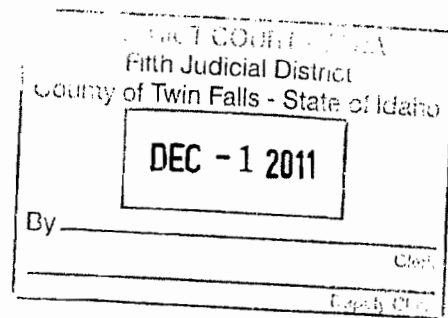




IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

|                |   |                                                    |
|----------------|---|----------------------------------------------------|
| In Re SRBA     | ) | Basin-Wide Issue 16                                |
|                | ) | Subcase No. 00-92099                               |
|                | ) | (In Re: Form and Content of Final Unified Decree)  |
| Case No. 39576 | ) |                                                    |
|                | ) | ORDER CLOSING CLAIMS TAKING IN                     |
|                | ) | BASINS 23, 24, 25, 43, 51, 55, 57, 61, 81, 82, 83, |
|                | ) | 84, 85, and 86 AND DISALLOWAL OF                   |
|                | ) | UNCLAIMED WATER RIGHTS                             |

**I. PROCEDURAL BACKGROUND**

This Court issued an *Order Setting Initial Status Conference Re: Form and Content of Final Decree* on January 13, 2011. On July 15, 2011, this Court entered its *Order Establishing Steering Committee and Notice of First Scheduled Meeting*. “The steering committee (“Committee”) is charged with identifying issues and sub-issues pertaining to the form and content of the final decree to be entered upon completion of the SRBA.” *Id.* at 1. The Committee is also “charged with recommending a logical order and time frame in which these issues and sub-issues should be decided.” *Id.*

In the *State of Idaho’s Initial Comments on Form and Content of Final Unified Decree*, filed May 17, 2011, the State of Idaho (“State”) recommended the Court “establish a schedule

for closing claims taking in each of the reporting basins . . . [i]n order to allow sufficient time for development of general provisions and preparation of the final decree . . .” *Id.* at 6. On July 18, 2011, the State filed its *Supplemental Comments on Form and Content of Final Unified Decree*, in which it proposed a schedule for closure of taking of late claims in the SRBA basins. The proposed schedule divided the SRBA basins into three groups based on the following criteria: (i) the amount of subcase activity within each basin, (ii) regional distribution of the closures to spread the workload out for IDWR, and (iii) SRBA basins that represented an entire drainage basin. At its initial meeting, the Committee reviewed the State’s proposed basin closure procedure and recommended that this Court implement that procedure.

On September 23, 2011, this Court issued its *Order Establishing Deadline for Late Claim Filings in Basins 23, 24, 25, 43, 51, 55, 57, 61, 81, 82, 83, 84, 85, and 86* (“Deadline Order”). The Court found that the Committee’s proposal for closure of taking of late claims within basins based on subcase activity, staging of IDWR’s workload, and drainage basins was a logical and necessary step in the completion of the SRBA, and ordered that claims taking in the initial group of basins be closed on November 30, 2011.

## II. DISCUSSION

Completion of claims taking in individual basins is an essential first step to completion of the SRBA. Without it, completion of the SRBA will not occur.

Based on the criteria identified above, the *Deadline Order* provided that “except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this Order in the SRBA, that the last date to file a MOTION TO FILE LATE CLAIM in Basins 23, 24, 25, 43, 51, 55, 57, 61, 81, 82, 83, 84, 85, and 86 shall be November 30, 2011.” *Deadline Order* at 4. Exhibit 1 to the *Deadline Order* included a list of *non-de minimis* water

rights from IDWR's water rights database that IDWR determined were required to be claimed in the SRBA. The preparation of this list was undertaken as a courtesy to the water users, not as an additional due process requirement. The *Deadline Order* provided that "[i]f unclaimed, these water rights will be decreed as disallowed." *Id.* at 3.

