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JUN 10 2009

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

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

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Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase No. 63-04927
	)	
	)	AFFIDAVIT OF WALTON C. POOLE, PH.D.
	)	DATED JUNE 9, 2009
Case No. 39576	)	
	)	
	)	
	)	
_____	)	
State of Idaho	)	
	)ss	
County of Ada	)	

WALTON C. POOLE, Ph.D. being first duly sworn, deposes and states:

1. I am a staff biologist with the Idaho Department of Fish and Game (IDF&G). I am a competent adult over the age of eighteen years, and the statements made herein are based upon my own personal knowledge of the events described.
2. I was awarded a Bachelor of Science degree in Biology from North Texas State

University in 1971. I was awarded a Masters of Science degree in Biology / Aquatic Ecology from North Texas State University in 1973. I received my doctoral degree in Zoology / Aquatic Ecology from Idaho State University in 1981.

3. I began working for the Idaho Department of Fish and Game in May 2006 in the Natural Resources Policy Bureau as a Staff Biologist. One of my duties is to coordinate with the Office of the Attorney General for the State of Idaho regarding water rights claimed by the IDF&G in the Snake River Basin Adjudication. I have executed affidavits that were filed in the Snake River Basin Adjudication in proceedings related to water right nos. 63-4679 and 67-4450.

4. The IDF&G, due to mistake, inadvertence, and/or excusable neglect, failed to file an objection to the recommended disallowal of water right no. 63-04927.

5. I received and reviewed the *Final Order Disallowing Water Right Claims*, (hereinafter the "*Disallowal Order for Basin 63, Part III*") in March 2009. I requested Deputy Attorney General David J. Barber to take all necessary action to reverse the disallowal of water right no. 63-04927. He requested that I undertake additional research about the history of water right no. 63-04927.

6. Attached to this affidavit are true and correct copies of the documents, listed below, that I obtained from the internet site for the Idaho Department of Lands (<http://gis1/idl.idaho.gov/website/pdlr/>). My understanding is that the deeds became available on this internet site in about 2007 and that these documents may have been previously available by conducting research in the local recorder's office or in the office of the Department of Lands where some of the records were stored.

Attachment I: Deed Dated March 10, 1956 from Walter J. & Nellie M. McFarland to the State of Idaho. Canyon County Instrument No. 431418.

- Attachment II: Letter Dated April 5, 1971 from O. B. White to Gordon C. Trombley.
- Attachment III: Letter Dated June 11, 1971 from W. J. Mitchell to O. B. White.
- Attachment IV: Letter Dated June 17, 1971 from O. B. White to Gordon C. Trombley.
- Attachment V: Letter Dated August 10, 1971 from Jack E. Gillette to Robert L. Salter.

7. Attached to this affidavit are true and correct copies of the following documents from the files of the IDF&G:

- Attachment VI: Memo dated May 2, 1964 from William Platts to James C. Simpson.
- Attachment VII: Letter Dated February 23, 1971 from John R. Woodworth to Ellis L. Mathes.

8. Attachments I through VII establish the following facts about the State's use and ownership of this site:

- A. Walter J. & Nellie M. McFarland sold the following parcel to the State of Idaho, Department of Highways, on March 10, 1956:

A rectangular parcel of land being all of the S $\frac{1}{2}$ N $\frac{1}{2}$ of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, Township 4 North, Range 2 West, Boise Meridian, and containing 9.8 acres, more or less, excluding a strip of land 12.5 feet wide along the West side of the above described land being present road right of way.

- Attachment I: Deed Dated March 10, 1956 from Walter J. & Nellie M. McFarland to the State of Idaho. Canyon County Instrument No. 431418.

- B. The above tract is a former material source, nearly depleted and filled with sub-surface water. The tract is located one mile east and one-quarter mile south of Middleton Highway 44. The resulting pond is now commonly referred to as "Duff Lane Pond."

Attachment II: Letter Dated April 5, 1971 from O. B. White to Gordon C. Trombley.

Attachment VI: Memo dated May 2, 1964 from William Platts to James C. Simpson.

- C. The IDF&G contacted fisherman about fishing in Duff Lane Pond, as early as May 2, 1964 and IDF&G's memo stated as follows:

I sampled the bass population in the Duff Lane Pond and found they are averaging about 11 inches and are in excellent shape. Very few small ones can be observed.

I talked with a fisherman from Boise who was fishing the pond and he informed me that last year he caught about 40 bass from the pond and they averaged about 10 inches. He remarked the bass this year are running about 1 inch larger.

Because the pond is supporting a good fishing population of bass and the pond is easy to seine -- maximum depth 7 feet -- **I would recommend the pond, for the future be managed for a bass fishery and bass supply for stocking.**

Attachment VI: Memo dated May 2, 1964 from William Platts to James C. Simpson (emphasis added).

- D. John R. Woodworth, Director of the Idaho Fish and Game Department, wrote on February 23, 1971 the State Highway Engineer about Duff Lane Pond. He stated:

We understand that the Highway Department is the owner of an excavated gravel pit in nonuse located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 4 N., R. 2 W., B. M., which has filled with percolating ground waters. The pond at one time was privately stocked with Black Bass and Perch and is presently used by the public as a fishing site.

One of our Biologists, Mr. Bill Webb, reports that the area is in need of policing for litter and that the pond has been used to some extent as a dump area for used tires. . . . Should the Highway Department consider this pit to be expended or surplus to its needs, the Fish and Game Department would be willing to pay the cost of disposal, . . . and to pay to the Highway Department the sum of \$10.00.

Attachment VII: Letter Dated February 23, 1971 from John R. Woodworth to Ellis L. Mathes.

E. The Idaho Board of Highway Directors agreed to the transfer at their regular meeting on March 23, 1971.

Attachment II: Letter Dated April 5, 1971 to John R. Woodworth from O. B. White.

F. The State Land Board approved this transfer at their meeting on June 8, 1971.

Attachment III: Letter Dated June 11, 1971 from W. J. Mitchell to O. B. White.

Attachment IV: Letter Dated June 17, 1971 from O. B. White to Gordon C. Trombley.

G. The IDF&G was notified of this transfer in a letter dated August 10, 1971.

Attachment V: Letter Dated August 10, 1971 from Jack Gillette to Robert L. Salter.

H. The newly discovered evidence described above shows a use of Duff Lane Pond as a source of Black Bass for fish propagation by the IDF&G prior to May 20, 1971.

9. Further your affiant sayeth naught.

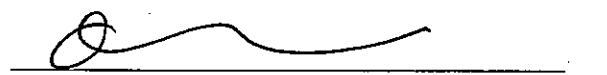
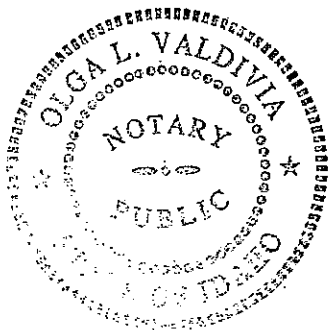


WALTON C. POOLE, PH.D.

Staff Biologist

Idaho Department of Fish and Game

Subscribed and sworn (or affirmed) to before me, a notary public in and for the State of Idaho this 9th day of June 2009.



Notary Public for Idaho
Residing at Boise, ID
My Commission expires: 2/8/2012

CERTIFICATE OF SERVICE

I certify that on this 9th day of June 2009, I caused to be served the original and/or copy of this AFFIDAVIT OF WALT C. POOLE, PH.D., DATED JUNE 9, 2009 on each of the following persons by the indicated methods:

1. Original 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

STATE OF IDAHO, Department of
Fish and Game
600 South Walnut Street
P.O. Box 25
Boise, ID 83707

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

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

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

012

WARRANTY DEED

Printed and for sale by Syme-York Company, Boise

367

INSTRUMENT No. 431418

THIS INDENTURE, Made this 10th day of March

in the year of our Lord one thousand nine hundred and fifty-six, between

Walter J. McParland and Nellie N. McParland, his wife,

of Caldwell, County of Canyon, State of Idaho

the part i es of the first part, and

State of Idaho

of the second part, and to its successors and assigns forever, all of the following described real estate,

situated in the part y of the second part.

WITNESSETH, That the said part i es of the first part, for and in consideration of the sum of One and 10/100 (\$1.10) DOLLARS,

lawful money of the United States of America,

to them in hand paid by the said part y of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said part y of the second part, and to its successors and assigns forever, all of the following described real estate, situated in the County of Canyon, State of Idaho, to-wit:

A rectangular parcel of land being all of the S 1/4 of the NW 1/4 of Section 9, Township 4 North, Range 2 West, Boise Meridian, and containing 9.8 acres, more or less, excluding a strip of land 12.5 feet wide along the West side of the above described land being present road right of way.



TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said part i es of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the part y of the second part, and to its successors and assigns forever and the said part i es of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said part y of the second part, its successors and assigns, against the said part i es of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

File Reference: Recorded as Instrument No 431418 and 431419, in Canyon County. of Land Board Action
This tract assigned from State Highway Dept. to Fish and Game Dept.
June 8, 1971. See official correspondence behind deed above.

IN WITNESS WHEREOF, The said part 123 of the first part ha ve hereunto set their hands and seal 3 the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Walter J. McFarland [Seal]
 Nellie M. McFarland [Seal]
 [Seal]
 [Seal]

STATE OF IDAHO }
 County of Canyon } ss.

On this 10th day of March in the year 1906, before me
 W. C. Park, a Notary Public

in and for said State personally appeared Elizabeth J. McFarland and William McFarland

known to me to be the person 3 whose name 5 are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public for the State of Idaho,
 Residing at Boise, Idaho

431418 D-14-8

WARRANTY DEED

Walter J. McFarland to use

State of Idaho

Recorded	Compared	Ind. Direct	9/18
Dated	10/10/06	10/10/06	10/10/06

STATE OF IDAHO }
 County of Canyon } ss.

I hereby certify that this instrument was filed for record at request of Elizabeth J. McFarland at 30 minutes past 9 o'clock A. M., this 16 day of March, A. D. 1906 in my office and duly recorded in Book 242 of Deeds at page 36.

S. S. FOOTE
 Ex-Officio Recorder.

By Lawrence Payne Deputy.

Filed to Boise, Idaho

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25 or 979 9

STATE OF IDAHO

IDAHO BOARD OF
HIGHWAY DIRECTORS

HOWARD B THOMASON - CHAIRMAN
LLOYD F. BARRON - VICE CHAIRMAN
JOHN G. FANNING - MEMBER

WAYNE SUMMERS
EXECUTIVE SECRETARY



E. L. MATHES
STATE HIGHWAY ENGINEER

DEPARTMENT OF HIGHWAYS

P.O. BOX 7129
BOISE, IDAHO 83707

April 5, 1971

Material Source
Cn - 72s
Canyon County

Mr. Gordon C. Trombley
State Land Commissioner
Department of Public Lands
State Capitol Building
Boise, Idaho

Dear Mr. Trombley:

Enclosed herewith is a copy of the legal description of a 9.8 acre tract located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9 Township 4 N., Range 2 W., Boise Meridian, which is one mile east and one-quarter mile south of Middleton on Highway 44.

The tract is a former material source, nearly depleted and filled with sub-surface water.

Idaho Fish and Game have asked if title could be conveyed to them so that efforts could be made to police the area and stock the pond with fish.

The Highway Board at its meeting March 23, 1971, declared the property surplus to Department needs and approved transfer at nominal value.

May we please have Land Board approval for conveyance of the site to the Fish & Game Department, after usual public hearing for objections?

Very truly yours,

A handwritten signature in cursive script, appearing to read "O. B. White".

O. B. WHITE
Chief Right of Way Agent

vp
Enclosure

Better Highways for a Better Idaho

LEGAL DESCRIPTION

Land situated in Canyon County

A rectangular parcel of land being all of the $S\frac{1}{2}N\frac{1}{2}$ of the $NW\frac{1}{4}SW\frac{1}{4}$ of Section 9, Township 4 North, Range 2 West, Boise Meridian, and containing 9.8 acres, more or less, excluding a strip of land 12.5 feet wide along the Westerly side of the above described land being present road right of way.

June 11, 1971

Mr. O. B. White
Chief R/W Agent
Building Mail

Dear Bruce:

The State Land Board at their meeting June 8, 1971 approved the transfer of that certain property in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 9, Township 4N, Range 2W.B.M. to the jurisdiction of the Fish and Game Department as requested in your letter of April 5, 1971. Your reference to this tract is Material Source, CN-72s, Canyon County.

Transfer is being made under authority of Section 58-332 of Idaho Code, and we do not think a public hearing is required for transfer to another State agency.

Please forward to us the Deed which you now hold to the property in the name of the State. This Deed will be forwarded on to the Fish and Game Department by us with official notification of the transfer.

