

DEPARTMENT OF
WATER RESOURCES

Marathon Partners LLC

FAX: (208) 726-0752

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

ATTORNEYS FEES

) SS.

)

Pursuant to I.R.C.P. § 54(e)(5) I, JAMES P. SPECK, after being first duly sworn under oath,

depose and state as follows:

1. I am over the age of eighteen (18) years and make this Affidavit of my personal knowledge and/or from the books, records and ledgers maintained in the regular and ordinary course of business.

2. I am an attorney licensed to practice law in the State of Idaho and a shareholder in the law firm of Speck & Aanestad, A Professional Corporation, attorneys of record for the Claimant, Marathon Partners, LLC (“Marathon”).

SECOND AFFIDAVIT OF JAMES P. SPECK
IN SUPPORT OF ATTORNEYS FEES - 1

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Partial Decree for Water Right No. 37-00481B in the name of Redstone Partners LP.

4. Attached hereto as **Exhibit 2** is a true and correct copy of the Partial Decree for Water Right No. 37-00494 in the name of The Valley Club Inc.

5. Attached hereto as **Exhibit 3** is a true and correct copy of the Partial Decree for Water Right No. 37-00114C in the name of Cattle-Lack Ranch Homeowners Association.

6. Attached hereto as **Exhibit 4** is a true and correct copy of Transfer No. 4909 for Water Right No. 37-00114B.

7. Attached hereto as **Exhibit 5** is a true and correct copy of the Partial Decree for Water Right No. 37-00028F in the name of Red Devil Mountain Homeowners Association.

8. Attached hereto as **Exhibit 6** is a true and correct copy of the November 11, 2010, Memorandum from David R. Tuthill, Jr., to James Speck regarding dates of priority cuts from 1975 through 1985 for water rights with a priority date of March 24, 1883.

9. Attached hereto as **Exhibit 7** is a true and correct copy of the November 11, 2010, Memorandum from David R. Tuthill, Jr., to James Speck regarding Water District 37 Billings for Predecessors to Water Right No. 37-21112, 1975-1985.

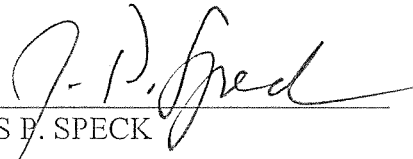
9. Attached hereto as **Exhibit 8** is a true and correct copy of my April 8, 1994 letter to Mr. Nick Spencer, IDWR, as found in the IDWR claim file for 37-12818 available on the IDWR website. I have underlined the relevant provisions.

9. Attached hereto as **Exhibit 9** is a true and correct copy of the December 21, 1994 letter from L. Glen Saxton, IDWR, to Lee Peterson, Watermaster for Water District 37, as found in

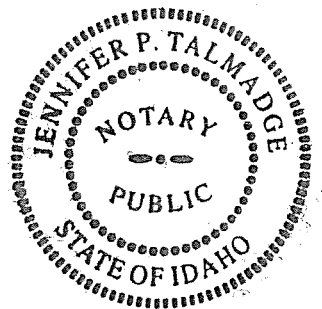
the IDWR claim file for 37-12818 available on the IDWR website. I have underlined the relevant provisions.

9. Attached hereto as **Exhibit 10** is a true and correct copy of the January 30, 1995 letter from Norma Peterson, Secretary/Treasurer for Water District 37, to Mr. Mel Schulte, IDWR, as found in the IDWR claim file for 37-12818 available on the IDWR website. I have underlined the relevant provisions.

9. Attached hereto as **Exhibit 11** is a true and correct copy of the Adjudication Claims Proof Reading Report for Water Right Number R37-12818, dated September 6, 1995, as found in the IDWR claim file for 37-12818 available on the IDWR website. I have underlined the relevant provisions.


JAMES P. SPECK

SUBSCRIBED AND SWORN TO before me this 11 day of April, 2012.




