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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

A. Subcase 74-15767  
(Insert water right number  
From the Objection Form)

Case No 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 \_\_\_\_\_

My address is \_\_\_\_\_

My phone number is: Work \_\_\_\_\_ Home \_\_\_\_\_

I am an attorney representing Charles E. Liebrecht, Nancy J. Kagel & Ray L. Kagel, Jr.

My name is Kent W. Foster of Holden, Kidwell, Hahn & Crapo, PLLC

My address is 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:

It was discovered at the initial hearing there was more acreage historically irrigated than listed in the original claim. Technology for mapping has improved dramatically.

- ☐ 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 )

See attached map showing historical place of use.

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 \$ 119 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 21, 2007 at 1:30 p.m.  
(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:

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

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I have attached:

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

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## VERIFICATION

State of Idaho

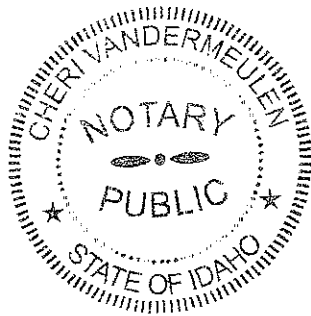
County of Bonneville

Kent W. Foster, 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.

  
\_\_\_\_\_  
Kent W. Foster

Subscribed and sworn to before me this 17<sup>th</sup> day of May, 2007



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

## CERTIFICATE OF MAILING

I certify that on this 17<sup>th</sup> day of May, 2007, 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:

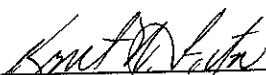
Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
P.O. Box 2707  
Twin Falls, ID 83303-2707

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

  
\_\_\_\_\_  
Kent W. Foster, Attorney

G:\WPDATA\KWF\13505 Kagel Ray & Nancy\Motion to File Late Claim.wpd

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 74-15767

Date Received \_\_\_\_\_

Receipt Number \_\_\_\_\_

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

1 Name of Claimant(s) Charles E. Liebrecht, Ray L. Kagel, Jr., Nancy J. Kagel Phone (208)745-0076

Mailing Address 3879 E. 200 N., Rigby, ID Zip 83422

2 Date of Priority (Only (1) per claim) \_\_\_\_\_

3 Source of water supply (a) Big Bear Creek

which is tributary to (b) Hawley Creek

4 a Location of existing point of diversion is:  
Township 16N Range 28E Section 31, 1/4 of NW 1/4 of NW 1/4, Govt. Lot \_\_\_\_\_,  
County of Lemhi

Additional points of diversion if any: NWSW, Sec. 32, T16N., R28E.

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. Headgates and ditches

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

For Irrigation purposes from 03/15 to 11/15 amount \*2.0 or \_\_\_\_\_

7 Total quantity claimed (a) \*2.0 (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.) \_\_\_\_\_
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 instruction for standard symbols.

| IWP | RNG | SEC | NE 1/4 |    |    |      | NW 1/4 |      |       |       | SW 1/4 |    |    |    | SE 1/4 |    |    |    | ILS   |
|-----|-----|-----|--------|----|----|------|--------|------|-------|-------|--------|----|----|----|--------|----|----|----|-------|
|     |     |     | NE     | NW | SW | SE   | NE     | NW   | SW    | SE    | NE     | NW | SW | SE | NE     | NW | SW | SE |       |
| 16N | 27E | 36  | 0.2    |    |    | 13.6 |        |      |       |       |        |    |    |    | 0.82   |    |    |    | 14.44 |
|     | 28E | 31  |        |    |    |      | 4.05   | 0.88 | 26.27 | 13.66 |        |    |    |    |        |    |    |    | 44.86 |
|     |     |     |        |    |    |      |        |      |       |       |        |    |    |    |        |    |    |    |       |
|     |     |     |        |    |    |      |        |      |       |       |        |    |    |    |        |    |    |    |       |

Total number of acres irrigated 59.3

11. In which county(ies) are lands listed above as place of use located? Lemhi
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.  
74-22 or None ( )

14. Remarks:

\* This is merely a claim to account for the balance of the acreage that has historically been irrigated under right no. 74-22. The Lemhi Decree references only 40.4 acres of irrigated land. With better technology, it appears there is 59.3. Claimants do not claim more than the 2.0 cfs of water under 74-22, just that 18.9 more acres has historically been irrigated. To conform this claim to the Lemhi Decree, a priority of March 15, 1983, has been set forth above for the extra 18.9 acres although to claimants' knowledge the same acreage has been irrigated from the time irrigation first began.

15. Basis of Claim (Check one) Beneficial Use ☒ Posted Notice ☐ Permit ☐ Decree ☐ License ☐  
If applicable provide IDWR Water Right Number 74-15767

Court \_\_\_\_\_ Case Number \_\_\_\_\_ Decree Date \_\_\_\_\_  
Plaintiff vs Defendant \_\_\_\_\_

16. Signature(s)

For Organizations: I do solemnly swear or affirm that I am attorney at law for claimants, that I have signed the foregoing document in the space below as attorney for claimants and that the statements contained in the foregoing document are true and correct

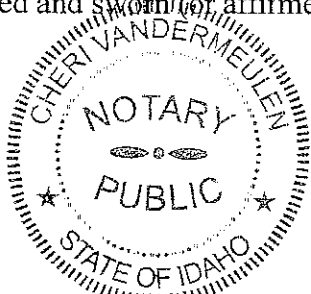
Signature of Authorized Agent 

Title and Organization Attorney at law for claimants Date May 17, 2007

Last Name Liebrecht, Kagel Ident Number 74-15767

State of Idaho )  
 ) SS  
County of Bonneville )

Subscribed and sworn (or affirmed) before me this 17<sup>th</sup> day of May, 2007.



Cheri Vandermeulen  
Notary Public for Idaho  
Residing at: Idaho Falls, ID  
My Commission Expires: July 7, 2009.

17. Notice of Appearance:

Notice is hereby given that I, Kent W Foster, 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 Kent W. Foster  
Address: PO Box 50130, Idaho Falls, ID 83405-0130  
Date May 17, 2007