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RECEIVED

OCT 30 2008

Department of Water Resources
Adjudication Bureau

Attorneys for Claimants Richard Douglas Baker and Cheryl K. Baker

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>72-16787</u>
	)	(Insert water right number)
Case 38576	)	
	)	STANDARD FORM 4
	)	
	)	MOTION TO FILE
	)	X 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.

COPY

X I have read *SRBA Administrative Order 1, Rules of Procedure* (amended Oct. 10, 1997).

My name is _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing Richard Douglas Baker and Cheryl K. Baker

My name is Daniel V. Steenson

My address is Ringert Law Chartered, 455 S. Third St., P.O. Box 2773, Boise, ID 83701-2773

My phone number is (208) 342-4591

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.

X I did not file a Notice of claim to the use of water in the SRBA because:

The claimants were unaware that the quantities that were claimed, recommended and decreed for their water rights were insufficient to provide for conveyance losses. The inadequacy of the decreed quantities has become clear in recent years, after the issuance of the partial decrees, as a result of measurements, the installation of fish screens in diversions, and notice from IDWR that diversions from the East Fork of the Salmon River will be subject to administration by a Water Master beginning in 2009.

☐ 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.

X 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) Late Notice of Claim, (2) Affidavit of Richard Douglas Baker (3) Affidavit of Richard L. Baker (originals of the aforementioned affidavits have been filed with the Motion to File Late Notice of Claim, Subcase No. 72-16786 (Richard Douglas Baker and Cheryl Baker claimants))

I have attached:

- ☒ A fully completed Notice of Claim (available for 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 late claim 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 \$100 (\$50 flat fee and \$50 late fee). (Water rights for irrigation of the acres referenced in the claim have been decreed.)

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, January 20, 2009, at 1:30p.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

Daniel V. Steenson, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

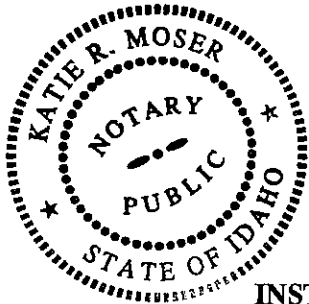
That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I. C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that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

Signature of person filing motion

Manuel Altemus

Attorney signing in representative capacity

Subscribed and sworn to before me on October 29, 2008
(Insert Date)



Katie R. Moser
Notary Public for Idaho
Residing at: Paris, ID
My Commission expires: 2/20/2014

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 parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on October 29, 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 form

RECEIVED

OCT 30 2008

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

Department of Water Resources
Adjudication Bureau

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576
Indent. Number 72-16787
Date Received _____
Receipt Number _____

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

Please type or print clearly

1. Name of Claimant(s) Richard Douglas Baker and Cheryl K. Baker Phone (208) 838-2269
Mailing Address HC 68 PO Box 350, Clayton, Idaho Zip 83227
2. Date of Priority only (1) per claim) April 1, 1930
3. Source of water supply (a) Herd Creek
which is tributary to (b) Salmon River, East Fork
4. a. Location of existing point of diversion is: Township 10N Range 18E Section 35,
SE $\frac{1}{4}$ of SW $\frac{1}{4}$ NE $\frac{1}{4}$, Govt. Lot, _____ B.M., County of Custer (aka SEFHC-1)
Additional points of diversion if any: T. 10N, R. 18E, Sec. 35, NESESE (aka SEFHC-2)

b. If instream flow, beginning point of claimed instream flow is:
Township _____ Range _____ Section _____, _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$,
Govt. Lot _____ B.M., County of _____
ending point is: Township _____ Range _____ Section _____, _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of _____
_____ $\frac{1}{4}$, 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 enlargement in use, the dimensions of the diversion works as constructed
and as enlarged and the depth of each well. There are two (2) diversion works covered by this claim,
designated as SEFHC-1 and SEFHC-2. Each diversion has a headgate in Herd Creek, and diverts water into a
ditch that has a fish screen installed by the Idaho Department of Fish and Game. The diversions are described in
greater detail in the Affidavit of Richard Douglas Baker in Support of Motion to File Late Notices of Claims.
6. Water is claimed for the following purposes:
(both dates are inclusive) (cfs) (acre feet)
For Irrigation (conveyance loss) purposes from 4/1 to 10/31 amount 7.00 or _____
For _____ purposes from _____ to _____ amount _____ or _____
For _____ purposes from _____ to _____ amount _____ or _____

Last Name Baker Ident. Number 72-16787

Form No. 42-1409 (2) a 9/88 (Internet)

7. Total quantity claimed (a) 7.00 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is N/A acre fee per annum.

9. Non-Irrigation uses; describe fully (e.g. Domestic: Give number of households served; Stockwater Type and number of livestock etc.) This water right is for conveyance losses in conveying water from the points of diversion to the place of use. There is no consumptive use associated with this claim.

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.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Total
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10N	18E	35		1.2	6.6											2.6			10.4

Total number of acres irrigated 10.4

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

12. Do you own the property listed above as place of use? Yes X No _____

13. Describe any other water rights used at the same place and for the same purposes as described above.
The following water right is used for irrigation at the place of use described above: 72-190

_____ or None ()

14. Remarks:

The maximum combined diversion for irrigation and conveyance loss at each point of diversion under the claimants' water rights is limited as follows (see Exhibit A):

SEFHC-1: this claim, 72-190 = 3.40 cfs

SEFHC-2: this claim, 72-190 = 4.00 cfs

Last Name Baker Ident. Number 72-16787

Last Name Baker Ident. Number 72-16787

Form No. 42-1409 (2) a 9/88 (Internet)

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 X 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 documents are true and correct.

Signature of Claimant (s) Richard Douglas Baker Date 10/27/08

Cheryl Kucker Date 10/27/08

For Organizations: I do solemnly swear or affirm that I am

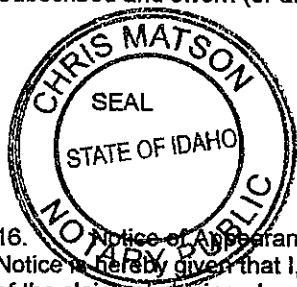
of _____, that I have signed the foregoing
Organization
document in the space below as _____ of _____
Title organization
and that the statements contained in the foregoing document are true and correct.

Signed of Authorized Agent

Title and Organization _____ Date _____

State of Idaho/or _____)
County of Blaine) SS.

Subscribed and sworn (or affirmed) before me this 27th day of October 2008



Notary Public Chris Matson

Residing at Challis, ID

My Commission Expires 7/28/2011

16. Notice of Appearance:

Notice is hereby given that I, Daniel V. Steenson will be acting as attorney at law on behalf of the claimant signing above, and 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 Daniel Steenson

Address P.O. Box 2773, Boise, Idaho 83701

Date 10-28-08

Last Name Baker Ident. Number 72-16787

Doug & Cheryl Baker Diversions, Water Rights, Claims & Measurements

East Fork Salmon River

<u>Decreed Diversion Rates</u>				<u>Claims</u>		<u>Ditch Measurements</u>	
				<u>Conveyance</u>	<u>Div. Max</u>	<u>DFG</u>	<u>BOR</u>
SEF-7/8 ¹	72-00193B²	2.70 cfs				16.00 cfs	13.00 cfs
	72-02095	<u>0.44 cfs</u>					
		3.11 cfs	0.79 cfs ³	+	2.72 cfs	=	3.51 cfs
SEF-9	72-00193B	2.70 cfs					
	72-00194	<u>0.30 cfs</u>					
		3.00 cfs	<u>2.65 cfs⁴</u>	+	5.85 cfs⁵	=	8.50 cfs
combined total:		3.44 cfs	3.44 cfs	+	8.57 cfs	=	12.01 cfs
						<u>6.40 cfs</u>	<u>8.50 cfs</u>
						16.00 cfs	+ 8.50 cfs = 24.50 cfs

Herd Creek

<u>Decreed Diversion Rates</u>				<u>Claims</u>		<u>Ditch Measurements</u>	
				<u>Conveyance</u>	<u>Div. Max</u>	<u>IDFG</u>	<u>Baker</u>
SEFHC-1	72-00190	.40 cfs			3.40 cfs	3.40 cfs	
SEFHC-2	72-00190	<u>0.40 cfs</u>			4.00 cfs	<u>3.40 cfs</u>	<u>4.00 cfs</u>
total (combined):		0.40 cfs	+	7.00 cfs⁶	=	7.40 cfs	3.40 + 4.00 cfs = 7.40 cfs

¹SEF-7 has been consolidated into SEF-8.

²The Bakers' water right no. 72-00193B is diverted through SEF 7/8 and SEF-9.

³This is the estimated portion of the Bakers' water rights that is diverted through SEF-7/8.

⁴This is the estimated portion of the Bakers' water rights that is diverted through SEF-9.

⁵SEF-9 conveyance loss = 8.50 cfs (BOR) - 2.65 cfs = 5.85 cfs

⁶SEFHC-1 & SEFHC-2 conveyance loss total: 7.40 cfs - 0.40 cfs = 7.00 cfs

R-18 E.

POU w/in (in blue)

1997

T.
10
N.

34

POD For 72-00152

SEFHC-1

checked on aerial
photo in Court House
in Chatter

SEP HC-2

POD For 72-00150

Subdivisions = 3.

Area = 22 aros

Q = 22 inches
= .44 cfs.