

Name of Party Filing Document:

UNITED STATES OF AMERICA

Attorneys' Names and Addresses:

SUE ELLEN WOOLDRIDGE
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Environment and Natural Resources Division

LARRY A. BROWN
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Natural Resources Section
Environment and Natural Resources Division
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Boise, Idaho 83724
Ph.: (202) 305-0435 FAX: (202) 305-0274

**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 Numbers: 37-07426 and 37-08165
	)	
	)	AFFIDAVIT OF LARRY A. BROWN
Case No. 39576	)	IN SUPPORT OF MOTION TO
	)	GRANT THE UNITED STATES'
	)	OBJECTIONS FOR FAILURE TO
	)	PROSECUTE

State of Maryland	)	
	)	ss.
County of Anne Arundel	)	

I, Larry A. Brown, being first duly sworn, do depose and state:

1. My name is Larry A. Brown. I am attorney of record for the United States of America in the above-captioned subcases.

2. I have personal knowledge of the following facts:

a. On March 10, 2006, the United States Department of the Interior, Bureau of Land Management (BLM), Idaho State Office filed objections to Water Right Claim Numbers 37-07426 and 37-08165 because 20 acres of public land were designated as an irrigation place of use, and private agricultural use of the public land was not authorized.

b. In May, 2006 I attempted to call the Claimants using phone numbers of record and found that (208) 352-4460, (208) 352-4462, and (208) 352-4349 were all disconnected. Through diligent research, I found a phone number for Mr. Randy Erkins, the Claimants' son. On May 30 and May 31, 2006, I called the phone number for Mr. Randy Erkins and left messages asking Mr. Erkins to call me regarding BLM's objections to the water right claims at issue in the above-captioned subcases. I did not receive return phone calls. In early July, 2006, I was informed that an Initial Hearing in the above-captioned subcases was going to be held in Gooding, Idaho on August 24, 2006. On July 13, 2006, I again called the number for Mr. Randy Erkins, spoke with Mr. Erkins, and explained BLM's objections. Mr. Erkins explained that the private property where the water was used and the water rights were tied up in two bankruptcy proceedings, and said he wasn't sure he could do anything. I asked him to have the trustee or the trustee's lawyer give me a call and I then sent Mr. Erkins the e-mail attached hereto as Attachment 3. I did not receive any communication of any kind from anyone regarding any bankruptcy proceeding that may involve these water right claims.

c. I traveled from Washington D.C. to Gooding, Idaho to attend the Initial Hearing held on August 24, 2006. Mr. Randy Erkins was present for the general introduction of the Initial Hearings and explained that a court order from Florida may have an impact on the Snake River Basin Adjudication proceedings in the above-captioned subcases. Mr. Randy Erkins was not present when the Special Master called for Initial Hearing of the above-captioned subcases. Neither the Claimants, nor Claimants' representatives, appeared at the Initial Hearing.

d. On September 8, 2006, the Special Master set a deadline for filing any motions related to a possible Federal Bankruptcy Order, ordering such motions to be filed not later than November 17, 2006. I am informed that no such motions were filed.

e. On November 29, 2006, the Special Master held a telephonic Hearing and Status Conference. Neither the Claimants, nor Claimants' representatives, appeared.

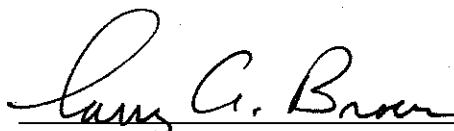
f. On December 12, 2006 I telephoned the law office of H. James Magnuson, Coeur d'Alene, Idaho, attorney of record for Robert And Bernardine Erkins in Bianco v. Rollie Newton & Company, Robert A. Erkins, and Petros G. Eliopulos, United States Court of Appeals for the Ninth Circuit No. 03-35431. See Status Report of Bankruptcy Proceeding, attached hereto as Attachment 4. I briefly explained previous SRBA proceedings to Mr. Magnuson, and he informed me that the Claimants lived out of state and probably did not receive notice of any SRBA proceedings. I told Mr. Magnuson that I intended to file a Motion to Grant the United States' Objections for Failure to Prosecute and would send him a copy of the Motion and supporting documents so that he could send them on to the Claimants. I also explained that the Special Master would probably set a hearing and that the Claimants or the Claimants lawyer

could appear at the hearing by telephone, and instructions for dialing would be included on the Order. On December 12, 2006, I mailed to Mr. Magnuson a copy of the United States' Objections filed in the above-captioned subcases and a copy of the Special Master's Order Setting Deadline and Status Conference dated September 8, 2006.

