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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 63-32910

) (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:
- ☐ 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:

Historical stockwater use was not included on Notice of Claim 63-32910.

Section 21 place of use was added during the Department's review of the original claim and has been included in this amended claim accordingly.

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

Affidavits of Sandra, Dale and Gary Bartles, George Dilley and Sam Smyser describing the nature, extent and priority date of the claimed beneficial use are attached.

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

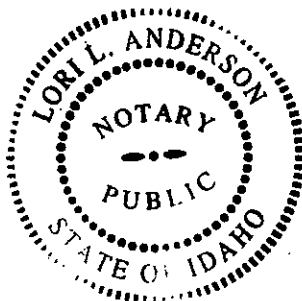
Michael P. Lawrence
Attorney signing in representative capacity

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

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.

4. My grandfather and father both grew corn on the River Bottom, and had pastures there too. They both raised cattle and pigs on that land. My father kept approximately 100 head of cattle, running a cow/calf operation there year-round. I remember my parents did their calving there in the winter/spring. My father kept cattle on the River Bottom through the 1960s and until about the time he decided to sell the land.

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).

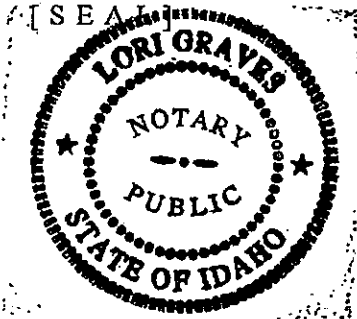
I understand that I am signing this affidavit under oath before a notary public. I swear under penalty of perjury that this statement is true and correct to the best of my knowledge and belief.

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

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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".

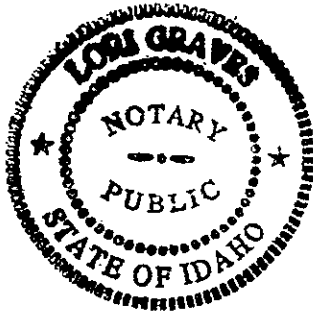
(4) I enjoyed hunting the River Bottom property in the fall and winter for ducks and pheasants. I recall the property having as good of hunting as any place we frequented. Flowing water diverted through the property made for good hunting. My father was a local banker and I recall many occasions where 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.

Gary 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: *Bain*

My Commission Expires: *5/6/2015*