

RECEIVED
JUN 25 2008
DEPARTMENT OF
WATER RESOURCES

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

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.: 37-07609
	)	
Case No.: 39576	)	AFFIDAVIT OF ALBERT P. BARKER IN
	)	SUPPORT OF O'GARA ET AL.
	)	OPPOSITION TO SINCLAIR OIL'S AND
	)	NEWFOUNDLAND PARTNER'S MOTION
	)	TO FILE LATE OBJECTION AND
	)	REQUEST FOR EXPEDITED HEARING
STATE OF IDAHO	)	
	) ss.	
County of Ada	)	

ALBERT P. BARKER, being first duly sworn upon oath, deposes and states as follows:

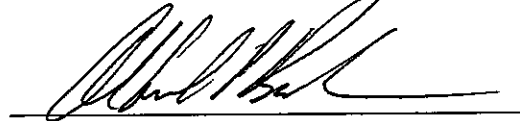
1. I am a duly licensed attorney with the law firm of Barker Rosholt & Simpson, LLP, who represents the interests of Tom O'Gara; John F. Stevenson; Bill Molyneux; Pete Van Der Meulen; Grace Eakin; Rocky Sherbine; Gerald Bashaw; Pepin Corso-Harris, also known as the Concerned Water Users (hereafter "CWU").

2. Attached herewith as Exhibit "A" is a true and correct copy of the Notice of Filing of Director's Report for Basin 37, Part 3 for Irrigation and Other Water Rights.

3. In his affidavit filed in support of this motion, Mr. Waldera incorrectly states that his client was not served with copies of the objections for subcases 37-415; 37-416; 37-4108; nor 37-12111. The objections were served in accordance with the Certificates of Service, via U.S. mail, directly to the claimant on 11/14/2007, as provided in the SRBA service rules. None of these objections to Sinclair Oil or Newfoundland Partners were returned for insufficient address, although we did receive some objections back in the mail that were filed against other non-Sinclair Oil or Newfoundland Partners rights.

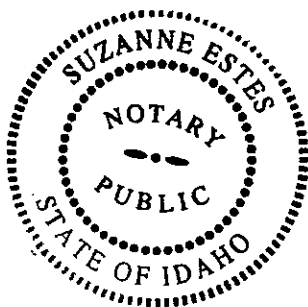
4. The court should not allow these late objections as same will set a precedent that a party will be allowed to ignore the objection deadline, and file late objections in retaliation to an objector exercising a valid right to object simply because. This would result in the curbing of a claimant's proper participation in the SRBA for fear of retaliation and intimidation—a public policy not envisioned by this court.

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker
Attorneys for O'Gara et al.

SUBSCRIBED AND SWORN before me this 23 day of June, 2008



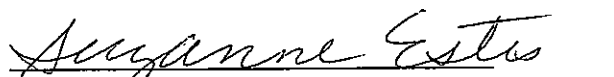

Notary Public for Idaho
Residing at Boise Idaho
My commission expires 6/1/2010

EXHIBIT A

NOTICE OF FILING OF DIRECTOR'S REPORT FOR BASIN 37, PART 3 FOR IRRIGATION AND OTHER WATER RIGHTS

The Director of the Idaho Department of Water Resources (IDWR) has filed with the Snake River Basin Adjudication (SRBA) District Court the Director's Report for Irrigation and Other Water Rights in Basin 37, Part 3. A map of the area covered by this Director's Report is attached to this Notice. This Director's Report contains the Director's recommendation to the SRBA Court as to how each of your claimed water rights should be decreed in the SRBA.

This Notice includes the Director's recommendation for your water rights claimed in the SRBA. IDWR is providing individual reports like this one to all claimants of irrigation and other water rights in your area. A complete copy of the Director's Report, listing all of these irrigation and other water rights claimed under state law and "dual based" claims by the federal government, is available at the SRBA courthouse in Twin Falls and the locations listed at the end of this Notice. Copies of the report can be made, but you may be charged for copying and mailing.

