

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. 34-11582 -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: WILEY SMITH
Address: STAR RT
MACKAY ID 83251

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

1. |☒| Name and Address: I respond to the objection concerning the name and/or address of the owner of the water right.
2. |☒| Source: I respond to the objection concerning the source of water.
3. |☒| Quantity: I respond to the objection concerning:
 - 3a. |☒| The total quantity of water used in cubic feet per second.
 - 3c. |☒| The total quantity of water reserved for each and every purpose, including all present and future uses.
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.
7. |☒| Purposes of Use: I respond to the objection concerning the purpose(s) of use.

8. ☒ Period of Year: I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
9. ☒ Place of Use: I respond to the objection concerning:
- 9a. ☒ The legal description of the place of use.
11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.
12. ☒ Water Right Recommendation: I respond to the objection concerning:
- 12a. ☒ This water right being recommended at all.
14. ☒ Other: I respond to the objection concerning:

ASSERTED INABILITY OF USFS TO CORRECTLY MATCH
CLAIM TO ACTUAL SOURCE

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 1, 2, 3, 3.a, 3.c, 4, 5, 7, 8, 9, 9.a, 11, 12, 12.a and 14, and all allegations of the objection regarding these items, IDWR responds as follows.

The director's report recommends certain water rights to the objector, as shown in the director's report.

IDWR conducts a limited investigation of small domestic and stockwater claims (as defined by Idaho Code section 42-111). IDWR generally does not field examine small D&S claims; IDWR's recommendations of small stockwater claims to the U.S. Forest Service established by beneficial use in Basin 34 were based on maps and other documentation provided by USFS.

IDWR generally does not require proof of priority date for small D&S claims based on beneficial use. However, rights to the use of surface water from the Big Lost River and tributaries were adjudicated in *Utah Construction Co. v. Abbott*, the source of water for this right is tributary to the Big Lost River, 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 the same as or earlier than the date of the decree, March 15, 1923.

The remark concerning use of this right with other rights is generally included in rights for stockwatering purposes on federal lands. Generally, where the right exists to water stock

(Over)

from multiple sources on an allotment of public land, the right to water from each source is described in a separate right. The purpose of the remark is to limit use from all the sources to the use of the allotment for which the appropriation was made.

The burden rests with the United States to prove the right, and on the objector to prove the objection, in accordance with these parties' respective burdens of proof.

CHANGES TO THE DIRECTOR'S REPORT

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

☒ 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. A34-11582	2
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW	1

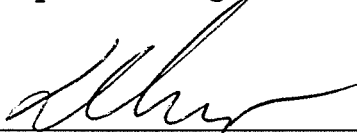
VERIFICATION (Must be Completed)

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 Kogsh-Hampe
(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 07th day of July,
1993.

Dally M. M. M.
Notary Public for Idaho
Residing at: Boise ID
My Commission expires: 11-14-1998

(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:

Name: US DEPT OF JUSTICE
Address: ENVT & NAT RESOURCES DIV
K J HAUGRUD/G GARVER/D ZANE
550 W FORT ST BOX 33
BOISE ID 83734

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: WILEY SMITH
Address: STAR RT
MACKAY ID 83251

A. Lynne Koch-Haug
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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576
Ident. Number: A34-11582
Date received: _____
Receipt No: _____
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: UNITED STATES OF AMERICA (USDA-Forest Service)
Address: 324 25th Street Phone (801) 625-5360
Ogden, Utah 84401

2. Date of Priority: 05/01/1876

3. Source: CEDAR CREEK Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	Tract	Lot	County
-----	-----	-----	-----	---	-----
9 N	22 E	13	SWSE		CUSTER

5. Description of diverting works: NO DEVELOPMENT

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A. (or)	Elevation/ Well Depth
-----	----	--	-----	----	-----	-----
STOCKWATER	Jun.1	Oct.31	0.02		0.00	0

7. Total Quantity Appropriated is: 0.02 C.F.S. / 0.00 A.F.A.

8. Total consumptive use is: de minimus

9. Non-irrigation uses: CATTLE Livestock Numbers: 468

10. Place of Use:

Township	Range	Section	Tract	Lot	County
-----	-----	-----	-----	---	-----
9 N	22 E	11	SWNW		CUSTER

Purpose of use: STOCKWATER Acres Irrigated:

11. Place of use in counties: CUSTER

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used: NONE

14. Remarks:

LIVESTOCK USE ALL TRIBUTARIES ALSO

APPLICATION DATE: 00/00/

15. Basis of Claim: BENEFICIAL USE/APPLICATION

Reference Information:

National Forest: CHALLIS

Priority Dates: CHALLIS NATIONAL FOREST LIVESTOCK HISTORY

Forest Service Record ID: 04 06 17040218 15 9991 0

IDWR Water State Filing No.: 34-11582

Allotment No.: 461

Notice is hereby given that the United States Department of Justice will represent the Department of Agriculture, Forest Service, in all matters pertaining to the Snake River Basin Adjudication. All notices required by law to be mailed by the Director to the Claimant should be mailed to the individuals at the address below:

Jack Haugrud
Geoffrey Garver
U.S. Department of Justice
Environment and Natural Resources Division
General Litigation Section
P.O. Box 663
Washington, D.C. 20044-0663
202-272-4134

This form is an attachment to a letter forwarding the claims of the U.S. Department of Agriculture, Forest Service. The signature and affirmation on such letter constitutes the signature of the authorized agent representing the United States of America required for each such claim.

A34-11582

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
-----------------	----------------	------------------	----------------	--------------------------	---------------------	-------------------

SOURCE: CEDAR CREEK

34-11582	UNITED STATES OF AMERICA ACTing THROUGH USDA FOREST SERVICE 324 25TH STREET OGDEN UT 84401-2394	05/01/1976 03/16/1923	STOCKWATER	06-01 10-31	.02 CFS	BENEFICIAL USE
----------	--	--------------------------	------------	-------------	---------	----------------

NON-IRRIGATION-USES:

STOCKWATER, 468 CATTLE

POINT OF DIVERSION:

T09N R22E S13 SWSWSE (B)
S11 SWSWNW (E)

PLACE OF USE: STOCKWATER

T09N R22E S11	SWNW	NESW	NWSW	NESE
S12	NWSE	NWSW	SESW	SWSE
S13	NENE	NWNE	SENE	NESE
	SWSE	SESE		

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.
FOREST SERVICE RECORD ID = 04061704021815 9991

TOTAL QUANTITY: .02 CFS

