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JUN 25 2012

DEPARTMENT OF
WATER RESOURCES

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 No. <u>21-02039</u>
	)	(Insert Water Right Number)
	)	
	)	STANDARD FORM 4
Case No. 39576	)	
	)	MOTION TO FILE:
	)	☒ CORRECTED LATE NOTICE OF CLAIM
	)	☐ AMENDED NOTICE OF CLAIM
_____	)	

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☒ I have read *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996).

My name is State of Idaho, Department of Fish and Game ("IDFG")

My address is P.O. Box 25, Boise, Idaho 83707

My phone number is: Work (208) 287-2714 Home Not Applicable

I am an attorney representing the IDFG

My name is Harriet A. Hensley, Deputy Attorney General

My address is 700 West State Street, P.O. Box 83720, Boise, Idaho 83720-0010

My phone number is (208) 334-4543

MOTION TO FILE CORRECTED LATE NOTICE OF CLAIM

A Motion to File a Late Notice of Claim will require a hearing before the Presiding Judge.

☒ I did not file a Notice of Claim to the use of water in the SRBA because:

IDFG owns and/or manages approximately thousands of acres of land for public use and, according to IDWR, filed approximately 600 water right claims in the SRBA. The failure to file claims for these water rights was inadvertent, and upon learning of the oversight, IDFG sought assistance from the Idaho Attorney General's Office in filing this late claim. See Attached Memorandum.

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☒ I am providing legal and factual documentation for my claimed use of water. You must described these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

See Corrected Notice of Claim and Memorandum, attached hereto.

I have attached:

☒ A fully completed Corrected Notice of Claim (available from IDWR) is attached.

- ☒ A claim filing fee and a late claim fee for those claims other than domestic or stock water use for which a notice of claim was filed. To determine this amount, contact IDWR at (800) 451-4129. IDWR has advised that the claim filing fee for this notice of claim is \$977.50. In the event the SRBA Court grants this motion, IDFG requests that IDWR initiate the Interagency Billing Process. The PCA is 41913 and the ABC Code is C399. Please forward billing documents to Walt Poole, Idaho Department of Fish and Game, P.O. Box 25, Boise, Idaho, 83707.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on Tuesday July 24, 2012 1:30 p.m.
at the SRBA courthouse, 253 Third Avenue, Twin Falls, Idaho.

VERIFICATION (Must be completed)

State of Idaho

County of Ada

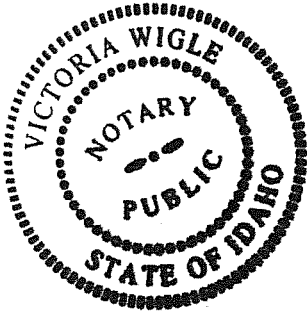
Harriet A. Hensley, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined I.C. §§42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or 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.

Signature of person filing motion

Harriet A. Hensley
Attorney signing in representative capacity

Subscribed and sworn to before me on June 22, 2012
(Insert Date)



Victoria Wigle
Notary Public for Idaho
Residing at: Boise
My Commission expires: 6/22/16

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA Clerk of the Court.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on this 22nd day of June 2012, I caused to be served the original and/or copy of this form on the following persons by the indicated method:

1. Original to:

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

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☒ Federal Express
☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to

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

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

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

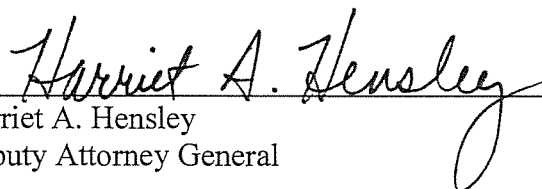
- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

Not Applicable

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)



Harriet A. Hensley
Deputy Attorney General

Attachment 1

**Corrected Late Notice of Claim
21-02039**

**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 21-02039

Date Received: _____

Receipt No: _____

Received By: _____

**NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

Please type or print clearly

1. Name of Claimant (s) State of Idaho, Idaho Department of Fish and Game Phone (208) 287-2714

Mailing Address P.O. Box 25 Boise ID ZIP 83707
Street or Box City State

2. Date of Priority (Only one (1) per claim) July 30, 1910
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Blue Creek
which is tributary to (b) Sand Creek

4. a. Location of Point of Diversion is: Township 10N, Range 41E, Section 03 SWNE,
NW, 1/4 of SW, 1/4 Govt. Lot _____, BM., County of Fremont

Parcel (PIN) no. _____

Additional points of diversion if any: 10N 41E Sections 9 and 10 (multiple - see map)

If available, GPS Coordinates _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. Dam and headgate structures.

