

RECEIVED

JUL 17 2017

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

22-594, water exchange for DKJ Farms,
22-265E, 22-13479

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: George Brown, MD
Address: 1439 Cambridge Drive
Idaho Falls, Idaho 83401
Daytime Phone: 208-522-9552

Name & Address of Attorney, if any:

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

Name: DKJ Farms
Address: 665 Centennial Loop
Rexburg, Idaho 83440

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:**
☒ 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
Failure of the Department of Water Resources to enforce the Stream Channel
Alteration Act and of the claimant to submit ~~and~~ a Stream Channel Alteration
Permit.

July 11, 2007

TO THE SNAKE RIVER BASIN ADJUDICATION
Re: DKJ Farms and/or Merle Jeppesen's Water Rights

I maintain that Recommended Water Rights Numbers 22-265E, 22-13479, 22-594, and a recent water exchange approved in 2007 have no legal basis to exist because of the failure of the Department of Water Resources to enforce the Stream Channel Alteration Act of 1971, the failure of DKJ Farms and/or Jeppesens to submit the required Stream Channel Alteration Permits needed for the department to issue any water rights in Moody Creek after 1971, and the illegal actions of IDWR to approve water rights in Moody Creek without Stream Channel Alteration Permits.. All of the above rights were approved in Moody Creek after 1971 by the Department of Water Resources.

The following is copied from the Department of Water Resources web page:
"Stream Channel Protection Program

The Idaho Stream Channel Protection Act requires that the stream channels of the state and their environment be protected against alteration for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality. This means IDWR must approve in advance any work being done within the beds and banks of a continuously flowing stream

What Is Covered By The Act

In general terms, the Stream Channel Protection Act applies to any type of alteration work, including recreational dredge mining, done inside the ordinary high water marks of a continuously flowing stream.

The Act requires that you first get a stream channel alteration permit from IDWR before you begin any work that will alter the stream channel.

A stream channel alteration is defined as any activity that will obstruct, diminish, destroy, alter, modify, relocate or change the natural existing shape or direction of water flow of any stream channel. This includes taking material out of the channel or placing material or structures in or across the channel where the potential exists to affect flow in the channel."

Water removal is a form of work that will alter the stream. Water removal is an activity that will diminish, destroy, alter, modify, relocate, and change the natural existing shape of water flow of any stream channel. In particular, I call your attention to the last sentence, about "taking material out". Water is that material.

Thus, all water rights approved in streams come under the Stream Channel Alteration Act, with the department protecting existing rights with entry dates

before 1971 in the involved streams. Furthermore, foremost in consideration, any water appropriation that threatens the fish, wildlife, recreation in the stream (like fishing), or beauty of the stream must be denied. All DKJ Farms' Water Rights in Moody Creek fit this latter category except perhaps Water Right 22-4195.

I understand that the Legislature expects a change in the way the Department of Water Resources administers water law and that this concept may be foreign to some, but the law is there for IDWR to enforce and follow. Moreover, this Act must be the most far-sighted, progressive law in any of the 50 States to preserve wildlife and to promote true public interest, not what the department defines presently as the "local public interest", which consistently favors one over the rest of the public.

Recommended Water Right Number 22-4195 was issued in 1969, but the right is terminated every drought year on June 20 and about every year is a drought year. For this reason, this water right has essentially no affect on the trout in Moody Creek from July on. With this minor exception, DKJ Farms and/or Jeppesens held no existing water right in Moody Creek and the creek and trout were fully protected under the Stream Channel Alteration Act of 1971.

However, a challenge developed in 1979. Although water right number 22-265 was issued in a canal elsewhere on March 15, 1879, it had no existence or vested rights in Moody Creek until the department illegally transferred Transfer Number 2034 from water right #22-265 to Moody Creek in 1979 for the irrigation of 85 acres yearly and Transfer Number 3002 from water right # 22-265 to Moody Creek in 1984 for the irrigation of 115 acres yearly. Recommended Water Right Number 22-265E is the combination of Transfer Numbers 2034 and 3002. If the department had enforced the Stream Channel Alteration Act of 1971 in 1979 and 1984 respectively, water right 22-265 would not exist in Moody Creek and there would be no #22-265E.

The department has documented violations of the terms of Transfers Numbers 2034 and 3002 for the last 23 years by noting the irrigation of more than 200 acres yearly, the failure to use an adequate measuring device, and the connection of Jeppesens' Moody Creek pumps to the common irrigation system to their entire farm. As a consequence, the creek became dry during parts of August and September, resulting in the destruction of cutthroat trout in about an eight mile segment of the creek below Jeppesens' pumps. All wildlife in the region suffered. In addition to loss of the fishery, a prime spawning habitat was ruined.

Water Right # 22-265E possesses the authority to destroy fish and wildlife in Moody Creek. In a Preliminary Order on a water exchange dated June 18, 2007, Allen D. Merritt, PE of the department stated that Jeppesens, using this right, may dewater or cause Moody Creek to cease to flow.

Furthermore, the irony of watching the destruction of fish in Moody Creek during the watch of the IDWR, which is charged by the Legislature in Idaho Code 42-3801 to protect fish specifically (Stream Channel Alteration Act), points to a horrendous, chronic failure on the part of the Department of Water Resources up to this juncture of time.

Recommended Water Right Numbers 22-13479 granted in 1980 as well as a recent water exchange approved in 2007 for DKJ Farms should be denied because of a failure to comply with the Stream Channel Alteration Act of 1971.

Recommended Water Right Number 22-594 delivers no water to Jeppesens' point of diversion presently. I think the right may still be under consideration. But I ask the Court to stop all harmful dewatering from Moody Creek to preserve the fish and wildlife, complying with the Stream Channel Alteration Act of 1971.

According to IDWR records, #22-265E, 22-4195, and 22-13479 may remove 11.85 cfs from Moody Creek for irrigation. In speaking with Ernie Carlsen of the department, no one knows the natural flow of the creek during July, August, September, October, and November. I find this paradoxical, misguided, and potentially devastating for the fish.

Again, I ask Director Tuthill and others of the Department of Water Resources to join me to correct the mistakes of the department and to concentrate on the well-being of the wildlife and the public. That destruction of cutthroat trout in an eight mile segment of Moody Creek is contrary to public interest seems a no-brainer.

Public Trust Doctrine allows the State to remove existing water rights that work against public interest. Certainly this case qualifies.

In summary, the Stream Channel Alteration Act requires the IDWR to deny any water removal from a stream that harms wildlife starting in 1971. This means rights 22-265E, 22-13479, 22-594, and a water exchange SHOULD NOT EXIST.

George Brown, MD
1439 Cambridge Drive
Idaho Falls, Idaho 83401

F.

VERIFICATION (must be completed)

State of Idaho)
)ss.
County of Bonneville)

George Brown

(Name of person filing objection)

, 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.

George Brown
(Signature of person filing objection)

(Attorney signing in representative capacity)

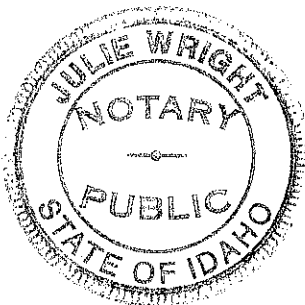
Subscribed and sworn to before me on:

July 12, 2007

Julie Wright
Notary Public for Idaho

Residing at: 305 1st St Idaho Falls Id 83401

My Commission Expires: 6-28-2010



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 14, 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: DKJ Farms
Address: 665 Centennial Loop
Rexburg, Idaho 83440

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

George Brown, M.D.
Signature of objector or attorney
mailing on Objector's behalf