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DEPARTMENT OF
WATER RESOURCES

Shelley M. Davis, ISB #6788
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Facsimile: (208) 344-6034

Attorneys for Indian Cove Irrigation District

**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 NOS.: 02-2033 and 02-00083
)

) **AFFIDAVIT OF SHELLEY M. DAVIS IN**
) **SUPPORT OF INDIAN COVE**
) **IRRIGATION DISTRICT'S MOTION TO**
) **SET-ASIDE PARTIAL DECREES**
)

STATE OF IDAHO)
) ss.
County of Ada)

SHELLEY M. DAVIS, being first duly sworn upon oath, deposes and says:

1. I am an attorney in the firm Barker Rosholt & Simpson LLP providing legal representation to Indian Cove Irrigation District ("ICID") in the above captioned matter. I am over the age of 18 and have knowledge of the documents and legal proceedings pertinent to this matter, and I make this affidavit based upon personal knowledge.

2. ICID is a small irrigation district comprised of less than a dozen landowners. The water rights for ICID date back to 11/14/1919. Due to various circumstances, there has been confusion concerning the number of acres within ICID's service area. Complicating matters, in

the early part of the 20th century there was a fire at ICID's pump house, where ICID's records were kept, which destroyed ICID's records and files.

3. ICID's water right claims 02-00083 and 02-02033 were partially decreed on May 12, 2009. Pursuant to the decrees, the place of use for the service area of ICID lists 1149 acres. The Amended Notice of Claims filed herewith state the correct number of acres—1,275.

4. On August 01, 1989, the Department forwarded to Sherl Chapman claims 02-00083 and 02-02033 along with blank Notice of Claim forms and an Application for Permit to be completed. *See* Correspondence from IDWR's Adjudication Backfile, attached herewith as Exhibit 1. In that correspondence the Department indicated that the claims listed 1,149 acres of irrigated lands, however acknowledged that on November 19, 1981, ICID filed a notice of claim stating that 1,495.15 acres were being irrigated. *Id.* That correspondence further discussed that the 1924 report of the engineer listed 1275 acres under cultivation, but that the State Reclamation Engineer issued a license for 1,149 acres in 1945. *Id.* To further complicate matters, the Department stated that their orthophotoquad map only showed 1,028 acres under cultivation in 1974. *Id.* It appears that based upon the correspondence, the Department was advising that the only option for ICID was to file for the 1,028 acres, and then an application for permit for an additional 121 acres. *Id.*

5. Sherl Chapman filed Notices of Claim in 1989, however, based on a review of the Department's backfile for the water rights, it appears that Notices were lost or otherwise not processed. *See* Correspondence of May 4, 1992, attached herewith as Exhibit 2. Based upon the information that was provided in the missing Notices, the Department reproduced Notices of Claim on or about May 4, 1992, based upon Sherl Chapman's "drafts which were completed during the Owyhee County claims filing in 1989" and urged Mr. Johnson to execute and submit

the same, as the fees had already been paid. *See Id.* On May 20, 1992, Sigert Johnson, then Chairman of ICID, submitted Notices of Claim, claiming 1,149 total acres, pursuant to the urging of the Department of Water Resources.

6. Based upon an Engineer's Report completed on November 1, 1924, there were "about 1275 acres" that were under cultivation. *See Report of Engineer*, filed herewith as Exhibit 3. Based upon the lack of a payment of the \$92.00, the license was apparently not issued until 1945. *See Correspondence from IDWR's* discussing the same and indicating a field examination showed 2800 acres being irrigated, attached herewith as Exhibit 4.

7. Earlier this year, in 2012, after a conversation between representatives of ICID and Carter Fritschle at IDWR, Mr. Fritschle indicated that upon his review of the backfile, it was his opinion that the claim for 1,149 acres was based upon the department's review of the 1974 aerial photograph, and that it incorrectly depicted the number of acres irrigated. The Department advised representatives for ICID to file a Motion to Set Aside the Partial Decrees for water right nos. 02-2033 and 02-0083 and to submit Amended Notices of Claim correcting the irrigable acres and service area of the water rights to reflect 1,275 acres.

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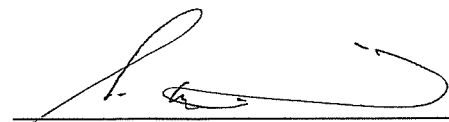
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Dated this 10th day of January, 2013.

