

APR 06 2026

DEPARTMENT OF
WATER RESOURCES

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**BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO**

IN THE MATTER OF WATER RIGHT 95-
16450

**PETITION FOR FORFEITURE OF
WATER RIGHT 95-16450**

INTRODUCTION

Idaho Forest Group, LLC., Curtis & Lana Carney, R&R Smith Properties LLC, Gary W. Creagle and Karen B. Creagle 1995 Trust, R&R Smith Family Trust; Gary Creagle and Ryan & Crystal Smith by and through their counsel of record, Clive J. Strong, pursuant to Idaho Code § 42-222(2) and IDAPA 37.01.01.02.14, 37.01.01.101, and 37.01/01.152, hereby petitions the Idaho Department of Water Resources ("IDWR") to declare that water right 95-16450 has been forfeited.

STATEMENT OF UNDISPUTED FACTS

The Coeur d' Alene/ Spokane River Basin Court issued The David L. Haman Trust a partial decree for water right 95-16450 on December 1, 2020, which authorizes the storage of 6.50 acre-feet per year in Chilco Reservoir for irrigation storage and irrigation from storage. Attachment 2 to Affidavit of Randall Smith In Support of Petition for Forfeiture of Water Right 95-16450 (hereinafter "Randall Smith Affidavit.")¹ The place of use of the water right is 5 acres in the SWNW and SENW of Section 8 in T52N, R03W. *Id.*

The Coeur d' Alene Basin Adjudication Claim for water right claim for 95-16450 describes the diversion works as "Dam & Chilco Lake-Creek to Chilco Falls – Headgate @ Falls Pipe to Property Below Falls Tap Off Main Line Aprox 200 yds from Falls Pipe to Ward Property North of Falls." Attachment 3 to Randall Smith Affidavit.²

In his affidavit Randy Smith states "there are only two lateral pipelines connected to the 12" pipeline that extends from Chilco Falls to the Idaho Forest Group, LLC Chilco Mill – the Smith and Carney lateral pipelines." *Id.* at ¶ 14. Smith states he and his wife "own the Smith lateral." *Id.* at ¶ 9, and that no storage water is diverted through the Smith lateral pipeline or the Carney pipeline to The David L. Haman Trust property. *Id.* at ¶¶ 15 and 16. Smith also states that The David L. Haman Trust has not diverted storage water from Chilco Reservoir in more than 5 years, *Id.* at ¶ 18 and that he has not "observed any

¹ Petitioners request that the Idaho Department of Water Resources take judicial notice of documents in its water right 95-16450 file, including but not limited to CSRBA partial decree 95-16450 pursuant to IDAPA 37.01.01.602.

² Petitioners request that the Idaho Department of Water Resources take judicial notice of documents in its water right 95-16450 file, including but not limited to the 95-16450 claim filed in the CSRBA pursuant to IDAPA 37.01.01.602

use of Chilco storage water on The David L. Haman Trust place of use in over 30 years.”

Id. at ¶ 20.

ARGUMENT

Based on the owner’s and former owner’s failure to maintain a delivery system and failure to use stored water accruing under water right 95-16450 to irrigate the place of use for more than five consecutive years, water right 96-16450 has been forfeited. Randall Smith Affidavit at ¶¶ 17 and 18. Idaho Code § 42-222(2) provides that “rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated.” See also *State v. Hagerman Water Right Owners, Inc.* 130 Idaho 736, 743, 947 P.2d 409, 416 (1997)(“Section 42-222(2) of the Idaho Code provides for the loss of a water right for non-application to beneficial use.”).

