

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. 34-12385

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. ☒ *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. ☒ *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.

2. Source:

The United States acting through the National Park Service (the "United States") filed an objection as to the "source" of their water right as identified in the director's report. The basis for their objection was that the report fails to describe both surface and ground water as sources for this water right. This objection is unwarranted.

The director's report lists both surface and ground water as a source for this water right on three separate pages. Page A-8, describes the ground water right, page A-12 describes the water right to Little Cottonwood Creek, and page A-472, describes all surface water rights. In addition, the Remarks section states: "Sources for this right are all surface water and groundwater sources arising on, occurring on, or under Area B as shown on Attachment I of the Agreement, including but not limited to Little Cottonwood Creek and its Tributaries."

11. Remarks:

(i.) The United States claims that the Remarks section should contain a description of separate administration for the Craters of the Moon National Monument (the "Monument") contained in Sections 5.13 and 6 of the Settlement Agreement. 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.

(ii.) The United States also 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 ¶ 5, p. 11: The United States objects to this provision because the phrase "pumping levels" could mean either a water table elevation or a rate of pumping. The United States argues that a limitation on rate of pumping would violate Section 5.14 of the Settlement Agreement. The reference in General Provision 5 to pumping levels is derived from Idaho Code § 42-237a. The meaning of the phrase is to the elevation of ground water and not to a rate of pumping. Consequently, General Provision 5 does not violate Section 5.14 of the Settlement Agreement.

(iii) General Provision ¶ 6, p. 11: The United States reiterates its objection regarding the failure of the remarks to include a description of separate administration for the Monument. The addition to the Remarks section described in paragraph 11.(i) is proposed to address the separate administration for the Monument.

(iv) 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 addition to the Remarks section described in paragraph 11.(i) is proposed to address the separate administration for the Monument.

(v) 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.

(vi) 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.

☒ 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.

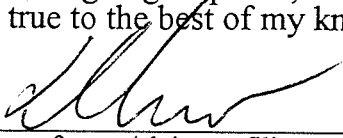
Attachment I: A revised Description of Water Right No. 34-12385.

VERIFICATION (Must be Completed)

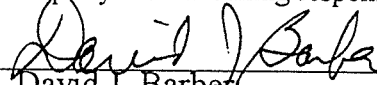
State of Idaho }
County of Ada } ss

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.

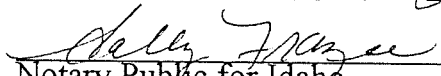


Signature of party/claimant filing response

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
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

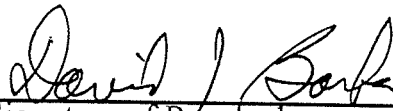
(BY HAND DELIVERY)

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

IDAHO DEPARTMENT OF WATER RESOURCES
ABSTRACTED CLAIMS TO WATER RIGHTS BASED UPON FEDERAL LAW

DATE: JUL-16-1993
PAGE: A-8

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

SOURCE: GROUNDWATER

34-12385

UNITED STATES AMERICA, ACTING THROUGH
NATIONAL PARK SERVICE
PACIFIC NORTHWEST REG. OFFICE
83 S KING ST STE 212
SEATTLE WA 98121

07/23/1928 DOMESTIC
IRRIGATION
COMMERCIAL

01-01 12-31
01-01 12-31
01-01 12-31
54.5 AFY
54.5 AFY
54.5 AFY
54.5 AFY
19.9 AFY

RESERVED

NON-IRRIGATION-USES:

MONUMENT COMMERCIAL USE, MONUMENT DOMESTIC USE
POINT OF DIVERSION: SEE REMARKS
PLACE OF USE: DOMESTIC

WITHIN CRATERS OF THE MOON NATIONAL MONUMENT
PLACE OF USE: IRRIGATION

SAME AS OTHER USE
PLACE OF USE: COMMERCIAL

SAME AS OTHER USE

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 WATER AND GROUNDWATER
SOURCES ARISING ON, OCCURRING ON, OR UNDER AREA B AS SHOWN ON
ATTACHMENT I OF THE AGREEMENT INCLUDING BUT NOT LIMITED TO
LITTLE COTTONWOOD CREEK AND ITS TRIBUTARIES.

