiming that Val and LaRee Westover were not the owners of their property.

28. The Memorandum of Real Estate Sales Contract filed with Franklin County proves that the statements by Jase Cundick to Rocky Mountain Power were false.

29. Jase Cundick had access to the county records, and John Does one and two were well aware of the memorandum of contract filed in 2007. Moreover, Val and LaRee Westover, by their attorney, sent all pertinent documents to Mr. Cundick, attached to the June 24, 2015 letter. Therefore, Jase Cundick's letter and his refusal to retract it were done with malice—a reckless disregard for the truth or falsity of his statement.

30. John Doe one or John Doe two, an employee of the assessor's office, encouraged, instigated, or was otherwise involved in the sending of the letter to Rocky Mountain Power because of personal malice toward Plaintiffs.

31. The sending of the letter to Rocky Mountain Power interfered with business transactions regarding real estate in Franklin County between the Plaintiff and others, including Rocky Mountain Power, for no legitimate purpose.

32. Val and LaRee Westover have suffered special damages with Rocky Mountain Power threatening to remove its equipment and to declare Val and LaRee Westover in breach of contract. There have also been special damages in way of attorney fees incurred in attempting to remove the cloud of title created by the assessor, and the opprobrium of the accusation that Val and LaRee Westover were attempting to grant an easement across property that they did not own.

SECOND CAUSE OF ACTION
(Writs of Mandate and Prohibition)

33. Plaintiffs incorporate by reference all of the allegations contained in paragraphs 6–32 above in this cause of action.

34. A writ of mandate is issued by Idaho Supreme Court or any district court to any “corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station.” I.C. § 7-302.

35. A writ of prohibition is the counterpart to the writ of mandate and is issued to “arrest[] the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction.” I.C. § 7-401.

36. A writ of mandate or prohibition “must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.” I.C. § 7-303.

37. There is no “plain, speedy and adequate remedy in the ordinary course of law” for the slander of title occurring in this case, which the County Assessor has refused to correct. *Id.* Slander of title is an intentional tort, and government entities are immune from suits alleging intentional torts. I.C. § 6-904(3).

38. Additionally, there are no administrative remedies available since appeals regarding actions taken by an assessor’s office are appealed to the Board of Equalization and the Idaho Tax Commission. However, the Assessor’s actions, in excess of his authority in determining property ownership and informing third parties of his opinion that the Plaintiffs do not own the property on which they conveyed an easement, do not regard tax issues and, therefore, cannot be appealed through existing administrative channels.

THIRD CAUSE OF ACTION
(Intentional interference with existing or potential economic relations)

39. Plaintiffs incorporate by reference all of the allegations contained in paragraphs 6–38 above in this cause of action.

40. The actions of the assessor's office and their refusal to rescind the letter to Rocky Mountain Power which slandered their title, after it was sent has interfered with the existing and potential economic relationship between the Plaintiffs and the power company.

41. According to recent assertions by the assessor, the actions of the assessor's office as described above were not within the course and scope of the assessor's authority, and therefore the actions of the assessor's office were done using improper means.

42. It is the Plaintiff's information and belief that the actions by the assessor's office were taken for an improper purpose as well, namely to interfere with the plaintiff's ability to provide adequate amenities to a substantial tenant of the property that provides jobs and revenue to Franklin County, and perhaps for other improper purposes.

43. On information and belief the employees of the assessor's office were also motivated by malice.

44. As a direct and proximate result of the actions of the assessor's office, Plaintiffs have been damaged in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. For writ of mandate, ordering Jase Cundick, Franklin County Assessor, to retract his slander of title;
2. For writ of prohibition, prohibiting Jase Cundick, Franklin County Assessor, from exceeding his authority in making property ownership determinations for purposes beyond those required for taxes and prohibiting him from interfering with real estate transactions in Franklin County;
3. For damages in an amount to be proven at trial.
4. For Plaintiff's costs, including attorney's fees, as are provided in I.C. § 7-312; and

5. For such other and further relief as the court deems just and equitable.

Dated this 20th day of August, 2015.

Atkin Law Offices, P.C.



Blake S. Atkin
Attorneys for the Plaintiff

Jury Trial Demand

Plaintiffs demand trial by jury

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of August, 2015, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Bruce J. Castleton
Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email: bjc@naylorhales.com;
tdw@naylorhales.com

Franklin County Court
39 West Oneida
Preston, ID 83263

U.S. Mail
 Fax: (208) 852-2926
 Delivered in-person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
paulcjefferies@gmail.com

U.S. Mail
 Email: paulcjefferies@gmail.com

Jennifer Mariscal

ATKIN LAW OFFICES, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

FILED

15 AUG 25 PM 12:58

FRANKLIN COUNTY CLERK

DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

VAL D WESTOVER AND LAREE H.
WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK, in his individual
capacity and in his official capacity as
FRANKLIN COUNTY ASSESSOR, JOHN
DOES 1 AND 2,

Defendant.

**PLAINTIFFS' FIRST SET OF
DISCOVERY REQUESTS**

Case No. CV-2015-312

Judge Mitchell Brown

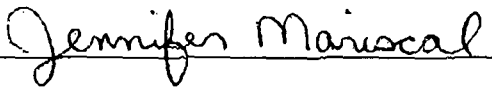
TO: THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that on the 25th day of August, 2015, I served PLAINTIFFS'
FIRST SET OF DISCOVERY REQUESTS upon counsel in the above-entitled matter by U.S.

first-class mail, postage prepaid and facsimile to:

Bruce J. Castleton
Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

Dated this 25th day of August, 2015.



A handwritten signature in cursive script that reads "Jennifer Mariscal". The signature is written in black ink and is positioned above a solid horizontal line.

Jennifer Mariscal

FILED

15 AUG 25 PM 3: 22

FRANKLIN COUNTY CLERK



DEPUTY

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Faosimile: (801) 533-0380

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover, and
LaRee H. Westover,
Plaintiffs

v.

Jase D. Cundick, in his individual capacity
And in his official capacity as
Franklin County Assessor,
John Does 1 and 2,
Defendant.

JOINT STATEMENT

Case No. CV-2015-312

Judge Mitchell Brown

Both parties, through their counsel, do agree upon and submit the following joint statement:

1. Whether this matter is to be tried to the Court or to a jury.

Some issues will be tried to the Court, but there are some issues subject to jury trial and the parties have demanded and intend to preserve their rights to jury trial on all issues triable to a jury.

2. Whether any service is still needed upon any unserved parties.

No.

3. Whether motions to add new parties or otherwise amend the pleadings are contemplated.

Yes.

4. Whether the parties currently contemplate or anticipate any pre-trial motions.

Yes.

5. Whether the case presents any unusual time requirements for trial preparation.

No.

6. The agreed amount of time required for trial.

Three (3) days.

7. Whether the case presents any unusual time requirements for discovery.

No.

8. Whether any party requests court-ordered mediation.

Plaintiffs believe court ordered mediation would be useful in this case. Defendants are willing to pursue settlement but do not request court ordered mediation.

9. Two stipulated trial dates, one no less than nine (9) months and no more than twelve (12) months from the date of this Order, and a second no less than twelve (12) months and no more than fifteen (15) months from the date of this Order.

July 19-21, 2016; November 8-10, 2016

10. Whether there are other matters conducive to determination of the action that the parties agree should be brought to the attention of the Court prior to entering a Scheduling Order.

No.

DATED this ^{25th} 24th day of August, 2015.

Atkin Law Offices, P.C.



Blake S. Atkin
Attorneys for the Plaintiffs

Naylor & Hales, P.C.



Bruce J. Castleton
Attorneys for the Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of August, 2015, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Bruce J. Castleton
Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email: bjc@naylorhales.com;
tdw@naylorhales.com

Franklin County Court
39 West Oneida
Preston, ID 83263

U.S. Mail
 Fax: (208) 852-2926
 Delivered in-person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
paulcjefferies@gmail.com

U.S. Mail
 Fax: (208) 547-2147

Jennifer Mariscal

FILED

15 AUG 28 AM 11:43

FRANKLIN COUNTY CLERK

DEPUTY

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

Attorney for Plaintiffs

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO

Val D Westover and
LaRae H. Westover,
Plaintiffs

AMENDED
JOINT STATEMENT

v.

Case No. CV-2015-312

Jase D. Cundick, in his individual capacity
And in his official capacity as
Franklin County Assessor,
John Does 1 and 2,

Judge Mitchell Brown

Defendant

Both parties, through their counsel, do agree upon and submit the following joint statement:

1. Whether this matter is to be tried to the Court or to a jury.

Some issues will be tried to the Court, but there are some issues subject to jury trial and the parties have demanded and intend to preserve their rights to jury trial on all issues triable to a jury.

2. Whether any service is still needed upon any unserved parties.

No.

3. Whether motions to add new parties or otherwise amend the pleadings are contemplated.

Yes.

4. Whether the parties currently contemplate or anticipate any pre-trial motions.

Yes.

5. Whether the case presents any unusual time requirements for trial preparation.

No.

6. The agreed amount of time required for trial.

Three (3) days.

7. Whether the case presents any unusual time requirements for discovery.

No.

8. Whether any party requests court-ordered mediation.

Plaintiffs believe court ordered mediation would be useful in this case. Defendants are willing to pursue settlement but do not request court ordered mediation.

9. Two stipulated trial dates, one no less than nine (9) months and no more than twelve (12) months from the date of this Order, and a second no less than twelve (12) months and no more than fifteen (15) months from the date of this Order.

July 19-21, 2016; October 17-19, 2016

10. Whether there are other matters conducive to determination of the action that the parties agree should be brought to the attention of the Court prior to entering a Scheduling Order.

No.

DATED this 27th day of August, 2015.

Atkin Law Offices, P.C.

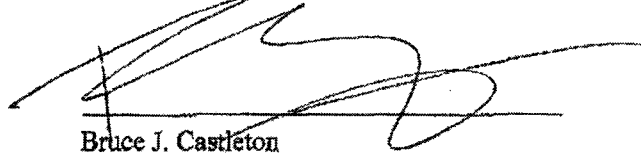


Blake S. Atkin
Attorneys for the Plaintiffs

Preferred method of notification:

Email – jenn@atkinlawoffices.net

Naylor & Hales, P.C.



Bruce J. Castleton
Attorneys for the Defendants

Preferred method of notification:

Email: bjc@naylorhales.com and dlr@naylorhales.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of August, 2015, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Bruce J. Castleton
Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email: bjc@naylorhales.com;
tdw@naylorhales.com

Franklin County Court
39 West Oneida
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U.S. Mail
 Fax: (208) 852-2926
 Delivered in-person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
paulcjefferies@gmail.com

U.S. Mail
 Fax: (208) 547-2147

Jennifer Mariscal

FILED

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

FRANKLIN COUNTY CLERK

lh
DEPUTY

VAL D. WESTOVER AND LAREE H. WESTOVER,

Plaintiffs,

VS

JASE D. CUNDICK, in his individual capacity and in his official capacity as FRANKLIN COUNTY ASSESSOR, JOHN DOES 1 and 2

Defendants.

Case No: CV-2015-312

SCHEDULING ORDER, NOTICE OF TRIAL SETTING AND INTIAL PRETRIAL ORDER

Pursuant to I.R.C.P. 16 and 40, IT IS HEREBY ORDERED:

- 1. This matter is set for **TRIAL, as follows:**
 - (A). **PRIMARY SETTING:** July 19-21, 2016 at 9:00 a.m.
 - (B). **ALTERNATIVE SETTING:** October 17-19, 2016 at 9:00 a.m.

All deadlines listed below shall apply to the trial setting listed in line (A) above.

2. **TRIAL:** This case is set for a **JURY TRIAL** as set forth above. The trial will be conducted in the District Courtroom, Franklin County, Preston, Idaho. A total of three (3) days have been reserved. On the first day of trial, counsel shall report to the Court's chambers at 8:30 a.m. for a brief status conference. Unless otherwise ordered, other than the first and last day of trial, proceedings will convene at 9:00 a.m. each morning, and adjourn at approximately 3:00 p.m. each afternoon. Two twenty (20) minute / brief recesses will be taken at approximately 11:00 a.m. and 1:00 p.m.

3. Pursuant to I.R.C.P. 16(e), in lieu of a pre-trial conference, trial counsel for the parties (or the parties if they are self-represented) are **ORDERED** to meet and/or confer for the purpose of preparing a joint Pre-Trial Stipulation, which shall be submitted to the Court at least twenty-one (21) days prior to Trial, and shall contain or include:

(A). A statement that all exhibits to be offered at trial have been provided to all other parties and attaching an Exhibit List of all such exhibits. The Exhibit List shall indicate: (1) by whom the exhibit is being offered, (2) a brief description of the exhibit, (3) whether the parties have stipulated to its admission, and if not, (4) the legal grounds for objection. If any exhibit includes a summary of other documents, such as medical expense records, to be offered pursuant to I.R.E. 1006, the summary shall be attached to the Stipulation.

(B). A statement whether depositions or any discovery responses will be offered in lieu of live testimony, and a list of what will actually be offered, the manner in which such evidence will be presented, and the legal grounds for any objection to any such offer.

(C). A list of the names and addresses of all witnesses which each party intends to call to testify at trial, including anticipated rebuttal or impeachment witnesses. Expert witnesses shall be identified as such. The Stipulation should also identify whether any witnesses' testimony will be objected to in its entirety and the legal grounds therefore.

(D). A brief non-argumentative summary of the factual nature of the case. The purpose of the summary is to provide an overview of the case for the jury and is to be included in pre-proof instructions to the jury, unless found inappropriate by the Court.

(E). A statement counsel have, in good faith, discussed settlement unsuccessfully and/or completed mediation unsuccessfully, if mediation was ordered by the Court.

(F). A statement that all pre-trial discovery procedures under I.R.C.P. 26 to 37 have been complied with and all discovery responses supplemented as required by the rules to reflect facts known to the date of the Stipulation.

(G). A statement of all issues of fact and law which remain to be litigated, listing which party has the burden of proof as to each issue.

(H). A list of any stipulated admissions of fact, which will avoid unnecessary proof.

(I). A list of any orders requested by the parties which will expedite the trial.

(J). A statement as to whether counsel require more than 30 minutes per party for voir dire or opening statement and, if so, an explanation of the reason more time is needed.

These submissions will be deemed by the Court to constitute the final pre-trial conference required by IRCP 16(b). However, if either party wishes a more formal pre-trial conference, the same should be request in writing at least 60 days prior to trial and one will be scheduled.

4. **PRE-TRIAL MOTIONS:** All motions to join parties or amend the pleadings (except motions pertaining to punitive damages under I.C. §6-1604) must be filed within sixty

(60) days of this Scheduling Order, Notice of Trial and Initial Pretrial Order. All motions for summary judgment and motions to add claims for punitive damages pursuant to I.C. §6-1604 must be filed and served so as to be heard not later than ninety (90) days before trial. All other non-dispositive pre-trial motions (including, but not limited to motions *in limine* or motions which seek to challenge the admissibility or foundation of expert testimony) must be filed and scheduled for hearing not less than thirty (30) days before trial. Exceptions will be granted infrequently, and only when justice so requires.

5. **MOTIONS FOR SUMMARY JUDGMENT:** All motions for summary judgment must be accompanied by a memorandum which includes a concise statement of each material fact upon which the moving party claims there is no genuine issue, and which shall include a specific reference to that portion of the record at or by which such fact is proven or established. Any party opposing a motion for summary judgment shall, not later than fourteen (14) days prior to hearing, serve and file any affidavits and opposing brief(s). The opposing brief shall identify the specific factual matters as to which the non-moving party contends there are genuine issues requiring denial of the motion, including a specific reference to the portion of the record which supports the claim that a genuine issue of fact exists. In ruling upon any summary judgment motion, the Court may assume that the facts as claimed by the moving party are conceded to exist without dispute except and to the extent the non-moving party shall have controverted them. Any reply brief must be lodged at least seven (7) days prior to hearing. Further, any objection to the admissibility of evidence must be in writing and shall be part of the response to the motion for summary judgment or in reply to the response in opposition to summary judgment. The failure to object in writing to the admissibility of evidence in support of or in response to summary judgment shall constitute a waiver as to any objection to the admissibility of evidence at the time of the hearing on summary judgment. Oral objections to the admissibility of evidence at the time of hearing on summary judgment will not be considered by the court.

6. **SCHEDULING AND HEARINGS.** The Court holds its regular civil law and motion calendar the second and fourth Thursday of each month. Absent an order shortening time, all motions must be filed and served at least fourteen (14) days prior to hearing. A “judge’s copy” of any memoranda or affidavits should be provided for use by the court. Said “judge’s copy” shall be sent to the court at its chambers in Soda Springs, Idaho. All such documents shall be

clearly marked as "JUDGE'S COPY." As a matter of courtesy, counsel are expected to contact the Court's Deputy Clerk, Linda Hampton at (208) 852-0877 to schedule hearings, and to confirm the availability of opposing counsel for proposed hearing dates. As an accommodation to out-of-town counsel and parties, hearings on any pretrial motion (except motions for summary judgment or hearings at which testimony is to be offered) may be conducted by telephone conference call pursuant to I.R.C.P. 7(b)(4), in the discretion of the court. **The Court will allow attorney participation by telephone on all non-dispositive proceedings. Such proceedings shall be by way of registering with CourtCall at 1-888-882-6878 at least 24 hours prior to hearing OR with prior Court approval of a conference call system approved 48 hours in advance.**

7. **DISCOVERY AND DISCOVERY DISPUTES:** The Court will not entertain any discovery motion unless accompanied by a written certification signed by counsel, which confirms that a reasonable effort has been made to voluntarily resolve the dispute with opposing counsel. A party's obligation to fully and timely respond to discovery requests is distinct from any obligation imposed by this Order, and no party may rely upon this Order or any deadline it imposes as justification for failing to timely respond to discovery requests or to supplement prior responses.

8. **DISCOVERY CUT-OFFS:** Absent a stipulation to the contrary, all discovery shall be propounded and served such that responses are due no later than thirty (30) days before trial. Any supplemental responses a party is required to make pursuant to I.R.C.P. 26(e) or the terms of an earlier discovery request shall also be served at least thirty (30) days before trial. Any supplementation of discovery required by the rule shall be made in a timely manner.

9. **WITNESS DISCLOSURES:** Each party shall disclose the existence and identity of intended or potential expert or lay witnesses to the extent required by interrogatories or other discovery requests propounded by another party. **There is no independent duty to disclose expert or lay witnesses except as required to adequately respond to discovery requests or supplement prior responses.** If discovery requests seeking disclosure of expert witnesses and the information required to be disclosed pursuant to I.R.C.P. 26(b)(4)(A)(1)(i) and I.R.C.P. 26(B)(4)(A)(1)(ii) are propounded, a plaintiff upon whom such requests are served shall, in good faith, disclose the existence and identity of potential or intended expert witnesses, including the disclosures required by I.R.C.P. 26(b)(4)(A)(1)(i) and I.R.C.P. 26(b)(4)(A)(1)(ii) at the earliest

opportunity, and in no event later than one hundred-fifty (150) days before trial. A defendant upon whom such requests are served shall, in good faith, identify any potential or intended expert witnesses, including the disclosures required by I.R.C.P. 26(b)(4)(A)(1)(i) and I.R.C.P. 26(b)(4)(A)(1)(ii) at the earliest opportunity, and in no event later than ninety (90) days before trial.

Any party upon whom discovery is served who intends or reserves the right to call any expert witness in rebuttal or surrebuttal shall, in good faith, identify such experts, including the disclosures required by I.R.C.P. 26(b)(4)(A)(i) and I.R.C.P. 26(b)(4)(A)(ii) at the earliest opportunity, and in no event later than sixty (60) days before trial. Any party upon whom discovery requests are served seeking disclosure of lay witnesses shall, in good faith, disclose the identity of all such witnesses at the earliest opportunity, and in no event later than sixty (60) days before trial. Absent a showing of good cause and a lack of unfair prejudice to any other party, any witness who has not been timely disclosed will not be permitted to testify at trial.

10. **EXHIBITS AND EXHIBIT LISTS:** When and to the extent required to respond to interrogatories, requests for production or other discovery requests propounded by another party, a party must identify and disclose any documentary, tangible or other exhibits that party intends or reserves the right to offer at trial. Absent a showing of good cause and a lack of unfair prejudice to all other parties, any exhibit which has not been timely disclosed will be excluded. Without regard to whether discovery concerning a party's exhibits has been propounded, not less than seven (7) days prior to trial, each party shall: (A) lodge with the Clerk a completed exhibit list in the form attached to this order (Exh. 1 attached) together with one complete, duplicate marked set of that party's proposed exhibits for the Judge's use during trial; and (B) deliver to counsel for each other party a copy of the completed exhibit list and duplicate copy of that party's marked exhibits. The exhibit list and duplicate copies need not include exhibits which will be offered solely for the purpose of impeachment. Unless otherwise ordered, the plaintiff shall identify exhibits beginning with number "101," and the defendant shall utilize exhibits beginning with number "201."

11. **JURY INSTRUCTIONS:** Jury instructions and verdict forms requested by a party shall be prepared in conformity with I.R.C.P. 51(a), and shall be filed with the Clerk (with copies to Chambers in Soda Springs, Idaho) at least seven (7) days before trial. Requested instructions not timely submitted may not be included in the court's preliminary or final charge.

Parties may submit additional or supplemental instructions to address unforeseen issues or disputes arising during trial.

12. **TRIAL BRIEFS:** The Court encourages (but does not require) the submission of trial briefs which address important substantive or evidentiary issues each party expects to arise during trial. Any trial briefs shall be prepared, exchanged between the parties, and lodged with the Clerk (with copies to Chambers in Soda Springs, Idaho) at least ten (10) days prior to trial.

13. **REQUEST TO VACATE TRIAL SETTING:** Any party requesting *or stipulating* to vacate a trial setting must submit a specific written statement concerning the reasons for the request, and must certify, in writing, that the request or stipulation has been discussed with the parties represented by counsel. An order granting a request to vacate or continue a trial setting may be conditioned upon terms (including orders that the requesting party or attorney reimburse other parties or their attorneys for attorney's fees incurred for preparation which must be repeated or expenses advanced in anticipation of the trial setting which cannot be avoided or recovered). An order vacating or continuing a trial setting shall not serve to alter the deadlines set forth in this order, and unless otherwise stipulated or ordered, the specific calendar dates associated with any deadlines shall be adjusted in reference to the new or amended trial date.

14. **LODGING AT RESIDENT CHAMBERS: "All" documents filed shall include the Court on the Certificate of Mailing, with courtesy copies mailed or faxed (but not both) to the Court's chambers in Soda Springs, Idaho. Address: 159 South Main, Soda Springs, ID 83276 Fax # (208) 547-2147.**

15. **SANCTIONS FOR NON-COMPLIANCE:** A failure to comply with this order or the deadlines it imposes in a timely manner subject a non-compliant party and/or counsel to an award of sanctions pursuant to I.R.C.P. 16(i) and/or other applicable rules, statutes or case precedent.

16. All meetings and/or hearings with the Court shall be scheduled in advance with the Court's Clerk, Linda Hampton, by calling 852-0877. No hearing shall be noticed without contacting the Clerk.

Notice is hereby given, pursuant to I.R.C.P. 40(d)(1)(G), that an alternate judge may be assigned to preside over the trial of this case, if the currently presiding judge is unavailable. The list of potential alternative judges is: 1) Honorable Stephen S. Dunn; 2) Honorable David C. Nye;

3) Honorable Robert C. Naftz; 4) Honorable William H. Woodland; 5) Honorable Richard T. St. Clair; 6) Honorable Jon J. Shindurling.

Dated this 11th day of September, 2015.



MITCHELL W. BROWN
District Judge

CERTIFICATE OF MAILING/SERVICE

The undersigned certifies that on the 11th day of September, 2015, she caused a true and correct copy of the foregoing SCHEDULING ORDER, NOTICE OF TRIAL, and SETTING AND INITIAL PRETRIAL ORDER to be served upon the following persons in the following manner:

Attorney(s)/Person(s):

Blake S. Atkin
Counsel for Plaintiffs

Bruce J. Castleton
Counsel for Defendants

Method of Service:

Email: jenn@atkinlawoffices.net

Email: bjc@naylorhales.com and
dlr@naylorhales.com

SHAUNA T. GEDDES, Clerk

By: Linda Hampton, Deputy Clerk

EXHIBIT LIST

MITCHELL W. BROWN, DISTRICT JUDGE

CASE NO. : CV-2015-312

Linda Hampton, Deputy Clerk

Rodney M. Felshaw, Court Reporter

DATE: _____

CASE: Westover etal vs. Jase D. Cundick

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT
101 or 201						

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FRANKLIN COUNTY CLERK

DEPUTY

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: bjc@naylorhales.com; tdw@naylorhales.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER and
LaREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No. CV-2015-312

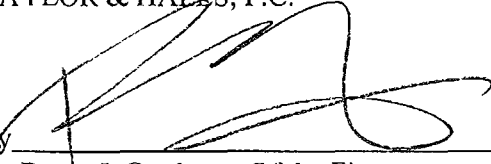
DEFENDANT'S MOTION TO DISMISS

Defendant Jase D. Cundick, Franklin County Assessor, by and through his attorneys of record, Naylor & Hales, P.C. hereby files his Motion to Dismiss. A memorandum in support of this motion will be filed within fourteen days pursuant to Rule 7(b)(3) of the Idaho Rules of Civil Procedure.

DEFENDANT'S MOTION TO DISMISS - 1.

DATED this 14th day of September, 2015.

NAYLOR & HALES, P.C.

By 
Bruce J. Castleton, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

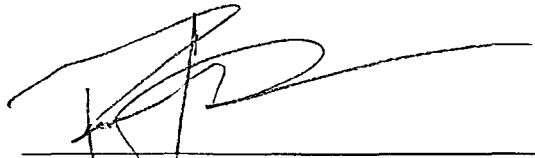
I HEREBY CERTIFY that on the 14th day of September, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

___ U.S. Mail
___ Federal Express
 Fax: 1-801-533-0380
___ Email: batkin@atkinlawoffices.net

Hon. Mitchell Brown's Chambers
159 South Main
Soda Springs, ID 83276
Courtesy Copy

___ U.S. Mail
___ Federal Express
 Fax: 1-208-547-2147


Bruce J. Castleton

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FRANKLIN COUNTY CLERK

DEPUTY

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: bjc@naylorhales.com; tdw@naylorhales.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
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VAL D. WESTOVER and
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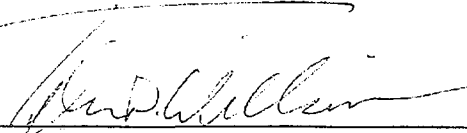
**NOTICE OF SERVICE RE:
DEFENDANT'S ANSWERS TO
PLAINTIFF'S FIRST SET OF
DISCOVERY REQUESTS**

Defendant, by and through undersigned counsel, pursuant to Rules 33(a)(5), 34(d), and 36(c)(2) of the Idaho Rules of Civil Procedure, hereby gives notice to all parties and counsel of record that Defendant's Answers to Plaintiff's First Set of Discovery Requests were served upon Plaintiff's counsel.

