

Kent W. Foster, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518
Idaho State Bar Number 1198

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. 35976

A. Subcase 35-4037

**STANDARD FORM 1
OBJECTION**

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Richard D. Polatis

Address: 174 S. 1075 N.

Blackfoot, ID 83221

Daytime Phone: 208-684-3135

Name & Address of Attorney, if any:

Kent W. Foster

Holden, Kidwell, Hahn & Crapo, PLLC

1000 Riverwalk Dr., Ste. 200

PO Box 50130

Idaho Falls, ID 83405-0130

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

Name: Richard D. Polatis
Address: 174 S. 175 W.
Blackfoot, ID 83221

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: 174 S. 1075 W., Blackfoot, ID 83221
2. ☒ **Source**
Should be: Groundwater
3. ☒ **Quantity**
Should be: 2.910 cfs
4. ☒ **Priority Date**
Should be: May 1, 1959
5. ☒ **Points of Diversion**
Should be: NWSW, Section 5, T.3S., R.32E.B.M., Bingham County
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: Irrigation
8. ☒ **Period of Year**
Should be: April 1 to October 31.
9. ☒ **Place of Use**
Should be: 151.6 acres in SW1/4, Section 5, T.3S., R.32E.
10. **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):** Claimant is able to produce evidence clearly demonstrating that water has been diverted and applied to beneficial use as described above each irrigation season commencing with the irrigation season of 1959 and continuing each irrigation season without interruption through the present time.

VERIFICATION (Must be Completed)

State of Idaho)
)ss.
County of Bonneville)

Kent W. Foster, duly sworn, upon oath, deposes and says:

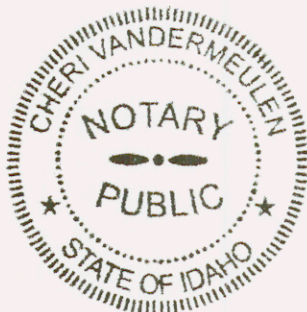
That I am the party/claimant filing this objection, as defined by I.C. §§42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Richard D. Polatis
Richard D. Polatis

Kent W. Foster
Kent W. Foster

Subscribed and sworn to before me on:

7 April 2005



Cheri Vandermeulen
Notary Public for *Idaho*
Residing at: *Idaho Falls*
My Commission Expires: *7 July 2009*

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of April, 2005, 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. Copies to:
IDWR Document Depository
P.O. 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

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



Kent W. Foster, Esq.

RICHARD D. POLATIS

COPY

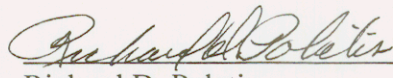
STATE OF IDAHO)
)ss.
County of Bonneville)

Richard D. Polatis, being first duly sworn, on his oath deposes and says:

1. Affiant resides at 174 South 1075 West, Blackfoot, Idaho 83221, and with his brother, Daniel T. Polatis, is involved in an Idaho farm partnership known as Polatis Brothers Farms. Affiant is over the age of eighteen (18) years and gives this testimony based on his own personal knowledge of the facts stated herein.
2. Affiant and his brother have been involved with farming for many years and it has been affiant's primary responsibility for taking care of the paperwork associated with the farming operation, including water rights matters. Polatis Brothers Farms owns a number of farms and there are several water rights appurtenant thereto and used in connection therewith.
3. In about 1987, Polatis Brothers Farms leased some land from Farm Credit Bank of Spokane, the successor by merger to the Federal Land Bank of Spokane, which land included the SW1/4 of Section 5, T.3S., R.32E.B.M. There was an existing well located on said land with an operating electric pump in it and every indication that the approximately 160 acres had been irrigated from the well for a long period of time. Polatis Brothers Farms began using the well and existing equipment to irrigate said land from the commencement of the lease in 1987 until the land was purchased by Polatis Brothers Farms from Farm Credit Bank of Spokane in April 1989. The same irrigation use and same irrigation practices have continued since the time of the purchase of the land to the present date.

Unfortunately during the time affiant normally would have been paying attention to the water rights matters regarding this land, he began to experience health problems which distracted him and made it difficult for him to concentrate and take care of business as he desired. The health problems became sufficiently severe in about 1997 or 1998 to seriously affect affiant's ability to focus on the water rights issues as he would have desired. Affiant had some neck surgery in December of 2001, which, over a period of

time, resulted in significant improvement. Before affiant recovered to any great extent from the surgery however, he experienced a stroke on December 25, 2003, which left much of his left side paralyzed and continued to interfere with his ability to focus on his normal business affairs, including the water rights matters for the farms. Affiant has now recovered substantially and continues to improve, especially in his ability to concentrate and to deal with water rights matters. Affiant recently discovered for example that water right number 35-4037 had been disallowed because of affiant's inability to respond to the communications received from the Idaho Department of Water Resources or to assist in the providing of evidence that would have been possible if affiant had been in better health.



