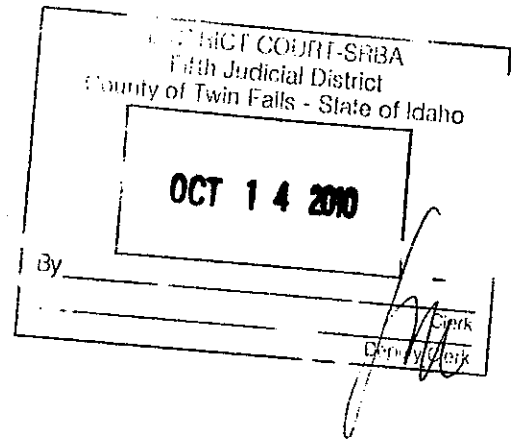


LAWRENCE G. WASDEN
Attorney General
State of Idaho

CLIVE J. STRONG
Chief, Natural Resources Division

NICHOLAS B. SPENCER
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
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Idaho State Bar # 2911



**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)
)
)
)
)
)
)
)

**AFFIDAVIT OF SERVICE:
NOTICE OF FILING LATE CLAIM
DIRECTOR'S REPORT FOR
WATER RIGHT 45-14290**

STATE OF IDAHO)
) ss.
County of Ada)

I, Carter Fritschle, being first duly sworn on oath, depose and state as follows:

1. I am the Manager, Adjudication Section, for the Idaho Department of Water Resources (IDWR). I am authorized by the Director to make this affidavit pursuant to Idaho

Code § 42-1701(3). I make this affidavit pursuant to the requirements of Idaho Code § 42-1411(7). The following actions were taken under my direction by IDWR.

2. The original Late Claim's Director's Report for Water Right 45-14290 was filed by IDWR with the SRBA District Court on September 30, 2010.

3. A Notice of Filing of Director's Report for the Late Claim's Director's Report for Water Right 45-14290, a copy of which is attached as Exhibit 1, was prepared by IDWR pursuant to Idaho Code § 42-1411(6) and orders of this Court. In this affidavit I will refer to this document as the "Notice."

4. The Notice and IDWR's Late Claim Director's Report, which contained the individual recommendation for the claimant's water right, were served on the claimant's attorney, Michael P. Tribe at 615 H Street, P.O. Box 396, Rupert, ID 83318, by deposit into the U.S. Mail before 5:00 p.m., on September 30, 2010.

5. A complete copy of the Late Claim Director's Report was delivered via statehouse mail on September 30, 2010 to the Office of the Attorney General for the State of Idaho.

6. A complete copy of the Late Claim Director's Report was mailed to the U.S. Department of Justice, Environment & Natural Resources Division, 550 West Fort Street, MSC Box 033, Boise, ID 83706 by deposit into the U.S. Mail prior to 5:00 p.m., on September 30, 2010.

7. A complete copy of the Late Claim Director's Report was mailed to the Cassia County Courthouse and Minidoka County Courthouse by deposit into the U.S. Mail prior to 5:00 p.m., on September 30, 2010.

8. The Notice and a complete copy of the Late Claim Director's Report were emailed to IDWR's Eastern, Western, Southern and Northern Regional Offices on October 4, 2010.

DATED this 12th day of October, 2010.

Carter Fritschle

Carter Fritschle
Manager, Adjudication Section
Idaho Department of Water Resources

SUBSCRIBED AND SWORN before me this 12 day of October, 2010.



Lori Harris

NOTARY PUBLIC FOR IDAHO

Residing at: Boise, Idaho

My commission expires: 12-12-12

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of October, 2010, I served a true and correct copy of this affidavit of service on the following persons by mailing in the U.S. Mail, with correct postage affixed thereto.

