

RECEIVED

JUN 10 2008

DEPARTMENT OF
WATER RESOURCES

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

22-386 B

(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 Kane Brightman

My address is 528 North Highway 33
Tetonia ID 83452

My phone number is: Work 307-690-1595 Home 208-456-2505

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 was unaware of the wrong priority date on my claim
A 22-00612 C filed 1/31/1989 until 5/30/2007. At which time
I filed a correction form. Last month I became aware I needed to file
a Late Notice of Claim after talking with Michel at I.F. skyline Dr. office.

☐ 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.)

Letter to IDWR with enclosures

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 \$ 150.

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 Tuesday Sept. 16, 2008 1:30pm
(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:

VERIFICATION (Must be completed)

State of Idaho

County of Teton

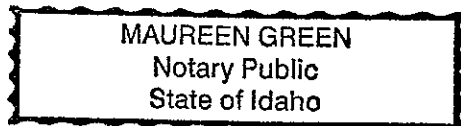
Kane Brightman, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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.

Kane Brightman
Signature of person filing motion

Attorney signing in representative capacity

Subscribed and sworn to before me on June 7, 08
(Insert Date)



Maureen Green
Notary Public for Teton CO
Residing at: Teton CO
My Commission expires: 08/05/14

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 June 6, ~~199~~²⁰⁰⁸, 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:

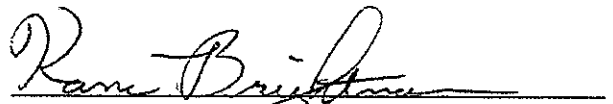
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

Kane Brightman
528 North Highway 33
Tetonia, ID 83452

June 4, 2008

Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 84302

Dear Sir or Madam:

I am enclosing with this letter a SRBA Late Notice of Claim. This is a claim to water right number 22-386, Originally decreed in the Rexburg Decree to one Zina Little. The land described in the decree as the place of use is the N1/2 NW1/4 and the SWNW, Section 35, T.6N., R.45E., containing 120 acres. I think the legal description of the place of use is wrong, and that it should have described 120 acres of land in the SW1/4 of Section 35, not the NW1/4.

Mr. John Letham has operated the property, the Northwest Quarter of the Southwest Quarter in Section 35, Township 6 North, Range 45 East, and been familiar with it for many years. He says this land was always watered from the Desert Ditch which heads on the south side of South Leigh Creek and brings water only to lands on the south side of the creek. He always understood the priority for the water used on the lands he has operated was April 1, 1889. As you can see on the accompanying map, South Leigh Creek runs from east to west about through the center of Section 35, and virtually no land in the NW1/4 of Section 35 can be irrigated from the south side of the creek. An affidavit of Mr. Letham is enclosed with this letter.

Kent Foster of Holden, Kiddwell, Hahn and Crapo, P.L.L.C. had a title company check the deed record. It turns out Zina Little owned land in the SW1/4 of Section 35, but not in the NW1/4 of that section. The title company checked both quarter sections and the chain of title for a period of years during the time the Rexburg Decree would have been considered and entered. Copies of those deeds may be found in water right number 2213366 Notice of Claim dated 4/1/2005.

Yours truly,



Kane Brightman

Enclosures

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 22-386B
Date Received: 5/6/2008
Receipt No:
Received By: MWH

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

KANE BRIGHTMAN Phone: (208)456-2505
528 N HWY 33
TETONIA ID USA 83452

2. Date of Priority: 04/01/1889

3. Source: SOUTH LEIGH CREEK Trib. to: TETON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
06N	46E	32	NW NW SW	TETON	

5. Description of diverting works:

DESERT DITCH HEADING.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/31	1.04	

7. Total Quantity Appropriated is:

1.04 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
06N	45E	35	NW SW	IRRIGATION	26
Section Acres					26
Total Acres					26

11. Place of use in counties: TETON

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

13. Other Water Rights Used: PORTIONS OF 22-612C AND 22-7002B.

14. Remarks:

AWAITING ACCEPTANCE OF CLAIM BY SRBA COURT.

15. Basis of Claim: Decreed

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 Individuals:

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

Signature of Claimant(s): Rene Bjeltra Date: June 4, 08
_____ Date: _____

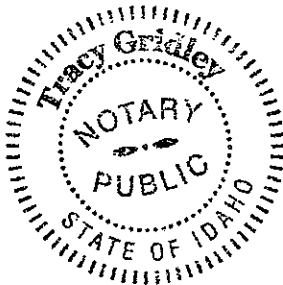
State of Idaho)
County of TETON) SS.

Subscribed and sworn (or affirmed) before me this 4th day
of June 2008 Tracy Gridley

Notary Public

Residing at Tetonia, Idaho

My commission Expires 12/20/2010



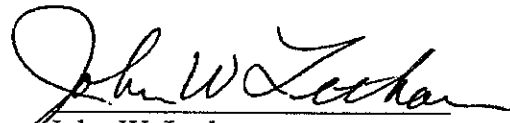
AFFIDAVIT OF JOHN W. LETHAM

STATR OF IDAHO)
)ss.
County of Bonneville)

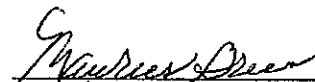
John W. Letham, on his oath deposes and says:

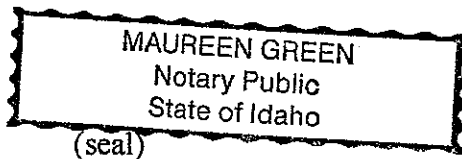
1. Affiant resides at 228 N. Highway 33, Driggs, Idaho 83422, and his telephone number is 208-354-2477. Affiant is 66 years of age and has resided in Teton County, Idaho, his entire life.
2. Affiant has been familiar with certain land owned by Kane Brightman in, T.6N., R.45E. Section 35, NW., 1/4 of SW. 1/4 for many years. Since about 1972 or 1973, Affiant has personally farmed and operated approximately 26 acres of that land. The surface water used for the irrigation of said land always came from the Desert Ditch which heads to the south side of South Leigh Creek in the NWSW Section 32, T.6N., R.46E. Affiant always understood the South Leigh water for said land was delivered under a priority of April 1, 1889.

DATED this 4th day of June, 2008


John W. Letham

SUBSCRIBED AND SWORN TO before me this 4th day of June, 2008


Notary Public for Idaho
Residing at: Teton CO
My commission expires: 08/05/14



Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
CHARLES A. HOMER
GARY L. MEKLE
DONALD L. HARRIS
DALE W. STORER
MARIE T. TYLER
ROBERT M. FOLLETT
FREDERICK J. HAHN, III
KARL R. DECKER
THEJ. W. CASPER*
SHAN B. PERRY
AMELIA A. SHEETS
DeANNE CASPERSON**
ROBERT L. HARRIS

1000 RIVERWALK DRIVE, SUITE 200
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
FACSIMILE (208) 523-9518
E-MAIL KFOSTER@HOLDENLEGAL.COM

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1929-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn

*Also Licensed in Utah and Arizona
**Also Licensed in Missouri & Kansas

April 1, 2005

Idaho Department of Water Resources
ATTN: Ernie Carlson
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RECEIVED
APR 04 2005
Department of Water Resources
Eastern Region

Dear Ernie:

We are enclosing with this letter an SRBA claim on behalf of Mr. Wendell Winters. This is a claim to water right number 22-386, originally decreed in the Rexburg Decree to one Zina Little. The land described in the decree as the place of use is the N1/2 NW1/4 and the SWNW, Section 35, T.6N., R.45E., containing 120 acres. We think the legal description of the place of use is wrong, and that it should have described 120 acres of land in the SW1/4 of Section 35, not the NW1/4.

First, Mr. John Letham has operated the property (actually the NWSW and the SWSW, Section 35) and been familiar with it for many years. He says this land was always watered from the Desert Ditch which heads on the south side of South Leigh Creek and brings water only to lands on the south side of the creek. He always understood the priority for the water used on the lands he has operated was April 1, 1889. As you can see on the accompanying map, South Leigh Creek runs from east to west about through the center of Section 35, and virtually no land in the NW1/4 of Section 35 can be irrigated from the south side of the creek. An affidavit of Mr. Letham is enclosed with this letter.

We also had the title company check the deed record. Sure enough, Zina Little owned land in the SW1/4 of Section 35, but not in the NW1/4 of that section. We had the title company check both quarter sections and the chain of title for a period of years during the time the Rexburg Decree would have been considered and entered. We are enclosing copies of those deeds with this letter as well.

Idaho Department of Water Resources
ATTN: Ernie Carlson
April 1, 2005
Page 2 of 2

If there is any additional information or assistance we may provide, please feel free to call upon us at your convenience.

Yours very truly,



Kent W. Foster

Enclosures

G:\WPDATA\KWP\12663 Wmms, Wendell\Ernie Carlson to 040105 wpd\chv

AFFIDAVIT OF JOHN W. LETHAM

STATE OF IDAHO)

)ss.

County of Bonneville)

John W. Letham, on his oath deposes and says:

1. Affiant resides at 228 N. Highway 33, Driggs, Idaho 83422, and his telephone number is 208-354-2477. Affiant is 63 years of age and has resided in Teton County, Idaho, his entire life.
2. Affiant has been familiar with certain land owned by the Winters family in the SW1/4 of Section 35, T.6N., R.45E. for many years. Since about 1972 or 1973, affiant has personally farmed and operated approximately 80 acres of that land consisting of most of the NESW and SWSW of said Section. The surface water used for the irrigation of said land always came from the Desert Ditch which heads on the south side of South Leigh Creek in the NWSW Section 32, T.6N., R.46E. Affiant always understood the South Leigh water for said land was delivered under a priority of April 1, 1889.

DATED this 17th day of March, 2005.

John W. Letham

John W. Letham



SUBSCRIBED AND SWORN TO before me this 17th day of March, 2005.

Bonnie Zoller

Notary Public for Idaho

Residing at: Driggs Idaho

My commission expires: 10/13/2010

