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Jerry R. Rigby (ISBN 2470)  
of RIGBY, ANDRUS & RIGBY, Chartered  
Attorneys at Law  
25 North Second East  
Rexburg, Idaho 83440  
Telephone: (208) 356-3633  
Facsimile: (208) 356-0768  
[jrigby@rex-law.com](mailto:jrigby@rex-law.com)

Joseph F. James  
James Law Office, PLLC  
125 5<sup>th</sup> Avenue West  
Gooding, Idaho 83330  
Telephone: (208) 934-4429  
[joe@jamesmvlaw.com](mailto:joe@jamesmvlaw.com)

*Attorneys for Big Wood & Little Wood Water  
Users Association*

W. Kent Fletcher, ISB #2248  
**FLETCHER LAW OFFICE**  
P.O. Box 248  
Burley, Idaho 83318  
Telephone: (208) 678-3250  
Facsimile: (208) 878-2548  
[wkf@pmt.org](mailto:wkf@pmt.org)  
*Attorney for Big Wood Canal  
Company*

**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 water 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.

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).

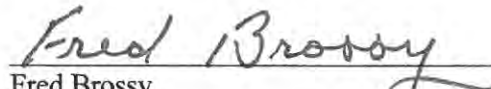
11. Due to the unprecedented early projected shutoff dates of our decree water, and unavailability of our BWCC contract water, we anticipate getting just two cuttings of green-chopped dairy alfalfa instead of the usual four. Additionally, planned establishment of new-seeding alfalfa following malt barley 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.

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<sup>rd</sup> day of May, 2021

  
Fred Brossy  
Managing Member of Barbara Farms, LLC.

**Table of Projected Injury\***

Owner	Water Right	Priority Date	Water Right Volume	Crop	Crop Acres	Needed last day of irrigation	Projected Cutoff Date <sup>5</sup>	Days of Supply Shortfall	Yield Target	Projected 2021 Yield Loss	Projected Revenue Loss in 2021	Projected Revenue Loss in 2022	
<b>Decreed Water</b>													
BARBARA FARMS	37-344A	04/06/1883	200 inches	Organic garden seed beans	21	30-Aug	15-Jun	76	1000 lbs/ac	1000 lbs/ac	\$84,000	\$0	
BARBARA FARMS	37-344A	04/06/1883	200 inches	Organic edible pinto beans	20	25-Aug	15-Jun	71	2200 lbs/ac	2200 lbs/ac	\$40,480	\$0	
BARBARA FARMS	37-344A	04/06/1883	200 inches	Organic purple barley	11	15-Jul	15-Jun	30	3100 lbs/ac	1550 lbs/ac	\$10,230	\$0	
BARBARA FARMS	37-344A	04/06/1883	200 inches	Organic malt barley/new seeding alfalfa	49.5	15-Jul	15-Jun	30	100 bu/ac	50 bu/ac	\$23,513	\$24,948	
BARBARA FARMS	37-344A	04/06/1883	200 inches	Organic winter wheat/new seeding alfalfa	12	15-Jul	15-Jun	30	80 bu/ac	40 bu/ac	\$5,760	\$6,048	
BARBARA FARMS	37-344A	04/06/1883	200 inches	Organic no-till edible pinto beans	16	25-Aug	15-Jun	71	1000 lbs/ac	1000 lbs/ac	\$14,720	\$0	
BARBARA FARMS	37-973	04/01/1884	100 inches	Organic alfalfa green chop	71	30-Aug	5-Jun	76	16.8 tons/ac	8.4 tons/ac	\$35,784	\$0	
BARBARA FARMS	37-973	04/01/1884	100 inches	Organic rye green chop/new seeding alfalfa <sup>#</sup>	17	15-Sep	5-Jun	102	7.2 tons/ac	4.2 tons/ac	\$4,284	\$8,568.00	
<b>Supplemental Water</b>													
BARBARA FARMS	BWCC Contract	n/a	314 acf	Applied as needed per crop, if BWCC is delivering	300	15-Sep	1-Jun	107	n/a	n/a	n/a	n/a	
CITY OF SHOSHONE*	AFRD2	n/a	66 inches	Organic processing potatoes	21	15-Sep	End of season	none	400 cwt/ac	none	none	none	
CITY OF SHOSHONE*	AFRD2	n/a	66 inches	Organic garden seed beans	45	30-Aug	End of season	none	1000 lbs/ac	none	none	none	
											Sum of revenue loss by year:	\$218,771	\$39,564
											Cost of emergency rental of 66 inches of supplemental AFRD2 water for 2021 season:	\$3,300	\$39,564
											\$222,071	\$39,564	
											Total Projected Injury:	\$261,635	

