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MAY 29 2009

DEPARTMENT OF
WATER RESOURCES

Attorneys for Olsen Livestock Consultants, Inc.

Scott L. Campbell, ISB No. 2251
Andrew J. Waldera, ISB No. 6608
Dylan B. Lawrence, ISB No. 7136
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
23091.0000

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

Case No. 39576

Subcase No. 37-00353G

**AFFIDAVIT OF DYLAN B. LAWRENCE IN
SUPPORT OF MOTION TO FILE LATE
RESPONSE OR PARTICIPATE**

STATE OF IDAHO)
) ss.
County of Ada)

Dylan B. Lawrence, having been duly sworn upon oath, deposes and states as follows:

1. I am licensed to practice law in the State of Idaho. I represent Olsen Livestock Consultants, Inc. in the above-captioned matter and have access to the files that are pertinent to this matter. I make this affidavit based upon personal knowledge.

**AFFIDAVIT OF DYLAN B. LAWRENCE IN SUPPORT OF
MOTION TO FILE LATE RESPONSE OR PARTICIPATE - 1**

Client:1229582.1

2. Attached hereto as Exhibit A is a true and correct copy of the warranty deed conveying Lot 2, Block 1 of the Dean Ranch Subdivision to Olsen Livestock Consultants, Inc., as well as the 1975 plat map of the Dean Ranch Subdivision. To the best of my knowledge, this is the most recent conveyance of fee simple title to this property.

3. Attached hereto as Exhibit B is a true and correct copy of the portion of the Frost Decree adjudicating a water right to James Johnson with a June 12, 1886, priority date, in the amount of 320 inches (6.4 cfs), for the irrigation of 160 acres.

4. Attached hereto as Exhibit C is a true and correct copy of the Amended Preliminary Order issued by IDWR on August 25, 1997, in response to a water delivery call initiated by Olsen.

5. Attached hereto as Exhibit D is a true and correct copy of the Director's Report recommendation for water right 37-353J.

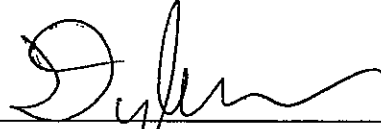
6. Attached hereto as Exhibit E is a true and correct copy of a letter dated January 22, 2007, and an unsigned letter obtained from IDWR's electronic adjudication claim file dated January 3, 2007, explaining the basis for IDWR's reduction of the quantity and place of use elements for water right 37-353J.

7. Attached hereto as Exhibit F is a true and correct copy of the objection filed by Olsen to IDWR's recommendation of water right 37-353J.

8. Attached hereto as Exhibit G is a true and correct copy of IDWR's recommended disallowance of water right 37-353G.

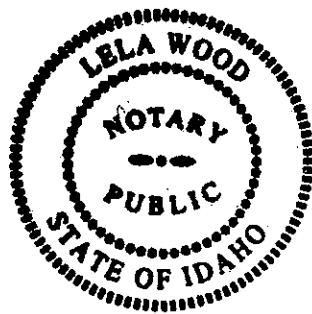
9. Attached hereto as Exhibit H is a true and correct copy of the objection filed by Barry in subcase 37-353J.

Further your affiant sayeth naught.



Dylan B. Lawrence

SUBSCRIBED AND SWORN to before me this 28th day of May, 2009.



NOTARY PUBLIC FOR IDAHO

Residing at Boise

My Commission Expires 5-31-2012

CERTIFICATE OF SERVICE

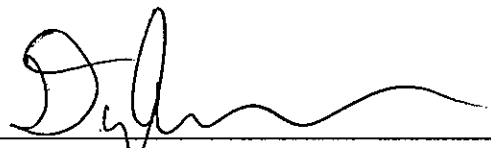
I HEREBY CERTIFY that on this 28th day of May, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF DYLAN B. LAWRENCE IN SUPPORT OF MOTION TO FILE LATE RESPONSE OR PARTICIPATE** to be served by the method indicated below, and addressed to the following:

Barbara A. Barry
Represented by:
Paul L. Arrington
BARKER ROSHOLT & SIMPSON, LLP
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-0485
Fax: (208) 735-2444