Also included in this Director's Report are some small domestic and stock water uses. The Director's Report for most small domestic and stockwater rights for IDWR Basin 37 was sent to the SRBA Court and individual water users on or about March 5, 1999. Some small domestic and stockwater claims were withheld from the earlier report. If a claim for small domestic and stockwater was withheld from the 1999 report, or filed after that report, it is reported in this Director's Report.

A portion of Basin 37 lies within the Eastern Snake Plain Aquifer (ESPA). Basin 37 ground water rights within this boundary were reported in the Director's Report for Irrigation & Other Uses, Reporting Area 16, IDWR Basin 37, Part 1, Groundwater, sent to the SRBA Court and individual water users on or about August 8, 2002. General provisions for Basin 37 ground water rights were inadvertently omitted from the Director's Report, but were included in copies of the Motion for Interim Administration in Basin 37, Part 1, Ground Water, sent to claimants of ground water rights recommended in the August 8 Director's Report on August 30, 2002. That mailing included General Provisions for Basin 37 that may apply to your water right. If a claim for ground water was withheld from the 2002 report, or filed after that report, it is reported in this Director's Report.

Additionally, the Director's Report for Basin 37, Part 1, Surface Water, encompassing the surface water rights within the portion of Basin 37 lying within the ESPA, was sent to the SRBA Court and individual water users on or about November 4, 2005, and also included General Provisions for Basin 37 that may apply to your water right. The Director's Report for Basin 37, Part 2, Surface Water, encompassing the surface water rights within the portion of Basin 37 lying mainly within the Camas Creek drainage was sent to the SRBA Court and individual water users on or about December 5, 2006, and also included General Provisions for Basin 37 that may apply to your water right. If a claim lying within either the Part 1 or Part 2 area was withheld from those reports, or filed after those reports, it is reported in this Director's Report.

INSTRUCTIONS FOR REVIEWING YOUR OWN WATER RIGHT

The enclosed description of your right is only the Director's recommendation to the SRBA Court on your water right. The Court will decide how it will decree your water right. You can agree or disagree with the Director's recommendation. If you agree with the Director's recommendation you do not need to do anything, pending further notice as described below. If you disagree with the Director's recommendation, you need to file an objection as described below.

INSTRUCTIONS FOR REVIEWING THE WATER RIGHTS OF OTHERS

The complete Director's Report contains recommendations to the SRBA Court on your water right and all other irrigation and other rights in your area. The Court will decide how it will decree all water rights. The Director's recommendations for the state based water right claims are listed in two sections:

- 1) **List of Recommended Water Rights --** Water right recommendations are listed numerically by water right number.
- 2) **List of Claims Recommended to Be Disallowed --** Water right claims to be disallowed are listed numerically by water right number. A short statement of the reason for IDWR's recommendation for disallowance is provided.

Also included in the complete Director's Report are descriptions of the United States' claims under federal law that have also been claimed under a state law basis. These are called "dual based" claims. While the Director neither investigates nor recommends the federal portion of these claims, a recommendation has been made for the state based portion of the claim.

If you want to review someone else's water right you need to look at the complete Director's Report, which is available at the SRBA courthouse in Twin Falls and other locations listed below in this Notice. Copies of the report can be made, but you may be charged for copying and mailing.

INSTRUCTIONS FOR TAKING A WATER RIGHT CLAIM TO COURT

What do I do if I disagree with a recommendation?

If you disagree with any element of the recommendation for your water right or anyone else's water right and want to be heard in court, file an objection with the SRBA Court. Objections must be made on the standard objection form ("Standard Form 1") available from any IDWR office or from the SRBA Court. You may also download a copy of the objection form from the SRBA Web Site at www.srba.state.id.us.

Your objection must be **received** by the SRBA Court on or before **November 14, 2007**.

What do I do if someone else objects to my water right recommendation?

