

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

In Re the General Adjudication)
of the Rights to the Use of Water)
from the Snake River Basin)
Water System)
_____)
_____)

Case No. 34-04154 -0001

The State of Idaho, ex rel.)
R. Keith Higginson in his)
official capacity as Director)
of the Idaho Department of)
Water Resources,)

RESPONSE TO OBJECTION

Petitioner,)

vs.)

The United States; the State)
of Idaho; and all Claimants to)
the use of water from the Snake)
River Basin Water System,)
_____)

Respondents.)
_____)

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

Address: IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449

Briefly describe your interest in this water right:

IDWR is required to file a response to an objection to part
I of the director's report pursuant to I.C. section 42-1412(2).

(Over)

2. Person who filed objection:

Name: US BUREAU OF LAND MGMT
Address: IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706-2544

3. If this response is filed by an attorney:

Attorney Name(s): A. LYNNE KROGH-HAMPE
Attorney Address: DEPUTY ATTORNEY GENERAL(S)
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449
Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

4. ☒ Priority Date: I respond to the objection concerning the priority date.
5. ☒ Points of Diversion: I respond to the objection concerning the legal description of the point(s) of diversion.
9. ☒ Place of Use: I respond to the objection concerning:
- 9a. ☒ The legal description of the place of use.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection item 4, and all allegations of the objection regarding this item, IDWR responds as follows.

The priority date recommended is the same as the priority date claimed. The United States improperly seeks to use the objection process to amend its notice of claim. IDWR believes that a claimant must obtain leave of court to amend a notice of claim after the director's report is filed, just as a party must obtain leave of court to file a late claim after the director's report is filed.

If leave to amend is granted, IDWR further responds as follows. The priority date recommended is the same as the

priority date shown on the statutory claim filed with IDWR by the United States pursuant to Idaho Code section 42-242 et seq. In addition, rights to the use of surface water from the Big Lost River and tributaries were adjudicated in Utah Construction Co. v. Abbott, Equity No. 222 (D.E.Id. 1923); the source of water for this right was adjudicated in that case; and the United States was a party to that case. The United States is therefore precluded by the doctrine of res judicata from asserting a beneficial use priority prior to the determination of rights in that case. IDWR denies this portion of the objection and any allegations regarding this portion of the objection not expressly admitted herein.

In response to Statement of the Objection items 5, 9, and 9.a, and all allegations of the objection regarding these items, IDWR responds as follows.

There is an error in the point of diversion and place of use of this right. The recommendation should be corrected as shown in the attachment entitled "Recommended Water Rights Acquired Under State Law." This right is an instream stockwater right; these changes will clarify that the stream segment includes two forks at the headwaters of the stream that were claimed by the United States, and will delete a segment that is a physical diversion rather than a natural stream. IDWR denies this portion of the objection and any allegations regarding this portion of the objection except as expressly admitted herein.

In addition, the notice of claim filed with IDWR claimed an amount of water for wildlife purposes which IDWR did not recommend, and which the United States again seeks in its "amended" claim attached to the objection. Wildlife use cannot be claimed as part of an instream stockwater appropriation. Physical diversion is required for an appropriation unless an exception is provided by statute. Idaho Code sections 42-113 and 42-114 establish an exception to the diversion requirement for watering of domestic livestock, but no exception is provided for appropriations by the United States for wildlife purposes. IDWR denies this portion of the objection and any allegations regarding this portion of the objection not expressly admitted herein.

CHANGES TO THE DIRECTOR'S REPORT

See attached List of Recommended Water Rights Acquired under State Law.

(Over)

☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary:

	No. of Pages
Notice of Claim No. A34-04154	2
Recommended Water Rights Acquired Under State Law, No. 34-04154	1

VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

David B. Shaw, being first duly sworn, upon oath, deposes and says:

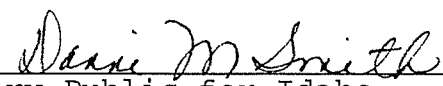
That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director of IDWR, to verify this response; and that I have read the foregoing response, know its contents and that the statements contained therein are true to the best of my knowledge and belief.



Signature of person filing response

By: D. Lynne Kogh-Nampe
(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 19th day of July,
1993.



