

RECEIVED
JAN 06 2005
DEPARTMENT OF
WATER RESOURCES

Name of Party Filing Document:
Jay L. Black

Attorney Name & Address:
Roger D. Ling, ISB No. 1018
LING, ROBINSON & WALKER
615 H Street, P. O. Box 396
Rupert, Idaho 83350

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

) Subcase No. 43-13382
)
) **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 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 October 16, 1997), 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.

SCANNED

☒ I have read *SRBA Administrative Order I, Rules of Procedure* (amended October 16, 1997).

My name is

My address is

My phone number is: Work:

Home:

I am an attorney representing Jay L. Black and Kenneth S. Black,

Jay L. Black and Sharon P. Black,

Ronald C. Ward and Venna C. Ward, and

Clark Ward, Sara Jane Ward, and Vaudis J. Ward

My name is Roger D. Ling

My address is P. O. Box 396

Rupert, Idaho 83350

My phone number is (208) 436-4717

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 claimants above named filed claims to use the water of Grape Creek, to which Summit Creek is a tributary. It was not known that a water right would be required for the diversion of Summit Creek to Grape Creek at a point above the normal confluence of the two creeks. The need for a right to divert Summit Creek into Grape Creek was noted as the result of the demands by the United States Forest Service, Department of Agriculture, that a water right be shown to exist to justify the easement for the ditch across Forest Service land used in this diversion.~~

☐

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 \$_____.
- ☒ 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 \$50.00.

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, April 19, 2004 at 1:30 p.m.
(Insert date and time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho. The parties may participate by phone by dialing the presiding judge at (918) 583-3445, Code 406128

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 (Must be Completed)

State of Idaho

County of Minidoka

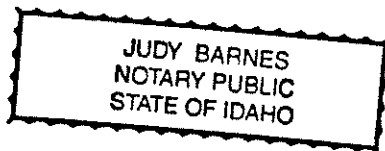
Roger D. Ling, duly sworn, upon oath, deposes and says:
(Name of person filing form)

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.

Signature of person filing motion

Roger D. Ling
Attorney signing in representative capacity

Subscribed and sworn to before me on: January 5, 2005
(Insert Date)



Judy Barnes
Notary Public for State of Idaho
Residing at: Rupert, Idaho
My Commission expires: 02/12/2005

INSTRUCTION FOR MAILING

You must mail the motion, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted by the 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 hereby certify that on January 5, 2005, I mailed the original and copies of this motion, 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, Idaho 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, Idaho 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 033
Boise, Idaho 83734

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/addresses 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

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: _____

Date Received: _____

Receipt No.: _____

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

1. Name of Claimant(s): Jay L. Black * Phone: (208) 824-5593
Mailing Address: P. O. Box 103, Almo, Idaho Zip: 83312

* See additional claimants described in Exhibit "A" attached hereto and made a part hereof.

2. Date of Priority (Only one (1) per claim): April 1, 1890
3. Source of water supply (a): Summit Creek
which is tributary to (b): Grape Creek
4. a. Location of existing point of diversion is: Township 14 S. Range 24 EBM Section 25
NW1/4 of SW1/4 of NW1/4, Govt. Lot, _____ B.M., County of Cassia

Additional points of diversion if any:

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 _____

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. A diversion dam in Summit Creek, diverting summit Creek into a earthen ditch which carries the water from Summit Creek, a tributary to Grape Creek, to Grape Creek, where the water is commingled with the water of Grape Creek and becomes Grape Creek water for diversion from Grape Creek under Water Right Nos. 43-00402, 43-00403A, 43-00404, 43-00405, 43-00406, 43-00407, 43-02215, 43-02247, all rights held by claimants.

Last Name Black Ident.No. _____

SCANNED

JAN 16 2005

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

For irrigation purposes from April 1 to October 31 amount 17.6 or _____

For stockwater purposes from January 1 to December 31 amount .05 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed: (a) 17.6 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses – Describe fully (e.g., Domestic: Give number of households served; Stockwater: Type and number of livestock, etc.) Stockwater right not to exceed 13,000 gallons per day.

10. Description of place of use: Acres described in water rights identified in paragraph 5 of this claim
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.

TWP	RNG	SEC	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Total
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	

