

3-15

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)

Case No. 34-12385
(You must insert the
water right number you
are objecting to)

The State of Idaho, ex rel.)
R. Keith Higginson in his)
official capacity as Director)
of the Idaho Department of)
Water Resources,)

OBJECTION RECEIVED
MAR 17 1993
Department of Water Resources
Adjudication Bureau

Petitioner,)

vs.)

34-12385 -0001/
93-03-0489

The United States; the State)
of Idaho; and all Claimants to)
the use of water from the Snake)
River Basin Water System,)

Respondents.)

INSTRUCTIONS

This form must be used to file an objection to any water right recommended in the Director's Report. You may object to one water right per objection form. The water right number you are objecting to must be indicated above in the blank space following "Case No." To object to more than one water right, you must file a separate objection form for each. Forms may be obtained from the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form, as long as it is identical to the court's form. You must file your objection by the deadline shown in the notice that IDWR mailed to you. The objection must be received by the court on or before the deadline is specified. Instructions for mailing this objection are found at Page 6, and must be strictly followed.

(Over)

Any party physically filing 25 (twenty-five) or more objections must make an appointment with the Clerk of the Adjudication Court and arrange for an appointment to file multiple objections.

By filing an objection form, you are certifying that the objection is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and that it is not filed for any improper purpose, such as to harass, cause unnecessary delay or needless increase in the cost of litigation.

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: United States Department of Justice
Address: Environment & Natural Resources Division
550 W. Fort St., Box, 33, Boise, Idaho 83734

Briefly describe your interest in this water right: owner
of the water right.

2. Owner of the water right:

Name: United States of America Acting Through National
Address: Park Service, Pacific NW Regional Office, 83-S.
King Street, Suite 212, Seattle, WA 98121

3. If this objection is filed by an attorney:

Attorney Name: Peter C. Monson, U.S. Dept. of Justice
Attorney Address: Environment & Natural Resources Div.
550 W. Fort St., Box 33 Boise, ID 83734
Attorney Phone No.: (303) 294-1950

If filed by an attorney, notice of pending court proceedings will be sent to the attorney only.

II. STATEMENT OF THE OBJECTION

Please check each "box" which states your objection to the recommendation in the Director's Report.

1. ☐ Name and Address: I object to the name and/or address of the owner of the water right.
2. ☒ Source: I object to the source of water.
3. ☐ Quantity: I object to:
 - a. ☐ the total quantity of water used in cubic feet per second; or
 - b. ☐ the total quantity of water stored in acre-feet per year; or
 - c. ☐ the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☐ Priority Date: I object to the priority date.
5. ☐ Points of Diversion: I object to the legal description of the point(s) of diversion.
6. ☐ Instream Flow: I object to the legal description of the beginning and ending points of the instream flow.
7. ☐ Purpose(s) of Use: I object to the purpose(s) of use.
8. ☐ Period of Year: I object to the period of year when water is used or is necessary for the purpose stated.
9. ☐ Place of Use: I object to:
 - a. ☐ the legal description of the place of use; or
 - b. ☐ the number of irrigated acres within each forty (40) acre subdivision.
10. ☐ Consumptive Use: I object to the annual volume of consumptive use.
11. ☒ Remarks: I object to the "remarks" listed with the water right.

(Over)

12. ☐ Water Right Recommendation: I object to:
- a. ☐ this water right being recommended at all: or
 - b. ☐ this water right not being recommended.
13. ☐ Description of Reservation: I object to the legal description of the reservation.
14. ☒ Other: I object to: See Attachment A
- _____
- _____
- _____
- _____

REASONS SUPPORTING EACH BOX CHECKED

In the space following, you must state the reason(s) by number for each box checked. You may use additional pages if necessary.

See Attachment B.

CHANGES TO THE DIRECTOR'S REPORT

Specifically describe how you want the Director's Report to be changed. You may use additional pages if necessary.

See Attachment C.

Please note: You should attach copies of documents which support your objection. Note on each document the "box number" it supports.

