

RECEIVED

FEB 01 2010

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

201 EAST CENTER STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

www.racinelaw.net

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

DEPARTMENT OF
WATER RESOURCES

BOISE OFFICE
101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE
477 SHOUP AVENUE
SUITE 107
POST OFFICE BOX 50898
IDAHO FALLS, ID 83405
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

ALL OFFICES TOLL FREE
(877) 232-6101

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

W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODSELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
ERIC L. OLSEN
CONRAD J. AIKEN
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
FREDERICK J. HAHN, III
DAVID E. ALEXANDER
PATRICK N. GEORGE
SCOTT J. SMITH
JOSHUA D. JOHNSON
STEPHEN J. MUHONEN
CANDICE M. MCHUGH
CAROL TIPPI VOLYN
BRENT L. WHITING
JONATHAN S. BYINGTON
DAVE BAGLEY
THOMAS J. BUDGE
JONATHAN M. VOLYN
MARK A. SHAFFER
JASON E. FLAIG

January 27, 2010

Andrea Courtney
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Water Right Claim No.35-02019 (Nelson/Stieglitz)*

Dear Andrea:

Regarding the above matter and in response to your December 11, 2009 letter requesting the submission of information for the Department to consider in preparing the Director's Report and Recommendation, I am enclosing herewith the Affidavit of Richard Koompin.

By copy of this letter and the enclosures, I am advising counsel Jerry Rigby and Rob Harris of the foregoing. If any of you have any questions, please feel free to contact me.

Sincerely,



RANDALL C. BUDGE

KR

RCB:rr

Enclosures

cc: Jerry Rigby (w/encls.)
Rob Harris (w/encls.)
Clients (w/encls.)

Randall C. Budge (ISB No. 1949)
RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Facsimile: (208)232-6109

**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)

**AFFIDAVIT OF RICHARD KOOMPIN
OPPOSING CLAIM**

Subcase: 35-02019 (Stieglitz)

STATE OF IDAHO)

: SS

COUNTY OF BINGHAM)

Richard Koompin, being first duly sworn under oath, deposes and states that the following facts are true and correct to the best of my personal knowledge, information, recollection and belief:

1. I reside at 2229 W. 1000 S., Sterling, Idaho 83210. I was born February 25, 1945 and am 64 years old. I have been raised on and have farmed property located immediately to the south of the property previously owned by Merlin and Donnetta Nelson which is now owned by Jeff Stieglitz and have personal knowledge concerning the farming and irrigation practices on this property from 1955 to date.

2. I am personally familiar with the property previously owned by Merlin and Donnetta Nelson now owned by Jeff Stieglitz, and have reviewed their Water Right Claim No. 35-2019 claiming a water right to 2.5 cfs from Upper Spring Creek with a priority date of May 23, 1910 to irrigate a place of use containing 125 acres depicted on the GIS Illustration-2006 NAIP Photography prepared by Michael Holladay, a copy of which is attached as Exhibit A and described as follows:

Township 4 South, Range 32 East,
Section 20: NW NW, NW NE, SW NE, NW SE

3. The place of use claimed by Nelson and Stieglitz under Claim No. 35-2019 has never been irrigated from Upper Spring Creek during the period of my personal knowledge. A considerable portion of the claimed place of use adjacent to the east boundary as outlined by the black line shown on the photo, Exhibit A, lies at a higher elevation than Spring Creek, by reason of which it would not have been possible to irrigate by means of gravity flood irrigation. Most of the remaining land in the claimed place of use is low-lying marshland not suitable for raising crops that has historically been used for grazing. I would estimate not more than 20 acres of the place of use could have been flood-irrigated to raise crops, certainly not the 125 acres claimed.

4. The Nelsons originally owned the NW1/4 NW1/4 of Section 20, Township 4 South, Range 32 East, which was irrigated based upon shares in Aberdeen-Springfield Canal Company diverted from the lateral which bisects the property as shown in Exhibit A. If there was any flood irrigation of the claimed place of use, it is my opinion that the source of supply was likely waste or runoff water from the irrigation of the NW1/4 NW1/4 of Section 20 using the Aberdeen-Springfield Canal Company shares. I recall one time in the late 1990s that the Nelson property was leased to Ron Inskeep, Jr., who raised one crop of barley on part of the land that was farmable. The barley crop was not irrigated from Upper Spring Creek, instead by water brought through a neighbor's pasture. I believe the source of this water was Aberdeen-Springfield Canal Company's Hiline canal.

5. Identified on Exhibit A is a pump located east of Upper Spring Creek in the NW1/4 NE1/4 of Section 20. Beginning in the late 1970s this pump was used to deliver water from the pump fed by Aberdeen-Springfield Canal Company (not from Upper Spring Creek), to irrigate some portion of the higher ground located to the east and south of the pump which could not be flood-irrigated. Sometime prior to 1998 the use of this pump ceased and it has not since been used to raise any crops or pasture.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 28th day of January, 2010.

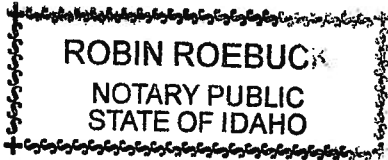
Richard Koompin
RICHARD KOOMPIN

SUBSCRIBED AND SWORN TO before me this 28th day of January, 2010.

Robin Roebuck
NOTARY PUBLIC FOR IDAHO,

Residing at: Palatello

My Commission Expires: 8/18/2012



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of January, 2010, I served a true and correct copy of the above and foregoing document by U.S. Mail/Postage Prepaid, to the following person(s):

Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

IDWR Document Depository
P.O. Box 83270
Boise, Idaho 83720-0098

United States Department of Justice
Environmental & Nat'l Resource Div.
550 W. Fort Street, MSC 033
Boise, Idaho 83724

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

Bridgette Stieglitz
Jeffrey Brian Stieglitz
c/o Kent W. Foster
PO Box 50130
Idaho Falls, Idaho 83405

Donnetta M. Nelson
c/o Murray Jim Sorensen
PO Box 1047
Blackfoot, Idaho 83221

Don and Ruth Adams
2201 W. 11200 S.
Aberdeen, Idaho 83210

Steven Adams
2215 W. 1100 S.
Aberdeen, Idaho 83210

Richard Koompin
2229 W. 1000 S.
Sterling, Idaho 83210

Conan Feld
PO Box 864
Aberdeen, Idaho 83210



112 35-2019 Stieglitz

GIS Illustration
2006 NAIP Photography
Prepared by M. Holliday

