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FEB 21 2008

DEPARTMENT OF
WATER RESOURCES

Law Offices

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February 15, 2008

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

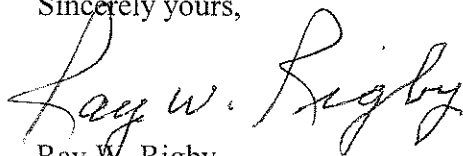
Re: Water Right 21-11165

Dear Clerk:

Enclosed for filing, please find an Affidavit of Norman Miller on the above referenced water right.

If you have any questions, please give our office a call. Thanks.

Sincerely yours,


Ray W. Rigby

/md
Enclosure

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RECEIVED

FEB 21 2008

DEPARTMENT OF
WATER RESOURCES

AMENDED AFFIDAVIT

State of IDAHO)
 ss.
County of Madison)

RE: SRBA Water Right Claim 21-11165

NORMAN J. MILLER, being first duly sworn, deposes and says:

1. This "Amended Affidavit amends and replaces that certain affidavit of your affiant dated November 23, 2005, and filed in this matter pertaining to said Water Right Claim 21-11165.

2. That he resides at 1993 South 675 East, Bountiful, Utah 84010.

3. That he is the surviving husband of NELDA STEWART MILLER and makes this amended affidavit in behalf of her estate and trust, she having died on February 16, 2007, and your affiant is well familiar with the matters deposed about herein.

4. That the said NELDA STEWART MILLER (hereinafter called Nelda), by a series of gift deeds, on dates commencing in 1976 and fully conveying all interests in 1983, acquired ownership from her father and mother, Roy Stewart and Delila Stewart, of the following described property located in Fremont County, Idaho, to-wit:

Lots 1 and 2 and the Southeast Quarter of the Northwest Quarter
(SE1/4NW1/4) and the Northeast Quarter of the Southwest Quarter
(NE1/4SW1/4) of Section 14, Township 9 North, Range 42 East of the
Boise Meridian.

5. That said water right number 21-11165 pertains to the above described real

property.

6. At the time Nelda received said property, your affiant inquired of Nelda's said parents and other "old timers" living in the area about the water rights pertaining to said property, and was advised by several persons that said property received water rights acquired by the first people to occupy the property as homesteaders; and that said homesteaders and the homesteaders of the other properties adjoining or nearby said property went into possession of the properties in that area and used water thereon commencing in late 1800s, sometime in the 1880s-1890s. Otherwise your affiant has been unable to learn the specific time Nelda's property was first occupied and when water was first applied to her land.

7. However, the homesteader for Nelda's property was William G. Hutchison. He received Homestead Receipt No. 656336 from the US Land Office on July 8, 1910. A copy of the index of documents pertaining to the several actions taken in the process of patenting said property is labeled Exhibit "A," and is attached hereto, and made a part hereof by reference. The entry on said index for April 27, 1910, states, "Notice 5 year proof before J.P. Clark."

8. A patent from the United States of America to said property was recieved on February 9, 1911. (A copy of said patent labeled Exhibit "B" is attached hereto and made a part hereof by reference.)

A. The Congressional Act of May 20, 1862, Chapter LXXV - an act to secure homesteads to actual settlers on the Public Domain (Exhibit "C" attached hereto) has particular provisions within it, which are pertinent as follows:

"----" said entry is made for the purpose of actual settlement and cultivation," and

“That no certificate shall be given or patent issued therefore until the expiration of five years from the date of said entry;”

B. Said index also records that said “notice of proof” was published in the Ashton Herald. Your affiant can not find a copy of the affidavit of publication.

Since we cannot find direct proof when the Hutchisons actually “made entry upon the premises for the purpose of actual settlement and cultivation,” even though there are records showing people were doing so on adjacent properties in 1897, the above information is proof that said Hutchisons did so, on or before 5 years before the filing of the said “5 year proof” (April 27, 1910) which would support a finding that Hutchisons entered upon the premises to which they received a patent, on or before at least 5 years before April 27, 1910, which would be on or before April 27, 1905.

