

1 Christopher L. Campbell #116329
ccampbell@bakermanock.com
2 Jeffrey A. Jaech #076876
jjaech@bakermanock.com
3 Dirk B. Paloutzian #173676
dpaloutzian@bakermanock.com
4 Amber M. Bridges #290127
abridges@bakermanock.com
5 BAKER MANOCK & JENSEN, PC
5260 North Palm Avenue, Fourth Floor
6 Fresno, California 93704
Telephone: 559.432.5400
7 Facsimile: 559.432.5620

8 Peter E. Tracy #078185
LAW OFFICE OF PETER E. TRACY
9 106 South Main Street, Suite 200
Post Office Box 485
10 Bishop, CA 93515
Telephone: 760.872.1101
11 Facsimile: 760.872.2971

12 Attorneys for David Hitz, acting on behalf of the Board of Trustees of the L.
L. Nunn Trust
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF INYO

16 In re the Matter of the

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

CASE NO. SI CV PM 1253232

**PETITIONER'S TRIAL BRIEF FOR
MODIFICATION OF TRUST**

Trial Date: April 28, 2014

TABLE OF CONTENTS

	<u>Page</u>
I. PARTIES AND REPRESENTATION	3
II. THE BASIC FACTS	3
III. WITNESSES	7
A. Percipient.....	7
1. David Hitz, Chairman of the Board of Trustees.....	7
2. Cory Myers, Former Student Trustee.....	7
3. Zachary Robinson, Current Deep Springs Student	7
4. David Neidorf, President of Deep Springs College	7
5. Amity Wilczek, Ph.D.	8
B. Expert	9
1. L. Jackson Newell, Ph.D.	9
2. Ronald E. Riggio, Ph.D.	10
3. Roger Lehecka, Ed.M., M.Phil.....	11
IV. DOCUMENTARY EVIDENCE.....	11
Petition expects to enter the following Documents into evidence:	11
1. The Deed of Trust of Lucien L. Nunn;.....	11
2. L. L. Nunn's writing called "The Purpose";	11
3. L. L. Nunn's letters contained in the Constitution of Deep Springs & the Deed of Trust "the Grey Book"; and.....	11
4. The Mission Statement of Deep Springs College.	11
V. LEGAL THEORIES OF TRUST MODIFICATION	11
A. Beneficiary Consent Under Probate Code Section 15403.....	12
1. The California Attorney General Represents All of the Beneficiaries For Modification Under Probate Code Section 15403.....	12
2. The Current Students At Deep Springs College Are The Only Other Possible Trust Beneficiaries.	13

1	B.	Statutory Equitable Deviation Under Probate Code Section 15409.....	14
2	1.	There Is No Evidence That L. L. Nunn Knew or Anticipated That	
3		Women's Roles In Higher Education And Leadership Would	
		Change Dramatically After 1923.	14
4	2.	Continuation of an All-Male Student Body Would Defeat or	
5		Substantially Impair the Purpose of the Trust.	16
6	C.	Common Law Equitable Powers.....	17
7	D.	<i>Cy Près</i>	18
8	1.	General Use of <i>Cy Près</i>	19
9	2.	Impracticability	20
10	a.	Impracticable Does Not Mean Impossible	20
11	b.	Where the Purpose of a Trust is Accomplished By Means	
12		Independent of the Trust, the Trust is Impracticable of	
		Fulfillment.	21
13	VI.	CONCLUSION	21

TABLE OF AUTHORITIES

Page

CASES

(<i>Hardman v. Feinstein</i> (1987) 195 Cal.App.3d 157, 161-162	13
(<i>Ibid.</i>) 12	
(<i>Id.</i> at fn. 7.).....	12
(<i>Ike v. Doolittle, supra</i> , 61 Cal.App.4th at p. 80.	17
(<i>O'Hara v. Grand Lodge Independent Order of Good Templars</i> (1931) 213 Cal. 131, 141 [<i>O'Hara</i>].....	19
<i>Adams v. Cook</i> (1940) 15 Cal. 2d 352, 361.....	17
<i>Board of Trustees of University of North Carolina at Chapel Hill v. Unknown and Unascertained Heirs of Prince</i> , 311 N.C. 644, 319 S.E.2d 239, 19 Ed. Law Rep. 744 (1984)	21
<i>Boys and Girls Club of Petaluma v. Walsh</i> (2008) 169 Cal.App.4th 1049.....	12
<i>Dunbar v. Board of Trustees of George W. Clayton College</i> (1969) 170 Colo. 327	20
<i>Ebitz v. Pioneer National Bank</i> ((1977) 372 Mass. 207, 209.....	20
<i>Estate of Puckett</i> (1980) 111 Cal.App.3d 46.....	19
<i>Estate of Traung</i> (1962) 207 Cal.App.2d 818, 830	17
<i>Estate of Traung, supra</i> , 207 Cal.App.2d at p. 833.....	18
<i>Matter of Estate of Vallery</i> (Colo. Ct. App. 1993) 883 P.2d 24, 28.....	21
<i>Neimann v. Vaughn Community Church</i> (Wash. 2005) 154 Wash.2d 365, 383, emphasis in original	17
<i>Patton v. Sherwood</i> (2007) 152 Cal.App.4th 339, 346.).....	13
<i>Stanton v. Wells Fargo Bank & Union Trust Co.</i> (1957) 150 Cal.App.2d 763, 770.....	17

STATUTES

(Gov. Code, §§ 12591, 12598	13
(See Gov. Code, § 12580 et seq.).....	13

1	citing 2 Scott on Trusts (2d ed. 1956) section 167 at pp. 1176-1177.....	17
2	Rest.3d Trusts §67.....	19
3	Rest.3d Trusts, § 66(1)	18
4	Rest.3d Trusts, § 67, at com. c.).....	19

5

6 **STATE STATUTES**

7	(Prob. Code, § 24, subd. (d).).....	12
8	(Rest. (3d) Trusts, § 94.)	13
9	Prob. Code, § 15403, subd. (b).)	12
10	Probate Code section 15403, subdivision (a).....	12
11	Probate Code section 15409.....	14
12	Rest. (3d) Trusts, § 94.	13

13

14 **TREATISES**

15	13 Witkin, Summary of Cal. Law (10th ed. 2005) Trusts, § 211, p. 795.....	17
----	---	----

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Christopher L. Campbell #116329
ccampbell@bakermanock.com
2 Jeffrey A. Jaech #076876
jjaech@bakermanock.com
3 Dirk B. Paloutzian #173676
dpaloutzian@bakermanock.com
4 Amber M. Bridges #290127
abridges@bakermanock.com
5 BAKER MANOCK & JENSEN, PC
5260 North Palm Avenue, Fourth Floor
6 Fresno, California 93704
Telephone: 559.432.5400
7 Facsimile: 559.432.5620

8 Peter E. Tracy #078185
LAW OFFICE OF PETER E. TRACY
9 106 South Main Street, Suite 200
Post Office Box 485
10 Bishop, CA 93515
Telephone: 760.872.1101
11 Facsimile: 760.872.2971

12 Attorneys for David Hitz, acting on behalf of the Board of Trustees of the L.
L. Nunn Trust
13

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

16 In re the Matter of the

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

CASE NO. SI CV PM 1253232

**PETITIONER'S TRIAL BRIEF FOR
MODIFICATION OF TRUST**

Trial Date: April 28, 2014
19

20
21 Petitioner DAVID HITZ, acting on behalf of the Board of Trustees of the L. L.
22 Nunn Trust (the "Trust"), initiated this action for declaratory relief. The Court bifurcated the
23 fundamental issues presented and previously addressed the question of the interpretation of the
24 Trust. Now we turn to the matter of modification of the Trust.

25 The Trust can and should be modified to permit the admission of women – in
26 addition to men – at Deep Springs College pursuant to any one or more of four independent
27 theories: (1) consent of the beneficiaries under Probate Code section 15403; (2) statutory
28 equitable deviation under Probate Code section 15409; (3) common law equitable deviation;

1 and/or (4) the doctrine of *cy près*.

2 **I.**
3 **PARTIES AND REPRESENTATION**

4 Petitioner will be represented at trial by Christopher L. Campbell, Dirk Paloutzian,
5 and others of the law firm Baker Manock & Jensen, PC, along with local counsel, Peter E. Tracy,
6 of the Law Office of Peter E. Tracy.

7 Real party in interest Deep Springs College Corporation will be represented at trial
8 by Jon Michaelson of K&L Gates LLP.

9 We anticipate that Respondents KINCH HOEKSTRA and EDWARD KEONJIAN
10 will be represented at trial by Joseph C. Liburt of the law firm Orrick Herrington & Sutcliff, LLP
11 and Eric M. George, et al. of the law firm Browne George Ross, LLP.

12 **II.**
13 **THE BASIC FACTS**

14 In 1917, Lucien L. Nunn ("L. L. Nunn") founded Deep Springs College in Inyo
15 County, California. Decades before starting Deep Springs, L. L. Nunn was a pioneer with George
16 Westinghouse and Nikola Tesla in alternating current power generation and long-distance
17 electrical transmission. His interests shifted gradually from business to educational innovation
18 and leadership development due to his experience training engineers and technicians for what was
19 then a new industry. He established several educational experiments, eventually including Deep
20 Springs.

21 By Deed of Trust executed November 5, 1923, L. L. Nunn created a trust endowed
22 with the college property and certain other assets to provide for continuation of the educational
23 work he started or six years earlier at Deep Springs. The eight trustees appointed by L. L. Nunn,
24 their successors, and one student trustee chosen by the College student body have administered the
25 Trust since inception.

26 The College practices the three basic elements of L. L. Nunn's educational
27 philosophy in which (1) student self-governance and (2) labor are still given importance equal to
28 (3) academic study. Students govern their own conduct, participate in the hiring of faculty and

1 selection of new students, and perform at least four hours each day of labor on the College
2 “campus” – a working cattle ranch situated in Deep Springs Valley -- in addition to pursuing a
3 regular academic course load. Today, however, the Trust provides only a small portion of funding
4 for the operation of Deep Springs College.

5 Deep Springs is now essentially a two year school with approximately 26 students.
6 All students – along with faculty, staff and their families – live on the ranch. The entire
7 community eats meals in a central boarding house and participates in community events in the
8 Main Room.

9 L. L. Nunn dictated in the Deed of Trust that his conveyance should be used “to
10 provide for and carry on [the] educational work” he had already “inaugurated” and that such
11 efforts be “similar to and in development of” that endeavor. In other words, L. L. Nunn directed
12 the Trustees to continue further development of what he had started, but did not restrict how that
13 could best be done in the future.

14 Specifically, the Deed of Trust states that the Trust was established:

15 [T]o provide for and carry on educational work in the State of
16 California similar to and in development of the work already
17 inaugurated by Grantor at Deep Springs in Inyo County, California,
18 but in such manner and form and at such place or places within said
19 State as said Trustees in good conscience and the exercise of their
20 best judgment may determine, for the education of promising young
21 men, selected by said Trustees or as they may prescribe, in a manner
22 emphasizing the need and opportunity for unselfish service in
23 uplifting mankind from materialism to idealism, to a life in harmony
24 with the Creator, in the conduct of which educational work
25 democratic self government by the students themselves shall be a
26 feature as is now the case at said Deep Springs and which work shall
27 be carried on not for profit but solely for the advancement of the
28 purpose hereinabove mentioned.

(hereinafter, “Purpose Paragraph”.)

