

RECEIVED
JUN 01 2010
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 63-33354
	) (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: _____

I am an attorney representing W & H Limited Liability Company

My name is Michael C. Creamer and Michael P. Lawrence, Givens Pursley LLP

My address is 601 W. Bannock St, P.O. Box 2720, Boise, Idaho 83702

My phone number is 208-388-1200

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:

Claimant originally understood that if stockwater use was de minimis or occurred incidental to diversions of water for other purposes, no claim was required to be filed. However, based on recent discussions with IDWR and legal counsel related to its other water rights, Claimant has learned that the historical stockwater use needs to be claimed.

☐ 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.)

Documentation of the nature, extent and priority date of the claimed beneficial use includes affidavits of Sandra, Dale and Gary Bartles, George Dilley and Sam Smyser and photographs of the diversion structure to the Upper Haas Ditch with date of reconstruction as a result of the 1944 flood on the Boise River.

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.**

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, August 17, 2010 at 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 Ada

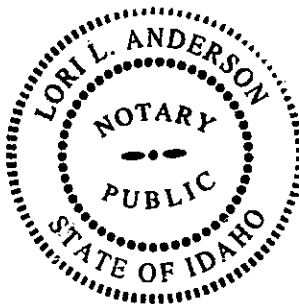
Michael P. Lawrence, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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

Michael P. Lawrence
Attorney signing in representative capacity

Subscribed and sworn to before me on May 27, 2010



(Insert Date)
Lori L. Anderson
Notary Public for Idaho

Residing at: Boise Idaho

My Commission expires: Aug 23, 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 MAY 27, 2010, 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.



Signature of person or attorney mailing the form



Diversion Structure for Upper Haas Ditch (photo taken 3/3/2010)



1944 Date of Reconstruction for Diversion Structure to Upper Haas Ditch

STATE OF IDAHO)
) ss:
COUNTY OF CANYON)

1. I am 70 years old and have lived my entire life in Idaho and most of it in Canyon, County. I have personal knowledge of the facts and matters described in this statement.

3. I am familiar with the property now known as the "Mallard Farm" located in Canyon County, Idaho. We referred to this property as the "River Bottom." The River Bottom was owned at one time by Clint and Bertha Allen, who were my grandparents, and before that by my great-grandparents. When my grandfather died, my father Homer acquired the property. To my recollection they always had a hired man who assisted with the irrigating and other farm tasks. I remember riding my horse on the River Bottom land when I was young and working the cattle for my father.

5. My father's health caused him to cease working the farm sometime in the late 1960s (he had two hip replacements). My father officially sold off his farm equipment and contracted with Raymond Abbott to run the farm on a share crop basis. At this time he started phase out of the cattle and hog business using family and hired help as necessary. This would have been in the late 1960s to early 1970s. I recall that he had cattle on the River Bottom up until 1971, right before he decided to sell the land.

6. Ditches and a slough were present on the River Bottom all of the time my family owned the land. The slough ran across the land and was lined with cattails. There was water in the slough and in some of the ditches year-round. My family kept water in the ditches and slough in the winter for watering the cattle and some flooding of the pastures. The area around the slough was vegetated with cattails for as long as I can remember. The water was channeled through the ditches, the slough, some fields, and eventually returned to the Boise River. When the water was high the ditches would be full and the slough would run into nearby land and fields. The area near the slough was always a wet marshy land with cattails and similar vegetation.

7. My father and other family members hunted on the River Bottom when his health was good. He allowed others to hunt there too. Neighbors and many people from Boise duck hunted there. In the fall, many people stopped in to get permission to hunt ducks and geese in the River Bottom land and along the Boise River. My father would tell them where the cattle were and give them permission. If the family was hunting on a particular day, he would not let others hunt on that day. Many people hunted on the River Bottom lands during the time my father owned the property.

8. The corn fields and the ditches, slough and wet areas (with year round water) attracted ducks and geese. My grandfather and father both kept water running in the slough and some of the ditches would have had water in them year-round for watering the cattle. The water created marshy areas, and with the corn fields the farm attracted waterfowl and other wildlife. Many ducks and geese used the fields and the water in the ditches, sloughs and wet areas.

