

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. 36-10283A -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.)

36-10283A -0001/
93-08-0444

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: YA TA HAY INVESTMENTS
Address: MARY RUTH BARRETT
813 W KIOWA
HOBBS NM 88240

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.
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. |X| Remarks: I respond to the objection concerning the "remarks" listed with the water right.

14. |X| Other: I respond to the objection concerning:

ALL MATTERS RAISED IN THE CLAIMANT'S ANSWER,
AFFIRMATIVE DEFENSES, AND PRAYER FOR RELIEF.

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); (3) the recommendation of the director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right; and (4) the eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

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 an additional use or uses 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.

(Over)

In response to Statement of the Objection item 8, and all allegations of the objection regarding this item, IDWR responds as follows: Idaho Code Sec. 42-1411(2)(g) requires the director to determine the period of use of each water right acquired under state law that is recommended in the director's report. IDWR has developed irrigation season of use standards for various climatic areas throughout the state based on a 75% chance of a 24 degree fahrenheit frost. The period of the year during which this water right may be used is consistent with the standard irrigation season of use for the area in which the place of use of this water right is located. Water may be used for irrigation outside the standard season of use, subject to the conditions set forth in general provision 12b of the director's report. In further response to this objection item, IDWR responds that it recommended stockwater use year-round, and that is recommended the period of use for irrigation as claimed. By now asserting a year-round season of use for irrigation, the claimant improperly seeks to use the objection process to amend the notice of claim. A claimant must obtain leave of court to amend a notice of claim just as a party must obtain leave of court to file a late claim after the director's report is filed. Once leave of court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the court.

In response to Statement of the Objection 9 and 9.a, 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.

In response to Statement of the Objection item 10 and all allegations of the objection regarding that item, IDWR responds as follows: (1) The decree asserted by the claimant did not set an annual volume of consumptive use for this water right. (2) 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. (3) 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. (4) The annual volume of consumptive use recommended for this 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 the area during the period of year when water is used for irrigation, as provided for by Idaho Code Sec. 42-1401A(2). (5) The recommendation of the director to the SRBA Court as to how

the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right. (6) The eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

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, 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 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:

(Over)

No. of
Pages

Notice of Claim No. A36-10283A

6

IDWR's Response to Answer, Affirmative Defenses and Prayer
For Relief of Claimant

4

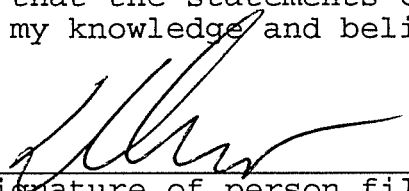
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

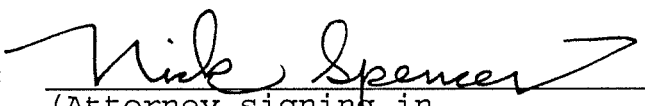
David B. Shaw, being first duly sworn, upon oath, deposes and says:

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.



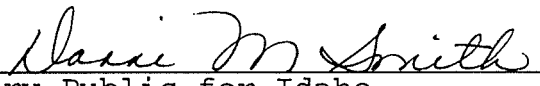
Signature of person filing response

By:



(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 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:

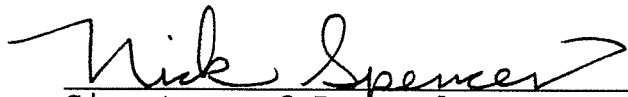
See No. 3

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: 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: R 36-10293A 8BIdent. Number 39356Date Received 7-22-88Receipt Number 5001162 SCC

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) YA-TA-HAY INVESTMENTS, INC., A TEXAS CORP. Phone (505) 392-1132
MARY RUTH BARRETT

Mailing Address 813 West Kiowa, Hobbs, New Mexico Zip 88240

2. Date of Priority (Only one (1) per claim) June 26, 1881

3. Source of water supply (a) John Bell Ditch, Pipe Ditch & Padgett Ditch
which is tributary to (b) Billingsley Creek

4. a. Location of existing point of diversion is: Township 7 South Range 13 East Section 11,

NW 1/4 of SE 1/4 of NE 1/4, Govt. Lot, _____ B.M., County of Gooding

The point of diversion of the John Bell Ditch is: Township 7 South
Additional points of diversion if any: Range 13 East, B.M., Section 11, NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$. The Pipe Ditch
is diverted out of the John Bell Ditch.

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. Water is diverted from Billingsley Creek to the
property by open ditches. Some of the property is irrigated by use of corrugates from
open ditches and some of the property is irrigated by the use of a sprinkler system
consisting of a 40 H.P. pump and motor, mainline, handlines and wheelines. The diversions
are concrete and the Pipe Ditch, which is diverted from the John Bell Ditch, delivers the
water to the property through a pipeline.

