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APR 05 2005

DEPARTMENT OF
WATER RESOURCES

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED**

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
DAVID E. ALEXANDER
LISA M. CHRISTON
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
PATRICK N. GEORGE
SCOTT J. SMITH
LISA A. WOOD, CPA
STEPHEN J. MUHONEN
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FACSIMILE (208) 232-6109

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

BOISE OFFICE

CONRAD J. AIKEN
THEODORE C. PETERS
DEBORAH L. LEHOSIT
LISA R. TANNER (CA ONLY)

101 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE

477 SHOUP AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

March 31, 2005

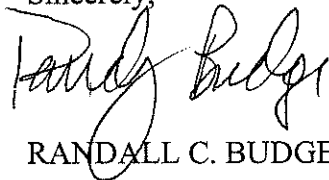
Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Re: Case No. 39576, Subcase No. 29-04060

Dear Clerk:

Enclosed for filing in the captioned matters you will find Standard Form 4 Motion to File Amended Notice of Claim. Please notice this up for hearing on the calendar of Special Master Bilyeu for April 13, 2005 at 10:30 a.m. Thank you for your assistance.

Sincerely,


RANDALL C. BUDGE

RCB:rr
Enclosures
cc: Service List

RECEIVED

APR 05 2005

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>29-4060</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 Randall C. Budge

My address is P.O. Box 1391
Pocatello, ID 83204-1391

My phone number is: Work 208-232-6101 Home _____

I am an attorney representing Portneuf Marsh Valley Canal Company (PMVCC)

My name is Randall C. Budge

My address is P.O. Box 1391
Pocatello, ID 83204-1391

My phone number is 208-232-6101

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 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 April 13, 2005 - 10:30 a.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:
Toponce Creek is a source of this water right (in addition to the
Portneuf River) and was omitted due to inadvertence, mistake or
oversight. Exhibit A attached is the proposed Recommendation as
Amended and Exhibit B attached is the existing Recommendation.

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

See attached Supporting Affidavit of Ellis Gilbert, President
of Portneuf Marsh Valley Canal Company.

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 Bannock

Randall C. Budge, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

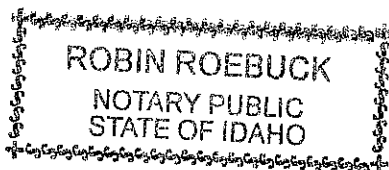
That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that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

Signature of person filing motion

Randall C. Budge

Attorney signing in representative capacity

Subscribed and sworn to before me on March 31st, 2005
(Insert Date)



Robin Roebuck

Notary Public for Idaho
Residing at: Pocatello
My Commission expires: 8/18/2006

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.

EXHIBIT A

PROPOSED IF AMENDMENT APPROVED - EX "A"

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-4060

NAME AND ADDRESS: PORTNEUF MARSH VALLEY CANAL CO LTD
C/O ELLIS GILBERT
2777 E HAWKINS RD
DOWNEY ID 83234

SOURCE: PORTNEUF RIVER
TOPONCE CREEK
TRIBUTARY: SNAKE RIVER
TRIBUTARY: PORTNEUF RIVER
POINT OF INJECTION INTO PORTNEUF RIVER. POINT OF REDIVERSION FROM
PORTNEUF RIVER.

QUANTITY: 7,285.00 AFY
USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 23695 AF. COMBINED RIGHT NOS.:
29-53, 29-589, 29-4060, 29-13319.

PRIORITY DATE: 04/01/1949

POINT OF
DIVERSION: T06S R38E S33 SWSESE Within CARIBOU County
T06S R39E S19 SWSW Lot 4 Within CARIBOU County
T06S R39E S19 SWSWSW Lot 4 Injection Within CARIBOU County
T09S R37E S22 SWSNW Lot 3 Rediversion Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION FROM STORAGE	04/01 09/15	7,285.00 AFY
IRRIGATION STORAGE	01/01 12/31	7,285.00 AFY

PLACE OF USE:

5103.2 ACRES TOTAL

PLACE OF USE IS WITHIN THE AREA SERVED BY THE PORTNEUF MARSH VALLEY CANAL
CO. LTD.

THE BOUNDARY ENCOMPASSING THE PLACE OF USE FOR THIS WATER RIGHT IS
DESCRIBED WITH A DIGITAL BOUNDARY AS DEFINED BY I.C. SECTION 42-202B(2) AND
AUTHORIZED PURSUANT TO I.C. SECTION 42-1411(2)(H). THE DATA COMPRISING THE
DIGITAL BOUNDARY ARE INCORPORATED HEREIN BY REFERENCE AND ARE STORED ON A
CD-ROM DISK ISSUED IN DUPLICATE ORIGINALS ON FILE WITH THE SRBA DISTRICT COURT
AND THE IDAHO DEPARTMENT OF WATER RESOURCES. A MAP DEPICTING THE PLACE
OF USE IS ATTACHED HERETO TO ILLUSTRATE THE PLACE OF USE DESCRIBED BY THE
DIGITAL BOUNDARY.

USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE A USE ON
FEDERAL PUBLIC LAND.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 5103.2 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-52, 29-53, 29-589,
29-4060, 29-13318, 29-13319.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

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

THIS STORAGE WATER RIGHT IS TO BE DELIVERED WITHOUT
CONVEYANCE LOSS FROM THE RESERVOIR TO THE POINT OF
DIVERSION LOCATED ON THE PORTNEUF RIVER AT T9S R37E SEC 22
SWSENE (LOT 3) FOR THE PORTNEUF-MARSH VALLEY CANAL
COMPANYS CANAL THROUGH SAID COMPANYS DRAINAGE CANAL
AND THE PORTNEUF RIVER.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-4060

NAME AND ADDRESS: PORTNEUF MARSH VALLEY CANAL CO LTD
C/O ELLIS GILBERT
2777 E HAWKINS RD
DOWNEY ID 83234

SOURCE: PORTNEUF RIVER

TRIBUTARY: SNAKE RIVER

POINT OF INJECTION INTO PORTNEUF RIVER. POINT OF REDIVERSION FROM
PORTNEUF RIVER.

QUANTITY: 7,285.00 AFY

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
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29-53, 29-589, 29-4060, 29-13319.

PRIORITY DATE: 04/01/1949

POINT OF
DIVERSION:

T06S R39E S19 SWSW Lot 4 Within CARIBOU County
T06S R39E S19 SWSWSW Lot 4 Injection Within CARIBOU County
T09S R37E S22 SWSNW Lot 3 Rediversion Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION FROM STORAGE	04/01 09/15	7,285.00 AFY
IRRIGATION STORAGE	01/01 12/31	7,285.00 AFY

PLACE OF USE:

5103.2 ACRES TOTAL

PLACE OF USE IS WITHIN THE AREA SERVED BY THE PORTNEUF MARSH VALLEY CANAL
CO. LTD.

THE BOUNDARY ENCOMPASSING THE PLACE OF USE FOR THIS WATER RIGHT IS
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AND THE IDAHO DEPARTMENT OF WATER RESOURCES. A MAP DEPICTING THE PLACE
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USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE A USE ON
FEDERAL PUBLIC LAND.

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IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-52, 29-53, 29-589,
29-4060, 29-13318, 29-13319.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

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

THIS STORAGE WATER RIGHT IS TO BE DELIVERED WITHOUT
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DIVERSION LOCATED ON THE PORTNEUF RIVER AT T9S R37E SEC 22
SWSENE (LOT 3) FOR THE PORTNEUF-MARSH VALLEY CANAL
COMPANYS CANAL THROUGH SAID COMPANYS DRAINAGE CANAL
AND THE PORTNEUF RIVER.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Randall C. Budge, ISB 1949
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109
E-mail: rcb@racinelaw.net

**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	)	A. Subcase Nos. 29-00052, 29-00053,
	)	29-000589, 29-04060, 29-13311
Case No. 39576	)	29-113317, 29-13318, 29-13319
	)	
_____	)	

SUPPORTING AFFIDAVIT OF ELLIS GILBERT

STATE OF IDAHO	)
	: SS
COUNTY OF BANNOCK	)

ELLIS GILBERT, being first duly sworn under oath, deposes and states as follows:

1. I am the President of Claimant Portneuf-Marsh Valley Canal Company ("PMVCC") and submit this Affidavit in support of PMVCC's Standard Form 4 Motion to File Amended Notice of Claim.

2. To the best of my knowledge, information and belief, the Portneuf River and Toponce Creek have always been the source of water stored in Chesterfield Reservoir, which is owned and operated by PMVCC. Water Right No. 29-589 is the Portneuf River source, and Water Right No. 29-53 is the Toponce Creek source of PMVCC's Chesterfield storage right, for a combined total of 16,410 AFA, with a priority date of July 6, 1912, when the reservoir was initially constructed.

3. Water Right No. 29-4060 is PMVCC's right for an additional 7285 AFY of storage in the Chesterfield Reservoir, with a priority date of April 1, 1949, the date when the Chesterfield Reservoir was raising providing additional storage capacity. The source of the water for this additional capacity is now and always has been the Portneuf River and Toponce Creek, being the same source as Water Right Nos. 29-53 and 29-589.

4. A review of the records of IDWR reflects that PMVCC filed a Idaho Code §42-225A "Claim to a Water Right" pertaining to the raised Chesterfield Reservoir reflecting as a source "Toponce Creek tributary to Portneuf River". Toponce Creek is in fact a tributary to the Portneuf River. However, when PMVCC filed its SRBA Claim No. A29-04060 on 2/14/1990, the source was identified as "Portneuf River tributary to Snake River". At that time PMVCC filed Claim No. 29-4060 and all other claims with the assistance of IDWR representatives, which were relied upon. Your Affiant believes that Toponce was not listed as a source by reason of inadvertence, oversight or an excusable neglect, or believing it was not necessary because Toponce Creek was a tributary of the Portneuf River.

5. In carefully reviewing all of the water rights of PMVCC in conjunction with the settlement agreements being negotiated, it came to the attention of your Affiant for the first time that Toponce Creek was erroneously and inadvertently omitted as a source of Water Right No. 29-4060 and should properly be added because both the Portneuf River and Toponce Creek are now and always have been the source of water for all rights pertaining to Chesterfield Reservoir storage. Accordingly, PMVCC has filed the foregoing Motion to File Amended Notice of Claim for the sole purpose to add Toponce Creek as an additional source for this water right. Exhibit "A" attached to

the Motion reflects the Recommended Water Right if the Motion to Amend is granted, and Exhibit "B" attached to the Motion reflects the Recommended Water Right as presently recommended.

6. Affiant represents that the purpose of the amendment is to accurately reflect the historic and actual sources of water for Right No. 29-4060. Further, that the proposed amendment, if granted, will not result in any enlargement or expansion of this right.

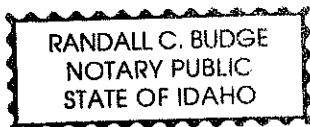
FURTHER YOUR AFFIANT SAYETH NAUGHT.

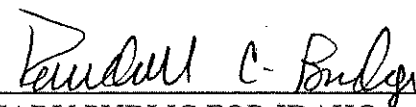
Dated this 30 day of MARCH, 2005.



ELLIS GILBERT

SUBSCRIBED AND SWORN TO before me this 30 day of March, 2005.





NOTARY PUBLIC FOR IDAHO,
Residing at Pocatello.
My Commission Expires 10/11/2006.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 31st day of March, 2005, I mailed a true and complete copy of the foregoing Motion to File Amended Notice of Claim and Supporting Affidavit of Ellis Gilbert, postage prepaid, to each of the following:

Indian Falls Property Assn.
Indian Falls Water Users Assoc.
Craig W. Parrish
P.O. Box 4321
Pocatello, Idaho 83205

I. Glenn Perkins
Mary D. Perkins
c/o Ronald J. Jarman
P.O. Box 2696
Pocatello, Idaho 83206-2696

Amber Hall
Evelee Hill Rush
Jason and Amber Hall
Jason Hall
Jeffery F. Harris
Lana Naef
Larry Naef
Lava Irrigation Co., Inc.
Lynn W. Stewart
Margie H. Stewart
Max W. Hall
Natalie Gunter
Roben Hull
Robert E. Rush
Russell Gunter
c/o Jerry R. Rigby
P.O. Box 250
Rexburg, Idaho 83440-0250

Portneuf Irrigating Co.
C/o Randolph Calvin Stone
P.O. Box 910
Burley, Idaho 83318

Indian Falls Property Assn
c/o Earl Mapes
1061 Sagewood Place
Pocatello, Idaho 83201

Dempsey Irrigation Company
c/o Earl Smith
P.O. Box 235
Lava Hot Springs, ID 83246

Topaz Irrigation Co.
C/o Gene Fagnant
P.O. Box 293
Lava Hot Springs, Idaho 83276

Fish Creek Irrigating Co.
C/o Wallace Whitehead
P.O. Box 152
Lava Hot Springs, ID 83246

Carroll & Ione Willmore Estate
c/o Jim Willmore
519 Park Street
St. Anthony, Idaho 83445

USDI BLM
U.S. Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

Fagnant & Olson Ranch, LLC
Frances Gene Fagnant
P.O. Box 293
Lava Hot Springs, ID 83246

Indian Falls Water Users Assoc
Phil Hudgens President
P.O. Box 134
Lava Hot Springs, ID 83246

Lava Irrigation Co.
P.O. Box 182
Lava Hot Springs, ID 83246

Portneuf Irrigation Co.
P.O. Box 194
Arimo, ID 83214

Jeffery F. Harris
P.O. Box 252
McCammon, ID 83250

Ronnie D. Tillotson
Sherril Tillotson
P.O. Box 261
Lava Hot Springs, ID 83246

David Lee Losee
P.O. Box 27
Lava Hot Springs, ID 83246

Russell and Natalie Gunter
P.O. Box 433
McCammon, ID 83250

Candice Symons
Lynden Symons
P.O. Box 604
Lava Hot Springs, ID 83246

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

Roben Hull
2142 Arbon Valley Hwy
Pocatello, ID 83204

Carl L. Phillips
Nola Rae Phillips
2884 W. 1400 S.
Aberdeen, ID 83210

Barbara W. Kevan
2462 N. 2500 E.
Twin Falls, ID 83301

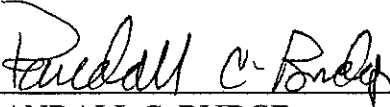
Lana Naef
Larry Naef
5812 E. Old Oregon Trail Road
Lava Hot Springs, ID 83246

Colleen L. Andrus
Jim Andrus
Kenneth D. Andrus
6948 E. Old Oregon Trail Rd.
Lava Hot Springs, ID 83246

Lynn W. Stewart
Margie H. Stewart
8574 Bob Smith Rd.
Lava Hot Springs, ID 83246

Nathan Casperson
8789 E. Maughan Rd.
Lava Hot Springs, ID 83246

Brett Casperson
8893 E. Maughan Rd.
Lava Hot Springs, ID 83246



RANDALL C. BUDGE