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MAR 29 1999

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)

Case No. 39576)

A. Subcase 22-07280 B

(Insert water right number)

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Catherine Rowan

Address: 843 Three Fountains Drive

Salt Lake City, UT 84107

Daytime Phone: (801) 255-4566

Name & Address of Attorney, if any:

Gregory W. Moeller

P. O. Box 250

Rexburg, ID 83440

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

Name: Norman Riley and Robin Riley

Address: 1623 W. 3400 S.

Rexburg, ID 83440

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: 5.41 CFS

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**

Adjusted along with Subcase No. 22-07280 A to treat all 367 acres as Rowans "Primary Service Lands." See preliminary Licenses dated December 12, 1997

Should be: _____

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): _____

Please see attached statement (Attachment "A") and Re-Examination Field Report,
dated 11/16/98 (Attachment "B").

F

VERIFICATION (Must be Completed)

State of Idaho)
)ss.
County of Madison)

Gregory W. Moeller, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

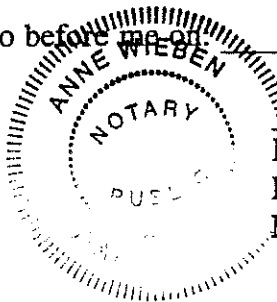
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

G. W. Moeller

(Attorney signing in representative capacity)

Subscribed and sworn to before me on March 26, 1999



Anne Wieben
Notary Public for Idaho

Residing at: Rexburg, Idaho

My Commission Expires: 7-27-2001

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 26, 1999, 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
PO Box 2707
Twin Falls, ID 83303-2707

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

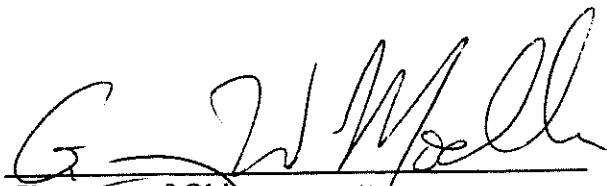
Name: Catherine Rowan
Address: 843 Three Fountains Drive
Salt Lake City, UT 84107

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 Objector or attorney
mailing on Objector's behalf

ATTACHMENT "A"

There are two wells involved in this dispute. The North Well (Water Right No. 22-02223) is located on Riley's property. Rowan concedes that she has no rights to this well. The center of the controversy is the South Well (subject to Water Right Nos. 22-07280A and 22-07280B) which is located on Rowan's property. Historically, approximately 575 acres have been watered from the South Well. However, 160 acres were left off the application for permit originally filed in 1978. The 160 acres were part of the 1988 property division and are now covered by Permit No. 22-00792, in the name of Catherine Rowan. These 160 acres are located at the extreme southern tip of Rowan's property, and apparently were not considered in the District Court's decision nor in the new licenses issued by IDWR.

Ignoring the 160 acres, historically Rowan has irrigated 294 acres from the South Well. Rileys have historically irrigated 121 acres from the South Well and an additional 319 acres from the North Well (Water Right No. 22-02223). So in essence, what the SRBA District Court asked IDWR to do, was to give Catherine one-half of the water from the South Well to irrigate her 294 acres and the Rileys one-half of the water to irrigate their 121 acres, plus water to supplement the North Well.

When the Department issued its preliminary licenses on December 12, 1997 (Exhibits "B(1)" and "B(2)") the Department essentially did just that. The Department determined the rate of flow to be 9.18 CFS, an amount that both parties agree is substantially too low. Then the Department split the flow and granted Catherine Rowan the right to irrigate her 294 acres with an annual volume of 1029 acre feet. Rileys were allowed to irrigate 440 acres (121 from the South

Well and 319 from the North Well) with an annual volume of 1540 acre feet, to be used in conjunction with Water Right 22-02223 (the North Well). Although there were some substantial issues related to quantity, Rowan believed the essential division was fair and accomplished what the parties intended.

It is worth noting that the trial testimony established that when the farm was divided in 1988, the intent was clearly to leave **both** parties with sufficient water to irrigate their ground. The preliminary licenses issued by the Department did just that by dividing the flow evenly and applying it to the waters historically irrigated from that well.

Following Rowan's prevailing on appeal, the Department was again asked to issue licenses. However, this time the Department changed its tact. The November 30, 1998 licenses (Exhibits C(1) and C(2)) did increase the amount of flow to 9.53 CFS, essentially giving both parties 4.77 CFS. However, rather than merely dividing the flow and allowing it to be applied to the historically irrigated acreage, the Department went further. The Department apparently felt that the annual volume of water should also be divided equally. As a result of this analysis, Rowan was given 207.5 acres of a primary right, with an annual volume of 727 acre feet. Rowan was also given the right to irrigate 159.5 acres supplemental to the North Well (Water Right No. 22-00223). As IDWR was well aware, Rowan has no rights in the North Well and cannot use this supplemental right. It is essentially worthless to her. Rileys were given the exact same right, 207.5 primary acres with an annual volume of 727 acre feet and 159.5 supplemental acres, related to their rights in the North Well.

While Rowan has no use for the supplemental acreage, Rileys obviously do. As argued before the Court, IDWR, in attempting to exactly split this right, has created a grossly fair and

inequitable division which results in Rowan receiving less than she needs and Rileys receiving more than they can use on their land. For example, the Rileys are given 207.5 acres of a primary rights, while they have historically only irrigated 121 acres from the South Well. Meanwhile, Rowan is given 207.5 primary acres, while she has historically irrigated 294 acres from this well, in addition to the 160 acres, which is covered by Permit No. 22-00792.

As a result of the Department's decision, Rowan will lose the right to irrigate approximately 87 acres, which have always been irrigated. When a final resolution is reached as to the status of the south 160 acres, (Permit No. 22-00792) the Department could take an additional 80 acres away from Catherine, leaving her once fully irrigated farm, with 167 acres of dry farm.

Such a result was clearly not intended by Judge Hurlbutt's "Memorandum Decision" of August 28, 1997. For example, in that decision Judge Hurlbutt stated:

At Lucille's death, Jim Howe and Catherine Rowan became co-owners of the permit. To rule otherwise would allow Jim Howe, a co-owner, to strip water from his co-tenant's, Catherine Rowan, one-half of the farm. Idaho Water Law does not permit such a result.

Memorandum Decision, p. 10

By effectively holding that the license was appurtenant to Catherine Rowan's ground, and could not be conveyed or removed without her permission, Judge Hurlbutt is clearly indicating that all of Catherine's ground would be irrigated. Judge Hurlbutt's decision clearly does not support a result that would leave Rileys with more water than they can use on this ground and Rowan with less than she needs.

In adopting the findings in the Court's Memorandum Decision, the Idaho Supreme Court stated as follows:

The District Court held that the only interest Jim Howe had in the permit was identical to that of Rowan; thus at the time of Lucille Howe's death, Jim Howe and Rowan became co-owners of the permit. The evidence indicated that Jim Howe "acknowledged that the permit application was intended to benefit the **complete set of farm owners**, not just himself. When he filed the application in his and Lucille's names, he did not intend to disavow Catherine Rowan's ownership interest." Furthermore, both the application for the permit and notice of claim were filed when Jim Howe was acting as manager of the farm and did not create a separate interest in the water permit to the exclusion of Rowan. The District Court determined that following the parties' decision to partition the property, Jim Howe and Rowan entered into an agreement in which it was "Jim Howe's clear, and ambiguous agreement and understanding that the permitted interest in the 'south well' was shared with Catherine Rowan. . . ."

Riley v. Rowan, Idaho Supreme Court 1998 Opinion No. 96 (Emphasis added).

The December 12, 1997 licenses allowed a flow of 9.18 CFS. Interestingly, the November 30, 1998 licenses increased that amount substantially to 9.53 CFS. This is still far less than both parties believe they are entitled to. Rowan believes, and assumes that Rileys concur, there is substantial evidence justifying a flow rate of at least 9.72 CFS, with higher amounts ranging from 10.81 CFS to over 13 CFS being possible. During settlement negotiations between Rowan, Rileys and IDWR, IDWR produced records substantiating flow rates between 10.81 CFS and 13.0 CFS.

It is worth repeating that as a result of these new licenses, (Exhibits C(1) and C(2)) Rowan gets 87 less acres than she needs. This is not cured by giving her the right to water an additional 159.5 supplemental acres on a North Well to which she has no rights. On the other had, the Rileys get the right to water 86 more acres than they need from the South Well, plus the 159.5 supplemental acres.

