
IN THE SUPREME COURT OF THE STATE OF NEVADA

<p>IN THE MATTER OF THE KENT AND JANE WHIPPLE TRUST, DATED MARCH 17, 1969, JANE WHIPPLE, CO-TRUSTEE (ERRONEOUSLY NAMED AS TRUSTEE), AND AMENDMENTS THERE TO, JANE WHIPPLE.</p>	<p>Electronically Filed Sep 16 2016 11:44 a.m. Tracie K. Lindeman Clerk of Supreme Court</p>
<p>WARNER WHIPPLE, CO-TRUSTEE OF THE KENT AND JANE WHIPPLE TRUST, DATED MARCH 17, 1969, AS AMENDED,</p> <p style="text-align: center;">Appellant,</p> <p>vs.</p> <p>JANE WHIPPLE, CO-TRUSTEE OF THE KENT AND JANE WHIPPLE TRUST, DATED MARCH 17, 1969, AS AMENDED, AND JANE WHIPPLE,</p> <p style="text-align: center;">Respondents.</p>	<p style="text-align: center;">Supreme Court No. 69945 District Court Case No. CV930015 Appeal from the Seventh Judicial District Court, The Honorable Steve L. Dobrescu, Judge</p> <p style="text-align: center;">APPELLANT'S APPENDIX</p>

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Case No.: CV 09-00015

2015 SEP 11 PM 1:08

Dept. No.: 2

IN THE SEVENTH JUDICIAL DISTRICT COURT
LINCOLN COUNTY, NEVADA

In Re THE KENT AND JANE WHIPPLE
TRUST dated March 17, 1969, Jane Whipple,
Trustee, and amendments thereto, JANE
WHIPPLE,
Petitioner.

PETITION FOR DECLARATORY RELIEF
(NRS 30.010 *et seq.*)

COMES NOW, the Trustee, JANE WHIPPLE, by and through her attorney of record,
MATTHEW D. CARLING, ESQ., of the Carling Law Office, PC, and moves this Honorable
Court for a Decree declaring the following:

1. That the Kent & Jane Whipple Trust dated March 17, 1969, remained in effect
in 1976 after the death of Kent Whipple;
2. That Jane Whipple is a trustee of the Kent & Jane Whipple Trust dated March
17, 1969;

1 3. That the "A" and "B" trusts of the Kent & Jane Whipple Trust dated March 17,
2 1969, were never partitioned and funded;

3 4. That water right Permit 79132 was transferred to the Kent & Jane Whipple
4 Trust dated March 17, 1969, and the transfer is valid and said permit is an asset of said Trust;

5 5. That water right Permits 28599, 55918, 55919, 55920, 79132 and Claim of
6 Vested right V-01394 were transferred to the Kent Whipple Ranch, LLC, by the Kent & Jane
7 Whipple Trust dated March 17, 1969, and the transfers are valid and said permits and claim are
8 assets of the Kent Whipple Ranch, LLC.
9

10 6. That this Court confirm the appraisal (in 1976 dollars) of the Kent & Jane
11 Whipple Trust dated March 17, 1969;
12

13 7. That the A trust (dba Jane Whipple Family Trust; Jane Whipple Trustee and/or
14 Kent Whipple Trust; Jane Whipple Trustee) is the rightful owner of the Kent Whipple Ranch,
15 LLC and that Jane Whipple has an absolute right to manage, sell; water right Permits 28599,
16 55918, 55919, 55920, 79132 and Claim of Vested right V-01394.
17

18 8. Therefore that the Kent & Jane Whipple Trust dated March 17, 1969, as the sole
19 owner of the Kent Whipple Ranch, LLC has and continues to have authority to manage, sell, to
20 otherwise convey water right Permits 28599, 55918, 55919, 55920, 79132 and Claim of Vested
21 right V-01394
22

23 This Petition is made and based on the pleadings and papers on file herein, the attached
24 exhibits and any arguments as may be presented at the hearing in this matter.

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2
STATEMENT OF FACTS

3 1. Kent Whipple died on February 5, 1977.

4 2. Prior to Kent Whipple's demise he and his wife, Jane Whipple, transferred their
5 assets into the Kent and Jane Whipple Trust dated March 17, 1969 (hereinafter "the Trust").
6 (Exhibit "1")
78 3. The Trust required that upon the death of either Kent Whipple or Jane Whipple,
9 the assets of the Trust be valued and partitioned into an A and B trust under the terms of the
10 trust.
1112 4. The assets of the Trust were never valued nor was any transfer or partition of
13 the Trust made as of the date of death of Kent Whipple pursuant to NRS 163.002 *et seq.* To
14 date, the A and B trusts have not been partitioned.15 5. An appraisal of the Trust assets has been requested with a value date of
16 February 5, 1977 by the American Real Estate Appraisal. (Exhibit "2")
1718 6. In March of 1991, approximately 15 years after the passing of Kent Whipple,
19 the Trust filed applications with the State of Nevada, Division of Water Resources, Office of
20 the State Engineer (hereinafter "State Engineer") for ground water in the common name of
21 Kent Whipple Ranch (Applications 55918, 55919 and 55920). The Trust paid the application,
22 permit and water right surveyor fees appurtenant to these applications. Prior to approval by the
23 State Engineer these applications were conveyed to the misnamed Kent Whipple Trust
24 pursuant to an unrecorded quit claim deed. (Exhibit "3")
2526 7. On January 1, 2006, the Trust applied to the State Engineer for a change in the
27 point of diversion and place of use of a portion of water right Permit 55919 (Application
28

1 73719) in the misnamed Kent Whipple Trust. Application 73719 was permitted by the State
2 Engineer on November 1, 2006. On December 28, 2009, the Trust applied to the State
3 Engineer for a change of point diversion and place of use of water right Permit 73719
4 (Application 79132) in the properly named Kent and Jane Whipple Trust dated March 17,
5 1969. An Affidavit of Identity was filed with the State Engineer's Office acknowledging that
6 the Kent and Jane Whipple Trust, Kent Whipple Trust, and Kent Whipple Ranch, LLC, are one
7 and the same. (Exhibit "4") The State Engineer's Office accepted said Affidavit of Identity
8 and water right Permits 55918, 55919, 55920 and 73719 became vested to the Trust and
9 Application 79132 was subsequently permitted by the State Engineer on November 18, 2010,
10 in the name of the Trust, abrogating Permit 73719. (Exhibit "5") Permit 79312 remains vested
11 in the Trust.
12

13
14 8. On July 1, 2010, the Trust conveyed water right Permits 28599, 55918, 55919,
15 55920, 79312 and Claim of Vested right V01394 to the Kent Whipple Ranch, LLC. (Exhibit
16 "6")
17

18 9. On January 12, 2015, the Kent Whipple Ranch, LLC, applied to the State
19 Engineer for a change in the point of diversion, place of use and manner of use of a portion of
20 water right Permit 55918 (Application 84692).
21

22 10. On or about March 6, 2015, Betsy Whipple filed a Protest to Application 84692
23 stating that the "ownership of the well is questionable" and "all the assets are supposed to be in
24 the Kent Whipple Ranch Trust." Additionally, through verbal communication with personnel
25 of the Division of Water Resources, Betsy Whipple claims that assets acquired (apparently
26 even if acquired 15 years after the passing of Kent Whipple) would be part of the "B" trust, of
27 which she was a remaindermen beneficiary. (Exhibit "7")
28

1 11. On June 3, 2015, pursuant to NRS 533.386, the Division of Water Resources
2 issued a letter to the parties informing them that the Kent Whipple Ranch, LLC's, application
3 (84692) was being held from further consideration and that the ownership of water right
4 Permits 28599, 55918, 55919, 55920, 79132 and Claim of Vested right V-01394 are
5 considered questionable transfers of title of water rights until a court of competent jurisdiction
6 determines the conflicting claims to ownerships of the water rights.
7

8
9 II.

10 **FIRST CAUSE OF ACTION**

11 **(DECLARATORY RELIEF NRS 30.030 and 30.040(1))**

12 12. Petitioner incorporates paragraphs 1-11 above as if fully set forth herein.

13 13. NRS 30.030 states, "Courts of record within their respective jurisdictions shall
14 have power to declare rights, status and other legal relations whether or not further relief is or
15 could be claimed. No action or proceeding shall be open to objection on the ground that a
16 declaratory judgment or decree is prayed for. The declaration may be either affirmative or
17 negative in form and effect; and such declarations shall have the force and effect of a final
18 judgment or decree.
19

20 14. NRS 30.040(1) states, "Any person interested under a deed, written contract or
21 other writings constituting a contract, or whose rights, status or other legal relations are
22 affected by a statute, municipal ordinance, contract or franchise, may have determined any
23 question of construction or validity arising under the instrument, statute, ordinance, contract or
24 franchise and obtain a declaration of rights, status or other legal relations thereunder.
25
26

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28 ///

1 15. NRS 163.008 states that a trust created in relation to real property is not valid
2 unless it is created by operation of law or is evidenced by a written instrument signed by the
3 trustee, or by the agent of the trustee.

4 16. The Kent Whipple Ranch, LLC, has made application for a change in usage of
5 certain Permits. Betsy Whipple has challenged that Application alleging that the Kent Whipple
6 Ranch, LLC, or Jane Whipple, as trustee of the Trust, does not have the authority to make such
7 an application.

8
9 17. The State Engineer refuses to proceed with Application 84692 and that the
10 ownership of water Permits 28599, 55918, 55919, 55930, 79132 and Claim of Vested right V-
11 01394 are considered questionable transfers of title of water rights until a court of competent
12 jurisdiction adjudicates that claims set forth herein.

13
14 18. Jane Whipple, the Petitioner, has never executed any documents creating an A
15 or B trust pursuant to the Trust.

16 19. Jane Whipple, the Petitioner, has never executed any written instruments
17 conveying any of the Trust assets to an A or B trust.
18

19 **III.**

20 **PRAYER FOR RELIEF**

21 WHEREFORE, the Petitioner prays that this Court declare the following:

22 1. That the Kent & Jane Whipple Trust dated March 17, 1969, remained in effect in 1976
23 after the death of Kent Whipple;

24 2. That Jane Whipple is a trustee of the Kent & Jane Whipple Trust dated March 17,
25 1969;

26 ///
27
28

1 3. That the "A" and "B" trusts of the Kent & Jane Whipple Trust dated March 17, 1969,
2 were never partitioned and funded;

3 4. That water right Permit 79132 was transferred to the Kent & Jane Whipple Trust dated
4 March 17, 1969, and the transfer is valid and said permit is an asset of said Trust;

5 5. That water right Permits 28599, 55918, 55919, 55920, 79132 and Claim of Vested
6 right V-01394 were transferred to the Kent Whipple Ranch, LLC, by the Kent & Jane Whipple
7 Trust dated March 17, 1969, and the transfers are valid and said permits and claim are assets of
8 the Kent Whipple Ranch, LLC.
9

10 6. That this Court confirm the appraisal (in 1976 dollars) of the Kent & Jane Whipple
11 Trust dated March 17, 1969;
12

13 7. That the A trust (d/b/a Jane Whipple Family Trust; Jane Whipple Trustee and/or Kent
14 Whipple Trust; Jane Whipple Trustee) is the rightful owner of the Kent Whipple Ranch, LLC
15 and that Jane Whipple has an absolute right to manage, sell; water right Permits 28599, 55918,
16 55919, 55920, 79132 and Claim of Vested right V-01394.
17

18 8. Therefore that the Kent & Jane Whipple Trust dated March 17, 1969, as the sole
19 owner of the Kent Whipple Ranch, LLC has and continues to have authority to manage, sell, to
20 otherwise convey water right Permits 28599, 55918, 55919, 55920, 79132 and Claim of Vested
21 right V-01394
22

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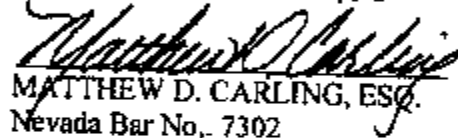
26 ///

27 ///

1 9. For any other relief deemed necessary by this Court

2 DATED this 31st day of August, 2015.

3 CARLING LAW OFFICE, PC

4 
5 MATTHEW D. CARLING, ESQ.

6 Nevada Bar No. 7302

7 1100 S. Tenth Street

8 Las Vegas, NV 89101

9 (702) 419-7330 (Office)

10 (702) 446-8065 (Fax)

11 Attorney for Petitioner,

12 JANE WHIPPLE

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF LINCOLN)

That under penalties of perjury the undersigned, JANE WHIPPLE, declares that she is the Petitioner named in the foregoing Petition for Declaratory Relief, that he knows the contents thereof, and that the same are true of her own knowledge, except as to those matters therein alleged on information and belief, and as to those matters, she believes them to be true.

Jane Whipple
JANE WHIPPLE

SUBSCRIBED and SWORN to me
this 22 day of February, 2015

[Signature]
NOTARY PUBLIC

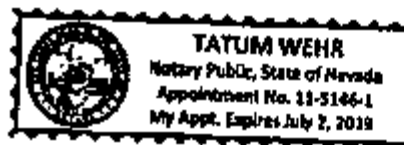


EXHIBIT "1"

SUPPLEMENTAL TRUST AGREEMENT

THIS SUPPLEMENTAL TRUST AGREEMENT is entered into between KENT WHIPPLE, also known as KENT O'NEIL WHIPPLE, and JANE WHIPPLE, also known as JANE ELEANOR R. WHIPPLE, also known as BETTY JANE WHIPPLE, his wife, hereinafter referred to as the "Trustors" or separately as "Husband" and "wife" respectively, and KENT WHIPPLE and JANE WHIPPLE, hereinafter jointly referred to as the "Trustee".

WHEREAS these Trustors entered into a Trust Agreement dated March 17, 1969 and wish to hereby modify certain terms of the trust, and as modified to ratify, confirm and readopt said trust and all actions heretofore taken by the Trustors and Trustee.

NOW THEREFORE, pursuant to the express powers reserved in said Trust Agreement of March 17, 1969, the following amendments and modifications are hereby made to said Trust Agreement:

FIRST: Article "SIX": (d) is hereby amended to read as follows:

"(d) Upon the death of either Trustor, the Trustee shall divide the trust estate into two (2) trusts, hereinafter called Trust "A" and Trust "B", which shall constitute separate trusts and shall be held and administered as such. At the Trustee's discretion the assets of the trust estate to be divided pursuant hereto may be divided and allocated in kind, by undivided interest, by actual division, or by any combination of such methods of division."

SECOND: Article "SIX": (d) is hereby amended to read as follows:

"(e) There shall be placed in Trust "A":

(1) The surviving Trustor's share of the community property subject to the terms of this Trust.

(2) Out of the other assets subject to the terms of this trust, including the decedent's share of the community property in this Trust and those received

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by the Trustee upon or by reason of the death of the first Trustor to die, the Trustee shall add to Trust A the fractional share of said assets which is equal to the maximum marital deduction allowed for Federal Estate Tax purposes in the estate of said deceased Trustor, less the value of all assets or interest which pass or have passed to the surviving Trustor other than by the terms of this Trust, and which qualify for marital deduction in the estate of said decedent.


(3) In making the computations and the allocations of property to Trust "A" required by the preceding paragraphs (1) and (2), the determination of the character and ownership of property and the value thereof shall be as finally established for Federal Estate Tax purposes in said decedent's estate.

(4) All of the rest, residue and remainder of the assets subject to the terms of this Trust shall be allocated to Trust "B".

THIRD: As hereby amended and modified the Trust Agreement dated March 17, 1969 made by the undersigned Trustors and Trustees, and all actions of the Trustors and Trustees hereunder to date is hereby ratified, confirmed, approved, agreed to and said Trust Agreement as herein modified and amended shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands this 30th day of January, 1977.

TRUSTORS:


KENT WHIPPLE, a/k/a KENT O'NEIL WHIPPLE


JANE WHIPPLE, a/k/a JANE ELEANOR R. WHIPPLE

TRUSTEE:


KENT WHIPPLE

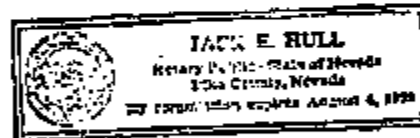

JANE WHIPPLE

VAGHAN, HULL, MARFIS & MILLER, LTD.
ATTORNEYS AND COUNSELORS
200 IRVING STREET

STATE OF NEVADA)
) SS.
COUNTY OF LINCOLN)

On January 30, 1977, personally appeared before me, a
Notary Public, KENT WHIPPLE and JANE WHIPPLE, his wife, who acknow-
ledged to me that they executed the above instrument.


NOTARY PUBLIC



VAUGHAN, HULL, MARFISI & MILLER, LTD.
ATTORNEYS AND COUNSELLORS
150 PRIMO STREET
ELKO, NEVADA 89801

1 THIS TRUST AGREEMENT is entered into between KENT
2 WHIPPLE, also known as KENT O'NEIL WHIPPLE, and JANE WHIPPLE, also
3 known as JANE ELEANOR R. WHIPPLE, also known as BETTY JANE WHIPPLE,
4 his wife, hereinafter referred to as the "Trustors", or separately
5 as "Husband" and "Wife" respectively, and KENT WHIPPLE and JANE
6 WHIPPLE, hereinafter jointly referred to as the "Trustee".
7

8 ONE: The Trustors, desiring to establish a Trust,
9 have assigned, transferred and delivered, and by these presents
10 do assign, transfer and deliver to the Trustee all of the real
11 property and personal property of every nature whatsoever belong-
12 ing to the Trustors, including, but not limited to, the property
13 described in Schedule "A" attached hereto and made a part of this
14 Trust Agreement. Receipt is hereby acknowledged by the Trustee
15 of the assets enumerated in Schedule "A". The Trustors may from
16 time to time add additional properties or policies of insurance
17 to this Trust by transferring such property or assigning such
18 policies to the Trustee, or by causing the Trustee to be named as
19 beneficiary thereunder. In either case, such property and
20 policies of insurance, and their proceeds, shall be subject to the
21 terms and conditions of this Agreement.

22 TWO: No consideration was nor will be given to or
23 by the Trustee for the conveyance or transfer to him of any of
24 the Trust Estate. The Trustee accepts such title to the Trust
25 Estate as is conveyed or transferred to him hereunder without
26 liability or responsibility for the condition or validity of such
27 title, and the Trust Estate has been or will be conveyed or trans-
28 ferred to the Trustee, IN TRUST, with power of sale, for the uses
29 and purposes herein provided.

30 THREE: The Trustee acknowledges that he may be named
31 as beneficiary under insurance policies of the Trustors, and
32 agrees to hold the same and the proceeds thereof subject to the
33

A/1

1 conditions he stated.

2 FOUR: The Trustee, upon being informed as to the
3 death of the insured or the earlier maturity of any insurance
4 policies, shall receive the proceeds thereof and is hereby author-
5 ized to execute the necessary receipts and releases to the insur-
6 ance companies concerned.

7 FIVE: The Trustors reserve during such time as the
8 Husband and Wife are both living the following rights and powers
9 to be exercised by them, without the consent or participation of
10 the Trustee or any beneficiary of this Trust, including, with-
11 out limiting the generality, the following rights and powers:

12 (a) The right to revoke this Trust, or
13 by supplemental agreement to modify the terms of
14 this Trust from time to time without the consent of
15 the Trustee, or any beneficiary, provided, however,
16 that the duties, powers, and liability of the Trustee
17 hereunder shall not be substantially changed without
18 his written consent. Except as hereinafter provided,
19 such powers of revocation and modification are per-
20 sonal to the Trustors and shall not be assignable
21 nor accrue to any other person, nor shall they ex-
22 tend to their estates nor to their legal representa-
23 tives, nor to any beneficiary named herein nor to
24 any other person.

25 (b) To receive or apply dividends, dis-
26 ability benefits, premium refunds, proceeds of
27 matured insurance policies, loan or surrender or
28 commuted values or any other sum due under any in-
29 surance policies contributed to this Trust.

30 (c) To obtain and receive cash advances
31 or loans as may be advisable under any life insur-
32 ance policies contributed to this Trust.

(d) To exercise any powers or privileges granted in any such policies or plans.

The rights and powers reserved in (a) through (d), inclusive, in this Paragraph FIVE shall, except as hereinafter provided, cease upon the death of either Trustor, and thereafter this Trust shall be irrevocable and shall not be subject to amendment or modification.

SIX: All property now or hereafter subject to this Trust shall constitute the Trust Estate, and shall be held, managed and distributed as hereinafter provided:

During the lifetime of the Trustors, the Trustee shall distribute the income and principal in the following manner:

(a) The Trustee shall pay or reserve sufficient funds to pay all expenses of management and distribution of the Trust Estate, including the compensation of the Trustee, all or any part of which may, in the discretion of the Trustee, be charged either to income or principal of the Trust Estate.

The remaining income shall be and is hereafter referred to as "net income".

(b) During the lifetime of both of the Trustors, the net income from the entire Trust Estate shall be distributed to or for the use and benefit of the Trustors in monthly or other convenient installments, but not less frequently than annually. If at any time during the lifetime of both of the Trustors, the net income shall be inadequate for the needs, comfort and pleasure of the Trustors, or their descendants, the Trustee may, in its discretion, pay to or apply for the benefit of said beneficiaries, in addition to the payments of income as hereinabove provided, such amounts of the

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1 principal of the Trust Estate as the Trustee may
2 deem necessary for said purposes.

3 (c) If at any time during the period set
4 forth in sub-paragraph (b) of Paragraph SIX, the
5 Trustors shall be incompetent or shall in the
6 judgment of the Trustee be unable for any other
7 reason to act in their own behalf, the Successor
8 Co-Trustees may, in their discretion, pay to or
9 apply for the health, support, maintenance and
10 comfort of the Trustors, or their descendants,
11 in addition to the payments of income as herein-
12 above provided, such amounts of the principal of
13 the Trust Estate as the Successor Co-Trustees may
14 from time to time deem necessary or advisable for
15 their use or benefit.

16 (d) Upon the death of either Trustor, the
17 Trustee shall segregate and divide the Trust
18 Estate into two trusts, hereinafter called Trust
19 "A" and Trust "B", which shall constitute separ-
20 ate trusts and shall be held and administered as
21 such.

22 (e) There shall be placed in Trust "A":

23 (1) The fractional share belonging to
24 the surviving Trustor of the community proper-
25 ty subject to the terms of this Trust.

26 (2) Out of the other assets subject to
27 the terms of this Trust, including those re-
28 ceived by the Trustee upon or by reason of
29 the death of the first Trustor to die, which
30 are eligible to satisfy the marital deduction,
31 the Trustee shall add to this Trust the frac-
32 tional share of said assets which is equal to

1 the maximum marital deduction allowed for
2 Federal Estate Tax purposes in the estate of
3 said deceased Trustor, less the value of all
4 assets or interest which pass or have passed
5 to the surviving Trustor other than by the
6 terms of this Trust, and which are eligible
7 to satisfy said marital deduction.

8 (3) In making the computations and the
9 allocations of property to Trust "A" required
10 by the preceding paragraphs (1) and (2), the
11 determination of the character and ownership
12 of property and the value thereof shall be
13 finally established for Federal Estate Tax
14 purposes.

15 (4) All of the rest, residue and re-
16 mainder of the assets subject to the terms
17 of this Trust, including those received by
18 the Trustee upon or by reason of the death
19 of the first Trustor to die, shall be allo-
20 cated to Trust "B".

21 PROVISIONS OF TRUST "A".
22

23 (1) The entire net income from Trust "A" shall
24 be paid to or applied for the benefit of the surviving
25 Trustor in monthly or other convenient installments
26 during his or her lifetime, but in no event less
27 often than annually.

28 (2) If the income is not adequate to maintain
29 the surviving Trustor in a manner similar to his or
30 her standard of living while living with the deceased
31 Trustor, the Trustee may pay to him or her, or apply
32 for his or her benefit so much of the principal of

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1 the Trust as he may, in his discretion, deem proper
2 or necessary for that purpose, taking into account
3 any income available to him or her from other
4 sources. The Trustee shall make such principal
5 disbursements to the surviving Trustor out of the
6 corpus of Trust "A" before making any disbursements
7 of principal to the surviving Trustor from Trust
8 "B".

9 (3) In the event the Wife survives the
10 Husband;

11 (a) She shall have the power, exer-
12 cisable in all events and at any time or
13 from time to time after the Husband's
14 demise, to withdraw all or any part of
15 the principal of Trust "A", and to require
16 the Trustee to distribute the same to her,
17 discharged of this Trust. Such power may
18 be exercised by written instrument filed
19 with the Trustee. There is further con-
20 ferred on the Wife, the absolute power to
21 distribute by her Last Will and Testament
22 the remaining assets of the Trust to any-
23 one she chooses, including her estate, her
24 creditors, or the creditors of her estate.

25 (b) If and to the extent that the
26 Wife shall fail to exercise such powers,
27 the principal and accrued and undistrib-
28 uted net income of this Trust shall, upon
29 her demise, be transferred to and become a
30 part of Trust "B" and shall be held, admini-
31 stered and distributed as is hereinafter
32 provided with respect to Trust "B", excepting

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1 however that the Trustee, in its discretion
2 may first pay out of the principal, the
3 Wife's last illness and burial expenses,
4 Federal Estate Taxes, Nevada Inheritance
5 Taxes, and any gift taxes assessed against
6 her estate, together with interest,
7 penalties, costs, Trustees' compensation
8 and attorney fees, unless other adequate
9 provisions shall have been made therefor.

10
11 (4) In the event the Husband survives the
12 Wife:

13 (a) He shall have the power, exer-
14 cisable in all events and at any time or
15 from time to time after the Wife's demise
16 to withdraw all or any part of the prin-
17 cipal of Trust "A", and to require the
18 Trustee to distribute the same to him,
19 discharged of this Trust. Such power may
20 be exercised by written instrument filed
21 with the Trustee. There is further con-
22 ferred on the Husband, the absolute power
23 to distribute by his Last Will and Testament
24 the remaining assets of the Trust to any-
25 one he chooses, including his estate, his
26 creditors, or the creditors of his estate.

27
28 (b) If and to the extent that the
29 Husband shall fail to exercise such powers,
30 the principal and accrued and undistributed
31 net income of this Trust shall, upon his
32 demise, be transferred to and become a part

1 of Trust "B" and shall be held, administered
2 and distributed as is hereinafter provided
3 with respect to Trust "B", excepting, how-
4 ever, that the Trustee, in its discretion,
5 may first pay out of the principal, the
6 Husband's last illness and burial expenses,
7 Federal Estate Taxes, Nevada Inheritance
8 Taxes, and any gift taxes assessed against
9 his estate, together with interest, penalties,
10 costs, Trustees' compensation and attorney
11 fees, unless other adequate provisions shall
12 have been made therefor.

13 (5) The interests of the beneficiaries in
14 principal or income shall not be subject to claims of
15 his or her creditors, nor others, nor to legal process,
16 and may not be voluntarily nor involuntarily alienated
17 nor encumbered.

18 PROVISIONS OF TRUST "B".
19

20 (1) Upon the death of the first Trustor to
21 die, if the surviving Trustor shall be in want of
22 additional monies to maintain himself or herself in
23 a manner similar to his or her standard of living
24 at the time of death of the Trustor who died first,
25 taking into account any other assets or income
26 available from other sources, including the afore-
27 said payments from Trust "A", the Trustee may, in
28 its absolute discretion, pay to or apply for the
29 benefit of the surviving Trustor so much of the
30 income or principal from this Trust as the Trustee
31 may from time to time deem necessary or advisable
32 for the health, support, maintenance and comfort

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1 of the surviving Trustor.

2 (2) Anything contained herein to the
3 contrary notwithstanding, no payment shall be
4 made to the surviving Trustor from the prin-
5 cipal or income of Trust "B" until such time
6 as Trust "A" is substantially exhausted both
7 as to principal and income. At such time as
8 the income and principal of Trust "A" is sub-
9 stantially exhausted, the net income of Trust
10 "B" shall be paid to the surviving Trustor
11 in monthly or other convenient installments
12 during his or her lifetime, but in no event
13 less often than annually.

14 (3) Upon the death of the surviving
15 Trustor, the remaining assets of the Trust
16 shall be divided into as many separate trusts
17 as there are children of the Trustors living,
18 providing that if any such child be then de-
19 ceased leaving issue surviving at the date of
20 such division, such deceased child shall be
21 considered as living for the purposes of such
22 division, and in that event the Trustee shall
23 set aside and distribute one of such equal
24 shares to the issue of any such deceased child
25 per stirpes. Each of the Trusts thus estab-
26 lished shall be administered as separate
27 Trusts, as hereinafter provided, but without
28 the necessity of the Trustee making physical
29 division of the assets unless the Trustee
30 deems it necessary or advisable to do so. The
31 assets set aside for the use and benefit of
32

the 'ustors' issue shall be ho: administered
and distributed as follows:

(a) The Trustee shall set aside
one of such shares for each of the Trustees'
children by right of representation in a
separate trust and shall distribute so much
of the net income derived therefrom as in
the sole discretion of the Trustee may be
deemed necessary or advisable for such
child's health, support, maintenance or
education, including study at an institu-
tion of higher learning, or to commence a
business or profession, to or for the
use or benefit of such child until he or she
attains the age of twenty-one (21) years, and
any accumulated income not so required shall
be added to the principal of such share.
Thereafter, the entire net income from said
share shall be distributed quarterly to or
for the use or benefit of such child until
he or she attains the age of twenty-five
(25) years, at which time one-half (1/2)
of the then principal of such share shall
be distributed to such child; and thereafter,
the entire net income from the balance of
the principal of such share shall be distri-
buted quarterly to or for the use or bene-
fit of such child until he or she attains
the age of thirty (30) years, at which time
the entire balance of the principal of such
share together with any undistributed income
therefrom, shall be distributed to such child.

1 (b) Upon the death of any such
2 child before becoming entitled to receive
3 the whole of his or her share of the Trust
4 Estate, the Trustee, after paying the ex-
5 penses of the last illness and burial of
6 such deceased child, unless such expenses
7 shall have been paid or provided for apart
8 from this Trust, shall distribute the en-
9 tire principal of such share, or so much
10 thereof as then remains, together with any
11 undistributed income therefrom, to the then
12 surviving issue of such deceased child per
13 stirpes, subject however, to the provisions
14 of sub-paragraphs (a) and (b) hereof. If
15 such deceased child shall leave no such
16 issue then surviving, the same shall be
17 added in equal portions to the shares then
18 held for the benefit of the other children,
19 and to those previously distributed there-
20 from, excluding the share of each child
21 theretofore deceased as to whom then sur-
22 vives no issue, but including by right of
23 representation the issue of any deceased
24 child. If any portion of a share has
25 theretofore been distributed, then a similar
26 portion of the added share shall likewise
27 be distributed.

28 (4) (a) If at any time during the life-
29 time of both Trustors, in the absolute dis-
30 cretion of the Trustee, any child or grand-
31 child of the Trustors, or issue of such
32 grandchildren, should be in want of

1 additional monies for their health, support
2 and maintenance, the Trustee may pay to or
3 apply for the benefit of such individual such
4 amounts from the income or principal of the
5 Trust Estate as the Trustee may from time to
6 time deem necessary or advisable for such
7 beneficiary's health, support, maintenance
8 or education, including study at an insti-
9 tution of higher learning.

10 (b) If at any time after the death
11 of one Trustor, and during the lifetime of the
12 surviving Trustor, in the absolute discretion
13 of the Trustee, any child or grandchild of the
14 Trustors, or issue of such grandchild, should
15 be in want of additional monies for their
16 health, support and maintenance, the Trustee
17 may pay to or apply for the benefit of such
18 individual, such amounts from the income or
19 principal of Trust "B" as the Trustee may
20 from time to time deem necessary or advis-
21 able, provided such payments do not jeopard-
22 ize the security of the surviving Trustor.

23 (c) If at any time after the death of
24 both Trustors, in the absolute discretion of
25 Trustee, any child or grandchild of the
26 Trustors should be in want of monies for
27 their health, support or maintenance, or
28 to commence a business or profession, the
29 Trustee may pay to or apply for the bene-
30 fit of such individual, in addition to
31 the payments hereinabove provided, such
32 amounts from the principal of his or her

1 respective share of the Trust Estate, up to
2 the whole of said part, as the Trustee may
3 from time to time deem necessary or advisable
4 for such beneficiary's health, support, main-
5 tenance, or education, including study at an
6 institution of higher learning, or to com-
7 mence a business or profession, or the
8 Trustee may in its sole discretion during
9 any calendar year pay to or apply for the
10 benefit of such individual the greater of
11 the following amounts: FIVE THOUSAND DOLLARS
12 (\$5,000.00) or FIVE PER CENT (5%) of the
13 aggregate value of the Trust Estate set
14 aside for such beneficiary.

15 (5) The interests of beneficiaries in
16 principal or income shall not be subject to claims
17 of their creditors nor others, nor to legal process,
18 and may not be voluntarily nor involuntarily alien-
19 ated nor encumbered.

20 (6) Any other provisions hereof to the
21 contrary notwithstanding, unless terminated at an
22 earlier date under the foregoing provisions, all
23 Trusts created herein shall terminate at the expir-
24 ation of twenty-one (21) years after the death of the
25 last surviving beneficiary living on the date of
26 the execution of this Trust Agreement. If any Trust
27 created herein is terminated by reason of the oper-
28 ation of this paragraph, the Trust as then existing
29 shall go and be distributed to the persons then en-
30 titled to the income therefrom in the same proportions
31 in which they were receiving or were entitled to re-
32 ceive said income.

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1 SEVEN: To carry out the purposes of this Trust,
2 the Trustee is vested with the following powers in addition to
3 those now or hereafter conferred by law, affecting the Trust
4 and the Trust Estates, subject to the provisions heretofore
5 set forth in Paragraph FIVE:

6 (a) The Trustee shall have the power to
7 manage and control, invest and reinvest, sell or
8 assign, the proceeds of such life insurance policies
9 and the funds of the Trust Estate, in such invest-
10 ments as the Trustee may elect, and also in such
11 other investments as are hereinabove specifically
12 authorized. He shall have the power to exercise
13 any right or option of subscription or otherwise
14 which may at any time be given to the holders of
15 any securities of the Trust Estate.

16 (b) To manage, control, sell, convey, ex-
17 change, partition, divide, subdivide, improve, repair;
18 to grant options and to sell upon deferred payments;
19 to lease for terms within or extending beyond the
20 duration of this Trust for any purpose, including
21 exploration for and removal of gas, oil or other
22 minerals; and to enter into community oil leases.

23 (c) To retain property and to invest, and
24 reinvest as provided by law from time to time ex-
25 isting.

26 (d) To borrow; to place, replace, renew,
27 or extend any encumbrances upon any real property;
28 and to institute, compromise and defend actions
29 and proceedings.

30 (e) To participate in voting trusts, poolin-
31 agreements, foreclosures, reorganizations, consoli-
32

a/c

1 de'ns, mergers, and liquidat' s, and in connection
2 therewith, to deposit securities with and transfer
3 title and delegate discretions to any protective or
4 other committee as the Trustee may deem advisable.

5 (f) Upon any division or partial or final
6 distribution of the Trust Estate, to partition, allot,
7 and distribute the Trust Estate in undivided interests
8 or in kind, at valuations determined by the Trustee,
9 and to sell such property as the Trustee may deem
10 necessary to make division and distribution.

11 (g) To determine what is principal or
12 income of the Trust Estate and apportion and allocate
13 in his discretion, receipts and expenses as between
14 these accounts. Except insofar as the Trustee shall
15 exercise this discretion, matters relating to the
16 rights of beneficiaries among themselves as to princi-
17 pal and income shall be governed by the provisions of
18 the Principal and Income Act from time to time existing.

19 (h) The enumeration of certain powers of
20 the Trustee shall not limit its general powers, the
21 Trustee subject always to the discharge of its fidu-
22 ciary obligations, being vested with and having all
23 the rights, powers and privileges which an absolute
24 owner of the same property would have.

25 (i) Upon the death of the first to die of
26 the Husband or Wife, or upon the death of any other
27 beneficiary, the expenses of last illness and burial,
28 and any estate, inheritance, succession or other
29 death taxes, duties, charges, or assessments, to-
30 gether with interest, penalties, costs, Trustees'
31 compensations and attorney fees, which shall become
32 due or be occasioned by reason of the Trust Estate

1 or any interest therein being includible for such
2 tax purposes, shall be paid by the Trustee out of
3 his or her share of the community property interest
4 in the Trust Estate, or his or her share of the
5 Trust Estate, as the case may be, unless other ade-
6 quate provisions shall have been made therefor. Any
7 such payments shall be charged to principal of the
8 share of the Trust Estate or the separate Trust so
9 included.

10 (j) Upon the death of the last Trustor to
11 die, all estate, inheritance, succession, or other
12 death taxes or duties (by whatever name called)
13 which shall become due by reason of the Trust Estate
14 or any portion thereof being includible for such tax
15 purposes, shall be paid by the Trustee out of the
16 said deceased beneficiary's Trust (the "A" Trust).
17 Any other costs, including Trustees' compensation
18 and attorney fees, which shall be due or be occasioned
19 by the death of the Trustors, or either of them, may
20 be paid by the Trustee out of income or principal
21 from either Trust "A" or Trust "B", unless other
22 adequate provisions shall have been made therefor.

23 (k) The Trustee shall have full power
24 and authority to pay from the Trust Estate any other
25 taxes, charges or assessments for which the Trustee, the
26 Trust Estate or any interest therein becomes liable,
27 and any such payments shall be made from and charged
28 to either income or principal of the Trust Estate
29 or any share or separate trust thereof; as the Trustee,
30 in its discretion, deems proper.

31 (l) The Trustee may make such payments
32 directly or to a personal representative or other

1 f iary, the Trustee may rel. pon a written state-
2 ment of such fiduciary as to the amount and propriety
3 of such taxes, interest, penalties, and other costs,
4 and shall be under no duty to see to the application
5 of any funds so paid.

6 (m) The Trustee shall sell assets from
7 Trust "A" to Trust "B" or between the separate Trusts
8 or shares, as may exist from time to time, on such
9 terms and at such fair market values as the Trustee
10 may determine. The Trustee may loan or advance
11 monies which are funds of the Trust Estate from any
12 one of the several trusts or shares to any of the
13 other trusts or shares as may exist from time to
14 time upon such terms, conditions and security as
15 the Trustee may, in its discretion, determine to
16 be fair and reasonable.

17 (n) Upon the death of either Trustor, the
18 Trustee may, within its discretion, purchase assets
19 from the estate of the deceased Trustor at a fair
20 value. The propriety of the purchase, the amount
21 of such assets purchased, and the ascertainment of
22 fair value shall be solely within the discretion of
23 the Trustee, and the Trustee shall incur no liability
24 as a result of such purchase or purchases whether
25 or not such assets constitute investments which may
26 ordinarily be made by Trustees. At its discretion,
27 the Trustee may loan monies which are funds of the
28 Trust Estate to the estate of the deceased Trustor,
29 upon such terms as the Trustee and the personal
30 representative of the deceased Trustor may agree.

31 (o) The Trustee shall have the power to
32 budget the estimated income and expenses of the

W.A.

1 st in such manner as to equalize, as far as
2 possible, periodic income payments to the
3 beneficiaries.

4 (p) The Trustee shall not at any time be
5 required to make any accounting of the administration
6 of the Trust Estate to any court or public authority
7 whatsoever. Any and all accounting shall be made
8 to the beneficiaries of the Trust or to the legal
9 guardian or conservator of any beneficiary who
10 has not reached the age of majority, or who has
11 been declared incompetent.

