



U.S. Department of Justice

Environment and Natural Resources Division

VBW:DAJ

90-6-2-63

David A. Jarvis
Labat-Anderson, Inc.
999 Eighteenth Street
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Denver, Colorado 80202

Telephone (303) 312-7370
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January 18, 2005

via FedEx Mail

Diana R. Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, Idaho 83303-2707

Re: SRBA Case No. 39576
Subcase Nos. 51-02002, *et al.*; 51-12756, *et al.*; and 51-12604, *et al.*

Dear Ms. Delaney:

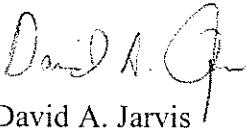
Enclosed for filing is the original document in the above mentioned subcases:

1. **UNITED STATES' RESPONSE TO THE SRBA COURT'S ORDER SETTING EXPEDITED HEARING ON STATUS OF CLAIMS**

The United States will be following up this FedEx filing with 391 copies for the remaining files in the covered subcases.

Thank you for your time and attention in this matter.

Sincerely,


David A. Jarvis
Paralegal

Enclosure

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
PETER C. MONSON
Assistant Chief, Indian Resources Section
VANESSA BOYD WILLARD
Trial Attorney, Indian Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, Colorado 80202
(303) 312-7350

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 Nos. 51-02002, <i>et al.</i> [Exhibit A]
	)	Subcase Nos. 51-12756, <i>et al.</i> [Exhibit B] and
Case No. 39576	)	Subcase Nos. 51-12604, <i>et al.</i> [Exhibit C]
	)	
	)	UNITED STATES' RESPONSE TO THE
	)	SRBA COURT'S ORDER SETTING
	)	EXPEDITED HEARING ON STATUS
	)	OF CLAIMS
	)	

In response to the Court's Order Setting Expedited Hearing on Status of Claims, the United States offers this pre-hearing explanation of the issues identified in the Order. As explained in more detail below, the United States believes that these four claims are properly before this court as a result of the Court's granting of the United States' 1998 Motion to Amend the original instream flow claims and no further action is required by this Court or by the parties with regard to the amendment or filing of these claims.

The four specific claim numbers at issue all have a similar history and their story begins

with the United States' *Standard Form 4 – Motion to File: Amended Notice of Claim* (SRBA Subcase Nos. 51-12756, 51-12761, 55-13476, 55-13477, 55-13485, 55-13486, and 55-13487) and *Memorandum in Support* (filed February 26, 1998).^{1/} In that Motion, the United States sought to make technical amendments to several of its instream flow claims filed on behalf of the Shoshone-Paiute Tribes. Specifically, two of the original claims were to be amended to more precisely define the quantity of water claimed within the original stream reach such that some portions of that reach would have lower flows. Through those refinements to the claims, the streams were divided into shorter segments with separate claim numbers assigned to each of those shorter segments. In both cases, the original claim was divided into three segments, one of which retained the original claim number and two new claim numbers were assigned to the other two segments.^{2/} Further, in each instance, the amended claims sought less water than had been claimed in the original claim. (See Attachment 2 – *United States' Memorandum in Support of the United States' Motion to file Amended Notices of Claim* at n. 1).

Technical amendments may be made to claims before the court, as anticipated by Administrative Order 1, as amended. *SRBA Administrative Order 1 – Rules of Procedure* (amended 10/10/97) (“*A.O.1*”) at § 4(d)(2) and § 17(b)(3). Where an amendment seeks less water than was originally claimed and does not otherwise change the parameters of the claim that may create different impacts than would have been anticipated by the original claim, there is no

^{1/} The *Motion to Amend* and *Memorandum in Support* are attached as Attachments 1 and 2. A possible source of the confusion in this matter may stem from the fact that the new claim numbers were not included in the caption of the Motion to Amend. Indeed, as a Motion to Amend, it was appropriate that only the claim numbers to be amended were listed in the caption. The new claim numbers were identified appropriately within the body of the Motion and Memorandum.

^{2/} The United States' practice for assigning claim numbers has been to call staff at IDWR who specify the numbers to use. In most cases, IDWR has a second opportunity to see the claim number as the claims go through IDWR for abstracting and reporting to the Court. Here, the claims were already before the Court and the technical amendments merely refined the original claims in such a manner as to split the original claim into three segments.

need for additional notice or an opportunity to comment. I.C. § 42-222(1) (2004). Here, the amendments did not expand the geographic scope of the original claims and in fact reduced the flows claimed in the original stream reach.^{3/} Conceivably, the amendments could have been made within the framework of the original claim number by specifying on the face of that single claim form the three smaller stream segments and the specific flows claimed for each of those smaller segments. However, for purposes of administration of the rights, it would probably be simpler to have those three segments defined as three separate water rights. That procedural option for the amendments was the one chosen by the United States.

Turning to the specific questions posed by the Court's Order, the United States believes that the first enumerated question misstates the history by characterizing these as new claims. As explained above and as explained in the *United States' Memorandum in Support*, these were properly characterized as claim amendments as allowed by *A.O.1* § 17(b)(3). As such, and because the nature of the amendments do not require additional notice, there is no need to refile the amendments as late claims, nor is there any need for IDWR to abstract and report the claims. It also follows that there is no need for a new objection and response period.

As to the Court's third and fourth questions, the United States believes that no further action is required by this Court or by the parties to resolve these issues. Judge Hurlbutt's granting of the Motion to Amend properly resolved the Motion before the Court. Because of the unique nature of the amendments, four new claim numbers were generated, but these were merely subdivisions of the claims that were already properly before the Court. At most, the

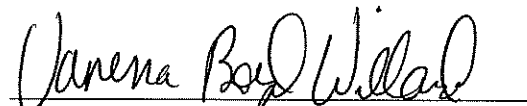
^{3/} This situation is analogous to amendment of an irrigation claim that might be pending before this Court. If the owner of a 1,000 acre farm decided to split his or her 2,000 acre-foot water right in anticipation of a possible future sale, the amendment might take the form of division into two new claims, each to serve 500 acres. At the same time, the claim could be refined to account for the fact that 20 acres of irrigated land had been converted to a non-irrigation use, resulting in two claims, one for 1,000 acre-feet and one for 900 acre-feet. Such an amendment would result in a new claim number, but would not require additional notice.

Court's and IDWR's records need to be made consistent with Judge Hurlbutt's Order, but that should only be an administrative or explanatory action, and will not require further formal action by this Court. Further, all four of these claims are on the current "Exhibit B" list of Duck Valley subcases (*i.e.*, Subcases 51-12756, *et al.*) defining the consolidated non-consumptive instream flow claims, so no action is necessary to correct the consolidation of claims. Finally, no change to the trial schedule is necessary because of the 1998 Amendments.

In summary, while the United States recognizes that it is unusual for a claim amendment to result in the creation of new claim numbers, that is exactly what happened in this instance. However odd that may have been procedurally for IDWR and the Court's record keeping procedures, the new claim numbers were explained in the 1998 Motion, specifically identified in the amended claims submitted to and approved by this Court, and no further judicial action is required.

Dated this 18th day of January 2005.

Thomas L. Sansonetti
Assistant Attorney General
Peter C. Monson
Assistant Section Chief


Vanessa Boyd Willard
Trial Attorney
Indian Resources Section

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of January 2005, I caused to be served true and correct copies of the attached **United States' Response to the SRBA Court's Order Setting Expedited Hearing on Status of Claims** as follows:

By facsimile and FedEx mail:

DISTRICT COURT (original + 391 copies)
253 Third Ave., North
Twin Falls, ID 83301
208-736-2121

By facsimile and first-class U.S. mail:

David J. Barber
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449
208-334-2690

Jeanette Wolfley
Special Counsel
Shoshone-Bannock Tribes
202 N. Arthur
Pocatello, ID 83202
208-232-7472

Jeanne S. Whiteing
Whiteing & Smith
1136 Pearl Street
Boulder, CO 80302
303-444-2365

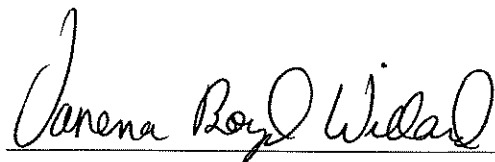
John K. Simpson
Barker, Rosholt & Simpson
P.O. Box 2139
Boise, ID 83701-2139
208-334-6034

Charles L. Honsinger
Ringert, Clark Chartered
P.O. Box 2773
Boise, ID 83701-2773
208-342-4657

Terry T. Uhling
J.R. Simplot Company
P.O. Box 27
Boise, ID 83707
208-389-7464

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098
208-287-6701

United States Dept. of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724
208-387-0842



Attachment 1

DOJ/BOA-57

MOTION TO FILE AMENDED NOTICE OF CLAIM BY THE UNITED STATES OF AMERICA (BUREAU OF INDIAN AFFAIRS - Page 1

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a separate form for each late or amended Notice of Claim.

