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DEPARTMENT OF
WATER RESOURCES

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IN 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

Case Nos.: 95-02138, 95-13699,
95-14511, and 95-17232

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

COMES NOW, Idaho water rights Owners Kathryn Spackman, Daniel A. Barkley, and Melissa M. Stocking (hereinafter “Water Rights Owners”), by and through their counsel of record, Parsons Behle & Latimer, and hereby provides this Memorandum in support of Water Rights Owners’ *Motion for Summary Judgment* (the “Motion”) accompanied by the supporting Affidavit of Norman M. Semanko, counsel for Water Rights Owners (hereinafter “Aff.” and “Affidavit of Counsel”), filed herewith.

I. INTRODUCTION

The Water Rights Owners have demonstrated, with ample historical documentation, that the beneficial use of their water rights, 95-14511 and 95-13699 predates 1971 and continues in the present. Evidence of such beneficial use is publicly available on the Idaho Department of Water Resources (hereinafter “IDWR”) Website, and it was relied upon and referenced by IDWR in making its recommendations for Water Right Numbers 95-14511, 95-13699, 95-17232,

and 95-0218 in the Coeur d'Alene – Spokane River Basin Adjudication *Director's Report*. Nearby springs supply the surface water that the Water Rights Owners use as their sole source of drinking and household water.

Objectors, Susan Martell and Becky D. Nelson (hereinafter “Objectors”) also hold water rights for surface waters originating in the same springs from which Water Rights Owners draw their water. Objectors do not accept that Water Rights Owners have right to such water and filed unsubstantiated Objections with this Court stating that the Water Rights Owners’ rights are invalid because Water Rights Owners have not demonstrated beneficial use prior to 1971.

IDWR’s records clearly indicate—via ample, factual documentation—that the Water Rights Owners’ Idaho water rights were beneficially used prior to May 20, 1971. Indeed, IDWR records indicate that such uses may even date back to the turn of the Twentieth Century. There is no genuine issue of material fact in this matter. In addition, Objectors are unable to overcome the evidentiary presumption afforded to the *Director's Report* under Idaho Code § 42-1411(5). Thus, the Water Rights Owners are entitled to summary judgment as a matter of law.

II. FACTS

For decades, the Water Right Owners and their predecessors in interest have lived upon what is now the two parcels of property belonging to Kathryn Spackman, and Daniel Barkley and Melissa Stocking, respectively. The Water Right Owners and their predecessors in interest have beneficially used water diverted and conveyed from a spring source located on Objectors’ adjacent property for stock water and domestic purposes under Idaho Water Right Numbers 95-14511 and 95-13699 since well before 1971. *See* Aff. ¶ 3 at Exhibit (“Ex.”) A. The Spackman Family itself has beneficially used the water subject to the rights since 1945 for stock purposes, and since 1958 for domestic purposes. *Id.* The water reaches the Water Rights Owners’

properties via a network of pipes from the point of diversion that is shared with Objectors, and it is the only source of drinking and household water for the Water Right Owners' properties. *Id.*

Kathryn Spackman and her now ex-husband Raymond Spackman resided at a mobile home on the property then-belonging to his parents. *Id.* They succeeded his parents in owning the residential property.

In October 2009, Kathryn Spackman submitted a Notice of Claim for Idaho Water Right No. 95-14511 to IDWR. The Notice included a priority date of October 1, 1915 and documentation of decades of beneficial use of the water on the Spackman property that included a warranty deed dating from 1915, an agreement from 1924, and a judicial decree from 1960. *See* Aff. ¶ 4 at Ex. B.

In August 2009, Raymond Spackman submitted a Notice of Claim for Idaho Water Right No. 95-13699. *See* Aff. ¶ 5 at Ex. C. It included a priority date of July 2, 1902 and documentation of its long history of beneficial use that included a warranty deed dating from 1915, an agreement from 1924, and a judicial decree from 1960. *Id.* The property and water right is now owned and beneficially used by Daniel Barkley and Melissa Stocking. *See* Aff. ¶¶ 5, 6 at Exs. C & D. All Water Rights Owners continue to beneficially use the water from the springs as their only source of drinking and household water pursuant to the terms of their water rights.

