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Attorneys for the State of Idaho

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

In Re CSRBA

Case No. 49576

Subcase Nos. 91-8021, 91-8022, 91-8023, 91-
8024, 91-8025

**STATE OF IDAHO'S RESPONSE TO
THE UNITED STATES FOREST
SERVICE'S MOTIONS TO FILE LATE
NOTICES OF CLAIMS**

The State of Idaho ("the State"), by and through its attorneys of record, hereby responds to the *Motion to File a Late Notice of Claim* filed in the above subcases by counsel for the United States Forest Service ("USFS") on July 17, 2018 (collectively "*Motions*"). The State does not object to the *Motions* filed in the above subcases. However, the State does have some potential concerns with the merits of the claims, and is reserving its right to participate fully in these subcases should the Court grant the *Motions*.

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**DEPARTMENT OF
WATER RESOURCES**

The State is concerned about whether these claims may have been subject to a previous claim by USFS, and whether allowing several *de minimis* domestic water rights from the same well for use at the Avery Ranger Station would violate the anti-stacking provision set forth in Idaho Code § 42-111(3).¹ The current record is inadequate to resolve these concerns. The State believes that it would be appropriate to await the Director's Reports for these claims, rather than attempt to resolve these issues at this stage of the proceedings. It is possible that the Director's Reports will dispel the State's concerns, or that the Director's Reports will raise additional issues. In any event, the State reserves all of its rights to participate fully in these subcases, including but not limited to raising the concerns described above, after the Director's Reports have been issued.

The State is also concerned that the proffered Notices of Claims appear to claim a quantity in excess of a *de minimis* domestic use as provided in Idaho Code § 42-111. The basis USFS provided for filing the *Motions* was that the claims were "deferred pursuant to the Court's Order Establishing Procedures For The Adjudication of *De Minimis* Domestic and Stockwater Claims (Nov. 13, 2008) ('Order')." *Motions* at 2. The State, therefore, requests that if the Court grants the *Motions*, the record reflect that the claims shall be adjudicated as *de minimis* domestic claims, subject to the definition and requirements of *de minimis* domestic uses as provided in Idaho Code § 42-111 and this Court's Order.

Respectfully submitted this 13th day of September, 2018.

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¹ The Affidavit of Shantel M. Chapple Knowlton filed concurrently with this response includes copies of documents from the adjudication file for water right no. 91-7631 that may be relevant to the claims at issue.



SHANTEL M. CHAPPLE KNOWLTON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2018, I caused to be served a true and correct copy of the foregoing document by the methods indicated:

CLERK OF THE DISTRICT COURT COEUR D' ALENE -SPOKANE RIVER BASIN ADJUDICATION 253 THIRD AVENUE NORTH P.O. BOX 2707 TWIN FALLS, ID 83303- 2707	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☒ Federal Express ☐ Facsimile: <u>(208) 736-2121</u> ☐ Statehouse Mail
IDWR DOCUMENT DEPOSITORY STATEHOUSE MAIL PO BOX 83720 BOISE, ID 83720-0098	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☒ Statehouse Mail
US DEPARTMENT OF JUSTICE ENVIRONMENT & NATL' RESOURCES 550 WEST FORT STREET, MSC 033 BOISE, ID 83724	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: ☐ Statehouse Mail



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