

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. 34-12444 -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.

This objection also seeks to increase the amount of water for stockwater purposes from the .02 cfs claimed and recommended to .05 cfs. The United States improperly seeks to use the objection process to amend its notice of claim. IDWR believes that a claimant must seek leave of court to amend a claim after the director's report is filed, just as a party must seek leave of court to file a late claim after the director's report is

filed. Once leave of court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the court.

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. A34-12444

2

Recommended Water Rights Acquired under State Law

1

(Over)

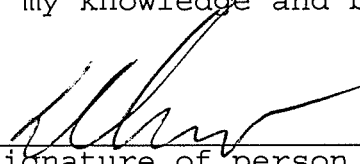
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

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

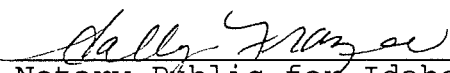
That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director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

D. Lynne Krogh-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. 3403480021
BLM NUMBER: 3403480021
BASIS OF CLAIM: BENEFICIAL USE
BASIN NO.: 34

SOURCE	TRIBUTARY TO
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SAWMILL CANYON CREEK	PRICE CANYON

DESCRIPTION OF DIVERSION WORKS

INSTREAM USE

PURPOSE OF USE	DIVERSION RATE	DIVERSION VOLUME	PERIOD OF USE FROM	TO
-----	-----	-----	-----	-----
STOCKWATER	0.020	0.00	0101	1231
WILDLIFE	0.010	0.00	0101	1231
TOTAL:	0.030 CFS	0.00 AF		

NON-IRRIGATION USES

40 RANGE CATTLE, 20 ANTELOPE, 50 DEER, 45 ELK, GROUSE

POINT OF DIVERSION							
TWP	RNG	SEC	TRACT1	TRACT2	TRACT3	LOT	COUNTY
---	---	---	-----	-----	-----	---	-----
02N	23E	01		SW	NW	00	BUTTE
02N	23E	01		SE	NW	00	BUTTE

PLACE OF USE								OWNED	IRRIGATED ACRES
TWP	RNG	SEC	TRACT1	TRACT2	LOT	COUNTY	-----	-----	
---	---	---	-----	-----	---	-----	-----	-----	
02N	23E	01	SE	NW	00	BUTTE	YES	0.0	
02N	23E	01	SW	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

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	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
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SOURCE: SAWMILL CANYON CREEK TRIBUTARY: PRICE CANYON CREEK

34-12444	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	.02	CFS BENEFICIAL USE
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NON-IRRIGATION-USES: TOTAL QUANTITY: .02 CFS

STOCKWATER, 40 RANGE CATTLE; WILDLIFE, VARIABLE AMOUNT
POINT OF DIVERSION:

T02N R23E S01
NWSWNW (B)
NESENW (E)

PLACE OF USE: STOCKWATER

T02N R23E S01 SWNW SENW
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 = 3403480021

