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JUL 19 2010

DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

) Subcase No. 37-11828

) 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:

I am an attorney representing: Flying Heart Ranch II Subdivision Owners Association Owners, Inc.

My name is: Fritz X. Haemmerle, Haemmerle & Haemmerle, P.L.L.C.

My address is: P.O. Box 1800, Hailey, ID 83333

My phone number is: (208) 578-0520

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:
This right was stacked with other rights (37-22196, 37-22202 and 37-22203) that were claimed. Upon further investigation by IDWR, this unclaimed right was discovered and made known to me.

☐ 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 \$104.00.

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: **November 18, 2008, at 1:30 p.m.**
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:
It was discovered that the Claimant had a right decreed under the Frost Decree

☒ I am providing legal and factual documentation to support my amended Notice of Claim.

You must describe these documents and attach a readable copy.
See Attached.

I have attached:

☒ An amended Notice of Claim (available from IDWR).

☐ Payment of the following additional fees required by IDWR:

VERIFICATION

State of Idaho)
) ss.
County of Blaine)

Fritz X. Haemmerle, being first duly sworn, upon oath, deposes and says:

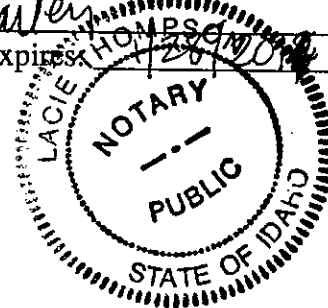
That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that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

[Handwritten Signature]

Notary Public for Idaho
Residing at: Hartley
My Commission expires 12/26/2014



CERTIFICATE OF MAILING

I certify that on July 15, 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

2. Copies to:

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

Albert P. Barker
BARKER, ROSHOLT & SIMPSON, LLP
P.O. Box 2139
Boise, ID 83701

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

Craig Hobdey
HOBDEY & HOBDEY
P.O. Box 176
Gooding, ID 83330



Signature of person or attorney mailing the form

JUL 19 2010

DEPARTMENT OF
WATER RESOURCESIN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN 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) Flying Heart Ranch II Subdivisions Association Phone (208) 578-0520
Mailing Address c/o Fritz X. Haemmerle, 400 South Main St., Hailey, ID Zip 83333
2. Date of Priority (Only one (1) per claim) 5-15-1884
3. Source of water supply (a) Big Wood River
which is tributary to (b) Malad River
4. a. Location of existing point of diversion is: Township 2N Range 18E Section 5,
1/4 of NW 1/4 of NE 1/4, Govt. Lot, B.M., County of Blaine
Additional points of diversion if any: NENE Sec. 5, T. 2 N., R. 18 E.; SWSE Sec. 32, T. 3 N., R. 18 E.
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. Pond impoundment

6. Water is claimed for the following purposes:

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

For Recreation Storage purposes from 1/1 to 12/31 amount _____ or 11.2

For Aesthetic Storage purposes from 1/1 to 12/31 amount _____ or 11.2

For Diversion to Storage purposes from 1/1 to 12/31 amount 10.0 or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) _____ (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.) Recreation and aesthetic use in pond

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	
2N	18E	5	Rec	Rec															
2N	18E	5	Aes	Aes															

Total number of acres irrigated _____

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 _____ No X
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.

37-7767

Or None ☐

14. Remarks:

Claim is based on right 37-555 decreed to A. M. Purdum in Frost vs. Alturas Water Company. No priority date is given in Frost. Claimed priority is date of earliest irrigation right decreed to Purdum. Pond has a maximum surface area of 2.8 acres and an estimated average depth of 4 feet. Claim asserts an accomplished transfer of the nature of use, point of diversion, and season of use. Claim is appurtenant to the upper Flying Heart Pond. Pond is an onstream pond and therefore diversion to storage component may not be necessary. All possible points of diversion are included on the claim since IDWR has recommended these type of rights in various manners.

Last Name _____ Ident. No. _____

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

If applicable provide IDWR Water Right Number 37-555

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant S. C. Frost vs. Alturas Water Company

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 or affirm that I am attorney in fact
Of Three Heart Ranch Owner Assoc. that I have signed the foregoing
Organization

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 [Signature]

Title and Organization attorney Date 7/15/10

State of Idaho / or _____)
County of Blaine) ss.

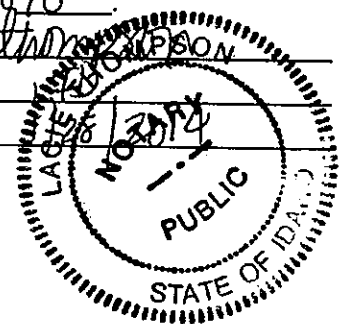
Subscribed and sworn (or affirmed) before me this 15th day of July, 2010

