

RECEIVED

JAN 31 2013

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>37-02787</u>                                     |
|                | ) | (Insert Water Right Number)                                     |
|                | ) |                                                                 |
|                | ) | <b>STANDARD FORM 4</b>                                          |
| Case No. 39576 | ) |                                                                 |
|                | ) | <b>MOTION TO FILE:</b>                                          |
|                | ) | <input checked="" type="checkbox"/> <b>LATE NOTICE OF CLAIM</b> |
|                | ) | <input type="checkbox"/> <b>AMENDED NOTICE OF CLAIM</b>         |
| _____          | ) |                                                                 |

**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 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 Notice of Claim and Memorandum, attached hereto.

I have attached:

☒ A fully completed 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 \$300.00. In the event the SRBA Court grants this motion, IDFG requests that IDWR initiate the Interagency Billing Process. The PCA is 41601 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 April 16, 2013 at 1:30 p.m.  
at the SRBA courthouse, 253 Third Avenue, Twin Falls, Idaho.

**VERIFICATION** (Must be completed)

State of Idaho

County of Ada

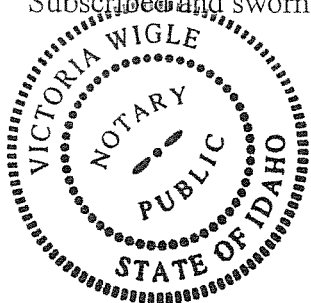
Harriet A. Hensley, being first duly sworn, upon oath, deposes and says:  
(Insert name of person filing form)

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

S  
E  
A  
L



Subscribed and sworn to before me on

January 30, 2013

(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 30<sup>th</sup> day of January 2013, 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

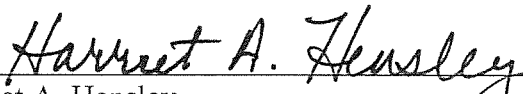
- ☐ U.S. Mail, postage prepaid  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile: \_\_\_\_\_  
☒ Statehouse Mail

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**

Late Notice of Claim 37-02787

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 37-2787

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 83707  
Street or Box City State

2. Date of Priority (Only one (1) per claim) June 30, 1947  
Month Day Year (YYYY)

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

4. a. Location of Point of Diversion is: Township 7S, Range 19E, Section 11,  
NE, 1/4 of NW, 1/4 Govt. Lot \_\_\_\_\_, BM., County of \_\_\_\_\_

Parcel (PIN) no. \_\_\_\_\_

Additional points of diversion if any: \_\_\_\_\_

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. Lateral 702-A, Big Wood Canal System, metal screw gate diversion  
structure

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Wildlife Propagation purposes from Mar. 1 to Nov. 30 amount 2.0 or \_\_\_\_\_

For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

7. Total quantity claimed (a) 2.0 (cfs) and/or (b) \_\_\_\_\_ (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 for open water habitat for the benefit of wildlife.

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 |        |
| 7S  | 19E | 11  |    |    |    | W  |    |    |    |    |    |    |    |    | W  |    |    |    |        |
|     |     | 12  |    |    | W  |    |    | W  | W  | W  | W  | W  |    | W  |    | W  |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |

Parcel (PIN) no(s). \_\_\_\_\_

Total number of acres irrigated N/A

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

\_\_\_\_\_ or None ( )

13. Remarks: The Bureau of Land Management (BLM) and IDFG cooperatively manage isolated parcels of BLM land, commonly referred to as Wildlife Tracts, through the Cooperative Wildlife Management Program. Our ability to cooperatively manage federal land was made possible through the 1960 Sikes Act (P.L. 93-452). The Act originally directed the Department of Interior and Department of Defense to cooperate in developing and implementing fish and wildlife conservation programs on military installations. The Act was amended in 1974 to include cooperation between state and federal agencies for planning.