This form has been adopted by the court in SRBA Administrative Order 1, Rules of Procedure (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a Motion to File a Late Notice of Claim or a Motion to File an Amended Notice of Claim, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

Claimant United States of America (Bureau of Indian Affairs, by and through its undersigned attorney, and pursuant to SRBA Administrative Order 1, Rules of Procedure, and I.R.C.P. 55(c) respectfully moves the Court to enter an Order granting permission to file Amended Notices of Claim in these consolidated cases, and as grounds therefore, states:

1. The United States seeks to amend its Notices of Claim to the use of water in the SRBA because:

Since the filing of its notices of claim, the United States has undertaken additional analysis to further clarify and refine its claims for non-consumptive flows for the Duck Valley Indian Reservation. Based on this additional analysis, the United States is seeking to amend its claims for these reserved water rights.

2. The Amended Claims, submitted herewith, clarify and refine the amounts of water claimed for the Reservation, the times in which this water is needed, the priority dates of the claims, and the legal description of the claims. This clarification and refinement of the claimed flows will not in any manner prejudice other parties to this litigation.

3. This motion and the amendment to the claim are timely. No trial or dispositive motion dates have been set in this matter, nor has any discovery taken place.

4. The United States has attached its Amended Notices of Claim hereto, and incorporates it by reference herein.

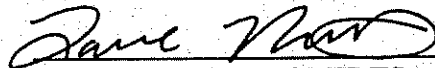
5. Counsel for the United States of America (Bureau of Indian Affairs) in this matter are designated below, and have read SRBA Administrative Order 1, Rules of Procedure (amended Sept. 30 1996).

Peter Monson,
Lawrence S. Roberts
Attorneys, Indian Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, Colorado 80202

WHEREFORE, for good cause shown, the United States of America (Bureau of Indian Affairs) respectfully requests this court to enter an Order granting leave to file the Amended Notices of Claim herein.

Dated this 26th day of February, 1998.

Respectfully submitted,



LAWRENCE S. ROBERTS
PETER MONSON
Trial Attorneys
U.S. Department of Justice

VERIFICATION

District of Columbia)

Lawrence Roberts, being first duly sworn, upon oath, deposes and says:

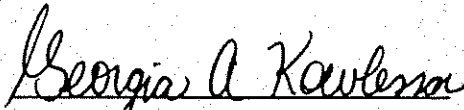
That I am the attorney for the party/claimant filing this motion for amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.



Attorney signing in representative

capacity

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this 26th day of February, 1998, a Notary Public in and for the District of Columbia.



NOTARY PUBLIC

DISTRICT OF COLUMBIA

My Commission Expires:

GEORGIA A. KOWLESSAR
Notary Public, District of Columbia
My Commission Expires September 14, 2000

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of February, 1998, I served a true and correct copy of the foregoing **Standard Form 4 - Motion to File Amended Notice of Claim, Memorandum in Support of Motion to File Amended Notice of Claim, and Notice of Appearance** by depositing a copy thereof in the U.S. mail, postage prepaid upon the following:

Idaho Power Company
James C. Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906

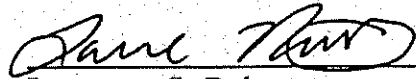
State of Idaho
Steven W. Strack
Deputy Attorney General
700 W Jefferson Room 210
P.O. Box 44449
Boise, ID 83711-4449

Terry T. Uhling
P.O. Box 27
Boise, ID 83707

William F. Ringert
P.O. Box 2773
Boise, ID 83701

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

Frank and Mary Tanikuni
Route 1 Box 1162
Homedale, ID 83628


Lawrence S. Roberts

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: 55-13476

Date Received: _____

Receipt No: _____

Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT RESERVED UNDER FEDERAL LAW
AMENDED

1. **Name:** UNITED STATES OF AMERICA as trustee on behalf of the
SHOSHONE-PAIUTE TRIBES of the DUCK VALLEY INDIAN RESERVATION
acting through the:

Address: AREA DIRECTOR, PORTLAND AREA OFFICE
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** April 16, 1877

3. **Source of Water:** Owyhee River

4. **Beginning Point of Claimed Instream Flow is:**
Idaho/Nevada state line
SE¼ Section 30, Township 16S, Range 3E

Ending Point of Claimed Instream Flow is:
Confluence of Owyhee River and Blue Creek
SW¼ Section 15, Township 16S, Range 2E

5. **Description of Diverting Works:** N/A; Instream flow

6. **Total Annual Quantity
of Water Reserved:**

January	24.5 cubic feet per second (cfs)
February	24.5 cfs
March	24.5 cfs
April	17.6 cfs
May	17.6 cfs
June	17.6 cfs
July	24.5 cfs
August	24.5 cfs
September	24.5 cfs
October	24.5 cfs
November	24.5 cfs
December	24.5 cfs

7. **Total Consumptive Use Claimed:** 0.0 acre-feet per annum.

8. Purposes of Use:

To fulfill the purposes of the Executive Order of April 16, 1877, reprinted in I Charles J. Kappler, Indian Affairs: Laws and Treaties 866 (Washington: GPO 1904) (hereafter Kappler); the Executive Order of May 4, 1886, I Kappler 866; and the Executive Order of July 1, 1910, III Kappler 679; which established the Duck Valley Indian Reservation as a homeland for the Shoshone-Paiute Tribes. Such uses include, but are not limited to, fisheries, religious, and ceremonial purposes.

9. Period of Use: January 1 through December 31 of each year.

10. Legal Description of Reservation:

Commencing at the one hundredth mile-post of the survey of the north boundary of Nevada; thence due north to the intersection of the north boundary of township 16 south of Boise base-line in Idaho; thence due west to a point due north of the one hundred and twentieth mile-post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base-line in Nevada; thence due east to a point due south of the place of beginning; thence north to the place of beginning.

Executive Order April 16, 1877.

Township 15 South, Ranges 1, 2, and 3, East Boise Meridian.

Executive Order May 4, 1886.

All that part of T. 15 S., R. 4E., Boise meridian, lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township.

Executive Order July 1, 1910.

11. Other Water Rights Used: N/A.

12. List of Documents

Creating Reservation: Executive Order of April 16, 1877, I Kappler 866;
Executive Order of May 4, 1886, I Kappler 866;
Executive Order of July 1, 1910, III Kappler 679.

13. Basis of Claim: Federal Reserved Water Rights

14. Remarks:

In order to comply with IDAHO CODE § 42-1409(1), the United States has designated the "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format required by IDAHO CODE § 42-1409(1) should not be construed to limit the United States' or the Shoshone-Paiute Tribes' later use of the water at other points of diversion, places of use, or for other purposes. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Shoshone-Paiute Tribes. The quantification standards used in no way constitute a limitation on the subsequent use of the water by the United States or the Shoshone-Paiute Tribes.

NOTICE:

All notices required by law to be mailed by the Director to the claimant signing the verification form should be also mailed to the address listed below.