Notary Public for Idaho
Residing at: Ketchum, ID
Comm. Expires: 2.9.15

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April, 2012, I served a true and correct copy of the foregoing Affidavit of James P. Speck in Support of Attorneys Fees on the following persons in the manner designated below:

Mr. Nicholas J. Spencer
Idaho Department of Water Resources
322 E. Front Street
Boise ID 83720-0098
Fax: (208) 287-6700

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid
- ☐ Electronic mail

Albert P. Barker
Barker, Rosholt & Simpson, LLP
P.O. Box 2139
Boise, ID 83701
Fax: (208) 344-6034

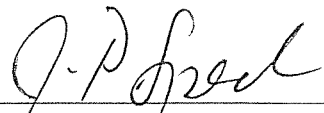
- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☒ Facsimile, with copy by United States Mail, Postage Prepaid
- ☐ Electronic mail

Craig Hobdey
Hobdey & Hobdey
P.O. Box 176
Gooding, ID 83330
Fax: (208) 934-4420

- ☐ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☒ Facsimile, with copy by United States Mail, Postage Prepaid
- ☐ Electronic mail

Idaho Department of Water Resources
Document Depository
P.O. Box 83720
Boise, ID 83720-0098

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid
- ☐ Electronic mail

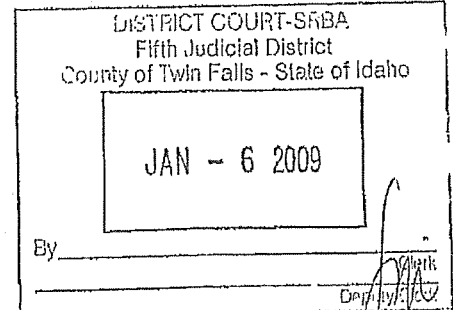


JAMES P. SPECK

EXHIBIT 1

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 37-00481B



NAME AND ADDRESS: REDSTONE PARTNERS LP
1188 EAGLE VISTA CT
RENO, NV 89511

SOURCE: BIG WOOD RIVER TRIBUTARY: MALAD RIVER

QUANTITY: 13.67 CFS

Total combined delivery at the field headgates (for surface water rights) and diversion at the wellheads (for ground water rights) for this right along with water right nos. 37-481B, 37-482G, 37-483B, 37-665K, 37-666J, 37-667N, 37-2625A, 37-2638, 37-2700, 37-21463 and 37-22155 shall not exceed a total instantaneous rate of 28.7 cfs (which equates to 0.02 cfs per acre over the combined permissible places of use for these water rights totaling 1,435.1 acres).

Total volume of water delivered to the field from this right along with water right nos. 37-481B, 37-482G, 37-483B, 37-665K, 37-666J, 37-667N, 37-2625A, 37-2638, 37-2700, 37-21463 and 37-22155 shall not exceed 5,022.9 acre-feet per year (which equates to 3.5 acre-feet per acre over the combined permissible places of use for these water rights totaling 1,435.1 acres).

PRIORITY DATE: 08/01/1982

POINT OF DIVERSION: T02N R19E S36 NESW/4 Within Blaine County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	13.67 CFS

PLACE OF USE:	Irrigation	Within Blaine County	
T01N R19E S17	SWNE 38.0	SNNW 34.0	
	SENN 40.0	NESW 40.0	
	NNSW 34.0	SWSW 40.0	
	SESW 35.0	NESE 11.0	
	NWSE 40.0	SWSE 40.0	
	SESE 22.0		
	S20	NENE 39.0	NWNE 39.0
		SWNE 19.0	SENE 40.0
		NENW 27.0	NWNW 40.0
		NESE 35.0	NWSE 1.3
S21 LOT 8	SESE 13.0		
	(NWNW) 10.0	LOT 9 (SNNW) 9.0	
	LOT 11 (NNSW) 24.0	SWSW 36.0	
	LOT 12 (SESW) 1.2		
S27	NENE 11.0	NWNE 9.0	
	SWNE 40.0	SENE 11.0	
	SWNW 13.0	SENN 30.0	
	NESW 40.0	NNSW 38.0	
	SWSW 40.0	SESW 30.0	
	NESE 3.8	NWSE 36.0	
	SWSE 4.0		
	S28	SWNE 14.0	SENE 4.0
		NENW 13.0	NWNW 29.0
		SWNW 6.4	SENN 37.0
NESW 22.0		SESW 2.2	
NESE 39.0		NWSE 39.0	

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

PLACE OF USE (continued)

	SWSE 36.0	SESE 40.0
S33	NENE 40.0	NWNE 14.0
	SENE 30.0	
S34	NENW 0.2	NWNW 11.0
	SEWN 15.0	
1435.1 Acres Total		

Right Nos. 37-481B, 37-482G, 37-483B, 37-665K, 37-666J, 37-667N and 37-22155 are limited to the irrigation of a combined total of 1435.1 acres in a single irrigation season.

