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OFFICE OF THE
ATTORNEY GENERAL

1 Claimants: Harry R. Gisler
2
3 Attorney Name and Address: HEPWORTH, LEZAMIZ & HOHNHORST,
4 CHARTERED
5 133 Shoshone St. North
6 P.O. Box 389
7 Twin Falls, ID 83303-0389
8 Telephone: (208)734-7510

9
10
11 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
12 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

13 * * * * *

14 In Re SRBA) Subcase No. 36-00021B
15)
16) AFFIDAVIT OF PATRICK D. BROWN
17 Case No. 39576)
18)

19 * * * * *

20 STATE OF IDAHO)
21) ss.
22 County of Twin Falls)

23 Patrick D. Brown, being first duly sworn upon oath deposes and says:

1. I am an attorney licensed to practice in the State of Idaho. I practice with the law firm of Hepworth, Lezamiz & Hohnhorst, Chartered, and represent Harry R. Gisler.

2. On or about Wednesday, November 8, 1995, I requested my secretary, LeAnn McMillan, to contact Josephine Beeman, attorney for Faulkner Land & Livestock, May

1 Farms, Ltd. and Sand Springs Ranch Partnership, for purposes of scheduling mutually
2 convenient times to take depositions of principals of the foregoing entities.

3 3. I discussed the status of the depositions with my secretary on the
4 afternoon of Thursday, November 9, 1995. During our discussion on November 9th, I
5 informed my secretary that I would not be available on Friday, November 17th, as I had just
6 confirmed that I would be having surgery on that day. However, we needed the depositions
7 before a hearing scheduled for November 22, 1995.

8 4. I requested my secretary to attempt to schedule the depositions for
9 Monday, November 13th, or Tuesday, November 14th, if Ms. Beeman's clients could be
10 available on either of those days, or at a later time convenient to Ms. Beeman's clients,
11 which I would change my schedule to accommodate.

12 5. On Friday, November 10th at approximately 3:30 p.m. I checked with
13 my secretary on the status of the depositions. My secretary informed me that she had been
14 in contact with Ms. Beeman's office on three separate occasions and was waiting for Ms.
15 Beeman's secretary to return a call to confirm the scheduling of the depositions beginning
16 on Monday, November 13th, at 9 a.m. I instructed my secretary to proceed with service
17 of the deposition notices but to include a letter to Ms. Beeman reflecting that if the times
18 were not acceptable to please let me know so we could accommodate her and her clients.

19 6. I left my office on Friday, November 10th, at 4:45 p.m. Prior to leaving
20 my office I confirmed with my secretary that we had not received a call from Ms. Beeman's
21 office.

22 7. Upon arriving at my office on Monday, November 13th, I received a
23

1 letter from C.A. Daw that had been faxed to my office on Friday, November 10th, at
2 approximately 4:53 p.m., a copy of which is attached as Exhibit "A".

3 8. I promptly called Mr. Daw and told him that pursuant to the events of
4 the previous Friday, the deposition notices were sent with the understanding that Ms.
5 Beeman would let me know if her clients were unavailable. I sent the notices after failing
6 to get a promised response from Ms. Beeman about the unavailability of her clients. I
7 reiterated my desire and intent to cooperate fully with Ms. Beeman to schedule the
8 depositions at a mutually convenient time and requested Mr. Daw cancel the motion for
9 protective order and work amicably to resolve the matter, as I understand his office.

10 9. Subsequently, at approximately 11:29 a.m. on Monday, November
11 13th, I received by fax a letter from Mr. Daw, a copy of which is attached hereto as Exhibit
12 "B."

13 10. Mr. Daw's letter makes reference to the sequence of events leading to
14 the service of the deposition notices. Mr. Daw's recount of events is inaccurate in regard
15 to the events I have personal knowledge about.

16 11. At approximately 8:15 a.m. on Monday, November 13th, I received by
17 hand delivery a notice of taking deposition of my client, Harry R. Gisler. I had never
18 received the courtesy of a telephone call from Ms. Beeman or Mr. Daw attempting to
19 schedule a mutually convenient time for the depositions. Moreover, I was not told, nor do
20 I understand my office was told that the dates for the Gisler depositions were open, despite
21 my attempts to accommodate counsel's schedule.

22 12. Although I have no duty, I have attempted to facilitate Ms. Beeman in
23

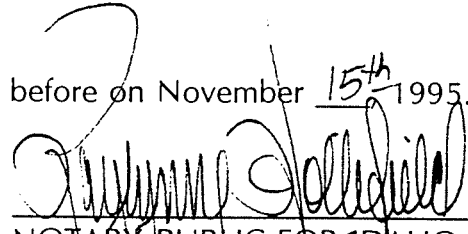
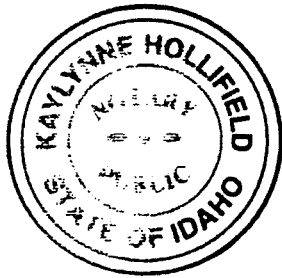
every way in the scheduling of her clients' depositions.