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6. Water is claimed for the following irrigation uses:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from Mar. 15 to Nov. 15 amount 7.50 or _____

For Stockwater purposes from Jan. 1 to Dec. 31 amount 0.12 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 7.50 (cfs) and/or (b) 588 (acre feet)

8. Total consumptive use claimed is 420 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) At times, we have had 200 to 250 pairs of cattle on the property.

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
7 S	13 E	11		S 40															40
7 S	13 E	2			Lot2 S-6					Lot3 S-2	Lot6 S-20			Lot7 S-8		S 30	S 40		107

Total number of acres irrigated 147 acres

11. In which county (ies) are lands listed above as place of use located? Gooding County

12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None (X)

14. Remarks:

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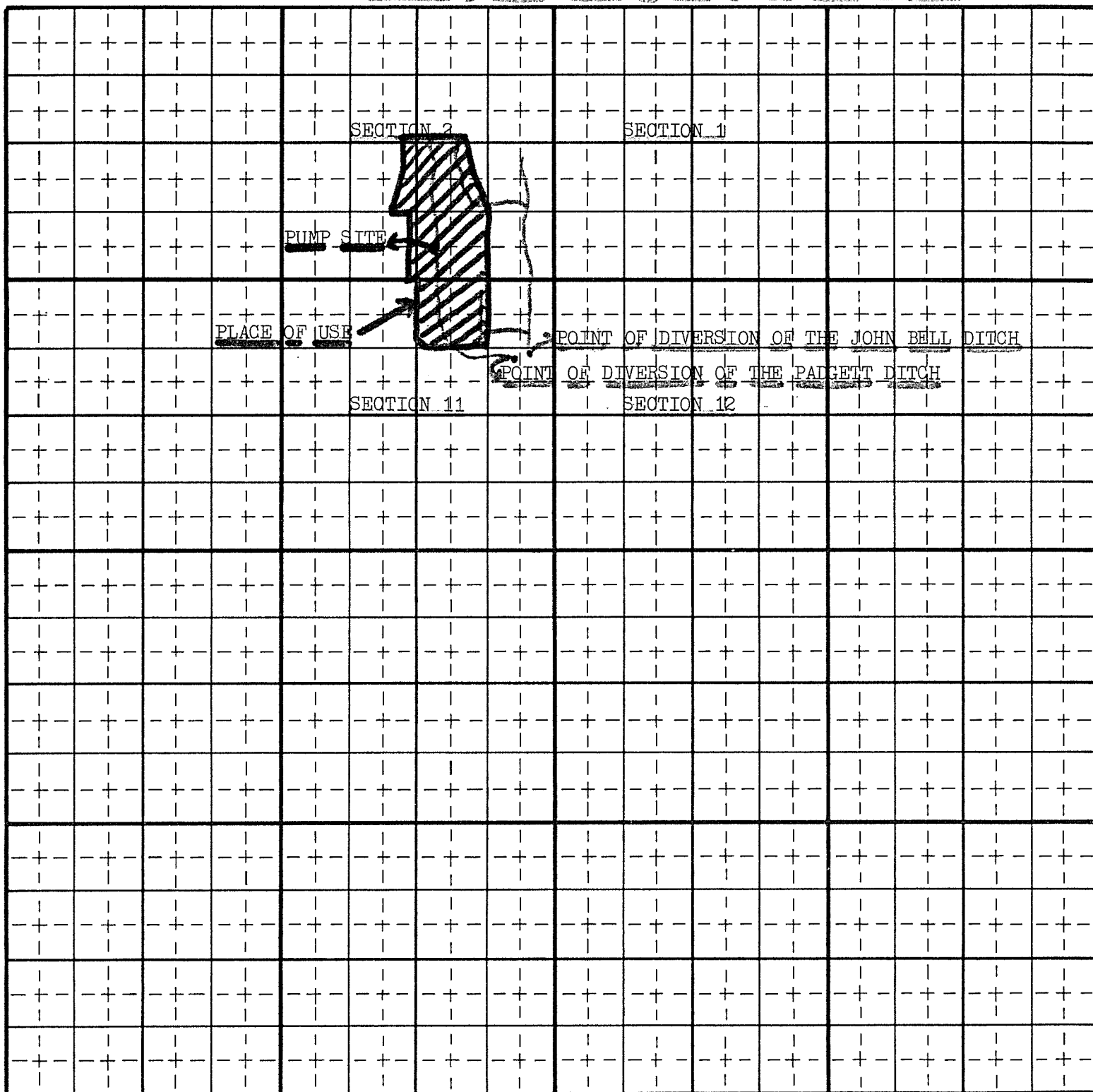
Last Name BARRETT Ident No. A36-10283