RE-EXAMINATION FIELD REPORT

A. GENERAL INFORMATION

Permit No. 22-07280

B. MEASUREMENTS:

Date: 16 Nov 1998

Note: Measurements taken with 2 different diameter tapes & thickness mikes

North Well #1: o.d. = 11.850" - 12.050" Thickness = 0.110" - 0.113"

South Well #2:

North mainline:

o.d. = 14.000" - 14.040" Thickness = 0.102" - 0.105"

South mainline:

o.d. = 15.990" - 16.025" Thickness = 0.136" - 0.139"

C. FLOW CALCULATIONS:

i.d. = [o.d.] - [2(T)]

i.d. = inside diameter

o.d. = outside diameter

T = wall thickness

$$Q_{cfs} = (i.d.)^2(\sqrt{H})(C) \div 448.8 \text{ gpm/cfs}$$

H = differential pressure inches H₂O

C = Annubar Constant

C for 12" = 3.99

C for 14"-16" = 4.01

Assumptions:

o.d. = maximum measured outside diameter

T = minimum measured thickness

H = use differential pressure measured original exam (6-29-87)

NORTH #1 WELL: $i.d. = [12.050] - [2(0.110)] = 11.830$ $H = 12.9'$ $C = 3.99$

$$Q_{cfs} = (11.830)^2(\sqrt{12.9})(3.99) \div 448.8 = 2005.567 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 4.469 \text{ cfs} = 4.47 \text{ cfs}$$

SOUTH #2 WELL:

North Mainline: $i.d. = [14.040] - [2(0.102)] = 13.836$ $H = 4.9'$ $C = 4.01$

$$Q_{cfs} = (13.836)^2(\sqrt{4.9})(4.01) \div 448.8 = 1699.274 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 3.786 \text{ cfs} = 3.79 \text{ cfs}$$

South Mainline: $i.d. = [16.025] - [2(0.136)] = 15.753$ $H = 6.7'$ $C = 4.01$

$$Q_{cfs} = (15.753)^2(\sqrt{6.7})(4.01) \div 448.8 = 2575.777 \text{ gpm} \div 448.8 \text{ gpm/cfs}$$

$$Q_{cfs} = 5.739 \text{ cfs} = 5.74$$

TOTAL CALCULATED FLOW RATE: $Q_{TOTAL} = 4.47 \text{ cfs} + 3.79 \text{ cfs} + 5.74 \text{ cfs} = 14.00 \text{ cfs}$

D. AUTHENTICATION:

Field Examiner's Name:

KEITH C WILSON

1

THEORETICAL PUMP FLOW CALCULATIONSFormula: $Q_{cfs} = [(Hp)(8.814)(Eff)] \div [Lift + (psi \times 2.308)]$ SYSTEM: NORTH**Assumptions:**Hp = Name plate Horsepower = Water Hp = 300Eff = Efficiency (pump & motor) = 70%

Lift: Static Level = Dynamic water level

Static Water Level = 370 ft.

Well log used is for this well

psi = 0 psi (Between well pump & booster pump)

$$Q_{cfs} = \left[\frac{300}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[\frac{370}{Lift} + \left(\frac{0}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{1850.94}{} \right] \div \left[\frac{370}{} \right]$$

$$Q_{cfs} = \underline{5.00} \text{ cfs}$$

SYSTEM: SOUTH**Assumptions:**Hp = Name plate Horsepower = Water Hp = 500Eff = Efficiency (pump & motor) = 70%

Lift: Static Level = Dynamic water level

Static Water Level = 350 ft.

Well log used is for this well

psi = 0 psi (Between well pump & booster pump)

$$Q_{cfs} = \left[\frac{500}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[\frac{350}{Lift} + \left(\frac{0}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{3084.90}{} \right] \div \left[\frac{350}{} \right]$$

$$Q_{cfs} = \underline{8.81} \text{ cfs}$$

TOTAL SYSTEM

$$\text{CAPACITY } Q = \underline{5.00 \text{ cfs} + 8.81 \text{ cfs}} = \underline{13.81} \text{ cfs}$$

PERMIT NO. 22-7280

#2

THEORETICAL PUMP FLOW CALCULATIONS

$$\text{Formula: } Q_{cfs} = [(Hp)(8.814)(Eff)] \div [Lift + (psi \times 2.308)]$$

SYSTEM: NORTH**Assumptions:**

$$Hp = \text{Nameplate Hp (Well + Booster)} = \text{Water Hp} = \frac{300+100}{1} = 400$$

$$Eff = \text{Efficiency (pump \& motor)} = \frac{70\%}{100} = 0.7$$

Lift: Static Level = Dynamic water level

$$\text{Static Water Level} = \frac{370}{1} \text{ ft.}$$

Well log used is for this well

$$psi = \frac{58}{1} \text{ psi (Measured after booster pump)}$$

$$Q_{cfs} = \left[\frac{400}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[\frac{370}{Lift} + \left(\frac{58}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{2467.92}{1} \right] \div \left[\frac{503.86}{1} \right]$$

