

COPY

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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	)	Subcase No. 31-11845
	)	
	)	AFFIDAVIT OF DAVID I. STANISH
	)	DATED NOVEMBER 17, 2006
Case No. 39576	)	
	)	
	)	
	)	
State of Idaho	)	
	)ss	
County of Ada	)	

DAVID I. STANISH, being first duly sworn, deposes and states:

1. I am a deputy attorney general assigned to the Snake River Basin Adjudication. I am a competent adult over the age of eighteen years, and the statements made herein are based upon my own personal knowledge of the events described.

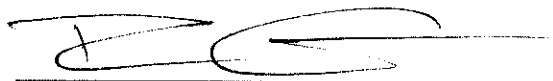
2. The Natural Resources Division of the Idaho Attorney General's Office received the Claimants/Objectors' *Answers to Interrogatories and Responses to Requests for Admissions and Production* on September 11, 2006. Attached to this Affidavit are true and correct copies of pages four and five of this discovery.

3. The Natural Resources Division of the Idaho Attorney General's Office received the Claimants/Objectors' *Supplemental Answers to Interrogatories and Responses to Requests for Admissions and Production* on October 15, 2006. Attached to this Affidavit are true and correct copies of pages five, six, seven, and eight of this discovery.

4. At the November 10, 2006, deposition of Bryce Contor, the undersigned deputy attorney general received from Mr. Contor his *Analysis of Place-of-Use Elevations* dated July 7, 2006. Attached to this Affidavit is page one of that analysis.

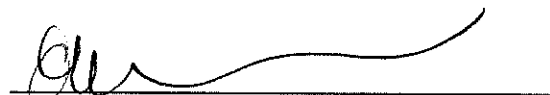
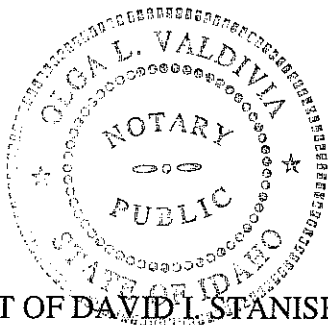
4. The Natural Resources Division of the Idaho Attorney General's Office has not received an expert report from either Bryce Contor or Chuck Brockway as of the time and date of this affidavit.

5. Further your affiant sayeth naught.



DAVID I. STANISH
Deputy Attorney General
Natural Resources Division

Subscribed and sworn (or affirmed) to before me, a notary public in and for the State of Idaho this 17th day of November 2006.



Notary Public for Idaho

Residing at Boise, ID

My Commission expires: 2/8/2012

CERTIFICATE OF SERVICE

I certify that on the 17th day of November 2006, I caused to be served the original and/or copy of this AFFIDAVIT OF DAVID I. STANISH DATED NOVEMBER 17, 2006 on each of the following persons by the indicated method.

1. Original to:

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

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☒ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

Claimant Ben Jernberg
Claimant Idaho Properties, LLC
Represented by:
Roger D. Ling
Michael P. Tribe
LING ROBINSON & WALKER
PO Box 396
Rupert, ID 83350

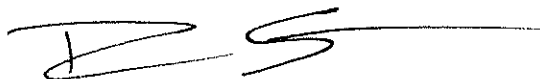
- ☐ U.S. Mail, postage prepaid
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PO Box 83720
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Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

Not Applicable



DAVID I. STANISH
Deputy Attorney General

1
2
3 Interrogatory No. 5

4 Identify all persons who have knowledge about the use of water under Water
5 Right No. 31-11845.

6 Answer to Interrogatory No. 5:

7 Ben Jernberg, Omar Llamas, Joe Llamas, Charles Covey and Bryce Contor.

8 Interrogatory No. 6

9 Please identify each and every person whom you expect to call as a fact witness in
10 this matter and state the substance of the facts upon which the person is expected to testify,
11

12 Answer to Interrogatory No. 6:

13 Ben Jernberg – Mr. Jernberg will testify as to all aspects of the water right at
14 issue. He has ranched the property and is familiar with irrigation practices of the PPU.

15 Omar Llamas – Mr. Llamas has worked on the PPU and the surrounding ranch for
16 most of his life. He is familiar with all aspect of the PPU, including irrigation practices and
17 cattle grazing.
18

19 Joe Llamas – Mr. Llamas has worked for Claimant Jernberg since 1969. Mr.
20 Llamas' duties included irrigating Jernberg's crop ground as well as the uncultivated
21 pasturelands on Jernberg's Mud Lake Ranch. Mr. Llamas was also involved in maintaining the
22 ditches that carried water to the pasture ground. His duties also included placing cattle on the dry
23 pasturelands, and such duties have continued with the sale of the property to Idaho Properties,
24 Inc.
25

26 Charles Covey – Mr. Covey is Mr. Jernberg's son-in-law and has had experience
27

28 ANSWERS TO INTERROGATORIES AND RESPONSES
TO REQUESTS FOR ADMISSIONS AND PRODUCTION - 4

1
2
3 irrigating the PPU. He is also familiar with the general ranch operations of Jernberg.

