BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF BASIN 37
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

DECLARATION OF FRED BROSSY IN
SUPPORT OF BWLWWUA RESPONSE
TO MOTIONS

I Fred Brossy hereby state and declare as follows:

1. I am one of the managing members of Barbara Farms, LLC, a participant and owner of the land
and water rights in the above-entitled matter and a member of Big Wood & Little Wood Water Users Association.

2. I am an active participant in the farming operation on the land owned by Barbara Farms, LLC (hereinafter “Barbara”) and leased to Ernie’s Organics, LLC. I am very familiar with the historical use of water and its availability to fulfill the water rights owned by Barbara having operated this farm since 1983.

3. Attached to this declaration is a table which depicts the water rights owned by Barbara with their priority dates. Barbara owns 300 acres of irrigable farmland to which 300 inches of water have been adjudicated. Barbara is party to a contract with Big Wood Canal Co. (hereinafter, “BWCC”) for delivery of 314 acre-feet of water additional to be delivered on-demand when BWCC is delivering to its shareholders.

4. The attached table also describes the acres of different crops being grown by Ernie’s Organics in 2021, as well as the last irrigation dates required to complete the irrigation of the crops as compared with the currently projected cutoff date given by the Water District 37 watermaster.

5. Additionally, the attached table also depicts the projected loss in revenue (for the years 2021 and 2022) to be realized by Ernie’s Organics, LLC as a result of the crop losses due to lack of adequate irrigation.

6. Due to the drought which is occurring in Basin 37 this year, Barbara’s water rights are an example of so many other senior water rights that will be dramatically impacted and are projected by the Water District 37 watermaster to be cut off earlier than the historical average cutoff date.

7. Historically, water rights with an 1884 priority date, or senior right, commonly were filled and diverted for a full irrigation season prior to widespread groundwater withdrawals upstream.

8. This is substantiated by the IDWR Technical Memo from Tim Luke to Gary Spackman of May 17, 2021, which explains that Water District 37 delivery records demonstrate water rights with priority dates 04-01-1884 and senior were in priority for the full irrigation season, even in dry years, prior to widespread groundwater withdrawals.

DECLARATION OF FRED BROSSY
9. Traditionally, Barbara's 300 inches of Little Wood River Decreed Water Rights and 314 acre-feet of Contract water from BWCC have been adequate to grow the mix of crops listed in the attached table. When Barbara's decrees are cut prematurely due to ground water pumping in the Lower Wood River Valley, and BWCC ceases delivery, we have had to supplement our water needs with rentals from District 1 in the Upper Snake. After a concerted effort and certainly due in part to the drought, we have been unsuccessful thus far in obtaining any emergency supplemental water for 2021 from any entities in the upper Snake River.

10. We have been able to rent 100 shares of AFRD2 water from the City of Shoshone for the 2021 irrigation season at a cost of $3,300. An AFRD2 share is 5/8 of an inch, so this equates to 66” of water, and is not nearly adequate to replace our 300” of Little Wood Decrees, projected by Watermaster Kevin Lakey to be cut off by 6/15/2021. Additionally, when Magic Reservoir is off, most likely by 6/1/2021, our 314 ac/ft of contract water will be undeliverable as well. The 66” of AFRD2 water will only be sufficient to irrigate 21 acres of processing potatoes and approximately 45 of the planned 66 acres of garden bean seed crops. The 66” is not nearly adequate to finish currently growing crops (alfalfa—71 acres, barley—60.5 acres, wheat—12 acres) and achieve yield targets, and furthermore jeopardizes our ability to plant previously planned crops (36 acres of pinto beans and 78.5 acres of new seeding alfalfa).

11. Due to the unprecedented early projected shutoff dates of our decree water, and unavailability of our BWCC contract water, we anticipate getting just two cuttings of green-chopped dairy alfalfa instead of the usual four. Additionally, planned establishment of new-seeding alfalfa following malt barley and wheat in late summer 2021 will not be possible, resulting in revenue loss of two cuttings in 2022 during the spring establishment period.

12. At the present time, we consider injury to consist of the sum of loss in revenue and cost of renting emergency supplemental water. The attached table shows combined projected injury in 2021 and 2022 of $261,635 due to insufficient supply of irrigation water in 2021. We reserve the right to identify and characterize additional injuries in the future.

DECLARATION OF FRED BROSSY
13. I have personal knowledge that when Silver Creek is running at low flows and groundwater pumps in Basin 37 are shut off, we senior water right holders see a significant increase in stream flows available to fill our senior water rights within a matter of less than one week. Therefore, I believe that a curtailment of junior ground water rights would significantly benefit not only Barbara’s senior water rights but also similarly decreed water rights within the drainage area.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct to the best of my knowledge.

