

**FILED**

FEB 06 2012

INYO CO. SUPERIOR COURT  
TAMMY L. GRIMM, CLERKBY *J Baker* DEPUTY

1 Christopher L. Campbell #116329  
2 Jeffrey A. Jaech #076876  
3 BAKER MANOCK & JENSEN, PC  
4 5260 North Palm Avenue, Fourth Floor  
5 Fresno, California 93704  
6 Telephone: 559.432.5400  
7 Facsimile: 559.432.5620  
8 Email: [CCampbell@bakermanock.com](mailto:CCampbell@bakermanock.com)

9 Peter E. Tracy #78185  
10 LAW OFFICE OF PETER E. TRACY  
11 106 South Main Street, #200  
12 P.O. Box 485  
13 Bishop, California 93515  
14 Telephone: 760.872.1101  
15 Facsimile: 760.872.2971  
16 Email: [inyomono@stanfordalumni.org](mailto:inyomono@stanfordalumni.org)

Attorneys for Petitioner Deep Springs College Corporation

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF INYO

In re the Matter of the

17 James R. Withrow, Jr. Chair for  
18 Government, the James R. Withrow, Jr.  
19 Lectureship Fund, and the James R.  
20 Withrow, Jr. General Fund  
21 Endowments created under the Will of  
22 James R. Withrow, Jr. at Deep Springs  
23 College Corporation

CASE No. **SI CV PB 12 53 233****PETITION FOR COURT ORDER  
INTERPRETING ENDOWMENT GIFT  
INSTRUMENT****[Probate Code § 17200]****DATE: March 9, 2012****TIME: 9:00 AM****DEPT:****JUDGE:**

25 Petitioner, Deep Springs College Corporation, a California nonprofit public benefit  
26 corporation, alleges as follows:  
27  
28

I.

INTRODUCTION

1. Petitioner operates Deep Springs College in Inyo County, California and brings this petition (the "Petition") under California Probate Code section 17200.

2. James R. Withrow, Jr. (the "Testator") died in 1987, a resident of the State of New York. Petitioner was the recipient of the James R. Withrow, Jr. Chair for Government (the "Chair Endowment"), the James R. Withrow, Jr. Lectureship Fund (the "Lectureship Endowment") and the James R. Withrow, Jr. General Fund (the "General Endowment") (collectively, the "Endowments"). The Endowments were established pursuant to the Last Will and Testament of Testator, which was executed in 1984. The will was admitted to probate on July 19, 1988 by the Surrogate's Court of the State of New York, County of New York (a true and correct copy of which is attached hereto as Exhibit "A"). Petitioner apparently executed a series of "Receipt, Release and Refunding Agreements," which specifically provided that that Deep Springs College takes its distributions subject to the conditions of Testator's will and subject to the terms of the resolution adopted by the Board of Trustees of Deep Springs College on May 14, 1988. A true and correct copy of the Receipt, Release and Funding Agreement dated September 22, 1997 is attached hereto as Exhibit "B." Such Exhibit "B" contains a copy of the referenced May 14, 1988 resolution by the Board of Trustees of Deep Springs College. The Endowments appear to be "endowment funds" within the meaning of the California Uniform Prudent Management of Institutional Funds Act (Probate Code § 18501, *et seq.*).

II.

TESTATOR'S WILL

3. As stated in Testator's last will, Testator's primary purpose for creating the Chair Endowment was to "carry out the purposes of such Chair established by Mrs. Beatrice Renfield in her letter to the Board of Trustees of Deep Springs Corporation dated October 22, 1975." A true and correct copy of Mrs. Renfield's letter is attached hereto as Exhibit "C."

4. As stated in Testator's last will, Testator's primary purpose for creating the Lectureship Endowment was to "provide lecture funds exclusively in the area of Social Sciences."

5. As stated in Testator's last will, Testator's primary purpose for creating the General Endowment was for "the operation and maintenance of Deep Springs College."

6. Testator's last will contains the following condition subsequent:

[S]hould DEEP SPRINGS COLLEGE cease to be an educational institution "for the education of promising young men" as provided in Par. 1 of the Deed of Trust dated November 5, 1923 ... all of the funds passing under this Article [i.e. the Endowments] shall revert to the TELLURIDE ASSOCIATION ... or, if ... the TELLURIDE ASSOCIATION refuses to accept such funds, to the VISITING NURSE SERVICE OF NEW YORK.

(Paragraph (D) of Article Fifth of Testator's last will.)

7. Testator was an alumnus of both Deep Springs College and Cornell Law School. He was an attorney in the State of New York and was a member of the Board of Trustees of the L. L. Nunn Trust from 1963 through 1980 and of the Deep Springs College Corporation from 1967 through 1980. From 1980 through the Spring of 1986, Testator served as an honorary Trustee/Director.

8. Testator lived at Telluride House on the Cornell University Campus beginning in 1930 and he promptly joined the Telluride Association. Testator served as the Telluride Association President from 1941 to 1943, and as its Treasurer from 1963 to 1973. As discussed more fully in the Declaration of L. Jackson Newell, attached hereto as Exhibit "D," the Telluride Association is the only other educational institution founded by L. L. Nunn that remains in operation. The Telluride Association transitioned from an all-male student population to coeducational from 1962 through 1964.

### III.

## DEEP SPRINGS COLLEGE AND THE DECISION TO BECOME COEDUCATIONAL

9. Originally, Deep Springs College was operated exclusively by trustees ("Trustees") of the Lucien L. Nunn ("L. L. Nunn") Trust (the "Trust"). In 1967, Testator participated in forming the Deep Springs College Corporation, a California non-profit public benefit corporation (the "Corporation") to assist with fundraising for Deep Springs College. In 1996, the Corporation revised its bylaws and amended the purpose of the Corporation to include continuing the educational work began at Deep Springs College by L. L. Nunn. Since 1996, the

1 board of directors of the Corporation ("Board of Directors") has operated Deep Springs College  
2 pursuant to an agreement with the Trust.

3 10. Since its establishment in 1917 by L. L. Nunn, Deep Springs College has  
4 operated as a single-sex institution, extending admissions only to male students. The question of  
5 whether Deep Springs College should be a coeducational institution has been considered and  
6 debated by the Trustees, students, alumni, faculty, and staff for at least 40 years. During those  
7 years, on several occasions, the Trustees formally considered whether Deep Springs College  
8 should become a coeducational institution. In particular, in 1979 when Testator was serving as a  
9 Trustee of the Trust and Director of the Corporation, the Trustees conducted significant  
10 discussions and held a formal trustee vote. On May 12, 1979, the Trustees adopted the following  
11 resolution retaining the male-only admissions policy but also resolved to review the policy in five  
12 years:

13 Resolved, that Deep Springs continue its present educational  
14 policies, including its status as an all-male institution, but that these  
15 policies be reviewed in five years in order to assure the Board that  
16 the primary educational objectives of the Founder can be achieved,  
in view of changes which may occur in social conditions and  
attitudes in the meantime.

17 11. In 1992 the Trustees convened an "Impact Commission on Student Body  
18 Gender and Size" (the "Impact Commission"). The Impact Commission studied the potential  
19 benefits, detriments, and cost of any changes to the student body composition as well as the  
20 potential process for implementing any change. The Trustees ultimately determined that the fiscal  
21 and infrastructure challenges facing Deep Springs College at the time made it infeasible to  
22 implement any changes, including a change to the single-sex admissions policy. In 2002, the  
23 Trustees and the Board of Directors determined that reconsideration of a change to the admissions  
24 policy should be included in long-range planning for Deep Springs College. Consideration of the  
25 subject was reaffirmed in the 2008 update of the long-range planning priorities set by the Trustees.  
26 In early 2011, the Trustees and the Board of Directors determined that it was logistically and  
27 financially possible to implement a change if the Trustees determined that admission of female  
28 students in addition to male students would advance the educational purpose of Deep Springs

1 College in its second century of operation. Thereafter, the Trustees began a formal inquiry. The  
2 Trustees requested input and opinions from the students, alumni, current and former staff and  
3 faculty of Deep Springs College. The Trustees conducted listening sessions in numerous  
4 metropolitan areas around the United States to facilitate input from interested parties and  
5 discussion of the possibility of coeducation at Deep Springs. The Trustees and members of the  
6 Board of Directors also reviewed the research of the Impact Commission and other writings from  
7 the prior discussions and research concerning admission of women to other formerly all male  
8 colleges and educational institutions. On September 17, 2011, the Trustees, by a vote of 7-2, and  
9 the Board of Directors, by a vote of 10-2, voted to change the admissions policy at Deep Springs  
10 College to allow the admission of female as well as male students. Following the Trustee's and  
11 the Board of Director's votes, the Deep Springs College administration set a target date of the  
12 2013-2014 school year as the first for coeducation.

#### 13 IV.

#### 14 RELIEF REQUESTED BY PETITIONER

15 12. Petitioner contends that regardless of whether New York law or California  
16 law applies, the Court should find that the admission of female students to Deep Springs College,  
17 when done in conjunction with the admission of male students, does not violate the condition  
18 subsequent contained in Paragraph (D) of Article Fifth of Testator's last will.

19 13. Petitioner asserts that interpretation is supported by New York law that  
20 acknowledges that even as a coeducational institution, Deep Springs College will continue to be  
21 an educational institution "for the education of promising young men as provided in Par. 1 of the  
22 Deed of Trust dated November 5, 1923," because young men will continue to receive education at  
23 Deep Springs College, along with women.

24 14. If the Court applies California law, then Petitioner seeks a judicial  
25 interpretation under California law that Paragraph (D) of Article Fifth of Testator's last will and  
26 the Receipt, Release, and Refunding Agreements create a property transfer subject to a condition  
27 subsequent. Petitioner further requests a judicial interpretation that the condition subsequent in  
28 Testator's will has not been, and will not, be triggered by Deep Springs College's admission of

1 women, in addition to men, during any school year.

2           15. When he drafted the applicable condition, Testator explicitly intended to  
3 incorporate the language of the Deed of Trust of the L. L. Nunn Trust, however interpreted and/or  
4 modified.

