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OCT 30 2008

Department of Water Resources
Adjudication Bureau

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Attorneys for Claimants Richard Douglas Baker and Cheryl K. 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. 72-16786 and 72-16787
	)	
	)	AFFIDAVIT OF RICHARD DOUGLAS
Case 38576	)	BAKER IN OF MOTION TO FILE
	)	LATE NOTICES OF CLAIMS
	)	

STATE OF IDAHO)
) ss
COUNTY OF CUSTER)

RICHARD DOUGLAS BAKER, being first duly sworn upon his oath, deposes and says that:

1. My name is Richard Douglas ("Doug") Baker. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.
2. My wife, Cheryl K. Baker, and I own water rights that have been decreed by the SRBA court. **Exhibit A**, attached hereto, contains a table that shows our diversions, water rights, late claims and measurements, and a table that shows showing water rights and measurements for a diversion designated as SEF-7/8, which we share with Lilace Three Co. Exhibit A also contains unofficial copies of our partial decrees for water right nos. 72-00190, 72-00193B and 72-02095.

COPY

3. **Exhibit B**, attached hereto, contains a diagram showing the locations of our diversions (denominated as SEF-8 and SEF-9) from the East Fork of the Salmon River ("East Fork") and the fields we own and irrigate from those diversions. Exhibit B also contains a diagram showing the locations of our diversions (denominated as SEFHC-1 and SEFHC-2) from a tributary to the East Fork called Herd Creek and the fields we irrigate with Herd Creek from those diversions.

4. I was born in 1952. I have lived along the East Fork of the Salmon River ("East Fork") all my life. My earliest recollections of our irrigated fields, diversions and ditches are from 1957. From 1957 to the present, all of the land my wife and I own has been irrigated to raise hay and for pasture.

5. From 1957 to the present, our fields shown in Exhibit B have been irrigated with water diverted from the East Fork through our SEF-8 and SEF-9 diversions. These fields were also irrigated with East Fork water diverted through a diversion denominated as SEF-7, until that diversion was consolidated into our SEF-8 diversion in 1996. When SEF-7 was consolidated into SEF-8, the ditch that conveys water from SEF-8 was enlarged to carry the additional flow. Today, the ditch that conveys water from SEF-9 is the same size as it was in 1957, and conveys the same quantity of water.

6. From 1957 to the present, our fields shown in Exhibit C have been irrigated with water diverted from Herd Creek through our SEFHC-1 and SEFHC-2 diversions. Today, the ditches that convey water from SEFHC-1 and SEFHC-1 are the same size as they were in 1957,

and convey the same quantities of water.

7. Our land shown in Exhibits B and C was formerly owned by my father and mother, Richard ("Dick") Baker and Betty Baker, and by Fred Gossi before them. It is my understanding that our land has been irrigated with East Fork diverted through SEF-8 and SEF-9 and with Herd Creek water diverted through SEFHC-1 and SEFHC-2 since our earliest East Fork and Herd Creek water rights were established in 1885, and that the quantities of water that are diverted and applied to these lands have not diminished since 1885. This understanding is confirmed by my father, Dick Baker, who has also signed an affidavit in support of our claims for conveyance losses.

8. Our irrigated fields are located within a narrow canyon, at or only a few feet above the water levels of the East Fork and of Herd Creek. The soil in the ditches is very porous gravel and river rock. Seepage loss from the ditches has always been very high. Water lost through seepage returns to the East Fork and/or Herd Creek or is picked up by downstream ditches and reused. For these reasons, the majority of the water we have diverted has always been lost to seepage.

9. The only significant change in our diversions has been that, in recent years, fish screens have been added at or near the diversions. The screens were sized so that we could continue to divert the quantities of water that had been historically diverted. Attached hereto as **Exhibit C** are our "Flow Agreements" with the Idaho Department of Fish and Game ("IDFG") which state the flows IDFG measured through our East Fork and Herd Creek diversions shortly before the fish screens were installed.

10. Brian Hamilton with the U.S. Bureau of Reclamation, Salmon Field Office, measured our East Fork diversions. His measurements are referenced in Exhibit A.

