

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 74-15681
) (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 F James Whittaker

My address is Po Box 240
Leadore ID 83464

My phone number is: Work _____ Home 768 2491

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 just bought this property and found that the
previous owner did not file this claim that
should have been filed.

☐ 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.)

IDWR claim 74-15681 with
documentation.

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 \$ 100.00.

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 August 15, 2006 1:30 ✓
(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 Jersey

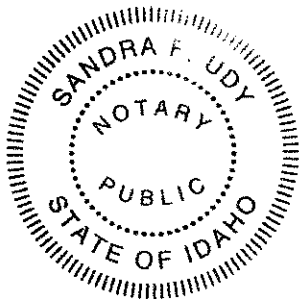
F. James Whittaker, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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.

F. James Whittaker
Signature of person filing motion

Attorney signing in representative capacity

Subscribed and sworn to before me on 05/19/06
(Insert Date)



Sandra F. Udy
Notary Public for _____
Residing at: Seadore ID
My Commission expires: 09/18/2008

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 MAY 19th, ~~199~~²⁰⁰⁶, 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:

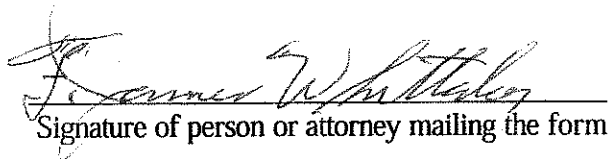
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

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 74-15681

Date Received _____

Receipt Number _____

**NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Claimant: F. James Whittaker
PO Box 240
Leadore ID 83464
208 768 2491
2. Date of Priority: 3/15/1966
3. Source of water (a) Big Eightmile Creek
which is tributary to (b) Lemhi River
4. a. Location of points of diversion:

Township	Range	Section	QQQ	Diversion Name
16N	25E	28	SWSE	

5. Description of existing diversion works.

Headgate to ditches

6. Water is claimed for the following purposes:

Purpose	Start Date	End Date	cfs	acre feet/year
Irrigation	3/15	11/15	7.04	

7. Total quantity claimed (a) 7.04 (cfs) and/or (b) (acre feet per year)

8. Total consumptive use claimed is _____-acre feet per annum.

9. Non-irrigation uses:

10. Description of place of use

Township	Range	Section												
16N	25E	26												
NE		NW					SW					SE		
NE NW	SW SE	NE NW	SW SE	NE NW	SW SE	NE NW	SW SE	NE NW	SW SE	NE NW	SW SE	NE NW	SW SE	Total
40	40 40			40	40		40						32 39	311