C. With the proof of said entry for “actual settlement for cultivation, as stated hereinbefore, and with the statements made by the affidavits of Reed and Grant Richey that in the 1930's they observed remnants of old buildings on the Hutchisons said lands; and knowing that the North Fork of the Snake River runs along the side of the said Hutchison property; and that two branches of Willow Creek, from the North, feed into said Snake River, after passing along past the said Hutchison property; it is only fair to find that said Hutchisons, since there is no evidence that they ever drilled a water well for domestic, stock watering, or irrigation purposes, used water from said river for all of said purposes.

D. The Affidavit of Reed Richey (labeled Exhibit “D,” and attached hereto) is evidence that the Hummells, who were the successors in interest to the Hutchisons said property,

in 1934 and subsequent thereto, were pumping water from said river up to said land and irrigating the Hutchison (Hummell) lands, through ditches from said pumps and could have been watering said lands before 1934 when Mr. Richey, with his fathers family moved into the area.

E. The Affidavit of Grant Richey (labeled Exhibit "E," and attached hereto) is additional evidence that the Hummells, who were the successors in interest to the Hutchisons said property, were pumping water by a stationary John Deere pump, from the Snake River up to said Hummell-Stewart Miller lands, where it was discharged into a small holding pond, and then diverted down through ditches from said pond on to and for the irrigation of the said Hummell-Stewart Miller lands, and it was commonly known during his childhood years that this was occurring, but the exact time when it started is not known by the said Grant Richey, and that it is possible that said property was irrigated for some time prior to 1934 in the manner described above because said affiant observed that there were a few buildings etc. on the high ground of the said property and that the Hummells resided on the property at times during the summer season and in the city of Ashton during the winter.

F. The Affidavit of Z.J. Egbert (labeled Exhibit "F," and attached hereto) is additional evidence that the Hummells, who were the successors in interest to the Hutchisons said property, in 1945, Z.J. went to see this property and observed that said Hummells were pumping water on to their land from the Snake River by the use of a John Deere motor.

9. After the Stewarts purchased the property they continued to pump water by means of electric motors and pumps installed in the pond or reservoir created by the Utah Power and Light which impounded the waters of the Snake River for their hydro electric generating

system and that system has been in continued use thereafter to and including the present time, thus continuing the water right the Hutchisons commenced on the said lands they received the patent for from the United States of America.

10. On April 3, 1989, Nelda Stewart Miller, with the help of Dennis M. Dunn of the Idaho Department of Water Resources, Eastern Region Office at Idaho Falls, filed with the said department Notice of Claim to a Water Right (claim number A21-11165), claiming the use of 3.26 cfs of water for the irrigation of the lands described in Exhibit A herein. Unaware, at that time, of the history of the water right, and advising said IDWR representative that the water was applied to said lands by means of a electric pump and mainline installed in 1949, in Henry's Fork of the Snake River, said IDWR representative used the date of April 1, 1949 as the date of priority of said water right. However, that date is in error because it did not reflect the use of the water by said Hutchisons and Hummells, using a pump and stationary motor, as described above.

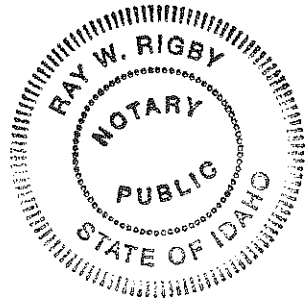
11. This water right no. 21-11165 should be corrected to state the priority date as being at least April 1, 1905, if not April 1, 1893, and recommended to the Court in all other particulars as stated.

12. Also attached hereto as Exhibit "G" is a copy of the GIS Place of Use Illustration for Claim No. 21-11165.

Dated this 15th day of February, 2008.


NORMAN MILLER

Subscribed and Sworn to before me this 15th day of February, 2008.



