

Attorneys for Bruce Walden

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22-090.0

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 No. 47-04177E

**AFFIDAVIT OF ANDREW J. WALDERA IN
SUPPORT OF RESPONSE IN OPPOSITION TO
MOTION TO FILE LATE OBJECTIONS**

State of Idaho)
) ss.
County of Ada)

ANDREW J. WALDERA, being first duly sworn upon oath, deposes and says:

1. I am an attorney duly licensed to practice law in the state of Idaho and I am one of the attorneys of record in the above-captioned matter for Bruce Walden.
2. I have knowledge of the files pertinent to this matter and I make this affidavit based upon personal knowledge, information, and belief.

**AFFIDAVIT OF ANDREW J. WALDERA IN SUPPORT OF
RESPONSE IN OPPOSITION TO MOTION TO FILE LATE OBJECTIONS - 1**

BOI_MT2:668227.1

3. Bruce Walden ("Walden") owns six (6) acres in the NESE quarter quarter section of Section 9, Township 9S, Range 14E, located in Buhl, Idaho. Tim and Karen Smalley ("Smalley") own an adjoining fourteen (14) acres in the same NESE quarter quarter section.

4. Walden and Smalley, in conjunction with other neighboring landowners, divert water from an unnamed stream that is tributary to Deep Creek through a common diversion lateral. Those who use the common diversion lateral do so via respective ownership of split rights of the parent beneficial use claim 47-04177 filed by Melissa Smalley in 1980.

5. On or about August 31, 2001, Smalley filed a Petition for Injunctive Relief alleging forfeiture, abandonment and waste of water right no. 47-04177E, seeking to enjoin Marjory Chessmore's (Bruce Walden's predecessor-in-interest) diversion and use of said water right. Smalley's Petition was filed by Arkoosh Law Offices, Chtd., and Smalley has been represented by the same firm regarding water right nos. 47-04177E and 47-04177B ever since.

6. In response to Smalley's Petition for Injunctive Relief, the SRBA Court assigned Smalley's action the subcase no. 94-00019. Special Master Bilyeu has presided over subcase no. 94-00019 since its inception, and presides over the subcase currently.

7. Smalley, Chessmore, and Walden have agreed to the interim administration of water right no. 47-04177E from irrigation season 2002 through irrigation 2007. This interim administration was encouraged by the Court because the final Director's Reports for Basin 47 did not issue until February 2, 2007. In fact, Smalley's Petition for Injunctive Relief was filed some three (3) months prior to the December 7, 2001 deadline for filing beneficial use claims in Basin 47.

8. The parties and the Court were waiting for the SRBA reporting process to proceed so that Smalley's Petition for Injunctive Relief, as well as Walden's objections to the

Director's Reports, could be addressed through the objection/response/initial hearing process—the SRBA procedural mechanism designed and provided for resolving such issues.

9. In an effort to keep both it and the parties informed, the Court held, and the parties (or their counsel) participated in, no fewer than thirteen (13) separate hearings and/or status conferences wherein the all involved received repeated Basin 47 reporting process progress updates (in the form of anticipated Director's Report issuance dates) from counsel for the Idaho Department of Water Resources between September 2001 and March 28, 2007. The March 28, 2007 hearing and/or status conference informed the Court and counsel for the parties that the final Director's Report for Basin 47 had, at last, issued on February 2, 2007, and that the Basin 47 objection period had been set accordingly. Attached hereto as Exhibit A is a true and correct copy of the March 28, 2007 hearing minutes.

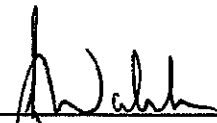
10. The February 2, 2007 Director's Report set September 19, 2007 as the objection deadline for Basin 47.

11. Walden filed timely objections to water right nos. 47-04177B (Smalley's split right) and 47-04177E (Walden's split right).

12. On October 3, 2007, the Court held a status conference again revisiting the Basin 47 reporting/objection process. Counsel for the Idaho Department of Water Resources and I informed the Court and Smalley's counsel that the objection period for the basin expired on September 19, 2007, and that Walden was the only 47-04177 split right owner who had filed objections.

13. On or about October 10, 2007, Smalley filed their Motion to File Late Objections.

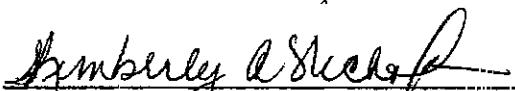
Further your affiant sayeth naught.



Andrew J. Waldera

SUBSCRIBED AND SWORN to before me this 31st day of October, 2007.





NOTARY PUBLIC FOR IDAHO
Residing at Boise
My Commission Expires 11/20/2007

CERTIFICATE OF SERVICE

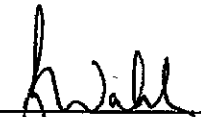
I HEREBY CERTIFY that on this 31st day of October, 2007, I caused a true and correct copy of the foregoing **AFFIDAVIT OF ANDREW J. WALDERA IN SUPPORT OF RESPONSE IN OPPOSITION TO MOTION TO FILE LATE OBJECTIONS** to be served by the method indicated below, and addressed to the following:

C. Thomas Arkoosh
Daniel A. Nevala
ARKOOSH LAW OFFICE, CHARTERED
301 Main Street
P.O. Box 32
Gooding, ID 83330-0032
Fax: (208) 934-8873

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 East Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720-0098
Fax: 287-6700

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile



Andrew J. Waldera

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

DISTRICT COURT
TWIN FALLS, ID

3/28/2007
10:30 a.m.

Special Master: BRIGETTE BILYEU

COURT MINUTES

Sub Case No. 94-00019

----- Clerk - J. Cornell -----
This was the time and place set for the STATUS CONFERENCE

APPEARANCES BY:

PETITION FOR INJUNCTIVE RE

TIMOTHY SMALLEY

BRUCE L WALDON

J.T. Kiha for
C. THOMAS ARKOOSH
Andy Waldens for
SCOTT L. CAMPBELL

ALSO PRESENT:

IDWR

Spencer/Bromley/Baxter/Courtney

1 - Ct intros case. Gives Brief Statement.
49 Baxter - Basin 47 Directors Report. Objection
deadline in September 2007.

Ct - issue Order for 2007 Irrigation
Season.

Waldens, Kiha - Concur.

Ct will issue interim Order for
2007 Irrigation Season.

Ct Sets Hearing Oct. 3, 2007
at 10:30AM

If Appropriate will withdraw Petition for Injunctive
Court Minutes - 1 - Relief.

110 Adjourn

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

US Bank Plaza Building
101 S Capitol Blvd 10th Fl
PO Box 829
Boise Idaho 83701 0829208 345 2000
208 385 5384 Fax
208 385 5418 Direct**FACSIMILE****From:** Andrew J. Waldera**Date:** October 31, 2007**Re:** In re SRBA, Case No. 39576
Subcase No. 47-04177E**File No.:** 22-090.0**Number of pages being transmitted including the cover page: 6**
Please call fax operator at (208) 345-2000 if all pages are not received.

To:	Name	Organization	Fax No.	Voice No.
	C. Thomas Arkoosh Daniel A. Nevala	Arkoosh Law Office	(208) 934-8873	
	Director	Idaho Department of Water Resources	287-6700	

Message:

Attached is the Affidavit of Andrew J. Waldera in Support of Response in Opposition to Motion to File Late Objections.

PLEASE DELIVER IMMEDIATELY

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If you have received this communication in error, please immediately notify us by telephone to arrange for return of the original document to us. Thank you.