

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>85-15644</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 Don A. Kerby - For 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:

We have multiple Claims in the SRBA and throughout
the hearing process & discussions with IDWR, it came to
my attention that the recommended water rights from
IDWR were not reflective of our historical water usage

☐ 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.)

Attached Narrative and Maps. (maps accompany
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 \$ 50.00.

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 Feb 21, 2006 1:30 PM
(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 Nez Perce

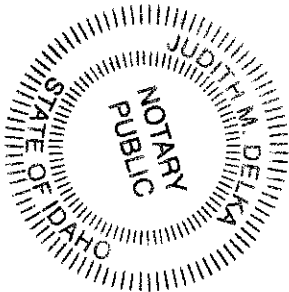
Don A. Kerby, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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 November 10, 2005
(Insert Date)



Judith M. Delia
Notary Public for Leviston, Idaho
Residing at: FirstBank NW
My Commission expires: 03-06-06

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 November 10, 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

2. Copies to:

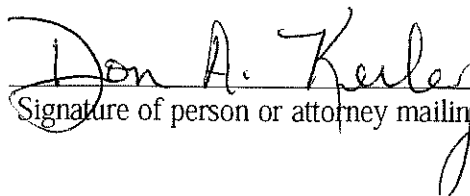
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

Legal and Factual Documentation for my claimed use of water:

Cherrylane Ranches Inc. has irrigated out of the Clearwater River for several decades to irrigate a 140-acre flat alongside the river. All of the water rights/licenses/claims were made before I was born or before I knew enough to be concerned about them.

There was a license (85 – 2173) with a 1947 priority date for part of the water used and a claim (85 – 4486) with a 1963 priority date covering the rest of the property. Both of these have been split as a result of a sale of part of the property (37 acres irrigated) to Potlatch Corporation in the late 1970's.

I am filing a late notice of claim with an April 15, 1963 priority date to reflect the actual use of the property we still own, grow crops and have continued need for irrigation water on. The 1947 license was an old water right based upon several small pumping stations and antiquated irrigation methods. In about 1963, my father installed a new first class pump station along the river and buried new mainline parallel to highway 12. This new pump station, coupled with a smaller station just below the Cherrylane Bridge, provided sufficient water to irrigate the entire flat with impact sprinklers and Big Gun sprinklers.

Currently, Cherrylane Ranches has 86.2 acres under irrigation – a 67.8 acre field with about 6+ acres of pasture along the edge that benefits from this irrigation, and the farmstead area which has a 7 acre field and 5.2 acres of yard, garden and pasture. The property is alongside the Clearwater River and is essentially the old riverbed, so the soils are sandy loams and sandy gravelly loams with excessive drainage. The pump station has a 3 phase 50 HP multi-stage turbine pump that can be incorporated with a 25 HP centrifugal booster pump. We irrigate with hand-lines and wheel-lines running 120+ impact sprinkler heads each delivering 7.5 GPM and have historically incorporated 1 or 2 Big guns putting out another 150 – 300 GPM. Our peak water needs then are about 1200 GPM. On that basis the total quantity of water claimed is 1200 GPM or 2.67 CFS. The period of use is from April 1 through October 31.

As additional documentation, I have attached an aerial photograph and topography map showing the fields and location of the pump station.

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) Cherrylane Ranches Inc. Phone (208) 746-9891 Day
Mailing Address 19022 Kerby Lane, Lenore ID Zip 83541 eve

2. Date of Priority (Only one (1) per claim) April 15, 1963

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

4. a. Location of existing point of diversion is: Township 37N Range 3W Section 34,
NW 1/4 of SE 1/4 of NE 1/4, Govt. Lot, B.M., County of Nez Perce

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township 37N Range 3W Section 26, SE 1/4 of SW 1/4 of SE 1/4,
Govt. Lot _____ B.M., County of Nez Perce

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. 16" Corrugated Culvert on Concrete footings in River
intake to Concrete Pump Basin, 50hp multi-stage turbine pump supplies 1/2 mile mainline
Down Stream and 1 mile upstream. Buried mainline 10", 8", 6" Steel + PVC.
Take offs on 180' spacing along mainline. Irrigation equipment is wheel lines
and handlines with Rainbird heads.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from April 1 to Oct 31 amount 2.67 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 2.67 (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.) NONE

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	34				X									X				
37	3W	35		X			X	X	X										
37	3W	26											X			X			
																			86.2

Total number of acres irrigated 86.2

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.
85-02173A, 85-15326, Irrigation + Domestic + Stockwater or None ()

14. Remarks: This Claim is made as part of ongoing objection to SRBA
Subcase 85-2173A. Claim is made to demonstrate water usage
above recommended quantity is necessary.

Last Name _____ Ident No. _____

15. Basis of Claim (check one) Beneficial Use ☒ Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number 85-~~15~~ 15644
Court SRBA Case Number 39576 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 3

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. Organization, that I have signed the foregoing

document in the space below as Vice President Title of Cherrylane Ranches, Inc. Organization

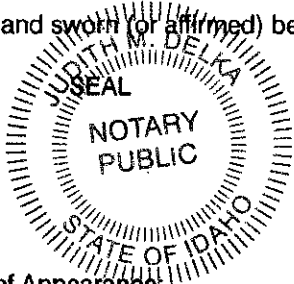
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Don A. Kelsey

Title and Organization Cherrylane Ranches, Inc Date 11/10/05

State of Idaho/or _____)
County of Nez Perce) SS.

Subscribed and sworn (or affirmed) before me this 10TH day of November 19 2005



Notary Public Judith M. Delka

Residing at Lewiston

My Commission Expires 03-06-06

Please Print Name Judith M. Delka

17. Notice of Appearance.

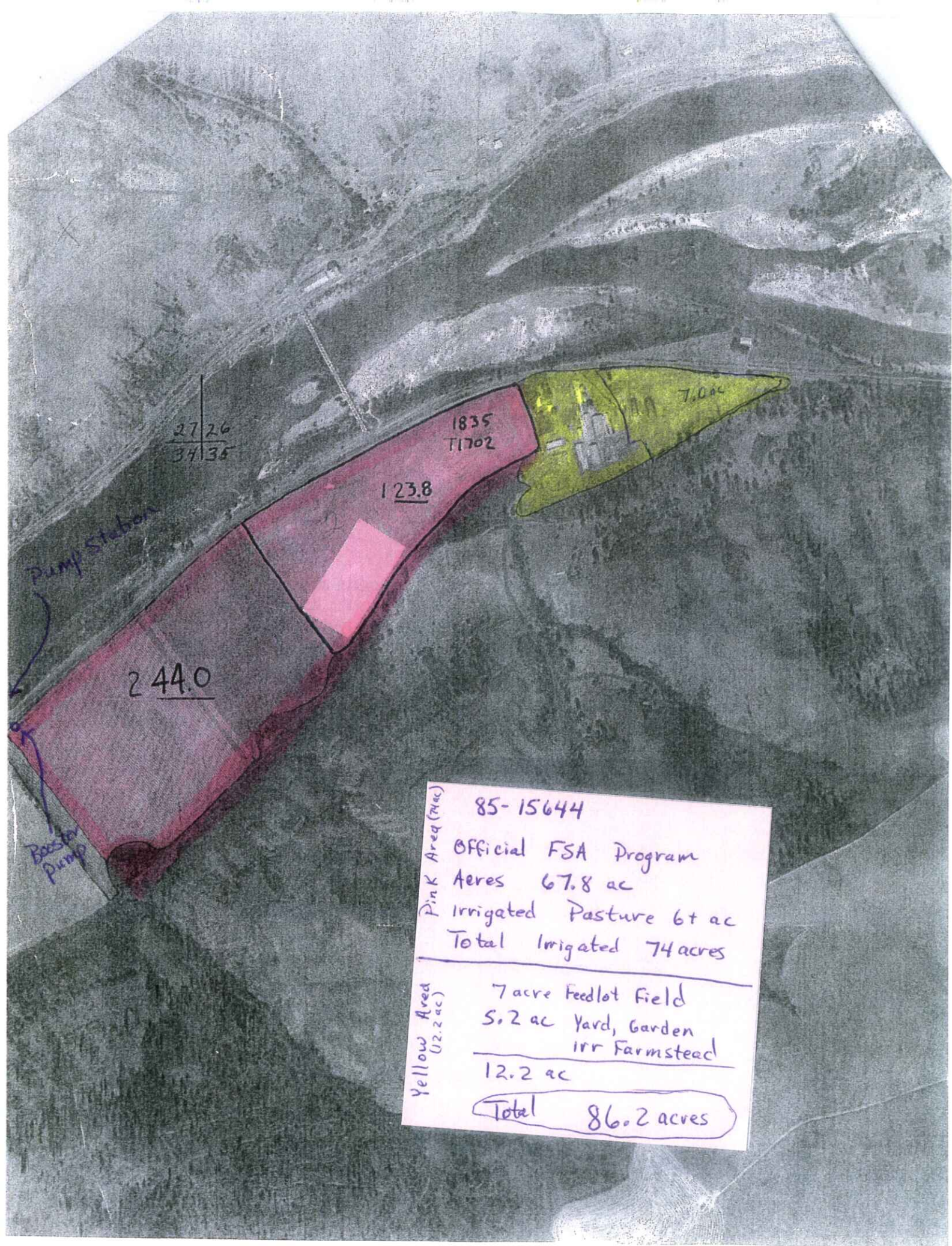
Notice is hereby given that I, _____ will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

Last Name _____ Ident. Number _____



85-15644

Official FSA Program

Aeres 67.8 ac

Irrigated Pasture 6+ ac

Total Irrigated 74 acres

Yellow Area
(12.2 ac)

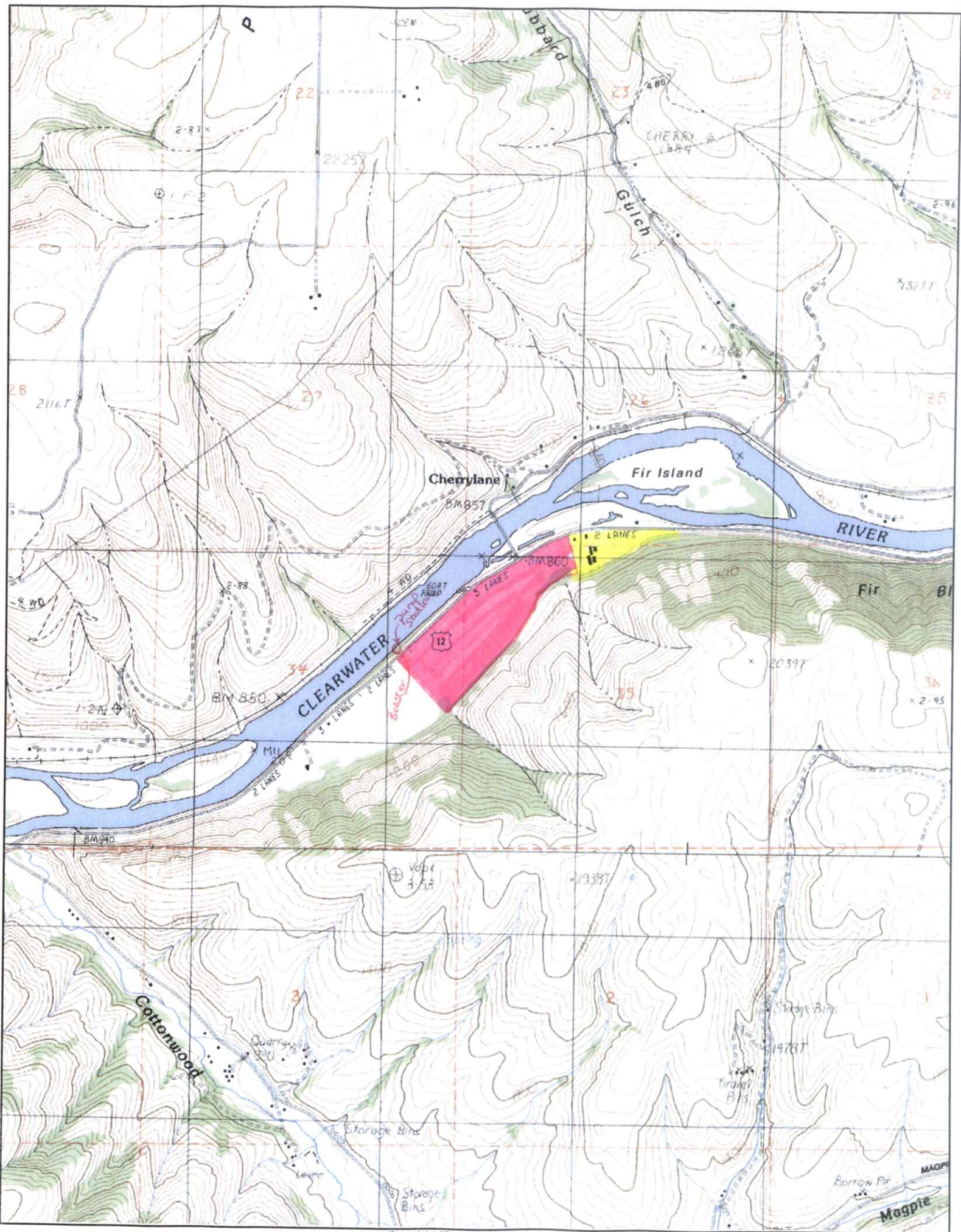
7 acre Feedlot Field

5.2 ac Yard, Garden

irr Farmstead

12.2 ac

Total 86.2 acres



SKETCH ADDENDUM

Borrower/Client			
Property Address			
City	County	State	Zip Code
Lender			

Exposed Intake Detail

End Plug



Scale 1" = 5'