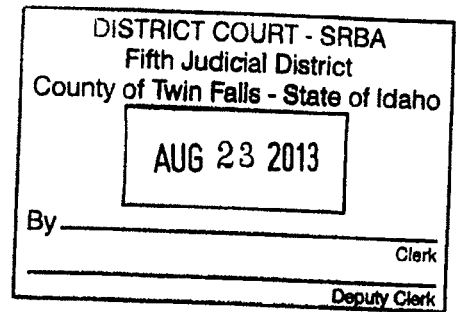


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SEP 04 2013
DEPT. OF WATER RESOURCES

**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. 21-00014, 21-00015,
) 21-2153, 21-2159, 21-4006, 21-4007,
) 21-4008, and 21-715.
)
Case No. 39576) **AFFIDAVIT OF TOM BASSISTA IN**
) **IN SUPPORT OF MOTION TO SET**
) **ASIDE PARTIAL DECREES**
)
)
_____)

STATE OF IDAHO)
) ss.
County of Bonneville)

I, TOM BASSISTA, being duly sworn upon oath, depose and hereby state as follows:

1. My name is Tom Bassista and my work address is Idaho Department of Fish and Game, Upper Snake Regional Office, 4279 Commerce Circle, Idaho Falls, ID 83401.
My telephone number is 208-525-7290.

2. I am employed by the Idaho Department of Fish and Game ("IDFG") and have been so employed for approximately three years. I was over the age of eighteen years at the time I was first employed.
3. I am the Environmental Staff Biologist for the Upper Snake and Salmon Regions of IDFG. My principal duties include providing technical support and IDFG comments concerning fish and wildlife resources for land and water use proposals and planning efforts. I have been employed in this position since October 31, 2010.
4. I make the following statements based upon my review of IDFG's and the Idaho Department of Water Resources' ("IDWR") records and personal knowledge of the geographic layout and water use on the Sand Creek Wildlife Management Area ("SCWMA").
5. IDFG manages the SCWMA which consists of five inter-connected ponds that are used primarily for wildlife habitat and recreation.
6. IDFG has eight water rights for use within the SCWMA. Water rights 21-00014, 21-00015, 21-2153, 21-2159, 21-4006, 21-4007, 21-4008, and 21-7151 ("Partial Decrees") were partially decreed in the Snake River Basin Adjudication ("SRBA").
7. IDFG recently filed two additional late claims, 21-2039 and 21-2170, in the SRBA for use within the SCWMA.
8. Late claims 21-2039 and 21-2170 were recommended in the Director's Report dated June 20, 2013. IDFG objected to the recommendations for 21-2039 and 21-2170 on the basis that the Source element should read "tributary to Sinks" rather than "tributary to Sand Creek."

9. In investigating late claims 21-2039 and 21-2170, IDFG also reviewed the Partial Decrees for the SCWMA and found several errors in each of the Partial Decrees.
10. Partial decree 21-00014 has the following errors:
- a. The Source element is incorrect because it lists “Sand Creek” as the source rather than as an Unnamed Stream tributary to Sand Creek.
 - b. The quantity element is incorrect because the quantity was decreed as an acre-feet per year (“AFY”) volume rather than in cubic-feet per second (“CFS”). This water right was originally decreed as a natural flow irrigation right in the Arcadia Reservoir Decree. *Affidavit of Ann Y. Vonde in Support of Motion to Set Aside Partial Decree (“Vonde Affidavit”)* Exhibit C. IDFG’s original claim for this water right noted that the water flows through the pond. *Vonde Affidavit* Exhibit B. IDFG currently manages the pond as claimed.
 - c. The Point of Diversion is incorrect because it lists an incorrect location in Section 9 and omits the correct location in Section 10. The Point of Diversion on partial decree 21-00014 is located within Pond #4. *Vonde Affidavit* Exhibit A. However, on the ground, the headgate that takes water to the pond is located on the Unnamed Stream commonly known as Sharp Springs Fork of Sand Creek. *Vonde Affidavit* Exhibit A. IDFG originally claimed this right with a point of diversion on the stream. *Vonde Affidavit* Exhibit B.
 - d. The Period of Use is incorrect because it lists the entire year instead of just the irrigation season. This water right was originally decreed as an irrigation water right in the Arcadia Reservoir Decree. *Vonde Affidavit* Exhibit C.

- e. The Place of Use is incorrect because it includes two incorrect quarter/quarter locations in Section 9 but omits a quarter/quarter in Section 9 that should be included.

11. Partial Decree 21-00015 has the following errors:

- a. The Source element is incorrect because it lists “Sand Creek” as the source rather than as an “Unnamed Stream” tributary to Sand Creek.
- b. The quantity element is incorrect because the quantity was decreed as an acre-feet per year (“AFY”) volume rather than in cubic-feet per second (“CFS”). *Vonde Affidavit Exhibit C.* This water right was originally decreed as a natural flow irrigation right in the Arcadia Reservoir Decree. *Vonde Affidavit Exhibit C.* IDFG’s original claim for this water right noted that the water flows through the pond. *Vonde Affidavit Exhibit D.* IDFG currently manages the pond as claimed.
- c. The Point of Diversion is incorrect because Section 9 does not include the point of diversion and it also incorrectly lists the Quarter-Quarter in Section 10. The Point of Diversion on partial decree 21-00015 is located within Pond #4. *See Vonde Affidavit Exhibit A.* However, on the ground, the headgate that takes water to the pond is located on the Unnamed Stream commonly known as Sharp Springs Fork of Sand Creek. *See Vonde Affidavit Exhibit A.* IDFG originally claimed this right with a point of diversion on the stream. *Vonde Affidavit Exhibit D.*
- d. The Period of Use is incorrect because it lists the entire year instead of just the irrigation season. This water right was originally decreed as an irrigation water right in the Arcadia Reservoir Decree. *Vonde Affidavit Exhibit C.*

- e. The Place of Use is incorrect because it includes two incorrect quarter/quarter locations in Section 9 but omits a quarter/quarter in Section 9 that should be included. *Vonde Affidavit* Exhibit A.

