

RECEIVED
FEB 27 2006
DEPARTMENT OF
WATER RESOURCES

Shelley M. Davis, ISB # 6788
BARKER ROSHOLT & SIMPSON LLP
205 N. 10th Street, Ste. 520
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Earl Warthen, Objector

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	)	Subcase Nos. 45-10480, 45-10481, 45-10502
	)	and 45-12906
	)	
	)	AFFIDAVIT OF SHELLEY M.
Case No. 39576	)	DAVIS IN SUPPORT OF EARL
	)	WARTHEN'S MOTION FOR
	)	SUMMARY JUDGMENT ON ALL
	)	CLAIMS AND WITHDRAWING
	)	OBJECTION TO SUB-CASE NO.
	)	45-10502
_____	)	
STATE OF IDAHO	)	
	) ss.	
County of Ada	)	

SHELLEY M. DAVIS, being first duly sworn upon oath, deposes and states as follows:

1. I am the attorney representing Earl Warthen in the above-entitled subcases, and make the following affidavit upon my personal knowledge of the facts and circumstances set forth herein below.

2. Attached hereto as Exhibit A is a true and correct copy of an excerpt of the *Chatburn v. Brim* decree entered April 19, 1884 decreeing 150 inches of Howell Creek water to be used on the N ½ SW ¼ of Section 16, T12S, R25E with a priority date of March 1, 1881.

3. Attached hereto as Exhibit B is a true and correct copy of a handwritten summary of the watermaster records for District 45 prepared by Earl Warthen.

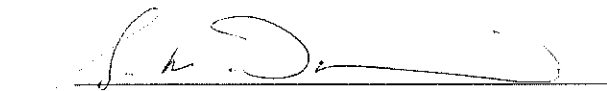
4. Attached hereto as Exhibit C is a true and correct copy of the Amended Notice of Claim to a Water Right, originally filed by Earl Warthen on May 11, 1989, assigned claim number 45-10502.

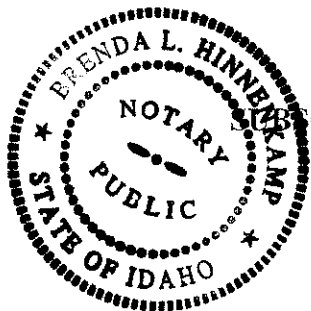
5. Attached hereto as Exhibit D is a true and correct copy of transfer 1029 dated May 25, 1964, removing the decreed water rights from the NW ¼ of Section 16, T12S, R25E.

6. Attached hereto as Exhibit E is a true and correct copy of the Department's recommendation for claim number 45-10502 issued March 5, 2004.

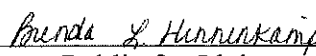
Dated this 24th day of February 2006.

BARKER ROSHOLT & SIMPSON LLP


Shelley M. Davis
Counsel for Earl Warthen



SUBSCRIBED AND SWORN to before me this 24th day of February 2006.


Notary Public for Idaho
Residing at: Borise, id
Commission Expires: 9/2008

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February 2006, I served a true and correct copy of the foregoing *Affidavit of Shelley M. Davis in Support of Motion to Amend and For Leave to Allow Filing of a Late Claim* on the following by U.S. Mail, postage prepaid or Facsimile:

Original to:

Clerk
Fifth Judicial District Court
Snake River Basin Adjudication
253 3rd Ave. N.
P.O. Box 2707
Twin Falls, ID 83303-2707

Counsel for the Objector/Claimants:

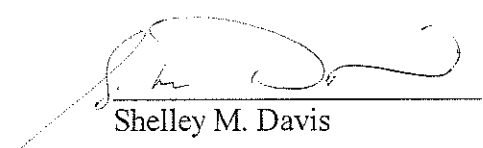
Michael Tribe
Ling, Robinson & Walker
P.O. Box 396
Rupert, ID 83350

Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment and Nat'l Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449



Shelley M. Davis

EXHIBIT A

J. Chatburn,
Geo. H. Weldon,
Jas. W. Snodgrass,
Wm. R. Holmes,
I. S. Potter,
Mahala Wright,
James Mahoney and
N. P. Williams,

Plaintiffs,

D E C R E E.

vs.

George V. Brim,
W. F. Brim,
J. H. Phillin,

Defendants.

-----O-----

This case having been brought on to be heard on the 9th day of April, A.D. 1884, upon the Amended Complaint of the plaintiffs above named, and the Answer and Cross-Complaint of the defendants above named and upon the proofs taken in said action, before the Court, trial by jury having been waived, and the Court being fully advised in the premises;

45-0319 It is now, therefore, ordered, adjudged and decreed, that the defendant, George V. Brim is entitled to one hundred (100) inches of the waters of Howell Creek, mentioned in the Complaint to irrigate the South East quarter of Section Seven(7) Tp.12 South of Range 25 East, and that said right shall and does date from the 1st day of May, A. D. 1877.