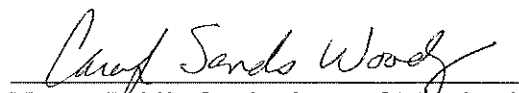
g. Attachment 1 to this Affidavit is a description of Water Right Number 37-07426 that I caused to be drafted by water rights specialists employed by the BLM. The BLM water rights specialists have assured me that Attachment 1 would resolve the BLM's objection to Water Right Number 37-07426 and should conform to Idaho Department of Water Resources standards.

f. Attachment 2 to this Affidavit is a description of Water Right Number 37-08165 that I caused to be drafted by water rights specialists employed by the BLM. The BLM water rights specialists have assured me that Attachment 2 would resolve the BLM's objection to Water Right Number 37-08165 and should conform to Idaho Department of Water Resources standards..

DATED this 12th day of December, 2006.


Larry A. Brown

Subscribed and sworn to before me this 12th day of December, 2006.


Notary Public for the State of Maryland
My Commission Expires: 3/1/10

11/01/2005

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-7426

NAME AND ADDRESS: ROBERT A ERKINS
PO BOX 108
BLISS ID 83314

BERNARDINE M ERKINS
PO BOX 108
BLISS ID 83314

SOURCE: SPRINGS

TRIBUTARY: CLOVER CREEK

QUANTITY: 3.980 ~~4.999~~ CFS
600.00 AFY

PRIORITY DATE: 03/23/1975

POINT OF
DIVERSION: T04S R13E S29 SKSW Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION FROM STORAGE	01/01 12/31	600.00 AFY
IRRIGATION STORAGE	01/01 12/31	600.00 AFY
IRRIGATION	04/01 11/01	<u>3.980</u> ~~4.999~~ CFS
~~FISH PROPAGATION~~	~~01/01 12/31~~	~~600.00 AFY~~

PLACE OF USE: IRRIGATION Within GOODING County

T04S R13E S30	SENE	9.0	T04S R13E S30	NESE	40.0
T04S R13E S30	SWSE	30.0	T04S R13E S30	SESE	40.0
T04S R13E S31	NENE	40.0	T04S R13E S31	NWNE	40.0
~~T04S R13E S31~~	~~SWNE~~	~~20.0~~			

~~FISH PROPAGATION Within GOODING County~~

~~T04S R13E S29 SKSW~~

IRRIGATION FROM STORAGE same as IRRIGATION

199.0 ~~219~~ ACRES TOTAL

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

This right is conditioned upon completion of the appropriation in accordance with the statutory procedure for appropriation of water rights. This right remains subject to all conditions set forth in the permit upon which this right is based, and will be subject to all conditions set forth in the license issued by IDWR upon completion of the statutory appropriation process.

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.

11/01/2006

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-8165
NAME AND ADDRESS: ROBERT A ERKINS
PO BOX 108
BLISS ID 83314

BERNARDINE M ERKINS
PO BOX 108
BLISS ID 83314

SOURCE: WHITE ARROW HOT SPRING TRIBUTARY: CLOVER CREEK

QUANTITY: 3.000 CFS

PRIORITY DATE: 06/30/1983

POINT OF
DIVERSION: T04S R13E S30 SENE Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4/01 10/31	3.000 CFS
RECREATION	1/01 12/31	0.300 CFS
DOMESTIC	1/01 12/31	0.060 CFS
HEATING	1/01 12/31	3.000 CFS
FISH PROPAGATION	1/01 12/31	3.000 CFS

PLACE OF USE: IRRIGATION Within GOODING County

T04S R13E S30	NESE	30.0	T04S R13E S30	SWSE	40.0
T04S R13E S30	SESE	30.0	T04S R13E S31	NENE	20.0
T04S R13E S31	NWNE	30.0	~~T04S R13E S31~~	~~SENE~~	~~20.0~~
T04S R13E S31	SENE	20.0			
<u>RECREATION same as IRRIGATION</u>					
<u>DOMESTIC same as IRRIGATION</u>					
<u>HEATING same as IRRIGATION</u>					
<u>FISH PROPAGATION same as IRRIGATION</u>					

170.0 ~~190~~ ACRES TOTAL

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

This right is conditioned upon completion of the appropriation in accordance with the statutory procedure for appropriation of water rights. This right remains subject to all conditions set forth in the permit upon which this right is based, and will be subject to all conditions set forth in the license issued by IDWR upon completion of the statutory appropriation process.