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Dylan B. Lawrence

EXHIBIT A

TO AFFIDAVIT OF DYLAN B. LAWRENCE IN SUPPORT
OF MOTION TO FILE LATE RESPONSE OR PARTICIPATE

Subcase No 37-00353G

Order No. 19384

WARRANTY DEED

For Value Received Robert D. Head and Sharyl M. Head, husband and wife

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto
Olsen Livestock Consultants, Inc., an Idaho Corporation
whose address is: 228 S. Cole Rd., Boise, ID 83709

Hereinafter called the Grantee, the following described premises situated in Blaine County, Idaho, to-wit:

Lot 2 in Block 1 of DEAN RANCH SUBDIVISION, according to the official plat
thereof, recorded as Instrument No. 169670, records of Blaine County,
Idaho.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to the Grantee's heirs
and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee
simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and
except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will
warrant and defend the same from all claims whatsoever.

Dated: September 25, 1996

Robert D. Head
Robert D. Head

Sharyl M. Head
Sharyl M. Head

State of Idaho

County of Blaine

On September 26, 1996 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert
D. Head and Sharyl M. Head personally known to me (as proved to me on the basis of satisfactory evidence) to be the person(s)
whose name(s) are subscribed to the within instrument and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

Signature Tami K. Sorenson

Commission Expires: 7-12-2000



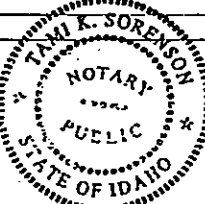
STATE OF IDAHO
COUNTY OF Blaine
On September 27, 1996 before me, the undersigned, a Notary Public in and for
said State, personally appeared Sharyl M. Head

personally known to me (or proved to me on the basis of satis-
factory evidence) to be the person(s) whose name(s) (is/are) sub-
scribed to the within instrument and acknowledged to me that
he/she/they executed the same.

WITNESS my hand and official seal.

Signature Tami K. Sorenson

Expires 7-12-2000

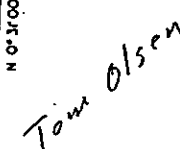


(This area for official notarial seal)

BLAINE CO. REQUEST
OF
FIRST AMERICAN TITLE CO.
1996 SEP 27 P 4:31
MARY GREEN, CLERK
FEES \$ 35

394945

Red



This map is a photographic reproduction of that on file in either the Recorder's or the Surveyor's Office. The company assumes no liability for variation, if any, with another re-survey.

Courtesy Of:
First American Title Co.
Box 758
Ketchum, Idaho 83340

LEGEND

- | STATE OF IDAHO | | COUNTY OF ADAMS |
|----------------|----------------------------------|---|
| | | |
| 1 | Marcelo J. Cox | Being first duly sworn, deposes and testifies that he is a professional engineer, licensed to practice by the State of Idaho, that he has compared the above deed with the original plat and that the same is a true and exact copy of said deed. |
| 2 | 3/8" x 5/8" x 1/2" x 1/2" x 1/2" | |
| 3 | 3/8" x 5/8" x 1/2" x 1/2" x 1/2" | |
| 4 | Found roughly 8. W. boundary | |
| 5 | Brass Cap | |
| 6 | Found Stone Monuments | |
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Subscribed and sworn before me this 2nd
day of November, 1916
in presence of James J. O'Connell
Notary Public for Idaho My Commission Expires
Residing at Boise, Idaho 2-11-17

U-B ENGINEERS, INC.
Engineers Planners
Boise, Idaho

EXHIBIT B

TO AFFIDAVIT OF DYLAN B. LAWRENCE IN SUPPORT
OF MOTION TO FILE LATE RESPONSE OR PARTICIPATE

Subcase No 37-00353G

S. C. FROST, ET AL.,

PLAINTIFFS,

VS.

ALTURAS WATER COMPANY ET AL.,

DEFENDANTS.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

In the District Court of the Fourth
Judicial District of the State of Idaho,
in and for the County of Lincoln.

Dated: December 12, 1909

Recorded: December 23, 1909

Judgement Book 6, page 469.

Signed: Alfred Budge, Presiding Judge.
Certificate of Harry W. Anderson, Clerk
of the Court, attached.

Recites:

That the following named plaintiffs and defendants, claimants of the use of water in said action, are respectively, are the owners, in the possession and entitled to the possession of the following tracts of land to-wit:

James Johnson:

$E\frac{1}{2}$ of $SE\frac{1}{4}$ of Section 13, and $E\frac{1}{2}$ of $NE\frac{1}{4}$ of Section 24, T. 1 N. R.
18 E., containing 160 acres.

