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JUL 30 2010

DEPARTMENT OF
WATER RESOURCES

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. 75-19C

Case No. 39576

STANDARD FORM 1
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING

Name: City of Salmon
Address: 200 Main St.
Salmon, ID 83467

Daytime Phone: (208) 756-3214

Name & Address of Attorney:

Josephine P. Beeman
Beeman & Associates, P.C.
409 W. Jefferson Street
Boise, ID 83702
(208) 331-0950
(208) 331-0954 (fax)
jo.beeman@beemanlaw.com

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

City of Salmon
200 Main St.
Salmon, Idaho 83467

I object to the following elements as recommended in the Director's Report.

1. ☐ **Name and Address**

Should be: _____

2. ☒ **Source**

Should be: 1) Jesse Creek, Pollard Canyon Creek, and Chipps Creek. 2) Second paragraph should be deleted or revised to properly recognize the priority date of this right. 3) The third paragraph should be deleted.

3. ☒ **Quantity**

Should be: 1) The combined right diversion rate limit of 11.6 cfs should be deleted. 2) The annual volume of diversion should be deleted or revised to a combined limit for all rights held by the City.

4. ☐ **Priority Date**

Should be: _____

5. ☒ **Point of Diversion**

Should be: 1) The points of diversion, injection, and rediversion for Pollard Canyon Creek should be T21N R21E Section 10 NENE. 2) Omit the reference to rediversion from Chipps Creek.

6. ☐ **Instream Flow Beginning and Ending Point**

Should be: _____

7. ☐ **Purpose(s) of Use**

Should be: _____

8. ☒ **Period of Year**

Should be: The period of use should be January 1 to December 31.

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.

REASONS SUPPORTING OBJECTIONS:

(See also attached July 19, 2010 Affidavit of Paul Drury.)

Objections to Source and Point of Diversion: Maintenance of historic distribution of water from Jesse Creek and tributaries requires recognition of Jesse Creek, Pollard Canyon Creek and Chipps Creek as the source of supply the City has relied upon for many decades. The City uses Jesse Creek to the extent water is available to satisfy demands under its rights in priority. Water available from Pollard Canyon Creek is then used as needed under its rights in priority before calling for water at its Chipps Creek diversion. The Amended Director's Report for the City of Salmon water rights 75-4, 75-17B, 75-19C, 75-26A, and 75-10075 recognizes the City's historic practice of diverting first from Jesse Creek, then from Pollard Canyon Creek, and lastly from Chipps Creek, but then restricts the use of Pollard Canyon Creek and Chipps Creek at times when Jesse Creek alone cannot satisfy the City's rights in priority. This would occur because in the amended recommendations these rights cannot be diverted from Pollard Canyon or Chipps Creeks when water rights with equal priority date are fully deliverable at the Farmers Ditch diversion. This is not consistent with historical practices and, since Farmers Ditch is downstream from the City's diversion on Jesse Creek, the City's Jesse Creek diversions may not satisfy the City's rights in priority because the City would be prevented from its historic practice of diverting available water from Pollard Canyon and Chipps Creek. In addition, the computation of water availability at the Farmers Ditch diversion should include all the water available at any given time from all three sources upstream of the Farmers Ditch. In contrast, water right 75-5 (Arrowhead Irrigation District) was recommended and water right 75-2 (Edwards) was partially decreed without limitations associated with changes to these rights following their original decrees.

Legal descriptions for points of diversion, redirection, and injection for Pollard Canyon Creek:

Diversion: Township 21N Range 21E Section 10, NENE

Injection: Township 21N Range 21E Section 10, NENE

Rediversion: Township 21N Range 21E Section 10, NENE

Legal description for point of diversion for Chipps Creek:

Diversion: Township 21N Range 21E Section 11, NWNW

Objections to Quantity: 1) The recommended maximum diversion rate for the City is not accurate nor required. Water District 75A annual reports and other IDWR records document diversion rates to the City's water treatment plant exceeding the recommended combined diversion rate limit of 11.6 cfs. IDWR's practice is to include a combined diversion limit only on the description of the most junior right, in this matter License No. 75-7563.