POINTS OF DIVERSION MAY BE ANY POINT WITHIN AREA B AS SHOWN
ON ATTACHMENT I OF THE AGREEMENT.
PLACE OF USE MAY BE ANY PLACE WITHIN THE BOUNDARIES OF THE
MONUMENT.

~~THE QUANTITY CONSUMED FOR FIRE SUPPRESSION IS NOT LIMITED
BY THIS RIGHT OR THE AGREEMENT.~~

BASIS OF RIGHT IS THE RESERVATION MADE UNDER PROCLAMATION
NO. 1843.

THE PRESENT DIVERSIONS ARE FROM SURFACE WATER AND FROM A
PERCHED GROUNDWATER AQUIFER.

THIS RIGHT APPEARS AS RIGHT NO. 36-15344 IN BASIN 36 REPORT.

USE OF THIS RIGHT AND RIGHT NOS. 34-12383, 34-12388 AND
36-15345 IS FOR A TOTAL COMBINED DIVERSION VOLUME OF 54.5 AFY AND
A TOTAL COMBINED CONSUMPTIVE USE VOLUME OF 19.9 AFY.

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.

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: SURFACE WATER, ALL						
TRIBUTARY: SINKS						
34-12385	UNITED STATES AMERICA, ACTING THROUGH NATIONAL PARK SERVICE PACIFIC NORTHWEST REG. 83 S KING ST STE 212 SEATTLE WA 98121	07/23/1928	DOMESTIC	01-01 12-31	54.5	AFY
			IRRIGATION	01-01 12-31	54.5	AFY
			COMMERCIAL	01-01 12-31	54.5	AFY
			TOTAL QUANTITY:		54.5	AFY
			CONSUMPTIVE USE:		19.9	AFY

NON-IRRIGATION-USES:
MONUMENT COMMERCIAL USE, MONUMENT DOMESTIC USE

POINT OF DIVERSION: SEE REMARKS

PLACE OF USE: DOMESTIC

PLACE OF USE: WITHIN CRATERS OF THE MOON NATIONAL MONUMENT

PLACE OF USE: IRRIGATION

PLACE OF USE: SAME AS OTHER USE

PLACE OF USE: COMMERCIAL

PLACE OF USE: SAME AS OTHER USE

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 WATER AND GROUNDWATER SOURCES ARISING ON, OCCURRING ON, OR UNDER AREA B AS SHOWN ON ATTACHMENT I OF THE AGREEMENT INCLUDING BUT NOT LIMITED TO LITTLE COTTONWOOD CREEK AND ITS TRIBUTARIES.

POINTS OF DIVERSION MAY BE ANY POINT WITHIN AREA B AS SHOWN ON ATTACHMENT I OF THE AGREEMENT.

PLACE OF USE MAY BE ANY PLACE WITHIN THE BOUNDARIES OF THE MONUMENT.

~~THE QUANTITY CONSUMED FOR FIRE SUPPRESSION IS NOT LIMITED BY THIS RIGHT OR THE AGREEMENT.~~

~~BASIS OF RIGHT IS THE RESERVATION MADE UNDER PROCLAMATION NO. 1843.~~

~~THE PRESENT DIVERSIONS ARE FROM SURFACE WATER AND FROM A PERCHED GROUNDWATER AQUIFER.~~

~~THIS RIGHT APPEARS AS RIGHT NO. 36-15344 IN BASIN 36 REPORT.~~

~~USE OF THIS RIGHT AND RIGHT NOS. 34-12383, 34-12388 AND 36-15345 IS FOR A TOTAL COMBINED DIVERSION VOLUME OF 54.5 AFY AND A TOTAL COMBINED CONSUMPTIVE USE VOLUME OF 19.9 AFY.~~

~~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 DETERMINATION OF THE SPECIFIC ELEMENTS OF A RECORDABLE WATER RIGHT, AND IF SO DIVERTED FOR FIRE SUPPRESSION, EXISTING WATER RIGHTS WILL NOT BE DIMINISHED.~~

