

In Re SRBA
Case No. 39576

STANDARD FORM 1 OBJECTION

B. NAME AND ADDRESS OF PERSON OBJECTING

Name and Address of Attorney, if any:

Attorney Name: ALAN G. LANCE
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER
Deputy Attorney General

Attorney Address: Office of the Attorney General
700 W. Jefferson, Room 210
P.O. Box 44449
Boise, ID 83711-4449

Attorney Phone No. (208) 334-2400
Idaho State Bar # 2597

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

Name: United States of America
USDA Forest Service
Address: 550 W. Fort Street, MSC 033
Boise, ID 83724

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: Decreed as Disallowed
2. ☒ **Source**
Should be: Decreed as Disallowed
3. ☒ **Quantity**
Should be: Decreed as Disallowed
4. ☒ **Priority Date**
Should be: Decreed as Disallowed
5. ☒ **Point(s) of diversion**
Should be: Decreed as Disallowed
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: Decreed as Disallowed
8. ☒ **Period of Year**
Should be: Decreed as Disallowed
9. ☒ **Place of Use**
Should be: Decreed as Disallowed
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):

GENERAL DENIAL. The objector generally denies all allegations made in the Notice of Claim filed by the United States, unless specifically admitted.

1. Name and Address

The United States issued a patent for H.E. Survey No. 454 under the Homestead Act of May 20, 1862, ch. 75, 12 Stat. 392, to Philip A. Shearer on or about October 15, 1919, for the land that is the described place of use and the point of diversion for this water right. The objector is informed and believes and, therefore, alleges the fact to be that the United States later reacquired this land within H.E. Survey No. 454. The federal reserved water rights doctrine does not recognize a federal reserved water right for such reacquired land. Any water right appurtenant to this real property must be developed and confirmed in accordance with state law. Copies of the patent and the master title plat for Township 31 N., Range 13 East are attached as Exhibits A and B respectively. The master title plat shows the location of H.E. Survey No. 454.

2. Source

The United States issued a patent for H.E. Survey No. 454 under the Homestead Act of May 20, 1862, ch. 75, 12 Stat. 392, to Philip A. Shearer on or about October 15, 1919, for the land that is the described place of use and the point of diversion for this water right. The objector is informed and believes and, therefore, alleges the fact to be that the United States later reacquired this land within H.E. Survey No. 454. The federal reserved water rights doctrine does not recognize a federal reserved water right for such reacquired land. Any water right appurtenant to this real property must be developed and confirmed in accordance with state law. Copies of the patent and the master title plat for Township 31 N., Range 13 East are attached as Exhibits A and B respectively. The master title plat shows the location of H.E. Survey No. 454.

3. Quantity

The United States issued a patent for H.E. Survey No. 454 under the Homestead Act of May 20, 1862, ch. 75, 12 Stat. 392, to Philip A. Shearer on or about October 15, 1919, for the land that is the described place of use and the point of diversion for this water right. The objector is informed and believes and, therefore, alleges the fact to be that the United States later reacquired this land within H.E. Survey No. 454. The federal reserved water rights doctrine does not recognize a federal reserved water right for such reacquired land. Any water right appurtenant to this real property must be developed and confirmed in accordance with state law. Copies of the patent and the master title plat for Township 31 N., Range 13 East are attached as Exhibits A and B respectively. The master title plat shows the location of H.E. Survey No. 454.

4. Priority Date

The United States issued a patent for H.E. Survey No. 454 under the Homestead Act of May 20, 1862, ch. 75, 12 Stat. 392, to Philip A. Shearer on or about October 15, 1919, for the land that is the described place of use and the point of diversion for this water right.

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5. **Point(s) of Diversion**

The United States issued a patent for H.E. Survey No. 454 under the Homestead Act of May 20, 1862, ch. 75, 12 Stat. 392, to Philip A. Shearer on or about October 15, 1919, for the land that is the described place of use and the point of diversion for this water right. The objector is informed and believes and, therefore, alleges the fact to be that the United States later reacquired this land within H.E. Survey No. 454. The federal reserved water rights doctrine does not recognize a federal reserved water right for such reacquired land. Any water right appurtenant to this real property must be developed and confirmed in accordance with state law. Copies of the patent and the master title plat for Township 31 N., Range 13 East are attached as Exhibits A and B respectively. The master title plat shows the location of H.E. Survey No. 454.