5           16. David Hitz, as Chairman of the Board of Trustees of the L. L. Nunn Trust  
6 for the benefit of Deep Springs College, has filed a concurrent petition asking this Court to  
7 interpret the language of the Deed of Trust of Lucien L. Nunn dated November 5, 1923 (the "Deed  
8 of Trust"). Specifically, David Hitz has asked this Court to construe Paragraph 1 of the Deed of  
9 Trust (the passage quoted by Testator) to permit the trustees of the L. L. Nunn Trust to use the  
10 trust estate granted in the Deed of Trust for the education of both men and women. In the  
11 alternative, this Court has been asked to modify the language of the Deed of Trust to permit use of  
12 the trust estate for the education of both men and women. The condition subsequent in Testator's  
13 will quoted in Paragraph 6 above refers specifically to the language in the Deed of Trust that this  
14 Court has been asked to interpret. If the Court interprets, or modifies, the Deed of Trust to permit  
15 the trustees of the L. L. Nunn Trust to use the trust estate for the education of both men and  
16 women at Deep Springs College, Petitioner seeks an interpretation from this Court that Deep  
17 Springs College will not cease "to be an educational institution 'for the education of promising  
18 young men' as provided in Par. 1 of the Deed of Trust dated November 5, 1923" when it becomes  
19 coeducational, and thus, will not trigger the condition subsequent.

20           17. Alternatively, if the Court declines to construe the condition by reference to  
21 the Deed of Trust, Petitioner seeks a slightly different judicial interpretation of the condition that  
22 would produce the same result. Testator's last will states that the Endowments shall go to the  
23 Telluride Association (a coeducational education institution) if Deep Springs College "ceases to be  
24 an institution for the education of promising young men." As a coeducational institution, Deep  
25 Springs College will continue to be an institution for the education of "promising young men." It  
26 will also become an institution for the education of promising young women. The education of  
27 women does not violate the specific language of Testator's last will. If Testator had intended for  
28 the Endowments to go to the Telluride Association if Deep Springs College became

1 coeducational, he could have simply inserted the word "solely," "only," or other similar modifier  
2 within his condition. His failure to do so, together with fact that coeducation does not contradict  
3 the specific language in Testator's will, support the interpretation that coeducation at Deep Springs  
4 College does not trigger the condition described in Paragraph 6 above.

5 18. The names and addresses of those entitled to notice of this Petition under  
6 Probate Code-section 17203 are as follows:

7 Office of the Attorney General  
8 1300 "T" Street  
9 Sacramento, California 95814

10 Telluride Association, Inc.  
11 217 West Avenue  
12 Ithica, New York 14850

13 Visiting Nurse Service of New York  
14 ATTN: Secretary  
15 107 East 7<sup>th</sup> Street  
16 New York, New York 10021

17 WHEREFORE, Petitioner prays as follows:

18 1. For an order from this Court that the conditions in the Endowments are such  
19 that the admission of women to Deep Springs College will not cause the forfeiture of the  
20 Endowments.

21 2. For such other order as the court may deem just and proper.

22 DATED: February 3, 2012

23 BAKER MANOCK & JENSEN, PC

24 By:   
25 Christopher L. Campbell  
26 Attorneys for Petitioner DEEP SPRINGS  
27 COLLEGE CORPORATION  
28

1  
2  
3 VERIFICATION  
4

5 STATE OF CALIFORNIA  
6 COUNTY OF INYO

7 I have read the foregoing PETITION FOR COURT ORDER INTERPRETING  
8 ENDOWMENT GIFT INSTRUMENT and know its contents.

9 I am an officer of a party to this action. The matters stated in the foregoing petition  
10 are true of my own knowledge except as to those matters which are stated on information and  
11 belief, and as to those matters I believe them to be true.

12 Executed on February 3, 2012, at Santa Clara, California.

13 I declare under penalty of perjury under the laws of the State of California that the  
14 foregoing is true and correct.

15   
16 David Hitz, Chairman of the Deep  
17 Springs College Corporation  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**EXHIBIT A**

LAST WILL AND TESTAMENT OF JAMES R. WITHROW, JR.

LAST WILL AND TESTAMENT

-of-

JAMES R. WITROW, JR.

Dated: September 7, 1984

*Donovan Lewis Newlin & Levine*  
30 Rockefeller Plaza  
New York, N.Y. 10112

JAMES R. WITHROW, JR., President of New York  
New York, declare this to be my last will and Testament  
and hereby revoke all wills and codicils which I have  
previously made.

First: I direct the payment from my estate of  
all my debts and funeral expenses as soon as practicable  
after my death. I direct that my remains be cremated and  
that my ashes be transferred to Deep Springs College, Deep  
Springs, California for appropriate disposal in Deep Springs  
Valley.

Second: (A) I give the following items of my  
tangible personal property to my granddaughters ALICE LLOYD  
HANSON and ELIZABETH WITHROW HANSON, as shall survive me,  
to be divided among them as they may agree, or in the absence  
of such agreement, as my executors shall determine. Any  
determination as to which items of property are to be included  
or division of such property made or other action taken by my  
executors pursuant to the provisions of this Article shall  
be conclusive upon all persons interested in my estate:

- (1) My silverware.
- (2) My pewter collection.
- (3) My blue and white china.
- (4) My four (4) framed portraits.
- (5) My pineapple glassware.
- (6) My French, English and early American furniture.
- (7) My jewelry.

...and among such of my friends and relatives as my executors shall select (other than themselves).

Third: (A) I bequeath the sum of Fifty Thousand Dollars (\$50,000) to my daughter ALICE WITHROW HANSON, if she survives me. If my daughter predeceases me, this bequest shall lapse.

(B) I bequeath the sum of Fifty Thousand Dollars (\$50,000) to my niece, DIANA FIELD, who in my illnesses has been the same as a loving daughter to me, if she survives me. If my niece predeceases me, this bequest shall lapse.

Fourth: I bequeath the sum of Twenty Thousand Dollars (\$20,000) to CATHERINE SCANDARIATO of Rego Park, New York, if she is employed as my secretary at the time of my last illness or at such time as I sever my connection with Donovan Leisure Newton & Irvine, its successors or assigns, and the sum of Ten Thousand Dollars (\$10,000) if she is not so employed at that time.

Fifth: I bequeath the sum of One Million Dollars (\$1,000,000) to DEEP SPRINGS COLLEGE (presently managed by Deep Springs Corporation) located in Deep Springs, California

to be disposed of as follows:

(A) I direct that Deep Springs Corporation shall set aside such part of the bequest as is necessary to bring to a total endowment of Six Hundred Thousand Dollars (\$600,000) the JAMES R. WITHEROW, JR. CHAIR FOR GOVERNMENT, as established by Mrs. Beatrice Renfield in her letter to the Board of Trustees of Deep Springs Corporation dated October 22, 1975 and approved by said Board at its October 1975 meeting, and add such property to such endowment fund. I further direct that all or any part of the annual income therefrom shall be used to carry out the purposes of such Chair, and that any income not used for such purposes shall be added to principal at the end of the fiscal year. I further direct that at such time or times as the principal of such endowment exceeds \$600,000 such excess may be used to carry out the purposes of such Chair.

(B) I direct that such part of the bequest remaining after provision for paragraph (A) as is necessary to bring to a total of Three Hundred Thousand Dollars (\$300,000) the JAMES R. WITHEROW, JR. LECTURESHIP FUND, shall be set aside by Deep Springs Corporation and held in a separate fund to be known as the James R. Withrow, Jr. Lectureship Fund. I further direct that all or any part

of the annual income therefrom shall be used to provide lecture funds exclusively in the area of the Social Sciences. Any income not used for such purpose shall be added to principal at the end of the fiscal year.

(C) I direct that the balance of this bequest remaining after provision for paragraphs (A) and (B) shall be set aside and held by Deep Springs Corporation in a separate fund in its permanent endowment to be known as the JAMES R. WITHROW, JR. GENERAL FUND. I further direct that all or any part of the annual income therefrom shall be used for the operation and maintenance of DEEP SPRINGS COLLEGE and that any income not used for such purpose shall be added to principal at the end of the fiscal year.

(D) Notwithstanding the provisions of paragraphs (A) through (C) of this Article, should DEEP SPRINGS COLLEGE cease to be an educational institution "for the education of promising young men" as provided in Par. 1 of the Deed of Trust dated November 5, 1923 or should the Ground Rules at DEEP SPRINGS COLLEGE be so changed by action or inaction of the Student Body or the Board of Trustees as to permit the use of intoxicating liquor or of illegal drugs (as defined by either the laws or regulations of the United States or of California), all of the funds passing under this Article shall revert to the TELLURIDE ASSOCIATION, 217

York Avenue, Ithaca, New York, provided that the TELLURIDE ASSOCIATION shall then be an organization described in sections 170(c) and 2055(a) of the Internal Revenue Code of 1954 as then amended or, if that is not the case or the TELLURIDE ASSOCIATION refuses to accept such funds, to the VISITING NURSE SERVICE OF NEW YORK, 107 East 70th Street, New York, New York, provided that it shall then be an organization described in sections 170(c) and 2055(a) of the Internal Revenue Code of 1954 as then amended.

(E) Any property not effectively disposed of under the foregoing provisions shall be distributed one-fourth to the CORNELL LAW SCHOOL, MYRON TAYLOR HALL, Ithaca, New York, and three-fourths to ROCKEFELLER UNIVERSITY, 1230 York Avenue, New York, New York.

Sixth: I devise and bequeath all the rest of my estate, referred to herein as "my residuary estate," as follows:

(A) I bequeath the shares of stock and proprietary lease to my apartment at No. 1602 in the Hampshire House, 150 Central Park South, New York, New York in equal shares to such of my granddaughters ALICE LLOYD HANSON and ELIZABETH WITHROW HANSON as survives me. In the event my granddaughters are then under the age of twenty-one, such

property shall be distributed to my daughter ALICE LLOYD HANSON as custodian under the New York Uniform Gifts to Minors Act until my granddaughters attain age twenty-one. During such time as she holds such property as custodian, I specifically authorize my daughter to utilize the principal and income of the bequests to my granddaughters under subparagraphs (B)(1) and (2) below to pay the maintenance, charges and assessments, utilities, insurance and other costs incident to the maintenance and operation of such apartment. I further authorize my daughter, in her sole discretion, to sell the shares and lease and to hold the net proceeds therefrom as custodian until my granddaughters attain age twenty-one.

