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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Claimant/Responding Party

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. 63-31194A & 63-31194B

AFFIDAVIT OF ROGER L. ANDERSON
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

STATE OF IDAHO)
) ss:
County of Ada)

ROGER L. ANDERSON, being first duly sworn upon oath, deposes and says

1. I am over the age of eighteen and am competent to testify before this Court.
2. At all times relevant to this action, I was the General Partner of Sundance Investments Limited Partnership ("Sundnace"), and in that capacity was directly involved in all aspects of Sundance's purchase of the property that is the subject matter of this case (the

"Property"), including, but not limited to, the initial identification of the Property for potential purchase, conversations and correspondence with the marketing agent for the Property, due diligence, negotiations and execution of the purchase and sale agreement for the Property, and the eventual closing of the sale. Accordingly, I have personal knowledge of the facts and circumstances set forth herein.

3. Beginning in 2000, on behalf of Sundance I became aware that the Property was available for sale. At that time, I saw a marketing flier relating to the Property and began to consider the Property for potential purchase and subsequent development. That marketing flier specifically referenced a 500-gallon/minute well on the Property. A true and correct copy of the marketing flier is attached hereto as Exhibit "A."

4. In September 2000, the Property owners' real estate agent provided me with a three-page memorandum specifically detailing all information relevant to the listing of the Property. That Memorandum expressly identified the water right at issue in this case and the 500 gpm well as a part of any sale of the Property. A true and correct copy of the Memorandum is attached hereto as Exhibit "B."

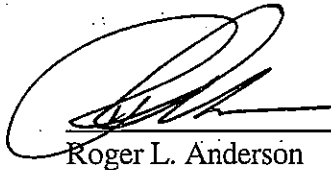
5. In reliance upon this marketing information, I negotiated with the owners for the purchase of the Property. On January 9, 2003, on behalf of Sundance, I entered into a Purchase and Sale Agreement (the "Agreement") with the Property's thirteen owners, including L. Darwin McKay, to purchase the Property. A true and correct copy of the Agreement is attached hereto as Exhibit "C."

6. In addition to the Agreement, each of the Property owners executed a document entitled "Action by Cotenants," whereby they "ratified and approved" the Agreement. True and correct copies of the signed Action by Cotenant documents are attached hereto as Exhibit "D."

7. In February 2003, the sale of the Property to Sundance was closed when the prior owners executed seventy-four (74) deeds (the "Deeds") conveying the Property together with appurtenances to Sundance. None of the Deeds expressly reserve the water right at issue in this case. In fact, the Deeds, without exception, expressly convey the Property together "with their appurtenances." True and correct copies of the ten (10) deeds executed by L. Darwin McKay conveying the Property to Sundance are attached hereto as Exhibit "E." True and correct copies of the sixty-four (64) remaining deeds are attached hereto as Exhibit "F."

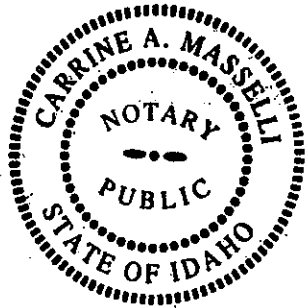
8. By entering into the Agreement, I absolutely intended and expected that all water rights appurtenant to or used on the Property, including the water right at issue in this case, would be conveyed to Sundance as a part of the sale. In fact, at no time was I ever told that the water right at issue in this case would not be included in the sale of the Property. It was not until September 2004, over a year after the sale was closed that I first learned that Darwin McKay disputed Sundance's ownership claim to the water right. Moreover, if the water right was not going to be included in the sale of the Property, Sundance would either not have purchased the Property or it would have offered substantially less for the Property.

FURTHER YOUR AFFIANT SAYETH NAUGHT.



Roger L. Anderson

SUBSCRIBED AND SWORN TO before me this 4th day of May, 2009.



Carrine A. Masselli

Notary Public for Idaho

Residing at Boise, Idaho

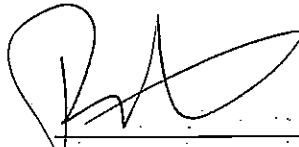
My Commission Expires: 4/1/10

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **AFFIDAVIT OF ROGER L. ANDERSON IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was mailed on the 5th day of May, 2009, with sufficient first-class postage prepaid to the following:

John C. Gould
Ringert Clark Chartered
P.O. Box 2773
Boise, Idaho 83701

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098



Richard W. Stover

Attachments may be viewed in the repository
or legal file