

SCANNED

FEB 12 2013

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. 36-15462 -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.

36-15462 -0001/
93-08-0575

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: DONNIE MC FADDEN
Address: 2726 S 1050 E
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. ☒ Quantity: I respond to the objection concerning:
- 3a. ☒ The total quantity of water used in cubic feet per second.
14. ☒ Other: I respond to the objection concerning:
EXPANSION OF WATER RIGHT NO. 36-11060.

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: This right is an expansion of right no. 36-11060 pursuant to Idaho Code section 42-1416(2), which authorizes enlargement in use of the amount of water originally appropriated, consistent with Idaho Code sections 42-201 and 42-202. This right is recommended for 2.04 cfs, which is the diversion rate originally appropriated under right no. 36-11060.

In response to Statement of the Objection item 14, IDWR responds that because the enlargement in water use which constitutes this right commenced in 1977 without a valid permit as required by

Idaho Code section 42-201, it would be unlawful, and would therefore be recommended for disallowal, if it were not an expansion based on right no. 36-11060 pursuant to Idaho Code section 42-1416(2).

In addition, there is an error in 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."

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. A36-15462	3
Recommended Water Rights Acquired Under State Law	1

(Over)

VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

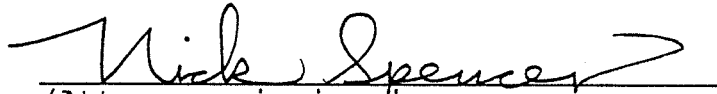
David B. Shaw, being first duly sworn, upon oath, deposes and says:

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 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

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:

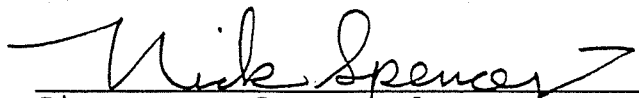
Name: JOHN A ROSHOLT
Address: PO BOX 1906
TWIN FALLS ID 83303

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: DONNIE MC FADDEN
Address: 2726 S 1050 E
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: 39576

Ident. Number: A36-15462
Date Received: 9/16/1988
Receipt No: _____
Received By: Sc

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: BILLINGSLEY CREEK RANCH 208-837-6174
Address: 2726 S 1050 E
HAGERMAN ID 83332

2. Date of Priority: JUN 1, 1977

3. Source: SPRINGS Trib. to: BILLINGSLEY CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	14E	18		NW	SW		GOODING
		30		SE	NW		GOODING

5. Description of diverting works:
PIPELINES TO CONCRETE RACEWAYS TO EARTH POND

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	7.700		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
FISH PROPAGATION, COMMERCIAL PONDS

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	14E	24	NE	SE		FISH	

11. Place of use in counties: GOODING

MICROFILMED
FEB 09 1993

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
A36-11060

14. Remarks:
12 RACEWAYS, 8' X 100" EACH. EXISTING PIPELINES CONVEY WATER FROM BIG SPRINGS USERS ASSN. (154 SHARES) AND 3 SPRINGS CONVERGE AT PONDS. AFTER PROPAGATION USE, WATER GOES TO IRRIGATION, OR TO BILLINGSLEY CREEK WHEN NOT NEEDED FOR IRRIGATION.

15. Basis of Claim: BENEFICIAL USE

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 Organizations:

I do solemnly swear or affirm that I am Owner of

Billingsley Creek Ranch that I have signed the foregoing
Organization

document in the space below as Owner of

Billingsley Creek Ranch and that the statements contained in the
Organization

foregoing document are true and correct.

