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MAY 14 2002

Department of Water Resources

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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

Case 39576

)
) **SUBCASE NO. 65-2457**
)
) **STANDARD FORM 4**
)
) **MOTION TO FILE LATE NOTICE OF**
) **CLAIM**
)
)

Comes now, Michael Derrick, the Trustee of the M.C. Shelley Family Trust, UTA dated October 14, 1993, by and through its counsel of record, the law firm WHITE PETERSON, and moves this court for an Order allowing the filing of a late claim for water right number 65-2457. This Motion is based on the following facts and is supported by the affidavit of Julie Klein Fischer filed herewith.

A. A Notice of Claim was Not Filed in the SRBA for Right No. 65-2457 For the Following Reasons:

1. Michael Derrick was appointed the Trustee of the M.C. Shelley Family Trust, UTA dated October 14, 1993 (hereinafter "the Trust") on or about July 8, 1998. See Exhibit A

attached to the Affidavit of Julie Fischer which consists of the Court Order Appointing Michael Derrick as the Trustee of the Trust.

2. The Trust owned numerous properties in Payette County, Idaho, many of which have water rights appurtenant to the same. See Fischer Affidavit at ¶ 9.

3. After being appointed as the Trustee of the Trust, certain litigation ensued with respect to various pieces of land owned by the Trust.

4. In December 1999, at the advice of previous counsel, certain of the Trust properties were transferred into M.C. Shelley Properties, LLC ("the LLC"). Mr. Derrick is the managing member of the LLC.

5. Once the litigation and other property management issues had been addressed, Mr. Derrick began to inventory the water rights associated with the various Trust and LLC properties. In doing so, Mr. Derrick requested the assistance of present counsel, and also visited the Idaho Department of Water Resources in Boise, Idaho, himself. See Fischer Affidavit at ¶ 5.

6. After much research and investigation, it was determined that the Trust and LLC owned properties to which six water rights were appurtenant. These facts were not easily ascertainable, as some of the rights remained in the names of the previous property owners and could only be determined by searching for legal property descriptions. The process was even more cumbersome due to the fact that until appointed as conservator, Mr. Derrick had no working knowledge of the Trust or LLC properties.

7. Ultimately, it was determined that all of the *irrigation* water rights, except this Right No. 65-2457 had been claimed in the Snake River Basin Adjudication.

8. Some of the water rights information obtained by Mr. Derrick's counsel was

obtained through on-line searches of the Idaho Department of Water Resources data bases. The data base search results showed that Water Right No. 65-2457 was decreed. The on-line research also revealed information that the claim for the right was “temporary” and the right was “active.” From this information, it was not clear whether an SRBA claim had, or had not, been filed and further research was required.

9. After further inquiry with both the State and Regional offices of the Department of Water Resources, it was determined that *no* SRBA claim had been filed for Water Right No. 65-2457.

10. Accordingly, this claim now is being filed to claim Water Right No. 65-2457.

11. In sum, although it has been several years since Mr. Derrick became acquainted with the M.C. Shelley Family Trust properties, he has been required to unwind a history of uses, ownerships and filings to determine the property uses and water associated with the same. It initially appeared that water rights on all properties had been claimed in the SRBA, but upon conducting further due diligence, it was discovered that Water Right No. 65-2457 had been overlooked, and was not claimed in the SRBA.

12. Water Right No. 65-2457 is an irrigation water right that formerly was decreed in the Payette River Basin Adjudication, and which is very important for the land to which it is appurtenant. Without this right, the land under Water Right No. 65-2457 may not have sufficient irrigation water. The value of the land without Water Right No. 65-2457 would be greatly diminished.

B. Pertinent Documents Attached

1. A fully completed Notice of Claim Form is attached hereto as Exhibit 1, and all

claim filing and late fees also are attached.

C. Conclusion

For the foregoing reasons, the Claimant respectfully requests this Court allow the attached notice of claim to be filed, late, in the on-going Snake River Basin Adjudication.

VERIFICATION

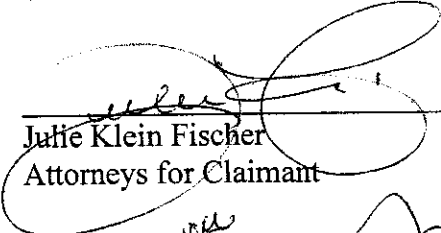
State of Idaho)
 : ss.
County of Payette)

I Julie Klein Fischer, being first duly sworn, upon oath, deposes and says:

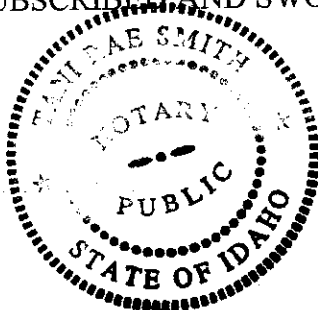
That I am the attorney for the party filing this motion for late claim, and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

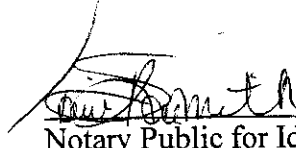
WHITE PETERSON

BY:


Julie Klein Fischer
Attorneys for Claimant

SUBSCRIBED AND SWORN to before me this 10th day of May, 2002.




Notary Public for Idaho

Residing: Meridian ID

My Commission Expires: 3/10/2005

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2002, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

☒ US Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Facsimile
No. _____

Original Document:

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

☒ US Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Facsimile
No. _____

Copy to:

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

☒ US Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Facsimile
No. _____

Copy to:

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

☒ US Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Facsimile
No. _____

Copy to:

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


for WHITE PETERSON

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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 _____

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Michael Derrick, Trustee, M.C. Shelley Family Trust Phone (208) 889-2999

Mailing Address 95 SW 4th Avenue, Ontario, Oregon UTA dated 10/14/93 Zip 97914

2. Date of Priority (Only one (1) per claim) 4/27/1945

3. Source of water supply (a) Groundwater
which is tributary to (b) _____

4. a. Location of existing point of diversion is: Township 9N Range 5W Section 26,
NE 1/4 of SW 1/4 of _____ 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. Existing well is 363 feet deep and has 12" casing. The
water is pumped with a 20 H.P. pump.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 3/15 to 11/15 amount 1.2 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 1.2 (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	SE1/4	
9N	5W	26									40	40							80

Total number of acres irrigated 80

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.

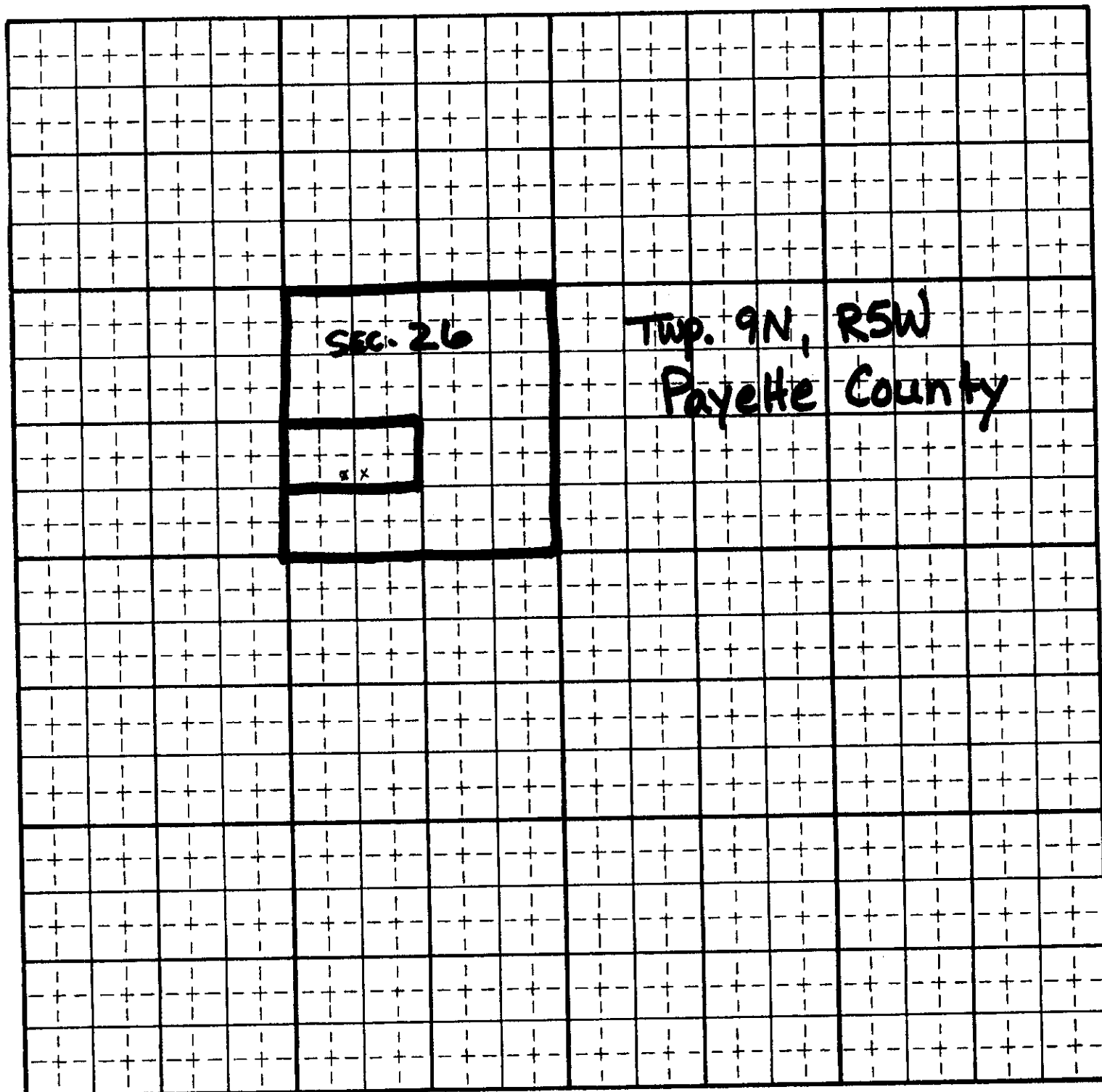
lower Payette Ditch Company or None ()

14. Remarks:

Last Name _____ Ident No. _____

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

Scale: 2 inches equals 1 mile



Last Name Mr. Shelley Ident No. 65-2457

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____
Decree X
If applicable provide IDWR Water Right Number 65-2457
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 _____

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

of M.C. Shelley Family Trust _____, that I have signed the foregoing

Organization

document in the space below as Trustee _____ of M.C. Shelley Family Trust

Title

Organization

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

Signature of Authorized Agent _____

Title and Organization Trustee _____ Date _____

State of Idaho/or Idaho)
County of Cayn) SS.

Subscribed and sworn (or affirmed) before me this 8th day of May 19 2002



Notary Public _____

Residing at _____

My Commission Expires 12/21/05

Please Print Name

17. Notice of Appearance

Notice is hereby given that Julie Klein Fischer 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 White Peterson, 5700 East Franklin Road, Suite 200, Nampa, Idaho 83687

Date 5/10/02

Last Name M.C. Shelley Ident. Number 65-2457