On December 30, 1924, approximately thirteen months after executing the Deed of
Trust, L. L. Nunn wrote a document entitled “The Purpose.” L. L. Nunn, wrote “A short season of
preparation for the work of the few, the great work – the heavy toil of leadership.” He went on
“[t]he purpose of Deep Springs [College] 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

1 them build the character for full employment in the service of their fellowmen.” L. L. Nunn’s
2 selection of only male students from 1917 to 1923 and the references to young men in both
3 Paragraph 1 of the Deed of Trust and The Purpose have influenced the admissions policy at Deep
4 Springs College since 1923.

5 L. L. Nunn was committed to using highly democratic educational methods and
6 lived experience to inspire gifted students to accept responsibility for themselves and their
7 communities, to excel ethically, and to prepare consciously for leadership in their chosen fields.
8 Specifically, he held the view that leadership had to be practiced. Believing that other colleges
9 and universities were failing to use such methods to instill leadership skills, L. L. Nunn began to
10 experiment with the training of young power plant workers by developing innovative schools at
11 his power stations. The center of this educational enterprise was the Telluride Institute established
12 in 1904 at the Olmstead Utah power station. Drawing on these experiments, in 1911 he established
13 a scholarship house on the Cornell University campus (the “Telluride House”). When the
14 shareholders of the power companies began to oppose expenditures on L. L. Nunn’s educational
15 projects, he shut down the Institute at Olmstead and attempted to found an independent “primary
16 branch” that would prepare students in ethics, leadership and character before going on to Cornell
17 or other education. After two failures, in 1917 L. L. Nunn to begin his work at the Deep Springs
18 Preparatory and Collegiate. Unfortunately due to his tuberculosis he was not able to achieve the
19 culmination of his educational dream and had to turn his experiment over to the Trustees in 1923.
20 He was able to ensure its initial financial security just before his death April 2, 1925, but he wrote
21 that he worried that Deep Springs would not survive. He also wrote that he was not satisfied with
22 Deep Springs and cautioned the Trustees to not be satisfied with it. (see etter to the Student Body
23 June 21, 1922.) His plan was for Deep Springs to use his innovative ideas to experiment with
24 training students to acquire the skills to be positive leaders in their communities and throughout
25 the world.

26 For more than the past four decades, the question whether to expand the admissions
27 policy at Deep Springs College to permit the admittance and education of women in addition to
28 men has been debated by trustees, students, alumni, faculty, and staff. The most recent formal

1 trustee inquiry into the question of coeducation began in early 2011. After extensive study,
2 discussion with alumni, donors and educational experts and long debate, on September 17, 2011,
3 the Board of Directors of the Deep Springs College Corporation, a non-profit California
4 corporation, voted 10 to 2 to admit women, in addition to men, as students of Deep Springs
5 College. The Trustees of the L.L. Nunn Trust voted 7 to 2 on the same question.

6 As the Court will hear in greater detail during trial, the Trustees' decision to
7 transition to coeducation was based on three conclusions by the ten who voted in the majority
8 about L. L. Nunn's objectives for Deep Springs. First, the trustees concluded that L. L. Nunn's
9 reason for founding Deep Springs was, in his own words, not "... to conduct a conventional
10 school ... [or] to make a special point of preparing boys for college ... Deep Springs is
11 endeavoring to add its mite to the creation of a class devoted to the country's needs and to be a
12 pioneer in the method of education which, if successful, should become general." (Letter to the
13 Student Body June 21, 1922.)

14 Second, the Trustees concluded that in 2011 and thereafter, a coeducational Deep
15 Springs would be more successful in training and developing the leaders focused on service who
16 L. L. Nunn hoped that Deep Springs would produce.

17 Finally, the Trustees concluded that they had the power and authority to make this
18 change in the admissions policy because the Deed of Trust charges them with developing L. L.
19 Nunn's educational work to achieve that purpose, which they interpreted as training that "class
20 devoted to the country's needs"

21 The Court will also hear at trial that the ten Trustees who voted in favor of the new
22 admissions policy concluded further that a change to coeducation would be in the best interest of
23 Deep Springs. In exercising their fiduciary duty to plan for the long range success of the
24 institution,, the majority Trustees determined that a change to coeducation would enhance the
25 College's ability to survive in the immediate future and long-term, and would strengthen its
26 operations by attracting more qualified student applicants, recruiting more qualified
27 administrators, faculty and staff, and increasing Deep Springs' success in garnering donations and
28 grants.

1 On February 6, 2012, Petitioner filed the Petition requesting a court order
2 construing the Trust provisions as giving the Trustees discretion to admit female along with male
3 students to Deep Springs College or, in the alternative, modifying the Trust to allow the Trustees
4 to admit female students as well as male students to the institution. On May 8, 2012, Messrs.
5 Hoekstra and Keonjian filed their Objection and Response to the Petition, contending essentially
6 that the purpose of the Trust is limited to the education of "promising young men."

7 **III.**
8 **WITNESSES**

9 Petitioner expects to elicit testimony from both lay and expert witnesses during
10 trial.

11 **A. Percipient**

12 **1. David Hitz, Chairman of the Board of Trustees**

13 Mr. Hitz has served as Chairman of the Board of Trustees since 2009. He will
14 testify primarily about the Board's 2011 deliberations which led to the decision to adopt
15 coeducation at Deep Springs College.

16 **2. Cory Myers, Former Student Trustee**

17 Mr. Myers served as the senior Student Body Trustee throughout the consideration
18 of the coeducation question in 2011. He will testify primarily on his role and the student body
19 participation in those deliberations.

20 **3. Zachary Robinson, Current Deep Springs Student**

21 Mr. Robinson is currently a second year student. He serves as Chair of the Deep
22 Springs College Applications Committee. He was formerly the Student Body Trustee and the
23 Labor Commissioner. He will testify as the designated Student Body Representative concerning
24 the Student Body consent to the requested Modification of the Trust. He will also testify
25 concerning the Committee's application process developed for the 2013 applications, when the
26 first round included women, and the results of that process.

27 **4. David Neidorf, President of Deep Springs College**

28 Prior to becoming President of Deep Springs College, Mr. Neidorf was a visiting

1 lecturer in the summer of 1993, and a visiting professor in 1995, 1997 and 2000. He was Dean
2 and Vice President of Business Operations from 2005 through 2007. He has been President of
3 Deep Springs College since January 1, 2008.

4 Mr. Neidorf's experience outside of Deep Springs College includes directing an
5 outdoor program at Saint Mary's College for six years, directing the Integrated Studies program at
6 Middlebury College, and working at three United States Outward Bound schools as a supervisor,
7 instructor, and staff trainer.

8 Mr. Neidorf will testify mainly about the following issues at Deep Springs College:
9 (1) the current status of the overall program at Deep Springs; (2) the current performance of the
10 College in relation to the goals articulated for the institution by L. L. Nunn; (3) differences
11 between the goals articulated by L. L. Nunn and standards used by the accreditation agency
12 applicable to the College; (4) the manner and extent to which having a single-sex male student
13 body impairs achievement of the goals set forth by L. L. Nunn; and (5) the manner and extent to
14 which coeducation would enhance realization of L. L. Nunn's goals and the strength of Deep
15 Springs College.

16 **5. Amity Wilczek, Ph.D.**

17 Since 2010 Dr. Wilczek has served at Deep Springs as the Herbert Reich Chair for
18 Natural Sciences. She has a BA from University of Chicago and a Ph. D. in Organismic and
19 Evolutionary Biology from Harvard. She taught as a T.A. at both institutions and, prior to her
20 tenure at Deep Springs,, designed and taught a seminar course at Brown University. She will
21 become Dean of Deep Springs in June 2014.

22 Dr. Wilczek will testify concerning the faculty consideration and recommendations
23 to the Trustees concerning the September 2011 consideration of coeducation, analysis of the 2013
24 applicant pool that included female applicants and the basis for her personal conclusions—based
25 on her experience as a professor at Deep Springs—concerning the advisability of coeducation at
26 Deep Springs.

27 **6. David Welle, Deep Springs Development Director**

28 Mr. Welle has an extensive background in film and theatrical production that gives

1 him a strong foundation for marketing and fundraising. He attended Deep Springs beginning in
2 1980, has a BA in Film from San Francisco State and was a directing Fellow at the American Film
3 institute. Since 2000 he has worked with Delphi Productions in numerous capacities including
4 development of marketing presentations. Mr. Welle has worked in fundraising for Deep Springs
5 since 2005, first as the volunteer co-chair of the endowment campaign. He was hired as the
6 development director in 2008. He also served as the Vice-President of Operations at Deep Springs
7 from July 2010 to July 2012. Mr. Welle will testify concerning the implications of coeducation on
8 Deep Springs fundraising efforts.

9 **B. Expert**

10 **1. L. Jackson Newell, Ph.D.**

11 Dr. Newell pursued his undergraduate education at Deep Springs College,
12 University of California, Davis, and The Ohio State University, where he completed his
13 undergraduate degree. He earned his M.A. at Duke University in American and European History,
14 and his Ph.D. at The Ohio State University in the History and Philosophy of European and
15 American Universities. Dr. Newell taught at Deep Springs College from 1965 to 1967, and again
16 from 1995 to 2004. He served as its President from 1995 to 2004. He also served as a Trustee of
17 Deep Springs from 1986 to 1994, including as Chairman of the Board. He is currently Professor
18 Emeritus at the University of Utah. He currently teaches social ethics and leadership philosophy
19 course in the Honors College at the University of Utah and in the Venture Program for low income
20 adults at Westminster College in Salt Lake City. He also serves on the board of directors of the
21 McMurrin Lectures on Religion and Culture (University of Utah) and of the Virgin River Land
22 Preservation Association in southern Utah.

23 Dr. Newell has published over 125 articles and essays and has written or edited
24 nine books and monographs, including The Students of Deep Springs College with Michael Smith
25 and William T. Vollmann (2000). The University of Utah Press will release his latest work, On
26 the Edge: The Saga of L. L. Nunn and Deep Springs College, in March of 2015.

27 Dr. Newell is the preeminent scholar concerning L. L. Nunn. He will testify about
28 L. L. Nunn's background, including his educational and work experiences, his management style

1 and relationships with subordinates—many of whom became the initial Trustees of Deep Springs
2 and the development of L. L. Nunn’s educational philosophy. Dr. Newell will testify about L. L.
3 Nunn’s overarching purpose in establishing Deep Springs College. He will also testify about the
4 rationale for L. L. Nunn’s choice of methods in 1917 through 1924 and his desire and direction to
5 the Trustees that Deep Springs be an ongoing educational experiment. Dr. Newell will also testify
6 about the different learning styles of men and women and how they interact differently in
7 educational settings and the basis for his conclusion that a coeducational Deep Springs will most
8 fully achieve L. L. Nunn’s purpose for Deep Springs in 2014 and in the future.

9 **2. Ronald E. Riggio, Ph.D.**

10 Dr. Riggio earned his B.S. in Psychology from Santa Clara University and his M.A.
11 in Psychology and Ph.D in Social/Personality Psychology from the University of California,
12 Riverside. Dr. Riggio is the Henry R. Kravis Professor of Leadership and Organization
13 Psychology at Claremont McKenna College and the former Director of the Kravis Leadership
14 Institute. He currently teaches leadership, organizational psychology, social psychology, social
15 cognition and communication, civic leadership, leadership and the sciences, and organizational
16 intervention.

17 Dr. Riggio has published numerous articles and essays on leadership and leadership
18 education. He has also written and edited books on leadership and leadership education, including
19 The Future of Leadership Development, which includes a chapter titled *Leadership Education at*
20 *the Undergraduate Level: A Liberal Arts Approach to Leadership Development*. His most recent
21 book, titled Educating Leaders for the Modern World, is expected to be published within two
22 years.

