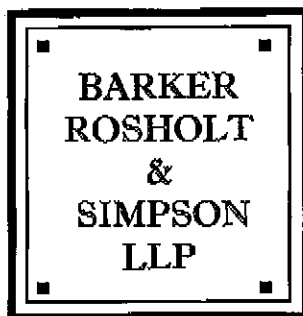


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FACSIMILE COVER SHEET

DATE: February 24, 2009

TO: Scott Campbell, Moffatt Thomas
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U.S. Department of Justice
Idaho Dept of Water Resources
Special Master Brigitte Bilyeu, SRBA
Nicholas Spencer and Douglas Jones, IDWR
Craig Hobdey
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FROM: Albert P. Barker

RE: Subcase No. 37-22256

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 6



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MESSAGE:

See the attached Response of T. O'Gara, et al. and Big Wood Canal Company to Motion for Entry of Special Master's Report and Recommendation.

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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	)	A. Subcase No. 37-22256
	)	
Case No. 39576	)	RESPONSE OF TOM O'GARA, et al.
	)	AND BIG WOOD CANAL COMPANY
	)	TO MOTION FOR ENTRY OF SPECIAL
	)	MASTER'S REPORT AND
	)	RECOMMENDATION

COMES NOW, Tom O'Gara, John F. Stevenson, Bill Molyneux, Pete Van Der Meulen, Grace Eakin, Rocky Sherbine, Gerald Bashaw, and Pepin Corso-Harris, by and through their attorneys of record, Barker Rosholt & Simpson, LLP, and Big Wood Canal Company, by and through its attorneys of record, Hobdey & Hobdey, and hereby respond to the motion for entry of Special Master's Report and Recommendation in Subcase No. 37-22256 as follows:

This right was formerly 37-862. The Recommendation for this right was made and was timely objected to by Tom O'Gara, et al., and the Big Wood Canal Company. The objection to right 37-862 was based upon quantity, i.e., an excessive diversion rate, the period of year excluding the normal irrigation season, and forfeiture for non-use based upon observations of the Water Master, as contained in the Department's records.

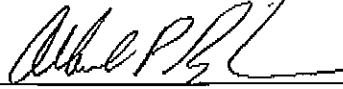
The Notice of a Completed Administrative Proceeding listing parent right 37-862 being divided into two separate rights: 37-22255 and 37-22256 was not, according to its service list, served upon objectors even though O'Gara, et al. and the Big Wood Canal Company had filed timely objections to 37-862 with this Court.

The concerns over the diversion rate, period of use, and forfeiture are not resolved by the simple splits referred to by Oliver Family Trust in this Motion. In fact, the split rights are recommended in excess of two inches per acre for both 37-22255 for Thomas Trust and 37-22256 for the Oliver Trust. Accordingly, nothing has changed in the split into the two water rights that would ameliorate the objections filed against the parent right by O'Gara, et al. and Big Wood Canal Company. Therefore, O'Gara, et al. and Big Wood Canal Company object to the entry of a Special Master's Report and Recommendation on Subcase No. 37-22256 as well as 37-22255.

In addition, the Motion asserts that there are overlapping rights to this same water right asserted by Fairman No. 37-862A and Weaver No. 37-4312. No decree should be entered on 37-22256 while the overlapping claims remain pending. In other words, no decree should be issued in this subcase until after rights 37-862A and 37-4312 have been decreed as disallowed.

DATED this 14 day of February, 2009.

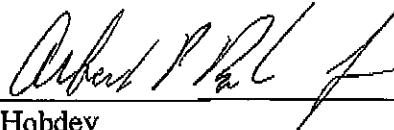
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Rocky Sherbine, Gerald Bashaw, and Pepin
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HOBDEY & HOBDEY



Craig Hobdey

Attorneys for Big Wood Canal Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1/14th day of February, 2009, I caused to be served a true and correct copy of the foregoing **RESPONSE OF TOM O'GARA, ET AL. AND BIG WOOD CANAL COMPANY TO MOTION FOR ENTRY OF SPECIAL MASTER'S REPORT AND RECOMMENDATION** by the method indicated below, and addressed to each of the following:

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