

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

RIGHT NUMBER: 74-15861

NAME AND ADDRESS: JAMES E RIGGAN
267 HWY 28
SALMON ID 83467

SOURCE: WIMPEY CREEK

TRIBUTARY: LEMHI RIVER

QUANTITY: 0.220 CFS

Right Nos. 74-15015 and 74-15861 are limited to a total combined diversion rate of 0.34 cfs.

PRIORITY DATE: 03/15/1983

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

POINT OF
DIVERSION:

T21N R23E S24 NESESW Within LEMHI County

T21N R23E S24 NESESW Within LEMHI County

T21N R23E S24 SESESW Within LEMHI County

T21N R23E S25 SWNENW Within LEMHI County

The following rights are diverted through point(s) of diversion described above: 74-15015 & 74-15861 .

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	0.220 CFS

PLACE OF USE: IRRIGATION in LEMHI County

T21N R23E S24	SESW	7.20	T21N R23E S25	NENW	28.00
T21N R23E S25	NWNW	3.30	T21N R23E S25	SWNW	15.00
T21N R23E S25	SENW	1.00	T21N R23E S25	NWSW	2.00
T21N R23E S26	SENE	1.50	T21N R23E S26	NESE	15.00

73 ACRES TOTAL

Right Nos. 74-15015 and 74-15861 are limited to the irrigation of a combined total of 73 acres in a single irrigation season.

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

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 be ultimately 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.

This right is based upon an enlargement of Right No. 74-15015 pursuant to Section 42-1426, Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

This right is for an enlargement of 46.5 acres within the place of use described for this right.

Claim No(s). 74-15861

Claim No(s). 74-15861

[illegible]

RECEIVED

MAY 29 2008

DEPARTMENT OF
WATER RESOURCES

Hearing: 8-19-08

SMRR 7/24/2008

Related closely to 74-15015
Trial held 7-24-2008 MVB
9-16-08

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 Fees accurate @ \$100⁰⁰)

Subcase: 74-15861

Variable Fee Paid for)

STANDARD FORM 4

Case 39576 under 74-15015)

MOTION TO FILE

☒ LATE NOTICE OF CLAIM

☐ AMENDED NOTICE OF CLAIM

Claim is complete & correct)
6-10-08

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

My name is: James E. Riggan

My address is: 267 HWY 28
Salmon, ID

My phone number is: 208-756-3710

I am an attorney representing: James E. Riggan

My name is Jerry R. Rigby

My address is: 25 North 2nd East, P.O. Box 250, Rexburg, Idaho 83440

My phone number is: (208) 356-3633

SCANNED

MAY 29 2008

MOTION TO FILE A LATE NOTICE OF CLAIM

5/6
74-15015
✓

A *Motion to File a Late Notice of Claim* will require a hearing before the

☒ I did not file a Notice of Claim to the use of the water in the SRBA.
Mr. Riggan attempted to file a Notice of Claim on water right number 72-15015. However, IDWR would not recommend it for the amount historically used and required based upon the fact that his mother did not file a notice of claim for said amount in the Lemhi Adjudication. Since that time, Claimant has discovered that the issue has not formally been decided by the water court and therefore believes that facts clearly support his claim and that he should not be barred by the Lemhi Adjudication.

☐ 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.)

I have attached:

A letter to Mr. Riggan from Nate Arave of the Idaho Department of Water Resources which states how much water the Department feels Mr. Riggan needs and the priority date they are willing to recommend if the claim is not barred by the Lemhi Adjudication.

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

☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$_____.

☒ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$100.00.

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: August 19, 2008.

SCANNED

MAY 29 2008

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A Motion to File and Amended Notice of Claim may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

- ☐ I must amend my Notice of Claim to the use of the water in the SRBA because:
Claimant has been working with IDWR for several years in an attempt to verify that there have been historical changes in water from natural flows to storage in Henry's Lake. Recently, through investigation of old files and historical data, it has been verified that said changes occurred thus giving rise to a claim involving the "accomplished transfer" from natural flow to storage.
- ☐ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.
-

I have attached:

- ☐ An Amended Notice of Claim (available from IDWR).
- ☐ Payment of the following additional fees required by IDWR:

Fees have been paid _____

SCANNED

MAY 29 2008

VERIFICATION

STATE OF IDAHO,)
 ss
County of Madison.)

