

29-11277

PARSONS, SMITH & STONE, LLP
ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
LANCE A. LOVELAND
DAVID F. SHIRLEY

TELEPHONE
(208) 878-8382
FAX NO.
(208) 878-0146

psa@pmt.org

April 26, 2004

PLEASE DELIVER THE FOLLOWING FAXED PAGES TO:

Name: Ernie Carlson

Fax Number- (208)525-7177

From: R.C. Stone

Company: Parsons, Smith & Stone, LLP

Location: 137 West 13th Street, Burley, Idaho

Total number of pages: 7 (including cover page)

Items faxed: Affidavits of D. Lane Schumann and Douglas G. Freestone, Sr. - hard
copy will not follow

Any questions, call: (208)-878-8382; FAX NO. (208)-878-0146

CONFIDENTIALITY NOTICE: The documents accompanying this telecopy transmission may contain confidential information belonging to the sender, which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited.

Dear Mr. Carlson:

Chris Robinson asked that I fax the attached affidavits. The originals are in my possession. If you need anything further please don't hesitate to contact me at the above number.

I understand you are about to ship out to Iraq. We greatly appreciate those who serve. Good luck. We will be thinking of you.

Sincerely,

R.C. Stone

AFFIDAVIT

State of Idaho)
) ss.
County of Cassia)

Douglas G. Freestone, Sr., having been first duly sworn deposes and states:

1. I have personal knowledge of all facts set forth herein and am competent in all respects to testify thereto except as specifically stated.
2. I reside at 1897 South 2225 East, Malta, ID, 83342.
3. I am 61 years of age.
4. I was general manager of Arimo Ranch, located approximately one mile north of the Village of Arimo, Bannock County, State of Idaho, (the "Ranch") from 1976 until 1989 (the "Period"). I lived on the ranch and was personally responsible for supervising all irrigation and stock watering. During that Period, the Ranch was the largest single shareholder in Portneuf Irrigating Company ("PIC") and received irrigation water from the Portneuf River transported through PIC's diversion and ditch improvements.
5. During that Period, I was also either an officer or director of PIC.
6. Throughout the Period, water was diverted and beneficially applied to the lands of the Ranch and to those of the other members of PIC, for irrigation as early as ice and weather conditions allowed. While the exact date varied from year to year, diversion and application could be

as early as April 1st.

7. Diversion and application for irrigation continued until crop rotation or weather rendered applications no longer beneficial. Again the exact date varied from year to year but irrigation could end as late as October 31st.
8. During and after the irrigation season, water was diverted for stock watering for the Ranch and for the other members of PIC, unless ice prevented water from being diverted or flowing down the ditches. Because of the very flat nature of the ditch system, approximately 10 cfs of water was required to maintain the flow through the ditches to provide water for livestock and to get it to the end of the ditch system. While the bulk of this water returned to the Portneuf River (through its tributary Marsh Creek) at the end of PIC's ditch system, the water could not be delivered without the flow. The diversion for stock water continued until ice closed the system and/or stock water was no longer needed which could be as late as December 31.
9. The area of Idaho where Ranch is located has a long history of ranching by established families and a great oral history. Water is critically important to ranching, and its history is well known and frequently discussed. Based on that oral history, including conversations with people involved in early irrigation and stock watering practices, the irrigation and stock watering diversions and applications I followed and described above, have been continuously

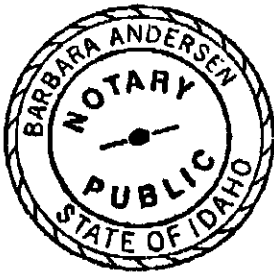
observed and followed by PIC since its ditch was installed in the late
1,800's, and has continued thereafter to the date of this affidavit.

Dated this 20 day of April, 2004.

Douglas G. Freestone, Sr.
Douglas G. Freestone, Sr.

Subscribed and sworn to before me, this 20th day of April,

2004.



Barbara Andersen
Notary Public for Idaho
Residing at Albion, ID
My commission expires: 7-23-05

AFFIDAVIT

State of Idaho)
) ss.
County of Cassia)

D. Lane Schumann, having been first duly sworn deposes and states:

1. I have personal knowledge of all facts set forth herein and am competent in all respects to testify thereto except as specifically stated.
2. I reside at 2666 S Highway 81, Malta, ID 83342.
3. I am 34 years of age.
4. I was general manager of Arimo Ranch, located approximately one mile north of the Village of Arimo, Bannock County, State of Idaho, (the "Ranch") from 1995 until August, 2003 (the "Period"). I lived on the ranch and was personally responsible for supervising all irrigation and stock watering. During that Period, the Ranch was the largest single shareholder in Portneuf Irrigating Company ("PIC") and received irrigation water from the Portneuf River transported through PIC's diversion and ditch improvements.
5. During that Period, I was also either an officer or director of PIC.
6. Throughout the Period, water was diverted and beneficially applied to the lands of the Ranch and to those of the other members of PIC, for irrigation as early as ice and weather conditions allowed. While the exact date varied from year to year, diversion and application could be

as early as April 1st.

