

2015

**Reed Brasher, an Individual, Appellant, v. Vicki Christensen, an Individual, Appellee.**

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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REED BRASHER, an individual,

Appellant,

v.

VICKI CHRISTENSEN, an individual,

Appellee.

**APPELLANT'S REPLY BRIEF**

Appellate Case No. 20141183-CA

Trial Case No. 130700011

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## **STATEMENT OF FACTS**

In her brief on appeal, Appellee Vicki Christensen (“Christensen”) provides her own “Statement of Relevant Facts” (see Christensen’s Brief, pp. 2-6). Christensen cites directly to the District Court’s *Order* [R. 546 *passim*.] for the facts presented. The majority of these enumerated facts are in accord with the Appellant Reed Brasher’s (“Brasher”) own Statement of Facts as set forth in his initial Brief.

However, in his initial Brief, Brasher clarifies and provides context for some of the District Court’s findings of fact while actually disputing three of the District Court’s findings of fact. Specifically, Brasher reiterates the following points of clarification and disputed facts enumerated in Christensen’s Brief:

**Fact statement 8:** *The Offer to Purchase required Brasher to pay \$5,000.00 “Earnest Money deposit paid to Owner with this Offer.” Brasher indicated during the meeting that he had the check to leave the \$5,000.00 earnest money, but did not do so.* [Christensen Brief, p. 4, ¶ 8].

**Brasher’s response:** The Offer to Purchase did not specify any date by which earnest money was required to be paid. Furthermore Brasher planned on paying Christensen at the meeting, but Christensen said that she wanted to speak with her family and attorney about the Offer to Purchase before accepting payment of the earnest money. Brasher testified that each time he called Christensen during March 2013 his intent was to arrange to drop off the earnest money payment to Christensen. [Brasher Brief, p. 16, ¶¶ 38(c), 39, 56].

**Fact statement 9:** *During the meeting, Brasher filled out the WUA himself. The terms “payable 3/15 each year” was not filled in at the March 13, 2013 meeting, nor was the term “2018.” Christensen told Brasher at the meeting that the water would only be leased to him on a year-to-year basis. Brasher took the WUA with him when he left the meeting, and never provided a copy to Christensen.*

**Brasher’s response:** The only testimony in support of this finding of fact was Christensen’s friend, Nedra Swasey (who was present at the March 13, 2013 meeting). Brasher points out in his Brief that Swasey indicated that she “could not remember” when initially asked about which portions of the WUA were not filled in at the March 13, 2013 meeting. Swasey also could not remember an ending date of 2018 in the WUA, but nonetheless argued that Christensen would not “ever” lease water to anybody for such an extended period of time. With respect to the term “2018,” Swasey said that she did “not believe it was filled in when that paper left [Christensen’s] home.” All of these statements are qualified in that Swasey admits she did not “remember” or that she did not “believe.” [Brasher Brief, pp. 18-20].

Christensen herself acknowledged that the “payable 3/15 each year” was the date of payment indicated on the 2013 WUA. Christensen also admitted during trial that if Brasher had purchased the property, she should *would* have rented the water to him for a “few years.” This admission contravenes Swasey’s statements and assumptions about what Christensen was willing to do as far as the lease term. [See Brasher Brief, p. 20].

Brasher testified that during the March 13, 2013 meeting, he left the ending date for the lease blank, but explained to Christensen why he needed the water for a period of

years (rather than just one year). Brasher also testified *without qualification* (unlike Swasey) that the term “Payable 3-15 of each year” was written in by him and that the term “2018” was written in by Christensen before he left the March 13, 2013 meeting. Brasher also noted that the handwriting of the term “2018” is not consistent with his writing and that it looked similar to Christensen’s writing. Brasher affirmatively stated that he witnessed Christensen write the term “2018” in. [See Brasher Brief, pp. 20-21].

