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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: 00-91013
Case No. 39576) (Basin-Wide Issue 13)
)
) OBJECTION RE: STATE OF
) IDAHO'S *SECOND AMENDED*
) *MOTION TO INCLUDE*
) *SUBORDINATION LANGUAGE ON*
) *WATER RIGHTS AFFECTED BY THE*
) *SWAN FALLS AGREEMENT*

Please Print or Type the Following Information:

NAME AND ADDRESS OF PERSON OBJECTING:

Name: Larry Bethke
Address: 2745 Breeding Road
American Falls, ID 83211
Phone: (208) 226-2201

Name and Address of Attorney, if any:

Racine Olson Nye Budge & Bailey
Candice McHugh
101 S. Capitol Blvd., Ste. 300, Boise, ID 83702
(208) 395-0011

Water Right Number for which I am objecting: 35-8046
(Please use one *Objection* form per water right)

Please Check Applicable Box:

- ☒ I have reviewed the State of Idaho's *Second Amended Motion*.
- ☒ I wish to object to my water right not being included on the list of water rights on Attachment A.

OBJECTION RE: STATE OF IDAHO'S *SECOND AMENDED MOTION TO INCLUDE SUBORDINATION LANGUAGE ON WATER RIGHTS AFFECTED BY THE SWAN FALLS AGREEMENT*

☒ The reason(s) I believe my water right should be included on Attachment A are as follows: * The property in question has been irrigated since 1974.
The wells used to irrigate the property changed location in approximately 1996, however
water was used on the property in question since 1974.

☒ I wish to object to my water right being included on the list of water rights on Attachment B.

☒ The reason(s) I believe my water right should not be included on Attachment B are as follows: * Because the property was irrigated since 1974. See above.

☒ I have included proof with this *Objection* supporting that beneficial use was made under the right prior to October 25, 1984.

Signature:  Dated: 5-19-2011

* Attach additional sheets of paper as necessary to provide complete explanation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May, 2011, a true and correct copy of the foregoing was mailed with sufficient first-class postage to the following:

DIRECTOR OF IDWR
P.O. Box 83720
Boise, Idaho 83720

Faulkner Land & Livestock Co.
North Snake Ground Water District

Represented by:
Thomas J. Budge
PO Box 1391
Pocatello, ID 83204-1391

Basin and Range Resource
Interested Water Users
Jeff & Jackie Harper
Represented by:
Dana L. Hofstetter
608 W Franklin St
Boise, ID 83702

Burgess Canal, *et al.*
Represented by:
Jerry R. Rigby
Po Box 250
Rexburg, ID 83340-0250

Clear Spring Foods Inc.
Idaho Power Company
Represented by:
John K. Simpson
PO Box 2139
Boise, ID 83701-2139

City of Pocatello
Represented by: Josephine P. Beeman
409 W Jefferson St
Boise, ID 83702

Idaho Ground Water Appropriators
Represented by:
Randall C. Budge
PO Box 1391
Pocatello, ID 83204-1391

STATE OF IDAHO
Office of Attorney General
Attn: Clive Strong / Shasta Kilminster-Hadley
P.O. Box 83720
Boise, ID 83720

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

SRBA DISTRICT COURT VIA FACSIMILE
P.O. Box 2707
Twin Falls, Idaho 83303-2707



Signature

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CANCELLED PERMIT NO.)
35-08046 IN THE NAME OF ARTHUR ADOLF)
AND CANCELLED PERMIT NO. 35-08050 IN) PRELIMINARY ORDER
THE NAME OF AMANDA SHERMAN)
_____)

This matter having come before the Idaho Department of Water Resources (department), as a result of the submittal of proof of beneficial use of water for the above captioned cancelled permits, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On August 3, 1982, the department issued Permit No. 35-08046 to Arthur Adolf as follows:

Ident No: 35-08046
Permit holder: Arthur Adolf
Rate of div: 8.0 cfs
Source: Groundwater
Use: Irrigation
Pl use: 400 acres in S1/2NE, NW1/4 Sec 13 and
 NE1/4 Section 14, all in T7S, R29E, B.M.
Pts of div: NWNW, SENE Section 13 and NWNE Sec 14,
 T7S, R29E, B.M.

2. On September 16, 1982, the department issued Permit No. 35-08050 to Amanda Sherman as follows:

Ident No: 35-08050
Permit holder: Amanda Sherman
Rate of div: 3.2 cfs
Source: Groundwater
Use: Irrigation
Pl use: 160 acres in NW1/4 Section 14, T7S,
 R29E, B.M.
Pt of div: NENW Sec 14, T7S, R29E, B.M.

3. On November 9, 1994, the department issued an Order for Temporary Stay of Development and Notice of Formal Proceedings (Temporary Stay Order) to the permit holders. The order was based on a moratorium which had been established, seven consecutive years of drought and delivery calls made by senior surface water and ground water right holders. The permit holders did not respond to the Temporary Stay Order.

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4. On February 14, 1995, the department issued a Final Order cancelling the permits.

5. On July 2, 1996, the Department's Eastern Regional Office advised Larry Bethke that the department had observed irrigation in the N1/2 Section 14, T7S, R29E, B.M. by Bethke from two (2) wells located in Section 11, T7S, R29E, B.M. The department also advised Bethke that the department did not have a record of a water right for the irrigation of the land.

6. On July 19, 1996, on behalf of Larry Bethke (Bethke) Kent Foster (Foster) filed proof of beneficial use for cancelled Permit Nos. 35-08046 and 35-08050 (permits) seeking reinstatement of the permits. Foster represents that approximately 90 acres in the North half of the North half of Section 14, T7S, R29E, B.M. (section 14) have been irrigated since 1974.

7. The wells which have been used for the alleged irrigation of land in Section 14 are located in Section 11 and are not the wells which were approved for construction and use under the cancelled permits.

8. Foster has filed claims in the Snake River Basin Adjudication claiming the use of groundwater for the irrigation of part of the land in the North half North half of section 14, T7S, R29E, B.M. with a priority of May 1, 1974.

9. On March 6, 1997, the department corresponded with Foster requesting the submittal to the department of any other information in support of the requested reinstatements within thirty (30) days. Foster did not respond to the department.

CONCLUSIONS OF LAW

1. Section 42-218a.2, Idaho Code, provides the following:

That upon receipt of proof of beneficial use after sixty (60) days after such notice of lapsing, the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit and any extensions of time previously approved. Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received.

2. Neither Bethke nor his successors-in-interest diverted water and applied it to a beneficial use from wells authorized by the cancelled permits. The land was irrigated, however, from other wells within the authorized development period of the cancelled permits.

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3. Bethke has shown sufficient cause why proof of beneficial use was not timely filed with the department.

4. The department should rescind its order cancelling the permits and should conditionally reinstate the permits.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the Final Order of the department dated February 14, 1995 is **RESCINDED**; and

IT IS FURTHER HEREBY ORDERED that the cancelled permits are partially **REINSTATED** to the extent described below:

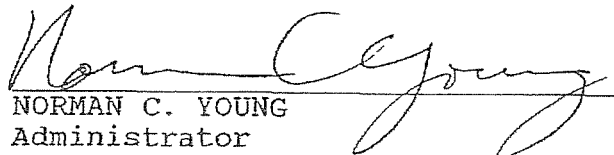
1. The authorized place of use for Permit No. 35-08050 shall not exceed a total of 40.4 acres within the N1/2NW1/4 Section 14, T7S, R29E, B.M.

2. The authorized place of use for Permit No. 35-08046 shall not exceed a total of 50.8 acres within the N1/2NE1/4 Section 14, T7S, R29E, B.M.

3. This reinstatement does not authorize any additional development under the permits.

4. This reinstatement does not authorize the construction of new or additional wells.

Dated this 18TH day of APRIL, 1997.


NORMAN C. YOUNG
Administrator

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