12 (q) For the purposes of allocation thereof
13 between the Trusts, as hereinabove provided in
14 Paragraph SIX, for the purpose of determining
15 the nature and character of the property in the
16 event the Trust is terminated or partially revoked
17 and assets distributed to the Trustors, and for
18 tax purposes, it is the express intent of the
19 Trustors, that in the event either of the Trustors
20 hereafter acquire any separate or community pro-
21 perty and transfer the same to this Trust, said
22 separate or community property shall retain its
23 status as separate or community property subsequent
24 to the time it is transferred to this Trust. In
25 the event that any separate or community property
26 is at any time hereafter transferred out of the
27 Trust, it shall retain its character as separate or
28 community property subsequent to being transferred
29 out of the Trust.

30 EIGHT: The Trustors declare that all property in
31 which they have an interest or which stands in the name of KENT
32 WHIPPLE, a/k/a KENT O'NEIL WHIPPLE, and/or JANE WHIPPLE, a/k/a

1 JANE ELEANOR WHIPPLE, is wholly community property under the
2 laws of the State of Nevada, irrespective of the manner in which
3 record title is held, or has been held prior to the transfer to
4 the Trustees under this Trust.

5
6 NINE: The primary purpose of this instrument is to
7 provide for the income beneficiaries, and the rights and interests
8 of remaindermen are subordinate to that purpose. The provisions
9 of this instrument shall be construed liberally in the interests
10 of and for the benefit of the income beneficiaries.

11
12 TEN: Upon the resignation, inability to act, or
13 death of JANE WHIPPLE, then KENT WHIPPLE shall act as the sole
14 Trustee. Upon the resignation, inability to act, or death of
15 KENT WHIPPLE, then JANE WHIPPLE and KEITH MURRAY WHIPPLE shall
16 act as Successor Co-Trustees. Upon the resignation, inability
17 to act, or death of both of the original Trustees, then KEITH
18 MURRAY WHIPPLE shall act as the sole Successor Trustee. Upon the
19 resignation, inability to act, or death of KEITH MURRAY WHIPPLE,
20 then the FIRST NATIONAL BANK OF NEVADA shall act as the Successor
21 Trustee.

22 The individual Successor Co-Trustees shall be
23 entitled to compensation for their services, which shall be the
24 compensation normally charged by corporate trustees under similar
25 circumstances. The individual Trustees named herein shall serve
26 without bond.

27 Each Successor Co-Trustee must at all times be
28 fully informed of each and every official act performed by the
29 other Trustees and must be furnished with an accounting of all in-
30 come, expenditures and activities of the Trust at least quarterly
31 Each Co-Trustee at all times shall have the right to examine any
32 and all Trust books of account, reports, files and papers of ever

1 nature what's er. Any individual Co-Trustee shall have the
2 right to demand a complete audit of the Trust by an independent
3 firm of Certified Public Accountants at the expense of the Trust
4 at any time or from time to time, without the consent of the other
5 Co-Trustees, and this power shall not be subject to arbitration.

6 The concurring vote of two (2) Co-Trustees shall be
7 necessary for the Trustees to act hereunder, when there are two
8 (2) Co-Trustees. In the event of a disagreement at any time
9 when there are only two (2) Co-Trustees, then the dispute shall be
10 submitted to arbitration in accordance with the Uniform Arbitration
11 Act of the State of Nevada.

12 ELEVEN: As used in this Trust, the singular shall be
13 deemed to include the plural, and the masculine, feminine, or
14 neuter shall be deemed to include each of the other two genders.

15 TWELVE: This Agreement has been delivered in the State
16 of Nevada. The laws of the State of Nevada shall govern the
17 validity and interpretation and administration thereof, notwith-
18 standing the residence in another jurisdiction of the Trustors or
19 of any other beneficiary hereunder.

20 THIRTEEN: As used throughout this instrument, the
21 term "issue" shall include any children of the Trustors, who may
22 hereafter be born or legally adopted, and shall include children
23 adopted by any descendant and their descendants by birth or
24 adoption.

25 IN WITNESS WHEREOF, we have hereunto set our hands this

26 17 day of March, 1969.

27 TRUSTORS:

28 Kent Whipple

KENT WHIPPLE, a/k/a KENT O'NEIL WHIPPLE

29 TRUSTEE:

30 Kent Whipple

KENT WHIPPLE

31 Jane Whipple

JANE WHIPPLE, a/k/a JANE ELEANOR R.

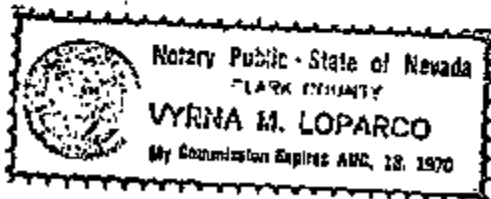
WHIPPLE

32 Jane Whipple

JANE WHIPPLE

1 STATE OF NEVADA }
2 COUNTY OF CLARK } ss.

3 On this 17th day of March, 1969, before me, the under-
4 signed, a Notary Public in and for said County and State, person-
5 ally appeared KENT WHIPPLE and JANE WHIPPLE, husband and wife,
6 known to me to be the persons described in and whose signatures
7 are subscribed to the within Trust Agreement as "TRUSTORS", and
8 jointly acknowledged to me that they executed the same freely
9 and voluntarily and for the uses and purposes therein mentioned.



Vyrna M. Loparco
NOTARY PUBLIC in and for
said County and State

EXHIBIT "2"

AMERICAN REAL ESTATE APPRAISAL

B. KENT VOLLMER, CERTIFIED GENERAL APPRAISER

UTAH CLASS B, VOLUME 6, 2009A, 2009

Matthew Carling - Attorney
51 East 400 North, Bldg 1
Cedar City, UT 84720

August 2, 2015

RE: **Kent Whipple Estate**
Whipple Ranch
Ash Springs, Lincoln County, NV
Total Acreage to be determined (Est to be approximately 500 acres)

Dear Mr. Matthew Carling,

Following is a standard Agreement for services and my proposal to complete the required appraisal work on the above referenced property. We are happy to offer this letter of engagement for the appraisal you have requested.

CONTRACT FOR SERVICES

This Agreement entered into by and between B. Kent Vollmer, hereafter referred to as the Appraiser, and Matthew Carling hereafter referred to as the Contractor.

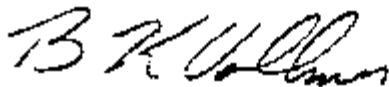
- 1) Appraiser agrees to provide a written **Summary Report** on the above referenced property. The final concluded land Legal Descriptions and/or Assessor Parcels will be agreed upon by the Appraiser and the Contractor. This is estimated to be in the range of 500 acres. The valuation will account for the "as is" value of the property as of the date of valuation. The scope of work is to include the appropriate approaches to value, which appear to be the Sales Comparison Approach for farm and range land, with NO improvements. The Water Rights associated with this property, as of the effective date of valuation, are assumed to be adequate to utilize the property for farming/ranching. There reportedly is not excessive water rights, and therefore, a water rights valuation will NOT be conducted.
- 2) The report will conform with the requirements and the code of Professional Conduct of USPAP. It is understood that the appraisal is prepared for the sole and exclusive use of Contractor. We require Appraiser's written authorization before releasing the reports to any other party. We conclude that to the best of our knowledge, we have provided NO services on this property in the past 5 years.

The intended user of the appraisal report is Matthew Carling - Attorney for the Estate of Kent Whipple. The intended use of the report is for establishing market value for Estate Planning purposes. The type of value to be estimated is MARKET VALUE as defined in USPAP. The legal property right appraised would be the fee simple interest. The property will be valued as of a retrospective date of February 5, 1997.

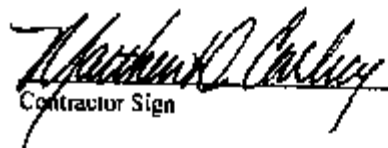
- 3) Based on a preliminary review of the subject property, the fee to appraise the properties will be \$3,000.00. It is understood that the fee is not contingent on any values to be reported. We will furnish you with a digitally transmitted copies (in pdf format) of the finished appraisal reports. Hard bound copies can be requested at an additional fee of \$50.00 per copy.

- 4) Contractor agrees to pay the appraiser fee as follows: \$3,000.00 upon execution of this agreement. Any remaining balances are due and payable prior to release of the completed reports. Execution of this agreement begins with the return of a signed copy of this agreement, the deposit fee, and any pertinent items in Section 8 below. The appraisal fee is in no way based on the final value estimate of the appraised properties, and all sums herein are due and payable, regardless of the amount of the final value estimate. It is agreed that any values or reports can not be released until all fees are paid in full.
- 5) This Agreement does not include Appraiser to and Appraiser shall not be required to give testimony or to attend any public hearing in court with reference to the properties appraised, provided however, in the event Appraiser is subpoenaed or otherwise commanded by lawful order or requirement to give testimony or attend any public or private hearing because of having prepared the appraisal reports, Contractor agrees to pay Appraiser \$150.00 per hour for preparation and attendance at such hearing, with a four hour minimum, plus expenses with the four hour minimum fee of \$600.00 paid prior to the hearing.
- 6) It is further agreed and understood that if any portion of the compensation or costs due to the appraiser become delinquent, the Contractor will pay late fees thereon at the rate of 10% per month on the said amount from the due date until paid, and further agrees to pay all costs of collection thereof, including all reasonable attorney's fees and court costs. Checks returned as not payable are charged a 5% fee.
- 7) If Contractor desires to cancel this Agreement, written notice thereof shall be delivered to Appraiser, and Contractor shall pay for all services to and through Appraiser's receipt of the written notice of termination at the rate of \$150.00 per hour.
- 8) Contractor agrees to furnish at the request of Appraiser any necessary information or documentation, in its possession or access, relevant to the property being appraised. These items could include, but are not limited to, water rights certificate #'s that apply to this property, copies of leases, rental income/expense statements, pro-formas, legal descriptions, detailed construction costs and plans, if applicable. If the property is currently under contract to sell, Appraiser is to be provided a copy of the contract including all addenda. Contractor shall provide the foregoing information and documentation to Appraiser in conjunction with Contractor's execution and return of this Agreement to Appraiser and as soon as reasonable thereafter.
- 9) Appraiser does not make warranties or guarantees of any kind regarding the condition of the properties, sufficiency of title, area and boundaries, mechanical and structural conditions of the improvements, and with the agreement that the appraisal reports represent Appraiser's opinion of value only, without any warranty that the properties will sell for the appraised value. Contractor agrees to indemnify Appraiser, its employees and agents from all claims, suits and charges of any nature that may arise out of this Agreement.
- 10) Time is of the essence and Appraiser will use diligence in completing this assignment within 2-3 week time frame, starting upon receipt of a signed copy of this agreement and of the information and documents set forth in sections #4 and #8. It is understood that Appraiser relies on certain information provided by others, including Contractor, and has no control over the timely availability of such information. It is agreed there will be no time constraints on the proper completion of the appraisal reports.

Accepted by:



B. Kent Vollmer
BKVollmer@CtMail.Com


Contractor Sign

Matthew D. Carling
Contractor Print

8/3/2015
Date

EXHIBIT “3”

BOB MILLER
Governor

STATE OF NEVADA



PETER G. MORROS
Director

R. MICHAEL TURNIPSEED, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

Capitol Complex
123 W. Nye Lane
Carson City, Nevada 89710
(702) 687-4380

55918, 55919, 55920

September 19, 1994

ATT: JAN BRADSHAW
KENT WHIPPLE RANCH
HIKO NV 89017

Dear Ms. Bradshaw:

Please be advised that Applications 55918, 55919 and 55920 have been assigned to show Kent Whipple Trust as current owner of record.

This assignment reflects only the information that has been filed with this office and may be subject to amendment upon receipt of additional documentation.

If you have any questions please contact this office at (702) 687-4381.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Randall".

Michael J. Randall
Hydraulic Engineer

MJR/pm

cc: Betsy Whipple
Southern Nevada Branch Office

RECEIVED

SEP 22 1994

Div. of Water Resources
Branch Office - Las Vegas, NV



Form A288

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 30th day of December, 1993

First party, to Kent Whipple Ranch

whose post office address is General Delivery, Hiko, NV 89017

to second party: Kent Whipple Trust

whose post office address is General Delivery, Hiko, NV 89017

WITNESSETH, That the said first party, for good consideration and for the sum of
Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is
hereby acknowledged, does hereby release, release and quitclaim unto the said second party forever, all the
right, title, interest and claim which the said first party has in and to the following described parcel of land,
and improvements and appurtenances thereto in the County of Lincoln, State of Nevada
to wit: Application #55918

DOUGLAS/WR/SMB
RECEIVED

AUG 28 1994

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day
and year first above written.

Signed, sealed and delivered in presence of:

Betsy Lou Whipple

State of California)
County of Los Angeles

On January 5, 1994 before me, Gary D. Greenlee
appeared Betsy Lou Whipple
personally known to me (or proved to me on the basis of satisfactory evidence) 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
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, acknowledged the instrument.
WITNESS my hand and official seal.

Signature



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Printed 5/93

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 30th day of December, 1993

first party: to Kent Whipple Ranch

whose post office address is General Delivery, Hiko, NV 89017

to second party: Kent Whipple Trust

whose post office address is General Delivery, Hiko, NV 89017

WITNESSETH, That the said first party, for good consideration and for the sum of Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest and claims which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Lincoln, State of Nevada

to wit: Application # 56919

DONOVAN/SHAW
RECEIVED

AUG 28 2014

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:

Betty Lou Whipple

State of California }
County of Los Angeles

On January 5, 1994, before me, Gary D. Granjuer

appeared Betty Lou Whipple

personally known to me (or proved to me on the basis of satisfactory evidence) 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 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Gary D. Granjuer



(Seal)



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(Seal 2005)

[Handwritten signature]

Form 439B

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 30th day of December, 19 93

first party, to Kent Whipple Ranch

whose post office address is General Delivery, Hiko, NV 89017

to second party: Kent Whipple Trust

whose post office address is General Delivery, Hiko, NV 89017

WITNESSETH, That the said first party, for good consideration and for the sum of Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby release, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Lincoln, State of Nevada to wit: Application # 55920

RECORDED
RECEIVED

AUG 28 2014

IN WITNESS WHEREOF, The said first party has signed and sealed (those presents the day, and year first above written.

Signed, sealed and delivered in presence of:

Betty Lou Whipple

State of California
County of Los Angeles

On January 5, 1994 before me, Gary D. Grayson
appeared Betty Lou Whipple
personally known to me (or proved to me on the basis of satisfactory evidence) 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
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal.

Signature

Gary D. Grayson



(Seal)



© 2002 Legal Forms. Before you use this form read it, fill in all blanks, and make whatever changes are necessary
to make it apply to your situation. Check the form for any changes for your purpose and use. 2002 Legal
Forms and the other marks are representations of a warranty, express or implied, with respect to the functionality of
this form for use intended and of persons.

(Printed 5/95)

*Original
in file*

EXHIBIT “4”

AFFIDAVIT OF IDENTITY-REPRESENTATIVE

State of Nevada

County of Lincoln

Affiant, Lenard D. Smith, being first duly sworn on his/her oath, states that
Print Name

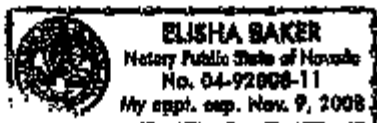
(s)he is familiar with Kent & Jane Whipple Trust and acknowledges that (s)he is one

in the same person as Kent Whipple Trust, who is also known as
Kent and Jane Whipple Trust and Kent Whipple Ranch


Affiant Signature before Notary Public

This instrument was acknowledged before me on 5 March 2008 by Lenard D. Smith
Date Name of Person(s)

as Agent of Kent and Jane Whipple Trust
Type of Authority, e.g. Officer, Trustee, etc. Name of party on behalf of whom instrument was executed



Notary Stamp

Elisha Baker

Signature of notarial officer

Branch Manager

Title and rank (optional)

My Commission Expires:

Nov. 9, 2008

Month, Day, Year

EXHIBIT “5”



Permit No. 79132

THE STATE OF NEVADA

PERMIT TO CHANGE THE PUBLIC WATERS OF THE STATE OF NEVADA HERETOFORE APPROPRIATED

Name of applicant: KENT AND JANE WHIPPLE TRUST
Source: UNDERGROUND
Basin: PAHRANAGAT VALLEY
Manner of Use: IRRIGATION
Period of Use: January 1st to December 31st 3/1 - 11/30
Priority Date: 10/01/2001

APPROVAL OF STATE ENGINEER

This is to certify that I have examined the foregoing application, and do hereby grant the same, subject to the following limitations and conditions:

This permit to change the point of diversion and place of use of the waters of an underground source as heretofore granted under Permit 73719 is issued subject to the terms and conditions imposed in said Permit 73719 and with the understanding that no other rights on the source will be affected by the change proposed herein. The well shall be equipped with a 2-inch opening and a totalizing meter must be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements must be kept of water placed to beneficial use. The totalizing meter must be installed before any use of the water begins or before the Proof of Completion of Work is filed. If the well is flowing, a valve must be installed and maintained to prevent waste. This source is located within an area designated by the State Engineer pursuant to NRS 534.030. The State retains the right to regulate the use of the water herein granted at any and all times.

This permit does not extend the permittee the right of ingress and egress on public, private or corporate lands.

The well must be sealed with cement grout, concrete grout or neat cement from ground level to 100 feet.

The issuance of this permit does not waive the requirements that the permit holder obtain other permits from State, Federal and local agencies.

The point of diversion and place of use are as described on the submitted application to support this permit.

(Continued on Page 2)

Permit No. 79132

The amount of water to be appropriated shall be limited to the amount which can be applied to beneficial use, and not to exceed 1.17 cubic feet per second or 271.0 acre-feet annually but not to exceed 5.0 acre feet per acre of land irrigated from any and all sources.

Work must be prosecuted with reasonable diligence and proof of completion of work shall be filed on or before:

November 18 2011

Water must be placed to beneficial use and proof of the application of water to beneficial use shall be filed on or before:

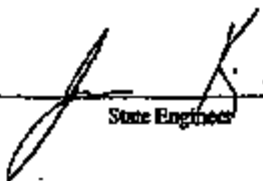
November 18 2013

Map in support of proof of beneficial use shall be filed on or before:

November 18 2013

IN TESTIMONY WHEREOF, I, JASON KING, P.E.,

State Engineer of Nevada, have hereunto set my hand and the seal of my office, this 18 day of November, A.D. 2010


State Engineer

Completion of work filed _____

Proof of beneficial use filed _____

Cultural map filed _____

Certificate No. _____ Issued _____

AMENDED

Application No.

79182

**APPLICATION FOR PERMISSION TO CHANGE POINT OF DIVERSION, MANNER
OF USE AND PLACE OF USE OF THE PUBLIC WATERS
OF THE STATE OF NEVADA HERETOFORE APPROPRIATED**

THIS SPACE FOR OFFICE USE ONLY

Date of filing in State Engineer's Office DEC 28 2009
 Returned to applicant for correction JAN 05 2010
 Corrected application filed JAN 11 2010 Map filed JAN 11 2010

The applicant Kent and Jane Whipple Trust
HC 61 Box 27 of Alamo
Street Address or PO Box City or Town
Nevada hereby make(s) application for permission to change the
State and ZIP Code

☒ Point of diversion ☒ Place of use ☐ Manner of use ☐ of a portion

of water heretofore appropriated under (Identify existing rights by Permit, Certificate, Proof or Claim Nos. If Decreed, give date of Decree and identify right in Decree.)

Permit 73719

- The source of water is under ground
Name of stream, lake, underground, spring or other source.
- The amount of water to be changed 1.17 cfs 271 afa.
Second feet, acre-feet. One second foot equals 448.83 gallons per minute.
- The water is to be used for irrigation
Irrigation, power, mining, commercial, etc. If for stock, state number and kind of animals. Must limit to one major use.
- The water heretofore used for irrigation
If for stock, state number and kind of animals.
- The water is to be diverted at the following point (Describe as being within a 40-acre subdivision of public survey and by course and distance to a found section corner. If on unurveyed land, it should be stated.)
within the NE 1/4 SE 1/4 Section 18, T.6S, R.61E, MDM. at a point from which the east quarter corner of said Section 18 bears N. 84° 50' 14" E. 1305.54'
- The existing point of diversion is located within (If point of diversion is not changed, do not answer.)
the NW 1/4 SE 1/4 Section 18, T.6S, R.61E, MDM at a point from which the east quarter corner of said Section 18 bears N. 86° 07' 34" E. 1476.36

7. Proposed place of use (Describe by legal subdivisions. If for irrigation, state number of acres to be irrigated.)
Portions of The NE $\frac{1}{4}$ NN $\frac{1}{4}$, NN $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 18
T. 6 S., R. 61 E., M.D.M.

WHE
1/13/10

8. Existing place of use (Describe by legal subdivisions. If changing place of use and/or manner of use of irrigation permit, describe acreage to be removed from irrigation.)

of the Permitted use: Portion of
The NE $\frac{1}{4}$ NN $\frac{1}{4}$, NN $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 18, T. 6 S., R. 61 E., M.D.M.

WHE
1/13/10

9. Proposed use will be from March 1st to Nov. 30th of each year.

10. Existing use permitted from March 1st to Nov. 30th of each year.

11. Description of proposed works. (Under the provision of NRS 535.010 you may be required to submit plans and specifications of your diversion or storage works.) (State manner in which water is to be diverted, i.e., diversion structure, ditches, pipes and flumes or drilled well, pump and motor, etc.)

12. Estimated cost of works No change

13. Estimated time required to construct works 3 yrs.

If well completed, describe well

14. Estimated time required to complete the application of water to beneficial use 4 years

15. Provide a detailed description of the proposed project and its water usage (use attachments if necessary). (Failure to provide a detailed description may cause a delay to processing.)

It was found (upon measuring for P.B.U.) that the point of diversion was across the sixteenth line east and the pipeline for irrigation was south of P.O.U. of the SW $\frac{1}{4}$ NE $\frac{1}{4}$, thereby slightly changing the P.O.D and the p.u.

16. Miscellaneous remarks:

The intent of this change application is not to add new acreage but accurately continue the Permitted amount (54.3 Acres)

lensmithlandsurvey@cturbonet.com

E-mail Address

775 726 5365

Phone No.

Lenard D. Smith

Type of print name client

Lenard D. Smith

Signature, applicant or agent

Lenard Smith Land Survey

Company Name

P.O. Box 443

Street Address or P.O. Box

Caliente, NV. 89008

City, State, ZIP Code

APPLICATION MUST BE SIGNED
BY THE APPLICANT OR AGENT

Revised 07/09

\$200 FILING FEE AND SUPPORTING MAP MUST ACCOMPANY APPLICATION

EXHIBIT “6”

BRIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-8250
(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

January 6, 2015

Kent Whipple Ranch, LLC
Ms. Jane E. Whipple
HCR 61 Box 27
Hiko, NV 89017

RE: Water Rights Title

To Whom It May Concern:

Please be advised that your *Reports of Conveyance* received on September 26, 2014, are hereby confirmed to update ownership of Permits as listed in the table below. These water rights are now in the name of Kent Whipple Ranch, LLC. In addition, the following portion* of Permit 55918 is now in the name of Jane E. Whipple. Details of the permits, including the current ownership, can be viewed online. First, click on "Water Rights Database"; then "Permit Search".

Permit	cfs	Duty (afn)	Acres
55918	1.6864	396.80	79.36
*55918	0.0136	3.20	0.64
55919	0.5300	123.50	24.70
55920	1.0000	152.00	30.40

Also be advised that according to NRS 533.386 (2.), this confirmation of your Report of Conveyance does not guarantee that a) the water right is in good standing with the office of the State Engineer; or b) the amount of water referenced in the notice or in the report of conveyance is the actual amount of water that a person is entitled to use; and c) this is not a determination of ownership and that only a court of competent jurisdiction may adjudicate conflicting claims to ownership of a water right.

This confirmation reflects only the information that has been filed with this office and may be subject to amendment upon receipt of additional documentation. The owner is responsible for notifying the State Engineer's office of any change of address in writing. If you have any questions, call (775) 684-2829.

Sincerely,

Dan Zampiro

Dan Zampiro
Engineering Technician III

DZ/sgc

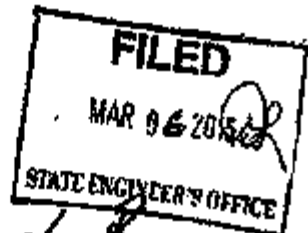
cc: Mr. Robert Coache, Hydrotech Consulting Services, LLC
SNBO

EXHIBIT “7”

IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEVADA

IN THE MATTER OF APPLICATION NUMBER 84692
FILED BY Kent Whipple Ranch, LLC
ON January 12, 20 15

PROTEST



Comes now Betsy Whipple & Peggy Whipple-Kessio
whose post office address is 1713 River Ranch Road, Hiko, NV 89017
whose occupation is _____
and protests the granting

of Application Number 84692, filed on January 12, 20 15
by Kent Whipple Ranch, LLC for the

waters of Pahrangat Valley situated in Lincoln County
as underground source or name of stream, lake, spring or other source

County, State of Nevada, for the following reasons and on the following grounds, to wit: The ownership of the well is questionable. We are currently doing a title search to figure out what is going on with all the assets that are supposed to be in the Kent Whipple Ranch Trust. This may lead to legal action.

THEREFORE the Protester requests that the application be

Denied

Denied, issued subject to prior rights, etc., as the case may be

and that an order be entered for such relief as the State Engineer deems just and proper

Signed

Betsy L Whipple
Agent of protestant

Address

1713 River Ranch Road
Hiko, NV 89017
City, State and ZIP Code

State of Nevada

County of Lincoln

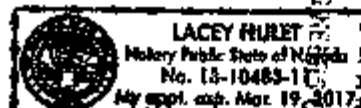
Subscribed and sworn to before me on March 3, 2015

by Betsy L. Whipple

702-556-1293
Phone Number

bwhipple@1etarkand.com
Email

L. Hunt
Signature of Notary Public Required



Notary Stamp or Seal Required

**+ \$39 FILING FEE MUST ACCOMPANY PROTEST. PROTEST MUST BE FILED IN DUPLICATE.
ALL COPIES MUST CONTAIN ORIGINAL SIGNATURE.**

March 9, 2015

Dan Randles
Water Rights Specialist I
Nevada Division of Water Resources
801 S. Stewart St. Suite 2002
Carson City, NV 89701

Dear Dan,

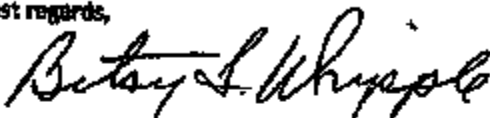
Enclosed is a copy of the Kent Whipple Ranch Trust which, according to my Father's Attorney, all assets were supposed to be deeded into upon my Father's death in 1977. The supplemental trust agreement which was signed on January 30, 1977 about a week before my Father died ensured all assets were placed into the trust.

My Sister and I have ordered a Title search to try to figure out what the Boys are up to. I'm very dishearten my Brother Bret, would use Robert Coache as an agent to try to remove assets from the trust. Robert Coache currently has 50 counts of criminal money laundering still pending against him in Clark County regarding the Water Issue he was involved with in Virgin Valley. (See attachment)

As soon as we have the results of the title search, we may have the Co-Trustee order an audit of the Trust and all the assets involved with the Ranch and Trust. At this time, we will send a "report of conveyance" which will correct to current name changes on all the water assets in the Trust. I hope it won't, but this may lead to a legal issue, especially if we find quick-claim deeds were designed to remove assets from the trust illegally. In addition, if you receive a copy of the trust from Robert Coache, please forward it to me as I am interested to see if another trust was created.

Thanking you in advance for your attention to this matter.

Best regards,



Betsy L. Whipple

NOT RECEIVED
2015 MAR -9 PM 12:16
STATE ENGINEERS OFFICE

RIAN SANDOVAL
Governor

STATE OF NEVADA



LEO DROZDOFF
Director

JASON KING, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 884-2800 • Fax (775) 884-2811

<http://water.nv.gov>

June 3, 2015

Jane E. Whipple
HCR 61 Box 27
Hiko, NV 89017

Betsy Whipple
1713 River Ranch Road
Hiko, NV 89017

Keith Whipple
HCR 61 Box 2
Hiko, NV 89017

Robert Coachs, P.E.
Hydrotech Consulting Services
4280 North Tioga Way
Las Vegas, NV 89129

John E. Marvel, Esq.
Marvel & Marvel, Ltd
P.O. Box 2645
Elko, NV 89803

Cody Whipple
7265 Dean Martin, Suite 17D
Las Vegas, NV 89118

Lenard Smith
Lenard Smith Land Survey
P.O. Box 443
Caliente, NV 89008

Bryan Reed
Reed, Inc
807 Avenue F
Ely, NV 89301

Bret Whipple
Kent Whipple Ranch LLC
1100 S. Tenth Street
Las Vegas, NV 89104

Re: Permit 28599, Permit 55918, Permit 55919, Permit 55920, Permit 79132,
Claim V-01394 and Application 84692

Ladies and Gentlemen:

The above-referenced Permits, which were issued for irrigation purposes, and a Decreed right under the Pahrump Lake Decree, all being associated with the Kent Whipple Ranch, are under review for various reasons by the State Engineer's office. However, the issue of ownership of water rights associated with the Kent Whipple Ranch has caused this office to determine that the related parties claiming ownership need to sort out this matter prior to the State Engineer taking any further action regarding title to or changes of water rights associated with the ranch.

Nevada Revised Statute § 533.386 provides that if, from the conveyance documents or other information in the Office of the State Engineer, it appears to the State Engineer that there is a conflict in the chain of title, the State Engineer shall reject the report of conveyance and return it to the person who submitted it, together with an explanation that a conflict appears to exist in the chain of title; and a notice stating that the State Engineer will not take further action with respect to the report of conveyance until a court of competent jurisdiction has determined the conflicting claims to ownership of the water right and the determination has become final or until a final resolution of the conflicting claims has otherwise occurred. The notice must also include a statement of the provisions of subsection 5. Subsection 5 provides that:

The State Engineer shall not consider or treat the person to whom:
(a) An application or permit to appropriate any of the public waters;
(b) A certificate of appropriation;
(c) An adjudicated or unadjudicated water right; or
(d) An application or permit to change the place of diversion, manner of use or place of use of water,
is conveyed as the owner or holder of the application, right, certificate or permit for the purposes
of this chapter, including, without limitation, all advisements and other notices required of the
State Engineer and the granting of permits to change the place of diversion, manner of use or place
of use of water, until a report of the conveyance is confirmed pursuant to subsection 1.

Before further consideration will be given toward the issuance of any change under Application 84692,
a determination by a court of competent jurisdiction will be required as to the ownership of the above-
referenced water rights..

Correspondence from Betsy Whipple, who is a protestant to Application 84692, and correspondence
and information provided by Robert Coache, P.E., acting as representative of Jane E. Whipple, trustee and Kent
Whipple Ranch, LLC, Applicant under Application 84692 raises a number of questions regarding the ownership
of these water rights.

One item of concern is that Kent Whipple died in 1978 and the only two rights he held prior to that date
were Permit 28599 and Claim V-01394. The remaining three permits, 55918, 55919 and 55920 were filed on
March 4, 1991, in the name of Kent Whipple Ranch as owner. Permits 55918, 55919 and 55920 were then
conveyed by unrecorded Quitclaim deed to the Kent Whipple Trust, which at the time in 1994 was an
acceptable transfer with the State Engineer's Office. At that time, the State Engineer did not have a copy of the
trust to review and subsequently accepted an affidavit by representative, at the time Lenard Smith, to confirm
that the acquisition was in fact by the Kent and Jane Whipple trust and that it was one and the same as Kent
Whipple Trust as listed in the unrecorded deed of 1993 submitted to update title. At this time, this office is not
comfortable with the acceptance of that affidavit as Mr. Smith was a water right surveyor and to our knowledge
was not qualified as a person to make determinations as to ownership under a trust. Upon recent review of the
Kent and Jane Whipple trust, it has been found that the death of either trustee Kent or Jane Whipple created an
"A" and "B" trust with co-trustees Keith and either surviving trustee Kent or Jane Whipple.

Betsy Whipple has informed this office that, upon the passing of Kent Whipple in 1978, it would have
split the Kent and Jane Whipple trust into an "A" and "B" trust with co-trustees Keith and Jane Whipple. The
split of the Kent and Jane Whipple trust into the "A" and "B" trusts with co-trustees Keith and Jane Whipple is
also confirmed by affidavit by Jane Whipple, but does not clarify if the water rights were to be assets of trust
"A" or "B" or both. At no point in any of the documents submitted to substantiate title with this office or within
any of the affidavits claiming ownership of water rights in question is it mentioned that there is an "A" and "B"
trust, only that Keith and Jane were co-trustees as noted on conveyance documents. At this time, it is unclear in
what way the water rights are assets of the Kent and Jane Whipple "A" and "B" trusts. An Affidavit by Robert
Coache claims the water rights are sole property of Jane Whipple as trustee, but that is not clearly defined in any
of the documents on file or submitted to this office and this office questions whether an engineer is qualified to
make statements regarding ownership of water rights under said trust(s). In conversations with Betsy Whipple,
she references the trust where on pages four, five and six, it states that assets acquired would be part of the "B"
trust that is controlled by both co-trustees.

Previous title changes are subject to review if needed and/or additional information has been
provided to the Office of the State Engineer that raises questions as to title. Any confirmation of a report
of conveyance of a water right does not guarantee that the water right is in good standing with the Office
of the State Engineer, that the amount of water referenced in the notice or in the report of conveyance is
the actual amount of water that a person is entitled to use and is not a determination of ownership. NRS §
533.386(2b states that.2). Only a court of competent jurisdiction may adjudicate conflicting claims to
ownership of a water right.

Jane B. Whipple et al
Permit 28599+
June 3, 2015
Page 3 of 3

In review of the Kent and Jane Whipple trust, and affidavits provided by Robert Coache and Jane Whipple, in addition to information provided by Betsy Whipple, it is determined that the current ownership on all Permits and Decreed right listed above are at this time considered questionable transfers of title of water rights. A determination of ownership may not be made by the Office of the State Engineer as to the conflicting claims by both parties and will require a decision by a court of competent jurisdiction. All of the Permits and the decreed right listed will need to be declared if they are associated with trust "A" or "B", who the trustees/co-trustees are, the amounts owned by each, explanation of the trust(s) holding the entity of Kent Whipple Ranch, LLC and if that is still operating, and if the conveyance of water rights by Quitclaim deeds to Kent Whipple Ranch LLC are valid transfers of title of water rights as submitted to the State Engineer's Office in September 2014.

Sincerely,



Rick Oliver
Chief, Title Section

RLO/sgc

Case No. CV 0930015

Dept. No.: 2

BINGHAM SNOW & CALDWELL

Nick A. Moschetti, Nevada Bar No. 0920

Bo Bingham, Nevada Bar No. 9511

840 Pinnacle Court, Suite 202

Mesquite, Nevada 89027

(702) 346-7300 phone

(702) 346-1313 fax

www.binghamsnow.com

Attorneys for Co-Trustee Warren Whipple

IN THE SEVENTH DISTRICT COURT, IN AND FOR
LINCOLN COUNTY, NEVADA

In re THE KENT AND JANE WHIPPLE
TRUST, dated March 17, 1969, Jane
Whipple, Co-Trustee (erroneously
named as Trustee), and amendments
thereto, JANE WHIPPLE,

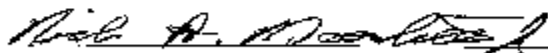
Petitioner.

MOTION:

- 1- TO DISMISS PETITION;
- 2- ALTERNATIVELY, TO STAY
PETITION; and
- 3- TO COMPEL ARBITRATION.

COMES NOW Warner Whipple, duly appointed and acting Co-Trustee
of the Kent and Jane Whipple Trust, dated March 17, 1969, by and through his
undersigned attorney Nick A. Moschetti, Jr. of the law firm of BINGHAM
SNOW & CALDWELL, and files this Motion to Dismiss Petition or Alternatively
to Stay Petition and to Compel Arbitration. This Motion is supported by the
Memorandum of Points and Authorities filed contemporaneously herewith.

Dated November 24, 2015.


Nick A. Moschetti, Nevada Bar No. 0920
BINGHAM SNOW & CALDWELL
Attorneys for Warner Whipple, Co-Trustee

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL BACKGROUND**

3
4 The pending Petition seeks a declaration of ownership rights in specific Nevada
5 water rights¹. The Petitioner, in her Petition, as an erroneously named sole Trustee (in
6 fact Petitioner is a Co-Trustee) of the Kent and Jane Whipple Trust (herein "Trust") and
7 as an individual, claims ownership and control of all of said specific Nevada water rights
8 and all other Trust property.
9

10 The Petitioner alleges and admits that the Trust shares A and B have not been
11 funded². Funding is required/mandatory by the controlling and foundation
12 Trust documents³. Without funding of the shares A and B, ownership of the specific
13 Nevada water rights and specific real properties to which the specific water rights
14 are appurtenant are unknown and must be determined.
15

16 The controlling and foundation Trust agreement requires unanimous agreement
17 By both Co-Trustees of the Trust (herein "Co Trustee Jane" and "Co-Trustee Warner"). In
18 the event there is not unanimous Co-Trustee agreement, then the Trust requires
19 arbitration of the Co-Trustee disagreements. Jane Whipple is an initial Co-Trustee and
20 upon the death of her husband Kent Whipple, Keith Whipple became the successor
21 Co-Trustee⁴ and upon the resignation of Keith Whipple⁵, Warner Whipple became
22 the successor Co-Trustee⁶.
23
24

25 ¹ State of Nevada Division of Water Resources Permits 28599, 55919, 55920, 79132, Claim V-01394 and
26 Application 84692, and successor historical Applications and Permits.

27 ² Petition pg.2 lns1&2; pg.3 lns 11-14; pg.6 lns 14-18.

28 ³ Exhibit A Kent and Jane Whipple Trust as Supplemented ("Trust") pgs 1 & 2 paragraphs FIRST & SECOND
and pgs 7 through 16.

⁴ Exhibit A pg 22 paragraph TEN.

⁵ Exhibit B Resignation of Keith Whipple dated August 29, 2015.

1 Co-Trustee Warner disagrees with the filing of the present Petition for Declaratory
2 Relief by Co-Trustee Jane and disagrees with the Petition claims and allegations of
3 Co-Trustee Jane, including without limitation that: (i) Share A and Share B have never
4 been funded (conflicting Trust records state otherwise); (i) Share B is not to be funded;
5 (iii) Jane, individually or as a sole Trustee of the share A Trust and/or Kent and Jane
6 Whipple Trust, has full ownership and control of the specific Nevada water rights and all
7 other Trust property; (iv) Kent and Jane Whipple Trust, Kent Whipple Trust and
8 Kent Whipple Ranch, LLC are one and the same; and, (v) an appraisal of the Trust in
9 1976 dollars be confirmed⁷.

12 The Petition is an attempt by one individual who is also one of two Trust
13 Co-Trustees to takeover all of the Trust property for herself: (i) to the extreme detriment
14 of specific Trust beneficiaries; (ii) in disregard of specific Trust terms; and (iii) in
15 complete disregard of the vote and opposing position of the Trust's other Co-Trustee,
16 who is under a fiduciary duty to administer the Trust, safeguard Trust properties, and
17 act in the best interests of Trust beneficiaries according to Trust terms and trust law.

