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LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL

June 25, 2008

RECEIVED

JUN 30 2008

**DEPARTMENT OF
WATER RESOURCES**

Shoshone-Bannock Tribes
Represented by:
Jeanette Wolfley
202 N. Arthur
Pocatello, Idaho 83202

Ken and Olivia Wernette
Represented by:
Jerry R. Rigby
P.O. Box 250
Rexburg, Idaho 83440-0250

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

David R. Tuthill, Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

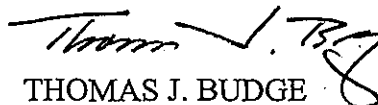
Michael and Connie Clawson
740 E. 450 N.
Firth, Idaho 83236

Re: SRBA Subcase No. 27-16C (Marion Walker)

Dear Folks:

Please find enclosed copies of Affidavits of LaVerrelle Stecklein, Gary A. Wright, and Marion P. Walker filed with the SRBA Court in Subcase No. 27-16C.

Sincerely,


THOMAS J. BUDGE

TJB:rr
Enclosures

RECEIVED

JUN 30 2008

DEPARTMENT OF
WATER RESOURCES

Thomas J. Budge, ISB No. 7465
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**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)

Case No. 39576)

Subcase No. 27-16C

AFFIDAVIT OF MARION P. WALKER

STATE OF IDAHO)

: ss.

County of Bannock)

MARION P. WALKER, being first duly sworn, deposes and states as follows:

1. I am of full age and I am competent to testify to the information contained in this Affidavit.
2. I have personal knowledge of the information contained in this Affidavit.
3. I wish to make a formal response to the Shoshone-Bannock Tribes' objection to a portion of my water rights as determined by the Upper Snake River Basin Adjudication (August 2, 1995).
4. I reject the idea that the Tribes can lay claim to the water that has been allocated to me simply because I chose to irrigate Tribal land that lies on the north bank of the re-channeled Blackfoot River.

5. In October of 1986, I purchased the remaining portion of the original farm owned by Mr. Robertson which contained 23.89 acres. The survey map is available from the Bingham County Recorder's Office, Map # 350339. The metes and bounds survey line clearly includes the two loops of Tribal land that fell on the north side of the new channel. Since the BLM survey of 2003 establishes the total acreage of the combined loops as 2.01 acres (which is surveyed to the center of the river, making it impossible to irrigate all of the acreage) I determine the farmable land to be approximately one and one-half acres.
6. According to the IDWR (dated 11/09/2005), I have been allocated 88.00 AFY to irrigate 22 total acres of land. If I were to discontinue the irrigation of Tribal land and that acreage was deducted from the total farm land, I am still within my rights of retaining the 88 acre feet of water to irrigate the remaining 22.39 acres of land. I fail to understand how simply irrigating Tribal land with my allocated water automatically gives the Tribes the right to claim those water rights. Objecting to the use of their Tribal land is one thing, but claiming the water which has been allocated to me should not be allowed.
7. I have been doing that which had been done by the previous owner (J. Dewey Robertson) ever since the new channel was established as had been previously agreed upon by himself and Fort Hall Business Council.
8. Regarding use of Tribal land on the north channel of the Blackfoot River, in February of 1943, J. Dewey Robertson purchased from Peter H. Johnston a tract of land containing 76.85 acres which he used for the purposes of farming. (Book 67 of Deeds on page 44 of the records of Bingham County, Idaho) This land was bordered on the

south by the Blackfoot River which is the northern boundary of the Fort Hall Reservation. In the late 1950's and continuing into the early 1960's the Blackfoot River was re-channeled for purposes of flood control. This newly created channel cut through two loops of farm ground owned by Mr. Robertson containing a total of 3.61 acres as surveyed to the center of the river by the BLM. This land then became inaccessible to Mr. Robertson. Due to the necessity of working cooperatively with all parties along both sides of the river for the mutual benefit of all, Mr. Robertson willingly gave up his claim to those cut-off loops in exchange for the use of Tribal land which fell on the north side of said channel (2.01 acres). I began working with Mr. Robertson on his farm in 1970 because he was reaching the age where extra help was appreciated. During these years of association with him, he explained some of the problems associated with the re-channelization project. Although he never gave me details of the agreement he had made with the Fort Hall Business Council, he often referred to the land he lost in exchange for the "use" of the Tribal land he gained. As the time approached when he began thinking of selling the farm and I expressed my desire to someday purchase it from him, on more than one occasion he explained that it was okay to use the Tribal land on the north side of the channel, but it would be very unwise to build any kind of a structure on either of the two loops because he did not have clear title to the loops in question.