11. I measure our SEFHC-2 diversion because it has a measuring device. The flow through this diversion is generally 4 cfs.

12. Attached hereto as **Exhibit D** are photographs of our SEF-8 diversion and IDFG's fish screen for SEF-8. Attached hereto as **Exhibit E** are photographs of our SEF-9 diversion and IDFG's fish screen for SEF-9. The bed and banks of these ditches are river rock and gravel, so there is a very large amount of seepage loss in conveying water from the points of diversion to the places of use.

13. Attached hereto as **Exhibit F** are photographs of our SEFHC-1 diversion and IDFG's fish screen for SEFHC-1. Attached hereto as **Exhibit G** are photographs of our SEFHC-2 diversion and IDFG's fish screen for SEFHC-2. As with our East Fork Diversions, the bed and banks of these ditches are river rock and gravel, so there is a very large amount of seepage loss in conveying water from the points of diversion to the places of use.

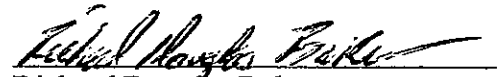
14. The water quantities in our partial decrees are far less than the quantities we have historically diverted and used, as established by the measurements taken by the Idaho Department of Fish and Game for our "Flow Agreements," and by Brian Hamilton with the Bureau of Reclamation. Due to the seepage losses through our ditch systems, we cannot effectively irrigate our fields with the water quantities provided by our decrees. Like our ditches, the ground we irrigate is very porous and does not retain water, requiring application of significant quantities of water by flood irrigation to maintain our pastures and grow hay.

15. Clearly, we need and have always diverted and beneficially used, more water than

is provided by our decrees. We respectfully request that the IDWR recommend, and the SRBA Court issue decrees for, the late claims we are filing in order to account for seepage losses and continue to provide adequate water for irrigation of our fields.

Further your affiant sayeth naught.

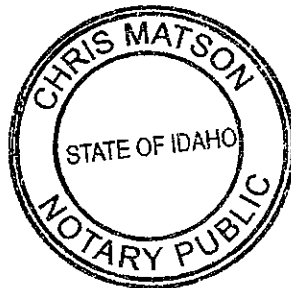
Dated this 27 day of Oct., 2008.


Richard Douglas Baker

STATE OF IDAHO)
)ss.
County of Custer)

On this 27th day of October, 2008, before me, the undersigned, a notary public in and for said state, personally appeared RICHARD DOUGLAS BAKER, 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.



Chris Matson
Notary Public for Idaho
Residing at Challis
My Commission Expires: 7/28/2011

EXHIBIT A

Doug & Cheryl Baker Diversions, Water Rights, Claims & Measurements

East Fork Salmon River

<u>Decreed Diversion Rates</u>				<u>Claims</u>		<u>Ditch Measurements</u>	
				<u>Conveyance</u>	<u>Div. Max</u>	<u>DFG</u>	<u>BOR</u>
SEF-7/8 ¹	72-00193B²	2.70 cfs				16.00 cfs	13.00 cfs
	72-02095	<u>0.44 cfs</u>					
		3.11 cfs	0.79 cfs ³	+	2.72 cfs	=	3.51 cfs
SEF-9	72-00193B	2.70 cfs					
	72-00194	<u>0.30 cfs</u>					
		3.00 cfs	<u>2.65 cfs⁴</u>	+	<u>5.85 cfs⁵</u>	=	<u>8.50 cfs</u>
	combined total:	3.44 cfs	3.44 cfs	+	8.57 cfs	=	12.01 cfs
						<u>6.40 cfs</u>	<u>8.50 cfs</u>
						16.00 cfs	+ 8.50 cfs = 24.50 cfs

Herd Creek

<u>Decreed Diversion Rates</u>				<u>Claims</u>		<u>Ditch Measurements</u>	
				<u>Conveyance</u>	<u>Div. Max</u>	<u>IDFG</u>	<u>Baker</u>
SEFHC-1	72-00190	.40 cfs			3.40 cfs	3.40 cfs	
SEFHC-2	72-00190	<u>0.40 cfs</u>			<u>4.00 cfs</u>	<u>3.40 cfs</u>	<u>4.00 cfs</u>
	total (combined):	0.40 cfs	+	7.00 cfs⁶	=	7.40 cfs	3.40 + 4.00 cfs = 7.40 cfs

¹SEF-7 has been consolidated into SEF-8.

