

3-21
RECEIVED

MAR 21 2013

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)
)
)
Case No. 39576)
)
)
_____)

A. Subcase Number: 51-13092
(Insert water right number)

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho,
Address: Office of the Attorney General
P.O. Box 44449
Boise ID 83711-4449
Phone: (208) 334-2400

Name and Address of Attorney, if any:

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
ANN Y. VONDE (ISB #8406)
Deputy Attorney General
Attorney Address: Office of the Attorney General
Joe R. Williams Building
700 West State Street, 2nd Floor
P.O. Box 44449
Boise, Idaho 83711-4449
Attorney Phone No. (208) 334-4141

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

Name: United States of America, on behalf of the
Department of Interior, Bureau of Land Management
Address: Idaho State Office
1387 S. Vinnell way
Boise ID 83709-1657

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: The claimed quantity is in excess of the amount of water necessary to fulfill the purpose of Omnibus Public Land Management Act of 2009. *Potlatch Corp. v. United States*, 134 Idaho 916, 921, 12 P.3d 1260, 1265 (2000). The quantification site is inappropriately located.
4. ☐ **Priority Date:**
Should be: _____
5. ☐ **Point of Diversion:**
Should be: _____
6. ☒ **Instream Flow Beginning and Ending Point:**
Should be: The beginning and ending points are inconsistent with legislative directive.
7. ☐ **Purpose(s) of Use:**
Should be: _____
8. ☐ **Period of Year:**
Should be: _____
9. ☐ **Place of Use:**
Should be: _____

10. ☒ **Remarks:**

The claimed quantity should be subordinated as laid out in Appendix B to the Owyhee Initiative Agreement dated May 10, 2006, which is attached hereto as Exhibit 1.

11. **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):

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

ANN Y. VONDE, Deputy Attorney General, duly sworn, upon oath, deposes and says:

That the State of Idaho is filing this objection as a party claimant and in its sovereign capacity, that I am a Deputy Attorney General authorized to represent the State of Idaho pursuant to I.C. § 42 1401C(2), and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

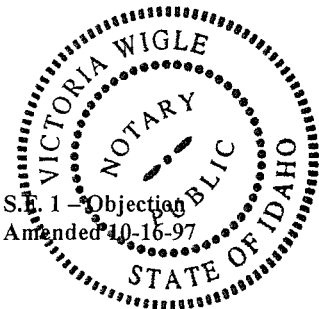
LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
ANN Y. VONDE
Deputy Attorney General

Ann Y. Vonde

By Attorney signing in representative capacity

Subscribed and sworn to before me on: 3/20/13

(Insert Date)



Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: 6/22/16

Victoria Wigle

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 this 20th day of March, 2013, I caused the original and the copies of this objection, including all attachments, to be served on the following persons by the method designated:

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

U.S. MAIL

2. One copy to the owner of the water right at the following address:

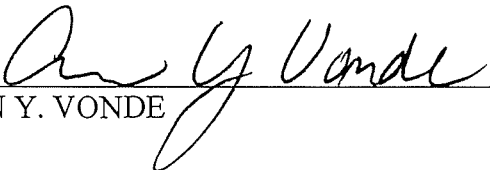
Bruce D. Bernard
David L. Negri
U.S. Department of Justice
Environment and Nat'l Resources Division
Natural Resources Section
550 W. Fort Street, MSC 33
Boise ID 83724

US MAIL

3. Copies to:

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

STATEHOUSE MAIL


ANN Y. VONDE

APPENDIX - B

OWYHEE INITIATIVE WILD AND SCENIC RIVERS WATER RIGHTS AGREEMENT

This Agreement is entered as of May 10, 2006 by the undersigned parties, who, as the parties comprising the Owyhee Initiative ("OI"), propose that Congress designate certain river and stream segments in the basins of Jacks Creek, Owyhee River, Bruneau River, and Jarbidge River, all in Idaho's Owyhee County as wild, scenic, or recreational under the Wild and Scenic Rivers Act. These stream segments are defined below and referred to collectively in this Agreement as the "Designated Rivers."

The Act expressly reserves rights to unappropriated waters in such rivers in quantities no greater than necessary to accomplish the purposes of the Act and with a priority date as of the date the President signs the bill making the designation. The OI expects that the Interior Department or other appropriate federal agencies will file federal reserved water right claims in the Snake River Basin Adjudication and take such other actions necessary to assure that the reserved water rights are quantified and administered consistent with the understanding of the parties as set forth herein. Specifically, the claims will recognize that the water rights in existence when the legislation becomes effective will be senior. This means that federal reserved water rights for the Designated Rivers will be junior to and will not affect senior water rights. Nothing in this Agreement shall in any way affect, derogate or diminish existing water rights as recognized under Idaho state law at the time the rivers are designated.

At present there is very limited foreseeable opportunity for new uses of water upstream of the Designated Rivers. There are few communities, no large-scale agricultural uses, no commercial and industrial uses, and very little private land in these areas. Only a small percentage of the private land is susceptible to new irrigation. In addition, the availability of water for new uses is extremely limited because surface water sources typically are small or intermittent and private water rights already have been established in all of these basins. The parties recognize, however, that some provision must be made for a limited amount of future development. Thus, they have agreed that any reserved water right claim will contain a subordination to a specified amount of future uses.

