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Attorneys for Janicek Properties LLC.

**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. 63-27475

**AFFIDAVIT OF MICHAEL P.
LAWRENCE IN SUPPORT OF
JANICEK'S MEMORANDUM OF
COSTS AND REQUEST FOR
ATTORNEYS' FEES**

State of Idaho)
) ss.
County of Ada)

MICHAEL P. LAWRENCE, being first duly sworn upon oath, deposes and states:

1. I am an attorney licensed to practice law in the state of Idaho. I make this affidavit based upon personal knowledge and to the best of my information and belief.
2. I am with the firm of Givens Pursley LLP and represent Janicek Properties LLC ("Janicek") in the above-captioned subcase. I billed the time I spent on this matter at a rate of \$160.00 to \$185.00 per hour.
3. I was the primary attorney working on this matter. I was supervised or assisted by other attorneys and staff as reflected in the itemized billing sheets for this matter that are attached

**AFFIDAVIT OF MICHAEL P. LAWRENCE IN SUPPORT OF JANICEK'S MEMORANDUM OF COSTS
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Page 1 of 7

hereto as Exhibit A. My time is reflected in the attached billing sheets under MPL. The other attorneys and staff who supervised or assisted me on this matter are identified on those billing sheets as follows:

MCC – Michael C. Creamer. Mr. Creamer is a partner at Givens Pursley and has been practicing law in Idaho for nineteen years, with particular expertise in natural resources and water law. Mr. Creamer was the supervising attorney on this matter and billed the time he spent on this matter at a rate of \$235.00 to \$250.00 per hour.

DRL – David R. Lombardi. Mr. Lombardi is a partner at Givens Pursley and has been practicing law in Idaho for twenty-two years, with particular expertise in litigation. Mr. Lombardi billed the time he spent on this matter at a rate of \$265.00 per hour.

GAP – G. Andrew Page. Mr. Page is an associate at Givens Pursley and has been practicing law in Idaho for one year. Mr. Page billed the time he spent on this matter at a rate of \$155.00 per hour.

KJN – Kelsey J. Nunez. Ms. Nunez is an associate at Givens Pursley and has been practicing law in Idaho for less than one year. Ms. Nunez billed the time she spent on this matter at a rate of \$155.00 per hour.

ASB – Alison S. Berriochoa. Ms. Berriochoa is a paralegal at Givens Pursley. Ms. Berriochoa billed the time she spent on this matter at a rate of \$65.00 per hour.

EBN – Eric B. Nelson. Mr. Nelson is a real estate paralegal at Givens Pursley with extensive experience in real estate title matters, having previously been employed as assistant manager of Lawyers Title of Idaho. Mr. Nelson billed the time he spent on this matter at a rate of \$175.00 per hour.

LLA – Lori L. Anderson. Ms. Anderson is on the administrative staff at Givens Pursley. Ms. Anderson did not bill the time she spent on this matter on an hourly basis.

CAROL or CG2 – Carol Gill. Ms. Gill is on the administrative staff at Givens Pursley. Ms. Gill did not bill the time she spent on this matter on an hourly basis.

CHELLI – Chelli Hinsdale. Ms. Hinsdale is on the administrative staff at Givens Pursley. Ms. Hinsdale did not bill the time she spent on this matter on an hourly basis.

4. SPF Water Engineering, LLC, assisted by providing consultant services. These services included on-site water flow studies, observation and analysis of water flow measurement devices installed by BOR and NMID, review and analysis of expert reports obtained from NMID and BOR through discovery, preparation of an expert report, and consultation with counsel on all of the aforementioned services and other matters requiring hydrologic expertise. The costs of SPF's services in the amount of \$3,183.44 are documented in the invoices attached to this affidavit as Exhibit B.

5. Because of the nature of the issues presented in this case, it required a considerable amount of time and specialized expertise. Such issues included whether Janicek was trespassing on a portion of Purdam Gulch Creek excavated by the U.S. Bureau of Reclamation ("BOR") and used by the Nampa & Meridian Irrigation District ("NMID") as a drainage facility and whether Idaho law allows the appropriation of waste water.

6. Representation of Janicek in this matter required a considerable amount of skill, experience, and ability in the areas of real estate and water law.

7. To my knowledge, the prevailing market rate for this kind of work in Ada County, Idaho, is between \$175 and \$300 per hour. The rates charged for the time spent by Givens Pursley LLP attorneys and staff on this action are within the prevailing charges for like work in

Ada County, Idaho, and throughout the State of Idaho when undertaken on an hourly or fixed rate, rather than a contingent fee agreement.

8. I exercised my professional judgment in reviewing all billings to ensure that charges were reasonable, necessary, and appropriate

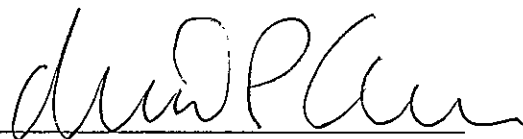
9. The costs reflected in Exhibit A and Exhibit B were necessary and reasonable. Photocopies of research, pleadings and correspondence were necessary for preparation of the briefs and communication with Janicek and the NMID's and BOR's counsel. The long distance telephone and facsimile charges were necessary for communication with the NMID, the BOR, and the SRBA Court, as were the courier and messenger charges. The professional fees for title research and water flow studies were also necessary to reasonably defend against arguments raised by the NMID and BOR.

10. This subcase involved an objection by the NMID to Janicek's water right recommendation in the SRBA and the BOR's response in support of that objection. The NMID and BOR asserted that Janicek was not entitled to a water right, and that Janicek had no right to appropriate waste water from the Purdam Gulch Creek. Janicek prevailed against the NMID and BOR on summary judgment and obtained an order recommending that water right number 63-27475 be decreed with the elements set forth in IDWR's recommendation, plus a remark describing the nature of the right to appropriate waste water. A copy of the Memorandum Decision and Order on Motion for Summary Judgment and Special Master's Report and Recommendation ("Decision and Order") is attached to this affidavit as Exhibit C. Neither the NMID nor BOR filed a motion to alter or amend the Decision and Order before the deadline specified therein.

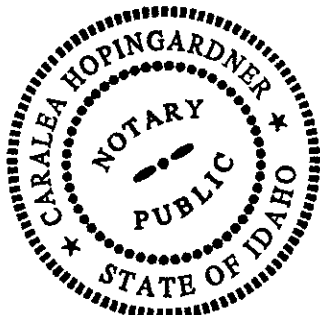
11. During the course of this litigation, Janicek served NMID and BOR each with two sets of discovery requests. An excerpt from NMID's responses to Janicek's first set of discovery requests is attached as Exhibit D. This excerpt contains NMID's Answer to Interrogatory No. 8.1, in which NMID vaguely describes its alleged recapture and reuse of waste waters in Purdam Gulch Creek. Exhibit E is an excerpt from NMID's responses to Janicek's second set of discovery requests. This excerpt contains NMID's Response to Request for Admission No. 18, in which NMID admits that it "does not divert and put to beneficial use all of the water in the Purdam Drain."

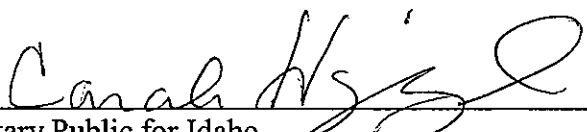
12. \$43,320.50 is the amount of attorney fees incurred in this matter, as shown in Exhibit A. \$3,939.41 is the amount of discretionary costs incurred in this matter, as shown in Exhibit A (\$755.97) and Exhibit B (\$3,183.44). These are reasonable amounts of attorney fees and costs to be assessed against the NMID and BOR for the representation of Janicek in this matter. Janicek benefited from the considerable knowledge of the subject matter held by the attorneys and staff within the firm of Givens Pursley LLP and the consultants within the firm SPF Water Engineering, LLC.

DATED this 28th day of August 2008.


Michael P. Lawrence

SUBSCRIBED AND SWORN to before me this 28th day of August, 2008.




Notary Public for Idaho
Residing at Borise
My commission expires: 5/8/2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28TH of August, 2008, the foregoing was filed, served, or copied as follows:

ORIGINAL FILED

Clerk of Fifth Judicial District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
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☒ U. S. Mail
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SERVICE

Nampa and Meridian
Ringert Clark
c/o Daniel V. Steenson & S. Bryce Farris
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Director of IDWR
P.O. Box 83720
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Chief of Natural Resource Division
Office of the Attorney General
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Boise, ID 83711-4449
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David W. Gehlert
US Department of Justice, Natural Resources
Environment & Natural Resources
1961 Stout Street – 8th Floor
Denver, CO 80294
Fax: 303-844-1350

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USDI Bureau of Reclamation
c/o US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
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Fax: 208-334-1414

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☐ Facsimile
☐ E-mail

Pioneer Irrigation District
c/o Scott L. Campbell
Moffatt Thomas Barrett Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701-0829
Fax: 208-385-5384

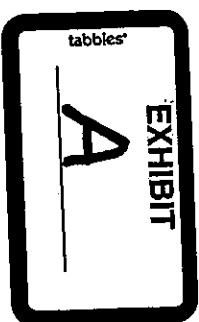
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Michael P. Lawrence

Givens Pursley LLP
Fees and Costs Listing thru August 27, 2008
Janicek Properties, LLC / Purdam Water Rights (9547 / 1)

Date	ID	Type	Status	Fees			Costs			Total Fees & Costs	Description
				Hours	Fee Rate	Amount	Quantity	Rate	Amount		
8/15/2007	MCC	Fee	Billed	0.20	235.00	47.00	0.00	0.00	0.00		Office conference re: Purdam gulch flow measurement.
8/23/2007	MPL	Fee	Billed	1.00	160.00	160.00	0.00	0.00	0.00		Review file; telephone conference with B. Janicek re: matter.
8/27/2007	MPL	Fee	Billed	1.00	160.00	160.00	0.00	0.00	0.00		Telephone conference with referring counsel J. Fischer re: case posture; telephone conference with N. Spencer and G. Baxter at IDWR re: Purdam Gulch facts and objection.
8/28/2007	MPL	Cost	Billed	0.00	0.00	0.00	1.00	1.00	1.00	Long Distance	Telephone conference with J. Shurte at IDWR re: Purdam Gulch facts; review NMID. BOR quitclaim deed referencing Purdam Drain; review Ada County records for Purdam Drain survey; telephone conference with Ada County Assessor's Office re: same; telephone conference with B. Farris (Irrigation District attorney) re: status conference.
8/28/2007	MPL	Fee	Billed	2.20	160.00	352.00	0.00	0.00	0.00		Draft and send letter to B. Farris re: obtaining evidence supporting objection. E-mail opposing counsel re: not filing motion for 706 report.
9/4/2007	MPL	Fee	Billed	0.20	160.00	32.00	0.00	0.00	0.00		Office conference regarding NMID objection.
9/6/2007	MCC	Fee	Billed	0.30	235.00	70.50	0.00	0.00	0.00		Review file; phone call to B. Janicek re: objection, hiring experts.
9/12/2007	MPL	Fee	Billed	1.20	160.00	192.00	0.00	0.00	0.00		Office conference regarding upcoming disclosure of experts and litigation strategy.
9/13/2007	MCC	Fee	Billed	0.40	235.00	94.00	0.00	0.00	0.00		
9/13/2007	MPL	Fee	Billed	1.30	160.00	208.00	0.00	0.00	0.00		Telephone conference with B. Janicek re: hiring experts, objections to other water rights; research M. Janicek and E. Quenzer settlements; conference with M. Creamer re: same.