NOTICE OF SERVICE - 1.

DATED this 24th day of September, 2015.

NAYLOR & HALES, P.C.

By 
Tyler D. Williams, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

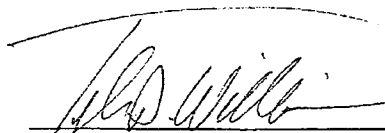
I HEREBY CERTIFY that on the 24th day of September, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

- U.S. Mail
- Federal Express
- Fax: 1-801-533-0380
- Email: batkin@atkinlawoffices.net

Hon. Mitchell Brown's Chambers
159 South Main
Soda Springs, ID 83276
Courtesy Copy


- U.S. Mail
- Federal Express
- Fax: 1-208-547-2147


Tyler D. Williams

9534_03 NOS, Def's Answers to PIP's Discovery.wpd

NOTICE OF SERVICE - 2.

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: bjc@naylorhales.com; tdw@naylorhales.com

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FRANKLIN COUNTY CLERK

DEPUTY

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER and
LaREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No. CV-2015-312

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS**

Defendant Jase D. Cundick, Franklin County Assessor, by and through his attorneys of record, Naylor & Hales, P.C., submits this Memorandum in Support of Motion to Dismiss. As shown below, Plaintiffs Val and LaRee Westover's Amended Complaint must be dismissed in its entirety under Rule 12(b)(1) of the Idaho Rules of Civil Procedure because they lack standing to pursue their claims. In addition, the Westover's petition for a writ of mandate or prohibition must

**DEFENDANT'S MEMORANDUM IN SUPPORT OF PARTIAL
MOTION TO DISMISS - 1.**

be dismissed on the separate grounds that their Amended Complaint fails to show that they are entitled to such relief under Rule 12(b)(6).

I. INTRODUCTION

Plaintiffs Val and LaRee Westover's (the Westovers) Amended Complaint alleges that they own real property in Franklin County, Idaho, that was conveyed to them by Val Westover's parents in a "Real Estate Sales Contract" and a memorandum of that contract was filed with the Franklin County Recorder on November 15, 2007. (Amended Complaint, ¶¶ 7-10.) In 2015, the Westovers entered into an underground right-of-way easement contract with Rocky Mountain Power, which was recorded with Franklin County on April 20, 2015. (*Id.*, ¶¶ 12-13.) They complain, however, that in a letter dated May 29, 2015, Franklin County Assessor Jase Cundick "declared that Val and LaRee Westover were not the owners of the property described in the easement grant." (*Id.*, ¶ 14.) The Westovers allege that, as a result of that letter, Rocky Mountain Power has threatened to cut off power, remove its equipment, and declare them in breach of contract. (*Id.*, ¶ 15.) There is no allegation that Rocky Mountain Power has taken any steps regarding its threats.

The Westovers' Amended Complaint alleges three causes of action for slander of title, writs of mandate and prohibition, and interference with a contract or prospective business advantage. (*Id.*, ¶¶ 26-44.) As shown below, all of these claims must be dismissed because the Westovers do not have standing to bring these claims. More so, the Westovers have failed to adequately show in their Amended Complaint that they are entitled to any special writ. For these reasons, dismissal is appropriate.

**DEFENDANT'S MEMORANDUM IN SUPPORT OF PARTIAL
MOTION TO DISMISS - 2.**

II. ARGUMENT

A. All of the Westovers' Claims Must Be Dismissed Under Rule 12(b)(1) Because They Do Not Have Standing to Bring Any Claim

Rule 12(b)(1) of the Idaho Rules of Civil Procedure provides the mechanism to dismiss a claim over which the court lacks subject matter jurisdiction. Subject matter jurisdiction is mandatory in all cases and any judgment issued where the court lacks it is void. *Troupis v. Summer*, 148 Idaho 77, 79 (2009). If a party does not have standing to bring a claim then the court lacks subject matter jurisdiction and the claim must be dismissed. *Bagley v. Thomason*, 149 Idaho 806, 807-808 (2010). With a 12(b)(1) motion the court may consider matters outside of the pleadings without converting it to a motion for summary judgment. *Owsley v. Idaho Industrial Com'n*, 141 Idaho 129, 133 (2004).

The Idaho Supreme Court has very recently reiterated the elements of standing:

[T]o establish standing a plaintiff must show (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a like[lihood] that the injury will be redressed by a favorable decision. An injury sufficient to satisfy the requirements of an injury in fact must be concrete and particularized and actual or imminent, not conjectural or hypothetical.

Coeur D'Alene Tribe v. Denney, 2015 WL 5286169 (Sept. 10, 2015) (not yet published) (quoting *State v. Philip Morris, Inc.*, 354 P.3d 187, 194 (2015)). The "injury in fact" element "requires a showing of a distinct palpable injury . . . that is easily perceptible, manifest, or readily visible." *Id.* (internal quotations and citations omitted). If the injury has not yet happened, it must be imminent. *Id.*

Additionally, "[a]s with all questions of subject matter jurisdiction except mootness, standing is determined as of the date of the filing of the complaint The party invoking the jurisdiction of the court cannot rely on events that unfolded after the filing of the complaint to establish its

**DEFENDANT'S MEMORANDUM IN SUPPORT OF PARTIAL
MOTION TO DISMISS - 3.**

standing." *Wilbur v. Locke*, 423 F.3d 1101, 1107 (9th Cir. 2005) *abrogated on other grounds by Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010) (internal quotations omitted).¹

There is no indication whatsoever that the Westovers have suffered any harm at all arising from Franklin County Assessor's May 29, 2015 letter. At most, they only contend that after the letter was sent out "Rocky Mountain Power has threatened to cut off power, remove its equipment, and declare Val and LaRee Westover in breach of contract." (Amended Complaint, ¶ 15.) This alleged threat, however is insufficient to constitute a concrete, particularized and actual or imminent harm. It is merely an old threat. Significantly, the Assessor's letter was dated May 29, 2015. The Amended Complaint is dated August 20, 2015, approximately three months later. Yet, the Amended Complaint contains no information about any actual or imminent harm. Since there is no harm shown, there can be no causal connection between the alleged misconduct and harm. Likewise, there is no likelihood that an injury could be redressed because there is no harm to correct.

The Westovers simply cannot maintain a lawsuit based on an alleged threat of harm where there is no indication whatsoever that such harm actually occurred or will occur imminently. Accordingly, the Amended Complaint must be dismissed in its entirety.

B. The Petition for Writ of Mandate or Prohibition Must Be Dismissed Under Rule 12(b)(6) Because the Westovers Fail to Adequately Show They Are Entitled to Any Relief

Even assuming, for the sake of argument only, that the Westovers have standing, Rule 12(b)(6) provides an alternative basis to dismiss the petition for writ of mandate or prohibition. This rule tests the sufficiency of a complaint and provides that a case must be dismissed if the complaint

¹Idaho courts look to federal courts for guidance in resolving standing issues. *Koch v. Canyon Cnty.*, 145 Idaho 158, 161 (2008).

fails to state a claim for relief. I.R.C.P. 12(b)(6). The court must accept as true all non-conclusory factual allegations. *Young v. City of Ketchum*, 137 Idaho 102, 104 (2002). However, a claim must be dismissed if it could not provide a basis for relief even when accepting the allegations as true. *Id.*

The Westovers' second claim for relief seeks a writ of mandate and a writ of prohibition. (Amended Complaint, ¶¶ 33-38.) Specifically, they seek an order mandating the Franklin County assessor to retract his May 29, 2015 letter as well as an order prohibiting the assessor "from exceeding his authority in making property ownership determinations for purposes beyond those required for taxes and prohibiting him from interfering with real estate transactions in Franklin County[.]" (Amended Complaint, Prayer for Relief, ¶¶ 1-2.) There is no basis here to issue either a writ of mandate or a writ of prohibition.

A writ of mandate is a special writ used in rare circumstances, to be used sparingly, "to compel the performance of an act which the law especially enjoins as a duty resulting from an office. . . ." I.C. § 7-302; *Cole v. U.S. Dist. Court for Dist. of Idaho*, 366 F.3d 813, 818 (9th Cir. 2004). The writ is used where one is "seeking to require a public officer to carry out a clearly mandated, non-discretionary ministerial act." *Coeur D'Alene Tribe*, 2015 WL 5286169 at 14.) Further, a writ of mandate is not a tool "to control matters of discretion." *Total Success Invest., LLC v. Ada Cnty Highway Dist.*, 148 Idaho 688, 691 (2010). Rather, it is only appropriate "if the officer against whom the writ is brought has a clear legal duty to perform and if the desired act sought to be compelled is ministerial or executive nature, and does not require the exercise of discretion." *Id.* Significantly, a writ must not be issued where there is "a plain, speedy and adequate remedy in the ordinary course of law." I.C. § 7-303; *Total Success Investments, LLC*, 148 Idaho at 692.

**DEFENDANT'S MEMORANDUM IN SUPPORT OF PARTIAL
MOTION TO DISMISS - 5.**

The counterpart to a writ of mandate is a writ of prohibition, which may be utilized to "arrest[] the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." I.C. § 7-401; *State v. Dist. Ct. of Fourth Jud. Dist.*, 143 Idaho 695, 698 (2007). In order to obtain a writ of prohibition the petitioner must show that the person against whom the writ is being sought is presently acting without authority or in excessive of authority. Just like a writ of mandate, a writ of prohibition is an extraordinary remedy that should only be ordered in extraordinary circumstances. And, as with a writ of mandate, a writ of prohibition cannot be issued where there is another remedy available. *State v. Idaho St. Bd. of Land Com'rs*, 150 Idaho 547, 553 (2010).

The Westovers are not entitled to either a writ of mandate or a writ of prohibition because the county assessor has not violated any clear legal right, has no clear legal duty to retract his letter, and there are alternative remedies available to the Westovers.

The county assessor has no clear mandate or legal duty to retract his May 29, 2015 letter. As the letter makes clear, it merely expresses the assessor's concern that the easement recorded on April 20, 2015, was not owned by the named grantor. There is nothing in the Title 63 governing revenue and taxation, or the related administrative rules prohibiting such a letter. Indeed, the statute implicitly contemplates that such a letter is appropriate for the assessor to determine who owns land for purposes of appraisal, assessment, taxation, exemptions to taxation, and liens. It strains credulity to suggest that a county assessor has no authority to determine who owns property where the assessor is tasked with such matters.

**DEFENDANT'S MEMORANDUM IN SUPPORT OF PARTIAL
MOTION TO DISMISS - 6.**

Even the citation provided in the Westovers' Amended Complaint supports this argument. (See Amended Complaint, ¶ 20.) Idaho Code § 63-307² specifically provides that the assessor "shall ascertain current ownership of land from documents recorded in the county recorder's office and/or from evidence of ownership furnished to the assessor which is admissible at trial in a civil action pursuant to section 54-103, Idaho Code." I.C. § 63-307(1). Nothing in this language prohibits an assessor from determining who owns land; in fact, it encourages doing so. This makes sense, as correct ownership is necessary for taxation purposes. *See generally* I.C. § 63-101 *et seq.* (statute governing revenue and taxation issues) and Idaho Admin. Code § 35.01.01 (Property Tax Administrative Rules).

The Westovers contend in their Amended Complaint that the assessor is required to change ownership on its records "whenever presented with a deed, title, or contract." (Amended Complaint, ¶ 20.) The statute they cite does not say no such thing. Rather, Idaho Code § 63-307(2)³ states:

Whenever any person is the owner of, or has contracted to purchase, either an undivided or defined portion of any real property assessed as a whole, such owner or purchaser, upon producing his deed, contract or other muniment of title, to the assessor at any time before the assessor has completed the assessment for that year, may have such assessment changed and corrected accordingly.

I.C. § 63-307(2) (emphasis added). Nothing in this language mandates that an assessor must automatically change ownership whenever presented with a deed, title or contract. In fact, the use of the word "may" clearly provides for discretion. And when read with the rest of the

²Paragraph 20 of the Amended Complaint incorrectly cites to "§ 63-703(1)."

³Paragraph 20 of the Amended Complaint incorrectly cites to "§ 63-703(2)."

statute and common sense, it makes sense that such discretion may include the assessor determining ownership.

Additionally, the Westovers have other remedies available to them which forecloses their ability to seek either writ. Notably, the burden is on the petitioner who is seeking a special writ to show that there are no other means available to obtain relief. *Cole*, 366 F.3d at 818. At the very least it is apparent the Westovers have other remedies available here because they are currently actually seeking to avail themselves of those remedies by suing the defendant for slander of title and breach of contract or prospective economic advantage. By adding these claims in their complaint the Westovers concede that they have other remedies available to them and therefore do not have a valid basis to seek any special writ.

The Westovers also could have potentially taken advantage of administrative appeals then sought judicial review or sought equitable remedies, including potentially seeking a declaratory judgment, injunctive relief or some other relief. It is their burden to show that none of these other options are available to them. In any event, the fact that they have also sued the assessor based on two other claims shows they have other remedies.

III. CONCLUSION

For the foregoing reasons the Westovers' Amended Complaint must be dismissed

DATED this 28th day of September, 2015.

NAYLOR & HALES, P.C.

By 

Bruce J. Castleton, Of the Firm
Attorneys for Defendant

**DEFENDANT'S MEMORANDUM IN SUPPORT OF PARTIAL
MOTION TO DISMISS - 8.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of September, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

___ U.S. Mail
___ Federal Express
 Fax: 1-801-533-0380
___ Email: batkin@atkinlawoffices.net

Hon. Mitchell Brown's Chambers
159 South Main
Soda Springs, ID 83276
Courtesy Copy

___ U.S. Mail
___ Federal Express
 Fax: 1-208-547-2147



Bruce J. Castleton

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**DEFENDANT'S MEMORANDUM IN SUPPORT OF PARTIAL
MOTION TO DISMISS - 9.**

FILED

15 SEP 28 PM 2:46

FRANKLIN COUNTY CLERK



DEPUTY

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: bjc@naylorhales.com; tdw@naylorhales.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER and
LaREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No. CV-2015-312

NOTICE OF HEARING

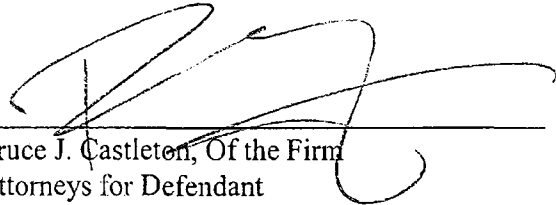
Judge: Hon. Mitchell W. Brown
Date/Time: 10/22/15; 2:00 p.m.
Location: Franklin County Courthouse

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Naylor & Hales, P.C., attorneys for Defendant, will bring on for hearing his **Motion for Dismissal** in the above-entitled matter on **October 22, 2015, at 2:00 p.m.**, before the Honorable Mitchell W. Brown in the above-entitled Courtroom, at Boise, Idaho, or as soon thereafter as counsel may be heard.

NOTICE OF HEARING -1.

DATED this 28th day of September, 2015.

NAYLOR & HALES, P.C.

By 
Bruce J. Castleton, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

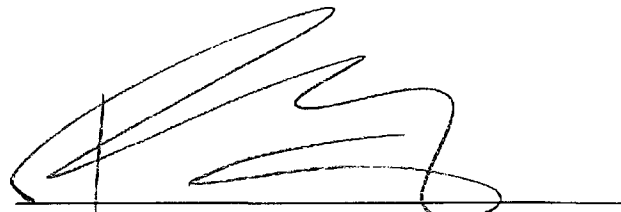
I HEREBY CERTIFY that on the 28th day of September, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

U.S. Mail
 Federal Express
 Fax: 1-801-533-0380
 Email: batkin@atkinlawoffices.net

Hon. Mitchell Brown's Chambers
159 South Main
Soda Springs, ID 83276
Courtesy Copy

U.S. Mail
 Federal Express
 Fax: 1-208-547-2147


Bruce J. Castleton

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

FILED

15 SEP 30 PM 4:54

FRANKLIN COUNTY CLERK

[Signature]
DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and)
LaRee H. Westover,)

Plaintiffs)

NOTICE OF DEPOSITION

v.)

Case No. CV-2015-312

Jase D. Cundick, in his individual capacity)
And in his official capacity as)
Franklin County Assessor,)
John Does 1 and 2,)

Judge Mitchell Brown

Defendant.)

Plaintiff hereby gives notice of the Deposition of Defendants **Jase D. Cundick and Denise E. Ralphs** to be conducted and recorded before a certified court reporter at the time and place indicated below:

Date: October 16, 2015

Time: Denise Ralphs at 9:00 a.m.

Jase Cundick at 1:00 p.m.

Place: County Commissioners Room
Franklin County Courthouse
51 West Oneida
Preston, ID 83263

Dated this 30th day of September, 2015.



Blake S. Atkin
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of September, 2015, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing Notice of Deposition upon:

Bruce J. Castleton
Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email: bjc@naylorhales.com;
tdw@naylorhales.com

Franklin County Court
39 West Oneida
Preston, ID 83263

U.S. Mail
 Fax: (208) 852-2926
 Delivered in-person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
paulcjefferies@gmail.com

U.S. Mail
 Fax: (208) 547-2147

Jennifer Mariscal

FILED

15 OCT -2 AM 11:43

FRANKLIN COUNTY CLERK

DEPUTY

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: bjc@naylorhales.com; tdw@naylorhales.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER and
LaREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No. CV-2015-312

AMENDED NOTICE OF HEARING

Judge: Hon. Mitchell W. Brown
Date/Time: 11/12/15; 2:00 p.m.
Location: Franklin County Courthouse

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that Naylor & Hales, P.C., attorneys for Defendant, will bring on for hearing **Defendant's Motion to Dismiss** in the above-entitled matter on **November 12, 2015, at 2:00 p.m.**, before the Honorable Mitchell W. Brown in the above-entitled Courtroom, in Preston, Idaho or as soon thereafter as counsel may be heard.

AMENDED NOTICE OF HEARING -1.

DATED this 2nd day of October, 2015.

~~NAYLOR & HALES, P.C.~~

By 

Bruce J. Castleton, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of October, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

- U.S. Mail
- Federal Express
- Fax: 1-801-533-0380
- Email: batkin@atkinlawoffices.net

Hon. Mitchell Brown's Chambers
159 South Main
Soda Springs, ID 83276
Courtesy Copy

- U.S. Mail
- Federal Express
- Fax: 1-208-547-2147


Bruce J. Castleton

9534_06 Amended Notice of Hearing re MTD.wpd

AMENDED NOTICE OF HEARING -2.

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

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15 OCT -8 PM 2:51
FRANKLIN COUNTY CLERK
DEPUTY

Attorney for Plaintiffs

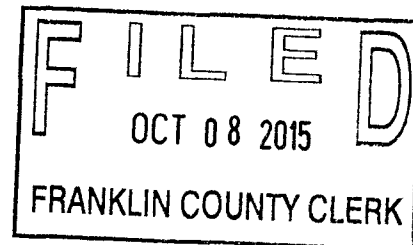
**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and)	
LaRee H. Westover,)	
Plaintiffs	)	NOTICE OF DEPOSITION
)	
v.	)	Case No. CV-2015-312
)	
Jase D. Cundick, in his individual capacity)	
And in his official capacity as)	
Franklin County Assessor,)	
John Does 1 and 2,	)	Judge Mitchell Brown
)	
Defendant.)	

Plaintiff hereby gives notice of the Deposition of Defendants **Jase D. Cundick and Denise E. Ralphs** to be conducted and recorded before a certified court reporter at the time and place indicated below:

Date: November 13, 2015
Time: Denise Ralphs at 9:00 a.m.
Jase Cundick at 1:00 p.m.
Place: Franklin County Courthouse
Commissioners Room
51 West Oneida
Preston, ID 83263

Atkin Law Offices, P.C.
 Blake S. Atkin ISB# 6903
 7579 North Westside Highway
 Clifton, Idaho 83228
 Telephone: (208) 747-3414
 Telephone: (801) 533-0300
 Facsimile: (801) 533-0380



Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
 FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
 LaRee H. Westover,

Plaintiffs

SUBPOENA

v.

Case No. CV-2015-312

Jase D. Cundick, in his individual capacity
 And in his official capacity as
 Franklin County Assessor,
 John Does 1 and 2,

Defendant.

Judge Mitchell Brown

The State of Idaho to: DENISE E. RALPHS:

YOU ARE COMMANDED:

to appear in the Court at the place, date and time specified below to testify in the above case.

to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below.

to permit inspection of the following premises at the date and time specified below.

PLACE, DATE, AND TIME:

Friday, November 13, 2015, at 9:00 am.

Franklin County Courthouse
Commissioners Room
51 West Oneida
Preston, ID 83263

You are further notified that if you fail to appear at the place and time specified above, or to produce or permit copying or inspection as specified above that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this subpoena.

This Subpoena is issued under Rule 45, I. R. Civ. P.

Dated this 8th day of October, 2015.



Blake S. Atkin
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of October, 2015, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Bruce J. Castleton
Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email: bjc@naylorhales.com;
tdw@naylorhales.com;
skh@naylorhales.com

Franklin County Court
39 West Oneida
Preston, ID 83263

U.S. Mail
 Fax: (208) 852-2926
 Delivered in-person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
paulcjefferies@gmail.com

U.S. Mail
 Fax: (208) 547-2147

Jennifer Mariscal

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

FILED
15 OCT -9 PM 3:06
FRANKLIN COUNTY CLERK
DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
LaRee H. Westover,

Plaintiffs

v.

Jase D. Cundick, in his individual capacity
And in his official capacity as
Franklin County Assessor,
John Does 1 and 2,

Defendant.

NOTICE OF DEPOSITION

Case No. CV-2015-312

Judge Mitchell Brown

Plaintiff hereby gives notice of the Deposition of Defendants **Jase D. Cundick and Denise E. Ralphs** to be conducted and recorded before a certified court reporter at the time and place indicated below:

Date: November 13, 2015

Time: Denise Ralphs at 9:00 a.m.

Jase Cundick at 1:00 p.m.

Place: Franklin County Courthouse
Commissioners Room
51 West Oneida
Preston, ID 83263

Dated this 8th day of October, 2015.



Blake S. Atkin
Attorney for Plaintiffs

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

FILED
15 OCT 13 PM 12:44
FRANKLIN COUNTY CLERK
DEPUTY

Attorney for Plaintiffs

IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO

Val D Westover and
LaRee H. Westover,

Plaintiffs

ACCEPTANCE OF SERVICE

v.

Case No. CV-2015-312

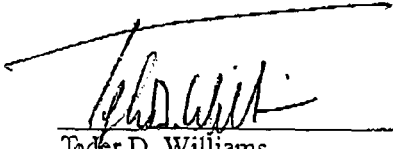
Jase D. Cundick, in his individual capacity
And in his official capacity as
Franklin County Assessor,
John Does 1 and 2,

Defendant.

Judge Mitchell Brown

I hereby accept service of the subpoena on behalf of Denise E. Ralphs for her
deposition on Friday, November 13, 2015.

DATED this 13th day of October, 2015.


Tyler D. Williams
NAYLOR & HALES, P.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of October, 2015, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Bruce J. Castleton
Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email: bjc@naylorhales.com;
tdw@naylorhales.com;
skh@naylorhales.com

Franklin County Court
39 West Oneida
Preston, ID 83263

U.S. Mail
 Fax: (208) 852-2926
 Delivered in-person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
paulcjefferies@gmail.com

U.S. Mail
 Fax: (208) 547-2147

Jennifer Mariscal

Atkin Law Offices, P.C.
 Blake S. Atkin ISB# 6903
 7579 North Westside Highway
 Clifton, Idaho 83228
 Telephone: (208) 747-3414
 Telephone: (801) 533-0300
 Facsimile: (801) 533-0380

FILED
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 FRANKLIN COUNTY CLERK

DS
 DEPUTY

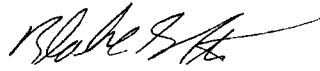
Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
 FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and)	
LaRee H. Westover,)	
Plaintiffs	)	PLAINTIFFS' MOTION FOR
	)	SUMMARY JUDGMENT
)	
v.	)	Case No. CV-2015-312
)	
Jase D. Cundick, in his individual capacity)	
And in his official capacity as)	
Franklin County Assessor,)	
John Does 1 and 2,	)	Judge Mitchell Brown
)	
Defendant.)	

The Franklin County Assessor, in a letter dated May 29, 2015, disparaged plaintiffs' ownership of a parcel of property in Franklin County to Rocky Mountain Power. Plaintiff has repeatedly requested that the Assessor correct that erroneous assertion and has repeatedly pointed out to the county assessor why his assessment about the ownership of the property was wrong. Plaintiff has no adequate remedy for removal of the cloud the assessor has put on the property short of an order from this Court requiring the retraction of that erroneous position by the assessor. The material facts are undisputed and plaintiffs' request for mandamus relief turns on the proper interpretation of documents on file with the Franklin County Recorder. Plaintiffs are entitled to the mandamus relief requested as a matter of law. This motion is supported by the memorandum filed in support hereof.

Dated this 23rd day of October, 2015.



Blake S. Atkin
Attorney for Plaintiffs

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

FILED
15 OCT 23 AM 11:20
FRANKLIN COUNTY CLERK
DG
DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
LaRee H. Westover,

Plaintiffs

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT AND IN RESPONSE TO
MOTION TO DISMISS**

v.

Case No. CV-2015-312

Jase D. Cundick, in his individual capacity
And in his official capacity as
Franklin County Assessor,
John Does 1 and 2,

Defendant.

