

SEP 04 2018

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

In Re CSRBA)

Case No. 49576)

A.)

Subcase 95-4466
(Insert water right number)STANDARD FORM 1
OBJECTION

Please print or type the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name:

JOHN SUTHERLAND

Address:

17899 E. ALDER CREEK RD.COEUR D'ALENE, IDAHO 83814

Daytime Phone:

(208) 664-2634

Name & Address of Attorney, if any:

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

Name:

JOHN SUTHERLAND

Address:

17899 E. ALDER CREEK RD.COEUR D'ALENE, IDAHO 83814

D. I object to the following elements or general provision 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. ☐ **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 OBJECTION(S): please refer to
attached letter

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.

F. CERTIFICATE OF MAILING

I certify that on AUGUST 30, 2018, 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 of the water right at the following address:

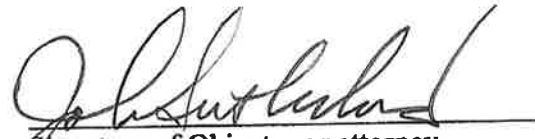
Name: John Sutherland
Address: 17899 E. Alder Creek Rd
Coeur d'Alene, ID 83814

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
State of Idaho
PO Box 83720
Boise, ID 83720-0010


Signature of Objector or attorney
mailing on Objector's behalf

John Sutherland
17899 E. Alder Creek Rd.
Coeur d'Alene, ID 83814
208 664 2634
bigjohnangus@gmail.com

RECEIVED

SEP 04 2018

DEPARTMENT OF
WATER RESOURCES

August 30, 2018

Clerk of the District Court
Coeur d'Alene-Spokane River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

RE: CSRBA Case No. 49576 Subcase 95-4466

Dear Members of the Court:

This letter is in regard to the above referenced water right claim and accompanies a "Standard Form 1 Objection". Specifically I want to explain why I feel the Director of the Idaho Department of Water Resources (IDWR) made an error on his recommendation that my claim for Water Right #95-4466 be disallowed because no beneficial use was found.

I received a letter from the Director of IDWR dated July 27, 2018. The letter included a recommendation to disallow my existing claim because of no beneficial use of the water. On Monday, August 6, 2018 I called the IDWR Northern Regional Office and spoke with Linda Werner, Water Right Agent, Sr. Ms. Werner informed me that the reason my water rights claim was disallowed was because I failed to respond to a letter from her dated December 1, 2016 requesting I supply additional documentation and information to her regarding my claim. Please be advised that I did not respond to the above reference letter because I never received it. I was temporarily out of town at the time, but had set up a temporary forwarding address with the US Post Office. I do not know why the Post Office did not forward this letter with my other mail. Instead they returned it to IDWR.

I am now in receipt of the December 1, 2016, letter. I received a copy August 10, 2018 from IDWR. The letter requests that I document the "beneficial use" or "Statutory Claim" to the water back to 1957.

On August 29, 2018, my wife Loretta and I met with Evan Roda, Water Rights Supervisor and Suzy Cooley-Denney at the Northern Regional IDWR office in Coeur d'Alene, Idaho. At that meeting I presented the information requested by Linda Werner, an affidavit from a local rancher documenting a house on the property in the late 1950s and copies from the Lane, Idaho, USGS topographic map from 1957 which showed a building on the property which is the house mentioned in the affidavit. Evan took all of this evidence in support of my claim and added it to the file in the regional office. He and Suzy

informed me that I needed to be sure to file my objection with the court, but that it was not necessary to send you the affidavit, maps or other information.

My wife and I bought the property, where this claim is located, in 1988, from Martin and Barbara Mueller. The property is a little more than 24 acres, and consists of a house located remotely from an old homestead with numerous outbuildings. We live in a house that was constructed in 1980. Our water source for the house is a well. The house and well are remotely located from the old homestead, being more than 0.1 mile away and 100 vertical feet above it. The well solely serves the house and none of the other buildings on the property. It is not interconnected with the surface water system. The old homestead is where my shop, barn, and various sheds are located. All of them are served by the water claimed in Water Right No. 95-4466. This is our sole source of water for these buildings. We use the water for domestic uses and limited irrigation.

In proving the water right back to 1957 the following evidence was, or is now, in my file at the IDWR Northern Region Office in Coeur d'Alene:

IDWR Claim to a Water Right (#95-4466) as submitted by Martin and Barbara Mueller (previous owners) and is on file with the IDWR. Also various documents stating the claim was advertised in local newspapers and attesting to the accuracy of the statements in the Claim. It is my understanding that there were no objections filed with the claim. Please note the date of priority on line 1 is 1957.

An affidavit from Robert Rider, a local rancher, who has lived in the area since 1952, who remembers a large white house being located on the property in the late 1950's and later a mobile home.

An excerpt from the USGS, Lane, Idaho, 1957, topographic map showing a building where my shop is currently located and is the building referenced in the affidavit from Robert Rider.

A Kootenai County Residential Building Appraisal Record attesting to a building on the property in 1966. This is a different building than the house mentioned in Robert Rider's Affidavit and remains standing. It is now used as a garage and a woodshed.

A satellite photo with the information that Linda Werner requested in her December 1, 2016 letter.

A topographic map with the same information plotted on it as the satellite photo.

An envelope documenting that the letter to me from Linda Werner was returned to the IDWR Northern Region office unopened.

A copy of the December 1, 2016, letter to me from Linda Werner.

All of the outbuildings on my property are located adjacent to the creek. It is my belief that an ordinary reasonable person would conclude that a house located adjacent to a creek with no wells on the property

would use the creek as a source of water. Further I can provide photographs of the old buildings on the property or welcome an inspection if requested.

The creek diversion system consists of a siphon to a reservoir (approximately 500 gallons), a 1 hp centrifugal (jet) pump and a pressure tank with lines to the distribution system. The reservoir is concrete. When we moved here the pump house pit was constructed of cribbed 2x4's. In 2006 the pump house pit was collapsing and was replaced with a concrete vault. Also in 2008 an old Sears's pump was replaced with a new pump.

In conclusion I request that you grant my request for Water Right Claim No. 95-4466. I believe I have shown that a beneficial use does exist and have offered evidence that a historical use of the water back to 1957 is likely.

Thank you in advance for your consideration of my request. If you have any questions or wish to discuss this matter do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John Sutherland", written in a cursive style.

John Sutherland

c: IDWR Document Depository

United States Department of Justice, Environment and Natural Resource Division

Chief, Natural Resource Division, Office of Attorney General, State of Idaho