

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

Water Right No. 36-15343

The State of Idaho, ex rel. R. Keith
Higginson in his official capacity as
Director of the Idaho Department of
Water Resources,

RESPONSE TO OBJECTION

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.

I. GENERAL INFORMATION

Please fill in the following information:

1. *Party/Claimant responding to objection:*

Name: R. KEITH HIGGINSON, Director

Address: IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449

Phone: (208) 327-7910

Briefly describe your interest in this water right:

IDWR is a party to each sub-case in the SRBA pursuant to subsection 2.0 of SRBA Administrative Order No. 1, and has an interest in ensuring that all water right claims in the SRBA are accurately determined, as noted in Idaho Department of Water Resources v. United States, 122 Idaho 116, 832 P.2d 289, 295 (1992)

If this response is filed by an attorney:

Attorney Name: DAVID J. BARBER

Attorney Address: DEPUTY ATTORNEY(S) GENERAL
P.O. BOX 44449
BOISE, ID 83711-4449

Attorney Phone No.: (208) 334-2400

If filed by an attorney, notice of pending court proceedings will be sent to the attorney only.

2. *Party/Claimant who filed objection:*

Name: UNITED STATES OF AMERICA ACTING THROUGH THE
NATIONAL PARK SERVICE, PACIFIC NW REGIONAL OFFICE,

Address: 83 S. KING STREET, SUITE 212, SEATTLE, WA 98121

II. STATEMENT OF THE RESPONSE

Please check each "box" which identifies your response.

1. ☐ *Name and Address:* I respond to the objection concerning the name and/or address of the owner of the water right.
2. ☐ *Source:* I respond to the objection concerning the source of water.
3. ☐ *Quantity:* I respond to the objection concerning:
 - 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 respond to the objection concerning the priority date.
5. ☐ *Points of Diversion:* I respond to the objection concerning the legal description of the point(s) of diversion.
6. ☐ *Instream Flow:* I respond to the objection concerning the legal description of the beginning and ending points of the instream flow.
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:
- 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 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.
12. ☐ *Water Right Recommendation*: I respond to the objection concerning:
- a. ☐ this water right being recommended at all; or
 - b. ☐ this water right not being recommended.
13. ☐ *Description of Reservation*: I respond to the objection concerning the legal description of the reservation.
14. ☒ *Other*: I respond to the objection concerning various General Provisions.

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.

11. Remarks:

The United States claims that the Remarks section should contain the substance of the following Section 6.2 from the Settlement Agreement:

6.2 The United States agrees that License Nos. 34-2381 [old no. 28964] and 34-2254 [old no. 16711] will be superseded by the water rights herein, only upon completion of all judicial proceedings, including appeals if any, together with entry of a final decree containing the water rights set forth in this Agreement.

The United States failed to file a notice of claim for License Nos. 34-2381 and 34-2254. Consequently, these state acquired water rights were not listed in the director's report, and a reference to them would be improper in the absence of a notice of claim for them.

14. Other (General Provisions)

(i) General Provision ¶ 1b, p. 9: The United States objects to this general provision "to the extent that the director seeks authority beyond the scope of the waiver of sovereign immunity contained in the McCarran Amendment." Objection at 8. IDWR denies the allegations of this section of the objection.

(ii) General Provision ¶ 5, p. 10: The United States claims that General Provision 5 is inconsistent with Section 5.13 of the Settlement Agreement regarding separate administration of the Monument. The following addition to the Remarks section is proposed to address the separate administration for the Monument:

The surface water within the boundaries of the Monument and perched ground water underlying the Monument shall be treated as a self-contained water system.

(iii) General Provision ¶ 7, p. 11: The United States objects "to administration of federal water rights by the director inconsistent with the McCarran Amendment" and asserts that the director may not prescribe measuring devices for federal diversions. IDWR denies the allegations of this section of the objection.

(iv) General Provision ¶ 8, pp. 11-12: The United States objects to the failure of the director's report to reprint verbatim Section 5.10 of the Settlement Agreement. In response to this objection, the IDWR assures the United States that no substantive differences were intended in the language of the director's report and the language in the Settlement Agreement.

In fact, the IDWR believes that the director's report uses language that is an improvement over the language of the Settlement Agreement. However, the IDWR proposes to add the following to the Remarks section to address this objection:

The following provision shall apply to this water right:

The use of water for fire suppression benefits the public. Water diverted for fire suppression may be taken randomly, without a definition of the specific elements of a recordable water right, and if so diverted for fire suppression, existing water rights shall not be diminished.

