

Randall C. Budge, ISB No. 1949
Thomas J. Budge, ISB No. 7465
RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED
Post Office Box 1391
201 E. Center Street
Pocatello, Idaho 83204-1391
208-232-6101 - Telephone
208-232-6109 - Fax

RECEIVED
JUL - 9 2009
DEPARTMENT OF
WATER RESOURCES

*Attorneys for Cedron Irrigation, LLC, Teton Rainbow Ranches, Inc.,
Trees, Inc., Mahogany Ranch Holdings, and Wally Rothgeb, Jr.*

**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. 22-13212 and 22-13503

MOTION TO STRIKE

Cedron Irrigation, LLC, Teton Rainbow Ranches, Inc., Trees, Inc., Mahogany Ranch Holdings, and Wally Rothgeb, Jr. (collectively, the "Objectors") hereby move the Court pursuant to Rules 43(e) and 56(e) of the Idaho Rules of Civil Procedure to strike from the record the letter of Rex Miller attached as Exhibit G to the *Motion for Summary Judgment* filed by Michael L. Reid (the "Claimant") on May 21, 2009. Exhibit G is not admissible as evidence and therefore may not be considered in support of the Claimant's Motion for Summary Judgment.

"When considering evidence presented in support of or opposition to a motion for summary judgment, a court can only consider material which would be admissible at trial." *Gem State Ins. Co. v. Thomas Evon Hutchison*, 145 Idaho 10, 13 (2007). Evidence may be submitted by affidavit in support of a motion, I.R.C.P. 43(e), but supporting affidavits "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein," I.R.C.P.

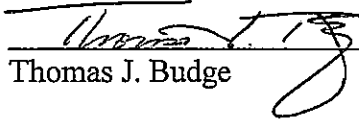
56(c). "Unsworn statements are entitled to no probative weight in passing on motions for summary judgment." *Camp v. Jiminez*, 107 Idaho 878, 882 (Ct. App. 1984).

In this case, the Claimant failed to support his *Motion for Summary Judgment* by affidavit, but instead simply attached various exhibits to his Motion, among which is a letter signed by Rex Miller, a copy of which is attached hereto as **Exhibit A**. The letter is unsworn, and is therefore not admissible as evidence in support of the Claimant's *Motion for Summary Judgment*.

RESPECTFULLY SUBMITTED.

DATED this 7th day of July, 2009.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED


Thomas J. Budge

*Attorneys for Cedron Irrigation, LLC, Teton
Rainbow Ranches, Inc., Trees, Inc., Mahogany
Ranch Holdings, and Wally Rothgeb, Jr.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July, 2009, the above and foregoing document was served in the following manner:

Deputy Clerk
Snake River Basin Adjudication
PO Box 2707, 253 Third Avenue N.
Twin Falls, Idaho 83303

☐ U.S. Mail/Postage Prepaid
☒ Facsimile: (208) 736-2121
☐ Overnight Mail
☐ Hand Delivery

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

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Michael L. Reid
550 S 450 W
Victor, ID 83455

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

X Email: mreide@paradise Springs Farm.com

