

TODD KIM

Assistant Attorney General

MARK J. WIDERSCHIEIN

KATHARINE LAUBACH

MICHELLE RAMUS

Natural Resources Section

Environment and Natural Resources Division

U.S. Department of Justice

550 West Fort Street, MSC 033

Boise, Idaho 83724

Phone: (202) 532-5803 (Widerschein)

RECEIVED

AUG 19 2024

DEPT. OF WATER RESOURCES

Counsel for the United States of America

**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

) Case No. 67-15263 et. al.
)
) **DECLARATION OF MARK J.**
) **WIDERSCHIEIN IN SUPPORT OF**
) **UNITED STATES' MOTION FOR**
) **PARTIAL SUMMARY JUDGMENT**
)

I, Mark J. Widerschein, declare as follows:

1. I am one of the attorneys who represents the United States Department of the Interior, Bureau of Land Management, in the above-captioned matter.
2. I give and make this declaration based upon my own personal knowledge and can testify as to the truth of the statements contained herein.
3. I am over the age of 18 and have personal knowledge of the facts stated in this Declaration and am competent to testify thereto.
4. Attached hereto as Exhibit 11 is a true and correct copy of transcript excerpts from the deposition of Claimant Keith Hood, which I conducted on June 12, 2024.

I declare under penalty of perjury, pursuant to the laws of the State of Idaho, that the foregoing is true and correct.

Dated this 16th day of August, 2024, at Arlington, Virginia

Mark J. Widerschein
Mark J. Widerschein

EXHIBIT 11

DECLARATION OF
MARK J. WIDERSCHEIN

Subcase 67-15263 et. al.

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.
Case No. 39576) 67-15263 et al.
_____)

DEPOSITION OF KEITH HOOD

JUNE 12, 2024

REPORTED REMOTELY BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

Job No. 6741060

Page 1

1 THE DEPOSITION OF KEITH HOOD was taken on
2 behalf of the United States of America via remote
3 videoconference, commencing at 9:13 a.m. Mountain
4 Daylight Time on June 12, 2024, before Jeff LaMar,
5 Certified Shorthand Reporter and Notary Public within
6 and for the State of Idaho, in the above-entitled
7 matter.

8
9 APPEARANCES (ALL REMOTE):

10 For Keith and Karen Hood:

11 PARSONS BEHLE & LATIMER

12 BY MR. GARRETT M. KITAMURA

13 800 West Main Street, Suite 1300

14 Boise, Idaho 83702

15 gkitamura@parsonsbehle.com

16 For United States of America:

17 UNITED STATES DEPARTMENT OF JUSTICE

18 BY MR. MARK J. WIDERSCHEIN

19 MS. KATHARINE LAUBACH

20 550 West Fort Street, MSC 033

21 Boise, Idaho 83724

22 mark.widerschein@usdoj.gov

23 katharine.laubach@usdoj.gov
24
25

I N D E X

TESTIMONY OF KEITH HOOD PAGE

Examination by Mr. Widerschein 5

EXHIBITS

EXHIBIT 1 Notice of Claim filed in 67-15263 13

EXHIBIT 2 Timeline 28

MR. WIDERSCHIEIN: This is Mark Widerschein for the United States. We consent. And there's no one in the room with me.

MR. KITAMURA: Garrett Kitamura for Keith and Karen Hood. I agree. And Karen Hood is in the room with us just off screen.

THE COURT REPORTER: Can you raise your right hand for me, please, sir.

KEITH HOOD,
first duly sworn to tell the truth relating to said
cause, testified remotely as follows:

1 would help if Jeff's having trouble hearing.

2 MR. KITAMURA: Just under the microphones. If
3 we continue to have audio problems and it becomes an
4 issue --

5 THE WITNESS: And I'll try to speak clearly.

6 MR. KITAMURA: -- if need be, we can take a
7 break and have my IT folks come in here. Allow me a
8 moment to readjust the camera.

9 MR. WIDERSCHEIN: Okay. Thank you.

10 Q. So we were discussing D.G. Edwards living
11 next door, I believe.

12 And so he was living next door, you say,
13 on -- is that a parcel that was patented? Are you
14 aware?

15 A. Yes, it was.

16 Q. Okay. And I'm curious, do you have any
17 knowledge of whether he owned stock at that time?

18 A. Whether he owned stock, meaning livestock?

19 Q. Livestock, yes.

20 A. I have no -- no knowledge of that.

21 Q. Okay. Thank you.

22 Other than these land patent documents that
23 you list in your letter here, do you have any records
24 of what was happening on the land that is now your base
25 property between your claimed priority date and 1908?

1 A. No.

2 Q. So without those records how do you assert
3 that he was using water on that land?

4 A. The land on the -- the allotment land or on
5 the land that you're -- how do I say that? His land
6 that he was patenting?

7 Q. Yeah, I'll rephrase the question.

8 To start, can we agree that he didn't
9 patent this land until 1908, that first parcel?

10 A. David G.?

11 Q. David G.

12 A. David G. Did he -- yes, I would agree that
13 it was -- he completed the patent in 1908.

14 Q. Okay. And so up to that point from when he
15 moved there until 1908 when he completed the patent, it
16 is your position that he was living on land nearby;
17 correct?

