

RECEIVED

MAR - 3 2003

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 65-22760
) (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 George and Cheryl Colwell

My address is 3990 Highway 52

Pavette, Idaho 83661

My phone number is: Work _____ Home (208) 278-3448

I am an attorney representing George and Cheryl Colwell

My name is Dana L. Hofstetter

My address is Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

My phone number is (208) 424-7800 FAX: (208) 424-8774

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:
The need to claim this incidental stock water right was identified in 2002 as a result of a field examination and review by engineer Terry Scanlan.

☐ 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.)
This is an incidental stock water right associated with water right nos. 65-3617, 65-8627 and 65-11261 pursuant to the incidental stock water general provision from the Pavette Adjudication decree. A copy of this general provision and the Pavette Adjudication recommendations for water right nos. 65-3617, 65-8627 and 65-11261 are attached. Licensed water right no. 65-7461 also is a basis for a portion of this incidental stock water claim. The Affidavit of Terry Scanlan which also is attached provides additional factual information.

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 \$ (Pursuant to IDWR policy, no filing fee is necessary since this right was included in the Payette Adjudication.)

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 20, 2003 at 1:30 p.m.
(Insert Date and Time)
at the Lemhi County Commission Annex, 210 Neyman Street, Salmon, 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 Ada

Dana L. Hofstetter, 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.

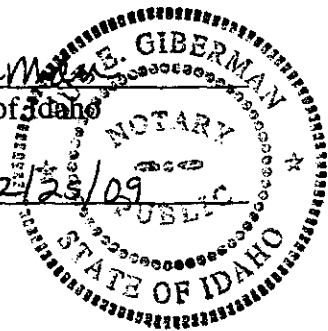
Signature of person filing motion

Dana Hofstetter

Attorney signing in representative capacity

Subscribed and sworn to before me on February 27, 2003
(Insert Date)

Sue E. Giberman
Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission expires: 2/28/09



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 February 28th, 2003, 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

6) The normal irrigation season depends upon the location of the water use, and is identified in Figure 2. The practice of diverting water during the pre-irrigation and post-irrigation season as well as diverting the so-called "high water" or "flood water" in addition to the quantified rights described in the recommended decree of water rights (and future rights that may be established pursuant to statutory procedures) are allowed provided:

- a. The waters so diverted are applied to a beneficial use.
- b. The existing quantified rights (including future appropriations of water) are first satisfied.

7) When stockwater is not a specifically mentioned use for a right that includes irrigation, a reasonable flow is implied and included for the watering of livestock during the non-irrigation season.

8) Water users whose rights are described herein are required to install and maintain headgates and measuring devices at their points of diversion for use by a watermaster.

9) Water users whose rights are described herein and whose sources of supply include flowing wells are required to cap or equip these wells in a manner that will allow the flow of water to be completely stopped when not being used beneficially.

10) "Fire Protection" is an implied use for each right, to the extent of the maximum rate of diversion for the right.

11) "Road-watering" is recognized as a beneficial use for which no water right need be recorded.

12) The right to hold water in a reservoir is year around unless otherwise defined.

13) The Sevenmile Slough is identified and treated for water delivery purposes as part of the main stem of the Payette River.

14) With the exception of water rights with a basis of "Permit" (which are not recommended to be decreed herein but are included for informational purposes only), water has been diverted and applied to a beneficial use as described in Volumes II and III of this recommended decree of water rights.

PAGE 253

PROPOSED FINDING OF WATER RIGHTS - PAYETTE RIVER DRAINAGE

SOURCE: PAYETTE RIVER

INDICATES TOTAL

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-0165X (cont.)							SWSE(18)	
							S36 110N R 5W	
							SESW(24) SWSE(21)	
							S33 111N R 5W	
							L01 71 7)	
							S20 1 0N R 4W	
							LCT 41 3)	
							S21 7 0N R 4W	
							LCT 3112)	
							LCT 2115)	
							L01 11 6)	
							S 4 1 0N R 5W	
							LCT 1127)	
							L01 2116)	
							L01 3110)	
							S24 1 0N R 5W	
							LCT 2111)	
							LCT 3114)	
							LCT 4117)	
							S33 1 0N R 5W	
							L01 3104)	
							L01 2111)	
							L01 11 4)	
							S26 110N R 5W	
							NENW(40) NENW(39)	
							SWNW(36) SENW(35)	
							S25 1 4N R 5W	
							NENE(36) NWNE(37)	
							SWNE(34) SENE(38)	
							NENW(39) NENW(38)	
							SWNW(37) SEW(37)	
							NESW(38) NWSW(34)	
							SWSW(39) SEW(38)	
							NESE(35) NWSE(37)	
							SWSE(36) SESE(36)	
							S33 1 0N R 5W	
							1100R	
65-11261	HIGBY, CHARLES S. & HIGBY, EMMA J. STAR ROUTE, PAYETTE, IDAHO 83661	10/24/1882	IRRIGATION	3/15 11/15	--- AFA 13 CFS	SWSE S35 1 0N R 4W	NENW(1) SENW(9) S27 1 0N R 4W *10*	BENEFICIAL USE
65-8621	HIGBY, CHARLES S. & HIGBY, EMMA J. STAR ROUTE, PAYETTE, IDAHO 83661	10/24/1882	IRRIGATION	3/15 11/15	--- AFA 2.72 CFS	SWSE S15 1 0N R 4W	NENW(2) NENW(21) SWNW(2) SEW(7) S27 1 0N R 4W LCT 6(30) LCT 71(1) S22 1 0N R 4W *105*	BENEFICIAL USE

MAR 02, 1979

PROPOSED FINDING OF WATER RIGHTS - PAYETTE RIVER DRAINAGE

PAGE 262

INDICATES TOTAL

SOURCE: PAYETTE RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
65-3617	HIGBY, CHARLES S. & HIGBY, EMMA J. STAR ROUTE, PAYETTE, IDAHO 83661	4/ 1/1890	IRRIGATION	3/15 11/15	--- AFA 10.63 CFS	SWSE S35 T 8N R 4W	NWSE(39) SWSE(13) SESE(14) SWSE(6) LOT 5(30) LOT 6(46) LOT 7(27) LOT 8(12) S21 T 8N R 4W NESE(40) NWSE(14) SWSE(11) SESE(21) LOT 2(11) LOT 1(47) LOT 3(20) S20 T 8N R 4W *411*	BENEFICIAL USE
65-5755	ACORD, O. THAYNE 1900 WEST 3500 SOUTH, SALT LAKE CITY, UTAH 84119	9/ 8/1890	IRRIGATION	3/15 11/15	--- AFA 10.45 CFS	LOT 2 S 7 T 7N R 3W LOT 4 S 8 T 7N R 3W	SWNE(4) NENE(33) NWNW(39) SWNW(20) SENW(21) S 7 T 7N R 3W SWNW(24) NWSE(29) SWSE(25) SESE(39) S 6 T 7N R 3W SENE(39) LOT 1(13) LOT 2(27) LOT 4(37) LOT 3(14) LOT 6(10) LOT 9(12) S 1 T 7N R 4W NENE(13) NWNE(8) S12 T 7N R 4W *415*	BENEFICIAL USE
65-0070A	ENTERPRISE DITCH COMPANY ROUTE 1, EMPEIT, IDAHO 83617 REMARKS: PLACES OF USE UNDER ENTERPRISE CANAL. SEE RIGHT 65-0070X.	8/24/1891	IRRIGATION	3/15 11/15	--- AFA 62.60 CFS	LOT 6 S11 T 6N R 2W	*2406*	BENEFICIAL USE
65-0053A	REED DITCH COMPANY C/O PATRICIA SNYDER, 3738 COUNTY LINE ROAD, EMPEIT, IDAHO 83617 REMARKS: SEE RIGHT 65-0053X. IRRIGATED BY REED DITCH CO.	6/ 1/1892	IRRIGATION	3/15 11/15	--- AFA 36.12 CFS	SESE S 9 T 6N R 2W	*1546*	BENEFICIAL USE

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 AL5-22760

Date Received _____

Receipt Number _____

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

JAN 17 2003

WATER RESOURCES
WESTERN REGION

Please type or print clearly

1. Name of Claimant (s) George E Colwell and Cheryl F Colwell Phone (208) 278-3448Mailing Address 3990 Highway 52, Payette, ID Zip 836612. Date of Priority (Only one (1) per claim) April 1, 18903. Source of water supply (a) Payette River
which is tributary to (b) Snake River4. a. Location of existing point of diversion is: Township 8N Range 4W Section 35,
1/4 of SW 1/4 of SE 1/4, Govt. Lot, B.M., County of Payette

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. Irrigation diversion and ditches
utilized by 65-3617, 65-7461, 65-8627, and 65-11261

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For stockwater purposes from Jan. 1 to Dec. 31 amount 0.88 or _____
For _____ purposes from _____ to _____ amount _____ or _____
For _____ purposes from _____ to _____ amount _____ or _____
For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.88 (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.) Stockwater - 4,000 head of range cattle

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	SE1/4	
8N	4W	17											S				S		
		19	S																
		20	S	S	S	S	S	S	S	S					S	S	S	S	
		21			S			S	S	S	S	S	S	S	S	S	S	S	
		22											S	S					
		27					S	S	S	S									

Total number of acres irrigated _____

11. In which county (ies) are lands listed above as place of use located? Payette

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

65-7462, 65-21373

or None ()

