

CLAIMANT: DALE SMITH
WILLIAM R. HOLLIFIELD
Attorney at Law
249 Third Avenue East
P.O. Box 66
Twin Falls, Idaho 83303-0066
Telephone: (208) 734-5610
Facsimile: (208) 734-8077

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ATTORNEY GENERAL

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Department of Water Resources
Adjudication Bureau

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

)
)
)
MOTION TO FILE A LATE OBJECTION

Subcase No. 34-02404

DESCRIPTIVE SUMMARY

This document is Dale Smith's motion to file a late Objection to the Director's Report.

MOTION

Dale Smith, by and through their attorney of record, William R. Hollifield, hereby move this Court for an order allowing him to file a later Objection to the Director's Report. Said Objection is attached hereto.

This motion is made for the reason that a settlement has been reached in Subcase No. 34-12435 which necessitates altering the Director's Report for this Right, 34-02404. The Objection to Right No. 34-02404 and the Standard Form 5 for Right No. 34-12435 are attached hereto.

Counsel requests oral argument.

DATED This 6 day of July, 1995.

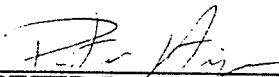

WILLIAM R. HOLLIFIELD
PETER J. AMPE
Pro Hac Vice
Colo. Atty. Reg. No. 23452

CERTIFICATE OF MAILING

PETER J. AMPE hereby certifies that on the 6 day of July, 1995, he served the foregoing document by placing true and correct copies thereof in the United States Mail, postage prepaid, addressed as follows:

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

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



PETER J. AMPE

125

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	)	STANDARD FORM 5
	)	
Case No. 39576	)	SUBCASE NO: 34-12435
	)	
	)	
	)	STIPULATED ELEMENTS OF A
	)	WATER RIGHT

This form is used to report the stipulated elements of one water right under state law or one water right acquired under federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; and they have been served with sufficient process, according to the law, and that they have appeared, prosecuted and defended their positions with regard to this water right dispute.

Instructions For Use

Elements where there has been no objection should be listed exactly as they appear in the director's report. The statement as to an uncontested element shall state "as recommended in the director's report."

Contested elements that are the result of an objection filed with the court shall be accompanied by a statement fully describing all facts, documents, expert opinions and law which support the element of the water right (attach additional pages if necessary).

IDWR and the parties stipulate that claim no. 34-12435 be dismissed with prejudice.

The stipulation of the parties is attached hereto and incorporated herein by reference.

Signatures and Addresses of Parties and their Attorney of Record (attach additional page if necessary):

I have read this form and know its contents and that the statements are true to the best of my knowledge and belief.

Name: Dale Smith
Address: Rt. 1 Box 22
City/State/Zip: Moore, ID 83255-9794
Attorney of Record: William Hollifield/
Peter Ampe

Name: Idaho Dept. of Water Resources
Address: P.O. Box 83720
City/State/Zip: Boise, ID 83720-0098
Attorney of Record: Susan E. Hamlin/
A. Lynne Krogh

Party's Signature Date

Attorney's Signature Date

Attorney's Signature Date

INSTRUCTIONS FOR MAILING

You must mail the form, including all attachments, to the Clerk of the SRBA Court and to the parties identified in the Certificate of Mailing. FAX filings will not be accepted by the SRBA Clerk of the Court.

You must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I certify that on _____, 199__, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or 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. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0098

William Hollifield
P.O. Box 66
Twin Falls, ID 83303-0066

Signature of person or attorney mailing the form

EXHIBIT

A. LYNNE KROGH
SUSAN E. HAMLIN
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 44449
Boise, ID 83711-4449
Telephone: (208) 327-7920
Fax: (208) 327-7866

Attorneys for IDWR

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	)	Sub-case No. 34-12435
	)	
Case No. 39576	)	
	)	
	)	STIPULATION
_____	)	

DESCRIPTIVE SUMMARY

This stipulation resolves the objection to claim number 34-12435 and the modification to the description of uncontested water right no. 34-02404.

STIPULATION

To resolve the dispute over the above-captioned subcase number, the Idaho Department of Water Resources (IDWR), and Dale Smith (the claimant), stipulate and agree that:

1. The Standard Form 5 for subcase no. 34-12435, attached hereto and incorporated by reference herein, sets forth the description of the water right as agreed by IDWR and the parties. All decrees, whether partial or final, should describe the

water right as shown in the Standard Form 5.

2. To resolve the objection in subcase no. 34-12435, the description of uncontested water right 34-02404 needs to be changed. In Exhibit 1, attached hereto and incorporated by reference herein sets forth the description of water right no. 34-02404 as agreed to by IDWR and the claimant.

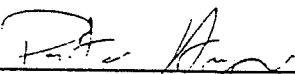
3. IDWR and the claimant agree that they will file the necessary documents with the SRBA District Court to effect the changes to the description of uncontested water right no. 34-02404 as described in Exhibit 1.

4. The Standard Form 5 and this stipulation have been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding, and that this agreement is not and shall not be used as precedent for any other claim to a water right.

5. All parties agree to bear their own costs and attorney's fees in connection with this matter.

6. The Standard Form 5 and this stipulation were entered into and executed voluntarily by all parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence whatsoever.

Dated this 6 day of July, 1995.