(B) After the distribution in subparagraph (A) above, the balance of my residuary estate shall be distributed as follows:

(1) Twenty-five percent (25%) to my granddaughter ALICE LLOYD HANSON if she survives me; provided, however, that if such granddaughter is then under the age of twenty-one, such property shall be distributed to my daughter Alice Withrow Hanson as custodian under the New York Uniform Gifts to Minors Act until my granddaughter attains age twenty-one.

(2) Twenty-five percent (25%) to my granddaughter ELIZABETH WITHROW HANSON if she survives me; provided, however,



that if such granddaughter is then under the age of twenty-one, such property shall be distributed to my daughter Alice

Withrow Hanson as custodian under the New York Uniform Gifts to Minors Act until my granddaughter attains age twenty-one.

(3) Twenty percent (20%) to add to or establish the JAMES R. WITHROW, JR. GENERAL FUND of Deep Springs College, Deep Springs, California (pursuant to the conditions set forth under Article Fifth (D) hereto);

(4) Ten percent (10%) thereof to the permanent endowment fund of the VISITING NURSE SERVICE OF NEW YORK, 107 East 70th Street, New York, New York;

(5) Five percent (5%) to the permanent endowment fund of ROCKEFELLER UNIVERSITY, 1230 York Avenue, New York, New York to be used pursuant to the direction of Dr. A. Kappas or his successor;

(6) Five percent (5%) thereof to the permanent endowment fund of the TELLURIDE ASSOCIATION, 217 West Avenue, Ithaca, New York;

(7) Five percent (5%) thereof to the SPEECH-HEARING CENTER at Mount Sinai Hospital, New York, New York, as a memorial to Harold L. Renfield;

(8) One percent (1%) thereof to the permanent endowment fund of the WILLIAM J. DONOVAN MEMORIAL FOUNDATION, 30 Rockefeller Plaza, New York, New York 10112; and

(9) Four percent (4%) thereof to the scholarship fund of the CORNELL LAW SCHOOL, MYRON TAYLOR HALL, Ithaca, New York.

If any of the said shares of my residuary estate is not disposed of by reason of the failure of all the beneficiaries named or described therein to survive me, I direct that such part shall be divided pro rata among the other parts and disposed of in accordance with the provisions of this Article for those said shares.

Seventh: If any property passing hereunder, whether principal or income, is distributable to a person under the age of twenty-one years ("a minor"), any fiduciary required to make such distribution may distribute all or any part of such property to such minor, to the guardian of the property of such minor, to a custodian for such minor under the Uniform Gifts to Minors Act (to age twenty-one), or to a parent or person having the care or custody of such minor. Such fiduciary shall have no duty to see to the use or application of such property, and the receipt therefor of such minor, guardian, custodian, parent or person shall discharge such fiduciary as to such distribution. In addition or in the alternative, such fiduciary may hold all or any part of such property in a separate fund until such

minor, commencing on or soon after such death, and at any time or times pay to or apply for the use of such minor in any manner described above all or any part of such property or the net income therefrom as such fiduciary deems advisable, without the necessity of taking into account any other property available for the use of such minor. Such fiduciary shall not be required to give bond or security or to render periodic accounts as to such property and shall have with respect thereto all the powers granted a fiduciary hereunder and the right to compensation of a testamentary trustee.

Eighth: Any beneficiary hereunder who dies under such circumstances that there is no sufficient evidence as to which of us survived the other shall be conclusively presumed to have predeceased me.

Ninth: I direct that all estate, inheritance, succession and similar taxes (with interest and penalties, if any), upon any property included in my taxable estate under any law imposing such taxes and whether or not passing under this Will shall be paid without apportionment as an expense of administration from my residuary estate.

Tenth: I appoint SANFORD M. LITVACK and THOMAS A. MELPE as executors of this Will. If a vacancy arises in the

Office of executor, I appoint as executor such partner of firm of Donovan Leisure Newton & Irvine, its successors or assigns, as the Executive Committee of such firm shall designate. Any executor shall be an active partner of Donovan Leisure Newton & Irvine or its successor partnerships, and shall cease to serve as executor on leaving the partnership or upon becoming a "senior partner", "1.1 partner", or "4.1 partner" as those terms are defined in the Supplement to the Partnership Agreement of April 21, 1958 which became effective as of July 1, 1969 and all amendments, if any, thereto affecting those terms. If my executors retain Donovan Leisure Newton & Irvine as legal counsel in the administration of my estate, I direct that they compensate such firm in the sum of One Hundred Thousand Dollars (\$100,000) for legal fees and disbursements, and for their executors' commissions. Designation of a fiduciary hereunder shall be by written instrument which shall be revocable until the qualification of such fiduciary and such fiduciary shall be entitled to qualify without the consent of any person interested in my estate. To the extent permitted by the law of any jurisdiction in which they may serve, no fiduciary serving hereunder, whether or not named herein, shall be required to post bond or other security or to render periodic accounts.

Eleventh: I authorize and empower my executors to accept as final and conclusive the statement of the Executive Committee of the firm of Donovan Leisure Newton & Irvine as to the nature and extent of my interest in such firm at the time of my death, without requiring any further accounting.

Twelfth: I direct that my fiduciaries, including any person holding property as a custodian under the Uniform Gifts to Minors Act, shall have with respect to any property held hereunder all powers conferred upon fiduciaries under the Estates, Powers and Trusts Law of the State of New York (whether or not I die a resident of such State) and the following additional powers:

1. To retain any such property or to invest and reinvest in and to acquire by exchange property of any character, foreign or domestic, or interests or participations therein, including, without limitation, notes and shares or interests in investment trusts, mutual funds or common trust funds, without regard to the proportion any such property held may bear to the entire amount held and whether or not an investment is of the class in which fiduciaries are authorized by law or any rule of court to retain or invest funds;

2. To sell, exchange, lease (including any oil, gas or mineral lease), sublease, mortgage, pledge or otherwise encumber any such property, to grant options for any of the foregoing and to renew, extend,

subordinate, replace or cancel any of the foregoing for such period of time and upon such terms and conditions as may be deemed advisable without regard to the duration of any trust and without approval of any court;

3. To borrow at any time or times from any person or corporation (including any fiduciary hereunder) for such period of time and upon such terms and conditions as may be deemed proper such sums of money as may be deemed necessary or advisable and to secure such loans by the pledge or hypothecation of any property held hereunder;

4. To pay any pecuniary bequest or make any other distribution hereunder partly or wholly in kind, pro rata or non pro rata, without regard to the tax basis of the property so distributed;

5. To employ investment counsel, accountants, depositaries, custodians, brokers, attorneys and agents, irrespective of whether any person so employed shall be a fiduciary hereunder or a firm or corporation in which a fiduciary hereunder shall be a partner or shall have an interest, and to compensate him or them out of the principal or income of the property held hereunder without charging the same against the commissions or compensation of such fiduciary; and

6. To enter into pooling, unitization, repressurization and any other type of agreement relating to the exploitation, development, operation and conservation, of any oil, gas or other mineral properties or interests therein; to expend from principal or income or both such amounts as may be deemed advisable for the exploitation, development, operation and conservation of any oil, gas or other mineral properties or interests therein;

and in connection therewith or otherwise to join with others in joint ventures, syndicates, co-owners' groups and partnerships for the exploitation, development, operation and conservation thereof and in making such repairs, alterations, improvements and replacements as may be deemed advisable; and in connection with any such properties or interests therein owned with others to rely upon or adopt any recommendation of the person, persons or corporation determined to be the operator thereof without any duty to make an independent investigation of any such recommendation, and to join with the other owners in the selection of an operator and the delegation to such operator of any and all of the authority, rights, powers and duties which any individual owner can delegate to such operator, and to designate one or more persons or a corporation as attorney-in-fact to act in any state or states, and to grant such attorney-in-fact such powers as may be deemed advisable and to pay such attorney-in-fact the usual compensation for the services rendered out of principal or income or both.

Thirteenth: If any descendant of mine elects to contest the charitable bequests made in Articles Fifth and Sixth above as being partially or wholly invalid because such bequests are in excess of the amount permitted for charitable or similar purposes under New York EPTL § 5-3.3 or other applicable law, then to the extent that such bequests are subject to an election to contest, and to such extent only, such bequests are revoked and in lieu thereof I bequeath such excess to my friend Beatrice Renfield.

presently residing at 10 Grace Square, New York, New York.  
I wish to make it expressly clear that my descendants are  
not intended to derive any pecuniary benefit under this my  
Will other than the provisions in their favor under Articles  
Third and Sixth above.

IN WITNESS WHEREOF, I have signed this Will this  
7<sup>th</sup> day of September, 1984.

James R. Withrow, Jr.  
JAMES R. WITHROW, JR.

Signed, published and declared by JAMES R.  
WITHROW, JR., to be his last Will and Testament  
in our presence, and we thereupon, at his request  
and in his presence, and in the presence of each  
other, subscribed our names as attesting witnesses  
and our respective residence addresses.

Thomas A. Meffe residing at 7 Evers High Road  
Port Washington, N.Y. 11052

Robin Kaufman residing at 55 East 70th St.  
New York, N.Y. 10021

Bernard Bond residing at 201 W. 86th St.  
N.Y.C., N.Y. 10024



COUNTY OF NEW YORK

Each of the undersigned, individually and severally being duly sworn, deposes and says:

The within will was subscribed in our presence and signed at the end thereof by JAMES R. WITHROW, JR., on the 7<sup>th</sup> day of September, 1984 at 30 Rockefeller Plaza, New York, New York.

At the time of making such subscription, the testator declared it to be his last Will and Testament. Each of the undersigned thereupon signed his or her name as a witness at the end of such will at the request of the testator and in his presence and in the presence of each other. The will was executed as a single original instrument and was not executed in counterparts. The will was executed by the testator and witnessed by each of the undersigned under the supervision of Thomas A. Melfe, an attorney-at-law.

