

2007 JUN 19 P 11:06

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C. Botuzak
CLERK

1 Dana L. Hupp
2 KD Feedback
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8 (406) 442-8783 (fax)

5 Donald D. MacIntyre
6 Attorney at Law
7 307 North Jackson
8 Helena, Montana 59601
9 (406) 442-8283

8 Attorneys for Fidelity Exploration & Production Company

9 MONTANA FIRST JUDICIAL DISTRICT COURT
10 LEWIS & CLARK COUNTY

11 NORTHERN PLAINS RESOURCE
12 COUNCIL, INC., and TONGUE RIVER
13 WATER USERS' ASSOCIATION,

13 Petitioner,

14 -vs-

15 MONTANA DEPARTMENT OF
16 NATURAL RESOURCES AND
17 CONSERVATION, and FIDELITY
18 EXPLORATION & PRODUCTION
19 COMPANY,

18 Respondents.

Cause No. BDV-2007-425

AFFIDAVIT OF

LaVonne Conner

20 STATE OF MONTANA)
21 County of Big Horn) :ss.

22 I, LaVonne Conner, being first duly sworn, deposes and states the following, under oath
23 and penalty of perjury:

- 24 1. I am over the age of 18 years, have first-hand knowledge of the facts set forth below, and
25 am competent to testify in this matter.
26 2. I reside in Big Horn County, Montana, and am in the business of raising cattle in the
27 vicinity of Fidelity Exploration & Production Company's natural gas operations at the CX
28

1 Field.

2 3. Big Horn County has recently experienced drought conditions and water has been
3 difficult to obtain.

4 4. I currently have a contract with Fidelity for them to provide water from their pipeline
5 system to me for stock water.

6 5. I have an interest in irrigating my hay fields with Fidelity's developed water produced in
7 association with natural gas.

8 6. I would appreciate the opportunity to use Fidelity's developed water at my cattle
9 operation for managed irrigation as well as for stock water.

10 7. Due to my interest in obtaining some of Fidelity's developed water, I hope to attend the
11 district court proceedings in Big Horn County.

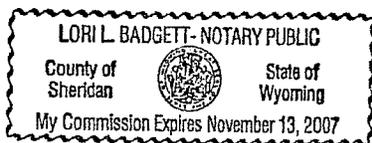
12 Further Affiant sayeth not.

13 DATED this 18th day of June 2007.

14 LaVonne Conner
15 LaVonne Conner, Affiant

16
17 SUBSCRIBED AND SWORN to before me this 18th day of June 2007, by
18 LaVonne Conner.

19
20
21 (Notarial Seal)



22 Lori L. Badgett
NOTARY PUBLIC FOR THE STATE OF MONTANA

23 LORI L. BADGETT

24 PRINTED NAME OF NOTARY

25 Residing at Sheridan County WY, MT

26 My commission expires 11 / 13 / 2007

CERTIFICATE OF SERVICE

This is to certify that the foregoing *Affidavit of LaVonne Conner* was duly served upon the following at their respective addresses by first-class mail, postage pre-paid thereon, on the 19th day of June 2007 as follows:

Fred Robinson, Esq.
P.O. Box 201601
Helena, Montana 59620-1601

Terry Punt
Bones Bros. Ranch
P.O. Box 505
Birney, Montana 59012

Mark Sonderberry, Consultant
8 Fry Drive
Sheridan, Wyoming 82801

Tim Hall
Anne Yates
Water Resources Division
Montana Department of Natural Resources
and Conservation
P.O. Box 201601
Helena, Montana 59620-1601

Brenda Lindlief-Hall, Esq.
401 Last Chance Gulch
Helena, Montana 59601

Jack R. Tuholske, Esq.
Tuholske Law Office, PC
P.O. Box 7458
Missoula, Montana 59807

Tom Kinnison
307 West Burkitt
Sheridan, Wyoming 82801



KD Feedback

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HANCOCK SWEENEY
CLERK OF DISTRICT COURT
FILED
SHELLY CALLIHAN
CLERK

2007 DEC 20 P 3:03

Donald D. MacIntyre
Attorney at Law
307 North Jackson
Helena, Montana 59601
(406) 442-8283

Attorneys for Fidelity Exploration & Production Company

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY**

NORTHERN PLAINS RESOURCE
COUNCIL, INC., and TONGUE RIVER
WATER USERS' ASSOCIATION,

Plaintiffs/Petitioners,

-vs-

MONTANA DEPARTMENT OF
NATURAL RESOURCES AND
CONSERVATION, and FIDELITY
EXPLORATION & PRODUCTION
COMPANY,

Defendants/Respondents.

