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DEPARTMENT OF
WATER RESOURCES

COPY

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

Case No. 39576

A. Subcase 21-7084
(Insert water right number
From the Objection Form)

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 are 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 file 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 Dean Schwendiman & Sons, Inc.

My name is Robert L. Harris

My address is Holden, Kidwell, Hahn & Crapo, PLLC, PO Box 50130, Idaho Falls, ID 83405-0130

My phone number is 208-523-0620

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 a 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 Court 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:

See Exhibit A attached hereto

- √ 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,

I have attached:

- √☐ An amended Notice of Claim (available from IDWR).
- √ Payment of the following additional fees required by IDWR:

There are no additional fees.

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 21-7084

Date Received _____

Receipt Number _____

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

1. Name of Claimant(s) Dean Schwendiman & Sons, Inc. Phone (208) 458-4314

Mailing Address PO Box 57, Newdale, ID Zip 83436

2. Date of Priority (Only (1) per claim) April 14, 1976

3. Source of water supply (a) Groundwater

which is tributary to (b) _____

4.a. Location of existing point of diversion is:

Township 8N Range 42E Section 30, 1/4 of NE 1/4 of NE 1/4, Govt. Lot _____,
County of Fremont

Additional points of diversion if any: _____

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. Well & pump into a pipeline

6. Water is claimed for the following purposes: _____ (Both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from 04/01 to 10/31 amount 6 cfs or 1105 afa

7. Total quantity claimed (a) 6 (cfs) and/or (b) 1105 (acre feet)

8. Total consumptive use claimed is 1105 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:
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 - If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instruction for standard symbols.

Claimant requests the irrigation of 442 acres within the following permissible place of use.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TLS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	42E	5	38 L1	39 L2	38	39	38 L3	38	37	37									304
		7	39	40	40	40	40	36 L1	36 L2	40	40	37 L3		0.2	36	40	0.4	0.4	465
		8			40	40	40	39	40	40	40	37	0.4	0.3	40	40	0.2		396.9
		9							40	33	40	40							153
	41E	12	38	40	40	40				37	40			39	40	40	39	39	432
8N	42E	32											37	35			35	31	138

Total number of acres irrigated 442 within a permissible place of use of 1888.9 acres

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

12. Do you own the property listed above as place of use? Yes ☒ 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.
22-2193, 22-7020, 22-12543 or None ()

14. Remarks:

15. Basis of Claim (Check one) Beneficial Use ☐ Posted Notice ☐ Permit ☐ Decree ☐ License ☒
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

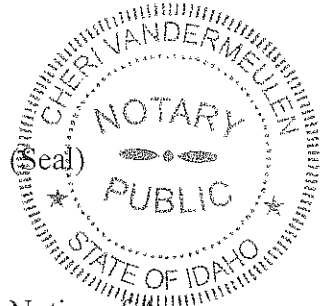
16. Signature(s): For Organizations:
I do solemnly swear or affirm that I am President of Dean Schwendiman & Sons, Inc., that I have signed the foregoing document in the space below as President of Dean Schwendiman & Sons, Inc., and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Dean Schwendiman

Title and Organization President, Dean Schwendiman & Sons, Inc. Date Dec. 15, 2006

State of Idaho)
) SS.
County of Bonneville)

Subscribed and sworn (or affirmed) before me this 15th day of December, 2006.



Cheri Vandermeulen
Notary Public Idaho
Residing at Idaho Falls
My Commission Expires July 7, 2009

17. Notice of Appearance:

Notice is hereby given that I, Robert L. Harris, 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 Robert L. Harris
Address: Holden, Kidwell, Hahn & Crapo, PLLC
PO Box 50130, Idaho Falls, ID 83405-0130

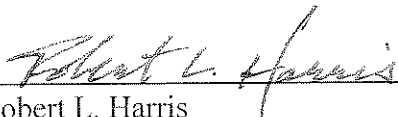
Date Dec. 15, 2006

VERIFICATION

State of Idaho)
)ss
County of Bonneville)

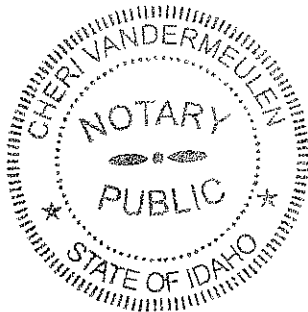
Robert L. Harris, being first duly sworn, upon oath, deposes and says:

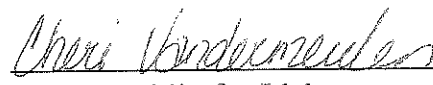
That I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.