William Hollifield/Peter Ampe
Attorneys for Claimant

Dated this _____ day of _____, 1995

A. Lynne Krogh/Susan E. Hamlin
Deputy Attorney General
Idaho Department of Water Resources

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: APR-14-1995
PAGE: A-1

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
34-02404	DALE SMITH RT 1 BOX 22 MOORE ID 83255	03/01/1961	IRRIGATION	04-15 10-15	1.4 294.17	CFS LICENSE
			STOCKWATER	04-01 11-01	0.05 1.4	CFS
				TOTAL QUANTITY:	294.17	CFS
				TOTAL VOLUME:	294.17	AFY
NON-IRRIGATION USES: STOCKWATER FOR 150 RANGE CATTLE POINT OF DIVERSION: T05N R26E S33 MWSNE PLACE OF USE: IRRIGATION T05N R26E S33 66.0 ACRES TOTAL PLACE OF USE: STOCKWATER SAME AS OTHER USE SNWE 37.0 NWSE 29.0						
REMARKS: USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 4.08 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 165 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 66 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 34-00555, 34-00641, 34-10234 AND 34-00117E. 0.35 CFS OF RIGHT NO. 34-10234, IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF RIGHT NOS. 34-00117E, 34-00641, 34-00555 AND 34-10234. A DIVERSION RATE OF 0.038 CFS PER ACRE AT THE FIELD HEADGATE IS RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE. RIGHT NO. 34-02452 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE. THIS RIGHT MAY BE USED IN COMBINATION WITH RIGHT NO. 34-02452 IN ROTATION ON THE PLACE OF USE DESCRIBED ABOVE WHEN BOTH THIS RIGHT AND RIGHT NO. 34-02452 ARE USED ON THE RESPECTIVE PLACE OF USE OF EACH RIGHT IN THE SAME IRRIGATION SEASON. USE OF THIS RIGHT WITH RIGHT NO. 34-02452 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 3.08 CFS AND A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 572.7 AF.						

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 35976

Case No. 34-02404

(Insert water right number)

STANDARD FORM 1

OBJECTION

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. To object to more than one water right, you must file a separate objection form for each. The water right number you are objecting to must be indicated above in the blank space following "Case No." 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 SRBA Court no later than 14 days before the filing deadline to file their pleadings.

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. *Party/Claimant objecting:*

Name: DALE SMITH

Address: RT 1, BOX 22

MOORE, IDAHO 83255

Phone: Work: _____ Home: (208)

Briefly describe your interest in this water right:

CLAIMANT

If this objection is filed by an attorney:

Attorney Name: WILLIAM R. HOLLIFIELD

Attorney Address: P.O. BOX 66, TWIN FALLS, ID 83303

Attorney Phone No.: (208) 734-5610

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

2. *Owner of the water right. You must identify the owner exactly as it appears in the Director's Report:*

Name: DALE SMITH

Address: TR 1, BOX 22, MOORE, ID 83255

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. Water Right Recommendation: I object to:
 - ☐ a. this water right being recommended at all; or
 - ☐ b. this water right not being recommended.
12. ☐ Description of Reservation: I object to the legal description of the reservation.

13. ☒ Other: I object to: REMARKS

REASONS SUPPORTING EACH BOX CHECKED

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

CHANGES ARE NECESSARY TO REFLECT A SETTLEMENT OF A RELATED SUBCASE

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.

SEE ATTACHED DRAFT DIRECTOR'S REPORT

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.

DRAFT DIRECTOR'S REPORT

VERIFICATION (Must be Completed)

State of _____

County of _____

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

That I am the party/claimant filing this objection (as listed on Page 2, Section 2, "Party/Claimant Objecting") as defined by I.C. § 42-1401A(1) and (7), and that I have read this objection, know its contents and that the statements are true to the best of my knowledge and belief.

Signature of person filing objection

[Signature]
By: Attorney signing in representative capacity

Subscribed and sworn to before me on: 07-06-95

Herrera L. Otero
Notary Public for Idaho
Residing at: Twin Falls
My Commission expires: 10-16-98

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 all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I hereby certify that on _____, 199__, I mailed the original and copies of this objection, including all attachments, to the following persons, by mailing the original and/or 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 at the following address:

Name: DALE SMITH

Address: RT 1, BOX 22

MOORE, ID 83255

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 033
Boise, Idaho 83734

Signature of party/claimant or attorney

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
34-02404	DALE SMITH RT 1 BOX 22 MOORE ID 83255	03/01/1961	IRRIGATION	04-15 10-15	1.4	CFS LICENSE
			STOCKWATER	04-01 11-01	2981/1	AFY
				TOTAL QUANTITY:	0.05	CFS
				TOTAL VOLUME:	1.4	CFS
					2981/1	AFY

NON-IRRIGATION USES:
STOCKWATER FOR 150 RANGE CATTLE
POINT OF DIVERSION:
T05N R26E S33 NWSWNE
PLACE OF USE: IRRIGATION
T05N R26E S33 SWNE 37.0 NWSE 29.0
66.0 ACRES TOTAL
PLACE OF USE: STOCKWATER
SAME AS OTHER USE

REMARKS: USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 4.08 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 165 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 66 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 34-00555, 34-00641, 34-10234 AND 34-00117E.
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A DIVERSION RATE OF 0.038 CFS PER ACRE AT THE FIELD HEADGATE IS RECOMMENDED FOR THE PLACE OF USE DESCRIBED ABOVE.

RIGHT NO. 34-02452 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

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