Right Nos. 37-481B, 37-482G, 37-483B, 37-665K, 37-666J, 37-667N, 37-2625A, 37-2638, 37-2700, 37-21463 and 37-22155 are limited to the irrigation of a combined total of 1435.1 acres in a single irrigation season.

This right is limited to the irrigation of 1079.0 acres within the place of use described above in a single irrigation season.

Right Nos. 37-481B, 37-482G and 37-483B are limited to the irrigation of a combined total of 1079 acres in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

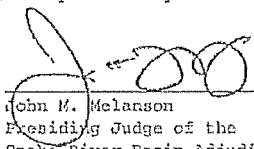

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

EXHIBIT 2

2010 JAN 26 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO. IDAHO
FILED *mi*

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 19576)
)
) Water Right 37-00494

NAME AND ADDRESS: THE VALLEY CLUB INC
PO BOX 252
SUN VALLEY, ID 83353

SOURCE: BIG WOOD RIVER TRIBUTARY: MALAD RIVER

QUANTITY: 2.00 CFS

The rights listed below shall provide no more than 0.02 cfs and
3.0 acre feet per acre at the field headgate for irrigation of
the lands described below. Combined Right Nos.: 37-494, 37-495,
37-577BU, 37-577BV, 37-833K and 37-2623.
The rights listed below are limited to a total combined diversion
rate of 8.44 cfs. Combined Right Nos.: 37-494, 37-495, 37-577BU,
37-577BV, 37-833K and 37-2623.

PRIORITY DATE: 05/01/1886

POINT OF DIVERSION: T03N R18E S20 NESWN Within Blaine County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	1.85 CFS
	Recreation	04-15 TO 10-31	0.15 CFS

PLACE OF USE:	Irrigation		Within Blaine County
	T03N R18E S20	NWNE 6.2	SWNE 16.0
		SENE 6.6	SENE 2.6
		NESE 12.0	NWSE 14.0
		SESE 6.6	
	S21	SWSW 13.2	
	S28	NENW 8.2	NWNW 16.0
		SWNW 13.0	SENE 10.0
		NESW 8.6	NWSW 8.7
		SESW 2.1	
	143.8 Acres Total		

Recreation		Within Blaine County
T03N R18E S20	SWNE	NESE
	NWSE	SESE
S21	SWSW	
S28	NWNW	SWNW
	NWSW	

The rights listed below are limited to the irrigation of a
combined total of 143.8 acres in a single irrigation season.
Combined Right Nos.: 37-494, 37-495, 37-577BU, 37-577BV, 37-833K
and 37-2623.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

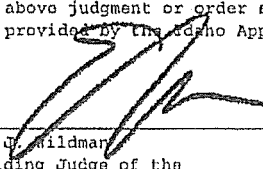
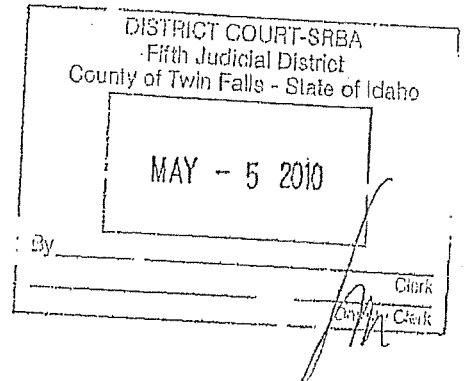

Eric Q. Wildman
Presiding Judge of the
Snake River Basin Adjudication

EXHIBIT 3

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 37-00114C



NAME AND ADDRESS: CATTLE-LACK RANCH HOMEOWNERS
ASSN
11 PURPLE SAGE LN
BELLEVUE, ID 83313

SOURCE: BIG WOOD RIVER TRIBUTARY: MALAD RIVER

QUANTITY: 12.52 CFS
532.00 AFY

This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the lands herein.

PRIORITY DATE: 05/01/1806

POINT OF DIVERSION: TOWN R18E S36 SWNW Within Blaine County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	12.52 CFS 532.00 AFY

The use of water for irrigation under this right may begin as early as April 1 and may continue to as late as November 1, provided other elements of the right are not exceeded. The use of water before April 15 and after October 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.

