

AFFIDAVIT

STATE OF IDAHO)
 ss.
County of Madison.)

Re: SRBA Right Claims: 74-15015 and 74-10146

Ray W. Rigby, being first duly sworn, deposes and says:

1. The case of Rexburg Irrigation Company v. Teton Irrigation Canal Company was a case of general adjudication, intended to include all water rights in the particular basin.

2. The Decree in said case was finally signed on December 16, 1910.

3. The legislature, in 1911 enacted a law, known as "The Summary Supplemental Adjudication of Water Rights" statute, I.C. § 42-1405, which provided that a claimant to a water right not included in said Rexburg Decree or any decree could pursue a Supplemental Adjudication Claim, because it was found that several water rights in the Upper Snake River Basin had not been adjudicated in the Rexburg Decree. Pursuant to 42-1405, several cases were processed through the court involving a multitude of water right claimants. In addition thereto, there were several individual claimants who processed their claims to decrees, and in which cases the Idaho Department of Water Resources appeared by and with the Idaho Attorney General. Your affiant and his law firm represented several of those claimants and the final supplemental decrees were approved by the Attorneys representing the state and the Department of Water Resources.

4. In those supplemental adjudication cases, the claimant's water rights were adjudicated and given their adjudicated priority date and all other elements of a water right, and said cases

continued up to the time the SRBA began.

5. It had been assumed that the Idaho Power Co. had subordinated all of its upstream water rights to upstream development in return for the State allowing said Idaho Power Company to license 3 power plants in Hells Canyon, but pursuant to the decision of the Idaho Supreme Court that the Federal Energy Regulatory Commission licenses had not been actually amended, there was no subordination except as to the 3 Hells Canyon Power Plants.

6. The Idaho Power Company then initiated a lawsuit to assert its rights (using the Swan Falls Power Plant rights as the representative case for all of its upstream power plants) and named thousands of water users, and the State and unknown claimants as defendants.

7. John Evans, as Governor, with the help of a task force, whose members were appointed by the Governor, and which task force your affiant chaired, and also with the participation of Jim Jones, Idaho's Attorney General at the time, negotiated a settlement with the power company, known as "The Swan Falls Agreement."

8. Among the terms of said agreement, was the provision that a general adjudication of all claims to the entire Snake River and its tributaries would be commenced, and the Chief advocate for said Adjudication was the Idaho Power Company, because the company, in developing its case, above referred to, had concluded that there were a multitude of water users on the Snake River and its tributaries, whose rights had not been made of record, and that the power company, if it was to subordinate its rights to upstream development, the company, and for that matter, everyone, including the State, needed to know once and for all who owned them and the elements of each right determined.

9. Whereas, because this adjudication was to be inclusive of all rights, those of record

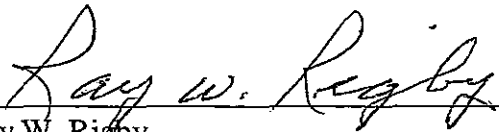
and those that were not of record, the Supplemental Adjudication statute (which is now found in I.C. § 42-1424) has not been used to the extent it was in the past. However, upon the completion of the SRBA, a water right claimant could use said statute for a supplemental adjudication. It seems counter to the original intent of the SRBA to force claimants to wait for the completion of the SRBA to file for a supplementary adjudication when the court could adjudicate these claims in the SRBA.

10. At the time of the so called Lemhi Adjudication said Supplemental Adjudication Statue was still in full force and effect and it was generally understood that in furtherance of the agreement with the power company, every claim to a water right on the Snake River and its tributaries, both those of record, by other adjudications or not, would be made of record. And as many rights with priorities prior to 1910 have been granted in the area covered by the Rexburg Decree, so should those rights missed in the Lemhi Adjudication, if proof is made of their use, even before the date of the Lemhi Decree.

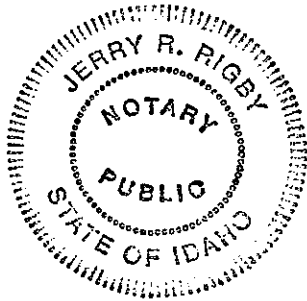
11. A basin wide type of adjudication was not very well understood in the Lemhi Adjudication and the expertise of all persons and entities had not been developed. This matter that got a lot of attention in the SRBA, through numerous meetings and rule making processes by water users and their attorneys, the Department of Water Resources and their attorneys. The single most important emphasis was that the SRBA, sought not only by Idaho Power, but also by IDWR and the water users, was to make sure that every claim, of every kind and nature, would be adjudicated and placed in the record. This was not only so Idaho Power knew what rights it was subordinating to, but also so that the Department of Water Resources had a record of every water right in the Snake River Basin for proper administration thereof, and so that the water users

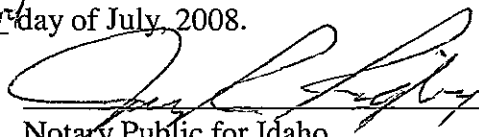
would know who held the water rights in the Snake River Basin, as between one another. Also, so that the purposes of the adoption of the constitutional amendment creating the Idaho Water Resources Board, and all of the other statutes clarifying the authority of the Idaho Department of Water Resources, would help protect Idaho waters from out of state interests.

Dated this 23 day of July, 2008.


Ray W. Rigby

Subscribed and sworn to before me this 23rd day of July, 2008.




Notary Public for Idaho
Residing at: Rexburg
My commission expires: 11-09-11