

JUN 27 2011

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

Case No. 39576

A. Subcase 25-7089
(Insert water right number
From the Objection Form)

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: Work _____ Home _____

I am an attorney representing Cottonwood Acres Domestic Well, Inc.

My name is Robert L. Harris

My address is 1000 Riverwalke Drive, Suite 200, PO Box 50130, Idaho Falls, Idaho 83405

My phone number is 208-523-0620

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 former owner of the water right, and developer of the subdivision to which it is appurtenant, Don Bingham, never filed a claim for this water right. He left the subdivision in approximately 1995-1996. The Claimant just became aware that Mr. Bingham did not file a claim and efforts to locate him have been unsuccessful. This was brought to the Claimant's attention after a well problem resulted in questions to IDWR Eastern Region Staff from DEQ.

- ☐ 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 a 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 you Notice of Claim.) See attached license documents.

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 \$122.00.
- ☐ 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 September 2011, at 1:30pm
(Insert Date and Time)
at the SRBA Court 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).

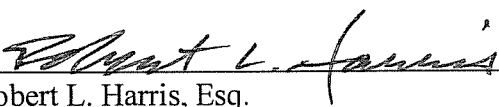
- ☐ Payment of the following additional fees required by IDWR: _____

VERIFICATION

State of Idaho)
)ss.
County of Bonneville)

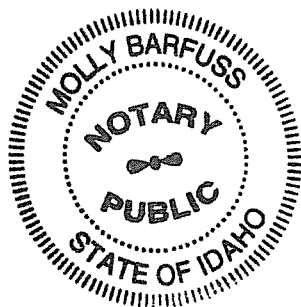
Robert L. Harris, being first duly sworn, upon oath, deposes and says:

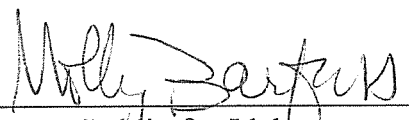
That I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Subscribed and sworn to before me this 23rd day of June, 2011.





Notary Public for Idaho
~~Notary Public for the State of Idaho~~
My Comm. Expires ~~Residing in Idaho Falls~~
Commission Expires 03-7-12

CERTIFICATE OF MAILING

I certify that on this 23rd day of June, 2011, 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:

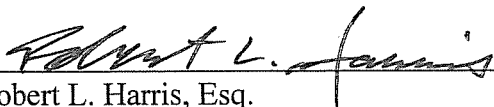
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. 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


Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\RLH\FORMS\WTRRTS\FORM.4, MOT. LATE, AMENDED CLAIM

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 25-07089

Priority: February 10, 1976 Maximum Diversion Rate: 0.22 CFS
Maximum Diversion Volume:¹ 16.0 AF

This is to certify, that DON H. BINGHAM
P.O. BOX 445
UCON, ID 83454

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 10, 1976; and has submitted Proof of Beneficial Use on January 5, 1981. An examination indicates that the works have a diversion capacity of .360 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/01 to 11/01	0.04 CFS	7.0 AF
DOMESTIC	01/01 to 12/31	0.18 CFS	9.0 AF
	Totals	0.22 CFS	16.0 AF

LOCATION OF POINT(S) OF DIVERSION: NENW, Sec. 22, Township 03N, Range 38E
BONNEVILLE County

PLACE OF USE: IRRIGATION

<u>TWN RGE SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
03N 38E 22	NENW 2			2

Total number of acres irrigated: 2

PLACE OF USE: DOMESTIC, same as IRRIGATION use

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The right to use water confirmed by this license is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to reflect cropping patterns or acceptable standards of water delivery efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. Domestic use is for 15 homes.

MICROFILMED

JUL 17 1989

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 25-07089

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 5TH
day of June, 1989.