- ☒ 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. CRMO Agreement,
- pages 10, 11, 17, 18, 19, 21.
- _____
- _____
- _____

INSTRUCTIONS FOR MAILING

You must mail the objection, including all attachments, to the Clerk of the Court. FAX filings will not be accepted by the Clerk of the Court. You must also send a copy to the owner of the water right, if other than yourself; to the Office of the Attorney General, State of Idaho; and to the United States Department of Justice, as set out below in the Certificate of Mailing. Finally, you must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of March, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid 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:

Owner name: United States of America -- see below

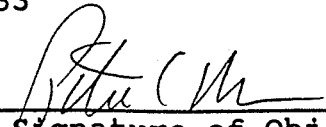
Owner's address: _____

3. One copy to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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 Objector or attorney
mailing on Objector's behalf

VERIFICATION (Must be completed)

State of Colorado

County of Denver

Peter C. Manson, being first duly
(Name of person filing objection)
sworn, upon oath, deposes and says:

That I am the person or entity filing this objection, that I am a water claimant or party in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and that I have read the foregoing objection, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

Signature of person filing objection

By: [Signature]

(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 12th day of March,
1993.

Deirdre Hills

Notary Public for Colorado
Residing at: 378 S. Pennsylvania, Denver, CO
My Commission expires: October 14, 1996

(Over)

OBJECTION - ATTACHMENT A

STATEMENT OF THE OBJECTION

14. Other (General Provisions): I object to the following General Provisions in the Director's Report:

- General Provision ¶1b, p.9 - Effect of Adjudication;
- General Provision ¶5, p.11 - Administration of Groundwater Within Basin 34;
- General Provision ¶6, p.11 - Conjunctive Administration of Ground and Surface Water Rights Within Basin 34;
- General Provision ¶7, p.12 - Administration of Basin 34 and Snake River Basin;
- General Provision ¶9, p.13 - Measuring Devices and Control Works;
- General Provision ¶10, p.13 - Firefighting Purposes.

OBJECTION - ATTACHMENT B

REASONS SUPPORTING EACH BOX CHECKED

2. Source:

Sources are surface water and groundwater sources, including but not limited to Little Cottonwood Creek and its tributaries, but only surface water is listed in this report. This violates the CRMO Agreement¹ (§ 5.4.1, pp. 10-11; § 6, pp. 18-19)

11. Remarks:

(a) General Provision ¶6a states that some ground water rights in the list of water rights contain a remark noting that the right will be administered as separate from the Big Lost River and its tributaries and all other ground water rights will be administered as part of the Big Lost River and tributaries. The Remarks for this water right fail to include the ¶6a remark that the water right will be administered separately from the Big Lost River and its tributaries. The CRMO Agreement provides that the surface water within the Craters of the Moon National Monument boundaries and perched groundwater underlying the Monument shall be treated as a self-contained water system. Failure to include General Provision ¶6a in this right's Remarks violates the CRMO Agreement (§6, pp. 18-19; §5.13, pp. 17-18).

(b) The Remarks for this water right also fail to mention that the United States holds State Licensed water rights nos. 34-2381 and 34-2254. The United States reserves the right to claim these water rights if the rights described in the CRMO Agreement are not confirmed in the decree. (See CRMO Agreement (§ 6.2, p. 18)).

14. Other (General Provisions):

General Provision ¶ 1b, p. 9: The United States objects to administration of federal water rights by the director to the extent that the director seeks authority beyond the scope of the waiver of sovereign immunity contained in the McCarran Amendment, 43 U.S.C. §666. All further references in this Objection to administration of water rights assumes administration consistent with the McCarran Amendment. (See § 7.5, p. 21, CRMO Agreement.)

¹ CRMO Agreement means the 1992 "Water Rights Agreement Between the State of Idaho and the United States for the Craters of the Moon National Monument" approved by the State of Idaho and the United States of America.

OBJECTION - ATTACHMENT B, continued (REASONS SUPPORTING EACH BOX CHECKED)

General Provision ¶5, p. 11: The United States objects to General Provision ¶5, as written, because "pumping levels" is undefined and could mean either (a) the water table elevation, or (b) the rate of pumping. Thus, this provision may violate the CRMO Agreement (§5.14, p. 18) where the United States agreed to disclaim any right to a specific water table elevation but not to limit our rate of pumping.

General Provision ¶6, p. 11: As noted above, failure to include General Provision ¶6a, i.e. that this water right will be administered separately from the Big Lost River and its tributaries, in this right's Remarks violates the CRMO Agreement.

