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U.S. Department of Justice
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(303) 312-7319

Counsel for the United States of America

**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. 78-12202
) (To be consolidated with Subcase No.
) 79-13597)
) Hells Canyon National Recreation Area
)
)
)

CASE NO. 39576

STANDARD FORM 4

)
) **STIPULATED MOTION TO FILE:**
) **LATE NOTICE OF CLAIM**
)
)
)

STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM

Claimant United States of America, on behalf of the United States Department of
Agriculture, Forest Service ("United States"), by and through its undersigned attorney, and

pursuant to SRBA Administrative Order 1, Rules of Procedure, respectfully moves the Court to enter an Order granting permission to file a Late Notice of Claim in this subcase, and as grounds therefor, states:

1. The United States must file a Late Notice of Claim to the use of water in the SRBA because:

In 1993, the United States filed a Notice of Claim for all unappropriated water in the Hells Canyon National Recreation Area ("HCNRA"). The Idaho Department of Water Resources ("IDWR") assigned this claim number 79-13597 and, after objections were filed by the State of Idaho and the Idaho Power Company, the SRBA Court designated this subcase number 79-13597.

In 2000, the Idaho Supreme Court entered its opinion in *Potlatch Corporation v. United States of America*, 12 P.3d 1260 (Idaho 2000), in which it determined that the HCNRA Act, Pub. L. No. 94-199, 89 Stat. 1117 (1975 (codified at 16 U.S.C. §§ 460gg(1)-(13))), created an express federal reserved water right for water in the tributaries of the Snake River within the HCNRA. *Potlatch*, 12 P.3d at 1268-69. That decision also determined that this federal reserved water right was not for all unappropriated water in the tributaries of the Snake River within the HCNRA, but, rather, that the United States was required to quantify the minimum amount of water necessary to fulfill the purposes of the HCNRA Act. *Id.* at 1269-70.

After two years of negotiation, the United States, together with the State of Idaho and the Idaho Power Company, who constitute all the parties to Subcase No. 79-13597, have settled upon a mutually agreeable manner of quantifying the HCNRA federal reserved water right and have

entered into that certain Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"). The Stipulation provides that the HCNRA water right shall be quantified at 32 separate water sources within the HCNRA. Most of these water sources, 26 streams and lakes, are located within IDWR reporting basin 79. However, six of these water sources, i.e., lakes, are located in IDWR reporting basin 78.

The United States' 1993 claim incorrectly referenced the claimed HCNRA federal reserved water right as lying in IDWR reporting basin 79. The parties to the Stipulation have therefore concluded that, in order to ensure that full and adequate notice has been provided of the quantification of the HCNRA federal reserved water right as including these six lakes in basin 78, it would be appropriate for the United States to file late Notices of Claim for the six lakes. Consequently, the United States is seeking leave to file late Notices of Claim for each of these lakes. IDWR has advised the parties that these claims will be assigned claim numbers 78-12200 through 78-12205. If the Court grants leave to file these late Notices of Claim, the parties to the Stipulation and Subcase No. 79-13597 will request the Court to consolidate these new subcases numbered 78-12200 through 78-12205 into Subcase No. 79-13597 after those late Notices of Claim have been duly noticed.

2. The State of Idaho and the Idaho Power Company have stipulated to this Motion to File Late Notice of Claim.

3. The United States is providing legal and factual documentation for its claimed use of water.

4. Counsel for the United States of America, on behalf of the United States

Department of Agriculture, Forest Service, in this matter is identified below and has read SRBA
Administrative Order 1, Rules of Procedure (amended October 16, 1997).

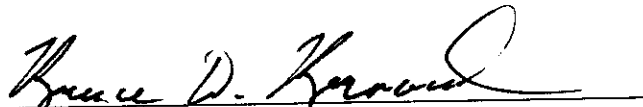
Bruce D. Bernard
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(303) 312-7319

4. The Late Notice of Claim is attached to this Motion.

WHEREFORE, for good cause shown, the United States respectfully requests this Court
to enter an Order granting leave to file the Late Notice of Claim herein.

Dated this 20th day of August, 2004.

