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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Objector,
 Ben D. Jernberg and Idaho Properties, LLC,

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. 31-11845
	)	
Case No. 39576	)	<u>AFFIDAVIT OF BEN D. JERNBERG</u>
	)	<u>IN SUPPORT OF MOTION</u>
	)	<u>FOR SUMMARY JUDGMENT</u>
	)	

STATE OF ARIZONA)
) ss.
 County of Maricopa)

Ben D. Jernberg, being first duly sworn on oath, deposes and states:

1. That your affiant is an adult resident of Maricopa County, Arizona, 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 your affiant is the Objector in the above-entitled action.

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2
3 3. That this affiant was the owner of over 1900 acres in Jefferson
4 County, Idaho.

5 4. That this affiant's father, David R. Jernberg previously owned the
6 land. That he surveyed the land and then built ditches and dykes on the dry graze and
7 pasture land. David R. Jernberg also drilled the wells and placed pumps in the ground
8 to pump enough water for the irrigation of the crops, dry graze and pasture land.
9

10 5. That this affiant continued on with the irrigating and leveling of the
11 ground so it would irrigate easier and better. I have since redone the wells and pumps
12 so that there would be enough water to water the farm ground, dry graze and pasture
13 land. The dry graze and pasture land was used for your affiant's cattle.

14 6. That to irrigate those lands, this affiant had to pump his full
15 capability from his two pumps. My father and I originally used two pumps to irrigate the
16 pastureland; the two pumps currently have a capacity of 19.28 cfs.
17

18 7. That said pumps are able to pump the combined capacities of
19 decreed Water Right Nos. 31-02357, 31-02395, 31-07311 as well as recommended
20 Water Right No. 31-11845. The combined quantity of the four rights (including 4.99 for
21 31-11845) is 17.86 cfs.
22

23 8. That when water is available, this affiant flood irrigated the entire
24 663 acres of pasture that was originally listed in the conditions of Water Right No. 31-
25 7311. That your affiant has always flood irrigated more than the 663 acres of
26 uncultivated pasture located in Sections 15, 16, 21 and 22 of Township 7 North, Range
27

1
2
3 34 East, B.M.

4 9. On February 20, 1979, this affiant filed an Application for Permit,
5 now known as 31-7311. In 1997, after a lengthy process, 31-7311 was finally licensed
6 for a portion of the requested water and land.

7 10. Once issued, the license provided for the diversion of 4.62 cfs for
8 the irrigation of 461 acres and provided for an additional 4.99 cfs of ground water to be
9 diverted onto 663 acres of uncultivated pasture. However, this additional 4.99 cfs of
10 ground water was found not to be appurtenant to the land upon which it occurred.

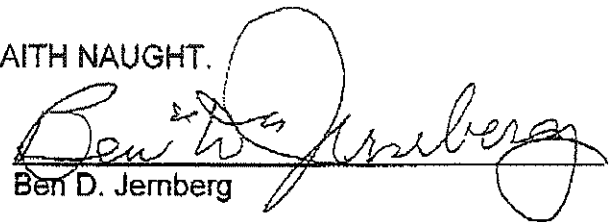
11
12 11. That Partial Decrees for Water Right No. 31-7311 was issued on
13 February 22, 2002. On July 15, 2003, this affiant filed a *Motion to Set Aside and*
14 *Vacate Partial Decree and to Allow the Filing of a Late Objection* with the SRBA Court.
15 On January 30, 2004, Special Master Bilyeu, signed an *Order Recommending Partial*
16 *Decree Be Set Aside*. In the *Order*, the Special Master allowed the elements of 31-
17 7311 to remain unchanged and deleted the "other provisions necessary" clause relating
18 to the uncultivated land. It was then recommended that IDWR file an Amended
19 Director's Report addressing only the uncultivated land with a new water right claim
20 number.
21

22 12. On March 15, 2004, John M. Melanson, Presiding Judge of the
23 Snake River Basin Adjudication, signed the *Order Dismissing Motion to Set Aside*
24 *Partial Decrees and Setting Aside Partial Decree and Issuing Partial Decree for Water*
25 *Rights: 31-0257, 31-02395, 31-07311*.
26

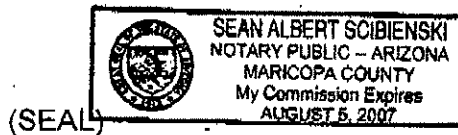
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3 13. That in May of 2005, this affiant filed an objection the Director's
4 Report for Water Right No. 31-11845 based upon the quantity of water used and the
5 place of use.

6 14. That during the summer of 2005, this affiant sold his Mud Lake
7 Ranch to Idaho Properties, LLC.

8
9 FURTHER THIS AFFIANT SAITH NAUGHT.

10
11 
Ben D. Jernberg

12
13 SUBSCRIBED AND SWORN to before me this 26th day of April, 2006.



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27
28 Notary Public for Arizona
Residing at: 13926 W Bell Rd Surprise Az Maricopa County
My Commission expires: Aug 5 2007