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MAR 13 2006

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

37-04091

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Frank C. Erwin

Address: 2628 South 975 East

Hagerman, Id 83332

Daytime Phone: 208-837-4433

Name & Address of Attorney, if any:

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

Name: Justice Ditch Company

Address: % Frank Erwin

2628 S. 975 E.

Hagerman, Id 83332

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

- Justice Ditch Company
% Frank Erwin
1. ☒ **Name and Address** 2628 S. 975 E.
Should be: Hagerman, Id 83332
2. ☒ **Source**
Should be: Waste Water tributary to Malad River
3. ☒ **Quantity**
Should be: 9.1 c.f.s.
4. ☒ **Priority Date**
Should be: April 1, 1934
5. ☒ **Point of Diversion**
Should be: Twp. 06S Rge 14E Sec 30 SE 1/4 SW 1/4 Gooding County
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: Stockwater and Irrigation
8. ☒ **Period of Year** Stockwater 01/01 12/31
Should be: Irrigation 03/15 11/15
9. ☒ **Place of Use**
Should be: Attachment 1 lists the correct place of use
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 OBJECTIONS(S):** The Justice Ditch Company is an unincorporated association of the users from the Justice Ditch
Attachment 2. Letter from Reed Newby, Watermaster dated Dec. 6, 1977
Attachment 3. Letter from Kevin Lakey, Watermaster dated Feb. 14, 2006

F.

VERIFICATION (must be completed)

State of Idaho)

)ss.

County of Gooding)

Frank C. Erwin

(Name of person filing objection)

, 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.

Frank C. Erwin
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: March 10, 2006

Malcolm
Notary Public for Idaho, Gooding County
Residing at: 114612111
My Commission Expires: 06-08-06

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 10, 2006, 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

Hand Delivered

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

Justice Ditch Company *Hand Delivered*
Name: % Frank Erwin
Address: 2628 S. 975 E.
Hagerman, Id 83332

3. Copies to:

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

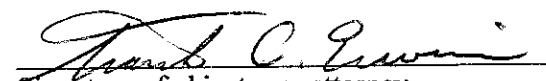
U.S. Mail

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

U.S. Mail

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

U.S. Mail



Signature of objector or attorney
mailing on Objector's behalf

ATTACHMENT 1

Place of use:

Irrigation and Stockwater within Gooding County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
06S	13E	35		NENE	19		NWNE	5.1		SWNE	24.8		SENE	40
				SENE	14.2									
				NESW	23									
				NESE	40		NWSE	40		SWSE	33.5		SESE	40
		36		NENE	11.3		NWNE	20.9						
				NENW	19.2		NWNW	20.5						
				SWSW	17									
07S	13E	1	2	NWNE	33	1	NENE	33						

Total Acres: 434.5

Right nos. 37-1160, 37-1175, 37-4091 and 37-10089 are limited to the irrigation of a combined total of 434.5 acres in a single irrigation season.

Attachment 2

Department of Water Resources
Southern Division
1041 BlueLakes Blvd. No.
Twin Falls, Idaho 83301

Re: Delivery of water to the Thorpe & Justice Diversion points.

WHEREAS: The records in the watermaster's office in Shoshone, Idaho show that the Thorpe and Justice diversion points are located as follows:

7 ← Thorpe - located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 30 T. 6S., R 14E.
Justice - located in the SEPSW $\frac{1}{4}$, Sec. 30, T.6S.R.14E.

and

WHEREAS: The S.C. Frost vs. Alturas Water Company decree of December 13, 1909, decreed the following amounts of water.

