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**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 Nos. 65-4213A, 65-4213B,
	)	65-4213C, 65-4214, and 65-4214A
	)	
Case No. 39576	)	AFFIDAVIT OF MARCHELLE D. HART
_____	)	

STATE OF IDAHO	)
	) ss:
COUNTY OF VALLEY	)

I, Marchelle D. Hart, after first being duly sworn upon oath, depose and state that:

(1) My name is Marchelle D. Hart, and I am competent to testify to the matters set forth herein.

(2) In 2000, my husband Daryl Hart and I purchased 2.5 acres of property in Valley County near McCall, Idaho. The 2.5 acres are in the SE ¼ SW ¼ Sec 34, T18N R3E, Lot 2 of the Betzold Subdivision. A certified copy of the recorded deed is attached as Exhibit A. I found out about the property from an advertisement that claimed the land had a 'view of the pond and water rights.' Part of the property is covered by a very old pond that was the main attraction for my husband and me in our purchase of the property and remains our chief enjoyment of the property. We have lived there since June 2000. We love the pond's established presence, its habitat and the annual cycle of recreational, aesthetic, and wildlife uses it affords. The pond

supports a variety of wildlife including ducks, geese, native non-migratory birds, raccoons, foxes, deer, elk, a resident muskrat, and an occasional otter. My husband and I use the pond for recreational and aesthetic purposes, including boating, canoeing, bird watching, and observation of wildlife. Our home is located on Turner Road, and locally the pond is known as Turner Pond.

(3) Turner Pond spans about three acres, including the stream bed of an unnamed stream which flows into and fills the pond behind a five-foot high dike that extends the length of a football field at the lower end of the pond. At one end of the dike, a concrete spillway has check boards to control the pond level and the flow of the unnamed stream back into the downstream channel. This lower part of the pond is on our neighbors' properties, Verla Witt and the Bowker family. The upper part of the pond is on our property and the Bowker family property. The pond fills during the spring run-off and then empties gradually by late fall because the flow of the unnamed stream generally ceases by August 1. The pond level is maintained by the check boards and any flow over those check boards has ceased by early August. We understand from the Bowker family that the pond (with its dike) dates from the 1950s or 1960s when the Bowker, Witt, and Hart properties were owned and farmed by members of the Heckathorn family. The Bowker family property is across the unnamed stream from the Hart and Witt properties.

(4) I did not know that the property my husband and I bought was part of a 20-acre irrigation water right from the unnamed stream, that the water right (65-4213) had been decreed in 1986 in the Payette Adjudication, but only partially claimed (65-4213A) in the Snake River Basin Adjudication (SRBA), and that our portion of 65-4213 had not been claimed in the SRBA. I did learn that the Idaho Department of Water Resources (IDWR) had no record of a water right for the pond.

(5) My neighbors and I were concerned that the pond might be vulnerable since there was no record of a water right. We wanted to preserve and protect the continued historic water use for the pond. We were and are particularly concerned about any action which might cause or require the pond to be drained. At the time my husband and I moved to our property in June 2000, the property now owned by Verla Witt was owned by Jeff and Kim Clark. The Clarks sold their property to Michael and Jenna Bailey in the summer of 2001. In 2002, Michael and Jenna Bailey and I filed an application for a new water right for the pond with IDWR. We learned from IDWR that we could establish a 2002 priority date with the water right application, but not an historic priority date. We eventually withdrew the application. After the Baileys sold their property to Verla Witt in November 2002, Ms. Witt and I visited IDWR. Again, I was told there was no water right record for the pond and no means of establishing an historic priority date for the pond, independent of the Bowker family's SRBA claim 65-4214. The Bowker family property had a 19-acre irrigation right with a 1928 priority date from the unnamed stream (65-4214). As a result of this information my neighbors and I began discussing deeding part of 65-4214 to a water users' association to be formed by the landowners whose homes border the pond: the Harts, the Bowkers, and Verla Witt. The water users' association would then seek to transfer that portion of 65-4214 to a year round aesthetic/recreational/wildlife use for the pond.

