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MAY 14 2002

Department of Water Resources

Julie Klein Fischer, ISB # 4601
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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

Case 39576

)
) **SUBCASE NOS. 65-2457 & 65-10973**
)
)
) **AFFIDAVIT OF JULIE KLEIN FISCHER IN**
) **SUPPORT OF MOTION TO FILE LATE**
) **NOTICE OF CLAIM**
)
)
)

STATE OF IDAHO)
: ss.
County of Canyon)

JULIE KLEIN FISCHER, being sworn upon oath, deposes and says;

1. I am the attorney for Michael Derrick, Trustee of the M.C. Shelley Family Trust, UTA dated October 14, 1993 ("the Trust"), and make this affidavit based on my own personal knowledge of the facts contained herein.

2. I certify that the Motion to File Late Notice of Claim, in the above-referenced Sub-Cases are well-grounded, and not filed for any improper purpose.

**AFFIDAVIT OF JULIE KLEIN FISCHER IN SUPPORT
OF MOTION TO FILE LATE NOTICE OF CLAIM- 1**

3. I have read SRBA Administrative Order 1, Rules of Procedure, as amended September 30, 1996.

4. The Trust owns several properties in Payette County, Idaho. In addition, the Trust transferred some of its properties to M.C. Shelley Properties, LLC ("the LLC") in about December 1999.

5. The court order appointing my client, Michael Derrick, as the Trustee of the M.C. Shelley Family Trust. UTA dated October 14, 1993, is attached hereto as Exhibit "A." The Articles of Organization for the M.C. Shelley Properties, LLC is attached hereto as Exhibit "B."

6. I was asked by Michael Derrick, the Trustee of the Trust, and managing member of the LLC, to research and determine what water rights were appurtenant to or associated with the Trust's and LLC's properties. Mr. Derrick had also done some preliminary water rights research with the assistance of the State Department of Water Resources.

7. Determining what, if any, water was appurtenant to the Trust properties was difficult due to the fact that there are numerous properties and some of the water rights associated with the properties were still in the names of the previous owners.

8. The search was further complicated due to the fact that some of the rights appear in the Idaho Department of Water Resources data base, even though they have not been claimed in the SRBA. For example, right no. 65-2457 appears as a "Claim" with a "temporary status, and as a "Right" with an "active" status.

9. In addition to searching on-line to obtain information about any and all water rights associated with the Trust's properties, I was assisted by staff at the Idaho Department of Water Resources to help identify water rights appurtenant to my client's properties. This, too,

was difficult because the areas in which the lands are located have been developed making legal description searches very difficult. Locating and pin-pointing the actual well location sometimes was the only way to know if the water right we had located was the Trust's water.

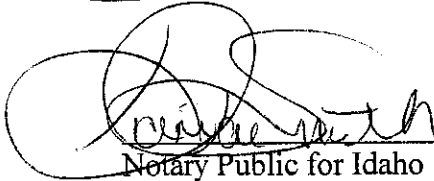
10. After much research, it was determined that there were a total of six water rights appurtenant to Trust and/or LLC lands. All irrigation water owned by the Trust had been claimed in the SRBA, except right no. 65-2457. It also was determined that one domestic right had not been claimed, that is right no. 65-10973.

11. Right no. 65-2457 is an irrigation water right that formerly was decreed in the Payette River Basin Adjudication, and which is very important for the land to which it is appurtenant. Right no. 65-10973 is a domestic stock right that also was decreed in the Payette River Basin Adjudication in 1986.

DATED this 10th day of May, 2002.


Julie Klein Fischer

SUBSCRIBED AND SWORN to before me this 10 day of May, 2002.


