

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. 34-04157 -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 item 5, 9, 9.a, and all allegations of the objection regarding these items, IDWR responds as follows.

This is an instream stockwater appropriation. The description of the point of diversion and place of use should be revised as shown in the attachment entitled "Recommended Water Rights Acquired Under State Law." This will include a stream segment in sections 20 and 21 that was claimed on the notice of claim filed with IDWR but was not included in IDWR's recommendation. IDWR denies this portion of the objection and all 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 included 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.

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. A34-04157	2
Recommended Water Rights Acquired Under State Law, No. 34-04157	1

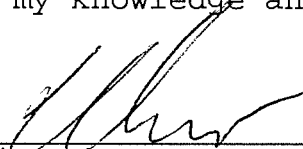
VERIFICATION (Must be Completed)

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: A. Lynne Krogh-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 Knapp-Haupe
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. 3404157
BLM NUMBER: 3403488122
BASIS OF CLAIM: BENEFICIAL USE
BASIN NO.: 34

SOURCE	TRIBUTARY TO
-----	-----
BAILEY CORRAL CANYON	SINKS

DESCRIPTION OF DIVERSION WORKS

INSTREAM STOCK WATERING

PURPOSE OF USE	DIVERSION RATE	DIVERSION VOLUME	PERIOD OF USE FROM	TO
-----	-----	-----	-----	-----
STOCKWATER	0.200	0.00	0510	0710
WILDLIFE	0.010	0.00	0101	1231
TOTAL:	0.210 CFS	0.00 AF		

NON-IRRIGATION USES

900 RANGE CATTLE, 30 ANTELOPE, 50 DEER, 15 ELK, GROUSE

TWP	RNG	SEC	POINT OF DIVERSION			LOT	COUNTY
			TRACT1	TRACT2	TRACT3		
---	---	---	-----	-----	-----	---	-----
05N	24E	31		NE	NE	00	CUSTER
05N	24E	31		SE	NE	00	CUSTER
05N	24E	20		NW	NE	00	CUSTER
05N	24E	29		SE	NW	00	CUSTER
05N	24E	20		NE	SE	00	CUSTER
05N	24E	29		SW	NW	00	CUSTER
05N	24E	20		SW	SE	00	CUSTER
05N	24E	30		NE	SE	00	CUSTER
05N	24E	21		NW	NW	00	CUSTER
05N	24E	30		SE	SE	00	CUSTER
05N	24E	29		NE	NW	00	CUSTER

05N	24E	20	NE	NE	00	CUSTER
05N	24E	29	NW	SW	00	CUSTER
05N	24E	21	NE	NW	00	CUSTER
05N	24E	21	SW	NW	00	CUSTER
05N	24E	29	NW	NE	00	CUSTER
05N	24E	20	SW	NE	00	CUSTER
05N	24E	20	NW	SE	00	CUSTER
05N	24E	20	SE	NE	00	CUSTER

PLACE OF USE

TWP	RNG	SEC	TRACT1	TRACT2	LOT	COUNTY	OWNED	IRRIGATED ACRES
---	---	---	-----	-----	---	-----	-----	-----
05N	24E	20	NW	NE	00	CUSTER		0.0
05N	24E	20	NW	SE	00	CUSTER		0.0
05N	24E	20	NE	NE	00	CUSTER		0.0
05N	24E	20	NE	SE	00	CUSTER		0.0
05N	24E	20	SE	NE	00	CUSTER		0.0
05N	24E	21	NW	NW	00	CUSTER		0.0
05N	24E	21	SW	NW	00	CUSTER		0.0
05N	24E	29	NE	NW	00	CUSTER		0.0
05N	24E	29	NW	NE	00	CUSTER		0.0
05N	24E	29	NW	SW	00	CUSTER		0.0
05N	24E	29	SE	NW	00	CUSTER		0.0
05N	24E	21	NE	NW	00	CUSTER		0.0
05N	24E	30	NE	SE	00	CUSTER		0.0
05N	24E	30	SE	SE	00	CUSTER		0.0
05N	24E	31	NE	NE	00	CUSTER		0.0
05N	24E	31	SE	NE	00	CUSTER		0.0
05N	24E	20	SW	NE	00	CUSTER		0.0
05N	24E	20	SW	SE	00	CUSTER		0.0
05N	24E	29	SW	NW	00	CUSTER		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

MAXIMUM
QUANTITY

US DEPT OF INTERIOR
BUREAU OF LAND MANAGEMENT
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706

STOCKWATER, 900 RANGE CATTLE; WILDLIFE, VARIABLE AMOUNT
POINT OF DIVERSION:

NWNENE	(B)
SENWSE	(E)
NWNENW	(B)
SWSENE	(E)

T05N R24E S20

NENE
NESE
NENW
NENE
NWSW
NESE
NENE

NWNE
NWSE
~~NWNW~~
NENW

SWNE
SWSE
SWNW
SWWS

SENE

SENW

NESE
NENE

SESE
SENE

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 = 3403488122