9. I have voluntarily provided this statement because I want to. I have reviewed this statement and have made all changes and corrections that I feel are necessary. This statement accurately reflects my knowledge and recollection about the River Bottom land (now known as the Mallard Farm).

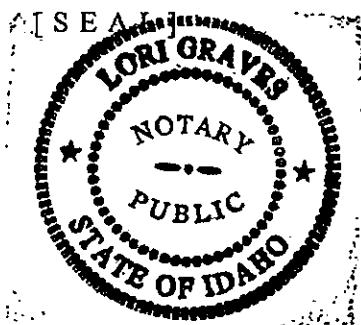
I understand that I am signing this affidavit under oath before a notary public. I swear under penalty of perjury that this statement is true and correct to the best of my knowledge and belief.

FURTHER THE AFFIANT SAITH NAUGHT.

Dated this 29 day of March 2010.


Sandra Allen Bartles

Subscribed and sworn to before me this 29 th day of Mar, 2010.



Lori Graves
Notary Public for Idaho
Residing at Boise
My Commission Expires 5/6/2015

4738849_1.DOC

AFFIDAVIT OF GARY BARTLES

STATE OF IDAHO)
) ss:
COUNTY OF CANYON)

I, Gary Bartles, being first duly sworn on oath, hereby depose and state as follows:

- (1) I am 52 years old and have lived in Idaho all of my life. I have personal knowledge of the facts and matters described in this affidavit.
- (2) My grandparents, Homer and Lucille Allen owned the "River Bottom" property now known as the "Mallard Farm". My parents, Sandra and Dale Bartles, moved to Parma around 1964 when I was seven years old. I lived there for eight years until I was fifteen.
- (3) I spent a lot of time on my grandparent's property while growing up and have many fond memories. I recall helping my grandfather feed and tend livestock (pigs as well as a small cow-calf operation) year round as well as farm in the summer. I do not recall any provision for providing the livestock with water beyond what was available on the property year round.
- (4) I recall their being water in the drains and ponds on the River Bottom lands year round. I recall in early spring (estimate early April 1971), two friends and I stranded a 1956 Chevy pick-up in attempting to cross a slew on the north east quadrant of the property. We ended up walking home because we drove through some standing water and flooded the engine with enough water to short out the distributor. I remember at least one occasion where we (a group of friends and family) fished for bull frogs in the ponds during the summer with bamboo poles using red felt cloth as bait. (To my recollection the only time I've ever had frog legs). Another

time (at the far southeast end of the property) I remember one side of a cement check structure in a ditch had collapsed and was obstructing incoming water flows. My grandfather wanted the incoming water to flow freely, without being checked up, so he blew up the structure with dynamite and I recall cement going "everywhere".

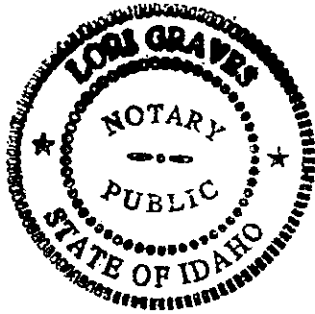
(4) I enjoyed hunting the River Bottom property in the fall and winter for ducks and pheasants. I recall the property having as good of hunting as any place we frequented. Flowing water diverted through the property made for good hunting. My father was a local banker and I recall many occasions where he invited his customers and colleagues to hunt the property. Over the years many people hunted on the property, including family and friends.

FURTHER THE AFFIANT SAITH NAUGHT.

DATED this 1 day of April, 2010.

Gay Smith

SUBSCRIBED AND SWORN to before me this 1 day of April, 2010.



