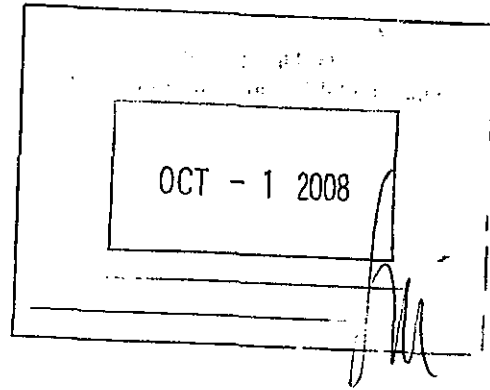


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J. Will Varin, ISB # 6981
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Attorneys for Sarah Jane Smith



**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

Subcase No.: 63-7539

Case No. 39576

**AFFIDAVIT OF JOHN M. MARSHALL IN
SUPPORT OF SARAH JANE SMITH'S
APPLICATION FOR COST AND
ATTORNEYS' FEES**

STATE OF IDAHO)
) ss.
County of Ada)

JOHN M. MARSHALL, being first duly sworn, deposes and says:

1. I am over 18 years old and otherwise competent to testify in this matter and make this affidavit based upon my own personal knowledge.

2. I am one of the attorneys of record for Claimant Sarah Jane Smith in the above captioned action, and I am personally familiar with the facts and procedural history of this matter and make this affidavit based upon my own personal knowledge.

3. I am a partner in the law firm of Givens Pursley LLP and was principally responsible for handling the litigation of the above-captioned action. I billed the time I spent on this matter at an hourly rate of \$225 per hour, which is my usual and customary rate for the type of services required in this matter. The services I rendered were reasonably and necessarily

incurred by Claimant Sarah Jane Smith this matter. This Affidavit is submitted in support of Sarah Jane Smith's Application for Attorneys' Fees and Costs pursuant to Idaho Rule of Civil Procedure 54, including 54(e)(5), and in recognition of the factors the Court must consider under Rule 54(e)(3) in connection with awarding a prevailing party its attorneys' fees and costs. Attached to the Sarah Jane Smith's Verified Memorandum of Costs and Attorneys' Fees is a spreadsheet that reflects Givens Pursley LLP's billing in this matter, which is hereby incorporated by reference.

4. Associate attorneys at the law firm of Givens Pursley LLP assisted on this case. Services rendered by the associates were reasonably and necessarily incurred by Sarah Jane Smith in this matter. The rates charged by these associate attorneys ranged from \$170 to \$185, which is comparable to rates charged by associates at other law firms who handle these types of matters.

Rule 54(e)(3) Factors for Attorneys' Fees Award

5. The fee arrangement between Sarah Jane Smith and Givens Pursley was based on time and hour basis.

6. Time and Labor Required. This matter arose out of the late Objection to Sarah Jane Smith's water right Craig Whitted filed in the SRBA. Mr. Whitted's objection was premised on his belief that Sarah Jane Smith's water right had been established in trespass on ground that he now owned. In response, we undertook factual and legal investigations, including through discovery to Craig Whitted, to assess the veracity of Mr. Whitted's objection. We concluded that there was no factual dispute and that Mr. Whitted's legal theory of trespass could be resolved through summary judgment. Accordingly at the pretrial conference in this matter we confirmed with Mr. Whitted that there no factual disputes and sought vacation of the trial date

and a schedule for summary judgment. Based upon the foregoing understanding of the issues and the stipulations of the parties, Sarah Jane Smith drafted a summary judgment motion. Preparing this motion required researching the applicable law, legal analysis, coordinating with witnesses to provide affidavits to establish undisputed facts and drafting the necessary briefing and affidavits. All time spent on this matter was necessary to fully understand the issues and address the issues presented.

7. Novelty and Difficulty of Questions. As the Special Master acknowledged in footnote 1 in the Court's February 13, 2008 Order, there is little law directly on point addressing the legal effect of having a point of diversion on another individual's private property without authorization. Therefore, analyzing and preparing this case required researching what law there was on the issue as well as studying the legal theories that could apply in this matter, given its unique factual circumstances. The questions presented in this matter were novel and required thorough analysis to develop an understanding of them and to develop legal theories in support of Sarah Jane Smith's position.

