

LATE CLAIM DIRECTOR'S REPORT

Water Right No. 21-13194

In Re SRBA

Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Gary Spackman, Director
Carter Fritschle, Manager, Adjudication Section

April 29, 2015

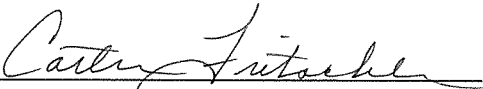
DESCRIPTIVE SUMMARY

This is a Late Claim Director's Report submitted by the Director of the Idaho Department of Water Resources.

DISCUSSION

Pursuant to the *Order for Expedited Late Claim Director's Report and Setting Forth Procedures and Deadlines for Expedited Process* issued by Judge Eric J. Wildman on March 16, 2015 (see attached), the Director submits this Late Claim Director's Report for water right 21-13194.

Respectfully submitted this 29th day of April, 2015.


CARTER FRITSCHLE
Manager, Adjudication Section

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 21-13194

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: CASCADE CREEK
GRASSY SPRING

TRIBUTARY: FALL RIVER
TRIBUTARY: FALL RIVER

QUANTITY: 11,800.00 AFY

Water right nos. 21-4155 and 21-13194 are limited to the total combined annual diversion volume necessary to allocate a total of 15,204 acre-feet of irrigation storage water per year to the consumers or users of the irrigation storage water.

The quantity for this water right represents the maximum quantity of storage water that may be put to beneficial use under this right after the storage released from Grassy Lake enters the State of Idaho.

PRIORITY DATE: 10/31/1978

This water right is subordinate to all existing and future water rights established pursuant to Idaho law for use within the Snake River Basin above Milner.

POINT OF
DIVERSION:

T09N R46E S17 Lot 3 Within FREMONT County

The point of diversion shown above is where Fall River enters the State of Idaho, recognizing, however, the storage water is physically stored in and released from Grassy Lake which is located within the State of Wyoming.

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION STORAGE	01/01 12/31	11,800.00 AFY

Water accruing to this water right supplements water accrued under water right no. 21-4155, and water available under this water right will be allocated for end use as provided in contracts entered into between the United States and federal contractors referenced in provision 2 as if it had accrued under water right no. 21-4155.

PLACE OF USE:

Place of use does not include federal public lands unless authorized in writing by the United States Bureau of Reclamation.

Place of use is on those lands indentified under water right no. 21-4155.

Place of use for storage is Grassy Lake, provided, however, that water under this right may be temporarily held in the unoccupied space of any of the reservoirs upstream of Milner Dam, located at Township 10S, Range 21E, Sections 28 and 29, when determined by the Water District 01 Watermaster as supervised by the Director of the Department of Water Resources, the Water District 01 advisory committee, and the United States Bureau of Reclamation that such temporary storage will maximize the storage of water upstream of Milner Dam.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

1. The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.
2. The allocation of storage to federal contractors and the location of that storage, including carryover storage, in the reservoir system shall be determined by the United States Bureau of Reclamation pursuant to federal reclamation law and contracts entered into between the United States and federal contractors. Water accruing to this water right is to be allocated to and for the benefit of the spaceholders in Palisades Reservoir by the United States Bureau of Reclamation pursuant to the spaceholders' contracts. The Water District 01 Watermaster as supervised by the Director of the Department of Water Resources shall distribute stored water in accordance with the allocation instructions from the United States Bureau of Reclamation. "Reservoir system" shall mean all Federal reservoirs on the Snake River and its tributaries down to and including Lake Walcott, which store and distribute water pursuant to water right nos. 1-219, 1-2064, 1-2068, 1-4055, 1-10042, 1-10043, 1-10044, 1-10045, 1-10620, 1-10621A, 1-10621B, 1-10622, 1-10623, 21-2156, 21-4155, 21-10560, 21-13161, 21-13194, 25-7004, 25-14413A and 25-14413B.
3. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may ultimately be determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
4. The operation, use and administration of this water right is subject to the terms and conditions of the Settlement Agreement signed on February 14, 2006 with Minidoka Irrigation District, Burley Irrigation District, Twin Falls Canal Company, North Side Canal Company and American Falls Reservoir District #2.
5. This decree does not alter, amend, or modify the contracts entered into between the various federal contractors and the United States Bureau of Reclamation, as amended, including but not limited to the contractual storage exchanges, in connection with the Palisades project and the Minidoka project, which contracts remain binding among the parties.
6. The storage of water for irrigation purposes occurs within the State of Wyoming pursuant to Certificate No. 4631-R and pursuant to the laws of that state and consistent with the Snake River Compact, and consistent with federal law, which provides for the operation of the Minidoka Project consistent with existing federal law and contracts entered into between spaceholders and the United States. The listing of irrigation storage is for information purposes only.
7. The exercise and administration of this water right is subject to the terms and conditions of the Stipulation effective _XX/XX_, 2015, which is incorporated herein by reference.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

