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January 12, 2006

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101 S Capitol Blvd 10th Fl  
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Twin Falls County Clerk  
District Court  
Fifth Judicial District  
425 Shoshone Street North  
Post Office Box 126  
Twin Falls, Idaho 83303-0126

**Re: In Re SRBA**  
**Case No. 39576**  
**Subcase Nos. 65-22967; 65-22939**  
MTBR&F File No. 22-494.0000

Dear Clerk:

Enclosed for filing in the above-referenced matter are the following original documents:

1. Memorandum in Support of Motion to File Late Notice of Claim
2. Affidavit of Angela Schaer Kaufmann

Please conform the copies of these documents and return them via the enclosed self-addressed, postage prepaid envelope. Thank you for your assistance.

Very truly yours,

# COPY

Melonie D. Robinson  
Administrative Assistant to  
Angela Schaer Kaufmann  
mdr@moffatt.com

/mdr

Enclosures

cc: Idaho Department of Water Resources ✓  
United States Department of Justice  
Office of the Attorney General  
Chris Bromley

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WATER RESOURCES

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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. 65-22967 and 65-22939

**MEMORANDUM IN SUPPORT OF  
MOTION TO FILE LATE NOTICE OF  
CLAIM**

Jack E. Childress, by and through his counsel of record MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHTD., and in response to the Court's Notice Continuing Hearing on Motion to File Late Notice of Claim, hereby lodges this Memorandum in Support of Motion to File Late Notice of Claim. In this Memorandum, Mr. Childress will answer the questions posed by the Court at the hearing on December 20, 2005. The issues can be divided roughly into two categories: (1) What is the status of the rights following the Payette Adjudication; and (2) Is water available to fulfill the claimed rights? The Court's third question, which as it noted is not

**MEMORANDUM IN SUPPORT OF MOTION TO  
FILE LATE NOTICE OF CLAIM - 1**

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necessary to determine whether the motion should be granted, is whether the two claims are subject to separate administration and would that affect the Court's entry of a Decree for General Provisions in Basin 65? Mr. Childress will respond to that question as well.

**I.  
STATUS OF THE WATER RIGHTS**

**A. What Is the Current Status of Underlying Water Rights 65-3194 and 65-3201?**

Water right Numbers 65-3194 and 65-3201 were decreed in the Payette Adjudication. Exhibit A to Affidavit of Angela Schaer Kaufmann ("Kaufmann Affidavit"), filed concurrently herewith. As discussed below in Section II, they have been partially claimed in the SRBA. Exhibits B-E to Kaufmann Affidavit.

**B. What Were The Decreed Elements Of The Underlying Rights?**

Water right 65-3194 was decreed as follows:

Lee C. Wright, Jr.  
Route 1, Box 254  
Fruitland, ID 83619

|                       |                                                                                                              |
|-----------------------|--------------------------------------------------------------------------------------------------------------|
| <b>Priority Date:</b> | 12-12-1903                                                                                                   |
| <b>Source:</b>        | Lake Fork Creek                                                                                              |
| <b>Use:</b>           | Irrigation                                                                                                   |
| <b>Period of Use:</b> | 5-1 to 9-15                                                                                                  |
| <b>Quantity:</b>      | 2.34 c.f.s.                                                                                                  |
| <b>POD:</b>           | T17N, R3E, Section 3, SENE                                                                                   |
| <b>POU:</b>           | T17N, R3E, Section 14, NWNW (19 acres), SWNW (37 acres), NWSW (40 acres), SWSW (19 acres) (115 total acres). |

Water Right Number 65-3201 was decree in the name of the same owner, with the following elements:

|                       |                 |
|-----------------------|-----------------|
| <b>Priority Date:</b> | 12-12-1903      |
| <b>Source:</b>        | Lake Fork Creek |
| <b>Use:</b>           | Irrigation      |
| <b>Period of Use:</b> | 5-1 to 9-15     |
| <b>Quantity:</b>      | 2.88 c.f.s.     |

**POD:** T17N, R3E, Section 3, SENE  
**POU:** T17N, R3E, Section 15, NESE (40 acres), NWSE (39 acres), SWSE (39 acres) SESE (32 acres);  
T17N, R3E, Section 22, NENE (20 acres), NWNE (21 acres)  
(191 total acres).

## II. IS WATER AVAILABLE TO FILL THE CLAIMED RIGHTS?

Under this inquiry, the Court has asked how much water remains unclaimed under the two rights discussed above. The water rights have been split, and portions claimed and decreed in the SRBA.