PLACE OF USE:	Irrigation	Within Blaine County
	TOWN R18E S25	NESE 35.0 NWSE 40.0 SESE 37.0
	152.0 Acres Total	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

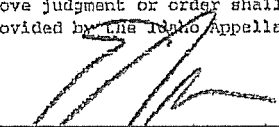
The portion of Right 37-00114C used for conveyance losses is 9.13 cfs. The remaining 3.39 cfs of Right 37-00114C is the authorized diversion at the field headgate.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



Eric J. Williams
Presiding Judge of the
Snake River Basin Adjudication

EXHIBIT 4

37-114C

Southern AJ

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4909
WATER RIGHT NO. 37-00114B

This is to certify that: MICHAEL A HARRIS
PEPIN CORSO HARRIS
98 FRIEDMAN LANE
BELLEVUE ID 83313

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/15	* 12.52 CFS	532.0 AF

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
BIG WOOD RIVER	MALAD RIVER

Priority: 05/01/1886

LOCATION OF POINT(S) OF DIVERSION: SWNW , Sec. 36, Township 02N, Range 18E
BLAINE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
01N	18E	25	NESE 35	NWSE 40	SWSE 40	152
			SESE 37			152

Total number of acres irrigated: 152

CONDITIONS OF APPROVAL AND REMARKS

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 37, Big Wood River, and subject to the policies and procedures of Wood River Valley Irrigation District #45.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department at both the diversion from the river and the redirection from the canal that will provide suitable control of the diversions.
- * 3. The portion of Right 37-00114B used for conveyance losses is 9.13 cfs. The remaining 3.39 cfs of Right 37-00114B is the authorized diversion at the field headgate.

TRANSFER NO. 4909
WATER RIGHT NO. 37-00114B

CONDITIONS OF APPROVAL AND REMARKS

4. Approval of Transfer 4909 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
5. This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
6. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

Dated this 21st day of May, 1998.

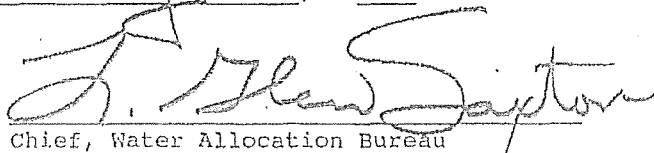

Chief, Water Allocation Bureau

EXHIBIT 5

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)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 37-00028F

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
JUN 29 2011	
By _____	Clerk
_____	Deputy Clerk

NAME AND ADDRESS: RED DEVIL MOUNTAIN
HOMEOWNERS ASSN
C/O CLAY S HOLDEN
PO BOX 4626
HAILEY, ID 83333

RED DEVIL MOUNTAIN
HOMEOWNERS ASSN
C/O MIRIAM F HOLDEN
PO BOX 4626
SUN VALLEY, ID 83353

SOURCE: BIG WOOD RIVER TRIBUTARY; MALAD RIVER

QUANTITY: 0.48 CFS

The rights listed below shall provide no more than 3.5 afa per
acre at the field headgate for irrigation of the lands in the
place of use whenever sprinkler methods of irrigation are used.
Combined Right Nos.: 37-28F and 37-297K

PRIORITY DATE: 03/24/1983

POINT OF DIVERSION: TOWN RISE S20 SWNW Within Blaine County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	0.48 CFS

PLACE OF USE:	Irrigation	Within Blaine County
	TOWN RISE S04 LOT 2 (NNNE) 11.0	SWNE 1.1
	LOT 3 (NNNW) 1.7	SENN 1.3
	15.1 Acres Total	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

EXHIBIT 6



MEMORANDUM

TO: Mr. James Speck
FROM: David R. Tuthill, Jr., Ph.D., P.E.
DATE: November 11, 2010
RE: Priority Cut Dates in the Upper Big Wood, 1975 – 1985

I have reviewed the Water District 37 compiled information relative to priority cuts of water rights with date of priority of March 24, 1883, and have determined that this priority was entitled to divert water from the Upper Big Wood River (above Magic Reservoir) for irrigation purposes at all times during the irrigation seasons from 1975 through 1985 except during the following periods:

- August 15, 1977 – Cut by 50%
- September 9, 1977 – Cut by 75%
- September 12, 1977 – Cut for the remainder of the season
- August 8, 1979 – Cut by 50% (Reinstated 2 days later on August 10th)

Compiled Water District records are available to demonstrate this information upon request.

