

JAN 26 2026

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

By _____
Clerk
Deputy Clerk

*Attorney for Claimant Idaho Forest Group, LLC,
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 RESPONSE TO KOOTENAI
PROPERTIES, LLC MOTION FOR
SUMMARY JUDGMENT**

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 response to Kootenai
Properties, LLC's ("KPI") 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. *Supplemental Director's Report Regarding Subcase No. 95-18274 (hereinafter "706 Report")*, Exhibit 1 at 1.² The claim also listed holders of water rights 95-16447, 95-16448 and 95-16450 as part owners of the claim. 706 Report, Exhibit 2 at 2.

After the Idaho Department of Water Resources ("IDWR") issued its *Late Claim Director's Report* recommending late claim 95-18274, 706 Report, Exhibit 3, KPI objected to IDWR's Recommendation. *Id.* Exhibits 5 and 6. KPI asserted in its amended objection that the refill 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 the storage right holders to satisfy the decreed volume of their individually decreed rights in priority.

In response to KPI's summary-judgment motion, Irrigators now agree with KPI that the refill component of the late claim is unnecessary, but on different grounds than KPI argues for. Instead, the decree should be interpreted to allow "continuous fill" to allow the storage right holders to satisfy the decreed volume of their individually decreed rights

² Since the filing of late claim 95-18274, 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).

in priority. Irrigators request that the Court enter a decree on the basis of “continuous fill” of Chilco Reservoir.

II. 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)).

III. ARGUMENT

Late claim 95-18274 seeks a water right to refill the 164.3 acre-feet difference between the Chilco Reservoir storage capacity and the total decreed volume of the Chilco storage rights, which is addressed in Section A. Irrigators argue in Section that the refill component is not necessary because the Partial Decrees can be interpreted to allow “continuous fill” of Chilco Reservoir. Next, the claim seeks 99 acre-feet of additional storage to replace evaporation and seepage losses, which is addressed in

Section B. All parties are in agreement on how that evaporation and seepage component of the late claim should be decreed.

A. Since the Decreed Storage Rights Implicitly Authorize “Continuous Fill” of Chilco Reservoir, the Refill Component of Late Claim 95-18274 Should be Denied.

KPI argues in its motion for summary judgment that the plain language of the Partial Decrees permits “first complete fill,” and therefore, refill is not necessary. In response, Irrigators now agree that refill is not necessary, but on a different legal ground. While the plain language of the Partial Decrees do explicitly address the question of “fill” but the Partial Decrees can be interpreted to implicitly allow “continuous fill” for the purpose of allowing the individual water users to obtain a complete fill of their decreed volume. The history of water right 95-2036 supports this interpretation.³

Chilco Reservoir originally started as a private irrigation project in the early 1900s with a single water right. IDWR’s backfile for water right 95-2036 and its Chilco Dam safety records tell how the project was transformed into its current configuration of multiple individual storage rights for multiple purposes. There was a great uncertainty about and numerous legal challenges to how Chilco water right 95-2036 was

³ KPI’s Motion for Summary Judgment seeks denial of the refill component of late claim 95-18247. After initially participating in filing the late claim, KPI changed its position after IDWR filed its recommendation of the claim. KPI now contends that water stored in the reservoir after it first physical fill is “‘not refill,’ but rather the ‘first complete fill’ of the water rights already decreed.” Memorandum In Support of Kootenai Properties, Inc.’s Motion for Summary Judgment (“Kootenai Properties Memorandum”) at 11.

developed and conveyed over its 115 years history. The present proceeding regarding late claim 95-18274 is merely another chapter in that saga.

While the Chilco Partial Decrees do not explicitly address the issue of how the Partial Decrees are “filled”, Irrigators contend that the Chilco Partial Decrees must be interpreted in light of how parent rights 95-2036, 95-2036A, 95-2036B and 95-2036C were exercised.⁴ As explained below, when this history is considered, the Partial Decrees implicitly allow “continuous fill” of the reservoir for the purpose of allowing a complete fill of the volume of each partial decree in priority.

