

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 75-10542
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Robert T Felton (75-10536 + 75-10530)
Address: 1373 3rd Ave
Salt Lake City UT 84103
Daytime Phone: 801-583-3319

Name & Address of Attorney, if any:

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

Name: Lemhi Gold Trust LLC
Address: 1112 W. Main St. #101
Boise, Id. 83702

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: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____

10. ☒ **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 OBJECTIONS(S): _____

SEE Attached - NOTE - All documents attached are excerpts from the SPF Memorandum filed by LGT (SPF water Engineering) with IDWR 7/15/13

F.

VERIFICATION (must be completed)

State of Utah)
)ss.
County of Salt Lake)

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

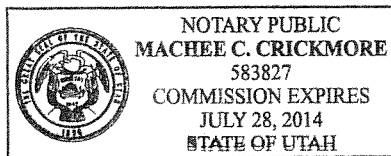
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Robert Felton
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

December 23, 2013



Machee C. Crickmore
Notary Public for Salt Lake
Residing at: 701 E 400 S, CBC, UT 84102
My Commission Expires: July 28, 2014

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 Dec 23rd, 2001 I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

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

Name: Lemhi Gold Trust
Address: 1112 W. Main St #101
Boise, Id 83702

3. Copies to:

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

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



Signature of objector or attorney
mailing on Objector's behalf

OBJECTION OF ROBERT FELTON

1. The application of LGT is untimely and must be denied.

The forfeiture statute was amended in 2008. Even if the statute applies LGT or its predecessor had over one year to amended their claim or present new evidence before this claim was denied with prejudice on Nov. 13, 2009. After that the applicant waited another three years to file its 60(b) motion. This Rule requires that such a motion be made "within a reasonable time". I submit three years is unreasonable as a matter of law especially since the Motion states no basis for relief arising between denial (Nov. 13, 2009) and filing in 2013. No "unique and compelling circumstances" are alleged or exist. *Miller v. Haller*, 129 Idaho 345, 924 P2d 607 (1996).

Rule 60(b) was never intended to relieve parties of their obligation under IRCP to file appropriate requests to amend or supplement the Director's Report before the Final Order Disallowing Claims or appropriate motions to challenge that Order after Nov. 13, 2009. Also, Rule 60(b) cannot be used as a substitute for an appeal of this Court's decision.

If this Motion is allowed then the finality and purpose of the SRBA is in jeopardy.

2. This application is in an area, which is already oversubscribed and will interfere with approved SRBA rights.

A quick check shows water rights immediately downstream in Ditch and Hughes Creeks: Richard Rabe 4.07 cfs; Lowell Cerise (Hughes Creek is 30% fed by Ditch Creek) .69 cfs; Robert Felton .43 cfs; Stuart Felton .26 cfs and every SRBA adjudicated right in the Hughes Creek and North Fork drainage.

A review of the SPF water report filed by LGT fails to support the availability of water. The portion relied upon was prepared by HartCrowser (attached) seventeen years ago. I submit with warming and scant moisture the report is obsolete and wrong. The data for the report was only collected from March to October and even 17 years ago there was only enough water during May and June run-off.

3. The Claimant has failed to demonstrate a basis for its claim under IC 42-223.

The statute, IC 42-223 requires a showing that the nonuse was due to mineral prices and the property was maintained for future mineral production. This claim fails both requirements.

There is no assertion that the cessation of mining on this property over 90 years ago was due to mineral prices. In fact, after mining was abandoned, the last use of this property was for a sawmill until about 1931. That is not mining.

The Polk Report submitted by LGT was prepared because the then owners wanted to exchange it with the Forest Service not mine it.

4. Claimant's evidence does not support beneficial use of water on this property.

This Polk Report (excerpts of which are attached) is misrepresented. The SPF Water memorandum states it supports the diversion of water for this property. That is not what it says. Polk says that two of the ditches were used downstream on Hughes Creek not here. At site 1039 a small depression may have carried snowmelt but there was no evidence it was used for mining. Also, the hydraulic mining was on Hughes Creek not Ditch Creek.

No water use is quantified.

The SPF Water report is speculative and “junk science” The priority date is – assumed to have been before patent. The diversion of water is not a requirement for a patent and this assumption is simply made up. As to beneficial use the Report simply assumes again that “water in whatever quantity available was used”. This assumption is nonsensical.

CONCLUSION

For the reasons stated this matter should be dismissed and denied.



