

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

In Re SRBA

Subcase

41-42

(Insert water right number)

Case 39576

STANDARD FORM 4

MOTION TO FILE:

☐ LATE NOTICE OF CLAIM

☐ AMENDED NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☐ I have read **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996).

My name is Lance Roper

My address is 3822 Rock Creek Rd.
American Falls, Idaho 83211

My phone number is: Work 208-406-4747 Home 208-548-2464

I am an attorney representing _____

My name is _____

My address is _____

My phone number is _____

MOTION TO FILE A LATE NOTICE OF CLAIM

A Motion to File a Late Notice of Claim will require a hearing before the Presiding Judge.

☒ I did not file a Notice of claim to the use of water in the SRBA because:

IDWR had me file on 3.9 CFS of high water instead of the juniper water rights because of the confusing
nature of it once being a mining water right but used for irrigation . The 1909 date put on the high
water right makes it worthless which I wasn't aware of till we had low water and I tried to get mine
delivered. The juniper water right has a 1882 date that gave us all un-used water in the valley
We have filed on an amount historicaly used on our farm and required to keep us in operation

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☒ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

Attached are two of the many documents I have supporting my case

One is the decree papers from the courthouse on these water rights

The other is the watermasters delivery sheet from the 1970's showing the water and usage

I have attached:

- ☒ A fully completed Notice of Claim (available from IDWR).
- ☒ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.
- ☒ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ 100.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on MAY 19, Salmon, ID 1:30 PM
(Insert Date and Time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A Motion to File an Amended Notice of Claim may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

- ☐ I must amend my Notice of Claim to the use of water in the SRBA because:

- ☐ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

I have attached:

- ☐ An amended Notice of Claim (available from IDWR).
- ☐ Payment of the following additional fees required by IDWR:

VERIFICATION (Must be completed)

State of IDAHO

County of Power

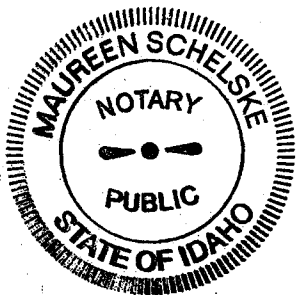
LANCE ROYER, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

[Signature]
Signature of person filing motion

Attorney signing in representative capacity

Subscribed and sworn to before me on 2-24-04
(Insert Date)



Maureen Schelske
Notary Public for Power County
Residing at: American Falls, Id.
My Commission expires: 7-18-08

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA Clerk of the Court.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on _____, 199____, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

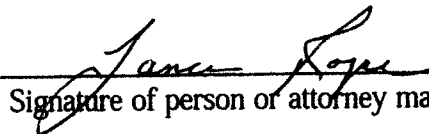
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.

(Insert Names/address of parties)



Signature of person or attorney mailing the form

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 41-42
Date Received: 2/10/2004
Receipt No:
Received By:

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

LANCE ROPER

Phone: (208)548-2464

3822 ROCK CREEK RD
AMERICAN FALLS ID USA 83211

KATRINA ROPER

Phone: (208)548-2464

3822 ROCK CREEK RD
AMERICAN FALLS ID USA 83211

2. Date of Priority: 09/15/1882

3. Source: ROCK CREEK

Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot			County	Type
09S	30E	15	NW	NE	SE	POWER	

5. Description of diverting works:

CONCRETE CHECK DAM TO DITCH.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	10/31	3.9	

7. Total Quantity Appropriated is:
3.9 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
09S	30E	10	SW	SW	IRRIGATION	20
			SE	SW	IRRIGATION	8
Section Acres						28
09S	30E	15	NE	NE	IRRIGATION	3.7
			NW	NE	IRRIGATION	31
			SW	NE	IRRIGATION	33
			SE	NE	IRRIGATION	29
			NE	NW	IRRIGATION	36.4
			NW	NW	IRRIGATION	29.1
			SE	NW	IRRIGATION	5.2
Section Acres						167.4
Total Acres						195.4

11. Place of use in counties: POWER

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Decreed

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): *Jane Lopez* Date: 2-10-04

Date:

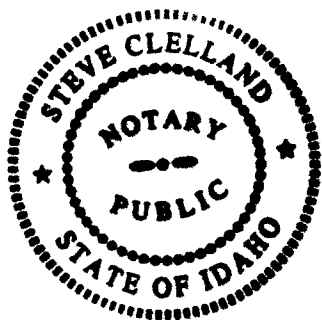
State of Idaho)
County of ADA) SS.