U.S. Department of Justice
Environment and Natural Resources Division
550 West Fort Street
Box 033
Boise, ID 83706

Chief, Nat'l Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449



John Harris
Signature of person or attorney mailing the form

NOTICE OF LATE CLAIM DIRECTOR'S REPORT FOR WATER RIGHT 45-14290

Pursuant to Judge Eric Wildman's Order Amending Deadlines for Expedited Process and Resetting Hearing dated September 1, 2010, the Director of the Idaho Department of Water Resources (IDWR) has filed with the Snake River Basin Adjudication (SRBA) District Court the Director's Report of Late Claim 45-14290, claimed by the City of Burley. In order to facilitate resolution of contested City of Burley water rights related to late claim 45-14290, the Director is reporting this late claim in advance of the Director's Report of Late Claims and Miscellaneous Claims normally filed with the court each spring and fall. This filing is for a claim that was not included in any original Director's Report or any subsequent Director's Report of Late Claims and Miscellaneous Claims for Basin 45 and / or Basin 36. The Director's Report of Late Claim 45-14290 contains the Director's recommendation to the SRBA Court as to how your claimed water right should be decreed in the SRBA.

Why am I getting this mailing?

You have received this mailing because you filed late claim 45-14290 in the SRBA. This mailing contains only the Director's recommendation to the SRBA Court of your claim number 45-14290. Your mailing **does not** contain the Director's recommendations of any claims other than your own. Related City of Burley water rights were originally reported to the Court in the Director's Report for Irrigation and Other, IDWR Reporting Area 10, IDWR Basin 45 which was filed with the SRBA Court on September 7, 2004. The sole City of Burley water right claimed in IDWR Administrative Basin 36, water right 36-4080, was reported in the Director's Report for Irrigation and Other Rights, Reporting Area 3, IDWR Basin 36 filed on November 2, 1992. City of Burley late claim 45-14083 was reported in the Director's Report for Late Claims filed on November 18, 2008. All objection periods for these original filings are closed, but if you wish to review the original Director's recommendations of these claims the Reports are available at the locations listed at the end of this notice. Copies of the report can be made, but you may be charged for copying and mailing. Maps of these reporting areas, as well as other information pertaining to the SRBA can be accessed on the internet at: <http://www.idwr.idaho.gov/water/srba/mainpage/>. Subsequently, the amendment of the City of Burley water rights were reported to the Court on September 29, 2008, with the exception of the amendment of City of Burley water right 45-7269, which was reported to the Court on February 27, 2009. Those objection periods have closed but the Amended Director's Reports are available for viewing at the locations listed at the end of this notice.

You may need to review subsequent Late Claims Director's Reports as claims in which you have an interest may be reported in them. You will not receive notice of future Director's Reports as they are filed with the SRBA Court unless you have water right claims that are reported in them. Therefore, if you are interested in the status of other water rights belonging to other people that have not yet been recommended by IDWR, you should check in periodically with the Court's docket sheet or the internet web page about the schedule for filing future reports. The Court's internet web page can be found at: <http://www.srba.state.id.us>. Information about subscribing to the court's docket sheet is provided on page three of this notice.

INSTRUCTIONS FOR REVIEWING YOUR OWN WATER RIGHT

The description of your right, which is enclosed, is only the Director's *recommendation* to the SRBA Court on your water right. The Court will decide how it will decree your water



right. You are free to agree or disagree with the Director's recommendation. If you agree with the Director's recommendation you do not need to do anything, pending further notice as described below. If you disagree with the Director's recommendation, you need to file an objection as described below.

INSTRUCTIONS FOR REVIEWING THE WATER RIGHTS OF OTHERS

The Director's Report of Late Claim contains the recommendation to the SRBA Court of water right 45-14290 only. If you want to review someone else's water right you need to look at the complete Director's Reports, which are available at the SRBA courthouse in Twin Falls and at the locations listed below. Copies of the complete report can be made, but you may be charged for copying and mailing. These Director's Reports contain:

- 1) **List of Recommended Water Rights**--Water right recommendations are listed numerically by water right number.
- 2) **List of Claims Recommended to Be Disallowed**--Water rights recommended to be disallowed are listed numerically by water right number. A short statement of the reason for IDWR's recommendation for disallowance is provided.

