

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. 36-10664 -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,)

36-10664 -0001/
93-08-0453

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: PERRY & MARGARET PATTERSON
Address: 1745 E 3100 S
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.
5. ☒ Points of Diversion: I respond to the objection concerning the legal description of the point(s) of diversion.
7. ☒ Purposes of Use: I respond to the objection concerning the purpose(s) of use.
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.
11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.

12. |X| Water Right Recommendation: I respond to the objection concerning:

12b. |X| This water right not being recommended.

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).

In response to Statement of the Objection item 5, and all allegations of the objection regarding this item, IDWR responds as follows: During its investigation, IDWR determined that the well that is used for irrigation of the acreage recommended pursuant to this right is the same well that is used for domestic purposes pursuant to right no. 36-10665. Therefore, the legal description of the point of diversion for 36-10664 is the same legal description used for the domestic well recommended in 36-10665.

In response to Statement of the Objection item 7, and all allegations of the objection regarding that item, IDWR responds that it recommended this element of the right as claimed.

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 total number of acres within each 40 acre subdivision upon which IDWR found water was beneficially used for irrigation under this water right. In further response to these items, IDWR notes that this water right claim was initially recommended for disallowal. However, during the Notice of Error procedure the claimant indicated to IDWR that he had not irrigated the 38.0 acre parcel he had claimed, but was irrigating "...my large lawn and garden of trees from my domestic well." The claimant provided to IDWR the dimensions of the irrigated area and, after confirmation of the irrigation, the water right was recommended for the irrigation of 1.6 acres.

(Over)

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 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 item 11, and all allegations of the objection regarding that item, IDWR responds that the remarks should be changed as shown in the attachment entitled "Recommended Water Rights Acquired Under State Law". In further response 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 remark or remarks objected to are necessary to adequately describe and define this water right.

In response to Statement of the Objection 12 and 12b., and all allegations of the objection regarding those items, IDWR responds as follows: The purpose of item 12b. is to allow an objector to object to the disallowal of a claim. This objection is inappropriate here because the claim was not disallowed.

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
Pages

Notice of Claim No. A36-10664

3

Recommended Water Rights Acquired Under State Law

1

(Over)

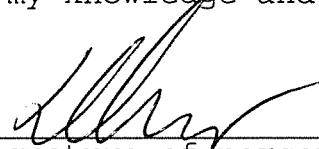
VERIFICATION (Must be Completed)

State of IDAHO

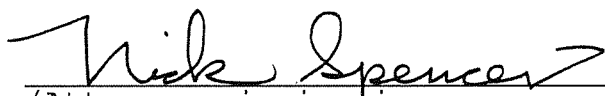
County of ADA

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.

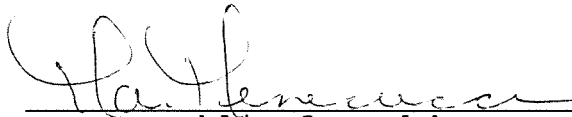

Signature of person filing response

By:


(Attorney signing in
representative capacity)

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




Notary Public for Idaho
Residing at: Boise Idaho
My Commission expires: 6/25/1999

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:

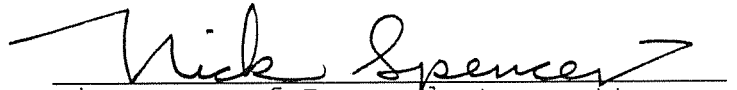
See No. 3

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: PERRY & MARGARET PATTERSON
Address: 1745 E 3100 S
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: A36-10664
Date Received: 8/26/1988
Receipt No: S001765
Received By: lw

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: PERRY PATTERSON 208-536-2025
Address: 1745E 3100S
WEDELL, ID 83355

AND/OR
Name: MARGARET PATTERSON 208-536-2025
Address: 1745E 3100S
WEDELL, ID 83355

2. Date of Priority: JUN 23, 1976

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
08S	15E	7	SE	NE			GOODING

5. Description of diverting works:
WELL & PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.760		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

A36-10664

Page 1

Date: 08/26/88

RECEIVED
FEB 07 1993

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
08S	15E	7	NW	NE		IRR	38.0
Section Acres							38.0
Total Acres							38.0

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:
36-7409, 36-7631

14. Remarks:
PORTION OF EACH WR, SEE TRANSFER #2741. CLAIMANT COMBINED
CFS PORTION FROM BOTH, CHOSE LATER PRIORITY, AND FILED AS
ON CLAIM ON THE 38 ACRES.

15. Basis of Claim: LICENSE

MICROFILMED
FEB 07 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): Perry Patterson Date: 8-26-88
_____ Date: _____

State of Idaho)
County of TF) SS.

Subscribed and sworn (or affirmed) before me this 26th day
of August 19 88 Lori White
Notary Public

Seal

Residing at TF
My Commission Expires 5/99

MICROFILMED

FEB 07 1993

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: SEP-9-1993
PAGE: A-1

RIGHT
NUMBER

NAME & ADDRESS

PRIORITY
DATE

PURPOSE OF USE

PERIOD OF USE
FROM TO

MAXIMUM
QUANTITY

BASIS OF
CLAIM

SOURCE: GROUNDWATER

36-10664

PERRY PATTERSON
MARGARET PATTERSON
1745 E 3100 S
WENDELL ID 83355

06/23/1976

IRRIGATION

04-01 10-31

.05 CFS

LICENSE

POINT OF DIVERSION:

T08S R15E S07

NWNWNE

PLACE OF USE: IRRIGATION

T08S R15E S07

NWNE 1.6

1.6 ACRES TOTAL

REMARKS: RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION

PURSUANT TO IDAHO CODE 42-1416A.

RIGHT NO. 36-10664 IS ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF
THESE RIGHTS IS LIMITED TO 0.05 CFS.

THIS RIGHT IS A COMBINATION OF PORTIONS OF OLD RIGHT NOS.
36-07409 & 36-07631.

TOTAL QUANTITY:

.05 CFS

6.4 AFY

CONSUMPTIVE USE:

4.8 AFY