Judge Mitchell Brown

The Franklin County Assessor incorrectly concluded that plaintiffs did not own property over which they conveyed an easement to Rocky Mountain Power. That easement was part of an agreement plaintiffs entered into with the power company to upgrade power to their tenant. Incredibly, when plaintiffs pointed out the error made by the assessor he refused to simply write a letter correcting his mistake and removing the cloud from plaintiffs' title. Now he continues to stubbornly litigate the issue rather than retracting his disparaging letter. It is not obvious what remedy short of a writ of mandamus compelling the assessor to retract his false statement that the Westovers are not the owners of the property can restore clear title to the property to the Westovers. As to plaintiffs' claims against individual defendants, issues of malice and scope of employment may yet remain. But the facts as they pertain to the request for mandamus or

prohibition relief are not in dispute, only the legal conclusions to be drawn from the documents filed with the Franklin County Recorder is at issue with regard to these claims. This case therefore lends itself to summary disposition on the claims requesting a writ of mandamus or prohibition.

FACTS

1. In November 2007 the parents of Val D Westover entered into a contract whereby they sold the family farm to Val and his wife, LaRee. That contract called for a warranty deed to be recorded upon successful payment of the purchase price over the next few years. A memorandum of that sales contract was recorded with the Franklin County Recorder's office in November 2007. That memorandum was properly acknowledged by all the signers. A true and correct copy of that memorandum is attached hereto as Exhibit A.
2. Thereafter, Val Westover's father, Don Westover, who had already conveyed away his interest in the property as set forth above, made a failed attempt to transfer the farm to a family trust with Val Westover as the Trustee. That filing was rejected by the assessor based on several deficiencies in the document as filed. No attempt was made by anyone to correct those deficiencies.
3. On or about April 2, 2015, Val and Laree Westover, as part of a contract to receive power from Rocky Mountain Power, conveyed an easement to the Power Company and paid \$33,210 for installation of lines and equipment for the purpose of receiving power.
4. On May 29, 2015, the assessor sent a letter to Rocky Mountain Power telling them that the property over which Val and Laree Westover had conveyed an easement to Rocky Mountain Power "is not owned by the Grantor." That letter is attached hereto as Exhibit B.

5. Rocky Mountain Power contacted plaintiff Val Westover and told him that if the matter were not corrected the power company would shut off power and remove its equipment. Mr. Westover assured the power company that he did own the property and he would get the assessor to correct their false statements. Affidavit of Craig Bolton; Affidavit of Val D Westover.
6. Val Westover was told by a power company official that he would hold off on demanding that the service be terminated while Val Westover attempted to get the slander of his ownership of the property corrected. Affidavit of Craig Bolton; Affidavit of Val D Westover.
7. Plaintiff Val D Westover immediately contacted the assessor's office and requested that the error in the letter be corrected. He was told by an employee of the office, Denise Ralphs, that they would not correct the error. Mr. Westover then met with Jase Cundick, the county assessor who again refused to correct the error. Affidavit of Val D Westover.
8. Counsel for the Westovers called the county assessor several times but did not receive a return phone call.
9. Thereafter, counsel for the Westovers sent a letter to the county assessor pointing out why their statement that the property over which the easement was granted "is not owned by the Grantor" was incorrect, and requested that he write a letter to the power company retracting the claims made in the May 29, 2015 letter. A true and correct copy of that letter is attached hereto as Exhibit C. No response to that letter was received from the county assessor.
10. This lawsuit followed.

ARGUMENT

Val and LaRee Westover are and were the owners of the property over which they conveyed an easement to the Power Company. The Assessor's letter disparaging their claim to

be the owners of the property was unnecessary, unauthorized, and disparaging. The stubborn refusal of the Assessor to correct a letter he had no business writing has cost the Westovers substantial amounts of money and continues to damage their reputation in the community for which there needs to be a remedy.

A. Val D and LaRee Westover have owned the property over which they granted the power company an easement since November 2007

A contract to sell property is an effective means of conveying title to real estate. *Simmons v. Simmons*, 11 P.3d 20 (Id. 2000). Once such a contract is executed the buyer becomes the equitable owner of the real estate with full ability to mortgage or convey the property, though the actual warranty deed is not conveyed until years later. *Rush v. Anestos*, 104 Idaho 630, 661 P.2d 1229 (Id. 1983). "an equitable conversion takes place when parties enter into a binding contract for the purchase and sale of realty. The purchaser is deemed the equitable owner thereof, and the seller is the owner of the purchase price." *Id.* at 1233 "[t]he interest of a vendee under a contract to purchase real estate, is an interest in real property that may be transferred, and hence may be mortgaged." *Id.* Upon entering into that binding contract in November 2007, Val and LaRee Westover were the owners of the real estate, could have transferred it, could have mortgaged it, and certainly could grant an easement over a portion of it.

In Idaho, recording is not part of the actual conveyance process. When the grantor delivers a properly executed deed (or in this case a promise that the deed will be delivered upon payment of the purchase price) the conveyance of the real property is effective. However, the act of recording gives constructive notice to all the world of the contract that was recorded. Idaho Code section 55-811. Once the memorandum of contract between Don and Connie Westover and Val and LaRee Westover reciting that a contract for a warranty deed had been entered was filed, all the world was put on notice that the owners of the property were no longer Don and Connie Westover, but Val and LaRee Westover. One suspects that the memorandum of the contract was conveyed to the county assessor, but whether that is the case or not, the assessor, like any other person was effectively put on notice by its recording. *Id.*

The failed attempt by Don Westover to convey the property to a Trust is completely immaterial to any issue in this case. That deed was never accepted by the County Assessor. More importantly, after he conveyed the property to his son, Val Westover as shown by the

memorandum of contract of conveyance recorded in November of 2007, Don Westover simply had nothing more to convey to a trust or otherwise. His failed attempt to convey the property to a family trust is a nullity.

The Assessor was wrong in his assertion to Rocky Mountain Power that the land over which they claimed an easement “is not owned by the Grantor.” And while the Assessor might have claimed confusion over the issue at the time he wrote the disparaging letter, any confusion was cleared up in the letter of counsel to the Assessor, and at that point he had no excuse to continue in whatever erroneous position he held regarding the title to the property. The Assessor is simply without excuse for failing to rectify the problem through a correcting letter to the power company as the Westovers requested him to do.

B. Val and LaRee Westover have standing to complain about and seek an appropriate remedy for the slander of their title to the property in question

The Assessor argues that the Westovers have no standing to seek resolution of the Assessor’s slander of their title to their property. The Assessor is wrong in this assertion. In order to have standing to pursue a matter, a plaintiff must show three elements: (1) an injury in fact (2) a sufficient causal connection between the conduct complained of and the injury and (3) a likelihood that the injury will be redressed by a favorable decision in the action. *Coeur D’Alene Tribe v. Denney*, 2015 WL 5286169 (Sept. 10, 2015); *State v. Philip Morris, Inc.* 354 P. 3d 187,194(2015).

In arguing that Val and LaRee Westover do not have standing to pursue these claims, the Assessor confuses the injury required to confer standing on a plaintiff and the damages which flow from that injury. The Assessor argues that because Rocky Mountain Power has yet to declare its service contract with the Westovers in breach, and has not yet cut off service or removed its equipment from the premises, the Westovers have not been injured. This analysis is flawed. The injury about which the Westovers complain is the damage to their reputation and ownership of the property that occurred when the Assessor uttered the disparaging words that he now refuses to retract, that the property “is not owned by the Grantor.” This is not a conjectural or hypothetical injury that has not yet happened, but may occur in the future. What the Assessor has done and refuses to correct is a palpable *fait accompli* that needs to be and can be rectified by this Court’s mandamus order that the Assessor retract the false statement that he uttered. Until

that occurs the Power Company retains the right to declare the Westover contract in breach.
Affidavit of Craig Bolton.

The injury to the plaintiff was complete when the Assessor wrongfully uttered and published his slanderous statement to the power company that the property over which the Westovers had granted an easement "is not owned by the Grantor." If the Assessor continues in his recalcitrance, does not correct his slanderous statements and Rocky Mountain Power follows through on its threat and declares the contract to be in breach, disconnects the service and removes its equipment, surely the damages the Westovers will seek to recover will grow exponentially. But even if the Power Company never gets around to carrying out its threat, the injury that bestows standing on the Westovers is already complete. Slander of title is not dependent upon a showing of additional damages than those already incurred by the Westovers in this case.

While it is not necessary to the issuance of a writ of mandamus that plaintiffs establish a claim for slander of title, the fact that such a claim can be established rebuts any claim that the Westovers have not been injured and therefore do not have standing to seek mandamus relief to stop the bleeding. There are four essential elements to the cause of action for slander of title: "(1) The uttering and publication of the slanderous words by the defendant; (2) the falsity of the words; (3) malice, and (4) special damages... ." *Rayl . Shull Enterprises, Inc.*, 700 P.2d 567 (Id. 1984). Special damages must be alleged and proven before one can recover for slander of title. But that need not be the type of damages that would occur if Rocky Mountain Power acts on the slander and removes its service and equipment. Rather the attorney fees and costs expended by Westovers in their attempts to remove the slander of title from the property constitutes those special damages required in a slander of title action. *Id.* As noted in Prosser, Torts, § 128, at p. 922: "Likewise it [special damages required as an element of a slander of title claim] would appear obviously to include the expenses of legal proceedings necessary to remove a cloud on the plaintiff's title, or other expenses to counteract the disparagement... ." In Idaho, the attorney fees incurred in counteracting the disparagement are the only special damages that need to be proven. As the court stated in *Rayl, supra*, It seems clear that, but for the slander of title caused by the letter sent by the Assessor, Westovers would not have incurred the attorney fees directly attributable to removal of the disparagement and the cloud from the title of the property. The

court found that the trial court erred in failing to find that the attorney fees incurred battling the slander of title constituted special damages and remanded the case for calculation and award of those attorney fees and to consider whether punitive damages should also be awarded.

Westovers incurred and continue to incur attorney fees trying to get the disparagement removed by the simple expedient of a letter correcting the Assessor's error.

The assessor has stubbornly refused to issue such a letter and has instead insisted on litigating this issue. That conduct has injured the Westovers and confers standing on them to pursue this action.

C. Plaintiffs do not have an adequate remedy at law

Typically when the courts speak of an adequate remedy at law they are talking about injury that can be compensated through damages so that the equitable (and in this case the administrative) powers of the court need not be invoked.

In this case the plaintiffs have alleged that the assessor, in sending a letter to the grantee of an easement for the purpose of supplying power to property, exceeded his proper authority. The assessor is given statutory authority to make determinations of ownership in order to carry out the taxing function. But there is no tax consequence to the grant of an easement. The grantor of the easement continues to own the fee and is taxed. The county does not tax the owner of the easement. There is nothing in the statute that makes the assessor the county's policeman to warn people that their grantor may not own the property purported to be conveyed. The assessor tries to recast his letter into a fishing expedition about who actually owned the property, Assessor's Brief at 6, but a perusal of the letter shows that was not its purpose. The letter does not state that the assessor is attempting to determine who owns the property, but instead flatly pronounces that the property "is not owned by the Grantor." Moreover, given the facts of this case no such letter was necessary. If the Assessor had a genuine concern about the ownership of the property in question. An employee of the Assessor's office who had a hand in the preparation of the disparaging letter is a neighbor of and well acquainted with both the parents of Val Westover and Val Westover. Affidavit of Val Westover. If determining actual ownership were the true motivation for the disparaging letter, a simple phone call would have been a much more effective method to solve the mystery.

Certainly nothing in the statute authorizes the Assessor to issue such a letter when his conclusions in the letter are wrong. Likewise he is not authorized to continue in his stubborn refusal to correct the error when it is pointed out to him before litigation is instituted. The Assessor incorrectly argues that “the county assessor has not violated any clear legal right . . .” As pointed out above, that simply is not true. He has slandered the plaintiff’s claim to ownership of the property in such a fashion as to interfere with the plaintiff’s contract and economic expectations with Rocky Mountain Power, and if he had any doubts when he issued the letter he had no excuse when the true facts were set before him by Mr. Westover and his lawyer.

The Assessor suggests that plaintiffs might seek a declaratory judgment, but that remedy is simply not available to correct the disparagement that has occurred in this case. The Assessor does not suggest who the defendant would be in such a declaratory judgment action, and a candidate for that position is not obvious.

As a general rule, a declaratory judgment can only be rendered in a case where an actual or justiciable controversy exists. Brown v. Oregon State Bar, 293 Or. 446, 648 P.2d 1289 (1982); Kahin v. Lewis, 42 Wash.2d 897, 259 P.2d 420 (1953); Washakie County School District Number One v. Herschler, 606 P.2d 310 (Wyo. 1980). While the elements of an actual or justiciable controversy are not subject to a mechanical standard, the United States Supreme Court aptly summarized the pivotal elements of a justiciable controversy in Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617 (1937).

"A 'controversy' in this sense must be one that is appropriate for judicial determination... . A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot... . The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests... . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts."

300 U.S. at 240-41, 57 S.Ct. at 464 (citations omitted). See also Sanchez v. City of Santa Fe, 82 N.M. 322, 481 P.2d 401 (1971); Cummings Construction Co. v. School District No. 9, 242 Or. 106, 408 P.2d 80 (1965); Brown v. Oregon State Bar, *supra*. We believe this federal standard provides a concise guideline for our analysis, and therefore, we will

apply these criteria in conjunction with pertinent Idaho case law cited *infra*. *Harris v. Cassia County*, 681 P.2d 988 (Id. 1984)

In order to have a justiciable controversy there must be a defendant who has a stake in the outcome that is contrary to the plaintiffs' interest. In suggesting that Plaintiffs could pursue a declaratory judgment action, Defendants fail to suggest who the defendant of such an action could be. There is no controversy between the power company and the plaintiffs that would cause the Power Company to resist such an action. They both entered into a contract for the supply of power connected with an easement for that purpose.

Plaintiffs hope that the county assessor is not claiming any ownership interest in the property over which the easement passes that would make him a proper candidate for defendant in a declaratory judgment action.

There simply is no apparent defendant who could be named in a declaratory judgment action in order to provide the requisite case or controversy requirement.

Even were the assessor a proper party defendant to a declaratory judgment action and the Court pursuant to such an action were to rule that the Westovers did indeed own the property at the time they granted the easement, that would not solve the cloud on their property created by the Assessor's letter to Rocky Mountain Power. The Court would still need to order the Assessor to reflect that finding in a retraction letter to the Power Company. There is nothing necessarily incompatible between a declaratory judgment action along with the additional needed remedy of mandamus. Cf. *Harris v. Cassia County*, 681 P.2d 988 (Id. 1984)(mandamus action remanded for implementation depending on the outcome of the declaratory judgment action).

D. Plaintiffs' slander of title and interference claims do not provide the remedy of removing the cloud from plaintiffs' title

Before filing this complaint, plaintiffs invited the assessor to remove the cloud he put on plaintiffs' title to the property in question. He was invited to do so in a personal visit from plaintiff Val Westover. When that was unavailing, the assessor was formally invited to correct the cloud put on the plaintiffs' property by written demand letter clearly spelling out the error in the assessor's analysis of the property ownership. Inaction in response to that letter required the filing of this lawsuit. While continuing to sit on his haunches and stubbornly refusing to remove

the cloud he has placed on Plaintiffs' property, the Assessor has the audacity to argue that Plaintiffs' cause of action for slander of title and interference with economic relations is an effective remedy. While Plaintiffs are now entitled to damages for the Assessor's torts, those damages still will not remove the cloud on Plaintiff's title created by the Assessor's letter. Rocky Mountain Power retains the ability to cancel power to Plaintiffs and remove its equipment unless and until this matter is resolved.


The matter can be easily resolved by a letter from the Assessor acknowledging that he was wrong in asserting that the Plaintiffs did not own the property when they granted the easement to Rocky Mountain Power. The Assessor's continuing recalcitrance is truly unfathomable.

It is not obvious what Plaintiffs can do to remove the cloud on their title placed there by the Assessor's actions. That is why they have sought mandamus relief. This is truly one of those rare circumstances where the Plaintiffs have been injured and other forms of judicial relief, while being able to compensate them for the financial impositions caused by the Assessor's wrongful acts cannot correct the cloud put on Plaintiff's title by his slanderous letter.

Conclusion

Because there is no adequate remedy at law that will remove the cloud on Plaintiffs' property, the Court should issue a writ of mandamus requiring the Assessor to correct his slanderous statements by writing a letter to Rocky Mountain Power retracting their statement that the Plaintiffs are not the owners of the property.

Dated this 23rd day of October, 2015.



Blake S. Atkin
Attorney for Plaintiffs

Exhibit A

239763 14

Memorandum of Real Estate Sales Contract

Be it known that on this 15th day of November 2007, Don A. Westover and Connie V. Westover as sellers and Val D Westover and LaRee H. Westover as buyers entered into a Real estate sales contract providing for a warranty deed with respect to the following described tract of land in Franklin County Idaho:

See, Exhibit A

Recorded at the request of

Val Westover

Dated this 26 day of November, 2007

12:24
a.m. NOV 26 2007 p.m.

Don A. Westover
Don A. Westover

V. ELLIOTT LARSEN, RECORDER
By Shauna Geddes Deputy
FRANKLIN COUNTY, IDAHO

Connie V. Westover
Connie V. Westover

Val D. Westover
Val D. Westover

LaRee H. Westover
LaRee H. Westover

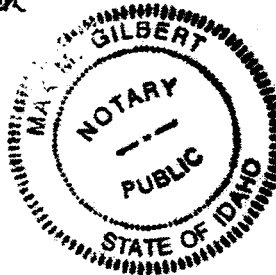
STATE OF Idaho)
 : SS
COUNTY OF Franklin)

On this the _____ day of November, 2007, personally ^{C, W,} appeared before me Don A. Westover and Connie V. Westover, ~~Val D Westover and LaRee H. Westover~~, the signers of this memorandum, who acknowledged to me that they executed the same.

Notary Public

ACKNOWLEDGMENT

State of IDAHO
County of FRANKLIN
On this 26 day of NOV, 2007 VAL D Westover & LaRee H Westover
personally appeared before me,
 who is personally known to me,
_____ whose identity I verified on the basis of _____
_____ whose identity I verified on the oath/affirmation of _____
a credible witness,
to be the signer of the foregoing document, and he/she acknowledged that he/she signed it. Maureen Gilbert
Notary Signature
My Commission Expires: 3-6-2012



239763 2-4

Exhibit A

E1/2NE1/4, SW1/4NE1/4, E1/2SE1/4, SECTION 20, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN.

NW1/4, NW1/4NE1/4 SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN,

N1/2NE1/4 SECTION 29, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN.

ALSO, COMMENCING AT A POINT 1320 FEET WEST AND 300.2 FEET SOUTH OF THE NE CORNER OF SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN, THENCE RUNNING SOUTH 34 DEGREES 54 MINUTES EAST 318.5 FEET; THENCE SOUTH 67 DEGREES 58 MINUTES WEST 96 FEET; THENCE SOUTH 8 DEGREES 55 MINUTES WEST 63.5 FEET; THENCE SOUTH 39 DEGREES 27 MINUTES WEST 48.6 FEET; THENCE SOUTH 66 DEGREES 21 MINUTES WEST 57.3 FEET THENCE NORTH 420.5 FEET TO THE PLACE OF BEGINNING.

Also excepting therefrom the following tract, to-wit:

Commencing at a point 1580 feet West and 729 feet South of the NE corner of Section 21, Township 14 South, Range 38 East, Boise Meridian, to the point beginning, thence running South 40 degrees 50 minutes East 440 feet; thence South 65 degrees 40 minutes West 512 feet; Thence North 20 degrees 12 minutes East 605 feet, more or less, to the point of beginning; Also Including, all water rights appurtenant to the property including but not limited to the following water stock, to wit: 2 3/4 shares in the Rushville irrigation company. Excepting therefrom portions deeded for road or road purposes.

239763 3-4



Acknowledgment by Individual

State of Idaho County of Franklin

On this 17 day of November, 2007, before me, Colleen Firth
Name of Notary Public

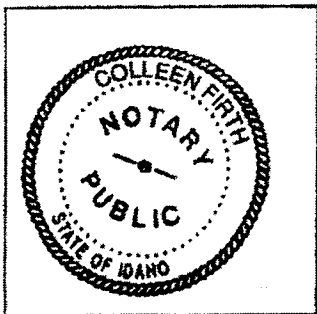
the undersigned Notary Public, personally appeared
Don A Westover

Name of Signer(s)

- Proved to me on the oath of _____
- Personally known to me
- Proved to me on the basis of satisfactory evidence _____
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Notary Seal

Colleen Firth
(Signature of Notary Public)

My commission expires 06/10/2011

Optional

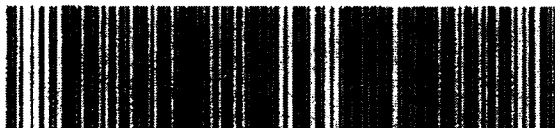
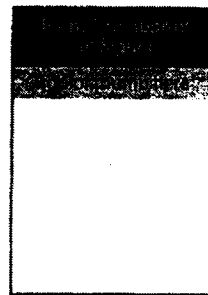
Though the information in this section is not required by law, it may prevent fraudulent removal and reattachment of this form to another document and could prove valuable to persons relying on the document.

Description of Attached Document

Type or Title of Document
Memorandum of Real Estate Sales Contract

Document Date November 17, 2007 Number of Pages 2

Signer(s) Other Than Named Above
Connie V Westover, Val D Westover, LaRec H Westover



FO01-00000DSG5350-01

Scanner Enabled: Stamp should scan this form
Manual Submission: Number for Deposit Operations

0563350 (8-07 11/6/77)

239763 4-4

WELLS FARGO

Acknowledgment by Individual

State of Idaho County of Franklin

On this 17 day of November, 20 07, before me, Colleen Firth
Name of Notary Public

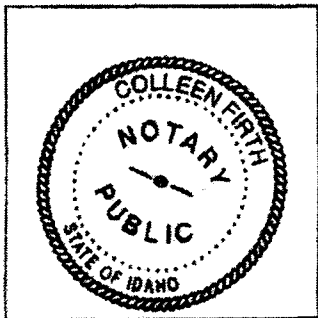
the undersigned Notary Public, personally appeared Connie V Westover

Name of Signer(s)

- Proved to me on the oath of _____
- Personally known to me
- Proved to me on the basis of satisfactory evidence _____
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Notary Seal

Colleen Firth

(Signature of Notary Public)

My commission expires 06/10/2011

Optional

Though the information in this section is not required by law, it may prevent fraudulent removal and reattachment of this form to another document and could prove valuable to persons relying on the document.

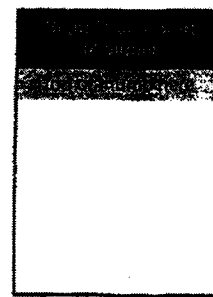
Description of Attached Document

Type or Title of Document
Memorandum of Real Estate Sales Contract

Document Date
November 17, 2007

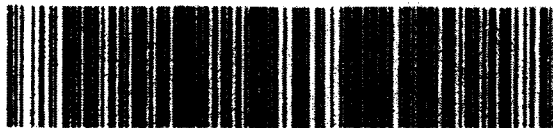
Number of Pages
2

Signer(s) Other Than Named Above
Don A Westover, Val D Westover, LaReeth Westover



Scanner Enabled States should scan this form
Manual Submission States to Request Operations

PS&S30 (9-07 11/07)



F001-00000DSG5350-01

Exhibit B

Franklin County



Assessor

Jase D. Cundick
Assessor

51 West Oneida St.
Preston, Idaho 83263
(208) 852-1091
Fax (208) 852-1096

May 29, 2015

Rocky Mountain Power
Craig Bolton
509 So. 2nd E.
Preston, ID 83263

and

Val D. Westover
500 No. Main Hwy.
Clifton, ID 83228

RE: Underground Right of Way of Easement recorded on April 20, 2015

In reviewing the document referenced above, the following concerns(s) have come to our attention:

- The property description included in the document is not owned by the Grantor.

For further clarification of the ownership of property please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jase Cundick", is written over a faint, larger version of the same signature.

Jase D. Cundick
Franklin County Assessor

Exhibit C

ATKIN LAW OFFICES

A PROFESSIONAL CORPORATION
7579 North Westside Highway
Clifton, ID 83228
TELEPHONE (801) 533-0300
FACSIMILE (801) 533-0380
e-mail: batkin@atkinlawoffices.net

June 24, 2015

Jase Cundick
Franklin County Assessor
51 West Oneida
Preston, ID 83263

Dear Mr. Cundick:

I have tried unsuccessfully to contact you by phone to attempt to resolve a very serious issue. This firm represents Val Westover and LaRee Westover, owners of certain property in Franklin County. The Westovers lease that property to Butterfly Express, Inc. a company that does about \$250,000 of business per month in the county and employs over 20 Franklin County residents.

Recently, the Westovers granted a lease to the power company as part of a contract to have power supplied to a new facility on the property. Your office mistakenly concluded that the Westovers did not own the property and you took it upon yourself to notify the power company that the Westovers, who had granted them the easement, did not own the property. I enclose, as Exhibit A, the letter as communicated to my client by the power company.

That slander of title and your office's refusal to correct it, has now resulted in the power company threatening to declare the contract with my clients in breach and remove their equipment from the premises. That action will disrupt the business and result in massive and irreparable damage to Butterfly Express and to the Westovers. Unless you and your employees want to find yourselves embroiled in significant investigation and litigation, you need to take steps immediately to undo the slander of title that you have committed.

I attempted to get satisfaction from one of your employees. But rather than listen to me she chose to argue the legal significance of some documents that have been filed. I sense that your employees are not lawyers, and I am surprised that the county allows them to practice law without a license. Let me explain to you what I explained to your employee. I would be pleased

if you are a lawyer, and in the case you are not I suggest that you discuss this with the county's lawyer who no doubt will understand what I am saying, and hopefully advise you to do what I am asking in order to avoid serious legal proceedings.

Seven years ago, Val and LaRee Westover bought the property in question under a real estate contract from Val's mother and father, Connie and Don Westover. A memorandum of that agreement was filed with the county recorder putting all the world on notice that Val and LaRee Westover were the owners of the property. I enclose as exhibit B, a copy of that recorded memorandum.