45-0320 It is further ordered, adjudged and decreed, that the defendant W. F. Brim is entitled to one hundred (100) inches of the waters of Howell Creek, mentioned in the Complaint, to irrigate the South West quarter of Section Eight(8) Tp.12 South, of Range 25 East, and that said right shall and does date from the 1st day of May A. D. 1877.

(100 inches of the waters of Howell Creek, mentioned in the Complaint, to irrigate the S.E.1/4 of the S. E.1/4 of Sec.5, S.E.1/4 of S.W.1/4 Sec.4 and N.1/2 of N.W.1/4 Sec. 9 Tp.12 South of Range 25 East, and that said right shall and does date from the 1st day of December A. D. 1880.

45-0327 That the plaintiffs James Mahoney, and N. P. Williams, jointly, are entitled to one hundred and fifty (150) inches of the waters of Howell Creek, mentioned in the Complaint, to irrigate the E.1/2 of N.W.1/4 and N.1/2 of S.W.1/4 Section Sixteen (16) Tp.12 South of Range 25 East and that said right shall and does date from the 1st day of March A. D. 1881,

45-0328 That the plaintiff James W. Snodgrass is entitled to one hundred and sixty (160) inches of the waters of Howell Creek, mentioned in the Complaint, to irrigate the E.1/2 of S.E.1/4 Sec. 29 & N.1/2 of N.E.1/4 Sec. 32 Tp.11 South, of Range 25 East, and that said right shall and does date from the 10th day of March, A. D. 1881.

And it is hereby further ordered, adjudged and decreed, that each party to this suit pay one eleventh of the costs, taxed at Three Hundred, Eighty nine & 27/100 Dollars, being the whole costs in this action.

Done in open Court this 19th day of April A. D. 1884.

John T. Morgan,

Judge 3d Dis. Court.

EXHIBIT B

Men

1915 = Beging on how to manage system
by Water Meter & Reports back to the state.

1916 = Section 3275? Water to Harris sec 16

1917 = Note Book Turned it

1918 = Bert Mahoney = SE $\frac{1}{4}$ NW $\frac{1}{4}$ S-16

1919 = Bert Mahoney = SE $\frac{1}{4}$ NW $\frac{1}{4}$ S-16.

Near survival Devices.

1920 = " " SE $\frac{1}{4}$ NW $\frac{1}{4}$ S-16.

1921 = " " SE $\frac{1}{4}$ NE $\frac{1}{4}$ S-16, x Harris.

1922 = " " SE $\frac{1}{4}$ NE $\frac{1}{4}$ S-16.

Everyone needs a
measuring device.

1923 = " " SE $\frac{1}{4}$ NE $\frac{1}{4}$ S-16.

No water @

No measuring device
on Boxes of Water Frase.

1924 = " " SE $\frac{1}{4}$ NE $\frac{1}{4}$ S-16, x Camp -

Looks Date 1925 " " SE $\frac{1}{4}$ NW $\frac{1}{4}$ S-16.

1926

? Controls.

1927 " " Harris.

Supreme Court

1928 " " Harris only

Reading?

1929 Bert & M S $\frac{1}{2}$ NW $\frac{1}{4}$ S-16

On Court

1930 No Use.

After on Headgates

1931 " "

1932 Bert Mahoney x Harris. SE $\frac{1}{4}$ NW $\frac{1}{4}$ S-16

Measure Water.

1933 No Use

Measure Water.

1934 No Use

1935 No Use

? Water use.

1936 Dory Harris NE $\frac{1}{4}$ SE $\frac{1}{4}$ S-16.

1937 Dory Harris NE $\frac{1}{4}$ SE $\frac{1}{4}$ S-16

1938 Dory Harris NE $\frac{1}{4}$ SE $\frac{1}{4}$ S-16

1939 No Use

1940 No Use

1941 No Use

1942 Bert Turn Over F $\frac{1}{2}$ NW $\frac{1}{4}$ S-16 - A

Water Masters
Death.
Measuring Devices

1943 - Dick Anderson E $\frac{1}{2}$ -NW $\frac{1}{4}$; SW $\frac{1}{4}$ -NW $\frac{1}{4}$
1944 - No Use in Sec 16
1945 - No Use
1946 - H. Brackenbury ^{another Right} NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$
1947 - H Brackenbury SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ^{Best Copy}
1948 - H Brackenbury SW $\frac{1}{2}$ SW $\frac{1}{4}$
1949 - H Brackenbury SW $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$
1950 - H Brackenbury Crosscut?
1951 - No Use

Measuring Devices.

1952 - No Use
1953 - No Use
1954 - No Use.
1955 - No Use.
1956 - ~~A.B. Clark~~ Puller.
1957 - No Use

Need a Head gates.

1958 - No Use.
1959 - No Use.
1960 - No Report for road.

Need locking
Head gates.

