

JUL 10 2008

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 21-10019
)
Case No. 39576) **STANDARD FORM 1**
) **OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Charles Kane

Address: 3761 HWY 87
Island Park, ID 83429

Daytime Phone: (801) 518-6956

Name & Address of Attorney, if any

Daniel Beck
410 Memorial Drive, Ste. 201
Idaho Falls, ID 83405

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

Name: Charles Kane

Address: 3761 HWY 87
Island Park, ID 83429

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: Charles Kane
3761 Hwy 87
Island Park, ID 83429
2. ☒ **Source**
Should be: Spring, Tributary to Henry's Lake
3. ☒ **Quantity**
Should be: 1 CFS
4. ☒ **Priority Date**
Should be: 6/27/1898
5. ☒ **Point of Diversion**
Should be: T16N R43E S30 NWSESE Within Fremont County
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: IRRIGATION, STOCKWATER, FISH PROPOGATION
8. ☒ **Period of Year**
Should be: IRRIGATION 01/01 to 12/31
STOCKWATER 05/01 to 09/30
FISH PROPOGATION 01/01 to 12/31
9. ☒ **Place of Use**
Should be: T16N R43E S32 NENE NWNE
S29 SWSW
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 OBJECTION(S):** The water claimed under water right 21-10019 was first appropriated and used in 1898 by William Bowers as evidenced by the Notice of Water Right, attached hereto. Continued use of the water was evidenced by a warranty deed dated November 8, 1965 which specifically transferred water appropriated by William Bowers in 1898. A copy of the warranty deed is attached hereto. Use continued by the Dietrich family until the property and the water were acquired by the claimant in 2000.

F.

VERIFICATION (must be completed)

State of Idaho)
)ss.
County of Bonneville)

Daniel Beck, duly sworn, upon oath, deposes and says:

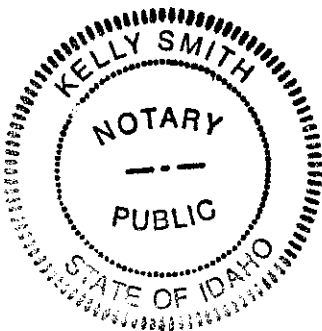
That I am the party/claimant filing this objection, as defined by I.C. §§42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

DOB

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: July 7, 2006



Kelly Smith

Notary Public for: Idaho
Residing at: R.aby
My Commission Expires: 06-28-2011

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 JULY 7, 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: Charles Kane

Address: 3761 Hwy 87
ISLAND PARK ID 83429

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

D. O. Be

Signature of objector or attorney
mailing on Objector's behalf

RECEIVED

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21-10019

AUG 16 2004

WARRANTY DEED

Department of Water Resources
Eastern Region

THIS INDENTURE, Made this 8th day of November in the year of our Lord One Thousand Nine Hundred and Sixty-five, between EDITH FELTON BOGER, in her own right and on behalf of her sole and separate property, hereinafter described, of _____, County of Fremont, State of Idaho, the party of the first part, and HENRY DIETRICH and LOUISE DIETRICH, his wife, of Rexburg, County of Madison, State of Idaho, the parties of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Dollar and other valuable consideration, lawful money of the United States of America, to her in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do by these presents, Grant, Bargain, Sell and Convey and Confirm unto said parties of the second part, and their heirs and assigns forever: All that certain lot, piece or parcel of land situate, lying and being in the County of Fremont, State of Idaho, bounded and more particularly described as follows, to-wit:

All of the Northeast Quarter of Section 32, Township 16 North, Range 43 East, Boise Meridian, Fremont County, Idaho, North of U. S. Highway 287, EXCEPT: That portion East of an existing fence more specifically described as follows: Commencing at the Southeast corner of the Northeast Quarter of said Section 32, and running thence North along the Section line 1442.0 feet, thence South 35°06' West 1306.0 feet more or less to the Highway right-of-way, thence Southeasterly along said right-of-way until it intersects the South line of said Northeast Quarter, thence East along the Quarter Section line 345.0 feet more or less to the point of beginning, containing approximately 13.9 acres more or less; and ALSO EXCEPTING: That portion of said property lying South and West of the old County Road.

ALSO: All water rights and ditch rights appertaining to said land being sold, including that certain water appropriated by William R. Bowers, by notice and use, notice thereof having been recorded June 30, 1898, in Book 'B' of Water Rights, Page 103, Records of Fremont County, Idaho;

There is excepted from the Water Rights herein sold that portion of said Water Right heretofore sold by the Grantor to Charles G. Day and Louis P. Farr of Santa Ana, California, by Contract of Sale dated May 14, 1952; said Water Rights being described as follows: That portion of the said appropriated Water Right above specifically described appurtenant to: "All that certain portion of the



70-800

Northeast Quarter of Section 32, Township 16 North, Range 43 East, Boise Meridian, which lies South of the County Road which bisects the afore-described tract of land, excepting* such portion, if any, of a tract conveyed by the predecessors in title of the Vendor to the North Fork Reservoir by Deed dated September 26, 1926, and recorded in Book 31 of Deeds at page 10 of the Records of Fremont County."