With respect to the finding that “*Christensen told Brasher at the meeting that the water would only be leased to him on a year-to-year basis*” the only testimony in support of this was given by Swasey at trial. However, as previously noted, Christensen acknowledged that she *was* willing to enter into a lease for a “few years.” Furthermore, Brasher gave unequivocal testimony that he saw Christensen fill in the term “2018” in the 2013 WUA while at the March 13 meeting.

**Fact statement 10:** *Brasher left a check for Christensen in the amount of \$1,290.00 for the lease of the water shares. However, Christensen told Swasey prior to the March 13, 2013 meeting that should [sic] would not lease Brasher he water shares unless he bought the farm. Christensen believed the offer to lease was contingent upon she and Brasher finalizing the offer to sell the farm.*

**Brasher’s response:** Brasher admits that he left a check for Christensen in the amount of \$1,290.00 for the lease of the water shares—and Christensen accepted that payment.

In her Brief, Christensen does not cite to the record where the Court found “that Christensen told Swasey prior to the March 13, 2013 meeting that she would not lease



Brasher he water shares unless he bought the farm.” The District Court’s final *Order* [R. 546-551] does not appear to indicate such a finding of fact. In any case, Brasher demonstrates at length in his initial brief that Christensen’s clear (and repeated) testimony at trial was that that the 2013 WUA was not in any way an integrated part of the Offer to Purchase and that the two documents were not interdependent. [See Brasher Brief, pp. 28-30].

**Fact statement 11:** *During the meeting, both parties signed the WUA and the Offer to Purchase Real Estate. Christensen told Brasher that before anything was finally [sic], she had to discuss both offers with her family and attorney. Christensen never cashed the check for the water shares.*

**Brasher’s response:** As pointed out by Brasher in his initial Brief, there is absolutely no evidence from the trial transcript or in record that Christensen stated that she had to discuss “both” offers with her family and attorney before accepting. On the contrary, all of the evidence indicates that Christensen only discussed taking the *Offer to Purchase* to her attorney and family (not the WUA). [See Brasher Brief, pp. 22-23]. This distinction is important because the District Court in its findings of fact conflates the Offer to Purchase and the WUA and assumes that Christensen needed to discuss both documents with her family and attorney, when in fact, that Christensen’s acceptance of the WUA was not conditioned upon her subsequent discussions with family and legal counsel.

While Brasher admits that Christensen held onto the check for the 2013 WUA lease, Christensen never informed Brasher that she hadn’t cashed Brasher’s check.

Furthermore, Brasher was not concerned because the prior year (2012), it took Christensen six weeks before she cashed the check for the water use. [See Brasher Brief, p. 14, ¶ 52].

### **SUMMARY OF THE ARGUMENT**

- I. The evidence clearly establishes that the parties *did* have a meeting of the minds with respect to the lease of the water under the 2013 WUA.
- II. The 2013 Water Use Authorization independently meets the requirements of a contract. Alternatively, the 2013 Water Use Authorization memorializes the underlying oral agreement of the parties.
- III. Three of the District Court's Findings of Fact are not supported by evidence.
- IV. Promissory estoppel is a viable cause of action because Christensen's own testimony and actions demonstrate that the water use was not conditioned upon Brasher purchasing Christensen's farm.

### **ARGUMENT**

#### **I. The evidence establishes that the parties did have a meeting of the minds.**

Christensen asserts that the District Court properly determined that there was no meeting of the minds sufficient to create a binding contract. [Christensen Brief, pp. 8-10].

Christensen correctly points out that the parties to any contract must have a meeting of the minds and that the analysis depends on whether the parties "actually intended to contract."

Christensen next argues that Brasher has not "marshaled evidence in contesting this particular finding by the District Court" (i.e. the finding that there was "no meeting

of the minds.”) Christensen suggest that Brasher has only argued that the District Court got “tangled up” in the Offer to Purchase the farm and missed the separate oral agreement between Brasher and Christensen that was memorialized by the 2013 WUA. [Christensen Brief, p. 8].

Initially, Brasher notes that the District Court properly treated the “meeting of the minds” issue as a conclusion of law, not a finding of fact. [R. 550].

