

DANIEL V. STEENSON (ISB #4332)
RINGERT LAW CHARTERED
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RECEIVED

DEC 17 2008

Department of Water Resources
Adjudication Bureau

Attorneys for Claimants Lilac Three LLC/Lilac Six LLC

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. 72-16789
	)	
	)	AFFIDAVIT OF GLENN OLBUM
Case 38576	)	IN SUPPORT OF MOTION TO FILE
	)	LATE NOTICE OF CLAIM
_____	)	

STATE OF PENNSYLVANIA)
)ss
COUNTY OF ALLEGHENY)

GLENN OLBUM, being first duly sworn upon his oath, deposes and says that:

1. My name is Glenn Olbum. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.
2. I am the Managing Member of Lilac Three LLC and Lilac Six LLC (collectively "Lilac"). Lilac owns water right nos. 72-00193A and 72-02142. **Exhibit A**, attached hereto, contains a table that lists our diversion (designated as SEF-7/8) from the East Fork of the Salmon River ("East Fork"), our water rights, the quantity of water we claim for conveyance loss, and measurements for the diversion.
3. Lilac owns the land to which water right nos. 72-00193A and 72-02142 are appurtenant.

4. It is my understanding that Lilac's land has been irrigated with East Fork water diverted from the Salmon River through diversions denominated as SEF-7 and SEF-8 (prior to the consolidation of these ditches) since water right no. 72-00193A was established. This understanding is confirmed by the Affidavit of Richard L. Baker, attached hereto as **Exhibit B**.

5. The only significant change in the diversion of water for Lilac's land has been that, in recent years, a fish screen has been added to the ditch that conveys water from the SEF-7/8 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") which states the flow IDFG measured through SEF-7 and SEF-8 shortly before SEF-7 and SEF-8 were consolidated and the fish screen was installed.

6. Attached hereto as **Exhibit D** is a photograph of the SEF-7/8 diversion. Lilac'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.

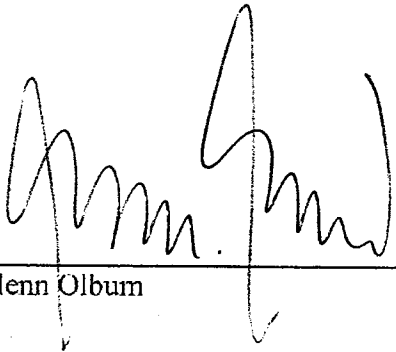
7. The water quantity of water right nos. 72-00193A and 72-02142 is far less than the quantity that has been historically diverted and used, as established by the measurements taken by the IDFG for the attached Flow Agreement. Due to the seepage losses through the ditch system, Lilac's land cannot be effectively irrigated with the water quantity provided by water right nos. 72-00193A and 72-02142. 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 nos. 72-00193A and 72-02142 has always diverted and beneficially used to irrigate Lilac's land. I respectfully request that the IDWR recommend, and the SRBA Court issue decrees for, the late claim Lilac is filing in order to account for seepage losses and continue to provide for irrigation of Lilac's fields.

Further your affiant sayeth naught.

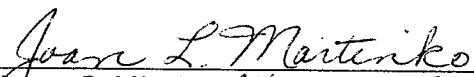
Dated this 5th day of December, 2008.


Glenn Olbum

PENNSYLVANIA
STATE OF ~~MAHO~~)
Allegheny)ss.
County of ~~KHSH~~)

On this 5th day of December, 2008, before me, the undersigned, a notary public in and for said state, personally appeared GLENN OLBUM, 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.


Notary Public for Allegheny County
Residing at Swissvale, Allegheny County
My Commission Expires: 7-9-09

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Joan L. Martinko, Notary Public
Swissvale Boro, Allegheny County
My Commission Expires July 9, 2009
Member, Pennsylvania Association of Notaries

Lilac Three 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>IDFG</u>	<u>BOR</u>
SEF-7/8 ¹	72-00193A	2.49 cfs		16.00 cfs	13.00 cfs
	72-02124	<u>0.32 cfs</u>			
		2.81 cfs			
		+	9.68 cfs	=	12.49 cfs

EXHIBIT A

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

East Fork Salmon River

16.00 cfs (BOR) - 3.60 cfs = 12.40 cfs

<u>Decrees</u>	<u>Rates</u>	<u>Decrees</u> <u>Total</u>	<u>%²</u>	<u>Conveyance</u>		<u>Ditch Measurements</u>
				<u>Total</u>	<u>Claims</u>	<u>IDFG</u>
						<u>BOR</u>
						16.00 cfs
						13.00 cfs
72-00193B (Baker)³	2.70 cfs					
72-02095 (Baker)	0.44 cfs					
	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 =
		3.60 cfs		+	12.40 cfs	=
						16.00 cfs

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.