23 Dr. Riggio will testify about the most current research on the educational efficacy
24 of single-sex verses coeducational settings, and that there is no evidence to support a conclusion
25 that there are benefits to a single-sex education. There is, likewise, no data on the subject as it
26 relates to all-male colleges. However, there is the potential of negative impacts of a single-sex
27 education. Equally important, and specifically related to Deep Springs’ mission to create leaders,
28 Dr. Riggio will explain that, under current leadership training theory, effective teaching of

leadership requires a coeducational setting and, as a group, women have more leadership capacity than men, as a group.

3. Roger Lehecka, Ed.M., M.Phil.

Mr. Lehecka received his A.B. from Columbia College, his Ed.M. from the Harvard Graduate School of Education, and his M.Phil. from Columbia University. He was the Dean of Students at Columbia College from 1979 to 1998, and during that period oversaw Columbia's transition from an all-male student body to coeducation in 1983. Mr. Lehecka is now a principal in R&R Education Consultants, which provides strategic planning, implementation, and evaluation services to businesses, foundations, schools and universities. He also teaches a seminar at Columbia University entitled Equity and Access in American Higher Education.

Mr. Lehecka will testify about the transition from an all-male student body to coeducation at Columbia during 1983. He will testify about the immediate and positive impact coeducation had on the caliber of students that applied to and enrolled in Columbia, the quality of education in the co-education setting compared to the all-male setting, the social impact of coeducation on the students with respect to maturity and gender stereotypes and the positive impact of coeducation on alumni donations and Columbia's reputation. He will also compare women's access to higher education in the United States from the time L. L. Nunn executed the trust instrument to the present.

IV. DOCUMENTARY EVIDENCE

Petition expects to enter the following Documents into evidence:

- 1. The Deed of Trust of Lucien L. Nunn;**
- 2. L. L. Nunn’s writing called “The Purpose”;**
- 3. L. L. Nunn’s letters contained in the Constitution of Deep Springs & the Deed of Trust “the Grey Book”; and**
- 4. The Mission Statement of Deep Springs College.**

For the convenience of the Court, we attach copies of these items to this brief.

V. LEGAL THEORIES OF TRUST MODIFICATION

1 The L. L. Nunn Trust is properly subject to modification under any one or more of
2 four independent theories.

3 **A. Beneficiary Consent Under Probate Code Section 15403**

4 With one exception, Probate Code section 15403, subdivision (a) compels a court
5 to modify or terminate an irrevocable trust if all beneficiaries consent. The exception arises if the
6 court finds that the proposed modification changes a provision that the court determines is a
7 “material” purpose of the trust. In that case, the trust can be modified only if the court, in its
8 discretion, also concludes that the reason for modifying the trust, under the circumstances,
9 outweighs the interest in accomplishing a material purpose of the trust. (Prob. Code, § 15403,
10 subd. (b).) Thus, if excluding female students does not rise to a “material purpose” then the
11 modification with the consent of the beneficiaries requires no court analysis. Petitioner will
12 present evidence at trial showing (1) that the males-only restriction is not a material purpose of the
13 Trust; and (2) even if excluding females is a material purpose of the Trust, L. L. Nunn’s dominant
14 purpose would be better achieved by relaxing the males-only restriction.

15 **1. The California Attorney General Represents All of the Beneficiaries For**
16 **Modification Under Probate Code Section 15403.**

17 All beneficiaries must consent for Section 15403 to apply. The Probate Code
18 defines a beneficiary as “a person to whom a donative transfer of property is made or that person’s
19 successor in interest, and ... [a]s it relates to a charitable trust, includes any person entitled to
20 enforce the trust.” (Prob. Code, § 24, subd. (d).) In the only published case involving a charitable
21 trust and Probate Code section 15403, *Boys and Girls Club of Petaluma v. Walsh* (2008) 169
22 Cal.App.4th 1049, the Attorney General stated that he represented the People of the State of
23 California, the ultimate beneficiaries of charity, and that he had acted to provide all beneficiaries,
24 named and unnamed, representation in the modification proceeding. (*Id.* at fn. 7.) The Attorney
25 General argued that, by consenting to the modification on behalf of all unnamed beneficiaries, the
26 requirements of Section 15403, subdivision (a) were satisfied. (*Ibid.*)

27 Here, the Attorney General represents all beneficiaries of the Trust because the
28 Trust does not name any specific beneficiaries. The Trust benefits the general public, not any

1 particular individual or entity. The Attorney General's broad powers with regard to charitable
2 trusts include all aspects of enforcement and supervision. By statute, the Attorney General is a
3 necessary party to any charitable trust modification. (Gov. Code, §§ 12591, 12598; *Patton v.*
4 *Sherwood* (2007) 152 Cal.App.4th 339, 346.) Because the Attorney General is a necessary party
5 to represent the general public for trust modification, the Attorney General is authorized to consent
6 to a modification on behalf of the general public as the class of beneficiaries. (See Gov. Code, §
7 12580 et seq.) As a result, the Attorney General's consent is sufficient to modify the Trust in this
8 case upon petition to the Court. Petitioner expects to receive prior to trial confirmation that the
9 Attorney General consents to modification of the Trust.

10 **2. The Current Students At Deep Springs College Are The Only Other Possible**
11 **Trust Beneficiaries.**

12 No California case addresses whether the present or future students of Deep
13 Springs College are beneficiaries for purposes of Probate Code section 15403. Persons with a
14 "special interest" in a trust are sometimes granted standing to enforce the terms of the trust.
15 (*Hardman v. Feinstein* (1987) 195 Cal.App.3d 157, 161-162; Rest. (3d) Trusts, § 94.) There is no
16 clear rule as to what qualifies as a "special interest."

17 The Restatement (Third) of Trusts proposes that a small group of students may
18 represent a class:

19 If a charitable trust is created to benefit the members of a described
20 group of persons that is reasonably limited (though "indefinite" ...),
21 one or more members of that group may be allowed to maintain a
22 suit, on behalf of its members generally, against the trustee for
23 enforcement of the trust. ... So, too, if a college is trustee of a trust
24 the terms of which direct that its income be used to provide graduate
25 – study scholarships each year to selected students graduating from
26 the college, based on prescribed procedures and criteria, the trust
27 purpose may be enforced by one or more of the current students who
28 might reasonably expect to meet the criteria.

(Rest. (3d) Trusts, § 94.)

26 The current students at Deep Springs may be special interest beneficiaries because
27 the class is very small and defined and they may have a personal interest in the outcome of this
28 litigation. Those who have not yet matriculated at Deep Springs, however, only have a potential

1 interest in the Trust. Therefore, the only students who could be considered beneficiaries for
2 purposes of Probate Code section 15403 are those presently attending Deep Springs College.
3 Petitioner will present evidence at trial of the current student body's unanimous consent to
4 modification of the Trust.

5 **B. Statutory Equitable Deviation Under Probate Code Section 15409.**

6 Under Probate Code section 15409, a court can modify the administrative or
7 dispositive provisions of a trust (or even terminate the trust) upon the petition of a trustee or
8 beneficiary if, because of circumstances not known to or anticipated by the settlor, "the
9 continuation of the trust under its terms would substantially impair the accomplishment of the
10 purposes of the trust."

11 Modification under this statute requires two steps. First, the petitioner must
12 demonstrate circumstances not known to nor anticipated by the settlor. Second, if the court finds
13 that such circumstances exist, it must then determine whether continuation of the trust without
14 modification would defeat or substantially impair the accomplishment of the purposes of the trust.
15 Petitioner will provide evidence at trial that will satisfy both of these requirements.

16 **1. There Is No Evidence That L. L. Nunn Knew or Anticipated That Women's**
17 **Roles In Higher Education And Leadership Would Change Dramatically**
After 1923.

18 L. L. Nunn pursued active educational experimentation between 1890 and 1923.
19 During this period, the evidence will demonstrate that while coeducation had been implemented in
20 many public universities, the proportion of the female population which attended college was
21 small and coeducation remained to be embraced by the most prestigious private institutions, like
22 Yale and Harvard, which were L. L. Nunn's standard for what he hoped to accomplish at Deep
23 Springs. Moreover, public universities which offered coeducation tended to segregate female
24 students from male students and to steer female students into stereotypic roles and professions.
25 Females were discouraged from entering fields associated with power and influence.

26 By contrast, the evidence will show that women's participation in higher education
27 today is far more substantial and broad. Beginning in the 1980s (60 years after execution of the
28 Deed of Trust) the number of women enrolled in institutions of higher education has consistently

1 exceeded the number of men. Women are now encouraged to and do in fact enter into all fields of
2 study, including those such as law, medicine, and engineering that when L. L. Nunn was alive, and
3 for decades thereafter, were reserved almost exclusively for men. For example, the most dramatic
4 increases in women's enrollment rates at law schools occurred from the 1970s to the 1990s, well
5 after execution of the Deed of Trust.

6 Similarly, the evidence is compelling that women's roles in leadership have
7 changed dramatically since 1923. For example, in 2012, women comprised a majority of
8 management, professional, and related positions in the United States. Three women sit on the
9 Supreme Court of the United States, and women comprise a majority on the California Supreme
10 Court, including the Chief Justice. There are just under 100 women in Congress, four female
11 cabinet secretaries at the federal level, five female governors, and eight female state Attorney
12 Generals, including California's own Kamala Harris. Outside law and government, there are 23
13 female CEOs of Fortune 500 companies. In sum, it is no longer an anomaly for women to hold
14 positions of power and leadership throughout society as it was in 1923.

15 The phrase "promising young men" described the student body at Deep Springs
16 from its inception in 1917 until execution of the Deed of Trust in 1923. No evidence (as opposed
17 to Objectors' speculation) exists that during that period anyone expected females to be interested
18 in participating in a radical form of preparatory education taking place in an isolated location and
19 involving a unique combination of hard manual labor and rigorous academics.

20 Furthermore, the Court will hear testimony that the main catalyst in these changes
21 in women's participation in each and every aspect of society – World War II – could not have
22 been predicted by anyone, including visionary L. L. Nunn, in the close aftermath of World War I
23 (then called "the war to end all wars"). Women proved they could do "men's" work by filling the
24 gap left by the 16 million men who left for military service in WWII. Women, who in L. L.
25 Nunn's time were considered too fragile and weak to work in factories, kept the U.S. industry
26 running. "Rosie the Riveter" threw out old prejudices. Those changes have continued to
27 accelerate, resulting in a cultural landscape radically different than what L. L. Nunn knew nearly a
28 century ago.

1 Evidence to be provided at trial will support the conclusion L. L. Nunn did not
2 know of or anticipate when he signed the Deed of Trust in 1923 – and could not have known or
3 predicted -- the drastic changes in women’s roles in higher education, industry, government, and
4 leadership which have taken place since.

5 **2. Continuation of an All-Male Student Body Would Defeat or Substantially**
6 **Impair the Purpose of the Trust.**

7 Deep Springs College was established by L. L. Nunn to provide practical education
8 to those few individuals in society who are, and will continue in the future to be, society’s leaders.
9 The evidence will show that in recent years accomplishment of this objective, that is, the creation
10 of leaders has been hindered by the continuation of the single-sex admissions policy. Deep
11 Springs, and its students, have been negatively impacted by the continuation of the single-sex
12 admission policy in at least the following areas: (1) student applications; (2) faculty recruiting (3)
13 fundraising; (4) community recognition; and (5) education.