Date	ID	Type	Status	Fees			Costs			Total Fees & Costs	Description
				Hours	Fee Rate	Amount	Quantity	Rate	Amount		
9/14/2007	MPL	Fee	Billed	1.50	160.00	240.00	0.00	0.00	0.00		Telephone conference with B. Janicek re: experts, title evidence, easements; telephone conference with S. Darling at TitleOne re: easements of record in favor of NMID; e-mail correspondence with S. Darling re: City-NMID License Agreement; review License Agreement.
9/20/2007	MPL	Fee	Billed	0.20	160.00	32.00	0.00	0.00	0.00		Phone call to B. Janicek re: hiring experts to measure water flows.
9/25/2007	MPL	Fee	Billed	0.40	160.00	64.00	0.00	0.00	0.00		Telephone conference with B. Janicek re: hiring experts, status of objection and trial schedule.
9/26/2007	MPL	Fee	Billed	0.90	160.00	144.00	0.00	0.00	0.00		Conference with M. Creamer re: experts, telephone conference with S. King at SPF re: water flow measurements.
10/1/2007	DRL	Fee	Billed	0.30	265.00	79.50	0.00	0.00	0.00		Conference with M. Lawrence re claim of Nampa & Meridian Irrigation District to waste ditch and recite previous similar claim based on historical filing; advise re use of expert witness to testify re search of Ada County records and potential use of Request for Admission to limit scope of claim.
10/1/2007	LLA	Cost	Billed	0.00	0.00	0.00	4.00	1.00	4.00	4.00	Fax Transmittal(s)
10/1/2007	LLA	Cost	Billed	0.00	0.00	0.00	4.00	1.00	4.00	4.00	Fax Transmittal(s)
10/1/2007	LLA	Cost	Billed	0.00	0.00	0.00	4.00	1.00	4.00	4.00	Fax Transmittal(s)
10/1/2007	LLA	Cost	Billed	0.00	0.00	0.00	3.00	1.00	3.00	3.00	Fax Transmittal(s)
10/1/2007	MCC	Fee	Billed	0.20	235.00	47.00	0.00	1.00	4.00	4.00	Fax Transmittal(s)
10/1/2007	MCC	Fee	Billed	0.30	235.00	70.50	0.00	0.00	0.00		Office conference regarding discovery strategy.
10/1/2007	MPL	Fee	Billed	1.90	160.00	304.00	0.00	0.00	0.00		Office conference regarding witness disclosure.
10/3/2007	MPL	Cost	Billed	0.00	0.00	0.00	1.00	500.00	500.00	500.00	Prepare Expert Witness Disclosure; conference with D. Lombardi re: expert testimony on title issue, NMID ownership; telephone conference with S. Darling at TitleOne re: expert testimony; telephone conference with B. Janicek re: Expert Witness Disclosure.
10/4/2007	LLA	Cost	Billed	0.00	0.00	0.00	1.00	0.15	0.15	0.15	TitleOne Corporation - Research Fees
10/12/2007	MPL	Fee	Billed	0.30	160.00	48.00	0.00	0.00	0.00		Review SPF water flow measurement proposal; e-mail comments re: same to S. King.
10/15/2007	LLA	Cost	Billed	0.00	0.00	0.00	7.00	0.15	1.05	1.05	Photocopies
10/19/2007	MPL	Fee	Billed	0.30	160.00	48.00	0.00	0.00	0.00		Telephone conference with B. Janicek re: Bureau of Reclamation response and objector's motion to continue trial date.

Date	ID	Type	Status	Fees			Costs		Total Fees & Costs	
				Hours	Fee Rate	Amount	Quantity	Rate	Amount	Description
10/22/2007	MCC	Fee	Billed	0.30	235.00	70.50	0.00	0.00	0.00	Office conference regarding trial scheduling.
10/22/2007	MPL	Fee	Billed	0.50	160.00	80.00	0.00	0.00	0.00	Outline issues; conference with M. Creamer re: motion to continue trial and Janicek strategy.
10/23/2007	L.A.	Cost	Billed	0.00	0.00	0.00	13.00	0.15	1.95	Photocopies
10/23/2007	MPL	Cost	Billed	0.00	0.00	0.00	1.00	3.38	3.38	Long Distance
10/23/2007	MPL	Fee	Billed	0.90	160.00	144.00	0.00	0.00	0.00	Telephone conference with B. Janicek re: hearing on motion to continue trial date; telephone conference with B. Farris (lrr. Dist. counsel) re: same; attend hearing.
10/25/2007	L.A.	Cost	Billed	0.00	0.00	0.00	7.00	0.15	1.05	Photocopies
11/26/2007	MPL	Fee	Billed	0.10	160.00	16.00	0.00	0.00	0.00	E-mail to S. King re: flow measurements.
12/13/2007	MCC	Fee	Billed	0.40	235.00	94.00	0.00	0.00	0.00	Office conference re status of discovery/summary judgment and trial scheduling issues
1/7/2008	MCC	Fee	Billed	1.00	250.00	250.00	0.00	0.00	0.00	Office conference re discovery issues; review SPF water measurement report; telephone call to S. King; forward comments to S. King.
1/7/2008	MPL	Fee	Billed	0.10	185.00	18.50	0.00	0.00	0.00	Conference with M. Creamer re: discovery requests.
1/8/2008	MPL	Fee	Billed	0.90	185.00	166.50	0.00	0.00	0.00	Draft NMID discovery request; analyze trespass issue.
1/9/2008	MPL	Fee	Billed	0.60	185.00	111.00	0.00	0.00	0.00	Draft discovery requests to NMID and BOR.
1/10/2008	L.A.	Cost	Billed	0.00	0.00	0.00	2.00	0.15	0.30	Photocopies
1/10/2008	MCC	Fee	Billed	0.50	250.00	125.00	0.00	0.00	0.00	Review legal status of prescriptive irrigation easements under Idaho law; telephone conference with S. King at SPF.
1/10/2008	MPL	Fee	Billed	5.10	185.00	943.50	0.00	0.00	0.00	Revise discovery requests.
1/11/2008	L.A.	Cost	Billed	0.00	0.00	0.00	1.00	0.15	0.15	Long Distance
1/11/2008	L.A.	Cost	Billed	0.00	0.00	0.00	2.00	0.15	0.30	Photocopies
1/11/2008	MPL	Fee	Billed	1.50	185.00	277.50	0.00	0.00	0.00	Edit discovery request to BOR.
1/14/2008	L.A.	Cost	Billed	0.00	0.00	0.00	8.00	0.15	1.20	Photocopies
1/14/2008	L.A.	Cost	Billed	0.00	0.00	0.00	1.00	0.15	0.15	Photocopies
1/14/2008	MPL	Fee	Billed	0.90	185.00	166.50	0.00	0.00	0.00	Review re: waste water arguments in light of J. Schroeder's delivery call order; review waste water cases.
1/15/2008	MPL	Fee	Billed	0.20	185.00	37.00	0.00	0.00	0.00	E-mail S. King re: revised report.
1/17/2008	MPL	Fee	Billed	0.60	185.00	111.00	0.00	0.00	0.00	Telephone conference with B. Janicek re: status; review S. King report.
1/21/2008	MPL	Fee	Billed	0.40	185.00	74.00	0.00	0.00	0.00	Review NMID discovery request.
1/22/2008	L.A.	Cost	Billed	0.00	0.00	0.00	1.00	0.15	0.15	Photocopies
1/22/2008	MCC	Fee	Billed	0.40	250.00	100.00	0.00	0.00	0.00	Review NMID discovery requests.

Date	ID	Type	Status	Fees			Costs			Total Fees & Costs	Description
				Hours	Fee Rate	Amount	Quantity	Rate	Amount		
1/22/2008	MPL	Fee	Billed	0.40	185.00	74.00	0.00	0.00	0.00		Review NMID's discovery request; mail same and Janicek discovery requests to B. Janicek.
1/23/2008	MCC	Fee	Billed	0.30	250.00	75.00	0.00	0.00	0.00		Coordinate discovery response preparation.
1/23/2008	MPL	Fee	Billed	0.30	185.00	55.50	0.00	0.00	0.00		Conference with M. Creamer re: NMIS discovery requests.
1/28/2008	MCC	Fee	Billed	0.10	250.00	25.00	0.00	0.00	0.00		Review final SPF reports.
1/28/2008	MPL	Fee	Billed	0.60	185.00	111.00	0.00	0.00	0.00		Review and comment SPF report; e-mail correspondence with S. King re: same.
2/7/2008	ASB	Cost	Billed	0.00	0.00	0.00	1.00	9.28	9.28	Copy Expense	Copy Expense reimbursement-9547-
2/7/2008	ASB	Fee	Billed	3.10	65.00	201.50	0.00	0.00	0.00		Conference with M. Creamer and M. Lawrence regarding research on Purdam Gulch Creek; conduct research at Idaho Historical Society regarding Purdam Gulch Creek; conference with M. Lawrence regarding same; conduct research at BLM regarding Purdam Gulch Creek; conference with M. Lawrence regarding same.
2/7/2008	MCC	Fee	Billed	0.80	250.00	200.00	0.00	0.00	0.00		Coordinate search for historical maps; review options for summary judgment arguments.
2/7/2008	MPL	Fee	Billed	1.40	185.00	259.00	0.00	0.00	0.00		Phone call to B. Janicek re status (message); discuss historical maps with M. Creamer; discuss research with A. Berriochoa; review maps; telephone conference with S. King re report; telephone with B. Janicek re Motion for Summary Judgment and S. King report.
2/8/2008	MCC	Fee	Billed	0.40	250.00	100.00	0.00	0.00	0.00		Review expert report and expert disclosure issues.
2/8/2008	MCC	Fee	Billed	0.40	250.00	100.00	0.00	0.00	0.00		Coordinate expert reports.
2/8/2008	MPL	Cost	Billed	0.00	0.00	0.00	2.00	0.15	0.30	Photocopies	Telephone conference with SPF re S. King CV; draft cover letter to opposing counsel and notice of service re expert statement; serve expert statement; telephone conference with B. Janicek re same; discuss same with M. Creamer.
2/8/2008	MPL	Fee	Billed	2.10	185.00	388.50	0.00	0.00	0.00		Copies
2/11/2008	CARO	Cost	Billed	0.00	0.00	0.00	1.00	15.40	15.40	Copy Expense	Review discovery requests and responses; telephone conference with P. Rassier at IDWR re: Burgess v. Salmon River Canal Co. decision.
2/11/2008	MCC	Fee	Billed	1.60	250.00	400.00	0.00	0.00	0.00		

Date	ID	Type	Status	Fees			Costs			Total Fees & Costs	
				Hours	Fee Rate	Amount	Quantity	Rate	Amount	Code	Description
2/11/2008	MPL	Fee	Billed	3.10	185.00	573.50	0.00	0.00	0.00		Review discovery requests with M. Creamer; telephone conference with B. Janicek re: discovery requests; telephone conference with S. King re flow measurements.
2/12/2008	MCC	Fee	Billed	0.60	250.00	150.00	0.00	0.00	0.00		Continued review of discovery responses from NMID and USBOR.
2/12/2008	MPL	Fee	Billed	4.80	185.00	888.00	0.00	0.00	0.00		Review NMID discovery responses; research waste water cases; e-mail S. King re Schmidt report; research natural stream cases; research irrigation district statutes.
2/13/2008	MCC	Fee	Billed	3.60	250.00	900.00	0.00	0.00	0.00		Review summary judgment strategy/issues; review draft of discovery responses; outline legal issues for summary judgment.
2/13/2008	MPL	Fee	Billed	5.50	185.00	1,017.50	0.00	0.00	0.00		Draft discovery responses; discuss same and summary judgment strategy with M. Creamer; telephone conference with B. Janicek re summary judgment; review BOR discovery response.
2/14/2008	MCC	Fee	Billed	5.50	250.00	1,375.00	0.00	0.00	0.00		Research and outline argument/briefing; telephone conference with T. Dominick.
2/14/2008	MPL	Cost	Billed	0.00	0.00	0.00	1.00	0.55	0.55	Long Distance	Begin drafting Motion for Summary Judgment; discuss summary judgment strategy with M. Creamer and J. Fereday; telephone conference with T. Dominick (Kandler case) re issues; review waste water cases; telephone conference with SRBA re hearing date.
2/14/2008	MPL	Cost	Billed	0.00	0.00	0.00	1.00	0.10	0.10	Long Distance	
2/14/2008	MPL	Fee	Billed	6.30	185.00	1,165.50	0.00	0.00	0.00		
2/15/2008	MCC	Fee	Billed	3.30	250.00	825.00	0.00	0.00	0.00		Order repayment contracts for NMID; draft/edit summary judgement brief.
2/15/2008	MPL	Fee	Billed	6.50	185.00	1,202.50	0.00	0.00	0.00		Begin drafting M. Lawrence, B. Janicek, S. King affidavits; telephone conference with title company re title policy; telephone conference and e-mail to S. King re groundwater model.
2/16/2008	MPL	Fee	Billed	0.20	185.00	37.00	0.00	0.00	0.00		Telephone conference with B. Janicek re Affidavit.
2/18/2008	MPL	Fee	Billed	0.80	185.00	148.00	0.00	0.00	0.00		Review and edit Memo and Motion for Summary Judgment.
2/19/2008	LLA	Cost	Billed	0.00	0.00	0.00	21.00	0.15	3.15	Photocopies	
2/19/2008	LLA	Cost	Billed	0.00	0.00	0.00	29.00	0.15	4.35	Photocopies	
2/19/2008	LLA	Cost	Billed	0.00	0.00	0.00	1.00	0.15	0.15	Photocopies	
2/19/2008	MCC	Cost	Billed	0.00	0.00	0.00	1.00	10.00	10.00	Messenger Service	

Date	ID	Type	Status	Fees			Costs			Total Fees & Costs	
				Hours	Fee Rate	Amount	Quantity	Rate	Amount	Code	Description
2/19/2008	MCC	Fee	Billed	5.20	250.00	1,300.00	0.00	0.00	0.00		Review draft affidavits, summary judgment motion and review and revise memorandum in support of motion for summary judgment; telephone conference with Boise River water master re: return flows below Star Bridge.
2/19/2008	MPL	Cost	Billed	0.00	0.00	0.00	1.00	7.50	7.50	Messenger Service	Revise Memo and Motion for Summary Judgment; finalize discovery responses; conference at GP with B. Janicek and Louann Janicek; draft Notice of Hearing; finalize affidavits and finalize exhibits; serve and file Affidavits, Memorandum and Motion for Summary Judgment.
2/19/2008	MPL	Fee	Billed	7.70	185.00	1,424.50	0.00	0.00	0.00		
2/20/2008	LLA	Cost	Billed	0.00	0.00	0.00	33.00	0.15	4.95	Photocopies	
2/20/2008	LLA	Cost	Billed	0.00	0.00	0.00	312.00	0.15	46.80	Photocopies	
2/20/2008	MPL	Cost	Billed	0.00	0.00	0.00	1.00	0.28	0.28	Long Distance	
2/20/2008	MPL	Cost	Billed	0.00	0.00	0.00	1.00	7.50	7.50	Messenger Service	
2/20/2008	MPL	Fee	Billed	0.30	185.00	55.50	0.00	0.00	0.00		Send Amended Certificates of Service.
2/21/2008	MCC	Fee	Billed	0.60	250.00	150.00	0.00	0.00	0.00		Coordinate hearing/trial schedule matters; review USBOR systems operations report for Boise Project re drainage issues.
2/21/2008	MPL	Fee	Billed	0.30	185.00	55.50	0.00	0.00	0.00		Telephone conference and e-mail correspondence with D. Gehlert (BOR), B. Farris re hearing dates; telephone conference with SRBA Court re same.
2/25/2008	CG2	Cost	Billed	0.00	0.00	0.00	56.00	0.15	8.40	Photocopies	
2/25/2008	CG2	Cost	Billed	0.00	0.00	0.00	235.00	0.15	35.25	Photocopies	
2/25/2008	LLA	Cost	Billed	0.00	0.00	0.00	3.00	0.15	0.45	Photocopies	
2/26/2008	MPL	Fee	Billed	0.20	185.00	37.00	0.00	0.00	0.00		Telephone conference with S. King re trial date availability; e-mail correspondence with SPF re same.
2/27/2008	MCC	Fee	Billed	0.30	250.00	75.00	0.00	0.00	0.00		Review hearing and briefing schedule issues.
2/27/2008	MPL	Fee	Billed	0.60	185.00	111.00	0.00	0.00	0.00		Telephone conference with B. Janicek re revised trial dates; e-mail correspondence and telephone conferences with opposing counsel re revised trial dates.
2/28/2008	CHELL	Cost	Billed	0.00	0.00	0.00	1.00	11.14	11.14	Courier Service	FedEx
2/28/2008	MPL	Fee	Billed	1.30	185.00	240.50	0.00	0.00	0.00		Draft Stipulation to Amend Trial Schedule; e-mail correspondence with opposing counsel re same.
2/29/2008	MPL	Fee	Billed	0.20	185.00	37.00	0.00	0.00	0.00		File Stipulation and proposed Order.
3/5/2008	MPL	Cost	Billed	0.00	0.00	0.00	1.00	0.10	0.10	Long Distance	
3/5/2008	MPL	Fee	Billed	0.30	185.00	55.50	0.00	0.00	0.00		Telephone conference with SRBA Court re: rescheduling order; e-mail same to opposing counsel.

Date	ID	Type	Status	Fees			Costs			Total Fees & Costs	
				Hours	Fee Rate	Amount	Quantity	Rate	Amount	Code	Description
3/14/2008	LLA	Cost	Billed	0.00	0.00	0.00	1.00	0.15	0.15	Photocopies	Review NMID response to Motion for Summary Judgment. Review response to motion for summary judgment. Prepare for Janicek meeting at GP on March 20.
3/14/2008	MPL	Fee	Billed	0.60	185.00	111.00	0.00	0.00	0.00		
3/17/2008	MCC	Fee	Billed	0.20	250.00	50.00	0.00	0.00	0.00		
3/19/2008	MPL	Fee	Billed	0.40	185.00	74.00	0.00	0.00	0.00		Review second round discovery requests.
3/20/2008	Mary	Cost	Billed	0.00	0.00	0.00	22.00	0.15	3.30	Photocopies	
3/20/2008	MCC	Fee	Billed	0.20	250.00	50.00	0.00	0.00	0.00		
3/20/2008	MPL	Cost	Billed	0.00	0.00	0.00	15.00	0.15	2.25	Photocopies	Draft second discovery requests; discuss same with M. Creamer; serve requests. Review issues for reply to US and NMID response on summary judgment. Review NMID and BOR response briefs; research cases cited. Review discovery responses from USBOR & NMID; review reply briefing strategy/arguments; research wastewater cases cited by USBOR & NMID. Draft reply brief; research cases; review discovery and affidavits. Review case law & refine arguments in response to citation to Seberne and Haga cases by objectors. Review outline of agreement. Research title and plat filings.
3/20/2008	MPL	Cost	Billed	0.00	0.00	0.00	2.00	0.15	0.30	Photocopies	
3/20/2008	MPL	Fee	Billed	1.00	185.00	185.00	0.00	0.00	0.00		
3/24/2008	MCC	Fee	Billed	0.30	250.00	75.00	0.00	0.00	0.00		Review opponent's briefs; draft introduction to reply brief. Draft reply brief; research caselaw; discuss strategy and research with M. Creamer.
3/24/2008	MPL	Fee	Billed	4.80	185.00	888.00	0.00	0.00	0.00		
3/25/2008	MCC	Fee	Billed	3.10	250.00	775.00	0.00	0.00	0.00		
3/25/2008	MPL	Fee	Billed	7.30	185.00	1,350.50	0.00	0.00	0.00		Purdam Drain Issue, research public records regarding drain easement. Review and edit reply memorandum in support of motion for summary judgment.
3/26/2008	MCC	Fee	Billed	2.50	250.00	625.00	0.00	0.00	0.00		
3/26/2008	MPL	Fee	Billed	3.20	185.00	592.00	0.00	0.00	0.00		
3/27/2008	EBN	Fee	Billed	0.40	175.00	70.00	0.00	0.00	0.00		Draft reply brief on motion for summary judgment. Finish and file reply brief.
3/27/2008	LLA	Cost	Billed	0.00	0.00	0.00	10.00	0.15	1.50	Photocopies	
3/27/2008	MCC	Fee	Billed	2.50	250.00	625.00	0.00	0.00	0.00		
3/27/2008	MPL	Fee	Billed	8.30	185.00	1,535.50	0.00	0.00	0.00		Review motion to participate.
3/28/2008	EBN	Fee	Billed	0.30	175.00	52.50	0.00	0.00	0.00		
3/28/2008	GAP	Fee	Billed	0.90	155.00	139.50	0.00	0.00	0.00		
3/28/2008	LLA	Cost	Billed	0.00	0.00	0.00	1.00	0.15	0.15	Photocopies	Draft reply brief on motion for summary judgment.
3/28/2008	LLA	Cost	Billed	0.00	0.00	0.00	120.00	0.15	18.00	Photocopies	
3/28/2008	MCC	Fee	Billed	6.00	250.00	1,500.00	0.00	0.00	0.00		
3/28/2008	MPL	Cost	Billed	0.00	0.00	0.00	23.00	0.15	3.45	Photocopies	Review motion to participate.
3/28/2008	MPL	Fee	Billed	8.00	185.00	1,480.00	0.00	0.00	0.00		
3/31/2008	LLA	Cost	Billed	0.00	0.00	0.00	4.00	0.15	0.60	Photocopies	
3/31/2008	MCC	Fee	Billed	0.30	250.00	75.00	0.00	0.00	0.00		

