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Attorney for A & B Irrigation District
 and Burley Irrigation District

**BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF)
 WATER TO VARIOUS WATER RIGHTS)
 HELD BY OR FOR THE BENEFIT OF)
 A & B IRRIGATION DISTRICT, AMERICAN)
 FALLS RESERVOIR DISTRICT #2, BURLEY)
 IRRIGATION DISTRICT, MILNER)
 IRRIGATION DISTRICT, MINIDOKA)
 IRRIGATION DISTRICT, NORTH SIDE)
 CANAL COMPANY, and TWIN FALLS)
 CANAL COMPANY)

AFFIDAVIT OF RANDY BINGHAM

STATE OF IDAHO)
) ss.
 County of Ada)

RANDY BINGHAM, being first duly sworn, deposes and says:

1. That this affiant is over the age of 21 years and makes this affidavit based upon my personal knowledge.

2. I am the manager of Burley Irrigation District ("BID") and I have held this

position since January 1, 1990.

3. My duties as manager of BID include, among other things, to make an annual assessment of the BID's water supply that will be available during each irrigation season and to advise the Board of Directors of BID as to the quantity of water predicted to be available for delivery in times of shortage and the amount to be allocated to each acre within the irrigation district being irrigated with surface water. I also must predict the amount of carry-over that may be anticipated for use in future irrigation seasons, as well as the preparation of curtailment orders on the delivery to landowners within the irrigation district for consideration by the Board of Directors of BID when water supplies appear to be inadequate to provide a full water supply to each landowner of the District for the purposes of irrigating crops planted and being grown by said landowners.

4. BID holds various natural flow and storage rights to flows of the Snake River, including the following:

Natural Flow Water Rights

Water Right No. 01-00007

Priority Date: April 1, 1939

Diversion Rate: 163.4 cfs

Water Right No. 01-00214B

Priority Date: August 6, 1908

Diversion Rate: 544 cfs (May be reduced to 380 cfs when full diversion of water right No. 01-00214 is being made.)

Water Right No. 01-00211B

Priority Date: March 26, 1903

Diversion Rate: 1200 cfs (May be reduced to 655.88 cfs when full diversion of water right No. 01-00211 is being made.)

Storage Space:

Rights pursuant to spaceholder contracts in which BID is the equitable owner in the following:

31,892 acre-feet in Lake Walcott (Minidoka Dam)

155,395 acre-feet in American Falls Reservoir (American Falls Dam)

39,200 acre-feet in Palisades Reservoir (Palisades Dam)

5. Under the Director's *Amended Order* of May 2, 2005 and his *Fifth Supplemental Order Amending Replacement Water Requirements Final 2006 and Estimated 2007* dated May 23, 2007, the Director relied upon a finding by his predecessor Director that the minimum full supply required by BID would be that supply required in 1995.

6. To rely upon BID's minimum full supply of water determined by the year 1995 use, which was established as the result of a significant and unusual period of precipitation during the irrigation season, fails to recognize that the diversion authorized by the District's water rights establish the required amounts to provide, when needed, as the necessary supply of water to provide to landowners within the irrigation district for the growing of crops during the irrigation season. This affiant has observed and clearly understands that crop yields are severely diminished in any year in which a full supply of water is not available when needed to insure proper irrigation of the crops. As a result, the entire natural flow of water from the Snake River under the water rights of BID are historically diverted and beneficially used in the irrigation of crops of landowners included within the irrigation district, and shortages have been provided by storage water supplies that accrued and, in part, by those supplies that have been carried over from year to year, which storage supplies can and have been less than the supply needed to provide a full supply from time

to time.

7. When there is a shortage of water in the Snake River to fill the water rights for natural flow and storage held by or for the benefit of BID, landowners within the irrigation district are required to curtail diversions involuntarily, through the alteration of cropping patterns when the shortage is clearly identified prior to the commencement of the irrigation season, and by using less than a full supply to provide some but an inadequate amount of water to meet the needs of the crop being grown.

