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	Water Right No. 34-12384
The State of Idaho, ex rel. R. Keith Higginson in his official capacity as Director of the Idaho Department of Water Resources, 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.	**RESPONSE TO OBJECTION**

I. GENERAL INFORMATION

Please fill in the following information:

1. *Party/Claimant responding to objection*:

Name: R. KEITH HIGGINSON, Director

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

Phone: (208) 327-7910

Briefly describe your interest in this water right:

IDWR is a party to each sub-case in the SRBA pursuant to subsection 2.0 of SRBA Administrative Order No. 1, and has an interest in ensuring that all water right claims in the SRBA are accurately determined, as noted in Idaho Department of Water Resources v. United States, 122 Idaho 116, 832 P.2d 289, 295 (1992)

If this response is *filed by an attorney*:

Attorney Name: DAVID J. BARBER

Attorney Address: DEPUTY ATTORNEY(S) GENERAL
P.O. BOX 44449
BOISE, ID 83711-4449

Attorney Phone No.: (208) 334-2400

If filed by an attorney, notice of pending court proceedings will be sent to the attorney only.

2. *Party/Claimant who filed objection*:

Name: UNITED STATES OF AMERICA ACTING THROUGH THE NATIONAL PARK SERVICE, PACIFIC NW REGIONAL OFFICE,

Address: 83 S. KING STREET, SUITE 212, SEATTLE, WA 98121

II. STATEMENT OF THE RESPONSE

Please check each "box" which identifies your 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:
   a. ☐ the total quantity of water used in cubic feet per second; or
   b. ☐ the total quantity of water stored in acre-feet per year; or
   c. ☐ 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.
6. ☐ *Instream Flow*: I respond to the objection concerning the legal description of the beginning and ending points of the instream flow.
7. ☐ *Purpose(s) 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:

   a. ☐ the legal description of the place of use; or

   b. ☐ the number of irrigated acres within each forty (40) acre subdivision.

10. ☐ *Consumptive Use*: I respond to the objection concerning the annual volume of consumptive use.

11. [x] *Remarks*: I respond to the objection concerning the "remarks" listed with the water right.

12. ☐ *Water Right Recommendation*: I respond to the objection concerning:

   a. ☐ this water right being recommended at all; or

   b. ☐ this water right not being recommended.

13. ☐ *Description of Reservation*: I respond to the objection concerning the legal description of the reservation.

14. [x] *Other*: I respond to the objection concerning various General Provisions.

REASONS SUPPORTING EACH BOX CHECKED

In the space following, you must state the reason(s), by number, for each box checked. You may use additional pages if necessary.

11. Remarks:

(i.)The United States claims that the Remarks section should contain the substance of the following Section 6.2 from the Settlement Agreement:

> 6.2 The United States agrees that License Nos. 34-2381 [old no. 28964] and 34-2254 [old no. 16711] will be superseded by the water rights herein, only upon completion of all judicial proceedings, including appeals if any, together with entry of a final decree containing the water rights set forth in this Agreement.

The United States failed to file a notice of claim for License Nos. 34-2381 and 34-2254. Consequently, these state acquired water rights were not listed in the director's report, and a reference to them would be improper in the absence of a notice of claim for them.

14. Other (General Provisions)

(i) General Provision ¶ 1b, p. 9: The United States objects to this general provision "to the extent that the director seeks authority beyond the scope of the waiver of sovereign immunity contained in the McCarran Amendment." Objection at 8. IDWR denies the allegations of this section of the objection.

(ii) General Provision ¶ 7, p. 12: The United States claims that General Provision 7 is inconsistent with Section 5.13 of the Settlement Agreement regarding separate administration of the Monument. The following addition to the Remarks section is proposed to address the separate administration for the Monument:

> The surface water within the boundaries of the Monument and perched ground water underlying the Monument shall be treated as a self-contained water system.

(iii) General Provision ¶ 9, p. 13: The United States objects "to administration of federal water rights by the director inconsistent with the McCarran Amendment" and asserts that the director may not prescribe measuring devices for federal diversions. IDWR denies the allegations of this section of the objection.

(iv) General Provision ¶ 10, p. 13: The United States objects to the failure of the director's report to reprint verbatim Section 5.10 of the Settlement Agreement. In response to this objection, the IDWR assures the United States that no substantive differences were intended in the language of the director's report and the language in the Settlement Agreement.