Reserved water rights in the Designated Rivers for purposes stated in the Act will be subordinate to future uses of water under new water rights for domestic and de minimis stockwater purposes in the watersheds of the Designated Rivers in Owyhee County, either on a Designated River or on a tributary, above an ending point.

The reserved water rights established in the Designated Rivers pursuant to the OI process will be administered as junior to later-established domestic and de minimis stockwater rights having points of diversion and places of use within the basins of, and upstream from, the ending points.

The OI expects that providing for the establishment of future domestic and de minimis stockwater rights, in accordance with state law, in the watersheds upstream of the respective ending points will not impair water flows necessary to protect the values of the Designated Rivers.

In addition, it is prudent to set aside, by means of a subordination of the reserved water right, a reserve of unappropriated water in each of the watersheds containing the Designated Rivers for future in-basin irrigation, commercial, municipal, industrial and other state-recognized beneficial uses. However, in recognizing the ecological importance of stream and river flows in this arid region, and recognizing the wishes of Owyhee County residents to maintain and protect their current way and quality of life, new appropriations of unappropriated water for irrigation, commercial, municipal, industrial or other state-recognized beneficial uses made after the designation, where the point of diversion is in the watershed of a Designated River above an ending point, shall comply with Idaho law and all of the following conditions:

1. In-basin irrigation, commercial, municipal, industrial or other state-recognized water rights with priority dates after the date the Designated Rivers are established, consistent with state law and in compliance with the conditions set forth in this Agreement, will be administered as senior to the reserved water rights established in the Designated Rivers.
2. Cumulative withdrawals of water from each Designated River's principal watershed, above the respective ending points, shall be limited to a maximum instantaneous diversion rate of ten percent of the mean monthly flows, in cubic feet per second, during March, April, May, and June. Water may be diverted only during these months and may not exceed the maximum diversion rate for each individual month. The mean monthly flows will be measured at the relevant basin gages. The mean monthly flows will be determined by examining the relevant basin gage record for the period of record of the gage for the months of March through June.
3. Future withdrawals of water for irrigation, commercial, municipal, industrial or other state-recognized beneficial uses within a Designated River's principal watershed in Owyhee County shall not de-water perennial streams or prematurely de-water intermittent streams. All transfers of water rights within the watersheds of the Designated Rivers will continue to be subject to the conditions and requirements of Idaho law, including the rule that other water rights are not injured as a result of any transfer.

4. Water appropriated for storage to serve any irrigation, commercial, municipal, industrial or other state-recognized beneficial uses shall not be stored in reservoirs constructed within the bed or between the banks of any perennial stream. Rather, all such waters will be diverted to off-stream storage sites

Finally, it is recognized that the reserved water rights, once quantified, will be administered by the State of Idaho in accordance with state law.

Definitions. For purposes of this Agreement, the following terms shall have the meanings stated below, it being understood that a definition in the singular shall be interpreted also to include the plural:

“Act” means the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271, et seq.

“Basin gage” means the United States Geological Survey gage listed for each respective principal watershed in the ERO Report.

“De minimis stockwater” water rights, purposes, or uses shall have the same meaning, and be subject to the same limitations and conditions, as: 1) the language permitting the “use of water for . . . livestock” contained in Idaho Code § 42-111; 2) the definition of “stock watering use” in Idaho Code § 42-1401A (11); and, to the extent consistent with these two Idaho Code sections, 3) the “watering of livestock” as set forth in Idaho Code § 42-113.

“Designated River” means those streams or rivers, of segments thereof, listed in Appendix A.

“Domestic” water rights, purposes, or uses means those water rights or entitlements defined at Idaho Code § 42-111.

“Ending point” means: The lower, or downstream, terminus of a river or stream reach in which a federal reserved water right is established on a Designated River pursuant to the Wild and Scenic Rivers Act.

“Perennial stream” means a natural watercourse that, under normal meteorological conditions, contains some visible water flow during each month of the year.

“Principal watershed” means the watershed of each of the following, as measured by the respective basin gage and described in the report prepared by David Shaw and entitled Water Supply for Non-de Minimis Water Uses From Stream Reaches Upstream from Wild and Scenic Designated Streams, ERO Resources Corporation (September 6, 2005) (the “ERO Report”): Owyhee Basin, South Fork Owyhee Basin, Bruneau Basin, East Fork Bruneau Basin, Jarbidge Basin, and Big Jacks Basin.

“Reserved water right” or “federal reserved water right” means a water right held by the federal government and established by operation of the Act.

“Transfer” means any change in a water right’s place or time of use, point of diversion, or nature of use, actions that currently are subject to state approval under Idaho Code 42-222.

“Tributary” means any perennial or intermittent stream that supplies water during any portion of the year to a Designated River above an ending point.

“Water right” means: Any right to divert and place to beneficial waters in Idaho, and recognized by license, court decree, permit, or by the use of water for domestic or stock watering purposes as provided in Idaho Code §§ 42-111 and 113.