

10-24

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OCT 24 1995
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. 55-13487
	)	(Insert water right number)
Case No. 39576	)	
	)	STANDARD FORM 1
	)	
	)	
	)	
_____	)	OBJECTION

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 on 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 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: State of Idaho
Address: 700 W. Jefferson, Room 210
P.O. Box 44449
Boise, Idaho 83711-4449
Phone: Work: (208) 334-2400 Home: N/A

Briefly describe your interest in this water right:

The State of Idaho possesses sovereign interests which may be affected by the federal reserved water right asserted in this claim. Additionally, the State has an interest in protecting, as *parens patriae*, the health and welfare and collective interests of all persons within the Snake River Basin. Finally, the State is authorized to file objections to federal reserved water right claims pursuant to the terms of Idaho Code § 42-1411A(16).

If this objection is filed by an attorney:

Attorney Name: ALAN G. LANCE
Attorney General
Clive J. Strong
Deputy Attorney General
Chief, Natural Resources Division
Steven W. Strack
Deputy Attorney General
Attorney Address: Office of the Attorney General
700 W. Jefferson, Room 210
P.O. Box 44449
Boise, ID 83711-4449
Attorney Phone No: (208) 334-4143

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: United States of America, Trustee on
Address: Behalf of Shoshone-Paiute
Acting through B.I.A.
911 N.E. 11th Ave.
Portland, OR 97232

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 description of 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 _____.

REASONS SUPPORTING EACH BOX CHECKED

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

The reasons for the State's objections are attached to this Form as "Attachment 1, Reasons Supporting Each Box Checked."

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.

The necessary changes to the Director's Report are included in Attachment 1 under the heading "Changes That Should Be Made To The 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.

VERIFICATION (Must be Completed)

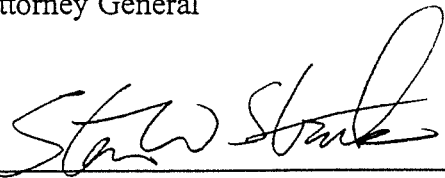
State of Idaho
County of Ada

The State of Idaho, herein represented by and through Alan G. Lance, Attorney General, Clive J. Strong, Deputy Attorney General, and Steven W. Strack, Deputy Attorney General, duly sworn, upon oath, deposes and says:

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

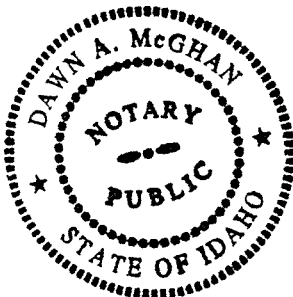
Signature of person filing objection

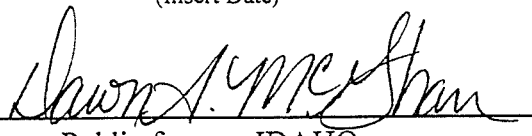
ALAN G. LANCE
Attorney General
Clive J. Strong
Deputy Attorney General
Chief, Natural Resources Division
Steven W. Strack
Deputy Attorney General



By Attorney signing in representative capacity

Subscribed and sworn to before me on: OCTOBER 23, 1995
(Insert Date)





Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: 8/30/2001

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 certify that on October 23, 1995, I mailed the original and copies of the foregoing 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: United States of America, Trustee on
Behalf of Shoshone-Paiute
Acting through the B.I.A.
Address: 911 N.E. 11th Ave.
Portland, OR 97232

3. One copy to:

~~Chief of Natural Resource Division~~ (not applicable)
~~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, MSC 033
Boise, Idaho 83724



Signature of party/claimant or attorney

ATTACHMENT 1
REASONS SUPPORTING EACH BOX CHECKED

GENERAL DENIAL

For the reasons described below, the State denies any allegation that the United States and the Shoshone-Paiute Tribes have entered into any treaty or agreement, or otherwise taken any action, sufficient under the law for the creation of the claimed federal reserved instream flow water right, whether for the purpose of fisheries habitat, wildlife habitat, channel maintenance, riparian maintenance, or any other purpose.

