

RECEIVED

SEP 29 2004

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 <u>34-13851</u>
	)	(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 _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing DAVID T. KEELE

My name is TRAVIS L. THOMPSON

My address is 113 MAIN AVENUE WEST, SUITE 303
TWIN FALLS ID 83301-6167

My phone number is (208) 733-0700

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:

SEE ATTACHED AFFIDAVIT OF DAVID T. KEELE IN SUPPORT OF MOTION TO FILE LATE
NOTICE OF CLAIM

☐ 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.)

SEE ATTACHED AFFIDAVIT OF DAVID T. KEELE IN SUPPORT OF MOTION TO FILE LATE
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 \$ 25.00.
- ☐ 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 \$ _____.

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 DECEMBER 21, 2004 AT 1:30 P.M.
(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 TWIN FALLS

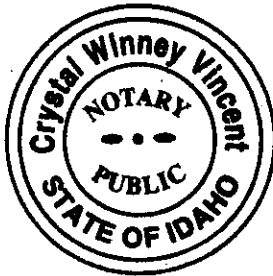
TRAVIS L. THOMPSON, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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

[Signature]
Attorney signing in representative capacity

Subscribed and sworn to before me on September 28, 2004.
(Insert Date)



Crystal Winney Vincent
Notary Public for Idaho
Residing at: Twin Falls
My Commission expires: 4-8-2010

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 September 27th, 2004, 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:

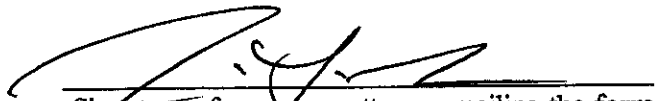
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

Attorneys for David T. Keele

In Re SRBA)
) Subcase No. 34-13851
Case No. 39576)
)
)
) **AFFIDAVIT OF DAVID T. KEELE**
) **IN SUPPORT OF MOTION TO FILE**
) **LATE NOTICE OF CLAIM**
)
)
)

DAVID T. KEELE, being first duly sworn upon oath, deposes and states as follows:

- 1

Appurtenant to my property are irrigation water rights #34-932 for 3.1 c.f.s. from Antelope Creek with a March 1, 1884 priority date, and #43-413C for .4 cfs from Antelope Creek with a May 15, 1891 priority date (partial decrees issued for both rights on December 29, 1997). I divert water from Antelope Creek through a common ditch that crosses the Edelmanns' and Jon Manetta's properties.

3. The Edelmanns mistakenly failed to file a notice of claim for stockwater purposes for the parcel that I now own. It is my understanding that the Edelmanns did not willfully fail to file a stockwater claim when they owned the property. It is my understanding that water for stockwater purposes has been diverted from Antelope Creek during the non-irrigation season to this parcel since it was homesteaded in the late 1800s. Accordingly, I have claimed a priority date of March 1, 1884 to correspond with my first decreed irrigation water right. My neighbors, Jack Harrop, who has lived in the area for over twenty years, and John King, who has lived in the area all of his life (80 years), have confirmed this winter stockwater use and diversion from Antelope Creek. I did not file a claim for stockwater use when the Basin 34 Report was issued to the Court in 1992 because I did not own the property at that time.

4. The former watermaster for Water District No. 34, Douglas Rosenkrance, told me that I would never be denied water for stockwater use in the non-irrigation season. However, since that watermaster retired, the Idaho Department of Water Resources (IDWR) has informed me that I need a water right to continue watering my cattle during the winter. I have relied upon this water for my cattle the last five years and am filing this late notice of claim to secure the stockwater right as requested by IDWR.

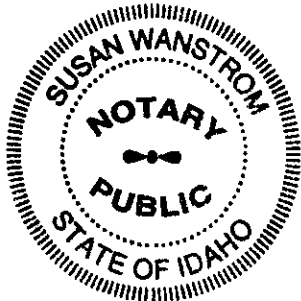
DATED this 24 day of September 2004.

David T. Keele
David T. Keele

STATE OF IDAHO)
County of Butte) ss.

On this 24 day of Sept, 2004, before me, a Notary Public for said County and State, personally appeared DAVID T. KEELE, known or identified to me, to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same

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



Susan Wanstrom
NOTARY PUBLIC FOR IDAHO
Residing at: Amo, ID
My commission expires: 09-16-08

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

Identification No. 34-13851

Date Received _____

Receipt Number _____

**NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW
For Domestic and/or Stockwater Purposes
Where Daily Use is less than 13,000 gallons per day.**

Filing Fee \$25

Please type or print clearly

1. Name of Claimant (s) DAVID KEELE Phone () (208) 554-2911
Mailing Address HC 60 BOX 25, MOORE, ID Zip 83255

2. Date of Priority (Only one per claim) 03/01/1884 Month/Day/Year

3. Source of water supply (Check one) () Groundwater or Other (X) (a) ANTELOPE CREEK
which is tributary to (b) BIG LOST RIVER Name or kind of source

4. Location of point of diversion is: Township 04N Range 24E
Section 18, SE 1/4 of SE 1/4 of NE 1/4, Govt. Lot _____, BM.,
County of CUSTER

Additional points of diversion if any: NONE

5. Description of existing diversion works (Ditches, Wells, Pumps, Pipelines, Headgate 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. HEADGATE ON THE CREEK, EXISTING DITCH TO PLACE OF USE

6. Water is claimed for the following: (limited to Domestic and/or Stockwater only. See Instructions.)

For STOCKWATER purposes from 10/16 ^{Month/Day} to 4/30 ^{Month/Day} amount 0.02 ^(cfs)
(Both dates are inclusive)
For _____ purposes from _____ to _____ amount _____

7. Total quantity claimed N/A (cfs)

8. Total consumptive use claimed is de minimus

9. Non-irrigation uses. Describe fully. (Domestic: give number of households served if single ownership; Stockwater: Type and Number of livestock) TO WATER 100 HEAD OF CATTLE THROUGH THE WINTER

10. Place of use is: Township: 04N Range 24E

Section 8, SWNE, SENE, NESE, NWSE 1/4 of 1/4, Govt. Lot , B.M.,

County of CUSTER for (Circle One) Domestic Stock Domestic and Stock

Additional places of use, if any NONE

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

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.
NONE

14. Remarks:

15. Basis of Claim (Circle One) Beneficial Use Posted Notice License Permit Decree

Court Decree Date Plaintiff vs Defendant

If applicable provide IDWR Water Right Number

16. Signature (s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understood 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) David Hule Date Sept. 24 04
 Date

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

of Title that I have signed the foregoing

document in the space below as Organization of

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

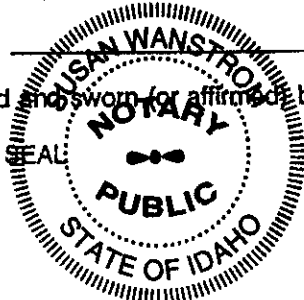
Signature of Authorized Agent Date

Title and Organization

State of Idaho/or)

County of) SS.

Subscribed and sworn to before me this 24th day of Sept. 1904



Notary Public Susan Wanstrom

Residing at Pico, Idaho

My Commission Expires 09-16-08

Last Name Ident No.