Address: U.S. Dept. of Justice
Environment and Natural Resource Division
Attn: Lawrence S. Roberts
550 W. Fort St., MSC 033
Boise, ID 83724

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: 55-13668

Date Received: _____

Receipt No: _____

Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT RESERVED UNDER FEDERAL LAW
AMENDED

1. **Name:** UNITED STATES OF AMERICA as trustee on behalf of the
SHOSHONE-PAIUTE TRIBES of the DUCK VALLEY INDIAN RESERVATION
acting through the:

Address: AREA DIRECTOR, PORTLAND AREA OFFICE
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** April 16, 1877

3. **Source of Water:** Owyhee River

4. **Beginning Point of Claimed Instream Flow is:**
Confluence of Owyhee River and Blue Creek
SW¼ Section 15, Township 16S, Range 2E

Ending Point of Claimed Instream Flow is:
South boundary of Township 15S
SW¼ Section 31, Township 15S, Range 2E

5. **Description of Diverting Works:** N/A; Instream flow

6. **Total Annual Quantity
of Water Reserved:**

January	29.9 cubic feet per second (cfs)
February	29.9 cfs
March	29.9 cfs
April	262.5 cfs
May	262.5 cfs
June	262.5 cfs
July	29.9 cfs
August	29.9 cfs
September	29.9 cfs
October	29.9 cfs
November	29.9 cfs
December	29.9 cfs

7. **Total Consumptive Use Claimed:** 0.0 acre-feet per annum.

8. Purposes of Use:

To fulfill the purposes of the Executive Order of April 16, 1877, reprinted in I Charles J. Kappler, Indian Affairs: Laws and Treaties 866 (Washington: GPO 1904) (hereafter Kappler); the Executive Order of May 4, 1886, I Kappler 866; and the Executive Order of July 1, 1910, III Kappler 679; which established the Duck Valley Indian Reservation as a homeland for the Shoshone-Paiute Tribes. Such uses include, but are not limited to, fisheries, religious, and ceremonial purposes.

9. Period of Use: January 1 through December 31 of each year.

10. Legal Description of Reservation:

Commencing at the one hundredth mile-post of the survey of the north boundary of Nevada; thence due north to the intersection of the north boundary of township 16 south of Boise base-line in Idaho; thence due west to a point due north of the one hundred and twentieth mile-post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base-line in Nevada; thence due east to a point due south of the place of beginning; thence north to the place of beginning.

Executive Order April 16, 1877.

Township 15 South, Ranges 1, 2, and 3, East Boise Meridian.

Executive Order May 4, 1886.

All that part of T. 15 S., R. 4E., Boise meridian, lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township.

Executive Order July 1, 1910.

11. Other Water Rights Used: N/A.

12. List of Documents

Creating Reservation: Executive Order of April 16, 1877, I Kappler 866;
Executive Order of May 4, 1866, I Kappler 866;
Executive Order of July 1, 1910, III Kappler 679.

13. Basis of Claim: Federal Reserved Water Rights

14. Remarks:

In order to comply with IDAHO CODE § 42-1409(1), the United States has designated the "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format required by IDAHO CODE § 42-1409(1) should not be construed to limit the United States' or the Shoshone-Paiute Tribes' later use of the water at other points of diversion, places of use, or for other purposes. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Shoshone-Paiute Tribes. The quantification standards used in no way constitute a limitation on the subsequent use of the water by the United States or the Shoshone-Paiute Tribes.

NOTICE:

All notices required by law to be mailed by the Director to the claimant signing the verification form should be also mailed to the address listed below.

Address: U.S. Dept. of Justice
Environment and Natural Resource Division
Attn: Lawrence S. Roberts
550 W. Fort St., MSC 033
Boise, ID 83724

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: 55-13669

Date Received: _____

Receipt No: _____

Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT RESERVED UNDER FEDERAL LAW
AMENDED

1. **Name:** UNITED STATES OF AMERICA as trustee on behalf of the
SHOSHONE-PAIUTE TRIBES of the DUCK VALLEY INDIAN RESERVATION
acting through the:

Address: AREA DIRECTOR, PORTLAND AREA OFFICE
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** May 4, 1886

3. **Source of Water:** Owyhee River

4. **Beginning Point of Claimed Instream Flow is:**
South boundary of Township 15S
SW¼ Section 31, Township 15S, Range 2E

Ending Point of Claimed Instream Flow is:
Canyon mouth
NE¼ Section 36, Township 15S, Range 1E

5. **Description of Diverting Works:** N/A; Instream flow

6. **Total Annual Quantity
of Water Reserved:**

January	29.9 cubic feet per second (cfs)
February	29.9 cfs
March	29.9 cfs
April	262.5 cfs
May	262.5 cfs
June	262.5 cfs
July	29.9 cfs
August	29.9 cfs
September	29.9 cfs
October	29.9 cfs
November	29.9 cfs
December	29.9 cfs

7. **Total Consumptive Use Claimed:** 0.0 acre-feet per annum.

8. **Purposes of Use:**

To fulfill the purposes of the Executive Order of April 16, 1877, reprinted in I Charles J. Kappler, Indian Affairs: Laws and Treaties 866 (Washington: GPO 1904) (hereafter Kappler); the Executive Order of May 4, 1886, I Kappler 866; and the Executive Order of July 1, 1910, III Kappler 679; which established the Duck Valley Indian Reservation as a homeland for the Shoshone-Paiute Tribes. Such uses include, but are not limited to, fisheries, religious, and ceremonial purposes.

9. **Period of Use:** January 1 through December 31 of each year.

10. **Legal Description of Reservation:**

Commencing at the one hundredth mile-post of the survey of the north boundary of Nevada; thence due north to the intersection of the north boundary of township 16 south of Boise base-line in Idaho; thence due west to a point due north of the one hundred and twentieth mile-post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base-line in Nevada; thence due east to a point due south of the place of beginning; thence north to the place of beginning.

Executive Order April 16, 1877.

Township 15 South, Ranges 1, 2, and 3, East Boise Meridian.

Executive Order May 4, 1886.

All that part of T. 15 S., R. 4E., Boise meridian, lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township.

Executive Order July 1, 1910.

11. **Other Water Rights Used:** N/A.

12. **List of Documents**

Creating Reservation: Executive Order of April 16, 1877, I Kappler 866;
Executive Order of May 4, 1886, I Kappler 866;
Executive Order of July 1, 1910, III Kappler 679.

13. **Basis of Claim:** Federal Reserved Water Rights

14. **Remarks:**

In order to comply with IDAHO CODE § 42-1409(1), the United States has designated the "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format required by IDAHO CODE § 42-1409(1) should not be construed to limit the United States' or the Shoshone-Paiute Tribes' later use of the water at other points of diversion, places of use, or for other purposes. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Shoshone-Paiute Tribes. The quantification standards used in no way constitute a limitation on the subsequent use of the water by the United States or the Shoshone-Paiute Tribes.

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Boise, ID 83724

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: 55-13477

Date Received: _____

Receipt No: _____

Received By: _____

**NOTICE OF CLAIM TO A WATER RIGHT RESERVED UNDER FEDERAL LAW
AMENDED**

1. **Name:** UNITED STATES OF AMERICA as trustee on behalf of the
SHOSHONE-PAIUTE TRIBES of the DUCK VALLEY INDIAN RESERVATION
acting through the:

Address: AREA DIRECTOR, PORTLAND AREA OFFICE
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** May 4, 1886

3. **Source of Water:** Owyhee River

4. **Beginning Point of Claimed Instream Flow is:**
Downstream of the canyon mouth
NE¼ Section 36, Township 15S, Range 1E

Ending Point of Claimed Instream Flow is:
Reservation boundary
SW¼ Section 19, Township 15S, Range 1E

5. **Description of Diverting Works:** N/A; Instream flow

6. **Total Annual Quantity
of Water Reserved:**

January	51.1 cubic feet per second (cfs)
February	51.1 cfs
March	51.1 cfs
April	51.1 cfs
May	51.1 cfs
June	51.1 cfs
July	51.1 cfs
August	51.1 cfs
September	51.1 cfs
October	41.0 cfs
November	51.1 cfs
December	51.1 cfs

7. **Total Consumptive Use Claimed:** 0.0 acre-feet per annum.