1. *Chilco Reservoir Water Right 95-2036 Was Split Multiple Times Without Consideration Of The Storage Capacity Of The Reservoir.*

In the early 1900s, the Spokane Valley Commercial Orchards Company (SVCOC) embarked on a plan to create a private irrigation project on 595 acres of land SVCOC owned in Sections 7, 8 and 18 of Township 52N, Range 03E. 706 Report at Exhibit 11. SVCOC built Chilco Dam around 1907 to provide a water supply for the SVCOC project lands. 706 Report Exhibit 9, Appendix B Narrative Report (November 1, 1956). SVCOC applied for and was granted storage water right 95-2036⁵ on September 3, 1910. 706 Report, Exhibit 11. The quantity of the right was 595 acre-feet.

From its outset the SVCOC project faced financial difficulties. As described in a 1958 narrative report included in the 1978 National Dam Safety Program Phase I

⁴ Water Right 95-2036 was divided into three rights through two transfers. Transfer 3461 transferred 150 acre-feet to Louisiana Pacific. Strong Declaration Exhibit 2. The Louisiana Pacific right was renumbered 95-2036B. Transfer 3566 transferred 300 acre-feet to Jim Carney. Strong Declaration, Exhibit 3. The Carney right was renumbered 95-2036C. The remainder of 95-2036 right after the split was renumber 95-2036A. All of the individual decreed rights are children of one of these three rights.

⁵ The SVCOC water right was originally numbered 6592 but was subsequently renumbered as 95-2036.

Inspection Report, the SVCOC irrigation project was converted into the Chilco Irrigation District, which also failed.

For various reasons common to early irrigation development in this area, the project failed and the development was re-financed and named the Chilco Irrigation District. At sometime after the failure of the Chilco Irrigation District, Mr. William Buell purchased the property and rights from the bond holders. At some time during this period the district dissolved and the debt and water rights made appurtenant to the land. At present, ownership is divided among various owners, including Mr. Buell.

706 Report, Exhibit 9, Phase 1 Inspection Report, National Dam Safety Program, Appendix B. The Chilco Irrigation District was officially created under Title 43, Idaho Code in 1922. Strong Declaration, Exhibit 1, Decree Confirming the Proceedings for the Organization of the Chilco Irrigation District, The Eighth Judicial Dist. Of the State of Idaho, (Nov. 25, 1922). Chilco Irrigation District was dissolved in 1938 in an action by the decree in *W.E. Buell v. Chilco Irrigation District*. Strong Declaration, Exhibit 4.

After the dissolution of Chilco Irrigation District water right 95-2036 was split multiple times as the project lands were sold. The effect of the sales was to create individual storage rights in Chilco Reservoir without regard to the physical storage capacity of the reservoir.

As early as 1956, doubts were expressed about the storage capacity of Chilco Reservoir. Estimates ranged from 400 acre-feet to 600 acre-feet. 706 Report at 6 and Exhibit 8 at 1. Yet, there was no actual measurement of the reservoir capacity until 2022. Declaration of Ryan Fobes In Support of Idaho Forest Group's and Irrigator's Motion for Summary Judgment at ¶ 6.

Against this backdrop, nine individual Chilco storage right claims were decreed in the CSRBA. The purpose of use for two of the rights is in-reservoir aesthetics, wildlife and recreation , one right is for log watering, and the remaining six claims are for irrigation. In absence of any objection, each storage right was decreed based on the claimed amount without consideration of whether the total decreed amount of the rights of 560.3 acres exceeded the actual storage capacity of the reservoir. Only after the Partial Decrees were entered was it learned that the actual storage capacity of the reservoir is approximately 396 acre-feet. Declaration of Ryan Fobes in Support of IFG's and Irrigators' Motion for Summary Judgment, ¶ 6.

