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Attorneys for Claimants David Wayne Baker and Melodie L. Baker

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	)	Subcase Nos. 72-16782 and 72-16783
	)	
	)	
Case 38576	)	AFFIDAVIT OF LARRY WEEKS IN SUPPORT OF
	)	MOTION TO FILE LATE NOTICES OF CLAIMS
_____	)	
STATE OF IDAHO	)	
	) ss	
COUNTY OF LEMHI	)	

LARRY WEEKS, being first duly sworn upon his oath, deposes and says that:

1. My name is Larry Weeks. I am an Easement Specialist with the Idaho Department of Fish and Game (IDFG), Salmon Region, 99 Highway 93 North, P.O. Box 1336, Salmon, Idaho 83467. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.

2. My work for IDFG includes coordinating projects for the installation of fish screens at diversions on streams within IDFG's Salmon Region, including diversions owned and operated by Wayne Baker from the East Fork of the Salmon River. In this capacity, my responsibilities have included: measuring East Fork diversions to size fish screens; negotiating

COPY

“Optimum Maximum Diversion Flow Agreements” between IDFG and Wayne Baker and others for the diversions to be screened; negotiating easements for IDFG access, operation, and maintenance of fish screens; participating in project design; developing contracts for the installation of fish screens and related structures, and overseeing construction, maintenance and maintenance. After construction, IDFG screen tenders check the screens on the East Fork every other day during the irrigation season for maintenance purposes.

3. Attached hereto as **Exhibit A** are the Optimum Maximum Diversion Flow Agreements (“Flow Agreements”) between IDFG and Wayne Baker. Some of the Flow Agreements are with Wayne Baker and other East Fork landowners who divert water from the same diversions. I negotiated and prepared each of these agreements.

4. The attached Flow Agreements pertain to diversions from the East Fork of the Salmon River. East Fork diversions are identified with the letters “SEF” and a number, such as “SEF 3.” The identification of the diversion that is the subject of the Flow Agreement is included in the first paragraph of the agreement.

5. As stated in the first paragraph of each Flow Agreement in Exhibit A, the purpose of each agreement “is to quantify the optimum maximum flow to be screened for fish protection by [IDFG].” The second page of each Flow Agreement references the measured rate of flow of the diversion prior to installation of the fish screen and related structures.

6. I was either present during or took measurements of each of the diversions referenced in the Flow Agreements in Exhibit A. Measurements were taken before fish screens were installed between the existing headgate and the proposed screen location. The measurement in each Flow Agreement was taken either a few days prior to or on the same day

the agreement was signed by the landowner.

7. The earliest measurements were taken by Bob Foster, an employee of the Idaho Department of Water Resources. Mr. Foster trained me to take measurements. Later measurements were taken either by myself or Quadrant Consulting. Most or all of the measurements were taken with a Marsh-McBirney Flo-Mate, which takes an electronic reading of water flow. Measurements were taken through a cross section of each ditch at six (6) inch increments, with ditch depths noted at each measurement. Attached hereto as **Exhibit B** is the "Ditch Flow Computation Table" for a measurement of Wayne Baker's SEF-13 diversion exemplifying how we took the measurements and calculated ditch flows.

8. I am confident that the flow rate in each Flow Agreement is accurate as of the time it was taken. However, as stated in each Flow Agreement, the measurement may not represent the maximum flow rate diverted by the landowner, and the Flow Agreement is not intended as to limit the landowner's water right(s).

Further your affiant sayeth naught.

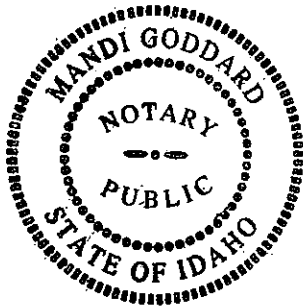
Dated this 30 day of Sept, 2008.


