

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. 36-07271 -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. )

36-07271 -0001/  
93-08-0354

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: EDWARD C & RUTH C SHOKAL  
Address: 963 PIONEER RD  
HAGERMAN ID 83332

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

1. ☒ Name and Address: I respond to the objection concerning the name and/or address of the owner of the water right.
3. ☒ Quantity: I respond to the objection concerning:
- 3a. ☒ The total quantity of water used in cubic feet per second.
14. ☒ Other: I respond to the objection concerning:  
REFERENCE TO ATTACHMENT

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 1, 3, 3a., and 14, and all allegations of the objection regarding these items, IDWR responds as follows: IDWR received a Notice of Change of Water Right Ownership from Edward C. Shokal prior to the filing of the director's report. The Notice of Change of Water Right Ownership indicated a split of water right no. 36-07271 with 0.96 cfs from Billingley Creek via Sands Ditch going to Jamie Martin and Thomas E. King, who purchased a portion of the real property owned by Edward C. Shokal and Ruth C. Shokal. Based on IDWR's

review of the ownership information provided by the claimant, it appears that the entire place of use for this right remains on land still owned by Edward C. Shokal and Ruth C. Shokal. Because of this, a transfer approved by the director of IDWR as provided for by Idaho Code 42-222 is required to change the place of use of all or part of this right. Therefore, IDWR did not recommend that this right be split. Instead, per the Notice of Change of Ownership, it listed Jamie Martin and Thomas E. King as additional owners of the water right. If the claimant or claimants come forward with additional information clarifying the nature of the transaction, IDWR will review such information and correct its recommendation for the ownership of all or portions of this water right accordingly.

#### 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<br>Pages |
|-------------------------------|-----------------|
| Notice of Claim No. A36-07271 | 5               |

(Over)

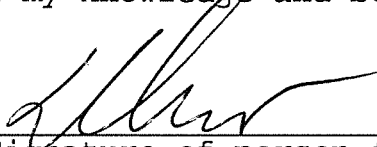
VERIFICATION (Must be Completed)

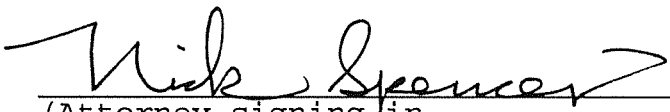
State of IDAHO

County of ADA

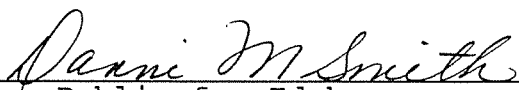
David B. Shaw, being first duly sworn, upon oath, deposes and says:

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:   
\_\_\_\_\_  
(Attorney signing in  
representative capacity)

Subscribed and sworn to before me this 31<sup>st</sup> day of August,  
1993.

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

CERTIFICATE OF MAILING

I hereby certify that on the 31st day of August, 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

Name: THOMAS E KING  
Address: PO BOX 254  
BURLEY ID 83318

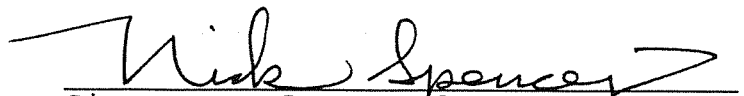
Name: JAMIE MARTIN  
Address: PO BOX 356  
HAGERMAN ID 83332

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: EDWARD C & RUTH C SHOKAL  
Address: 963 PIONEER RD  
HAGERMAN ID 83332

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: A36-07271  
Date Received: 6/09/1988  
Receipt No: S000381  
Received By: SCC

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: EDWARD C. SHOKAL 208-837-4577  
Address: RT. 1 BOX 410  
HAGERMAN, ID 83332

AND/OR

Name: RUTH C. SHOKAL  
Address: HAGERMAN, ID 83332

2. Date of Priority: NOV 17, 1972

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     | R   | GOODING |
|          |       |         | SE     | SE     | NE     | R   | GOODING |

5. Description of diverting works:  
BUCKEYE AND SANDS DITCHES.

6. Water is used for the following purposes:

| Purpose          | From  | To    | C.F.S | (or) | A.F.A. |
|------------------|-------|-------|-------|------|--------|
| FIRE PROTECTION  | 01/01 | 12/31 | 2.880 |      |        |
| FISH PROPAGATION | 01/01 | 12/31 | 4.620 |      |        |