Whether a “meeting of the minds” occurred is actually a legal conclusion based on several cumulative, subsidiary “facts.”<sup>1</sup> In this case, the questions directly affecting whether or not a meeting of the minds occurred include: (1) whether the 2013 WUA was conditioned upon acceptance of the Offer to Purchase; (2) whether Christensen told Brasher prior to canceling the 2013 WUA that the lease of water shares was conditioned upon acceptance of the Offer to Purchase; (3) whether the WUA contains terms sufficient to define the parties’ intentions; (4) whether Brasher tendered adequate payment for the lease of shares and whether Christensen accepted that tender; (5) whether logical inconsistencies arise by assuming that the Offer to Purchase and the 2013 WUA were interdependent.

Addressing these five points in order, it becomes clear that Christensen and Brasher *did* have a meeting of the minds. Christensen cannot make a mere *ex post facto*

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<sup>1</sup> Under basic contract law principles, a contract is not formed without a meeting of the minds. *Oberhansly v. Earle*, 572 P.2d 1384, 1386 (Utah 1977). “Contractual mutual assent requires assent by all parties to the same thing in the same sense so that their minds meet as to all the terms.” *Cessna Fin. Corp. v. Meyer*, 575 P.2d 1048, 1050 (Utah 1978). Determining whether a meeting of the minds occurred requires an examination of the agreement at issue and the circumstances under which the agreement was entered into. *Crismon v. Western Co.*, 742 P.2d 1219, 1221-22 (Utah Ct. App. 1987).

decision to renege on the 2013 WUA and then claim that she never had a meeting of the minds with Brasher. Such a position is self-serving and is against the clear weight of evidence in this case.

(1) The 2013 WUA was not conditioned upon acceptance of the Offer to Purchase. While the District Court found that based on evidence presented at trial “Christensen believed the water lease was part of the Farm sale” and that “Christensen did not intend to lease the water to Brasher unless he purchased the Farm. . . .” [R. 550], there is no evidence to support this position. Brasher demonstrates (at length) that Christensen testified that the Offer to Purchase and WUA were not interdependent on each other. [Brasher Brief, pp. 28-30]. Christensen acknowledges in her Brief that the 2013 WUA and Offer to Purchase were separate documents and that neither document references the other. [Christensen Brief, p. 9]. In fact, Christensen points to no evidence in testimony or in the record (other than the District Court’s finding—which is challenged on appeal) to support the proposition that the 2013 WUA was conditional based on an acceptance of the Offer to Purchase.

(2) There is no evidence in trial testimony that Christensen told Brasher prior to canceling the 2013 WUA that the lease of water shares was conditioned upon acceptance of the Offer to Purchase.

(3) The WUA contains terms sufficient to define the parties’ intentions. Brasher has argued this position at length in his initial Brief. [Brasher Brief, pp. 24-27].

(4) There is no dispute that Brasher tendered adequate payment for the lease of shares and Christensen accepted that tender at the March 13, 2013 meeting. [Brasher Brief, p. 14, ¶ 48].

(5) Several logical inconsistencies arise by assuming that the Offer to Purchase and the 2013 WUA were interdependent. First, if such an assumption is made, the 2013 WUA becomes an unnecessary redundancy because there would have been no reason for Christensen to sign the 2013 WUA or accept payment for the lease of 215 shares if the sale of the Property was requisite. This is true because the sale would have resulted in Brasher receiving all of Christensen's shares associated with the property—far in excess of what he needed. Second, the Offer to Purchase anticipated a closing no later than December 1, 2013. If permission to lease the water was conditioned on the purchase of the Farm by Brasher, the 2013 WUA would necessarily have been held in abeyance until closing had actually occurred up to December 1, 2013 thereby rendering the 2013 WUA useless during the entire 2013 irrigation season.

