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RECEIVED
OCT 31 2008
DEPARTMENT OF
WATER RESOURCES

Attorneys for Claimant Three G Company

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 No. 72-16788
	)	
	)	AFFIDAVIT OF ROBERT Y. KOPF JR.
Case 38576	)	IN SUPPORT OF MOTION TO FILE
	)	LATE NOTICE OF CLAIM
_____	)	

STATE OF IDAHO)
) ss
COUNTY OF CUSTER)

ROBERT Y. KOPF JR., being first duly sworn upon his oath, deposes and says that:

1. My name is Robert Y. Kopf Jr. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.

2. I am the Managing Partner of Three G Company ("Three G"), an Idaho limited Liability partnership. Three G owns water right no. 72-232B. **Exhibit A**, attached hereto, contains a table that lists the Three G diversion (designated as EF-18A) from the East Fork of the Salmon River ("East Fork"), Three G's water right, the quantity of water Three G claims for conveyance loss, and measurements for the diversion. Exhibit A also contains the Idaho Department of Water Resources ("IDWR") report for water right no. 72-232B.

COPY

3. Three G owns the land to which water right no. 72-232B is appurtenant in. Edwin Baker Jr. and his father, Edwin Baker Sr., operate and maintain Three G's diversion and ditch, and use Three G's land for pasture.

4. It is my understanding that Three G's land has been irrigated with East Fork water diverted through EF-18A since water right no. 72-232B was established. This understanding is confirmed by the Affidavit of Edwin E. Baker, attached hereto as **Exhibit B**.

5. The only significant change in the diversion of water through EF-18A has been that, in recent years, a fish screen has been added to the ditch that conveys water from the diversion to the place of use. The screen was sized to allow continued diversion of the quantity of water that had been historically diverted. Attached hereto as **Exhibit C** is the "Flow Agreement" with the Idaho Department of Fish and Game ("IDFG") that I signed on behalf of Three G which states the flow IDFG measured through EF-18A shortly before the fish screen was installed.

6. Attached hereto as **Exhibit D** is a photograph of the EF-18A diversion and ditch. Three G's land is located within a canyon along the East Fork, at or only a few feet above the water level of the river. The soil in the ditch is very porous gravel and river rock. Seepage loss from the ditch is very high. Water lost through seepage returns to the river. For these reasons, the majority of the water diverted is lost to seepage.

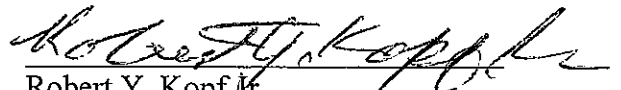
7. The water quantity in water right no. 72-232B is far less than the quantity that has been historically diverted and used, as established by the measurements taken by the IDFG for the attached Flow Agreement. Due to the seepage losses through the ditch system, Three G's land cannot be effectively irrigated with the water quantity provided by water right no. 72-232B.

Like the ditch, the irrigated ground is very porous and does not retain water, requiring application of significant quantities of water by flood irrigation to maintain the pasture.

8. Clearly, more water than is provided by water right no. 72-232B has always diverted and beneficially used. I respectfully request that the IDWR recommend, and the SRBA Court issue decrees for, the late claims Three G is filing in order to account for seepage losses and continue to provide for irrigation of Three G's fields.

Further your affiant sayeth naught.

Dated this 29th day of OCT., 2008.

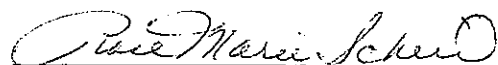

Robert Y. Kopf Jr.

Pennsylvania
STATE OF ~~IDAHO~~)
Allegheny) 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 ROBERT Y. KOPF JR., 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.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Rose Marie Scheid, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires April 26, 2012
Member, Pennsylvania Association of Notaries


Notary Public for Allegheny County
Residing at Pittsburgh, PENNSYLVANIA
My Commission Expires: 04-26-2012

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

10/14/2008

WATER RIGHT NO. 72-232B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	THREE G CO C/O ROBERT Y KOPF BUCHANAN-INGERSOLL 600 GRANT ST 58TH FLOOR PITTSBURGH, PA 15219
Original Owner	INSINGER RANCH C/O JOHN INSINGER 407 W JEFFERSON BOISE, ID 83702 (208)345-9974
Original Owner	BOULDER CREEK RANCH C/O R JOHN INSINGER 407 W JEFFERSON BOISE, ID 83702

Priority Date: 05/01/1936

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
EAST FORK SALMON RIVER	SALMON RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	10/31	1.22 CFS	
STOCKWATER	4/01	10/31	0.02 CFS	
Total Diversion			1.22 CFS	

Exhibit A

Location of Point(s) of Diversion:

SALMON RIVER	SWNWSE	Sec. 22	Township 09N	Range 17E	CUSTER County
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Place(s) of use:

Place of Use Legal Description: IRRIGATION CUSTER County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
09N	17E	15		SWSE	0.1									
		22		NWNE	11		SWNE	12						
				NWSE	4.1									

Place of Use Legal Description: STOCKWATER same as IRRIGATION

Total Acres: 27.2

Conditions of Approval:

1.	C18	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. SECTION 42-1412(6), IDAHO CODE.
2.	N05	THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.
3.	N08	THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
4.	C03	RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.

