

JAMES J. DUBOIS,
Attorney, Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
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Denver, Colorado 80202
(303) 312-7341

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 A25-4034B

Case 39576

STANDARD FORM 4

MOTION TO FILE:
SECOND AMENDED NOTICE OF
CLAIM

MOTION TO AMEND CLAIM

Claimant United States of America (U.S. Fish and Wildlife Service) ("United States"), by and through its undersigned attorneys, 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 a Second Amended Notice of Claim in this case, and as grounds therefor, states:

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

In 1993, 42 claims for water rights appropriated under state law were filed on behalf of the U.S. Fish and Wildlife Service for the Grays Lake National Wildlife Refuge. Further field review conducted by the Refuge staff and representatives of the Idaho Department of Water Resources

("IDWR") identified several necessary corrections and changes. As a result, an amendment was filed correcting the priority date, the claimed place of use, quantity, and points of diversion (as discussed with IDWR). In amending the claimed priority date based upon a posted notice, the United States erroneously failed to amend the "Basis of Use," which should have been changed from "beneficial use" to "posted notice." This Second Amendment to the claim is only to correct this clerical error.

2. The factual information and documentation that support the amendment of this claim are attached hereto, and include:

- a) A copy of the applicable posted Notice of Water Location (Bingham County Recorder's Office); and
- b) A plat map relevant to the original Notice of Water Location (Bonneville County Recorder's Office).

3. The claim amendment will not prejudice other parties to this litigation, as it merely corrects a clerical error in the prior amendment, and does not change the priority or basis of priority set forth in the prior amendment. This motion and the amended notices are timely. The Director's Report relating to Grays Lake National Wildlife Refuge has been issued, and no objection has been filed in this matter. No hearing has yet been held. Leave to amend shall be freely given where justice so requires.

4. The discussion with IDWR and the Court which occurred after the filing of these claims and led to the discovery of the errors with regard to the description of the "basis of use" set forth in the Amended Claim is good cause for this Court to allow the amendment submitted herewith. The interests of justice require that leave to amend this claim be granted in order to properly reflect the basis of use of this water right.

5. The Second Amended Notice of Claim is attached hereto, and incorporated herein by reference.

6. Counsel for the United States of America (U.S. Fish and Wildlife Service) in this matter are designated below, and have read SRBA Administrative Order 1, Rules of Procedure (amended October 16, 1997).

James J. DuBois
Trial Attorney, General Litigation Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, Colorado 80202
(303) 312-7341

WHEREFORE, for good cause shown, the United States of America (U.S. Fish and Wildlife Service) respectfully requests this Court to enter an Order granting leave to file the Second Amended Notice of Claim herein.

Respectfully submitted this 9th day of March, 2006.

SUE ELLEN WOOLDRIDGE
Acting Assistant Attorney General


JAMES J. DUBOIS
Trial Attorney, Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 945
Denver, Colorado 80202
(303) 312-7341

VERIFICATION

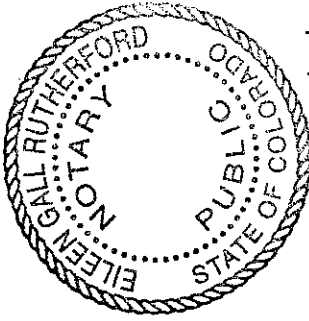
State of Colorado)
County of Denver)

James J. DuBois, 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 9th day of March,
2006, a Notary Public in and for the City and County of Denver, State of Colorado.




NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires: 8/23/2008

My Commission Expires 8/23/2008

CERTIFICATE OF MAILING

I certify that on March 9, 2006, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

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

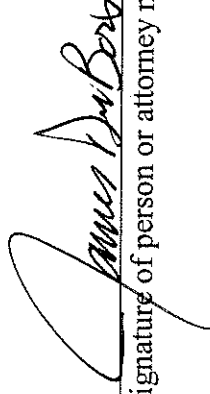
2. Copies to:

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

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

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

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.
(Insert Names/address of parties)



Signature of person or attorney mailing the form

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: A25-04034B

Date Received: _____

Receipt No.:

Received By: _____

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: **United States of America**
(Fish and Wildlife Service)
Address: **Division of Engineering**
911 NE 11th Avenue
Portland, OR 97232-4181
Phone: **503-231-6145**
2. Date of Priority: **January 28, 1886**
3. Source: **Eagle Creek** Trib. to: **Grays Lake**
4. Point of Diversion:

Township 4S Range 43E Section 23, NE 1/4 of NE 1/4, B.M.,
County of Bonneville

Additional Point of Diversion from Eagle Creek: T04 S R 43E S23 SWNE

Point of Injection to Bridge Creek: T04S R43E S26 SWNE

Point of Re-diversion from Bridge Creek: T04S R43E S26 SWNE

5. Description of diverting works: **Earthen diversion and ditch, flood irrigation.**
6. Water is claimed for the following purposes:

Purpose	From	To	C.F.S. (or)	A.F.A.
Irrigation/Wildlife	Apr. 15	Oct. 15	2.40	
Stockwater/Wildlife	Mar. 15	Nov. 15	0.05	

