

RECEIVED

AUG 14 2008

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

Case No. 39576

A. Subcase 25-14228
(Insert water right number
From the Objection Form)

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 file 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 _____ Birch Creek Corp. _____

My name is Robert L. Harris of the firm 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:

We recently purchased the property and believed the claim had been filed. We just discovered that it had not.

☐ 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.)

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 \$ 200.00.

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 November 18, 2008, 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:

- ☐ 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:

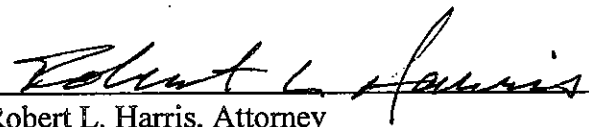
- ☐ An amended Notice of Claim (available from IDWR).
- ☐ Payment of the following additional fees required by IDWR:

VERIFICATION

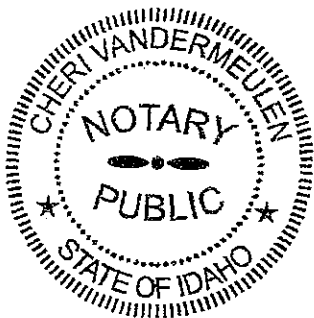
State of Idaho)
)ss.
County of Bonneville)

Robert L. Harris, 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.


Robert L. Harris, Attorney

Subscribed and sworn to before me this 12th day of August, 2008.




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

CERTIFICATE OF MAILING

I certify that on this 12th day of August, 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:

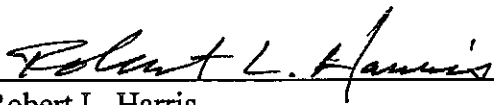
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

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


Robert L. Harris

G:\WPDATA\RLH\14930 Birch Creek\Motion to File Late Notice.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 25-14228

Date Received _____

Receipt Number _____

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s) Birch Creek Corporation . Phone (303) 862-8973

Mailing Address PO Box 20745, Boulder, CO Zip 80308

2. Date of Priority (Only (1) per claim) June 13, 1960

3. Source of water supply (a) Unnamed Stream

which is tributary to (b) Birch Creek

4.a. Location of existing point of diversion is:

Township 2N Range 41E Section 10 , NW 1/4 of SW 1/4 of NE 1/4, Govt. Lot _____,

County of Bonneville

Additional points of diversion if any: _____

If Available, GPS Coordinates: _____

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. Dam in stream channel with two outlets into channels below dam. Dam is approximately 21.5 feet high and 250 feet across. The dam crest is 7 feet wide.

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

For Diversion to Storage purposes from 01/01 to 12/31 amount 10 cfs or _____

For Aesthetic Storage purposes from 01/01 to 12/31 amount _____ or 26 afa

For Recreation Storage purposes from 01/01 to 12/31 amount _____ or 26 afa

For Wildlife Storage purposes from 01/01 to 12/31 amount _____ or 26 afa

7. Total quantity claimed (a) 10 (cfs) and/or (b) 26 (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Pond is approximately 3.5 acres in surface area. Pond is for recreation, aesthetic and wildlife purposes only. No irrigation from the pond is performed.

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- 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.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TLS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
2N	41E	10			JWR														

Total number of acres irrigated 0

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

11. 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.

12. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None (☒)

13. Remarks: Pond may have been constructed in 1940s or 1950s, but earliest evidence of priority is from aerial photos taken on June 13, 1960, which is the claimed priority date. The volume of the pond when it was originally constructed was 26 acre feet. See attached report.

14. Basis of Claim (Check one) Beneficial Use ☒ Posted Notice _____ Permit _____ Decree _____ License _____
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

15. 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 _____

Last Name Birch Creek Corporation • Ident. Number _____

For Individuals: I/we do solemnly swear or affirm under penalty of perjury 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 under penalty of perjury that I am President of Birch Creek Corp., that I have signed the foregoing document in the space below as
(Title)
(Organization)
President of Birch Creek Corp. and that the statements contained in the
(Title) (Organization)
foregoing document are true and correct.

Signature of Authorized Agent [Signature]

Title and Organization President, Birch Creek Corp. Date 8/8/08

17. Notice of Appearance:

Notice is hereby given that I, Robert L. Harris, 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 Robert L. Harris
Address: PO Box 50130, Idaho Falls, ID 83405-0130
Date Aug. 11, 2008

G:\WP\DATA\RLH\14930 Birch Creek\Claim.wpd.cds

Last Name Birch Creek Corp. Ident. Number _____

BONNEVILLE COUNTY

KEVIN ECKERSELL
PUBLIC WORKS DIRECTOR
E-MAIL: keckersell@co.bonneville.id.us

STEVEN ROUNDS
ASSISTANT PUBLIC WORKS DIRECTOR
E-MAIL: srounds@co.bonneville.id.us

CAROL WALTON
ADMINISTRATIVE SECRETARY
E-MAIL: cwalton@co.bonneville.id.us



605 NORTH CAPITAL AVE.,
IDAHO FALLS, IDAHO 83402

PUBLIC WORKS DEPARTMENT
PHONE: (208) 529-1290
FAX: (208) 529-1295

WEB SITE: www.co.bonneville.id.us

July 16, 2008

Chris Blair
Birch Creek Corporation
PO Box 22677
Bakersfield, CA 93390

Re: Aerial photographs

Chris:

I have prepared copies of two aerial photographs for the Birch Creek Ranch subdivision. The photographs are dated 6-13-60 and the copies are of sheets CXO-4AA-38 and CXO-4AA-109. We cannot certify to the date or to the origin of the photos but we believe that the 1960 set of aerials (and other sets in our office) were originally used by the Bonneville County Assessor's office to identify different types of agricultural lands.

Please don't hesitate to contact me if you have any other questions.

Sincerely,

Steven Rounds
Bonneville County Surveyor

6-13-60

DATE OF PHOTO

4-36

1940
13

J ARLO MOSS

DA 35
3 3
D6 3 3
D6 3 3

D6

ST

CX0-4AA-38

MIMERS BROS.

DAI
138

2
7093

3
7187

FAY WHEELER

3
6

2
10 11

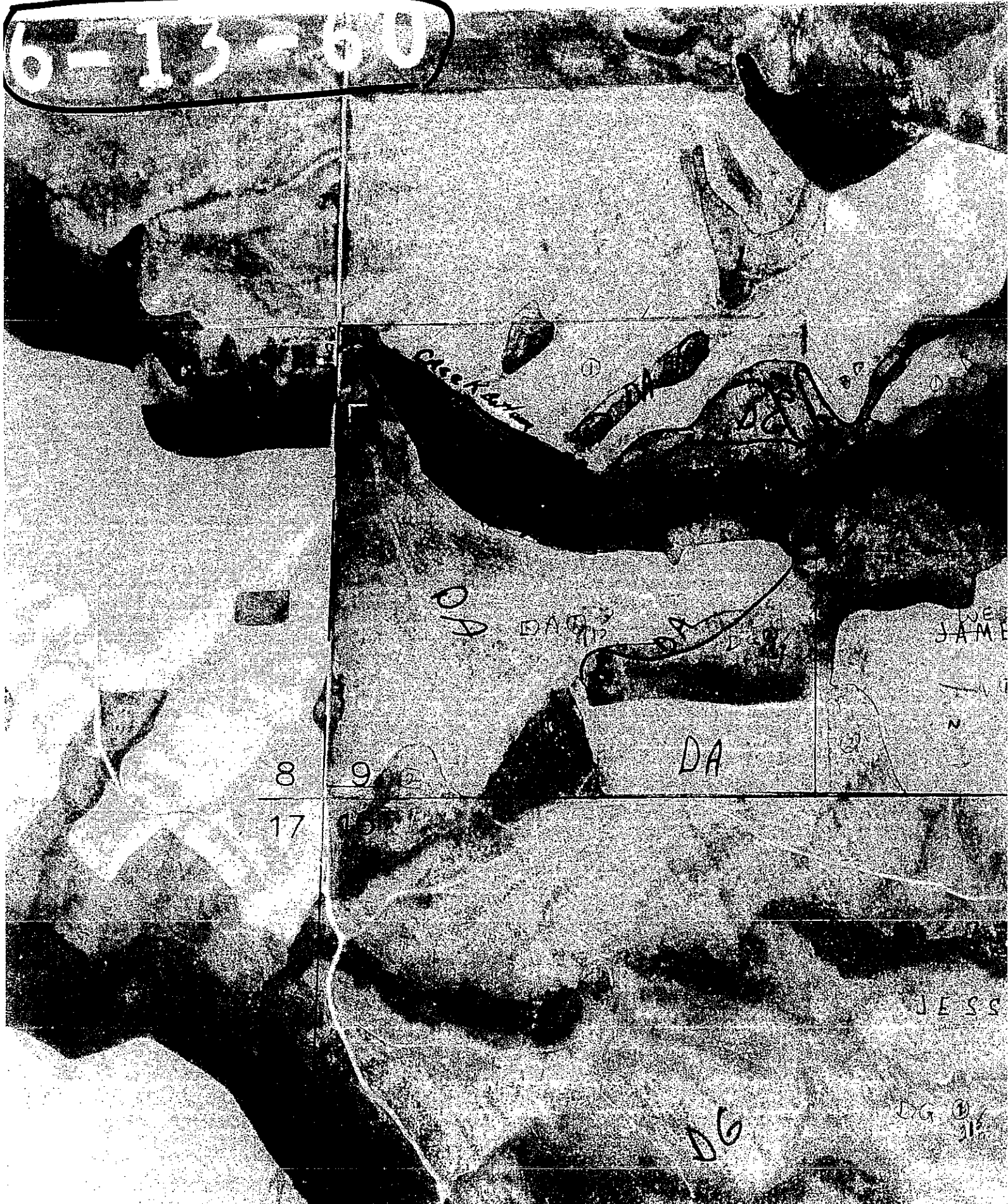
DO-1



10 11
15 14

— DATE OF PHOTO

6-13-60



8

9

17

15

DA

DG

DG

11

JAM

JESS

DA 112

P

Q

