

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
CHARLES A. HOMER
GARY L. MEIKLE
DONALD L. HARRIS
DALE W. STORER
MARIE T. TYLER
ROBERT M. FOLLETT
FREDERICK J. HAHN, III
KARL R. DECKER
THEL W. CASPER*
SHAN B. PERRY
AMELIA A. SHEETS
DeANNE CASPERSON**
ROBERT L. HARRIS

1000 RIVERWALK DRIVE, SUITE 200
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
FACSIMILE (208) 523-9518
E-MAIL RHARRIS@HOLDENLEGAL.COM

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn

*Also Licensed in Utah and Arizona

**Also Licensed in Missouri & Kansas

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MAY 20 2005

Department of Water Resources
Eastern Region

May 18, 2005

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Department of Water Resources
Eastern Region

Allen B. Ruberry
Idaho Department of Water Resources
Eastern Region
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

RE: Proof of Beneficial Use for Water Right No. 22-12900

Dear Allen:

Enclosed with this letter are a number of documents relating to SRBA Water Right Claim 22-12900. We appreciate your flexibility in allowing us additional time to provide evidence of the priority date associated with this right. As you may remember from our brief discussion over a month ago, the notices were sent to the widow of Junior Ostermiller (the presently-listed Current Owner) and she did not fully appreciate what these notices required her to do. Mr. Ostermiller died on October 8, 1994. We have worked as quickly as possible to provide the Department with the information that it has requested.

The enclosed documents are intended to prove a priority date of May 1, 1965 (not February 1, 1965 as presently listed on the Adjudication Claim Report) and to clean up some other issues related to this water right. We believe that the following discussion will be helpful in explaining the history of this water right and why some changes are necessary.

In order to better understand the following, please refer to the aerial photo with drawn quarter-quarter sections enclosed with this letter. First, as indicated by the Adjudication Claim Report, Water Right No. 22-12900 is appurtenant to property owned by Mr. Dyle Peterson. Mr. Peterson's property is highlighted in yellow and outlined in red on the aerial photo. This property was never owned by Junior Ostermiller, but Mr. Ostermiller filed this SRBA claim on Mr. Peterson's behalf because Mr. Ostermiller was leasing Mr. Peterson's property at the time. For some reason, Mr. Ostermiller is listed as the Current Owner. Enclosed with this letter is an

Amended Notice of Claim to a Water Right and a copy of a Motion to file an Amended Notice of Claim with the SRBA court that, among other things, proposes to change the Current Owner designation from Junior Ostermiller to Dyle Peterson.

As explained by the enclosed affidavits, Mr. Peterson leased his property to both Junior Ostermiller and Rex Howard beginning in 1965. The enclosed affidavits and other documents also demonstrate that both farmers pumped water from a well located in 06N, 41 E, **Sec. 3** (not 06N, 41E, **Sec. 2** as listed on the Adjudication Claim Report) from 1965 until 1986. The approximate location of this well is indicated on the aerial photo and is labeled as "correct point of diversion." Mr. Howard and Mr. Ostermiller also used this point of diversion to irrigate other property owned by each of these men and by Mr. Reese Godfrey under Water Right No. 22-2200. These properties are located to the north of Mr. Peterson's property. Therefore, Water Right No. 12-12900 is an expansion of Water Right No. 22-2200 and not an expansion of Water Right No. 12-0218 as indicated on the Adjudication Claim Report. The Amended Notice of Claim to a Water Right and the Motion to file an Amended Notice of Claim with the SRBA court seek to correct this error.

In 1986, Mr. Howard ceased leasing his half of Peterson's property and Mr. Ostermiller began leasing all of Mr. Peterson's property. At this point, Mr. Ostermiller decided that it would be easier to divert water from a well located in 06N, 41E, **Sec. 2** that he also owned. Mr. Ostermiller irrigated Peterson's property from this well in Sec. 2 until his death in 1994. Mr. Ostermiller did not file a transfer application to change the point of diversion for this right, but he did irrigate the property from the point of diversion in Sec. 2 until 1994.

This history is useful to understanding why Mr. Ostermiller, filing on behalf of Mr. Peterson, listed the point of diversion as being in Sec. 2 because at the time he filed the claim for Water Right No. 22-12900 around 1990, Mr. Ostermiller was actually using the point of diversion in Sec. 2 without realizing that he was using that point of diversion illegally. As set forth in the affidavits, the correct point of diversion for this water right is in Sec. 3. The Amended Notice of Claim to a Water Right and the Motion to file an Amended Notice of Claim with the SRBA court seeks to correct this error.

Beginning in 1995, Mr. Peterson began leasing all of his property to Mr. Layne Harris. Mr. Harris is the current lessee of the property and owns property south of Peterson's property. Back in 1995, Mr. Harris began diverting water from a well located south of Mr. Peterson's property in 06N, 41E, **Sec. 10** to irrigate the Peterson property. In the process of figuring out the history of Water Right No. 22-12900, Mr. Harris now realizes that he should have filed a transfer application to change the point of diversion and intends to file such an application for transfer in the next few months.

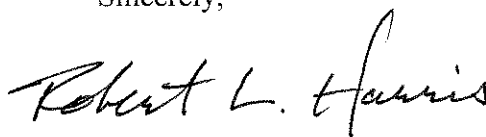
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Concerning the priority date, since this is a claim for enlargement of 22-2200, the priority date relates back to when the enlargement occurred. None of the three affiants could remember the exact date that water was first applied to the Peterson property, but they all know that it was sometime in the spring of 1965. It is highly unlikely that the property was first irrigated in February. Therefore, we believe that the correct priority date should be May 1, 1965 because this is the time that water was most likely first applied to the Peterson property.

In sum, the Amended Notice of Claim to a Water Right and the Motion to file an Amended Notice of Claim with the SRBA court seeks to change the Current Owner (from Mr. Ostermiller to Mr. Peterson), the priority date (from Feb. 1, 1965 to May 1, 1965), and the point of diversion (from 06N, 41 E, Sec. 2 to 06N, 41E, Sec. 3). It also is intended to clarify that Water Right No. 22-12900 is an expansion of Water Right No. 22-2200 rather than Water Right No. 22-02180. Water Right No. 22-12900 has been used every year since 1965 to irrigate Peterson's property and has not been forfeited. However, three different points of diversion have been used to divert water under this right. Given the history set forth in the enclosed documents, the point of diversion that should be partially decreed by the SRBA court is found in 06N, 41 E, Sec. 3 because that point of diversion was used when this enlargement was accomplished. The water right is currently being diverted from a well in 06N, 41E, Sec. 10 by Mr. Layne Harris to irrigate Mr. Peterson's property. Mr. Harris will file a transfer application to change the point of diversion within the next few months.

We hope the above history and enclosed documents are clear as to what has occurred with Water Right No. 22-12900. It appears that the SRBA was intended to cleanup situations just like this one. We appreciate your assistance with this matter. Please do not hesitate to call if you have any questions.

Sincerely,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

cc: Dyle Peterson
Layne Harris