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APR 03 2009

DEPARTMENT OF
WATER RESOURCES

Attorneys for Claimants Pioneer Irrigation
District, Jerry L. Tlucek, Mary Lou Tlucek,
Shelly Tlucek, Byron Tlucek, Rebekah Tlucek,
and Kevin Tlucek

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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 Nos. 63-02529 63-03323
63-03324 63-10435

**SECOND AFFIDAVIT OF DYLAN B.
LAWRENCE**

STATE OF IDAHO)
) ss.
County of Ada)

Dylan B. Lawrence, having been duly sworn upon oath, deposes and states as
follows:

1. I am an attorney duly licensed to practice law in the state of Idaho. I am
one of the attorneys representing Pioneer Irrigation District, Jerry L. Tlucek, Mary Lou Tlucek,

Shelly Tlucek, Byron Tlucek, Rebekah Tlucek, and Kevin Tlucek, in the above-referenced matter. I have access to the clients' files in this matter, and make this affidavit based upon personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of the hearing minutes on the State's Motion for Protective Order, during which the Court granted the State's motion, thereby confirming that Director Tuthill would be the 30(b)(6) representative of both IDWR and the State of Idaho.

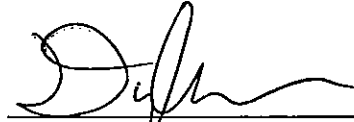
3. Attached hereto as Exhibit B is a true and correct copy of the quoted excerpts of the February 3, 2009, deposition in the above-referenced subcases of David R. Tuthill, Jr., Director of the Idaho Department of Water Resources.

4. Attached hereto as Exhibit C is a true and correct copy of relevant portions of the index to the transcript of the deposition described in Paragraph 3, *supra*. The terms "soil" and "soils" do not appear in this index.

5. Attached hereto as Exhibit D is a true and correct copy of relevant portions of the index to Volume I of the transcript of the deposition of Director Tuthill, conducted on November 26, 2007, in subcase 63-3174. That subcase involved a similar challenge to annual diversion volume limitations, but settled on other grounds and prior to a judicial resolution of the issue. Pursuant to a stipulation between the parties and this Court's order approving that stipulation, discussions of IDWR's general policies regarding annual diversion volume limitations in this deposition are relevant to, and may be cited by the parties, in this proceeding. (Joint Stip. and Mot. for Order Governing Consol. Proceedings of Oct. 2, 2008, pp. 2-3; Order Granting Joint Stip. and Mot. for Order Governing Consol. Proceedings of Nov. 3, 2008.) The terms "soil" and "soils" do not appear in this index.

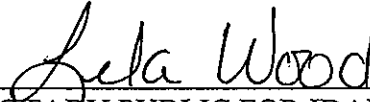
6. Attached hereto as Exhibit E is a true and correct copy of relevant portions of the index to Volume II of the transcript of the deposition described in Paragraph 5, *supra*, conducted on December 7, 2007. The terms "soil" and "soils" do not appear in this index.

Further your affiant sayeth naught.



Dylan B. Lawrence

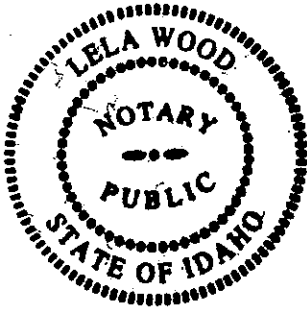
SUBSCRIBED AND SWORN to before me this 2nd day of April, 2009.



NOTARY PUBLIC FOR IDAHO

Residing at Boise

My Commission Expires 5-31-2012



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April, 2009, I caused a true and correct copy of the foregoing **SECOND AFFIDAVIT OF DYLAN B. LAWRENCE** to be served by the method indicated below, and addressed to the following:

Representing: State of Idaho
David J. Barber
Office of the Attorney General
STATE OF IDAHO
700 West State Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720-0010
Fax: (208) 854-8072

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Director
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098
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☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Natural Resources Division Chief
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 44449
Boise, ID 83711-4449

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

UNITED STATES DEPARTMENT OF JUSTICE
Environment & Natural Resources
MSC 033
550 West Fort Street
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

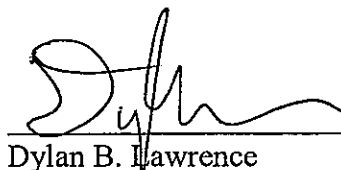

Dylan B. Lawrence

EXHIBIT A

TO SECOND AFFIDAVIT OF DYLAN B. LAWRENCE

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

253 - 3RD AVENUE NORTH
TWIN FALLS, ID

1/22/2009
2:00 p.m.