The testator was, at the time of so executing such will, over the age of eighteen years and, in the respective opinions of the undersigned, of sound mind, memory and understanding and not under any restraint or in any respect incompetent to make a will. The testator, in the respective opinions of the undersigned, could read, write and converse in the English language and was suffering from no defect of sight, hearing or speech, or from any other physical or mental impairment which would affect his capacity to make a valid will.

Each of the undersigned was acquainted with the testator at the time of the execution of the will and makes this affidavit at his request. The within will was shown to the undersigned at the time this affidavit was made and was examined by each of them as to the signature of the testator and of the undersigned.

Thomas A. Melfe  
Ralph K. Kohn  
Beverly B. Kohn

Severally sworn to before me  
this 7<sup>th</sup> day of Sept., 1984.

LEONORA M. BALLINGER  
Notary Public

LEONORA M. BALLINGER  
NOTARY PUBLIC State of New York  
NO. 61-4657810  
Qualified in New York County  
Commission Expires March 30, 1995

**EXHIBIT B**

**RECEIPT, RELEASE AND REFUNDING AGREEMENT**

STATE OF NEW YORK  
SURROGATE'S COURT, COUNTY OF NEW YORK

-----X  
In the Matter of the Settlement of  
the Proceedings of Thomas A. Melfe :  
as Executor of the Last Will and :  
Testament of :

RECEIPT, RELEASE AND  
REFUNDING AGREEMENT

File No. 2188/87

JAMES R. WITHROW, JR.,

Deceased.

-----X  
TO THE SURROGATE'S COURT, NEW YORK COUNTY:

The undersigned, DEEP SPRINGS COLLEGE, hereby  
acknowledges receipt of the sum of EIGHTEEN THOUSAND DOLLARS  
(\$18,000), on further account of its twenty percent (20%)  
interest in the residuary estate of James R. Withrow, Jr.,  
the within decedent, and agrees to add said sum to or to  
establish the James R. Withrow, Jr. General Fund, subject to  
the conditions of the Last Will and Testament of James R.  
Withrow, Jr. and subject to the terms of the resolution  
adopted by the Board of Trustees of Deep Springs College on  
May 14, 1988, a copy of which is attached hereto and made a  
part hereof. The undersigned hereby releases and discharges

Thomas A. Melfe, individually and as Executor of the Estate of James R. Withrow, Jr., in respect of the distribution to the undersigned as aforesaid and relieves him of any and all liability and further accountability in connection therewith. The undersigned further agrees to refund to the Estate an amount not to exceed the sum receipted for herein upon demand therefor by said Executor should the Executor determine that an amount in excess of the amount properly distributed was in fact distributed.

Dated: ~~September~~ 22, 1997

DEEP SPRINGS COLLEGE

By: Richard C. Cornelison  
Richard C. Cornelison  
Chairman, Board of Trustees

STATE OF OHIO )

: ss.:

COUNTY OF CUYAHOGA )

On this 22<sup>nd</sup> day of September, 1997, before me personally came RICHARD C. CORNELISON to me known who, being by me duly sworn, did depose and say that (s)he resides at 11879 Gantner Road, Huron, Ohio 44227, that (s)he is the Chairman, Board of Trustees of DEEP SPRINGS COLLEGE, the corporation described in and which executed the foregoing instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that (s)he signed (her) his name thereto by like order.



Notary Public

HERBERT EUCUM

Notary Public - State of Ohio

Commission has no expiration date

Section 147.05 R. S.

WHEREAS, at its regular fall meeting held on October 23-25, 1987, and again at its regular spring meeting held on May 13-15, 1988, both at Deep Springs, California, the Trustees of Deep Springs considered fully the terms and conditions of the bequests to Deep Springs College under Articles Fifth and Sixth (collectively the "bequests") of the Last Will and Testament of James R. Withrow, Jr., deceased, dated September 7, 1984 (the "Will"), a copy of such bequests and the conditions thereon being attached hereto as Appendix A and made a part hereof; and

WHEREAS, the Trustees of Deep Springs has reviewed the terms and conditions of the bequests, has had explained by counsel the legal ramifications of the restrictions thereon, and has had opportunity to ask questions in that regard and receive answers thereto.

NOW, THEREFORE, BE IT RESOLVED, that the Trustees of Deep Springs, being fully cognizant of all restrictions upon the bequests, does hereby accept the bequests under the Will and the conditions on the bequests therein stated; and

RESOLVED FURTHER, that the Trustees of Deep Springs agrees that it and its successors will comply with the directions contained in Article Fifth, sections (A), (B), and (C), and, by reference, Article Sixth, section (B)(3), of the Will by (1) setting aside the respective amounts there indicated and adding them to the JAMES R. WITHEROW, JR. CHAIR FOR GOVERNMENT and the JAMES R. WITHEROW, JR. LECTURESHIP FUND, (2) with the remaining amount of the bequests, establishing the JAMES R. WITHEROW, JR. GENERAL FUND, and (3) with respect to the additions to the CHAIR and LECTURESHIP FUND and the full initial amount of the GENERAL FUND, adhering to the restrictions on the use of income and principal set forth in such sections of Articles Fifth and Sixth; and

RESOLVED FURTHER, that the Trustees of Deep Springs understands and accepts for itself and its successors the consequences of the reversionary provision of Article Fifth, Section (D), of the Will and (1) affirms that, as of the date of this resolution, Deep Springs College has not "cease[d] to be an educational institution 'for the education of promising young men' as provided in Par. 1 of the Deed of Trust dated November 5, 1923," and that "the Ground Rules at DEEP SPRINGS COLLEGE" have not, since their adoption in their present form in 1981, been "so changed by action or inaction of the Student Body or the Board of

Trustees as to permit the use of intoxicating liquor or of illegal drugs," and (2) agrees that, if to the knowledge of the Trustees of Deep Springs or its successors anything happens which might reasonably be believed to cast doubt on whether the situation just described continues to exist, it or its successors will notify, promptly and in writing, the Executor of the Will so long he serves in that capacity and, after he is discharged, the Telluride Association or, if it no longer exists at the time cause for such notification arises, the Attorney General of the State of New York.



I, JAMES R. WITHROW, JR., a resident of New York, New York, declare this to be my last Will and Testament and hereby revoke all wills and codicils which I have previously made.

\* \* \*

Fifth: I bequeath the sum of One Million Dollars (\$1,000,000) to DEEP SPRINGS COLLEGE (presently managed by Deep Springs Corporation) located in Deep Springs, California (but the mailing address of which is currently Dyer, Nevada 89010), to be disposed of as follows:

(A) I direct that Deep Springs Corporation shall set aside such part of the bequest as is necessary to bring to a total endowment of Six Hundred Thousand Dollars (\$600,000) the JAMES R. WITHROW, JR. CHAIR FOR GOVERNMENT, as established by Mrs. Beatrice Renfield in her letter to the Board of Trustees of Deep Springs Corporation dated October 22, 1975 and approved by said Board at its October 1975 meeting, and add such property to such endowment fund. I further direct that all or any part of the annual income therefrom shall be used to carry out the purposes of such Chair and that any income not used for such purposes shall be added to principal at the end of the fiscal year. I further direct that at such time or times as the principal of such endowment exceeds \$600,000 such excess may be used to carry out the purposes of such Chair.

(B) I direct that such part of the bequest remaining after provision for paragraph (A) as is necessary to bring to a total of Three Hundred Thousand Dollars (\$300,000) the JAMES R. WITHROW, JR. LECTURESHIP FUND, shall be set aside by Deep Springs Corporation and held in a separate fund to be known as the James R. Withrow, Jr. Lectureship Fund. I further direct that all or any part of the annual income therefrom shall be used to provide lecture funds exclusively in the area of the Social Sciences. Any income not used for such purpose shall be added to principal at the end of the fiscal year.

(C) I direct that the balance of this bequest remaining after provision for paragraphs (A) and (B) shall be set aside and held by Deep Springs Corporation in a separate fund in its permanent endowment to be known as the JAMES R. WITHROW, JR. GENERAL FUND. I further direct that all or any part of the annual income therefrom shall be used for the operation and maintenance of DEEP SPRINGS COLLEGE and that any income not used for such purpose shall be added to principal at the end of the fiscal year.

(D) Notwithstanding the provisions of paragraphs (A) through (C) of this Article, should DEEP SPRINGS COLLEGE cease to be an educational institution "for the education of promising young men" as provided in Par. 1 of the Deed of Trust dated November 5, 1923 or should the Ground Rules at DEEP SPRINGS COLLEGE be so changed by action or inaction of the Student Body or the Board of Trustees as to permit the use of intoxicating liquor or of illegal drugs (as defined by either the laws or regulations of the United

States or of California), all of the funds passing under this Article shall revert to the TELLURIDE ASSOCIATION, 217 West Avenue, Ithaca, New York, provided that the TELLURIDE ASSOCIATION shall then be an organization described in sections 170(c) and 2055(a) of the Internal Revenue Code of 1954 as then amended or, if that is not the case or the TELLURIDE ASSOCIATION refuses to accept such funds, to the VISITING NURSE SERVICE OF NEW YORK, 107 East 70th Street, New York, New York, provided that it shall then be an organization described in sections 170(c) and 2055(a) of the Internal Revenue Code of 1954 as then amended.

\* \* \*

Sixth: I devise and bequeath all the rest of my estate, referred to herein as "my residuary estate," as follows:

\* \* \*

(B) After the distribution in subparagraph (A) above, the balance of my residuary estate shall be distributed as follows:

\* \* \*

(3) Twenty percent (20%) to add to or establish the JAMES R. WITHROW, JR. GENERAL FUND of Deep Springs College, Deep Springs, California (pursuant to the conditions set forth under Article Fifth (D) hereto);

\* \* \*

CERTIFICATION

I, William H. Allen, Secretary of the Board of Trustees of Deep Springs, hereby certify that the foregoing resolution was adopted by the Board on May 14, 1988, during the regular spring meeting of the Board at Deep Springs, California, the eight designated Trustees voting aye and the Student Body Representative to the Board voting no.

