

RECEIVED
MAY 25 2000
Department of Water Resources
Southern Region

Movant: State of Idaho

ALAN G. LANCE
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

PETER J. AMPE
Deputy Attorney General
Natural Resources Division
P.O. Box 44449
Boise, ID 83711-4449
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Idaho State Bar # 5209 (Ampe)

72-12775

**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)

Subcase No. 72-12775

Case No. 39576)
_____)

MOTION TO AMEND OBJECTION

COMES NOW the State of Idaho and respectfully requests the Special Master to allow the State of Idaho to amend its Objections filed in this Subcase and accept the Amended Objection attached hereto for filing.

AS GROUND IN SUPPORT: The State of Idaho states as follows.

1. The procedural and factual history of this Subcase is contained in the *Memorandum Decision and Order on Challenge*, Subcase Nos. 32-11171 (March 31, 2000) at 2-3.

2. As stipulated to as part of the *Challenge* and as Ordered by the Court, the Special Master is directed to grant leave to the State of Idaho to amend its objection to this water right. *Memorandum Decision and Order on Challenge*, Subcase Nos. 32-11171 (March 31, 2000) at 5.

3. The State of Idaho does **not** request hearing on this motion.

DATED this 15th day of May 2000.

ALAN G. LANCE
Attorney General



PETER J. AMPE
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May, 2000, I caused to be served a true and correct copy of the foregoing MOTION TO AMEND OBJECTION to the following addressees by the method indicated:

Larry A. Brown
United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☐ Statehouse Mail

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail



PETER J. AMPE
Deputy Attorney General
P0136naa.doc

**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	)		
	)	A.	Subcase 72-12775
	)		(Insert water right number)
Case No. 39576	)		(Amended)
	)		DOMESTIC AND
	)		STOCK WATER RIGHT
	)		OBJECTION
	)		
	)		

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON 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

Name and Address of Attorney, if any:

Attorney Name: ALAN G. LANCE
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
PETER J. AMPE
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) 334-2400

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

Name: United States of America Acting Through
Address: USDI Bureau of Land Management
1387 S. Vinnell Way
Boise, Idaho 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: _____
4. ☒ **Priority Date**
Should be: If this water right exists, the State Law based portion of this right should have a priority date no earlier than June 28, 1934.
5. ☐ **Points of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
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):** The United States has failed to establish any legal and/or factual basis for any claimed priority date for stockwater purposes with a date prior to the enactment of the Taylor Grazing Act, June 28, 1934.

Even if PWR 107 created a federal reserved water right, the United States, or any subdivision thereof, has not complied with the requirements of PWR 107 and/or the United States' and/or its subdivisions' own rules and regulations in regards to this claim. Therefore, no water right can be granted based upon PWR 107.

The State further objects to this claim as to any part based on federal law as the claimed source is declared tributary to a flowing stream and so cannot be based upon the executive order known as Public Water Reserve 107 (April 17, 1926).

The State reserves the right to amend this objection as to any part of this claim based on federal law, based on the final decision reached in Basin-Wide Issue #9 (PWR 107) (Idaho Supreme Court No. 23587 and/or any subsequent proceedings).

F.

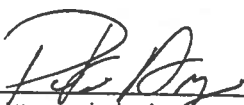
VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Peter J. Ampe, Deputy Attorney General, being first duly sworn, upon oath, deposes and says:

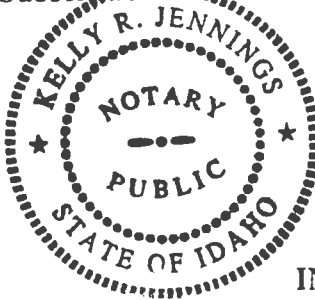
That the State of Idaho, in both its sovereign and proprietary capacity, and pursuant to I.C. § 42-1411A(16) is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and that the statements are true to the best of my knowledge and belief.

ALAN G. LANCE
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
PETER J. AMPE
Deputy Attorney General



By Attorney signing in representative capacity

Subscribed and sworn to before me on: May 15, 2000
(Insert Date)



Kelly R. Jennings
Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: May 29, 2003

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 May 15, 2000, 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
P.O. Box 2707
Twin Falls, Idaho 83303-2707

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

United States of America Acting Through
USDI Bureau of Land Management
1387 S. Vinnell Way
Boise, Idaho 83709-1657

3. Copies to:

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

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

[Signature]
Signature of party claimant or attorney

RIGHTS FROM: SOURCE: SPRING TRIBUTARY: MORGAN CREEK
RIGHT NUMBER: 72-12775

NAME & ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE ID 83709-1657

SOURCE: SPRING TRIBUTARY: MORGAN CREEK

QUANTITY: 0.02 CFS
THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 01/01/1879

POINT OF DIVERSION: T16N R19E S19 NWSNW Within CUSTER County

PURPOSE AND PERIOD OF USE: PURPOSE OF USE STOCKWATER PERIOD OF USE 01-01 12-31 QUANTITY 0.02 CFS

PLACE OF USE: STOCKWATER T16N R19E S19 Within CUSTER County
SNW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE
BLM RECORD ID = 7204580566
STOCKWATER, 1493 RANGE CATTLE; WILDLIFE VAR. AMT.