Dated this 15th day of November, 1995.



Patrick D. Brown

SUBSCRIBED and SWORN to before on November 15th 1995.



NOTARY PUBLIC FOR IDAHO

Residing at: TRINITY PLACE

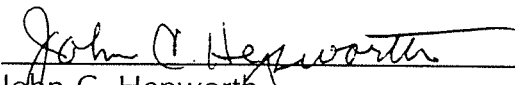
Commission Expires: 10/31/2001

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin Falls, Idaho 83303, and one of the attorneys for the claimants in this matter, certifies that on the 15th day of November, 1995, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Chief, Natural Resources Div.	<u>X</u> U.S. Mail
Office of the Attorney General	<u> </u> Hand Delivered
State of Idaho	<u> </u> Overnight Mail
P. O. Box 44449	<u> </u> Telecopy (Fax)
Boise, ID 83711-4449	

Josephine P. Beeman	<u>X</u> U.S. Mail
Dillion, Bosch, Daw & Bock, Chtd.	<u> </u> Hand Delivered
Fidelity Building	<u> </u> Overnight Mail
242 N. 8th Street, Suite 200	<u> </u> Telecopy (Fax)
Boise, ID 83702	


John C. Hepworth

(WATER\600051A.AFT)

DILLION:
B O S C H
DAW
BOCK &
chartered

November 10, 1995

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Attorneys

Josephine P. Beeman
Les Bock
Allen R. Bosch
C. A. Daw
Lee B. Dillion
Dana L. Hofstetter
Robert Wreggelsworth

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Patrick D. Brown
Hepworth, Lezamiz & Hohnhorst
133 Shoshone St. N.
Twin Falls, Id.

Re: May Farms, Ltd., Sand Springs Ranch Partnership & Faulkner
Land and Livestock
DBDB File No. 1790-WA03

Dear Pat:

Your suggestions for times for depositions on the above cases are not acceptable and your notice is woefully insufficient. If not withdrawn before noon, Saturday, November 11th, 1995, we will be filing for a protective order and we will seek fees and costs.

Sincerely,

Dillion, Bosch, Daw & Bock
Chartered

By:

C. A. Daw

Fidelity Building
242 N. 8th St.
Suite 200
Boise, ID 83702

tel (208) 344-8990
fax (208) 344-9140

Internet E-mail to:
dbdb@micron.net

EXHIBIT **A**

DILLION
BOSCH
DAW &
BOCK
chartered

November 13, 1995

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Attorneys

Josephine P. Beeman
Las Bock
Allan R. Bosch
C. A. Daw
Lee B. Dillon
Dana L. Hofstetter
Robert Wreggelsworth

Pat Brown
Hepworth, Lezamiz & Hohnhorst
Chartered
133 Shoshone St. N.
Twin Falls, Idaho 83301

Re: Subcases on Mildren, McFaddan (2), Hagerman Water Users
Association, Ya-Ta-Hay Investments, Inc., Gisler
DBDB File No. 1780-WA03

Dear Pat:

As I understood the drift of our conversation this morning you desired a cancellation of the hearing on our motion for protective order in the above cases. I assume that this means you will be withdrawing your notices of taking deposition before the hearing. I believe there is still the issue of attorney's fees to be decided, although I am willing to discuss that matter also.

I rechecked with staff and Jo. Our earliest phone call regarding the potential for these depositions was on Thursday November 9, 1995. We received one call the 9th proposing a date of the 17th. As you have already been informed, the 17th is not available for either Jo or myself. Even if your secretary's phone call the 9th had mentioned the 13th, it would have been ruled out as not giving sufficient notice. None of the phone calls on the 9th or the 10th even mentioned the 13th and 14th as possible dates. Accordingly, the first notice we had you intended to take depositions on the 13th and 14th was via fax on Friday, at 4:10 p.m. We immediately signaled our disapproval of the timing and the notice. We received no reply before our motions and affidavits were filed this morning. I do not think it was responsible for you and your staff to handle this matter this way since it required me to spend considerable weekend time in order to be protected. Our facsimile rejection came to your office during business hours and was remarkably prompt, considering when the notices went out.

I do not see any available dates for stipulated depositions. Jo and I continue to be unavailable for depositions on the 16th and 17th. We and our clients are occupied the 20th and 21st with our own depositions of your clients. If you desire to seek a

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tel (208) 344-8990
fax (208) 344-9140

Internet E-mail to:
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EXHIBIT B

Dillion, Bosch, Daw & Bock, Chartered
November 13, 1995
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rescheduling of the existing depositions, I think it would be beneficial to discuss the issue with the court on Wednesday, along with the issues raised by your notices of taking deposition.

If you propound new notices of taking deposition for different dates we will respond according to the tenor of your requests. Frankly, I do not see any need for any factual background on an issue that should be resolved off the face of the pleading.

If you have another proposal, I will be willing to listen and convey it to our clients. I would also be happy to coordinate any settlement discussions either client-to-client or through the attorneys.

Sincerely,

Dillion, Bosch, Daw & Bock
Chartered

By:

C. A. Daw