Robert L. Harris

Subscribed and sworn to before me on this 15th day of December, 2006.





Notary Public for Idaho
Residing at: Idaho Falls
My Commission expires: July 7, 2009

CERTIFICATE OF MAILING

I certify that on the 15th day of December, 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
P.O. Box 2707
Twin Falls, ID 83303-2707

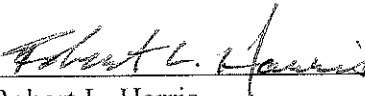
2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. 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 amend 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.



Robert L. Harris

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STATEMENT

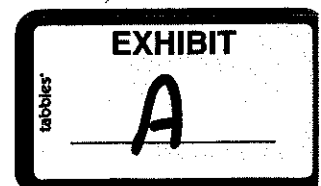
Dean Schwendiman & Sons, Inc., ("Schwendiman") owns and operates farm ground north of Newdale, Idaho, just north of the Teton Canyon in Basin 22. A map of the Schwendiman property, along with other relevant features, is displayed in the map attached hereto as Exhibit B. As you can see on the map, there are two distinct pieces of property owned by Schwendiman. Schwendiman has four (4) water rights appurtenant to this property: 22-2193, 22-7020, 22-12543, and 21-7084.

Schwendiman is filing a Late Notice of Amended Claim because it was confused as to the sequence in which it received its preliminary recommendations. All of the irrigated property owned by Schwendiman is located in Basin 22, however, water right 21-7084 has a point of diversion located in Basin 21. Thus, as IDWR has moved through the different administrative basins, it first issued preliminary recommendations and final recommendations for Basin 21 before making its way into Basin 22. When Schwendiman received the preliminary recommendations for Basin 22, it became apparent that there was an error associated with Water Right No. 21-7084. In short, Schwendiman was confused as to when he was supposed to deal with the issues facing each particular water right, because it thought it would have received preliminary recommendations on all of its water rights at the same time. Now that Schwendiman has received preliminary recommendations for his rights in Basin 22, it has realized the error that presently exists on the final recommendation for 21-7084.

Once Schwendiman reviewed the water right recommendations for Basin 22, it realized one of the errors made in the preliminary recommendation for 21-7084. This error can perhaps be best described while looking at Exhibit B. As you can see from the map, the point of diversion for Water Right No. 21-7084 is approximately 1,000 feet north of the boundary line between administrative basins 21 and 22. Once water is diverted at the point of diversion, it is piped for some distance, first to a field of approximately 450 acres (442 of which are irrigated), then continuing down to the remaining Schwendiman property, which has approximately 1,446.9 irrigated acres. The pipeline was installed in the 1970s, and has been operated by Schwendiman since then. Thus, there has been an accomplished transfer under Water Right No. 21-7084, and we are asking to amend our original claim for 21-7084 to specify a permissible place of use for this water right to include all of the Schwendiman property. In other words, the water system on the property is entirely connected, and water diverted under 21-7084 has historically been used on all parts the Schwendiman property. Thus, we are seeking to amend our claim to have a provision allowing for the irrigation of 442 acres (the number of acres licensed under 21-7084) within a permissible place of use of approximately 1,888.9 acres.

Because the licensed acres for irrigation under Water Right No. 21-7084 are located with Basin 22, we would ask the court to change the water right number of this right with a 22 prefix instead of a 21 prefix, as the water right is currently numbered.

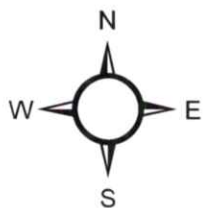
In sum, Schwendiman must amend his original notice of claim for 21-7084 because it failed to include all of Schwendiman's property within its permissible place of use. The entire water system on the Schwendiman property is interconnected, and has been since the 1970s. Thus, as



Water Right No. 21-7084 is currently recommended, the recommendation is inaccurate.

