

D. I am responding to the objections to the following elements. (Please check the appropriate box(es)).

1. **Name and Address**
2. **Source**
3. **Quantity**
4. **Priority Date**
5. **Point(s) of Diversion**
6. **Instream Flow Description**
7. **Purpose of Use**
8. **Period of Use**
9. **Place of Use**
10. **Recommendation**

This water right should not exist

This water right was not recommended, but should be recommended with the elements described above.

11. **Respondent's Position**

This water right should continue in accordance with the approved 1986 transfer of the licensed right from Robert Brennan to Joseph Cirillo, which was subsequently transferred to Bruce McCaw and then to Respondent. The water right has been used to irrigate a portion of the property since 1987, Exhibit A (1995 Peterson letter) and Exhibit B (2005 Memo, Field Notes & 2007 letter from Respondent). The Objectors are barred from asserting the claims made in their Objections.

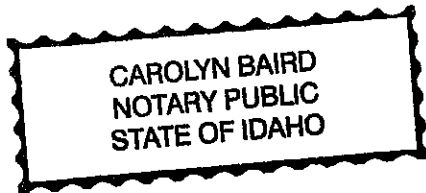
E. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Blaine)

I, Samuel Williams, duly sworn, upon oath, deposes and says that I am the party/claimant filing this response as defined by I.C. §§ 42-140A(1) and (6), and that I have read this response know its contents and believe that the statements are true to the best of my knowledge.

Samuel Williams

Subscribed and sworn to before me on: 3/31/10



Carolyn Baird
Notary Public for Idaho
Residing at: Ketchum Hailey
My Commission expires:
1/23/2015

INSTRUCTIONS FOR MAILING

You must mail the response, including all attachments, to the Clerk of the Court. **Fax filings will not be accepted.** You must send a copy to all the parties below in the Certificate of Mailing.

F. CERTIFICATE OF MAILING

I certify that on April 8, 2010, I mailed the original and copies of this amended response, including all attachments to the following person:

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:

Samuel Williams
P.O. Box 6729
Ketchum, ID 83340

3. One Copy to the party who filed the objection at the following address:

Tom O'Gara
John F Stevenson
Bill Molyneux
Pete Van Der Meulen
Grace Eakin
Rocky Sherbine
Gerald Bashaw
Pepin Corso-Harris
c/o Concerned Water Users
PO Box 1200
Bellevue, ID 83313

Big Wood Canal Company
112 South Apple Street
Shoshone, ID 83352

4. Copies to:

Director IDWR
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environmental & Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

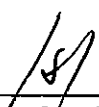
Chief, Natural Resource Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

Albert P Barker
Barker, Rosholt & Simpson
PO Box 2139
Boise, ID 83701-2139

Craig Hobdey
Hobdey & Hobdey
PO Box 176
Gooding, ID 83330



Samuel Williams



Samuel Williams, Managing Member
Thomas Williams, LLC

EXHIBIT A

A 1-3

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37 M

P.O. Box T
Shoshone, Idaho 83352
(208) 886-2451



LEE R. PETERSON
Watermaster

RECEIVED
OCT 18 1995

Department of Water Resources
Southern Region

Alan Merritt
State of Idaho
Department of Water Resources
222 Shoshone St. East
Twin Falls, Idaho 83301

October 18, 1995

Alan:

The following is a list of owners of water right 37-0539 of 150 inches and the use record for that right. By using the past Watermaster's work sheet I was able to go back as far as 1980.

Year	Owner	Inches Owned	Used
1980	Robert Brennan	130.00	no
	Rupert House	20.00	no
1981	Robert Brennan	130.00	yes
	Rupert House	20.00	yes
1982	Robert Brennan	130.00	no
	Rupert House	20.00	yes
1983	Robert Brennan	130.00	no
	Rupert House	20.00	yes
1984	Robert Brennan	130.00	yes
	Rupert House	20.00	yes
1985	Robert Brennan	130.00	yes
	Rupert House	20.00	yes
1986	Robert Brennan	130.00	no
	Rupert House	20.00	yes
1987	Robert Brennan	102.20	no
	Joseph Cirillo	27.80	yes
	Rupert House	20.00	yes
1988	Robert Brennan	102.20	no
	Joseph Cirillo	27.80	no
	Rupert House	20.00	yes

Years on how-use

1 1
2 2
3 3

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DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37 M

P.O. Box T
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LEE R. PETERSON
Watermaster