Cause No. CDV-07-425

AFFIDAVIT OF FRA PORTER

STATE OF MONTANA)
 :SS.
COUNTY OF BIGHORN)

I, Fra Porter, being first duly sworn, depose and state the following, under oath and penalty of perjury:

1. I am over the age of 18 years, have first-hand knowledge of the facts set forth below, and am competent to testify in this matter.
2. I reside in Big Horn County, Montana.

3. I am in the business of raising cattle in the vicinity of Fidelity Exploration & Production Company's (Fidelity) coalbed natural gas operations at the CX Field.
4. On December 19, 2005, I entered a contract with Fidelity to use water from its coalbed methane wells located on my property for stock water. This contract provided that I would receive up to 1,314,000 gallons or 4.0 acre feet per year. That contract has expired.
5. On September 26, 2006, I entered into a second contract with Fidelity to use its developed water for agriculture, livestock, and wildlife in order to continue the productive development of my ranch. My current contract provides that I will receive up to 3.36 acre feet of developed water per year.
6. I contracted to receive enough water for 150 head of cattle. The Montana Department of Natural Resources and Conservation (DNRC) recommends fifteen gallons of water per day per animal unit plus an additional five gallons per day to cover evaporation and wildlife. Based upon 150 head of cattle, this translates to 1,095,000 gallons of water per year or 3.6 acre feet per year.
7. I think it is a waste to run the water down the creek or otherwise dispose of it without using it. I think it may be that the people trying to push the stay just want Fidelity to have to put the water in the river so they can have it down stream of the reservoir. We have used methane water on this ranch for many years and not only do the cows prefer it, it would be impossible to operate in this country without it.
8. After 10 years of drought and having to pump and haul water, it is a great benefit to have a tank full of water where we need it. Since the drought began, even though we have a number of reservoirs they almost never have water for the livestock. We still have to haul water from

one of Fidelity's pump stations to locations in our summer pasture and need to continue doing so in order to use the grass.

9. One well I had was already going bad and we were having to haul water. When Fidelity arrived and offered to provide water that allowed us to replace this well. Since we got the Fidelity water we didn't have to drill a new well or try to fix this old well that had gone bad.

10. The use of Fidelity's water has allowed us to use pastures that would otherwise not be useable because of a lack of water. It prevents overgrazing and allows better use of our grass because the cows can be spread out more evenly and in smaller bunches rather than one big one. This lets us use the grass across a wide area instead of just around the only water. It also allows me to use a small, fenced pasture as a holding area for cows and calves. This makes it far easier to keep them mothered up, as previously we had to drive them five miles and it was almost impossible to keep the calves with the mothers.

11. It also saves having to drive the cattle for such long distances because there is more water spread across the ranch. If we can't have this water, our ranch will be far less productive and maybe not economical. It would be great if we could fill our reservoirs with Fidelity's water to provide a backup source of water.

12. I would really like to see more development for the benefits of the water, which is more valuable even than any mineral rights. In particular, I'd like to see the federal mineral acres be developed because the additional water would allow us to open up more summer pasture and would probably allow us to add maybe 50 cows to our herd.

13. I am also considering negotiating with Fidelity to receive 200 acre feet of additional developed water for managed irrigation. If this contract is finalized, it will allow me to cultivate an estimated 80 additional acres of alfalfa or alfalfa grass mix for hay.

14. I am aware that the Northern Plains Resource Council and the Tongue River Water Users' Association have filed a Motion to stay of Fidelity's Montana Beneficial Use Permit 42B-30011045. I am further aware that if the Judge grants the Motion to stay Fidelity will be unable to provide me with developed water. Losing this water will negatively impact my ranch operation in several significant respects.

15. First, if the Fidelity water were shut off we would lose the ability to keep about fifty (50) of our mother cows but would have to sell them off. If all such uses are cut off, we would have to reduce the herd by another 50 head.