Subscribed and sworn (or affirmed) before me this 10th
of FEBRUARY 2004 *Steve Clelland*

Notary Public

Residing at Meridian ID

My commission Expires 12/7/2006



-040 In May 1884 the following named parties to wit: J.I. May, Jude A. May, Ed. Hunter, Peter Halling, Peter Hansen, Nelson Davis, Robt. Hillhouse, Wm. Clark, James Frodsham, Isaac Horn and Wm. Kelly constructed a ditch from the main channel of lower Rock Creek to and upon the lands owned by the claimants in said ditch for the purpose of irrigating said lands; that the water from said ditch has been used each and every season by said claimants for irrigating crops grown on said lands.

That said ditch and the owners thereof are entitled to the flow at all times of 50 inches of water for the purpose of irrigating their said lands to be distributed among them according to their adopted custom; concerning which there is no controversy among them; said right to date from the 15th. day of May 1884. 41-0040

that in the year 1884 James Frodsham, Wm. Kelly, J.A. Lasley, A.W. Thompson and Jas. I May constructed a ditch from the main channel of lower Rock Creek sufficient in size to carry a large irrigating stream to and upon the lands owned by said parties lying under said ditch and during the season of 1884 irrigated portions of said lands and have continued in the use of said water and ditch each and every season since until now there are about 100 acres of land in lucerne and grain irrigated by means of said ditch; that said ditch is known as the Kelly & Frodsham ditch; that there is no controversy among the claimants thereto as to the use and regulations of the water therein flowing, among themselves; that said ditch and the owners thereof are entitled to a flow at all times to 100 inches of the waters of said Rock Creek for the purpose of irrigating their said lands lying under said ditch; the right to the use thereof to date from May 20th 1884. Frodsham

We find that in Sep., 1882 the Juniper Mining Company which was then engaged in placer Mining on Snake River lying below and near the mouth of Rock Creek made and constructed a flume and ditch by means of which they diverted and appropriated about 400 inches of the water of lower Rock Creek to and upon their said mining claim; that for the greater portion of said distance, the water was conveyed by a flume constructed of lumber; that said water was used by said company for the purpose of mining said claim a portion of every year thereafter until 1887 that about 1887 the said Juniper Co. became bankrupt and the said mining claims sold under foreclosure of mortgage, and the flumes and ditches and other improvement appertaining to said claim were sold for delinquent taxes due upon said property for taxes due Cassia County and Idaho Territory and were bought in at said delinquent sale by Wm. Stokes; that W.H. Philbrick now owns and claims through various titles bought by him in the year 1888, the mining property aforesaid and the ditch flumes and water rights pertaining thereto. The evidence shows that since the year 1887, no water was used through said flumes and ditch except the attempt to irrigate about 5 acres of grain upon said mining premises in the year 1888 James May testifies that there was plenty of water flowing at the point of diversion of said ditch during said season for that purpose, but the condition of the flume was so bad a sufficient amount of water could not be gotten through it. since 1887 there has been plenty of water in Rock Creek not claimed to fill the Juniper ditch during the fall, winter and spring months but no attempts have been made to use it except in the year 1889 J. Calder has said property rented but did not get the flume in condition to hold and convey any water that season and in June of said season the water gave out at the head of said flume by reason of the use of same for irrigating by the farmers on said stream above; that previous to 1887 there was plenty of water in Rock Creek not otherwise used to fill the Juniper ditch and flume at all seasons of the year but since said time it has been nearly or quite all used above for irrigating purposes during the irrigating season. that since the year 1887, the area of land brought under cultivation on Rock Creek above the Juniper dam has been largely extended under the general impression that the rights of the Juniper ditch had been forfeited by discontinuance of mining operations and upon the further fact that since said time said flume has been entirely out of repair and will have to be largely rebuilt before it will carry the water. under the above state of facts, we seriously doubt if the appropriation of water originally made in said ditch was for a beneficial purpose and if it were we more seriously doubt if the same could have been used since the year 1887 or now could be used for a beneficial and profitable purpose; therefore in view of all the facts mentioned we find that said W.H. Philbrick is entitled to the use of 400 inches of the water of said lower Rock Creek to

be taken from said lower Rock Creek through said Juniper ditch and to be used for mining purposes to and upon said mining claim, except during the months of June, July and August in every season and that during said 3 months he shall be entitled to 50 inches of water to be conveyed through said flume and ditch for the purpose of preventing said flume from warping and also during said last three months in addition to said last mentioned 50 inches, any flow of water from said Rock Creek that may find its way to the head of said ditch by reason of seepage or percolation or non use by claimants above; the right to the use of the water aforesaid and at the time aforesaid to date from the 15th. day of September 1892.

