

COPY

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OCT 16 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	)	Subcase <u>37-22464</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 _____ Rock Creek, LLC

My name is _____ Robert E. Williams

My address is _____ Williams, Meservy & Lothspeich, LLP
_____ P.O. Box 168, Jerome, ID 83338

My phone number is _____ (208) 324-2303

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:

See Exhibit A attached hereto.

☐ 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.)

See proposed Notice of Claim and "ATTACHMENT TO SRBA CLAIMS"
copied and attached hereto as Exhibit B.

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 \$ 100.00.

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 January 19th, 2010 @ 1:30 p.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)

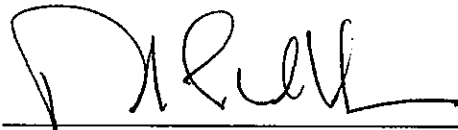
State of Idaho

County of Jerome

Robert E. Williams, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

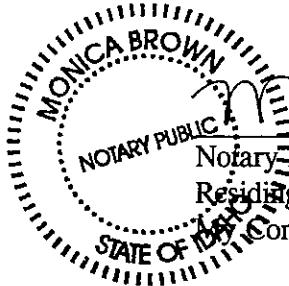
That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that 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 October 14th, 2009
(Insert Date)



Monica Brown
Notary Public for Idaho
Residing at: Jerome
Commission expires: 5-29-2013

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 October 15, 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:

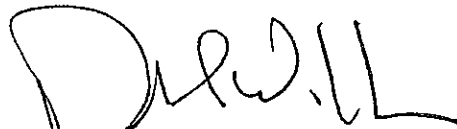
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

EXHIBIT A

SF-5s have been agreed to and are being circulated for signature by Claimant and the Idaho Department of Water Resources for Water Rights Nos. 37-1151D and 37-1152. The diversion rates in the SF-5s match the original diversion rates decreed in Frost vs. Alturas Water Company for these rights. Because the subsequent Decree in Brown vs. Mortensen decreed all the water in Rock Creek to the above and related rights, all of which are now owned by Claimant and a related entity, Claimant and Idaho Department of Water Resources agreed that a late beneficial use claim could be filed for the additional flow of Rock Creek over and above the Frost decreed amounts, rather than to litigate the effect of the Decree in Brown vs. Mortensen or the Decree in Frost vs. Alturas Water Company.

Attachment to SRBA Claims
Rock Creek, LLC and Harry S. & Diane J. Revocable Trust
September 29, 2009

The purpose of these three (3) claims is to assert the right to additional diversion rate above the diversion rates established under the various water rights decreed in S. C. Frost vs. Alturas Water Company dated December 13, 1909. An excess flow analysis prepared by Brockway Engineering and set forth in a report dated February 25, 2008 demonstrated that additional diversion rate was required and continues to be required for the beneficial uses allowed by the water rights.

The diversion rates set forth on the three (3) new claims were calculated as described below. The new claims are appurtenant to lands originally decreed in Frost, and do not apply to lands covered by beneficial use claims 37-22264, 37-22398, and 37-4192.

Step 1: Total diversion requirement

Area	Rights	Acres*	On-farm diversion rate per acre**	Seepage loss**	Total diversion requirement
North	37-1151D 37-1152	252.8	0.0419 cfs/ac	3.47 cfs	14.06 cfs
Middle	37-1151B 37-1212	40.2	0.0503 cfs/ac	0.50 cfs	2.52 cfs
South	37-1150	217.5	0.0491 cfs/ac	2.15 cfs	12.83 cfs

* Final shape file agreed upon with IDWR as of 9/29/09

** From Brockway Engineering excess flow analysis

Step 2: Diversion rates decreed in Frost

Area	Decreed to	Original number	Decreed rates	Total
North	Brown, E.	37-0098	1.2 cfs	6.0 cfs
	Davis & Eastwood	37-0171	1.0 cfs	
		37-0172	0.8 cfs	
	Eastwood, W.	37-0195	1.2 cfs	
	Smidt, C.	37-625	1.2 cfs	
		37-626	0.6 cfs	
Middle	Brown, R.	37-0109	0.2 cfs	1.2 cfs
		37-0108	1.0 cfs	
South	Reardon, D.	37-566	1.8 cfs	5.2 cfs
		37-567	1.6 cfs	
		37-568	1.0 cfs	
		37-569	0.8 cfs	

EXHIBIT
B

Step 3: Claim amounts = difference between diversion requirement and decreed rates

Area	Claim amounts
North	$14.06 - 6.0 = 8.06$ cfs
Middle	$2.52 - 1.2 = 1.32$ cfs
South	$12.83 - 5.2 = 7.63$ cfs

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) Rock Creek LLC Phone (714) 979-8300

Mailing Address P.O. Box 7250, Newport Beach, CA Zip 92658

2. Date of Priority (Only one (1) per claim) 12/14/1909

3. Source of water supply (a) Rock Creek

which is tributary to (b) Big Wood River (dry stream)

4. a. Location of existing point of diversion is: Township 1N Range 17E Section 11,
1/4 of SE 1/4 of SW 1/4, Govt. Lot, B.M., County of Blaine

Additional points of diversion (if any): NENW S14, NESW S14, NWSE S14, NENE S23, NESE S23, SENE S26,

SWNE S26 T1N,R17E

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. Headgates to ditches and gravity irrigation.

6. Water is claimed for the following purposes:

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

For Irrigation purposes from 4/15 to 10/31 amount 8.06 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 8.06 (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	
1N	17E	14		7.4	2.2		5.2			16.5	16.1			0.9		0.8	14.9		64.0
1N	17E	23	11.6	4.6		15.8									25.7	0.3			58.0
1N	17E	26	16.3			10.2					0.3			12.7		31.4	21.3		92.2
1N	17E	35		8.7	0.4		18.7			10.8									38.6

Total number of acres irrigated 252.8

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

12. Do you own the property listed above as place of use? Yes X 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.

37-1151D, 37-1152 Or None ☐

14. Remarks:

Claim asserts additional diversion rate above those decreed in S.C. Frost vs. Alturas Water Company.

Priority date claimed is one day after Frost decree. Diversion rate based on excess flow analysis report by

Brockway Engineering dated February 25, 2008.

Last Name _____ Ident. No. _____

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

If applicable provide IDWR Water Right Number _____

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 _____ Manager _____

Of _____ Rock Creek LLC _____, that I have signed the foregoing
Organization

Document in the space below as _____ Manager _____ of _____ Rock Creek LLC
Title Organization

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

Signature of Authorized Agent Harry S. Rinker, by Charles B. Bullock, Agent II
Title and Organization _____ Power of Attorney for Harry S. Rinker _____ Date 10/9/09 FA

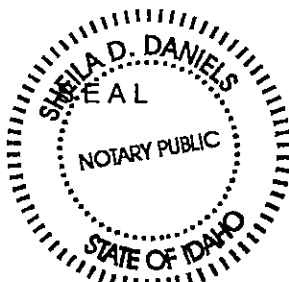
State of Idaho / or _____)
County of Twin Falls) ss.

Subscribed and sworn (or affirmed) before me this 9th day of October, 20 09.