14 The Court will hear testimony that the single-sex admissions policy has inhibited
15 the College from recruiting the most promising students who best exemplify the values which L.
16 L. Nunn sought to promote for at least two reasons. One, some male students are unwilling to
17 attend because the College is not coeducational. Second, in some cases, the best most qualified
18 individuals for admission are females, who are not even permitted to apply. Further, the single-
19 sex environment increasingly is attracting less mature students. If the quality of applicants and the
20 resulting student body does not improve or in fact declines, then L. L. Nunn’s overarching purpose
21 of preparing promising individuals to lead the nation and world will be jeopardized.

22 The evidence will show that while recruitment of administrators, faculty, and staff,
23 for Deep Springs is challenging for several reasons, the single-sex male policy constitutes a “tax”
24 which the institution can ill afford to continue to pay.

25 Deep Springs College’s single-sex admissions policy also hinders fundraising.
26 As the Court will learn during trial, the policy precludes Deep Springs from obtaining funding
27 from some foundations and through matching programs which a number of employers
28 maintain.

1 Finally, the continuation of the current single-sex admissions policy is a
2 disadvantage to male students at Deep Springs College. It makes it more difficult for the College
3 to fully promote the characteristics which L. L. Nunn wished to inculcate in future leaders in
4 society. One of the most important elements of L. L. Nunn's design for Deep Springs is training
5 practical and enlightened leaders by allowing them to govern themselves and to practice
6 leadership in practical real world situations. Today it is difficult for current (male) students to
7 practice at Deep Springs for leading effectively in the real world they will encounter after
8 graduation – a world which is no longer a male only domain. Therefore, holding onto the single-
9 sex male student body tradition of Deep Springs is causing a fundamental and detrimental change
10 to L. L. Nunn's concept for practical leadership education that he developed throughout his career
11 at the power plants. It would be very unfortunate for the slavish attention to a detail of what L. L.
12 Nunn began in 1917 to undermine the overarching concept of his educational philosophy.

13 **C. Common Law Equitable Powers**

14 Courts have "broad" equitable power, founded in common law. (*Ike v. Doolittle*,
15 *supra*, 61 Cal.App.4th at p. 80.) Common law equitable deviation has been explained as making
16 specific administrative terms of an instrument subservient to the dispositive provisions in the event
17 of a conflict. (*Estate of Traung* (1962) 207 Cal.App.2d 818, 830, citing 2 Scott on Trusts (2d ed.
18 1956) section 167 at pp. 1176-1177.) Under this theory, the terms of a trust may be altered to
19 permit trustees to do not what the testator intended them to do, but what the court thinks the
20 testator would have intended if he or she had anticipated circumstances that later arose. (*Stanton*
21 *v. Wells Fargo Bank & Union Trust Co.* (1957) 150 Cal.App.2d 763, 770.) The California
22 Supreme Court has made "perfectly clear" that a court has the power to modify the terms of a trust
23 where necessary to carry out the trustor's original intent. (*Adams v. Cook* (1940) 15 Cal. 2d 352,
24 361.) Common law equitable deviation permits deviation from a charitable trust when such
25 deviation is "reasonably necessary to effectuate and further the trust's *primary* purpose."
26 (*Neimann v. Vaughn Community Church* (Wash. 2005) 154 Wash.2d 365, 383, emphasis in
27 original.) This equitable power is not restricted by statute. (13 Witkin, Summary of Cal. Law
28 (10th ed. 2005) Trusts, § 211, p. 795.)

1 Similar to statutory equitable deviation, common law equitable deviation has a two-
2 prong test: (1) the finding of unanticipated, changed circumstances; and (2) court determination
3 that deviation from a trust provision will further the purpose(s) of the trust. (*Estate of Traung*,
4 *supra*, 207 Cal.App.2d at p. 833; Rest.3d Trusts, § 66(1).)

5 The evidence will show that women have vastly more opportunities and play vastly
6 different roles -- including especially leadership roles in all aspects of society, whether that be in
7 education, business, politics, government, or elsewhere, today as compared to what L. L. Nunn
8 had experienced during his lifetime through 1923. None of these dramatic changes was or could
9 have been anticipated by L. L. Nunn when he created the Deed of Trust in 1923.

10 In addition, modifying the Deed of Trust to permit the Trustees to use the Trust
11 property for the benefit of both male and female students at Deep Springs College will advance the
12 Trust's purpose of providing students practical training to assist them in becoming unselfish
13 leaders dedicated to a life of service. The evidence will show that admitting men and women to
14 Deep Springs College will better prepare all students -- particularly the men -- for leadership roles
15 outside of Deep Springs College, where women play an important role. Furthermore, the manner
16 in which Deep Springs educates its students, by introducing them to and helping them to flourish in
17 leadership roles in connection with self-governance and labor at the College, will assist women at
18 the school to realize their leadership potential.

19 In sum, the evidence will show that unanticipated, changed circumstances exist that
20 require deviation from the males-only legacy to effectuate and further the Trust's primary purpose.

21 **D. Cy Près**

22 The principles of *cy près* also allow for modification of the Trust to allow
23 coeducation at Deep Springs College.

24 "Unless the terms of the trust provide otherwise, where property is
25 placed in trust to be applied to a designated charitable purpose and it
26 is or becomes unlawful, impossible, or impracticable to carry out
27 that purpose, or to the extent it is or becomes wasteful to apply all of
28 the property to the designated purpose, the charitable trust will not
fail but the court will direct application of the property or

27 \\\

28 \\\

1 appropriate portion thereof to a charitable purpose that reasonably
2 approximates the designated purpose.”

3 (Rest.3d Trusts §67.)

4 As explained in the comments to section 67, if a settlor provides for a trust to
5 support a school, but directs conduct at the institution in a manner which seriously undermines the
6 usefulness of the entity, the court may modify trust terms to allow a similar but more general
7 charitable purpose to be accomplished. (Rest.3d Trusts, § 67, at com. c.)

8 The Trustees have determined that it is not just undesirable but also currently
9 impracticable for Deep Springs College to pursue its objective of providing practical training for
10 leadership as a single-sex, male only institution. Not only does the College exclude all of the
11 potentially exceptional women leaders but, perhaps more importantly, even the men who do attend
12 Deep Springs receive training that is increasingly less relevant to the world they will enter, and try
13 to lead, following Deep Springs. As a result, the lack of a modification undermines the Grantor’s
14 fundamental plans and objectives. Those facts provide ample support for application of the *cy*
15 *près* doctrine, if necessary, to modify the Trust. This modification does not, however, merely
16 reasonably approximate the designated purpose-this modification is essential to effectively pursue
17 the fundamental purpose.

18 1. General Use of *Cy Près*

19 A trust is construed most strongly against the trustor, because the courts favor
20 charities. (*O’Hara v. Grand Lodge Independent Order of Good Templars* (1931) 213 Cal. 131,
21 141 [*O’Hara*].)

22 The court in *O’Hara* found that a trust “for the creation and maintenance of an
23 orphan’s home” created a general charitable intent for the benefit of orphans. (*Id.* at 141.) The
24 court relied on extrinsic evidence surrounding the creation of the trust, including the absence of a
25 reversionary clause in the instrument, the manner in which funds were distributed for an
26 orphanage that had become impossible to maintain, and the proceedings of the trustee. (*Id.*; see
27 also *Estate of Puckett* (1980) 111 Cal.App.3d 46 [holding that a will expressed a general charitable
28 intent to help young people obtain a college education because it established a scholarship fund for

1 four students selected annually and that if the fund failed it would be donated to the Regents of the
2 University of California].)

3 In a similar case, *Ebitz v. Pioneer National Bank* ((1977) 372 Mass. 207, 209.), the
4 court allowed modification for a trust established a scholarship fund “to aid and assist worthy and
5 ambitious *young men* to acquire a legal education, so that they may be better fitted and qualified to
6 become good citizens of their country, leaders in their community, and able members of the legal
7 profession.” Based upon the language of the will as a whole including testator’s reference to the
8 educational program of the Knights Templar, the generic goal of assistance of “as many students
9 as possible”, and dedication of the scholarship to both a male judge and his wife, purpose of the
10 trust broadened to include young women as well as young men.

11 In the same way the trusts were broadened in *O’Hara* and in *Ebitz*, the Court can
12 and should broaden the Trust to allow for the education of women -- in addition to men -- at Deep
13 Springs College. Testimony at trial will show that modification is necessary and appropriate in
14 this instance to avoid serious risks of decline and ultimate failure of the College.

15 2. Impracticability

16 a. Impracticable Does Not Mean Impossible

17 “Impracticability” is not the same as “impossibility.” In *Dunbar v. Board of*
18 *Trustees of George W. Clayton College* (1969) 170 Colo. 327, the court held that in view of
19 changing conditions, the charitable intent of testator whose 1899 will provided for establishment
20 of college for care and training of poor, white male orphans between ages of 6 and 10 years could
21 best be served by extending admission to children regardless of color and between ages of 6 and
22 18 years who have been deprived of parental care and/or support::

23 We would be less than candid if we did not state that many
24 jurisdictions still equate the word ‘impracticable’ with the word
25 ‘impossible’ when dealing with the *Cy près* doctrine. We think this
is an unenlightened view.
(*Id at p. 334.*)

26 Following and relying upon *Dunbar*, another Colorado court held that a purpose
27 becomes “impracticable” under the *cy près* doctrine when it appears that under the circumstances
28 the application of the property to that designated purpose would fail to accomplish the general

charitable intention of the testator. (*Matter of Estate of Vallery* (Colo. Ct. App. 1993) 883 P.2d 24, 28.) Such difficulty need be only a reasonable one and not such as to make the donor's plan a physical impossibility. (*Ibid*)

b. Where the Purpose of a Trust is Accomplished By Means Independent of the Trust, the Trust is Impracticable of Fulfillment.

In *Board of Trustees of University of North Carolina at Chapel Hill v. Unknown and Unascertained Heirs of Prince*, 311 N.C. 644, 319 S.E.2d 239, 19 Ed. Law Rep. 744 (1984), the University's construction of new dramatic arts facility could not be exclusively funded by the applicable trust. Instead, a legislative grant of funds was necessary in addition to testamentary trust. Because additional funds were required to achieve the purpose it was expressly "impracticable" for the testamentary trust to achieve its purpose.

Similarly, for the last 50 years, the L. L. Nunn Trust has not had sufficient assets to operate the College. Because it is, therefore, impracticable for the Trust to continue alone, it is appropriate and essential under *Cy près* to modify the Trust to prevent financial decline and ultimate failure due to limitations on funds available to support an all male student body.

VI. CONCLUSION

Respondents will contend that modification is not warranted because Deep Springs College is currently very strong by a number of conventional measures. Current strength, however, does not guaranty future success. The Trustees (both the corporate board and the Trustees of the L. L. Nunn Trust) have a fiduciary duty, as do all trustees of charitable trusts and non-profit entities, to engage in long term planning to both strengthen the institution and to anticipate and to protect it from looming threats. Now that the Trustees are not required to focus all their attention on the crises of the moment, as they did from the 1960s through the 1990s, the Trustees have focused seriously on long range planning. That planning has included examination of how well Deep Springs is fulfilling its mission and its goals—rather than focusing on conventional measures—and how Deep Springs can do a better job at fulfilling its mission. This planning effort has worked on the premise that there are many good conventional colleges

1 available so the effort expended to maintain a 26 student educational experiment in the desert can
2 only be justified if it supplies something unique and valuable.