1961 - Dry
1962 - Dry
1963 - Dick Anderson ^{Clark} S $\frac{1}{2}$ SW $\frac{1}{4}$
1964 - AB Clark ^{Clark} NW $\frac{1}{4}$ NW $\frac{1}{4}$ -16
Dick Anderson ^{Clark} S $\frac{1}{2}$ SW $\frac{1}{4}$ -16
1965 - AB Clark NW $\frac{1}{4}$ NW $\frac{1}{4}$ -16
1966 - AB Clark NW $\frac{1}{4}$ NW $\frac{1}{4}$ -16
1967 - AB Clark NW $\frac{1}{4}$ NW $\frac{1}{4}$ -16
1968 - AB Clark ^{Estate} NW $\frac{1}{4}$ NW $\frac{1}{4}$ 16
1969 - Kate Bridger
Leslie Nelson NW $\frac{1}{4}$ NW $\frac{1}{4}$ -16

Measuring Devices.

Head gates
& Measuring
Devices

EXHIBIT C

COPY

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A45-10502
Date Received: 5/11/1989
Receipt No: S019917
Received By: AD

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: EARL WARTHEN
Address: BOX 145
ALBION ID

208-673-5385

83311

2. Date of Priority: AUG 31, 1874

3. Source: SPRING CREEK

Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
12S	25E	16	SE	NE	SW		CASSIA

5. Description of diverting works:
OPEN DITCHES AND POND WITH TILE DRAIN

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.400		
GROUNDWATER RECHARGE	11/16	03/14	0.200		

7. Total Quantity Appropriated is:
0.400 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
12S	25E	16	NE	NW		IRR	40.0
			NW	NW		IRR	20.0
			SE	NW		IRR	19.0
			NE	SW		IRR	20.0

COPY

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
12S	25E	16	NE SW		GWR	
Section Acres						99.0
Total Acres						99.0

11. Place of use in counties: CASSIA

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
A45-07366, A45-00327E

14. Remarks:

WATER IS MINGLED WITH OTHER RIGHTS OF THE CLAIMANT IN AN INTERTIE SYSTEM IRRIGATING THE PLACE OF USE CLAIMED. DURING THE WINTER WATER IS RUN INTO POND TO MAINTAIN LEVEL DURING SUCH TIME WATER IS DISCHARGED VIA TILE DRAIN TO MAINTAIN SPRINGS AND WETLANDS IN MEADOW.

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Carl H. W. H. Date: 11-19-98

Date: _____

EXHIBIT D

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Certificate	)	
of Transfer Issued Pursuant to	)	
the Application of Richard Storey	)	ORDER CANCELLING TRANSFER
Anderson, Box 126, Albion, Idaho,	)	OF WATER RIGHT NO. 1022 AND
Designated as Transferred Right	)	ISSUANCE OF NEW TRANSFER OF
No. 1022	)	WATER RIGHT NO. 1029.

WHEREAS, Under date of April 2, 1964, an Order was executed granting the transfer requested by the application of Richard Storey Anderson covering a certain water right in Water District No. 26, and as a result of such Order, Certificate of Transfer of Water Right No. 1022 was issued April 2, 1964; and

WHEREAS, said Certificate shows 0.2 cubic feet per second of the waters of Howell Creek with priority of August 31, 1874; and 1.5 cubic feet per second of the waters of Spring Creek with priority of April 1, 1875; this should read

0.2 cubic feet per second of the waters
of Spring Creek, with priority of
August 31, 1874; and 1.5 cubic feet per
second of the waters of Howell Creek with
priority of April 1, 1875;

NOW, Certificate of Transfer of Water Right No. 1022, issued April 2, 1964, is HEREBY CANCELLED, and a new Certificate of Transfer of Water Right No. 1029 shall be issued;

WITNESS the seal and signature of the State Reclamation Engineer of the State of Idaho affixed at Boise, Idaho, this 25th day of May, 1964.

(SEAL)

s/ CARL E. TAPPAN

CARL E. TAPPAN
State Reclamation Engineer

EXHIBIT E

03/05/2004

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 45-10502

NAME AND ADDRESS: EARL WARTHEN
BOX 145
ALBION ID 83311

SOURCE: SPRING CREEK

TRIBUTARY: SINKS

QUANTITY: 0.400 CFS

This right when combined with all other rights shall provide no more than 0.02 cfs per acre.

This right when combined with all other rights shall provide no more than 4.0 afa per acre at the field headgate for irrigation of the lands above.

PRIORITY DATE: 05/26/1964

POINT OF DIVERSION:

T12S R25E S16 SENESW Within CASSIA County

PURPOSE AND

PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	0.400 CFS

PLACE OF USE: IRRIGATION Within CASSIA County

T12S R25E S16	NENW	37.0	T12S R25E S16	NWNW	15.0
T12S R25E S16	SESW	16.0	T12S R25E S16	NESW	18.0

86 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A
COMBINED TOTAL OF 86 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS. 45-7366, 45-327E, and 45-10502.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: Beneficial Use