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DEPARTMENT OF
WATER RESOURCES

CHARLES L. HONSINGER (ISB #5240)
JON GOULD (ISB #6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Claimant Lava Lake Land and Livestock, LLC

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 38576

SUBCASE NUMBERS 37-2545A, 37-2545B,
37-2688, 37-11950, 37-7072, 37-7600

AFFIDAVIT OF CHUCK BROCKWAY
IN SUPPORT OF MOTION TO SET ASIDE
PARTIAL DECREES

STATE OF IDAHO

COUNTY OF TWIN FALLS

) ss

CHUCK BROCKWAY, being first duly sworn upon his oath, deposes and says that:

1. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.
2. I am a Professional Engineer licensed by the state of Idaho, and am a principle in the

AFFIDAVIT OF CHUCK BROCKWAY IN SUPPORT OF MOTION TO SET ASIDE
PARTIAL DECREES - Page 1

COPY

firm of Brockway Engineering, an Idaho Professional Limited Liability Company that is engaged in the provision of water resource engineering services to various agricultural, industrial and municipal entities.

3. Lava Lake Land and Livestock, LLC (hereinafter "Lava Lake") engaged my services in the summer of 2006 to do a feasibility study on its irrigation system and water rights so that it could optimize its water use. I reviewed the system and water rights at length, discussing historical and current configuration of irrigation systems and uses of water with various Lava Lake personnel. As a result of my study, I am very familiar with the elements, and configuration of Lava Lake's water rights and irrigation system - both historical and current.

4. Through the course of my study, I found that prior to approximately 1986, the places of use for Lava Lake's water rights were essentially as claimed and recommended in the Snake River Basin Adjudication. That is, the place of use of the water rights was essentially divided into "northern" and "southern" places of use - the divide was generally defined by a road running from east to west across the Lava Lake ranch.

5. Although most of Lava Lake's water rights were divided prior to approximately 1986 between the northern and southern places of use, water right no. 37-2545, diverted from Copper Creek and springs was historically used on both the northern and southern places of use based upon the licensing exam conducted by the Idaho Department of Water Resources. It was erroneously claimed and decreed in the Snake River Basin Adjudication as two separate water rights - one with a northern place of use, the other with a southern place of

use.

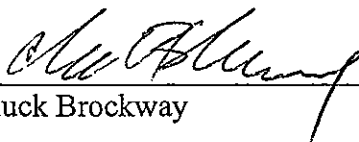
6. Through the course of my study and my increasing familiarity with LLLL's irrigation system and water rights, I came to understand that the LLLL irrigation system was changed in approximately 1986 so that all of LLLL's water rights from all sources were interconnected and used on all of LLLL places of use for its water rights. Unfortunately, LLLL claimed its water rights in the SRBA in a manner reflecting their pre-1986 use, and the water rights were partially decreed in the same manner by the SRBA District Court.

7. It is my understanding that I.C. §42-225 - the "accomplished transfer" statute - applies to this situation, and that the LLLL water rights may be claimed in their post - 1986 configuration if the partial decrees of those rights are set aside.

8. I have consulted with LLLL and its attorneys, and determined that LLLL should file a Motion to Set Aside its partially decreed water rights so that such rights can be properly claimed and decreed in their current configuration and according to the manner in which they have been used since approximately 1986.

9. I have met with IDWR Senior Water Rights Agent Kelly Christenson who originally recommended the LLLL water rights in the SRBA. It is my understanding that Mr. Christenson agrees that the LLLL partial decrees should be set aside so that LLLL can properly claim its water rights.

Further your affiant sayeth naught.



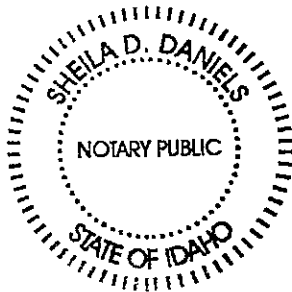
Chuck Brockway

STATE OF IDAHO)
)ss.
County of Twin Falls)

On this 19th day of August, 2008, before me, the undersigned, a notary public in and for said state, personally appeared CHUCK BROCKWAY, known to me to be the individual that executed the foregoing affidavit, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

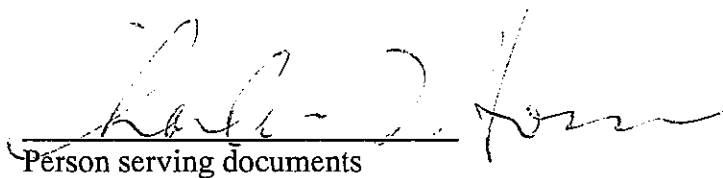
Sheila D. Daniels
Notary Public for State of Idaho
Residing at Kimberly, Idaho
My Commission Expires: Aug. 6, 2013



CERTIFICATE OF SERVICE

I certify that on September 10th, 2008, I served copies of this document, including all attachments by mailing a copy thereof, postage prepaid, to each of the parties listed below.

Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098



Person serving documents