General Provision ¶7, p. 12: Pursuant to the CRMO Agreement (§ 5.13, pp. 17-18), Craters of the Moon National Monument's surface water and perched groundwater sources shall be treated as a self-contained system. Thus, General Provision ¶7, which states that all water rights in Basin 34 shall be subject to administration as part of the Snake Plain Aquifer is applicable only to the extent that our water use taps the Snake Plain Aquifer. General Provision ¶7 does not apply to our water uses of the self-contained system; these other water uses must be administered separately from the Snake Plain Aquifer.

General Provision ¶9, p. 13: The United States objects to administration of federal water rights by the director inconsistent with the McCarran Amendment. The United States further asserts that, absent the consent of the United States, the director may not prescribe measuring devices and control works to be installed and maintained on federal property and the director may not prohibit or prevent the diversion of water to federal property or for federal uses. (See § 7.5, p. 21, CRMO Agreement.)

General Provision ¶10, p. 13: The CRMO Agreement requires that § 5.10, p. 17, of that Agreement be included in the final decree; also §§ 6.1 and 6.3, pp. 18-19, of the CRMO Agreement require the director to report and support the CRMO Agreement. Thus, the United States objects to the failure to reprint verbatim in this report § 5.10 of the CRMO Agreement.

OBJECTION - ATTACHMENT C

CHANGES TO THE DIRECTOR'S REPORT

2. Source:

Change "source" to "all surface and groundwater, including but not limited to Little Cottonwood Creek and its tributaries" or split into three rights, as was done in Basin 36. If the right is split a letter identifier should be added to distinguish the three rights, e.g., 34-12385A, 34-12385B, and 34-12385C.

11. Remarks:

(a) Add to Remarks of this water right the provision at § 6(a) of this report.

(b) Add to Remarks of this water right notice that the United States also holds State licensed water rights nos. 34-2381 and 34-2254 and reserves the right to claim these rights if the rights described in the CRMO Agreement are not confirmed in the decree.

14. Other (General Provisions):

General Provision ¶1b, p. 9: Add to General Provision ¶1b that the director has authority to administer the federal water rights, if at all, to the extent consistent with the McCarran Amendment.

General Provision ¶5, p. 11: Define "pumping level" in General Provision ¶5 to mean water table elevation not pumping rate or add that this paragraph does not apply to the United States.

General Provision ¶6, p. 11: Add General Provision ¶6a to Remarks section of this water right.

General Provision ¶7, p. 12: Add that General Provision ¶7 does not apply to the water rights for the Craters of the Moon National Monument except to the extent that its water use taps the Snake Plain Aquifer and that all other federal water uses for Craters of the Moon National Monument shall be administered separately.

General Provision ¶9, p. 13: Add that General Provision ¶9 does not apply to the United States.

General Provision ¶10, p. 13: Add the provision, verbatim, at § 5.10 of the CRMO Agreement and state that it is applicable to the United States' use of water for fire suppression for the Craters of the Moon National Monument.

- .viii Place of Use/Legal Description of Reservation:
Within Area A as shown on Attachment I.
- .ix Basis of Right: Reservation under Proclamation
No. 1694.
- .x Comments: None.

5.4 Water Rights for Consumptive Use in Area B:

- .1 Right No. 34-12385, also known as 36-15344.
 - .i Source: All surface water and ground water sources arising on, occurring on, or under Area B as shown on Attachment I, including but not limited to Little Cottonwood Creek and its tributaries.
 - .ii Annual Diversion Volume: The maximum annual diversion volume for all consumptive use water rights set forth in this Agreement is 54.5 AFY, except as provided in Article 5.10, *infra*.
 - .iii Date of Priority: July 23, 1928
 - .iv Points of Diversion: Any point within Area B as shown on Attachment I.
 - .v Purpose of Use: Monument commercial use, Monument domestic use, and Monument irrigation use.
 - .vi Period of Use: January 1- December 31
 - .vii Annual Volume of Consumptive Use: Included in Right No. 34-12383, also known as 36-15342 [Article 5.2.1]. The quantity consumed for

fire suppression in accordance with Article 5.10 infra is not limited by this Agreement.

