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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

Subcase No. 63-3618

Case No. 39576

**STANDARD FORM 1
OBJECTION**

NAME AND ADDRESS OF PERSON OBJECTING

Name: New Dry Creek Ditch Company
Address: 5926 W. Floating Feather
Eagle, ID 83616
Daytime Phone: (208) 286-9701

Name & Address of Attorney:

Daniel V. Steenson
S. Bryce Farris
Ringert Clark, Chartered
P.O. Box 2773
Boise, ID 83701
(208) 342-4591

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTORS'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

I object to the following elements as recommended in the Director's Report.

1. **X Name and Address**
Should be: See Attachment A.
2. **Source**
Should be:
3. **X Quantity**
Should be: See Attachment A.
4. **Priority Date**
Should be:
5. **Point(s) of Diversion**
Should be:
6. **X Instream Flow Description**
Should be: See Attachment A.
7. **X Purpose(s) of Use**
Should be: See Attachment A.
8. **Period of Year**
Should be:
9. **X Place of Use**
Should be: See Attachment A.
10. **I object because:**

This water right should not exist.

This water right was not recommended, but should be recommended with the elements as described above.

REASONS SUPPORTING OBJECTION(S):
See Attachment A.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

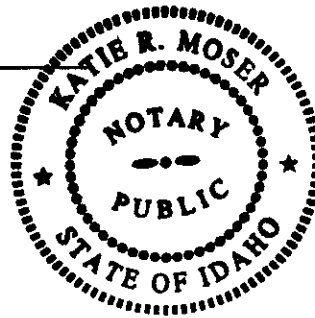
S. Bryce Farris, duly sworn, upon oath, deposes and says:

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.

[Signature]
(Attorney signing in representative capacity)

Subscribed and sworn to before me
on: 1/29/03

Katie R. Moser
Notary Public for State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 2/20/08



CERTIFICATE OF MAILING

I certify that on January 27th, 2003, 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:

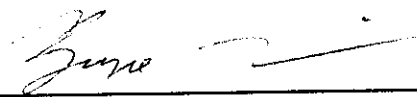
United States of America Acting Through
Regional Director PN Region
Bureau of Reclamation
1150 N. Curtis Rd., Suite 100
Boise, ID 83706-1234

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

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



Signature of Objector or attorney
mailing on Objector's behalf

ATTACHMENT A

63-3618

1. Ownership, Quantity, Place of Use. The Idaho Department of Water Resources (IDWR) has recommended this right in the name of the United States Department of Interior, Bureau of Reclamation (Reclamation). However, New Dry Creek Ditch Company (New Dry Creek) is the owner of 3,000 acre feet of this water right based upon the fact that this portion of the right was perfected by beneficial use on lands within New Dry Creek's boundaries, and is therefore appurtenant to those lands. New Dry Creek's position is in accordance with Idaho Law, the Reclamation Act of 1902, 43 U.S.C. § 372, and is supported by case law holding that a water right developed under the Reclamation Act is appurtenant to the land, and the landowners are the owners of the water right. *Ickes v. Fox*, 300 U.S. 82 (1937). Consistent with these authorities, New Dry Creek has filed SRBA Claim no. 63-3618G seeking a decree of 3,000 acre feet of this water right in New Dry Creek's name, appurtenant to lands within New Dry Creek's boundaries. Issuance of such a decree to New Dry Creek will require that 3,000 acre feet not be included in the decree for Water Right Number 63-3618.

In the alternative, at a minimum under these authorities, New Dry Creek is the beneficial owner of the water right and Reclamation holds only nominal legal title. If the court decrees the water right to Reclamation in this manner the decree must state that Reclamation holds legal title in name only, and New Dry Creek is the beneficial owner of 3,000 acre feet, appurtenant to lands within New Dry Creek's boundaries.

2. Purpose of Use.

(a) The purposes for which Lucky Peak Dam and Reservoir were constructed are irrigation and flood control. These are the only allowable uses of the dam and reservoir under the statutes authorizing the construction of the dam and reservoir. Therefore, Reclamation has no authority to seek or claim water right uses other than irrigation and flood control.

(b) If the right is decreed, the claimed purpose for use for streamflow maintenance storage or streamflow maintenance from storage should not be decreed. Those uses are not beneficial uses of water under Idaho law, particularly if held by any individual or entity other than the Idaho Water Resources Board. Those quantities should be decreed for irrigation purposes, as reflected in the water permit before IDWR erroneously approved the amendment of the permit.

(c) In order to properly define and administer this water right, there must be: a remark which provides that any change to the elements of this water right requires a transfer pursuant to Idaho law; a remark which requires New Dry Creek's approval of any change to New Dry Creek's portion of this right (3,000 acre feet); and a remark which requires that uncontracted space be made available for irrigation use.