Richard D. Polatis

SUBSCRIBED AND SWORN to me this 7th day of April, 2005.



Notary Public for the State of Idaho

Residing at: IDAHO FALLS, ID

My Commission Expires: 11/30/2010

AFFIDAVIT OF GLEN E. KIRKPATRICK

STATE OF IDAHO)
)ss
County of CANYON)

COPY

Glen E. Kirkpatrick, on his oath deposes and says:

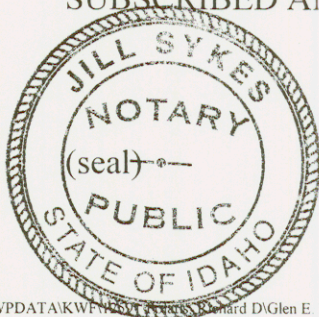
1. Affiant presently resides at 22518 Hoskins Rd., Caldwell, ID 83607, and his telephone number is (208) 337-5449. Affiant is 83 years of age and will be 84 in July. Affiant was born and raised, and resided in Bingham County, most of his life, where his occupation was farming.
2. In the fall of 1954, affiant and his wife moved to a 400 acre farm west of Blackfoot. The farm is located in an area we then called "out on the desert". Mr. Mel Wilcox, who owned Wilcox Lumber in Blackfoot, had purchased the land and arranged with me to develop it as a farm. We removed the sage brush, had two wells drilled by Guy Cushman, prepared and planted the 400 acres, and I personally operated it in 1954, 1955 and 1956. In 1956, I had an opportunity to purchase a farm from a widow named VanOrden, and we then moved to and operated that farm after 1956.
3. There was quite a bit of interest at that time about developing the desert land, and several people were doing things similar to what I did. A Mr. Hauck came from California to look into developing 160 acres of land being the SW1/4 Section 5, T.35N., R.32E., which was located near the 400 acres I was operating. He came to see me after he arrived and we went together to look at the land in which he was interested. We called Mr. Hauck both "Herm" and "Lew". I think his full name was Herman Lewis Hauck.
Mr. Hauck had a well drilled on the 160 acres referenced above, removed the sage brush, prepared and planted the farm and operated it himself. He had a son, Walter, who wanted to, and I understand eventually did, attend college at the University of Idaho in Moscow, Idaho. Mr. Hauck farmed part of the year in California, and then he would bring a large diesel engine, portable mainline and sprinkler pipe on two large trucks he had to Idaho, and farm the 160 acres in Idaho during the summer months. I do not know for certain whether his well was drilled by Guy Cushman or by a Bill Findlay, but it was first

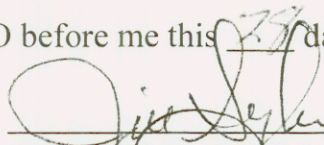
operated with Mr. Hauck's diesel engine during the crop season of 1955. Mr. Hauck actually lived at our home during the summers of 1955 and 1956 while he was here operating the farm, and my wife did his washing and cooking those two seasons. Although my wife and I moved to the VanOrden farm after the 1956 crop season, we had contact with the Haucks for several years. I was aware that he had electrical power installed to operate the well in 1958.

DATED this 28 day of March, 2005.


Glen E. Kirkpatrick

SUBSCRIBED AND SWORN TO before me this 28 day of March, 2005.




Notary Public for Idaho
Residing at: Caldwell
My commission expires: 10-10-07

1448 West 100 South
Blackfoot, Id 83221
April 5, 2005

COPY

Dear Richard Polatis,
Richard, I bought the farm on the southwest quarter of section 5 from Herman Hauck on contract in the late 1950's and sold it to Bill Dishman around 1970.

I raised grain, potatoes, hay, and sugar beets during that time. It was irrigated with 6 hand lines. And ran by an electric pump, which was already on the land. I farmed and irrigated all 160 acres, except that witch was covered by rock piles.

Sincerely,
Frank Tominga

Frank Tominga

Subscribed and Sworn before me on 5th April 2005

Patricia P. Waters

Notary Public



Bingham County Commission Expires

9/30/05