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OCT 11 2007

DEPARTMENT OF
WATER RESOURCES

C. Thomas Arkoosh, ISB #2253
ARKOOSH LAW OFFICES, Chtd.
P.O. Box 32
Gooding, Idaho 83330
Telephone: (208) 934-8872
Facsimile: (208) 934-8873

**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. 94-00019
	)	
Case No. 39576	)	FOR WATER RIGHT NO.: A47-04177E
	)	
	)	MOTION TO CONSOLIDATE
	)	
	)	

COMES NOW, Tim and Karen Smalley ("Smalley"), by and through their attorney Daniel A. Nevala, Arkoosh Law Offices, Chtd., pursuant to I.R.C.P. 42(a), and move this Court for an Order to Consolidate SRBA Case No. 39576 with companion case number 94-00019 for the reasons set forth below and as outlined in movant's Motion to File Late Objection filed concurrently herewith.

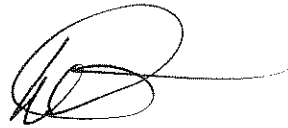
These cases should be consolidated for reasons of efficiency and commonality. When actions involving a common question of law or fact are pending before the court,... it may order all the actions consolidated.... I.R.C.P. 42(a). With respect to the water rights involved in these cases, both parties' objections, responses to objections, the claims, and IDWR's

recommendations have questions of law and fact in common, namely, the determination of the respective rights.

Movant respectfully requests a hearing on this motion prior to the January 2, 2008 Final Hearing on Petition for Injunctive Relief.

DATED this 10th day of October, 2007.

ARKOOSH LAW OFFICES, CHTD.

A handwritten signature in black ink, appearing to read 'D. Nevala', written over a horizontal line.

Daniel A. Nevala

CERTIFICATE OF MAILING

I certify that on October 10, 2007, I mailed the original and copies of the foregoing motion, including all exhibits, to the following persons:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Scott L. Campell
Andrew J. Waldera
Moffatt Thomas Barrett Rock & Fields
PO Box 829
Boise, Idaho 83701

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

United States Department of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

Tim and Karen Smalley
4579A River Road
Buhl, Idaho 83316

Bruce L. Waldon
2660 Dalton Lane
Boise, Idaho 83704



Daniel A. Nevala

C. Tom Arkoosh
ARKOOSH & JAMES, PLLC
301 Main Street
Post Office Box 32
Gooding, Idaho 83330
Telephone: (208) 934-8872
Facsimile: (208) 934-8873
Idaho State Bar: #2253

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WATER RESOURCES

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

Attorney For Petitioner

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

TIMOTHY SMALLEY, successor in
Interest to MELISSA SMALLEY

Petitioner,

vs.

MARJORY CHESSMORE,

Respondent.

SRBA Case No. 94-19
For Water Right No. A47-04177E

PETITION FOR INJUNCTIVE
RELIEF

COMES NOW, the Petitioner in the above-entitled action, Timothy Smalley
["Smalley"], and pursuant to Administrative Order 1 ["A0-1"] 3(i) and Idaho Rule of
Civil Procedure [I.R.C.Pro.] 65, and as and for her cause of action for relief, complains
and alleges, as follows:

PETITION FOR INJUNCTIVE RELIEF- 1

EXHIBIT

A

I. PARTIES

1. That Smalley is an individual and owner of Water Right 47-04177, 41 CFS of water from an unnamed stream, tributary to Deep Creek, Township 09 South, Range 14 East, Section 9.

2. That Respondent, Marjory Chessmore ["Chessmore"] is an individual and putative owner of Water Right A47-04177E, 0.120 CFS of water from an unnamed stream, tributary to Deep Creek, Township 09 South, Range 14 East, Section 09.

II. FACTS

3. On or about June 15, 1985, Chessmore purchased approximately six acres from Smalley, in Township 09 South, Range 14 East, Section 9, NE SE, adjacent to 30 acres of real property retained by Petitioner's predecessor, Melissa Smalley, in the same quarter, quarter section.

4. With the sale of the real property described in paragraph 3 above, Chessmore also purchased the appertinent water right represented and described as A47-04177E.

5. No entity has applied A47-04177E to beneficial use since in or about June of 1985.

6. During the summer of 2000, Chessmore, or her agents caused the installation of a four (4) inch plastic pipe, carrying away water from the ditch conveyance for the water described in Water Right 47-04177, and allowed the same to flood and waste upon unsown ground, and onto the public road adjacent to the Chessmore real property

in Township 09 South, Range 14 East, Section 9.

7. That upon information and belief, Smalley alleges that the recommendation of the Department of Water Resources for basin 47 is not expected to be provided to the court until on or after sometime in the year 2002.

8. That continuation of the wrongful diversion of the water described in Water Right A47-04177E will produce waste, or great, irreparable injury to Smalley.

9. That the continued wrongful diversion to waste by Chessmore is a violation and contrary to Smalley's rights, and Smalley is entitled to the relief hereinafter demanded.

III. COUNT ONE

(Forfeiture)

10. Smalley realleges the allegations in paragraphs 1 through 9 of said Smalley as though the same were set forth in full herein.

11. That non-use of the water represented by Water Right A47-04177E constitutes forfeiture pursuant to Idaho Code.

IV. COUNT TWO

(Abandonment)

10. Smalley realleges the foregoing allegations, as though the same were set forth in full herein.

11. That non-use of the water represented by Water Right A47-04177E

constitutes abandonment pursuant to Idaho Code.

V. COUNT THREE

(Waste)

10. Smalley realleges the foregoing as though the same were set forth in full herein.

11. That the wrongful diversion of the water described in Water Right A47-04177E, without application of the same to beneficial use constitutes waste, and injury to Smalley, under Smalley's water rights.

VI. PRAYER

WHEREFORE, Smalley prays for relief, as follows:

1. That the Court adhere to the procedural dictates of A01-3(i); and open a subcase accordingly;

2. That the Court declare, adjudicate, adjudge and find forfeiture and abandonment of Water Right A47-04177E by Chessmore.

3. That the Court declare, adjudicate, adjudge and find waste of Water Right A47-04177E by Chessmore.

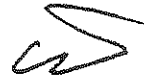
4. That the Court enter its order and judgment, ordering and adjudging Chessmore and all others be enjoined from diversion of the water described in Water Right A47-04177E.

5. That Smalley awarded her costs and fees pursuant to §§12-120, 12-121 and

12-123, Idaho Code.

DATED this 28th day of August, 2001.

ARKOOSH & JAMES, PLLC



C. Tom Arkoosh
Attorney for Smalley