

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: A36-07172
Date Received: 7/22/1988
Receipt No:
Received By: Adm

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: BOB PORTER 208-734-3455
Address: 562 SHOUP AVE. WEST
TWIN FALLS, ID 83301

AND/OR

Name: FRED SURBAUGH 208-734-3455
Address: 562 SHOUP AVE. WEST
TWIN FALLS, ID 83301

2. Date of Priority: MAR 25, 1971

3. Source: BILLINGSLEY CREEK Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
07S	13E	11	NW	SW	NE		GOODING

5. Description of diverting works:
VIA SANDS DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
STOCKWATER	01/01	12/31	0.020		
DOMESTIC	01/01	12/31	0.020		
WILDLIFE	01/01	12/31	4.000		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
S/300 RANGE CATTLE, W/ POND & HABITATE MAINTENANCE

A36-07172

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Date: 07/22/88

MICROFILMED

FEB 03 1993

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	15	SW	NE		STOCK	
			SW	NE		WILDLF	
			SE	NE		STOCK	
			SE	NE		WILDLF	
			SE	SW		WILDLF	
			SE	SW		STOCK	
			NE	SE		STOCK	
			NE	SE		WILDLF	
			NW	SE		STOCK	
			NW	SE		WILDLF	
			SW	SE		STOCK	
			SW	SE		DOMEST	
			SW	SE		WILDLF	
			SE	SE		STOCK	
			SE	SE		WILDLF	

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
A36-07233

14. Remarks:

THIS CLAIM IS BASED ON THE LIC 36-7172 WHICH WAS ISSUED FOR FISH PROPAGATION. THIS USE HAS NEVER BEEN FOR A COMMERCIAL USE AND IT IS MORE CORRECTLY DESCRIBED BY THE TERM WILDLIFE. THE WATER IS USED TO FLOW THRU CHANNELS AND PONDS TO MAINTAIN A WILDLIFE HABITATE ON THE PROPERTY. WATERFOWL & FISH USE THE WATERWAYS AND POND AS WELL AS NUMEROUS OTHER WILDLIFE IN THE AREA. THIS FILING IS FOR ADDITIONAL WATER ABOVE THAT WHICH IS BEING CLAIMED UNDER A36-07233 WHICH RECORDS THE USE OF THE ORIGINAL DECREEED WATER WHICH IS ALSO USED FOR THIS SAME WILDLIFE MAINTENANCE.

15. Basis of Claim: LICENSE

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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

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): [Signature] Date: 22 July 88
Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 22 day
of July 19 88 [Signature]
Notary Public

Seal

Residing at Kimberly, ID
My Commission Expires 6/30/94

IDWR'S RESPONSE TO ANSWER, AFFIRMATIVE DEFENSES AND PRAYER FOR
RELIEF OF CLAIMANT

This portion of the response addresses the multi-page attachment to the objection (hereinafter "the attachment"), wherein the claimant admits or denies all sections of Parts I, II, and III of the director's report, asserts 27 affirmative defenses, and alleges a prayer for relief. The attachment contains the following sections, corresponding to the various sections of the director's report:

- (1) I. GENERAL RESPONSE
- (2) II. DESCRIPTIVE SUMMARY, (first unnumbered page of Part I of the director's report)
- (3) III. TABLE OF CONTENTS (second and third unnumbered pages of Part I of the director's report)
- (4) IV. 1. INSTRUCTIONS FOR USING THIS REPORT PART I (page 1 of Part I of the director's report)
- (5) IV. 2. SCOPE OF THE ADJUDICATION (pages 1-3 of Part I of the director's report)
- (6) IV. 3. PURPOSE OF THIS REPORT PART I (pages 3-4 of Part I of the director's report)
- (7) V. 1. BOUNDARIES OF BASIN (pages 4-6 of Part I of the director's report)
- (8) V. 2. WATER SOURCES (page 6 of Part I of the director's report)
- (9) V. 3. DEVELOPMENT OF WATER USE (pages 6-9 of Part I of the director's report)
- (10) VI. GENERAL PROVISIONS 1-8 APPLY TO ALL WATER RIGHTS IN BASIN 36 (page 9 of Part I of the director's report)
- (11) VI. General Provision 1. EFFECT OF ADJUDICATION (page 9 of Part I of the director's report)
- (12) VI. General Provision 2. GENERAL ADMINISTRATIVE PROVISIONS (pages 9-10 of Part I of the director's report)
- (13) VI. General Provision 3. CONJUNCTIVE ADMINISTRATION (page 10 of Part I of the director's report)
- (13) VI. General Provision 4. ADMINISTRATION OF GROUND WATER RIGHTS (page 10 of Part I of the director's report)
- (14) VI. General Provision 5. ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER (page 10 of Part I of the director's report)
- (15) VI. General Provision 6. ADMINISTRATION OF SMALL DOMESTIC AND STOCK WATER RIGHTS (page 11 of Part I of the director's report)
- (16) VI. General Provision 7. MEASURING DEVICES AND CONTROL

The attachment also contains part VIII, AFFIRMATIVE DEFENSES (pp. 20 through 28) and a PRAYER FOR RELIEF (untitled, p. 28).

- (17) VI. General Provision 8. FIRE FIGHTING PURPOSES (page 11 of Part I of the director's report)
- (18) VI. General Provision 9. CONSUMPTIVE USE (page 12 of Part I of the director's report)
- (19) VI. GENERAL PROVISION 10 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH DOMESTIC USE AS A PURPOSE OF USE (page 12 of Part I of the director's report)
- (20) VI. General Provision 10. DOMESTIC USE (page 12 of Part I of the director's report)
- (21) VI. GENERAL PROVISION 11 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH STOCK WATER USE AS A PURPOSE OF USE (page 13 of Part I of the director's report)
- (22) VI. General Provision 11. STOCK WATER USE (page 13 of Part I of the director's report)
- (23) VI. GENERAL PROVISIONS 12-16 APPLY TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH IRRIGATION AS A PURPOSE OF USE (page 13 of Part I of the director's report)
- (24) VI. General Provision 12. IRRIGATION USE (pages 13-14 of Part I of the director's report)
- (25) VI. General Provision 13. DIVERSION VOLUME FOR IRRIGATION (page 14 of Part I of the director's report)
- (26) VI. General Provision 14. CONSUMPTIVE USE FOR IRRIGATION (pages 14-15 of Part I of the director's report)
- (27) VI. General Provision 15. AMOUNT OF COMBINED WATER RIGHTS FOR IRRIGATION (page 15 of Part I of the director's report)
- (28) VI. General Provision 16. DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE (pages 15-16 of Part I of the director's report)
- (30) VI. 17. INSTRUCTIONS FOR USE OF LIST OF RECOMMENDED WATER RIGHTS (pages A-1 through A-11 of Part I of the director's report)
- (31) VI. 18. IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW (pages A-1 through B-25 of Part I of the director's report)
- (32) DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART II)
- (33) DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART III)

In response to each of the items enumerated above IDWR responds that pursuant to Section 4 a.(2)(c) of SRBA Administrative Order 1, Rules of Procedure, IDWR generally denies each and every allegation, if any, contained in each enumerated portion of the attachment. IDWR affirmatively responds that neither SRBA Administrative Order 1, Rules of Procedure, nor Title 42, Chapter 14, Idaho Code, make provision for IDWR to affirm, amplify, or otherwise respond to the claimant's admissions, or to deny the claimant's denials, and that IDWR therefore does not believe that it is required to do so. Title 42, Chapter 14, Idaho Code solely defines the content and scope of the director's report. It is to contain a description of the water system and is to provide a recommendation as to each water right claimed and as to those matters necessary for administration of those water rights. Therefore, the content and scope of the objection is limited to those same matters. The attachment to the present objection asserts or otherwise raises matters not directly addressing the elements of the water right as recommended, the description of the water system, or the general provisions. Rather, the attachment raises broad issues as to the constitutional, statutory and administrative efficacy of the entire adjudication process. All such issues should be raised by means of motions to designate basinwide issues and similar procedural vehicles specifically designed to provide for basinwide notice and participation. They should not be permitted to divert the focus of any individual subcase away from the issues directly connected to the elements of the water right and the administration thereof. Therefore, because the attachment to the present objection is not within the scope of the statutory purpose of an objection it should be stricken.