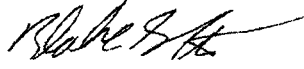
After that memorandum was recorded, the property did not belong to Don or Connie Westover, and anything filed by either of them except the Warranty Deed called for in their contract with Val and LaRee Westover (which we have now filed) simply has no legal effect. I was told that Don Westover had attempted to convey the property to a Trust. Not only did your office reject that filing, but even if it had been properly filed, it could not have affected title to the property because by the time of that filing Don and Connie Westover had sold the property to Val and LaRee Westover under the real estate contract mentioned above. It was next argued that there were discrepancies in the legal descriptions of the properties that Don and Connie conveyed to Val and LaRee Westover. We have attempted to correct any scrivener's errors in the legal descriptions, but none of those discrepancies affects the easement granted to the power company. There simply is no legal basis for the claim you made to the power company that Val and LaRee Westover did not own the property when they granted the easement to the power company.

If you want to avoid serious legal entanglements you must do two things immediately. First, you need to write to the power company and retract your slander of title and acknowledge to them that Val and LaRee Westover are the legal owners of the property and the prior letter you sent them was the result of a negligent and/or incompetent examination of the real estate records performed by your office. Second, you need to write to Val and LaRee Westover and similarly point out that the letter to the power company was the result of negligent and/or incompetent examination or interpretation of the real estate records on your part.

I have a client that is very frustrated and angry at what has occurred. He feels that in this county, where all the parties are known well by each other, that before you would take action that threatened a \$250,000 per month business, you could pick up the phone to make sure that you are correct before slandering someone's title. If you have not taken both steps outlined above by June 29, 2015, I have been instructed to take whatever action that is necessary to protect the interests of the Westovers and Butterfly Express, Inc.

Please feel free to call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Blake S. Atkin", with a stylized flourish at the end.

Blake S. Atkin

Exhibit A

Franklin County



51 West Oneida St.
Preston, Idaho 83263
(208) 852-1091
Fax (208) 852-1096

Jase D. Cundick
Assessor

Assessor

May 29, 2015

Rocky Mountain Power
Craig Bolton
509 So. 2nd E.
Preston, ID 83263

and

Val D. Westover
500 No. Main Hwy.
Clifton, ID 83228

RE: Underground Right of Way of Easement recorded on April 20, 2015

In reviewing the document referenced above, the following concerns(s) have come to our attention:

- The property description included in the document is not owned by the Grantor.

For further clarification of the ownership of property please contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Jase Cundick".

Jase D. Cundick
Franklin County Assessor

Exhibit B

239763 1-4

Memorandum of Real Estate Sales Contract

Be it known that on this 15th day of November 2007, Don A. Westover and Connie V. Westover as sellers and Val D Westover and LaRee H. Westover as buyers entered into a Real estate sales contract providing for a warranty deed with respect to the following described tract of land in Franklin County Idaho:

See, Exhibit A

Recorded at the request of

Val Westover

Dated this 26 day of November, 2007

 a.m. NOV 26 2007 12:24 p.m.

[Signature]
Don A. Westover

V. ELLIOTT LARSEN, RECORDER
By Shauna Gades Deputy
FRANKLIN COUNTY, IDAHO

[Signature]
Connie V. Westover

[Signature]
Val D. Westover

[Signature]
LaRee H. Westover

STATE OF Idaho)
 : SS
COUNTY OF Franklin)

On this the _____ day of November, 2007, personally C, W, ~~Val D Westover and LaRee H. Westover~~, appeared before me Don A. Westover and Connie V. Westover, the signers of this memorandum, who acknowledged to me that they executed the same.

Notary Public

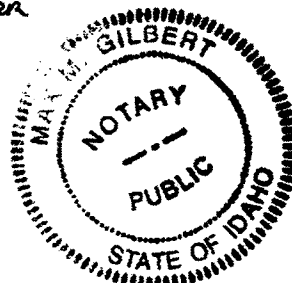
ACKNOWLEDGMENT

State of IDAHO
County of FRANKLIN
On this 26 day of NOV 2007, VAL D Westover & LaRee H Westover
personally appeared before me,

who is personally known to me,
 whose identity I verified on the basis of _____
 whose identity I verified on the oath/affirmation of _____
a credible witness.

to be the signer of the foregoing document, and he/she acknowledged that he/she signed it.

My Commission Expires: 3-6-2012
[Signature] Notary Signature



239763 2-4

Exhibit A

E1/2NE1/4, SW1/4NE1/4, E1/2SE1/4, SECTION 20, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN.

NW1/4, NW1/4NE1/4 SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN,

N1/2NE1/4 SECTION 29, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN.

ALSO, COMMENCING AT A POINT 1320 FEET WEST AND 300.2 FEET SOUTH OF THE NE CORNER OF SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN, THENCE RUNNING SOUTH 34 DEGREES 54 MINUTES EAST 318.5 FEET; THENCE SOUTH 67 DEGREES 58 MINUTES WEST 96 FEET; THENCE SOUTH 8 DEGREES 55 MINUTES WEST 63.5 FEET; THENCE SOUTH 39 DEGREES 27 MINUTES WEST 48.6 FEET; THENCE SOUTH 66 DEGREES 21 MINUTES WEST 57.3 FEET THENCE NORTH 420.5 FEET TO THE PLACE OF BEGINNING.

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Also Including, all water rights appurtenant to the property including but not limited to the following water stock, to wit: 2 3/4 shares in the Rushville irrigation company. Excepting therefrom portions deeded for road or road purposes.



Acknowledgment by Individual

State of Idaho County of Franklin

On this 17 day of November, 2007, before me, Colleen Firth
Name of Notary Public

the undersigned Notary Public, personally appeared Don A Westover

Name of Signer(s)

Proved to me on the oath of _____

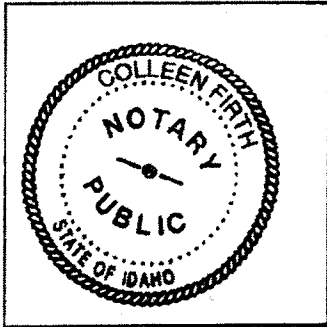
Personally known to me

Proved to me on the basis of satisfactory evidence _____

(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Notary Seal

Colleen Firth
(Signature of Notary Public)

My commission expires 06/10/2011

Optional

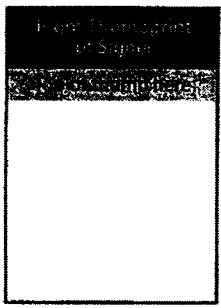
Though the information in this section is not required by law, it may prevent fraudulent removal and reattachment of this form to another document and could prove valuable to persons relying on the document.

Description of Attached Document

Type or Title of Document
Memorandum of Real Estate Sales Contract

Document Date November 17, 2007 Number of Pages 2

Signer(s) Other Than Named Above
Connie V Westover, Val D Westover, LaRae H Westover



FO01-00000DSG5350-01

Scanner Enabled Users should scan this form
Manual Submission Route to Support Operations
0563350 (P-07 111617)

239763 4-4



Acknowledgment by Individual

State of Idaho County of Franklin

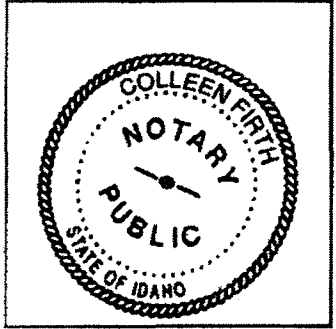
On this 17 day of November, 2007, before me, Colleen Firth
Name of Notary Public

the undersigned Notary Public, personally appeared
Connie V Westover

- Name of Signer(s)
- Proved to me on the oath of _____
 - Personally known to me
 - Proved to me on the basis of satisfactory evidence _____
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Notary Seal

Colleen Firth
(Signature of Notary Public)
My commission expires 06/10/2011

Optional

Though the information in this section is not required by law, it may prevent fraudulent removal and reattachment of this form to another document and could prove valuable to persons relying on the document.

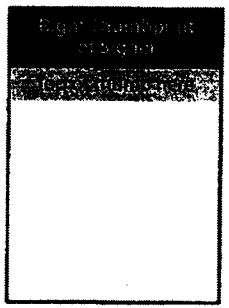
Description of Attached Document

Type or Title of Document
Memorandum of Real Estate Sales Contract

Document Date
November 17, 2007

Number of Pages
2


Signer(s) Other Than Named Above
Don A Westover, Val D Westover, LaRee H Westover



FO01-00000DSG5350-01

Scanner Enabled Stores should scan this form
Manual Submission Route to Deposit Operations
0562350 (9-07 171677)

Atkin Law Offices, P.C.
 Blake S. Atkin ISB# 6903
 7579 North Westside Highway
 Clifton, Idaho 83228
 Telephone: (208) 747-3414
 Telephone: (801) 533-0300
 Facsimile: (801) 533-0380

FILED
 15 OCT 23 AM 11:21
 FRANKLIN COUNTY CLERK

 DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
 FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
 LaRee H. Westover,

Plaintiffs

AFFIDAVIT OF CRAIG BOLTON

v.

Case No. CV-2015-312

Jase D. Cundick, in his individual capacity)
 And in his official capacity as)
 Franklin County Assessor,)
 John Does 1 and 2,)

Judge Mitchell Brown

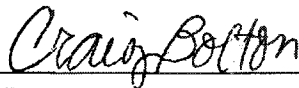
Defendant.

I, Craig Bolton, having been first duly sworn, deposes and says:

1. I have personal knowledge of the matters set forth herein and could testify to the same if called upon to do so.
2. I am a job estimator with Rocky Mountain Power.
3. In April 2015, on behalf of Rocky Mountain Power I entered into a contract to supply power to Val D Westover at his property in Clifton, Idaho.
4. As part of that contract Mr. Westover was required to provide the power company with an easement across property he purported to own in Clifton.
5. He provided Rocky Mountain Power with a grant of easement for that purpose.
6. On May 29, 2015 I received the attached letter from the Franklin County Assessor informing the power company that Val D Westover did not own the property described in the grant of easement.

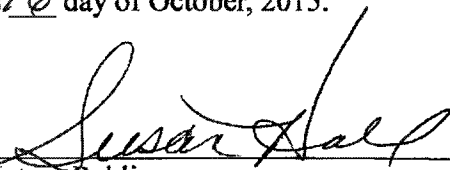
7. My manager told me to write a letter to Mr. Westover telling him that if this problem was not corrected within 30 days we would shut off the power and remove our equipment and lines from Mr. Westover's property.
8. He told me that he would take care of it and asked if I would please hold off writing the letter while he handled the problem.
9. I agreed to do so while Mr. Westover was taking action to deal with the problem.
10. I understand that Mr. Westover instituted suit trying to get the county to retract their letter claiming that he does not own the property.
11. While that action is pending, the power company will continue to supply power to the Westovers.
12. But unless the power company ultimately receives assurances from the county assessor that the Westovers owned the property over which they conveyed the power company an easement and that our easement pursuant to the grant given by the Westovers is valid, the power company reserves the right to declare the contract with the Westovers breached, discontinue service and remove the lines and equipment Mr. Westover paid to have installed.

Dated this 16 day of October 2015.

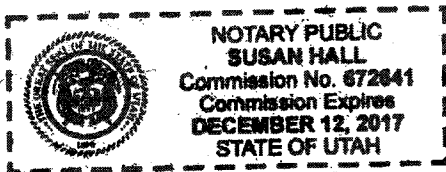


Craig Bolton

SUBSCRIBED AND SWORN before me this 16 day of October, 2015.



Notary Public



Atkin Law Offices, P.C.
 Blake S. Atkin ISB# 6903
 7579 North Westside Highway
 Clifton, Idaho 83228
 Telephone: (208) 747-3414
 Telephone: (801) 533-0300
 Facsimile: (801) 533-0380

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 FRANKLIN COUNTY CLERK

 DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
 FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
 LaRee H. Westover,

Plaintiffs

v.

Jase D. Cundick, in his individual capacity)
 And in his official capacity as)
 Franklin County Assessor,)
 John Does 1 and 2,)

Defendant.

AFFIDAVIT OF VAL D WESTOVER

Case No. CV-2015-312

Judge Mitchell Brown

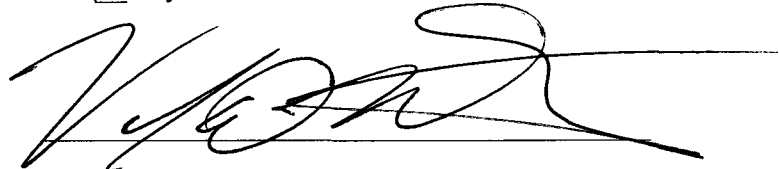
Val D Westover, having been first duly sworn, deposes and says:

1. I have personal knowledge of the matters set forth herein.
2. My wife, LaRee, and I purchased the family farm from my father and mother in 2007.
3. A memorandum of the agreement by which we purchased the farm was recorded with the Franklin County Recorder in November 2007.
4. In April 2015 we entered into a contract with Rocky Mountain Power to put in a new power supply for a business to whom we lease portions of the property. That contract cost me over \$37,000.
5. As part of that contract we were required to grant an easement to the power company for installation of the underground lines.
6. We recorded the grant of easement in April 2015.
7. On May 29, 2015, Jase Cundick, Franklin County Assessor wrote a letter to the power company telling them that I did not own the property.
8. The power company representative with whom I was doing business, Mr. Craig Bolton, called me and told me that his manager had instructed him to send me a letter pointing out the ownership issue and that I would have 30 days after that letter was sent to correct

the legal problem or the power company would pull their equipment, declare the contract breached and shut off out power.

9. I assured Mr. Bolton that I was indeed the owner of the property and that I would take care of it.
10. Mr. Bolton told me that while I was getting it sorted out he would hold off sending the letter that would trigger the 30 day period to get the problem resolved or lose my rights under the contract.
11. I immediately contacted the Franklin County Assessor and spoke with Denise Ralphs who knows me, knows my parents from whom I bought the property, and is a neighbor who lives in Clifton, Idaho.
12. I explained to Denise that I was the owner of the property having bought it in 2007. She disagreed and would not write a letter to the power company correcting the error the assessor had made.
13. I then contacted Jase Cundick, the Franklin County Assessor who likewise refused to correct the false assertion that I did not own the property.
14. Feeling I had no choice I hired a lawyer and instituted this suit to try and get the assessor to remove the cloud he has placed on my ownership of my property.

Dated this 23 day of October 2015.



Val D Westover

SUBSCRIBED AND SWORN before me this 23rd day of October, 2015.



Jennifer Mariscal
Notary Public exp. 7-13-18

Atkin Law Offices, P.C.
 Blake S. Atkin ISB# 6903
 7579 North Westside Highway
 Clifton, Idaho 83228
 Telephone: (208) 747-3414
 Telephone: (801) 533-0300
 Facsimile: (801) 533-0380

FILED
 15 OCT 23 AM 11:21
 FRANKLIN COUNTY CLERK
 DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
 FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
 LaRee H. Westover,

Plaintiffs

v.

Jase D. Cundick, in his individual capacity
 And in his official capacity as
 Franklin County Assessor,
 John Does 1 and 2,

Defendant.

CERTIFICATE OF SERVICE

Case No. CV-2015-312

Judge Mitchell Brown

I HEREBY CERTIFY that on the 23rd day of October, 2015, I caused to be served a true and correct copy of the following documents:

1. Plaintiffs' Motion for Summary Judgment
2. Memorandum in Support of Plaintiffs' Motion for Summary Judgment and in Response to Motion to Dismiss
3. Affidavit of Craig Bolton
4. Affidavit of Val D Westover

as indicated below to the following:

Bruce J. Castleton
 Tyler D. Williams
 NAYLOR & HALES, P.C.
 Attorneys at Law
 950 W. Bannock St., Suite 610
 Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email: bjc@naylorhales.com;
 tdw@naylorhales.com;
 skh@naylorhales.com

Franklin County Court
39 West Oneida
Preston, ID 83263

U.S. Mail
 Fax: (208) 852-2926
 Delivered in-person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276

U.S. Mail
 Fax: (208) 547-2147

Jennifer Mariscal

FILED

15 NOV -9 AM 8:25

FRANKLIN COUNTY CLERK

DEPUTY

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
LaRee H. Westover,
Plaintiffs

**PLAINTIFFS' REQUEST FOR
ORAL ARGUMENT AND
NOTICE SETTING HEARING ON
PLAINTIFFS' MOTION OF
SUMMARY JUDGMENT**

v.

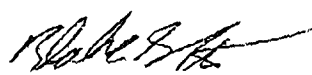
Case No. CV-2015-312

Jase D. Cundick, in his individual capacity
And in his official capacity as
Franklin County Assessor,
John Does 1 and 2,
Defendant.

Judge Mitchell Brown

Plaintiffs desire to present oral argument on their motion for summary judgment that was filed on October 23, 2015. Notice is hereby given that the hearing for the motion on summary judgment will be held on December 10, 2015 at 3:00pm.

Dated this 9th day of November, 2015.



Blake S. Atkin
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of November, 2015, I caused to be served, by the method(s) indicated below, a true and correct copy of the foregoing upon:

Bruce J. Castleton
Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

 X U.S. Mail
 Fax: (208) 383-9516
 X Email: bjc@naylorhales.com;
tdw@naylorhales.com;
skh@naylorhales.com

Franklin County Court
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 X Fax: (208) 852-2926
 Delivered in-person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276
paulcjefferies@gmail.com

 U.S. Mail
 X Fax: (208) 547-2147

Jennifer Mariscal

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15 NOV 10 AM 8:41

FRANKLIN COUNTY CLERK

DEPUTY

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: bjc@naylorhales.com; tdw@naylorhales.com

Attorneys for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER and
LaREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No. CV-2015-312

**DEFENDANTS' REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**

Defendant Jase D. Cundick, Franklin County Assessor, by and through his attorneys of record, Naylor & Hales, P.C. hereby submits this Reply Memorandum in Support of Motion to Dismiss.

**I.
INTRODUCTION**

Defendant moved to dismiss all of Plaintiffs' claims under Rule 12(b)(1) because Plaintiffs do not have standing, as there is no indication that they have suffered any actual harm arising from

DEFENDANTS' REPLY MEMORANDUM RE: MTD - 1.

the Franklin County Assessor's May 29, 2009 letter. Additionally, Defendants moved to dismiss the Petition for Writ of Mandate or Prohibition under Rule 12(b)(6) on the separate grounds that the assessor has not violated any clear legal right, has no clear legal duty to retract his letter and there are legal remedies available to Plaintiffs.

In response, Plaintiffs filed a motion for summary judgment, supported by a memorandum and the affidavits of plaintiff Val Westover and Rocky Mountain Power representative Craig Bolton. Their memorandum also contains their opposition to Defendant's motion to dismiss. This reply addresses only the arguments in opposition to the motion to dismiss.

II. ARGUMENTS

A. Plaintiffs Have Failed to Show That They Have Standing

Plaintiffs contend that they have standing because they allegedly suffered injury to their reputation at the moment the assessor sent the May 29, 2015 letter to Plaintiffs and Rocky Mountain Power stating that the property was "not owned by the Grantor." (Plfs' Memo Opp., § B.) They further argue that they have incurred attorney fees and costs in prosecuting the action, which they argue confers standing. (*Id.*) These arguments are meritless. It is insufficient to merely state that one's reputation has been harmed in order to have standing. Rather, the plaintiff must show an injury in fact, which requires "a distinct palpable injury" that is "easily perceptible, manifest, or readily visible." *Coeur D'Alene Tribe v. Denney*, 2015 WL 5286169, *3 (Idaho Sept. 10, 2015) (internal quotations and citation omitted).

All Plaintiffs have done in an attempt to show standing is to state in a conclusory fashion that their reputation has been harmed and submit an affidavit from a Rocky Mountain Power representative stating that Rocky Mountain Power will take no action pending the resolution of this

DEFENDANTS' REPLY MEMORANDUM RE: MTD - 2.

lawsuit. (C. Bolton Aff., ¶¶ 6-11.) Plaintiffs, however, make no actual showing as to how their reputation has allegedly been harmed or otherwise shown that they have suffered any palpable injury.

While Mr. Bolton states in his affidavit that Rocky Mountain Power reserves the right to take action against the Westovers in the future (*id.*, ¶ 12), standing is determined as of the date of the filing of the complaint, not based on future events, so Mr. Bolton's statement is not only speculative, it is irrelevant. *Wilbure v. Lock*, 423 F.3d 1101, 1107 (9th Cir. 2005) *abrogated on other grounds by Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010).

Further, merely incurring costs and attorney fees is insufficient to confer standing. If this were the case there would always be standing so long as a plaintiff simply hired an attorney and filed a complaint. More so, whether a party may even recover costs and attorney fees depends on the issues of the case, whether there is a prevailing party, the rules of civil procedure, and the existence of a contractual fee provision or an applicable statute and the requirements contained therein. Yet the "doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated." *Syringa v. Networks, LLC v. Idaho Dept. Of Admin.*, 155 Idaho 55, 60 (2013) (internal quotations omitted). Thus, Plaintiffs' focus on the attorney fees that they have incurred as an element of special damages in their slander of title claim has no bearing on whether they have standing to bring the claims in the first place.

DEFENDANTS' REPLY MEMORANDUM RE: MTD - 3.

B. Plaintiffs Have Failed to Show They Are Entitled to Either a Writ of Mandate or a Writ of Prohibition

A writ of mandate is only appropriate under rare circumstances in order to compel a public officer to "carry out a clearly mandated, non-discretionary ministerial act." I.C. § 7-302; *Coeur D'Alene Tribe*, 2015 WL 5286169, * 14. It cannot be used to correct matters of discretion. *Id.*; *Total Success Invest., LLC v. Ada Cnty Highway Dist.*, 148 Idaho 688, 691 (2010). An act is considered ministerial for purposes of a writ of mandate "only if it is a positive command and so plainly prescribed as to be free from doubt." *U.S. v. Walker*, 409 F.2d 477, 481 (9th Cir. 1969). For example, writs of mandate have been issued: to compel a city to levy assessment that was clearly required of the city, *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939); to compel a county assessor to obey an order of the state tax commission reducing the plaintiff's tax assessment, *Utah Oil Refining Co. v. Hendrix*, 72 Idaho 407 (1952); and to compel a board of equalization to remove certain property from tax rolls, *Wagers v. Nichols*, 94 Idaho 6 (1970).

Unlike the above examples, which all involve a clear-cut obligation of the defendant to correct non-discretionary ministerial acts, Plaintiffs in the present case are seeking to compel the county assessor to retract a letter that was sent to inform Plaintiffs and Rocky Mountain Power that the grantor did not own the property at that time. The letter was plainly a courtesy that the assessor was not legally obligated to send and, therefore, it was a discretionary act not subject to a writ of mandate. Plaintiff's allegations that the letter violated the law is insufficient to warrant a writ of mandate.

DEFENDANTS' REPLY MEMORANDUM RE: MTD - 4.

Likewise, Plaintiffs have done nothing to show that a writ of prohibition is appropriate. Significantly, in order to obtain such a writ there must be some present action that is taking place; in other words, there needs to be a proceeding to actually stop. I.C. § 7-401; *State v. Dist. Ct. of Fourth Jud. Dist.*, 143 Idaho 695, 698 (2007). Here, the assessor's letter has already been sent and there are no pending proceedings to arrest. Thus, a writ of prohibition is not authorized.

Additionally, Plaintiffs have failed to show why there is no adequate remedy at law. They contend that their slander of title and tortious interference claims are insufficient because prevailing on those claims "still will not remove the cloud on Plaintiff's title." (Mem. Opp., ¶ D.) However, a specific remedy available with a successful slander of title claim is the removal of a cloud from title. *Weitz v. Green*, 148 Idaho 851, 862 (2009). If Plaintiffs were to prevail in their slander of title claim, any alleged "cloud" on their title would be removed. Their contrary assertion is simply not correct under Idaho law.

III. CONCLUSION

Based on the foregoing reasons and as shown in Defendants' opening brief, the Motion to Dismiss should be granted.

DATED this 9th day of November, 2015.

NAYLOR & HALES, P.C.

By 

Bruce J. Castleton, Of the Firm
Attorneys for Defendant

DEFENDANTS' REPLY MEMORANDUM RE: MTD - 5.

CERTIFICATE OF SERVICE

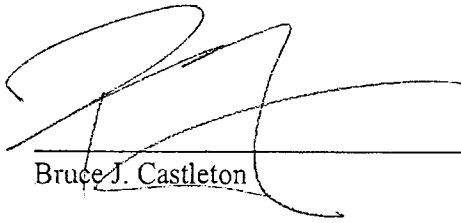
I HEREBY CERTIFY that on the 9th day of November, 2015, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

U.S. Mail
 Federal Express
 Fax: 1-801-533-0380
 Email: batkin@atkinlawoffices.net

Hon. Mitchell Brown's Chambers
159 South Main
Soda Springs, ID 83276
Courtesy Copy

U.S. Mail
 Federal Express
 Fax: 1-208-547-2147



Bruce J. Castleton

9534_07 MTD Reply Memorandum FINAL.wpd

DEFENDANTS' REPLY MEMORANDUM RE: MTD - 6.

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
FRANKLIN COUNTY CLERK

STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

DEPUTY

VAL D. WESTOVER and
LAREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK, in his individual capacity
And in his official capacity as
Franklin County Assessor, John Does 1 and 2,

Defendants.

)
)
)
) Case No. CV-2015-312
)
)
)

) MINUTE ENTRY AND ORDER
)
)
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This matter came before the Court on November 12, 2015 for hearing on Defendant's Motion to Dismiss. Blake S. Atkin appeared as counsel for the Plaintiffs. The Plaintiffs were present in the courtroom. Tyler D. Williams appeared for and on behalf of the Defendant, Jase D. Cundick. Rodney M. Felshaw acted as court reporter.

The Court held a discussion with all parties and at the conclusion of the discussion, the Court ordered that they proceed to mediation. The hearings on the Motion to Dismiss as well as the forthcoming Motion for Summary Judgment were vacated to afford the parties an opportunity to mediate this dispute. Plaintiff's counsel advised that Plaintiff's would like to have Judge Dunn assist the parties in mediation and asked that the Court contact Judge Dunn to assist the parties in securing a mediation date with him. The Court will contact Judge Dunn at its earliest convenience and will apprise the parties of Judge Dunn's availability.

IT IS SO ORDERED.

Dated this 5th day of December, 2015.