8. Purposes of Use:

To fulfill the purposes of the Executive Order of April 16, 1877, reprinted in I Charles J. Kappler, Indian Affairs: Laws and Treaties 866 (Washington: GPO 1904) (hereafter Kappler); the Executive Order of May 4, 1886, I Kappler 866; and the Executive Order of July 1, 1910, III Kappler 679; which established the Duck Valley Indian Reservation as a homeland for the Shoshone-Paiute Tribes. Such uses include, but are not limited to, fisheries, religious, and ceremonial purposes.

9. Period of Use: January 1 through December 31 of each year.

10. Legal Description of Reservation:

Commencing at the one hundredth mile-post of the survey of the north boundary of Nevada; thence due north to the intersection of the north boundary of township 16 south of Boise base-line in Idaho; thence due west to a point due north of the one hundred and twentieth mile-post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base-line in Nevada; thence due east to a point due south of the place of beginning; thence north to the place of beginning.

Executive Order April 16, 1877.

Township 15 South, Ranges 1, 2, and 3, East Boise Meridian.

Executive Order May 4, 1886.

All that part of T. 15 S., R. 4E., Boise meridian, lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township.

Executive Order July 1, 1910.

11. Other Water Rights Used: N/A.

12. List of Documents

Creating Reservation: Executive Order of April 16, 1877, I Kappler 866;
Executive Order of May 4, 1886, I Kappler 866;
Executive Order of July 1, 1910, III Kappler 679.

13. Basis of Claim: Federal Reserved Water Rights

14. Remarks:

In order to comply with IDAHO CODE § 42-1409(1), the United States has designated the "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format required by IDAHO CODE § 42-1409(1) should not be construed to limit the United States' or the Shoshone-Paiute Tribes' later use of the water at other points of diversion, places of use, or for other purposes. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Shoshone-Paiute Tribes. The quantification standards used in no way constitute a limitation on the subsequent use of the water by the United States or the Shoshone-Paiute Tribes.

NOTICE:

All notices required by law to be mailed by the Director to the claimant signing the verification form should be also mailed to the address listed below.

Address: U.S. Dept. of Justice
Environment and Natural Resource Division
Attn: Lawrence S. Roberts
550 W. Fort St., MSC 033
Boise, ID 83724

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

WE ARE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER 39576

Ident. Number: 51-12756

Date Received: _____

Receipt No: _____

Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT RESERVED UNDER FEDERAL LAW
AMENDED

1. **Name:** UNITED STATES OF AMERICA as trustee on behalf of the
SHOSHONE-PAIUTE TRIBES of the DUCK VALLEY INDIAN RESERVATION
acting through the:

Address: AREA DIRECTOR, PORTLAND AREA OFFICE
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** April 16, 1877

3. **Source of Water:** Marys Creek

4. **Beginning Point of Claimed Instream Flow is:**
Origin of Marys Creek
SW¼ Section 30, Township 16S, Range 4E

Ending Point of Claimed Instream Flow is:
South boundary of Township 15S
NW¼ Section 6, Township 16S, Range 4E

5. **Description of Diverting Works:** N/A; Instream flow

6. **Total Annual Quantity
of Water Reserved:**

January	2.0 cubic feet per second (cfs)
February	2.9 cfs
March	7.4 cfs
April	6.6 cfs
May	6.6 cfs
June	6.6 cfs
July	2.5 cfs
August	1.4 cfs
September	1.1 cfs
October	0.9 cfs
November	1.1 cfs
December	1.5 cfs

7. **Total Consumptive Use Claimed:** 0.0 acre-feet per annum.

8. **Purposes of Use:**

To fulfill the purposes of the Executive Order of April 16, 1877, reprinted in I Charles J. Kappler; Indian Affairs: Laws and Treaties 866 (Washington: GPO 1904) (hereafter Kappler); the Executive Order of May 4, 1886, I Kappler 866; and the Executive Order of July 1, 1910, III Kappler 679; which established the Duck Valley Indian Reservation as a homeland for the Shoshone-Paiute Tribes. Such uses include, but are not limited to, fisheries, religious, and ceremonial purposes.

9. **Period of Use:** January 1 through December 31 of each year.

10. **Legal Description of Reservation:**

Commencing at the one hundredth mile-post of the survey of the north boundary of Nevada; thence due north to the intersection of the north boundary of township 16 south of Boise base-line in Idaho; thence due west to a point due north of the one hundred and twentieth mile-post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base-line in Nevada; thence due east to a point due south of the place of beginning; thence north to the place of beginning.

Executive Order April 16, 1877.

Township 15 South, Ranges 1, 2, and 3, East Boise Meridian.

Executive Order May 4, 1886.

All that part of T. 15 S., R. 4E., Boise meridian, lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township.

Executive Order July 1, 1910.

11. **Other Water Rights Used:** N/A.

12. **List of Documents**

Creating Reservation: Executive Order of April 16, 1877, I Kappler 866;
Executive Order of May 4, 1886, I Kappler 866;
Executive Order of July 1, 1910, III Kappler 679.

13. **Basis of Claim:** Federal Reserved Water Rights

14. **Remarks:**

In order to comply with IDAHO CODE § 42-1409(1), the United States has designated the "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format required by IDAHO CODE § 42-1409(1) should not be construed to limit the United States' or the Shoshone-Paiute Tribes' later use of the water at other points of diversion, places of use, or for other purposes. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Shoshone-Paiute Tribes. The quantification standards used in no way constitute a limitation on the subsequent use of the water by the United States or the Shoshone-Paiute Tribes.

NOTICE:

All notices required by law to be mailed by the Director to the claimant signing the verification form should be also mailed to the address listed below.

Address: U.S. Dept. of Justice
Environment and Natural Resource Division
Attn: Lawrence S. Roberts
550 W. Fort St., MSC 033
Boise, ID 83724

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: 51-12847

Date Received: _____

Receipt No: _____

Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT RESERVED UNDER FEDERAL LAW
AMENDED

1. **Name:** UNITED STATES OF AMERICA as trustee on behalf of the
SHOSHONE-PAIUTE TRIBES of the DUCK VALLEY INDIAN RESERVATION
acting through the:

Address: AREA DIRECTOR, PORTLAND AREA OFFICE
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** May 4, 1886

3. **Source of Water:** Marys Creek

4. **Beginning Point of Claimed Instream Flow is:**
Within Township 15S, Range 3E
SE¼ Section 36, Township 15S, Range 3E

Ending Point of Claimed Instream Flow is:
Within Township 15S, Range 3E
SE¼ Section 25, Township 15S, Range 3E

5. **Description of Diverting Works:** N/A; Instream flow

6. **Total Annual Quantity
of Water Reserved:**

January	2.0 cubic feet per second (cfs)
February	2.9 cfs
March	7.4 cfs
April	6.6 cfs
May	6.6 cfs
June	6.6 cfs
July	2.5 cfs
August	1.4 cfs
September	1.1 cfs
October	0.9 cfs
November	1.1 cfs
December	1.5 cfs

7. **Total Consumptive Use Claimed:** 0.0 acre-feet per annum.

8. Purposes of Use:

To fulfill the purposes of the Executive Order of April 16, 1877, reprinted in I Charles J. Kappler, Indian Affairs: Laws and Treaties 866 (Washington: GPO 1904) (hereafter Kappler); the Executive Order of May 4, 1886, I Kappler 866; and the Executive Order of July 1, 1910, III Kappler 679; which established the Duck Valley Indian Reservation as a homeland for the Shoshone-Paiute Tribes. Such uses include, but are not limited to, fisheries, religious, and ceremonial purposes.

9. Period of Use: January 1 through December 31 of each year.

10. Legal Description of Reservation:

Commencing at the one hundredth mile-post of the survey of the north boundary of Nevada; thence due north to the intersection of the north boundary of township 16 south of Boise base-line in Idaho; thence due west to a point due north of the one hundred and twentieth mile-post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base-line in Nevada; thence due east to a point due south of the place of beginning; thence north to the place of beginning.