Notary Public for Idaho

Residing: Indian ID

My Commission Expires: 3/10/2005

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2002, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

☒ US Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Facsimile
No. _____

Original Document:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

☒ US Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Facsimile
No. _____

Copy to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720 - 0098

☒ US Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Facsimile
No. _____

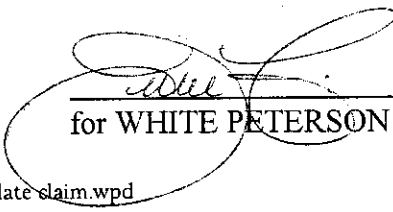
Copy to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO box 44449
Boise, Idaho 83711-4449

☒ US Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Facsimile
No. _____

Copy to:

United States Department of Justice
Environmental and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

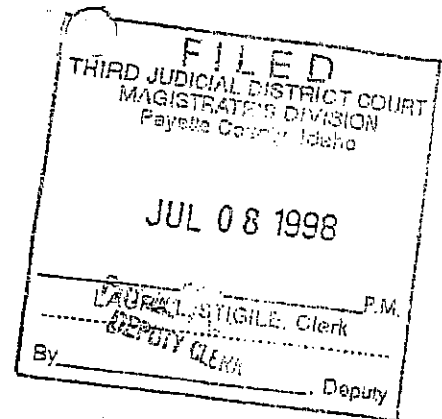

for WHITE PETERSON

ts\Z:\Work\S\Shelley MC Trust 18174\jkl aff to file late claim.wpd

**AFFIDAVIT OF JULIE KLEIN FISCHER IN SUPPORT
OF MOTION TO FILE LATE NOTICE OF CLAIM- 4**

1 William F. Nichols
2 STUNZ, FONDA, NICHOLS, KIYUNA,
3 HORTON & FLINDERS, LLP
4 106 Main Street
5 P. O. Box 1565
6 Nyssa, OR 97913
7 (541) 372-2268

8 Attorneys for Joe Nysingh



9 IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
10 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF PAYETTE

11 IN RE THE GUARDIANSHIP and)
12 CONSERVATORSHIP OF M.C. SHELLEY,) Case No. SP-GM-97-00055*M
13 also known as MELVIN C. SHELLEY,)
14 also known as DOOLEY SHELLEY,) ORDER APPOINTING
15) CONSERVATOR
16 An Incapacitated Person.)
17 -----

18 Upon the petition for appointment of a conservator for MELVIN
19 C. SHELLEY, and it appearing, by clear and convincing evidence, to
20 the court from the allegations of the petition, the reports
21 submitted, including any required visitor's report, and all other
22 evidence, records, and files herein that:

23 (1) Venue is properly in this court and no other court in
24 this, or any other, state has acquired jurisdiction in this
25 matter;

26 (2) All notices required by I.C. 15-5-405 have been given to
the persons entitled to notice;

(3) MELVIN C. SHELLEY is a person who is unable to manage
his property and affairs effectively for that reason that he has
been diagnosed with Alzheimer's dementia, and he has property
which will be wasted or dissipated unless proper management is

1 provided and that funds are needed for the support, care, and
2 welfare of MELVIN C. SHELLEY;

3 (4) R. Brad Masingill, as attorney for MELVIN C. SHELLEY, the
4 incapacitated person, is entitled to a reasonable attorney fee for
5 representing MELVIN C. SHELLEY in this
6 conservatorship/guardianship proceeding. Mr. Masingill will
7 submit his billing to the conservator within 10 days of the date
8 of this Order for review and provide copies to the guardian
9 through her counsel of record, and to the attorneys for Joe
10 Nysingh and Frank Shelley. The conservator and any other
11 interested party shall have 10 days after the date the billing is
12 mailed, in which to object to the billing in which case the matter
13 shall be set for hearing and the court will determine the fee to
14 be paid to Mr. Masingill;

15 (5) Nicholas T. Bokides, as attorney for the guardian, is
16 entitled to a reasonable attorney fee for representing the
17 guardian in this conservatorship/guardianship proceeding. Mr.
18 Bokides will submit his billing to the conservator within 10 days
19 of the date of this Order for his review and provide copies to R.
20 Brad Masingill, attorney for MELVIN C. SHELLEY, and to the
21 attorneys for Joe Nysingh and Frank Shelley. The conservator and
22 any other interested party shall have 10 days after the date the
23 billing is mailed, in which to object to the billing in which case
24 the matter shall be set for hearing and the court will determine
25 the fee to be paid to Mr. Bokides;