4 Bryce Contor – Mr. Contor has worked with the Claimants in establishing the
5 Claimants' Water Right No. 31-11845. Mr. Contor can testify as to the beneficial use of the PPU
6 over the last twenty years.

7 Interrogatory No. 7

8 Please identify each and every person whom you expect to call as an expert
9 witness in this matter. For each such person identified, please state the subject matter on which
10 the expert is expected to testify, the substance of the opinions to which the expert is expected to
11 testify, and the underlying facts and data upon which the expert's opinions are based.

12
13 Answer to Interrogatory No. 7:

14 Dale Stukenholtz – Mr. Stukenholtz will provide soil analyses of the PPU of use.
15 As Mr. Stukenholtz has not visited the PPU or sampled the soils of the PPU, he has not formed
16 an opinion of which Claimants can disclose at this time. Any report he prepares will be duly
17 provided to the State.

18
19 Chuck Brockway – Mr. Brockway is expected to testify regarding the hydrological
20 system of the PPU for Water Right No. 31-11845. It is expected that Mr. Brockway will testify
21 on the findings of the State's experts and their findings.

22 Request for Production No. 2

23 For each person identified in your response to Interrogatory No. 7, please produce:
24
25 (1) a curriculum vitae or resume, including a list of publications authored by that person, if any,
26 as well as any other information which would demonstrate the person's knowledge or

27 ANSWERS TO INTERROGATORIES AND RESPONSES
28 TO REQUESTS FOR ADMISSIONS AND PRODUCTION - 5

1
2
3 additional ground that he is in the process of purchasing, in addition to his work with Idaho
4 Properties.

5 Joe Llamas resides at 1517 N. 1054 E., Terreton, Idaho, 83450. Joe's phone
6 number is (208) 663-4496. Omar resides at 1518 N. 1054 E., Terreton, Idaho, 83450. Omar's
7 phone number is (208) 521-5093.
8

9
10 Charles Covey. Mr. Covey is a son-in-law to Ben Jernberg. He has helped on
11 Mr. Jernberg's Mud Lake Ranch in the past, specifically with the irrigation of the PPU. He is
12 currently a heavy equipment operator. He has no formal education beyond high school.

13 Mr. Covey's Address is P.O. Box 4456
14 288 Beaver Lake Rd
15 White Fish, MT 59937
16 406-862-4801

17 Bryce Contor. Mr. Contor is a Research Hydrologist, Idaho Water Resources
18 Research Institute, University of Idaho, Idaho Falls, Idaho. His position includes serving as a
19 principle investigator on a ground water banking project in cooperation with U.S. Bureau of
20 Reclamation and as a principle investigator on an evapotranspiration study with the USGS Water
21 Institutes 104b program. Mr. Contor had been retained to advise Mr. Jernberg regarding Water
22 Right No. 31-11845. His business address is P.O. Box 94, Tona Idaho, 83427. His business phone
23 is (208) 681 9100. Mr. Contor's education includes:

- 24 - M.S., Hydrology, University of Idaho, Moscow ID
25 - One-year certificate, Water Resource Management, College of Southern Idaho
26

27
28 SUPPLEMENTAL ANSWERS TO INTERROGATORIES AND
29 RESPONSES TO REQUESTS FOR ADMISSIONS AND PRODUCTION - 5

LENO, ROBINSON C. WALKER

ATTORNEY AT LAW

PO BOX 1000 TONAHWAPT

1
2
3 - B.S., Agricultural Economics, Brigham Young University, Provo, UT

4 - Specialized Associate, Farm Crops Production, Ricks College, Rexburg ID
5

6 Interrogatory No. 4:

7 Please identify each and every person whom you expect to call as a fact witness in
8 this matter and state the substance of the facts upon which the person is expected to testify.
9

10 Answer to Interrogatory No. 6:

11 Ben Jernberg - Mr. Jernberg will testify as to all aspects of the water right at
12 issue. He has ranched the property and is familiar with irrigation practices of the PPU.

13 Omar Llamas - Mr. Llamas has worked on the PPU and the surrounding ranch for
14 most of his life. He is familiar with all aspect of the PPU, including irrigation practices and
15 cattle grazing.
16

17 Joe Llamas - Mr. Llamas has worked for Claimant Jernberg since 1969. Mr.
18 Llamas' duties included irrigating Jernberg's crop ground as well as the uncultivated
19 pasturelands on Jernberg's Mud Lake Ranch. Mr. Llamas was also involved in maintaining the
20 ditches that carried water to the pasture ground. His duties also included placing cattle on the dry
21 pasturelands, and such duties have continued with the sale of the property to Idaho Properties,
22 Inc.
23

24 Charles Covey - Mr. Covey is Mr. Jernberg's son-in-law and has had experience
25 irrigating the PPU. He is also familiar with the general ranch operations of Jernberg.