2) Water District 75A records and internal measurement data collected by the City document annual diversion volumes greater than recommended for the City's combined rights. Distribution of water in Water District 75A and other water districts on creeks and rivers has historically not included regulation of the annual volume of diversion. If such regulation is implemented, the impact on the City will be lessened by regulating the total volume allowed to be diverted under a combination of the City's rights instead of regulating volume for each

specific right. This is needed to prevent accounting of diversions to the oldest priority water rights when junior priority rights are also in priority.

Objections to Period of Year: The City now diverts water, and has since the system was first constructed and acquired by the City, to meet municipal needs at any and all times of the year including the winter (non-irrigation) season. IDWR applied an erroneous policy, one that has not been consistently used, relative to extending the period of use when the nature of use is changed.

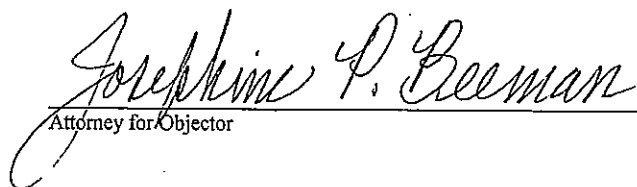
Explanatory Material should be revised as follows: Use of water under this right will be administered during times of shortage by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this action, this water right is within State Water District 75A.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

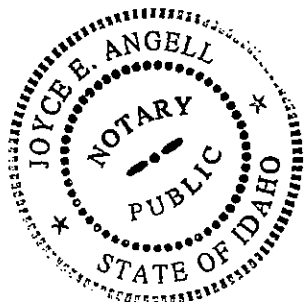
Josephine P. Beeman, duly sworn, upon oath, deposes and says:

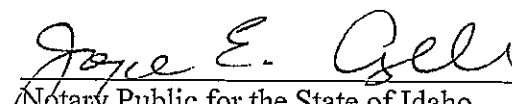
That I am the attorney for the party objecting and that I have read this objection, know its contents, and believe that the statements are true to the best of my knowledge.



Attorney for Objector

Subscribed and sworn to before me on: July 28, 2010





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 7-29-14

CERTIFICATE OF MAILING

I certify that on July 28, 2010, I mailed the original and copies of this Objection, including the July 19, 2010 Affidavit of Paul Drury to the following:

Original to: Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

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

City of Salmon
200 Main St.
Salmon, ID 83467

Copies to:

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

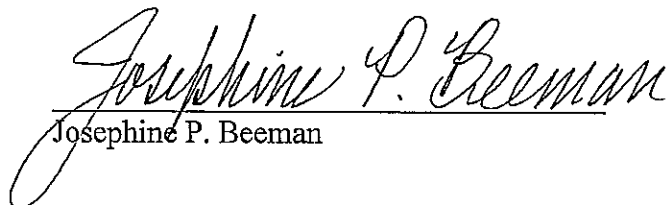
Lemhi County Courthouse
206 Courthouse Dr.
Salmon, ID 83467

United States Department of
Justice
Environment & Nat'l
Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Edgar & Myrtle Edwards
Represented by:
Randall C. Budge
201 E. Center, Ste. A2
P.O. Box 1391
Pocatello, ID 83204-1391

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

Arrowhead Water District
Represented by:
Jerry R. Rigby
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440-0250


Josephine P. Beeman

**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. 75-19C

Case No. 39576

**AFFIDAVIT OF PAUL DRURY, DATED JULY 19, 2010,
IN SUPPORT OF CITY OF SALMON'S STANDARD FORM 1: OBJECTION
DATED JULY 28, 2010**

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Phone: 208-331-0950
Fax: 208-331-0954
jo.beeman@beemanlaw.com

Attorneys for the City of Salmon

**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)
_____)

Subcase No. 00-9202175 [BWI 92-21-75]

**AMENDED AFFIDAVIT OF PAUL DRURY
IN SUPPORT OF CITY OF SALMON'S
SUPPLEMENTAL RESPONSE TO STATE OF
IDAHO'S MOTION FOR ORDER OF INTERIM
ADMINISTRATION OF WATER RIGHTS IN
BASIN 75**

STATE OF IDAHO)
COUNTY OF ADA) ss:

I, Paul Drury, after first being duly sworn upon oath, depose and state that:

1. I am over 18, a resident of the State of Idaho, and am employed by ERO Resources Corporation, a business consisting of natural resource and environmental consultants.
2. On behalf of the City of Salmon, I have reviewed the SRBA District Court files for the City of Salmon subcases 75-7, 75-17D (75-17A and 75-17B), 75-19E (75-19B and 75-19C), 75-26A, 75-10075, and 75-10076 (75-4 and 75-114). The court files include the City's SRBA claims, the August 1, 2007 Director's Report, corresponding objections/amended objections by Arrowhead Water District (Arrowhead) and Edgar and Myrtle Edwards (Edwards), and the June 22, 2010 Amended Director's Report.
3. The City of Salmon subcases involve water rights from Jesse Creek and its tributaries Pollard Canyon Creek and Chipps Creek. The Idaho Department of Water Resources

Water District 75A encompasses the Jesse Creek drainage, including Pollard Canyon Creek and Chipps Creek.

