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DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
DAVID I. STANISH (ISB #7310)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
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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
	)	
	)	AFFIDAVIT OF DAVID J. BARBER
	)	DATED AUGUST 14, 2006
Case No. 39576	)	
	)	
	)	
	)	
State of Idaho	)	
	)ss	
County of Ada	)	

DAVID J. BARBER, being first duly sworn, deposes and states:

1. I am a deputy attorney general assigned to the Snake River Basin Adjudication. I am a competent adult over the age of eighteen years, and the statements made herein are based upon my own personal knowledge of the events described.

2. I served the *State of Idaho's First Set of Discovery Requests To Ben Jernberg and Idaho Properties LLC* on August 9, 2006. Attached to this Affidavit are true and correct copies of pages twelve and thirteen of this discovery. These pages contain Request for Production No. 13.

3. I called Mr. Roger Ling on August 8, 2006 about the proposed discovery described in Request for Production No. 13. We discussed in some detail the proposed work. Mr. Ling responded that he had concerns about the excavation of holes with a backhoe. He said that he would find out his client's position as soon as he could. I told him that I would describe the proposed work in some detail in the discovery so that his clients would have a good understanding of the proposed work.

4. I sent Mr. Roger Ling and Mr. Michael Tribe a draft stipulation that would have permitted the work described in Request for Production No. 13 and I advised him in the e-mail that I would call him on either Friday, August 11, 2006 or on Monday August 14, 2006.

5. I called Mr. Michael P. Tribe on August 14, 2006 and was informed that Claimants Jernberg and Idaho Properties LLC opposed the proposed discovery described in Request for Production No. 13.

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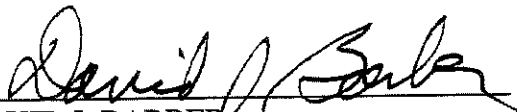
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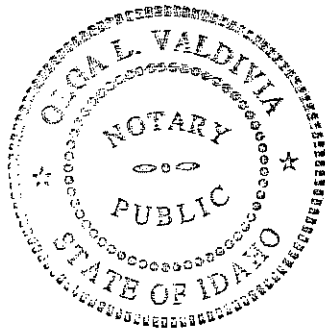
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6. Further your affiant sayeth naught.


DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

Subscribed and sworn (or affirmed) to before me, a notary public in and for the
State of Idaho this 14th day of August 2006.




Notary Public for Idaho
Residing at Boise
My Commission expires: 2/5/2012

CERTIFICATE OF SERVICE

I certify that on the 14th day of August 2006, I caused to be served the original and/or copy of this AFFIDAVIT OF DAVID J. BARBER DATED AUGUST 14, 2006 on each of the following persons by the indicated method.

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☒ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

Claimant Ben Jernberg
Claimant Idaho Properties, LLC
Represented by:
Roger D. Ling
Michael P. Tribe
LING ROBINSON & WALKER
PO Box 396
Rupert, ID 83350

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ E-Mail: rdl@idlawfirm.com
☒ E-Mail: mpt@idlawfirm.com
☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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☐ Facsimile: _____
☒ Statehouse Mail

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

Not Applicable



DAVID J. BARBER
Deputy Attorney General

Request for Production No. 10

Please produce for inspection and copying all conveyance documents, including wills, deeds, or court decrees, which relate to the transfer of the PPU under water right no. 31-11845 to Claimant Jernberg.

Request for Production No. 11

Please produce for inspection and copying the real estate listing agreement, real estate advertisements, sales agreements and deeds, which relate to the transfer of the PPU to Claimant Idaho Properties.

Request for Production No. 12

Please produce for inspection and copying all documents that authorize or allow Claimant Jernberg and Claimant Idaho Properties to enter on, construct ditches, and irrigate the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of section 22, Township 7 North, Range 34 East, B.M., which is public land administered by the U.S. Department of the Interior, Bureau of Land Management

Request for Production No. 13

Entry on lands of Claimant Jernberg and Claimant Idaho Properties is requested for the following purposes: (1) conducting soil tests, (2) making measurements of the ditch delivery system, (3) examining forage and plant species present, and (4) conducting other scientific investigations incidental thereto. The proposed date of entry would commence on or about August 21, 2006 and would continue through September 29, 2006. The soil tests would include the excavation of pits with a backhoe. The depth of the pit would not generally exceed six feet. A soil scientist would examine the soil horizons in each soil pit, would conduct certain tests to determine alkalinity and other properties of the soil, and may extract a sample from each soil horizon. The soil pits would be filled in following completion of the soil tests. The number of

STATE OF IDAHO'S FIRST SET OF DISCOVERY REQUESTS
TO BEN JERNBERG AND IDAHO PROPERTIES, LLC

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soil pits cannot be determined precisely without a surface examination of the PPU. The minimum number of pits is probably fifteen (15), and the maximum number of pits would not exceed forty (40).

The State of Idaho understands that a grain crop is being raised in the southwest corner of the PPU. The timing of the State of Idaho's visit is such that the State of Idaho expects that the grain crop will be harvested from the PPU. The State of Idaho will not dig any soil pits in a grain field that has not been harvested. If the grain crop is harvested, the State of Idaho expects to dig some soil pits in the existing grain field. The State of Idaho will make every effort to minimize any adverse impacts from its excavation of soil pits on the PPU.

Interrogatory No. 13

Identify all persons who assisted in the preparation of the responses to these Interrogatories, Requests for Admission and Requests for Production.

DATED this 9th day of August 2006.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO



DAVID J. BARBER
Deputy Attorney General

STATE OF IDAHO'S FIRST SET OF DISCOVERY REQUESTS
TO BEN JERNBERG AND IDAHO PROPERTIES, LLC

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CERTIFICATE OF SERVICE

I certify that on the 14th day of August 2006, I caused to be served the original and/or copy of this BRIEF IN SUPPORT OF STATE OF IDAHO'S MOTION TO SHORTEN TIME, TO COMPEL DISCOVERY, AND FOR AN EXPEDITED HEARING on each of the following persons by the indicated method.

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
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Claimant Ben Jernberg
Claimant Idaho Properties, LLC
Represented by:
Roger D. Ling
Michael P. Tribe
LING ROBINSON & WALKER
PO Box 396
Rupert, ID 83350

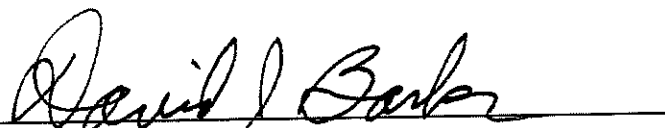
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☒ E-Mail: mpt@idlawfirm.com
☐ Statehouse Mail

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State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

Not Applicable



DAVID J. BARBER
Deputy Attorney General