If someone files an objection to your water right, or anyone else's water right, you may file a response to that objection. Responses to objections must be made on the standard response form ("Standard Form 2") available from any IDWR office or from the SRBA Court. You may also download a copy of the response form from the SRBA Web Site at www.srba.state.id.us.

Your response must be received by the SRBA Court on or before **January 15, 2008**.

What do I do if I want to participate in the court case on someone else's water right?

If you want to be involved in the court case on any water right in the Director's Report, you must file either an objection or a response by the dates listed above.

What happens if there are no objections to a water right?

After the deadline for filing objections, IDWR will file a list of all water right recommendations with no objections. Upon receipt of that list, the Court will schedule a hearing on whether the water right recommendations should proceed to partial decree. The SRBA Court will hear the uncontested recommendations on or about **March 18, 2008 at 1:30 p.m.** at the SRBA courthouse. Partial decrees will be issued following this hearing.

How will I know about the proceedings on water right recommendations to which objections were filed?

A notice will be mailed to you for court dates on your water right or for those where you filed an objection or a response. You will not receive notice of court dates on any other water right recommendations.

Additional information regarding water right claims can be found on the SRBA Web Site.

Note: The SRBA Court publishes a monthly Docket Sheet listing all objections and responses filed as well as when Director's Reports are filed. It does not list court dates for individual water right cases, but provides general information helpful to all participants in the SRBA.

The Docket Sheet is available at your county courthouse and all IDWR offices, or you may subscribe by contacting the SRBA Court or IDWR. The annual subscription fee is \$7.50. The Docket Sheet is also available on the SRBA Web Site at www.srba.state.id.us.

What if a water right is not in this report? What if a water right claim is filed late? How do I get notice of IDWR's recommendation for a late claim?

A water right for Basin 37 may not be included in this Director's Report if it was not filed in time for IDWR to investigate and report. These water rights will be reported at a later time in IDWR's *Director's Report for Late Claims*. This report may include recommendations for Basin 37, as well as other basins. As the Director files Director's Reports for any remaining water rights in Basin 37, he may also recommend additional general provisions that could also apply to your water rights. It is the responsibility of all parties to check with the SRBA Court or IDWR to see when this report is filed. It is also the responsibility of all parties to check this report carefully for water rights to which they want to object. A notice of filing of this report will not be sent to you unless you have a late claim that is recommended in the report.

CHANGES OF ADDRESS OR OWNERSHIP DURING THE SRBA COURT CASE

You must contact your regional IDWR office with your address change or if the ownership of your water right changes. You may download a copy of a change of ownership form from the IDWR Web Site at www.idwr.idaho.gov. Failure to notify IDWR may result in the loss of your water rights..

ADDITIONAL INFORMATION

If you have questions about the SRBA, public information brochures are available at any IDWR office and on the IDWR Web Site at www.idwr.idaho.gov. The IDWR webpage provides information regarding claims, mapping, and other valuable information on the SRBA and IDWR. Maps and aerial photography of this reporting area, as well as assistance in using the maps and the photography, are also available at the IDWR Southern regional office. You are also welcome to call IDWR at any of its offices or the SRBA Court. Additional information regarding water right claims can be found on the SRBA Web Site at www.srba.state.id.us. Finally, you may also want to consider contacting an attorney to assist you.

Snake River Basin Adjudication District Court

253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707
(208) 736-3011
<http://www.srba.state.id.us>

Idaho Department of Water Resources

322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098
(208) 287-4800
(800) 451-4129
<http://www.idwr.idaho.gov>