S. C. FROST, ET AL,

PLAINTIFFS,

vs.

ALTURAS WATER COMPANY, ET AL,

DEFENDANTS.

DECREE:

IN THE DISTRICT COURT OF THE FOURTH
JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR SAID COUNTY OF LINCOLN.

Dated: Dec. 13, 1909

Recorded: Book 6 of Judgments, page 447.

Filed: December 23, 1909.

Signed: Alfred Hodge, Presiding Judge.

CERTIFICATE OF TRUE COPY:

Dated: December 17, 1909.

Signed: Harry W. Anderson, Clerk (SEAL)

Recites:

It is Ordered, Adjudged and Decreed, that the several parties, plaintiffs, and defendants herein named, do have judgment respectively for a right to use, for irrigation and other purposes, the following number of inches of water, each fifty inches thereof to be equivalent to a flow of one cubic foot per second, as prescribed by the law of Idaho, from the waters of the Malad or Big Wood River and its tributaries, situated in the counties of the State of Idaho, being Blaine and Lincoln, their priorities to date from the time hereinafter named, to-wit:

Johnson, James

320 inches

June 12, 1886

Big Wood River

EXHIBIT C

TO AFFIDAVIT OF DYLAN B. LAWRENCE IN SUPPORT
OF MOTION TO FILE LATE RESPONSE OR PARTICIPATE

Subcase No 37-00353G

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF A CALL FOR	)	
DELIVERY OF WATER RIGHT NO.	)	AMENDED
37-0353 TO OLSEN LIVESTOCK	)	PRELIMINARY ORDER
CONSULTANTS, INC.	)	
_____	)	

Scott Campbell, an attorney representing Olsen Livestock Consultants, Inc., requested delivery of 0.40 cfs (20 miners inches) of water from the Big Wood River under water right No. 37-0353. After reviewing the files and records of the Department, Water District 37, and Blaine County, the Department of Water Resources enters the following Findings of Fact, Conclusions of Law, and Preliminary Order.

FINDINGS OF FACT

1. Water Right No. 37-0353 was decreed to James Johnson in the case of S. C. Frost, et al vs. Alturas Water Co., et al. The right is for 6.4 cfs (320 miners inches) to be diverted from the Big Wood River for irrigation of the E1/2SE1/4 of Section 13 and the E1/2NE1/4, Section 24, T1N R18E, B.M., Blaine County (approximately 160 acres). The water right has been diverted into the Wood River Valley Irrigation District No. 45 canal located within the SW1/4NW1/4, Section 36, T2N, R18E, for delivery to users of the water. The priority of right No. 37-0353 is June 12, 1886.
2. The decreed place of use for right No. 37-0353 was divided in the early 1970's into an 18 lot subdivision known as the Dean Ranch Subdivision. The records of the Department and Water District 37 indicate that right No. 37-0353 was appurtenant to and used upon the decreed place of use up to the time the land was subdivided and on some of the subdivision lots and other land each year thereafter. Lot 2, Block 1 of the subdivision has not been irrigated for more than 10 years as evidenced by a review of aerial photographs and other information available to the department.
3. Olsen Livestock Consultants, Inc. claims ownership of Lot 2, Block 1, Dean Ranch Subdivision. The deeds in the chain of title filed with Blaine County for this lot from the creation of the subdivision to the present are summarized as follows:
 - a. M.D. and Katherine Dean deeded Lot 1 (approximately 8 acres) and Lot 2 (approximately 10 acres) with appurtenances to Charles A. and Debra Anne Curtis on November 1, 1974. Appurtenant water rights were not specifically described.