3 The Respondents argue that the unique aspect is that Deep Springs is the last
4 vestige of training for the 19th Century all male leadership class. The majority of the Trustees find
5 no support for that in the Deed of Trust or L. L. Nunn's other writings. The majority believes that
6 L. L. Nunn's vision of Deep Springs as a microcosm, or crucible, that trains practical leaders
7 dedicated to lives of unselfish service in uplifting mankind from materialism to idealism is both
8 what was most important to L. L. Nunn and why Deep Springs is as, probably more important
9 today than it was when L. L. Nunn began the experiment. The majority, after significant study
10 and consultation with numerous experts, have determined that, not only the best, but the only
11 practical way to pursue L. L. Nunn's vision of practical training for enlightened leadership is to
12 have the Deep Springs Student Body mirror the conditions of leadership in the outside world. The
13 lessons of leadership and responsibility are primarily taught at Deep Springs through cooperating
14 with peers in practical work and participation in meaningful and consequential student
15 government. Without women in that student peer group, those components of the Deep Springs
16 education are increasingly less relevant to today's leadership.

1 All parties to this dispute are acting in good faith to preserve and enhance Deep
2 Springs. Ironically, however, by clinging to one of L. L. Nunn's tangible methods for education
3 that was undoubtedly a sensible and efficient use of Deep Springs' resources in 1917—an all male
4 student body—the Respondents are compromising the core concepts of L. L. Nunn's educational
5 vision. He designed his methods to address the circumstances and societal challenges he saw in
6 1917. Inevitably society changes and Deep Springs must have the ability to change as well to
7 remain relevant to the leadership needed and problems presented today and in the future.

8 DATED: April 4, 2014

9 BAKER MANOCK & JENSEN, PC

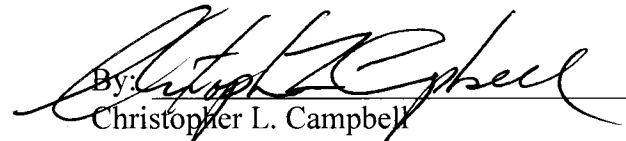
10
11 By: 
12 Christopher L. Campbell
13 Jeffrey A. Jaech
14 Dirk B. Paloutzian
15 Amber M. Bridges
16 Attorneys for David Hitz, acting on behalf of
17 the Board of Trustees of the L. L. Nunn Trust
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

DEED OF TRUST OF LUCIEN L. NUNN

Deed of Trust of Lucien L. Nunn

THIS INDENTURE made this 5th day of November, A.D., 1923, by Lucien L. Nunn, who is also sometimes designated as L. L. Nunn, a bachelor of Deep Springs in Inyo County, in the State of California, Grantor, and Paul N. Nunn, now of La Jolla, California, William L. Biersach, now of Provo, Utah, Ernest A. Thornhill, now of Deep Springs, California, Otto B. Suhr, now of Los Angeles, California, Francis C. Noon, now of Los Angeles, California, Carroll N. Whitman, now of Rochester, New York, Paul F. Cadman, now of Berkeley, California, and Harold R. Waldo, now of Salt Lake City, Utah, Grantees, WITNESSETH THAT:

WHEREAS Grantor has heretofore established an educational institution at Deep Springs in Inyo County, California, and has been there carrying on educational work for the education and development of promising young men; and

WHEREAS Grantor, desiring to provide for the development and perpetuation of such educational work, has heretofore conveyed the property hereinafter described to the above named Grantees by a certain instrument in writing dated May 15, 1923, and duly executed and delivered by Grantor, and now desires to supplement and confirm said conveyance dated May 15, 1923, by the execution and delivery of this conveyance which more particularly defines both certain of the property conveyed and the terms and conditions of the trust upon which Grantor desires that the property conveyed by him to said Grantees shall be held and used;

NOW THEREFORE in consideration of the premises and for use as hereinafter set forth, Grantor does hereby give, grant, bargain, sell and convey unto the said Grantees, and their successors and assigns forever, all and singular the following described property, to-wit:

(Property description omitted)

TO HAVE AND TO HOLD all and singular the above mentioned and described property, together with its appurtenances, unto the said Grantees, and their successors and assigns forever, but in trust, nevertheless, to be held, used, and disposed of by the said Grantees and their successors appointed in pursuance of the terms hereof (said Grantees and their said successors being hereinafter called Trustees), for the purpose, with the

powers, and upon the terms and conditions hereinafter more fully set forth, to-wit:

1. The purpose for which the property hereby conveyed and the rents, income, profits, and proceeds thereof, shall be used by said Trustees is to provide for and carry on educational work in the State of California similar to and in development of the work already inaugurated by Grantor at Deep Springs in Inyo County, California, but in such manner and form and at such place or places within said State as said Trustees in good conscience and the exercise of their best judgment may determine, for the education of promising young men, selected by said Trustees or as they may prescribe, in a manner emphasizing the need and opportunity for unselfish service in uplifting mankind from materialism to idealism, to a life in harmony with the Creator, in the conduct of which educational work democratic self government by the students themselves shall be a feature as is now the case at said Deep Springs and which work shall be carried on not for profit but solely for the advancement of the purpose hereinabove mentioned.

2. In order to enable them to accomplish the purpose of this trust in such manner as they in the exercise of their best judgment may deem most fitting and expedient, the said Trustees are hereby authorized and empowered to act in the matter and deal with any and all property now or hereafter held by them hereunder, (said property so held hereunder at any given time being hereinafter referred to as the trust estate), as they in good conscience and the exercise of their best judgment may deem proper and advisable; and they are hereby given and granted full power and authority:

(a) To hold, sell, convey, lease, subdivide, pledge, mortgage, encumber, invest, reinvest, loan, reloan, and in any and all other respects handle, manage, operate, and dispose of all or any portion of said trust estate in such manner, for such consideration, and upon such terms and conditions as said Trustees may deem most advisable, and all without the intervention of any court or any limitation or restriction on the discretion of said Trustees as to the kind or class of property in which the proceeds of or income from said trust estate may be reinvested, and without obligation on the part of any purchaser of all or any part of the trust estate to see to the application of any of the purchase money paid therefor;

(b) To transfer and turn over, without receiving pecuniary consideration therefor, all of the trust estate held hereunder to an educational corporation, unincorporated association, or other like organization devoted to the cause of education, whether formed by said Trustees or then existing, whenever so to do will in the judgment of said Trustees best main-

tain and carry out the purpose herein set forth, provided that under no circumstances shall any of the trust estate be so transferred or turned over to any such organization formed or operated for private gain, or for use otherwise than in the accomplishment of the purpose of this trust; and, upon such transfer of said trust estate, the Grantee or Grantees thereof shall be substituted for the said Trustees and shall be subject, however, to such additional conditions and limitations as may be imposed by said Trustees;

(c) To pay out of the trust estate and the proceeds therefrom all of the necessary and proper expense of accomplishing the purpose of this trust and of protecting and preserving the trust estate and, in that connection, to expend the corpus of the trust estate, as well as the income therefrom if, and to such extent as, they may deem it expedient and advisable so to do, and they may, also, reserve income and invest the same as part of the trust estate whenever they may deem such action to be to the best interest of the trust estate and the better accomplishment of the purpose of this trust;

(d) To hold meetings in conformity to the requirements hereinafter set forth, and to appoint, define the powers and duties of, control and discharge such committees of its members, officers, and agents, including a chairman, secretary, and treasurer, and such subordinate employees as they may deem necessary or convenient, and they may delegate such powers with reference to said trust estate and the carrying out of this trust to any such committee, officer, or agent appointed by them as they may deem necessary or proper;

(e) To adopt and change a name in which the business of this trust may be transacted; and from time to time to make and alter such arrangements, and adopt, repeal, and amend such by-laws, rules, and regulations as to the signature of deeds, transfers, agreements, checks, receipts, and other writings, and as to such other matters, as may secure the safe and convenient transaction of the financial and other business of this trust;

(f) To receive, hold, and use in pursuance of the terms hereof, any and all other property that may be vested in them by deed or by will or otherwise to be devoted to the primary object of this trust; and

(g) Generally, to do all such things and handle and dispose of the trust estate held hereunder as they may deem necessary and appropriate for the accomplishment of the purpose of this trust.

3. Whenever any of said Trustees shall die, resign, or become unable, refuse, or fail to act hereunder after reasonable opportunity is afforded him so to do, all of his rights, powers, and duties hereunder shall forthwith cease and determine and two-thirds of the remainder of said Trustees, regardless of how many that may be, may appoint a suitable per-

son as his successor. Such appointment shall be made by an instrument in writing signed and acknowledged by said two-thirds of said remainder of said Trustees and by the person so appointed, and recorded in the office for the recording of deeds in the county wherein the principal part of the educational work provided for hereunder is being carried on and in each other county wherein real estate forming a part of the trust estate is situated; and, thereupon, such successor so appointed shall succeed to and be vested with all the rights, privileges, powers and duties hereunder of the Trustee who has died, resigned, or become unable, refused or failed to act hereunder after reasonable opportunity afforded him so to do. In the event two-thirds of said remainder of said Trustees refuse or fail within a reasonable time to so appoint such a successor, he may be appointed with the same effect by order of any court of competent jurisdiction upon the application of any one of the said remainder of said Trustees or of any other party authorized by law to make such application.

4. The said Trustees shall receive no compensation for their personal services as fiduciaries hereunder, but they may employ any of their number as an officer, agent, or employee for any purpose permissible hereunder, and allow him reasonable compensation out of the trust estate for services as such which are in excess of his duties as a fiduciary hereunder. No bond or other security for the faithful performance of his duty shall be required of any of said Trustees except in pursuance of action at a Trustee's meeting, and none of said Trustees shall be held personally responsible on any account by reason of his being a Trustee hereunder so long as he shall act in good faith.

5. The students in attendance receiving the benefits of the educational work being conducted hereunder are the sole beneficiaries of this trust, constitute the Student Body, and are to be considered as the beneficial owners of all the property at any time held by the said Trustees under the terms hereof, title and authority being vested hereunder in said Trustees only because of the probability that most of said students will be and remain minors while they are such students, and to maintain and perpetuate the work of this trust free from the changes that would inevitably result from the ever changing membership of the Student Body. Therefore, it shall be the duty of said Trustees to accord the Student Body the full right, power and authority of democratic self-government in accordance with its traditions and the ideals and policies of Deep Springs educational institution set forth in the correspondence and documents of Grantor and of the institution, including the control of the conduct of its members and of the buildings used as students' dormitories and the power of majority vote to veto the dismissal of any member during the school year but not the power to dismiss any member. It shall also be the duty of said Trustees to recog-

nize the right of the Student Body to maintain its organization and hold its meetings under such rules and regulations as it may adopt and with no one present but its own members except on its invitation; to ascertain, consider, and comply with, so far as in good conscience they can so comply with, the desires of said Student Body; and to accord it full opportunity to make its wishes known to them. To this end, the Student Body shall be entitled to appoint one of its members to act as the Student Body Representative at all Trustees' meetings, and it may remove at will any person so appointed; such appointment or removal to take effect upon the filing of a proper certificate with the secretary of the Trustees. Each person so appointed shall continue as the Student Body Representative until removed or until the expiration of his term of office as may be fixed by the Student Body even though he may after his appointment cease to be a member of the Student Body. The Student Body Representative, during his continuance in office, shall be entitled to notice of, and to attend all Trustees' meetings with full power to speak therein and to present his views and those of said Student Body on all matters connected with the carrying out of this trust the same as if he was made one of said Trustees by virtue of this deed, and to a vote, which shall be considered and counted as if he were one of said Trustees, on all matters acted upon at any Trustees' meeting except on matters involving the conveyance or transfer of any title to, or the imposition of any lien upon, any of the property forming a part of the trust estate, but not including as a transfer of title within the meaning of this exception the expenditure of money in the conduct of educational work hereunder or in the protection or preservation of the trust estate.

