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JUN 24 2005

DEPARTMENT OF
WATER RESOURCES

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)

A. Subcase 25-14084

(Insert water right number)

Case No. 39576)

STANDARD FORM 1

OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: UNITED STATES OF AMERICA ACTING THROUGH
USDI FISH AND WILDLIFE SERVICE
DIVISION OF ENGINEERING

Address: 911 NE 11TH AVE
PORTLAND, OR 97232-4181

Daytime Phone: (503) 231-6251

Name & Address of Attorney, if any:

JAMES DUBOIS,
U.S. DEPARTMENT OF JUSTICE
999 18 STREET - N TOWER
DENVER, CO 80202

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

Name: UNITED STATES OF AMERICA ACTING THROUGH
USDI FISH AND WILDLIFE SERVICE, DIVISION OF ENGINEERING

Address: 911 NE 11TH AVE
PORTLAND, OR 97232-4181

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: 2.80 cfs for irrigation and 0.02 cfs for stockwater outside the irrigation season.
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: Stockwater (4/15-11/15) and Irrigation (4/15-10/15)
8. ☒ **Period of Year**
Should be: 4/15-11/15 (Stockwater) and 4/15-10/15 (Irrigation)
9. ☒ **Place of Use**
Should be: STOCKWATER Within BONNEVILLE County

<u>T04S R43E S34 NENE</u>	<u>T04S R43E S34 NWNE</u>
<u>T04S R43E S34 SWNE</u>	<u>T04S R43E S34 SENE</u>
<u>T04S R43E S34 NESE</u>	<u>T04S R43E S34 NWSE</u>
<u>T04S R43E S35 SWNW</u>	

IRRIGATION Within BONNEVILLE County

<u>T04S R43E S34 NENE</u>	<u>13</u>	<u>T04S R43E S34 NWNE</u>	<u>7</u>
<u>T04S R43E S34 SWNE</u>	<u>20</u>	<u>T04S R43E S34 SENE</u>	<u>40</u>
<u>T04S R43E S34 NESE</u>	<u>13</u>	<u>T04S R43E S34 NWSE</u>	<u>7</u>
<u>T04S R43E S35 SWNW</u>	<u>40</u>		
<u>140.0 ACRES TOTAL</u>			
- 10 ☐ **I object because:**
☐ This water right was not recommended, but Should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTIONS(S): This water right should be decreed for 2.80 c.f.s. for the irrigation of 140 acres, as well as 0.02 c.f.s. for stock water outside the irrigation season. **Quantity:** The Director's Report (DR) did not include the rate associated with the 140 irrigated acres associated with this claim. For 140 acres at 0.02 cfs per acre, the rate should be 2.80 cfs. **Purpose of Use:** This water right has historically been used for irrigation purposes on the identified acres, and Irrigation should be included as a Purpose of Use. See Affidavit of Michael N. Fisher attached hereto. **Period of Year:** The DR did not include a Period of Year for the irrigation portion of the claim. The Refuge irrigates between 4/15 and 10/15 yearly. **Place of Use:** The DR omitted the legal description of the 140.0 acres irrigated under this claim. The place of use described above should be included in the water right.

F.

VERIFICATION

State of Colorado)
)
County of Denver)

ss.

James J. DuBois, duly sworn, upon oath, deposes and says:

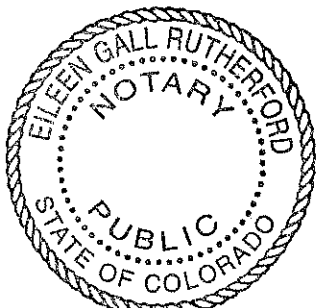
That I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

KELLY A. JOHNSON
Acting Assistant Attorney General

By: *James DuBois*
JAMES J. DUBOIS, #13206
U.S. Department of Justice
Environment and Natural
Resources Division
General Litigation Section
999 18th Street, Suite 945
Denver, Colorado 80202
(303) 312-7341

ATTORNEY FOR THE
UNITED STATES OF AMERICA

Subscribed and sworn to before me on : June 21, 2005



My Commission Expires 8/23/2008

Eileen G Rutherford
Notary Public for State of Colorado
Residing at: 1755 Keston Lane Superior Co 80027
My Commission Expires: 8/23/2008

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 June 21, 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
Twin Falls, ID 83301

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

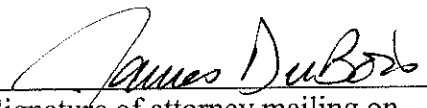
United States of America
c/o U.S. Fish and Wildlife Service
911 NE 11TH Avenue
Portland, OR 97232-4181

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
PO Box 44449
Boise, ID 83711-4449

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



Signature of attorney mailing on
Objector's behalf

I, Michael N. Fisher, being first duly sworn, depose and testify as follows:

My name is Michael N. Fisher and I have been employed by the U.S. Fish and Wildlife Service (USFWS or Service) since 1986. I am currently employed as a Supervisory Wildlife Biologist at the Southeast Idaho National Wildlife Refuge Complex in Chubbuck, Idaho. I have been in this position since November, 2003. Previous to this position, from December, 1989 to November, 2003, I was the Refuge Manager at the Grays Lake National Wildlife Refuge (Refuge), near Wayan, Idaho.

In my role as Refuge Manager, I was responsible for administering and managing the daily operations of the Refuge. Besides routine Refuge administrative duties, a large portion of my time was spent managing important Refuge wildlife and habitat resources, including expansive wet meadows and uplands adjacent to the 22,000 acre lake bed. My duties included managing critical habitat management programs, such as: habitat enhancement, habitat restoration and water manipulation; burning; weed spraying; wildlife surveys; irrigation of agricultural lands and wetlands; and conducting farming, haying and grazing activities. Critical irrigation duties included ensuring that wet meadows were properly irrigated for use by wildlife during the critical breeding, nesting and migration seasons to produce cover and forage for wildlife and stock use; for filling shallow wetland ponds and sloughs for wildlife and stock use; irrigation of grain/alfalfa fields, grown for wildlife; and irrigation of Refuge hay meadows. Besides providing forage for permittees' livestock and for growing crops of hay, the flood irrigation methods used at the Refuge by me and my staff created valuable habitats such as wet meadows, dense grass stands and grain crops for nesting, foraging and migrating greater sandhill cranes, ducks, geese, trumpeter swans, shorebirds (i.e. willet, avocet, curlew), marshbirds (i.e. herons, egrets, white-faced ibis) and a wide assortment of other wildlife species dependant on these types of wetland habitats (meadows, grain fields, ponds, shallow sloughs).

I have personal knowledge and 14 years of field experience in diverting, and allowing Refuge permittees to beneficially divert, water for irrigation and wildlife purposes onto Refuge lands covered under SRBA claims A25-00229A, A25-02161, A25-04032, A25-04034B, A25-04045, A25-13722, A25-14084, A25-14096 and the new Bridge Creek, Eagle Creek, and unnamed stream (locally known as Hawkins Creek) claims. I personally irrigated Refuge meadows and fields, using diversion structures, canvas dams, irrigation ditches and irrigation laterals. In addition, ponds and sloughs were manipulated by me for stock and wildlife use. The Refuge staff and I have documented and quantified this use by using staff gauges, water flow meters, fixed flumes, portable flumes, water brooms and water volume measurement methods. Specifically, water was diverted for irrigation, stock and wildlife purposes as indicated below:

1) CLAIM: A25-00229A

SOURCE: Herman Creek (also known as Meyers Creek)

PLACE OF USE: T.3 S., R.43 E., Sec. 28, NWNW, SWNW, and Sec. 29, NENE, SENE, Bonneville Co., B.M

POINT OF DIVERSION: T.3 S., R.43 E., Sec. 28, NWNW, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: As shown by the enclosed title documents, the Service acquired the land associated with this claim in 1976. After acquisition of the property, the Refuge Manager was often annually involved in attempts to coordinate water use on the property with neighbors. In 1992, I attempted to divert water in old ditches to the Place of Use, but flows were too low. Refuge staff replaced headgates and cleaned ditches in fall of 1992. Since 1993, the Refuge staff have irrigated the Place of Use (the Rich Tract, which consists of the west grain field, the northwest meadow and the northeast meadow) annually. Waters from Herman Creek are used to irrigate the west grain field, the meadows and to provide stock water along the main Herman Creek channel within the Rich Tract. A series of irrigation ditches and canvas dams are used to distribute Herman Creek flows to the Place of Use described above. The Refuge has measured irrigation water flows on the Refuge through instantaneous flow measurements, flumes and by other methods since 1995. To the best of my knowledge, the Service manages irrigation of the Rich Tract similar to the previous owners.

