

1
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3 ROBERTSON & SLETTE, PLLC
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5 Twin Falls, Idaho 83303-1906
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9 lrlm\litig\ABC\Muldoon\discovery responses_Muldoon

10 *Attorneys for Muldoon Ranch Co., LLC*

RECEIVED
JUN 08 2009
DEPARTMENT OF
WATER RESOURCES

11 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
12 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

13 * * * * *

14 IN Re SRBA) Subcase No. 37-01005
15)
16 Case No. 39576) MULDOON RANCH CO., LLC'S
17) ANSWERS & RESPONSES TO
18) OBJECTORS' FIRST SET OF
19) DISCOVERY REQUESTS

20 *****

21 COMES NOW, MULDOON RANCH CO., LLC (hereinafter "Claimant"), by and
22 through its undersigned counsel of record, Gary D. Slette, having previously responded to
23 Objectors' Request for Admission, and answers and responds to Objectors' First Set of Discovery
24 Requests as follows:

25 INTERROGATORIES

26 INTERROGATORY NO. 1: Please state the name, address, and telephone number of
each and every individual known to you who has any knowledge of, or who claims to have
knowledge of, any facts or evidence discoverable in this matter (e.g., the historic source(s) of
water right no. 37-1005, and/or the historic means of conveyance of said water right to its

originally decreed place of use in Section 8, Township 02 North, Range 21 East), together with a brief summary of each person's knowledge.

ANSWER NO. 1:

Grant Ellsworth
246 East Lehi Rd.
Mesa, AZ 85201
(480) 464-9445

Any of the water masters who have historically delivered the water from Muldoon Creek.

INTERROGATORY NO. 2: Please state the name, address, and telephone number of any and all experts you plan to call upon at the hearing of this matter and please:

- (a) summarize each expert's background and qualifications;
- (b) state the subject matter of each expert's anticipated testimony;
- (c) state the substance of the facts and opinions to which each expert is expected to testify; and
- (d) disclose all underlying facts and data upon which each expert bases his or her expert opinion(s).

ANSWER NO. 2:

Charles G. Brockway
Brockway Engineering, PLLC
2016 N. Washington St. – Ste. 4
Twin Falls, ID 83301
(208) 736-8543

- (a) See attached Resume'.
- (b) Dr. Brockway is expected to testify regarding his review of the decrees relative to this water right and the filing of claims in the SRBA.
- (c) Dr. Brockway is anticipated to testify that the decree affecting this water right does not describe with particularity the elements of the points of diversion for the water right at issue.
- (d) The Woodworth decree and any amendments or corrections thereto and any and all water master records, together with documents in the IDWR data base.

1
2 INTERROGATORY NO. 3: Please identify each and every document that you intend
3 to offer as an exhibit at the hearing of this matter.

4 ANSWER NO. 3:

- 5 1. The Woodworth decree and all amendments and/or corrections thereto.
6 2. Water master records.
7 3. Any documents in the IDWR data base or any IDWR records that pertain to this
8 right.
9 4. Any documents produced by the Objectors.

10 INTERROGATORY NO. 4: If your response to Request for Admission No. 1 is
11 anything other than an unqualified admission, please describe in full and complete detail any
12 and all grounds supporting your response.

13 ANSWER NO. 4: Please see Response to Request for Admission No. 1 previously
14 filed in this matter.

15 INTERROGATORY NO. 5: Please describe in full and complete detail any and all
16 facts supporting your contention that Muldoon Creek is a valid, historic source for water right
17 no. 37-01005.

18 ANSWER NO. 5: Claimant responds to this interrogatory by asserting that the water
19 right under 37-1005 has, during the time of its ownership, been diverted from Muldoon Creek.
20 Conversations with prior owners have confirmed that this water right was delivered historically
21 through Muldoon Creek.

22 INTERROGATORY NO. 6: Please describe in full and complete detail the chronology
23 of the construction of Muldoon Ditch (i.e., when the ditch was constructed, who constructed the
24 ditch, and if the ditch was constructed in stages, when the respective segments were constructed
25 and were each segment terminated.)

26 ANSWER NO. 6: Neither Claimant nor its experts possess any independent
knowledge of the chronology of the construction of Muldoon Ditch believed to have been done
approximately one century ago. Claimant responds by stating that it is presumed that the ditch
was constructed when the earliest water right on the ditch was decreed.

