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JUN 16 2011

DEPARTMENT OF
WATER RESOURCES

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June 9, 2011

Idaho Department of Water Resources
Attn: Vicki Kelley
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Additional Evidence re Water Right No. 36-7512*
Basin-Wide Issue 13

Dear Ms. Kelley:

Enclosed is additional evidence showing why Water Right No. 36-7512 should not be included on Attachment B to the *Objection re: State of Idaho's Second Amended Motion to Include Subordination Language on Water Rights Affected by the Swan Falls Agreement*. The following is an explanation of the relevance of each piece of additional evidence:

1. Tim Luke Memo dated July 25, 1989. This memo shows that 740 of the 801 acres authorized under Water Right No. 36-7512 were irrigated prior to July 1, 1985.
2. Request for Extension of Time dated December 31, 1984. This request shows that water right owner had invested \$25,000 in irrigation wells and equipment as of December 31, 1984.
3. Application for Amendment of a Permit approved June 15, 1981. This shows that the water right owner held a valid permit existing prior to October 25, 1984.

June 9, 2011

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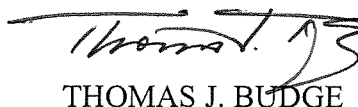
4. Affidavit of Perry Van Tassell. This affidavit shows that nearly all of the 801 acres had been developed by October 25, 1984.

Paragraph 7(d) of the Swan Falls Agreement grants unqualified subordination to "persons who have beneficially used water prior to October 1, 1984, and who have filed an application or claim for said use by June 30, 1985." The Tim Luke memo and the Affidavit of Perry Van Tassell both verify that the Van Tassells beneficially used water prior to October 1, 1984 under an Application for Permit filed prior to June 30, 1985. Therefore, Water Right No. 36-7512 receives the benefit of unqualified subordination under paragraph 7(d) of the Swan Falls Agreement.

In addition, Water Right No. 36-7512 receives the benefit of unqualified subordination as a third party beneficiary under paragraphs 4 and 2(a) of the 1180 Contract. Paragraph 4 grants the benefit of unqualified subordination to the class of water users identified in paragraph 2(a). Paragraph 2(a) includes "all consumptive water users who have beneficially used water prior to [October 25, 1984,] pursuant to a valid permit . . . and any persons who have previously made substantial investments in irrigation wells or equipment for use pursuant to a Water Right Application filed prior to [October 25, 1984] . . ." The enclosed Application for Amendment of a Permit shows that the Van Tassells owned a valid water right permit as of June 15, 1981. The Tim Luke Memo and the Perry Van Tassell Affidavit show that water was beneficially used under this permit prior to October 25, 1984. The Request for Extension of Time shows further that the Van Tassells had made substantial investments in irrigation wells and equipment prior to October 25, 1984. Thus, these documents clearly demonstrate that Water Right 36-7512 benefits from unqualified subordination as a third party beneficiary under the 1180 Contract.

With this information, I presume that Water Right 36-7512 will be removed from Attachment B to the *Objection re: State of Idaho's Second Amended Motion to Include Subordination Language on Water Rights Affected by the Swan Falls Agreement*. Should you still have any questions as to whether this water right benefits from unqualified subordination, please give me a call and I will endeavor to secure what additional evidence may be necessary.

Sincerely,



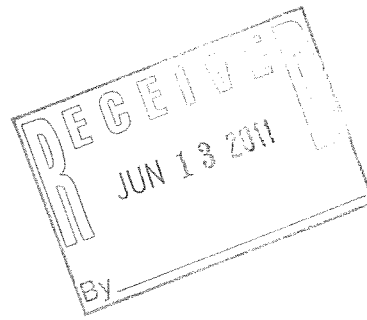
THOMAS J. BUDGE

TJB:rr

Enclosures

cc: Perry and Afton Van Tassell (w/encls.)