After acquiring the property to which this water right is appurtenant in 1947, IDFG continued to

divert water to fill ponds for open water habitat and recreation within the Sand Creek Wildlife

Management Area.

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Wildlife purposes from 05-01 to 10-31 amount 8 or 16

For Recreation purposes from 05-01 to 10-31 amount 8 or 16

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 8 (cfs) and/or (b) 16 (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) Water is diverted to fill ponds for open water habitat for the benefit of wildlife/recreation.

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10N	41E	3								W	W	W	W						
		9	W			W	W	W	W	W	W			W	W	W	W	W	
		10					W	W	W	W		W	W						

Parcel (PIN) no(s). _____

Total number of acres irrigated NA

10. In which county (ies) are lands listed above as place of use located? Fremont County

11. Do you own the property listed above as place of use? Yes (✓) No ()

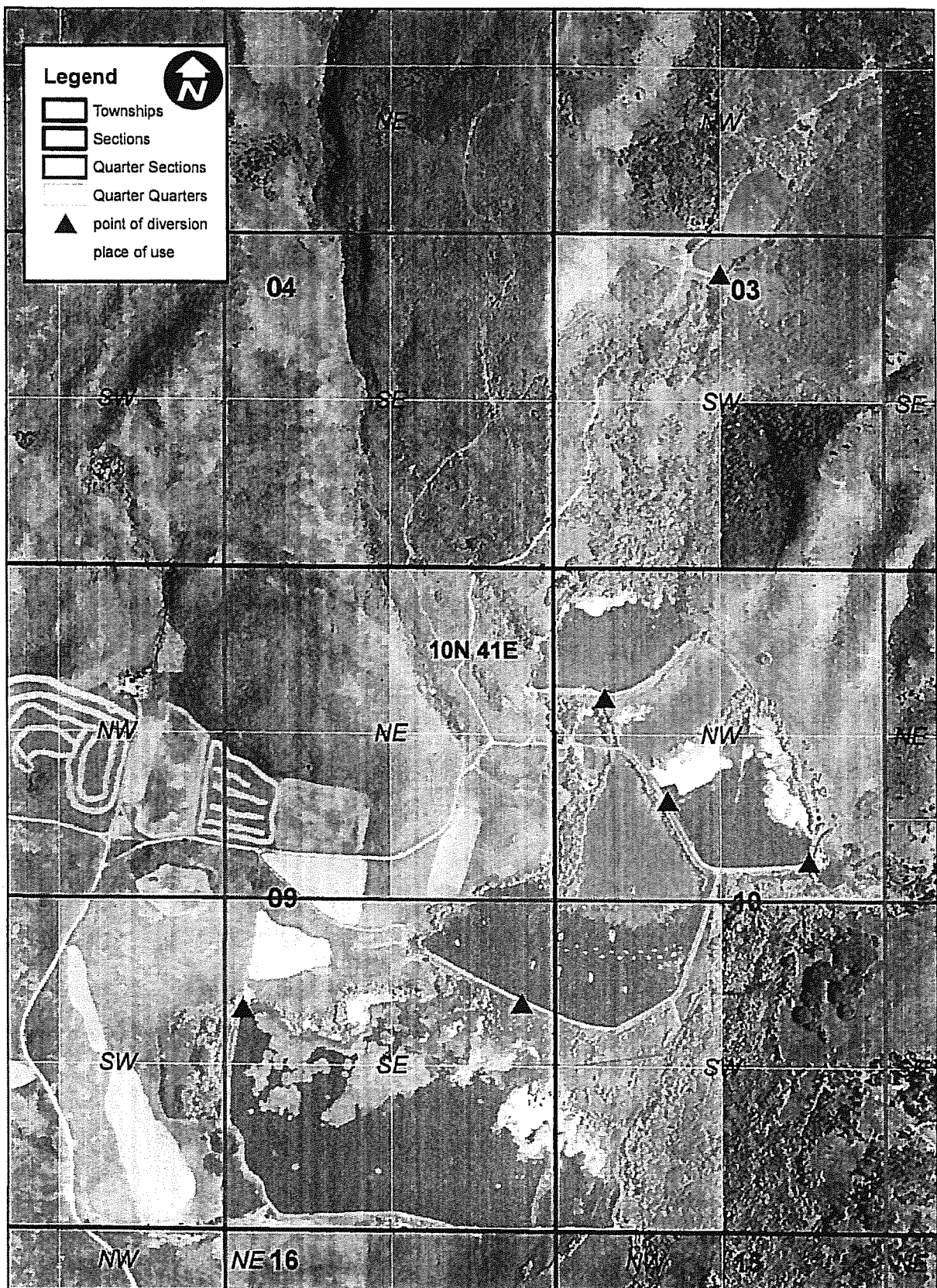
If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

