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DEPARTMENT OF
WATER RESOURCES

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

Subcase Nos. 74-361, -362, -363, -364, -
365, -367, -368

**MEMORANDUM IN SUPPORT OF
MOTIONS FOR LATE CLAIM**

COME NOW Bruce and Glenda McConnell (“McConnells”), by and through their counsel of record, Chris M. Bromley, McHugh Bromley, PLLC, and hereby file this *Memorandum* in support of their *Motions for Late Claim* for water right nos. 74-361, -362, -363, -364, -365, -367, and -368.¹

I. LEGAL STANDARD OF REVIEW

Pursuant to A.0.1 § 4d(2)(e), motions to file a late notice of claim are reviewed under the “good cause” standard set forth in Idaho Rule of Civil Procedure 55(c)(5). “The primary

¹ McConnells are also filing contemporaneously a *Motion and Memorandum to Set Aside* the Court’s disallowal of the above-captioned water rights. McConnells hereby incorporate by reference the *Motion and Memorandum to Set Aside*. Additionally, all filings in these subcases are being made on an expedited basis, and with actual notice to users on Lee Creek.

considerations in determining good cause are: (1) whether the default was willful; (2) whether a meritorious defense has been presented; and (3) whether setting aside the default would prejudice the opponent.” *Order Granting Motion for Reconsideration as to Alternative Relief*, SRBA subcase no. 72-16779, p. 4 (May 6, 2010).

II. ARGUMENT

A. McConnells Meet the Good Cause and Meritorious Defense Standards

As stated in the contemporaneously filed *Motion to Set Aside and Memorandum in Support*, McConnells meet the “good cause” / “meritorious defense” standards articulated by A.O.1 § 4d(2)(e) and I.R.C.P. 55(c)(5), as summarized below:

- McConnells and their predecessors derived their interest in the above-captioned water rights from the *Reddington* decree, then the Lemhi decree;
- Lee Creek, from which McConnells divert water, was decreed as a separate source in the Lemhi Adjudication and then the SRBA;
- Including McConnells, there are only six other water users on Lee Creek;
- McConnells’ irrigation rights, ranging from 1883 to 1909, are senior to all other irrigation rights on Lee Creek;
- Only the United States, with a *de minimis* stockwater right (1876), holds a water right with an intervening priority date;
- McConnells’ water rights allow a total combined diversion rate of 15.2 cfs. The total combined diversion rate of all other rights on Lee Creek is 2.99 cfs;
- McConnells and their predecessors have diverted water every year, as the senior user, in-priority, since at least 1983;

- Since 2006, when the Court entered its order authorizing interim administration in Basin 74, McConnells have diverted their water rights every year, as the senior user, in-priority;
- During the 2012 and 2013 irrigation seasons, after their rights were determined unclaimed and disallowed, McConnells continued to be delivered water, in-priority;
- McConnells' water rights have been continually recognized as valid by IDWR since at least entry of the 1983 Lemhi decree;
- Second round service was not made upon McConnells;
- Aerial imagery of McConnells' place of use confirms it was irrigated when second round service was being investigated by IDWR;
- Because their water rights have always been delivered, in-priority, McConnells were never aware that their rights were unclaimed in the SRBA and action needed to be taken to ensure their water rights;
- Since they became aware on April 17, 2014 that their water rights were invalid, McConnells have worked as swiftly and diligently as possible to bring this action;
- McConnells hold no valid water rights with which to irrigate their ranch. Their ranch will be devastated if they are not allowed to file late claims for the above-captioned water rights.

See generally Memorandum in Support of Motion to Set Aside.

B. Granting the Late Claims will not Result in Prejudice

In conjunction with the good cause and meritorious defense standards, late claims are scrutinized as to whether they are opposed by third parties, mainly in an effort to avoid prejudice

to other parties who timely filed, prosecuted, and had their claims adjudicated. As stated by the Court:

A previously unaccounted for water demand on a fully appropriated and adjudicated source has the potential to undermine compromises and existing agreements made between other parties. In determining whether or not to grant a late claim this Court weighs the consequences of denying a late claimant the opportunity to have his right adjudicated and ultimately losing the right against any prejudice to other parties resulting from the unraveling of matters that have already been settled, completed and relied upon by those with decreed rights.

Order on Permissive Review Granting Motion to Set Aside Partial Decrees and Order of Recommitment to Special Master, SRBA subcase no. 79-02063 et al., pp. 8-9 (June 10, 2010) (emphasis added).

This case is completely unique in this regard because the water rights that are to be claimed, albeit very late in the SRBA process, have been continually delivered, accounted for and used by McConnells, and the water users on Lee Creek have taken their water subject to McConnells' water rights for decades. *See generally Memorandum in Support of Motion to Set Aside.* Because Lee Creek is a separate source, and the few water users on the source have always been delivered their water rights as the junior users, there is no possible "unraveling of matters" by allowing these late claims. Rather, not allowing these late claims will unravel and alter the historic delivery, return flows, and use of the waters from Lee Creek.

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III. CONCLUSION

In the best interests of justice and in the interests of the proper administration of the water rights so established, the Court should grant the Motion for Late Claim for water rights nos. 74-361, -362, -363, -364, -365, -367, and -368.

DATED this 28th day of April, 2014.

MCHUGH BROMLEY, PLLC

A handwritten signature in black ink, appearing to read "Chris M. Bromley", is written over a horizontal line.

CHRIS M. BROMLEY

Attorneys for Bruce and Glenda McConnell

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April 2014, I caused the foregoing document to be filed with the Court and true and correct copies served 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
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2. Paper copies to:

IDWR DOCUMENT DEPOSITORY P.O. BOX 83720 BOISE, ID 83720-0098	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery
CHIEF NATURAL RESOURCES DIV. OFFICE OF THE ATTORNEY GENERAL STATE OF IDAHO P.O. BOX 44449 BOISE, ID 83711-0449	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery
UNITED STATES DEPT. OF JUSTICE ENVIRONMENT & NATURAL RESOURCE 550 WEST FORT STREET, MSC 033 BOISE, ID 83724-0101	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery

3. Paper copies to water users on Lee Creek:

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4. Transmittal letter with an attached DVD containing all documents filed in this matter to the SRBA Expedited Service List:

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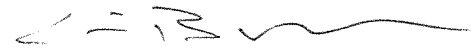
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