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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR ADAMS COUNTY

COLUMBIA SNAKE RIVER IRRIGATORS  
ASSOCIATION,  
  
Plaintiff,  
  
v.  
  
EAST COLUMBIA BASIN IRRIGATION  
DISTRICT,  
  
Defendant.

Case No. 15-2-00176-4

DECLARATION OF DARRYLL OLSEN,  
Ph. D. IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT  
  
(G17 Affidavit attached)

Darryll Olsen, Ph.D declares:

1. I am the Board Representative/Principal Consultant for the Columbia-Snake River Irrigators Association ("CSRIA"), and make this Declaration in support of Plaintiff's Motion for Summary Judgment to supplement the factual material I have previously verified in the Verified Complaint. My qualifications are set forth in that verification.

2. Attached as Exhibits 1 through 15 are true copies of excerpts of the deposition transcript of the General Manager of the East Columba Basin Irrigation District, Mr. Craig Simpson, taken on November 23, 2015, and certain exhibits utilized at that deposition:

<u>Exhibit</u>	<u>Description</u>
1	Excerpts from Deposition of Craig Simpson, Nov. 23, 2015;

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- 2 Simpson Deposition Exhibit 21: Message from Lorri Lee, Bureau of Reclamation to Craig Simpson, East Columbia Basin Irrigation District, dated October 27, 2014;
- 3 Simpson Deposition Exhibit 23: Correspondence from Craig Simpson, East Columbia Basin Irrigation District to Lorri Lee, Bureau of Reclamation, dated October 17, 2014;
- 4 Excerpts of Simpson Deposition Exhibit 24: Minutes of the Continued Regular Meeting of the Board of Directors of the East Columbia Basin Irrigation District, dated November 21, 2014;
- 5 Simpson Deposition Exhibit 25: East Columbia Basin Irrigation District Resolution 2014-14 Establishing a Policy for the Allocation and Delivery of First Phase Continuation/Ground Water Replacement Water Service Contracts, dated October 24, 2014;
- 6 Simpson Deposition Exhibit 27: Memorandum from Susan Musselman and Thomas Toepfer, Public Financial Management, Inc., to Levi Johnson, East Columbia Basin Irrigation District, dated September 29, 2014;
- 7 Simpson Deposition Exhibit 28: East Columbia Basin Irrigation District, Preliminary Debt Service Estimates and Revenue Requirements, Tax-Exempt Financing Scenarios;
- 8 Simpson Deposition Exhibit 29: East Columbia Basin Irrigation District Odessa Groundwater Replacement Program (OGWRP) Preliminary Delivery System Cost Estimates (Post Land Owner Meeting);
- 9 Simpson Deposition Exhibit 30-A: Memo from Levi Johnson to ECBID Board of Directors, dated September 11, 2015, Re: Development Fee;
- 10 Excerpts of Simpson Deposition Exhibit 44: Minutes of the Regular Meeting of the Board of Directors of the East Columbia Basin Irrigation District, Dated April 1, 2015;
- 11 Simpson Deposition Exhibit 45: Columbia Basin Project, Washington Interruptible Water Service Contract (Conservation Water);
- 12 Simpson Deposition Exhibit 46: East Columbia Basin Irrigation District Columbia Basin Project, Washington Interruptible Water Service Contract (Lake Roosevelt Incremental Storage Releases Water);
- 13 Simpson Deposition Exhibit 47: East Columbia Basin Irrigation District Columbia Basin Project, Washington Interruptible First Phase Continuation Water

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Service Contract for: Series 190, First Phase Continuation Acres; Series 390, First Phase Continuation Acres - Groundwater Replacement;

- 13A Simpson Deposition Exhibit 49: District Proposed Annual Assessment
- 14 Simpson Deposition Exhibit 52: Map - East Columbia Basin Irrigation District Odessa Groundwater Replacement Program (OGWRP), Preliminary Delivery System Alignments (11/12/15); and
- 15 Simpson Deposition Exhibit 55: Revised Cost Structure East Columbia Basin Irrigation District Columbia Basin Project Groundwater Replacement Water Service Contracts Annual Assessment Systems N/S 1-90 Capital Costs Paid by Private Sector Financing.

3. The CSRIA represents System 1-North-I-90 system participants, one of six (or seven) new water delivery systems envisioned off of East Low Canal (*see* Exhibit 14 Map).