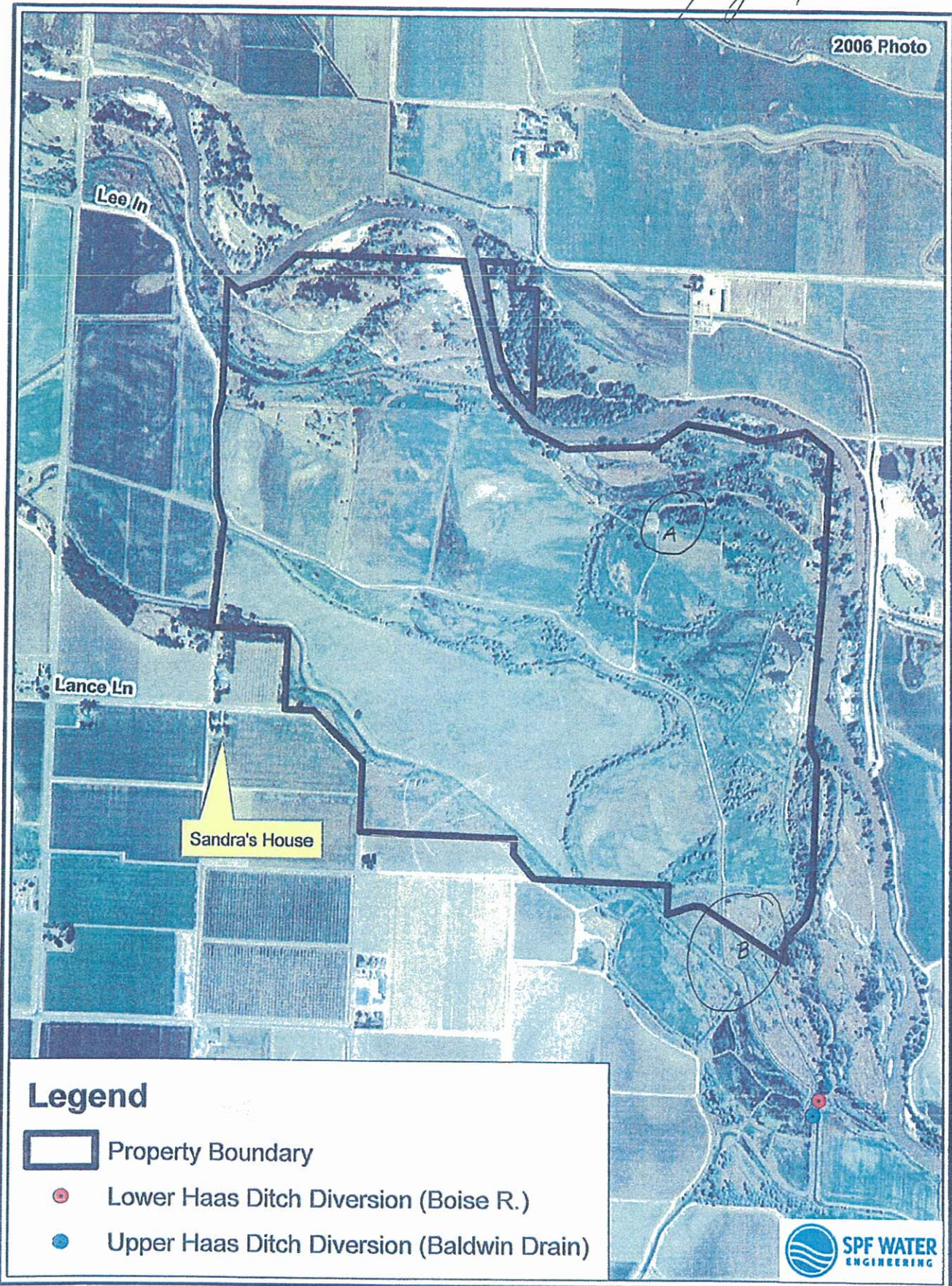
Lori Graves

Notary Public in and for the State of Idaho

Residing at: *Boise*

My Commission Expires: *5/6/2015*

Gang 7.1.10



A. area of stranded pick-up
B. area of blown up check structure

AFFIDAVIT OF DALE BARTLES

STATE OF CALIFORNIA)
) ss:
COUNTY OF RIVERSIDE)

I, Dale Bartles, being first duly sworn on oath, hereby depose and state as follows:

- (1) I was married to Sandra Allen Bartles for 24 years. We lived in Parma from 1964 to 1970. I have personal knowledge of the facts and matters described in this affidavit.

