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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**

	)	
	)	AFFIDAVIT OF RICHARD A. SIMMS
In Re SRBA	)	
	)	
	)	SUBCASE Nos. 01-10248, 27-11560
Case No. 39576	)	
_____	)	

AFFIDAVIT

STATE OF IDAHO	)
	) ss.
County of Blaine	)

RICHARD A. SIMMS, being first duly sworn upon oath, attests:

1. Affiant is the attorney for Kim Bodily and makes this Affidavit in Support of the **Motion to Vacate and Reset Order Setting Subcases for Trial and Pretrial Scheduling Order** filed herewith.

2. On March 21, 1995, the court entered an **Order Setting Subcases for Trial and Pretrial Scheduling Order** with the following dates:

5/15/95 Discovery Cutoff/Exhibit and Witnesses. All discovery shall be completed.

5/31/95 Pretrial Motions. All pretrial motions shall be filed on or before 5 p.m. Argument on pretrial motions shall be heard at the pretrial conference.

6/7/95 Exchange of Exhibit/Witness Lists. Complete lists of exhibits and witnesses shall be physically exchanged.

6/12/95 Pretrial Conference. To be held in Twin Falls. Counsel for all parties shall be present.

6/19/95 Prehearing briefs shall be simultaneously filed and served on all parties.

6/26/95 Trial. (10 a.m.)

3. The court entered its order Denying Motion to Dismiss Objections of Kim Bodily on May 11, 1995. However, the order was not posted on IWATRS and was not received by Affiant until Friday May 12, 1995.

4. In denying the Motion to Dismiss Kim Bodily's objections the court limited the issue to be tried to one of ownership.

5. Kim Bodily has not had an opportunity to conduct further discovery on this limited issue of ownership as the deadline for discovery was Monday, May 15, 1995.

6. On Friday, May 12, 1995, the State of Idaho informed Affiant that it no longer needed to provide the remaining documents pursuant to requests for discovery because the Fort Hall Water Users Association had been dismissed and Kim Bodily's name was not on the discovery requests.

7. On or around May 16, 1995, the United States asked when the remainder of their discovery would be answered and Affiant pointed out that no discovery had been served on Kim Bodily, individually.

8. No formal discovery on either side has been conducted with respect to the issue of ownership.

9. The custodian of the records of transactions between the non-Indian owners of lands in the Fort

Hall Irrigation Project to which, by federal statute, the water rights are appurtenant, and the Secretary of the Interior, was historically the General Land Office in Blackfoot, Idaho.

10. At some unknown time, the relevant records of the General Land Office were physically transferred to the Bureau of Indian Affairs, Fort Hall Agency.

11. It has been reported that some of the historical records were lost or destroyed.

12. Kim Bodily's predecessor-in-interest and the Secretary of the Interior executed the initial contract for sale of the water rights appurtenant to his Project lands.

13. Payments consummating the purchase of the water rights appurtenant to Kim Bodily's predecessor-in-interest's lands were timely made, and all other terms of the sales contract were timely complied with.

14. Kim Bodily's predecessor-in-interest and the Secretary of the Interior entered into a supplemental contract for the purchase of the water rights appurtenant to his Project lands.

15. Payments consummating the purchase of the water rights appurtenant to Kim Bodily's predecessor-in-interest's lands were timely made, and all other terms of the sales contract were timely complied with.

16. Neither Kim Bodily nor the Fort Hall Agency, the new custodian of the General Land Office records, has been able to locate the original contract between his predecessor-in-interest and the Secretary of the Interior.

17. Kim Bodily and Affiant have continued to attempt to locate a copy of the original contract between his predecessor-in-interest and the Secretary of the Interior, to no avail.

18. The United States has failed to properly maintain the files of the General Land Office relating to

the custody of the contracts of sale of the nonIndian water rights as between the Secretary of the Interior and the nonIndian users.

19. In order to reconstruct, in part, the transactions between the nonIndian users in the Fort Hall Irrigation Project and the Secretary of the Interior, Kim Bodily has been forced to retain an historian with expertise in the field of these transactions.

20. Under the circumstances, Kim Bodily cannot meet the trial deadline originally set for the Fort Hall Water Users, who have been dismissed from this case.

21. Time is needed to attempt to further discover the material documents and to depose the new custodian of the General Land Office files.

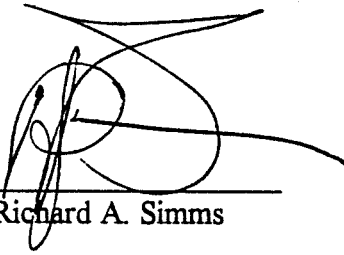
22. Given the requisite discovery, it is unlikely that this matter would have to go to trial.

23. Based on additional discovery, including admissions of facts which appear to be undisputable, this matter could be resolved by summary judgment as a matter of law.

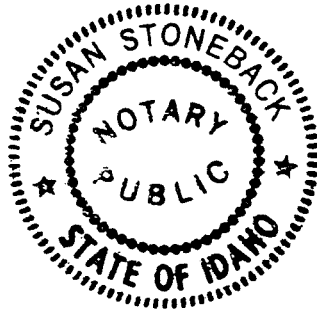
24. Affiant acknowledges that there is a trial date certain and that Kim Bodily and Affiant will be responsible for the continuance of the trial date and the resulting delay, if the continuance is granted.

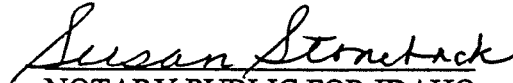
FURTHER, Affiant sayeth naught.

DATED this 31th day of May, 1995.


Richard A. Simms

SUBSCRIBED AND SWORN TO before me this 31st day of May, 1995.




NOTARY PUBLIC FOR IDAHO
Residing at Hailey Idaho
My Commission expires 2/9/2000

CERTIFICATE OF SERVICE

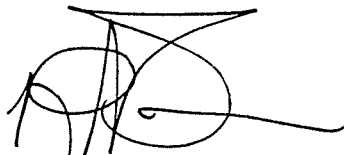
I hereby certify that on the 31st day of May, 1995, I served the foregoing AFFIDAVIT OF RICHARD A. SIMMS by placing a true and correct copy thereof in the United States Mail, postage prepaid, addressed as follows:

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