Thomas J. Budge, ISB No. 7465
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Post Office Box 1391
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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

Case No. 39576

Subcase Nos. 91013

AFFIDAVIT OF PERRY VAN TASSELL

STATE OF IDAHO)
: SS
County of Cassia)

PERRY VAN TASSELL, being first duly sworn, deposes and states as follows:

1. I am over 18 years of age, competent to testify and state the following based on my own personal knowledge.
2. In the year 1975, my family moved from Kamas, Utah, to a farm that my parents purchased in Paul, Idaho. I was 12 years old at the time and have lived on the family farm ever since.
3. I have worked on the family farm my entire life and have been in charge of operating the family farm since my father, Gail Van Tassell, died on June 24, 1984. I am very familiar with the operation of the farm and the development of irrigation on the farm.
4. One of the water rights owned by my family and used on the farm is water right number 36-7512, currently in the name of my parents, Afton and Gale Van Tassell. This water right is presently included in Attachment B to the *State of Idaho's Second Amended Motion to Include Subordination Language on Water Rights Affected by the Swan Falls Agreement*. This water right should be removed from Attachment B because substantial investment was made in irrigation the wells and equipment that deliver this water right and because water was physically used under this water right prior to October 25, 1984, as explained below.

5. I am familiar with the irrigation practices on the family farm as of October 25, 1984. I was 21 years old at the time and was actively involved with the farming and irrigation of the family farm. At that time nearly the entire 801 acres that are authorized to be irrigated under water right number 36-7512 were actively being irrigated. My recollection is that the only land that wasn't being irrigated at that time was roughly 20 acres located in the NW¼ NE¼ of Section 32, Township 7 South, Range 21 East, Boise Meridian, Lincoln County, Idaho. I estimate that roughly 781 acres were irrigated as of October 25, 1984.

6. By October 25, 1984, we did not have an open ditch capable of delivering water to the land in the NW¼ NE¼ of Section 32 that wasn't being irrigated. However, we had installed two wells, irrigation main lines, and sprinkler irrigation equipment to irrigate the rest of the land within the place of use of water right number 36-7512. We eventually extended a main line out to our property in the NW¼ NE¼ of Section 32 and brought it under irrigation.

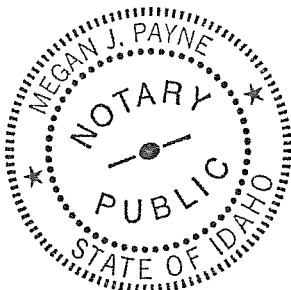
7. I have read the Memorandum of Tim Luke dated July 25, 1989, attached hereto as *Exhibit A*. That memo states that 740 of the 801 acres were developed prior to July 1, 1985. We did not increase the number of acres irrigated between October 25, 1984, and July 1, 1985, so Mr. Luke's calculation of 740 acres would be accurate as of October 25, 1984. I do not have a map of the acres Mr. Luke included in his calculation of 740 acres, so I cannot at this time provide an explanation of the difference between his calculation of 740 acres and my estimate of 781 acres. In any case, I would agree that between 740 and 781 acres were actively irrigated as of October 25, 1984, under water right number 36-7512.

FURTHER YOUR AFFIANT SAITH NAUGHT.

DATED this 10 day of June, 2011.


PERRY VAN TASSELL

SUBSCRIBED AND SWORN TO before me this 10th day of June, 2011.




NOTARY PUBLIC FOR IDAHO
Residing at: dundee
My Commission Expires: 10-11-14

EXHIBIT “A”

MEMORANDUM

TO: FILE

FROM: TIM LUKE

DATE: July 25, 1989

RE: SWAN FALLS PROCESSING/ PERMIT NO. 36-7512

=====

Mrs. Van Tassel and her son visited the office recently to review this permit and pay the trust water readvertisement fee. They claimed that the lands under this permit had been irrigated prior to 1985. Some of the land under the permit is not irrigable due to rock outcrops etc. I had previously asked the Van Tassels to submit information concerning development prior to July of 1985, particularly since only a portion of this permit overlaps existing rights.