26 (6) William F. Nichols, as attorney for Petitioner Joe

1 Nysingh, a Trustee of the M. C. Shelley Family Trust, is entitled
2 to a reasonable attorney fee for representing the Trustee in this
3 conservatorship/guardianship proceeding. Mr. Nichols will submit
4 his billing to the conservator within 10 days of the date of this
5 Order for his review and provide copies to R. Brad Masingill,
6 attorney for MELVIN C. SHELLEY, the guardian through her counsel
7 of record, and to the attorney for Frank Shelley. The conservator
8 and any other interested party shall have 10 days after the date
9 the billing is mailed, in which to object to the billing in which
10 case the matter shall be set for hearing and the court will
11 determine the fee to be paid to Mr. Nichols;

12 (7) Aaron J. Bazzoli, as attorney for Frank Shelley, is
13 entitled to a reasonable attorney fee for representing Frank
14 Shelley in this conservatorship/guardianship proceeding. Mr.
15 Bazzoli will submit his billing to the conservator within 10 days
16 of the date of this Order for his review and provide copies to R.
17 Brad Masingill, attorney for MELVIN C. SHELLEY, the guardian
18 through her counsel of record, and to William F. Nichols, attorney
19 for Joe Nysingh. The conservator and any other interested party
20 shall have 10 days after the date the billing is mailed, in which
21 to object to the billing in which case the matter shall be set for
22 hearing and the court will determine the fee to be paid to
23 Mr. Bazzoli;

24 (8) Joe Nysingh, as Trustee of the M. C. Shelley Family
25 Trust, and as a Director of Vistair, Inc., is entitled to a
26 reasonable fee for his services rendered to the Trust and/or the

1 Vistair Corporation, and shall submit his billing to the
2 conservator within 10 days of the date of this Order for his
3 review and provide copies to R. Brad Masingill, attorney for
4 MELVIN C. SHELLEY, the guardian through her counsel of record, and
5 to the attorney for Frank Shelley. The conservator and any other
6 interested party shall have 10 days after the date the billing is
7 mailed, in which to object to the billing in which case the matter
8 shall be set for hearing and the court will determine the fee to
9 be paid to Mr. Nysingh;

10 (9) Ron Shelley, as Trustee of the M. C. Shelley Family
11 Trust, and as a Director of Vistair, Inc., is entitled to a
12 reasonable fee for his services rendered to the Trust and/or the
13 Vistair Corporation, and shall submit his billing to the
14 conservator within 10 days of the date of this Order for his
15 review and provide copies to R. Brad Masingill, attorney for
16 MELVIN C. SHELLEY, the guardian through her counsel of record, and
17 to the attorneys for Joe Nysingh and Frank Shelley. The
18 conservator and any other interested party shall have 10 days
19 after the date the billing is mailed, in which to object to the
20 billing in which case the matter shall be set for hearing and the
21 court will determine the fee to be paid to Mr. Ron Shelley;

22 (10) Frank Shelley, as Trustee of the M. C. Shelley Family
23 Trust, and as a Director of Vistair, Inc., is entitled to a
24 reasonable fee for his services rendered to the Trust and/or the
25 Vistair Corporation, and shall submit his billing to the
26 conservator within 10 days of the date of this Order for his

1 review and provide copies to R. Brad Masingill, attorney for
2 MELVIN C. SHELLEY, the guardian through her counsel of record, and
3 to the attorneys for Joe Nysingh. The conservator and any other
4 interested party shall have 10 days after the date the billing is
5 mailed, in which to object to the billing in which case the matter
6 shall be set for hearing and the court will determine the fee to
7 be paid to Mr. Frank Shelley;