6. Except as otherwise expressly provided for herein, the powers hereby vested in the said Trustees shall only be exercised by or with the consent of all of said Trustees or in pursuance of action at a meeting of said Trustees held in conformity with the requirements hereof, when such action is approved by the vote of not less than five of those entitled to vote thereon as specified herein. Trustees' meetings may be held at any time upon call of the chairman appointed by said Trustees or of any of said Trustees and at the place where the principal part of the educational work provided for hereunder is being carried on, or at Los Angeles, California, or at such other place as may be agreed upon by all of those entitled to attend such meeting, but at least one Trustees' meeting shall be held each year, while school work is in progress, at Deep Springs, so long as the principal part of the educational work provided for hereunder is being carried on there, and thereafter wherever the principal part of said educational work is being conducted. Written notice stating the time and the place of each Trustees' meeting shall be given to each person entitled to attend the same, either personally or by mailing him a copy thereof at his last known post office address, and such notice must be so presented or

mailed to each such person at least thirty days before the date of such meeting, but any person entitled thereto may waive such notice by a writing to that effect signed either before or after such meeting or by attendance at such meeting without objection thereto on the ground of lack of notice. The notice required hereunder shall be given by the secretary appointed by said Trustees or by their chairman or any three Trustees, and the certificate of said secretary as to any action taken at any Trustees' meeting or as to any other fact concerning the same or as to the call and notice thereof shall be prima facie evidence of the facts therein set forth. The said Trustees and said Student Body Representative shall be entitled to reimbursement out of the trust estate for all their reasonable and necessary expenses in attending any Trustees' meeting.

IN WITNESS WHEREOF Grantor has set his hand and seal to these presents, and the said Grantees, to evidence their acceptance hereof, have likewise executed this instrument, all on the day and year first above written.

LUCIEN L. NUNN	(SEAL)	OTTO B. SUHR	(SEAL)
<i>Grantor</i>		FRANCIS C. NOON	(SEAL)
PAUL N. NUNN	(SEAL)	CARROLL N. WHITMAN	(SEAL)
WILLIAM L. BIRSACH	(SEAL)	PAUL F. CADMAN	(SEAL)
ERNEST A. THORNHILL	(SEAL)	HAROLD R. WALDO	(SEAL)
		<i>Grantees.</i>	

STATE OF CALIFORNIA }
 City and County of San Francisco } ss.

On this 5th day of November, A.D., 1923, before me, Grace Sonntag, a notary public in and for the county and state aforesaid, residing therein and duly commissioned and sworn, personally appeared Lucien L. Nunn, known to me to be the same person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

WITNESS my hand and official seal the day and year last above written.

GRACE SONNTAG
Notary Public

EXHIBIT 2

THE PURPOSE

rules should be your endeavor, but a vicious, persistent violation of a positive rule should be treated with unflinching determination to preserve the life of your institution. There should be no favoritism in dealing with such matters. On the other hand, I do not believe you should consent to the dismissal of a student during the school year for a merely scholastic inferiority.

Sincerely,
L. L. NUNN

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 of Malmsey*—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 maternal 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 3

L. L. NUNN'S LETTERS CONTAINED IN THE CONSTITUTION OF DEEP SPRINGS &
THE DEED OF TRUST

Los Angeles, California
November 10, 1919

Gentlemen:

I beg your earnest attention to the problem of a permanent organization for Deep Springs.

The institution is unique. We have no precedents to follow. To the extent that its purpose differs from the purposes of other institutions, the methods adopted for preserving its existence and stimulating its growth must differ from other methods. Having grave responsibilities the Student Body must have broad discretionary powers, but not such as would enable it to degenerate and destroy the institution, which must be protected by several different forces.

The trustee, the faculty, the ranch manager, and interested patrons clothed with visitorial powers, must be associated with the Student Body in the control of affairs in order to give stability and security to the whole. Provision should be made for periodical joint sessions to be attended by all parties concerned and possibly presided over by the trustee, but such assembly should be guided in its deliberations by a constitution defining as definitely as possible the responsibility and jurisdiction of each of the several departments.

For some time past I have been trying to get the views of various persons on the subject. Last May Chancellor Noon had several meetings with Mr. P. N. Nunn, Mr. A. M. Johnson, Captain Nightingale and others with a view of recommending certain provisions to be incorporated in a general constitution. They discussed the division of responsibility and authority but made no definite recommendations.

The institution exists for the Student Body, but no one of high ideal would consent to be a mere dummy in his life's work simply for the purpose of receiving a salary. It is of vast importance to an artisan of high character that his work brings him honorable distinction, and I trust that a large portion of the compensation for a life of devotion to Deep Springs by any of the teachers or superintendents will be the success of the enterprise. The faculty must have a voice in the conduct of affairs, and perhaps should have the control of the methods used to obtain efficiency in scholastic work. Note I say perhaps, but as a patient consulting a surgeon determines as to whether an operation will or will not be performed, so the Student Body should have broad authority, perhaps exclusive authority, in

determining what shall be done. Methods, however, should be largely, if not exclusively, in the hands of the specialists employed to do the work.

What authority should be left with the Student Body, what given the faculty, what to the management of the ranch, what to a visiting committee, and what to the trustee? I have given much thought to this matter and now ask your attention to it with the intimate persuasion that it is of eminent and paramount importance.

Respectfully submitted,
L. L. NUNN

Los Angeles, Calif.
March 23, 1920

Gentlemen:

I am just in receipt of a request from Elbridge Gerry, representing your vacation committee, for permission for half a dozen of your members to take the Ford for a week or such a matter to Bishop during the Easter vacation.

I shall not arbitrarily veto the action taken in allowing your members to spend their vacation in Bishop or Big Pine, but to the extent that you respect my opinions you cannot but think ill of such a plan. You know how I feel about establishing social connections in towns near the ranch. You know to what extent I have gone in order to prevent such social connections. I have at different times endeavored to explain the various reasons for my position and I must say now that I must find in the Student Body a more responsive attitude towards my views that have been most carefully considered and thought out if I am to have great confidence in the wisdom of your body. Several requests have been made for permission to bring young folks from Bishop and Big Pine for dances and general social functions at Deep Springs. To accept courtesies at the hands of the people of Bishop and Big Pine means that we must extend the same courtesies and hospitality to them. To allow such a system of intercourse to grow up is impossible and, of course, will be in some way prevented. It is my earnest desire that your body consider this question in the light of the views you know I entertain as well as discuss it in a broad manner which will involve your own views on the danger of establishing such a precedent. Those who feel that they must spend a part or all of their vacation in a town or

city had better arrange to come here or go to San Francisco. If they come here I will give them a cordial welcome and endeavor to make their stay enjoyable and profitable.

Without reference to the above, I certainly cannot consent to the ranch Ford being used in any such manner as the request implies. Too much personal sacrifice is called for in order to keep the situation in an operating condition to jeopardize it by such a use of the Ford.

Sincerely,
L. L. NUNN

Los Angeles, Calif
March 26, 1920

Gentlemen:

I had expected to be with you tomorrow evening but a telegram from Mr. Cadman that the road is closed by snow changes this plan. There are several things I wish to say to you before your vacation,—thoughts resulting from study and doings during the last few months.

The whole national situation is critical. The greater minds are tense with apprehension; the mass hysterical and thoughtless almost to insanity. The ship of state is rocking in the storm, with insufficient and unstable ballast. I wish that two or three of the older members; older in training, thought and sobriety rather than in years, would during the coming vacation visit San Francisco or Los Angeles, whichever their connections would best enable them to get a comprehensive view of the situation, not for pleasure and excitement but as men wishing to inquire, to investigate and discuss the situation, and prepare for the storm.

I am a member of the Student Body; I am a member of Telluride Association, in each instance the only member of advanced years. Question has arisen as to whether my membership in these two bodies was consistent with their general purpose and plan. My answer is, I am a student; more than ninety per cent of my time is given to progressive education; to the acquisition and utilization of knowledge. I am in absolute sympathy and living in conformity with both the purpose and plan of those organizations. My every commercial interest is dedicated to their development. I am certainly eligible and I am loyal. Under such circumstances, it is proper that

I speak as freely in reference to the conduct of any member of your organization as it is the practice and duty of you gentlemen to speak in your sessions. With such feeling I say that should a committee of the Student Body visit this place or San Francisco during the vacation, it should be composed of members intensely interested in studying the important problems and not seeking pleasure. I was far from satisfied with E.—'s general spirit and attitude when he was here last time. Girls, picture shows and kid excitement took up his time rather than things worth while. You undoubtedly saw unfavorable result when he returned.

The above naturally leads to the subject about which I wrote you a few days ago. Deep Springs enterprise was established for a certain definite purpose. Individual freedom of both thought and action is one of the cornerstones upon which it is founded, but individual freedom consists in "forestalling restraint by self-restraint." The main purpose of every institution must be adhered to or the institution becomes another institution. Deep Springs Valley, as has been said to you a number of times, has been selected for the express purpose of controlling by natural barriers a social condition which the government, at such institutions as Annapolis and West Point, and the higher grade of private institutions all over the land, control by rules and regulations. Deep Springs Student Body is supposed to be made up of young men who wish to take advantage of such natural advantages and carry out the purpose of the institution by preventing during the school life social conditions adverse to the growth and development aimed at. To build up social connections between Deep Springs and the surrounding towns is in direct opposition to the methods of education adopted by us. While the control of the conduct of your members is in your hands so long as you exercise control within the spirit of the whole purpose of the institution, it is also true that the institution must not be allowed to perish because of failure to assume responsibility. Visiting in the surrounding towns should not be permitted and it is your duty in the exercise of the authority given you to control it.

Sincerely,
L. L. NUNN

Deep Springs, California
April 3, 1920

Dear Mr. Nunn:

The Student Body has received your letters of March 23 and 26, and has held several lengthy meetings to decide upon its policy towards control of social relations with Owens Valley. After considering your views and the views of other members and non-members upon the subject, the body was able, by a small majority, to decide upon the following policy:

Although the Student Body feels it unadvisable for the ranch to incur social obligations in this vicinity, it nevertheless believes that the execution of this principle can be most effectively handled by personal self-restraint. Through this self-restraint and through the check which the Student Body possesses in controlling the conduct of its members by individual criticisms, the Body undertakes to keep the institution's local social connections within narrow limits.

Very truly yours,
(THE STUDENT BODY)

Pasadena, Calif.
January 24, 1921

My Dear Whitney:

Replying to your letter of the 20th. The student body must acquire authority by wise conduct. There are comparatively few instances in the world's affairs where authority antedates responsibility and control, and practically no such instances are to be found in connection with government.

The students individually, but under the student body, should take care of the tools. Nobody will or can object to that and from such care will emanate control first and then authority. Were I to issue an absolute order giving authority it would do the student body no good and simply place me in the position of being an arbitrary dictator instead of a guiding influence.

You have clearly raised the whole question in the second paragraph

of your letter wherein you state: "We hold that the student body as an organization is not responsible for equipment unless its responsibility and the authority that goes with it, have been definitely delegated to us." This I definitely deny so that a direct issue is raised. The student body is responsible for the conduct of its members and its members can and should care for the tools except where such care is absolutely beyond their control. The power to control is the necessary condition to moral responsibility or obligation to control; but your body has plenty of power.

Neither great men nor nations do their main work on authority except as they assume the authority given by the Creator to every man to work efficiently in the high cause of government of the universe. What authority do you think Washington could possibly have had from a Congress which had no authority itself? Where did Lincoln get his authority to save the Union? He violated the Habeas-Corpus Act and practically every fundamental law of the Anglo-Saxon liberty in the cause of preserving them.

