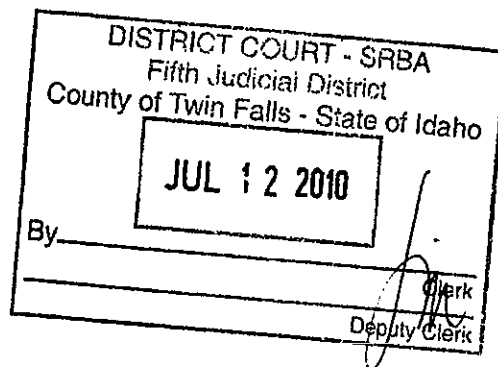


ORIGINAL

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Attorneys for Claimants

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

Water Right 37-04242 and 37-21964

AFFIDAVIT OF HEATHER M
JOHNSTON

STATE OF IDAHO,)
) ss.
County of Blaine.)

HEATHER M. JOHNSTON, being sworn upon oath, deposes and states as follows:

1. I am over the age of eighteen (18) years, and I make the averments contained herein of my own personal knowledge and would testify to the facts as presented herein if called upon to do so.

2. I a daughter-in-law of one of the owners of the Minnie Moore Mines ("Mines"). I am also the caretaker of the property, along with my husband, Carl B. Johnston. I am in possession of all the historic documents for the Mines. I have reviewed the records for the Mines. This Affidavit describes my investigation. My husband, Carl B. Johnston, who operates the Mine, has lived on the Mine property, on-and-off, since 1978. I have lived on the Mine property, on-and-off, since 1997. Over the course of my life, I have developed a keen interest and passion for researching

historic documents. I have the ability to obtain documents for nearly every source, including county records, university records, and documents held by the Idaho State Historic Society. I have the ability to obtain nearly any kind of public document.

THE WATER

3. In 1882, an entry is made in the Alturas Book of Records indicating a diversion from Galena Creek for 300 inches of water with a priority date of August 1, 1882. (*See, Book 2, page 322, Records of Alturas County*, attached hereto as Exhibit 1).

4. Based on my review of the records, I believe the Mines have been operational since 1882. My opinion is based on my personal knowledge, USGS records, histories written on the Mine, historical correspondence contained in the records of the Mine, smelting tickets, deeds and proof of labor and other documents recorded in the Alturas County, Logan County and Blaine County records, and other documents cited below. I have prepared a spreadsheet documenting operations of the Mine, and the source, for each year since operations at the Mine began. The spreadsheet is attached hereto as Exhibit 2.

THE PROPERTY

5. The "Minnie Moore Mine" is actually a series of mines, mining claims and patents. I have in my possession a series of maps showing the particular mining claims and patents. Attached hereto as Exhibit 3 is a map depicting the monies and patents constituting the "Minnie Moore Mine."

6. Up to and until 1969 or 1970, the Mine produced ore from the shafts, and the Mine then processed the ore on site and then shipped the high grade to outside smelters. From 1970 forward, the Mine has been used to sell the "overburden" from the Mine. "Overburden" is

the material from the Mine that is not ore, taken from the Mineshafts. The overburden is used in various ways by developers and other customers. The overburden is used to make roads, riprap stream and rivers, and in other phases of commercial and residential development. We have a list of between 200-300 customers for the overburden.

7. The overburden is sized and sorted on-site, by a method of screening and crushing. The water is used in the following various ways: water is piped to sprinkler system at rock-crushing plant and rock pit for dust control to satisfy Department of Environmental Quality; water is required for drilling activities; water is used on the coarse material in order to wash rocks in preparation for sale of the rock; dust abatement during the crushing and screening process; water is used to spray trucks and loads leaving site to reduce dust; dust abatement on roads created to obtain overburden; erosion control to satisfy EPA requirements (EPA planted native grasses on top of tailings – water is necessary to keep vegetation alive); topsoil is sold from site – water is sprinkled on top-soil to keep soils from blowing away; water is used to pressure wash equipment used in operations; water is used to irrigate trees that screen operations from neighbors; and water is used to mix concrete, as necessary.

8. Historically, the water is taken from Galena Creek. To the best of my knowledge, the water has always been stored in ponds and then pumped from the ponds for Mine operations. For example, there are photographs from the 1890's showing the ponds. (See, Exhibit 12).

9. We have been using the revenue from the Mine to fund our clean up of the Mine. My husband and I maintain a site on Facebook called "For the Love of the Minnie Moore" that documents our clean up of the site. Without water, we would be compelled to cease all operations and leave the Mine behind, without any control of the Mine, tailings or overburden.