- b. Charles A. and D. Anne Curtis deeded Lot 1 with appurtenances to Robert E. Fosnot on October 19, 1978. Appurtenant water rights were not specifically described.
 - c. Charles A. and Debra Anne Curtis deeded Lot 2 with appurtenances to Dean R. and Judene Call on December 5, 1978. A water right with an 1887 priority date for 20 inches was specifically included.
 - d. Dean R. and Judene Call deeded Lot 2 with appurtenances to Robert D. and Sharyl M. Head on August 5, 1991. A water right with an 1887 priority date for 20 inches was specifically included.
 - e. Robert D. and Sharyl M. Head deeded Lot 2 with appurtenances to Olsen Livestock Consultants, Inc. on September 25, 1996. Appurtenant water rights were not specifically described.
4. Blaine County does not have any record of deeds transferring title of any part of Water Right No. 37-0353 separately from the appurtenant land during the time period of December 15, 1969 (the date the land was deeded to M. D. Dean) to November 1, 1974 (the date of the initial sale of Lot 1 and 2).
5. As of July 22, 1997, Water District 37 records listed the following as the current owners of water right No. 37-0353:
- a. Harry L. Oppenheimer (20 miners inches) based upon a letter dated October 27, 1977 from M. D. Dean confirming the sale of the water to Jerry Lee Johnson, a February 16, 1978 warranty deed from Jerry Lee Johnson to Marvin Lotspeich, and a 1980 warranty deed from Marvin Lotspeich to Harry L. Oppenheimer.
 - b. Ed Stricker (20 miners inches) based upon an October 29, 1977, letter from M. D. Dean confirming sale of the water to Mr. Stricker.
 - c. Reid Kantenwein (10 miners inches) based upon IDWR approved transfer No. 3679 filed by Gus Chek. Mr. Chek's ownership was based upon a November 1, 1977, letter confirming sale of 20 inches of water to Mr. Chek by Mr. Dean. Mr. Chek subsequently sold 10 inches to Douglas Driever. The water is to be used upon 10 acres in the SW1/4SW1/4, Section 18, T1N R19E. Based upon approved permit No. 37-08660, the 10 inches of water held by Kantenwein under right No. 37-0353 is to be left undiverted from the Big Wood River to mitigate depletions in flow of the river resulting from pumping ground water under Permit No. 37-08660.

d. Douglas Driever (10 miners inches) based upon an October 4, 1991 letter from Gus Chek confirming sale of the water and Transfer No. 3679 approved by the department.

e. Robert Gardner (180 miners inches) based upon a June 25, 1982 letter from M. D. Dean confirming sale of the water to Mr. Gardner.

f. J Karl Bick (20 miners inches) based upon a June 25, 1982 letter from M. D. Dean to John Peterson and a quit claim deed dated November 3, 1993 from John Peterson to J Karl Bick.

g. Robert Fosnot (20 miners inches) based upon Transfer No. 2948 approved by the department.

6. The records of Water District 37 list a current owner for 280 inches of the 320 miners inches) of right No. 37-0353. Olsen Livestock Consultants, Inc. is not listed as a current owner by the water district. The watermaster records indicate that an assessment has not been paid for delivery of water for use on Lot 2, Block 1, Dean Ranch Subdivision since 1982 or earlier.

7. The following have claimed portions of right 37-0353 in the Snake River Basin Adjudication (SRBA):

- | | | |
|----|---|--------------------|
| a. | A37-0353 J Karl & Judith G. Bick
(This claim was originally filed by John Peterson.) | 20 miners inches |
| b. | A37-0353B Edward & Jeannine Stricker | 20 miners inches |
| c. | A37-0353D Robert & Kathryn Gardner | 180 miners inches |
| d. | A37-0353E Harry L. Oppenheimer, Jr. | 20 miners inches |
| e. | A37-0353F William R. Long | 10 miners inches |
| f. | A37-0353G Douglas Driever
(This is one half of claim A37-0353C filed by Gus Chek.) | 10 miners inches |
| g. | A37-0353H Reid Kantenwein
(This is one half of claim A37-0353C filed by Gus Chek.) | 10 miners inches |
| h. | A37-0353J Tom Olsen | 13.5 miners inches |
| i. | A37-11688 Paul R. & Robert E. Fosnot
(This claim is based upon water right No. 37-0353.) | 20 miners inches |

