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Attorneys for Objectors

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS  
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In Re: SRBA )  
Case No. 39576 ) Subcase Nos.: 21- 00060C  
 )  
 ) AFFIDAVIT OF  
 ) REX V. OSTBERG  
 )  
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STATE OF IDAHO )  
 ) ss.  
County of Bonneville )

Rex V. Osterberg, having been duly sworn, states under oath as follows:

1. I am a resident of Fremont County, Idaho.
2. I am the current owner of Water Right No. 21-00060C, which diverts from Curr Ditch, which in turn diverts from the Fall River.
3. Curr Ditch is a lateral ditch and an unincorporated association of water right users that function similarly to an Lateral Ditch Association but without the legal association. Therefore, each water user owns his/her own water rights and only works with the other water users on the Curr ditch in order to provide the necessary use of the ditch to adequately water

each individual's lands.

4. I certify that while Water Right No. 21-00060C was in the claim phase of the Snake River Basin Adjudication, I, like other Curr Ditch water users, was told by Idaho Department of Water Resources' SRBA Staff that a reduction in my Rexburg Decree water right was appropriate because on paper, they believed my right exceeded what I could beneficially apply to my lands. They also represented that the reduced amount would continue to be sufficient to meet my needs and would be consistent with my historical diversions. I sent a letter to IDWR informing them that I did not believe the reduction in my water right was correct. When the Directors Recommendation was filed and I received the notification, I was informed that the reduction in right would not impact my historical practice of watering from the Curr ditch as had been represented to me. I therefore had no reason to dispute the reduction and didn't file any objection.

5. Unfortunately, following the May objection deadline date, the typical and historical diversions took place in the Curr ditch and like the other users in the ditch, I began my historical diversions from the ditch onto my lands.

6. To my astonishment, I was informed by IDWR that the combined diversions of the Curr ditch water users exceeded the combined rates allowed by the Director's Report (as are now under interim administration), and that the users of the Curr ditch were being charged storage for all amounts exceeding the combined recommendations.

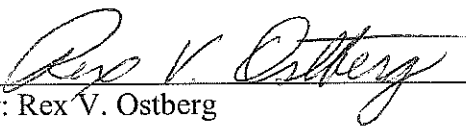
7. Furthermore, following meetings and/or conversations with the other water users of Curr Ditch, it is now clear that the reduced combined diversions makes it impossible to get water to the end of the Curr Ditch or to adequately water the lands of the water right holders

who divert from the Curr Ditch.

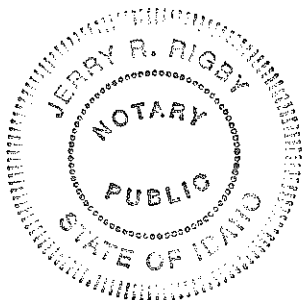
8. Because Curr Ditch is not a canal company or a legal organization that is jointly administered, the reduced combined rates which resulted from the reduction of the decreed individual water rights (pursuant to the Rexburg Decree) as now being administered pursuant to the Director's Report could not have been ascertainable without a report or representation to all Curr Ditch water users as to the combined reduction in water rights. This was not known by me, or anyone I know, at the time my objection to the Director's Recommendation was required to be filed.

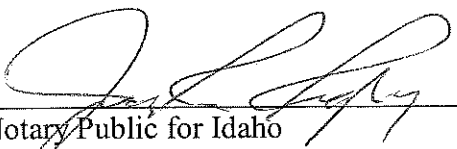
9. In the interest of justice, I respectfully request that the above entitled court allow me to file a late objection in order that I be granted the right to prove that my water rights should not be reduced from those claimed. I desired nothing more than to have my historical water rights kept in tact.

Dated this 7<sup>th</sup> day of August, 2006.

  
By: Rex V. Ostberg

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of August, 2006.



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