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APR 21 2003

Department of Water Resources

U.S. Department of Justice

Environment and Natural Resources Division

DG:DAJ

90-6-2-63C

David A. Jarvis
Labat-Anderson, Inc.
999 Eighteenth Street
Suite 945, North Tower
Denver, Colorado 80202

Telephone (303) 312-7370
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April 17, 2003

via FedEx Mail

Diana R. Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, Idaho 83303-2707

Re: SRBA Case No. 39576
Subcase No. 35-02009

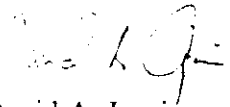
Dear Ms. Delaney:

Enclosed for filing are the following original documents in the above mentioned subcases:

1. **MOTION FOR PERMISSION TO FILE LATE OBJECTION**
2. **MEMORANDUM IN SUPPORT OF MOTION FOR PERMISSION TO FILE LATE OBJECTION**
3. **STANDARD FORM 1 - OBJECTION**

Thank you for your time and attention in this matter.

Sincerely,


David A. Jarvis
Paralegal

Enclosures

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Department of Water Resources

THOMAS L. SANSONETTI
Assistant Attorney General
Environmental and Natural Resources Division

DAVID W. GEHLERT
Trial Attorney, General Litigation Section
Environmental and Natural Resources Division
U.S. Department of Justice
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(303) 312-7352

Attorneys for the United States of America

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

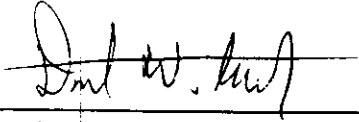
In Re SRBA	)	Subcase No. 35-02009
	)	
Case No. 39576	)	UNITED STATES' MOTION FOR
	)	PERMISSION TO FILE LATE
	)	OBJECTION
_____	)	

The United States Department of Justice, on behalf of the Department of Interior,
Bureau of Reclamation, files this Motion for permission to file a late Objection in Subcase No.
35-02009 for the reasons noted in the attached Memorandum in Support.

DATED this 17th Day of April, 2003.

Respectfully submitted,

THOMAS L. SANSONETTI
Assistant Attorney General
Environmental and Natural Resources Division



David W. Gehlert
Attorney, General Litigation Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945, North Tower
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Attorneys for the United States of America

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**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 No. 35-02009
	)	
Case No. 39576	)	MEMORANDUM IN SUPPORT OF
	)	THE UNITED STATES' MOTION FOR
	)	PERMISSION TO FILE LATE
	)	OBJECTION
_____	)	

Facts

On December 23, 2002, Carl Christensen filed a Motion to File an Amended Notice of Claim in Subcase No. 35-02009. The reason given for the Motion was to add "domestic use" (explained to include both domestic and stockwater use), which had inadvertently been left off the original claim in the SRBA. On January 14, 2003, the SRBA Court granted the Motion. Discussion during the hearing on the motion clearly noted that this issue was independent of the issue of trespass, which had been the reason for the United States' Objection

to this water right.

On January 15, 2003, IDWR issued an Amended Director's Report for Subcase No. 35-02009. The director's report added references to stockwater use, primarily in "Purpose and Period of Use" and "Place of Use," but also added a diversion point, clarified the source and added comments to "Quantity," "Other Provisions," and "Explanatory Material." None of the changes affected the issues related to trespass on federal lands. This director's report was noticed in the Docket Sheet for January 2003, which is dated February 4, 2003. Thus, Objections were due by February 25, 2003.

At the time of the hearing on the Motion to File an Amended Notice of Claim, the United States and the Christensens had reached agreement on removal of the water use from federal lands. Changes to the description of the water right reflecting a transfer of this right off federal lands had not appeared (in the form of the director's report or otherwise) only due to the backlog that exists at IDWR. The United States, having no issue with the proposed amendments to the claim, did not object to the amended claim.

In early April 2003 Dala Walton, Water Rights Specialist for the Bureau of Reclamation, contacted Candice McHugh of IDWR and was advised that the United States was no longer considered a party to Subcase No. 35-02009 because the amendments to the water right claim were substantive in nature and the United States had failed to reaffirm its objection to the water right.

Argument

The United States should be allowed to file a late Objection in order to preserve its position in this subcase and ensure completion of the settlement efforts that have been

ongoing for three years. The United States has actively participated in these proceedings throughout. There was no reason to expect that, simply because the Christensens sought to amend their claim in ways totally unrelated to the issue involving the United States, that the United States would withdraw from the subcase.