2) CLAIM: A25-02161

SOURCE: A well near Headquarters

PLACE OF USE: T.4 S., R.43 E., Sec. 35, SENE, Bonneville Co., B.M.

POINT OF DIVERSION: T.4 S., R.43 E., Sec. 35, SENE, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: As shown by the enclosed documents, the Service acquired the lands associated with this claim in 1969 and this replacement well was drilled in 1976. Previously, there was a well at this site that could no longer be used for domestic uses. Since 1976, the Refuge has used the well to: supply water to a residence headquarters office, shop, bunkhouse, guard station, three hydrants and three recreational vehicle/travel trailer pads; irrigate the lawn surrounding the office area; and provide water for livestock and wildlife. During my 14-year tenure as Refuge Manager of Grays Lake NWR, I supervised the application of, or personally applied, the well water to these uses.

3) CLAIM: A25-04032 and new claim to Eagle Creek

SOURCE: Bridge Creek (A25-04032) and Eagle Creek (new claim)

PLACE OF USE: T.4 S., R.43 E., Sec. 26, NENW, Bonneville Co., B.M

POINT OF DIVERSION:

A25-04032: T.4 S., R.43 E., Sec. 26, SWNE, and T.4 S, R.43 E, Sec. 25, SESE and SWSW, Bonneville Co., B.M.

New Claim: T.4 S., R.43 E., Sec. 23, NENE; Point of Injection: T.4 S., R.43 E., Sec. 26, NESWNE; Point of Re-diversion: T.4 S., R.43 E., Sec. 26, NESWNE

IRRIGATION OF PLACE OF USE: As shown by the enclosed title documents, the Service acquired the land associated with these claims in 1973. After acquisition of the property, the Refuge Manager was involved in attempts to coordinate water use on the property with upstream and downstream neighbors. To the best of my knowledge, since the Service acquired the lands, Refuge permittees irrigated all of the lands every year until 1995. Since 1995, Refuge staff has irrigated the lands every year. The Place of Use includes meadows in the South 40 field which produce hay. The Refuge staff cleaned all upstream delivery ditches and channels located on Ewart Muir Estate land, with the permission of the heirs, to the point of diversion in 1992. The Refuge staff also maintained and improved ditches on the Refuge in 2002.

Water from Bridge Creek and Eagle Creek water, coming through the Dugway Ditch and into the Bridge Creek channel, is used on these lands for irrigation, wildlife, and stock. Water from the point of diversion moves north and west to irrigate meadows in the South 40 fields. Water from these diversions also provides livestock water and flood irrigation for hay production to create wet meadow habitats for wildlife. Wildlife use in these wet meadows is high, including use by sandhill cranes, waterfowl and shorebirds for breeding, nesting and migration. Spring, summer and early fall water from Bridge Creek and flows from Eagle Creek provide water that I have diverted (via structures, ditches and using canvas dams) and monitored, or measured, while Refuge Manager at Grays Lake. I have also directed Refuge staff to conduct the diversions and measurements. Water measurements were made at least once per month and after flow adjustments were made, since 1995, at the north ditch flume (Sec. 26, SWNE) (by flume gauge or water flow meter prior to the flume) and the west water control structure (Sec. 26, SWNE) along the Bridge Creek channel on the Refuge.

4) CLAIM: A25-04034B and new claim to Bridge Creek

SOURCE: Eagle Creek (A25-04034B) and Bridge Creek (new claim)

PLACE OF USE: T.4 S., R.43 E., Sec. 23, NESW, SESW, and SWSW, Bonneville Co., B.M.