8. The SRBA claims on file total 303.5 miners inches.
9. The Water District 37 records show that Wood River Valley Irrigation District No. 45 has paid the Water District 37 assessments for 1997 for Gus Chek and for 1996 and 1997 for Robert Kierstad. The chain of title for Lot 9, Block 1, Dean Ranch Subdivision indicates that the ownership interest of Robert Kierstad was reassumed by M. D. Dean in 1978 or 1979. Letters in the files of Water District 37 indicate that any ownership interest of Mr. Kierstad in the 40 inches of water was also reassumed by Mr. Dean.
10. The Department, Water District 37, and Blaine County records do not show the transfer of an 1887 water right to Lot 2, Block 1, Dean Ranch Subdivision.
11. Water District 37 has been active each year since 1974 and earlier.
12. Rule 104 of the "Rules of Procedure of the Idaho Department of Water Resources", IDAPA 37.01.01, authorize the department to initiate a formal proceeding by issuing an informal determination that will become final in the absence of further action by the person(s) to whom the document is addressed.
13. Wood River Valley Irrigation District #45 indicates that because of the long delivery ditch, a right of less than 20 inches cannot be delivered to Lot 2, Block 1, Dean Ranch Subdivision. District #45 recommends that the ownership records be clarified for the 40 miners inches attributed to Robert Kierstad under Water District 37 records by dividing it between Olsen Livestock Consultants and Tom Goicoechea, owner of Lot 3, Block 1, Dean Ranch Subdivision.

CONCLUSIONS OF LAW

1. Water right No. 37-0353 has not been forfeited as evidenced by the Water District 37 records of delivery and use, although use has not occurred on Lot 2, Block 1 Dean Ranch Subdivision for many years.
2. Lot 2, Block 1 Dean Ranch Subdivision was included in the decreed place of use of water right No. 37-0353. Unless a change in place of use was made in accordance with a valid transfer procedure, water right No. 37-0353 is prorated uniformly to the place of use; i.e., 2 miners inches to each acre of the place of use, *Crow v. Carlson*, 107 Idaho 461 (1984).
3. A water right is an appurtenance to the land and passes by conveyance of the land unless it was specifically reserved in the deed or it can be clearly shown that it was known to both parties that the water right was not intended to be conveyed. *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911). Because the 1974 deed from M. D. and Katherine Dean to Charles A. and Debra Anne Curtis did not specifically reserve water rights from the sale, a proportionate share of water right 37-0353 remained appurtenant to the parcel. Deeds and letters confirming the sale of portions of the decreed water right issued by M. D. Dean subsequent to the 1974 deed to Curtis purporting to convey water rights could not have moved the water right from Lot 2.

4. The reference to an "1887" water right in the chain of title to Lot 2, Block 1, Dean Ranch Subdivision, appears to be a typographical error in describing the appurtenant May 12, 1886 priority water right because documentation has not been found to associate an 1887 priority water right with Lot 2, Block 1, Dean Ranch Subdivision. The inclusion of this reference to a water right in the deed to Mr. Call indicates that Mr. Curtis understood that a water right was appurtenant to Lot 2, Block 1, Dean Ranch Subdivision.

5. Section 42-607, Idaho Code, provides that a water user can not adversely possess the water rights of another user in an active water district.

6. The information available to the department indicates that a proportionate share of water right No. 37-0353 is appurtenant to Lot 2, Block 1, Dean Ranch Subdivision owned by Olsen Livestock Consultants, Inc. The watermaster of Water District 37 should be instructed to deliver the water to the authorized point of diversion for delivery and irrigation use.

7. Because some of the persons presently owning part of water right No. 37-0353 are not claiming ownership and are not calling for delivery under the right, the watermaster can satisfy the Olsen Livestock Consultant, Inc. call without otherwise changing the delivery to those entitled to use the water.

8. Mr. Tom Goicoechea has not asserted a claim to own a part of right No. 37-0353. If he or others having a potential ownership claim to right No. 37-0353 make a call for delivery and provide information to support ownership, IDWR will consider the validity of the call by providing notice to other affected users and providing opportunity to participate. A ruling by IDWR with respect to a call, including the present Olsen Livestock Consultants, Inc. call, is an interim determination subject to review and revision by the SRBA Court.

9. IDWR is not authorized to divide or otherwise assign the 40 miners inches at one time shown in the Water District 37 records as owned by Robert Keirstad to satisfy the call by Olsen Livestock Consultants, Inc. or any other claimant. The order to deliver 20 miners inches to Olson Livestock Consultants, Inc. should not be viewed as making such a determination.