Last Name ID Department of Fish & Game Identification No. \_\_\_\_\_

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 37-02787

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: 1

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 1/29/2013

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

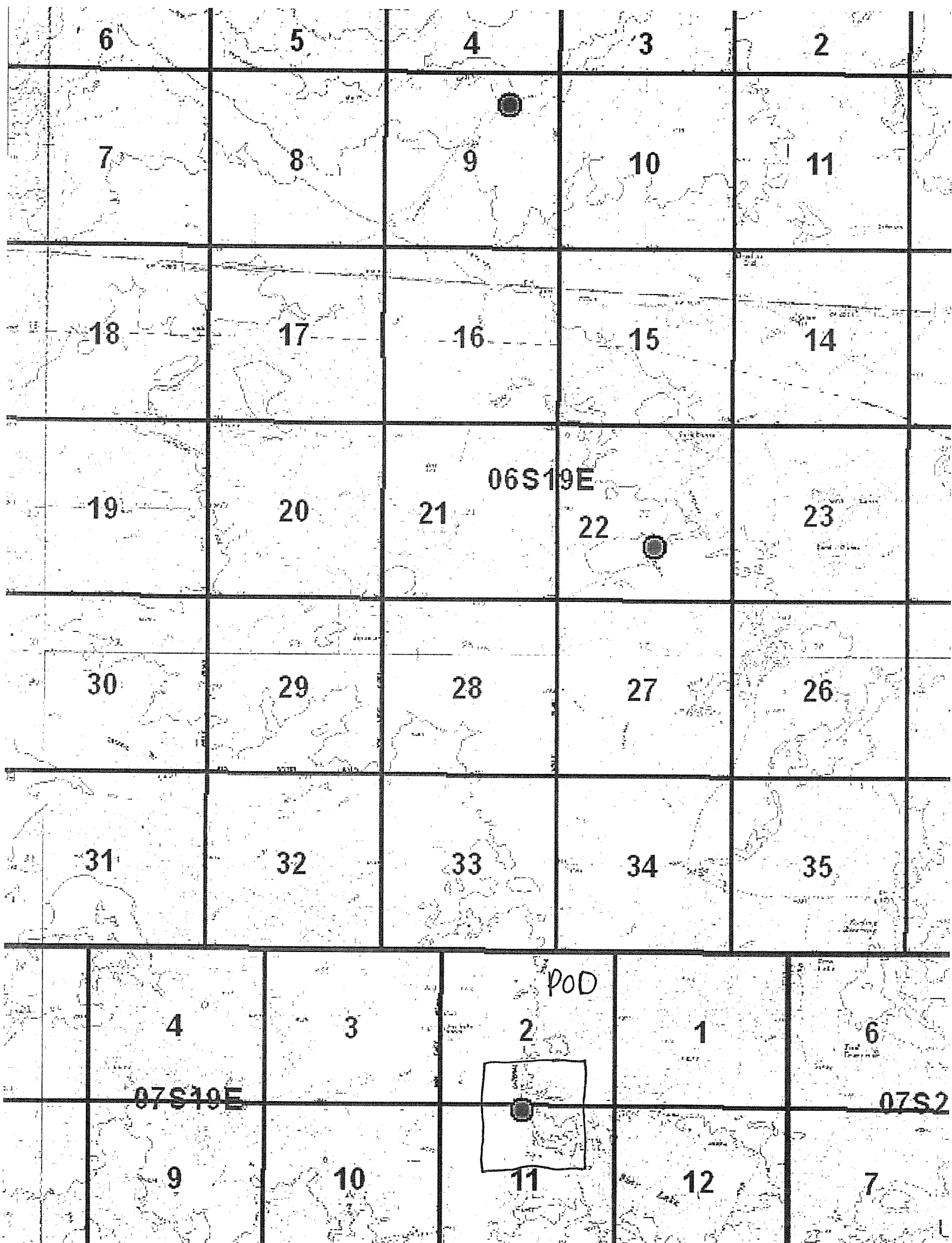
16. Notice of Appearance:

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 1/30/2013

Address Office of the Attorney General, Natural Resources Division

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





## **Attachment 2**

Memorandum In Support Of Motion To  
File Late Notice Of Claim 37-02787



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 a claim for the above listed water right 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 a claim for this water right was inadvertent, and upon learning of this oversight, IDFG researched historical and current use and asked for legal assistance in filing the late claim. *Affidavit of Mike McDonald* (“*McDonald Aff.*”) ¶ 6 attached hereto.

2. No water users will be prejudiced by the granting of this motion. Claim no. 37-02787 is based upon a license issued by the Idaho Department of Water Resources. 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.