7. Diversion and application for irrigation continued until crop rotation or weather rendered applications no longer beneficial. Again the exact date varied from year to year but irrigation could end as late as October 31st.
8. During and after the irrigation season, water was diverted for stock watering for the Ranch and for the other members of PIC, unless ice prevented water from being diverted or flowing down the ditches. Because of the very flat nature of the ditch system, approximately 10 cfs of water was required to maintain the flow through the ditches to provide water for livestock and to get it to the end of the ditch system. While the bulk of this water returned to the Portneuf River (through its tributary Marsh Creek) at the end of PIC's ditch system, the water could not be delivered without the flow. The diversion for stockwater continued until ice closed the system and/or stockwater was no longer needed which could be as late as December 31st.
9. The area of Idaho where Ranch is located has a long history of ranching by established families and a great oral history. Water is critically important to ranching, and its history is well known and frequently discussed. Based on that oral history, including conversations with people involved in early irrigation and stock watering practices, the irrigation and stock watering diversions and applications I followed and described above, have been continuously

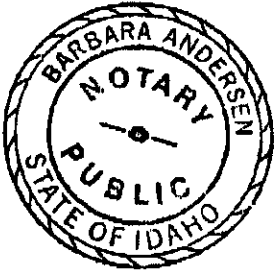
observed and followed by PIC since its ditch was installed in the late
1,800's, and has continued thereafter to the date of this affidavit.

Dated this 20th day of April, 2004.

D. Lane Schumann
D. Lane Schumann

Subscribed and sworn to before me, this 20th day of April,

2004.



Barbara Andersen
Notary Public for Palmer
Residing at Albion, Id
My commission expires: 7-23-05

4-23-04

Subject: Support for 10cfs of stock water for Portneuf Irrigating Company
To: IDWR (Ernie Carlson)
From Portneuf Irrigating Company

Ernie Carlson

I am attaching copies of a statement of Randy Morris who at times needs stock water carried to his place in the PMV Canal and Affidavits of Craig Smith and Alton Smith (not related to each other) to support the past use and need for up to 10 cfs of stock water. Thank you and I hope this is helpful.


James L. Burnham

Secty/ Treasurer Portneuf Irrigating Co.
PO Box 194
Arimo ID 83214
254 9022 or 251 3591

GENERAL AFFIDAVIT

STATE OF IDAHO

County of BANNOCK

BEFORE ME the undersigned Notary

(name of Notary)

(month) 20 (personally appeared)

(name of affiant)

Known to me to be a credible person and of lawful age. Who being by me first duly

Sworn, on (his or her) oath. Deposes and says;

My name is Alton Smith. Born Dec. 1, 1930.I Lived on this farm where Jim & Arlene Burnham lives Since I was born.I was married in 1950 & I ran this farm which I had a dairy Farm and cash crops.I leased this out some of the time. I did this till I sold it in 1987 During this time it was always irrigated either flood or sprinklers and stock water was always available for people who needed it.

(set forth affiant's statement of facts)

Alton C Smith

(signature of affiant)

Alton C Smith

(typed name of affiant)

810 E 2nd N

(address of affiant, line 1)

Soda Springs

(address of affiant, line 2)

Subscribed and sworn be for me, this 19th (day of month) day of April (month), 2004.

Notary Seal :)

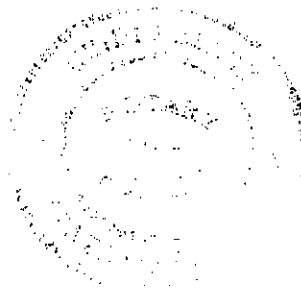
Heidi Kelley

(signature of Notary)

Heidi Kelley

(typed name of Notary)

Notary Public

My commission expires: 7-25, 2009

My name is Randal Z. Morris and I live 1 1/2 miles south of Arimo at 3224 E. Arkansas Rd. We run approximately 300 cow-calf pairs and bring them home to the fields each fall. At times and in certain fields the Portneuf March Valley Canal is the only source of water. We have used it for stock water ever since we moved here in April 1988 and I assume it was also used before then. We use it late into the fall and it takes approximately 5 cfs of water at the diversion to reach my place.

The above statement is true and correct to the best of my knowledge.

Randal Z. Morris
April 20, 2004

James L Burnham
Witness

6:30 PM 4/20/2004

GENERAL AFFIDAVIT

State of Idaho
County of Bannock

BEFORE ME, the undersigned Notary,

Louise P. Wilding (name of Notary)
before whom affidavit is sworn, on this 20th (day of month) day of
April (month), 2004, personally appeared

T. Craig Smith (name of affiant),
known to me to be a credible person and of lawful age, who being by me first duly
sworn, on his (his or her) oath, deposes and says:

Let it be know that I have used stock water from the Arimo Ditch and Portneuf Irrigation late into every fall to water up to 80 cow-calf pairs plus heifers and bulls since 1972. That is when I took over my father's farm. I can't remember a year growing up when my father, T. J. Smith, didn't have cows pasturing the field east of Arimo and below Arimo Ditch late in the fall when the only source of water was the Arimo Ditch. I estimate that it takes five CFS of water released at the diversion point to reach my field in sufficient quantity. As you can see stock water is a vital part of my operation.

(set forth affiant's statement of facts)

T. Craig Smith
(signature of affiant)

T. Craig Smith
(typed name of affiant)

1827 East Arimo Rd
(address of affiant, line 1)

Arimo Idaho 83214
(address of affiant, line 2)

Subscribed and sworn to before me, this 20th (day of month) day of
April (month), 2004.

(Notary Seal.)

Louise P. Wilding
(signature of Notary)

Louise P. Wilding
(typed name of Notary)

NOTARY PUBLIC

My commission expires: 1-16, 2008.