Ray W. Rigby
A Notary Public for Idaho
Residing At: Rexburg
My Commission Expires: 3-12-2011

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at **BLACKFOOT, IDAHO,** has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of

WILLIAM G. HUTCHISON

has been established and duly consummated, in conformity to law, for the **LOTS ONE AND TWO, THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, AND THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION FOURTEEN IN TOWNSHIP NINE NORTH OF RANGE FORTY-TWO EAST OF THE BOISE MERIDIAN, IDAHO, CONTAINING ONE HUNDRED SIXTY-THREE AND TWENTY-HUNDREDTHS ACRES,**

according to the Official Plat of the Survey of the said Land, returned to the **GENERAL LAND OFFICE** by the Surveyor-General:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described; **TO HAVE AND TO HOLD** the said tract of Land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I,

WILLIAM H. TAFT

President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the

NINTH

(SEAL)

day of **FEBRUARY**

In the year of our Lord one thousand

nine hundred and

ELEVEN

and of the Independence of the

United States the one hundred and

THIRTY-FIFTH,

By the President:

By

W. H. Taft
W. P. Le Roy
John O. Connell
Acting

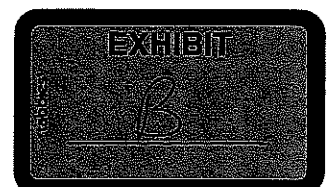
Secretary,

Recorder of the General Land Office.

RECORD OF PATENTS: Patent Number

177107

6-2577



Repeal of inconsistent laws.

SEC. 20. *And be it further enacted*, That all acts and parts of acts heretofore passed, which are inconsistent with any of the provisions of this act, are, for the purposes of this act, hereby repealed, so far as the same are inconsistent herewith.

APPROVED, May 17, 1862.

May 20, 1862.

CHAP. LXXV. — *An Act to secure Homesteads to actual Settlers on the Public Domain.*

Certain persons may enter certain quantities of certain unappropriated public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States Government or given aid and comfort to its enemies, shall, from and after the first January, eighteen hundred and sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a preemption claim, or which may, at the time the application is made, be subject to preemption at one dollar and twenty-five cents, or less, per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: *Provided*, That any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

Such persons to make affidavit.

Contents of affidavit.

SEC. 2. *And be it further enacted*, That the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one years or more of age, or shall have performed service in the army or navy of the United States, and that he has never borne arms against the Government of the United States or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: *Provided, however*, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry; or, if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death; shall prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law: *And provided, further*, That in case of the death of both father and mother, leaving an infant child, or children, under twenty-one years of age, the right and fee shall enure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children for the time being have their domicile, sell

Certificates and patents, when to issue and upon what proof.

Affidavit.

Provision in case of death of applicant, &c.

THIRTY-SEVENTH CONGRESS. Sess. II. CH. 75. 1862.

393

said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and sum of money herein specified.

SEC. 3. *And be it further enacted*, That the register of the land office shall note all such applications on the tract books and plats of his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded. Record of applications to be made.

SEC. 4. *And be it further enacted*, That no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor. Such lands not to be subject to prior debts.

SEC. 5. *And be it further enacted*, That if, at any time after the filing of the affidavit, as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven, after due notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said land for more than six months at any time, then and in that event the land so entered shall revert to the government. When lands thus entered revert to government.

SEC. 6. *And be it further enacted*, That no individual shall be permitted to acquire title to more than one quarter section under the provisions of this act; and that the Commissioner of the General Land Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one half to be paid by the person making the application at the time of so doing, and the other half on the issue of the certificate by the person to whom it may be issued; but this shall not be construed to enlarge the maximum of compensation now prescribed by law for any register or receiver: *Provided*, That nothing contained in this act shall be so construed as to impair or interfere in any manner whatever with existing preemption rights: *And provided, further*, That all persons who may have filed their applications for a preemption right prior to the passage of this act, shall be entitled to all privileges of this act: *Provided, further*, That no person who has served, or may hereafter serve, for a period of not less than fourteen days in the army or navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this act on account of not having attained the age of twenty-one years. Not over one quarter section can be thus acquired. Rules and regulations of Land Office. Fees of registers and receivers, when to be paid. Existing preemption rights not impaired.

SEC. 7. *And be it further enacted*, That the fifth section of the act entitled "An act in addition to an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," approved the third of March, in the year eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits, required or authorized by this act. Punishment for false swearing under this act. 1857, ch. 116, § 5. Vol. xi. p. 250.

SEC. 8. *And be it further enacted*, That nothing in this act shall be so construed as to prevent any person who has availed him or herself of the benefits of the first section of this act, from paying the minimum price, or the price to which the same may have graduated, for the quantity of land so entered at any time before the expiration of the five years, and obtaining a patent therefor from the government, as in other cases provided by law, on making proof of settlement and cultivation as provided by existing laws granting preemption rights. Applicant may have the land upon paying minimum price, &c., before the five years expire.

APPROVED, May 20, 1862.

VOL. XII. PUB. — 50

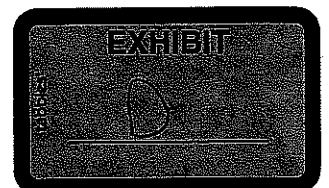
AFFIDAVIT

STATE OF IDAHO)
)
) SS.
County of Bonneville)

Re: SRBA Right Claim 21-11165

Reed Richey, being first duly sworn, deposes and says:

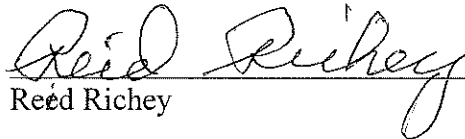
1. That he presently resides at 1843 Kearney, Idaho Falls, Idaho 83401.
2. That he was born in 1928.
3. That he grew up on a farm North of Ashton, Fremont County, Idaho, where he also farmed and raised a family, and moved to Idaho Falls, Idaho, upon his retirement.
4. That he has been familiar with the farming and irrigation practices of said North Ashton area most of his lifetime.
5. That he has always been quite familiar with what is known as the Hummell (Stewart Miller) farm and the history of its operation and watering practices, for the following reasons:
 - A. It was located West of your affiants family's farm.
 - B. As a young boy he herded the family's cattle particularly dairy cows, westerly from their place and along the Snake River, and upon its adjoining lands, including the said Hummell-Stewart Miller lands. He also drove teams of horses pulling wagons to gather grain bundles to the threshing machine on the said Hummell farm (now owned by Nelda Stewart Miller).
6. That he remembers distinctly that during those years water was being pumped, by a stationary John Deere pump, and probably a tractor, from the Snake River up to said Hummell-

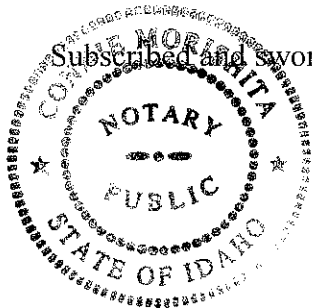


Stewart Miller lands, where it was discharged into a small holding pond, and then diverted down through ditches from said pond on to and for the irrigation of the said Hummell-Stewart Miller lands, and that all of this was occurring during the irrigation season 1934, and before, but the exact time when it started is not known by your affiant.

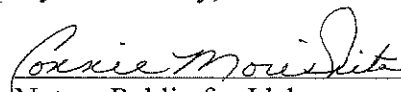
7. That it is possible that said Hummell-Stewart Miller property was irrigated for some time prior to said 1934 crop year, because your affiant also observed that there were a few buildings etc. on the high ground of the said property and that the Hummells resided on the property at times during the summer season and in the city of Ashton during the winter.

Dated this 13th day of February, 2008.


Reed Richey



Subscribed and sworn to before me this 13th day of February, 2008.


Notary Public for Idaho
Residing at: Idaho Falls
My commission expires: 5/22/2009

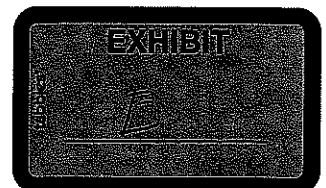
AFFIDAVIT

STATE OF IDAHO)
 ss.
County of Madison.)

Re: SRBA Right Claim 21-11165

Grant Richey, being first duly sworn, deposes and says:

1. That he presently resides at 3507 East 1600 North, Ashton, Idaho 83420.
2. That he was born on September 14, 1931.
3. That he grew up on a farm North of Ashton, Fremont County, Idaho, where he also farms and raised a family.
4. That he has been familiar with the farming and irrigation practices of said North Ashton area most of his lifetime.
5. That he has always been quite familiar with what is known as the Hummell (Stewart Miller) farm and the history of its operation and watering practices, for the following reasons:
 - A. It was located West of your affiants family's farm.
 - B. As a young boy he herded the family's cattle particularly dairy cows, westerly from their place and along the Snake River, and upon its adjoining lands, including the said Hummell-Stewart Miller lands.
6. That he remembers distinctly that during those years while he herded cows, water was being pumped, by a stationary John Deere pump, from the Snake River up to said Hummell-Stewart Miller lands, where it was discharged into a small holding pond, and then diverted down through ditches from said pond on to and for the irrigation of the said Hummell-Stewart Miller



lands, and it was commonly know~~d~~during your affiants childhood year that this was occurring, but the exact time when it started is not known by your affiant.

