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Department of Water Resources

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

A. Subcase 29-13085

(Insert water right number
From the Objection Form)

STANDARD FORM 2
RESPONSE TO OBJECTION

Please print or type the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: James L. + Arlene Burnham

Address: P.O. Box 111 455 East Street
Arimo, Idaho 83214

Daytime Phone: 208-254-9022

Name & Address of Attorney, if any:

C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING

Name: Bron M. Rammell, atty. P.O. Box 370 Pocatello, Id 83204

Address: atty. for Merle C. Tippetts, et. al.
P.O. Box 46 Arimo, Ida 83214

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(s) of Use
8. ☐ Period of Year
9. ☐ Place of Use
11. Recommendation
 - ☒ This water right should not exist.
 - ☒ This water right was not recommended, but should be recommended with the elements described above.

E. VERIFICATION (Must be Completed)

State of Idaho
County of Bannock)ss.

James L. Burnham, duly sworn, upon oath, deposes and says:
(Name of person filing response)

That I am the party/claimant filing this response as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.

James L. Burnham
(Signature of person filing response)

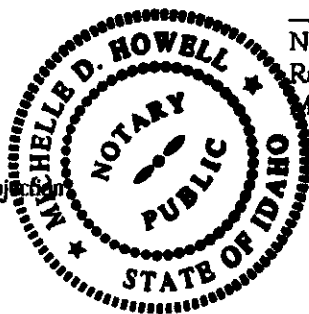
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: Nov. 18, 2003

Notary Public for Michelle D. Howell

Residing at: McCannon Rd. 83250

My Commission Expires: 10-23-07



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 also send a copy to all the parties listed below in the Certificate of Mailing.

F. CERTIFICATE OF MAILING

I certify that on 11-24⁹³, 2003~~1999~~, I mailed the original and copies of this response, including all attachments, to the following persons:

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:

Name: James L. + Arlene Burnham
Address: P.O. Box 111
455 East Street
Arimo, Idaho 83214

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

Name: Bron M. Rammell, atty. Po. Box 370 Pocatello, Id. 83204
Address: atty. for Merle C. Tippetts, et al.
P.O. Box 46, Arimo, Idaho 83214

4. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

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

James L. Burnham
our signature or signature of attorney
mailing on your behalf

11-18-2003

ATTACHMENT:

RESPONSE TO: SUBCASE: 29-13085

D. 3. WE WILL ACCEPT THE OBJECTORS REQUEST FOR .020 cfs AS THE MAXIMUM WATER USE FOR OUR PLACE, BUT KEEP THE 4/26/1921 AGREEMENT TO SELL IN FORCE AS WRITTEN.

D. 4. WE WILL ACCEPT THE OBJECTORS REQUEST TO USE 4/28/1921 AS THEIR PRIORITY DATE.

11. WE DISAGREE THAT WATER RIGHT SHOULD NOT EXIST;

The 4/26/1921 signed agreement to sell was for AS LONG AS THE SPRING EXISTS. (this is found at the end of the first page of the agreement, attached) It extends to heirs, executors, administrators, & assigns.

The water has been used the same since 1921 on the present Burnham's place and Kent's place, to the best we have heard of.

The agreement was to sell an interest in the spring. The language of heirs, executors, administrators and assigns are commonly used in sales. We do not feel this sale of interest in the spring was meant to end with John Worley & heirs, presently the Kent's place, (subcase 29-13087) Joseph O Smith & heirs, presently the Burnham's place.

The right of way for the pipeline was FOREVER and also extends to heirs, executors, administrators and assigns. (this is found at the bottom portion of page two in the agreement to sell, signed 4/26/1921)

An Agreement

Made and entered into by and between James H. Tippetts, Arimo, Idaho, party of the first part, and John Worley and Joseph O. Smith, Arimo, Idaho, Parties of the second part, this 8th day of April in the year 1921 at Arimo, Bannock County, Idaho

Witnesseth, that the said parties do mutually agree and covenant as follows: The Party of the first part does hereby sell to the parties of the second part one certain interest in an unnamed spring on his farm on the East side of the O.S.L.R.R. at Arimo, Idaho, or rather sufficient water from said spring for the domestic use of the said second parties, including the necessary water for lawns and the watering of their horses and cattle and other animals; provided, however, that in case either of the second parties shall build more homes, that the said party or parties of the second part shall then pay the party of the first part an additional consideration for such additional water desired. Said water enters one certain pipe line from a cement box at the head of spring and enters into a wooden pipe line which is owned jointly between the said parties as follows: Two thirds of this wooden pipe line belongs to the party of the first part and one third of the wooden pipe belongs to the parties of the second part equally. The total consideration which the parties of the second part are to pay to the party of the first part for the water specified and for their share of right-of-way for pipe line shall be Five hundred and no/100 Dollars to be paid by the second parties equally in the amount of \$250.00 each. The parties of the second part having made the above payment in full to the party of the first part and he hereby acknowledges receipt in full for the above amounts as specified.

At point where the second parties divert their water from the wooden pipe line they are to carry their share of water in a two inch pipe for a distance of twney two feet and from this two inch paibe they are to reduce their line to a one-inch pipe. The parties of the second part are and shall enjoy enough water through this pipe line as needed for their needs as specified above and are to have priority rights over all other parties which may hereafter purchase water from the party of the first part, excepting that for his residence the party of the first part shall have prior right but this right shall be confined to his large residence in which he now resides and to this only. These rights shall exist between the said parties to this agreement as long as this spring exists and shall be binding on their heirs, executors, administrators and assigns.

In case of water decreasing in spring below an amount sufficient to care for the needs of the respective parties to this agreement as above specified and sufficient for the uses as specified then the said parties shall develop the spring and the said parties shall all pay the expense of such developement according to their respective interests as above shown.

Repairs of the wooden pipe line and maintenance of cement box shall be borne by the said parties as follows: ~~two~~ two thirds by the party of the first part and one third by the parties of the second part and the said one third shall be borne equally by the two parties of the second part.

It is further provided and agreed that the pipe line which runs from the wooden pipe line and which is the pipe line that carries the water to the home of Joseph O. Smith and John Worley shall belong to these said parties in the proportion of one half to each individual/ ^{that is as far as Smith's house,} and that in consideration of the fact that John Worley paid for one -half of the cost of labor and pipe for the line from the wooden pipe line to Joseph O. Smith's house that the said John Worley shall have right of way forever not only for the pipe which carries the water as far as Smith's house but also have right of way for the line from Smith's house to John Worley's house forever and the same shall be enjoyed by the heirs, assigns and administrators of the respective parties forever.

James H. Tippetts

Party of the first part

John Worley
Joseph O. Smith

Parties of the second part

Subscribed and sworn to before me this 26th day of April in the year 1921 at my office at Arimo, Bannock County, Idaho.

Notary Public

Notary Public,
Arimo, Idaho