In her Brief, Christensen cites to four “facts” that support her contention that there was no meeting of the minds:

- (1) Brasher tried at least three times in early 2013 to lease Christensen's water. Christensen initially declined these three times.
- (2) Brasher and Christensen met one time on March 13, 2013 to discuss leasing the water and the purchase of Christensen's property.

- (3) At the meeting, Christensen allegedly told Brasher she need to discuss *both* the Offer to Purchase and the 2013 WUA with her family and attorney before anything was final.
- (4) After the meeting Brasher could not initially reach Christensen and she did not cash his check. [Christensen Brief, p. 9].

Christensen relies on these four points to argue that Christensen was not “very interested” in leasing the water to Brasher. Christensen also asserts that the lease was conditioned upon the purchase of the property and that Christensen needed to speak with her family and attorney before “anything was final.” [Christensen Brief, pp. 9-10].

It should be readily apparent that facts (1), (2) and (4) as enumerated by Christensen are entirely irrelevant in determining whether the parties had a meeting of the minds. The undisputed facts are: (1) Christensen *did* meet with Brasher on March 13, 2013, (2) Christensen and Brasher *did* execute the 2013 WUA, (3) Brasher *did* tender payment for the 2013 WUA and Christensen did accept Brasher’s check at the March 13, 2013 meeting, and (4) Christensen *did* allow Brasher to leave with the 2013 WUA in hand.

Furthermore with respect to fact (3), Christensen never told Brasher that she needed to have her family and attorney review the 2013 WUA before accepting it. [See Brasher Brief, pp. 22-23]. It is absurd to suggest that the 2013 WUA was *not* accepted by Christensen when all of her actions demonstrate that she signed and delivered the 2013 WUA to Brasher at the March 13, 2013 meeting. One has to reasonably question why Christensen even entertained Brasher, accepted his payment, executed the 2013 WUA

and released it to Brasher to be filed with HCIC if the entire transaction was merely a “proposition.”

**II. The 2013 Water Use Authorization independently meets the requirements of a contract. Alternatively, the 2013 Water Use Authorization memorializes the underlying oral agreement of the parties.**

Christensen contends that 2013 WUA does not contain the required elements to qualify as an enforceable contract. [Christensen Brief, pp. 11-12]. In support of this position, Christensen argues five points: (1) the 2013 document is a form between the water owner and HCIC and is not an agreement between a water owner and lessee; (2) the WUA is a “directive” from a water owner to HCIC because the water owner already has a “lease and/or other agreement” that defines the terms between the water owner and the lessee; (3) there is no language of offer or acceptance in the WUA; (4) there is no consideration for the WUA, and (5) there is no defined term for the WUA.

Brasher responds to each of the five points as follows:

(1) The WUA *is* a form document required by HCIC—but that does not mean that the WUA is not a contract (or a writing embodying a verbal understanding between parties). Almost every witness during trial (including Christensen) referred to the WUA as an actual “lease.” [Brasher Brief p. 17, ¶ 67].

(2) While the WUA may be considered a “directive” (Christensen does not cite to the record or testimony to support this assertion), such an appellation does not mean

the WUA is *not also* a contract. Brasher has set forth the reasons why the WUA can and should be considered an enforceable contract. [Brasher Brief, pp. 24-27].

(3) Christensen argues that the WUA does not contain the language of “offer or acceptance.” However, the form WUA contains the language “in accordance with a lease and/or other agreement” and provides that a party is “authorizing” the other party to “call for” a specific issuance of water shares. Furthermore, at the bottom of the WUA, the following language appears: “If the conditions of this agreement change, I will contact Huntington Cleveland Irrigation Company office and modify, or terminate this agreement.” (Emphasis added). This verbiage establishes that the WUA is most certainly represents an “agreement” between the parties.

(4) Although the WUA does not include a specific line listing the price for the lease, the WUA (as Christensen readily acknowledges) contemplates that the parties have reached an accord, whether pursuant to a “lease or other agreement” for an agreed-on price. It is undisputed that the parties agreed upon a lease price of \$1,290.00 for both 2012 and 2013. Therefore, consideration was contemplated and agreed to, even if the price itself is not listed in the WUA.

