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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 37-22223
	)	
Case No. 39576	)	AFFIDAVIT OF LEE R. PETERSON
	)	IN SUPPORT OF
	)	STANDARD FORM 1: OBJECTION,
	)	FILED BY JOHN BROWN, INC.
	)	(now known as BROWN RANCH, INC.)

AFFIDAVIT OF LEE R. PETERSON

STATE OF IDAHO)
) ss:
COUNTY OF BLAINE)

I, Lee R. Peterson, after being duly sworn upon oath, states as follows:

1. I served as the elected and appointed state watermaster for Water District 37 (Big Wood River and Tributaries) and Water District 37M (Little Wood River, Silver Creek and Tributaries) from January 1991 through October 2003.
2. My duty as watermaster was to distribute water during times of scarcity in accordance with the priorities of the decreed, licensed and permitted rights established for these streams. A time of scarcity exists each irrigation season (April 1 through October 31) anytime the available flow in a stream reach is not sufficient to satisfy all demands for water made in accordance with valid existing rights.
3. The following tasks were accomplished each year, with the assistance and direction of Idaho Department of Water Resources ("IDWR") staff, to satisfy my water distribution duties:
 - a. Maintain an updated list of all valid rights for each stream reach under my jurisdiction arrayed by priority date, ownership and point of diversion.
 - b. Review and revise procedures and protocols used to distribute natural flow in accordance with priority and to deliver other water, such as saved or stored water, to those having a right to its use. The term "saved water" used in this affidavit refers to water identified for diversion in accordance with a court decree recognizing the flow developed or saved by a project constructed, maintained and operated by the holder of the decreed right.
 - c. Prepare annual reports of water deliveries to each diversion and water right owner.

- d. Prepare annual reports assessing the cost of operating the water district prorated in accordance with deliveries to each water right owner.
4. The following tasks were accomplished, under the direction of IDWR staff, on a daily basis during times of scarcity:
- a. Determination of the “priority call (or cut) date” existing for that day based upon stream flows and water demands. The priority call date is the priority of the oldest water right(s) for which the water supply is not sufficient to provide all of the flow required to fill that right(s) on that date. The priority call date for each day of the irrigation season is reported in the watermaster’s annual report.
 - b. Adjustment of diversions to distribute water to rights in priority calling for water and to distribute stored, saved or other supplies of water legally available to water right owners at the diversion. Each day, I informed the deputy watermasters of the priority call date then in effect. The deputy watermasters, under my supervision, made necessary flow adjustments, usually on a schedule that allowed each diversion to be visited every second day, except Sundays.
 - c. Preparation of daily records documenting the flow rate at each diversion and the nature of the flow being diverted (natural flow, stored water or saved water.) The daily diversion information was entered on a printed form, termed a “delivery ticket” supplied by the Water District to be completed in the field by the deputy watermasters and filed each week with the watermaster’s office. Information from the delivery tickets provided the basis for preparing the annual water distribution reports and the annual assessments to collect water district expenses.
5. Each and every year that I served as watermaster, Right No. 37-892 held by the Upper Wood River Water Users Association (“UWRWUA”) recognizing water saved by construction, maintenance and operation of the Baseline Bypass Canal was included in the list of valid water rights. I always recognized that water was to be distributed to the holders of this right, without regard for priority call date, anytime the conditions set forth in the decree establishing this right were met. Based upon my review of the Water District records, Mr. Reid Newby, the watermaster preceding me, likewise included

right No. 37-892 in the list of valid rights to receive water during the years he served as watermaster.