Claimants in each of these basins previously received extensive first-round and second-round *Notice of Filing Requirements* in the SRBA. See Idaho Code § 42-1408. These notice procedures meet constitutional due process requirements. *LU Ranching Co. v. U.S.*, 138 Idaho 606 (2003).

As of November 30, 2011, four motions for late claim in Basins 23, 24, 25, 43, 51, 55, 57, 61, 81, 82, 83, 84, 85, and 86 were received by the Court.

### III. CONCLUSION

In accordance with the *Deadline Order*, the Court has determined that except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this *Order* in the SRBA, that claims taking should be closed in basins 23, 24, 25, 43, 51, 55, 57, 61, 81, 82, 83, 84, 85, and 86. Further, the Court has determined that unclaimed water rights represented by the water right numbers listed on Exhibit 1 to this *Order*, except for any deferrable domestic and/or stockwater portion of such rights, should be decreed as disallowed.

This *Order* does not alter the deferrable nature of *de minimis* domestic and stockwater rights as provided for in "Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses" (January 17, 1989).

This *Order* does not preclude filing of late claims related to the resolution of litigation pending at the time of this *Order* in basins 23, 24, 25, 43, 51, 55, 57, 61, 81, 82, 83, 84, 85, and 86.

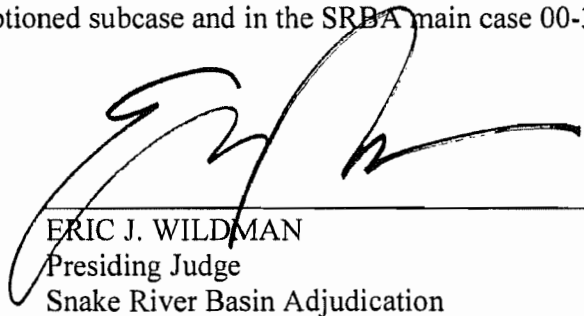
#### IV. ORDER

For the reasons stated above, IT IS HEREBY ORDERED that, except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this *Order* in the SRBA,<sup>1</sup> claims taking in Basins 23, 24, 25, 43, 51, 55, 57, 61, 81, 82, 83, 84, 85, and 86 is closed. No late claims will be accepted for filing in Basins 23, 24, 25, 43, 51, 55, 57, 61, 81, 82, 83, 84, 85, and 86, except as expressly provided by this *Order*.

IT IS FURTHER ORDERED that all unclaimed water rights represented by the water right numbers listed on Exhibit 1, except for any deferrable domestic and/or stockwater portion of such rights, are hereby decreed as disallowed.

The Clerk of the Court is hereby instructed to file a copy of the *Order Closing Claims Taking in Basins 23, 24, 25, 43, 51, 55, 57, 61, 81, 82, 83, 84, 85, and 86 and Disallowal of Unclaimed Water Rights* in the above captioned subcase and in the SRBA main case 00-39576.

DATED December 1, 2011.



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ERIC J. WILDMAN  
Presiding Judge  
Snake River Basin Adjudication

<sup>1</sup> "Pending litigation" refers to an active, related subcase(s) pending at the time of the basin closure deadline wherein an additional late claim(s) is required to resolve the related water right(s).