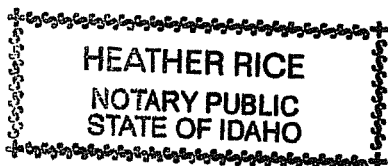
BARKER RSHOLT & SIMPSON LLP

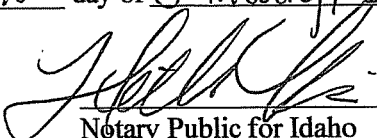


Shelley M. Davis
Attorneys for Indian Cove Irrigation District

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN before me on this 10th day of January, 2013





Notary Public for Idaho
Residing at Boise, ID
Commission expires 12/16/2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of January, 2013, I caused to be served a true and correct copy of the foregoing **AFFIDAVIT OF SHELLEY M. DAVIS IN SUPPORT OF INDIAN COVE IRRIGATION DISTRICT'S MOTION TO SET-ASIDE PARTIAL DECREES** by the method indicated below, and addressed to each of the following:

Original filed via U.S. Mail with:

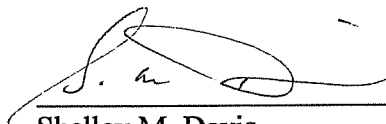
Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707
Fax No. 208-736-2121

Copy mailed to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resc Division
550 West Fort Street, MSC 033
Boise, ID 83724



Shelley M. Davis

EXHIBIT
1



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705 - (208) 334-2190

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

SHERL CHAPMAN
457 W. WILLOWBROOK
MERIDIAN, ID. 83642

08/01/1989

DEAR SHERL:

ENCLOSED ARE CLAIMS NUMBERED A02-00083 AND A02-02033.

A02-00083 LISTS 1149 ACRES OF IRRIGATED LANDS AND A DIVERSION RATE OF 8.07 CFS BASED ON BENEFICIAL USE. THIS DEPARTMENT HAS ON RECORD A NOTICE OF CLAIM DATED 11/19/1981 (COPY ENCLOSED) LISTING 1,495.15 ACRES AS BEING IRRIGATED WITH A TOTAL DIVERSION RATE OF 19.35 CFS CLAIMED. A SUBSEQUENT REVIEW BY THIS DEPARTMENT ON 08/23/1984 FOUND 1028 ACRES IRRIGATED AS OF 1974, USING ORTHOPHOTOQUAD MAPS.

A FIELD EXAM OF THE IRRIGATION SYSTEM ON 04/21/1983 FOUND THE TOTAL DIVERSION CAPACITY AT 32.77 CFS.

DEPARTMENT STAFF HAD EARLIER DETERMINED THAT A DIVERSION RATE OF 0.03 CFS WAS NECESSARY TO DELIVER SUFFICIENT WATER TO THE LANDS WITHIN THE DISTRICT. THUS 1028 ACRES TIMES 0.03 CFS/ACRE = 30.84 CFS

LICENSE 02-02033 WAS ISSUED FOR 25.5 CFS, LEAVING 5.34 CFS AS BEING RECOMMENDED FOR THE 11/19/1981 CLAIM (02-00083). 25.5 CFS PLUS 5.34 CFS = 30.84 CFS.

PROBLEM: IF THE 1028 ACRES THAT WAS FOUND TO BE IRRIGATED IN 1974 HAVE BEEN EXPANDED TO THE PRESENT 1149 ACRES AS CLAIMED IN THE RETURNED SNAKE RIVER BASIN ADJUDICATION CLAIM- A02-00083, THEN IT WOULD BE ADVISABLE FOR THE DISTRICT TO SUBMIT AN APPLICATION FOR PERMIT FOR THE EXPANDED ACREAGE (121 ACRES) IN ADDITION TO A02-00083 FOR 5.34 CFS. IF THE TOTAL CAPACITY OF THE DISTRICTS DIVERSION SYSTEM NOW EXCEEDS 32.77 CFS, THE ADDITIONAL AMOUNT COULD ALSO BE MADE IN THE APPLICATION FOR PERMIT.

A02-02033 ALSO LISTS 1149 ACRES AS BEING IRRIGATED AND IS BASED ON A LICENSE ISSUED BY THE STATE RECLAMATION ENGINEER ON 01/19/1945. THE REPORT OF THE ENGINEER ON 11/01/1924 LISTED APPROXIMATELY 1275 ACRES UNDER CULTIVATION, HOWEVER THE ORTHOPHOTOQUAD MAP SHOWED 1028 ACRES UNDER CULTIVATION IN 1974.

MICROFILMED

AUG 10 1994

PROBLEM: IT IS PROBABLE THAT THERE HAS BEEN AN EXPANSION OF ACTUAL ACRES IRRIGATED BETWEEN 1974 AND THE PRESENT TIME OF APPROXIMATELY 121 ACRES. AGAIN, IT WOULD BE ADVISABLE TO FILE FOR THIS EXPANSION IN A APPLICATION FOR PERMIT.

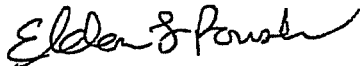
ONE APPLICATION FOR PERMIT WOULD SUFFICE TO COVER THE ADDITIONAL 121 ACRES OF IRRIGATION AND THE ADDITIONAL DIVERSION RATE NEEDED TO PROPERLY IRRIGATE 1149 ACRES.

IT APPEARS THAT THE ONLY LIMITING FACTOR WILL BE THE CAPACITY OF THE PUMPS AND AVAILABILITY OF WATER FOR APPROPRIATION.

ENCLOSED ARE BLANK NOTICE OF CLAIMS AND A APPLICATION FOR PERMIT FOR YOUR USE IF YOU DECIDE TO REFILE. IF YOU DO NOT WISH TO REFILE, RETURN THE CLAIMS WITH A LETTER SO STATING.