  
\_\_\_\_\_  
William H. Allen

Dated: May 25, 1988

**EXHIBIT C**

LETTER OF MRS. BEATRICE RENFIELD, DATED OCTOBER 22, 1975

Beatrice Benfield Vice President

October 22, 1975

To the Trustees:

In initiating the endowment for a Withrow chair on government I said I would advise you at a later date what I really had in mind. If you know Jim, as he is known in the areas where I have gotten to know him, you will understand that he believes in finding out the hard facts of a situation, and in knowing in detail how to go about accomplishing the proper result.

I believe that he would prefer that this chair of government or politics, should stress such an approach. In other words this would not be a chair to teach a conventional course in the philosophy or theory of government or politics. Rather, it would emphasize and present the real world of government.

The purposes of the chair would be the following:

First: To explore how governments actually operate from the lowest level to the very top.

Second: To explore how an informed individual or a small group can effectively influence the direction of government at various levels.

Third: To examine the assumption that serious problems are solved by passing another law and/or creating another commission or agency.

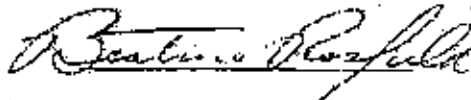
It may be very difficult to find a professional academician who can teach such a course. He would have to be a person whose career had included substantial participation in one or more levels of government. If possible, his basic career, no matter what it has been, should have included managerial experience at a junior level or higher.

Beatrice Renfield Vice President

In fact, it would not really be important for the person to be a professional educator, but he or she should be able to relate to the students and engender a real interest in the actual operations and problems of government.

Indeed, rather than one person holding such a chair, it might be well to have a series of persons lecture for periods of a week to a month. I believe Deep Springs and Telluride have produced persons meeting these qualifications. The Trustees could produce others who had occupied various positions in government, and maybe also a political reporter or two.

Stated another way, the potential leaders being educated at Deep Springs should have first hand insight as to how they can make their views felt in this democracy.



Trustees of Deep Springs  
Deep Springs College  
Deep Springs, California





**EXHIBIT D**

**DECLARATION OF L. JACKSON NEWELL**

Christopher L. Campbell #116329  
Jeffrey A. Jaech #076876  
BAKER MANOCK & JENSEN, PC  
5260 North Palm Avenue, Fourth Floor  
Fresno, California 93704  
Telephone: 559.432.5400  
Facsimile: 559.432.5620  
Email: CCampbell@bakermanock.com

Peter E. Tracy #78185  
LAW OFFICE OF PETER E. TRACY  
106 South Main Street, #200  
P.O. Box 485  
Bishop, California 93515  
Telephone: 760.872.1101  
Facsimile: 760.872.2971  
Email: inyomono@stanfordalumni.org

Attorneys for Petitioner David Hitz, Chairman of the Board of Trustees of the  
L. L. Nunn Trust, acting on behalf of the Board of Trustees

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF INYO

In re the Matter of

L. L. Nunn Trust for the benefit of  
Deep Springs College under the Deed  
of Trust dated November 5, 1923

CASE No.

**DECLARATION OF L. JACKSON  
NEWELL, IN SUPPORT OF  
PETITIONER DAVID HITZ'S PETITION  
FOR COURT ORDER CONSTRUING  
TRUST PROVISIONS, OR, IF  
NECESSARY, MODIFYING THE TRUST  
INSTRUMENT**

**DATE: March 9, 2012  
TIME: 9:00 a.m.  
DEPT:  
JUDGE:**

///

1 I, L. Jackson Newell, declare:

2 1. I am a senior professor of the history and administration of higher education  
3 in the United States. My formal preparation included an M.A. degree in American History from  
4 Duke University, a Ph.D. in the history and administration of American colleges and universities  
5 from The Ohio State University, and a post-doctoral fellowship for two years with the University  
6 Council for Educational Administration (an association of leading American and Canadian  
7 universities). In addition to serving twenty-five years as professor of educational leadership at the  
8 University of Utah, I served there as dean of Liberal Education for sixteen years, and was awarded  
9 the distinguished faculty rank of University Professor in 1991. I served as president of Deep  
10 Springs College from 1995 to 2004, and then returned to the University of Utah where I continue  
11 to teach a year-long course for the top twenty-eight first-year students in the Honors College. This  
12 experience deepens my understanding of the differences between a coeducational cohort of this  
13 type and an all-male cohort.

14 2. I attended Deep Springs College as a student from 1956 to 1959.

15 3. I taught history and economics at Deep Springs College from 1965 to 1967.

16 4. I served on the Deep Springs College Board of Trustees from 1987 to 1994.

17 I served as Chair of the board for the final year of that period.

18 5. I served as President of Deep Springs College from July 1995 through June  
19 2004. While I was president I also taught two courses each year: "The History and Philosophy of  
20 Higher Education" and "Personal Values and Social Ethics."

21 6. As Chair of the Trustees of Deep Springs, and as President of Deep Springs  
22 College, I played leading roles in annual fundraising to obtain the funds necessary to meet Deep  
23 Springs College's operational expenses. Further, I orchestrated the largest capital campaign in  
24 Deep Springs College's history. That campaign garnered \$18.2 million in gifts and pledges to  
25 rebuild almost all aspects of the physical plant at Deep Springs College and to add to the  
26 endowment. During the seven years of construction when Deep Springs College invested heavily  
27 to renew its physical plant, ranging from building a new student residence, a science center and

1 museum and a greenhouse to completely retrofitting and renovating the Main Building and every  
2 other significant structure and dwelling on campus, we also replaced virtually the entire  
3 infrastructure of the college—including the water and sewer systems, the electrical service and  
4 even added flash flood control. In the process of raising the funds and managing the renewal of  
5 the college, I had the occasion to meet with well over half the living alumni of Deep Springs  
6 College as well as all of the significant foundation funding sources that Deep Springs College  
7 relies upon. In addition, as President, I was responsible for recruiting and supervising all faculty  
8 and staff of Deep Springs College and played a role in recruiting new trustees of the college.

9           7. I am a historian of American colleges and universities, specializing in  
10 innovative colleges. I have edited one of the two leading journals in my field, *The Review of*  
11 *Higher Education*, and co-authored or edited nine books or monographs including: *Maverick*  
12 *Colleges: Fourteen Notable Experiments in American Higher Education*; *A History of Thought*  
13 *and Practice in Educational Administration*; *Creating Distinctiveness: Lessons from Uncommon*  
14 *Colleges and Universities* and *Matters of Conscience: Conversations with Sterling M McMurrin*  
15 *on Philosophy, Education and Religion*. Since 2005 I have been researching and writing a  
16 biography of Deep Springs College's founder, Lucien L. Nunn ("L. L. Nunn"), and the history of  
17 the college. That book is under contract with the University of Utah Press and is scheduled for  
18 publication in 2013.

19           8. I have personal knowledge of the following facts and, if called to testify, I  
20 could and would competently testify thereto.

21           9. Based on my personal experience and academic knowledge, I am familiar  
22 with Deep Springs College, including its founder, its history and culture, its faculty recruiting, its  
23 student applications process, fundraising, and standing among American institutions of higher  
24 learning.

25           10. Deep Springs College was founded in 1917 by L. L. Nunn, a pioneer in  
26 alternating current power generation and long-distance transmission whose interests shifted  
27 gradually to educational innovation and leadership development. Founding Deep Springs College

1 was the crowning achievement of his life. L. L. Nunn specified that Deep Springs College has the  
2 specific purpose of selecting and educating those who have promise of excelling in "service to  
3 humanity" and becoming "trustees of the nation." From my review of his writings both before and  
4 after he wrote the Deed of Trust in 1923, L. L. Nunn was single-minded in his commitment to  
5 using *highly democratic educational methods* and *lived experience* to inspire gifted students to  
6 accept responsibility for themselves and their communities, to excel ethically as well as  
7 academically, and to prepare consciously for leadership in their chosen fields. Believing that other  
8 colleges and universities were failing to use democratic methods to instill leadership skills, L. L.  
9 Nunn began early to experiment with the training of young power plant workers by developing  
10 innovative schools at his power stations. Drawing on these experiments, in 1911 he established a  
11 scholarship house on the Cornell University campus where his students might continue their  
12 studies as undergraduate and graduate students. Founding Deep Springs College six years later as  
13 an independent liberal arts college for future leaders culminated his educational dream. His plan  
14 was for his students to acquire an unparalleled liberal education foundation at Deep Springs  
15 College and then transfer to Cornell University as juniors to pursue their academic major.

16         The following quotations provide direct access to L. L. Nunn's aims and ideals for  
17 Deep Springs College. Writing to the student body in 1921: "Your members came [to Deep  
18 Springs College] with the understanding that they possessed superior ability and purpose and this  
19 understanding must be justified. Average results obtained in ordinary schools will not be accepted  
20 as satisfactory at Deep Springs." The same year he wrote that the college's "purpose is the  
21 promotion of well-being, it is not limited to the well-being of a nation, or even of mankind, but to  
22 the sentient universe." At that time, he was also surfeited with qualified candidates for admission:  
23 "I never had so difficult a task to keep within the limit of the number we can take. I have to reject  
24 many admirably suited to this place....because of the great number of applications." Two years  
25 later, in the Deed of Trust, L. L. Nunn required the trustees to carry on the work of the college "for  
26 the education of promising young men, ... in a manner emphasizing the need and opportunity for  
27 unselfish service in uplifting mankind from materialism to idealism." In the conduct of this

1 educational work, "democratic self-government by the students themselves shall be a feature as is  
2 now the case." Clearly, L. L. Nunn intended for Deep Springs College to attract and select the  
3 most exceptional students available and to educate them with the skills, perspectives and  
4 knowledge necessary to create a more just and humane society.

5           Based on my long term study of L. L. Nunn, his educational experiments and his  
6 other work, I believe the key element of his educational philosophy was that the students must  
7 learn by grappling with things themselves—including the ongoing character of the institution. He  
8 wrote:

9  
10           "Again I say cut me out. Do not use my name. Refer no one to me  
11 for any cause. Establish the work on broader lines than individual  
12 plan or purpose, always having in mind that the benefits ultimately  
should go to the world and not a class, to the end 'that government  
of the people, for the people, shall not perish from the earth.'"