Total number of acres irrigated: 728

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

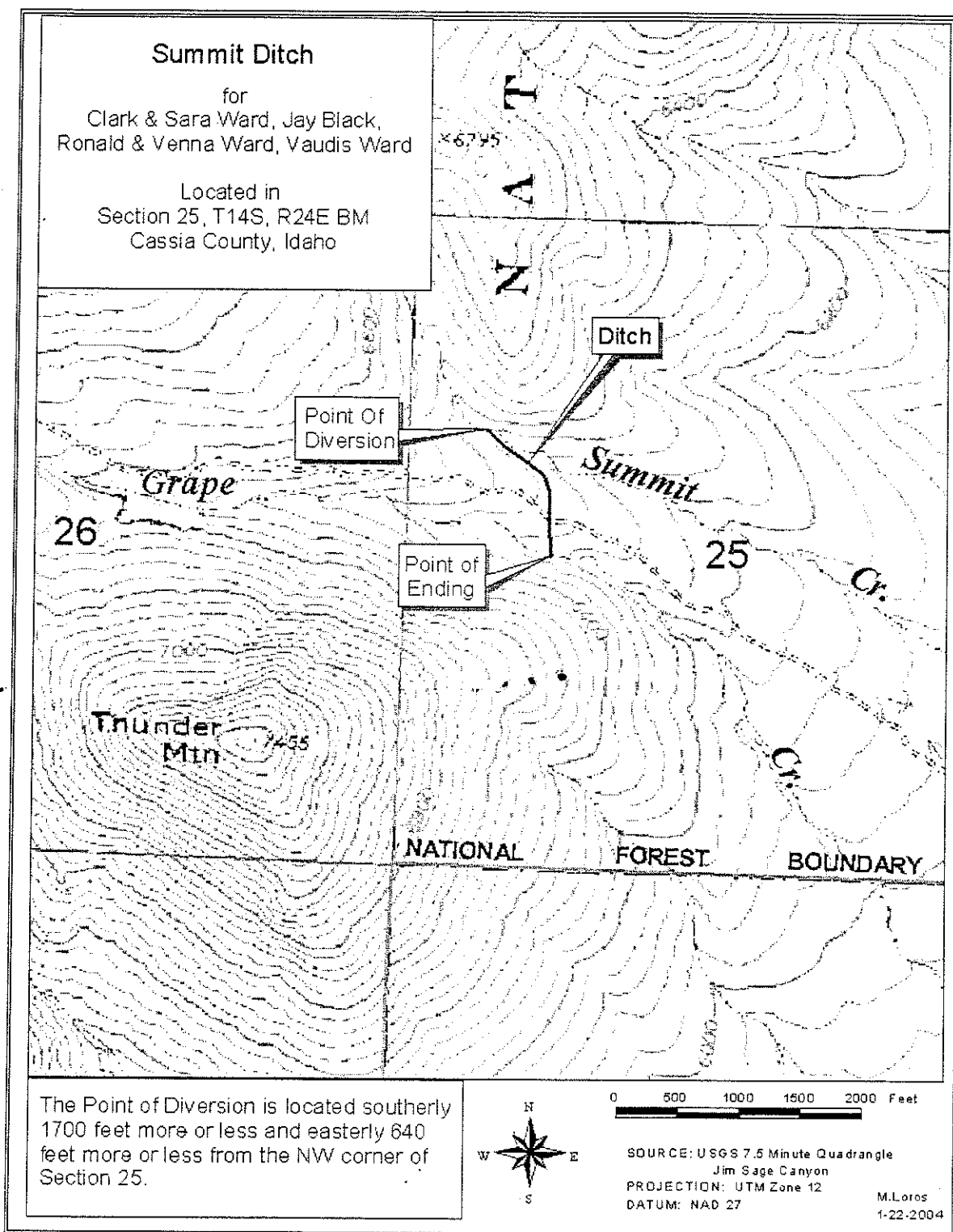
12. Do you own the property listed above as place of use? Yes ☒ No ☐
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
See paragraph 5 or None ()

14. Remarks: The water diverted under this right has historically been diverted from Summit Creek into a ditch which carries the water of Summit Creek to Grape Creek to which Summit Creek is a tributary. The Summit Creek water then becomes a part of Grape Creek and is diverted pursuant to the water rights related to the diversion and beneficial use of water from Grape Creek by the claimants under the water rights described in paragraph 5. This water right has been established by the diversion from Summit Creek and the application of water to beneficial use as a part of Grape Creek.

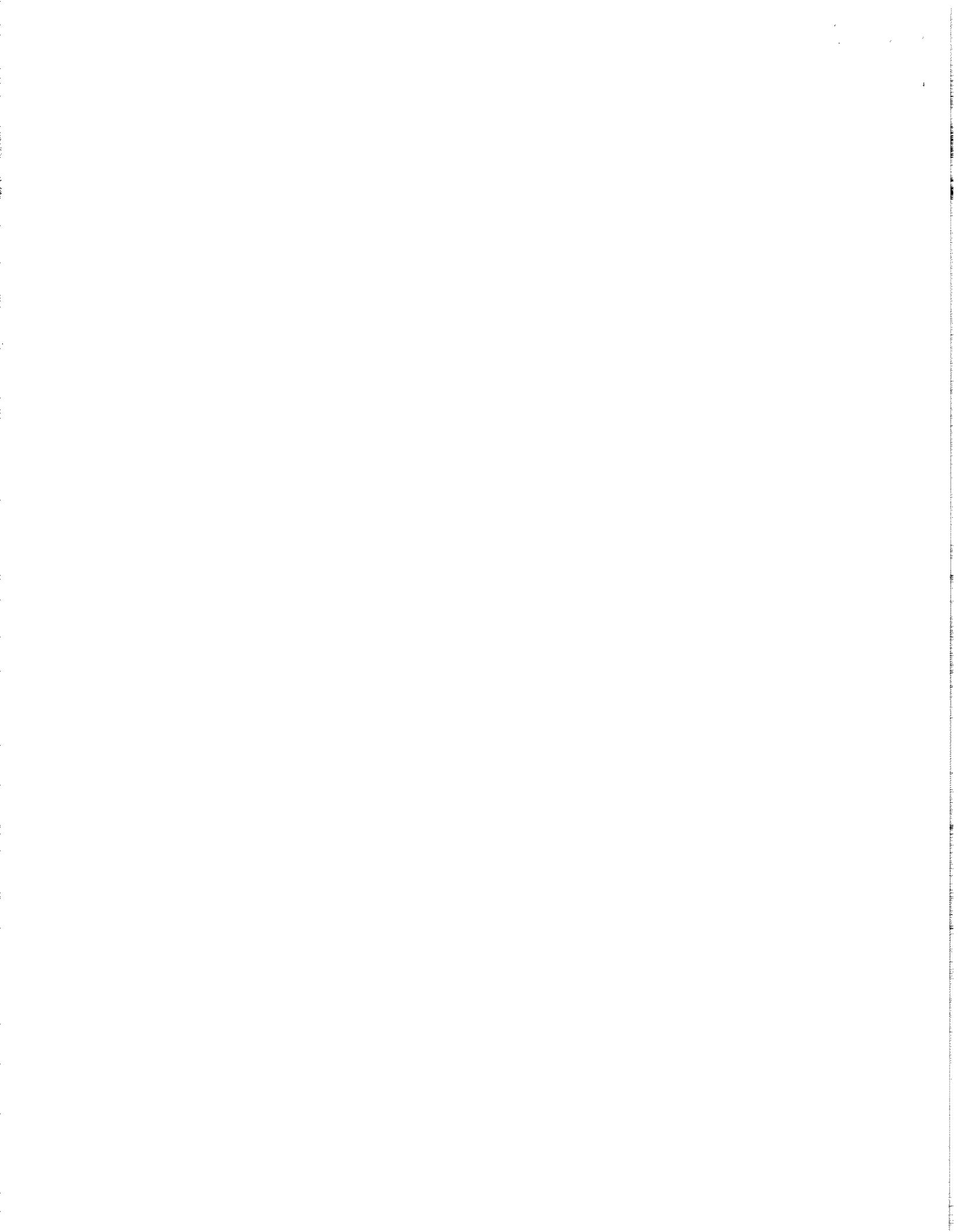
Last Name Black Ident.No. SCANNED

JAN 16 2005



SCANNED

JAN 06 2005



15. Basis of Claim (check one): Beneficial Use ☒ Posted Notice ☐ License ☐ Permit ☐
Decree ☐

If applicable, provide IDWR Water Right Number.: _____

Court _____ Case No. _____ Decree Date _____

Plaintiff vs. Defendant: _____

16. 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: one (1)

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) Jay L. Black Date Jan. 5-05

Date _____

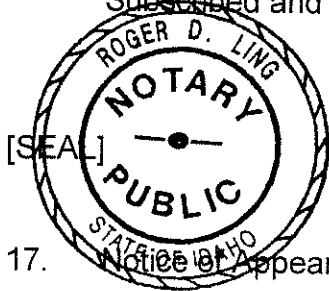
For Organizations: I do solemnly swear or affirm that I am _____ of _____, that I have signed the foregoing document in the space below as _____ of _____ and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho or _____)
County of Minidoka) ss.

Subscribed and sworn (or affirmed) before me this 5th day of January, 2005.



Roger D. Ling
Notary Public, State of Idaho
Residing at: Rupert, Idaho
My Commission expires: 10/30/06

17. Notice of Appearance:

Notice is hereby given that I, Roger D. Ling, will be acting as attorney at law on behalf of the claimant signing the 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 Roger D. Ling
Roger D. Ling
LING, ROBINSON & WALKER

Address: P. O. Box 396
Rupert, Idaho 83350-0396

Date January 5, 2005

Last Name Black Ident.No. _____

SCANNED

JAN 6 2005

EXHIBIT "A" TO NOTICE OF CLAIM TO A WATER RIGHT

GRAPE CREEK WATER RIGHTS AND OWNERS

<u>Water Right</u>	<u>Owners</u>
43-00402	Jay L. Black and Kenneth S. Black
43-00403A	Jay L. Black and Kenneth S. Black
43-00404	Jay L. Black and Sharon P. Black
43-00405	Jay L. Black and Sharon P. Black
43-02247	Jay L. Black and Kenneth S. Black
43-00406	Ronald C. Ward and Venna C. Ward
43-00407	Clark Ward, Sara Jane Ward, and Vaudis J. Ward
43-02215	Clark Ward, Sara Jane Ward, and Vaudis J. Ward

SCANNED

JAN 6 2005