²The Bakers' water right no. 72-00193B is diverted through SEF 7/8 and SEF-9.

³This is the estimated portion of the Bakers' water rights that is diverted through SEF-7/8.

⁴This is the estimated portion of the Bakers' water rights that is diverted through SEF-9.

⁵SEF-9 conveyance loss = 8.50 cfs (BOR) - 2.65 cfs = 5.85 cfs

⁶SEFHC-1 & SEFHC-2 conveyance loss total: 7.40 cfs - 0.40 cfs = 7.00 cfs

SEF-7/8¹ Water Rights, Claims & Measurements

East Fork Salmon River

SEF-7/8 conveyance loss total:

$$16.00 \text{ cfs (BOR)} - 3.60 \text{ cfs} = \mathbf{12.40 \text{ cfs}}$$

<u>Decrees</u>	<u>Rates</u>	<u>Decrees</u>			<u>Conveyance</u>			<u>Ditch Measurements</u>	
		<u>Total</u>	<u>%²</u>		<u>Total</u>	<u>Claims</u>	<u>Total</u>	<u>IDFG</u>	<u>BOR</u>
								16.00 cfs	13.00 cfs
72-00193B (Baker) ³	2.70 cfs								
72-02095 (Baker)	<u>0.44 cfs</u>								
	3.11 cfs	0.79 cfs ⁴	.2194	x	12.40 cfs	= 2.72 cfs	+ .79	=	3.51 cfs
72-00193A (Lilac 3)	2.49 cfs								
72-02142 (Lilac 3)	<u>0.32 cfs</u>	<u>2.81 cfs</u>	.7806	x	12.40 cfs	= <u>9.68 cfs</u>	+ 2.81	=	<u>12.49 cfs</u>
		3.60 cfs				+ 12.40 cfs		=	16.00 cfs

¹SEF-7 was consolidated into SEF-8.

²For purposes of apportioning conveyance losses to the Baker and Lilac Three diversions, this is the percentage which the owner's diversion bears to the total SEF-7/8 irrigation diversions.

³The Bakers' water right no. 72-00193B is diverted through SEF-7/8 and SEF-9.

⁴The Bakers irrigate 23% of the acres within their place of use with water diverted through SEF-7/8. For purposes of apportioning conveyance loss to the Bakers, the combined total of their water rights (72-00193B, 72-00194 and 72-02095), 3.44, cfs is multiplied by .23.

Issued on 11-17-2000.

Contact IDWR or the Court for a Certified Copy.

Choose Landscape Orientation when printing.

NAME AND ADDRESS:	CHERYL KAY BAKER		
	RICHARD DOUGLAS BAKER		
	HC 68 BOX 350		
	CLAYTON, ID 83227		
SOURCE:	HERD CREEK	TRIBUTARY: SALMON RIVER, EAST FORK	
QUANTITY:	0.40 CFS		
PRIORITY DATE:	05/01/1885		
POINT OF DIVERSION:	T10N R18E S35	SESWNE	Within Custer County
		NESESE	
PURPOSE AND			
PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.40 CFS
PLACE OF USE:	Irrigation		Within Custer County
	T10N R18E S35	NWNE 1.2	SWNE 6.6
		NWSE 2.6	

10.4 Acres Total

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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SRBA PARTIAL DECREE 72-00193B

Issued on 02-15-2000.

This is not an official copy.

Contact IDWR or the Court for a Certified Copy.

Choose Landscape Orientation when printing.

