

COPY

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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 No. <u>31-12313</u>
	)	(Insert Water Right Number)
	)	
	)	STANDARD FORM 4
Case No. 39576	)	
	)	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 State of Idaho, Department of Lands ("IDL")

My address is 300 North 6th Street, Suite 103, P.O. Box 83720, Boise, Idaho 83720-0050

My phone number is: Work (208) 334-0200 Home Not Applicable

I am an attorney representing IDL

My name is Tyson K. Nelson, Deputy Attorney General

My address is JRW Building, Second Floor, 700 West State Street, P.O. Box 44449, Boise, Idaho 83711-4449

My phone number is (208) 334-2400

MOTION TO FILE 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 land identified as the place of use for this claim is owned by the State of Idaho and managed by IDL for grazing purposes. IDL recently became aware that the State's lessee has historically irrigated the State land with waste water from the adjacent private land, and a water right had not been claimed in the SRBA for this use. IDL is filing a claim in the SRBA to recognize the use of waste water on the State land.

☐ 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.)

IDL's supporting documentation is included with the Notice of Claim, attached hereto.

I have attached:

☒ A fully completed Notice of Claim (available from IDWR) is attached.

☒ A claim filing fee and a late claim fee for those claims other than domestic or stock water use for which a notice of claim was filed. To determine this amount, contact IDWR at (800) 451-4129. IDWR has advised that the claim filing fee for this notice of claim is \$1,061.45. IDL requests that IDWR initiate an SA-50 Interagency Billing Statement to bill IDL for the fees (see attached letter).

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, February 19, 2013, at 1:30 p.m.
at the SRBA courthouse, 253 Third Avenue, Twin Falls, Idaho.

VERIFICATION (Must be completed)

State of Idaho

County of Ada

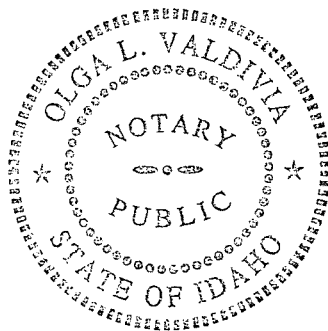
Tyson K. Nelson, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined 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.

Husen

Attorney signing in representative capacity

Subscribed and sworn to before me on November 16, 2012
(Insert Date)



Olga L. Valdivia
Notary Public for Boise, ID
Residing at: Boise
My Commission expires: 2/8/2018

CERTIFICATE OF MAILING

I certify that on this 16th day of November, 2012, I caused to be served the original and/or copy of this form on the following persons by the indicated method:

1. Original to:

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

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

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

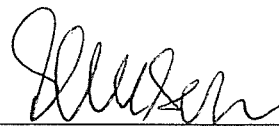
- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

Not Applicable

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)



Tyson K. Nelson
Deputy Attorney General

EASTERN IDAHO SUPERVISORY AREA

3563 Ririe Highway
Idaho Falls, ID 83401
Phone (208) 525-7167
Fax (208) 525-7011
pbrown@idl.idaho.gov



STATE BOARD OF LAND COMMISSIONERS

C. L. "Butch" Otter, Governor
Ben Ysursa, Secretary of State
Lawrence G. Wasden, Attorney General
Brandon Woolf, State Controller
Tom Luna, Sup't of Public Instruction

November 2, 2012

Idaho Department of Water Resources
Attn: Craig Saxton
Idaho Water Center
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Fee Payment for Claim No. 31-12313

Dear Mr. Saxton:

The Idaho Department of Lands ("IDL") has prepared a Notice of Claim for water right claim no. 31-12313 and will file a Motion to File Late Notice of Claim in the SRBA Court for the claim. In the event the SRBA Court grants IDL's motion, IDL requests that the Idaho Department of Water Resources initiate a SA-50 Interagency Billing Statement to bill IDL for the filing fee. The filing fee is \$1,061.45.

If you have any questions, please contact me at pbrown@idl.idaho.gov or 208-525-7167.
Thank you for your assistance in this matter.

Sincerely,

Pat Brown
Area Manager
Eastern Supervisory Area

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 31-12313

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) State of Idaho, Department of Lands Phone (208) 334-0200

Mailing Address 300 N. 6th St., Ste. 103, P.O. Box 83720 Boise ID 83720-0050
Street or Box City State ZIP

2. Date of Priority (Only one (1) per claim) 05/02/1948
Month Day Year (YYYY)

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

4. a. Location of Point of Diversion is: Township 13N, Range 39E, Section 13,
SE, 1/4 of NE, 1/4 Govt. Lot _____, BM., County of Clark

Parcel (PIN) no. _____

Additional points of diversion if any: See attached additional information.