Jerry R. Rigby, being first duly sworn, upon oath, deposes and says:

That I am the Secretary of party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 4204101A(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



Attorney signing in representative capacity.

Subscribed and sworn to before me on this 27th day of May, 2008.





Notary Public for Idaho

Residing at St. Anthony 

My Commission Expires: 8-9-2012

SCANNED

MAY 29 2008

CERTIFICATE OF MAILING

I certify that on May 27, 2008, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid 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

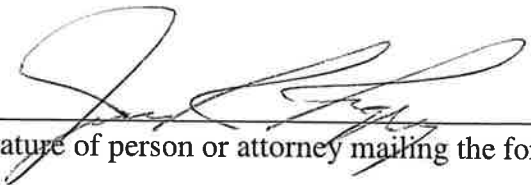
2. Copies to:

IDWR Document Depository
P. O. Box 83720
Boise, ID 83720-0098

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

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

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or Special Master, you must serve a copy on all parties in that subcase.



Signature of person or attorney mailing the form

SCANNED

MAY 29 2008

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 74-15861
Date Received: 5/12/2008
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

JAMES E RIGGAN Phone: (208) 756-3710

267 HWY 28
SALMON ID USA 83467

2. Date of Priority: 03/15/1907

3. Source: WIMPEY CREEK Trib. to: LEMHI RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 Lot	County	Type
21N	23E	24	NE	SE	SW	LEMHI	
21N	23E	24	NE	SE	SW	LEMHI	
21N	23E	24	SE	SE	SW	LEMHI	
21N	23E	25	SW	NE	NW	LEMHI	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/15	11/15	1.24	

7. Total Quantity Appropriated is:
1.24 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
21N	23E	24	SE	SW	IRRIGATION	7.2
					Section Acres	7.2
21N	23E	25	NE	NW	IRRIGATION	28
			SW	NW	IRRIGATION	15
			SE	NW	IRRIGATION	1
			NW	SW	IRRIGATION	2
			NW	NW	IRRIGATION	3.3
					Section Acres	49.3
21N	23E	26	SE	NE	IRRIGATION	1.5
			NE	SE	IRRIGATION	15
					Section Acres	16.5
					Total Acres	73

