

OCT-05-2007 11:57

303 8441350

303 8441350

P.02

RONALD J. TENPASActing Assistant Attorney General
Environment and Natural Resources Division**JAMES J. DUBOIS**Natural Resources Section
Environment and Natural Resources Division

U.S. Department of Justice

1961 Stout Street, 8th Floor

Denver, Colorado 80294

Phone: (303) 844-1375

Fax: (303) 844-1350

Counsel for the United States

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
OCT - 5 2007	
By _____	Clerk Deputy Clerk

**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 A25-4032

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

OCT-05-2007 11:57

303 8441350

303 8441350

P.03

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. An amended claim was filed in this matter on September 16, 2005. An objection to the amended claim was filed by OW Ranches. Further field review conducted by the Refuge staff together with representatives of the Idaho Department of Water Resources ("IDWR") and objector OW Ranches, and subsequent negotiations between the parties regarding the objection clarified on-the-ground operations and identified an additional point of diversion that needs to be included in order to have the claim match actual operations in the field. In addition, the irrigated acreage reported in the Amended Director's Report dated December 16, 2005 contains different acreage than originally claimed by the United States. On further review, the United States agrees with IDWR's description of the irrigated acreage, and seeks amendment to conform to IDWR's recommendation.

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

a) A map of the claimed place of use and points of diversion

3. The claim amendments will not prejudice other parties to this litigation, as they more accurately reflect the historic use and operation of these water rights. This motion and the amended notices are timely. The Director's Report relating to Grays Lake National Wildlife Refuge and an Amended Directors Report related to this claim have been issued, and an objection filed in this matter, but no hearing has yet been held. Leave to amend shall be freely given where justice so requires.

4. The field review and discussion with IDWR and objector OW Ranches which occurred after the filing of these claims and led to the discovery of the errors with regard to the description of this right are 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 historical operation of this water right.

5. The 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
U. S. Department of Justice
Environment and Natural Resources Division

OCT-05-2007 11:57

303 8441350

303 8441350

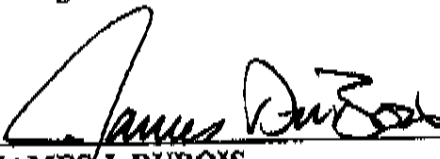
P.04

Natural Resources Section
1961 Stout Street, 8th Floor
Denver, Colorado 80294
Phone: (303) 844-1375
Fax: (303) 844-1350

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 5th day of October, 2007.

RONALD J. TENPAS
Acting Assistant Attorney General



JAMES J. DUBOIS
Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, Colorado 80294
(303) 844-1375

OCT-05-2007 11:58

303 8441350

303 8441350

P.05

VERIFICATION

State of Colorado)
County of Denver)

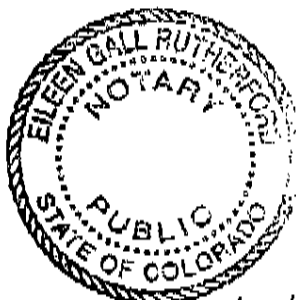
James J. DuBois, being first duly sworn, upon oath, deposes and says:

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.

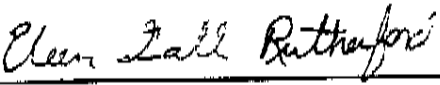


Attorney signing in representative
capacity

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this 5th of October, 2007, a Notary Public in and for the City and County of Denver, State of Colorado.



My Commission Expires 8/23/2008



NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires: 8/23/2008

OCT-25-2007 11:58

303 8441350

303 8441350

P.06 200

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: A25-04032

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: July 19, 1888

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

4. Points of Diversion:

Township 4S Range 43E Section 25, SE 1/4 of SE 1/4, SE 1/4, B.M.,
Township 4S Range 43E Section 25, SE 1/4 of SE 1/4, SW 1/4 B.M.,
Township 4S Range 43E Section 25, SE 1/4 of SW 1/4, SW 1/4 B.M.,
County of Bonneville

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.
Irrigation/Wildlife	May 1	Oct. 31	1.74
Stockwater/Wildlife	Mar. 15	Nov. 15	0.02

United States of America
Fish and Wildlife Service

OCT-05-2007 11:58

303 8441350

303 8441350

P.07

7. Total Quantity Claimed is:

1.74 C.F.S.

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	3.4
4S	43E	23	NW SW		Irr, S&W	0.3
4S	43E	23	SW SW		Irr, S&W	8.4
4S	43E	23	SE SW		Irr, S&W	35.0
4S	43E	26	NE NW		Irr, S&W	40

Total Number of Acres Irrigated 87.1

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:
- A25-4034B

13. Remarks:
- This amended claim reflects a correction to add a point of diversion in the SESWSW of section 25, and to correct the irrigated acreage to correspond with the Amended Director's report previously filed in this subcase.**

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 X Posted Notice _____
License _____ Permit _____ Decree _____If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____

OCT-05-2007 11:58

303 8441350

303 8441350

P.09

CERTIFICATE OF SERVICE

I certify that on this 5th day of October 2007, I served a true and correct copies of the foregoing **STANDARD FORM 4 – MOTION TO FILE: SECOND AMENDED NOTICE OF CLAIM** as indicated below:

via facsimile:

CLERK OF THE SRBA COURT
SRBA Courthouse
District Court
Fax: (208) 736-2121

Kent W. Foster
Holden, Kidwell, Hahn & Crapo, PLLC
Fax: (208) 523-9518

United States Department of Justice
Environment and Natural Resources Div.
Fax: (208) 378-0842

IDWR
Document Depository
Fax: (208) 287-6701


James J. DuBois