

6-8
RECEIVED

JUN 08 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 <u>81-2006</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 Terry Jackson and Becky Brotnov

My address is 1342 Ridgewood Drive, Kamiah, ID 83536

My phone number is: Work _____ Home 208-935-2572

I am an attorney representing Terry Jackson and Becky Brotnov

My name is Candice M. McHugh

My address is 101 South Capitol Boulevard, Suite 208
Boise, ID 83702

My phone number is 208-232-6101

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:

Claimants recently purchased the subject property
and recently became aware of the need to file a
claim in the SRBA.

☐ 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.)

Deed

Notice of Claim of Water Right

☒ I have read **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996).

My name is Terry Jackson and Becky Brotnov

My address is 1342 Ridgewood Drive, Kamiah, ID 83536

My phone number is: Work _____ Home 208-935-2572

I am an attorney representing Terry Jackson and Becky Brotnov

My name is Candice M. McHugh

My address is 101 South Capitol Boulevard, Suite 208
Boise, ID 83702

My phone number is 208-232-6101

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:

Claimants recently purchased the subject property
and recently became aware of the need to file a
claim in the SRBA.

☐ 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.)

Lease With Option to Purchase

Notice of Claim of Water Right

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 \$ 162.00.

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 Tuesday, September 21, 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).⁷
- ☐ Payment of the following additional fees required by IDWR:

VERIFICATION (Must be completed)

State of Idaho

County of Ada

Candice M. McHugh, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

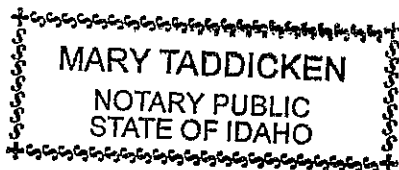
That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that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

Signature of person filing motion

Candice M. McHugh

Attorney signing in representative capacity
Candice M. McHugh

Subscribed and sworn to before me on June 7, 2010
(Insert Date)



Mary Taddicken

Notary Public for Idaho
Residing at: Boise
My Commission expires: 9-12-13

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 June 7, 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.

(Insert Names/address of parties)

Terry Jackson
Becky Brotnov
1342 Ridgewood Drive
Kamiah, ID 83536

courtesy copy



Signature of person or attorney mailing the form
Candice M. McHugh

**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 39576
NUMBER:
Ident. Number: 81-2006
Date Received:
Receipt No.:**

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

1. Name of Claimant(s):

Name	Address	City	State	Country	Postal Code
TERRY JACKSON	1242 RIDGEWOOD DRIVE, KAMIAH, ID 83536 107 Little Smith Crk. Rd B.H. KOOTENAI, ID. 83539	KAMIAH	ID	USA	83536

2. Date of Priority:

Date	Explanation
5/19/1930	This is the date of original license no. 17303.

3. Source:

Source	Tributary	Type
LITTLE SMITH CREEK	CLEARWATER RIVER	

4. Point Of Diversion:

Township	Range	Section	Gov Lot	QQ	Q	County
33N	06E	32		NW	SE	IDAHO

5. Water is used for the following purpose(s):

Water Use	Number Of Homes	Stock	Description
DOMESTIC	1	-	
FIRE PROTECTION	-	-	Water to be used in case of forest fire.
INDUSTRIAL	-	-	
IRRIGATION	-	-	

6. Season(s) of Use:

Water Use	From Month/Day	To Month/Day
IRRIGATION	3 / 15	11 / 15
INDUSTRIAL	1 / 1	12 / 31

DOMESTIC	1 / 1	12 / 31
FIRE PROTECTION	1 / 1	12 / 31

7. Quantity:

Water Use	CFS	AF	KW
DOMESTIC	0.020	0.00	0.0
FIRE PROTECTION	1.000	0.00	0.0
INDUSTRIAL	1.000	0.00	0.0
IRRIGATION	1.000	0.00	0.0

Totals:

