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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	)	AFFIDAVIT OF MERLYN BROWNING
_____	)	IN SUPPORT OF SRBA CLAIMS
		27-4019 AND 27-7411

STATE OF IDAHO	)	
	) ss:	
COUNTY OF BINGHAM	)	

I, Merlyn Browning, after first being duly sworn upon oath, depose and state that:

(1) My name is Merlyn Browning. From 1958 through August 1996, I was a fulltime employee for the potato processing plant now owned and operated by Basic American Foods, Inc. in Shelley, Idaho. I was first employed by the R. T. French Company and then the Pillsbury Company. The Pillsbury Company owned the plant at the time of my retirement in 1996.

(2) From 1958 to 1974, I was the maintenance foreman and then the maintenance packaging foreman at the processing plant. In 1974, the plant stopped discharging its process water and operating water into the Snake River and added "spray fields" for the year-round land application of its process water and operating water. From 1974 to August 1996, I was the contract employee responsible for year-round operation of the "spray fields." My son Dave Browning assumed those responsibilities in August 1996 and is the current contract employee for the "spray fields."

(3) Due to my employment, I was familiar with the use and operation of the wells at the plant from 1958 through August 1996, the land application of the plant's process/operating water at the "spray fields" from 1974 through August 1996, and the use and operation of the well at the "spray fields" from its first use in the summer of 1984 through August 1996.

(4) The plant wells were commonly known as well #2 and well #3. Their location never changed and their use remained generally the same over time. A third well at the plant stopped operating about 40 years ago when the warehouse was built over its location.

(5) Well #2 and well #3 operated continuously, except for repairs and maintenance. They supplied water for the potato dehydration operations of the plant when the plant was in production. The actual production days in a year could vary depending upon growing conditions and market conditions. The plant was usually in production twenty-four hours a day from sometime in August to mid-July. This could range from at least 310 days to sometimes more than 330 days in some years.

(6) Well #2 and well #3 also supplied water year round at the plant for restrooms, steam heating, general cleaning, and air compressors. The air compressors required large quantities of water at all times and had their heaviest use during production shut down. Cleanup operations typically occurred for eight hours every two weeks. The wells also supplied water for landscaping. The water supplied to the restrooms exited the plant to the sewer system for the City of Shelley.

(7) This mode of operation occurred from 1958 through my retirement in August 1996.

(8) Water from the plant began to be land applied to the "spray fields" in 1974. The water from the plant was supplied year round to the "spray fields". Process water was supplied through out the days the plant was in production. When the plant was not in production, the

water from ongoing plant operations to the "spray fields" was about 200 gallons per minute. The land application occurred continuously from 1974 through my retirement in August 1996.

(9) The small well at the "spray fields" was drilled and began operation in the summer of 1984. It was near the location where the pipe from the plant connected to the irrigation lines for the land application system at the "spray fields". The use of this small well remained generally the same over time. Throughout the year, it was used to clean the line which carried the water from the plant and to purge the irrigation lines for the "spray fields". The purging was done once or twice a week. The well was also used to prime the canal pumps when canal water was mixed with water from the plant for land application during the growing season.

(10) This mode of operation occurred from the summer of 1984 through my retirement in August 1996.

(11) I am aware that the R. T. French Company filed a claim 27-4019 with the Idaho Department of Water Resources in 1979 that states the wells at the plant were used for commercial purposes from September 15 to July 1, although the wells were actually operated year round for the plant. Lynn Sirrine signed the claim and may have focused on the processing cycle that year. From my personal knowledge, I know that the wells at the plant, well #2 and well #3, operated year round since 1958. The "spray fields" were also in operation year round in 1979.

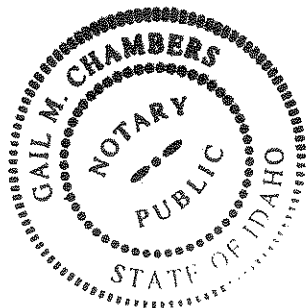
(12) I am aware that water right license 27-7411 for the small well at the "spray fields" states that the well was used March 15 to November 15, although the well was used year round. Frank Latta signed the water right application for the well and may have focused on land application during the growing season rather than the year-round land application of the plant's process water and operation water during the growing and nongrowing seasons. From my personal knowledge, I know that the well at the "spray fields" operated year round since 1984.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this ^{smB} ~~8~~-29 day of March 2004.

