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Attorneys for Objector Don M. Burtenshaw

RECEIVED

JUL 19 2002

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

	)	Subcase 31-00324
In Re SRBA	)	
	)	MOTION TO FILE A
	)	LATE OBJECTION
Case 39576	)	
_____	)	

COMES NOW, DON BURTENSHAW, of 1603 North 1000 East, Terreton, ID 83450, hereinafter "Objector", and hereby moves the above entitled Court for leave to file a Late Objection to certain water right claims of David J. Hagenbarth (hereinafter "Claimant") numbered 31-00066A, 31-00066B, 31-00067A, 31-00067B, and 31-00324 all of which involve claims to divert certain waters from Crab Creek and Camas Creek. This motion is based upon the following facts:

1. Objector owns certain water rights which are senior and junior to the water rights being claimed by Claimant. The record is clear that Objector has always to this date vigorously defended his water rights from junior water rights uses which have the potential to

injure Objector's senior water rights.

2. When the Director's report on Claimant's above entitled claims was originally reported, Objector was under the mistaken belief that the Harmon Reservoir referred to in Claimant's claim for water right was something other than what the local population has commonly referred to as the Frazier Reservoir.

3. Objector has always maintained that any rights associated with said Frazier Reservoir have been forfeited and/or abandoned long ago and any diversion or use of said water would directly injure Objector due to the hydrological connection of the Crab Creek water with the water rights of Objector.

4. Because Objector was unaware that the said Director's report actually referred to a water right in what Objector recognized as the Frazier Reservoir, Objector failed to realize that Claimant had the potentiality of obtaining a decreed right in water originally diverted for the said Frazier Reservoir.

5. Had Objector known or had been made aware that the above entitled claims actually referred to what Objector knew as the Frazier Reservoir, Objector would have immediately filed an objection to said Director's report, which objection would have been timely filed.

6. Since discovering that the Harmon Reservoir as used by the Suave Decree actually referred to the Frazier Reservoir, Objector immediately discussed filing a late objection with Mud Lake Water Users, Inc. ("Company") on behalf of Objector as well as other water users in said Company. Upon very recently discovering that Objector's personal water rights outside of the Company's water rights would be injured, Objector has only now realized that he must file an objection to protect said water rights from the injury which will be caused by these

claims. Objector has now authorized counsel to immediately investigate the matter and file the appropriate motion to file this late objection.

7. Objector has just informed the Claimant's attorney that he intends to object but has previously joined with several other water right holders who's water rights would be injured in signing and sending a notice to the Department of Water Resources in an attempt to have the State change its recommendation for Claimant's water claims.

8. Objector believes that he can show by substantial evidence that the above entitled Claimant's water right claims are invalid and/or have been forfeited/abandoned by Claimant's predecessors. Attached hereto is a copy of a letter from the watermaster, Greg Shenton, stating that the only water delivered to Hagenbarths' out of West Camas Creek were under water right nos. 31-00373 and 31-00374.

9. Furthermore, to grant a decree to said above entitled water rights would substantially injure Objector's water rights in violation of Idaho water law.

10. Objector's motion is not an attempt to disadvantage anyone by this delay.

11. Objector believes that there will be no material prejudice to Claimant if this late objection is allowed to be heard and ruled upon. Under the circumstances, Objector believes that his objection has merit and would promote a result that would not only benefit him and his senior water rights, but also many other water right holders and the citizens of the State of Idaho.

12. Objector is attaching herewith a Standard Form 1 Objection to the above entitled claims made by Claimant.

13. Objector specifically requests a hearing on his motion to be heard at the same time as those being heard on behalf of Mud Lake Water Users, Inc. Objector's motion is supported by the affidavits of Objector.


Jerry R. Rigby
of Rigby, Thatcher, Andrus, Rigby,
Kam & Moeller, Chartered
Attorney of Objector

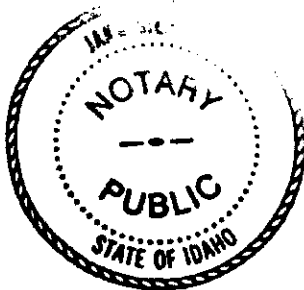

Don Burtenshaw
Objector

STATE OF IDAHO,)
County of Madison.) ss.

Don Burtenshaw, being first duly sworn, upon oath, deposes and says: That I am the party filing this Motion for Late Objection and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Don Burtenshaw
Don Burtenshaw

Subscribed and sworn to before me on July 16, 2002.



Sana Supert
Notary Public for Idaho
Residing at: Rexburg, Idaho
My Commission Expires: 3-15-2017

CERTIFICATE OF MAILING

I certify that on July 24th, 2002, I mailed the original and copies foregoing motion to the following:

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

David J. Hagenbarth
c/o Michael C. Creamer
P.O. Box 2720
Boise, ID 83701-2720

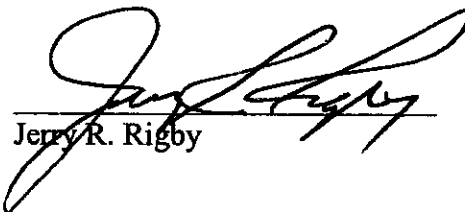
c/o John Bloomquist & Patti Rowland
Doney Crowley Bloomquist
108 S. Washington
P.O. Box 1418
Dillon, MT 59725-1418

IDWR Document Depository
PO 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

Candice McHugh
1301 N. Orchard
Boise, ID 83706

Brigette Bilyeu
Special Master - SRBA
P.O. Box 2707
Twin Falls, ID 83303-2707


Jerry R. Rigby

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Rexburg, Idaho 83340
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Attorneys for Objector Don M. Burtenshaw

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. 36957

)
)
)
)
)
)
)
AFFIDAVIT OF DON M. BURTENSHAW

STATE OF IDAHO

)
ss.