Date	ID	Type	Status	Fees			Costs			Total Fees & Costs	Description
				Hours	Fee Rate	Amount	Quantity	Rate	Amount		
3/31/2008	MPL	Fee	Billed	0.40	185.00	74.00	0.00	0.00	0.00		Draft letter to client re motion for summary judgment, and Pioneer Irr. District Motion to Participate; telephone conference with B. Farris (NMID) re: Pioneer Motion.
4/1/2008	MCC	Fee	Billed	0.50	250.00	125.00	0.00	0.00	0.00		Participate in expedited hearing on motion to participate
4/1/2008	MPL	Cost	Billed	0.00	0.00	0.00	1.00	0.35	0.35	Long Distance	Participate in hearing on motion to participate by Pioneer Irr. Dist. Telephone conference with A. Snook re Pioneer request for discovery documents.
4/1/2008	MPL	Cost	Billed	0.00	0.00	0.00	1.00	2.32	2.32	Long Distance	
4/1/2008	MPL	Fee	Billed	0.70	185.00	129.50	0.00	0.00	0.00		
4/2/2008	MPL	Fee	Billed	0.40	185.00	74.00	0.00	0.00	0.00		
4/3/2008	LLA	Cost	Billed	0.00	0.00	0.00	2.00	0.15	0.30	Photocopies	Telephone conference with B. Janicek re Pioneer Motion to Participate; e-mail SPF re testing. FedEx - 3/28/08 [Lori A to Snake River Basin Adjudication] Review summary judgment argument. Office conference re preparation for oral argument on summary judgment motion. Organize file; review briefs in preparation for hearing on Motion for Summary Judgment. Review arguments for summary judgment hearing. Prepare for hearing on Motion for Summary Judgment; telephone conference with B. Janicek re same; discuss strategy with J. Fereday and M. Creamer.
4/3/2008	LLA	Cost	Billed	0.00	0.00	0.00	2.00	0.15	0.30	Photocopies	
4/9/2008	MPL	Fee	Billed	0.60	185.00	111.00	0.00	0.00	0.00		
4/10/2008	LLA	Cost	Billed	0.00	0.00	0.00	1.00	11.14	11.14	Courier Service	
4/10/2008	MCC	Fee	Billed	0.30	250.00	75.00	0.00	0.00	0.00		Review arguments for summary judgment hearing. Prepare for hearing on Motion for Summary Judgment; telephone conference with B. Janicek re same; discuss strategy with J. Fereday and M. Creamer.
4/11/2008	MCC	Fee	Billed	0.20	250.00	50.00	0.00	0.00	0.00		
4/14/2008	MPL	Fee	Billed	0.80	185.00	148.00	0.00	0.00	0.00		
4/15/2008	MCC	Fee	Billed	1.40	250.00	350.00	0.00	0.00	0.00		
4/15/2008	MPL	Fee	Billed	9.40	185.00	1,739.00	0.00	0.00	0.00		
4/16/2008	MCC	Fee	Billed	1.50	0.00	0.00	0.00	0.00	0.00		Attend summary judgment hearing [no change for time].
4/16/2008	MPL	Fee	Billed	4.50	185.00	832.50	0.00	0.00	0.00		Prepare for hearing on Motion for Summary Judgment; argue motion; discuss matter with B. Janicek at Givens Pursley.
4/22/2008	LLA	Cost	Billed	0.00	0.00	0.00	11.00	0.15	1.65	Photocopies	Review discovery responses and supplemental responses; prepare for pretrial conference. Discuss pre-trial conference strategy with M. Creamer; review NMID second discovery responses.
4/22/2008	LLA	Cost	Billed	0.00	0.00	0.00	11.00	0.15	1.65	Photocopies	
4/29/2008	LLA	Cost	Billed	0.00	0.00	0.00	12.00	0.15	1.80	Photocopies	
4/30/2008	MCC	Fee	Billed	0.50	250.00	125.00	0.00	0.00	0.00		
4/30/2008	MPL	Fee	Billed	0.70	185.00	129.50	0.00	0.00	0.00		

Date	ID	Type	Status	Fees			Costs			Total Fees & Costs	Description
				Hours	Fee Rate	Amount	Quantity	Rate	Amount		
5/5/2008	LLA	Cost	Billed	0.00	0.00	0.00	38.00	0.15	5.70	Photocopies	Review Order on Summary Judgment; telephone call to B. Janicek re same.
5/5/2008	MCC	Fee	Billed	0.60	250.00	150.00	0.00	0.00	0.00		Prepare for pre-trial conference; review supplemental discovery responses.
5/5/2008	MPL	Fee	Billed	0.80	185.00	148.00	0.00	0.00	0.00		Review Order on Motion for Summary Judgment; draft letter to Janicek re Order.
5/6/2008	MPL	Fee	Billed	1.40	185.00	259.00	0.00	0.00	0.00		Research SRBA attorney fee decisions and availability of attorney fees against United States in SRBA.
5/7/2008	LLA	Cost	Billed	0.00	0.00	0.00	20.00	0.15	3.00	Photocopies	Review attorney fee statutes; telephone conference with B. Janicek re requesting attorney fees.
5/7/2008	MCC	Fee	Billed	1.00	250.00	250.00	0.00	0.00	0.00		Review parameters for filing attorney fee motion.
5/7/2008	MPL	Fee	Billed	0.80	185.00	148.00	0.00	0.00	0.00		Review cases re attorney fees and costs; draft and send letter to Janicek re requesting attorney fees and costs.
5/8/2008	LLA	Cost	Billed	0.00	0.00	0.00	2.00	0.15	0.30	Photocopies	Draft motion and memo re requesting costs and attorney fees.
5/8/2008	MCC	Fee	Billed	0.20	250.00	50.00	0.00	0.00	0.00		Revise Memo in Support of attorney fee request.
5/8/2008	MPL	Fee	Billed	1.10	185.00	203.50	0.00	0.00	0.00		Review draft of motion for fees and costs.
5/9/2008	MPL	Fee	Billed	2.80	185.00	518.00	0.00	0.00	0.00		
5/13/2008	MPL	Fee	Billed	2.20	185.00	407.00	0.00	0.00	0.00		
5/14/2008	MCC	Fee	Billed	1.30	250.00	325.00	0.00	0.00	0.00		
5/14/2008	MPL	Cost	Billed	0.00	0.00	0.00	1.00	0.45	0.45	Long Distance	
5/14/2008	MPL	Cost	Billed	0.00	0.00	0.00	1.00	0.38	0.38	Long Distance	
5/14/2008	MPL	Fee	Billed	2.90	185.00	536.50	0.00	0.00	0.00		Revise Memo re Costs and Attorney fees; discuss timing of filing Memo with M. Creamer; telephone conference with SM Blyeu re timing issues.
5/15/2008	LLA	Cost	Billed	0.00	0.00	0.00	4.00	0.15	0.60	Photocopies	Review caselaw and rules re deadline for filing motion for costs and attorney fees; e-mail correspondence with M. Creamer re same; telephone conference with B. Janicek re same and waiting to file motion.
5/15/2008	MPL	Fee	Billed	2.20	185.00	407.00	0.00	0.00	0.00		
7/4/2008	MCC	Fee	Billed	0.30	250.00	75.00	0.00	0.00	0.00		Review status of recommended order, motions to alter or amend and timing for filing motion for attorney fees.
7/11/2008	MPL	Fee	Billed	0.30	185.00	55.50	0.00	0.00	0.00		Review Idaho Rules of Civil Procedure re attorney fee requests; discuss strategy re same with M. Creamer.
7/18/2008	MCC	Fee	Billed	0.20	250.00	50.00	0.00	0.00	0.00		Office conference re motion for attorney fees.

Date	ID	Type	Status	Fees			Costs			Total Fees & Costs	
				Hours	Fee Rate	Amount	Quantity	Rate	Amount	Code	Description
8/7/2008	MPL	Fee	WIP	3.60	185.00	666.00	0.00	0.00	0.00		Revise Memo in Support of Motion for Attorney fees; research McCarran Amendment cases re award of costs and attorney fees against federal government.
8/11/2008	MPL	Fee	WIP	1.10	185.00	203.50	0.00	0.00	0.00		Revise draft Memo for fees and costs.
8/12/2008	MCC	Fee	WIP	1.10	250.00	275.00	0.00	0.00	0.00		Review McCarran amendment Jurisdiction and research limitations on state court award of attorney fees against United States.
8/12/2008	MPL	Fee	WIP	3.80	185.00	703.00	0.00	0.00	0.00		Revise draft Memo for fees and costs; draft Affidavit in support of Memo; discuss issues re awards of fees against federal government with M. Creamer.
8/14/2008	KJN	Fee	WIP	1.80	155.00	279.00	0.00	0.00	0.00		Research and review SRBA and Idaho Supreme Court decisions re: obtaining attorney fees against the United States; review draft motion for attorney fees. Office conference re: motion for attorney fees.
8/14/2008	MCC	Cost	WIP	0.00	0.00	0.00	1.00	0.32	0.32	Long Distance	
8/19/2008	MCC	Fee	WIP	1.50	250.00	375.00	0.00	0.00	0.00		
8/21/2008	MCC	Fee	WIP	0.30	250.00	75.00	0.00	0.00	0.00		Review and revise attorney fee motion. Draft and edit attorney fee brief.
8/22/2008	MCC	Fee	WIP	1.50	250.00	375.00	0.00	0.00	0.00		Review and edit M. Creamer edits to Memo for attorney fees and costs; research entry of final judgment and draft section on same for Memo; discuss same with M. Creamer; review NMID discovery responses re use of Purdam Gulch water.
8/25/2008	MCC	Fee	WIP	3.60	250.00	900.00	0.00	0.00	0.00		
8/25/2008	MCC	Cost	WIP	0.00	0.00	0.00	1.00	0.15	0.15	Long Distance	
8/25/2008	MCC	Cost	WIP	0.00	0.00	0.00	1.00	0.08	0.08	Long Distance	
8/26/2008	MPL	Fee	WIP	2.10	185.00	388.50	0.00	0.00	0.00		
8/26/2008	MCC	Fee	WIP	3.90	250.00	975.00	0.00	0.00	0.00		Continued review and edits to memorandum re: attorney fees with emphasis on availability of fee against U.S. in SRBA.
8/27/2008	MCC	Fee	WIP	1.00	250.00	250.00	0.00	0.00	0.00		Review, edit and finalize motion for attorney fees and supporting affidavit/materials.
8/27/2008	MPL	Fee	WIP	1.60	185.00	296.00	0.00	0.00	0.00		Review NMID and BOR discovery responses and add section to attorney fee memo re admissions in same; revise Memo.
8/28/2008	MCC	Fee	WIP	2.00	250.00	500.00	0.00	0.00	0.00		Finalize attorney fee request.
8/28/2008	MPL	Fee	WIP	0.60	185.00	111.00	0.00	0.00	0.00		Review and edit M. Lawrence affidavit and exhibits in support of Memo re attorney fees.

