

**FRITZ X. HAEMMERLE
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ISB # 3862**

Attorney for the Claimants

**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. 34-230, 34-231 and 34-232
	)	
Case No. 39576	)	AFFIDAVIT OF FRITZ X. HAEMMERLE
	)	IN SUPPORT OF MOTION TO SET
	)	ASIDE PARTIAL DECREES AND TO
	)	FILE AMENDED CLAIMS
	)	
	)	
	)	

STATE OF IDAHO,)
) ss.
County of Blaine.)

FRITZ X. HAEMMERLE, being sworn upon oath, deposes and states as follows:

1. I am an attorney duly licensed to practice law in the State of Idaho. I represent the aforementioned Claimant, the John Lezamiz Limited Partnership, in the aforementioned case. I make the averments contained herein of my own personal knowledge and would testify to the facts as presented herein if called upon to do so.

2. This Affidavit is being filed in support of Motions to Set Aside Partial Decrees and Motions to File Amended Claims in water rights 34-230, 34-231 and 34-

232. On November 17, 2008, these Motions were filed at the suggestion of the Idaho Department of Water Resources (IDWR) during the Initial Hearing in Subcase 34-2418.

3. Subcase 34-2418 involved an under-claimed license. The Court previously granted a Late Claim in that subcase. During the Initial Conference on 34-2418, my client and I, along with our expert Dr. Charles Brockway, discovered the basis of IDWR's denial of the late claim in Subcase 34-2418. IDWR is of the opinion that 34-2418 was licensed as a supplemental groundwater right, and that there are no existing surface water rights claimed for the same place of use as covered by the claim for 34-2418.

4. All the surface water rights that once existed on the place of use claimed under 34-2418 are as follows: 34-230, 34-231 and 34-232. These surface water rights were recognized under the UC Decree. For some unknown reason, during the original claims taking process, my client's predecessor in interest consolidated the place of use for these rights previously recognized under the UC Decree. Thereafter, this Court issued Partial Decrees for water rights 34-230, 34-231 and 34-232, and the place of use for these rights was reduced from the place of use recognized under the UC Decree. Based on IDWR's own analysis, there was no reason for the original claimant to have removed the place of use for these water rights from the claimed place of use for water right 34-2418, and the same place of use once recognized for the surface water rights existing under the UC Decree.

5. The purpose of the Motions are to once again establish the original place of use for water rights 34-230, 34-231 and 34-232 to the same place of use covered under UC Decree. This would reestablish surface water rights now covered under the claim for

water right 34-2418. If the full extent of these surface water rights that once on the pace of use for 34-2418 are again recognized, then IDWR has advised that they would be in a position to recommend the place of use covered by 34-2418, as well as the places of use covered by the Late Amended Claims in 34-230, 34-231 and 34-232.

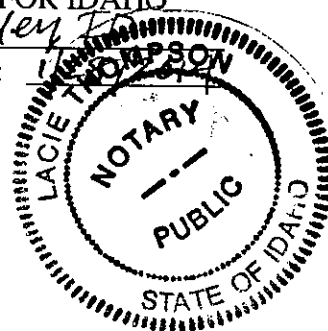
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 27th day of November 2008.

Fritz X. Haemmerle
FRITZ X. HAEMMERLE

SUBSCRIBED AND SWORN to before me this 24th day of November 2008.

Lacie Thompson
NOTARY PUBLIC FOR IDAHO
Residing at: *Hailey, ID*
Commission expires: *11/24/2011*



CERTIFICATE OF MAILING

I certify that on 27th day of November, 2008, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

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

2. One copy to the claimant of the water right at the following address:

Name:

Address:

3. One copy to the party who filed the objection at the following address:

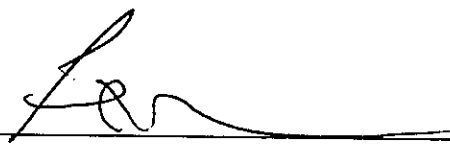
Name:

Address:

4. Copies to:

IDWR Document Depository United States Department of Justice
PO Box 83720 Environment & Natural Resource Division
Boise, ID 83720-0098 550 West Fort Street, MSC 033

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449
Boise, ID 83724



Fritz X. Haemmerle