7. **Purpose(s) of Use**

The United States issued a patent for H.E. Survey No. 454 under the Homestead Act of May 20, 1862, ch. 75, 12 Stat. 392, to Philip A. Shearer on or about October 15, 1919, for the land that is the described place of use and the point of diversion for this water right. The objector is informed and believes and, therefore, alleges the fact to be that the United States later reacquired this land within H.E. Survey No. 454. The federal reserved water rights doctrine does not recognize a federal reserved water right for such reacquired land. Any water right appurtenant to this real property must be developed and confirmed in accordance with state law. Copies of the patent and the master title plat for Township 31 N., Range 13 East are attached as Exhibits A and B respectively. The master title plat shows the location of H.E. Survey No. 454.

8. **Period of Year**

The United States issued a patent for H.E. Survey No. 454 under the Homestead Act of May 20, 1862, ch. 75, 12 Stat. 392, to Philip A. Shearer on or about October 15, 1919, for the land that is the described place of use and the point of diversion for this water right. The objector is informed and believes and, therefore, alleges the fact to be that the United States later reacquired this land within H.E. Survey No. 454. The federal reserved water rights doctrine does not recognize a federal reserved water right for such reacquired land. Any water right appurtenant to this real property must be developed and confirmed in accordance with state law. Copies of the patent and the master title plat for Township 31 N., Range 13 East are attached as Exhibits A and B respectively. The master title plat shows the location of H.E. Survey No. 454.

9. **Place of Use**

The United States issued a patent for H.E. Survey No. 454 under the Homestead Act of May 20, 1862, ch. 75, 12 Stat. 392, to Philip A. Shearer on or about October 15, 1919, for the land that is the described place of use and the point of diversion for this water right. The objector is informed and believes and, therefore, alleges the fact to be that the United States later reacquired this land within H.E. Survey No. 454. The federal reserved water rights doctrine does not recognize a federal reserved water right for such reacquired land. Any water right appurtenant to this real property must be developed and confirmed in accordance with state law. Copies of the patent and the master title plat for Township 31 N., Range 13 East are attached as Exhibits A and B respectively. The master title plat shows the location of H.E. Survey No. 454.

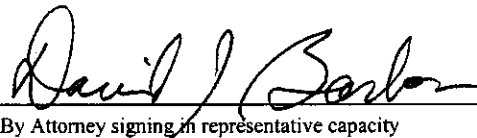
F. **VERIFICATION (Must be Completed)**

State of Idaho)
) ss.
County of Ada)

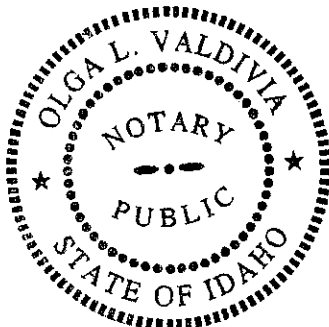
DAVID J. BARBER, Deputy Attorney General, duly sworn, upon oath, deposes and says:

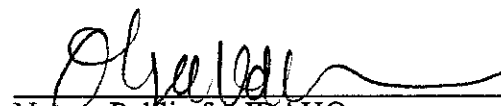
That the State of Idaho, Department of Lands, in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, Department of Lands which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

ALAN G. LANCE
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER
Deputy Attorney General


By Attorney signing in representative capacity

Subscribed and sworn to before me on: 10-28-02
(Insert Date)




Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: 2/8/06

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 October 28, 2002, I caused the original and the copies of this objection, including all attachments, to be served on the following persons by the method designated:

1. Original to:

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

U.S. Mail

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

United States of America
USDA Forest Service
550 W. Fort Street, MSC 033
Boise, ID 83724

U.S. MAIL

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

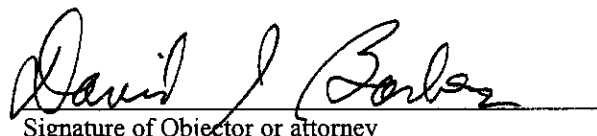
STATEHOUSE MAIL

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

(not applicable)