				Fees		Costs			Total Fees & Costs		
Date	ID	Type	Status	Hours	Fee Rate	Amount	Quantity	Rate	Amount	Code	Description
Report Totals				Unbilled:		6,372.00			0.55		6,372.55
				Billed:		36,948.50			755.42		37,703.92
						\$43,320.50			\$755.97		\$44,076.47
Recap				Attorney			Hours	Average rate	Fees	Costs	
				Costs						755.97	
				ASB			3.1	65.00	201.50		
				DRL			0.3	265.00	79.50		
				EBN			0.7	175.00	122.50		
				GAP			0.9	155.00	139.50		
				KJN			1.8	155.00	279.00		
				MCC			64.4	243.03	15,768.50		
				MPL			146.5	179.33	26,730.00		
				Fees					43,320.50		43,320.50
				Costs						755.97	755.97
				Report Totals							\$44,076.47

RECEIVED

SPF Water Engineering, LLC

600 E. River Park Lane, Suite #105

Boise, ID 83706

Tel: (208) 383-4140 Fax: (208) 383-4156

MAY 15 2008

Givens Pursley, LLP

Page 1 of 1

Invoice Date	Invoice Num
Mar 2, 2008	9549
Billing From	Billing To
Feb 03, 2008	Mar 01, 2008

Janicek Properties, LLC

4325 W. Chinden Blvd

Meridian ID 83642

Job ID: 653.0010 - Janicek Properties, LLC:

Job Name: 653.0010 - Janicek Properties, LLC

Manager: SKing

INVOICE

Activity ID	Description	Hours	Amount
Services:			
Scott N. King:	Senior Project Engineer	7.80	\$897.00
Total Services:			\$897.00
Reimbursable Expenses:			
2/11/2008	SPF Water Engineering LLC Mileage		\$19.17
Total Expenses:			\$19.17
Amount Due This Invoice:			\$916.17

This invoice is due upon receipt

Flow monitoring and report for Purdam Gulch Creek.



SPF Water Engineering, LLC

600 E. River Park Lane, Suite #105
Boise, ID 83706
Tel: (208) 383-4140 Fax: (208) 383-4156

Page 1 of 1

Invoice Date	Invoice Num
Feb 3, 2008	9382
Billing From	Billing To
Dec 30, 2007	Feb 02, 2008

Janicek Properties, LLC
4325 W. Chinden Blvd
Meridian ID 83642

Job ID: 653.0010 - Janicek Properties, LLC:
Job Name: 653.0010 - Janicek Properties, LLC
Manager: SKing

INVOICE

Activity ID	Description	Hours	Amount
Services:			
Scott N. King:	Senior Project Engineer	4.50	\$517.50
Total Services:			\$517.50

Amount Due This Invoice: **\$517.50**

PAID

This invoice is due upon receipt

SPF Water Engineering, LLC

600 E. River Park Lane, Suite #105
Boise, ID 83706
Tel: (208) 383-4140 Fax: (208) 383-4156

Page 1 of 1

Invoice Date	Invoice Num
Dec 30, 2007	9262
Billing From	Billing To
Dec 02, 2007	Dec 29, 2007

Janicek Properties, LLC
4325 W. Chinden Blvd
Meridian ID 83642

Job ID: 653.0010 - Janicek Properties, LLC:
Job Name: 653.0010 - Janicek Properties, LLC
Manager: SKing

INVOICE

Activity ID	Description	Hours	Amount
Services:			
Scott N. King:	Senior Project Engineer	2.00	\$200.00
Steve Bennett:	Designer	1.00	\$75.00
Total Services:			<u>\$275.00</u>
Reimbursable Expenses:			
12/29/2007	SPF Mileage		\$30.71
Total Expenses:			<u>\$30.71</u>
Amount Due This Invoice:			<u><u>\$305.71</u></u>

This invoice is due upon receipt

SPF Water Engineering, LLC

600 E. River Park Lane, Suite #105
Boise, ID 83706
Tel: (208) 383-4140 Fax: (208) 383-4156

Page 1 of 1

Invoice Date	Invoice Num
Dec 2, 2007	9135
Billing From	Billing To
Nov 04, 2007	Dec 01, 2007

Janicek Properties, LLC
4325 W. Chinden Blvd
Meridian ID 83642

Job ID: 653.0010 - Janicek Properties, LLC:
Job Name: 653.0010 - Janicek Properties, LLC
Manager: SKing

INVOICE

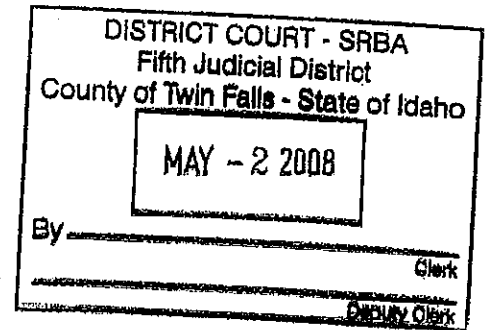
Activity ID	Description	Hours	Amount
Services:			
Scott N. King:	Senior Project Engineer	14.20	\$1,420.00
Total Services:			<u>\$1,420.00</u>
Reimbursable Expenses:			
11/30/2007	SPF Mileage		\$24.06
Total Expenses:			<u>\$24.06</u>
Amount Due This Invoice:			<u>\$1,444.06</u>

This invoice is due upon receipt

RECEIVED

MAY 05 2008

Givens Pursley, LLP



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 63-27475
Case No. 39576) (Janicek Properties, LLC)
)
) MEMORANDUM DECISION AND
) ORDER ON MOTION FOR SUMMARY
) JUDGMENT
)
) SPECIAL MASTER'S REPORT AND
) RECOMMENDATION

Summary of Ruling: The water in Purdam Gulch Creek, which includes seepage and waste water from the Nampa & Meridian Irrigation District, is public water of the state and therefore subject to appropriation and beneficial use in accordance with Idaho law, regardless of whether the creek is a natural stream or watercourse. The partial decree for Janicek's water right should include a remark regarding the use of wastewater. Janicek's water right was not initiated in trespass. The license agreement entered into by the NMID and Bradley Janicek in 1996 for the use of water from the Sky Pilot drain does not estop Janicek from asserting a claim to a water right from Purdam Gulch Creek.

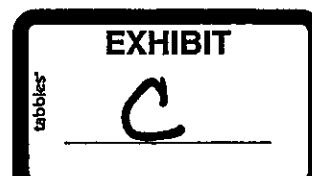
I. APPEARANCES

Michael C. Creamer and Michael P. Lawrence, Givens Pursley, LLP, Boise, Idaho, for claimant Janicek Properties, LLC.

S. Bryce Farris, Ringert Clark Chartered, Boise, Idaho, for objector Nampa & Meridian Irrigation District.

David W. Gehlert, United States Department of Justice, Denver, Colorado, for respondent United States of America, Department of Interior, Bureau of Reclamation.

Scott L. Campbell, Dylan B. Lawrence, Moffat, Thomas, Barrett, Rock & Fields, Chartered, Boise, Idaho, for intervenor Pioneer Irrigation District.



II. STATEMENT OF FACTS

The water right claim at issue herein is based upon beneficial use. The right is claimed by Janicek Properties, LLC ("Janicek"), and was recommended in the Basin 63, Part 2, *Director's Report* with the following elements:

Source: Purdam Gulch Creek
Quantity: 1.400 cfs
Priority Date: 03/01/1951
Point of Diversion: T03N R01W S15 SESENE
Purpose and Period of Use: Irrigation 03/01 to 11/15
Place of Use: T03N R01W S15 SWNE (34.00 acres) SENE (36.00 acres) 70 acres total

The source of the claimed right has been referred to in the briefing as Purdam Gulch, Purdam Slough, Purdam Slough Drain, Purdam Drain, and Purdam Gulch Creek. The name of source is not at issue herein, and accordingly the name used in the *Director's Report* -- Purdam Gulch Creek -- will hereinafter be used.

On June 1, 1915, the United States of America, Department of Interior, Bureau of Reclamation ("BOR") and the Nampa & Meridian Irrigation District ("NMID") entered into a contract ("1915 Contract") designed to meet two goals: 1) secure additional water supply for the NMID, particularly storage water from the Boise Project, which included Arrowrock and Deer Flat reservoirs; and 2) to construct a system of drains to remove canal seepage and irrigation infiltration water that had been raising the water table and making or threatening to make some lands within the NMID incapable of cultivation. 1915 Contract, pp. 1-2, Exhibit C to the *Affidavit of Michael P. Lawrence*. The 1915 Contract contemplated that the drains to be constructed would have sufficient capacity to drain seepage water that originated both in the lands lying above the NMID, as well as seepage water originating within the NMID itself. *Id.*, pp. 3-4. The 1915 Contract contemplated the construction of only "principal" drains, to which individual and community farm drains could be connected. *Id.*, p 4.

The parties to the contract (the BOR and the NMID) agreed, as between themselves, to an apportionment of the right to water developed in the drainage system.

Id., p. 7. The 1915 Contract also contemplated that some funds may need to be used as compensation for damages for interference with existing rights with sources of water in the “drains, sloughs or natural channels” within the NMID, where the deepening of such channels and the construction of the drains may interfere with such rights. *Id.*, pp. 16-17. The “Estimate of Cost” attached to the 1915 Contract states: “The proposed [drainage] ditches will follow the natural drainage courses as closely as feasible, and these channels will be straightened and deepened. Five Mile Creek, Wilson Slough, Purdam Gulch, Elijah Slough.” *Id.*, Estimate of Cost at p. 1.

