

3-2

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

In Re the General Adjudication
of Rights to the Use of Water
from the Snake River Basin
Water System

Case No. 34-7088
(You must insert the
water right number you
are objecting to)

The State of Idaho, ex rel.
R. Keith Higginson in his
official capacity as Director
of the Idaho Department of
Water Resources,

OBJECTION RECEIVED

MAR 03 1993

Department of Water Resources
Adjudication Bureau

Petitioner,

vs.

The United States; the State
of Idaho; and all Claimants to
the use of water from the Snake
River Basin Water System,

34-07088 -0001/
93-03-0418

Respondents.

INSTRUCTIONS

This form must be used to file an objection to any water right recommended in the Director's Report. You may object to one water right per objection form. The water right number you are objecting to must be indicated above in the blank space following "Case No." To object to more than one water right, you must file a separate objection form for each. Forms may be obtained from the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form, as long as it is identical to the court's form. You must file your objection by the deadline shown in the notice that IDWR mailed to you. The objection must be received by the court on or before the deadline specified. Instructions for mailing this objection are found at Page 6, and must be strictly followed.

Any party physically filing 25 (twenty-five) or more objections must make an appointment with the Clerk of the Adjudication Court and arrange for an appointment to file multiple objections.

(Over)

OBJECTION - 1

By filing an objection form, you are certifying that the objection is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and that it is not filed for any improper purpose, such as to harass, cause unnecessary delay or needless increase in the cost of litigation.

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: John Powers

Address: POB 493
Mackay Idaho 83251

Briefly describe your interest in this water right:

My interest in water
right is that it is needed
to supply water to approx 15
acres of land that the water
is pertinent to

2. Owner of the water right:

Name: John Powers

Address: POB 493
Mackay Idaho 83251

3. If this objection is filed by an attorney:

Attorney Name: _____

Attorney Address: _____

Attorney Phone No.: _____

If filed by an attorney, notice of pending court proceedings will be sent to the attorney only.

II. STATEMENT OF THE OBJECTION

Please check each "box" which states your objection to the recommendation in the Director's Report.

1. ☐ Name and Address: I object to the name and/or address of the owner of the water right.
2. ☐ Source: I object to the source of water.
3. ☐ Quantity: I object to:
 - a. ☒ the total quantity of water used in cubic feet per second; or
 - b. ☐ the total quantity of water stored in acre-feet per year; or
 - c. ☐ the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☒ Priority Date: I object to the priority date.
5. ☐ Points of Diversion: I object to the legal description of the point(s) of diversion.
6. ☐ Instream Flow: I object to the legal description of the beginning and ending points of the instream flow.
7. ☐ Purpose(s) of Use: I object to the purpose(s) of use.
8. ☐ Period of Year: I object to the period of year when water is used or is necessary for the purpose stated.
9. ☐ Place of Use: I object to:
 - a. ☒ the legal description of the place of use; or
 - b. ☐ the number of irrigated acres within each forty (40) acre subdivision.
10. ☐ Consumptive Use: I object to the annual volume of consumptive use.
11. ☐ Remarks: I object to the "remarks" listed with the water right.

(Over)

12. ☐ Water Right Recommendation: I object to:

a. ☐ this water right being recommended at all; or

b. ☐ this water right not being recommended.

13. ☐ Description of Reservation: I object to the legal description of the reservation.

14. ☐ Other: I object to:

Restriction of amt. of
water allowed for irrigation and the wrong
total acreage

REASONS SUPPORTING EACH BOX CHECKED

In the space following, you must state the reason(s) by number for each box checked. You may use additional pages if necessary.

In the
adjud-
ication → The dept allowed me a max of 10 minor inches to
irrigate approx 10 acres. I have 15 acres and also have
been allowed a total of 15 minor inches for use on
these acres. The dept did not include all of the land ir-
rigated.

CHANGES TO THE DIRECTOR'S REPORT

Specifically describe how you want the Director's Report to be changed. You may use additional pages if necessary.

I would suggest that he recognize the 15 irrigable
acres and the 15 minor inches allowed by a
previous filing 34-7088 and a stipulation (attached)
as a result of a legal action in 1952 between ^{Woodman} ~~millions~~ and ^{and} ~~city of~~ ^{MacDuff}

Please note: You should attach copies of documents which support your objection. Note on each document the "box number" it supports.

☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary.