Executive Order April 16, 1877.

Township 15 South, Ranges 1, 2, and 3, East Boise Meridian.

Executive Order May 4, 1886.

All that part of T. 15 S., R. 4E., Boise meridian, lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township.

Executive Order July 1, 1910.

11. Other Water Rights Used: N/A.

12. List of Documents

Creating Reservation: Executive Order of April 16, 1877, I Kappler 866;
Executive Order of May 4, 1886, I Kappler 866;
Executive Order of July 1, 1910, III Kappler 679.

13. Basis of Claim: Federal Reserved Water Rights

14. Remarks:

In order to comply with IDAHO CODE § 42-1409(1), the United States has designated the "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format required by IDAHO CODE § 42-1409(1) should not be construed to limit the United States' or the Shoshone-Paiute Tribes' later use of the water at other points of diversion, places of use, or for other purposes. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Shoshone-Paiute Tribes. The quantification standards used in no way constitute a limitation on the subsequent use of the water by the United States or the Shoshone-Paiute Tribes.

NOTICE:

All notices required by law to be mailed by the Director to the claimant signing the verification form should be also mailed to the address listed below.

Address: U.S. Dept. of Justice
Environment and Natural Resource Division
Attn: Lawrence S. Roberts
550 W. Fort St., MSC 033
Boise, ID 83724

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: 51-12848

Date Received: _____

Receipt No: _____

Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT RESERVED UNDER FEDERAL LAW
AMENDED

1. **Name:** UNITED STATES OF AMERICA as trustee on behalf of the
SHOSHONE-PAIUTE TRIBES of the DUCK VALLEY INDIAN RESERVATION
acting through the:

Address: AREA DIRECTOR, PORTLAND AREA OFFICE
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** July 1, 1910

3. **Source of Water:** Marys Creek

4. **Beginning Point of Claimed Instream Flow is:**
West boundary of Range 4E
SW¼ Section 30, Township 15S, Range 4E

Ending Point of Claimed Instream Flow is:
Reservation boundary
SE¼ Section 4, Township 15S, Range 4E

5. **Description of Diverting Works:** N/A; Instream flow

6. **Total Annual Quantity
of Water Reserved:**

January	2.0 cubic feet per second (cfs)
February	2.9 cfs
March	7.4 cfs
April	6.6 cfs
May	6.6 cfs
June	6.6 cfs
July	2.5 cfs
August	1.4 cfs
September	1.1 cfs
October	0.9 cfs
November	1.1 cfs
December	1.5 cfs

7. **Total Consumptive Use Claimed:** 0.0 acre-feet per annum.

8. **Purposes of Use:**

To fulfill the purposes of the Executive Order of April 16, 1877, reprinted in I Charles J. Kappler, Indian Affairs: Laws and Treaties 866 (Washington: GPO 1904) (hereafter Kappler); the Executive Order of May 4, 1886, I Kappler 866; and the Executive Order of July 1, 1910, III Kappler 679; which established the Duck Valley Indian Reservation as a homeland for the Shoshone-Paiute Tribes. Such uses include, but are not limited to, fisheries, religious, and ceremonial purposes.

9. **Period of Use:** January 1 through December 31 of each year.

10. **Legal Description of Reservation:**

Commencing at the one hundredth mile-post of the survey of the north boundary of Nevada; thence due north to the intersection of the north boundary of township 16 south of Boise base-line in Idaho; thence due west to a point due north of the one hundred and twentieth mile-post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base-line in Nevada; thence due east to a point due south of the place of beginning; thence north to the place of beginning.

Executive Order April 16, 1877.

Township 15 South, Ranges 1, 2, and 3, East Boise Meridian.

Executive Order May 4, 1886.

All that part of T. 15 S., R. 4E., Boise meridian, lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township.

Executive Order July 1, 1910.

11. **Other Water Rights Used:** N/A.

12. **List of Documents**

Creating Reservation: Executive Order of April 16, 1877, I Kappler 866;
Executive Order of May 4, 1886, I Kappler 866;
Executive Order of July 1, 1910, III Kappler 679.

13. **Basis of Claim:** Federal Reserved Water Rights

14. **Remarks:**

In order to comply with IDAHO CODE § 42-1409(1), the United States has designated the "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format required by IDAHO CODE § 42-1409(1) should not be construed to limit the United States' or the Shoshone-Paiute Tribes' later use of the water at other points of diversion, places of use, or for other purposes. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Shoshone-Paiute Tribes. The quantification standards used in no way constitute a limitation on the subsequent use of the water by the United States or the Shoshone-Paiute Tribes.

NOTICE:

All notices required by law to be mailed by the Director to the claimant signing the verification form should be also mailed to the address listed below.

Address: U.S. Dept. of Justice
Environment and Natural Resource Division
Attn: Lawrence S. Roberts
550 W. Fort St., MSC 033
Boise, ID 83724

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: 55-13485

Date Received: _____

Receipt No: _____

Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT RESERVED UNDER FEDERAL LAW
AMENDED

1. **Name:** UNITED STATES OF AMERICA as trustee on behalf of the
SHOSHONE-PAIUTE TRIBES of the DUCK VALLEY INDIAN RESERVATION
acting through the:

Address: AREA DIRECTOR, PORTLAND AREA OFFICE
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** April 16, 1877
3. **Source of Water:** Blue Creek, tributary to Owyhee River
4. **Point of Diversion is:**
NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 2, Township 16S, Range 2E

Place of Use is:

Blue Creek Lakes

SW $\frac{1}{4}$

W $\frac{1}{2}$ and SE $\frac{1}{4}$

E $\frac{1}{2}$

E $\frac{1}{2}$

All

NW $\frac{1}{4}$

NE $\frac{1}{4}$

Section 1, Township 16S, Range 2E

Section 2, Township 16S, Range 2E

Section 3, Township 16S, Range 2E

Section 10, Township 16S, Range 2E

Section 11, Township 16S, Range 2E

Section 14, Township 16S, Range 2E

Section 15, Township 16S, Range 2E

5. **Description of Diverting Works:** N/A; Lake level maintenance
6. **Total Annual Quantity of Water Reserved:** 314 acre-feet per annum
7. **Total Consumptive Use Claimed:** 314 acre-feet per annum.
8. **Purposes of Use:**

To fulfill the purposes of the Executive Order of April 16, 1877, reprinted in I Charles J. Kappler, Indian Affairs: Laws and Treaties 866 (Washington: GPO 1904) (hereafter Kappler); the Executive Order of May 4, 1886, I Kappler 866; and the Executive Order of July 1, 1910, III Kappler 679; which established the Duck Valley Indian Reservation as a homeland for the Shoshone-Paiute Tribes. Such use includes but is not limited to fisheries, recreation, religious, and ceremonial purposes.

9. **Period of Use:** January 1 through December 31 of each year.

10. **Legal Description of Reservation:**

Commencing at the one hundredth mile-post of the survey of the north boundary of Nevada; thence due north to the intersection of the north boundary of township 16 south of Boise base-line in Idaho; thence due west to a point due north of the one hundred and twentieth mile-post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base-line in Nevada; thence due east to a point due south of the place of beginning; thence north to the place of beginning.

Executive Order April 16, 1877.

Township 15 South, Ranges 1, 2, and 3, East Boise Meridian.

Executive Order May 4, 1886.

All that part of T. 15 S., R. 4E., Boise meridian, lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township.

Executive Order July 1, 1910.

11. **Other Water Rights Used:** N/A

12. **List of Documents**

Creating Reservation: Executive Order of April 16, 1877, I Kappler 866;
Executive Order of May 4, 1886, I Kappler 866;
Executive Order of July 1, 1910, III Kappler 679.

13. **Basis of Claim:** Federal Reserved Water Rights

14. **Remarks:**

In order to comply with IDAHO CODE § 42-1409(1), the United States has designated the "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format required by IDAHO CODE § 42-1409(1) should not be construed to limit the United States' or the Shoshone-Paiute Tribes' later use of the water at other points of diversion, places of use, or for other purposes. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Shoshone-Paiute Tribes. The quantification standards used in no way constitute a limitation on the subsequent use of the water by the United States or the Shoshone-Paiute Tribes.