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. Water is diverted from springs and applied to privately-owned land.

Water flows from private land onto adjacent State land and is applied to State land through a series of ditches.

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Irrigation purposes from 05/01 to 10/31 amount 17.46 or

For purposes from to amount or

For purposes from to amount or

For purposes from to amount or

7. Total quantity claimed (a) 17.46 (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	
13N	39E	13			40	40				39	40				40	40	20	17	276
13N	40E	18			38	18			35	23	40	40	9	38	13	40	40	19	353
		19	40	31	9	39									27			3	149
		20					5	30	39	3		18							95

Parcel (PIN) no(s).

Total number of acres irrigated 873

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

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.

or None (✓)

13. Remarks:

Last Name Idaho Department of Lands Identification No. 31-12313

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: 3

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

Patrick Brown, Area Manager for Eastern Area of State of Idaho, Department of Lands,

Area Manager for the Eastern Area Title State of Idaho, Department of Lands Organization

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

Area Manager for the Eastern Area of State of Idaho, Department of Lands,

Area Manager for the Eastern Area Title State of Idaho, Department of Lands Organization

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

Signature of Authorized Agent [Signature] Date 11/2/12

Title and Organization Area Manager, State of Idaho, Department of Lands

16. Notice of Appearance:

Notice is hereby given that I, Tyson K. Nelson, Deputy Attorney General, 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 [Signature] Date 11/16/2012

Address Office of the Attorney General, Natural Resources Division

P.O. Box 44449, Boise, ID 83711-4449

Last Name Idaho Department of Lands Identification No. 31-12313

Notice of Claim Attachment 1

Description of Points of Diversion

NOTICE OF CLAIM TO A WATER RIGHT
Claim No. 31-12313

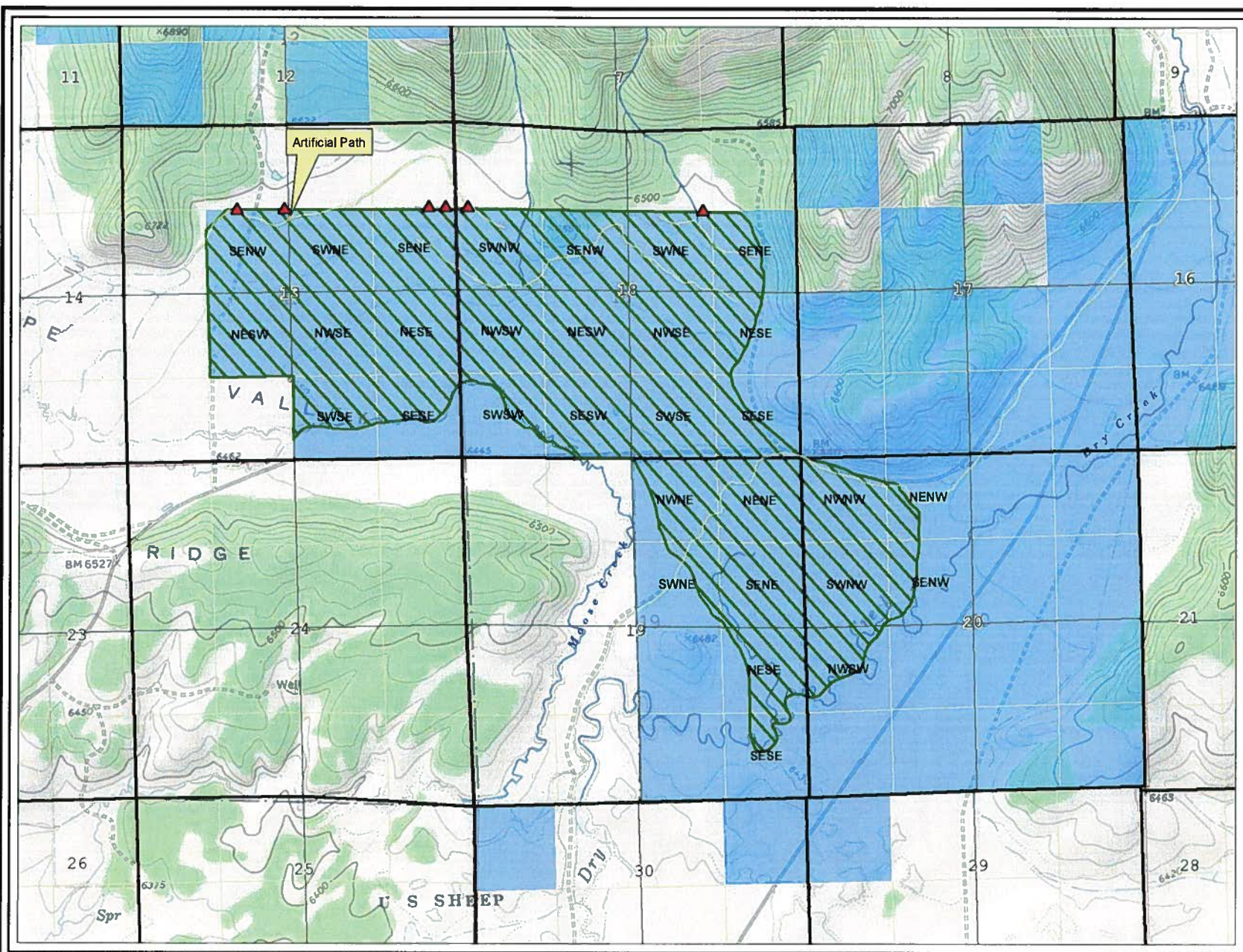
Additional Information for Section 4 - Location of Point of Diversion:

The points of diversion are at the following locations.

Township 13N, Range 39E, Section 13,	NESENE	
	NESENE	
	NESENW	
	NWSENW	
Township 13N, Range 40E, Section 18,	NESWNE	
	NWSWNW	(Lot 2)

Notice of Claim Attachment 2

Map



Place of Use and Diversion

31-12313

Legend

- ▲ Points of Diversion
- ▭ Places of Use
- ▭ IDL Endowment Ownership
- Artificial Path
- Stream/River
- Canal/Ditch
- ▭ Township
- ▭ Sections
- ▭ Quarter Quarter
- Quarter Lines

Explanation

Projection: Idaho Transverse Mercator, NAD 83

Map Notes and Data Sources
Endowment Lands current as of map date
Hagenberth Map 1 POU derived from
Anelope Valley-Hagenberth Map 7/2/2012
IDWR Canal data, downloaded 7/3/2012
ESRI USA Topo Service

Disclaimer:
This map has been compiled using the best
information available to the Idaho Department of
Lands at the time and may be updated and/or
revised without notice. In situations where known
accuracy and completeness is required, the user
has the responsibility to verify the accuracy of the
map and the underlying data sources.

10/05/2012

Scale 1:17,000

0 0.25 0.5 Miles



Vicinity Map



Notice of Claim Attachment 3

Affidavit of James F. Hagenbarth

3. I have leased the State Land since 1991.

4. The Lease covers certain parcels of State land located in Township 13 North, Range 39 East, Section 13; and Township 13 North, Range 40 East, Sections 18, 19, and 20, Boise Meridian, Clark County, Idaho. The State land is identified in Exhibit A attached hereto (hereinafter "State Land").

5. My family owns real property adjacent to the State Land, generally located north and west of the State Land.

6. My family irrigates our private land adjacent to the State Land under water right nos. 31-253, 31-254, 31-2077, 31-2125, 31-4027, 31-10208, 31-10212, 31-10216, and 31-10218.

7. I am familiar with the historic irrigation practices on my family's private land and on the State Land.

8. In the fall of 1947, my father, D.V. Hagenbarth, constructed a massive sub-flood water delivery system for Antelope Valley, where the State Land is located.

9. During spring months of the year when there is sufficient water, water flows off my family's private land onto the adjacent State Land through a series of ditches on the State and private land.

10. Based upon my knowledge of my family's historic practices in this area of Idaho, water from my family's private land has flowed onto and irrigated the State Land beginning with the irrigation season in May 1948.

11. During times of high flow during runoff, approximately one inch per acre of water flows from the private land onto the State Land.

/

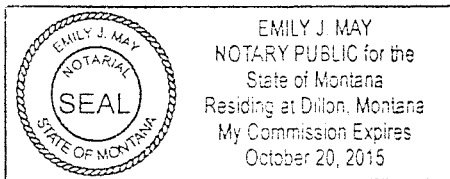
/

Further your affiant sayeth naught.

DATED this 6th day of November 2012.