Total number of acres irrigated 311

11. Irrigated lands are located in county(s) of: Lemhi

12. Do you own the property listed above as place of use? Yes

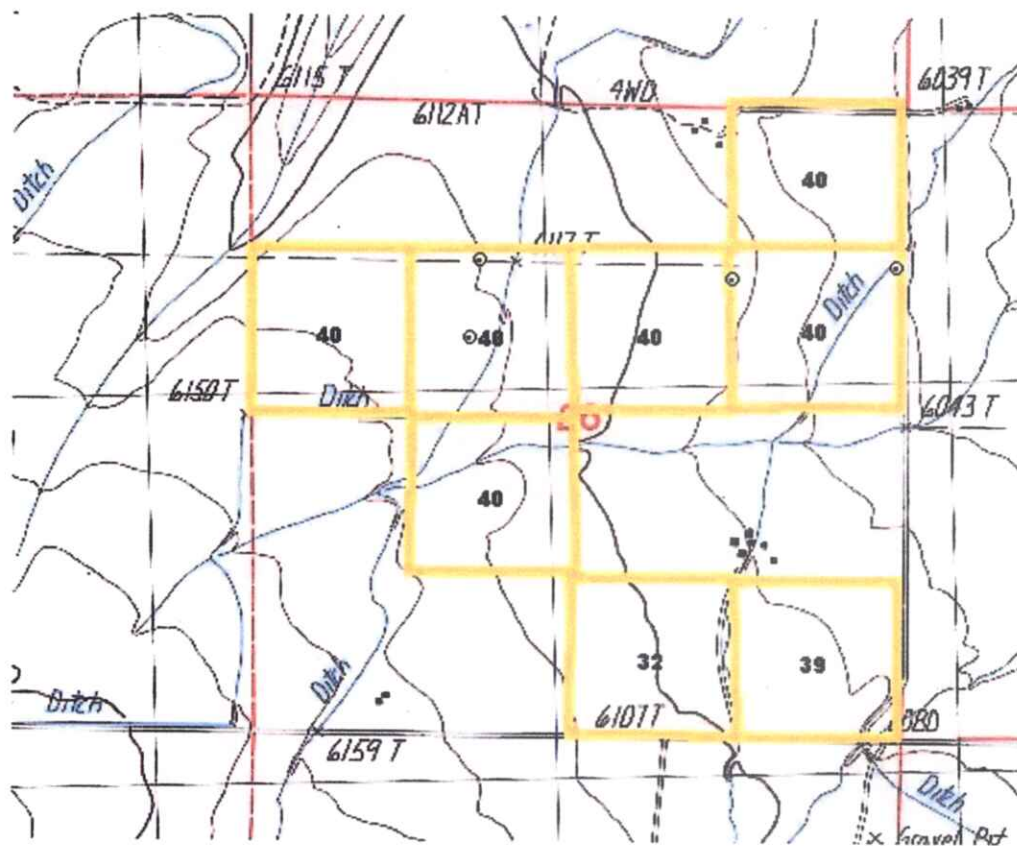
13. Describe any other water rights used at the same place and for the same purposes as described above:

74-345 is for the same place of use and from the same source.

14. Remarks. This is a high water claim for additional diversion rate to allow one complete irrigation to store water in the root zone before the spring runoff declines. Please see attached documentation for priority date and evidence of beneficial use. It is the same place of use as recommended for 74-345.

Claim 74-15682 is an enlargement of this claim and 74-345.

Map of project:



15: Basis of Claim: Beneficial Use

IDWR water right number (none)

16: Signatures

Number of attachments 2

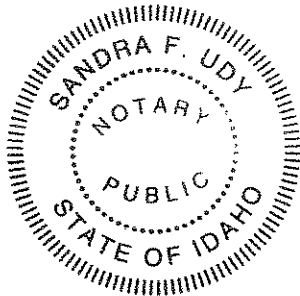
I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) James Whittaker Date 5/19/06
Paula Whittaker Date 5-19-06

State of Idaho/or _____)
County of Lemhi) SS.

Subscribed and sworn (or affirmed) before me this 5/19/19th day of May 2006

SEAL



Notary Public Sandra E. Udy

Residing at Leadore ID

My Commission Expires 09/18/08



State of Idaho
Attachment #1
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

September 3, 1982

Floyd James Whittaker
Box 177
Leadore, ID 83464

Dear Mr. Whittaker:

The determination of water rights in the Lemhi drainage is almost finished. The specific objections of record dealing with individual water rights essentially are resolved and the majority of general objections have been resolved. I am writing to you because one of the unfinished matters affects you directly.

Shortly after the proposed finding of water rights in the Lemhi drainage (called the "green book" because of its cover) was filed with the district court in Salmon, you were among a number of water right users who filed written objections to the acre-foot limitation, the season of use, and the treatment of "high water." These are general matters which affected all water rights and have been termed "general objections." To complete the Lemhi Adjudication, all of these general objections must be resolved or go to trial.

