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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____
2003 NOV 13 AM 11 30

**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 29-2177

STANDARD FORM OBJECTION

B. NAME AND ADDRESS OF PERSON OBJECTING:

Name: Richard N. Hartvigsen
Address: 1023 E. Millstream Way, Bountiful, Utah 84010
Daytime Phone: (801) 299-1771

Name & Address of Attorney, if any:

D. Scott Crook
SMITH HARTVIGSEN, PLLC
215 S. State Street, Suite 650
Salt Lake City, Utah 84111

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Geraldine B. McNee
Address: 3214 E Woodland Road, Downey, Idaho 83234

D. OBJECTION:

I object to the following elements as recommended in the Director's Report.

1. ☐ **Name and Address**

Should be:

2. ☐ **Source**

Should be:

3. ☒ **Quantity**

Should be reduced by the amount of water historically intercepted by the ditch that historically collected water from two springs as it traversed west from the original point of diversion on Aspen Creek to Cherry Creek.

4. ☐ **Priority Date**

Should be:

5. ☐ **Point(s) of Diversion**

Should be:

6. ☐ **Instream Flow Description**

Should be:

7. ☐ **Purpose(s) of Use**

Should be:

8. ☐ **Period of Year**

Should be:

9. ☐ **Place of Use**

Should be:

10. **I object because:**

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

E. REASONS SUPPORTING OBJECTION(S):

This water right, as originally filed, diverted water from 3 sources; i.e., Aspen Creek and two unnamed springs along the historic ditch. The Claimant and/or her predecessors ceased using that ditch approximately 50 years ago, apparently changing her point of diversion several miles downstream on Aspen Creek. In so doing, she abandoned and/or forfeited that quantity of water which was originally supplied from those springs. Those springs do not flow into Aspen Creek and cannot be replaced with Aspen Creek water. This objecting party does not know how much water those two springs contributed historically to the flow in that ditch; however, this water right should be reduced by whatever amount that was.

The objecting party has knowledge of these facts because the point of diversion for the historic ditch is located on property owned by this objecting party's family. This objecting party states that no water has been diverted from Aspen Creek into the historic ditch by any party for decades, other than this objecting party and family members who are co-owners of three water rights in Aspen Creek, i.e., 29-2174, 29-2176, and 29-11182. The initial section of the ditch has been exclusively used and maintained by family members between the point of diversion from Aspen Creek and the authorized places of use under these three family water rights. Beyond that point, the ditch has not been used by anyone for any purpose for approximately 50 years, and it essentially no longer exists.

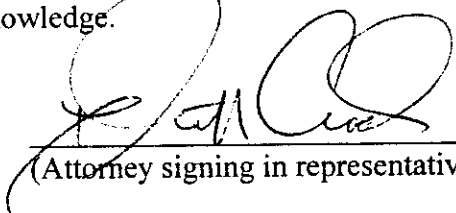
In addition, the Claimant has, by moving her point of diversion several miles downstream, effectively converted this water right into a highwater water right because Aspen Creek rarely reaches her new point of diversion. One of this objecting party's upstream water rights is junior to the Claimant's right. However, this objecting party should not be required to bypass water needed to satisfy his junior right in order to satisfy the Claimant's right, except in those rare high water conditions where it is likely that such water will actually reach the Claimant's new point of diversion.

Therefore this objecting party respectfully requests that the Claimant's water right be modified accordingly in the Court's decree.

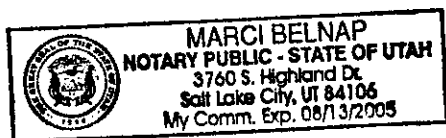
F. VERIFICATION

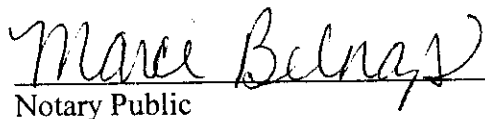
State of Utah }
 ss.
County of Salt Lake }

I, D. Scott Crook, being duly sworn, upon oath, depose and state that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.


(Attorney signing in representative capacity)

Subscribed and sworn to before me on this 12th day of November, 2003.




Notary Public

G.

CERTIFICATE OF MAILING

I certify that on November 12, 2003, I sent the original by overnight delivery and mailed copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

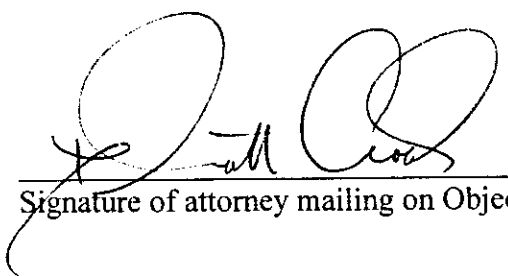
Geraldine B. McNee
3214 E Woodland Road
Downey, Idaho 83234

3. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

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

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



Signature of attorney mailing on Objector's behalf