MITCHELL W. BROWN
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 7th day of December, 2015, I mailed/served/faxed a true copy of the foregoing document on the attorney(s)/person(s) listed below by the method indicated:

Attorney(s)/Person(s):

Method of Service:

Blake S. Atkin
Counsel for Plaintiffs

Email

Bruce J. Castleton
Tyler D. Williams
Counsel for Defendants

Email

SHAUNA T. GEDDES, Clerk

BY: Linda Hampton, Deputy Clerk

Atkin Law Offices, P.C.
 Blake S. Atkin ISB# 6903
 7579 North Westside Highway
 Clifton, Idaho 83228
 Telephone: (208) 747-3414
 Telephone: (801) 533-0300
 Facsimile: (801) 533-0380

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 16 JAN -6 PM 3:56
 FRANKLIN COUNTY CLERK
 DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
 FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
 LaRee H. Westover,

Plaintiffs

**MOTION FOR ISSUANCE OF WRIT OF
 MANDAMUS AND PROHIBITION AND
 TO DISMISS REMAINING CLAIMS
 WITHOUT PREJUDICE**

v.

Case No. CV-2015-312

Jase D. Cundick, in his individual capacity
 And in his official capacity as
 Franklin County Assessor,
 John Does 1 and 2,

Defendant.

Judge Mitchell Brown

Plaintiffs respectfully move this Court to issue the requested Writ of Mandamus and Writ of Prohibition and to dismiss plaintiffs' remaining claims without prejudice. This Motion supported by the Memorandum filed simultaneously with this Motion.

Dated this 7th day of January, 2016.

Atkin Law Offices



Blake S. Atkin,
 Attorneys for the Plaintiffs

Atkin Law Offices, P.C.
 Blake S. Atkin ISB# 6903
 7579 North Westside Highway
 Clifton, Idaho 83228
 Telephone: (208) 747-3414
 Telephone: (801) 533-0300
 Facsimile: (801) 533-0380

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DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
 FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
 LaRee H. Westover,

Plaintiffs

**MEMORANDUM IN SUPPORT OF
 REQUEST FOR ENTRY OF
 JUDGMENT
 AND MOTION TO DISMISS
 REMAINING CLAIMS WITHOUT
 PREJUDICE**

v.

Case No. CV-2015-312

Jase D. Cundick, in his individual capacity
 And in his official capacity as
 Franklin County Assessor,
 John Does 1 and 2,

Defendant.

Judge Mitchell Brown

The Franklin County Assessor incorrectly concluded that plaintiffs did not own property over which they conveyed an easement to Rocky Mountain Power. That easement was part of an agreement plaintiffs entered into with the power company to upgrade power to their tenant, a multi- million dollar fast growing company they operate here in Franklin County. When plaintiffs pointed out the error made by the assessor and referenced a Memorandum of Contract they had recorded way back in 2007 by which they bought the property, he refused to simply

write a letter correcting his mistake and removing the cloud from plaintiffs' title. Plaintiffs brought this action seeking to compel the assessor to do his duty under the statute to properly "ascertain the current ownership of the land from documents recorded in the county recorder's office and/ or from evidence of ownership furnished to the assessor . . . " Idaho Code section 63-307. Again, rather than simply writing the letter that would remove the cloud from plaintiffs' title, he chose to litigate the issue, filing a motion to dismiss rather than answering the complaint and articulating why he thought it appropriate to write a letter clouding the title to plaintiffs' property. There was no remedy short of a writ of mandamus compelling the assessor to do his duty under the law to ascertain property ownership from the records that were on file with the county recorder and pointed out by the plaintiffs before this litigation ever began to restore clear title to the property to the Westovers.

The assessor had no excuse to not acknowledge to the Memorandum of Contract filed by the Westovers in 2007. The Idaho statute placing a duty on the assessor to "ascertain" ownership of property on his records specifically provides that the owner can establish his ownership on the records of the assessor by "producing his deed, contract or other muniment of title, to the assessor. . . " The Memorandum of Contract filed with the county recorder and specifically pointed out to the assessor in plaintiff's letter seeking to resolve this dispute was a "muniment of title" to which the assessor was required by statute to give heed.

In addition to seeking a writ of Mandamus, plaintiffs also sought a writ of prohibition preventing the assessor from continuing to slander their title to the property and continue his practice of questioning real estate ownership in contracts between citizens of this county when no tax issue is raised. At the hearing on the assessor's motion to dismiss this Court astutely asked counsel for the assessor by what authority he went around sending letters to parties to a

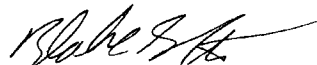
real estate transaction calling into question a grantor's ownership of property. The response was that "there is no authority to prohibit him from doing it". (Motion Hearing Transcript, page 16, lines 20-21) Certainly this Court has the power to enter judgment under the rubric of a writ of prohibition against future profligate exercise of power not delegated to the assessor by the state legislature.

The assessor has now reconsidered his untenable position and wrote the letter to the power company removing the cloud from plaintiffs' property. A true and correct copy of that letter is attached hereto as Exhibit A.

Plaintiffs now request that judgment be entered in favor of the plaintiffs, that the assessor did not perform the duties enjoined upon him by statute to properly ascertain the ownership of the property from the documents on file with the county recorder, and is prohibited from again slandering plaintiffs' title through inadequate review of the county records and taking upon himself undelegated authority to question the grantor's title to third parties with whom a grantor has entered a real estate contract. In addition, plaintiffs have moved to dismiss their remaining claims without prejudice.

A proposed writ is attached hereto as Exhibit B.

Dated this 6th day of January, 2016.



Blake S. Atkin
Attorney for Plaintiffs

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IN THE SIXTH JUDICIAL DISTRICT COURT
FRANKLIN COUNTY, STATE OF IDAHO

VAL WESTOVER and LAREE
WESTOVER,

Plaintiffs,)

vs.)

Case No. CV-2015-312

JASE D. CUNDICK, et al,)

Defendants.)

MOTION HEARING

NOVEMBER 12, 2015

HONORABLE MITCHELL W. BROWN

APPEARANCES:

For the Plaintiffs: Mr. Blake Atkin

For the Defendants: Mr. Tyler Williams

Reported by:

Rodney Felshaw

Certified Shorthand Reporter

1 Williams, why is your client so intent on picking this
2 fight, which seems to exceed perhaps what his role as an
3 elected official with the Franklin County assessor's
4 office would be? Why does he concern himself with this
5 issue?

6 MR. WILLIAMS: We attempted to resolve this matter
7 back in August. We sent a letter to Mr. Atkin that said
8 basically this is moot, there's now a deed in place.

9 THE COURT: But that's not my question. Why did he
10 involve himself in the first instance? Does he have any
11 responsibility to notify Rocky Mountain Power, or a third
12 party, that he feels like a filing with the recorder's
13 office should be responded to or that he should police
14 those issues?

15 MR. WILLIAMS: That's the practice of the
16 assessor's office and has been for a number of years.
17 When there is a question as to ownership --

18 THE COURT: Again, it might be a practice, but is
19 there any legal or statutory authority that he do that?

20 MR. WILLIAMS: There is no authority to prohibit
21 him from doing it.

22 THE COURT: And in fact he holds himself out to a
23 lawsuit such as this if he's incorrect in his legal
24 assessment of the state of affairs, correct?

25 MR. WILLIAMS: Yes, correct. As we now know. I

Exhibit A



Jase D. Cundick
Franklin County Assessor

51 W Oneida St
Preston, ID 83263
(208) 852-1091
jasec@fcidaho.us

Rocky Mountain Power
Craig Bolton
509 So. 2nd E.
Preston, ID 83263

and

Val D Westover
500 No. Main Hwy
Clifton, ID 83228

December 11, 2015

RE: Underground Right of Way of Easement recorded on April 20, 2015

On May 29, 2015 this office advised you that the property description included in the document referenced above was not owned by the Grantor. Upon further investigation we have determined that on the date the easement was granted, Val D Westover was the owner of the property in question.

Sincerely,

Jase D. Cundick
Franklin County Assessor

Exhibit B

Franklin County Court
39 West Oneida
Preston, ID 83263

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276

U.S. Mail
 Fax: (208) 852-2926
 Delivered in person

U.S. Mail
 Fax: (208) 547-2147

Jennifer Mariscal

FILED

16 JAN -7 AM 10:26

FRANKLIN COUNTY CLERK

DEPUTY

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

Attorney for Plaintiffs


**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and)	
LaRee H. Westover,)	
Plaintiffs	)	NOTICE OF HEARING
)	
v.	)	Case No. CV-2015-312
)	
Jase D. Cundick, in his individual capacity)	
And in his official capacity as)	
Franklin County Assessor,)	
John Does 1 and 2,	)	Judge Mitchell Brown
)	
Defendant.)	

Please take notice that the hearing on the Plaintiffs' Motion for Issuance of Writ of Mandamus and Prohibition and to Dismiss Remaining Claims without Prejudice will be held on Thursday, February 11, 2016, at 2:00 p.m.

DATED this 7th day of January, 2016.

Atkin Law Offices



Blake S. Atkin
Attorneys for the plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the Notice of Hearing to the following as indicated below:

Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email: tdw@naylorhales.com;
skh@naylorhales.com

Franklin County Court
39 West Oneida
Preston, ID 83263

U.S. Mail
 Fax: (208) 852-2926
 Delivered in person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276

U.S. Mail
 Fax: (208) 547-2147

Jennifer Mariscal

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: bjc@naylorhales.com; tdw@naylorhales.com

Attorneys for Defendant

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16 JAN 28 PM 2:45
FRANKLIN COUNTY CLERK
KJ
DEPUTY

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER and
LaREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No. CV-2015-312

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR
ISSUANCE OF WRITS AND TO
DISMISS**

Defendant Jase D. Cundick, Franklin County Assessor, by and through his attorneys of record, Naylor & Hales, P.C. hereby objects to Plaintiffs' January 7, 2016 "Motion for Issuance of Writ of Mandamus and Prohibition and to Dismiss Remaining Claims Without Prejudice."

**I.
BACKGROUND**

As a preliminary matter, the Court need not consider the Plaintiffs' new motion, this response or any reply, in order to resolve Defendants' pending motion to dismiss. In short, Plaintiffs do not

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 1.**

have standing to maintain their claims and the Amended Complaint fails to otherwise show that they are entitled to either a writ of mandate or a writ of prohibition. These issues have been fully briefed in connection with Defendants' September 14, 2015 Motion to Dismiss and need not be rehashed here. However, to the extent a more complete record is needed for purposes of Plaintiffs present motions, Defendant provides the following background and additional legal analysis.

A. Factual Background

Plaintiff Val and LaRee Westover's ("Westover") lawsuit is based on a May 29, 2015 letter (Complaint, Ex. C), from Defendant Franklin County Assessor Jase Cundick to Westover and Rocky Mountain Power, communicating that based on a review of property records the property for which Westover and Rocky Mountain Power were seeking to record an easement was not owned by the grantor of the easement (Westover). Mr. Cundick wrote this letter based on the following records that were available to him at the time.

Prior to November 26, 2007, the listed owners of the property (affected by the Right of Way of Easement, hereinafter referred to as "the Property") were Don and Connie Westover. On that date—November 26, 2007—a Memorandum of Real Estate Contract (Complaint, Ex. A) was recorded indicating that Don and Connie Westover had conveyed the Property to Val and LaRee Westover, but this Memorandum of Real Estate Contract was not an actual conveyance of property in and of itself because it contained no language to convey the Property. **The Real Estate Sales Contract itself was not provided to the Assessor.** Thus, no ownership was transferred on the records of the Assessor through this Memorandum, and the listed owners remained Don and Connie Westover.

On February 25, 2008, two quitclaim deeds were recorded to trade ground involving the Property between Don and Connie Westover and Dexter and Linda Ralphs. These were recorded as

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 2.**

Instrument Nos. 240669 and 240670. (Declaration of Jase Cundick, Exhibit A) These quitclaim deeds adjusted the acreage of the respective parcels. This action indicated Don and Connie Westover remained the owners of the Property. (*See id.*)

On December 3, 2012, a warranty deed conveying the Property from Don A. Westover to the Don A. Westover Trust was recorded as Instrument No. 256758. (Cundick Decl., Ex. B) Questions were raised by the Assessor's Office regarding the legal description used for the warranty deed, and a letter was sent to Don Westover regarding these issues. (Cundick Decl., Ex. C) The Assessor's Office also emailed Plaintiff's counsel regarding this issue, but did not receive a response. (Cundick Decl., ¶ 4.) Based on this warranty deed, the owner of the Property was updated as the Don A. Westover Trust.

On April 20, 2015, the Underground Right of Way of Easement was recorded. (Complaint, Ex. B)

On May 14, 2015, a warranty deed conveying the Property from Don and Connie Westover to Val and LaRee Westover was recorded as Instrument No. 264433. (Cundick Decl., Ex. D) This recording did not formally appear in the Assessor's records and in its systems until after Mr. Cundick sent his May 29, 2015 letter. More so, because the listed owner of the Property was still the Don A. Westover Trust—not Don and Connie Westover—the May 14, 2015 warranty deed did not change the record of title in the Assessor's Office.

On May 29, 2015, Mr. Cundick sent his letter to Westover and Rocky Mountain Power informing them of his concern that "the property description included in [the easement document] is not owned by the Grantor . . . [and] for further clarification of the ownership of property please contact our office." (Complaint, Ex. C.)

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 3.**

Subsequently, on June 8, 2015, a Quitclaim Deed was recorded conveying the Property from the Don A. Westover Family Trust to Val and LaRee Westover. This was recorded as Instrument No. 264663. (Cundick Decl., Ex. E) The deed itself indicates a copy of it was to be sent to Plaintiffs' counsel's office upon recording. The Assessor's Office deemed the Don A. Westover Family Trust to be the same entity as the Don A. Westover Trust, and so ownership of the Property was changed in the Assessor's Office to Val and LaRee Westover, who are the currently listed owners.

Thus, Cundick did not have sufficient evidence that the Property belonged to Westover until June 8, 2015, after he had sent the letter to Westover and Rocky Mountain Power. As the situation stood at the time of the complaint was filed, the Westovers were the currently listed owner of the Property and were able to record the Underground Right of Way of Easement with Rocky Mountain Power since there were no longer any ownership discrepancies on record in the Franklin County Assessor's Office. Nevertheless, Westover commenced the present lawsuit.

B. Procedural History

Westover filed a lawsuit in the Sixth Judicial District Court of Idaho, Franklin County, on July 15, 2015. (*See* Complaint) The Original Complaint alleged that Westover owned the property since November 15, 2007, pursuant to a Real Estate Sales Contract (the one that was not provided to the Assessor's office), that the Memorandum of Sale was sufficient to show ownership, that the easement recorded on April 20, 2015 was therefore appropriate, and Cundick's May 29 letter informing Westover and Rocky Mountain Power that Westover was not the grantor based on county records was unlawful. Westover alleged that Rocky Mountain Power had threatened to cut of power to the Property, remove its equipment, and declare Westover in breach of contract (none of these

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 4.**

things ended up happening). Westover sued for slander of title and sought a petition for a special writ of mandate or prohibition.

On or about August 17, 2015, Bruce J. Castleton, the lead counsel in this case representing Cundick, sent Plaintiffs' counsel a letter (Williams Decl., Ex. A) setting out the above described facts and identified two controlling points: first, Cundick did not make any false statements regarding the ownership of the Property in his May 29 letter; and second, though subsequent conveyances the question of ownership had been resolved and Westover could go forward with the affairs relating to the Property with Rocky Mountain Power as planned. It would therefore be a waste to move forward in the litigation. A telephone conversation was arranged to discuss these issues, but Defense counsel was not able to make contact with Plaintiffs' counsel. (*Id.*, ¶ 2.)

Instead, Plaintiffs responded to counsel's letter shortly thereafter by filing an Amended Complaint adding a third claim for tortious interference with a contract or prospective business advantage. (August 20, 2015 Amended Complaint) The Amended Complaint seeks a writ of mandate ordering Cundick to "retract his slander of title," (referring to the May 29 letter), a writ of prohibition prohibiting Cundick from "exceeding his authority in making property ownership determinations" and "prohibiting him from interfering with real estate transactions in Franklin County." It also seeks damages and attorney fees.

Cundick has not yet filed an answer. On September 28, 2015, he filed a motion to dismiss and memorandum (as well as a reply) arguing: (1) all of the Westovers' claims must be dismissed for lack of standing because there was no indication that they had actually suffered any harm; (2) at the very least the petition for writ of mandate or prohibition must be dismissed because Westover failed to show entitlement to relief under the special writs statute.

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 5.**

The motion to dismiss was set for a hearing for November 12, 2015. Prior to the hearing, Westover filed a motion for summary judgment on the special writs issue, and also responded substantively to Cundick's dismissal arguments. Plaintiffs also provided an affidavit from Craig Bolton, of Rocky Mountain Power, stating that Rocky Mountain Power was not going to take any adverse action against Westover pending clarification of who owned the Property. (*See id.*, Bolton Affidavit) As indicated above, there is no dispute that Westover owns the Property.

On November 12, the Court conducted a hearing on this matter and ordered mediation. This stayed Cundick's motion to dismiss and Westover's motion for summary judgment (which was previously set for a December 10 hearing).

On January 7, 2016, even though these matters had been stayed pending mediation, Plaintiffs filed the present motion seeking an entry of judgment on the petition for writ of mandate/prohibition and seeking to dismiss without prejudice their claims for slander of title and tortious interference.

Mediation occurred on January 15 and did not result in the case being resolved.

C. Additional Proceedings

Immediately after the November 12 hearing, the parties, with counsel, briefly met in a side room in the Franklin County Courthouse. At the conclusion of this meeting it was decided that Westover would provide a copy of the real estate purchase and sale agreement with an agreement that it would remain confidential, and that if Cundick was satisfied it showed they owned the property at issue when they had previously recorded the easement, Cundick would issue a new letter to Westover and Rocky Mountain Power. It was Cundick's and his attorney's understanding at the conclusion of this meeting that this would resolve the case. However, in subsequent communications

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 6.**

with Plaintiffs' counsel it was clarified that a letter related only to the issue of the special writs, but would not resolve the slander of title and tortious interference claims. (Williams Decl., ¶¶ 3.)

Nevertheless, anticipating at least a partial resolution of the case, counsel signed the proposed confidentiality agreement, which even referenced resolution of the mandamus issue. (Williams Decl., ¶ 4.) Plaintiff's counsel then provided a copy of the confidential real estate contract and, after reviewing the new document, Cundick issued a letter to Westover and Rocky Mountain Power on December 11, 2015. (Cundick Decl., Ex. F.) The letter states in full:

On May 29, 2015 this office advised you that the property description included in the document referenced above [i.e., the easement] was not owned by the Grantor. Upon further investigation we have determined that on the date the easement was granted, Val D. Westover was the owner of the property in question.

(*Id.*) (bracketed language added). Notably, this language is identical to what was actually proposed by Plaintiffs' counsel. (Williams Decl., ¶ 4.)

With the December 11, 2015 letter issued as a courtesy and in an attempt to resolve this matter, the issue of mandate/prohibition should have been once and for all resolved. Instead, Westover now seeks entry of judgment on their writs of mandate and prohibition and to dismiss the remaining torts, thus resulting in anticipated future piecemeal litigation and additional waste of time and expense.

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 7.**

II. ARGUMENT

A. **Westover's Motion for Entry of Judgment on Their Petition for Special Writs Must Be Denied**

1. **Writ of Mandate**

A writ of mandate is a special writ used in rare circumstances, to be used sparingly, "to compel the performance of an act which the law especially enjoins as a duty resulting from an office. . . ." I.C. § 7-302; *Cole v. U.S. Dist. Court for Dist. of Idaho*, 366 F.3d 813, 818 (9th Cir. 2004). The writ is used where one is "seeking to require a public officer to carry out a clearly mandated, non-discretionary ministerial act." *Coeur D'Alene Tribe*, 2015 WL 7421342 at *14 (Nov. 20, 2015) (emphasis added) (not yet published) (citing *Cowles Publ'g Co. v. Magistrate Court*, 118 Idaho 753 (1990)). A writ of mandate is not a tool "to control matters of discretion." *Total Success Invest., LLC v. Ada Cnty Highway Dist.*, 148 Idaho 688, 691 (2010). Rather, it is only appropriate "if the officer against whom the writ is brought has a clear legal duty to perform and if the desired act sought to be compelled is ministerial or executive nature, and does not require the exercise of discretion." *Id.* (emphasis added). Significantly, a writ must not be issued where there is "a plain, speedy and adequate remedy in the ordinary course of law." I.C. § 7-303; *Total Success Investments, LLC*, 148 Idaho at 692.

Westover's motion for entry of judgment fails for three main reasons:

a. **Cundick Has No Clear Mandate or Legal Duty to Retract His May 29 Letter**

First, the county assessor has no clear mandate or legal duty to retract his May 29, 2015 letter. As the letter makes clear, it merely expresses the assessor's concern that the Property subject

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 8.**

to the easement recorded on April 20, 2015, was not owned by the named grantor, based on his office's review of the recorded documents. There is nothing in Title 63 (governing revenue and taxation) or the related administrative rules, prohibiting such a letter. Indeed, the statute implicitly contemplates that such a letter is appropriate for the assessor to determine who owns land for purposes of appraisal, assessment, taxation, exemptions to taxation, and liens. It strains credulity to suggest that a county assessor has no authority to determine who owns property where the assessor is tasked with such matters.

Indeed, the assessor has an affirmative duty to ascertain ownership and implicit in this duty is the obligation to ascertain correct ownership. As Westover points out, "[t]he assessor shall ascertain the current ownership of land from documents recorded in the county recorder's office and/or from evidence from evidence of ownership furnished to the assessor which is admissible at trial in a civil action pursuant to section 54-103, Idaho Code." I.C. § 63-307(1). This is exactly what Cundick did. His office reviewed the documents on file, which raised concern about ownership and which precipitated his May 29 letter, which was plainly intended to apprise the concerned parties – both Westover and Rocky Mountain Power (the grantee), that there was a problem with ownership.

Westover contends that the 2007 Memorandum of Real Estate Contract (Complaint, Ex. A) constitutes a sufficient "muniment of title" under I.C. § 63-307 that adequately showed they owned the Property at the time of the easement. (Plfs' Motion at 2.) This is incorrect. In context of section 307, "muniment of title" is used in subsection 2 as shorthand referring to certain forms of evidence of ownership referenced in subsection 1, which cross-references I.C. § 54-103, i.e., an abstract of title, policy of title insurance, or title report. More the point, while a summary of an instrument of

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 9.**

a sale may be recorded for purposes of providing notice (assuming it meets certain criteria), *see* I.C. § 55-818, that is not the same issue as determining actual ownership for purposes of Title 63.

The purpose of recording instruments under Idaho's recording statutes is to provide notice that there is a claimed interest in real property. *Matheson v. Harris*, 98 Idaho 758 (1977). The statutes thus provide for the recording of several types of instruments, including a summary of an instrument. I.C. §§ 55-801, 818. As such, a properly drafted memorandum of sale may act as a placeholder for purposes of determining priority, but it does not establish ownership or a transfer thereof insofar as the recording system is concerned. In other words, a memorandum of sale has no impact on ownership and therefore a county assessor could reasonably not recognize it as conveying or establishing ownership.

Further, in order for a summary of an instrument to even provide adequate notice under the recording statutes it must comply with certain statutory requirements, including the full mailing address of the grantee. I.C. § 55-818. In this case, the 2007 Memorandum does not include the complete mailing address of any party, much less the grantee. Accordingly, it is not even a valid summary of the underlying real estate contract for purposes of notice, let alone adequate to prove actual ownership.

To the extent Westover contends that the memorandum of sale reflects equitable title, this is also insufficient to establish ownership here because the doctrine of equitable conversion deals with issues in equity involving risk of loss where there is a real estate transaction, which is irrelevant to determining ownership for purposes of Title 63. To be clear, a contract to sell real property results in an equitable conversion of the land, with equitable ownership transferring to the vendee while the vendor retains legal title as security for payment of the debt. *Rush v. Anestos*, 104 Idaho 630, 633

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 10.**

(1983). This means that when there is a valid contract for the sale of real property the purchaser is treated as having an interest in the property and the seller an interest in the right to receive the purchase money. *Holscher v. James*, 124 Idaho 443, 446 (1993). The doctrine typically applies when there is a real estate contract executed and there is damage or loss to the property. The contract purchaser may be deemed the equitable owner and assumes the risk of loss on the property. *Id.*

Significantly, however, the doctrine only applies "if 'nothing in the contract states otherwise.'" *Id.* (quoting *Rush*, 104 Idaho at 634). This plainly means that in order to determine whether the doctrine will apply and therefore whether a person is the equitable owner, the contract itself needs to be evaluated. However, this is impossible here because the real estate contract is confidential and is not in the record.

In any event, these issues regarding equitable conversion do not relate to Title 63 ownership determination by a county assessor and Westover's assertions to the contrary merely distract from the real issues. A writ of mandate can only be issued to order an official to take an action he has a clear legal duty to perform. Based on the above, this is not the case here especially where Cundick has already issued his December 11, 2015 letter¹ stating that Westover owned the property as of the date of the easement.

b. Cundick's May 29 Letter Was Discretionary

¹Westover states that the December 11, 2015 letter was issued because Cundick "has now reconsidered his untenable position. . . ." (Plfs' Mot. at 3.) This is plainly not the case and is a disingenuous representation. Cundick issued the December 11 letter based on being provided the actual real estate contract that Plaintiffs had previously not provided. It was based on the contents of this newly produced document that he sent the new letter, not because he reconsidered documents already in the record.

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 11.**

Second, as noted above, while Title 63 recognizes an assessor's ability to correctly determine property ownership, nothing in the statute prohibits an assessor from sending a letter to interested parties when a question of land ownership arises in connection with an attempt to record an instrument. Rather, this is a courtesy performed by the Franklin County Assessor (and has been for years) done in its discretion. Thus, the Cundick's May 29 letter was a discretionary act for which a writ of mandate or prohibition simply cannot apply.

c. Westover Has Legal Remedies Available

Last, as has already been briefed, Plaintiffs have other adequate remedies at law that prevents them from also seeking writs. In fact, in this case they have also sued for slander of title and tortious interference with contract/prospective business advantage. They cannot, therefore, also obtain a writ of mandate.

