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ATTORNEYS AT LAW

675 SUN VALLEY ROAD, SUITE A
P.O. BOX 3310
KETCHUM, ID 83340
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FAX: 208-725-0076

MULTIPLE PARTY FACSIMILE COVERSHEET

Date: 5/6/2009 **Pages (including cover page):** 14
File: 10612-002
To: Snake River Basin Adjudication **Fax:** (208) 736-2121
To: Office of Attorney General **Fax:** (208) 287-6700
To: IDWR Document Depository **Fax:** (208) 287-6701
To: United States Department of Justice **Fax:** (208) 854-8072
To: Chief, Natural Resources Division **Fax:** (208) 854-8072

From: Judy Nicholson, Assistant to Kirstin K. Dutcher

Re: SRBA Case No. 39576
Twin Falls County Subcase Nos. 37-00212A, 37-20381, 37-2621, 37-4337

Comments:

Attached is the Motion for Extension of Time to Provide Information to the Idaho Department of Water Resources. Thank you.

ORIGINAL WILL:

BE SENT BY *MAIL*

BE SENT BY FEDEX/OVERNIGHT COURIER

BE SENT BY *MESSENGER*

X NOT BE SENT

CALL BACK: If the transmission to you was incomplete or not legible, please call the individual above listed at (208) 725-0055 or call the FAX operator at (208) 725-0055.

Confidentiality Notice: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the US Postal Service. Thank you.

**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>37-20381</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.

☐ 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 Helios Development, LLC

My name is James R. Laski

My address is PO Box 3310 Ketchum, Idaho 83340

My phone number is (208) 725-0055

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 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.

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

There are two additional points of diversion associated
with the water right.



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

Affidavit of Patrick Simpson indicating the two additional
points of diversion. This information was recently learned
from a previous manager of the property.

I have attached:



An amended Notice of Claim (available from IDWR).

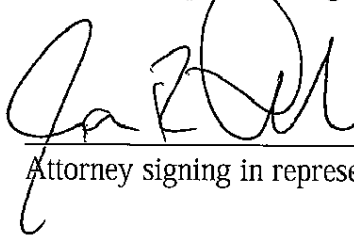
☐ Payment of the following additional fees required by IDWR:

VERIFICATION (Must be completed)State of IdahoCounty of Blaine

James R. Laski, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

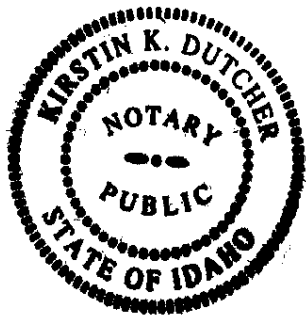
That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that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

Signature of person filing motion



Attorney signing in representative capacity

Subscribed and sworn to before me on May 6, 2009
(Insert Date)



Kirstin K. Dutcher
Notary Public for _____
Residing at: Blaine W. Idaho
My Commission expires: 12/23/2009

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 HEREBY CERTIFY that on this 6th day of May, 2009, I caused to be served a true copy of the foregoing document by the method indicated below, and addressed to each of the following:

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

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy – (208) 736-2121

Christopher Bromley
Office of Attorney General
PO Box 83720
Boise, ID 83701

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy – (208) 287-6700

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

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy – (208) 287-6701

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy – (208) 854-8072

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy – (208) 854-8072


KIRSTIN K. DUTCHER

Edward A. Lawson, ISB No. 2440
 James R. Laski, ISB No. 5429
 Kirstin K. Dutcher, ISB No. 6762
 LAWSON & LASKI, PLLC
 675 Sun Valley Road, Suite A
 P.O. Box 3310
 Ketchum, ID 83340
 Telephone: (208) 725-0055
 Facsimile: (208) 725-0076

Attorneys for Helios Development, LLC

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

**Water Right Nos. 37-212A, 37-2621,
 37-4337, 37-11885 and 37-8304**

**AFFIDAVIT OF PATRICK
 SIMPSON**

STATE OF IDAHO,)
) ss.
 County of Blaine)

PATRICK SIMPSON, being first duly sworn upon oath, deposes and states as follows:

1. My family owned and operated Warm Springs Ranch (the "Ranch") from 1952 through 2004. I managed the golf course for over twenty (20) years commencing in 1974 and I was involved in the management of the Ranch until 2004 and as such, I have personal knowledge of the facts stated herein. The Ranch holds several water rights for irrigation, fish propagation, aesthetic, recreation, wildlife and commercial purposes.

2. In or about 1952, my father built ponds for fish propagation. Water for the ponds was delivered using a head gate to divert water from Warm Springs' Creek into the ditch (See water right nos. 37-8304 and 37-4337). When we owned the Ranch, we used the ponds year-

round and we stocked the ponds with about 100 Rainbow trout that were approximately 12 inches or longer. We also stocked about 100 California Golden trout that were approximately 16 to 18 inches. These fish came from the Hagerman Valley and was stocked annually.