Idaho Department of Water Resources Eastern Region

900 North Skyline, Suite A
Idaho Falls, Idaho 83402-1718
(208) 525-7161

Idaho Department of Water Resources Northern Region

7600 Mineral Drive, Suite 100
Coeur d'Alene, Idaho 83815
(208) 762-2800

Idaho Department of Water Resources Southern Region

1341 Fillmore, Suite 200
Twin Falls, Idaho 83301-3380
(208) 736-3033

Idaho Department of Water Resources Western Region

2735 Airport Way
Boise, Idaho 83705-5082
(208) 334-2190

Blaine County Courthouse
210 2nd Ave S, Ste 110
Hailey, Idaho 83333

Butte County Courthouse
P.O. Box 171
Arco, Idaho 83213

Camas County Courthouse
P.O. Box 430
Fairfield, Idaho 83327

Elmore County Courthouse
150 S 4th E Ste 5
Mountain Home, Idaho 83647

Gooding County Courthouse
624 Main St.
P.O. Box 27
Gooding, Idaho 83333

Lincoln County Courthouse
111 West B St.
P.O. Drawer A
Shoshone, Idaho 83352

DEFINITIONS OF THE ELEMENTS OF YOUR WATER RIGHT

RIGHT NUMBER: Your water right is identified by a number assigned by IDWR. The first two digits identify IDWR's administrative basin number; for example, 37.

NAME AND ADDRESS: Your name and address should appear here. IDWR will use the most recent name and address in its records for the water right.

SOURCE: The name and/or type of the source where you divert your water. For example: "ground water," "spring," "unnamed stream," or "Common Creek."

QUANTITY: The amount of water recommended in either cubic feet per second (cfs) and/or the volume of water in acre feet per year (AFY).

PRIORITY DATE: The date used to determine the priority of your water right in relation to other water rights using water from the same source.

POINT OF DIVERSION: The legal location where you divert water from its source; generally described as 1/4 1/4 sections down to a 40-acre tract, or smaller. Other legal descriptions that might be used are: government lots, block, subdivision, parcel numbers, townsite names, mining claim information, homestead entry surveys, and other survey information.

PURPOSE OF USE: The general category of the type of use you can make of your water. Typical purposes of use include irrigation, domestic, and stock watering.

PERIOD OF USE: The period of time during the year when you can use the water for your water right.

PLACE OF USE: The legal location where you use your water right; generally described as 1/4 1/4 sections down to a 40-acre tract. Other legal descriptions that might be used are: government lots, block, subdivision, parcel numbers, townsite names, mining claim information, homestead entry surveys, and other survey information.

PLACE OF USE FOR IRRIGATION PROJECTS: Pursuant to Idaho Code Sections 42-219(2) and 42-1411(2)(h), IDWR has included GIS mapping for describing the place of use (digital boundary) for water rights meeting certain criteria (i.e. irrigation projects). The **PLACE OF USE** for irrigation projects is reported in digital format and uses GIS technology to particularly identify and display a geographic area encompassing the place of use with the aid of a computer. The GIS data is stored in digital format and contained on a CD-ROM and is properly marked for identification with the water right number. The CD-ROM will be retained by the SRBA Court. IDWR also retains a duplicate of the original CD-ROM. The electronic data contained on the CD-ROM is available for public use and is also accessible through the IDWR Web Site www.idwr.idaho.gov. Upon request, IDWR will provide a copy of the CD-ROM with the electronic data to claimants.

BASIS OF CLAIM: The method that was used to establish your claim. Examples include prior decree, posted notice, beneficial use (historical) method, license, or permit.