13 In his writings, L. L. Nunn clearly defined the goal but other than the repeated insistence on  
14 democratic self governance, he did not dictate the precise educational methods to best achieve that  
15 goal. I conclude that L. L. Nunn's charge to the Trustees of Deep Springs and the students was to  
16 continually seek the best way to achieve the overall educational goals that are the reason for Deep  
17 Springs College to exist rather than slavishly retaining methods just because they are in place.

18           11. Based on my background, scholarship and professional experience, I am  
19 familiar with the changing roles of women in society over the century since Deep Springs College  
20 was conceived, and about the evolution of American colleges (including coeducational institutions  
21 and traditionally single-sex institutions) and men's and women's educational conditions across  
22 these decades. I am specifically knowledgeable about L. L. Nunn's personal history regarding  
23 these issues.

24           12. First, it is important to note that L. L. Nunn founded Deep Springs College  
25 three years before the Nineteenth Amendment to the U.S. Constitution granted women the right to  
26 vote. Ratification did occur before L. L. Nunn drafted the Deed of Trust in 1923, but the values  
27 and conditions reflected in the Deed were the product of educational experimentation he had been

1 developing for over four decades.

2           13. The era in which L. L. Nunn pursued active educational experimentation,  
3 1890-1923, was one in which coeducation had been widely implemented in public universities but  
4 remained to be embraced by the most prestigious private institutions, like Yale and Harvard,  
5 which constituted L. L. Nunn's standard of reference. Even at coeducational state-supported  
6 institutions during this period, however, the emerging collegiate system, while granting equal  
7 access to women, was aggressively segregating them with restrictive social controls and academic  
8 policies that steered them into stereotypic female roles and professions. For example, the Morrill  
9 Acts of 1862 and 1890 created land grant universities in every state and they adopted new  
10 meritocratic admissions standards, but the new women students were guided explicitly into teacher  
11 education, home economics and other academic majors and professions that reinforced traditional  
12 definitions of femininity. Females were discouraged from entering engineering, law, medicine  
13 and other fields that were associated in the public mind with power and influence.

14           14. Two observations can be advanced at this point: First, the elite intellectual  
15 milieu in which L. L. Nunn was enmeshed had not yet come to accept the admission of women  
16 alongside men in the nation's most prestigious colleges. Second, public universities, as well as  
17 many private institutions, that had opted to educate women were doing so in ways that  
18 discouraged females from aspiring to or preparing for the very societal, professional and political  
19 leadership positions for which L. L. Nunn specifically and exclusively sought to prepare students.

20           15. It is also important to understand the vocational culture and personal  
21 environment in which L. L. Nunn lived and worked throughout his life. A lifelong bachelor, his  
22 career began as a hard scrabble western entrepreneur in the early days of mineral extraction, labor  
23 strife, railroad expansion and electrical engineering developments—all areas in which he  
24 competed successfully. His competitors, associates and workers, as well as the public servants and  
25 political personalities with whom he constantly dealt, were all men. Even his personal secretaries,  
26 valets and cooks were consistently men. This was the world L. L. Nunn inhabited, and when he  
27 thought about improving it by inspiring and educating a new generation of leaders, men alone

1 came to mind. While he accorded notable respect to his sisters and nieces, and to the wives and  
2 daughters of his associates, these women never entered the equation for creating ideas, institutions  
3 or socio-political change.

4           16. In writing the Deed of Trust for Deep Springs College, therefore, L. L.  
5 Nunn stated that the college was designed for the preparation of "promising young men" for lives  
6 of selfless leadership and service. These words signified his focus on leadership development, and  
7 coincidentally reflected his deeply imbedded assumption that men had been leading almost all the  
8 important institutions in America, and would continue to do so. Significantly, L. L. Nunn did not  
9 state that the college was *only* for the education of young men. For him, men were simply the ones  
10 who merited acculturation for roles he believed they alone were destined to assume.

11           17. Since 1923, the field of education as it relates to education of women has  
12 changed drastically. Today, all public and almost all private colleges and universities admit  
13 women. Today, only four non-religious institutions remain all-male. The four institutions are  
14 Deep Springs College, Hampden-Sydney College, Morehouse College and Wabash College.  
15 Additionally, today, women are no longer guided towards fields that perpetuate stereotypical  
16 female gender roles. Women are encouraged to enter into all fields of study, including fields that  
17 were traditionally men-only such as law, medicine, engineering and other fields associated with  
18 power and leadership.

19           18. Based on my background, knowledge, and over forty-five years experience  
20 in teaching gifted undergraduate students, I am familiar with the learning styles, classroom  
21 conditions and gender factors that bear upon the educational outcomes for students today.

22           19. Research has verified that college men and women often differ in the ways  
23 they respond to human conditions, whether the situations are real or are portrayed in course  
24 material through works of literature, history, philosophy and the social sciences. Whereas men  
25 tend primarily toward analytical responses to phenomena around them, women's responses more  
26 often also include deep feelings about human challenges and predicaments. These differences have  
27 been found to exist across time and cultures, revealing a complementarity in learning and behavior



1 between women and men.

2           20. For over twenty years, I have taught an honors level humanities course  
3 titled "Personal Values and Social Ethics" or "What Matters Most?" I initiated the course for the  
4 Honors College at the University of Utah, then taught it at Deep Springs College for the nine years  
5 I served as president and senior professor there, and have continued to teach it since returning to  
6 the Honors College in Utah. Among the works I typically require and discuss in depth with  
7 students are Steinbeck's *Grapes of Wrath*, Camus' *The Plague* and Dostoyevsky's *The Brothers*  
8 *Karamazov*. My aim is to help students come to grips simultaneously with the power of doctrines  
9 and ideas on the one hand, and the strength of personal emotions and spiritual needs (in the largest  
10 sense) on the other. I start class discussions of these works by analyzing their social, political and  
11 doctrinal content, and then move the conversation to consideration of the emotional needs and  
12 forces that appear to be experienced by the major characters in these classic works. It is not easy to  
13 transition from analyzing plots and themes to expressing the feelings one experiences when  
14 encountering poverty and hunger, love and hate, and birth and death through the lives of  
15 compelling fictional characters. In my experience, women in my classes almost always lead the  
16 shift from the head to the heart--from rational analysis to sympathetic understanding of human  
17 situations. At Deep Springs College, where there were no women in class, I found it difficult and  
18 often impossible to engage students on an empathic level. My current teaching in the Honors  
19 College of the University of Utah and at Westminster College in Salt Lake City reveals the same  
20 benefits of coeducational classrooms that I had known before my decade at Deep Springs.  
21 Inasmuch as democratic self-governance is central to the Deep Springs College method, the more  
22 fully students are able to engage one another and the issues they confront, the greater the  
23 educational benefits that will accrue them. Based on my experience I believe that, especially in  
24 the Deep Springs College approach, the inclusion of women in the student body will enhance  
25 educational benefits for all students.

26           21. L. L. Nunn was unequivocal about the importance of preparing future  
27 leaders as whole human beings. His aim was to imbue his students with "whole lives—not one-

tenth, or one-half or three-quarters." If others inquired about what was being accomplished at Deep Springs College, he wrote, "there will be no pointing with the material finger to a fortune achieved or to a mechanistic invention." Rather, "the few have always had an abundance of heart and out of that abundance they have spoken. The developing influence of Deep Springs College should make the student conscious of that abundance of heart—should make that abundance coherent, and should bring it to expression." My own teaching experience and research literature suggest strongly that the abundance of heart L. L. Nunn sought to engender is more likely to develop in college students when men and women are educated together.

22. Based on my background, knowledge, and professional experience, including my service as a Trustee of Deep Springs College from 1987 to 1994 and as President of Deep Springs College from 1995 to 2004, I am familiar with the contemporary academic marketplace and in particular the processes and challenges of recruiting trustees, presidents and deans, faculty, staff and students for Deep Springs College.

23. Deep Springs College has, and desires to keep, a very high academic rating so it can recruit some of the most promising students to fulfill its mission of training leaders for public service. As a result, Deep Springs College requires a president, dean and faculty with impeccable credentials. Because there are so few academic leaders—usually the president, the dean and three other long-term professors—in residence at Deep Springs College at any one time, each individual has to possess a wide range of skills to fit well in the community while performing a variety of governance, mentoring, counseling and teaching roles. There is, therefore, a very limited pool of people who are fully qualified to teach at Deep Springs College and to lead the institution. Yet to maintain its high standards of education, the college must be successful in finding, hiring and retaining such unusual professionals. Generally, each professor that Deep Springs College seeks to hire has significant competing opportunities and a very promising career ahead of him or her. In addition, due to its small size, remote location and intensity, Deep Springs College limits faculty appointments to a maximum of six years. As a result, all but the most senior faculty, deans and presidents who serve at Deep Springs College must be keenly aware of

1 the impact of their time at Deep Springs College on the career opportunities that will be available  
2 to them in the future. Having recently presided over the appointment of trustees and the hiring of  
3 faculty and staff at Deep Springs College, I know that an all-male student body has dissuaded  
4 many otherwise promising applicants. Based on my interviews with applicants, the problem is not  
5 so much personal preference but the systemic concern in academia about single-gender higher  
6 education institutions—especially male-only student bodies.

7           24. In my experience a significant number of prospective and qualified male  
8 students have chosen not to apply for admission to Deep Springs College because of its single-sex  
9 student body. During the student recruitment process in 1985 and 2008, Deep Springs College  
10 conducted formal surveys of potential applicants. The two surveys revealed a consistent response  
11 to the all-male student body. It was identified as one of the four worst (or most negative) features  
12 of the school by 59% in 1985 and 56% in 2008. The total percentage of respondents ranking the  
13 all-male policy as a negative were 75% of the 1985 respondents and 74% of the 2008 respondents.  
14 Further, some who have been offered admission have chosen not to attend Deep Springs College  
15 because of its all-male policy.

16           25. In my capacity as President of Deep Springs College for nine years, I was  
17 the individual primarily responsible for fund raising. Deep Springs College benefits greatly from  
18 a loyal alumni group that helps support the college financially, but there are many foundations,  
19 corporations and interested individuals who rule out supporting Deep Springs College, often  
20 categorically, simply because it is a single-sex male institution. This fact makes procuring major  
21 grants to support new construction projects and academic development particularly difficult when  
22 coupled with Deep Springs College's small size. To my knowledge, none of the foundations and  
23 outside individuals who provide grants to strengthen the college offer their support because it has  
24 an all-male student body.