DEEDS

10. On November 1, 1883, Henry E. Miller, who owned the 300" of water rights in Galena Gulch, along with John Moore and Frederick H. Meyers filed for a patent for a mining claim for the Minnie Moore Mine properties ("Minnie Moore load"). The patent was granted on March 10, 1884. (*See, Alturas County Book of Deeds, Book 7, Page 606*).

11. On March 3, 1884, Moore, Meyers and Miller sold one hundred percent (100%) of the Minnie Moore Mine properties to Dent, Palmer and Co. of London, England. (*See, Alturas County Book of Agreements and Contracts, Book 3, Page 16*). Water rights described as "water rights and claim for 300 inches of water measured under a four inch pressure to be taken from the Creek known as Galena Creek" were sold from Henry E. Miller to Dent, Palmer and Co. (*See, Alturas County Book of Deeds, Book Q (sic), Page 61.*)

12. On August 27, 1900, Dent, Palmer and Co. sold the Minnie Moore Mine properties to Edward A. King and Robert T. Tustin. The Deed mentions "water right and claim for three hundred inches of water measured under a four-inch pressure, to be taken from the creek known as Galena Creek, in Mineral Hill Mining District, County of Blaine, State of Idaho." (*See, Blaine County Book of Deeds, Book 52, Page 13*)

13. On February 19, 1901, Edward A. King and Robert T. Tustin, sold the Minnie Moore Mine properties to the Minnie Moore Mining Company, Ltd on February 19, 1901. The Deed mentions "water right and claim for three hundred inches of water measured under a four-inch pressure, to be taken from the creek known as Galena Creek, in Mineral Hill Mining District, County of Blaine, State of Idaho." (*See, Blaine County Book of Deeds, Book 52, Page 34*).

14. On January 1, 1902, the Minnie Moore Mining Company (secretary being Irvin E. Rockwell) executes a Deed of Trust to the Royal Trust Company of Illinois for \$150,000.00 to be secured by the Minnie Moore Mine properties and including the "water right and claim for three hundred inches of water measured under a four-inch pressure, to be taken from the creek known as Galena Creek, in Mineral Hill Mining District, County of Alturas, State of Idaho." (*See, Blaine County Book of Mtges, Book N, Page 225*).

15. On July 9, 1904, the Deed of Trust between Minnie Moore Mining Company and Royal Trust Company of Illinois is released including the "water right and claim for three hundred inches of water measured under a four-inch pressure, to be taken from the creek known as Galena Creek, in Mineral Hill Mining District, County of Blaine, State of Idaho." (*See, Blaine County Book of Mtges, Book O, Page 197*).

16. On July 9, 1906, the Minnie Moore Mining Company Ltd, sold the Minnie Moore Mining properties to Idaho Consolidated Mines Company of Arizona. The Warranty Deed includes "all water right and claim for 300 inches of water, measured under a four inch pressure, to be taken from the Creek known as "Galena Creek", in Mineral Hill Mining District, County of Blaine, State of Idaho." (*See, Blaine County Book of Deeds, Book 53, Page 415*)

17. On February 1, 1909, a Deed of Trust is executed between Idaho Consolidated Mines Company, Ltd and Commercial and Savings Bank of Racine, Wisconsin for \$250,000.00 to be secured by the Minnie Moore Mine properties including "certain water rights associated." (*See, Blaine County Book of Mtges, Book R, Page 104*).

18. On May 20, 1912, the Fourth District Court Judge Edward A. Walters orders the sale of all properties owned by the Idaho Consolidated Mines Company, Ltd to satisfy \$300,000.00 plus in judgments against the company by numerous parties including the

Commercial and Savings Bank of Racine, Wisconsin. This sale must include "all buildings, machinery, tools, etc. and certain other real property, water, etc, being all real and personal property belonging to said company. J.J. Donovan, the duly appointed, qualified and acting Receiver of the Idaho Consolidated Mines Company, Ltd. (Grantor) sells to Lallah R. White (Grantee) all real property of the Idaho Consolidated Mines Company, Ltd for \$20,000.00. The Property included in this sale is detailed in a lengthy Receiver's report, which does include mention of the water rights, and the added water rights of 300 cubic feet per second of time, of the waters of the Big Wood River, for power purposes according to Permit #3295, approved on the December 7, 1907. (See, *Book 9 of Blaine County permits, page 3295*). The Deed is dated June 29 1912. (See, *Blaine County Book of Deeds, Book 80, Page 217*).

19. On July 1, 1912, Lallah R. White, an unmarried woman, sells to the Minnie Moore Mines Company, Inc all properties included in the Receiver's Report, which includes the water rights. (See, *Quit Claim Deed, Blaine County Deed Book, Book 80, Page 225*).