(5) Christensen argues that the 2013 WUA contains two options relative to the terms of the lease, and that neither box was checked. According to Christensen, this means that no “term” was agreed to. Brasher has argued at length in his initial Brief that the terms for the 2013 WUA were *written in by Christensen during the March 13, 2013 meeting*. [Brasher Brief, pp. 18-21]. However, even if no term was written in at the meeting, Christensen has cited the testimony of her friend, Nedra Swasey. At trial Nedra



Swasey said “Yes, Vikki told [Brasher] it would be on a year-to-year basis. [TT: 205:18-206:19]. [Christensen Brief, p. 16]. Therefore, even assuming that the term of years for the 2013 WUA were not written in at the March 13, 2013 meeting, Christensen was aware that the term was *at least* one year.

Christensen next argues that the 2013 WUA was not integrated and that the 2013 WUA actually contains an “anti-integration” because it assumes an underlying lease and/or other agreement. [Christensen Brief, p. 13]. Brasher has already addressed this issue at length in his initial Brief. [Brasher Brief, pp. 37-39].

**III. Three of the District Court’s Findings of Fact are not supported by evidence.**

Brasher has challenged three of the District Court’s “findings of fact,” namely:

- (1) The finding that Brasher filled out the 2013 WUA by adding the term “payable 3/15 each year” and the term “2018.”
- (2) The finding that Christensen told Brasher during the March 13, 2013 meeting that the water would only be leased to him on a year-to-year basis.
- (3) The finding that Christensen told Brasher at the March 13, 2013 meeting that she needed to discuss “both” the Offer to Purchase and the 2013 WUA with her family before anything was final. [Brasher Brief, pp. 18-23].

With respect to the alleged additional terms written in by Brasher after the March 13, 2013 meeting, Brasher has pointed at that Swasey’s testimony at trial was vague insofar as she first stated that she could not remember which portions of the 2013 WUA were filled out. This was in stark contrast to Brasher’s testimony which was clear and definite. Brasher stated that the term “Payable 3-15 of each year” was written in by him

at the March 13, 2013 meeting and that Christensen herself wrote in the term “2018” based on Brasher’s explanation as to why he need a five-year lease. Moreover, Swasey’s “certainty” that Christensen would not “ever” lease her water for a five-year period is directly contradicted by Christensen who said she would have leased the water for a “few years” if Brasher had purchased her property.<sup>2</sup> [Brasher Brief, p. 19-21].

As to the finding that Christensen told Brasher during the March 13, 2013 meeting that the water would only be leased to him on a year-to-year basis, Brasher has pointed to the fact that Christensen stated that she was contemplating a multi-year lease conditioned upon Brasher’s purchase of the Property. Brasher also testified that Christensen was the one who filled in the term “2018” during the March 13, 2013 meeting. [Brasher Brief, pp. 21-22].

Concerning the finding that Christensen told Brasher at the March 13, 2013 meeting that she needed to discuss “both” the Offer to Purchase and the 2013 WUA with her family before anything was final, Christensen has provided her own testimony in support of this finding. [Christensen Brief, pp.17-18]. Importantly, however, none of these quotes from Christensen’s trial testimony ever indicate that Christensen *told* Brasher at the March 13, 2013 meeting that she needed to have the 2013 WUA reviewed (as opposed to the Offer to Purchase). The only statement that Christensen made at trial that may be slightly supportive of this finding of fact is the following: “I was going to you and a few people to see if *it* was legal. And that’s what I told him. I won’t—none of

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<sup>2</sup> The inconsistency of Christensen’s position is again highlighted. There is no reason Brasher would need a multi-year lease for the water if he was required to purchase the property in order for the lease to take effect (as Christensen has consistently asserted).

this is good here today. (Emphasis added). [TT. 217:25 through 218:14]. [See Christensen Brief, p. 18]. The problem with this isolated and rambling statement is that Christensen doesn't indicate what "it" is. There is no question that Christensen wanted to take the Offer to Purchase to her family and attorney before accepting the sale of her property—that is why she kept the Offer to Purchase in her possession and why Brasher didn't pay her earnest money at the March 13, 2013 meeting. [Brasher Brief, pp. 22-23]. However, there is no evidence that Christensen required approval of her family or attorney before accepting the 2013 WUA. In fact, Christensen accepted the check tendered by Brasher and permitted Brasher to leave the March 13, 2013 meeting with the executed WUA in hand.