2. Writ of Prohibition

The counterpart to a writ of mandate is a writ of prohibition, which may be utilized to "arrest[] the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person." I.C. § 7-401; *State v. Dist. Ct. of Fourth Jud. Dist.*, 143 Idaho 695, 698 (2007). In order to obtain a writ of prohibition the petitioner must also show that the person against whom the writ is being sought is presently acting without authority or in excessive of authority. Just like a writ of mandate, a writ of prohibition is an extraordinary remedy that should only be ordered in extraordinary circumstances. And, as with a writ of mandate, a writ of prohibition cannot be issued where there is another remedy available. *State v. Idaho St. Bd. of Land Com'rs*, 150 Idaho 547, 553 (2010).

**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 12.**

Plaintiffs motion for issuance of a writ of prohibition fails for the same reasons as their writ of mandate. It also fails because there is presently no action whatsoever to stop. While Cundick may, in his discretion, send out future letters concerning ownership of property similar to the one at issue here, there is nothing in the record showing that right now he is doing anything allegedly unlawful with respect to Westover. And Westover certainly has no standing to seek a writ of any kind or any relief at all based on speculative letters that might go to third-parties in the future. In short, there is simply nothing here to arrest and therefore a writ of prohibition is inappropriate.²

B. Westover's Motion to Dismiss Their Claims for Slander of Title and Tortious Interference Should be Denied

Westover also asks the Court to dismiss their remaining tort claims without prejudice. Leave is required in this case because no answer has been filed and there is a pending motion for summary judgment. Otherwise, Plaintiffs would be able to voluntarily dismiss these claims without a court order. *See* I.R.C.P. 41(a)(1), (2). Instead of dismissing these claims without prejudice now, and invite additional, piecemeal litigation in the form of a new lawsuit, the Court should rule on Cundick's motion to dismiss for lack of standing and resolve these matters in that manner. This would avoid unnecessary future expense and waste of time.

**III.
CONCLUSION**

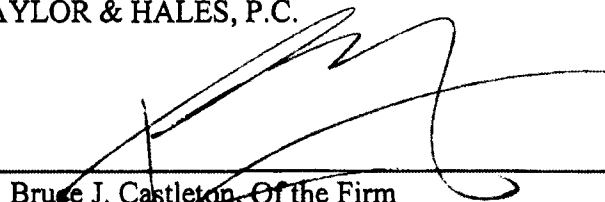
Plaintiffs' motion for issuance of a writ of mandate and prohibition must be denied for the reasons set forth above and in Defendant's motion to dismiss. Additionally, Defendant requests that

²For the Court's information, the Franklin County Assessor's Office is currently developing a policy, with input from Plaintiffs, regarding these types of letters in order to better articulate the circumstances and process for such letters, and to lessen Plaintiffs' concern of future issues.

the Court rule on the standing issue regarding Plaintiffs' tort claims rather than dismiss them at this stage.

DATED this 28th day of January, 2016.

NAYLOR & HALES, P.C.

By 
Bruce J. Castleton, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of January, 2016, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

U.S. Mail
 Federal Express
 Fax: 1-801-533-0380
 Email: batkin@atkinlawoffices.net

Hon. Mitchell Brown's Chambers
159 South Main
Soda Springs, ID 83276
Courtesy Copy

U.S. Mail
 Federal Express
 Fax: 1-208-547-2147


Bruce J. Castleton

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**DEFENDANT'S RESPONSE TO MOTION FOR ISSUANCE OF WRITS
AND TO DISMISS - 14.**

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: bjc@naylorhales.com; tdw@naylorhales.com

Attorneys for Defendant

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DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER and
LaREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No. CV-2015-312

**DECLARATION OF JASE
CUNDICK IN RESPONSE TO
PLAINTIFF'S MOTION FOR
ISSUANCE OF WRITS AND TO
DISMISS**

I, **JASE CUNDICK**, declare under penalty of perjury that the following is true and correct:

1. I am the named defendant in the above-captioned case. I am over the age of eighteen and I have personal knowledge about the facts set forth herein. In my capacity as the Franklin County Assessor I have custody and possession of various documents related to this lawsuit, as set forth below.

2. Attached as **Exhibit A** (FRANKLIN COUNTY 48-49) are true and correct copies of two quitclaim deeds recorded on February 25, 2008, as Instrument Nos. 240669 and 240670.

DECLARATION OF JASE CUNDICK - 1.

3. Attached as **Exhibit B** (FRANKLIN COUNTY 50-51) is a true and correct copy of a warranty deed recorded on December 3, 2012, as Instrument No. 256758.

4. Attached as **Exhibit C** (FRANKLIN COUNTY 22) is a true and correct copy of a letter from the Assessor's Office related to the December 3, 2012 warranty deed. The office also emailed plaintiffs' counsel regarding the deed but did not receive a response.

5. Attached as **Exhibit D** (FRANKLIN COUNTY 56-57) is a true and correct copy of a warranty deed recorded on May 14, 2015, as Instrument No. 264433.

6. Attached as **Exhibit E** (FRANKLIN COUNTY 58-59) is a true and correct copy of a quitclaim deed recorded on June 8, 2015, as Instrument No. 264663.

7. Attached as **Exhibit F** (FRANKLIN COUNTY 80) is a true and correct copy of a letter I sent to Val Westover and Rocky Mountain Power, dated December 11, 2015. I sent this letter after Plaintiffs' counsel provided a confidential copy of a real estate purchase and sale agreement that showed Val and LaRee Westover owned the property at issue here as of the date of the easement.

PURSUANT to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATE: 27 Jan 2016



JASE CUNDICK

Attachments:
Exhibits A-F

DECLARATION OF JASE CUNDICK - 2.

CERTIFICATE OF SERVICE

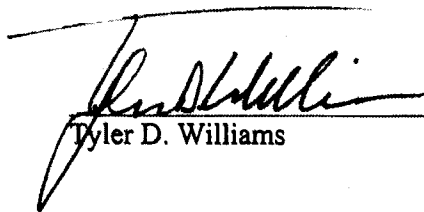
I HEREBY CERTIFY that on the 18th day of January, 2016, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

U.S. Mail
 Federal Express
Fax: 1-801-533-0380
 Email: batkin@atkinlawoffices.net

Hon. Mitchell Brown's Chambers
159 South Main
Soda Springs, ID 83276
Courtesy Copy

U.S. Mail
 Federal Express
Fax: 1-208-547-2147


Tyler D. Williams

9534_10 Declaration of Jase Cundick.wpd

DECLARATION OF JASE CUNDICK - 3.

Return to: 424 N. Main Hwy
Clifton ID 83228

240669

Recorded at the request of
Dexter Ralphs

 a.m. FEB 25 2008 p.m. 1:32

V. ELLIOTT LARSEN, RECORDER
By Camille Jensen Deputy
FRANKLIN COUNTY, IDAHO

QUIT CLAIM DEED

For Value received DAN A Westover
Spouse Connie V. Westover
Grantor(s),

do(es) hereby convey, release, remise and forever quit claim unto
Dexter E Ralphs & Linda L. Ralphs
husband & wife Grantee(s),

the following described premises, to-wit:

STARTING POINT SW. NE. NE. 21.14 S. S8E —
THEN 789' S90W — THEN 65' N0E — THEN
422.04' N40°29'01"E — THEN 481.6' S74°27'47"E
— THEN 51' N90E — THEN 257' S0E TO STARTING
POINT

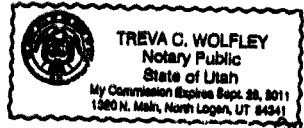
together with their appurtenances.

Dated: Nov. 19, 2007

X Don Westover X Connie Westover

State of Utah
County of Cache

On this 19 day of November, 2007, before me, a Notary Public in and for said State, personally
appeared Connie and Don Westover, known or identified to me to be the person(s) whose
name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same. In
witness whereof I have set my hand and affixed my official seal the day and year in this certificate first above written.



Treva C. Wolfley
Notary Public State of Utah
Residing at: Wills Camp 120 N. Main Log
Commission Expires: 04/28/2011

Courtesy of First American Title Company, Inc.

Return to:

424 N. Main Hwy
Clifton ID 83228

240670

Recorded at the request of

Dexter Ralphs

— a.m. FEB 25 2008 p.m. 1:34

V. ELLIOTT LARSEN, RECORDER
By Camille Larsen Deputy
FRANKLIN COUNTY IDAHO

QUIT CLAIM DEED

For Value received DEXTER E RALPHS & SPOUCE
LINDA L RALPHS

Grantor(s),

do(es) hereby convey, release, remise and forever quit claim unto

Don A Westover ; Connie Westover
husband & wife Grantee(s),

the following described premises, to-wit:

SW, NE, NE, 21, 14S, 38E - 922.9' N90E - THEN 953.25'
N44°27'W TO STARTING POINT - 107' N44°27'W - THEN
96' S67.58'W - THEN 63.5' S8.55'W - THEN 82.6'
S39.27'W - THEN 57' S66.21'W - THEN 267.86'
S05.4636E - THEN 232.29' N25°24'21"E - THEN
230' TO STARTING POINT.

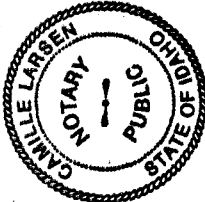
together with their appurtenances.

Dated: 2-25-08

X [Signature] X Linda L Ralphs

State of Idaho
County of Franklin

On this 25th day of February, 2008, before me, a Notary Public in and for said State, personally appeared Dexter E. Ralphs and Linda L. Ralphs known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same. In witness whereof I have set my hand and affixed my official seal the day and year in this certificate first above written.



Camille Larsen
Notary Public State of Idaho
Residing at: Western
Commission Expires: 2/21/2014

Courtesy of First American Title Company, Inc.

256758 1-2

WARRANTY DEED

Don A. Westover grantor, of Clifton, Idaho hereby conveys and warrants to Val D Westover, Trustee of the Don A. Westover Trust, grantee, of Clifton, Idaho 83228 for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described tracts of land in Franklin County, Idaho as set forth in Exhibit "A" attached hereto.

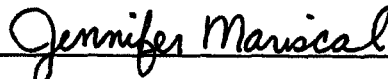
WITNESS the hand of said grantors this 30th day of November, 2012.


Don A. Westover

STATE OF Idaho)
: SS
COUNTY OF Franklin)

On this the 30th day of November, 2012, personally appeared before me Don A. Westover the signer of this Warranty Deed, who acknowledged to me that he executed the same.

JENNIFER MARISCAL
Notary Public
State of Idaho


Notary Public

warrdeed.914

1

Recorded at the request of
Northern Title
Time 10:11

DEC 03 2012

SHAUNAT GEODES, RECORDER
BY C. Law Deputy
FRANKLIN COUNTY IDAHO

256758 2-2

Exhibit A

E1/2NE1/4, SW1/4NE1/4, E1/2SE1/4, SECTION 20, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN.

NW1/4, NW1/4NE1/4 SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN,

N1/2NE1/4 SECTION 29, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN.

ALSO, COMMENCING AT A POINT 1320 FEET WEST AND 300.2 FEET SOUTH OF THE NE CORNER OF SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN, THENCE RUNNING SOUTH 34 DEGREES 54 MINUTES EAST 318.5 FEET; THENCE SOUTH 67 DEGREES 58 MINUTES WEST 96 FEET; THENCE SOUTH 8 DEGREES 55 MINUTES WEST 63.5 FEET; THENCE SOUTH 39 DEGREES 27 MINUTES WEST 48.6 FEET; THENCE SOUTH 66 DEGREES 21 MINUTES WEST 57.3 FEET THENCE NORTH 420.5 FEET TO THE PLACE OF BEGINNING.

Also excepting therefrom the following tract, to-wit:

Commencing at a point 1580 feet West and 729 feet South of the NE corner of Section 21, Township 14 South, Range 38 East, Boise Meridian, to the point beginning, thence running South 40 degrees 50 minutes East 440 feet; thence South 65 degrees 40 minutes West 512 feet; Thence North 20 degrees 12 minutes East 605 feet, more or less, to the point of beginning; Also Including, all water rights appurtenant to the property including but not limited to the following water stock, to wit: 2 3/4 shares in the Rushville irrigation company. Excepting therefrom portions deeded for road or road purposes.



Franklin County Assessor

Jase D. Cundick
Assessor

51 West Oneida
Preston, Idaho 83263
(208) 852-1091

January 24, 2013

Don A. Westover
P.O. Box 68
Clifton, ID 83228

Re: Instrument # 256758 Office Contact: Denise

The enclosed documents are copies of ones you have recorded with the Franklin County Clerk's Office. They are being sent back to you for the following reason(s):

- The property description has errors within it.
- There is no section, township, or range in the description.
- There is no address for the grantee listed, as required by Idaho State Law.
- Other: The Grantor does not own the all property described in the deed. Exceptions need to be added to the legal description. The Grantor has not included all property owned. Is it the intent to leave Connie V. Westover's interest on the property?

Proper procedure would be for the original document to be corrected, initialed by the grantors and brought back to the Franklin County Clerk's Office for recording again. Or you may create a new document. In either instance, the recording fee per page will again be charged.

It is important for these corrections to be made, as the complete transfer of property can not occur on the county records until we have a corrected document.

Thank You for your assistance in this matter.

Sincerely,

Jase D. Cundick
Franklin County Assessor

Encl: Previously Recorded Document(s)

264-133

1-2

WARRANTY DEED

Recorded at the request of
Blake Atkin
Time 9:21 Amount \$ 1300

MAY 14 2015

SHAUNA T. GEDDES, RECORDER
By Richard [Signature] Deputy
Franklin County, Idaho

Don A. Westover and Connie V. Westover, grantors, Clifton, Idaho hereby convey and warrant to Val D Westover and LaRee H. Westover as joint tenants and not as tenants in common, grantees, of Clifton, Idaho 83228 for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described tracts of land in Franklin County, Idaho as set forth in Exhibit "A" attached hereto.

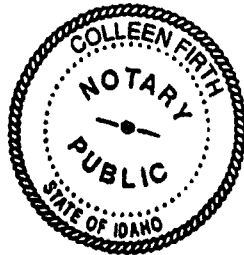
WITNESS the hand of said grantors this 17 day of November, 2007.

[Signature]
Don A. Westover

[Signature]
Connie V. Westover

STATE OF Idaho)
: SS
COUNTY OF Franklin)

On this the 17 day of November, 2007, personally appeared before me Don A. Westover and Connie V. Westover, the signers of this Warranty Deed, who acknowledged to me that they executed the same.



Colleen Firth
Notary Public
exp 06/10/2011

264433

2-2

Exhibit A

E1/2NE1/4, SW1/4NE1/4, E1/2SE1/4, SECTION 20, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN.

NW1/4, NW1/4NE1/4 SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN,

N1/2NE1/4 SECTION 29, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN.

ALSO, COMMENCING AT A POINT 1320 FEET WEST AND 300.2 FEET SOUTH OF THE NE CORNER OF SECTION 21, TOWNSHIP 14 SOUTH, RANGE 38 EAST, BOISE MERIDIAN, THENCE RUNNING SOUTH 34 DEGREES 54 MINUTES EAST 318.5 FEET; THENCE SOUTH 67 DEGREES 58 MINUTES WEST 96 FEET; THENCE SOUTH 8 DEGREES 55 MINUTES WEST 63.5 FEET; THENCE SOUTH 39 DEGREES 27 MINUTES WEST 48.6 FEET; THENCE SOUTH 66 DEGREES 21 MINUTES WEST 57.3 FEET THENCE NORTH 420.5 FEET TO THE PLACE OF BEGINNING.

Also excepting therefrom the following tract, to-wit:

Commencing at a point 1580 feet West and 729 feet South of the NE corner of Section 21, Township 14 South, Range 38 East, Boise Meridian, to the point beginning, thence running South 40 degrees 50 minutes East 440 feet; thence South 65 degrees 40 minutes West 512 feet; Thence North 20 degrees 12 minutes East 605 feet, more or less, to the point of beginning; Also Including, all water rights appurtenant to the property including but not limited to the following water stock, to wit: 2 3/4 shares in the Rushville irrigation company. Excepting therefrom portions deeded for road or road purposes.

WHEN RECORDED, MAIL TO:
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, Idaho 83228

264663 1-2

Recorded at the request of
Atkin Law
Time 1:08P Amount \$ 1300

JUN 08 2015

SHAUNA T. GEDDES, RECORDER
By [Signature] Deputy
Franklin County, Idaho

QUITCLAIM DEED

Don A. Westover, Trustee of The Don A. Westover Family Trust hereby Quitclaims to Val D. and LaRee H. Westover the property at the legal description attached as exhibit "A" in Franklin County, State of Idaho.

WITNESS the hand of grantor, this 6 day of June, 2015.

[Signature]
Don A. Westover

STATE OF IDAHO)
 : ss
COUNTY OF FRANKLIN)

On this 6 day of June, 2015, before me personally appeared
Don A. Westover the signer of this Quitclaim Deed, who acknowledged
to me that he executed the same.

Jennifer Mariscal
NOTARY PUBLIC
exp. 7-13-18



Exhibit A

Township 14 South, Range 38 East of the Boise Meridian.

Section 20: E1/2NE1/4; SW1/4NE1/4; E1/2SE1/4.

Section 29: N1/2NE1/4.

Section 21: NW1/4; NW1/4NE1/4; All of that portion of the NE1/4NE1/4 lying west of the West Side Highway.

EXCEPTING THEREFROM:

Commencing at the Northeast corner of said Section 21, Township 14 South, Range 38 East, Boise Meridian, Franklin County, Idaho, from which the East Quarter Corner of the Section 21 bears South 00° 31' 16" East;

Thence West 1069.82 feet;

Thence South 623.81 feet to a 5/8" rebar and cap labeled "A.L.S., PLS 9163" at the intersection of an existing fence line and the southwesterly right of way of the West Side Highway (F.A.P. S-1739(4)), the Point of Beginning.

Thence South 47° 40' 30" West 233.21 feet along a fence line to a 5/8" rebar and cap;

Thence South 22° 54' 00" West 212.30 feet along a fence line to a 5/8" rebar and cap;

Thence South 00° 14' 00" West 86.60 feet along a fence line to a 5/8" rebar and cap;

Thence South 82° 27' 00" West 50.60 feet along a fence line to a 5/8" rebar and cap;

Thence North 74° 29' 00" West 485.40 feet along a fence line to a 5/8" rebar and cap;

Thence South 41° 47' 00" West 443.40 feet along a fence line to a 5/8" rebar and cap;

Thence South 29° 03' 00" East 62.90 feet, more or less, along a fence line to the south boundary of the N1/2NE1/4 of said Section 21;

Thence East 1712.0 feet, more or less, along said south boundary line to the southwesterly right of way of the West Side Highway;

Thence Northwesterly 970.0 feet, more or less, along said southwesterly right of way to the Point of Beginning.



Jase D. Cundick
Franklin County Assessor

51 W Oneida St
Preston, ID 83263
(208) 852-1091
jasec@fcidaho.us

Rocky Mountain Power
Craig Bolton
509 So. 2nd E.
Preston, ID 83263

and

Val D Westover
500 No. Main Hwy
Clifton, ID 83228

December 11, 2015

RE: Underground Right of Way of Easement recorded on April 20, 2015

On May 29, 2015 this office advised you that the property description included in the document referenced above was not owned by the Grantor. Upon further investigation we have determined that on the date the easement was granted, Val D Westover was the owner of the property in question.

Sincerely,

A handwritten signature in cursive script that reads "Jase Cundick".

Jase D. Cundick
Franklin County Assessor

Bruce J. Castleton [ISB No. 6915]
Tyler D. Williams [ISB No. 8512]
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock Street, Suite 610
Boise, ID 83702
Telephone No. (208) 383-9511
Facsimile No. (208) 383-9516
Email: bjc@naylorhales.com; tdw@naylorhales.com

Attorneys for Defendant

FILED

16 JAN 28 PM 2:47

FRANKLIN COUNTY CLERK

KI

DEPUTY

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN**

VAL D. WESTOVER and
LaREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

Case No. CV-2015-312

**DECLARATION OF TYLER D.
WILLIAMS IN SUPPORT OF
DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR
ISSUANCE OF WRITS AND TO
DISMISS**

I, **Tyler D. Williams**, declare under penalty of perjury that the following is true and correct:

1. That I am an attorney of record in the above-captioned case for the Defendant. I make this declaration based upon my personal knowledge and experience.

2. On or about August 17, 2015, after Jase Cundick was served with the complaint in this action, Bruce J. Castleton, the lead counsel in this case representing Mr. Cundick, sent Plaintiffs' counsel a letter setting out the relevant facts of the case and identifying the controlling points. A true and correct copy of the letter is attached hereto as **Exhibit A (FRANKLIN COUNTY 81-83)**. Mr.

DECLARATION OF TYLER D. WILLIAMS - 1.

Castleton explained to counsel that records showed there was a legitimate reason for Mr. Cundick to send the May 29, 2015 letter and that the issue of ownership had since been resolved, thus there was no reason to go forward with litigation. A telephone conference was arranged to discuss these issues but we were not able to make contact with Plaintiffs' counsel. Instead, just a few days later Plaintiffs filed an Amended Complaint. While this letter is a Rule 408 communication, it is not being provided to disprove liability. The facts of the case and controlling law is sufficient for that purpose. Rather, the letter is being provided because Plaintiffs have made multiple representations in this case that they have had no option but to pursue this litigation when, in fact, this letter plainly shows that Defense counsel attempted to reach out to Plaintiff's counsel early on in this case to resolve these issues. Plaintiffs have set forth a narrative of this case that is not entirely accurate, and this letter helps to provide more context.

3. Additionally, it is important to recognize that immediately after the November 12 hearing (on defendant's motion to dismiss), the parties, with counsel, briefly met in a side room in the Franklin County Courthouse. At the conclusion of this meeting it was decided that Westover would provide a copy of the real estate purchase and sale agreement with an agreement that it would remain confidential, and that if Cundick was satisfied it showed they owned the property at issue when they had previously recorded the easement, Cundick would issue a new letter to Westover and Rocky Mountain Power. It was my understanding (and my client's) understanding at the conclusion of this meeting that this would resolve the case. However, in subsequent communications with Plaintiffs' counsel it was clarified that the letter related only to the issue of the special writs, but would not resolve the slander of title and tortious interference claims.

DECLARATION OF TYLER D. WILLIAMS - 2.

4. Plaintiff's counsel provided a proposed confidentiality agreement, which even referenced resolution of the mandamus issue. He also provided proposed language for Mr. Cundick to use in a letter to Westover and Rocky Mountain Power, which ultimately was adopted by Mr. Cundick in its entirety. A true and correct copy of the proposed agreement and proposed letter is attached as **Exhibit B** (FRANKLIN COUNTY 84-86).

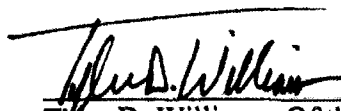
5. Anticipating at least a partial resolution of the case (i.e., the writ of mandate/prohibition), I signed the confidentiality agreement, a true and correct copy of which is attached as **Exhibit C** (FRANKLIN COUNTY 87). Plaintiff's counsel then provided a copy of the confidential real estate contract and, after reviewing the new document, Mr. Cundick issued a letter to Westover and Rocky Mountain Power on December 11, 2015, a copy of which is attached to Mr. Cundick's declaration.

6. Again, these issues do not necessarily relate to liability. Instead, this information is being provided because of representations made by Plaintiffs in this case that do not provide the full context. Specifically, Plaintiffs suggest that Mr. Cundick "reconsidered his untenable" position when in fact, as the record shows, he issued the December 11 letter based on new evidence.

PURSUANT to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 18th day of January, 2016.

NAYLOR & HALES, P.C.


Tyler D. Williams, Of the Firm
Attorneys for Defendant

DECLARATION OF TYLER D. WILLIAMS - 3.

CERTIFICATE OF SERVICE

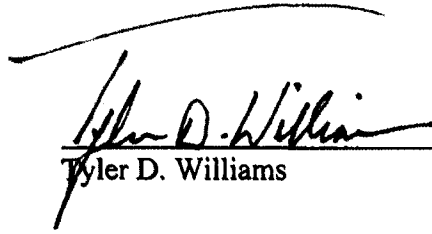
I HEREBY CERTIFY that on the 28th day of January, 2016, I caused to be served, by the method(s) indicated, a true and correct copy of the foregoing upon:

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Attorney for Plaintiffs

U.S. Mail
 Federal Express
 Fax: 1-801-533-0380
 Email: batkin@atkinlawoffices.net

Hon. Mitchell Brown's Chambers
159 South Main
Soda Springs, ID 83276
Courtesy Copy

U.S. Mail
 Federal Express
 Fax: 1-208-547-2147


Tyler D. Williams

Attachments: Exhibits A-C
9534_10 Declaration of TDW.wpd



NAYLOR & HALES, P.C.
ATTORNEYS AT LAW

BRUCE J. CASTLETON

Direct Line: 947-2069
E-mail: bjc@naylorhales.com

Kirtlan G. Naylor
Roger J. Hales
Bruce J. Castleton
Eric F. Nelson
Jacob H. Naylor
Tyler D. Williams
Joan E. Callahan
Landon S. Brown

Of Counsel
Robert G. Hamlin

August 17, 2015

RULE 408 PROTECTED

Blake S. Atkin
Atkin Law Offices, P.C.
7579 North Westside Highway
Clifton, ID 83228
Via U.S. Mail and Fax: 1-801-533-0380

Re: Westover v. Cundick

Dear Mr. Atkin:

I represent and write on behalf of Franklin County Assessor Jace D. Cundick, and I write with respect to the lawsuit filed by your clients, Val and LaRee Westover, against Mr. Cundick in Sixth District Court. I write in the hope that I can explain my client's position on the matters related to the lawsuit, and to request that your clients dismiss this lawsuit and move forward with their affairs.

Your clients' lawsuit is based primarily upon a letter written by Mr. Cundick dated May 29, 2015, to Val Westover and Rocky Mountain Power. This letter is Exhibit C to your client's Complaint. In this letter, Mr. Cundick communicated that the property description included in the Underground Right of Way of Easement recorded by the addressees was not owned by the listed Grantor. By way of explanation, my client came to write this letter based on the following records that were available to him at the time he wrote the letter:

1. Prior to November 26, 2007, the listed owners of the property (affected by the Right of Way of Easement, hereinafter referred to as "the Property") were Don and Connie Westover. On that date—November 26, 2007—a Memorandum of Real Estate Contract was recorded indicating that Don and Connie Westover had conveyed the Property to Val and LaRee Westover, but this Memorandum of Real Estate Contract was not a conveyance of property in and of itself because it contained no language to convey the Property, and the Real Estate Sales Contract itself was not provided. Thus, no ownership

Blake S. Atkin
Atkin Law Offices, P.C.
August 17, 2015
Page 2

was transferred on the records of the Assessor through this Memorandum, and the listed owners remained Don and Connie Westover.