Fred Gossi before us. I knew Mr. Gossi and observed his water diversion and irrigation methods.

5. The East Fork diversions, ditches and irrigated fields I discuss in this affidavit were in place long before I was born.

6. From 1930 to the present, all the land now owned by Lilac has been irrigated for pasture. From 1930 to the present, this land has been flood irrigated with water diverted from the East Fork through diversions that have been designated as SEF-7 and SEF-8 (now designated as SEF-7/8 after SEF-7 was consolidated into SEF-8). The only significant change in these diversions has been their consolidation and, in recent years, a fish screen has been added at or near the SEF-7/8 diversion from the East Fork. The SEF-7/8 ditch was enlarged when SEF-7 and SEF-8 were consolidated. Lilac diverts the same quantity of water from the East Fork that Betty and I diverted, and Fred Gossi diverted before us, to irrigate the Lilac land.

7. Lilac's irrigated fields are located within a canyon, at or only a few feet above the water level of the East Fork. The soil in the ditch that conveys water from SEF-7/8 is very porous gravel and river rock. Seepage loss from the ditch has always been very high. Water lost through seepage returns to the East Fork. For these reasons, the majority of the water diverted has always been lost to seepage.


RICHARD L. BAKER

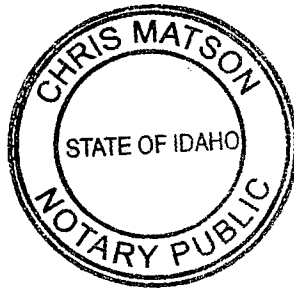
STATE OF IDAHO)

)ss.

County of Custer)

On this 26 day of November, 2008, before me, the undersigned, a notary public in and for said state, personally appeared RICHARD L. 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

Flow Log 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;

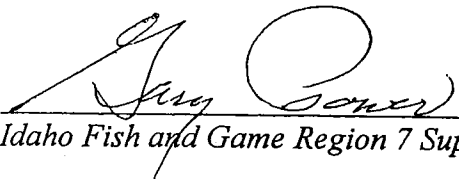
A. Idaho Fish and Game will be responsible for:

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.

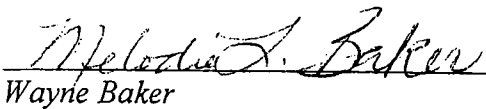
Further it is agreed that 16 cfs at diversion SEF-08 will be the optimum maximum diversion rate to supply both SEF-07 and SEF-08.


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

Richard M. Baker
Diversion Owner\User

5/3/95
Date

Date: 5/3/95

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

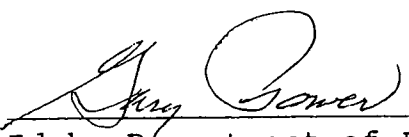
Whereas: This agreement is not for the purpose of limiting or infringing on irrigator's water rights or the right to divert flows above decreed rights, and

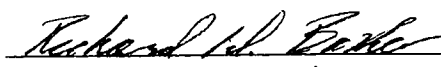
Whereas: This agreement is in the best interest for both Idaho Department of Fish and Game and the irrigators to agree on a maximum flow for the above diversion, and

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)

	<u>12/1/96</u>	_____	_____
Idaho Department of Fish and Game		Diversion Owner\User	Date
Gary Power, Region 7 Supervisor			

	<u>9/25/96</u>	_____	_____
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

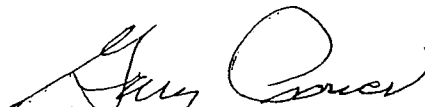
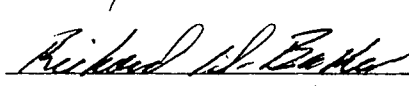
Whereas: This agreement is not for the purpose of limiting or infringing on irrigator's water rights or the right to divert flows above decreed rights, and

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)

 Idaho Department of Fish and Game Gary Power, Region 7 Supervisor	<u>12/1/96</u> Date	_____	_____
Diversion Owner\Owner	Date	Diversion Owner	Date
 _____	<u>9/25/96</u> Date	_____	_____
Diversion Owner\Owner	Date	Diversion Owner	Date