CFS	AF	KW
2.000	0.00	

8. Place of Use:

Water Use	Total Claimed Acreage
IRRIGATION	10

Water Use	Township	Range	Section	QQ	Q	County	Gov Lot	Acreage
DOMESTIC	33N	06E	32	SE	SE	IDAHO	-	-
FIRE PROTECTION	33N	06E	32	SW	SE	IDAHO	-	-
INDUSTRIAL	33N	06E	32	SW	SE	IDAHO	-	-
IRRIGATION	33N	06E	32	SW	SE	IDAHO	-	10

9. Basis of Claim:

Basis	WaterRight
License	81-2006

10. 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/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): *Tommy E. Jackson* Date: 5/23/10
Debra J. Hottel Date: 5-23-10

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

_____ of _____
Title Organization

that I have signed the foregoing document in the space below as

_____ of _____
Title Organization

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

Signature of Authorized Agent _____ Date _____

Title and Organization _____

Please print name

LEASE WITH OPTION TO PURCHASE

THIS INDENTURE, made this 5th day of August, 2002, by and between DONALD A. DENTON and DONALD A. DENTON, as Personal Representative of the Estate of Geraldine R. Denton, acting pursuant to authority in Idaho County Probate Case No. SP 3003, formerly husband and wife, c/o Lochsa Lodge, Lolo, MT 59847, hereinafter referred to as the Landlords, and THERRAL E. JACKSON, a single man, of Rt. 2 Box 528, Kamiah, ID 83536, hereinafter referred to as the Tenant

WITNESSETH:

WHEREAS, the Landlords are owners of certain real property in Idaho County, State of Idaho, the legal description of which is as follows, to wit:

Tax #18 in Section 32, Township 33 North, Range 6 East, Boise Meridian, containing 5.05 acres more or less, the accurate metes and bound description of which is attached hereto as Exhibit A;

together with, all water rights associated therewith, from Big and Little Smith Creek, tanks and pumping station, that are located off the property on a Forest Service special use permit which benefits the property which likewise goes with it. (Subject to the right of a scenic easement sale to apply all monies from the scenic easement to any remaining balance that is due as is hereinafter described); and,

WHEREAS, in addition to the one year lease, there will be an option to purchase the property, under certain terms and conditions, as is more completely described hereinafter.

NOW, THEREFORE, IT IS HEREBY COVENANTED AND AGREED AS FOLLOWS:

I.

That the Landlords agree to lease and rent the property to the Tenant upon the conditions hereinafter mentioned. The parties acknowledge that the Tenant has taken possession of the property, as of the execution of this agreement, and has the right to clean and clear the same, provided that his actions result in improving the property.

Upon the execution of this agreement, the parties acknowledge that the Tenant has made the annual lease payment of \$100.00, the receipt whereof is hereby acknowledged by the Landlords.

The parties acknowledge that the total rental under this agreement shall be the sum of \$100.00, and no additional rental shall be required.

II.

It is further agreed, that this lease begins as of the 10th day of July, 2002, and continues until the 9th day of July, 2003. At any time, during the terms of this lease, the Tenant shall have the right and option to purchase the above-described property, as is hereinafter described. The parties further acknowledge that the Tenant has paid to the Landlords \$10,000.00 upon the execution of this agreement, which shall be considered option money. That \$10,000.00 shall be considered and is nonrefundable, in the event the Tenant does not exercise the option. The parties understand that a Notice of Option shall be recorded in the Idaho County records to reflect the parties various interests in this lease and option hereunder created.

III.

As aforesaid, the Tenant agrees to keep the premises in excellent repair, in a clean and tidy condition and is entitled to make improvements on the property during the term of the lease.

IV.

It is further understood and agreed, that the Tenant shall be obligated to purchase liability insurance on the premises and name the Landlords as additional named insured upon that liability insurance to the extent of \$ 1,000,000.

V.