4. Since March 2009 I have been assisting the City of Salmon in settlement negotiations to resolve the Arrowhead and Edwards objections. These negotiations are ongoing and I am actively drafting and reviewing stipulated elements for inclusion in Standard Form 5's that will encompass the settlement agreement among the parties.
 - a. The objections to the August 1, 2007 Director's Report for subcases 75-7, 75-17D (75-17A and 75-17B), 75-19E (75-19B and 75-19C), 75-26A, 75-10075, and 75-10076 (75-4 and 75-114) were the *framework* for the negotiations.
 - b. The negotiations are *based* on my comprehensive review (with Norm Young of ERO) of the historic practices/records for the City of Salmon's municipal water rights and delivery system, as well as watermaster records for Water District 75A.
 - c. In April 2010 I visited the Jesse Creek drainage and observed the diversions for the City of Salmon, Arrowhead, and Edwards. Due to the unfortunate death of the current watermaster for Water District 75A, my site visit was made in the company of the backup watermaster Paul Stokes, who is also an employee with the City of Salmon. During this site visit I obtained GPS coordinates for the three diversions operated by the City of Salmon.
5. In March 2010, Monica Van Bussum of the Idaho Department of Water Resources was included in settlement meetings and subsequent settlement correspondence between ERO for the City of Salmon and Roxanne Brown (SPF Engineering) for Arrowhead.
6. In order to confirm the parties' settlement progress, ERO recommended to the City of Salmon's counsel that the SRBA Court schedule a mandatory in person settlement conference. On behalf of the City of Salmon, I prepared for and attended the April 14, 2010 SRBA settlement conference at the Idaho Department of Water Resources in Boise, Idaho, intending to review the details of the parties' written negotiations in which I am an active participant and drafter. SRBA Special Master Ted Booth was the settlement moderator.
7. Hours before the April 14, 2010 settlement conference, I received IDWR's April 13 email of draft recommendations proposing to amend the August 2007 Director's

Report for the City of Salmon water rights 75-7, 75-17D (75-17A and 75-17B), 75-19E (75-19B and 75-19C), 75-26A, 75-10075, and 75-10076 (75-4 and 75-114).

8. This was my first knowledge that IDWR was considering amending its August 2007 Director's Report.
9. The week of April 26, 2010 I received a copy of the State of Idaho's April 23, 2010 Motion FOR ORDER OF INTERIM ADMINISTRATION OF WATER RIGHTS IN BASIN 75 AND REQUEST FOR EXPEDITED HEARING. The Motion seeks "an order authorizing interim administration of water rights in Basin 75 in accordance with the Director's Report ... and partial decrees that supersede the Director's Reports."
10. On June 22, 2010 IDWR issued an Amended Director's Report for the City of Salmon water rights 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, and 75-10075.
11. Based on the City of Salmon's SRBA claims and the June 22, 2010 Amended Director's Report, I prepared two tables that are Attachment A to this Affidavit. Attachment A, page 1, is a table entitled Irrigation Season Authorized Diversion Rate. Attachment A, page 2, is a table entitled Winter Season Authorized Diversion Rate. Reviewing Attachment A, it is evident that the Amended Director's Report, while consistent with the claimed irrigation season diversions, excludes any non-irrigation season diversions from Jesse Creek, Pollard Canyon Creek and Chipps Creek.
 - a. During the non-irrigation season, the City of Salmon claims originally filed in 1990 best reflect the historic and current diversions and use from Jesse Creek and its tributaries.
 - b. During the irrigation season, the June 22, 2010 Amended Director's Report is more consistent with the historic and current diversions and use from Jesse Creek and its tributaries, although the recommendations add undue restrictions to the water rights which will need to be addressed as explained below.
12. **The Amended Director's Report for the City of Salmon water rights 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, and 75-10075 does not recognize the historical use of water from all three sources on a year round basis by the City of Salmon.** Water from all three sources has historically been available to the

