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DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG (ISB No. 2207)
Deputy Attorney General
Chief, Natural Resources Division

DAVID I. STANISH (ISB No. 7310)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

Counsel for the State of Idaho

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. 01-00217, 01-00218,
	)	01-04024, and 01-04025
Case No. 39576	)	(Minidoka Power Rights)
	)	
	)	Subcase Nos. 01-02068 and 01-04054
	)	(Palisades Power Rights)
	)	
	)	AFFIDAVIT OF DAVID I. STANISH
	)	

State of Idaho)
)ss
County of Ada)

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

1. I am a competent adult over the age of eighteen years, and the statements made herein are based upon my own personal knowledge of the events described.

2. I am a deputy attorney general assigned to the Snake River Basin Adjudication.

3. Attached to this affidavit are true and correct copies of the following documents:

Attachment I: Email from Garrick L. Baxter to Candice McHugh et al.
(Sept. 18, 2009)

Attachment II: Email from C. Thomas Arkoosh to Garrick L. Baxter et al.
(Sept. 18, 2009)

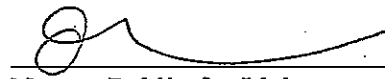
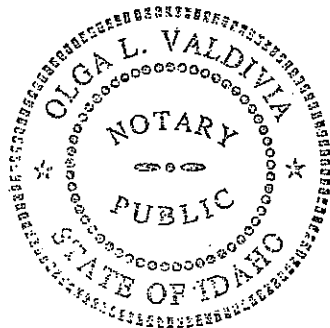
Attachment III: Email from John K. Simpson to Candice McHugh et al.
(Sept. 24, 2009)

4. Further your affiant sayeth naught.



DAVID I. STANISH
Deputy Attorney General
Natural Resources Division

Subscribed and sworn (or affirmed) to before me, a notary public in and for the State of
Idaho this 1st day of October 2009.



Notary Public for Idaho
Residing at Boise, ID
My Commission expires: 2/8/2012

CERTIFICATE OF SERVICE

I certify that on this 1st day of October 2009, I caused to be served the original and copies of the **AFFIDAVIT OF DAVID I. STANISH** on the following persons by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

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☐ Statehouse Mail

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IDAHO POWER CO
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DENVER, CO 80202

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C THOMAS ARKOOSH
301 MAIN ST
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RANDALL C BUDGE
201 E CENTER, STE A2
PO BOX 1391
POCATELLO, ID 83204-1391

CITY OF POCATELLO
Represented by:
JOSEPHINE P BEEMAN
409 W JEFFERSON ST
BOISE, ID 83702

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WHITE & JANKOWSKI LLP
KITTREDGE BUILDING
511 16TH ST STE 500
DENVER, CO 80202

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BURLEY IRRIGATION DISTRICT
FALLS IRRIGATION DISTRICT
Represented by:
ROGER D LING
615 H ST
PO BOX 396
RUPERT, ID 83350-0396

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NORTH SIDE CANAL COMPANY
TWIN FALLS CANAL COMPANY
Represented by:
JOHN SIMPSON
113 MAIN AVE W, STE 303
PO BOX 485
TWIN FALLS, ID 83303-0485

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Represented by:
W KENT FLETCHER
1200 OVERLAND AVE
PO BOX 248
BURLEY, ID 83318

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JERRY R. RIGBY

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USDI BUREAU OF RECLAMATION

Represented by:

US DEPARTMENT OF JUSTICE

ENVIRONMENT & NATL' RESOURCES

550 WEST FORT STREET, MSC 033

BOISE, ID 83724

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REGIONAL DIRECTOR PN REGION

BUREAU OF RECLAMATION PN-3100

1150 N CURTIS RD STE 100

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BOISE, ID 83720-0098

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DAVID I. STANISH

Deputy Attorney General

Attachment I

**Email from Garrick L. Baxter to Candice
McHugh et al. (Sept. 18, 2009)**

Stanish, David

From: Baxter, Garrick [Garrick.Baxter@idwr.idaho.gov]
Sent: Friday, September 18, 2009 8:52 AM
To: Candice M. McHugh; Stanish, David; tarkoosh@capitolawgroup.net; John Simpson; Gehlert, David (ENRD); jamestucker@idahopower.com; rwood@rex-law.com
Subject: RE: Historic Practices Deposition

