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MAY 29 2009

DEPARTMENT OF
WATER RESOURCES

Kenneth R. and Tammie Walters

Dana L. Hofstetter, ISB #3867
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
(208) 424-7800
(208) 424-8774 (Facsimile)

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

In Re SRBA

Case No. 39576

) Subcase Nos. 77-14306, 77-14307,
) 77-14308, 77-14309, 77-14310,
) 77-14311, 77-14312, 77-14313, and
) 77-14314
)
) **MOTION TO FILE LATE**
) **OBJECTIONS**

MOTION

Kenneth R. and Tammie Walters, by and through their counsel of record, Dana Hofstetter of Hofstetter Law Office, LLC, hereby move, pursuant to I.R.C.P. Rule 55(c) and SRBA Administrative Order 1, for leave to file late Objections to the above-referenced water rights. This Motion is supported by the Memorandum below, the proposed Objections attached hereto as Exhibit A, the contemporaneously filed Affidavit of Dana L. Hofstetter and the record.

MEMORANDUM

I. FACTUAL BACKGROUND

Water Right Nos. 77-4089 and 77-4219 cover historic irrigation on the Walters' property. The two rights together are used to divert water from streams via historic ditches to the same irrigated place of use. Both beneficial use rights were claimed with the same priority date of September 1, 1925. Both rights should have the same priority as the historic diversion system delivers the water by gravity from upgradient locations to the same irrigated place of use. *Affidavit of Dana L. Hofstetter.*

The Idaho Department of Water Resources ("IDWR") has split the instream stock water uses claimed under 77-4089 and 77-4219 and has given them separate water right numbers from the irrigation uses under 77-4089 and 77-4219. In the process of reviewing the November 28, 2008 Amended Director's Report and Director's Reports, the Walters' and their counsel overlooked that certain of the instream stock water right splits had been recommended with a priority of March 1, 1943, instead of September 1, 1925, as claimed. *Id.* It is believed that the instream stock water uses should have the same priority date as the related irrigation rights as the historic irrigation of this property would have been for stock pasture. *Id.*

A January 8, 1985 Affidavit of John H. Carrey that the Walters' counsel located in the IDWR online water right file for 77-4219, substantiates the September 1925 priority date for the Walters' water rights, including the subject stock water rights. *Id.*

Further, it has recently been discovered that the recommended place of use and point of diversion for split 77-14309 is somewhat incorrect and should have been objected to also. *Id.*

II. GOOD CAUSE EXISTS TO GRANT LEAVE TO FILE LATE OBJECTIONS

The decision to allow a late objection to be filed in the SRBA, is based on the good cause standard of I.R.C.P. 55(c). *Order on Motion to Set Aside Partial Decrees and File Late Objections, SRBA Subcase Nos. 65-19812 et al. (January 31, 2001)*. The Rule 55(c) standard requires good cause and a meritorious defense. *McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d 274, 278 (Ct. App. 1993). The Rule 55(c) standard for setting aside entry of default is less stringent than the Rule 60(b) standard for setting aside default judgment. *Id.* at 935-36, 854 P.2d at 278-79. This approach is consistent with the policy that cases generally should be decided on their merits and that in an earlier stage of where there has been no judgment, a liberal approach is appropriate. *Id.* at 936, 854 P.2d at 279. The Rule 55(c) standard has been described as requiring the movant to show "whether the default was willful, whether setting aside the default would prejudice the opponent and that a meritorious position exists." *Id.* This Motion is consistent with these factors.

A. The failure to submit timely Objections was not willful as the difference between he recommended priority date and the claimed priority date was only recently discovered for the split stock water rights.

IDWR split the stock water rights from the irrigation rights and while the 1943 priority date recommended for the irrigation right 77-4089 was timely objected to, the 1943 priority date recommendation for the stock water splits of that right was overlooked. The split water rights had the same objection deadline, all these Director's Reports being issued together. Thus, if the stock water priority date issue had been identified, this would have been objected to at the same time that the Objection to priority was filed for the companion irrigation right, 77-4089. Thus, the omission was not willful. Likewise, the failure to object to the place of use and point of diversion for 77-14309 was not willful.

