

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUL 28 2010

By _____ Clerk
_____ Deputy Clerk

**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. 75-10075

Case No. 39576

**AFFIDAVIT OF PAUL DRURY, DATED JULY 19, 2010,
IN SUPPORT OF CITY OF SALMON'S STANDARD FORM 1: OBJECTION
DATED JULY 28, 2010**

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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 No. 00-9202175 [BWI 92-21-75]

**AMENDED AFFIDAVIT OF PAUL DRURY
IN SUPPORT OF CITY OF SALMON'S
SUPPLEMENTAL RESPONSE TO STATE OF
IDAHO'S MOTION FOR ORDER OF INTERIM
ADMINISTRATION OF WATER RIGHTS IN
BASIN 75**

STATE OF IDAHO)
COUNTY OF ADA) ss:

I, Paul Drury, after first being duly sworn upon oath, depose and state that:

1. I am over 18, a resident of the State of Idaho, and am employed by ERO Resources Corporation, a business consisting of natural resource and environmental consultants.
2. On behalf of the City of Salmon, I have reviewed the SRBA District Court files for the City of Salmon subcases 75-7, 75-17D (75-17A and 75-17B), 75-19E (75-19B and 75-19C), 75-26A, 75-10075, and 75-10076 (75-4 and 75-114). The court files include the City's SRBA claims, the August 1, 2007 Director's Report, corresponding objections/amended objections by Arrowhead Water District (Arrowhead) and Edgar and Myrtle Edwards (Edwards), and the June 22, 2010 Amended Director's Report.
3. The City of Salmon subcases involve water rights from Jesse Creek and its tributaries Pollard Canyon Creek and Chipps Creek. The Idaho Department of Water Resources

Water District 75A encompasses the Jesse Creek drainage, including Pollard Canyon Creek and Chipps Creek.

4. Since March 2009 I have been assisting the City of Salmon in settlement negotiations to resolve the Arrowhead and Edwards objections. These negotiations are ongoing and I am actively drafting and reviewing stipulated elements for inclusion in Standard Form 5's that will encompass the settlement agreement among the parties.
 - a. The objections to the August 1, 2007 Director's Report for subcases 75-7, 75-17D (75-17A and 75-17B), 75-19E (75-19B and 75-19C), 75-26A, 75-10075, and 75-10076 (75-4 and 75-114) were the *framework* for the negotiations.
 - b. The negotiations are *based* on my comprehensive review (with Norm Young of ERO) of the historic practices/records for the City of Salmon's municipal water rights and delivery system, as well as watermaster records for Water District 75A.
 - c. In April 2010 I visited the Jesse Creek drainage and observed the diversions for the City of Salmon, Arrowhead, and Edwards. Due to the unfortunate death of the current watermaster for Water District 75A, my site visit was made in the company of the backup watermaster Paul Stokes, who is also an employee with the City of Salmon. During this site visit I obtained GPS coordinates for the three diversions operated by the City of Salmon.
5. In March 2010, Monica Van Bussum of the Idaho Department of Water Resources was included in settlement meetings and subsequent settlement correspondence between ERO for the City of Salmon and Roxanne Brown (SPF Engineering) for Arrowhead.
6. In order to confirm the parties' settlement progress, ERO recommended to the City of Salmon's counsel that the SRBA Court schedule a mandatory in person settlement conference. On behalf of the City of Salmon, I prepared for and attended the April 14, 2010 SRBA settlement conference at the Idaho Department of Water Resources in Boise, Idaho, intending to review the details of the parties' written negotiations in which I am an active participant and drafter. SRBA Special Master Ted Booth was the settlement moderator.
7. Hours before the April 14, 2010 settlement conference, I received IDWR's April 13 email of draft recommendations proposing to amend the August 2007 Director's

