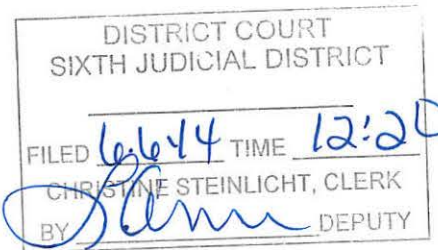


Randall C. Budge (ISB #: 1949)
Carol Tippi Volyn (ISB#: 6371)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109



Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF POWER

ABERDEEN-SPRINGFIELD CANAL
COMPANY, an Idaho Corporation,
JEFFREY and CHANA DUFFIN,
individually, as stockholders, and as
husband and wife,

Plaintiffs,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, an executive department
of the State of Idaho,

Defendant.

Case No.

CV 2014-165

AFFIDAVIT OF STEVE HOWSER

STATE OF IDAHO)

ss.

County of _____)

STEVEN T. HOWSER, being first duly sworn under oath, deposes and states that he is
Registered Agent for, and General Manager of, Aberdeen-Springfield Canal Company (hereafter
"ASCC") and a Special Deputy Water Master of Water District #1, duly elected by the

shareholders of ASCC and appointed by the Director of the Idaho Department of Water Resources, and he makes this affidavit to the best of his knowledge, information and belief.

1. ASCC is an Idaho 'Carey Act' corporation duly authorized as a water users association that provides water to stockholders who use the water to irrigate approximately 62,000 acres of real property in Idaho. ASCC has nearly 500 stockholders, including Plaintiffs' Jeffrey and Chana Duffin of Aberdeen, Idaho.
2. ASCC holds natural flow, storage, and groundwater rights. ASCC's primary source of water is 1,072.1 cfs of natural flow from the Snake River with a priority date of February 6, 1895 and 230 cfs of natural flow from the Snake River with a priority date of April 1, 1939. ASCC is one of the largest storage water holders in the upper Snake River with (at full pool) 57,661 acre feet in Jackson reservoir, 139,417 acre feet in Palisades reservoir, and 29,771 acre feet in American Falls reservoir. In addition, ASCC has groundwater rights for two Company-owned wells totaling 8.44 cfs (6 cfs with a priority date of August 7, 1958 and 2.44 cfs with a priority date of October 15, 1934). These wells are pumped directly into the canal system to supplement supply.
3. ASCC delivers irrigation water to its stockholders through a system of approximately 200 miles of canals and laterals extending from its diversion from the Snake River at Rose to its terminus below the American Falls Dam near Neely to serve nearly 62,000 acres of crop land owned by its stockholders.
4. ASCC, as required by Idaho law, has been meticulously measuring and documenting its daily diversion from the Snake River, deliveries to stockholders, and return spills to the Snake River for over 100 years. In addition, ASCC estimates annual transmission loss based on the formula: $Diversion_{af} - Delivery_{af} - Spill_{af} = Transmission\ Loss_{af}$.

Transmission loss has two components: evaporation, which is estimated to be less than 2% of the total, and loss to the underlying Eastern Snake Plain Aquifer (ESPA). These annual amounts have been part of the General Manager's Annual Report to Stockholders every year since ASCC's incorporation in 1910. Prior to my tenure with ASCC, this data was handwritten and I began using computers to record and calculate these amounts, and incorporated historical, handwritten data back to 1989 and anecdotal data from the General Manager's Annual Report to Stockholders back to 1922. For the first 60 years of operation, ASCC's percentage loss ranged between 30% and 40% of total diversion. Beginning in the early 1970's loss rates began to increase and since the mid 1980's have stabilized, ranging between 55% and 62%. For the years 1989 to 2013, ASCC's average annual diversion was 319,953 af, average delivery to stock holders was 102,478 af, average return spill was 44,634 af, and average transmission loss (and consequent contribution to the ESPA) was 181,624 acre feet (57% of total diversion). It should be noted that contribution to the ESPA due to infiltration after application to crops was not calculated, but has been estimated at 2-4% of total application, which we consider de minimis. ASCC believes it has a lawful right to recover all of its transmission loss to the underlying ESPA utilizing recovery wells pursuant to Idaho Code §42-228.

5. As Plaintiffs' Jeffrey and Chana Duffin's property served by ASCC is located at the end of ASCC's 'J' lateral, and had historical difficulty receiving their share of the water due to system capacity issues, sometime in the early 1970's a well was excavated on the property to supplement surface water deliveries. This was a somewhat common occurrence in the 1960's and 1970's as conversion to sprinklers advanced across our system. Others who were similarly situated to the Duffins also converted to wells.

