

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

29-11773

(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: Dempsey Irrigation Company

Address: P.O. Box 235

Java Hot Springs, ID 83246

Daytime Phone: 208-776-5848

Name & Address of Attorney, if any:

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

Name: Marsh Valley Development Inc

Address: 5203 South 11th East

Idaho Falls, ID 83404

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 *See attachment*
- 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)
)ss.
County of Bannock)

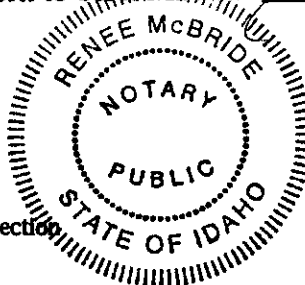
Earl H. Smith, duly sworn, upon oath, deposes and says:
(Name of person filing response)

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.

Earl H. Smith
(Signature of person filing response)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: March 19, 2004



Renee McBride
Notary Public for State of Idaho
Residing at: Lava Hot Springs
My Commission Expires: May 31, 2006

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 March 19, ~~199~~²⁰⁰⁴, 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:

Address:

Dempsey Irrig Co.
P.O. Box 235 / Lava Hot Springs, ID
83246

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

Name:

Address:

Marsh Valley Development Inc
5203 South 11th East
Idaho Falls, Id 83404

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

Earl H. Smith

Your signature or signature of attorney
mailing on your behalf

Item #8 Attachment

We have used the water from April 1st to October 31st from the beginning of our water rights #29-36 dated 4-18-1898.

In August 1932, the season of use was changed to April 15th to Sept. 15th. After that time we continued to use the water for beneficial use from April 1st to April 15th and Sept 15th to Oct. 31st. In low water years those with earlier rights for the regular water year shut us off as early as June 1st. We have always used the water after Sept. 15th for beneficial use and have several notarized affidavits to this use by water users. Our water right #29-11773 dated 8-7-1932 was granted on this beneficial use.

We also have a stipulation from March Valley Hydroelectric Company allowing our use of this water if we would withdraw our Intervention to their Power Plant use; which we did.

We would be adversely affected and our livelihood would be compromised if this use was not granted.

Signed,

*Dempsey Irrigation Co.
by Earl H. Smith Sec*

Attachment
SRBA Case No. 39576
Marsh Valley Development, Inc.

Item E Attachment:

Reasons supporting objections: We have operated a power plant that uses water before April 15 and after September 15, since 1993. We use this water under a written agreement with Portneuf Marsh Valley Canal Company and McCammon Ditch Company. This practice would be adversely affected by extended season of use if granted by these proposed rights. We would withdraw this objection if claimant agrees to allow Portneuf Marsh Valley and McCammon Ditch Company to use their share of water under 29-4060; 29-13311; 29-13317; 29-13318 and 29-13319, priority date August 07 1932, for use through our power plant per our agreement with Portneuf Marsh Valley Canal Company and McCammon Ditch Company dated February 4, 1988 amended May 14, 1992 .