NAME AND ADDRESS: CHERYL KAY BAKER
RICHARD DOUGLAS BAKER
HC 68 BOX 350
CLAYTON, ID 83227

SOURCE: SALMON RIVER, EAST FORK TRIBUTARY: SALMON RIVER

QUANTITY: 2.70 CFS

PRIORITY DATE: 05/01/1885

POINT OF DIVERSION: T09N R18E S03 LOT 4 (SENWNW) Within Custer County
T10N R18E S35 SWSWNE
SWNESW
NESWSW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	2.70 CFS
PLACE OF USE:	Irrigation		Within Custer County
	T09N R18E S03 LOT 1	(NENE) 0.8	LOT 2 (NWNE) 7.9
	T10N R18E S34	SESE 14.0	
	S35	SWNE 3.3	SENE 6.4
		NESW 3.9	SWSW 10.0
		SESW 0.2	

46.5 Acres Total

RIGHT NOS. 72-00193B, 72-00194 AND 72-02095 ARE LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 46.5 ACRES IN A SINGLE IRRIGATION SEASON. THE USE OF WATER IN THE FOLLOWING 1/4 1/4 SECTIONS OF T10N.R18E.S35 IS LIMITED AS FOLLOWS: E1/2 SENW., E1/2 NESW., E1/2 SESW.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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SRBA

PARTIAL DECREE 72-00194

Issued on 02-15-2000.

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Choose Landscape Orientation when printing.

NAME AND ADDRESS: CHERYL KAY BAKER
RICHARD DOUGLAS BAKER
HC 68 BOX 350
CLAYTON, ID 83227

SOURCE: SALMON RIVER, EAST FORK TRIBUTARY: SALMON RIVER

QUANTITY: 0.30 CFS

PRIORITY DATE: 05/01/1936

POINT OF DIVERSION: T09N R18E S03 LOT 4 (SENWNW) Within Custer County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-01 TO 10-31	0.30 CFS

PLACE OF USE: Irrigation Within Custer County

T09N R18E S03 LOT 1 (NENE)	0.8	LOT 2 (NWNE)	7.9
T10N R18E S34 SESE	14.0		
S35 SWSW	10.0		
32.7 Acres Total			

RIGHT NOS. 72-00193B, 72-00194 AND 72-02095 ARE LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 55.3 ACRES IN A SINGLE IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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SRBA

PARTIAL DECREE 72-02095

Issued on 02-15-2000.

This is not an official copy.

Contact IDWR or the Court for a Certified Copy.

Choose Landscape Orientation when printing.

NAME AND ADDRESS: CHERYL KAY BAKER
RICHARD DOUGLAS BAKER
HC 68 BOX 350
CLAYTON, ID 83227

SOURCE: SALMON RIVER, EAST FORK TRIBUTARY: SALMON RIVER

QUANTITY: 0.44 CFS

PRIORITY DATE: 06/22/1951

POINT OF DIVERSION: T10N R18E S35 SWNESW Within Custer County
NESWSW

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 11-01	0.44 CFS
PLACE OF USE:	Irrigation		Within Custer County
	T10N R18E S35	SENW 6.4	NESW 3.9
		SESW 0.2	