16. Second, the loss of 3.6 acre feet of developed water will negatively impact the wildlife populations on the ranch.

17. Third, receiving Fidelity's developed water has enhanced the value of our ranch. If Fidelity was unable to provide developed water, we would lose the value of this enhancement.

18. Fourth, I will lose the future benefits of managed irrigation which will negatively impact the continued development of the ranch.

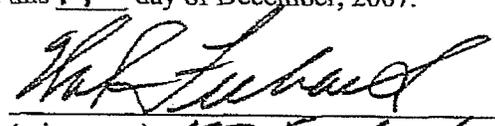
DATED this 14 day of December, 2007.



Fra Porter

SUBSCRIBED AND SWORN to before me this 14th day of December, 2007.

(Notarial Seal)



(print name) KD Feeback

Notary Public for the State of Montana

Residing at Lincoln

My commission expires Feb 28, 2011

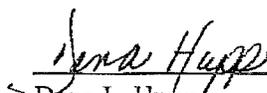
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Affidavit of Fra Porter* was mailed postage pre-paid thereon at Helena, Montana, this 20th day of December 2007:

Anne Yates
Tim D. Hall
Water Resources Division
Montana Department of Natural Resources and Conservation
1625 11th Avenue
P.O. Box 201601
Helena, MT 59620-1601

Jack R. Tuholske, Esq.
Tuholske Law Office, PC
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Missoula, MT 59807

Brenda Lindlief-Hall, Esq.
Reynolds, Motl, & Sherwood
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Dana L. Hupp

Jon Metropoulos
Dana L. Hupp
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(406) 442-8783 (fax)

MINISTY SWEENEY
CLERK OF DISTRICT COURT
FILED BY SHELLY CALLIHAN
FIDELITY

2007 DEC 20 P 3:03

Donald D. MacIntyre
Attorney at Law
307 North Jackson
Helena, Montana 59601
(406) 442-8283

Attorneys for Fidelity Exploration & Production Company

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY**

NORTHERN PLAINS RESOURCE
COUNCIL, INC., and TONGUE RIVER
WATER USERS' ASSOCIATION,

Plaintiffs/Petitioners,

-vs-

MONTANA DEPARTMENT OF
NATURAL RESOURCES AND
CONSERVATION, and FIDELITY
EXPLORATION & PRODUCTION
COMPANY,

Defendants/Respondents.

Cause No. CDV-07-425

AFFIDAVIT OF CHARLES LARSEN

STATE OF MONTANA)

:ss.

COUNTY OF BIG HORN)

I, Charles Larsen, being first duly sworn, depose and state the following, under oath and penalty of perjury:

1. I am over the age of 18 years, have first-hand knowledge of the facts set forth below, and am competent to testify in this matter.
2. I am in the business of raising cattle in the vicinity of Fidelity Exploration & Production

Company's (Fidelity) coalbed natural gas operations at the CX Field. I run a cattle operation on land that I lease from the surface owner, CNX Land Resources, Inc.

3. On December 21, 2006, I entered into a contract with Fidelity to receive developed water for agriculture, livestock, and wildlife in order to continue the productive development of this ranch. My contract allows Fidelity to provide me with up to 13.44 acre feet of developed water per year.

4. I contracted to receive enough water to maintain my herd of cattle. The Montana Department of Natural Resources and Conservation (DNRC) recommends fifteen gallons of water per day per animal unit plus an additional five gallons per day to cover evaporation and wildlife. Based upon my current herd of cattle, this translates to about 4,380,000 gallons of water per year or 13.44 acre feet per year.

5. I direct water received from Fidelity to twelve (12) stocktanks located on the ranch.

6. I intend to use water from Fidelity as domestic water and have installed a pipeline to do so.

7. I am aware that the Northern Plains Resource Council and the Tongue River Water Users' Association have filed a Motion to stay of Fidelity's Montana Beneficial Use Permit 42B-30011045. I am further aware that if the Judge grants the Motion to stay that Fidelity will be unable to provide me with developed water. Losing this water will negatively impact my ranch operation in several significant respects.

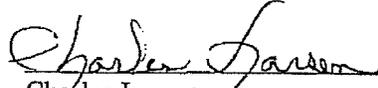
8. First, in the event Fidelity is prevented from delivering water it would cause me to have reduce my herd size significantly.