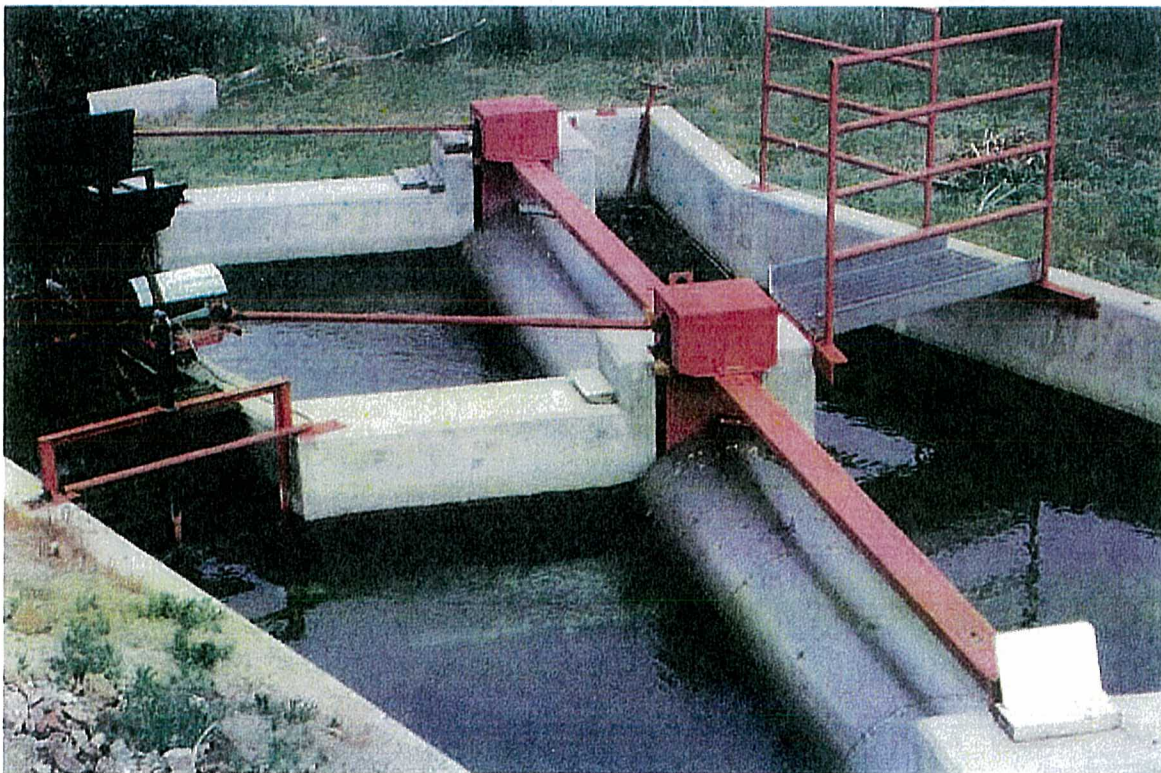


EXHIBIT D

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DEC 17 2008

DEPARTMENT OF
WATER RESOURCES

Laura E. Burri
Adam S. Christenson
Jeffrey R. Christenson
David P. Claiborne
S. Bryce Farris
Jon C. Gould
David Hammerquist
Charles L. Honsinger **
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid *
Daniel V. Steenson

TO: CLERK OF THE COURT - SNAKE RIVER BASIN ADJUDICATION

FROM: DANIEL V. STEENSON **DATE: 12/15/08**

RE: Water Right No. 72-16789

1. Original and Copy of: Affidavit of Glenn Olbum in Support of Motion to File Late Notice of Claim; and
2. Original and Copy of: Affidavit of Richard L. Baker in Support of Motion to File Late Notice of Claim.

___ FOR YOUR INFORMATION

X

FILE ORIGINAL & CONFORM COPY

Not Done SR9

___ FOR YOUR FILE

PLEASE REPLY FOR MY SIGNATURE

___ PLEASE FILE

PLEASE ANSWER AND SEND COPY OF LETTER TO ME

___ IN ACCORDANCE WITH YOUR REQUEST

PLEASE RECORD AND RETURN

___ PLEASE COMMENT

RUSH

___ PLEASE SIGN AND RETURN

AS PER OUR PHONE CONVERSATION

___ PLEASE TELEPHONE/SEE ME

PLEASE REVIEW AND CALL TO DISCUSS

REMARKS: Please file originals and return the conformed copies to me in the enclosed pre-paid envelope. Thank you, Katie Moser.