11. Place of use in counties: LEMHI

12. Do you own the property listed above as place of use? Yes

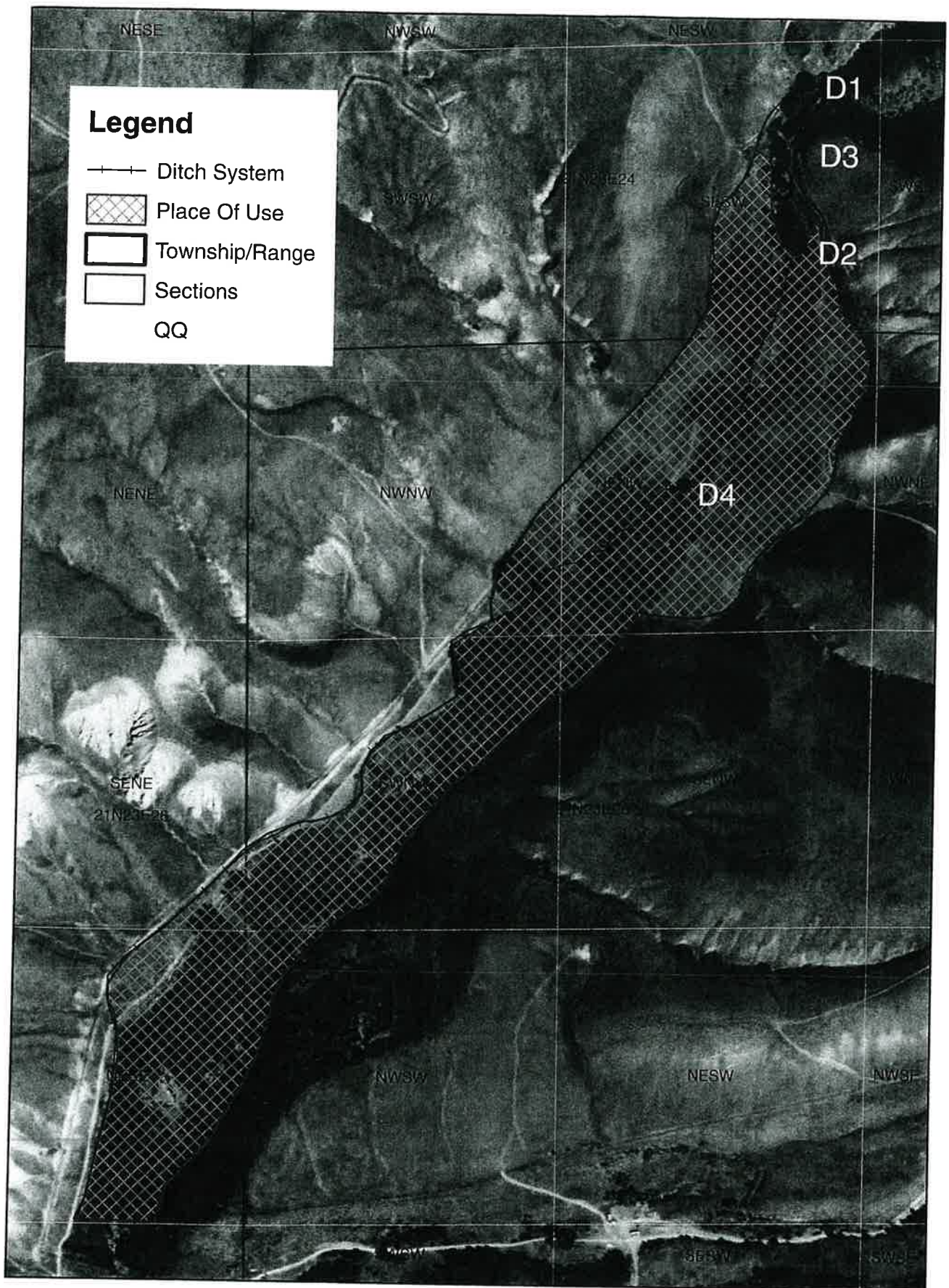
13. Other Water Rights Used: 74-15015

14. Remarks:

15. Basis of Claim: Beneficial Use

16. Signature(s)

34-15861 Delivery System



(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not X 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 that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): James E. Reggan Date: 5-23-08

Date:

State of Idaho)
County of Lemhi) SS.

Subscribed and sworn (or affirmed) before me this 23rd

of May 2008

Bill Allen
Notary Public

Residing at Shannon

My commission Expires 2/19/2009





State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

EASTERN REGION

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

May 12, 2008

RE: Late Claim 74-15861

JAMES E RIGGAN
267 HWY 28
SALMON ID 83467

Dear Mr. Riggan,

Thank you for your time and assistance in conducting the field exam on Friday 5/9/2008. I have generated a late claim pursuant to my findings during this visit. I have enclosed a copy of the diagram of the delivery system used to irrigate your place on Wimpey Creek. The total acres irrigated are 73. I determined a diversion rate which would be required for irrigation of this ground using the Worstell method. I have enclosed a copy of this analysis for each ditch. The results of these analyses have shown that 1.58 cfs would be required to irrigate this ground delivering an inch to the acre. Currently 0.36 cfs is recommended under water right 74-15015 and as a result 1.24 would need to be used under claim 74-15861. The Shannon decree was issued in 1906. I have used a 3/15/1907 priority data on this claim because it would be the earliest which can be recommended. I would be comfortable recommending this priority date based upon the age of the trees growing along these ditches if the Lemhi Decree did not preclude me from doing so. I have also enclosed a copy of an SF4 which will need to be submitted with this late claim.

If you have any questions or concerns please contact me at the number listed below.

Respectfully Submitted,

Nate Arave
Water Resource Agent
Idaho Department of Water Resources
900 N. Skyline Drive Suite A
Idaho Falls, Id 83402-1718
(208)-525-7161

RECEIVED

JAN 14 2009

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JAN 12 2009

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

Case No. 39576

) Subcases 74-15015 and 74-15861
) (Riggan)
)
) ORDER CONDITIONALLY GRANTING
) MOTION TO FILE LATE NOTICE OF
) CLAIM; ORDER REQUIRING FILING
) OF AMENDED CLAIM; ORDER
) REQUESTING AMENDED
) DIRECTOR'S REPORT IF AMENDED
) CLAIM IS FILED
)

I.

