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MAY 18 2006

DEPARTMENT OF
WATER RESOURCES

REPLY TO MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

IN RE SRBA

TWIN FALLS COUNTY CIVIL CASE NO. 39576

LEAH ROSE, CLAIMANT

May 16, 2006

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

Subcase No. 45-00167A

AFFIDAVIT OF LEAH ROSE

STATE OF IDAHO)
 ss.
County of Cassia)

COMES NOW, Leah Rose, being first duly sworn on oath,
deposes and states:

1. That I am the sole owner of the property on 994 S 150 E,
Burley, ID; it being my primary residence since August, 1998.
2. That being recommended for Water Right no. 45-167A on this
property, a decreed surface water right from Willow Creek in Basin 45, I ask that I
be granted this water right.
3. That the facts contained in the Supplemental Director's
Report regarding subcase number 45-167A be the basis for this water right.

4. That in the report, Jeanie Robertson, Senior Water Resource Agent, Southern Region Office in Twin Falls states:

*"Since the claim to water right no. 45-167A stated that it was a split from a right decreed by the court in **Poulton**, Agent Robertson began her claim investigation by reviewing the **Poulton** decree. Agent Robertson found that the land assigned by the court in **Poulton** to water right 45-167, the SESE of Section 9, matched the description of the place of use from 1962, 1968, 1976, 1987 and 1992 to determine whether the place of use had historically been irrigated. The 1962 and 1968 aerial photographs show a small pond in the area of the claimed place of use along with evidence of irrigation. Attached hereto as Attachment C is a true and correct copy of the 1962 aerial photograph. Attached hereto as Attachment D is a true and correct copy of the 1968 aerial photograph. Small striations appear in the 1976 aerial photograph, which are indicative of irrigation ditches, along with evidence of irrigation. Attached hereto as Attachment E is a true and correct copy of the 1976 aerial photograph.³ The reddish tint in the claimed place of use had been irrigated as of the commencement of the SRBA. Attached hereto as Attachment F is a true and correct copy of the 1987 aerial photograph. Finally, the 1992 NAPP photograph shows areas of irrigation in the claimed place of use after commencement of the SRBA and filing of the original claim by the Koyles on August 23, 1988. Attached hereto as Attachment G is a true and correct copy of the 1992 NAPP photograph.*

NAPP photography from 2004, however, shows that the historic channel of Willow Creek has changed since the aerial photography was taken in 1992, 1987, 1976, 1968 and 1962. Attached hereto as Attachment H is a true and correct copy of the 2004 NAPP photograph. In each of the photographic attachments prepared by Agent Rogertson, the claimed point of diversion has been marked with a yellow and black point. In 1992 and earlier, aerial photography demonstrates that Willow Creek entered the claimed place of use in the SESE of Section 9 at the marked point of diversion and continued its flow north along the property line. Sometime between 1992 and 2004, after the Koyles filed their original claim,⁴ the channel of Willow Creek changed.

Compare Attachment H with Attachments C-G. Presently, Willow Creek no longer enters the claimed place of use at the marked point of diversion or flows through the claimed place of use in the SESE of Section 9. **See Attachment H.** Instead, Willow Creek bypasses the SESE of Section 9 as it flows through the SWSW of Section 10 before it reenters its historic channel to the north of the claimed place of use.⁵ *Id.*

Attached to the original claim filed by the Koyles was a diagrammed map depicting the points of diversion in the SWNESE of Section 26 and SESESE of Section 9, along with depicted irrigation in the SESE of Section 9. The diagrammed map is substantially similar to a diagrammed map that was originally filed by Robert and Ruth Moncur on April 1, 1983, with application for transfer no. 2852 for water right no. 45-166. Attached hereto as Attachment I is a true and correct copy of transfer no. 2852. Water right no. 45-166 was originally decreed to Thomas Poulton in the **Poulton** decree. Ruth Moncur, also known as Ruth Koyle, is presumably related to John and Margaret Koyle, original claimants of water right no. 45-167-A. Unlike the map associated with the application for transfer, the map attached to the claim depicts irrigation in the SESE of Section 9. Both diagrammed maps mimic the historic channel of Willow Creek, as evidenced by aerial photography from 1992 and earlier.

Based on the above, Agent Robertson determined that water had been used for irrigation on the claimed place of use and determined that water right no. 45-167A could be recommended.”

5. That Agent Robertson concludes that “the Department’s recommendation for water right no. 45-167A is based on historical evidence of beneficial use and reasonable conclusions. “

6. That William A. Poulton’s objection to Water Right No. 45-00167A is based upon personal grievance and not on need.

7. That I object to the *Memorandum in Support of Motion for Summary Judgment* and affidavits included therein because of the *Memorandum* claims of “fact” that are not “fact” but unreasonable conclusions.

8. That in paragraph I of the *Memorandum*, entitled "*Factual Background*," line 21,22 it states that "*Poulton will be injured if Rose is permitted to unlawfully divert water from Willow Creek*" when in fact, Poulton applied for and according to the Idaho Department of Water Resources **Adjudication Recommendation Report 45-13666 V1** was deemed "*recommended as an enlargement of 45-167B for an additional 60 acres not covered by the decree.*" (*Exhibit A*). Also, that the 0.04 cfs allotted in the recommendation of Water Right No. 45-167A would only amount to a "cup" of water (*Affidavit of John Anderson*) according to the Poultons, thereby admitting the amount would not be injurious to them. Mr. Poulton also lends some of his water to Poulton affiant Cory King.

