

Jerry R. Rigby (Bar No. 2470)
of RIGBY, THATCHER, ANDRUS,
RIGBY, KAM & MOELLER, Chartered
25 North Second East
P.O. Box 250
Rexburg, Idaho 83440
Phone: 208 356-3633
FAX: 208 356-0768
Attorneys for Movant Lava Irrigation Company, Limited
& Dempsey Irrigating Company (hereinafter "Movants")

RECEIVED

APR 13 2006

DEPARTMENT OF
WATER RESOURCES

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. 39576

)
) Subcase Nos.: Basin 29 Water Rights
) Signatories to Portneuf River Settlement
)
) MOVANTS LAVA IRRIGATION
) COMPANY, LIMITED and DEMPSEY
) IRRIGATING COMPANY'S
) MOTION TO VACATE HEARING

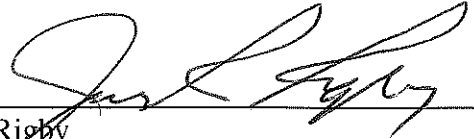
Comes now, Movants, Lava Irrigation company, Limited, and Dempsey Irrigating
Company, by and through their counsel, Jerry R. Rigby, of RIGBY, THATCHER,
ANDRUS, RIGBY & MOELLER, CHARTERED, and hereby move the above entitled Court
to vacate the hearing set on Movants' Motion to Consolidate and Motion to Alter or Amend
Order of Partial Decrees on Portneuf River for the water rights described below:

29-00052; 29-13363; 29-13311; 29-13317; 29-11277; 29-4060; 29-589; 29-00053;
29-13318; 29-04467; 29-10816; 29-11773; 29-11774; 29-04364; 29-13213;
29-13279; 29-13289; 29-13299; 29-13310; 29-13321; 29-13320; 29-11681;
29-13334; 29-13535; 29-13536; 29-13521; 29-13580; 29-13581; 29-13582;

29-13583; 29-13584; 29-13586; 29-13407; & 29-11775.

Movants' Motion to Vacate is supported by the affidavit of Jerry R. Rigby, attached hereto.

Dated this 5th day of April, 2006.

A handwritten signature in black ink, appearing to read "Jerry R. Rigby", written over a horizontal line.

Jerry Rigby
of RIGBY, THATCHER, ANDRUS,
RIGBY & MOELLER, Chartered

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 10th day of April, 2006, a true and accurate copy of the foregoing was sent by facsimile transmission and/or U.S. Mail, postage prepaid to the following:

INDIAN FALLS PROPERTY ASSN.
INDIAN FALLS WATER USERS ASSOC.
Represented by:
CRAIG W. PARRISH
P O BOX 4321
POCATELLO ID 83205

I GLENN PERKINS
MARY D PERKINS
Represented by:
RONALD J. JARMAN
PO BOX 6252
POCATELLO ID 83205-6252

MC CAMMON DITCH CO LTD
MC CAMMON DITCHE COMPANY
Represented by:
JAMES A. SPINNER
P O BOX 6009
POCATELLO ID 83205

USDI BLM
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE ID 83724

CARROLL & IONE WILLMORE ESTATE
Represented by:
KENT W. FOSTER
1000 RIVERWALK DRIVE, STE 200
P O BOX 50130
IDAHO FALLS ID 83405

DEMPSY IRRIGATION COMPANY
C/O EARL SMITH
P O BOX 235
LAVA HOT SPRINGS ID 83246

MARSH VALLEY DEVELOPMENT INC
PORTNEUF MARSH VALLEY CANAL CO
Represented by:
RANDALL C. BUDGE
201 E. CENTER, STE. A2
P O BOX 1391
POCATELLO ID 83204-1391

TOPAZ IRRIGATION CO.
C/O GENE FAGNANT
PO BOX 293
LAVA HOT SPRINGS ID 83246

FISH CREEK IRRIGATION CO.
C/O WALLACE WHITEHEAD
P O BOX 152
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PORTNEUF IRRIGATING CO.
PORTNEUF IRRIGATING COMA=PANY
Represented by:
RANDOLPH CALVIN STONE
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BURLEY ID 83318

FAGNANT & OLSEN RANCH LLC
FRANCES GENE FAGNANT
P O BOX 293
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LAVA IRRIGATION CO. INC
P O BOX 182
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PORTNEUF IRRIGATION CO.
P O BOX 194
ARIMO ID 83214

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NOLA RAE PHILLIPS
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DIRECTOR OF IDWR
P.O. BOX 83720
BOISE, ID 83720-0098

BARBARA W. KEVAN
3462 N. 2500 E.
TWIN FALLS ID 83301

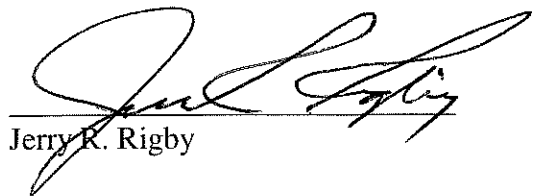
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In Re: SRBA

Case No. 39576

) Subcase Nos.: Basin 29 Water Rights
) Signatories to Portneuf River Settlement
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) AFFIDAVIT OF JERRY R. RIGBY
) IN SUPPORT OF MOVANTS LAVA
) IRRIGATION COMPANY, LIMITED
) and DEMPSEY IRRIGATING
) COMPANY'S MOTION TO
) VACATE HEARING

STATE OF IDAHO,)
)
) ss
 County of Madison.)

JERRY R. RIGBY, being first duly sworn, states as follows:

1. I am the attorney for Movants Lava Irrigation Company, Limited and Dempsey Irrigating Company.
2. On April 4, 2006, Movants attended a special meeting convened by the Idaho Department of Water Resources ("IDWR") to discuss the issues upon which Movant's motion to Alter or Amend is based.

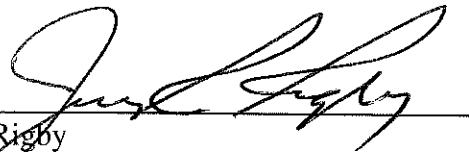
3. The meeting was held following notice to all parties to the Porteuf River Settlement Agreement by IDWR and a majority of the parties to said agreement were in attendance. Based upon the meeting, a plan of further investigation of the records, discussion and further mediation were discussed.

4. All parties to the meeting agreed that until further information, discussion and mediation could occur, it would be prudent to have the present pending motions before the above entitled court vacated in order to grant the time necessary to all parties to determine if any further action by the above entitled court would be necessary.

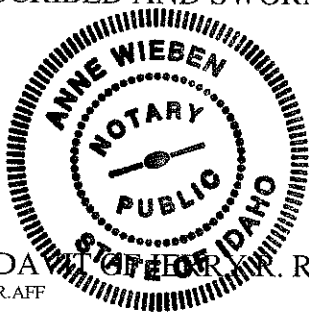
5. The parties present at the meeting unanimously determined that Movants' counsel should file a Motion to Vacate and then allow all other parties to call into the above entitled court on the scheduled date of April 18, 2006 and give evidence their support of the Motion to Vacate.

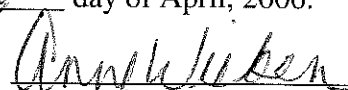
6. This motion is not filed in an effort to delay or otherwise prolong a quick resolution of Movants pending motions before the above entitled court.

Dated this 8th day of April, 2006.


Jerry Rigby
of RIGBY, THATCHER, ANDRUS,
RIGBY & MOELLER, Chartered

SUBSCRIBED AND SWORN to before me this 8th day of April, 2006.




Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires: 7/27/07

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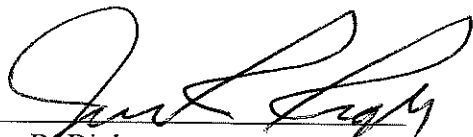
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