6. In the Spring of 2013, the Duffins made a request for delivery of their proportionate share of ASCC water to their lands located in the Northwest Quarter of Section 20, and the Southeast Quarter of the Northeast Quarter of Section 19, all in Township 5 South, Range 31 East Boise Meridian, Bingham County (ASCC Parcel #'s 352 and 515, with 170 ASCC Shares and 110 American Falls Reservoir District Shares). As per the policy of ASCC, if a demand for delivery is made for a parcel that has previously been irrigated by a well, ASCC will require that parcel receive its delivery through that existing well, provided the General Manager and Board of Directors approve an application to change the point of delivery associated with that parcel. I determined that ASCC's 'J' lateral has insufficient capacity to serve these parcels (indeed, ASCC was and continues to have difficulty supplying the parcels already dependent on 'J' lateral), and that the well located on the Duffin's parcel was in good repair, suitable and sufficient to supply the parcel and presented the application to the Board of Directors with a recommendation to approve. The application was approved, the well was assigned a head gate number (JR-2-1) and in compliance with ASCC policy the Duffins surrendered control of the well to ASCC and ASCC added it to its recovery well inventory. All water pumped from that well during the 2013 irrigation season, and arguably since it was drilled, is considered by ASCC to be delivery made to its shareholders and is recorded and subtracted from the Duffin's annual allocation in the same manner as all other ASCC head gates. A map of these parcels and the location of ASCC headgate JR-2-1 is attached and incorporated herein by reference as Exhibit 1.
7. ASCC granted the Duffins' application to take control of their well and to operate it as a "recovery well" under Idaho Code § 42-228. ASCC has been providing the water to the


Duffins for irrigation purposes through this recovery well since 2013. This has been done pursuant to the ASCC's policy adopted and implemented by its Board of Directors.

8. ASCC is currently operating 12 "recovery wells" under Idaho Code § 42-228. These wells were drilled and installed at different times under proper drilling permits, but all with the same lawful purpose. The bulk of the wells (9) were drilled in the 1930's during the great drought and have been used as needed since that time. The most recent was drilled in 2005. Eight of these wells pump water directly into canals or laterals and four of these wells are used to deliver water directly to specific parcels. None of these wells have separate water rights as they are recovering a small portion of the transmission loss incurred over the entire system (typically less than 500 acre feet are diverted in total each year, with the exception of short water years, e.g. 2001-2004, when ASCC has pumped as much as 2,000 acre feet in an irrigation season). All recovery wells are measured daily and calibrated weekly (when operating) and the flows are noted in the General Manager's Daily Log, in accordance with Idaho Law. IDWR has never attempted to stop our use of any of these recovery wells in the past.
9. ASCC maintains that it is lawfully entitled to own and operate wells to recover water lost through the Company's delivery system pursuant to Idaho Code § 42-228 and to deliver that water to lands which have ASCC shares appurtenant, to wit: "excavation and opening of wells and the withdrawal of water therefrom by canal companies and other owners of irrigation works for the sole purpose of recovering ground water resulting from irrigation works for further use on the lands to which the established water rights of the parties constructing the wells are appurtenant". Defendant IDWR has issued to Duffin two separate Notices of Violation asserting that Duffin is illegally irrigating his lands and

threatening to curtail their use of the water lawfully supplied by ASCC from its natural flow and storage water rights and rightfully appurtenant to the Duffin's land (See Exhibits A and B to the Complaint for Declaratory Relief filed herewith). IDWR has also threatened by said Notice of Violation to charge the Duffins with over \$52,000 in civil fees/penalties and to install locks to prevent the use of the recovery well by ASCC to deliver water to the Duffin's parcels. This threatened action is not only unreasonable as contrary to the intent of the statute, but if the threatened action is allowed it could cause irreparable injury and harm to the Duffin's 175 acres of farm property by depriving them of irrigation water they are legally entitled to, and which ASCC has an obligation to deliver. This should not be allowed.

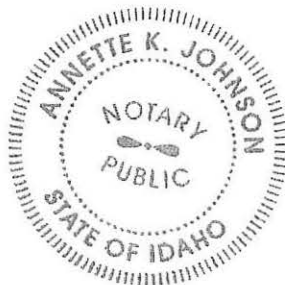
FURTHER YOUR AFFIANT SAITH NAUGHT.


Dated this 5th day of June, 2014.


STEVEN T. HOWSER, General Manager

SUBSCRIBED AND SWORN to before me this 5th day of June, 2014.

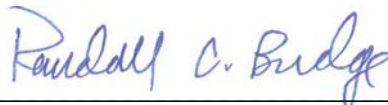
(SEAL)




NOTARY PUBLIC
Residing in Bingham County, Idaho
My Commission Expires August 31, 2015

CERTIFICATE OF SERVICE

I certify that on this 6th day of June, 2014, the foregoing document was served on the following persons in the manner indicated.

