



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

October 24, 2013

Rusty Trail  
5603 E Trail RD  
King Hill ID 83633

**RE: Notice of Tort Claim—Batruel**

Dear Mr. Trail:

In reference to our phone conference on October 3, 2013, this letter is a reminder that your report as watermaster is due to the Department on **November 1, 2013**. Please the send the report to my attention:

Attn: John Westra  
Idaho Department of Water Resources Western Region  
2735 Airport Way  
Boise ID 83705

Should you have questions, please contact me at the Western Regional Office, phone 208-334-2190.

Sincerely,

A handwritten signature in cursive script that reads "John Westra".

John Westra, Manager



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## Conference Call Little Canyon Creek Watermaster

-Call the watermaster Rusty Trail to set up a phone conference during the AM—prefer 9:00AM. His cell no. is **208-599-1261**.

*366-2368 home*

This week: 10/02 Wednesday or 10/03 Thursday  
Second Choice: 10/08 Tuesday—10/10 Thursday.

-Parties involved: J. Westra R. Whitney J. Homan

-Find out the phone number he would like us to contact him. We will call him.

-Select a conference room at the SO that is available.

*9am Thursday 10/3  
208-366-2368  
conference rooms not available*

*Called 10:01 am 10/2, told him has to be 9am 10am or 11am on 10/3, said he will call back*

*10am on 599-1261 10/3*

COPY

RECEIVED

SEP 13 2013

WATER RESOURCES  
WESTERN REGION

September 12, 2013

*Via Hand Delivery*

Idaho Secretary of State  
700 West Jefferson Street, Room E205  
Boise, Idaho 83720

Re: Notice of Tort Claims filed pursuant to Idaho Tort Claims Act

Dear Sir:

This Notice of Tort Claims is presented and filed to you pursuant to the provisions of Idaho Code Sections 6-905 and 6-907, in connection with the wrongful acts and omissions by the Idaho Department of Water Resources ("Department" or "IDWR") and the watermaster for Water District 61D ("Watermaster") summarized herein. This letter is intended to provide notice to the Secretary of State, IDWR, the Watermaster, and all other necessary governmental entities and employees, of any and all legal claims which may arise out of the conduct and circumstances summarized herein.

The information required by Idaho Code Section 6-907 (contents of claims) is set forth below.

1. The conduct and circumstances surrounding the injury

Beginning on or about March 29, 2013, and for approximately one month thereafter, the Watermaster, Mr. Rusty Trail, under the supervision of IDWR, failed to distribute the waters of Little Canyon Creek (tributary to the Snake River) in priority under my decreed storage Water Right No. 61-308. Rather than deliver water in priority under my water right, the Watermaster distributed water to junior priority rights—including Water Right No. 61-2228B, owned in part by Mr. Trail—and otherwise allowed water to be wasted by delivering it to the headgates of other water right holders who did not put it to beneficial use.

During April 2013, I contacted the Watermaster and IDWR numerous times attempting to have available water (i.e., water that was not being beneficially used under senior water rights) delivered under Water Right No. 61-308 to my storage facility, known as Morrow Reservoir. I also retained an attorney, Michael P. Lawrence with Givens Pursley LLP, to advise me in this matter. On April 29, 2013, Mr. Lawrence and I met in person with IDWR employees John Westra, Rob Whitney, and Steve Lester at IDWR's Western Region office to request that IDWR instruct the Watermaster to take all actions necessary to deliver available water to Morrow Reservoir. Mr. Lawrence and Mr. Westra subsequently exchanged correspondence on the matter, copies of which are enclosed with this letter as Attachments A and B.

Unfortunately, the additional flow of water diverted to the Morrow Reservoir commencing on April 30, as described in Mr. Westra's letter, did not make up for the amount of water that should