NOTICE:

All notices required by law to be mailed by the Director to the claimant signing the verification form should be also mailed to the address listed below.

Address: U.S. Dept. of Justice
Environment and Natural Resource Division
Attn: Lawrence S. Roberts
550 W. Fort St., MSC 033
Boise, ID 83724

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

ARE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER 39576

Ident. Number: 55-13486

Date Received: _____

Receipt No: _____

Received By: _____

**NOTICE OF CLAIM TO A WATER RIGHT RESERVED UNDER FEDERAL LAW
AMENDED**

1. **Name:** UNITED STATES OF AMERICA as trustee on behalf of the
SHOSHONE-PAIUTE TRIBES of the DUCK VALLEY INDIAN RESERVATION
acting through the:

Address: AREA DIRECTOR, PORTLAND AREA OFFICE
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** April 16, 1877
3. **Source of Water:** Owyhee River
4. **Point of Diversion is:**
SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ Section 15, Township 16S, Range 2E

Place of Use is:

Blue Creek Lakes

SW $\frac{1}{4}$

W $\frac{1}{2}$ and SE $\frac{1}{4}$

E $\frac{1}{2}$

E $\frac{1}{2}$

All

NW $\frac{1}{4}$

NE $\frac{1}{4}$

Section 1, Township 16S, Range 2E

Section 2, Township 16S, Range 2E

Section 3, Township 16S, Range 2E

Section 10, Township 16S, Range 2E

Section 11, Township 16S, Range 2E

Section 14, Township 16S, Range 2E

Section 15, Township 16S, Range 2E

5. **Description of Diverting Works:** N/A; Lake level maintenance
6. **Total Annual Quantity of Water Reserved:** 942 acre-feet per annum
7. **Total Consumptive Use Claimed:** 942 acre-feet per annum.
8. **Purposes of Use:**

To fulfill the purposes of the Executive Order of April 16, 1877, reprinted in I Charles J. Kappler, Indian Affairs: Laws and Treaties 866 (Washington: GPO 1904) (hereafter Kappler); the Executive Order of May 4, 1886, I Kappler 866; and the Executive Order of July 1, 1910, III Kappler 679; which established the Duck Valley Indian Reservation as a homeland for the Shoshone-Paiute Tribes. Such use includes but is not limited to fisheries, recreation, religious, and ceremonial purposes.

9. **Period of Use:** January 1 through December 31 of each year.

10. **Legal Description of Reservation:**

Commencing at the one hundredth mile-post of the survey of the north boundary of Nevada; thence due north to the intersection of the north boundary of township 16 south of Boise base-line in Idaho; thence due west to a point due north of the one hundred and twentieth mile-post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base-line in Nevada; thence due east to a point due south of the place of beginning; thence north to the place of beginning.

Executive Order April 16, 1877.

Township 15 South, Ranges 1, 2, and 3, East Boise Meridian.

Executive Order May 4, 1886.

All that part of T. 15 S., R. 4E., Boise meridian, lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township.

Executive Order July 1, 1910.

11. **Other Water Rights Used:** N/A

12. **List of Documents**

Creating Reservation: Executive Order of April 16, 1877, I Kappler 866;
Executive Order of May 4, 1886, I Kappler 866;
Executive Order of July 1, 1910, III Kappler 679.

13. **Basis of Claim:** Federal Reserved Water Rights

14. **Remarks:**

In order to comply with IDAHO CODE § 42-1409(1), the United States has designated the "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format required by IDAHO CODE § 42-1409(1) should not be construed to limit the United States' or the Shoshone-Paiute Tribes' later use of the water at other points of diversion, places of use, or for other purposes. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Shoshone-Paiute Tribes. The quantification standards used in no way constitute a limitation on the subsequent use of the water by the United States or the Shoshone-Paiute Tribes.

NOTICE:

All notices required by law to be mailed by the Director to the claimant signing the verification form should be also mailed to the address listed below.

Address: U.S. Dept. of Justice
Environment and Natural Resource Division
Attn: Lawrence S. Roberts
550 W. Fort St., MSC 033
Boise, ID 83724

**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: 55-13487

Date Received: _____

Receipt No: _____

Received By: _____

**NOTICE OF CLAIM TO A WATER RIGHT RESERVED UNDER FEDERAL LAW
AMENDED**

1. **Name:** UNITED STATES OF AMERICA as trustee on behalf of the
SHOSHONE-PAIUTE TRIBES of the DUCK VALLEY INDIAN RESERVATION
acting through the:

Address: AREA DIRECTOR, PORTLAND AREA OFFICE
Department of the Interior
Bureau of Indian Affairs
911 N.E. 11th Ave.
Portland, OR 97232

2. **Date of Priority:** April 16, 1877
3. **Source of Water:** Boyle Creek, tributary to Blue Creek
4. **Point of Diversion is:**
NW¼ NW¼ NE¼ Section 19, Township 16S, Range 3E
- Place of Use is:**
Boyle Creek Reservoir
S½ Section 18, Township 16S, Range 3E
N½ Section 19, Township 16S, Range 3E
5. **Description of Diverting Works:** N/A; Lake level maintenance
6. **Total Annual Quantity of Water Reserved:** 36 acre-feet per annum
7. **Total Consumptive Use Claimed:** 36 acre-feet per annum.
8. **Purposes of Use:**
To fulfill the purposes of the Executive Order of April 16, 1877, reprinted in I Charles J. Kappler, Indian Affairs: Laws and Treaties 866 (Washington: GPO 1904) (hereafter Kappler); the Executive Order of May 4, 1886, I Kappler 866; and the Executive Order of July 1, 1910, III Kappler 679; which established the Duck Valley Indian Reservation as a homeland for the Shoshone-Paiute Tribes. Such use includes but is not limited to fisheries, recreation, religious, and ceremonial purposes.
9. **Period of Use:** January 1 through December 31 of each year.

10. **Legal Description of Reservation:**

Commencing at the one hundredth mile-post of the survey of the north boundary of Nevada; thence due north to the intersection of the north boundary of township 16 south of Boise base-line in Idaho; thence due west to a point due north of the one hundred and twentieth mile-post of said survey of the north boundary of Nevada; thence due south to the ninth standard parallel north of the Mount Diablo base-line in Nevada; thence due east to a point due south of the place of beginning; thence north to the place of beginning.

Executive Order April 16, 1877.

Township 15 South, Ranges 1, 2, and 3, East Boise Meridian.

Executive Order May 4, 1886.

All that part of T. 15 S., R. 4E., Boise meridian, lying and being west of a line formed by extending the east boundary line of the Duck Valley Indian Reservation through the said township.

Executive Order July 1, 1910.

11. **Other Water Rights Used:** N/A

12. **List of Documents**

Creating Reservation: Executive Order of April 16, 1877, I Kappler 866;
Executive Order of May 4, 1886, I Kappler 866;
Executive Order of July 1, 1910, III Kappler 679.

13. **Basis of Claim:** Federal Reserved Water Rights

14. **Remarks:**

In order to comply with IDAHO CODE § 42-1409(1), the United States has designated the "places of use," "points of diversion," and "purposes of use" in submitting this water rights claim. The use of this format required by IDAHO CODE § 42-1409(1) should not be construed to limit the United States' or the Shoshone-Paiute Tribes' later use of the water at other points of diversion, places of use, or for other purposes. The statute's terminology has been employed to demonstrate that the amount claimed is necessary, justifiable, and available to achieve the purpose of the Reservation as a homeland for the Shoshone-Paiute Tribes. The quantification standards used in no way constitute a limitation on the subsequent use of the water by the United States or the Shoshone-Paiute Tribes.

NOTICE:

All notices required by law to be mailed by the Director to the claimant signing the verification form should be also mailed to the address listed below.