9. Second, the loss of Fidelity's developed water will negatively impact the wildlife

populations on the ranch.

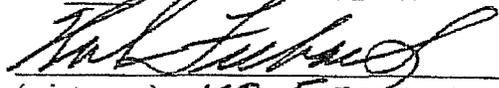
10. If Fidelity is not allowed to provide water, we would lose the ability to run a profitable livestock operation on this ranch.

DATED this 13 day of December 2007.


Charles Larsen

SUBSCRIBED AND SWORN to before me this 13th day of December 2007.

(Notarial Seal)


(print name) KD FEEBACK
Notary Public for the State of Montana
Residing at Lincoln
My commission expires FEB 28, 2011

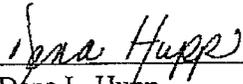
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Affidavit of Charles Larsen* was mailed postage pre-paid thereon at Helena, Montana, this 20th day of December 2007:

Anne Yates
Tim D. Hall
Water Resources Division
Montana Department of Natural Resources and Conservation
1625 11th Avenue
P.O. Box 201601
Helena, MT 59620-1601

Jack R. Tuholske, Esq.
Tuholske Law Office, PC
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Missoula, MT 59807

Brenda Lindlief-Hall, Esq.
Reynolds, Motl, & Sherwood
401 Last Chance Gulch
Helena, MT 59601



Dana L. Hupp

Jon Metropoulos
Dana L. Hupp
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(406) 442-8783 (fax)

FANCY SWEENEY
CLERK JUDICIAL DISTRICT COURT
SHELLY CALLINAN
CLERK

2007 DEC 20 P 3:02

Donald D. MacIntyre
Attorney at Law
307 North Jackson
Helena, Montana 59601
(406) 442-8283

Attorneys for Fidelity Exploration & Production Company

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY**

NORTHERN PLAINS RESOURCE
COUNCIL, INC., and TONGUE RIVER
WATER USERS' ASSOCIATION,

Plaintiffs/Petitioners,

-vs-

MONTANA DEPARTMENT OF
NATURAL RESOURCES AND
CONSERVATION, and FIDELITY
EXPLORATION & PRODUCTION
COMPANY,

Defendants/Respondents.

Cause No. CDV-07-425

AFFIDAVIT OF FREDRICK MUELLER

STATE OF MONTANA)
 :ss.
COUNTY OF BIG HORN)

I, Fredrick Mueller, being first duly sworn, depose and state the following, under oath and penalty of perjury:

1. I am over the age of 18 years, have first-hand knowledge of the facts set forth below, and am competent to testify in this matter.
2. I reside in Big Horn County, Montana.
3. I raise cattle and hay crops in the vicinity of Fidelity Exploration & Production

Company's (Fidelity) coalbed natural gas operations at the CX Field.

4. On January 17, 2007, I entered into a contract with Fidelity to receive developed water for "certain beneficial uses" including "a water supply for agriculture, livestock, and wildlife in order to continue the productive development of [my land]." My contract allows Fidelity to provide me up to 3.36 acre feet of developed water per year.

5. I lease lands from Decker Coal Company. Part of the land I lease is covered by a conservation easement. A stock tank fed by Fidelity's developed water was put in on the conservation easement between wildlife food plots. Since I cannot graze my cows on the conservation easement, the sole purpose of this stock tank is to water wildlife grazing the food plots.

6. I am aware that the Northern Plains Resource Council and the Tongue River Water Users' Association have filed a Motion to stay of Fidelity's Montana Beneficial Use Permit 42B-300 11045. I am further aware that if the Court grants the Motion to stay Fidelity will be unable to provide me the developed water.

7. Food plots and plenty of water make for an ideal wildlife sanctuary. Taking good water from the conservation easement will not help but harm the productivity of the easement. The best forage in the world will not hold wildlife without a good source of water.

8. I would also lose any future opportunities to use the developed water for uses beneficial to both me and the wildlife present on the conservation easement.

DATED this 17 day of December, 2007.


Fredrick Mueller

SUBSCRIBED AND SWORN to before me this 17th day of December, 2007.

