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DEPARTMENT OF
WATER RESOURCES

Shelley M. Davis, ISB # 6788
BARKER ROSHOLT & SIMPSON LLP
205 N. 10th Street, Ste. 520
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Earl Warthen, Objector

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. 45-10480, 45-10481, 45-10502
	)	and 45-12906
	)	
	)	AFFIDAVIT OF EARL WARTHEN
Case No. 39576	)	IN SUPPORT OF EARL
	)	WARTHEN'S MOTION FOR
	)	SUMMARY JUDGMENT ON ALL
	)	CLAIMS AND WITHDRAWING
	)	OBJECTION TO SUB-CASE NO.
	)	45-10502
_____	)	

STATE OF IDAHO	)
	) ss.
County of Minidoka	)

EARL WARTHEN, being first duly sworn upon oath, deposes and states as follows:

1. I am a resident of Albion, Idaho located in Minidoka County and have been since 1971.
2. I reside on, and/or own and farm the property adjacent to the property owned by Kevin Smyer and Norman and Delores Smyer.

3. The property now owned by Kevin Smyer was previously owned by Kate Bridger who did not apply water to the property.

4. 1973 was a very good water year and we had some excess water so Reed Shaw, Kate Bridger and myself cut a ditch through from one of my delivery ditches and turned some water onto the property.

5. We also turned some water onto Kate Bridger's property in 1974 but never again after that.

6. In May of 1989 without notifying me or getting authorization from the Department Kevin Smyer installed a headgate above my diversion and started diverting water.

7. I objected to the Department and Kevin ended up filing an Application for Transfer.

8. I did extensive research of the watermaster records for District 45 prior to the hearing and discovered that there is no record of any water having been put on the property claimed by Kevin for as long as records have been kept.

9. There was a hearing held in November of 1990 and the Department determined that the water rights that Kevin was claiming had been forfeited due to years of nonuse.

10. Since 1990 Kevin has on several occasions attempted to take water causing interference with my rights.

11. I learned that in 2003 Kelly Christiansen came out and talked with Kevin and Norman Smyer about their claims in the SRBA and that they amended their claims

after talking with Kelly to change their claimed sources, points of diversion, rates of diversion, and places of use.

12. Kelly Christiansen never met with me to discuss my claims or the historic use of water on my property or the adjacent properties.

13. No water has been used from Spring Creek, or the old Howell Creek channels, on the property owned by Norman Smyer since at least 1971.

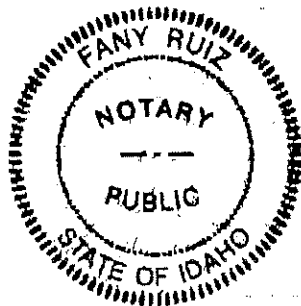
14. If the Department's recommendation for Norman and Delores Smyers' claim is allowed to stand, and if they take water from Spring Creek it will cause injury to my rights.

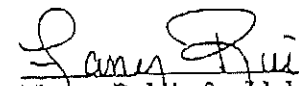
15. If the Department's recommendation for Kevin Smyer's claims 45-10480 and 45-10481 is allowed to stand, it will cause injury to my water rights.

Dated this 24th day of February 2006.


Earl Warthen

SUBSCRIBED AND SWORN to before me this 24th day of February 2006.




Notary Public for Idaho
Residing at: Minidoka
Commission Expires: June 4, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February 2006, I served a true and correct copy of the foregoing *Affidavit of Earl Warthen in Support of Earl Warthen's Motion for Summary Judgment on All Claims and Withdrawing Objection to Sub-Case No. 45-10502* on the following by U.S. Mail, postage prepaid or Facsimile:

Original hand delivered to:

Clerk
Fifth Judicial District Court
Snake River Basin Adjudication
253 3rd Ave. N.
P.O. Box 2707
Twin Falls, ID 83303-2707

Counsel for the Objector/Claimants:

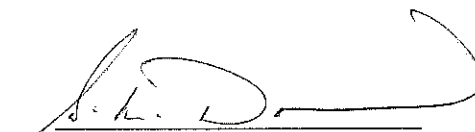
Michael Tribe
Ling, Robinson & Walker
P.O. Box 396
Rupert, ID 83350

Copies to:

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

United States Department of Justice
Environment and Nat'l Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449


Shelley M. Davis