Water rights nos. 21-14, 21-15, 21-2153, 21-2159, 21-4006, 21-4007, 21-4008, 21-7151 _____ or None ()

13. Remarks: This water right was licensed November 8, 1913. After IDFG acquired the property to which this water right is appurtenant in 1947, IDFG continued to divert the water for wildlife and recreation, both of which are recognized beneficial uses. Because the change in use occurred prior to November 19, 1987, the change in use is allowed under the accomplished transfer statute, Idaho Code § 42-1425.

Last Name ID Department of Fish & Game Identification No. 21-02039



14. Basis of Claim (Check One) Beneficial Use () Posted Notice () License (✓) Permit () Decree ()

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number 6416

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Snake River Basin Adjudication." (b.) I/We do () do not () wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____

_____ Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

Director _____ of Idaho Department of Fish and Game _____,
Title Organization

that I have signed the foregoing document in the space below as

Secretary _____ of Idaho Fish and Game Commission _____,
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Virgil Moore Date 6/22/12

Title and Organization Virgil Moore, Secretary, Idaho Fish and Game Commission

16. Notice of Appearance:

Notice is hereby given that I, Harriet A. Hensley, Deputy Attorney General, will be acting as attorney at law of behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature Harriet A. Hensley Date June 22, 2012

Address Office of the Attorney General, Natural Resources Division

P.O. Box 83720, Boise, ID 83720-0010

Attachment 2

Memorandum In Support Of Motion
To File Late Notices Of Claims and
Affidavit of Thomas Bassista in
Support of Motions to File Late
Notices of Claims
21-02039 & 21-02170

In subcases for which partial decrees have not been entered, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined pursuant to the standard set forth in *AOI* for filing late claims since *AOI* does not expressly provide a standard for reviewing late objections. A motion to file a late claim is determined pursuant to I.R.C.P. 55(c), which provides the standard for setting aside the entry of a default. *See AOI* § 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria) and (k) (leave to amend a notice of claim shall be freely given when justice so requires). In determining whether to set aside the entry of default under I.R.C.P. 55(c), Idaho Courts apply a "good cause" for untimeliness standard. I.R.C.P. 55(c). The "good cause" standard is more lenient threshold than the Rule 60(b) standard. [*McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d 274, 279 (Ct. App. 1993).] The I.R.C.P. 55(c) standard takes into account the following factors:

- 1) whether the default was willful;
- 2) whether setting aside the judgment would prejudice the opponent;
and
- 3) as with a Rule 60(b) motion, whether a meritorious position has been presented.

McFarland, 123 Idaho at 936, 865 P.2d at 279.

Order on Motion to Set Aside Partial Decrees and File Late Objections, 5 SRBA 4, 4.5 (2001) ("A.L. Cattle").

The IDFG can demonstrate good cause for the Court to grant this motion.

1. IDFG's failure to file claims for the above listed water rights was not willful. The IDFG owns and manages approximately thousands of acres of land for public use and, according to IDWR, has filed approximately 600 claims in the SRBA. The failure to file claims for these water rights was inadvertent, and upon learning of this oversight, IDFG researched historical and current use and asked for legal assistance in filing the late claims. *Affidavit of Thomas Bassista* ("*Bassista Aff.*") at ¶ 6 attached hereto.

2. No water users will be prejudiced by the granting of this motion. Claim nos. 21-02170 and 21-02039 are based upon licenses issued by the Idaho Department of Water Resources. Although the purpose of use has changed, IDFG has diverted water as authorized

under the licenses since acquiring the land to which the water rights are appurtenant. *Bassista Aff.* at ¶ 5. Accordingly, it is unlikely that any water user would assert prejudice as a result of this claim. Moreover, an order granting IDFG's motion will not prejudice any water users because water users who believe they will be prejudiced by this late claim may participate in the proceedings by filing an objection and/or response and will have a full and fair opportunity to address their concerns before the Court.

