

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) Subcase No. 29-4491 and and 29-13557
)
Case No. 39576)
) AFFIDAVIT OF ALLEN RUBERRY
)
)
_____)

State of Idaho)
) ss.
County of Ada)

COPY

Allen Ruberry, being first duly sworn, deposes and states as follows:

1. My name is Allen Ruberry. I am a Senior Water Resources Agent with the Adjudication Bureau of the Idaho Department of Water Resources ("IDWR" or the "Department"). This affidavit is based upon my own personal knowledge.
2. My work address is Idaho Department of Water Resources, 900 North Skyline Drive, Suite A, Idaho Falls, Idaho 83402. I reside in Idaho Falls, Idaho.
3. My educational background is as follows: BS Geology, Boise State Univ. 1980; Assoc. Degree, Civil Engineering, Idaho State Univ., 1979; Cert. Drafting and Design, 1968.
4. My Department of Water Resources work experience includes the following: 1975 to 1977, IDWR, Hydrologic Aid, Adjudication Bureau; 1979 to 1980, IDWR, Water Resource Agent, Dam Safety; 1993 to Present IDWR, Sr. Water Resource Agent, Adjudication Bureau.

5. As part of my duties as Senior Water Resources Agent, I conduct field investigations for water right claims filed in the Snake River Basin Adjudication. I was the primary investigator on the above claims.

6. Mr. Moon and Ms. Sluder did not file an objection to the Department's recommendation for the Winters' water right.

7. The Winters filed an objection to the Department's recommendation of Mr. Moon and Ms. Sluder's water right.

8. I originally recommended to the Winters, 0.05 cfs for claim no. 29-4491: 0.03 cfs for irrigation and 0.02 cfs stockwater. I recommended 0.03 cfs to Mr. Moon and Ms. Sluder for claim no. 29-13557. I understood that these original recommendations had not been changed at the time I was assisting the parties at the initial hearings. Attached hereto as Exhibit A are the original recommendations contained in the Basin 29 Director's Report.

9. At the initial hearings on this matter, I assisted Charles and Jenny Winters (the "Winters") and Mr. Moon and Ms. Sluder to reach an amicable settlement.

10. I suggested to Mr. Moon and Ms. Sluder that they change the priority date on their water right to be one day later than the Winters' priority date. I told the Moons that in practical terms, they would get any water in the creek over and above the Winters' water right amount.

11. I explained the stockwater portion of the claim to Mr. Moon and Ms. Sluder. I told them that the stockwater stays in the streambed.

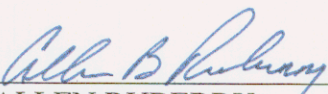
12. Standard Forms 5 were developed and filed with the SRBA District Court on April 22, 2005, to reflect the agreement. Attached hereto as Exhibit B is a copy of the SF5 filed on April 22, 2005 by the parties with IDWR's concurrence.

13. I have since learned that prior to the initial hearings, an Amended Director's Report was filed in water right no. 29-4491 increasing the Winters' water right amount to 0.08 cfs. My supervisor, Ernest Carlsen made the changed recommendation. The Winters filed a Motion to Amend their claim and this motion was heard in February 3, 2004. The motion was granted. The Amended Director's Report was filed February 6, 2004. Objections to the Amended Director's Report were due March 19, 2004. No objections were filed.

14. Mr. Moon called me sometime November 30, 2004, and that is when I first learned that the Winters had an amount of 0.08 cfs on their water right. I was surprised to learn that this change had been made because I believe the Winters are only entitled to 0.05 cfs. During this conversation I directed Mr. Moon to call IDWR's attorney, Candice M. McHugh on what procedure if any he may have to remedy the situation.

15. During my conversations with Mr. Moon, he expressed concerns about how to enforce his water right against the Winters. I informed him that the only way to enforce his water right was to be part of a water district and hire a Watermaster, but that was not my role at IDWR. I told him to call Mr. Roger Warner with the Idaho Falls office of the Department of Water Resources.

DATED this 28th day of March, 2005.


ALLEN RUBERRY
Senior Water Resources Agent, IDWR

SUBSCRIBED AND SWORN to before me this 28 day of March, 2005.




Notary Public for Idaho
Residing at Boise
My Commission Expires: 9/23/09