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

8. Total consumptive use is 140.4 Acre Feet Per Annum.

9. Non-irrigation uses:  
FISH POND AND FIRE PROTECTION.

A36-07271

Page 1

Date: 06/09/88

MICROFILMED  
FEB 03 1993

10. Place of Use:

|          |       |         |        |     |               |      |       |
|----------|-------|---------|--------|-----|---------------|------|-------|
| Township | Range | Section | 1/4 of | 1/4 | Lot           | Use  | Acres |
| 07S      | 13E   | 11      | SE     | SW  |               | IRR  | 10.0  |
|          |       |         | SE     | SW  |               | FISH |       |
|          |       |         | SW     | SE  |               | IRR  | 36.8  |
|          |       |         | SW     | SE  |               | FISH |       |
|          |       |         |        |     | Section Acres |      | 46.8  |
|          |       |         |        |     | Total Acres   |      | 46.8  |

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:  
36-0080, 36-0081, 36-0082 DECREED RIGHTS.

14. Remarks:  
THIS RT. WHEN COMBINED WITH RTS. 36-0080, 36-0081 & 36-0082  
SHALL NOT EXCEED 5.0 CFS.  
USE OF WATER UNDER THIS LICENSE IS SUBJECT TO CONTROL BY THE  
WATERMASTER OF STATE WATER DISTRICT NO. 36A, BILLINGSLEY CREEK.

15. Basis of Claim: LICENSE  
Water Right Number:

MICROFILMED  
FEB 03 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): Edward C. Shokal Date: June 9 88  
\_\_\_\_\_ Date: \_\_\_\_\_

State of Idaho )  
County of Twin Falls ) SS.

Subscribed and sworn (or affirmed) before me this 9th day

of June 19 88

Mary A. Baldwin  
Notary Public

Seal

Residing at Gooding Id  
My Commission Expires 10/16/1992

Entry No. 45 cont.

| Name      | Amount of Water In Second Fe And Source | Priority of Appropriation | Diversion Point       |
|-----------|-----------------------------------------|---------------------------|-----------------------|
| Neal,     | 2 Billingsley Creek                     | April 1, 1885             | Sands Ditch           |
| Louis,    | 1 Billingsley Creek                     | April 1, 1910             | Sands Ditch 36-0081   |
| Harry H.  | 2 Billingsley Creek                     | Jan. 2, 1891              | Granger Ditch 36-0082 |
| and Effie | .8 Spring                               | Jan. 2, 1891              | Unnamed Spring;       |

M. Neal,  
and Alva  
Reed (Said Unnamed spring arises in the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 11, Twp. 7 S. R. 13 E.B.M. at a point 1065 feet north 2 degrees 2' West from the southeast corner of said forty acres tract of land.)

The SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 11, Twp. 7 S. R. 13 E.B.M. excepting approximately nine acres described as follows:

Beginning at the Southeast Corner of the said Southwest Quarter of the SE $\frac{1}{4}$  of said Sec. 11, Thence north along the center of the Hagerman road 305.25 feet, thence North 80 degrees 50' West 907.5 feet, thence South 44 degrees 55' West 631.15 feet to the Quarter corner of the boundary line between Sections 11 and 14, thence due east to the place of beginning.

Also the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 11, Twp. 7 S. R. 13 E.B.M., excepting a strip of ground extending along the entire length of the south side of the said SE $\frac{1}{4}$  of the SW $\frac{1}{4}$ , which strip is 28 feet wide on the west and runs to a point at the east end, or the quarter corner of the above mentioned secs. 11 and 14, Twp. 7 S.R.13 E.B.M.

(Other amounts to other parties)

It is further Ordered, Adjudged and Decreed, That the plaintiff, defendants, cross-complainants, counter-claimants, and intervenors and their attorneys, agents, servants, and employees and any and all persons acting in aid of or for any of said parties, and any persons in privy with or claiming under any of said parties and each and every of them are hereby forever enjoined and restrained from in any manner interfering with or diverting or using the waters of said Billingsley Creek, or said Riley Creek, or the Springs, adjudication of which has been made herein, excepting in accordance with the terms of this decree.

Signed: Charles C. Cavanah, District Judge.