4. It is clear that RCW Chapter 87.03 requires the District to consider whether its assessments are “proportional to benefits accruing to the lands assessed,” and that the Washington courts have identified incremental changes in land value resulting from irrigation district improvements as the sort of benefits to which the statutory scheme refers.

5. In most basic terms, the statute should guide irrigation districts to recognize assessment costs that are “common” to all water delivery systems, versus separate costs that accrue to the water delivery (benefits) of separate systems. Even more plainly stated, irrigators should pay the actual costs associated with their specific water delivery hardware.

6. This cost allocation/assessment principle further is affirmed in how large private sector irrigation systems distribute costs, where multiple parties share a pump station, mainline, and some piping systems—such as System 1-North-I-90 designed by CSRIA for the private sector irrigators. This separation of costs is an absolute requirement of lenders: you only pay for the costs that can be assigned to benefit your system, including marginal, or incremental, costs.

1           7.       Based upon the testimony of Mr. Simpson, and the books and records of the  
2 District which I have reviewed, the District has never attempted to determine whether the  
3 Development Fee will operate in a fashion “proportional to benefits accruing to the lands  
4 assessed.” The District has never attempted to determine whether the benefits of distribution  
5 system development will be proportion to costs incurred, as between properties located within  
6 different systems, or properties within any particular system.

7           8.       At all relevant times, CSRIA’s proposed System One, North I-90 project involves  
8 the farmers directly assuming construction costs; yet the District has attempted to impose upon  
9 them a Development Fee that would be used to largely pay the costs of other distribution systems  
10 not providing any empirical or financial benefits to System 1.

11           9.       The lack of careful scrutiny to an assessment of lawful costs to the irrigators is  
12 mirrored further in the District’s hit-and-miss approach to financing. The District staff initially  
13 conveyed to the landowners that it intended to finance the multiple system projects via revenue  
14 bonds under local improvement districts (LIDs)—the District would issue LID bonds, but would  
15 not be directly responsible for any LID default payments. But as Mr. Simpson’s deposition  
16 reveals, their revenue bond counsel flatly rejected this scheme for unsecured bonding, and would  
17 not attempt to issue bonds simple based on land values (and assessments) after the completion of  
18 some or all projects. Revenue bonding requires the full faith and financial obligation of the  
19 District to even approach the Bond market. In direct terms, Bond council has told the District  
20 that it cannot issue what amount to “junk bonds.”

21           10.       At the time that CSRIA presented its System One water service contract (WSC)  
22 request to the District in mid-2014, CSRIA representatives told the District’s General Manager  
23 and Board that their unsecured bonding scheme would fail. CSRIA requested that the District  
24

1 instead entered into water service contracts with the CSRIA Participants and allow them to  
2 proceed with System One construction.

3 11. In general, the farmers have continued, since the time of the Verified Complaint  
4 (as described in its paragraph 24), to refuse to agree to the District's proposals, not just in System  
5 One, but in other proposed systems CSRIA has identified as Systems Two and Four. Indeed, on  
6 October 1, 2015, a majority of participants in the District's proposed EL47.5 system rejected the  
7 District's proposals as financially infeasible. (A true copy of their letter is attached hereto as  
8 Exhibit 16.)

9 12. A few irrigators, typically those adjacent to canals have executed contracts with  
10 the District for Odessa replacement water. Attached as Exhibits 17 and 18 are two contracts  
11 executed by The Little Jug Ranch, LLC for such water, which provide, in § 6(f), for the  
12 imposition of various charges as assessments. Attached as Exhibit 19 is a copy of the District's  
13 invoice showing the \$29,196 Development Fee charge.

14 13. Not surprisingly, some landowners who agreed to or reviewed these water service  
15 contracts have contacted CSRIA and asked for an explanation of the Development Fee as the  
16 District has not adequately explained it. We have explained how and why the charge is illegal.

17 14. In general, the District's financial scheme remains a moving target, with the  
18 source of financing yet to be determined, if even available. The District has most recently sought  
19 direct payments from the farmers for capital costs on the order of \$2,500/acre. These  
20 circumstances further mean that separate systems will not be built collectively, but in some  
21 future sequence, even if the District develops the systems. Consequently, multiple system costs  
22 and benefits will not be the same over time. The District's Development Fee ignores this  
23 circumstance.

