

RECEIVED

MAY 31 2005

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

Case 39576

Subcase 33-7159

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 _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing Alan J. "Jake" Amy and Afton Amy, husband and wife

My name is Curt R. Thomsen

My address is 2635 Channing Way, Idaho Falls, ID 83404.

My phone number is 208-522-1230 or 208-362-0085.

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:

Mr. and Mrs. Amy entered into a hydropower development agreement and ground lease with New Energy Inc. (Now Bell Mountain Power) in 1986 and the water right involved was assigned to New Energy. Amy's did not receive a Notice to file a claim and assumed that New Energy had taken all necessary steps to file required notice in the SRBA proceeding. In April, 2005 Amys first received notice from IDWR that a claim had not been filed in the SRBA and are now taking the necessary steps to file such a claim. There is an existing hydropower project (Amy Ranch Hydropower Project) which has been constructed and is using the right, and has continuously used the right to generate power since January, 1987. Amys will become the owners of the Project when the ground lease ends in January, 2007, and must preserve their right and claim in order to operate. Attached is IDWR documentation relating to the right and its proof of use.

☐ 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 August 16, 2005 at 1:30 p.m.
(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 ADA) ss.

CURT R. THOMSEN 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.

Signature of person filing motion

Attorney signing in representative capacity

SUBSCRIBED AND SWORN to on oath before me this 24 day of May, 2005.



Notary Public for Idaho

Residing at Idaho Falls, Idaho Boise

My Commission Expires: JUN 30 2009

INSTRUCTIONS FOR MAILING

You must file 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 _____, 2005, 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:

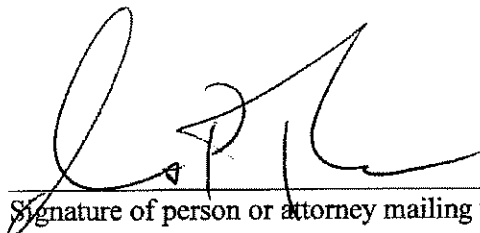
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report 33-7159

WATER RIGHT NUMBER: 33-7159

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	ALAN J AMY PO BOX 32 HOWE, ID 83244 (208)767-3374
Current Owner	NEW ENERGY INC C/O DAVID SNEDIGAR 4577 N CLEAR LAKES GRADE BUHL, ID 83316

Priority Date: 11/08/1983

Basis:

Status: Active

<u>Source</u>	<u>Tributary</u>
BLACK CREEK	SINKS

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
POWER	1/01 to 12/31	0.800 CFS	
	<u>Total Diversion:</u>	0.800 CFS	

Location of Point(s) of Diversion
BLACK CREEK SE1/4SW1/4 Sec. 10, Twp 10N, Rge 27E,
B.M.
BUTTE County

Place of Use
POWER

Twp	Rge	Sec	NE			NW			SW			SE		
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
10N	27E	20												

Conditions of Approval:

1. 17C Use of water under this right is subordinated to future diversion of water for irrigation or other consumptive beneficial uses.
2. 26A Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
3. 025 This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report 33-7159

4. 08A This right is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.
5. 17F The diversion and use of water under this right and any license subsequently issued is subject to review by the Director thirty-five (35) years from the date of issuance of this right. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use exercised. authorized herein and may revise, delete or add conditions under which the right may be
6. 01F The right holder shall either install a measuring device or a flow measurement port or provide a certified measurement or computation of flow based upon system design to be prepared by a professional engineer.
7. 004 The issuance of this right does not grant any right-of-way or easement across the land of another.

Remarks:

Comments:

Dates and Other Information:

Permit Proof Due Date: 4/1/1989
Permit Proof Made Date: 7/22/1987
Permit Approved Date: 4/3/1984
Permit Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Field Exam Date: 7/23/1992
Date Sent to State Office:
Date Received at State Office:
State or Federal:
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
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Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
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Water Supply Bank:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, *Idaho Code*, any person claiming a water right established by diversion and application of water to beneficial use must file a claim with the Department of Water Resources. **The filing of this claim does not confirm the water right claimed.** Water rights represented by a valid permit, license, decree, or previous claim are exempt from this requirement, as are uses of water for domestic purposes as defined in Section 42-111, *Idaho Code*. A filing fee must be submitted with this claim. See the instruction sheet to determine the appropriate fee.

Notice is hereby given that Alan J. "Jake" and Afton Amy, husband and wife
(Name of Claimant)
PO Box 32, Howe, ID 83244 Telephone No: 208-767-3374
(Mailing Address) (Zip Code)

claims a right to the diversion and beneficial use of surface or ground water. The extent and nature of said claim is as follows:

1. Date of Priority: (When the water was first applied to beneficial use) 11/08/1983
A claim is not acceptable for the use of surface water with a priority later than May 20, 1971. A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963, unless the water is used for domestic purposes as defined in Section 42-111, Idaho Code.

