

Party's Name: Sand Springs Ranch Partnership

818

Attorney's Name and Address

Josephine P. Beeman
DILLION BOSCH DAW & BOCK Chtd.
Fidelity Building
242 N. 8th Street, Suite 200
Boise, Idaho 83702

**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

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Case No. 36-15168

**RESPONSE TO HAGERMAN WATER USERS
ASSOCIATION OBJECTION**

I. GENERAL INFORMATION

95-12-0064

1. Person responding to objection:

Name: Sand Springs Ranch Partnership

Address: P.O. Box 400
Wendell, ID 83355

Briefly describe your interest in this water right:

Sand Springs Ranch Partnership ("Sand Springs") is a water claimant in reporting area 3 (Basin 36) who diverts from a common aquifer with the Hagerman Water Users Association ("HWUA").

2. Person who filed objection:

Name: HAGERMAN WATER USERS ASSOCIATION

Address: Route 1, Box 406
Hagerman, ID 83332

3. If this response is filed by an attorney:

Attorney Name: Josephine P. Beeman

Attorney Address: DILLION BOSCH DAW & BOCK Chtd.
Fidelity Building
242 N. 8th Street, Suite 200
BOISE, ID 83702

Attorney Phone No.: (208) 344-8990

II. STATEMENT OF THE RESPONSE

1. ☐ Name and Address: I respond to the objection concerning the name and/or address of the owner of the water right.
3. ☐ Quantity: I respond to the objection concerning:
 - 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.
7. ☐ Purposes of Use: I respond to the objection concerning the purpose(s) of use.
9. ☐ Place of Use: I respond to the objection concerning:
 - 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 respond to the objection concerning the annual volume of consumptive use.
11. ☐ Remarks: I respond to the objection concerning the "remarks" listed with the water right.
14. ☐ Other: I respond to the objection concerning:

All matters raised in the claimant's answer, affirmative defenses, and prayer for relief.

REASONS SUPPORTING EACH BOX CHECKED

A. Statement of Objection 1. In response to Statement of Objection Item 1, Sand Springs responds that the Idaho Department of Water Resources ("IDWR") will change the claimant's address on its records to that shown on the objection. This, however, may not change the claimant's

address on the records of the SRBA Court. The Court has developed its "Standard Form 3" to be used for reporting matters such as address changes and changes in ownership. The claimant may need to file this form with the SRBA Court.

B. Statement of Objection 3 and 3.a.

In response to Statement of the Objection items 3 and 3.a. and all allegations of the objection regarding those items, Sand Springs responds as follows: (1) IDWR recommended the amount of water it determined was being beneficially used; (2) the claimant is not entitled to any amount greater than that which is beneficially used (Idaho Code Sec. 42-104 and 42-1402); (3) the recommendation of the Director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right; and (4) the eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

C. Statement of Objection 3 and 3.b. In response to Statement of the Objection items 3 and 3.b. and all allegations of the objection regarding those items, Sand Springs responds that the recommended water right was not claimed, and therefore could not be recommended, as a storage right either in whole or in part. The claimant's objection to these items is in error.

D. Statement of Objection 7. In response to Statement of the Objection item 7, and all allegations of the objection regarding that item, Sand Springs responds that it recommended the same purpose or purposes of use that were identified on the notice of claim and that were found when the claim was investigated. By identifying in the objection domestic and fish propagation as additional uses that the claimant did not list on the notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim after a Director's report is filed, just as a party must obtain leave of the court to file a late claim after the Director's report is filed. Once leave of the court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the court.

E. Statement of Objections 9 and 9.a. In response to Statement of Objections 9 and 9.a., and all allegations of the objection regarding those items, Sand Springs responds that IDWR has found, in the Director's report, that the recommended water right accurately describes the place of use of the right, and Sand Springs relies on the Director's report.

F. Statement of Objections 9 and 9.b. In response to Statement of the Objection 9 and 9.b. and all allegations of the objection regarding those items, Sand Springs responds that the recommended water right accurately describes the total number of acres within each 40 acre subdivision upon which IDWR found water was beneficially used for irrigation under this water right.

G. Statement of Objections 10. In response to Statement of Objections 10 and to all allegations of the objection regarding that item, Sand Springs responds as follows: (1) the decree asserted by the claimant did not set an annual volume of consumptive use for this water right; (2) Idaho Code § 42-1411(2)(I) requires the Director to determine the annual volume of consumptive use for each water right acquired under state law and recommended in the Director's report; (3) Idaho Code Sec. 42-1401A(2) provides that the quantification of consumptive use "is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code"; therefore the consumptive use recommended for this water right is included solely for use in future transfer proceedings; (4) the annual volume of consumptive use claimed and recommended for this right is three acre feet per acres. This is the maximum volume of water IDWR found to be consumed by the most water consumptive crop (pasture) that can be grown in the area during the period of year when water is used for irrigation, as provided for by Idaho Code § 42-1401A(2); (5) the recommendation of the Director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right; (6) the eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

H. Statement of Objection 11. In response to Statement of Objection 11, and all allegations of the objection regarding that item, Sand Springs responds that IDWR has authority pursuant to Idaho Code § 42-1411(2)(j) and Idaho case law to include in its recommendations of water rights, and recommended in the Director's report, remarks and other matters that are necessary to define, clarify, or administer the right. The remarks objected to are necessary to adequately describe and define this water right.

I. Statement of Objection 14. In response to State of Objection 14, and all allegations of the objection regarding that item, see attached "Sand Springs Ranch Partnership's Response to Claimant's Answer, Affirmative Defenses and Prayer for Relief."

In response to the sentence listed in Changes to the Director's Report, whereby the claimant attempts to "reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial," Sand Springs responds that, insofar as this purported reservation of rights may constitute an attempt to reserve the right to amend at trial the claimant's notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim just as a party must obtain leave of the court to file a late claim after the Director's report is filed.

CHANGES TO THE DIRECTOR'S REPORT

Sand Springs proposes no changes to the description of this claim in the Director's report.

☐ 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:

Affidavit of Josephine P. Beeman 2 pages

Sand Springs Ranch Partnership's Response 4 pages
to Claimant's Answer, Affirmative Defenses
and Prayer for Relief

VERIFICATION

State of IDAHO)
 : SS
County of ADA)

Tom Ambrose, being first duly sworn, upon oath, deposes and says:

I am a principal in Sand Springs Ranch Partnership, a party to this proceeding, as defined by I.C. § 42-1401A(1) and (7); that Josephine P. Beeman is my attorney in fact for these matters and is authorized to verify this response; and I have read the foregoing response, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

SANDS SPRINGS RANCH PARTNERSHIP

By: /5/
Tom Ambrose

DILLION BOSCH DAW & BOCK, Chtd.

By: /5/
Josephine P. Beeman, Attorney signing in
Representative capacity

Subscribed and sworn to before me this 18th day of August, 1995 .

 /5/
Notary Public for _____
Residing at: _____
My Commission expires: _____

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of August, 1995, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

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ASSOCIATION OBJECTION, No. 36-15168 - Page 6

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 44449
Boise, Idaho 83711-4449

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

Patrick D. Brown
HEPWORTH LEZAMIZ & HOHNHORST, Chtd.
P.O. Box 389
Twin Falls, ID 83303-0389

/s/
JOSEPHINE P. BEEMAN