

378

John K. Simpson
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson, Suite. 102
Boise, ID 83702
(208) 336-0700 - Telephone
(208) 344-6034 - Fax
ISB #: 4242

RECEIVED
MAR 21 2011
DEPARTMENT OF
WATER RESOURCES

Attorney for Committee of Nine

**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. 27-11375
	)	
	)	
Case No. 39576	)	
	)	AFFIDAVIT OF DAVID B. SHAW
	)	
_____	)	

I, DAVID B. SHAW, being first duly sworn upon oath, depose and hereby state as follows:

1. My name is David B. Shaw, and my work address is ERO Resources Corporation, 3314 Grace Street, Boise, ID 83703-5836. My telephone number is 208-373-7983.

2. My educational background includes a Bachelor of Science and Master of Science degrees in Agricultural Engineering from the University of Idaho in 1966 and 1972, respectively. I am a registered professional engineer in the States of Idaho, Arizona, Colorado and Oregon, and a registered professional land surveyor in the State of Idaho. I continue to attend seminars and short courses in the areas of water law, water rights and applicable technology. I have made numerous presentations at seminars covering water law and water right issues, most often

regarding some aspect of water right adjudication.

3. My work experience includes five years of teaching at the University of Idaho in the College of Engineering from 1968 to 1973. I was with the Idaho Department of Water Resources ("Department"), and its predecessor agencies, from November 1973 until July 1996. With the Department, I served in a number of technical and administrative positions including Regional Supervisor for the Department's western region from 1978 to 1985 and Adjudication Bureau Chief from 1985 to 1996. As Adjudication Bureau Chief, I was responsible for all of the Department's obligations in the Snake River Basin Adjudication ("SRBA"). The Department's obligations included serving notice of the SRBA to all potential water users, assisting claimants in filing their claims to water rights, investigating each state law based claim and making a recommendation as to each state law based claim to the SRBA Court. If a recommendation was protested (contested), the Department was obligated to present evidence to justify its recommendation. My experience with the Department includes successfully managing the SRBA for 11 years and resolving a variety of water right, water supply and water delivery situations.

4. Since July 1996 I have been employed by ERO Resources Corporation ("ERO") providing consulting services to clients in the areas of water rights, water right adjudication, and water distribution and management. In January 2003, I became a Principal of ERO, one of 11 employee owners of the firm. ERO is a natural resources consulting firm based in Denver, Colorado with satellite offices in Boise, Idaho and Durango and Hotchkiss, Colorado. ERO has a long history of, among other services, providing expertise to clients in water right adjudications around the West. We currently have water right adjudication clients in Arizona, Idaho and Oregon.

5. I was the Adjudication Bureau Chief for the Department during the period 1985-1990 and was the technical representative for the State of Idaho in the Fort Hall negotiations which resulted in The 1990 Fort Hall Indian Water Rights Agreement ("Agreement").

6. One of my assignments in this role was to estimate the water requirements of the non-Indian non-Fort Hall Project water users ("North Side Users") diverting natural flow water within the Blackfoot River basin. Since this effort predated the taking of SRBA claims to water rights in the Blackfoot River basin, the Department's water right records could not be relied upon to be complete or accurate. Various other data sources both within and outside of the Department were reviewed to identify acreage irrigated by the North Side Users. My recollection is that the primary data source was Landsat Satellite imagery. That imagery was analyzed by the Department's remote sensing staff using the "supervised classification" method to estimate the acreage being actively irrigated during the 1986 – 1987 timeframe by the North Side Users.

7. Once the estimate of actively irrigated acreage was determined the amount of water needed to be diverted or duty of water for the irrigation of those acres was estimated. The water duty estimate was developed in consultation with other members of the Department staff including members of the Department's hydrology group. Other individuals outside the Department may have been consulted, including the Blackfoot River basin Watermaster, but I have no current recollection of who those individuals may have been.

8. The estimate of actively irrigated acreage and duty of water were combined to produce the estimate of 45,000 ac-ft per year of water diverted by the North Side Users.

9. The 45,000 ac-ft per year estimated water requirement did not include water that could have been previously diverted and used on acreage that was inactive in the 1986 – 1987

timeframe. With the information and tools available, including the records of the Blackfoot River Water District and the Department, it was not possible to estimate the amount of water that might have been used in prior years on lands not being actively irrigated in the 1986 – 1987 timeframe.

10. Neither did the 45,000 ac-ft per year estimated water requirement include water diverted and used by *de minimis* domestic or stock water uses. There simply were no data available to base an estimate of the water needs for *de minimis* uses upon. The amount of water required for the continued *de minimis* water uses was expected to be negligible when compared to the irrigation needs of the basin.