9. That the claim that "*Water Right No. 45-00167A has never been lawfully put to beneficial use, and if it was ever lawfully diverted, it has been abandoned or forfeited by nonuse for over five (5) years*" has not been proven by affidavits or otherwise in said *Memorandum*. That the affidavits in the *Memorandum* are anecdotal and do not provide scientific evidence such as that provided in the Supplemental Director's Report Regarding SRBA Subcase No. 45-167-A.

10. That William A. Poulton used said property for maintaining his cattle (*Affidavit of John Anderson*) and said property did not sit "vacant" (Poulton's *Affidavit of Don W. Green*, par. 10; *Poulton's Affidavit of Florence Poulton Gibson*, par. 8;) when not actively used by other owners, and because Mr. Poulton's cattle grazed on the property would have reason to irrigate said property (*Affidavit of Garth Osterhout*, *Affidavit of Blane K. Rose*). That other neighbors witnessed Mr. Poulton's cattle on the property during the years after the church discontinued use of the property, but did not want to be involved in the case because they have dealings with Mr. Poulton and do not want Mr. Poulton to cause trouble for them.

11. That the affiants supporting William Poulton did not walk the property to inspect the presence of structures to provide irrigation (*Affidavit of Blane K. Rose ;Exhibit B,C*), nor did they stand upon the property the entire time to witness irrigation when it happened. That the road the affiants traveled by vehicle to view said property was lined with large trees to inhibit close inspection of said property and a curve in the road would take attention from viewing said property carefully (*Affidavit of John Anderson; Exhibit D*).

12. That affiant Cory King did not reside in this area until approximately 1985 and shares a water interest with Mr. Poulton.

13. That Don Green and Florence Poulton Gibson, affiants of Mr. Poulton, are related to Mr. Poulton and may have the facts misrepresented to them by Mr. Poulton and/or have a personal interest in Mr. Poulton's case.

14. That Sharon K. Harrison, affiant for Mr. Poulton, has an interest downstream of said property. That J. Dennis Koyle, affiant for Mr. Poulton, is related to Sharon K. Harrison and could be presently representing Ms. Harrison in her interest. Any recollections of J. Dennis Koyle about the property owned by his father, John H. Koyle can not be counted as fact. J. Dennis Koyle would not intentionally harm a water claim filed by his father unless he was misled somehow, or is now working in behalf of Sharon K. Harrison. J. Dennis Koyle was approximately 10 years old in 1963 and did not live on the property purchased by his father. He would not have been on the property constantly to witness any irrigation by Mr. Poulton and could not provide proof that Mr. Poulton did not irrigate somehow. Please show the proof that "waste" or "stray" water (*Poulton's Affidavit of J. Dennis Koyle, par. 7*) was indeed that. I ask how Grant Matthews can affirm that "floodwater" (*Poulton's Affidavit of Grant M. Matthews, par. 7*) was indeed that. How can Michael Tribe in par. 4 of section ii of the *Memorandum*, conclude that the evidence of water on the property is "simply the result of wastewater or stray water"? I ask Mr. Tribe to provide proof.

15. That because previous owners "*John and Margaret Koyle, original claimants of water right no. 45-167-A*" (*Supplemental Director's Report p.7*) filed the claim, abandonment or forfeiture of said claim would not be the intent during the Koyle's ownership.

16. That Mr. Poulton willfully tried to prevent subsequent owner Clark Harman from accessing Willow Creek water (*Affidavit of Clark Harman*) and thus Mr. Harman demonstrated a situation contrary to willful abandonment or forfeiture. Mr. Harman recalls Mr. Poulton allowed irrigation of the property for some time, but later decided not to let Mr. Harman have any water. (See also *Affidavit of Blane K. Rose*) Also, Clark Harman offered to sell the water claim to Mr. Poulton to appease the situation, which Mr. Poulton agreed to purchase

(although he had told me the water claim paper I had received through the purchase of the home from Clark Harman was worthless and was not a rightful claim) but the transaction did not go through because Mr. Poulton never sent the money to Mr. Harman. Mr. Harman, being a bishop of the LDS Church at the time, did not want to cause undue problems regarding his relationship with Mr. Poulton (Affidavit of Clark Harman).

17. That I, Leah Rose, being the current owner, was prevented from using Willow Creek after four years of ownership because of the rerouting of Willow Creek away from said property by the Burley Highway District. This rerouting without my permission does not constitute abandonment on my part. That the water I was supposed to enjoy up to the present was taken from me and used by Mr. Poulton. I was not consulted in the process of the rerouting of the Willow Creek stream that flowed on my eastern boundary. Mr. Poulton told the Highway District where to move the stream and I was not consulted. I fail to see how the new location of the streambed is "*in the best interest of all parties*" (Affidavit of William A. Poulton, par. 13) when I was not part of the decision-making process. A map the Highway District drew for me when I talked to them later shows where they wanted to route the stream before consulting Mr. Poulton (*Exhibit E*). That I am especially concerned about ten huge trees that are on the eastern boundary of my property. The trees are dying and are a constant safety concern now because they were dependent upon the Willow Creek water stream that flowed past them.

18. That asking for this "cup" of water would still be beneficial to my acreage and would allow me to water my pasture and maintain a few animals. That I also believe I may continue to fight for my water claim, no matter how small, because it is my right to do so to protect my interest in the water, and provide substantial property value.

19. That Poulton's affiant Boyd Richins did not travel the road by my property until the summer of 1998 when I purchased the property and four years later was prevented from using it.

20. That Mr. Poulton, in fact, believes the property still rightfully belongs to him (*Affidavit of Don W. Green, par. 8;*) when in fact said property does **not** belong to William A. Poulton or any other member of his family, but was **sold** to the L.D.S. Church in 1914 (*Exhibit F*). That Mr. Poulton makes a point of telling everyone that it is his property and was stolen, and because he believes the property is still his, constitutes the *basis for the objection of the water right*.