Basin 86 Potentially Unclaimed Water Rights

| Water Right No. | Basis           | Priority Date | Rate | Source(s)                                  | Water Use(s)                                            | Owner(s) of Record                   |
|-----------------|-----------------|---------------|------|--------------------------------------------|---------------------------------------------------------|--------------------------------------|
| 86-2000         | License         | 2/5/1905      | 0.50 | COYOTE GULCH CREEK, SPRING, UNNAMED STREAM | DOMESTIC, IRRIGATION                                    | GOLDSMITH, MARTIN L; LEWIS, SAMUEL   |
| 86-2002         | License         | 9/12/1906     | 0.02 | SPRING                                     | DOMESTIC, IRRIGATION                                    | HARR, JACKSON                        |
| 86-2003         | License         | 9/7/1906      | 1.00 | HATWAI CREEK, SPRINGS                      | DOMESTIC, IRRIGATION                                    | ELLIS, JAMES D                       |
| 86-2004         | License         | 6/22/1908     | 1.00 | RUBY CREEK                                 | DOMESTIC, INDUSTRIAL, MINING                            | JENNINGS, J J; MANN, R L; MOORE, W E |
| 86-2005         | License         | 5/6/1910      | 0.50 | KIMBERLY CREEK                             | DOMESTIC, IRRIGATION                                    | GROSECLOSE, MARION G                 |
| 86-2008         | License         | 7/31/1911     | 0.49 | BRADY GULCH CREEK                          | DOMESTIC, IRRIGATION                                    | BRATCHER, JAMES; COMPTON, C G        |
| 86-2013         | License         | 8/12/1938     | 0.12 | BIG MEADOW CREEK                           | DOMESTIC                                                | CITY OF TROY                         |
| 86-2019         | License         | 4/30/1953     | 0.14 | LITTLE POTLATCH CREEK                      | IRRIGATION                                              | WILSON, GARTH                        |
| 86-2024         | License         | 8/2/1957      | 1.22 | MOOSE CREEK                                | INDUSTRIAL, MINING                                      | RUBY CO                              |
| 86-2025         | License         | 3/17/1958     | 0.01 | UNNAMED STREAM                             | DOMESTIC                                                | HAGEN, DONALD E                      |
| 86-2037         | License         | 6/29/1962     |      | UNNAMED STREAM                             | IRRIGATION FROM STORAGE, IRRIGATION STORAGE, IRRIGATION | ARNBERG BROTHERS                     |
| 86-2040         | License         | 7/1/1955      | 0.20 | MIDDLE POTLATCH CREEK                      | IRRIGATION                                              | COOK JR, ASA                         |
| 86-2041         | License         | 9/1/1910      | 6.18 | CLEARWATER RIVER                           | DOMESTIC, IRRIGATION                                    | DARWIN, HARRY G                      |
| 86-2042         | License         | 10/8/1928     | 0.20 | CLEARWATER RIVER                           | DOMESTIC, IRRIGATION                                    | WHITE, DORA P                        |
| 86-4002         | Statutory Claim | 7/1/1950      |      | BIG MEADOW CREEK                           | MUNICIPAL FROM STORAGE, MUNICIPAL                       | CITY OF TROY                         |
| 86-4003         | Statutory Claim | 7/1/1952      | 1.00 | BIG MEADOW CREEK                           | MUNICIPAL                                               | CITY OF TROY                         |