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.

The IDWR proposes the additions to the Remarks section described above. Attachment I is a description of this water right with these additions.

Please note that you should attach copies of documents which support your response. 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.

Attachment I: A revised Description of Water Right No. 36-15343.

MICROFILMED

OCT 20 1994

VERIFICATION (Must be Completed)

State of Idaho }
County of Ada } ss

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 in 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 party/claimant filing response

By: David J. Barber
David J. Barber
Deputy Attorney General
Natural Resources Division

Subscribed and sworn to before me this 1st day of September, 1993.

Danni M. Smith
Notary Public for Idaho
Residing at: _____
My Commission expires: _____

Danni Smith, Notary Public
Residing at Boise, ID
My Commission Expires December 5, 1994

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of Sept., 1993, I mailed the original and copies of this response, including all attachments, to the following persons by mailing the original and/or 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

(BY HAND DELIVERY)

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:

Name: U.S. DEPT. OF JUSTICE
Address: Environ. & Natural Res. Division
550 W FORT ST., BOX 33
BOISE, ID 83724

(BY HAND DELIVERY)



Signature of Respondent or attorney
mailing on Respondent's behalf

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
ABSTRACTED CLAIMS TO WATER RIGHTS BASED UPON FEDERAL LAWDATE: NOV-2-1992
PAGE: A-6

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: SURFACE WATER, ALL			TRIBUTARY: SINKS			
36-15343	UNITED STATES AMERICA, ACTING THROUGH NATIONAL PARK SERVICE PACIFIC NORTHWEST REG. OFFICE 83 S KING ST STE 212 SEATTLE WA 98121	05/02/1924	MINIMUM INSTREAM FLOW	01-01 12-31		RESERVED

TOTAL QUANTITY:

NON-IRRIGATION-USES:

INSTREAM FLOW USES

POINT OF DIVERSION: SEE REMARKS

PLACE OF USE: MINIMUM INSTREAM FLOW

SEE REMARKS

REMARKS: SEE WATER RIGHTS AGREEMENT BETWEEN THE STATE OF IDAHO AND THE
UNITED STATES FOR THE CRATERS OF THE MOON NATIONAL MONUMENT
SIGNED MAY 14, 1992 (AGREEMENT).SOURCES FOR THIS RIGHT ARE ALL SURFACE WATERS WITHIN AREA A
AS SHOWN ON ATTACHMENT I OF THE AGREEMENT.AMOUNT OF FLOW IS ENTIRE FLOW OF EACH SOURCE IN EXCESS OF
AMOUNT DIVERTED BY RIGHT NO. 36-15342.POINTS OF DIVERSION MAY BE ANY POINT WITHIN AREA A AS SHOWN
ON ATTACHMENT I OF THE AGREEMENT.PLACE OF USE MAY BE ANY PLACE WITHIN AREA A AS SHOWN ON
ATTACHMENT I OF THE AGREEMENT.

THIS RIGHT APPEARS AS RIGHT NO. 34-12384 IN BASIN 34 REPORT.

BASIS OF RIGHT IS THE RESERVATION MADE UNDER PROCLAMATION

NO. 1694.

THE SURFACE WATER WITHIN THE BOUNDARIES OF THE MONUMENT AND PERCHED GROUND
WATER UNDERLYING THE MONUMENT SHALL BE TREATED AS A SELF-CONTAINED WATER SYSTEM.THE USE OF WATER FOR FIRE SUPPRESSION BENEFITS THE PUBLIC. WATER DIVERTED FOR FIRE SUPPRESSION MAY BE TAKEN
RANDOMLY, WITHOUT A DEFINITION OF THE SPECIFIC ELEMENTS OF A RECORDABLE WATER RIGHT, AND IF SO DIVERTED FOR
FIRE SUPPRESSION, EXISTING WATER RIGHTS WILL NOT BE DIMINISHED.MICROFILMED
OCT 20 1994

RECEIVED

MAR 07 1995

Department of Water Resources
Southern Region

RECEIVED

JAN 27 1995

Department of Water Resources
Adjudication Bureau

RECEIVED

JAN 26 1995

OFFICE OF THE
ATTORNEY GENERAL

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
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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.

Case No. 39576

STANDARD FORM 3

STANDARD FORM FOR NOTICE
OF CHANGE IN ADDRESS

OR

CONSENT TO SUBSTITUTION OF
PARTY

blank records updated.

3-3-95

A36-15343

INSTRUCTIONS FOR USE

This form must be used to provide notice of change in address or to substitute a party whose water right recommendation is in a director's report which has been filed with the court. The filing of Standard Form 3 cannot result in a contested matter. A hearing will not be scheduled.