21.. That if Mr. Tribe was saying there was no evidence of water being used on the property during that time, why does it say that in the adjudication process, the period of nonuse considers the year of the beginning of the adjudication process and five years previous?

22. I ask Grant Matthews to provide *proof* that the property was not irrigated during the time he claims it wasn't. Does he have more proof than just recollections of the property from more than *three-quarters of a century ago*? To me, this evidence appears anecdotal and does not qualify as a factual statement.

23. That Michael Tribe further states in section i, par. 2 of the *Memorandum* that the LDS church intended to abandon and surrender the water right because of the "*physical removal of the church and an absence of any record of a transfer or attempted transfer of such a right coupled with a substantial period of nonuse.*" How does he know the intent of the LDS church at that time? If someone removes a structure, it does not mean the water right intends to be abandoned. Where is the proof that it was indeed the intent of the church to abandon any water claim? Does not the deed of transfer from one owner to another constitute the transfer of the right? If the statement that the sale is "*subject to all rights, rights-of-way, easements, covenants, conditions and restrictions as may appear of record*" (*Exhibit G*) appears on the document, does that not mean the transfer of water as well? And, unless a water claim is specifically mentioned as *not* transferring with the deed, it goes along with it? If the LDS church maintained ownership of the property, why would the church need to have cause to transfer the right while it maintained ownership? It passed the ownership and the right to use Willow Creek to the subsequent owner, John H. and Margaret Koyle. There was no mention of otherwise.

Also, in times of drought, ditches and other water-conveying structures on a property can remain dry for many years. Does that mean the owners intend to abandon their water rights? We live in a desert and a period of nonuse does not mean abandonment of water right.

24. That Mr. Tribe has stated there is "no genuine issue of material fact," In addition to the facts contained in the "706" report, I have secured an aerial map taken by the USDA depicting diversion of water onto my property in 1978. (*Exhibit H*).

In conclusion, I would like to say that I must represent myself because I do not have money to retain an attorney, and that for any inconvenience it may cause, I apologize. I make a small amount of money as an educational aide.

I must also say that Mr. Poulton has changed his mind many times about the reason for the objection to the granting of this water right. When asking Mr. Poulton why he was objecting to my water right, his attorney, Mr. Ling, replied during our initial settlement conference that Mr. Poulton felt it would be difficult to work with the scheduling of the water use and that Mr. Poulton did not need the water. Later, asking Mr. Ling again why Mr. Poulton was contesting the right, he replied during a phone conference that Mr. Poulton did not need the water, but that he was contesting for selfish reasons and that we all have selfish motivations. In another conference with Mr. Ling and Mr. Poulton and the IDWR, I asked Mr. Poulton if he knew how much water was involved in my water claim. He said he didn't know. Later, neighbors were told by the Poultons that it only amounted to about a "cup" of water and so the Poultons were upset that I was contesting this objection to my water right because I should not give them so much of a problem for such a small amount. I fail to see how "*William Poulton will be harmed*" (*Conclusion, Memorandum*) if I am granted this water right. He has, and continues, to enjoy his portion of Willow Creek. If it would be detrimental to him to lose this water, I ask for you to consider what it would do to me.

My personal opinion is that Mr. William A. Poulton bears a grudge that the ground was "stolen" from his family and cannot bear to share the water with me, perhaps to get "even." I do not have any water now to enjoy, having it taken from me, and all I ask is for consideration of a small amount of water for my use which would be sorely needed. The culinary water coming from my well does not provide enough flow to support irrigation of the pasture to sustain animals as I wish to do.

Someone once told me that the Supreme Court has ruled that "For one to enhance his position at the expense of another is morally wrong."

I will respect any judgment you have concerning this case.

Submitted this 16th of May, 2006.


Leah Rose

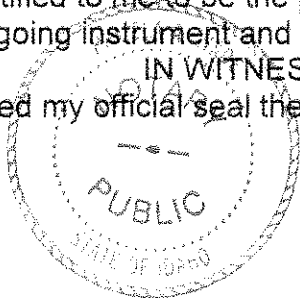
STATE OF IDAHO)

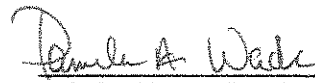
ss.

County of Cassia)

On this 16th day of May, 2006, before me the undersigned, a Notary Public in and for said State, personally appeared Leah Rose, known or identified to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




NOTARY PUBLIC FOR IDAHO
Residing at _____
My Commission Expires 11/18/08

EXHIBIT

A

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 45-13666 V1

WATER RIGHT NUMBER: 45-13666 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WILLIAM A POULTON 977 S 150 E BURLEY, ID 83318 (208)678-0011

Priority Date: 03/15/1980
Basis: Beneficial Use
Status: Active

<u>Source</u>	<u>Tributary</u>
WILLOW CREEK	SINKS

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/15 to 11/15	1.200 CFS	
	<u>Total Diversion:</u>	1.200 CFS	

Location of Point(s) of Diversion

WILLOW CREEK	SW1/4SW1/4SW1/4	Sec. 10, Twp 12S, Rge 23E, B.M.
CASSIA County		
WILLOW CREEK	SW1/4NE1/4SE1/4	Sec. 26, Twp 12S, Rge 23E, B.M.
CASSIA County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	23E	9			40.0											40.0	40.0	37.0	157.0
12S	23E	10											30.0	30.0					60.0

Total Acres: 217

Conditions of Approval:

1. C11 THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR RIGHT.
2. C18 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.

Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 45-13666 V1

1. Quantity The amount of water diverted under the following water rights may not exceed 50% or one half of the stream flow of Willow Creek. Combined Right Nos.: 45-166A, 45-166B, 45-167A, 45-167B, 45-11928, 45-13421, 45-13623, 45-13631, & 45-13632.
2. Quantity The amount of water diverted under this water right, 45-167A and 45-167B may not exceed 25% or 1/4 of the stream flow of Willow Creek at the point of diversion described below at any given time.
3. Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHT NO. 45-167B IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 217 ACRES IN A SINGLE IRRIGATION SEASON.
4. General THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NO. 45-167B PURSUANT TO SECTION 42-1426, IDAHO CODE.
5. Place of Use - Irrigation THIS RIGHT IS LIMITED TO THE IRRIGATION OF 60 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Comments:

1. jroberts 3/3/2004 Basis of Recommendation

Comment: Recommended as an enlargement of 45-167B for an additional 60 acres not covered by the decree.

Handwritten notes:
Mason
5-26-04
add.
60 ac.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 45-167B V1

WATER RIGHT NUMBER: 45-167B V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WILLIAM A POULTON 977 S 150 E BURLEY, ID 83318 (208)678-0011
Current Owner	MARGARET POULTON 977 S 150 E BURLEY, ID 83318 (208)678-0011
Directors Report Owner	JAMES W POULTON RT 2 BOX 2454 BURLEY, ID 83318 (208)678-5791
Directors Report Owner	LA VORA G POULTON RT 2 BOX 2454 BURLEY, ID 83318 (208)678-5791

Priority Date: 11/23/1881

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
WILLOW CREEK	SINKS

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/15 to 11/15	3.140 CFS	
	<u>Total Diversion:</u>	3.140 CFS	

Location of Point(s) of Diversion

WILLOW CREEK CASSIA County	SE1/4SE1/4SE1/4	Sec. 9, Twp 12S, Rge 23E, B.M.
WILLOW CREEK CASSIA County	SW1/4NE1/4SE1/4	Sec. 26, Twp 12S, Rge 23E, B.M.

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	23E	9			40.0											40.0	40.0	37.0	157.0
12S	23E	10											30.0	30.0					60.0

Total Acres: 217

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 45-167B V1

Conditions of Approval:

1. C18 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.

Remarks:

1. Quantity The amount of water diverted under the following water rights may not exceed 50% or one half of the stream flow of Willow Creek. Combined Right Nos.: 45-166A, 45-166B, 45-167A, 45-167B, 45-11928, 45-13421, 45-13623, 45-13631, & 45-13632.
2. Quantity The amount of water diverted under this water right, 45-167A and 45-13666 may not exceed 25% or 1/4 of the stream flow of Willow Creek at the point of diversion described below at any given time.
3. Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHT NO. 45-13666 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 217 ACRES IN A SINGLE IRRIGATION SEASON.
4. Explanatory RIGHT NO. 45-13666 IS AN ENLARGEMENT OF THIS RIGHT PURSUANT TO SECTION 42-1426, IDAHO CODE.
5. Place of Use - Irrigation THIS RIGHT IS LIMITED TO THE IRRIGATION OF 157 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
6. Explanatory THIS RIGHT IS A SPLIT FROM FORMER RIGHT 45-167.

Comments:

1. jroberts 3/3/2004 Basis of Recommendation

Comment: This right is recommended for 157 acres in a 217 ac PPU with 45-13666, an enlargement of 60 acres.

Diversion rate was claimed and recommended as 3.14 cfs, or an inch per acre, but 45-167 was for 1/4 of the flow of Willow Creek, so this right and part A, along with the enlargement claim will all be limited to the 1/4 flow.

Stockwater was not a part of the decree so will not be recommended under this right and it is subject to the standard SoU in the area, not year-round use. (Needs O/C - letter sent.)

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

Subcase No. 45-00167A

AFFIDAVIT OF JOHN ANDERSON

STATE OF IDAHO)
 ss.
County of Cassia)

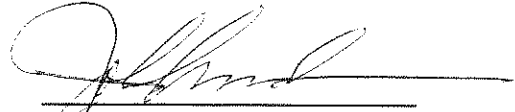
COMES NOW, John Anderson, being first duly sworn on oath,
deposes and states:

My family bought many acres of property around the Willow Creek area in 1971, and we farmed the property. I built my residence on 1054 S 175 E in 1976 and have passed the property on 994 S 150 E since 1971 at least 3 times a week and after residing permanently here, traveled back and forth at least daily. I saw Poulton's cattle feed on the Rose acreage all the time during the years prior to the Harman's purchasing the property (which purchase occurred around 1987 or 1988.) I know the cattle belong to the Poultons because they are the only people who run cows in this area.

It is hard to notice whether irrigation water is on the property or not because of the large trees that are in front of the Rose property as you drive by, and at the end of the property the road takes a sharp, banked corner that should take your attention to the opposite way of the property as you go around the corner and then the road continues toward the east—the property being on the west behind you.

The Poultons have said the water that Ms. Rose is asking for amounts to only about a "cup" of water and they are upset she is fighting for this small amount. However, we believe it is her right to fight for her water, no matter how small that amount may be. If they believe this small amount would hurt them, consider how it has and would affect Ms. Rose to not have any share of this water claim and to not have been able to use it thus far as was her right, continuously, to the present, as the Poultons have used the water.

