

RECEIVED
AUG 30 2006
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 29-13764
) (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.

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

My name is Berry T. Williams

My address is 1277 Mink Creek Rd., Arbon, Idaho
83212

My phone number is: Work 335-2354 Home 335-2354

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:

Please see enclosed statement.

☐ 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.)

A copy of my Notice of Claim is enclosed.
A letter, map and 2 photographs are enclosed.
I will provide further documentation at a later date.

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 \$ ~~360.00~~
- ☒ 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 \$ 360.00.

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 November 21, 2006 at 1:30 PM
(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:

- ☐ 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 Bonneville

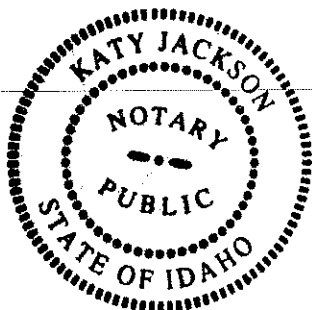
Barry T Williams, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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.

Barry T. Williams
Signature of person filing motion

Attorney signing in representative capacity

Subscribed and sworn to before me on Aug 15, 2006
(Insert Date)



Katy Jackson
Notary Public for State of Idaho
Residing at: Idaho Falls
My Commission expires: 3/31/2011

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 _____, 199____, 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:

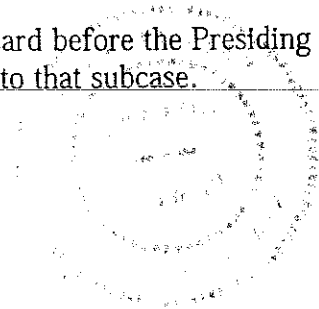
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

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 29-13764
Date Received: 8/15/2006
Receipt No:
Received By: MWH

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

1. Name of Claimant(s)

BARRY T WILLIAMS Phone: (208)335-2354
1277 MINK CREEK RD
ARBON ID USA 83212

VALORIE WILLIAMS Phone: (208)335-2354
1227 MINK CREEK RD
ARBON ID USA 83212

2. Date of Priority: 04/01/1940

3. Source: BANNOCK CREEK Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
11S	33E	13	SW SE	POWER	

5. Description of diverting works:

DITCH FOR FLOOD IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	10/31	2	

7. Total Quantity Appropriated is:
2 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
----------	-------	---------	----------------	-----	-------

11S

33E 13

NW
SW

SE
SE

IRRIGATION
IRRIGATION

40
40

Section Acres

80

Total Acres

80

11. Place of use in counties: POWER
12. Do you own the property listed above as place of use? Yes
13. Other Water Rights Used:
14. Remarks:
15. Basis of Claim: Beneficial Use
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: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Garry J. Williams Date: 8-15-06

Date:

State of Idaho)
County of Bonneville) SS.

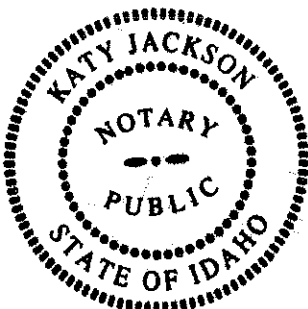
Subscribed and sworn (or affirmed) before me this 15 day
of August 2006 Kath

Kathy Jackson

Notary Public

Residing at Idaho Falls

My commission Expires 8/31/2011



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

I was not aware of my right to do so. My land was irrigated by Bannock Creek and sup irrigated by underground water until two irrigation wells dried up Bannock Creek and the sub water under my land. I was seeking to get my water back through a 1900 livestock water right when it was recommended to me by James Rush of Rocky Mountain Environmental Associates, Inc. and Roger Warner of the Idaho Department of Water Resources to file a Beneficial Use irrigation water right on a constitutional basis.



August 7, 2006

Barry Williams
1277 Mink Creek Road
Arbon, Idaho

Dear Mr. Williams:

On August 4, Rocky Mountain EnvironmentalSM examined the various field relationships between the pasture land along Bannock Creek and wells locally identified as the Ward Well and the Curry Well. Also present was Mr. Roger Warner, Idaho Department of Water Resources [IDWR].

As we understand the history of the valley, since as the early as the early 1900, cattle have watered from Bannock Creek, and grass has been grazed or harvested. Your right to water cattle is enumerated in water right numbers 29-13528.

As we discussed today, you (and your predecessors in title) have beneficially used water to raise pasture grass and alfalfa along Bannock Creek since the early 1900s, but now the volume of water in the creek has fallen. However, you never made application to Idaho Department of Water Resources [IDWR] for a right to use Bannock Creek for irrigation.