11. As a part of the Fort Hall negotiations, other State of Idaho representatives and I met with Ed Hall, the then Watermaster of Water District 27, the Blackfoot River basin, to better understand the needs of the North Side Users and to inform the watermaster of the progress of the negotiations.

12. Subsequently, during the Fort Hall negotiations, the State of Idaho, the United States and the Shoshone Bannock Tribe negotiated the provisions of Section 7.1.18.x.d of the Agreement (provision x.d of water right 27-11375) based, in part, upon the 45,000 ac-ft per year estimated diversion requirement for the North Side Users identified above.

13. As identified in my Affidavit dated December 5, 2008 filed in Basin-Wide Issue No. 00-92027, during the current negotiations involving the Blackfoot River basin that began in the Spring of 2007, maps were prepared by HKM Engineering, now DOWL HKM, identifying lands historically irrigated but idle in the 1986 – 1987 and earlier timeframe. Some of those idle lands are covered by water right recommendations currently before the SRBA Court or water rights decreed by the SRBA Court. It is my belief the lands identified as idle by HKM were not

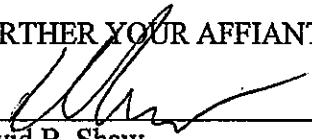
included in the actively irrigated acreage used to estimate the 45,000 ac-ft per year water requirement for the North Side Users.

14. After my review of the water rights listed on the *State of Idaho's Motion for Accounting*, and in consultation with the Water District #27 Watermaster, it is my opinion the list contains water right recommendations and decrees that were not diverting and using water for irrigation during the 1986 – 1987 timeframe prior to January 1, 1990. These water rights are for lands identified as idle on the maps described in paragraph 13, above, and are still not diverting and using water for irrigation purposes according to the 2010 Basin 27 Watermaster's records. Water for diversion and use by these water rights was not included in the 45,000 ac-ft estimate of water needed by the North Side Users since those lands were not actively irrigated at the time of the estimate and continue to be unirrigated through the 2010 irrigation season.

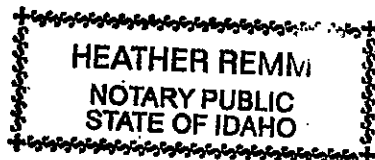
15. The water rights that I believe were not included in the 45,000 ac-ft estimate are listed on Exhibit A, attached hereto.

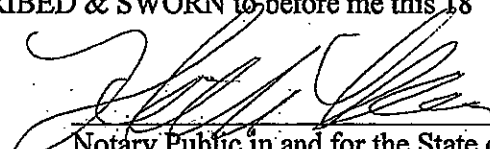
DATED this 18th day of March, 2011.

FURTHER YOUR AFFIANT SAYETH NAUGHT


David B. Shaw

SUBSCRIBED & SWORN to before me this 18th day of March, 201.




Notary Public in and for the State of Idaho
My Commission Expires: 12/10/15

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March, 2011, a true and correct copy of the foregoing was mailed with sufficient first-class postage to the following:

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720

Eastern Idaho Water Co.
C/o Larry Hinderager
434 W. Riverton Rd.
Blackfoot, ID 83221

William G. Myers III
HOLLAND & HART, LLP
P.O. Box 2527
Boise, ID 83701-2527

Mark B. Pratt
279 N. 400 E.
Blackfoot, ID 83221

Brett McDaniel
631 W. 225 S.
Blackfoot, ID 83221

Scott Axline
P.O. Box 100
Blackfoot, ID 83221

Merlin Yancey
707 W. 300 S.
Blackfoot, ID 83221

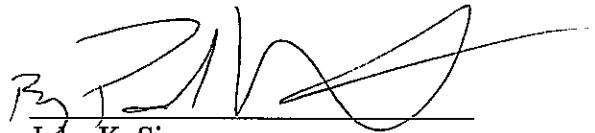
Clive Strong
Shasta Kilminster-Hadley
Natural Resources Division
IDAHO ATTORNEY GENERAL'S OFFICE
P.O. Box 44449
Boise, ID 83711-4449

Marvin R. Yancey
691 W. 300 S.
Blackfoot, ID 83221

Gary A. & Sonja J. Wright
673 W. 300 S.
Blackfoot, ID 83221

Jeanette Wolfley
SHOSHONE-BANNOCK TRIBES
202 N. Arthur
Pocatello, ID 83202

Peter C. Monson
Environment & natural Resources Div.
U.S. DEPARTMENT OF JUSTICE
999 18th Street
South Terrace, Suite 370
Denver, CO 80202



John K. Simpson

Exhibit A

Blackfoot River Basin Water Rights that should be removed from the State's list

27-4L
27-47
27-49
27-54
27-73
27-76
27-2039
27-2041A
27-2041B
27-2048
27-4096
27-4097
27-4147
27-7071
27-7374
27-11273
27-11317
27-11966
27-12035
27-12040
27-12045
27-12115
27-12118