- Report for the City of Salmon water rights 75-7, 75-17D (75-17A and 75-17B), 75-19E (75-19B and 75-19C), 75-26A, 75-10075, and 75-10076 (75-4 and 75-114).
8. This was my first knowledge that IDWR was considering amending its August 2007 Director's Report.
 9. The week of April 26, 2010 I received a copy of the State of Idaho's April 23, 2010 Motion FOR ORDER OF INTERIM ADMINISTRATION OF WATER RIGHTS IN BASIN 75 AND REQUEST FOR EXPEDITED HEARING. The Motion seeks "an order authorizing interim administration of water rights in Basin 75 in accordance with the Director's Report ... and partial decrees that supersede the Director's Reports."
 10. On June 22, 2010 IDWR issued an Amended Director's Report for the City of Salmon water rights 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, and 75-10075.
 11. Based on the City of Salmon's SRBA claims and the June 22, 2010 Amended Director's Report, I prepared two tables that are Attachment A to this Affidavit. Attachment A, page 1, is a table entitled Irrigation Season Authorized Diversion Rate. Attachment A, page 2, is a table entitled Winter Season Authorized Diversion Rate. Reviewing Attachment A, it is evident that the Amended Director's Report, while consistent with the claimed irrigation season diversions, excludes any non-irrigation season diversions from Jesse Creek, Pollard Canyon Creek and Chipps Creek.
 - a. During the non-irrigation season, the City of Salmon claims originally filed in 1990 best reflect the historic and current diversions and use from Jesse Creek and its tributaries.
 - b. During the irrigation season, the June 22, 2010 Amended Director's Report is more consistent with the historic and current diversions and use from Jesse Creek and its tributaries, although the recommendations add undue restrictions to the water rights which will need to be addressed as explained below.
 12. **The Amended Director's Report for the City of Salmon water rights 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, and 75-10075 does not recognize the historical use of water from all three sources on a year round basis by the City of Salmon. Water from all three sources has historically been available to the**

City of Salmon and its predecessor's. Use of Jesse Creek waters for year round municipal purposes within the City began in 1890 with the development of the Salmon City Water Company. The City purchased the Salmon City Water Company in 1912 and subsequently upgraded the water system and acquired additional water rights within the Jesse Creek drainage which it has accessed from all three sources -- Jesse Creek, Pollard Canyon Creek, and Chipps Creek -- on a year round basis. Attachment B to this affidavit is a copy of the City of Salmon's Motion to File Late Claim 75-2167 that ERO Resources assisted in preparing. The Motion includes the late claim and the following documentation of this continuing historic practice:

- (1) Water Right License No. 75-2167.
- (2) Copy of document dated January 2, 1912 deeding License No. 75-2167 to the City of Salmon.
- (3) Copy of IDWR "Water Rights Proof Reading Report dated December 13, 1984 listing License No. 75-2167 in the name of Salmon City Water Co. Ltd. for municipal purposes within the City of Salmon.
- (4) Copy of IDWR Memorandum Decision and Order dated June 6, 1981, including on page 3 a summary of testimony from Virgil Schofield, watermaster of Water District 75A (Jesse Creek and Tributaries), noting winter time use of water by the City of Salmon.
- (5) Copy of U.S. Forest Service Management Plan for the Salmon Municipal Watershed dated June 1975 confirming year round municipal diversions from Jesse Creek, Pollard Canyon Creek, and Chipps Creek.

13. **The Amended Director's Report for the City of Salmon water rights 75-4, 75-17B, 75-19C, 75-26A, and 75-10075 lists only Jesse Creek as the source. The source should list all three creeks or, alternatively, Jesse Creek should be defined to include its tributaries for these rights.** Presently, the amended Director's Report for these rights lists a point of diversion, injection, and rediversion from Jesse Creek in the NENE Section 2, a point of diversion, injection, and rediversion from Pollard Canyon Creek in the SWSW Section 2 (should be NENE Section 10) and lists a point of rediversion (should be diversion) from Chipps Creek in the NWNW Section 11.

14. **The Amended Director's Report for the City of Salmon water rights 75-4, 75-17B, 75-19C, 75-26A, and 75-10075 recognizes the City's historic practice of diverting first from Jesse Creek, then from Pollard Canyon Creek, and lastly from Chipps Creek, but then restricts the use of Pollard Canyon Creek and Chipps Creek at times when Jesse Creek alone cannot satisfy the City's rights in priority. This would occur because in the amended recommendations these rights cannot be diverted from Pollard Canyon or Chipps Creeks when water rights with equal priority date are fully deliverable at the Farmers Ditch Diversion. This is not consistent with historical practices and, since Farmers Ditch is downstream from the City's diversion on Jesse Creek, the City's Jesse Creek diversions may not satisfy the City's rights in priority because the City would be prevented from its historic practice of diverting available water from Pollard Canyon and Chipps Creek. In addition, the computation of water availability at the Farmers Ditch diversion should include all the water available at any given time from all three sources upstream of the Farmers Ditch. In contrast, water right 75-5 (Arrowhead Irrigation District) was recommended and water right 75-2 (Edwards) was partially decreed without limitations associated with changes to these rights following their original decrees.**
15. **The Amended Director's Report for the City of Salmon water rights 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, and 75-10075 limits the combined diversion rate to 11.6 cfs. This limitation should be removed considering:**
- a. **Diversion rates of more than 14 cfs were recorded by the watermaster in the 1987-1989 watermaster reports; Attachment C page 1 is an ERO Resources summary of *maximum diversion rates* by the City of Salmon recorded in the watermaster delivery records from 1970 to the 2008. Attachment C, Pages 2-29 are copies of Water District 75A watermaster records for the 1987 delivery season (with ERO annotations from IDWR microfiche).**
 - b. **IDWR calculated the system diversion capacity at approximately 20 cfs. Attachment D is the January 30, 1996 report of an IDWR field examination conducted September 20, 1995. Page 1 of attachment D has been relocated from**

within the report for convenience; it includes an estimate for the City of Salmon's diversion capacity from Jesse Creek calculated by IDWR at 19.95 cfs. ERO Resources understands that the September 20, 1995 field examination was conducted for purposes of licensing 75-7563 (1990 priority) which was then licensed with an 11.6 cfs combined diversion rate limit. ERO further understands that this 11.6 cfs limitation is the basis for the Amended Director's Report inclusion of an 11.6 cfs combined diversion rate limit for all of the City's water rights that were in existence as of or prior to November 19, 1987.

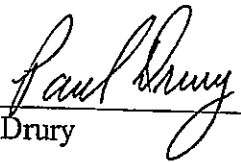
16. **The Amended Director's Report for the City of Salmon water rights 75-4, 75-19C, 75-26A, 75-114, and 75-10075 includes limits to the annual diversion volume for each right and a combined volume limit for rights 75-7, 75-17A, and 75-19B.**

There is no volume limit for water right 75-17B.¹ The watermaster records and the City's separate internal records demonstrate that some years the *historic volume* diverted by the City is greater than the recommended volume limits. Attachment E, page 1 is an ERO Resources summary of the total diversion volumes for the City of Salmon from Water District 75A watermaster records for 1970 through 2008. Attachment E, page 2, is an ERO summary of data collected by the City of Salmon of combined Jesse Creek, Pollard Canyon Creek, and Chipps Creek diversions to the City's water treatment plant for the years 1992 through 2007. On some years the City could be limited in supplying water to its customers in the late irrigation season, especially if the volume limits accrue to the most senior rights first. The historical and current practice of administering rights in Water District 75A does not limit the annual volume diverted under any water right. This practice should be continued or the accounting for annual volume should be mitigated by accounting diversion volume to the most junior rights in priority first, or preferably, combining the volume limit for all rights.

¹ The annual diverted volume total for the City of Salmon's municipal rights from the June 25, 2010 Amended Director's Report is 1698.5 acre-feet without a diverted volume for 75-17B. The annual volume for 75-17B can be calculated at a maximum of 101.9 acre-feet if 75-17B is diverted continuously from April 1 through October 31.

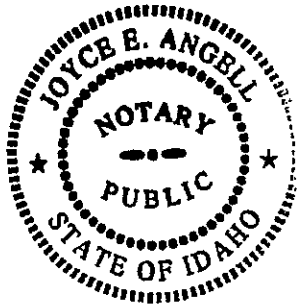
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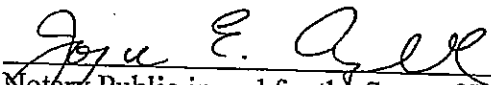
DATED this 19th day of July 2010.



Paul Drury

SUBSCRIBED AND SWORN to before me this 19th day of July 2010.





Notary Public in and for the State of Idaho
Residing in Boise, Idaho
My Commission Expires: July 29, 2014

CERTIFICATE OF MAILING

I certify that on July 19, 2010, I mailed copies of this document, including all attachments, to the following:

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IN BASIN 75

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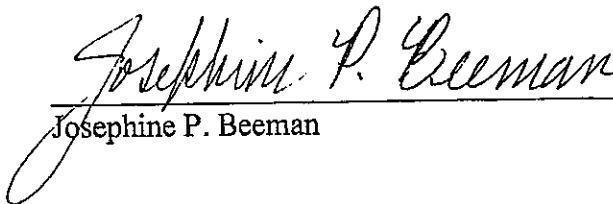
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Josephine P. Beeman

**ATTACHMENTS TO
AFFIDAVIT

ON FILE WITH THE

COURT**

To request a copy, (\$1.00 per page) please contact
Clerk of the Court at 208-736-3011.