Thorpe Diversion: water decreed to Martin Thorpe 10.4 c.f.s. for lands located NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 26, N $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, Section 25, T 6S. R.13 E.B.M. containing 520 acres, page 35 of the S.C. Frost decree listed as Martin -----and

WHEREAS: on the 13th day of February 1953 Mark R. Kulp then being State Reclamation Engineer did grant to Robert E. Dingman of Twin Falls, Idaho Transfer #801 the right to transfer 25 inches (0.50 cfs) decreed to Martin Thorpe in the S.C. Frost decree from lands located SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 26, T., 6S, r.13 E TO lands located E $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 26, T. 6S, R 13 E.B.M. This being part of the water now owned by Mrs. Fred Zeller, and

WHEREAS: The water diverted at the Thorpe diversion is now owned

by Fred Zeller 4.00 c.f.s.
Dick A Dalton 6.60 c.f.s.
Robert Erickson .80 c.f.s

and

WHEREAS: Water was decreed to the Justice diversion under Decree William Woody vs. Sewell H. Chapman dated August 16, 1921 water decreed to William Woody in the amount of 3.34 C.F.S. with priority date of April 1, 1900 for lands located in NE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 34 T 6S., R.13E., SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 35 T6S., R13E. SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$. Sec. 35, T6S, R13 E.B.M. and

WHEREAS: This water is now owned by the Idaho Parks Department Malad River Gorge Park. and

WHEREAS: water was decreed to the Justice Diversion under decree William Justice vs. S.H. Chapman dated August 17, 1921, water decreed to William Justice for 4.00 c.f.s. for lands located SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 35, T6S., R13E, Lots 1 & 2 Sec. 1, T., 7S., R .3 EBM This water is now owned by the following people.

- .22 cfs by Idaho Parks Department Malad River Gorge
- 1.38 cfs by Floyd March
- .80 cfs by R.K. Bendorf
- .80 cfs by T.E. Anderson
- .80 cfs by Lyons D. Woody and

WHEREAS: on the 6th day of Sept. 1947 Mark R. Kulp then being State of Idaho Reclamation Engineer did grant to John F. Edenborough of Hagerman, Idaho under Transfer #715 the right to transfer 40 inches (.80 cfs) decreed to William Justice with priority date of May 31, 1900 from lands located SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35, T6S., T13E, without changing the point of diversion to lands located SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 35 and the W $\frac{1}{2}$ W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 36, T6S., T.13 EBM, and

WHEREAS: This being water now owned by R.K. Bendorf as shown by watermaster's records. and

WHEREAS: The water delivered by decree to Martin Thorpe and by decree To William Woody and by decree to William Justice were decreed by court cases prior to the year 1931. and

WHEREAS: The records in the Watermaster's office show that water has been delivered to these points of diversion. and,

WHEREAS: Water from American Falls Reservoir was first delivered to the Little Wood and Big Wood Rivers in June, 1931 and,

WHEREAS: This new source of water was made available to the decreed users from the Thorpe and Justice diversions as a supplemental right, not to exceed the amount purchased by the users and not to exceed the amount of decreed rights expires. and

WHEREAS: It is with great difficulty to maintain a constant head of water at these points of diversion because the sources of water are Big Wood River natural flow, Big Wood Canal Company storage from Magic Reservoir, American Falls Supplemental water from American Falls Reservoir through the Milner Gooding Canal American Falls Reservoir District #2 system, Little Wood River natural flow and Northside Canal Company American Falls Water and Snake River natural flow through the Northside Canal Co. system, and any water that gets into the Big Wood River from surrounding land, and

WHEREAS: When the natural flow of Big Wood River dictates a cut of the 1900 priorities in the Justice Ditch, this cuts out 7.34 c.f.s. of water from this diversion and allows American Falls Supplemental water to be delivered in the amount of 4.34 c.f.s. At this time the Thorpe diversion is entitled to 10.40 c.f.s. of natural flow water dated 7-1-1889. and

WHEREAS: When natural flow of Big Wood River dictates a cut of priority date 7-1-1889, this leaves 5.55 c.f.s. of American Falls to be delivered to the Thorpe diversion and,

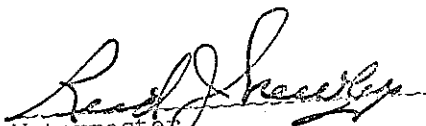
WHEREAS: The total amounts of water in the Big Wood River at these diversions fluctuate in varying amounts from several c.f.s. below the amount they are entitled to, to many c.f.s. above the amounts the diversions are entitled to. and,

WHEREAS: The author of this paper has been watermaster of the Big and Little Wood Rivers (Water Districts 37 & 37M) for the past 15 years and has been in direct contact with the delivery of this water and knows that the above statements are true and correct to the best of his knowledge.