A review of 1984 NHAP photography on file at the State SCS office shows that most of the land under the permit was irrigated in that year. A schematic and analysis of the 1984 photo is attached. The 1984 photo and schematic closely resembles the department's 1986 remote sensing 7.5 min overlay of irrigated acreage as well as the department's 1978 orthophotos. The actual number of irrigated acres reported by the remote sensing division is shown in red in the upper diagram of the attached analysis sheet. The total number of irrigated acres is 740 acres.

Based on the above review, I recommend that the department readvertise the permit and consider 740 acres as developed prior to July 1, 1985 and count the remaining 61 acres as trust water acres.

INDEXED

SEP 19 1989

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

For Office Use Only
Fee Received 15.00
Date 1-3-85
Receipt # 35945

REQUEST FOR EXTENSION OF TIME

To provide additional time in which to submit
proof of beneficial use on a water right permit

RECEIVED

DEC 31 1984

Department of Water Resources

Afton Van Tassell

(Name)

of Route #2, Box 2608, Paul,

(Address)

State of Idaho, 83347, deposes and says:

That he is the holder, or the duly authorized agent of the holder*, of Permit to Appropriate the Public Water of
the State of Idaho No. 36-7512.

That under the terms and conditions of said permit, work thereunder was required to be completed on or before
January 1, 19 85.

That he has heretofore performed the following work described under said permit: Two wells drilled (per
(This must be filled out if no work has been completed put none.)
application for amendment approved 6-15-1981). Water is supplemental for existing
licenses. *Installed a mainline and sprinkler irrigation and presently irrigating
at least 100 acres.

*Per conversation with Afton Van Tassell - 1/10/85 rf Costings *25,000

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit:
Litigation with Idaho Power Co. /Swan Falls has precluded development.
Additionally, my husband, Gail Van Tassell, died on June 24, 1984,
and prior to his death he was primarily responsible for the
development.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations
under said permit to January 1, 19 90.
(1 yr. minimum, 5 yrs. maximum)

NOTE
AS OF JULY 1, 1980,
THERE IS A \$15.00
CHARGE FOR REQUESTS
FOR EXTENSION OF
TIME.

Afton Van Tassell
(Signature)*

*IF OTHER THAN HOLDER, Power of Attorney must be supplied.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time within
which to submit the proof of beneficial use is extended to January 1, 1990.

Signed this 11th day of January, 19 85.

L. Glen Saxton
Chief, Operations Bureau

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR AMENDMENT OF A PERMIT

To change the point of diversion and/or the place of use.

Comes now Gail &/or Afton Van Tassell ph. 438-8165
of (address) Rt. 2, Box 152, Paul, Idaho, 83347, and represents to the
Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho
No. 36-7512, and requests that the permit and permit map be changed as follows:

1. Point of diversion: NE ^(existing) ¼ SE ¼, Section 28, Township 7S, Range 21E, B.M.,
County of Lincoln. Other points of diversion: NE ^(existing) ¼ NW ¼ Sec. 33, T7S, R21E, B.M.
NE ^(proposed) ¼ SE ¼ or SE ¼ SE ¼ Sec. 29, T7S, R21E, B.M.

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Amount 9.2 for Irrigation purposes from Mar. 15 to Nov. 15 (both dates inclusive)
(cfs or acre feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