Robert Felton

Table 2 - Summary of Stream Flow Gauging Data

Gauging Station	Stream Flow Measurements in cfs			
	May-95	Jun-95	Aug-95	Oct-95
<i>Ditch Creek</i>				
DC-1A	44.23	31.00	2.00	1.37
DC-1B	0.12	0.03	dry	dry
DC-2	36.50	25.70	2.10	1.51
DC-3	35.12	28.06	1.77	1.48
DC-4	---	27.50	1.48	1.37
<i>Little Ditch Creek</i>				
LD-1	0.47	0.14	0.02	0.05
LD-2A	0.52	0.15	0.01	0.04
LD-2B	dry	dry	dry	dry
LD-3	3.87	0.45	< 0.01	0.05
<i>Hughes Creek</i>				
HC-1	---	---	6.99	5.72
HC-2	---	---	nm	nm

Notes:

- Gauge not installed at time of measurement
- dry Stream segment dry
- nm Gauge not monitored
- cfs Cubic feet per second

humbug2.xls(5)

DRAFT

**A CULTURAL RESOURCES SURVEY OF THE PROPOSED HUMBUG
LAND EXCHANGE, LEMHI COUNTY, IDAHO**

by

**Michael R. Polk
Principal Investigator**

Prepared for:

**American Gold Resources
Salmon, Idaho 83467**

Prepared by:

**Sagebrush Archaeological Consultants, L.L.C.
3670 Quincy Avenue, Suite 203
Ogden, Utah 84403**

Under Authority of USFS Special Use Permit

Salmon National Forest Project No. SL-95-1103

Archaeological Report No. 754-01

August 2, 1995

rapidly staked seventy-one claims and organized the Oro Fino Mining District. Prospectors searching for other gold deposits fanned out to other areas, including the Salmon River, where a discovery near Florence triggered a rush in 1861 (Arrington 1994: 183-189).

Gold Mining at Ditch Creek

Gold mining activity in the study area was an outgrowth of an 1866 discovery on Napias Creek, in the north-central part of Lemhi County. The town of Leesburg developed from the subsequent influx of prospectors (Umpleby 1913: 20-21). After the initial discovery, few promising deposits were found, and, as one miner reported, "aside from the claims of the discovery company, very little was known of the true value of the camp, and many left disheartened for new fields of expectation" (*Idaho Recorder*, 26 March 1890).

One area that appeared promising was the North Fork of the Salmon River. Barney Hughes, who had prospected in present-day Montana before coming to Idaho, made the initial discovery of placer gold on Hughes Creek in 1867. Five years later, two brothers from Georgia discovered placer gold on another tributary of the North Fork, which they named Dahlenega Creek after their hometown (Gibbonsville Improvement Association 1982: 78).

By 1877 most easily-accessible placer deposits and lode veins along the North Fork and its tributaries had been mined, requiring more expensive hard-rock extraction. That year, George Anderson of Leesburg located a series of lode veins situated on the north slope of Dahlenega Creek, on the eastern outskirts of Gibbonsville. These claims were an important part of the American Development and Reduction Mining Company (ADM&R), which produced an estimated one million dollars in gold bullion. In 1878 a group of hard-rock miners formed the Dahlenega Mining District, later renamed the Gibbonsville District (Gibbonsville Improvement Association 1982: 79-80).

Ditch Creek, a tributary of Hughes Creek formed by a miner's ditch, was the site of both placer and lode mining (Lemhi County History Committee 1992: 172). In 1891, Charles Barclay purchased a group of six individual lode claims, known collectively as the Bull of the Woods mines, in the Ditch Creek area, about four miles from Gibbonsville. The six mines—the Ironstone, Chameleon, Copperstain, Atlanta, Fraction, and Beauty claims—along with a mill at the Chameleon site, comprised about 116 acres (Lemhi County Recorder 1893).

Over the next several decades, the Bull of the Woods mines changed hands frequently and apparently never yielded the riches that its owners hoped it would. In 1892 Charles Barclay sold the Bull of the Woods claims and other lode and placer claims to Bernard MacDonald of Marysville, Montana for the sum of \$75,000 (Lemhi County Recorder 1892). MacDonald's mining interests apparently shifted to Mexico sometime in the next few years. In 1907, MacDonald sold the claims to W.S. Goodyer of Helena, Montana for one dollar, listing Guanajuato, Mexico as his residence (Lemhi County Recorder 1908a). The same year, Goodyer sold a half interest in the claims to Paris O'Neil of Lemhi County (Lemhi County Recorder 1908b).

Corporate ownership of the Bull of the Woods mines came in 1908, when the Idaho Mining and Lumber Company purchased the claims for \$65,000 (Lemhi County Recorder 1908c). The company invested substantial capital in the property, developing a plant designed to treat one hundred tons of ore per day. The mining camp consisted of employee's quarters, an assay office, and warehouses that were electrically-lighted with power generated at Ditch Creek (Miller 1985: 45). Production of a small amount of gold at Hughes Creek occurred between 1901 and 1932 (Lorain and Metzger 1939: 32), but apparently the Bull of the Woods mines did not yield similar results. Geologist Joseph Umpleby reported in 1913 that the Bull of the Woods property had recently produced lead ore, but little or no gold bullion. (Umpleby 1913: 134, 152).

Umpleby also reported the presence of a recently-erected stamp mill on the site, with all of its machinery not yet installed (Umpleby 1913: 134), perhaps the same mill first mentioned in the 1912 annual report of the Idaho mining industry (Bell 1913: 134). Two Gibbonsville area residents built a sawmill on the property, known as the Kerrigan and Bradshaw mill (Miller 1985: 55). In 1921, Frank Miller, a Hughes Creek resident, bought the sawmill and operated it for about ten years before moving to Salmon (Miller 1985: 104-105).

