

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

RECEIVED
SEP 01 1993

Department of Water Resources
Adjudication Bureau

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.

Water Right No. 36-04080

STANDARD FORM 2

RESPONSE TO OBJECTION

36-04080 -0001/
93-08-0305

INSTRUCTIONS

This form must be used to file a response to any objection filed against a water right recommended in a Director's Report. You may respond to all objections filed against one water right, using one response form. If you choose this option, your response should cover every issue raised in the objections. To respond to objections filed against more than one water right, you must file a separate response form for each water right. Forms may be obtained from the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you do, the text must be on the front and back of each page exactly as it appears here. The response must be received by the court on or before the deadline specified in the Notice of Filing the Director's Report that IDWR mailed to you. Follow the Instructions for Mailing this response (Page 5), or the court will not accept it for filing.

This form has been adopted by the court in SRBA Administrative Order 1 (amended June 21, 1993), Section 4, which may be consulted for further information.

Any party filing 25 or more responses must make an appointment with the Clerk of the SRBA Court.

By filling a response form, you are certifying that the response is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and that it is not filed for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation.

I. GENERAL INFORMATION

Please fill in the following information:

1. Party/Claimant responding to objection:

Name: City of Pocatello

Address: P.O. Box 4169

Pocatello, Idaho 83205

Phone: Work: 208-234-6148 Home:

Briefly describe your interest in this water right:

The City of Pocatello has numerous SRBA claims for municipal

groundwater rights. A complete statement of this interest is

contained in the section "Reasons Supporting Responses."

If this response is filed by an attorney:

Attorney Name: Josephine P. Beeman

Address: DAVIS WRIGHT TREMAINE

702 West Idaho, Suite 700

Boise, Idaho 83702

Attorney Phone No.: 208-338-8200

If filed by an attorney, notice of pending court proceedings will be sent to the attorney only.

2. Party/Claimant who filed objection:

Name: David W. Harder, U.S. Department of Justice

Address: Environment and Natural Resources Division

550 West Fort Street, Box 33

Boise, Idaho 83734

II. STATEMENT OF THE RESPONSE

Please check each "box" which identifies your 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.
3. ☐/ ☐/ Quantity: I respond to the objection concerning:
☐/ a. the total quantity of water used in cubic feet per second; or
☐/ b. the total quantity of water stored in acre-feet per year; or
☐/ c. the total quantity of water reserved for each and every purpose, including all present and future uses.
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.
6. ☐/ ☐/ Instream Flow: I respond to the objection concerning the legal description of the beginning and ending points of the instream flow.
7. ☐/ ☐/ Purpose(s) 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:
☐/ a. the legal description of the place of use; or
☐/ b. the number of irrigated acres within each forty (40) acre subdivision.
10. ☒/ ☐/ Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
11. ☒/ ☐/ Remarks: I respond to the objection concerning the "remarks" listed with the water right.
12. ☐/ ☐/ Water Right Recommendation: I respond to the objection concerning:
☐/ a. ☐ this water right being recommended at all; or
☐/ b. ☐ this water right not being recommended.

13. / Description of Reservation: I respond to the objection concerning the legal description of the reservation.

14. / Other: I respond to the objection concerning: _____

REASONS SUPPORTING EACH BOX CHECKED

In the space following, you must state the reason(s), by number, for each box checked. You may use additional pages if necessary.

See attached "Reasons Supporting Responses" numbered as per

above checklist.

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.

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:

Reasons Supporting Responses - One Page.

VERIFICATION (Must be Completed)

State of Idaho

County of Ada

Josephine P. Beeman, being first duly sworn, upon oath, deposes and says:

That I am the person or entity filing this response (as listed on Page 2, Section 1, "Person responding to objection"), as defined by I.C. § 42-1401A(1) and (7), and I have read this response, know its contents and that the statements are true to the best of my knowledge and belief.

Signature of party/claimant filing response

By: Josephine P. Beeman
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: August 31, 1993

Melinda Anderson
Notary Public for State of Idaho
Residing at: Boise
My Commission expires: 1-14-99

INSTRUCTIONS FOR MAILING

You must mail the response, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted by the Clerk of the Court.** You must also send a copy to all of the parties listed below in the Certificate of Mailing

You must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I hereby certify that on the 31st day of August, 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(VIA FEDERAL EXPRESS)
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: _____ City of Burley
Address: _____ P.O. Box 1090
Burley, ID 83318

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: _____ David W. Harder, U.S. Department of Justice
Address: _____ Environment and Natural Resources Division
550 West Fort Street, Box 33
Boise, Idaho 83734

