

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. 36-04137 -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.)

36-04137 -0001/
93-08-0308

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: JOHN D BRUNE
Address: 2463 E 1200 S
HAZELTON ID 83335

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

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.
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.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 3 and 3.a, and all allegations of the objection regarding those items, IDWR responds as follows: (1) it recommended the amount of water it

determined was being beneficially used; (2) the claimant is not entitled to any amount greater than that which is beneficially used (Idaho Code Secs. 42-104 and 42-1402). IDWR further responds that the points of diversion recommended for this right are the same points of diversion licensed for right no. 36-08051. The licensing field exam for right no. 36-08051 confirmed diversion of 0.89 cfs from these two points. This right is therefore recommended for 0.89 cfs, and the combined diversion rate of both rights, used to irrigate different places of use, is limited to a total of 0.89 cfs.

In response to Statement of the Objection item 5, and all allegations of the objection regarding this item, IDWR responds as follows: It recommended the points of diversion described based on information available to IDWR that these points of diversion are linked by a mainline and either point of diversion could be used to deliver water to the place of use of this right.

In response to Statement of the Objection 9 and 9.a, and all allegations of the objection regarding those items, IDWR responds as follows: There is an error in the description of the place of use of this right in the director's report. The recommendation should be corrected as shown in the attachment entitled "Recommended Water Rights Acquired Under State Law." The corrected recommendation describes the place of use as claimed. IDWR further responds to these items as follows: By identifying in the objection additional acres that the claimant did not list on the notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim after a director's report is filed, just as a party must obtain leave of the court to file a late claim after the director's report is filed. Once leave of the court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the court.

In response to Statement of the Objection item 10 and all allegations of the objection regarding this item, IDWR responds as follows: Idaho Code Sec. 42-1411(2)(i) requires the director to determine the annual volume of consumptive use for each water right acquired under state law and recommended in the director's report. IDWR has developed uniform standards of consumptive use for various climatic areas throughout the state, based upon the definition of consumptive use contained in Idaho Code Sec. 42-1401A(2), which is the maximum volume of water consumed by "the most water consumptive crop that can be grown in the area during the period of year when water is used for irrigation." The consumptive use recommended for this water right is 3 acre feet per acre. This is the maximum volume of water consumed by the most water consumptive crop (pasture) that can be grown in

(Over)

the area during the irrigation season. 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." Therefore, the consumptive use recommended for this water right is included solely for use in future transfer proceedings, and not as a limitation on the quantity of water that the claimant may divert pursuant to this recommended right.

In response to Statement of the Objection item 11, and all allegations of the objection regarding this item, IDWR responds as follows: There is an error in the remarks in the description of this water right in the director's report. The recommendation should be corrected as shown in the attachment entitled "Recommended Water Rights Acquired Under State Law." The corrections are consistent with the corrections in the place of use. The corrections are consistent with the corrections in the place of use.

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. A36-04137	3
Recommended Water Rights Acquired Under State Law	1

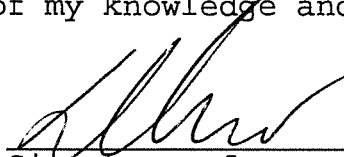
VERIFICATION (Must be Completed)

State of IDAHO

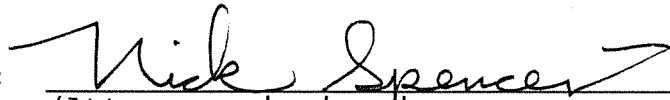
County of ADA

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: 
(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 10th day of September, 1993.