4.90 cfs

$$Q_{cfs} = \frac{4.897}{1} \text{ cfs}$$

SYSTEM: SOUTH**Assumptions:**

$$Hp = \text{Nameplate Hp (Well + Booster)} = \text{Water Hp} = \frac{500+350}{1} = 850$$

$$Eff = \text{Efficiency (pump \& motor)} = \frac{70\%}{100} = 0.7$$

Lift: Static Level = Dynamic water level

$$\text{Static Water Level} = \frac{350}{1} \text{ ft.}$$

Well log used is for this well

$$psi = \frac{59}{1} \text{ psi}$$

(After booster pump & Avg psi of N & S Mainlines)

$$Q_{cfs} = \left[\frac{850}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[\frac{350}{Lift} + \left(\frac{59}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{5244.33}{1} \right] \div \left[\frac{486.17}{1} \right] = 10.786$$

$$Q_{cfs} = \frac{10.79}{1} \text{ cfs}$$

TOTAL SYSTEM

$$\text{CAPACITY } Q = \frac{4.90 \text{ cfs} + 10.79 \text{ cfs}}{1} = 15.69 \text{ cfs}$$

PERMIT NO. 22-7280

#3

THEORETICAL PUMP FLOW CALCULATIONS

$$\text{Formula: } Q_{cfs} = [(Hp)(8.814)(Eff)] \div [Lift + (psi \times 2.308)]$$

SYSTEM: NORTH

Assumptions:

Hp = Nameplate Hp (Well + Booster) = Water Hp = 300 + 100 = 400 hp

Eff = Efficiency (pump & motor) = 70%

Lift: Static Level + 50' Draw down

Dynamic water level = 420 ft.

Well log used is for this well

psi = 58 psi (Measured after booster pump)

$$Q_{cfs} = \left[\frac{400}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[\frac{420}{Lift} + \left(\frac{58}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{2467.92}{} \right] \div \left[\frac{553.86}{} \right] = 4.455$$

$$Q_{cfs} = \underline{4.46} \text{ cfs}$$

SYSTEM: SOUTH

Assumptions:

Hp = Nameplate Hp (Well + Booster) = Water Hp = 500 + 350 = 850 hp

Eff = Efficiency (pump & motor) = 70%

Lift: Static Level + 50' Draw down

Dynamic water level = 400 ft.

Well log used is for this well

psi = 59 psi

(After booster pump & Avg psi of N & S Mainlines)

$$Q_{cfs} = \left[\frac{850}{Hp} \times 8.814 \times \frac{0.7}{eff} \right] \div \left[\frac{400}{Lift} + \left(\frac{59}{psi} \times 2.308 \right) \right]$$

$$Q_{cfs} = \left[\frac{5244.33}{} \right] \div \left[\frac{536.17}{} \right] =$$

$$Q_{cfs} = \underline{9.78} \text{ cfs}$$

TOTAL SYSTEM

$$\text{CAPACITY } Q = \underline{4.46 \text{ cfs} + 9.78 \text{ cfs} = 14.24 \text{ cfs}}$$

PERMIT NO. 22-7280

RECEIVED

MAR 29 1999

RILEY

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

Case No. 39576

A: Subcase 22-07280B
(Insert water right number)

STANDARD FORM 1

OBJECTION

Attached to Case No. CV-94-00012

Please fill in the following information:

B: NAME AND ADDRESS OF PERSON OBJECTING

Name: Robin Riley

Address: 1623 W. 3400 S.

Rexburg, Idaho 83440

Daytime Phone: (208) 356-5873

Name & Address of Attorney, if any:

Steven R. Parry

P.O. Box 51630

Idaho Falls, Idaho 83405-1630

(208) 522-3001

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

Name: Norman Riley / Robin Riley

Address: 1623 W. 3400 S.

Rexburg, Idaho 83440

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: 5.31 CFS (4.77 + .54)
4. ☐ Priority Date
Should be: _____
5. ☒ Point(s) of Diversion
Should be: The point of diversion for the additional .54 CFS should be T05N R40E S3 SENE
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: Same as listed plus (See Exhibit A)

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 reasons supporting these

objections are set forth in Riley's Brief dated February 16, 1999, filed in Subcase No. 94-00012 with Special Master Bilyeu, that Brief being incorporated herein by this reference. For convenience, a copy of pages 9-13 of the Brief are attached as Exhibit B.

F.

