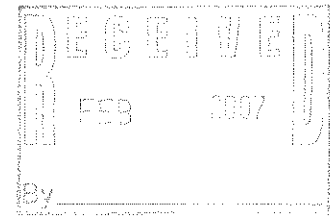


**AFFIDAVIT OF
MAX F. BEYELER**

STATE OF IDAHO)
)ss
County of Jefferson)



Max F. Beyeler, being first duly sworn, on his oath, deposes and says:

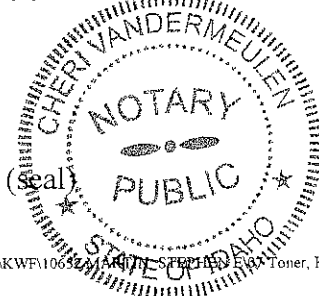
1. I am a citizen of the United State of America and reside at 465 N. Yellowstone Highway, Rigby, ID 83442. I am eighty-eight (88) years of age, having been born May 15, 1918. I have personal knowledge of the facts set forth herein, and make this affidavit from such personal knowledge.
2. I am quite familiar with the ranch land in Sections 20, 21, 28 and 29, of T9S., R46E., which I have been informed are now owned by Kevin Toner, Yodon Thondon, and Joel Porter, as well as the irrigation of such land over a period of several decades. My father, Fredrick Beyeler, homesteaded some of this land before or at about the time of my birth. My father built a cabin on the property, south of Crow Creek in the NWNW, Sec. 28 of said Township and Range and I recall how excited I was to spend the night in the new cabin when I was about four years of age or younger. By the time I was five years old, our family was living in the cabin, and I grew up on this ranch, helping with the farm work, including the irrigating. Most of the ditches were constructed before I was born or when I was very young, and have remained in the same location and irrigated essentially the same land since I first became aware. I was on the property last year (2006) and observed that the ditches are in the same location and the irrigation is still being done pretty much the same way as it always has been.
3. In the summer of 1929, when I was 11 years of age, I assisted by father and others as we began construction of a new ditch which diverted water from the north side of Sage Creek, in the SESW, Sec. 20, in said Township and Range, and which carried water to the east, across the road in the SWSE of said Section. The ditch carried water to a neighbor's property to the east, now owned by the Simplot Company, and for many years, water from this ditch contributed to the irrigation of several acres of our land in the SESE of Section 20, between the north side of Sage Creek and the road which runs through the north part of this quarter-quarter section.

4. For many years, my wife and I owned a ranch further up Sage Creek where we also resided. My brother-in-law, G. Harvey Kennington, bought the ranch on Crow Creek from my father and also homesteaded some additional property which became part of the ranch and continued the same irrigation practices, using the same system, until sometime in the early or mid 1980s. At that time, his son-in-law, Robert Beus, took over the operation of the ranch, and except for a year or two when the land was leased, personally did most of the irrigation. Because I often drove past and was also frequently present on the ranch, I observed that the irrigation continued essentially the same as it was always done from the time I was a small boy in the 1920s.
5. A map is attached to this affidavit, on which are depicted four ditches and the land irrigated from each. The ditch I helped construct, from the north side of Sage Creek, is not depicted because, I have been informed, the current owners do not claim a right from said ditch. The four ditches depicted include one which diverts from the south side of Sage Creek in the SESW, Section 20 and proceeds east to where it irrigates the lands shown in pink. The second is a ditch which heads on the north side of Crow Creek in the SWSE, Section 29, and flows in a northeasterly direction to irrigate the lands shown in yellow. The third ditch collects water, which runs off the land shown in yellow and pink and springs up about midway along and near the south line of the SESE, Section 20, and then flows essentially east to irrigate the lands shown in orange. The fourth ditch diverts water from the south side of Crow Creek in the NENE, Section 29, and runs east for about a quarter mile to a point near the east property line of the ranch where a branch runs north along the property line. This fourth ditch provides irrigation water for the lands shown on the map in blue.

DATED this 26th day of January, 2007.

Max F. Beyeler
Max F. Beyeler

SUBSCRIBED AND SWORN TO before me this 26th day of January, 2007.



Cheri Vandermeulen
Notary Public for Idaho
Residing at Idaho Falls, Idaho
My commission expires: July 7, 2009