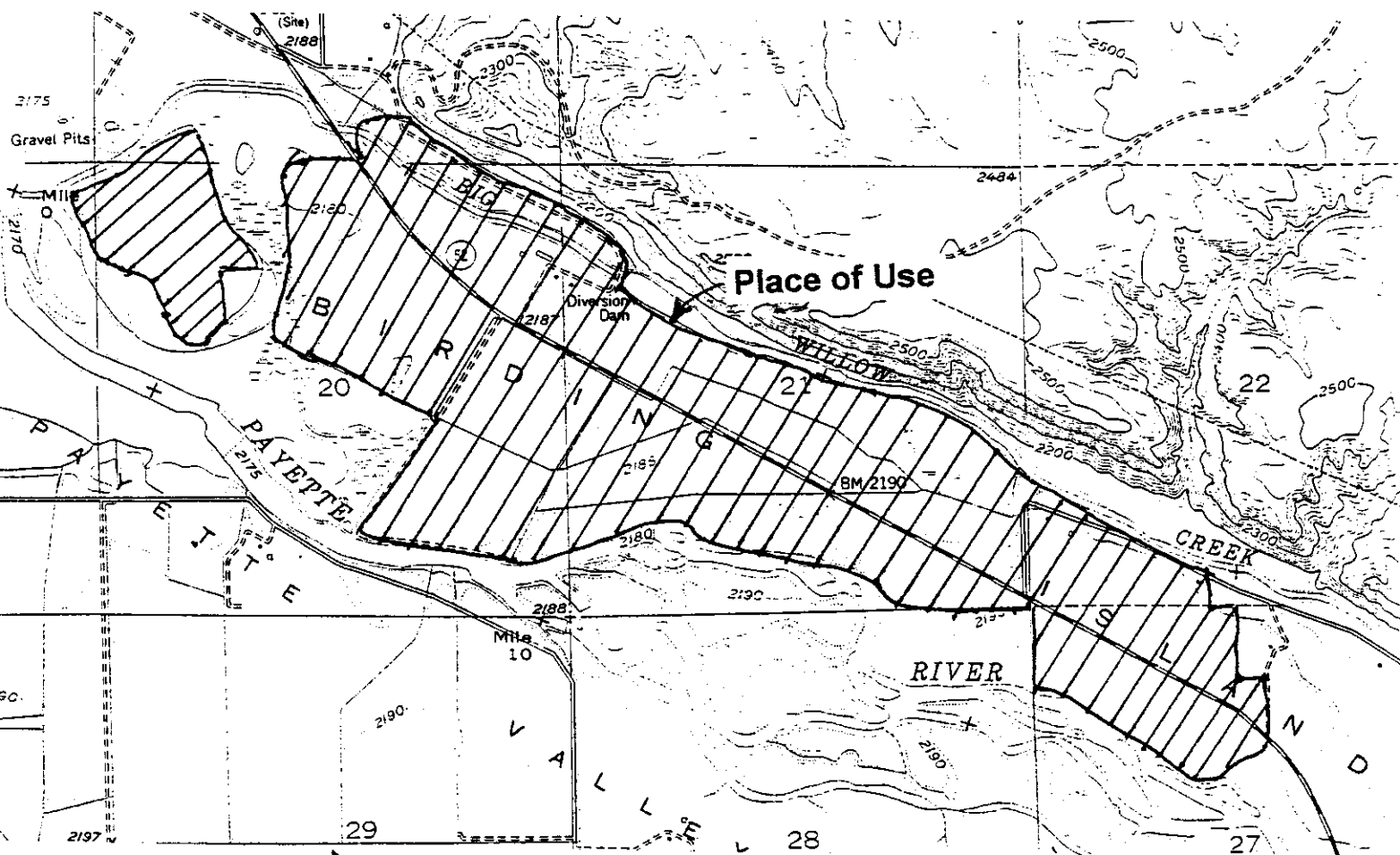
14. Remarks:

This claim is for incidental stockwater from irrigation ditches.
Priority date is based on the priority date for the largest irrigation
right for the property. Irrigation water rights using the same ditches
include 65-3617, 65-7461, 65-8627, and 65-11261.

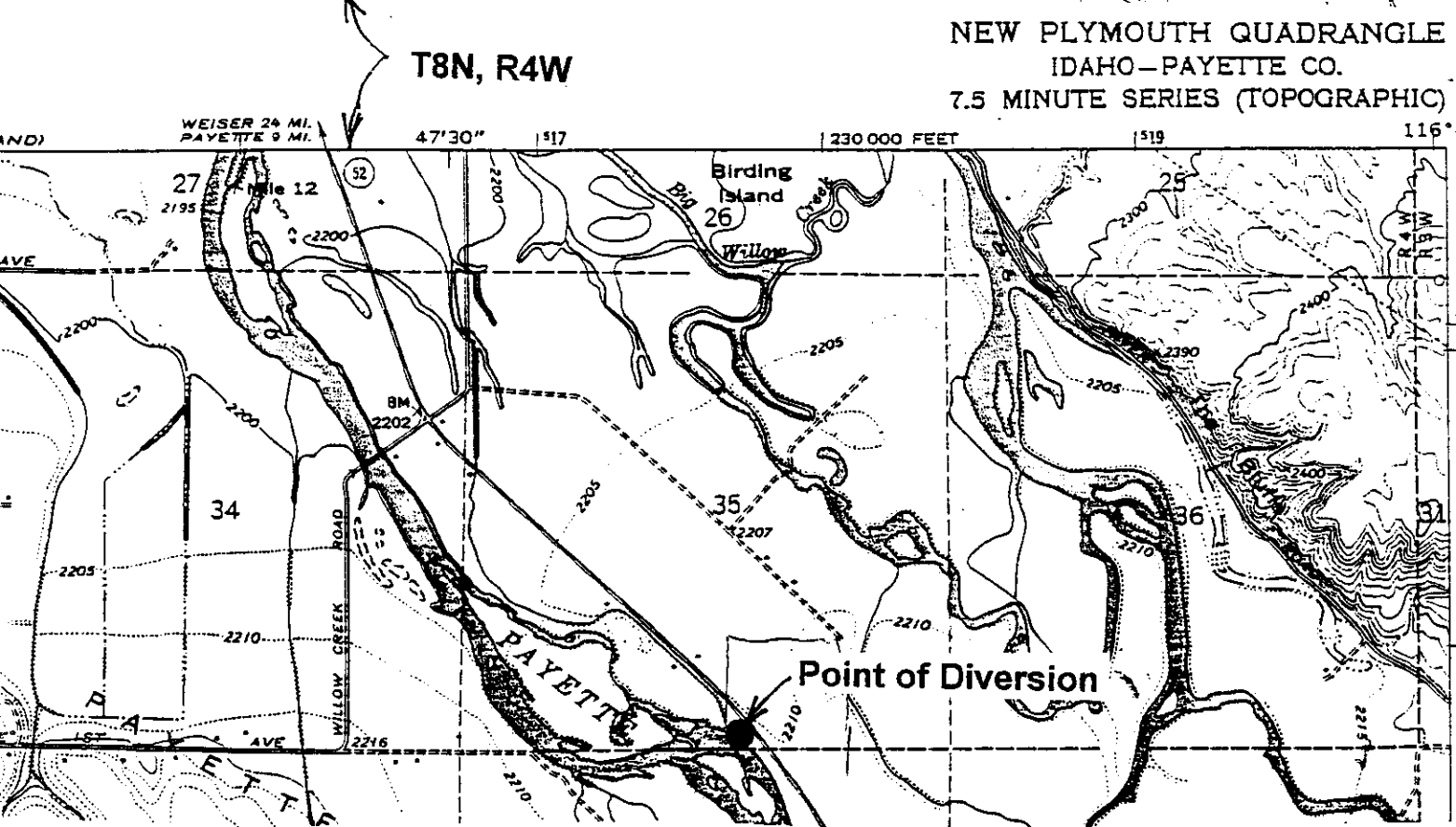
Last Name Colwell Ident No. _____

Copies: White -State, Yellow-Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.



NEW PLYMOUTH QUADRANGLE
IDAHO-PAYETTE CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)



Last Name Colwell

Ident No.

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License 65-7461 Permit _____
Decree X

If applicable provide IDWR Water Right Number _____

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant Payette Adjudication - Incidental Stockwater General Provision

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 X 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)

Charles F. Colwell
Charles F. Colwell

Date 1/15/03

Date 1/15/03

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

Title

of _____, that I have signed the foregoing

Organization

document in the space below as _____

Title

of _____

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 _____)

County of ADA)

SS.

Subscribed and sworn (or affirmed), before me this

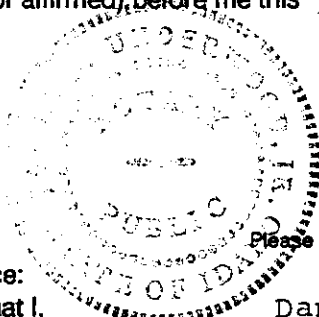
15th

day of

JANUARY

2003

SEAL



Notary Public

Residing at

BOISE, ID

My Commission Expires

2-13-2003

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, Dana L. Hofstetter 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

Dana Hofstetter

Address Hofstetter Law Office, LLC, 608 West Franklin St., Boise, Idaho 83702

Date January 17, 2003

Last Name Colwell

Ident. Number _____

Copies White-State, Yellow-Claimant