ORDER

IT IS, THEREFORE, HEREBY ORDERED:

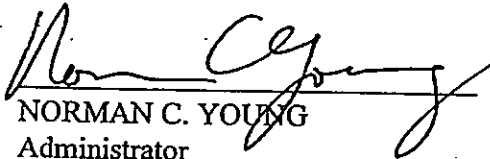
1. The watermaster of Water District 37 is instructed to deliver 0.40 cfs of water right 37-0353 with a June 12, 1886 priority date to the Wood River Valley Irrigation District No. 45 headgate in the SW1/4NW1/4, Section 36, T2N, R18E for use by Olsen Livestock Consultants, Inc. Prior to delivery of the water under this order, Olsen Livestock Consultants, Inc. shall have paid any applicable Water District 37 assessments.

2. This Order does not constitute a determination that Olsen Livestock Consultants, Inc. has a right-of-way, easement, or other necessary authorities and approvals needed to convey water through the Wood River Valley Irrigation District headgate and canal system.

3. This Order is a preliminary determination subject to revision if additional information is submitted indicating that water right No. 37-0353 is no longer appurtenant to Lot 2, Block 1, Dean Ranch Subdivision. All persons receiving this order and others using or claiming the use of water under right No. 37-0353 have the opportunity to seek reconsideration or file exceptions in accordance with Rule 730 of the "Rules of Procedure of the Department of Water Resources," IDAPA 37.01.01.

4. Ownership of water right no. 37-0353 will be finally fully determined by the SRBA District Court.

Signed at Boise, Idaho, this 25th day of August, 1997.



NORMAN C. YOUNG
Administrator
Water Management Division

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of August, 1997, I served a true and correct copy of the foregoing document on the following person(s) by mailing in the U.S. mail, first class, with the correct postage affixed thereto:

Scott Campbell
Elam & Burke
PO Box 1539
Boise, Idaho 83701

J Karl and Judith G. Bick
PO Box 2014
Sun Valley, Idaho 83353

Gus Chek
PO Box 1984
Hailey, Idaho 83333

Robert and Kathryn Gardner
PO Box 470
Bellevue, Idaho 83313

William R. Long
11710 Mayfield Avenue
Los Angeles, California 90049

Robert Earl Fosnot
PO Box 290
Bellevue, Idaho 83313

E. Lee Schlender
PO Box 296
Hailey, Idaho 83333

Edward and Jeannine Sticker
10767 State Highway 75
Bellevue, Idaho 83313

Douglas Driever
PO Box 2072
Hailey, Idaho 83333

Harry L. Oppenheimer, Jr.
246 Summit Drive
Corde Madera, California 93925

Reid Kantenwein
PO Box 1525
Hailey, Idaho 83333

Paul R. Fosnot
837 Laurel Avenue
Pomona, California 91767

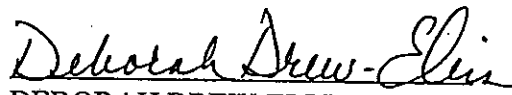

DEBORAH DREW-ELLIS
Legal Secretary

EXHIBIT D

TO AFFIDAVIT OF DYLAN B. LAWRENCE IN SUPPORT
OF MOTION TO FILE LATE RESPONSE OR PARTICIPATE

Subcase No 37-00353G

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-353J

NAME AND ADDRESS: OLSEN LIVESTOCK CONSULTING
228 S COLE RD
BOISE ID 83709

SOURCE: BIG WOOD RIVER

TRIBUTARY: MALAD RIVER

QUANTITY: 0.320 CFS

PRIORITY DATE: 06/12/1886

POINT OF
DIVERSION: T02N R18E S36 NESWNW Within BLAINE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/15 10/31	0.320 CFS

PLACE OF USE: IRRIGATION in BLAINE County

T01N R18E S24 SENE 7.80

7.8 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. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

The place of use is also known as Lot 2 of the Dean Ranch Subdivision.

This right is a portion of former Right 37-353.

EXHIBIT E

TO AFFIDAVIT OF DYLAN B. LAWRENCE IN SUPPORT
OF MOTION TO FILE LATE RESPONSE OR PARTICIPATE

Subcase No 37-00353G



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

RECEIVED

JAN 24 2007

MOFFATT, THOMAS, BARRETT.
ROCK & FIELDS, CHTD

SOUTHERN REGION

January 22, 2007

Moffatt Thomas Chtd
ATTN: Scott Campbell
PO Box 829
Boise, ID 83701-0829

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

RE: SRBA Claim Recommendation 37-353J, Tom Olsen/Olsen Livestock Consulting

Dear Mr. Campbell;

As I explained to Mr. Olsen, it was necessary to recommend less than the claimed diversion rate because Right 37-353 is over-claimed in the SRBA. While a diversion rate of 6.4 cfs was established in the Frost Decree in 1909, 6.66 cfs was claimed in the SRBA for the claims that could be recommended. I made the necessary reductions as fairly as I could, and do not plan to change my recommendations at this time.