James F. Hagenbarth
James F. Hagenbarth

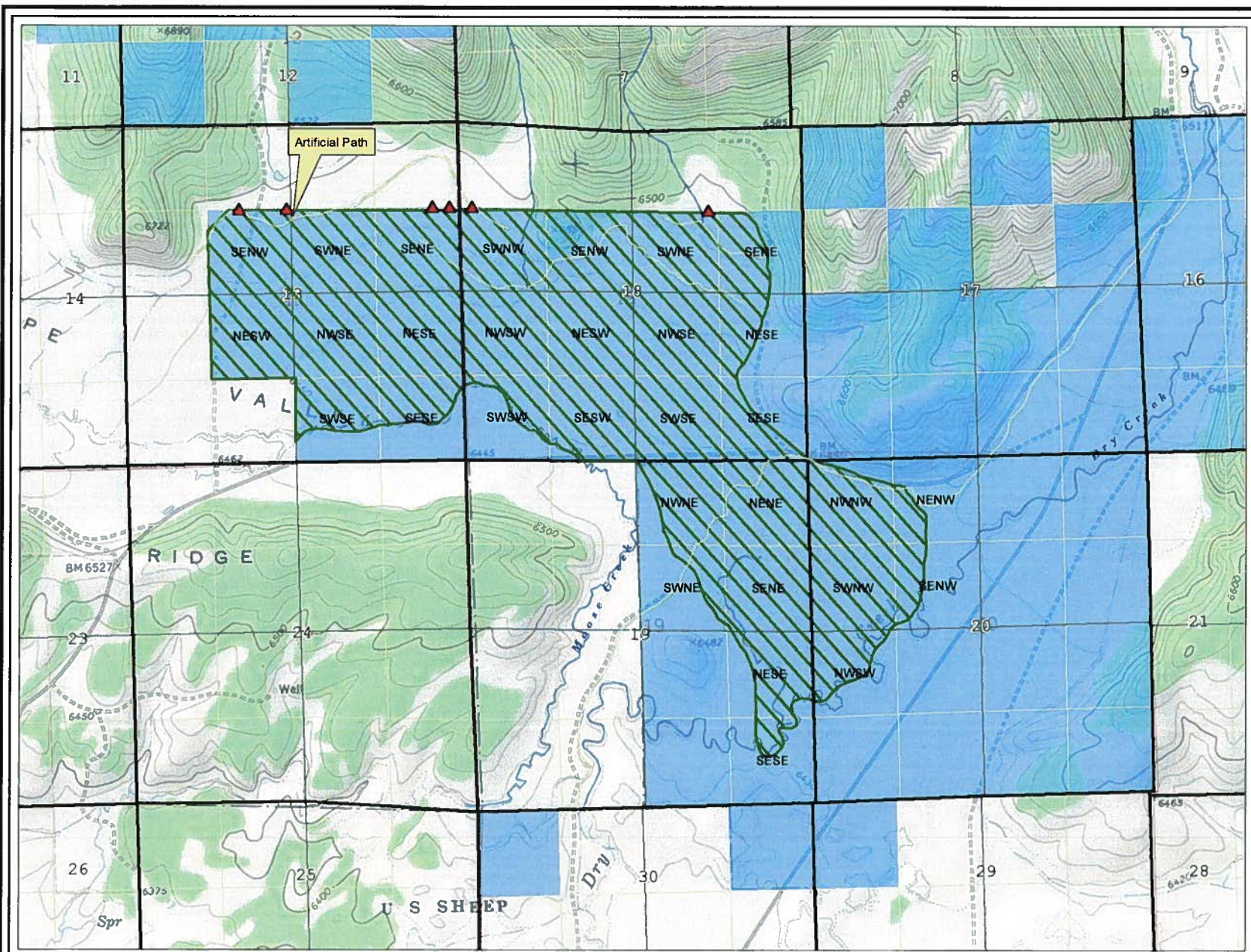
Subscribed and sworn to before me on this 6th day of November 2012.



Emily J. May
Notary Public for _____
Residing at: _____
My commission expires: _____

Affidavit of James F. Hagenbarth Exhibit A

Map of Place of Use for Water Right 31-12313



Place of Use and Diversion 31-12313

Legend

- ▲ Points of Diversion
- Places of Use
- IDL Endowment Ownership
- Artificial Path
- Stream/River
- Canal/Ditch
- Township
- Sections
- Quarter Quarter
- Quarter Lines

Explanation

Projection: Idaho Transverse Mercator, NAD 83

Map Notes and Data Sources
Endowment Lands current as of map date
Hagenbarth Map 1 POU derived from
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10/05/2012

Scale 1:17,000

0 0.25 0.5 Miles