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1989	Robert Brennan	94.45	no	4	
	Joeseph Cirillo	27.80	yes		
	Dr. Craig Brandman	7.75	no		4
	Rupert House	20.00	yes		
1990	Robert Brennan	54.01	no	5	
	Bruce McCaw	27.80	yes		
	Dr Craig Brandman	7.75	no		5
	Robert Mitchell	40.44	no		
	Rupert House	20.00	yes		
1991	Robert Brennan	54.01	no	6	
	Bruce McCaw	28.50	yes		
	Dr Craig Brandman	7.75	no		6
	Robert Mitchell	40.44	yes		
	Rupert House	20.00	yes		
1992	Robert Brennan	54.01	no	7	
	Bruce Mc Caw	27.80	yes		
	Dr Craig Brandman	7.75	no		7
	Robert Mitchell	40.44	yes		
	Rupert House	20.00	yes		
1993	Robert Brennan	54.01	no	8	
	Bruce Mc Caw	27.80	yes		
	Dr Craig Brandman	7.75	no		8
	Robert Mitchell	40.44	yes		
	Rupert House	20.00	yes		
1994	Robert Baugh	10.85	no	9	
	Hyndman Homeowners	43.16	no		
	Bruce Mc Caw	27.80	yes		
	Dr Craig Brandman	7.75	no		9
	Robert Mitchell	40.44	yes		
	Rupert House	20.00	yes		
1995	Robert Baugh	10.85	no	10	
	Hyndman Homeowners	43.16	no		
	Bruce Mc Caw	27.80	yes		
	Dr Craig Brandman	7.75	no		10
	Robert Mitchell	40.44	yes		
	Rupert House	20.00	yes		

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A 3-3



LEE R. PETERSON
Watermaster

Page 3

In way of explanation for non-use of some portions of this water right. Robert Brennan is a developer, his practice is to buy up land and water rights. As a rule he never uses the water. He then develops the land, sells off parcels and the water right may or may not be used by the new owner. Mr. Brennan has held more water rights in non use situations and has caused much controversy because of this practice.

I hope you find this information useful. If there is anything further we can do to be of help please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Norma Peterson".

Norma Peterson
Secretary/Treasurer

Memo

Nick Treasure

July 18, 2005

Subject: SRBA review and recommendation of Hyndman Peak Subdivision, Blaine County. Claims: 37-20379, 37-20380, 37-539D, 37-539F, 37-539J, 37-539L, 37-539H, 37-539I, 37-539K, 37-539G

A review of the history of Hyndman Peak Subdivision shows a series of approved transfers that have occurred from original water right 37-539. This is a 06/03/1884 decreed right for 3.0 cfs of the East Fork Wood River. Through a series of approved transfers and ownership changes, a consistent 0.06 cfs/acre has occurred in this area. The remaining portion of the parent water right 37-539 is water right 37-539G in which there are 4 claims filed against. (See attached split tree analysis-page 8).

The majority of this subdivision was developed during the 1980's. There are currently 40 lots in the subdivision as well as a 20-acre lot of original owner Rupert House. (See attached tax lot map-page 4). Many individual homeowners chose to quitclaim their water rights over to the Hyndman Peak Subdivision Homeowners Association (claim 37-539G). The remaining homeowners decided to individually claim against the 1884 decree (all remaining claims listed above).

A field examination occurred on July 6, 2005 by Water Resource Agent Nick Treasure and Basin 37 Water Master Kevin Lakey. The following was found during the course of this field visit through personal observance as well as conversations with various homeowners of the association.

- There are four Points of Diversions associated with this subdivision:
 1. The original POD to the parent right 37-539 is located in the SENE. This head gate is locally known as the peters #17 head gate. Claimants of this head gate are Robert Mitchell 37-539L and Hyndman Peak Homeowners Association 37-539G.
 2. Transfer 3291 created a POD in the SWSWNE of section 3. This particular POD has no lockable head gate. Claimants of this diversion are Rupert House 37-20379 and Carl Bontrager 37-20380.
 3. Transfer 3280 created a POD in the SWNESW of section 3. This head gate is claimed by Bruce McCaw 37-539F and Thomas Matson 37-539D.
 4. Transfer 3551 created a POD in the NENESW of section 3. The POD is a pump and sprinkler system from East Fork River. The claimant for this diversion is Craig Brandman 37-539J.

