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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.: 01-02064
	)	
Case No. 39576	)	SECOND AFFIDAVIT OF
_____	)	DAVID A. JARVIS

STATE OF COLORADO	)
	)ss.
City and County of Denver	)

AFFIDAVIT

I, DAVID A. JARVIS, being of lawful age and having been first duly sworn, state the following:

1. I make the following statements based upon personal knowledge and am competent to testify thereto.

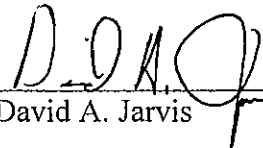
2. I am a paralegal with USIS | Labat, a government contractor which provides paralegal services to the U.S. Department of Justice.

3. I provide paralegal support to Environment and Natural Resources Division attorneys who represent the interests for the United States in the Snake River Basin Adjudication. I have performed this role for approximately ten (10) years. As part of my duties, I act as the custodian of SRBA files for the United States Department of Justice, and am familiar with the court filings served upon the United States and the documents filed by the United States in the SRBA.

4. I attest that attached as Exhibit LLL is a true and correct copy of the letter from A. C. Inman, Secretary of Idaho Power Company to Idaho Congressional Representative Hamer Budge, dated June 14, 1954.

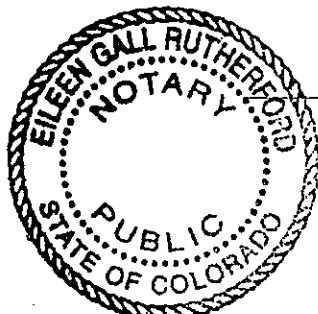
5. I attest that attached as Exhibit MMM is a true and correct copy of the EXPERT REPORT OF DAVID B. SHAW in *Idaho Power Company v. United States*, Court of Federal Claims, Case No. 07-730C (Nov. 2009)

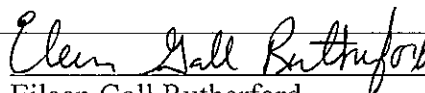
DATED this 15 day of November, 2010.



David A. Jarvis

SUBSCRIBED AND SWORN to before me this 15th day of November, 2010





Eileen Gall Rutherford
Notary Public for Colorado
Residing at: Denver, Co
My Commission Expires: 8/27/2012

My Commission Expires 8/27/2012

Exhibit LLL



IDAHO POWER COMPANY

BOISE, IDAHO

REC'D JUN 14 1954

June 14, 1954

Honorable Hamer Budge
House of Representatives
Washington, D. C.

Dear Mr. Budge:

The Congressional Record for June 8, 1954, pages A4230-32, contains a reprint of a letter written by Mr. G. H. R. Taylor, a director of the National Hells Canyon Association. This organization is one of the parties to the proceeding now pending before the Federal Power Commission to determine the proper type of development of the Hells Canyon-Weiser reach of the Snake River for power and other multi-purpose uses. The letter discusses, and gives the views of Mr. Taylor concerning a number of matters which are before the Commission for its decision, and in addition comments on the construction of the American Falls Dam in southeastern Idaho by the Bureau of Reclamation.

Because the American Falls Dam has been a frequent subject of propaganda against the Idaho Power Company, I thought you would be interested in the attached memorandum concerning this project, and the contract of June 15, 1923, between the United States Government and the Idaho Power Company, in which the rights of the parties are set forth.

Contrary to the statements of Mr. Taylor, no condemnation of the Idaho Power Company's property at American Falls was necessary or involved, as all the numerous problems inherent in the construction of the project were settled by amicable negotiations between the Government, the irrigators and the company.

Very truly yours,

A. C. Inman
Secretary

Attachment

RECEIVED

7. P. C. - *Mixed*

MICROFILMED

Exhibit MMM

IN THE UNITED STATES
COURT OF FEDERAL CLAIMS
(No. 07-730C)

IDAHO POWER COMPANY

v.

UNITED STATES

EXPERT REPORT
OF

David B. Shaw, P.E.

