

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

1994 JUN -1 PM 3: 54
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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. 27-11374

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

STANDARD FORM 1

OBJECTION

94-06-0150

I. GENERAL INFORMATION

Please fill in the following information:

1. *Party/Claimant objecting:*

Name: Ore-Ida

Address: P.O. Box 10
Boise, Idaho 83707

Phone: Work: (208) 383-6100 Home:

Briefly describe your interest in this water right: Ore-Ida uses groundwater in the Snake River Basin above Milner Dam where the Fort Hall Reservation is located. The many growers who supply potatoes to Ore-Ida for processing rely upon water rights (both groundwater and surface water) that are in the Snake River system above Milner Dam and are junior to the tribal rights listed in the 1990 Fort Hall Indian Water Rights Agreement.

If this objection is *filed by an attorney*:

Attorney Name: Josephine P. Beeman

Attorney Address: Moffatt, Thomas, Barrett, Rock & Fields, Chtd
P. O. Box 829
Boise, Idaho 83701

Attorney Phone No.: (208) 345-2000

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:*

Name: United States of America
Bureau of Indian Affairs
Address: 911 N.E. 11th Avenue
Portland, Oregon 97232

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: absence of language clarifying that groundwater users are not subject to rebound calls from senior water users whose state law water rights are affected by the exercise of tribal water rights under the 1990 Fort Hall Indian Water Rights Agreement; description of instream flows on reservation.

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 document entitled "Reasons Supporting Each Box Checked and Suggested Changes to the Director's Report"

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 document entitled "Reasons Supporting Each Box Checked and Suggested Changes to the Director's Report"

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 Ada

Josephine P. Beeman, attorney for Ore-Ida, 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.

Signature of party/claimant filing objection

By: Josephine P. Beeman
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: June 1, 1994
(Insert Date)

Larry C. Hunter
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: Aug

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 (by hand delivery):

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	Candy L. Jackson
	Bureau of Indian Affairs	Shoshone-Bannock Tribes
Owner's address:	911 N.E. 11th Avenue	Post Office Box 306
	Portland, Oregon 97232	Fort Hall, Idaho 83203

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 party/claimant or attorney

jp632787

REASONS SUPPORTING EACH BOX CHECKED AND SUGGESTED CHANGES TO THE DIRECTOR'S REPORT

(The last two pages contain a summary chart and explanation of the objections)

These explanations apply to the following ten (10) objected water rights listed in the proposed consent decree for the 1990 Fort Hall Indian Water Rights Agreement.

01-10223	Snake River/Sand Creek
27-11373	Ross Fork Creek/Ross Fork Basin Groundwater
27-11374	Lincoln Creek/Lincoln Creek Basin Groundwater
29-00466	Bannock Creek
29-12049	Bannock Creek
29-12050	Portneuf River/Jeff Cabin Creek
27-11375	Blackfoot River and Groundwater
27-11376	Groundwater within the Reservation
29-12052	Bannock Creek Basin Groundwater
01-10248	Fort Hall Project from Snake River

Groundwater Users Have a Common Interest to Clarify Provisions in the 1990 Fort Hall Water Rights Agreement Which Protect Southeastern Idaho's Groundwater Economy.

Certain groundwater users (the groundwater users), which include the Amalgamated Sugar Company, the Association of Idaho Cities representing 113 municipalities, Basic American Foods, the City of Pocatello, the J. R. Simplot Company, Lamb-Weston, Ore-Ida, and Universal Frozen Foods Company, are concerned about the groundwater rights of the growers and cities that are the foundation for the economy of southern and southeastern Idaho.

Groundwater users are junior to surface water users, in general, and all surface and groundwater users under state law are junior to the 1867 priority date for the reserved rights in the 1990 Fort Hall Indian Water Rights Agreement. Conjunctive Management rules for groundwater and surface water are now in effect in Idaho, and the groundwater users seek clarification of critical components of the Fort Hall Agreement that would affect conjunctive management requirements for groundwater users.

The Groundwater Users Have Worked With Negotiators of the Fort Hall Agreement to Better Understand the Agreement.

The groundwater users have asked representatives to review the director's report for the 1990 Fort Hall Indian Water Rights Agreement and to meet with Clive Strong of the Attorney General's office to seek answers to questions about the Agreement and the proposed consent decree. In addition, we have spoken with Peter

Monson from the Department of Justice, who was involved in the negotiations from 1985 to 1990 that resulted in the Fort Hall Agreement, and we have attempted to obtain technical documents that explain the basis for the current irrigated acreage and the nature of future irrigation on the Reservation. The groundwater users also asked Roger Ling, an attorney with the Committee of Nine, to speak with them about his representation of groundwater interests during the negotiation and his understanding of the impact and operation of the Fort Hall Agreement. We have also asked representatives to examine the federal act and legislative history that supported congressional approval of the Fort Hall Agreement in 1990.

EXPLANATION FOR BOX 14, "OTHER," MARKED FOR OBJECTIONS TO ALL WATER RIGHTS

**The Fort Hall Agreement Provides a Block of Water to
Mitigate, Among State Law Water Right Holders, the Impacts
from the Fort Hall Water Rights.**

Although the Consent Decree incorporates the provisions of the 1990 Fort Hall Indian Water Rights Agreement (Consent Decree, p. 2), it does not specifically describe mitigation of impacts as discussed by the Agreement in Article 12.

Both the Agreement [Article 12] and the proposed consent decree [IV.1 in General Provisions Applicable to all rights] contemplate that all existing or future impacts among state law water rights from groundwater and surface water use under the Fort Hall Agreement are completely resolved by the mitigation provision for water now under contract between Mitigation, Inc. and the Bureau of Reclamation. The mitigation provided in the Fort Hall Agreement protects all junior groundwater users from calls under the conjunctive management doctrine by senior priority users because of impacts to the senior users from water use under the 1990 Fort Hall Indian Water Rights Agreement.

If this understanding is correct, we have no objection, but we would ask that the consent decree include language to clarify the binding effect of the mitigation provision among state law water rights. The clarifying language would be consistent with the statement in the consent decree that, "The Agreement does not adversely affect the interests of persons not party to the Agreement." (Consent Decree, p. 2) Groundwater users were not party to the Agreement and yet as parties to the Snake River Basin Adjudication they would be bound by the consent decree which incorporates the Agreement. (General Provision 8, Consent Decree, p. 71)

If the mitigation issue is resolved, then it may lessen the issues raised below, except as otherwise noted.

QUANTIFICATION: If the mitigation provision in Article 12 of the 1990 Fort Hall Indian Water Rights Agreement is not binding among state law water users, the proposed consent decree should include information to quantify existing and future impacts from tribal water use.

EXPLANATION FOR BOXES 2 (SOURCE), 5 (POINT OF DIVERSION) AND 9 a AND b (PLACE OF USE) MARKED FOR OBJECTIONS TO ALL 10 WATER RIGHTS, EXCEPT 01-10248 FOR THE FORT HALL PROJECT

The consent decree should include a map or legal description to show separately the current irrigated acres and the future irrigated acres, the source of water (ground, surface, or commingled) and points of diversion (including present well locations) for the current irrigated acres under this right.

EXPLANATION FOR BOX 3a (QUANTITY) MARKED FOR ALL WATER RIGHTS EXCEPT 29-12052 (TRIBAL RIGHT FOR BANNOCK CREEK BASIN GROUNDWATER) AND 01-10248 (FORT HALL PROJECT FROM SNAKE RIVER)

The consent decree should quantify the present use of each separate diversion of surface water and/or groundwater attributable to this water right.

EXPLANATION FOR BOX 9a (PLACE OF USE) MARKED FOR WATER RIGHTS 01-10223 AND 27-11375

The following rights are combined and commingled to provide water rights for up to 53,828 acres:

<u>Water Right #</u>	<u>Source</u>
01-10223	Snake River/Sand Creek
27-02007	Blackfoot Reservoir
25-02160	Gray's Lake
27-11375	Blackfoot River

The consent decree should identify the location of the 53,828 acres.

**EXPLANATION FOR BOX 3a (QUANTITY) MARKED FOR
01-10223 AND 01-10248**

The conversion of the Snake River water right for the Fort Hall Indian Irrigation Project (01-10248) to the tribal reserved right for Snake River/Sand Creek (01-10223) should be set forth by formula to show how diversion rate of 01-10223 will increase as irrigated acreage increases.

**EXPLANATION FOR BOX 9a (PLACE OF USE) MARKED
FOR 01-10223 AND 01-10248**

The consent decree should identify which lands that are presently irrigated by the Fort Hall Indian Irrigation Project (FHIIP) water right are ceded lands. The FHIIP water right (01-10248) identifies 12,667.2 irrigated acres, but the tribal reserved right (01-10223) only shows a future maximum of 8,672 new acres for irrigation, as the U.S. relinquishes water rights for the FHIIP.

**EXPLANATION FOR BOX 2 (SOURCE) MARKED FOR
27-11373**

The consent decree should define "Ross Fork Creek Basin" by map or description.

**EXPLANATION FOR BOX 2(SOURCE) MARKED FOR
27-11374**

The consent decree should more clearly define "Lincoln Creek Basin" by map or legal description.

**EXPLANATION FOR BOX 9a (PLACE OF USE) FOR
RIGHTS 29-00466 AND 29-12049**

It is unclear how this right relates to other Bannock Creek rights claimed since some points of diversion are common to these rights.

29-00466	Bannock Creek
29-00467	Bannock Creek, West Fork
	Bannock Creek
29-12848 (29-0468)	Rattlesnake Creek
29-00469	West Fork Bannock Creek
29-00470	West Fork Bannock Creek
29-00471	Bannock Creek
29-00472	West Fork Bannock Creek
29-00473	West Fork Bannock Creek
29-00474	West Fork Bannock Creek
29-12049	Bannock Creek

Are these rights used on the same or different acreage? The consent decree should separately identify the acreages for each water right.

EXPLANATION FOR BOX 2 (SOURCE) FOR 29-12049

It is unclear if this is a separate point of diversion for the "Michaud Project." How does the "Michaud Project" relate to "Michaud Division"? Are they the same or different?

EXPLANATION FOR BOX 7 (PURPOSE OF USE) AND 11 (REMARKS) MARKED FOR POCATELLO'S OBJECTION TO 27-11376

Pocatello Indian lots: Indian lands exist within the City of Pocatello, although the lots are not within the boundaries of the Fort Hall Reservation. The lots have tribal reserved rights for domestic, commercial, municipal, and industrial (DCMI) uses. The City of Pocatello would like the consent decree to state clearly the inherent limit of the reserved rights to DCMI use on these particular lands.

EXPLANATION FOR BOX 2 (SOURCE) MARKED FOR 29-12052

The consent decree should more clearly define "Bannock Creek Basin" by map or legal description.

EXPLANATION FOR BOX 11 (REMARKS) MARKED FOR 27-11376

The Ross Fork Creek and Lincoln Creek basin combined surface and groundwater diversions in excess of 5000 AFY and 5700 AFY, respectively, are charged against the tribal groundwater right (27-11376). Should the Bannock Creek basin combined surface and groundwater diversions above 48,500 AFY also be listed in this remark?

EXPLANATION FOR BOX 11 (REMARKS) MARKED FOR 29-12052

How was the 48,500 AFY combined surface water and groundwater for Bannock Creek basin derived?

**EXPLANATION FOR BOX 9a (PLACE OF USE), 11
(REMARKS), AND 14 (OTHER) MARKED FOR 01-10248**

Irrigation is limited to 12,667.2 acres within 13,630.13 Project acres. Does this and language of General Provision 5 (consent decree, p. 70) preclude the City of Pocatello from using Project water outside of "Project acres"?

The City of Pocatello would suggest the following language to clarify 01-10248 and General Provision 5:

Nothing in this Decree is intended to limit the authority of the United States to redesignate lands within the Fort Hall Irrigation Project or to redesignate lands that are currently outside the Project boundaries to be within the Project boundaries under applicable statutes and regulations as eligible to receive project water. (New language underlined.)

**EXPLANATION FOR BOX 5 (POINT OF DIVERSION)
MARKED FOR 29-12049 AND 27-11376 AND BOX 11
(REMARKS) MARKED FOR 27-11376**

We believe the proposed consent decree may not be consistent with the Michaud contract and the Michaud federal legislation.

**EXPLANATION FOR BOX 14 (OTHER) MARKED FOR ALL
BUT 01-10248**

General Provisions for Tribal Reserved Rights: The consent decree should describe the instream uses with greater specificity, by listing name of water source, upper/lower points of instream reach and maximum flow rates.

JPB/32767

SUMMARY CHART OF FORT HALL OBJECTIONS - P. 1

Box on Objection Chart								
Water Right	Objector	2* (Source)	3* (Quantity)	5* (Points of Diversion)	7* (Purpose of Use)	9* (Place of Use)	11* (Remarks)	14* (Other)
01-10223 Snake River/Sand Creek	Basic American Foods J. R. Simplot Company	2	3a, 3a.1	5		9a & b, 9a.1, 9a.2		14, 14.1
27-11373 Ross Fork Creek/Ross Fork Basin Groundwater	Amalgamated Sugar Ore-Ida	2, 2.1	3a	5		9a & b		14, 14.1
27-11374 Lincoln Creek/Lincoln Creek Basin Groundwater	Lamb-Weston Ore-Ida	2, 2.2	3a	5		9a & b		14, 14.1
29-00466 Bannock Creek	Amalgamated Sugar Universal Frozen Foods Company	2	3a	5		9a & b, 9a.3		14, 14.1
29-12049 Bannock Creek	Amalgamated Sugar Lamb-Weston	2, 2.3	3a	5, 5.1		9a & b, 9a.3		14, 14.1
29-12050 Portneuf River/Jeff Cabin Creek	City of Pocatello J. R. Simplot Company	2	3a	5		9a & b		14, 14.1
27-11375 Blackfoot River and Groundwater	Basic American Foods Universal Frozen Foods Company	2	3a	5		9a & b, 9a.1		14, 14.1
27-11376 Groundwater within the Reservation	City of Pocatello J. R. Simplot Company	2	3a	5, 5.1	7 (Pocatello only)	9a & b	11, 11.1, 11.4	14, 14.1
29-12052 Bannock Creek Basin Groundwater	Lamb-Weston Universal Frozen Foods Company	2, 2.4		5		9a & b	11.2	14, 14.1
01-10248 Fort Hall Project from Snake River	Basic American Foods City of Pocatello		3a.1			9a.2, 9a.4	11.3	14, 14.2, 14.2 (Pocatello only on 14.2)

*Accompanying sheet explains bases for objections.

P. 2 - SUMMARY EXPLANATIONS FOR OBJECTIONS TO FORT HALL AGREEMENT

2. Consent decree needs to show source of water (ground, surface, or commingled) for current irrigated acres.
- 2.1 Need map or legal description to define "Ross Fork Creek Basin."
- 2.2 Need map or legal description to define "Lincoln Creek Basin."
- 2.3 Is this a separate source (point of diversion) for the "Michaud Project"?
- 2.4 Need map or legal description to define "Bannock Creek Basin."
- 3a Consent decree should quantify each existing separate diversion of surface and/or groundwater for this right.
- 3a.1 Need formula for conversion of the Snake River right for the Fort Hall Project (01-10248) to the tribal reserved right from Snake River/Sand Creek (01-10223).
5. Consent decree needs to show points of diversion (including present well locations) for current irrigated acres.
- 5.1 Consent decree may not be consistent with the Michaud contract and the Michaud federal legislation.
7. Consent decree should clarify that reserved rights on Indian land in Pocatello are limited to DCMI use on those lands.
- 9a & b Consent decree should include map or legal description to show current v. future irrigated acres.
- 9a.1 Consent decree should identify the 53,828 acres covered by 01-10223, 27-02007, 25-02160, 27-11375.
- 9a.2 Identify which lands irrigated by the Fort Hall Indian Irrigation Project water right are ceded lands.
- 9a.3 The consent decree should separately identify the acreage for each Bannock Creek water right.
- 9a.4 Does the description of "Project Acres" preclude future change of Project boundaries to include acres currently outside Project boundaries?
11. Remarks should clarify that reserved rights on Indian land in Pocatello are limited to DCMI use on those lands.
- 11.1 Should remarks include Bannock Creek Basin combined surface and groundwater diversions above 48,500 AFY?
- 11.2 How was the 48,500 AFY combined surface water and groundwater for Bannock Creek basin derived?
- 11.3 Are the current ceded lands within the current Project boundaries also the only permissible place of future use for Project water?
- 11.4 Consent decree may not be consistent with Michaud contract and Michaud federal legislation.
14. Need language to clarify that mitigation in Article 12.3 of Agreement is binding among all state law water rights.
- 14.1 Consent decree should describe instream uses in more detail (source, reach, maximum flow rates).
- 14.2 Does the language of Provision 5 preclude City of Pocatello from using project water in the future outside present Project acres?