

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

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 63-10399 and 63-10714
	)	
	)	
Case 39576	)	STANDARD FORM 4
	)	
	)	MOTION TO FILE:
	)	LATE NOTICES OF CLAIM
	)	

MOTION TO FILE LATE NOTICES OF CLAIM

Claimant United States of America (Department of Defense), by and through its undersigned attorneys, and pursuant to SRBA Administrative Order 1 Rules of Procedure, and Idaho Rules of Civil Procedure 55(c), respectfully moves the Court to enter an Order granting permission to file Late Notices of Claim in these subcases, and as grounds therefore, states:

1. The United States originally filed claims under claim nos. 63-29762 for Wilder Strategic Training Range under both federal reserved water right and state law bases. Only the federal reserved water right was reported out by the Idaho Department of Water Resources, and the federal reserved water right claims are being prosecuted by the United States. The United States and the State of Idaho have agreed that the United States shall file late notices of claims for state-based water rights based upon state license nos. 63-10399 and 63-10714 in exchange for the United States' withdrawal of its reserved water rights claim nos. 63-29762 and 63-29763.

2. The claims subject to this Motion are based upon Water Right License Nos. 63-10399 and 63-10714 issued by the Department of Water Resources on May 12, 1988 and December 28, 1992 respectively. Pursuant to I.C. § 42-1409(4) and 42-1420 (1)(d) these claims were not required to be filed in this adjudication. However, in order to settle the matters in SRBA subcase nos. 63-29762 and 63-29763, it has become necessary to include these licensed water rights in this adjudication. The Claimant United States of America now submits this Motion to File a Late Notice of Claim (SF-4) based upon the existing licenses.

3. Rule 55(c) sets forth the standards for setting aside a default judgment, and provides:

For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

Rule 60(b) provides, in pertinent part:

On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . [T]he motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

Thus the "good cause" provided for in Rule 55(c) must be analyzed and defined in reference to Rule 60(b).

5. Briefly stated, the Idaho Supreme Court has stated that:

Two requirements must be met to set aside a default judgment. Under rule 60(b)(1), a party may ask for relief from a default judgment on the grounds of mistake, inadvertence, surprise, or excusable neglect. In addition, the moving party must plead facts which, if established, would constitute a meritorious defense to the entry of default. [citations omitted]

Clear Springs Trout Co. v. Anthony, 123 Idaho 141, 143, 845 P.2d 559, 561 (1992).

6. In the instant case, the procedures established by the State and this Court to only address one legal theory at a time for claims which can be advanced under two alternative theories should be deemed to constitute mistake or excusable neglect as to the prosecution of the state law-based constitutional water rights claims. In the framework of the SRBA, the actions of the United States in pursuing these claims sequentially demonstrates conduct of a type expected from a reasonably prudent person under the circumstances. See, Baldwin v. Baldwin, 114 Idaho 525,

527, 757 P.2d 1244, 1246 (Idaho App. 1988). The court must view this matter in light of the facts of this case. See generally, Baldwin, supra; Avondale on Hayden, Inc. v. Hall, 104 Idaho 321, 658 P.2d 992 (Idaho App. 1983). The claim made in this Late Claim demonstrate facts which, if established, constitute a meritorious claim for the licensed water right. A copy of the claim is attached hereto as Exhibit 1, and incorporated herein by reference.

7. The United States has therefore established the right to file the Late Claim which accompanies this Motion.

8. The filing of this Late Notice of Claim will not prejudice other parties to this litigation, as the claims accurately reflect the historic use and operation of these water rights under the referenced licenses. This motion and the Notices of Claim filed herewith are timely.

9. Counsel for the United States of America (Department of Defense) in this matter are designated below, and have read SRBA Administrative Order 1, Rules of Procedure (amended October 16, 1997).

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

WHEREFORE, for good cause shown, the United States of America (Department of Defense) respectfully requests this Court to enter an Order granting leave to file the Notice of Claim attached hereto, and incorporated by reference herein.

Respectfully submitted this 8th day of September, 2008.

RONALD J. TENPAS
Assistant Attorney General



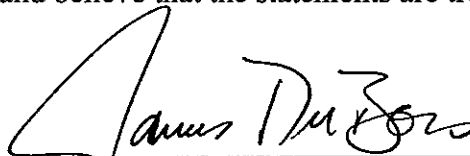
JAMES J. DUBOIS
Trial Attorney, Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, Colorado 80294
(303) 844-1375

VERIFICATION

State of Colorado)
County of Denver)

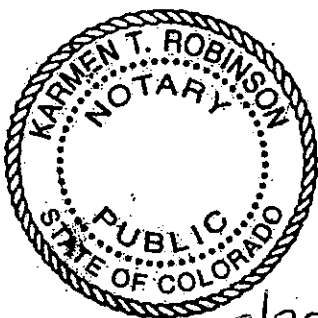
James J. DuBois, being first duly sworn, upon oath, deposes and says:

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.

