

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>67-12139</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.

X I have read *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996).

My name is United States of America, USDA Forest Service

My address is 550 W. Fort St. MSC 033, Boise, Idaho 83724

My phone number is: Work _____ Home _____

I am an attorney representing: United States of America on behalf of the USDA Forest Service

My name is David L. Negri

My address is 550 W. Fort St. MSC 033, Boise, ID 83724

My phone number is 208-334-1936

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.

X I must amend my Notice of Claim to the use of water in the SRBA because:

The use of this water has changed since the claim was filed in 1993. Changes needed follow:

1. **Reserved Under Federal Law** needs to be changed to **Acquired Under State Law**.
2. The priority date needs to be changed from **05-10-1906** to **04-01-1933**.
3. The purpose of use needs to be changed from **Irrigation** to **Domestic**.
4. The quarter-quarter of the legal description of the place of use needs to be changed from **SENE** to **NESE**.
5. The basis of the claim needs to be changed from **Reserved** to **Beneficial Use**.

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

E-mail dated 03/17/2005 from David Kennell, Payette National Forest Hydrologist to Steven M Spencer documenting the priority date based on first use of the water from Buck Park Spring at Buck Park Guard Station was in 1933, the year the guard station was constructed.

E-mail dated 06/26/2008 from Linda Strain, Payette National Forest Recreation Manager to numerous individuals describing the change in use and basis of claim - Buck Park (Guard Station) is now a "Recreation Rental Cabin on the National Recreation Reservation system.

I have attached:

X An amended Notice of Claim (available from IDWR).

- ☐ Payment of the following additional fees required by IDWR:

Pursuant to United States v. Idaho ex rel. Dir., Idaho Dep't of Water Resources, 508 U.S. 1, 113 S. Ct. 1893, 123 L. Ed. 2d 563 (1993) the McCarran Amendment (43 U.S.C. § 666(a)) does not waive the United States' sovereign immunity from fees required by the State of Idaho.

VERIFICATION (Must be completed)

State of Idaho

County of Ada

Steven M Spencer, 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.

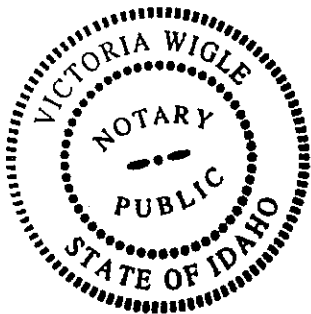
Steven M Spencer

Signature of person filing motion

Paul M. [Signature]

Attorney signing in representative capacity

Subscribed and sworn to before me on August 5, 2005.



Victoria Wigle

Notary Public for Idaho

Residing at: Boise

My Commission expires: 5/29/10

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 August 5, 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:

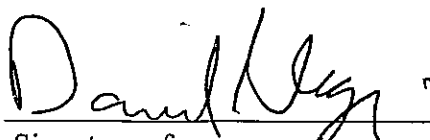
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ~~RESERVED UNDER FEDERAL LAW~~
ACQUIRED UNDER STATE LAW

Right Number: 67-12139

Name and Address: UNITED STATES OF AMERICA
USDA FOREST SERVICE
550 W FORT ST MSC 033
BOISE, ID 83724

Source: BUCK PARK SPRING Tributary: SINKS

Quantity: .02 CFS

Priority Date: ~~05-10-1906~~
04-01-1933

Point of
Diversion: T17N R03W S30 NESE Within Washington County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	~~Irrigation~~	01-01 TO 12-31	.02 CFS
	<u>Domestic</u>		

Place of Use: ~~Irrigation~~ Within Washington County
Domestic
T17N R03W S30 ~~SENE~~
NESE

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - ~~Reserved~~
Beneficial Use

David Kennell/R4/USDAFS
03/17/2005 10:56 AM

To Steven M Spencer/R4/USDAFS@FSNOTES, Linda R
Moore/R4/USDAFS@FSNOTES
Cliff G Steele/R4/USDAFS@FSNOTES, Robert S
Giles/R4/USDAFS@FSNOTES, Mike J
Hays/R4/USDAFS@FSNOTES, Wayne
cc Hersel/R4/USDAFS@FSNOTES, Quinn
Carver/R4/USDAFS@FSNOTES, John
Baglien/R4/USDAFS@FSNOTES, David
Kennell/R4/USDAFS@FSNOTES

bcc

Subject Re: Administrative Site Water Right 

Steve,

Based on the Payette NF "Big Book Number 1" -"Investment and Depreciation Record" the three guard stations were initially built and therefore water first used for administrative purposes as the following:

1. Buck Park - 1933
2. Krassel GS - 1935
3. Hard Creek GS - 1933

You will note this was done during the CCC era.

Good luck, David Kennell PNF



Linda Strain/R4/USDAFS

06/26/2008 04:00 PM

To Holly Becker/R4/USDAFS@FSNOTES

cc David Kennell/R4/USDAFS@FSNOTES, Holly
Becker/R4/USDAFS@FSNOTES, Mary
Farnsworth/R4/USDAFS@FSNOTES, Maura
Lavery/R4/USDAFS@FSNOTES, Monte L
Hurd/R4/USDAFS@FSNOTES, Steven M
Spencer/R4/USDAFS@FSNOTES, Brant
Petersen/R4/USDAFS@FSNOTES, Larry
Kingsbury/R4/USDAFS@FSNOTES

Subject Re: Some Water Rights

Holly/Steve,

I have a couple of pieces of information to add to these questions and concerns. **Buck Park** is now a **Recreation Rental Cabin on the National Recreation Reservation system**. The water source is available as a non potable source and is maintained as such however it is not available for livestock use per say as it is fenced. This was possibly maintained as a water source prior to 1933 due to the mining claims in the area however the cabin was constructed by the CCC's on the present site in that year and so that is the earliest I have it being used. Larry Kingsbury may have an earlier date recorded. The **Mann Creek Guard station** is gone but the site will be a picnic/historical interpretive site in the near future.

Linda Strain
W Zone Recreation
Weiser RD, Payette NF
208-549-4217
lstrain@fs.fed.us