All,

Turns out that former Director Tuthill has first hand knowledge of the new subordination language. Since he has the most knowledge regarding these issues, the Department will make him available for a deposition. He is available next Friday (Sept. 25) starting at 9:00 am. We are willing to provide space here and a telephone connection for those that do not want to attend in person. Let me know if this works for you.
Garrick

From: Candice M. McHugh [mailto:cmm@racinelaw.net]
Sent: Thursday, September 17, 2009 8:52 AM
To: Baxter, Garrick; Stanish, David; tarkoosh@capitolawgroup.net; John Simpson; Gehlert, David (ENRD)
Subject: Historic Practices Deposition

I am not sure when you were thinking of scheduling the next deposition but wanted to let you know that October 1 (afternoon) and October 2 don't work for me.

Thanks

Candice M. McHugh
Racine, Olson, Nye, Budge & Bailey, Chartered
101 S Capitol Blvd., Ste. 208
Boise, ID 83702
(208) 395-0011
cmm@racinelaw.net

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Attachment II

**Email from C. Thomas Arkoosh to Garrick
L. Baxter et al. (Sept. 18, 2009)**

Stanish, David

From: Tom Arkoosh [tarkoosh@capitolawgroup.net]
Sent: Friday, September 18, 2009 9:47 AM
To: Baxter, Garrick; Candice M. McHugh; Stanish, David; John Simpson; Gehlert, David (ENRD);
jamestucker@idahopower.com; rwood@rex-law.com
Subject: RE: Historic Practices Deposition

Thank you. My understanding is that he is proffered as the one most knowledgeable, is that correct? When can the Director be available to speak on behalf of the Department concerning Department policy; when can Lyle be available to speak on behalf of WD 1 concerning WD1 policy? Would there be a third person available who can say what the State of Idaho policy is? (Please do not infer from the question any concordance with any parties' views.)

From: Baxter, Garrick [mailto:Garrick.Baxter@idwr.idaho.gov]
Sent: Friday, September 18, 2009 8:52 AM
To: Candice M. McHugh; Stanish, David; Tom Arkoosh; John Simpson; Gehlert, David (ENRD);
jamestucker@idahopower.com; rwood@rex-law.com
Subject: RE: Historic Practices Deposition

All,
Turns out that former Director Tuthill has first hand knowledge of the new subordination language. Since he has the most knowledge regarding these issues, the Department will make him available for a deposition. He is available next Friday (Sept. 25) starting at 9:00 am. We are willing to provide space here and a telephone connection for those that do not want to attend in person. Let me know if this works for you.
Garrick

From: Candice M. McHugh [mailto:cmm@racinelaw.net]
Sent: Thursday, September 17, 2009 8:52 AM
To: Baxter, Garrick; Stanish, David; tarkoosh@capitolawgroup.net; John Simpson; Gehlert, David (ENRD)
Subject: Historic Practices Deposition

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Thanks

Candice M. McHugh
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Attachment III

**Email from John K. Simpson to Candice
McHugh et al. (Sept. 24, 2009)**

Stanish, David

From: John Simpson [jks@idahowaters.com]
Sent: Thursday, September 24, 2009 11:38 AM
To: Candice M. McHugh; Baxter, Garrick; Stanish, David; Gehlert, David (ENRD); tarkoosh@capitolawgroup.net; jamestucker@idahopower.com; rwood@rex-law.com; Lochhead, James S.; Travis Thompson; Kent Fletcher
Subject: RE: Historic Practices Deposition

Garrick,

Let me see if I can state this clearly enough for you. I am not simply interested in the language in the presently recommended Director's report, but the present Director's policy of what is necessary for administration and what he may or may not be bound by. Tony's deposition simply revealed that he takes the elements of the water rights, puts them into the accounting program and delivers water. He receives the decrees from the Department. Therefore, the current Director's perspective is relevant, not redundant; nor a waste of time. As we all know, a Director's policy can change from Director to Director. One only needs to look at how the past and current Director have addressed the applicability of the Ground Water Act to pre-1951 rights to see that this could be viewed as a moving target. If you are unwilling to participate in the scheduling of the current Director simply state so and we will send out our notices. We will all do our best to keep this out of the disingenuous category.