(Doreen) McFadden
Signature of Authorized Agent

Owner / Billingsley Creek Ranch
Title and Organization

10/19/92
Date

MICROFILMED
FEB 09 1993

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 19th day
of October 19 92 Steve Cell
Notary Public

Seal

Residing at Twin Falls
My Commission Expires Dec 7, 1994

MICROFILMED
FEB 09 1993

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: SEP-3-1993
PAGE: A-1

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: SPRINGS						
TRIBUTARY: BILLINGSLEY CREEK						
36-15462	BILLINGSLEY CREEK RANCH 2726 S 1050 E HAGERMAN ID 83332	06/01/1977	FISH PROPAGATION	01-01 12-31	2.04 CFS	BENEFICIAL USE
NON-IRRIGATION-USES: FISH PROPAGATION, COMMERCIAL PONDS POINT OF DIVERSION: T07S R14E S18 NWSW S30 SENW PLACE OF USE: FISH PROPAGATION T07S R14E S24 NESE REMARKS: THIS RIGHT IS AN EXPANSION OF RIGHT NO. 36-11060 PURSUANT TO IDAHO CODE 42-1416(2). FACILITY VOLUME 48,000 AF. USE OF THIS RIGHT WITH RIGHT NO. 36-11060 IS LIMITED TO A COMBINED DIVERSION RATE OF 2.04 CFS. USE OF THIS RIGHT WITH RIGHT NOS 36-00045 AND 36-11060 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 5.7 CFS					TOTAL QUANTITY: 2.04 CFS	

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. 36-15462 -0002

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,

36-15462 -0002/
93-08-0576

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: JOHN W JONES JR
Address: PO BOX 265
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. ☒ Quantity: I respond to the objection concerning:
- 3a. ☒ The total quantity of water used in cubic feet per second.
4. ☒ Priority Date: I respond to the objection concerning the priority date.
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. ☒ 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, 3.a, 11, 12 and 12.a and all allegations of the objection regarding those items, IDWR responds as follows: This recommended water right is an expansion of right no. 36-11060 pursuant to Idaho Code Section 42-1416(2), which authorizes enlargement in use of the amount of water originally appropriated, consistent with Idaho Code Sections 42-201 and 42-202. This right is recommended for 2.04 cfs, which is the amount beneficially used and which is the diversion rate originally appropriated under right no. 36-11060.

In response to Statement of the Objection item 4, IDWR responds that the claimant submitted evidence to show that the use covered by this right commenced on June 1, 1977. This objection provides no evidence to show that the recommended priority date is incorrect. Therefore, IDWR lacks sufficient information to form a conclusion as to the validity of the allegations of this objection and therefore denies the objection.

In response to Statement of the Objection item 10 and all allegations of the objection regarding this item, IDWR responds as follows: (1) 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. (2) General provision 9 of the director's report states: "Where consumptive use is not stated for a right or a portion of a right, the consumptive use for that right or that portion of the right is so small that it is deemed de minimus." (3) IDWR did not include a consumptive use volume in its recommendation for this right because the consumptive use for this water right is deemed to be de minimus. (4) The claimant's objection to this element of the recommendation is in error.

In further response to Statement of the Objection item 11, IDWR responds that there is an error in 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 response to the suggestion in Changes to the Director's Report that some objections in the objector's objection to rights 36-00046 and 36-11060 apply to this right and, therefore, the proceedings on these three objections should be consolidated, IDWR responds that it has reviewed the three objections conjunctively and has responded accordingly.

(Over)

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

The notice of claim is attached to IDWR's response
to Objection No. 36-15462-0001
Recommended Water Rights Acquired under State Law

1

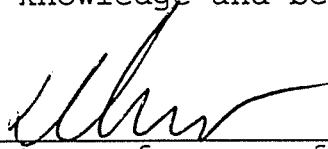
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

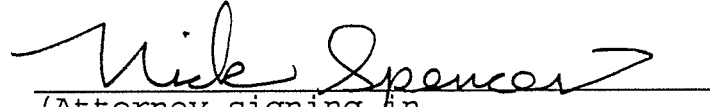
David B. Shaw, being first duly sworn, upon oath, deposes and says:

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 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

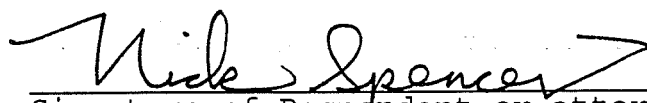
Name: JOHN A ROSHOLT
Address: PO BOX 1906
TWIN FALLS ID 83303

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