United States of America
Fish and Wildlife Service

7. Total Quantity Claimed is: 2.40 C.F.S. (and/or) A.F.A.

8. Non-irrigation uses: 200 head cattle, wildlife.

9. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
4S	43E	23	NE SW		Irr,S&W	38
4S	43E	23	SE SW		Irr,S&W	35
4S	43E	23	SW SW		Irr,S&W	7
4S	43E	26	SW NE		Irr,S&W	40

Total Number of Acres Irrigated 120

10. Place of use, county(ies): Bonneville.

11. Do you own the property listed above as place of use? Yes.

12. Other Water Rights Used: A25-04032

13. Remarks: **This amended claim reflects a priority date supported by a posted notice (see attachment) posted in Bingham County on January 28, 1886, and the addition of 40 acres in the SWNE of section 26. The cumulative diversions from Eagle Creek will not exceed 2.40 cfs. This water right combined with the water right claimed under A25-04032 (Bridge Creek) will not exceed 2.40 cfs. Water is diverted from Eagle Creek into the Dugway Ditch at the upstream Point of Diversion in the NENE section 23, then injected into Bridge Creek for diversion at the downstream Point of Diversion in the SWNE of section 26.**

The Grays Lake National Wildlife Refuge was established by the Migratory Bird Conservation Commission on June 15, 1965, for waterfowl nesting and production.

14. Basis of Claim (Check one) Beneficial Use Posted Notice X
License Permit Decree
If applicable provide IDWR Water Right Number

Court Case Number Decree Date

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: A25-04034B
Date Received: _____
Receipt No.: _____
Received By: _____

SECOND AMENDED NOTICE OF CLAIM TO A WATER RIGHT SECOND AMENDED
ACQUIRED UNDER STATE LAW

1. Name: **United States of America** Phone: **503-231-6145**
(Fish and Wildlife Service)
Address: **Division of Engineering**
911 NE 11th Avenue
Portland, OR 97232-4181

2. Date of Priority: January 28, 1886

3. Source: Eagle Creek Trib. to: Grays Lake

4. Point of Diversion:

Township 4S Range 43E Section 23, NE 1/4 of NE 1/4, B.M.,
County of Bonneville

Additional Point of Diversion from Eagle Creek: T04 S R 43E S23 SWNE

Point of Injection to Bridge Creek: T04S R43E S26 SWNE

Point of Re-diversion from Bridge Creek: T04S R43E S26 SWNE

5. Description of diverting works: **Earthen diversion and ditch, flood irrigation.**

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United States of America
Fish and Wildlife Service

7. Total Quantity Claimed is: 2.40 C.F.S. (and/or) A.F.A.

8. Non-irrigation uses: 200 head cattle, wildlife.

9. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
4S	43E	23	NE SW		Irr,S&W	38
4S	43E	23	SE SW		Irr,S&W	35
4S	43E	23	SW SW		Irr,S&W	7
4S	43E	26	SW NE		Irr,S&W	40

Total Number of Acres Irrigated 120

10. Place of use, county(ies): Bonneville.

11. Do you own the property listed above as place of use? Yes.

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13. Remarks: This amended claim reflects a priority date supported by a posted notice (see attachment) posted in Bingham County on January 28, 1886, and the addition of 40 acres in the SWNE of section 26. The cumulative diversions from Eagle Creek will not exceed 2.40 cfs. This water right combined with the water right claimed under A25-04032 (Bridge Creek) will not exceed 2.40 cfs. Water is diverted from Eagle Creek into the Dugway Ditch at the upstream Point of Diversion in the NENE section 23, then injected into Bridge Creek for diversion at the downstream Point of Diversion in the SWNE of section 26.

The Grays Lake National Wildlife Refuge was established by the Migratory Bird Conservation Commission on June 15, 1965, for waterfowl nesting and production.

14. Basis of Claim (Check one) Beneficial Use Posted Notice X
License Permit Decree
If applicable provide IDWR Water Right Number

Court Case Number Decree Date

WATER LOCATION

Notice of Water Location

—017—

James H. Abbott

January 28th 1886

Notice is hereby given that I the undersigned have this day claimed and do hereby claim and appropriate five hundred inches of water measured under a four inch pressure or so much thereof as there may be, the waters of Eagle Creek remaining unclaimed.

Said water is to be diverted from said creek by placing a dam across the creek at a point about one mile in a North easterly direction from the house now owned and occupied by the undersigned James H. Abbott.

The water is to be used for domestic and Agricultural purposes on the land now settled or now claimed by the undersigned James H. Abbott. The water is to be conducted to said land by means of a ditch four foot wide and one foot deep with a full equal to the natural fall of the land Territory of Idaho } James H. Abbott.
County of Targhoun }

James H. Abbott first being duly sworn deposes and says that he posted a full true and correct copy of the foregoing Notice in a conspicuous place at the place stated therein as the point of diversion on the 28th day of February A.D. 1886.

Subscribed and sworn to before me this 3rd day March (A.D.) 1886.

Wm. Webster
Justice of the Peace

Recorded March 5th 1886

at 11 o'clock AM.

J. W. Colford

Recorder

by Frank H. Dwyer

Deputy

