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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. 34-10706
	)	
Case No. 39576	)	RESPONSE TO OBJECTION
	)	

I. GENERAL INFORMATION

1. Person responding to objection: 95-05-0047

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.
4. ☒ Priority date: I respond to the objection concerning the priority date.
7. ☒ Purpose(s) of use: I respond to the objection concerning the purpose(s) of use.
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.

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 it recommended this element of the water right as claimed. By now seeking an amount greater than claimed, 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.

In response to Statement of the Objection item 4, and all allegations of the objection regarding this item, IDWR responds as follows: The source for this water is the Big Lost River. Rights to the use of surface water from the Big Lost River and its tributaries were adjudicated in *Utah Construction Co. v Abbott Equity No. 222* (D.E.Id. 1923). The objector claimed, and was recommended, various rights that were decreed in that case. The objector in addition claims this right, which was not decreed in that case, with a priority predating the decree. The objector's predecessor in interest at the time of the decree was a party to the decree. The objector is therefore bound by the decree and is precluded by the doctrine of *res judicata* from asserting a pre-decree priority for this right. IDWR therefore recommended a priority date of the day after the date of entry of the decree.

(Over)

In response to Statement of the Objection item 7 and all allegations of the objection regarding this item, IDWR responds that it recommended the type and number of stock for this water right as claimed. By now seeking to change the type and number of stock claimed 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.

In response to Statement of the Objection items 9 and 9.a, and all allegations of the objection regarding these items, IDWR responds that it recommended this element of the water right as claimed. By now seeking additional places of use, the claimant improperly seeks to use the objection process to amend the claim. The 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. In addition, IDWR further responds that this claim is a right for instream stockwater use. The claimed and recommended quarter-quarters are the tracts through which the Big Lost River flows, and therefore the quarter-quarters in which the cattle drink from the stream.

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 A34-10706	4

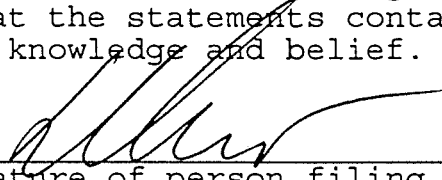
(Over)

VERIFICATION (Must be Completed)

State of IDAHO
County of ADA

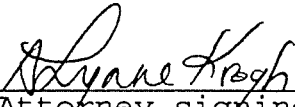
David B. Shaw, being first duly sworn, upon oath, deposes and says:

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.



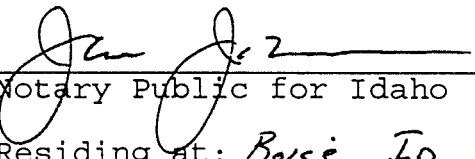
Signature of person filing response

By:



(Attorney signing in
representative capacity)

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



Notary Public for Idaho

Residing at: Borise, 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

A. Lynne Krogh
Signature of person filing response
or attorney mailing on Respondent's
behalf