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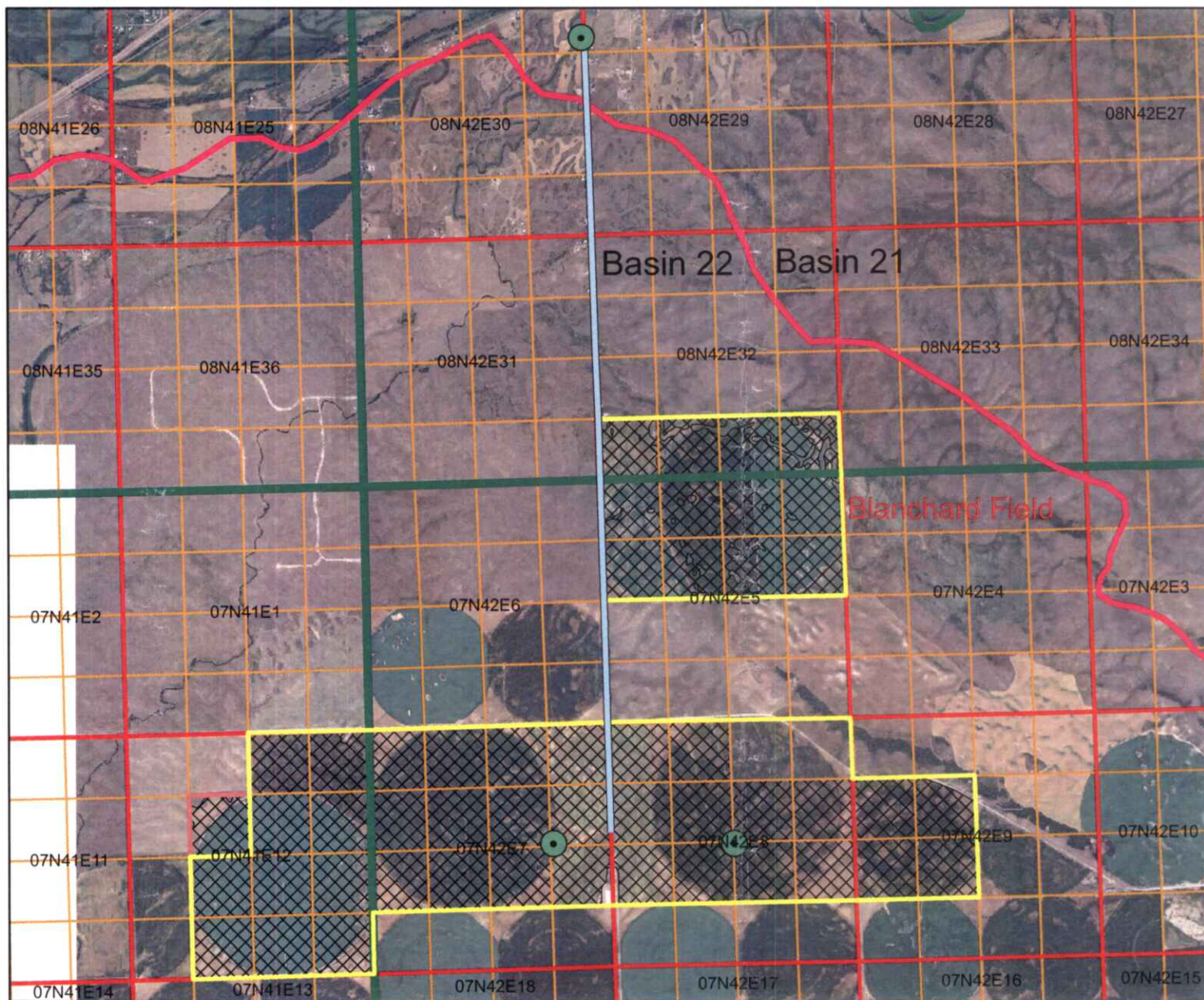
DEAN SCHWENDIMAN & SONS



Legend

- POD_Recommended
- Schwendiman_Property
- Dalling_Property
- Townships
- Sections
- Quarter Quarters
- Pipeline
- Water Rights POU
- IDWR Admin Basins

Prepared by
Robert L. Harris
Dec. 13, 2006



0 2,875 5,750 11,500 Feet

