

APPENDIX B

Affidavit of Simon J. Iberlin

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

IN THE MATTER OF THE APPEAL AND REVIEW OF)
THE DECISION REGARDING THE RECLASSIFICATION)
OF EIGHT MAIN STREAM DRAINAGES TO POWDER)
RIVER AND OTHER TRIBUTARIES IN THE)
POWDER RIVER BASIN, DATED DECEMBER 22, 2004)

AFFIDAVIT

COMES NOW **SIMON J. IBERLIN**, being first duly sworn upon his oath, and
deposes and states as follows:

1.

He is an adult person and makes this affidavit of his own personal knowledge.

2.

He is the owner Cat Creek Land Company LLC and the Iberlin Ranch on Four Mile
Creek and Cat Creek and holds title to lands known as the North Fork of Four Mile Creek
and the South Fork of Four Mile Creek and Cat Creek. He was born in 1922. His father
purchased these lands in 1929 and since Affiant was a young man, Affiant has worked on
the ranch and been on the property on an annual basis.

3.

The Iberlin family has maintained a sheep operation on the Iberlin lands for nearly
70 years.

4.

Beginning in 1929, it was typical of the operation to lamb the sheep in the Four Mile
drainage and keep them on the property until the beginning of summer, when the sheep
would be trailed to the Big Horn Mountains. Upon returning the sheep from the mountain

lands in the fall of each year, generally late September, the sheep would again be placed in the Four Mile drainage.

5.

In nearly every year Affiant can remember there was water running down Four Mile Creek when he left for the mountains and there was water when he returned, both in the ponds and Four Mile Creek itself. It has only been during the last five years that water flow has become intermittent because of severe drought conditions.

6.

Affiant constructed what is known as the Iberlin Reservoir just above the confluence of Goble Draw. This area was always a source of water for not only livestock of Iberlin's, but was known as a stopping point for all livestock trailing either between Sussex and Kaycee or from the Powder River to the Big Horn Mountains. Prior to the time that the reservoir was built, a spring provided this water source.

7.

It is incorrect to state that the wetland area described at the confluence of Goble Draw is the direct result of a stock impoundment. That wetland existed for 50 years prior to the construction of the Iberlin Reservoir which is described in the UAA.

8.

Affiant's company, Cat Creek Land Company LLC, now owns the property which is identified as Coyer Reservoir which is on a tributary of Cat Creek. For years the Coyer Reservoir was full of water and, in fact, was a popular place for fishing. Affiant also stocked the Iberlin Reservoir about five years ago for fishing, but with the drought, the impoundment has become dry.

9.

Affiant is personally aware of a naturally occurring spring located on Cat Creek. Within the last three years Affiant opened this spring with a mechanical backhoe, but because of drought the spring produces little water. However, historically this spring has provided water down Cat Creek.

10.

Affiant has been on the property for nearly 70 years and he does not remember any years as dry as the last three years on the property.

11.

Affiant never received a notice of the hearing or proposed action of reclassification by direct mail nor did Affiant see a copy of the notice at any location available or posted in Johnson County, Wyoming. The lack of notice has denied Affiant his opportunity to be heard in the declassification and is taking of his property without just compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Wyoming Constitution.

12.

Affiant was not interviewed or questioned by any person in regard to the preparation of the UAA.

13.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 24th day of February, 2005.


SIMON J. IBERLIN

STATE OF WYOMING)
) ss.
County of Johnson)

Subscribed and sworn to before me by **SIMON J. IBERLIN**, this 24th day of February, 2005.

Witness my hand and official seal.

Sherrie L. Standish
Notary Public

My Commission Expires: 11/18/07