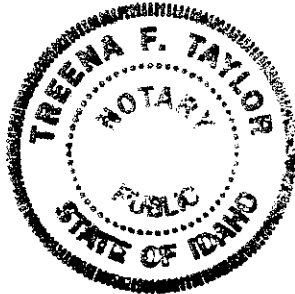
DATED this 17th day of February, 2006.

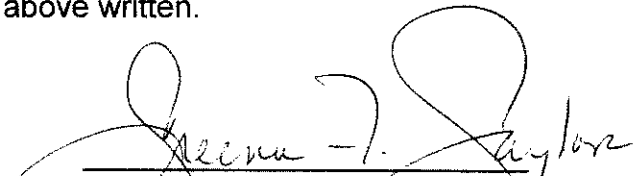

John Anderson

STATE OF IDAHO)
 ss.
County of Cassia)

On this 12 day of May, 2006, before me the undersigned, a Notary Public in and for said State, personally appeared John Anderson, known or identified to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




NOTARY PUBLIC FOR IDAHO
Residing at: Cassia
My Commission Expires: 3-2011

AFFIDAVIT OF JOHN ANDERSON

In Re SRBA
Case No. 39576
Subcase No. 45-00167A AFFIDAVIT

STATE OF IDAHO)
 ss.
County of Cassia)

COMES NOW, Garth Osterhout, being first duly sworn on oath,
deposes and states:

Leah Rose owns a pasture on which I asked to graze my horses during the early summer of 2005. The horses were not able to be kept on the pasture for more than three weeks at the most. The lack of moisture dried the grass completely during that time and I had to remove my animals.

When the horses were first put in the pasture the grass was green and lush due to the unusually wet spring we had that year and I was surprised the grass did not last long. In my opinion, it would be necessary to have irrigation to keep the pasture in a condition to sustain animals throughout the summer.

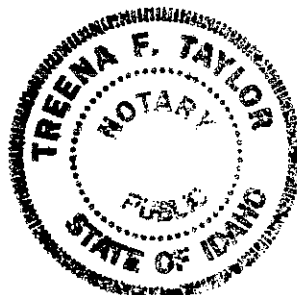
DATED this 17th day of February, 2006.

Garth Osterhout
Garth Osterhout

STATE OF IDAHO)
 ss.
County of Cassia)

On this 17 day of February 2006, before me the undersigned, a Notary Public in and for said State, personally appeared Garth Osterhout, known or identified to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Treena F. Taylor
NOTARY PUBLIC FOR IDAHO
Residing at: Cassia
My Commission Expires: 3-2011

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

Subcase No. 45-00167A

AFFIDAVIT OF BLANE K. ROSE

STATE OF IDAHO)
 ss.
County of Cassia)

COMES NOW, Blane K. Rose, being first duly sworn on oath,
deposes and states:

Bill Poulton has been actively preventing our family from using the water from Willow Creek on the subject property. When we first moved into our home in 1998, Mr. Poulton, who never introduced himself, stopped to tell us that the ground we purchased was stolen from his family and should belong to him. He further stated that any water claim we thought we had was wrong—that the claim was not valid and “did not exist.”

During the time I lived there, he would not let us access the water that ran past our home on the east to irrigate our lawn or garden or to irrigate the pasture, since the water did not “belong to us.” The previous owner, Clark Harman, said he had “permission” to use the water from Mr. Poulton for a short time, but after a disagreement, was not “allowed” to take water from the stream anymore. Mr. Harman said the matter was dropped because he didn’t want trouble with Mr. Poulton. I remember Mr. Harman saying he had placed a sump pump in the creek to get water, but found the pump on the side of the ditch later.

In 2002, four years after purchase of the property, the Burley Highway District moved the water that flowed on the east side of the property. They informed Ms. Rose that they would be moving the water off the right-of-way. At that time, Ms. Rose told the main person on the project that she had a paper saying she had a water claim and didn’t want the water to be moved because the ten huge trees along the stream depended on this water. The district made a decision to move the water completely off the subject property after consulting with Mr. Poulton. We never received a permission letter from the district to do the work, as did Mr. Poulton. The culvert and access to the water is on Mr. Poulton’s property. Mr. Poulton states in paragraph 13, line 25,26 of his affidavit, that the decision to move the streambed “*was in the best interest of all*

parties." I wonder how it can be in the Rose's best interest if Ms. Rose was not consulted in the process of the relocation of the streambed?

In the affidavit of Mr. Poulton, he states many points which are convenient for his case. However, I would like to make some comments of my own. Mr. Poulton never makes reference to the point that he had his cattle on the property from the time the church decided not to use it as a facility. I would think if there was feed on this ground and Mr. Poulton felt it was his property, any resourceful livestock owner would not let the feed go to waste but would use it. And, irrigate the ground for that livestock. Mr. Poulton has never explained why the Harmans were not using the water. It was not by their choice. Mr. Poulton would never work with Mr. Harman with the water schedule or to provide a way to permit him access to the water. In paragraph 12 of Bill Poulton's affidavit, it says *"That Leah Rose has never had permission...from the pipe that Cory King and I use."* It seems that Mr. Poulton thinks he is the one who needs to grant permission and determine who does and doesn't get the water.

Mr. Poulton mentions that our driveway that went over the Willow Creek stream would cause the water to clog there. We would ask him on many occasions if we could help him get the debris cleared out, but he would tell us not to mess with it. I understand what he was trying to do now. I believe he was preventing us from using the water in order for us to lose any claim on it. He says that we "failed to clean out the obstructions" and that is totally unfair to say.

We were prevented from using the water for our property since 2002 when the Highway District moved it, and Mr. Poulton has the control of the culvert on his property now, which is right on our north boundary, at the present, and it could be a point of diversion, which Mr. Poulton, in paragraph 8 of his affidavit, states that it is *"10 to 12 feet"* from our property, but it is actually 6' from our north fence line. I just measured it.

