

Recd 6/3/94- Atty Gen. Office

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

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

Petitioner,

vs.

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

Respondents.

Water Right No. 27-11561

(The water right number you are objecting to must be inserted here)

STANDARD FORM 1

OBJECTION

94-06-0127

INSTRUCTIONS

This form must be used to file an objection to a water right recommended in the director's report. *Only one party/claimant may object to one water right per objection form.* 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. If you do, the text must be on the front and back of each page exactly as it appears here. The objection must be received by the court on or before the deadline specified in the Notice of Filing the Director's Report that IDWR mailed to you. Follow the Instructions for Mailing this objection (Page 6) or the court will not accept it for filing. This form has been adopted by the court in *SRBA Administrative Order 1* (amended June 21, 1993), Section 4, which may be consulted for further information.

Any party filing 25 or more objections must make an appointment with the Clerk of the SRBA Court.

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 is not filed for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation.

I. GENERAL INFORMATION

Please fill in the following information:

1. **Party/Claimant objecting:** Fort Hall Water Users Association
C/O Floyd Johnson, President
- Name: _____
- Address: 13562 West Tyhee Rd.
Pocatello, Idaho 83202
- Phone: Work: 237-3420 Home: 237-3420

Briefly describe your interest in this water right: Have received irrigation water from this source for 85 years. Have paid the pro rata share for the construction and O & M. Have contracts with the U.S. for the delivery of 3.5 acre feet of water and have had our land encumbered to the U.S. to guarantee payment and delivery.

If this objection is filed by an attorney:

Attorney Name: _____

Attorney Address: _____

Attorney Phone No.: _____

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

2. **Owner of the water right. You must identify the owner exactly as it appears in the Director's Report:** Water rights held by the United States for use on Non-Indian lands on the Fort Hall irrigation project & for the Bureau of Indian Affairs.
- Name: _____
- Address: Fort Hall Agency
Fort Hall, Idaho

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.
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: _____

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 attachments

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

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. _____

VERIFICATION (Must be Completed)

State of Idaho

County of Bannock

Floyd Johnson, being first duly sworn, upon oath, deposes and says:
(Name of party/claimant filing objection)

That I am the party/claimant filing this objection (as listed on Page 2, Section 1, "Party/Claimant Objecting"), as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and that the statements are true to the best of my knowledge and belief.

Floyd Johnson
Signature of party/claimant filing objection

By: _____
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: May 31, 1994
(Insert Date)

William Lee Hobbs
Notary Public for IDAHO
Residing at: Boise, Idaho
My Commission expires: NOTARY COMMISSION
EXPIRES 3-5-98

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 all of the parties listed below in the Certificate of Mailing.

You must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I certify that on June 1, 1994, I mailed the original and copies of this objection, including all attachments, to the following persons by mailing the original and/or 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: _____

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

Floyd Johnson
Signature of party/claimant or attorney

ATTACHMENT BELONGING TO 3a:

LAND BASE & WATER ALLOCATION'S ORIGINAL FORT HALL
IRRIGATION PROJECT COMPARED TO THE
1990 FORT HALL AGREEMENT.

INDIAN
33,259 ac =72%

LAND BASE TOTAL
46,480 ac

NON INDIAN
13,221 ac =28%

BLACKFOOT RESERVIOR
&
GRAY'S LAKE STORAGE
RIGHTS TOTAL
448,000 AC FT.

INDIAN
original
322,560 ac ft. =72%

NON INDIAN
original
125,440 ac ft. =28%

1990
422,500 ac ft. =94%

1990
25,500 ac ft. =6%

DIFFERENCE = +99,940 ac ft.

DIFFERENCE = -99,940 ac ft.

SNAKE RIVER
&
SAND CREEK TOTAL

90 DAY RUN AT 600 CFS = 108,000 ac ft.

INDIAN
original
77,760 ac ft. =72%

NON INDIAN
original
30,240 ac ft. =28%

1990
61,560 ac ft. =57%

1990
46,440 ac ft. =43%

DIFFERENCE = -16,200 ac ft.

DIFFERENCE = +16,200 ac ft.

TOTAL
DIFFERENCE AS RESULT

OF 1990 AGREEMENT = +83,740 ac ft.

DIFFERENCE = -83,740 ac ft.

3 b. The storage capacity of the Blackfoot Reservoir and Gray's Lake combine equal 448,000 acre feet. Under the old project system the Non-Indian water users were entitled to their share which is 28% or 125,440 acre feet. The new agreement provides for Non-Indians to receive only 5.67% or 25,500 acre feet. The storage water system is vital to the successful operation of the project and our loss of storage water, 125,400 acre feet, will make us short of water most of the time.

It is understandable why the indians were asked to give us first right of refusal for their excess water. We will be buying back the water we already owned under the old system.

9 b. We object to the total number of irrigable acres as reported by the 1990 Fort Hall Water Agreement of 12,667 Vs. the acreage referenced of 13,221 as per Federal statute of 8/17/1961 Public Law 87-154. Beneficial use was not considered for our canals and ditches. The new law provides that canals and ditches be reported as beneficial use.

10. The Federal statute of 8/17/61 does not make reference to consumptive use, however; it does make mention of delivering 3 1/2 acre feet of irrigation water to each farm per irrigable acre. The irrigable acreage per farm is established by Public Law 87-154. In other words, the consumptive use limit as listed in Right No. 01-10248 is 33,222 AFY which equals 2.44 AFY. The original entitlement by law is 3.5 AFY.

11. Object to item 7 and 8 found on pages 71 & 72 of the consent decree. The contents herein are unreasonable, untruthful, and misrepresent the feelings of the Fort Hall Water User's Association.

12 a. We object to the 1990 Fort Hall Indian Water Rights Agreement because it has destroyed the original Fort Hall Irrigation Project and reduced our storage water right by 99,940 acre feet. It is critical to note that the water received from the natural flow of the Snake River is significantly less important to the survival of the irrigation project than the storage water benefit, and yet, the storage water right has been reduced by almost 100,000 acre feet!

14. We object to the separation of the Original Fort Hall Irrigation Project into Indian and Non-Indian. For 100 years the Indians and Non-Indians have enjoyed together the benefits of the irrigation water provided by the project. The water running in the canal system was owned equally by each land owner regardless of race. The new 1990 agreement creates the possibility of locking the head gates on all Non-Indian water users while the Indian Land-owners are enjoying an abundance of water or this situation in reverse. This situation will only create tension and strife between Indians and Non-Indians in the Fort Hall area. There is a better way of satisfying the Winter's Doctrine Water Rights for the Fort Hall Indians than the destruction of 100 years of Federal Water Law regarding the Original Fort Hall Irrigation Project.

Changes to the Director's Report

The original Fort Hall Irrigation Project as provided by Federal Laws dated: 8/15/1894, 3/1/1907, 4/30/1908, 4/4/1910, 5/24/1922, 5/9/1924, 6/30/1948, 9/30/1950, 8/31/1954, 8/17/1961, must remain in full force in accordance with these laws. Winter's Doctrine water for the Shoshone Bannock Tribes must be provided some other way. It is very evident that the U.S. Supreme Court's decision on Winter's Water was in full view when Federal Laws were enacted creating the original project.