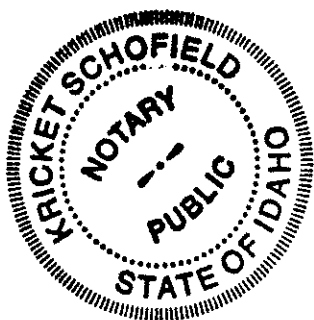
VERIFICATION (Must be Completed)

State of IDAHO)County of BOONEVILLE) ss.STEVEN R. PARKY, 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 of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: March 24, 1999Notary Public for IdahoResiding at: Idaho FallsMy Commission Expires: 9-4-2004

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, 1999, 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

~~PO Box 2707~~

~~PO Box 2707~~
Twin Falls, ID 83301 ~~2707~~ Via Fed Express

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

Name:

Address:

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 Objector or attorney
mailing on Objector's behalf

EXHIBIT A
TO STANDARD FORM 1 OBJECTION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
05N	40E	14	SWNW 0.3	SENW 2.0	NESW 25.0	
			NWSW 23.0	SWSW 34.0	SESW 39.0	133.3
			SWSE 10.0			3.2
		15	NESE 0.2	SESE 3.0		
		23	NWNE 2.0	NENW 9.0	NWNW 3.0	14.0
Total number of acres irrigated:						150.05

EXHIBIT B
TO STANDARD FORM 1 OBJECTION

authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence; or (e) are arbitrary, capricious, or an abuse of discretion. [Citations omitted.]

Id. at 577. Whether the standard of review is set forth under the Administrative Procedures Act (see jurisdictional discussion above) or otherwise, the fact is that the SRBA must not lightly overturn the decisions of the Department. As set forth in the background section above, the licenses under consideration are the result of years of review and consideration by the Courts and the Department, and the Department has internally reviewed these issues at the highest levels. The Department has been assisted at hearings and otherwise by the Attorney General's office and has expended a considerable amount of time on the issues associated with this case. Hence their decisions should be presumed correct.

The main complaint to be heard from Rowan relates to the Annual Diversion rate and the allocation of primary service land acres and supplemental service land. These issues have been considered and carefully analyzed by the Department, and therefore should not be overturned by the SRBA without a compelling reason. The Department's analysis is clearly set forth in its November 30, 1998 letter to the parties, a copy of which was sent to the SRBA.

III. ELEMENTS OF WATER LICENSES

The Rileys are generally in agreement with the Department's actions in issuing the licenses. However, from the beginning of this case, the Rileys have maintained that the ownership of the water permit must first be determined, and then the owner or owners thereof should have the right to seek amendments to the permit before it is licensed or in connection with its license. The need for such amendments is made clear by the beneficial use field report (See SRBA Trial Exhibit 5) which actually recommended at Section I.2 thereof that the underlying permit be amended to reflect the actual place of use and the additional point of diversion. All the Rileys desire is a chance to seek appropriate amendments to their portion of the water right as discussed below. Because any other permit holder would be afforded this right, the denial of this right would deny the Rileys of important property without due process of law. The key issues now before the SRBA are each addressed below.

A. ANNUAL DIVERSION.

The Department has properly divided the water rights evenly between the parties by focusing on the various aspects of the water right that are valuable. After years of litigation and one trip to the Idaho Supreme Court, the answer is clear that Rowan owns 50% of the subject water right and the Rileys own 50% of the subject water right. As the Rileys have long maintained, the only way that can happen is if the Rileys own water rights on land which they have leased from Rowan. The question before the SRBA is simply "What does half mean?"

The parties were given every opportunity and encouragement by the Department to come to an agreement dividing the water rights in a way that would work best for them both, but Rowan simply wants more than half. The Rileys have come too far and spent too much to give up any part of their half of the water right. With the parties at an impasse, the Department did the only logical thing it could do, and that is to divide every aspect of the water right in half. At the prior hearing, Rowan's attorney appeared to have conceded that the Department had "mathematically" divided the right in half, but claimed that subjective factors should be considered. The parties by agreement could certainly consider subjective factors favorable to their respective positions, but barring their mutual consent "half" should mean "half," nothing more and nothing less.

Clearly the most valuable aspect of the water right are the maximum diversion rate and the annual diversion volume, with the first representing the speed at which the water comes out of the spigot and the later representing the size of the bucket to hold the water. The maximum diversion rate has clearly been divided equally with each party receiving 4.77 CFS. Likewise, by equally dividing the Primary Service acres and the Supplemental Service acres, the Department has given each party an equally sized bucket. In making that allocation, the most useful element is the Primary Service acres as the Supplemental Service acres are of little value to either party. Certainly the supplemental water rights given to Rowan on Rileys' land are of little value to her unless she can move them or sell them to the Rileys. However, the fact is, that with modern irrigation methods, the supplemental rights owned by the Rileys on their own ground are of little value to them as well as their primary rights on that ground are sufficient to water that ground. The licenses as issued by

the Department carefully gave each party the same size bucket and consequently the Rileys own some primary water rights as tenants on property owned by Rowan. That is the natural result of an even split of the water right and the result which the Rileys have long anticipated and predicted if the ownership was indeed 50/50.