The 70 acre place of use for Janicek’s claimed right is wholly within the boundaries of the NMID. *Affidavit of John P. Anderson*, p. 2. Janicek’s property receives NMID water delivered through the Kennedy Lateral. *Id.* Janicek’s property also receives drainage benefits by the NMID. *Id.* Janicek’s property is near the top of the Purdam Gulch Creek drain, which begins less than one mile to the east. *Id.* Janicek is the owner of the land through which Purdam Gulch Creek passes and upon which Janicek’s claimed point of diversion is located. *Affidavit of Bradley J. Janicek; Affidavit of Jerry Gregg*, Exhibit G (Map of Boise Project). Janicek is the record owner, in fee simple, of the real property that includes the bed and banks of Purdam Gulch Creek where said Creek crosses his property. *Affidavit of Bradley J. Janicek*. There are no instruments of record which describe the NMID’s real property interests in the bed and banks of Purdam Gulch Creek where it crosses Janicek’s property. *Id.*

The Purdam Gulch Creek drain, along the relevant stretch, is constructed to a depth of approximately twelve feet (12’). *Affidavit of Robert D. Schmidt*. Essentially all of the water that collects in the Purdam Gulch Creek drain is water from canal seepage and irrigation infiltration occurring within NMID lands. *Id.* The vast majority of the water in the Purdam Gulch Creek drain results from the interception of shallow ground water, and direct surface runoff may contribute water at some times of the year, depending on precipitation conditions. *Affidavit of Scott N. King*, p. 3.

By 1914, after several years of widespread irrigation both outside and within the boundaries of the NMID, and prior to the construction of the drain in Purdam Gulch Creek, the water table in the vicinity of Purdam Gulch Creek had risen to between zero

feet (0') and six feet (6'). *Affidavit of Jerry Gregg*, Exhibit E. In the absence of this irrigation, the water table would have been much lower. *Affidavit of Robert D. Schmidt*. The computer model of subsurface flow utilized by Robert Schmidt predicts that the pre-development water table would have been 13.6 feet below the bottom of the drain (which was constructed to a depth of approximately 12 feet). *Affidavit of Robert D. Schmidt*. In the absence of the shallow ground water that contributes to the Purdam Gulch Creek drain, it is unlikely that pre-development surface runoff into Purdam Gulch Creek would have yielded sufficient water in either volume or continuity of flow to be beneficially useable for the irrigation of farm land.

The NMID recaptures and re-uses water from the Purdam Gulch Creek drain downstream from Janicek's point of diversion. The NMID pumps water from the drain to the Kennedy Lateral to be used by NMID landowners. Additionally, water in the drain is diverted into a pressurized irrigation system for the St. James Place Subdivision. *Affidavit of John P. Anderson*. Neither the NMID nor the BOR have alleged that the NMID recaptures and re-uses all of its water that finds its way into the Purdam Gulch Creek drain, nor are there any facts in the record showing that Janicek's diversion has caused the flow of water in the drain to be insufficient for NMID's purposes of re-use. Upon leaving the boundaries of the NMID, the water in the Purdam Gulch Creek drain enters the boundaries of the Pioneer Irrigation District.

Neither the NMID nor the BOR have ever communicated to Janicek that his diversion works or his use of the water from the drain have caused injury to the drainage ditch, interfered with the functioning of the system, or hindered NMID's maintenance of the drain. *Affidavit of Bradley J. Janicek*.

III. ISSUES PRESENTED

The *Motion for Summary Judgment* filed by Janicek and the opposition thereto filed by the NMID and the BOR raise the following issues:

1. Was the water in Purdam Gulch Creek -- which is a drain constructed by the Bureau of Reclamation ("BOR") pursuant to a contract between the BOR and the

Nampa & Meridian Irrigation District ("NMID") dated June 1, 1915 – subject to appropriation on March 1, 1951?

2. Should the partial decree issued for Janicek's water right contain a remark for purposes of defining, clarifying, or administering the right?

3. Was Janicek's claimed water right initiated in trespass and therefore invalid?

4. Is Janicek estopped to assert a water right from the Purdam Gulch Creek drain by reason that one of the members of Janicek Properties, LLC (Bradley Janicek) had previously entered into a license agreement with the NMID for the use of water out of the Sky Pilot drain?

IV. MATTER DEEMED FULLY SUBMITTED FOR DECISION

Oral argument occurred in this matter on April 16, 2008. The parties have not requested an opportunity to submit additional briefing, nor does this Special Master require any additional briefing. Therefore, this matter is deemed fully submitted for decision the next business day, or April 17, 2008.

V. STANDARD OF REVIEW ON SUMMARY JUDGMENT

A motion for summary judgment shall be rendered if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c); *Olsen v. J. A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990). All controverted facts are liberally construed in favor of the non-moving party. *Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987). The burden at all times is upon the moving party to prove the absence of a genuine issue of material fact. *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 452 P.2d 362 (1969). The moving party's case must be anchored on something more than speculation, and a mere scintilla of evidence is not enough to create a genuine issue. *R. G. Nelson, A.I.A. v. Steer*, 118 Idaho 409, 797 P.2d 117 (1990). All doubts are to be resolved against the moving party, and the motion must be denied if the evidence is such that conflicting inferences may be

drawn therefrom and if reasonable people might reach different conclusions. *Doe v. Durtschi*, 101 Idaho 466, 716 P.2d 1238 (1986). The court is authorized to enter summary judgment in favor of non-moving parties. *Barlow's Inc. v. Bannock Cleaning Corp.*, 103 Idaho 310, 647 P.2d 766 (Ct. App. 1982).

VI. ANALYSIS

1. Was the water in the Purdam Gulch Creek drain subject to appropriation on March 1, 1951?

For the reasons set forth below, this Special Master holds that on the date of appropriation and beneficial use of the water of the Purdam Gulch Creek drain by Janicek's predecessor-in-interest (March 1, 1951), the water therein was public water of the state of Idaho and subject to appropriation and beneficial use.

The NMID and the BOR argue that the Purdam Gulch Creek drain is not a natural stream or watercourse¹, and therefore the water therein is not subject to appropriation. Janicek argues that the Purdam Gulch Creek drain is a natural watercourse, but further argues that irrespective of whether the drain is, or is not, a natural watercourse, Janicek's appropriation of water is valid because waste, seepage, and spring waters are subject to appropriation under Idaho Code § 42-107, which states:

42-107. Priority – Waste, seepage, and spring waters. – All ditches now constructed or which may hereafter be constructed for the purpose of utilizing seepage, waste or spring water of the state, shall be governed by the same laws relating to priority of right as those ditches, canals and conduits constructed for the purpose of utilizing the waters of running streams.

¹ The Idaho Supreme Court has defined a natural water course as:

[A] stream of water flowing in a definite channel, having a bed or sides or banks, and discharging itself into some other stream or body of water. The flow of water need not be constant, but must be more than mere surface drainage occasioned by extraordinary causes; there must be substantial indications of the existence of a stream, which is ordinarily a moving body of water.

Burgess v. Salmon River Canal Co., 119 Idaho 299, 305, 805 P.2d 1223, 1229 (2001); *Loosli v. Heseman*, 66 Idaho 469, 481, 162 P.2d 393, 398 (1945).

This Special Master agrees with Janicek and holds that a determination of whether the Purdam Gulch Creek drain is, or at sometime was, a natural watercourse is immaterial, and that the water in the drain is public water of the state and therefor was subject to being appropriated by Janicek's predecessor-in-interest.²

The argument put forth by the NMID and the BOR relies upon a the statement contained in the last sentence of *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927):

Where there has been no appropriation of waste or seepage water prior to the construction of the drain in which such water collects, said water is in the possession of the owner of the drain, and is therefore not subject to appropriation under [I.C. § 42-107].

Sebern, 44 Idaho at 418, 258 P. at 178. Janicek argues that this statement is *dictum*, and was not necessary for the determination made in that case. Janicek also points out that this statement has not since been cited by any Idaho court. For the reasons set forth below, this Special Master finds that this statement in *Sebern* is not inconsistent with the holding herein that Janicek has a valid water right with a source of the Purdam Gulch drain.

The statement in *Sebern* is in regard to appropriations of waste or seepage water pursuant to Idaho Code § 42-107. In reading Idaho Code § 42-107, it should be noted that the statute applies to “*utilizing* seepage, waste or spring water of the state . . .” Two key observations to be made are: 1) the statute envisions “*utilizing*” the water (i.e. beneficial use), as opposed to drainage of water for the purpose of elimination; and 2) the water is “*water of the state*” as opposed to private water.³ The statement made by the *Sebern* court presupposes that the person who constructed a ditch to collect seepage and waste water did so with the intent of beneficially using all of the water so collected. The

² There is considerable uncertainty in making a factual determination – either from the affidavits on file, or at trial on the matter – as to the hydraulic properties of Purdam Gulch Creek prior to human manipulation of the flow of water in the area. Whatever those hydraulic properties may have been, they have not existed for many years, and did not exist in 1951 at the time of appropriation of the subject right. Large scale irrigation had raised the water table in the Purdam Gulch and elsewhere, and a deep drain was excavated by the BOR for the purpose of lowering the water table. Janicek's predecessors-in-interest made the appropriation of water under the conditions as they essentially exist today, not under the conditions that existed prior to the excavation of the drain.

³ The common law doctrine relating to private water has been recognized in Idaho, and the definition is codified in I.C. §§ 42-212 and 213. It is not contended by any party in this subcase that the water in the Purdam Gulch Creek drain is private water.

statement simply does not address the situation where the person or entity that constructed the drainage ditch does not beneficially use all of the water so collected, leaving a balance of *water of the state* in the ditch. Any water collected in the drain but not appropriated for beneficial use by the person or entity that constructed the drain, remains water of the state, and as such it is subject to appropriation in accordance with Idaho law. For this reason, the determination of whether the Purdam Gulch Creek drainage structure is a natural stream or not is immaterial – what matters is that the water is water of the state.

The NMID argues that there is no difference between Janicek drawing water from the Purdam Gulch Creek drain and drawing water directly out of NMID's delivery canals. This Special Master is not persuaded by this argument because there is a clear distinction between the two.

The NMID's diversions from the running streams of the state are required to have some type of infrastructure at the point of diversion that is designed to regulate and control the amount of water diverted. In this way, the amount of water diverted is in line with the amount entitled to be diverted under the applicable water right(s), and the conveyance system can be turned off at the end of the applicable period of use. A ditch constructed for the purpose of intercepting and collecting seepage or waste water from saturated soils, on the other hand, does not and can not have any such infrastructure. Such a ditch does not even have a precise point of diversion. The ditch will collect whatever water drains into it, and there simply is no way to regulate, limit, or shut off the flow of water into the drainage ditch. Because of this inability to regulate and limit the flow of water into the ditch, it is certainly possible that the amount of public water collected in the drain exceeds that which can be beneficially used by the person or entity that constructed the ditch – in terms of quantity, annual volume, and period of use. Because any balance of unused water in the drainage ditch is still public water of the state, it is subject to appropriation under the laws of the state.

The "*dictum*" sentence from *Sebern* is not necessarily an incorrect statement of the law, but rather it is incomplete. A more complete statement is: Idaho Code § 42-107 provides that public waters of the state that are found in the form of seepage, waste,

or spring waters, may be collected by means of ditches and appropriated under the same laws relating to priority as the waters of running streams. Because the extent of such an appropriation is determined by the extent of beneficial use, in the event that the appropriator is unable to beneficially use all of the water so collected, any balance remaining in the ditch is subject to appropriation by other users in accordance with Idaho law. Where such appropriator is able to beneficially use all of the water so collected, and “where there has been no appropriation of waste or seepage water prior to the construction of the drain in which such water collects, said water is in the possession of the owner of the drain, and is therefore not subject to [subsequent] appropriation under [I.C. § 42-107].” *Sebern*, 44 Idaho at 418, 258 P. at 178.

Under this rule, it would not matter whether the right to the use of the water by the constructor of the ditch was based upon the beneficial use of the water so collected in the drain (as is contemplated by I.C. § 42-107), or whether the right to the use of the drain water is based upon the right of a paramount appropriator to recapture and reuse identifiable water previously diverted from a natural stream (as is the right of the NMID in the instant case). The alternative interpretation of the statement in *Sebern* essentially creates a license for the continued wasting of water by placing a servitude on the water which prevents it from being used by others until it comeslingles with a natural stream, i.e. the original appropriator is not using the water and others are precluded as well from using the water.

2. Should the partial decree issued for Janicek’s water right contain a remark for purposes of defining, clarifying, or administering the right?

At oral argument on summary judgment, the parties discussed whether a remark should be included in Janicek’s water right - should such right exist – regarding the legal effect of the water right having a source that includes waste water. Counsel for Janicek argued that no such remark would be necessary. Counsel for the NMID argued that any right of Janicek to use the waste water of the NMID should be qualified by a remark.

Under Idaho Code § 42-1411(2)(j), the director of IDWR may include in a director’s report “such remarks and other matters as are necessary for definition of the

right, for clarification of any element of a right, or for administration of the right by the director.” I.C. § 42-1411(2)(j). The *Director’s Report* for water right 63-27475 contains no remark regarding the fact that a substantial portion of the water in Purdam Gulch Creek drain is waste water and seepage coming from lands irrigated by water diverted from the Boise River under NMID’s water rights. Under Idaho law, the NMID has the right to recapture and re-use any of this water that can reasonably be identified as originating from water diverted under its water rights. *Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc.*, 101 Idaho 677, 680, 619 P.2d 1130, 1133 (1980)(citing *Colthorp v. Mountain Home Irr. Dist.*, 66 Idaho 173, 157 P.2d 1005 (1945)); *United States v. Haga*, 276 F. 41 (D. Idaho 1921). This right to recapture and re-use is unaffected by junior appropriations of the waste and seepage water. *Hidden Springs*, 101 Idaho at 680, 619 P.2d at 1133. The water so re-used by NMID is pursuant to the right(s) under which the water was first diverted, and not as an independent water right to the use of the seepage and drain water. *A&B Irr. Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746, 753, 118 P.3d 78. Such re-use by NMID would necessarily have to occur within the parameters of the right under which the water was diverted – importantly within the allowable place of use. The NMID is the paramount appropriator of the water that can be so identified, and as such the right of the NMID to capture and re-use this water is superior to Janicek’s right in two respects.

First, the NMID’s right is superior based on relative priority dates. Janicek’s right has a priority date of 1951, the NMID rights are much earlier. *NMID’s Memorandum in Opposition*, p. 3. Accordingly, any re-use of the water in the drain that is identifiably NMID water would be a use under those earlier priority dates. Secondly, and irrespective of the relative priority dates, NMID is the paramount appropriator and has the right to cease wasting the water, in good faith change the place or manner of wasting it, or to recapture it, so long as the NMID applies it to beneficial use within the parameters of the water right(s) under which it was diverted. *Sebern*, 44 Idaho at 418, 258 P. at 178 (citing *United States v. Haga*, 276 F. 41). Janicek does not have a vested right to such seepage and waste water as against the NMID’s paramount ownership.

In accordance with the foregoing, and despite the fact that no waste water remark was included in the *Director's Report*, for purposes of the administration of both Janicek's right and the NMID's paramount right(s), this Special Master finds and concludes that the partial decree issued for Janicek's water right should contain the following remark:

The source of this water right includes waste water. This right remains subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place or manner of wasting it, or to recapture it.

This Special Master finds the remark is necessary to define Janicek's right to show that the right is not subject to the same panoply of rights associated with a water right with a source that does not include waste water. Furthermore, such a remark prevents any injury resulting to the paramount appropriator.

3. Was Janicek's claimed water right initiated in trespass and therefore invalid?

The NMID argues that the Purdam Gulch Creek drain is a "facility owned, operated, and maintained by NMID," and that Janicek's diversion of water constitutes a trespass upon that NMID owned facility. *NMID's Memorandum in Opposition*, p. 6. Under Idaho law, one cannot initiate a water right in trespass. *Idaho Power Co. v. Buhl*, 62 Idaho 351, 111 P.2d 1088 (1941); *Jones v. McIntire*, 60 Idaho 338, 344, 91 P.2d 373 (1939). As explained below, this Special Master holds that Janicek's water right was not initiated in trespass

The affidavits on file in this subcase demonstrate that Janicek is the owner of record, in fee simple, of the real property where his point of diversion is located. *Affidavit of Bradley Janicek*, pp. 1-2. Furthermore, Janicek's diversion works in the Purdam Gulch Creek drain have not interfered with NMID's or BOR use of the drain. *Id.* p.2. The NMID describes the Purdam Gulch Creek drain as a "facility" of the NMID. *NMID's Memorandum in Opposition*, p. 2. There is no question that this facility – the Purdam Gulch Creek drain – is an inseparable component or fixture of the real property

upon which it lies. The nature and extent of NMID's property interest for this facility in Janicek's real property is not clearly described. It may be that the NMID has an easement by prescription over Janicek's property, or perhaps if the land had not been patented into private ownership prior to the construction of the ditch, the 1866 ditch rights-of-way act might be applicable. 43 U.S.C. § 661 (1866). As pointed out in Janicek's *Reply Memorandum*, neither the NMID nor the BOR have produced any recorded instruments showing a real property interest of the NMID or BOR in Janicek's real property. Suffice it to say that whatever the precise nature of the NMID to use Janicek's property, such interest allows use, not possession.

The traditional common-law elements for a cause of action in trespass are: 1) an invasion; 2) which interferes with the right of exclusive possession of the land; and 3) which is a direct result of some act committed by the defendant. *Mock v. Potlatch Corp.*, 786 F. Supp. 1545, 1548 (D. Idaho 1992). Further, the common-law requirement for trespass *quare clausum fregit* is that it must be against a possessory interest in real property. As such, an action for trespass does not lie against a property interest in the form of an easement, which is an incorporeal hereditament and not possessory.⁴ *Socony-Vacuum Oil Co. v. Bailey*, 202 Misc. 364, 365, 109 N.Y.S.2d 799, 801 1952 (citing Pollock's Law of Torts, 14th ed. 1939, p. 299; Tiffany, Law of Real Property, 3rd ed. 1939, Vol. 3, § 814; (Cf. *First Baptist Church v. Witherell*, 1832, 3 Paige 296 and *Shaw v. Beveridge*, 1842, 3 Hill 26 (in which trespass was held to lie for interference with right of owner of church pew on theory such right was not an easement but a property right and therefore 'real estate'))).

Whatever the nature of the NMID's interest in Janicek's property along the location of the Purdam Gulch Creek drain, such an interest is not for the exclusive possession of the real estate, rather it is Janicek who is entitled to such exclusive possession. Accordingly, the assertion that Janicek or his predecessors-in-interest have trespassed upon property owned by the NMID is without merit. Janicek's water right was not initiated, and has not been maintained in trespass.

4. Is Janicek estopped to assert a water right from the Purdam Gulch Creek drain?

The NMID asserts that Janicek is estopped to assert the subject water right because Janicek knows that it must get NMID permission to pump from a drain facility operated by the NMID. The factual underpinning of this argument is a license agreement entered into between Bradley Janicek and the NMID in 1996 that allowed Bradley Janicek to temporarily pump from the Sky Pilot drain. This Special Master finds this argument to be unpersuasive, and holds that Janicek is not so estopped.

As pointed out by Janicek in its *Reply Memorandum*, the factual relationship between Janicek's claim to a water right from the Purdam Gulch Creek drain and the temporary use of NMID water by Bradley Janicek's is insufficient to estop Janicek, and the agreement entered into by Bradley Janicek cannot be construed as an admission by Janicek Properties, LLC as to any issues in this subcase. One obvious distinction is that in 1951, a water right could be appropriated through diversion and beneficial use. In 1996, however, had Bradley Janicek sought a water right from the Sky Pilot drain, he would have needed to file an application for permit to appropriate the water. It is unlikely that Mr. Janicek would go to such measures if all he needed was a temporary use of water. Janicek's use of the water of the Purdam Gulch Creek drain, on the other hand, was not pursuant to a license agreement, and because the such use involved the application to beneficial use of public water of the state, prior to change in law in 1971 to a mandatory permit requirement, Janicek's water right was perfected upon such application to beneficial use. Accordingly, Janicek is not estopped to claim the right in the SRBA.

VII. ORDER AND RECOMMENDATION

In accordance with the foregoing, the *Motion for Summary Judgment* filed by Janicek Properties LLC is **granted**. Therefore, IT IS RECOMMENDED that water right

⁴ It should also be noted that a water right, which is a usufructory right and not possessory, is also an incorporeal hereditament, and as such a common law action for trespass will not lie for interference with a

63-27475 be decreed with the elements as set forth in the attached *Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)*.

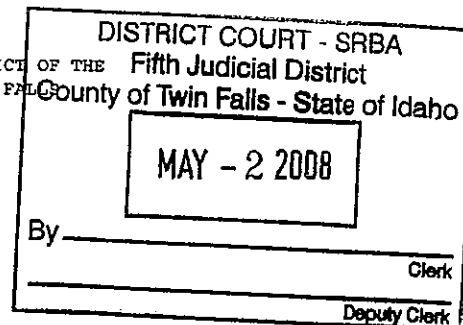
Dated May 2, 2008

A handwritten signature in black ink, appearing to read 'Theodore R. Booth', written over a horizontal line.

THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

water right.