Also, Mr. Poulton's ditch goes around the back and follows the boundary of the property and bisects the subject property on the northwest corner. As the ditch goes all the way around next to the west of the property, the ditch has opened up on many occasions through the years and has provided us with much irrigation water. It would have easily been a way to irrigate the land prior to the Harman's home being placed there. The irrigated areas would not have been visible from the road, which is on the east side of the property.

There is also a large ditch on the southwest corner of the property near the irrigation ditch that runs from Mr. Poulton's property under the fence and into the subject property's pasture. Clark Harman mentioned he would have accessed the water from that ditch because it was quite easy to get the water into the subject pasture that way. In fact, I was later told the highway district considered an option to move the Willow Creek stream to the south of the property for an easy way for the subject property to access it. But, since Mr. Poulton told them we did not have a valid water claim, they decided against it.

AFFIDAVIT OF BLANE K. ROSE

One last statement. In paragraph 14, Bill Poulton declares that he has "never seen any person intentionally irrigate the place of use...." yet in his own affidavit he states that there was indeed "*irrigation of a lawn*" but in his words he says it was "*watered with a pump from a personal well.*" I ask Mr. Poulton to prove whether or not the water came from this "personal well" or not. Or if the sprinkler watering the lawn Boyd Richins stated he saw on the property (in paragraph 6 of the affidavit of Boyd Richins) was drawing water from Willow Creek or not. I would like Mr. Poulton to show the proof that there *wasn't* Willow Creek water diverted onto the Rose property.

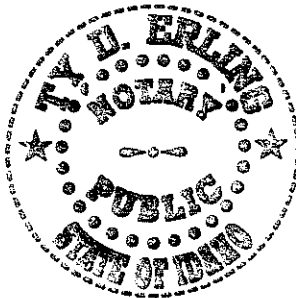
DATED this 10th day of May, 2006.

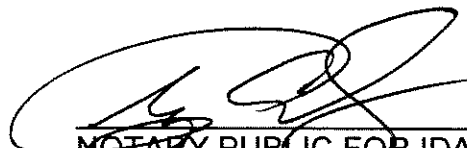

Blane K. Rose

STATE OF IDAHO)
 ss.
County of Cassia)

On this 12th day of May, 2006, before me the undersigned, a Notary Public in and for said State, personally appeared Blane K. Rose, known or identified to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




NOTARY PUBLIC FOR IDAHO
Residing at: CASSIA COUNTY
My Commission Expires: 11/14/11

AFFIDAVIT OF BLANE K. ROSE

EXHIBIT

B

S



N



W

Ditch from Poulton to Rose
4.06

S



N

E

N



S

W Ditch from Poulton to Rose Apr. 2006

EXHIBIT C

- N -

Bill Poulton
Ditch
Bisects Rose

257

2951

29181

0 0.0035 0.007 0.014 0.021 0.028



EXHIBIT D



May 2006

Subcase 110. 45-00167A

AFFIDAVIT

STATE OF IDAHO)
County of Cassia) ss.

COMES NOW, Clark Harman, being first duly sworn on oath,
deposes and states:

To Whom It May Concern:

I have been asked by Leah Rose to write to the best of my memory anything that I had to do with using Willow Creek for a water source at 994 S 150 E, Burley, Idaho.

Between 1990-1999, my family and I lived at 994 S 150 E, Burley, Idaho. Willow Creek flowed through the east of our property. When we purchased the property from John Koyle, he transferred a paper of water right that was filed for this property. I approached Bill Poulton several times during those years about using the water. He did not allow me to use the water during that or any other time. A neighbor approached me to buy the paper of the water right and I declined. I instead offered it to Bill Poulton, for half of the price that I was offered and Bill said to give him some time and he would buy it. This transaction of the purchase never happened. I decided I wasn't going to worry about it because life is too short and it wasn't worth the contention.

I have written this to the best of my memory.

DATED this 22nd day of June, 2005.



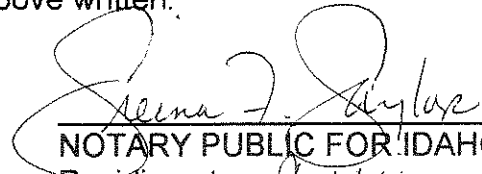

Clark B. Harman

STATE OF IDAHO)
County of Cassia) ss.

On this 22 day of February, 2006, before me the undersigned, a Notary Public in and for said State, personally appeared Clark Harman, known or identified to me to be the person whose name is subscribed to

the within and foregoing instrument and acknowledged to me that he executed the same.