VERIFIED BY KKC
4-17-97

72-12775

APR-10-1997
0013

RIGHT NUMBER:

72-12775

NAME AND ADDRESS:

UNITED STATES OF AMERICA ACTING THROUGH
USDI BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
1387 S VINNELL WAY
BOISE ID 83709-1657
83709

SOURCE:

SPRING

TRIBUTARY: MORGAN CREEK

QUANTITY:

0.02 CFS
0101 EPS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13.000
GALLONS PER DAY.

PRIORITY DATE:

01/01/1879

POINT OF DIVERSION:

T16N R19E S19

NWSNW

Within CUSTER County

PURPOSE AND
PERIOD OF USE:

STOCKWATER

PERIOD OF USE
01-01 12-31

WILDLIFE

01/01 12/31

QUANTITY
0.02 CFS
0101 EPS
0101 EPS

PLACE OF USE:

STOCKWATER
T16N R19E S19

Within CUSTER County
SNW

WILDLIFE
T16N R19E S19

Within CUSTER County
SNW

OTHER MATTERS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL:

BASIS OF CLAIM - BENEFICIAL USE
BLM RECORD ID = 7204580566
STOCKWATER, 1493 RANGE CATTLE; WILDLIFE VAR. AMT.

OK 4-12-97

In Re SRBA

Case No. 39576

NAME and
ADDRESS:

United States of America acting through
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, ID 83709 - 1657

AMENDED NOTICE of CLAIM
for Water Right number:

A72-12775

A72-12776

BLMIDENT:

7204580566

RECEIVED
MAR 03 1997

Department of Water Resources

SOURCE:

Source	Tributary
SPRING	MORGAN CREEK

QUANTITY:

0.02

CFS

or VOLUME:

0

Acre Fee

The quantity of water under this right for stockwater shall not exceed 13,000 gallons per day

PRIORITY DATE:

1/1/1879

POINT of
DIVERSION:

Twtnship	Range	Section	T1	T2	T3	LOT	within the	County of
16N	19E	19	NW	SW	NW			CUSTER

PURPOSE
and
PERIOD
OF USE:

Purpose of Use	Period of Use (from - to):	Rate In CFS	or	Volume in Ac
04	0101	1231		0
16	0101	1231		0

CONSUMPTIVE
USE:

de minimis stockwater use

DATE:

01-Mar-97

2:43 PM

OTHER PROVISIONS NECESSARY FOR DEFINITION or ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

PLACE
of USE:

Water Use	Twtn	Rge	Sec	T1	T2	LOT	within the	County of
04	16N	19E	19	SW	NW	0		CUSTER
16	16N	19E	19	SW	NW	0		CUSTER



A7212775

IN THE DISTRICT COURT OF
THE FIFTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

CIVIL CASE NUMBER: 39576

IN RE THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF WATER
FROM THE SNAKE RIVER BASIN WATER SYSTEM

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE AND FEDERAL LAW

U.S. DEPT. OF INTERIOR
BUREAU OF LAND MGMT.
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706
TELEPHONE: 208-334-1401

PRIORITY DATE: 1879-01-01
(RESERVED..... 1926-04-17)
AGENCY NUMBER: 7204580566
BLM NUMBER: 7204580566
BASIS OF CLAIM: BENEFICIAL USE
(SUBSEQUENT FEDERAL RESERVE)
BASIN NUMBER: 72

SOURCE

TRIBUTARY TO

SPRING

MORGAN CREEK

DESCRIPTION OF DIVERSION WORKS

UNDEVELOPED SPRING

PURPOSE OF USE	DIVERSION RATE	DIVERSION VOLUME	PERIOD OF USE FROM	TO
STOCKWATER	0.010	0.00	0101	1231
WILDLIFE	0.010	0.00	0101	1231
TOTAL:	0.010 CFS	0.00 AF		

NON-IRRIGATION USES

STOCKWATER, 1493 RANGE CATTLE; WILDLIFE VAR. AMT.

POINT OF DIVERSION							
TWP	RNG	SEC	TRACT1	TRACT2	TRACT3	LOT	COUNTY
16N	19E	19	NW	SW	NW	00	CUSTER

PLACE OF USE

TWP	RNG	SEC	TRACT1	TRACT2	LOT	COUNTY	IRRIGATED OWNED	ACRES
16N	19E	19	SW	NW	00	CUSTER	YES	0.0
16N	19E	19	SW	NW	00	CUSTER	YES	0.0

TOTAL ACRES IRRIGATED: 0.0

MICROFILMED

BLM NUMBER: 7204580566

PAGE: 2

TOTAL CONSUMPTIVE USE IS: DE MINIMUS ACRE FEET PER ANNUM

OTHER WATER RIGHTS

WATER FEDERALLY RESERVED, SEE REMARKS

REMARKS

RESERVED - EXECUTIVE ORDER DATED APR 17, 1926 PWR NO. 107

WATER RIGHT NUMBER - A72-12775

PREFIX TRANSLATION: ADJUDICATION CLAIM

OLD (D) NUMBER -

[illegible]

