

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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JAN 07 2008

DEPARTMENT OF
WATER RESOURCES

In Re SRBA

A. Subcase: 37-21259

Case No. 39576

STANDARD FORM 2
RESPONSE TO OBJECTION

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON RESPONDING

Name: Cynthia Jesinger
Address: P.O. Box 111
Sun Valley, ID 83333
Daytime Phone:

Name & Address of Attorney, if any:
Fritz X. Haemmerle
HAEMMERLE & HAEMMERLE, P.L.L.C.
P.O. Box 1800
Hailey, ID 83333

**C. NAME AND ADDRESS OF PERSON WHO FILED THE OBJECTION TO
WHICH YOU ARE RESPONDING**

Name: Tom O'Gara
John F. Stevenson
Bill Molyneux
Pete Van Der Meulen
Grace Eakin
Rocky Sherbine
Gerald Bashaw
Pepin Corso-Harris
c/o Concerned Water Users
P.O. Box 1200
Bellevue, ID 83313

Big Wood Canal Company
112 South Apple Street
Shoshone, ID 83352

Address: Albert P. Barker
BARKER, ROSHOLT & SIMPSON, LLP
P.O. Box 2139
Boise, ID 83701
Tel: (208) 336-0700
For O'Gara, Stevenson, Molyneux,
Van Der Meulen, Eakin
Sherbine & Bashaw

Craig Hobdey
HOBDEY & HOBDEY
P.O. Box 176
Gooding, ID 83330
Tel: (208) 934-4420
For: Big Wood Canal Company

D. I am responding to the objections to the following elements. (Please check the appropriate box(es)).

1. ☐ Name and Address
2. ☐ Source
3. ☐ Quantity
4. ☒ Priority Date
5. ☐ Point(s) of Diversion
6. ☐ Instream Flow Description
7. ☒ Purpose(s) of Use
8. ☐ Period of Year
9. ☐ Place of Use
11. ☐ Recommendation

☒ (This water right should exist).

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

Reasons for Response:

1. **Failure to Properly Serve:** The Big Wood Canal Company did not verify their objection as required by law, so its objection should be dismissed. The "Concerned Water Users" failed to sign the objection in its name, so its objection should be dismissed. Also, the Objectors failed to serve both owners of the water right.
2. **Lack of Standing:** The so-called "Concerned Water Users" are not claimants in the SRBA, so its objection should be dismissed. Upon information and belief, the claimant also maintains the Objectors are unaffected and are not injured in fact by the claims.

3. **Res Judicata, Collateral Estoppel, Judicial Estoppel, Administrative Estoppel, Waiver and Estoppel:** Diversion rate is not excessive. Similar diversion rates have been decreed in the SRBA court, without objection of the Objectors in this case, so they are foreclosed through all claim preclusion theories, including, but not limited to, res judicata, collateral estoppel, judicial estoppel, administrative estoppel and estoppel and from asserting these issues; or in the alternative, the Objectors have waived their right to object on this basis or they are estopped from raising such objections including but not limited to by their failure to object to the licensing, transfer and adjudication of this and other rights.
4. **Failure to State a Claim:** The water right has not been abandoned or forfeited.
5. **Attorney's Fees and Costs:** The claimant is entitled to costs and attorney fees under Idaho law, including but not limited to under Idaho Rules of Civil Procedure 54 and Idaho Code Sections 12-121 and 12-123.

E. **VERIFICATION** (Must be Completed)

State of Idaho)
)ss.
County of Blaine)

Fritz X. Haemmerle, duly sworn, upon oath, deposes and says:

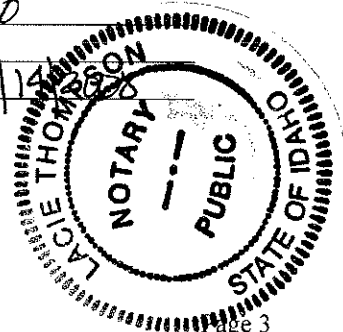
That I am the party/claimant filing this response as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this response, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing response)

Fritz X. Haemmerle
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: Lacie Thompson

Lacie Thompson
Notary Public for Idaho
Residing at: Bellevue
My Commission Expires: 1/14/2008



F.

CERTIFICATE OF MAILING

I certify that on December 31st, 2007, I mailed the original and copies of this response, 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:

Cynthia Jesinger
P.O. Box 111
Sun Valley, ID 83353

3. One copy to the party who filed the objection at the following address:

Concerned Water Users
P.O. Box 1200
Bellevue, ID 83313

Albert P. Barker
BARKER, ROSHOLT & SIMPSON, LLP
P.O. Box 2139
Boise, ID 83701
Tel: (208) 336-0700
For O'Gara, Stevenson, Molyneux,
Van Der Meulen, Eakin
Sherbine & Bashaw

Craig Hobdey
HOBDEY & HOBDEY
P.O. Box 176
Gooding, ID 83330
Tel: (208) 934-4420
For: Big Wood Canal Company

4. Copies to:

IDWR Document Depository United States Department of Justice
PO Box 83720 Environment & Natural Resource Division
Boise, ID 83720-0098 550 West Fort Street, MSC 033

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449
Boise, ID 83724

Fritz X. Haemmerle