18 A. Correct.

19 Q. And you don't know whether he owned any
20 livestock; correct?

21 A. At that time everybody owned a horse. But
22 I have no documentation that would say that he owned
23 livestock.

24 Q. So why claim 1896 and not say 1908?

25 A. Because he was there in 1906 -- or excuse

1 me, in 1896.

2 Q. He was there, perhaps, but was he using
3 water?

4 A. They were -- they were farming.

5 Q. Were they watering livestock?

6 A. They had livestock. They would have had to
7 water livestock.

8 Q. But to be clear, you don't know if they had
9 livestock?

10 A. I have no proof that they had livestock.

11 Q. Thank you.

12 A. I take that -- I'd like to re-correct that.
13 In 1905 there was a law from the State of Idaho that
14 required you if you had land or had livestock, you were
15 required to brand them. David G. received a brand in
16 1905 from the State. He registered his brand.

17 Q. Okay. Thank you.

18 So let's turn two pages in your document to
19 that first patent, that 1908 document. So looking at
20 this document, it should be labeled Homestead
21 Certificate No. 2762, Application 4485.

22 Do you see that?

23 A. Yes, I do.

24 Q. So this document describes -- and I'll
25 quote here -- land -- I'm sorry, land, quote,

1 A. Idaho, correct.

2 Q. So why would a Mineral Point, Wisconsin
3 property sale be recorded in Idaho?

4 A. Because David G. and Mary Ellen were in
5 Cambridge, Idaho, at that time.

6 Q. Okay. Okay. So moving down in the
7 timeline a bit, we've already gone through quite a bit
8 of this David G. Edwards timeline, so I think we can
9 skip through some of that.

10 I'm just curious, we've talked a bit about
11 David G. Edwards and whether he ran stock and knowledge
12 on that.

13 I'm curious, for some of these other names
14 who are also in that chain of title leading up to the
15 base property, for example, Nels Nielson, do you have
16 any information showing that Nels Nielson was watering
17 livestock on federal land?

18 A. No.

19 Q. And as we come down the chart -- or the
20 timeline, rather, flipping to the next page, I see 1910
21 Leroy Braden applies for a patent.

22 And so same question, do you have any
23 evidence that Leroy Braden was watering livestock?

24 A. No.

25 Q. And as we continue to come down the

1 timeline, I'm looking at 1915 here. You reference
2 grazing permits in the Weiser National Forest, USDA
3 grazing permits.

4 I'm curious, why reference those?

5 A. The 1915 started a requirement for grazing
6 permits in the Weiser National Forest?

7 Q. Yes, sir.

8 A. Because David G. ended up with a class A
9 permit. He filed in 1915 and received a permit, which
10 is a class A, which proved that he had been grazing
11 those lands prior to the permit.

12 Q. And when you say "those lands," you're
13 referring to the USDA allotments; correct?

14 A. Forest Service lands.

15 Q. Forest Service, USDA Forest Service, yes.

16 A. Correct.

17 Q. And those are different from the BLM lands
18 that you currently are claiming on; correct?

19 A. Correct.

20 Q. So coming down the chart as we continue,
21 you discuss in 1919 Flavilla Cutler and H.T. Cutler.

22 Do you see that?

23 A. Yes.

24 Q. Now, do you have any evidence of the
25 Cutlers watering livestock?

1 A. No.

2 Q. And a month later in February 1919 Flavilla
3 cell to J.F. and W.F. Medaris.

4 Do you see that?

5 A. Yes.

6 Q. Similar question, do you have any evidence
7 of the Medaris brothers watering livestock?

8 A. No.

9 Q. And now coming down to 1934, you reference
10 two major events in 1934.

11 First that the ownership of the present day
12 base property is unified for the first time on
13 December 14; is that correct?

14 A. That's correct.

15 Q. And so that's the base property that you
16 own today?

17 A. That's correct.

18 Q. Okay. And second, you reference the
19 passage of the Taylor Grazing Act on 6/28.

20 Why reference the passage of the Taylor
21 Grazing Act?

22 A. As reference.

23 Q. Okay. So you don't attribute any priority
24 date significance to the passage of the Taylor Grazing
25 Act?

1 A. Just the fact that it passed.

2 Q. Okay. Now, onward into 1935, you note that
3 in July "C.R," I assume C.R. Edwards, "filed his first
4 grazing permit application."

5 Is that referring to his Taylor Grazing Act
6 permit application?

7 A. That's correct.

8 Q. And so he was eventually granted a permit
9 to graze on that BLM land; is that right?

10 A. He was granted a class one.

11 Q. Okay. And you've since reviewed that
12 permit application; correct?

13 A. That's correct.

14 Q. Other than the statements from C.R. Edwards
15 in that permit and then the later letter that we
16 discussed earlier, is there any evidence you have of
17 grazing on BLM land before that?

18 A. Just in the permit and in the letter, the
19 sworn statements of C.R. Edwards.

20 Q. Sure. And I understand that.

21 So I'm just asking, other than those, that
22 permit application and that letter, is there anything
23 else you would point to?

24 A. I don't recall anything right now.

25 Q. Okay. So tracking the history of this base

REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me.

That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction.

That the foregoing is a true and correct record of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 26th day of June, 2024.



JEFF LaMAR, CSR NO. 640

Notary Public

1109 West Main Street, Suite 220

Boise, Idaho 83702

My commission expires December 30, 2029