PROCEDURAL BACKGROUND

On May 1, 1990, Clark H. and Harriet C. Riggan filed a *Notice of Claim to a Water Right* in the Snake River Basin Adjudication for water right claim number 74-0209. The Riggans claimed a water right for 0.36 cfs and a priority date of May 1, 1897, based on an earlier decree. This earlier decree was issued to the Riggans in the Lemhi Adjudication, for the irrigation of 27 acres from one point of diversion. On May 18, 2001, water right claim number 74-0209 was renumbered to 74-15015, due to a split.

The Idaho Department of Water Resources filed its *Director's Report for Irrigation and Other Uses, Reporting Area 23, IDWR Basin 74, Part I* on January 23, 2006, recommending the claimed quantity, priority date, and acreage based on the Lemhi Decree as claimed by the Riggans. On June 27, 2006, James E. Riggan (son of Clark and Harriet Riggan) filed a *Standard Form 1 Objection* to 74-15015, objecting to the recommended quantity, place of use, and point of diversion. Specifically, Mr. Riggan claimed a quantity of 1 to 1.5 inches per acre, a place of use of 72 acres, and three different points of diversion. Mr. Riggan asserted that from the time his family

ORDER CONDITIONALLY GRANTING MOTION TO FILE LATE NOTICE OF CLAIM;
ORDER REQUIRING FILING OF AMENDED CLAIM;
ORDER REQUESTING AMENDED DIRECTOR'S REPORT IF AMENDED CLAIM IS FILED

Page 1 of 7

purchased the property in the 1960's, there had been over seventy acres irrigated from three points of diversion.

On May 15, 2007, after being advised by the Idaho Department of Water Resources ("IDWR"), Mr. Riggan filed a *Motion to File Amended Notice of Claim*.¹ After a hearing, the Special Master granted Mr. Riggan's *Motion*. The amended claim sought 2.16 cfs for 72 acres with three points of diversion. Thereafter, IDWR filed an *Amended Director's Report, Subcase 74-15015* on September 21, 2007, recommending no change from the original *Director's Report*. No changes were made on the basis that the water right was previously adjudicated in the Lemhi Adjudication. IDWR cited Idaho Code § 42-1420, stating that the legal doctrine of *res judicata* bars reconsideration of the nature and extent of all water rights previously adjudicated. On October 17, 2007, Mr. Riggan again objected to the quantity, point of diversion and place of use in the *Amended Director's Report*.

Special Master Dolan requested an I.R.E. 706 report from IDWR, detailing the underlying facts and data upon which it made its recommendation, plus an "alternative recommendation." IDWR filed its *Supplemental Director's Report Regarding Subcase No. 74-15015* on July 11, 2008. It found that water right 74-209 was decreed in the Lemhi Adjudication for 27 acres with .34 cfs from one point of diversion, based on the Shenon Decree of 1906. During the course of its site examination and discussions with Mr. Riggan, IDWR suggested that Mr. Riggan file a beneficial use claim for the additional acreage, quantity, and points of diversion.

On May 28, 2008, Mr. Riggan filed a *Motion to File Late Notice of Claim* claiming the additional acreage, quantity, and points of diversion under water right claim number 74-15861. Water right claim number 74-15861 overlaps with claim number 74-15015. After a hearing, this Court referred the matter to the Special Master on July 18, 2008. On September 24, 2008, the Special Master issued his *Special Master Report and Recommendation on Motion to File Late Notice of Claim* recommending the *Motion to File Late Notice of Claim* be granted and that different recommendations be prepared by IDWR in the event 74-15861 is allowed as an overlapping claim, or in the alternative, if

¹ *AOI* prohibits a claimant from amending a claim through an objection. *Administrative Order 1*, Section 4(d)(1)(b).

Mr. Riggan decides to withdraw his objection to 74-15015 should 74-15861 be allowed as a beneficial use claim.

II. EFFECT OF PRIOR DECREE IN THE SRBA

The Idaho Supreme Court has held that a prior decree entered in a private adjudication is binding upon the parties (and their privies) to that decree. *State v. Hagerman Water Right Owners*, 130 Idaho 736, 742, 947 P.2d 409, 415 (1997). In its decision, the Court cites I.C. § 42-1401A, which defines a private adjudication as binding "those persons joined in the action and for the administration of such rights." I.C. § 42-1401A (9). Further, with limited exception, I.C. § 42-1420 states that a "decree in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system." I.C. § 42-1420 (1). Therefore, in the SRBA, water rights decreed in a prior adjudication are binding upon the parties (and their successors-in-interest) to that decree. Such parties bound by that earlier decree may not collaterally attack it in a later adjudication, such as the SRBA. The SRBA cannot serve as a second opportunity for parties and their successors-in-interest to re-adjudicate their prior decreed water rights. Subject to certain exceptions, this Court has consistently prohibited parties from reopening prior decrees in the SRBA.