A handwritten signature in dark ink that reads "David R. Tuthill, Jr." The signature is written in a cursive, flowing style.

EXHIBIT 7



MEMORANDUM

TO: Mr. James Speck
FROM: David R. Tuthill, Jr., Ph.D., P.E.
DATE: November 11, 2010
RE: Water District 37 Billings for Predecessors to Water Right No. 37-21112,
1975 – 1985

I have been advised by Mr. Kevin Lakey, Watermaster of Water District 37, that the predecessor of water right no. 37-21112 who was billed from 1975 to 1979 was Mr. Stanley Levison. The Watermaster indicated that the Water District was advised that in 1980 the property was sold to Pacesetter Development Co., which was billed from 1980-1985 and for some years afterward. The billing is now in the name of Ed Dumke.

The Watermaster confirmed that the annual costs for the water have been paid to the Water District over the years and the account is in good standing.

Water District records are available to demonstrate this information upon request.

A handwritten signature in cursive script that reads "David R. Tuthill Jr.".

EXHIBIT 8

HOGUE, SPECK & AANESTAD A PROFESSIONAL ASSOCIATION OF ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
JOHN A. SEILER

120 EAST AVENUE
P. O. BOX 987
KETCHUM, IDAHO 83340
(208)726-4421
FAX (208)726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

April 8, 1994

VIA FACSIMILE - 1-208-327-7866

Mr. Nicholas B. Spencer
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

Re: SRBA Claim No. A37-12818 - Blaine County School District, et al.

Dear Nick:

I have again met with Greg Mann to discuss the irrigation use of the water right in 1991. However, I have not yet been able to meet with Burr Smith or others who may have run horses and/or cattle on either or both of the two (2) parcels. In the meantime, I would like to address the Department's philosophy and focus on the issue of forfeiture in this case.

First, it is my understanding the Department is only concerned with the non-use of the water right from 1987 through 1992, a period of only six (6) consecutive years. I do not believe there is an issue of forfeiture during any other time frame. Second, Marathon Partners purchased the property and water right in September, 1992. The prior owner, Pacesetter Development Company, had been attempting to sell the property during 1992, a very poor water year for this area. I believe the watermaster records will show this right was out for priority on July 14, 1992 and not turned on again during that season. Thus, there were good reasons for Pacesetter to not use the right in 1992.

Third, upon purchasing the property, Marathon Partners, knowing of the proposal for new athletic fields for the Blaine County School District ("District"), approached the non-profit organization (the Wood River High School Baseball and Softball Association) charged with raising the funds and overseeing the construction of the fields and offered to donate a portion of the water right (from the southern parcel) as long as the transfer to the new use was accomplished as quickly as possible. Marathon fully intended to resume actual use of the water for irrigation of the southern parcel in 1993 if an agreement could not be reached on transferring that portion to the District. After corresponding with Norm Young about whether to file an application for transfer or new permit with a "mitigation plan", the District elected to do the latter and Application for Permit No. 37-08821 was filed at the end of March, 1993. We believe that proceeding promptly through the administrative process to obtain approval of the

Mr. Nicholas B. Spencer
April 8, 1994
Page 2

new use should constitute a "resumption of use" of this portion of the water right (from the southern parcel). It is only fair to make the "use" retroactive to the date of filing the application (similar to the priority date for new permit applications) and suspend the ticking of the forfeiture clock during the pendency of the application approval process, since the applicant has no control over the time it takes for the application to make its way through the necessary administrative channels.

In 1993, Marathon Partners irrigated the entire northern parcel known as Hidden Meadows and cattle were run on this land through an agreement with the owners of lands to the north of Hidden Meadows. Burr Smith did the irrigating. Marathon intends to irrigate and run cattle on the Hidden Meadows property again in 1994. This is certainly a resumption of a valid beneficial use.

Thus, we have resumption of use of the water right after six (6) years of non-use (for the sake of this discussion only - we are not conceding non-use in 1991) The sixth year (1992) was such a low water year it arguably should not even be counted against us. As you know, forfeiture is generally "abhorred" by the courts and proof of forfeiture by clear and convincing evidence is required. I do not know of a reported case declaring forfeiture of a water right after only five or six consecutive years of non-use. Is the Department, in this and other cases in the SRBA, going to take the position that water rights are to be forfeited when the non-use extends for only five or six years? Shouldn't the defense of resumption of use be recognized in this case?