2. On February 25, 2008, two quitclaim deeds were recorded to trade ground involving the Property between Don and Connie Westover and Dexter and Linda Ralphs. These were recorded as Instrument Nos. 240669 and 240670. These quitclaim deeds adjusted the acreage of the respective parcels. This action indicated Don and Connie Westover remained the owners of the Property.
3. On December 3, 2012, a warranty deed conveying the Property from Don A. Westover to the Don A. Westover Trust was recorded, Instrument No. 256758. Questions were raised by the Assessor's Office regarding the legal description used for the warranty deed, and a letter was sent to the Westovers regarding these issues. The Assessor's Office also emailed you regarding this issue, but they never received any response from anyone. Based on this warranty deed, the owner of the Property was updated as the Don A. Westover Trust.
4. On April 20, 2015, the Underground Right of Way of Easement was recorded.
5. On May 14, 2015, a warranty deed conveying the Property from Don and Connie Westover to Val and LaRee Westover was recorded, though this recording did not formally appear in the Assessor's records and in its systems until after Mr. Cundick sent his May 29, 2015 records. More so, because the listed owner of the Property was still the Don A. Westover Trust—not Don and Connie Westover—the May 14, 2015 warranty deed did not change the record of title in the Assessor's Office.
6. On May 29, 2015, Mr. Cundick sent his letter to Mr. Westover and Rocky Mountain Power.

Subsequently, on June 8, 2015, a Quitclaim Deed was recorded conveying the Property from the Don A. Westover Family Trust to Val and LaRee Westover. This was recorded as Instrument No. 264663, and the deed itself indicates a copy of it was to be sent to your offices upon recording. The Assessor's Office deemed the Don A. Westover Family Trust to be the same entity as the Don A. Westover Trust, and so ownership of the Property was changed in the Assessor's Office to Val and LaRee Westover, who are the currently listed owners.

As such, ownership of the Property did not change to Val and LaRee Westover until June 8, 2015, after my client had sent the letter to Mr. Westover and Rocky Mountain Power. As the situation stands today, Val and LaRee Westover are the currently listed owners of the Property and so if those individuals were to record the Underground Right of Way of Easement with Rocky

Blake S. Atkin
Atkin Law Offices, P.C.
August 17, 2015
Page 3

Mountain Power now there would be no ownership discrepancies on record in the Franklin County Assessor's Office.

As established above, my client's May 29, 2015 letter to Mr. Westover and Rocky Mountain Power was based on the information available to my client, which information showed that the Westovers were not, in fact, the owners of the Property at the time the letter was sent. My client's letter was simply to convey to the parties this noted discrepancy in the Franklin County records so the parties would be so advised. That letter did not constitute any official action by my client, nor did it constitute a refusal to take any action my client was legally obligated to undertake. My client was simply conveying to the addressees of the letter that the Westovers were not listed as the owners of the Property as per the records of Franklin County. And that statement was true and supported by the records of the County.

Further supporting my client's position is the fact that the Don A. Westover Family Trust then recorded the June 8, 2015 Quitclaim Deed transferring the Property from the Trust to Val and LaRee Westover. Had Val and LaRee Westover been the actual owners of the Property when my client sent the May 29 letter, this Quitclaim Deed would have been unnecessary. This Quitclaim Deed reinforces my client's position regarding ownership of the Property, and indicates the Westovers must have realized they did not have ownership of the Property without that transaction.

Considering the above, there seems to me to be two controlling points here. First, my client did not make any false statements regarding the ownership of the Property in his May 29, 2015 letter. And second, through subsequent conveyances the question of ownership for the Property has been resolved and your clients can go forward with their affairs relating to the Property as planned. Given these, it would be wasteful to go forward with this litigation when my client was not at fault in issuing the letter, and your clients no longer have any obstacles to their grant of easement to Rocky Mountain Power.

I look forward to speaking with you regarding this issue on Wednesday at 11:00 a.m. as arranged.

Sincerely,

*Dictated by Bruce J. Castleton and mailed/faxed
without signature in his absence to avoid delay*

Bruce J. Castleton

BJC:dr
Client

9534 Atkin 01. wpd

From: [Tyler Williams](#)
To: [Sheri Hamlin](#)
Cc: [Bruce Castleton](#)
Subject: FW: Westover v. Cundick et al
Date: Wednesday, January 27, 2016 3:28:21 PM
Attachments: [Dear Tyler.pdf](#)
[Proposed ltr to Rocky Mtn. Power.pdf](#)

Sheri,

I'm not sure if the email below was ever saved because I see that they did not copy you or Bruce (even though I've asked her to).

In any event, would you please save this email and the attachments and also BS# them? We are going to produce the email and attachments with my declaration.

Thanks.

Tyler D. Williams
(208) 947-2078

From: Jenn Mariscal [mailto:jenn@atkinlawoffices.net]
Sent: Friday, November 13, 2015 1:21 PM
To: Tyler Williams
Subject: Westover v. Cundick et al

Good afternoon, Mr. Williams.

Attached, please find a letter from Mr. Atkin as well as an additional attachment referred to in his letter. Please feel free to contact me with any questions or concerns.

--

Jenn Mariscal
Atkin Law Offices
(801) 533-0300

ATKIN LAW OFFICES

A PROFESSIONAL CORPORATION
7579 North Westside Highway
Clifton, ID 83228
TELEPHONE (801) 533-0300
FACSIMILE (801) 533-0380
e-mail: batkin@atkinlawoffices.net

November 12, 2015

Tyler D. Williams
NAYLOR & HALES, P.C.
950 W. Bannock St., Suite 610
Boise, ID 83702

Dear Tyler:

Thank you for your helpful suggestions today. I am encouraged that we can get the writ of mandamus issue resolved along the lines we discussed. As we discussed, my clients are willing to provide you with a copy of the real estate purchase agreement with an agreement on your part that you will not make any copies of the contract, that you and your client will review the contract only for purposes of this litigation, and that upon completion of this litigation the contract will be returned to me. If this is agreeable to you and your client, please sign this letter at the place indicated below and return it to me, and I will provide you with the contract. In order to move this matter along, I have a draft of a letter that we would hope the Assessor will sign and send to Rocky Mountain Power after his review of the contract. Please let me know if you have any concerns with the letter as drafted.

Sincerely,



Blake S. Atkin

Tyler D. Williams

Rocky Mountain Power
Craig Bolton
509 So. 2nd E.
Preston, ID 83263

and Val D Westover
500 No. Main Hwy
Clifton, ID 83228

RE: Underground Right of Way of Easement recorded on April 20, 2015

On May 29, 2015 this office advised you that the property description included in the document referenced above was not owned by the Grantor. Upon further investigation we have determined that on the date the easement was granted, Val D Westover was the owner of the property in question.

Sincerely,

Jase D. Cundick
Franklin County Assessor

ATKIN LAW OFFICES

A PROFESSIONAL CORPORATION
7579 North Westside Highway
Clifton, ID 83228
TELEPHONE (801) 533-0300
FACSIMILE (801) 533-0380
e-mail: batkin@atkinlawoffices.net

November 12, 2015

Tyler D. Williams
NAYLOR & HALES, P.C.
950 W. Bannock St., Suite 610
Boise, ID 83702

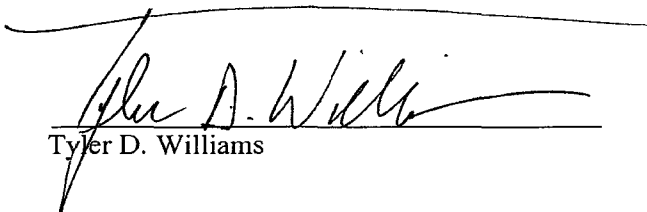
Dear Tyler:

Thank you for your helpful suggestions today. I am encouraged that we can get the writ of mandamus issue resolved along the lines we discussed. As we discussed, my clients are willing to provide you with a copy of the real estate purchase agreement with an agreement on your part that you will not make any copies of the contract, that you and your client will review the contract only for purposes of this litigation, and that upon completion of this litigation the contract will be returned to me. If this is agreeable to you and your client, please sign this letter at the place indicated below and return it to me, and I will provide you with the contract. In order to move this matter along, I have a draft of a letter that we would hope the Assessor will sign and send to Rocky Mountain Power after his review of the contract. Please let me know if you have any concerns with the letter as drafted.

Sincerely,




Blake S. Atkin



Tyler D. Williams

Atkin Law Offices, P.C.
 Blake S. Atkin ISB# 6903
 7579 North Westside Highway
 Clifton, Idaho 83228
 Telephone: (208) 747-3414
 Telephone: (801) 533-0300
 Facsimile: (801) 533-0380

FILED
 16 FEB -2 PM 2:38
 FRANKLIN COUNTY CLERK

 DEPUTY

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
 FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
 LaRee H. Westover,

Plaintiffs

**REPLY TO MOTION FOR
 ENTRY OF JUDGMENT**

v.

Case No. CV-2015-312

Jase D. Cundick, in his individual capacity)
 And in his official capacity as)
 Franklin County Assessor,)
 John Does 1 and 2,)

Judge Mitchell Brown

Defendant.

The Assessor's response to Plaintiffs' request for issuance of writ of mandamus/prohibition illustrates, as nothing else could, why Plaintiffs cannot settle for anything less than a writ of prohibition in this case. The Assessor refuses to see the seriousness of the jeopardy he created for the Plaintiffs by failing to perform his duty to acknowledge Plaintiffs' ownership based on documents on file and, assuming he found some technical defect in the recordings, documents presented to him personally by the Plaintiffs. To give the Court some flavor of the seriousness of the Assessor's actions, Plaintiffs have attached the affidavits of Val D Westover and LaRee Westover. Dismissing the seriousness of his conduct the Assessor glibly says the power company never pulled Plaintiffs' power, and now it won't. While Plaintiffs are

now certain they will not lose their contract with the power company, it is not because the threat was not real, but because of the letter the Assessor finally sent--the letter Plaintiff asked for before this lawsuit was filed. The Assessor attaches his counsel's letter, sent in the early days of this litigation, and argues that it illustrates that this litigation was unnecessary. A perusal of the letter, however, illustrates the exact opposite and the absolute necessity of Plaintiffs' pursuit of this litigation. In the letter, the Assessor asserts that Plaintiffs should get on with their lives and that Plaintiffs' concerns no longer mattered because the Assessor no longer doubted Plaintiffs' ownership. But for some inexplicable reason the Assessor still refused to write the letter correcting his error. Without that letter, this lawsuit was an absolute necessity.

I. RE-RECORDING THE EASEMENT WOULD NOT REMOVE THE CLOUD CREATED BY THE ASSESSOR'S SLANDEROUS LETTER.

Once the Assessor, an officer of Franklin County asserted that Val Westover was not the owner of the property, competent counsel for the power company would not be satisfied with a simple re-filing of the easement. Questions about possible intervening rights would require at least a title search and perhaps other legal quagmires which the power company would quite rightly determine was not their problem. Nor are such legal quagmires merely hypothetical in this case. Connie Westover, Val's mother was dead and Don Westover, his father was in advanced stages of Alzheimers. Val D Westover was not the only child of Don and Connie Westover. Val has two married sisters with children who have expressed a claim in the property arising from promises allegedly made by their grandmother. Nothing short of a retraction letter by the county acknowledging that Plaintiffs were the owners of the property at the time they conveyed the property to Rocky Mountain Power could suffice to lay the issue to rest. Affidavit of Val D Westover; Affidavit of LaRee Westover.

Plaintiffs applaud the Assessor that he has now issued the letter. That finally resolves the cloud he put on Plaintiffs' title, but that is not enough. Plaintiffs were entitled to a writ of mandamus requiring him to write the letter and are now entitled to judgment so that it does not happen again.

A review of this litigation makes the conclusion that the Assessor's final acquiescence in what Plaintiffs sought is not enough. The Assessor did not answer the complaint and attempt to explain his actions. Instead, he ramped up the litigation filing a motion to dismiss making the spurious claim that the owners of the property whose title was put into question by his ultra vires actions did not have standing to bring their claims. In response to a direct question by this Court as to why he would write the letter to the power company he stated that "there is no authority prohibiting his conduct." He has stalwartly refused to acknowledge that his slanderous letter to the power company was ultra vires, unnecessary at best, and extremely injurious to the Plaintiffs. Even now, he refuses to take ownership of his conduct and makes a number of excuses for what he did and refused to do and promises he will do it again in the future. It would be a serious miscarriage of justice for this Court simply to dismiss this case now that the Assessor finally acquiesced in doing what in civilized society should have been done months and thousands of dollars ago.

II. WHEN THE DEFENDANT ACQUIESCES IN THE PLAINTIFFS' DEMANDS, THE CASE IS NOT RENDERED MOOT, RATHER THE PLAINTIFF IS ENTITLED TO JUDGMENT TO PREVENT REPETITION OF THE WRONGFUL CONDUCT.

In this case, the Assessor has demonstrated an inexplicable recalcitrance toward righting a wrong he committed. In November 2007 a Memorandum of Real Estate Sales Contract was filed notifying the county that Don and Connie Westover had entered into a real estate sales

contract providing for a warranty deed to the plaintiffs in this case, Val and LaRee Westover. On May 14, 2016 (before the Assessor wrote his May 29 slanderous letter) the Warranty Deed called for in the 2007 Memorandum of Contract was filed. Exhibit D to Declaration of Jase Cundick dated January 27, 2016. The excuses the Assessor now makes for his prior refusal in sending a letter to the power company, with whom the Plaintiffs were under contract, retracting his legally erroneous claim that the property “is not owned by the Grantor,” are all a pretext. It is time for the Assessor to take responsibility for his action.

His office first refused to correct the letter despite explanation by the Plaintiffs and their lawyer as to why his legal analysis of the Memorandum of Real Estate Sales Contract was wrong. He refused to respond to written demand which again pointed out why the Plaintiffs were the owners of the property based on the contract entered into with their parents in November 2007. Getting no response to that formal demand that he recognize the Plaintiffs as the owners of the property plaintiffs filed this suit. The Assessor’s counsel, promising a settlement proposal, instead wrote the letter the Assessor has now made part of the record. The letter, rather than asking to review the 2007 real estate contract, if confusion over the validity of that contract were more than a pretext, instead claimed that the slanderous letter “was not his fault.” He suggested that because the question of ownership had now been cleared up in the Assessor’s mind through the filing of the warranty deed, that Plaintiffs should simply re-record the grant of easement to the power company and all would be well. That simplistic view shows a complete lack of understanding of the realities of real estate law and poignantly illustrates why the Assessor, who is not required to be a lawyer, and who apparently does not have access to counsel, should not be in the business of evaluating real estate transactions for any purpose except for assessing taxes.

A Defendant's cessation of illegal conduct after suit has been filed does not render the action moot, but instead entitles the Plaintiffs to judgment so that the conduct does not occur in the future.

Both sides agree to the abstract proposition that voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case, i.e., does not make the case moot. United States v. Trans-Missouri Freight Assn., 166 U. S. 290 (1897); Walling v. Helmerich & Payne, Inc., 323 U. S. 37 (1944); Hecht Co. v. Bowles, 321 U. S. 321 (1944). A controversy may remain to be settled in such circumstances, United States v. Aluminum Co. of America, 148 F. 2d 416, 448 (1945), e. g., a dispute over the legality of the challenged practices. Walling v. Helmerich & Payne, Inc., *supra*; Carpenters Union v. Labor Board, 341 U. S. 707, 715 (1951). The defendant is free to return to his old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion. United States v. Trans-Missouri Freight Assn., *supra*, at 309, 310. For to say that the case has become moot means that the defendant is entitled to a dismissal as a matter of right, Labor Board v. General Motors Corp., 179 F. 2d 221 (1950). The courts have rightly refused to grant defendants such a powerful weapon against public law enforcement.

Powell v. McCormack, 395 US 486 (1969).

This case is not moot. At least in *Powell*, the defendant gave lip service to having repented. Here, the Assessor doesn't even promise to go straight. He still refuses to acknowledge he did anything wrong. According to the Assessor,

Plaintiffs motion for issuance of a writ of prohibition fails because there is presently no action whatsoever to stop. While Cundick may, in his discretion, send out future letters concerning ownership of property similar to the one at issue here, there is nothing in the record showing that right now he is doing anything allegedly unlawful with respect to Westover, and Westover certainly has no standing to seek a writ of any kind or any relief at all based on speculative letters that might go to third-parties in the future. In short, there is simply nothing here to arrest and therefore a writ of prohibition is inappropriate. Cundick response at 13.

This case illustrates why a mootness ruling is not appropriate. The Assessor states he did nothing wrong and that he considers himself to have discretion to do the same thing again in the future and there is nothing this Court or the Plaintiffs can do about it. Unless a judgment is

entered in Plaintiffs' favor in this case, as the Assessor has made clear, they could be back in court tomorrow since he believes he has discretion to do what he did.

In this case the Plaintiffs rightly fear that unless this case is ended in a judgment granting their request for a writ of mandamus and prohibition that at some future date the Assessor will again take it upon himself to interfere in real estate transactions because "there is no authority to prohibit him from doing so." As the *Powell* court put it: "A controversy remains to be settled. . . . "e. g., a dispute over the legality of the challenged practices." Without a judgment in this case "[t]he Defendant is free to return to his old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion." The Assessor needs to be told that there is authority prohibiting him from going outside the duties enjoined upon him to ascertain title for purposes of levying taxes and to not interfere with real estate transactions. The Assessor's argument that this Court cannot limit his actions because there is no authority prohibiting his conduct and it is therefore "discretionary" is haunting. A discretionary function is one which is placed into a minister's hands by proper authority who then endows him with the discretion, within proper bounds, to implement final policy. *See*, I.C. § 6-904. (Protecting government employees from liability for "exercising ordinary care, in reliance upon or the execution or performance of a statutory or regulatory function, , , ")

The Assessor cites no authority, and Plaintiffs have found none to support the dangerous notion that a public official has discretionary authority to do things not delegated to him by statute.

III. THE ASSESSOR'S ARGUMENTS THAT DOCUMENTS FILED AFTER NOVEMBER 15, 2007 BY DON WESTOVER CREATED CONFUSION DO NOT JUSTIFY THE ASSESSOR'S ULTRA VIRES ACTIONS OR OBVIATE THE NEED FOR A JUDGMENT.

The Assessor argues that the November 15, 2007 Memorandum or Real Estate Sales Contract did not require him to acknowledge the Plaintiffs' ownership of the property. He makes this argument through convoluted and fallacious legal arguments that are no business of an Assessor who is not (and not required to be) a lawyer.¹

The law is perfectly clear that when a real estate contract is entered into providing for a warranty deed the contract purchaser owns the land, and the contract seller owns the right to receive the money. *Simmons v. Simmons*, 11 P3d 20 (Id. 2000). The buyer even has the ability to sell or mortgage the real property. *Rush v. Anestos*, 104 Idaho 630, 661 P.2d 1229 (Id. 1983). "an equitable conversion takes place when parties enter into a binding contract for the purchase and sale of realty. The purchaser is deemed the equitable owner thereof, and the seller is the owner of the purchase price." *Id.* at 1233 "[t]he interest of a vendee under a contract to purchase real estate, is an interest in real property that may be transferred, and hence may be mortgaged." *Id.* Upon entering into that binding contract in November 2007, Val and LaRee Westover were the owners of the real estate, could have transferred it, could have mortgaged it, and certainly could grant an easement over a portion of it.

To be sure, this general rule might be upset in the hypothetical case where the contract provided otherwise, but the Assessor' raw speculation that such a provision might have existed in this contract gave him no right to ignore what was presented to him. That would be akin to the Assessor refusing to acknowledge a warranty deed submitted to him because sometimes there are forgeries. The Assessor simply cannot be allowed to speculate that a memorandum of contract is not what it purports to be. Instead, the Assessor is charged with the duty to ascertain the current

¹ Some of these creative legal arguments were never made before and none were made by the Assessor before this litigation began, thus leading one to believe they are not only wrong, but are a mere pretext and not the real reason for the Assessor's recalcitrance.

ownership of land from the recorded documents or from documents provided to him by the owner. Idaho Code section 63-307. Indeed, the owner of the property can produce his deed, contract “or other muniment of title” to the Assessor and is thereby entitled to have the assessment changed. The Assessor now argues, with no authority, that the Memorandum of Real Estate Sales Contract is not a muniment of title, but this again, in addition to being legally unsupported, is an after the fact pretext. The argument has never before been made. Similarly the Assessor’s technical argument that the Assessor was not required to recognize the November 2007 Memorandum of Real Estate Sales Contract because it did not contain the grantees’ address is a pretext and is unavailing. Obviously the purpose of the mailing address is so that the tax assessment can be properly mailed and received. The Plaintiffs and the person in the Assessor’s office responsible for the slanderous letter is a neighbor of the Plaintiffs, knows them well and was well acquainted with both them and their parents. Moreover, a letter sent to Val Westover, Clifton, Idaho, even without a zip code is delivered by the U.S. mail. Affidavit of Blake S. Atkin. Most importantly, in Idaho, recording is not part of the actual conveyance process. When the grantor delivers a properly executed promise that a deed will be delivered upon payment of the purchase price the conveyance of the real property is effective. And the Assessor statute specifically codifies this notion in the context of the Assessor’s duty to ascertain the ownership of the property for tax assessment purposes. He is charged to make that determination from the documents on record with the county recorder and/or “from evidence of ownership furnished to the Assessor . . .” Idaho Code section 63-307. Whatever technical defect the Assessor argues about the recording of the November 15, 2007 Memorandum of Real Estate Sales Contract, the arguments do not explain why the Assessor refused to give proper recognition to that document when presented to him again by the plaintiffs, their lawyer, and in

the formal letter asking for a retraction of the slanderous letter which he sent out after the warranty deed called for in that memorandum had been recorded.

The Assessor acknowledges that the Memorandum of Real Estate Sales Contract "indicated that Don And Connie Westover had conveyed the Property to Val and LaRee Westover. . ." Exhibit A to declaration of Tyler D. Williams (letter to Blake Atkin from Bruce J. Castleton dated August 17, 2015). Moreover, by the time the Assessor wrote his slanderous letter, the Warranty Deed called out in the Memorandum of Contract had been filed. Exhibit D to declaration of Jase Cundick. Please note that the Warranty Deed is dated November 14, 2007, coinciding with the date of the Memorandum of Real Estate Sales Contract, and the Warranty Deed is recorded on May 14, 2015, before the slanderous letter by the Assessor to the power company. In his letter to the Assessor asking that he retract the slanderous letter to the power company, counsel pointed this fact out, and warned that failure to retract the slander would result in serious legal entanglements for the Assessor. The Assessor admits that the filing of that Warranty Deed as a confirmation of the 2007 Memorandum of Contract removed any supposed cloud on the Plaintiffs' title in the Assessor's mind, yet he still refused to write the retraction letter to the power company, claiming that the error was "not his fault" and taking the simplistic view that the problem could all go away simply by the Westovers refileing the easement contract with the power company. As pointed out above, that simplistic analysis was not competent legal analysis. The problem all stems from the Assessor trying to play lawyer and argue the merits of Plaintiffs' ownership rather than doing his duty to ascertain the ownership of the property from the documents presented to him.

A. THE FAILED ATTEMPT IN 2012 BY DON WESTOVER TO CONVEY THE PROPERTY TO A TRUST IS A PRETEXT AND A RED HERRING.

The Assessor argues that the failed attempt by Don Westover to convey the property into a Trust (with the plaintiff Val Westover as the Trustee) somehow created confusion over who owned the property and that somehow justified the Assessor in writing the letter to the power company claiming that the property “is not owned by the Grantor.”

That argument is a pretext, and would not justify the slanderous letter even if it were a position honestly held by the Assessor.

What the Assessor fails to point out is that the Assessor’s office refused to recognize the failed attempt to change the ownership and returned the original of this filing with a list of corrections that needed to be made before the Assessor would give it credence. Exhibit C to affidavit of Jase Cundick. The Assessor at that time said:

“Proper procedure would be for the original document to be corrected, initialed by the grantors and brought back to the Franklin County Clerk’s office for recording again. Or you may create a new document. In either instance, the recording fee per page will again be charged.

It is important for these corrections to be made, as the complete transfer of property cannot occur on the county records until we have a corrected document. “

Those corrections were never made because the family had not sponsored the proposed changes. For the Assessor, who rejected the document, to now argue that the failed attempt to convey the property into a trust created confusion is a pretext.

But most importantly, if we were to suppose that the failed attempt by Don Westover to convey the property into a family Trust with Plaintiff Val Westover as Trustee created temporary confusion in the Assessor’s office as to where title to the property stood. That confusion does not justify slander of title. Are the Plaintiffs to bear the burden of the Assessor’s ultra vires acts because the Assessor was confused? At most, the documents to which the Assessor was privy

created a confusion as to ownership. Had the transaction in question had any tax assessment consequences, the Assessor might have been justified in asking Val Westover as the purported trustee of the Don Westover trust for clarification of the ownership, but it would not supply justification for a letter to the power company slandering Val Westover's title to the property in a transaction that had absolutely no tax consequence. It certainly does not justify stubborn expensive litigation to extract a retraction letter that should have been issued on the basis of the letter counsel sent to the Assessor before this litigation began.

B. QUITCLAIM DEEDS BETWEEN DON AND CONNIE WESTOVER AND THEIR NEIGHBORS, DEXTER AND LINDA RALPHS, DO NOT CREATE CONFUSION.

A quitclaim deed is not a claim of ownership. It is a mere statement that if the owner has an interest, he is conveying that interest, whatever it may be to the grantee. For the Assessor to rely on a quit claim deed from Don and Connie Westover to Dexter and Linda Ralphs to justify his slanderous letter to the power company underscores that the Assessor, who is not required to be a lawyer, needs to be stopped from exercising what he considers a "discretionary" function calling into question real estate transactions that require some sophisticated legal analysis.