However, in the event that the court should determine that all or part of the attachment is properly within the scope of the objection, IDWR further responds as follows:

IDWR affirmatively responds that all statements within the director's report are properly included therein pursuant to Title 42, Chapter 14, Idaho Code, and in particular pursuant to Idaho Code §§ 42-1411 and 42-1412(8); and that the provisions of the Idaho Rules of Civil Procedure regarding pleadings are inapplicable to the extent that they are in conflict with the statutory requirements. Therefore IDWR denies all allegations directed at the contents of the director's report.

As to the enumerated portions of the attachment addressing the listings of recommended water rights, abstracts of federal reserved water right claims, or negotiated agreements, other than the individual recommendation that is the subject of this objection, IDWR responds that such claims or agreements are not brought before this court by this objection.

Responding to the 27 affirmative defenses asserted in the attachment, IDWR generally denies each and every affirmative defense asserted. IDWR further responds that affirmative defense numbers 1, 2, 4, 5, 10, 11, 12, 18, and 22, asserting various violations of civil or constitutional rights, fail to comply with the requirements I.R.C.P. 9(b) providing that in all averments of violation of civil or constitutional rights the factual circumstances constituting such violation must be stated with particularity. Accordingly, IDWR asserts that those affirmative defenses should be stricken.

In response to that portion of the multi-page attachment to the objection wherein the claimant asserts a prayer for relief, IDWR responds as follows:

1. IDWR denies that the director's report asserts any claims against the claimant; rather, the director's report contains only the recommendation of the director as to how the claimant's water right should be decreed and administered.

2. IDWR denies that the claimant is entitled to have the water right decreed as claimed unless in the director's report the water right has been recommended as claimed.

3. IDWR denies that any acts upon its part constitute the taking of private property for which just compensation should be allowed and awarded.

4. IDWR denies that the claimant is entitled to recover court costs and reasonable attorney fees.

5. IDWR denies that the claimant by this objection has raised any claims against IDWR entitling such claimant to any relief other than the eventual judicial determination and decree of the various elements of the claimant's water right, if any, and of those related matters necessary to describe and administer that water right.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: SEP-4-1993
PAGE: A-1

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER						
36-07172	BOB PORTER FRED SURBAUGH 562 SHOUP AVE W TWIN FALLS ID 83301	03/25/1971	STOCKWATER	01-01 12-31	.02	CFS LICENSE
			DOMESTIC	01-01 12-31	.02	CFS
			WILDLIFE	01-01 12-31	4.00	CFS
			TOTAL QUANTITY:		4.00	CFS

NON-IRRIGATION-USES:

STOCK, 300 RANGE CATTLE; WILDLIFE, POND, HABITAT MAINTENANCE
POINT OF DIVERSION:

T07S R13E S11 NWSNE

PLACE OF USE: STOCKWATER

T07S R13E S15

PLACE OF USE: DOMESTIC

NESE

SWSE

T07S R13E S15

PLACE OF USE: WILDLIFE

SWSE

T07S R13E S15

SWNE

NESE

REMARKS:

A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE
MAINTAINED AS A PART OF THE DIVERTING WORKS.RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT
TO IDAHO CODE 42-1416A.

WATER IS DELIVERED THROUGH SANDS DITCH.

0.25 CFS OF RIGHT NO. 36-00099 IS LIMITED TO USE FOR
CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT DURING THE
IRRIGATION SEASON.~~0.25 CFS OF RIGHT NO. 36-07233 IS LIMITED TO USE FOR
CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT DURING THE
NON-IRRIGATION SEASON.~~