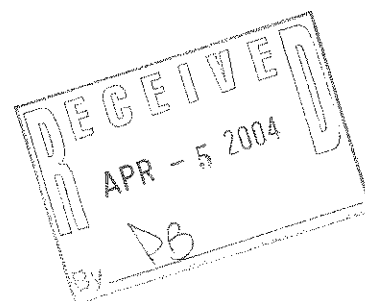
Merlyn Browning
MERLYN BROWNING

SUBSCRIBED AND SWORN before me on this 29 day of March 2004.



Gail M. Chambers
Notary Public for Idaho
Residing at Replung, Idaho
Commission Expires: 11-12-2010

Z:\1773\7\6161



27-2116

FAX COVER SHEET

May 10, 2005

TO: Cindy Bird
IDWR Soda Springs Office

Fax: 208-547-3939

FROM: Beeman & Associates, P.C.

FILE NO.: Basic American: license 27-2116 (and SRBA claim 27-2116) and
SRBA claim 27-4019

MESSAGE: Following is a copy of the signed affidavit for Robert Beal.
The hard copy will be mailed tomorrow. Thank you.

The information contained in this facsimile is confidential information or attorney work product or both and is for the exclusive use of the intended recipient listed above. Any reading, disclosure, use or reproduction of this communication other than by the intended recipient is prohibited. If you have received this communication in error, please notify us by collect telephone call immediately and return the communication to us by U. S. Mail.

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ORIGINAL BY MAIL: YES x NO

BEEMAN & ASSOCIATES, P.C.

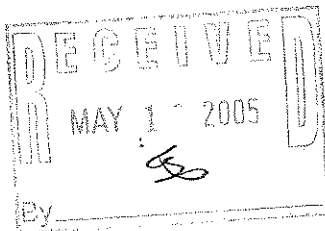
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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA)

Case No. 39576)

**AFFIDAVIT OF ROBERT BEAL
IN SUPPORT OF SRBA CLAIMS
27-2116 AND 27-4019**

STATE OF IDAHO)

COUNTY OF BINGHAM)

) ss:

I, Robert Beal, after first being duly sworn upon oath, depose and state that:

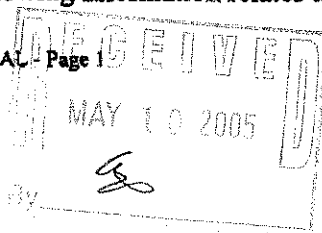
(1) My name is Robert Beal. From 1962 to the present, I have been a fulltime employee for the potato processing plant now owned and operated by Basic American, Inc. in Shelley, Idaho. At present, I am the Maintenance Superintendant for the plant.

(2) Due to my length of employment at the Shelley facility, I am familiar with the plant, its systems, and its history. This includes the use and operation of the wells at the plant.

(3) There have been only three wells at the processing plant, as described in Merlyn Browning's affidavit. I have reviewed Mr. Browning's affidavit which was previously filed in support of SRBA claims 27-2116 and 27-4019. The continuously functioning plant wells are commonly known as well #2 and well #3. The third well at the plant was covered by the warehouse and has not been in use since the warehouse was built.

(4) The following information relates to the exact locations of well #2 and well #3

AFFIDAVIT OF ROBERT BEAL Page 1



and the physical attributes and diversion capacities for each well.

(5) Well #2 is 16" in diameter and 150' in depth; it is equipped with a 60 horsepower pump and diverts 650 gallons per minute (1.45 cfs). It is located in the NE ¼ SE ¼ Section 32, T1N, and R37E.

(6) Well #3 is 20" in diameter and 243' in depth; it is equipped with a 100 horsepower pump and diverts 1000 gallons per minute (2.66 cfs). I am aware that SRBA claim 27-4019 states that there are three production wells all 150 feet deep; however, there are only two production wells and well #3 is 243 feet deep. After examining the map submitted with SRBA claim 27-4019 and the map submitted with SRBA claim 27-2116, well #3 appears to be both the well in claim 27-2116 and the most southeastern well on the map with claim 27-4019. To the best of my knowledge, well #3 is located in the NE ¼ SE ¼ Section 32, T1N, and R37E.

(7) Well #2 and Well #3 have always been interconnected.

(8) Water used in the restrooms is about 50,000 gallons per day throughout the year.

(9) Prior to November 19, 1987, the highest number of days of production in a year was 338.

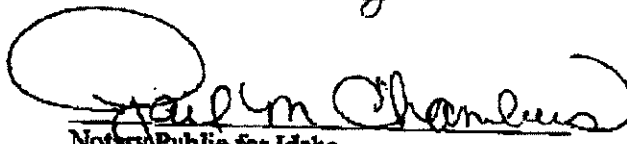
FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 10 day of May 2005.

