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Department of Water Resources

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Attorneys for Objector Mud Lake Water Users, Inc.

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	)	Subcase 31- 00324
	)	**MOTION TO FILE A LATE OBJECTION**
Case 39576	)	

COMES NOW, MUD LAKE WATER USERS, INC., an Idaho water corporation with its principal place of business located at 1400 E. 1500 N., 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., James F. and Margaret 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 to the water rights being claimed by Claimant. The record is clear that Objector has always to this date vigorously

defended its 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 then 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, and its' principal directors and managers, were 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 their counsel of record, Mr. Kent Foster. Upon Mr. Foster discovering that he has a potential conflict of interest in representing the Objector against Claimant, Objector was forced

to obtain alternative counsel. Upon finding new counsel to file the late objection, Objector authorized the new counsel to immediately investigate the matter and file the appropriate motion to file this late objection.

7. Immediately upon discovering the discrepancy, Objector informed the State that it intended to object and has gone so far as obtaining signatures of several other water right holders who's water rights would be injured and sent the signatures 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 it 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 mislead or 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 its objection has merit and would promote a result that would not only benefit it and its 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 an expedited hearing on its motion. Objector's motion is supported by the affidavits of Gerald Messerli and NickHilllman.

Dated this 26 day of June, 2002.

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

Gerald Messerli
Pres. of Mud Lake Water Users, Inc.
Objector

VERIFICATION

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

Gerald Messerli, being first duly sworn, upon oath, deposes and says: That I am the President of Mud Lake Water Users, Inc., 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.

Gerald Messerli

Subscribed and sworn to before me on June 26, 2002.

JANA SIEPERT NOTARY PUBLIC STATE OF IDAHO

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

CERTIFICATE OF MAILING

I certify that on June 26, 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.0. Box 2707
Twin Falls, ID 83303-2707

Margaret 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

WATER DISTRICT #31
P.O. BOX 33
DUBOIS, ID 83423
(208) 374-5274

May 30, 2002

To Whom It May Concern:

The question was asked on the historical use of water right numbers; 31-66A, 66B, 67A, 67B, 324, 373, and 374 out of West Camas Creek in Water District 31.

As to the historical use of the above water rights I make the following comment. The only two water rights delivered to Mr. Hagenbarth out of West Camas Creek are 31-373 and 374, for the total of 4.44 c.f.s. This is the way I have handled these water rights since being Assistant Watermaster and Watermaster from the mid 1980's to the present time. This is the way I was directed by the previous Watermaster Donald Shenton who was the Watermaster from 1960 to 1998.

Sincerely,

Greg Shenton
Watermaster

Jerry R. Rigby (I.S.B. No. 2470)
of RIGBY, THATCHER, ANDRUS,
RIGBY, KAM & MOELLER, *Chartered*
Attorneys at Law
PO Box 250
25 North Second East
Rexburg, Idaho 83340
Telephone: (208) 356-3633
Facsimile: (208) 356-0768

Attorneys for Objector Mud Lake Water Users, Inc.

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 GERALD MESSERLI**
	)	

STATE OF IDAHO)
ss.
County of Madison)

GERALD MESSERLI, 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 am President of Mud Lake Water Users, Inc.

3. Mud Lake Water Users, Inc. owns certain water rights which are senior to the water rights being claimed by David J., James F. and Margaret Hagenbarth.

4. 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.

5. 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.

6. 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.

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

8. Once the problem was discovered, we have been diligent in our attempts to resolve the issue. I met with our attorney Kent Foster to take care of the matter. Since Mr. Foster had a conflict of interest and could not handle our case, we were left to find another attorney to represent us, which caused additional delay.

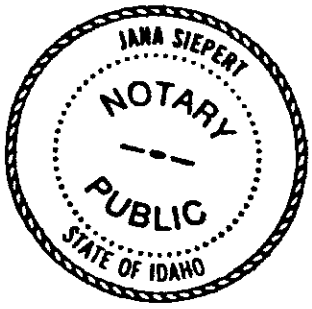
10. Granting a decree to said above entitled water rights would have a severe adverse impact on our water rights.

DATED This 26th day of June, 2002.

Gerald Messerli

Gerald Messerli

SUBSCRIBED AND SWORN to before me this 26th day of June, 2002.



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

Jerry R. Rigby (I.S.B. No. 2470)
of RIGBY, THATCHER, ANDRUS,
RIGBY, KAM & MOELLER, *Chartered*
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Attorneys for Objector Mud Lake Water Users, Inc.

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 NICK HILLMAN**
	)	

STATE OF IDAHO)
ss.
County of Madison)

NICK HILLMAN, 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 am a water right holder in Basin 31 and an familiar with the area in question.

3. I am intimately familiar with the amount of water delivered to Hagenbarths due to the fact that their diversionary works are located on my property.

4. To my knowledge the Harmon Reservoir, as referred to in the claims set forth by Hagenbarths, has never been known as such. It is commonly referred to as the Frazier Reservoir.

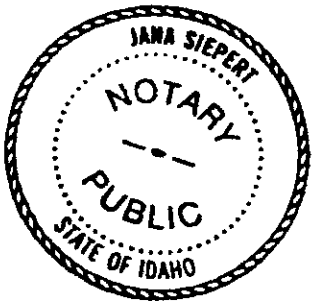
5. I am unaware of any requests by Hagenbarths to use Frazier Reservoir water under water rights 31-00066A, 31-00066B, 31-00067A, 31-00067B, or 31-00324.

6. I believe that to decree Frazier Reservoir water to Hagenbarths would adversely affect other senior water right holders, including Mud Lake Water Users, Inc.

DATED This 26th day of June, 2002.

Nick Hillman

SUBSCRIBED AND SWORN to before me this 26th day of June, 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)
)
Case No. 39576)
)
)
)
)

A. Subcase Number: 31-00324

STANDARD FORM 1 OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Mud Lake Water Users, Inc.
1400 E. 1500 N.
P.O. Box 68
Terreton, ID 83450
208-663-4359

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: Margaret 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)

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

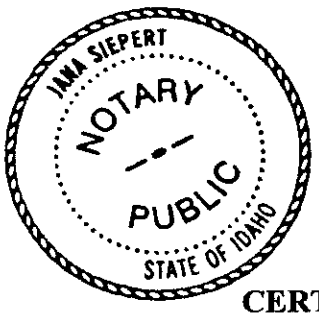
That I am the President of Mud Lake Water Users, Inc. the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best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

Gerald Messerli

Gerald Messerli

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: June 26, 2002



Jana Siepert

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

CERTIFICATE OF MAILING

I certify that on June 26 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:

Margaret 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:

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

Signature of attorney mailing on Objector's behalf