

April 24, 2007

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

a
RECEIVED
MAY 07 2007
DEPARTMENT OF
WATER RESOURCES

RE: Reason for Protest of Water Right 75-27L - John A. Benzon

TO: Clerk of the District Court - Twin Falls, Idaho

I am enclosing documents from our previous protests of 2002 and 2003. I think you should have these documents in your file, along with the original.

I am protesting Mr. Benzons water right #75-27L on the basis that Mr. Benzon has never had water from Williams Creek on his property legally to this date and never from the Highline Ditch legally.

Therefore, I am protesting Mr. Benzons 75-27L Water Right, dated 1/08/07, that it does not exist for not having used water since 1935 (documents enclosed). However, if water right 75-27L, 1/08/07 is valid by the Idaho Department of Water Resources, I protest the moving of the diversion point of 75-27L from NESWNW Sec. 12 T20N R 21E to T20N R21E S11 NENENE Lot 1.

Sincerely,


Bill Gattung

RECEIVED

MAY 07 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

75-27L

(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: Bill Gattung

Address: 88 Lois Ln.

Salmon, Idaho 83467

Daytime Phone: 208-756-3704

Name & Address of Attorney, if any:

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

Name: John A. Benzon

Address: 257 Williams Creek Road

Salmon, Idaho 83467

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. ☐ **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:** SEE ENCLOSED DOCUMENTS

☐ 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):** SEE ENCLOSED DOCUMENTS
OF PROTEST.

F.

VERIFICATION (must be completed)

State of IDAHO)
)ss.

County of LEMMING)

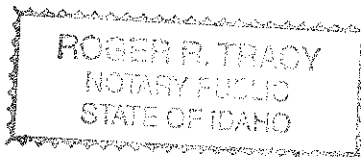
BILL HATHUNG, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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.

Bill Hathung
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: 2/4/07



Roger R. Tracy
Notary Public for Bill Hathung
Residing at: 1212 N. 2nd St.
My Commission Expires: 9/25/10

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 5-4-07, 2007, 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:

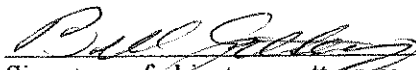
Name: John A. Benzon
Address: 257 Williams Creek Rd.
Salmon, Idaho 83467

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


Signature of objector or attorney
mailing on Objector's behalf

Law Offices

***RIGBY, THATCHER, ANDRUS
RIGBY, KAM & MOELLER, Chartered***

*Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam (1954-2001)
Gregory W. Moeller*

*P.O. Box 250
25 North Second East
Rexburg, ID 83440*

*Telephone: (208) 356-3633
Facsimile: (208) 356-0768
E-mail: jrigby@rigby-thatcher.com*

December 10, 2002

Mr. Robert Foster
IDWR - Salmon Region Office
206 Van Dreff Offices, Suite B
Salmon, ID 83467

Re: Williams Creek/Highline Ditch vs. John A. Benzon

Dear Mr. Foster,

This firm represents Bill Gattung and other water users on the privately owned Highline Ditch which has, as its point of diversion, Williams Creek in the following location: SE1/4NE1/4NE1/4 of Section 11, Twp. 21 North, Rge. 22 E.B.M. It has come to our attention that pursuant to a mandate given to the Highline Ditch water users by you and/or the Department of Water Resources, Highline Ditch water users are now required to allow a Mr. John A. Benzon to divert his claimed Water Right No. 75-27L in the amount of .080 cfs from the Highline Ditch in order to water his approximately four acres. Our understanding is that you have based your determination based upon an affidavit of Mr. Shoup, who is now deceased.

After extensive review of the records, the chain of titles to the properties and conversation with all witnesses who were alive at the time of the original applicable diversions from Williams Creek, it is clear that Mr. Benzon does not have a water right out of Williams Creek. According to our investigation, the history of the Highline Ditch is as follows:

1. A Colonel George L. Shoup originally owned certain property now being watered by the Highline Ditch. He initially began construction of a ditch from Williams Creek but stopped at a draw well above property now owned by Mr. Benzon as well as the present water users of Highline Ditch. No water was diverted. The question at that time was whether or not to froom across the draw or engineer around the draw.

2. In 1935, the Colonel Shoup property was then divided and sold to a Mr. Gar Hodges and a Mr. Corbett. The property taken by Mr. Corbett is not at issue in this matter as such property is the north half of the original Shoup Ranch toward Williams Lake road. Mr. Hodges then contracted with Mr. Corbett, as a contractor, to construct the balance of the Highline Canal to the Hodges property purchased from the Shoups. (As a point of interest, the Corbetts and Hodges also built what is now

December 10, 2002

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Mr. Robert Foster

Re: Williams Creek/Highline Ditch vs. John A. Benzon

known as Rainbow Ditch for the purpose of diverting water directly from the Salmon River to their properties as well).