2. Describe the source of water: (Name of stream, lake, spring, etc., or ground water)
Black Creek tributary to sinks

3. Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

	(cfs or af)	(Irrigation, Domestic, Stock, Etc.)	(Both dates inclusive) (MM/DD) (MM/DD)
Quantity	<u>0.800 cfs</u>	Use <u>power</u>	Period of Use From <u>01/01</u> to <u>12/31</u>
Quantity	_____	Use _____	Period of Use From _____ to _____
Quantity	_____	Use _____	Period of Use From _____ to _____
Quantity	_____	Use _____	Period of Use From _____ to _____

4. 0.800 cfs TOTAL QUANTITY USED.
(cfs or af)

5. A) Location of point of diversion is SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____
Sec. 10 Township 10N Range 27E B.M., Butte County; additional points
of diversion, if any: _____

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch etc.). Give sizes and capacities. Be specific. Describe any changes in the system and give the date of the change.

Hydropower

6. A) Describe the place of use within each 40-acre tract in the appropriate box using the symbols listed below. If the use is for irrigation, describe the location by listing the number of irrigated acres within each 40-acre tract.
D - domestic, S - stockwater, M - municipal, C - Commercial, I - Industrial, X - other

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10N	27E	20						X											

TOTAL ACRES _____

- B) If water is used for purposes other than irrigation, fully describe the use. Be specific. Diversion to penstock to hydropower plant to generate electrical power

NOTE: Include here the type and number of stock watered: _____

7. Remarks: Claim has already been verified by IDWR and has been used to generate power commercially since 1987. Late claim due to assignee failure to claim.

8. Map -- Attach an 8½"x11" map clearly identifying the point of diversion and the place of use by 40-acre subdivisions, section, township and range of the public land survey system. (A photocopy of a USGS 7½ minute topographic quadrangle map is preferred.) Attach an aerial photograph of the place of use if available.

State of Idaho)
County of Booneville) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the forgoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

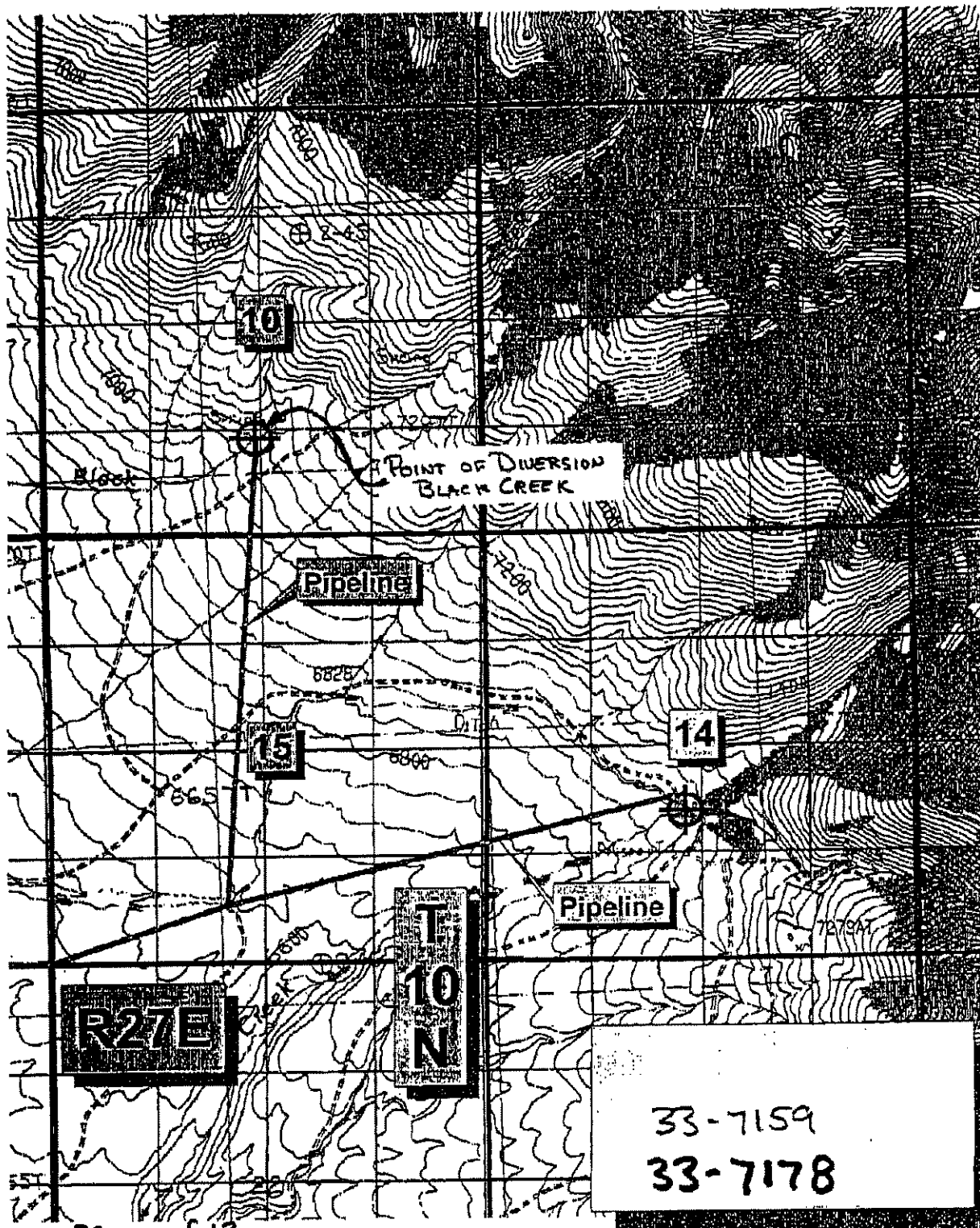
Sworn to before me this 26th day of May 2005
Claimant's Signature (and title if claim is for an organization) Alan J. Amy