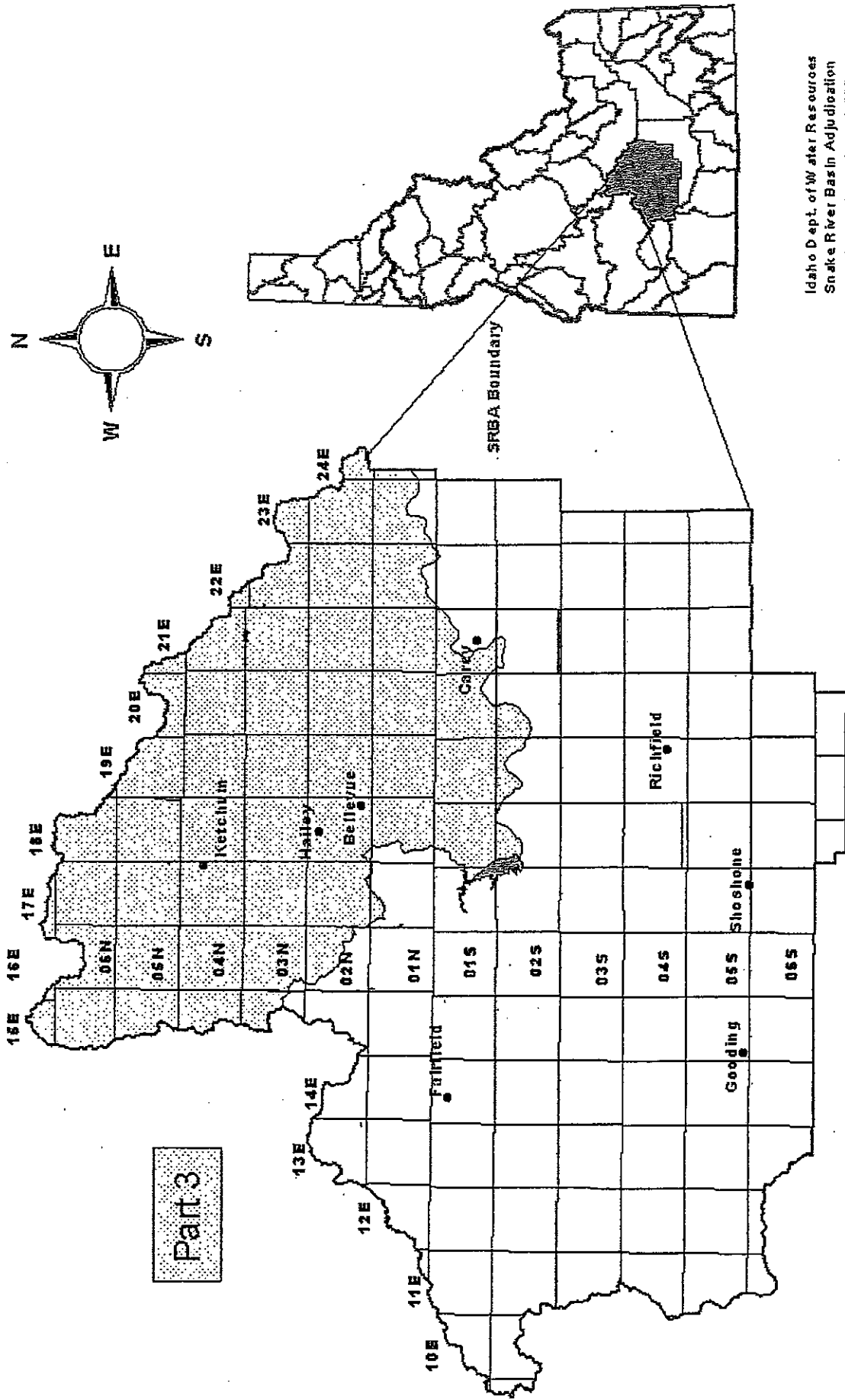
DUAL BASED CLAIMS: In some cases, the federal government has claimed one water right under two theories: a state basis and a federal law basis. Both theories will be reported on one form for that single water right. In most cases, the priority dates are different and will be listed separately. The federal law basis is separately indicated by a remark under the priority date that reads:

*4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT *

THIS WATER RIGHT IS ALSO CLAIMED BASED ON FEDERAL LAW WITH AN APRIL 17, 1926,
DATE OF PRIORITY PURSUANT TO AN EXECUTIVE ORDER SIGNED THE SAME DATE AND
KNOWN AS PUBLIC WATER RESERVE 107.

IDWR does not investigate or make recommendations regarding federal law based claims.

Basin 37 Map



Idaho Dept. of Water Resources
Snake River Basin Adjudication
Danni M Smith 09/13/2006