Dated this 23 day of May, 2021

Fred Brossy
Managing Member of Barbara Farms, LLC.
### Table of Projected Injury

<table>
<thead>
<tr>
<th>Owner</th>
<th>Water Right</th>
<th>Priority Date</th>
<th>Water Right Priority Date</th>
<th>Crop</th>
<th>Needed last day of irrigation</th>
<th>Projected Cutoff Date</th>
<th>Days of Supply Shortfall</th>
<th>Yield Target</th>
<th>Projected 2021 Yield Loss</th>
<th>Projected Revenue Loss In 2021</th>
<th>Projected Revenue Loss In 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decreed Water</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BARBARA FARMS</td>
<td>37-344A</td>
<td>04/06/1883</td>
<td>200 inches</td>
<td>Organic garden seed beans</td>
<td>21</td>
<td>30-Aug</td>
<td>15-Jun</td>
<td>76</td>
<td>1000 lbs/ac</td>
<td>1000 lbs/ac</td>
<td>$84,000</td>
</tr>
<tr>
<td>BARBARA FARMS</td>
<td>37-344A</td>
<td>04/06/1883</td>
<td>200 inches</td>
<td>Organic edible pinto beans</td>
<td>20</td>
<td>25-Aug</td>
<td>15-Jun</td>
<td>71</td>
<td>2200 lbs/ac</td>
<td>2200 lbs/ac</td>
<td>$40,480</td>
</tr>
<tr>
<td>BARBARA FARMS</td>
<td>37-344A</td>
<td>04/06/1883</td>
<td>200 inches</td>
<td>Organic purple barley</td>
<td>11</td>
<td>15-Jul</td>
<td>15-Jun</td>
<td>30</td>
<td>3100 lbs/ac</td>
<td>1550 lbs/ac</td>
<td>$10,230</td>
</tr>
<tr>
<td>BARBARA FARMS</td>
<td>37-344A</td>
<td>04/06/1883</td>
<td>200 inches</td>
<td>Organic malt barley/new seeding alfalfa</td>
<td>49.5</td>
<td>15-Jul</td>
<td>15-Jun</td>
<td>30</td>
<td>100 bu/ac</td>
<td>50 bu/ac</td>
<td>$23,513</td>
</tr>
<tr>
<td>BARBARA FARMS</td>
<td>37-344A</td>
<td>04/06/1883</td>
<td>200 inches</td>
<td>Organic winter wheat/new seeding alfalfa</td>
<td>12</td>
<td>15-Jul</td>
<td>15-Jun</td>
<td>30</td>
<td>80 bu/ac</td>
<td>40 bu/ac</td>
<td>$5,760</td>
</tr>
<tr>
<td>BARBARA FARMS</td>
<td>37-344A</td>
<td>04/06/1883</td>
<td>200 inches</td>
<td>Organic no-till edible pinto beans</td>
<td>16</td>
<td>25-Aug</td>
<td>15-Jun</td>
<td>71</td>
<td>1000 lbs/ac</td>
<td>1000 lbs/ac</td>
<td>$14,720</td>
</tr>
<tr>
<td>BARBARA FARMS</td>
<td>37-973</td>
<td>04/01/1884</td>
<td>100 inches</td>
<td>Organic alfalfa green chop</td>
<td>71</td>
<td>30-Aug</td>
<td>5-Jun</td>
<td>76</td>
<td>16.8 tons/ac</td>
<td>8.4 tons/ac</td>
<td>$35,784</td>
</tr>
<tr>
<td>BARBARA FARMS</td>
<td>37-973</td>
<td>04/01/1884</td>
<td>100 inches</td>
<td>Organic no-till edible pinto beans</td>
<td>17</td>
<td>15-Sep</td>
<td>5-Jun</td>
<td>102</td>
<td>7.2 tons/ac</td>
<td>4.2 tons/ac</td>
<td>$4,284</td>
</tr>
</tbody>
</table>

**Supplemental Water**

<table>
<thead>
<tr>
<th>Owner</th>
<th>Water Right</th>
<th>Priority Date</th>
<th>Water Right Volume</th>
<th>Crop</th>
<th>Needed last day of irrigation</th>
<th>Projected Cutoff Date</th>
<th>Days of Supply Shortfall</th>
<th>Yield Target</th>
<th>Projected 2021 Yield Loss</th>
<th>Projected Revenue Loss In 2021</th>
<th>Projected Revenue Loss In 2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>BWCC Contract</td>
<td>n/a</td>
<td>n/a</td>
<td>314 acf</td>
<td>Applied as needed per crop, if BWCC is delivering</td>
<td>300</td>
<td>15-Sep</td>
<td>1-Jun</td>
<td>107</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>CITY OF SHOSHONE*</td>
<td>AFRO2</td>
<td>n/a</td>
<td>66 inches</td>
<td>Organic processing potatoes</td>
<td>21</td>
<td>15-Sep</td>
<td>End of season</td>
<td>none</td>
<td>400 cwt/ac</td>
<td>none</td>
<td>none</td>
</tr>
<tr>
<td>CITY OF SHOSHONE*</td>
<td>AFRO2</td>
<td>n/a</td>
<td>66 inches</td>
<td>Organic garden seed beans</td>
<td>45</td>
<td>30-Aug</td>
<td>End of season</td>
<td>none</td>
<td>1000 lbs/ac</td>
<td>none</td>
<td>none</td>
</tr>
</tbody>
</table>

**Notes:**

1. This table considers the sum of loss of revenue and cost of renting emergency supplemental water to be an injury. We reserve the right to identify and characterize additional injuries in the future.
2. Projected cutoff dates as of 05/21/21 are based on professional judgement of WD37 Watermaster utilizing WD37 historical records. Projected dates are not static; they will change as more current data become available.
3. City of Shoshone water is an emergency rental for 2021 season only.
4. New seeding alfalfa revenue loss in 2022 is based on yield loss of 4.2 tons/ac per cutting and loss of two cuttings during establishment.

*Sum of revenue loss by year: $218,771 $39,564

Cost of emergency rental of 66 inches of supplemental AFRO2 water for 2021 season: $3,300

Total Projected Injury: $261,635
CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 22nd day of May, 2021, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid or email to the following:

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