

COPY

**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: 82-10354
(Insert water right number)

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho, Department of Lands
Address: 700 W. Jefferson, Room 210
P.O. Box 44449
Boise, Idaho 83711-4449
Daytime Phone: (208) 334-2400

Name and Address of Attorney, if any:

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER (ISB # 2597)
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

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

Name: UNITED STATES OF AMERICA on behalf of the U.S.D.A
Forest Service
Address: 550 W. Fort Street MSC033
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: None
2. ☒ **Date of Priority**
Should be: None
3. ☒ **Source of Water**
Should be: None
- 4a. ☒ **Description of Diversion Works: Wells**
Should be: None
- 4b. ☒ **Location of point of diversion**
Should be: None
- 4c. ☐ **Location of Place of Use**
Should be: None
5. ☒ **Quantity claimed**
Should be: None
6. ☒ **Total consumptive use claimed for present and future use is:**
Should be: None
7. ☒ **Present and future uses to which the water is or will be used**
Should be: None
8. ☒ **Remarks**
Should be: None.

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):

The U.S. Supreme Court addressed in *United States v. New Mexico*, 438 U.S. 696, 98 S.Ct. 3012, 57 L.Ed.2d 1052 (1978), the scope of the federal reserved water right created when the United States withdraws land from the public domain and reserves it for a National Forest. The Court noted the history of Acts of Congress that resulted in the enactment of the Organic Administration Act of June 4, 1897, ch. 2, 30 Stat. 34. The Creative Act of March 3, 1891, ch. 561, 26 Stat. 1095 was the first congressional authorization to the Executive to create forest reservations. The Court described its implementation as follows:

The Creative Act of 1891 unfortunately did not solve the forest problems of the expanding Nation. To the dismay of the conservationists, the new national forests were not adequately attended and regulated; fires and indiscriminate timber cutting continued their toll. To the anguish of Western settlers, reservations were frequently made indiscriminately. **President Cleveland, in particular, responded to pleas of conservationists for greater protective measures by reserving 21 million acres of 'generally settled' forest land on February 22, 1897. President's action drew immediate and strong protest from Western Congressmen who felt that the 'hasty and ill considered' reservation might prove disastrous to the settlers living on or near these lands.**

Congress' answer to these continuing problems was three-fold. **It suspended the President's Executive Order of February 22, 1897; it carefully defined the purposes for which national forests could in the future be reserved; it provided a charter for forest management . . .**

438 U.S. at 706, 98 S.Ct. at 3017, 57 L.Ed.2d at 1060-1061 (Emphasis added, and footnotes omitted). Of interest, the present national forest where this reserved water right is claimed is one of the national forests that President Cleveland reserved on February 22, 1897 and that Congress quickly suspended. 30 Stat. 36. Thus, a primary goal of the Organic Administration Act was to limit power of the President to reserve forest lands in the West. 438 U.S. at 708 n.14, 98 S.Ct. at 3018 n.14, 57 L.Ed.2d at 1061 n.14.

The Court stated:

Each time this Court has applied the 'implied-reservation-of-water doctrine,' it has carefully examined both the asserted water right and the specific purposes for which the land was reserved, and concluded that

without the water the purposes of the reservation would be entirely defeated.

438 U.S. at 700; 98 S.Ct. at 3014; 57 L.Ed.2d at 1057 (Footnote omitted). The Court further stated:

The legislative debates surrounding the Organic Administration Act of 1897 and its predecessor bills demonstrate that Congress intended national forests to be reserved for only two purposes—‘[t]o conserve the water flows, and to furnish a continuous supply of timber for the people.’ . . . National forests were not to be reserved for aesthetic, environmental, recreational, or wildlife-preservation purposes

438 U.S. at 707-708; 98 S.Ct. at 3017-3018; 57 L.Ed.2d at 1061-1062 (Footnote and citations omitted).

The use of ground water as described in the notice of claim is not within the scope of the reserved water rights doctrine as applied to lands administered by the U.S. Forest Service.

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F.

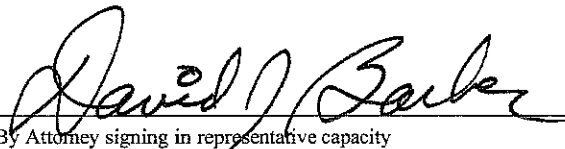
VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

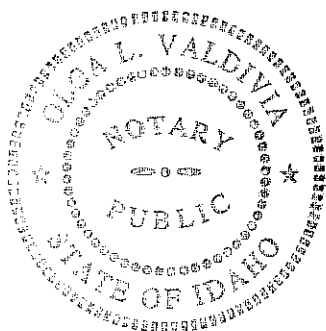
DAVID J. BARBER, Deputy Attorney General, duly sworn, upon oath, deposes and says:

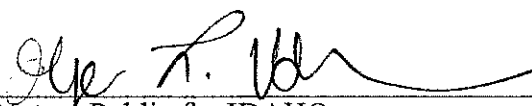
That the State of Idaho, Department of Lands, in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, Department of Lands which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have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

LAWRENCE G. WASDEN
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: March 24, 2005
(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 March 25, 2005 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

HAND DELIVERY

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

UNITED STATES OF AMERICA
on behalf of the U.S.D.A. Forest Service
550 W. Fort Street MSC033
Boise, ID 83724

U.S. MAIL

3. Copies to:

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

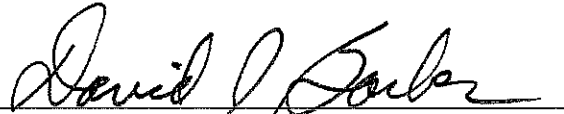
STATEHOUSE MAIL

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

U.S. MAIL

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

(not applicable)



Signature of Objector or attorney
Mailing on Objector's behalf