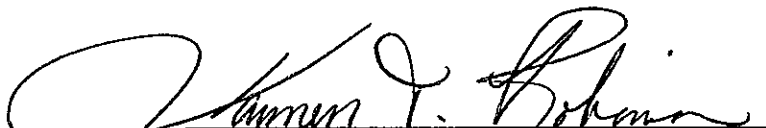


Attorney signing in representative
capacity

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this 16th of September, 2005, a Notary Public in and for the City and County of Denver, State of Colorado.



My Commission Expires 3/25/09



NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires: 3/25/09

CERTIFICATE OF MAILING

I certify that on September 9, 2008, 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:

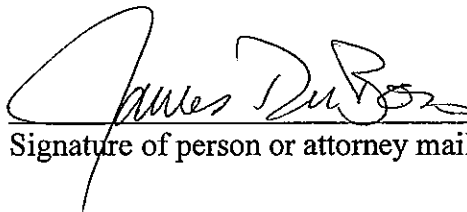
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

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



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: 63-10399
Date Received: _____
Receipt No.: _____
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: **United States of America** Phone: **206-764-3780**
(Department of Defense)
Address: **c/o Chief of Real Estate**
Seattle District, U.S. Army Corps of Engineers
4735 E. Marginal Way S.
Seattle, WA 98124
2. Date of Priority: March 24, 1987
3. Source: Ground water
Trib. to: Snake River
4. Point of Diversion:
Township 4N Range 5W Section 20, Lot 1, SW1/4 of NW1/4 B.M.,
County of Canyon
Additional Points of Diversion _____
5. Description of diverting works: **Well.**
6. Water is claimed for the following purposes:

Purpose	From	To	C.F.S. (or)	A.F.A.
Domestic	Jan. 1	Dec. 31	0.04	1.6 afa

United States of America
Fish and Wildlife Service

7. Total Quantity Claimed is:
0.04 C.F.S. (and/or) 1.6 A.F.A

8. Non-irrigation uses Domestic.

9. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
4N	5W	20	SW NW	1		

Total Number of Acres Irrigated _____

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

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

12. Other Water Rights Used: **63-10714**

13. Remarks: **Water is used for domestic purposes at the Wilder Air Force Station**

14. Basis of Claim (Check one) Beneficial Use _____ Posted Notice _____
License X Permit _____ Decree _____
If applicable provide IDWR Water Right Number Lic. No. 63-10399
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: 63-10714
Date Received: _____
Receipt No.: _____
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: **United States of America** Phone: **206-764-3780**
(Department of Defense)
Address: **c/o Chief of Real Estate**
Seattle District, U.S. Army Corps of Engineers
4735 E. Marginal Way S.
Seattle, WA 98124

2. Date of Priority: October 3, 1988

3. Source: Ground water
Trib. to: Snake River

4. Point of Diversion:

Township 4N Range 5W Section 20, Lot 1, SW1/4 of NW1/4 B.M.,
County of Canyon
Additional Points of Diversion _____

5. Description of diverting works: **Well.**

6. Water is claimed for the following purposes:

Purpose	From	To	C.F.S. (or)	A.F.A.
Domestic	Jan. 1	Dec. 31	0.04	0.6 afa
Irrigation	Mar. 15	Nov. 15	0.03	5.0

United States of America
Fish and Wildlife Service

7. Total Quantity Claimed is:
0.07 C.F.S. (and/or) 5.6 A.F.A

8. Non-irrigation uses Domestic.

9. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
4N	5W	20	NW	NW		0.9
4N	5W	20	SW	NW	1	0.2

Total Number of Acres Irrigated 1.1

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

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

12. Other Water Rights Used: **Lic. No. 63-10399**

13. Remarks: **This water right is appurtenant to the described place of use. The right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.5 afa per acre for the lands above. Domestic use is for a commissary and station buildings. Place of use is located within the Wilder Air Force Station.**

14. Basis of Claim (Check one) Beneficial Use _____ Posted Notice _____
License X Permit _____ Decree _____
If applicable provide IDWR Water Right Number Lic. No. 63-10714
Court _____ Case Number _____ Decree Date _____