Copies: White -State, Yellow-Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

TOWNSHIP 7 SOUTH, RANGE 13 EAST OF THE BOISE MERIDIAN



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FEB 07 1993

Last Name BARRETT

Ident No. A36-10283

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) ☒ Beneficial Use ☐ Posted Notice ☐ License ☐ Permit ☐
Decree ☒

If applicable provide IDWR Water Right Number 36-0094, 36-0095 & 36-0096

Court U.S. District Court Case Number 1602 Decree Date March 22, 1932

Plaintiff vs Defendant New International Mortgage Bank vs Idaho Power Company

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 two (2)

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) Mary Keith Barrett Date 7-22-88

Date _____

For Organizations: I do solemnly swear or affirm that I am _____

Title

of _____, that I have signed the foregoing

Organization

document in the space below as _____

Title

of _____

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho/or _____)
County of Gooding) SS.

Subscribed and sworn (or affirmed) before me this 22nd day of July 19 88

SEAL

Notary Public [Signature]

Residing at Hagerman, Idaho

My Commission Expires 5-10-91

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, _____ will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

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FEB 07 1993

Last Name BARRETT

Ident. Number 436-10283

Copies White-State, Yellow-Claimant

rest, thence west 1320 feet, thence south 250 feet, containing 7.575 acres.

more or less.

Sarboorn,
John A.
and Joseph
M. Sarboorn

Billingsley Creek
Billingsley Creek
Billingsley Creek

June 26, 1881
June 26, 1881
June 26, 1881

John Bell Ditch,
Pipe Line,
Padgett Ditch.

(The diversion point of said pipe line is on Billingsley Creek at the diversion point of the John Bell Ditch; the diversion point of the Padgett Ditch is 50 yards below the diversion point of the John Bell Ditch;)

Lots 2, 3, 6 and the NW 1/4 of the SW 1/4 of the SW 1/4 of Sec. 2, Twp 7 S. R. 13 E. B. Also beginning at the northeast corner of Lot 7 said Section 2 and running thence west 4 chains, thence south 200 feet, thence east 4 chains, thence north 200 feet, also the NW 1/4 of the NW 1/4 of Sec. 11, Twp. 7 S. R. 13 E. B.

Excepting from the above described land the following described tracts:

Beginning at a point on the first standard parallel south 2000 links west from the northeast corner Sec. 2, Twp. 7 S. R. 13 E. B. and thence west along said standard parallel 750 links, thence south, parallel to eastern boundary of said Sec. 2, 1040 links, thence east parallel to first course 750 links, thence north along the eastern boundary of Lot 2 of the above mentioned Sec. 2 160 links to the point of beginning, containing 12.20 acres all in Lot 2, Sec. 2, Twp. 7 S. R. 13 E. B. Also beginning at a point on the first standard parallel south 2332 links west from the northeast corner of Sec. 2, Twp. 7 S. R. 13 E. B., thence west along said standard parallel 1163 links, thence south along the western boundary of Lot 2,

also section, township and range, 1882 links, thence east parallel to the first

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A. F. JAMES
ATTORNEY AT LAW
GOODING, IDAHO

March 25, 1932.

Mr. John Sanborn,
Hagerman, Idaho.

Dear Mr. Sanborn:

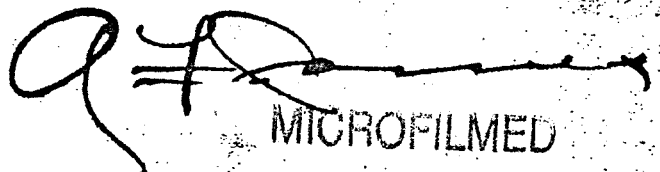
After spending several months corresponding and meeting with the attorneys for the other parties in the Hagerman Valley water suit and making a number of trips to Boise, we have finally been able to work out the details of a decree in that matter, without the necessity of you and your witnesses making a trip to Boise and submitting proof, and on Tuesday of this week, Judge Cavanaugh, the United States District Judge, at Boise, Idaho, signed the Findings of Fact, Conclusions of Law, and Decree and the entire matter is fully adjusted. The water right decreed to you is as follows:

- 30 inches of Billingsley Creek diverted through the John Bell Ditch, with a priority of June 26, 1881;
- 60 inches of Billingsley Creek, diverted through the Pipe line, with a priority of June 26, 1881;
- 285 inches of Billingsley Creek, diverted through the Padgett Ditch, with a priority of June 26, 1881;

As you will remember, the fee which you were to pay me was \$40.00, on which you have paid \$20.00, leaving a balance of \$20.00. Will you therefore kindly forward me your check to cover this balance?

Very truly yours,

AFJ:BW



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A36-10283

**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.