12. Partial Decree 21-2153 has the following errors:

- a. The Source is incorrect because it lists Blue Creek as tributary to “Sand Creek.” *Vonde Affidavit* Exhibit F and Exhibit G.
- b. The Place of Use is incorrect because it does not include a quarter/quarter in Section 3. See *Vonde Affidavit* Exhibit A

13. Partial Decree 21-2159 has the following errors:

- a. The Source is incorrect because it lists Blue Creek as tributary to “Sand Creek.” *Vonde Affidavit* Exhibit F and Exhibit G.
- b. The Point of Diversion is incorrect because it incorrectly lists the quarter/quarter location. See *Vonde Affidavit* Exhibit A.
- c. The Place of Use is incorrect because it includes a quarter/quarter in Section 9 that is incorrect and omits a quarter/quarter in Section 9 that should be included. See *Vonde Affidavit* Exhibit A.

14. Partial Decree 21-4006 has the following errors:

- a. The Source element is incorrect because it lists “Sand Creek” as the source rather than as an “Unnamed Stream” tributary to Sand Creek.
- b. The Quantity is incorrect because it fails to include a diversion to storage quantity amount in CFS. This is not an on stream reservoir for purposes of this right. Water is taken from Sharp Springs Fork of Sand Creek through a ditch and then into the pond for storage. See *Vonde Affidavit* Exhibit A.

- c. The Point of Diversion is incorrect because Section 9 does not include the point of diversion and it also incorrectly lists the quarter/quarter in Section 10. The Point of Diversion on partial decree 21-4006 is located within Pond #4 and on Sand Creek. However, on the ground, the headgate that takes water to the pond is located on the Unnamed Stream commonly known as Sharp Springs Fork of Sand Creek. *Vonde Affidavit* Exhibit A. IDFG originally claimed this right with a point of diversion on the Unnamed Stream. *Vonde Affidavit* Exhibit E.
- d. The Purpose of Use is incorrect because it does not include “diversion to storage.” This is not an on-stream reservoir for purposes of this right. Water is taken from Sharp Springs Fork of Sand Creek through a ditch and then into the pond for storage. *Vonde Affidavit* Exhibit A.

15. Partial Decree 21-4007 has the following errors:

- a. The Source is incorrect because it lists Blue Creek as tributary to “Sand Creek.” *Vonde Affidavit* Exhibit F and Exhibit G.
- b. The Point of Diversion is incorrect because it includes a location in Section 3. *Vonde Affidavit* Exhibit A.
- c. The Place of Use is incorrect because it omits a quarter/quarter location in Section 10. *Vonde Affidavit* Exhibit A.

16. Partial Decree 21-4008 has the following errors:

- a. The Source is incorrect because it lists Blue Creek as tributary to “Sand Creek.” *Vonde Affidavit* Exhibit F and Exhibit G.
- b. The Point of Diversion is incorrect because it omits a quarter/quarter location in Section 10. *Vonde Affidavit* Exhibit A.

c. The Place of Use is incorrect because it omits a quarter/quarter location in Section

10. *Vonde Affidavit* Exhibit A.

17. Partial Decree 21-7151 has the following errors:

a. The Source is incorrect because it lists Blue Creek as tributary to "Sand Creek." *Vonde Affidavit* Exhibit F and Exhibit G.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

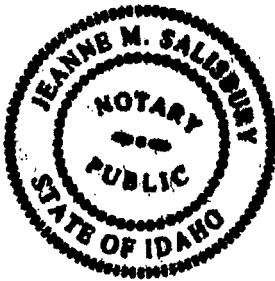
DATED and SIGNED this 22nd day of August, 2013.

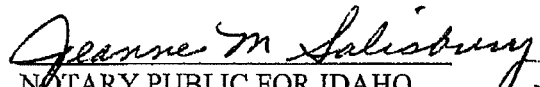


TOM BASSISTA
Environmental Staff Biologist

State of Idaho)
)ss.
County of Bonneville)

SUBSCRIBED AND SWORN TO before me this 22 day of August, 2013.

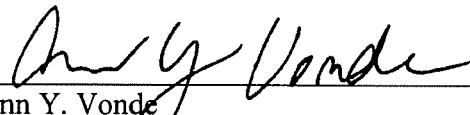



NOTARY PUBLIC FOR IDAHO
Residing at: 4279 Commerce Circle, Idaho Falls
My Commission Expires: 5-13-2014 Idaho

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of August 2013, I caused to be served a true and correct copy of the foregoing AFFIDAVIT OF TOM BASSISTA to the following by the method indicated:

CLERK OF THE DISTRICT COURT SRBA P.O. BOX 2707 TWINS FALLS, ID 83307	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery
DIRECTOR OF IDWR P.O. BOX 83720 BOISE, ID 83720-0098	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery



Ann Y. Vonde
Deputy Attorney General