Very truly yours,

FOR THE COMMISSIONER

W. J. MITCHELL
Division Chief, Lands

WJM:ab

STATE OF IDAHO

IDAHO BOARD OF
HIGHWAY DIRECTORS

HOWARD B. THOMASON - CHAIRMAN
LLOYD F. BARRON - VICE CHAIRMAN
JOHN G. FANNING - MEMBER

WAYNE SUMMERS
EXECUTIVE SECRETARY



E. L. MATHES
STATE HIGHWAY ENGINEER

DEPARTMENT OF HIGHWAYS

P.O. BOX 7129
BOISE, IDAHO 83707

June 17, 1971

Cn-72s
Canyon County

Mr. Gordon C. Trombley
State Land Commissioner
Idaho Department of Public Lands
Capitol Building
Boise, Idaho

Attn: Mr. W. J. Mitchell
Division Chief, Lands

Dear Mr. Trombley:

The State Land Board at their meeting June 8, approved transfer of property in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T. 4 N., R. 2 W., B.M., known on our records as Cn-72, to the Fish and Game Department.

At your request we enclose the two deeds whereby the State acquired the property. Please proceed with the transfer.

We also have an Owners Title Insurance Policy. Should there be any title question, please give us the following reference number; D-14-8b.

Very truly yours,

A handwritten signature in cursive script, appearing to read "O B White".

O. B. WHITE
Chief Right of Way Agent

vp
Enclosures

Better Highways for a Better Idaho

August 10, 1971

Mr. Robert L. Salter
Acting Director
Idaho Fish and Game Department
Building Mail

Dear Bob:

At a regularly scheduled meeting on June 8, 1971, the State Board of Land Commissioners transferred jurisdiction of a 9.8 acre tract identified as Material Source CN-72s, Canyon County from the State Highway Department to the Idaho Fish and Game Department.

The legal description of the property is:

A rectangular parcel of land being all of the S $\frac{1}{2}$ N $\frac{1}{2}$ of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, Township 4 North, Range 2 West, Boise Meridian, and containing 9.8 acres, more or less, excluding a strip of land 12.5 feet wide along the West side of the above described land being present road right of way.

We are enclosing herewith photocopies of a Warranty Deed from Walter J. and Nellie M. McFarland, and a Quitclaim Deed from Norman and Ruth Siverts, both of said Deeds conveying this property to the State of Idaho. The original copies of the Deeds are on file in our Acquisition Deed Book.

Please assume jurisdiction and management of this tract as of this date.

Very truly yours,

JACK E. GILLETTE
Acting Commissioner

WJM:JEG:ab
cc: Bruce White
State Highway Dept.

III R 12A

FROM William Platts
TO James C. Simpson
SUBJECT Buff Lane Pond - Middleton

ER-DEPARTMENT MEMO—1

DATE 5-2-64

208

I sampled the bass population in the Duff Lane Pond and found they are averaging about 11 inches and are in excellent shape. Very few small ones can be observed.

I talked with a fisherman from Boise who was fishing the pond and he informed me that last year he caught about 40 bass from the pond and they averaged about 10 inches. He remarked the bass this year are running about 1 inch larger.

Because the pond is supporting a good fishing population of bass and the pond is easy to seine - maximum depth 7 feet - I would recommend the pond, for the future, be managed for a bass fishery and bass supply for stocking.

Sincerely,

Bill

February 23, 1971

Expended Gravel Pond
Duff Lane
Canyon County

Mr. Ellis L. Mathes
State Highway Engineer
P. O. Box 7129
Boise, Idaho 83707

Attention: O. B. White, R/W Division Engineer

Dear Mr. Mathes:

We understand that the Highway Department is the owner of an excavated gravel pit in nonuse located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 4 N., R. 2 W., B. M., which has filled with percolating ground waters. The pond at one time was privately stocked with Black Bass and Perch and is presently used by the public as a fishing site.

One of our Biologists, Mr. Bill Webb, reports that the area is in need of policing for litter and that the pond has been used to some extent as a dump area for used tires. He suggested that the Idaho Fish and Game Department attempt to acquire this pit. Should the Highway Department consider this pit to be expended or surplus to its needs, the Fish and Game Department would be willing to pay the cost of disposal, by having the disposal cost billing such as advertising sent directly to this Department, and to pay to the Highway Department the sum of \$10.00.

Should the Highway Department determine that they still need the site, we would like for them to consider granting a free-use license to the Fish and Game Department for an indefinite period of time, subject to entry by the Highway Department for excavation of gravel bearing materials. In return the Idaho Fish and Game Department would post the area to dumping, attempt to police the ground area and rehabilitate the fishery.

Sincerely,

IDAHO FISH AND GAME DEPARTMENT

John R. Woodworth
Director

Woodworth

JRW/TDB/ech
cc: Jim Simpson
Bill Webb

ATTACHMENT VII