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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

Case No. 39576

A. Subcase Number: 63-31973  
(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: Office of the Attorney General  
JRW Building, Second Floor  
700 West State Street  
P.O. Box 44449  
Boise, Idaho 83711-4449  
Phone: (208) 334-2400

Name and Address of Attorney, if any:

Attorney Name: LAWRENCE G. WASDEN  
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  
Natural Resources Division  
JRW Building, Second Floor  
700 West State Street  
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 on behalf of the U.S.D.A.  
Forest Service  
Address: 550 W. Fort St. MSC 033  
Boise, ID 83724

**D.** I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☒ **Name of Claimant:**  
Should be: None
2. ☒ **Date of Priority:**  
Should be: None
3. ☒ **Source of Water:**  
Should be: None
- 4a. ☒ **Location of Point of Diversion**  
Should be: None
- 4b. ☒ **Location of Place of Use**  
Should be: None
5. ☒ **Quantity claimed:**  
Should be: None
6. ☒ **Total Consumptive Use Claimed for Present and Future Use is:**  
Should be: None
7. ☒ **Present and future uses to which the water is or will be used:**  
Should be: None
8. ☒ **Remarks:**  
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 administrative uses at the Big Smoky Guard Station.

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 government 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.

**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 the Proclamation entered on November 6, 1906 impliedly or expressly reserved ground water and that the Organic Administration Act of June 4, 1897, 30 Stat. 34, 16 U.S.C. § 473 *et seq.* authorized the reservation of ground water for forest reservations.
- Box 3: Objector denies that the Proclamation entered on November 6, 1906 impliedly or expressly reserved ground water and that the Organic Administration Act of June 4, 1897, 30 Stat. 34, 16 U.S.C. § 473 *et seq.* authorized the reservation of ground water for forest reservations.
- Box 4a: Objector denies that the Proclamation entered on November 6, 1906 impliedly or expressly reserved ground water and that the Organic Administration Act of June 4, 1897, 30 Stat. 34, 16 U.S.C. § 473 *et seq.* authorized the reservation of ground water for forest reservations.

- Box 4b: Objector denies that the Proclamation entered on November 6, 1906 impliedly or expressly reserved ground water and that the Organic Administration Act of June 4, 1897, 30 Stat. 34, 16 U.S.C. § 473 *et seq.* authorized the reservation of ground water for forest reservations.
- Box 5: Objector denies that the quantity claimed has any relationship to the primary purposes described in the Organic Administration Act of June 4, 1897, 30 Stat. 34, 16 U.S.C. § 473 *et seq.* .
- Box 6: A designation of total consumptive use is unnecessary if a federal reserved water right does not exist.
- Box 7: A designation of present and future uses is unnecessary if a federal reserved water right does not exist.
- Box 8: A statement of remarks is unnecessary if a federal reserved water right does not exist.

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F.

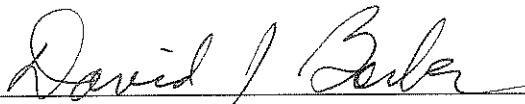
VERIFICATION (Must be Completed)

State of Idaho )  
                          ) ss.  
County of Ada)

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

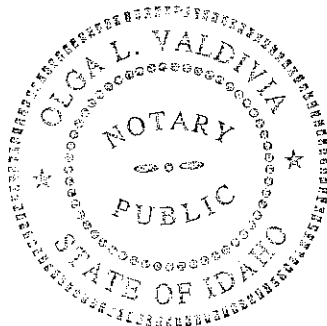
That the State of Idaho in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and 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: June 14, 2007  
(Insert Date)



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

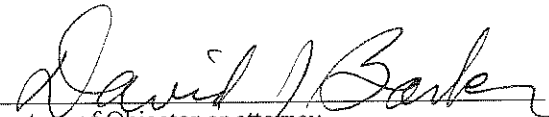
## INSTRUCTIONS FOR MAILING

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 June 14, 2007 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  
U.S. MAIL
2. One copy to the owner of the water right at the following address:  
UNITED STATES OF AMERICA  
on behalf of the U.S.D.A. Forest Service  
550 W. Fort St. MSC 033  
Boise, ID 83724  
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