

SEP 09 2010 9-8

DEPARTMENT OF
WATER RESOURCES

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Attorneys for Raymond C. Barker, Jr.
Charles J. Kritz, Jr. and Diane B. Kritz

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

In Re SRBA

Case No. 39576

Subcase No. 2-2318A

**AFFIDAVIT OF NORMAN C.
YOUNG IN SUPPORT OF MOTION
FOR RECONSIDERATION**

STATE OF IDAHO)

COUNTY OF ADA)

ss.

Norman C. Young, P.E./L.S., being first duly sworn, deposes and states:

1) I am an engineer employed by ERO Resources Corporation ("ERO") at its office located in Boise, Idaho. I have a Bachelor of Science Degree and a Master of Science Degree

**AFFIDAVIT OF NORMAN C. YOUNG IN SUPPORT OF MOTION FOR
RECONSIDERATION - 1**

in Agricultural Engineering from the University of Idaho. I am a licensed professional engineer and land surveyor in the State of Idaho.

2) I have over 39 years of experience as an engineer working in the areas of surface and ground water resource inventory, evaluation and management, water resources engineering, and various programs involving the administration of water use and water rights. This experience includes:

- a) Two years inventorying surface and ground water resources.
- b) Three years managing a regional office for the Idaho Department of Water Resources ("IDWR" or "Department") with responsibilities for all IDWR regulatory and permitting programs.
- c) Three years as Chief of IDWR's Engineering Bureau with responsibility for managing the supervision of the Carey Act, well drilling, safety of dams, use of geothermal resources, stream channel protection and other water resource regulation and management programs.
- d) Twenty-five years as Administrator responsible for all IDWR regulatory and permitting programs involving all aspects of water rights and water resource regulation and management.
- e) Seven years as an engineering consultant with ERO assisting clients on water right and water use issues.

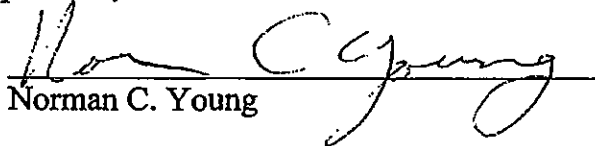
3) My experience with IDWR includes extensive involvement in developing and refining the administrative procedures and policies for establishing water rights under the Doctrine of Prior Appropriation applicable in Idaho, for confirming water rights through the state's licensing and adjudication processes, for modifying established water rights by the state's transfer procedures and for administration and management of water rights, including conjunctive management of surface and ground water rights.

4) While employed with IDWR, I had responsibility for developing administrative rules and policies used by IDWR in water administration at this time, including the following:

- a) Water Appropriation Rules, IDAPA 37.03.08.
 - b) Well Construction Standard Rules, IDAPA 37.03.09.
 - c) Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11.
 - d) Draft rules (not adopted, to date) for water management in Idaho.
 - e) Transfer Processing Policies and Procedures, Administrator's Memorandum Transfer Processing No. 24, October 30, 2002.
- 5) I have been retained in this proceeding by Objectors Raymond C. Barker, Charles J. Kritz, Jr. and Diane B. Kritz, Jr., to provide expert analysis and opinion concerning, among other matters, an evaluation of Water Right No. 02-2318A.
- 6) While I was employed at IDWR, it was routine practice for the Department to include in water right licenses or similar instruments where the applicant did not own the point of diversion, place of use or locations along the conveyance system, language to the effect that "this grant of a water right does not grant any right of way or easement across the lands of another."
- 7) Since the time I left IDWR, I have continued to work on matters involving water rights, licenses and similar matters as an expert consultant. Based on my experience and knowledge, it is my understanding that IDWR has used, and continues to use this routine practice to include in water right licenses or similar instruments where the applicant does not own the point of diversion, place of use or locations along the conveyance system, language to the effect that "this grant of a water right does not grant any right of way or easement across the lands of another." As an example, *see* Exhibit A hereto, a copy of Water Right License No. 37-07854 issued on September 30, 2005, which states in Condition of Approval Item 8 that: "This right does not grant any right-of-way or easement across the land of another."

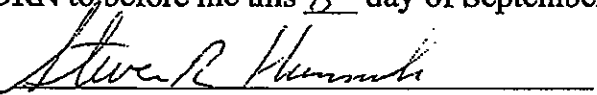
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 8TH day of September, 2010.


Norman C. Young

SUBSCRIBED AND SWORN to, before me this 8th day of September, 2010.




Notary Public in and for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 8-18-11

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2010, I caused to be served copies of the foregoing Affidavit of Norm Young in Support of Motion for Summary Judgment by the method(s) indicated below:

IDWR Director
P. O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Jon Gould Facsimile No. (208) 342-4657
Ringert Law
P.O. Box 2773
Boise, ID 83701-2773
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 37-07854

Priority: July 23, 1980

Maximum Diversion Rate: 3.38 CFS
Maximum Diversion Volume: 2,450.0 AF

It is hereby certified that CITY OF HAILEY
115 S MAIN ST # H
HAILEY ID 83333 has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated July 23, 1980; and has
submitted Proof of Beneficial Use on October 25, 1985. An examination indicates that the works have a
diversion capacity of 3.38 cfs of water from:

SOURCE

INDIAN CREEK SPRING

Tributary: BIG WOOD RIVER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
POWER	01/01 to 12/31	3.38 CFS	2,450.0 AF

LOCATION OF POINT OF DIVERSION:

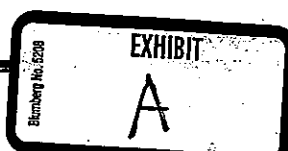
INDIAN CREEK SPRING SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 23, Twp 03N, Rge 18E, B.M., BLAINE County

PLACE OF USE: POWER

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
03N 18E 33		X															

CONDITIONS OF APPROVAL

1. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
2. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37.
3. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
4. The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after June 14, 2020. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
5. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.



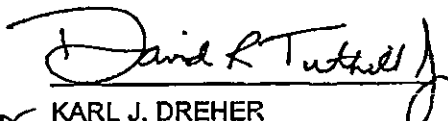
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 37-07854

6. Use of water under this right shall be non-consumptive.
7. Rights 37-00296, 37-00717 and 37-01216 are also diverted through the point of diversion described above.
8. This right does not grant any right-of-way or easement across the land of another.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 30th day of September, 2005.


for **KARL J. DREHER**
Director