

COPY

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

RECEIVED

MAY 08 2015
DEPARTMENT OF
WATER RESOURCES

A. Subcase 92-10622

In Re CSRBA)
)
Case No. 49576)
)
)
)
_____)

STANDARD FORM 1 OBJECTION

B. NAME AND ADDRESS OF PERSON OBJECTING

COEUR D'ALENE TRIBE of the COEUR D'ALENE INDIAN RESERVATION, 850 A Street, P.O.
Box 408, Plummer, ID 83851

Name & Address of Attorney:

Howard Funke
Howard Funke & Associates, P.C.
424 Sherman Ave.
P.O. Box 969
Coeur d'Alene, ID 83816-0969
Telephone: (208) 667-5486
Email: hfunke@indian-law.org

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

Robert Swisher, Luada Swisher, Kevin Swisher and Kylie Swisher, 2614 Rd 76, Pasco, WA
99301

Name & Address of Attorney:

D. The Tribe objects to the following elements or general provision as recommended in the Director's Report.

1. ☐ **Name and Address**

Should be: _____

2. ☐ **Source**

Should be: _____

3. ☐ **Quantity**

Should be: _____

4. ☒ **Priority Date**

Should be: The date that reflects when water was actually diverted and put to a beneficial use

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. ☐ **General Provision** ☐ Individual Water Right ☐ All Water Rights

☐ Should not be recommended.

☐ This general provision was not recommended but should be recommended as described below.

Should be: _____

☐ General provision was recommended but should be modified as described below.

Should be: _____

11. ☐ I object because the recommendation contains an accomplished transfer under Idaho Code § 42-1425 resulting in injury to my water right(s) and/or enlargement of the original right.
12. ☐ 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:

Idaho law requires that a claimant's priority date "must be based upon evidence, not speculation. If a water right is based upon the constitutional method, 'one of the essential requisites to establish his claim is the application of water to a beneficial use, and, where there is a total lack of evidence upon this point, a decree awarding water to the claimant cannot be sustained.'" *City of Pocatello v. Idaho*, 152 Idaho 830, 841 (2012) (quoting *Reno v. Richards*, 32 Idaho 1, 8 (1918)). The claimant in this case has provided no evidence beyond their claim form as evidence of their priority date. To sustain this evidence and decree a priority date based upon such dubious evidence would "give them a date of priority in advance of the actual application of the water to a beneficial use of which there is any *definite evidence . . .*" *Reno*, 32 Idaho at 8.

Exhibit A, attached, contains a list of claim numbers that the Tribe has also objected to that implicate the same issues raised in this objection.

F. CERTIFICATE OF MAILING

I certify that on May 6, 2015, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to: Clerk of the District Court
Coeur d'Alene-Spokane River Basin Adjudication
253 Third Avenue North PO Box 2707
Twin Falls, ID 83303-2707
2. One copy to the claimant or attorney for the claimant of the water right at the following address:

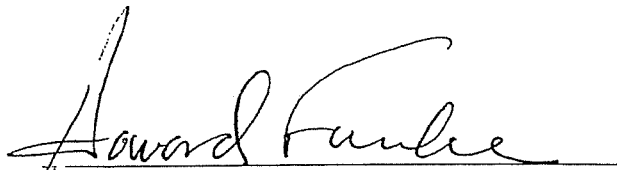
Brian Davis
16604 Hwy 5
Saint Maries, ID 83861

3. Copies to:

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

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

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

A handwritten signature in black ink, appearing to read "Howard Funder", written over a horizontal line.

Signature of Objector or attorney
mailing on Objector's behalf

EXHIBIT A
LIST OF SUBCASE NOS.

Box 4: Priority Date

92-4008
92-10093
92-10134
92-10482
92-10483
92-10549
92-10554
92-10905
92-10972
92-10377
92-10452
92-10622
92-10642
92-10694