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Department of Water Resources

*Attorneys for Mays Land and Livestock Inc. and
Blaine County Canal Company*

**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. 35976

Case Nos.:33-69, 33-70,33-71, 33-72,
33-73, 33-74, 33-76, 33-78, 33-79, 33-
80, 33-81, 33-82, 33-2086A, 33-2086B,
33-2090, 33-2091, 33-7018

**AFFIDAVIT OF DAVID R.
TUTHILL, JR.**

STATE OF IDAHO)
) ss.
County of Ada)

David R. Tuthill, Jr., being first duly sworn, deposes and states as follows:

1. My name is David R. Tuthill, Jr.. I am the Adjudication Bureau Chief for the Idaho Department of Water Resources (IDWR).
2. My work address is Idaho Department of Water Resources, 1301 North Orchard, Boise, Idaho 83706. I reside in Boise, Idaho.
3. My educational background includes a Bachelor of Science degree in agricultural engineering from Colorado State University at Fort Collins, Colorado, in 1974, and a Master of

Science degree in civil engineering from the University of Colorado at Boulder, Colorado, in 1975. I completed my Ph.D. in civil engineering from the University of Idaho in 2002. My course work included, but was not limited to, fluid mechanics, hydrology, hydraulics, statics and dynamics, thermodynamics, soil mechanics, chemistry, mathematics, materials, structures, sanitary engineering, electrical circuits, physics, computer programming, statistics, open channel hydraulics, geohydrology, ground water management, emerging technologies, and decision making in resource management. My education/training since college has included, but is not limited to, participation in various seminars and symposia.

4. I have been registered as a professional engineer in Idaho since 1979.

5. I have worked for the IDWR for 24 years in the following positions:

A. From January 1976 through September 1976, I worked as the Adjudication Section Supervisor. My duties included, but were not limited to, review of applications for water permits, analysis of proposed transfers of water with beneficial use calculations, analysis of decreed rights as to location and amount, supervision of six (6) people in the drafting and report writing sections, supervision of water distribution statewide, responding to watermaster/water district problems of water delivery, and supervision and monitoring of three (3) ongoing water adjudications.

B. From September 1976 through December 1978, I worked as the Payette Adjudication Supervisor. My duties included, but were not limited to, responsibility for the Payette River Basin adjudication, which was a ten-year water rights adjudication involving some 10,000 water rights covering an area of 3,200 square miles; supervision of three (3) professionals, a secretary and two (2) data entry staff; analysis of methods of computation of water rights to include commingling of rights, ditch losses and exchanges; preparation of water rights reports; arrangement for public meetings; use of radio, newspapers, posters and television

to provide public information about the adjudication; and responsibility for the preparation of recommendations of state and federal water rights, including federally reserved water rights.

C. From December 1978 through May 1985, I worked as the IDWR Water Allocation Section Supervisor. My duties included, but were not limited to, supervision of four (4) state office subsections; custodianship of a central filing system for all Idaho water rights, including claims, permits, licenses and decrees, including cross-referencing systems for water rights research; responsibility for water right processing, including state office review for approval of water right permits, amendments, assignments, licenses and transfers; central processing and guidance for water right adjudications which were handled in the regional offices; oversight of the state office drafting department; and responsibility for implementation of a state-wide mandatory water right claim filing program, which included preparation of posters and brochures, radio and television advertisements, and public education programs.

D. From June 1985 through June 1996, I worked as the Regional Office Manager of the IDWR's Western Regional Office. As engineer in charge of the IDWR's Western Region, my duties included, but were not limited to, oversight of all aspects of Western Regional Office activities, including personnel and salary; oversight of water right application processing and beneficial use examinations; general oversight of the Western Regional Office's adjudication unit; oversight of dam safety and stream channel alteration programs; implementation of IDWR policy and procedure; implementation and maintenance of IDWR databases and files used at the Western Regional Office; coordination of the various section activities in the Western Regional Office; oversight of water distribution and administration throughout the Western Region; serving as Chairman of the GIS Utilization Task Force; supervision of the creation of the Southeast Boise Ground Water Management Area (SEBGWMA); and formation, operation and technical liaison with the SEBGWMA Advisory Committee.

E. From June 1996 to the present, I have served as the Adjudication Bureau Chief for the IDWR. I am responsible for the implementation and oversight of the IDWR's statutory duties in the Snake River Basin Adjudication (SRBA). As part of my duties, I implement and oversee the IDWR's investigation of claims filed in the SRBA.

