

RECEIVED

DEC 16 2009

DEPARTMENT OF
WATER RESOURCES

Timothy W. Tyree, ISB No. 5630
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208.344.6000
Facsimile: 208.954.5276
Email: ttyree@hawleytroxell.com

Attorneys for Jerry Turco

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. 37-20348

)
) BASIS FOR CLAIM ON WATER RIGHT
) 37-20348
)

COMES NOW, Jerry Turco, Jr. ("Turco"), by and through his attorneys, Hawley Troxell Ennis & Hawley LLP, and submits this Basis for Claim on Water Right 37-20348 pursuant to verbal order of Special Master Booth and the Idaho Rules of Civil Procedure. For the following reasons, the Court should decree water right 37-20348 in the amount of 0.20 cfs of water with a June 12, 1886 priority date appurtenant to Turco's property more particularly described as Lot 10 of the Dean Ranch Subdivision.

I.

INTRODUCTION

At the hearing held November 6, 2009, Special Master Booth granted Turco's Motion to File Late Objection and received Turco's Standard Form 1 Objection. Water right 37-20348 had been recommended as disallowed. To rebut the recommendation, Special Master Booth required other claimants of water right 37-00353, which is the origin of water right 37-20348, to file any objections they may have to Turco's objection. Only three of the potential thirteen other claimants filed objections. Furthermore, Special Master Booth instructed Turco, after expiration of the deadline to object by the other subclaimants, to file pleadings supporting the basis for Turco's claim to water right 37-20348. In compliance with Special Master Booth's order, Turco files this Basis for Claim on Water Right 37-20348.

II.

STATEMENT OF FACTS

Turco purchased Lot 10, Block 1 of the Dean Ranch Subdivision ("Lot 10") on September 19, 1997, appurtenant to which is Water right 37-20348. *Affidavit of Jerry Turco in Support of Basis for Claim* ("Turco Aff.") at ¶ 2. Water right 37-20348 is the only irrigation water appurtenant to Lot 10. *Id.* at ¶ 3. Without the irrigation water, Turco cannot irrigate the vast majority of Lot 10. *Id.*

The Dean Ranch Subdivision is the decreed place of use for water right 37-00353. Preliminary Order dated December 29, 1999, In the Matter of a Call for Delivery of Water Right No. 37-00353 to Richard and Paula Ziker, Trustees. Unless a change in place of use was made in accordance with a valid transfer procedure, water right 37-00353 is prorated uniformly to the place of use; i.e., two miners inches to each acre of the place of use. *Id.*; *Crow v. Carlson*, 107

Idaho 461 (1984). Lot 10 is approximately 10 acres in size. *Turco Aff.* at ¶ 3. Turco is seeking .2 cfs (10 miners inches).

III. ANALYSIS

Lot 10 is entitled to a proportionate amount of water from water right 37-00353. The proportional amount of water to which Lot 10 is entitled exceeds the proposed rate of diversion and therefore the proposed rate of diversion is the correct measure of water.

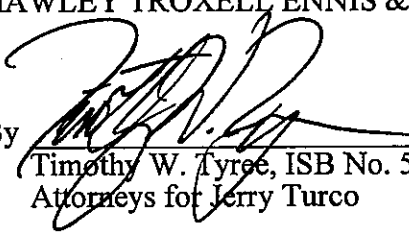
Only three parties with claims derived from water right 37-00353 objected to Turco's claim (Goicoechea, Olsen and Gardner). Based on the Proposed Settlement for Claims Filed Against Decreed Right 37-353 prepared by Kelly K Christensen dated August 4, 2009, the claims of Goicoechea, Olsen and Gardner are capped at the claimed rate, meaning that a proportional distribution of water results in an amount in excess of their claimed rate. This additional water is available to satisfy Turco's claim without diminution of the claims of Goicoechea, Olsen and Gardner.

IV. PRAYER

Turco prays for a decree of water right 37-20348 in the amount of 0.20 cfs of water with a June 12, 1886 priority date appurtenant to Lot 10.

DATED THIS 11th day of December, 2009.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By 

Timothy W. Tyree, ISB No. 5630
Attorneys for Jerry Turco

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of December, 2009, I caused to be served a true copy of the foregoing BASIS FOR CLAIM ON WATER RIGHT 37-20348 by the method indicated below, and addressed to each of the following:

Chief Natural Resources Div.
Office of Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

US Department of Justice
Envir. & Nat. Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Director of IDWR
P.O. Box 83702
Boise, Idaho 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Albert P. Barker
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson, Ste. 102
P.O. Box 2139
Boise, Idaho 83701-2139
*[Attorneys for Pepin Corso-Harris, Bill Molyneux,
Gerald Bashaw, Grace Eakin, John F. Stevenson, Peter
Van Der Meulen and Tom O Gara]*

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Craig D. Hobdey
125 5th Ave.
P.O. Box 176
Gooding, Idaho 83330
[Attorneys for Big Wood Canal Company]

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Kirstin K. Dutcher
LAWSON & LASKI PLLC
675 Sun Valley Rd., Ste. A
P.O. Box 3310
Ketchum, Idaho 83340
[Attorneys for Judith P. Grigsby]

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Dylan B. Lawrence
Scott L. Campbell
101 S. Capitol Blvd, 10th Floor
P.O. Box 829
Boise, Idaho 83701-0829
[Attorneys for Annette & Tom Goicoechea and Olsen Livestock]

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Fritz X. Haemmerle
P.O. Box 1800
Hailey, Idaho 83333
[Attorneys for Mark & Bette Gower, Mark D. & Danette L. Fisher]

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Paul L. Arrington
113 Main Ave. W., Ste. 303
P.O. Box 485
Twin Falls, Idaho 83303-0485
[Attorneys for Barbara A. Barry]

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Robert E. and Kathryn Allred Gardner
P.O. Box 1200
Hailey, Idaho 83333

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Robert Earl Fosnot
P.O. Box 290
Bellevue, Idaho 83313

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

James M. Oosting
P.O. Box 386
Bellevue, Idaho 83313

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Linda Van Der Meulen
Peter D. Van Der Meulen
P.O. Box 537
Hailey, Idaho 83333

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

James R. & Janet A. Super
P.O. Box 598
Bellevue, Idaho 83313

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Noel Briggs
2050 E. 3000 S.
Wendell, Idaho 83355

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Dan Arrington
2998 April Drive
Twin Falls, Idaho 83301

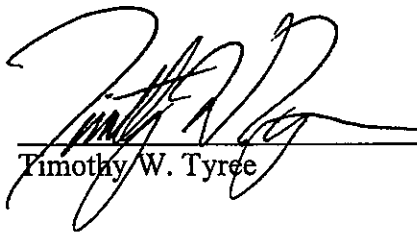
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Paul R. Fosnot
837 Laurel Ave.
Pomona, California 91767

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy

Barbara Benson
97 Freedom Loop
Bellevue, Idaho 83313-5013

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ E-mail
☐ Telecopy



Timothy W. Tyree