3. Place of use or land to be irrigated:

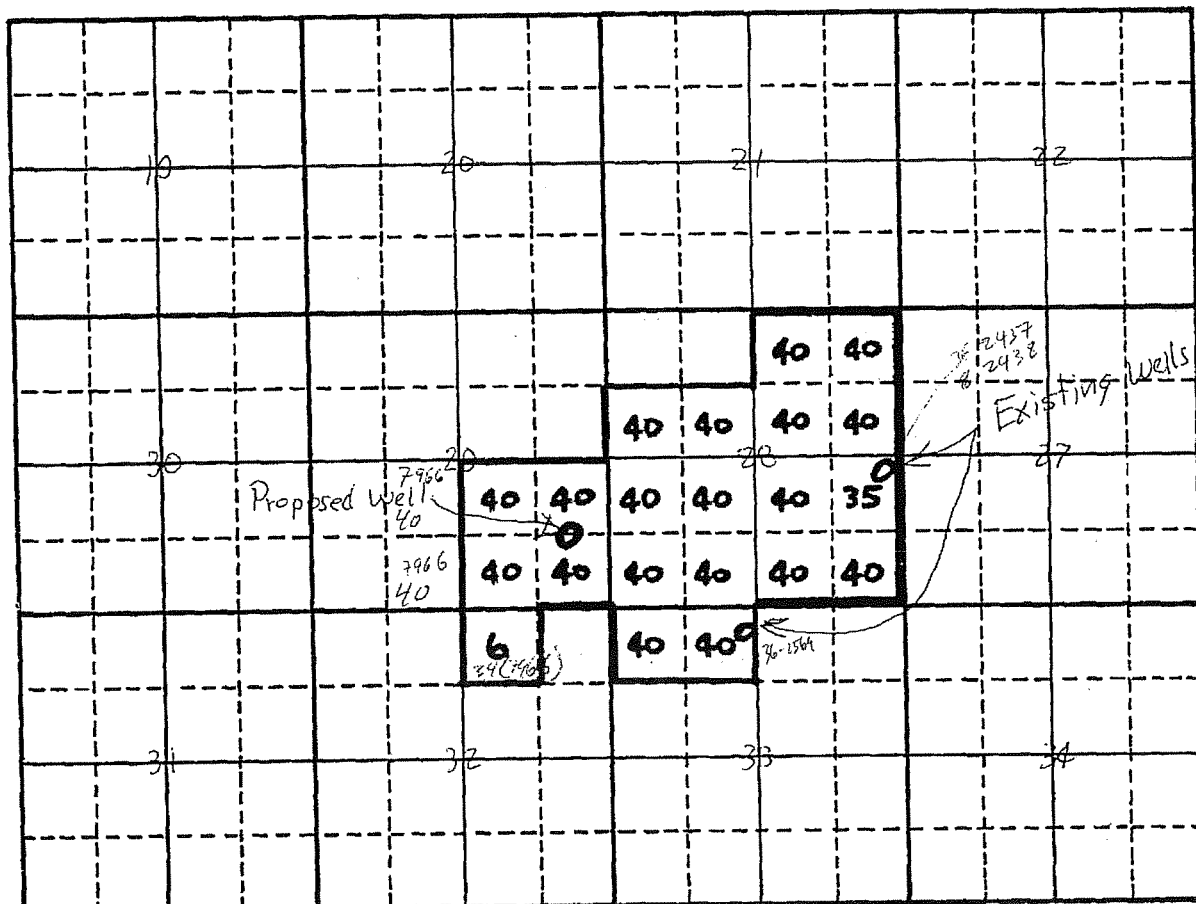
TWP	RGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
7S	21E	28	40	40	40	40			40	40	40	40	40	40	35	40	40	40	555
		29													40	40	40	40	160
		32		6															6
		33					40	40											80

Total number of acres to be irrigated = 801

4. a. Who owns the property at the point of diversion? Applicant
b. Who owns the land to be irrigated or the place of use? Applicant
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the
applicant to make this filing: _____

Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile.

That no one will be injured by such change, and that such change will be made at permit holder's own risk.

Signed at Twin Falls, Ida., this 23 day of Feb., 19 81.

Paul Van Tassell
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by LS Fee = \$20.00
#16846
Publication prepared by M. Hill Date 3/2/81 Published in Lincoln Co. Journal
Publication dates 3/12/3/19/81

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

I, L. GLEN SAXTON Chief, Operations Bureau of the Department of Water Resources hereby

APPROVE the above referenced Amendment for Permit No. 36-7512.

Witness my hand this 15 day of June, 19 81.

L. Glen Saxton
Chief, Operations Bureau