1
2 REQUESTS FOR PRODUCTION OF DOCUMENTS

3 REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents you
4 intend to introduce as exhibits at the hearing of this matter.

5 RESPONSE NO. 1:

- 6 1. Any and all decrees and records, including the Woodworth decree and SRBA
7 documentation, that may pertain to this water right and which are in the
8 possession of the Idaho Department of Water Resources.
- 9 2. Water master delivery records.
- 10 3. Any and all documents that may be produced by the Objectors in this matter.

11 REQUEST FOR PRODUCTION NO. 2: If your response to Request for Admission
12 No. 1 is anything other than an unqualified admission, please produce any and all documents
13 supporting, either in whole or in part, your response.

14 RESPONSE NO. 2: See Response to Request for Admission No. 1 previously filed in
15 this matter.

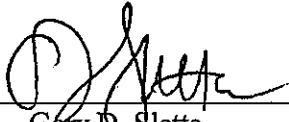
16 REQUEST FOR PRODUCTION NO. 3: Please produce any and all documents
17 supporting, either in whole or in part, your response to any of the Interrogatories contained
18 herein.

19 RESPONSE NO. 3: See Response to Request for Admission No. 1 previously filed in
20 this matter.

21 *Claimant reserves the right to supplement any answers and responses in these
22 answers and responses to Objectors' Requests for Discovery in accordance with the
23 Idaho Rules of Civil Procedure.*

24 DATED this 5 day of June, 2009.

25 ROBERTSON & SLETTE, PLLC

26 By: 

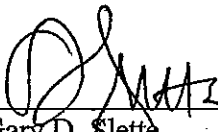
Gary D. Slette

CERTIFICATE OF MAILING

I hereby certify that on this 5 day of June, 2009, I served the original hereof, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Scott L. Campbell	☐	Hand Deliver
Andrew J. Waldera	☒	U.S. Mail
MOFFATT THOMAS BARRETT	☐	Overnight Courier
P.O. Box 829	☐	Facsimile Transmission - 208-385-5384
Boise, ID 83701-0829	☒	Email slc@moffatt.com ajw@moffatt.com

Director	☐	Hand Deliver
Idaho Dept of Water Resources	☒	U.S. Mail
P.O. BOX 83720	☐	Overnight Courier
Boise, ID 83720-0098	☒	Facsimile Transmission - 208-287-6700



Gary D. Slette

CHARLES G. BROCKWAY, Ph.D., P.E.

Brockway Engineering, PLLC
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301
(208) 736-8543 • charles.g.brockway@brockwayeng.com

EDUCATION

- | | |
|-----------|--|
| 1992-1995 | Iowa Institute of Hydraulic Research
University of Iowa, Iowa City, Iowa.
Ph.D., Civil and Environmental Engineering

Research was conducted under the Hunter Rouse Scholarship,
leading to the doctorate granted in December 1995. |
| 1989-1992 | University of Idaho, Moscow, Idaho.
B.S., Civil Engineering |
| 1988-1989 | Northwest Nazarene College, Nampa, Idaho. Major: Physics. |

EXPERIENCE

Professional

Managing Member, Brockway Engineering, PLLC
August 1995 to present. Areas of particular expertise include:

- Computer modeling of water resources systems
- Hydraulic, hydrologic, and environmental evaluations
- Statistical analysis and stochastic modeling
- Irrigation systems and crop water requirements
- Water conveyance and control system analysis and design
- Rainfall-runoff and flood plain-floodway analysis
- Idaho and western states water right transactions
- Economic analysis of water resources systems

P.E. Registrations: Idaho, Wyoming

Research

Graduate research: Quantitative assessment of the uncertainties associated with hydrologic reconstructions in augmenting historical information about low-flow phenomena.
Dr. A. Allen Bradley, Iowa Institute of Hydraulic Research, University of Iowa.

Undergraduate research: Leak detection in long oil pipelines under transient conditions
Dr. C. P. Liou, University of Idaho.