Larry Weeks

STATE OF IDAHO)
)ss.
County of Lemhi)

On this 30th day of September, 2008, before me, the undersigned, a notary public in and for said state, personally appeared LARRY WEEKS, known to me to be the individual that executed the foregoing affidavit, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Mandi Goddard
Notary Public for Idaho
Residing at Salmon Idaho
My Commission Expires: Oct 30 2013

EXHIBIT A

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

20.75 C+2

Between: Idaho Fish and Game and Gary Ingram Wayne Baker
owner(s) Salmon East Fork diversion SEP 03

Purpose: This agreement is to quantify the optimum maximum flow to be screened for fish protection by the Idaho Department of Fish and Game, and

Whereas: Maximum flows vary in level from year to year, and

Whereas: Maximum flows vary in time of year and in length of time from year to year, and

Whereas: Measured flows by the Idaho Department of Water Resources and the Idaho Fish and Game are only one point in time measurements, and

Whereas: These measurements give only an approximation and not a definitive value for maximum flows, and

Whereas: Idaho Fish and Game is required to meet current design criteria established by National Marine Fisheries Service of 0.4 of a foot per second maximum approach velocity of water through the screen, and

Whereas: When the approximate maximum flow is exceeded, the 0.4 foot per second criteria is not met, and

Whereas: Idaho Department of Fish and Game is trying to bring all screening structures into NMFS criteria, and

Whereas: Costs of the fish screen structure rise in proportion to the water diverted, especially on small diversions, and

Whereas: Cost of building a screen to meet only a short period of maximum flow is a waste of tax payer dollars, and

Whereas: Screens which are built to meet maximum flows that are available only during a short period of time or only during occasional years, do not operate efficiently at or near decreed flow levels, and

Whereas: This agreement is not for the purpose of limiting or infringing on irrigator's water rights or the right to divert flows, and

Exhibit A

Whereas: This agreement is in the best interest for both Idaho Department of Fish and Game and the irrigators to agree on a maximum flow for the above diversion, and

Whereas: If there is no such agreement, Idaho Department of Fish and Game will design and build the fish screen to meet the approximated maximum flow, which may or may not be the correct optimum flow. It is

Therefore: Agreed that the maximum diverted flow for the above diversion will not exceed 20.75 CFS (1037.5 Idaho's Miners Inches)

Gary Power
Idaho Department of Fish and
Gary Power, Region 7 Supervisor

Gary Ingram
Diversion Owner\User

6-6-95
Date

Date: 6/14/95

Diversion Owner\User

Date

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

Between: Idaho Department of Fish and Game and Wayne Baker owner/users) of Salmon East Fork River diversion 10.

Purpose: This agreement is to quantify the optimum maximum flow to be screened for fish protection by the Idaho Department of Fish and Game, and

Whereas: Irrigators have the right to divert flows above their decreed right during maximum flows from the East Fork of the Salmon River, and

Whereas: Maximum flows vary in time of year and in length of time from year to year, and

Whereas: Maximum flows vary in level from year to year, and

Whereas: Measured flows by the Idaho Department of Water Resources (IDWR) and Idaho Department of Fish and Game are only one point in time measurements, and

Whereas: These measurements give only an approximation and not a definitive value for maximum flows, and

Whereas: In the past, the Idaho Department of Fish and Game has designed screening facilities for approximated maximum flows based on their or IDWR flow measurements, and

Whereas: In some cases, measured maximum flows following construction of new fish screens have exceeded design flows, and

Whereas: Idaho Department of Fish and Game is required to meet current design criteria established by National Marine Fisheries Service of 0.4 of a foot per second maximum approach velocity of water through the screen, and

Whereas: Idaho Department of Fish and Game is trying to bring all screening structures into NMFS criteria, and

Flow Agreement
Cont.

Whereas: Costs of the fish screen structure rise in proportion to the water diverted, especially on small diversions, and

Whereas: Cost of building a screen to meet only a short period of maximum flow is a waste of tax payer dollars, and

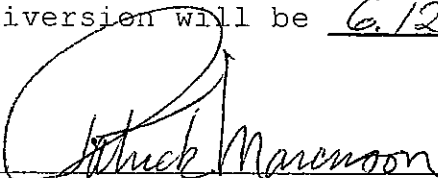
Whereas: Screens which are built to meet maximum flows that are available only during a short period of time or only during occasional years, do not operate efficiently at or near decreed flow levels, and

Whereas: This agreement is not for the purpose of limiting or infringing on irrigator's water rights or the right to divert flows above decreed rights, and

Whereas: This agreement is in the best interest for both Idaho Department of Fish and Game and the irrigators to agree on a maximum flow for the above diversion, and

Whereas: If there is no such agreement, Idaho Department of Fish and Game will design and build the fish screen to meet the approximated maximum measured flow, which may or may not be the correct optimum flow. It is

Therefore: Agreed that the optimum diverted flow for the above diversion will be 6.12 CFS (306 Idaho's Miners Inches)


Idaho Department of Fish and Game
Pat Marcuson Program Coordinator

1/18/01
Date

Wayne Baffer
Water User

1-17-01
Date

Water User

Date

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

Between: Idaho Department of Fish and Game and Wayne Baker owner/users) of Salmon East Fork River diversion 11.

