

RECEIVED
APR 17 2009
DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorneys General
P. O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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 NOS. 01-00023B, 01-00297, 35-02543,
) & 35-04246
)
) IDAHO EXHIBIT 1: AFFIDAVIT OF KARL J.
Case No. 39576) DREHER DATED APRIL 15, 2009
)
_____)

STATE OF COLORADO)
) ss.
County of Douglas)

KARL J. DREHER, being first duly sworn upon oath, deposes and states:

1. I make the following statements based on personal knowledge.
2. I served as the Director of the Idaho Department of Water Resources ("IDWR")
from May of 1995 through December of 2006. In that capacity, I was responsible for overseeing

COPY

the administration of water rights and water policy decisions for IDWR. I was also responsible for overseeing the preparation and submission of water right recommendations for the Snake River Basin Adjudication ("SRBA") District Court.

3. Attached hereto as Exhibit A is a true and correct copy of the settlement agreement entered into with Aberdeen Springfield Canal Company ("ASCC") entitled *Settlement Agreement Regarding Aberdeen-Springfield Canal Company's Basin 01 Surface Water Rights and Consolidated SRBA Subcase No. 35-2315*, executed by me on behalf of IDWR on June 5, 2002.

4. The agreement was the result of an investigation and negotiations regarding ASCC's water right claims in the Snake River Basin Adjudication.

5. By signing the settlement, I agreed that IDWR would recommend a portion of ASCC surface water rights as an accomplished transfer from irrigation to recharge for irrigation.

6. Members of ASCC appropriated ground water prior to 1987 to service lands previously irrigated with surface water supplied by ASCC. These ground water rights cause depletion to the ESPA.

7. I concluded that the accomplished transfer was justified because ASCC shareholders continued to pay assessments and ASCC diverted the full amount of water authorized under water right number 1-23B in most years. Thus, a portion of the diversion provided incidental recharge to the Eastern Snake Plain Aquifer ("ESPA").

8. The change from irrigation to recharge for irrigation took place prior to November 19, 1987.

9. The accomplished change in purpose of use from irrigation to recharge for irrigation for a portion of ASCC's water rights did not injure other water rights or result in an

enlargement because the amount of water ASCC diverted and consumptively used was no more than its historic diversion and consumptive use.

10. Since the change from irrigation to recharge for irrigation took place prior to the commencement of the SRBA on November 19, 1987, and there was no injury and no enlargement, the criteria of the accomplished transfer statute, Idaho Code § 42-1425, were met.

11. ASCC's recharge mitigates the impacts of pre-commencement ground water rights used for irrigation within the service area of the ASCC on lands paying assessments to ASCC and to which ASCC's surface water rights remained appurtenant. Thus, I concluded that it was appropriate to recognize this benefit through mitigation credits for the amount of water recharged against ground water depletions arising from the authorized diversion and use of ground water that occurred as a result of the pre-commencement ground water rights.

12. ASCC's recharge diversions also maintain the status quo and provide a tangible benefit to both the ESPA and the Snake River. The recharge diversions benefit the ESPA by mitigating declines in ground water levels that would otherwise occur. Recharge also benefits the Snake River as it stores water in the aquifer, a portion of which is discharged back to the Snake River and then becomes available at a later time to those surface water users who rely upon return flows to the river from the aquifer.

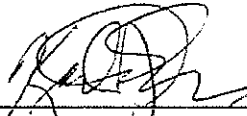
13. Under the agreement, the amount of water diverted for recharge will be calculated on an annual basis. Flexibility is provided such that if ASCC converts acres back to surface water, the available credit for recharge will be less.

14. By IDWR recommending the full 1,172.1 cfs for irrigation, this allows those water users who converted to ground water to convert back to surface water at some later point

in time if needed. This is consistent with how IDWR recommended and the SRBA District Court decreed rights in the Hagerman area in Basin 36.

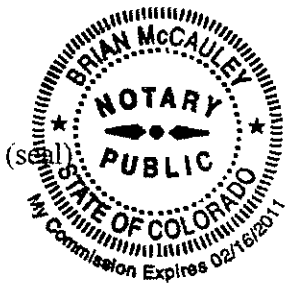
Further your Affiant sayeth naught.

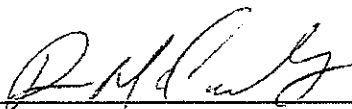
DATED this 15th day of April, 2009.



KARL J. DREHER

SUBSCRIBED AND SWORN TO BEFORE ME this 15th day of April, 2009.





NOTARY PUBLIC for Colorado
Residing at: Angles County
My Commission Expires: 2-16-2011

CERTIFICATE OF SERVICE

I certify that on this 16th day of April 2009 I caused to be served the original and/or copy of the IDAHO EXHIBIT 1: AFFIDAVIT OF KARL J. DREHER DATED APRIL 15, 2009 on each of the following persons by the indicated method:

1. Original and three copies to:

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

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to the following persons:

Special Master Terry Dolan
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 345-8800
- ☐ Statehouse Mail

Randall C. Budge
Thomas J. Budge
Racine, Olson, Nye, Budge & Bailey,
Chartered
Attorneys for Aberdeen-Springfield Canal
Company
201 E. Center Street
P.O. Box 1391
Pocatello, ID 83204-1391

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☒ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

W. Kent Fletcher
Fletcher Law Office
Attorneys for Minidoka Irrigation District
1200 Overland Avenue
P.O. Box 248
Burley, ID 83318

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☒ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

C. Thomas Arkoosh
Capitol Law Group, PLLC
Attorneys for American Falls Reservoir
District #2
P.O. Box 32
301 Main Street
Gooding, ID 83330

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☒ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

John K. Simpson
Travis L. Thompson
Paul L. Arrington
Barker Rosholt & Simpson, LLP
Attorneys for A&B Irrigation District
Burley Irrigation District, Milner Irrigation
District, North Side Canal Company, and
Twin Falls Canal Company
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, ID 83303-0485

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☒ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

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

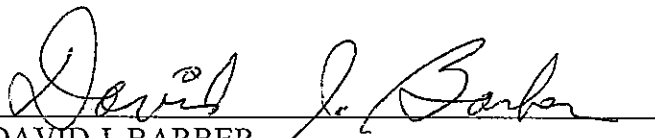
- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

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

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

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

Not Applicable


DAVID J. BARBER
Deputy Attorney General