INSTRUCTIONS FOR TAKING THIS WATER RIGHT CLAIM TO COURT

What do I do if I disagree with a recommendation?

If you disagree with any element of the recommendation for your water right and want to be heard in court, file an objection with the SRBA Court. Objections must be made on the standard objection form ("Standard Form 1") available from any IDWR office or from the SRBA Court. You may also download a copy of the objection form from the SRBA web site at: <http://www.srba.state.id.us>.

Your objection must be **received** by the SRBA Court on or before **October 28, 2010**.

What do I do if someone else objects to my water right recommendation?

If someone files an objection to your water right, or anyone else's water right, you may file a response to that objection. Responses to objections must be made on the standard response form ("Standard Form 2") available from any IDWR office or from the SRBA Court. You may also download a copy of the response form from the SRBA web site at: <http://www.srba.state.id.us>.

Your response must be **received** by the SRBA Court on or before **November 12, 2010**.

What happens if there are no objections to my water right?

After the deadline for filing objections and responses, the SRBA Court will hear the uncontested recommendation on **November 16, 2010 at 1:30 p.m.** at the SRBA courthouse. A Partial decree will be issued following this hearing.

How will I know about the proceedings on water right recommendations to which objections were filed?

A notice will be mailed to you for court dates on your water right or for those where you filed an objection or a response. You will not receive notice of court dates on any other water right recommendations.

Additional information regarding water right claims can be found on the SRBA Court's web site at: <http://www.srba.state.id.us>.

Note: The SRBA Court publishes a monthly Docket Sheet listing all objections and responses filed, as well as when Director's Reports are filed. It does not list court dates for individual water right cases, but provides general information helpful to all participants in the SRBA.

The Docket Sheet is available at your county courthouse and all IDWR offices, or you may subscribe by contacting the SRBA Court or IDWR. The annual subscription fee is \$7.50. The Docket Sheet is also available on the SRBA web site at: <http://www.srba.state.id.us>.

IMPORTANT INFORMATION REGARDING GENERAL PROVISIONS

General provisions are those parts of the SRBA Court's decree that apply to all the water rights in a basin, or to classes of similarly situated water rights within a basin. IDWR recommends to the SRBA Court the general provisions it believes should be decreed in a basin when it files with the court its Director's Report for the basin. At that time, any party may object to the recommended general provisions.

The Director in his previous Director's Reports for irrigation and other water rights in the basins included in this Late Claim Director's Report, has already recommended the general provisions for the above-listed basins. The objection period for the general provisions in the above-listed basins has expired. Therefore, it is too late for you to object to the general provisions governing your late claim. You may obtain a copy of the General Provisions for your basin from the SRBA District Court in Twin Falls or at the courthouse location nearest to your basin. You may be charged for copying and mailing. You may also view the General Provisions for every basin within the SRBA by going to IDWR's website at: <http://www.idwr.idaho.gov>. It is possible that in the future the SRBA Court will entertain recommendations for additional general provisions. Should that occur, an opportunity to object to those additional general provisions will be provided. It is your responsibility to monitor the SRBA case through the Docket Sheet discussed above.

CHANGES OF ADDRESS OR OWNERSHIP DURING THE SRBA COURT CASE

You must contact your regional IDWR office with your address change or if the ownership of your water right changes. Failure to notify IDWR may result in the loss of your water rights.

ADDITIONAL INFORMATION

If you have questions about the SRBA, public information brochures are available at any IDWR office. Maps and aerial photography of this reporting area, as well as assistance in using the maps and the photography, are available at the IDWR Regional office nearest to the location of your water right. You are also welcome to call IDWR at any of its offices or the SRBA Court. You may also want to consider contacting an attorney to assist you.