In fact, the IDWR believes that the director's report uses language that is an improvement over the language of the Settlement Agreement. However, the IDWR proposes to add the following to the Remarks section to address this objection:

The following provision shall apply to this water right:

> The use of water for fire suppression benefits the public. Water diverted for fire suppression may be taken randomly, without a definition of the specific elements of a recordable water right, and if so diverted for fire suppression, existing water rights shall not be diminished.

CHANGES TO THE DIRECTOR'S REPORT

Specifically describe how you want the Director's Report to be changed. You may use additional pages if necessary.

The director proposes the additions to the Remarks section described above. Attachment I is a description of this water right with these additions.

Please note that you should attach copies of documents which support your response. Note on each document the "box number" it supports.

[X] 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.

Attachment I: A revised Description of Water Right No. 34-12384.

VERIFICATION (Must be Completed)

State of Idaho)
) ss
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 in 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 party/claimant filing response

By: David J. Barber
Deputy Attorney General
Natural Resources Division

Subscribed and sworn to before me this 16th day of July, 1993.

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

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of July, 1993, I mailed the original and copies of this response, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

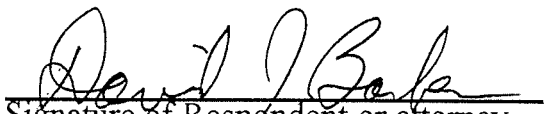
   Clerk of the District Court (BY HAND DELIVERY)
   Snake River Basin Adjudication
   253 Third Avenue North
   P. O. Box 2707
   Twin Falls, Idaho 83303-2707

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: U.S. DEPT. OF JUSTICE (BY HAND DELIVERY)
   Address: PETER C. MONSON
   550 W FORT ST.
   BOX 33
   BOISE, ID 83734



Signature of Respondent or attorney mailing on Respondent's behalf

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM	PERIOD OF USE TO	MAXIMUM QUANTITY	BASIS OF CLAIM
	SOURCE: SURFACE WATER, ALL		TRIBUTARY: SINKS				
34-12384	UNITED STATES AMERICA, ACTING THROUGH NATIONAL PARK SERVICE PACIFIC NORTHWEST REG. OFFICE 83 S KING ST STE 212 SEATTLE WA 98121	05/02/1924	MINIMUM INSTREAM FLOW	01-01	12-31		RESERVED

TOTAL QUANTITY:

NON-IRRIGATION-USES:
INSTREAM FLOW USES
POINT OF DIVERSION: SEE REMARKS
PLACE OF USE: MINIMUM INSTREAM FLOW
SEE REMARKS
REMARKS: SEE WATER RIGHTS AGREEMENT BETWEEN THE STATE OF IDAHO AND THE UNITED STATES FOR THE CRATERS OF THE MOON NATIONAL MONUMENT SIGNED MAY 14, 1992 (AGREEMENT).
SOURCES FOR THIS RIGHT ARE ALL SURFACE WATERS WITHIN AREA A AS SHOWN ON ATTACHMENT I OF THE AGREEMENT.
AMOUNT OF FLOW IS ENTIRE FLOW OF EACH SOURCE IN EXCESS OF AMOUNT DIVERTED BY RIGHT NO. 34-12383.
BEGINNING AND ENDING POINTS OF INSTREAM FLOW MAY BE ANY POINT WITHIN AREA A AS SHOWN ON ATTACHMENT I OF THE AGREEMENT.
PLACE OF USE MAY BE ANY PLACE WITHIN AREA A AS SHOWN ON ATTACHMENT I OF THE AGREEMENT.
THIS RIGHT APPEARS AS RIGHT NO. 36-15343 IN BASIN 36 REPORT.
BASIS OF RIGHT IS THE RESERVATION MADE UNDER PROCLAMATION NO. 1694.
THE SURFACE WATER WITHIN THE BOUNDARIES OF THE MONUMENT AND PERCHED GROUND WATER UNDERLYING THE MONUMENT SHALL BE TREATED AS A SELF-CONTAINED WATER SYSTEM.
THE USE OF WATER FOR FIRE SUPPRESSION BENEFITS THE PUBLIC. WATER DIVERTED FOR FIRE SUPPRESSION MAY BE TAKEN RANDOMLY, WITHOUT A DEFINITION OF THE SPECIFIC ELEMENTS OF A RECORDABLE WATER RIGHT, AND IF SO DIVERTED FOR FIRE SUPPRESSION, EXISTING WATER RIGHTS WILL NOT BE DIMINISHED.