8 (11) Betty Shelley, as guardian for MELVIN C. SHELLEY, the
9 incapacitated person, is entitled to a reasonable fee for her
10 services rendered in this Conservatorship/Guardianship proceeding.
11 Betty Shelley shall submit her billing to the conservator within
12 10 days of the date of this Order for his review and provide
13 copies to R. Brad Masingill, attorney for MELVIN C. SHELLEY, and
14 to the attorneys for Frank Shelley and Joe Nysingh. The
15 conservator and any other interested party shall have 10 days
16 after the date the billing is mailed, in which to object to the
17 billing in which case the matter shall be set for hearing and the
18 court will determine the fee to be paid to Betty Shelley;

19 (12) The conservator shall have all powers conferred by
20 Idaho Code 15-5-425 and 15-5-408(b);

21 (13) The visitor has filed a report recommending appointment
22 of a conservator; and

23 (14) Michael S. Derrick is a qualified and suitable person to
24 act as conservator and is willing to serve; and

25 (15) The M.C. Shelley Family Trust, dated October 14, 1993,
26 remains a valid Trust and has not been revoked.

1 THEREFORE, IT IS ORDERED THAT:

2 (a) Michael S. Derrick is appointed conservator for MELVIN
3 C. SHELLEY.

4 (b) Letters of conservatorship shall issue to Michael S.
5 Derrick on the filing of the conservator's acceptance of
6 appointment.

7 (c) Those persons entitled to compensation shall submit
8 their billings to the conservator as specified above.

9 (d) Upon the conservator's acceptance of appointment, and
10 issuance of the Letters of Conservatorship, the conservator shall
11 become the sole Trustee of the M.C. Shelley Family Trust, and
12 exercise all powers delegated to the Trustee therein; and, at that
13 time, Joe Nysingh, Frank Shelley, and Ron Shelley, shall be
14 removed as Co-Trustees of said Trust and their duties and
15 obligations as Co-Trustees shall thereupon cease.

16 (e) Not later than 90 days after the date hereof, the
17 conservator shall file his inventory of the conservatorship estate
18 assets.

19 (f) The conservator shall file with the Court, at least
20 annually on the anniversary date of this Order, an annual
21 accounting of the Ward's estate pursuant to I.C. 15-5-419. The
22 conservator shall provide copies of the accounting to the
23 following persons:

24 Brad Masingill, Weiser, Idaho, Attorney for the Ward;
25 Ron Shelley; Frank Shelley; Melita Poston; and Nicholas T.
26 Bokides, Weiser, Idaho, Attorney for Betty J. Shelley,

1 Guardian.

2 (g) The Conservator shall file a final report and accounting
3 with the Court, pursuant to I.C. 15-5-210 and 15-5-419, upon the
4 incapacitated person's death or the termination of the ward's
5 incapacity.

6 Done and dated at Payette, Idaho, this 8 day of July,
7 1998.

8 /s/ A. LYNNE KROGH
LAWYER MAGISTRATE

9 A. LYNNE KROGH, MAGISTRATE



ARTICLES OF ORGANIZATION LIMITED LIABILITY COMPANY

FILED
2 26 11 99

(Instructions on back of application)

SECRETARY OF STATE
STATE OF IDAHO

- The name of the limited liability company is: M.C. Shelley Properties, LLC
- The address of the initial registered office is: 104 9th Ave. So., Nampa, ID
83651 (not a PO Box)
- and the name of the initial registered agent at that address is: Stephen L. Pruss
- Signature of registered agent: *[Signature]*

- Is management of the limited liability company vested in a manager or managers?
☒ Yes ☐ No (check appropriate box)

- If management is vested in one or more manager(s), list the name(s) and address(es) of at least one initial manager. If management is vested in the members, list the name(s) and address(es) of at least one initial member.

Name:
Michael Derrick, Trustee of
The M.C. Shelley Family
Trust UTA 10-14-93

Address: P
93 SW 4th ~~St.~~ ^{Ave.}, Ontario, OR 97914

- Signature of at least one person listed in #4 above:

[Signature]

Secretary of State use only

IDAHO SECRETARY OF STATE

12/29/1999 09:00
CK: 24381 CT: 7269 BH: 27723

1 @ 100.00 = 100.00 ORGAN LLC # 2

W10646

EXHIBIT

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