This form has been adopted by the court in *SRBA Administrative Order 1* (amended June 21, 1993), Section 4A, which may be consulted for further information.

Standard Form 3 shall not operate to excuse compliance with the statutory requirements of I.C. § 42-1409(7) where a water right recommendation is not before the court.

As used in this form, the term "prior claimant/seller" means any person who, pursuant to I.C. § 42-1409(2), (3) and (6), filed a notice of claim asserting the right to the use of water or on whose behalf the right to the use of water was asserted. "New claimant/purchaser" means any successor in interest of a "prior claimant/seller," whether the interest is acquired by purchase, gift, inheritance or other means.

A *Consent to Substitution of Party (Substitution)* must be signed by the prior claimant/seller and the new claimant/purchaser. The *Substitution* shall be filed by the new claimant/purchaser.

Check either the *Change in Address* or *Consent to Substitution of Party* box and fill in the requested information. A party may copy or reproduce the standard form. The text of the form must be on the front and back of each page, exactly as it appears here.

Follow the instructions on the form or the court will not accept it for filing. The Verification and the Certificate of Mailing must be completed.

The standard form may be obtained from the Idaho Department of Water Resources and the court. You must provide a copy of this form to each party, or to their legal counsel, in any subcase in which you are a party.

☒ CHANGE IN ADDRESS

My name is National Park Service

I am the claimant of 34-12383, 34-12384, 34-12385, 34-12386, 34-12387
34-12388, 34-12389, 36-15342, 36-15343, 36-15344

36-15345

(insert each water right number)

36-15346

I have filed an objection/response to the following water right(s) _____

(insert each water right number)

My new mailing address is National Park Service, Pacific Northwest Region
909 First Avenue Seattle, WA 98104-1060

My phone number is: Work (206) 220-4000 Home _____

☐ **CONSENT TO SUBSTITUTION OF PARTY**

My name is _____

My address is _____

My phone number is: Work _____ Home _____

The name and address of the party who I wish to be substituted for are:

I am the new claimant/purchaser of _____ and
(Insert each water right number)

I am submitting proof of acquisition of the interest of the prior claimant/seller, *which is required by the court* to support my *Substitution*. Proof must contain a legal description of the property, including the water right numbers conveyed. You must describe the documents you are submitting.

(Signature of prior claimant/seller)

(Signature of new claimant/purchaser)

☐ **ATTORNEY OF RECORD COMPLETING FORM**

My name is PETER C. MONSON

I am the attorney of record for UNITED STATES OF AMERICA
(Identify party/claimant)

My address and phone number are Indian Resources Section, U. S. Department of Justice/ENRD, 999 18th Street, Denver, Colorado 80202 .Tele: (303) 294-1900

VERIFICATION

(Must be completed for either a *Notice of Change in Address* or for *Consent for Substitution of Party*)

State of Colorado

County of Denver

PETER C. MONSON, being first duly sworn, upon oath, deposes and says:
(Insert name of party/claimant filing form)

NATIONAL PARK SERVICE

That I am the person or entity filing this form, that I am a water right claimant or party or their successor in interest, defined by I.C. §§ 42-1401A(1), (7) or (10); and that I have read this form, know its contents and that the statements are true to the best of my knowledge and belief.

Signature of person filing form

By:

Attorney signing in representative capacity

Subscribed and sworn to before me on January 24, 1995
(Insert Date)

Notary Public for State of Colorado

Residing at: Denver, Colorado

My Commission expires: October 14, 1996.

INSTRUCTIONS FOR MAILING

You must mail the form, including all attachments, to the Clerk of the SRBA Court and to the parties identified in the Certificate of Mailing. FAX filings will not be accepted by the SRBA Clerk of the Court.

You must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I certify that on January 24, 1995, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or 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. A *Change of Address* must be served on each party, or their attorney, in each subcase in which you are a party at the following address(es):

3. A *Consent to Substitution of Party* must be served on the prior claimant/seller or their attorney at the following address:

Mitchell Sorensen
Route 1, Box 63C-1
Moore, Idaho 83255

4. A *Consent to Substitution of Party* must be served on each party, or their attorney, to each subcase in which the prior claimant/seller is a party at the following address(es):

4. One copy to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, Idaho 83711-4449

5. One copy to:

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83734

A handwritten signature in dark ink, appearing to be "J. H. K.", written over a horizontal line.

(Signature of person or attorney mailing the form)