| 86-4004         | Statutory Claim | 7/1/1950      |      | BIG MEADOW CREEK                           | MUNICIPAL FROM STORAGE, MUNICIPAL                       | CITY OF TROY                         |
| 86-4005         | Statutory Claim | 7/1/1952      | 1.00 | BIG MEADOW CREEK                           | MUNICIPAL                                               | CITY OF TROY                         |
| 86-4007         | Statutory Claim | 6/1/1924      | 0.50 | CLEARWATER RIVER                           | IRRIGATION                                              | RUGG, REVA P; RUGG, W H              |
| 86-4015B        | Statutory Claim | 6/1/1914      | 0.09 | SPRING                                     | DOMESTIC                                                | BATEMAN, EMERY                       |
| 86-4018         | Statutory Claim | 7/1/1951      | 0.33 | CLEARWATER RIVER                           | STOCKWATER                                              | MC CANN, WILLIAM V                   |
| 86-4031         | Statutory Claim | 6/1/1934      | 0.22 | CLEARWATER RIVER                           | IRRIGATION                                              | LEWISTON ROUNDUP ASSN                |
| 86-4035         | Statutory Claim | 4/1/1925      | 1.30 | POTLATCH RIVER                             | IRRIGATION, STOCKWATER                                  | ALBRIGHT, R W                        |
| 86-4040         | Statutory Claim | 6/1/1928      | 0.04 | SPRING                                     | DOMESTIC, IRRIGATION, STOCKWATER                        | FLERCHINGER, LEE; FLERCHINGER, MARY  |
| 86-4041         | Statutory Claim | 6/1/1940      | 0.06 | SPRING                                     | FISH PROPAGATION, IRRIGATION, STOCKWATER                | FLERCHINGER, LEE; FLERCHINGER, MARY  |
| 86-4042         | Statutory Claim | 6/1/1938      | 0.03 | SPRING                                     | DOMESTIC, IRRIGATION, STOCKWATER                        | FLERCHINGER, LEE; FLERCHINGER, MARY  |
| 86-4044         | Statutory Claim | 4/30/1900     | 0.03 | SPRING                                     | IRRIGATION, STOCKWATER                                  | SHAWLEY, BOB                         |
| 86-4048         | Statutory Claim | 6/1/1948      | 0.07 | GROUND WATER                               | DOMESTIC, IRRIGATION, STOCKWATER                        | PITKIN, LILLIAN LINDERMAN            |
| 86-4049         | Statutory Claim | 5/18/1977     | 0.01 | SPRING                                     | DOMESTIC, IRRIGATION, STOCKWATER                        | DARCY, GLADYS                        |
| 86-4064         | Statutory Claim | 6/1/1959      | 0.18 | SPRING                                     | DOMESTIC, IRRIGATION, STOCKWATER                        | DAVIE, BEVERLY J; DAVIE, WAYNE       |
| 86-4078         | Statutory Claim | 6/1/1901      | 0.02 | UNNAMED STREAM                             | IRRIGATION STORAGE, IRRIGATION, STOCKWATER STORAGE      | REIERSON, GUNDER                     |
| 86-4081         | Statutory Claim | 5/1/1979      | 0.03 | GROUND WATER                               | DOMESTIC                                                | BECK, L L                            |
| 86-4083         | Statutory Claim | 6/1/1940      | 0.08 | GROUND WATER                               | DOMESTIC                                                | CAMERON EMMANUEL LUTHERAN CHURCH     |
| 86-4094         | Statutory Claim | 5/26/1933     | 0.01 | GROUND WATER                               | RECREATION                                              | US DEPT OF AGRICULTURE               |