B. There would be no prejudice as these proceedings are at a relatively early stage and Rule 55(c) policy favors deciding cases on the merits.

All of the subject rights were claimed with the 1925 priority date along with the root irrigation right under amended claims. The Objections were due in December 2008, about six months ago. These proceedings are at a relatively early stage that filing the subject late Objections would not cause prejudice.

C. A meritorious case is presented as the Affidavit of John H. Carrey establishes the September 1925 priority date..

The 1985 Affidavit of John H. Carrey from the IDWR online water right file for 77-4219 substantiates the September 1925 priority date for the Walters' water rights. *Affidavit of Dana*

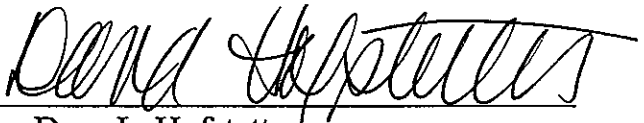
L. Hofstetter. It is likely that the subject property historically was irrigated pasture, as it is now, and the stock water use priority, therefore, likely would coincide with the irrigation priority. *Id.*

III. CONCLUSION

For the reasons stated above, this Motion to File Late Objections should be granted.

RESPECTFULLY SUBMITTED this 27th day of May, 2009.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter

CERTIFICATE OF SERVICE

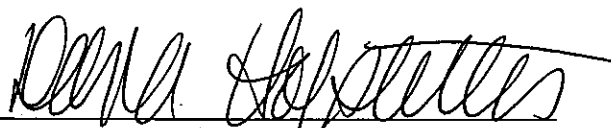
I hereby certify that on the 27th day of May, 2009, I caused to be served copies of the foregoing **Motion to File Late Objections** by the methods indicated below:

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
✱ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449
✱ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724
✱ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

4071.1/8586


Dana L. Hofstetter

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 39576

A. Subcase 77-14306

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

Daytime Phone: 208-628-3803

Name & Address of Attorney, if any:

Dana Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

208-424-7800

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

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549



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: as claimed September 1, 1925
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 OBJECTION(S): Claimed priority is based on actual historic beneficial use. See January 8, 1985 Affidavit of John H. Carrey.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

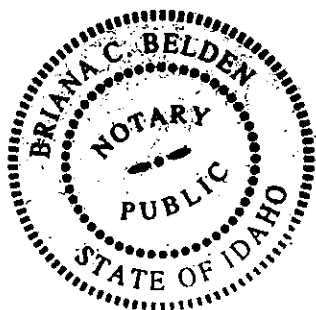
Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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.

Dana Hofstetter
Signature of person filing objection

Dana Hofstetter
Attorney signing in representative capacity

Subscribed and sworn to before me on: May 27, 2009



Briana C. Belden
Notary Public for the State of Idaho
Residing at: Meridian
My Commission expires: 01/16/13

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 May 27, 2009, I filed the original with the SRBA Court and mailed copies of this Objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court (*via U.S. Mail*)
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to the claimant of the water right at the following addresses:

Name: Kenneth R. and Tammie Walters
P.O. Box 31
Riggins, Idaho 83549

3. Copies to:

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PO Box 83720
Boise, ID 83720-0098

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

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



Signature of Objector or attorney
mailing on Objector's behalf

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 39576

A. Subcase 77-14307

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

Daytime Phone: 208-628-3803

Name & Address of Attorney, if any:

Dana Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

208-424-7800

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

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

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

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Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☒ **Priority Date**
Should be: as claimed September 1, 1925
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 OBJECTION(S): Claimed priority is based on actual historic beneficial use. See January 8, 1985 Affidavit of John H. Carrey.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