3. In or about 1953, we opened Warm Springs Ranch Restaurant (the "Restaurant"). In those days, the ponds were the main attraction for the Restaurant because guests would catch fish and the Restaurant would cook the fish for them. In addition, the Restaurant would serve fish from the ponds. At that time, I was still a boy, but it was my job to catch the fish for the Restaurant. On a busy night there would be around 30 people fishing for their dinner.

4. Several years later, after the Ranch ceased allowing guests to catch their dinner, we continued to stock the ponds for raising and rearing fish and for aesthetic purposes. During the time we owned the Ranch, the aesthetics of the ponds were enjoyed by Ranch guests as they entered and exited the Restaurant and dined on the patio.

5. In or about 1961, the Restaurant operated using water from a well located on the Ranch (the "Restaurant Well"). See water right no. 37-11885. From 1961 through 1998, water from this well was used for commercial purposes in the Restaurant including: cooking, drinking and washing dishes, linens and cleaning the interior and exterior of the Restaurant. The Restaurant Well also provided water to the golf shop.

6. The Restaurant Well was also used for irrigation purposes for the area immediately surrounding the Restaurant.

7. The Ranch also has an irrigation system ("Irrigation System") for the golf course. The source of this Irrigation System is a combined water right which includes: Warm Springs' creek (37-212A), Rockwell Bypass (37-20381), and a spring (37-2621) located on the property ("Combined Water Right"). In addition to the main golf course pump, the system included two

smaller pumps, one located in pond #1 and one located in pond #3 on Exhibit A attached hereto. These pumps were used to irrigate the area of the Ranch to the north of Warm Springs creek (including the No. 9 Green and approach) as well as some portions of the golf course south of the creek. This irrigation system also irrigated land north of Warm Springs' creek.

8. In regards to the Rockwell Bypass, sometime in 1988 my family purchased, and 25 inches (.50 cfs) was transferred to the Ranch, through diversion NO 06-P which became part of the combined water right.

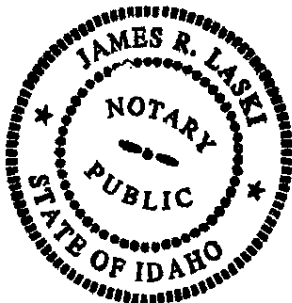
9. In regards to the spring water right which is part of the combined water right, during the 1960s through the 1980s there was a lot of water running from the spring. During the months of April, May and June there would be between 20 to 30 inches of water in the spring. However, sometime in the mid 1980s, when the drought started, the water from the spring decreased and would run only in May and June.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

