

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. 36-07298 -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.

36-07298 -0001/  
93-08-0358

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: FAYE COATES  
Address: FRED A BECKSTEAD  
PO BOX 359  
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

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.
11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.
14. ☒ Other: I respond to the objection concerning:
- ALL MATTERS RAISED IN THE CLAIMANTS' ANSWER,  
AFFIRMATIVE DEFENSES, AND PRAYER FOR RELIEF.

REASONS SUPPORTING EACH BOX CHECKED

In response to the claimant's description of interest in the water right, IDWR responds as follows: (1) IDWR recommended the water right in question as a permitted or licensed right as claimed by the claimant; (2) the claimant now asserts that the right is based on beneficial use; and (3) to the extent that the claimant is now attempting to assert a different basis for the

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. The source of this right is not "private springs" within the meaning of Idaho Code section 42-212.

In response to Statement of the Objection 4, and all allegations of the objection regarding this item, IDWR responds that it recommended this element of the water right as claimed. By now seeking an earlier priority date 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 5, and all allegations of the objection regarding this item, IDWR responds that the recommended water right accurately describes the point of diversion of the right.

In response to Statement of the Objection item 11, and all allegations of the objection regarding that item, IDWR responds as follows: There is an error a portion of 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." In further response to the objection to this 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 remaining remark or remarks objected to are necessary to adequately describe and define this water right.

In response to Statement of the Objection item 14, and all allegations of the objection regarding that item, see attached "IDWR's Response to Answer Affirmative Defenses and Prayer for Relief of Claimant".

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

(Over)

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

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<br>Pages |
|--------------------------------------------------------------------------------------|-----------------|
| Notice of Claim No. A36-07298                                                        | 4               |
| IDWR's Response to Answer, Affirmative Defenses and Prayer<br>For Relief of Claimant | 4               |
| Recommended Water Rights Acquired Under State Law                                    | 1               |

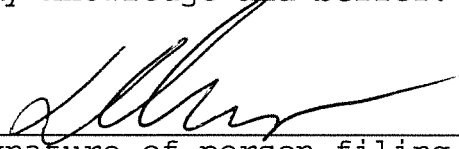
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

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

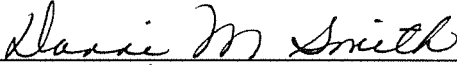
That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director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

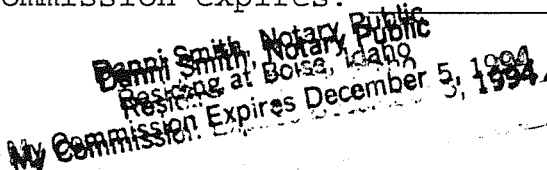
  
\_\_\_\_\_  
Signature of person filing response

By:

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

Subscribed and sworn to before me this 10<sup>th</sup> day of September, 1993.

  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_



(Over)

CERTIFICATE OF MAILING

I hereby certify that on the 10<sup>th</sup> 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:

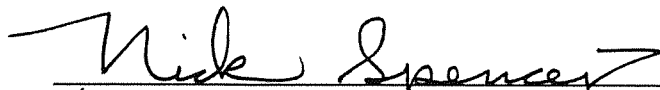
See No. 3

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: HEPWORTH NUNGESTER & LEZAMIZ  
Address: PATRICK D BROWN  
& PENELOPE PARKER  
PO BOX 389  
TWIN FALLS ID 83303

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: A36-07298

Date Received: 6/08/1988

Receipt No: 5000407

Received By: na

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: FRED A. BECKSTEAD 208-837-4573  
Address: BOX 359  
HAGERMAN, ID 83332

AND/OR

Name: FAYE COATES  
Address: BOX 359  
HAGERMAN, ID 83332

2. Date of Priority: FEB 02, 1973

3. Source: DONKEY SPRINGS Trib. to: BILLINGSBY CREEK

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 of | Lot | County  |
|----------|-------|---------|--------|--------|--------|-----|---------|
| 07S      | 13E   | 14      | NW     | NW     | NW     |     | GOODING |

5. Description of diverting works:  
CONCRETE DIVERSION.

6. Water is used for the following purposes:

| Purpose          | From  | To    | C.F.S. | (or) | A.F.A. |
|------------------|-------|-------|--------|------|--------|
| FISH PROPAGATION | 01/01 | 12/31 | 2.000  |      |        |

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:  
FISH PROPAGATION.

A36-07298

Page 1

Date: 06/08/88

MICROFILMED

FEB 03 1993

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use  | Acres |
|----------|-------|---------|--------|-----|-----|------|-------|
| 07S      | 13E   | 14      | NW     | NW  |     | FISH |       |

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:  
NONE

14. Remarks:

USE OF WATER UNDER THIS LICENSE IS SUBJECT TO CONTROL BY THE  
WATERMASTER OF STATE WATER DISTRICT NO. 36-A, 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): *Hayes Coates* Date: 6-13-88  
\_\_\_\_\_ Date: \_\_\_\_\_

State of Idaho )  
County of Twin Falls ) SS.

