

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. 36-08649 -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,

36-08649 -0001/
93-08-0427

vs.

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: RAY & ALICE MC CORD
Address: RT 1
WENDELL ID 83355

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.
9. |☒| Place of Use: I respond to the objection concerning:
- 9b. |☒| 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.
12. |☒| Water Right Recommendation: I respond to the objection concerning:
- 12a. |☒| This water right being recommended at all.

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 it recommended a diversion rate of 1.47 cfs, the full amount of the license upon which this right is based.

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.

In response to Statement of the Objection 9 and 9.b, and all allegations of the objection regarding those items, IDWR responds that the recommended water right accurately describes the place of use of the right. IDWR further responds that it recommended the entire acreage specified in the license upon which this right is based. Information available to IDWR indicates that the licensure field examination conducted on July 2, 1984, revealed that only 73.5 acres of the 80 acres covered by the claimant's water permit were being irrigated. Consequently IDWR issued a license for that acreage. Under Idaho Code sections 42-101, 42-104, and 42-202, the claimant cannot acquire a water right for more water than is being beneficially used. Correspondence from the claimant to IDWR regarding the number of licensed acres reveals that the claimant was not irrigating the entire 80 acres covered by his permit at the time of the licensure examination, but rather intended to expand his irrigated acres in the future. 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 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. IDWR has developed uniform standards of consumptive use

(Over)

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 based upon the maximum volume of water consumed by the most water consumptive crop (pasture) that can be grown in 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 12 and 12a., and all allegations of the objection regarding those items, IDWR responds as follows: The purpose of items 12 and 12a. is to allow an objector to seek disallowal of a claim. Since the claimant presumably does not want the claimant's right disallowed, the objection to these items appears to be error.

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. A36-08649	4

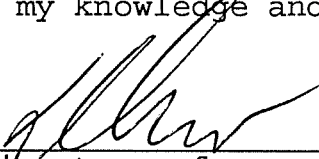
VERIFICATION (Must be Completed)

State of IDAHO

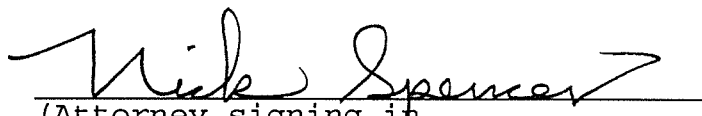
County of ADA

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

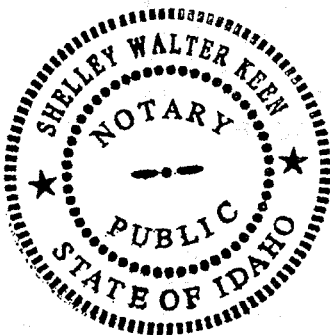
That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director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

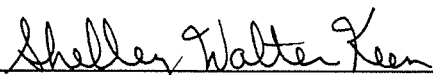

Signature of person filing response

By:


(Attorney signing in
representative capacity)

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




Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: July 31, 1997

(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:

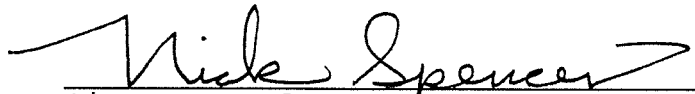
See No. 3

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: RAY & ALICE MC CORD
Address: RT 1
WENDELL ID 83355

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: R36-08649
Date Received: A37-07696
Receipt No: 8/09/1988
Received By: M000928
g ac

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: RAY MC CORD
Address: RT. 1
WENDELL, ID 83355

AND/OR

Name: ALICE MC CORD
Address: RT. 1
WENDELL, ID 83355

2. Date of Priority: JAN 25, 1978

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
07S	14E	34	NW	NE	NE		GOODING

5. Description of diverting works:
WELL, PUMP & SPRINKLERS.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	1.600		

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

A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

A37-07696

Page 1

Date: 08/09/88

MICROFILMED

FEB 09 1993

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	14E	34	NE	NE		IRR	40.0
			NW	NE		IRR	40.0
					Section Acres		80.0
					Total Acres		80.0

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:
NORTH SIDE CANAL CO.

14. Remarks:

15. Basis of Claim: PERMIT

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): Ray McLoey Date: 8/9/88

Date: _____

State of Idaho)
County of Booing) SS.

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

of Aug 19 88

John Val Carlson
Notary Public

Seal

Residing at Booing Id.

My Commission Expires 4/2/89



SCALE 1:24 000

623

ED