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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: 22-626
)
)

Case 39576

) STANDARD FORM 4
)
)

) MOTION TO FILE
)

) ☒ LATE NOTICE OF CLAIM
)

) ☐ AMENDED NOTICE OF CLAIM
)
_____)

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

My name is: City of Driggs

My address is: P.O. Box 48, Driggs, ID 83422

My phone number is: (208) 354-2362

I am an attorney representing the City of Driggs

My name is Jerry R. Rigby

My address is: 25 North 2nd East, P.O. Box 250, Rexburg, Idaho 83440

My phone number is: (208) 356-3633

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.

X I did not file a Notice of Claim to the use of the water in the SRBA because:

These rights have always been diverted in Wyoming and are subject to the Wyoming Roxanna Decree. Therefore, Claimant (the City of Driggs) was originally under the understanding that it was not required to file on these as the Idaho Department of Water Resources originally would not accept any Wyoming diverted water rights. However, the Department has since changed its position and now has determined that notwithstanding Wyoming decrees and permits properly issued for these rights, any right permitted or claimed prior to the commencement of the Snake River Adjudication should be included in the SRBA.

The below described law firm was retained by the City of Driggs some time in May of 2011 and immediately prepared a motion to file a late notice of claim at that time. The claims themselves were previously prepared by Rocky Mountain Environmental (a local engineering firm) and actually signed by the City of Driggs in September of 2009. In fact, counsel went so far as obtaining water right numbers for the subcases from IDWR during May of 2011 in full anticipation of an immediate filing of the said motion. It was fully understood by the claimant, City of Driggs and its counsel, Jerry R. Rigby, that the motions were then filed with the above entitled Court. However, for an unknown reason, they were not filed.

Fully believing that the motions had been filed, the City of Driggs and its counsel entered into protracted negotiations and discussions with the other parties to the Roxanna Decree, the Wyoming State Engineer and the water engineers hired by the City of Driggs, which negotiations have continued to the present time - as set forth in detail in the attached affidavit of counsel, Jerry R. Rigby. Only upon resolving and finalizing the balance of what has been referred to as the numerous RecRec claims for basins 21 and 22 was it discovered by Counsel that the motion for file of late claim had mistakenly not been actually filed with the court.

The water right claimed pursuant to this Motion is extremely valuable as it is a vital and irreplaceable source of water for the City of Driggs and its citizens. This water right, together with the other claims being filed herewith, provides irrigation and most importantly potable water for its citizens' significant needs. Claimant is fully aware that basin 22 has recently become a closed basin. However, due to the excusable and clearly unintentional mistake by counsel for the City of Driggs, Claimant should not be penalized and should be granted the right to finalize the filing of its late claims and pursue them as it would have prior to the closing of Basin 22 just a few months ago.

No party will be injured by this Motion as these rights have been fully diverted in Wyoming and delivered through the Grand Teton Canal company and beneficially used in the City of Driggs on a continuous basis since their respective priority dates.

☐ 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 described 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 \$100.00. The place of use for this water right was already claimed under previous rights.

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, October 16, 2012 at 1:30 P.M.,
at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

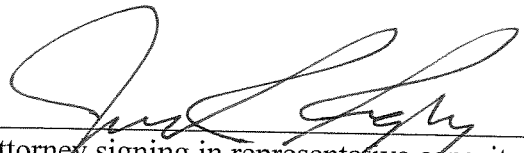
VERIFICATION

STATE OF IDAHO,)
 ss
County of Madison.)

Jerry R. Rigby, being first duly sworn, upon oath, deposes and says:

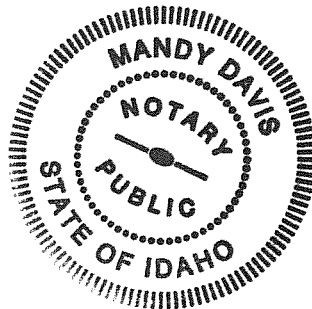
That I am the Secretary of party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 4204101A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

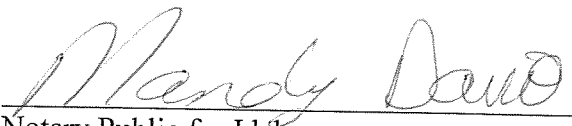
Signature of person filing motion



Attorney signing in representative capacity.

Subscribed and sworn to before me on this 10th day of July, 2012.





Notary Public for Idaho
Residing at St. Anthony
My Commission Expires: 06/24/2017

CERTIFICATE OF MAILING

I certify that on July 10, 2012, 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

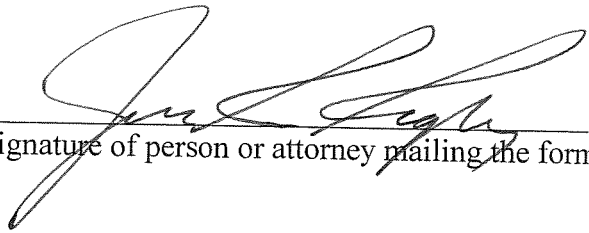
2. Copies to:

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 Resources 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 Special Master, you must serve a copy on all parties in that subcase.