Please call me at your earliest convenience. It is important for the District to know where it stands by this summer season. Thank you.

Sincerely yours,

HOGUE, SPECK & AANESTAD



James P. Speck

JPS/j
cc: client

EXHIBIT 9



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 21, 1994

Lee Peterson
Water District 37
P.O. Box T
Shoshone, ID 83352

RE: APPLICATION FOR TRANSFER NOS. 37-00577 AND A37-12818 -
MARATHON BROTHERS

Dear Lee:

In 1993, Marathon Brothers, through Jim Speck of Ketchum filed the above referenced application for transfer with the department offering 0.11 cfs of the above referenced surface water rights as mitigation for four (4) pending applications for permit which propose a groundwater diversion. The question before the department is whether there has been a five year consecutive period of non-use associated with the surface water right.

On September 28, 1993 you submitted the "Recommendation of Watermaster" form to the department in connection with the proposed transfer. With respect to watermaaster billing for use of water, your records apparently show the following:

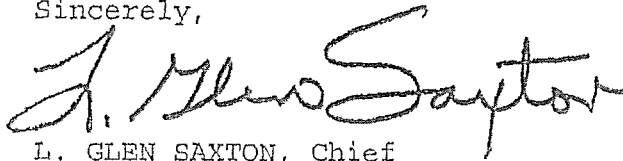
1987 - no billing
1988 - no billing
1989 - no billing
1990 - billed
1991 - billed

The critical 5-year period appears to be from 1987 through 1991. Since there is conflicting information on the use of water, I need to know whether your records show that water was or was not delivered (not just billed) during the period in question.

Lee Peterson
Page 2
December 21, 1994

Please provide the information at your earliest convenience.

Sincerely,

A handwritten signature in cursive script, reading "L. Glen Saxton". The signature is written in dark ink and is positioned above the typed name.

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - S. Region

EXHIBIT 10

TO: STATE OFFICE

JAN-31-'95 TUE 09:56

IDWR SOUTHERN

TEL NO: 1-20

36-3037

H315 P01

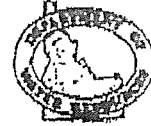
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER DISTRICT NO. 37 & 37 M

P.O. Box 1

Shoshone, Idaho 83352

(208) 886-2451



LEE R. PETERSON
Watermaster

RECEIVED

JAN 30 1995

Mel Scholte
Idaho Department of Water Resources
222 Shoshone St. East
Twin Falls, Idaho 83301

Department of Water Resources
Southern Region

January 30, 1995

Mel,

This is a list of the water used and the charges paid by
Pacesetter Homes/Edmund Dumke from 1986 to the present
time. They never were billed the \$20.00 minimum.

1986 - 301.30 CFS, paid \$68.30, 1987 no record of use or
payment, 1988 no record of use or payment, 1989 no record
of use or payment, 1990-339.60 CFS, paid \$252.51,
1991-354.60 CFS, paid \$190.51, 1992-200.69 CFS, paid
\$90.08, 1993-269.34 CFS, paid \$40.30, 1994-184.20 CFS,
billed 139.44.

I hope this is the information you were seeking. If we
can be of further help please let us know.

Sincerely,

Norma Peterson
Norma Peterson
Secretary/Treasurer

Post-It™ brand fax transmittal memo 7671		# of pages 1
To <i>Nick Spencer</i>	From <i>Mel Scholte</i>	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	

EXHIBIT 11

AJ0743NP
(00-124)

IDAHO DEPARTMENT OF WATER RESOURCES ADJUDICATION CLAIMS PROOF READING REPORT (REGIONAL)

09/06/95 15:58:37
Page 1

Water Right Number - R37-12818

Prefix Translation: RESEARCH

Old (D) Number -

+ - - - - Last Name - - - - + + - - - - First Name - - - - + + - - - - Address - - - - - +