Considering the other side, the student body need not look far to find instances where great danger would result from granting power or authority not based on wise action.

Every one at Deep Springs has the authority from God to act wisely and it is safe to say that no human power will interfere with such action. The care of the tools naturally belongs to the student body. The responsibility for them is upon the student body. Its unquestioned authority will follow immediately upon the heels of the successful assumption of such responsibility.

The student body is not making the progress it should make in extending its jurisdiction. It can only do so by wise action. It would be the worst of folly to specifically give it broad powers. It would be the highest wisdom for it to acquire them. The student body is composed largely of young and inexperienced members, who seem to be averse to learning wisdom from others. In several instances the action of the majority has resembled that of a mob propelled by a more or less violent passion without the guidance of deliberate judgment or reason. I am constantly hoping for much improvement in this respect. I stand ready at all times to counsel and decide on specific questions referred to me, but I ought not to constitute myself a dictator by delegating arbitrary power in advance of wise action or of a question being raised as to the right of the student body to wisely exercise such power.

I am uncertain as to the meaning of your statement: "but we are uncertain as to our power to put this into effect." If you mean your author-

ity to direct your members, there should be no uncertainty, as you certainly have such power. If you mean your authority as against all the rest of the universe, the above is my answer.

Sincerely,
L. L. NUNN

Mr. Simon N. Whitney
Sec'ty. of Deep Springs Student Body

March 23, 1921

Extracts from Minutes:

Mr. Nunn stated that the management had authority, unless overruled on an appeal, to call on every student for four hours of work every day, and to decide which students should take the different jobs, and that the Labor Commission, existing for convenience, had no power to overrule the management.

March 26, 1921

Extracts from Minutes:

There was a discussion of the failure of P.—to keep the kitchen furnished with wood. Mr. Nunn stated that if there was no improvement, a workman would be hired for the job, at the expense of the Student Body.

Deep Springs, Calif.
April 5th, 1921

To the Student Body of Deep Springs:

Your resolution assigns no reason for granting the request contained therein. Your request is denied.

Your members came with the understanding that they possessed superior ability and purpose and this understanding must be justified. Average results obtained by ordinary schools will not be accepted as satisfactory at Deep Springs. There is nothing difficult to understand about the purpose required nor in acting in harmony with the spirit thereof. They are hindered by a lack of intense earnestness and the spirit of refined selfishness ingrained to the point of saturation. I can talk until I am black in the face explaining principles easily understood by children of ten or twelve years of age but nothing is absorbed that is not wanted and nothing is wanted that does not contribute to individual and personal lawlessness. You are less anxious for truth and more hungry for authority than any of your predecessors. The time has come to call a halt.

The purpose of Deep Springs as identical with the purpose of God which is the well-being of the universe, must be recognized. I am not forcing my individual views but those of the theists of all ages, when I state that but two ultimate purposes are possible to intelligent beings. The one, loyalty to the right, to the well-being of the universe as the bigger including the smaller; and the other, devotion to self and to the extent required by selfishness or self-interest, the state of rebellion against right, against moral principles, against the moral order of the universe, against the administration by God of those laws which He Himself obeys and requires man to obey also. This position favors no special creed. It is equally adapted to every form of theism and Deep Springs is a theistic institution. To be confused in reference to this single purpose which is so plain that "a way-faring man though a fool need not err therein," and to fail to act in accordance with the spirit thereof is not excusable in your members. The acceptance of the purpose as a guide to conduct is relative and a matter of degree which will vary in different individuals but the intellectual comprehension of the statement is only a matter of effort and can be and must be understood and the acceptance of it in spirit will follow. A few hours devoted to a sincere determination to understand statements respecting these matters made by your instructors as well as myself, would have a strong bearing on conduct. It is no part of the duty of the teachers here to either study for the students or force the students to study. Any individ-

ual who needs to be prodded to do his work by any other than his own organization, should go where the teachers are expected to prod.

If you gentlemen feel injured and think that you deserve no criticism but that you have acted just as you should have acted, there is nothing further to be said.

I am talked out. I have given you the very best within me and it has been disregarded. The general conduct has been that of ordinary students and not such as should be expected of a score of students especially selected from the hundred million people of this country as the best material out of which to make public servants and trustees of the country's welfare.

I am not objecting to any young man putting his entire heart and soul into playing marbles or jumping around like a monkey on a tennis court but I am saying that the four hours physical work required as an important feature of the education provides all the exercise necessary and it ought to be possible to find sixteen or eighteen young men in this whole land who do not care for such things but are preparing to be trustees of the nation.

The complaint has been made that the authority of the student body has been encroached upon. This is certainly true, but why? The student body exercised authority over the entire culinary department until its slack administration and its treatment of the servants created an almost unbearable condition. It had entire charge of the dairy until the quantity of milk was reduced to not more than half the proper amount, receptacles were not kept clean so that the milk used on the table was tainted, the butter hardly fit to use, and a person directly under the management was installed. It certainly has absolute authority over vacations but it could hardly expect such authority to be absolute hereafter in view of the shameless exhibition of the last two weeks of continuing class work through the whole two weeks notwithstanding the fact that the four instructors all wanted a vacation but they were denied that privilege and required to appear in class with about one-fifth attendance, with absolutely no more concern than the ordinary man ties his mule in a stall to await his whim as to its use.

The question has been asked recently, "What has the Student Body control over?" It has authority over the conduct of its members and the right to increase that authority to an absolutely unlimited extent under the law of the eternal fitness of things. It even has the right to see that wood is provided for the cook without requiring her to tramp around and beg the one whose duty it is to see that she is supplied with it, to come and get her enough to cook a meal with. It has the right to see that four hours honest full measure of the time of each student be devoted to out-

side work. It has the right to protect the institution's property. It has the right to install economies everywhere throughout the system. It had the right absolutely to control the garage, transportation problems, machine shop, power plant, water system, and cold storage, and it still has the right to regain all the control which it has gradually lost by reason of insufficient attention. It seems hungry for authority but its careless and inefficient exercising of it has brought about the present crisis.

This criticism is not personal but directed to the Student Body as an organization and if those who recognize the necessity for radical improvement will pledge their utmost endeavor to secure it and to meet requirements of the purpose as described herein and will sign a statement to that effect and request a reconsideration of the order issued last Saturday, their request will be considered.

L. L. NUNN

April 6, 1921

Mr. Nunn:

We, the undersigned members of the Student Body, acknowledge that we have been at fault, and pledge our utmost endeavor to secure radical improvement and to meet the requirements of the purpose of Deep Springs, as opposed to self; and petition for a reconsideration of the order issued last Saturday.

(The Student Body)

Deep Springs, California
April 7th, 1921

Deep Springs Student Body
Gentlemen:

In accordance with the request of your members contained in an instrument dated April 6th, 1921, the school year will be extended through the month of May instead of closing on the first of May as was announced last Saturday, April 2nd.

The statements made in said instrument refer to the general conduct of your members which is within your jurisdiction to control. I therefore send the instrument to you herewith to be filed among your records.

Respectfully,
L. L. NUNN

cal. All obligation is based upon value. Christ's command was, Thou shalt love thy neighbor as thyself; not more, not less, because thy neighbor is of similar value as thyself. Man's supreme purpose should be to put a just value upon all things and treat all things accordingly without regard to what we call "ownership".

The Purpose of Deep Springs is to secure in its members complete renunciation of self as the supreme end; the dedication of self and all one can ever become, all one has and all one can ever acquire, is a just administration of the various values of the universe. In other words, taking the oath of allegiance to the intrinsic values of the universe, and treating all accordingly. Considering and treating God and his Government as of infinite value. This necessarily implies recognition of, and obedience to, Law, and the enjoyment of the highest Liberty.

These facts will not be grasped without an effort, but this place was selected away from society's bustle to induce meditation along such lines.

Pasadena, Calif.
January 31st, 1922

Gentlemen:

I have had few disappointments equal to the one occasioned by my inability to be with you during the past especially important weeks. As my absence is likely to continue for sometime I am sending this brief message.

Stimulate and encourage each other by promulgating fundamental rules of conduct rather than by individual personal criticism. Give heed to the fact that true democracy provides for individual development and growth along the most varied lines and in connection with the most numerous and varied defects. That as no one is free from myriads of imperfections so no one has a monopoly on the virtues and good qualities of life. Recognize as the most fundamental absolutely necessary quality of efficient development and effective organization, charity toward all, and as to the meaning of charity read with scholarly purpose of obtaining the meaning verses four to seven both inclusive of the thirteenth chapter of 1st Corinthians. A really vicious purpose should not be tolerated but I know the members of Deep Springs Student Body and I know there is not one without a fundamentally good purpose. There are no "zeros" among us. There are none so far above the others as to make it safe for them to consider

themselves examples or models from which others should be formed. Each one of us has his work to do. True self-reliance is sincere humble realization of the necessity of relying upon the voice of God within and respect for the institutions of society which are the result of the experience of the ages. Less time should be spent in looking for defects and criticising them and more time in action; especially less time in criticising others and more in forming the habit of seeing quickly and admitting the admirable points in others. This would not tend to lower the standard but to the contrary to inspire each one with the spirit of progress in line with his natural and God-given powers. As stated above, I do not believe there is a member who does not possess a healthy desire to develop along the line of unselfish service. If there is such a one he certainly should feel without any direct criticism how out of place he is at Deep Springs. A direct offense against the purpose of the institution should be openly condemned by your body but mere individual peculiarities and minor short-comings need not be noticed, at least to the point of "nagging."

I hope to be with you soon but most certainly not as an example or as a critic. I am too conscious of a life crowded full to the uttermost and overflowing with defects to assume either of those positions. I want to be with you to draw from you, as I do whenever I am with you, life and Divine purpose, remembering always that the promise to him who "endureth unto the end."

Sincerely,
L. L. NUNN
Member Deep Springs
Student Body

Deep Springs, California
April 4, 1922

Dear Mr. Nunn,

We, the Student Body do herewith recommend the dismissal of
D_____ ...

Yours very sincerely,
Deep Springs Student Body

Deep Springs, Calif.
June 1st, 1922

Gentlemen:

You ask me what we are doing at Deep Springs. Burke in the last sentence of his French Revolution refers to himself as one, who "when the equipoise of the vessel in which he sails may be endangered by overloading it upon one side, is desirous of carrying the small weight of his reason to that which may preserve its equipoise." Deep Springs believes and teaches that since Lord Bacon's time the Anglo Saxon people have been overloading their Ship of State on the side of Science, resulting in the growth of materialism and commercialism and obscuring the ideals which flow from religion, philosophy and ethics. It teaches and believes that science has been made the ignominious slave of commercialism and that commercialism has found most profit in amusing and stupefying the people with every material device and sensual pleasure; that our educational institutions too often prepare their most brilliant students to be the ill-paid hirelings of the avaricious, or, what is worse, participators in the results of an evil system. Deep Springs does not disregard mathematics or the general sciences, or even commercialism or the spread of the use of creature comforts, but, recognizing the overloading of the ship on one side, aims to place the small weight of its influence where it will tend to develop men of fixed purpose and character, who will dedicate themselves to the higher cause of service.

Deep Springs does not conduct a conventional school. It does not make a special point of preparing boys for college, nor of providing a year or more of outing to build up their physique before they enter college. It does not teach agriculture or engineering, or specialize in any of the material sciences. Its purpose is not to finance education for those who cannot finance for themselves. It is not endeavoring to prepare its students for commercial pursuits. It aims at high scholastic work in ancient and modern language; in history, especially by the study of the lives of those who in various ages have made history conspicuous in the great epochs in the world's development; in the rise, fall, and general character of government; in philosophy; in ethics, especially emphasizing service to sentient being, loyalty to the moral order of the universe, and the taking of the oath of allegiance to that moral order of its Executive. Deep Springs attempts to form in its students the habit of extensive reading and thus to establish a close comradeship between them and those who have struggled and accomplished things worth while. Its aim is to prepare the student for his life work; preparation for college being only incidental.

