

MAY - 5 2011

By

Clerk
Deputy Clerk

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 Nos.: See Exhibit A

Case No. 39576

AFFIDAVIT OF ROBERT L. HARRIS

**On Permissive Review from Special Master Dolan's December 11, 2009 Order on Motions
for Summary Judgment**

Honorable Eric J. Wildman, Presiding Judge

Robert L. Harris, Esq. (ISB # 7018)
Luke H. Marchant (ISB # 7944)
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

Attorneys for Mud Lake Water Users

*(See service page for listing of all
parties' counsel)*

STATE OF IDAHO)
) ss.
County of Bonneville)

I, Robert L. Harris, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

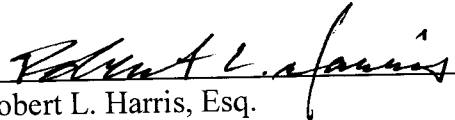
And being so sworn I depose and say:

1. I am an attorney licensed to practice law in the state of Idaho. I am a member of the firm of HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C. I am the attorney for Mud Lake Water Users, Inc., Montevue Canal Company, Independent Water Users of Mud Lake, Producers Irrigation Company, and Jefferson Irrigation District (collectively, "Mud Lake Water Users") in this matter.
2. MLWU previously moved for summary judgment on the matter of whether or not the water rights at issue in this matter should have a remark or other indicator of the flood water source that supplies these water rights. The position of MLWU was aligned with the Ground Water Districts. Ultimately, the special master in these subcases ruled against MLWU's and the Ground Water Districts' position.
3. The Ground Water Districts requested permissive appeal in this matter, which was granted. MLWU has always intended to file a response brief in support of that appeal. I inadvertently scheduled the response brief deadline for May 6, 2011, the same date as another brief pertaining to high flows in the Lemhi River basin was due. I believed that both briefs were due on the same day.
4. Upon receipt of email service of the Surface Water Coalition's Response Brief on May 4, 2011 (it was sent on May 3, 2011, but was not read by me until after business hours on May

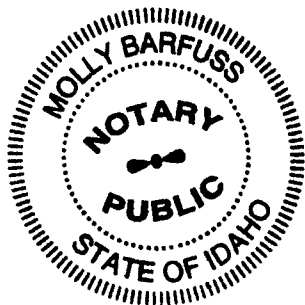
3rd), I rechecked the response brief deadline and discovered that it was actually May 3rd, not May 6th.

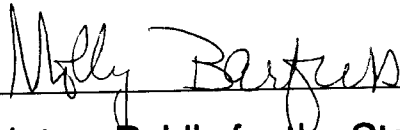
5. I have not read any part of the Surface Water Coalition's response brief, but instead finalized my intended response brief for submission immediately to the other parties.
6. I apologize for my oversight, but request that MLWU's response brief be accepted and reviewed by the court and counsel to this matter even though it is one day past the response brief deadline. I do not believe that the parties will suffer any prejudice with the one day delay, as it is a response brief that requires no reply, and the hearing on this matter is scheduled for May 23rd.

DATED this 4th day of May, 2011.


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

SUBSCRIBED AND SWORN TO before me this 4th day of May, 2011.




Notary Public for the State of Idaho
Residing in Idaho Falls
Commission Expires 03-7-12

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof on this 4th day of May, 2011.

DOCUMENT SERVED: AFFIDAVIT OF ROBERT L. HARRIS

ATTORNEYS SERVED:

Clerk of the SRBA Court
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83302-2707

United States Dept. of Justice
Environment & Natural Resource Div.
550 West Fort Street
MS 033
Boise, ID 83724
david.gehlert@usdoj.gov

John K. Simpson, Esq.
Travis L. Thompson, Esq.
Barker, Rosholt & Simpson, LLP
PO Box 485
Twin Falls, ID 83303-0485
jar@idahowaters.com
tlt@idahowaters.com

Josephine P. Beeman Esq.
Beeman & Associates PC
409 W. Jefferson St.
Boise, ID 83702
jo.beeman@beemanlaw.com

A. Dean Tranmer
City of Pocatello
PO Box 4169
Pocatello, Id 83201

Candice M. McHugh
Racine, Olson, Nye, Budge & Bailey, Chtd.
101 South Capitol Blvd., Ste. 208
Boise, ID 83702
cmm@racinelaw.net

Natural Resources Division Chief
State of Idaho
Attorney General's Office
PO Box 44449
Boise, ID 83711-4449

IDWR Depository
PO Box 83720
Boise, ID 83720-0098

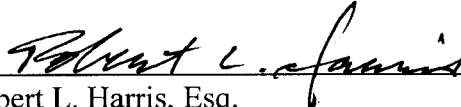
Roger D. Ling, Esq.
Ling, Robinson & Walker
PO Box 396
Rupert, ID 83350-0396
rdl@idlawfirm.com

Jerry Rigby
Rigby, Andrus & Moeller, Chtd.
PO Box 250
Rexburg, ID 83440-0250
jrigby@rex-law.com

C. Thomas Arkoosh, Esq.
Arkoosh Law Offices, Chtd.
PO Box 32
Gooding, ID 83330
tarkoosh@capitolawgroup.net

W. Kent Fletcher, Esq.
Fletcher Law Office
PO Box 248
Burley, ID 83318
wkf@pmt.org

Sarah A. Klan
White & Jankowski, LLP
511 Sixteenth St., Ste. 500
Denver, CO 80202
sarahk@white-jankowski.com



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\RLH\1047 MLWU\01, Objections, Oct 2006\03 Pleadings\Permissive Review Affidavit.wpd

EXHIBIT A

WR#	Claimant	Priority Date
1-4	TFCC	12/22/1915
1-5	NSCC	12/23/1915
1-6	AFRD	3/30/1921
1-7	BID	4/1/1939
1-8	MID	4/1/1939
1-9	Milner	4/1/1939
1-10	TFCC	4/1/1939
1-13	FID	4/1/1939
1-14	A&B	4/1/1939
1-16	NSCC	12/23/1915
1-17	Milner	11/14/1916
1-211A	BOR	3/26/1903
1-211B	BID	3/26/1903
1-212	North Side	10/7/1905
1-213	North Side	8/10/1908
1-214A	BOR	8/6/1908
1-214B	BID	8/16/1908
1-219	BOR	12/14/1909
1-2050	Milner	10/25/1939
1-2061	BOR	6/11/1956
1-10094	BOR	2/15/1944
1-10225	A&B	4/1/1984
1-10237	A&B	7/11/1968
1-10238	A&B	7/11/1968
1-10239	A&B	7/11/1968
1-10240	A&B	7/12/1968
1-10241	A&B	4/1/1978
1-10482	BOR	4/1/1940
1-10483	Amalgamated	5/18/1926