The Department divided the water right evenly between the parties and the SRBA should not alter that division. The Department followed the order of the SRBA as confirmed by the Idaho Supreme Court and that portion of the licenses should stand.

B. AMENDMENT TO RILEYS' LICENSE FOR ADDITIONAL WATER.

The beneficial use field report (SRBA Trial Exhibit 5) proved that the North well owned by the Rileys was actually producing 4.41 CFS, or .54 CFS more than the 3.87 CFS authorized by a separate license owned by the Rileys on that North Well (SRBA Trial Exhibit C). As mentioned above, the field report recommended an amendment to the water permit to take this additional water production into account. This was possible because the water permit (SRBA Trial Exhibit D) was for 10.81 CFS which was more than the South Well could actually produce. This additional .54 CFS of water was produced by the North Well which is clearly owned by the Rileys who were farming the ground. As such, the Rileys should have the right to amend their license so as to take this water into account, and if necessary the water should be applied to the 160 acres South of the railroad which the Rileys were leasing from Rowan.

C. AMENDMENT TO RILEYS' LICENSE FOR ADDITIONAL ACRES.

The beneficial use filed report (SRBA Trial Exhibit 5, See Map #1) showed that approximately 160 acres South of the railroad tracks was being irrigated by the Rileys. As such, the Rileys should be able to move some of their water down to this 160 acres. Whether the Rileys "spread" their water to all or part of this 160 acres by way of a permit amendment or by an expansion claim off their North water license, Rowan has no claim to have spread water to these acres. While Rowan owned the ground which was leased to the Rileys or their predecessor, there is a railroad track separating the property from the other parcel and that railroad strip is owned by the railroad. The Rileys, and formerly their predecessor, have sole ownership of the railroad easement and paid for the easement, the pipe, and the installation thereof to put the water under the railroad tracks. The mainline

used to spread this water on the 160 acres is above ground and clearly belongs to the Rileys. It would be outrageous for any court to say that Rowan applied her water through the labor and effort of the Rileys as her tenants, across land owned by another, through pipe owned by the Rileys and on an easement owned by the Rileys, to above-ground mainline and through sprinklers owned by the Rileys.

If the SRBA does not resolve the issue with the 160 acres now, a clear mechanism needs to be established for its resolution. Without notice to the Rileys, Rowan pursued and obtained Water Permit No. 22-07792 (SRBA Trial Exhibit MM). This Permit was issued January 30, 1997, with a proposed priority date of September 4, 1996, and was tied to Right 22-07280. When the Rileys discovered what had taken place during the pendency of this matter without any notice to them, they raised strong objection with the Department and issued its Order Designating a Preliminary Order dated March 12, 1997, a copy of which is attached as Exhibit A. This procedure allowed the Rileys to file their Petition for Reconsideration In Re: Permit 22-07792 dated March 24, 1997, a copy of which is attached as Exhibit B. That Petition was placed on hold before the Department and remains this day on hold before the Department.

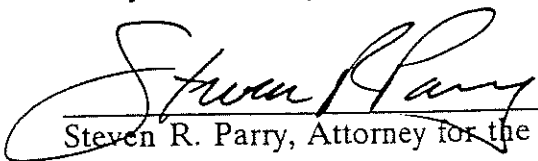
The issues associated with the 160 acres obviously need to be resolved in connection with the resolution of the other issues. Both parties will likely desire amendments to include the 160 acres, but the facts remain that only the Rileys actually applied water to that ground, and they did it through their pipe running through their easement. Rowan expended no money and made no effort to develop the water on the 160 acres and therefore only the Rileys should be allowed to expand their water to those acres. Therefore, the Rileys specifically request that the Department be ordered to entertain their amendment in this regard or that some other procedure be established to resolve the issues relating to the 160 acres.

IV. CONCLUSION

Based upon the foregoing discussion, the Rileys request the Special Master to recommend a partial decree consistent with the licenses issued by the Department, except that the Rileys license should first be amended to add the additional .54 CFS being produced by the North Well and to add all or part of the 160 acres that was watered by the

Rileys. These two revisions are consistent with the recommendations set forth in the beneficial use field report. If no recommendation is made with regard to the 160 acres, then the Rileys request that a procedure be established to resolve that issue as well.