*** A - ATTORNEY ***

HAUGRUD, JACK OR G GARVER OR D ZANE

1 - US DEPT OF JUSTICE
2 - ENV & NR DIV GEN LIT SEC
3 - PO BOX 663
CITY- WASHINGTON
PHONE - 202-272-4134

STATE- DC ZIP- 20040663

*** C - CURRENT OWNER ***

US DEPT OF INTERIOR

1 - BUREAU OF LAND MANAGEMENT
2 - IDAHO STATE OFFICE
3 - 3380 AMERICANA TERRACE
CITY- BOISE
PHONE - 208-334-1401

STATE- ID ZIP- 83706

*** K - ALSO KNOWN AS ***

37

1 -
2 -
3 -
CITY- X
PHONE -

STATE- ID ZIP- 0

[illegible]

```

+ - - - - - SOURCE - - - - - +
+ - - - - - SOURCE - - - - - +
+ - - - - - SPRING - - - - - +
+ - - - - - TRIBUTARY - - - - - +
+ - - - - - MORGAN CREEK - - - - - +

```

TWN	RNG	SEC	TRACT	LOT	RFLG	COUNTY	POINT OF DIVERSION	DIVERSION NAME
-----	-----	-----	-------	-----	------	--------	--------------------	----------------

16N	19E	19	NW	SW	NW	(37)	CUSTER

[illegible]

04 - STOCKWATER
16 - WILDLIFE

01/01	12/31	0.010
01/01	12/31	0.010

	+ - TOTAL DIV. RATE - +	+ - TOTAL DIV. VOLUME - +	+ - TOTAL DIV. CAPACITY - +	+ - TOTAL CONSUMPTIVE USE - +	+ - KW USAGE - +
	0.010			0.0	

[illegible]

STOCK	WATER	04	16	WT	NI	TEE
16N	19E	19	SW	NW		
16N	19E	19	SW	NW		

(37) CUSTER

+ - - DIVERSTON MEANS - SPRING

+ - - NON-IRRIGATION USE - STOCKWATER. 1493 RANGE CATTLE: WTDI TEE VAR ANT

+ - - OTHER RIGHTS END SAME IICE - WATER FEDERALITY RECEIVED SEE REMARKS

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

AJ5808NP
(00-26)

WATER RIGHT NUMBER - A72-12775

PREFIX TRANSLATION: ADJUDICATION CLAIM

+ - - - - REMARKS - - - - -

BLM RECORD ID = 7204580566
RESERVED - EXECUTIVE ORDER DATED APR 17, 1926 PWR NO. 107

+ - - - - OLD WATER RIGHT NUMBERS - - - - -
NO OLD WATER RIGHT NUMBERS FOUND.

+ - - - - CONDITIONS OF APPROVAL - - - - -
NO CONDITIONS OF APPROVAL FOUND.

+ - - - - DECREE PLAINTIFF - - - +
+ - - - - DECREE DEFENDANT - - - +
+ - - - - DECREE DATE - - +
00/00/0000

+ - - AUDIT FIELDS - 06/13/93 AJCTR

+ - - - - COMMENTS - - - - -
NO COMMENTS FOUND

+ - - - - ADJUDICATION RIGHTS DATES AND FLAGS AREA - - - - -

COURT REPORT FILING	- 00/00/0000	FIELD INSPECTION MADE	- 00/00/0000	CIVIL CASE NUMBER	- 39576
OBJECTION FILED DATE	- 00/00/0000	FIELD INSPECTION FLAG	-	OLD CASE NUMBER	-
RESPONSE FILED DATE	- 00/00/0000	VERIFIED DATE	- 00/00/0000	OLD JUDICIAL DISTRICT	-
CLAIM RECEIVED DATE	- 03/25/1993	LAST AMENDED DATE	- 00/00/0000	TEMPORARY RIGHT	- P
PROOF DUE DATE	- 00/00/0000	PROOF MADE DATE	- 00/00/0000	WATER DISTRICT	-
LICENSED DATE	- 00/00/0000	RECEIPT NUMBER	- X111111	FEDERAL/STATE INDICATOR	- S
CLAIMS TAPE ERROR FLG	-	POU OWNERSHIP FLAG	- Y	PRESUMPTION FLAG	-
FEE EXEMPT FLAG	-	NAME CONNECTOR	-	NOTICE OF ERROR FLAG	-

Twin Peaks NE

7216 1919 - 2

"Verified By"
Tono A. Orlho-PQ
A. Orlho-PQ
Water Right Records
N. Orlho-PQ
F. Orlho-PQ
C. Orlho-PQ (Remarks)
W. Orlho-PQ
P. Orlho-PQ
IDWR Records

VERIFIED

JUN 15 1994

CERTIFIED

JUN 28 1994

WATER EXAMINER

DATA ENTRY

ENTERED

CHECKED