| Water Right No. | Basis           | Priority Date | Rate | Source(s)          | Water Use(s)                                                                             | Owner(s) of Record                 |
|-----------------|-----------------|---------------|------|--------------------|------------------------------------------------------------------------------------------|------------------------------------|
| 86-4095         | Statutory Claim | 6/1/1960      |      | MOOSE CREEK        | STOCKWATER STORAGE, STOCKWATER, WILDLIFE STORAGE, WILDLIFE                               | US DEPT OF AGRICULTURE             |
| 86-4098         | Statutory Claim | 6/1/1935      | 0.01 | SPRING             | STOCKWATER, WILDLIFE                                                                     | US DEPT OF AGRICULTURE             |
| 86-4103         | Statutory Claim | 6/1/1965      |      | CORRAL CREEK       | STOCKWATER FROM STORAGE, STOCKWATER, WILDLIFE STORAGE, WILDLIFE                          | US DEPT OF AGRICULTURE             |
| 86-4104         | Statutory Claim | 6/1/1965      |      | CORRAL CREEK       | STOCKWATER FROM STORAGE, STOCKWATER, WILDLIFE STORAGE, WILDLIFE                          | US DEPT OF AGRICULTURE             |
| 86-4174         | Statutory Claim | 6/1/1951      | 0.20 | UNNAMED STREAM     | IRRIGATION FROM STORAGE, IRRIGATION STORAGE, IRRIGATION, STOCKWATER STORAGE              | NELSON, RUDOLPH                    |
| 86-4175         | Statutory Claim | 6/1/1915      | 0.26 | SPRING             | DOMESTIC, IRRIGATION, STOCKWATER                                                         | J & H RANCH CO                     |
| 86-4183         | Statutory Claim | 9/1/1911      | 0.11 | SPRING             | DOMESTIC, IRRIGATION, STOCKWATER                                                         | WAGNER, KATHERINE C                |
| 86-4184         | Statutory Claim | 6/1/1953      | 0.08 | GROUND WATER       | DOMESTIC, IRRIGATION, STOCKWATER                                                         | BOAG, ALFRED; BOAG, VIOLET         |
| 86-4186         | Statutory Claim | 6/1/1940      | 0.13 | SPRINGS            | DOMESTIC, IRRIGATION, STOCKWATER                                                         | HEATH, EUGENE                      |
| 86-4187         | Statutory Claim | 6/1/1903      | 0.26 | SPRING             | DOMESTIC, IRRIGATION, STOCKWATER                                                         | DOBROTH, ALBERT H                  |
| 86-4190         | Statutory Claim | 6/1/1940      | 0.30 | SPRINGS            | DOMESTIC, IRRIGATION, STOCKWATER                                                         | THULON, SHARON S; THULON, VICTOR L |
| 86-4204         | Statutory Claim | 6/1/1965      |      | UNNAMED STREAM     | IRRIGATION FROM STORAGE, IRRIGATION STORAGE, STOCKWATER FROM STORAGE, STOCKWATER STORAGE | WILSON, ALONZO C                   |
| 86-4206         | Statutory Claim | 6/1/1952      | 0.03 | SPRING             | IRRIGATION FROM STORAGE, IRRIGATION STORAGE, IRRIGATION, STOCKWATER STORAGE              | FRASER, ELMER                      |
| 86-4210         | Statutory Claim | 6/1/1968      |      | UNNAMED STREAM     | RECREATION STORAGE, STOCKWATER STORAGE                                                   | HENGEN, ALAN K                     |
| 86-4212         | Statutory Claim | 6/1/1937      | 0.04 | HOWARD GULCH CREEK | DOMESTIC, IRRIGATION, STOCKWATER                                                         | HERMANN, J P                       |
| 86-4237         | Statutory Claim | 6/1/1966      | 0.04 | SPRINGS            | DOMESTIC, IRRIGATION, STOCKWATER                                                         | RICHARDSON, PAUL W                 |
| 86-4239         | Statutory Claim | 2/28/1898     | 0.20 | ROCK CREEK         | INDUSTRIAL                                                                               | BURLINGTON NORTHERN RAILROAD CO    |
| 86-4240         | Statutory Claim | 2/26/1917     | 0.10 | SPRING             | INDUSTRIAL                                                                               | BURLINGTON NORTHERN RAILROAD CO    |
| 86-4250         | Statutory Claim | 2/16/1927     | 0.20 | UNNAMED STREAM     | INDUSTRIAL                                                                               | BURLINGTON NORTHERN RAILROAD CO    |
| 86-4251         | Statutory Claim | 1/15/1900     | 0.07 | SPRING             | INDUSTRIAL                                                                               | BURLINGTON NORTHERN RAILROAD CO    |
| 86-7001         | License         | 12/20/1967    | 0.02 | POTLATCH RIVER     | IRRIGATION                                                                               | ROWLAND, GARY G                    |
| 86-7004         | License         | 1/11/1968     | 0.03 | POTLATCH RIVER     | IRRIGATION                                                                               | WRIGHT, LOUIS A                    |
| 86-7014         | License         | 5/21/1970     | 0.07 | CLEARWATER RIVER   | IRRIGATION                                                                               | RANTA, W E                         |
| 86-7016         | License         | 11/26/1970    | 0.16 | CLEARWATER RIVER   | IRRIGATION                                                                               | CLARK, ROBERT L                    |
| 86-7017         | License         | 12/22/1970    | 0.03 | GROUND WATER       | DOMESTIC                                                                                 | CLARK, ROBERT L                    |
| 86-7025         | License         | 3/1/1990      | 0.04 | GROUND WATER       | MUNICIPAL                                                                                | J W CONSTRUCTION                   |
| 86-7026         | License         | 5/10/1973     | 0.02 | POTLATCH RIVER     | IRRIGATION                                                                               | BAHR, PHIL                         |