POINT OF DIVERSION:

PAGE 3 OF 3: Affidavit of Michael N. Fisher

A25-04034B: T.4 S., R.43 E., Sec. 23, NENE, and NWSWNE, Bonneville Co., B.M.; Point of Injection: T.4 S., R.43 E., Sec. 26, NESWNE; Point of Re-diversion: T.4 S., R.43 E., Sec. 26, NESWNE;
New Claim: T.4 S., R.43 E., Sec. 26, SWNE, and T.4 S, R.43 E, Sec. 25, SESE and SWSW, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the land associated with these claims in 1986. After acquisition of the property, the Refuge Manager was involved in attempts to coordinate water use on the property with neighbors. To the best of my knowledge, since the Service acquired the lands, Refuge permittees irrigated all of the lands every year until 1995. Water from Eagle Creek and Bridge Creek is diverted onto these lands. The Place of Use includes the North 40 Field and Center 40 Field. From 1995 to 2003, the Refuge staff and I continued the historic practice of diverting water from the Main Eagle Creek diversion structure (Sec. 23, NWSWNE) on the Refuge. Water was diverted south and west across the Ewart (Stoddard) Field to the Place of Use in the North 40 Field and the Center 40 Field. The Refuge staff and I also diverted water from 1995 to 2003 across the Sibbett Field to the Center 40, as had been done historically. Irrigation water on this Place of Use is used for stock and wildlife watering and to provide hay production to create diverse wet meadow habitats for sandhill cranes, waterfowl and shorebirds.

From 1995 to 2003, Refuge staff have taken water measurements at specific water diversion points to quantify flows using water flow meters and, more recently, fixed flumes in two locations. In 1995, the Refuge staff cleaned the delivery ditch across private land, with the permission of the owner, from the Point of Diversion to the Place of Use. The distribution ditch within the Place of Use was cleaned at the same time. Maintenance and improvements to ditches were done again in 2002 to improve flows.

5) CLAIM: A25-04045 and new claim to unnamed stream (known as Hawkins Creek)

SOURCE: Willow Creek (A25-04045) and Unnamed Stream (a.k.a. Hawkins Creek) (new claim)

PLACE OF USE: T.4 S., R.43 E., Sec. 11, SENE, SWNE, NESW, NWSE, Bonneville Co., B.M.

POINT OF DIVERSION:

A25-4045: T.4 S., R.44 E., Sec. 6, SESW, Bonneville Co., B.M.; Point of Injection: T.4 S., R.43 E., Sec. 1, SESW; Points of Re-diversion: T.4 S., R.43 E., Sec. 11 SESENE.
New Claim: T.4 S., R.43 E., Sec. 11 SESENE, and additional in SESENE.

IRRIGATION OF PLACE OF USE: The Service acquired the land associated with these claims in 1975. After acquisition of the property, the Refuge Manager was involved in attempts

to coordinate water use on the property with neighbors. For the first five years following purchase, an agreement was in place, as a condition of purchase, allowing the original owner to continue to manage the property for haying and grazing as he had done previously, including water management which supported haying, grazing and wildlife. This water management was considered beneficial to the Refuge. To the best of my knowledge the former owner irrigated all of the lands in the Place of Use until 1980; after the five year agreement expired in 1980, the Refuge permittee continued to irrigate all of the lands every year until 1995. The Place of Use consists of meadows, also known as Hayfield and Hawkins Creek fields, which are part of tract #32. Since 1995, the Refuge staff and I have taken an active role in irrigating the Place of Use every year. I coordinated closely with the adjacent landowner upstream to ensure the Refuge receives sufficient flows through Willow Creek and Hawkins Creek. This water is used for hay production and stock water and provides important wildlife habitat for sandhill cranes, waterfowl and shorebirds. Maintenance and improvements to ditches were done in 2002.

6) CLAIM: A25-13722

SOURCE: Eagle Creek

PLACE OF USE: T.4 S., R.43 E., Sec. 23, Lots 2 & 3, Bonneville Co., B.M.

POINT OF DIVERSION: T.4 S., R.43 E., Sec. 23, NENW, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the land associated with this claim in 1988. After acquisition of the property, the Refuge Manager was involved in attempts to coordinate water use on the property with neighbors. To the best of my knowledge, since the Service acquired the lands, the Refuge permittee irrigated all of the lands in the Place of Use every year from 1988 to 1995. Refuge staff cleaned the ditches and laterals in the Place of Use in 1992. Since 1995, the Refuge staff has continued to irrigate all of the lands every year. The Place of Use is also known as Boathouse Field (Tract 40).

As Refuge Manager I diverted water into the Boathouse Field (Tract 40) annually via a ditch from the main Eagle Creek ditch. This water irrigated the Boathouse Field, to the south and west of the Point of Diversion, for hay production, while also providing wildlife and stock water. From 1995 through 2003, I measured water flows using flow meters and, more recently, a Parshall flume to quantify Eagle Creek flows used to irrigate this Place of Use. Maintenance and improvements to ditches were done in 2002.

7) CLAIM: A25-14084

SOURCE: Bridge Creek

PLACE OF USE: T.4 S., R.43 E., Sec. 35, SWNW and Sec. 34, NENE, NWNW, SWNE, SENE, NESE, NWSE, Bonneville Co., B.M.

POINT OF DIVERSION: T.4 S., R.43 E., Sec. 35, NWNW, B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the land associated with this claim in 1980. After acquisition of the property, the Refuge Manager was involved in attempts to coordinate water use on the property with neighbors. Since the Service acquired the lands, irrigation flows have reached the Place of Use every year. The Place of Use is the Tingey Tract, #51. The Refuge staff has irrigated these lands every year since 1980. Water is used for hay production, stock water and for important wildlife use by sandhill cranes, waterfowl and shorebirds. Since 1995, I have measured water flows down the Bridge Creek channel using flow meters. Maintenance and improvements to ditches were done in 2002.

8) CLAIM: A25-14096

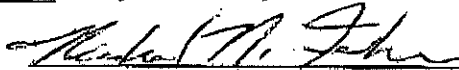
SOURCE: Willow Creek

PLACE OF USE: T.3 S., R.43 E., Sec. 34, NWSE, SWSE, SESE, and Sec. 35 SWSW, Bonneville Co., B.M.

POINT OF DIVERSION: T.3 S., R.43 E., Sec. 35, NESW, Sec. 34, NESE, Bonneville Co., B.M.

IRRIGATION OF PLACE OF USE: The Service acquired the land associated with this claim in 1975. After acquisition of the property, the Refuge Manager was involved in attempts to coordinate water use on the property with neighbors. For the first five years following purchase, an agreement was in place, as a condition of purchase, allowing the original owner to continue to manage the property for haying and grazing as he had done previously, including water management to support the haying, grazing, and wildlife. This water management was considered beneficial to the Refuge. To the best of my knowledge, the former owner irrigated all of the lands in the Place of Use until 1980; when the five year agreement expired in 1980, the Refuge permittee irrigated all of the lands every year until 1995. After 1995, Refuge staff continued to irrigate the Place of Use every year. Water from Willow Creek irrigates the Place of Use, known as Willow Creek Field (Tract #32). Uses include stockwater and watering of meadows for important wildlife habitat for sandhill cranes, waterfowl and shorebirds. I have been measuring Willow Creek flows since 1995 using water flow meters. Maintenance and improvements to Willow Creek ditches were done in 2002.

Further affiant saith not. DATED this 11 th day of January 2005.



Michael N. Fisher
U.S. Fish and Wildlife Service
4425 Burley Drive, Suite 4
Chubbuck, ID 83202

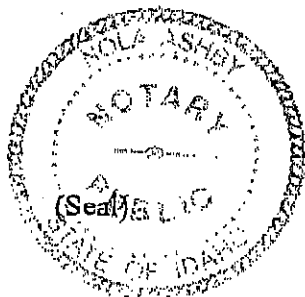
STATE OF Idaho
COUNTY OF Bannock

The affiant, Michael N. Fisher, being first duly sworn by me, hereby declares that he has read the foregoing Affidavit and that the information contained therein is true and accurate to the best of his knowledge and belief.

Subscribed and sworn to me by Michael N. Fisher this 11 th day of January 2005.


NOTARY PUBLIC

Residing at Bannock County, ID



My Commission Expires: 2-25-06