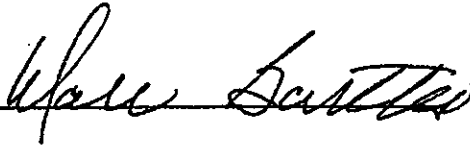
- (2) I helped my father-in-law, Homer Allen, work cattle (feed, vaccinate, sort, brand etc.) on his property now known as the "Mallard Farm".

- (3) We rotated the cattle throughout Mallard Farm in the summer and winter to different pastures and feeding grounds. The cattle had to have water available year round. I remember flowing water diverted throughout the property by way of headgates, ditches and sloughs.

- (4) Besides working cattle, I enjoyed hunting the property in the fall and winter with family and friends. The hunting was always very good.

FURTHER THE AFFLIANT SAITH NAUGHT.

DATED this 26 day of March, 2010.



SUBSCRIBED AND SWORN to before me this ____ day of March, 2010.

Notary Public in and for the State of California

Residing at: _____

My Commission Expires: _____

State of California)
County of RIVERSIDE)

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On MARCH 26 2010 before me, VINCENT PICARONE NOTARY PUBLIC,
(here insert name and title of the officer)

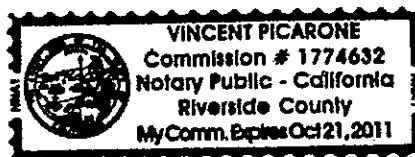
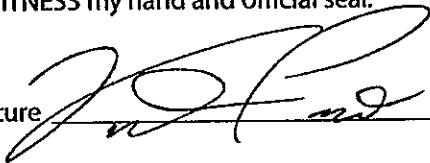
personally appeared DALE EDWARD BARTLES

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the
State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document
titled/for the purpose of AFRICA TRAVEL

containing 2 pages, and dated MARCH 26 2010

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-in-Fact
☐ Corporate Officer(s) _____
Title(s) _____

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # 49 Entry # 3

Notary contact: _____

Other

- ☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)
☐ _____

STATE OF IDAHO)
) ss:
COUNTY OF CANYON)

1. I am 87 years old and have lived in Canyon County, Idaho for most of my life. I am of sound mind and am personally acquainted with the matters described in this statement.

3. I am familiar with the property now known as the "Mallard Farm" located in Canyon County, Idaho. That land was owned at one time by Clint and Bertha Allen. My family lived near the Allens. We were friends and neighbors. I worked some on Clint's farm when I was a boy living at home. Homer Allen, their son, combined grain for my family before the River flooded in 1943. After the flood, the Allens did not grow as much grain.

5. I hunted along the Boise River and in the adjacent fields in the Parma area for many years. I shot my first goose on Clint Allen's land when I was a boy. I hunted many times on the Allen property.

7. There were ditches running through the marshy areas on the Allen farm along the River. Before the flood in about 1943, there was the Island High Line Ditch north of the Allen farm and ditches on the Allen farm. After the flood the area was diked, ditches were repaired, and other ditches were made. There was always water in the ditches, sloughs, and marshy areas when we hunted, throughout the hunting season. We used to jump ducks on the sloughs and ditches on the Allen farm. I remember hunting there in the snow.

8. The area on and around the Allen farm was always good hunting, for ducks, geese, and other birds such as pheasant and bobwhite quail. The wet areas, sloughs and ditches attracted many ducks. Clint, and then Homer, diverted water through the ditches for cattle in the winter and the diverted water ran through the sloughs too. The ducks used the water in the ditches, sloughs and wet areas. Homer was not a hunter, but allowed a lot of people to hunt on his land.

9. I have voluntarily provided this statement because I want to. I have reviewed this statement and have made all changes and corrections that I feel are necessary. This statement accurately reflects my knowledge and recollection about the Mallard Farm property.

I understand that I am signing this affidavit under oath before a notary public. I swear under penalty of perjury that this statement is true and correct to the best of my knowledge and belief.

FURTHER THE AFFIANT SAITH NAUGHT.

Dated this 25th day of January 2010.