(Notarial Seal)

Nolan J. Olson
(print name) Nolan J. Olson
Notary Public for the State of ~~Wyoming~~ Montana
Residing at Glendive
My commission expires June 3, 2008

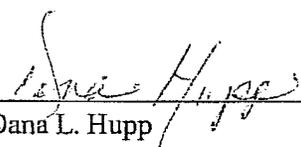
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Affidavit of Fredrick Mueller* was mailed postage pre-paid thereon at Helena, Montana, this 20th day of December 2007:

Anne Yates
Tim D. Hall
Water Resources Division
Montana Department of Natural Resources and Conservation
1625 11th Avenue
P.O. Box 201601
Helena, MT 59620-1601

Jack R. Tuholske, Esq.
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Missoula, MT 59807

Brenda Lindlief-Hall, Esq.
Reynolds, Motl, & Sherwood
401 Last Chance Gulch
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Dana L. Hupp

Jon Metropoulos
Dana L. Hupp
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33 So. Last Chance Gulch
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(406) 442-8560
(406) 442-8783 (fax)

HONORABLE SWEENEY
CLERK DISTRICT COURT
FILED BY SHELLEY CALLIHAN
DEPUTY

2007 DEC 20 P 3:02

Donald D. MacIntyre
Attorney at Law
307 North Jackson
Helena, Montana 59601
(406) 442-8283

Attorneys for Fidelity Exploration & Production Company

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS & CLARK COUNTY**

NORTHERN PLAINS RESOURCE
COUNCIL, INC., and TONGUE RIVER
WATER USERS' ASSOCIATION,

Plaintiffs/Petitioners,

-vs-

MONTANA DEPARTMENT OF
NATURAL RESOURCES AND
CONSERVATION, and FIDELITY
EXPLORATION & PRODUCTION
COMPANY,

Defendants/Respondents.

Cause No. CDV-07-425

AFFIDAVIT OF JOHN LUCAS

I, John Lucas, being first duly sworn, do hereby state and affirm as follows:

1. I am the Manager of Environmental and Regulatory Affairs for Rio Tinto Energy America Inc. (RTEA) and as part of that position, have oversight responsibility for effective utilization of resources for RTEA's surface coal mines.

2. Spring Creek Coal Company (SCCC) is a Montana corporation that is a wholly-owned subsidiary of RTEA. SCCC operates a surface coal mine located in Decker, Montana known as the Spring Creek Mine. The Spring Creek Mine produced over 14.5 million tons of

coal in 2006.

3. The Spring Creek Mine utilizes coal bed natural gas developed water (developed water) provided by Fidelity Exploration & Production Company (Fidelity) for beneficial uses, including industrial uses in and around the mine site. This developed water is the primary source of water for the Spring Creek Mine.

4. SCCC entered into a Water Distribution Contract with Fidelity on April 25, 2001 (2001 Contract) to provide up to 100 million gallons per year of developed water from its CX Field Water Management System for beneficial use by the Spring Creek Mine. Subsequently, SCCC revised the 2001 Contract on August 1, 2005 (together with the 2001 Contract, Water Contract) to provide up to 125 million gallons per year of developed water. The Water Contract expires on August 1, 2015.

5. The Spring Creek Mine uses the developed water provided by Fidelity under the Water Contract specifically for dust suppression and service water at the mine's administrative facilities and coal plant. Dust suppression is vitally important for operational safety and to meet dust control requirements of the applicable MDEQ air quality permit. Service water is non-potable water that is important for continued washdown operations in the plant and maintenance operations in the shops.

6. SCCC has made investments in specific pipeline segments and appurtenances to convey the developed water from Fidelity's CX Field Water Management System to the Spring Creek Mine. If Fidelity were unable to supply the developed water to the Spring Creek Mine in accordance with the Water Contract, these infrastructure investments would be rendered worthless.

7. Spring Creek Mine's use of developed water is in lieu of obtaining groundwater through existing water rights permits. In order to replace the developed water as the Spring Creek Mine's primary source of water, SCCC would be required to refurbish or re-drill groundwater production wells under its existing water rights permits.

8. Refurbishing or re-drilling SCCC's production wells would be at a significant cost to SCCC. SCCC estimates that the cost could be \$1.5 million to \$2.0 million

DATED this 14th day of December, 2007.