RESPECTFULLY SUBMITTED this 16th day of February, 1999.


Steven R. Parry, Attorney for the Rileys

RECEIVED

MAR 29 1999

Department of Water Resources

Anderson Nelson Hall Smith, P.A.
ATTORNEYS

490 MEMORIAL DRIVE
POST OFFICE BOX 51630
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TELEPHONE (208) 522-3001
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Brian T. Tucker

Of Counsel
John M. Sharp*

Eugene L. Bush
(1928-1986)

*Also member of Utah bar

March 24, 1999

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

Re: *Rowan v. Riley*
Case No.: CV-94-00012

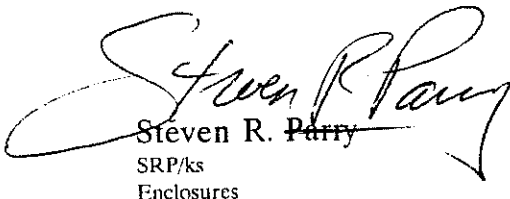
Dear Clerk:

Enclosed are a Standard Form 1 Objection filed on behalf of Norman Riley and one filed on behalf of Robin Riley. Pursuant to the instructions for filing, my understanding was that both Norman and Robin needed to file a separate objection. Inasmuch as the water right is their community property, I felt that filing two objections was prudent. However, the objections are identical.

Although not required by the objection form itself, we recognize that this objection is being filed in the context of ongoing litigation and therefore we have provided a curtesy copy of this objection to Greg Moeller who is Catherine Rowan's attorney.

If you need any additional information or have any questions pertaining to the Standard Form 1 Objection, please do not hesitate to call. Thank you for your assistance in this matter.

Sincerely,



Steven R. Parry
SRP/ks
Enclosures

cc: Gregory W. Moeller
Norman and Robin Riley

L:\SRP\266\SRBACLER.LTR

COPY

RECEIVED

MAR 29 1999

RILEY

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

Case No. 39576

A: Subcase 22-07280R

(Insert water right number)

STANDARD FORM 1

OBJECTION

Attached to Case No. CV-94-00012

Please fill in the following information:

B: NAME AND ADDRESS OF PERSON OBJECTING

Name: Norman Riley

Address: 1623 W. 3400 S.

Rexburg, Idaho 83440

Daytime Phone: (208) 356-5873

Name & Address of Attorney, if any:

Steven R. Parry

P.O. Box 51630

Idaho Falls, Idaho 83405-1630

(208) 522-3001

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

Name: Norman Riley / Robin Riley

Address: 1623 W. 3400 S.

Rexburg, Idaho 83440

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: 5.31 CFS (4.77 + .54)
4. ☐ Priority Date
Should be: _____
5. ☒ Point(s) of Diversion
Should be: The point of diversion for the additional .54 CFS
should be T05N R40E S3 SENE
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: Same as listed plus (See Exhibit A)

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 reasons supporting these

objections are set forth in Riley's Brief dated February 16, 1999, filed in
Subcase No. 94-00012 with Special Master Bilyeu, that Brief being incorporated
herein by this reference. For convenience, a copy of pages 9-13 of the Brief are
attached as Exhibit B.

F.

VERIFICATION (Must be Completed)

State of INDIANA)
County of BONNEVILLE) ss.

STEVEN R. PARRY, 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 of person filing objection)

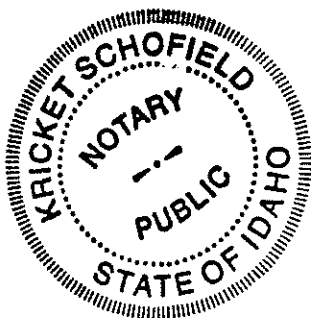
(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

Notary Public for

Residing at:

My Commission Expires: 9-4-2004



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.

CERTIFICATE OF MAILING

G.

