

RECEIVED

MAY 28 2003

Department of Water Resources

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

2003 MAY 23 PM 1 57

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 43-13309

(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.

COPY
(over)

Claim accepted per
GARRICK Baxter
8-20-03
UH

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

My name is Preston R. Allen & Sons

My address is 2601 E 300 S Declo Idaho 83323

My phone number is: Work 300-0123 Home 208-349-5573

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:

This Filing to replace incorrect Filing

☐ 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 \$ 25.00.
- ☐ 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 August 19th 2003 @ 1:30pm
(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:

COPY

- ☐ 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 Twin Falls

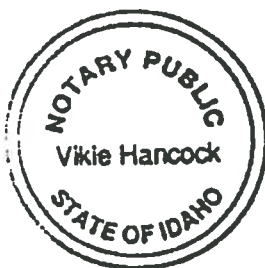
Lony Allen being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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

Lony Allen
Signature of person filing motion

Attorney signing in representative capacity

Subscribed and sworn to before me on May 23, 2003
(Insert Date)



[Signature]
Notary Public for IDAHO
Residing at: Buhl, Idaho
My Commission expires: 5-7-2009

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 5/27/03, 2003, 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:

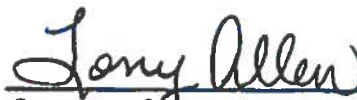
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

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

RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576
Identification No. 43-13309
Date Received _____
Receipt Number _____

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW
For Domestic and/or Stockwater Purposes
Where Daily Use is less than 13,000 gallons per day.

Filing Fee \$25

Please type or print clearly

1. Name of Claimant (s) Preston R Allen & Sons Phone (208) 349-5573 or 300-0123

Mailing Address 2601 E 300S Declo Id Zip 83323

2. Date of Priority (Only one per claim) 01/01/1960 Month/Day/Year

3. Source of water supply (Check one) ☒ Groundwater or Other () (a) _____
Name or kind of source

which is tributary to (b) _____

4. Location of point of diversion is: Township 11 S Range 27 E

Section 15, SE 1/4 of SE 1/4 of _____ 1/4, Govt. Lot _____, BM.,

County of Cassia

Additional points of diversion if any: _____

5. Description of existing diversion works (Ditches, Wells, Pumps, Pipelines, Headgate 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. _____

6. Water is claimed for the following: (limited to Domestic and/or Stockwater only. See Instructions.)

	Month/Day	to	Month/Day	amount	(cfs)
For <u>Stockwater</u> purposes from	<u>1/01</u>	to	<u>12/31</u>		<u>.04</u>
	(Both dates are inclusive)				
For <u>Domestic</u> purposes from	<u>1/01</u>	to	<u>12/31</u>		<u>.04</u>

7. Total quantity claimed .04 (cfs)

8. Total consumptive use claimed is de minimus

9. Non-irrigation uses. Describe fully. (Domestic: give number of households served if single ownership; Stockwater: Type and Number of livestock) 300 - 500 hd

COPY

0. Place of use is: Township: 11S Range 27
Section 15, SE 1/4 of SE 1/4, Govt. Lot _____, B.M.,
County of Cassia for (Circle One) Domestic Stock Domestic and Stock
Additional places of use, if any _____

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

12. Do you own the property listed above as place of use? Yes X No _____
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.

14. Remarks: Claim numbers 43-13309 and 43-13308 will take the place of Claim number 43-4188
water right
Claim 43-4188 will be relinquished if this is accepted

15. Basis of Claim (Circle One) Beneficial Use Posted Notice License Permit Decree
Court _____ Decree Date _____ Plaintiff vs Defendant _____

If applicable provide IDWR Water Right Number _____

16. Signature (s)
(a.) By signing below, I/We acknowledge that I/We have received, read and understood the form entitled "How you will receive notice in the Snake River Basin Adjudication". (b.) I/We do _____ do not X 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.

