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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

74-741

(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:

Lynn A. Herbst

Address:

P.O. Box 21

Tendoy Fld. 83468

Daytime Phone:

208-756-2584

Name & Address of Attorney, if any:

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

Name:

Lynn A. Herbst

Address:

P.O. Box 21

Tendoy Fld 83468

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: _____
4. ☒ **Priority Date**
Should be: 5-26-1873
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
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):** based on information that shows this ground has been irrigated since 5-26-1873 when water was filed on. Records of 8/1917, 12/1914 court hearings & affidavits, FDWR has copies of records, supporting my claim.

F. VERIFICATION (must be completed)

State of Idaho)
) ss.
County of terati)

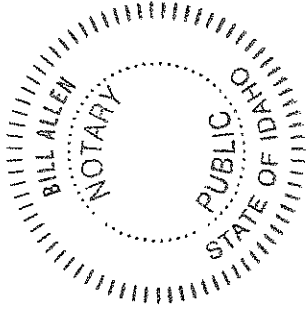
Lynn A. Hebert _____, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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.

Lynn A. Hebert _____
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: May 5th 2006



Notary Public for Idaho
Residing at: Sharon
My Commission Expires: 2/19/2009

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 5, 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

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

Name: Self
Address: _____

3. Copies to:

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

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

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

Debra A. Oberholt
Signature of objector or attorney
mailing on Objector's behalf

I, Lynn Herbst object to the priority date 1/8/1908 on water right 74-0741.

On May 26, 1873 JB Pattee claimed all the water that would run or be carried in his ditch from Agency Creek for his ranch, reference in water right book A page 138.

August 29, 1914 in a court hearing, Book B of Judgement page 181 & 182, Henrietta Pattee, prior owner & plaintiff verses William Carpenter defendant an affidavit of FB Sharkey, speaks of a ditch just east of road from Sunfield to Junction. Ditch head is 100 feet from road in Agency Creek, water right filed May 26, 1873. Sharkey states water was traded to Indian Department in exchange for a ditch & water right from Lemhi River. Ditch would be correct elevation to irrigate same ground as May 26, 1873 water right out of Agency Creek.

Court rules in favor of Defendant that water was traded.

Affidavit of CW Snook dated March 26, 1910.

Affidavit of FB Sharkey

Affidavit of John W Snook dated March 3, 1972, that Joe Pattee Ranch now owned by John F Herbst was irrigated from Indian Ditch in 1888, now owned by Lynn A. Herbst

In 1907 or 1908 a point of diversion change was made for a portion of the ground irrigated from Lemhi River since June 22, 1886, now L.31 water right #74-0741.

I believe the ground irrigated by 74-0741 has been irrigated since May 26, 1873 from Agency Creek until June 22, 1886 when right was traded for ditch & right out of Lemhi River.

Based on this information I believe that 74-0741 priority date should be May 26, 1873, for it has been continuously irrigated since that date.

Attachments:

- 1 map
- 3 affidavits
- 2 water right filing claims, Lemhi County Courthouse

Sincerely,


Lynn A Herbst

AFFIDAVIT

STATE OF IDAHO

County of Lemhi--ss

I the undersigned, JOHN W. SNOOK, of Salmon, Idaho after being duly sworn according to law depose and say: That I was born in Salmon, Idaho in the year 1876; that as a young boy I have personal knowledge of the ditch known as the "Indian Ditch"; that upon occasion I would visit what was then the Joe Pattee ranch which is now owned by Farrrell Herbst, located near Tendency Idaho and that I know for a person fact from my own observation and knowledge that the old Joe Pattee ranch was under irrigation out of the "Indian Ditch" in the year 1888.

Dated: March 3, 1972

John W. Snook
John W. Snook

Subscribed to and sworn to before me this 3rd day of March

1972.

1st Fred Snook
Fred Snook

DEFENDANT'S EXHIBIT "A"

Notice is hereby given that I the undersigned claim all the water that can be carried or run in the old Fort Lemhi ditch, taken from the Creek now known as the Agency Creek about two miles above Fort Lemhi, and conveyed to my Ranch at Fort Lemhi by said ditch for irrigating purposes.

Salmon City, Lemhi County, Idaho Territory.