Stipulation (1952) 5 pages

VERIFICATION (Must be Completed)

State of

Idaho

County of

Leuster

John Powers

(Name of person filing objection), being first duly sworn, upon oath, deposes and says:

That I am the person or entity filing this objection, that I am a water claimant or party in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and that I have read the foregoing objection, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

John Powers
Signature of person filing objection

By:

(Attorney signing in representative capacity)

Subscribed and sworn to before me this ____ day of _____, 199__.

Notary Public for _____
Residing at: _____
My Commission expires: _____

INSTRUCTIONS FOR MAILING

You must mail the objection, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted by the Clerk of the Court.** You must also send a copy to the owner of the water right, if other than yourself; to the Office of the Attorney General, State of Idaho; and to the United States Department of Justice, as set out below in the Certificate of Mailing. Finally, you must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of _____, 199____, I mailed the original and _____ copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the owner of the water right, and you must fill in the following information:

Owner name: John Powner

Owner's address: POB 493
MacPac, Ida 83351

3. One copy to:

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

4. One copy to:

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83734

John Powner
Signature of Objector or attorney
mailing on Objector's behalf

John P. Hume
POB 4, 3
Mackay Idaho 83551

Letter of the Dist. Court
Snake River Basin Adjudication
253 Third Ave. No.
POB 2707
Twin Falls Idaho 83303

My intent was to file these papers
on March 1 with the ADWR at ^{Idaho Falls} and
send the copies to the points in-
dicated. That is to get them another
send the originals at a later date. The
objection forms that I had (dated July 1992)
allowed me to do just that.

However the staff at ADWR informed
me that you wouldn't accept FAX ma-
terial (the refusal form indicates this)

Accordingly I am mailing these today
and ask you to accept them as properly
filed because of the change in policy.
Thank you

Sincerely
John P. Hume

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF CUSTER.

ARTHUR H. WOODMAN and WANDA Y. WOODMAN, Husband and Wife,

Plaintiffs,

vs.

JAKE MILLONIG and MRS. JAKE MILLONIG,
Husband and Wife; VILLAGE OF MACKAY,
IDAHO, a municipal corporation, and
B. C. JONES, Mayor of Village of Mackay,

Defendants.

STIPULATION

In the above-entitled action, in open Court, the plaintiffs sbeing represented by their Attorneys, Black, Black & Oliver, and Bistline & Bistline, all of Pocatello, Idaho, and the defendants appearing in person and with their attorney, Robert Felton, of Arco, Idaho, it was stipulated, and is hereby stipulated and agreed as follows:

1. That the plaintiffs are the owners of, and entitled to possession of the following-described real property, situate in Custer County, Idaho, to-wit:

The W $\frac{1}{2}$ of NE $\frac{1}{4}$ (Lot 2), and the SW $\frac{1}{4}$ NE $\frac{1}{2}$, Sec. 32, Twp. 7 N., R. 24 E.B.M., containing 81.35 acres, more or less.

2. That there is situate, upon said lands, a certain warm spring known as Warm Springs Creek, the waters of which are the subject of this action, and that said spring continuously flows in excess of 60 miners inches of water per second.

3. That there is located at said spring, a spring house, including a cement reservoir covered by a roof, and enclosed in a fence, and that running from said spring, there is and has been established, for a period of more than ten (10) years, a pipe line constructed of soil pipe, carrying the water of said spring to reservoirs located on the property of the defendants, Millonig, and it is hereby stipulated, by and between the parties hereto, that the defendant, Village of Mackay, Idaho, a municipal corporation, is hereby granted, and shall have a perpetual easement to maintain the said spring and spring house, and the said pipe line, and to repair, and if necessary, reconstruct the said spring house and reservoir, to conform to the public health requirements of the State of Idaho. Provided, however, that in the event the defendant, Village of Mackay, shall further develop the said spring, that the springs developed by the plaintiffs, hereinafter referred to, shall first be measured as to the flow of water from said springs, and should the further development of springs by the defendant, Village of Mackay, decreased or diminish the flow from the springs developed by plaintiffs, as hereinafter described, then the plaintiffs

shall be entitled to withdraw from said pipe line, an additional amount of water equivalent to the diminished or decreased flow from said springs developed by the plaintiffs, as hereinafter described.