Notary Public Sheila D. Daniels

Residing at Kimberly, Idaho

My Commission Expires Aug. 16, 2013



Please Print Name

17. Notice of Appearance:

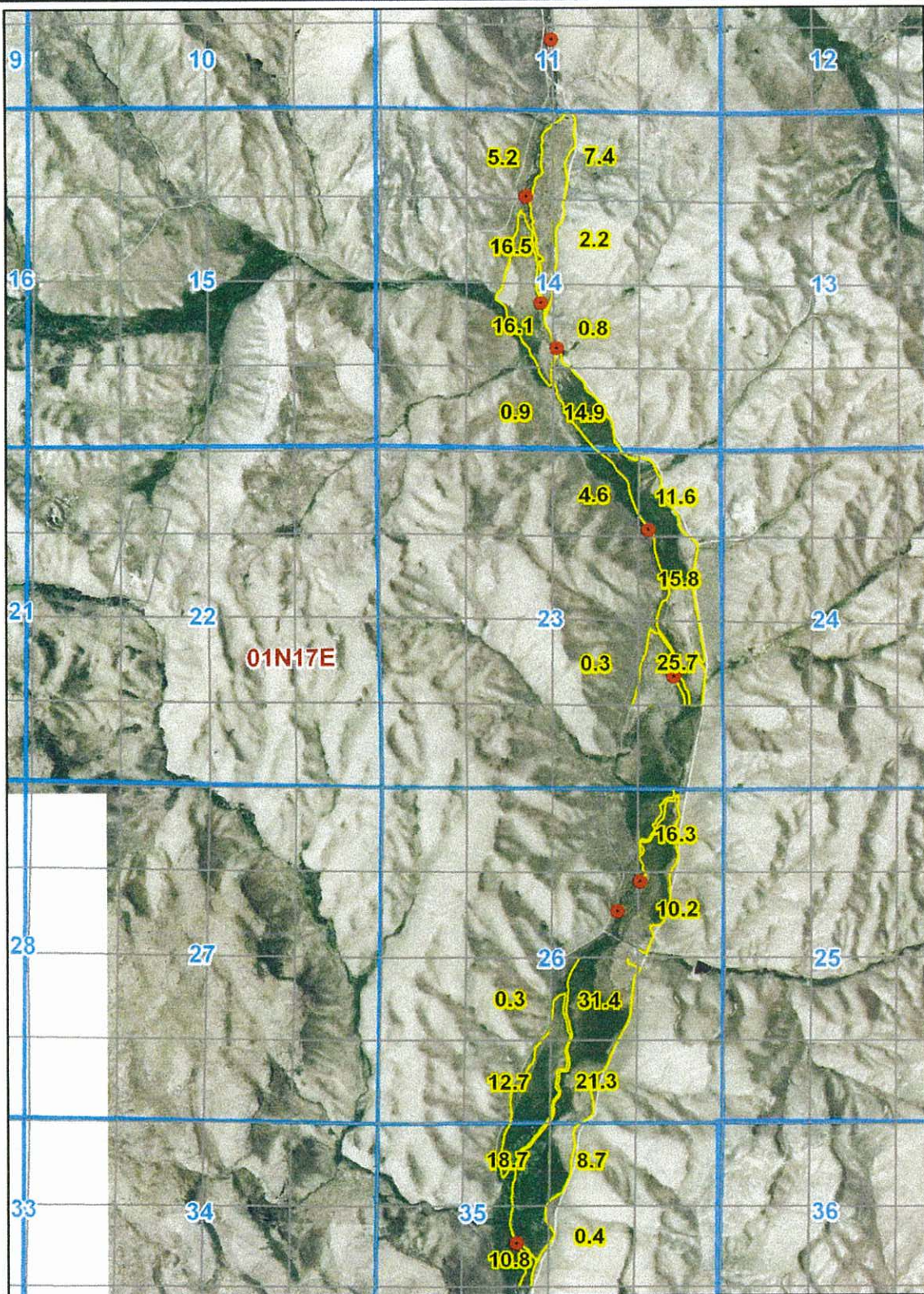
Notice is hereby given that I, _____ will be acting as attorney at law on behalf Of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

Last Name _____ Ident. Number _____



**RINKER - ROCK CREEK
BENEFICIAL USE CLAIM FOR ADDITIONAL DIVERSION RATE - NORTH AREA
NAIP 2006 AERIAL**

BROCKWAY ENGINEERING, PLLC.
ALR - SEPT 29, 2008

- Sections_lines
- Beneficial use Claim North Area
- Points of Diversion

