

**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. 34-12386

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)

12. WATER RIGHT RECOMMENDATION

This water right was recommended at page A-13.

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 listed this general provision as a general provision that they wanted changed in Attachment C. However, the United States did not list this general provision in paragraph 14 of Attachment A as the subject of an objection and did not provide any reasons in support of an objection in Attachment B. Accordingly, this general provision is not before the District Court.

Assuming that this general provision is properly before the District Court, then the IDWR states: 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 listed this general provision as a general provision that they wanted changed in Attachment C. However, the United States did not list this general provision in paragraph 14 of Attachment A as the subject of an objection and did not provide any reasons in support of an objection in Attachment B. Accordingly, this general provision is not before the District Court.

Assuming that this general provision is properly before the District Court, then the IDWR states: The addition to the Remarks section described in paragraph 14.(iv) 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 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.

(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 IDWR 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.

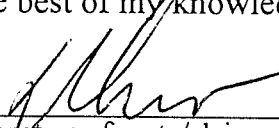
Attachment I: A revised Description of Water Right No. 34-12386.

VERIFICATION (Must be Completed)

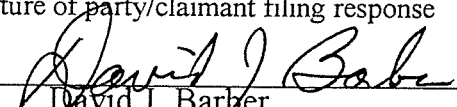
State of Idaho }
County of Ada } ss

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.

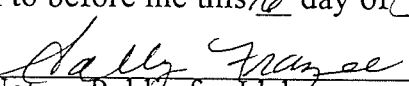


Signature of party/claimant filing response

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)

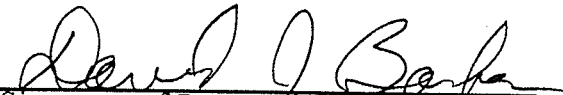
2. One copy to the owner of the water right, and you must fill in the following information:

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
Address: PETER C. MONSON
550 W FORT ST.
BOX 33
BOISE, ID 83734

(BY HAND DELIVERY)


Signature of Respondent or attorney
mailing on Respondent's behalf

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

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
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SOURCE: LITTLE COTTONWOOD CREEK TRIBUTARY: SINKS

RESERVED

34-12386	UNITED STATES AMERICA, ACTING THROUGH NATIONAL PARK SERVICE PACIFIC NORTHWEST REG. OFFICE 83 S KING ST STE 212 SEATTLE WA 98121	07/23/1928	MINIMUM INSTREAM FLOW	01-01 12-31		
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TOTAL QUANTITY:

NON-IRRIGATION-USERS:

INSTREAM FLOW USES

POINT OF DIVERSION:

T02N R24E S16 SESW (B)
S27 SWNE (E)

PLACE OF USE: MINIMUM INSTREAM FLOW

T02N R24E S16	SESW	Lot 5 (SESE)	Lot 2 (SENE)
S21	(NENE)	SWNE	NWSE
S22	SESW	NESE	
S27	NESW	NWSW	
	SWNE	NENW	

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).

AMOUNT OF FLOW IS ENTIRE FLOW OF LITTLE COTTONWOOD CREEK IN EXCESS OF THE AMOUNT DIVERTED BY RIGHT NO. 34-12385. BEGINNING POINT OF INSTREAM FLOW IS IN THE HEADWATERS OF LITTLE COTTONWOOD CREEK IN S21, T02N, R24E AND IN THE SESW, LOT 5 (SESE) AND SWSE, S16, T02N, R24E.

ENDING POINT OF INSTREAM FLOW IS WHERE THE STREAM DISAPPEARS IN THE SWNE OF UNSURVEYED S27, T02N, R24E.

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

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.

