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DEPARTMENT OF
WATER RESOURCES

Claimant Name:

Diamond/Soldier Properties LLC

Attorney Name & Address:

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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	)	SUBCASE 37-409A
	)	
Case No. 39576	)	MOTION TO ALTER OR AMEND
	)	SPECIAL MASTER'S REPORT
	)	AND RECOMMENDATION
	)	

Diamond Soldier Properties LLC ("Claimant"), the owner and claimant of the water right which is the subject of this Subcase (the "Water Right"), by and through its counsel of record, respectfully moves this Court for its Order Altering and Amending the Special Master's Report and Recommendation issued herein on July 31, 2009 (the "SMRR") by adding thereto the following other provision necessary for definition or administration of the water right:

THIS WATER RIGHT SHALL BE ADMINISTERED AS BEING FROM A SEPARATE SOURCE PURSUANT TO BASIN 37 PART 2 GENERAL PROVISION NO 1A. IF THE HOLDER OF THIS RIGHT SEEKS TO CHANGE THE RIGHT PURSUANT TO IDAHO CODE SEC 42-222 OR SUCCESSOR STATUTE, NOTHING IN THIS GENERAL PROVISION SHALL PRECLUDE ANY OTHER PERSON OR ENTITY FROM DEMONSTRATING THAT SUCH A CHANGE IN USE WOULD CAUSE INJURY TO ITS WATER RIGHT OR FROM RECEIVING ANY RELIEF PROVIDED BY LAW IN THE EVENT OF INJURY.

As grounds therefor, Claimant states as follows:

1. The Water Right is diverted from the East Fork of Three Mile Creek with a priority date of April 1, 1907. The Director's Report for Basin 37 Part 2 recommended that the Water Right be disallowed. All other water rights recommended in the Director's Report with the East Fork of Three Mile Creek as their source were listed on the separate stream General Provision of the Director's Report.

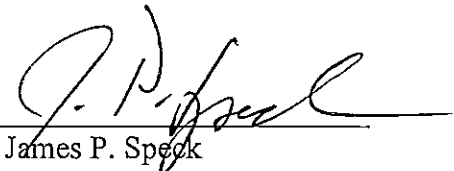
2. An objection was filed to this General Provision that was subsequently resolved on August 21, 2008 by a Stipulation to Resolve Basin 37 Part 2 General Provision Objection. The basis of that Stipulation was to administer separately all water rights from a list of separate sources with priority dates senior to March 13, 1940. The Stipulation also requires that the partial decree for each water right to be administered separately include the provision which this Motion requests to be added to the partial decree for the Water Right.

3. Claimant filed an Objection herein contending that the Water Right should be recommended. Claimant and the Idaho Department of Water Resources signed and filed herein on March 16, 2009 a Standard Form 5 to resolve this Objection and now recommend the Water Right with agreed upon terms and conditions, including an April 1, 1907 priority date and the East Fork of Three Mile Creek as its source. These meet the requirements of the Stipulation for separate administration.

4. The SMRR did not include the provision for separate administration. Since the Water Right meets the requirement for separate administration the SMRR should be amended to include this provision.

DATED this 18 day of August, 2009.

SPECK & AANESTAD
A Professional Corporation

By 
James P. Speck

CERTIFICATE OF SERVICE

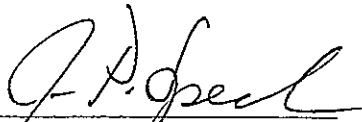
I hereby certify that on the 18 day of August, 2009, I served a true and correct copy of the foregoing SUBCASE 37-409A MOTION TO ALTER OR AMEND SPECIAL MASTER'S REPORT AND RECOMMENDATION on the following persons in the manner designated below:

Mr. Gary Spackman, Interim Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

☒ United States Mail, Postage Prepaid
☐ Hand Delivery
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Mr. Chris Bromley
Idaho Department of Water Resources
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JAMES P. SPECK