Subscribed and sworn to before me this ____ th day of January, 2010.

[S E A L]

Notary Public for Idaho
Residing at _____
My Commission Expires _____

4711849_2.DOC





SPF WATER
ENGINEERING, LLC

By _____ Date _____ Client _____ Sheet _____ of _____

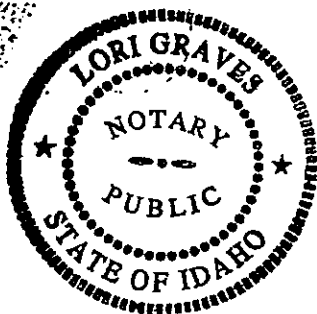
Chkd By _____ Description _____ Job No _____

I understand that I am signing this affidavit under oath before a notary public. I swear under penalty of perjury that this statement is true and correct to the best of my knowledge and belief.

Further the affidavit saith naught
Dated this 25th day of January 2010.

Liam Snyder

Subscribed and sworn to
before me this 25th day of January 2010.



Lori Graves
Residing at Boise ID
My commission expires
5/6/2015

AFFIDAVIT OF GEORGE M. DILLEY

STATE OF IDAHO)
) ss:
COUNTY OF CANYON)

I, George Dilley, being first duly sworn on oath, hereby depose and state as follows:

(1) I am 68 years old and have lived in Idaho all of my life. I have personal knowledge of the facts and matters described in this affidavit.

(2) I live at 26341 Lee Lane, Parma, Idaho in the home I grew up in that my grandparents built in 1906. My next door neighbor is Sandra Allen, who also lives in the home she grew up in. My grandparents purchased a portion of the Dilley property from Charlie Allen, Sandra's great grandfather in 1900 and moved here in 1903. We have been friends and neighbors with the Allen's ever since. I cherish the memories I have growing up on this farm.

(3) When I was born in 1941, Clint and Bertha Allen owned the property now known as the "Mallard Farm". We referred to this property as the "River Bottom" land. In the 1950's, Clint and Bertha retired and moved to town (Parma). Their son Homer and his wife Lucille then took over the farm.

(4) The Dilley's and Allen's farmed and raised cattle. As neighbors, we would trade labor and share farm equipment. Together, we vaccinated and dehorned cattle and harvested hay. Clint and Homer would rotate their cattle on their pasture lands year round and they also raised pigs. We had a small dairy and raised dairy cows.

(5) My family's property is located on the west side of Lee lane, adjacent to the former Allen property. We receive irrigation water from a drain ditch and (lower) Haas Ditch that flow onto our property from the former Allen property. The drain ditch flows year round, but not the Haas Ditch because it is shut off from the Boise River in the fall. When growing up, I remember every spring we would rebuild the coffer dam in the Boise River for the Haas Ditch. The dam was located near the southeast end of the Allen's River Bottom lands and consisted of straw bales, steel posts and woven wire fence. One year my job was to drive a team of Belgium draft horses, pulling a hay rack full of straw bales, into the river for the dam. We had to use horses because a tractor would have gotten stuck. When necessary, we would also clean the Haas Ditch in the spring, before water was diverted from the river, by dragging a "V" down the ditch using five or six tractors. We have old film footage of this event.

(6) I loved hunting and camping on the River Bottom lands during my childhood. The northeast end of the River Bottom lands was my favorite place because of all the cottonwoods, willows, cattails, etc. In the summer, we would pack up firewood, hot dogs and sleeping bags, hitch a utility trailer on the back of the tractor, and drive down to the River Bottom and camp. During the winter, we would build a duck blind on the south bank of the Boise River, next to the River Bottom land, and hunt ducks and geese. The vegetation, flowing water and corn stubble attracted lots of water fowl. I remember the morning sky used to be black with ducks and geese. There was always flowing water in the River Bottom sloughs and drain ditches allowing us to fish for crayfish, crappie, carp and frogs. I loved all the adventures I had on the Allen's River Bottom property while growing up.

