

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. 34-11583 -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: HERB WHITWORTH
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. |X| Name and Address: I respond to the objection concerning the name and/or address of the owner of the water right.
4. |X| Priority Date: I respond to the objection concerning the priority date.
12. |X| Water Right Recommendation: I respond to the objection concerning:
- 12a. |X| This water right being recommended at all.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 1, 4, 12, 12.a , 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 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. A34-11583	2
Recommended Water Rights Acquired under State Law	1

(Over)

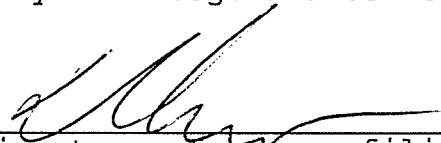
VERIFICATION (Must be Completed)

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.

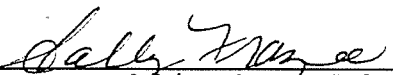


Signature of person filing response

By: A. Lynne Koch-Nampe

(Attorney signing in
representative capacity)

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



Notary Public for Idaho
Residing at: Burise ID
My Commission expires: 11-14-1998

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: HERB WHITWORTH
Address: STAR RT
MACKAY ID 83251

A. Lyane Kosh-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

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: A34-11583
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: ELKHORN CREEK Trib. to: BIG LOST R

4. Point of Diversion:

Township	Range	Section	Tract	Lot	County
9 N	23 E	19	SWNW		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	25	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 9993 0

IDWR Water State Filing No.: 34-11583

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.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: JUL-16-1993
PAGE: A-1

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: ELKHORN CREEK						
34-11583	UNITED STATES OF AMERICA ACTING THROUGH USDA FOREST SERVICE 324 25TH STREET OGDEN UT 84401-2394	05-01-1876 03/16/1923	STOCKWATER	06-01 10-31	.02	CFS BENEFICIAL USE
NON-IRRIGATION-USES:						
STOCKWATER, 468 CATTLE						
POINT OF DIVERSION:						
	T09N R23E S19	NESWNW (B)				
	R22E S25	SWSWNW (E)				
PLACE OF USE: STOCKWATER						
					TOTAL QUANTITY:	.02 CFS
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 9993						