III. THE LEMHI ADJUDICATION

The Lemhi Adjudication was commenced as a general adjudication on August 13, 1970. Thereafter, following an investigation of water uses by the Director, a list of water users was compiled and those water users were then joined as parties and required to file claims. Proposed findings of fact and conclusions of law were lodged with the court on July 9, 1974. On January 4, 1983, a *Partial Decree* was entered. The *Partial Decree* applied to all of the claims in the Lemhi Basin except as expressly excluded. The *Partial Decree* provided:

ORDER CONDITIONALLY GRANTING MOTION TO FILE LATE NOTICE OF CLAIM;
ORDER REQUIRING FILING OF AMENDED CLAIM;
ORDER REQUESTING AMENDED DIRECTOR'S REPORT IF AMENDED CLAIM IS FILED

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the water rights of the Lemhi River Basin with the exceptions noted above are as described in the PROPOSED FINDINGS OF WATER RIGHTS IN THE LEMHI RIVER BASIN, as amended by:

1. Special Master's Report on Specific Objections;
2. Stipulation Resolving General Objections;
3. Order Correcting Clerical Oversights in Proposed Findings of Water Rights;
- and
4. Licenses issued on or before the dates of this partial decree for permits listed in the PROPOSED FINDINGS;

all of which are incorporated herein by reference.

The *Partial Decree* expressly excluded any of the rights on Geertsen Creek and its tributaries which were subject to a separate partial decree. The *Partial Decree* also excluded the United States Forest Service claims which were at issue in *U.S. v. New Mexico*, 438 U.S. 696, 98 S.Ct. 3012 (1978).

On July 29, 1985, a *Notice of Entry of Judgment* was entered, providing that final judgment for the water rights covered by the *Partial Decree* was entered January 4, 1983. Accordingly, all water users within the Lemhi River Basin who were joined as parties, subject to the express exclusions as provided in the *Partial Decree*, who either filed claims or failed to file claims were bound by that *Partial Decree* and subsequent final judgment.

On October 14, 1992, a minute entry order was filed which provided:

- 1) The December 30, 1982 [January 4, 1983] partial decree shall be considered to be a final decree in this matter.
- 2) The United States shall be dismissed without prejudice certainly to bring their claims as reserved under the partial decree.
- 3) It was ordered in the alternative, that this matter be consolidated with the Snake River Basin Adjudication with the jurisdiction, in

Twin Falls, so the procedures can be followed that have been established by the sitting Judge there, Daniel C. Hurlbutt.

- 4) The Lemhi County court, within the Seventh Judicial District, does not have the facilities to process the claims that the forest service has filed. Prior to this, they were all done by the Department of Water Resources and not by the Clerk of the Court. It is the understanding of this court, the claims to be processed, whether it be refiling of the forest service claims or any new claims, shall be filed in Twin Falls.
- 5) The issue of whether or not the order of this court is res judicata, that decision is properly addressed in the Snake River Basin Adjudication.

Although the October 14, 1992 order provided that the December 30, 1982 order and *Partial Decree* be considered a final decree in the Lemhi Adjudication, the *Partial Decree* and *Notice of Entry of Judgment* was a final judgment as to those parties whose claims were subject to the *Partial Decree*. Accordingly, under principles of *res judicata*, law-of-the-case, and the holding in *State v. Hagerman Water Right Owners*, 130 Idaho 736, 947 P.2d 409, (1997), any water user or successor-in-interest whose claim was decreed or who failed to file a claim is bound by the *Partial Decree*.

Claims in the SRBA can vary from the elements in the prior decree to account for subsequent changes in circumstances such as abandonment, forfeiture, and accomplished transfer, or to correct errors.² However, evidence of an earlier use or larger quantity than previously decreed does not fit within either of the above exceptions and constitutes a collateral attack on the prior decree.

