

RECEIVED
JUL 16 2014
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: 21-97D, 21-96C, 21-94C, 21-2062
	)	& 21-2038
	)	
Case 39576	)	STANDARD FORM 4
	)	
	)	EXPEDITED MOTION TO FILE
	)	X LATE NOTICE OF CLAIMS
_____	)	☐ AMENDED NOTICE OF CLAIM

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

My name is: Michael Bryan Moedl, member manager of Badger Butte Cattle Company, LLC; Silver Saddle Cattle Company, LLC; Bootjack Cattle Company, LLC; Hope Creek Cattle Company, LLC; and Meadow Vue Cattle Company LLC;

My address is: 3325 E. Skyview Dr., Idaho Falls, ID 83401

My phone number is: 208-521-1111

I am an attorney representing Michael Bryan Moedl; Badger Butte Cattle Company, LLC; Silver Saddle Cattle Company, LLC; Bootjack Cattle Company, LLC; Hope Creek Cattle Company, LLC; and Meadow Vue Cattle Company LLC

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:

I, Michael Bryan Moedl, purchased the lands upon which the claimed water rights were appurtenant from my grandmother, Lola Moedl, on November 25, 1994 (hereinafter (Lands)). My grandfather, Elmer Moedl, purchased the Lands via Warranty Deed in July of 1946 with language which included “with the natural flow Hope Creek and 200 inches of Rock Creek”. At the time of my purchase, I granted to my father, Dennis Moedl, a life estate in the Lands. To my personal knowledge and belief, the claimed water rights have been diverted in the similar manner to which they are now claimed from the original dates of their respective claimed priorities. During the adjudication, I instructed my father, the life tenant, to file claims for the water rights being diverted upon the Lands. I even paid him \$500 toward the costs of filing the applications for the claimed water rights upon the Lands over ten years ago. I was then informed by my father that the applications had been filed and were now fully in place. Because he was the life tenant of the Lands and worked the lands and water on the lands from his early life, I fully believed that he had received all notices regarding the water rights and that because he did not bring anything to my attention, I had no reason to believe that the rights weren’t fully adjudicated pursuant to the original decrees, licenses and permits.

My father passed away in September of 2013. Only recently was I made aware that the water rights on the Lands had NOT been claimed and adjudicated as had been represented by my father. Because he is not here to ask, I have no explanation as to why he failed to file the claims and why represented to me that they HAD been filed and “taken care of”.

The claimed water rights are all based upon valid decrees, licenses or permits. The claims based upon decrees are from the Rexburg Decree and none of the claims are “competing” claims with others in the adjudication but are all based upon “unclaimed” decreed, licensed or permitted rights. Furthermore, because all claimed water rights have been and are currently being diverted since their original priority dates, no other water user has been or will be injured by granting the valid rights.

The five claimed water rights include three originally decreed in the Sherman Decree and two licensed in what is known as the Masterson Licenses. The Sherman Decree combines diversions from Duck Creek, Rock Creek and Hope Creek. I am the only diversion on Hope

Creek. One other entity owned by Lynn Briggs diverts from Duck Creek via Rock Creek. Hope Creek originates on the National Forest Lands and flows through Idaho Wildlife Federation and the Bureau of Land Management Lands. However, none of the above cause any diversion of any waters. The other diversions from the other creeks, although limited, will be notified by me as to these late claims, just as the individual entities described above will be notified. The Creeks drain into Henry's Lake, owned by North Fork Reservoir Company which shall also receive notice of these late claims. As to all other potential parties, I am filing under the expedited hearing rules which will allow them to have proper notice.

I recognize that basin 21 has been closed. Nevertheless, the claimed water rights have always been diverted without interruption or notice to stop diversion until 2014 and due to the fact that I did not purposefully delay filing a late claim, and due to the fact that no other parties will be injured by this late claim, and due to the fact that all parties involved in any diversion of the particular creeks and streams where these claimed water rights are diverted will receive notice by me through mailed copies of the claimed water rights, the Motion to File a Late Claim should be granted.

The water right claimed pursuant to these Motions are extremely valuable to me. In fact, without them, my entire business will be destroyed. I have never received notice of failing to file these claims until now. Furthermore, I never received notice that my decrees, licensed or permitted rights were going to be voided. Due to the excusable and clearly unintentional delay by me, I should not be penalized and should be granted the right to finalize the filing of these late claims and pursue them as I would have prior to the closing of Basin 21.

I have transferred by rights in the Lands to five individual limited liability companies as listed above. However, I am the member manager of each and own the interest within said companies. Therefore, I have filed these claimed water rights under my individual names for the purpose of these proceedings.

- ☐ 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.)

Deeds and attachments to the claims

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 \$695 $((50 + 50) \times 5 + 190 = \$500 + 195 = \$695$ for all five claims).

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, August 12th, 2014 at 1:30 P.M.,
at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

VERIFICATION

STATE OF IDAHO,)

SS

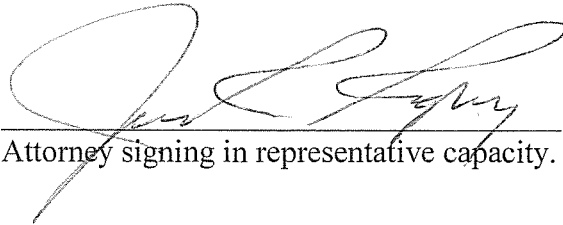
County of Madison.)

Michael B. Moedl, being first duly sworn, upon oath, deposes and says:

That I am the member manager of the 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.

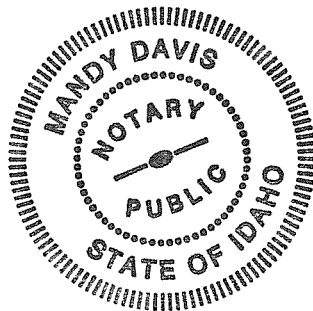


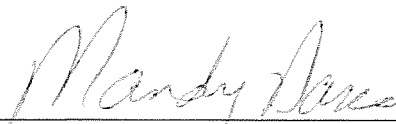
Signature of person filing motion



Attorney signing in representative capacity.

Subscribed and sworn to before me on this 14th day of July, 2014.





Notary Public for Idaho

Residing at St. Anthony

My Commission Expires: 06/24/2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of July, 2014, I caused the foregoing document to be filed with the Court and true and correct copies served on the following parties by the methods indicated:

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: <u>(208) 736-2121</u>
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2. Copies to:

IDWR DOCUMENT DEPOSITORY P.O. BOX 83720 BOISE, ID 83720-0098	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
C. THOMAS ARKOOSH ARKOOSH LAW OFFICES PO BOX 2900 BOISE, ID 83701	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
ALBERT B. BARKER JOHN K SIMPSON SHELLEY M. DAVIS BARKER ROSHOLT & SIMPSON LLP PO BOX 2139 BOISE, ID 83701-2139	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
PAUL L. ARRINGTON TRAVIS L. THOMPSON BARKER ROSHOLT & SIMPSON LLP 195 RIVER VISTA PL. STE. 204 TWIN FALLS, ID 83301-3029	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
W. KENT FLETCHER FLETCHER LAW OFFICE PO BOX 248 BURLEY, ID 83318-0248	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail

BERT L. OSBORN BERT L. OSBORN CHARTERED PO BOX 158 PAYETTE, ID 83661-0158	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
ADAM T. DEVOE DAVID G. SCOTT BROWNSTEIN HYATT & FARBER PC 410 17 TH ST., 22 ND FL DENVER, CO 80202-4437	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
RON KERL COOPER & LARSEN CHARTERED PO BOX 4229 POCATELLO, ID 83205-4229	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
TERRY G. HOGUE HOGUE & DUNLAP LLP PO BOX 460 HAILEY, ID 83333-0460	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
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BRANDELLE G. WHITWORTH WILLIAM F. BACON SHOSHONE-BANNOCK TRIBES TRIBAL COUNSEL OFFICE PO BOX 306 FORT HALL, ID 83206-0306	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
DOUGLAS B L ENDRESON REID PEYTON CHAMBERS SONOSKY CHAMBERS SACHSE ENDRESON & PERRY LLC 1425 K ST NW STE 600 WASHINGTON, DC 20005-3498	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
CLIFF S BENTZ YTURRI ROSE LLP 89 SW 3RD AVE ONTARIO, OR 97914-0058	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
ANGELO L ROSA 1155 EAST 2100 SOUTH, APT 649 SALT LAKE CITY, UT 84106-2863	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
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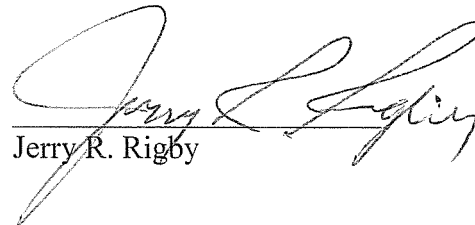
CRAIG A. PRIDGEN CRAIG A. PRIDGEN ATTYS AT LAW 305 W. LAKE BLVD. TAHOE CITY, CA 96145	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
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UNITED STATES DEPT. OF JUSTICE ENVIRONMENT & NATURAL RESOURCE 550 WEST FORT STREET, MSC 033 BOISE, ID 83724-0101	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Statehouse Mail
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Land Conservation & Wildlife Federation P.O. Box 6426 Boise, ID 83707	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express
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Jerry R. Rigby