Acting for

R. Keith Higginson, Director

MICROFILMED

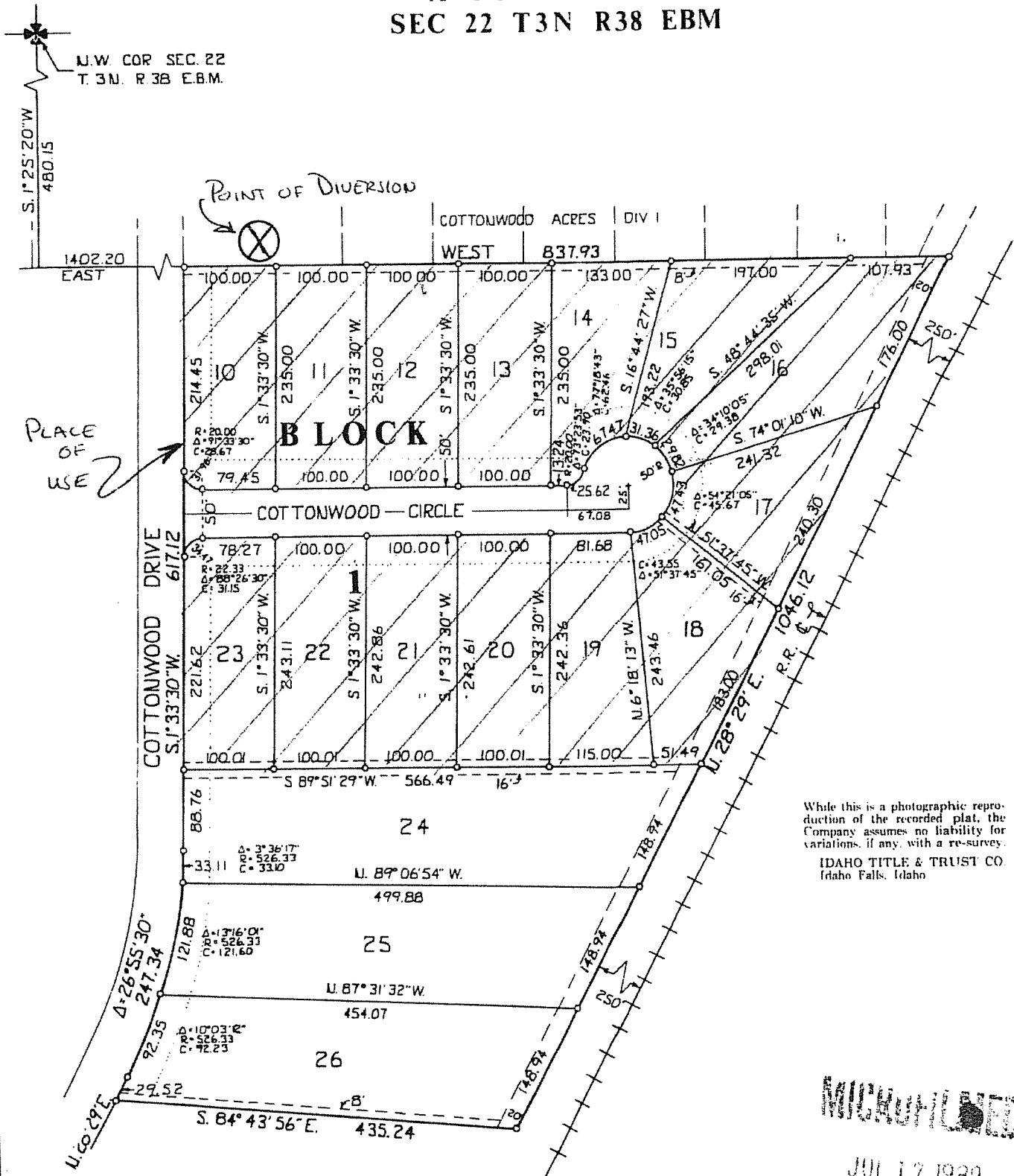
JUL 17 1989

COTTONWOOD ACRES

DIVISION - 4

BONNEVILLE COUNTY, IDAHO

A PORTION OF NE 1/4 NW 1/4
SEC 22 T3N R38 EBM



While this is a photographic reproduction of the recorded plat, the Company assumes no liability for variations, if any, with a re-survey.

IDAHO TITLE & TRUST CO.
Idaho Falls, Idaho

RECORDED

JUL 17 1939

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 25-7089

Date Received _____

Receipt Number _____

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

1. Name of Claimant(s) Cottonwood Acres Domestic Well, Inc. Phone _____

Mailing Address c/o Kathy Taylor, 9488 N. Cottonwood Dr., Idaho Falls, Idaho Zip 83401

2. Date of Priority (Only (1) per claim) February 10, 1975

3. Source of water supply (a) Groundwater

which is tributary to (b) _____

4.a. Location of existing point of diversion is:

Township 3N Range 38E Section 22, _____ 1/4 of NE 1/4 of NW 1/4, Govt. Lot _____,

County of _____

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 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. Well and pump and 250 gallon storage pressure tank.

6. Water is claimed for the following purposes: _____ (Both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from 4/1 to 11/1 amount .04cfs or 7.0 AF

For Domestic purposes from 1/1 to 12/31 amount .18cfs or 9.0 AF

7. Total quantity claimed (a) .22 (cfs) and/or (b) 16 (acre feet)

Last Name _____ Ident. Number _____

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Domestic use is for 15 homes.

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instruction for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TLS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	38E	22					2.0												2.0

Parcel (PIN) No(s). _____

Total number of acres irrigated 2.0

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

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. The Claimant operates the water system for use on lots owned by individuals. or None ()

13. Remarks: _____

14. Basis of Claim (Check one) Beneficial Use _____ Posted Notice _____ Permit _____ Decree _____
License ☒ If applicable provide IDWR Water Right Number 25-7089
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

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 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) _____ Date _____

Date _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am the attorney of
(Title)

Last Name _____ Ident. Number _____

Cottonwood Acres Domestic Well, Inc., that I have signed the foregoing document in the space below as
(Organization)
the attorney of Cottonwood Acres Domestic Well, Inc., and that the statements contained in the
(Title) (Organization)
foregoing document are true and correct.

Signature of Authorized Agent Robert L. Harris

Title and Organization Attorney, Cottonwood Acres Date June 23, 2011
Domestic Well, Inc.

17. Notice of Appearance:

Notice is hereby given that I, Robert L. Harris, 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 Robert L. Harris
Address Holden, Kidwell, Hahn & Crapo, P.L.L.C.
PO Box 50130, Idaho Falls, ID 83405-0130
Date June 23, 2011