Said Water Rights hereinabove excepted from this present sale are more particularly described in the said Contract of Sale between Seller herein and the said Charles G. Day and Louis P. Farr and for greater certainty stated herein as follows:

"* Including that certain Water Right appropriated by William R. Bowers by notice and use, the notice thereof having been recorded on the 30th day of June, 1898 in Book 'B' of Water Rights, Page 103 of the Records of Fremont County, Idaho; that said water emanates from a Spring situate to the North and West of the aforesaid described premises, and that said water flows from said Spring through a natural water course to a Reservoir situate upon that portion of the Northeast Quarter of Section 32, Township 16 North, Range 43 East of the Boise Meridian, which lies to the North of the Fremont County Road, and which is also owned by Vendor. There is a pipe line leading from the Reservoir across the Roadway to the buildings situate upon the premises being sold under this Contract of Sale which water is used for domestic purposes only. It is mutually agreed, and understood that as a part of the consideration aforesaid, the Vendor agrees to furnish a sufficient amount of water to the Reservoir to maintain a continuous flow of water through said pipe line. It is mutually understood and agreed by and between the parties hereto, however, that the right to the use of the water for domestic purposes as aforesaid, will be a right prior to any other right. The Vendor agrees to keep the natural channel from the Spring to the Reservoir free and clear at all times so that the water will flow to the Reservoir. It is still further understood and agreed by and between the parties to this Agreement that the covenants herein contained shall be a burden upon the portion of the Northeast Quarter of Section 32, Township 16 North, Range 43 East of the Boise Meridian, which lies North of the Fremont County Road, and shall be an appurtenance to that portion of said Northeast Quarter of Section 32, Township 16 North, Range 43 East of the Boise Meridian, which lies South of the Fremont County Road, and that such burden and appurtenance shall be covenants running with the land, and shall exist forever, unless sooner extinguished by mutual agreement of the parties, and shall be binding upon the heirs, administrators, executors, successors and assigns of the respective parties."

(The aforesaid quotations are included herein for definiteness for the reason that the said Contract of Sale between Seller and Day and Farr has not been recorded.)

Seller reserving, however, from the water rights herein being sold to Buyers that proportion of the aforesaid "Bowers water right" appurtenant to the 13.9 acres more or less retained by Seller in the Southeast corner as hereinabove described.

It being further mutually agreed that Buyers hereby accept and agree to be bound by the terms of the sale of water rights by Seller to Day and Farr as hereinabove specifically described, and that the pipe line hereinabove referred to from the said Reservoir to the buildings on the property hereto fore sold to Day and Farr is a two inch pipe line.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises together with the appurtenances and privileges thereunto incident unto the said parties of the second part, and to their heirs and assigns

forever. And the said party of the first part, and her heirs the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns against the said party of the first part, and her heirs and against all and every person or persons whomsoever, lawfully claiming or to claim same, shall and will warrant and by these presents forever defend.

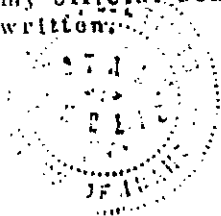
IN WITNESS WHEREOF. The said party of the first part has hereunto set her hand and seal the day and year first above written.

Edith Felton Boger
Edith Felton Boger

STATE OF *Idaho*)
County of *Fremont*) ss.

On this 8th day of November in the year 1965, before me, *Harvey J. Hewies*, a Notary Public in and for said County and State, personally appeared EDITH FELTON BOGER, in her own right and on behalf of her sole and separate property, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Harvey J. Hewies
Notary Public
Residing at *at Arden, Idaho*

AUG 16 2004

Department of Water Resources
Eastern Region

NOTICE OF WATER RIGHT.

STATE OF IDAHO,
County of Fremont } ss.

TO ALL CONCERNED, NOTICE IS HEREBY GIVEN:

1st. That I, William R. Powers, of Lake
Fremont County of Idaho
hereby claim the use of the waters of Banyon Creekto the extent of One cubic foot per second.2d. It is intended to divert said water at or near the point where a copy of this notice is posted, and more definitely described as follows: To be diverted from said Bayon Creek at
Mouth of Canyon one half mile South from Lake.

(In above description give legal subdivision of land or describe the place with reference to some prominent landmark.)

3d. The purpose for which said water is intended to be used is Domestic and
AgriculturalThe place of intended use is Lake, Fremont County, Idaho4th. It is intended to divert said water by means of Ditch and damThe general course of the proposed canal is SouthThe length of the proposed canal is three fourths of a mile

It is intended to use said water for irrigating the following described land:

NE 1/4 Sec. 37, Twp. 16 North, Range 43 East, Boise Meridian5th. It is intended to have the works for diversion and use of said water as aforesaid completed within
years. (This must in no case exceed five years.)WITNESS two hands at Lake, Fremont County Idaho,
this 27 day of June, 1898William R. Powers } Claimants.STATE OF IDAHO,
County of Fremont } ss.William R. Powers
being first duly sworn, deposes and says that he is of lawful age and is the
claimant of the Water Right mentioned in the foregoing notice and whose name he subscribed thereto. That
the statements in said notice are true, and that the original notice, of which the foregoing is a true copy, was posted
in a conspicuous place at or near the place of intended diversion (as provided by law) on the 27
day of June, 1898, at 10 minutes past 4 o'clock P. M.Subscribed and sworn to before me this 27 day of June, 1898

NOTE.—The above Certificate may, where there are several claimants, be made and sworn to by each of them.

Filed for record this 30 day of June, 1898 at 4 o'clock P. M.
By Wm. R. Powers Deputy Recorder.