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DEPARTMENT OF
WATER RESOURCES

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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	)	Subcase: 22-13457
	)	
	)	AFFIDAVIT OF RICHARD F. SMITH
Case 39576smithrichards.aff	)	IN SUPPORT OF MOTION TO SET
	)	ASIDE PARTIAL DECREE
	)	
	)	
	)	
	)	

STATE OF IDAHO)

County of Madison)
ss

Richard F. Smith, being first duly sworn, deposes and says:

1. I own farm land on the Rexburg Bench, in Madison County, Idaho, which the Smith family has owned since the early 1900's, which was originally dry farmed.
2. Our farm is located adjacent to farm land owned and operated by the Webster family for approximately as many years as our own.
3. When water was first applied to the farm lands, our individual permits covered each of our respective lands. Hand lines were used to water Webster's lands.
4. When Webster's converted to center pivot systems and our lands became irrigated with

center pivots, because of the irregular boundary lines, both the Webster's and myself agreed to exchange property to accommodate the more efficient use of center pivot systems. The exchange was for farming purposes only. Ownership of the property did not change. The resulting cross lease allowed Webster's to irrigate and farm 80 acres of my property. I in turn irrigated and farmed 80 acres of the Webster's land.

5. A long term lease (based upon a year to year renewal) was entered into whereby Webster's farmed and irrigated the Smith lands consisting of W $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 13, Twp. 5N, Rge 40 E.B.M. (hereinafter the "Smith Exchanged land"). In exchange, I farmed and irrigated the Webster's lands consisting of the S $\frac{1}{2}$ NW $\frac{1}{4}$, of Section 18, Twp. 5 N., Rge. 41 E.B.M. (hereinafter the "Webster Exchanged land"). This exchange began on or around the irrigation season of 1982. This was accomplished and a "transfer" of our respective water rights occurred between the two of us even though we never filed anything with the Idaho Department of Water Resources in order to officially transfer the rights on record.

6. Once the Webster permit was proven up, License 22-7071 was issued in the name of Franko Farms, Inc., on November 7, 1978. This license authorized 13.35 cfs of ground water for 879 acres. WR 22-7071 also included the 80 acres of Webster Exchanged land which the Smiths were now farming in accordance with the exchange agreement. When the claim was filed in the SRBA, knowing of the exchange agreement with Smiths, Webster's filed their claim for 22-7071 without including the full licensed acres of the Webster Exchanged land believing that it would be taken care of by the Smith Adjudication claim. The claim even included language which acknowledged the exchange between the Webster Exchanged land and the Smith Exchanged land. Consistent with the accomplished transferred exchange, Webster's claimed the Smith

Exchanged land in their SRBA claim under WR 22-7071. Based upon an Accomplished Transfer, the Director recommended the Wester claim, which included the Smith Exchanged land, and the claim went to partial decree on or about November 24, 2008 along with WR 22-13458 which recognized the Smith Exchanged land under the doctrine of Accomplish Transfer of place of use.

7. Contrary to the Webster water rights, Smith's rights were still in "permit" status at the time the SRBA began. (The Department had discovered that for almost 20 years, a field exam had not been conducted.) Therefore, the Smith's permit (as WR 22-7418) which included the Smith Exchanged land carried a priority date of December 29, 1982. The permit authorized 14.40 cfs and the irrigation of 720 acres (including the Smith land).

8. Unfortunately, when the Smith's claim was originally filed by John Smith (my uncle) in the SRBA, it included the Smith Exchanged land but did NOT include the Webster Exchanged land. Upon notice from the Department that it should not have included the Smith Exchanged land, following the notice of the Department, on or about August 22, 1988, I filed an amended SRBA claim (numbered 22-7418A) which removed the Smith Exchanged land from my claim and both the drawing depicting the land irrigated and the amended claim DID include the Webster Exchanged land.

9. During the adjudication, WR 22-7418 was proven in a field exam conducted in 2001. The field exam found 592.7 acres were irrigated under the original permit 22-7418 INCLUDING THE WEBSTER EXCHANGED LAND. Based upon the exam, WR 22-13457 (originally 22-7418) was licensed in February of 2006. It authorized 5.88 cfs on only 517.1 acres. Unbeknownst to me, it DID NOT include the Webster Exchanged land even though the report clearly identified

that the Smith pivot was watering the Webster Exchanged land.

