

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. 36-15091 -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, )

36-15091 -0001/  
93-08-0527

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: 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. |X| Quantity: I respond to the objection concerning:
- 3a. |X| The total quantity of water used in cubic feet per second.
- 3c. |X| The total quantity of water reserved for each and every purpose, including all present and future uses.
7. |X| Purposes of Use: I respond to the objection concerning the purpose(s) of use.
8. |X| 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. |X| 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:

ATTACHMENT

REASONS SUPPORTING EACH BOX CHECKED

In response to the Statement of Interest Portion of the Objection, IDWR responds as follows: IDWR recommended this claim based on beneficial use with a priority of June 1, 1970, the same as claimed. The claimant here asserts that the right is based on a decree with a priority of January 2, 1891, but the objection does not object to either the basis of the claim or the priority date recommended. These assertions by the claimant 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 the claim to this right was based on beneficial use and not a decree as stated in the objection, and that it recommended the same quantity as was 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 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

(Over)

the court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the court. However, by amending the claim to add irrigation as a purpose the claimant will be claiming a right in violation of Idaho Code Sec. 42-229, which requires any appropriation of groundwater for irrigation occurring after March 25, 1963, to be done only in accordance with the mandatory permitting and licensure procedures of IDWR. In further response to this objection item, IDWR 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 8, and all allegations regarding this item, IDWR responds that the claim for this right was based on beneficial use and not a decree as stated in the objection, and IDWR recommended a longer period of use than was set forth on the claim. In further response to this objection item, IDWR responds that the period of use recommended, from 01-01 to 12-31, is the longest period of use possible.

In response to Statement of the Objection item 10, and all allegations regarding this item, IDWR responds that the claim for this right was based on beneficial use and not a decree as stated in the objection, and all small domestic and stockwater rights as described in General Provisions 10.a and 11.a of the director's report were recommended with a "de minimus" consumptive use as described in General Provision 9. of the director's report.

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 remarks apparently referred to in the objection are not contained in the recommendation of this right. The only remark that is in the recommendation of this right, the county assigned parcel number, is helpful in describing this water right.

In response to Statement of the Objection item 14, and all allegations of the objection regarding that item, IDWR responds that an attachment for item 14 was not filed with the objection.

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

Notice of Claim No. A36-15091

3

(Over)

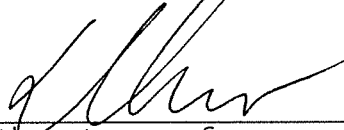
VERIFICATION (Must be Completed)

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:

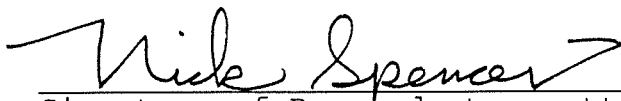
See No. 3

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

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: *Renumb. A36-15091*Ident. Number *39576*Date Received *8/31/88*Receipt Number *90002429*

RECEIVED

SEP 14 1988

Department of Water Resources  
Southern Region Office

NOTICE OF CLAIM  
TO A  
WATER RIGHT

ACQUIRED UNDER STATE LAW

For Domestic and/or Stockwater Purposes

Where Daily Use is less than 13,000 gallons per day. Filing fee \$25

RECEIVED

AUG 31 1988

Department of Water Resources

Please type or print clearly

- Name of Claimant (s) James & Susan Martin Phone (208) 837-6430  
Mailing Address P.O. Box 356 Hagerman, Idaho Zip 83332
- Date of Priority (Only one (1) per claim) 6-10-1970
- Source of water supply (a) Well GROUNDWATER  
which is tributary to (b) \_\_\_\_\_
- Location of point of diversion is: Township 7 South Range 13 East  
Section 11, SE 1/4 of SE 1/4 of SW 1/4, Govt. Lot \_\_\_\_\_, B.M.,  
County of Gooding  
Additional points of diversion if any: N/A
- Description of existing diversion works (Ditches, Wells, Pumps, Pipelines, Headgate 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. Depth 220' 6" casing to 40'  
1.5 H.P. Sub. pump
- Water is claimed for the following: (Limited to Domestic and/or Stockwater only. See Instructions)  
(Both dates are inclusive)  
For Domestic purposes from 1-1 to 12-1 amount 0.04 (cfs)  
For Stock water purposes from 1-1 to 12-1 amount 0.02 (cfs)
- Total quantity claimed 0.06 (cfs)
- Total consumptive use claimed is de minimus
- Non-irrigation uses. Describe fully. (Domestic: give number of households served; Stockwater: Type and number of  
livestock) One household 4 head of cattle

MICROFILMED  
FEB 24 1993

10. Place a "D" for domestic and "I" for stockwater use in the corresponding place in the use below.

[illegible]

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

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.  
13 shares Buckeye Ditch or None ( )

14. Remarks: \_\_\_\_\_

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

If applicable provide IDWR Water Right Number \_\_\_\_\_  
 Court \_\_\_\_\_ Case Number \_\_\_\_\_ Decree Date \_\_\_\_\_  
 Plaintiff vs Defendant \_\_\_\_\_

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

Signature of Claimant (s) x *Jamie Martin* Date 8-30-88  
x *Susan Martin* Date 8-30-88

**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 \_\_\_\_\_ of \_\_\_\_\_  
Title 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 \_\_\_\_\_ )  
 ) ss.

County of Gooding

Subscribed and sworn (or affirmed) before me this

SEAL

Notary Public

Residing at

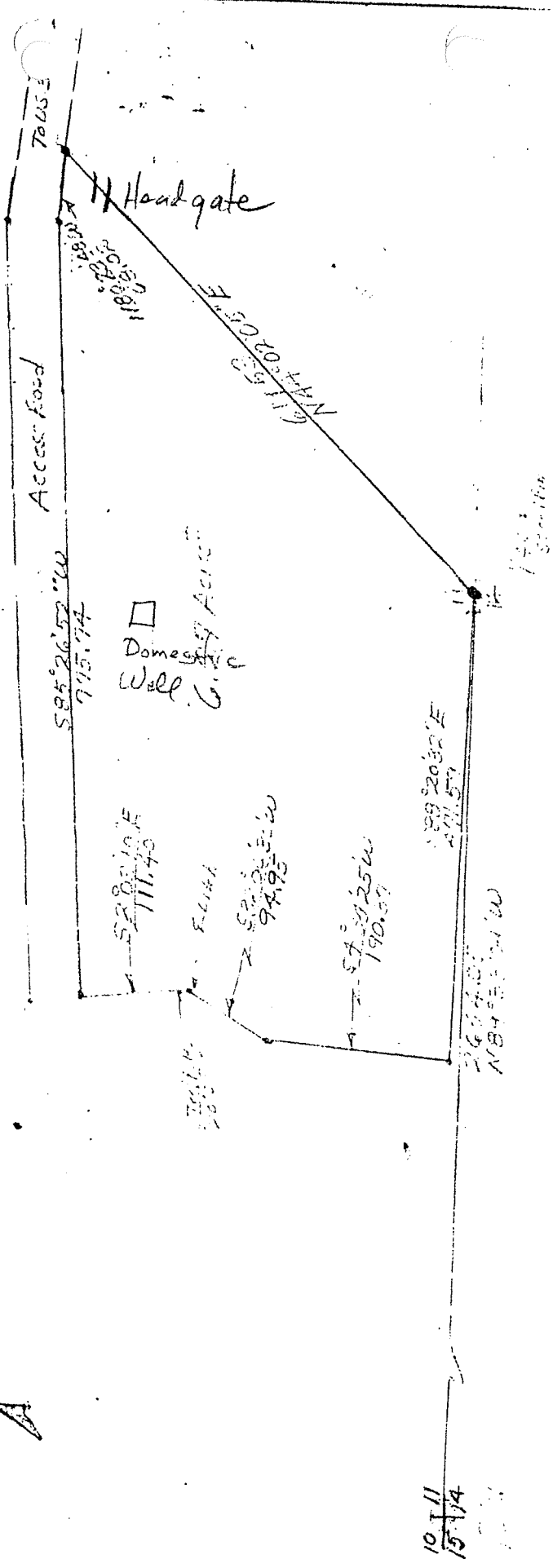
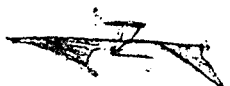
My Commission Expires

Last Name Martin Ident No. \_\_\_\_\_

A37-11291

*Copies White-State, Yellow-Claimant*

19 88  
FEB 21 1993  
MICROFILMED



Notes: Steel Pins set at 175' Section



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FEB 21 1993

|                                               |                     |                              |  |
|-----------------------------------------------|---------------------|------------------------------|--|
| APPROVED BY: <i>[Signature]</i>               |                     | DRAWN BY: <i>[Signature]</i> |  |
| SCALE: <i>1" = 100'</i>                       | DATE: <i>7/1/74</i> | REVISED:                     |  |
| PARISE-SW & PART SW-SE Sec 11 T.75 R.13 E. BM |                     |                              |  |
| DRAWING NUMBER: <i>179</i>                    |                     |                              |  |