May 26th, 1873.

J.B.Pattee

Filed for record in this office this 26th day of May A.D. 1873 at 9 o'clock P.M. and duly recorded on the 27th day of May A.D. 1873 at 8 o'clock A.M. in record of water rights Book A page 138.

John Hogan

County Recorder.

State of Idaho) ss
County of Lemhi)

I, W.C.Smith, County Recorder in and for the County and State aforesaid do hereby certify that the above and foregoing is a full, true and complete copy of a notice of water location of J.B.Pattee as the appears of record in my office in Book A of water rights at page 138.

In Testimony whereof I have hereunto set my hand and affixed my official seal this 18th day of July, 1910.

W.C.Smith,

County Recorder.

By *W.C. Smith* Deputy

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Department of Interior
Eastern District Office

POOR ORIGINAL

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1-3-96
J.B.Pattee

NOTICE is hereby given that the undersigned has located and claimed (10000) Ten Thousand inches of the water of the Lemhi River taken out at or near the point of the Fluff about three or four hundred yards above the so called High Bridge on the Lemhi Reservation or Agency, and conveyed by ditch to my Ranch for agricultural and other purposes, said Water Right has been turned over to me by the "Indian Department" as an equivalent for was used by said department, that was located and claimed by the undersigned
Dated at Fort Lemhi Idaho
June 22nd 1886. J.B.Pattee

Claimant.

Filed for record in this office this 22nd day of June A.D. 1886, at 30 Minutes past 10 clock P.M, and duly and duly recorded,

John Hogan

County Recorder

State of Idaho,
County of Lemhi.) ss

I, W.C.Smith, County Recorder in and for the State and County aforesaid do hereby certify that the foregoing is a full, true and complete copy of the notice of water location of J.B.Pattee as the same appears of record in my office in Book A of Water Rights at page 345, records of Lemhi County, Idaho.

In witness whereof, I have hereunto set my hand and affixed my official seal this 18th day of June, 1910.

W.C.Smith,

By *W.C.Smith* Deputy. County Recorder.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI.

Henrietta Pattee et al.
P l a i n t i f f .

vs.

William M. Carpenter et al.
D e f e n d a n t .

A F F I D A V I T .

STATE OF IDAHO ss.
County of Lemhi.

C. W. Snook, being first duly sworn according to law, deposes and says:

I,

That he is and has been a resident of what now is the County of Lemhi, State of Idaho, for the last thirty years, and during that time from the fall of 1907 to 1909 resided on land and premises lying immediately west of land now occupied by defendant, William M. Carpenter, at a place nearer the mouth of Agency Creek, and that for twenty-two years prior to said 1907, affiant resided about seven miles distant from said Agency Creek, during all of which time he was acquainted with conditions existing as to the use of water from said Agency Creek.

ll.

That he is well acquainted with a certain ditch constructed for the purpose of conducting water from the Lemhi River at or near a point of the bluff about three or four hundred yards above the so-called High Bridge, in a northerly direction to and on to the lands of the plaintiffs in the above entitled action, and that in conversations had with the plaintiff Fred B. Pattee, the said Fred has claimed the ownership of said ditch and the right to use all the water therein for himself and the other plaintiffs herein.

lll.

That said Lemhi River Ditch before reaching lands of plaintiffs emptied its water in to said Agency Creek at a point westerly of land

of said William M. Carpenter nearer the mouth of the Creek, and about fifty yards easterly of the road leading from Sunfield to Junction; and a short distance below ~~and~~ ~~the~~ ~~water~~ ~~of~~ ~~said~~ ~~ditch~~ ~~was~~ ~~emptied~~ ~~in~~ ~~to~~ ~~said~~ ~~Creek~~ ~~, the~~ ~~said~~ ~~Plaintiffs~~ ~~, and~~ ~~their~~ ~~predecessor~~ ~~in~~ ~~interest~~ ~~always~~ ~~had~~ ~~their~~ ~~headgate~~ ~~up~~ ~~to~~ ~~the~~ ~~fall~~ ~~of~~ ~~1909~~ ~~, and~~ ~~never~~ ~~did~~ ~~have~~ ~~any~~ ~~head~~ ~~gate~~ ~~on~~ ~~or~~ ~~above~~ ~~land~~ ~~occupied~~ ~~by~~ ~~said~~ ~~Carpenter~~.