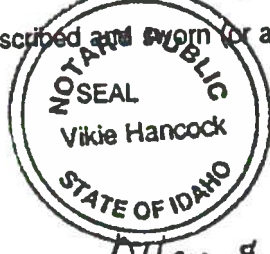
Signature of Claimant (s) _____ Date _____
_____ Date _____

For Organizations: I do solemnly swear or affirm that I am General Partner
of Preston R. Allen + Sons that I have signed the foregoing
document in the space below as General Partner of Preston R. Allen + Sons
Organization Title Organization

and that the statements contained in the foregoing document are true and correct.
Signature of Authorized Agent Long Allen Date 5-23-03
Title and Organization General Partner Preston R. Allen + Sons

State of Idaho/or _____ } SS.
County of Shoshone }

Subscribed and sworn (or affirmed) before me this 23rd day of May 2003



Notary Public [Signature]
Residing at Buhl, Idaho
My Commission Expires 5-7-2009

Last Name Allen & Sons Ident No. _____

Copies: White-State, Yellow-Claimant

COPY

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 43-4188

WATER RIGHT NUMBER: 43-4188

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	PRESTON R ALLEN 2601 E 300 S PO BOX 63 DECLO, ID 83323 (208)349-5714

Priority Date: 01/01/1960
Basis: Beneficial Use
Status: Closed

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER	01/01 to 12/31	0.220 CFS	13.40 AF
DOMESTIC	01/01 to 12/31	0.040 CFS	1.00 AF
	<u>Total Diversion:</u>	0.260 CFS	14.40 AF

Location of Point(s) of Diversion

GROUND WATER	SE1/4SE1/4SE1/4	Sec. 15, Twp 11S, Rge 27E, B.M.
CASSIA County		

Place of UseSTOCKWATER Within CASSIA County

T11S R27E S15 SESE

DOMESTIC Within CASSIA County

T11S R27E S15 SESE

Conditions of Approval:Remarks:

1. Originally this claim included two wells at different points of diversion. Since the systems are independent of one another it is more appropriate to file separate claims, which has resulted in this amended claim and a new claim.

Comments:Dates and Other Information:

*Temp claim
to replace
this with
POD in 15
is 43-13309.
This will be
relinquished*

New
claim
filed
10-31-2000

Memo

August 22, 2003

From: Vikie Hancock

To: File

Re: Relinquishment of 43-4188

Claim 43-4188 for domestic and stockwater use was filed in the SRBA based upon a Statutory Claim of the same number filed by Preston Allen in 1983. Both the SRBA and Statutory Claims listed two points of diversion, SESE Section 15 and SESE Section 16, T11S, R27E. They also listed two places of use: the SESE S15 and SESE S16, T11S, R27E. Remarks indicated that the claim was for domestic and stockwater use for two families from two drilled wells with underground piping systems. SRBA claim 43-4188 was decreed July 24, 1998 as it was originally filed, with two points of diversion and two places of use.

In October 2000 the claimants, unaware that they had already been issued a Partial Decree on 43-4188, requested the IDWR agent investigating their irrigation claims to amend 43-4188 so that it included only the well and place of use in Section 15. At the same time they filed a new claim for domestic and stockwater use, 43-11271, to cover the well and place of use in Section 16. SRBA claim 43-11271 was decreed June 28, 2002. "Amended" claim 43-4188 remained on IDWRs database but, as the right had previously been partially decreed, this claim did not continue through the process and its status was set to *closed*.

In May 2003 the claimants, Preston and Tony Allen, realized that their water right 43-4188 still had two places of use and points of diversion, which they believed was not correct. Tony Allen met with me and a search of IDWR records discovered what had happened. At this point we discussed the possible ways to correct the water rights so that the Allens would have two separate rights for the two separate wells and places of use:

- Motion the SRBA Court to set aside the partial decree for 43-4188 and then amend the claim to include just the well and POU in Section 15.
- Motion the SRBA Court to accept a late claim to cover the well and place of use in Section 15 and, if the late claim was accepted, relinquish water right 43-4188.

The claimant, Tony Allen, decided to file late claim 43-13309 and subsequently relinquish water right 43-4188. Remarks (item 14) on the signed, handwritten Notice of Claim to A Water Right state that claim numbers 43-13309 and 43-13308 will take the place of claim number 43-4188 and that 43-4188 will be relinquished if the late claim is accepted. This should read *...claim numbers 43-13309 and 43-11271 will take the place of claim number 43-4188...* Thus, when late claim 43-13309 is accepted and/or decreed, the claimants should be asked to relinquish 43-4188.