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DEPARTMENT OF  
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSING WATER  
RIGHT PERMIT NO. 01-7011 IN THE  
NAME OF TWIN FALLS CANAL  
COMPANY AND NORTH SIDE CANAL  
COMPANY

**SECOND AFFIDAVIT OF LUKE H.  
MARCHANT**

STATE OF IDAHO                    )  
  )ss  
County of Bonneville            )

I, Luke H. Marchant, do solemnly swear or affirm that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that is made upon my personal knowledge, and that I would so testify in open court if called upon to do so.

Being so sworn I depose and say:

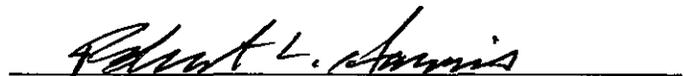
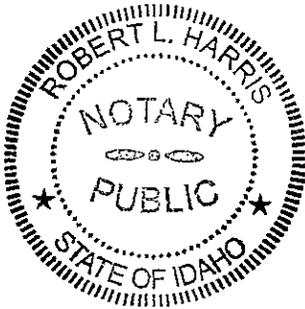
1. I am an attorney licensed to practice law in the State of Idaho and I am one of the attorneys representing the Upper Snake Water Users in this action.
2. Attached hereto as Exhibit A is a true and correct copy of Water District 1 Resolution 27 from the Water District 1 annual meeting held March 2, 2010.
3. Attached hereto as Exhibit B is a true and correct copy of Water District 1 Resolution 49 from the Water District 1 annual meeting held March 2, 2010.

DATED this 19 day of March, 2010.



\_\_\_\_\_  
Luke H. Marchant, Esq.  
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

SUBSCRIBED AND SWORN TO before me this 19<sup>th</sup> day of March, 2010.



\_\_\_\_\_  
Notary Public for Idaho  
Residing at Idaho Falls, Idaho  
My Commission Expires: 11/18/2010

## CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Idaho Falls, Idaho; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof on this 14<sup>th</sup> day of March, 2010.

**DOCUMENT SERVED: SECOND AFFIDAVIT OF LUKE H. MARCHANT**

### INDIVIDUALS SERVED:

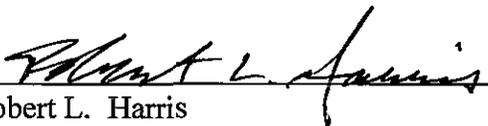
<del>Victoria Wigle</del> Idaho Department of Water Resources PO Box 83720 Boise, Id 83720-0098 <a href="mailto:victoria.wigle@idwr.idaho.gov">victoria.wigle@idwr.idaho.gov</a>	<input checked="" type="checkbox"/> <i>First Class Mail</i> <input type="checkbox"/> <i>Hand Delivery</i> <input type="checkbox"/> <i>Facsimile</i> <input type="checkbox"/> <i>Via Overnight Mail</i> <input checked="" type="checkbox"/> <i>Email</i>
Honorable Gerald F. Schroeder Hearing Officer (Home Address) <a href="mailto:fcjschroeder@gmail.com">fcjschroeder@gmail.com</a>	<input type="checkbox"/> <i>First Class Mail</i> <input type="checkbox"/> <i>Hand Delivery</i> <input type="checkbox"/> <i>Facsimile</i> <input type="checkbox"/> <i>Via Overnight Mail</i> <input checked="" type="checkbox"/> <i>Email</i>
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Randall C. Budge Thomas J. Budge Racine Olson Nye Budge & Bailey Chtd. PO Box 1391 Pocatello, ID 83204-1391 <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a> <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a>	<input checked="" type="checkbox"/> <i>First Class Mail</i> <input type="checkbox"/> <i>Hand Delivery</i> <input type="checkbox"/> <i>Facsimile</i> <input type="checkbox"/> <i>Via Overnight Mail</i> <input checked="" type="checkbox"/> <i>Email</i>
Craig B. Evans, Chairman Bingham Group Water district PO Box 1268 Blackfoot, ID 83221 <a href="mailto:binghamgroundwtr@cableone.net">binghamgroundwtr@cableone.net</a>	<input checked="" type="checkbox"/> <i>First Class Mail</i> <input type="checkbox"/> <i>Hand Delivery</i> <input type="checkbox"/> <i>Facsimile</i> <input type="checkbox"/> <i>Via Overnight Mail</i> <input checked="" type="checkbox"/> <i>Email</i>

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\_\_\_\_\_  
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# **Exhibit A**

"waters of the United States" by EPA, the Corps, DEQ and other federal and state agencies.

K. That neither the Corps of Engineers nor EPA nor any other federal agency or officer shall utilize any provision or program under the Clean Water Act to require NPDES permits for inter- or intra-basin water transfers and that the agencies adopt regulations exempting such water transfers from NPDES permits.