HONORS and AWARDS

University of Idaho Alumni Award for Excellence, 1992
Outstanding Senior Civil Engineering Student, 1992
Tau Beta Pi member
Phi Kappa Phi member
Golden Key National Honor Society member
National Dean's List member
Hunter Rouse Fellow, University of Iowa, 1992 - 1995

ACADEMIC PUBLICATIONS

- Brockway, C. G. and A. Allen Bradley (1995). Errors in streamflow drought statistics reconstructed from tree ring data. *Water Resources Research*, 31(9), 2279-2293.
- Brockway, C. G. (1995). An evaluation of streamflow reconstructions for estimation of drought statistics. Ph.D. Thesis, University of Iowa, Iowa City, Iowa.
- Brockway, C. G. and A. Allen Bradley (1996). Errors in reconstructed streamflow drought statistics. *13th Conference on Probability and Statistics in the Atmospheric Sciences*, American Meteorological Society.
- Liou, C.P., C. G. Brockway, and R. B. Miller (1991). Pipeline variable uncertainties and their effects on leak detectability. *1992 API Cybernetics Symposium*, Houston, Texas.

OTHER PUBLICATIONS

Dr. Brockway is the author or co-author of over 100 technical publications related to consulting services performed in the hydraulics, hydrology, and water resources fields. A listing can be provided upon request.

GRADUATE RESEARCH

Research was conducted at the Iowa Institute of Hydraulic Research under the Hunter Rouse scholarship. A brief summary of the main emphasis of the work is provided here.

Observed records of hydrologic variables such as streamflow are generally too short to yield reliable estimates of the characteristics of extreme events such as prolonged drought or large-scale temperature anomalies. In an effort to augment observed records, analysts have employed paleologic indicators such as the growth rings of trees, ice core composition, and sediment deposition characteristics as proxies for the desired hydrologic variable. If the paleologic information can be related to observed hydrologic information, a reconstruction of the hydrologic variable can be created for many years past.

Although reconstructions have been used frequently to make inferences about past drought or wet periods, or past temperature anomalies, time series statistics estimated from a reconstructed record are inherently more uncertain than those estimated from an observed record; they may be biased or have inflated standard error of estimation. This and other problems make records augmented with paleologic information less useful than they may appear.

The stochastic technique of Monte Carlo simulation was employed to investigate the usefulness of reconstructed hydrologic records. The estimation standard error and bias of important drought statistics was examined both in absolute terms and relative to expected uncertainty when an observed record is used. Uncertainty is dependent on the error in the reconstruction model, the length of data used to calibrate the model, the degree of autocorrelation present in the time series, and other factors. The phenomenon of "artificial smoothing" was identified and can lead to large biases in the estimated variance and other statistics. The presence of such bias may have led to erroneous conclusions about shifts in climate patterns by some users of hydrologic reconstructions. A Monte-Carlo processing technique was developed which greatly reduces estimation biases and should be used whenever statistics are estimated from a reconstruction.

AREAS OF EXPERTISE AND PRACTICE

Computer Modeling

Development, testing, and implementation of computer models for deterministic and stochastic analysis of hydraulic and hydrologic systems, both surface water and groundwater.

Groundwater Evaluations

Data collection, evaluation, and analysis of groundwater flow systems and contaminant transport.

Hydraulic Analysis and Design

Design and analysis of canal diversion and regulation structures, water measurement structures, spillways, pipelines, culverts, aqueducts, canals, pumping stations, surge-control devices, groundwater wells, irrigation systems, pipeline networks, municipal distribution systems.

Land Application of Wastewater

Evaluation and design of all aspects of wastewater treatment by land application, including hydrogeologic analysis and modeling, parameter loading analysis, environmental impact evaluation, system management and design, and permit acquisition and compliance.

Stream Bank Protection

Analysis of sedimentation and meander pattern evolution in natural waterways, both mountainous and low-gradient. Design of bank stabilization and protection structures. Design of river management projects including flood channel restoration, natural gravel bar removal, drop structures, and sills.

Water Rights Evaluations

Hydrologic analysis and transaction preparation for water right permits and transfers in compliance with current state policies, rules, and statutes. Crop evapotranspiration determination, climatic analysis; statistical analysis of climate and crop use variables; water requirements evaluations for irrigation, domestic, commercial, and industrial applications; consumptive use determination; field investigations, measurement and analysis of diversion capacity and water requirements.

Flood Analysis and Control

Estimation of flood-frequency relationships in natural and man-made drainages using statistical and deterministic approaches. Hydraulic analysis and computer modeling of waterways to predict water surface elevations and extent of inundation during flood events. Design of flood control structures and bank protection structures.

Water Demand and Sufficiency Analyses

Analysis and determination of water supply suitability, source development feasibility, and other factors affecting water supplies for municipalities, residential developments, and industry.