*** C - CURRENT OWNER ***
SPLIT RIGHT

1 -
2 -
3 -
City- XXX
Phone - 208-000-0000
State- ID Zip- 00000

*** O - ORIGINAL OWNER ***
PACESETTER DEVELOPMENT COMPANY

1 - 4540 CAMPUS DRIVE
2 -
3 -
City- NEWPORT BEACH
Phone - 714-852-8600
State- CA Zip- 92660

SPECK

JAMES P

1 - ROGUE SPECK & AAMESTAD
2 - PO BOX 987
3 -
City- KETCHUM
Phone - 208-000-0000
State- ID Zip- 83340

+ - - - - Priority Date - - - + + - - - - Region - - - - + + - - - - Stage - - - - + + - - - - Status - - - - +
03/24/1983 ERROR IN REGION I - DISALLOWED

+ - - - - Source - - - - + + - - - - Tributary - - - - + + - - - -
BIG WOOD RIVER MALAD RIVER
SPLIT RIGHT

+ - - - - Tkn Rng Sec Tract Lot Rflg County Point of Diversion - - - - - +

03N 18E 20 SE SW NW (13) BLAINE HIAWATHA CANAL

+ - - - - Code Description Period From Period To Water Use Diversion Rate Diversion Volume

01 - IRRIGATION 04/01 11/01 2.720

+ - - - - Total Div. Rate - + + - - - - Total Div. Volume - + + - - - - Total Consumptive Use - + + - - - - KV Usage - +
2.720 257.5

+ - - - - Twn Rng Sec Tract Lot Acres Code Description County

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
02N	18E	9	NE NE		6.0	01	IRRIGATION	(13) BLAINE
02N	18E	10	NW NW		37.0	01	IRRIGATION	(13) BLAINE
02N	18E	10	SW NW		17.0	01	IRRIGATION	(13) BLAINE
02N	18E	10	SE NW		27.0	01	IRRIGATION	(13) BLAINE
02N	18E	10	NE SW		16.0	01	IRRIGATION	(13) BLAINE

Total Acres: 103.0

+ - - - - Diversion Means - VIA HEADGATE #22 & HIAWATHA CANAL

Water right number - R37-12818

Prefix Translation: RESEARCH

+ - - Non-Irrigation Use -

4 - - Other Rights for Same Use - NONE

[illegible]

THIS CLAIM IS FOR A PORTION OF 37-0577 ORIGINALLY DECEED TO W.

1371-1

CONFIRMED ATTORNEY MAILING ADDRESS DMS

[illegible]

PURSUANT TO APPROVED TRANSFER 4205 9/5/95:

CLAIM WAS SPLIT - A37-12818A PACESETTER DEVELOPMENT CO. 2.61 CFS.

A57-12818B J PETER AND CLAIRE B FITZPATRICK .11 GFS.

27500577

Old Water Right Numbers

708

- - - - - Conditions of Approval

FORFEITED/ABANDONED: This is included for a claim based on a decrease or license that is PROPOSED to be disallowed on the basis that the water right no longer exists because forfeiture of the right by nonuse was confirmed and a defense to forfeiture was not confirmed, or because abandonment of the right was confirmed.

+ - - - Decree Plaintiff - - +
S.C. FROST ET AL

+ - - - Decree Defendant - - +
 ALTURUS WATER CO., ET AL

+ - Decree Date - +
00/00/0000

-Comments-

Date: 10/15/1993 User Id: CLELAND Subject: RECOMMENDATION/DISALLOWAL

SEE FILE FOR DETAILS OF REVIEW. WATER HAS NOT BEEN USED FOR A PERIOD OF AT LEAST 5 YEARS: 1987-1992.

Date: 04/03/1995 User Id: DSMITH Subject: DATA ENTRY

CONFIRMED ATTORNEY ADDRESS DNS

+ - - Audit Fields - - +

09/06/95 TFAWCEIT

[illegible]

Court Report Filing	- 00/00/0000
Objection Filed Date	- 00/00/0000
Response Filed Date	- 00/00/0000
Claim Received Date	- 02/03/1989

Field Inspection Made
Field Inspection Flag
Verified Date
Last Amended Date
Receipt Number
POU Ownership Flag
Name Connector

Civil Case Number	-	39576
Old Case Number	-	
Old Judicial District	-	
Temporary Right	-	P
Water District	-	
Federal/State Indicator	-	S
Presumption Flag	-	D
Notice of Error Flag	-	

Prescription Flag
Notice of Error Flag