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FACSIMILE TRANSMITTAL SHEET

TO:

SRBA ATTN: DIANA
IDWR
CRAIG HOBDEY
JAMES SPECK
ALBERT BARKER
SCOTT CAMPBELL

FROM**FRITZ X. HAEMMERLE****COMPANY:****DATE:****JULY 25, 2008****Fax number:****TOTAL NO. OF PAGES**
INCLUDING COVER:**208-736-2121****208-287-6700****208-934-4429****208-725-0076****208-344-6034****208-734-7508****PHONE NUMBER:****SENDER'S REFERENCE:****37-7767**

Affidavit of FXH in Opposition to Motion to Amend Objections

WARNING
THIS DOCUMENT IS A PRIVILEGED COMMUNICATION
INTENDED SOLELY FOR THE BENEFIT OF THE
ADDRESSEE.

FRITZ X. HAEMMERLE
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ISB # 3862

Attorney for the Claimants

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

) **Subcase No. 37-7767**

)

) **AFFIDAVIT OF FRITZ X. HAEMMERLE**
) **IN OPPOSITION TO MOTION TO**
) **AMEND OBJECTIONS**

)

)

)

)

STATE OF IDAHO,)

) ss.

County of Blaine.)

Fritz X. Haemmerle, being sworn upon oath, deposes and states as follows:

1. I am an attorney duly licensed to practice law in the State of Idaho. I represent the aforementioned Claimant, Flying Heart Ranch Owners Association, Inc., in the aforementioned case. I make the averments contained herein of my own personal knowledge and would testify to the facts as presented herein if called upon to do so.

2. In my client's prior Objection to Motion to Amend Objections, it was asserted that the Objectors had failed to state a claim upon which relief may be granted. In this case, it should be noted that the Director's Report finds that right number 37-7767,

**AFFIDAVIT OF FRITZ X. HAEMMERLE IN SUPPORT
 OF OBJECTION TO MOTION AMEND OBJECTIONS - 1**

to the Flying Heart Ranch Owner's Association ("FHROA"), is based on a license. See, Exhibit 1. The permit was issued in 1979. The license was issued in 1993. See, Exhibit 2 (Documents obtained from IDWR's Back File on Water Right 37-7767). As stated in the *Claimant's and Respondents' Supplemental Opposite to Objector's Motion to Amend Objection*, filed by James P. Speck, for his clients Elise Lufkin *et al*, parties may not collaterally attack licenses in the Snake River Basin Adjudication ("SRBA"). Those arguments are incorporated herein by reference. These arguments are relevant to Subcase 37-7767.

3. The only possible attack on a license could be that the license was forfeited or abandoned. Since there are no such allegations with respect to 37-7767, the current Amended Objection cannot be granted. Furthermore, since the license for 37-7767 was issued in 1993, and the forfeiture statute has been abated during the pendency of the SRBA commenced in 1987, there can be no forfeiture claim with respect to 37-7767 as a matter of law.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 25th day of August 2008.

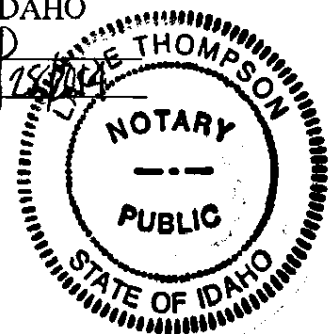

FRITZ X. HAEMMERLE

SUBSCRIBED AND SWORN to before me this 25th day of August 2008.


