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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 <u>37-22326</u>
	)	(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 _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing 4 Bros. Dairy, Inc.

My name is Robert E. Williams, of Fredericksen, Williams, Meservy
& Lothspeich, LLP

My address is 153 East Main Street, P.O. Box 168
Jerome, ID 83338

My phone number is (208) 324-2303

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:

The well was originally overlooked in the SRBA process by
a previous owner, whom owned the property to which the
claimed water right was appurtenant during the initial
claim period.

☐ 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.)

See Affidavit of Andrew Fitzgerald attached hereto as
Exhibit A.

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 \$ 100.
- ☐ 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 November 18th, 2008, 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)

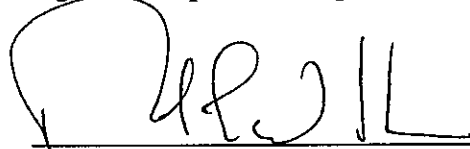
State of Idaho

County of Jerome

Robert E. Williams, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

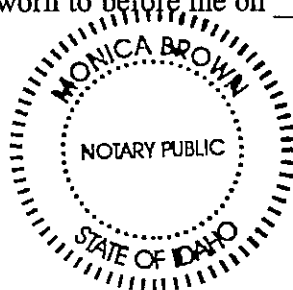
That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Signature of person filing motion



Attorney signing in representative capacity

Subscribed and sworn to before me on June 19th, 2008
(Insert Date)



Monica Brown
Notary Public for Idaho
Residing at: Jerome
My Commission expires: 5-29-2013

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 July 2nd, 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:

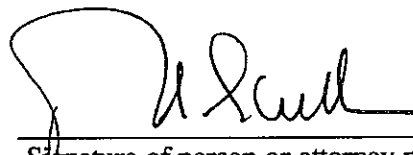
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

ROBERT E. WILLIAMS

IDAHO STATE BAR NO. 1693

FREDERICKSEN, WILLIAMS, MESERVY & LOTH SPEICH, LLP

Attorneys at Law

117 South Adams Street

P. O. Box 168

Jerome, Idaho 83338

Telephone: (208) 324-2303

Facsimile: (208) 324-3135

Attorney for Claimant 4 Bros. Dairy, Inc.

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 No: 37-22326
Case No. 39576	AFFIDAVIT IN SUPPORT OF MOTION TO FILE LATE CLAIM

ANDREW FITZGERALD, first being duly sworn, deposes and says as follows:

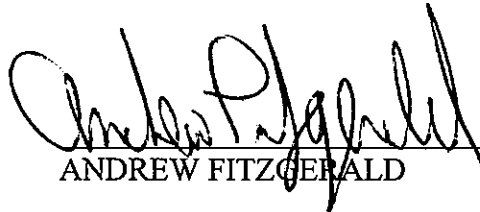
1. I am the Secretary/Treasurer of 4 Bros. Dairy, Inc., an Idaho corporation, and make this affidavit on the basis of my own personal knowledge.
2. 4 Bros. Dairy, Inc., acquired ownership of the real property to which Water Right No. 37-22326 would be appurtenant in 1988 or 1989, pursuant to a foreclosure sale.
3. The previous owner of the real property, Kenneth Jerome, had conducted continuous dairying operations on the real property for approximately forty (40) years prior to the foreclosure sale date.
4. Upon my own personal knowledge and conversations with Kenneth Jerome, the well that served as the point of diversion for Water Right No. 37-22326 was

utilized in Mr. Jerome's dairy operations for the entire time he owned it.

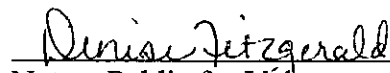
5. After the date 4 Bros. Dairy, Inc., acquired ownership of the real property formerly owned by Kenneth Jerome, 4 Bros. Dairy, Inc., has continued to utilize the water for domestic and stock water purposes that is subject to a proposed Notice Of Claim for Water Right No. 37-22326.

6. Only recently, in the process of preparing an application for an expansion to 4 Bros. Dairy, Inc.'s current dairy operations was it discovered that no claim had been filed for Water Right No. 37-22326 by Mr. Jerome or by 4 Bros. Dairy, Inc.

7. The motion to file late claim has been filed to correct this oversight.


ANDREW FITZGERALD

SUBSCRIBED AND SWORN To before me this 26 day of June, 2008.


Notary Public for Idaho
Residing at: Shoshone
Comm. Expires: 12-15-2012

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 FORM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number _____

Date Received _____

Receipt Number _____

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

Please type or print clearly

1. Name of Claimant (s) 4-Bros. Dairy Inc. Phone (208) 886-7716
Mailing Address 425 N. 250 W. Shoshone, ID. 83352 Zip _____
2. Date of Priority (Only one (1) per claim) _____
3. Source of water supply (a) Ground Water
which is tributary to (b) _____
4. a. Location of existing point of diversion is: Township 05 S. Range 17 E. Section 9,
SE 1/4 of SE 1/4 of SW 1/4, Govt. Lot, _____ B.M., County of Lincoln
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 with pump which supplies existing homestead and supply
line to a trough in a corral.

6. Water is claimed for the following purposes:

(both dates are inclusive) (cfs) (acre feet)

For Domestic purposes from 1/1 to 12/31 amount 0.02 or _____

For Stockwater purposes from 1/1 to 12/31 amount 0.02 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.02 (cfs) and / or (b) 14.5 (acre feet)

8. Total consumptive use claimed is 14.5 acre feet per annum.

9. Non-irrigation uses; described fully (e.g. Domestic: list number of households served; Stockwater: type and number of livestock, etc.) One household, 1,000 Dairy Heifers

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 instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
5S	17E	9												S,D					S,D

Total number of acres irrigated _____

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

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

None Or None ☒

14. Remarks:

Last Name _____ Ident. No. _____

15. Basis of Claim (check one) Beneficial Use ☒ Posted Notice _____ License _____ Permit _____
Decree _____

If applicable provide IDWR Water Right Number _____

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

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

Signature of Claimant (s) _____ Date _____

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am Secretary/Treasurer

Of 4 Bros. Dairy, Inc. _____ Title _____

Document in the space below as Secretary/Treasurer of 4 Bros. Dairy, Inc.

And that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent [Signature]

Title and Organization Secretary/Treasurer 4 Bros. Inc Date 6-26-08

State of Idaho / or _____)

County of Lincoln) ss.

Subscribed and sworn (or affirmed) before me this 26 day of June, 2008.

Notary Public Denise Fitzgerald

Residing at Shoshone

SEAL

My Commission Expires 12-15-2012

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, Robert E. Williams 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 [Signature]

Address P.O. Box 168,153 East Main St., Jerome, ID 83338

Date June 19th, 2008

Last Name Williams Ident. Number 1693