NOVEMBER 2009

Ex 1

I. Introduction

This report is being prepared at the request of Brownstein Hyatt Farber Schreck, P.C. The purpose of the report is to describe the analysis of stream flow conditions for the contract years 2001 through 2007 to determine whether the target flows set forth in the June 15, 1923 contract between the United States and Idaho Power Company Relative to Power Rights at American Falls, Idaho (hereinafter Contract) were satisfied.

Exhibit A attached hereto is an annotated map of South Central Idaho that illustrates the relative locations of the physical features of the Snake River that are relevant to this analysis. Beginning from the right side of the map is American Falls Reservoir, the primary storage facility that is the subject of the Contract. Moving downstream, to the left, is the Neeley Gage, the stream gage that measures the rate of discharge of water leaving American Falls Reservoir through the Snake River. Moving further downstream to near the center of the map is Lake Walcott, an additional storage facility addressed in the Contract. Still further downstream is the location of the Milner Gage, the stream gage that measures the entire discharge passing the Milner Dam location. Twin Falls, downstream of the Milner Gage, is the location at which the flow targets in paragraph 22 of the Contract are established. The furthest downstream gage on the map is the Kimberly Gage, the best available stream gage to determine the discharge of the Snake River at Twin Falls. Shoshone Falls, downstream from the Kimberly Gage, is the location at which the flow targets in paragraph 21 of the Contract are established.

The following analysis compares the Contract criteria to the observed discharge at Twin Falls for the 2001 through 2007 contract period. The results of the analysis describe those discharge conditions that did not meet the Twin Falls target flow Contract criteria.

This report is preliminary and my work is continuing. I reserve the right to modify and supplement these opinions as further information comes to light, including through the depositions of experts, and to express new opinions in response to new information or opinions expressed by experts or other witnesses or evidence.

II. Qualifications and Publications

David B. Shaw is a registered professional engineer in the states of Idaho, Arizona, Oregon and Colorado. His work includes 23 years with the Idaho Department of Water Resources (IDWR) and its predecessor agencies and 13 years with ERO Resources Corporation. At the IDWR he served in a variety of technical and management positions including 11 years as manager of IDWR's responsibility for the Snake River Basin water right adjudication. At ERO David provides expertise and expert witness testimony to a variety of clients from water users to government agencies.

A resume is attached hereto as Exhibit B.

III. Data and Other Sources of Information Considered

This opinion is based on my experience as an engineer and many years of studying and analyzing the hydrology of the Snake River and its tributaries, and water use in Idaho. Over the past 36 years I have come to understand much of the historical development of water use in Idaho, the changes that have occurred over time and the issues facing water users today. This understanding has been enhanced through the regular use of published and unpublished gage records of stream discharge and reservoir contents, crop water requirements, population and land use changes and water needs, instream water needs and regulatory requirements and methods to assure proper administration of water use and water rights in Idaho and in other western states.

I have for purposes of this opinion also made a review of the Contract and the specific gage records for American Falls Reservoir, and the Neeley, Milner and Kimberly Gage data as those data appear on the Water District 01 web site at:

<http://maps.idwr.idaho.gov/wraccounting/viewer.htm>

A list of documents and data considered is attached hereto as Exhibit C.

IV. Summary of Opinions, Basis and Reasons for Opinions

It is my opinion the flow targets within paragraph 22 of the Contract were not satisfied at all times during any of the contract years 2001 through 2007.

My analysis began by reducing each of the flow targets specified in paragraph 21 of the Contract by 100 cfs as specified in paragraph 22 of the Contract. The Kimberly Gage is located upstream of the Shoshone Falls and downstream of the Twin Falls. Using the Kimberly Gage is a conservative estimate of the Twin Falls discharge since any reach gains between Twin Falls and the Kimberly Gage would increase the measured discharge at the gage above the actual discharge at Twin Falls.

Paragraph 21 of the Contract sets out the flow targets and the periods of the year during which each of the flow targets is applicable at Shoshone Falls. For convenience, the Shoshone Falls flow targets and the Twin Falls flow targets are set out in Table 1 below.