19 II. LEGAL ARGUMENT

20 The undersigned Co-Trustee Warner respectfully requests that this Court
21 Compel arbitration under the Uniform Arbitration Act of Nevada as specifically mandated
22 in the Trust. Nevada has established a policy favoring arbitration, the Co-Trustees
23 have entered into a valid agreement requiring arbitration, and the arbitration clause in
24 in the Trust agreement is clear and unambiguous. As such this Court should
25

26
27 ⁶ Exhibit C Order Amending Inter Vivos Trust entered November 16, 2007 in Case No. 3692 by the Fourth
Judicial District Court of the State of Nevada in and for the County of Elko.

28 ⁷ The alleged appraisal that has been requested by Petitioner's legal counsel, Petitioner's Exhibit 2, does not have
the approval or agreement of Co-Trustee Warner as required by the Trust (see fo.4 above).

1 compel arbitration.

2 **A. ARBITRATION UNDER THE UNIFORM ARBITRATION ACT OF NEVADA.**

3 Co-Trustee Warner opposes the Petition and argues that the Petition should be
4 dismissed or alternatively stayed and arbitration compelled, based on the mandatory
5 Trust language for arbitration of disagreements between Trust Co-Trustees. The Trust
6 Agreement specifically provides:

7
8 "The concurring vote of two (2) Co-Trustees shall be necessary for the Trustees
9 to act hereunder, when there are two (2) Co-Trustees. In the event of a
10 disagreement at any time when there are only two (2) Co-Trustees, then the
11 dispute shall be submitted to arbitration in accordance with the Uniform
12 Arbitration Act of the State of Nevada."⁸

13 As stated in a recent 2015 Nevada Supreme Court Advance Opinion:

14 "NRS 38.219(1) expresses Nevada's fundamental policy favoring the enforceability of
15 arbitration agreements"⁹.

16 "An agreement contained in a record to submit to arbitration any
17 existing or subsequent controversy arising between the parties to the
18 agreement is valid, enforceable and irrevocable ...(unless grounds exist for
19 revocation of the agreement)"¹⁰.

20 The Trust here involved is undeniably an agreement as recited and intended in opening
21 lines of the Trust and Trust Supplement¹¹. The Trust language is specific and
22 unambiguous in stating "In the event of a disagreement at any time, then the dispute
23 shall be submitted to arbitration..."¹²

24 Further support for arbitration can be found in a Nevada Supreme Court decision
25 addressing an earlier version of the Uniform Arbitration Act. There the Court said that

26 ⁸ Exhibit A Trust pg. 23 lns 6-11.

27 ⁹ *Tallman v. The Eighth Judicial District Court of the State of Nevada*, 131 Nev., Advance Opinion 71, at pg. 8

28 ¹⁰ NRS 38.219(1) of Nevada's Uniform Arbitration Act.

¹¹ Exhibit A Trust pgs. 1 & 4.

¹² Exhibit A Trust pg. 23 ln 8.

1 the reason for not allowing interlocutory appeals of orders *compelling* arbitration is
2 "obvious". "[I]f at the very threshold of the proceeding the defaulting party could appeal
3 and thereby indefinitely delay the matter of arbitration, the object of the law
4 [favoring arbitration] and the purpose of the written agreement of the parties
5 would be entirely defeated." Clark Cnty. V. Empire Elec., Inc., 96 Nev. 18, 20, 604 P.2d
6 352, 353 (1980). In the matter now before this Court, the "defaulting party" is the
7 Petitioner, who has failed to obtain the concurring vote of Co-Trustee Warner regarding
8 Trust matters and has refused to submit the Petition matters to mandatory
9 arbitration as required by the terms of the Trust.

12 NRS 38.247 (a)(1) authorizes the interlocutory appeal of an order *denying*
13 arbitration, since the appealing party is seeking to enforce the object of the law
14 [favoring arbitration] and the written agreement of the parties.

15 "As a matter of public policy, Nevada courts encourage arbitration and
16 liberally construe arbitration clauses in favor of granting arbitration." State ex rel. Masto,
17 125 Nev. At 44, 109 P.3d at 832. Similarly, Nevada law also recognizes that "strong
18 public policy favors arbitration because arbitration generally avoids the higher costs
19 and longer time periods associated with traditional litigation." D.R. Horton v. Green, 120
20 Nev. 549, 553 (2004), citing to Burch v. Dist.Ct., 118 Nev. 438, 442, 49 P.3d 647, 650 (2002)

23 Nevada courts have further uniformly held that agreements to arbitrate are
24 specifically enforceable. Silverman v. Fireman's Fund Ins. Co., 96 Nev. 30, 604 P.2d 805
25 (1980). Any doubts concerning the arbitrability of the subject matter of the disputes are to
26 be resolved in favor of arbitration and the parties are not to be deprived by the Court of
27 the benefit of arbitration. Exber, Inc. v. Sleiten Const.Co., 92 Nev. 721, 558 P.2d
28

517 (1976). The U.S. Supreme Court has also held because of the strong policy favoring arbitration, any doubts are to be resolved in favor of the party moving to compel arbitration. *Moses H. Cone Mem. Hosp. v. Mercury Const. Corp.*, 460 U.S. 1, 24 (1983).

B. ARBITRATION OF CO-TRUSTEE DISAGREEMENTS BASED ON TRUST TERMS.

The two leading cases in Arizona¹³ and California¹⁴ that held against enforcement of arbitration clauses in trusts have been overturned, by statute in Arizona¹⁵ and by case law in California¹⁶ enacted after those case decisions.

In 2007, Florida became the first state to enforce a Mandatory Arbitration Provision for trusts (and Wills) by a statute¹⁷ which states:

“Arbitration of disputes: A provision in a will or trust requiring the arbitration of disputes, other than disputes of the validity of all or a part of a will or trust, between or among the beneficiaries and a fiduciary under the will or trust, or any combination of such persons or entities, is enforceable.”

Texas provides the leading case that enforces a mandatory arbitration clause in a trust.¹⁸

The Court addressed **three theories** for enforcement of a Mandatory Arbitration Provision

in a trust. The Intent Theory, simply put, is justification to enforce a Mandatory Arbitration Provision because it resulted from a clear manifestation of the trust donor's intent. The Theory applies to trustees as well as beneficiaries.¹⁹

¹³ *Schoenberger v. Oelze*, 96 P.3d 1078 (Ariz. Ct. App. 2004).

¹⁴ *Diaz v. Bukey*, 125 Cal. Rptr. 3d 610 (Ct. App. 2011).

¹⁵ ARIZ.REV. STAT. §14-10205, “A trust instrument may provide mandatory, exclusive and reasonable procedures to resolve issues between the trustee and interested persons or among interested persons with regard to the administration or distribution of the trust.”

¹⁶ *Pinnacle Museum Tower Association v. Pinnacle Market Dev.(U.S.), LLC*, 282 p.3D 1217 (Cal. 2012), where the California Supreme Court directed the Court of Appeals to vacate and reconsider its decision in *Diaz*, supra fn. 14.

¹⁷ FLA.STAT. §731.401(1)

¹⁸ *Rachal v. Reitz*, 11-0708, Supreme Court of Texas, May 3, 2013.

¹⁹ *Id.* at 2 & 3.

1 The Benefit Theory, stands for the broad rule that a beneficiary who accepts
2 Benefits from a trust either (i) impliedly agrees to be bound by its terms or (ii) is
3 estopped from challenging the validity of the terms of the trust.²⁰ This Theory only
4 Applies to beneficiaries, who receive/accept the benefits under the trust (a trustee does
5 not receive benefits under the trust, but rather receives compensation for services).

7 The Contract Theory, briefly stated would be against enforcement of a trust's
8 Mandatory Arbitration clause because a trust is not a contract; however, a trust is an
9 "agreement" and the Texas Arbitration Act does not require a "contract" but rather
10 requires an "agreement". The Court then analyzed the requirements for an
11 "agreement" and held an "agreement" need not meet all the formal requirements of a
12 contract, but it must be supported by mutual assent of the parties, which assent is
13 typically manifested by signing an agreement.²¹ The Court finally relied on the
14 doctrine of direct benefits estoppels (a form if equitable estoppel), and held "a
15 beneficiary who attempts to enforce rights that would not exist without the trust
16 manifests assent to the trust's arbitration clause."

19 The Texas Supreme Court also indicated that the claims for breach of fiduciary
20 duty by misappropriating trust assets and failing to provide an accounting were within
21 the scope of the arbitration provision.²²

23 Application of the *Rachal v. Reitz* holdings to the facts presented by the Petition
24 now before this Court would support enforcement to the mandatory arbitration clause in
25 the Trust on all three above Theories.

27 ²⁰ Id. At 3&4.

28 ²¹ Id. At 3 & 4.

²² Id. At 4.

- 1 1. **Intent Theory** supports enforcement because the creators of the Trust so
2 intended to include and have the mandatory arbitration clause control.
3 Petitioner Jane Whipple signed the Trust agreement, she also petitioned for
4 the appointment to Co-Trustee Warner as reflected in the
5 Elko County District Court Order appointing Co-Trustee Warner as a
6 Successor Trustee. Which appointment Co-Trustee Warner accepted.
7 See said Order, footnote 6 above. Co-Trustee Warner has again also signed
8 his acceptance of the Trust and Co-Trustee position.²³
- 9 2. **Benefit Theory** supports enforcement because Trust beneficiary Jane Whipple
10 has accepted the benefit of being and acting as a CoTrustee of the Trust and is
11 now seeking, and in the past has used, Trust benefits through claims of
12 ownership and control of the specific Nevada water rights and further asserts
13 benefits of Trust share A ownership and benefits regarding Trust real
14 property.²⁴
- 15 3. **Contract Theory** supports enforcement because the Trust is an agreement and
16 both Co-Trustee Jane and Co-Trustee Warner have manifested their assent to
17 the Trust by signing their acceptance.²⁵ Additionally the Uniform Arbitration
18 Act of Nevada only requires "an agreement contained in a record to submit to
19 arbitration".²⁶

20 C. STAY OF PETITION.

21 Co-Trustee Warner has submitted a demand for arbitration to legal counsel
22 for Petitioner²⁷ and to date Petitioner has refused and declined to arbitrate the Matters
23 set forth in the Petition and the other disagreed Trust matters. NRS 38.221(1)(b) provides:

24 "On motion of a person showing an agreement to arbitrate and alleging another
25 person's refusal to arbitrate pursuant to the agreement: ... (b) If the refusing party
26 opposes the motion, the court shall proceed summarily to decide the issue and
27 order the parties to arbitrate unless it finds that there is no enforceable agreement
28 to arbitrate."

29 NRS 38.221(6) provides:

30 "If a party makes a motion to the court to order arbitration, the court on
31 just terms shall stay any judicial proceeding that involves a claim alleged to be
32 subject to the arbitration until the court renders a final decision under this

33 ²³ Exhibit D acceptance of Co-Trustee Warner.

34 ²⁴ Petition pp. 2-5.

35 ²⁵ See Exhibit A Trust signature pages, Exhibit C Order and Exhibit D Co-Trustee Warner acceptance.

36 ²⁶ NRS 38.219(1).

37 ²⁷ Exhibit E and F demands for arbitration.

section.”

NRS 38.22(4) provides:

“The court may not refuse to order arbitration because the claim subject to Arbitration lacks merit or grounds for the claim have not been established.”

Co-Trustee Warner has shown an agreement to arbitrate, as contained in the Trust agreement and its below mandatory arbitration language:

“The concurring vote of two (2) Co-Trustees shall be necessary for the Trustees to act hereunder, when there are two (2) Co-Trustees. In the event of a disagreement at any time when there are only two (2) Co-Trustees, then the dispute shall be submitted to arbitration in accordance with the Uniform Arbitration Act of the State of Nevada.”²⁸

To date, Petitioner has refused and failed to arbitrate.²⁹ Co-Trustee submits he has Meet the jurisdictional requirements of NRS 38.22(1) by showing an agreement to Arbitrate and alleging another person’s refusal to arbitrate.

D. THE TRUST AGREEMENT IS CLEAR AND UNAMBIGUOUS.

The Trust agreement between Petitioner Co-Trustee Jane and this moving party Co-Trustee Warner clearly and unambiguously requires arbitration “in the event of a disagreement at any time” between the two (2) Co-Trustees. Nevada courts consistently enforce unambiguous contracts according to their plain language. *Renshaw v. Renshaw*, 96 Nev. 541, 611 P.2d 1070 (1980). Courts are bound by language that is clear and free of ambiguity and cannot, using the guise of interpretation, distort the plain meaning of the agreement. *Watson v. Watson*, 95 Nev. 495, 496 P.2d 507 (1979).

It is clear from the language of the Trust that arbitration was intended. As such, the Trust language clearly and unambiguously requires that the Co-Trustees arbitrate their disagreements regarding this Petition and its disputed contents, and this Court

²⁸ Exhibit A Trust p. 23.

²⁹ Exhibit E and F.

1 should enforce the clear language of the Trust agreement. See, e.g., Southern Trust
2 Mortgage Co. v. Kay & Door Co., Inc., 104 Nev. 564, 763 P.2d 353 (1988) (holding that
3 where a document is clear and unambiguous, **the court must construe the document**
4 **from its language**); see, e.g., Love v. Love, 114 Nev. 572, 959 P.2d 523 (1983) (concluding
5 that a clear and unambiguous document on its face must be **construed according to**
6 **its plain language**). So, overwhelming Nevada authority holds that unambiguous
7 agreements must be construed according to their plain language.
8

10 III. CONCLUSION

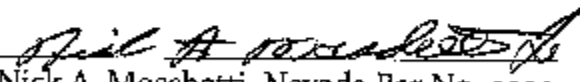
11 Co-Trustee Warner respectfully requests that this Court compel the
12 arbitration of the disagreements between Co-Trustee Jane and Co-Trustee Warner
13 regarding their disputes relating to the Petition and its contents. There is a valid, clear
14 and unambiguous Trust agreement requiring arbitration of Co-Trustee disagreements.
15 Disputes and disagreements have now arisen concerning Petitioner's actions in filing
16 the present Petition and concerning the disputed allegations contained in that Petition.
17

18 The Petition should be dismissed or stayed pending arbitration pursuant to the
19 Uniform Arbitration Act of Nevada. Nevada law (as articulated by both the Nevada
20 Legislature and the Nevada Supreme Court) uniformly holds that the agreed arbitrability
21 of disputes must be enforced as provided in an agreement. The Trust agreement here
22 involved requires in clear and unambiguous language arbitration "**In the event of a**
23 **disagreement at any time**" between the two (2) Co-Trustees.
24

25 Arbitration should be compelled for the Co-Trustees' disagreements and disputes
26 regarding the pending Petition and the Petition's related Trust matters, and the
27
28

Petition and/or other action by Petitioner should be stayed in the interim. Attorney fees, costs and expenses, per the Trust are to be paid by the Trust for both Co-Trustees [Co-Trustee Jane and Co-Trustee Warner] so there will be an effective arbitration rather than a biased and unequal administration of the arbitration with the Trust only paying the fees, costs and expenses of one Co-Trustee [Co-Trustee Jane].

Respectfully submitted this 24 day of November, 2015.


Nick A. Moschetti, Nevada Bar No. 0920
BINGHAM SNOW & CALDWELL
Attorneys for Warner Whipple, Co-Trustee

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of Bingham Snow & Caldwell, and that on this day; I caused a true and correct copy of the foregoing document to be served, to the following:

ATTORNEY OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
Matthew D. Carling Cedar Legal 1100 S. 10 th St. Las Vegas, 89101 cedarlegal@gmail.com	Jane Whipple	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> Email / E-File <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Mail

DATED this ____ day of November, 2015,

An employee of Bingham Snow & Caldwell

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EXHIBIT- A

SUPPLEMENTAL TRUST AGREEMENT

THIS SUPPLEMENTAL TRUST AGREEMENT is entered into between KENT WHIPPLE, also known as KENT O'NEIL WHIPPLE, and JANE WHIPPLE, also known as JANE ELEANOR R. WHIPPLE, also known as BETTY JANE WHIPPLE, his wife, hereinafter referred to as the "Trustors" or separately as "Husband" and "wife" respectively, and KENT WHIPPLE and JANE WHIPPLE, hereinafter jointly referred to as the "Trustee".

WHEREAS these Trustors entered into a Trust Agreement dated March 17, 1969 and wish to hereby modify certain terms of the trust, and as modified to ratify, confirm and readopt said trust and all actions heretofore taken by the Trustors and Trustee.

NOW THEREFORE, pursuant to the express powers reserved in said Trust Agreement of March 17, 1969, the following amendments and modifications are hereby made to said Trust Agreement:

FIRST: Article "SIX": (d) is hereby amended to read as follows:

"(d) Upon the death of either Trustor, the Trustee shall divide the trust estate into two (2) trusts, hereinafter called Trust "A" and Trust "B", which shall constitute separate trusts and shall be held and administered as such. At the Trustee's discretion the assets of the trust estate to be divided pursuant hereto may be divided and allocated in kind, by undivided interest, by actual division, or by any combination of such methods of division."

SECOND: Article "SIX": (d) is hereby amended to read as follows:

"(e) There shall be placed in Trust "A":

(1) The surviving Trustor's share of the community property subject to the terms of this Trust.

(2) Out of the other assets subject to the terms of this Trust, including the Decedent's share of the community property in this Trust and those received

VAUGHAN, HULL, MORRIS & MILLER, LTD.
ATTORNEYS AND COUNSELORS
200 GRAND STREET
ELAB, NEVADA 89501

by the Trustee upon or by reason of the death of the first Trustor to die, the Trustee shall add to Trust A the fractional share of said assets which is equal to the maximum marital deduction allowed for Federal Estate Tax purposes in the estate of said deceased Trustor, less the value of all assets or interest which pass or have passed to the surviving Trustor other than by the terms of this Trust, and which qualify for marital deduction in the estate of said decedent.

(3) In making the computations and the allocations of property to Trust "A" required by the preceding paragraphs (1) and (2), the determination of the character and ownership of property and the value thereof shall be as finally established for Federal Estate Tax purposes in said decedent's estate.

(4) All of the rest, residue and remainder of the assets subject to the terms of this Trust shall be allocated to Trust "B".

THIRD: As hereby amended and modified the Trust Agreement dated March 17, 1969 made by the undersigned Trustors and Trustee, and all actions of the Trustors and Trustees hereunder to date is hereby ratified, confirmed, approved, agreed to and said Trust Agreement as herein modified and amended shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands this 30th day of January, 1977.

TRUSTORS:

Kent Whipple
KENT WHIPPLE, a/k/a KENT O'NEIL WHIPPLE

Jane Whipple
JANE WHIPPLE, a/k/a JANE ELEANOR R. WHIPPLE

TRUSTEE:

Kent Whipple
KENT WHIPPLE

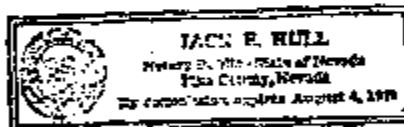
Jane Whipple
JANE WHIPPLE

BRUGHAN, HULL, MARFIS & MILLER, LTD.
ATTORNEYS AND COUNSELLORS
220 E. 15th STREET

STATE OF NEVADA)
COUNTY OF LINCOLN) SS.

On January 30, 1977, personally appeared before me, a
Notary Public, KENT WHIPPLE and JANE WHIPPLE, his wife, who acknow-
ledged to me that they executed the above instrument.


NOTARY PUBLIC



VANUGHAN, HULL, MARFISI & MILLER, LTD.
ATTORNEYS AND COUNSELORS
800 MAIN STREET
LINCOLN, NEVADA 89501

1 THIS TRUST AGREEMENT is entered into between KENT
2 WHIPPLE, also known as KENT O'NEIL WHIPPLE, and JANE WHIPPLE, also
3 known as JANE ELEANOR R. WHIPPLE, also known as BETTY JANE WHIPPLE,
4 his wife, hereinafter referred to as the "Trustors", or separately
5 as "Husband" and "Wife" respectively, and KENT WHIPPLE and JANE
6 WHIPPLE, hereinafter jointly referred to as the "Trustee".
7

8 ONE: The Trustors, desiring to establish a Trust,
9 have assigned, transferred and delivered, and by these presents
10 do assign, transfer and deliver to the Trustee all of the real
11 property and personal property of every nature whatsoever belong-
12 ing to the Trustors, including, but not limited to, the property
13 described in Schedule "A" attached hereto and made a part of this
14 Trust Agreement. Receipt is hereby acknowledged by the Trustee
15 of the assets enumerated in Schedule "A". The Trustors may from
16 time to time add additional properties or policies of insurance
17 to this Trust by transferring such property or assigning such
18 policies to the Trustee, or by causing the Trustee to be named as
19 beneficiary thereunder. In either case, such property and
20 policies of insurance, and their proceeds, shall be subject to the
21 terms and conditions of this Agreement.

22 TWO: No consideration was nor will be given to or
23 by the Trustee for the conveyance or transfer to him of any of
24 the Trust Estate. The Trustee accepts such title to the Trust
25 Estate as is conveyed or transferred to him hereunder without
26 liability or responsibility for the condition or validity of such
27 title, and the Trust Estate has been or will be conveyed or trans-
28 ferred to the Trustee, IN TRUST, with power of sale, for the uses
29 and purposes herein provided.

30 THREE: The Trustee acknowledges that he may be named
31 as beneficiary under insurance policies of the Trustors, and
32 agrees to hold the same and the proceeds thereof subject to the

A/1,1

1 conditions he has stated.

2 FOUR: The Trustee, upon being informed as to the
3 death of the insured or the earlier maturity of any insurance
4 policies, shall receive the proceeds thereof and is hereby author-
5 ized to execute the necessary receipts and releases to the insur-
6 ance companies concerned.

7 FIVE: The Trustors reserve during such time as the
8 Husband and Wife are both living the following rights and powers
9 to be exercised by them, without the consent or participation of
10 the Trustee or any beneficiary of this Trust, including, with-
11 out limiting the generality, the following rights and powers:

12 (a) The right to revoke this Trust, or
13 by supplemental agreement to modify the terms of
14 this Trust from time to time without the consent of
15 the Trustee, or any beneficiary, provided, however,
16 that the duties, powers, and liability of the Trustee
17 hereunder shall not be substantially changed without
18 his written consent. Except as hereinafter provided,
19 such powers of revocation and modification are per-
20 sonal to the Trustors and shall not be assignable
21 nor accrue to any other person, nor shall they ex-
22 tend to their estates nor to their legal representa-
23 tives, nor to any beneficiary named herein nor to
24 any other person.

25 (b) To receive or apply dividends, dis-
26 ability benefits, premium refunds, proceeds of
27 matured insurance policies, loan or surrender or
28 commuted values or any other sum due under any in-
29 surance policies contributed to this Trust.

30 (c) To obtain and receive cash advances
31 or loans as may be advisable under any life insur-
32 ance policies contributed to this Trust.

(d) To exercise any of the powers or privileges granted in any such policies or plans.

The rights and powers reserved in (a) through (d), inclusive, in this Paragraph FIVE shall, except as hereinafter provided, cease upon the death of either Trustor, and thereafter this Trust shall be irrevocable and shall not be subject to amendment or modification.

SIX: All property now or hereafter subject to this Trust shall constitute the Trust Estate, and shall be held, managed and distributed as hereinafter provided:

During the lifetime of the Trustors, the Trustee shall distribute the income and principal in the following manner:

(a) The Trustee shall pay or reserve sufficient funds to pay all expenses of management and distribution of the Trust Estate, including the compensation of the Trustee, all or any part of which may, in the discretion of the Trustee, be charged either to income or principal of the Trust Estate.

The remaining income shall be and is hereafter referred to as "net income".

(b) During the lifetime of both of the Trustors, the net income from the entire Trust Estate shall be distributed to or for the use and benefit of the Trustors in monthly or other convenient installments, but not less frequently than annually. If at any time during the lifetime of both of the Trustors, the net income shall be inadequate for the needs, comfort and pleasure of the Trustors, or their descendants, the Trustee may, in its discretion, pay to or apply for the benefit of said beneficiaries, in addition to the payments of income as hereinabove provided, such amounts of the

1 principal of the Trust Estate as the Trustee may
2 deem necessary for said purposes.

3 (c) If at any time during the period set
4 forth in sub-paragraph (b) of Paragraph SIX, the
5 Trustors shall be incompetent or shall in the
6 judgment of the Trustee be unable for any other
7 reason to act in their own behalf, the Successor
8 Co-Trustees may, in their discretion, pay to or
9 apply for the health, support, maintenance and
10 comfort of the Trustors, or their descendants,
11 in addition to the payments of income as herein-
12 above provided, such amounts of the principal of
13 the Trust Estate as the Successor Co-Trustees may
14 from time to time deem necessary or advisable for
15 their use or benefit.

16 (d) Upon the death of either Trustor, the
17 Trustee shall segregate and divide the Trust
18 Estate into two trusts, hereinafter called Trust
19 "A" and Trust "B", which shall constitute separ-
20 ate trusts and shall be held and administered as
21 such.

22 (e) There shall be placed in Trust "A":

23 (1) The fractional share belonging to
24 the surviving Trustor of the community proper-
25 ty subject to the terms of this Trust.

26 (2) Out of the other assets subject to
27 the terms of this Trust, including those re-
28 ceived by the Trustee upon or by reason of
29 the death of the first Trustor to die, which
30 are eligible to satisfy the marital deduction,
31 the Trustee shall add to this Trust the frac-
32 tional share of said assets which is equal to

1 the maximum marital deduction allowed for
2 Federal Estate Tax purposes in the estate of
3 said deceased Trustor, less the value of all
4 assets or interest which pass or have passed
5 to the surviving Trustor other than by the
6 terms of this Trust, and which are eligible
7 to satisfy said marital deduction.

8 (3) In making the computations and the
9 allocations of property to Trust "A" required
10 by the preceding paragraphs (1) and (2), the
11 determination of the character and ownership
12 of property and the value thereof shall be
13 finally established for Federal Estate Tax
14 purposes.

15 (4) All of the rest, residue and re-
16 mainder of the assets subject to the terms
17 of this Trust, including those received by
18 the Trustee upon or by reason of the death
19 of the first Trustor to die, shall be allo-
20 cated to Trust "B".

21 PROVISIONS OF TRUST "A".

22 (1) The entire net income from Trust "A" shall
23 be paid to or applied for the benefit of the surviving
24 Trustor in monthly or other convenient installments
25 during his or her lifetime, but in no event less
26 often than annually.

27 (2) If the income is not adequate to maintain
28 the surviving Trustor in a manner similar to his or
29 her standard of living while living with the deceased
30 Trustor, the Trustee may pay to him or her, or apply
31 for his or her benefit so much of the principal of
32

1 the Trust as he may, in his discretion, deem proper
2 or necessary for that purpose, taking into account
3 any income available to him or her from other
4 sources. The Trustee shall make such principal
5 disbursements to the surviving Trustor out of the
6 corpus of Trust "A" before making any disbursements
7 of principal to the surviving Trustor from Trust
8 "B".

9 (3) In the event the Wife survives the
10 Husband;

11 (a) She shall have the power, exer-
12 cisable in all events and at any time or
13 from time to time after the Husband's
14 demise, to withdraw all or any part of
15 the principal of Trust "A", and to require
16 the Trustee to distribute the same to her,
17 discharged of this Trust. Such power may
18 be exercised by written instrument filed
19 with the Trustee. There is further con-
20 ferred on the Wife, the absolute power to
21 distribute by her Last Will and Testament
22 the remaining assets of the Trust to any-
23 one she chooses, including her estate, her
24 creditors, or the creditors of her estate.

25 (b) If and to the extent that the
26 Wife shall fail to exercise such powers,
27 the principal and accrued and undistri-
28 buted net income of this Trust shall, upon
29 her demise, be transferred to and become a
30 part of Trust "B" and shall be held, admini-
31 stered and distributed as is hereinafter
32 provided with respect to Trust "B", excepting

-6- 2/9/1

1 however that the Trustee in its discretion
2 may first pay out of the principal, the
3 Wife's last illness and burial expenses,
4 Federal Estate Taxes, Nevada Inheritance
5 Taxes, and any gift taxes assessed against
6 her estate, together with interest,
7 penalties, costs, Trustees' compensation
8 and attorney fees, unless other adequate
9 provisions shall have been made therefor.
10

11 (4) In the event the Husband survives the
12

13 Wife:

14 (a) He shall have the power, exer-
15 cisable in all events and at any time or
16 from time to time after the Wife's demise
17 to withdraw all or any part of the prin-
18 cipal of Trust "A", and to require the
19 Trustee to distribute the same to him,
20 discharged of this Trust. Such power may
21 be exercised by written instrument filed
22 with the Trustee. There is further con-
23 ferred on the Husband, the absolute power
24 to distribute by his Last Will and Testament
25 the remaining assets of the Trust to any-
26 one he chooses, including his estate, his
27 creditors, or the creditors of his estate.

28 (b) If and to the extent that the
29 Husband shall fail to exercise such powers,
30 the principal and accrued and undistributed
31 net income of this Trust shall, upon his
32 demise, be transferred to and become a part

1 of Trust "B" and shall be held, administered
2 and distributed as is hereinafter provided
3 with respect to Trust "B", excepting, how-
4 ever, that the Trustee, in its discretion,
5 may first pay out of the principal, the
6 Husband's last illness and burial expenses,
7 Federal Estate Taxes, Nevada Inheritance
8 Taxes, and any gift taxes assessed against
9 his estate, together with interest, penalties,
10 costs, Trustees' compensation and attorney
11 fees, unless other adequate provisions shall
12 have been made therefor.

13 (5) The interests of the beneficiaries in
14 principal or income shall not be subject to claims of
15 his or her creditors, nor others, nor to legal process,
16 and may not be voluntarily nor involuntarily alienated
17 nor encumbered.

18 PROVISIONS OF TRUST "B".
19

20 (1) Upon the death of the first Trustor to
21 die, if the surviving Trustor shall be in want of
22 additional monies to maintain himself or herself in
23 a manner similar to his or her standard of living
24 at the time of death of the Trustor who died first,
25 taking into account any other assets or income
26 available from other sources, including the afore-
27 said payments from Trust "A", the Trustee may, in
28 its absolute discretion, pay to or apply for the
29 benefit of the surviving Trustor so much of the
30 income or principal from this Trust as the Trustee
31 may from time to time deem necessary or advisable
32 for the health, support, maintenance and comfort

1 of the surviving Trustor.

2 (2) Anything contained herein to the
3 contrary notwithstanding, no payment shall be
4 made to the surviving Trustor from the prin-
5 cipal or income of Trust "B" until such time
6 as Trust "A" is substantially exhausted both
7 as to principal and income. At such time as
8 the income and principal of Trust "A" is sub-
9 stantially exhausted, the net income of Trust
10 "B" shall be paid to the surviving Trustor
11 in monthly or other convenient installments
12 during his or her lifetime, but in no event
13 less often than annually.

14 (3) Upon the death of the surviving
15 Trustor, the remaining assets of the Trust
16 shall be divided into as many separate trusts
17 as there are children of the Trustors living,
18 providing that if any such child be then de-
19 ceased leaving issue surviving at the date of
20 such division, such deceased child shall be
21 considered as living for the purposes of such
22 division, and in that event the Trustee shall
23 set aside and distribute one of such equal
24 shares to the issue of any such deceased child
25 per stirpes. Each of the Trusts thus estab-
26 lished shall be administered as separate
27 Trusts, as hereinafter provided, but without
28 the necessity of the Trustee making physical
29 division of the assets unless the Trustee
30 deems it necessary or advisable to do so. The
31 assets set aside for the use and benefit of
32

1 the 'ustors' issue shall be held administered
2 and distributed as follows:
3

4 (a) The Trustee shall set aside
5 one of such shares for each of the Trustors'
6 children by right of representation in a
7 separate trust and shall distribute so much
8 of the net income derived therefrom as in
9 the sole discretion of the Trustee may be
10 deemed necessary or advisable for such
11 child's health, support, maintenance or
12 education, including study at an institu-
13 tion of higher learning, or to commence a
14 business or profession, to or for the
15 use or benefit of such child until he or she
16 attains the age of twenty-one (21) years, and
17 any accumulated income not so required shall
18 be added to the principal of such share.
19 Thereafter, the entire net income from said
20 share shall be distributed quarterly to or
21 for the use or benefit of such child until
22 he or she attains the age of twenty-five
23 (25) years, at which time one-half (1/2)
24 of the then principal of such share shall
25 be distributed to such child; and thereafter,
26 the entire net income from the balance of
27 the principal of such share shall be distri-
28 buted quarterly to or for the use or bene-
29 fit of such child until he or she attains
30 the age of thirty (30) years, at which time
31 the entire balance of the principal of such
32 share together with any undistributed income
therefrom, shall be distributed to such child.

11

1 (b) Upon the death of any such
2 child before becoming entitled to receive
3 the whole of his or her share of the Trust
4 Estate, the Trustee, after paying the ex-
5 penses of the last illness and burial of
6 such deceased child, unless such expenses
7 shall have been paid or provided for apart
8 from this Trust, shall distribute the en-
9 tire principal of such share, or so much
10 thereof as then remains, together with any
11 undistributed income therefrom, to the then
12 surviving issue of such deceased child per
13 stirpes, subject however, to the provisions
14 of sub-paragraphs (a) and (b) hereof. If
15 such deceased child shall leave no such
16 issue then surviving, the same shall be
17 added in equal portions to the shares then
18 held for the benefit of the other children,
19 and to those previously distributed there-
20 from, excluding the share of each child
21 theretofore deceased as to whom there sur-
22 vives no issue, but including by right of
23 representation the issue of any deceased
24 child. If any portion of a share has
25 theretofore been distributed, then a similar
26 portion of the added share shall likewise
27 be distributed.

28 (4) (a) If at any time during the life-
29 time of both Trustors, in the absolute dis-
30 cretion of the Trustee, any child or grand-
31 child of the Trustors, or issue of such
32 grandchildren, should be in want of

1 additional monies for their health, support
2 and maintenance, the Trustee may pay to or
3 apply for the benefit of such individual such
4 amounts from the income or principal of the
5 Trust Estate as the Trustee may from time to
6 time deem necessary or advisable for such
7 beneficiary's health, support, maintenance
8 or education, including study at an insti-
9 tution of higher learning.

10 (b) If at any time after the death
11 of one Trustor, and during the lifetime of the
12 surviving Trustor, in the absolute discretion
13 of the Trustee, any child or grandchild of the
14 Trustors, or issue of such grandchild, should
15 be in want of additional monies for their
16 health, support and maintenance, the Trustee
17 may pay to or apply for the benefit of such
18 individual, such amounts from the income or
19 principal of Trust "B" as the Trustee may
20 from time to time deem necessary or advis-
21 able, provided such payments do not jeopard-
22 ize the security of the surviving Trustor.

23 (c) If at any time after the death of
24 both Trustors, in the absolute discretion of
25 Trustee, any child or grandchild of the
26 Trustors should be in want of monies for
27 their health, support or maintenance, or
28 to commence a business or profession, the
29 Trustee may pay to or apply for the bene-
30 fit of such individual, in addition to
31 the payments hereinabove provided, such
32 amounts from the principal of his or her

1 respective share of the Trust Estate, up to
2 the whole of said part, as the Trustee may
3 from time to time deem necessary or advisable
4 for such beneficiary's health, support, main-
5 tenance, or education, including study at an
6 institution of higher learning, or to com-
7 mence a business or profession, or the
8 Trustee may in its sole discretion during
9 any calendar year pay to or apply for the
10 benefit of such individual the greater of
11 the following amounts: FIVE THOUSAND DOLLARS
12 (\$5,000.00) or FIVE PER CENT (5%) of the
13 aggregate value of the Trust Estate set
14 aside for such beneficiary.

15 (5) The interests of beneficiaries in
16 principal or income shall not be subject to claims
17 of their creditors nor others, nor to legal process,
18 and may not be voluntarily nor involuntarily alien-
19 ated nor encumbered.

20 (6) Any other provisions hereof to the
21 contrary notwithstanding, unless terminated at an
22 earlier date under the foregoing provisions, all
23 Trusts created herein shall terminate at the expir-
24 ation of twenty-one (21) years after the death of the
25 last surviving beneficiary living on the date of
26 the execution of this Trust Agreement. If any Trust
27 created herein is terminated by reason of the oper-
28 ation of this paragraph, the Trust as then existing
29 shall go and be distributed to the persons then en-
30 titled to the income therefrom in the same proportions
31 in which they were receiving or were entitled to re-
32 ceive said income.

a/n.

1 SEVEN: To carry out the purposes of this Trust,
2 the Trustee is vested with the following powers in addition to
3 those now or hereafter conferred by law, affecting the Trust
4 and the Trust Estates, subject to the provisions heretofore
5 set forth in Paragraph FIVE:

6 (a) The Trustee shall have the power to
7 manage and control, invest and reinvest, sell or
8 assign, the proceeds of such life insurance policies
9 and the funds of the Trust Estate, in such invest-
10 ments as the Trustee may elect, and also in such
11 other investments as are hereinabove specifically
12 authorized. He shall have the power to exercise
13 any right or option of subscription or otherwise
14 which may at any time be given to the holders of
15 any securities of the Trust Estate.

16 (b) To manage, control, sell, convey, ex-
17 change, partition, divide, subdivide, improve, repair;
18 to grant options and to sell upon deferred payments;
19 to lease for terms within or extending beyond the
20 duration of this Trust for any purpose, including
21 exploration for and removal of gas, oil or other
22 minerals; and to enter into community oil leases.

23 (c) To retain property and to invest, and
24 reinvest as provided by law from time to time ex-
25 isting.

26 (d) To borrow; to place, replace, renew,
27 or extend any encumbrances upon any real property;
28 and to institute, compromise and defend actions
29 and proceedings.

30 (e) To participate in voting trusts, pooling
31 agreements, foreclosures, reorganizations, consoli-
32

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1 da'ns, mergers, and liquidat' e, and in connection
2 therewith, to deposit securities with and transfer
3 title and delegate discretions to any protective or
4 other committee as the Trustee may deem advisable.

5 (f) Upon any division or partial or final
6 distribution of the Trust Estate, to partition, allot,
7 and distribute the Trust Estate in undivided interests
8 or in kind, at valuations determined by the Trustee,
9 and to sell such property as the Trustee may deem
10 necessary to make division and distribution.

11 (g) To determine what is principal or
12 income of the Trust Estate and apportion and allocate
13 in his discretion, receipts and expenses as between
14 these accounts. Except insofar as the Trustee shall
15 exercise this discretion, matters relating to the
16 rights of beneficiaries among themselves as to principal
17 and income shall be governed by the provisions of
18 the Principal and Income Act from time to time existing.

19 (h) The enumeration of certain powers of
20 the Trustee shall not limit its general powers, the
21 Trustee subject always to the discharge of its fidu-
22 ciary obligations, being vested with and having all
23 the rights, powers and privileges which an absolute
24 owner of the same property would have.

25 (i) Upon the death of the first to die of
26 the Husband or Wife, or upon the death of any other
27 beneficiary, the expenses of last illness and burial,
28 and any estate, inheritance, succession or other
29 death taxes, duties, charges, or assessments, to-
30 gether with interest, penalties, costs, Trustees'
31 compensations and attorney fees, which shall become
32 due or be occasioned by reason of the Trust Estate

1 or any interest therein being includible for such
2 tax purposes, shall be paid by the Trustee out of
3 his or her share of the community property interest
4 in the Trust Estate, or his or her share of the
5 Trust Estate, as the case may be, unless other ade-
6 quate provisions shall have been made therefor. Any
7 such payments shall be charged to principal of the
8 share of the Trust Estate or the separate Trust so
9 included.

10 (j) Upon the death of the last Trustor to
11 die, all estate, inheritance, succession, or other
12 death taxes or duties (by whatever name called)
13 which shall become due by reason of the Trust Estate
14 or any portion thereof being includible for such tax
15 purposes, shall be paid by the Trustee out of the
16 said deceased beneficiary's Trust (the "A" Trust).
17 Any other costs, including Trustees' compensation
18 and attorney fees, which shall be due or be occasioned
19 by the death of the Trustors, or either of them, may
20 be paid by the Trustee out of income or principal
21 from either Trust "A" or Trust "B", unless other
22 adequate provisions shall have been made therefor.

23 (k) The Trustee shall have full power
24 and authority to pay from the Trust Estate any other
25 taxes, charges or assessments for which the Trustee, the
26 Trust Estate or any interest therein becomes liable,
27 and any such payments shall be made from and charged
28 to either income or principal of the Trust Estate
29 or any share or separate Trust thereof; as the Trustee,
30 in its discretion, deems proper.

31 (l) The Trustee may make such payments
32 directly or to a personal representative or other

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1 f iary, the Trustee may rel. pon a written state-
2 ment of such fiduciary as to the amount and propriety
3 of such taxes, interest, penalties, and other costs,
4 and shall be under no duty to see to the application
5 of any funds so paid.

6 (m) The Trustee shall sell assets from
7 Trust "A" to Trust "B" or between the separate Trusts
8 or shares, as may exist from time to time, on such
9 terms and at such fair market values as the Trustee
10 may determine. The Trustee may loan or advance
11 monies which are funds of the Trust Estate from any
12 one of the several trusts or shares to any of the
13 other trusts or shares as may exist from time to
14 time upon such terms, conditions and security as
15 the Trustee may, in its discretion, determine to
16 be fair and reasonable.

17 (n) Upon the death of either Trustor, the
18 Trustee may, within its discretion, purchase assets
19 from the estate of the deceased Trustor at a fair
20 value. The propriety of the purchase, the amount
21 of such assets purchased, and the ascertainment of
22 fair value shall be solely within the discretion of
23 the Trustee, and the Trustee shall incur no liability
24 as a result of such purchase or purchases whether
25 or not such assets constitute investments which may
26 ordinarily be made by Trustees. At its discretion,
27 the Trustee may loan monies which are funds of the
28 Trust Estate to the estate of the deceased Trustor,
29 upon such terms as the Trustee and the personal
30 representative of the deceased Trustor may agree.

31 (o) The Trustee shall have the power to
32 budget the estimated income and expenses of the

W.A.

1 it in such manner as to equalize, as far as
2 possible, periodic income payments to the
3 beneficiaries.

4 (p) The Trustee shall not at any time be
5 required to make any accounting of the administration
6 of the Trust Estate to any court or public authority
7 whatsoever. Any and all accounting shall be made
8 to the beneficiaries of the Trust or to the legal
9 guardian or conservator of any beneficiary who
10 has not reached the age of majority, or who has
11 been declared incompetent.

12 (q) For the purposes of allocation thereof
13 between the Trusts, as hereinabove provided in
14 Paragraph SIX, for the purpose of determining
15 the nature and character of the property in the
16 event the Trust is terminated or partially revoked
17 and assets distributed to the Trustors, and for
18 tax purposes, it is the express intent of the
19 Trustors, that in the event either of the Trustors
20 hereafter acquire any separate or community prop-
21 erty and transfer the same to this Trust, said
22 separate or community property shall retain its
23 status as separate or community property subsequent
24 to the time it is transferred to this Trust. In
25 the event that any separate or community property
26 is at any time hereafter transferred out of the
27 Trust, it shall retain its character as separate or
28 community property subsequent to being transferred
29 out of the Trust.

30 EIGHT: The Trustors declare that all property in
31 which they have an interest or which stands in the name of KENT
32 WHIPPLE, a/k/a KENT O'NEIL WHIPPLE, and/or JANE WHIPPLE, a/k/a

1 JANE ELEANOR WHIPPLE, is wholly community property under the
2 laws of the State of Nevada, irrespective of the manner in which
3 record title is held, or has been held prior to the transfer to
4 the Trustee under this Trust.

5
6 NINE: The primary purpose of this instrument is to
7 provide for the income beneficiaries, and the rights and interests
8 of remaindermen are subordinate to that purpose. The provisions
9 of this instrument shall be construed liberally in the interests
10 of and for the benefit of the income beneficiaries.

11
12 TEN: Upon the resignation, inability to act, or
13 death of JANE WHIPPLE, then KENT WHIPPLE shall act as the sole
14 Trustee. Upon the resignation, inability to act, or death of
15 KENT WHIPPLE, then JANE WHIPPLE and KEITH MURRAY WHIPPLE shall
16 act as Successor Co-Trustees. Upon the resignation, inability
17 to act, or death of both of the original Trustees, then KEITH
18 MURRAY WHIPPLE shall act as the sole Successor Trustee. Upon the
19 resignation, inability to act, or death of KEITH MURRAY WHIPPLE,
20 then the FIRST NATIONAL BANK OF NEVADA shall act as the Successor
21 Trustee.

22 The individual Successor Co-Trustees shall be
23 entitled to compensation for their services, which shall be the
24 compensation normally charged by corporate trustees under similar
25 circumstances. The individual Trustees named herein shall serve
26 without bond.

27 Each Successor Co-Trustee must at all times be
28 fully informed of each and every official act performed by the
29 other Trustees and must be furnished with an accounting of all in-
30 come, expenditures and activities of the Trust at least quarterly.
31 Each Co-Trustee at all times shall have the right to examine any
32 and all Trust books of account, reports, files and papers of ever

1 nature what's er. Any individual Co-Trustee shall have the
 2 right to demand a complete audit of the Trust by an independent
 3 firm of Certified Public Accountants at the expense of the Trust
 4 at any time or from time to time, without the consent of the other
 5 Co-Trustees, and this power shall not be subject to arbitration.

6 The concurring vote of two (2) Co-Trustees shall be
 7 necessary for the Trustees to act hereunder, when there are two
 8 (2) Co-Trustees. In the event of a disagreement at any time
 9 when there are only two (2) Co-Trustees, then the dispute shall be
 10 submitted to arbitration in accordance with the Uniform Arbitration
 11 Act of the State of Nevada.

12 ELEVEN: As used in this Trust, the singular shall be
 13 deemed to include the plural, and the masculine, feminine, or
 14 neuter shall be deemed to include each of the other two genders.

15 TWELVE: This Agreement has been delivered in the State
 16 of Nevada. The laws of the State of Nevada shall govern the
 17 validity and interpretation and administration thereof, notwith-
 18 standing the residence in another jurisdiction of the Trustors or
 19 of any other beneficiary hereunder.

20 THIRTEEN: As used throughout this instrument, the
 21 term "issue" shall include any children of the Trustors, who may
 22 hereafter be born or legally adopted, and shall include children
 23 adopted by any descendant and their descendants by birth or
 24 adoption.

25 IN WITNESS WHEREOF, we have hereunto set our hands this

26 17 day of March, 1969.

27 TRUSTORS:

28 Kent Whipple
 29 KENT WHIPPLE, a/k/a KENT O'NEIL WHIPPLE

30 TRUSTEE:

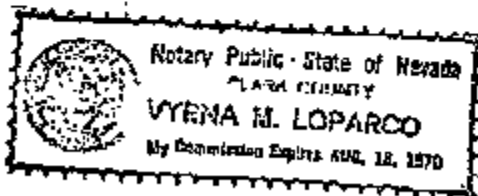
31 Kent Whipple
 32 KENT WHIPPLE

Jane Whipple
 JANE WHIPPLE, a/k/a JANE ELEANOR R. WHIPPLE

Jane Whipple
 JANE WHIPPLE

1 STATE OF NEVADA }
2 COUNTY OF CLARK } ss.

3 On this 17th day of March, 1969, before me, the under-
4 signed, a Notary Public in and for said County and State, person-
5 ally appeared KENT WHIPPLE and JANE WHIPPLE, husband and wife,
6 known to me to be the persons described in and whose signatures
7 are subscribed to the within Trust Agreement as "TRUSTORS", and
8 jointly acknowledged to me that they executed the same freely
9 and voluntarily and for the uses and purposes therein mentioned.



Verna M. Loparco
NOTARY PUBLIC in and for
said County and State

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EXHIBIT- B

12

**RESIGNATION OF CO-TRUSTEE
Of
THE KENT AND JANE WHIPPLE TRUST**

KEITH WHIPPLE
HCR 61 BOX 2
Elko, Nevada 89801

August 29, 2015

The Kent and Jane Whipple Trust
c/o Warner Whipple
Bide Bailly LLP
975 5th Street
Elko, NV 89801

RE: Resignation of Co-Trustee of the Kent and Jane Whipple Trust

To whom it may concern:

I, **KEITH WHIPPLE**, Co-Trustee of the Kent and Jane Whipple Trust, dated March 17, 1969, as amended, on this 29 day of August, 2015, do hereby tender and give formal notice that I resign from my current position as Co-Trustee of said Trust, effective as of the day and year first hereinabove written.

Sincerely,



KEITH WHIPPLE

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EXHIBIT- C

CASE NO. 3692

87 NOV 16 P1:08
KAREN VASQUEZ
J. H. James
CLERK

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF ELKO

IN THE MATTER OF
THE KENT WHIPPLE
AND JANE E. BRADSHAW,
Formerly JANE WHIPPLE,
TRUST,

ORDER AMENDING
INTER VIVOS TRUST

AN INTER VIVOS TRUST.

The Petition of JANE E. BRADSHAW, formerly known as JANE WHIPPLE, and KEITH MURRAY WHIPPLE, duly verified and filed herein on the 16th day of November, 1987, requests that this Court enter an Order amending an inter vivos trust established March 17, 1959 pursuant to a Trust Agreement between KENT WHIPPLE, also known as JOHN O'NEIL WHIPPLE, and JANE WHIPPLE, also known as JANE ELEANOR E. WHIPPLE, also known as BETTY JANE WHIPPLE, as Trustees, and KENT WHIPPLE and JANE WHIPPLE, as Trustees. A copy of said Trust Agreement, as amended, is attached to said Petition as Exhibit A and made a part thereof.

It appearing to the satisfaction of the Court that all parties interested in this proceeding, including all beneficiaries of said trust and the named successor trustees therein which is the subject of the Petition, to wit, FIRST

1 INTERSTATE BANK OF NEVADA, NA, have each filed herein their
2 duly acknowledged appearance in this action, consented to the
3 substitution of successor trustee and waived notice of the
4 hearing of this matter and further acknowledged the time set
5 for the hearing of this action.

6 The Court, having duly and regularly heard this
7 action on November 16, 1987 at 1:00 o'clock P.M. and
8 Petitioner, JANE E. BRADSHAW, being present with her attorney
9 JOHN E. MARVEL of the law firm of MARVEL & HANSEN of Elko,
10 Nevada, and evidence having been adduced on the part of the
11 Petitioner, the Court hereby finds as follows:

12 1. That due and legal Notice of the hearing of
13 said Petition has been waived by all persons interested in
14 said Trust.

15 2. That the allegations of said Petition are true
16 and correct.

17 3. That Petitioners are the Co-Trustees under the
18 inter vivos trust established March 17, 1969, pursuant to the
19 Trust Agreement between KENT WHIPPLE, also known as KENT
20 O'NEIL WHIPPLE, and JANE WHIPPLE, also known as JANE ELEANOR
21 R. WHIPPLE, also known as BETTY JANE WHIPPLE, as Trustees,
22 and KENT WHIPPLE and JANE WHIPPLE, as Trustees.

23 4. That said KENT WHIPPLE died on February 5,
24 1977.

25 5. That Petitioner KATHI MURRAY WHIPPLE thereupon
26 succeeded said KENT WHIPPLE as Co-Trustee with JANE WHIPPLE,
now known as JANE E. BRADSHAW, pursuant to Article TEN of
said Trust Agreement.

1 6. That Petitioners both desire and request, in
2 their capacities as Co-Trustees, and Petitioner JANE S.
3 BRADSHAW further desires and requests, in her capacity as
4 Trustee and Beneficiary, for an Order of this Court amending,
5 or in the alternative, authorizing the amendment of, Article
6 TEN said Trust Agreement by substituting WARNER WHIPPLE as
7 Successor Trustee in place of FIRST NATIONAL BANK OF NEVADA,
8 now known as FIRST INTERSTATE BANK OF NEVADA, NA.

9 7. That the terms and provisions of the Trust
10 Agreement itself make no provision for such amendment and, by
11 virtue of the death of KENT WHIPPLE, said Trust Agreement is
12 not otherwise subject to amendment or modification and no
13 other legal procedure exists to accomplish the desired
14 substitution of Successor Trustee except by an Order of this
15 Court.

16 8. That WARNER WHIPPLE should be substituted as
17 Successor Trustee for the following reasons:

18 a. That WARNER WHIPPLE is and has been the
19 accountant for the Trust since its creation and has
20 detailed knowledge, expertise and experience in
21 dealing with the Trust and Trust matters;

22 b. That WARNER WHIPPLE is personally familiar with
23 the Trust beneficiaries and is knowledgeable of
24 their respective health, support, maintenance and
25 educational needs;

26 c. That the potential compensation to the
 Successor Trustee would be less for WARNER WHIPPLE

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than for FIRST INTERSTATE BANK OF NEVADA, thereby preserving estate property.

d. That FIRST INTERSTATE BANK has had no past or present experience with the management, business or affairs of the Trust, has not undertaken any action whatsoever in regard thereto and has consented to the substitution in its place of WARNER WHIPPLE as Successor Trustee as evidenced by the Consent to Substitution of Successor Trustee by FIRST INTERSTATE BANK OF NEVADA, NA, filed herein.

e. That no harm, prejudice or detriment whatsoever to the Trust estate, to the Trust beneficiaries or to any other parties whomsoever would result from such substitution of Successor Trustee.

f. That all of the Trust beneficiaries have consented to the substitution of Successor Trustee as evidenced by the Consent thereto filed herein by each of said beneficiaries, to wit: JANE E.

BRADSHAW, sole income beneficiary; BRETT O'NEILL WHIPPLE, BETSY LOU WHIPPLE and KIRT RANDALL WHIPPLE, adult contingent beneficiaries; and JANE E. BRADSHAW on behalf of PEGGY SUE WHIPPLE, CODY KENT WHIPPLE and DALTON BRUCE BRADSHAW, minor contingent beneficiaries.

9. That WARNER WHIPPLE has agreed to accept the appointment as Successor Trustee.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Article TEN of the above-described inter vivos

1 Trust Agreement dated March 17, 1969, as amended, is hereby
2 amended by substituting WARNER WHIPPLE as Successor Trustee
3 in place of FIRST NATIONAL BANK OF NEVADA, now known as FIRST
4 INTERSTATE BANK OF NEVADA, NA.

5 DATED this 16th day of November 1987.

6 /s/ Son. A. McDermott
7 DISTRICT JUDGE
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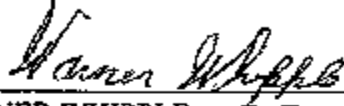
EXHIBIT- D

The undersigned WARNER WHIPPLE hereby recites as follows:

1. He has received the written Resignation of KIETH WHIPPLE as a Co-Trustee of the KENT AND JANE WHIPPLE TRUST dated March 17, 1969 (herein "Trust");
2. He has previously been appointed as a successor co-trustee of said Trust pursuant to Elko County District Court Order filed on November 16, 1987 in Case No. 3692 of the Fourth Judicial District Court of the State of Nevada in and for the County of Elko (herein "Order");
3. He has previously accepted his successor Co-Trustee position of said Trust, as set forth in said Order;
4. He confirms acceptance of his successor Co-Trustee position of said Trust and agrees to serve with presently acting Co-Trustee JANE WHIPPLE;
5. He has received a copy of a PETITION filed in the Lincoln County District Court in Case No. CV0930015 of the Seventh Judicial District Court of the State of Nevada in and for the County of Lincoln signed by MATTHEW D. CARLING as the attorney for JANE WHIPPLE the Petitioner and a trustee of said Trust (herein "Petition");
6. He has concerns as a Co-Trustee of said Trust regarding the filing and contents of said Petition; and,

BASED ON THE ABOVE RECITALS, hereby incorporated, WARNER WHIPPLE as a Co-Trustee of said Trust hereby appoints and retains, as an expense of said Trust, NICK A. MOSCHETTI, JR. and his law firm of BINGHAM SNOW & CALDWELL of Mesquite, Nevada as his attorney(s) regarding all matters relating to said Petition and Trust and any other matters that involve the said Co-Trustees and/or the said Trust.

DATED this 7th day of October, 2015.



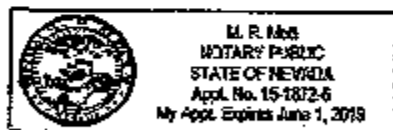
WARNER WHIPPLE, as Co-Trustee of
the KENT AND JANE WHIPPLE TRUST


State of Nevada)

) ss

County of Elko)

This instrument was acknowledged before me on this 7th day of October, 2015, by WARNER WHIPPLE in his capacity as a Co-Trustee of the KENT AND JANE WHIPPLE TRUST.





(Signature of Notary Public)

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EXHIBIT- E

NEVADA OFFICE

848 Pinnacle Court
Suite 202
Mesquite, Nevada 89027

(702) 346-7300 phone
(702) 346-7313 fax

Reply to Nevada Office

CARLING LAW OFFICE, PC

Matthew D. Carling, Esq.

1100 Tenth Street

Las Vegas, Nevada 89101

Via: US Mail and

Fax: 702-446-8065

RE: PETITION FOR DECLARATORY RELIEF
LINCOLN COUNTY DISTRICT COURT
FILED ON September 11, 2015
CASE NO. CV-0930015

In Re THE KENT AND JANE WHIPPLE TRUST
Dated March 17, 1969, Jane Whipple, Trustee, and
Amendments thereto, JANE WHIPPLE, Petitioner

Dear Mr. Carling:

This firm represents Warner Whipple, Co-Trustee of THE KENT AND JANE WHIPPLE TRUST, dated March 17, 1969, as amended (herein "Trust"). On the referenced matter, attached please find the following documents:

1. Elko County District Court Order filed on November 16, 1987 in Case No. 3692 appointing Warner Whipple as a successor Trustee of said Trust;
2. Resignation of Keith Whipple as Co-Trustee of said Trust, dated August 29, 2015.
3. Appointment and retainer of, as an expense of said Trust, Nick A. Moschetti, Jr. and the law firm of BINGHAM SNOW & CALDWELL as the attorneys for Co-Trustee Warner Whipple.

You are hereby **NOTIFIED** as follows:

- a. Co-Trustee Warner Whipple (herein "our client") disputes and disagrees with the filing of the referenced Petition and further disputes and disagrees with its contents, and Co-Trustees Warner Whipple and Jane Whipple are therefore in disagreement.
- b. The last paragraph of Article TENTH of said Trust states:
"The concurring vote of two (2) Co-Trustees shall be necessary for the Trustees to act hereunder, when there are two (2) Co-Trustees. In the event of a disagreement at any time when there are only two (2) Co-Trustees, then the dispute shall be submitted to arbitration in accordance with the Uniform Arbitration Act of the State of Nevada."

UTAH OFFICE

253 W. St. George Blvd.
Suite 100
St. George, Utah 84790

(435) 656-1900 phone
(435) 656-1963 fax

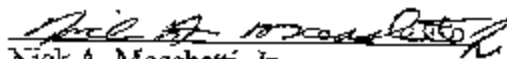
*email: nick@binghamsnow.com
email: hc@binghamsnow.com*

October 8, 2015

- c. Demand for Arbitration is hereby made by our client as specifically provided in and required by said Trust.
- d. No action is to be taken, directly or indirectly, by you, your office or your client Jane Whipple (whether in her capacity as a Trustee or Co-Trustee or in her individual capacity) regarding the referenced Petition and/or said Trust, unless this law office is first notified in writing according to the Nevada Rules of Civil Procedure, Nevada District Court Rules, Lincoln County Local Court Rules and/or Nevada Arbitration statutes.
- e. Neither you nor your office personnel is authorized to directly contact Co-Trustee Warner Whipple unless the prior written authorization of this law office is first provided.

We look forward to your prompt response in order to establish how the referenced matter, Arbitration of the referenced matter, the Co-Trustee's disagreement(s) and payment of our fees and costs for representing Co-Trustee Warner Whipple can be successfully addressed and resolved. At this time our client seeks to address and establish funding of the Trust's A and B sub-trusts in order to determine ownership of water rights and satisfy the fiduciary duties of his Co-Trustee position.

Sincerely,
BINGHAM SNOW & CALDWELL


Nick A. Moschetti, Jr.
Licensed in Nevada & California

cc: Warner Whipple w/ attachments
Attachments: 1, 2 & 3 per above

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EXHIBIT- F

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*email: nick@binghamnow.com
email: bo@binghamnow.com*

November 6, 2015

Matthew D. Carling, Esq.
Via Email: cedarlegal@gmail.com and
Fax: 702-446-8065 and US Mail
1100 South Tenth Street
Las Vegas, NV 89101

Re: In Re Kent and Jane Whipple Trust matters (collectively "Trust" without limitation)

Dear Mr. Carling:

I received your letter dated November 5, 2015 and the Notice of Hearing with a file-stamp date of October 22, 2015 this morning, 11/06/2015, via email. Clearly I was quite surprised since our telephone conversation of October 13, 2015 and my letter of same date confirming our telephone conversation provided for 10 days notice prior to any filing or action in the referenced matter.

Obviously, the 10 day notice was not honored since you took action without notice to me when the Notice of Hearing was filed shortly after our conversation and was further not honored since that Notice provides less than 10 days before the Hearing date of November 13, 2015.

Your 11/05/2015 letter states your client intends to adjudicate the Petition, even though my letters of October 08, 2015 and October 13, 2015 to you specifically state our Co-Trustee client's demand for Arbitration as mandatorily required by the Kent and Jane Whipple Trust.

As an attorney who has practiced, litigated, and taught in the area of trusts, estates and family ranch differences for 40 years, I am honestly shocked that you have: (i) taken the positions recited in the Petition; (ii) avoided my attempts for negotiation/settlement discussions in light of the problems associated with the Trust and the potential for protracted expert, accounting and legal fees and costs; and, (iii) ignored specific directives contained in the controlling and foundation Trust document.

Whatever your legal plan or client's intentions may be, I am just an attorney representing my client, who intends to perform his fiduciary duties. I am not steeped in the "family differences",

BINGHAM SNOW
CALDWELL

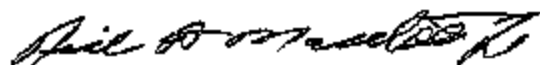
and we both know it is in the best interest of the Co-Trustees, and all Trust beneficiaries to seek resolution of the differences involved in the referenced matter.

It appears my client is now required to engage in this un-necessary "battle" because attorney commitments have not been honored, resolution efforts are being ignored, and your client is not honoring the terms of the Trust.

Co-Trustee Warner Whipple is now involved because that is what the Kent and Jane Whipple Trust provides. Our Co-Trustee client definitely disagrees with the filing and contents of the pending Petition. We will proceed accordingly in order to enforce the provisions of the Kent and Jane Whipple Trust.

Experience and judgment have taught that we will be available to put the "battle" on hold and engage in meaningful efforts to resolve our clients' differences; however, you are on notice that we always reserve, without any waiver or release, all claims, rights, causes of action, offsets, and/or defenses that we may have in law or equity.

Sincerely,



Nick A. Moschetti, Jr.
BINGHAM SNOW & CALDWELL
Attorneys for Co-Trustee Warner Whipple

Cc: Warner Whipple

1 OPP

2 ALISSA C. ENGLER, ESQ.

3 Nevada Bar Number 11940

4 JUSTICE LAW CENTER

5 1100 S. Tenth Street

6 Las Vegas, Nevada 89104

7 (702) 731-0000

8 Attorney for Petitioner

FILED
28 DEC 11 AM 10:04

LINCOLN COUNTY CLERK

9 IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR

10 LINCOLN COUNTY, NEVADA

11 IN RE THE KENT AND JANE WHIPPLE
12 TRUST, dated March 17, 1969, Jane Whipple,
13 Trustee, and amendments thereto, JANE
14 WHIPPLE,

15 Petitioner.

CASE NO.: CV-0930015

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19 OPPOSITION TO MOTION TO DISMISS/STAY
20 PETITION PENDING MANDATORY ARBITRATION

21 COMES NOW, Petitioner, Jane Whipple, by and through her attorney of record ALISSA
22 ENGLER, Esq., of Justice Law Center, and hereby files this Opposition to Motion to
23 Dismiss/Stay Petition. This Opposition is based upon the points and authorities contained herein
24 as well as any other pleadings or hearings held in this matter.

25 JUSTICE LAW CENTER

26 /s/ Alissa Engler
27
28

1100 S. Tenth Street
Las Vegas, Nevada 89104
(702) 731-0000

1
2
3 I. Factual and Procedural Background

4 Kent and Jane Whipple created the Kent and Jane Whipple Trust dated March 17, 1969
5 (hereinafter "the Trust") in 1969. Jane and Kent Whipple were to serve as the trustees of the
6 trust, for which they were also the beneficiaries during their lifetimes.

7
8 Upon the death of either spouse, the trustee was to divide the assets of the Trust into two
9 sub-trusts: Trust A and Trust B. Additionally, if Kent passed away such that Jane was the
10 surviving spouse, a co-trustee would be appointed upon Kent's death. The co-trustee was
11 originally Keith Murray Whipple. The co-trustee is currently Warner Whipple.

12
13 Keith Murray Whipple and Jane Whipple have served as co-trustees for the majority of
14 the last thirty-eight years, up until approximately 2015. Jane Whipple successfully managed the
15 ranch, and the Kent Whipple Ranch Trust and LLC to be profitable and to increase the value of
16 the assets held by the family over that time. See Affidavit of Jane Whipple. It has been her
17 primary purpose, following the intent and wishes of herself and her husband expressed in the
18 Trust, to keep the Ranch together for the ongoing benefit of the entire family. *Id.*

19
20 During this time, the Co-Trustees never divided the property into Trust A or Trust B. The
21 property Trust A was to be created based on the following terms: "The surviving Trustor's share
22 of the community property subject to the terms of this Trust." Additionally, Trust A was to retain
23 a portion of the other property sufficient to cover the marital tax credit at that time. The
24 remainder of the property held in the Trust was to be transferred to Trust B. Presumably, this
25 would have allowed Jane Whipple to bolster the holdings of Trust A at any time, including
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1 therein her ability to acquire or sell assets held by Trust A. Subsequently to the death of Kent
2 Whipple, Jane Whipple continued to manage the ranch and the family's assets. The Trust,
3 through Jane Whipple, acquired water rights that did not exist prior to the death of Kent
4 Whipple. These water rights were placed in the ownership of Kent Whipple Ranch, LLC. The
5 Trust is the sole owner of Kent Whipple Ranch, LLC.

6
7 Jane Whipple subsequently entered into a potential agreement to modify and/or transfer
8 those water rights. At that time, her daughter, Betsy Whipple, started agitating and attempting to
9 prevent Jane Whipple from being able to complete that modification and/or transfer. Betsy
10 Whipple agitated Warner Whipple to get involved as co-trustee. This necessitated the filing of
11 the Petition for Declaratory relief. Jane Whipple filed a Petition seeking declaratory relief that
12 she had the authority to modify the water rights owned by Kent Whipple Ranch, LLC, that she
13 herself acquired long after the death of her husband.

14
15 Warner Whipple has filed a motion to dismiss/stay that Petition, claiming that (1) he is
16 the co-trustee; (2) that both co-trustees have to unanimously agree on any decision regarding the
17 Trust, (3) that he does not agree with Jane's ability to exercise control over the water rights
18 without his agreement. Warner Whipple has moved this Court to compel the co-trustees to go to
19 arbitration pursuant to an arbitration clause contained within the Trust agreement.

20
21 **II. Legal Argument.**

22 **A. This Matter should not be submitted to Arbitration.**

23
24 The Kent and Jane Whipple Trust arbitration clause should not compel arbitration
25 because even if the clause itself is valid, its scope is limited and would not act to require
26 arbitration under the facts here.

For instance, other courts have often found that arbitration clauses can be similarly limited in this manner. In *Royal Indem. Co. v. Chi. Hosp. Risk Pooling Program*, 406 Ill. App. 3d 1211, 376 Ill. Dec. 174, 998 N.E.2d 716 (2011), the court analyzed an arbitration clause in which the parties had agreed to arbitrate any failure to agree to a settlement in negotiations contemplated by the underlying agreement for a "covered loss". *Id.* When one party sued the other for a cause of action laying outside of a "covered loss" the dispute was outside of the scope of the arbitration clause and the district court therefore retained jurisdiction. *Id.*

In another case, the parties disputed the scope of an arbitration clause in a trust that had language applying it to "any controversy among the parties arising out of or in connection with this [Trust]." *Lusk v. AmeriServ Fin., Inc.*, 2007 U.S. Dist. LEXIS 55775, *15-16, 41 Employee Benefits Cas. (BNA) 2923 (S.D. Ind. July 31, 2007) In *Ross Brothers Construction Co. Inc. v. International Steel Services, Inc.*, the 7th Circuit recognized that the phrase, "any controversy," is the "broadest conceivable language" which thereby creates an all-encompassing arbitration clause.

The arbitration clause at issue here is not of the "all encompassing" variety. First of all, the arbitration clause is tucked in as a sub-set of Section Ten of the Trust, which primarily deals with successor trustees. The arbitration clause is not its own section. The natural reading, then, is to understand the arbitration clause by reference to its limited relation to successor co-trustees. Additionally, the arbitration clause is limited to the "event of a disagreement" at a time when there are only two co-trustees, where the trustees aim to act "hereunder" the Trust powers assigned to them. Properly understood, this means that whenever the co-trustees disagree on how to exercise their explicit powers, the dispute must be arbitrated.

1 However, the dispute raised by the petition is not a dispute about how to act, it is a
2 dispute regarding the underlying power of the trustees. The Petition for declaratory relief lies
3 outside the scope of the arbitration clause. As argued above, the property in question are water
4 rights which would fall under the property of "Trust A", which the founding trust documents say
5 that she has the full ability to control or transfer for her own benefit. The water rights property in
6 question should not be subject to an arbitration dispute with co-Trustee Warner Whipple because
7 there is no trustor, trustee, or beneficiary other than Jane Whipple, at least as it pertains to the
8 property in Trust A.

9
10 The arbitration clause does not cover disputes over the powers of the Trustees or the
11 meaning of the terms that created the Trust. This dispute is over a more complex legal matter,
12 namely, what property belongs to which Trust now that Trust A and Trust B have sat un-
13 partitioned for decades and Jane Whipple has acquired additional property rights during that
14 time. This is not simply a matter of the co-trustees disagreeing with one another on a decision
15 which lies within the scope of their powers pursuant to the Trust, but is a dispute over the nature
16 of the Trust, the owners of property, and the powers and responsibilities of the co-trustees. Jane
17 Whipple is not asking for the Court to resolve a dispute between co-Trustees, she is asking the
18 Court to declare that she does not need the permission of the co-Trustee to modify water rights
19 acquired after Kent Whipple's death.

20
21 The Motion spends considerable time arguing that the arbitration clause is enforceable.
22
23 Petitioner does not argue that the arbitration clause is unenforceable in principle, but rather that
24 the arbitration clause's scope is limited to situations where the co-trustees cannot agree on how
25 to act within their clearly defined powers. This dispute is over the *definition* of the powers of the
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1 co-trustees as applied to the facts of this case, and whether Warner Whipple has any say over
2 what happens to the water rights all-together. For this reason, the Court should deny the Motion
3 and should grant the relief requested in the Petition.

4 B. Establishing Trusts A and B.

5 Even if this Court believes that the Trust should have been divided into Trust A and Trust
6 B, Warner Whipple now seeks to compel arbitration on property that would definitively be a part
7 of Trust A, and the co-trustee has no authority to dictate what happens with that property.
8 Specifically, Jane Whipple has the complete authority to utilize, exhaust, or remove the property
9 held by Trust A at any time before her death. The property of Trust A only goes to the benefit of
10 the potential beneficiaries if Trust A contains property at the time of Jane Whipple's death.
11

12 The Trust's establishing document indicates that: "The entire net income from Trust A
13 shall be paid to or applied for the benefit of the surviving trustor [...]" (pg. 08/24). Furthermore,
14 the Trust indicates that if Jane shall survive Kent, that: "She shall have the power, exercisable in
15 all events and at any time [...] to withdraw all or any part of the principle of Trust "A", and
16 require the Trustee to distribute the same to her, discharged of this Trust. Such power may be
17 exercised by written instrument filed with the Trustee." In this basis, it is clear that Jane was
18 intended to have complete control of the subdivision of the Trust entitled Trust A. She should be
19 considered the sole trustor and trustee of Trust A and should not need the permission of the co-
20 Trustee to manage the assets of Trust A.
21

22 As the sole trustor and trustee of Trust A, Jane Whipple founded Kent Whipple Ranch,
23 LLC, which at that point would have been recognized as property which belonged solely to Trust
24 A. Subsequently, water rights were obtained by that LLC, and as a result, are owned by Trust A.
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1 of which Jane Whipple is the sole trustor and trustee. As a result, Warner Whipple should not
2 have the ability to dictate what happens (or prevent Jane from deciding what happens) to the
3 water rights which were obtained subsequent to Kent Whipple's death. Such water rights were
4 never community property, and could not have become part of Trust B if the trusts were
5 portioned upon Kent Whipple's passing.
6

7 In sum, the Motion to Dismiss the Petition should be denied. The co-trustee, even under a
8 reading most favorable to Warner Whipple, has no authority under the trust to dictate what
9 happens with property acquired by Jane Whipple after Kent Whipple's death. Any such property
10 would naturally fall under Trust A which can be exhausted or removed from the Trust at the sole
11 discretion of Jane Whipple. Arbitration would be entirely inappropriate as it pertains to property
12 in Trust A and/or any property acquired by Jane Whipple after Kent Whipple's death.
13

14 C. Warner Whipple has Breached his Fiduciary Duty as Trustee

15 Furthermore, Warner Whipple has breached and is continuing to breach his fiduciary
16 duty as the appointed co-trustee. At minimum, the theoretical Trust A is intended to be used
17 solely for the benefit of Jane Whipple, in her complete discretion, yet Warner Whipple's actions
18 have been entirely against the interests of Jane Whipple.
19

20 As co-trustee, Warner Whipple has a fiduciary duty to Jane Whipple and any other
21 beneficiaries. This duty includes that he should not act willfully and purposefully to delay or
22 hinder the Trust's valid and everyday functioning. Specifically, the co-trustee must "at all times
23 be fully informed" regarding the Trust, communicate with the other parties, and do his due
24 diligence regarding the trust's assets (Section Ten of the Trust).
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Warner Whipple has an ongoing duty to communicate with the other parties. Instead, he has acted to bully Jane Whipple and delay property modifications which would benefit all the possible beneficiaries of the trust. This Motion would only further the ongoing breach of his fiduciary duty, and on that basis, should be denied.

D. Conclusion.

In sum, the Motion filed to dismiss or stay the Petition should be denied. First, the arbitration clause is inapplicable here because that clause only set out that the co-trustees would utilize an arbitrator after they failed to reach an agreement on how to act under the trust. Here, Warner Whipple has not done any of his due diligence or even attempted to work with the co-trustee Jane Whipple, and therefore he cannot invoke arbitration. Second, the arbitration clause was limited in scope. The dispute here is about the power(s) of the trustees and not about any disagreement about how to act.

For these reasons, we ask that this Court deny the Motion to stay/deny the petition, and instead to grant the declaratory relief requested in that petition.

JUSTICE LAW CENTER

/s/ Alissa Engler
1100 S. Tenth Street
Las Vegas, Nevada 89104
(702) 731-0000

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Rules of Civil Procedure, I certify under penalty of perjury that on this date, I caused the foregoing OPPOSITION to be served on all parties to this action by delivering a true copy thereof as follows:

- ☐ Faxed
☐ Hand Delivered
☒ Regular Mail
☐ Overnight Mail

Nick A Moschetti
Bingham Snow & Caldwell
840 Pinnacle Court, Suite 202
Mesquite NV 89027

THIS 11 day of December, 2015.


AN EMPLOYEE OF JUSTICE LAW CENTER

Case No. CV 0930015

Dept. No.: 1

BINGHAM SNOW & CALDWELL

Nick A. Moschetti, Nevada Bar No. 0920

Jedediah Bo Bingham, Nevada Bar No. 9511

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www.binghamsnow.com

Attorneys for Co-Trustee Warner Whipple

**IN THE SEVENTH DISTRICT COURT, IN AND FOR
LINCOLN COUNTY, NEVADA**

In re THE KENT AND JANE WHIPPLE
TRUST, dated March 17, 1969, Jane
Whipple, Co-Trustee (erroneously named
as Trustee), and amendments thereto,
JANE WHIPPLE,

Petitioner.

**REPLY IN SUPPORT OF MOTION TO
COMPEL ARBITRATION**

COMES NOW Warner Whipple, duly appointed and acting Co-Trustee of the Kent and Jane Whipple Trust, dated March 17, 1969 (the "Trust"), by and through his undersigned attorney Nick A. Moschetti, Jr. of the law firm of Bingham Snow & Caldwell, and files this Reply in Support of the Motion to Dismiss Petition or Alternatively to Stay Petition and to Compel Arbitration.¹

INTRODUCTION

While there is a material disagreement as to certain underlying issues, there is no significant disagreement between the Co-Trustees regarding the salient facts in this Motion. The

¹ Although the Motion is styled as a Motion to Dismiss or to Stay Proceedings, pursuant to case law from the Nevada Supreme Court, the appropriate procedural course is to stay the Petition, pending arbitration, not dismiss it. See *AJS Const. v. Pankoff*, 2013 WL 5445188 at *1 (Nev. 2013) (unpublished).

1 law is clear. A motion to compel arbitration must be granted unless it appears "with positive
2 assurance" that an arbitration clause does not apply to a particular controversy.² Significantly,
3 the party opposing arbitration bears the extremely heavy burden of overcoming the presumption
4 in favor of arbitration by proving beyond a reasonable doubt that the subject dispute is not
5 subject to arbitration.³

6 Once the Court determines that an arbitration clause is valid, all other matters as to the
7 scope of arbitration are to be decided by the arbitrator. Further, the reviewing court is not to
8 make any determinations regarding the merits of the parties' contentions; its only role is to
9 "summarily" determine the validity of an arbitration agreement.⁴ The Court's role here is plain,
10 because the arbitration agreement clearly encompasses any disagreement between co-trustees,
11 the instant dispute must go to arbitration.

12 REBUTTAL FACTS

13 As for the undisputed facts, Kent and Jane Whipple set up the Trust to provide both
14 income for the surviving spouse and to protect the inheritances of the remainder beneficiaries,
15 their five children.⁵ To accomplish this goal, Kent and Jane dictated that, upon the death of
16 either of them, the Trust *res* must be divided into two sub-trusts.⁶ The surviving spouse's sub-
17 trust (the "A Share") was to be funded with the surviving spouse's share of the community
18 property and the surviving spouse was to be granted liberal access to the income from the A
19 Share. The decedent's sub-trust (the "B Share") was to be funded with all property of the Trust
20 not put into the A Share and preserved (except for any amounts necessary to maintain the
21 surviving spouse's standard of living *after* exhaustion of the A Share) exclusively for the benefit
22 of the remaining beneficiaries, the Trustors' five children.⁷

23 In addition to requiring the Trust property to be divided into the separate shares upon the
24 first spouse's death; the Trust also provided that Jane would never have unilateral control over
25 Trust assets. Instead, the Trust required co-trustees for all matters relating to the Trust. Section

26 ² *Dryer v. Los Angeles Rams*, 709 P.2d 826, 830 (Cal. 1985) (*In Bank*).

27 ³ *Dryer*, 709 P.2d 826, 830 (Cal. 1985) (*In Bank*).

28 ⁴ NRS 387.221(2) (West 2015).

⁵ See generally Exhibit A, Whipple Trust at p. 3-7.

⁶ Exhibit A, Whipple Trust at p. 4-5.

⁷ Exhibit A, Whipple Trust at p. 8-9.

1 Ten of the Trust sets forth the means by which trustees and successor trustees for the Trust are
2 selected and governed. Significantly, the trustors determined that if Jane died first, Kent would
3 be the sole trustee with control over all Trust assets, including those in the A Share and B
4 Share.⁸ However, the Trust mandated that, should Kent die first (which is what actually
5 occurred), Jane would always serve as co-Trustee only, with at least one co-Trustee always
6 overseeing her actions in regards to Trust assets:

7
8 Upon the resignation, inability to act, or death of JANE WHIPPLE, then KENT
9 WHIPPLE shall act as the sole Trustee. Upon the resignation, inability to act, or
10 death of KENT WHIPPLE, then JANE WHIPPLE and KEITH MURRAY
11 WHIPPLE shall act as Successor Co-Trustees.

12
13 ...
14 Each Successor Co-Trustee must at all times be fully informed of *each and every*
15 official act performed by the other Trustees and must be furnished with an
16 accounting of all income, expenditures and activities of the Trust at least
17 quarterly.

18
19 ...
20 The concurring vote of two (2) Co-Trustees shall be necessary for the Trustees to
21 act hereunder. In the even of a disagreement at any time when there are only two
22 (2) Co-Trustees, then the dispute shall be submitted to arbitration in accordance
23 with the Uniform Arbitration Act of the State of Nevada.⁹

24
25 Contrary to Petitioner's contention, Section Ten does not distinguish between the A and B
26 Shares in regards to the co-Trusteeship.¹⁰ Instead, the Trust requires co-trustees for "each and
27 every" matter pertaining to the Trust "at all times." Further, Section Ten mandates that Jane
28 secure co-Trustee approval for all actions she proposes to undertake with Trust assets by
requiring unanimity in decision making and arbitration in the event of any disagreement.¹¹ The
unanimity and arbitration requirements, likewise, do not distinguish between the A and B shares
as Petitioner asks this court to do.¹²

Unfortunately, following Kent's death the A and B shares were never funded,¹³ meaning
all Trust assets remain assets of the original Trust, not either of the sub-trusts. All income or

25 ⁸ Exhibit A, Whipple Trust at p. 19-20.

26 ⁹ Exhibit A, Whipple Trust at p. 19-20 (emphasis added).

27 ¹⁰ Exhibit A, Whipple Trust at p. 20.

28 ¹¹ Exhibit A, Whipple Trust at p. 20.

¹² Exhibit A, Whipple Trust at p. 20.

¹³ See Petition at ¶4.

1 increase derived from Trust property belongs to the Trust and must be administered for the
2 benefit of all the beneficiaries equally.

3 At various times following Kent's death, the Trust obtained certain water rights from the
4 State Engineer for the benefit of Trust land (the "Water Rights").¹⁴ Jane acknowledges that the
5 Water Rights are Trust assets and that the Trust paid all necessary fees for the Water Right
6 applications, etc.¹⁵ Despite these undisputed facts, Jane now claims the Water Rights are held by
7 the Trust for her exclusive benefit only. In reality, the Water Rights are unquestionably held by
8 the Trust and cannot be unilaterally controlled by Jane.

9 LEGAL ARGUMENT

10 1. The Water Rights, as after-acquired Trust property, are subject to Co-Trustee 11 authority and mandatory Arbitration.

12 Property acquired by a trustee using trust assets or by way of trust assets are trust
13 property and, as such, are subject to the terms of the documents governing the trust.¹⁶ Indeed, a
14 trustee's fiduciary duty bars her from gaining any *personal* benefit from the trust property.¹⁷ For
15 example, a trustee may not use trust property as collateral for a personal loan, even if the loan is
16 repaid in full and the trust suffers no direct harm thereby.¹⁸ In the same vein, a trustee's
17 application for water rights for use on trust property, means that any water rights ultimately
18 obtained are assets owned by the trust, not the trustee personally.¹⁹ It follows then, that water
19 rights obtained by a trustee for beneficial use on trust land are trust assets, subject to the
20 provisions of the governing trust documents.

21 ¹⁴ See e.g. Exhibit 3 to Petition. Jane cites to her affidavit for the proposition that she was
22 instrumental in getting the water rights granted by the State Engineer. Warner and his counsel
23 were never provided with a copy of Jane's affidavit and thus oppose it being provided to the
Court as an *ex parte* communication. Further, as to the substantive claim that Jane had a role in
securing the Trust's water rights, Warner disputes any such claim.

24 ¹⁵ See Petition at ¶8 and Opposition at p. 4.

25 ¹⁶ See generally NRS 164.067 (West 2015).

26 ¹⁷ *Ashley v. Burton*, No. B160305, 2003 WL 22871829 at *6 (Cal. Ct. App. 2003)
(unpublished).

27 ¹⁸ *People v. Larkin*, 413 F. Supp. 978, 983 (N.D. Cal. 1976).

28 ¹⁹ See *Benson v. State Engineer*, 131 Nev. Adv. Op. 78, 358 P.3d 221, 222, n. 1 (2015) (opining
that even though a petition for review of State Engineer actions was filed individually, the right
was actually held by the trust due to the fact that the trust was the manager of real property for
which the water right was applied).

1 In this case, there can be no dispute that the Water Rights are held by the Trust, not the
2 Jane personally and not the A Share which was never established or funded. Further, any act or
3 decision regarding the ownership or transfer of the Water Rights is subject to the provisions of
4 the Trust. Of particular import are, of course, the provisions requiring the co-trustees to reach a
5 unanimous decision as to any trust action or, in the event of a disagreement, to submit to
6 arbitration.

7 Jane's claim to the contrary flies in the face of the law, the terms of the Trust, and the
8 undisputed facts. Jane acknowledges that the A Share was never created or funded.²⁰ Jane also
9 acknowledges that the Water Rights are trust assets and that the Trust paid all of the fees
10 associated with the water right applications.²¹ Finally, all the deeds associated with the Water
11 Rights indicate that either the Kent and Jane Whipple Trust or the Kent Whipple Trust²² owns
12 the Water Rights.²³ Based on the undisputed facts Jane must concede and already has conceded,
13 the Motion should be granted and the parties referred to arbitration. Indeed, the facts lead to
14 only one conclusion, the co-trustees' present disagreement regarding the disposition of the
15 Water Rights requires arbitration.

16 However, rather than admit the inevitable and save the Trust and all parties considerable
17 time and money, Petitioner makes the completely circular argument that if the A Share had been
18 funded, the Water Rights would have fallen into the A Share (for reasons unknown and wholly
19 unsupported) and therefore, Jane is entitled to 100% decision making power. Petitioner's
20 argument fails for multiple reasons. First, it omits a crucial factor, namely that at Kent's death,
21 the A Share was to be funded with only Jane's share of the community property; all of the rest
22 of the Trust property was to be placed in Share B exclusively for the benefit of the remaining
23 beneficiaries (Kent and Jane's children).²⁴ Moreover, Jane couldn't touch the B Share until the
24 A Share was completely exhausted and the co-trustee was satisfied that distributions from the B

25 ²⁰ See Petition at ¶4.

26 ²¹ Opposition at p. 3.

27 ²² If anything, the fact that the Water Rights were granted to the Kent Whipple Trust or the Kent
28 Whipple Ranch would indicate intent, at the time the Water Rights were granted, that they held
by the B Share, which was the decedent's (Kent Whipple) trust, not the survivor's trust for Jane.

²³ See Exhibit 3 to Petition (included herewith as Exhibit B for reference).

²⁴ Exhibit A, Whipple Trust at p. 8-9.

1 Share were necessary for Jane's maintenance.²⁵ This structure evidenced a clear intent on the
2 part of the trustors to set aside a portion of the Trust property for the near-exclusive benefit of
3 their children and to protect those assets from all other claims and actions, including those of
4 Jane. Thus, contrary to Petitioner's claims, other than Jane's share of the community property
5 (the extent of which is currently unknown), Jane is prohibited from making any use at all of the
6 Trust assets without the express agreement or consent of the co-Trustee.

7 How many of the Water Rights (if any) would have been fallen into the A or B Shares
8 had those been properly funded is unknown and undetermined. However, Petitioner's claim that
9 the entirety of the Trust assets—including the Water Rights (which are presumably the most
10 valuable of the Trust assets)—somehow belong in the A Share simply because the A and B
11 Shares were not funded or because she allegedly had some role in filling out water right
12 applications after Kent's death fails on its own terms. Moreover, Petitioner's argument, if true,
13 would circumvent the Trust protections and fail to carry out the Trustors' intent to preserve
14 Trust assets for the children. More specifically, the Trust documents mandate that at least half
15 (assuming 100% of the Trust assets were community assets, which is also undetermined at this
16 point) if not more of the Trust assets be preserved for the benefit of the Trustors' children. The
17 Petition, if granted, would undermine the Trust and the trustors' intent at the expense of the
18 children. For this and related reasons, Warner disagrees with and opposes the Petition, thereby
19 requiring arbitration of the dispute, which is precisely what the Trust contemplates in such a
20 situation.

21 Given that the A and B Shares were not funded, the Trust assets (including the Water
22 Rights) are not *a priori* assets of the non-existent A Share, rather they are owned by the Trust
23 and must be managed by the co-Trustees for the benefit of all Trust beneficiaries, including the
24 beneficiaries of the B Share, the children.

25 ///

26 ///

27 ///

28 ²⁵ Exhibit A, Whipple Trust at p. 8-9.

1 **2. The clear language of the trust documents mandate arbitration of all disputes and the**
2 **Opposition does not overcome the presumption in favor of arbitration.**

3 Nevada law is clear that any agreement to arbitrate must be enforced and the matter
4 submitted to arbitration.²⁶ Arbitration agreements are to be interpreted and enforced according
5 to their plain language. This strict requirement is at least part of the reason why any court
6 decision not to enforce an arbitration clause is reviewed *de novo*.²⁷ Under the Uniform
7 Arbitration Act, although the court can decide whether a controversy is subject to arbitration,
8 the arbitrator must decide if conditions precedent to arbitration have been satisfied.²⁸ Further,
9 because of the strong public policy favoring arbitration of disputes, even if an arbitration clause
10 contains ambiguities or raises a reasonable doubt as to the enforceability or applicability of an
11 arbitration clause to a particular dispute, it must be interpreted in favor of arbitration if at all
12 possible.²⁹ A motion to compel arbitration should not be denied unless it appears "with positive
13 assurance" that an arbitration clause should not apply to a particular controversy.³⁰ A party
14 opposing arbitration has an extremely heavy burden in seeking to overcome the presumption in
15 favor of arbitration.

16 Even the cases cited by Petitioner in the Opposition support the well-accepted majority
17 position cited above. They also make clear that the only circumstance where an arbitration
18 clause may be unenforceable is where the arbitration clause itself limits the scope of mandatory
19 arbitration and where the subject dispute is significantly removed from the ambit of that scope.
20 This is not one of those cases. The *Royal Indemnification* case, an unpublished Illinois opinion
21 cited by Petitioner, simply upheld the well-established proposition that one cannot be required
22 to arbitrate under an arbitration agreement it did not consent to.³¹ Likewise, the *Lusk* and *Ross*
23 *Brothers* cases actually support sending the parties in this matter to arbitration because the Trust
24 includes the same type of broad arbitration language, which likewise mandated arbitration in

25 ²⁶ NRS 38.219(1) (West 2015).

26 ²⁷ *Mediterranean v. Ssangyong*, 708 F.2d 1458,

27 ²⁸ NRS 38.219(3) (West 2015).

28 ²⁹ *Titolo v. Cano*, 68 Cal. Rptr.3d 616, 620 (Cal. Ct. App. 2007).

29 ³⁰ *Dryer v. Los Angeles Rams*, 709 P.2d 826, 830 (Cal. 1985) (*In Bank*).

30 ³¹ *Royal Indem. v. Hosp. Risk*, 2011 WL 9693718 at *6 (Ill. Ct. App. 2011) (*unpublished*)
31 (erroneously cited by Jane as 406 Ill. App. 3d 1211, 998 N.E.2d 716 (2011)) (holding that
32 subrogee was not bound by insured's agreement to arbitrate).

1 those cases.³² As the court in *Lusk* pointed out, when an agreement includes language requiring
2 "any controversy" to be arbitrated, the agreement is an *unlimited* submittal to arbitration.³³ In
3 such a case, *no* disagreement or controversy between the parties falls outside the scope of the
4 mandated arbitration and motions to compel should be granted as a matter of course.³⁴

5 The arbitration clause in this matter is an unlimited agreement to arbitrate. The operative
6 language is not "tucked away" in the Trust documents; rather, it is front and center in Section
7 Ten setting forth the nature and powers of the co-trusteeship:

8 The concurring vote of two (2) Co-Trustees shall be necessary for the Trustees to
9 act hereunder...In the event of a disagreement at any time when there are only two
10 (2) Co-Trustees, then the dispute shall be submitted to arbitration in accordance
11 with the Uniform Arbitration Act of the State of Nevada.³⁵

12 Section Ten sets forth the manner in which the decision making for the Trust was to be
13 governed, which depended upon which spouse died first. It clearly provided that if Kent died
14 first, Jane's authority over Trust assets would be limited. It was "necessary" for Jane to act with
15 a co-trustee.³⁶ Section Ten further set forth that any disputes between Jane and the co-trustee
16 were to be resolved through arbitration. The plain language of Section Ten requires co-trustees
17 over all matters and there is nothing whatsoever suggesting that co-trustees were only intended
18 as to subtrust B.

19 Equally clear is the fact that there was no limitation on the type of disputes mandating
20 arbitration. This is an arbitration agreement like that in the *Lusk* case, by which the co-trustees
21 are required to submit *any* disagreement whatsoever between them to arbitration. On its face,
22 the language belies any interpretation that the arbitration clause only applies to the selection of
23 co-trustees or management of B Share assets. The Trust says: "In the event of a disagreement *at*

24
25 ³² See *Lusk v. Ameriserve Financial*, No. 1:06-cv-1820-SEB-JMS, 2007 WL 2228561 at *6-*7
26 (S.D. Ind. 2007) (*unpublished*).

27 ³³ *Lusk*, 2007 WL 2228561 at *6.

28 ³⁴ *Lusk*, 2007 WL 2228561 at *6.

³⁵ Exhibit A, Whipple Trust at p. 19-20.

³⁶ Exhibit A, Whipple Trust at p. 20.

1 any time when there are only two Co-Trustees, then the dispute shall be submitted to
2 arbitration...³⁷

3 The language of Section Ten is not ambiguous, but even if it were, Petitioner would
4 have the burden of proving beyond a reasonable doubt that the instant controversy is not subject
5 to arbitration.³⁸ This Petitioner cannot do. Petitioner claims that Jane is, in essence the sole
6 trustee of "Share A" and as such, Section Ten whereby she is required to always act with a co-
7 trustee, does not apply to her. As an initial matter, this argument fails because Share A was
8 never funded following Kent's death.³⁹ All of the Trust assets, including the Water Rights are in
9 the Trust and are subject to Co-Trustee Warner Whipple's joint decision making powers.

10 Even if Share A *had* been funded following Kent's death, Jane's authority to act would
11 nonetheless be constrained by the co-trustee unanimity requirement and the arbitration clause.
12 The Trust itself does not anywhere distinguish between trustees' authority to act as to the Trust
13 as a whole or the trustees' authority to act as to Share A or Share B. It simply says that, in the
14 event Kent died first, that Jane's could not act in relation to the Trust without the mutual
15 consent of the co-trustee.⁴⁰ Section Ten itself shows that Jane and Kent understood how to
16 exempt trustee actions from the arbitration provision: the clause requiring the co-trustees to
17 account to each other and provide audits upon request is specifically exempted from arbitration:

18 Any individual Co-Trustee shall have the right to demand a complete audit of the
19 Trust by an independent firm of Certified Public Accountants at the expense of
20 the Trust at any time or from time to time, without the consent of the other Co-
Trustees, and **this power shall not be subject to arbitration.**⁴¹

21 If there had been intent by the trustors to exempt either the A or B shares from co-trustee joint
22 decision making or mandatory arbitration, they certainly would have done so. The fact that
23 Share A is not specifically exempted from either the co-trustee decision making process or
24 mandatory arbitration language is fatal to Petitioner's claim. Even if the A Share *had* been
25

26 ³⁷ Exhibit A, Whipple Trust at p. 20.

27 ³⁸ *Dryer*, 709 P.2d 826, 830 (Cal. 1985) (*In Bank*).

28 ³⁹ See Petition for Declaratory Relief at ¶3.

⁴⁰ Exhibit A, Whipple Trust at p. 20.

⁴¹ Exhibit A, Whipple Trust at p. 20 (emphasis added).

1 funded and the Water Rights *were* in the A Share (which the Co-Trustee does not concede),
2 decisions as to the ownership or disposition of those Water Rights would still be subject to joint
3 unanimous decision making and mandatory arbitration. That is not to say that Jane is not a
4 beneficiary of the Trust. It simply means that the trustors expressly agreed and took explicit
5 steps to ensure that Jane would not be acting alone in relation to the Trust. Failing to enforce the
6 arbitration provision would undermine those efforts and throw the long-standing rules
7 governing estate planning into chaos. The principal objective when interpreting a trust is to
8 carry out the intent of the trustor.

9 Petitioner argues that, because Jane has the unexercised authority to demand a
10 distribution from the A Share, she is in fact the sole trustee of the A Share. The plain language
11 of the Trust (and the words omitted from Jane's quotations of the Trust) belies this claim. An
12 accurate quotation of the clause Jane claims makes her a sole trustee of the A Share actually
13 makes explicit the co-trusteeship:

14 She shall have the power, exercisable in all events and at any time or from time to
15 time after the Husband's demise to withdraw all or any part of the principal of
16 Trust "A" **and to require the Trustee to distribute the same to her, discharged**
17 **of this Trust. Such power may be exercised by written instrument filed with**
18 **the Trustee.**⁴²

19 If the A Share *had* been funded and if Jane *had* been inclined to exercise this power, she still
20 would have been required to make a written demand for distribution on the co-trustee and
21 establish that the A Share had not already been fully dissipated or distributed.⁴³ Even before
22 getting to that point, a determination would be required as to what assets were in Share A and
23 what assets in Share B. To do that would require the assets to be valued. It may be that the
24 Water Rights in question exceed the total value that could be properly assigned to Share B. At
25 this point, there is certainly no agreement as to the value of the Trust assets or that the Water
26 Rights are part of Share A.

27 Notwithstanding the need to first resolve those overarching disagreements, Petitioner's
28 argument still fails because the exercise of power over Share A would still be subject to co-

⁴² Exhibit A, Whipple Trust at p. 6 (emphasis added).

⁴³ Exhibit A, Whipple Trust at p. 6.

1 trusteeship authority and decision making (and thus the arbitration clause). In any event, the
2 effect of Jane's right to demand a distribution from the trustee (as set forth above) as to Share A
3 is purely hypothetical because the A Share has never been funded and there is no consensus as
4 to value, which means Petitioner cannot use a tortured interpretation of a clause which applies
5 to a non-existent sub-trust to wish away Co-Trustee Warner Whipple's duties and decision
6 making authority in connection with the Trust and the distribution or transfer of its assets.

7 The only other basis put forward by Petitioner is the location of the arbitration clause in
8 the Trust. The contention is weak and wholly insufficient for the court to depart from the clear
9 statement of intent in the Trust. Indeed, in the *Lusk* case cited by Petitioner, the arbitration
10 agreement (which the court concluded was fully enforceable), was contained only in Sections
11 4.6 and 9.11 and of the agreements between those parties.⁴⁴ An arbitration clause must be
12 located somewhere in the agreement and the fact that it is one particular section does not
13 suggest that it only applies to that section. Further, given that Section Ten of the Trust in this
14 case governs the selection and operation of the trustees, it makes sense that the unanimity and
15 arbitration clauses were included there. Section Ten shows that Kent was concerned about Jane
16 exercising sole authority over the Trust assets following his death and Jane accepted and agreed
17 to the provisions included to address those concerns. Jane and Kent agreed that Jane could not
18 make any decisions without the full consent of the co-trustee. Petitioner's arguments to the
19 contrary fall well short of the burden of proof she is required to carry to exempt this case from
20 arbitration.

21 **3. Warner has not violated but is fulfilling his fiduciary duties by seeking to protect all**
22 **beneficiaries of the Trust.**

23 It goes without saying that the trustee of a trust owes fiduciary duties to *all* beneficiaries
24 of the trust; this includes the duty to treat fairly all beneficiaries of the trust.⁴⁵ Warner's
25 disagreement with Jane regarding the Water Rights and her Petition with this court comes down
26 to the fact that the Trust itself evidences a clear intent on the part of the Trustors that a
27 significant portion of the Trust assets (at least half, and potentially much more) be protected
28 from Jane and preserved for the benefit of the other beneficiaries. The Petition is, as Jane

⁴⁴ *Lusk*, 2007 WL 2228561 at *3.

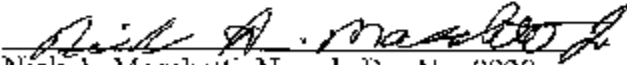
⁴⁵ *In re Orpheus Trust*, 124 Nev. 170, 174, 179 P.3d 562, 565-66 (2008).

1 admits, a means by which she hopes to gain exclusive control over the Water Rights. Warner
2 disagrees with the proposed action and the claimed right of title. He is fulfilling his duties in
3 ensuring that the trustors' intent is respected and carried out. Accordingly, he requests that the
4 parties' dispute be submitted to arbitration as required by the Trust.

5 CONCLUSION

6 For the foregoing reasons, Warner requests that the court refer this case to arbitration
7 forthwith.

8 Respectfully submitted this 22 day of December, 2015.

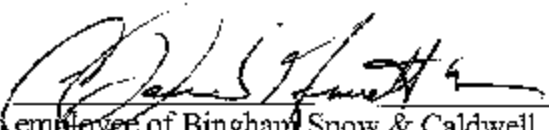
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12 Nick A. Moschetti, Nevada Bar No. 0920
13 Jodediah Bo Bingham, Nevada Bar No. 9511
14 Attorneys for Warner Whipple, Co-Trustee
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of Bingham Snow & Caldwell, and that on this day, I caused a true and correct copy of the foregoing document to be served to the following:

ADDRESSES OF RECIPIENT	PARTIES REPRESENTED	METHOD OF SERVICE
Matthew D. Carling Cedar Legal 1100 S. 10 th St. Las Vegas, NV 89101 cedarlegal@gmail.com	Jane Whipple, in her capacity as co-trustee of the Kent and Jane Whipple Trust	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> Email / E-File <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Mail
Alissa Engler Justice Law Center 1100 S. Tenth Street Las Vegas, NV 89104 alissaengler@justice-law-center.com	Jane Whipple, in her capacity as co-trustee of the Kent and Jane Whipple Trust	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> Email / E-File <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Mail

Dated this 22nd day of December 2015.


An employee of Bingham Snow & Caldwell

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EXHIBIT - A

1 THIS TRUST AGREEMENT is entered into between KENT
2 WHIPPLE, also known as KENT O'NEIL WHIPPLE, and JANE WHIPPLE, also
3 known as JANE ELEANOR R. WHIPPLE, also known as BETTY JANE WHIPPLE,
4 his wife, hereinafter referred to as the "Trustors", or separately
5 as "Husband" and "Wife" respectively, and KENT WHIPPLE and JANE
6 WHIPPLE, hereinafter jointly referred to as the "Trustee".
7

8 ONE: The Trustors, desiring to establish a Trust,
9 have assigned, transferred and delivered, and by these presents
10 do assign, transfer and deliver to the Trustee all of the real
11 property and personal property of every nature whatsoever belong-
12 ing to the Trustors, including, but not limited to, the property
13 described in Schedule "A" attached hereto and made a part of this
14 Trust Agreement. Receipt is hereby acknowledged by the Trustee
15 of the assets enumerated in Schedule "A". The Trustors may from
16 time to time add additional properties or policies of insurance
17 to this Trust by transferring such property or assigning such
18 policies to the Trustee, or by causing the Trustee to be named as
19 beneficiary thereunder. In either case, such property and
20 policies of insurance, and their proceeds, shall be subject to the
21 terms and conditions of this Agreement.

22 TWO: No consideration was nor will be given to or
23 by the Trustee for the conveyance or transfer to him of any of
24 the Trust Estate. The Trustee accepts such title to the Trust
25 Estate as is conveyed or transferred to him hereunder without
26 liability or responsibility for the condition or validity of such
27 title, and the Trust Estate has been or will be conveyed or trans-
28 ferred to the Trustee, IN TRUST, with power of sale, for the uses
29 and purposes herein provided.

30 THREE: The Trustee acknowledges that he may be named
31 as beneficiary under insurance policies of the Trustors, and
32 agrees to hold the same and the proceeds thereof subject to the

1 THIS TRUST AGREEMENT is entered into between KENT,
2 WHIPPLE, also known as KENT O'NEIL WHIPPLE, and JANE WHIPPLE, also
3 known as JANE ELEANOR R. WHIPPLE, also known as BETTY JANE WHIPPLE,
4 his wife, hereinafter referred to as the "Trustors", or separately
5 as "Husband" and "Wife" respectively, and KENT WHIPPLE and JANE
6 WHIPPLE, hereinafter jointly referred to as the "Trustee".
7

8 ONE: The Trustors, desiring to establish a Trust,
9 have assigned, transferred and delivered, and by these presents
10 do assign, transfer and deliver to the Trustee all of the real
11 property and personal property of every nature whatsoever belong-
12 ing to the Trustors, including, but not limited to, the property
13 described in Schedule "A" attached hereto and made a part of this
14 Trust Agreement. Receipt is hereby acknowledged by the Trustee
15 of the assets enumerated in Schedule "A". The Trustors may from
16 time to time add additional properties or policies of insurance
17 to this Trust by transferring such property or assigning such
18 policies to the Trustee, or by causing the Trustee to be named as
19 beneficiary thereunder. In either case, such property and
20 policies of insurance, and their proceeds, shall be subject to the
21 terms and conditions of this Agreement.

22 TWO: No consideration was nor will be given to or
23 by the Trustee for the conveyance or transfer to him of any of
24 the Trust Estate. The Trustee accepts such title to the Trust
25 Estate as is conveyed or transferred to him hereunder without
26 liability or responsibility for the condition or validity of such
27 title, and the Trust Estate has been or will be conveyed or trans-
28 ferred to the Trustee, IN TRUST, with power of sale, for the uses
29 and purposes herein provided.

30 THREE: The Trustee acknowledges that he may be named
31 as beneficiary under insurance policies of the Trustors, and
32 agrees to hold the same and the proceeds thereof subject to the

1 conditions be in stated.

2 FOUR: The Trustee, upon being informed as to the
3 death of the insured or the earlier maturity of any insurance
4 policies, shall receive the proceeds thereof and is hereby author-
5 ized to execute the necessary receipts and releases to the insur-
6 ance companies concerned.

7 FIVE: The Trustors reserve during such time as the
8 Husband and Wife are both living the following rights and powers
9 to be exercised by them, without the consent or participation of
10 the Trustee or any beneficiary of this Trust, including, with-
11 out limiting the generality, the following rights and powers:

12 (a) The right to revoke this Trust, or
13 by supplemental agreement to modify the terms of
14 this Trust from time to time without the consent of
15 the Trustee, or any beneficiary, provided, however,
16 that the duties, powers, and liability of the Trustee
17 hereunder shall not be substantially changed without
18 his written consent. Except as hereinafter provided,
19 such powers of revocation and modification are per-
20 sonal to the Trustors and shall not be assignable
21 nor accrue to any other person, nor shall they ex-
22 tend to their estates nor to their legal representa-
23 tives, nor to any beneficiary named herein nor to
24 any other person.

25 (b) To receive or apply dividends, dis-
26 ability benefits, premium refunds, proceeds of
27 matured insurance policies, loan or surrender or
28 commuted values or any other sum due under any in-
29 surance policies contributed to this Trust.

30 (c) To obtain and receive cash advances
31 or loans as may be advisable under any life insur-
32 ance policies contributed to this Trust.

1 conditions he in stated.

2 FOUR: The Trustee, upon being informed as to the
3 death of the insured or the earlier maturity of any insurance
4 policies, shall receive the proceeds thereof and is hereby author-
5 ized to execute the necessary receipts and releases to the insur-
6 ance companies concerned.

7 FIVE: The Trustors reserve during such time as the
8 Husband and Wife are both living the following rights and powers
9 to be exercised by them, without the consent or participation of
10 the Trustee or any beneficiary of this Trust, including, with-
11 out limiting the generality, the following rights and powers:

12 (a) The right to revoke this Trust, or
13 by supplemental agreement to modify the terms of
14 this Trust from time to time without the consent of
15 the Trustee, or any beneficiary, provided, however,
16 that the duties, powers, and liability of the Trustee
17 hereunder shall not be substantially changed without
18 his written consent. Except as hereinafter provided,
19 such powers of revocation and modification are per-
20 sonal to the Trustors and shall not be assignable
21 nor accrue to any other person, nor shall they ex-
22 tend to their estates nor to their legal representa-
23 tives, nor to any beneficiary named herein nor to
24 any other person.

25 (b) To receive or apply dividends, dis-
26 ability benefits, premium refunds, proceeds of
27 matured insurance policies, loan or surrender or
28 commuted values or any other sum due under any in-
29 surance policies contributed to this Trust.

30 (c) To obtain and receive cash advances
31 or loans as may be advisable under any life insur-
32 ance policies contributed to this Trust.

(d) To exercise any c. ions or privileges granted in any such policies or plans.

The rights and powers reserved in (a) through (d), inclusive, in this Paragraph FIVE shall, except as hereinafter provided, cease upon the death of either Trustor, and thereafter this Trust shall be irrevocable and shall not be subject to amendment or modification.

SIX: All property now or hereafter subject to this Trust shall constitute the Trust Estate, and shall be held, managed and distributed as hereinafter provided:

During the lifetime of the Trustors, the Trustee shall distribute the income and principal in the following manner:

(a) The Trustee shall pay or reserve sufficient funds to pay all expenses of management and distribution of the Trust Estate, including the compensation of the Trustee, all or any part of which may, in the discretion of the Trustee, be charged either to income or principal of the Trust Estate.

The remaining income shall be and is hereafter referred to as "net income".

(b) During the lifetime of both of the Trustors, the net income from the entire Trust Estate shall be distributed to or for the use and benefit of the Trustors in monthly or other convenient installments, but not less frequently than annually. If at any time during the lifetime of both of the Trustors, the net income shall be inadequate for the needs, comfort and pleasure of the Trustors, or their descendants, the Trustee may, in its discretion, pay to or apply for the benefit of said beneficiaries, in addition to the payments of income as hereinabove provided, such amounts of the

(d) To exercise any c. ions or privileges granted in any such policies or plans.

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(b) During the lifetime of both of the Trustors, the net income from the entire Trust Estate shall be distributed to or for the use and benefit of the Trustors in monthly or other convenient installments, but not less frequently than annually. If at any time during the lifetime of both of the Trustors, the net income shall be inadequate for the needs, comfort and pleasure of the Trustors, or their descendants, the Trustee may, in its discretion, pay to or apply for the benefit of said beneficiaries, in addition to the payments of income as hereinabove provided, such amounts of the

1 pri ipal of the Trust Estate as he Trustee may
2 deem necessary for said purposes.

3 (c) If at any time during the period set
4 forth in sub-paragraph (b) of Paragraph SIX, the
5 Trustors shall be incompetent or shall in the
6 judgment of the Trustee be unable for any other
7 reason to act in their own behalf, the Successor
8 Co-Trustees may, in their discretion, pay to or
9 apply for the health, support, maintenance and
10 comfort of the Trustors, or their descendants,
11 in addition to the payments of income as herein-
12 above provided, such amounts of the principal of
13 the Trust Estate as the Successor Co-Trustees may
14 from time to time deem necessary or advisable for
15 their use or benefit.

16 (d) Upon the death of either Trustor, the
17 Trustee shall segregate and divide the Trust
18 Estate into two trusts, hereinafter called Trust
19 "A" and Trust "B", which shall constitute separ-
20 ate trusts and shall be held and administered as
21 such.

22 (e) There shall be placed in Trust "A":

23 (1) The fractional share belonging to
24 the surviving Trustor of the community proper-
25 ty subject to the terms of this Trust.

26 (2) Out of the other assets subject to
27 the terms of this Trust, including those re-
28 ceived by the Trustee upon or by reason of
29 the death of the first Trustor to die, which
30 are eligible to satisfy the marital deduction,
31 the Trustee shall add to this Trust the frac-
32 tional share of said assets which is equal to

1 principal of the Trust Estate as the Trustee may
2 deem necessary for said purposes.

3 (c) If at any time during the period set
4 forth in sub-paragraph (b) of Paragraph SIX, the
5 Trustors shall be incompetent or shall in the
6 judgment of the Trustee be unable for any other
7 reason to act in their own behalf, the Successor
8 Co-Trustees may, in their discretion, pay to or
9 apply for the health, support, maintenance and
10 comfort of the Trustors, or their descendants,
11 in addition to the payments of income as herein-
12 above provided, such amounts of the principal of
13 the Trust Estate as the Successor Co-Trustees may
14 from time to time deem necessary or advisable for
15 their use or benefit.

16 (d) Upon the death of either Trustor, the
17 Trustee shall segregate and divide the Trust
18 Estate into two trusts, hereinafter called Trust
19 "A" and Trust "B", which shall constitute separ-
20 ate trusts and shall be held and administered as
21 such.

22 (e) There shall be placed in Trust "A":

23 (1) The fractional share belonging to
24 the surviving Trustor of the community proper-
25 ty subject to the terms of this Trust.

26 (2) Out of the other assets subject to
27 the terms of this Trust, including those re-
28 ceived by the Trustee upon or by reason of
29 the death of the first Trustor to die, which
30 are eligible to satisfy the marital deduction,
31 the Trustee shall add to this Trust the frac-
32 tional share of said assets which is equal to

1 the maximum marital deduction allowed for
2 Federal Estate Tax purposes in the estate of
3 said deceased Trustor, less the value of all
4 assets or interest which pass or have passed
5 to the surviving Trustor other than by the
6 terms of this Trust, and which are eligible
7 to satisfy said marital deduction.

8 (3) In making the computations and the
9 allocations of property to Trust "A" required
10 by the preceding paragraphs (1) and (2), the
11 determination of the character and ownership
12 of property and the value thereof shall be
13 finally established for Federal Estate Tax
14 purposes.

15 (4) All of the rest, residue and re-
16 mainder of the assets subject to the terms
17 of this Trust, including those received by
18 the Trustee upon or by reason of the death
19 of the first Trustor to die, shall be allo-
20 cated to Trust "B".

21 PROVISIONS OF TRUST "A".
22

23 (1) The entire net income from Trust "A" shall
24 be paid to or applied for the benefit of the surviving
25 Trustor in monthly or other convenient instalments
26 during his or her lifetime, but in no event less
27 often than annually.

28 (2) If the income is not adequate to maintain
29 the surviving Trustor in a manner similar to his or
30 her standard of living while living with the deceased
31 Trustor, the Trustee may pay to him or her, or apply
32 for his or her benefit so much of the principal of

1 the maximum marital deduction allowed for
2 Federal Estate Tax purposes in the estate of
3 said deceased Trustor, less the value of all
4 assets or interest which pass or have passed
5 to the surviving Trustor other than by the
6 terms of this Trust, and which are eligible
7 to satisfy said marital deduction.

8 (3) In making the computations and the
9 allocations of property to Trust "A" required
10 by the preceding paragraphs (1) and (2), the
11 determination of the character and ownership
12 of property and the value thereof shall be
13 finally established for Federal Estate Tax
14 purposes.

15 (4) All of the rest, residue and re-
16 mainder of the assets subject to the terms
17 of this Trust, including those received by
18 the Trustee upon or by reason of the death
19 of the first Trustor to die, shall be allo-
20 cated to Trust "B".

21 PROVISIONS OF TRUST "A".
22

23 (1) The entire net income from Trust "A" shall
24 be paid to or applied for the benefit of the surviving
25 Trustor in monthly or other convenient installments
26 during his or her lifetime, but in no event less
27 often than annually.

28 (2) If the income is not adequate to maintain
29 the surviving Trustor in a manner similar to his or
30 her standard of living while living with the deceased
31 Trustor, the Trustee may pay to him or her, or apply
32 for his or her benefit so much of the principal of

1 th Trust as he may, in his discretion, deem proper
2 or necessary for that purpose, taking into account
3 any income available to him or her from other
4 sources. The Trustee shall make such principal
5 disbursements to the surviving Trustor out of the
6 corpus of Trust "A" before making any disbursements
7 of principal to the surviving Trustor from Trust
8 "B".

9 (3) In the event the Wife survives the
10 Husband:

11 (a) She shall have the power, exer-
12 cisable in all events and at any time or
13 from time to time after the Husband's
14 demise, to withdraw all or any part of
15 the principal of Trust "A", and to require
16 the Trustee to distribute the same to her,
17 discharged of this Trust. Such power may
18 be exercised by written instrument filed
19 with the Trustee. There is further con-
20 ferred on the Wife, the absolute power to
21 distribute by her Last Will and Testament
22 the remaining assets of the Trust to any-
23 one she chooses, including her estate, her
24 creditors, or the creditors of her estate.

25 (b) If and to the extent that the
26 Wife shall fail to exercise such powers,
27 the principal and accrued and undistri-
28 buted net income of this Trust shall, upon
29 her demise, be transferred to and become a
30 part of Trust "B" and shall be held, admini-
31 stered and distributed as is hereinafter
32 provided with respect to Trust "B", excepting

1 th Trust as he may, in his discretion, deem proper
2 or necessary for that purpose, taking into account
3 any income available to him or her from other
4 sources. The Trustee shall make such principal
5 disbursements to the surviving Trustor out of the
6 corpus of Trust "A" before making any disbursements
7 of principal to the surviving Trustor from Trust
8 "B".

9 (3) In the event the Wife survives the
10 Husband:

11 (a) She shall have the power, exer-
12 cisable in all events and at any time or
13 from time to time after the Husband's
14 demise, to withdraw all or any part of
15 the principal of Trust "A", and to require
16 the Trustee to distribute the same to her,
17 discharged of this Trust. Such power may
18 be exercised by written instrument filed
19 with the Trustee. There is further con-
20 ferred on the Wife, the absolute power to
21 distribute by her Last Will and Testament
22 the remaining assets of the Trust to any-
23 one she chooses, including her estate, her
24 creditors, or the creditors of her estate.

25 (b) If and to the extent that the
26 Wife shall fail to exercise such powers,
27 the principal and accrued and undistri-
28 buted net income of this Trust shall, upon
29 her demise, be transferred to and become a
30 part of Trust "B" and shall be held, admini-
31 stered and distributed as is hereinafter
32 provided with respect to Trust "B", excepting

1 however that the Trustee in its discretion
2 may first pay out of the principal, the
3 Wife's last illness and burial expenses,
4 Federal Estate Taxes, Nevada Inheritance
5 Taxes, and any gift taxes assessed against
6 her estate, together with interest,
7 penalties, costs, Trustees' compensation
8 and attorney fees, unless other adequate
9 provisions shall have been made therefor.

10 (4) In the event the Husband survives the
11

12 Wife:

13 (a) He shall have the power, exer-
14 cisable in all events and at any time or
15 from time to time after the Wife's demise
16 to withdraw all or any part of the prin-
17 cipal of Trust "A", and to require the
18 Trustee to distribute the same to him,
19 discharged of this Trust. Such power may
20 be exercised by written instrument filed
21 with the Trustee. There is further con-
22 ferred on the Husband, the absolute power
23 to distribute by his Last Will and Testament
24 the remaining assets of the Trust to any-
25 one he chooses, including his estate, his
26 creditors, or the creditors of his estate.

27 (b) If and to the extent that the
28 Husband shall fail to exercise such powers,
29 the principal and accrued and undistributed
30 net income of this Trust shall, upon his
31 demise, be transferred to and become a part
32

1 however that the Trustee in its discretion
2 may first pay out of the principal, the
3 Wife's last illness and burial expenses,
4 Federal Estate Taxes, Nevada Inheritance
5 Taxes, and any gift taxes assessed against
6 her estate, together with interest,
7 penalties, costs, Trustees' compensation
8 and attorney fees, unless other adequate
9 provisions shall have been made therefor.

10
11 (4) In the event the Husband survives the
12 Wife:

13 (a) He shall have the power, exer-
14 cisable in all events and at any time or
15 from time to time after the Wife's demise
16 to withdraw all or any part of the prin-
17 cipal of Trust "A", and to require the
18 Trustee to distribute the same to him,
19 discharged of this Trust. Such power may
20 be exercised by written instrument filed
21 with the Trustee. There is further con-
22 ferred on the Husband, the absolute power
23 to distribute by his Last Will and Testament
24 the remaining assets of the Trust to any-
25 one he chooses, including his estate, his
26 creditors, or the creditors of his estate.

27 (b) If and to the extent that the
28 Husband shall fail to exercise such powers,
29 the principal and accrued and undistributed
30 net income of this Trust shall, upon his
31 demise, be transferred to and become a part
32

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1 of Trust "B" and shall be held, administered
2 and distributed as is hereinafter provided
3 with respect to Trust "B", excepting, how-
4 ever, that the Trustee, in its discretion,
5 may first pay out of the principal, the
6 Husband's last illness and burial expenses,
7 Federal Estate Taxes, Nevada Inheritance
8 Taxes, and any gift taxes assessed against
9 his estate, together with interest, penalties,
10 costs, Trustees' compensation and attorney
11 fees, unless other adequate provisions shall
12 have been made therefor.

13 (5) The interests of the beneficiaries in
14 principal or income shall not be subject to claims of
15 his or her creditors, nor others, nor to legal process,
16 and may not be voluntarily nor involuntarily alienated
17 nor encumbered.

18 PROVISIONS OF TRUST "B".
19

20 (1) Upon the death of the first Trustor to
21 die, if the surviving Trustor shall be in want of
22 additional monies to maintain himself or herself in
23 a manner similar to his or her standard of living
24 at the time of death of the Trustor who died first,
25 taking into account any other assets or income
26 available from other sources, including the afore-
27 said payments from Trust "A", the Trustee may, in
28 its absolute discretion, pay to or apply for the
29 benefit of the surviving Trustor so much of the
30 income or principal from this Trust as the Trustee
31 may from time to time deem necessary or advisable
32 for the health, support, maintenance and comfort

1 of Trust "B" and shall be held, administered
2 and distributed as is hereinafter provided
3 with respect to Trust "B", excepting, how-
4 ever, that the Trustee, in its discretion,
5 may first pay out of the principal, the
6 Husband's last illness and burial expenses,
7 Federal Estate Taxes, Nevada Inheritance
8 Taxes, and any gift taxes assessed against
9 his estate, together with interest, penalties,
10 costs, Trustees' compensation and attorney
11 fees, unless other adequate provisions shall
12 have been made therefor.

13 (5) The interests of the beneficiaries in
14 principal or income shall not be subject to claims of
15 his or her creditors, nor others, nor to legal process,
16 and may not be voluntarily nor involuntarily alienated
17 nor encumbered.

18 PROVISIONS OF TRUST "B".
19

20 (1) Upon the death of the first Trustor to
21 die, if the surviving Trustor shall be in want of
22 additional monies to maintain himself or herself in
23 a manner similar to his or her standard of living
24 at the time of death of the Trustor who died first,
25 taking into account any other assets or income
26 available from other sources, including the afore-
27 said payments from Trust "A", the Trustee may, in
28 its absolute discretion, pay to or apply for the
29 benefit of the surviving Trustor so much of the
30 income or principal from this Trust as the Trustee
31 may from time to time deem necessary or advisable
32 for the health, support, maintenance and comfort

1 of the surviving Trustor.

2 (2) Anything contained herein to the
3 contrary notwithstanding, no payment shall be
4 made to the surviving Trustor from the prin-
5 cipal or income of Trust "B" until such time
6 as Trust "A" is substantially exhausted both
7 as to principal and income. At such time as
8 the income and principal of Trust "A" is sub-
9 stantially exhausted, the net income of Trust
10 "B" shall be paid to the surviving Trustor
11 in monthly or other convenient installments
12 during his or her lifetime, but in no event
13 less often than annually.

14 (3) Upon the death of the surviving
15 Trustor, the remaining assets of the Trust
16 shall be divided into as many separate trusts
17 as there are children of the Trustors living,
18 providing that if any such child be then de-
19 ceased leaving issue surviving at the date of
20 such division, such deceased child shall be
21 considered as living for the purposes of such
22 division, and in that event the Trustee shall
23 set aside and distribute one of such equal
24 shares to the issue of any such deceased child
25 per stirpes. Each of the Trusts thus estab-
26 lished shall be administered as separate
27 Trusts, as hereinafter provided, but without
28 the necessity of the Trustee making physical
29 division of the assets unless the Trustee
30 deems it necessary or advisable to do so. The
31 assets set aside for the use and benefit of
32

1 of the surviving Trustor.

2 (2) Anything contained herein to the
3 contrary notwithstanding, no payment shall be
4 made to the surviving Trustor from the prin-
5 cipal or income of Trust "B" until such time
6 as Trust "A" is substantially exhausted both
7 as to principal and income. At such time as
8 the income and principal of Trust "A" is sub-
9 stantially exhausted, the net income of Trust
10 "B" shall be paid to the surviving Trustor
11 in monthly or other convenient installments
12 during his or her lifetime, but in no event
13 less often than annually.

14 (3) Upon the death of the surviving
15 Trustor, the remaining assets of the Trust
16 shall be divided into as many separate trusts
17 as there are children of the Trustors living,
18 providing that if any such child be then de-
19 ceased leaving issue surviving at the date of
20 such division, such deceased child shall be
21 considered as living for the purposes of such
22 division, and in that event the Trustee shall
23 set aside and distribute one of such equal
24 shares to the issue of any such deceased child
25 per stirpes. Each of the Trusts thus estab-
26 lished shall be administered as separate
27 Trusts, as hereinafter provided, but without
28 the necessity of the Trustee making physical
29 division of the assets unless the Trustee
30 deems it necessary or advisable to do so. The
31 assets set aside for the use and benefit of
32

1 the rustors' issue shall be held, administered
2 and distributed as follows:

3 (a) The Trustee shall set aside
4 one of such shares for each of the Trustors'
5 children by right of representation in a
6 separate trust and shall distribute so much
7 of the net income derived therefrom as in
8 the sole discretion of the Trustee may be
9 deemed necessary or advisable for such
10 child's health, support, maintenance or
11 education, including study at an institu-
12 tion of higher learning, or to commence a
13 business or profession, to or for the
14 use or benefit of such child until he or she
15 attains the age of twenty-one (21) years, and
16 any accumulated income not so required shall
17 be added to the principal of such share.
18 Thereafter, the entire net income from said
19 share shall be distributed quarterly to or
20 for the use or benefit of such child until
21 he or she attains the age of twenty-five
22 (25) years, at which time one-half (1/2)
23 of the then principal of such share shall
24 be distributed to such child; and thereafter,
25 the entire net income from the balance of
26 the principal of such share shall be distri-
27 buted quarterly to or for the use or bene-
28 fit of such child until he or she attains
29 the age of thirty (30) years, at which time
30 the entire balance of the principal of such
31 share together with any undistributed income
32 therefrom, shall be distributed to such child.

1 the rustors' issue shall be hel , administered
2 and distributed as follows:

3 (a) The Trustee shall set aside
4 one of such shares for each of the Trustors'
5 children by right of representation in a
6 separate trust and shall distribute so much
7 of the net income derived therefrom as in
8 the sole discretion of the Trustee may be
9 deemed necessary or advisable for such
10 child's health, support, maintenance or
11 education, including study at an institu-
12 tion of higher learning, or to commence a
13 business or profession, to or for the
14 use or benefit of such child until he or she
15 attains the age of twenty-one (21) years, and
16 any accumulated income not so required shall
17 be added to the principal of such share.
18 Thereafter, the entire net income from said
19 share shall be distributed quarterly to or
20 for the use or benefit of such child until
21 he or she attains the age of twenty-five
22 (25) years, at which time one-half (1/2)
23 of the then principal of such share shall
24 be distributed to such child; and thereafter,
25 the entire net income from the balance of
26 the principal of such share shall be distri-
27 buted quarterly to or for the use or bene-
28 fit of such child until he or she attains
29 the age of thirty (30) years, at which time
30 the entire balance of the principal of such
31 share together with any undistributed income
32 therefrom, shall be distributed to such child.

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1 (b) Upon the death of any such
2 child before becoming entitled to receive
3 the whole of his or her share of the Trust
4 Estate, the Trustee, after paying the ex-
5 penses of the last illness and burial of
6 such deceased child, unless such expenses
7 shall have been paid or provided for apart
8 from this Trust, shall distribute the en-
9 tire principal of such share, or so much
10 thereof as then remains, together with any
11 undistributed income therefrom, to the then
12 surviving issue of such deceased child per
13 stirpes, subject however, to the provisions
14 of sub-paragraphs (a) and (b) hereof. If
15 such deceased child shall leave no such
16 issue then surviving, the same shall be
17 added in equal portions to the shares then
18 held for the benefit of the other children,
19 and to those previously distributed there-
20 from, excluding the share of each child
21 theretofore deceased as to whom then sur-
22 vives no issue, but including by right of
23 representation the issue of any deceased
24 child. If any portion of a share has
25 theretofore been distributed, then a similar
26 portion of the added share shall likewise
27 be distributed.

28 (4) (a) If at any time during the life-
29 time of both Trustors, in the absolute dis-
30 cretion of the Trustee, any child or grand-
31 child of the Trustors, or issue of such
32 grandchildren, should be in want of

1 (b) Upon the death of any such
2 child before becoming entitled to receive
3 the whole of his or her share of the Trust
4 Estate, the Trustee, after paying the ex-
5 penses of the last illness and burial of
6 such deceased child, unless such expenses
7 shall have been paid or provided for apart
8 from this Trust, shall distribute the en-
9 tire principal of such share, or so much
10 thereof as then remains, together with any
11 undistributed income therefrom, to the then
12 surviving issue of such deceased child per
13 stirpes, subject however, to the provisions
14 of sub-paragraphs (a) and (b) hereof. If
15 such deceased child shall leave no such
16 issue then surviving, the same shall be
17 added in equal portions to the shares then
18 held for the benefit of the other children,
19 and to those previously distributed there-
20 from, excluding the share of each child
21 theretofore deceased as to whom then sur-
22 vives no issue, but including by right of
23 representation the issue of any deceased
24 child. If any portion of a share has
25 theretofore been distributed, then a similar
26 portion of the added share shall likewise
27 be distributed.

28 (4) (a) If at any time during the life-
29 time of both Trustors, in the absolute dis-
30 cretion of the Trustee, any child or grand-
31 child of the Trustors, or issue of such
32 grandchildren, should be in want of

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1 additional monies for their health, support
2 and maintenance, the Trustee may pay to or
3 apply for the benefit of such individual such
4 amounts from the income or principal of the
5 Trust Estate as the Trustee may from time to
6 time deem necessary or advisable for such
7 beneficiary's health, support, maintenance
8 or education, including study at an insti-
9 tution of higher learning.

10 (b) If at any time after the death
11 of one Trustor, and during the lifetime of the
12 surviving Trustor, in the absolute discretion
13 of the Trustee, any child or grandchild of the
14 Trustors, or issue of such grandchild, should
15 be in want of additional monies for their
16 health, support and maintenance, the Trustee
17 may pay to or apply for the benefit of such
18 individual, such amounts from the income or
19 principal of Trust "B" as the Trustee may
20 from time to time deem necessary or advis-
21 able, provided such payments do not jeopard-
22 ize the security of the surviving Trustor.

23 (c) If at any time after the death of
24 both Trustors, in the absolute discretion of
25 Trustee, any child or grandchild of the
26 Trustors should be in want of monies for
27 their health, support or maintenance, or
28 to commence a business or profession, the
29 Trustee may pay to or apply for the bene-
30 fit of such individual, in addition to
31 the payments hereinabove provided, such
32 amounts from the principal of his or her

1 additional monies for their health, support
2 and maintenance, the Trustee may pay to or
3 apply for the benefit of such individual such
4 amounts from the income or principal of the
5 Trust Estate as the Trustee may from time to
6 time deem necessary or advisable for such
7 beneficiary's health, support, maintenance
8 or education, including study at an insti-
9 tution of higher learning.

10 (b) If at any time after the death
11 of one Trustor, and during the lifetime of the
12 surviving Trustor, in the absolute discretion
13 of the Trustee, any child or grandchild of the
14 Trustors, or issue of such grandchild, should
15 be in want of additional monies for their
16 health, support and maintenance, the Trustee
17 may pay to or apply for the benefit of such
18 individual, such amounts from the income or
19 principal of Trust "B" as the Trustee may
20 from time to time deem necessary or advis-
21 able, provided such payments do not jeopard-
22 ize the security of the surviving Trustor.

23 (c) If at any time after the death of
24 both Trustors, in the absolute discretion of
25 Trustee, any child or grandchild of the
26 Trustors should be in want of monies for
27 their health, support or maintenance, or
28 to commence a business or profession, the
29 Trustee may pay to or apply for the bene-
30 fit of such individual, in addition to
31 the payments hereinabove provided, such
32 amounts from the principal of his or her

1 respective share of the Trust Estate, up to
2 the whole of said part, as the Trustee may
3 from time to time deem necessary or advisable
4 for such beneficiary's health, support, main-
5 tenance, or education, including study at an
6 institution of higher learning, or to com-
7 mence a business or profession, or the
8 Trustee may in its sole discretion during
9 any calendar year pay to or apply for the
10 benefit of such individual the greater of
11 the following amounts: FIVE THOUSAND DOLLARS
12 (\$5,000.00) or FIVE PER CENT (5%) of the
13 aggregate value of the Trust Estate set
14 aside for such beneficiary.

15 (5) The interests of beneficiaries in
16 principal or income shall not be subject to claims
17 of their creditors nor others, nor to legal process,
18 and may not be voluntarily nor involuntarily alien-
19 ated nor encumbered.

20 (6) Any other provisions hereof to the
21 contrary notwithstanding, unless terminated at an
22 earlier date under the foregoing provisions, all
23 Trusts created herein shall terminate at the expir-
24 ation of twenty-one (21) years after the death of the
25 last surviving beneficiary living on the date of
26 the execution of this Trust Agreement. If any Trust
27 created herein is terminated by reason of the oper-
28 ation of this paragraph, the Trust as then existing
29 shall go and be distributed to the persons then en-
30 titled to the income therefrom in the same proportions
31 in which they were receiving or were entitled to re-
32 ceive said income.

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1 respective share of the Trust Estate, up to
2 the whole of said part, as the Trustee may
3 from time to time deem necessary or advisable
4 for such beneficiary's health, support, main-
5 tenance, or education, including study at an
6 institution of higher learning, or to com-
7 mence a business or profession, or the
8 Trustee may in its sole discretion during
9 any calendar year pay to or apply for the
10 benefit of such individual the greater of
11 the following amounts: FIVE THOUSAND DOLLARS
12 (\$5,000.00) or FIVE PER CENT (5%) of the
13 aggregate value of the Trust Estate set
14 aside for such beneficiary.

15 (5) The interests of beneficiaries in
16 principal or income shall not be subject to claims
17 of their creditors nor others, nor to legal process,
18 and may not be voluntarily nor involuntarily alien-
19 ated nor encumbered.

20 (6) Any other provisions hereof to the
21 contrary notwithstanding, unless terminated at an
22 earlier date under the foregoing provisions, all
23 Trusts created herein shall terminate at the expir-
24 ation of twenty-one (21) years after the death of the
25 last surviving beneficiary living on the date of
26 the execution of this Trust Agreement. If any Trust
27 created herein is terminated by reason of the oper-
28 ation of this paragraph, the Trust as then existing
29 shall go and be distributed to the persons then en-
30 titled to the income therefrom in the same proportions
31 in which they were receiving or were entitled to re-
32 ceive said income.

1 SEVEN: To carry out the purposes of this Trust,
2 the Trustee is vested with the following powers in addition to
3 those now or hereafter conferred by law, affecting the Trust
4 and the Trust Estates, subject to the provisions heretofore
5 set forth in Paragraph FIVE:

6 (a) The Trustee shall have the power to
7 manage and control, invest and reinvest, sell or
8 assign, the proceeds of such life insurance policies
9 and the funds of the Trust Estate, in such invest-
10 ments as the Trustee may elect, and also in such
11 other investments as are hereinabove specifically
12 authorized. He shall have the power to exercise
13 any right or option of subscription or otherwise
14 which may at any time be given to the holders of
15 any securities of the Trust Estate.

16 (b) To manage, control, sell, convey, ex-
17 change, partition, divide, subdivide, improve, repair;
18 to grant options and to sell upon deferred payments;
19 to lease for terms within or extending beyond the
20 duration of this Trust for any purpose, including
21 exploration for and removal of gas, oil or other
22 minerals; and to enter into community oil leases.

23 (c) To retain property and to invest, and
24 reinvest as provided by law from time to time ex-
25 isting.

26 (d) To borrow; to place, replace, renew,
27 or extend any encumbrances upon any real property;
28 and to institute, compromise and defend actions
29 and proceedings.

30 (e) To participate in voting trusts, pooling
31 agreements, foreclosures, reorganizations, consoli-
32

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1 SEVEN: To carry out the purposes of this Trust,
2 the Trustee is vested with the following powers in addition to
3 those now or hereafter conferred by law, affecting the Trust
4 and the Trust Estates, subject to the provisions heretofore
5 set forth in Paragraph FIVE:

6 (a) The Trustee shall have the power to
7 manage and control, invest and reinvest, sell or
8 assign, the proceeds of such life insurance policies
9 and the funds of the Trust Estate, in such invest-
10 ments as the Trustee may elect, and also in such
11 other investments as are hereinabove specifically
12 authorized. He shall have the power to exercise
13 any right or option of subscription or otherwise
14 which may at any time be given to the holders of
15 any securities of the Trust Estate.

16 (b) To manage, control, sell, convey, ex-
17 change, partition, divide, subdivide, improve, repair;
18 to grant options and to sell upon deferred payments;
19 to lease for terms within or extending beyond the
20 duration of this Trust for any purpose, including
21 exploration for and removal of gas, oil or other
22 minerals; and to enter into community oil leases.

23 (c) To retain property and to invest, and
24 reinvest as provided by law from time to time ex-
25 isting.

26 (d) To borrow; to place, replace, renew,
27 or extend any encumbrances upon any real property;
28 and to institute, compromise and defend actions
29 and proceedings.

30 (e) To participate in voting trusts, pooling
31 agreements, foreclosures, reorganizations, consoli-
32

.. K/9J.

1 da'tions, mergers, and liquidat' s, and in connection
2 therewith, to deposit securities with and transfer
3 title and delegate discretions to any protective or
4 other committee as the Trustee may deem advisable.

5 (f) Upon any division or partial or final
6 distribution of the Trust Estate, to partition, allot,
7 and distribute the Trust Estate in undivided interests
8 or in kind, at valuations determined by the Trustee,
9 and to sell such property as the Trustee may deem
10 necessary to make division and distribution.

11 (g) To determine what is principal or
12 income of the Trust Estate and apportion and allocate
13 in his discretion, receipts and expenses as between
14 these accounts. Except insofar as the Trustee shall
15 exercise this discretion, matters relating to the
16 rights of beneficiaries among themselves as to princi-
17 pal and income shall be governed by the provisions of
18 the Principal and Income Act from time to time existing.

19 (h) The enumeration of certain powers of
20 the Trustee shall not limit its general powers, the
21 Trustee subject always to the discharge of its fidu-
22 ciary obligations, being vested with and having all
23 the rights, powers and privileges which an absolute
24 owner of the same property would have.

25 (i) Upon the death of the first to die of
26 the Husband or Wife, or upon the death of any other
27 beneficiary, the expenses of last illness and burial,
28 and any estate, inheritance, succession or other
29 death taxes, duties, charges, or assessments, to-
30 gether with interest, penalties, costs, Trustees'
31 compensations and attorney fees, which shall become
32 due or be occasioned by reason of the Trust Estate

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2 therewith, to deposit securities with and transfer
3 title and delegate discretions to any protective or
4 other committee as the Trustee may deem advisable.

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31 compensations and attorney fees, which shall become
32 due or be occasioned by reason of the Trust Estate

1 or any interest therein being includible for such
2 tax purposes, shall be paid by the Trustee out of
3 his or her share of the community property interest
4 in the Trust Estate, or his or her share of the
5 Trust Estate, as the case may be, unless other ade-
6 quate provisions shall have been made therefor. Any
7 such payments shall be charged to principal of the
8 share of the Trust Estate or the separate Trust so
9 included.

10 (j) Upon the death of the last Trustor to
11 die, all estate, inheritance, succession, or other
12 death taxes or duties (by whatever name called)
13 which shall become due by reason of the Trust Estate
14 or any portion thereof being includible for such tax
15 purposes, shall be paid by the Trustee out of the
16 said deceased beneficiary's Trust (the "A" Trust).
17 Any other costs, including Trustees' compensation
18 and attorney fees, which shall be due or be occasioned
19 by the death of the Trustors, or either of them, may
20 be paid by the Trustee out of income or principal
21 from either Trust "A" or Trust "B", unless other
22 adequate provisions shall have been made therefor.

23 (k) The Trustee shall have full power
24 and authority to pay from the Trust Estate any other
25 taxes, charges or assessments for which the Trustee, the
26 Trust Estate or any interest therein becomes liable,
27 and any such payments shall be made from and charged
28 to either income or principal of the Trust Estate
29 or any share or separate trust thereof, as the Trustee,
30 in its discretion, deems proper.

31 (l) The Trustee may make such payments
32 directly or to a personal representative or other

1 of any interest therein being includible for such
2 tax purposes, shall be paid by the Trustee out of
3 his or her share of the community property interest
4 in the Trust Estate, or his or her share of the
5 Trust Estate, as the case may be, unless other ade-
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21 from either Trust "A" or Trust "B", unless other
22 adequate provisions shall have been made therefor.

23 (k) The Trustee shall have full power
24 and authority to pay from the Trust Estate any other
25 taxes, charges or assessments for which the Trustee, the
26 Trust Estate or any interest therein becomes liable,
27 and any such payments shall be made from and charged
28 to either income or principal of the Trust Estate
29 or any share or separate trust thereof, as the Trustee,
30 in its discretion, deems proper.

31 (l) The Trustee may make such payments
32 directly or to a personal representative or other

1 f. ciary, the Trustee may rely upon a written state-
2 ment of such fiduciary as to the amount and propriety
3 of such taxes, interest, penalties, and other costs,
4 and shall be under no duty to see to the application
5 of any funds so paid.

6 (m) The Trustee shall sell assets from
7 Trust "A" to Trust "B" or between the separate Trusts
8 or shares, as may exist from time to time, on such
9 terms and at such fair market values as the Trustee
10 may determine. The Trustee may loan or advance
11 monies which are funds of the Trust Estate from any
12 one of the several trusts or shares to any of the
13 other trusts or shares as may exist from time to
14 time upon such terms, conditions and security as
15 the Trustee may, in its discretion, determine to
16 be fair and reasonable.

17 (n) Upon the death of either Trustor, the
18 Trustee may, within its discretion, purchase assets
19 from the estate of the deceased Trustor at a fair
20 value. The propriety of the purchase, the amount
21 of such assets purchased, and the ascertainment of
22 fair value shall be solely within the discretion of
23 the Trustee, and the Trustee shall incur no liability
24 as a result of such purchase or purchases whether
25 or not such assets constitute investments which may
26 ordinarily be made by Trustees. At its discretion,
27 the Trustee may loan monies which are funds of the
28 Trust Estate to the estate of the deceased Trustor,
29 upon such terms as the Trustee and the personal
30 representative of the deceased Trustor may agree.

31 (o) The Trustee shall have the power to
32 budget the estimated income and expenses of the

1 f. iary, the Trustee may rel. upon a written state-
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28 Trust Estate to the estate of the deceased Trustor,
29 upon such terms as the Trustee and the personal
30 representative of the deceased Trustor may agree.

31 (o) The Trustee shall have the power to
32 budget the estimated income and expenses of the

1 It in such manner as to equalize, as far as
2 possible, periodic income payments to the
3 beneficiaries.

4 (p) The Trustee shall not at any time be
5 required to make any accounting of the administration
6 of the Trust Estate to any court or public authority
7 whatsoever. Any and all accounting shall be made
8 to the beneficiaries of the Trust or to the legal
9 guardian or conservator of any beneficiary who
10 has not reached the age of majority, or who has
11 been declared incompetent.

12 (q) For the purposes of allocation thereof
13 between the Trusts, as hereinabove provided in
14 Paragraph SIX, for the purpose of determining
15 the nature and character of the property in the
16 event the Trust is terminated or partially revoked
17 and assets distributed to the Trustors, and for
18 tax purposes, it is the express intent of the
19 Trustors, that in the event either of the Trustors
20 hereafter acquire any separate or community pro-
21 perty and transfer the same to this Trust, said
22 separate or community property shall retain its
23 status as separate or community property subsequent
24 to the time it is transferred to this Trust. In
25 the event that any separate or community property
26 is at any time hereafter transferred out of the
27 Trust, it shall retain its character as separate or
28 community property subsequent to being transferred
29 out of the Trust.

30 EIGHT: The Trustors declare that all property in
31 which they have an interest or which stands in the name of KENT
32 WHIPPLE, a/k/a KENT O'NEIL WHIPPLE, and/or JANE WHIPPLE, a/k/a

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1 JANE ELEANOR R. WHIPPLE, is wholly commur ty property under the
2 laws of the State of Nevada, irrespective of the manner in which
3 record title is held, or has been held prior to the transfer to
4 the Trustee under this Trust.

5
6 NINE: The primary purpose of this instrument is to
7 provide for the income beneficiaries, and the rights and interests
8 of remaindermen are subordinate to that purpose. The provisions
9 of this instrument shall be construed liberally in the interests
10 of and for the benefit of the income beneficiaries.

11
12 TEN: Upon the resignation, inability to act, or
13 death of JANE WHIPPLE, then KENT WHIPPLE shall act as the sole
14 Trustee. Upon the resignation, inability to act, or death of
15 KENT WHIPPLE, then JANE WHIPPLE and KEITH MURRAY WHIPPLE shall
16 act as Successor Co-Trustees. Upon the resignation, inability
17 to act, or death of both of the original Trustees, then KEITH
18 MURRAY WHIPPLE shall act as the sole Successor Trustee. Upon the
19 resignation, inability to act, or death of KEITH MURRAY WHIPPLE,
20 then the FIRST NATIONAL BANK OF NEVADA shall act as the Successor
21 Trustee.

22 The individual Successor Co-Trustees shall be
23 entitled to compensation for their services, which shall be the
24 compensation normally charged by corporate trustees under similar
25 circumstances. The individual Trustees named herein shall serve
26 without bond.

27 Each Successor Co-Trustee must at all times be
28 fully informed of each and every official act performed by the
29 other Trustees and must be furnished with an accounting of all in-
30 come, expenditures and activities of the Trust at least quarterly.
31 Each Co-Trustee at all times shall have the right to examine any
32 and all Trust books of account, reports, files and papers of every

1 JANE ELEANOR R. WHIPPLE, is wholly community property under the
2 laws of the State of Nevada, irrespective of the manner in which
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31 Each Co-Trustee at all times shall have the right to examine any
32 and all Trust books of account, reports, files and papers of every

1 nature what's ver. Any individual Co-Trustee shall have the
2 right to demand a complete audit of the Trust by an independent
3 firm of Certified Public Accountants at the expense of the Trust
4 at any time or from time to time, without the consent of the other
5 Co-Trustees, and this power shall not be subject to arbitration.

6 The concurring vote of two (2) Co-Trustees shall be
7 necessary for the Trustees to act hereunder, when there are two
8 (2) Co-Trustees. In the event of a disagreement at any time
9 when there are only two (2) Co-Trustees, then the dispute shall be
10 submitted to arbitration in accordance with the Uniform Arbitration
11 Act of the State of Nevada.

12 ELEVEN: As used in this Trust, the singular shall be
13 deemed to include the plural, and the masculine, feminine, or
14 neuter shall be deemed to include each of the other two genders.

15 TWELVE: This Agreement has been delivered in the State
16 of Nevada. The laws of the State of Nevada shall govern the
17 validity and interpretation and administration thereof, notwith-
18 standing the residence in another jurisdiction of the Trustors or
19 of any other beneficiary hereunder.

20 THIRTEEN: As used throughout this instrument, the
21 term "issue" shall include any children of the Trustors, who may
22 hereafter be born or legally adopted, and shall include children
23 adopted by any descendant and their descendants by birth or
24 adoption.

25 IN WITNESS WHEREOF, we have hereunto set our hands this
26 17 day of March, 1969.

27 TRUSTORS:

28 Kent Whipple

29 KENT WHIPPLE, a/k/a KENT O'NEIL WHIPPLE

30 TRUSTEE:

31 Kent Whipple

KENT WHIPPLE

32 Jane Whipple

JANE WHIPPLE, a/k/a JANE ELEANOR R.
WHIPPLE

Jane Whipple
JANE WHIPPLE

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KENT WHIPPLE, s/k/a KENT O'NEIL WHIPPLE

29 TRUSTEE:

30 Kent Whipple

KENT WHIPPLE

31 Jane Whipple

JANE WHIPPLE, a/k/a JANE ELEANOR R.
WHIPPLE

32 Jane Whipple

JANE WHIPPLE

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EXHIBIT - B

BOB MILLER
Governor

STATE OF NEVADA



PETER G. MORRIS
Director

R. MICHAEL YERGEN, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

Capitol Complex
125 W. Nye Lane
Carson City, Nevada 89710
(702) 657-4380

55918, 55919, 55920

September 19, 1994

ATT: JAN BRADSHAW
KENT WHIPPLE RANCH
HIKO NV 89017

Dear Ms. Bradshaw:

Please be advised that Applications 55918, 55919 and 55920 have been assigned to show Kent Whipple Trust as current owner of record.

This assignment reflects only the information that has been filed with this office and may be subject to amendment upon receipt of additional documentation.

If you have any questions please contact this office at (702) 687-4381.

Sincerely,


Michael J. Randall
Hydraulic Engineer

MJR/pm

cc: Betsy Whipple
Southern Nevada Branch Office

RECEIVED
SEP 22 1994
Div. of Water Resources
Branch Office - Las Vegas, NV

BOB MILLER
Geologist

STATE OF NEVADA



PETER G. MORROS
Director

R. MICHAEL TURNER, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

Capital Complex
123 W. Nye Lane
Carson City, Nevada 89710
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55918, 55919, 55920

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Sincerely,


Michael J. Randall
Hydraulic Engineer

MJR/pm

cc: Betsy Whipple
Southern Nevada Branch Office

RECEIVED

SEP 22 1994

Div. of Water Resources
Branch Office - Las Vegas, NV



Form A290

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 30th day of December, 1993
first party to Kent Whipple Ranch
whose post office address is General Delivery, Hiko, NY 89017
to second party: Kent Whipple Trust
whose post office address is General Delivery, Hiko, NY 89017

WITNESSETH, That the said first party, for good consideration and for the sum of Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Lincoln, State of Nevada
to wit: Application #55918

CONFIRMATION
RECEIVED
AUG 28 1994

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:

Betty Lou Whipple

State of California
County of Los Angeles

On January 5, 1994 before me, Gary D. Gorman,

appeared Betty Lou Whipple

personally known to me (or proved to me on the basis of satisfactory evidence) 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 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



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(Revised 1/93)

Handwritten initials



Form A250

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 30th day of December, 1993
first party to Kent Whipple Ranch
whose post office address is General Delivery, Niko, NY 89017
to second party: Kent Whipple Trust
whose post office address is General Delivery, Niko, NY 89017

WITNESSETH, That the said first party, for good consideration and for the sum of Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Lincoln, State of Nevada to wit: Application #55918

DOUGLAS/UNDO
RECEIVED
AUG 28 1994

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:

Betty Lou Whipple

State of California }
County of Los Angeles }

On January 5, 1994 before me Gary D. Grouzer
appeared Betty Lou Whipple

personally known to me (or proved to me on the basis of satisfactory evidence) 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 his/her/their unadvised capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: *Gary D. Grouzer*



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Revised 2003

CP
1-94

Form A-993

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 30th day of December, 1993

First party, is Kent Whipple Ranch

whose post office address is General Delivery, Hiko, NY 89017

to second party: Kent Whipple Trust

whose post office address is General Delivery, Hiko, NY 89017

WITNESSETH, That the said first party, for good consideration and for the sum of Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Lincoln, State of Nevada to wit: Application # 55919

RECEIVED
DONOR/WHIPPLE

AUG 28 2014

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of

Betty Lou Whipple

State of California
County of Los Angeles

On January 5, 1994, before me, Gary D. Gonyea, appeared Betty Lou Whipple, personally known to me (or proved to me on the basis of satisfactory evidence) 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 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



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Form A198

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 30th day of December, 1993

first party to Kent Whipple Ranch

whose post office address is General Delivery, Niko, NV 89017

to second party: Kent Whipple Trust

whose post office address is General Delivery, Niko, NV 89017

WITNESSETH, That the said first party, for good consideration and for the sum of Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby release, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Lincoln, State of Nevada to wit: Application # 55919

RECORDED
RECEIVED

AUG 28 2014

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:

Betty Lou Whipple

State of California
County of Los Angeles

On January 5, 1994, before me, Gary D. Granger

appeared Betty Lou Whipple, personally known to me (or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) were subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their individual capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



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Noted 5/22/14

Form A394

QUITCLAIM DEED

THIS QUITCLAIM DEED, Record this 30th day of December, 19 93

first party, to Kent Whipple Ranch

whose post office address is General Delivery, Niko, NV 89017.

to second party: Kent Whipple Trust

whose post office address is General Delivery, Niko, NV 89017

WITNESSETH, That the said first party, for good consideration and for the sum of Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby certify, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Lincoln, State of Nevada

to wit: Application # 55929

CONTRACT/RECORD
RECEIVED

AUG 28 2014

IN WITNESS WHEREOF, The said first party has signed and sealed these presents this day, and year first above written.

Signed, sealed and delivered in presence of

Betty Lou Whipple

State of California
County of Los Angeles

On January 5, 1964 before me, Gary D. Granger
appeared Betty Lou Whipple
personally known to me (or proved to me on the basis of satisfactory evidence) 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
his/her/their authorized capacity(ies), and that he/she/they are the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Gary D. Granger



(Seal)



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(Revised 3/8/14)

Page 1

Form A395

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 30th day of December 1993

First party: Kent Whipple Ranch

whose post office address is General Delivery, Niko, NY 89017

to second party: Kent Whipple Trust

whose post office address is General Delivery, Niko, NY 89017

WITNESSETH, That the said first party, for good consideration and for the sum of Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Lincoln, State of Nevada to wit: Application # 55920

RECEIVED
DECEMBER 28 1993

AUG 28 2014

IN WITNESS WHEREOF, The said first party has signed and sealed this presents the day and year first above written.

Signed, sealed and delivered in presence of:

Betty Lou Whipple

State of California }
County of Los Angeles

On January 5, 1994 before me, Gary D. Granger, appeared Betty Lou Whipple, personally known to me (or proved to me on the basis of satisfactory evidence) 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 his/her/their individual capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: *Gary D. Granger*



(Seal)



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(Revised 2/93)

Granger
12/28/93

SUPPLEMENTAL TRUST AGREEMENT

THIS SUPPLEMENTAL TRUST AGREEMENT is entered into between KENT WHIPPLE, also known as KENT O'NEIL WHIPPLE, and JANE WHIPPLE, also known as JANE ELEANOR R. WHIPPLE, also known as BETTY JANE WHIPPLE, his wife, hereinafter referred to as the "Trustors" or separately as "Husband" and "wife" respectively, and KENT WHIPPLE and JANE WHIPPLE, hereinafter jointly referred to as the "Trustee".

WHEREAS these Trustors entered into a Trust Agreement dated March 17, 1969 and wish to hereby modify certain terms of the trust, and as modified to ratify, confirm and readopt said trust and all actions heretofore taken by the Trustors and Trustee.

NOW THEREFORE, pursuant to the express powers reserved in said Trust Agreement of March 17, 1969, the following amendments and modifications are hereby made to said Trust Agreement:

FIRST: Article "SIX": (d) is hereby amended to read as follows:

"(d) Upon the death of either Trustor, the Trustee shall divide the trust estate into two (2) trusts, hereinafter called Trust "A" and Trust "B", which shall constitute separate trusts and shall be held and administered as such. At the Trustee's discretion the assets of the trust estate to be divided pursuant hereto may be divided and allocated in kind, by undivided interest, by actual division, or by any combination of such methods of division."

SECOND: Article "SIX": (d) is hereby amended to read as follows:

"(e) There shall be placed in Trust "A":

(1) The surviving Trustor's share of the community property subject to the terms of this Trust.

(2) Out of the other assets subject to the terms of this Trust, including the decedent's share of the community property in this Trust and those received

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ATTORNEYS AND COUNSELLORS
850 FRANK STREET
SALT LAKE, UTAH 84111

by the Trustee upon or by reason of the death of the first Trustor to die, the Trustee shall add to Trust A the fractional share of said assets which is equal to the maximum marital deduction allowed for Federal Estate Tax purposes in the estate of said deceased Trustor, less the value of all assets or interest which pass or have passed to the surviving Trustor other than by the terms of this Trust, and which qualify for marital deduction in the estate of said decedent.

