

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. 34-12442 -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: US BUREAU OF LAND MANAGEMENT
Address: IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706-2544

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

3. ☒ Quantity: I respond to the objection concerning:

3a. ☒ The total quantity of water used in cubic feet
per second.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 3 and 3.a, and all allegations of the objection regarding these items, IDWR responds as follows.

This objection seeks to add an amount of water for wildlife purposes to an instream stockwater appropriation. Physical diversion is required for an appropriation unless an exception is established by statute. Idaho Code sections 42-113 and 42-114 establish an exception to the diversion requirement for watering of domestic livestock, but no exception is provided for appropriations by the United States for wildlife purposes. IDWR denies the objection and any allegations of the objection not expressly admitted herein.

In addition, IDWR notes that there is an error in the priority date of this water right. Rights to the use of surface water from the Big Lost River and tributaries were adjudicated in Utah Construction Co. v. Abbott, Equity No. 222 (D.E.Id 1923);

the source of water for this right was one of the sources adjudicated in that case; and the United States was party to that case. The United States is therefore precluded by the doctrine of res judicata from asserting a beneficial use priority date as of or prior to March 15, 1923.

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. A34-12442

2

Recommended Water Rights Acquired under State Law

1

(Over)

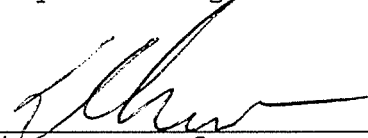
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

David B. Shaw, being first duly sworn, upon oath, deposes and says:

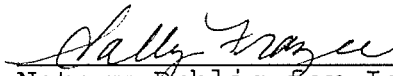
That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director 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 Koop-Hansen
(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 15th 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 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:

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: US DEPT OF JUSTICE
Address: K JACK HAUGRUD & DARIA J ZANE
550 W FORT ST
BOX 33
BOISE ID 83734

A. Lynae Kogh-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

CIVIL CASE NUMBER: 39576

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

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

U.S. DEPT. OF INTERIOR
BUREAU OF LAND MGMT.
IDAHO STATE OFFICE
3380 AMERICANA TERRACE
BOISE ID 83706
TELEPHONE: 208-334-1401

PRIORITY DATE: 1884-01-01
IDWR WATER RIGHT NO. 3403480019
BLM NUMBER: 3403480019
BASIS OF CLAIM: BENEFICIAL USE
BASIN NO.: 34

SOURCE	TRIBUTARY TO
-----	-----
STODDARD CREEK	ANTELOPE CREEK

DESCRIPTION OF DIVERSION WORKS

INSTREAM USE

PURPOSE OF USE	DIVERSION RATE	DIVERSION VOLUME	PERIOD OF USE FROM	TO
-----	-----	-----	-----	-----
STOCKWATER	0.050	0.00	0101	1231
WILDLIFE	0.010	0.00	0101	1231
TOTAL:	0.060 CFS	0.00 AF		

NON-IRRIGATION USES

125 RANGE CATTLE, 50 ANTELOPE, 35 DEER, 15 ELK, SAGE GROUSE

POINT OF DIVERSION							
TWP	RNG	SEC	TRACT1	TRACT2	TRACT3	LOT	COUNTY
---	---	---	-----	-----	-----	---	-----
04N	24E	30		SW	SW	00	BUTTE
04N	24E	30		NE	NW	00	BUTTE
04N	24E	19		SE	SW	00	BUTTE
04N	24E	19		NW	SW	00	BUTTE

PLACE OF USE							OWNED	IRRIGATED ACRES
TWP	RNG	SEC	TRACT1	TRACT2	LOT	COUNTY		
04N	24E	30	SW	SW	00	BUTTE	YES	0.0
04N	24E	30	NE	NW	00	BUTTE	YES	0.0
04N	24E	19	NW	SW	00	BUTTE	YES	0.0
04N	24E	19	SE	NW	00	BUTTE	YES	0.0

TOTAL ACRES IRRIGATED: 0.0

TOTAL CONSUMPTIVE USE IS: DE MINIMUS ACRE FEET PER ANNUM

OTHER WATER RIGHTS

NONE

REMARKS

FIRST DATE OF BENEFICIAL USE -1884

AJ5856NP

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

DATE: JUL-9-1993
PAGE: A-1

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE FROM TO	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
34-12442	US DEPT OF INTERIOR BUREAU OF LAND MANAGEMENT IDAHO STATE OFFICE 3380 AMERICANA TERRACE BOISE ID 83706	01/01/1884 03/16/1923	STOCKWATER	01-01 12-31	.05	CFS BENEFICIAL USE

NON-IRRIGATION-USES: TOTAL QUANTITY: .05 CFS

POINT OF DIVERSION: STOCKWATER, 125 RANGE CATTLE; WILDLIFE, VARIABLE AMOUNT

T04N R24E S30 LOT 4 (SWSWSW) (B)
S19 LOT 3 (NENWSW) (E)

PLACE OF USE: STOCKWATER

T04N R24E S19	NESW	Lot 3	(NMSW)	SESW	Lot 4	(SWSW)
S30	NENW		SENW	NESW		
	SESW					

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.
BLM RECORD ID = 3403480019

