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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)

A. Subcase 29-13728

(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: Leo D. Lewis

Address: 90 W. Indian Creek Rd.

Inkom, ID 83245

Daytime Phone: 208-233-4640 ext. 6516

Name & Address of Attorney, if any:

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

Name: Max T. & LaRue Whitworth

Address: 73 So. Indian Creek Rd.

Inkom, ID 83245

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 attached memo

Memorandum

To: Clerk of the District Court
From: Leo and Bonnie Lewis
Date: 7/16/2007
Re: Reasons Supporting Objection to Subcase 29-13728

For the past several years my immediate up-stream neighbors, Max and Larue Whitworth, have been pumping water from Indian Creek on an almost daily basis through the summer months to irrigate their property. For the past two summers this has frequently resulted in barely a trickle of water flowing through my property as a result of their pumping. I knew they had no legal right to the water, but the current drought has aggravated the problem, so in the summer of 2005 I approached them to discuss water rights. In order to try to maintain relations I verbally agreed at the time to not make this a legal issue as long as they left sufficient water running below their diversion point to give me the water to which I was entitled through decree 29-606A. Since pumping the stream nearly dry has begun to occur again on an almost daily basis this summer I researched the IDWR web site to find only last Thursday that in 2006 Max and Larue applied for and have been granted an adjudication claim that has been recommended for approval by the court.

For a brief history, the property on which I live is where I grew up. I have intimate knowledge and substantial documentation handed down to me relating to water usage from Indian Creek and water right disputes that date back nearly 100 years. Larue Whitworth's parents, Ernest and Hazel Moser, lived where Max and Larue now live from the 1940's up until Ernest's death several years ago. For many years Ernest raised pigs and sheep and dry farmed in addition to a full time job in Pocatello. The stock used the creek but there was never any diversion of water from Indian Creek for irrigation purposes on that property. If so it was done without any recorded right. Vance Burrup, who built a home on upper Indian Creek in 1959, and was apparently approached by claimants to submit an affidavit dated 7 February, 2007 states therein, "I...remember Ernest Moser using water for domestic use from Indian Creek..." Following this affidavit filing, on 14 February, 2007 it was noted in a STAFF TIME LOG LATE CLAIMS form that D. Shaff, "spoke with claimant to determine if affidavit could apply to irrigation claim and it will." This conclusion must have been based on claimant's statement only because no evidence exists on file to support the irrigation claim or priority date on Indian Creek for claimants' property. Meanwhile the priority date of my water right dates back to 1 June, 1908 when Christian Skeem first homesteaded on the property where I now reside and 2.08 cfs was allotted. For many years afterward my grandmother and then my widowed mother struggled to the point of selling parcels of our property, one of which was to Ernest Moser, to fund counsel to maintain existing water rights. In recent years I have observed neighbors both above and below me using the water from Indian Creek without regard to legality or the permit system. Through the Snake River Basin Adjudication process we re-filed for our right and on 22 March, 2004 we were disappointed when our right was substantially reduced in a decree of 0.08 cfs from April 1 through October 31 to irrigate 2.7 acres but with the original priority date of 1 June, 1908.

Regarding the late claim 29-13728 application, related proceedings, and deadlines for objections, I submit the following pertinent quotes: 1) From the ORDER TO APPOINT BRIGETTE BILYEU

SPECIAL MASTER dated 22 June, 2006, "However, the element of prejudice to other parties, if any, that may arise by the late claim was not addressed. The Court places emphasis on this element because the originally reported irrigation and other purposes water rights in Basin 29 have substantially all been litigated and decreed. A new late claim on a fully decreed source potentially puts parties with rights on the same source in the position of re-litigating issues..." 2) In the SPECIAL MASTER'S REPORT AND RECOMMENDATION dated 26 September, 2006 it states, "...the late claims assert a 1939 priority date which are relatively junior compared to many other claims in the area..." Also, "...these claims are for *high* water rights" (emphasis added). High water on Indian Creek is **not** available from April 1 through October 31 as permitted by the claim. I submit that only the claimants were copied on the NOTICE OF HEARING FOR THE MOTION TO FILE LATE CLAIM ordered by Special Master dated 12 July, 2006. Therefore it is not surprising that in the ORDER GRANTING MOTIONS TO FILE LATE NOTICES OF CLAIM dated 28 September, 2006 it states, "No party appeared in opposition to the motion in conjunction with the proceedings before the special master." Given our obvious interest in the matter neither I nor other senior downstream water users were copied.

My objection is to not being included in said proceedings when claimants were aware of my position and rights, claimants' ongoing disregard for my rights and now disregard for the limit specified in their claim. Claimants have requested 0.03 cfs and the court recommended approving 0.01 cfs to water 0.6 acres. This translates to 13.5 gpm or 4.5 gpm respectively. These are flow rates normally associated with a sprinkler attached to a garden hose, depending on pressure. The current diversion rate, considerably in excess of these limits, is produced by a gasoline-driven pump of at least 5 hp feeding a typical multi-headed sprinkler pipe system. This upstream diversion in recent years has prevented me from **constant** access to my decreed 35.9 gpm to water my allotted 2.7 acres. Consequently I can currently only water the landscaping immediately around my home and all else has dried up. Idaho Code 42-106 states that the first in time is the first in right. Furthermore, Idaho code 42-1505 states that water is not available to fill any priority date if diversion of that water will decrease the flow in the stream and not allow a downstream user with an older priority date the amount decreed to them. This situation exists currently as I, the down stream user with a senior priority date, cannot obtain the water that has been decreed to me.

Consequently I petition the court to reject this "junior," "high-water" right claim for use from April 1 through October 31 that has no basis in historical rights and where senior downstream users with decreed rights exist that can barely be met by summer stream flow. Furthermore, claimants have used the water without a right to it and Idaho code 42-1505 clearly supports my objection. If claimants claim is granted, I further petition that any allocated diversion rate be restricted to only the excess of what is required to continuously meet all senior rights between April 1 and October 31. I invite the Special Master to personally visit and inspect these properties before final judgment is passed to check stream flow, diversion techniques and equipment used.

F.

VERIFICATION (must be completed)

State of Idaho)
)ss.
County of Bannock)

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

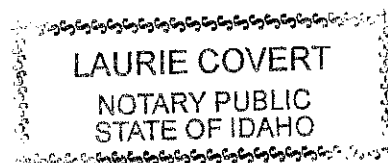
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Leo D. Lewis
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: 7/16/07

Laurie Covert
Notary Public for AMI Semiconductor
Residing at: POCATELLO, ID
My Commission Expires: 7/27/07



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 16, 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: Max & Larue Whitworth
Address: 73 So. Indian Creek Rd
Idaho, Idaho 83245

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

Les D. Lewis
Signature of objector or attorney
mailing on Objector's behalf