Notary Public for Idaho
Residing at: _____
My Commission Expires _____
Danni Smith, Notary Public
Residing at Boise, Idaho
My Commission Expires December 5, 1994

(Over)

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:

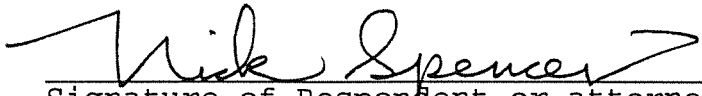
See No. 3

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: JOHN D BRUNE
Address: 2463 E 1200 S
HAZELTON ID 83335

4. One copy to:

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 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: A36-04137
Date Received: 1/19/1989
Receipt No: S006085
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JOHN BRUNE 208-829-5457
Address: 2463E 1200S
HAZELTON, ID 83335
2. Date of Priority: APR 12, 1961
3. Source: WASTE WATER Trib. to: MILNER-GOODING CANAL
4. Point of Diversion:
- | Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County |
|----------|-------|---------|--------|--------|-----|-----|--------|
| 10S | 21E | 18 | SW | SW | | 4 | JEROME |
5. Description of diverting works:
PUMP, PIPELINE, HANDLINES
6. Water is used for the following purposes:
- | Purpose | From | To | C.F.S. | (or) | A.F.A. |
|------------|-------|-------|--------|------|--------|
| IRRIGATION | 04/01 | 09/30 | 1.670 | | |
7. Total Quantity Appropriated is:
1.670 C.F.S. (and/or) A.F.A.
8. Total consumptive use is Acre Feet Per Annum.
9. Non-irrigation uses:
10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	21E	19	NE	NE		IRR	17.0
			NW	NE		IRR	15.0
			SE	NE		IRR	3.0
			NE	NW		IRR	15.0

A36-04137

Page 1

Date: 01/19/89

MICROFILMED
FEB 01 1993

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
10S	21E	19	NW	NW	IRR	3.0
					Section Acres	53.0
					Total Acres	53.0

11. Place of use in counties: JEROME

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

13. Other Water Rights Used:
NORTHSIDE CANAL WATER

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

MICROFILMED
FEB 01 1993

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 Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): John D. Brune Date: Jan 19, 1989
Date:

State of Idaho)
County of TK) SS.

Subscribed and sworn (or affirmed) before me this 19th day
of Jan 19 89 Tom White
Notary Public

Seal

Residing at TK

My Commission Expires 5/94

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: AUG-29-1993
PAGE: A-1RIGHT
NUMBER

NAME & ADDRESS

PRIORITY
DATE

PURPOSE OF USE

PERIOD OF USE
FROM TOMAXIMUM
QUANTITYBASIS OF
CLAIM

SOURCE: WASTE WATER

36-04137

JOHN BRUNE
2463 E 1200 S
HAZELTON ID 83335

04/12/1961 IRRIGATION

04-01 10-31

.89 CFS

BENEFICIAL USE

POINT OF DIVERSION:

T10S R21E S18 LOT 4 (SESWSW)
S19 NENENE

TOTAL QUANTITY: .89 CFS

PLACE OF USE: IRRIGATION

CONSUMPTIVE USE: 159.00 AFY

T10S R21E S19

NENE 36.0 17.0
NWNW 3.0

NWNW 15.0

SENE

8.0 3.0

NENW 15.0

REMARKS:

53.0 77.0 ACRES TOTAL

USE OF THIS RIGHT IS COMBINED WITH WATER FROM

NORTH SIDE PUMPING CO.

THIS RIGHT REMAINS SUBJECT TO THE RIGHT OF THE ORIGINAL
APPROPRIATOR, IN GOOD FAITH AND IN COMPLIANCE WITH STATE LAWS
GOVERNING CHANGES IN USE AND/OR EXPANSION OF WATER RIGHTS, TO
CEASE WASTING WATER, TO CHANGE THE PLACE OR MANNER OF WASTING IT,
OR TO RECAPTURE IT.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 53 ACRES WITHIN THE
PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
USE OF THIS RIGHT WITH RIGHT NO. 36-08051 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 0.89 CFS, A TOTAL COMBINED
ANNUAL CONSUMPTIVE USE VOLUME OF 231 AF, AND TO THE IRRIGATION
OF A COMBINED TOTAL OF 77 ACRES IN A SINGLE IRRIGATION SEASON.
RIGHT NO. 36-08051 IS ALSO DIVERTED THROUGH THE POINTS OF
DIVERSION DESCRIBED ABOVE.