The original Place of Use historically irrigated is depicted on the attached map-*page 5*. Also outlined on the attached map is the ditch system in which we examined and verified with original owner Rupert House before the subdivision existed. The POU outlined in green was irrigated by this irrigation system. Note that the northern areas of the subdivision as well as along the East Fork River are riparian areas and have not historically been irrigated by the 1884 decree.

- The attached map-*page 6* depicts claimants of the 1884 decree by individual owners in association with the historically irrigated ground. Notice the remaining portion of the historic irrigation depicted in green is what the homeowners association wishes to claim.
- There is currently a delivery system through ditches and laterals in which water can be delivered to the claimants listed on *page 6*. However there is no current means of deliverance for the remaining portion for individuals of the Hyndman Peak Homeowners Association though there may have been historically. It appears that a delivery system ended sometime in the late-1980's due to subdivision development.

In addition to the above findings, we also found some issues listed below that need to be addressed by the IDWR. A series of transfers and other measures need to be taken in the following situations:

- Upon field examination there were found 2 large ponds on lot 34 of the Hyndman subdivision owned by Robert Mitchell. The 2 ponds together measure approximately 0.75 acres. The 2 ponds are situated directly behind the Mitchell residence. The source of water for these ponds is the East Fork River with the POD in the SENE of section 3. A third pond was also found in lot 33 for the same owner. The pond was being dug as we visited the location but did not yet contain water. This pond will receive water through a drain ditch originating from the first two ponds. It does not appear the ponds are being used in conjunction with irrigation. I met with Dr. Mitchell during our visit. He indicated that the first two ponds were built in the early 1990's. It is confirmed that the ponds did not exist in the 1987 Napp Aerial Photography. All three ponds have no transfers filed. (See photos in claim 37-5391)
- During the field visit, we noticed that a large percentage of the lots have sprinkler irrigation on more than the ½ acre allowed under their Domestic wells. Most individual owners are sprinkler irrigating 2-3 acres of pasture, yard and trees from domestic wells. Among the 40 lots in the Hyndman Peak Subdivision, there are two homeowners who have been licensed for groundwater with the purpose of irrigation. The water rights are 37-8567 for Craig Brandman and 37-8421 for Shawn Szombathy. These are the only two owners in the sub-division who are

authorized to irrigate more than a ½ acre in the subdivision. (See photos in 37-539G)

- The Hyndman Peak Homeowner's Association, claim 37-539G, currently has no means of delivery for its members from the claimed POD in the SENE of section 3. The members of the association are spread throughout the subdivision with no organized delivery system. Historically before the subdivision was built, it does appear these lots of the members of the association were irrigated. The subdivision was constructed in the late-1980's. During the construction of the Subdivision, many ditches and laterals were filled in making it impossible to currently irrigated from the claimed POD.

Notes

07/06/05

Field Exam

Nick Treasures

Bruce McGaw owns lot 26 of Hyndman Peak subdivision. There currently is no residence at this location. However, there are sprinklers along the fence line which waters a grassy area approx. 1 acre. The actual lot is over 2 acres. A large portion of the lot is Riparian.
(Attached Map)

07/06/05 Field Notes

Nick Treasure

Bruce McGaw owns Lot 26 of Hyndman Peak subdivision. There currently is no residence at this location. However, there are sprinklers along the fence line which waters a grassy area approx. 1 acre. The actual lot is over 2 acres. A large portion of the lot is Riparian.
(Attached Map)

SAMUEL MOSHER WILLIAMS

B 5-5

December 5, 2007

Albert P. Barker
Barker, Rosholt & Simpson
PO Box 2139
Boise, ID 83701

Re: SRBA Case No. 39576
Water Right 37-539F

Dear Mr. Barker:

Your clients are protesting our water right for irrigation stating that it should be forfeited for lack of use and that the diversion rate is excessive. These claims are incorrect and I would appreciate withdrawal of the objection and dismissal of the case. Moreover, please provide information pertaining to the basis for the claim, as well as any other facts supporting your clients' objections.

Contrary to your clients' claim, the right has actually been in continual use for sometime and used in conjunction with pumps, irrigation lines and sprinkler heads for irrigation. While we only recently purchased the property, DWR verified the use of the water right and continues to monitor this right, granted the amount is not significant (.081 CFS). The property is +/- 2.5 acres and the water right provides enough irrigation for approximately 1.3 acres.

Undoubtedly, your clients along with the Big Wood Canal Company would like to recapture those water rights that have not been used, but ours is not one of them. Thank you for your timely response.

Sincerely,

Cc: Douglas Jones, Department of Water Resources