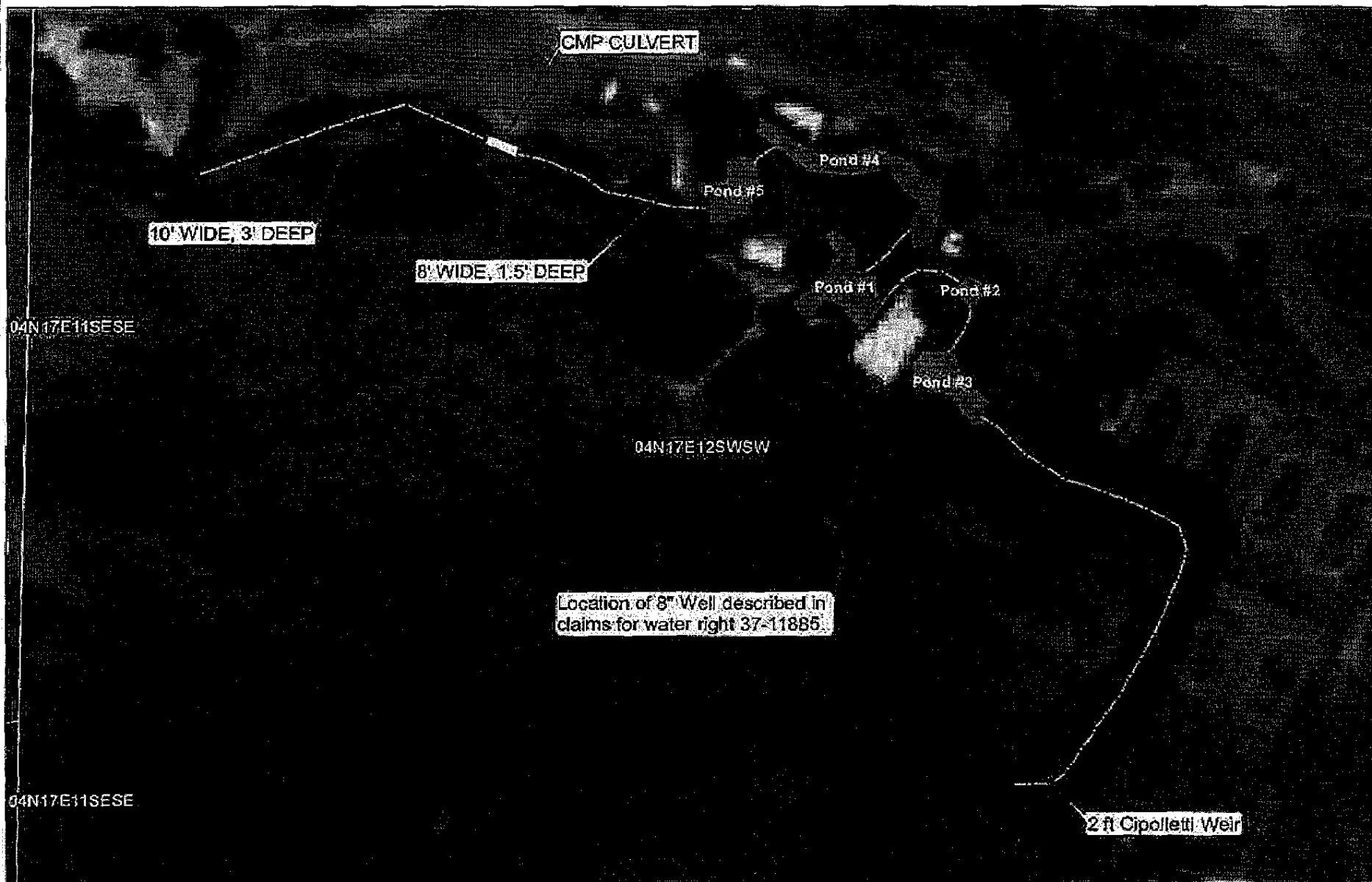
Patrick S. Simpson
Patrick Simpson

STATE OF IDAHO)
) ss.
County of Blaine)

SUBSCRIBED AND SWORN before me this 26th day of March, 2009.



[Signature]
Name: James R. Laski
Notary Public for Idaho
Residing at Blaine County
My commission expires Aug 3, 2011



1 inch equals 120 feet

HELIOS DEVELOPMENT LLC DIVERSION SYSTEM 2004 NAIP AERIAL PHOTOGRAPH

BROCKWAY ENGINEERING, PLLC.
ALR - OCT. 20, 2008

Legend

- Well- 37-11885
- Diversion

EXHIBIT

Ponds
04N17E

EXHIBIT

Form No. 42-1409 (2) a 1/88 **AMENDED CLAIM FOR WATER RIGHT 37-20381**

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 FORM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number _____

Date Received _____

Receipt Number _____

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

Please type or print clearly

1. Name of Claimant (s) Helios Development LLC c/o: Stan Castleton Phone 435-655-3288
Mailing Address P.O Box 4151 Park City, UT Zip 84060
2. Date of Priority (Only one (1) per claim) 11/12/1936
3. Source of water supply (a) Warm Springs Creek
which is tributary to (b) Big Wood River
4. a. Location of existing point of diversion is: Township 04N. Range 17E. Section 11,
1/4 of SE 1/4 of SE 1/4, Govt. Lot, B.M., County of Blaine
Additional points of diversion if any: T.04N R.17E SEC.12 SW 1/4 SW 1/4, T.04N R.17E SEC.12 SW 1/4 SW 1/4
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. Existing headgate allows Warm Springs Creek to fill irrigation pond
with submersable pump. Water is then pumped through pressurized irrigation system. 2 submersible pumps in
existing ponds supply irrigation to the property on the north side of Warm Springs Creek.

6. Water is claimed for the following purposes:

(both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from 04/01 to 11/01 amount 0.5 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.5 (cfs) and / or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; described fully (e.g. Domestic: list number of households served; Stockwater: type and number of livestock, etc.) _____

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	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
04N	17E	11															4.6	17.7	22.3
04N	17E	12											12.1	0.1					12.2

Total number of acres irrigated 34.511. In which county (ies) are lands listed above as place of use located? Blaine12. Do you own the property listed above as place of use? Yes XXX No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

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

37-212A, 37-2621 Or None ☐

14. Remarks:

Place of use does not include federal lands.

Last Name _____

Ident. No. _____

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____
Decree XX

If applicable provide IDWR Water Right Number 37-20381

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

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 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 document are true and correct.

Signature of Claimant (s) _____ Date _____

_____ Date _____

For Organizations: I do solemnly swear of affirm that I am Counsel _____ Title _____

of Helios Development LLC _____, that I have signed the foregoing

Document in the space below as Counsel _____ Title _____ of Helios Development, LLC _____ Organization _____

And that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent [Signature] _____

Title and Organization Counsel, Helios Development LLC Date 5/6/09

State of Idaho / or _____)

County of Blaine) ss.

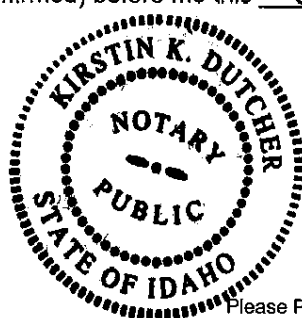
Subscribed and sworn (or affirmed) before me this 6th day of May, 2009.

Notary Public Kirstin K. Dutcher

Residing at Blaine, Co. Idaho

My Commission Expires _____

SEAL



Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, James R. Laski 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 [Signature] _____

Address PO 3310, Ketchum ID 83346

Date 5/6/09

Last Name LASKI Ident. Number 5309