6. As Adjudication Section Supervisor, Payette Adjudication Supervisor, Water Allocation Section Supervisor, Regional Office Manager of IDWR's Western Regional Office and Adjudication Bureau Chief, I have investigated hundreds of water rights, including reviewing their descriptions in decrees, licenses and permits. I have supervised the distribution of water to water right holders and resolved disputes between competing water users. I have extensive first-hand knowledge of how water rights for a variety of uses interact with other water rights from the same source. I have extensive first-hand experience with the difficulty of resolving disputes between water right holders when the water use under a right is not adequately described.

7. In addition to my duties for the SRBA, I am also routinely involved in administrative and policy matters concerning water rights, and ground and surface water supplies and conditions throughout the State, including Administrative Basin 33, which is the Little Lost River Basin.

8. I have had ongoing involvement in the IDWR's planning, development and implementation of policies and rules governing water appropriation and use and conjunctive administration of ground and surface water rights.

9. I am generally familiar with the nature of water rights claimed and/or partially decreed in Basin 33 as reflected in the IDWR's records.

10. The ground and surface water sources in the relevant reaches of the Little Lost River are hydraulically interconnected water sources.

11. IDWR water right records indicate that valid water appropriations with priorities junior to the Sagewillow water right claims exist authorizing use of the ground water source from which the Sagewillow water rights are claimed.

12. IDWR water right records indicate that valid ground water rights, other than those owned by Sagewillow, exist with priorities between 1969 and 1989.

13. The Little Lost River Basin surface water supply is deemed by the IDWR to be fully appropriated during portions of many years inasmuch as the Little Lost River and its surface water tributaries are typically insufficient to fill all existing water rights throughout the entire irrigation season.

14. Since 1992, the IDWR has imposed a moratorium on processing applications for permits to appropriate water for consumptive uses from all surface and ground water sources within the Eastern Snake River Plain Area and all tributaries thereto, including the Little Lost River basin. This moratorium was established based on findings by the IDWR that a moratorium was necessary to protect existing water rights.

15. Under the Moratorium Order, Applications for Permit can be processed upon a showing that the proposed appropriation of water would have no effect on existing water rights because of the proposed appropriation's location, insignificant consumption of water or mitigation provided by the applicant to offset injury to other rights.

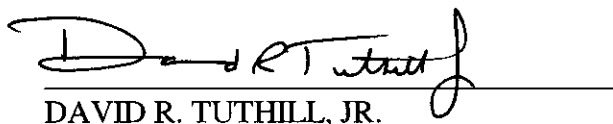
16. If increased consumptive use of water occurs on the Sagewillow property, it is reasonable to conclude that decreases in the flow of the Little Lost River will occur and will reduce the rate and volume of recharge to the ground water source.

17. Any decrease in Little Lost River streamflows caused by increased consumptive use of water on the Sagewillow property would decrease the quantity of water available to fill existing surface water rights below the Sagewillow property.

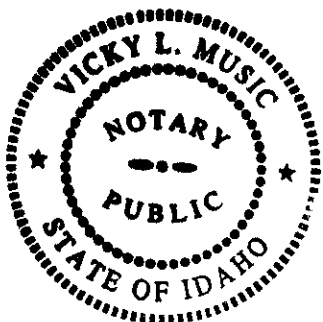
18. Relative to a new appropriation or a transfer of an existing water right, IDWR does not allow increased depletion of a fully appropriated source, whether or not the depletion is measurable by conventional methods.

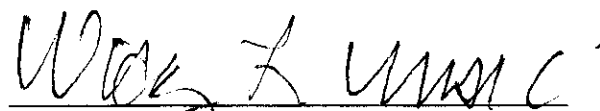
19. Assuming that Dr. Brockway's conclusion that a 5.88 cfs decrease in Little Lost River streamflows would be attributable to Sagewillow's increased ground water pumping and irrigation from 1989 through 1994 is correct, such a decrease would constitute a diminishment of the quantity of water available for use under existing surface water rights downstream from the Sagewillow property.

20. If Sagewillow's use of ground water between 1989 and 1994 to irrigate up to 978 additional acres and Dr. Brockway's conclusions are correct, and this would result in an increase of consumptive use of ground water and a resulting decrease in downstream streamflows, then Sagewillow's actions would have the same effect on the interconnected water sources and existing junior and senior water rights as a new appropriation. Under IDWR's Moratorium Order, such a new appropriation would not have been processed absent mitigation.


DAVID R. TUTHILL, JR.

SUBSCRIBED AND SWORN to before me this 8th day of January, 2004.




Notary Public for the State of Idaho
Residing at: CELESTE ID
My commission expires: 1-27-06

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of January, 2004, I served a true and correct copy of the foregoing by delivering the same to the following by the method indicated below, addressed as follows:

Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ U. S. Mail
☐ Hand Delivered
☒ Overnight Mail
☐ Facsimile

Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

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State of Idaho
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Boise, ID 83724

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Katrina Thomas