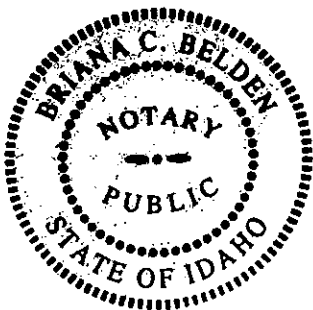
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Signature of person filing objection

Dana Hofstetter

Attorney signing in representative capacity

Subscribed and sworn to before me on: May 27, 2009



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Residing at: Meridian
My Commission expires: 01-16-13

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2. Copies to the claimant of the water right at the following addresses:

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P.O. Box 31
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Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449

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



Signature of Objector or attorney
mailing on Objector's behalf

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 39576

A. Subcase 77-14308

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

Daytime Phone: 208-628-3803

Name & Address of Attorney, if any:

Dana Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

208-424-7800

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

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

D. I object to the following elements as recommended in the Director's Report.
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Should be: _____
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 - ☐ This water right was not recommended, but should be recommended with the elements described above.

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County of Ada)

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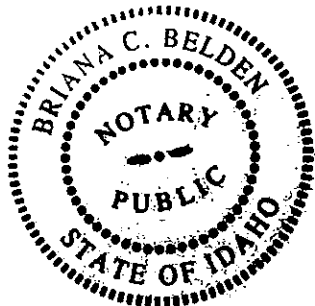
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Dana L. Hofstetter
Attorney signing in representative capacity

Subscribed and sworn to before me on:

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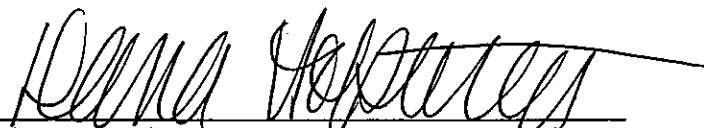
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Signature of Objector or attorney
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case 39576

A. Subcase 77-14309

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

Daytime Phone: 208-628-3803

Name & Address of Attorney, if any:

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608 West Franklin Street

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3. ☐ **Quantity**
Should be: _____
4. ☒ **Priority Date**
Should be: as claimed September 1, 1925
5. ☐ **Point of Diversion**
Should be: _____
6. ☒ **Instream Flow Beginning and Ending Point**
Should be: Add NWNE Section 32
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: Add NWNE Section 32
10. **I object because:**
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 - ☐ This water right was not recommended, but should be recommended with the elements described above.

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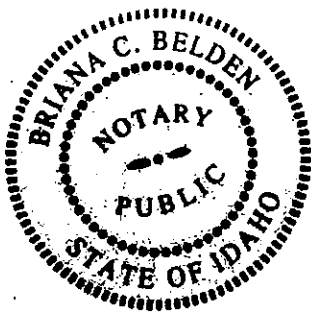
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Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

**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 39576

A. Subcase 77-14310

(Insert water right number)

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

Daytime Phone: 208-628-3803

Name & Address of Attorney, if any:

Dana Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

208-424-7800

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Address: P.O. Box 31
Riggins, Idaho 83549

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) ss.
County of Ada)

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(Name of person filing objection)

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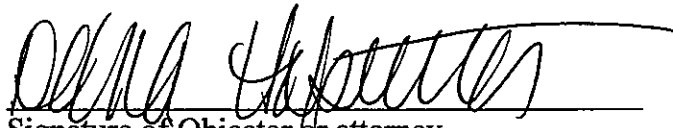
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P.O. Box 31
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Signature of Objector or attorney
mailing on Objector's behalf

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 39576

A. Subcase 77-14311

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

Daytime Phone: 208-628-3803

Name & Address of Attorney, if any:

Dana Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

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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 OBJECTION(S): Claimed priority is based on actual historic beneficial use. See January 8, 1985 Affidavit of John H. Carrey.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

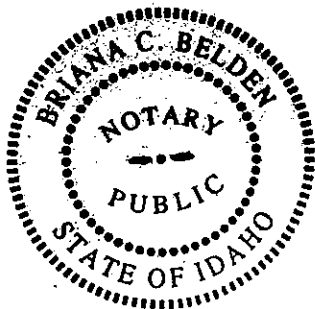
Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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.

Signature of person filing objection

Dana L. Hofstetter
Attorney signing in representative capacity

Subscribed and sworn to before me on: May 27, 2009



Briana C. Belden
Notary Public for the State of Idaho
Residing at: Meridian
My Commission expires: 01-16-13

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 May 27, 2009, I filed the original with the SRBA Court and mailed copies of this Objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court (*via U.S. Mail*)
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to the claimant of the water right at the following addresses:

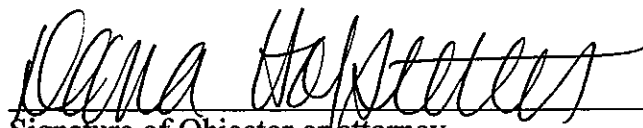
Name: **Kenneth R. and Tammie Walters**
P.O. Box 31
Riggins, Idaho 83549

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

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


Signature of Objector or attorney
mailing on Objector's behalf

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 39576

A. Subcase 77-14312
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

Daytime Phone: 208-628-3803

Name & Address of Attorney, if any:

Dana Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

208-424-7800

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

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

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: as claimed September 1, 1925
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: _____
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Should be: _____
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F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

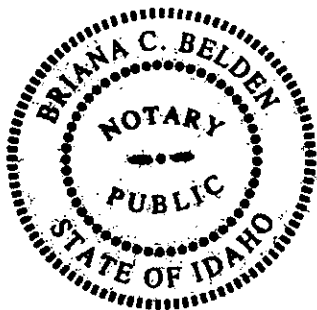
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Signature of person filing objection

Dana Hofstetter
Attorney signing in representative capacity

Subscribed and sworn to before me on: May 27, 2009



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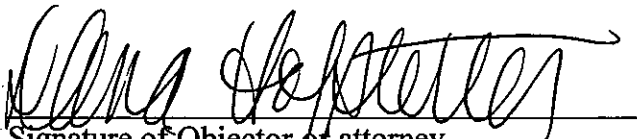
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P.O. Box 31
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Environment and Natural Resources Division
550 West Fort Street, MCS 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

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 39576

A. Subcase 77-14313
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

Daytime Phone: 208-628-3803

Name & Address of Attorney, if any:

Dana Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

208-424-7800

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

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
Riggins, Idaho 83549

D. I object to the following elements as recommended in the Director's Report.
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) ss.
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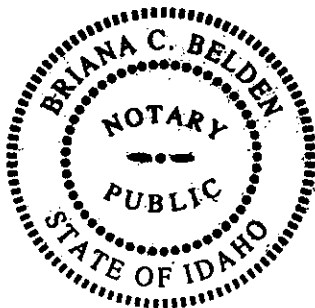
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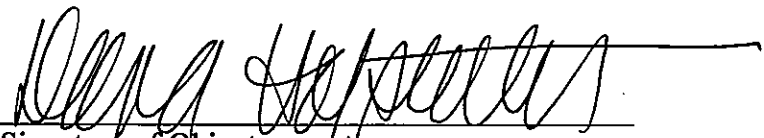
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Signature of Objector or attorney
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case 39576

A. Subcase 77-14314
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
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Daytime Phone: 208-628-3803

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Name: Kenneth R. and Tammie Walters

Address: P.O. Box 31
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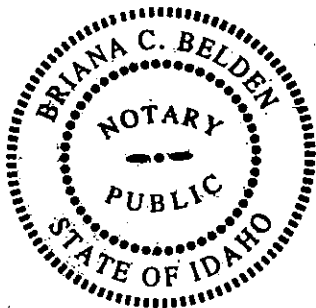
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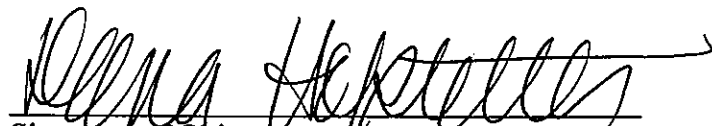
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