10.5 Acres Total

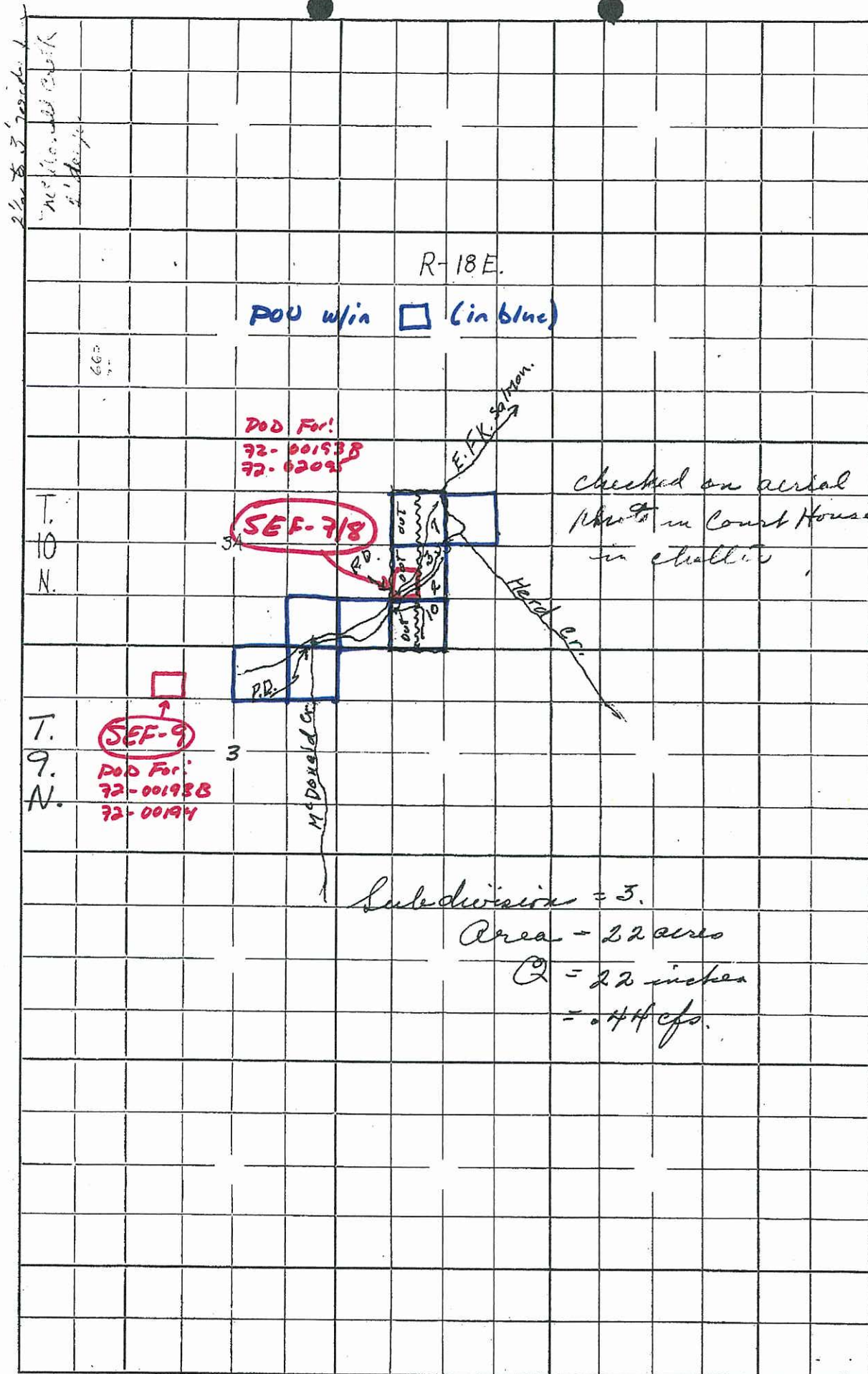
RIGHT NOS. 72-00193B, 72-00194 AND 72-02095 ARE LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 55.3 ACRES IN A SINGLE IRRIGATION SEASON. THE USE OF WATER IN THE FOLLOWING 1/4 1/4 SECTIONS OF T10N.R18E.S35 IS LIMITED AS FOLLOWS: E1/2 SENW., E1/2 NESW., E1/2 SESW.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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EXHIBIT B



665

POU w/in ☐ (in blue)

T.
~~10~~
N.

34

F.F.K. salmon

POD FOI 72-00152

SEFHC-1

checked on aerial
photo in Court House
in charter

(SEP HC-2)

POD For 72-60150

P.R.

Mr Donald Cr.

Sub division = 3.

Area = 22 ams

Q = 22 inches
= 0.44 cfs.

EXHIBIT C

Flow 9-25-96

East Fork Salmon River 7 and 8 Diversion Consolidation Agreement

Between

Doug and Wayne Baker

and

Idaho Department of Fish and Game

This Cost Share Agreement, is made and entered into by and between Idaho Fish and Game, hereinafter referred to as IDFG, and Doug and Wayne Baker, hereinafter referred to as Cooperators, water right holders from diversions SEF-07 and SEF-08; on the East Fork River, tributary to the Salmon River. This project is located in Sec. 35, T.10N. R.18E.