Snake River Basin Adjudication

District Court

253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707
(208) 736-3011
<http://www.srba.state.id.us>

Idaho Department of Water Resources

322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098
(208) 287-4800
(800) 451-4129
<http://www.idwr.idaho.gov>

Idaho Department of Water Resources

Western Region

2735 Airport Way
Boise, Idaho 83705-5082
(208) 334-2190

Idaho Department of Water Resources

Northern Region

7600 N. Mineral Drive, Suite 100
Coeur d'Alene, Idaho 83815
(208) 762-2800

Idaho Department of Water Resources

Southern Region

1341 Fillmore, Suite 200
Twin Falls, Idaho 83301-3380
(208) 736-3033

Idaho Department of Water Resources

Eastern Region

900 North Skyline, Suite A
Idaho Falls, Idaho 83402-3653
(208) 525-7177

Minidoka County Courthouse

8th & G St
P.O. Box 368
Rupert, ID 83350

Cassia County Courthouse

1459 Overland Ave.
Burley, ID 83318

DEFINITIONS OF THE ELEMENTS OF YOUR WATER RIGHT

RIGHT NUMBER: Your water right is identified by a number assigned by IDWR. The first two digits identify IDWR's administrative basin number; for example, 29, 43, or 72.

NAME AND ADDRESS: Your name and address should appear here. IDWR will use the most recent name and address in its records for the water right.

SOURCE: The name and/or type of the source where you divert your water. For example: "groundwater," "unnamed spring," or "Common Creek."

QUANTITY: The amount of water recommended in either cubic feet per second (cfs) and/or the volume of water in acre feet per year (AFY).

PRIORITY DATE: The date used to determine the priority of your right in relation to other rights using water from the same source.

POINT OF DIVERSION: The legal location where you divert water from its source; generally described as 1/4 1/4 sections down to a 40-acre tract, or smaller. Other legal descriptions that might be used are government lots, block, subdivision, parcel numbers, townsite names, mining claim information, homestead entry surveys, or other survey information.

PURPOSE OF USE: The general category of the type of use you can make of your water. Typical purposes of use include irrigation, domestic, or stock watering.

PERIOD OF USE: The period of time during the year when you can use the water for your right.

PLACE OF USE: The legal location where you use your water right; generally described as 1/4 1/4 sections down to a 40-acre tract. Other legal descriptions that might be used are government lots, block, subdivision, parcel numbers, townsite names, mining claim information, homestead entry surveys, or other survey information.

PLACE OF USE FOR IRRIGATION PROJECTS: Pursuant to Idaho Code Sections 42-219(2) and 42-1411(2)(h). IDWR has included GIS mapping for describing the place of use (digital boundary) for water rights meeting certain criteria (i.e. irrigation projects). The **PLACE OF USE** for irrigation projects is reported in digital format and uses GIS technology to particularly identify and display a geographic area encompassing the place of use with the aid of a computer. The GIS data is stored in digital format and contained on a CD-ROM and is properly marked for identification with the water right number. The CD-ROM will be retained by the SRBA Court. IDWR also retains a duplicate of the original CD-ROM. The electronic data contained on the CD-ROM is available for public use and is also accessible through the IDWR internet website (<http://www.idwr.idaho.gov>). *Upon request, IDWR will provide a copy of the CD-ROM with the electronic data to claimants.*

BASIS OF CLAIM: The method that was used to establish your claim. Examples include prior decree, posted notice, beneficial use (historical) method, license, or permit.

DUAL BASED CLAIMS: In some cases, the federal government has claimed one right under two theories: a state basis and a federal law basis. Both theories will be reported on one form for that single water right. In most cases, the priority dates are different and will be listed separately. The federal law basis is separately indicated by a remark under the priority date that reads:

4/17/1926 CLAIMED UNDER FEDERAL RESERVED WATER RIGHT

THIS WATER RIGHT IS ALSO CLAIMED BASED ON FEDERAL LAW WITH AN APRIL 17, 1926, DATE OF PRIORITY PURSUANT TO AN EXECUTIVE ORDER SIGNED THE SAME DATE AND KNOWN AS PUBLIC WATER RESERVE 107.

IDWR does not investigate or make recommendations regarding federal law based claims.