4. One copy to:
- Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 4449
Boise, Idaho 83711-4449

5. One copy to:

United States Department of Justice
Environmental and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83734

Signature of party/claimant or attorney

Jeffrey F. Beaman

Reasons Supporting Responses to Objection
City of Burley
Case No. 36-04080

The United States Department of Justice, Environment and Natural Resources Division (United States), has filed objection to four municipal water rights in basin 34: City of Mackay (34-00780C, 34-00960, and 34-07073); City of Arco (34-10030) and four municipal water rights in basin 36: City of Hagerman (36-02465); City of Rupert (36-04075); City of Burley (36-04080); and City of Jerome (36-15361). The City of Pocatello is responding to each of the eight United States objections because the factual and legal issues decided in the eight subcases could be binding precedent for the City of Pocatello's municipal water right claims in basin 29 (the Portneuf drainage). The City of Pocatello will withdraw from this subcase if the issues presented have no bearing on municipal claims in basin 29.

We are filing this Response without the benefit of reviewing the Idaho Department of Water Resources' (IDWR) Response because we and the Department have simultaneous filing deadlines, and are thus without information regarding the specific methods used by IDWR to determine the objected municipal water rights. However, we have reviewed each recommended municipal claim for the test area (basins 34, 57, and 36), compared those to the objected claims, and contacted the following attorneys and individuals for information and data:

Lynne Krogh-Hampe, IDWR
David W. Harder, United States Department of Justice
Don Shaff, IDWR
Glenn Saxton, IDWR

The United States' objection contains numerous factual and legal claims which the City of Pocatello generally denies, although the City attempts to respond to each element of the objection. Each element of the objection that is not admitted is generally denied.

10. CONSUMPTIVE USE

The City of Pocatello denies that a municipal water right cannot include irrigation uses exceeding 1/2 acre per household and that municipal rights must be restricted according to average household uses. Even where dual irrigation and municipal water systems exist within and adjoining the city limits, in times of shortage the municipal right may be the only irrigation source. The City of Pocatello also denies that the average daily per capita figure of 237 gallons is an appropriate standard for determining municipal use for a city. The objection should be denied.

11. REMARKS

The City of Pocatello does not have sufficient information to respond and therefore asks that this objection be denied.

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. 36-04080 -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.)

36-04080 -0001/
93-08-0306

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)

In response to Statement of the Objection item 10 and all allegations of the objection regarding this item, IDWR responds as follows: The recommended annual consumptive use volume for this right is based on 108 irrigated acres within that portion of Burley located in Basin 36, which is that portion located on the north side of the river. Municipal use may include water provided by the city to its residents for both domestic and agricultural irrigation. The claim file includes a list of the 40-acre tracts that were analyzed to determine the number of irrigated acres within that portion of Burley located in Basin 36 Idaho Code sec. 42-1401A(2) provides that the quantification of consumptive use "is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code." IDWR Adjudication Memo #37 provides that

REASONS SUPPORTING EACH BOX CHECKED

10. ☒ Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.

II. STATEMENT OF THE RESPONSE

2. Person who filed objection:
- Name: US DEPT OF JUSTICE
Address: ENVT & NAT RESOURCES DIV
550 W FORT ST BOX 33
BOISE ID 83734
3. If this response is filed by an attorney:
- Attorney Name(s): NICHOLAS B. SPENCER
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

one method of determining annual consumptive use volume is based on monthly diversion volume data, preferably data for several recent years. That memo further provides that where such information is not available, annual consumptive use volume can be estimated based on the consumptive use for irrigated areas. This is a reasonably accurate and simple method for estimating annual consumptive use volume of municipal rights. IDWR denies this portion of the objection; IDWR denies, or lacks sufficient information to form a belief and therefore denies, all allegation regarding this portion of the objection not expressly admitted herein.

In response to Statement of the Objection item 11 and all allegations of the objection regarding this item, IDWR responds as follows: No other rights are recommended to the City of Burley in the director's report. The city has filed claims to water rights in Basin 45, from wells located on the south side of the river. IDWR denies this portion of the objection and all allegations regarding this portion of the objection not expressly admitted herein.

CHANGES TO THE DIRECTOR'S REPORT

The director proposes no changes to the description of this claim in the Director's Report.