The number of students is limited to twenty. The annual expense of each is approximately twenty-five hundred dollars, which is all paid by the institution. The students, however, are expected to be financially able to continue their education in universities at home or abroad and in foreign travel after leaving Deep Springs.

One year at Deep Springs is entirely inadequate for the development expected of the student. Character does not grow in a night. It may be quickly inspired but it matures slowly. The mind must have time to season and take permanent set. To throw a boy without proper preparation into the modern college with the materialistic and commercial tendencies of the age and expect him to maintain high ideals, may be likened to throwing him into Niagara and expecting him to swim up the rapids. He should develop the nerves and sinews of character and purpose before entering college. He should know what to expect on entering service of his country in diplomatic fields abroad or in commissions or other fields at home, and to be ready to meet and reject any alluring opportunities. Christ is not the only one to whom Satan has offered the world. Stability must come from constant devotion to a cause. The student whose purpose is to make his life worth while should drink deep of the philosophy of life, or the experiences of the soul,—walking with nature and with God—until he cries out with Kipling,—

*"Lord God of Hosts, be with us yet,
Lest we forget—lest we forget!"*

To conclude: Deep Springs is endeavoring to add its mite to the creation of a class devoted to the country's needs and to be a pioneer in the method of education which, if successful, should become general. It requires high-grade material which will respond to high-class instruction. Students should expect to remain not less than three years, preferably four, and to do while at Deep Springs the first two years of college work. They should consider the conditions seriously before coming so as to avoid being required to leave because of failing to meet them, or disappointing the institution by leaving the work undone.

L. L. NUNN

Deep Springs, Calif.
February 17, 1923

Gentlemen:

I am not satisfied with general conditions at Deep Springs and have a few things to say to you which will require your close attention. Otherwise they will appear a jumble of inconsistencies.

The Atlantic Monthly reports a conversation between two educators, as follows: One says, "If I can keep the pupil asking why and how, and whence and whither, I can draw him out." The other asks, "Don't you ever tell the answers to the questions?" The first replies, "What would be the use? They do not pay any attention to what I say. If I tell them a bit of wisdom before they find it out for themselves, they think it is a joke. When they find it out for themselves they take it seriously." But Edmund Burke attributed his unusual progress to the habit of tenaciously laying ahold of his tutors' sayings and instructions. These positions appear inconsistent, but in reality they are not. The first applies to the ordinary man with the ordinary personal purpose of our present commercial and material life. The latter, to the Burkes with their purpose to serve God and mankind; dedicated to the moral order of the universe. To which class do you belong?

For many years my messages to the students have been criticised as being above their heads. An educator said, in referring to a statement I had made, "Why, I have heard you make that statement a number of times, but not until the last time did I fully grasp its meaning. How can you expect boys to grasp it?" As indicated above, I do not expect ordinary boys, whose heads are filled with ordinary diversions and whose minds are given to the ordinary purpose, to grasp much that is worth while. But there is another type of youth whose aims are higher and whose minds absorb spiritual truths which are forever hidden from the older and more calloused minds. A verse of Longfellow's poem, "My Lost Youth" comes to my mind:

*"I remember the gleams and gloams that dart
Across the schoolboy's brain;
The song and the silence in the heart,
That in part are prophecies, and in part
Are longings wild and vain.
And the voice of that fitful song
Sings on, and is never still.
A boy's will is the wind's will,
And the thoughts of youth are long, long thoughts."*

There are those who will understand and those who will not understand. I ask each and all of you the question which Christ asked on the river Jordan, "For what came ye out into the wilderness?"

The desert has a deep personality; it has a voice; and God speaks through its personality and voice. Great leaders in all ages from Moses to Roosevelt, have sought the desert and heard its voice. You can hear it if you listen, but you cannot hear it while in the midst of uproar and strife for material things. Gentlemen, "For what came ye into the wilderness?" Not for conventional scholastic training; not for ranch life; not to become proficient in commercial or professional pursuits for personal gain. You came to prepare for a life of service, with the understanding that superior ability and generous purpose would be expected of you, and this expectation must be justified. Even in scholastic work, average results obtained in ordinary school will not be satisfactory. The desert speaks. Those who listen will hear the purpose, philosophy and ethics of Deep Springs, for it will need no prodding from teachers or superintendents to produce superior results in all departments. In Kingsley's "Hypatia" the death of a noted person is frequently spoken of by the statement, "and he went to his own place." In life as in death a man goes to his own place. Is this your own place? For what came ye into the wilderness? Deep Springs endeavors to develop and guide the student, not to change him. It is in no sense a reformatory. The teacher's duty is to study the pupil and learn what is required for his natural growth, instead of attempting to reconstruct him on artificial lines.

A few evenings ago, one of you remarked to me that he was disappointed with the sincerity, earnestness and ideal of the place, and he believed all the other newcomers felt the same way. I was pleased to have him speak thus plainly, but you should not expect too much from others. Listen to the voice of the desert and you will receive from it inspiration and enthusiasm. Most of your education, development and progress, must come from yourself. You can obtain help from instructors and superintendents, but superior scholastic results, higher ideals, which can only be maintained by higher practices, greater earnestness and finally, a rounding out of the general tendencies and habits of life, which can be trusted to guide the ever erring intellect, must come from within. No character worth while ever was or ever will be built except upon the relation between the human and the Divine, and that relation demands a pure and modest heart. "Blessed are the pure in heart, for they shall see God," not in some future state, but just as soon as they are pure. To quote Aristotle, "The thinking part of the man is the real man. Sooner or later, all other parts obey; sooner or later, will be pure; if the thinking part is vile, the whole man will be vile."

As you read and think more, you will see that but little of your gleanings are true in the sense of being complete. Equally good and great scholars put forth the most opposite statements concerning matters they are supposed to understand. You will, without effort, in fact unconsciously, sift and reject and qualify, because of your contact with different opinions expressed by equally great minds. You did not come to Deep Springs to find either absolute truth or absolute wisdom, but to think, to read, to grow, and above all, to securely establish the one and only purpose which can justify man's existence.

You ask me to state the purpose of Deep Springs. The ultimate purpose of every intelligent free moral agent is either loyalty to moral government under which he was born or rebellion against that government by supreme devotion to his own self-interests. Observe, I am speaking of the ultimate purpose, not the thousand and one subsidiary purposes or means to accomplish the one ultimate end. Deep Springs teaches loyalty to the moral law and to God, as the executive of the law, which is the law of his being to which He conforms as He requires His creatures to conform. The capacity to feel, the capacity for sensation, is the source or basis for value or happiness. The ultimate purpose to promote supreme universal value or happiness is a reasonable obligation, obligatory on every intelligent free moral agent. It is entirely proper for one to consider his own value in connection with universal value in just that proportion to which his capacity of the whole, but value is value, sensation is sensation, without reference to whom they apply, and should be regarded and dealt with justly. Disregarding value or happiness is being untrue to the whole order of the universe. The purpose of Deep Springs is no more nor less than the purpose which has been the controlling influence in the lives of men of service of all ages and nations. They may have erred, stumbled, made serious mistakes, and at times even changed their purpose, but the main, controlling, ultimate purpose of their lives has been service to God and man, and they have endeavored to work in harmony with the laws adopted to the promotion of universal happiness as required for the development of sentient being.

In conclusion, I am constrained to say that I fear there are those here who did not come to develop lives of service, but rather to obtain personal benefits. This, gentlemen, is neither right nor just and you should realize from your connection with the institution that such are mis-using it and that they should not expect to return next year, even if they remain the rest of this year.

L. L. NUNN

EXHIBIT 4

THE MISSION STATEMENT OF DEEP SPRINGS

DEEP SPRINGS COLLEGE



[Home](#)
[News and Events](#)
[Gallery](#)
[Student Blog](#)
[About](#)
[Admissions](#)
[Academics](#)
[Labor](#)
[Self-Governance](#)
[Daily Life](#)
[Employment](#)
[Academic](#)
[Calendar](#)
[Contribute](#)
[Directory](#)
[Contact Us](#)

Deep Springs College Mission Statement

Adopted 1998, and reaffirmed by TDS January 2005 and October 2010

Leadership and enlightened service are the aims of Deep Springs, which fulfills its educational mission by bringing students into intense contact with nature, work, and ideas.

Deep Springs' challenging and comprehensive educational program is designed for a few of the most promising students entering college each year.

No tuition or fees are levied, but strenuous effort, self-governance, and selfless service to the community are expected of everyone.

The college takes sound principles of teaching and learning to their practical limits.

Based on a cattle ranch in an isolated desert-mountain valley, the college enables its twenty-six male students to experience and take year-round responsibility for a largely self-sustaining community, ranch, and farm, while requiring them to engage in a two-year liberal arts honors program.

Learning is pursued to solve real problems, both practical and social, for the joy of intellectual understanding and humane action.

Those who are educated at Deep Springs incur a lifelong obligation to improve the human condition.

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF FRESNO**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of Fresno, State of California. My business address is 5260 North Palm
Avenue, Fourth Floor, Fresno, CA 93704.

5 On April 4, 2014, I served true copies of the following document(s) described as
6 **PETITIONER'S TRIAL BRIEF FOR MODIFICATION OF TRUST** on the interested parties
in this action as follows:

7 **Joseph C. Liburt**
8 **Orrick Herrington & Sutcliff, LLP**
9 **1000 Marsh Road**
10 **Menlo Park, CA 94025**
11 **Tel: (650) 614-7500**
12 **Fax: (650) 614-7401**
13 **Email: jliburt@orrick.com**

Jon Michaelson
K & L Gates LLP
630 Hansen Way
Palo Alto, CA 94304
Tel: (650) 798-6700
Fax: (650) 798-6701
Email: jon.michaelson@klgates.com

12 **Heather M. Hoekstra**
13 **420 Coventry Road**
14 **Kensington, CA 94707**
15 **Tel: (510) 525-1514**
16 **Email: hmatsumoto@berkeley.edu**

Peter Tracy
Law Office of Peter E. Tracy
106 South Main Street #200
P.O. Box 485
Bishop, CA 93514
Tel: (760) 872-1101
Fax: (760) 872-2971
Email: inyomono@StanfordAlumni.org

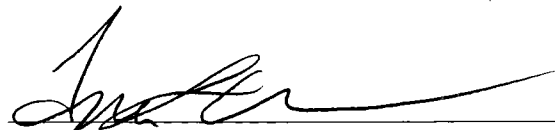
15 **Tania M. Ibanez**
16 **Supervising Deputy Attorney General**
17 **Charitable Trusts Section**
18 **California Attorney General's Office**
19 **300 S. Spring Street, Suite 1702**
20 **Los Angeles, CA 90013**
21 **Email: Tania.Ibanez@doj.ca.gov**

Ira Bibbero
Brown George Ross, LLP
2121 Avenue of the Stars, Suite 2400
Los Angeles, CA 90067
Email: ibibbero@bgrfirm.com

22 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document
23 to be sent from e-mail address twebb@bakermanock.com to the persons at the e-mail addressed
24 listed in the Service List. I did not receive, within a reasonable time after the transmission, any
25 electronic message or other indication that the transmission was unsuccessful.

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

28 Executed on April 4, 2014, at Fresno, California.


Tina L. Webb