

5-16

A. LYNNE KROGH  
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Deputy Attorney(s) General  
Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83720-0098  
Telephone: (208) 327-7900

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. 34-10688  |
|                | ) |                       |
| Case No. 39576 | ) | RESPONSE TO OBJECTION |
|                | ) |                       |

I. GENERAL INFORMATION

1. Person responding to objection: 95-05-0046

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 this water right represents the combination of two rights previously decreed in *Utah Construction v Abbott*, Equity No. 222 (D.E.Id. 1923): 34-00210 and 34-00036. The diversion rate recommended for this right is 3.7 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 for 34-00210 (0.5 cfs) and 34-00036 (3.2 cfs). 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 purposes of use claimed, recommended, and previously decreed for this right are irrigation and stockwater. This item appears to have been marked in error. To the extent that the claimant intended to object to item 2 (source), IDWR further  
(Over)

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 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 creage 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.

☒ 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:

Notice of Claim A34-10688

No. of  
Pages

3

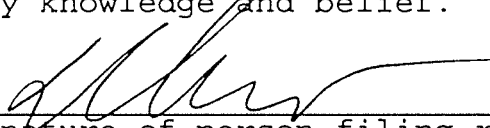
(Over)

VERIFICATION (Must be Completed)

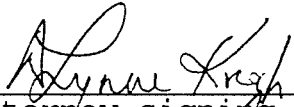
State of IDAHO  
County of ADA

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 16<sup>th</sup> day of May,  
1995.

  
\_\_\_\_\_  
Notary Public for Idaho

Residing at: Roxanne McCarthy, Notary Public  
Residing at Boise, Idaho

My Commission expires: Expires May 16, 1996.

CERTIFICATE OF MAILING

I hereby certify that on the 16<sup>th</sup> 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:

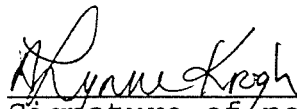
See No. 3

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: A34-10688  
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: | 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        |
| AND/OR   |                    |              |
| Name:    | RAYMOND E. BRIGHT  | 208-588-2610 |
| Address: | STAR ROUTE         |              |
|          | MACKAY ID          | 83251        |

2. Date of Priority: JUN 1, 1902

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 | 3.700 |      |        |
| STOCKWATER | 10/16 | 04/30 | 0.020 |      |        |

MICROFILMED

7. Total Quantity Appropriated is:

3.700 C.F.S. (and/or)

A.F.A.

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

9. Non-irrigation uses:

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:

A34-00211

14. Remarks:

THIS NOTICE IS A COMBINATION OF DECREES 34-00210 (0.50 CFS) AND  
34-00036 (3.2 CFS).

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 10/21/1925

MICROFILMED

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): Dale Hale Date: 6/2/92  
\_\_\_\_\_  
Date: \_\_\_\_\_

State of Idaho )  
County of Custer ) ss.

Subscribed and sworn (or affirmed) before me this 3 day  
of June 19 92 Dale Hale  
Notary Public

Seal

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