

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. 34-00801
	)	
Case No. 39576	)	RESPONSE TO OBJECTION
	)	

I. GENERAL INFORMATION

1. Person responding to objection: 95-05-0042

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; and,
 - 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; and,
 - 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 claimed and recommended for this right is the amount previously decreed in Utah Construction v Abbott, Equity No. 222 (D.E.Id. 1923). IDWR further responds that the total diversion rate for this right and right no. 34-00802 is recommended as 6.86 cfs in the "Remarks" section of both rights and is the same as stated in the objection. In addition, the total annual volume of consumptive use for this right and right no. 34-00802 is recommended as 795 AF in the "Remarks" section of both rights and is the same as stated in the objection.

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 that it recommended this element of the water right as claimed. IDWR further responds that the use of water for stockwater purposes in the recommendation is for use outside the irrigation season, so the amount recommended for stockwater is part of the total 5.06 cfs diversion rate that was previously decreed, claimed and recommended. The amount recommended for irrigation includes uses for stockwater during the irrigation season.

(Over)

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 No. 222 (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 348.0 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 examination of this right on September 13, 1990; the proposed and recommended water right accurately describes the total number of irrigated acres within each quarter-quarter section found by IDWR. The notice of error filed by the claimant to IDWR's proposed recommendation did not assert an error in the description of the place of use.

In response to Statement of the Objection item 10, and all allegations of the objection regarding this item, IDWR responds as follows: IDWR incorporates its response to items 3 and 3.a above. In addition, since this right and right 34-00802 are used for irrigation of the same lands, the total combined consumptive use is the total consumptive use for all lands irrigated pursuant to both rights, which accurately describes the actual use of the two rights. IDWR further responds that any future change in use of these rights that would result in separation of the rights will be subject to the requirements of Idaho Code §42-222. Such separation will be addressed in accordance with the statute upon the filing of an application pursuant to the statute; and pursuant to Idaho Code §42-1401A(2), quantification of consumptive use "...is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to §42-222, Idaho Code."

In response to Statement of the Objection item 11, and all allegations of the objection regarding this item, IDWR incorporates its response to items 3, 3.a and 10 above.

CHANGES TO THE DIRECTOR'S REPORT

The director proposes no changes to the description of this claim in the Director's Report.

☒ 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 A34-00801	3

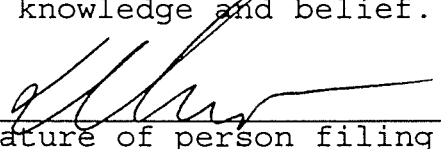
(Over)

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.



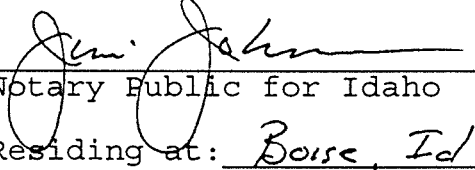
Signature of person filing response

By:



(Attorney signing in
representative capacity)

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



Notary Public for Idaho
Residing at: Borise, Id
My Commission expires: 1-1-2000

(Over)

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:

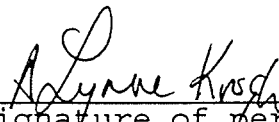
See No. 3

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: A34-00801
Date Received: 1/10/1990
Receipt No: E011597
Received By: _____

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. 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
AND/OR		
Name:	MARCELLE J. BRIGHT	208-588-2610
Address:	STAR ROUTE MACKAY ID	83251

2. Date of Priority: MAY 1, 1884

3. Source:	BACK CHANNEL	Trib. to:	PARSONS CREEK
	PARSONS CREEK		BIG LOST RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
08N	22E	24		NE	SW		CUSTER
		25		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	5.060		
STOCKWATER	10/16	04/30	0.020		

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

A.F.A.

8. Total consumptive use is 870.0 Acre Feet Per Annum.

9. Non-irrigation uses:

STOCKWATER 850 CATTLE, 35 HORSES, 30 SHEEP

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
08N	22E	24	SE	NE		IRR	14.0
			NE	SE		IRR	40.0
			SE	SE		IRR	40.0
						Section Acres	94.0
		25	NE	NE		IRR	34.0
			SE	NE		IRR	18.0
						Section Acres	52.0
	23E	19	NW	SW	3	IRR	4.0
			SW	SW	4	IRR	28.0
						Section Acres	32.0
		30	NE	NW		IRR	30.0
			NW	NW	1	IRR	40.0
			SW	NW	2	IRR	40.0
			SE	NW		IRR	27.0
			NE	SW		IRR	3.0
			NW	SW	3	IRR	30.0
						Section Acres	170.0
						Total Acres	348.0

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:
A34-00802

14. Remarks:

15. Basis of Claim: DECREED

Case Number:

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NOV 24 1992

Court :

Decree date: 10/21/1925

UTAH CONSTRUCTION CO.
Decree Plaintiff

JOHN F. ABBOTT, ET AL.
vs Decree Defendant

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): Delbert Hale Date: 6/3/92

Date: _____

State of Idaho)
County of Custer) SS.

Subscribed and sworn (or affirmed) before me this 3 day
of June 1992

Dane Calk
Notary Public

Seal

Residing at Heise, Id
My Commission Expires 2/26/96

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