Special Master: THEODORE R. BOOTH

COURT MINUTES

Sub Case No. 63-02529 63-03163 63-03274 63-03323 63-03324
63-09109 63-10435

This was the time and place set for the HEARING ON MOTION FOR PROTECTIVE
ORDER

APPEARANCES BY:

PIONEER IRRIGATION DISTRICT	--	SCOTT L CAMPBELL
STATE OF IDAHO	--	<u>Dawn Barber</u> NATURAL RESOURCES DIV CHIEF
DBSI TIEGS 979 LLC	--	<u>DYLAN B LAWRENCE</u>
MARY LOU TLUCEK	--	SCOTT L CAMPBELL
JERRY L TLUCEK	--	SCOTT L CAMPBELL
SHELLEY TLUCEK	--	SCOTT L CAMPBELL
REBEKAH TLUCEK, KEVEN TLUC	--	SCOTT L CAMPBELL
BYRON TLUCEK	--	SCOTT L CAMPBELL
REBEKAH TLUCEK	--	SCOTT L CAMPBELL
KEVIN TLUCEK	--	SCOTT L CAMPBELL

ALSO PRESENT:

IDWR: -- Spencer/Bromley/Baxter/Courtney

TAPE DESCRIPTION

2:09	Law called; parties identified
2:09:58	Mr. Barber argues motion for Protective Order
2:13:14	Response by Mr. Lawrence
2:20:15	Mr. Barber reply

Court Minutes

- 1 -

2:24:59 Motuair for Protective Order Granted

Deposition of Brit for 1/27/09 will be
vacated.

Deposition set for 2/3/09 will go forward

2:32 Adjourned

EXHIBIT B

TO SECOND AFFIDAVIT OF DYLAN B. LAWRENCE

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 NOS.
) 63-02529	63-03163	
	Case No. 39576.	) 63-03274 63-03323
		) 63-03324 63-09109
		) 63-10435
		)

DEPOSITION OF DAVID R. TUTHILL, JR.

Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 South Capitol Boulevard
Tenth Floor
Boise, Idaho

Tuesday, February 3, 2009
Beginning at 9:30 o'clock a.m.

(ELECTRONIC COPY)

Deposition of David R. Tuthill, Jr.

1 compute.

2 Instead, we are open to a claimant providing
3 additional information that would indicate that that cap
4 is not sufficient. We are open to that today, in these
5 matters.

6 Q. I have a couple of things to follow up on
7 there. Thank you for that comprehensive answer. I
8 think the question that generated it was just focused on
9 the capabilities of the Department's field examiner when
10 they are not making measurements out in the field but
11 are just looking at terms of licenses and photos.

12 You mentioned that there is some technology --
13 it was not used in this basin -- that may allow some
14 estimation of actual beneficial use.

15 I mean, is it still safe to assume, though,
16 that the aerial photos that were relied upon -- as I
17 mentioned before, maybe they can help identify whether
18 place of use has changed.

19 But that information, the photos themselves, do
20 not really let the field examiner know that a particular
21 quantity of water has been used on the ground.

22 A. A field examination would not reveal that
23 either. For a volume, the only way to really determine
24 the volume is to make a measurement of an annual
25 diversion from a well.

1 We do that in many areas of the state. We
2 don't presently do that in the Boise River Basin. We
3 have a great deal of experience, having done that in
4 other areas through our water measurement districts.

5 Q. Thank you. The second follow-up question I had
6 is you mentioned that the Department is open to a
7 claimant providing information about beneficial use in
8 what you think of as rare instances when they might
9 exceed the standard that the Department has formulated.

10 In the context of the SRBA, how would that
11 work? My recollection is that the Notice of Claim form
12 does not request a claimant to provide that. And then
13 the Department issues a recommendation which, as you
14 mentioned before, is prima facie evidence of a water
15 right.

16 What is the mechanism for a claimant to do that
17 before the prima facie evidence standard applies and
18 then there is kind of this presumption that the annual
19 diversion volume is valid?

20 A. Well, we have seen an adjustment of a standard
21 recommendation based on other evidence. For example, in
22 season of use, here, we have a recommended season.

23 If a water user were to come to us with
24 evidence showing that, historically, water had been used
25 beneficially for irrigation in February, then we would

1 It is up to you. If you want to, you can consult that
2 before we start talking about kind of the development of
3 the 4.5-acre-foot-per-acre standard. Do you just want
4 to go at it?

5 A. We can proceed.

6 Q. So my recollection, based on that, is that
7 there are maybe three components to the
8 4.5-acre-foot-per-acre standard: Climate, an assumption
9 about a crop, and irrigation efficiency which you have
10 already referenced.

