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2006 MAY 26 PM 1:52

FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS  
**SNAKE RIVER BASIN ADJUDICATION DIVISION**

In RE: SRBA

Subcase: 22-7672

Case No. 39576

**AFFIDAVIT OF DALE SWENSEN**

STATE OF IDAHO

ss.

County of Madison

Dale Swensen, having been duly sworn, states under oath as follows:

1. I am a resident of Fremont County, Idaho and reside at 2353 E. 200 N., St.  
Anthony, ID 83445.

2. I certify that I am presently and at all times relevant to this motion, the  
Executive Director for Fremont Madison Irrigation District, which has as it headquarters 350 N.  
6<sup>th</sup> W., St. Anthony, ID 83445.

3. Along with my Directors and legal counsel, I have been extremely involved  
with the adjudication and the water rights for not only Fremont Madison Irrigation District, but

also all canals, irrigation districts and individual water right holders within the boundaries of Fremont Madison Irrigation District (hereinafter "District").

4. For the last several years, the above described water users have been negotiating with the Idaho Department of Water Resources to develop a plan of water administration which would recognize and allow water diverted from the District as well as its contracted canal companies and irrigation districts to recover water diverted under their respective water rights from the ground.

5. These talks and negotiations rose to even a higher level when the District received title to its wells (known as Bureau Wells) located within its boundaries and for which the District claimed as recovery wells.

6. As recently as two weeks ago, the general understanding was that an agreement would be forthcoming which would be similar to previously authorized settlements approved by IDWR and would be satisfactory with IDWR as well as the District and the other said water users. Upon that date, the basic premises upon which the agreement relied upon were disallowed by IDWR which made it impossible to continue with the settlement negotiations.

7. At the same time as the negotiations were underway, a directors report was filed for Basin 21. The last day to file objections for any water rights in Basin 21 was May 26, 2006. On behalf of the District, its contracting irrigation entities and the other water users (each of whom were involved with the negotiations in some form or another), we originally calendared the required objections to be filed on or before May 26, 2006 and used said date with the IDWR as the "drop dead" date for negotiations.

8. Basin 22 then had a certain number of its water rights reported in the director's report. Assuming that Basin 22's objection would be at or after Basin 21, no-one calendared the event to be earlier than the "drop dead" date. Therefore, the negotiations with IDWR never did discuss the earlier date of May 5, 2006, but only discussed the required objection date of May 26, 2006. In fact, at that time, negotiations appeared to be on tract to have a settlement agreement prior to May 26, 2006 and thus avoid any objection whatsoever.

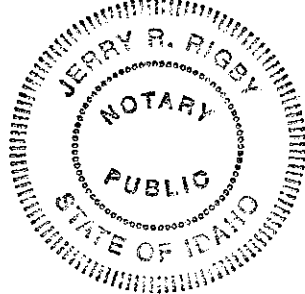
9. The other irrigation entities and water users were also being told that a settlement agreement was forthcoming and that their water rights would also be amended in a manner which would incorporate the terms of the settlement agreement into their individual rights.

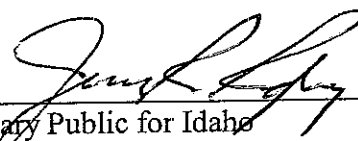
10. It was only when the negotiations broke down and we began preparation of the numerous objections which we are filing this same day, that we discovered the Basin 22 wells, including the Bureau Wells, required objections to be filed even before the entire Basin 21 rights. It should be noted that only a portion of Basin 22 is reported and that when it is fully reported, we will necessarily be required to object to all water rights which are similarly situated within the District's boundary.

Dated this 26<sup>th</sup> day of May, 2006.

  
Dale Swensen

SUBSCRIBED AND SWORN to before me this day of 26, 2006.



  
Notary Public for Idaho  
Residing at Rexburg, Idaho  
My Commission Expires: 11/09/11