20. On December 2, 1943, the Minnie Moore Mines Company, Inc., sells to Robert T. Walker of Lake County, Colorado the Minnie Moore Mine properties including the "GALENA CREEK WATER RIGHT: 300 inches of water of the waters of Galena Creek to be used for mining purposes. Priority: 1882, recorded at page 322, Book 2 of water rights" in Alturas County, Idaho. (See, *Blaine County Book of Deeds, Book 148, page 311*).

21. On December 4, 1951, Robert T. Walker sells the assets of the Walker Corporation and the Minnie Moore Mine properties to his corporations, Walker Corporation, of Nevada including the water rights described as, "GALENA CREEK WATER RIGHT: 300 inches of water of the waters of Galena Creek to be used for mining purposes. Priority: 1882,

recorded at page 322, Book 2 of water rights" in Alturas County, Idaho. (*See, Blaine County Book of Deeds, Book 162, page 344*).

22. Between 1951 through 1979, Robert T. Walker dies leaving the Minnie Moore Mine properties to his children Robert T. Walker, Jr., Mary Alida Walker Nielsen, and Woodville J. Walker.

23. On July 31, 1979, a Grand Deed is executed for Woodville J Walker, Mary Alida Walker Nielsen, and Robert T. Walker, Jr. to sell the Minnie Moore Mine properties to Carl B Johnston and James H. Bilbray including "Galena Creek Water Rights: 300 inches of water of the waters of Galena Creek to be used for mining purposes, priority 1882." (*See, Blaine County Book of Records, page 322, Book 162*).

24. Attached hereto as Exhibit 4 are true and correct copies of the Deeds and/or entries in the Book of Records, as specified in paragraphs 10 through 23.

OPERATION OF THE MINES

25. The first resource is the HISTORY OF THE MINNIE MOORE MINE, BLAINE COUNTY, Idaho, by Victoria E. Mitchell, Idaho Geological Survey, University of Idaho, published June 2000 (hereinafter "Mitchell History"). Attached hereto as Exhibit 5 is the History. The History describes the operation of the Mine from 1882 to the present date.

26. The second resource comes from a history drafted by Irvin Rockwell (hereinafter "Rockwell History"), who was one of the owners or principles in the mine from 1901 to 1943. I am in possession of the hand and type written copies of the Rockwell History. A true and correct copy of the type written Rockwell History is attached hereto as Exhibit 6. The Rockwell History does not show any gaps in operation or production in the Mines from 1901 to 1943.

27. In addition to the histories, I reviewed a USGS Bulletin entitled GEOLOGY AND MINERAL DEPOSITS OF THE MINNIE MOORE AND BULLION MINERALIZED AREAS, BLAINE COUNTY, IDAHO, written by Paul Karl Link and Ronald G. Wolf, attached hereto as Exhibit 7. The USGS Bulletin shows operations of the Mines between 1881 through 1889.

28. There is a gap in the USGS Bulletin between 1891 and 1900. I believe this gap is the result of not being able to locate the appropriate County records. Between 1889 and 1895, Bellevue, and the town of Broadford where the Mines are located, were part of Logan County. In 1895, the Idaho Legislature combined Logan County and Alturas County to form Blaine County. Subsequently, the southern end of Blaine County became Lincoln County. (See, Exhibit 8).

29. Logan County existed between 1889 and 1895. The Logan County Books of Record, now located in Blaine County, show Proofs of Labor for the Mines between 1891 and 1894. Subsequent Proofs of Labor for the Mines were entered in the Blaine County Book of Record from 1895 through 1898. "Proofs of Labor" are reports that had to be filed with each county to show that there was work on the mine. Proofs of Labor were required in connection with filing patents on mining claims. Attached hereto as Exhibit 9 are the Proof of Labor for Logan and Blaine County for the time period discussed herein.

30. In an effort to determine what operations were at the mine, on or about 1884 and 1885, I found an article entitled "Minnie Moore Strike at Broadford" published online by "Idaho Genealogy." The article shows a strike occurring in 1884 and mine operations beginning again in 1885. A true and correct copy of the article is attached hereto as Exhibit 10.

31. On November 21, 1896, a Complaint filed in the Fourth District Court for monies owed for work done at the Mines between 1894 and 1895. J.H. Hauge was issued a Judgment

from the Court for \$4,190.30 plus interest. A true and correct copy of the judgment is attached hereto as Exhibit 11.

32. Attached is a photograph dated 1896. The photograph depicts the Minnie Moore Mine smoke coming from the Mine smelter. A true and correct copy of the photographs is attached hereto as Exhibit 12.