.viii Place of Use/Legal Description of Reservation:
Any place within the boundaries of the Monument.

.ix Basis of Right: Reservation under Proclamation No. 1843.

.x Comments: The present diversions are from surface water and from a perched ground water aquifer.

5.5 Water Rights for Non-consumptive Use in Area B:

.1 Right No. 34-12386.

.i Source: Little Cottonwood Creek

.ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 34-12385, also known as 36-15344 [Article 5.4.1].

.iii Date of Priority: July 23, 1928.

.iv Beginning and Ending Point of Instream Flow:
Beginning in the headwaters of Little Cottonwood Creek in Section 21, and in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ Section 16, all in Township 2 North, Range 24 East, Boise Meridian, and wholly within the Monument's boundaries; and ending where the stream disappears, in the SW $\frac{1}{4}$

.ix Basis of Right: Reservation under Proclamation
No. 3506.

.x Comments: None.

5.10 The United States may also divert water for fire suppression in accordance with the following paragraph to be included in the final decree in this matter:

"The use of water for fire suppression benefits the public. Water diverted for fire suppression may be taken randomly, without a definition of the specific elements of a recordable water right, and if so diverted for fire suppression, existing water rights shall not be diminished."

5.11 The rights described in this Agreement are Federal Reserved Water Rights with all the characteristics appertaining thereto. Non-use of all or any part of the Federal Reserved Water Rights shall not constitute a relinquishment, forfeiture or abandonment of the rights.

5.12 The United States shall not change any element of any Federal Reserved Water Right described in Article 5.

5.13 For purposes of this Agreement only, the surface water within the Monument boundaries and perched ground water underlying the Monument shall be treated as a self-contained water system. If the United States believes, however, that proposed or existing water uses or diversions outside the boundaries of the Monument will adversely affect or are adversely affecting the Monument's water

rights from surface water or perched ground water as defined in this Agreement, the United States may seek relief against those uses or diversions outside the boundaries of the Monument, except as provided in paragraph 5.14.

- 5.14 For purposes of this Agreement only, the United States disclaims any right to seek on behalf of the Monument the maintenance of any specific water table elevation in the Snake River Regional Aquifer.

6. Finality of Settlement Agreement

- 6.1 The parties understand that this Agreement will be submitted to the Director in lieu of a notice of claim in the Snake River Adjudication, that the Director will submit this Agreement and an abstract of this Agreement to the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls as part of a Director's Report, and that state law allows other persons not a party to this Agreement to file objections to the approval of this Agreement by the District Court.
- 6.2 The United States agrees that License Nos. 34-2381 [old no. 28964] and 34-2254 [old no. 16711] will be superseded by the water rights identified herein, only upon completion of all judicial proceedings, including appeals if any, together with entry of a final decree containing the water rights set forth in this Agreement.

- 6.3 The parties agree to move the Court for adoption of a decree awarding the United States the water rights set forth in this Agreement, and to jointly support and defend this Agreement against any and all objections or other challenges that may arise in any phase of the SRBA, including any appeals, and in securing any necessary ratification of the Agreement. If the Court, after notice and hearing, fails to approve the terms of this Agreement, then this Agreement shall be null and void.
- 6.4 The United States' water rights for the Monument confirmed in Article 5 shall be final and conclusive as to all parties to the SRBA upon the completion of all judicial proceedings, including any appeals, relative to this Agreement.

7. Disclaimers and Reservation of Rights

- 7.1 Except for the United States' water rights recognized in Article 5, the United States hereby relinquishes forever any and all existing claims to water under federal and state law from any source for present and future use on the Monument.
- 7.2 This Agreement has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding.

time the application is made, or are not physically available for use through reasonable diversion facilities.

.5 To restrict the power of the United States to reserve water in the future, in accordance with applicable law.

7.5 The parties are unable to agree upon who may administer the water rights set forth in this Agreement. Accordingly, this Agreement does not address or resolve this issue. Each party reserves the right to litigate the issue of administration, if and when the need arises.

8. Severability

8.1 This Agreement is not severable.

9. Successors

9.1 This Agreement shall bind and inure to the benefit of the respective successors of the parties.

10. Entire Agreement

10.1 This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.