This right is based upon an enlargement of Right No. 21-4155 pursuant to Section 42-1426, Idaho Code.

CERTIFICATE OF SERVICE

I certify that on April 29th, 2015, I caused to be served a true and correct copy of this Late Claim Director's Report, to the following persons, in the manner indicated and addressed as follows:

1. Original to:

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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ E-mail

2. Copies to:

Chief, Natural Resources Div.
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ E-mail

United States Department of Justice
Environment & Natural Resources Div.
550 W. Fort Street MSC 033
Boise, ID 83724

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ E-mail

David W. Gehlert
Natural Resources Section
Environment and natural Resources Division
U.S. Department of Justice
999 18th Street
South Terrace – Suite 370
Denver, CO 80294

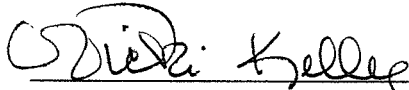
☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ E-mail

United States of America
Acting Through Regional Director
PN Region Code PN-3100
Bureau of Reclamation
1150 N. Curtis St., Ste. 100
Boise, ID 83706-1234

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ E-mail

Fremont County Courthouse
151 West 1st North Suite 15
St. Anthony, ID 83445

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ E-mail



Signature of person mailing the form

RECEIVED

MAR 18 2015

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAR 16 2015	
By _____	Clerk _____
	Deputy Clerk _____

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	)	WATER RIGHT NO: 21-13194
	)	
Case No. 39576	)	ORDER GRANTING LATE NOTICE OF
	)	CLAIM
	)	
	)	ORDER FOR EXPEDITED LATE CLAIM
	)	DIRECTOR'S REPORT AND
	)	SETTING FORTH PROCEDURES AND
	)	DEADLINES FOR EXPEDITED PROCESS
	)	
	)	

On April 25, 2012, this Court entered an *Order* in SRBA subcase no. 00-92099 and Twin Falls County Case No. 39576 closing Basin 21 to the filing of non-deferrable late claims (hereinafter, "*Order*").¹ On February 19, 2015, the United States of America, Bureau of Reclamation, filed a *Motion to File Late Notice of Claim* for the above-captioned water right. A hearing on the *Motion* was held on March 16, 2015. No one appeared in opposition to the *Motion*.

Following a review of the file and after hearing the comments made in open court, the Court found that the United States had set forth sufficient grounds to justify the filing of the *Motion*. The justifications and rationale supporting the Court's holding were orally set forth on the record at the March 16, 2015, hearing. Additionally, the Court, for the reasons set forth on the record, found good cause and a meritorious position for the *Motion to File Late Notice of Claim*. At the hearing, it was represented to the Court by the Idaho Department of Water Resources ("IDWR") that, if granted, this late claim would be a candidate for an expedited late claim director's report.

¹ The *Order* was entitled *Order Closing Claims Taking Basins 21, 22, 29, 32, 33, 65, 67, 69, 71, 72, 73, 74, 75, 77, 78 and 79 and Disallowal of Unclaimed Water Rights*.

