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OCT 06 2009

DEPARTMENT OF
WATER RESOURCES

Attorneys for Objectors
Terry and Anita Clark

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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

Case No. 39576

Subcase No. 37-01005

AFFIDAVIT OF JAMES PETERSON

STATE OF IDAHO)
) ss.
County of Blaine)

JAMES PETERSON, having been duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 years old, and I make this affidavit based upon my own personal knowledge.
2. I have resided in the Muldoon Creek drainage nearly all of my life. I am presently 80 years old. I own two ranches, one located in Carey, Idaho, and one located in the

COPY

Muldoon Creek drainage. I spend the late spring, summer, and early fall months (irrigation season) at the Muldoon ranch, and I spend the winter at the Carey ranch.

3. I was the Watermaster of Water District 37-O (Muldoon Creek) from 1965 through 2006. From 200~~6~~⁸ to date the Water District 37-O Watermaster has been and is Bruce Price. I became Watermaster of Water District 37-O in 1965 after the passing of my father. However, my appointment as Watermaster was not "official" with respect to appointment by the State of Idaho until 1974. Attached hereto as Exhibit A is a true and correct copy of my irrigation season 1974 Watermaster's Report for Water District 37-O. The report was attested by then Idaho state Southern District Engineer Robert Haynes.

4. It has come to my attention that the Idaho Department of Water Resources has recommended the source of water for water right no. 37-1005 as Muldoon Creek due to its belief that water right 37-1005 has been diverted and delivered from Muldoon Creek at least from the commencement of the Snake River Basin Adjudication in 1987 to date. This is not correct. Water right no. 37-1005 has never been diverted and delivered from Muldoon Creek to my knowledge, and certainly not during my tenure as Watermaster of Water District 37-O. Instead, water right no. 37-1005 has historically been diverted and delivered from Spring Creek, a natural stream that is intercepted by an irrigation ditch known as Muldoon Ditch. The Muldoon Ditch commences at Muldoon Creek, and flows more or less west - southwest intercepting various streams including Spring Creek, Brown Creek, and Chicken Creek as it progresses. While the Muldoon Ditch does divert and deliver various water rights from Muldoon Creek, water right no. 37-1005 is not one of those water rights.

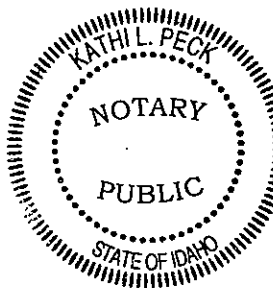
5. Spring Creek flows year round, is entirely captured by Muldoon Ditch, and it is common knowledge amongst the resident and long time water users in the Muldoon

Creek drainage that Spring Creek, and not Muldoon Creek, is the true and only source of water right no. 37-1005.

Further your affiant sayeth naught.

James Peterson
James Peterson

SUBSCRIBED AND SWORN to before me this 30th day of September, 2009.



Kathi L. Peck
NOTARY PUBLIC FOR IDAHO
Residing at Carey ID
My Commission Expires 8/31/13

CERTIFICATE OF SERVICE

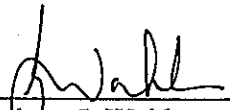
I HEREBY CERTIFY that on this 5th day of ^{October}~~September~~, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF JAMES PETERSON** to be served by the method indicated below, and addressed to the following:

Gary D. Slette
Robertson & Slette, PLLC
P.O. Box 1906
Twin Falls, ID 83303-1906
Fax: (208) 933-0701

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

Director
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098
Fax: (208) 287-6700

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



Andrew J. Waldern

EXHIBIT A

to

AFFIDAVIT OF JAMES PETERSON

MAR 14 1975

WATERMASTER'S REPORT

Department of Water Resources

From April 1 19 74 To November 1 19 74Water District No. 37-0Name of Watermaster James PetersonP.O. Address Conay Ida

AFFIDAVIT OF WATERMASTER

STATE OF IDAHO,

COUNTY OF Twin Falls

ss.

James Peterson, being first duly sworn, deposes and says that he is (Deputy) Watermaster on Muldoon Creek in District 37-0, having been lawfully appointed by the Director Department of Water Administration R. Keith Higginson that the volumes of water, as stated in this report, prorated by him to the several users, are correct; that the sum of \$50.00 is due as stated, and that the same is justly due and unpaid.

James Peterson
(Deputy) Watermaster District No. 37-0

Subscribed and sworn to before me, this 5th day of February, 19 75

Nancy Carlson
Notary Public.

My Commission expires June 1, 1975

(SEAL)

Twin Falls ~~Boise~~, Idaho, March 18, 19 75I HEREBY CERTIFY, That James Peterson

was lawfully appointed ~~by me~~ (Deputy) Watermaster of District No. 37-0, and that his bill for services rendered prorated to the several users, as herein sworn to, is, to the best of my knowledge and belief, correct.

By

Robert D. Haynes
SOUTHERN DISTRICT ENGINEER

Exhibit A