As of the October 2002 Status Conference, all that remained towards resolving the issue between the Christensens and the United States was for the Christensens to complete the administrative act of transferring their water off the federal lands. IDWR estimated that the transfer process would take up to six months. When the Motion to File an Amended Notice of Claim was heard in January 2003, nearly three months had passed. The failure of the United States to object to the amended Notice of Claim was due to two factors: the United States had no issues with the amendments being proposed and it believed that its own objection had essentially been resolved.

The United States has recently learned that the Christensens have yet to file for the water right transfer and that processing the transfer will take up to a year due to backlogs at IDWR. Thus, it is imperative that the United States remain a party to this subcase until that transfer has been accomplished.

Conclusion

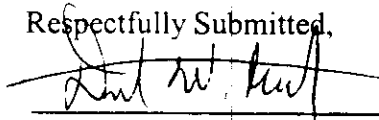
The United States has been and continues to be an active participant in this subcase. That participation has led to a plan that would resolve the issue raised by the United States Objection to the satisfaction of both parties. In order to see that resolution through, the United States needs to remain a party to this proceeding.

Therefore, the United States petitions this court for permission to file a late

objection, not to raise any new issues, but simply to preserve its position in the subcase with regard to ensuring final resolution of an issue that has been resolved in principle.

Dated this 17th day of April, 2003.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David W. Gehlert", written over a horizontal line.

David W. Gehlert
Attorney for the United States

Certificate of Service

I certify that on this 17th day of April 2003, I caused to be served true and correct copies of the foregoing **UNITED STATES' MOTION FOR PERMISSION TO FILE LATE OBJECTION** and **MEMORANDUM IN SUPPORT OF THE UNITED STATES' MOTION FOR PERMISSION TO FILE LATE OBJECTION** to:

via Hand Delivery:

CLERK OF THE SRBA COURT (Original)
SRBA Courthouse
District Court
253 Third Ave. North
Twin Falls, Idaho 83301

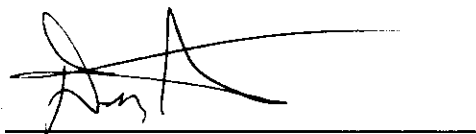
via First-Class Mail:

Mary J. & Carl R. Christensen
1321 S. 2300 W.
Sterling, ID 83210

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

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

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

A handwritten signature in black ink, appearing to be "J. Christensen", is written over a horizontal line.

**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 35-02009
(Insert water right number)

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: United States of America acting through the Department of Interior,
Bureau of Reclamation, Regional Director PN Code-3100
Address: 1150 N. Curtis Rd. Suite 100
Boise, Idaho 83706-1234
Daytime Phone: 208-378-5306 (E. Gail McGarry)

Name & Address of Attorney, if any:
David W. Gehlert (303-312-7352)
Trial Attorney, General Litigation Section
Environment and Natural Resource Division
U. S. Department of Justice
999 18th Street, Suite 945 North Tower
Denver, Colorado 80202

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

Name: Carl R. Christensen and Mary J. Christensen
Address: 1321 S 2300 W
Sterling ID 83210

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be:
2. ☐ **Source**
Should be:
3. ☐ **Quantity**
Should be:
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: Changed to exclude land in federal ownership.
11. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described.

E. REASONS SUPPORTING EACH OBJECTION(S):

The place of use in T05S, R32E S05, NESW (1 acre), SESW (12 acres) and NWSE (7 acres) is in ownership of the United States, Bureau of Reclamation.

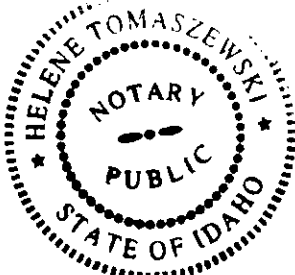
F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Jerrold D. Gregg, 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.



[Signature] 4/4/2003
(Signature of person filing objection)

[Signature] 4/15/2003
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: APRIL 4, 2003

Helene Tomaszewski
Notary Public for IDaho
Residing at: Meridian
My Commission Expires: 07-16-2008

INSTRUCTIONS FOR MAILING

You must mail the objection, 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.

G. CERTIFICATE OF MAILING

I certify that on April 17, 2003, I mailed the original and copies of this objection, including all attachments, to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

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:

Name: Mary J. And Carl R. Christensen

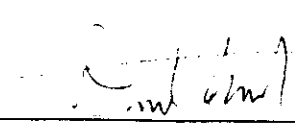
Address: 1321 S 2300 W
Sterling ID 83210

3. Copies to:

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

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

United States Department of Justice
Environment and Natural Resource Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724



Signature of Objector or attorney mailing on Objector's behalf