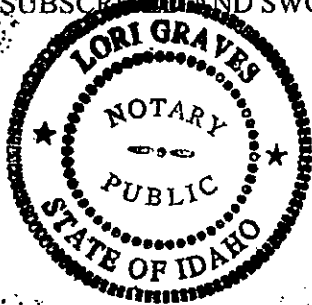
(7) I have voluntarily provided this statement. I have reviewed this statement and for accuracy and have made all changes and corrections that I feel are necessary.

FURTHER THE AFFIANT SAITH NAUGHT.

DATED this 30 day of March, 2010.

George M. Dilling

SUBSCRIBED AND SWORN to before me this 30 day of March, 2010.



Lori Graves

Notary Public in and for the State of Idaho

Residing at:

Boise

My Commission Expires:

5/6/2015

RECEIVED

JUN 01 2010

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: 63-33354

Date Received:

Receipt No:

Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

W & H Limited Liability
Company
DBA Mallard Farms
PO Box 7943
Boise, ID 83707

Phone: (208) 323-7767

2. Date of Priority: 3/13/1944

3. Source: Baldridge and Meadows Drain

Trib. to: Boise River

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County	Type
5N	5W	27		NE	NW	3	Canyon	

5. Description of diverting works:

Water is diverted from the drain into Upper Haas Ditch and from Upper Haas Ditch to smaller ditches.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
Stockwater	1/1	12/31	1.55	

7. Total Quantity Appropriated is:

1.55 cfs

8. Total consumptive use:

9. Non-irrigation uses:

Stockwater for 200 beef cattle

10. Place of use:

TWP	RNG	SEC	NE ¼				NW ¼				SW ¼				SE ¼				totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5N	5W	16												S			S		
		21	Lt2 S	Lt3 S	Lt7 S	Lt8 S	Lt4 S			Lt6 S					Lt9 S	S			
		22						S	Lt4 S			Lt3 S	S						

11. Place of use in counties: Canyon

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

13. Other Water Rights Used: Incidental stockwater use during the irrigation season under decrees 63-172B, 63-202B, 63-2611A and 63-2611B. Year-round stockwater use claimed under SRBA beneficial use claim 63-33361.

14. Remarks: Water is diverted from the Baldrige and Meadows Drain into a ditch, also known as the Upper Haas Ditch, that carries water to feeder ditches for stockwater, wildlife and irrigation uses. The claimed flow rate includes 1.50 cfs for conveyance losses.

15. Basis of Claim: Beneficial Use

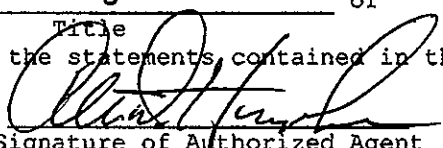
16. Signature(s)

(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: 1 (map)

For Organizations:

I do solemnly swear or affirm that I am Manager of
Title
W & H Limited Liability Company, that I have signed the foregoing
Organization
document in the space below as Manager of
Title
W & H Limited Liability Company and that the statements contained in the
Organization
foregoing document are true and correct.


Signature of Authorized Agent

Manager, W & H Limited Liability Company

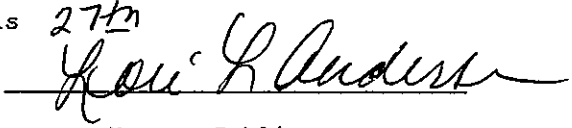
Title and Organization

5/27/10
Date

State of Idaho)
County of Ada) SS.

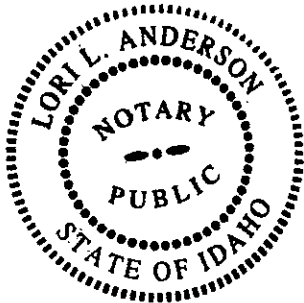
Subscribed and sworn (or affirmed) before me this 27th

of May 2010


Notary Public

Residing at Boise Idaho

My commission Expires Aug 23, 2013



T5N R5W

2009 Photo



Legend

-  Property Boundary
-  Stockwater Place of Use (Upper Haas)
-  Point of Diversion
-  Sections
-  Section QtrQtr Lines

W & H Partnership, LLC
Claim 63-33354



0 750 1,500
Feet

