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DEPARTMENT OF
WATER RESOURCES

Clive J. Strong, ISB No. 2207
Attorney at Law
14512 38th Ave. N.E.
Lake Forest Park, WA 98155
Telephone: (208) 850-7792
Email: clivejstrong@gmail.com

Attorney for 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

BEFORE THE DEPARTMENT OF WATER RESOURCES OF

THE STATE OF IDAHO

IN THE MATTER OF WATER RIGHT 95-
16448

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 95-16448 has been forfeited.

STATEMENT OF FACTS

The Coeur d' Alene/ Spokane River Basin Court issued Jameson Mortgage Company a partial decree for water right 95-16448 on December 1, 2020, which authorizes storage of 6.10 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 95-16448 (hereinafter "Randall Smith Affidavit") and Attachment 2 to the Affidavit of Curtis B. Carey In Support of Petition for Forfeiture of Water Right 95-16448 (hereinafter "Curtis Carney Affidavit"). The place of use of water right is 4.7 acres in the SESE of Section 7 in T52N, R03W. *Id.*

The Kootenai County Recorder Office's records list LK Erickson Living Trust as the current owner of parcel no. 52N03W079200, which is the place of use of water right 95-16448. Attachment 3 to the Randall Smith and Curtis Carney Affidavits. LK Erickson Living Trust is listed as the owner of water right 95-16448 in IDWR's database.¹

"A 12" pipe exiting Chilco Lake running Westerly along the North line of the South ½ of the SW ¼ of Section 8, Township 52N, Range #W, B.M. and north Line of the South ½ of the Southeast ¼ of Section 7, Township 52N, Range 3W, B. delivers Chilco storage water for irrigation and commercial use." Randall Smith Affidavit at ¶ 8 and Curtis Carney Affidavit at ¶ 4. "The 12" pipeline is the only water delivery system for conveying Chilco storage water to lands located below Chilco Reservoir. Randall Smith Affidavit at ¶ 15 and Curtis Carney Affidavit at ¶ 12. Smith and Carney both state that "[t]here is no

¹ Petitioners request that the Idaho Department of Water Resources take judicial notice of documents in its 95-16448 water right file pursuant to IDAPA 37.01.01.602.

water delivery system connecting the LK Erickson Living Trust Parcel 52N03W079200 to the 12” pipeline.” Randall Smith Affidavit at ¶ 17 and Curtis Carney Affidavit at ¶ 14.

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.” Randall Smith Affidavit 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 to the LK Erickson Living Trust property. *Id.* at ¶ 16. Smith also states that he has not “observed any use of Chilco storage water on the LK Erickson Living Trust parcel 52N03W079100 in over 30 years.” *Id.* at ¶ 20.

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 ¶ 11. 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 LK Living Trust parcel 52N03W079100. *Id.* at ¶ 13. 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 Randall Smith and Curtis Carney Affidavits state that the LK Erickson Living Trust and prior owners of water right 95-16448 have not used Chilco stored water to irrigate the place of use of water right 95-16448 since entry of the partial decree on December 1, 2020, which is more than five consecutive years of nonuse. Randall Smith Affidavit at ¶18 and Curtis Carney Affidavit at ¶ 15. The nonexistence of a delivery system for delivery of Chilco storage water to the LK Erickson Living Trust parcel no. 52N03W079200 is further evidence that water right 95-16448 has been forfeited. Randall Smith Affidavit at ¶¶ 15, 16 and 17 and Curtis Carney Affidavit at ¶¶ 12, 13, and 14. Smith and Carey both state they have not observed Chilco storage water being used to irrigate the place of use of water right 95-16448. Smith Affidavit at ¶ 20 and Curtis Carney Affidavit at ¶ 17. Thus, IDWR should declare water right 95-16448 forfeited.

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 the LK Erickson Living Trust has sought an extension of time from the Idaho Department of Water Resources to put its water right to beneficial use on the place of use of water right 95-16448.² Although the commencement of the CSRBA tolled the forfeiture period until after entry of the partial

² Petitioners request that the Idaho Department of Water Resources take judicial notice its 95-16448 water right file pursuant to IDAPA 37.01.01.602.

decree, the failure of the holders of water right 95-16448 to make beneficial use of the storage water for the purpose for which it was appropriated for decades should preclude any request for an extension of time to put the water right to beneficial use. Accordingly, the time to request an extension of time for the forfeiture period has passed.

There is no apparent valid defense to forfeiture of water right 95-16448. The Randall Smith and Curtis Carney Affidavits establish that storage water was available for delivery to water right 95-16447 since entry of the partial decree. Randall Smith Affidavit at ¶ 18 and Curtis Carney Affidavit at ¶15. Yet, no storage water was diverted and put to beneficial use on the place of use of water right 95-16448 for more than five consecutive years.

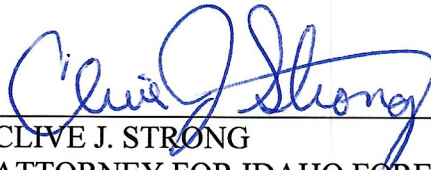
The Department's procedural rules define a petition as a pleading requesting "clarification, declaration or construction of the law administered by the agency, the clarification, declaration or construction of a person's rights or obligations under law administered by the agency . . . , or to otherwise 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 95-16448 is forfeited.

Petitioners specifically request that IDWR initiate a contested case proceeding on the issue of the forfeiture of water right 95-16448. 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 Randall Smith and Curtis Carney Affidavits provide clear and convincing evidence that water right 95-16448 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 95-16448 has been forfeited for non-use.

DATED this 18th day of April 2026.



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

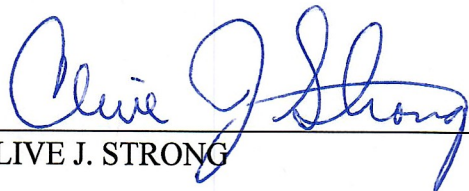
CERTIFICATE OF SERVICE

I certify that on the 18th 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

LK Erickson Living Trust
123 Montgomery Rd.
Gillette, WY 82716-9155


CLIVE J. STRONG