

RECEIVED

Hon. Terrance A. Dolan
February 3, 2011
Special Master, SRBA
Box 2707
Twin Falls, Idaho 83303-2707

FEB 10 2011

February 2, 2011

DEPARTMENT OF
WATER RESOURCES

Re: Robert & Jacqueline Ernest
Box 132
Carmen, Idaho 83462

Late Claim for 1915 Priority Right
(Carmen Cr. High Water)

William Clementz
Box 225
Carmen, Idaho 83462

Late Claim for 1915 Priority Right
(Carmen Cr. High Water)

Dear Special Master Dolan:

Attached please find SF-4s, Motions to File Late Claim. We did not previously file claims for 1915 high water due to uncertainty and confusion involving the several overlapping rights which were previously contested and involved in protracted litigation, but are now settled and uncontested.

Our review of the partial decrees for the overlapping rights for our property indicates that the aggregate total for the partials is less than two inches per irrigated acre. The IDWR standard for Carmen Creek is two inches per acre, and most other properties in similar circumstances to ours are at that amount.

We respectfully request that the court accept our late claims and subsequently grant 1915 partial decrees to bring our individual aggregates for non-contested overlapping rights to two inches per irrigated acre. Counsel for the IDWR is aware of this request. Thank you for your consideration.

Sincerely, *Robert Ernest* *Jacqueline Ernest* ✓

Robert & Jacqueline Ernest

William Clementz
William Clementz

Copies: Garrick Baxter
IDWR

Director
IDWR

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 75-14699
) (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 ✓ ROBERT ERNEST

My address is ✓ Box 132, CARMEN, ID. 83462

My phone number is: ✓ Work — Home 208-756-8045

I am an attorney representing —

My name is —

My address is —

My phone number is —

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:

THE CONFUSION AND UNCERTAINTY WITH THE VARIOUS RIGHTS AMOUNTS, RESOLVED RECENTLY, DID NOT INDICATE A HIGH WATER 1915 RIGHT WAS NEEDED TO REACH THE CARMEN CR. IDWR STANDARD OF 2" PER ACRE. A ADDITIONAL 1.8" IS NEEDED,

☐ 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.)

IDWR WILL CONFIRM THE SHORTFALL IN THE UNCONTESTED 1915 HIGH WATER PRIORITY -

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 \$ 500.

IDWR STAFF, BOISE, ADVISED THAT \$500 IS APPROPRIATE.
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 MAY 17, 2011
(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 LEMHI

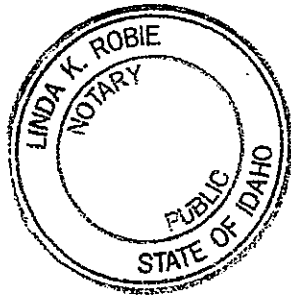
ROBERT ERNEST and Jacqueline ERNEST
(Insert name of person filing form), being first duly sworn, upon oath, deposes and says:

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.

✓ Jacqueline Ernest
Signature of person filing motion

Attorney signing in representative capacity

✓ Subscribed and sworn to before me on February 7, 2011
(Insert Date)



Linda K. Robie
Notary Public for Idaho
Residing at: Salmon, Idaho
My Commission expires: 10-6-11

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 Feb. 199, 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

ERNEST
(ORIG)

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 75-14699

Date Received: _____

Receipt No: _____

Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Robert & Jacqueline Ernest Phone (208) 756-8045

Mailing Address Box 132 Carmen ID 83462
Street or Box City State ZIP

2. Date of Priority (Only one (1) per claim) April 1, 1915
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Carmen Creek
which is tributary to (b) Salmon River

4. a. Location of Point of Diversion is: Township 22N, Range 22E, Section 02,
NE, 1/4 of NW, 1/4 Govt. Lot 3, BM., County of Lemhi

Parcel (PIN) no. _____

Additional points of diversion if any: _____

If available, GPS Coordinates _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____, Range _____, Section _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., 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. Headgate and ditch from Carmen Creek. Designation C9 for new fishscreen and splitter works recently installed by Idaho Fish & Game. Construction underway on new headgate.

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Irrigation purposes from April 1 to October 31 amount 0.036 or

For purposes from to amount or

For purposes from to amount or

For purposes from to amount or

7. Total quantity claimed (a) 0.036 (cfs) and/or (b) (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.)

9. 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.

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
22N	22E	02							1.7										1.7

Parcel (PIN) no(s).

Total number of acres irrigated 1.7

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

11. Do you own the property listed above as place of use? Yes (✓) No ()

If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

10061Y, 10062W, 00069N, 00070N, all in Water District 75 or None ()

13. Remarks: All above rights have received partial decrees from SRBA court.

Last Name Ernest

Identification No.