John

From: Candice M. McHugh [mailto:cmm@racinelaw.net]
Sent: Thursday, September 24, 2009 10:57 AM
To: Baxter, Garrick; John Simpson; Stanish, David; Gehlert, David (ENRD); tarkoosh@capitolawgroup.net; jamestucker@idahopower.com; rwood@rex-law.com
Subject: RE: Historic Practices Deposition

What other date and time is Mr. Tuthill available, afternoon of October 1 perhaps?

Candice M. McHugh
 Racine, Olson, Nye, Budge & Bailey, Chartered
 101 S Capitol Blvd., Ste. 208
 Boise, ID 83702
 (208) 395-0011
cmm@racinelaw.net

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From: Baxter, Garrick [mailto:Garrick.Baxter@idwr.idaho.gov]
Sent: Thursday, September 24, 2009 10:34 AM
To: John Simpson; Stanish, David; Gehlert, David (ENRD); Candice M. McHugh; tarkoosh@capitolawgroup.net; jamestucker@idahopower.com; rwood@rex-law.com
Subject: RE: Historic Practices Deposition

John,

As stated before, Dave Tuthill is the person with personal knowledge of the historical practices language. Thus, we are making him available. A deposition of others would be redundant, not relevant and a waste of time. We don't plan to make anyone else available.

Garrick

From: John Simpson [mailto:jks@idahowaters.com]
Sent: Thursday, September 24, 2009 9:07 AM
To: Stanish, David; Baxter, Garrick; Gehlert, David (ENRD); cmm@racinelaw.net; tarkoosh@capitollawgroup.net; jamestucker@idahopower.com; rwood@rex-law.com
Subject: RE: Historic Practices Deposition

Is the present Director available on that date?

From: Stanish, David [mailto:david.stanish@ag.idaho.gov]
Sent: Thursday, September 24, 2009 9:06 AM
To: Baxter, Garrick; Gehlert, David (ENRD); cmm@racinelaw.net; tarkoosh@capitollawgroup.net; John Simpson; jamestucker@idahopower.com; rwood@rex-law.com
Subject: RE: Historic Practices Deposition

This communication and its attachments are confidential and/or privileged. If you have received this communication in error, please immediately read the "NOTICE" appended below.

Tom/John/Jim:

What are your thoughts on October 2nd?

Sincerely,

David I. Stanish
Deputy Attorney General

Natural Resources Division
Office of Attorney General
700 West State Street
Joe R. Williams Building, Second Floor
P.O. Box 83720
Boise, Idaho 83720

Phone: (208) 334-4549
Facsimile: (208) 854-8072
Email: david.stanish@ag.idaho.gov

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-----Original Message-----

From: Baxter, Garrick [mailto:Garrick.Baxter@idwr.idaho.gov]
Sent: Monday, September 21, 2009 2:54 PM
To: Gehlert, David (ENRD); cmm@racinelaw.net; Stanish, David; tarkoosh@capitollawgroup.net; jks@idahowaters.com; jamestucker@idahopower.com; rwood@rex-law.com
Subject: RE: Historic Practices Deposition

Dave is available on October 2nd. Candice – can another attorney in your firm sit in on the depo? Does it work for the rest of the group?

Thanks,
Garrick

From: Gehlert, David (ENRD) [mailto:David.Gehlert@usdoj.gov]
Sent: Friday, September 18, 2009 9:41 AM
To: Baxter, Garrick; cmm@racinelaw.net; david.stanish@ag.idaho.gov; tarkoosh@capitollawgroup.net; jks@idahowaters.com; jamestucker@idahopower.com; rwood@rex-law.com
Subject: Re: Historic Practices Deposition

Garrick, sorry but I'm not available on the 25th. I'm pretty open the following week. Dave

Sent Using U.S. DOJ/ENRD BES Server

From: Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>
To: Candice M. McHugh <cmm@racinelaw.net>; Stanish, David <david.stanish@ag.idaho.gov>; tarkoosh@capitollawgroup.net <tarkoosh@capitollawgroup.net>; John Simpson <jks@idahowaters.com>; Gehlert, David (ENRD); jamestucker@idahopower.com <jamestucker@idahopower.com>; rwood@rex-law.com <rwood@rex-law.com>
Sent: Fri Sep 18 10:52:29 2009
Subject: RE: Historic Practices Deposition

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Sent: Thursday, September 17, 2009 8:52 AM
To: Baxter, Garrick; Stanish, David; tarkoosh@capitollawgroup.net; John Simpson; Gehlert, David (ENRD)
Subject: Historic Practices Deposition

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Candice M. McHugh
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