

Movant: State of Idaho

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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 No. 92-00021
)	
)	AFFIDAVIT OF TIMOTHY J. LUKE
Case No. 39576)	DATED JULY 10, 2003
)	
))	
_____)	

STATE OF IDAHO)
) ss.
County of Ada)

Timothy J. Luke, being first duly sworn upon oath deposes and states as follows:

1. My name is Timothy J. Luke. I am the Section Manager for the Water Distribution Section for the Idaho Department of Water Resources ("IDWR"). My work address is

Idaho Department of Water Resources, 1301 North Orchard, Boise, Idaho 83706. I reside in Boise, Idaho.

2. My education background includes a Bachelor of Arts degree in Geography from West Virginia University in 1982, and a Master of Science degree in Geography and Natural Resource Management from the University of Idaho in 1992. My education/training since college has included, but is not limited to, participation in seminars and courses related to water management such as Ground Water and Surface Water Relationships, Hydraulics, Water Management Workshop, Field Hydrogeology, Irrigation System Design and several water law workshops.

3. I worked from September 1988 to August 1991 for IDWR as a Senior Water Rights Agent. My duties included, but were not limited to, the review, analysis, recommendation and processing of water right transfers, and the review and processing of applications to reallocate water held in trust under the Swan Falls agreement.

4. From September 1991 to February 1992 I worked for IDWR as a Hydrologist-in-Training, in the Water Permits Section. My duties included, but were not limited to, water district assistance, field inventory and measurement of diversions, and water right analysis.

5. I worked from March 1992 to February 1997 for IDWR as a Hydrologist in the Water Permits and Water Distribution Sections. My duties included, but were not limited to, assisting in the implementation of the water measurement program, field inventory and measurement of diversions, water district assistance, water right analysis, reduction and analysis of hydrologic data and preparation of reports, and investigation of water distribution complaints and water right disputes.

6. From March 1997 to the present I have served as the Section Manager for the

Water Distribution Section. My primary responsibilities are the implementation and management of the water measurement program, provide assistance to water districts, periodic training of watermasters, and assistance or resolution of water distribution/water right disputes.

7. I have personal knowledge of the water supply conditions and water rights in IDWR Administrative Basin 29, through my work with IDWR's Water Distribution Section. Ground water occurrence within part of Basin 29 is located in the Eastern Snake Plain Aquifer ("ESPA").

8. The Eastern Snake River Plain is a crescent shaped tract of land extending from about Ashton in the east in a southwesterly direction following the Snake River downstream to King Hill. Underlying this plain is the ESPA. Natural recharge to the ESPA occurs mainly in the north and east portions of the plain. Natural discharge from the ESPA occurs primarily near American Falls Reservoir and in the Thousand Springs reach from Kimberly to King Hill. Discharges from the ESPA have fluctuated significantly over the past one hundred years. The primary causes of the fluctuations in discharge are due to the many effects of irrigated agriculture. For example, irrigated agriculture brings large quantities of water out onto the ESPA. Leaks from earthen canals and recharge from irrigation provide additional recharge to the ESPA. Diversions of ground water from the ESPA intercept some ground water that would otherwise discharge into the Snake River. These changes may not be apparent in discharge from the ESPA for periods of years or even decades. This complex hydrogeology makes distribution of surface and ground water rights from the hydraulically connected sources in accordance with the prior appropriation doctrine very complex.

9. A severe drought has occurred in southern Idaho beginning in 2000. The reduced surface water flows has caused substantial shortages of water for users of surface water and has

resulted in depleted reservoirs. In response to the drought the Director established on August 3, 2001 the American Falls Ground Water Management Area and the Thousand Springs Ground Water Management Area. The *Order In the Matter of Designating the American Falls Ground Water Management Area* states, in part:

2. The water supply in the ESPA is hydraulically connected to the Snake River and tributary surface water sources at various places and to varying degrees. One of the locations at which a direct hydraulic connection exists between the ESPA is in the Shelley to Minidoka reach of the river, herein termed the "American Falls reach" located along the southeastern edge of the ESPA in the vicinity of American Falls Reservoir.
3. Simulations using the Department's calibrated computer model of the ESPA show that ground water withdrawals from the ESPA for irrigation and other consumptive purposes, which occur in relatively close proximity to the American Falls reach, cause significant reductions in the gains to this reach of the Snake River that result from hydraulic connection with the ESPA (herein termed "reach gains") within six (6) months or less from the time the withdrawals occur.