26 Bryce Center - Mr. Center has worked with the Claimants in establishing the
27

28 SUPPLEMENTAL ANSWERS TO INTERROGATORIES AND
RESPONSES TO REQUESTS FOR ADMISSIONS AND PRODUCTION - 6

DAVID I. STANISH, ATTORNEY AT LAW

REPRESENTING PLAINTIFFS

1
2
3 Claimants' Water Right No. 31-11845. Mr. Contor can testify as to the beneficial use of the PPU
4 over the last twenty years.

5 Interrogatory No. 7

6 Please identify each and every person whom you expect to call as an expert
7 witness in this matter. For each such person identified, please state the subject matter on which
8 the expert is expected to testify, the substance of the opinions to which the expert is expected to
9 testify, and the underlying facts and data upon which the expert's opinions are based.

10
11 Answer to Interrogatory No. 7:

12 Dale Stukenholtz -- Mr. Stukenholtz has a Ph.D., in soil fertility and Plant
13 Nutrition. Mr. Stukenholtz will provide soil analyses of the PPU of use. As Mr. Stukenholtz has
14 not visited the PPU or sampled the soils of the PPU, he has not formed an opinion of which
15 Claimants can disclose at this time. Any report he prepares will be duly provided to the State.

16
17 Mr. Stukenholtz currently owns and operates Stukenholtz Laboratory, Inc., located
18 at 2924 Addison Avenue, E. P.O. Box 353, Twin Falls, ID 83303-0353. Mr. Stukenholtz's
19 business phone number is (208) 734-3050. Stukenholtz Laboratory, Inc. is a soil, fertilizer and
20 crop-consulting firm. Stukenholtz Laboratory conducts business from St. Anthony and Grace to
21 Panna and Homedale, Idaho.

22
23
24 Charles E. Brockway, B.S., Civil Engineering, University of Idaho. M.S., Civil
25 Engineering, California Institute of Technology, Ph.D., Civil Engineering, University of Utah. - Mr.
26 Brockway is expected to testify regarding the hydrological system of the PPU for Water Right No.

27
28 SUPPLEMENTAL ANSWERS TO INTERROGATORIES AND
RESPONSES TO REQUESTS FOR ADMISSIONS AND PRODUCTION - 7

31-11845. It is expected that Mr. Brockway will testify on the findings of the State's experts and their findings.

Mr. Brockway's currently owns and operates Brockway Engineering, PLLC. His business is located at 2016 Washington St. North, Suite 4 Twin Falls, Idaho 83301. The business phone number is (208) 736-8543. Brockway Engineering is a business focusing in all areas of water resources engineering and hydrological systems.

Request for Production No. 2

For each person identified in your response to Interrogatory No. 7, please produce:
(1) a curriculum vitae or resume, including a list of publications authored by that person, if any, as well as any other information which would demonstrate the person's knowledge or qualifications to state the facts or express the opinions to which the person is expected to testify; and (2) all documents containing or evidencing the underlying facts or data described in your response to Interrogatory No. 7.

Response to Request for Production No. 2:

The curriculum of Mr. Stukenholtz has previously been provided to the State in the Affidavit of Dale Stukenholtz of August 17, 2006. When and if the Claimants employ Mr. Brockway, the requested information will be provided to the State.

Request for Admission No. 1

Admit that Attachment 1 is a true and correct copy of the point of diversion data maintained by the North Measurement District for wells in Township 7 North, Range 34 East.

SUPPLEMENTAL ANSWERS TO INTERROGATORIES AND
RESPONSES TO REQUESTS FOR ADMISSIONS AND PRODUCTION - 8

Analysis of Place-of-Use Elevations
31-11845
7 July 2008
Water Resources Field Services
(206) 581-8100, B. Contor

Introduction

This document is an analysis of recent GPS elevation data obtained from the IDWR FTP site on 6 July 2008 in a folder titled "31-11845." The files used were spreadsheet "31-11845.xls" and shapefiles "Topo clip.shp" and "Section.shp." The purpose of this analysis is to determine whether the GPS data contradict the 1988 findings of the IDWR water-right examiner or the Llamas affidavits.

The analysis procedure was to compare reported elevations of land-surface points to the inlet-ditch elevation, after allowing for ditch freeboard at the inlet and adjusting for a gradient to cause water to flow to lands distant from the inlet point.

This analysis confirms that the acreage indicated as irrigated by the water-right examiner and the Llamas affidavits is capable of receiving water from the ditch system. A more conservative analysis that biases both the inlet elevation and land-surface elevations towards a reduction in potential irrigation reduces the acreage somewhat but still indicates that the lands can be watered from the existing ditches.

A separate document discusses the ditch-bottom elevation data.

1. Procedure

- a) Elevation points. The points identified as "Topo_poi.shp" in file "31-11845.xls" were plotted in GIS using the X and Y coordinates in fields "Northing (Y)" and "Easting (X)." This data set appeared to be incomplete; bands across the place of use had no points.

To fill in the missing areas, additional points were hand digitized along the contour lines in data file "Topo clip.shp." Except where contours were far apart, only the whole-foot contours were plotted.

In the figures (all figures appear at the end of the document), the two different types of elevation points may be identified by different symbols and by the fact that the hand-digitized points fall in linear patterns.