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

U.S. MAIL


Signature of Objector or attorney
Mailing on Objector's behalf

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at Lewiston, Idaho, has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 30, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Philip A. Shearer has been established and duly consummated, in conformity to law, for the U.S. Survey No. 454, embracing a portion of, approximately, Township thirty-one north of Range thirteen east of the Boise Meridian, Idaho, more particularly bounded and described as follows: Beginning at corner No. 1, from which U.S. Location Monument No. 454, bears north twelve degrees thirty minutes forty-nine seconds west one hundred thirty-three and eight-tenths chains distant; thence east eleven and fourteen-hundredths chains to corner No. 2; thence south forty-eight degrees thirty minutes west five and eighty-one-hundredths chains to corner No. 3; thence south twenty-two degrees two minutes west eleven and fifty-six-hundredths chains to corner No. 4; thence south one degree forty-nine minutes east fifteen and eighty-four-hundredths chains to corner No. 5; thence south twenty-eight degrees forty-four minutes west six and four-hundredths chains to corner No. 6; thence south forty-three degrees thirty minutes west sixteen and twenty-seven-hundredths chains to corner No. 7; thence south seven degrees fifty-nine minutes east nine and ninety-eight-hundredths chains to corner No. 8; thence south twenty-seven degrees fifty-three minutes east ten and seventy-one-hundredths chains to corner No. 9; thence south ten degrees thirty-one minutes west twelve and fifty-two-hundredths chains to corner No. 10; thence west eighteen and eighty-three-hundredths chains to corner No. 11; thence north ten degrees forty-seven minutes east thirty-one and sixty-five-hundredths chains to corner No. 12; thence north seventeen degrees seven min-

utes east thirty-eight and ninety-nine-hundredths chains to corner No.13; thence north thirty-seven degrees fifty-three minutes east thirteen and seven-tenths chains to corner No.1, the place of beginning, containing one hundred eleven and one-hundredth acres, according to the Official Plat of the Survey of the said land, returned to the GENERAL LAND OFFICE by the Surveyor-General:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of land above described; TO HAVE AND TO HOLD the said tract of land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, Woodrow Wilson,

President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

GIVEN under my hand, at the City of Washington, the FIFTEENTH

(SEAL)

day of OCTOBER

In the year of our Lord one thousand

nine hundred and NINETEEN

and of the Independence of the

United States the one hundred and FORTY-FOURTH.