IDWR issued its recommendations for Defendants' water rights in 2018. *See* Aff. ¶ 7 at Ex. E.

Objectors Susan Martell and Becky Nelson have not been receptive to the existence or use of Water Rights Owners' rights, which long predate Objectors' ownership of their property. Nor have they been cooperative in ensuring that the Water Rights Owners can access the water to

which they are entitled. *See* Aff. ¶ 3 at Ex. A. In 2018, Objectors submitted Notices of Error to IDWR regarding their Idaho Water Right Nos. 95-2138 and 95-17232 in which they questioned the validity of Water Rights Owners' water rights. The Notices stated that IDWR should not have noted that their rights share the point of diversion with Water Right Nos. 95-14511 and 95-13699. *See* Aff. ¶ F at Ex. F. Objectors further asserted that the Water Rights Owners are "not authorized to divert water from sources located on their property" to which they own the rights, and that such diversion "disturbs [. . .] waterflow." *Id.*

IDWR replied to Objectors in a January 18, 2019 letter stating that its recommendation for Water Rights Owners' water rights was correct because they demonstrated that the water was beneficially used for the recommended purposes prior to 1971. *Id.* IDWR enclosed documentation of such beneficial use to Objectors and their counsel in its letter. This evidence referenced and attached herein, also is publicly available on IDWR's Website for any party to review.

In July 2019, Objectors filed their objections with this Court, stating that Idaho Water Right Nos. 95-14511 and 95-13699 "should not exist" because there was allegedly "no evidence of water use prior to 1971." *See* Aff. ¶ 9 at Ex. G. Objectors did not reference the ample evidence on the IDWR record that such beneficial uses of the water rights predated 1971, nor did they offer factual support for their contention.

In May 2021, the parties and their attorneys met with IDWR to discuss the water right recommendations in all four subcases. IDWR reviewed the evidence attached as exhibits to the Affidavit of Counsel in support of the Motion. This evidence, again, is publicly available on the IDWR website. *See* Aff. at ¶ 11. Despite clear evidence, submitted to and relied upon by IDWR, establishing that Water Rights Owners' water rights are valid, and that beneficial use of such

rights existed long before 1971, Objectors have decided to move forward with their Objections in this matter.

III. LEGAL STANDARD

Summary Judgment under Idaho Rule of Civil Procedure 56 is appropriate when the pleadings, affidavits, and documents before the Court indicate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. *Montgomery v. Montgomery*, 147 Idaho 1, 5 (2008); IRCP 56(a) and (c). The burden of establishing the absence of a genuine issue of material fact rests with the party moving for summary judgment. *Finholt v. Cresto*, 143 Idaho 894, 896-97 (2007). A party asserting that a fact cannot be disputed must support its assertion by “citing to particular parts of materials in the record” and by “showing that the materials cited do not establish the . . . presence of a genuine dispute.” IRCP 56(c).

A fact is material for summary judgment purposes when it relates to an issue disclosed by the pleadings. *Argyle v. Slemaker*, 107 Idaho 668, 669-70, 691 (Ct. App. 1984). An issue of fact is genuine if the evidence is such that a reasonable finder-of-fact could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.* 447 U.S. 242, 248 (1986). The Idaho Supreme Court has stated: “Flimsy or transparent contentions, theoretical questions of fact which are not genuine, or disputes as to matters of form do not create genuine issues which will preclude summary judgment. Neither is a mere pleading allegation sufficient to create a genuine issue as against affidavits and other evidentiary materials which show the allegation to be false. A mere scintilla of evidence is not enough to create an issue.” *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 871 (1969).

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IV. ARGUMENT

Kathryn Spackman, Daniel Barkley, and Melissa Stocking have met their burden for summary judgment as a matter of law under Idaho R. Civ. P. 56. The Water Rights Owners demonstrated in their Notices of Claim and the evidence subsequently submitted to IDWR that the beneficial use of their water rights predated 1971 and that such water has been used continually to the present. I.C. §§ 42-1409; 42-1406B. Such evidence factually disproves Objectors' flimsy and unsupported contention to the contrary. *See* Aff. ¶¶ 3, 4, and 5, at Exs. A through C. Indeed, beneficial use on the property was evident via a Warranty Deed as early as 1915, and documented again in an agreement in 1924, and a court decree in 1960. *Id.* The factual basis for the beneficial use of Idaho Water Right Nos. 95-14511 and 95-13699 is publicly available on the IDWR website to inform interested parties, including the Objectors.