Idaho Department of Water Resources

SRBA Recommendation:

75-10062AC

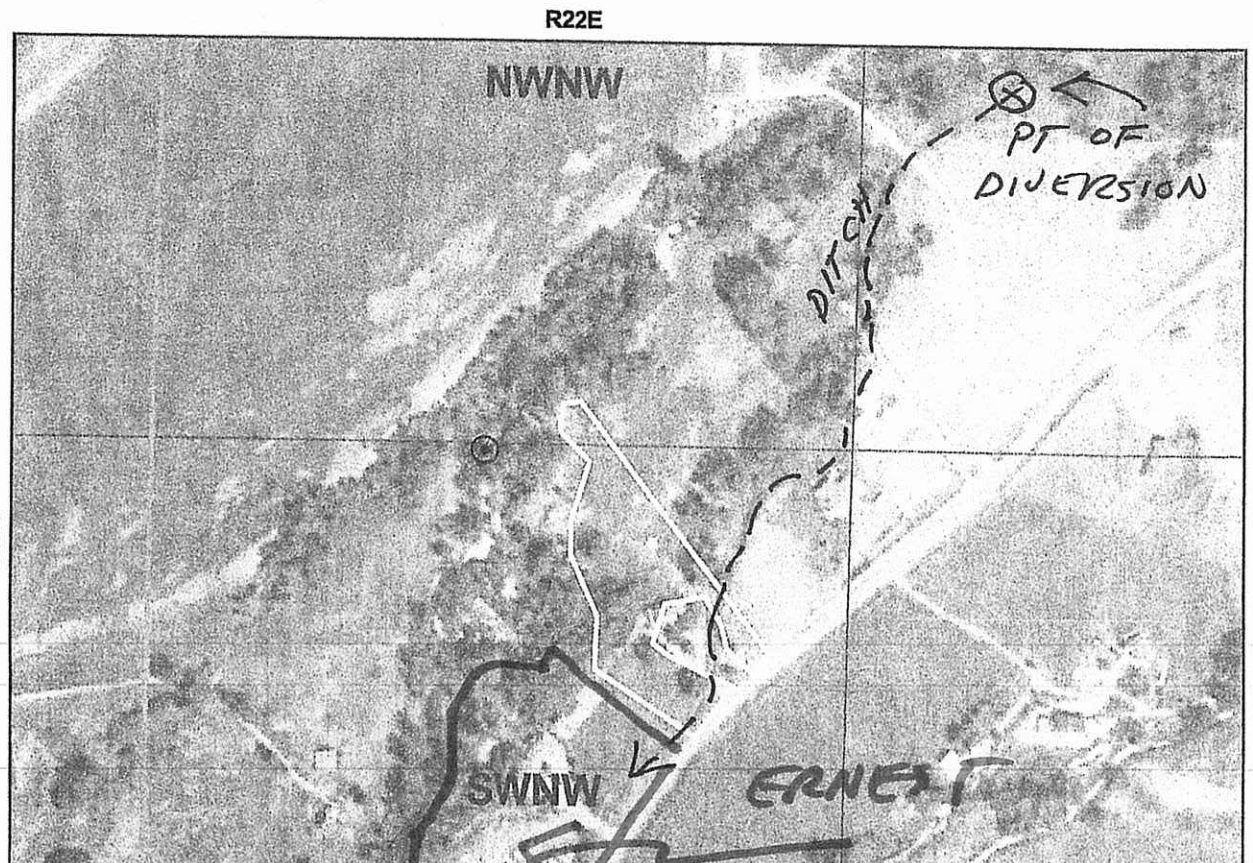
(Irrigation)

Legend

- ⊙ Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters



T22N



14. Basis of Claim (Check One) Beneficial Use (✓) Posted Notice () License () Permit () Decree ()

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices 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: 1

MAP OF DITCH & PROPERTY (IDWR)

✓ 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)

Robert M. Ernest

Date: 2-7-11

+ Jacqueline Ernest

Date: 2-7-11

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 _____

16. Notice of Appearance:

Notice is hereby given that I, _____, will be acting as attorney at law of 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 _____ Date _____

Address _____

Last Name Ernest

Identification No. _____

COPIES
ERNEST
(ORIG)

SRBA Form No.42-1403-1 (Internet 2/09)

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
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Street or Box City State ZIP
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Month Day Year (YYYY)
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which is tributary to (b) Salmon River
- a. Location of Point of Diversion is: Township 22N, Range 22E, Section 02
NE 1/4 of NW 1/4 Govt. Lot 3, BM., County of Lemhi

Parcel (PIN) no. _____

Additional points of diversion if any: _____

If available, GPS Coordinates _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____, Range _____, Section _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., 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. Headgate and ditch from Carmen Creek. Designation C9 for new fishscreen and splitter works recently installed by Idaho Fish & Game. Construction underway on new headgate.

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			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
22N	22E	02							1.7										1.7

Parcel (PIN) no(s)

Total number of acres irrigated 1.7

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11. Do you own the property listed above as place of use? Yes (✓) No ()

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12. Describe any other water rights used at the same place and for the same purposes as described above.

10061Y, 10062W, 00069N, 00070N, all in Water District 75

or None ()

13. Remarks: All above rights have received partial decrees from SRBA court.

Last Name Ernest

Identification No.