Water Right Number 65-3194 was decreed in the Payette Adjudication with a quantity of 2.34 c.f.s. Exhibit A to Kaufmann Affidavit. Since that time, two “split” water rights have been decreed in the SRBA: 65-3194B, decreed in the amount of 1.4 c.f.s., and 65-3194C, decreed in the amount of .14 c.f.s. Exhibits B and C, respectively, to Kaufmann Affidavit. Thus, .80 c.f.s. remains unclaimed.

When Mr. Childress filed his Motion to File Late Notice of Claim, and the Notice of Claim, for SRBA Claim Number 65-22967 (his claim stemming from Water Right Number 65-3194), he claimed 1.0 c.f.s. However, in preparing the additional information requested by the Court, counsel for Mr. Childress conducted additional calculations and concluded that the quantity of water claimed was in error. Kaufmann Aff., ¶ 7. Thus, an Amended Notice of Claim has been prepared and will be filed with the Court as soon as it is properly signed.

Water Right Number 65-3201 was decreed in the Payette Adjudication with a quantity of 2.88 c.f.s. Exhibit A to Kaufmann Affidavit. Since that time, two “split” rights have been decreed in the SRBA: 65-3201A, with a quantity of 1.15 c.f.s., and 65-3201B, with a quantity of .6 c.f.s. Exhibits D and E, respectively, to Kaufmann Affidavit. Therefore, 1.13 c.f.s.

remains undecreed. There was an error in the amount claimed in the original Notice of Claim, and Mr. Childress will therefore file an Amended Notice of Claim.

Mr. Childress will also provide the Affidavit of William Maki. Mr. Maki is the ditchrider for the Westside Lake Fork Ditch Company, and also personally irrigates Mr. Childress' property. Affidavit of William Maki, ¶ 3. As Mr. Maki will explain in his affidavit, water has been delivered to the Westside Lake Fork Ditch from Lake Fork Creek and from Westside Lake Fork Ditch to private irrigation ditches which supply water to the Childress Property.

Thus, unclaimed water remains from the Water Right Numbers 65-3201 and 65-3194, both of which were claimed in the SRBA.

### **III. INCLUSION IN THE BASIN 65 GENERAL PROVISION REGARDING SEPARATE STREAMS**

The Court also inquired whether these two claims are subject to separate streams administration. In reviewing the proposed Partial Decree Pursuant to I.R.C.P. 54(b) For General Provisions in Basin 65, it is apparent that the other water rights split from the parent rights 65-3194 and 65-3201 are included within General Provision 3, under "Lake Fork Creek." Therefore, the two claims currently at issue should be included as well.

The Court's existing Proposed Order would not need to be changed, because the addition of these rights to General Provision 3 would not change the findings made in the Proposed Order. Mr. Childress understands that the Basin 65 General Provisions will likely be decreed in the near term, prior to his rights being adjudicated. A suggestion would be that those general provisions could be decreed, with SRBA Claim Numbers 65-22967 and 65-22969 added via an amendment to the general provision decree once the rights are decreed.

**IV.  
CONCLUSION**

Unclaimed portions of the now-split Water Right Nos. 65-03194 and 65-03201, decreed in the Payette Adjudication, remain. Therefore, Mr. Childress respectfully requests that this Court grant his Motion to File Late Notices of Claim.

DATED this 12<sup>th</sup> day of January, 2006.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By Angela Schaer Kaufmann  
Angela Schaer Kaufmann Of the Firm  
Attorneys for Jack E. Childress

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12<sup>th</sup> day of January, 2006, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO FILE LATE NOTICE OF CLAIM** to be served by the method indicated below, and addressed to the following:

IDAHO DEPARTMENT OF WATER RESOURCES  
DOCUMENT DEPOSITORY  
PO Box 83720  
Boise, ID 83720-0098

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☐ Hand Delivered  
☐ Overnight Mail  
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Chief  
Natural Resources Division  
OFFICE OF THE ATTORNEY GENERAL  
State of Idaho  
PO Box 44449  
Boise, ID 83711-4449

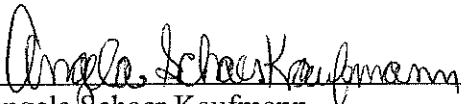
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THE UNITED STATES DEPARTMENT OF JUSTICE  
Environment and Natural Resources Division  
550 West Fort Street, MSC 033  
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid  
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*Courtesy Copy to:*  
Chris Bromley  
Facsimile: 208/287-6700

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Angela Schaer Kaufmann