IDWR is obligated, by law, to recognize such rights and to recommend the uses for which the Water Rights Owners are entitled in the *Director's Report*. *See* I.C. §§ 42-1406B; 42-1410; 42-1411; 42-101; 42-1401B; and 42-104; 42-1402. It did so in this case after examining the claims for each right, and the evidence on the IDWR record. *See* Aff. ¶¶ 3 through 8 at Exs. A through F. Further, IDWR is obligated to note in Objectors' Water Rights that the rights of the Water Rights Holders share the source and the point of diversion. I.C. § 42-110. This remark will also assist in further definition and administration of the water rights. I.C. § 42-1411

Under Idaho law, the *Director's Report* is prima facie evidence of the nature and extent of the water rights acquired under state law. I.C. § 42-1411(4) and 1411(5). Any party filing an objection to any portion of the *Director's Report* has the burden of providing evidence to rebut the *Director's Report* as to all issues raised by the objection. I.C. § 42-1411(5). In this case, Objectors have offered no evidence to support their claim that Idaho Water Rights Nos. 95-

14511 and 95-13699 were not put to beneficial use prior to 1971. In the face of the existing evidence, they are unable to provide any such evidence.

While Objectors may personally dislike the fact that the Water Rights Owners possess rights to water from the springs located on Objectors' property, their stated basis of objection to IDWR's recommendations is discredited by the detailed evidence in IDWR's records. *See* Aff. ¶¶ 3 through 8 at Exs. A through F. In addition, IDWR further informed Objectors of such evidence in its response to Objectors' Notices of Error. *See* Aff. ¶¶ 3 through 8 at Exs. A through F. And again, at the recent meeting between the parties and IDWR.

The evidentiary record firmly establishes that Idaho Water Right Numbers 95-14511 and 95-13699 were beneficially used long before 1971. Objectors' basis for their objections in the pleadings is not factually supported, and they have not met their burden to overcome the evidentiary presumption afforded to the *Director's Report* under I.C. § 42-1411(5).

The allegations in the objections are not sufficient to create a genuine issue of material fact when presented with the existing facts on the record. The Water Rights Owners are legally entitled to their Idaho Water Rights as recommended by IDWR, and summary judgment should be granted in this matter.

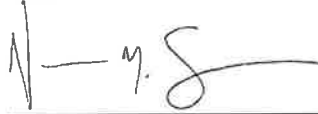
V. CONCLUSION

Ample evidence in IDWR's records demonstrates that the Water Rights Owners established that the beneficial use of Idaho Water Right Numbers 95-14511 and 95-13699 predated 1971. They have met their burden under Idaho R. Civ. P. 56 to establish that there is no genuine issue of material fact in this case. Objectors have presented no evidence pursuant to I.C. § 42-1411(5) to rebut the *Directors Report*, or to establish a factual basis for their claims.

The Water Rights Owners are entitled to Summary Judgment as a matter of law, consistent with the *Director's Report* for these four water rights.

DATED this 4th day of August, 2021.

PARSONS BEHLE & LATIMER

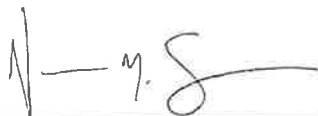


Norman M. Semanko
Attorneys for Kathryn Spackman, Daniel A.
Barkley, and Melissa M. Stocking

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of August, 2021, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

IDWR P. O. Box 83720 Boise, ID 83720-0098	☒ U.S. Mail ☐ Facsimile: ☐ Hand Delivery ☐ Overnight Delivery ☐ Email / iCourt:
Michael P. Lawrence GIVENS PURSLEY LLP 601 W. Bannock Street P. O. Box 2720 Boise, ID 83701-2720	☒ U.S. Mail ☐ Facsimile: ☐ Hand Delivery ☐ Overnight Delivery ☐ Email / iCourt:



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