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13 William A. Poulton

14  
15 **IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE**  
16 **STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

17 In Re SRBA )

Subcase No. 45-00167A

18 Case No. 39576 )

**AFFIDAVIT OF WILLIAM A. POULTON**

19 STATE OF IDAHO )  
20 ) ss.  
21 County of Cassia )

22 William A. Poulton, being first duly sworn, deposes and says:

23 1. That this affiant is an adult resident of Cassia County, Idaho and makes  
24 this Affidavit on his own personal knowledge, is competent to testify to the matters stated herein,  
25 and this Affidavit sets forth facts as would be admissible in evidence.

26 2. That I currently reside at 977 South, 150 East in Burley, Idaho. I was born  
27 at that residence in 1953 and have lived there my entire life except for a two-year period while I  
28 was serving a mission for the LDS Church.

**AFFIDAVIT OF WILLIAM A. POULTON**

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3           3.     That I helped my family operate our ranch while growing up and  
4 participated in all aspects of the operation of the ranch.

5           4.     That my family's irrigation ditch runs parallel to the property owned by  
6 Leah Rose on the north side of her property.

7           5.     That the property currently owned by Leah Rose had the concrete remains  
8 of an old structure located at the corner of 1000 South and 150 East. The structure was a  
9 landmark for those in the area and was always referred to as "The Church House Corner."

10          6.     That everyone in the area knew where "The Church House Corner" was  
11 located as a reference point. As a child, I played on this lot.

12          7.     That this property was never cultivated or irrigated, but was tall sagebrush  
13 and June grass.

14          8.     That my headgate is located approximately 10 to 12 feet from the  
15 Northeast corner of Rose's property and has always been at that location. There were never  
16 headgates of any kind at The Church House Corner lot; the lot was always a dry parcel of ground.

17          9.     That around 1987, Clark Harmon purchased The Church House Corner lot  
18 from John Koyle and moved a mobile home onto the property after the purchase. That between  
19 the time Mr. Harmon purchased the property and the time that he moved the mobile home onto  
20 the property, extensive evacuation work was done to cover the remains of the old church  
21 structure and Harmon had some fill-dirt hauled onto the lot where the home is located. That the  
22 home was placed on additional fill-dirt to avoid the run-off sometimes caused by Willow Creek  
23 during high water.

24          10.    That the Harmons never had a headgate or any ditches running from  
25 Willow Creek during their stay on The Church House Corner property and that they never  
26 irrigated the property with the waters of Willow Creek. The Harmons did, however, water their  
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3 lawn and garden from their domestic well but they never diverted water from Willow Creek.

4           11. That I have other points of diversion but none are close to the Rose  
5 property. One point of diversion is north and downstream of the Rose property, one point is east  
6 and upstream of the Rose property, and another is in Section 26 of Township 12 South, Range 23  
7 East. The diversion located at Section 26 is at a higher elevation on a hillside near the splitter  
8 that divides the stream from other water users. It was concerning this point of diversion in  
9 Section 26 that a neighbor, Cory King, approached me in the mid-1980's with an idea that would  
10 benefit both of us if he happened to lose a pump during peak irrigation season. My share of  
11 Willow Creek can be pushed to his side of a splitter and sent down a pipeline which is gravity  
12 pressurized, enabling me to use sprinklers on more of my property with this system.

13           12. That this point of diversion in Section 26 is unique to Cory King and  
14 myself. That Leah Rose has never had permission nor has she or her successors in interest ever  
15 diverted from any point of diversion in Section 26, specifically from the pipe that Cory King and  
16 I use. The pipe is the only way to get Willow Creek water from Section 26 to my property and  
17 the delivery point is approximately a 1/2-mile from Roses west property boundary line.

18           13. That in 2002, the Burley Highway District wanted Willow Creek moved  
19 off the Highway District's right-of-way. The Highway District cut down trees and moved the  
20 Willow Creek streambed approximately 20 to 30 feet west from where it ran alongside 150 East.  
21 This construction and replacement relocated Willow Creek inside of my property fence instead of  
22 the stream running down the side of 150 East. Prior to the Highway District making this change,  
23 Rose objected to having the stream that close to her home. At some point after Rose objected,  
24 officials from the Highway District came to me and asked if I had any ideas on how to solve this  
25 issue. I discussed the matter with them and we decided to move the streambed to where it is  
26 currently located, which was in the best interest of all parties. At that time, Rose's driveway  
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3 which crossed the Willow Creek stream bed was too low and was continually causing weeds and  
4 trash coming downstream to form a dam and obstruct the natural flow of Willow Creek, making  
5 it difficult for me to take water at my point of diversion in Section 9. On occasion, when Rose  
6 failed to clean out the built-up obstructions in their driveway crossing, Willow Creek would run  
7 out of its bank to the south and west. Rose, at that time, was unable to maintain the driveway  
8 crossing and it was partly for that reason that the Highway District decided to move the Willow  
9 Creek stream so that it would no longer run inside Rose's driveway crossing. With the Highway  
10 District's rerouting of the Willow Creek streambed the stream bed now no longer runs parallel to  
11 Rose's property on the east side.

12           14. That in the 53 years I have lived in the Willow Creek area, I have never  
13 seen any person intentionally irrigate the place of use claimed by Leah Rose. There are no  
14 structures that could divert water onto Rose's place of use. That any proof of irrigation provided  
15 by the Idaho Department of Water Resources from aerial photos is the result of either periodic  
16 flooding when Willow Creek has overrun its banks or when the water was clogged by Rose's  
17 driveway and forced to the South and West. That the more-recent photographs demonstrating  
18 irrigation of a lawn was only watered with a pump from a personal well, and the waters of  
19 Willow Creek have never been diverted to irrigate grass, shrubbery or a garden on Rose's  
20 property. That some of the vegetation shown by the photos in the place of use is large trees,  
21 which run against the eastern portion of the claimed place of use, and is in the riparian zone  
22 where Willow Creek used to run.

23           15. That any pond that may appear in an aerial photo is from Willow Creek  
24 running its banks and not from the intentional diversion of any person.

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FURTHER YOUR AFFIANT SAITH NAUGHT.

William A. Poulton  
William A. Poulton

SUBSCRIBED AND SWORN to before me this 27th day of April, 2006.

Michael P. Tribe  
Notary Public for Idaho  
Residing at: Rupert, Idaho  
My Commission expires: 4/15/2011

(SEAL)