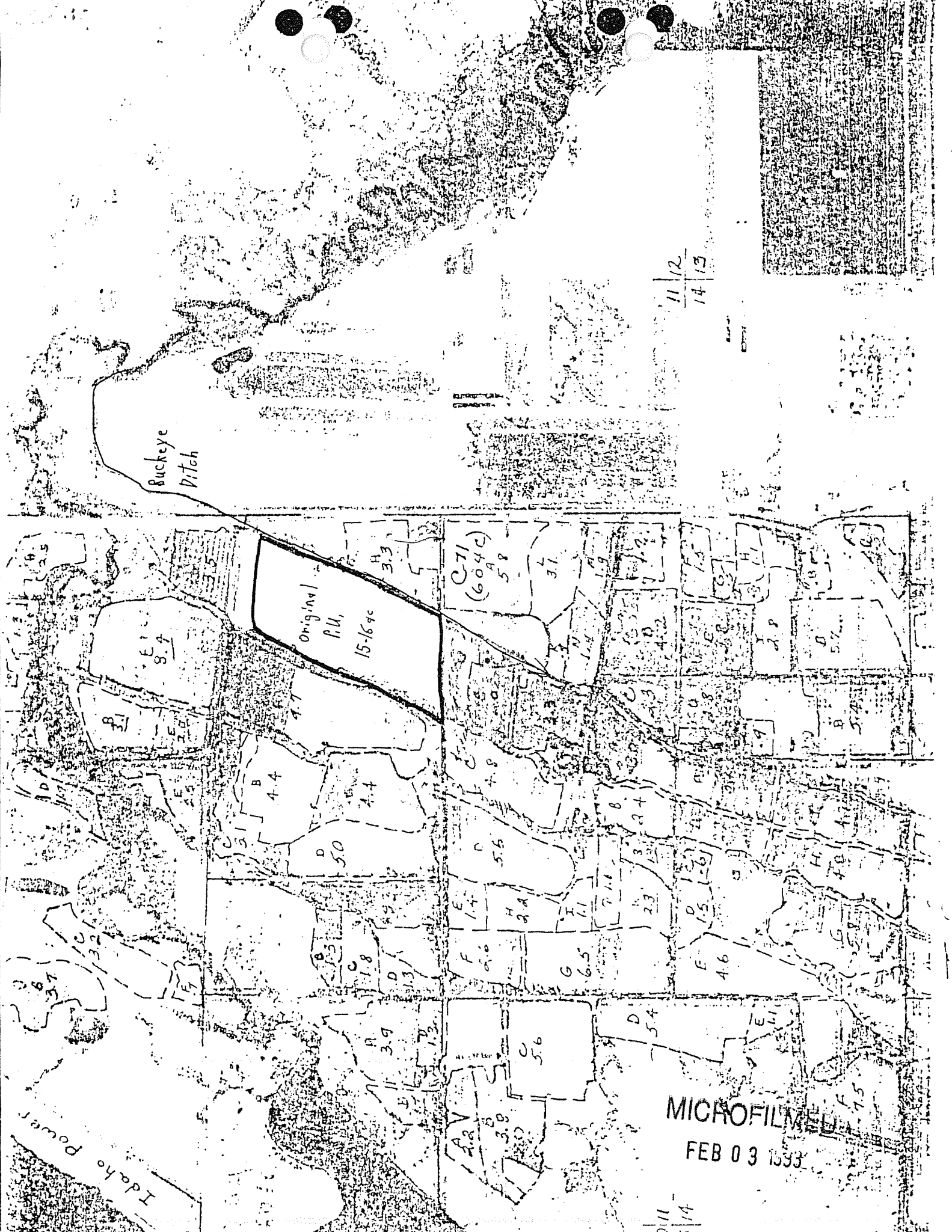
Certificate of correct transcript of the original, given under date of April 8, 1932, by W. D. McReynolds, Clerk of the United States District Court for the District of Idaho, By Dorothy G. Wylie, Deputy (U.S.D.C.Seal)

MICROFILMED

FEB 03 1955

118 53

Security Title Company, Gooding, Idaho



11/12  
14/13

MICROFILMED  
FEB 03 1993

2/11  
5/14

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. 36-07271 -0002

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. )

36-07271 -0002/  
93-08-0355

The United States; the State )  
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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: JAMIE MARTIN  
Address: PO BOX 356  
HAGERMAN ID 83332

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.
- 3c. ☒ The total quantity of water reserved for each and every purpose, including all present and future uses.
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.
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.