Whereas: IDFG has the authority to build and maintain fish screening structures for the purpose of screening migrating anadromous fish from irrigation diversions or alternatives to; and

Whereas: It has been determined by fisheries biologists and that combining diversion sites would benefit juvenile and adult fish on their migration to and from the Pacific Ocean, by reducing the number of diversion dams and screening facilities passed over and through; and

Whereas: Combining two diversions into one diversion will speed the passage of juvenile salmon downstream and adult salmon up the East Fork of the Salmon River;

Whereas: Cost of the diversion consolidation to deliver water to the ditch supplied by SEF-07 from SEF-08 is less expensive than having to build a second screen on SEF-07; and

Whereas: Elimination of the SEF-07 screen will delete the need for long-term operation and maintenance of the screen structure, screen, paddlewheel and other appurtenances and delete any further upkeep and road maintenance; and

Whereas: This consolidation will eliminate cost of long-term operation and maintenance of diversion structure at SEF-07 by Cooperators and the need for in-stream disturbance for the purpose of a gravel diversion berm or other means; it is

Exhibit C

Therefore Agreed;

A. Idaho Fish and Game will be responsible for:

1. Design and construction of fish screen structure on SEF-08 ditch.
2. Maintain close coordination with Cooperators on construction activities.
3. Costs associated with abandoning the diversion site, screen site and road easement to screen the SEF-07 after the 5 year period.
4. Furthermore, it is understood that within the 5 year period, should a natural disaster occur, such as a flood, that makes all or a portion of the diversion works unable to supply water to SEF-07 from SEF-08 the cooperator has the right to reopen SEF-07, following such a natural disaster, until repairs to SEF-08 are completed.

B. Cooperator is responsible for:

1. All normal operation and maintenance of facilities, upon completion , with the exception of the SEF-08 fish screen.
2. Abandonment of diversion site SEF-07 and the legal transfer of water rights from SEF-07 to SEF-08.

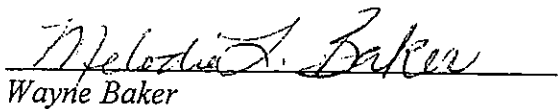
Further it is agreed that 16 cfs at diversion SEF-08 will be the optimum maximum diversion rate to supply both SEF-07 and SEF-08.


Idaho Fish and Game Region 7 Supervisor

12/13/96
Date


Doug Baker

9/25/96
Date


Wayne Baker

9/25/96
Date

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

Between: Idaho Fish and Game and Doug Baker
owner(s) Salmon East Fork diversion SEP 09.

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 6.4 CFS (320 Idaho's Miners Inches)

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

Date: 5/3/95

Richard M. Baker 5/3/95
Diversion Owner\User Date

Diversion Owner\User Date

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

Between: Idaho Department of Fish and Game and Doug Baker
_____, owner(s) / user(s) Salmon East Fork
River diversion SEF HC 01 Herd Creek

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 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 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 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: 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 above decreed rights, and

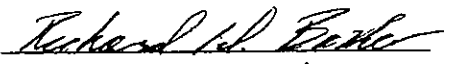
Whereas: This agreement is in the best interest for both Idaho Department of Fish and Game and the irrigators to agree on a maximum flow for the above diversion, and

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.

Whereas: In order to improve operation of fishscreens, the IDF&G may choose to assist irrigators (on a cost share basis) with the installation of headgates, ditch modifications, and or diversion structures, but the IDF&G will not be responsible to maintain or replace any structures except the fish screen structure and the bypass pipe. It is

Therefore: Agreed that the maximum diverted flow for the above diversion will not exceed 3.4 CFS (_____ Idaho's Miners Inches)

 12/3/96
Idaho Department of Fish and Game Diversion Owner\User Date
Gary Power, Region 7 Supervisor

 9/25/96
Diversion Owner\Owner Date Diversion Owner Date

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

Between: Idaho Department of Fish and Game and Doug Baker
owner(s) \ user(s) Salmon East Fork
River diversion EFHC-02 ✓ Herd Cr.

