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MAR 04 2009

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

Case 39576

) Subcase 2-64
)
)
) STANDARD FORM 4
)
) MOTION TO FILE:
) 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 _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing Gem Irrigation District

My name is Albert P. Barker

My address is 1010 W. Jefferson, Suite 102, Boise, ID 83701

My phone number is 208-336-0700

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:

☐ 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.)

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 also 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 \$_____.

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 _____
(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.

[x] I must amend my Notice of Claim to the use of water in the SRBA because:

A point of diversion was inadvertently omitted from the original claim. An objection to omission of this point of diversion was filed, but the Department requires an amended notice of claim to rectify this omission.

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

Objection filed by claimant dated 12-5-2007 is attached hereto as Exhibit A, including a letter dated 12-16-1992 from David Tuthill to claimant's representatives, recommending this amendment, which describes the factual basis for this amendment.

I have attached:

☒ An Amended Notice of Claim (available from IDWR).

☐ Payment of the following additional fees required by IDWR:

N/A

VERIFICATION (must be completed)

State of IDAHO

County of Ada

Albert P. Barker, 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

Albert P. Barker

Attorney signing in representative capacity

Subscribed and sworn to before me on March 3, 2009
(Insert Date)



Suzanne Estes
Notary Public for Idaho
Residing at: Boise Idaho
My Commission expires: June 1, 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 March 3, 2029, 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:

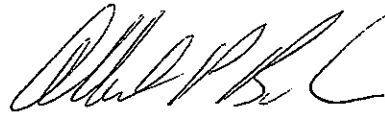
IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

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

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) All parties other than claimant are identified above.



Signature of person or attorney mailing the form

RECEIVED

MAR 04 2009

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

CIVIL CASE NUMBER: 39576

Ident. Number: 2-64

Date received: _____

Receipt No. : _____

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

1. **Name:** Gem Irrigation District **Phone:** 208-337-3760
Address: P.O. Box 67
Homedale, ID 83628
2. **Date of Priority:** 12/01/1911
3. **Source of Water supply (a)** Snake River
Which is tributary to (b) Columbia River
4. **Location of Point of Diversion:**

	Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
(a)	02N	04W	14	NW	NE	NW		Owyhee
(b)	04N	05W	32		NW	SE		Owyhee
5. **Description of diverting works:**
 - (a) Concrete pumping station. There are four 1,025 hp 24" pumps, two 700 hp 24" pumps, two 330 hp 20" pumps and one 600 hp 20" pump. They pump into a penstock, then into the gravity canal system.
 - (b) Two 15 cfs Floway pumps; powered by 2 Fairbanks-Morse 200 hp motors. They pump into a penstock, then into the gravity canal system.
6. **Water is used for the following purposes:**

Purpose	From	To	CFS	AFA
Irrigation	3/1	11/15	306	
7. **Total quantity claimed is:** 306 CFS (and/or) AFA
8. **Total consumptive use is:** AFA
9. **Non-irrigation uses:**
10. **Description of place of use:**
22,603 acres within the boundaries of Gem Irrigation District
11. **In which county(ies) are lands listed above as place of use located?** Owyhee
12. **Do you own the property listed above as place of use?** No; land is within service area of Gem Irrigation District.

COPY

13. Describe any other water rights used at the same place and for the same purposes as described above.

2-65, 2-2014, 2-2276

14. Remarks: This amended claim is being filed in order to include a point of diversion which was inadvertently omitted from the original claim.

15. Basis of Claim: Beneficial Use
Water right number: 2-64

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 Organizations:

I do solemnly swear or affirm that I am Attorney of
Benn Benjamin District Title
space, that I have signed the foregoing document in the

below as Attorney of Benn Benjamin Dist, and that the
statements contained in the foregoing document are true and correct.

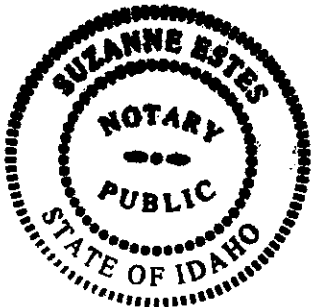
Signature of Authorized Agent: [Signature]

Title & Organization: Attorney Ben ID Date: 3/3/09

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

Subscribed and sworn (or affirmed) before me this 3rd day of March, 2009.

SEAL



Notary Public Suzanne Estes

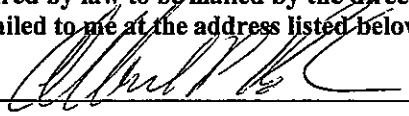
Residing at Boise, Idaho

My Commission Expires: June 1, 2012

17.