11 Is that a fair summary of the components of the
12 4.5 acre-foot standard?

13 A. Yes.

14 Q. Now, as far as the climate aspect of the
15 standard, can you go into a little bit more detail about
16 the assumptions about climate that go into the
17 4.5-acre-foot-per-acre standard?

18 A. In developing this number, we used weather data
19 unique to weather stations around the state. When the
20 first computational document was published by Corey and
21 Sutter back in the 1970s, they identified the water use
22 requirement and the consumptive irrigation requirements
23 and the -- and the consumptive irrigation requirements
24 for basins around the state.

25 The updates to that document have been made by

1 A. Yes.

2 Q. As the State of Idaho representative, do you
3 feel that there is anything that needs to be revised or
4 clarified or that you would disagree with, with respect
5 to your previous testimony?

6 A. No.

7 Q. Admittedly, it is a little bit strange to even
8 have to ask the question.

9 So as the State of Idaho, the party who filed
10 the response, can you summarize just what the State of
11 Idaho's position is that it is trying to -- or what its
12 interest in these particular subcases is?

13 A. Well, embodied in these subcases is a policy
14 determination. That policy relates to the efficient use
15 of water in Idaho from groundwater. So for the State of
16 Idaho to participate in this consolidated matter is
17 important.

18 Q. Just to put a little bit of a finer point on
19 it, a lot of times, in the SRBA, when the State of Idaho
20 is involved -- when I see those words, "State of Idaho,"
21 on some filing in the SRBA, it is usually associated
22 with a particular agency, like Fish and Game or the
23 Water Resource Board who has an instream flow right.

24 Is the State of Idaho representing any
25 particular agency with an actual water right impacted?

1 A. No.

2 Q. To kind of build on that and, then, your
3 previous response, is the State of Idaho's primary
4 interest to protect and promote the policy of annual
5 diversion volumes developed by the Department of Water
6 Resources?

7 A. Yes. Also, it does relate to the efficient use
8 of water concepts of the Idaho Water Resource Board and
9 other elements of the State of Idaho.

10 Q. This is kind of going back. Before, I kind of
11 got into what the Department of Water Resources'
12 internal process is for when an objection has been
13 filed.

14 You talked about, well, it depends upon the
15 nature of the issue, whether it is something that gets
16 kicked up to you or not.

17 What was the decision-making process like that
18 led up to filing responses in these particular subcases?

19 Responses? Yes. I am sorry. I was getting
20 confused with objections for a second, but they are
21 technically responses here.

22 A. Yes. I don't recall being personally involved
23 with that. We have a large number of cases, as you
24 know, in the SRBA. We are blessed with a wonderful
25 staff of Deputies Attorney General that work in our

EXHIBIT C

TO SECOND AFFIDAVIT OF DYLAN B. LAWRENCE

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 NOS.
) 63-02529	63-03163	
	Case No. 39576.	) 63-03274 63-03323
		) 63-03324 63-09109
		) 63-10435
		)

DEPOSITION OF DAVID R. TUTHILL, JR.

Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 South Capitol Boulevard
Tenth Floor
Boise, Idaho

Tuesday, February 3, 2009
Beginning at 9:30 o'clock a.m.

(ELECTRONIC COPY)

Deposition of David R. Tuthill, Jr.