4. IT IS FURTHER STIPULATED That the plaintiffs have a prior right to receive five (5) miners inches per second, of the water of said spring, the same to be withdrawn by a valve to be inserted in the pipe line above referred to, and IT IS FURTHER STIPULATED That the plaintiffs, shall at all times receive, through said valve, a continuous flow of five (5) miners inches of water, the same to be collected, utilized and applied to the beneficial use, in such manner as the plaintiffs may from time to time determine, and IT IS FURTHER STIPULATED That said valve shall be placed in said pipe line above referred to, at a point in the immediate vicinity of the spring house referred to above, under the mutual directions of the plaintiffs and the defendant, Village of Mackay, at a point to be selected by the plaintiffs. Provided further that the plaintiffs shall pay all expenses of inserting said valve in said pipe line.

5. IT IS FURTHER STIPULATED That the defendant, Village of Mackay, shall have the right to utilize all of the remainder of the water of said spring, it being expressly agreed that the defendant, Village of Mackay, is the owner of, and entitled to the possession of all of the waters of said spring, with the exception of the five (5) miners inches per second, which are the property of the plaintiffs.

6. IT IS FURTHER STIPULATED AND AGREED THAT THE defendant, Village of Mackay, shall have the right to construct and maintain necessary ditches to remove surface water, and run-off water, from the spring house, in order to protect said spring against contamination and pollution, and such ditches shall be so constructed as to cause a minimum of inconvenience to the lands of the plaintiffs.

7. IT IS FURTHER UNDERSTOOD AND AGREED That the plaintiffs shall have the right to cover the said pipe line of the defendant, Village of Mackay, extending across the lands of the plaintiffs, with dirt, at the plaintiffs' expense, provided, however, that any damages that the pipe line may suffer, as a result thereof, shall be compensated for by the plaintiffs, it being expressly understood that plaintiffs intend to terrace the lands of plaintiffs situated on higher ground than the said pipe line, and to farm and cultivate the same, and that these operations shall be done in such manner as not to damage the said pipe line.

8. IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED That while the defendant, Village of Mackay, shall have the right to utilize the entire water output of said springs, with the exception of the said five (5) miners inches referred to above, that at times the Village of Mackay does not use all of said waters, and at the present location of the two reservoir tanks constructed and maintained by the defendant, Village of Mackay, there is a provision for overflow from said tanks,

hereinafter referred to as waste waters, which in the past has been diverted by a ditch from the overflow from said reservoir tanks to the lands of the plaintiffs and the defendants, Millonig. IT IS THEREFORE EXPRESSLY STIPULATED AND AGREED that all waste waters not applied to the beneficial use by the defendant, Village of Mackay, either through their present reservoir system, or otherwise, shall be permitted to flow at the present location of said reservoir tanks, so that such waste water as is left, may be diverted as is hereinafter more particularly described.

9. IT IS FURTHER STIPULATED AND AGREED That the defendant, Village of Mackay, makes no present claim to certain other springs developed by the plaintiffs, but it is expressly provided that if the development of such springs as are being developed by the plaintiffs, should diminish the flow of the Warm Springs Creek, that the said defendant, Village of Mackay, reserves the right to come into Court and re-open the issue as to whether or not such springs as are now, or may hereafter be developed by the plaintiffs, are actually a part of the water of the Warm Springs Creek, as it is presently defined.

10. IT IS FURTHER STIPULATED AND AGREED, as between the plaintiffs and the defendants, Millonig, that the Court shall enter a temporary Order providing for the distribution of the waste waters hereinbefore described, as between the plaintiffs and the defendants, Millonig, until November 1, 1952, without prejudice to the rights of either such plaintiffs or such defendants, in accordance with the following:

a. That commencing on Sunday, June 29, 1952, the defendants, Millonig, shall have the right to appropriate the entire flow of waste water as the same is wasted at the reservoirs of the defendant, Village of Mackay, for a period of one (1) week, and thereafter, on Sunday, July 6, 1952, the plaintiffs shall have the right to divert and appropriate all of said waste water for a period of one (1) week, and that each of said parties shall have the right, respectively, to make such appropriation on alternate weeks thereafter, until November 1, 1952, commencing on Sunday of each week, as above described, until November 1, 1952.

b. That the plaintiffs are hereby granted an easement, by the defendants, Millonig, to build, construct and maintain a new ditch to convey said waste waters across said lands of defendants, Millonig, at a point below the contour of the pipe line above referred to, chosen by plaintiffs, in order to divert and carry the said waste waters from the said reservoir site of the defendant, Village of Mackay, above-described, to the property of the plaintiffs.

