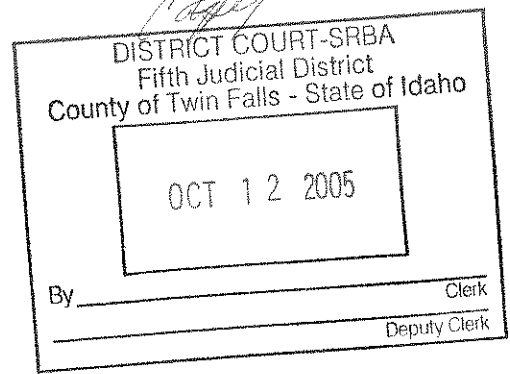




IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA) Subcase 85-15326
) (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 Don A. Kerby, Vice President Cherrylane Ranches, Inc.

My address is 19315 Kerby Lane
Lenore ID 83541

My phone number is: Work (208) 746-9891 Home (208) 276-3343

I am an attorney representing _____

My name is _____

My address is _____

My phone number is _____

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 _____
(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:
We have multiple Claims in the SRBA and when I revised the
recommendations, I realized that the Farmstead area was not included
in the original Claim and the water claimed was not sufficient

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

1 map, 1 Aerial photo, 1 note, 1 notice of Claim

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 Nez Perce

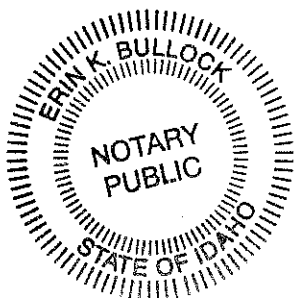
Don A. Kerby, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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.

Don A. Kerby
Signature of person filing motion

Attorney signing in representative capacity

Subscribed and sworn to before me on October 13th, 2005
(Insert Date)



Erin K. Bullock
Notary Public for State of Idaho
Residing at: Lewiston, ID
My Commission expires: 12/30/10

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 October 12, ²⁰⁰⁵~~199~~, 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

Hand delivered

2. Copies to:

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

Hand delivered

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

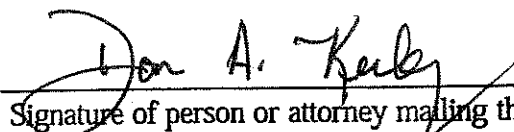
Hand delivered

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

Hand delivered

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

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN 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) Cherrylane Ranches, Inc. Phone (208) Eve 276-3343 Day 746-9891Mailing Address 19315 Kerby Lane, Lenore, ID Zip 835412. Date of Priority (Only one (1) per claim) June 1, 19503. Source of water supply (a) Ground water / developed Spring
which is tributary to (b) Sinks4. a. Location of existing point of diversion is: Township 37 N Range 3 W B M Section 35,N 1/2 1/4 of NE 1/4 of NW 1/4, Govt. Lot, B.M., County of Nez PerceAdditional points of diversion if any: Second well approx 200' south, developed Spring 1/4 mile south

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.A developed Spring originally provided all of the domestic and stockwater to the farmstead. In 1950, a well (60' deep) was drilled to supplement the Spring. A second well (300' deep) was drilled nearby in 1987. Both wells and the Spring supply water to a 30,000 gallon Reservoir built in 1970. Water is gravity fed through a 4" Supply Line to the Farmstead from the reservoir.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Domestic purposes from Jan 1 to Dec 31 amount .02 or _____

For Irrigation purposes from March 1 to Oct 31 amount .40 or _____

For Stockwater purposes from Jan 1 to Dec 31 amount .07 or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) .49 (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.) Domestic Water Serves 3 Residences, Stockwater up to 300 cow/calf Pairs

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	
37N	3W	26												6.2			2.6		8.8
		26												D			D		
		26												S			S		
37N	3W	35					3.4												3.4
		35	D				D												
		35	S				S												

Total number of acres irrigated 12.2

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

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. _____ or None (X)

14. Remarks:

Last Name _____ Ident No. _____

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License X 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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments 2 - 2 maps, 1 letter

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 Vice President
Title

of Cherrylane Ranches, Inc. that I have signed the foregoing
Organization
document in the space below as Vice President of Cherrylane Ranches, Inc.
Title Organization

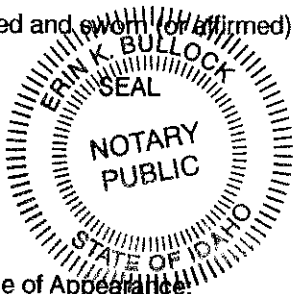
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Don A. Kerley

Title and Organization Vice President, Cherrylane Ranches, Inc. Date October 12, 2005

State of Idaho/or IDAHO)
County of NEZ PERCE) SS.

Subscribed and sworn (or affirmed) before me this 12th day of October 19 2005



Notary Public Erin K. Bullock

Residing at Elliston, Idaho

My Commission Expires 12/20/10

Please Print Name

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 _____

Last Name _____ Ident. Number _____

Memorandum

To: SRBA District Clerk

From: Don Kerby, Cherrylane Ranches, Inc.

Date: October 12, 2005

RE: Water Rights Sub Case 85-15326

This memo is adapted from an earlier memo sent with the original Notice of Claim. Please find enclosed a topography map and aerial photograph that shows the place of use and diversion points. When we first submitted this claim, I did not include the pasture and garden areas surrounding the farmstead, therefore understated the irrigated acreage and quantity of water. This amendment is intended to correct this oversight. Based upon scale measurements, there is approximately 12.2 acres of land irrigated in the field and around the farmstead. This area is irrigated with hand-lines with up to 24 impact sprinkler heads each putting out 7.5 GPM. Thus the irrigation water use claim is amended to 180 GPM or .40 CFS.

My grandparents acquired this ranch in about 1940 and at that time the water for the farmstead came from a developed spring up on the hillside which had been the primary water supply for several decades. In 1950, they drilled a well, approximately 80 feet deep on the farmstead to supplement the spring water. The well along with the spring provided water for 3 residences, stock water for cattle and horses, and irrigation around the farmstead. In 1970, a 30,000-gallon concrete reservoir was constructed on the hill to store water for peak demands and higher water pressure. In 1987, another well, about 300 feet deep, was drilled 200 feet southeast of the other. The new well was drilled as an exploratory well when BP A and the Nez Perce Tribe were looking for a water source for a fish hatchery. We dropped a pump in this well too since it produces a high volume of good quality water. Currently, the spring, and both wells are all tied together and can all supply water to the farmstead.

Although the priority on the spring is probably prior to 1919 according to long term area residents, I am requesting a priority date of 1950 because that is the date that the first well was drilled and the ranch began consuming much more water.

The farmstead was used as a dairy facility, with peak milking herd of 225 head plus dry cows, replacements, calves, beef cattle and a few head of horses, the equivalent of 350 - 375 animal units. Currently we are feeding cow/calf pairs and have capacity for up to 300 pairs.

2726
3434

1835
11702

1238

2440

Cherry Lane Ranches Inc.
85-15326

Correct Map

irrigated area
shown in pink
upper Field ~ 7.0 ac
Fountain area 5-6 ac
Total irrigated ~ 12-13 ac