3. When the Highline Ditch was completed, only the Hodges ever diverted from it. Prior to that time, even when Shoups owned the property, the present property being watered by the Highline Ditch (excluding Mr. Benzon's property) was the only property ever watered from the original diversion.
4. Approximately, during the same period of time, another son of Colonel Shoup, by the name of Will Shoup, purchased some additional property which was unrelated to the property transferred to the Hodges as discussed above and some portion of which eventually became the property now owned by Mr. Benzon.
5. Mr. Hodges had three children, Garr Hodges, Paul Hodges and a daughter by the name of Deleith (sp). The property was then divided among the three children and the water rights from the Highline Ditch were divided in three equal portions.
6. The property originally owned by Paul Hodges eventually became owned by the Capps. The property originally owned by Garr Hodges eventually was divided up and sold to Mr. Bill Gattung, Jason Beyelerr and D. Logan. The property originally owned by Deleith Hodges went to her heirs and is now owned and or operated by Kevin Rice.
7. The only modifications to the Highline Ditch, from the time of its' construction and when it originally carried water, have been two new head gates (one by Mr. Gattung and the other by Mr. Rice) representing the three original points of diversion from the original water rights with n the Highline Ditch.
8. Testimony from Mr. Gar Hodges himself will evidence that the property now owned by Mr. Benzon absolutely never had any water on it from the beginning of the original construction of the Highline Ditch by Mr. Shoup and completed by Mr. Hodges. This testimony will be confirmed by Mr. George Rice who came to the area in 1945. Both of these gentlemen are willing to testify at any hearing or meeting required to resolve this matter
8. Both Mr. Hodges and Mr. Rice confirm that the Benzon property was always sage brush and was never cleared until recently. In fact, the property actually had a small saw mill on it and was never intended for irrigation purposes. The sage brush was five to six feet high, hardly evidencing any clearing in modern times.
9. In the early 1980s, a new diversion on Williams Creek was constructed which essentially allowed all of the water of Williams Creek to be diverted into the Highline Ditch and then within a few yards from the creek, a re-diversion takes place which dumps water for all other water rights on Williams Creek back into Williams Creek.

As stated above, it is our understanding that the Department has granted Mr. Benzon's request based

December 10, 2002

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Mr. Robert Foster

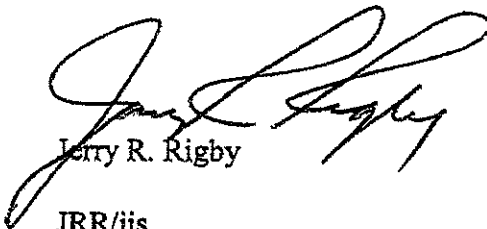
Re: Williams Creek/Highline Ditch vs. John A. Benzon

upon an Affidavit of Richard M. Shoup (deceased) prepared by his attorney of record in 1974. The fact of the matter is, the Affidavit is unsubstantiated and certainly is inconsistent with the testimony of those who were there and are presently alive and willing to testify. Furthermore, it is obviously incorrect in other ways: i.e. it states the priority date as May 1, 1888 and it should be 1886. At best, the Affidavit can only be claimed to be confused with the fact that some of the property purchased by Will Shoup lying below Mr. Benzon's property (on the other side of the road) was in fact willed from another point of diversion down stream of the point of diversion the Highline Canal on Williams Creek, located in the NE1/4SW1/4NW1/4 of Section 12. This property is presently owned by a Mr. Gale Anderson. However, this diversion could never have reached property lying up-gradient above the road and now owned by Mr. Benzon.

Basically, the bottom line to this correspondence is that we believe Mr. Benzon's claim to water right is in error and that he does not have any water rights on his property (except for a well which was drilled by his predecessor in interest, a Mr. Snider). Furthermore, even if his predecessors in interest did own a water right (as claimed within the original Shoup water right from either the Section 11 or Section 12 diversion), it has long ago been forfeited and/or abandoned. For these reasons, we must insist that the water master and/or the Department of Water Resources reverse its direction to the Highline Ditch shareholders that they must allow Mr. Benzon to divert from the Highline Ditch. We request a specific meeting to be held when we can present our case and our witnesses. If for any reason you are unwilling to provide the same, we will of course be forced to bring whatever action is necessary to enforce what we believe are our legal rights. We await your reply.

