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DEPARTMENT OF
WATER RESOURCES

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LLC, Gary W. Creagle and Karen B. Creagle 1995 Trust, R&R Smith Family Trust;
Gary Creagle and Ryan & Crystal Smith*

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

IN THE MATTER OF WATER RIGHT 95-
16447

PETITION FOR FORFEITURE

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 95-16447 has been forfeited.

STATEMENT OF FACTS

The Coeur d' Alene/ Spokane River Basin Court issued Jameson Mortgage Company a partial decree for Water Right 95-16447 on December 1, 2020, which authorizes the storage of 5.20 acre-feet per year in Chilco Reservoir for irrigation storage and irrigation from storage. Attachment 2 to the Affidavit of Randall Smith in Support of Petition for Forfeiture of Water Right 95-16447 (herein after "Randall Smith Affidavit") and Attachment 2 to the Affidavit of Curtis B. Carney In Support of Petition for Forfeiture of Water Right 95-16447 (herein after "Curtis Carney Affidavit").¹ The place of use of the water right is 4 acres in the SESE of Section 7 in T52N, R03W. *Id.*

The State of Idaho Office of Secretary of State records show that Jameson Mortgage Co. no longer exists. Attachment 3 to the Randall Smith and Curtis B. Carney Affidavits.² The Kootenai County Assessor's records list Carl Lowry and Caitlyne Coman as the current owner of parcel no. 52N03W079100, which is the place of use of water right 95-16447. Attachment 4 to the Randall Smith and Curtis B. Carney Affidavits. IDWR sent a letter to Carl Lowry on October 16, 2024, asking him to file a change of ownership form if he claimed ownership of the right. Attachment 5 to the Affidavit of Clive J. Strong.³ There is no change of ownership form from Lowry or any other prior owner in IDWR's 95-16447 water right file.

¹ Petitioners request that the Idaho Department of Water Resources take judicial notice of all documents in its 95-16447 water right file, including but not limited to CSRBA partial decree 95-16447 pursuant to IDAPA 37.01.01.062.

² Petitioners request that the Idaho Department of Water Resources take judicial notice of the State of Idaho Secretary of States Certificate of Existence/Filing dated March 24, 2026, Verification #: 039048531 as permitted by IDAPA 37.01.01.602.

³ Petitioners request that the Idaho Department of Water Resources take judicial notice of the letter from Craig L. Saxton, Adjudication Section Manager to Carl Lowry dated October 16, 2024.

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.” Smith Affidavit at ¶ 16. 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 to the Lowry/Coman property. *Id.* at ¶ 18. Smith also states that he has not “observed any use of Chilco storage water on the Lowry/Coman parcel 52N03W079100 in over 30 years.” *Id.* at ¶ 22.

Curtis B. Carney states “the only lateral pipelines connected to the 12” pipeline that extends from Chilco Falls to the Idaho Forest Group, LLC Chilco Mill are the Smith and Carney lateral pipelines.” Carney Affidavit at ¶ 12. Carney states he and his wife own the Carney lateral pipeline. *Id.* at 5 Carney further states that no storage water is diverted through the Carney lateral pipeline to the Lowry/Coman Lowry/Coman parcel 52N03W079100. *Id.* at ¶ 14. Carney also states that he has not “observed any use of Chilco storage water on the Lowry/Coman parcel 52N03W079100 in over 30 years. *Id.* at ¶ 17.

ARGUMENT

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 verified Certificate of Existence/Filing from Idaho Secretary of State establishes that Jameson Mortgage Company no longer exists. Attachment 3 to Randall Smith and Curtis B. Carney Affidavits. None of the owners of place of use of water right 95-16447 subsequent to Jameson Mortgage Company have filed a claim of ownership of the water right with IDWR. In absence of any person claiming ownership of water right 95-16447, and no subsequent owner of parcel 52N03W079100 putting water to beneficial use under water right 95-16447 for more than five-years since entry of the partial decree on December 1, 2020, the right has been forfeited. *Id.* Both Smith and Carney stated that they have not observed storage water being used to irrigate the place of use of water right 95-16447 in more than 30 years. Smith Affidavit at ¶ 22 and Carney Affidavit at ¶ 17. The nonexistence of a delivery system for water right 95-16447 further confirms that water right has been forfeited. Smith Affidavit at ¶19 and Carney Affidavit at ¶15.

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 95-16447 has sought an extension of time to put the water right to beneficial use. Although the commencement of the CSRBA tolled the forfeiture period until after entry of the partial decree, the failure of anyone to file a change of ownership, to make beneficial use of water accruing under water right 95-16447 and the nonexistence of delivery system to deliver stored water to parcel 52N03W079100 should preclude any request for an extension of time. Randall Smith Affidavit at ¶ 22 and Curtis B. Carney Affidavit at ¶17.

There is no apparent valid defense to forfeiture of water right 95-16447. The Affidavits of Smith and Carney establish that storage water has been available for delivery to water right 95-16447. Smith Affidavit at ¶ 20 and Carney Affidavit at ¶16. Yet, no storage water has been diverted and put to beneficial use on the place of use of water right 95-16447 in more than five consecutive years.

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 the Department issue an order determining that water right 95-16447 is forfeited.

Petitioners specifically request that IDWR initiate a contested case proceeding on the issue of the forfeiture of water right 95-16447. 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 affidavits provide clear and convincing evidence that water right 95-16447 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 95-16447 has been forfeited for non-use.

DATED this 9th day of April 2026.

A handwritten signature in black ink, appearing to read "Clive J. Strong", written over a horizontal line.

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 9th day of April 2026, I served or caused to be served a copy of this Petition for Forfeiture 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

Carl Lowry and Caitlyne Coman
22128 N. Pope Rd.
Athol, ID 83801

USPS Mail (postage paid) or Certified
Mail/Return Receipt Requested


CLIVE J. STRONG