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: BASIS OF CLAIM - Permit

Brown, Larry (ENRD)

From: Brown, Larry (ENRD)
Sent: Thursday, July 13, 2006 3:17 PM
To: 'erkins@msn.com'
Cc: 'Scott_Beazer@blm.gov'; 'Nick.Spencer@idwr.idaho.gov'; 'Carter.Fritschle@idwr.idaho.gov'; Steve.Clelland@idwr.idaho.gov
Subject: SRBA Water Right Numbers 37-08165 and 37-07426; Claimant: Robert A. and Bernadine M. Erkins

Mr. Erkins:

Thank you for taking the time to speak with me this afternoon on the phone. My e-mail address is larry.brown@usdoj.gov and my phone number is (202) 305-0435.

The legal description in the place of use element of the above-referenced water right numbers that describes federal public lands is T4S, R13E, Sec. 31, SWNE (20.0 acres). The U.S. Department of the Interior, Bureau of Land Management (BLM) manages that property and filed objections to the water right claims. The BLM suspects that there may be a typographical error in that legal description, but if not, then that place of use would have to be deleted from the water right claims. If the place of use is deleted, there would also be a commensurate reduction in quantity.

Scott Beazer, a BLM water rights specialist in Boise, Idaho, will scan and e-mail to you a color copy of the objections.

Please review the water right descriptions and maps attached to the objections. Please try to determine the correct legal description of the place of use. It may help to have the Idaho Department of Water Resources (IDWR) review the claims, and compare the legal descriptions of the place of use to the deed. IDWR may even have an aerial photo of the property that would help determine the correct legal description of the place of use element of the water right claims.

If you need anything further from me or the BLM, please call me or send me an e-mail. Thanks again,

Larry

H. JAMES MAGNUSON
Attorney at Law
1250 Northwood Center Court
P.O. Box 2288
Coeur d'Alene, Idaho 83816
Telephone: (208) 666-1596
Fax: (208) 666-1700
Idaho State Bar # 2480

Attorney for Defendants-Appellees
ROBERT A. ERKINS and BERNARDINE ERKINS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALFRED J. BIANCO, as Plan Administrator to
the Estate of Gaston & Snow,

Plaintiff-Appellee,

v.

ROLLIE NEWTON & COMPANY, Trustee of
the Coastal Foreign Security Trust,

Defendant-Appellant,

ROBERT A. ERKINS; husband; et al.,

Defendants-Appellees,

and

PETROS G. ELIOPULOS, an individual, as
Trustee of the Lissalin Ultra Trust dated
February 27, 2001 as the Meglon Domestic Non
Grantor Trust dated February 27, 2001; et al.,

Defendants.

NO. 03-35431

D.C. No. CV-02-00142-BLW
District of Idaho, Boise

**STATUS REPORT OF
BANKRUPTCY
PROCEEDING**

COMES NOW, Robert A. Erkins and Bernardine Erkins, Defendants-Appellees and
debtors in Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Middle District of Florida,

Case No. 03-10502-ALP, by and through H. James Magnuson, their attorney in this proceeding, and, pursuant to Order of this Court, provide the following status report.

The Erkins Chapter 11 Bankruptcy proceeding for the U. S. Bankruptcy Court for the Middle District of Florida continues to be ongoing. The Erkins are represented by Jerome Shulkin, Esq.

The Bankruptcy Court issued an order dismissing the proceeding on June 16, 2006. The Erkins filed a Motion for Reconsideration on June 26, 2006, which has yet to be heard or acted on.

The Erkins anticipate filing a disclosure statement and plan a reorganization if the dismissal order is reversed. While in Chapter 11 the Erkins litigated with the Internal Revenue Service regarding its claim and resolved all other claims.

The Erkins suggest that the Court continue a stay of these proceedings for an additional ninety (90) days from the date herewith and direct the parties to submit a further report at that time.

Dated this 30 day of June, 2006.



H. JAMES MAGNUSON
Attorney for Robert A. Erkins
and Bernardine Erkins

CERTIFICATE OF MAILING

I hereby certify that on the 30 day of June, 2006, I caused to be served by U.S. mail, postage prepaid, a true copy of the foregoing to the following:

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Joseph E. Reinhardt
Douglas M. Marrano
The McCabe Group
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