

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

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Case No. 34-13147 -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.

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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: LOLA L COATES  
Address: BOX 146  
MACKAY ID 83251

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

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.
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.
7. |☒| Purposes 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:
  - 9a. |☒| The legal description of the place of use.
  - 9b. |☒| The number of irrigated acres within each forty (40) acre subdivision.

11. |X| Remarks: I respond to the objection concerning the "remarks" listed with the water right.
12. |X| Water Right Recommendation: I respond to the objection concerning:
- 12a. |X| This water right being recommended at all.
14. |X| Other: I respond to the objection concerning:

ASSERTION THAT CLAIM IS TO WATER THAT HAS  
ALREADY BEEN APPROPRIATED

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 1, 2, 4, 5, 7, 8, 9, 9.a, 9.b, 11, 12, 12.a, and 14, and all allegations of the objection regarding these items, IDWR responds as follows.

The director's report recommends two rights, nos. 34-00335 and 34-0336, to the objector to water from Sage Creek, which were decreed in Utah Construction Co. v. Abbott, Equity No. 222 (D.E.Id. 1923). Springs and precipitation are a source of water in Sage Creek, including springs tributary to Sage Creek, springs tributary to Corral Creek (which is tributary to Sage Creek), and springs tributary to Bradshaw Creek (which is tributary to North Fork Sage Creek).

IDWR conducts a limited investigation of small domestic and stockwater claims (as defined by Idaho Code section 42-111). IDWR generally does not field examine small D&S claims; IDWR's recommendations of small stockwater claims to the U.S. Bureau of Land Management established by beneficial use in Basin 34 were based on maps and other documentation provided by BLM.

IDWR generally does not require proof of priority date for small D&S claims based on beneficial use. However, rights to the use of surface water from the Big Lost River and tributaries were adjudicated in Utah Construction Co. v. Abbott, the source of water for 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.

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. All rights to water from the Snake River Basin in Idaho are required to be

(Over)

claimed in the SRBA, although the adjudication of small D&S rights may be deferred as provided by order of the SRBA District Court.

The United States submitted a number of claims which stated on a single claim form that the claimed water right was both appropriated under state law and reserved under federal law. Pursuant to Idaho Code section 42-1411, IDWR is required to include a recommendation for claims to water rights appropriated under state law in Part I of the director's report, to include an abstract of claims to water rights reserved under federal law in Part II of the director's report, and to include the claims to water rights reserved under federal law in Part III of the director's report.

To meet the requirements of the statute, IDWR prepared a recommendation for this claim, which is included in the Supplemental Director's Report Part I for Basin 34, and to which this objection is filed. IDWR also prepared an abstract for this claim, which is included in the Director's Report Part II for Basin 34, and which has the same water right number as the contested claim but includes an "A" suffix. The original notice of claim is included in the Director's Report Part III for Basin 34, which was previously filed with the court.

The burden rests with the United States to prove the right, and on the objector to prove the objection, in accordance with these parties' respective burdens of proof.

#### 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

The notice of claim for this right is included in Part III of the Director's Report which was previously filed with the court.

Recommended Water Rights Acquired Under State Law

1

(Over)

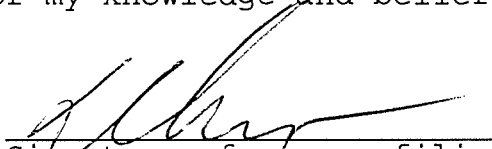
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

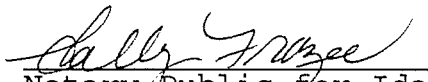
David B. Shaw, being first duly sworn, upon oath, deposes and says:

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 Krugh-Hampe  
(Attorney signing in  
representative capacity)

Subscribed and sworn to before me this 14<sup>th</sup> 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 16<sup>th</sup> 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:

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

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: LOLA L COATES  
Address: BOX 146  
MACKAY ID 83251

D. Lynne Krog-Hamper  
Signature of Respondent or attorney  
mailing on Respondent's behalf

J5856NP

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

DATE: JUL-13-1993  
PAGE: A-1

| RIGHT<br>NUMBER           | NAME & ADDRESS                                                                                                     | PRIORITY<br>DATE         | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF<br>CLAIM |
|---------------------------|--------------------------------------------------------------------------------------------------------------------|--------------------------|----------------|--------------------------|---------------------|-------------------|
| SOURCE: SPRING            |                                                                                                                    |                          |                |                          |                     |                   |
| TRIBUTARY: BRADSHAW CREEK |                                                                                                                    |                          |                |                          |                     |                   |
| 34-13147                  | US DEPT OF INTERIOR<br>BUREAU OF LAND MANAGEMENT<br>IDAHO STATE OFFICE<br>3380 AMERICANA TERRACE<br>BOISE ID 83706 | 01/01/1884<br>03/16/1923 | STOCKWATER     | 01-01 12-31              | .01 CFS             | BENEFICIAL USE    |

TOTAL QUANTITY: .01 CFS

NON-IRRIGATION-USES:

STOCKWATER, 1,810 RANGE CATTLE

POINT OF DIVERSION:

T09N R20E S15

SESWSE

PLACE OF USE: STOCKWATER

T09N R20E S15

SWSE

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 = 3404583544