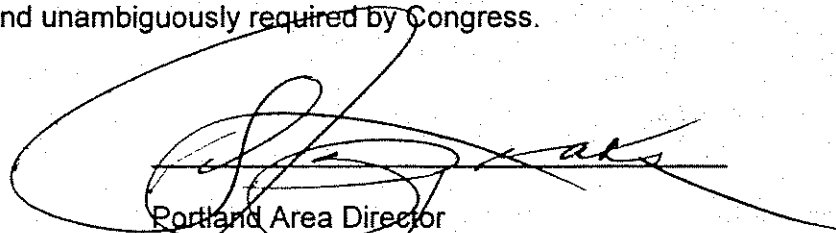
Address: U.S. Dept. of Justice
Environment and Natural Resource Division
Attn: Lawrence S. Roberts
550 W. Fort St., MSC 033
Boise, ID 83724

Verification of United States

As the Area Director, or his authorized designee, for the Portland Area of the United States Department of the Interior, Bureau of Indian Affairs, I verify under penalty of perjury pursuant to the provisions of 28 U.S.C. § 746, that to the best of my knowledge and belief the statements made in this document and in the claims filed herewith are true and correct.

Although federal compliance with 28 U.S.C. § 1746 satisfies the verification requirements of IDAHO CODE § 2-1409 (5), as a matter of comity I also solemnly swear or affirm under oath that I am the Regional Director, or his designee, and that to the best of my knowledge and belief the statements made in this document and in the claims filed herewith are true and correct.

By making this verification, neither I, the United States of America, nor any of its agencies or personnel, waive any immunities, rights, privileges, or presumptions, whether based on federal, state, or other statutory and/or common law, except as clearly and unambiguously required by Congress.



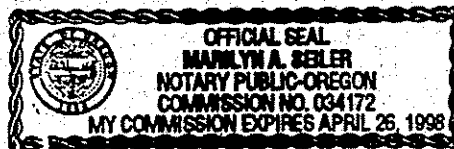
Portland Area Director
Bureau of Indian Affairs
911 N.E. 11th Avenue
Portland, Oregon 97232-4181

Executed on: 2/25/98

Subscribed and sworn (or affirmed) before me this 25th day of February 1997.

Notary Public Marilyn A. Seiler
Residing at Gresham, OR Multnomah County

My commission expires 4/26/1998



Attachment 2

RECEIVED

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DOJ/ET

UNITED STATES OF AMERICA
Attorneys' Names and Addresses

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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 No. 39576

)
) Subcase Nos. 51-12756, 51-12761,
) 55-13476, 55-13477, 55-13485
) 55-13486, 55-13487 (Consolidated
) Duck Valley Indian Reservation
) Non-Consumptive Water Right Claims)
) United States' Memorandum
) in Support of the
) United States'
) Motion to File Amended
) Notices of Claim

I. INTRODUCTION

The United States respectfully seeks leave of the Court to
amend federally reserved non-consumptive claims filed by the
United States on behalf of the Shoshone-Paiute Tribes of the Duck
Memorandum in Support of the United States' Motion to File Amended Notice of
Claim (Bureau of Indian Affairs) - Page 1

Valley Indian Reservation. The federally reserved claims were abstracted by the Idaho Department of Water Resources ("IDWR") on March 31, 1994. All of the United States' amendments to the quantity of water claimed are based on technical studies that were recently completed. The United States also seeks to amend the legal description for certain claims. These amendments attempt to accurately describe the actual location of the Owyhee River, Mary's Creek, and the existing lakes. Finally, the United States seeks to amend the priority dates for certain claims. All of the amendments to the priority dates of the claims result in a later priority date than originally claimed. For the reasons stated below, the United States' motion to amend its non-consumptive claims should be granted.

II. THE 1992 CLAIMS AND THE PROPOSED AMENDMENTS

The United States seeks to amend six of its non-consumptive claims filed on behalf of the Shoshone-Paiute Tribes of the Duck Valley Reservation. In addition, the United States seeks to withdraw claim number 51-12761. All of the amendments to the quantity of water claimed are based upon recently completed studies.

For claim numbers 55-13485, 55-13486, and 55-13487 the United States' amendments represent a decrease in the quantity of water claimed. For these lake level maintenance claims, the United States also seeks to correct the point of diversions and

the places of use.^{1/} The amended claims reflect the correct locations of the point of diversion and places of use.

The United States also seeks to amend the quantity of water and the priority dates for claims numbered 55-13476, 55-13477, and 51-12756.^{2/} These original claims for water in Mary's Creek

^{1/}Claim number 55-13485 was originally filed and reported with a point of diversion in the NW1/4 NW1/4 SW1/4 Section 11, Township 16S, Range 2E. The correct point of diversion for this claim is the NW1/4 NE1/4 SE1/4 Section 2, Township 16S, Range 2E. The places of use were claimed as the W1/2 Section 2, Township 16S, Range 2E; E1/2 Section 3, Township 16S, Range 2E; NE1/4 Section 10, Township 16S, range 2E; All Section 11, Township 16S, Range 2E. The correct places of use are described as the Blue Creek Lakes SW1/4 Section 1, Township 16S, Range 2E; W1/2 and SE1/4, Section 2, Township 16S, Range 2E; E1/2 Section 3, Township 16S, Range 2E; E1/2 Section 10, Township 16S, Range 2E; All Section 11, Township 16S, Range 2E; NW1/4 Section 14, Township 16S, Range 2E; NE1/4 Section 15, Township 16S, Range 2E.

Claim number 55-13486 was originally filed and reported with a point of diversion in the NW1/4 SE1/4 SW1/4 Section 15, Township 16S, Range 2E. The correct point of diversion is SW1/4 NE1/4 SW 1/4 Section 15, Township 16S, Range 2E. The places of use were claimed as the W1/2 Section 2, Township 16S, Range 2E; E1/2 Section 3, Township 16S, Range 2E; NE1/4 Section 10, Township 16S, Range 2E; All Section 11, Township 16S, Range 2E. The correct places of use are described as the Blue Creek Lakes SW1/4 Section 1, Township 16S, Range 2E; W1/2 and SE1/4 Section 2, Township 16S, Range 2E; E1/2 Section 3, Township 16S, Range 2E; E1/2 Section 10, Township 16S, Range 2E; All Section 11, Township 16S, Range 2E; NW1/4 Section 14, Township 16S, Range 2E; NE1/4 Section 15, Township 16S, Range 2E.

Claim number 55-13487 was originally filed and reported with a point of diversion in the NE1/4 NE1/4 NW1/4 Section 19, Township 16S, Range 2E. The correct point of diversion is NW1/4 NW1/4 NE1/4 Section 19, Township 16S, Range 3E. The place of use was claimed as SE1/4 SW1/4 Section 18, Township 16S, Range 2E. The correct places of use are described as the Boyle Creek Reservoir S1/2 Section 18, Township 16S, Range 3E; and the N1/2 Section 19, Township 16S, Range 3E.

^{2/}The United States' proposed amendments to 55-13476 and 51-12756 will each divide one stream segment claimed in 1992 into three

and the Owyhee River included claims for channel maintenance and riparian protection. Those claims ranged from 86.00 cfs to 2400 cfs. Based upon recently completed studies, the United States seeks to amend by deleting those portions of its claims which are based on channel maintenance and riparian protection. The channel maintenance and riparian protection amendments result in an overall decrease in the quantity of water claimed for each of the Owyhee River and Mary's Creek claims.

For most months the amended claims for fish habitat on the Owyhee River and Mary's Creek represent a decrease in the quantity of water claimed. There are only two claims on the Owyhee River, during the months of April, May, and June, where the amendments result in a monthly increase of water claimed for fish habitat. In all other months, the United States' amendments result in a decrease of the quantity of water claimed. Likewise, the instream flow claims for Mary's Creek represent a decrease in the monthly flows claimed from August through February for fish habitat. The total quantity of water claimed by the amendments for channel maintenance, riparian protection, and fish habitat, therefore, reflect an overall decrease in the quantity of the original claims.

separate claims. As discussed infra, IDWR has assigned new claim numbers to those segments of the Owyhee River and Mary's Creek. The United States does not object to allowing objections filed to the original claims to apply to the amended claims with new claim numbers.