Table 1

Period	Shoshone Falls Targets (cfs)	Twin Falls Targets (cfs)
10/1 – 11/30	790	690
12/1 – 1/31	890	790
2/1 – 2/12	790	690
2/13 – 4/15	690	590
4/16 – 6/10	790	690

The next step of the analysis compared the mean daily observed discharge at the Kimberly Gage to the Twin Falls target for all dates during the period October 1 through June 10. If the observed discharge is less than the target the other criteria of the Contract must be tested to determine if the shortage is a missed target. The gage records of American Falls

Reservoir contents are checked to determine if the reservoir has already filled during the current contract year. If the reservoir has filled, the shortage is not a missed target as provided in paragraph 18 of the Contract. If the date is later than April 1 and 60,000 ac-ft has been released since April 1, the shortage is not a missed target as provided in paragraph 18 of the Contract.

If American Falls Reservoir has not filled and the 60,000 ac-ft criteria is not a limitation, the shortage is a missed target. After a missed target is identified the discharge at Milner is examined for the prior day. If the discharge at Milner for the prior day is solely made up of Idaho Power Company primary storage as described in paragraph 16 of the Contract, the discharge at Milner for the prior day is added to the total shortage for the missed target. This is consistent with paragraph 21 of the Contract since the flow targets are intended to be satisfied solely from secondary storage as provided in the Contract.

This analysis is completed for each of the 253 (254 in 2004) days from October 1 through June 10. On those days in which the flow target is missed the shortage in cubic feet per second (cfs) is determined. The missed target shortages are then totaled and multiplied by 1.9835 to convert cfs to acre-feet (ac-ft) per year. The number of days each year the flow targets are missed is then counted. Twin Falls flow targets were missed in each of the contract years 2001 through 2007 where a contract year is the same as a water year and is defined as the period from October 1 of the prior year through September 30 of the year in question.

Summary of Conclusions

This analysis determined the shortages resulting from the missed Twin Falls targets. The results of the analyses for each contract year 2001 through 2007 are reported in Table 2 below.

Table 2

Water Year	Shortage Due to Missed Targets ac-ft	Days Target Missed
2001	17,415	47
2002	71,776	94
2003	71,044	108
2004	77,597	130
2005	77,762	102
2006	52,424	74
2007	21,547	41

V. Exhibits Supporting Opinions

Exhibits supporting my opinions are included in the materials cited above. I may use additional exhibits at trial.

VII. Compensation

My firm is being compensated at the rate of \$130 per hour of time spent preparing this opinion and for my time spent preparing for any testifying at deposition and trial.

VIII. Other Testimony

Cases in which I have testified as an expert at trial or by deposition within the preceding four years are as follows:

Surface Water Coalition water delivery call.

A & B Irrigation District water delivery call.

Snake River Farms water delivery call.

Sage Springs Home Owners Association v Rotarun contested drilling permit.

Lexington Hills Home Owners Association v Lexington Hills Inc., SRBA Subcases.

Ada County Highway District v Settlers Irrigation District.

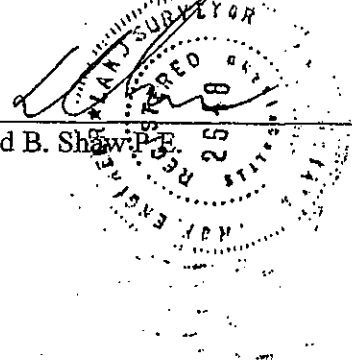
Pioneer Irrigation District v City of Caldwell.

Dated this 3 day of November 2009.

Respectfully submitted,



David B. Shaw, P.E.