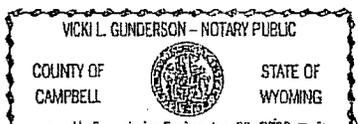


John Lucas

STATE OF WYOMING)
) ss.
COUNTY OF CAMPBELL)

Subscribed and sworn to before me by John Lucas, Manager of Environmental and Regulatory Affairs for Rio Tinto Energy America Inc., this 14th day of December, 2007.

Witness my hand and seal this 14th day of December, 2007.


Commission Expires Jan. 20, 2009



Notary Public

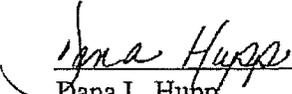
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Affidavit of John Lucas* was mailed postage pre-paid thereon at Helena, Montana, this 20th day of December 2007:

Anne Yates
Tim D. Hall
Water Resources Division
Montana Department of Natural Resources and Conservation
1625 11th Avenue
P.O. Box 201601
Helena, MT 59620-1601

Jack R. Tuholske, Esq.
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5 Donald D. MacIntyre
Attorney at Law
6 307 North Jackson
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7 (406) 442-8283

8 Attorneys for Fidelity Exploration & Production Company

9 **MONTANA FIRST JUDICIAL DISTRICT COURT**
10 **LEWIS & CLARK COUNTY**

11 NORTHERN PLAINS RESOURCE)
12 COUNCIL, INC., and TONGUE RIVER)
13 WATER USERS' ASSOCIATION,)

14 Petitioner,)

15 -vs-)

16 MONTANA DEPARTMENT OF)
17 NATURAL RESOURCES AND)
18 CONSERVATION, and FIDELITY)
19 EXPLORATION & PRODUCTION)
20 COMPANY,)

21 Respondents.)

Cause No. BDV-2007-425

AFFIDAVIT OF

Mark Moreland

22 STATE OF MONTANA)
23 :ss.)
24 County of Big Horn)

25 I, Mark Moreland, being first duly sworn, deposes and states the following, under oath
26 and penalty of perjury:

- 27 1. I am over the age of 18 years, have first-hand knowledge of the facts set forth below, and
28 am competent to testify in this matter.
2. I reside in Big Horn County, Montana, and am in the business of raising cattle in the
vicinity of Fidelity Exploration & Production Company's natural gas operations at the CX

Affidavit of Mark Moreland

Page 1 of 2

GSIW

1 Field.

2 3. Big Horn County has recently experienced drought conditions and water has been
3 difficult to obtain.

4 4. I currently have a contract with Fidelity for them to provide water from their pipeline
5 system to me for stock water.

6 5. I have discussed the option of irrigating my hay fields with Fidelity's developed water
7 produced in association with natural gas.

8 6. I would appreciate the opportunity to use Fidelity's developed water at my cattle
9 operation for managed irrigation as well as for stock water.

10 7. Due to my interest in obtaining some of Fidelity's developed water, I hope to attend the
11 district court proceedings in Big Horn County.

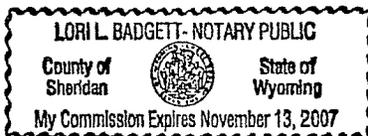
12 Further Affiant sayeth not.

13 DATED this 18 day of June 2007.

14
15 
16 Affiant

17 SUBSCRIBED AND SWORN to before me this 18th day of June 2007, by
18 MARK MORELAND

19
20
21 (Notarial Seal)



21 
22 NOTARY PUBLIC FOR THE STATE OF MONTANA

23 LORI L. BADGETT

24 PRINTED NAME OF NOTARY

25 Residing at SHERIDAN COUNTY, WY.

26 My commission expires 11 / 13 / 20 07

CERTIFICATE OF SERVICE

This is to certify that the foregoing *Affidavit of Mark Moreland* was duly served upon the following at their respective addresses by first-class mail, postage pre-paid thereon, on the 19th day of June 2007 as follows:

Fred Robinson, Esq.
P.O. Box 201601
Helena, Montana 59620-1601

Terry Punt
Bones Bros. Ranch
P.O. Box 505
Birney, Montana 59012

Mark Sonderberry, Consultant
8 Fry Drive
Sheridan, Wyoming 82801

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Water Resources Division
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and Conservation
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KD Feedback