**REASONS FOR CHECKING BOX 7, PURPOSES OF USE; AND
BOX 11.A, OBJECTION TO WATER RIGHT BEING RECOMMENDED AT ALL**

1. The Duck Valley Indian Reservation was established by the Executive Order of April 16, 1877, and enlarged by the Executive Order of May 4, 1886, and the Executive Order of July 1, 1910 (hereinafter the "Executive Orders").
2. The State denies that the Executive Orders were entered for the purpose of providing fisheries on streams, rivers and other waters within the Reservation. Even if such a purpose existed, it was secondary to the primary purpose of the Executive Orders and therefore not sufficient to infer the creation of a federal reserved water right.
3. The State additionally denies that the Executive Orders were entered for the purpose of providing flows necessary to maintain lake levels for irrigation, wildlife, or any other purpose. Even if such a purpose existed, it was secondary to the primary purpose of the Executive Orders and therefore not sufficient to infer the creation of a federal reserved water right.
4. The State additionally denies that the Executive Orders were entered for the purposes of maintaining stream channels or protecting riparian habitats. Even if such purposes existed, they were secondary to the primary purpose of the Executive Orders and therefore not sufficient to infer the creation of a federal reserved water right.
5. Even if the provision of fishery habitat, lake level maintenance, stream channel maintenance, or riparian maintenance were primary purposes of the Executive Orders, the claimed reserved instream flow water right is not necessary to fulfill such purposes.
6. The reference in the Notice of Claim that the water claimed may be used "at other points of diversion, places of use, or for other purposes" constitutes an impermissible expansion of the scope of the claim, fails to provide other claimants with appropriate

notice of the nature and extent of the water right claimed and fails to claim the water right with sufficient specificity as required by federal and state law.

**REASONS FOR CHECKING BOX 3.C, OBJECTION TO
TOTAL QUANTITY OF WATER CLAIMED FOR EACH
AND EVERY PURPOSE; AND BOX 8, PERIOD OF YEAR**

7. The claimed water right is in excess of the amount, if any, that is reasonable and necessary, in terms of quantity, duration, and frequency, to fulfill the purposes alleged by the Tribes.

**REASONS FOR CHECKING BOX 6, LEGAL DESCRIPTION
OF INSTREAM FLOW; BOX 2, SOURCE; BOX 9A, PLACE
OF USE; AND BOX 12, DESCRIPTION OF THE RESERVATION**

8. The claim does not adequately describe the point at which the claimed instream flow is to be quantified and measured.
9. The claim does not adequately describe whether the claimed flow is to be applied at all points within the claimed reach of the instream flow, or whether the claim is to be quantified at a specific point and applied proportionally upstream or downstream from that point.

REASONS FOR CHECKING BOX 4, PRIORITY DATE

10. Because the Duck Valley Reservation was twice enlarged after its creation, any portion of the claimed water right within an area added to the Reservation after its initial creation should carry a priority date as of the date of enlargement, and not of the initial creation.

**CHANGES THAT SHOULD BE MADE
TO DIRECTOR'S REPORT**

- A. The claimed instream flow right should be stricken from the Report, and not decreed.
- B. In the alternative, if the claimed instream flow right is found to exist, any decree of the claimed right must include the following limitations:
 1. That the claimed water right exists only in the minimum amount found at trial to be necessary to fulfill the primary purpose of the Executive Order(s) creating the Duck Valley Indian Reservation;

2. That the claimed water right is decreed in a manner that avoids or minimizes impacts on existing and future water users;
3. That the claimed water right is not transferable to other uses or other water users;
4. That any portion of the claimed water right within an area added to the Reservation after its initial creation carries a priority date as of the date of enlargement, and not of the initial creation.
5. All other limitations and conditions necessary to conform the claimed water right to applicable state and federal laws.

--- END ---