Notary Public Goyce Alansie
Residing at: Idaho Falls Idaho
My commission expires: 9-12-06

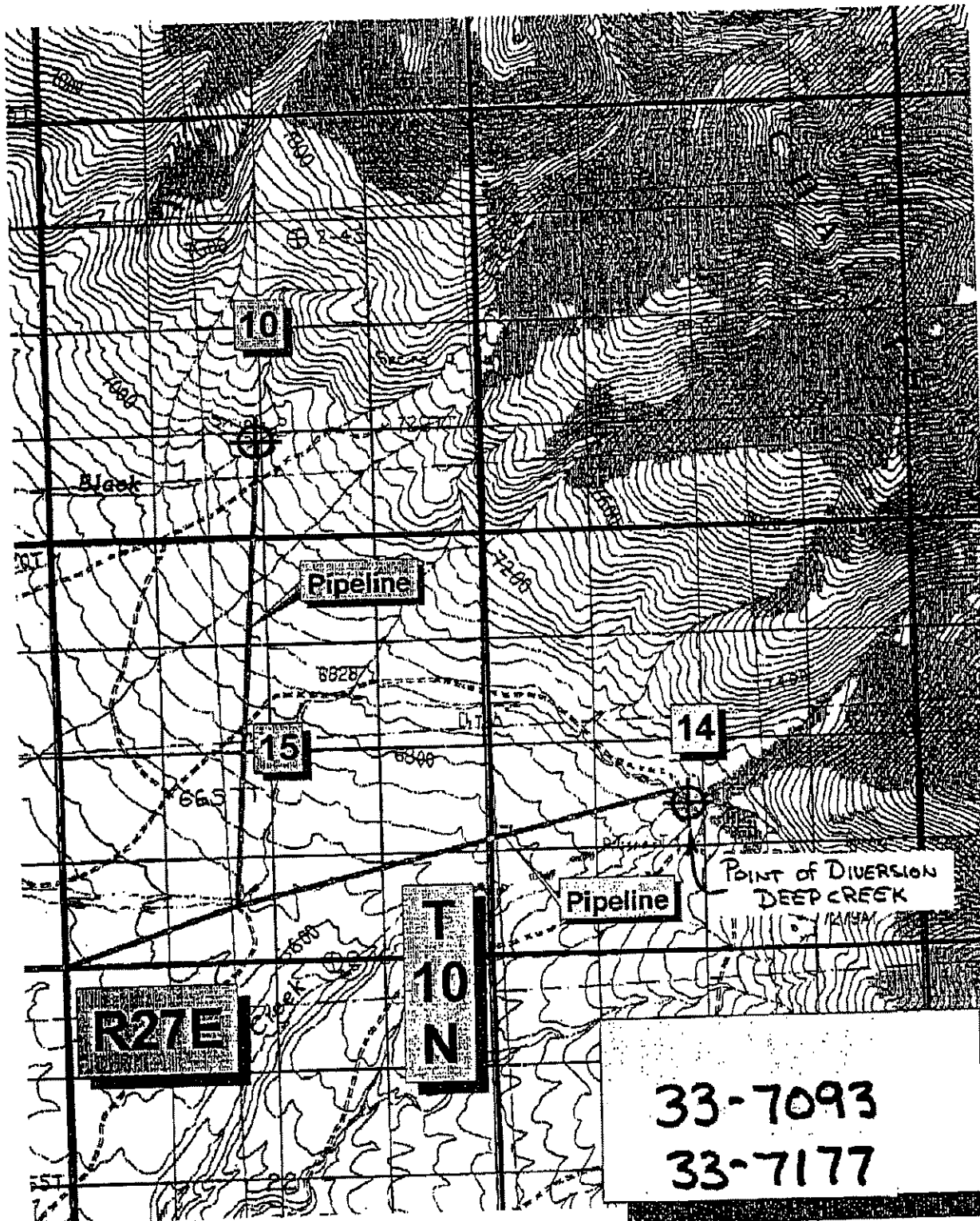
FOR DEPARTMENT USE ONLY

Received by _____ Date _____
Prelim. check by _____ Date _____
Fee _____ Receipt # _____