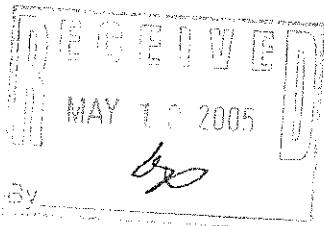

ROBERT BEAL

SUBSCRIBED AND SWORN before me on this 10 day of May 2005.




Notary Public for Idaho
Residing at Reubens, Idaho
Commission Expires: 08-12-2010

AFFIDAVIT OF ROBERT BEAL - Page 2



Bird, Cindy

From: Bird, Cindy
Sent: Tuesday, April 19, 2005 12:41 PM
To: 'Jo Beeman'
Subject: RE: Basic American ground water rights for Shelley plant

REF: Mr Browning's affidavit.

Jo,
 I did find a copy of the affidavit in 27-7411? He refers to well # 2 and # 3 as 27-4019 & 27-7411? Is well 2 & 3 for 27-4019 and 2116 or 7411? Can you please send me a map of the location of these three wells? How many wells are in operation? Mr. Browning's states that the third well was buried under a building over 40 years ago. Was a new well drilled?

thanks,
 Cindy

-----Original Message-----

From: Jo Beeman [mailto:jo.beeman@beemanlaw.com]
Sent: Monday, April 18, 2005 10:16 PM
To: Cindy Bird (IDWR)
Cc: Joyce Angell (B&A); Jo Beeman ; 'B&A Office'
Subject: Basic American ground water rights for Shelley plant

Cindy,

Basic American wanted to check some matters regarding its Shelley plant SRBA claims: 27-7411, 27-4019 and 27-2116.

1. Does IDWR have all the necessary documents on the change in ownership to Basic American, Inc?
2. The plant wells should be listed as points of diversion for both 27-4019 and 27-2116 and the places of use should be the same.
3. The rate of diversion for 27-4019: An affidavit will be provided to confirm the rates of diversion for wells 2 and 3.
4. Diverted volume: Basic American will have a recommendation based on Merlyn Browning's affidavit (already on file) and the rates of diversion for wells 2 and 3. Should I just email that to you?
5. Is a field exam necessary?

Basic American should have the data to me for 27-4019 and the diverted volume this week. Thanks.

Jo

Josephine P. Beeman
 Beeman & Associates, P.C.
 Phone: 208-331-0950
 Fax: 208-331-0954
jo.beeman@beemanlaw.com

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4/20/2005

Bird, Cindy

From: Bird, Cindy
Sent: Tuesday, April 19, 2005 11:25 AM
To: 'Jo Beeman'
Subject: RE: Basic American ground water rights for Shelley plant

Jo,

1. It does appear that we have the needed documents for the ownership change in the files.
2. Plant wells for 27-4019 & 27-2116. Are you saying that the two wells under the different rights should be both listed on both claims? The pod listed under 27-2116 does not agree with what Harold Jones found during his field exam. The licensing exam shows it in the NWSE. Was a new well drilled? If so when? Harold found one in the NESE and one in the SENE of section 32. Claim 27-2116 claimed the NWSE of section 32? Why is it different? If they need to claim both wells under both claims they will need to amend the claims.
3. The rate of diversion under 27-4019 has to be based on a 1957 rate not today's rate of diversion.
4. Diverted volume: I do not have a copy of Mr. Browning's affidavit in the claim file for 27-4019.
5. Harold Jones has already been out to the site. Unless we need to re-exam it shouldn't need a field exam.
6. Another issue that needs to be addressed. Under license 27-2116 the pou was licensed as NWSE of section 32. But in the A.J. claim it is much different. This is also similar for 27-4019. The SOU was changed from the statutory claim and the A.J. claim. As you know the Department needs documentation of when the change was made. Because a change like this requires a transfer and one was not filed. In order for us to recognize the change we need documentation that it occurred prior to commencement of the adjudication in 1987.

Jo, these recommendations have to go out in a couple weeks without the proper documents in the file the claims will be disallowed. Your immediate attention to this matter is needed in order for a recommendation to be made for your clients.

Cindy

-----Original Message-----

From: Jo Beeman [mailto:jo.beeman@beemanlaw.com]
Sent: Monday, April 18, 2005 10:16 PM
To: Cindy Bird (IDWR)
Cc: Joyce Angell (B&A); Jo Beeman ; 'B&A Office'
Subject: Basic American ground water rights for Shelley plant

Cindy,

Basic American wanted to check some matters regarding its Shelley plant SRBA claims: 27-7411, 27-4019 and 27-2116.

