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**RECEIVED**  
**MAR 05 2010**  
 DEPARTMENT OF  
 WATER RESOURCES

*Attorneys for North Side Canal Company and Twin Falls Canal Company*

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

IN THE MATTER OF	)	<b>AFFIDAVIT OF SHELLEY M.</b>
APPLICATION FOR PERMIT & LICENSE	)	<b>DAVIS IN SUPPORT OF CANAL</b>
NO. 01-07011	)	<b>COMPANIES' MEMORANDUM</b>
	)	<b>IN OPPOSITION TO IDAHO</b>
APPLICANT:	)	<b>WATER RESOURCE BOARD,</b>
Twin Falls Canal Company &	)	<b>UPPER SNAKE WATER USERS'</b>
North Side Canal Company	)	<b>AND GROUND WATER</b>
	)	<b>DISTRICTS' MOTIONS FOR</b>
_____	)	<b>SUMMARY JUDGMENT</b>

STATE OF IDAHO )  
 ) ss.  
 County of Ada )

SHELLEY M. DAVIS, being first duly sworn upon oath, deposes and says:

1. I am an attorney in the firm Barker Rosholt & Simpson LLP providing legal representation to the Participants North Side and Twin Falls Canal Companies (hereinafter "Canal Companies") in the above captioned matter. I am over the age of 18 and have knowledge of the documents and legal proceedings pertinent to this matter, and I make this affidavit based upon personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of a January 7, 1977 letter from Stephen Allred to John Rosholt.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Joint Statement of the Twin Falls and North Side Canal Companies on House Bill 459, dated February 4, 1984.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Application for Permit for water right no. 01-7011 including amendments, and attaching the letter approving application.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Complaint filed in Ada County Case No. 62237, dated October 21, 1977.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Memorandum Decision and Order issued in Ada County Case No. 62237, dated December 10, 1979.

7. Attached hereto as Exhibit 6 is a true and correct copy of the Idaho Supreme Court opinion in appeal no. 13794, dated November 19, 1982.

8. Attached hereto as Exhibit 7 is a true and correct copy of the May 3, 1982, letter from John Rosholt to Reed Hansen, Chairman of the Idaho Water Resource Board.

9. Attached hereto as Exhibit 8 is a true and correct copy of the July 6, 1982, memorandum from Phil Rassier to Norm Young and Wayne Haas regarding the Milner Project.

10. Attached hereto as Exhibit 9 is a true and correct copy of the November 18, 1987 letter from Director R. Keith Higginson to John Rosholt regarding Permit No. 01-7011 request for extension of time.

11. Attached hereto as Exhibit 10 is a true and correct copy of excerpted portions of the Federal Energy Regulatory Commission Application for Initial License: Project No. 2899-002, Milner Hydroelectric Project, dated July 1984.

12. Attached hereto as Exhibit 11 is a true and correct copy of the Idaho Department of Water Resources Motion to Intervene in the FERC licensing of Milner Hydroelectric Project dated September 23, 1985.

13. Attached hereto as Exhibit 12 is a true and correct copy the FERC Order Issuing License for Project No. 2899-003, dated December 15, 1988.

14. Attached hereto as Exhibit 13 is a true and correct copy of the Beneficial Use Field Report submitted for the Milner Hydroelectric Project, dated October 29, 1993.

15. Attached hereto as Exhibit 14 is a true and correct copy of the Swan Falls Agreement executed October 25, 1984.

16. Attached hereto as Exhibit 15 is a true and correct copy of the July 27, 2006 letter to Senator Charles Coiner from Director of the Idaho Department of Water Resources Karl Dreher.

17. Attached hereto as Exhibit 16 is a true and correct copy of the text of House Bill 800 introduced in the Idaho Legislature 2006 session.

18. Attached hereto as Exhibit 17 is a true and correct copy of the text of Senate Bill 1185 introduced in the Idaho Legislature 2009 session.

19. Attached hereto as Exhibit 18 is a true and correct copy of the April 11, 2006, agreement between the State of Idaho and Idaho Power Company regarding Idaho Power Company's subordination to recharge permit nos. 01-7054 and 37-7842.

20. Attached hereto as Exhibit 19 is a true and correct copy of the Idaho Department of Water Resources and Water Supply Bank records for recharge permit nos. 01-7054 and 37-7842.

21. Attached hereto as Exhibit 20 is a true and correct copy of the Notice of Intent to Issue License for water right no. 01-7011 dated September 5, 2007.

22. Attached hereto as Exhibit 21 is a true and correct copy of the January 9, 2007, letter from Bingham Ground Water Users, the February 5, 2007, letter from Randy Budge, and the April 13, 2007, letter from Rob Harris, all to the Idaho Department of Water Resources regarding Milner water right permit no. 01-7011.

23. Attached hereto as Exhibit 22 is a true and correct copy of *North Side Canal Company and Twin Falls Canal Company v. Tuthill* Petition for Preemptory Write of Mandate, Fifth Judicial District Court, in and for the State of Idaho, case no. 2007-1093.

24. Attached hereto as Exhibit 23 is a true and correct copy of the Final Order of the Director of the Idaho Department Resources Issuing Water Right License No. 01-7011 and license.

25. Attached hereto as Exhibit 24 is a true and correct copy of North Side and Twin Falls Canal Company's Protest and Petition for Hearing for water right no. 01-7011.

26. Attached hereto as Exhibit 25 is a true and correct copy of plans for the Milner Hydroelectric Facility depicting the point of diversion above Milner Dam, and drawings depicting the places of use for irrigation water rights for Twin Falls and North Side Canal Companies.

27. Attached hereto as Exhibit 26 is a true and correct copy of the Petitions to Intervene of Idaho Water Resource Board, the Upper Snake Water Users, and the Ground Water Districts, as well as the Amended Petition to Intervene of the Idaho Water Resource Board.

28. Attached hereto as Exhibit 27 is a true and correct copy of the June 23, 2007, Memorandum of Director Karl Dreher to Senator Laird Noh and Representative Dell Raybould.

29. Attached hereto as Exhibit 28 is a true and correct copy of excerpts of the 1992 Idaho State Water Plan.

30. Attached hereto as Exhibit 29 is a true and correct copy of excerpts of the 1986 Idaho State Water Plan.

31. Attached hereto as Exhibit 30 is a true and correct copy of excerpts of the 1996 Idaho State Water Plan.

32. Attached hereto as Exhibit 31 is a true and correct copy of the 2009 Draft Resolutions of Water District 1.

33. Attached hereto as Exhibit 32 is a true and correct copy of examples of the Partial Decrees submitted to the Snake River Basin Adjudication Court pursuant to the Swan Falls Reaffirmation Agreement.

34. Attached hereto as Exhibit 33 is a true and correct copy of the State of Idaho's Motion for Summary Judgment in SRBA sub-case no. 02-200, *et seq.*

35. Attached hereto as Exhibit 34 is a true and correct copy of the April 9, 1987, memorandum from L. Glenn Saxton to File for water right no. 01-7011.

36. Attached hereto as Exhibit 35 is a true and correct copy of the April 13, 1987, letter from L. Glenn Saxton to John Rosholt.

37. Attached hereto as Exhibit 36 is a true and correct copy of the May 8, 1987, letter from John Rosholt to L. Glenn Saxton.

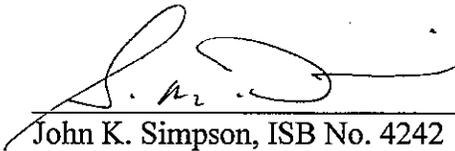
38. Attached hereto as Exhibit 37 is a true and correct copy of September 1, 1985, letter from L. Glenn Saxton to the Canal Companies.

39. Attached hereto as Exhibit 38 is a true and correct copy of the Memorandum Decision and Order of the Fifth Judicial District Court in and for the State of Idaho in *Riley v. Rowan*, case no. 94-00012, dated August 28, 1997.

40. Attached hereto as Exhibit 39 is a true and correct copy of the Memorandum Decision and Order on Appeal in the Third Judicial District Court in and for the State of Idaho in *Idaho Power Co. v. Idaho Department of Water Resources*, case no. CV 09-1883, dated January 13, 2010.

Dated this 5<sup>th</sup> day of March, 2010.

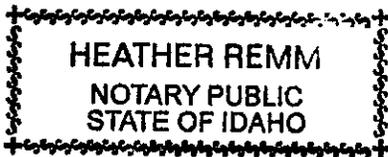
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Attorneys for North Side Canal Company and Twin Falls Canal Company

SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of November, 2009.



Notary Public for Idaho  
Residing at: Boise  
Commission Expires: 12/11/2015

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5<sup>th</sup> day of March, 2010, I served a true and correct copy of the foregoing **AFFIDAVIT OF SHELLEY M. DAVIS IN SUPPORT OF CANAL COMPANIES' MEMORANDUM IN OPPOSITION TO IDAHO WATER RESOURCE BOARD, UPPER SNAKE WATER USERS' AND GROUND WATER DISTRICTS' MOTIONS FOR SUMMARY JUDGMENT** upon the following persons via the method indication below:

Interim Dir., Gary Spackman  
Idaho Department of Water Resources  
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Shelley M. Davis