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ATTORNEYS FOR IDAHO GROUND WATER  
APPROPRIATORS

Filed pursuant to  
I.R.C.P. 5(e)(1)  
May 17, 2010 at  
4:35 p.m.  
Eric Waldman Dist. Judge

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ~~BANNOCK~~ <sup>Jerome</sup>  
~~BANNOCK~~

IDAHO GROUND WATER APPROPRIATORS,  
INC., MAGIC VALLEY GROUND WATER  
DISTRICT, and NORTH SNAKE GROUND  
WATER DISTRICT,

Plaintiffs,

Vs.

THE IDAHO DEPARTMENT OF WATER  
RESOURCES and GARY SPACKMAN, IN HIS  
OFFICIAL CAPACITY AS INTERIM  
DIRECTOR OF THE IDAHO DEPARTMENT  
OF WATER RESOURCES,

Defendants.

CASE NO. \_\_\_\_\_

AFFIDAVIT OF TIMOTHY P. DEEG

STATE OF IDAHO            )  
                                  ss:  
County of Bannock        )

The undersigned, Timothy P. Deeg, having been first duly sworn upon oath does hereby  
depose and state as follows:

1. I am the past Chairman and a Board Member of the Aberdeen-American Falls  
Ground Water District and the President of the Idaho Ground Water Appropriators, Inc.  
("IGWA") and Chairman of Water District 120. I am also a farmer and have been farming since

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1974. I am familiar with the operations within Aberdeen-American Falls Ground Water Districts and am familiar with the interests of the Ground Water District members and other members of IGWA. Attached hereto is an accurate list of the Ground Water District members that belong to IGWA including the number of members within each of the Districts as well as the number of irrigated acres within those Ground Water Districts.

2. I am also a member on the Eastern Snake Plain Aquifer Comprehensive Aquifer Management Plan Implementation Committee commonly referred to as the ESPA. I have been active in that committee for the past three years.

3. I am familiar with the *Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carry-Over* ("Methodology Order") and the *Order Regarding April 2010 Forecast Supply (Methodology Steps 3 and 4)* ("As-Applied Order") and am generally familiar with their contents.

4. I understand that the Director has ordered the junior groundwater users to provide him evidence that we have secured 84,300 acre-feet in storage water to mitigate for the predicted shortage to Twin Falls Canal Company and American Falls Reservoir District No. 2 for the upcoming 2010 irrigation season. This is in addition to the amount of water that we need to meet our obligations to Clear Springs which is roughly 27,000 acre-feet bringing the total amount of water IGWA needs to secure for 2010 to 110,000 acre-feet. This amount of water shocked the groundwater users and is nearly three times the amount of water that we were expecting we may have to lease in order to meet any orders for the 2010 irrigation season. Giving the late timing of this order and the great amount of water required, IGWA needs more time in order to avoid the irreparable harm that will occur if groundwater users are curtailed this year.

6. IGWA on behalf of the groundwater users is diligently pursuing obtaining water leases and options, although we disagree with the process and dispute the amount of water that we are being required to secure. However, many of the storage water right holders that we have leased water from in the past or who we have recently approached are not willing to commit to a certain amount until after the day of allocation by Water District 01. Day of allocation is when the storage space holders know whether or not their storage space has filled. As such, we will be unable to secure the required amount of water by the May 13<sup>th</sup> deadline. My understanding is if we do not come up with that amount of water that the Director will issue a curtailment order.

7. Curtailment orders against the junior groundwater users would be devastating for several reasons. First, the economic devastation to the groundwater user and the surrounding communities cannot be overstated. The farmers have already planted their crops, purchased their fertilizer, and have made substantial investments in their farms for the upcoming season. The economic devastation that would result from the curtailment of 73,782 acres on the Eastern Snake Plain would be catastrophic to the farmers and would result in impairing Plaintiffs' access to capital for continued business operations and possibly making it impossible to obtain operating lines of credit; foreclosing any further enrollment in certain federally and state funded agricultural programs, such as CREP; impairing the ability of certain municipalities to provide for the public welfare and safety of citizens; causing the death and destruction of livestock; forcing numerous industries and commercial businesses to cease production and close causing untold harm to the economy of the State of Idaho and to the southern region of the state in particular; resulting in the loss of already planted crops and a loss of the business investment and contracts; and causing grave economic loss to Plaintiffs' member ground water users; and leave the Ground Water Districts without the ability to collect assessments on curtailed acres

jeopardizing the Ground Water Districts' ability to perform mitigation in the future or other primary functions.

8. Second, the groundwater users have been actively involved in the CAMP process and are fully supportive of that process. However, curtailment of this magnitude would substantially hinder progress in that process because the curtailed groundwater acres would no longer be able to afford to pay assessments and I fear that there would be a loss of good will.

9. Third, the groundwater users have made significant progress on potential settlement in the Thousand Springs area. I fear that a wide-spread curtailment could thwart the progress being made to solve issues to the mutual satisfaction of both the junior and senior water users.

10. The harm of the curtailment order will be irreparable and must be avoided.

11. IGWA filed its Mitigation Plan for the Surface Water Coalition Delivery Call last November and a hearing on it has not yet been held, but is set for the end of May. At the very least, IGWA should have the opportunity to have its hearing before the Director issues any curtailment order.

12. I believe that IGWA can secure sufficient water once the day of allocation occurs and while I strongly disagree with the Director being able to force us to secure the 84,300 acre-feet of water in order to avoid curtailment, I believe we should be given a reasonable chance to do so before a curtailment order is issued.

13. The Ground Water Users are not unopposed to providing mitigation water, provided that (a) any order requiring mitigation water provides a reasonable timeframe which they can satisfy to obtain the mitigation water, (b) the amount of mitigation water is actually needed to raise crops and is based upon ground water pumping impacts upon any shortage. It is

the Ground Water Users understanding that this is not what the current Methodology Order provides.

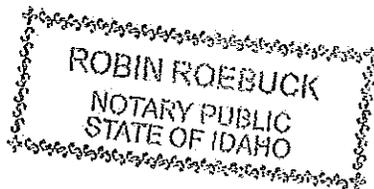
14. The Director had the opportunity since the summer of 2009 to develop a methodology for calculating material injury. Instead of properly utilizing that time period to carefully develop a methodology, the Director waited until a short four or five week period in the late spring of 2010 and threw together an overly simplistic methodology which fails to analyze ground water impacts and actual crops needs which comes up with an outrageously high mitigation requirement. This process has not been fair to the Ground Water Users and should be taken into consideration.

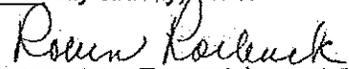
Further, your Affiant saith not.

DATED this 12<sup>th</sup> day of May, 2010.

  
TIMOTHY P. DEEG

Subscribed and sworn to before me, a Notary Public, this 12<sup>th</sup> day of May, 2010.



  
Notary Public for Idaho  
Residing at Bozeman  
My commission expires 8/18/2012