1. Does IDWR have all the necessary documents on the change in ownership to Basic American, Inc?
2. The plant wells should be listed as points of diversion for both 27-4019 and 27-2116 and the places of use should be the same.
3. The rate of diversion for 27-4019: An affidavit will be provided to confirm the rates of diversion for wells 2 and 3.
4. Diverted volume: Basic American will have a recommendation based on Merlyn Browning's affidavit (already on file) and the rates of diversion for wells 2 and 3. Should I just email that to you?
5. Is a field exam necessary?

Basic American should have the data to me for 27-4019 and the diverted volume this week. Thanks.

Jo

4/19/2005

CONVERSATION MEMORANDUM

EMPLOYEE: Cindy Bird

FILE: 27-2116, 7411, 4019

RE: Ownership change

DATE: 4/1/04

NAME OF PARTY: Larry Sautter, Basic American Foods.

Noon: Larry called about coming by to drop off the affidavits and the signed ownership change form. I told him he didn't need to make a special trip to drop them off, he could mail them.

4-5-04 Received affidavit and ownership change from claimant, but no warranty deed. Called claimant, left message on answering machine. PB

Bird, Cindy

From: Jo Beeman [jo.beeman@beemanlaw.com]
Sent: Wednesday, March 31, 2004 3:44 PM
To: 'Bird, Cindy'
Subject: RE: Basic American Foods (Shelley): SRBA claims 27-4019 and 27-7411

Thanks. That's exactly what I need to know. Jo

Josephine P. Beeman
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jo.beeman@beemanlaw.com

-----Original Message-----

From: Bird, Cindy [mailto:CindyBird@idwr.state.id.us]
Sent: Wednesday, March 31, 2004 3:17 PM
To: 'Jo Beeman'
Subject: RE: Basic American Foods (Shelley): SRBA claims 27-4019 and 27-7411

Jo,
I have three claims filed in the SRBA by Pillsbury Company, 27-7411, 27-4019 and 27-2116. I'm assuming they are the water rights involved in the purchase. I still need something to confirm that. Yes I do need confirmation of the rates of diversion because 27-4019 is a statutory claim that must be verified and I can't verify it with the information I have.
Thanks,
Cindy

-----Original Message-----

From: Jo Beeman [mailto:jo.beeman@beemanlaw.com]
Sent: Wednesday, March 31, 2004 3:04 PM
To: 'Bird, Cindy'
Subject: RE: Basic American Foods (Shelley): SRBA claims 27-4019 and 27-7411

Cindy,
Thank you. I will check with Larry. Is there correspondence to BAF listing the water right elements for which you need factual confirmation? If not, could you let me know what you need? I am aware of the season of use issue. I have suggested that BAF provide information to assist with the determination of a diverted volume, but do you also need confirmation of the rates of diversion for the two wells at the plant?
Jo

Josephine P. Beeman
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Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

4/1/2004

-----Original Message-----

From: Bird, Cindy [mailto:CindyBird@idwr.state.id.us]

Sent: Wednesday, March 31, 2004 12:12 PM

To: 'Jo Beeman'

Subject: RE: Basic American Foods (Shelley): SRBA claims 27-4019 and 27-7411

Jo,

You need to remind Larry that we also need the supporting documents required for an ownership change. He indicated that the warranty deed is about 30 pages long and would have to check with you on what documents could be released. Jo, you have worked with the Department long enough to know what documents we need for the ownership change. Could you send those as soon as possible?

I need the diversion information as soon as possible. I'll put a copy of this email in the file to note your response.

thanks Jo,

Cindy

-----Original Message-----

From: Jo Beeman [mailto:jo.beeman@beemanlaw.com]

Sent: Friday, March 26, 2004 9:47 PM

To: Cindy Bird (IDWR)

Subject: Basic American Foods (Shelley): SRBA claims 27-4019 and 27-7411

Cindy,

I have been working with Larry Sautter on the affidavit regarding year round use of the two wells at the plant (SRBA claim 27-4019) and the well at the spray fields (SRBA claim 27-7411) for Basic American Food's processing plant in Shelley.

Merlyn Browning should be able to sign the affidavit Monday or Tuesday when he returns to Shelley from Utah. It will be waiting for him in Larry's office and Larry will mail it directly to you in Soda Springs once it is signed and notarized.

Larry also wants you to know that Dan Hatch with Basic American Foods has signed the change in name forms and you will receive those shortly.

Finally, information about the plant's historical diverted volume is under review. Do you need that by March 31? Later?

I appreciate the assistance. You are welcome to call.

Jo

Josephine P. Beeman

Beeman & Associates, P.C.

Phone: 208-331-0950

Fax: 208-331-0954

jo.beeman@beemanlaw.com

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4/1/2004