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 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 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 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: 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

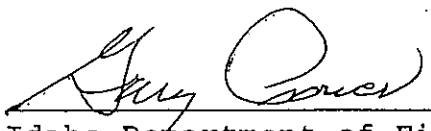
Whereas: This agreement is not for the purpose of limiting or infringing on irrigator's water rights or the right to divert flows above decreed rights, and

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.

Whereas: In order to improve operation of fishscreens, the IDF&G may choose to assist irrigators (on a cost share basis) with the installation of headgates, ditch modifications, and or diversion structures, but the IDF&G will not be responsible to maintain or replace any structures except the fish screen structure and the bypass pipe. It is

Therefore: Agreed that the maximum diverted flow for the above diversion will not exceed 3.4 CFS (_____ Idaho's Miners Inches)

 12/3/96
Idaho Department of Fish and Game Diversion Owner\User Date
Gary Power, Region 7 Supervisor

 9/25/96
Diversion Owner\Owner Date Diversion Owner Date

EXHIBIT D

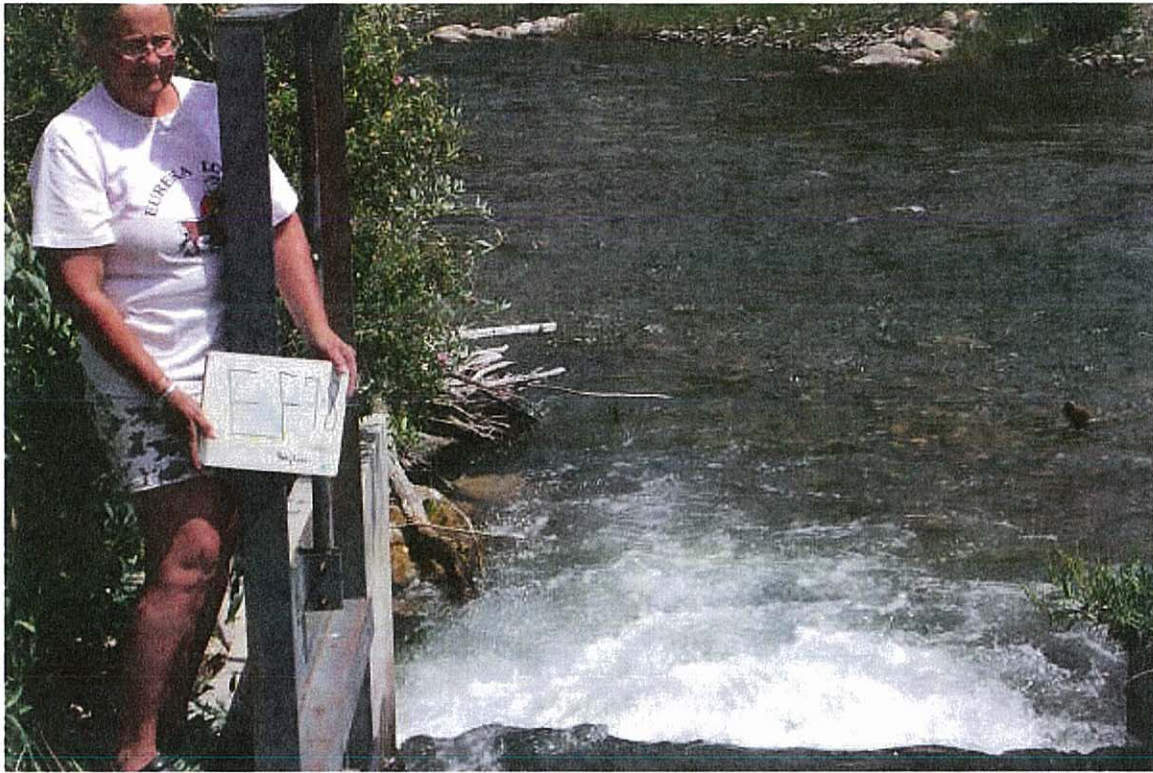


Exhibit D

EXHIBIT E



Exhibit E

EXHIBIT F



Exhibit F

EXHIBIT G



Exhibit G