1           15.     I am familiar with the documentation prepared pursuant to the National  
2 Environmental Policy Act (NEPA) called the Odessa Subarea Special Study. It attempted to  
3 demonstrate, among other things, that it would yield a positive benefit-cost (B/C) ratio toward  
4 replacing the failing Odessa groundwater supplies. The economic analysis in that study  
5 addressed changes to net social welfare; it was not a financial analysis pertinent to land owners  
6 ability to borrow funds to pay for the systems' costs. This analysis has no bearing on the  
7 District's cost allocation structure necessary for implementation of the Washington statutory  
8 scheme. Nor is there any evidence that the District ever attempted to review such information to  
9 ensure proportionality of project costs and benefits. In fact, one of the great criticisms voiced by  
10 opponents of Western water projects is that cost allocations actually levied against individual  
11 land owners may have no relevance whatsoever when compared to project B/C ratios—a real  
12 time example would be concerns surrounding the implementation of the Yakima Basin  
13 Integrated Plan.

14           16.     The District has already completed improvements to the East Low Canal that  
15 were necessary predicates before Odessa groundwater replacement water could be delivered in  
16 the vicinity of System One, North I-90. These improvements were completed with funding from  
17 the Washington State Department of Ecology. Strictly speaking, the District may not assess the  
18 Participants in System One, North I-90 to recover costs that were not actually incurred by the  
19 District. Nevertheless, CSRIA has offered, on behalf of the Participants in System One, North I-  
20 90, to pay a smaller development fee that treats all remaining East Low Canal improvements in  
21 common with other distribution systems, estimated to cost on the order of \$20-25 million  
22 (Exhibit 15 above, to be compared with Exhibit 13A above).

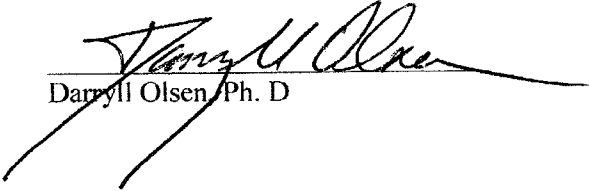
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17. The District's \$120/acre/year development fee not only lacks a legal foundation, but also stands as a senseless obstacle to the development of lateral distribution systems by Odessa subarea irrigators who urgently need replacement surface water. Only a decree by the Court can remove this obstacle and help restore progress toward solving the water problems of the Odessa subarea.

Dated: December 14, 2015.

  
Darryll Olsen, Ph. D

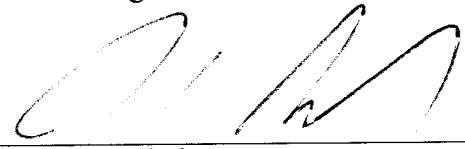
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**G17 AFFIDAVIT**

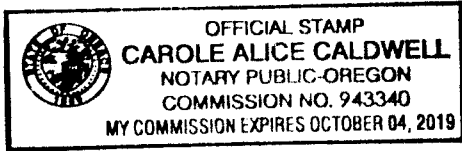
STATE OF OREGON            )  
  ) ss.  
County of Multnomah        )


I, James L. Buchal of Murphy & Buchal LLP declare and state the following:

I have examined the Declaration of Darryll Olsen, Ph. D. in Support of Plaintiffs' Motion for Summary Judgment transmitted to me to be filed in Adams County Superior Court, Case No. 15-2-00176-4. The document consists of 258 pages including its exhibits, this page and the certificate of service. The Declaration is complete and legible.

  
\_\_\_\_\_  
James L. Buchal

SUBSCRIBED AND SWORN TO before me this 15<sup>th</sup> day of December, 2015.



  
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NOTARY PUBLIC FOR OREGON  
My Commission expires 12/04/2019



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CERTIFICATE OF SERVICE

I, Carole A. Caldwell, hereby declare under penalty of perjury under the laws of the State of Washington that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I am an employee of Murphy & Buchal, LLP and my business address is 3425 SE Yamhill Street, Suite 100, Portland, Oregon 97214.

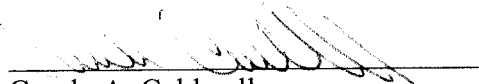
On December 15, 2015, I caused the following document to be served:

DECLARATION OF DARRYLL OLSEN, Ph. D. IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

on the parties listed below in the following manner:

- ( ) (BY FEDERAL EXPRESS)
- (X) (BY FIRST CLASS US MAIL)
- ( ) (BY FAX)
- (X) (BY E-MAIL)

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Carole A. Caldwell