Hydrography

Discharge measurements in open-channels and closed-conduits using current meters, in-pipe impeller and propeller meters, and non-intrusive ultrasonic meters.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A37-01005
Date Received: 10/14/1988
Receipt No: 5003332
Received By: 16

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: GRANT ELLSWORTH 208-788-3125
Address: BOX 246
CAREY, ID 83320

2. Date of Priority: APR 01, 1886

3. Source: SPRING CREEK Trib. to: MULDOON CREEK
MULDOON CREEK LITTLE WOOD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
02N	21E	3	SE	SW	NE		BLAINE

5. Description of diverting works:
DIVERSION DAM, HEADGATE, DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	1.400		

7. Total Quantity Appropriated is:
1.400 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 3885.0 Acre.Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
02N	20E	13	SW	NE		IRR	

11. Place of use in counties: BLAINE

A37-01005

Page 1

Date: 10/14/88

MICROFILMED

FEB 23 1993

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

A37-01139, 01051, 01048, 02247, 07006, 02007

14. Remarks:

SOURCES NOT GIVEN IN DECREE BUT SHOWN ON USGS MAP.

P/U AMENDED BY ORDER DATED 11-18-1908.

THE LEGAL LAND DESCRIPTION FOR THE POU FOR THIS CLAIM IS THE
SAME AS FOR CLAIM NUBER A37-01139. INCIDENTAL STOCK USE.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

N. R. WOODWORTH ET. AL.

Decree Plaintiff

vs

FRANK ANTHONY ET. AL., AMENDED

Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Grant R. Greenworth Date: 10/17/88
Jim S. Ellsworth Date: 10/17/88

State of ^{ARIZONA} ~~Idaho~~)
County of MARICOPA) SS.

Subscribed and sworn (or affirmed) before me this 17th day
of October 19 88

Barbara B. Taylor
Notary Public

Seal

Residing at 2740 E. Southern Ave Mesa Az

My Commission Expires 5/3/89

Blaine CO., IDAHO

Water Dist. No. 11-D

LICENSE	PERMIT	NAME	ACT. Inches	Date of Filing or Priority	Point of Diversion Subdiv. Sec. Township.	PLACE OF USE, REMARKS, ETC. License Page Number
604		Ada L. Komack <i>Elise Peterson</i>	140 ✓	8-28-01	SW 1/4 Sec. 10 2 N 21E	SW 1/4, Sec. 8-2N-21E 100
1000	<i>1400</i>	Absolum Komack Fred W. Laidlaw, Inc	130 ✓	12-16-01	SE 2001 EE from W 1/4 Cor 16 2N 21E	SE 1/4, Sec. 17; NW 1/4, Sec. 20-2N-21E 136 (See Decree 5-15-10)
3148	?	Muldoon Mining Co. East Fk	1200	8-7-07		At mines of Muldoon Mining Co. 517
8595	<i>1400</i>	James Laidlaw Fred W. Laidlaw, Inc	Mutual 215 ✓	Tunnel Water 8-8-12	NW 1/4 Sec. 3 2N 21E	NW 1/4, SW 1/4, NE 1/4, Sec. 10; SE 1/4, Sec. 9; SE 1/4, Sec. 17-2N-21E 174
8624		Andy Olaim Leslie Peterson <i>Brook's Creek</i>	25 ✓	8-22-12	SE 1/4 Sec. 7 "	SE 1/4, Sec. 13 - 2N-20E 2236
11377		Frank Somsen Thompson Cr.	50	6-23-15	NW 1/4 Sec. 34 3N 21E	NW 1/4, Sec. 34 - 3N-21E 272
12233	<i>1400</i>	Frank R. Hills Fred W. Laidlaw, Inc	120	9-24-16	SW 1/4 Sec. 24 "	SE 1/4, E 1/4, Sec. 23; SW 1/4, Sec. 24 273
	11625	<i>1400</i> R. J. Scobie Alf Billingsley	160 ✓	3-24-20	SE 1/4 Sec. 9 2N 21E	NW 1/4, Sec. 17; E 1/4, SW 1/4, Sec. 18-2N-21E 274
14810		Leo Parry	200 ?	6-28-20	NE 1/4 Sec. 10 "	For purpose at po of diversion 316
31-7006 32038		<i>Keith Testerson (E 1/4 40-44)</i> (Approved 12-18-61 T.D.N. 37-7006)	<i>215</i> <i>215</i>	<i>8-25-14</i>	<i>NE 1/4 Sec. 17 2N 21E</i>	