Notary Public for Idaho
Residing at: _____
My Commission expires: _____
Danni Smith, Notary Public
Residing at Boise, Idaho
My Commission Expires December 5, 1994

(Over)

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of July, 1993, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepared and addressed as follows:

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, and you must fill in the following information:

See No. 3

3. One copy to the party who filed the objection, or if represented by an attorney, to their attorney; and you must fill in the following information:

Name: US DEPT OF JUSTICE
Address: K JACK HAUGRUD & DARIA J ZANE
550 W FORT ST
BOX 33
BOISE ID 83734

A. Lynne Krogh-Hampe
Signature of Respondent or attorney
mailing on Respondent's behalf

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 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: 1934-06-28
IDWR WATER RIGHT NO. 3404154
BLM NUMBER: 3403488119
BASIS OF CLAIM: BENEFICIAL USE
BASIN NO.: 34

SOURCE	TRIBUTARY TO
-----	-----
BRIER CANYON	SINKS

DESCRIPTION OF DIVERSION WORKS

INSTREAM STOCK WATERING.

PURPOSE OF USE	DIVERSION RATE	DIVERSION VOLUME	PERIOD OF USE FROM	TO
-----	-----	-----	-----	-----
STOCKWATER	0.050	0.00	0166	1231
WILDLIFE	0.010	0.00	0101	1231
TOTAL:	0.060 CFS	0.00 AF		

NON-IRRIGATION USES

115 RANGE CATTLE, 100 ANTELOPE, 30 DEER, SAGE GROUSE

POINT OF DIVERSION							
TWP	RNG	SEC	TRACT1	TRACT2	TRACT3	LOT	COUNTY
---	---	---	-----	-----	-----	---	-----
05N	27E	26		NE	NW	00	BUTTE
05N	27E	26		NW	NW	00	BUTTE
05N	27E	27		NE	SW	00	BUTTE
05N	27E	27		NW	NE	00	BUTTE
05N	27E	27		NW	SE	00	BUTTE
05N	27E	27		NE	NE	00	BUTTE
05N	27E	27		SW	NE	00	BUTTE
05N	27E	34		NE	NW	00	BUTTE
05N	27E	34		NW	SW	00	BUTTE
05N	27E	34		SE	NW	00	BUTTE
05N	27E	34		SW	SW	00	BUTTE

05N 27E 27

SE SW 00 BUTTE

PLACE OF USE

TWP	RNG	SEC	TRACT1	TRACT2	LOT	COUNTY	OWNED	IRRIGATED ACRES
05N	27E	26	NE	NW	00	BUTTE		0.0
05N	27E	26	NW	NW	00	BUTTE		0.0
05N	27E	27	NE	SW	00	BUTTE		0.0
05N	27E	27	NW	SE	00	BUTTE		0.0
05N	27E	27	NW	NE	00	BUTTE		0.0
05N	27E	27	SE	SW	00	BUTTE		0.0
05N	27E	34	NE	NW	00	BUTTE		0.0
05N	27E	34	SE	NW	00	BUTTE		0.0
05N	27E	34	SW	SW	00	BUTTE		0.0
05N	27E	27	NE	NE	00	BUTTE		0.0
05N	27E	34	NW	SW	00	BUTTE		0.0
05N	27E	27	SW	NE	00	BUTTE		0.0

TOTAL ACRES IRRIGATED: 0.0

TOTAL CONSUMPTIVE USE IS: DE MINIMUS ACRE FEET PER ANNUM

OTHER WATER RIGHTS

NONE

REMARKS

PREVIOUSLY FILED WITH THE IDAHO DEPARTMENT OF WATER RESOURCES

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: BRIER CANYON CREEK						
TRIBUTARY: SINKS						
34-04154	US DEPT OF INTERIOR BUREAU OF LAND MANAGEMENT IDAHO STATE OFFICE 3380 AMERICANA TERRACE BOISE ID 83706	06/28/1934	STOCKWATER	01-01 12-31	.05	CFS BENEFICIAL USE
NON-IRRIGATION-USES:						
STOCKWATER, 115 RANGE CATTLE; WILDLIFE, VARIABLE AMOUNT						
POINT OF DIVERSION:						
T05N R27E S26						
S27						
S34						
PLACE OF USE: STOCKWATER						
T05N R27E S26						
S27						
S34						
REMARKS: THIS RIGHT AND OTHER RIGHTS COMMON TO THE SAME GRAZING						
ALLOTMENT SHALL BE LIMITED TO THE QUANTITY OF WATER BENEFICIALLY						
USED BY THE NUMBER OF STOCK WITHIN THE ALLOTMENT.						
BLM RECORD ID = 3403488119						

TOTAL QUANTITY: .05 CFS

SWNE
NWSW

NWNW
NWNE
NWSE
SESW

NENW
NENE
SESW
NENW

NESW