Idaho Department of Water Resources

SRBA Recommendation:

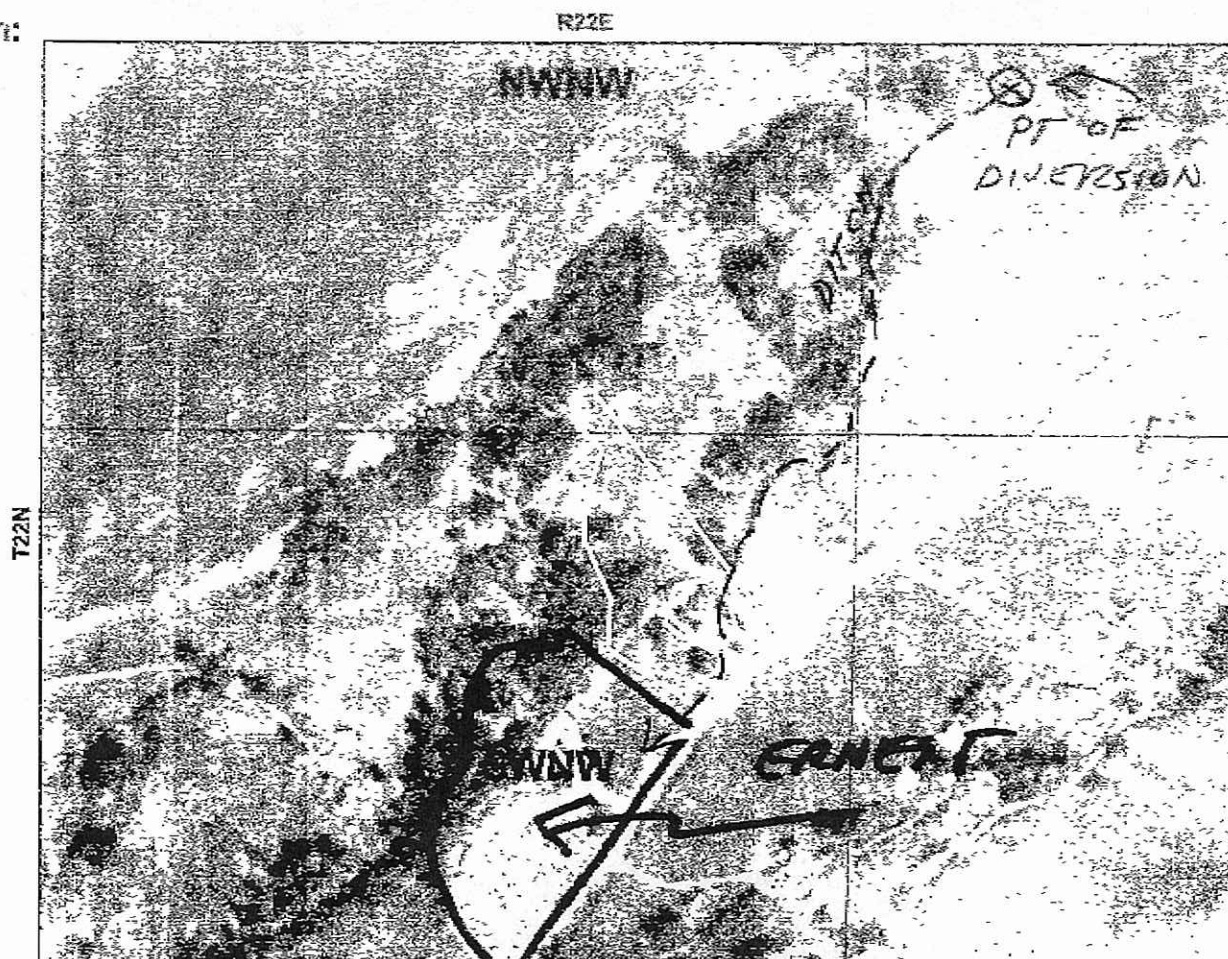
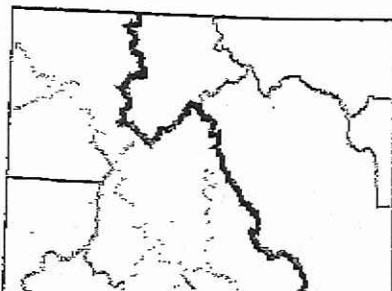
75-10302AC

(Irrigation)

Legend

⊙ Point of Diversion
Place of Use

▭ Townships
▭ PLS Sections
▭ Quarter Quarters



14. Basis of Claim (Check One) Beneficial Use (☒) Posted Notice () License () Permit () Decree ()

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices 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: _____

MAP OF DITCH & PROPERTY (IOWA)

✓ 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) *Roberta M. Ernst* Date: *2-7-11*

Jaqueline Ernst Date: *2-7-11*

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 _____

16. Notice of Appearance:

Notice is hereby given that I, _____, will be acting as attorney at law of 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 _____ Date _____

Address _____

Last Name Ernst

Identification No. _____