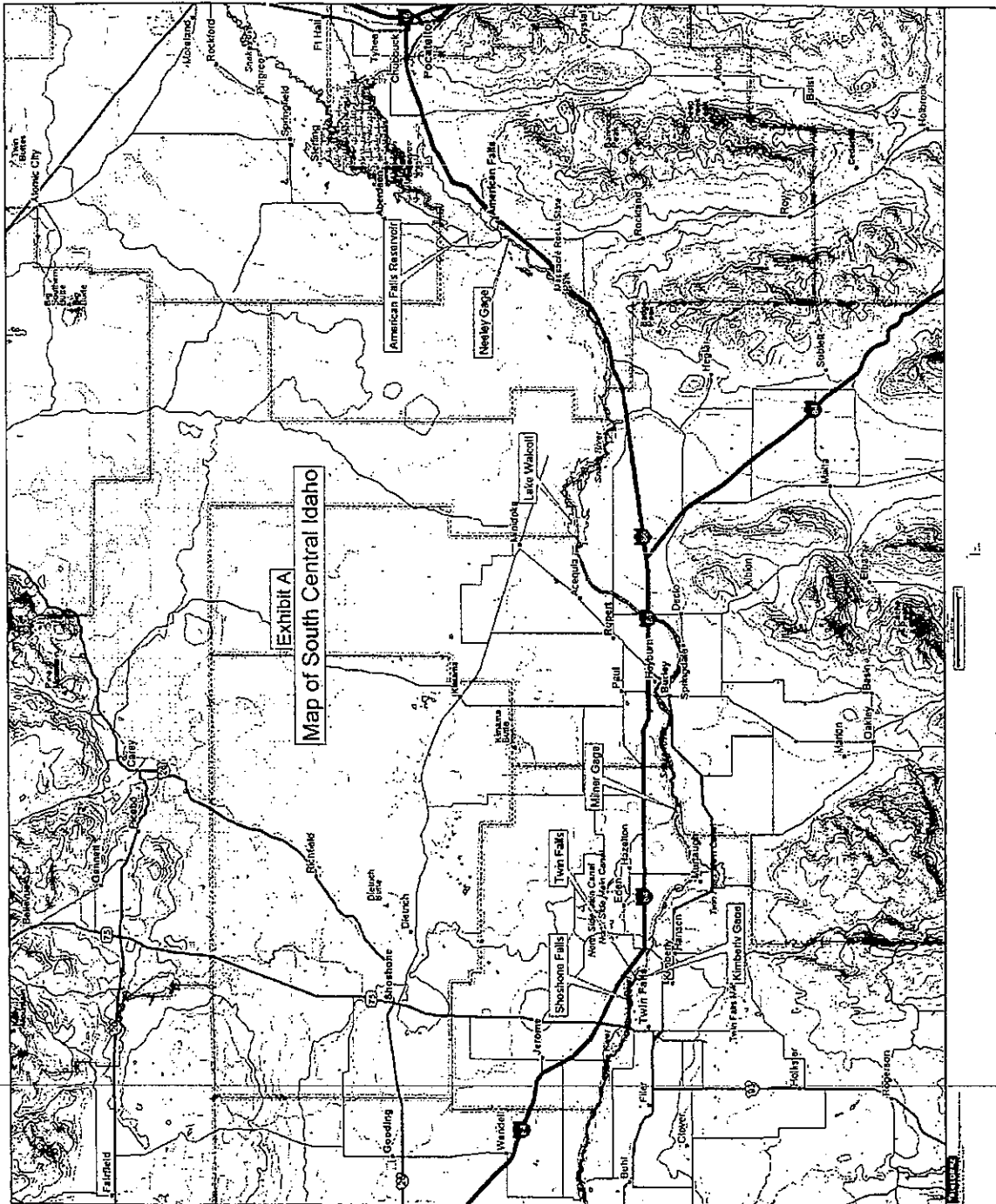


Exhibit B

David B. Shaw

SUMMARY:

David Shaw is an engineer and principal in the firm of ERO Resources Corp, a Denver based natural resources consulting firm. David manages and provides leadership to the Boise ERO Resources Corp. office. He specializes in the identification, analysis, and resolution of water issues including coordination with other professionals in multi-disciplinary projects. David has 36 years experience and expertise in water resources and management covering a broad spectrum of disciplines including surface and ground water supply and use studies, water rights evaluations, water quality evaluation and monitoring, project management, alternative dispute resolution, litigation support and expert witness testimony, and technical input on legislative and administrative matters.