(6) Faustino Ramos owns property immediately downstream of Turner Pond. The Ramos property also underlies a portion of the dike for the Turner pond, adjacent to Verla Witt's property. In early October 2003, my husband and I heard equipment operating near the dike for Turner Pond. We then observed a trackhoe digging below the downstream side of the dike for Turner Pond. We talked with the operator who informed us that Faustino Ramos was going to dig a pond at that location in front of the house Mr. Ramos had just built. My husband and I are concerned that there is not enough water for Turner Pond and the pond Mr. Ramos is digging in

front of his home. In November 2003, our attorney, Richard Cummings, met with Josephine P. Beeman to discuss how a water users' association could establish a water right for Turner Pond using a portion of Bowker irrigation right 65-4214. As a result of that meeting, my husband and I learned that the SRBA court was still reviewing 65-4214. We also learned that we or a water users' association, with consent from the Bowker family, could seek to transfer part of 65-4214 to a water right for Turner Pond.

(7) In January 2004, Bob Bowker called me to say he would work with my husband and me to transfer some of the Bowker irrigation right 65-4214 to Turner Pond. The place of use for the pond's water right would include all of the property underlying the pond: Harts, Bowkers, and Verla Witt. In late January, Mr. Bowker sent me an email that Jo Beeman was making a name change on his parents water right and that she was moving forward with putting the water in the water bank & preparing to include the pond in the permanent water right language for 65-4214.

(8) In late February 2004, as a result of information obtained for Bob Bowker and shared with Richard Cummings, I learned that water right 65-4213 which was decreed in the Payette Adjudication with a 1959 priority date, listed my property and Verla Witt's property as part of the place of use for irrigation. I also learned that the portion of water right 65-4213 for my property and Verla Witt's property had not been claimed in the SRBA. My husband and I never received "second round" service from IDWR informing us that our property was part of the place of use for decreed right 65-4213 and that our property was not included in the partial claim for 65-4213 filed in the SRBA.

(9) I also learned that 65-4213A, presumably for another part of 65-4213, was currently claimed in the SRBA under the name of Faustino Ramos and that it had a different

place of use and point of diversion from the original water right 65-4213 decreed in the Payette Adjudication.

(10) Since 65-4213's 1959 priority date is junior to 65-4214's 1928 priority date, my husband and I told Richard Cummings that a portion of 65-4214 would be our preferred choice for the pond's water right. We offered to make our portion of 65-4213 available to the Bowker family.

(11) On March 5, 2004, my husband and I met with Jo Beeman and Norm Young at Mr. Young's engineering office (ERO Resources) in Boise, Idaho, to provide information about the size of the pond, how it fills and empties during the year, the operation of the spillway in the pond's dike, and the use of the pond for recreational, aesthetic, and wildlife purposes. We explained that a pump from Turner Pond was used to irrigate some of Verla Witt's property. We also reviewed information about the location and status of Faustino Ramos's SRBA claim 65-4213A. We learned that 65-4213A claimed a point of diversion from the unnamed stream immediately below the pond and that 65-4213A had been recommended to the SRBA court without any condition to limit diversion to times water was actually available at the original point of diversion for 65-4213 upstream of the pond. Unrestricted diversions under 65-4213A could take water from the pond when there was no water at 65-4213's original point of diversion.

(12) We knew that Mr. Young was going to be out of town the week of March 8, that Ms. Beeman was scheduled for jury duty the week of March 15, and that it was important to file any claim for the pond as soon as possible while the SRBA court was still reviewing 65-4214 and 65-4213A. On March 15, Jo Beeman informed Richard Cummings that the Bowkers that day had asked her to put the water rights work "on hold" and that we should understand that 65-4214 was not available. We told Mr. Cummings we would proceed alone. I also called Bob Bowker the evening of March 16 and found out that he had put the water rights work "on hold" because

of a pending sale of the Bowker property associated with 65-4214, but that the sale had fallen through. Mr. Bowker said he would have Jo Beeman continue the water rights work.

(13) April 1, Jo Beeman provided Richard Cummings, the Bowker family, and Norm Young a detailed list of filings which would need to be made at the water bank and the SRBA court regarding 65-4214, 65-4213, and 65-4213A, indicating that the water right claims necessary for the pond were nearly complete. The evening of April 1, decisions necessary to apportion the pond's surface area and volume between 65-4214 and 65-4213 were included in a draft letter for review by Norm Young and Richard Cummings. Ms. Beeman later provided this draft letter by email to me the evening of Sunday, April 4.

