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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Claimants: DKJ Farms, LLC & Woodmansee Johnson Canal Company

**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. 22-00265E, 22-00594, 22-04195 &
	)	22-13479
	)	
Case No. 39576	)	CLAIMANTS DKJ FARMS, LLC &
	)	WOODMANSEE JOHNSON CANAL
	)	COMPANY'S TRIAL MEMORANDUM
	)	

COME NOW Claimants DKJ Farms, LLC & Woodmansee Johnson Canal Company and
file the following Trial Memorandum in the above entitled action:

GENERAL INITIAL COMMENTS & OBJECTION

Water Claimants DKJ Farms, LLC (hereinafter "DKJ") and Woodmansee Johnson Canal Company (hereinafter "Woodmansee") initially object to the scope of the trial dealing with any rights associated with water right numbers: 22-4195 & 22-265E for the simple reason that 22-4195 has gone to partial decree and is not challengeable and 22-265E is a direct result of two post adjudication administrative transfers under I.C. §42-222 and therefore, for the purpose and scope of Objector's objections are no longer challengeable.

Therefore, this memorandum will only be addressing the two remaining water rights of

DKJ (22-13479) & Woodmansee (22-594) and the two water rights of Son Rise, Inc. (Hereinafter “Son Rise”).

Woodmansee (and its predecessor in interest) has appropriated water from Moody Creek in Madison County since the late 1800s. These basic rights are based upon the Rexburg Decree and are undisputable. Furthermore, these rights have been recommended as they were being diverted at the commencement of the SRBA, including accomplished transfers to the points of diversion at DKJ’s pumps on the Moody Creek which transfer had occurred by use and notice prior to the commencement of the SRBA.

Son Rise has also claimed stock water rights in Moody Creek dating back to 1880. However, these rights are not supported by any evidence whatsoever, and even if a right somehow originally existed, they were never decreed and they have been forfeited by non-use for all of the years before any claim was filed.

Accomplished Transfer

With the commencement of the Snake River Basin Adjudication, the Idaho state legislature enacted Idaho Code § 42-1425, which allows that changes in place of use, point of diversion, nature or purpose of use, or period of use of water rights that took place before the commencement of the SRBA, and without compliance with the transfer provisions of IC § 42-108 and 42-222, would be recognized as “accomplished transfers” in the SRBA. This was done to prevent “harsh economic results” from denying claims in the SRBA of water rights which had made changes to their water rights without complying with the transfer provisions. These accomplished transfers are only allowed for changes made before the commencement of the SRBA and if no other water users are injured by the accomplished transfer.

Water Right 22-594 belongs to the Woodmansee. It is diverted from Moody Creek in

Madison County. From its original decree to sometime prior to 1982, this water right had its point of diversion downstream from the DKJ pumps. The reason for the change in the point of diversion was that Merle Jeppesen leased water from Woodmansee Johnson in order to have an more adequate water supply for his crops in the Moody area. In 1982, Woodmansee Johnson sent a letter to the Department requesting that the point of diversion for this right to be added to the wells owned by Merle Jeppesen. The Department allowed the change in the point of diversion and the water was diverted from the Jeppesen's well from that time to the present.

Said water right was claimed in the SRBA with the new point of diversion located at the Jeppesen's wells. The Department recommended the claim with the new point of diversion. It is clear that the change in the point of diversion qualify as an accomplished transfer as the change was made before the commencement of the SRBA. Further, no other valid water rights were injured by the change in the point of diversion which will be evidenced at trial.

Despite the fact that no existing water rights were injured, Son Rise is now claiming that it has water rights which will not only be injured, but are also senior to the Woodmansee Johnson rights. Son Rise filed late claims for 22-13557 and 22-13558 on August 7, 2006. These rights claimed year round use of .02 cfs of the waters of Moody Creek for in-stream stock watering of 100 head of cattle. The claimed priority date of these rights is March 25th, 1880, and were based on beneficial use.

When these rights were filed, no supporting documentation was filed in support of the rights. No documentation has been presented since which would prove that this right existed for stock water since 1880. Further, other water users on Moody Creek claim that this right has never been used for stock water at the point of diversions claimed. In light of the fact that 100 head of livestock is a large amount of livestock, other water users would have been aware if these

rights were being exercised. Testimony at trial will evidence that no such right could have existed.

Son Rise's principal, along with George Brown, have been consistently opposed to Woodmansee and DKJ's water rights along Moody Creek. In the glaring lack of evidence to support Son Rise's claims, and the seemingly convenient fact that Son Rise's claims have an earlier priority date than Woodmansee's rights, it is not hard to come to the conclusion that Son Rise Inc.'s claims are meant not to water cattle, but more an end around attempt to stop Woodmansee and DKJ from using the water they have consistently used for decades.

As far as Water Right No. 22-13479 is concerned, the evidence at trial will be abundantly clear that this beneficial use right has existed since before the recommended priority date of 1980. The very person who originated the diversion will be present at trial and will testify as to said diversion and its annual diversions.

Forfeiture

A water right must be applied to a beneficial use to remain valid in Idaho. Idaho Code § 42-222(2) states that "all rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited for the term of five (5) years to apply it to the beneficial use for which it was appropriated..." Any right which is forfeited through non-use reverts back to the state. *Id.* Statutory forfeiture has been relied on by the Idaho Department of Water Resources and the courts where water users have not beneficially used their water rights. One water user was found to have forfeited his irrigation rights because he had not diverted them for 18 years. *Jenkins v. State, Dept. of Water Resources*, 103 Idaho 384, 647 P.2d 1256, Idaho, 1982.

Even if Son Rise's claims were valid in 1880 (which is impossible to evidence because there is obviously no one alive and there is no other documentation or decree which evidences it),

other water users who divert from Moody Creek can attest to the fact that the rights have not been used during their lifetimes. As such, these rights would have been forfeited long ago, and they should not be decreed in the Snake River Basin Adjudication. These rights were inexplicably recommended by IDWR. Nevertheless, no evidence has been presented to support the claims. Therefore, the SRBA Court should deny these claims.

Further, while defenses to the doctrine of forfeiture exist, none apply in this particular case.

Conclusion

Water Rights 22-4195 and 22-265E cannot be subject to Objector's protest or objections. Woodmansee's change in its point of diversion is a valid accomplished transfer pursuant to the Idaho law and should be decreed by the SRBA court pursuant to the recommended points of diversion. In contrast, Son Rise's claims are not supported by any evidence whatsoever. They appear to be only an attempt to complicate Woodmansee & DKJ's valid rights. Further, even if those rights were valid in 1880, they have clearly been lost because of Idaho's statutory forfeiture law. As such, Son Rise's claims should be denied by the SRBA Court.

Respectfully Submitted, this 17th day of November, 2010.

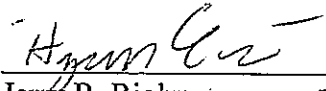

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CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
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I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 17th day of November, 2010.

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