8. As established by the records of Water District 1 assimilated from water delivery measurements, BID had a total diversion in 1995 of 212,396 acre-feet, 158,234 acre-feet of which was natural flow and 54,162 acre-feet was from storage. In April and May of 1995, the total diversion in April and May was 32,924 acre-feet, all of which was natural flow. In 2001, BID diverted in April and May a total of 60,544 acre-feet of water, all of which was natural flow except 22,917 acre-feet of storage in May of 2001. In April and May of 2007, BID diverted 65,071 acre-feet for use by its landowners for the growing of crops. Of this water diverted, 17,111 acre-feet was stored water delivered in May, and the balance was water from natural flow. It is projected that BID will be required to divert a minimum of 280,000 acre-feet in 2007 for its landowners, being the comparable amount delivered by BID for irrigation in the years 2000 and 1990.

9. The storage rights to store water in Palisades Reservoir is the most junior storage right on the Snake River, and it is not uncommon for the space allocated to BID in Palisades Reservoir to receive no new storage water in years of low flows. This failure to accumulate new storage in Palisades Reservoir is exasperated and contributed in large part to the

need of many water users, including BID, to use storage water to make up for reduced natural flows to which they would otherwise be entitled in the absence of diversion by junior appropriators, thereby causing new storage to go to those reservoirs with the earlier priority and depriving any new storage water to reservoirs such as Palisades Reservoir.

10. Even in years of high carry-over, as occurred after the 2006 irrigation season, the storage space of BID in American Falls and Palisades Reservoirs has failed to fill. If that space had filled, BID would have 226,487 acre-feet of storage water allocated to it. Instead, its allocation for 2007 from the three reservoirs into which BID holds space has been allocated for a total of 213,265 acre-feet. Assuming that the projected requirements of landowners within BID for irrigation of their crops in 2007 is 280,000 acre-feet, BID will have only 21,681 acre-feet of carryover into the 2008 irrigation season, less evaporation. This will cause BID to use all of its Walcott and American Falls storage, and nearly 18,000 acre-feet of its Palisades storage. Unless 2008 is an exceptionally wet year, no new storage will accrue in Palisades, and even if replacement water was to be provided in mitigation for the groundwater diversions by junior appropriators affecting the flows of the Snake River in 2008, it would be inadequate unless it was sufficient to insure that no carryover in Palisades Reservoir is used until water shortages have been fully mitigated through aquifer management.

11. Although BID appears to have a sufficient water supply, through its storage, to delivery a full water supply to its landowners for irrigation in 2007, it is also likely that because of the high temperatures and low precipitation being experienced, diversion of water by junior appropriators in 2007 will have substantial impacts upon the natural flows and new storage in

future years, commencing in 2008. Without some assurance that the water diverted in 2007 by junior appropriators is fully mitigated, mitigation will be impossible in later years when there is no ready supply of water.

12. This affiant, from experience and knowledge, concurs with the finding of the Idaho State Legislature in Idaho Code § 42-273ag when it determined that: "Water in a well shall not be deemed available to fill a water right therein if withdrawal therefrom of the amount called for by such right would affect, contrary to the declared policy of this act, the present or future use of any prior surface or ground water right . . . , in the absence of a program which will increase recharge or decrease withdrawals to bring ground water withdrawals into balance with recharge." (emphasis added.)

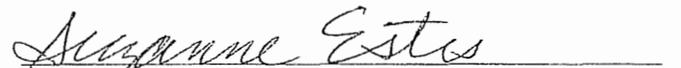
FURTHER THIS AFFIANT SAITH NAUGHT.


Randy Bingham

SUBSCRIBED AND SWORN to before me this 21st day of June, 2007.

(SEAL)




Notary Public, in and for the State of Idaho
Residing at: Boise
My Commission expires: June 1, 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2/5th day of June, 2007, I caused to be served true and correct copies of the foregoing AFFIDAVIT OF RANDY BINGHAM by the method indicated below, and addressed to each of the following:

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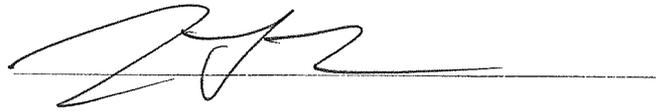
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A handwritten signature in black ink, appearing to be 'S. Klahn', is written over a horizontal line.