Notice of Appearance:

Notice is hereby given that I, Albert P. Barker
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: 

Address: 1010 W. Jefferson, Suite 102

Boise, ID 83701

Date:

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 Number: 2-64
(Insert water right number)

STANDARD FORM 1
OBJECTION

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DEC 06 2007

DEPARTMENT OF
WATER RESOURCES

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Gem Irrigation District
Address: P. O. Box 67
Homedale, Idaho 83628

Daytime Phone: 208-337-3505

Name and Address of Attorney, if any:

Attorney Name: Albert P. Barker

Attorney Address: P. O. Box 2139
Boise, ID 83701-2139

Attorney Phone No. 208-336-0700
Idaho State Bar # 2867

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Gem Irrigation District
Address: P.O Box 67
Homedale, Idaho 83628

Daytime Phone: 208-337-3505

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ Name and Address
Should be: _____
2. ☐ Source
Should be: _____
3. ☐ Quantity
Should be: _____
4. ☐ Priority Date
Should be: _____
5. ☒ Point(s) of diversion
Should be: Include original licensed, alternative POD at T2N, R5W, Sec. 32, NWSE
6. ☐ Instream Flow Description
Should be: _____
7. ☐ Purpose(s) of Use
Should be: _____
8. ☐ Period of Year
Should be: _____
9. ☒ Place of Use
Should be: 22594 acres as shown on attached POU map, and should add all those irrigated acres not found in the recommendation. See attached exhibit.

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): See attached letter from IDWR to Mr. Geertson, Gem Irrigation District, dated December 16, 1992, regarding point of diversion. See attached map for proper POU.

F.

VERIFICATION

State of IDAHO)
) ss.
County of Twin Falls)

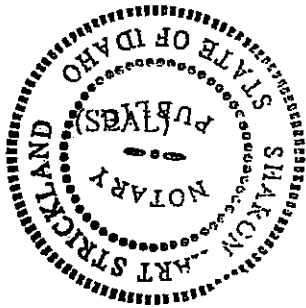
Paul L. Arrington, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6), or that I am the attorney for the party/claimant objecting, and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge, and I have been expressly authorized to sign this objection on behalf of the attorney for Big Wood Canal Company.

(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: December 5, 2007



Sharon Strickland
Notary Public for: Idaho
Residing at: Twin Falls *Hoodig*
My Commission Expires: 12-22-09

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. Fax filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on December 5th, 2007, I hand-delivered and mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original hand-delivered to:

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

2. One copy mailed to the claimant of the water right at the following address:

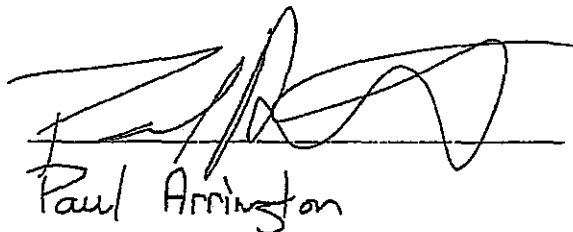
Name: Gem Irrigation District
Address: P.O. Box 67
Homedale, Idaho 83628

3. Copies mailed 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 & Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724



Paul Arrington



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 16, 1992

Mr. Ron Geertson, et al
Rt. 1, Box 1333
Homedale, ID 83628

RE: Reinstatement of a Point of Diversion by Gem Irrigation District

Dear Mr. Geertson:

I am in receipt of a letter signed by yourself and six other individuals in which you identified some concerns relative to Gem Irrigation District's actions to renew a point of diversion northwest of Homedale. I will respond to your questions in the order they were addressed in your letter.

1. Does Gem Irrigation District need authorization from the IDWR to move 25-30 cfs of the water right to Homedale?

Licensed water right No. 02-02014 identifies two points of diversion, one near Marsing (NENW Sec. 14, T 2 N, R 4 W) and the other near Homedale (NWSE Sec. 32, T 4 N, R 5 W), with a rate of diversion of 306 cfs, and with no restriction regarding the rate of flow to be diverted from each location. Licensed water right No. 02-02276 identifies only the Marsing point of diversion, for an additional 50 cfs. The total water right from the Snake River in the name of Gem Irrigation District is 356 cfs.

Consistent with the description in your letter, it is my understanding that in the 1930's or 1940's the diversion of water from the Snake River by Gem Irrigation District was consolidated at the diversion site near Marsing. It is my understanding that the site near Homedale has been unused since then.