6. A procedure for determining the amount of water credited to Right No. 37-892 was in effect each year that I served as watermaster. From time-to-time, the UWRWUA officers provided to the Water District an updated list of shareholders in good standing and eligible to receive water in accordance with their respective shares.
7. The procedure I used from 1991 to 2001 to distribute water under Right No. 37-892 determined the volume of water that could be distributed based upon the number of shares held by an UWRWUA shareholder. Shareholders, using UWRWUA's rotation procedure, were distributed water, within the parameters of right No. 37-892, in amounts large enough to beneficially use at their respective places of use. I understand that this procedure was a longstanding practice used by earlier watermasters, including Reid Newby. At the direction of IDWR staff, the procedure for distributing saved water was revised in 2002 to define the continuous flow rate available to each shareholder during the time that the entire flow of the river was in the Baseline Bypass Canal. This procedure in some cases prevented a shareholder from using saved water because the flow rate attributable to a small number of shares is not large enough to be delivered and used without rotating with other holders of saved water.
8. Every year that I was watermaster, the entire flow of the Big Wood River was diverted into the Baseline Bypass Canal at the diversion facility located just upstream of the Glendale Bridge when the river flow could be accommodated by the canal. The date that this condition occurred and the number of days that it existed varied from year to year depending upon stream flows and irrigation water demands.
9. The amount of saved water per UWRWUA share is larger during years of low stream flow and high irrigation water demand because the entire flow of the river can be put into the Baseline Bypass Canal early in the irrigation season (i.e., early June during some years). It is during such years that the saved water is of most value to the shareholders. On years of high stream flow and limited irrigation water demand, the river cannot be contained in the Baseline Bypass Canal until later in the season and the volume of water accumulated per share of UWRWUA is less than for a low runoff year. On such years, the shareholders have a reduced need for the saved water and some shareholders may not call for it.

10. Each and every year that I was watermaster, UWRWUA shareholders contacted me and/or the deputy watermaster to call for delivery of saved water accumulated under Right No. 37-892 in accordance with the shares at their disposal and deliveries of saved water were made each and every year. Saved water was delivered at the diversion facility requested by the shareholder. Saved water was distributed to some shareholders using canals diverting from the Baseline Bypass Canal and saved water was distributed to other diversions from Big Wood River and tributaries at various locations above Magic Reservoir.
11. Because the delivery ticket form used by the deputy watermaster for the reach of Wood River above Magic Reservoir did not have a specific column for noting distribution of saved water, all diversions were typically coded as natural flow. For this reason, the deputy watermaster rarely, if ever, noted that all or part of the water being diverted for a specific time period at any diversion was saved water even during times that saved water was being diverted and used.
12. I have reviewed hydrographs prepared by ERO Resources Corporation comparing flow rates available for diversion under the prevailing priority call date to the recorded rate of diversion for that date for a number of the diversions through which UWRWUA shareholders diverted saved water. Some of the hydrographs show periods during the peak of the irrigation season that the recorded diversion rate exceeds the rate authorized under the rights in priority at that diversion for the prevailing priority call date recorded in the watermaster's annual report. It is my understanding that the excess diversion rate at such times is attributable to the diversion of saved water even though the delivery ticket filled out for that date does not identify the excess diversion as such for the reasons described above.
13. During the irrigation season while the river is under watermaster regulation, all water diverted at each diversion is measured, reported and included in the determination of the Water District's annual assessment. Thus, to the extent that saved water was diverted, but not specifically identified as such, the amount of such saved water diversion would have been included within the assessment made to the water right owners using the diversion.
14. As watermaster, I distributed water to recorded water rights including those listed in the Frost Decree. I recognized diversion and use of water for stock watering purposes as an authorized use within this decree's provision allowing rights to be used for "irrigation and other

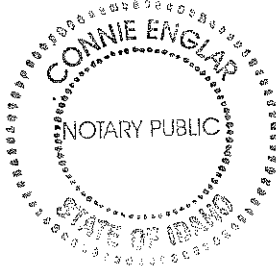
purposes.” Accordingly, I routinely distributed water for stock watering purposes as an incidental use of water diverted for irrigation purposes and occasionally as a sole purpose of use during the irrigation season. At the end of the irrigation season when the daily regulation of the river ended, the deputy watermasters left the head gates unlocked to allow water to be diverted for stock watering purposes before and after the irrigation season. Throughout my term as watermaster, I routinely observed water being diverted for this purpose in various canals, including the Baseline, District and Glendale canals, each fall until freezing conditions prevented delivery (usually in mid-to-late November) and in the early spring after ice left the canals (usually early-to-mid March) prior to the irrigation season and resumption of daily water master regulation. I understand this to be a longstanding practice predating my tenure as watermaster.

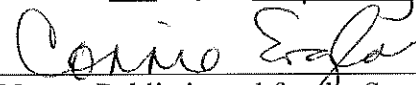
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 25 day of February 2008.


Lee R. Peterson

SUBSCRIBED AND SWORN to before me this 26th day of February 2008.




Notary Public in and for the State of Idaho
Residing at: Twin Falls County
My Commission Expires: Dec 11, 2012

CERTIFICATE OF MAILING

I certify that on March 6, 2008, I mailed the original and copies of this objection, including all attachments, to the following persons:

Original to:

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

Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

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



Josephine P. Beeman, Attorney