

RECEIVED

OCT 16 2008

DEPARTMENT OF
WATER RESOURCES

Michael C. Creamer [ISB No. 4030]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
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

**SECOND 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.

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

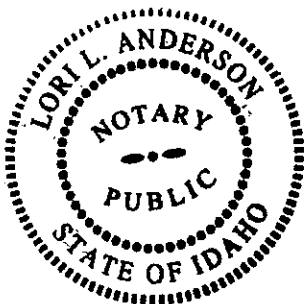
Page 1 of 4

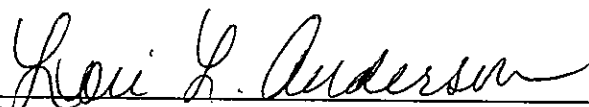
3. A copy of the reporter's transcript of the Status Hearing Before Special Master Theodore Booth, *In re SRBA*, Case No. 39576, Subcase No. 63-27475 (Aug. 27, 2007) is attached to this affidavit as Exhibit A.

DATED this 15th day of October 2008.


Michael P. Lawrence

SUBSCRIBED AND SWORN to before me this 15th day of October, 2008.




Notary Public for Idaho
Residing at Bosch Idaho
My commission expires: Aug. 23, 2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15TH of October, 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
Fax: 208-736-2121

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

SERVICE

Nampa and Meridian
Ringert Clark
c/o Daniel V. Steenson & S. Bryce Farris
P.O. Box 2773
Boise, ID 83701-2773
Fax: 208-342-4657

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098
Fax: 208-287-6700

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

Chief of Natural Resource Division
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449
Fax: 208-334-2690

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail

David W. Gehlert
US Department of Justice, Natural Resources
Environment & Natural Resources
1961 Stout Street – 8th Floor
Denver, CO 80294
Fax: 303-844-1350

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

USDI Bureau of Reclamation
c/o US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724
Fax: 208-334-1414

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ 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

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☐ E-mail



Michael P. Lawrence

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

REPORTER'S TRANSCRIPT
Subcase No. 63-27475

STATUS HEARING
BEFORE
SPECIAL MASTER THEODORE BOOTH
Special Master Presiding

DATE: August 27, 2007

PLACE: COURTROOM OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
BUILDING - 253 3RD AVE. NORTH
TWIN FALLS, IDAHO

Transcribed by:
Maureen Newton, CSR No. 321
P.O. Box 368
Rupert, ID 83350
(208) 436-9041

TRANSCRIPT OF PROCEEDINGS

August 27, 2007

SPECIAL MASTER BOOTH: Okay. Okay, well, let's go ahead and proceed. It sounds like we have everybody here. We're on record in the Snake River Basin Adjudication and we'll take up subcase 63-27475.

My name's Theodore Booth, presiding as Special Master. We have participating by telephone Mr. Michael Lawrence, representing Janicek Properties LLC, who is the claimant of this water right; we have Mr. Bryce Farris representing objector Nampa and Meridian Irrigation District; and participating by telephone also we have Gay Lynn Gerry (sic) with the Bureau of Reclamation, as well as Dave Gehlert with the United States Department of Justice on behalf of the Bureau of Reclamation; and we have Deputy Attorney General Nick Spencer for the Idaho Department of Water Resources.

We're here on a status conference. Looking at the trial scheduling order I see today is also the deadline for a motion for IDWR to prepare a 706 report. But before we go there, I notice that the trial scheduling order has a settlement conference that was to be held on August 15, 2007 at 10 a.m. at the Western Regional Office of IDWR.

So I guess first I'd like to ask did that

2

settlement conference happen, and if so, what sort of progress may have been made towards settling.

Mr. Spencer, do you want to start out?

MR. SPENCER: Your Honor, I can provide part of that information. The settlement conference was not held. I received a call the morning of the conference from Julie Fischer indicating that Mr. Farris had made a settlement proposal to her which she needed to review with her client, and they had decided that rather than holding a meeting simply for exchanging of papers, that it would be more appropriate to vacate the conference so that she could review the document and get with her client.

Since that time, pursuant to this notice of substitution of counsel, I understand that Ms. Fischer has withdrawn. Mr. Lawrence has substituted in her place, and I have no information beyond that in terms of where the parties are in moving towards settlement.

SPECIAL MASTER BOOTH: Thank you.

Would anybody else like to add anything to the record with respect to settlement efforts in this subcase?

MR. LAWRENCE: This is Michael Lawrence speaking. I had an opportunity this morning to speak with Mr. Farris, and I've reviewed his proposal that he forwarded to Ms. Fischer, and at this time we're not prepared to reach settlement on his proposal, but Mr. Farris has agreed to

3

provide us with some additional information and so we're still working down that road to settlement.