Signature of person or attorney mailing the form

**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 22-626

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) City of Driggs Phone (208) 354-2362
Mailing Address PO Box 48 Driggs ID 83422
Street or Box City State
2. Date of Priority (Only one (1) per claim) 01/22/1916
Month Day Year (YYYY)

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

4. a. Location of Point of Diversion is: Township 5N, Range 46E, Section 20,
NW, 1/4 of NE, 1/4 Govt. Lot 1, BM., County of TETON

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. This right is delivered through the Grand Teton Canal. The point of diversion listed above is where the conveyance system enters Idaho. The actual point of diversion is in Wyoming in T44N R118W Sec. 29 NWNW.

(both dates are inclusive MM-DD) (cfs) (acre feet)

For Irrigation purposes from 4/15 to 10/31 amount 3.2 or _____

For Domestic purposes from 1/01 to 12/31 amount 3.2 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) Domestic use is for the service area of the City of Driggs

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.

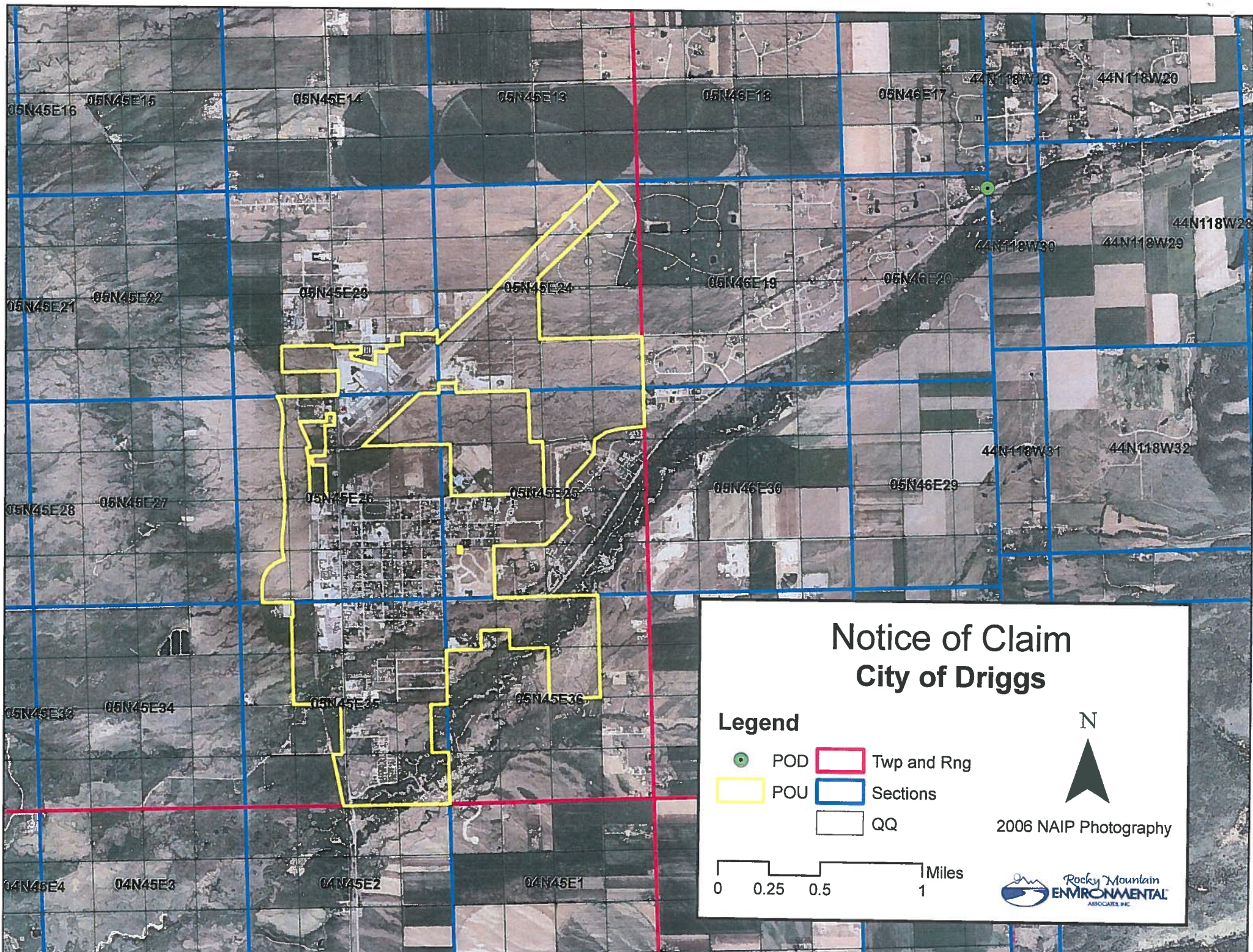
[illegible]

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

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

13. Remarks: This right is based on decreed right 22-626, which was decreed January 24, 1938. The water is conveyed through the Grand Teton Canal to the place of use. Claimant also owns 150 shares in the Grand Teton Canal Company.

Last Name Driggs Identification No. _____



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

Court _____ Decree Date 01/24/1938 Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number 22-626

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: _____

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

Mayor _____ of City of Driggs _____,
Title Organization

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

Mayor _____ of City of Driggs _____,
Title Organization

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

Signature of Authorized Agent Shirley B. Christensen Date 9-15-09

Title and Organization Mayor, City of Driggs

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 Janet L. Lofgren Date 5-10-11

Address _____

Last Name _____ Identification No. _____