Subscribed and sworn (or affirmed) before me this 13th day

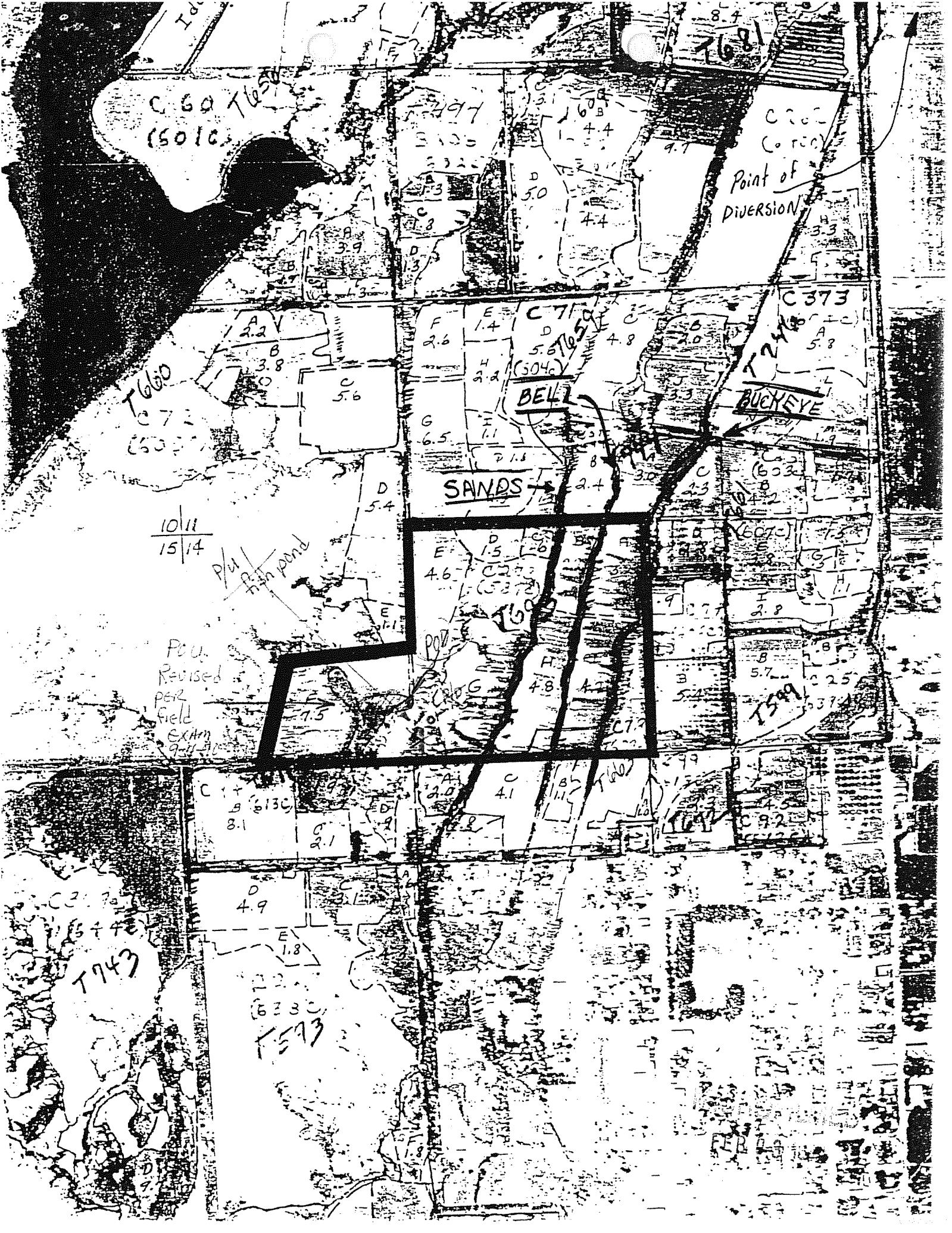
of June 19 88

*Mary A. Baldwin*  
Notary Public

Seal

Residing at *Gooding Id*

My Commission Expires 8/16/1992



**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**

- WORKS** (page 11 of Part I of the director's report)
- (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-i through A-iii 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)**

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

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.

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES  
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: SEP-5-1993  
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: DONKEY SPRINGS |                                                                    |                  |                     |                          |                     |                   |
| -----                  |                                                                    |                  |                     |                          |                     |                   |
| 36-07298               | FAYE COATES<br>FRED A BECKSTEAD<br>PO BOX 359<br>HAGERMAN ID 83332 | 02/02/1973       | FISH<br>PROPAGATION | 01-01 12-31              | 2.00 CFS            | LICENSE           |

TOTAL QUANTITY: 2.00 CFS

## NON-IRRIGATION-USES:

FISH PROPAGATION, COMMERCIAL PONDS

## POINT OF DIVERSION:

T07S R13E S14 SWNENW

## PLACE OF USE: FISH PROPAGATION

T07S R13E S14

NWNW

## REMARKS:

LOCKABLE CONTROLLING WORKS OF A TYPE ACCEPTABLE TO IDWR SHALL  
BE PERMANENTLY INSTALLED AND MAINTAINED AS PART OF THE DIVERTING  
WORKS.RIGHT INCLUDES ACCOMPLISHED CHANGE IN SOURCE PURSUANT TO IDAHO  
CODE 42-1416A.RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION  
PURSUANT TO IDAHO CODE 42-1416A.  
FACILITY VOLUME 2160 CU.FT.