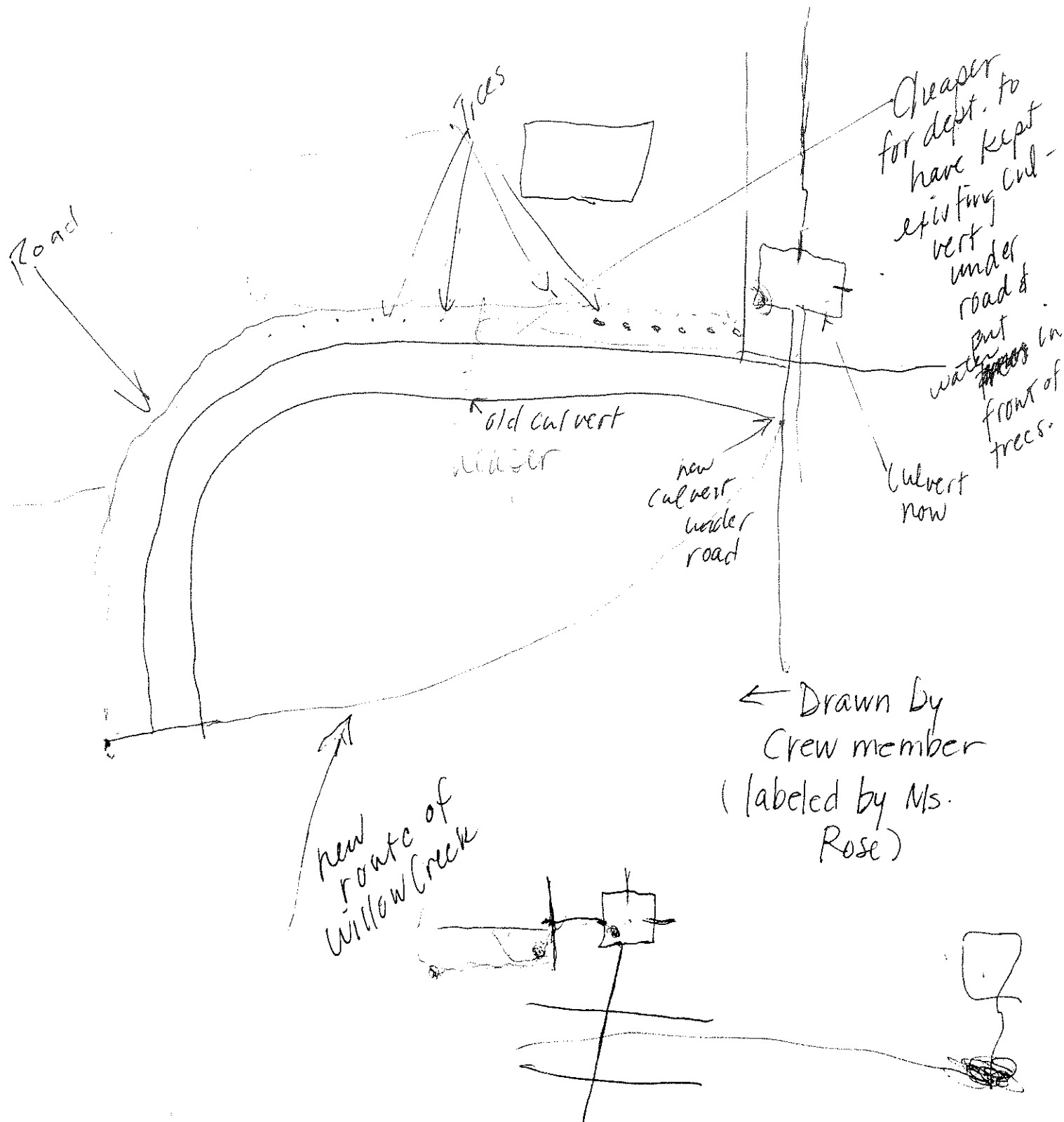
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



NOTARY PUBLIC FOR IDAHO
Residing at: Cassia
My Commission Expires: 3-2011

EXHIBIT

E



Highway Dist. Sketches

Subsoiler 34-1" line

* Sketch of what Highway Dist. orig. wanted to do - obtained later (2004-Aug)
(after job)

EXHIBIT

F

26 Sept 1914

B18DEED

Sold to L.D.S.
Church - notdedicated
who
(donated + sold)✓ C
#17803.

THIS INDENTURE, Made this 26th day of September, in the year of our Lord one thousand nine hundred and fourteen, between Sarah A. Poulton and William S. Poulton, her husband, of Cassia, County of Cassia, State of Idaho, the parties of the first part, and Charles E. Smith, Bishop of Pella Ward, Cassia Stake of the L. D. S. Church, of Pella, County of Cassia, State of Idaho, the party of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of One (\$1.00) DOLLARS, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described real estate, situated in Cassia County, State of Idaho, to-wit: Commencing at the Southeast corner of the Southeast quarter (SE¹/₄) of Section Nine (9), Township Twelve (12) South of Range Twenty-three (23) East of the Boise Meridian, and running thence West Two hundred fifty (250) feet; thence North Two hundred ninety-five (295) feet; thence East Two hundred fifty (250) feet; thence South Two hundred ninety-five (295) feet; to the place of beginning.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises, together with the appurtenances unto the party of the second part, and to his heirs and assigns forever. And the said parties of the first part, and their heirs, the said premises in the quiet and peaceful possession of the said party of the second part, his heirs and assigns against the said parties of the first part, and their heirs and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hand and seal the day and year first above written.

Signed, sealed and delivered

in the presence of

W. L. Dunn.

Sarah A. Poulton. (Seal)

William S. Poulton. (Seal)

State of Idaho,)
County of Cassia.) ss.

On this Twenty-sixth day of September, in the year 1914, before me, Henry V. Tucker, a Notary Public in and for said County, personally appeared Sarah A. Poulton and

26 Sept 1914

B18DED

William S. Poulton, her husband, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(SEAL)

Henry T. Tucker,

Notary Public.

My commission expires on the 22nd day of October, 1915.

Filed for record at the request of Chas. H. Smith at 8:32 A. M. November 19, 1914.

Geo. A. Smith,

County Recorder.