That all water herein awarded shall be measured in a box or flume placed at the head of every ditch through which the same is to be conveyed of the length of 8 & 1/4 feet with a fall of 1/2 inch to said box the water at notime in said box to be more than 6 inches in depth at the head thereof and without pressure except the natural flow of the stream; said box to be placed on a solid foundation and constructed of 2 inch lumber, and no claimant herein to whom water is herein awarded shall after the present season of 1890 receive the water herein awarded to him until his claim shall have been in every respect complied with; that the right to the use of water herein conveyed to different claimants shall date from the date of appropriation by them each respectively, and that no claimants right subsequent in time shall be permitted to use the water herein awarded to him until the right of each and every prior appropriator shall have been supplied; provided that at the time the prior appropriator shall be using said water for a useful and beneficial purpose; but if said useful and beneficial purpose does not exist then the water herein awarded to said prior appropriator and appropriators shall be subject to use by the subsequent appropriators according to the date of their appropriations respectively) that the costs and expences of the arbitration are \$500 and shall be paid by the claimants herein as follows to wit:

The said H.P. Houtz to pay.....	\$3.00
Andrew Allen	15.00
S.N. Morris	25.00
Josenh Brown	15.00
Wm. Furgerson	5.00
David Tayson	7.50
Chas. Tayson	15.00
Wm. Adshhead	7.50
S.C. Hatch	10.00
Jas. Hartley	5.00
John Hartley	5.00
Hyrum Hartley	5.00
Hyrum Prodsham	5.00
Bradley Jackson	10.00
George Mc. Donald	5.00
E.T. Olney	2.50
Jim Wgnm, Indian	2.50
John Montewitch, Indian	2.50
V.J. Stewart	5.00
I.L. Stewart	2.50
H.A. Pease	5.00
George Stanger	30.00
G. Valdez	5.00
Neil Danilson	5.00
Jas. Shearman	20.00
H.C. Wood	10.00
Henry Houtz, Jr., ...	2.50
J. Lewis	22.50
L. Lance	7.50
D.C. Tyler	7.50
L. Barnard	7.50
D.A. Budge	10.00
Prom. Stock Ranch Co	10.00
Joseph Henry	5.00
D.A. Perry	5.00
D.C. Tyler Sr., ...	45.00
Bench Ditch Co., ...	2.50
H.D. Lish	35.00
West Ditch Co., ...	

Box
Description

TITLE
OF
CASE

in the matter of the application of H. F. Moutz, et al.
for the arbitration of the claims to the use of the waters
of Rock Creek and tributaries

SOURCE Rock Creek and tributaries

WATER DIST 29

COUNTY Power

JUDICIAL DIST 5

(arbitration)
JUDGE Frank Ca

DATE OF DECREE Jun 6, 1903

RECORDED

IN BOOK NO 1

PN	DN	DECEED OWNER	NAME	PRESENT OWNER	AMT INCHES SEC. FT.	PRIORITY	DIVERSION SUBDIV SEC TWP RG	REMARKS, LAND TO BE IRRIGATED
							ROCK CREEK	
1		Joseph Brown					regardless of Brown's Springs	E ¹ / ₂ , SE, SE NE, Sec. 19; SW SW, Sec
2		United States Ditch			all	5-1-80	trib. to Rock Creek	no land description given in dec
3		United States Ditch			50	6-1-81	main channel Rock Creek	" " " " "
					350		main channel Rock Creek	" " " " "
		note: the combined totals of above 2 rights of United States Ditch never to exceed 350 inches.						upon lands once owned by Juniper
4		W. H. Filbrick			400	9-15-82	main channel Rock Creek	" " " " "
4		W. H. Filbrick			50	9-15-82	main channel Rock Creek	" " " " "
		note: all seepage, percolation or non use of upstream water to be added to Filbrick total.						west side lower Rock Creek
5		West Ditch			275	5-4-84	main channel Rock Creek	Lander Creek & trib. SE NW, S ¹ / ₂ NE, Sec 22, SW NW, Sec 23
6		Hyrum Hartley			48	5-8-84	Springs, trib. to Rock Creek	" " " " "
6		Hyrum Hartley			18	5-8-84	"	" " " " "
7		J. I. May						
7		Jude A. May						
7		Ed Hunter						
7		Peter Halling						
7		Peter Hansen						no land description given in dec
7		Nelson Davis			50	5-15-84	main channel Rock Creek	note: this water to be distributed water users adopted custom.
7		Robert Hillhouse						
7		William Clark						
7		James Frodsham						