

May 18,2009

RECEIVED

MAY 26 2009

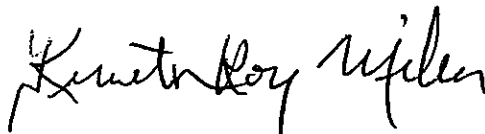
DEPARTMENT OF
WATER RESOURCES

Attention:

The intent of the attached claim is to replace the original claim to my motion. The claim form I completed is not used in the Snake River Basin Adjudication. I have enclosed the new completed computer generated Notice of Claim.

The Identification Number of my claim has been changed from 22-181 to 22-181C.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth Roy Miller". The signature is written in dark ink and is positioned above the printed name.

Kenneth Roy Miller

RECEIVED

MAY 26 2009

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 22-18/C
(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 Kenneth Roy Miller

My address is 5297 Thunder Drive
Idaho Falls, ID 83406

My phone number is: Work 208-523-6036 Home 307-248-0600

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 land was owned by my father at that time
and rented to Ryan and Meole Kunz. I do not
know why my father didn't file a claim.

☐ 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 own land that the Sarah Bowles water right
was decreed onto and has been used on.

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 \$ 115.50.

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 July 21, 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 Teton

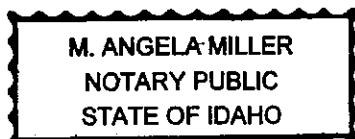
Kenneth Roy Miller, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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.

Kenneth R. Miller
Signature of person filing motion

Attorney signing in representative capacity

Subscribed and sworn to before me on May 19th 2009
(Insert Date)



M. Angela Miller
Notary Public for State of Idaho
Residing at: Bonneville County
My Commission expires: 2-22-2014

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 5/20/09, 1999, 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
Shoshone River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

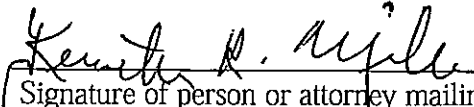
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

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 Kenneth Miller
(Name of Claimant)

Mailing Address: 5297 Thunder Drive Idaho Falls, ID 83406

Telephone No: 307 248-0600 Email: _____

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) 6/01/1891
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)
Unnamed stream tributary to Teton River

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>0.30 cfs</u>	Use <u>Irrigation + Stockwater</u>	Period of Use From <u>4-15</u> to <u>10/31</u>
Quantity _____	Use _____	Period of Use From _____ to _____
Quantity _____	Use _____	Period of Use From _____ to _____
Quantity _____	Use _____	Period of Use From _____ to _____

4. 0.30 cfs TOTAL QUANTITY USED.
(cfs or af)

5. A) Location of point of diversion is SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of NW $\frac{1}{4}$, Govt. Lot _____
Sec. 33 Township 04N Range 45E B.M., Teton 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.

Ditch carries water to property line, flood irrigation of 5 acres;
Bowles Spring creek irrigates another 10+ acres

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	
4N	45E	32				X													10
		33				X			X										5

TOTAL ACRES 15

- B) If water is used for purposes other than irrigation, fully describe the use. Be specific.

NOTE: Include here the type and number of stock watered: 1 cow/calf pair / acre

7. Remarks: _____

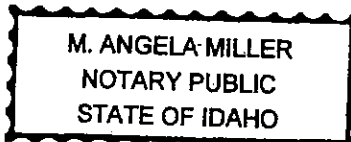
8. Map – Attach an 8½"x11" map clearly identifying the point of diversion and the place of use by 40-acre subdivisions, section, township and range of the public land survey system. (A photocopy of a USGS 7½ minute topographic quadrangle map is preferred.) Attach an aerial photograph of the place of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

State of Idaho)
County of Teton) 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.

Kenneth P. Miller
Claimant's Signature (and title if claim is for an organization)

Sworn to before me this 8th day of April, 2009.



M. Angela Miller
Notary Public
Residing at: Idaho Falls
My commission expires: 2-22-2014

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 _____

RECEIVED

MAY 26 2009

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

CIVIL CASE NUMBER: 39576

Ident. Number 22-181C
Date Received: 4/22/2009
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

KENNETH ROY MILLER Phone: (307)248-0600

5297 THUNDER DR
IDAHO FALLS ID USA 83406

2. Date of Priority: 06/01/1891

3. Source: UNNAMED STREAM Trib. to: TETON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
04N	45E	33	SE SE NW	TETON	

5. Description of diverting works:

Ditch carries water to property line, flood irrigation of 5+ acres; Bowles Spring Creek irrigates another 10+ acres.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/31	0.3	
STOCKWATER	04/15	10/31	0.3	

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

8. Total consumptive use:

9. Non-irrigation uses:
Number of other uses: 1 cow/calf pair/acre

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
04N	45E	32	SE	NE	IRRIGATION	10
			SE	NE	STOCKWATER	
			Section Acres			
04N	45E	33	SW	NW	STOCKWATER	5
			SW	NW	IRRIGATION	
			Section Acres			
Total Acres					15	

11. Place of use in counties: TETON

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: One

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): *Kenneth R. Apple* Date: 5/1/09
 _____ Date: _____

March 15, 2009

To Whom It May Concern:

The recommendation of water right #22-180 was protested and the Duane Kunz Trust's portion of this right has been successfully investigated and recommended by Michael Holliday for 2.0 cfs with an 1889 priority date. Neil Kunz, who was recommended for 0.67 cfs of water right # 22-181, owns none of that right. In fact, Neil's water comes both from the HC Bowles spring and from Jones Spring Creek, the latter being associated with water right # 22-181, but all of the water he uses should be adjudicated under #22-180 and not #22-181. For his 40 acres Neil Kunz should be awarded 0.8cfs of water right #22-180.

The 0.67 cfs that Neil was recommended for actually belongs to Ryan Kunz, John Block, Ken Miller, and perhaps Michael Morey. Ryan and his father Merle Kunz, now deceased, own 40.5 acres for which they were recommended a total of 0.67 cfs of 22-181 under water right numbers 22-13732 and 22-13733. The reality is, they put out about 0.02 cfs/acre onto this land and therefore own 0.81cfs of 22-181 to be applied appropriately to 22-13732 and 22-13733. John Block, not related or involved in this motion, should be awarded 0.8 cfs for his 40 acres. