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AFFIDAVIT

of

KATRINA JACOBSON GARDNER

WALTER S. GARDNER

Taken Saturday, September 30, 1989

1:00 P.M.

A P P E A R A N C E S

FRANK YEAMANS, ESQUIRE
ATTORNEY AT LAW
P.O. Box 20713
Reno, Nevada 80515

Reported by: JANELLE GRANTHAM, CSR-187

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JANELLE GRANTHAM
CERTIFIED SHORTHAND REPORTER

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I N D E X

WITNESS: Direct

KATRINA JACOBSON GARDNER 3

(Mr. Walter S. Gardner is referred to throughout the deposition as Mr. Gardner)

DEPOSITION EXHIBITS: Page

1, Topographic map	6
1A, Topographic map	51
2, Map	27
3, Map	27
4, Photo	35
5, Map	41
6, Map	43
7, Map	44
8, Map	45
9, Map	46
10, Map	48
11, Map	49

1 (Whereupon KATRINA JACOBSON and WALTER S. GARDNER
2 were duly sworn)

3 MR. YEAMANS: We are here today to take the
4 testimony of Mr. and Mrs. Gardner of Ruby Valley
5 Nevada, we are discussing the matter of the historic
6 water use on the diamond springs ranch in Diamond
7 Valley, Nevada.

8 The ranch itself is some 25 or so 30 miles
9 north of Eureka, Nevada and the ranch sits on the
10 east side of Diamond Valley.

11 KATRINA JACOBSON GARDNER

12 called as a witness on behalf of Mr. Yeamans,
13 having first been duly sworn, testifies as
14 follows:

15 E X A M I N A T I O N

16 BY MR. YEAMANS: Q. Mrs. Gardner, if you will
17 give your full name Katrina J Gardner, it is Jacobson
18 Gardner. Walter S Gardner Ruby Valley, Nevada.

19 Q. I will start with Mrs. Gardner first just
20 to identify who she is?

21 MR. GARDNER: She was born there.

22 Q. What was your maiden name, Mrs. Gardner?

23 A. Katrina Jacobson.

24 Q. And who was your father?

1 A. Jorgan Jacobson.

2 Q. Would you spell his first name?

3 A. J-o-r-g-a-n B Jacobson.

4 Q. Where do you currently live, Mrs. Gardner?

5 A. Ruby Valley, Nevada.

6 Q. And how long have you lived there?

7 A. 59 years.

8 Q. And do you live on a ranch or in a
9 subdivision, in a city, in a town?

10 A. In a ranch.

11 Q. And has that been a ranch for the last 59
12 years that you have lived there?

13 A. Yes.

14 MR. GARDNER: May I say something. She hasn't
15 always lived on this ranch, but she's lived nearby
16 ranches, part of the Gardner ranches.

17 Q. Oh, all right.

18 Now what is todays date, Mrs. Gardner?

19 A. September 30th, 1989.

20 Q. And where are we now seated?

21 A. At the home of Eileen Penrod.

22 Q. Okay. And who is present in the room here
23 today?

24 A. Yourself, and you are.

1 Q. My name is Frank Yeamans?

2 A. Janelle Grantham, and Milton Thompson,
3 Walter Gardner, my husband Walter Gardner.

4 Q. And why are we here today?

5 A. We are here to talk about the conditions of
6 the water on the Diamond springs ranch in Diamond
7 Valley, Nevada.

8 Q. Okay. What was the date of your birth,
9 Mrs. Gardner?

10 A. May 9th 1909.

11 Q. And your place of birth?

12 A. Elko, Nevada.

13 Q. And where were your parents living at the
14 time of your birth?

15 A. In Diamond Valley, Nevada at the Diamond
16 springs ranch.

17 Q. And your parents were, what were their
18 names?

19 A. Jorgan P Jacobson and Grace Phoebe
20 Jacobson.

21 Q. Could you spell her middle name, please?

22 A. P-h-o-e-b-e.

23 Q. And where did your parents live, once again
24 where did your parents live at the time of your

1 birth?

2 A. At the Diamond springs ranch in Diamond
3 Valley, Nevada.

4 Q. Okay. Now, is that the ranch that is now
5 called the Thompson ranch?

6 A. It is.

7 Q. We'll call this Exhibit 1.

8 Exhibit 1 is a 15 minute topographic map
9 with a label or titled Diamond springs, Nevada.

10 Now, Mr. Jacobson-- Mr. and Mrs. Gardner
11 will you come here one second now.

12 We want to make sure that when we discuss
13 your home and your birth place you refer to it as the
14 Diamond springs ranch, now on this map as we went
15 over it we can see that it has the McGinni ranch
16 going north of Eureka. There is a ranch called the
17 Thompson ranch in section 3. North of the Thompson
18 ranch in section 34 is a location called Diamond
19 springs?

20 A. That would be one mile between them.

21 Q. Yes, ma'm that's correct approximately one
22 mile between them. Now on this map what represents
23 your original home place, is it the Diamond springs
24 in section 34 or what is now called the Thompson

1 ranch?

2 A. The Thompson ranch.

3 Q. So the Thompson ranch would be the same
4 that you grew up on known as the Diamond springs
5 ranch?

6 A. Yes.

7 Q. Thank you. Now you say that you were born
8 in Elko and then your parents took you back to the
9 Diamond springs ranch?

10 A. Yes, my Mother came to Elko for doctors
11 care when I was born.

12 Q. How long did you live at the Diamond spring
13 ranch?

14 A. Well, from the time I was born until, well
15 I graduated from high school I wasn't home. It was
16 always home until I married in 1931.

17 Q. So you lived on the ranch from
18 approximately 1909 to 1931?

19 A. Right.

20 Q. And that was home?

21 A. That was home.

22 Q. Okay. Now who lived on the ranch there.
23 Did your parents live there?

24 A. Yes. And by that time my Father had

1 acquired the Diamond springs, as indicated on your
2 map, ranch and also the ranch 7 miles to the north of
3 that which was the Box springs ranch and belonged to
4 my grandparents.

5 Q. What were their names?

6 A. Andrew and Emma Dibble D-i-b-b-l-e.

7 Q. Okay. And what was the name or another
8 name for the Diamond springs located in section 34 at
9 the mouth of telegraph canyon, was there a ranch name
10 for that?

11 A. Just the Cox ranch.

12 Q. Okay. The Cox ranch or the Cox place. Did
13 any one else live at the Diamond springs ranch which
14 is what we are now referring to the present day
15 Thompson ranch?

16 A. You mean the present day Thompson ranch.
17 No one but our family.

18 MR. THOMPSON: Didn't you have an uncle.

19 THE WITNESS: Oh yes my uncle had owned the
20 ranch and his name was Nels Toft N-e-l-s T-o-f-t.

21 MR. THOMPSON: And Pete he was there all the
22 time that I was around there.

23 MR. YEAMANS: Q. Old Pete was also living there,
24 is that correct.

1 MR. GARDNER: He worked at the place, he came
2 with the place and he worked there.

3 A. When the ranch changed hands he went with
4 it.

5 Q. When did Nels Toft acquire the Diamond
6 springs ranch?

7 A. I think perhaps in the early 19 hundreds or
8 late 18 hundreds. My Father came from-- was his
9 nephew and he came from Denmark to work for him on
10 the ranch in 1900 and 2, I think.

11 Q. Okay. Did your Father or your uncle ever
12 talk about the previous owners?

13 A. Yes.

14 Q. Which owners did they mention?

15 A. I know some of the old deeds there was even
16 some Wines from Ruby valley had owned part of it at
17 one time, or probably invested money in it. There
18 was-- when it was first it was a station for the
19 teamsters to stop overnight in hauling supplies from
20 grain and flour from Ruby valley to Eureka and it was
21 owned buy some people named Studer. And before them
22 I think it was before them or it may have been after
23 them there was somebody name Taft instead of Toft
24 T-a-f-t.

1 Q. Did your Father or your Mother or Mr. Nels
2 Toft describe to you the operations of the ranch when
3 Mr. Taft owned it, did they ever say how Mr. Taft
4 operated the ranch?

5 A. Yes. He evidently had backing and the way
6 quite alot of money is what I would think even though
7 they had never mentioned this. But they used it as a
8 station for people to stay overnight and the
9 telegraph, line came through there. This was just
10 for a short time because the Pony Express-- when the
11 Pony Express came in they no longer needed the
12 telegraph, line, or is it the opposite. It's the
13 opposite?

14 A. The telegraph line replaced the Pony
15 Express.

16 Q. Did you know whether or not Mr. Taft was
17 the one who dammed up the springs, did any one
18 ever--?

19 A. Yes.

20 Q. Okay. Now he dammed up the springs at the
21 Diamond springs ranch?

22 A. Yes.

23 Q. Do you remember how many springs there
24 were, or roughly just one spring or were there a

1 series of springs, or were there two groups of
2 springs. Can you describe a little bit of what you
3 know of it?

4 A. Well I was a child and these things of
5 course were interesting to me, but I didn't in alot
6 of ways wonder about the springs, though, they always
7 said that I thought that there were numerous springs
8 in the bottom of this large pond which we had a
9 picture of. There were springs seeping up to make
10 the pond, and then there were the springs the ones
11 that supplied water for the house that was a definite
12 spring.

13 Q. And is it your understanding that Mr. Taft
14 was the one who originally dammed up the springs?

15 A. I thought that Mr. Taft was the one that
16 made it into a ranch and dammed up the springs. Made
17 the various ponds as they were. He planted a large
18 Orchard. We had beautiful apple and pears and goose
19 berry patches and so forth when I was a child. And
20 in order to pump the water for the Orchard which was
21 on the hill right back of where the present house is
22 part of the Orchard is there.

23 Q. Is this on the north side of the present
24 buildings?

1 A. It was on the west and on the north.

2 Q. Uh huh?

3 A. Between the pond where we went swimming and
4 the house and there were also several pear trees down
5 below the old Adobe house, maybe four or five pear
6 trees. And in order to get the water onto, up the
7 hill he installed a water wheel that was drawn by
8 horses.

9 Q. A water pump?

10 A. A pump that a horse was hitched to it and
11 it went around in a circle. Now this was still there
12 when I was a child. We loved to play on it.

13 Q. And this was built by Mr. Taft as you
14 understand?

15 A. As I understood Mr. Taft had it built.

16 Q. And that was still there when you were
17 living as a child?

18 A. Yes, and I don't know how a child assesses
19 the size of anything, but I would think that it was
20 perhaps 15 feet in diameter and it went into like a
21 hub of a wheel in the center and this rotated by the
22 horse pulling it around through cogs.

23 And Minni Cox, who was my Mother's cousin,
24 was five years old and when she came over to visit

1 from what is indicated there as the Diamond springs
2 ranch which was the Cox ranch she, her Mother visited
3 Mrs. Taft in the house and she went out to play with
4 the Taft children and they took her down, they used
5 to sit on the side of this wheel as the horse pulled
6 it around, but they had to be careful to be still
7 while they sat there. And she put her hand out on to
8 the wheel and the cogs ran over it and she lost her
9 hand. She was 5 years old.

10 Q. And this was approximately what year, was
11 this before you were born?

12 A. Oh yes.

13 Q. Okay.

14 A. About probably 30 years before or 25.

15 Q. Okay. And this, the horse driven water
16 pump was located-- was taking water from which, which
17 pond was it taking water from?

18 A. I would think the fish pond as Milton would
19 called it the fish pond. Do you recall anything like
20 that.

21 MR. THOMPSON: As near as I thought that it was
22 there the little fish pond.

23 MR. YEAMANS: Q. How about the pond that was
24 located to the north of Milt Thompson's house, it's a

1 large pond up there now it's not full?

2 A. Our swimming pool.

3 Q. That was the swimming pool?

4 A. Uh huh, yes.

5 Q. And the fish pond where the water wheel was
6 located is different than the swimming pool?

7 A. Yes.

8 Q. Okay. Do you remember any other unusual
9 features that Mr. Taft may have installed on those
10 ponds, did he install what's known as a water ram?

11 A. I don't know if that was installed by Mr.
12 Taft while he was there or if it was installed later
13 by later owners. But it was there as long as I could
14 remember. And evidently something that was quite
15 ordinary by the time that I could remember that that
16 hydraulic ram was in place.

17 But we did have running water which was
18 quite unusual though it ran constantly and was, and
19 was quite a small stream because it was pumped up the
20 hill and filled a one inch pipe and we had to keep it
21 going constantly because the ram operated on a
22 constant equilibrium of some sort.

23 Q. This ram was that drawn by electric motor?

24 A. No, it was self-sufficient.

1 MR. GARDNER: You know how a ram works.

2 Q. Was it water driven, in other words, the
3 force of the spring water drove it, is that right?

4 A. Yes.

5 Q. And that ram was at the house. Was it
6 still working while you lived there as a child?

7 A. It was still working after Walter and I
8 were married and as long as we owned the ranch.

9 MR. GARDNER: It worked there as long as I was
10 there.

11 Q. Where was the spring that the ram took the
12 water from?

13 MR. GARNER: It was slightly above and high
14 enough to have a little force, as I could see?

15 A. It was evidently the spring that was
16 closest to the east on, there was a hill between the
17 house and the pond, see and it was evidently the one
18 that was on the edge of the pond. The other springs
19 were in the pond and were not visible though you
20 might see some bubbling water coming up once in a
21 while. This was housed in a housing built up around
22 it, and I think my Father put in more cement walls
23 around it, perhaps to improve it. And every once in
24 a while it would need a new piece of leather put on

1 it, which was like a gasket and it wouldn't be
2 pumping correctly, and he would put on a new gasket
3 and perhaps every five or six years it would wear
4 out, it may not have been that often, or more often
5 and they would send to Sears Roebuck for another
6 ram. Probably Sears Roebuck could furnish you with a
7 catalog that had it, a hydraulic ram in it.

8 Q. Now, was this the spring that drove the ram
9 was that to the east of what was no-- to the south of
10 what is known as the fish pond, would that be one way
11 of identifying the location of the ram?

12 A. It was a matter of perhaps 20, 25 feet only
13 between them. But it was the fish pond was a spring,
14 of course, but it was the one with the ram in it was
15 a little further east up the hill from the fish pond
16 and water drained down.

17 And I think both the fish pond and the
18 overflow from the ram went into the big pond, is that
19 correct Walter.

20 MR. GARDNER: As I remember it there's a line
21 of trees along the upper edge of the pond that would
22 be the west side of the pond. This ram was situated
23 right in the north west corner and kind of come down
24 and run into the ram and the water went on into

1 the--.

2 Q. Up to the house?

3 A. Well it was pumped to the house. What
4 wasn't pumped was running into, because it took water
5 to make it work and that water went on into the pond.

6 Q. Okay?

7 A. And a portion of that water went up the
8 pipe line to the house.

9 Q. Okay.

10 A. Does that make it clear as mud.

11 MR. THOMPSON: Do you want to correct that it
12 was east instead of east--.

13 MR. YEAMANS: Q. So it would be on the north
14 east edge of the pond rather than the north west?

15 A. Yes.

16 MR. GARDNER: Thanks for checking.

17 Q. When your Father operated the Diamond
18 spring ranch what type of ranch was that, what were
19 the ranching operations that he carried on at the
20 ranch, Mrs. Gardner?

21 A. It was cattle ranching and then later when
22 sheep men came in and took the mountains for their
23 range the ranchers also invested in sheep in order to
24 hold their claim on the range.

1 Q. So your Father ran cattle on not only--
2 Correct me if I'm wrong, I don't want to lead you on
3 here, but, he put cattle on the range at the Diamond
4 spring ranch?

5 A. On the mountains, not on the ranch, the
6 sheep went on to the mountains but the cattle went on
7 to the range, and on to the natural meadows, that
8 were enlarged by the fact that the water had been
9 dammed and so made it more--may I clarify that.

10 Q. Yes?

11 A. In the winter you had to feed your cattle
12 on count of the snow and the cold weather and the
13 water made stags that's where the hay was and the
14 cattle came to eat. Otherwise in the summer or
15 spring they were out on the range and ranged back and
16 forth on the mountain.

17 Q. So when he was. Now is it correct to say
18 that your Father was raising hay on the ranch for
19 winter feed?

20 MR. GARDNER: Yes?

21 A. Yes.

22 Q. Did he raise hay to sell, or did he sell
23 any of the hay that he raised?

24 A. Yes. At that time they were still-- main

1 way of transportation were horses and wagons and
2 Eureka had livery stables that housed the horses and
3 when I was quite small we had a baler, did any of
4 that ever appear on the ranch, an old baler.

5 MR. GARDNER: I never did see it. I heard that
6 it was there. He also had the mail contract of
7 Eureka and he baled hay to haul in to his stock
8 because he had to stay overnight and come back with
9 the mail the next day?

10 A. That's right and then he would, sell some
11 of this to people that needed hay if we had a surplus
12 of hay.

13 Q. So alot of the hay would have been used for
14 the cattle, for feeding your own cattle in the winter
15 time?

16 A. Mostly, yes.

17 Q. And what was surplus hay would have been
18 sold?

19 A. Yes, not to any great extent but sometimes
20 there was, that was just a little extra income.

21 (Whereupon an off the record discussion
22 ensued.)

23 MR. YEAMANS: Q. Back on the record. We were
24 talking about the previous owners of the Diamond

1 springs ranch and we were discussing a baler that was
2 on the ranch when you lived there as a young girl,
3 Mrs. Taft-- Mrs. Gardner, excuse me.

4 Do you know who originally purchased the
5 baler for the ranch, was that your Father or your
6 uncle Nels Toft, or was it there when they purchased
7 the ranch?

8 A. I couldn't say.

9 Q. But it was there, was it an old baler when
10 you remember it as a young girl?

11 A. It was just the baler that sat there and at
12 that time it sat this one place and you hauled the
13 hay to the baler and and put it in.

14 MR. GARDNER: It is what you call a stationary
15 baler. You crammed it down in there and then you
16 tied the wires on it and some way or other it got
17 pushed out.

18 Q. Were there. Now let's see let's go back
19 and describe the springs and the pond that were built
20 up behind the dam.

21 Did all of the spring water or was all of
22 the spring water contained behind the dams or did any
23 of the spring water just sort of run free the outside
24 of the control of the dams?

1 A. Well, in the pond that we call the swimming
2 pool which was situate north of our house and was--
3 was a little closer to the mountains there was a
4 large spring perhaps enclosed with a fence around it
5 and it was perhaps 25 feet in diameter. Maybe not
6 that large but about that large and a deep spring and
7 it was enclosed with a fence, and the water from that
8 came out in a channel into the swimming pool which
9 was a large dam made in a semi circle.

10 Q. And that was a dam, a man made dam?

11 A. That was the man made dam and the spring
12 was as it was in its natural state above, and it had
13 probably run free, and so much went into fill this
14 pond for a holding pond when they needed to
15 irrigate. And it had a headgate on the northwest end
16 of it and Dad would regulate the water for the fields
17 by raising this headgate, a wooden gate so many
18 inches or feet to let the water run out onto the
19 field, and then when they were adequately irrigated.
20 He would push it down and let the dam fill again and
21 that way it gave it the more of a run as it went down
22 onto the fields when it scattered.

23 MR. GARDNER: As I remember it they used water
24 from there to irrigate their potatoe patch so it went

1 off to the north to ground out that way to irrigate
2 the potatoes?

3 A. Yes, and the field over there that also had
4 a spring in it. Now near the potatoe patch there was
5 a spring, quite a boggy deep spring and we lost
6 several horses that got in their reaching 4 green
7 grass. It was a smaller spring perhaps 12 feet
8 across and they would go in and get in to for and
9 mire down and we lost a very family pet called
10 Cheyenne an old mare in there.

11 Q. What year was this, do you remember.

12 A. Perhaps about 1923 or 4.

13 Q. Now, just one more thing on the swimming
14 pool, or swimming pond.

15 Now all of that spring water was controlled
16 by that dam and the headgate, is that correct, all of
17 the spring water had to come down through that
18 headgate, the natural flow of the spring?

19 A. There wasn't a head-- that spring didn't
20 have a headgate on it.

21 Q. But the swimming pool?

22 A. But the swimming pool did.

23 Q. So all the water flowed into the swimming
24 pool?

1 A. Yes.

2 Q. All of the natural spring flow?

3 A. Natural spring water but it was fenced to
4 keep--

5 Q. But that wasn't connected to the other pond
6 though?

7 A. No not at all.

8 Q. That was a separate?

9 A. That was a separate spring.

10 Q. How deep was the swimming pool, do you
11 know?

12 A. I imagine about 6 to 7 feet in the center.

13 Q. And did the water fill it all the way up to
14 the level ground?

15 A. Yes, they always said that they saved my
16 life because as a two year old I went head first into
17 it, it is about level and Dad grabbed me by one foot
18 and pulled me out.

19 Q. That's something I would have done.

20 And now the other springs would have been
21 the ones that were to the south of the swimming pool?

22 A. Yes. They were the ones that contributed
23 to the water in the large lake like pond.

24 Q. Now, was all of the spring flow from those

1 springs controlled by the levy or the dam that made
2 the large pond?

3 A. Yes, they all seeped up and the dam on the
4 west controlled it.

5 Q. And this was there as long or as early as
6 you can remember?

7 A. Yes.

8 Q. Was there any more source of water for the
9 ranch from the, was any water diverted from the
10 canyons up above the ranch to the east?

11 A. Well the canyon to the east and then to the
12 south is called horse canyon is that correct, Milt.

13 MR. THOMPSON: To the southeast, yeah, right
14 horse canyon?

15 A. And in the spring there was water from the
16 snow banks but none of the water was very permanent
17 it was only, ran a month in the spring, perhaps, that
18 was just strictly from the snow melt.

19 Q. And was that diverted from horse canyon to
20 the ranch to be used for irrigation?

21 A. Yes.

22 Q. And all of the water that did flow off of
23 horse canyon diverted?

24 A. Yes, but it was very little.

1 Q. But all of it was?

2 A. Yes. It had to go somewhere so it went
3 down on to our field. It did not go into the pond.

4 Q. Oh. Okay. Do you remember when you were
5 living at Diamond springs ranch whether the rate of
6 flow from the springs varied from one time of the
7 year to the next, or did the springs seem to have a
8 relatively constant discharge?

9 A. They were constant.

10 Q. Were they warm or cold springs?

11 A. Warm.

12 Q. Do you remember ever seeing anything in the
13 winter time on the tops of the springs that would be
14 a result of the warm water?

15 A. Well, something that we would call scum
16 sometimes.

17 Q. Did the spring ever create fog?

18 A. Yes, on the very cold day they did.

19 Q. So these were warm water springs?

20 A. They never froze over, any of them.

21 Q. Okay. Do you remember ever-- some one ever
22 telling you, or did you ever know what the rate of
23 the discharge was from all of the springs in gallons
24 per minute?

1 A. No, I don't think that we knew exactly how
2 to measure or comprehend a gallon per minute.

3 Q. Okay. Did your Father when he was running
4 the ranch did he use all of that water for use on the
5 ranch in irrigating the pasture lands, and the hay
6 fields, stock watering?

7 A. Yes.

8 Q. He used the entire discharge of the
9 springs?

10 A. Yes, if-- I suppose some years it was
11 constant but some years he would enlarge the amount
12 of land under cultivation by grub, by grubbing. Old
13 Pete would grub out a little more land around the
14 edge, but that was more or less just to keep the
15 brush down and from intruding upon the land.

16 Q. So all of the water was put to beneficial
17 use?

18 A. Yes.

19 Q. Did your Father ever tell you how much of
20 the water that the Taft family used, did you ever
21 have an impression of the spring discharge that
22 they-- that they put to beneficial use?

23 A. I think that they put it to beneficial use
24 and it was considered that they had really developed

1 the ranch until it was rather a show place.

2 Q. Have you read Mr. Crofut's Dust Diamond
3 Devils?

4 A. Not for several years.

5 Q. He also referred to it as it is a show
6 place and that is when the Taft family owned it?

7 (Whereupon an off the record discussion
8 ensued.)

9 MR. YEAMANS: Back on the record.

10 Okay. Mrs. Gardner we are looking at two
11 maps here, we'll identify these as Exhibits 2 and 3.

12 Exhibit Number 2 will be a map entitled
13 lands irrigated by Nels Toft from waters of Horse
14 canyon and Taft springs. Proof of appropriation
15 number 0 1 1 4 - 0 1 1 5.

16 Exhibit Number 3 will be a map entitled
17 amended map to accompany proof of appropriation for
18 irrigation and stock watering submitted by Theodore
19 and Olive Thompson from horse canyon and Taft
20 springs. Let me finish identifying them first.
21 Identified as amended map for applications 0 1 1 4
22 and 0 1 1 5.

23 Thank you?

24 A. May I clarify something privately with

1 Milt.

2 Q. Yes?

3 (Whereupon an off the record discussion
4 ensued.)

5 MR. YEAMANS: Let's go back on the record.

6 Q. Now we are looking at these two maps, Mrs.
7 Gardner, showing the land irrigated from what has
8 been identified as the Taft spring and the Horse
9 canyon on the map submitted by Nels Toft that is
10 Exhibit Number 2, and the same area covered under the
11 Exhibit 3 showing the lands irrigated from what is
12 now called Diamond springs and Horse canyon.

13 You see that there is a considerable
14 difference as the acreage being submitted as being
15 irrigated from the springs in Horse canyon the map
16 submitted by Nels Toft shows considerably less
17 acreage than that submitted by Mr. and Mrs. Theodore
18 Thompson?

19 A. Yes.

20 Q. As you remember as a child living at the
21 Diamond springs ranch which of the maps and the
22 irrigated acreage shown on that map more accurately
23 rents the ranch being used and irrigated when you
24 were a small child?

1 A. Well I thought that it was intermediate
2 but.

3 Q. Somewhere in between?

4 A. I know that they were always saying there's
5 more water. We can get more water out of that spring
6 and we can enlarge this field, and this is doing-- we
7 were able to run a few more cattle this year because
8 we have cultivated more, but there is always ample
9 water to be tapped.

10 Q. And has not?

11 MR. GARDNER: He also mentioned that old Pete
12 was always down grubbing brush increasing the size of
13 the ground that was being used and irrigated.

14 Q. As you said your impression and
15 remembrances are that it was more than what was shown
16 by Nels Toft, but somewhat less than shown by the
17 Thompson's?

18 A. Yes, I would say my judgment at that time
19 whether I was really paying that much attention to
20 it, but that the way that it seemed to me that there
21 was always plentiful water, but that the ranch could
22 be improved because the water was constant.

23 Q. Okay. All right. And all of the water
24 that was coming from the springs was put to

1 beneficial use?

2 A. Yes.

3 Q. None of it just fled to waste?

4 A. No, we didn't have any sink like they have
5 for the Humbolt river.

6 (Whereupon an off the record discussion
7 ensued.)

8 MR. YEAMANS: Back on the record. Now we've
9 discussed the springs that were the source of water
10 for the Diamond spring ranch, were there any other
11 areas that could be used for ranching or for raising
12 hay that did not have to be irrigated?

13 A. Well that goes into these gardens that were
14 irrigated by just digging down a ways and raising
15 potatoes and vegetables without any irrigation.

16 At the Cox place toward the north and it
17 was quite distance from where the house is, but quite
18 a ways maybe a quarter of a mile or more to the north
19 they raised a huge potatoe field and sometimes sold
20 potatoes and that was all subirrigated.

21 Q. Were there subirrigated lands in the
22 vicinity of the Diamond springs ranch to the west of
23 the ponds or was that all irrigated land?

24 A. That was all more or less, and some of it

1 was spongy with water underneath and willows grew.
2 You didn't try to raise willows you sometimes rubbed
3 them out because it would dam that when you got too
4 many.

5 Q. And this was naturally irrigated, or what
6 they would call subirrigated land?

7 A. I think that it was naturally irrigated or
8 it was irrigation water that didn't go into the ponds
9 or seep into the ponds why it would make a boggy
10 place where willows would spring up and so forth.

11 MR. GARDNER: Subirrigated.

12 Q. Was there-- were there significant amounts
13 of subirrigated land on the ranch that your Father
14 owned, not only the Diamond springs ranch but the Cox
15 place and the Box springs ranch to the north, did all
16 these ranches have a significant or fair amount of
17 subirrigate land on them that was naturally irrigated
18 by a a high water table?

19 A. No, I think that they depended mostly upon
20 springs. But there were patches that perhaps there
21 was a spring there and they kept it that way.

22 Q. A natural spring that just flowed?

23 A. Or seeped in and around itself and would
24 make land that was more profitable. I really didn't

1 pay too much attention to the source of it, it was
2 there.

3 Q. And hay could be raised on these lands?

4 A. Oh yes. The hay crop was the important
5 thing.

6 Q. Okay?

7 A. In the pastures.

8 Between the ranches it was 7 miles between
9 the Diamond springs ranch which I lived on, and the
10 Box springs ranch where my grandparents and uncle and
11 his wife lived, and this land in between there was
12 used for cattle grazing. And these cattle all
13 watered at springs that were outside of the fields.
14 And there were little watering springs and sometimes
15 they became boggy and an animal might bog in to
16 them. But there were springs there for their water.

17 Q. And natural grasses grew in these areas?

18 A. There was the wide open range you might
19 call it, but there had to be water for cattle, or you
20 couldn't keep them there.

21 MR. THOMPSON: Could you clarify.

22 There were meadows, around the springs do
23 you recall those natural native meadows.

24 THE WITNESS: At Willow do you know where

1 Willow that was a meadow, that was the Cox.

2 MR. THOMPSON: And then Rock field.

3 THE WITNESS: Yes and Rock field, and And Rock
4 pasture.

5 Rock field they raised a little alfalfa but
6 mostly sweet clover for hay and Willow was a main
7 source of hay for the Cox place. And it was quite a
8 large field, but it sat off there with no buildings
9 around it, and it had probably been taken up by uncle
10 Billy Cox.

11 MR. YEAMANS: Q. How was that irrigated?

12 A. Probably from the mountain run off but I
13 think that they were also quite wet fields.

14 MR. THOMPSON: And also behind the Cox place
15 there were extensive meadows, do you recall those.

16 THE WITNESS: Yes.

17 MR. THOMPSON: And they were quite boggy in the
18 spring.

19 THE WITNESS: Yes. Or they were-- I mean they
20 were green and, you know, the size of those large
21 black willows that were over at the Cox place.

22 MR. THOMPSON: Right. Right and--.

23 THE WITNESS: And they also had huge trees all
24 around the house there, a very shady and very

1 attractive place.

2 MR. YEAMANS: Q. Could you describe please how
3 large was that pond at the Diamond springs ranch the
4 main pond, do you remember how wide it was or how
5 long it might have been?

6 A. Only by looking at the perspective on that
7 picture I have of it, would you like to see that.

8 Q. We don't want to take your picture from you
9 so I guess we can't put it in as an Exhibit because
10 that's your picture and I don't want to--?

11 A. I had several copies of it Milt probably
12 has one.

13 Do you have one.

14 Q. The size of the main pond at the Diamond
15 springs ranch?

16 MR. THOMPSON: The only picture I have of yours
17 is the one that you sent me.

18 THE WITNESS: I have several copies of it.

19 MR. YEAMANS: Q. Would you say it was a large
20 pond or a big--.

21 Q. Well it was quite a little walk down there
22 from the house you didn't trot down there unless you
23 wanted to take a long walk and get some exercise.

24 Q. You are talking down the far end of the

1 pond?

2 A. Yes.

3 (Whereupon an off the record discussion
4 ensued.)

5 MR. YEAMANS: We are now back on the record.

6 Q. We have Exhibit Number 4 here which is a
7 picture, will you describe exactly what that picture
8 is, Mrs. Gardner?

9 A. This is a picture of the large pond that
10 was created by the springs on the east and the trees
11 are on the east, and the pond extends directly to the
12 west and it was quite wide besides being quite a long
13 ways to walk down to the end of it.

14 Q. Is this the house. Would the house be
15 located where the trees are in this picture?

16 A. The house is up here where the smaller
17 trees are.

18 Q. So this picture is taken from the west end
19 of the pond looking east, is that correct?

20 A. Correct.

21 Q. And you were describing earlier something
22 about one of your brothers that was swimming in the
23 pond?

24 A. So he went swimming and he got in above his

1 head and he didn't know how to swim at all. And he
2 said that he went under and came up and gasp and got
3 a breath and then he went under again, and he did
4 this twice and he thought, they say if you go under
5 three times you won't come up again. And so he
6 thought quickly what can I do, I'll stay on the
7 bottom and crawl on the bottom and get out and that
8 was his story of the way that he got out of there.

9 Q. How old was your brother when this
10 happened?

11 A. About 11 or 12 I think.

12 Q. So the spring or the pond was quite deep,
13 is that a fair statement?

14 A. Yes, and the year after I taught, the first
15 year that I taught when I came home for the summer I
16 thought that it would be nice to have a boat to go
17 out on this pond and this was in 1928 and so-- no 29
18 1929 and so we sent away to Sears Roebuck, I suppose
19 and I got a 12 foot boat with some paddles and we
20 paddled out and all around the edge of the pond and
21 around the pond and looked at the fish and when
22 company came they all got a boat ride.

23 So we thought that it would be great if we
24 could coax old Pete into taking a boat ride. Now old

1 Pete was famous for the fact that he was dirty Pete
2 who never took a bath and so finally my younger
3 brothers and sisters got him in the boat, when it was
4 well up on the shore just to show him what the boat
5 was like. And they weren't very nice after they got
6 him into the boat they give it a shove and got him
7 out into the lake.

8 And it was well loaded with four or five
9 kids and old Pete and it got out so far and there
10 were too many people in it and it got right up to the
11 top level of the boat and the boat started to sink.

12 And so we young people could swim, we had
13 learned to swim in the swimming pool by then so we
14 just bailed out, but the boat by that time with
15 everybody jumping up and down and bailing out was
16 sinking. And it went right down with old Pete
17 sitting in it but it didn't go completely down but it
18 went down until he was sitting in perhaps 7 or 8
19 inches of water and then we went out with ropes and
20 tied them and swam in and pulled the boat in. And we
21 said that we gave old Pete a bath.

22 But he was so frightened I can still see
23 him sitting there, he was petrified.

24 Q. Now this photograph we are not going to

1 take that, that's yours, Mrs. Gardner but Milt
2 Thompson says that he has a reproduction of that
3 photograph that he got from you and we'll submit that
4 as Exhibit Number 4?

5 (Whereupon an off the record discussion
6 ensued.)

7 MR. YEAMANS: Let's go back one more time here
8 on the main swimming pond.

9 First, Mrs. Gardner, we are talking about
10 old Pete out in the boat. Did that pond rise just to
11 the level of the land, or was the water level down in
12 a basin or did it come up to the land surface?

13 A. It came up almost to the land surface.

14 Q. Now Milt has some questions about diversion
15 of the water from the northbound which would be your
16 swimming pond?

17 A. Yes.

18 Q. Now you said that that was a headgate on
19 the north west side of the pond?

20 A. May I have time with Milt for a minute.

21 Q. Where was that water diverted. Milt
22 Thompson would like to ask Mrs. Gardner about the
23 diversions of the water from the swimming pond, the
24 one that has the headgate on the north west side of

1 the pond.

2 MR. THOMPSON: You said that there were other
3 diversions.

4 To my recollection and understanding there
5 was also a diversion pipe on the direct south side of
6 the spring that flowed from this north spring down
7 into the south spring in a ditch that flowed in above
8 the old willow patch that was there.

9 THE WITNESS: Yes, I remember that ditch
10 definitely now, as I said it was more than one could
11 get across.

12 MR. THOMPSON: And then there was another
13 little diversion on the south west side that I
14 believe that irrigated a garden with it was a little
15 square pipe that flowed into a little garden patch.

16 THE WITNESS: Yes. And below that garden patch
17 it seemed that there was enough water after going
18 through the garden some of it went down and across
19 and into the dam, perhaps.

20 MR. THOMPSON: Into the main pond.

21 THE WITNESS: Into the main pond.

22 MR. YEAMANS: Q. So you could control the flow
23 of the water from the swimming pond so that it went
24 also into the main pond?

1 A. Yes. Yes, I had forgotten that ditch.

2 Q. Would you have any way of describing how
3 high that water stood in the ponds in relation to the
4 house or to the dams or anything, what they commonly
5 call the hydraulic head of the spring?

6 A. It seemed that the water was, the ponds
7 were full. Why the water came right up to the banks
8 of them and then sometimes there would be little like
9 little oh V shape come into the bank here and there
10 and they weren't smooth banks on the side.

11 Q. When the ponds were full was there still
12 discharge over the dams or through the check, the
13 head valve the headgates?

14 A. I think if they ever got up near the top of
15 the dam there would be a fear that they might wash
16 out and so the headgates would be opened.

17 Q. Full flowed?

18 A. Yes, or whatever flow that they thought
19 that they needed to keep it under control.

20 Q. So if you shut the headgates there was a
21 possibility that the spring would wash out the dams?

22 A. Yes it was being watched, it was near the
23 house and you watched it without with even thinking
24 about it. But if you thought that the water was

1 getting high you let more water go out on to your
2 meadow and your irrigated lands.

3 Q. So the dams themselves could have been at
4 an elevation lower than what the springs would have
5 put the water up to. In other words the springs
6 could have washed the dams out if you would have not
7 opened the headgates, is that a correct statement?

8 A. In some cases, yes.

9 Q. Did your Father have on the pond any safety
10 ditches or drainage ditches that would keep the
11 springs from washing out the main dam?

12 A. No. Just what was controlled by the
13 headgates which he watched.

14 Q. So he controlled the flow out of the pond
15 from the headgates?

16 A. Well, definitely I would think that was the
17 main-- if it were to a height that was beyond control
18 why that was how he controlled it.

19 Q. Okay. Thank you.

20 Would you mind identifying-- I don't expect
21 you to know alot of details on these, these were
22 smaller fields but can you identify any of the maps
23 that were submitted by your Father.

24 We'll call this Exhibit Number 5, this is a

1 proof of appropriation number 0 1 1 1 0 submitted by
2 Mr. Jorgan Jacobson for the waters of Rock Canyon
3 Eureka county, Nevada.

4 Mrs. Gardner this shows a map showing if
5 you will read what it says along here for the source
6 of the water?

7 A. Yes.

8 Q. And what is that say, what is the source of
9 the water on this map?

10 A. Well, I would think that this is east.

11 Q. Yes, ma'm?

12 A. That the source of this water would be
13 coming from the mountain down across the road into
14 the field into the irrigated field.

15 Q. Uh huh?

16 A. And canyons, I was not familiar with the
17 canyons. But all canyons have natural little spring
18 that will drain in at sometimes of the year, and
19 drain down into that, and then the rest would be snow
20 water.

21 Q. And your Father would divert the water from
22 the ditch-- or from the channel of the creek and use
23 it to irrigate the pasture land?

24 A. Yes.

1 Q. And that would be this. This was a
2 diversion point here on the map and it shows a ditch
3 coming along the east side of what they call the
4 irrigated land. Now the east side would be on the
5 mountain side?

6 A. Yes.

7 Q. So would it be a true statement to say that
8 here you have the natural channel waters of Rock
9 canyon, your Father used a diversion point and
10 diverted the water above the field so that it would
11 irrigate the fields below it?

12 A. Yes, where would the roadway have gone.

13 Q. The road. The roadway is not shown on this
14 the roadway should be somewhere?

15 A. Right along there.

16 Q. And I'm pointing an area just to the east
17 of the irrigated--?

18 A. Yes, and running north and south.

19 Q. Yes, ma'm okay. This is a map for the
20 waters of Rock canyon, is that correct?

21 A. Yes.

22 Q. These are, right, original ones. Now that
23 was Exhibit Number 5.

24 This would be Exhibit Number 6 which is a

1 map for proof of appropriations submitted for number
2 0 1 3 2 0 Crofut spring taken from US government
3 survey Crofut.

4 THE REPORTER: Could you please spell that.

5 THE WITNESS: C-r-o-f-u-t that's what we would
6 have called Box springs, there's Box canyon creek.

7 MR. YEAMANS: And does not say who filed on
8 this one?

9 A. The Box spring was filed on by Mr.
10 Ouderkirk who is in Elko, the street is named for out
11 here Nels Ouderkirk.

12 Q. I remember his name in the Diamond Dust
13 Devils. This we'll call it Exhibit Number 7, this is
14 a map for the proof of appropriation for Number 2 4 4
15 1?

16 A. Yes, this is Davis creek and the land is
17 used it's south of the Box spring-- north of the Box
18 springs.

19 Q. Davis creek was the land irrigated north of
20 Box springs.

21 A. Yes, correct it irrigated north of Box
22 springs where the Crofut was, right.

23 MR. THOMPSON: Right and they kind of let that
24 one drop, yeah, they used to irrigate land directly

1 out from that, and then they let it drop. They never
2 did a prove up on that pattern.

3 THE WITNESS: Well there was a well down there.

4 MR. THOMPSON: I think that a half brother
5 irrigated that or something.

6 THE WITNESS: Walt drilled a well.

7 MR. GARDNER: Yes, I, and her brother went
8 north of there and we went down until we hit hard pan
9 and we got into some water, but it wasn't enough to
10 water with it was mostly mud.

11 Q. So did you finish?

12 MR. GARDNER: We never completed it?

13 A. They did put a windmill in there.

14 I think that the 3 C's did put a windmill
15 in there.

16 Q. Who are they?

17 MR. THOMPSON: Civil Conservation Corp.

18 MR. GARDNER: Yes, soil conservation corp?

19 A. It was for poor boys in dire states during
20 the depression.

21 MR. YEAMANS: Let's go on with the next exhibit
22 if we can.

23 Q. This is a map which appears to be a
24 continuation of proof of application number 0 2 4 4 1

1 and does that, it shows water coming from Davis
2 creek, is that correct?

3 A. If this is west and this is east.

4 Q. Well I believe that this is located north
5 south I think that this may be the ditch. This would
6 be the water is shown flowing from north to south?

7 MR. GARDNER: True.

8 Q. So that would have been probably the ditch
9 itself rather than the creek?

10 MR. GARDNER: That's the ditch. Now I don't
11 remember seeing too much water in it at any one time.

12 Q. That was from the mountain drainage?

13 A. Yes, that was the run off from the snow.

14 Q. Okay. The snow pack okay and this is
15 Exhibit Number 8.

16 This is will be exhibit 9 a map for proof
17 of appropriation number 0 1 1 1 1 submitted by Jorgan
18 P Jacobson for the waters of Box springs canyon?

19 A. There are no dates on any of this.

20 Q. No ma'm. Here's a day?

21 A. May 29th 1912.

22 Q. Uh huh. And that's when it was surveyed by
23 at the request of your Father?

24 A. Well my Father.

1 Q. George S Nicholson is the surveyor?

2 A. But my Father didn't have anything to do
3 with this land at that time.

4 Q. Okay. This is the water from Box spring
5 canyon, now, did your Father own the land at Box
6 spring canyon?

7 A. Not at that time. He didn't purchase that
8 land until 1926 from my grandparents.

9 Q. But at this time possible though that the
10 waters from Box springs canyon had been put to use on
11 the land prior to it being purchased by your Father?

12 A. Yes, it was put to use by my uncle Andy and
13 the Dibble's.

14 Q. Are you referring to Andrew Dibble?

15 A. Yes and Andrew Crofut?

16 A. Andrew Dibble Crofut and Andrew Dibble was
17 his stepfather.

18 Q. So this map though was not drawn until
19 1912?

20 A. It was then owned by them, but not my
21 Father.

22 Q. But showing the water that was put to use
23 when the Dibble's and the Crofut's owned the land?

24 A. Yes.

1 (Whereupon an off the record discussion
2 ensued.)

3 MR. YEAMANS: Q. Back on the record here, Mrs.
4 Gardner. We are looking at Exhibit Number 10, here
5 which is a map for the proof of appropriation
6 application Number
7 2 4 4 1 submitted by Jorgan Jacobson for the waters
8 of Davis canyon, Eureka county, Nevada.

9 And this if you will look at the map shows
10 this would be north pointing to the top of the map in
11 this direction. So west would be on the left side
12 and then east would be on the right side of the map?

13 A. This is east.

14 Q. Yes, ma'm?

15 A. And this is west and Davis canyon come from
16 the east to the west the canyon creek goes down that
17 way, okay.

18 Q. And here you have a ditch taking diverting
19 water from Davis canyon?

20 A. Up to the Box springs ranch.

21 Q. I am-- I'm not real sure.

22 Oh from right there?

23 A. Box springs canyon bringing the water south
24 to the waters of Box spring canyon.

1 Q. Right. Okay. And Exhibit Number 11 is the
2 map of appropriation of water to application 6 9 1 4
3 and here you can see on this map, once again-- no it
4 appears here that north-- north is not clearly shown
5 on here?

6 A. Is that north.

7 Q. Well here is section 2?

8 A. This goes down this is usually going north
9 and south isn't it--.

10 Q. Usually is but this is the southeast corner
11 of Section 3 Township 23 north Range 54 east. So
12 this is section one section two, section three sits
13 over here.

14 So we are looking at it with north towards
15 the short edge of the map that would be section one,
16 two, and three as you read them across from the north
17 east corner to the north west corner on a Township
18 range.

19 MR. GARDNER: That's right.

20 Q. And here it shows water being diverted from
21 Cottonwood spring which is in the southwest quarter
22 of Section 1. Is that appear to be the case to you
23 Mrs. Gardner or Mr. Gardner that this is the center
24 of section 1 here?

1 A. Well.

2 MR. GARDNER: As I recall my surveying 1, 2, 3
3 and go down 6 then you drop down 7 and come back and
4 you wind up here with 12.

5 Q. Uh huh?

6 MR. GARDNER: Is that right.

7 Q. That's the way that I understand it from my
8 map reading.

9 So this point here would be in, now each
10 one, a section 2 is this, these are the quarter--
11 quarter sections of 2 it appears to me?

12 A. This wouldn't be section 3, then.

13 Q. No I think that they crossed out here and
14 put 3 above. That refers to the southeast corner of
15 section 3, which would be right here and it appears
16 that that's the southeast corner of section 3. And
17 they surveyed over here to Cottonwood spring which
18 would be in the southwest corner of section 1?

19 A. Right.

20 Q. And this was a map submitted by your Father
21 Mrs. Gardner. By Mr. Jacobson?

22 A. Yes.

23 Q. Okay. Thank you.

24 I'd like to enter in one more exhibit and

1 this is just a continuation of the topographic maps
2 and this is a 15 minute series map titled railroad
3 pass Nevada, and at the southernmost part of the map
4 it shows the upper most reach of Box spring canyon
5 and north of that it shows Davis canyon draining to
6 the west off of the Diamond range?

7 A. That all sounds right, doesn't it, Walt.

8 MR. GARDNER: Uh huh.

9 MR. YEAMANS: We'll enter it as Exhibit Number
10 1 A and that will be 1 A and we'll have--

11 I'd like to ask you, Mrs. Gardner, once
12 again in your opinion and your impressions from
13 growing up there at the Diamond springs ranch would
14 it be your opinion, or your thoughts, your belief
15 that all of the waters from the Diamond springs had
16 been put to beneficial use prior to 1905?

17 A. Yes.

18 Q. Thank you, Mrs. Gardner?

19 A. Because my Father didn't come from Denmark
20 until 1902 and it was well established place before
21 that.

22 Q. Is it your impression that it was a well
23 establish accomplished and full operating ranch when
24 the Taft family operate it in the 1880's?

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A. Yes.

Q. And looking back in your lifetime and your childhood there talking with your Father and your Great Uncle Nels Toft, was it your impression that the Taft's had put all that water to beneficial use by use of the ponds when they owned it?

A. Yes, I think that they were pretty enterprising.

Q. Thank you, very much, Mrs. Gardner?

MR. YEAMANS: Will keep the exhibits, Milt will get the Exhibit Number 4 to me.

ooOoo

Signature of Witness

1 STATE OF _____)
2 COUNTY OF _____) SS.

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I, _____, A Notary Public in
and for the County of _____, State of
_____, do hereby certify:

That on the ___ day of _____, 198__
before me personally appeared KATRINA JACOBSON
GARDNER, the witness whose deposition appears
hereinbefore:

That said deposition was examined by her and
signed by her;

That she stated to me that the deposition had
been read by her, and that she had made such changes
and corrections, if any, as she desired, and that she
thereupon subscribed and swore to said deposition in
my presence.

WITNESS MY HAND AND OFFICIAL SEAL this ___
day of _____, 198__.

NOTARY PUBLIC

1 STATE OF NEVADA)
2 COUNTY OF ELKO) SS.

3
4 I, JANELLE GARDNER GRANTHAM, A Notary Public
5 and Certified Shorthand Reporter in and for the
6 County of Elko, State of Nevada, do hereby certify:

7 That on Saturday, September 30, 1989, at the
8 hour of 1:00 o'clock p.m. of said day, at 295 Skyline
9 Drive in Elko, Nevada, duly appeared KATRINA
10 JACOBSON, who was duly sworn by me, according to law,
11 to testify to the truth, the whole truth, and nothing
12 but the truth in the matter entitled herein, and
13 thereupon gave answeres to the questions propounded
14 to her;

15 That said questions and answers were taken down
16 in Stenotype by me, a Stenotype Reporter; and
17 thereafter transcribed into longhand typewriting as
18 herein appears.

19 IN WITNESS WHEREOF, I have hereunto set my hand
20 and affixed my notarial seal this 23rd day of
21 October, 1989.

22
23
24 Janelle Gardner Grantham 93