Idaho allocates the *right to use* both surface and groundwater water under the doctrine of “prior appropriation”¹ or “first in time, first in right.” The basic principles of prior appropriation include^{2, 3}:

- a. Priority,
- b. Beneficial use,
- c. Duty of water,
- d. Requirement for diversion.
- e. Preference for type of beneficial use.

The oral history of the valley clearly suggests that you have used Bannock Creek Water since as early as about 1900 and that you have applied the water for beneficial use. I believe that our examination of your pasture on August 4th discovered a *constitutional* basis for claim for a water right for irrigation of your pasture along Bannock Creek.

The *constitutional* basis is really a common law or a “do-it-yourself” method to establish a water right. Prior to adoption of statutes governing the process of appropriation, the constitutional method was the only means of obtaining a right. In 1963, the legislature enacted laws essentially eliminating new constitutional claims for groundwater. After 1971, surface water could be appropriated only by application to the Department.⁴

On August 4, 2006, accompanied by Roger Warner, IDWR, we observed the remnants of a ditch through which water from Bannock Creek was diverted onto the pasture in Section 13. Refer to Photographs 1 and 2 below. Because the volume of water flowing in Bannock Creek has declined, the ditch at Bannock Creek is not obvious. However, farther north, the ditch has distinct sides and an obvious, elongated trace north into Section 13. Refer to the Map below.

The presence of this ditch demonstrates that, prior to 1971, irrigation water was, in fact, diverted onto the pasture in Section 13 (and flowed further north) for beneficial uses.

¹ Idaho Constitution, Art. XV, §3.

² Fereday, J. C., Meyer, C. H., and Creamer, J. C., 1998, Handbook on Idaho water law: A practical guide: Givens Pursley LLP, Boise, ID., 115 pp.

³ Fereday, J. J., C., Meyer, C. H., and Creamer, J. C., 2006, Water Law Handbook: The acquisition, use, transfer, administration, and management of water rights in Idaho: Givens Pursley LLP, Boise, ID., 193p.

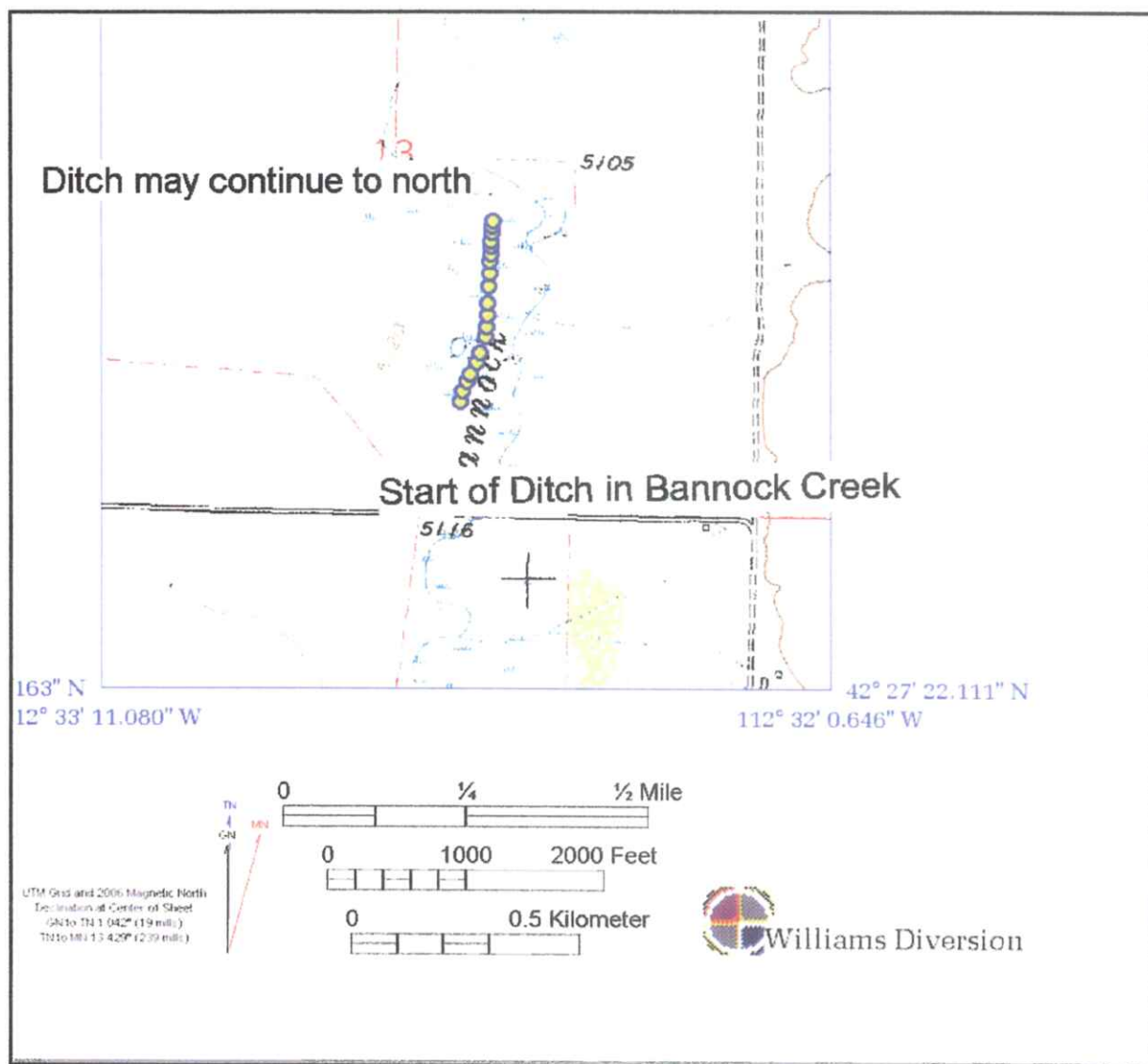
⁴ *ibid*, page 38.