THEREFORE: These waterusers from the Thorpe and Justice diversions should be given the right to divert water in excess of the rate of flow for beneficial use, at the times when water in the Big Wood River is in excess of either the

amount of priority right that is good as decreed to them or amount of supplemental and 100% American Falls Reservoir District #2 water that was purchased by them. Records in the watermaster's office in Shoshone, Idaho indicate that since about 1934 to the present time that this has been the normal practice.

Because of the above statement, I believe that all of the users that divert water through the Thorpe and Justice ditches should be allowed to claim water in excess of the amount of the normal rate of flow at various times and that the watermaster of Water District 37 & 37M should be instructed to administer this excess water based on the amount of water flowing past the U.S. Geological Survey gaging station #21 upstream which is read and reported to the Watermaster's office in Shoshone, Idaho each morning during the irrigation season.


Watermaster
Water District #37 & 37M

SUBSCRIBED AND SWORN TO BEFORE ME, THIS 6th
DAY OF Dec, 1977


Notary Public

My commission expires Life Term

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES



Kevin Lakey
Watermaster

WATER DISTRICT NO. 37 & 37M
107 WEST 1ST
SHOSHONE, IDAHO 83352
(208) 886-2451

February 14, 2006

Snake River Basin Adjudication
253 3rd Ave. North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

To Whom It May Concern:

I am writing in regards to surface water deliveries to the Thorpe and Justice ditches on the Malad River. In specific I would like to address claims 37-4091 and 37-4093 which are statutory claims on waste water from Northside Canal Company and American Falls Reservoir District #2.

I understand that water re-entering a river system should be considered natural flow and therefore re-appropriated. In fact I have other incidences within water District 37 where I re-appropriate return flows, but I believe these claims are quite unique and could be viewed differently. The Thorpe and Justice diversions are at the very end of our system where flows are unpredictable. At this point in the system, we can have excess water or none at all. Due to this fact, the amount of diverted water is unpredictable. These claims would allow excess diversion without penalty during excess flows.

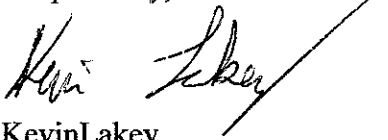
I also understand there are diversions lower on the Malad River where this water could be re-appropriated. The lower diversions may have seniority, but I believe the decision of where to re-appropriate this waste water could become a value based, subjective decision based upon the use which provides "the greatest economic impact". Due to the distance and river-bed conditions between the Justice/ Thorpe diversions and the next lower diversions there is excessive loss of water. If these claims are disallowed and forced down stream, much of the water would be lost and therefore wasted. If the decision

comes down to whether Idaho Power can generate another \$100.00 per day with this water or whether the farms claiming this water can still operate without it, I have to side with the farmers.

These claims were defended by then Water Master, Reid Newby in 1977. At that time, he wrote an affidavit, which I have enclosed. All facts disclosed in the affidavit still hold true today. Due to this fact and the facts I have listed above, I believe these claims should still be recommended to the Justice and Thorpe diversions.

Thank you for your time and consideration to this matter.

Respectfully,



Kevin Lakey
Watermaster, Districts 37 and 37M

SUBSCRIBED AND SWORN TO BEFORE ME, THIS 21 DAY OF
February, 2006

NOTARY PUBLIC Jane M. Sabala

MY COMMISSION EXPIRES 3-7-09