For claim number 55-13477, the United States' amendment represents a decrease in the quantity of water claimed for each month. This claim was filed and abstracted as having a downstream location in the NW1/4 with a priority date of April 16, 1877. Based upon a review by our technical staff, the downstream location is incorrect by approximately 100 feet and the correct priority date for this claim is May 4, 1886. Our amended claim reflects the correct legal description of the Owyhee River and the correct priority date for this claim.

The United States seeks to amend claim 55-13476 by dividing the claim into three smaller segments based upon results of our expert's studies and to reflect the correct priority dates of the claims. The United States proposes that claim number 55-13476 be used for that portion of the Owyhee River that begins at an upstream location of the Idaho/Nevada State line, SE1/4 Section 30, Township 16S, Range 3E and extends to a downstream location of the confluence of Owyhee River and Blue Creek, SW1/4 Section 15, Township 16S, Range 2E with a priority date of April 16, 1877. The United States' requests that two new claim numbers be assigned to two stretches of the Owyhee River described as follows: one stretch of the Owyhee River with an upstream location of the confluence of the Owyhee River and Blue Creek, SW1/4, Section 15, Township 16S, Range 2E, and a downstream location of the south boundary of Township 15S, SW1/4 Section 31, Township 15S, Range 2E with a priority date of April 16, 1877; and one stretch of the Owyhee River with an upstream location of

the south boundary of Township 15S. SW1/4 Section 31, Township 15S, Range 2E and a downstream location of the canyon mouth NE1/4 Section 36, Township 15S, Range 1E with a priority date of May 4, 1886.^{3/} As set forth earlier, the proposed amendments do not add any stretches of the Owyhee River not set forth in the United States' original claim. The proposed amendments simply seek to change the quantity of water and the priority date claimed for one stretch of the Owyhee River.

The United States also seeks to amend claim 51-12756 by dividing the claim into three smaller segments. The need to amend the claim in this manner is to correspond the claims' priority dates to the dates of the establishment of the Reservation. The United States proposes that claim number 51-12756 be used for that portion of Mary's Creek with a point of origin at SW1/4 Section 30, Township 16S, Range 4E and extends to a downstream location of the south boundary of Township 15S, NW1/4 Section 6, Township 16S, Range 4E with a priority date of April 16, 1877.^{4/} The United States requests that two new claim numbers be assigned to two stretches of Mary's Creek as follows:

^{3/}On February 23, 1998, IDWR assigned claim number 55-13668 to that portion of the Owyhee River with a priority date of April 16, 1877 and claim number 55-13669 to that portion of the Owyhee River with a priority date of May 4, 1886.

^{4/}The claim for this stretch of Mary's Creek was erroneously filed and reported as having an upstream location of SE1/4 Section 4, Township 15S, Range 4E and a downstream location of SW1/4 Section 30, Township 16S, Range 3E. In actuality, Mary's Creek is located in Range 4E and flows in the opposite direction. The United States' amended claim corrects these errors.

one stretch of Mary's Creek with an upstream location of within Township 15S, Range 3E, SE1/4 Section 36, Township 15S, Range 3E, and a downstream location of within Township 15S, Range 3E, SE1/4 Section 25, Township 15S, Range 3E with a priority date of May 4, 1886; and one stretch of Mary's Creek with an upstream location of the west boundary of Range 4E, SW1/4 Section 30, Township 15S, Range 4E and a downstream location of the Reservation boundary SE1/4 Section 4, Township 15S, Range 4E with a priority date of July 1, 1910.^{5/} The United States' amended claims seek the same quantity of water for all three stretches of the Creek.

ARGUMENT

III. THE UNITED STATES MOTION TO AMEND SHOULD BE GRANTED.

Leave to amend should be freely granted where good cause for amendment exists, absent a strong showing that leave should be denied. Leave to amend "shall be freely given when justice so requires."^{6/} I.R.C.P. 15(a); see Clark v. Olson, 110 Idaho 323, 326, 715 P.2d 993, 996 (Idaho 1986) citing Foman v. Davis, 371 U.S. 178, 182 (1962). While this Court has also adopted the criteria of I.R.C.P. 55(c) in reviewing motions to amend, see

^{5/}On February 23, 1998, IDWR assigned claim number 51-12847 to that portion of Mary's Creek with a May 4, 1886 priority date and claim number 51-12848 to that portion of Mary's Creek with a July 1, 1910 priority date.

^{6/}I.R.C.P. 15 (a) provides, in relevant part, that "a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires, and the court may make such order for the payment of costs as it deems proper." I.R.C.P. 15(a).

A.O.1 at 7, that fact does not alter the "liberal leave" standard created by Rule 15. As this Court has repeatedly stated, the "litigation of the SRBA will be governed by the Idaho Rules of Civil Procedure," and this Court's rules are designed merely to supplement the I.R.C.P. "only to the extent necessary to allow for the fair and expeditious resolution of all claims or issues in the SRBA." A.O.1 at 1. As the United States demonstrates, an application of rule 15(a), consistent with A.O.1, requires that the United States' Motion to Amend be granted.

The Idaho Supreme Court has stated that the purpose of Rule 15 is:

First, to allow the best chance for each claim to be determined on its merits rather than on some procedural technicality; and, second, to relegate pleadings to the limited role of providing parties with notice of the nature of the pleader's claim and the facts that have been called into question. Issue formulation is to be left to the discovery process and pleadings are not to be viewed as carrying the burden of fact revelation or of controlling the trial phase of the action.

Clark, 110 Idaho at 326, 715 P.2d at 996, citing C. Wright & A. Miller, Federal Practice and Procedure: Civil 2d § 1471 (1971).

1. The United States has adequately shown good cause to amend.

The United States is entitled to an order granting leave to amend because it has shown good cause. First, the proposed amendments to the quantity of water claimed are based upon scientific analysis which was not available to the United States at the time the claims were filed.

Second, the United States is merely altering its requested relief: the quantity of water, the priority date, and the legal description. The United States' amendments simply seek to provide parties with notice of the nature of the United States' claims. The amendments are akin to a plaintiff amending a complaint to elect a different remedy than the one originally requested. Leave to amend is freely granted when the proposed amendment adds a claim for relief and changes the prayer for relief.²⁷ Clark, 110 Idaho at 326, 715 P.2d at 996.

Third, no party will be prejudiced by the proposed amendments because litigation on these claims, other than discovery, has been stayed until a Director's Report for the on-Reservation consumptive claims are reported. See Ninth Amended Case Management Order: Federal and Tribal Non-Consumptive (Instream Flow) Claims, February 24, 1997. To date, the United States has not been served with a discovery request concerning the Duck Valley claims. Thus, no party can legitimately claim to be prejudiced by the amendments.

²⁷Arguably, the United States' proposed amendment is not even necessary because it merely reduces the total quantity of water claimed. See Memorandum Decision and Order Granting, In Part, and Denying, In Part, Motion To Stay Subcases, at 9, SRBA February 13, 1998; I.R.C.P. 54(c) ("every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleading."); Rowe v. Burrup, 95 Idaho 747, 750, 518 P.2d 1386 (Idaho 1974) ("A court may grant all proper relief consistent with the proof and embraced within the issues framed, whether or not that particular relief is prayed for or not."); Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 1474 (1990).

In sum, reading the "good cause shown" standard set forth in A.O.1 in light of Rule 15's controlling directive to freely give leave to amend when justice so requires, the United States' Motion for Leave to Amend should be granted. The proposed amendments are an appropriate way to improve the notice and understanding of potential objectors in order to focus the litigation, and avoid a waste of resources on all sides. The proposed amendments will thus serve the interests of justice and judicial economy. In the context of a Rule 15(a) amendment this is ample "good cause" for allowing the amendments.

III. CONCLUSION

For the foregoing reasons, the United States' Motion to File Amended Notices of Claim should be granted.

Dated this 26th day of February, 1998.

Respectfully submitted,



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