2. *Chilco Reservoir has been and continues to be Operated on a "Continuous Fill" Basis.*

As is the pattern in all water right adjudications, once decrees are entered, unforeseen issues arise regarding the definition of decreed rights. This is the situation in this case.

Prior to the entry of the partial decrees, there were no measuring devices on Chilco Reservoir to measure water withdrawals. Declaration of Charles Jackman in Support of Irrigators Motion for Summary Judgment at ¶¶ 13-14. This was likely because prior to the decree of KPI's in-reservoir rights all the stored water was used for irrigation. Storage water was distributed to IFG and irrigators, by opening the storage release valve in early May and allowing it to remain open until the end of irrigation season or when submerged stumps begin to reappear in the reservoir. *Id.* at ¶¶ 9-11; Declaration of Dan Hoisington In Support of Irrigators Motion for Summary Judgment at ¶¶ 7 and 12. In short, Chilco reservoir has been and continues to be operated on a

“continuous flow” basis. Declaration of Jackman at ¶ 10; Declaration of Hoisington at ¶¶ 10- 11.

KPI agrees that “The reservoir has historically operated on a continuous fill basis to satisfy the decreed water right quantities.” Memorandum in Support of KPI’s Motion for Summary Judgment at 2. Thus, the fact that Chilco Reservoir is operated on a “continuous fill” basis is not in dispute.

3. *The Partial Decrees Do Not Expressly Address the Fill of Chilco Reservoir.*

As noted in IDWR’s January 9, 2025 *Review Memo*, KPI and the Irrigators were “[c]oncerned about the Department’s one-fill policy [and] wanted to make sure that they could refill the reservoir to achieve the full decreed volume.” *Review Memo* at 1; Ex. B to *Thompson Declaration*. At the time of filing the late claim, Irrigators were uncertain how IDWR would apply the one-fill policy to the individually decreed rights given that the total decreed volume of the rights exceeded the storage capacity of the reservoir by 164.3 acre-feet.

Idaho, like most prior appropriation states, follows the common law rule that a reservoir may only be filled in priority once a year.⁶ Application of this rule is straightforward when the quantity of the storage right matches the physical storage capacity of the reservoir.

⁶ IDWR has implemented the rule in the context of new applications through the administrative rules. IDAPA 37.03.08.035.03.b.v. provides that “Impoundment applications shall show the maximum acre-feet requirement per year which shall not exceed the storage capacity of the impoundment structure unless the application describes a plan of operation for filling the reservoir more than once per year.”

Aware of (1) major litigation in SRBA regarding the fill of storage rights and (2) the past history of Chilco Reservoir, Irrigators desired clarity regarding the application of the one fill rule in the context of Chilco Reservoir. There simply was no occasion for the CSRBA Court to expressly consider the fill issue because the rights were decreed independent of one another.

KPI argues the plain language of the Partial Decrees is sufficient to allow the initial fill of each of the individual rights and therefore late claim 95-18274 should be denied at least as to that portion of the claim in excess the 99 acre-feet of storage and seepage loss. KPI asserts the storing of the additional 164.3 acre-feet required to satisfy the total decreed volume of the storage rights is not a ‘refill,’ but rather the ‘first complete fill’ of the water right.” KPI Memorandum at 11. While Irrigators disagree that the plain language of the Partial Decrees can resolve this matter because nothing in those decrees address the issue of fill, Irrigators nevertheless recognized that the historic exercise of continuous fill permits a court to interpret the decrees as allowing continuous fill of Chilco Reservoir to satisfy the rights.

4. *The Partial Decrees Implicitly Recognize the Right To Continuous Fill And Therefore The Refill Component of Late Claim Should Be Denied.*

Although the decrees are silent on the issue of “fill,” the Partial Decrees by implication recognize the historic practice of “continuous fill” of Chilco reservoir during the irrigation season to satisfy the storage water rights.

