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MAR 10 2008

DEPARTMENT OF
WATER RESOURCES

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. 27-04020
	)	
Case No. 39576	)	AFFIDAVIT OF WM. BART CONLIN
	)	IN SUPPORT OF MOTION FOR
	)	SUMMARY JUDGMENT
_____	)	

STATE OF NEW YORK	)
	) ss.
COUNTY OF QUEENS	)

William Bart Conlin, being first duly sworn upon oath, deposes and states as follows:

1. I am over 18 years of age and have first-hand knowledge of the facts set forth herein, to which I am fully competent to testify.
2. I am the president of Wm. Bart Conlin, Inc., which is the owner of the water right in subcase no. 27-04020 listed above.
3. I am temporarily residing in New York as a missionary for The Church of Jesus Christ of Latter-day Saints. My missionary service is complete in December 2008, and thereafter I will return to my residence at 250 E. 3rd N., Soda Springs, Idaho 83276. My temporary daytime telephone number is 718-672-2031.
4. The affidavit of Matthew C. Carney in support of Shoshone-Bannock Tribe's opposition to Bart Conlin's Motion for Summary Judgment was not timely filed

in accordance with Special Master Bilyeu's set time period. As the affidavit was not timely filed, any information included should be disregarded in the Motion for Summary Judgment.

5. The affidavit was prepared by Matthew C. Carney, a registered Professional Engineer in the State of Colorado. Mr. Carney prepared his affidavit from information taken off a topographical map and a groundwater table map. It is apparent that Mr. Carney has not been on the location of the spring nor has he seen where the water from the spring sinks back into the ground. He appears to be making his professional judgment solely on the basis of maps and without any physical observation or physical testing on his part.

If Mr. Carney had actually seen the property and observed the situation, he would have seen as my Father did over 50 years ago that the water does not flow into the Blackfoot River but sinks into the ground. The fact that the water does not flow into the Blackfoot River allowed my Father to originally set up the water irrigation system.

As stated in earlier oral testimony before Special Master Bilyeu, representatives of the Shoshone-Bannock Tribe came and inspected the water sinking into the ground 25 to 30 years ago. At that time, when they determined that the water did indeed sink into the ground and did not flow into the Blackfoot River, they did not protest our use of the water.

6. The U. S. Geological Service 7.5 minute quadrangle topographic map China Hat, Idaho (1981) showing the location of the Gardner Spring and a perennial stream flowing from the spring to the Blackfoot River is incorrect. I have personally

been associated with this spring and the little stream that flows from it since my parents bought the farm in 1954 when I was 12 years old. I know from personal observation that during those 50-plus years that the stream has never reached the Blackfoot River. In all those 50-plus years it has followed the same course and flowed approximately $\frac{1}{4}$ miles and sunk back into the ground. The stream sinks into the ground about $\frac{1}{4}$ miles from the Blackfoot River and has for the last 50-plus years. The map is incorrect, at least for the last 50 years, and it appears that the errors of previous maps have been perpetrated.

Cindy Bird from the Idaho Department of Water Resources has physically inspected the stream and could testify that it does indeed sink into the ground. All the members of my family and several of my friends who are familiar with the area could also testify that the stream does not and has not for the last 50-plus years reached the river. A physical inspection makes this an easily verifiable fact.

7. Mr. Carney further tries, without any physical observation or proof, to imply that the groundwater is connected to the Blackfoot River and therefore must be discharging into the Blackfoot River. The map he looked at shows the groundwater table to be approximately the same elevation as the Blackfoot River Channel. It may be easy to sit at a desk in Colorado and look at a map and state where the water flows in Caribou County Idaho, but without his physically inspecting the site and tracing the water, there is really no physical evidence for his conclusion. Mr. Carney has not met the burden of proof to prove his theory.

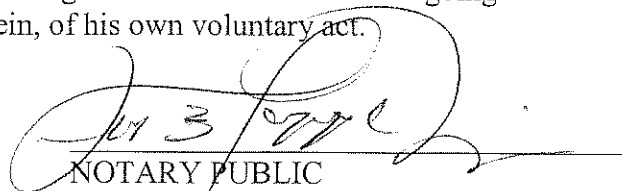
8. The fact that the water sinks back into the ground and becomes part of the groundwater some $\frac{1}{4}$ of a mile from the Blackfoot River is certainly not proof that I am diverting any water from the Blackfoot River.
9. There are numerous springs and streams that do flow into the upper Blackfoot River, but Mr. Carney has failed to physically show that Gardner Spring is one of them.
10. Since Mr. Carney's affidavit was filed late and since he has no physical proof that the water flows into the river, his affidavit should not be considered valid and should be disregarded in the consideration of the Motion of Summary Judgment.

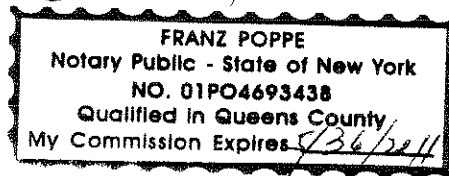
DATED this 6th day of March, 2008.



William Bart Conlin, President
Wm. Bart Conlin, Inc.

On the 6 day of March, 2008, personally appeared before me, William Bart Conlin, whose identity has been proven on the basis of satisfactory evidence, being first duly sworn, acknowledges that he executed the foregoing instrument, for the purposes stated therein, of his own voluntary act.


NOTARY PUBLIC



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was mailed, first-class, postage prepaid, on the 16th day of March, 2008, to the following:

1. Original to: Clerk of the District Court US Mail
Snake River Basin Adjudication Faxed
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
Facsimile No.: (208) 736-2121
2. One copy to the party who filed the objection at the following address:
Shoshone-Bannock Tribes US Mail
Jeanette Wolfley
202 N. Arthur
Pocatello, ID 83204
3. Copies to: IDWR Document Depository US Mail
P. O. Box 83720
Boise, ID 83720-0098
4. IDWR US Mail
Garrikk Baxter
P O Box 83720
Boise, ID 83720-0098
5. United States Department of Justice US Mail
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724
6. David Barber, Deputy Attorney General US Mail
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

Adjudication Bureau US Mail
Idaho Dept of Water Resources
900 N. Skyline, Ste A
Idaho Falls, ID 83401-3653



William Bart Conlin