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Gary Creagle, Gary W. and Karen B. Creagle 1995 Trust,
Curtis and Lana Carney, R&R Smith Properties, LLC,
R&R Smith Trust, and Ryan and Crystal Smith*

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

IN RE CSRBA

Case No. 49576

Subcase No. 95-18274

**IRRIGATORS' MEMORANDUM
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Claimants Idaho Forest Group, LLC, Curtis & Lana Carney, R&R Smith Properties LLC, Gary W. Creagle and Karen B. Creagle 1995 Trust, R&R Smith Trust; Gary Creagle and Ryan & Crystal Smith (collectively, "Irrigators") by and through their counsel of record, Clive J. Strong hereby submit this memorandum in support of Irrigators' Motion for Summary Judgment.

I. INTRODUCTION

On June 23, 2022, Kootenai Properties, Inc. ("KPI"), Idaho Forest Group, LLC (IFG"), Curtis & Lana Carney, Martha W. & Max E. Jenkins¹, Gary W. Creagle and Karen

¹ Martha and Max Jenkins subsequently sold water right 95-16453 to R&R Smith Properties, LLC.

B. Creagle 1995 Trust, R&R Properties, LLC, R&R Smith Trust; and Ryan & Crystal Smith filed late claim 95-18274.² Supplemental Director's Report Regarding Subcase No. 95-18274 (*hereinafter* "706 Report"), Exhibit 1 at 1. The claim was filed on behalf of all Chilco storage right holders to ensure the right to operate Chilco Reservoir on "a continuous fill basis" to satisfy the Chilco storage rights. 706 Report, Exhibit 2 at 2. After the Director of Idaho Department of Water Resources ("IDWR") recommended late claim 95-18274, 706 Report, Exhibit 3, KPI objected to the Director's Recommendation. *Id.* Exhibits 5 and Exhibit 6. KPI asserted in its amended objection that the right should not exist. *Id.* Exhibit 6 at 3. In the alternative, KPI objected to the claim "to the extent it is not conditioned with remarks to ensure the administration of the right does not impact the existing decreed water rights and quantities including KPI's right to a proportionate share of storage contents in a given year." *Id.* Exhibit 6 at 6. KPI's objection frames the legal questions before the Special Master, namely whether water right 95-18274 is necessary to allow continuous fill of Chilco Reservoir. Based on the argument below, Irrigators request that the Court grant summary judgment for the Irrigators. .

II. STATEMENT OF UNDISPUTED FACTS

1. Chilco Reservoir is full at the beginning of the irrigation season. Declaration of Dan Hoisington at 5.

² Since the filing of late claim 95-18274, several changes of ownership of the Chilco storage rights have occurred. Currently, the following individuals and entities own decreed storage rights in Chilco Reservoir: Kootenai Properties, Inc, (95-2036A & 95-16449); Idaho Forest Group, LLC (95-2036B); Jameson Mortgage Co (95-16447); LK Erickson Living Trust (95-16448); The David L. Haman Trust (95-16450); Curtis & Lana Carney (95-16451); Gary W. Creagle & Karen B Creagle 1995 Trust and R&R Smith Properties, LLC (95-16452); R&R Smith Properties, LLC (95-16453); R&R Smith Trust (95-18552); Ryan & Crystal Smith (95-18553) and Gary Creagle (95-18668).

2. IFG employees turn the irrigation release valve on in early May each year and leave it on throughout the irrigation season to provide storage water to the Chilco Mill and privately irrigated lands. Declaration of Charles Jackman at ¶¶ 6 through 9; Declaration of Dan Hoisington at ¶¶ 7 and 10.
3. During the irrigation season all inflow in Chilco Creek is captured to satisfy the Chilco storage rights. Notice of Claim for Water Right 95-18274, 706 Report Exhibit 2 at 2; Declaration of Charles Jackman at ¶ 10; Declaration of Dan Hoisington at ¶ 11.
4. IFG hired Ryan Fobes “to collect topographic data when Chilco Dam was drained for repair in November 2021. Declaration of Ryan Fobes at ¶ 5. Fobes measurements disclosed that the storage volume in the reservoir available for diversion is 396.6 acre-feet. Declaration of Ryan Fobes at ¶ 6.
5. IFG and KPI each installed water meters in the 8” HDPE pipe above Chilco Falls in 2025. These water meters are now used to monitor and allocate Chilco storage water. Declaration of Charles Jackman at ¶ 14.
6. Since all decreed storage rights share a common priority date, the storage water is allocated proportionately to the decreed rights. *Id.* at ¶ 15.