By the President

Woodrow Wilson

By

W. P. Le Roy

Secretary,

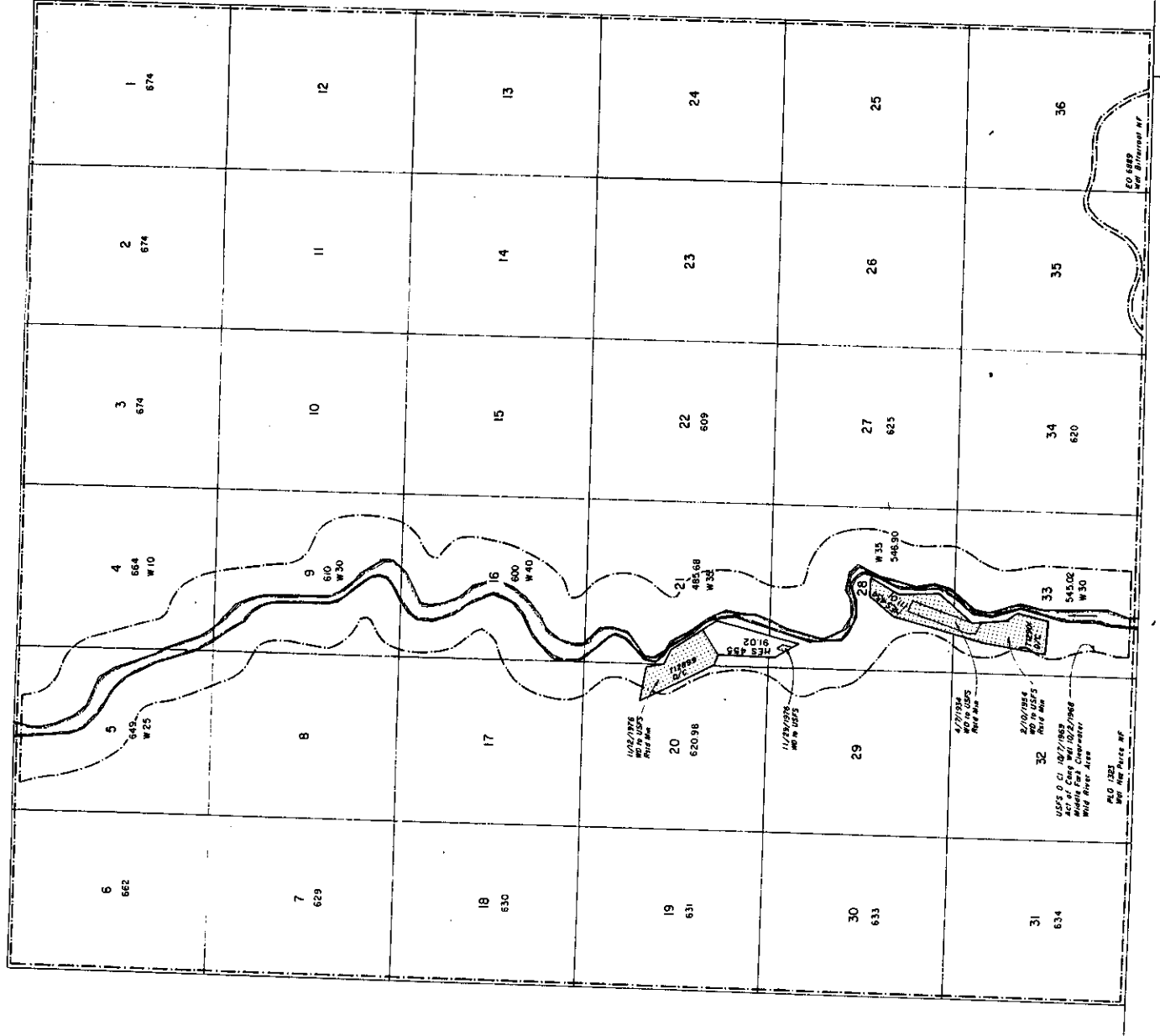
L. B. Samson

Recorder of the General Land Office.

UNSURVEYED TOWNSHIP 31 NORTH RANGE 13 EAST OF THE BOISE MERIDIAN, IDAHO

Revised Protection Diagram No 19 approved 3/16/1970

IDAHO COUNTY 049
COEUR D'ALENE DISTRICT



MT PLAT

INDEX TO SEGREGATED TRACTS			
TRACT NO	T	R	SEC
1	31	13	1
2	31	13	2
3	31	13	3
4	31	13	4
5	31	13	5
6	31	13	6
7	31	13	7
8	31	13	8
9	31	13	9
10	31	13	10
11	31	13	11
12	31	13	12
13	31	13	13
14	31	13	14
15	31	13	15
16	31	13	16
17	31	13	17
18	31	13	18
19	31	13	19
20	31	13	20
21	31	13	21
22	31	13	22
23	31	13	23
24	31	13	24
25	31	13	25
26	31	13	26
27	31	13	27
28	31	13	28
29	31	13	29
30	31	13	30
31	31	13	31
32	31	13	32
33	31	13	33
34	31	13	34
35	31	13	35
36	31	13	36

SO 1/23/1927 Will Per S CI 166, all land lying within 1/4 mile of Selway River
Secs 4 to 6 Incl
Secs 8 to 10 Incl
Secs 12, 15, 21, 27, 28, 33, 34
All Tr included in L O 12844 Set Pt 167 (Act of Cong 7/23/1953) Complete 12/4/1952 All NF
Surface Acq by USFS
All Tr included in Selway-Bitterroot Wilderness Area WOI 97/3/1964

FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS REFER TO INDEX OF MISCELLANEOUS DOCUMENTS

CURRENT TO	CURRENT TO
USE PLAT	

No warranty is made by the Bureau Land Management for the use of it data for purposes not intended by BLM

STATUS OF PUBLIC DOMAIN LAND AND MINERAL TITLES AND ACQUIRED LANDS