

FRITZ X. HAEMMERLE
HAEMMERLE & HAEMMERLE, P.L.L.C.
400 South Main Street, Suite 102
P.O. Box 1800
Hailey, Idaho 83333
208/578-0520
Fax: 208-578-0564
E-mail: fxh@haemlaw.com
ISB #3862

RECEIVED

FEB 13 2009

DEPARTMENT OF
WATER RESOURCES

Attorney for the Claimant

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

) Subcase No. 37-343A and 37-4359
)
) AMENDED 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:

I am an attorney representing: Pat and Vickie Bennett

My name is: Fritz X. Haemmerle, Haemmerle & Haemmerle, P.L.L.C.

My address is: P.O. Box 1800, Hailey, ID 83333

My phone number is: (208) 578-0520

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:

1. After meeting with Steve Clelland of IDWR, it was discovered that the appropriate point of diversion for water right 37-343A is the Malad River.
2. After meeting with Steve Clelland of IDWR and having reviewed the homestead documents and licensed rights to the claimants' predecessor in interest, it was discovered that the appropriate priority date for water right 37-4359 is October 9, 1905.

☐ I am providing legal and factual documentation to support my amended Notice of Claim.

You must describe these documents and attach a readable copy.

This Motion is supported by:

Amended Claims as well as in the *Affidavit of Fritz X. Haemmerle in Support of Motion to Set Aside Partial Decrees and To File Amended Claims*.

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 Blaine)

Fritz X. Haemmerle, being first duly sworn, upon oath, deposes and says:

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.

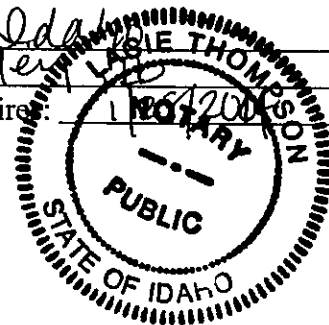
Signature of person filing motion

Attorney signing in representative capacity

Subscribed and sworn to before me on February 11, 2009
(Insert Date)

Laurie Thompson

Notary Public for Idaho
Residing at: Hailey, ID
My Commission expires: 1/26/2011



CERTIFICATE OF MAILING

I certify that on February 11, 2009, 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

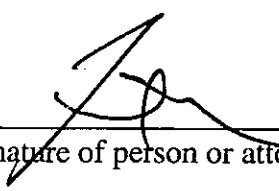
2. Copies to:

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

AMENDED CLAIM

WATER RIGHT NO. 37-4359

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	PAT BENNETT
Current Owner	VICKIE BENNETT
	BOX 113
	HILL CITY, ID 83337
	(208) 539-9115
Original Owner	EMMA MALCOMSON BENNETT
	PO BOX 120
	HILL CITY, ID 83337-0120
	(208)764-2398

Priority Date: ~~07/01/1915~~ 10-9-1905

Basis: Statutory Claim

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRING	MALAD RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/15	10/15	4.2 CFS	
Total Diversion			4.2 CFS	

Location of Point(s) of Diversion:

SPRING	SESW	Sec. 28	Township 01S	Range 11E	ELMORE County
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Place(s) of use:

Place of Use Legal Description: IRRIGATION ELMORE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	A
01S	11E	28		SWSW	10		SESW	40						
		33		NWNE	15		SWNE	20						
				NENW	40		NWNW	30		SWNW	15		SENW	40

Total Acres: 210

Dates:

Licensed Date:

Claim Received Date:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Other Information:

State or Federal: S

Owner Name Connector: AND/OR

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

AMENDED CLAIM

WATER RIGHT NO. 37-343A

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	PAT BENNETT
Current Owner	VICKIE BENNETT
	BOX 113
	HILL CITY, ID 83337
	(208) 539-9115
Original Owner	EMMA MALCOMSON BENNETT
	PO BOX 120
	HILL CITY, ID 83337-0120
	(208)764-2398

Priority Date: 05/01/1889

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
~~DYER CREEK~~	MALAD RIVER

MALAD RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	11/01	1.6 CFS	
Total Diversion			1.6 CFS	

Location of Point(s) of Diversion:

DYER CREEK	Sec. 32	Township 01S	Range 11E	ELMORE County
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Place(s) of use:

Place of Use Legal Description: IRRIGATION ELMORE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01S	11E	33		NWSW	40		SWSW	40						

Total Acres: 80

Conditions of Approval:

1. AC. IRRIG. NOT SPECIFIED. FARM = 240 AC.

Dates:

Licensed Date:

Claim Received Date:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Other Information:

State or Federal: S

Owner Name Connector: AND/OR

Water District Number: 37

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close