Purpose: This agreement is to quantify the optimum maximum flow to be screened for fish protection by the Idaho Department of Fish and Game, and

Whereas: Irrigators have the right to divert flows above their decreed right during maximum flows from the East Fork of the Salmon River, and

Whereas: Maximum flows vary in time of year and in length of time from year to year, and

Whereas: Maximum flows vary in level from year to year, and

Whereas: Measured flows by the Idaho Department of Water Resources (IDWR) and Idaho Department of Fish and Game are only one point in time measurements, and

Whereas: These measurements give only an approximation and not a definitive value for maximum flows, and

Whereas: In the past, the Idaho Department of Fish and Game has designed screening facilities for approximated maximum flows based on their or IDWR flow measurements, and

Whereas: In some cases, measured maximum flows following construction of new fish screens have exceeded design flows, and

Whereas: Idaho Department of Fish and Game is required to meet current design criteria established by National Marine Fisheries Service of 0.4 of a foot per second maximum approach velocity of water through the screen, and

Whereas: Idaho Department of Fish and Game is trying to bring all screening structures into NMFS criteria, and

Flow Agreement
Cont.

Whereas: Costs of the fish screen structure rise in proportion to the water diverted, especially on small diversions, and

Whereas: Cost of building a screen to meet only a short period of maximum flow is a waste of tax payer dollars, and

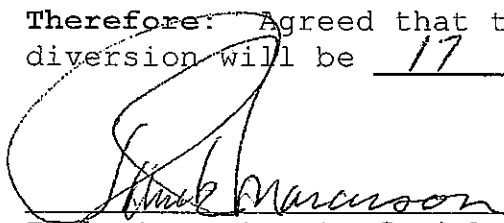
Whereas: Screens which are built to meet maximum flows that are available only during a short period of time or only during occasional years, do not operate efficiently at or near decreed flow levels, and

Whereas: This agreement is not for the purpose of limiting or infringing on irrigator's water rights or the right to divert flows above decreed rights, and

Whereas: This agreement is in the best interest for both Idaho Department of Fish and Game and the irrigators to agree on a maximum flow for the above diversion, and

Whereas: If there is no such agreement, Idaho Department of Fish and Game will design and build the fish screen to meet the approximated maximum measured flow, which may or may not be the correct optimum flow. It is

Therefore: Agreed that the optimum diverted flow for the above diversion will be 17 CFS (850 Idaho's Miners Inches)


Idaho Department of Fish and Game
Pat Marcuson Program Coordinator

1/18/01
Date

Wayne Baker
Water User

1-17-01
Date

Water User

Date

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

Between: Idaho Fish and Game and Wayne Baker
owner(s) Salmon East Fork diversion SEF 1/2.

Purpose: This agreement is to quantify the optimum maximum flow to be screened for fish protection by the Idaho Department of Fish and Game, and

Whereas: Maximum flows vary in level from year to year, and

Whereas: Maximum flows vary in time of year and in length of time from year to year, and

Whereas: Measured flows by the Idaho Department of Water Resources and the Idaho Fish and Game are only one point in time measurements, and

Whereas: These measurements give only an approximation and not a definitive value for maximum flows, and

Whereas: Idaho Fish and Game is required to meet current design criteria established by National Marine Fisheries Service of 0.4 of a foot per second maximum approach velocity of water through the screen, and

Whereas: When the approximate maximum flow is exceeded, the 0.4 foot per second criteria is not met, and

Whereas: Idaho Department of Fish and Game is trying to bring all screening structures into NMFS criteria, and

Whereas: Costs of the fish screen structure rise in proportion to the water diverted, especially on small diversions, and

Whereas: Cost of building a screen to meet only a short period of maximum flow is a waste of tax payer dollars, and

Whereas: Screens which are built to meet maximum flows that are available only during a short period of time or only during occasional years, do not operate efficiently at or near decreed flow levels, and