Id. at 1.

10. Ground water in the ESPA occurs in part of Basin 29 in close proximity to the American Falls reach of the Snake River and is hydraulically connected to the Snake River.

11. The Director also stated his intent to curtail diversions of ground water users whom he determined were causing significant depletions to hydraulically connected surface water sources. The senior users of surface water and many affected ground water users then entered into agreements to address the water shortage for a two-year period. As a part of the agreements, the signators agreed not to oppose a motion by the State seeking interim administration of water rights within portions of the ESPA. In addition, the senior surface water users agreed not to exercise their senior surface water rights against the junior ground water

users; the junior ground water users agreed to provide a replacement supply to the senior surface water users.

12. Later as the drought worsened, the Director declared in 2002 drought emergencies in the following counties in southern Idaho: Butte, Bingham, Blaine, Bonneville, Clark, Elmore, Fremont, Gooding, Jefferson, Lincoln, Madison, Oneida, and Power.

13. On February 19, 2002, the Director of IDWR issued the Final Order Creating Water District 120 pursuant to Chapter 6, title 42, Idaho Code. The district was created for the purpose of administration of rights to the use of ground water in the ESPA in IDWR Administrative Basins 35 and 41. The district is currently limited to all or portions of Basins 35 and 41 within the ESPA because rights can be administered in accordance with the most current Director's Reports for those basins, or in accordance with partial decrees that have superseded the Director's Reports.

14. As the drought continued in 2003, the Director declared drought emergencies in the following counties in Southern Idaho: Bannock, Bear Lake, Bingham, Blaine, Butte, Caribou, Cassia, Clark, Custer, Fremont, Lincoln, Madison, Oneida, Owyhee, and Power.

15. IDWR filed a Director's Report with the SRBA District Court on or about July 10, 2003 for water rights in Basin 29, including ground water rights within the ESPA in Basin 29 (Director's Report for Basin 29). Pursuant to the provisions of Sections 42-1417 and 42-604, Idaho Code, the Director proposes to enlarge Water District 120 to include water rights within that portion of Basin 29 in the ESPA. Attached is a map that illustrates this area.

16. The general reasons for the creation or enlargement of a water district are:

- Provide a mechanism for administration, regulation and enforcement of water rights;

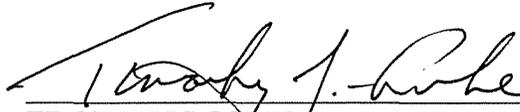
- Provide a means for regular measurement and reporting of diversions, including ground water diversions.
- Provide a more local and immediate response to general calls for water delivery;
- Provide for improved management of water rights and keeping water rights current with respect to ownership and water use;
- Provide a system whereby local watermasters or deputy watermasters can provide for local and timely response to general calls for water distribution; and
- Water district administration and regulation can be accomplished by assessing water users directly through the districts.

17. The specific reasons for creation or enlargement of water districts in Basin 29 are:

- Existing water districts in these basins are limited to surface water sources and do not include ground water sources.
- All of the water rights claimed in Basin 29 in the ESPA have been reported or partially decreed in the SRBA as required under Idaho Code § 42-1417.
- IDWR has already created a Water Measurement District in the area, but the measurement District's authority is limited to measurement and reporting of diversions and does not include authority for the administration of water rights, or the enforcement of water right conditions.
- The expansion of a water district will provide the watermaster with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.

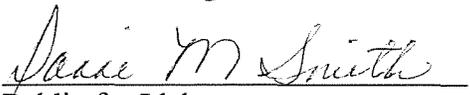
- The available water supply is currently not adequate to satisfy some senior priority water rights and is projected, in the future, to be insufficient, at times, to satisfy these water rights.

18. Further your affiant sayeth naught.


TIMOTHY J. LUKE

SUBSCRIBED AND SWORN to before me this 10th day of July, 2003.




Notary Public for Idaho
Residing at: Boise, Idaho
My commission expires: Dec 5, 2006

WATER DISTRICT NO. 120 PROPOSED EXPANSION

-  Eastern Snake Plain Aquifer
-  IDWR Administrative Basins
-  Townships
-  Water District No. 120
-  Proposed Expansion