With regard to the place of use, I recommended only those areas that appeared to be irrigated by the red-diversion works in the District Canal. Areas taken out for homes, driveways, etc., were not recommended. All my recommendations for the Dean Ranch Subdivision were done this same way, and I do not plan to change this either.

Regards,

James E. Stanton
Sr. Water Resource Agent

FILE



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

January 3, 2007

Tom Olsen
PO Box 1145
Bellevue, ID 83313

JAMES E. RISCH
Governor

KARL J. DREHER
Director

RE: SRBA Recommendation 37-353J

Dear Mr. Olsen;

My initial recommendation of this claim was for a diversion rate of 0.40 cfs, which was what you claimed. However, Water Right 37-353 is now over-claimed by 0.28 cfs. The excess amount cannot be allowed, so it is necessary to reduce some claims by 21.2% in order to stay within the original decreed rate of 6.4 cfs. Four claims that have been recommended cannot be traced back to known previous owners, and your claim is one of these. I am therefore revising my recommendation for your claim to 0.32 cfs. The original acreage recommendation remains the same.

If you have questions, feel free to contact me. Once the Director's Report for your area comes out (it is presently scheduled to be released during the third week in January), you can file a formal objection to the recommendation if you so desire.

Regards,

James E. Stanton
Sr. Water Resource Agent

EXHIBIT F

TO AFFIDAVIT OF DYLAN B. LAWRENCE IN SUPPORT
OF MOTION TO FILE LATE RESPONSE OR PARTICIPATE

Subcase No 37-00353G

RECEIVED

NOV 15 2007

Department of Water Resources
Adjudication Bureau

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 37-00353J

(Insert water right number)

Case No. 39576)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Olsen Livestock Consultants, Inc.

Address: P.O. Box 1145

Bellevue, ID 83313

Daytime Phone: (208) 788-4149

Name & Address of Attorney, if any:

Scott L. Campbell / Andrew J. Waldera

Moffatt, Thomas, Barrett, Rock & Fields

P.O. Box 829, Boise, ID 83701-0829

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Olsen Livestock Consulting

Address: 228 S. Cole Road

Boise, Idaho 83709

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☒ **Name and Address**
Should be: Olsen Livestock Consultants, Inc., P.O. Box 1145, Bellevue, ID 83313
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: 0.40 cfs
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☒ **Period of Year**
Should be: Quantity of 0.40 cfs
9. ☒ **Place of Use**
Should be: 10 Acres within the SENE S24 T01N R18E
10. ☐ **I object because:**
 - ☐ This water right Should not exist.
 - ☐ This water right was not recommended, but Should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTIONS(S):** See Attachment 1.

F.

VERIFICATION (must be completed)

State of Idaho)
)ss.
County of Ada)

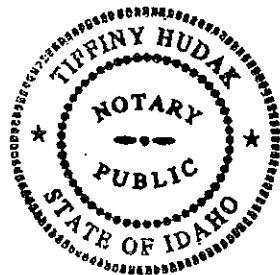
Scott L. Campbell, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

[Signature]
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: November 14, 2007



[Signature]
Notary Public for Idaho
Residing at: Boise, ID
My Commission Expires: 9/16/09

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on November 14, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Olsen Livestock Consultants, Inc.

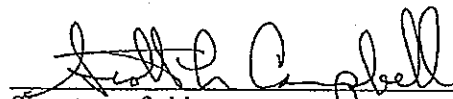
Address: P.O. Box 1145
Bellevue, ID 83313

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



Signature of objector or attorney
mailing on Objector's behalf

ATTACHMENT 1
STANDARD FORM 1 – OBJECTION
SUBCASE 37-353J

Reasons Supporting Objection(s):

Name and Address:

The correct name of the water right owner is Olsen Livestock Consultants, Inc., and address of the water right holder is P.O. Box 1145, Bellevue, ID 83313.

Quantity:

There is no legal basis for reduction in the historical amount of water used to irrigate the property.

Period of Use:

There is no legal basis for reduction in the historical amount of water used to irrigate the property.

