

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. 34-12445 -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.
5. |☒| Points of Diversion: I respond to the objection concerning the legal description of the point(s) of diversion.
9. |☒| Place of Use: I respond to the objection concerning:
- 9a. |☒| The legal description of the place of use.

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 portion of the objection seeks to add wildlife as a purpose of use to an instream stockwater appropriation, and also seeks to add an additional amount for wildlife purposes. 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 for watering of domestic livestock, but no exception is provided for appropriations by the United States for

wildlife purposes. IDWR denies this portion of the objection and any allegations regarding this portion of the objection not expressly admitted herein.

In response to Statment of the Objection items 5, 9, and 9.a, and all allegations of the objection regarding these items, IDWR responds as follows.

There is an error in the description of the place of use and point of diversion of this right. The recommendation should be corrected as shown in the attachment entitled "Recommended Water Rights Acquired Under State Law." This will add a stream segment in section 36 that was claimed by the United States.

In addition, the objection seeks to change the description of the point of diversion and the place of use to include additional 40-acre tracts in section 35. The United States improperly seeks to use the objection process to amend the notice of claim. IDWR believes that a claimant must obtain leave of the court to amend a claim after the director's report is filed, just as a party must obtain leave of court to file a late notice of claim after the director's report is granted. Even if leave to amend is granted, the description of the point of diversion and the place of use should not be changed to include the additional 40-acre tracts, because the stream does not flow through these tracts.

IDWR denies this portion of the objection and any allegations regarding this portion of the objection not expressly admitted herein.

There is an error in the priority date recommended for this 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 fo this right is tributary to the Big Lost River; and the United States was a party to that case. The United States is therefore precluded by the doctrine of res judicata from asserting a beneficial use priority the same as or earlier than the date of the decree, 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:

(Over)

No. of
Pages

Notice of Claim No. A34-12445
Recommended Water Right Acquired under State Law

2
1

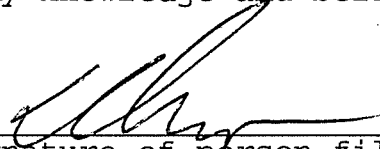
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

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

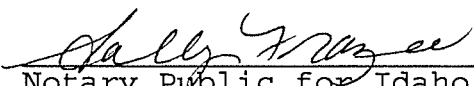
That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director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

Subscribed and sworn to before me this 19th day of July,
1993.



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

(Over)

CERTIFICATE OF MAILING

I hereby certify that on the 19th 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. Diane Kough-Hemp
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. 3403480022
BLM NUMBER: 3403480022
BASIS OF CLAIM: BENEFICIAL USE
BASIN NO.: 34

SOURCE	TRIBUTARY TO
-----	-----
UNNAMED STREAM	DRY FORK CREEK

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
---	---	---	-----	-----	-----	---	-----
03N	23E	36		SW	SW	00	BUTTE
03N	23E	36		SE	NE	00	BUTTE
03N	23E	35		SE	SE	00	BUTTE

PLACE OF USE								OWNED	IRRIGATED ACRES
TWP	RNG	SEC	TRACT1	TRACT2	LOT	COUNTY	-----	-----	
---	---	---	-----	-----	---	-----	-----	-----	
03N	23E	36	SW	SW	00	BUTTE	YES	0.0	
03N	23E	36	SE	NE	00	BUTTE	YES	0.0	
03N	23E	35	SE	SE	00	BUTTE	YES	0.0	

BLM NUMBER: 3403480022

PAGE 2

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-18-1993
PAGE: A-1

[illegible]

SOURCE: UNNAMED STREAM

TRIBUTARY: DRY FORK CREEK

TOTAL QUANTITY: .02 CFS

STOCKWATER, 40 RANGE CATTLE; WILDLIFE, VARIABLE AMOUNT.

T03N R23E S35	NWSESE	(B)
S36	NESESE	(E)
S35	SESESE	(E)

T03N R23E S35	SESE
\$36	SENE
	NESE

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 = 3403480022