| Water Right No. | Basis   | Priority Date | Rate | Source(s)          | Water Use(s)                                                                                         | Owner(s) of Record              |
|-----------------|---------|---------------|------|--------------------|------------------------------------------------------------------------------------------------------|---------------------------------|
| 86-7036         | License | 12/17/1973    | 0.08 | GROUND WATER       | DOMESTIC, IRRIGATION, STOCKWATER                                                                     | WESTBY, MAURITZ                 |
| 86-7037         | License | 2/26/1974     | 0.08 | GROUND WATER       | DOMESTIC, IRRIGATION, STOCKWATER                                                                     | COREY, ROBERT L                 |
| 86-7049         | License | 9/4/1970      | 0.01 | GROUND WATER       | DOMESTIC                                                                                             | US DEPT OF ENERGY               |
| 86-7054         | License | 12/30/2003    | 0.31 | GROUND WATER       | MUNICIPAL                                                                                            | CITY OF DEARY                   |
| 86-7056         | License | 5/10/1973     | 0.02 | RANDALL FLAT CREEK | IRRIGATION                                                                                           | BROWN, DARRELL S                |
| 86-7064         | License | 6/24/1977     | 1.57 | CLEARWATER RIVER   | INDUSTRIAL                                                                                           | NORTHWEST AGGREGATE INC         |
| 86-7078         | License | 2/13/1978     |      | UNNAMED STREAM     | FIRE PROTECTION STORAGE, FISH PROPAGATION STORAGE, RECREATION STORAGE, WILDLIFE STORAGE              | DETERS, MERRILL E               |
| 86-7082         | License | 4/13/1978     | 0.02 | CLEARWATER RIVER   | IRRIGATION                                                                                           | PAYTON, GEORGE W                |
| 86-7093         | License | 1/5/1979      | 3.70 | CLEARWATER RIVER   | WATER QUALITY IMPROVEMENT                                                                            | US DEPT OF DEFENSE              |
| 86-7094         | License | 4/2/1979      | 0.02 | UNNAMED STREAM     | IRRIGATION STORAGE, IRRIGATION                                                                       | DETERS, MERRILL E               |
| 86-7124         | License | 5/28/1981     | 0.05 | GROUND WATER       | DOMESTIC, IRRIGATION                                                                                 | BROCK, MARY A; BROCK, R E       |
| 86-7126         | License | 6/22/1981     | 0.01 | UNNAMED STREAM     | FIRE PROTECTION STORAGE, IRRIGATION FROM STORAGE, IRRIGATION STORAGE, IRRIGATION, STOCKWATER STORAGE | BERNT, JOHN                     |
| 86-7127         | License | 6/18/1981     | 0.10 | GROUND WATER       | DOMESTIC, IRRIGATION, STOCKWATER                                                                     | EMERSON, MARJORIE L             |
| 86-7176         | License | 4/22/1983     | 0.03 | UNNAMED STREAM     | IRRIGATION                                                                                           | RAYMOND JOHN ROTH TRUST         |
| 86-7182         | License | 6/7/1983      | 0.02 | GROUND WATER       | DOMESTIC, IRRIGATION, STOCKWATER                                                                     | QUEENER, ELAINE; QUEENER, GERRY |
| 86-7203         | License | 6/28/1983     | 0.03 | POND, SPRINGS      | IRRIGATION FROM STORAGE, IRRIGATION STORAGE, IRRIGATION, STOCKWATER FROM STORAGE, STOCKWATER         | CHAMBERLAIN, CECIL GERALD       |