“The party asserting that a water right has been forfeited has the burden of proving the forfeiture by clear and convincing evidence.” Idaho Code § 42-222(2). The Randall Smith Affidavit unambiguously shows that, The David L. Haman Trust has not used Chilco stored water to irrigate the place of use of water right 95-16450 since entry of the partial decree on December 1, 2020, which is more than five consecutive years of nonuse. Affidavit at ¶ 18. The nonexistence of a delivery system for delivery of water accruing to water right 95-16450 to the David L. Haman property is further evidence that water right 95-16450 has been forfeited. *Id.* at ¶ 17. Randall Smith states that he has not “observed any use of Chilco storage water on The David L. Haman Trust place of use in over thirty years.” *Id.* at 20.

Idaho Code § 42-222(3) allows IDWR to extend the forfeiture period for an additional five years, upon showing of “good cause and sufficient reason for nonapplication to beneficial use.” The water right holder, however, must submit the application for extension to IDWR before the end of the original five-year period. Idaho Code § 42-222(4). There is no record that any owner of water right 95-16450 sought an extension of time to put its water rights to beneficial use on the place of use of water right 95-16450.³ Although the commencement of the CSRBA tolled the forfeiture period until after entry of the partial decree, the failure to make beneficial use of water accruing under water right 95-16450 stored water for more than 30 years should preclude any request for an extension of time. *Id.* at 18. Accordingly, the time to request an extension of time of the forfeiture period has passed.

There is no apparent valid defense to forfeiture of water right 95-16450. The Randall Smith Affidavit establishes that storage water has been available for delivery to water right 95-16450. *Id.* at 18. Yet, The David L. Haman Trust has not diverted Chilco storage water under water right 95-16450 since entry of the decree more than 5 years ago.

The Department’s procedural rules define a petition as a pleading requesting “clarification, declaration or construction of the law administered by the agency, the clarification, declaration or construction of a person’s rights or obligations under law administered by the agency . . . , or to otherwise request the agency take action that will result in the issuance of an order.” IDAPA 37.01.01.002.14. Petitioners are seeking “to clarify or have the agency declare. . . a person’s rights or obligations” and requesting that

³ Petitioners request that the Idaho Department of Water Resources take judicial notice of documents in its water right 95-16450 file.

the Department issue an order determining that water right 95-16450 is forfeited.

Petitioners specifically request that IDWR initiate a contested case proceeding on the issue of the forfeiture of water right 95-16450. IDAPA 37.01.01.152. Under IDWR's Rules of Procedure, contested cases are conducted as formal or informal proceedings. IDAPA 37.01.01.100. IDWR has the authority to proceed directly to formal proceeding. IDAPA 37.01.01.100.03. Given the importance of this issue Petitioner request that IDWR initiate the contested case and move immediately to the formal proceeding.

CONCLUSION

This petition and accompanying Affidavit of Randall Smith provides clear and convincing evidence that water right 95-16450 has been forfeited. Accordingly, Petitioners ask IDWR to initiate a contested case and move to a formal proceeding pursuant to IDAPA 37.01.01.101 to determine that water right 95-16450 has been forfeited for non-use.

DATED this 2nd day of April, 2026.

Clive J Strong

CLIVE J. STRONG
ATTORNEY FOR IDAHO FOREST GROUP, LLC,
GARY CREAGLE, GARY W. AND KAREN B.
CREAGLE 1995 TRUST, CURTIS AND LANA
CARNEY, R&R PROPERTIES, LLC, R&R SMITH
TRUST, AND RYAN AND CRYSTAL SMITH

CERTIFICATE OF SERVICE

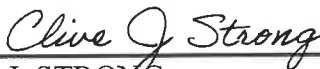
I certify that on the 2nd day of April 2026, I served or caused to be served a Petition for Forfeiture of Water Right 95-16450 to the parties by the following method(s):

Idaho Department of Water Resources
322 E. Front St Ste 648
P.O. Box 83720
Boise, ID 83720-2707

USPS(postage paid)
email file@idwr.idaho.gov

The David L. Haman Trust
P.O. Box 3311
Hayden, ID 83835

USPS Certified Mail/Return Receipt Requested



CLIVE J. STRONG