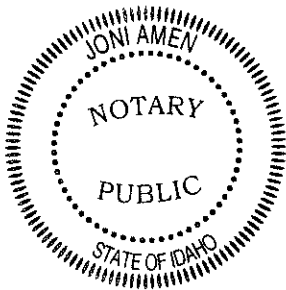
A. Your affiant remembers, in particular, that the thing that attracted his curiosity about what was going on, was the sound of the "put""put," of said pump motor.

7. That it is possible that said Hummell-Stewart Miller property was irrigated for some time prior to said 1934 crop year, because your affiant also observed that there were a few buildings etc. on the high ground of the said property and that the Hummells resided on the property at times during the summer season and in the city of Ashton during the winter.

Dated this 8th day of February, 2008.

Grant Richey
Grant Richey

Subscribed and sworn to before me this 8th day of February, 2008.



Joni Amen
Notary Public for Idaho
Residing at: Ashton, ID
My commission expires: 1/31/12

AFFIDAVIT

STATE OF IDAHO)
) ss.
County of Fremont.)

Re: SRBA Right Claim 21-11165

Z. J. Egbert, being first duly sworn, deposes and says:

1. That he resides at 1475 Highway 20, Ashton, Idaho 83420, where he and his parents and family have owned and operated and still own and operate an extensive farming and ranching business.

2. That he is very familiar with the history of farming operations and water rights and the use thereof in the North Ashton area.

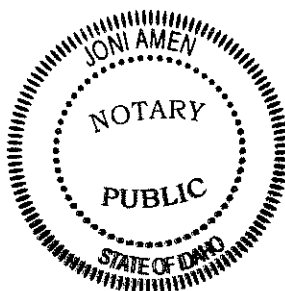
3. In 1945, your affiants father, Z. N. Egbert and his wife, purchased some property from John Spratling, which is located adjacent to property then owned and operated by Richard A. and Stella B. Hummell (now owned by Nelda Stewart Miller).

4. Your affiant went to see this property and observed that said Hummells were pumping water on to their land from the Snake River by the use of a John Deere motor and irrigating their property through ditches constructed from that outlet of said pump to said lands.

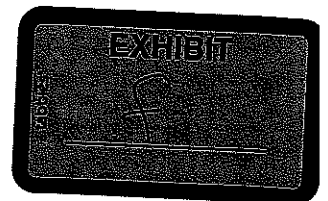
Dated this 3rd day of February, 2008.

Z. J. Egbert

Subscribed and sworn to before me this 8th day of February, 2008.



Joni Orma
Notary Public for Idaho
Residing at: Ashton, ID
My commission expires: 1/31/12





State of Idaho
Department of Water Resources
Eastern Region



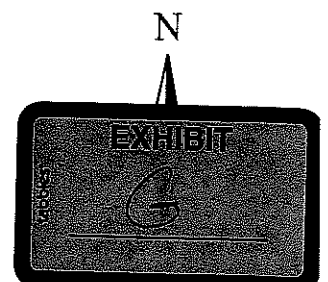
Claim Number(s): 21-11165



900 0 900 1800 Feet

- Place of Use
- Points of diversion
- Quarter Quarter

GIS Place of Use Illustration
1987/1988 NAPP photography
Prepared by T. Galbraith
Date: June 2005



CERTIFICATE OF MAILING

I certify that on February 15, 2008, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to

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

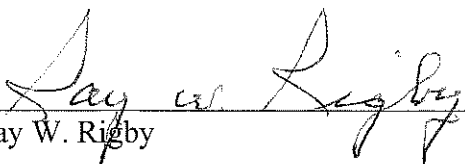
2. Copies to:

Norman Miller
1993 South 675 East
Bountiful, Utah 84010

IDWR Document Depository
P. O. Box 83720
Boise, ID 83720-0098

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

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


Ray W. Rigby