Dates:

Licensed Date:

Decreed Date: 11/17/2000

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

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Facsimile: (208) 342-4657

Attorneys for Claimants D. 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 72-16779, 72-16780 and 72-16781
	)	
	)	
Case 38576	)	AFFIDAVIT OF EDWIN E. BAKER IN SUPPORT OF
	)	MOTION TO FILE LATE NOTICES OF CLAIM
	)	
_____	)	

STATE OF IDAHO	)
	) ss
COUNTY OF CUSTER	)

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

1. My name is Edwin ("Eddie") E. Baker. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.

2. I was born in 1920. I have lived on ranch property owned by my family along the East Fork of the Salmon River since 1920. This property was first settled by my great grandfather in the mid 1800s. Today, I own this property with my son, Edwin ("Eddie") Baker Jr., through a partnership called Baker Ranch Partnership.

3. My earliest recollection of our ranch is from the time I was 8 years old, in 1928. From 1928 to the present, we have irrigated the same fields to raise hay and for pasture. From 1928 to the present, we have flood irrigated the same fields with water diverted from the East Fork of the Salmon River and from Big Boulder Creek, a tributary to the East Fork of the Salmon River.

4. Today, we use the same diversions and main ditches that we used in 1928 to take water from the East Fork of the Salmon River and from Big Boulder Creek to irrigate our fields. The only significant change in our diversions has been that, in recent years, fish screens have been added at or near the diversions. Today, the main ditches are the same size as they were in 1928. The same quantity of water is diverted at each of our diversions as was diverted in 1928.

5. Our irrigated fields are located within a narrow canyon, along the East Fork of the Salmon River, at or only a few feet above the water level of the river. The lay of the land is such that several diversions and ditch systems are required to irrigate our fields. Most of our fields are irrigated with water from two or three diversions and ditch systems. 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 river 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.

6. While I do not know the date on which each of our diversions and ditches was constructed, I do know from my father that these diversions and ditches had been in place for many years prior to 1928, likely dating back to the mid 1800s.

7. From 1928 to the present, I have also been familiar with irrigated fields along the East Fork of the Salmon River immediately upstream from our irrigated fields. Each of these fields was recently owned and sold by John Insinger and/or his father. Since 1928, one of these fields has

been flood irrigated with water diverted from the East Fork of the Salmon River. I have been informed that this field is now owned Robert Kopf. As with our diversions and ditches, this diversion has not changed since 1928, except for the installation of a fish screen at or near the diversion. The same amount of water has been diverted and used through this diversion since 1928. The diversion from the East Fork of the Salmon River to the field formerly owned by Insinger is shown in the photograph attached hereto as **Exhibit A**.

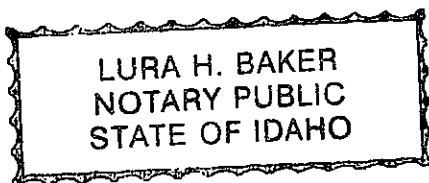
8. Another field formerly owned by Insinger has also been irrigated from Little Boulder Creek since 1928. I have been informed that this field is now owned by Kenneth Ryan. The same amount of water has been diverted and used through this diversion since 1928.

Eddie E. Baker
Edwin ("Eddie") E. Baker

STATE OF IDAHO)
)ss.
County of Custer)

On this 11th day of May, 2008, before me, the undersigned, a notary public in and for said state, personally appeared EDWIN E. 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.



Lura H. Baker
Notary Public for Idaho
Residing at Clarksville, Idaho
My Commission Expires: 12-12-09

OPTIMUM MAXIMUM DIVERSION FLOW AGREEMENT

Between: Idaho Department of Fish and Game and Robert Kopf
owner(s)\user(s) of Salmon East Fork 18A diversion.

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 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 the Idaho Department of Water Resources 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
Continued

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

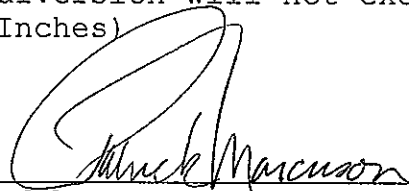
Whereas: Screens which are built to meet maximum flows that are available only during a short period of time or only during occasional years, do not operate efficiently at or near decreed flow levels, and

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

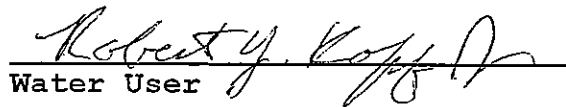
Whereas: If there is no such agreement, Idaho Department of Fish and Game will design and build the fish screen to meet the approximated maximum measured flow, which may or may not be the correct optimum flow. It is

Therefore: Agreed that the maximum diverted flow for the above diversion will not exceed 4.8 CFS (240 Idaho's Miners Inches)



Idaho Department of Fish and Game
Pat Marcuson Program Coordinator

10/11/00
Date



Water User

10-11-00
Date

Water User

Date



Exhibit D