Each of these three findings is subject to the "clearly erroneous" standard required when an appellate court reviews a challenge to a finding of fact. See *Oneida/SLIC v. Oneida Cold Storage & Warehouse*, 872 P.2d 1051, 1053 (Utah Ct. App. 1994). Brasher has properly marshaled the evidence and demonstrated that each of these three findings is against the "clear weight of evidence."

**IV. Promissory estoppel is a viable cause of action because Christensen's own testimony and actions demonstrate that the water use was not conditioned upon Brasher purchasing Christensen's farm.**

Christensen asserts that Brasher "has not really challenged" the trial court's determination that "Christensen's promise to allow Brasher to draw water in 2013 was conditioned upon Brasher purchasing the Farm." [Christensen Brief, p. 18]. This is a patently untrue—Brasher thoroughly addresses this particular determination in his initial Brief. [Brasher Brief, pp. 27-30]. As oft-noted, Christensen admitted in trial that the 2013

WUA and the Offer to Purchase were “separate documents” and not dependent on each other. [TT. 217:8-25]. Brasher confirmed that Christensen never told him that the water lease was contingent upon her approving the Offer to Purchase. [TT. 137:16-25].

In her Brief, Christensen cites her own trial testimony in an attempt to establish the conditional nature of the 2013 WUA. [Christensen Brief, pp.17-18]. However, a review of this testimony *only* establishes that Christensen *in her own mind* may have felt that the water use was conditional. None of her testimony as cited proves that she ever spoke with Brasher about it or disclosed her thoughts on the matter.

Futhermore, the following arguments presented by Brasher in his initial Brief confirm Brasher’s argument that the 2013 WUA was not conditioned upon the sale of the Farm:

- (1) The testimony at trial indicates that Christensen *only* told Brasher that she need to discuss the Offer to Purchase (not the 2013 WUA) with her family and attorney before agreeing to accept the sale of the Farm [Brasher Brief, pp. 22-23].
- (2) According to the Offer to Purchase, the sale included 605.55 shares of class “A” water and 175 shares of class “B” water—far in excess of the 215 class “A” shares that Brasher leased under the terms of the 2013 WUA. This fact is relevant because if the 2013 WUA was *conditioned* upon consummation of the sale under the terms of the Offer to Purchase, Brasher would not have needed a separate WUA/lease since he would have had more than

enough water merely by purchasing Christensen's property. [Brasher Brief, p. 29].

- (3) The Offer to Purchase anticipated a closing no later than December 1, 2013. If permission to lease the water was conditioned on the purchase of the Farm by Brasher, the 2013 WUA would necessarily have been held in abeyance until closing had actually occurred up to December 1, 2013 thereby rendering the 2013 WUA useless during the entire 2013 irrigation season. [Brasher Brief, p. 30].
- (4) Christensen openly manifested her acceptance of the offer by: (a) executing the 2013 WUA during the March 13, 2013 meeting; (b) accepting the check tendered by Brasher for the full lease price; (c) allowing Brasher to leave the meeting with the 2013 WUA in his possession so Brasher could file the WUA with HCIC; and (d) holding onto the check and not returning it to Brasher until it was demanded in discovery during the litigation. [Brasher Brief, p. 31].
- (5) The 2013 WUA incorporates specific timing for the payment of the valid consideration. Brasher promised to tender payment for the upcoming irrigation season no later than March 15th of each year. Additionally, the payment term is definite as the check tendered by Brasher established the premium price agreed upon of six dollars (\$6.00) per share – the same amount agreed to in 2012. [Brasher Brief, p. 31].

