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FEB 02 2009

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
DAVID I. STANISH (ISB #7310)
Deputy Attorneys General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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. 31-11845
	)	
	)	
	)	
Case No. 39576	)	AFFIDAVIT OF DAVID I. STANISH DATED
	)	JANUARY 30, 2009
	)	
	)	
_____	)	
STATE OF IDAHO	)	
	) ss	
<u>County of Ada</u>	)	

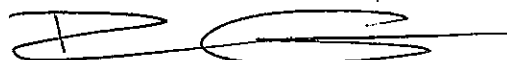
DAVID I. STANISH, being first duly sworn deposes and states:

1. I am a competent adult, over the age of eighteen years, and have personal knowledge of the facts stated herein. I am a deputy attorney general assigned to the Snake River Basin Adjudication (hereinafter the "SRBA").

2. Attached as Exhibit 1 is a true and correct copy of a letter dated October 16, 2006, to Messrs. Roger D. Ling and Michael P. Tribe.

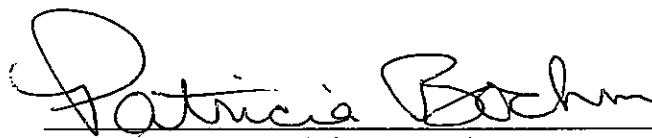
3. Attached as Exhibit 2 is a true and correct copy of a letter dated October 30, 2006, to Messrs. Roger D. Ling and Michael P. Tribe.

4. Further your affiant sayeth naught.



DAVID I. STANISH
Deputy Attorney General
Natural Resources Division

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the State of Idaho, this 30th day of January 2009.



NOTARY PUBLIC FOR IDAHO
Residing at Boise ID
My Commission expires: 11/6/09

CERTIFICATE OF SERVICE

I certify that on January 30, 2009 I caused to be served the original and/or copy of this AFFIDAVIT OF DAVID I. STANISH DATED JANUARY 30, 2009 on each of the following persons by the indicated method.

1. Original to:

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

- ☐ U.S. Mail, postage prepaid
☒ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

Claimant Ben Jernberg
Claimant Idaho Properties, LLC
Represented by:
Roger D. Ling
Michael P. Tribe
LING ROBINSON & WALKER
PO Box 396
Rupert, ID 83350

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 436-6804
☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail



DAVID I. STANISH
Deputy Attorney General

Exhibit 1

**October 16, 2006 Letter from IAGO to
Ling/Tribe**



SRBA



42286

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

October 16, 2006

VIA U. S. MAIL AND FACSIMILE
(208) 436-6804

Mr. Roger D. Ling
Mr. Michael P. Tribe
LING ROBINSON & WALKER
Attorneys at Law
615 H Street
P. O. Box 396
Rupert, ID 83350

Re: Response to Offer of Judgment Pursuant to I.R.C.P. 68 and I.R.E. 408 Regarding
Water Right No. 31-11845.

Dear Roger and Michael:

The Respondent, State of Idaho, has reviewed the offer of judgment that it received in your letter dated October 6, 2006, and declines the offer of judgment for the following reasons:

The experts for the State of Idaho have conducted an extensive review of the amount of beneficial use that has occurred within the permissible place of use for water right no. 31-11845. Our expert on soils has concluded that very little of the land, which is classified as soil type 93 within the permissible place of use, can be considered irrigable because of the extreme stony nature of the soil, among many other reasons. The acreage of this soil type 93 within the permissible place of use is 351.9 acres. Furthermore, the analysis of topography by the Idaho Department of Water Resources establishes that much of the permissible place of use cannot be physically irrigated with the existing ditch system. The inability of the existing ditch system to irrigate much of the permissible place of use is confirmed by Idaho's forage expert. He found sagebrush that was over twenty years in age within the permissible place of use. The existence of this sagebrush within the permissible place of use shows that irrigation of that land has not occurred.

The experts for the Respondent State of Idaho are continuing to work on their expert reports. The Respondent State of Idaho has incurred substantial expert witness fees to date and continues to incur substantial fees on a daily basis in the amount of several thousand dollars a day. If there is going to be a settlement in this matter, it needs to occur now.

Messrs. Roger D. Ling and Michael P. Tribe
October 16, 2006
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Barber". The signature is fluid and cursive, with the first name "David" being more prominent and the last name "Barber" following in a similar style.

DAVID J. BARBER
Deputy Attorney General

DJB/olv

* * * COMMUNICATION RESULT REPORT (OCT.16.2006 12:34PM) * * *

FAX HEADER: ID ATTY GEN, NAT RES

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
222	MEMORY TX	912084366804	OK	P. 2/2

REASON FOR ERROR

E-1) HANG UP OR LINE FAIL
E-3) NO ANSWERE-2) BUSY
E-4) NO FACSIMILE CONNECTION

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

October 16, 2006

VIA U. S. MAIL AND FACSIMILE
(208) 436-6804

Mr. Roger D. Ling
Mr. Michael P. Tribe
LING ROBINSON & WALKER
Attorneys at Law
615 H Street
P. O. Box 396
Rupert, ID 83350

Re: Response to Offer of Judgment Pursuant to I.R.C.P. 68 and I.R.E. 408 Regarding
Water Right No. 31-11845
Exhibit 1 Letter Dated October 16, 2006 to Messrs. Roger D. Ling and Michael P. Tribe

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Dear Roger and Michael:

Exhibit 2

**October 30, 2006 Letter from IAGO to
Ling/Tribe**



SRBA



42301

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

October 30, 2006

VIA U. S. MAIL AND FACSIMILE
(208) 436-6804

Mr. Roger D. Ling
Mr. Michael P. Tribe
LING ROBINSON & WALKER
Attorneys at Law
615 H Street
P. O. Box 396
Rupert, Idaho 83350

Re: Response to Offer of Judgment Pursuant to I.R.C.P. 68 and I.R.E. 408
Regarding Water Right No. 31-11845.

Dear Roger and Michael:

The Respondent, State of Idaho, reviewed the following offer of judgment from Michael Tribe by telephone on October 26, 2006: "Right nos. 31-2395 and 31-11845 are limited to the irrigation of a combined total of ~~324.5~~ 474.5 acres in a single irrigation season." The State of Idaho understands that no other changes were proposed. The State of Idaho declines the offer of judgment for the same reasons that it declined the Claimants/Respondents' October 6, 2006 offer of judgment.

Again, the Respondent State of Idaho has incurred substantial expert witness fees to date and will continue to do so as its experts are deposed and its experts prepare for trial. If there is going to be a settlement in this matter, it needs to occur now.

Sincerely,

DAVID J. BARBER
Deputy Attorney General

DJB/olv

* * * COMMUNICATION RESULT REPORT (OCT.30.2006 12:15PM) * * *

FAX HEADER: ID ATTY GEN, NAT RES

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
248 MEMORY TX		912084366804	OK	P. 1/1

REASON FOR ERROR

E-1) HANG UP OR LINE FAIL
E-3) NO ANSWERE-2) BUSY
E-4) NO FACSIMILE CONNECTION

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

October 30, 2006

VIA U. S. MAIL AND FACSIMILE
(208) 436-6804

Mr. Roger D. Ling
Mr. Michael P. Tribe
LING ROBINSON & WALKER
Attorneys at Law
615 H Street
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Re: Response to Offer of Judgment Pursuant to I.R.C.P. 68 and I.R.E. 408
Regarding Water Right No. 31-11845.

Exhibit 2 Letter Dated October 30, 2006 to Messrs. Roger D. Ling and Michael P. Tribe

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Dear Roger and Michael: