

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 63-32910
	)	(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 W & H Limited Liability Company

(Partners: Gerald Waller & Allan Humphries)

My address is 504 N. Phillippi, Boise, ID 83706

My phone number is: Work 208.323.7767 Gerald's Cell: 208.841.7171

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:
In 1989, Jim Johnson and Jeff Peppersack with Idaho Department of Water Resources indicated that water action for wildlife use was not necessary based on existing water rights. See attached documentation.

☐ 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.)

1. An affidavit from Ward Williamson verifying historical use prior to 1971.

2. Two dated letters from Harold G. Noack, Jr., Attorney at Law, that documents conversations with IDWR concerning water right action for wildlife 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 \$ 1,120.

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 March 18, 2008 at 1:30 p.m.
(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:

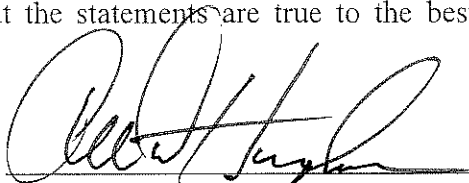
VERIFICATION (Must be completed)

State of IDAHO

County of ADA

ALLAN D. HUMPHRIES, 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.

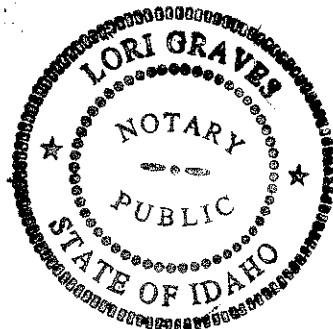


Signature of person filing motion

MEMBER, WFA LLC

Attorney signing in representative capacity

Subscribed and sworn to before me on DECEMBER 10, 2007
(Insert Date)



Lori Graves
Notary Public for STATE OF IDAHO

Residing at: BOISE

My Commission expires: 6/18/2010

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 12/10, 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
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.



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: 63-32910

Date Received:

Receipt No:

Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

W & H Limited Liability Company
504 N. Phillippi St.
Boise, ID 83706

Phone: (208) 323-7767

2. Date of Priority: January 1, 1970

3. Source: Baldrige and Meadows Drain

Trib. to: Boise River

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County	Type
5N	5W	27	NE	NW 3	Canyon	

5. Description of diverting works:

Water is diverted from the drain into Upper Haas Ditch, which fills a pond that overflows and floods surrounding fields.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
Diversion to Storage	1/1	12/31	4.6	
Wildlife	1/1	12/31	4.6	
Wildlife Storage	1/1	12/31		45.0

7. Total Quantity Appropriated is:

4.6 cfs/45.0 afa

8. Total consumptive use:

9. Non-irrigation uses:

Miscellaneous Wildlife

10. Place of use:

TWP	RNG	SEC	NE ¼				NW ¼				SW ¼				SE ¼				totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5S	5E	22						W W/S	Lt 4 W W/S			Lt 3 W W/S							

11. Place of use in counties: Canyon

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

13. Other Water Rights Used:

Permit 63-12601

14. Remarks: Water is diverted from the Baldridge and Meadows Drain into a ditch, also known as the Upper Haas Ditch, that carries water to the SWNW, Section 22, T5N, R5W, where it is continuously discharged to flood 45 acres 1 foot deep for wildlife purposes. A 2006 NAIP Photo was used to determine the point of diversion from the drain.

15. Basis of Claim: Beneficial Use

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: _____

For Organizations:

I do solemnly swear or affirm that I am A MEMBER of _____ Title

WAH, L.L.C., that I have signed the foregoing _____ Organization

document in the space below as MEMBER of _____ Title

WAH, L.L.C. and that the statements contained in the _____ Organization

foregoing document are true and correct.

[Signature]
Signature of Authorized Agent

MEMBER, WAH, L.L.C.
Title and Organization

12/10/07
Date

State of Idaho)
County of ADA) SS.

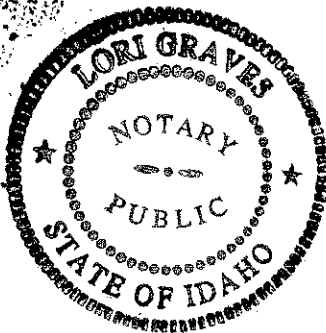
Subscribed and sworn (or affirmed) before me this
of DECEMBER 2007

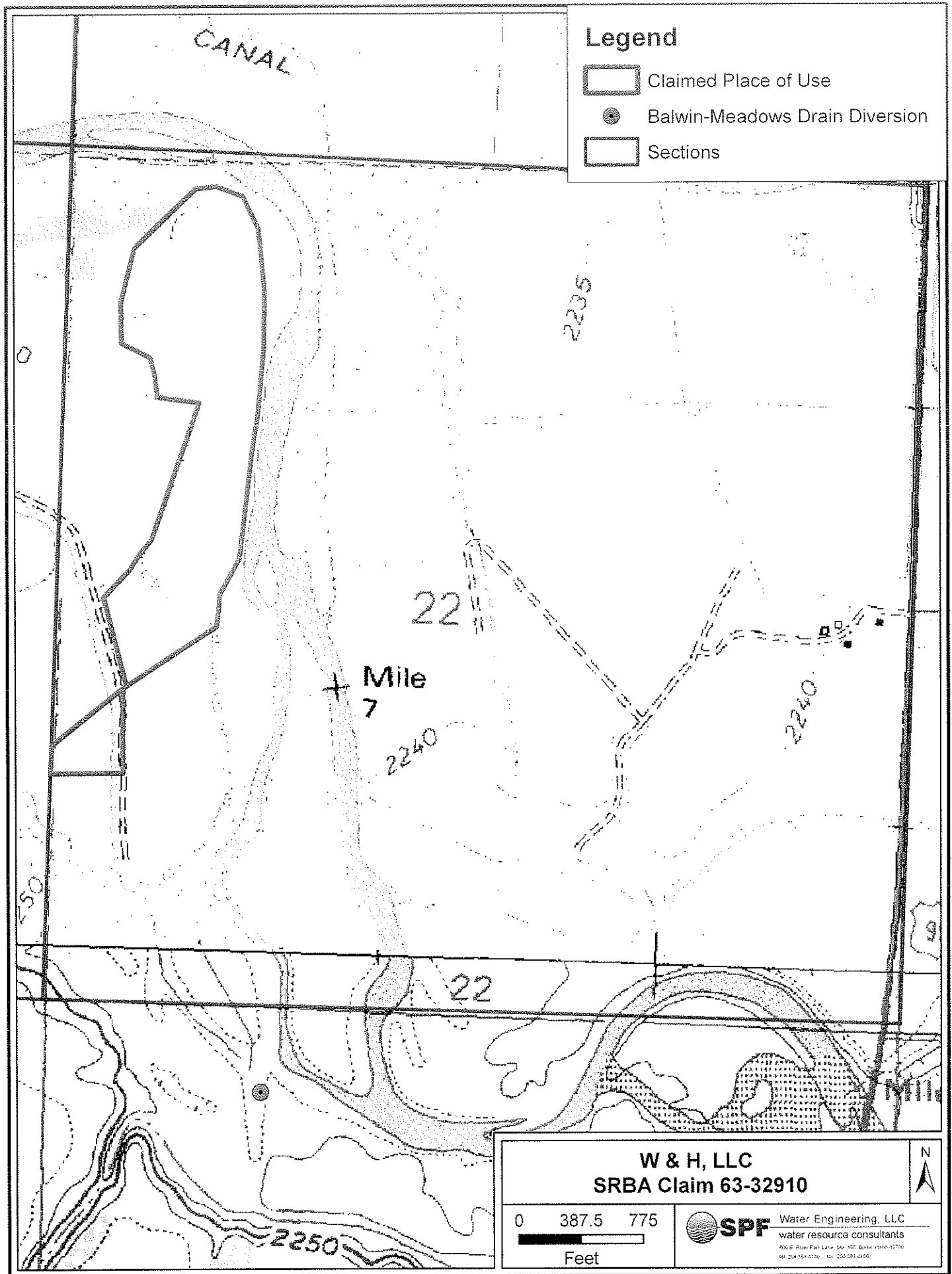
10th day
Lori Graves

Notary Public

Residing at BOISE

My commission Expires 6/18/2010





IN THE MATTER OF: Civil Case 39576

SNAKE RIVER BASIN ADJUDICATION

[Evidence of Priority]

State of Idaho

County of Canyon

AFFIDAVIT

I, Ward Williamson, being past owner of Mallard Farm from the early 1970's until 2005,
attest that water was deliberately diverted year round for wildlife uses from the
Baldrige/Meadows Drain, which is also known as the Upper Haas Ditch. To my
knowledge, this has occurred since at least 1970 with evidence at that time, such as cat
tails, indicating use many years prior. All the water from the Upper Haas Ditch was
diverted into a pond located on Mallard Farm in the SWNW, Section 22, T5N R5W,
which then filled, overflowed, and flooded the majority of Mallard Farm property and
part of the Walker Farm property located in the E1/2, Section 21 and the W1/2, W1/2,
Section 22, T5N R5W. Year round diversion for wildlife uses has resulted in the
development of a wetlands atmosphere that promotes and supports wildlife uses.

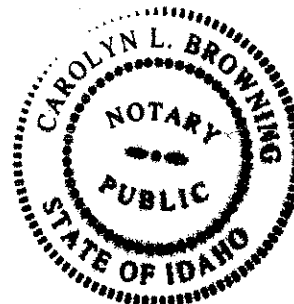
Ward C. Williamson
(Signature)

Subscribed and sworn before me this 29th day of November, 2007.

Carolyn L. Browning
(Signature of Notary)

Residing at Boise Idaho

My commission expires 5/15/2013



HAROLD Q. NOACK, JR.
ATTORNEY AT LAW

345 Bobwhite Court, Suite 110
Boise, ID 83706
P.O. Box 875
Boise, ID 83701

Telephone
(208) 336-2480
FAX
(208) 336-6701

December 6, 1989

James Johnson
Idaho Water Resource Board
1301 N. Orchard
Boise, ID 83720

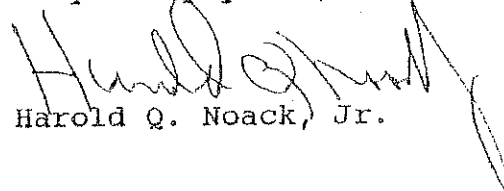
Re: Mallard Farms water rights
ID# A63-15173, A63-00202A, A63-00172A, and A63-02611A

Dear Mr. Johnson:

I represent Mallard Farms, a partnership, owners of farm property adjacent to the Boise River near Parma, Idaho. On October 25, 1989, a conference was held at the Water Resource Board office on Orchard Street. Present at that meeting were Jerry Waller (a partner in Mallard Farms), Jeff Peppersack, you and me.

The purpose of this letter is to verify that as a result of that conference it is your position that based upon the water rights held by Mallard Farms, which are identified above, there is no need for a transfer of nature of use for Mallard Farms to maintain on a yearly basis water for ponds which exist on the property for the maintenance and use of wildlife and for use of the water for the growing of crops for wildlife forage.

Very truly yours,



Harold Q. Noack, Jr.

HQN:dsg
cc: Jerry Waller
Jeff Peppersack

HAROLD Q. NOACK, JR.
Attorney at Law

345 Bobwhite Court, Suite 110
P. O. Box 875
Boise, ID 83701

Telephone
(208) 336-2480

FAX
(208) 336-6701

October 7, 1989

Gerald A. Waller
Rocky Mountain Pizza Huts, Inc.
504 N. Phillippi
Boise, ID 83706

Re: Water rights

Dear Jerry:

I talked to Jeff Peppersack with the Water Resource Board about "wildlife water rights." Jeff said that the wildlife water right is not well-defined by statute and that it is usually claimed by a state agency such as Fish and Game for wildlife refuges. Claiming a wildlife water right does not give you a better water right claim than a claim for stock water or irrigation purposes. All water rights go by priority, i.e., by when the water right was claimed.

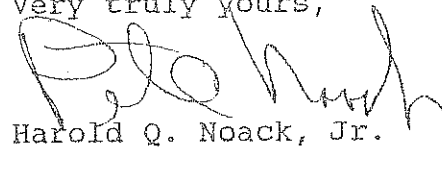
The purpose of the adjudication that the State is going through now is for people to re-establish their water right claims. If a party holds a valid water right now, that right will not be lost through the adjudication process. If you have sufficient water at the present time to maintain wildlife ponds through the existing water rights, there would not be any advantage to applying for wildlife water rights, if such application is possible.

The only area in which a wildlife water right could be important is providing water for ponds during the non-irrigation season. According to Jeff, the irrigation season runs from March 15 through November 15 of each year. If the ponds are to be maintained all year round, technically, it would be necessary to amend our claims which we may do to include wildlife water rights for the non-irrigation season. However, as a practical matter, the question of use of water during non-irrigation season would have to be raised by someone who was affected thereby, which is not likely to happen because there isn't a demand for water during the non-irrigation season.

Letter to Gerald A. Waller
October 7, 1989
Page 2

In accordance with our telephone conversation, I will pursue the matter further.

Very truly yours,

A handwritten signature in dark ink, appearing to read "H. Q. Noack, Jr.", written in a cursive style.

Harold Q. Noack, Jr.

HQN:dsg