14. ☒ Other: I respond to the objection concerning:

REFERENCE TO ATTACHMENT TO OBJECTION

**REASONS SUPPORTING EACH BOX CHECKED**

In response to the claimant's description of interest in the water right, IDWR responds as follows: IDWR recommended the water right in question based on a license and with the licensed priority date as claimed by the claimant. The claimant here asserts that the right is decreed with an 1891 priority date. Since the claimant does not object either to the recommended priority date or the recommended basis of the water right, these assertions in the Statement of Interest are made in error.

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). In further response to this objection item, IDWR responds that it recommended this element of the water right as claimed.

In response to Statement of the Objection item 3c., and all allegations of the objection regarding that item, IDWR responds as follows: Since this water right is not a federal reserved water right, this objection item is inapplicable and the claimant's assertion of it is in error. IDWR further responds that under Idaho law water cannot be reserved for future use, but must be appropriated and put to beneficial use before the user can acquire a water right.

In response to Statement of the Objection item 7, and all allegations of the objection regarding that item, IDWR responds that it recommended the same purpose or purposes of use that were identified on the notice of claim and that were found when the claim was investigated. By identifying in the objection irrigation, stockwater and domestic as additional uses that were not identified 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

(Over)

court.

In response to Statement of the Objection item 8, IDWR responds as follows: IDWR recommended a season of use of 1-1 to 12-31, which is the same season claimed and the same season now requested in this objection.

In response to Statement of the Objection item 10 and all allegations of the objection regarding this item, IDWR responds as follows: The license upon which the claimant's claim is based does not set an annual volume of consumptive use for this water right. 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. As stated in general provision 9 of the director's report, "Where consumptive use is not stated for a right or a portion of a right, the consumptive use for that right or that portion of the right is so small that it is deemed de minimus." No consumptive use is stated for this right, and it is therefore deemed de minimus.

In response to Statement of the Objection item 11, and all allegations of the objection regarding that item, IDWR responds that it has authority pursuant to Idaho Code Sec. 42-1411(2)(j) to include in its recommendations of water rights acquired under state law and recommended in the director's report "such other matters as are necessary to define the right." The remark or remarks objected to are necessary to adequately describe and define this water right.

In response to Statement of the Objection item 14, IDWR deems the item identified to be only a reference to the attachment listing the reasons to support the other items objected to. IDWR has addressed each of those reasons in the response items enumerated above.

In response to the sentence listed in Changes to the Director's Report, whereby the claimant attempts to "reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial," IDWR responds as follows: Insofar as this purported reservation of rights may constitute an attempt to reserve the right to amend at trial the claimant's 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 just as a party must obtain leave of the court to file a late claim after the director's report is filed.

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

The notice of claim is attached to IDWR's response to Objection No. 36-07271-0001

(Over)

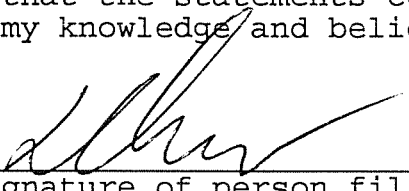
VERIFICATION (Must be Completed)

State of IDAHO

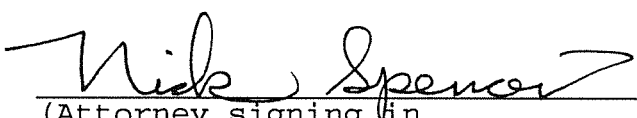
County of ADA

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

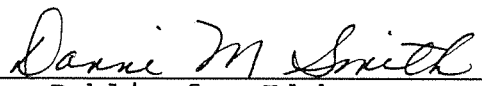
That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director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

  
\_\_\_\_\_  
(Attorney signing in  
representative capacity)

Subscribed and sworn to before me this 31<sup>st</sup> day of August,  
1993.

  
\_\_\_\_\_  
Notary Public for Idaho

Residing at: \_\_\_\_\_

My Commission expires \_\_\_\_\_

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

CERTIFICATE OF MAILING

I hereby certify that on the 31st day of AUGUST, 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

Name: THOMAS E KING  
Address: PO BOX 254  
BURLEY ID 83318

Name: EDWARD C & RUTH SHOKAL  
Address: 963 PIONEER RD  
HAGERMAN ID 83332

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: JAMIE MARTIN  
Address: PO BOX 356  
HAGERMAN ID 83332

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