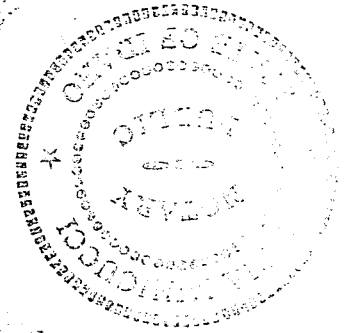
☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary:

No. of
Pages

Notice of Claim No. A36-04080

4

(Over)



Notary Public for Idaho
Residing at: Boise Idaho
My Commission expires: 6/25/1999

Subscribed and sworn to before me this 9th day of September, 1993.

By: Mark Sprouer
(Attorney signing in
representative capacity)

Signature of person filing response

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.

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

State of IDAHO
County of ADA

VERIFICATION (Must be completed)

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of SEPTEMBER, 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: CITY OF BURLEY
Address: PO BOX 1090
BURLEY ID 83318

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: ENVT & NAT RESOURCES DIV
550 W FORT ST BOX 33
BOISE ID 83734


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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A36-04080
Date Received: 6/06/1989
Receipt No: S007579
Received By: SCC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CITY OF BURLEY
Address: P.O. BOX 1090
BURLEY, ID 83318 208-678-2224

2. Date of Priority: NOV 01, 1962

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
10S	23E	17	NE	NE	NW		CASSIA

5. Description of diverting works:
WELL AND 150 HP PUMP, PIPELINES TO CITY SYSTEM.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
MUNICIPAL	01/01	12/31	4.010		

7. Total Quantity Appropriated is:
4.010 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
M/CITY WATER FOR BURLEY

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
10S	23E	17	NE	NE		MUNI	
			NW	NE		MUNI	
			NE	NW		MUNI	

A36-04080

Page 1

Date: 06/06/89

MICROFILMED
FEB 05 1993

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
10S	23E	17	NE SW		MUNI	
			SE SW		MUNI	
			NE SE		MUNI	
			NW SE		MUNI	
			SW SE		MUNI	
			SE SE		MUNI	
		19	NE SE		MUNI	
			NW SE		MUNI	
			SW SE		MUNI	
			SE SE		MUNI	
		20	NE NE		MUNI	
			NW NE		MUNI	
			SW NE		MUNI	
			SE NE		MUNI	
			NE NW		MUNI	
			NW NW		MUNI	
			SW NW		MUNI	
			SE NW		MUNI	
			NE SW		MUNI	
			NW SW		MUNI	
			SW SW		MUNI	
			SE SW		MUNI	
			NE SE		MUNI	
			NW SE		MUNI	
			SW SE		MUNI	
			SE SE		MUNI	
		21	NE NE		MUNI	
			NW NE		MUNI	
			SW NE		MUNI	
			SE NE		MUNI	
			NE NW		MUNI	
			NW NW		MUNI	
			SW NW		MUNI	
			SE NW		MUNI	
			NE SW		MUNI	
			NW SW		MUNI	
			SW SW		MUNI	
			SE SW		MUNI	
			NE SE		MUNI	
			NW SE		MUNI	
			SW SE		MUNI	
			SE SE		MUNI	
		22	NW SW		MUNI	
			SW SW		MUNI	
		27	NE NW		MUNI	

10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
10S	23E	27	NW		NW		MUNI	
		28	NW		NW		MUNI	
		29	NE		NE		MUNI	
			NW		NE		MUNI	
			SW		NE		MUNI	
			NE		NW		MUNI	
			NW		NW		MUNI	
			SW		NW		MUNI	
			SE		NW		MUNI	
			NE		SW		MUNI	
			NW		SW		MUNI	
			SW		SW		MUNI	
			SE		SW		MUNI	
			NE		SE		MUNI	
			NW		SE		MUNI	
			SW		SE		MUNI	
			SE		SE		MUNI	
		30	NE		NE		MUNI	
			SE		NE		MUNI	
		32	NE		NE		MUNI	
			NW		NE		MUNI	
			NE		NW		MUNI	
			NW		NW		MUNI	

11. Place of use in counties: MINIDOKA, CASSIA

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

A45-04099, A45-04098, A45-04097, A45-07269

14. Remarks:

P/U WITHIN CITY LIMITS OF BURLEY

15. Basis of Claim: STATUTORY CLAIM

MICROFILM

FEB 65 1985

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am Utilities Director of City of Burley, that I have signed the foregoing document in the space below as Utilities Director of City of Burley and that the statements contained in the foregoing document are true and correct.

Donald R. Hill
Signature of Authorized Agent

Utilities Director
Title and Organization

6-6-89
Date

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 6th day
of June 19 89

Steve Call
Notary Public

Seal

Residing at ~~72~~ Twin Falls
My Commission Expires Dec 7, 1994

RECORDED
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