

PRECED

APR 23 1968

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 Number: 63-29716
(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
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. WARDEN
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
Address: United States Department of the Interior
U.S. Geological Survey
230 Collins Road
Boise, Idaho 83702-5420

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. ☒ **Source**
Should be: None
3. ☒ **Quantity**
Should be: None
4. ☒ **Priority Date**
Should be: None
5. ☒ **Point of Diversion**
Should be: None
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: Not applicable
7. ☒ **Purpose of Use**
Should be: None
8. ☒ **Period of Year**
Should be: None
9. ☒ **Place of Use**
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):

GENERAL DENIAL

For the reasons described below, the State of Idaho denies that the United States has taken any action sufficient under the law for the creation of the claimed federal reserved water right for purposes of heating.

The United States Supreme Court has characterized the federal reserved water right as the exception to the general rule regarding compliance with state water law. 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.

United States v. New Mexico, 438 U.S. 696, 700; 98 S.Ct. 3012, 3014; 57 L.Ed.2d 1052, 1057 (Footnote omitted). The Court went on to state two reasons for this careful examination. The water right is implied, rather than express, and congress has a long history of deferring to state water law when it has expressly addressed the question of whether the federal must comply with state water law. *Id.* 438 U.S. at 701-702, 98 S.Ct. at 3015, 57 L.Ed.2d at 1058. The purposes of the reservation would not be entirely defeated in the absence of an implied federal reserved water right.

Here, two critical facts preclude recognition of a federal reserved water right for this reservation. (1) Two Executive orders entered on April 9, 1873, and on February 13, 1911 created the reservations related to this claimed federal reserved water right. (2) The United States has not exercised the claimed federal reserved water right in the over one hundred years of the existence of the first reservation. The inescapable conclusion is that the purposes of the reservation would not be defeated in the absence of an implication of a federal reserved water right.

REASONS FOR CHECKING EACH BOX

- Box 1: A claimant designation is unnecessary if a federal reserved water right does not exist.
Box 2: Objector denies that Executive Orders entered on April 9, 1873 and on February 13, 1911 impliedly or expressly reserved ground water.

- Box 3: Objector denies that the quantity claimed has any relationship to the primary purposes described in Executive Orders entered on April 9, 1873 and on February 13, 1911.
- Box 4: Two Executive orders entered on April 9, 1873, and on February 13, 1911 created the reservations related to this claimed federal reserved water right. Any portion of the claimed water right within an area added to the Reservation after its initial creation should carry a priority date as of the date of the enlargement, and not of the initial creation.
- Box 5: Objector denies that there is any basis for a federal reserved water right for a diversion from a well for heating purposes.
- Box 7: Objector denies that there is any basis for a federal reserved water right for a diversion from a well for heating purposes.
- Box 8: A Period of Year designation is unnecessary if a federal reserved water right does not exist.
- Box 9: A Place of Use designation is unnecessary if a federal reserved water right does not exist. Even if a federal reserved water right exists, the place of use description as “[t]he presently federally owned property administered by the U.S. Geological Survey” is overly broad. Attached as Attachment I is a Master Title Plat entitled “MTP Suppl Boise Barracks Mil Res.” This Master Title Plat illustrates that the United States has deeded significant portions of the original Boise Barracks Military Reservation to non-federal entities. If the United States later reacquired any of this land, a reserved water right would no longer exist on the reacquired land even though the land was within the original Boise Barracks Military Reservation.

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F.

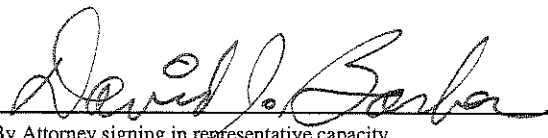
VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

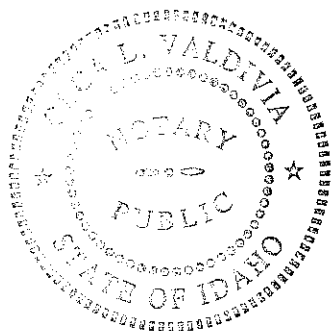
DAVID J. BARBER, Deputy Attorney General, duly sworn, upon oath, deposes and says:

That the State of Idaho in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, 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: April 18, 2006
(Insert Date)




Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: 2/8/2012

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 April 18, 2006 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
United States Department of the Interior
U.S. Geological Survey
230 Collins Road
Boise, Idaho 83702-5420

U.S. MAIL

3. Copies to:

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

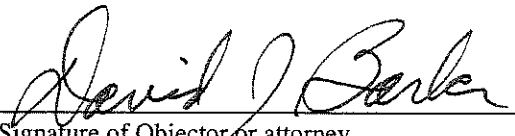
STATEHOUSE MAIL

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

ATTACHMENT I

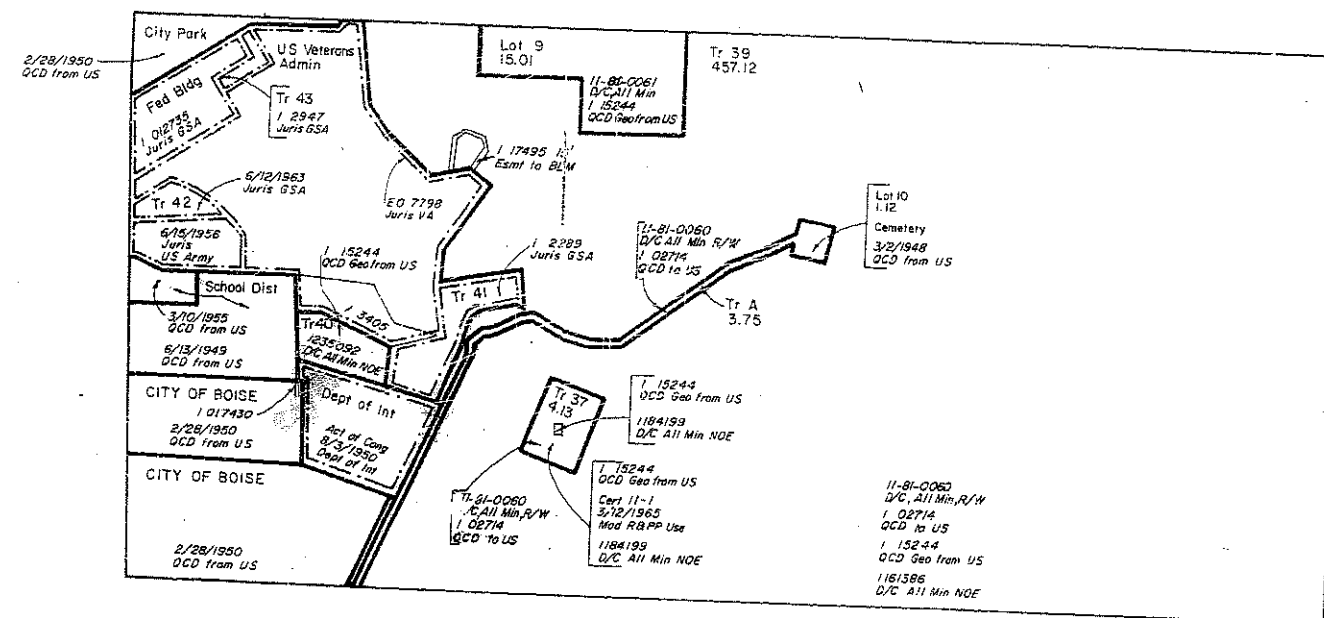
ADA COUNTY 001
BOISE DISTRICT SEC3

NO 1
STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES
AND ACQUIRED LANDS
MTP SUPPL
BOISE BARRACKS
MIL RES

[illegible]

4/12/1947 Esmt from Sec of War
Sec 1: M & B in Boise Barracks

! 013211 Revested to US NOE until Order issues
Sec II: Tr 38 18.686 acres



FOR ORDERS EFFECTING DISPOSAL OR USE OF
UNIDENTIFIED LANDS REFER TO INDEX OF
MISCELLANEOUS DOCUMENTS.

CURRENT TO	CURRENT TO
MAY 21 1966	
USE PLATS:	

Q4

Boise Mer

T. ... 3 N

R. 2E.

WARNING STATEMENT

WARNING STATEMENT
This plat is the Bureau's Record of Title, and should be used only as a graphic display of the township survey data. Records hereon do not reflect title changes which may have been effected by lateral movements of rivers or other bodies of water. Refer to the cadastral surveys for official survey information.