A				
abbreviation 14:18 ability 22:16 35:5 40:16 69:10 abusive 6:12 accepted 25:13 account 30:22 39:4 39:12 62:7 accurate 11:1 12:4 15:1,2 17:5 18:13 21:22 22:21 25:1 26:25 27:22 40:1 47:14 58:23 accurately 25:12 achieve 41:12 acknowledge 52:10 Acquired 4:8,11,15 4:18,22,25 acre 16:8 17:19 19:2,4 21:16 28:19,23 29:24 35:14 41:7 44:5 50:20,22,23 51:1 51:2,4,7,10 59:25 62:2 acreage 61:25 acres 16:7 17:18 19:1,3 20:23 21:15 22:11 24:25 29:23 31:25 32:12 63:19 acre-feet 14:15,19 14:24 16:5,8,11 16:14,16 17:15,18 17:21,23 18:25 19:1,4,9,17,18,24 20:20 21:10,15,20 21:24 22:10,23,24 23:1,3,6,10,22 24:21 25:23 26:3 26:7,24 28:18,23 29:3,23,25 30:3,5 30:13,18 32:5 35:14 41:7 44:4 46:3 50:20,23 51:1,2,4,7,10 56:10 59:25 62:2 acre-foot 41:10,15 41:24 43:12 53:18	act 44:25 action 5:4 39:25 69:14 actual 9:6 12:8 22:19 33:6 36:14 38:9 40:8 44:25 64:6 65:25 67:17 add 32:14 56:11 added 33:8 adding 42:5 addition 7:4 67:2 additional 36:3 38:8 address 45:3 addressed 51:12 adds 56:20 adduced 5:7 adequacy 45:17 adequate 45:11 adjudicated 52:19 adjudication 11:5,6 11:7,12 12:16 31:11 51:22 63:1 adjudications 11:4 adjust 26:2,4 28:25 30:19 adjusted 25:11,16 adjusting 27:3 adjustment 37:20 admit 38:12 Admittedly 60:7 65:7 adopt 64:15,23 adopted 10:23 advisor 64:5 aerial 33:23 34:7 34:20 35:2 36:16 affect 60:4 AFY 14:19 21:21 agency 63:15 65:22 65:25 ago 24:3 40:13 agree 13:24 15:19 17:22 24:21 40:13 ahead 6:10 14:4 27:22 aim 48:6 al 5:1 alfalfa 46:12 59:19	59:21 Allen 44:1,13 54:22 54:22,25 55:3 Allen's 56:2 allocated 25:23 allow 27:20 35:15 36:13 39:7 59:20 allowable 25:7 allowed 11:17 28:1 29:1 30:16 35:13 35:21 amount 14:15 20:22 22:4,8 23:11,22 25:10,25 26:2,7 32:3 35:7 35:16,21,23 39:10 41:8,10,15 47:21 50:22 56:10 59:21 62:1 amounts 35:12 analysis 48:15 annual 7:22 9:7,16 10:21 12:23 13:25 14:12,22 15:20 16:3 17:1,5,13 18:8,12,22 19:16 20:13,18 21:9 24:3 28:1,6,25 30:19 31:4,10 33:7,17 35:2 36:24 37:18 38:18 39:14 41:4 46:7 51:23 52:6 54:3,8 58:22 61:17 62:12 63:23 66:4 annually 25:8 answer 6:7,11,16 6:17 20:17 36:7 39:15 45:7 49:3 50:3 51:16 answering 48:23 answers 40:13 64:13 anticipated 46:24 anticipates 41:8 anybody 24:8 anyway 6:22 28:5 apologize 29:17 50:13 57:14	appear 7:23 24:18 26:5 34:15 59:8 appears 13:20 22:15 24:3 33:24 application 41:7 59:14,16 60:18 61:11 applied 35:3 48:8 55:25 62:1 applies 9:19 28:4 37:17 appreciate 8:20 10:16,17 13:8 appropriate 63:15 aquifer 50:18 54:14 area 22:11 25:24 33:10 35:8,15 46:4,12,23 47:9 47:11 54:5 55:4,8 55:21 60:22 areas 35:9,11 37:1 37:4 38:3 55:19 56:17 argue 48:18 articulate 6:4 articulated 45:8 aside 52:7 asked 6:4 64:18 asking 48:15 aspect 43:14 44:7 44:19 46:7,11 47:16 54:2 aspects 12:22 assembled 8:7 assessment 32:19 64:8 associated 65:21 assume 6:7 9:15 12:1 28:3 36:15 49:25 62:24 67:7 67:16 assumed 62:8 assuming 25:19 28:15 35:1 assumption 11:18 43:8 46:12,15 assumptions 43:16 44:8 45:23 60:8,8 60:9	attachments 10:9 attorney 2:5,11,12 2:17,18 6:10 48:22 66:25 67:3 68:3 69:13 attorneys 48:18 augment 32:25 augmented 33:2 authority 7:22 48:12,19,20 49:8 available 10:2,4 26:3 44:12 63:6 69:12 averaged 44:10 aware 50:7 a.m 1:19 68:12
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EXHIBIT D

TO SECOND AFFIDAVIT OF DYLAN B. LAWRENCE

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.
) 63-03174
)
)

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NOV 30 2007

MOFFATT, THOMAS, BARRETT,
ROCK & FIELDS, CHTD

DEPOSITION OF DAVID R. TUTHILL, JR.

Volume I

(Pages 1 through 34)

Law Offices of
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 South Capitol Boulevard, 10th Floor
Boise, Idaho 83702

Monday, November 26, 2007
Beginning at 9:43 o'clock a.m.

QnA COURT REPORTING
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(COPY)

Deposition of David R. Tuthill, Jr. (Volume I)

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EXHIBIT E

TO SECOND AFFIDAVIT OF DYLAN B. LAWRENCE

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.
) 63-03174
)
)
)

DEPOSITION OF DAVID R. TUTHILL, JR.

Volume II

(Pages 35 through 46)

Law Offices of
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 South Capitol Boulevard, 10th Floor
Boise, Idaho 83702

Friday, December 7, 2007
Beginning at 4:04 o'clock a.m.

QnA COURT REPORTING
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Concordance

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