City of Salmon and its predecessor's. Use of Jesse Creek waters for year round municipal purposes within the City began in 1890 with the development of the Salmon City Water Company. The City purchased the Salmon City Water Company in 1912 and subsequently upgraded the water system and acquired additional water rights within the Jesse Creek drainage which it has accessed from all three sources -- Jesse Creek, Pollard Canyon Creek, and Chipps Creek -- on a year round basis. Attachment B to this affidavit is a copy of the City of Salmon's Motion to File Late Claim 75-2167 that ERO Resources assisted in preparing. The Motion includes the late claim and the following documentation of this continuing historic practice:

- (1) Water Right License No. 75-2167.
- (2) Copy of document dated January 2, 1912 deeding License No. 75-2167 to the City of Salmon.
- (3) Copy of IDWR "Water Rights Proof Reading Report dated December 13, 1984 listing License No. 75-2167 in the name of Salmon City Water Co. Ltd. for municipal purposes within the City of Salmon.
- (4) Copy of IDWR Memorandum Decision and Order dated June 6, 1981, including on page 3 a summary of testimony from Virgil Schofield, watermaster of Water District 75A (Jesse Creek and Tributaries), noting winter time use of water by the City of Salmon.
- (5) Copy of U.S. Forest Service Management Plan for the Salmon Municipal Watershed dated June 1975 confirming year round municipal diversions from Jesse Creek, Pollard Canyon Creek, and Chipps Creek.

13. **The Amended Director's Report for the City of Salmon water rights 75-4, 75-17B, 75-19C, 75-26A, and 75-10075 lists only Jesse Creek as the source. The source should list all three creeks or, alternatively, Jesse Creek should be defined to include its tributaries for these rights.** Presently, the amended Director's Report for these rights lists a point of diversion, injection, and rediversion from Jesse Creek in the NENE Section 2, a point of diversion, injection, and rediversion from Pollard Canyon Creek in the SWSW Section 2 (should be NENE Section 10) and lists a point of rediversion (should be diversion) from Chipps Creek in the NWNW Section 11.

14. **The Amended Director's Report for the City of Salmon water rights 75-4, 75-17B, 75-19C, 75-26A, and 75-10075 recognizes the City's historic practice of diverting first from Jesse Creek, then from Pollard Canyon Creek, and lastly from Chipps Creek, but then restricts the use of Pollard Canyon Creek and Chipps Creek at times when Jesse Creek alone cannot satisfy the City's rights in priority.** This would occur because in the amended recommendations these rights cannot be diverted from Pollard Canyon or Chipps Creeks when water rights with equal priority date are fully deliverable at the Farmers Ditch Diversion. This is not consistent with historical practices and, since Farmers Ditch is downstream from the City's diversion on Jesse Creek, the City's Jesse Creek diversions may not satisfy the City's rights in priority because the City would be prevented from its historic practice of diverting available water from Pollard Canyon and Chipps Creek. In addition, the computation of water availability at the Farmers Ditch diversion should include all the water available at any given time from all three sources upstream of the Farmers Ditch. In contrast, water right 75-5 (Arrowhead Irrigation District) was recommended and water right 75-2 (Edwards) was partially decreed without limitations associated with changes to these rights following their original decrees.
15. **The Amended Director's Report for the City of Salmon water rights 75-4, 75-7, 75-17A, 75-17B, 75-19B, 75-19C, 75-26A, 75-114, and 75-10075 limits the combined diversion rate to 11.6 cfs.** This limitation should be removed considering:
- a. **Diversion rates of more than 14 cfs were recorded by the watermaster in the 1987-1989 watermaster reports;** Attachment C page 1 is an ERO Resources summary of *maximum diversion rates* by the City of Salmon recorded in the watermaster delivery records from 1970 to the 2008. Attachment C, Pages 2-29 are copies of Water District 75A watermaster records for the 1987 delivery season (with ERO annotations from IDWR microfiche).
 - b. **IDWR calculated the system diversion capacity at approximately 20 cfs.** Attachment D is the January 30, 1996 report of an IDWR field examination conducted September 20, 1995. Page 1 of attachment D has been relocated from

within the report for convenience; it includes an estimate for the City of Salmon's diversion capacity from Jesse Creek calculated by IDWR at 19.95 cfs. ERO Resources understands that the September 20, 1995 field examination was conducted for purposes of licensing 75-7563 (1990 priority) which was then licensed with an 11.6 cfs combined diversion rate limit. ERO further understands that this 11.6 cfs limitation is the basis for the Amended Director's Report inclusion of an 11.6 cfs combined diversion rate limit for all of the City's water rights that were in existence as of or prior to November 19, 1987.