Accordingly, following a review of the file and after hearing the comments made in open court, the Court makes the following findings:

1. The *Motion to File Late Notice of Claim* complied with all procedural requirements under *SRBA Administrative Order 1*, and no objections were made to the *Motion*. Although this Court previously entered an *Order* in Basin 21 closing the Basin to the filing of late claims generally, the Court finds that this claim was filed as a result of ongoing litigation, and therefore fits into one of the exceptions to the closure set forth in this Court's *Order*.
2. In limited circumstances it is preferable to have a *Late Claims Director's Report* for certain late claims individually prepared and filed. This is on a case-by-case basis and provided IDWR does not oppose preparing and filing an expedited *Late Claims Director's Report*.
3. In this case IDWR does not oppose preparing and filing an expedited *Late Claim Director's Report* for the late claim, given that the final regularly scheduled SRBA late claims director's report was filed December 31, 2013.
4. This Court therefore finds that under the circumstances the issuance of expedited *Late Claim Director's Reports* for the above-captioned claim is appropriate.

THEREFORE, IT IS HEREBY ORDERED that the *Motion to File a Late Notice of Claim* for water right claim 21-13194 is **granted**. The original Notice of Claim, as well as any attached filing fees, and a copy of this *Order* will be forwarded to IDWR for further action.

IT IS HEREBY FURTHER ORDERED that the Director issue an expedited *Late Claim Director's Report* for the above-captioned water right claim, and that the parties abide by the following schedule with respect to the late claim:

1. Deadline for filing *Late Claim Director's Report*: The Director shall file an original of the *Late Claim Director's Report* for the above-captioned water right claim with this Court on or before **April 30, 2015**, and shall distribute for display and review at least one (1) copy of the *Late Claim Director's Report* to the office of the clerk of the district court for each county in which any part of the water system is located, together with a copy of this *Order*. The Director shall also serve on each claimant or the claimant's attorney a notice of filing of the *Late*

Claim Director's Report. Last, the Director shall file with the Court an affidavit demonstrating compliance with the notice requirements of Idaho Code § 42-1411(6).

2. Deadline for the filing of objections to *Late Claim Director's Report*: Any party wishing to file an objection to the *Late Claim Director's Report* may do so on or before **May 29, 2015**.

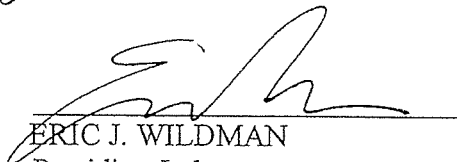
3. Deadline for the filing of responses to objections to *Late Claim Director's Report*: Responses to objections to the *Late Claim Director's Report* must be filed on or before **June 19, 2015**.

4. Hearing on uncontested claim: In the event no objections are filed, the Court will hold a hearing on the entry of the ***Partial Decree*** as required by I.C. § 42- 1412(7). **NOTICE IS HEREBY GIVEN** that the hearing will be held on **July 21, 2015, at 1:30 p.m. (Mountain Time)**, at the Snake River Basin Adjudication District Court, 253 - 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing the number 1-215-446-0193 and when prompted entering code 406128#.

5. Publication of Notice: The clerk of the court is instructed to publish a notice of the issuance of this order, together with the applicable objection, response and hearing date, on the April 2014 docket sheet.

IT IS SO ORDERED.

Dated March 16, 2015


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING LATE NOTICE OF CLAIM / ORDER FOR EXPEDITED DIRECTOR'S REPORT AND SETTING FORTH PROCEDURES AND DEADLINES was mailed on March 16, 2015, with sufficient first-class postage to the following:

UNITED STATES OF AMERICA

Represented by:

US DEPARTMENT OF JUSTICE

ENVIRONMENT & NATL' RESOURCES

550 WEST FORT STREET, MSC 033

BOISE, ID 83724

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

ORDER

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FILE COPY FOR 00525

Deputy Clerk

A handwritten signature in cursive script, appearing to read "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the printed text "Deputy Clerk".