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lrlm\IDWR\memo late objection

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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)
) **MEMORANDUM IN SUPPORT OF**
Case No. 39576) **MOTION TO FILE LATE NOTICE**
) **OF CLAIM**
) **Subcase No. 37-22447**
)
_____)

This Memorandum is attached to, and intended to clarify, the Motion of the Sun Valley Water and Sewer District (the "District") to file, in the Snake River Basin Adjudication ("SRBA"), a Late Notice of Claim in Subcase (Water Right Number) 37-22447. Said Motion, together with two additional similar Motions to permit late claim filings by the District with respect to Subcases (Water Rights) 37-22444 and 37-22445, seeks a new basis (i.e., a claim of beneficial use) on which to claim the groundwater diversion currently evidenced by licensed Water Right No. 37-2709, a claim for which has been timely filed in the SRBA (Subcase 37-2709). In negotiations with Mr. Michael Ciscell of the Idaho Department of Water Resources ("IDWR") in SRBA proceedings concerning the claim for Subcase 37-2709, it was mutually agreed that substituting these three (3) late beneficial use claims (SRBA Subcases 37-22444, 37-22445 and 37-22447) (collectively "Late Claims") for the pending SRBA claim based on a licensed right (Subcase 37-2709) constituted the most appropriate way to address inaccuracies in Subcase 37-2709, including issues of priority, nature of beneficial use, and permissible place of use. This Memorandum will briefly discuss the origin of those inaccuracies and issues and, hopefully demonstrate to the Court the appropriateness of approving these Late Claims in lieu of Subcase 37-2709. (The District

has agreed with IDWR that in the event the Late Claims are allowed and processed, the District will withdraw its currently pending SRBA Subcase 37-2709, or will stipulate with IDWR for its disallowance.)

To understand the inaccuracies in pending Subcase 37-2709, a bit of local Sun Valley history may be helpful. The development of the Sun Valley Resort ("Resort") was undertaken by the Union Pacific Railroad in the late 1930's, with the first buildings being completed in 1936, consisting of hotel rooms, restaurants and related facilities. To provide the required water for those uses, the Union Pacific Railroad drilled, and commenced using, a small groundwater well on or about August 21, 1936, diverting approximately 0.31 cfs. This well is now known and referred to as District "Well No. 1." A second well, now known and referred to as District "Well No. 2," was completed by the Union Pacific Railroad and placed in service on or about September 25, 1936, capable of diverting approximately 0.52 cfs of groundwater. As the development of the Resort continued, a third well, now known as District "Well No. 3," became necessary and was placed in service on or about July 26, 1948, diverting approximately 0.95 cfs of groundwater. (Those three wells constitute the basis for the Motions to permit the filing of the Late Claims for Water Right Nos. 37-22444, 37-22445, and 37-22447, respectively.)

Notwithstanding the fact that District Wells Nos. 1, 2 and 3, have been used continuously since their above-referenced respective priority dates, when the Resort was sold by the Union Pacific Railroad to the Sun Valley Company, a subsidiary of the Janss Corporation, in the mid-1960's, the purchaser became needlessly concerned that the water rights for those three wells were not evidenced by a formal, printed license from IDWR. Consequently, the Janss Corporation, in 1965, filed an application for, and received from IDWR, a single license (37-2709) for all three, with a diversion rate of 1.78 cfs, which equals the combined diversion rates of the three wells. The license specified the beneficial use as Domestic, with a place of use which covered a very limited portion of the Resort and a priority date of July 8, 1965, the date the license was applied for.

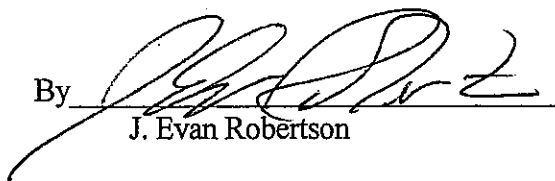
As the Resort continued to grow, it transitioned into an incorporated city, whose central water services were transferred to the District, and were incorporated into the District's integrated municipal water system which serves the entirety of the City of Sun Valley. One such right was licensed Water Right No. 37-2709, which was transferred to the District in 1966. At the time of the transfer the District evidently did not object to the license priority date of July 8, 1965, quite possibly because groundwater priority dates were not then the concern they are today. However, during the SRBA proceedings,

including a full investigation of the history of Water Right No. 37-2709 with the help of IDWR, substantial credible evidence was found which establishes that Water Right No. 37-2709 was, in fact, comprised of the three beneficial use claims with much earlier priority dates relating to District Wells Nos. 1, 2 and 3. In addition, the 1965 license for Water Right No. 37-2709 and the pending SRBA claim for it continue to list the beneficial use as "Domestic," rather than the "Municipal" use actually being made of that right since it was acquired by the District, and similarly designates a very limited place of use which does not reflect the District's integrated service area. As a result of those deficiencies, the District and IDWR came to the conclusion that the District should file three separate motions to permit the Late Claims based on a Notice of Claim to a State Right Acquired under State Law for the water appurtenant to District Wells Nos. 1, 2 and 3, setting forth a corrected priority date for each; a recognition that the established beneficial use of the water is "Municipal"; the inclusion of updated points of diversion to include the District's integrated well system; and a revised place of use consistent with the current service area of the District. That conclusion is the genesis of the three Late Claims referred to herein. As mentioned above, if these three Motions are granted, and the Late Claims filed and processed, the District and IDWR will withdraw the pending SRBA claim for Water Right No. 37-2709, or will stipulate to its disallowance.

DATED this 20th day of June, 2009.

ROBERTSON & SLETTE, PLLC

By


J. Evan Robertson

CERTIFICATE OF MAILING

I hereby certify that on this 23 day of June, 2009, I served a copy of the foregoing instrument, by depositing same in the United States mail, postage prepaid, in an envelope; addressed to the following:

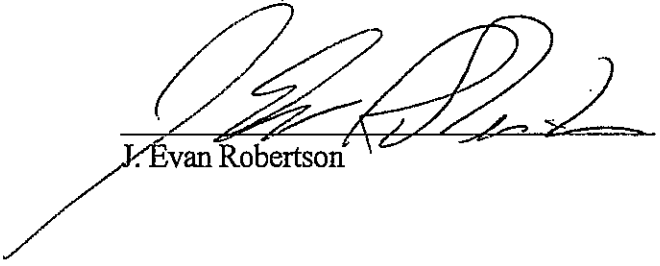
Original to: Clerk of the Court
Snake River Basin Adjudication
253 Third Ave. N. - P.O. Box 2707
Twin Falls, ID 83303-2707

Copies to:

Chief, Natural Resources Division
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State of Idaho
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United States Dept. of Justice
Environment and Natural Resources Division
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