25           26. Before, during and after my presidency of Deep Springs College, the single-  
26 sex admission policy of the board of trustees has caused some key wealthy and influential alumni  
27 to withhold financial support from the college. This issue has interfered with alumni fund raising

1 since the first official consideration of coeducation by the trustees in 1979-80. Among these  
2 dissenting alumni, some have felt so strongly that they have actively dissuaded their peers from  
3 giving to the college annual fund drive or arranging bequests to Deep Springs College. In fact, a  
4 core group of these alumni created a "coeducational trust fund" to which they contributed in lieu  
5 of Deep Springs College—and they encouraged others to give to it as well. The terms of this trust  
6 fund, which eventually exceeded \$80,000 mostly in small gifts from younger alumni, called for its  
7 transference to Deep Springs College if and when the college admitted women students.  
8 Ultimately, the fund was mostly used to finance Deep Springs College's coeducation  
9 investigations including the expenses for the Impact Commission on Student Body Composition  
10 and Size in the early 1990's. The prospect of converting college policy to coeducational  
11 admissions has prompted many donor holdouts to line up in support of Deep Springs.

12           27. Deep Springs College's sister institution, Telluride Association, now  
13 located on the Cornell University campus ("Telluride"), was founded by L. L. Nunn in 1911.  
14 When he subsequently founded Deep Springs College, L. L. Nunn urged Telluride to provide  
15 financial assistance to Deep Springs. Beginning in the early 1920's, Telluride responded and  
16 initially underwrote one-quarter of the annual operating revenue for Deep Springs College.  
17 Although it declined significantly as a proportion of Deep Springs College's expenses, Telluride's  
18 financial support to Deep Springs College remained important until the 1960's when Telluride  
19 experienced financial difficulties of its own. In addition, Deep Springs College's all-male  
20 admissions policy began to complicate relations between the two institutions. The tension over  
21 the all-male policy at Deep Springs College continues to negatively impact the relationship  
22 between the two institutions. Although there is no assurance that financial support from Telluride  
23 will increase if Deep Springs College becomes coeducational, the change will remove a significant  
24 impediment and may provide Deep Springs College with additional significant benefits from  
25 Telluride.

26           28. The reputation of Deep Springs College in the academic community has  
27 often been at risk because of its all-male student body. Over the years and continuing into the

1 present, I have spoken frequently at professional meetings, before academic and civic  
2 organizations and to students and prospective students and their parents about the purpose,  
3 methods and outcomes of the Deep Springs College's unique educational program. Invariably, I  
4 am quizzed about, and asked to defend, the single-sex admission policy. Knowing what I know,  
5 and what I have testified to above, I strain to provide a satisfying explanation. Believing that the  
6 Deed of Trust accords the board of trustees power to make the change, historical precedent and the  
7 resistance of aging, well-healed alumni have been my only defense. The consternation and even  
8 anger, especially among high school and traditional college-age students, and faculty colleagues,  
9 is palpable. The damage to Deep Springs College's interests—in terms of academic reputation,  
10 student and faculty recruiting, and moral and fiscal support—needs no further explication.

11           29. To summarize, in my professional judgment L. L. Nunn's primary passion  
12 and interest was the preparation of principled leaders for the nation and the world. This conclusion  
13 is vouched safe in his letters and in the three formal documents known as "The Deed of Trust,"  
14 "*The Purpose*," and "The Man Required for Deep Springs." True and correct copies of these  
15 documents are attached to this Declaration as Exhibits "A," "B" and "C" respectively. His charge  
16 that the college should educate "promising young men" for this purpose was a function of his  
17 personal acculturation in the emerging American west, the times in which his career and life  
18 crested and the purpose to which he dedicated his final years. His choice was not to exclude  
19 women, but to focus on those he anticipated would take the reins. The reins are now held as  
20 comfortably by women as by men. To serve L. L. Nunn's purpose more fully today, his college  
21 can double the talent pool from which it draws students by embracing a coeducational admissions  
22 policy. And by doing so, in all likelihood it will also enrich the education accorded to its students,  
23 enhance its academic reputation, widen the field for finding excellent faculty and staff, and expand  
24 the base of its financial support. Decades of wrangling over coeducation have been costly in trust  
25 and have robbed the college of the unity it needed to thrive. Widespread support of the trustees'  
26 policy change to initiate coeducation at the college promises a brighter future for Deep Springs  
27 College.

30. Further, it is clear from L. L. Nunn's writings that he did not anticipate present circumstances, including the dramatically increased presence and influence of women in societal and educational leadership roles. If the Trust terms were narrowly construed to prohibit the Trustees from supporting coeducation at Deep Springs College, then I believe the accomplishment of the Trust's purposes would be substantially impaired or even defeated.

31. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 2, 2012, at Salt Lake City, Utah.

L. Jackson Newell

**EXHIBIT A**  
**DEED OF TRUST**





[illegible][illegible]

There have been no other individuals who have been arrested and described above together with the above-named individuals. All persons and their names are to be kept confidential, however, the names of the individuals listed above are to be made public and the names of the individuals listed above are to be made public and the names of the individuals listed above are to be made public.

[illegible]







with the creation of the Central Intelligence Agency, which was established in 1949, and the National Security Agency, which was established in 1947. The Central Intelligence Agency was created to coordinate and integrate the intelligence activities of the various departments and agencies of the Federal Government. The National Security Agency was created to coordinate and integrate the intelligence activities of the various departments and agencies of the Federal Government. The Central Intelligence Agency was created to coordinate and integrate the intelligence activities of the various departments and agencies of the Federal Government. The National Security Agency was created to coordinate and integrate the intelligence activities of the various departments and agencies of the Federal Government.





45



1871

11



**THE**

11

115

11

總

100

... ..



On 11-11-40, Kay, of the FBI, advised that the following information was obtained from the Bureau of the FBI, New York City, on 11-11-40, regarding the activities of the "Black Legion" in New York City:

Witness my hand and official seal the day and year first above written.

Notary Public for the State of New York

My commission expires May 10, 1935

Salt Lake City, Utah, My commission expires May 10, 1935

State of New York  
County of Monroe

On this 8th day of January, 1935, before me, Charles F. Stinson, a Justice of the Peace in and for the County and State aforesaid, residing therein and duly qualified and sworn personally appeared Charles F. Stinson, known to me to be the person to whom is assigned to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed.

Witness my hand and official seal the day and year first above written.

Notary Public for the State of New York

My commission expires March 20, 1925

State of New York  
County of Albany

On this 15th day of May, A.D. 1935, before me, J. J. O'Connor, a Justice of the Peace in and for the County and State aforesaid, residing therein and duly qualified and sworn personally appeared Charles F. Stinson, known to me to be the person to whom is assigned to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed.

Witness my hand and official seal the day and year first above written.

Notary Public for the State of New York

My commission expires May 4, 1925

State of Utah  
County of Salt Lake

On this 15th day of November, 1935, before me, J. J. O'Connor, a Justice of the Peace in and for the County and State aforesaid, residing therein and duly qualified and sworn personally appeared Charles F. Stinson, known to me to be the person to whom is assigned to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed.

Witness my hand and official seal the day and year first above written.

Notary Public for the State of New York

My commission expires May 4, 1925

State of Utah  
County of Salt Lake

On this 15th day of November, 1935, before me, J. J. O'Connor, a Justice of the Peace in and for the County and State aforesaid, residing therein and duly qualified and sworn personally appeared Charles F. Stinson, known to me to be the person to whom is assigned to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed.

Witness my hand and official seal the day and year first above written.

Notary Public for the State of New York

My commission expires May 4, 1925

State of Utah  
County of Salt Lake

On this 15th day of November, 1935, before me, J. J. O'Connor, a Justice of the Peace in and for the County and State aforesaid, residing therein and duly qualified and sworn personally appeared Charles F. Stinson, known to me to be the person to whom is assigned to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed.

Witness my hand and official seal the day and year first above written.

Notary Public for the State of New York

My commission expires May 4, 1925

State of Utah  
County of Salt Lake

On this 15th day of November, 1935, before me, J. J. O'Connor, a Justice of the Peace in and for the County and State aforesaid, residing therein and duly qualified and sworn personally appeared Charles F. Stinson, known to me to be the person to whom is assigned to the foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed.

Witness my hand and official seal the day and year first above written.

Notary Public for the State of New York

My commission expires May 4, 1925

**EXHIBIT B**

*THE PURPOSE*



## The Purpose

It is a fact of social evolution that the few always dominate. This is because the mass is dull-witted, sluggish, incapable. It follows only the blazed trail. In the progress of the race toward God, only the few have the vision of the Divine plan and purpose. They have always been the leaven in the lump. These forerunners, pacemakers, who anticipate progress perhaps by decades are those who break the trails and point the way. They are the voice "crying in the wilderness" and, as John foretold the coming of the "Great Spirit," they tell of the Great Light to come. It is the few who stand on the mountain tops of spiritual vision that compel a struggling race towards "life more abundant."

And the few have often come out of the wilderness—the eternal silence of the desert. When Jesus saw the vision of a blind and wandering people, he went apart to pray. "Come ye out from among them and be ye separate," and this is not to a fanatic life of asceticism but to a short season of preparation for the work of the few, the great work—the heavy toil of leadership.

Now the burden of leadership is in part the consciousness of the call—the vision of the need—but the acceptance of the calling to be one of the few is half of the labor accomplished.

Throughout the whole historic story of mankind there has been the terrible conflict between the spirit and the flesh. Sometimes it has been called the conflict between good and evil or between darkness and light, righteousness and sin, but it is always the same conflict and often it has been expressed in the combat between material and spiritual forces to dominate the soul of men. Now it is a principle of conflict that one side usually wins. In the great human family which we call society, the masses have not yet been developed to a place where they understand that there is a conflict in progress. For the most part, they have yielded unconsciously to the rule of the material, which the Prophets so aptly characterized as "the flesh pots of Egypt." But the few have seen that only the things of the Spirit endure; that Righteousness and Liberty, and Justice, and Love, are the attributes of God.