Although the rights were decreed separately, they are children of water right 95-2036. Thus, it is appropriate for this Court to look back at how the parent right 95-2036 and the split rights 95-2036A, 95-2036B and 95-2036C were exercised in interpreting

the individual storage decrees. The Declarations of Dan Hoisington and Charles Jackman show that from at least 1987 to the present, “[the] practice was to capture all inflow into [Chilco] reservoir during the irrigation season and divert it to satisfy the storage water rights.” Declaration of Hoisington at ¶ 11; Declaration of Jackman at ¶10. KPI also agrees that “[t]he reservoir has historically operated on a continuous fill basis to satisfy the decreed water quantities.” Memorandum in Support of Kootenai Properties, Inc.’s Motion for Summary Judgment at 2.

When the Partial Decrees are considered as a whole, the practice of “continuous fill” is implicit in the decrees. “Continuous fill” is the reason storage right 95-2036 and subsequent children of the right were able to establish rights with a total storage volume of 560.3 acre-feet. The Court could not have issued the Partial Decrees if they were limited to one-fill of Chilco’s storage capacity of 396 acre-feet. Thus, the Special Master should find that the CSRBA decreed rights implicitly recognize the right to operate Chilco Reservoir on a “continuous fill” basis to allow a complete fill of the individually decreed rights in priority.⁷

B. Late Claim 95-18274 Should Be Decreed To Allow Ninety-Nine Acre Feet of Storage to Replace Evaporation and Seepage Losses.

Late claim 95-18274 also seeks ninety-nine (99) acre-feet of storage to replace evaporation and seepage losses. On this separate point, the parties agree that the late claim can be granted to the extent of 99 acre-feet of evaporation and seepage loss.

⁷ Irrigators withdraw their motion for summary judgment as to the refill component of the late claim, but retain their claim to the seepage and evaporation component of the late claim.

Ryan Fobes, a professional engineer retained by IFG, examined seepage losses at Chilco Reservoir and observed continual seepage losses “down gradient from the dam, emergency overflow, and the southern dike at Chilco Lake.” Fobes Second Declaration at ¶6.

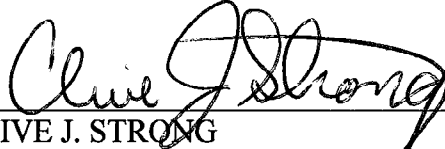
Fobes used IDWR’s Pond Loss Calculation Spreadsheet to calculate Chilco Reservoir seepage and evaporation losses, which were submitted in support of late claim 95-18274. Based upon his personal inspection of the reservoir, Fobes concluded that, “the estimated total Seepage and Evaporation loss of 99 acre-feet is similar to losses observed when comparing the difference in Chilco Reservoir Dam gauge-volume estimates.” Fobes Second Declaration at ¶ 9.

No one disputes the claimed amount of ninety-nine acre-feet. Irrigators agree with KPI that the late claim is permissible under Idaho § 42-1426 and therefore should be decreed.

CONCLUSION

For the above stated reasons irrigators respectfully request that the Court find that the Partial Decrees implicitly allow Chilco Reservoir to be operated on a “continuous fill” basis, and that the refill component of late claim 95-18274 be disallowed. Irrigators further respectfully request that the Court decree late claim for with a volume of 99 acre-feet for storage and seepage losses.

DATED this 19th day of January 2026.

A handwritten signature in black ink, reading "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 FAMILY
TRUST, AND RYAN AND CRYSTAL SMITH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of January 2026, 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:

ORIGINAL:

Clerk of the Court
Coeur d'Alene-Spokane River Basin
Adjudication Court
P.O. Box 2707
Twin Falls, ID 83303-2707

COPIES:

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

Travis L. Thompson
Parsons Behle & Latimer
P.O. Box 63
Twin Falls, ID 83303-0063
tthompson@parsonsbehle.com

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

Jameson Mortgage Co.
2243 W. Dakota Ave
Hayden, ID 83835

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


CLIVE J. STRONG