IV.

That all and the same lands of plaintiffs and their predecessor in interest are capable of being irrigated from water flowing in said Lemhi River Ditch as were ever irrigated from water taken from Agency Creek prior to the construction of said Lemhi River Ditch.

V.

That affiant in conversation with J.B. Pattee during his lifetime, and the plaintiffs herein was informed and given to understand that the said J.B. Pattee had entered into some kind of an Agreement with the Indian Department of the United States Government whereby he had acquired the ownership of said Lemhi River Ditch and the waters therein flowing in lieu of certain rights relinquished to the use of water from said Agency Creek.

VI.

That affiant has no interest in the above entitled action whatsoever.



Charles D. Smith

Subscribed and sworn to before me this 26th day of
July, A.D. 1910.

Emory M. Whitcomb

Notary Public.

IN THE DISTRICT COURT OF THE SIXTH
JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF LEMHI.

Henrietta Pattee et al
Plaintiffs.

A F F I D A V I T .

vs.

William M. Carpenter et al.
Defendants.

STATE OF IDAHO, SS
County of Lemhi.

F.B. Sharkey, being first duly sworn according to law,
deposes and says:

I.

what now is
That he is and has been a resident of the County of Lemhi,
State of Idaho, for the last Forty-four (44) years, and during that
time has resided continuously since the fall of 1872 approximately
one and one-half miles from Agency Creek, so called.

II.

That the buildings first erected on the Lemhi Indian Reservation
for indian and government purposes, were situated near the mouth of
Agency Creek a short distance easterly of the road leading from Sun-
field to Junction, and that the persons ^{in charge} and officers thereof, then
first began to use the waters of said Agency Creek for beneficial
purposes.

III.

That about the year 1886 this affiant in a conversation with
J.B. Pattee, now deceased, one of plaintiffs' predecessors in inter-
est in their claim to the right to, use the waters of said Agency
Creek, as he has been informed, ^{now J.B. Pattee} ~~said J.B. Pattee~~ informed ~~him~~ that
he had entered into an agreement with the government through the
officials of said Lemhi Indian Reservation, whereby said J.B. Pattee
had relinquished all his right, title and interest to the Waters of
said Agency Creek to the U.S. Government for its Indian Department,
in consideration that said Government construct for him a ditch

that would convey and conduct water from the Lemhi River at a sufficient elevation to irrigate the land which he was then in possession of; that thereafter said ditch was so constructed by the U.S. Government, and thereafterwards the said land of the said J.B. Pattee was irrigated therefrom.

IV.

That thereafterwards the land now occupied by said Carpenter was reclaimed, irrigation ditches constructed thereon, and water appropriated ~~therefrom~~ ^{said Creek} ~~for irrigating~~ and used for irrigating the same up to the time the said improvements were offered for sale in 1907 by the U.S. Government.

V.

That the point of appropriation of water from said ~~XXXXXX~~ Agency Creek by said J.B. Pattee prior to said alleged contract of release to the U.S. Government was situated approximately between fifty and one hundred feet easterly of said road, and at no time was indicated to be further up said Creek and further easterly of said road, by any ditch, or head gate constructed by said J.B. Pattee.

VI.

That said ditch constructed by the U.S. Government pursuant to said contract with said J.B. ~~Pattee~~ ^{Pattee} is still in existence and capable of conducting sufficient water to irrigate all the land that was irrigated ~~therefrom~~ by water from Agency Creek prior to said contract ~~which~~ and owned by said Pattee.

VII.

That land now occupied by ~~xx~~ Fred F. Pattee and Joseph I. Pattee is also capable of being irrigated from said Lemhi River Ditch,

VIII.

That any land of plaintiffs, or any one of them, situated on the bar, so called, easterly of said road, has never been irrigated by water taken ~~from~~ from said Agency Creek, except forty acres on which water from said creek was conducted in the fall of 1909 for the first time; that the amount of land on said bar claimed by ~~plaintiffs~~ plaintiffs, or some of them, is 120 acres.

J. B. Pattee

Exhibit F

County Road - Road From Sunfield to Junction

State Highway

1 mi