**Notes:**

- <sup>3</sup>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.
- <sup>5</sup>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.
- \*City of Shoshone water is an emergency rental for 2021 season only.
- <sup>#</sup>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.

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY That on this 22<sup>nd</sup> 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:

Gary Spackman, Director  
Idaho Department of Water Resources  
PO Box 83720  
Boise, ID 83720-0098  
[Gary.Spackman@idwr.gov](mailto:Gary.Spackman@idwr.gov)

Mail  
 Hand Delivery  
 Electronic Mail

Garrick L. Baxter  
Deputy Attorney General  
Idaho Department of Water Resources  
PO Box 83720  
Boise, ID 83720-0098  
[Garrick.baxter@idwr.idaho.gov](mailto:Garrick.baxter@idwr.idaho.gov)

Mail  
 Hand Delivery  
 Electronic Mail

Albert P. Barker  
Travis L. Thompson  
Michael A. Short  
John K. Simpson  
BARKER ROSHOLT & SIMPSON LLP  
PO Box 2139  
Boise, ID 83701-2139  
[apb@idahowaters.com](mailto:apb@idahowaters.com)  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)  
[mas@idahowaters.com](mailto:mas@idahowaters.com)  
[jks@idahowaters.com](mailto:jks@idahowaters.com)

Mail  
 Hand Delivery  
 Electronic Mail

W. Kent Fletcher  
Fletcher Law Office  
PO Box 248  
Burley, ID 83318  
[wkf@pmt.org](mailto:wkf@pmt.org)

Mail  
 Hand Delivery  
 Electronic Mail

Candice M. McHugh  
Chris M. Bromley  
MCHUGH BROMLEY, PLLC  
380 S. 4th St, Ste 103  
Boise, ID 83702  
[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)  
[cmchugh@mchughbromley.com](mailto:cmchugh@mchughbromley.com)

Mail  
 Hand Delivery  
 Electronic Mail

Robert L. Harris  
HOLDEN KIDWELL HAHN & CRAPO,  
PLLC  
PO Box 50130  
Idaho Falls, ID 83405-0130  
[rharris@holdenlegal.com](mailto:rharris@holdenlegal.com)

Mail  
 Hand Delivery  
 Electronic Mail

Michael C. Creamer  
Michael P. Lawrence  
Charlie S. Baser  
GIVENS PURSLEY LLP  
PO Box 2720  
Boise, ID 83701-2720  
[mpl@givenspursley.com](mailto:mpl@givenspursley.com)

Mail  
 Hand Delivery  
 Electronic Mail

Matthew A Johnson  
Brian T. O'Bannon  
White Peterson GiGray & Nichols, P.A.  
5700 E Franklin Rd, Ste 200  
Nampa, ID 83687-7901  
[mjohnson@whitepeterson.com](mailto:mjohnson@whitepeterson.com)  
[bobannon@whitepeterson.com](mailto:bobannon@whitepeterson.com)

Mail  
 Hand Delivery  
 Electronic Mail

J. Evan Robertson  
Robertson & Slette, PLLC  
PO Box 1906  
Twin Falls, ID 83303-1906  
[erobertson@rsidaholaw.com](mailto:erobertson@rsidaholaw.com)

Mail  
 Hand Delivery  
 Electronic Mail

James R. Laski  
Heather O'Leary  
Lawson Laski Clark PLLC  
PO Box 3310  
Ketchum, ID 83340  
[heo@lawsonlaski.com](mailto:heo@lawsonlaski.com)  
[jrl@lawsonlaski.com](mailto:jrl@lawsonlaski.com)  
[efiling@lawsonlaski.com](mailto:efiling@lawsonlaski.com)

