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APR 20 2007

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 1-2064

(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: United States of America acting through the Department of Interior,
Bureau of Reclamation, Regional Director PN Code-3100

Address: 1150 N. Curtis Rd. Suite 100
Boise, ID 83706-1234

Daytime Phone: (208) 378-5306 E. Gail McGarry

Name & Address of Attorney, if any:

David W. Gehlert (303) 844-1386 Trial Attorney,
Natural Resources Section

Environment and Natural Resource Division

U.S. Department of Justice

1961 Stout Street – 8th Floor

Denver, CO 80294

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

Name: United States of America Acting Through
Regional Director PN Region
Bureau of Reclamation

Address: 1150 N. Curtis Rd. Suite 100
Boise, ID 83706-1234

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: 1,700,000 AFY

Total reservoir capacity remark should also reflect a quantity of 1,700,000 acre-feet.

The following remark should be included under this element: "This water right includes the right to refill under the priority date of this water right to satisfy the United States' storage contracts."

4. ☒ **Priority Date**

Should be: The following remark under this element should be stricken: "The appropriator shall exercise this right in a manner that recognizes the historic practice that the use of water for power generation is incidental to the rights of others to the use of water for other purposes. The appropriator shall not make a delivery call for hydropower generation except as against junior hydropower rights."

The following remark should be included under this element: "159,400 AFY of this right shall be administered under a priority date of 03/29/1921."

5. ☐ **Point(s) of Diversion**

Should be:

6. ☐ **Instream Flow Description**

Should be:

7. ☒ **Purpose(s) of Use**

Should be:

Irrigation storage should be 1,655,000 AFY.

Irrigation from storage should be 1,655,000 AFY.

Power storage should be 300,000 AFY.

Power from storage should be 300,000 AFY.

The following remark under this element should be stricken: "The diversion and release of storage for power purposes under this water right is subject to those conditions contained in contract nos. Ilr-733 and Ilr-801 between the United States Bureau of Reclamation and Idaho Power Company."

The above-stricken remark should be replaced with the following remark: "The exercise of this water right for power purposes is subject to the limitations and conditions set forth in the Act of December 28, 1973, Pub. L. 93-206, and the following contracts: Contract between the United States and Idaho Power Company dated June 15, 1923, Symbol Ilr-733; Spaceholder Contract among the United States, the American Falls Reservoir District, and Idaho Power Company dated March 31, 1976, contract no. Ilr-733S; Falling Water Contract between American Falls Reservoir District and Idaho Power Company dated March 31, 1976; and the Contract between the United States and American Falls Reservoir District dated March 31, 1976 Contract No. 14-06-100-9041."

8. ☐ **Period of Year**
Should be:

9. ☐ **Place of Use**
Should be:

10. ☒ **Other Provisions**
Should be:

The following remark under this element should be stricken: "A portion of this right is designated as the first to fill for the benefit of the contract holders as provided in the provisions for saving winter water as recognized in the Burley Irrigation Dist. v. Eagle, Supplemental Decree (Idaho 5th Jud. Dist., July 10, 1968) and Aberdeen-Springfield Canal Co. v. Eagle, Supplemental Decree (Idaho 7th Jud. Dist., March 12, 1969)."

The following remark under this element should be stricken: "The delivery of water to this right may be subject to procedures described in the United States Bureau of Reclamation "space holder" contracts and the Burley Irrigation Dist. v. Eagle, Supplemental Decree (Idaho 5th Jud. Dist., July 10, 1968) and Aberdeen-Springfield Canal Co. v. Eagle, Supplemental Decree (Idaho 7th Jud. Dist., March 12, 1969) together with the natural-flow and storage deliveries as calculated by the Idaho Department of

Water Resources.”

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described.

E. REASONS SUPPORTING EACH OBJECTION(S):

Element #3 (Quantity): The quantity of water should be 1,700,000 acre-feet as set forth in the license issued for this water right and as claimed in the notice of claim for this water right. A remark for refill under this element is necessary to preserve the historical practice of maximizing the water resources above Milner Dam for use by Reclamation contractors located above Milner.

Element #4 (Priority Date): The subordination remark recommended under this element is unnecessary because the exercise of this right for power purposes is already limited by the remark proposed under the “Purpose of Use” element. *See e.g., infra*. Also, a remark should be included under this element that recognizes 159,400 AFY as being administered with a priority date of 3/29/1921. This remark is pled in the alternative in the event water right 01-10042 is not decreed.

Element #7 (Purpose of Use): The quantities of water listed under this element should be increased consistent with the increased quantity identified under Element #3, above. Because the exercise of this water right for power purposes is limited by congressional act and related contracts, a remark is necessary to further define and clarify the limits on the exercise of this water right for power purposes. The remark recommended by IDWR fails to identify all the relevant instruments pertaining to the exercise of this water right for power purposes and therefore should be replaced with the more comprehensive remark proposed above.

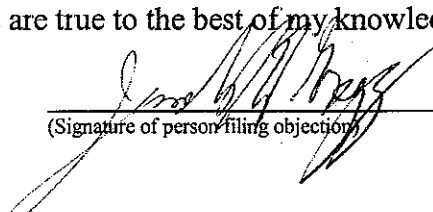
Element #10 (Other Provisions): The remarks under this element, identified above, should be stricken because they are not necessary to define, clarify, or administer the water right.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Jerrold D. Gregg, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

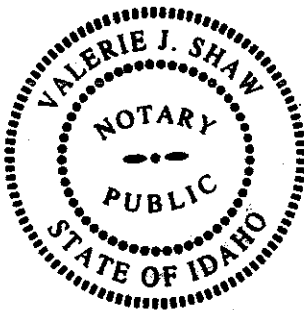
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

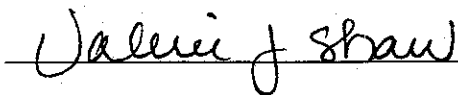

(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

APR 18 2007




Notary Public for: Idaho
Residing at: Meridian
My Commission Expires: 6/2/2012

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 APR 19 2007, I mailed the original and copies of this objection, including all attachments, to the following persons, by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

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

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

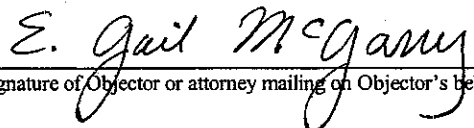
Name: United States of America Acting through
Regional Director PN Region
Bureau of Reclamation
Address: 1150 N Curtis Rd Ste 100
Boise, ID 83706-1234

3. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment and Natural Resource Division
Natural Resources Section
550 West Fort Street, MSC 033
Boise, ID 83724


Signature of Objector or attorney mailing on Objector's behalf