

Michael P. Tribe, ISB No. 6816
 LING, ROBINSON & WALKER
 Attorneys at Law
 615 H Street
 P. O. Box 396
 Rupert, Idaho 83350
 Telephone (208) 436-4717
 Facsimile (208) 436-6804

Attorneys for Kevin, Norman and Delores Smyer

**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 No 45-10480, 45-10481
 and 45-12906

Case No. 39576

AFFIDAVIT OF NORMAN SMYER

STATE OF IDAHO)
) ss.
 County of Cassia)

Norman Smyer, being first duly sworn, deposes and says:

1. That this affiant is an adult resident of Idaho and makes this Affidavit on his own personal knowledge, is competent to testify to the matters stated herein, and this Affidavit sets forth facts as would be admissible in evidence.

2. That I was born in April 1935 in the Albion Valley and lived there until 1953

3. That I have either resided in Declo and have frequently visited the area since that time. That my mother still lives in Albion and that I frequently visit her to care for her.

AFFIDAVIT OF NORMAN SMYER

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3 4. That I also have owned various properties in the Albion Valley since 1976,
4 which have been used for farming and livestock,

5 5. That my parents had a herd of milk cows from 1935 until approximately
6 1953.

7 6. That from 1943 through 1948 my father leased the NE ¼ of Section 16,
8 T12S, R25E, from D.C. Harris for pasture for the milk cows. That this is the land currently
9 owned by Kevin Smyer on which Water Right No. 45-10480 and 45-10481 have been
10 recommended and to which Earl Warthen has objected.

11 7. That my family kept the milk cows there during the summer months and
12 milked them twice a day at that location.

13 8. That your affiant personally observed water being diverted from what has
14 been identified as Spring Creek and the Unnamed Stream in the southwest quarter into ditches
15 that were old and grassed in at that time.

16 9. That my father applied such water that flowed through those ditches to the
17 land in the NE ¼ for irrigation.

18 10. That your affiant owns the property listed as the place of use and point of
19 diversion for Water Right No. 45-12906.

20 11. That your affiant and wife, purchased 7.5 acres from Joy R. Solosabal and
21 Dolores Kilmartin in August of 1994, which currently comprise the place of use for Water Right
22 No. 45-12906.

23 12. That Oliver and Janice Anderson owned the 7.5 acres prior to Solosabal
24 and Kilmartin.

25 13. That Richard and Helen Anderson owned the 7.5 acres prior to Oliver and
26 Janice Anderson

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3 14. That your affiant filed a Notice of Claim to a beneficial use surface water
4 right for irrigation in the Snake River Adjudication on August 17, 1999.

5 15. Our 7.5 acres is not fenced in and has been used for pasture by Helen
6 and Richard Anderson and Oliver and Janice Anderson.

7 16. The Andersons have always paid the water bill on my acreage as it was
8 originally part of the Anderson farmstead.

9 17. That of my 7.5 acres 4.6 acres is irrigated from two sources. First, when
10 water from a small reservoir on the Unnamed Stream overflows it runs down the stream bed and
11 is able to irrigate a portion of my 4.6 irrigated acres.

12 18. That my second point of diversion is from Spring Creek, which is diverted
13 through a ditch running from Spring Creek to my property and irrigates the balance of my 4.6
14 acres. The water then exits my property in Spring Creek Channel at Highway 77.

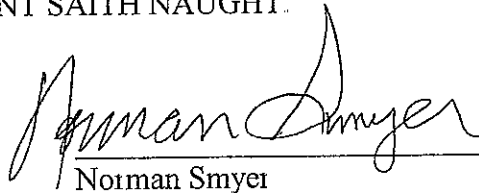
15 19. That the Anderson's have always used the 7.5 acres I currently own and
16 that water from the above-mentioned sources, to irrigate my property to pasture their livestock
17 That said use continued when Joy R. Solosabal and Dolores Kilmartin owned the property and
18 continued after I acquired the property.

19 20. That the Anderson's have irrigated my parcel since they purchased the
20 parcel in the 1950's and paid the water bills.

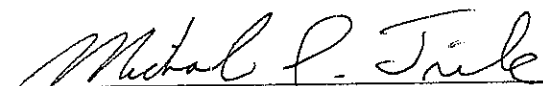
21 21. That to your affiant's knowledge, neither I nor any of my predecessors in
22 interest have knowingly abandoned or forfeited their interest in the waters that I currently irrigate
23 my land with
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FURTHER YOUR AFFIANT SAITH NAUGHT.


Norman Smyer

SUBSCRIBED AND SWORN to before me this 27th day of February, 2006



Notary Public for Idaho

Residing at: Rupert, ID

My Commission expires: 4/15/11

(SEAL)