9. Sometime in the late 1980's or early '90's I attended a meeting at the Bingham County Courthouse. The meeting was called by the Bingham County Commissioners in response to a question raised by the Fort Hall Business Council. My memory is vague as to what was discussed during that meeting, but one thing stands out as it

affected me personally: A Quitclaim Deed signed by Mr. Robertson giving clear title to the Fort Hall Agency for his lost loops of land was presented. I believe he would only do that in exchange for the right to use Tribal land now on the north side of the channel. I believe he felt he now had permission to farm the land in question as evidenced by aerial photographs dating back to 1961 which clearly show that the old channel was filled in on the north bank and cultivation was occurring.

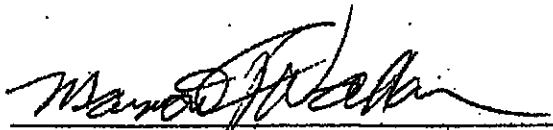
10. To further document the mutual agreement between himself and the Tribal Council, simply for historical information on my part, I met with Mr. Theron Cobbley a few months prior to his passing (September 28, 1979). We discussed any knowledge he had regarding the re-channelization project. He told me at that time that he, along with Mr. Robertson and Theodore Stecklein, were the original commissioners of the newly formed Flood Control District #7. He told me of the day when all three commissioners made a trip to Fort Hall for the express purpose of solidifying the arrangements with the Tribal Council and Mr. Robertson for the right to use the said loops. He was very adamant about the fact it was more than the right "to use" the land but an actual purchase of those loops. He went into some detail about how Mr. Robertson gave the Fort Hall Agency \$500.00 to purchase the land in question. There was no recording of such a transaction to my knowledge. Mr. Cobbley said he was not aware of the previously mentioned Quitclaim Deed. This information lends support to the idea that an agreement had indeed been negotiated with the Tribes which allowed Mr. Robertson the right "to use" Tribal land.
11. This information is further enhanced by a statement made by Mr. Robertson's daughter, Enid Williams. On March 17, 2008, I made telephone contact with her to

seek any information regarding a verbal agreement between her father and the Tribes. She responded most emphatically that it was much more than a verbal agreement, but that her father had in fact given the Indians the land on the south side of the river in exchange for their land on the north side.

12. After sorting through the foregoing information along with information supplied by Jeanette Wolfley (attorney for the Shoshone-Bannock Tribes), it is clear to me that considerable misunderstanding exists regarding Tribal land. Since it cannot be purchased or traded, such negotiations could only be pursued on the grounds of "right to use" rather than "ownership."
13. I believe the following is a fair proposal: If the Quitclaim Deed I referenced above exists, (which I have not yet been able to verify through court records) it then appears more than fair and reasonable that the Shoshone-Bannock Tribes would be willing to retain the land and water rights associated with said land in exchange for the right "to use" the land on the north side of the channel along with its water rights. The Shoshone-Bannock Tribes can therefore dismiss the objection filed against me regarding water rights and trespass, and wait for congressional action to resolve the entire issue regarding trespass and water rights. This can eliminate an otherwise stressful and extended process. This allows the Shoshone-Bannock Tribes 3.61 acres in exchange for the right "to use: 2.01 acres of Tribal land. This is based on the formula presented to me by the IDWR of four acre-feet of water per one acre of land, thus giving the Tribe 14.44 acre feet of water in exchange of 8.04 acre feet of water. Alternatively, I will pursue the option of filing a late claim with the IDWR for the lost water associated with the original lost 3.61 acres associated with the original

farm. I desire to be a good neighbor and to work cooperatively with the Tribal council and all parties involved.

DATED: This 27 day of March, 2008.


MARION P. WALKER, Affiant

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for said state, this ____ day of March, 2008.




Notary Public for Idaho
Residing at: Blackfoot
Commission expires: 5/26/2010

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing AFFIDAVIT OF MARION P. WALKER was mailed on March 24, 2008, with sufficient first-class postage, to the following:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Blackfoot Irrigation
Keith S. Hinckley
LaVerelle Stecklein
Jerry R. Rigby
P.O. Box 250
Rexburg, ID 83440-0250

USDI Bureau of Reclamation
U.S. Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

Karen T. Van Orden
35 N. 1200 W.
Blackfoot, ID 83221

Connie S. Clawson
Michael R. Clawson
740 E. 450 N.
Firth, ID 83236

Shoshone-Bannock Tribes
Jeanette Wolfley, Special Counsel
202 N. Arthur
Pocatello, ID 83202

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

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

Ken F. Wernette
Olivia Wernette
508 N. 600 E.
Firth, Idaho 83236

Rhitt Hamilton
Shayne Hamilton
839 West Riverton Rd.
Blackfoot, ID 83221

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing AFFIDAVIT OF MARION P. WALKER was mailed on June ~~26~~, 2008, with sufficient first-class postage, to the following:

Clerk of the District Court
Snake River Basin Adjudication
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Twin Falls, Idaho 83303-2707

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Keith S. Hinckley
LaVerelle Stecklein
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