10. There is a memo prepared by Kay Walker on January 5, 2006 which explains that the Webster Exchanged land was not included in WR 22-12457 because he understood that Webster's were going to claim the Webster Exchange land in an amendment to the Webster's claim (Franko Farms, Inc.). As stated above the Webster's did NOT amend their claim to include the Webster Exchanged land. The Department proceeded to recognize the exchange agreement in making a recommendation for Webster's claim and included Smith Exchanged land in the Webster claims. But in making the recommendation for my claim, they did not recognize the exchange agreement even though my amended claim No. A22-07418A included a claim for the Webster Exchanged land. The Department made a mistaken recommendation relying on the assumption that Webster's would include the Webster Exchanged land in their claim. As a result, the Webster Exchanged lands were not included in my adjudicated right.

11. I met with IDWR on several occasions in order to make certain that the exchange agreement between the Webster's and the Smiths was understood. The claims and other papers were prepared by the Department and I relied on the Department personnel to make the correct filings. When I signed the amended claim described above, I fully understood that my claim and partial decree would authorize me to divert 5.88 cfs upon lands owned by me which were included in the claim and also the Webster Exchanged land. The Department obviously understood and recognized the exchange agreement in that the Webster claims were adjudicated based upon the exchange agreement. However, the Department personnel failed to recognize the exchange agreement for the Smith claims as it did for the Webster claims and unfortunately, I failed to discover this in the recommendation and consequently my partial decree did not include

the Webster Exchanged lands.

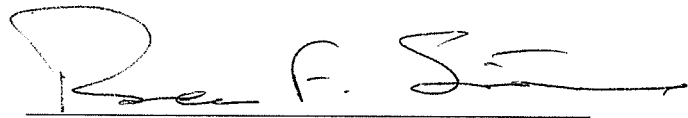
12. Based upon the mistake stated above, WR 22-13457 was partially decreed on November 24, 2008 for only 3.83 cfs on only 517.1 acres which DID NOT include the Webster Exchanged land. Even though I was aware of the partial decree, I assumed that it contained the Webster Exchanged land and therefore believed that the exchange agreement had been recognized by the Department.

13. About the same time as the partial decree was issued for WR 22-13457, I was called by my Church as a Mission President and spent the next three years in New York City. I did not understand that the Webster Exchanged land was not claimed by either the Smith's or Webster's in the SRBA until the Department notified the Webster's that the Webster Exchanged land was being watered and that even though it had originally been licensed, no claim was PENDING in the adjudication. Byron Webster then contacted me on my mission and I then contacted Mr. Jerry Rigby to represent me. Mr. Webster informed me that he had a telephone conversation with the Department and that they had recognized the mistake that had occurred and that the matter could wait until I returned home in July of 2012. Since that time, Byron Webster, myself, and Jerry Rigby have worked with the Department personnel. Everyone has realized a mistake has been made and that the Webster Exchanged lands should be included in my partial degree WR 22-13457.

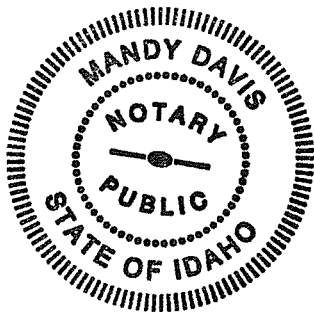
14. I represent and will testify that the above facts are true and correct to the best of my knowledge. I own a substantial number acres in Madison County, Idaho and worked with the Department on the water rights for all of them. Except for this particular water right, all others seem to have been correctly decreed. Unfortunately, because I believed the Department personnel

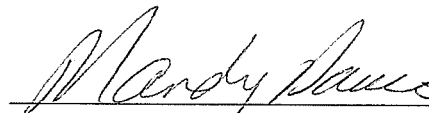
had understood the above facts regarding the exchanged lands, I relied upon them to prepare the correct license and amended claim. I believe that the mistake was made by everyone, including the Department, and that due to the unique set of facts and obvious mistake, I should be granted my motion to vacate the partial decree for WR 22-13457 in order to amend the claim to include the Webster Exchange land under the legal principal of Accomplished Transfer and an appropriate amount of "rate" and "volume" to be consistent with the additional 80 acres of Webster Exchanged land. I understand that of the 5.88 cfs from the original license, I will require at lease 4.4 cfs to adequately cover the current acres under WR 22-13457 together with the Webster Exchanged land.

DATED This 28th day of December, 2012.


Richard F. Smith

SUBSCRIBED AND SWORN To before me this 28th day of December, 2012.




Notary Public for Idaho
Residing at: St. Anthony
Commission Expires: 06-24-17