33. I have also reviewed smelting tickets from the Mines between 1917 through 1959. The smelting tickets show tonnage of ore that was taken from the Mines. I am in possession of the original smelting tickets. I did not produce all tickets for each year. They can be produced upon request. I did produce one true and correct copy of a smelting tickets for each year, attached hereto as Exhibit 13.

34. Based on my knowledge of the mining industry, I do know that the absence of smelting tickets does not indicate an absence of mining activity. For each year lacking smelting tickets, there are still documents showing mining exploration or other operations. Often times a lack of smelting tickets denoted a serious drop in silver prices. When this happened, the ore was stockpiled until the prices rose again.

35. There are no smelting tickets for 1937. However, I located correspondence from Oscar Hershey, who I know to be a then renowned geologist. His letter and notes show drilling and exploration of the mine. These documents are attached hereto as Exhibit 14.

36. There are no smelting tickets for 1940. However, I located correspondence to shareholders showing continued exploration and operations of the Mine. The documents are attached hereto as Exhibit 15.

37. There is an absence of smelting tickets after 1959. The records after 1959 are located at the University of Utah, in the J. Willard Marriott Library Special Collections. Those

files contain the "dead files" of Federal Resources Corp., which operated the Mine on the 1950's through 1970's. I confirmed the existence of the records. I believe the smelting tickets are located in these files. Absent obtaining those records, I have in our files several letters mining activity between 1960 and 1965. Attached hereto as Exhibit 16 is a July 14, 1961, letter from Woodville J. Walker, then one of the owners of the Mine, detailing mining activity for this time period. Attached hereto as Exhibit 17 is a May 28, 1965, report from Federal Reserve detailing activity from June 30, 1964 to July 1, 1965.

38. Between 1966 and 1969, there is the Affidavit of Milton Fife, detailing his work on the Mine between 1966 and 1969, incorporated herein by reference.

39. Federal Reserve continued its operation of the Mine throughout the 1970's. Attached hereto as Exhibit 18 is a letter from Federal Resources showing that it continued operations after June 30, 1970.

40. On or about 1999, Blaine County issued a stop work order on the Mines. The Stop Work Order was based on some premise that the Mines were an illegal use under Blaine County Zoning requirements. A trial was held on the stop work order. During trial, numerous contractors testified to buying tailings and rock from the Mine. On August 16, 2005, Judge Elgee, of the Fifth Judicial Court issued his Findings of Fact and Conclusions of Law. In his findings, he concluded:

The use of the mining properties constitutes a pre-existing non-conforming use under the language of the 1971 Ordinance and the 1977 Ordinance. The property was mined continuously from 1880 until the County until [sic] it ceased major industrial operations in the 1970 or 1974, and thereafter the prior nonconforming uses identified were continued, although some greatly diminished in intensity, until demanded it to be shut down in 1999 by Blaine County that the Mines and/or processing of tailings was operational continuously since at least 1970.

A true and correct copy of Judge Elgee's Decision is attached hereto as Exhibit 19.

AFFIDAVIT OF HEATHER M. JOHNSTON - 10

CONCLUSION

41. Based on the aforementioned information, I believe I have documented the operations of the Mine from the beginning to the current date.

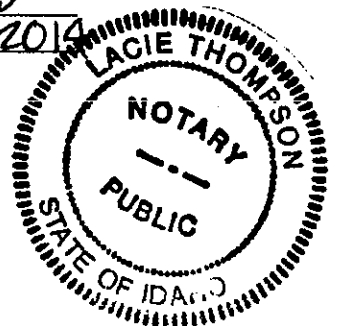
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 29th day of June, 2010.


HEATHER M. JOHNSTON

SUBSCRIBED AND SWORN to before me this 29th day of June, 2010.


NOTARY PUBLIC FOR IDAHO
Residing at: Hailey, ID
Commission expires: 1/28/2014



CERTIFICATE OF MAILING

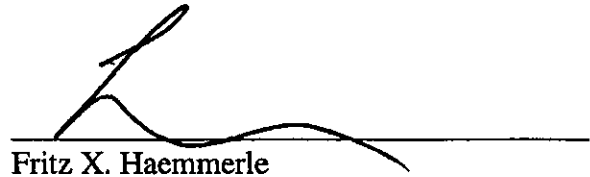
I certify that on July 7, 2010, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

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

Copies to:

Idaho Department of Water Resources
c/o Doug Jones
1341 Fillmore Street Suite 200
Twin Falls, ID 83301-3380



Fritz X. Haemmerle

EXHIBITS TO AFFIDAVIT ON FILE WITH THE COURT

To request a copy, (\$1.00 per page) please contact
Clerk of the Court at 208-736-3011.