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

“Summary judgment is proper ‘if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Mortensen v. Baker*, 170 Idaho 744, 751, 516 P.3d 1015, 1022 (2022) (quoting I.R.C.P. 56(a)). A moving party “must support its assertion by citing particular materials in the record or by showing the ‘materials cited do not establish the . . . presence of a

genuine dispute, or that an adverse party cannot provide admissible evidence to support the fact[s].” *Id.* (quoting I.R.C.P. 56(c)(1)(B)). “Summary judgment is improper ‘if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence presented’ . . . [but a] ‘mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment.’” *Rich v. Hepworth Holzer, LLC*, 172 Idaho 696, 702, 535 P.3d 1069, 1075 (2023) (quoting *Owen v. Smith*, 168 Idaho 633, 641, 485 P.3d 129, 137 (2021)).

IV. ARGUMENT

A. Because There Is No Material Issue of Fact That Chilco Reservoir Is Operated on a Continuous Fill Basis, Kootenai Properties’ Objection To The Existence of Claim 95-18274 Fails.

1. There is No Dispute That Chilco Reservoir Operates On A Continuous Fill Basis During the Irrigation Season.

The historic operation of Chilco Reservoir is not in dispute. Chilco Reservoir is full at the beginning of the irrigation season. Declaration of Dan Hoisington at ¶5. When the Chilco Mill staff open the irrigation storage release valve in early May to divert stored water to the place of use of Irrigators, the valve remains open during the irrigation season. Declaration of Dan Hoisington at ¶ 10; Declaration of Charles Jackman at ¶ 9. Until the storage release valve is closed, all inflow is captured in vacated space to satisfy the decreed volume of the Chilco storage rights. *Notice of Claim for Water Right 95-18274*, 706 Report Exhibit 2 at page 22; Declaration of Dan Hoisington at ¶ 11; Declaration of Charles Jackman at ¶ 10 .

*2. The Issue In This Proceeding Is Whether A Refill Right Is Required
As A Matter of Law to Preserve The Historic Practice of
Continuous Fill of Chilco Reservoir.*

The issue raised by KPI's objection is whether late claim 95-18274 is necessary as a matter of law to continue the historic practice of operating Chilco Reservoir on a continuous fill basis. This issue arose after the Chilco storage right claims were decreed by the CSRBA Court.³

As explained by Ryan Fobes in his Declaration, he was hired by IFG in November 2021 to collect topographic data while Chilco Reservoir was drained for repair. Declaration of Ryan Fobes at ¶ 5. Based on the data he gathered, Fobes determined the storage volume in the reservoir available for diversion is 396.37 acre-feet. ¶ 6

Prior to the Fobes study the "Chilco Water Right Holders were unaware the collective amount of the decreed storage rights exceed[ed] the storage capacity of the reservoir. 706 Report Exhibit 1 at 2. IFG was troubled by the inconsistency between the physical storage capacity of Chilco Reservoir and the total volume of the individual storage rights. Thus, IFG directed Ryan Fobes to share his findings with the other storage water right holders.

IFG, KPI and certain irrigators⁴ realizing the historic practice of "continuous fill" was not consistent with the way the Department typically recommends storage

³ The CSRBA Record shows that partial decrees were entered for water rights 95-2036B, 95-16447, 95-16448, 95-16449, 95-16450, 95-16451 and 95-16452 on December 1, 2020, and on January 11, 2021, for water right 95-3036A.

⁴ Jameson Mortgage Co., LK Erickson Living Trust, and David L. Haman Trust were not signatories to Late Claim 95-18247; nonetheless they are listed on the claim to show that they would also benefit from the claim.

rights⁵ collectively filed late claim 95-18274 on June 24, 2022, to ensure their right to continue to operate the reservoir “on a continuous fill basis.”⁶ Late Claim 95-18274 seeks a priority right to continuously store water until the twelve Chilco storage rights are satisfied.⁷ 706 Report Exhibit 2 at 2.

Irrigators and KPI each filed objections to the Director’s Recommendation. Through the course of discussions with IDWR the Irrigators have resolved their objections to the name and quantity elements of the claim. Thus, only KPI’s objection to the existence of the claim and whether a remark regarding administration of the claim is necessary if claim 95-18274 is decreed are at issue in this motion for summary judgment.⁸

3. *Late Claim 95-18274 Should Exist To Ensure the Right To Operate the Chilco Reservoir On A Continuous Fill Basis To Satisfy Chilco Storage Rights.*

Prior to the split of Chilco storage right 95-2036 into twelve individual rights, Chilco storage water was stored solely for irrigation and was allocated based on

⁵ How to decree storage rights for on stream reservoirs has been the subject of much litigation. For example, the issue of IDWR fill/refill polices was the subject of a decade long dispute in the Snake River Basin Adjudication. See, e.g., *A&B Irrigation District v. State* (“Basin-wide Issue 17”), 157 Idaho 385, 336 P.3d 792 (2014); *In the Matter of Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 63, Idaho Department of Water Resources* ((Amended Final Order October 20, 2015).

⁶ Since the filing of late claim 95-18274 several changes of ownership of the Chilco storage rights have occurred.

⁷ Currently, the following individuals and entities own decreed storage rights in Chilco Reservoir: Kootenai Properties, Inc. (95-2036A & 95-16449); Idaho Forest Group, LLC (95-2036B); Jameson Mortgage Co (95-16447); LK Erickson Living Trust (95-16448); The David L. Haman Trust (95-16450); Curtis & Lana Carney (95-16451); Gary W. Creagle & Karen B Creagle 1995 Trust and R&R Smith Properties (95-16452); R&R Smith Properties (95-16453); R&R Smith Trust (95-18552); Ryan & Crystal Smith (95-18553) and Gary Creagle (95-18668).

⁸ KPI in its first objection objected to the quantity element of the claim because IDWR’s recommendation contained an error regarding the amount of storage allowed for evaporation and seepage losses. IDWR agreed to modify the recommendation to allow 99 acre-feet for evaporation and seepage losses. 706 Report at 6. In the second objection it is unclear whether KPI has further objections to the quantity element.

irrigated acres entitled to receive water within the place of use of the water right. Now that there are two decreed in-reservoir storage rights in addition to the ten consumptive use rights, the allocation is more complex. Thus, the inconsistency between the reservoir storage capacity and the total volume of the Chilco storage rights needs to be clearly defined to ensure water accruing in the reservoir as a result of continuous fill is protected as a priority right.

Since none of the decreed storage water rights contain a remark authorizing “continuous fill”, claim 95-18274 will ensure all storage right holders have a shared right to “continuous fill” to satisfy their storage right. Additionally, the claim also recognizes that the storage right holders share an entitlement to an additional 99 acre-feet of storage to account for reservoir evaporation and seepage losses. *Id.*

B. Although Claim 95-18274 Does Not Injure Or Alter The Existing Chilco Storage Rights, Irrigators Do Not Oppose Inclusion Of A Remark Stating Water Accruing Under 98-18247 Shall Be Allocated Proportionately To Chilco Storage Rights.

The claim as recommended by IDWR does not change or diminish the previously decreed Chilco storage rights. The existing storage rights share a priority date of September 3, 1910, which is senior to the August 23, 1920, priority date of 95-18274. The prior appropriation doctrine requires that the storage water be distributed proportionately to the existing storage rights. The same rule will apply to water accruing under 95-18274. This is how Chilco storage water accruing as a result of “continuous fill” is being distributed now. KPI and IFG are using their respective water meters to allocate storage water proportionately in real time. Declaration of Charles Jackman ¶¶ 14 & 15. If claim 95-18274 is decreed, any water accruing under the right will be

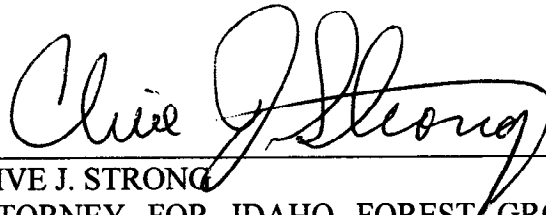
distributed proportionately to Chilco storage rights having the common priority date of September 3, 1910.

While Irrigators contend that claim 95-18274, if decreed, will not alter or diminish the existing Chilco storage rights, they do not oppose KPI's request for inclusion of a condition in 95-18247 to ensure it "does not impact the existing decreed water rights and quantities including KPI's right to a proportionate share of storage contents in a given year." *Id.* Exhibit 6 at 6.

V. CONCLUSION

For the above stated reasons irrigators respectfully request that KPI's objection to the existence of claim 95-18274 be denied and that claim 95-18274 be decreed with a remark acknowledging that water accruing to the right be allocated proportionately to the storage right holders sharing the common priority date of September 3, 1910.

DATED this 18th day of December, 2025.

A handwritten signature in black ink, reading "Clive J. Strong", is written over a horizontal line.

CLIVE J. STRONG
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CREAGLE 1995 TRUST, CURTIS AND LANA
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TRUST, AND RYAN AND CRYSTAL SMITH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of December 2025, a true and correct copy of the foregoing document to be served by U.S. Mail postage prepaid addressed to the following individuals and email where noted:

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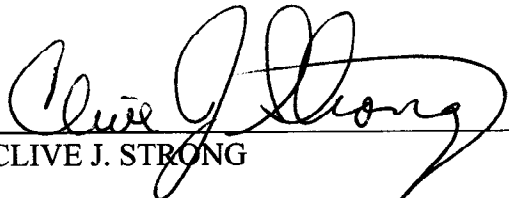
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