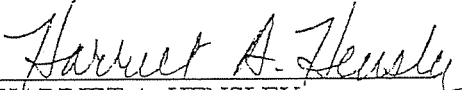
3. Finally, IDFG states a meritorious position in this motion. The purpose of the SRBA is to quantify lawful water use in the Snake River Basin for the purpose of improved administration. The water rights claimed are essential to the management of the Sand Creek Wildlife Management Area. *Bassista Aff.* at ¶ 5. Allowing IDFG to obtain partial decrees for these water rights is entirely consistent with this purpose.

Based on the foregoing reasons, IDFG has demonstrated good cause for this Court to allow the IDFG notices of claim to be adjudicated. IDFG respectfully requests that this Court enter an order granting IDFG leave to file late claims 21-02039 and 21-02170. Oral argument is requested on this matter.

DATED this 28th day of March 2012

LAWRENCE G. WARDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division


HARRIET A. HENSLEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 28th day of March 2012, I caused to be served the original and copies of the **MEMORANDUM IN SUPPORT OF MOTION TO FILE LATE NOTICES OF CLAIM** on the following persons by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 736-2121
☐ Email:

2. Copies to:

IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

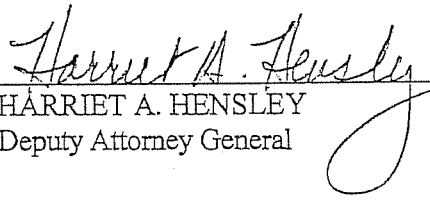
- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 287-6700
☒ Statehouse Mail

US DEPARTMENT OF JUSTICE
ENVIRONMENT &
NATURAL RESOURCES DIVISION
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:

CHIEF, NATURAL RESOURCES DIV.
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

- ☒ Not Applicable
☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile:


HARRIET A. HENSLEY
Deputy Attorney General

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

HARRIET A. HENSLEY (ISB No. 5235)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

*Attorneys for the State of Idaho,
Department of Fish and Game*

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

)
) Subcase Nos. 21-02039 and 21-02170
)
)

) AFFIDAVIT OF THOMAS BASSISTA IN
) SUPPORT OF MOTIONS TO FILE LATE
) NOTICES OF CLAIMS
)
)
)

THOMAS BASSISTA, under oath, deposes and states as follows:

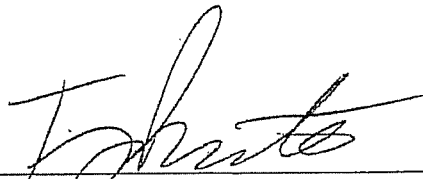
1. I am over the age of 18 and I make this affidavit based upon personal knowledge.
2. I am employed by the Idaho Department of Fish and Game ("IDFG").
3. Included in my duties as an Environmental Staff Biologist is assisting IDFG staff in matters pertaining to water rights.

AFFIDAVIT OF THOMAS BASSISTA IN SUPPORT OF
MOTION TO FILE LATE CLAIMS, Page 1

4. I have reviewed the IDFG files and other information pertaining to water right claims 21-02039 and 21-02170. Both claims are based upon licenses issued by the Idaho Department of Water Resources. The licenses are appurtenant to lands conveyed to IDFG after the licenses were issued.
5. Water has been diverted under these rights for the purpose of recreation and wildlife habitat since the lands to which they are appurtenant were conveyed to the IDFG. These water rights are essential to the management of the Sand Creek Wildlife Management Area.
6. The failure to file claims for water rights 21-02039 and 21-02170 was inadvertent and upon learning of the oversight, the IDFG sought assistance from the Idaho Attorney General's Office in filing these late notices of claim.

Further your affiant sayeth naught.

DATED this 27 day of March 2012.



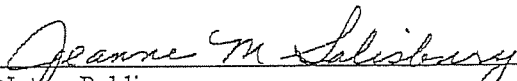
THOMAS BASSISTA

State of Idaho)
) S.S.
County of Ada)

Subscribed and sworn to before me this 27 day of March 2012.

S
E
A
L





Notary Public
I reside at: 4279 Commerce Circle Idaho Falls, ID
My Commission Expires on: May 13, 2014

AFFIDAVIT OF THOMAS BASSISTA IN SUPPORT OF
MOTION TO FILE LATE CLAIMS, Page 2