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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 63-03618

(Insert water right number)

STANDARD FORM 1
OBJECTION

COPY

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Middleton Mill Ditch Company

Address: % Jane Foote

P.O. Box 214, Middleton, ID 83644

Daytime Phone: 585-6676

Name & Address of Attorney, if any:

Jerry A. Kiser

Stoppello & Kiser

620 W. Hays St., Boise, ID 83702

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

Name: United States/Bureau of Reclamation

Address: 1150 N. Curtis Rd., Suite 100

Boise, ID 83706-1234

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: See Appendix attached
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: See Appendix attached
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: See Appendix attached
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: See Appendix attached

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): See Appendix attached

F.

VERIFICATION (Must be Completed)

State of Idaho)
County of Ada) ss.

Jerry A. Kiser, 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.

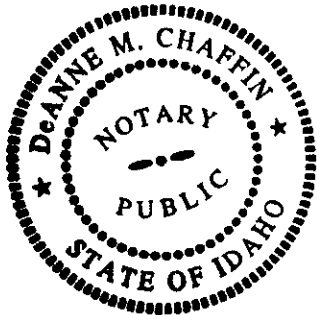
(Signature of person filing objection)

Jerry A. Kiser
(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

January 28, 2003

Deanne M. Chaffin
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 11-08-2006



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 January 30, 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:

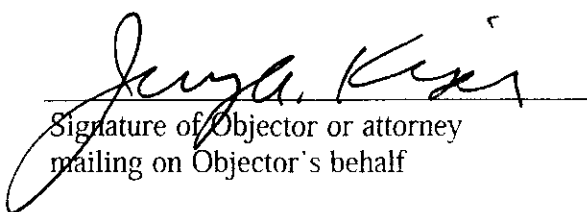
Name: Bureau of Reclamation
Address: 1150 N. Curtis Rd., Suite 100
Boise, ID 83706-1234

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

APPENDIX A
63-3618

Middleton Mill Ditch Company ("Middleton Mill") has a contract with the Bureau of Reclamation for irrigation storage water from Lucky Peak Reservoir. Middleton Mill has a right to use 4,620 acre feet of water from Lucky Peak Reservoir to irrigate 9,159 acres owned by landholders within Middleton Irrigation Association, Inc. (operated in conjunction with Middleton Mill) and Middleton Mill's service area. The Idaho Department of Water Resources has recommended that Middleton Mill's water right claim for that amount of water, 63-3618F, be disallowed.

Middleton Mill has filed or will file an objection to that recommendation, and further objects to the recommendation for SRBA Claim Number 63-3618, because the Idaho Department of Water Resources has indicated that claim number 63-3618F has been recommended as 63-3618. Middleton Mill asserts an ownership interest in 63-3618 to the extent that water right, as recommended, includes 63-3618F. This ownership interest is a full ownership interest, in accordance with Idaho law, the Reclamation Act of 1902, 43 U.S.C. § 372 et seq., and the United States Supreme Court decision in *Ickes v. Fox*, 300 U.S. 82, 57 S.Ct. 412, 416-17 (1937). In the alternative, Middleton Mill asserts a beneficial ownership interest.

The Director's report has recommended claim 63-3618 be approved. The claim as recommended by the Director is for a water right consisting of the following:

Irrigation storage	111,950.00 AFY
Irrigation from storage	111,950.00 AFY
Recreation storage	28,800.00 AFY
Stock water storage	152,300.00 AFY
Stock water from storage	152,300.00 AFY

The claim 63-3618 as recommended differs from the water right license issued for that same claim. The water right license issued by the Department of Water Resources on September 27, 2002 reflects a water right has been established as follows:

Irrigation storage	111,950.00 AFY
Irrigation from storage	111,950.00 AFY
Recreation storage	28,800.00 AFY
Stream flow maintenance storage	152,300.00 AFY
Stream flow maintenance from storage	152,300.00 AFY

If the right is decreed, the claimed purposes of 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 Resource Board.

Those quantities should be decreed for irrigation purposes, as reflected in the water permit before the Idaho Department of Water Resources erroneously approved the amendment of the permit.

Moreover, allowing wintertime releases and releases for fish and game purposes in contrary to the purposes for which Lucky Peak Dam and Reservoir were constructed. The only allowable uses under the pertinent authorizations are irrigation and flood control.