I certify that on March 25, 1999, 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
~~PO Box 2707~~
Twin Falls, ID 83301-~~2707~~

VIA FED EXPRESS

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

Name:

Norman + Robin Riley

Address:

1623 WEST 3400 SOUTH
Reberburg, Idaho 83440

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

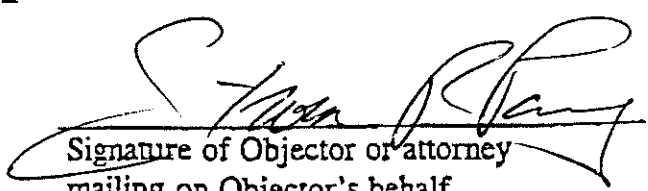

Signature of Objector or attorney
mailing on Objector's behalf

EXHIBIT A

TO STANDARD FORM 1 OBJECTION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
05N	40E	14	SWNW 0.3	SENW 2.0	NESW 25.0	
			NWSW 23.0	SWSW 34.0	SESW 39.0	
			SWSE 10.0			133.3
		15	NESE 0.2	SESE 3.0		3.2
		23	NWNE 2.0	NENW 9.0	NWNW 3.0	14.0
Total number of acres irrigated:						150.05

authority; (c) are made upon unlawful procedure; (d) are not supported by substantial evidence; or (e) are arbitrary, capricious, or an abuse of discretion. [Citations omitted.] *Id.* at 577. Whether the standard of review is set forth under the Administrative Procedures Act (see jurisdictional discussion above) or otherwise, the fact is that the SRBA must not lightly overturn the decisions of the Department. As set forth in the background section above, the licenses under consideration are the result of years of review and consideration by the Courts and the Department, and the Department has internally reviewed these issues at the highest levels. The Department has been assisted at hearings and otherwise by the Attorney General's office and has expended a considerable amount of time on the issues associated with this case. Hence their decisions should be presumed correct.

The main complaint to be heard from Rowan relates to the Annual Diversion rate and the allocation of primary service land acres and supplemental service land. These issues have been considered and carefully analyzed by the Department, and therefore should not be overturned by the SRBA without a compelling reason. The Department's analysis is clearly set forth in its November 30, 1998 letter to the parties, a copy of which was sent to the SRBA.

III. ELEMENTS OF WATER LICENSES

The Rileys are generally in agreement with the Department's actions in issuing the licenses. However, from the beginning of this case, the Rileys have maintained that the ownership of the water permit must first be determined, and then the owner or owners thereof should have the right to seek amendments to the permit before it is licensed or in connection with its license. The need for such amendments is made clear by the beneficial use field report (See SRBA Trial Exhibit 5) which actually recommended at Section I.2 thereof that the underlying permit be amended to reflect the actual place of use and the additional point of diversion. All the Rileys desire is a chance to seek appropriate amendments to their portion of the water right as discussed below. Because any other permit holder would be afforded this right, the denial of this right would deny the Rileys of important property without due process of law. The key issues now before the SRBA are each addressed below.

the Department carefully gave each party the same size bucket and consequently the Rileys own some primary water rights as tenants on property owned by Rowan. That is the natural result of an even split of the water right and the result which the Rileys have long anticipated and predicted if the ownership was indeed 50/50.

The Department divided the water right evenly between the parties and the SRBA should not alter that division. The Department followed the order of the SRBA as confirmed by the Idaho Supreme Court and that portion of the licenses should stand.

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The beneficial use field report (SRBA Trial Exhibit 5) proved that the North well owned by the Rileys was actually producing 4.41 CFS, or .54 CFS more than the 3.87 CFS authorized by a separate license owned by the Rileys on that North Well (SRBA Trial Exhibit C). As mentioned above, the field report recommended an amendment to the water permit to take this additional water production into account. This was possible because the water permit (SRBA Trial Exhibit D) was for 10.81 CFS which was more than the South Well could actually produce. This additional .54 CFS of water was produced by the North Well which is clearly owned by the Rileys who were farming the ground. As such, the Rileys should have the right to amend their license so as to take this water into account, and if necessary the water should be applied to the 160 acres South of the railroad which the Rileys were leasing from Rowan.

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If the SRBA does not resolve the issue with the 160 acres now, a clear mechanism needs to be established for its resolution. Without notice to the Rileys, Rowan pursued and obtained Water Permit No. 22-07792 (SRBA Trial Exhibit MM). This Permit was issued January 30, 1997, with a proposed priority date of September 4, 1996, and was tied to Right 22-07280. When the Rileys discovered what had taken place during the pendency of this matter without any notice to them, they raised strong objection with the Department and issued its Order Designating a Preliminary Order dated March 12, 1997, a copy of which is attached as Exhibit A. This procedure allowed the Rileys to file their Petition for Reconsideration In Re: Permit 22-07792 dated March 24, 1997, a copy of which is attached as Exhibit B. That Petition was placed on hold before the Department and remains this day on hold before the Department.

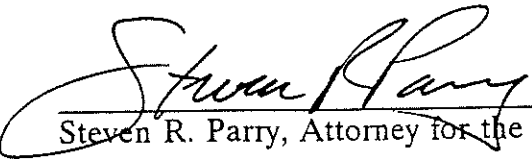
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