

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

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JUN 25 2015

DEPARTMENT OF
WATER RESOURCES

A. Subcase 91-7228

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

Shawn Fly, 32086 S. Hells Gulch Rd, St. Maries, ID 83861

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: The quantity of water actually diverted at the time the water right was first applied to a
beneficial use.

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:

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.

Box 3:

Idaho law requires the director of the Idaho Department of Water Resources (IDWR) to determine the quantity of water used by each claimant in the adjudication. I.C. § 42-1411(2)(c). The Idaho Supreme Court has found that “a claimant seeking a decree of a court to confirm his right to the use of water by appropriation [rather than by permit] must present to the court *sufficient evidence to enable it to make a definite and certain findings* as to the amount of water actually diverted and applied, as well as the amount necessary for the beneficial use for which the water is claimed.” *Reno v. Richards*, 32 Idaho 1, 15 (1918). IDWR acknowledges that it has not investigated the quantity element of domestic and/or stockwater water right claims in the CSRBA by stating “the quantity of water decreed for this water right is not a determination of historical beneficial use.” IDWR is not in compliance with its legal duty to determine the quantity of water put to beneficial use by those claimants that claim their water right based upon the constitutional method of acquiring a water right.

Box 4:

Idaho law requires the director of the Idaho Department of Water Resources (IDWR) to determine the relative priority of each claimed water right in the adjudication. I.C. § 42-1411(2)(d). The Idaho Supreme Court has found that a user’s claimed 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* 32 Idaho at 8). The claimant in this case has provided only a land patent as proof of his/her priority date. However, the Idaho Supreme Court has found that where a claimant in an adjudication has offered a land patent as their only evidence of priority, decreeing that date 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.

F. CERTIFICATE OF MAILING

I certify that on June 23, 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:

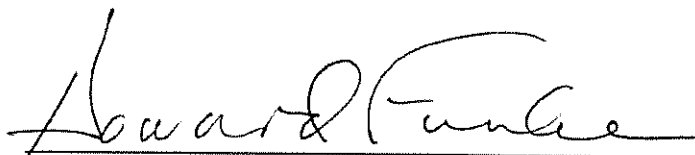
Shawn Fly
32086 S. Hells Gulch Rd
St. Maries, ID 83861

3. Copies to:

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

Chief, Natural Resources Division
Office of Attorney General
PO Box 83720
Boise, ID 83720-0010

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

A handwritten signature in cursive script, 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 3, 4: Quantity and priority date

91-4109
91-7218
91-7228
91-7472
91-7474
91-7476
91-7537
91-7584
91-7706
91-7823
91-7824