This summer the manager of Gem Irrigation District, Mr. Clyde Hutton, visited our offices to determine what action, if any, would be needed to reconstitute the point of diversion near Homedale. We researched the water rights at the sites, discovered the recorded point of diversion at Homedale, and determined that if (1) the total rate of diversion of 356 cfs has been used periodically since the licenses were issued (so there has been no forfeiture of any portion of the water right), and (2) the total rate of diversion after the Homedale pumps are replaced does not exceed 356 cfs, then the only filing required by Gem Irrigation District is to amend the adjudication claim to show both points of diversion. This action can be completed at no charge to the district, and it does not have

Roth Page 378-5382
JAN shorts - 334-2190

John Lindgren - 287-4850 - hydrogeologist
Dale Hutton - 287-4854 - "

Page 2

Ron Geertson, et al
December 16, 1992

to be accomplished until the Department is preparing the Director's Report for the Snake River mainstem.

Mr. Hutton felt that that the proposed reinstatement of the Homedale pumping plant would comply with these conditions because the output of the pumps has diminished over recent years. The pumping plant output was measured by District personnel to produce 371.49 cfs on May 27, 1964 according to the field report in the Department's file for License No. 02-02276. In comparison, according to information provided by the U.S. Geological Survey the maximum daily output of the pumping plant at Marsing was 319 cfs for water year 1992, and 321 cfs for water year 1991 (see discharge values enclosed). This is likely due in part to pump wear, but is also due in part to the lowered stage of the Snake River due to drought-reduced flows.

After receiving your letter, Mr. Geertson, as a double check I contacted Department chief counsel Mr. Phillip Rassier, who confirmed that he is not aware of any provision whereby the use of a point of diversion can be forfeited in conjunction with a water right for which the full rate of flow is appropriated at one or more of the remaining points of diversion.

2. Is the pumping plant at Marsing producing less than 356 cfs so that water is available within the water right to be transferred?

See the response above.

3. If the full amount of the 356 cfs has not been used, is that water still available for appropriation after over 50 years of non-use?

Based on the measurement of 371.49 cfs on May 27, 1964 and on the data reported by the USGS, it appears that 356 cfs could possibly have been used within the past 5 years. If this is the case, the addition of another 25-30 cfs at Homedale would be acceptable if the total diversion does not exceed 356 cfs.

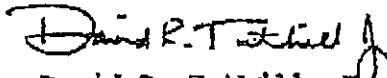
4. What liabilities are the Directors creating for themselves and Gem Irrigation District by proceeding with a new diversion of water from the Snake River without authorization from the IDWR and other agencies?

Page 3
Ron Geertson, et al
December 16, 1992

I view the proposed action by Gem Irrigation District as being similar to a wateruser replacing a worn-out pump. I do not know of any approvals required by the District to complete the proposed action, assuming that the rights-of-way are still in place.

Mr. Geertson, after you and your associates review this response, please feel free to contact me regarding any aspect of this letter. In order to fully explore this subject I am sending copies of this letter to Mr. Hutton, and to Mr. Luke of our State Office.

Sincerely,



David R. Tuthill, Jr., P.E.
Manager, Western Regional Office

Enclosures

cc: Clyde Hutton, GID
✓ Tim Luke, IDWR

LIST OF IRRIGATED ACRES NOT FOUND ON RECOMMENDATION

T. 2N., R. 4W.

SEC 7	NWNW	10
SEC 8	SWSW	35
	SESW	35
SEC 9	SESW	31
SEC 17	NWNW	15
SEC 18	NENE	15
	NWNE	30

T. 3N., R. 4W.

CITY OF MARSING		242
SEC 18	NESW	2
	NWSE	13
	SWSE	40
SEC 19	SWSW	15
	SESW	20
SEC 30	NENE	40
	NWNE	40
	SWNE	40
	SENE	40
	NWNW	10
	NESW	5
	NWSW	30
	SWSW	35

T. 2N., R. 5W

SEC 2	SWNE	5
	NWNW	34
	SWNW	38
	NESE	10
	NWSE	20
	SWSE	28
	SESE	25

T. 3N., R. 5W.

CITY OF HOMEDALE		391
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T. 3N., R. 5W.	SEC 10	NENW	5
		SWNW	30
		SENW	20
		NESW	15
		SWSE	20
	SEC 14	SESW	5
	SEC 15	NWNW	25
		SWNW	10
		SENW	38
		NESE	40
		NWSE	40
		SESE	40
	SEC 16	SENE	35
	SEC 17	SWSW	15
	SEC 18	SWSW	5
	SEC 19	NENE	20
		SENE	5
	SEC 20	NENW	38
		NWNW	38
	SEC 24	NWNE	38
		SWNE	5
		SENE	10
		NESE	5
	SEC 25	NENW	5
		NESE	35
		SESE	35
	SEC 29	NWNE	40
		SWNE	40

TOTAL ACRES 1951