Many of the water users who filed general objections were represented by attorneys; however, you were among those general objectors who were not represented by an attorney or are no longer represented by an attorney. Over the past several years, the attorneys who represented general objectors have worked with the Idaho Department of Water Resources to settle the problems relating to the acre-foot limitation, the season of use, and the use of "high water." An agreement was reached between the Department and all attorneys of record in the Lemhi River Adjudication proceeding and was signed this last winter and approved by the court. The agreement, called a "stipulation resolving general objections," is available for your review at the Lemhi County Courthouse if you wish to review it. Pages 2 and 3 of the stipulation show which of the general objectors were represented by the attorneys who signed the stipulation. The three general objections were essentially resolved, however, by making the following changes in the Department's previous recommendations to the District Court:

- a) The 3.0 acre-feet per acre originally recommended as a volume at the field headgate has essentially been eliminated. The Findings of Fact and Conclusions of Law now state that the consumptive irrigation requirement (the amount of water required to raise alfalfa or wild hay in the Lemhi River Basin) is 1.45 AF/acre. This is factual information and will not be used to limit delivery of water under existing rights as was the original concern of objectors. Water will be delivered as historically done - by rate of diversion (cfs or miner's inch) to the land to which it is appurtenant.
- b) The normal irrigation season originally recommended as April 1 to November 1 has been changed to March 15 to November 15 of each year with the provision that in some cases water has been and can be applied to a beneficial use outside the normal irrigation season.
- c) The use of "flood water" or "high water" concern has been resolved by essentially changing the original recommendation to say that the existing decreed streams as listed in Conclusion of Law # 3 in the "Green Book" can operate as distinct and separate streams from the mainstream Lemhi River priorities including future appropriations on those particular decreed streams shown in Conclusion of Law # 3.

The individuals who are listed on the "stipulation resolving general objections" had the same general objections as you. For this reason, it is believed that the provisions of the stipulation should also satisfy your concerns. If the stipulation is satisfactory to you, please sign the enclosed "agreement to stipulation" and return to me by September 30, 1982. The court will then be notified that your objection has been settled. If the stipulation is not satisfactory, do not sign the "agreement to stipulation." You will be notified at a later date of a time when your objection can be scheduled for trial before the district court.

A list of all the general objectors who were not represented by attorneys is included. With this list and the names on the stipulation you have the names of all the other general objectors if you would want to discuss this matter with any of them.

SCANNED

MAY 23 2006

Sept. 3, 1982
Page 3

Please feel free to contact me if you have any questions about the stipulation or this letter.

Sincerely,

A handwritten signature in cursive script that reads "L. Glen Saxton". The signature is written in dark ink and is positioned above the typed name.

L. Glen Saxton, Chief
Operations Bureau

LGS:jh
Encls.

SCANNED

MAY 7 3 2006

Hi Water

Attachment #2

01/19/2006

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

RIGHT NUMBER: 74-15196

NAME AND ADDRESS: F JAMES WHITTAKER
PO BOX 240
LEADORE ID 83464

PAULA J WHITTAKER
PO BOX 240
LEADORE ID 83464

SOURCE: BIG EIGHTMILE CREEK

TRIBUTARY: LEMHI RIVER

QUANTITY: 7.000 CFS

PRIORITY DATE: 03/15/1966

This water right is subordinated to all water rights with a priority date earlier than October 3, 1974.

POINT OF

DIVERSION: T15N R25E S5 SENE Within LEMHI County

T16N R25E S28 SWSE Within LEMHI County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/05 11/15	7.000 CFS

PLACE OF USE: IRRIGATION Within LEMHI County

T16N R25E S26	NWSW	40.00	T16N R25E S26	SWSW	38.00
T16N R25E S27	SWNE	36.00	T16N R25E S27	SENE	40.00
T16N R25E S27	NESE	40.00	T16N R25E S27	NWSE	40.00
T16N R25E S27	SWSE	40.00	T16N R25E S27	SESE	40.00

314 ACRES TOTAL

This right authorizes the irrigation of 314.7 total acres.

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

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.

This right is supplemental to water right no. 74-341.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use