Receipt prepared by _____ Date _____

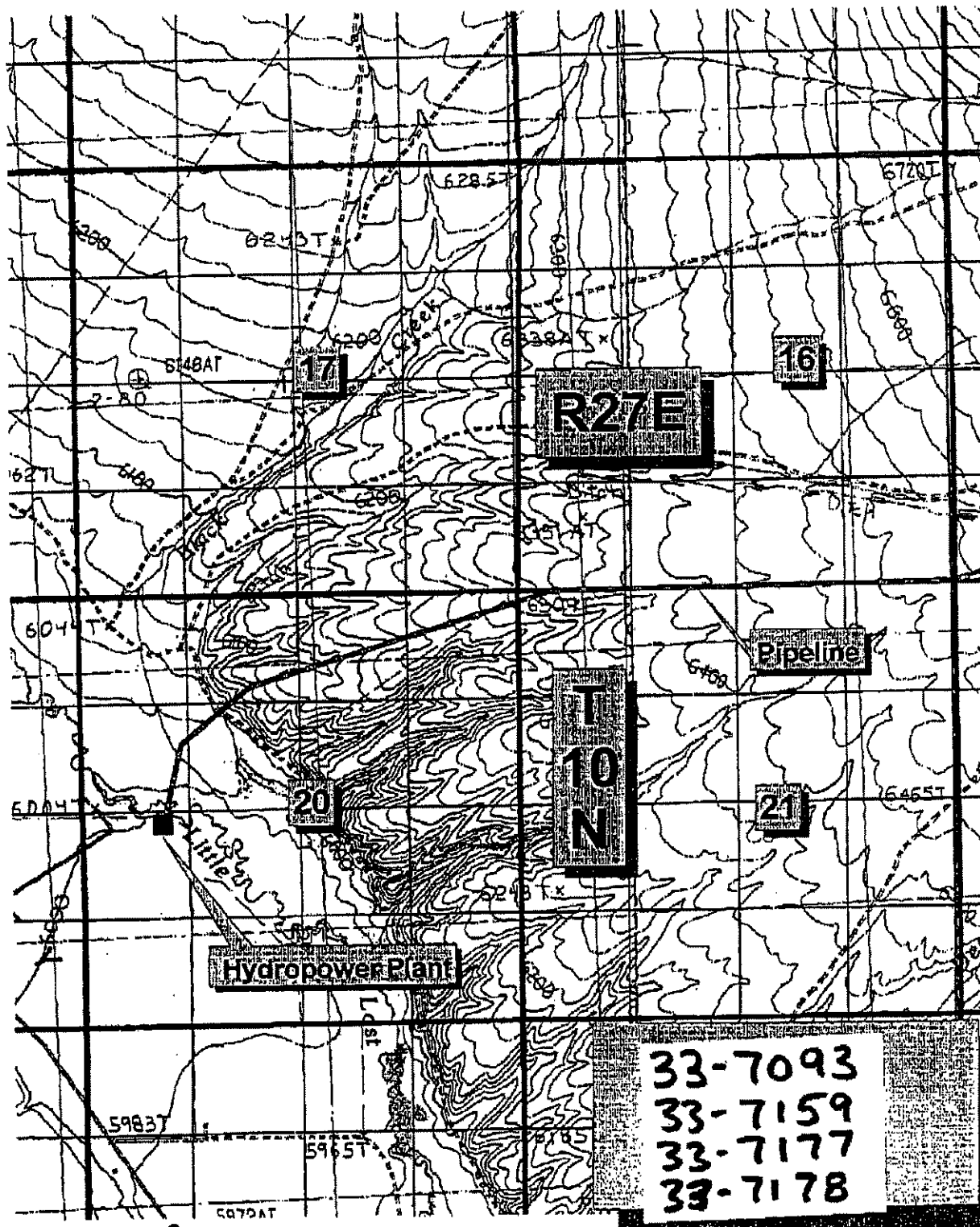
Published in _____
Publication dates _____
Publication checked by _____ Date _____
Exceptions filed by _____



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