If the Tenant shall abandon or vacate the premises prior to the termination of this lease the Landlords may relet the premises and rent the same upon such terms and conditions as the Landlords may deem reasonable. However, upon such reletting all rights hereunder shall cease, in the Tenant, and be of no further force and effect.

In order to cure the Idaho County records and the Affidavit of the Landlords or their heirs and assigns setting forth the nature of any breaches shall be sufficient to eliminate the option to purchase set forth herein. Furthermore should it be necessary in the event of an abandonment of the premises the Tenant shall be obligated to make an Affidavit setting forth the abandonment facts and that likewise shall be sufficient to eliminate the option to purchase. However, in the event of an abandonment and a retaking of the property by the Landlords there shall be no right of the Landlords to sue for any additional rent or any additional option money but the \$10,100.00 earlier paid shall be forfeited to the Landlords in the event of such breach.

VI.

Exercise of the Option: In the event the Tenant desires to exercise the option to purchase at any time during the term of this lease, but at least thirty (30) days prior to the expiration thereof, then he shall give WRITTEN NOTICE to Landlords or their heirs or successors of his

LEASE WITH OPTION TO PURCHASE - 3

intent to exercise the option. During that final thirty (30) day period, which written notice must be delivered on or before the 9th day of June, 2003, then a commitment for title insurance shall be secured from Idaho County Title Company and the closing shall occur thereafter. Closing must occur before what would otherwise would be the termination of this lease.

VII.

At closing, the parties agree that the total price shall be \$110,000.00, with the \$10,000.00 that has been earlier paid then being considered down payment. The remaining \$100,000.00 shall be paid at the rate of \$10,000.00 per year, plus interest at 6% per annum, with the first payment of such amount being due one year from the date of closing. The parties agree that Forsmann Accounting Service, Cottonwood, Idaho will hold the long term escrow agreement, and the debt will be evidenced by a Promissory Note and secured by a Deed of Trust, in proper form. The parties at closing agree to split all closing costs and document preparation costs, with attorney, Dennis L. Albers, Grangeville, Idaho being the closing agent.

The parties agree, that Albers has functioned in this transaction as attorney for the Tenant and the Landlords are entitled and encouraged if they want to do so to seek independent legal advice in this transaction.

VIII.

During the term of this lease, the Tenant shall be responsible for all repair and maintenance of every kind and description that property requires, including the reasonable maintenance on the tanks and pumping station and pipeline easement, and all water easements that do benefit the property, from what other source, including but not limited to Big and Little Smith Creek.

IX.

It is agreed that during the term of this lease the Landlords shall be responsible for taxes on the premises, and if the option is exercised real property taxes for the year 2003 will be prorated to the date of closing.

X.

In the event the Tenant breaches this contract in any fashion, the Landlords shall give notice to the Tenant by certified mail or direct personal service specifying the defaults. The Tenant after that notice shall have 120 days in which to cure any deficiency, in order to keep the rights herein mentioned properly in place. If there is a complete default by the failure to cure any defaults then the lease rights shall terminate and the option right shall terminate at that point and the Landlords shall be entitled to keep all option money and rental.

Furthermore, if the option is exercised there shall be a 120 day default provision inserted within the Promissory Note, which is hereunder contemplated, in which defaults including nonpayment could be cured prior to formal foreclosure proceedings occurring.

XI.

This agreement shall be binding upon the heirs, executors, administrators, successors and assigns as if in each covenant they were specifically mentioned.

XII.

Scenic Easement Sale: If the option is exercised, and the Tenant shall deem it advisable to sell a scenic easement to the United States Government on the property, then any net proceeds from the sale of the scenic easement, will be applied to any balance under the Promissory Note, which is yet held by the Landlords if such sale occurs. Of course, if the scenic easement is sold

when there is no longer a balance due then this provision shall not be applicable and the Tenant shall be entitled to all scenic easement proceeds.

XIII.