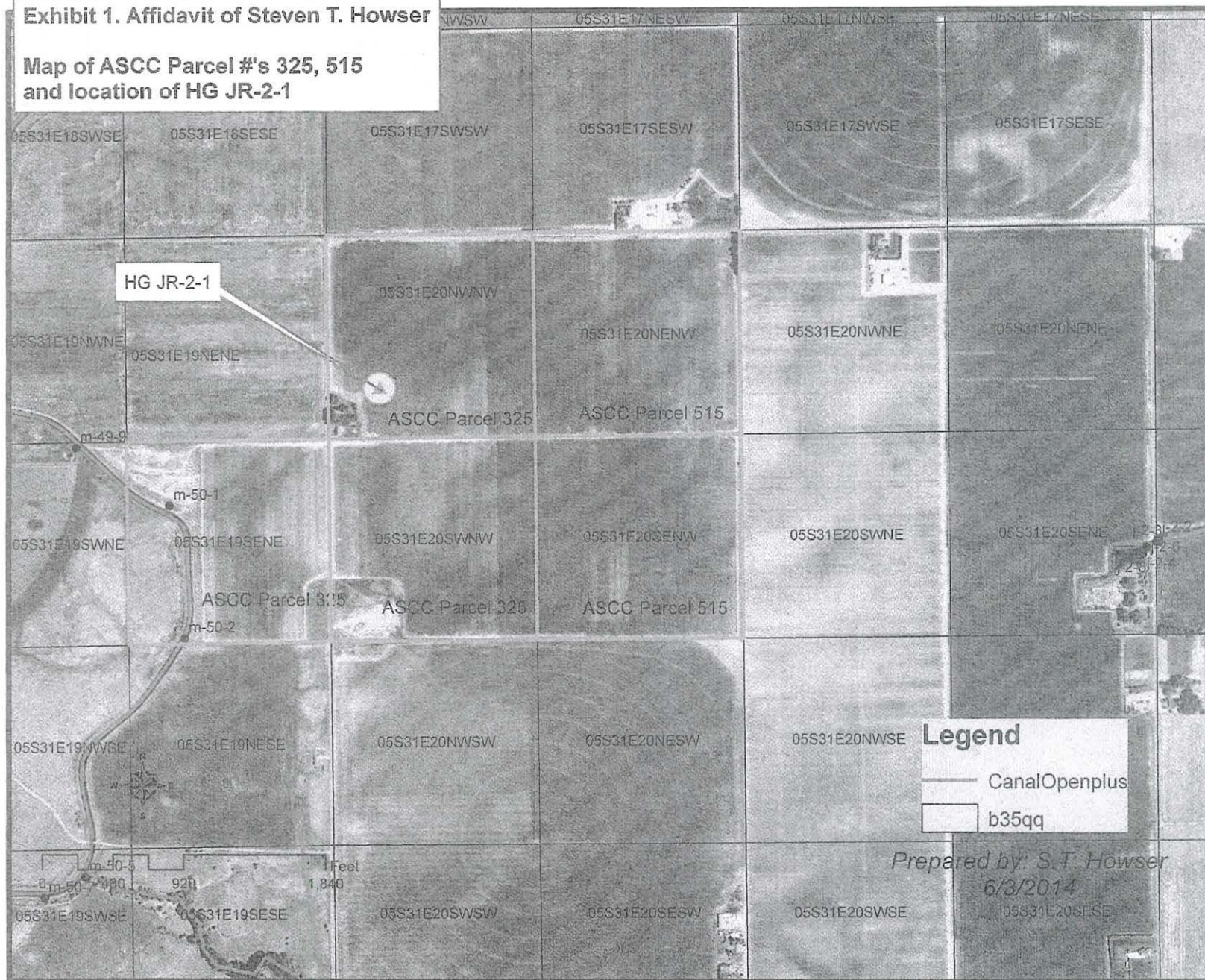


Signature of person mailing form

Director, Gary Spackman Idaho Department of Water Resources PO Box 83720 Boise, ID 83720-0098 Attn: Deborah Gibson deborah.gibson@idwr.idaho.gov kimi.white@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
James Cefalo Water Master 900 N. Skyline Dr, Ste. A Idaho Falls, Idaho 83402 james.cefalo@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
John Homan Deputy Attorney General P.O. Box 83720 Boise, Idaho 83720-0098 john.homan@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Chamber's Copy Honorable Stephen S. Dunn Bannock County Courthouse 624 E. Center, Room 220 Pocatello, Idaho 83205	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> E-mail

Exhibit 1. Affidavit of Steven T. Howser

**Map of ASCC Parcel #'s 325, 515
and location of HG JR-2-1**



EXHIBIT

1

tabbles