Respectfully submitted,



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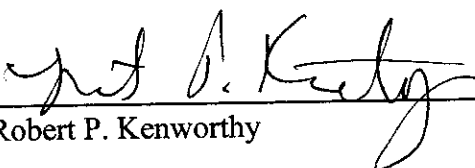
Attorney for the United States of America, on
behalf of the United States Department of
Agriculture, Forest Service

VERIFICATION

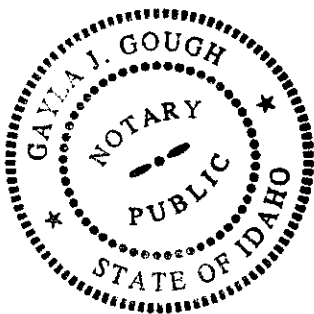
State of Idaho)
County of Ada)

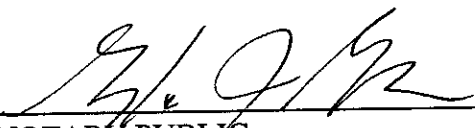
Robert P. Kenworthy, being first duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this Stipulated Motion to File Late Notice of Claim, as defined by I.C. §§ 42-1401(1) and (7), and that I have read this Motion, know its contents, and believe that the statements are true to the best of my knowledge.


Robert P. Kenworthy

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this 19th day of August, 2004, a Notary Public, Ada County, State of Idaho.




NOTARY PUBLIC
STATE OF IDAHO
Residing at KUNA IDAHO
My Commission Expires: 11-17-2004

Certificate of Service

I certify that on August 20, 2004, I caused to be served a true and correct copy of the Stipulated Motion to File Late Notice of Claim for subcase no.78-12202 to the parties listed below:

Original by hand delivery to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies by hand delivery or United States Mail, postage prepaid to:

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

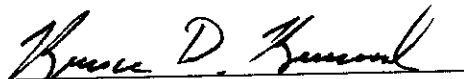
James C. Tucker
Idaho Power Company
P.O. Box 70
Boise, ID 83707

United States Department of Justice
Environment and Natural Resources Division
General Litigation Section
550 W. Fort St. MSC 033
Boise, ID 83724

Merlyn W. Clark
P.O. Box 1617
Boise, ID 83701

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720

John K. Simpson
Barker Rosholt & Simpson LLP
P.O. Box 2139
Boise, ID 83701-2139


Bruce D. Bernard

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: 78-12202
(To be consolidated with Subcase
79-13597)
Date received:
Receipt No:

NOTICE OF CLAIM TO A WATER RIGHT
RESERVED UNDER FEDERAL LAW

1. Name and address of owner: UNITED STATES OF AMERICA, on behalf of the
U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724

2. Priority date: December 31, 1975

3. Source of water: Dog Lake

4. Location of point of diversion:

a. Point of diversion at lake outlet:

The projection of the NW $\frac{1}{4}$ NW $\frac{1}{4}$, of unsurveyed Sec. 35, T23N, R2W, Boise
Meridian.

b. Description of diversion works: lake level maintenance

c. Location of place of use: Note: Tracts are projections in unsurveyed sections

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
23N	02W	34	X															
23N	02W	35						X	X									

The lake level claimed herein will be applied to beneficial use throughout the lake as
identified above.

5. Period of use: 01/01 to 12/31

6. Quantity claimed:

a. This water right establishes the lake level of Dog Lake at 98.84 feet referenced to Dog BM1 (Elevation 100 feet) located at X=534951, Y=5015617 (UTM Zone 11 North NAD 83).

b. This water right precludes any diversion of water out of the watershed of Dog Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.

7. Total consumptive use claimed for present and future use is:

This lake level claim is nonconsumptive (other than evaporation and evapotranspiration which may take place from the lake).

8. Present and future uses to which the water is or will be used:

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

9. Attach the legal description of the reservation, and maps showing for each use the existing and proposed place of use.

The Hells Canyon National Recreation Area Act reserved the entire Hells Canyon National Recreation Area for the purposes of the Act. The legal description of the Hells Canyon National Recreation Area is filed with and is available for inspection and copying at the Idaho Department of Water Resources. The place of use of this water right is shown on the map attached hereto as Attachment A.

10. Remarks: (include a list of document(s) creating the federal reservation and/or negotiated agreement). Land and water was reserved pursuant to:

Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

11. Describe any other water rights used at the same place and for the same purposes as described above:

None

12. Counties within the reservation:

Idaho

Notice is hereby given that the United States Department of Justice will represent the United States Department of Agriculture, Forest Service, in all matters pertaining to the Snake River Basin Adjudication.

All notices required by law should be mailed to the individuals at the address below:

Bruce Bernard
US Department of Justice
Environment and Natural Resources Division
550 W. Fort Street, MSC 33
Boise, ID 83724

This form is an attachment to a Standard Form 4 – Stipulated Motion to File Late Notice of Claim by the United States. The signature and affirmation on such Motion constitutes the required signature of the authorized agent representing the United States.

Attachment A – Partial Decree for Dog Lake – 78-12202