In 1927, A.B. Post of the Rescue Mining Company of California attempted to revive mining in the area, purchasing the primary ADM&R mine and the Bull of the Woods mines. Although Post discovered a three-foot wide ore body at the ADM&R mine, a fire, which caused the main portal of the mine to cave in, thwarted his hopes of rejuvenating the mine (Miller 1985: 123). Post died in 1943, leaving the Bull of the Woods mines to his sons. The mines changed hands frequently over the next several decades. Ethel Routh of Lemhi County purchased the mines for \$2,000 in 1957 (Lemhi County Recorder: 1957). The claims were then split up, with the Copperstain claim being sold for \$1,000 in 1970 (Lemhi County Recorder: 1970).

Gold mining activity at Ditch Creek provides a microcosm of mining throughout the American West. In most cases, the excitement generated by a mining rush rapidly gave way to a long and costly extraction process that yielded little. The Bull of the Woods mines exhibited the typical pattern of both individual and corporate ownership, frequently changing hands and never yielding the wealth hinted at by initial discoveries.

E. Expected Historic and Prehistoric Land Use and Site Sensitivity.

1. Are there known sites in this area? ☒ yes.

There is one site which has been noted on a previous Forest Service survey.

2. Are sites expected? ☒ yes.

The Humbug Land Exchange survey area is in a very rugged terrain overlooking the narrow Ditch Creek river valley. It is possible that small prehistoric activity areas could be found in the area, possibly a small hunting camp on a knoll or bench. However, they would be extremely small and represent short term occupation.

land was actively mined using water diverted from Ditch Creek on or before the issuance of the 1892 patent deed.

Evidence of Beneficial Use

The LGT mine site is so remote that it remains unsurveyed. The Ditch Creek drainage basin is relatively small and stream flows in the creek have not been routinely measured. We assume water in whatever quantity available was historically diverted and used at the Bull of the Woods mine site.

Evidence of historical water diversion and use was documented in a report by Michael R. Polk in 1995.³ Polk's investigation discovered several historical ditches and mine adits, and also documents the location of the mill site. A copy of the report is provided as Attachment E. The location of each site in the report is shown in Figure 1 below (SL-1037, SL-1038, SL-1039).

The Polk report provides evidence of the following mining activities at the Bull of the Woods mine sites:

Site SL-1037: Two mine adits, several waste dumps and a mill site.

Site SL-1038, Site SL-1039: Several historical ditches (two in the general vicinity of the claimed point of diversion), and the remnants of a flume

In addition to the Polk report, we are providing a copy of a set of photographs taken by Lemhi Gold Trust in 2012 (see Attachment F). Water-retention berms and conveyance ditches can be seen in the photographs, and the location is labeled on Figure 1 as "Photos 1-4".

³ Sagebrush Archaeological Consultants. (1995). *A Cultural Resources Survey of the Proposed Humbug Land Exchange, Lemhi County, Idaho.*

Gauging Station (Ditch Creek)	Stream Flow Measurements (cfs)			
	May 1995	June 1995	August 1995	October 1995
DC-1A	44.23	31.00	2.00	1.37
DC-1B	0.12	0.03	dry	dry
DC-2	35.50	25.70	2.10	1.51
DC-3	35.12	28.06	1.77	1.48
DC-4	Gauge not installed	27.50	1.48	1.37

Table 1. Ditch Creek Stream Flows (1995)

A map of the stream gauge locations is provided in the Hart Crowser report. Gauge DC-2 was located approximately 600' downstream of the point of diversion claimed. Clearly, water was available for diversion at this point in 1995. Also, in the 10-year period from 1989 to 1998, on April 1 of each year, the snow water equivalent (swe) data for the nearest snotel site⁵ ranges from 11.3-31.0 inches. If we remove the highest value (31.0 inches in 1997, which may have been an exceptional year), the average swe value for the remaining nine years is 15.5 inches. Based on this limited information, we believe that 1995 should be considered a normal water year when considering water availability for beneficial use under LGT's water right claim from Ditch Creek. Therefore, the 1995 streamflow monitoring demonstrates that there was adequate water to support the 0.5 cfs diversion rated claimed. We believe historical water use on the Bull-of-the-Woods mine site was likely in excess of the 0.5 cfs claimed, due to the evidence of hydraulic mining provided by Polk and the LGT photographs.

C. SRBA Claim 75-10542

Amended Claim:

The original SRBA claim was submitted to IDWR by Don C. Lortz on May 5, 1990. The original claim was for 3.0 cfs from Ditch Creek and Little Ditch Creek for mining use from April through October, and 0.04 cfs from the same streams for year-round stockwater use. The claim has been amended to make the following changes:

⁵ Snotel Site No. 638 (Moose Creek), which is approximately 9 miles northeast of the claimed point of diversion from Ditch Creek.