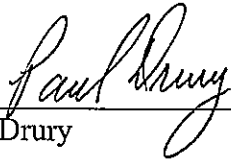
16. **The Amended Director's Report for the City of Salmon water rights 75-4, 75-19C, 75-26A, 75-114, and 75-10075 includes limits to the annual diversion volume for each right and a combined volume limit for rights 75-7, 75-17A, and 75-19B.**

There is no volume limit for water right 75-17B.¹ The watermaster records and the City's separate internal records demonstrate that some years the *historic volume* diverted by the City is greater than the recommended volume limits. Attachment E, page 1 is an ERO Resources summary of the total diversion volumes for the City of Salmon from Water District 75A watermaster records for 1970 through 2008. Attachment E, page 2, is an ERO summary of data collected by the City of Salmon of combined Jesse Creek, Pollard Canyon Creek, and Chipps Creek diversions to the City's water treatment plant for the years 1992 through 2007. On some years the City could be limited in supplying water to its customers in the late irrigation season, especially if the volume limits accrue to the most senior rights first. The historical and current practice of administering rights in Water District 75A does not limit the annual volume diverted under any water right. This practice should be continued or the accounting for annual volume should be mitigated by accounting diversion volume to the most junior rights in priority first, or preferably, combining the volume limit for all rights.

¹ The annual diverted volume total for the City of Salmon's municipal rights from the June 25, 2010 Amended Director's Report is 1698.5 acre-feet without a diverted volume for 75-17B. The annual volume for 75-17B can be calculated at a maximum of 101.9 acre-feet if 75-17B is diverted continuously from April 1 through October 31.

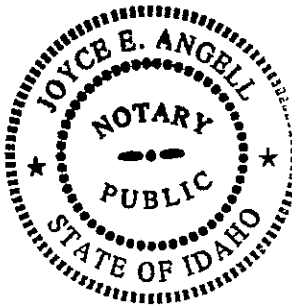
FURTHER YOUR AFFIANT SAYETH NAUGHT.

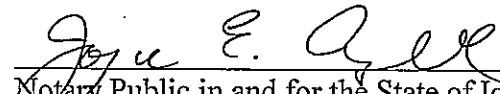
DATED this 19th day of July 2010.



Paul Drury

SUBSCRIBED AND SWORN to before me this 19th day of July 2010.





Notary Public in and for the State of Idaho
Residing in Boise, Idaho
My Commission Expires: July 29, 2014

CERTIFICATE OF MAILING

I certify that on July 19, 2010, I mailed copies of this document, including all attachments, to the following:

INTERIM ADMINISTRATION
IN BASIN 75

STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

A C & LUELLA PILKERTON
ALBERT & ALVERA FOLS
CHARLES & MARY HARLING
JAMES EDGREN
JENNIFER BRADY
LLOYD & SHERYL TUTOR
TRACY MASCIA
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113 MAIN AVE W, STE 303
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GEORGE MATEJKO
BOX 129
CARMEN, ID 83462

ROBERT M & JACQUELINE ERNEST
BOX 132
CARMEN, ID 83462

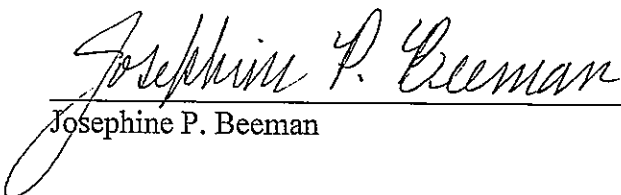
JAMES R & ROWENA D QUINN
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WILLIAM W CLEMENTZ
BOX 225
CARMEN, ID 83462

JOHN E & RUTH C BURNS
BOX 264
CARMEN, ID 83462

RICK & LINDA RICE
BOX 285
CARMEN, ID 83462

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098


Josephine P. Beeman

See Subcase 75-4 for Attachments to Affidavit