Whereas: This agreement is not for the purpose of limiting or infringing on irrigator's water rights or the right to divert flows, and

Whereas: This agreement is in the best interest for both Idaho Department of Fish and Game and the irrigators to agree on a maximum flow for the above diversion, and

Whereas: If there is no such agreement, Idaho Department of Fish and Game will design and build the fish screen to meet the approximated maximum flow, which may or may not be the correct optimum flow. It is

Therefore: Agreed that the maximum diverted flow for the above diversion will not exceed 16 CFS (800 Idaho's Miners Inches)

Gary Power
Idaho Department of Fish and
Gary Power, Region 7 Supervisor

Wayne Baker
Diversion Owner\User

5-2-95
Date

Date: 5/3/95

Diversion Owner\User

Date

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

Between: Idaho Department of Fish and Game and D. Wayne Baker, Jerry J. Goicoechea, T. Randy Gillette, L. Jean Guffy, and the Shoshone Bannock Tribes, owner(s)\user(s) of the Salmon East Fork 13 diversion, and also known as SEF-13.

Purpose: This agreement is to quantify the optimum maximum flow to be screened for fish protection by the Idaho Department of Fish and Game, and

Whereas: Irrigators have the right to divert flows above their decreed right during maximum flows from the East Fork River, and

Whereas: Maximum flows vary in time of year and in length of time from year to year, and

Whereas: Maximum flows vary in level from year to year, and

Whereas: Measured flows by the Idaho Department of Water Resources (IDWR) and Idaho Department of Fish and Game are only one point in time measurements, and

Whereas: These measurements give only an approximation and not a definitive value for maximum flows, and

Whereas: In the past, the Idaho Department of Fish and Game has designed screening facilities for approximated maximum flows based on their or IDWR flow measurements, and

Whereas: In some cases, measured maximum flows following construction of new fish screens have exceeded design flows, and

Whereas: Idaho Department of Fish and Game is required to meet current design criteria established by National Marine Fisheries Service of 0.4 of a foot per second maximum approach velocity of water through the screen, and

Whereas: Idaho Department of Fish and Game is trying to bring all screening structures into NMFS criteria, and

Whereas: Costs of the fish screen structure rise in proportion to the water diverted, especially on small diversions, and

Whereas: Cost of building a screen to meet only a short period of maximum flow is a waste of tax payer dollars, and

Whereas: Screens which are built to meet maximum flows that are available only during a short period of time or only during occasional years, do not operate efficiently at or near decreed flow levels, and

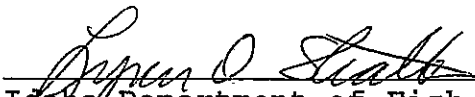
Flow Agreement SE: 13

Whereas: This agreement is not for the purpose of limiting or infringing on irrigator's water rights or the right to divert flows above decreed rights, and

Whereas: This agreement is in the best interest for both Idaho Department of Fish and Game and the irrigators to agree on a maximum flow for the above diversion, and

Whereas: If there is no such agreement, Idaho Department of Fish and Game will design and build the fish screen to meet the approximated maximum measured flow, which may or may not be the correct optimum flow. It is

Therefore: Agreed that the optimum diverted flow for the above Diversion, will be 9.2 CFS, (460 Idaho's Miners Inches)


Idaho Department of Fish and Game
Lynn Stratton Program Coordinator

4/10/2007
Date

Wayne Baker
Water User:

4-4-07
Date

Water User:

Date

Water User:

Date

Water User:

Date

Water User:

Date

EXHIBIT B

filename: c:\docs\forms\ditch flow computations upgraded.xls

prepared 8/3/00 by Hightree

Measurement done by: Weeks (IDFG) Qudarant Consulting Inc.

Location of measurement: SEF-15

Date if measurment:

Global Inputs:

REW value: 1.00

LEW value: 9.70

Space between

readings (ft): 0.50

Note to user:

Make entries in cells without shading.

[illegible]

filename: c:\docs\forms\ditch flow computations upgraded.xls

prepared 8/3/00 by Hightree

Measurement done by: Weeks (IDFG) Quadrant Consulting Inc.

Location of measurement: SEF-17

Date if measurment:

Global Inputs:

REW value: 1.00

LEW value: 5.50

Space between

readings (ft): 0.50

Note to user:

Make entries in cells without shading.

[illegible]