County of Madison

)

DON M. BURTENSHAW, being first duly sworn, states under oath as follows:

1. I am an adult over the age of 18 years and competent to testify to the matters contained herein.

2. I own certain water rights which are senior and junior to the water rights being claimed by David J., James F. and Margaret Hagenbarth.

3. I am familiar with the Director's report on Hagenbarth's claims as originally reported. However, said claims and the Director's report referred to the Harmon Reservoir instead of Frazier Reservoir which is the common name of reservoir used by people in our area.

4. To my knowledge the water rights associated with said Frazier Reservoir under 31-00066A, 31-00066B, 31-00067A, 31-00067B, and 31-00324 have been forfeited and/or abandoned long ago and any diversion or use of said water would directly injure Objector due to the hydrological connection of the Crab Creek water with the water rights of Objector.

5. I have relied upon information supplied by our watermaster, Greg Shenton, who shows no record of any water being delivered to Hagenbarths under the claims in question.

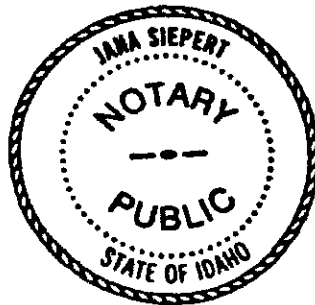
6. Had I known that the reference to Harmon Reservoir in the Director's report was really a reference to Frazier Reservoir, I would have immediately filed an objection due to the possibility that our water rights would be adversely impacted by any decree issued to Hagenbarths.

7. Granting a decree to said above entitled water rights would have a severe adverse impact on my water rights.

DATED This 16 day of July, 2002.


Don M. Burtenshaw

SUBSCRIBED AND SWORN to before me this 16 day of July, 2002.




Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires: 3-15-2007

**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)

A. Subcase Number: 31-00324

Case No. 39576)

**STANDARD FORM 1
OBJECTION**

_____)
Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Don Burtenshaw
1603 North 1000 East
Terreton, ID 83450

Name & Address of Attorney:

Jerry R. Rigby
Rigby, Thatcher, Andrus, Rigby,
Kam & Moeller, Chartered
P.O. Box 250
Rexburg, ID 83440
(208) 356-3633

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

Name: David J. Hagenbarth
Address: P.O. Box 1128
Dillon, MT 59725

**D. I OBJECT TO THE FOLLOWING ELEMENTS AS RECOMMENDED
IN THE DIRECTOR'S REPORT.**

1. ☐ Name and address

Should be:

2. ☒ ☐ **Source**
Should be: None

3. ☒ ☐ **Quantity**
Should be: None

4. ☒ ☐ **Priority Date**
Should be: None

5. ☒ ☐ **Point(s) of diversion**
Should be: None

6. ☐ **Instream Flow Description**
Should be:

7. ☒ ☐ **Purpose(s) of Use**
Should be: None

8. ☐ **Period of Year**
Should be:

9. ☐ **Place of Use**
Should be:

10. ☐ **Remarks:**
Should be: This water right was abandoned and/or forfeited by
Claimant's predecessors

11. **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):

2,3, 4, 5, & 7: The water rights originally decreed in the Suave Decree for the above entitled claim have long been abandoned and/or forfeited by Claimant's predecessors in interest. The

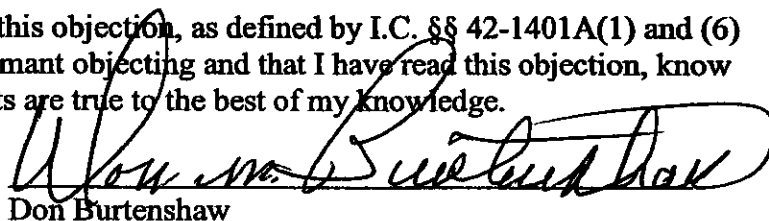
additional reasons are covered within Objector's Motion to file late objection accompanying this Objection.

VERIFICATION

State of Idaho)
)ss.
County of Madison)

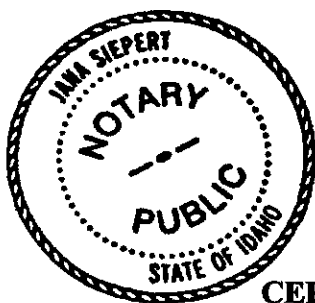
Don Burtenshaw, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

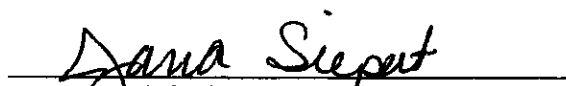
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.


Don Burtenshaw

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: July 16, 2002





Notary Public for the State of Idaho
Residing at: Rexburg, Idaho
My Commission Expires: 3-15-2007

CERTIFICATE OF MAILING

I certify that on July 16, 2002, I mailed the original and 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:

David J. Hagenbarth
c/o Michael C. Creamer
P.O. Box 2720
Boise, ID 83701-2720

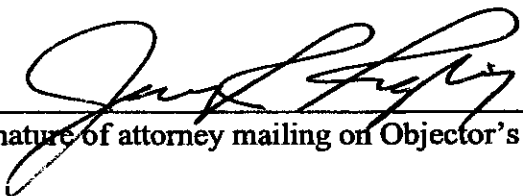
c/o John Bloomquist & Patti Rowland
Doney Crowley Bloomquist
108 S. Washington
P.O. Box 1418
Dillon, MT 59725-1418

3. Copies to:

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PO 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

Candice McHugh
1301 N. Orchard
Boise, ID 83706



Signature of attorney mailing on Objector's behalf