EXHIBIT G

67385

State of Idaho, County of Cassia § 26
 I, Notary Public, do hereby certify that this instrument was filed for record at my office on
 December 19, 1972, at 10:00 A.M. in my office and
 duly recorded in File No. 236, as per the
 Official Register
 100
 Re: Rt 2, Box 236
 Burley

SPECIAL WARRANTY DEED

CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST
 OF LATTER-DAY SAINTS, a Utah corporation sole, who took title as
 Charles H. Smith, Bishop of Pella Ward, Cassia Stake of the L.D.S.
 Church, Grantor, hereby conveys and warrants only against all acts
 of itself, its successors and assigns, to JOHN H. KOYLE and MARGARET
 H. KOYLE, his wife, Grantees, for the sum of Ten Dollars (\$10.00)
 and other good and valuable consideration, the following described
 tract of land situated in the County of Cassia, State of Idaho, to-wit:

Township 12 South, Range 23 East of the Boise
 Meridian, Cassia County, Idaho,

Section 9: Beginning at the Southeast corner of
 said Section 9; thence North 295 feet; thence West
 250 feet; thence South 295 feet; thence East 250
 feet to the point of beginning.

Subject to all rights, rights-of-way, easements, covenants,
 conditions and restrictions as may appear of record.

In Witness Whereof, the said Grantor has hereto subscribed its name
 and affixed its corporate seal by its Corporate Sole this 19th day of
 December, A.D., 1972.

CORPORATION OF THE PRESIDING BISHOP
 OF THE CHURCH OF JESUS CHRIST OF
 LATTER-DAY SAINTS, a Utah corpor-
 ation sole.

By Victor L. Brown
 Corporate Sole

STATE OF UTAH)
) SS.
 COUNTY OF SALT LAKE)

On this 19th day of December, A.D., 1972, before me the undersigned,
 a Notary Public in and for said County and State, personally appeared
 VICTOR L. BROWN, known to me to be the Presiding Bishop of the Church of
 Jesus Christ of Latter-Day Saints, and known to me to be the Corporate
 Sole of the Corporation of the Presiding Bishop of the Church of Jesus
 Christ of Latter-Day Saints, who executed the within instrument on behalf
 of the Corporation therein named and acknowledged to me that such corpor-
 ation executed the same.

My Commission Expires:

March 25, 1976

Victor L. Brown
 Notary Public in and for said
 County and State.

EXHIBIT H



United States
Department of
Agriculture

Farm
Service
Agency

Aerial
Photography
Field Office

2222 W 2300 S
Salt Lake City UT
84119-2020
801-975-3500
801-975-3532 fax

October 31, 2005

RE: 9900-600401

CERTIFICATION

This is to certify that the attached enlargement was made from aerial film which was secured while photographing:

Cassia County, Idaho

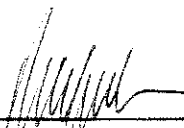
The film is on file in the Aerial Photography Field Office, FSA, USDA, and Salt Lake City, Utah.

ENLARGEMENT

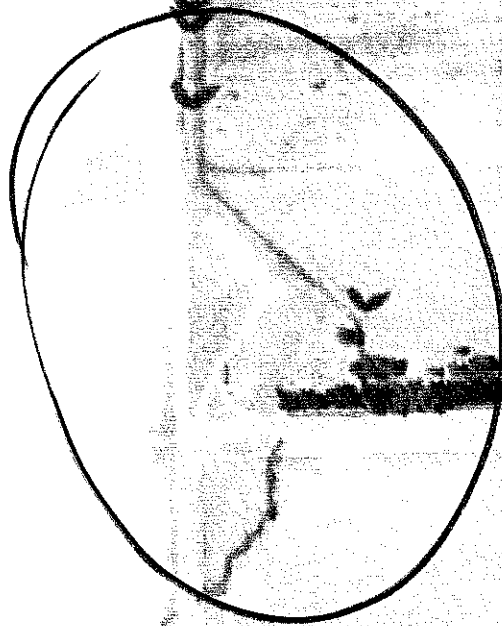
16031-278-27C

DATE

August 21, 1978



Ken Koehler
Management Operations Officer



111

In Re SRBA
Case No. 39576

Subcase No. 45-00167A

AFFIDAVIT OF LEAH ROSE

STATE OF IDAHO)
 ss.
County of Cassia)

COMES NOW, Leah Rose, being first duly sworn on oath,
deposes and states:

The aerial map from the United States Department of Agriculture,
taken in August of 1978, shows a formation that indicates a dried water feature
on the property. It shows water diverted onto the property not only once, but
many times in order to cause a depiction of the water residue.

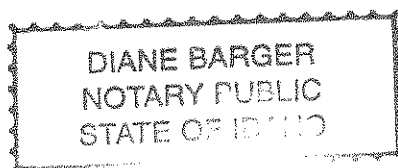
DATED this 16th day of May, 2006.

Leah Rose
Leah Rose

STATE OF IDAHO)
 ss.
County of Cassia)

On this 16th day of May, 2006, before me the
undersigned, a Notary Public in and for said State, personally appeared Leah
Rose, known or identified to me to be the person whose name is subscribed to
the within and foregoing instrument and acknowledged to me that he executed
the same.

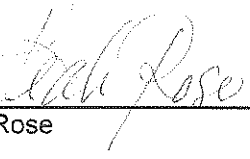
IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my official seal the day and year first above written.



Diane Barger
NOTARY PUBLIC FOR IDAHO
Residing at: Idaho, Id
My Commission Expires: 11-7-06

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I served a true and correct copy of the following document on the persons listed below by United States Mail with the correct postage affixed thereto on this ____ day of May, 2006.



Leah Rose

Document Served: Reply to Memorandum In Support of Motion for Summary Judgment

Persons Served:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

Roger Ling and Michael P. Tribe
Ling, Robinson and Walker
615 H. Street
P.O. Box 396
Rupert, ID 83350

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

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