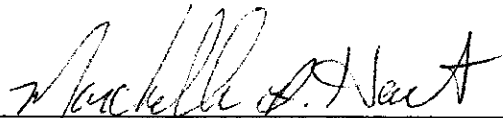
(14) On Sunday, April 4, Bob Bowker informed Jo Beeman that his mother Dorothy Bowker died April 3, that there was a pending sale on the property to Mr. Ramos due to close April 15, and that he would have to sort out what to do about signing documents. Ms. Beeman forwarded this information to us that day. On April 5 and April 6, my husband and I talked with Verla Witt and Richard Cummings about this recent unfortunate development. Richard Cummings advised Jo Beeman that my husband and I and Verla Witt would proceed immediately, with Ms. Beeman as counsel, to protest the Ramos claim and establish entitlements to Turner Pond with the most senior rights available. Jo Beeman called us on April 7 to discuss the objections and claims. On April 8, Jo Beeman forwarded Bob Bowker's reply that he did not oppose our claiming three acres of 65-4214 for the surface area of the pond and four acres of 65-4213 for the area of the pond; that it was the "prudent course of action." We also learned that Mr. Ramos was the prospective buyer of the Bowker property. We received draft claims 65-4214A and 65-4213B for the pond on April 8 and signed and notarized them on Friday, April 9.

(15) I pay an assessment to Lake Irrigation District for supplemental water on my property.

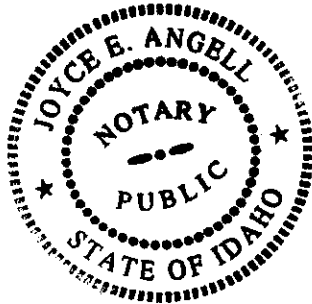
(16) My husband and I have not previously filed claims for water rights in the SRBA.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 20th day of April 2004.


MARCHELLE D. HART

SUBSCRIBED AND SWORN before me on this 20 day of April 2004.




Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires: 7-29-08

CERTIFICATE OF SERVICE

The undersigned certifies that on the 23rd day of April 2004, a true and correct copy of the foregoing **AFFIDAVIT OF MARCHELLE D. HART** was sent to the following entities by

U. S. Mail:

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

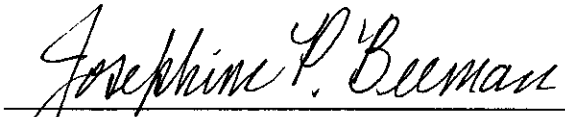
United States Department of Justice
Environment & Natural Resources Div
550 West Fort Street, MSC 033
Boise, ID 83724
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

James C. Heckathorn
RT 1 Box 46A
McCall, ID 83638
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Faustino Ramos
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McCall, ID 83638
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Dorothy A. Bowker & John R. Bowker
821 S.W. 12th Street
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☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Dorothy A. and John S. Bowker
P. O. Box 68
McCall, ID 83638
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax



JOSEPHINE P. BEEMAN

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WARRANTY DEED

For Value Received, Faustino L. Ramos and Maurene L. Ramos, husband and wife

the Grantors, do hereby grant, bargain, sell and convey unto

Daryl E. Hart and Marchelle D. Hart, husband and wife

whose address is: P.O. Box 250, Donnelly, Idaho 83615

the Grantee, the following described premises, to-wit:

All that certain lot, piece or parcel of land situated in Valley County, Idaho and shown as Lot 2, Betzold Subdivision, a plat which is recorded in the office of the Recorder of Valley County, Idaho.

TO HAVE AND TO HOLD the premises with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises that said premises are free from all encumbrances except the 2000 taxes and assessments and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: 5/30/00

Faustino L. Ramos
Faustino L. Ramos

Maurene L. Ramos
Maurene L. Ramos

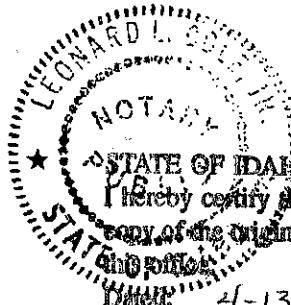
State of Idaho)
County of Valley) ss

On the 30 day of May, 2000 before me, Leonard L. Cole, a notary public in and for said State, personally appeared Faustino L. Ramos and Maurene L. Ramos known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Leonard L. Cole
Notary Public

Residing at: CASCADE

Commission Expires: 01-14-05



Clerk, Auditor & Recorder Lee Hunsick

By Lee Hunsick Deputy

Exhibit A to
Affidavit of Marchelle D. Hart
(65-4213A, et al.)