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JUL 20 2007

DEPARTMENT OF
WATER RESOURCES

July 14, 2007

After I mailed my objections earlier today, I found two errors.

First, Transfer 2034 was granted in 1977 rather than 1979. Secondly, Right 22-265 was originally issued in Woody Creek near its termination.

To be accurate as well as write what I believe to be clearer objections, another filing is made. Please disregard the first.

George Brown, MD

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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

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 14, 2007

OBJECTIONS

To the Snake River Basin Adjudication

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 or Merle Jeppesen to submit the required Stream Channel Alteration Permits needed for the department to issue any water rights in Moody Creek after 1971, and the 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.

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."

The words "stream channel of the state and their environment" refers to the stream in the channel and 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 a material.

All water rights approved in streams after 1971 come under the Stream Channel Alteration Act. The Act requires the IDWR to issue no rights that threaten the fish, wildlife, recreation, or beauty of the stream. All DKJ Farm Water Rights at their present point of diversion in Moody Creek so threaten except for 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 public interest, not what the IDWR defines presently as the "local public interest", that consistently favors one over the rest of the public.

Recommended Water Right 22-4195 was issued in 1969. Since this right is terminated every drought year on June 20 and about every year is a drought year, this right has no influence on the trout. DKJ Farms and/or Jeppesens held no other existing water right in Moody Creek at this point of diversion. The creek and trout were fully protected under the Stream Channel Alteration Act of 1971.

However, a challenge developed in 1977. The IDWR transferred Transfer Number 2034 from water right #22-265 to the present point of diversion in 1977 and Transfer 3002 in 1984. Both transfers irrigated 200 acres yearly. Recommended Water Right 22-265E is the combination of Transfers Numbers 2034 and 3002. If the department had enforced the Stream Channel Alteration Act of 1971, there would be no right 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 to a common irrigation system to their entire farm. As a consequence, the creek became dry, 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 became ruined.

Water Right # 22-265E possesses the capability 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 may dewater or cause Moody Creek to cease to flow if they desired.

The irony to watch the destruction of fish in Moody Creek during the watch of the IDWR, that is charged by the Legislature in Idaho Code 42-3801 to protect fish specifically, points to a horrendous contradiction of duty.

Recommended Water Right 22-13479 granted in 1980 and Right 22-594 fits the same mold. I understand Right 22-594 delivers no water to DKJ Farms' present point of diversion now. I do not know the reason.

I appreciate the concept of decreed property or water rights. Enforcement of the Stream Channel Alteration Act in the upper creek would not harm Right 22-265 held in Moody Creek near its termination. The State of Idaho holds the property rights to Moody Creek and the cutthroat trout within. As a resident of Idaho, I object to the Idaho Department of Water Resources surrendering those rights and I am disappointed that DKJ Farms or Merle Jeppesen would ask for them in upper Moody Creek. That destruction of cutthroat trout in an eight-mile segment of Moody Creek is contrary to public interest seems obvious! After all, the State owned the property long before 1879. Moreover, the State should be outraged at the consequences and take whatever actions necessary to restore, protect and preserve the cutthroat trout in the creek. Indeed, the Idaho Fish and Game Department is charged to do just this! Furthermore, the Department of Water Resources is charged to do the same.

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

In summary, the Stream Channel Alteration Act requires the IDWR deny water removal from Moody Creek that destroys wildlife from DKJ Farms' point of diversion downstream starting in 1971. This means rights 22-265E, 22-13479, 22-594, and a water exchange should not exist.

Decreed Water Right 22-265 obviously does not allow the owner to automatically transfer rights anywhere pleased without the approval of the Idaho Department of Water Resources. In 1971 the Legislature specifically directed the Idaho Department of Water Resources that streams "be protected against alteration for the protection of fish and wildlife habitat, aquatic life, recreation aesthetic beauty and water quality."

If the Idaho Department of Water Resources had enforced the mandate of the Stream Channel Alteration Act, I would have no need to file these objections.

F. VERIFICATION (must be completed)

State of Idaho)
County of Bonneville) ss.

George Brown, duly sworn, upon oath, deposes and says:

(Name of person filing objection)

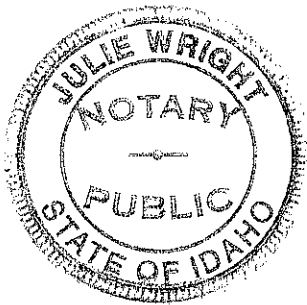
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

George Brown
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: July 16, 2007

Julie Wright
Notary Public for Idaho



Residing at: 305 1st ST IF, ID 8340
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 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: 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. for July 16, 2007
George Brown, M.D.
Signature of objector or attorney
mailing on Objector's behalf