8. Skill Requisite to Perform Legal Services and Experience of Counsel. Over the last 10 years, my practice has focused on the water law and real estate transactions, including litigating claims in the SRBA. My experience in these types of matters allowed me to analyze the facts and law applicable to this case and develop the legal theories that led to the full dismissal of Whitted's claims.

9. Prevailing Charges for Like Work. As an attorney in Boise, Idaho, who represents clients throughout the state of Idaho and who has represented many clients in the SRBA, I am familiar with the current billing rates of attorneys with practices similar to mine. The rates I charge and the rates charged by the other attorneys at Givens Pursley LLP who

worked on this case are consistent with the rates of other professionals with whom I am familiar and who practice in water law in the state of Idaho.

10. Fee Arrangement. My client agreed to compensate Givens Pursley LLP based upon time and hour charges.

11. Time Limitations. Sarah Jane Smith runs a feed lot on her property and water from the well in question is key to her operation. Therefore, timely resolution was important to her. I am not aware of any other time limitations that would affect up or down any attorneys' fees award in this matter.

12. The Amount Involved and the Results Obtained. Sarah Jane Smith obtained a dismissal of Whitted's objection in this matter.

13. The Undesirability of the Case. While water right objections are not in and of themselves undesirable, objections such as those filed by Whitted that lack factual or legal basis should be discouraged. Further, changing theories mid-way through the litigation after both the opposing party and Court have relied upon representations should also be discouraged.

14. The Nature and Length of Relationship With the Client. Sarah Jane Smith's attorney/client relationship with Givens Pursley LLP was established in 2004. The firm has handled several matters for her in addition to this water rights matter.

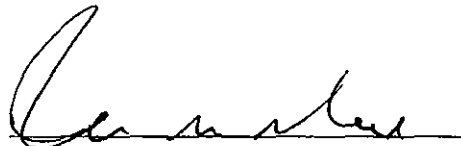
15. Awards in Similar Cases. Because of the uniqueness of this case, I am not aware of awards in similar cases.

16. The Reasonable Cost of Automated Legal Research. Total computer legal research costs of \$169.70 are reasonable under the circumstances of this case given the nature of this matter and the unique legal question posed.

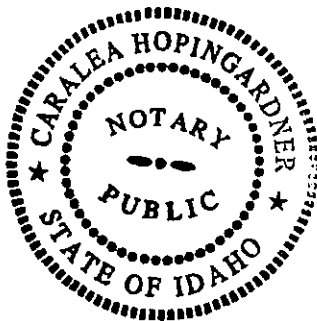
17. Other Factors the Court Deems Appropriate in the Particular Case. Beyond the factors already discussed above, I am not aware of other factors the Court should consider in this case in its fee award to Sarah Jane Smith.

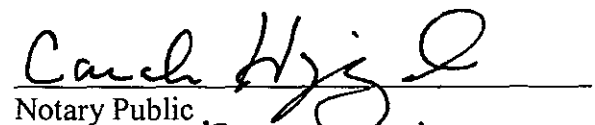
FURTHER, YOUR AFFIANT SAYETH NAUGHT.

Dated this 30th day of September, 2008


John M. Marshall

SUBSCRIBED AND SWORN before me this 30th day of September, 2008.



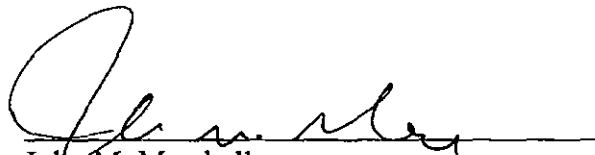

Notary Public
Residing at: Boise, ID
My Commission Expires: 5/8/2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of September, 2008, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Kimball D. Gourley
Trout Jones Gledhill Furhman, P.A.
225 N. 9th Street, Suite 820
PO Box 1097
Boise, ID 83701-1097

☒ U.S. Mail
☐ By hand
☐ Overnight
☐ Facsimile


John M. Marshall