Place of Use:

There is no legal basis for reduction in the number of irrigated acres historically irrigated under this water right.

EXHIBIT G

TO AFFIDAVIT OF DYLAN B. LAWRENCE IN SUPPORT
OF MOTION TO FILE LATE RESPONSE OR PARTICIPATE

Subcase No 37-00353G

05/23/2008

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION</u>	<u>REASON</u>
37-353G	BARBARA A BARRY PO BOX 1197 BELLEVUE ID 83313	Disallowed	No lawful appropriation shown.

EXHIBIT H

TO AFFIDAVIT OF DYLAN B. LAWRENCE IN SUPPORT
OF MOTION TO FILE LATE RESPONSE OR PARTICIPATE

Subcase No 37-00353G

**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

Case No. 39576

)
) **A. Subcases: 37-353J**
)
) **STANDARD FORM 1**
) **OBJECTION**
)

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Barbara Barry
Address: PO Box 1197
Bellevue, ID 83313
Daytime Phone: (208) 788-2811

Name & Address of Attorney, if any: Travis L. Thompson
Paul L. Arrington
Barker Rosholt & Simpson LLP
P.O. Box 485
Twin Falls, Idaho 83303-0485
(208) 733-0700

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Olsen Livestock Consulting, Inc.
Address: 228 S. Cole Road
Boise, ID 83709

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☒ **Name and Address**
Should be: _____
2. ☒ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: _____
4. ☒ **Priority Date**
Should be: _____
5. ☒ **Point of Diversion**
Should be: _____
6. ☒ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: _____
8. ☒ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: _____
- 10 ☐ **I object because:**
☒ This water right should not exist.
☐ This water right was not recommended, but Should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTIONS(S): Water Right 37-353 originated in the *Frost Decree*. The original water right authorized a diversion rate of 6.4 cfs (or 320 inches). The right has subsequently been split into a number of additional rights, including the above listed water right. The above listed water right was recommended as part of the Director's Report for Basin 37 part 3, even though the claimant's ownership interest in the water right is questionable, at best. At the same time, water right 37-353G was disallowed even though the ownership interest is well established and has long been recognized by the Department. Since all 6.4 cfs of the parent right have been

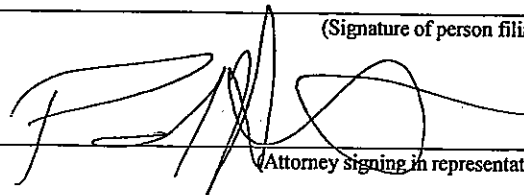
recommended, the above listed water right should either (1) have its diversion rate adjusted; or (2) be disallowed.

F. VERIFICATION (must be completed)

State of Idaho)
) ss.
County of Twin Falls)

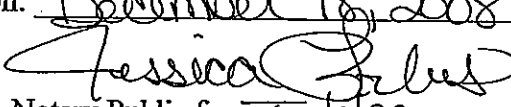
Paul L. Arrington, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

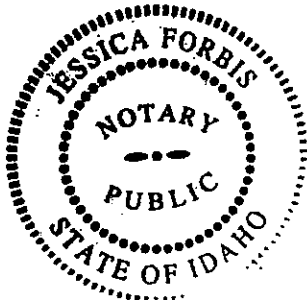
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and(6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)


(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

December 18, 2008

Notary Public for Idaho
Residing at: Twin Falls
My Commission Expires: 4/3/12



G. CERTIFICATE OF MAILING

I certify that on December 18, 2008, I served the foregoing *Objection*, including all attachments, on to the following persons:

1. Original to (via hand delivery)

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

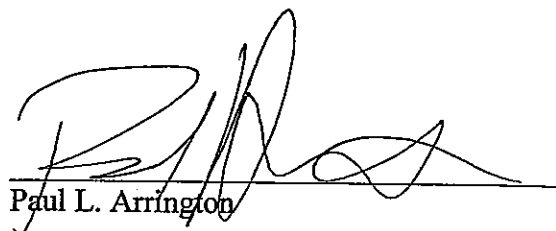
Scott Campbell
Moffatt Thomas Barrett Rock & Fields Chtd.
PO Box 829
Boise, ID 83701-0829
Attorney for Olsen Livestock Consultants, Inc. (37-353J)

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



Paul L. Arrington