SPECIAL MASTER BOOTH: Okay. Thank you, Mr. Lawrence.

Mr. Farris, let me ask you: Looking at the objection, is this the -- I mean, the objection objects to pretty much all elements of the water right, including that the water right should not exist, and then it has a comment with respect to the claimed water as waste water from the Nampa and Meridian Irrigation District, so on and so forth. Is it still the position of the Nampa and Meridian Irrigation District that the water right should be disallowed or is this one of these cases where you're seeking inclusion of a waste water remark?

MR. FARRIS: This is one of those cases that the District's position is that the water right should be disallowed.

SPECIAL MASTER BOOTH: Thank you. Okay.

Well, let's move onto the motion for a 706 report.

Does any party see a need at this time for the preparation of a 706 report by IDWR which would set forth the basis of their recommendation?

MR. LAWRENCE: This is Michael Lawrence again. Coming into this matter at this late stage, I am not aware

4

EXHIBIT

A

1 of information right now that would lead us to believe that
2 we would like the Department to prepare a 706 report. But
3 given my late coming, if the other parties would agree to
4 extending this deadline for motions to prepare 706 reports
5 for another week so I could learn a little bit more about
6 this, I would appreciate it.

7 SPECIAL MASTER BOOTH: All right. Is there any
8 objection to moving that deadline out a week?

9 Let me just state a couple things with respect to
10 the deadline for the motion for 706 report. One is, I'd
11 like to give IDWR plenty of lead time to prepare those.
12 They're incredibly busy and so the more lead time, the
13 better.

14 We have a trial date set for January 17th, 2008,
15 but probably more importantly is the deadline for discovery
16 served and responses complete, meaning that if IDWR did go
17 ahead and prepare a 706 report, you know, there -- the
18 parties may want to take IDWR's deposition with respect to
19 the 706 report and/or notify the other parties that they
20 intend to call IDWR as a witness.

21 Now maybe that's not so important because
22 typically IDWR would be called as a witness even by the
23 court at trial for the purpose of at least putting the
24 Director's Report into evidence. And of course my
25 understanding is a party can take IDWR's deposition whether

5

1 a 706 report is filed or not, but just with those comments
2 in mind, is there any objection to moving that deadline out
3 a week?

4 Okay, hearing no objection --

5 Nick, is the Department okay with that?

6 MR. SPENCER: Yes, that's fine, Your Honor.

7 SPECIAL MASTER BOOTH: Okay, I will order that
8 deadline. What's a week from today?

9 September 4th, 2007, deadline motions for 706
10 report. September 4, 2007, at the close of business.

11 Okay. I'll just make one further note with
12 respect to this waste water issue, and that is that,
13 today -- I don't know if Diana's got it on the web yet --
14 but I've issued an order in a waste water subcase that
15 was -- the objector's New York Irrigation District -- I
16 don't have the subcase number in front of me -- the
17 claimant is Candler (sic), who is represented by Tom
18 Dominick. There was a motion for summary judgment. I've
19 issued an order on that motion for summary judgment which I
20 believe is going out today and also should be posted on the
21 court's website today.

22 I don't know if the matters that were discussed
23 in that motion for summary judgment are relevant to the
24 waste water issues that are presented in this subcase, but
25 to the extent that they are, I just wanted to give

6

1 everybody heads up that they should be able to get their
2 hands on a copy of that order on summary judgment shortly.
3 Does anybody have anything further with respect
4 to the status conference in this subcase?

5 Okay. Does anybody see -- we don't have any
6 other status conferences scheduled prior to the
7 December 17, 2007 pretrial conference. Does anybody see
8 any need for any additional status conferences before that
9 date?

10 And let me just note that if the need arises in
11 the future, prior to that date, we can certainly arrange
12 for that to happen upon motion of any party, okay?

13 Well, I guess we'll see you on December 17th at
14 10:30 a.m. for the final pretrial conference.

15 We'll be in recess. Thank you.

7

1 REPORTER'S CERTIFICATE

2
3
4 STATE OF IDAHO)
5)
6 COUNTY OF MINIDOKA)
7

8 I, MAUREEN NEWTON, Official Court Reporter and
9 Notary Public, in and for the Fifth Judicial District of
10 Minidoka County, Idaho, do hereby certify that the above
11 and foregoing typewritten pages contain a true and correct
12 transcription of my shorthand notes taken upon the occasion
13 set forth in the caption hereof, as reduced by means of
14 computer-aided transcription by me or under my direction.

15
16 Witness my hand, this the 13th day of October,
17 2008.
18
19
20
21

22 MAUREEN NEWTON, CSR #321
23 Court Reporter and Notary Public
24 For the State of Idaho
25 My commission expires 9-10-2012

8