Mail  
 Hand Delivery  
 Electronic Mail

Norman M. Semanko  
Parsons Behle & Latimer  
800 W Main St, Ste 1300  
Boise, ID 83702  
[nsemanko@parsonsbehle.com](mailto:nsemanko@parsonsbehle.com)

Mail  
 Hand Delivery  
 Electronic Mail



Charles L. Honsinger  
HONSINGER LAW, PLLC  
PO Box 517  
Boise, ID 83701  
[honsingerlaw@gmail.com](mailto:honsingerlaw@gmail.com)

Mail  
 Hand Delivery  
 Electronic Mail

Dylan Lawrence  
Varin Wardwell  
PO Box 1676  
Boise, ID 83701  
[dylanlawrence@varinwardwell.com](mailto:dylanlawrence@varinwardwell.com)

Mail  
 Hand Delivery  
 Electronic Mail

Laird B. Stone  
Stephan, Kvanig, Stone & Trainor  
PO Box 83  
Twin Falls, ID 83303-0083  
[Sks&t@idaho-law.com](mailto:Sks&t@idaho-law.com)

Mail  
 Hand Delivery  
 Electronic Mail

Rusty Kramer  
WD 37B Groundwater Association  
PO Box 507  
Fairfield, ID 83327  
[Waterdistrict37b@outlook.com](mailto:Waterdistrict37b@outlook.com)

Mail  
 Hand Delivery  
 Electronic Mail

Randall C. Budge  
Thomas J. Budge  
Racine Olson, PLLP  
PO Box 1391  
Pocatello, ID 83204  
[randy@racineolson.com](mailto:randy@racineolson.com)  
[tj@racineolson.com](mailto:tj@racineolson.com)

Mail  
 Hand Delivery  
 Electronic Mail

James P. Speck  
Speck & Aanestad, PC  
PO Box 987  
Ketchum, ID 83340  
[jim@speckandaanestad.com](mailto:jim@speckandaanestad.com)

Mail  
 Hand Delivery  
 Electronic Mail

Lawrence Schoen  
Napisunaih  
18351 U.S. Highway 20  
Bellevue, ID 83313  
[lschoen@naramail.net](mailto:lschoen@naramail.net)

Mail  
 Hand Delivery  
 Electronic Mail

Vic Conrad  
J.R. Simplot Company  
PO Box 27  
Boise, ID 83707-0027  
[Vic.conrad@simplot.com](mailto:Vic.conrad@simplot.com)

Mail  
 Hand Delivery  
 Electronic Mail

Paul Bennett  
Swiftsure Ranch  
114 Calypso Lane  
Bellevue, ID 83313

Mail  
 Hand Delivery  
 Electronic Mail

Paul L. Arrington  
Idaho Water Users Association  
1010 W Jefferson Ste 101  
Boise, ID 83702  
[iwua@iwua.org](mailto:iwua@iwua.org)

Mail  
 Hand Delivery  
 Electronic Mail

Ann Y. Vonde, Deputy Attorney General  
PO Box 83720  
Boise, ID 83720-0010  
[ann.vonde@ag.idaho.gov](mailto:ann.vonde@ag.idaho.gov)

Mail  
 Hand Delivery  
 Electronic Mail

Tom Bassista  
Technical Assistance Program Coordinator  
Idaho Dept. of Fish and Game  
Headquarters Office  
PO Box 25  
Boise, ID 83707  
[Thomas.bassista@idfg.idaho.gov](mailto:Thomas.bassista@idfg.idaho.gov)

Mail  
 Hand Delivery  
 Electronic Mail

Kaysi and Rodney Hubsmith  
[Kaysi10@live.com](mailto:Kaysi10@live.com)

Mail  
 Hand Delivery  
 Electronic Mail

Big Wood Farm  
c/o Alton Huyser  
72 North, Hwy 75  
Shoshone, ID 83352

Mail  
 Hand Delivery  
 Electronic Mail

Fred Brossy  
Barbara Farms LLD  
PO Box 424  
Shoshone, ID 83352

Mail  
 Hand Delivery  
 Electronic Mail

Mark Sabala  
Sabala Farms, Inc.  
1819 E 1550 S  
Gooding, ID 83330

Mail  
 Hand Delivery  
 Electronic Mail



Jerry R. Rigby