EDUCATION: B.S., Agricultural Engineering
University of Idaho, 1966

M.S., Agricultural Engineering
University of Idaho, 1972

EXPERIENCE:
1996 to present

Engineer, Project Manager and Principal since 2003
ERO Resources Corporation, Boise, ID

- Provide technical expertise and coordination to the State and water users for the resolution, through mediation or litigation, of federal law based water right claims filed by the United States and certain Indian tribes in the Snake River Basin Adjudication of water rights.
- Develop and implement water quality monitoring programs for various water user organizations.
- Assist a variety of water users with technical expertise to resolve issues and conflicts relative to their continued use of water. Activities have included collection of field data, including stream flow measurements and gaging, evaluation of existing data, and data analysis to facilitate agreements or to offer expert opinion.
- Provide expert testimony in the Klamath Adjudication in Oregon.

1985 to 1996

Water Rights Adjudication Bureau Chief
Department of Water Resources, Boise, ID

- Responsibilities included the design, implementation and management of the Snake River Basin Adjudication (SRBA) program involving the processing of 170,000 claims to water rights; staff selection and training, budget preparations, implementation and monitoring for main office and four regional offices; established rules and regulations pertaining to the SRBA; educational presentations for professionals; public and the media.

- Served as co-chair of the state, Indian, federal and private technical advisory committee for the Shoshone-Bannock reserved water right determination that resulted in the 1990 Fort Hall Indian Water Right Agreement.
- Lead responsibility for preparation of the first water distribution rules developed and adopted in Idaho. Participated and testified before Legislature in two rewrites of Idaho's adjudication statutes.
- Designated as an expert witness in water right adjudications by the SRBA court.

1978 to 1985

Western Region Manager

Department of Water Resources, Boise, ID

Responsibilities included management of a separate office including budget and staff needs, work assignments and responsibility and supervision for the department's regulatory programs for Southwest Idaho.

1974 to 1978

Technical Support Section Manager

Department of Water Resources, Boise, ID

Responsibilities included management of staff that provided technical support in the areas of engineering, economics, soils, geohydrology, geology, geothermal, remote sensing and computer operations. Provided technical support for completion of the original State Water Plan. After completion of the state water plan, managed the Water Allocation Section responsible for water right processing, water distribution and adjudications.

RELATED EXPERIENCE:

Assistant Professor – College of Engineering, Department of General Engineering, University of Idaho 1968-1973. Courses taught: Engineering Graphics, Slide Rule, Engineering Science (Statics & Dynamics), Introduction to Fortran Programming and Advanced Fortran Programming, Freshman Engineering Design.

David was raised on an irrigated farm and has operated and managed an irrigated orchard in the Emmett Valley since 1982. As a result, he has gained insight into water use and water users that may not be available in any other way.

Licensed Professional Engineer and Land Surveyor in Idaho
Licensed Professional Engineer in Arizona, Colorado and Oregon
Emmett Irrigation District Board Member, 1992
Chairman, Board of Trustees, Walter Knox Memorial Hospital
Past Chairman, Board of Directors, Gem Supply Cooperative
Licensed Private Pilot

PUBLICATIONS:

Shaw and Molnau. 1974. "Problem Oriented Languages – Statistics and Hydrology." COED Transactions.

Shaw and Molnau. 1975. "Why Use Problem Oriented Languages." ASAE Transactions.

PROFESSIONAL AFFILIATIONS:

American Society of Agricultural and Biological Engineers
U.S. Committee on Irrigation and Drainage
Idaho Society of Professional Land Surveyors
National Council of Examiners for Engineering and Surveying

Exhibit C

Documents and Data Considered

Contract between the United States and the Idaho Power Company Relative to Power Rights at American Falls, Idaho, dated June 15, 1923.

Stream flow and reservoir content data available from the Water District 01 web site at:
<http://maps.idwr.idaho.gov/wraccounting/viewer.htm>

Data include:

- American Falls Reservoir contents
- Neeley Gage records of Snake River discharge
- Milner Gage records of Snake River discharge
- Kimberly Gage records of Snake River discharge

Descriptions of these gages are available at:

<http://waterdata.usgs.gov/id/nwis/sw/>