Perhaps the few are more numerous today than they were two centuries ago. Perhaps in the large we can measure an infinitely small progress of the whole human race but yet today the conflict is as bitter, if not more bitter, than it has ever been at any period in the Christian era. And if the few are more numerous, there is still a tremendous burden on them to lead—to secure the progress and to assure its continuance.

"Enoch walked with God, and was not, because God took him." This is the story so often repeated by the prophets and seers of the power of selflessness. It is Jesus saying that if a man would have his life he must lose it. Tennyson puts this with rare genius in his story of *The Siege Perilous*—that great seat at Arthur's table in which a knight who dared to sit was lost.

The growth of the human race toward God is inevitably in the hands of the few. In a sense they are doomed to lead. This is the burden of the vision.

The purpose of Deep Springs is to help in the training of the few. It is to create an environment where young men of sound character may find religious influence which will help them build the character for full employment in the service of their fellowmen.

This environment consists:

(1) In intimate association with a small group of young men who have declared themselves ready to accept the purpose of Deep Springs. To each of these individuals and to the group which they comprise is entrusted the fostering and the furtherance of the Deep Springs ideal. This is their first and fundamental responsibility. It follows that those who are called do not come seeking what they can acquire but rather to accept a sacred trust. In them the Purpose must be fulfilled; their failure in that trust is a menace to the very life of the ideal.

This environment consists:

(2) In the association of youth and maturity through a Guide and through certain chosen guests—men of achievement who have counted high the Things of the Spirit. The service of these to those who are called shall be: to present each one his particular subject so that it may emphasize the spiritual values together with, but primary to, the intellectual values of the Humanities, the Sciences, and all human achievement. The Guide shall hold in trust the principle that his Art, his Science, his information, his experience, must be so available that students may draw from it for the building of character as defined in the Purpose.

This environment consists:

(3) In the directed use of a library which contains all of the proven classics.

This environment consists:

(4) In the direct responsibility of the individual for his own conduct and for the group conduct of the Student Body. Also in the solemn obligation to make full use of all the means available for development of character in harmony with the Purpose.

This environment consists:

(5) In the performance of such tasks as are assigned for the conduct of the business of the ranch and school and in the care of such property as may from time to time be entrusted to the students.

It follows from the above:

(1) That the developing influences are found in part in the acceptance of the call to be one of the few. This must come from the student himself and it will surely find expression in his will to know the Truth—his desire to know it, his willingness to sacrifice—to take up the burden of the few. It will find expression in his loyalty to his trust and to the Student Body in its trust. And this development will come through suggested and supervised reading from the pages of the great masters who themselves have seen the vision, who have been numbered with the few and who have left their witness to the glory of God in their written words. Finally, there will be the contact with the experience of the mature. And in all this the student is left to discover and achieve from within. Only guidance is given from without. The few have always had an abundance of heart and out of that abundance they have spoken. The developing influences of Deep Springs should make the student conscious of that abundance of heart—should make that abundance coherent, and should bring it to expression. Yet such expression is not necessarily in any particular vocation. The abundance of heart may be evident in the blacksmith as well as in the great preacher or master surgeon. But wherever the heart is abundant there will be a leader no matter how great or how small the following. And the blacksmith or the teacher or the surgeon who fulfills in himself the Purpose of Deep Springs will be a good blacksmith, a good teacher, and a good surgeon, even as Christ must have been a good carpenter.

(2) Under such conditions no candidate can be truly called who has uppermost in his mind the fulfillment of stereotyped academic requirements for entrance to a given class, rank, or grade of a university. No one can come to Deep Springs for units. In fact many may stay the maximum period with true loyalty to the trust and profit to themselves, without making a single unit.

Nevertheless, a student may desire to spend a certain portion of his time in a given preparation for a future step, and faithful application to a directed course of study in the spirit of the Purpose may lead to formal credit.

(3) It appears, then, that the Guide must be free from all the details of administration—must delegate them. He must give himself to those who are called—his experience, his understanding, his vision. He must

spend much time in fulfilling the fountain, in reading, in meditation, in writing, in travel, and in contact with men and institutions. He must bring experience; he must be ready to give, and he must even stimulate the desire to ask. He must find those whose lives and works are worthy examples and must invite them to bring their experiences to the young men at Deep Springs. His failure, likewise, strikes at the life of the ideal.

But someone will say "How can these things be?" The masses follow curricula in the search for units. That is not their fault. They are yielding unconsciously to the materialism of their day, expressed in the educational institutions of their society. At Deep Springs it shall be the aim of all to share in the purpose to build lives—whole lives—not one-tenth, or one-half, or three-quarters. And this can be done, perhaps, through simple residence with no further instruction than a careful course of reading of good books, for a student may learn style and English from Milton's prose far better than he can learn it in a formal class in rhetoric and composition. A student may learn history for himself in reading Gibbon. He may learn experience in reading Plutarch. Where a knowledge of the native tongue of a great author may be desired, he will find instruction in it. If his development takes him into finding the majesty of God in the wonders of Science, he may have guidance in mathematics and an open door to the knowledge of what has been achieved, from which may come the vision of what may yet be done. In short, he may live at Deep Springs, perchance fulfilling only the humble tasks which are assigned to him, yet absorbing from the organic whole the consciousness of the call—of the election of the few.

And if someone will say, "But what have you done?", there will be no pointing with the material finger to a fortune achieved or to a mechanistic invention. There will be the witness of the fruits of the Spirit, for as out of the abundance of the heart the mouth speaketh, so out of the knowledge of life the soul beareth fruit.

L. L. NUNN

Los Angeles, California  
December 30, 1924

**EXHIBIT C**

*THE MAN REQUIRED FOR DEEP SPRINGS*

## The Man Required for Deep Springs

No one can realize the difficulty of obtaining the man for this place without giving considerable thought to the requirements. In one sense the general charge of Deep Springs would not be extensive. In a more complete sense it would be very extensive. One difficulty almost universally experienced is in the fact that a man conscious of ability and of executive power would see hundreds of matters different from his conventional ideas and would at once start a revolution of methods and, to a certain extent, of purpose. It is doubtful whether the right man would not do better to live on the proposition and study it thoroughly for six months or more without giving an order of any kind and perhaps it would be better if he did not even reveal the fact that he was at the head. Burke in his masterpiece "The French Revolution" says that the development of society and government owes little to philosophy or theory, but almost entirely it is the work of experience which would have been much more effective than it has been but for the conduct of those having selfish purposes and more or less power to enforce them. Deep Springs is not conventional in its methods and any attempt to introduce conventional methods or any radical change would destroy its usefulness altogether. It requires a big man to study such a proposition deliberately and not use the authority which he possesses to obtain more efficient conventional results. The impatient boy digs down to see whether his seed has started to grow. The impatient executive remedies an incidental matter at the expense of the basic law which he has not fully learned.

Again, there is the financial difficulty. The country is enormously rich in cheap dollars. Methods have changed with the inflated condition and the value of the dollar, so that it sometimes appears that the old fortunes, depending on the moderate interest of past issues of bonds and suffering from the excessive taxation and other general expenses, are outclassed by the new fortunes of cheap dollars and unable to perform what they were expected to perform. Deep Springs endowment is at least six hundred thousand dollars and should have a gross income of not less than forty thousand dollars a year:—more than ample under the old order of things for giving sixteen or eighteen students the very best opportunities but apparently entirely inadequate to meet all kinds of income and other taxation and the excessive cost of everything including a very great increase in salaries and wages. I hope the institution will be permanent but I sometimes fear it will suffer financial destruction. Much more money is expended than would be necessary under management having the spirit of twenty years ago. But the danger is that in the future a manager will have the spirit of the present, which is much more extravagant than the practice at Deep Springs. The present age is not to control expenses but to be control-

led by them. You remind a young man that he has overdrawn his allowance and he replies with an injured air that he has spent nothing that was not necessary, without realizing that it was not necessary for him to spend a quarter of what he did spend. You criticize the expenses of a superintendent and he assumes no responsibility except to the extent of insisting that he has spent nothing that wasn't necessary, without recognizing at all that only such expenditures as can be paid for are necessary; but that which seems necessary is usually ordered leaving the payment as a matter to be dealt with in the future. This I find thoroughly ingrained into the present generation, occasioned largely I suppose by the enormous amount of cheap dollars, which would have vastly less purchasing power than they have now were it not for the fact that they are sharing the actual value of the old dollars which represent many times the amount of actual labor.

The man, therefore, for Deep Springs should be a careful student of affairs, conservative and slow to make changes in the present institution, which has grown up during practically a half a century and which is the embodiment of the truest democratic spirit. He should be an executive of financial ability and economical almost to the point of penuriousness. He should be a great student himself, finding much broadening society in the lives of men who have done things worth while. He should be a teacher from the abundance of his learning and enthusiasm, obtained from his own studies. He should not live constantly at Deep Springs but be a visitor of universities and other educational institutions and broadly known as an educator and a writer and speaker on educational topics. He should return to Deep Springs and bring the best that he has acquired from the outside. His aim should be to produce in students the highest type of ethical and religious character and to mature and stabilize in them the purpose for which Deep Springs stands, securing for God and mankind, men of service. He should respond to the Bishop of Exeter's call,

*Give us men*

*Strong and stalwart ones:*

*Men whom highest hope inspires,*

*Men whom purest honor fires,*

*Men who trample Self beneath them,*

*Men who made their country wreath them*

*As her noble sons,*

*Worthy of their sires,*

*Men who never shame their mothers,*

*Men who never fail their brothers,*

*True, however false are others;*

*Give us men—I say again,  
Give us Men!*

*Give us Men!*

*Men who, when the tempest gathers,  
Grasp the Standard of their fathers  
In the thickest fight:*

*Men who strike for home and altar,  
(Let the coward cringe and falter)*

*God defend the right:*

*True as truth though lorn and lonely  
Tender, as the brave are only:*

*Men who tread where saints have trod,  
Men for Country—Home—and God:*

*Give us Men: I say again—again—  
Give us such Men!*