c. IT IS FURTHER UNDERSTOOD AND AGREED That for many years there has existed a ditch on the Easterly or lower side of the plaintiffs' property, used for the purpose of collecting waste water running off of the plaintiffs' property, and

carrying the same to the property of the defendants, Millonig, and IT IS FURTHER STIPULATED That said defendants, Millonig, shall have the right to repair such waste ditch, for the purpose of collecting such waste water, and conveying the same to the property of the defendants, Millonig.

d. IT IS FURTHER STIPULATED AND AGREED That the provisions contained in this paragraph shall be in full force and effect until November 1, 1952, without prejudice to the rights of the plaintiffs or of the defendants, Millonig, and that at that time, or such time thereafter, as either party may determine, such party may ask the Court for a hearing to make the provisions aforesaid final, or to try the issues now existing between the plaintiffs and the said defendants, Millonig, upon questions of fact to the Court. If the above provisions are determined to be satisfactory to both parties, during the trial period provided for herein, then these provisions may be incorporated in the Final Decree of the Court.

11. IT IS STIPULATED That this Stipulation shall be submitted to the Court for approval, and the terms thereof incorporated in the final Decree of the Court, and as to the matters and issues between the plaintiffs and the defendant, Village of Mackay, said Decree shall become final upon approval by the Court, and as to the issues between the plaintiffs and the defendants, Millonig, the same shall be temporary, but binding, until November 1, 1952, after which time further action shall be taken to provide for a final Decree as to these rights, in accordance with this Stipulation.

12. IT IS HEREBY STIPULATED, by and between the parties hereto, that all parties expressly waive the making of Findings Of Fact and Conclusions Of Law in said cause, unless issues of fact between the plaintiffs and the defendants, Millonig, are later tried before the Court.

13. IT IS FURTHER STIPULATED, by and between the parties and their respective counsel, that this cause is submitted to the Court upon this Stipulation, and without formal trial or evidence, and all parties hereto respectively waive any and all objections to the Court making, rendering, and entering a formal Decree in said cause, based upon this Stipulation.

14. IT IS FURTHER STIPULATED that each and all of the parties hereto shall pay their own costs.

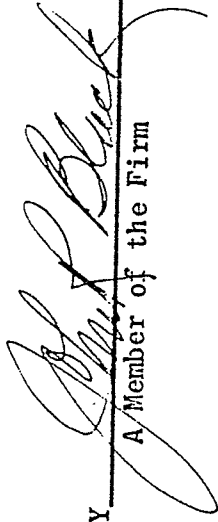
Arthur J. Woodman

Wanda J. Woodman

PLAINTIFFS.

BLACK, BLACK & OLIVER

BY


A Member of the Firm

BISTLINE & BISTLINE

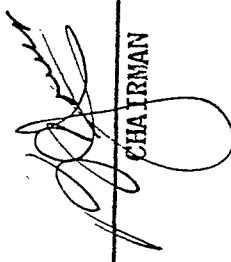
BY


A Member of the Firm

ATTORNEYS FOR PLAINTIFFS
Residing at Pocatello, Idaho.

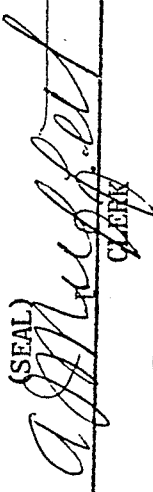
VILLAGE OF MACKAY

BY

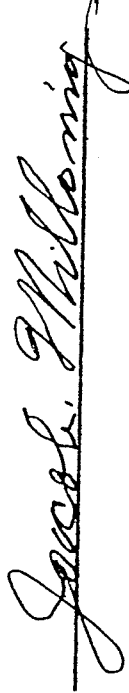

CHAIRMAN

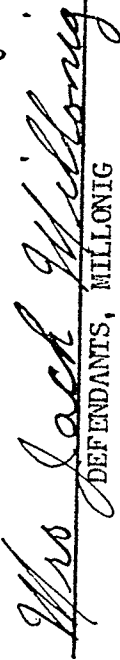
ATTEST:

(SEAL)


CLERK


ATTORNEY FOR DEFENDANT, Village of Mackay




DEFENDANTS, MILLONIG

ATTORNEY FOR DEFENDANTS, Millonig.