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DEPARTMENT OF
WATER RESOURCES

Jerry R. Rigby (ISBN 2470)
of RIGBY, ANDRUS & RIGBY, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208 356-3633

Attorneys for the Claimant, Paul Gunderson

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

Subcases: 31-12314

Case 39576

AFFIDAVIT OF RAY W. RIGBY
In Support of Motion To File Late Claim

STATE OF IDAHO,)
 ss.
County of Madison.)

RAY W. RIGBY, being first duly sworn, deposes and says:

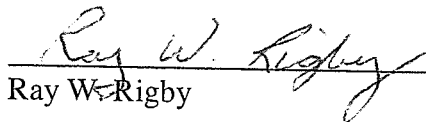
- 1) My name is Ray W. Rigby, of the firm Rigby, Andrus and Rigby Chartered of 25 North 2nd East, Rexburg, ID 83440.
- 2) Several months ago, I was approached by Mr. Paul Gunderson who had been working with Rocky Mountain Environmental of Idaho Falls Idaho to determine his rights to file a claim in the Snake River Basin Adjudication based upon the old *Owsley Canal Co. Vs. Earnest Bauerle* decree and precedent setting rulings in the Adjudication as addressed in the Motion to which this affidavit is attached.

- 3) As I began investigating the rights, because I have not been involved in water rights in basin 31 for many years, I inquired as to the ability to file late claims within the basin. I inquired within my office and had my assistants contact IDWR in order to determine if the right was still available.
- 4) Although I don't know who it was that was contacted and although I did not make the contact directly myself, all I know is that I came away with the clear understanding that I had until the end of February in which to file the late claims.
- 5) It was only when our office received the order from the court officially closing the various basins that I was made aware that my understanding was in error. I then turned this matter over to my son, Jerry R. Rigby, in which to finalize the preparation of the necessary claim, motion, affidavit and memorandum supporting the motion to file this late claim notwithstanding the order closing the basin a month earlier.
- 6) Finally, I now recognize that the notice of the closing of Basin 31 came to my law firm from the court. However, because of my attempt to decrease my practice due to my age and because I have not been directly involved with Basin 31 for many years, I was not aware of the closing of Basin 31 prior to my inquiry described above. Clearly, the error was one of excusable mistake by me in understanding that February was the closing date instead of January.
- 7) An additional equitable reason for granting Claimant's late claims is that the claim is based upon a unique set of circumstances and based upon rulings by the SRBA court in previous sub-cases. Therefore, it is not unreasonable to grant a reasonable

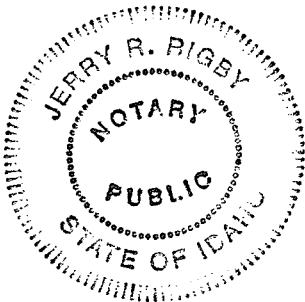
period of time after it is closed for claims which have legitimate reasons for not having been filed before the closing. The time requested is less than 30 days.

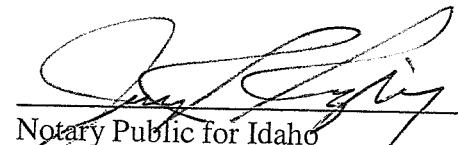
- 8) Finally, because it is incumbent upon the Claimant who is seeking the relief from the order closing Basin 31, to not only meet the requirements of IRCP 60(b), but also to show and present evidence of facts which, if established, would constitute meritorious claims to the water rights, themselves, your affiant has investigated the claims and can represent to the Court that the attachments to the claim are valid and meritorious. Furthermore, Claimant is prepared to present such additional testimony by those who have personal knowledge of the history and use of the water rights as required by the Court at the hearing upon its Motion to File Late Claims in order to further establish the legitimacy of the said claims.

FURTHER YOUR AFFIANT SAITH NOT.


Ray W. Rigby

SUBSCRIBED AND SWORN To before me this 28th day of February, 2013.




Notary Public for Idaho
Residing at: St. Anthony
My Commission Expires: 11-09-17