Thank you for the opportunity to meet you and your mother, to examine your pasture, and to assist you in this process.

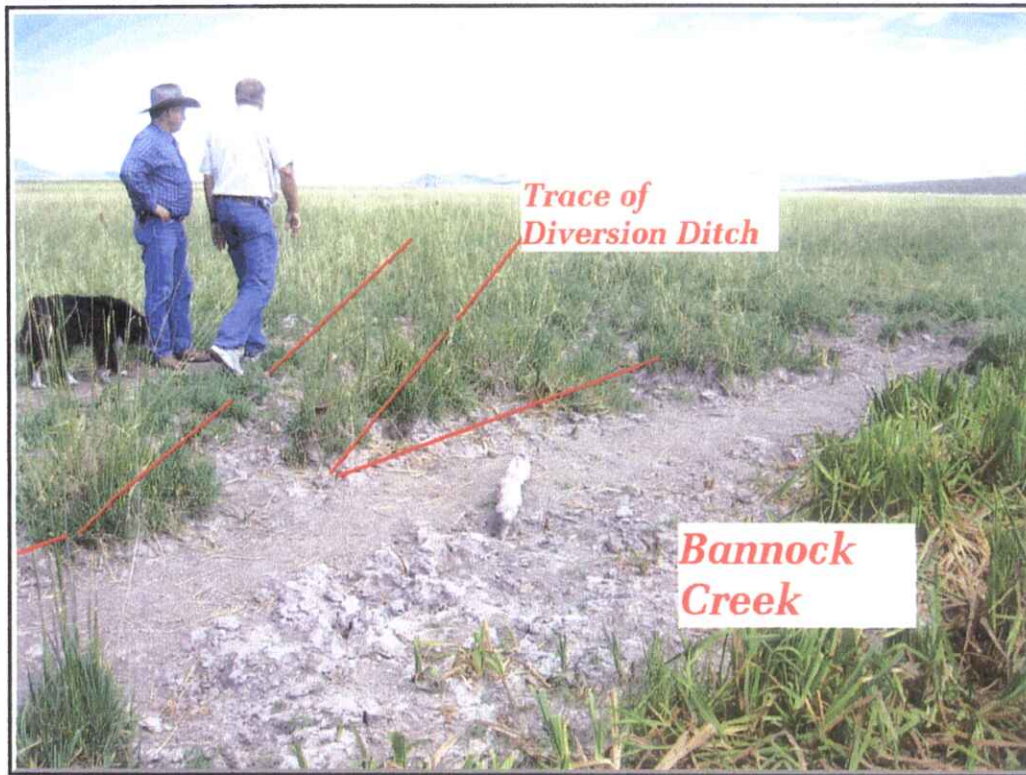
Sincerely,

A handwritten signature in black ink, appearing to read "Jim". The signature is stylized with a large, sweeping initial "J" and a cursive "im".

James D. Rush, PG
Vice President



Map 1 Trace of diversion ditch from Bannock Creek.



Photograph 1 Location of diversion point where water from Bannock Creek was diverted into the pasture. Note Bannock Creek is dry.



Photograph 2 Although faint, the ditch can be followed north into Section 13 about $\frac{1}{2}$ mi.