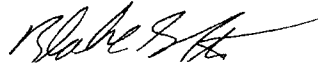
CONCLUSION

Before this litigation began, the Plaintiffs three times provided the Assessor with the documents showing they were the owners of this property and asked him to correct the letter he sent to the power company stating that the Plaintiffs were not the owners of the property. The Assessor has finally sent the letter, but is now causing thousands of dollars more in legal expense arguing that he should not be prohibited from the same or similar conduct in the future because he thinks he has "discretion" to perform acts not delegated to him by statute. He argues there is nothing this Court can do to prevent such future ultra vires conduct. Plaintiffs believe that the

Court has power to instruct the Assessor that his “discretion” is limited to ascertaining ownership for purposes of tax assessment, and he does not have “discretion” to go outside his statutory authority and question real estate transactions through communications with third parties with whom that tax payer has business dealings.

Dated this 2nd day of February, 2016.

Atkin Law Offices



Blake S. Atkin,
Attorneys for the Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of February, 2016, I caused to be served a true and correct copy of the Reply to Motion for Entry of Judgment as indicated below to the following:

Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email: tdw@naylorhales.com;
skh@naylorhales.com

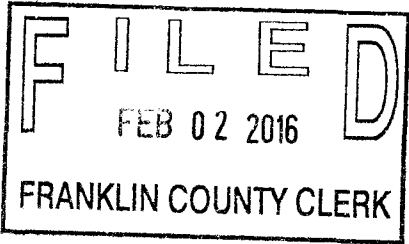
Franklin County Court
39 West Oneida
Preston, ID 83263

U.S. Mail
 Fax: (208) 852-2926
 Delivered in person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276

U.S. Mail
 Fax: (208) 547-2147

Jennifer Marscal



Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and)	
LaRee H. Westover,)	
Plaintiffs	)	AFFIDAVIT OF BLAKE ATKIN
)	
v.	)	Case No. CV-2015-312
)	
Jase D. Cundick, in his individual capacity)	
And in his official capacity as)	
Franklin County Assessor,)	
John Does 1 and 2,	)	Judge Mitchell Brown
)	
Defendant.)	

Blake Atkin, having been fully dully sworn, deposes and says:

1. On August 31, 2015, I caused to be mailed from the post office in Preston, Idaho a letter addressed to Val D Westover, Clifton, Idaho. I did not even put the zip code on the letter.
2. Within a few days and in due course, the letter was delivered.

Dated this 1st day of February, 2016.

Blake Atkin

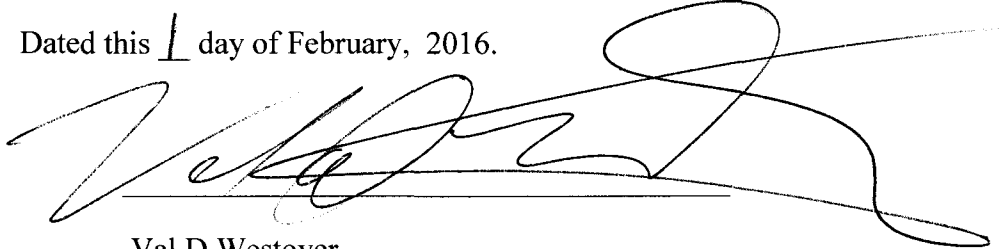
SUBSCRIBED AND SWORN before me this ~~15~~^{1st} day of February, 2016.


Notary Public

- the legal problem or the power company would pull their equipment, declare the contract breached and shut off our power.
9. I assured Mr. Bolton that I was indeed the owner of the property and that I would take care of it.
 10. Mr. Bolton told me that while I was getting it sorted out he would hold off sending the letter that would trigger the 30 day period to get the problem resolved or lose my rights under the contract.
 11. I immediately contacted the Franklin County Assessor and spoke with Denise Ralphs who knows me, knows my parents from whom I bought the property, and is a neighbor who lives in Clifton, Idaho.
 12. I explained to Denise that I was the owner of the property having bought it in 2007 and she and I discussed the memorandum of agreement that had been filed in 2007 with which she was familiar. She disagreed and would not write a letter to the power company correcting the error the assessor had made.
 13. I then contacted Jase Cundick, the Franklin County Assessor who likewise refused to correct the false assertion that I did not own the property.
 14. Feeling I had no choice I hired a lawyer. I instructed him to get this resolved. He too spoke with Denise Ralphs to no avail. He then wrote a letter and attached the documents showing I owned the property since 2007 and warned that serious legal problems would follow unless he retracted the false letter sent to the power company. Getting no response to that letter, we instituted this suit to try and get the assessor to remove the cloud he had placed on my ownership of my property.
 15. I had no other recourse. The power company would not take my word for it that I owned the property after the county assessor had told them that I did not own the property.
 16. I had worked hard to solve the ownership issues surrounding the farm between me and my siblings while my mother and dad were alive and in good health. I have nieces and nephews who had expressed the view that they are entitled to some interest in some of the land based on promises made by their grandmother. Now, after my mother had died and my father (who has now died) was in failing health, the Assessor put in jeopardy all the estate planning and family issues that I thought I had resolved. The Assessor's refusal to acknowledge that I have owned this property since 2007 has caused me severe worry until we finally got it resolved through the letter the Assessor finally wrote correcting the error.
 17. More importantly, it has caused me severe anxiety that a government official without any due process, through the stroke of a pen, can deprive me of my property rights. From May of this year until December when the Assessor finally acquiesced in our requests for a retraction I was deprived of full ownership of my property and my contract with Rocky Mountain Power was put in limbo.

18. I finally recovered my property rights, but it has cost me thousands of dollars in attorney fees to do so. Most citizens do not have the resources to combat such calloused and arbitrary government action.
19. That is why I am asking that I be fully reimbursed for what it cost me to get the assessor to retract his letter. I do not want it to ever happen to me again and I do not want it to happen to any other citizens of this county.

Dated this 1 day of February, 2016.

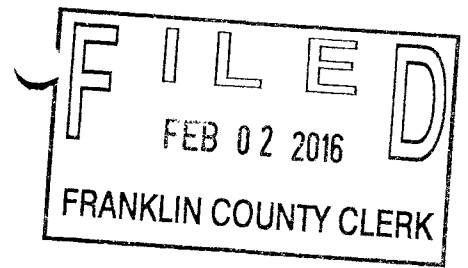


Val D Westover

SUBSCRIBED AND SWORN before me this 1st day of February, 2016.



Jennifer Mariscal
Notary Public



Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380

Attorney for Plaintiffs

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and
LaRee H. Westover,

Plaintiffs

v.

Jase D. Cundick, in his individual capacity)
And in his official capacity as)
Franklin County Assessor,)
John Does 1 and 2,)

Defendant.)

AFFIDAVIT OF LAREE WESTOVER

Case No. CV-2015-312

Judge Mitchell Brown

LaRee Westover, having been fully dully sworn, deposes and says:

My husband, Val D Westover, having outlined the facts and details of this situation, I would like to address some of the less technical but, to me, very important aspects of this long attempt to have the sending of a false and very damaging letter remedied.

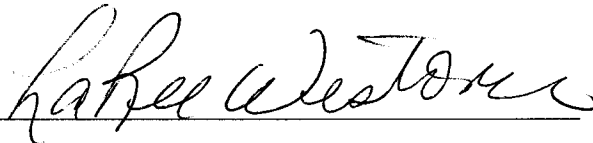
- 1) I simply do not understand the mind-set of the assessor and his staff that allowed them to send such a damaging and untruthful letter, have their error pointed out to them, and take absolutely no steps to check their facts and remedy the potentially disastrous situation they had created. What a display of total and complete lack of concern for the welfare of a resident of the county they serve. Was it arrogance on their part? Did they believe that they knew more of real estate law and matters than a member of the bar, one who had drawn up the contracts of sale and had personal knowledge of the

ownership of the property? Why were they unwilling to speak at any length with my husband and with our lawyer, Mr. Atkin? Why did they not respond to correspondence sent them? It seems to me that this matter could have been so simply resolved the very first time it was brought to their attention.

- 2) The stress and strain of this situation has been great and it has gone on for months. Time and focus that should have been spent running this fast-growing and fast-paced company was spent dealing with, fretting about, and worrying over the details of this mess and the possible repercussions for our business and family. Evenings that should have been spent peacefully were taken up, month after month, by this mess.
- 3) Every day for the months that this situation has gone on I have walked into the business and looked at our employees—the single mothers, heads of households, young people putting away college money, my sons, daughter, and son-in-law who had given up their own businesses and/or jobs to work for us— and wondered if they would all be looking for work after our business folded because Rocky Mountain Power tore up our power lines and shut off our power.
- 4) I have worried and wondered how my husband and I would make a living at our ages and how we could ever recover from the losses we would incur if we were unable to meet our obligations to our customers and move our inventory. We have put everything—our hearts and souls, our time and money—into this business and it was all in danger of being ripped away from us and there didn't seem to be any action that we could take to remedy a situation not of our making! And the assessor did not seem to want to check his facts or even correct the false statement he made in his letter to Rocky Mountain Power.
- 5) The uncertainty—and the legal fees that we were racking up—have impacted to a large extent the decisions we have made about expansion projects, equipment purchases, hiring of new employees and wage increases for our current employees. This has made what was a joyful family business a nightmare for the last several months.

- 6) At some point along this path the action of the assessor's office began to feel malicious, much more than a misunderstanding or a comedy of errors. whether it was malicious or not, if I or any other person had caused so much havoc, potential risk, and caused another person to run up such bills as this situation did for us, justice and simple fairness would require that I, or any other person, do all in our power to make restitution and compensation.

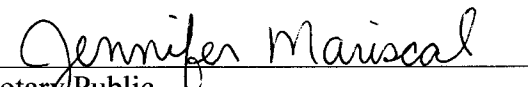
Dated this 1 day of February, 2016.



LaRee Westover

SUBSCRIBED AND SWORN before me this 1st day of February, 2016.




Notary Public

The Court DENIED the Plaintiffs' request that the Court issue a Writ of Mandamus and/or a Writ of Prohibition. The Court's ruling was set forth in detail on the record. The Court will prepare a final judgment.

IT IS SO ORDERED.

Dated this 24th day of February, 2016.



MITCHELL W. BROWN
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 24th day of February, 2016, I mailed/served/faxed a true copy of the foregoing document on the attorney(s)/person(s) listed below by the method indicated:

Attorney(s)/Person(s):

Method of Service:

Blake S. Atkin
Counsel for Plaintiffs

Email

Bruce J. Castleton
Tyler D. Williams
Counsel for Defendants

Email

SHAUNA T. GEDDES, Clerk

BY: Linda Hampton, Deputy Clerk

FILED

16 FEB 17 PM 12:05

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

FRANKLIN COUNTY CLERK

ew

DEPUTY

VAL D. WESTOVER and LAREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.

)
)
) Case No: CV-2015-312
)
)
)

) **FINAL JUDGMENT**
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JUDGEMENT IS ENTERED AS FOLLOWS:

- (1) Plaintiffs' First Cause of Action for Slander of Title is Dismissed without prejudice;
- (2) Plaintiff's Second Cause of Action for Writs of Mandate and Prohibition are Dismissed with prejudice;
- (3) Plaintiff's Third Cause of Action for Intentional Interference with an Existing or Potential Economic Relations is Dismissed without prejudice.

Dated this 17th day of February, 2016.

Mitchell W. Brown

MITCHELL W. BROWN
District Court



CERTIFICATE OF MAILING/SERVICE

I HEREBY CERTIFY that on the 17th day of February, 2016, I mailed/served a true copy of the foregoing Final Judgment on the attorney(s)/person(s) listed below by the method indicated:

Attorney(s)/Person(s):

Blake S. Atkin
Counsel for Plaintiff

Bruce J. Castleton
Counsel for Defendant

Method of Service:

Faxed: (801) 533-0380

Faxed: (208) 383-9516

By: Linda Hampton, Deputy Clerk

TRANSACTION REPORT

FEB/17/2016/WED 12:13 PM

BROADCAST

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	FEB/17	12:11PM	18015330380	0:01:02	2	MEMORY OK	G3 6293
002		12:13PM	12083839516	0:00:42	2	MEMORY OK	G3 6293
TOTAL				0:01:44	4		

FILED

16 FEB 17 PM 12:05

FRANKLIN COUNTY CLERK
 IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

DEPUTY

VAL D. WESTOVER and LAREE H. WESTOVER,

Plaintiffs,

vs.

JASE D. CUNDICK,
FRANKLIN COUNTY ASSESSOR,

Defendant.


Case No: CV-2015-312

FINAL JUDGMENT

JUDGEMENT IS ENTERED AS FOLLOWS:

- (1) Plaintiffs' First Cause of Action for Slander of Title is Dismissed without prejudice;
- (2) Plaintiff's Second Cause of Action for Writs of Mandate and Prohibition are Dismissed with prejudice;
- (3) Plaintiff's Third Cause of Action for Intentional Interference with an Existing or Potential Economic Relations is Dismissed without prejudice.

Dated this 17th day of February, 2016.



MITCHELL W. BROWN
District Court

from the Final Judgment dated February 17, 2016 by the Honorable Judge Mitchell W. Brown presiding. A copy of the judgment is attached to this notice.

2. That the parties have a right to appeal to the Idaho Supreme Court, and the said decision described in paragraph 1 above is an appealable decision under and pursuant to Rule 11 I.A.R.

3. A preliminary statement of the issues on appeal which the Appellants then intend to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal, are as follows:

A. Whether the District Court erred in refusing to grant injunctive relief prohibiting defendant/appellee from acting ultra vires of any statutory or regulatory authority in sending out letters to parties to real estate transactions that slander the title of the grantor when the defendant/appellee boldly proclaimed his intention to continue the practice.

B. Whether the District Court erred in refusing injunctive relief in an action brought as an action for writ of mandamus/prohibition, where under rule 54(c) it clearly appeared that plaintiffs were entitled to injunctive relief from defendants declarations that he planned to continue his ultra vires conduct, and plaintiffs' counsel asked the Court to grant that remedy even though injunctive relief had not been specifically demanded in the pleadings.

4. No order has been entered sealing all or any portion of the record.

5. The reporter's transcript has been produced and paid for.

6. The Appellants request the following documents to be included in the clerk's record, in addition to those automatically included under Rule 28, I.A.R.: None

7. The Appellants request that all exhibits offered or admitted at the trial be included in the record.
8. I certify:
 - a) That a transcript has been ordered, prepared, and paid for.
 - b) That the estimated fee for preparation of the clerk's or agency's record has been paid.
 - c) That the appellate filing fee has been paid.
 - d) That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 11th day of March, 2016.

Atkin Law Offices



Blake S. Atkin
Attorneys for the Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of March, 2016, I caused to be served a true and correct copy of the Notice of Appeal as indicated below to the following:

Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
tdw@naylorhales.com;
950 W. Bannock St., Suite 610
skh@naylorhales.com
Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email:

Franklin County Court
39 West Oneida
Preston, ID 83263

U.S. Mail
 Fax: (208) 852-2926
 Delivered in person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276

U.S. Mail
 Fax: (208) 547-2147

Jennifer Mariscal

CERTIFICATE OF MAILING/SERVICE

I HEREBY CERTIFY that on the 17th day of February, 2016, I mailed/served a true copy of the foregoing Final Judgment on the attorney(s)/person(s) listed below by the method indicated:

Attorney(s)/Person(s):

Method of Service:

Blake S. Atkin
Counsel for Plaintiff

Faxed: (801) 533-0380

Bruce J. Castleton
Counsel for Defendant

Faxed: (208) 383-9516

By: Linda Hampton, Deputy Clerk

FILED

16 MAR 15 AM 8:57

FRANKLIN COUNTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D WESTOVER and
LAREE H. WESTOVER,

Plaintiffs/Appellants,

vs.

JASE D. CUNDICK, in his individual
Capacity and in his official capacity as
Franklin County Assessor,
John Does 1 and 2,

Defendant/Appellant.

)
)
)
) Supreme Docket No. _____

)
) Franklin Co. Case No.: CV-2015-312

)
)
)
) CLERK'S CERTIFICATE OF APPEAL

Appeal from: **Sixth Judicial District, Franklin County**
Honorable Mitchell W. Brown

Case number from court: CV-2015-312

Order or judgment appealed from: Final Judgment filed February 17, 2016

Attorney for Appellants: Blake S. Atkin - batkin@atkinlawoffices.net
Atkin Law Office

Attorney for Respondents: Bruce J. Castleton - bjc@naylorhales.com
Tyler D. Williams - tdw@naylorhales.com
Naylor & Hales, PC

Appealed by: Plaintiffs

Appeal against: Defendants

Notice of Appeal filed: March 11, 2016

Appellate fee paid: Yes

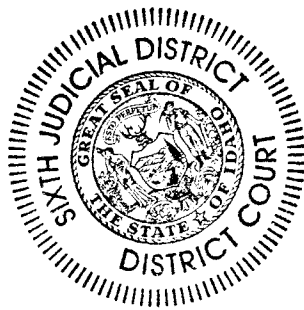
Request for additional (clerk's) record filed: No

Request for additional reporter's transcript filed: No

Was reporter's transcript requested? Yes (paid)

Name of reporter: **Rodney M. Felshaw**

Dated this 15th day of March, 2016.



SHAUNA T. GEDDES

By

Linda Hampton
Linda Hampton, Deputy Clerk

Atkin Law Offices, P.C.
Blake S. Atkin ISB# 6903
7579 North Westside Highway
Clifton, Idaho 83228
Telephone: (208) 747-3414
Telephone: (801) 533-0300
Facsimile: (801) 533-0380
Email: blake@atkinlawoffices.net

FILED
16 APR -5 PM 3:31
FRANKLIN COUNTY CLERK
DEPUTY

Attorney for Plaintiffs/Appellants

**IN THE SIXTH JUDICIAL DISTRICT COURT IN AND FOR
FRANKLIN COUNTY, STATE OF IDAHO**

Val D Westover and LaRee H. Westover, Plaintiffs/Appellants	)	)	AMENDED NOTICE OF APPEAL
v.	)	)	Case No. CV-2015-312
Jase D. Cundick, in his individual capacity And in his official capacity as Franklin County Assessor, John Does 1 and 2, Defendant/Respondents	)	)	Hon. Mitchell W. Brown

TO THE ABOVE NAMED DEFENDANTS, JASE D. CUNDICK IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS FRANKLIN COUNTY ASSESSOR, AND THE PARTY'S ATTORNEY, TYLER D. WILLIAMS, NAYLOR & HALES, P.C., ATTORNEYS AT LAW, 950 WEST BANNOCK STREET, SUITE 610, BOISE, IDAHO 83702, (208) 947-2078, TDW@NAYLORHALES.COM, AND THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellants, VAL D WESTOVER AND LAREE H. WESTOVER, appeal against the above-named Respondent, to the Idaho Supreme Court from the Final Judgment dated February 17, 2016 by the Honorable Judge Mitchell W. Brown presiding. A copy of the judgment is attached to this notice.
2. That the parties have a right to appeal to the Idaho Supreme Court, and the said decision described in paragraph 1 above is an appealable decision under and pursuant to Rule 11 I.A.R.
3. A preliminary statement of the issues on appeal which the Appellants then intend to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal, are as follows:
 - A. Whether the District Court erred in refusing to grant injunctive relief prohibiting defendant/appellee from acting ultra vires of any statutory or regulatory authority in sending out letters to parties to real estate transactions that slander the title of the grantor when the defendant/appellee boldly proclaimed his intention to continue the practice.
 - B. Whether the District Court erred in refusing injunctive relief in an action brought as an action for writ of mandamus/prohibition, where under rule 54(c) it clearly appeared that plaintiffs were entitled to injunctive relief from defendants declarations that he planned to continue his ultra vires conduct, and plaintiffs' counsel asked the Court to grant that remedy even though injunctive relief had not been specifically demanded in the pleadings.
4. No order has been entered sealing all or any portion of the record.
5. The reporter's transcript has been produced and paid for.

7. The Appellants request the following documents to be included in the clerk's record, in addition to those automatically included under Rule 28, I.A.R.: None
8. The Appellants request that all exhibits offered or admitted at the trial be included in the record.
9. I certify:
 - a) That the following transcripts have been ordered, prepared, and paid for:
 - i. Motion Hearing held on November 12, 2015
 - ii. Motion Hearing held on February 11, 2016
 - b) That the estimated fee for preparation of the clerk's or agency's record has been paid.
 - c) That the appellate filing fee has been paid.
 - d) That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 5th day of April, 2016.

Atkin Law Offices



Blake S. Atkin

Attorneys for the Appellants

CERTIFICATE OF SERVICE

The undersigned certifies that she caused to be served a true and correct copy of the Amended Notice of Appeal to the following as indicated below:

Tyler D. Williams
NAYLOR & HALES, P.C.
Attorneys at Law
950 W. Bannock St., Suite 610
Boise, ID 83702

U.S. Mail
 Fax: (208) 383-9516
 Email: tdw@naylorhales.com;
skh@naylorhales.com

Rodney Felshaw
Court Reporter
Wasatch Reporting
631 South 1st East
Preston, ID 83263

Email: rodney.felshaw@gmail.com

Franklin County Court
39 West Oneida
Preston, ID 83263

U.S. Mail
 Fax: (208) 852-2926
 Delivered in person

Hon. Mitchell W. Brown
159 South Main
Soda Springs, ID 83276

U.S. Mail
 Fax: (208) 547-2147

Jennifer Mariscal

FILED
16 APR 12 PM 3:45
FRANKLIN COUNTY CLERK
lh
DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D WESTOVER and
LAREE H. WESTOVER,

Plaintiffs/Appellants,

vs.

JASE D. CUNDICK, in his individual
Capacity and in his official capacity as
Franklin County Assessor,
John Does 1 and 2,

Defendant/Appellant.

)
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)
) Supreme Docket No. _____
)
)

) Franklin Co. Case No.: CV-2015-312
)
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) AMENDED
) CLERK'S CERTIFICATE OF APPEAL
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Appeal from: **Sixth Judicial District, Franklin County**
Honorable Mitchell W. Brown

Case number from court: CV-2015-312

Order or judgment appealed from: Final Judgment filed February 17, 2016

Attorney for Appellants: Blake S. Atkin - batkin@atkinlawoffices.net
Atkin Law Office

Attorney for Respondents: Bruce J. Castleton - bjc@naylorhales.com
Tyler D. Williams - tdw@naylorhales.com
Naylor & Hales, PC

Appealed by: Plaintiffs

Appeal against: Defendants

Notice of Appeal filed: March 11, 2016

Amended Notice of Appeal filed: April 5, 2016

Appellate fee paid: Yes

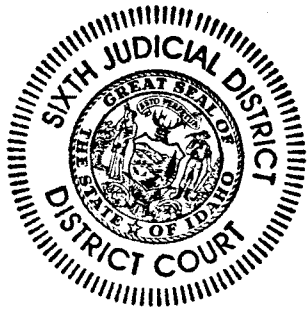
Request for additional (clerk's) record filed: No

Request for additional reporter's transcript filed: No

Was reporter's transcript requested? Yes

Name of reporter: **Rodney M. Felshaw**

Dated this 12th day of April, 2016.



SHAUNA T. GEDDES

By Linda Hampton
Linda Hampton, Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
COUNTY OF FRANKLIN, STATE OF IDAHO

VAL D. WESTOVER and LAREE H.
WESTOVER,

Plaintiffs/Appellants,

vs.

NOTICE OF LODGING.

JASE D. CUNDICK, in his
Individual capacity and in his
Capacity as Franklin County
Assessor; and John Does 1 and 2,

Defendant/Respondent.

Supreme Court No. 44046
Franklin County Case No. CV-2015-312

The following transcript(s) in the above-entitled matter were
lodged with the District Court Clerk at the Franklin County
Courthouse in Preston, Idaho, on April 28, 2016.

November 12, 2015 - Motion Hearing	24 pages.
February 11, 2106 - Motion Hearing	25 pages.

Filed via:
(XX) Hand delivery to Court Clerk
() U.S. Mail to Court Clerk
(XX) Electronic Copy to ISC/ICA.

Rodney M. Felshaw, RPR, CSR

(Typed name of Reporter.)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER and)	
LAREE H. WESTOVER,)	
)	
Plaintiffs/Appellants,	)	Docket No. 44046
)	
vs.)	
)	
JASE D. CUNDICK, in his individual	)	CERTIFICATE OF EXHIBITS
capacity and in his official capacity as)	
Franklin County Assessor,)	
John Does 1 and 2,)	
)	
Defendant/Appellant.)	
_____)	

I, Shauna T. Geddes, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Franklin, do hereby certify that the following is a list of exhibits which were offered or admitted into evidence during the hearing in this cause:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 20th day of May, 2016.



SHAUNA T. GEDDES
CLERK OF THE DISTRICT COURT

By Linda Hampton
Linda Hampton, Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

* * * * *

VAL D. WESTOVER and)	
LAREE H. WESTOVER,)	
)	
Plaintiffs/Appellants,	)	Docket No. 44046
)	
vs.)	
)	
JASE D. CUNDICK, in his individual	)	CERTIFICATE OF CLERK
capacity and in his official capacity as)	
Franklin County Assessor,)	
John Does 1 and 2,)	
)	
Defendant/Appellant.)	

I, Shauna T. Geddes, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Franklin, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I do further certify that all no exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the Court Reporter's Transcript and Clerk's Record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Preston, Idaho, this 20th day of May, 2016.



SHAUNA T. GEDDES
CLERK OF THE DISTRICT COURT

BY: Linda Hampton
Linda Hampton, Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF FRANKLIN

VAL D. WESTOVER and)	
LAREE H. WESTOVER,)	
)	
Plaintiffs/Appellants,	)	Docket No. 44046
)	
vs.)	
)	
JASE D. CUNDICK, in his individual	)	CERTIFICATE OF CLERK
capacity and in his official capacity as)	
Franklin County Assessor,)	
John Does 1 and 2,)	
)	
Defendant/Appellant.)	

I, Shauna T. Geddes, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Franklin, do hereby certify that I have personally served or mailed, by United States Mail, one copy of the REPORTER'S TRANSCRIPT AND CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

Blake S. Atkin
 ATKIN LAW OFFICE
 7579 North Westside Highway
 Clifton, ID 83228
batkin@atkinlawoffices.net

Bruce J. Castleton
 Tyler D. Williams
 NAYLOR & HALES, P.C.
 950 W. Bannock Street, Suite 610
 Boise, ID 83702
bjc@naylorhales.com
tdw@naylorhales.com

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 20th day of May, 2016.



SHAUNA T. GEDDES
 CLERK OF THE DISTRICT COURT

By Linda Hampton
 Linda Hampton, Deputy Clerk