Please contact me as soon as possible.

Sincerely yours,



Jerry R. Rigby

JRR/jjs

cc: Bill Gattung

cc: Ron Carlson

PAWP05BKGATTUNGB.LTR

01/08/2007

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 75-27L

NAME AND ADDRESS: JOHN A BENZON
257 WILLIAMS CREEK RD
SALMON ID 83467

SOURCE: WILLIAMS CREEK

TRIBUTARY: SALMON RIVER

QUANTITY: 0.080 CFS

This right when combined with all other rights shall provide no more than .03 cfs per acre nor more than 3.0 afa per acre for irrigation of the lands above.

PRIORITY DATE: 05/01/1886

POINT OF
DIVERSION: T20N R21E S11 NENENE Lot 1 Within LEMHI County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

04/01 11/01

0.080 CFS

PLACE OF USE: IRRIGATION in LEMHI County

T20N R21E S12 SENW 3.60

3.6 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

07/12/2002

IDAHO DEPARTMENT OF WATER RESOURCES
 Adjudication Claim Report 75-27L

WATER RIGHT NUMBER: 75-27L

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JOHN A BENZON 257 WILLIAMS CREEK RD SALMON, ID 83467 (208)758-4573

Priority Date: 05/01/1886

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
WILLIAMS CREEK	SALMON RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	1/01	to 11/01	0.080 CFS	
	<u>Total Diversion:</u>		0.080 CFS	

Location of Point(s) of DiversionWILLIAMS CREEK
LEMHI County

NE1/4SW1/4NW1/4

Sec. 12, Twp 20N, Rge 21E, B.M.

Place of Use

IRRIGATION

Twp	Rge	Sec	NE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Total
20N	21E	12									4.0									4.0

Total Acres: 4

Conditions of Approval:Remarks:

1. General

IT APPEARS TO BE ERROR IN PROPERTY DESCRIPTION IN ORIGINAL DECREE TOWNSHIP FOR PROPERTY IS 20N RATHER THAN 21N AS IN DECREE. WILLIAMS CREEK WATER CANNOT REACH T21N R21E SEC.18. THIS RIGHT IS A PORTION OF A75-00027.8/7/90/JT

Comments:Dates and Other Information:

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report 75-27L

Dates and Other Information:

Claim Received Date: 8/7/1990
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

01/08/2007

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 75-27L

NAME AND ADDRESS: JOHN A BENZON
257 WILLIAMS CREEK RD
SALMON ID 83467

SOURCE: WILLIAMS CREEK

TRIBUTARY: SALMON RIVER

QUANTITY: 0.080 CFS

This right when combined with all other rights shall provide no more than 03
cfs per acre nor more than 3.0 afa per acre for irrigation of the lands above.

PRIORITY DATE: 05/01/1886

POINT OF
DIVERSION: T20N R21E S11 NENENE Lot 1 Within LEMHI County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION

PERIOD OF USE
04/01 11/01

QUANTITY
0.080 CFS

PLACE OF USE: IRRIGATION in LEMHI County

T20N R21E S12 SENW 3.60

3.6 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for
the definition of the rights or for the efficient administration of the water
rights as may be ultimately determined by the Court at a point in time no
later than the entry of a final unified decree. Section 42-1412(6), Idaho
Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

2 May 2006

Williams Creek Water District 75-B
88 Lois Lane
Salmon, Idaho 83467

RECEIVED
MAY 07 2007
DEPARTMENT OF
WATER RESOURCES

Re: Removing water from the Highline Ditch

Dear Mr. Benzon:

It has been brought to our attention (while we were in the process of cleaning the ditch), that you have been removing water for your property.

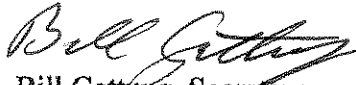
You were notified by a letter of 7 February 2003 that the Highline Ditch is a private line and it is illegal for you to remove water from it.

If we find further evidence that you have been or are continuing to remove water from this ditch, we will have to take legal action.

Sincerely,



Kevin Rice, Watermaster



Bill Gattung, Secretary

cc: Idaho Department of Water Resources, Idaho Falls, Idaho
Bob Foster, Salmon, Idaho

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John Benzon
257 Wm. Crk Rd
Salmon ID 83467

2. Article Number

(Transfer from servi

7004 2890 0002 9623 6736

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X John Benzon

☐ Agent☐ Addressee

B. Received by (Printed Name)

JOHN BENZON

C. Date of Delivery

5-9-06

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes