

5-16

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase No. 34-00211
	)	
Case No. 39576	)	RESPONSE TO OBJECTION
	)	

I. GENERAL INFORMATION

1. Person responding to objection: 95-05-0039

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).

2. Person who filed objection:

Name: MARCELLE J. AND RAYMOND E. BRIGHT
AND JOHN P DEMOREST

Address: 1822 20TH ST.
SAN FRANCISCO, CA 94107

(Over)

3. If this response is filed by an attorney:

Attorney Name(s): A. LYNNE KROGH

Attorney Address: DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 83720
BOISE, ID 83720-0098

Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

1. ☒ Name and Address: I respond to the objection concerning the name and/or address of the owner of the water right.
3. ☒ Quantity: I respond to the objection concerning:
 - 3a. ☒ the total quantity of water used in cubic feet per second.
 - 3b. ☒ the total quantity of water stored in acre-feet per year.
7. ☒ Purpose(s) of use: I respond to the objection concerning the purpose(s) of use.
8. ☒ Period of Year: I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
9. ☒ Place of Use: I respond to the objection concerning:
 - 9a. ☒ the legal description of the place of use.
 - 9b. ☒ the number of irrigated acres within each forty (40) acre subdivision.
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.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection item 1, and all allegations regarding this item, IDWR responds as follows: No notice of change of ownership has been filed with IDWR by the owner of the water right as required by Idaho Code §42-1409(7). IDWR therefore lacks sufficient information to form a belief as to the truth of the matter asserted. Upon the filing of a notice of change of ownership, IDWR will correct the name and address of the owners of this water right accordingly. This, however, may not change the records of the SRBA Court. The Court has developed its "Standard Form 3" to be used for reporting matters such as address changes and changes in ownership. The claimant may need to file this form with the SRBA Court.

In response to Statement of the Objection items 3 and 3.a, and all allegations of the objection regarding those items, IDWR responds that the diversion rate recommended for this right is 2.7 cfs, which is stated under the column titled "maximum quantity". This is the same as the diversion rate claimed, and the same as the diversion rate previously decreed in *Utah Construction v Abbott*, Equity No. 222 (D.E.Id. 1923). IDWR further responds that IDWR recommended four water rights for the irrigation of the recommended place of use and the total combined diversion rate IDWR found to be beneficially used under all four rights is 8.66 cfs, as stated in the "Remarks" section of all four water rights.

In response to Statement of the Objection item 3.b, and all allegations of the objection regarding this item, IDWR responds as follows: The objector did not claim water for storage purposes on the original claim and does not appear to assert a claim to water for storage purposes in the objection. This item appears to have been marked in error.

In response to Statement of the Objection item 7, and all allegations of the objection regarding this item, IDWR responds as follows: The purpose of use claimed, recommended, and previously decreed for this right is irrigation. This item appears to have been marked in error. To the extent that the claimant intended to object to item 2 (source), IDWR further responds that the source claimed, recommended and previously decreed for this right is the Big Lost River. IDWR recommended four water rights (two from a groundwater source) for the
(Over)

irrigation of the recommended place of use and the total combined diversion rate IDWR found to be beneficially used under all four rights is 8.66 cfs, as stated in the "Remarks" section of all four water rights.

In response to Statement of the Objection item 8, and all allegations of the objection regarding this item, IDWR responds as follows: The period of year during which this water right may be used for irrigation is the season of use decreed for this right in *Utah Construction v Abbott Equity* (D.E.Id. 1923).

In response to Statement of the Objection items 9, 9.a and 9.b, and all allegations of the objection regarding those items, IDWR responds as follows: The place of use claimed for this right was 318 acres. By now asserting a place of use including 678 acres, 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 a director's report is filed. Once leave of the court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the court. IDWR further responds that IDWR conducted a field investigation of this right on September 13, 1990. The recommended water right accurately describes the total number of acres within each 40 acre subdivision upon which IDWR found water to be beneficially used, from the points of diversion found, during that field investigation. IDWR did not "accept" the 318.0 acres claimed; the proposed recommendation stated a total irrigated acreage of 182.0 acres, no notice of error was filed, and the director's report recommended a total irrigated acreage of 182.0 acres.

In response to Statement of the Objection item 10, and all allegations of the objection regarding this item, IDWR responds as follows: IDWR recommended four water rights for irrigation of the recommended place of use. Since these rights are used for irrigation of the same lands, the total combined consumptive use is the total combined consumptive use for all lands irrigated pursuant to the four rights, which accurately describes the use of the four rights. The consumptive use claimed and recommended was 2.5 AFY per acre.

In response to Statement of the Objection item 11, and all allegations of the objection regarding this item, IDWR responds as follows: IDWR incorporates by reference its responses to the items above.

CHANGES TO THE DIRECTOR'S REPORT

The director proposes no changes to the description of this right in the director's report.

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☒ 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 A34-00211

4

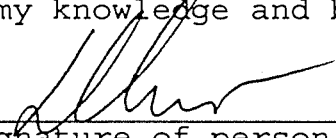
(Over)

VERIFICATION (Must be Completed)

State of IDAHO
County of ADA

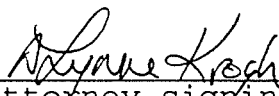
David B. Shaw, being first duly sworn, upon oath, deposes and says:

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.



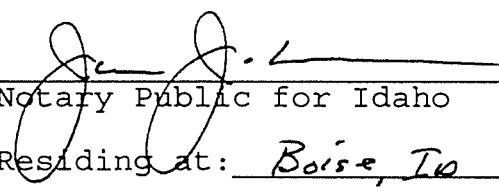
Signature of person filing response

By:



(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 16TH day of MAY,
1995.



Notary Public for Idaho

Residing at: Boise, ID

My Commission expires: 1-1-2000

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of May, 1995, 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 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:

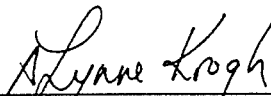
See No. 3

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:

Ray W. Rigby
Gregory W. Moeller
P.O. Box 250
Rexburg, ID 83440

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 person filing response
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: A34-00211
Date Received: 1/10/1990
Receipt No: EO 11597/90
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MARCELLE J. BRIGHT 208-588-2610
Address: STAR ROUTE
MACKAY, ID 83251
AND/OR
Name: RAYMOND E. BRIGHT 208-588-2610
Address: STAR ROUTE
MACKAY, ID 83251
AND/OR
Name: ROXANNE R. HALE 208-588-2610
Address: STAR ROUTE
MACKAY, ID 83251
AND/OR
Name: DELVIN A. HALE 208-588-2610
Address: STAR ROUTE
MACKAY, ID 83251

2. Date of Priority: JUN 01, 1916

3. Source: BIG LOST RIVER Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
08N	22E	13	NE	NW			CUSTER
		24	SE	NE			CUSTER

5. Description of diverting works:
OPEN DITCHES FOR FLOOD IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.700		

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

A34-00211

Page 1

Date: 01/10/90

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NOV 19 1992

8. Total consumptive use is 795.0 Acre Feet Per Annum.

9. Non-irrigation uses:

INCIDENTIAL STOCKWATER FOR 850 CATTLE, 35 HORSES, 50 SHEEP.

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
08N	22E	24	NE	NE		IRR	40.0
			SE	NE		IRR	26.0
						Section Acres	66.0
	23E	19	NW	NW	1	IRR	40.0
			SW	NW	2	IRR	39.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	36.0
			SW	SW		IRR	12.0
			SE	SW		IRR	40.0
						Section Acres	247.0
		30	NE	NW		IRR	5.0
						Section Acres	5.0
						Total Acres	318.0

11. Place of use in counties: CUSTER

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

13. Other Water Rights Used:
A34-10688

14. Remarks:

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 10/21/1925

UTAH CONSTRUCTION CO.
Decree Plaintiff

vs

JOHN F. ABBOTT, ET AL
Decree Defendant

A34-00211

Page

2

Date: 01/10/90

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NOV 19 1992

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

Signature of Claimant(s): Delvin Hale Date: 6/10/90

Date: _____

State of Idaho)
County of Bonneville) SS.

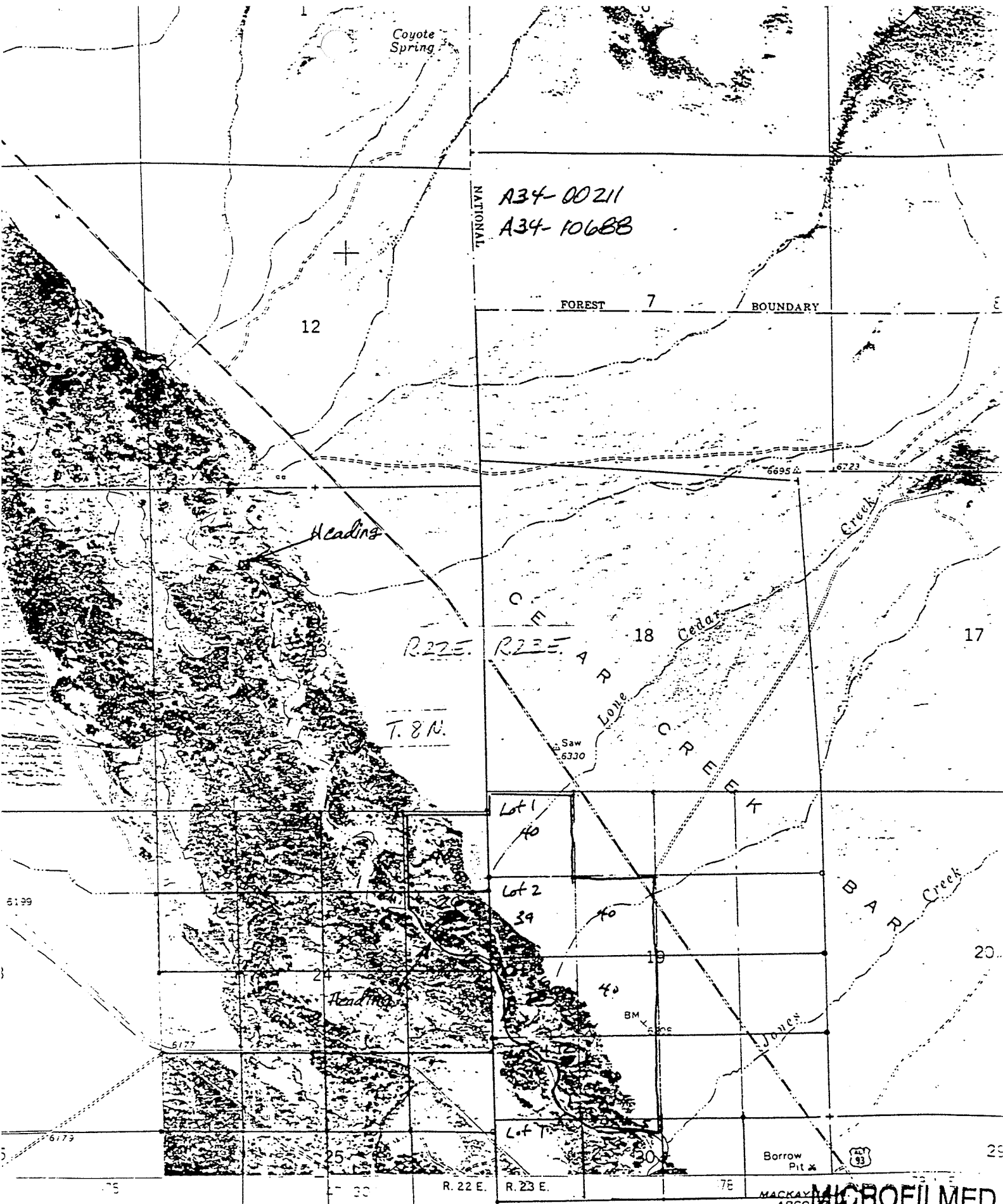
Subscribed and sworn (or affirmed) before me this 10th day

of Jan 19 90

Betty J. Thompson
Notary Public

Seal

Residing at BETTY J. THOMPSON, NOTARY PUBLIC
RESIDING AT IDAHO FALLS, IDAHO
My Commission Expires MY COMMISSION EXPIRES: 6-30-94



A34-00211
A34-10688

Heading

R. 22 E.

R. 23 E.

T. 8 N.

Lot 1
40

Lot 2
39

Lot 3
30

18

19

17

20

29

FOREST

BOUNDARY

Cedar Creek

Lone Creek

B A Creek

Jones

Borrow Pit

MACKAY ARCO

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NOV 19 1992

R22E R23E

