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DEPARTMENT OF
WATER RESOURCES

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. 22-13746

**AFFIDAVIT OF ANDREW J. WALDERA IN
SUPPORT OF MOTION TO FILE LATE
OBJECTION**

STATE OF IDAHO)
) ss.
County of Ada)

Andrew J. Waldera, having been duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys for B&B Farms, and the following is based upon my direct, personal knowledge of this matter.
2. On or about July 24, 2007, B&B Farms filed a motion for late claim in order to claim water for a 40 acre parcel of land lying within the SWSE quarter quarter of Section 32, T06N, R40E. The ground has been irrigated continuously since the 1965

development of the well serving water right no. 22-2236. However, the ground was never licensed, and was not subsequently claimed by prior owners until B&B Farms' filed its motion for late claim in July 2007.

3. The Court granted B&B Farms' motion on or about October 19, 2007, and allowed it to file its late claim for the above-referenced 40-acre parcel.

4. The Idaho Department of Water Resources first issued a Director's Report recommending water right no. 22-13746 on or about March 21, 2008. The recommendation was included in the Director's Report for Late and Miscellaneous Claims.

5. On or about June 17, 2008, the Idaho Department of Water Resources filed an amended Director's Report recommendation of water right no. 22-13746 in which the Department corrected errors to the quantity description and the total combined diversion rate. Attached hereto as Exhibit A is a true and correct copy of the June 17, 2008 correspondence from the Department submitting the amended Director's Report to the Court for filing.

6. While the Department's correspondence dated June 17, 2008 carbon copied Scott Campbell (also one of the attorneys for B&B Farms), there is no record of this office having received the Department's letter or the enclosed amended Director's Report. Moreover, according to the SRBA Court, the Department's submission of the amended Director's Report to the Court should have triggered notice under the docket sheet procedure pursuant to Administrative Order One. Despite being acknowledged as counsel of record regarding all matters pertinent to water right no. 22-13746, there is also no record of this office ever receiving notice of the filing from the SRBA Court.

7. I first became aware of the Department's submission of the amended Director's Report, and the Court's subsequent setting of a July 28, 2008 objection deadline on or

about August 15, 2008 while preparing for the August 20, 2008 Initial Hearings for subcase nos. 22-2236A and 22-13797. While preparing for these initial hearings I reviewed the IWATRS Reports for water right nos. 22-2236, 22-7088, 22-13746, 22-13747, and 22-13797 because the rights are intertwined between two clients (B&B Farms and Grant Ricks) who share an interest in the rights and the ground to which they are appurtenant.

8. After becoming aware that the objection period for water right no. 22-13746 had been set, and that it had expired approximately two weeks earlier, I immediately reviewed our files looking for our copy of the Department's June 17, 2008 correspondence as well as any notice that we may have received from the SRBA Court. Finding no record of either in our files, my paralegal Tiffiny Hudak contacted the Court regarding this matter. The Court confirmed that we should have received notice of the filing of the amended Director's Report via the docket sheet procedure.

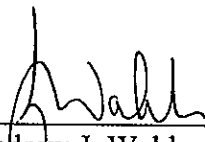
9. Given that the Initial Hearings for subcase nos. 22-2236A and 22-13797 were set for August 20, 2008, I took that opportunity to talk the matter over with the Department personnel present. While the Department's amended Director's Report for water right no. 22-13746 correctly recommends the right as an enlargement right, the Director's Report incorrectly recommends the right as an enlargement of water right 22-7088. Instead, water right no. 22-13746 is an enlargement of water right no. 22-2236 given that irrigation of the ground in question commenced upon the 1965 development of water right no. 22-2236 as opposed to the 1974 development of water right no. 22-7088. Consequently, the amended Director's Report quantity recommendation based upon water right no. 22-7088 is incorrect. The Department personnel present at the August 20, 2008 Initial Hearings agreed with B&B Farms' rationale

regarding the Director's Report's flaws. This error necessitates B&B Farms' filing of its motion to file late objection to water right no. 22-13746.

10. B&B Farms failure to timely file an objection to water right no. 22-13746 was not willful or intentional. It appears that neither B&B Farms, nor its counsel of record ever received the notices it was intended to receive from both the Idaho Department of Water Resources and the SRBA Court. Once counsel became aware of the lapsed objection deadline it contacted the SRBA Court for clarification, and it has since spoken with the Department regarding the matter. Given that the Department seemingly agrees with B&B Farm's position, that no other objections have been filed to against the right, and that no initial hearing had yet been set with respect to water right no. 22-13746, granting B&B's motion to file a late claim should not result in any prejudice to others.

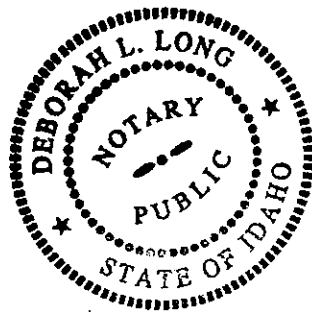
11. Initial Hearings regarding subcase nos. 22-2236B and 22-13747 (owned by Grant Ricks) are currently set for March 4, 2009. Given the intertwined nature of the water rights referenced in Paragraph 7 hereof, B&B Farms is amenable to the same March 4, 2009 Initial Hearing setting for water right no. 22-13746 should the Court grant its motion to file late objection.

Further your affiant sayeth naught.



Andrew J. Waldera

SUBSCRIBED AND SWORN to before me this 5th day of September, 2008.



Deborah L. Long
NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires 10/10/2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September, 2008, I caused a true and correct copy of the foregoing **AFFIDAVIT OF ANDREW J. WALDERA IN SUPPORT OF MOTION TO FILE LATE OBJECTION** to be served by U.S. Mail, and addressed to all parties to the SRBA Expedited Service List.

h. Wall
Andrew J. Waldera