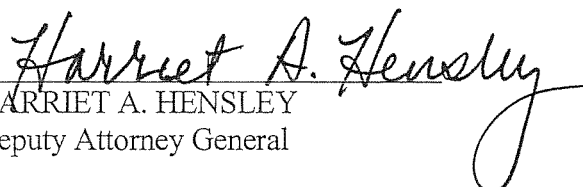
3. Finally, IDFG states a meritorious position in this motion. The purpose of the SRBA is to quantify lawful water use in the Snake River Basin for the purpose of improved administration. The water right claimed is essential to the wildlife propagation at Star Lake. *McDonald Aff* at ¶ 5. Allowing IDFG to obtain a partial decree for this water right is entirely consistent with this purpose.

Based on the foregoing reasons, IDFG has demonstrated good cause for this Court to allow the IDFG's notice of claim to be adjudicated. IDFG respectfully requests that this Court enter an order granting IDFG leave to file late claim 37-02787. Oral argument is requested on this matter.

DATED this 30<sup>th</sup> day of January, 2013.

LAWRENCE G. WASDEN  
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 30<sup>th</sup> day of January 2013, I caused to be served the original and copies of the **MEMORANDUM IN SUPPORT OF MOTION TO FILE LATE NOTICE 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

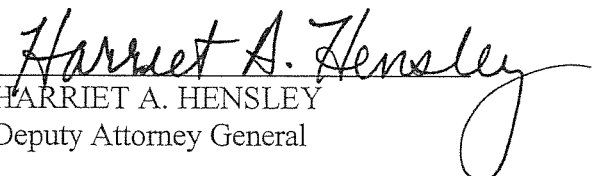
- ☐ U.S. Mail, postage prepaid  
☐ Hand Delivery  
☐ Federal Express  
☐ Facsimile: (208) 287-6700  
☒ Statehouse Mail

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     | ) | Subcase No. 37-02787                  |
|                | ) |                                       |
| Case No. 39576 | ) | <b>AFFIDAVIT OF MIKE McDONALD IN</b>  |
|                | ) | <b>SUPPORT OF MOTION TO FILE LATE</b> |
|                | ) | <b>NOTICE OF CLAIM</b>                |
|                | ) |                                       |
|                | ) |                                       |

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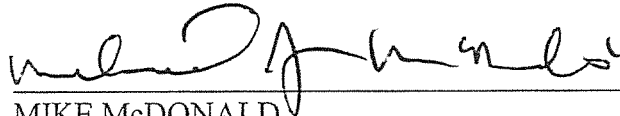
MIKE McDONALD, under oath, deposes and states as follows:

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.

4. I have reviewed the IDFG files and other information pertaining to water right claim 37-02787. The claim is based upon a license issued by the Idaho Department of Water Resources.
5. This water right is essential to the propagation of the wildlife resources of Star Lake.
6. The failure to file a claim for water right 37-02787 was inadvertent and upon learning of the oversight, the IDFG sought assistance from the Idaho Attorney General's Office in filing the late notice of claim.

Further your affiant sayeth naught.

DATED this 29 day of January, 2013.

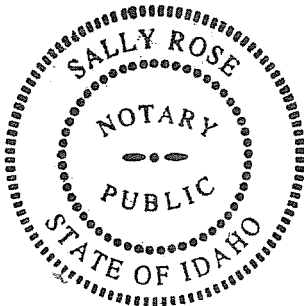
  
MIKE McDONALD

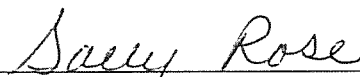
State of Idaho           )  
                                  ) S.S.  
County of ~~Ada~~        )

*Jerome*

Subscribed and sworn to before me this 29 day of January, 2013.

S  
E  
A  
L



  
Notary Public  
I reside at: 212 N. 200 W. Jerome, Id  
My Commission Expires on: 12/20/2016

## CERTIFICATE OF SERVICE

I certify that on this 30<sup>th</sup> day of January 2013, I caused to be served the original and copies of the **AFFIDAVIT OF MIKE McDONALD IN SUPPORT OF MOTION TO FILE LATE 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  
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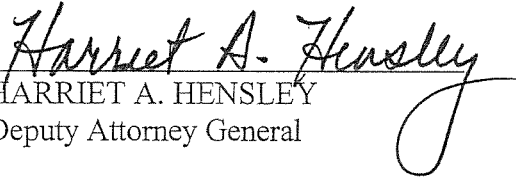
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☐ Facsimile:

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