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Department of Water Resources

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 31-10245

STANDARD FORM 4

Case 39576

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 _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing Margaret Hagenbarth, David J. Hagenbarth and James F. Hagenbarth

My name is John M. Marshall

My address is 277 North 6th Street, Suite 200, P.O. Box 2720, Boise, ID 83701-2720

My phone number is (208) 388-1270

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:

☐ 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.)

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 a 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 \$ ____.

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 _____
(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:

The legal description for the point of diversion was incorrectly described as claimed and recommended by IDWR, and further request that the Court allow us to amend the Notice of Claims for the use of the water in the SRBA because the place of use as recommended by IDWR includes 3.1 acres of land owned by the Idaho Department of Lands which should be removed from the place of use, and further that the place of use as recommended by IDWR includes .5 acres of land which was not originally claimed.

Hagenbarths filed four (4) Notices of Claim for Dry Creek water in the SRBA. Those Claims are 31-02274, 31-02275, 31-10245, and 31-10740. The claimed point of diversion for each Dry Creek Claim was the NENWSW of Section 9, T13N, R40E, Clark County. The claimed point of diversion legal description was recommended by the Idaho Department of Water Resources (IDWR) for each Notice of Claim mentioned above.

The United States of America, acting through the USDA Forest Service (hereinafter the "Forest Service"), filed an Objection to the point of diversion of water right claim/subcase 31-10245. The Forest Service objection indicated that the legal description for the point of diversion would be more accurately described as being located in the NWNWSW of Section 9, T12N, R40E, Clark County.

After meeting with representatives of the Forest Service and IDWR on Wednesday, January 16, 2002, in Rexburg, Idaho, the claimants agree that the point of diversion of their Dry Creek water rights would be more accurately described as being located in the NWNWSW of Section 9, T13N, R40E, Clark County. All parties agree that the point of diversion should be changed accordingly on each of the four (4) Dry Creek water right claims listed previously.

In addition, the Amended Notice of Claim removes a total of 3.1 acres from the place of use and adds .5 acres to the place of use pursuant to the objection of the Idaho Department of Lands (IDL) and the Response of the Forest Service. Settlement discussions conducted with the representatives of IDL, IDWR, and the Forest Service resulted in a consensus that the place of use should be amended.

- ☐ 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:

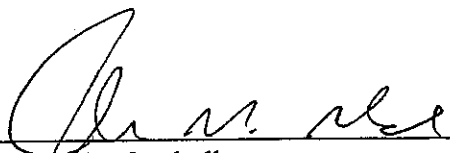
No additional fees required

VERIFICATION

State of Idaho)
) ss.
County of Ada)

John M. Marshall, being first duly sworn, upon oath, deposes and says:

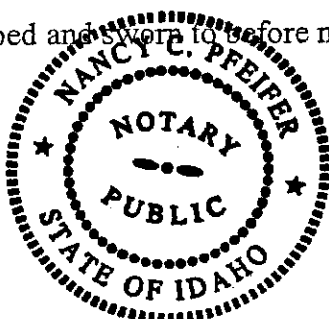
That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that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

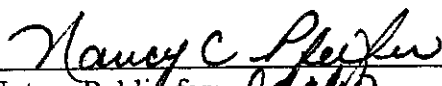


John M. Marshall

Subscribed and sworn to before me on

January 24, 2002





Notary Public for Idaho
Residing at: Boise
My Commission expires: 5-10-07

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.

VERIFICATION

State of Montana)
) ss.
County of Beaverhead)

James F. Hagenbarth, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this Motion to Amend Notice of Claim on behalf of Margaret Hagenbarth, David J. Hagenbarth and myself, as defined by I.C. § 42-1401A(1) and (6) and that I have read this Motion to File an Amended Notice of Claim, know its contents and believe that the statements are true to the best of my knowledge.

James F. Hagenbarth
James F. Hagenbarth

Subscribed and sworn to before me on: January 19, 2002
Walter L. Prewland
Notary Public for Montana
Residing at: Dillon, MT 59705
My Commission Expires: 1/1/04

CERTIFICATE OF MAILING

I certify that on January 24, 2002, 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 Basis 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

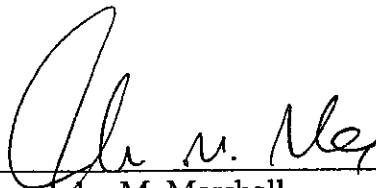
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

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

3. Copies to additional parties in the subcase:

Idaho Department of Lands
Attn: Steven J. Schuster
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0050

Idaho Department of Water Resources
Office of the Attorney General
Attn: Candace McHugh
1301 N. Orchard St.
Boise, ID 83706



John M. Marshall

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 _____
Date Received _____
Receipt Number _____

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

Please type or print clearly

PLEASE SEE ATTACHED

1. Name of Claimant (s) _____ Phone () _____
Mailing Address _____ Zip _____
2. Date of Priority (Only one (1) per claim) _____
3. Source of water supply (a) _____
which is tributary to (b) _____
4. a. Location of existing point of diversion is: Township _____ Range _____ Section _____,
1/4 of 1/4 of _____ 1/4, Govt. Lot, _____, B.M., County of _____

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of
_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. _____

6. Water is claimed for the following purposes:
(both dates are inclusive) (cfs) (acre feet)
- For Stockwater purposes from 01-01 to 12-31 amount _____ or _____
- For _____ purposes from _____ to _____ amount _____ or _____
- For _____ purposes from _____ to _____ amount _____ or _____
- For _____ purposes from _____ to _____ amount _____ or _____
7. Total quantity claimed (a) _____ (cfs) and/or (b) _____ (acre feet)
8. Total consumptive use claimed is _____ acre feet per annum.
9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____
10. Description of place of use:
a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	E1/4	

Total number of acres irrigated

11. In which county(ies) are lands listed above as place of use located? _____
12. Do you own the property listed above as place of use? Yes _____ No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.
13. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None ()
14. Remarks: _____

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit
Decree

If applicable provide IDWR Water Right Number

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant

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

Signature of Claimant (s) _____ Date _____
 _____ Date _____

Date _____

For Organizations: I do solemnly swear or affirm that I am _____

of _____, that I have signed the foregoing document in the space

Organization

below as _____ of _____

Title

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho/or _____)

) ss.

County of _____)

Subscribed and sworn (or affirmed) before me this _____ day of _____, 19____

SEAL

Notary Public _____

Residing at _____

My Commission Expires _____

17. Notice of Appearance:

17. Notice of Appearance.
Notice is hereby given that I, _____ will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

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: 31-10245

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

RIGHT NUMBER: 31-10245
NAME AND ADDRESS: MARGARET HAGENBARTH
PO BOX 1128
DILLON MT 59725

DAVID J HAGENBARTH
PO BOX 1128
DILLON MT 59725

JAMES F HAGENBARTH
PO BOX 1128
DILLON MT 59725

SOURCE: DRY CREEK TRIBUTARY: SPRING CREEK

QUANTITY: 8.000 CFS
THIS RIGHT WHEN COMBINED WITH RIGHT NO. 31-02274, 31-02275, 31-10245, 31-10740 SHALL PROVIDE NO MORE THAN .02 CFS PER ACRE.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 21.79 CFS. COMBINED RIGHT NOS.: 31-02274, 31-02275, 31-10245, 31-10740.

PRIORITY DATE: 09/24/1912

POINT OF DIVERSION:
T13N R40E S9 NWNWSW Within CLARK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	05/01 10/31	8.000 CFS

PLACE OF USE:

IRRIGATION within Clark County

T13N R40E S10	NESE	27.0	T13N R40E S10	SESW	25.0
T13N R40E S10	SWSE	37.0	T13N R40E S10	NWSE	12.0
T13N R40E S11	NWSW	3.5	T13N R40E S11	SESE	40.0
T13N R40E S11	SESW	28.0	T13N R40E S11	SWSW	37.0
T13N R40E S11	SWSE	31.0	T13N R40E S11	NESE	9.4
T13N R40E S12	NESW	5.0	T13N R40E S12	SESE	34.0
T13N R40E S12	SWSW	6.2	T13N R40E S12	NWSW	35.0
T13N R40E S14	NWNE	11.0	T13N R40E S14	NENE	2.7
T13N R40E S14	NWNW	5.0	T13N R40E S14	NENW	14.0
T13N R40E S15	NWNE	40.0	T13N R40E S15	NENE	40.0
T13N R40E S21 Lot 5	SWNW	6.6	T13N R40E S21 Lot 4	NWNW	25.0
T13N R40E S21	SWSE	11.0	T13N R40E S21	SESW	5.0
T13N R40E S23	SESW	19.0	T13N R40E S23	SWSW	40.0
T13N R40E S26	NWNW	40.0	T13N R40E S26	NENW	32.0
			T13N R40E S26	SWNW	29.0
			T13N R40E S27	NENE	40.0
T13N R40E S27	NWNE	38.0	T13N R40E S27	SENE	40.0
T13N R40E S27	NENW	18.0	T13N R40E S27	NWNW	10.0
T13N R40E S27	SWNW	18.0	T13N R40E S27	SENW	14.0
T13N R40E S28	NENE	27.0	T13N R40E S28	NWNE	38.0
T13N R40E S28	SWNE	40.0	T13N R40E S28	SENE	40.0
T13N R40E S28	NENW	32.0	T13N R40E S28	NWNW	4.1
T13N R40E S28	SWNW	8.1	T13N R40E S28	SENW	27.0
T13N R40E S29 Lot 2	NWNE	13.0	T13N R40E S29	SWNE	21.0
T13N R40E S29	SENE	11.0			

The place of use in the NWSW of S11, T13N, R40E, does not include any State public school endowment land.

1089.6 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 1089 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 31-02274, 31-02275, 31-10245, 31-10740. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 400 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
RIGHT NOT CLAIMED IN PRIOR ADJUDICATION.
RIGHTS HAVE ALSO BEEN CLAIMED TO WATER FROM BASIN 21 FOR THE SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED ABOVE, WHICH WILL BE INCLUDED IN A DIRECTOR'S REPORT TO BE FILED AT A LATER DATE. ANY WATER RIGHTS RECOMMENDED IN THE BASIN 21 REPORT FOR THE SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED ABOVE WILL CONTAIN COMBINED USE LIMITATIONS FOR THIS RIGHT AND THE BASIN 21 RIGHTS.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
RIGHT INCLUDES ACCOMPLISHED CHANGE IN SOURCE PURSUANT TO SECTION 42-1425, IDAHO CODE.

Signature(s)

On behalf of claimants Margaret Hagenbarth, David J. Hagenbarth and James F. Hagenbarth, I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

DATED this 19th day of January, 2002.


James F. Hagenbarth

STATE OF MONTANA)
 :SS.
County of Beaverhead)

On this 19th day of January, 2002, before me, Patti L. Rowland, Notary Public for the State of Montana, personally appeared James F. Hagenbarth, known to me to be the person whose name is subscribed within and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year herein above first written.


Notary Public for the State of Montana,
Residing at Dillon, Montana
My Commission expires: 1/1/04

(SEAL)