(3) In making the computations and the allocations of property to Trust "A" required by the preceding paragraphs (1) and (2), the determination of the character and ownership of property and the value thereof shall be as finally established for Federal Estate Tax purposes in said decedent's estate.

(4) All of the rest, residue and remainder of the assets subject to the terms of this Trust shall be allocated to Trust "B".

THIRD: As hereby amended and modified the Trust Agreement dated March 17, 1969 made by the undersigned Trustors and Trustees, and all actions of the Trustors and Trustees hereunder to date is hereby ratified, confirmed, approved, agreed to and said Trust Agreement as herein modified and amended shall remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands this 30th day of January, 1977.

TRUSTORS:

Kent Whipple, a/k/a Kent O'Neil Whipple

Jane Whipple, a/k/a Jane Eleanor R. Whipple

TRUSTEE:


Kent Whipple

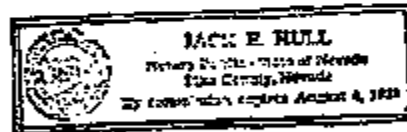
Jane Whipple

LAUGHAN, HULL, MARFIS & MILLER, LTD.
ATTORNEYS AND COUNSELLORS
800 IRVING STREET

STATE OF NEVADA)
COUNTY OF LINCOLN) SS.

On January 30, 1977, personally appeared before me, a
Notary Public, KENT WHIPPLE and JANE WHIPPLE, his wife, who acknow-
ledged to me that they executed the above instrument.


NOTARY PUBLIC



VAUGHAN, NULL, MARTIN & MILLER, LTD.
ATTORNEYS AND COUNSELORS
110 MAIN STREET
RENO, NEVADA 89501

1 THE TRUST AGREEMENT is entered into between KENT
2 WHIPPLE, also known as KENT O'NEIL WHIPPLE, and JANE WHIPPLE, also
3 known as JANE ELEANOR R. WHIPPLE, also known as BETTY JANE WHIPPLE,
4 his wife, hereinafter referred to as the "Trustors", or separately
5 as "Husband" and "Wife" respectively, and KENT WHIPPLE and JANE
6 WHIPPLE, hereinafter jointly referred to as the "Trustee".
7

8 ONE: The Trustors, desiring to establish a Trust,
9 have assigned, transferred and delivered, and by these presents
10 do assign, transfer and deliver to the Trustee all of the real
11 property and personal property of every nature whatsoever belong-
12 ing to the Trustors, including, but not limited to, the property
13 described in Schedule "A" attached hereto and made a part of this
14 Trust Agreement. Receipt is hereby acknowledged by the Trustee
15 of the assets enumerated in Schedule "A". The Trustors may from
16 time to time add additional properties or policies of insurance
17 to this Trust by transferring such property or assigning such
18 policies to the Trustee, or by causing the Trustee to be named as
19 beneficiary thereunder. In either case, such property and
20 policies of insurance, and their proceeds, shall be subject to the
21 terms and conditions of this Agreement.

22 TWO: No consideration was nor will be given to or
23 by the Trustee for the conveyance or transfer to him of any of
24 the Trust Estate. The Trustee accepts such title to the Trust
25 Estate as is conveyed or transferred to him hereunder without
26 liability or responsibility for the condition or validity of such
27 title, and the Trust Estate has been or will be conveyed or trans-
28 ferred to the Trustee, IN TRUST, with power of sale, for the uses
29 and purposes herein provided.

30 THREE: The Trustee acknowledges that he may be named
31 as beneficiary under insurance policies of the Trustors, and
32 agrees to hold the same and the proceeds thereof subject to the

9/1

1 conditions he stated.

2 FOUR: The Trustee, upon being informed as to the
3 death of the insured or the earlier maturity of any insurance
4 policies, shall receive the proceeds thereof and is hereby author-
5 ized to execute the necessary receipts and releases to the insur-
6 ance companies concerned.

7 FIVE: The Trustors reserve during such time as the
8 Husband and Wife are both living the following rights and powers
9 to be exercised by them, without the consent or participation of
10 the Trustee or any beneficiary of this Trust, including, with-
11 out limiting the generality, the following rights and powers:

12 (a) The right to revoke this Trust, or
13 by supplemental agreement to modify the terms of
14 this Trust from time to time without the consent of
15 the Trustee, or any beneficiary, provided, however,
16 that the duties, powers, and liability of the Trustee
17 hereunder shall not be substantially changed without
18 his written consent. Except as hereinafter provided,
19 such powers of revocation and modification are per-
20 sonal to the Trustors and shall not be assignable
21 nor accrue to any other person, nor shall they ex-
22 tend to their estates nor to their legal representa-
23 tives, nor to any beneficiary named herein nor to
24 any other person.

25 (b) To receive or apply dividends, dis-
26 ability benefits, premium refunds, proceeds of
27 matured insurance policies, loan or surrender or
28 commuted values or any other sum due under any in-
29 surance policies contributed to this Trust.

30 (c) To obtain and receive cash advances
31 or loans as may be advisable under any life insur-
32 ance policies contributed to this Trust.

(d) To exercise any of the powers or privileges granted in any such policies or plans.

The rights and powers reserved in (a) through (d), inclusive, in this Paragraph FIVE shall, except as hereinafter provided, cease upon the death of either Trustor, and thereafter this Trust shall be irrevocable and shall not be subject to amendment or modification.

SIX: All property now or hereafter subject to this Trust shall constitute the Trust Estate, and shall be held, managed and distributed as hereinafter provided:

During the lifetime of the Trustors, the Trustee shall distribute the income and principal in the following manner:

(a) The Trustee shall pay or reserve sufficient funds to pay all expenses of management and distribution of the Trust Estate, including the compensation of the Trustee, all or any part of which may, in the discretion of the Trustee, be charged either to income or principal of the Trust Estate.

The remaining income shall be and is hereafter referred to as "net income".

(b) During the lifetime of both of the Trustors, the net income from the entire Trust Estate shall be distributed to or for the use and benefit of the Trustors in monthly or other convenient installments, but not less frequently than annually. If at any time during the lifetime of both of the Trustors, the net income shall be inadequate for the needs, comfort and pleasure of the Trustors, or their descendants, the Trustee may, in its discretion, pay to or apply for the benefit of said beneficiaries, in addition to the payments of income as hereinabove provided, such amounts of the

1 principal of the Trust Estate as the Trustee may
2 deem necessary for said purposes.

3 (c) If at any time during the period set
4 forth in sub-paragraph (b) of Paragraph SIX, the
5 Trustors shall be incompetent or shall in the
6 judgment of the Trustee be unable for any other
7 reason to act in their own behalf, the Successor
8 Co-Trustees may, in their discretion, pay to or
9 apply for the health, support, maintenance and
10 comfort of the Trustors, or their descendants,
11 in addition to the payments of income as herein-
12 above provided, such amounts of the principal of
13 the Trust Estate as the Successor Co-Trustees may
14 from time to time deem necessary or advisable for
15 their use or benefit.

16 (d) Upon the death of either Trustor, the
17 Trustee shall segregate and divide the Trust
18 Estate into two trusts, hereinafter called Trust
19 "A" and Trust "B", which shall constitute separ-
20 ate trusts and shall be held and administered as
21 such.

22 (e) There shall be placed in Trust "A":

23 (1) The fractional share belonging to
24 the surviving Trustor of the community proper-
25 ty subject to the terms of this Trust.

26 (2) Out of the other assets subject to
27 the terms of this Trust, including those re-
28 ceived by the Trustee upon or by reason of
29 the death of the first Trustor to die, which
30 are eligible to satisfy the marital deduction,
31 the Trustee shall add to this Trust the frac-
32 tional share of said assets which is equal to

1 the maximum marital deduction allowed for
2 Federal Estate Tax purposes in the estate of
3 said deceased Trustor, less the value of all
4 assets or interest which pass or have passed
5 to the surviving Trustor other than by the
6 terms of this Trust, and which are eligible
7 to satisfy said marital deduction.

8 (3) In making the computations and the
9 allocations of property to Trust "A" required
10 by the preceding paragraphs (1) and (2), the
11 determination of the character and ownership
12 of property and the value thereof shall be
13 finally established for Federal Estate Tax
14 purposes.

15 (4) All of the rest, residue and re-
16 mainder of the assets subject to the terms
17 of this Trust, including those received by
18 the Trustee upon or by reason of the death
19 of the first Trustor to die, shall be allo-
20 cated to Trust "B".

21 PROVISIONS OF TRUST "A".

22
23 (1) The entire net income from Trust "A" shall
24 be paid to or applied for the benefit of the surviving
25 Trustor in monthly or other convenient installments
26 during his or her lifetime, but in no event less
27 often than annually.

28 (2) If the income is not adequate to maintain
29 the surviving Trustor in a manner similar to his or
30 her standard of living while living with the deceased
31 Trustor, the Trustee may pay to him or her, or apply
32 for his or her benefit so much of the principal of

1 the Trust as he may, in his discretion, deem proper
2 or necessary for that purpose, taking into account
3 any income available to him or her from other
4 sources. The Trustee shall make such principal
5 disbursements to the surviving Trustor out of the
6 corpus of Trust "A" before making any disbursements
7 of principal to the surviving Trustor from Trust
8 "B".

9 (3) In the event the Wife survives the
10 Husband;

11 (a) She shall have the power, exer-
12 cisable in all events and at any time or
13 from time to time after the Husband's
14 demise, to withdraw all or any part of
15 the principal of Trust "A", and to require
16 the Trustee to distribute the same to her,
17 discharged of this Trust. Such power may
18 be exercised by written instrument filed
19 with the Trustee. There is further con-
20 ferred on the Wife, the absolute power to
21 distribute by her Last Will and Testament
22 the remaining assets of the Trust to any-
23 one she chooses, including her estate, her
24 creditors, or the creditors of her estate.

25 (b) If and to the extent that the
26 Wife shall fail to exercise such powers,
27 the principal and accrued and undistri-
28 buted net income of this Trust shall, upon
29 her demise, be transferred to and become a
30 part of Trust "B" and shall be held, admini-
31 stered and distributed as is hereinafter
32 provided with respect to Trust "B", excepting

1 however that the Trustee in its discretion
2 may first pay out of the principal, the
3 Wife's last illness and burial expenses,
4 Federal Estate Taxes, Nevada Inheritance
5 Taxes, and any gift taxes assessed against
6 her estate, together with interest,
7 penalties, costs, Trustees' compensation
8 and attorney fees, unless other adequate
9 provisions shall have been made therefor.
10

11 (4) In the event the Husband survives the
12 Wife:

13 (a) He shall have the power, exer-
14 cisable in all events and at any time or
15 from time to time after the Wife's demise
16 to withdraw all or any part of the prin-
17 cipal of Trust "A", and to require the
18 Trustee to distribute the same to him,
19 discharged of this Trust. Such power may
20 be exercised by written instrument filed
21 with the Trustee. There is further con-
22 ferred on the Husband, the absolute power
23 to distribute by his Last Will and Testament
24 the remaining assets of the Trust to any-
25 one he chooses, including his estate, his
26 creditors, or the creditors of his estate.
27

28 (b) If and to the extent that the
29 Husband shall fail to exercise such powers,
30 the principal and accrued and undistributed
31 net income of this Trust shall, upon his
32 demise, be transferred to and become a part

1 of Trust "B" and shall be held, administered
2 and distributed as is hereinafter provided
3 with respect to Trust "B", excepting, how-
4 ever, that the Trustee, in its discretion,
5 may first pay out of the principal, the
6 Husband's last illness and burial expenses,
7 Federal Estate Taxes, Nevada Inheritance
8 Taxes, and any gift taxes assessed against
9 his estate, together with interest, penalties,
10 costs, Trustees' compensation and attorney
11 fees, unless other adequate provisions shall
12 have been made therefor.

13 (5) The interests of the beneficiaries in
14 principal or income shall not be subject to claims of
15 his or her creditors, nor others, nor to legal process,
16 and may not be voluntarily nor involuntarily alienated
17 nor encumbered.

18 PROVISIONS OF TRUST "B".
19

20 (1) Upon the death of the first Trustor to
21 die, if the surviving Trustor shall be in want of
22 additional monies to maintain himself or herself in
23 a manner similar to his or her standard of living
24 at the time of death of the Trustor who died first,
25 taking into account any other assets or income
26 available from other sources, including the afore-
27 said payments from Trust "A", the Trustee may, in
28 its absolute discretion, pay to or apply for the
29 benefit of the surviving Trustor so much of the
30 income or principal from this Trust as the Trustee
31 may from time to time deem necessary or advisable
32 for the health, support, maintenance and comfort

01.

1 of the surviving Trustor.

2 (2) Anything contained herein to the
3 contrary notwithstanding, no payment shall be
4 made to the surviving Trustor from the prin-
5 cipal or income of Trust "B" until such time
6 as Trust "A" is substantially exhausted both
7 as to principal and income. At such time as
8 the income and principal of Trust "A" is sub-
9 stantially exhausted, the net income of Trust
10 "B" shall be paid to the surviving Trustor
11 in monthly or other convenient installments
12 during his or her lifetime, but in no event
13 less often than annually.

14 (3) Upon the death of the surviving
15 Trustor, the remaining assets of the Trust
16 shall be divided into as many separate trusts
17 as there are children of the Trustors living,
18 providing that if any such child be then de-
19 ceased leaving issue surviving at the date of
20 such division, such deceased child shall be
21 considered as living for the purposes of such
22 division, and in that event the Trustee shall
23 set aside and distribute one of such equal
24 shares to the issue of any such deceased child
25 per stirpes. Each of the Trusts thus estab-
26 lished shall be administered as separate
27 Trusts, as hereinafter provided, but without
28 the necessity of the Trustee making physical
29 division of the assets unless the Trustee
30 deems it necessary or advisable to do so. The
31 assets set aside for the use and benefit of
32

1 the 'ustors' issue shall be he: administered
2 and distributed as follows:

3 (a) The Trustee shall set aside
4 one of such shares for each of the Trustors'
5 children by right of representation in a
6 separate trust and shall distribute so much
7 of the net income derived therefrom as in
8 the sole discretion of the Trustee may be
9 deemed necessary or advisable for such
10 child's health, support, maintenance or
11 education, including study at an institu-
12 tion of higher learning, or to commence a
13 business or profession, to or for the
14 use or benefit of such child until he or she
15 attains the age of twenty-one (21) years, and
16 any accumulated income not so required shall
17 be added to the principal of such share.
18 Thereafter, the entire net income from said
19 share shall be distributed quarterly to or
20 for the use or benefit of such child until
21 he or she attains the age of twenty-five
22 (25) years, at which time one-half (1/2)
23 of the then principal of such share shall
24 be distributed to such child; and thereafter,
25 the entire net income from the balance of
26 the principal of such share shall be distri-
27 buted quarterly to or for the use or bene-
28 fit of such child until he or she attains
29 the age of thirty (30) years, at which time
30 the entire balance of the principal of such
31 share together with any undistributed income
32 therefrom, shall be distributed to such child.

1 (b) Upon the death of any such
2 child before becoming entitled to receive
3 the whole of his or her share of the Trust
4 Estate, the Trustee, after paying the ex-
5 penses of the last illness and burial of
6 such deceased child, unless such expenses
7 shall have been paid or provided for apart
8 from this Trust, shall distribute the en-
9 tire principal of such share, or so much
10 thereof as then remains, together with any
11 undistributed income therefrom, to the then
12 surviving issue of such deceased child per
13 stirpes, subject however, to the provisions
14 of sub-paragraphs (a) and (b) hereof. If
15 such deceased child shall leave no such
16 issue then surviving, the same shall be
17 added in equal portions to the shares then
18 held for the benefit of the other children,
19 and to those previously distributed there-
20 from, excluding the share of each child
21 theretofore deceased as to whom then sur-
22 vives no issue, but including by right of
23 representation the issue of any deceased
24 child. If any portion of a share has
25 theretofore been distributed, then a similar
26 portion of the added share shall likewise
27 be distributed.

28 (4) (a) If at any time during the life-
29 time of both Trustors, in the absolute dis-
30 cretion of the Trustee, any child or grand-
31 child of the Trustors, or issue of such
32 grandchildren, should be in want of

1 additional monies for their health, support
2 and maintenance, the Trustee may pay to or
3 apply for the benefit of such individual such
4 amounts from the income or principal of the
5 Trust Estate as the Trustee may from time to
6 time deem necessary or advisable for such
7 beneficiary's health, support, maintenance
8 or education, including study at an insti-
9 tution of higher learning.

10 (b) If at any time after the death
11 of one Trustor, and during the lifetime of the
12 surviving Trustor, in the absolute discretion
13 of the Trustee, any child or grandchild of the
14 Trustors, or issue of such grandchild, should
15 be in want of additional monies for their
16 health, support and maintenance, the Trustee
17 may pay to or apply for the benefit of such
18 individual, such amounts from the income or
19 principal of Trust "B" as the Trustee may
20 from time to time deem necessary or advis-
21 able, provided such payments do not jeopard-
22 ize the security of the surviving Trustor.

23 (c) If at any time after the death of
24 both Trustors, in the absolute discretion of
25 Trustee, any child or grandchild of the
26 Trustors should be in want of monies for
27 their health, support or maintenance, or
28 to commence a business or profession, the
29 Trustee may pay to or apply for the bene-
30 fit of such individual, in addition to
31 the payments hereinabove provided, such
32 amounts from the principal of his or her

1 respective share of the Trust Estate, up to
2 the whole of said part, as the Trustee may
3 from time to time deem necessary or advisable
4 for such beneficiary's health, support, main-
5 tenance, or education, including study at an
6 institution of higher learning, or to com-
7 mence a business or profession, or the
8 Trustee may in its sole discretion during
9 any calendar year pay to or apply for the
10 benefit of such individual the greater of
11 the following amounts: FIVE THOUSAND DOLLARS
12 (\$5,000.00) or FIVE PER CENT (5%) of the
13 aggregate value of the Trust Estate set
14 aside for such beneficiary.

15 (5) The interests of beneficiaries in
16 principal or income shall not be subject to claims
17 of their creditors nor others, nor to legal process,
18 and may not be voluntarily nor involuntarily alien-
19 ated nor encumbered.

20 (6) Any other provisions hereof to the
21 contrary notwithstanding, unless terminated at an
22 earlier date under the foregoing provisions, all
23 Trusts created herein shall terminate at the expir-
24 ation of twenty-one (21) years after the death of the
25 last surviving beneficiary living on the date of
26 the execution of this Trust Agreement. If any Trust
27 created herein is terminated by reason of the oper-
28 ation of this paragraph, the Trust as then existing
29 shall go and be distributed to the persons then en-
30 titled to the income therefrom in the same proportions
31 in which they were receiving or were entitled to re-
32 ceive said income.

A/A.

1 SEVEN: To carry out the purposes of this Trust,
2 the Trustee is vested with the following powers in addition to
3 those now or hereafter conferred by law, affecting the Trust
4 and the Trust Estates, subject to the provisions heretofore
5 set forth in Paragraph FIVE:

6 (a) The Trustee shall have the power to
7 manage and control, invest and reinvest, sell or
8 assign, the proceeds of such life insurance policies
9 and the funds of the Trust Estate, in such invest-
10 ments as the Trustee may elect, and also in such
11 other investments as are hereinabove specifically
12 authorized. He shall have the power to exercise
13 any right or option of subscription or otherwise
14 which may at any time be given to the holders of
15 any securities of the Trust Estate.

16 (b) To manage, control, sell, convey, ex-
17 change, partition, divide, subdivide, improve, repair;
18 to grant options and to sell upon deferred payments;
19 to lease for terms within or extending beyond the
20 duration of this Trust for any purpose, including
21 exploration for and removal of gas, oil or other
22 minerals; and to enter into community oil leases.

23 (c) To retain property and to invest, and
24 reinvest as provided by law from time to time ex-
25 isting.

26 (d) To borrow; to place, replace, renew,
27 or extend any encumbrances upon any real property;
28 and to institute, compromise and defend actions
29 and proceedings.

30 (e) To participate in voting trusts, pooling
31 agreements, foreclosures, reorganizations, consoli-
32

4/1

1 de'ns, mergers, and liquidat' s, and in connection
2 therewith, to deposit securities with and transfer
3 title and delegate discretions to any protective or
4 other committee as the Trustee may deem advisable.

5 (f) Upon any division or partial or final
6 distribution of the Trust Estate, to partition, allot,
7 and distribute the Trust Estate in undivided interests
8 or in kind, at valuations determined by the Trustee,
9 and to sell such property as the Trustee may deem
10 necessary to make division and distribution.

11 (g) To determine what is principal or
12 income of the Trust Estate and apportion and allocate
13 in his discretion, receipts and expenses as between
14 these accounts. Except insofar as the Trustee shall
15 exercise this discretion, matters relating to the
16 rights of beneficiaries among themselves as to princi-
17 pal and income shall be governed by the provisions of
18 the Principal and Income Act from time to time existing.

19 (h) The enumeration of certain powers of
20 the Trustee shall not limit its general powers, the
21 Trustee subject always to the discharge of its fidu-
22 ciary obligations, being vested with and having all
23 the rights, powers and privileges which an absolute
24 owner of the same property would have.

25 (i) Upon the death of the first to die of
26 the Husband or Wife, or upon the death of any other
27 beneficiary, the expenses of last illness and burial,
28 and any estate, inheritance, succession or other
29 death taxes, duties, charges, or assessments, to-
30 gether with interest, penalties, costs, Trustees'
31 compensations and attorney fees, which shall become
32 due or be occasioned by reason of the Trust Estate

1 or any interest therein being includible for such
2 tax purposes, shall be paid by the Trustee out of
3 his or her share of the community property interest
4 in the Trust Estate, or his or her share of the
5 Trust Estate, as the case may be, unless other ade-
6 quate provisions shall have been made therefor. Any
7 such payments shall be charged to principal of the
8 share of the Trust Estate or the separate Trust so
9 included.

10 (j) Upon the death of the last Trustor to
11 die, all estate, inheritance, succession, or other
12 death taxes or duties (by whatever name called)
13 which shall become due by reason of the Trust Estate
14 or any portion thereof being includible for such tax
15 purposes, shall be paid by the Trustee out of the
16 said deceased beneficiary's Trust (the "A" Trust).
17 Any other costs, including Trustees' compensation
18 and attorney fees, which shall be due or be occasioned
19 by the death of the Trustors, or either of them, may
20 be paid by the Trustee out of income or principal
21 from either Trust "A" or Trust "B", unless other
22 adequate provisions shall have been made therefor.

23 (k) The Trustee shall have full power
24 and authority to pay from the Trust Estate any other
25 taxes, charges or assessments for which the Trustee, the
26 Trust Estate or any interest therein becomes liable,
27 and any such payments shall be made from and charged
28 to either income or principal of the Trust Estate
29 or any share or separate trust thereof, as the Trustee,
30 in its discretion, deems proper.

31 (l) The Trustee may make such payments
32 directly or to a personal representative or other

9/10.

1 f iary, the Trustee may rel. pon a written state-
2 ment of such fiduciary as to the amount and propriety
3 of such taxes, interest, penalties, and other costs,
4 and shall be under no duty to see to the application
5 of any funds so paid.

6 (m) The Trustee shall sell assets from
7 Trust "A" to Trust "B" or between the separate Trusts
8 or shares, as may exist from time to time, on such
9 terms and at such fair market values as the Trustee
10 may determine. The Trustee may loan or advance
11 monies which are funds of the Trust Estate from any
12 one of the several trusts or shares to any of the
13 other trusts or shares as may exist from time to
14 time upon such terms, conditions and security as
15 the Trustee may, in its discretion, determine to
16 be fair and reasonable.

17 (n) Upon the death of either Trustor, the
18 Trustee may, within its discretion, purchase assets
19 from the estate of the deceased Trustor at a fair
20 value. The propriety of the purchase, the amount
21 of such assets purchased, and the ascertainment of
22 fair value shall be solely within the discretion of
23 the Trustee, and the Trustee shall incur no liability
24 as a result of such purchase or purchases whether
25 or not such assets constitute investments which may
26 ordinarily be made by Trustees. At its discretion,
27 the Trustee may loan monies which are funds of the
28 Trust Estate to the estate of the deceased Trustor,
29 upon such terms as the Trustee and the personal
30 representative of the deceased Trustor may agree.

31 (o) The Trustee shall have the power to
32 budget the estimated income and expenses of the

W.A.

1 st in such manner as to equalize, as far as
2 possible, periodic income payments to the
3 beneficiaries.

4 (p) The Trustee shall not at any time be
5 required to make any accounting of the administration
6 of the Trust Estate to any court or public authority
7 whatsoever. Any and all accounting shall be made
8 to the beneficiaries of the Trust or to the legal
9 guardian or conservator of any beneficiary who
10 has not reached the age of majority, or who has
11 been declared incompetent.

12 (q) For the purposes of allocation thereof
13 between the Trusts, as hereinabove provided in
14 Paragraph SIX, for the purpose of determining
15 the nature and character of the property in the
16 event the Trust is terminated or partially revoked
17 and assets distributed to the Trustors, and for
18 tax purposes, it is the express intent of the
19 Trustors, that in the event either of the Trustors
20 hereafter acquire any separate or community pro-
21 perty and transfer the same to this Trust, said
22 separate or community property shall retain its
23 status as separate or community property subsequent
24 to the time it is transferred to this Trust. In
25 the event that any separate or community property
26 is at any time hereafter transferred out of the
27 Trust, it shall retain its character as separate or
28 community property subsequent to being transferred
29 out of the Trust.

30 EIGHT: The Trustors declare that all property in
31 which they have an interest or which stands in the name of KENT
32 WHIPPLE, a/k/a KENT O'NEIL WHIPPLE, and/or JANE WHIPPLE, a/k/a

1 JANE ELEANOR A. WHIPPLE, is wholly committ^y property under the
2 laws of the State of Nevada, irrespective of the manner in which
3 record title is held, or has been held prior to the transfer to
4 the Trustees under this Trust.

5
6 NINE: The primary purpose of this instrument is to
7 provide for the income beneficiaries, and the rights and interests
8 of remaindermen are subordinate to that purpose. The provisions
9 of this instrument shall be construed liberally in the interests
10 of and for the benefit of the income beneficiaries.

11
12 TEN: Upon the resignation, inability to act, or
13 death of JANE WHIPPLE, then KENT WHIPPLE shall act as the sole
14 Trustee. Upon the resignation, inability to act, or death of
15 KENT WHIPPLE, then JANE WHIPPLE and KEITH MURRAY WHIPPLE shall
16 act as Successor Co-Trustees. Upon the resignation, inability
17 to act, or death of both of the original Trustees, then KEITH
18 MURRAY WHIPPLE shall act as the sole Successor Trustee. Upon the
19 resignation, inability to act, or death of KEITH MURRAY WHIPPLE,
20 then the FIRST NATIONAL BANK OF NEVADA shall act as the Successor
21 Trustee.

22 The individual Successor Co-Trustees shall be
23 entitled to compensation for their services, which shall be the
24 compensation normally charged by corporate trustees under similar
25 circumstances. The individual Trustees named herein shall serve
26 without bond.

27 Each Successor Co-Trustee must at all times be
28 fully informed of each and every official act performed by the
29 other Trustees and must be furnished with an accounting of all in-
30 come, expenditures and activities of the Trust at least quarterly
31 Each Co-Trustee at all times shall have the right to examine any
32 and all Trust books of account, reports, files and papers of ever

1 nature what er. Any individual Co-Trustee shall have the
2 right to demand a complete audit of the Trust by an independent
3 firm of Certified Public Accountants at the expense of the Trust
4 at any time or from time to time, without the consent of the other
5 Co-Trustees, and this power shall not be subject to arbitration.

6 The concurring vote of two (2) Co-Trustees shall be
7 necessary for the Trustees to act hereunder, when there are two
8 (2) Co-Trustees. In the event of a disagreement at any time
9 when there are only two (2) Co-Trustees, then the dispute shall be
10 submitted to arbitration in accordance with the Uniform Arbitration
11 Act of the State of Nevada.

12 ELEVEN: As used in this Trust, the singular shall be
13 deemed to include the plural, and the masculine, feminine, or
14 neuter shall be deemed to include each of the other two genders.

15 TWELVE: This Agreement has been delivered in the State
16 of Nevada. The laws of the State of Nevada shall govern the
17 validity and interpretation and administration thereof, notwith-
18 standing the residence in another jurisdiction of the Trustors or
19 of any other beneficiary hereunder.

20 THIRTEEN: As used throughout this instrument, the
21 term "issue" shall include any children of the Trustors, who may
22 hereafter be born or legally adopted, and shall include children
23 adopted by any descendant and their descendants by birth or
24 adoption.

25 IN WITNESS WHEREOF, we have hereunto set our hands this

26 17 day of March, 1959.

27 TRUSTORS:

28 Kent Whipple

29 KENT WHIPPLE, A/K/A KENT O'NEIL WHIPPLE

30 TRUSTEE:

31 Kent Whipple

32 KENT WHIPPLE

33 Jane Whipple

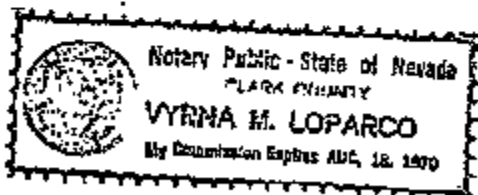
JANE WHIPPLE, A/K/A JANE ELEANOR R. WHIPPLE

Jane Whipple

JANE WHIPPLE

1 STATE OF NEVADA }
2 COUNTY OF CLARK } ss.

3 On this 17th day of March, 1969, before me, the under-
4 signed, a Notary Public in and for said County and State, person-
5 ally appeared RENT WHIPPLE and JANE WHIPPLE, husband and wife,
6 known to me to be the persons described in and whose signatures
7 are subscribed to the within Trust Agreement as "TRUSTORS", and
8 jointly acknowledged to me that they executed the same freely
9 and voluntarily and for the uses and purposes therein mentioned.



Vyrna M. Loparco
NOTARY PUBLIC in and for
said County and State

BOB MILLER
Secretary

STATE OF NEVADA



PETER G. MORRIS
Director

R. MICHAEL TURNIPSEED, P.E.
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

Capital Complex
123 W. Nye Lane
Carson City, Nevada 89710
(702) 687-4380

55918, 55919, 55920

September 19, 1994

ATT: JAN BRADSHAW
KENT WHIPPLE RANCH
HIKO NV 89017

Dear Ms. Bradshaw:

Please be advised that Applications 55918, 55919 and 55920 have been assigned to show Kent Whipple Trust as current owner of record.

This assignment reflects only the information that has been filed with this office and may be subject to amendment upon receipt of additional documentation.

If you have any questions please contact this office at (702) 687-4381.

Sincerely,


Michael J. Randall
Hydraulic Engineer

HJR/pm

cc: Betsy Whipple
Southern Nevada Branch Office

RECEIVED

SEP 22 1994

Div. of Water Resources
Branch Office - Las Vegas, NV



Form A224

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 30th day of December, 1993

First party, to Kent Whipple Ranch

whose post office address is General Delivery, Nita, NV 89017

to second party: Kent Whipple Trust

whose post office address is General Delivery, Nita, NV 89017

WITNESSETH, That the said first party, for good consideration and for the sum of Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby make, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Lincoln, State of Nevada to wit: Application #55918

RECORDED
RECEIVED
AUG 28 1994

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of

Betty Lou Whipple

State of California
County of Los Angeles

On January 5, 1994 before me, Gary D. Grounizer

appeared Betty Lou Whipple, personally known to me (or proved to me on the basis of satisfactory evidence) 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 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, acknowledged the instrument.

WITNESS my hand and official seal.

Signature



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(Rev 12/31/93)

Form A298

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 30th day of December, 1993

first party, to Kent Whipple Ranch

whose post office address is General Delivery, Hiko, NV 89017

to second party: Kent Whipple Trust

whose post office address is General Delivery, Hiko, NV 89017

WITNESSETH, That the said first party, for good consideration and for the sum of Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby release, remise and quitclaim unto the said second party forever, all the right, title, interest and claims which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Lincoln, State of Nevada to wit: Application # 55919

DO NOT WRITE IN THIS
RECEIVED

AUG 28 2014

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:

Betty Lou Whipple

State of California
County of Los Angeles

On January 5, 1994, before me, Gary D. Grogan,

appeared Betty Lou Whipple,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) were subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Gary D. Grogan



USE Legal Forms. Before you use this form, read it, fill it out, and make necessary changes. An attorney is your best source of information. Check a lawyer's fees about the best source for your purpose and use. Use Legal Forms and the information in advertisements in various, expensive, and with respect to the responsibility of this form by an attorney or a professional.



[Handwritten signature]

Form 1291

QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this 30th day of December, 1993

First party, to Kent Whipple Ranch

whose post office address is General Delivery, Hiko, NV 89017

to second party: Kent Whipple Trust

whose post office address is General Delivery, Hiko, NV 89017

WITNESSETH, That the said first party, for good consideration and for the sum of Ten Dollars (\$ 10.00) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby certify, release and quitclaim unto the said second party forever, all the right, title, interest and claims which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of Lincoln, State of Nevada to wit: Application # 55920

RECORDED
RECEIVED

AUG 28 2014

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:

Betsy Lou Whipple

State of California
County of Los Angeles

On January 5, 1994 before me, Gary D. Gromley, appeared Betsy Lou Whipple

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) appears subscribed in the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that he/she/they is/are the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: *Gary D. Gromley*



(Seal)



© 2002 Legal Forms. Please pay on this form, and in all blanks, and only whatever changes are necessary to your particular transaction. Consult a lawyer if you are in the least doubt. For 2002 purposes, use the 2002 Legal Forms and the rules with an understanding of continuity, as provided in the text, with respect to the applicability of this form to your business and to property.

Revised 3/93

Page 1 of 1

ERR

ALISSA C. ENGLER, ESQ.
Nevada Bar Number 11940
JUSTICE LAW CENTER
1100 S. Tenth Street
Las Vegas, Nevada 89104
(702) 731-0000
Attorney for Petitioner

IN THE SEVENTH JUDICIAL DISTRICT COURT IN AND FOR
LINCOLN COUNTY, NEVADA

IN RE THE KENT AND JANE WHIPPLE
TRUST, dated March 17, 1969, Jane Whipple,
Trustee, and amendments thereto, JANE
WHIPPLE,

Petitioner.

CASE NO.: CV-0930015

ERRATA TO OPPOSITION TO MOTION TO DISMISS/STAY
PETITION PENDING MANDATORY ARBITRATION

COMES NOW, Petitioner, Jane Whipple, by and through her attorney of record ALISSA ENGLER, Esq., of Justice Law Center, and hereby files this Errata to her Opposition to Motion to Dismiss/Stay Petition. The attached Errata includes the Affidavit of Jane Whipple which was inadvertently not included in the original Opposition.

Dated this 5th day of January, 2016.

JUSTICE LAW CENTER

ALISSA C. ENGLER, ESQ.
1100 S. Tenth Street
Las Vegas, Nevada 89104

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Rules of Civil Procedure, I certify under penalty of perjury that on this date, I caused the foregoing ERRATA to be served on all parties to this action by delivering a true copy thereof as follows:

☐ Faxed

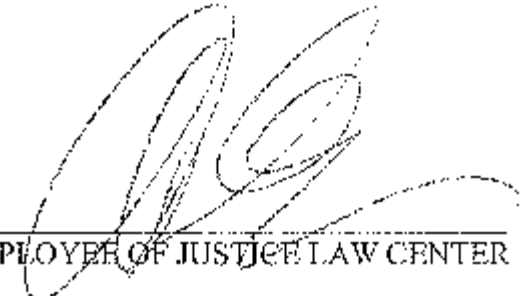
☐ Hand Delivered

☒ Regular Mail

☐ Overnight Mail Nick A Moschetti

Bingham Snow & Caldwell
840 Pinnacle Court, Suite 202
Mesquite NV 89027

Dated this 5th day of January, 2016.



AN EMPLOYEE OF JUSTICE LAW CENTER

AFFIDAVIT OF JANE WHIPPLE.

1
2 1. I, Jane Whipple, am the Petitioner in the underlying action.

3 2. I am the original trustee of the trust, sole living trustor, and a beneficiary of the trust that
4 was set up by me and my Husband, Kent Whipple.

5 3. I have acted as original trustee of the trust and I have ran the Whipple Ranch (now owned
6 by Kent Whipple Ranch, LLC) for the 38 years after my husband died and prior to Warner Whipple
7 becoming the alleged co-Trustee.

8 4. The Ranch is debt free; I have managed the ranch profitably and improved the value of
9 the assets owned by the Trust, and the Ranch itself.

10 5. Warner Whipple has recently contacted me and attempted to bully me regarding the
11 Trust's actions.

12 6. Warner Whipple did not do any investigation or make any good faith effort to work with
13 me regarding the Trust or the water rights at issue in the Petition.

14 7. It is my belief that Warner Whipple's sole purpose in this action is to delay the use of the
15 property and to the detriment of the beneficiary and sole living trustor of the trust, and that his actions
16 will be harmful to the Trust and the Trust's assets.

17 8. It is my belief that Warner Whipple is acting solely on the behalf of my daughter Betsy
18 Whipple and not in the interests of the remaining beneficiaries of the Trust, and that Betsy's has been
19 acting against my interests and the interests of our family over the course of the last five years.

20 9. It has always been my intent and wish, and the intent wish of my husband before his
21 death, to keep the ranch together and to utilize that ranch for the benefit of the entire family, and that
22 Betsy Whipple has acted against this interest.

23 10. It is my belief that this latest action is an attempt by Betsy Whipple, through Warner
24 Whipple, to unilaterally determine what happens with the ranch for her own benefit and not for the
25 benefit of the rest of the family.
26
27
28

1 11. That my intent remains the same today as it was thirty-eight years ago when my husband
2 died, and that is to keep the ranch together for the benefit of the entire family.

3 12. That I believe that this action has been taken to stall the transfer of water rights in a deal
4 that is already in place and that the actions of Betsy Whipple and Warner Whipple have placed that deal
5 in jeopardy.

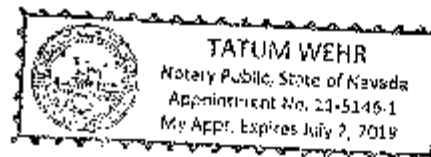
6 FURTHER AFFIANT SAYETH NAUGHT.

7
8 DATED this 9th day of December, 2015.

Jane Whipple
JANE WHIPPLE

9 Subscribed and sworn to before me
10 This 9th day of December, 2015.

11
12 NOTARY PUBLIC in and for said
13 County and State.



FILED

2015 DEC 28 PM 3:38

LISA C. LLOYD
LINCOLN COUNTY CLERK
DEPUTY

Case No. CV 0930015

Dept. No.: 1

BINGHAM SNOW & CALDWELL

Nick A. Moschetti, Nevada Bar No. 0920

Jedediah Bo Bingham, Nevada Bar No. 9511

840 Pinnacle Court, Suite 202

Mesquite, Nevada 89027

(702) 346-7300 phone

(702) 346-7313 fax

www.binghamsnow.com

Attorneys for Co-Trustee Warner Whipple

FILE COPY

**IN THE SEVENTH DISTRICT COURT, IN AND FOR
LINCOLN COUNTY, NEVADA**

In re THE KENT AND JANE WHIPPLE
TRUST, dated March 17, 1969, Jane
Whipple, Co-Trustee (erroneously named
as Trustee), and amendments thereto,
JANE WHIPPLE,

Petitioner.

**REPLY IN SUPPORT OF MOTION TO
COMPEL ARBITRATION**

COMES NOW Warner Whipple, duly appointed and acting Co-Trustee of the Kent and Jane Whipple Trust, dated March 17, 1969 (the "Trust"), by and through his undersigned attorney Nick A. Moschetti, Jr. of the law firm of Bingham Snow & Caldwell, and files this Reply in Support of the Motion to Dismiss Petition or Alternatively to Stay Petition and to Compel Arbitration.¹

INTRODUCTION

While there is a material disagreement as to certain underlying issues, there is no significant disagreement between the Co-Trustees regarding the salient facts in this Motion. The

¹ Although the Motion is styled as a Motion to Dismiss or to Stay Proceedings, pursuant to case law from the Nevada Supreme Court, the appropriate procedural course is to stay the Petition, pending arbitration, not dismiss it. *See AJS Const. v. Pankoff*, 2013 WL 5445188 at *1 (Nev. 2013) (unpublished).

1 law is clear. A motion to compel arbitration must be granted unless it appears "with positive
2 assurance" that an arbitration clause does not apply to a particular controversy.² Significantly,
3 the party opposing arbitration bears the extremely heavy burden of overcoming the presumption
4 in favor of arbitration by proving beyond a reasonable doubt that the subject dispute is not
5 subject to arbitration.³

6 Once the Court determines that an arbitration clause is valid, all other matters as to the
7 scope of arbitration are to be decided by the arbitrator. Further, the reviewing court is not to
8 make any determinations regarding the merits of the parties' contentions; its only role is to
9 "summarily" determine the validity of an arbitration agreement.⁴ The Court's role here is plain,
10 because the arbitration agreement clearly encompasses any disagreement between co-trustees,
11 the instant dispute must go to arbitration.

12 REBUTTAL FACTS

13 As for the undisputed facts, Kent and Jane Whipple set up the Trust to provide both
14 income for the surviving spouse and to protect the inheritances of the remainder beneficiaries,
15 their five children.⁵ To accomplish this goal, Kent and Jane dictated that, upon the death of
16 either of them, the Trust *res* must be divided into two sub-trusts.⁶ The surviving spouse's sub-
17 trust (the "A Share") was to be funded with the surviving spouse's share of the community
18 property and the surviving spouse was to be granted liberal access to the income from the A
19 Share. The decedent's sub-trust (the "B Share") was to be funded with all property of the Trust
20 not put into the A Share and preserved (except for any amounts necessary to maintain the
21 surviving spouse's standard of living *after* exhaustion of the A Share) exclusively for the benefit
22 of the remaining beneficiaries, the Trustors' five children.⁷

23 In addition to requiring the Trust property to be divided into the separate shares upon the
24 first spouse's death, the Trust also provided that Jane would never have unilateral control over
25 Trust assets. Instead, the Trust required co-trustees for all matters relating to the Trust. Section

26 ² *Dryer v. Los Angeles Rams*, 709 P.2d 826, 830 (Cal. 1985) (*In Bank*).

27 ³ *Dryer*, 709 P.2d 826, 830 (Cal. 1985) (*In Bank*).

28 ⁴ NRS 387.221(2) (West 2015).

⁵ See generally Exhibit A, Whipple Trust at p. 3-7.

⁶ Exhibit A, Whipple Trust at p. 4-5.

⁷ Exhibit A, Whipple Trust at p. 8-9.

1 Ten of the Trust sets forth the means by which trustees and successor trustees for the Trust are
2 selected and governed. Significantly, the trustors determined that if Jane died first, Kent would
3 be the sole trustee with control over all Trust assets, including those in the A Share and B
4 Share.⁸ However, the Trust mandated that, should Kent die first (which is what actually
5 occurred), Jane would always serve as co-Trustee only, with at least one co-Trustee always
6 overseeing her actions in regards to Trust assets:

7
8 Upon the resignation, inability to act, or death of JANE WHIPPLE, then KENT
9 WHIPPLE shall act as the sole Trustee. Upon the resignation, inability to act, or
10 death of KENT WHIPPLE, then JANE WHIPPLE and KENT MURRAY
11 WHIPPLE shall act as Successor Co-Trustees.

12
13 Each Successor Co-Trustee must at all times be fully informed of *each and every*
14 official act performed by the other Trustees and must be furnished with an
15 accounting of all income, expenditures and activities of the Trust at least
16 quarterly.

17
18 The concurring vote of two (2) Co-Trustees shall be necessary for the Trustees to
19 act hereunder...In the even of a disagreement at any time when there are only two
20 (2) Co-Trustees, then the dispute shall be submitted to arbitration in accordance
21 with the Uniform Arbitration Act of the State of Nevada.⁹

22 Contrary to Petitioner's contention, Section Ten does not distinguish between the A and B
23 Shares in regards to the co-Trusteeship.¹⁰ Instead, the Trust requires co-trustees for "each and
24 every" matter pertaining to the Trust "at all times." Further, Section Ten mandates that Jane
25 secure co-Trustee approval for all actions she proposes to undertake with Trust assets by
26 requiring unanimity in decision making and arbitration in the event of any disagreement.¹¹ The
27 unanimity and arbitration requirements, likewise, do not distinguish between the A and B shares
28 as Petitioner asks this court to do.¹²

Unfortunately, following Kent's death the A and B shares were never funded,¹³ meaning
all Trust assets remain assets of the original Trust, not either of the sub-trusts. All income or

⁸ Exhibit A, Whipple Trust at p. 19-20.

⁹ Exhibit A, Whipple Trust at p. 19-20 (emphasis added).

¹⁰ Exhibit A, Whipple Trust at p. 20.

¹¹ Exhibit A, Whipple Trust at p. 20.

¹² Exhibit A, Whipple Trust at p. 20.

¹³ See Petition at ¶4.

1 increase derived from Trust property belongs to the Trust and must be administered for the
2 benefit of all the beneficiaries equally.

3 At various times following Kent's death, the Trust obtained certain water rights from the
4 State Engineer for the benefit of Trust land (the "Water Rights").¹⁴ Jane acknowledges that the
5 Water Rights are Trust assets and that the Trust paid all necessary fees for the Water Right
6 applications, etc.¹⁵ Despite these undisputed facts, Jane now claims the Water Rights are held by
7 the Trust for her exclusive benefit only. In reality, the Water Rights are unquestionably held by
8 the Trust and cannot be unilaterally controlled by Jane.

9 LEGAL ARGUMENT

10 **1. The Water Rights, as after-acquired Trust property, are subject to Co-Trustee** 11 **authority and mandatory Arbitration.**

12 Property acquired by a trustee using trust assets or by way of trust assets are trust
13 property and, as such, are subject to the terms of the documents governing the trust.¹⁶ Indeed, a
14 trustee's fiduciary duty bars her from gaining any *personal* benefit from the trust property.¹⁷ For
15 example, a trustee may not use trust property as collateral for a personal loan, even if the loan is
16 repaid in full and the trust suffers no direct harm thereby.¹⁸ In the same vein, a trustee's
17 application for water rights for use on trust property, means that any water rights ultimately
18 obtained are assets owned by the trust, not the trustee personally.¹⁹ It follows then, that water
19 rights obtained by a trustee for beneficial use on trust land are trust assets, subject to the
20 provisions of the governing trust documents.

21 ¹⁴ See e.g. Exhibit 3 to Petition. Jane cites to her affidavit for the proposition that she was
22 instrumental in getting the water rights granted by the State Engineer. Warner and his counsel
23 were never provided with a copy of Jane's affidavit and thus oppose it being provided to the
Court as an *ex parte* communication. Further, as to the substantive claim that Jane had a role in
securing the Trust's water rights, Warner disputes any such claim.

24 ¹⁵ See Petition at ¶8 and Opposition at p. 4.

25 ¹⁶ See generally NRS 164.067 (West 2015).

26 ¹⁷ *Ashley v. Burton*, No. B160305, 2003 WL 22871829 at *6 (Cal. Ct. App. 2003)
(unpublished).

27 ¹⁸ *People v. Larkin*, 413 F. Supp. 978, 983 (N.D. Cal. 1976).

28 ¹⁹ See *Benson v. State Engineer*, 131 Nev. Adv. Op. 78, 358 P.3d 221, 222, n. 1 (2015) (opining
that even though a petition for review of State Engineer actions was filed individually, the right
was actually held by the trust due to the fact that the trust was the manager of real property for
which the water right was applied).

1 In this case, there can be no dispute that the Water Rights are held by the Trust, not the
2 Jane personally and not the A Share which was never established or funded. Further, any act or
3 decision regarding the ownership or transfer of the Water Rights is subject to the provisions of
4 the Trust. Of particular import are, of course, the provisions requiring the co-trustees to reach a
5 unanimous decision as to any trust action or, in the event of a disagreement, to submit to
6 arbitration.

7 Jane's claim to the contrary flies in the face of the law, the terms of the Trust, and the
8 undisputed facts. Jane acknowledges that the A Share was never created or funded.²⁰ Jane also
9 acknowledges that the Water Rights are trust assets and that the Trust paid all of the fees
10 associated with the water right applications.²¹ Finally, all the deeds associated with the Water
11 Rights indicate that either the Kent and Jane Whipple Trust or the Kent Whipple Trust²² owns
12 the Water Rights.²³ Based on the undisputed facts Jane must concede and already has conceded,
13 the Motion should be granted and the parties referred to arbitration. Indeed, the facts lead to
14 only one conclusion, the co-trustees' present disagreement regarding the disposition of the
15 Water Rights requires arbitration.

16 However, rather than admit the inevitable and save the Trust and all parties considerable
17 time and money, Petitioner makes the completely circular argument that if the A Share had been
18 funded, the Water Rights would have fallen into the A Share (for reasons unknown and wholly
19 unsupported) and therefore, Jane is entitled to 100% decision making power. Petitioner's
20 argument fails for multiple reasons. First, it omits a crucial factor, namely that at Kent's death,
21 the A Share was to be funded with only Jane's share of the community property; all of the rest
22 of the Trust property was to be placed in Share B exclusively for the benefit of the remaining
23 beneficiaries (Kent and Jane's children).²⁴ Moreover, Jane couldn't touch the B Share until the
24 A Share was completely exhausted and the co-trustee was satisfied that distributions from the B

25 ²⁰ See Petition at ¶4.

26 ²¹ Opposition at p. 3.

27 ²² If anything, the fact that the Water Rights were granted to the Kent Whipple Trust or the Kent
28 Whipple Ranch would indicate intent, at the time the Water Rights were granted, that they held
by the B Share, which was the decedent's (Kent Whipple) trust, not the survivor's trust for Jane.

²³ See Exhibit 3 to Petition (included herewith as Exhibit B for reference).

²⁴ Exhibit A, Whipple Trust at p. 8-9.

1 Share were necessary for Jane's maintenance.²⁵ This structure evidenced a clear intent on the
2 part of the trustors to set aside a portion of the Trust property for the near-exclusive benefit of
3 their children and to protect those assets from all other claims and actions, including those of
4 Jane. Thus, contrary to Petitioner's claims, other than Jane's share of the community property
5 (the extent of which is currently unknown), Jane is prohibited from making any use at all of the
6 Trust assets without the express agreement or consent of the co-Trustee.

7 How many of the Water Rights (if any) would have been fallen into the A or B Shares
8 had those been properly funded is unknown and undetermined. However, Petitioner's claim that
9 the entirety of the Trust assets—including the Water Rights (which are presumably the most
10 valuable of the Trust assets)—somehow belong in the A Share simply because the A and B
11 Shares were not funded or because she allegedly had some role in filling out water right
12 applications after Kent's death fails on its own terms. Moreover, Petitioner's argument, if true,
13 would circumvent the Trust protections and fail to carry out the Trustors' intent to preserve
14 Trust assets for the children. More specifically, the Trust documents mandate that at least half
15 (assuming 100% of the Trust assets were community assets, which is also undetermined at this
16 point) if not more of the Trust assets be preserved for the benefit of the Trustors' children. The
17 Petition, if granted, would undermine the Trust and the trustors' intent at the expense of the
18 children. For this and related reasons, Warner disagrees with and opposes the Petition, thereby
19 requiring arbitration of the dispute, which is precisely what the Trust contemplates in such a
20 situation.

21 Given that the A and B Shares were not funded, the Trust assets (including the Water
22 Rights) are not *a priori* assets of the non-existent A Share, rather they are owned by the Trust
23 and must be managed by the co-Trustees for the benefit of all Trust beneficiaries, including the
24 beneficiaries of the B Share, the children.

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27 ///

28 ²⁵ Exhibit A, Whipple Trust at p. 8-9.

1 **2. The clear language of the trust documents mandate arbitration of all disputes and the**
2 **Opposition does not overcome the presumption in favor of arbitration.**

3 Nevada law is clear that *any* agreement to arbitrate must be enforced and the matter
4 submitted to arbitration.²⁶ Arbitration agreements are to be interpreted and enforced according
5 to their plain language. This strict requirement is at least part of the reason why any court
6 decision not to enforce an arbitration clause is reviewed *de novo*.²⁷ Under the Uniform
7 Arbitration Act, although the court can decide whether a controversy is subject to arbitration,
8 the arbitrator must decide if conditions precedent to arbitration have been satisfied.²⁸ Further,
9 because of the strong public policy favoring arbitration of disputes, even if an arbitration clause
10 contains ambiguities or raises a reasonable doubt as to the enforceability or applicability of an
11 arbitration clause to a particular dispute, it must be interpreted in favor of arbitration if at all
12 possible.²⁹ A motion to compel arbitration should not be denied unless it appears "with positive
13 assurance" that an arbitration clause should not apply to a particular controversy.³⁰ A party
14 opposing arbitration has an extremely heavy burden in seeking to overcome the presumption in
15 favor of arbitration.

16 Even the cases cited by Petitioner in the Opposition support the well-accepted majority
17 position cited above. They also make clear that the only circumstance where an arbitration
18 clause may be unenforceable is where the arbitration clause itself limits the scope of mandatory
19 arbitration and where the subject dispute is significantly removed from the ambit of that scope.
20 This is not one of those cases. The *Royal Indemnification* case, an unpublished Illinois opinion
21 cited by Petitioner, simply upheld the well-established proposition that one cannot be required
22 to arbitrate under an arbitration agreement it did not consent to.³¹ Likewise, the *Lusk* and *Ross*
23 *Brothers* cases actually support sending the parties in this matter to arbitration because the Trust
24 includes the same type of broad arbitration language, which likewise mandated arbitration in

25 ²⁶ NRS 38.219(1) (West 2015).

26 ²⁷ *Mediterranean v. Ssangyong*, 708 F.2d 1458,

27 ²⁸ NRS 38.219(3) (West 2015).

28 ²⁹ *Titolo c. Cano*, 68 Cal. Rptr.3d 616, 620 (Cal. Ct. App. 2007).

29 ³⁰ *Dryer v. Los Angeles Rams*, 709 P.2d 826, 830 (Cal. 1985) (*In Bank*).

30 ³¹ *Royal Indem. v. Hosp. Risk*, 2011 WL 9693718 at *6 (Ill. Ct. App. 2011) (*unpublished*)
31 (erroneously cited by Jane as 406 Ill. App. 3d 1211, 998 N.E.2d 716 (2011)) (holding that
32 subrogee was not bound by insured's agreement to arbitrate).

1 those cases.³² As the court in *Lusk* pointed out, when an agreement includes language requiring
2 “any controversy” to be arbitrated, the agreement is an *unlimited* submittal to arbitration.³³ In
3 such a case, *no* disagreement or controversy between the parties falls outside the scope of the
4 mandated arbitration and motions to compel should be granted as a matter of course.³⁴

5 The arbitration clause in this matter is an unlimited agreement to arbitrate. The operative
6 language is not “tucked away” in the Trust documents; rather, it is front and center in Section
7 Ten setting forth the nature and powers of the co trusteeship:

8 The concurring vote of two (2) Co-Trustees shall be necessary for the Trustees to
9 act hereunder...In the event of a disagreement at any time when there are only two
10 (2) Co-Trustees, then the dispute shall be submitted to arbitration in accordance
11 with the Uniform Arbitration Act of the State of Nevada.³⁵

12 Section Ten sets forth the manner in which the decision making for the Trust was to be
13 governed, which depended upon which spouse died first. It clearly provided that if Kent died
14 first, Jane’s authority over Trust assets would be limited. It was “necessary” for Jane to act with
15 a co-trustee.³⁶ Section Ten further set forth that any disputes between Jane and the co-trustee
16 were to be resolved through arbitration. The plain language of Section Ten requires co-trustees
17 over all matters and there is nothing whatsoever suggesting that co-trustees were only intended
18 as to subtrust B.

19 Equally clear is the fact that there was no limitation on the type of disputes mandating
20 arbitration. This is an arbitration agreement like that in the *Lusk* case, by which the co-trustees
21 are required to submit *any* disagreement whatsoever between them to arbitration. On its face,
22 the language belies any interpretation that the arbitration clause only applies to the selection of
23 co-trustees or management of B Share assets. The Trust says: “In the event of a disagreement *at*

24
25 ³² See *Lusk v. Ameriserve Financial*, No. 1:06-cv-1820-SEB-JMS, 2007 WL 2228561 at *6-7
26 (S.D. Ind. 2007) (*unpublished*).

27 ³³ *Lusk*, 2007 WL 2228561 at *6.

28 ³⁴ *Lusk*, 2007 WL 2228561 at *6.

³⁵ Exhibit A, Whipple Trust at p. 19-20.

³⁶ Exhibit A, Whipple Trust at p. 20.

1 any time when there are only two Co-Trustees, then the dispute shall be submitted to
2 arbitration...³⁷

3 The language of Section Ten is not ambiguous, but even if it were, Petitioner would
4 have the burden of proving beyond a reasonable doubt that the instant controversy is not subject
5 to arbitration.³⁸ This Petitioner cannot do. Petitioner claims that Jane is, in essence the sole
6 trustee of "Share A" and as such, Section Ten whereby she is required to always act with a co-
7 trustee, does not apply to her. As an initial matter, this argument fails because Share A was
8 never funded following Kent's death.³⁹ All of the Trust assets, including the Water Rights are in
9 the Trust and are subject to Co-Trustee Warner Whipple's joint decision making powers.

10 Even if Share A *had* been funded following Kent's death, Jane's authority to act would
11 nonetheless be constrained by the co-trustee unanimity requirement and the arbitration clause.
12 The Trust itself does not anywhere distinguish between trustees' authority to act as to the Trust
13 as a whole or the trustees' authority to act as to Share A or Share B. It simply says that, in the
14 event Kent died first, that Jane's could not act in relation to the Trust without the mutual
15 consent of the co-trustee.⁴⁰ Section Ten itself shows that Jane and Kent understood how to
16 exempt trustee actions from the arbitration provision: the clause requiring the co-trustees to
17 account to each other and provide audits upon request is specifically exempted from arbitration:

18 Any individual Co-Trustee shall have the right to demand a complete audit of the
19 Trust by an independent firm of Certified Public Accountants at the expense of
20 the Trust at any time or from time to time, without the consent of the other Co-
Trustees, and this power shall not be subject to arbitration.⁴¹

21 If there had been intent by the trustors to exempt either the A or B shares from co-trustee joint
22 decision making or mandatory arbitration, they certainly would have done so. The fact that
23 Share A is not specifically exempted from either the co-trustee decision making process or
24 mandatory arbitration language is fatal to Petitioner's claim. Even if the A Share *had* been
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26 ³⁷ Exhibit A, Whipple Trust at p. 20.

27 ³⁸ *Dryer*, 709 P.2d 826, 830 (Cal. 1985) (*In Bank*).

28 ³⁹ See Petition for Declaratory Relief at ¶3.

⁴⁰ Exhibit A, Whipple Trust at p. 20.

⁴¹ Exhibit A, Whipple Trust at p. 20 (emphasis added).

1 funded and the Water Rights *were* in the A Share (which the Co-Trustee does not concede),
2 decisions as to the ownership or disposition of those Water Rights would still be subject to joint
3 unanimous decision making and mandatory arbitration. That is not to say that Jane is not a
4 beneficiary of the Trust. It simply means that the trustors expressly agreed and took explicit
5 steps to ensure that Jane would not be acting alone in relation to the Trust. Failing to enforce the
6 arbitration provision would undermine those efforts and throw the long-standing rules
7 governing estate planning into chaos. The principal objective when interpreting a trust is to
8 carry out the intent of the trustor.

9 Petitioner argues that, because Jane has the unexercised authority to demand a
10 distribution from the A Share, she is in fact the sole trustee of the A Share. The plain language
11 of the Trust (and the words omitted from Jane's quotations of the Trust) belies this claim. An
12 accurate quotation of the clause Jane claims makes her a sole trustee of the A Share actually
13 makes explicit the co-trusteeship:

14 She shall have the power, exercisable in all events and at any time or from time to
15 time after the Husband's demise to withdraw all or any part of the principal of
16 Trust "A" **and to require the Trustee to distribute the same to her, discharged**
17 **of this Trust. Such power may be exercised by written instrument filed with**
18 **the Trustee.**⁴²

19 If the A Share *had* been funded and if Jane had been inclined to exercise this power, she still
20 would have been required to make a written demand for distribution on the co-trustee and
21 establish that the A Share had not already been fully dissipated or distributed.⁴³ Even before
22 getting to that point, a determination would be required as to what assets were in Share A and
23 what assets in Share B. To do that would require the assets to be valued. It may be that the
24 Water Rights in question exceed the total value that could be properly assigned to Share B. At
25 this point, there is certainly no agreement as to the value of the Trust assets or that the Water
26 Rights are part of Share A.

27 Notwithstanding the need to first resolve those overarching disagreements, Petitioner's
28 argument still fails because the exercise of power over Share A would still be subject to co-

⁴² Exhibit A, Whipple Trust at p. 6 (emphasis added).

⁴³ Exhibit A, Whipple Trust at p. 6.

1 trusteeship authority and decision making (and thus the arbitration clause). In any event, the
2 effect of Jane's right to demand a distribution from the trustee (as set forth above) as to Share A
3 is purely hypothetical because the A Share has never been funded and there is no consensus as
4 to value, which means Petitioner cannot use a tortured interpretation of a clause which applies
5 to a non-existent sub-trust to wish away Co-Trustee Warner Whipple's duties and decision
6 making authority in connection with the Trust and the distribution or transfer of its assets.

7 The only other basis put forward by Petitioner is the location of the arbitration clause in
8 the Trust. The contention is weak and wholly insufficient for the court to depart from the clear
9 statement of intent in the Trust. Indeed, in the *Lusk* case cited by Petitioner, the arbitration
10 agreement (which the court concluded was fully enforceable), was contained only in Sections
11 4.6 and 9.11 and of the agreements between those parties.⁴⁴ An arbitration clause must be
12 located somewhere in the agreement and the fact that it is one particular section does not
13 suggest that it only applies to that section. Further, given that Section Ten of the Trust in this
14 case governs the selection and operation of the trustees, it makes sense that the unanimity and
15 arbitration clauses were included there. Section Ten shows that Kent was concerned about Jane
16 exercising sole authority over the Trust assets following his death and Jane accepted and agreed
17 to the provisions included to address those concerns. Jane and Kent agreed that Jane could not
18 make any decisions without the full consent of the co-trustee. Petitioner's arguments to the
19 contrary fall well short of the burden of proof she is required to carry to exempt this case from
20 arbitration.

21 **3. Warner has not violated but is fulfilling his fiduciary duties by seeking to protect all**
22 **beneficiaries of the Trust.**

23 It goes without saying that the trustee of a trust owes fiduciary duties to *all* beneficiaries
24 of the trust; this includes the duty to treat fairly all beneficiaries of the trust.⁴⁵ Warner's
25 disagreement with Jane regarding the Water Rights and her Petition with this court comes down
26 to the fact that the Trust itself evidences a clear intent on the part of the Trustors that a
27 significant portion of the Trust assets (at least half, and potentially much more) be protected
28 from Jane and preserved for the benefit of the other beneficiaries. The Petition is, as Jane

⁴⁴ *Lusk*, 2007 WL 2228561 at *3.

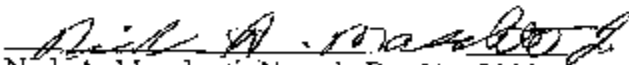
⁴⁵ *In re Orpheus Trust*, 124 Nev. 170, 174, 179 P.3d 562, 565-66 (2008).

1 admits, a means by which she hopes to gain exclusive control over the Water Rights. Warner
2 disagrees with the proposed action and the claimed right of title. He is fulfilling his duties in
3 ensuring that the trustors' intent is respected and carried out. Accordingly, he requests that the
4 parties' dispute be submitted to arbitration as required by the Trust.

5 **CONCLUSION**

6 For the foregoing reasons, Warner requests that the court refer this case to arbitration
7 forthwith.

8 Respectfully submitted this 22 day of December, 2015.

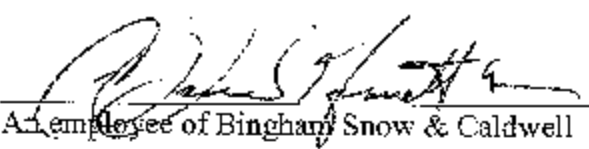
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10 
11 Nick A. Moschetti, Nevada Bar No. 0920
12 Jedediah Bo Bingham, Nevada Bar No. 9511
13 Attorneys for Warner Whipple, Co-Trustee
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of Bingham Snow & Caldwell, and that on this day, I caused a true and correct copy of the foregoing document to be served, to the following:

ATTORNEY'S OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
Matthew D. Carling Cedar Legal 1100 S. 10 th St. Las Vegas, NV 89101 cedarlegal@gmail.com	Jane Whipple, in her capacity as co-trustee of the Kent and Jane Whipple Trust	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> Email / E-File <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Mail
Alissa Engler Justice Law Center 1100 S. Tenth Street Las Vegas, NV 89104 alissaengler@justice-law-center.com	Jane Whipple, in her capacity as co-trustee of the Kent and Jane Whipple Trust	<input type="checkbox"/> Personal Service <input checked="" type="checkbox"/> Email / E-File <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Mail

Dated this 22nd day of December 2015.


An employee of Bingham Snow & Caldwell

FILED

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CLERK OF DISTRICT COURT
LINCOLN COUNTY, NEVADA

Case No. CV-0930015

Dept No. 1

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF LINCOLN

In re THE KENT AND JANE WHIPPLE
TRUST, dated March 17, 1969, Jane
Whipple, Co-Trustee (erroneously
names as Trustee), and amendments
thereto, JANE WHIPPLE,

Petitioner

ORDER

PROCEDURAL HISTORY

On September 11, 2015, Petitioner "Jane" filed a Petition for Declaratory Relief. On November 25, 2015, Warner Whipple "Warner" filed a Motion to Dismiss/Stay Petition Pending mandatory arbitration. Jane filed an opposition to the motion and Warner filed a Reply. Warner filed a Request for Submission on December 28, 2015. On January 7, 2016, Jane filed an "Errata to Opposition to Motion to Dismiss/Stay Petition Pending Mandatory Arbitration" and a Request for Oral Argument. On January 11, 2016, Warner filed an Opposition to Errata and Untimely Request for Oral Arguments. The court has reviewed the file and finds that additional briefing or argument is not necessary.

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT 1
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



FACTUAL SUMMARY

For the purposes of deciding Warner's motion, the court finds the following facts to be undisputed.

On March 17, 1969, Kent and Jane Whipple, husband and wife, created a trust. Kent and Jane amended the trust on January 30, 1977. Subsequently, Kent died.

After Kent's death, the trust acquired water rights "permits" from the State Engineer. Prior to 2015, several of the permits were conveyed to the Kent Whipple Ranch, LLC. In January 2015, the Kent Whipple Ranch applied to the State Engineer to change the point of diversion, place of use and manner of use of a portion of one of the water permits. Betsy Whipple, a remainder beneficiary of the trust protested and the State Engineer stayed his consideration of the application.

On August 29, 2015, Keith Whipple, Co-Trustee of the Trust resigned. Pursuant to a Court order filed in Elko County in 1987, Warner would succeed Keith as Co-Trustee. On October 15, 2015, Warner confirmed his acceptance of appointment as successor Co-Trustee.

Jane's filing is styled as a "Petition for Declaratory Relief (NRS 30.010 et seq.)" Although not cited by Jane, NRS 30.060(1)(c) allows a Trustee to have a declaration of "rights or legal relations" to "determine any question arising in the administration of . . . the trust, including questions of construction" of the trust. In addition, various sections of NRS Chapter 164 provide for a trustee to petition a court for advice and instruction.



1 In her petition Jane seeks the following relief: A declaration that:

2 1. The Kent and Jane Whipple Trust dated March 17, 1969, remained in
3 effect in 1976 after the death of Kent Whipple;

4 2. Jane Whipple is a trustee of the Kent and Jane Whipple Trust dated
5 March 17, 1969;

6 3. The "A" and "B" trusts of the Kent and Jane Whipple Trust dated March
7 17, 1969, were never partitioned and funded;

8 4. Water right Permit 79132 was transferred to the Kent and Jane Whipple
9 Trust dated March 17, 1969, and the transfer is valid and said permit is an asset of said
10 Trust;

11 5. Water right Permits 28599, 55918, 55919, 55920, 79132 and Claim of
12 Vested right V-01394 were transferred to the Kent Whipple Ranch, LLC, by the Kent and
13 Jane Whipple Trust dated March 17, 1969, and the transfers are valid and said permits
14 and claim are assets of the Kent Whipple Ranch, LLC.

15 6. This Court confirm the appraisal (in 1976 dollars) of the Kent and Jane
16 Whipple Trust dated March 17, 1969;

17 7. The A trust (d/b/a Jane Whipple Family; Jane Whipple Trustee and/or
18 Kent Whipple Trust; Jane Whipple Trustee) is the rightful owner of the Kent Whipple
19 Ranch, LLC and that Jane Whipple has an absolute right to manage, sell; water right
20 Permits 28599, 55918, 55919, 55920, 79132 and Claim of Vested right V-01394.

21 8. The Kent and Jane Whipple Trust dated March 17, 1969, as the sole
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1 owner of the Kent Whipple Ranch, LLC has and continues to have authority to manage,
2 sell, to otherwise convey water right Permits 28599, 55918, 55919, 55920, 79132 and
3 Claim of Vested right V-01394.
4

5 In the motion to compel arbitration, Warner argues that it is "unclear" if the
6 A and B trusts were funded; whether the water rights acquired after the death of Kent
7 Whipple are in the A trust or B trust, and whether the Kent Whipple Ranch is an entity
8 separate from the trust. It is alleged that these uncertainties have caused Warner
9 "considerable concern" and because the co-trustees have not unanimously agreed to the
10 transfer of the water rights or what the ownership interest is, arbitration is required. An
11 affidavit from Warner is attached as an exhibit in which Warner states "He has concerns
12 as a Co-Trustee of said Trust regarding the filing and contents of said Petition . . ."
13

14 The motion relies on section Ten of the Trust which provides as follows:
15

16 TEN: Upon the resignation, inability to act, or death of
17 JANE WHIPPLE, then KENT WHIPPLE shall act as the
18 sole Trustee. Upon the resignation, inability to act, or
19 death of KENT WHIPPLE, then JANE WHIPPLE and
20 KEITH MURRAY WHIPPLE shall act as Successor Co-
21 Trustees. Upon the resignation, inability to act, or death
22 of both the original Trustees, then KEITH MURRAY
23 WHIPPLE shall act as the sole Successor Trustee.
24 Upon the resignation, inability to act, or death of KEITH
25 MURRAY WHIPPLE, then the FIRST NATIONAL BANK
26 OF NEVADA shall act as the Successor Trustee.

The individual Successor Co-Trustees shall be
entitled to compensation for their services, which shall
be the compensation normally charged by corporate
trustees under similar circumstances. The individual
Trustees named herein shall serve without bond.



Each Successor Co-Trustee must at all times be fully informed of each and every official act performed by the other Trustees and must be furnished with an accounting of all income, expenditures and activities of the Trust at least quarterly. Each Co-Trustee at all times shall have the right to examine any and all Trust books of account, reports, filed and papers of every nature whatsoever. Any individual Co-Trustee shall have the right to demand a complete audit of the trust by an independent firm of Certified Public Accountants at the expense of the Trust at any time from time to time, without the consent of the other Co-Trustees, and this power shall not be subject to arbitration.

The concurring vote of two (2) Co-Trustees shall be necessary for the Trustees to act hereunder, when there are two (2) Co-Trustees. In the event of a disagreement at any time when there are only two (2) Co-Trustees, then the dispute shall be submitted to arbitration in accordance with the Uniform Arbitration Act of the State of Nevada.

Based on these facts and the trust language, Warner requests the Court to "compel the arbitration of the disagreements between Co-Trustee Jane and Co-Trustee Warner regarding their disputes relating to the petition and its contents."

In 2000, Nevada adopted the Uniform Arbitration Act (NRS 38.206 et seq). NRS 38.219 provides in part that an "agreement contained in a record to submit to arbitration any existing or subsequent controversy . . . is valid, enforceable and irrevocable . . ." The party moving to enforce an arbitration clause has the burden of persuading the district court that the clause is valid.

Here, it is not disputed that the arbitration language in the trust is valid.

¹
See D.R. Horton, Inc., v. Greer, 120 Nev. 549 (2004).



1 Although Jane does not dispute the validity of the arbitration agreement, she argues that
2 the scope of the clause does not encompass the relief she seeks in her petition.
3

4 In her petition, Jane is in essence seeking judicial ratification of actions she
5 has taken as a Trustee, and confirmation (or declaration) of her authority to act in the
6 future. Although somewhat non-specific, Warner disagrees with Jane's "proposed action"
7 and her claimed right of title (presumably to the water permits and the Kent Whipple
8 Ranch).
9

10 Whether a dispute arising under a contract is arbitrable is a matter of
11 contract interpretation, which is a question of law.² NRS 38.219(1) refers to arbitration of
12 "an existing or subsequent controversy" between the parties.
13

14 An examination of the arbitration language in Section Ten of the trust
15 reveals a focus on acts of a trustee. The relevant provisions provide that each Co-
16 Trustee "must at all times be fully informed of each and every official act performed by
17 the other Trustees [sic]. . . ." The section further provides that "the concurring vote of two
18 (2) Co-Trustees shall be necessary for the Trustees to act hereunder . . . " and "in the
19 event of a disagreement . . . the dispute shall be submitted to arbitration"
20

21 On the record before the court, it appears that all of Warner's
22 disagreements or concerns relate to actions taken prior to the resignation of Warner's
23 predecessor Co-Trustee. Nothing in the record suggests that Warner's predecessor was
24 not "fully informed" or did not concur with Jane's action. Neither party cited any law to
25

26 ²
State Ex Rel. Masto v. Second Judicial District Court, 125 Nev. 37; 199 P.3d 828 (2009).



1 support Warner's authority to dispute actions taken before his appointment as Co-
2 Trustee.

3
4 Based on the foregoing, the Court finds that the "dispute" raised by Warner
5 is not arbitable under Section Ten of the trust.

6 Further, the issue of what authority a trustee has pursuant to the terms of
7 the trust is a question of law, and does not require a consideration of how a trustee
8 should exercise that authority. For example, a determination of the authority of the
9 trustees to allocate property between the A and B trusts, or the authority of either to
10 control the A or B trusts is a question of law based on the trust language. A dispute
11 between Trustees as to the existence of their authority is not a dispute as to the
12 existence of that authority. On the other hand, a dispute as to what particular property
13 should be allocated to each trust, or a dispute as to how property should be managed or
14 disposed of would clearly fall within the arbitration language.³

15
16
17 At the risk of redundancy, a further example may help illustrate the point. If
18 the court determined that the "concurring vote" language applies to actions regarding
19 either the A or B trust (or unallocated property in the original trust) any proposed action
20 by either trustee would be subject to arbitration in the event of a dispute. If however, the
21 court found that Jane has sole authority to act in regard to the A trust, Warner's
22 disagreement with her proposed action would not be subject to arbitration.

23
24 Overall, the court finds that Jane's petition and Warner's response does

25
26 ³
This point assumes of course, that the "concurring vote" language applies to the action proposed.

SEVENTH JUDICIAL DISTRICT COURT
STEVE L. DOBRESCU
DISTRICT JUDGE
DEPARTMENT I
WHITE PINE, LINCOLN AND EUREKA COUNTIES
STATE OF NEVADA



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not present a dispute or disagreement that falls within the arbitration language of the
trust. Good cause appearing.

IT IS HEREBY ORDERED that Warner's Motion to Dismiss/Stay Petition
Pending Mandatory Arbitration is **DENIED**.

DATED this 11 day of February, 2016.



DISTRICT JUDGE

FILED

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LISA C. LIGON
LINCOLN COUNTY CLERK
DEPUTY

Case No. CV 0930015

Dept. No.: 1

BINGHAM SNOW & CALDWELL

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Attorneys for Co-Trustee Warner Whipple



FILE COPY

IN THE SEVENTH DISTRICT COURT, IN AND FOR
LINCOLN COUNTY, NEVADA

In re THE KENT AND JANE WHIPPLE
TRUST, dated March 17, 1969, Jane Whipple,
Co-Trustee (erroneously named as Trustee),
and amendments thereto, JANE WHIPPLE,

**ORDER STAYING PROCEEDINGS
PENDING APPEAL**

Petitioner.

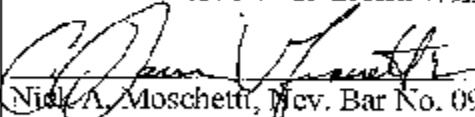
The Court, having received Co-Trustee Warner Whipple's Motion to Stay Proceedings,
no opposition to the same having been filed by Petitioners, and for good cause shown, does
hereby order that proceedings in this matter are hereby STAYED pending resolution of Co-
Trustee Warner Whipple's appeal of the Court's order denying his motion that this matter be
referred to arbitration.

By the Court this 13 day of April, 2016,

Steve L. Dobresen
District Court Judge

Submitted by:

BINGHAM SNOW & CALDWELL

 \$255.00 for

Nick A. Moschetti, Nev. Bar No. 0920

Jedediah Bo Bingham, Nev. Bar No. 9511

840 Pinnacle Court, Suite 202

Mesquite, Nevada 89027

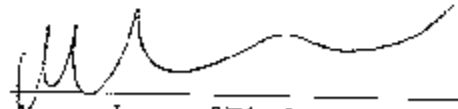
Attorneys for Co-Trustee Warner Whipple

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of Bingham Snow & Caldwell, and that on this day, I caused a true and correct copy of the foregoing document to be served, to the following:

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
Alissa Engler JUSTICE LAW CENTER 1100 S. Tenth Street Las Vegas, 89101 alissaengler@justice-law-center.com	Jane Whipple, in her capacity as Co-Trustee of the THE KENT AND JANE WHIPPLE TRUST, dated March 17, 1969	U.S. Mail

Dated this 16th day of April, 2016.


An employee of Bingham Snow & Caldwell

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on September 15, 2016.

The following individuals have been served by electronic mail and U.S. Mail, First Class pre-paid as follows:

Alissa C. Engler, Esq.
JUSTICE LAW CENTER
1100 S. 10th St.
Las Vegas, NV 89104
alissae@justice-law-center.com
Attorney for Co-trustee Jane Whipple

Dated this 15th day of September, 2016,

/s/ Michelle Thacker
An employee of Bingham Snow & Caldwell