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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	)	A. Subcase No. 37-415
	)	
Case No. 39576	)	**MOTION TO AMEND OBJECTION**
	)	
	)	
	)	
	)	

COMES NOW, Tom O'Gara, John F. Stevenson, Bill Molyneux, Pete Van Der Meulen, Grace Eakin, Rocky Sherbine, Gerald Bashaw, and Pepin Corso-Harris, by and through their attorneys of record, Barker Rosholt & Simpson, LLP, and Big Wood Canal Company, by and through its attorneys of record, Hobdey & Hobdey, and respectfully request that the SRBA Court grant leave to amend their objections in this Subcase. The amended objection is attached hereto as Exhibit "A." Objectors move the court on grounds that they have good cause for amending and narrowing their objection:

1. Objectors' previous objections questioned whether a private party had the legal authority to hold such water rights for aesthetic, wildlife or recreation uses. Objectors are interested in impacts to the water supply from impounding water in the upper portions of Part 3 of Basin 37 and in particular the reduction in flows on the Big Wood, springs, and groundwater. Objectors' interest is not in debating the authority of the Department to act without legislative or constitutional authorization to permit private parties to hold water rights for private enjoyment of ponds and streamlets.

2. Objectors wish to withdraw their objections to the existence of the water right on those grounds and to amend their objection to object to quantity of water used in the ponds and other aesthetic, wildlife, or recreation amenities which exceed rates of use of the original water rights and which exceed the beneficial use requirements of the aesthetic, wildlife or recreational use.

3. Objectors filed timely objections to this right. By amending the objections at this time, Objectors are providing adequate notice of the entire range of issues they intend to pursue. Objectors are amending their objections in a way that disposes of a significant legal issue. This amendment will focus their objections on the factual circumstances surrounding the beneficial use of water under this right. This amendment narrows the issues in this Subcase by eliminating an overarching legal issue. The amendment turns to a subset of that issue, i.e., the extent of beneficial use, rather than whether the use is "beneficial" in the first place.

4. No prejudice will accrue to any party as no status conferences have been held, no case management schedule has been adopted, and no partial decrees have been entered.

5. Counsel for Objectors has contacted counsel for claimants in the captioned matter, who have not indicated whether they support or oppose said motion.

6. This Court, through Special Master Dolan, recently permitted the City of Pocatello to amend its objections in Subcases 01-209, et al. "Minidoka Credit Remark" even when the amendment there expanded the issues in the Subcase, when the Motion was brought in the earliest stages of the subcase, as is this Motion. Here the amendment narrows the issues in this Subcase.

DATED this 4th day of June, 2008.

BARKER ROSHOLT & SIMPSON LLP

Albert P. Barker
Attorneys for Tom O'Gara, John F. Stevenson, Bill Molyneux, Pete Van Der Meulen, Grace Eakin, Rocky Sherbine, Gerald Bashaw, and Pepin Corso-Harris

HOBDEY & HOBDEY

Craig Hobdey
Attorneys for Big Wood Canal Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of June, 2008, I caused to be served a true and correct copy of the foregoing **MOTION TO AMEND OBJECTION** and **STANDARD FORM ONE OBJECTION, AMENDED** by the method indicated below, and addressed to each of the following:

1. Original hand-delivered to:

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

2. One copy mailed to the claimant of the water right at the following address:

   Name: Sinclair Oil Corp. DBA Sun Valley Co.
   Address: Served c/o counsel below

3. Copies mailed to:

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

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

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

   Scott L. Campbell
   Moffatt Thomas Barrett Rock & Fields
   P.O. Box 829
   Boise, ID 83701

   James P. Speck
   Speck & Aanestad
   120 East Avenue
   P.O. Box 987
   Ketchum, ID 83340

Albert P. Barker

EXHIBIT A

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	)	**A. Subcase No.** 37-415
	)	
Case No. 39576	)	**STANDARD FORM 1**
	)	**OBJECTION**
_____	)	*AMENDED*

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING:

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

Name and Address of Attorney, if any:

Albert P. Barker
Barker, Rosholt & Simpson, LLP
P.O. Box 2139
Boise, ID 83701
Telephone: (208) 336-0700
Attorney for O'Gara, Stevenson, Molyneux, Van Der Meulen, Eakin, Sherbine & Bashaw

Craig Hobdey
Hobdey & Hobdey
P.O. Box 176
Gooding, ID 83330
Telephone: (208) 934-4420
Attorney for Big Wood Canal Company

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

Name: Sinclair Oil Corp. DBA Sun Valley Co.
Address: P.O. Box 10, Sun Valley, ID 83353

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate boxes):

1. ☐ **Name and Address**
   Should be:

2. ☐ **Source**
   Should be:

3. ☑ **Quantity**
   Should be: See "E" Below.

4. ☑ **Priority Date**
   Should be: date of enlargement of water right

5. ☐ **Point(s) of Diversion**
   Should be:

6. ☐ **Instream Flow Beginning and Ending Point**
   Should be:

7. ☑ **Purpose(s) of Use**
   Should be: See "E" Below.

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 OBJECTION(S):

Diversion Rate:

Should be set at the same diversion rate as an irrigation right: one inch per acre for every acre of surface area of the aesthetic, recreation or wildlife use, not to exceed the right from which the aesthetic, recreation or wildlife use is derived, and not to exceed the actual beneficial use. Conveyance loss can not exceed the original right's conveyance loss.

Volume/Consumptive Use:

Should be limited to the irrigation annual total volume of 3.5 feet per acre, not to exceed the right from which the aesthetic, recreation or wildlife use is derived, and not to exceed the actual beneficial use.

Measurement:

A single measuring device is not sufficient to adequately measure the usage by ponds and other aesthetic streamlets. Flow measuring devices specified by the Department and/or water master should be installed at the point of diversion (from stream/or to storage) and the point of discharge back to the natural stream. The measuring devices should provide a means of measurement and lockable controlling works to provide suitable control of diversion.

Administration:

The water right should be regulated by the water master of State Water District No. 37.

Water Quality:

The water used under said right when discharged back to a natural channel should comply with Idaho Water Quality Standards. The monitoring of the standards should be allowable and conducted by the Idaho Department of Water Resources and/or the Idaho Department of Environmental Quality.

Tom O'Gara
John F. Stevenson
Bill Molyneux
Pete Van Der Meulen
Grace Eakin
Rocky Sherbine
Gerald Bashaw
Pepin Corso-Harris

Big Wood Canal Company

By: _____ By: _____
Albert P. Barker, Attorney Craig Hobdey, Attorney

VERIFICATION

State of IDAHO)
) ss.
County of Ada)

Albert P. Barker, 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 of person filing objection)

_____
(Attorney signing in representative capacity)

SUBSCRIBED AND SWORN to before me this 4th day of June, 2008.

(seal) SUZANNE ESTES NOTARY PUBLIC STATE OF IDAHO

Suzanne Estes
NOTARY PUBLIC FOR IDAHO
Residing in: Boise, Idaho
My Commission Expires: 6/11/2012