Notary Public Lance Thompson

Residing at Harley

My Commission Expires _____

SEAL



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 _____

0536	Peck, Warren J.	120 inches.	204 Apr. 15, 1894.	Big Wood River.
0537	Peterlin, Charles	"	May 15, 1882.	" " "
0538	"	180	486 May 15, 1891.	" " "
0539	Peters, Lyman	150	78 June 3, 1884.	East Fork of Big Wood River.
0540	Peterson, Nels	160	194 June 10, 1892.	Soldier Creek. ✓
0541	"	80	252 May 5, 1900.	" "
0542	Pettigrew, Joseph M.	100	445 Apr. 15, 1886.	Little Wood River. 436
0543	Pettigrew, L. D.	240	223 Aug. 2, 1909.	Big Wood River.
0544	Phillips, Mary	155	48 Apr. 15, 1883.	" " "
0545	Phillips, Allison	"	"	Shares in Little Wood River Canal Company.
0546	Phillips, A. B.	100	127 Dec. 1, 1886.	Little Wood River. (Also shares in Little Wood River Canal Co.)
0547	Phillips, Clarence	"	"	Shares in Little Wood River Canal Company.
0548	Phillips, S.	100	44 May 26, 1885.	Little Wood River. (Also shares in Little Wood River Canal Co.)
0549	Plummer, J. J.	All of	June 1, 1880.	Warm Springs Creek, near Hailey.
0550	Phipps, Wiley W.	200 inches.	46 June 30, 1882.	Croy Creek.
0551	Phipps, Wiley W.	100	94 May 18, 1907.	Three Mile Creek or Four Mile Creek.
0552	Pilling, Gusie	120	307 July 28, 1906.	Big Wood River.
0553	Pothair, Estate and Pothair, Fred, and Louise	"	"	(See Green, Miss Belle, Guardian.)
0554	Potts, William	100	244 Apr. 1, 1903.	Big Wood River.
0555	Prine, W. M.	15	72 June 1, 1884.	Trail Creek.
0556	Prine, John, and John Korman	"	"	(See Korenko, John, and John Pugel.)
0557	Purdum, A. M.	(See pond.)	"	Big Wood River.
0558	"	(See pond.)	"	"
0559	Purdum, A.	(See pond.)	"	Little Wood River.

JUN 04 1896

Shoshone Light &
Water Company

3000 inches.

Nov. 6, 1903. Little Wood River.

6. That A. M. Purdum and his predecessors in interest, since the _____ day of _____, in the year _____, have used a certain amount of water, flowing in and through the McBryan ditch, having its source in Big Wood River, near Hailey, Idaho, sufficient to fill a certain ice-pond of which he is the owner, and to maintain a uniform depth of water therein, between the first day of December and the first day of April of the following year, of each Winter season, for the purpose of making and harvesting ice; and such use of the said water does not interfere in any manner with the use thereof by any person for irrigating or other purposes; and that the said A. M. Purdum, for many years last past, has used a sufficient amount of water to maintain a certain fish-pond situated upon his said lands, returning the water which runs through the same into the channel of Big Wood River.

7. That Purdum & Purdum, of Shoshone, Idaho, are partners, under the name of Purdum & Purdum; that they and their predecessors in interest, since the first day of December, 1885, have used a certain amount of water flowing in and through the channel of the Little Wood River, at a point on the surface of Little Wood River in the North-East Quarter of the North-East Quarter of Section 2, Township 6 South, Range 17 East, and about 700 feet Northeasterly of the Oregon Short Line pumping-station, and continuing up said Little Wood River in a Northeasterly direction for 2500 feet, and extending into Sections 35 and 36, Township 5 South, Range 17 East, between the first day of December in each year and the first day of April of the succeeding year, a sufficient amount of water to cut and harvest 2000 tons of ice; and such use of said waters has not and does not interfere in any manner with the right to the use thereof on the part of any other claimant thereto.

8. That certain of the claimants to the right to the use of the waters of the ~~Malad~~ or Big Wood River and its tributaries, have at various

titled to have the waters of said dry streams continue to flow down to where their channels unite with the streams into which they empty, when any water is discharged therein from such dry streams.

3. That the various parties, plaintiffs and defendants, in the actions in which decrees were entered and filed, as set forth in the said Findings, and their successors in interest, are entitled to the use of the waters so awarded in the said decrees.

4. That A. M. Purdum is entitled to the use of a sufficient amount of water to supply his ice-pond and his fish-pond, described in the Findings and in the pleadings in this action, the water for such ice-pond to be used each season between the first day of December and the first day of the following April, only.

5. That Purdum & Purdum are entitled to the use of a sufficient amount of water to make their supply of ice, in the channel of Little Wood River, described in the said Findings, such use of the water to be confined to the winter season, between the first day of December and the first day of the following April, of each season.

6. That the defendants, Michael Brown, Sarah Brown, Mary Brown, and Catherine Sweet, are entitled to the use of 160 inches of the waters of Big Wood River, to date from the first day of August, 1884, for the irrigation of the W 1/2 of the SW 1/4 of Sec. 8, T. 1 N., R. 19 E., said water to be conveyed upon said land through the so-called Miller and Packard ditch.

7. That the defendants, R. F. Buller and Rosa B. Buller, are entitled to the exclusive use of the 400 inches of water developed by them from the said swamps described in the Findings.

8. That the defendants, Adam Ifland and Frederick W. Fator, are each entitled to the exclusive use of 160 inches of water of a continuous flow, so long as they maintain the dam in the channel extending from Silver Creek to the said sink-holes, so as to prevent the loss of water herein; that their respective rights to the use of said amount of water

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