In the event litigation is necessary to enforce the terms of this agreement then the prevailing party in any suit or action brought to enforce the terms hereof shall in addition to costs and disbursements allowed by law be entitled to a reasonable attorney's fee from the nonprevailing party.

XIV.

In the event there are any utility bills including but not limited to electricity that are attributable to the property during the period of this lease, the Tenant shall be obligated to pay those utility bills.

XV.

The Landlords shall have the right to inspect the premises at any time to make sure that the terms of this lease are being fulfilled.

XVI.

Non-assignability: During the term of this lease, the Tenant shall not be permitted to sublease or assign the premises or any rights hereunder unless the express written consent of the Landlords or their successors, shall have been first had and obtained. However, the Landlords shall not arbitrarily withhold consent in the event a reasonably responsible third party is proposed as a potential assignee.

XVII.

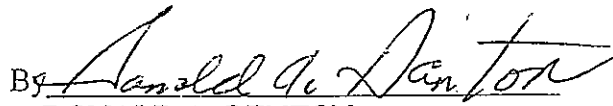
Time is the essence of this agreement and all time periods mentioned herein shall be strictly construed.

ADDITIONAL PROVISIONS:

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

THE ESTATE OF GERALDINE R.
DENTON, Deceased


DONALD A. DENTON

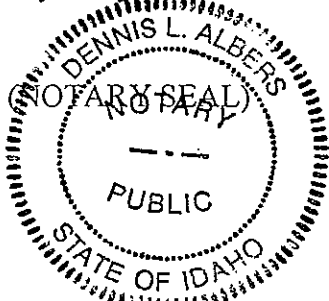
By 
DONALD A. DENTON,
Personal Representative

Therral E. Jackson
THERRAL E. JACKSON

STATE OF *Idaho*)
County of *Idaho*) SS

On this *10* day of *July*, 2002, before me, a Notary Public in and for said County and State, personally appeared, DONALD A. DENTON, acting for himself and as personal representative for the Estate of Geraldine R. Denton, formerly husband and wife, known to me to be the persons whose names are subscribed to the within instrument and they acknowledged to me that they freely executed the same individually and for on behalf of the estate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

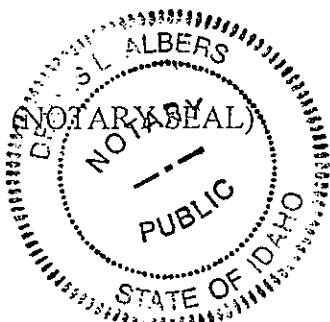


Dennis L. Albers
Notary Public for the State of *Idaho*
Residing at *Boise* therein.
My commission expires *12-26-2006*

STATE OF IDAHO)
County of *Idaho*) SS

On this *5th* day of *August*, 2002, before me, a Notary Public in and for said County and State, personally appeared, THERRAL E. JACKSON, a single persons, known to me to be the person whose name is subscribed to the within instrument and he acknowledged to me that he freely executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Dennis L. Albers
Notary Public for the State of Idaho,
Residing at *Boise* therein.
My commission expires *12-26-2006*

EXHIBIT A

✓ 18
Old Tax 4 A parcel of land in the Southeast Quarter of Section 32, T.
33 N., R.6 E.B.M., Idaho County, Idaho, more particularly
described as follows:
Beginning at a 1½" x 5' pipe, from which point the center
of the Southeast Quarter of Section 32 bears S88°43'E,
110.5 feet;
1. S20°11'E, 454.88 feet to a 2" x 48" iron pipe;
2. Thence S79°14'W, 512.06 feet to a 1" x 36" iron pipe;
3. Thence N1°10'E, 378.76 feet;
4. Thence N21°50'W, 104.09 feet;
5. Thence S88°43'E, 399.73 feet to the point of beginning
containing a calculated area of 5.05 acres more or less.
All bearings are based on a stated direction of the East
line of said Section 32.