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 63-27475

NAME AND ADDRESS: JANICEK PROPERTIES LLC
1284 S GOSLING WAY
EAGLE, ID 83616

SOURCE: PURDAM GULCH CREEK TRIBUTARY: MASON CREEK

QUANTITY: 1.40 CFS

PRIORITY DATE: 03/01/1951

POINT OF DIVERSION: T03N R01W S15 SSEENE Within Ada County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-01 TO 11-15	1.40 CFS

PLACE OF USE: Irrigation Within Ada County
T03N R01W S15 SWNE 34.0 SENE 36.0
70.0 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

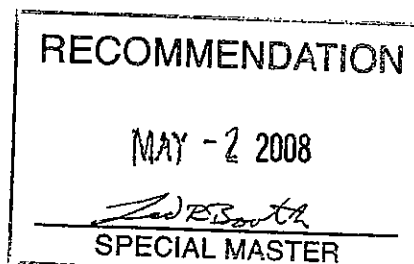
The source of this water right includes waste water. The right remains subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place or manner of wasting it, or to recapture it.

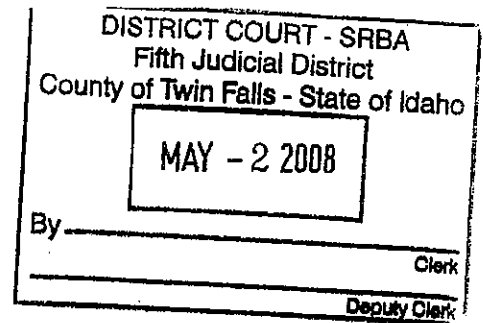
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication





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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

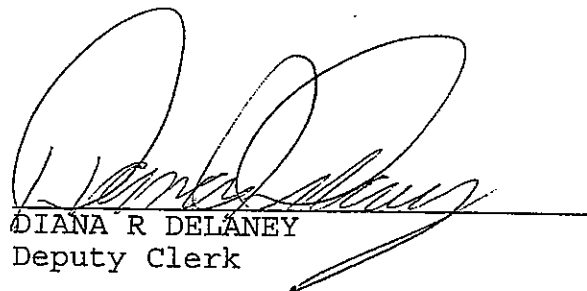
Water Right(s) : 63-27475

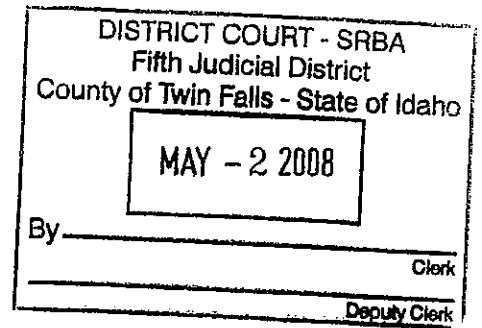
On May 02, 2008, Special Master THEODORE R. BOOTH issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED May 02, 2008.


DIANA R DELANEY
Deputy Clerk



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)
_____)

CERTIFICATE OF MAILING

Water Right(s): 63-27475

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on May 02, 2008, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

JANICEK PROPERTIES LLC
Represented by:
MICHAEL P LAWRENCE
PO BOX 2720
BOISE, ID 83701
Phone: 208-388-1200

NAMPA AND MERIDIAN
Represented by:
S. BRYCE FARRIS
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

CERTIFICATE OF MAILING

PAGE 1
05/02/08

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER ON MOTION FOR SUMMARY JUDGMENT was mailed on May 02, 2008, with sufficient first-class postage to the following:

JANICEK PROPERTIES LLC

Represented by:
MICHAEL P LAWRENCE
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BOISE, ID 83701
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NAMPA AND MERIDIAN

Represented by:
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BOISE, ID 83701-2773
Phone: 208-342-4591

PIONEER IRRIGATION DISTRICT

Represented by:
SCOTT L CAMPBELL
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

USDI BUREAU OF RECLAMATION

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third Street
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Boise, Idaho 83701-2773
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Facsimile: (208) 342-4657

Attorneys for Nampa & Meridian Irrigation District

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. 36576

)
) Subcase No. 63-27475
)
) NAMPA & MERIDIAN IRRIGATION
) DISTRICT'S ANSWERS TO JANICEK
) PROPERTIES, LLC'S FIRST SET OF
) INTERROGATORIES, REQUESTS FOR
) ADMISSION, AND REQUESTS FOR
) PRODUCTION
)

Nampa & Meridian Irrigation District Answers to Janicek Properties, LLC's First Set of Interrogatories, Requests for Admission, and Requests for Production of Documents to Nampa & Meridian Irrigation District pursuant to Rules 26, 33, 34 and 36 of the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Nampa & Meridian Irrigation District ("NMID") has not completed its own investigations and/or discovery. Accordingly, the answers that follow are based upon the best knowledge, information and beliefs of NMID at this time. NMID reserves the right to make any further answers if it appears that any omission or error has been made in connection with these

NMID'S ANSWERS TO JANICEK PROPERTIES, LLC'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION - Page 1

EXHIBIT

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that supports or tends to support, in whole or in part, your response to Request for Admission Number 7.

ANSWER TO INTERROGATORY NO. 7: See Answer to Interrogatory No. 5.

REQUEST FOR PRODUCTION NO. 7: Please produce each and every document that supports or tends to support, in whole or in part, your response to Request for Admission Number 7 and Interrogatory Number 7.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Please see the attached documents. NMID will supplement this response as necessary.

REQUEST FOR ADMISSION NO. 8: Please admit that Nampa & Meridian Irrigation District does not exert physical control over water flowing into Purdam Gulch Creek.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: Deny.

INTERROGATORY NO 8.1: If your response to Request for Admission Number 8 is anything other than an unqualified admission, please set forth each and every fact you are aware of that supports or tends to support, in whole or in part, your response to Request for Admission.

ANSWER TO INTERROGATORY NO. 8.1: See Answers to Interrogatory Nos. 1 and 5. In addition, NMID operates and maintains the Purdam Drain in order to drain water from its lands and as a means to deliver irrigation water to its landowners, including landowners downstream from Claimant's property and/or point of diversion. A pump station is used to divert water to a subdivision, St. James Place, downstream of Claimant's property and NMID has constructed pumps and a lift station downstream of Claimant's property to recapture water and deliver it to NMID's landowners.

REQUEST FOR PRODUCTION NO. 27: Please produce the curriculum vitae of each person identified in your response to Interrogatory Number 28.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27: Please see NMID's Amended Expert Witness Disclosures.

REQUEST FOR PRODUCTION NO. 28: Please produce each and every document upon which the persons identified in your responses to Interrogatory Numbers 27 and 28 will base their testimony.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28: Please see NMID's Amended Expert Witness Disclosures.

REQUEST FOR PRODUCTION NO. 29: Please produce each and every document upon which you relied in preparing your responses to Interrogatory Numbers 27 and 28.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29: Please see NMID's Amended Expert Witness Disclosures.

REQUEST FOR PRODUCTION NO. 30: Please identify and produce any and all water discharge and/or water flow measurements or estimates of which you are aware for Purdam Gulch Creek.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30: Flow measurements were taken by Robert Schmidt as part of his review for this case. NMID does not have the measurements at this time other than those provided in Mr. Schmidt's report. NMID will supplement this response as necessary.

DATED this 11th day of February, 2008.

RECEIVED

APR 21 2008

Givens Pursley, LLP

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RINGERT CLARK CHARTERED
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Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Nampa & Meridian Irrigation District

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. 36576

)
) Subcase No. 63-27475
)

) NAMPA & MERIDIAN IRRIGATION
) DISTRICT'S ANSWERS TO JANICEK
) PROPERTIES, LLC'S SECOND SET OF
) INTERROGATORIES, REQUESTS FOR
) ADMISSION, AND REQUESTS FOR
) PRODUCTION
)

Nampa & Meridian Irrigation District Answers to Janicek Properties, LLC's Second Set of Interrogatories, Requests for Admission, and Requests for Production of Documents to Nampa & Meridian Irrigation District pursuant to Rules 26, 33, 34 and 36 of the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Nampa & Meridian Irrigation District has not completed their own investigations and/or discovery. Accordingly, the answers that follow are based upon the best knowledge, information and beliefs of NMID at this time. NMID reserves the right to make any further answers if it appears that any omission or error has been made in connection with these answers or that more

NMID'S ANSWERS TO JANICEK PROPERTIES, LLC'S SECOND SET OF INTERROGATORIES, REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION - Page 1

EXHIBIT

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objection and without waiving the same: please see the attached documents.

REQUEST FOR PRODUCTION NO. 35: Please identify and produce any and all Nampa & Meridian Irrigation District board meeting minutes and resolutions, including exhibits, regarding the diversions from Purdam Gulch Creek to the St. James Place Subdivision, the Kennedy Lateral, or to any other landowner.

RESPONSE TO REQUEST FOR PRODUCTION NO. 35: Objection to the extent this Request is overly broad, unduly burdensome, vague, ambiguous and not calculated to lead to the discovery of admissible evidence. Notwithstanding said objections and without waiving the same: NMID will make said records which may be responsive to this request available for inspection upon a mutually agreeable time.

REQUEST FOR ADMISSION NO. 18: Please admit that Nampa & Meridian Irrigation District does not divert and put to beneficial use within the District's boundaries all waste, seepage, or return flow water that collects in Purdam Gulch Creek.

RESPONSE TO REQUEST FOR ADMISSION NO. 18: NMID objects to this Request as being vague and ambiguous. Notwithstanding said objection and without waiving the same: NMID admits that, at this time, NMID does not divert and put to beneficial use all of the water in the Purdam Drain.

INTERROGATORY NO. 36: If your response to Request for Admission Number 18 is anything other than an unqualified admission, please set forth each and every fact you are aware of that supports or tends to support, in whole or in part, your response to Request for Admission Number 18.

By: *S. Bryce Farris*S. Bryce Farris
Attorneys for NMID

STATE OF IDAHO

COUNTY OF CANYON

) ss

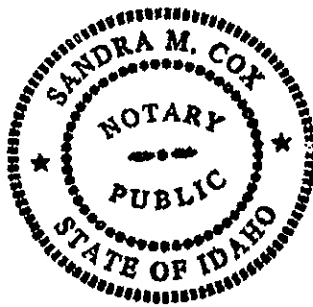
VERIFICATION

John P. Anderson, after being first duly sworn on oath depose and state as follows:

1. That I am NMID's Water Superintendent, and I have reviewed NMID's Answers to Janicek Properties' Second Set of Interrogatories, Requests for Admission and Requests for Production and I believe the facts contained therein to be true and correct to the best of my knowledge.

John P. Anderson
John P. Anderson

SUBSCRIBED AND SWORN TO before me this 21 day of April, 2008.

*Sandra M. Cox*
Notary Public for Idaho
Residing: *Caldwell Idaho*
My Commission Expires: *7 July 2012*