27. ~~SNAKE RIVER RECHARGE / CONTINUED SURFACE WATER DELIVERY OPERATIONS.~~

WHEREAS, water levels in the Eastern Snake Plain Aquifer (ESPA), as well as surface water flows, have declined over the past several years due to changes in irrigation delivery operations and practices, drought, and groundwater pumping; and

~~WHEREAS, water levels in the ESPA as well as surface water flows may further decline by future changes to surface water delivery operations, including reducing diversions and incidental recharge from canal systems; and~~

WHEREAS, these declining water levels and surface water flows may be improved by ~~artificial-managed~~ recharge at various locations on the Snake River Plain as determined by the Eastern Snake Plain Aquifer model and recharge study; and

WHEREAS, managed recharge is recharge of the ESPA by authorized diversion and use of storage or natural flow water rights in existing irrigation delivery facilities; and

WHEREAS, at the present time, recharge facilities are available to accommodate recharge to ESPA within Water District 1;

~~WHEREAS, preventing further declining water levels and surface water flows may be accomplished by encouraging continued surface water delivery operations, including continued incidental recharge from these operations;~~

NOW, THEREFORE, BE IT RESOLVED that the water users of Water District 1 support continued efforts and funding to identify and implement the most effective ~~artificial-managed~~ aquifer recharge sites and projects, which would, replenish ground water levels and surface and spring flows.

BE IT FURTHER RESOLVED, that the water users of Water District 1 support recharge and are ready, willing and able to provide facilities to commence

recharge upon clearly defined recommendations or proposals from the State of Idaho and Idaho Water Resource Board.

BE IT FURTHER RESOLVED, that the water users of Water District 1 support and urge the Idaho Water Resource Board to work with the Committee of Nine, canal companies and irrigation districts on management of the recharge component of the ESPA CAMP plan.

~~BE IT FURTHER RESOLVED, that the water users of Water District 1 support continued surface water delivery operations, including continued incidental recharge from these operations.~~

28. CONTINUED SURFACE WATER DELIVERY OPERATIONS  
IMPLEMENTING RECHARGE

WHEREAS, ground water levels and surface water flows may decline by changes to surface water delivery operations, including reduced incidental recharge; and

WHEREAS, preventing further declining water levels and surface water flows may be accomplished by supporting continued surface water delivery operations, including continued incidental recharge from these operations;

WHEREAS, water users in Water District 1 may take actions to improve surface water delivery operations, including implementing conservation or efficiency measures;

NOW THEREFORE BE IT RESOLVED, that the water users of Water District 1 support continued surface water delivery operations, including incidental recharge from these operations;

BE IT FURTHER RESOLVED, that the water users of Water District 1 recognize a water delivery entity's right to change surface water delivery operations, including implementing conservation or efficiency measures.

~~WHEREAS, effective management of Idaho's water resources mandates the intentional use of the Eastern Snake Plain Aquifer (ESPA) to conserve available water in the upper Snake River Basin; and~~

~~WHEREAS, the ESPA has the largest storage capacity in the Snake River Basin in Idaho; and~~

~~WHEREAS, at the present time, recharge facilities are available to accommodate recharge to ESPA within Water District 1;~~

# **Exhibit B**

NOW, THEREFORE, BE IT RESOLVED, that the water users of Water District 1 support adequate funding for the Idaho Department of Water Resources, in order to bring the agency to parity with other state agencies and the private sector.

49. IWRB COMPREHENSIVE AQUIFER MANAGEMENT PLAN (CAMP)

WHEREAS, in 2006 the Idaho Legislature passed Senate Concurrent Resolution No. 136 requesting the Idaho Water Resource Board (IWRB) to prepare and submit a Comprehensive Aquifer Management Plan for the Eastern Snake Plain Aquifer ("ESPA"); and

WHEREAS, the IWRB with the assistance of IDWR and a stakeholder advisory committee completed the Plan and IWRB approved it on January 29, 2009; and

WHEREAS, the stated goal of the Plan is to "Sustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively managing a balance between water use and supplies"; and

WHEREAS, the objectives of the Plan are to: 1) increase predictability for water users by managing for a reliable supply; 2) create alternatives to administrative curtailment; 3) manage overall demand for water within the Eastern Snake Plain; 4) increase recharge to the aquifer; and 5) reduce withdrawals from the aquifer; and

WHEREAS, the Plan seeks to effect a total long-term water budget change in the ESPA by 600,000 acre-feet over a 20-year period, with a 200-300,000 acre-feet change within the first 10 years; and

WHEREAS, implementation of the Plan and its proposed actions is dependent upon adequate funding, including funding from the State of Idaho; and

WHEREAS, many some water users in Water District 1 have an interest in the sustainability of the ESPA to ensure water supplies for their water rights;

NOW, THEREFORE, BE IT RESOLVED, that the water users of Water District 1 support IWRB's efforts in formulating and implementing CAMP for the benefit of the ESPA;

BE IT FURTHER RESOLVED, that the water users of Water District 1 support and urge the State of Idaho to fund the State's portion of the Plan for purposes of the Plan's implementation.

~~BE IT FURTHER RESOLVED, that the water users of Water District 1 support and urge the Idaho Water Resource Board to work with the Committee of Nine, canal companies and irrigation districts on management of the recharge component of the CAMP plan.~~