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

In Re SRBA)
)
Case No. 39576)
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)
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_____)

Subcase No. A29-11342

AFFIDAVIT OF CARTER FRITSCHLE

STATE OF IDAHO)
)ss.
County of Ada)

CARTER FRITSCHLE, being first duly sworn upon oath, deposes and states as follows:

1. I am an employee of the Idaho Department of Water Resources (hereinafter "IDWR") holding the title of Water Rights Supervisor for the Adjudication Bureau. I work from the State office based in Boise, Idaho.

2. My duties as Water Rights Supervisor for the Adjudication Bureau include investigating and recommending water rights claimed in the SRBA, supervising agents in the state office, Lewiston satellite office and other claim investigators, and reviewing claim investigation results for accuracy. I am familiar with the above claim and finalized the

recommendation. I conduct field investigations for water right claims filed in the SRBA. I was the primary reviewer on the City of Pocatello claims.

3. FMC Corporation ("FMC") claim number A29-11342 was claimed as a beneficial use right from one of the wells included in a licensed right that was initially granted to the City of Pocatello for municipal purposes. Claim number A29-11342 is for 1.1 cfs of water from well No. 11, commonly referred to as the "Pilot House" well. Historically, it appears from the file, the water use under claim no. A29-11342 belonged to the City of Pocatello and was included in license number G-24451 (29-02338) issued in 1953.

4. There is a complicated ownership history of this claim. There is a letter in the IDWR claim file for claim no. A29-11342 from Dave Carlson of the IDWR to FMC indicating that claim no. A29-11342 was granted a change in ownership on or about September 21, 1992. This change of ownership appears to be based on a request and supporting document provided by FMC. However, there is also documentation in the file indicating that claim no. A29-11342 is considered part of licensed water right no. 29-02338. In 1997 the City of Pocatello filed a transfer of water right no. 29-02338 and two other water rights. This transfer included the water from the Pilot House well, the well claimed under claim no. 29-11342. This transfer was approved without protest.

5. On or about April 25, 2003, the City of Pocatello amended claim no. 29-02338 to exclude the 1.1 cfs which could be the water represented by claim no. A29-11342. This amendment was not reflected in the file for claim no. A29-11342. When the recommendations were made for the Director's Report for Basin 29, claim no. A29-11342 was recommended to be disallowed because the water use for that claim had been recommended to right no. 29-02338. Because the City of Pocatello filed a transfer in 1997 that included the amount of water from the

Pilot House well, it did not appear that there was any water available under the license to recommend to FMC.

6. Without the City of Pocatello excluding the 1.1 cfs from its claim, the only other option for recommending water to FMC under claim no. 29-A11342 was as a beneficial use for water in excess of 1.1 cfs. However, there was no documentation in the file to support a diversion rate in excess of 1.1 cfs. Therefore, I recommended this claim as a portion of the prior licensed water right in accordance with the approved transfer.

7. However, when the City of Pocatello amended its SRBA claims, the City no longer included as part of its claims this water, making 1.1 cfs available from this well to be recommended to FMC.

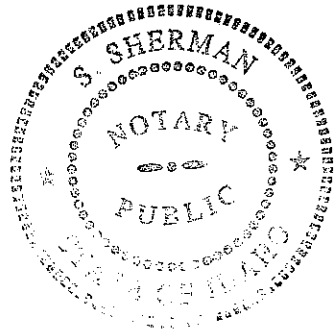
8. I recommended A29-11342, as "Disallowed, Recommended as 29-2338," prior to the City of Pocatello amending its claim 29-02338. After recommending the City's claims, I did not revisit claim no. A29-11342 nor did I realize that the 1.1 cfs was now unclaimed.

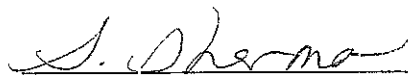
9. The IDWR believes the 1.1 cfs should be recommended in the SRBA as a split from license 29-02338 and could be recommended under claim no. 29-11342.

Dated this 4th day of April, 2005.


Carter Fritschle

SUBSCRIBED AND SWORN to before me this 4th day of April, 2005.




Notary Public for Idaho
Residing at: Boise
Commission Expires: 11-14-2010