The Court makes two observations in this respect. First, the fact that the present owner of a previously decreed water right may now have evidence of an earlier use or larger quantity than was previously decreed does not mean that an error or oversight occurred when the predecessor-in-interest filed (or failed to file) the claim in the prior adjudication. There are other plausible explanations. For instance, claims can be made in a manner so as to avoid contests. Existing differences between users over water rights can be worked out prior to the claims being filed so as to avoid litigation in the

² For example, corrections to legal descriptions and the like which do not result in expanding the previously decreed right.

adjudication process. Settlements such as these may dictate what each user eventually claims in the adjudication. Therefore, parties or their successors-in-interest to the prior decree are entitled to rely upon the prior decree, at least to the extent that the scope of the right will not be expanded beyond what was previously adjudicated.

Next, allowing a claimant to reopen a prior decree to present evidence of earlier use or larger quantity than was previously decreed completely undermines the principles of *res judicata* and the Supreme Court's ruling in *State v. Hagerman Water Right Owners*, as well as law-of-the-case in the SRBA. This is not the only case before the Court involving a collateral attack on the Lemhi Decree. Based on the facts and circumstances of this case, an exception in this case would render the effect of the prior decree meaningless and would require that the Court allow the same exception in all cases. This would be contrary to the Court's past rulings involving other prior decrees.

IV. DISCUSSION AND ORDER

In this case, the claimant's predecessor-in-interest was properly joined in the Lemhi Adjudication. The water right was decreed in the Lemhi Adjudication. The claimant is now seeking a greater quantity and more acreage than was previously decreed. The claimant offers no concrete explanation for the discrepancy other than a possible oversight by his predecessors-in-interest. The Court finds this to be a direct collateral attack on the partial decree. In the I.R.E. 706 Report, IDWR provided a draft recommendation for the portion of the water right claim exceeding that which was decreed in the Lemhi Adjudication. The 706 Report provides that there is evidence of prior beneficial use and that but for *res judicata*, it could recommend the claim as a beneficial use claim. However, because of the Shenon Decree, IDWR could not recommend a priority date earlier than March 15, 1907.

For reasons not apparent to this Court, the *Proposed Findings of Fact and Conclusions of Law* lodged July 9, 1974 and eventually incorporated into the *Partial Decree* provide that: "Beneficial use rights from surface sources are those rights which were commenced by diversion and appropriation of the water for a beneficial use prior to May 20, 1971." Because the mandatory permit requirement for appropriating surface

rights did not become effective until July 1, 1971, it would have been possible to perfect a beneficial use surface right between May 20, 1971, and July 1, 1971. The Special Master found that the claimant was beneficially using the water at that time.

Accordingly, based on the above-stated reasoning, the earliest permissible priority date that could be established would be May 20, 1971.

THEREFORE, IT IS ORDERED that the *Motion to File a Late Notice of Claim* for water right claim 74-15861 is **conditionally granted** on the basis that the claimant file an amended claim claiming a May 20, 1971 priority date. Alternatively, the Court is issuing an I.R.C.P. 54(b) certificate so that the claimant may appeal from this **Order**.

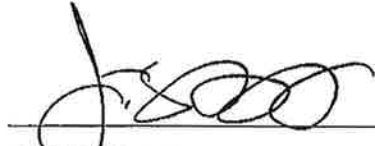
IT IS FURTHER HEREBY ORDERED that if the claimant elects to file the amended claim, the claim be filed within 15 (fifteen) days of entry of this **Order**.

IT IS FURTHER HEREBY ORDERED that if the claimant files an amended claim, IDWR is required to file an Amended Director's Report for 74-15015 and a Director's Report for 74-15861 with the May 20, 1971 priority date.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated January 9, 2009

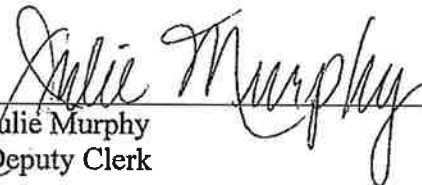

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER CONDITIONALLY GRANTING MOTION TO FILE LATE NOTICE OF CLAIM; ORDER REQUIRING FILING OF AMENDED CLAIM; ORDER REQUESTING AMENDED DIRECTOR'S REPORT IF AMENDED CLAIM IS FILED** were mailed on January 12, 2009, by first-class mail to the following:

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

James E. Riggan
Represented by:
Jerry R. Rigby
205 N 2nd E
PO Box 250
Rexburg, ID 83440-0250



Julie Murphy
Deputy Clerk