NOTARY PUBLIC FOR IDAHO

Residing at: Hailey, ID

Commission expires: 1/25/2012



CERTIFICATE OF MAILING

I certify that on August 25, 2008, I faxed and mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

By FAX Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:
Elise Lufkin, served c/o counsel below
Sinclair Oil, d.b.a. Sun Valley Company

3. Copies to:

By FAX IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

By FAX Albert P. Barker
BARKER ROSHOLT & SIMPSON LLP
P.O. Box 2139
Boise, ID 83701-2139

By FAX Craig Hobdey
Hobdey & Hobdey
P.O. Box 176
Gooding, ID 83330

By FAX Scott L. Campell
Moffatt Thomas Barret Rock & Fields
P.O. Box 829
Boise, ID 83701

By FAX James P. Speck
SPECK & AANESTAD, PA
P.O. Box 987
Ketchum, ID 83340

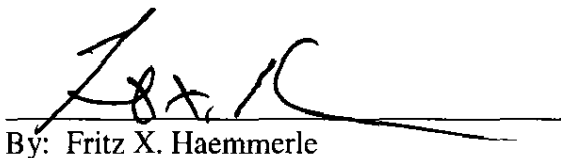

By: Fritz X. Haemmerle

EXHIBIT 1

SRBA

DIRECTORS REPORT 37-07767

Return to SRBA Home Page

IWT072

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 37-07767

Name and Address: FLYING HEART RANCH II SUBDIVIS
PO BOX 2163
HAILEY, ID 83333

Source: SPRINGS Tributary: BIG WOOD RIVER

Quantity: 10.00 CFS
18.00 AFY

Priority Date: 02-27-1979

Diversion Point: T02N R18E S05 SWNE Within Blaine County
NWSENE

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	Fish Propagation	01-01 TO 12-31	10.00 CFS
	Recreation	01-01 TO 12-31	10.00 CFS
	Aesthetic Storage	01-01 TO 12-31	18.00 AFY

Place of Use:	Fish Propagation	Within Blaine County
	T02N R18E S05	NENE NWNE SENE

Aesthetic Storage	Within Blaine County
	T02N R18E S05 NENE NWNE SENE

Recreation
Same as Other Use

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - License

Use of water under this water right will be regulated by the watermaster of State Water District No. 37.
Measuring devices of a type approved by this Department shall be maintained at the point of diversion and point of effluent discharge.
This right does not grant any right-of-way or easement across the land of another.

EXHIBIT 2

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 37-07767

Priority: February 27, 1979

Maximum Diversion Rate:

10.00 CFS

This is to certify, that FLYING HEART RANCH II

C/O BRIAN BALLARD

PO BOX 297

KETCHUM ID 83340

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 27, 1979; and has submitted Proof of Beneficial Use on March 22, 1984. An examination indicates that the works have a diversion capacity of 10.000 cfs of water from:

SPRINGS

tributary to **BIG WOOD RIVER**

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
RECREATION	01/01 to 12/31	10.00 CFS	

LOCATION OF POINT(S) OF DIVERSION:

SWSE , Sec. 32, Township 03N, Range 18E
BLAINE County

PLACE OF USE: RECREATION

TWN RGE SEC

02N 18E 5 Lot 1(NENE) Lot 2(NWNE) SENE

CONDITIONS/REMARKS:

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. Use of water under this water right will be regulated by the watermaster of State Water District No. 37.
5. Use of water under this right shall be non-consumptive.
6. The Director retains jurisdiction over this license to determine whether the use of water is consumptive, and to require measuring devices or testing by the water right holder to determine consumption. If water is being consumed, the Director also retains jurisdiction to require mitigation, or to regulate the right in its priority with other water rights of the Big Wood River.
7. Water discharged into a natural channel must satisfy Idaho water quality standards.
8. Recreation use is for fishing.

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APR 12 1993

PAGE 2

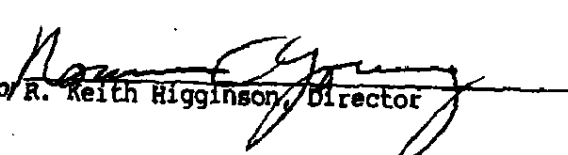
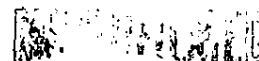
State of Idaho
Department of Water Resources**WATER RIGHT LICENSE**

WATER RIGHT NO. 37-07767

CONDITIONS/REMARKS:

9. Facility Volume = 820,000 cubic feet.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 30th
day of MARCH, 1993.

Acting for  Director

APR 12 1993