Christensen argues in her Brief that because of the “conditional” nature of the 2013 WUA, a promissory estoppel claim cannot be supported and the promise to deliver water was “nothing more than a preliminary negotiation.” [Christensen Brief, p. 19].

This position, however, cannot be taken seriously given the following *undisputed* facts: (1) the 2013 WUA incorporates specific timing for the payment of the valid consideration; (2) the 2012 WUA (which Christensen *did* honor) was identical to the 2013 WUA; (3) the parties executed the 2013 WUA during the March 13, 2013 meeting; (4) Christensen accepted the check tendered by Brasher for the full lease price; (5) Christensen allowed Brasher to leave the meeting with the 2013 WUA in his possession so Brasher could file the WUA with HCIC; (6) Christensen held onto the check; (7) Christensen *never* actually told Brasher that the 2013 WUA was not valid unless her purchased the Farm; (8) Brasher relied upon the signed/executed 2013 WUA and did not attempt to secure an alternate water source, but filed it the same day (March 13, 2013) after leaving the meeting. [Brasher Brief, pp. 30-32].

Based on these facts, the suggestion that Christensen and Brasher were merely engaged in “preliminary negotiations” strains credulity.

Christensen also suggests that second element (required to establish promissory estoppel) is also not met because the trial court determined that Christensen subjectively believed the water lease was part of the Farm sale and did not intend to lease the water to Brasher unless he purchased the Farm. Also, Christensen first realized that Brasher was drawing on her water in late April/ May 2013 and then took steps to terminate Brasher’s

use of the water.<sup>3</sup> [Christensen Brief, pp. 19-20]. Brasher has established *ad nauseum* that Christensen did not view the 2013 WUA as dependent upon the purchase of the Farm. Moreover, Christensen belated termination of the 2013 WUA does not mean that the lease was conditional. As noted in the preceding paragraph, every action taken by Christensen prior to the termination evidenced an intent to lease the requisite shares of water—and Christensen was well-aware of the fact that those shares were essential for Brasher’s operations.

### CONCLUSION

Based on the foregoing, Brasher respectfully request that the Court:

1. Reverse the three specified findings of fact by the District Court on grounds of clear error.
2. Reverse the District Court’s legal conclusion that the 2013 WUA, standing alone, is not a contract.
3. Reverse the District Court’s legal conclusion that Christensen and Brasher never had a “meeting of the minds” sufficient to form an oral contract.
4. Reverse the District Court’s legal conclusion that promissory estoppel is inapplicable because Christensen required that Brasher purchase her property in order for the 2013 WUA to be valid.

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<sup>3</sup> Of course, after Christensen decided that she wanted to raise the price of the Farm by \$100,000.00 and to keep back 100 shares of water, Brasher’s 2013 WUA would likely be problematic for any subsequent interested buyer—especially if (as Brasher asserts), the lease was for a 5-year period. [Brasher Brief, p. 16, ¶63].

5. Reverse the District Court's legal conclusion that the parol evidence rule is inapplicable to evidence related to the alleged "condition" that Brasher was required to purchase Christensen's property in order to effectuate the 2013 WUA.

**HEIDEMAN & ASSOCIATES**



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**CERTIFICATE OF SERVICE**

I hereby certify that on September 25, 2015, I delivered eight copies of the foregoing **APPELLANT'S REPLY BRIEF** to the Utah Court of Appeals and two copies to the following party via U.S. Mail, postage prepaid:

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**CERTIFICATE THAT NO ADDENDUM IS NECESSARY**

Pursuant to Utah R. App. P. 24(a)(11), the undersigned certifies that the Appellant's Reply Brief requires no addendum.

**HEIDEMAN & ASSOCIATES**



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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Utah R. App. P. 24(f)(1)(A), the undersigned certifies that the Appellant's Brief complies with the word limitation of no more than 7,000 words. The total number of words in the Brief is 5,250.

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