IF YOU HAVE ANY QUESTIONS OR NEED CLARIFICATION, FEEL FREE TO CONTACT THIS AGENT.

SINCERELY,



ELDON L. ROUSH
SENIOR WATER RESOURCE AGENT

CC: JAMES ELIAS
CHAIRMAN
INDIAN COVE IRRIG. DIST.
STAR ROUTE BOX 33
HAMMETT, ID. 83627

MICROFILMED

AUG 10 1994

EXHIBIT
2



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

May 4, 1992

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

RE: Claim No's. A02-00083, A02-02033, A51-10204, A51-10205

Indian Cove Irrigation District
Segert Johnson
HC 33 Box 35
Hammett, ID 83627

Dear Mr. Johnson:

Enclosed are two copies each of the irrigation district's Notices of Claim to a Water Right as referenced above. One copy is for your signature and one copy is for you to keep for the district's records.

These claims were completed based on Sherl Chapman's drafts which were completed during the Owyhee County claims filing in 1989. We have been unable to locate any original signed claims, however, the fees for these claims were paid timely and once the signed claims are returned, our records will be complete.

If you have any questions concerning the content of these claims, please feel free to contact me.

Sincerely,

Jan Shurte
Water Rights Supervisor
Adjudication Section

JS:lh
Enclosures

MICROFILMED

AUG 10 1994

EXHIBIT
3

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF ENGINEER

Permit No. 14452This proof is for Beneficial UseIn Water District No. 591. Name of applicant: Indian Cove Irrigation District2. Source of water supply: Snake River3. Location of point of diversion: at Is in the S.W. Cor. of Lot 4 of Section 6T. 6 S R. 8 E.B.M. County of Owyhee

4. Describe works as they exist, giving dimensions and capacities of same Pumping station
equipped with 2-14" Cameron, 3-10" Hough Centrifugal direct connected
pumps, 4 Westinghouse motor 57.5 rated H.P. & 1 G.E. Motor of 150 H.P.
Three 125 K.V.A. transformers, 37 mile power line, and all necessary
equipment, 2 pipe lines of total length 2000 ft 36" wood stave,
640 ft 96" steel flume & about 14 miles of ditches

5. Water is used for: Irrigation6. State whether or not water has been turned into works of diversion: yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation): N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 34, T. 5 S., R. 7 E.; W $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$, Sec. 6, T. 6 S., R. 8 E.; NW $\frac{1}{4}$, SW $\frac{1}{4}$, Sec. 7, T. 6 S., R. 8 E.; SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ Sec. 1, SW $\frac{1}{4}$ N $\frac{1}{2}$, NW $\frac{1}{4}$ N $\frac{1}{2}$ & S $\frac{1}{2}$ SW $\frac{1}{4}$ & SW $\frac{1}{4}$, & SE $\frac{1}{4}$, Sec. 2; all Sec. 3; NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 10; NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 11; All Sec. 12; N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 13, T. 6 S., R. 7 E., B.M.

Area under cultivation to date about 1275 acres.

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach? Columbia

Remarks: Lands of this system consist of about 2300 acres
of which approximately 50% are served by a lift
of 50 ft & the remainder by the "high line" of
100 ft elevation above the river

This examination was made on the 1st day of Nov 1924

(Signed)

David A. Johnson

Examiner.

14452

EXHIBIT
4

Charles C. Gossett

January 10, 1945

Hon. Frank Langley
Attorney General
Building.

Re: Tender of payment of fees for
License on Permit No. 14452-
Indian Cove Irrigation District

Dear Sir:

On November 14, 1919, Permit No. 14452 was issued to Indian Cove Irrigation District to appropriate public waters of the Snake River for the irrigation of 2821.80 acres of land through an existing pumping plant and distribution system.

Proof of completion of works was made on November 18, 1921, and certificate issued.

Beneficial use proof was made on November 19, 1924, and the field examination showed 2800 acres had been irrigated.

After some correspondence concerning pending legislation, the following letter was written to the attorneys for the irrigation district.

March 21, 1925

"Re: Permit No. 14452-Indian Cove Irrigation District

Messrs. Oppenheim & Lampert,
Attorneys at Law,
Idaho Building,
Boise, Idaho

Attention: Mr. D. W. Oppenheim

Gentlemen:

Referring to the proof of beneficial use of water under the above numbered permit would state that, upon receipt of fees in the sum of \$92.00, license will be issued in accordance with the provisions of Senate Bill No. 53, Session Laws of 1925.

Very truly yours,

C. G. SWENDSEN
Commissioner of Reclamation
By

Chief Clerk"

14452

Mr. Frank Langley
Attorney General
January 10, 1945
Page 2

Today the Indian Cove Irrigation District tenders their check for
\$92.00

Opinions are requested on:

1. Can the Department of Reclamation accept the \$92.00 and issue
License, waiving interest?
2. If the interest cannot be waived, has the Department of Reclamation
authority to adjust the interest payment to an amount that seems
reasonable, or must the statutory interest rate apply?

Very truly yours,

K:A

MARK R. KULP
State Reclamation Engineer

14452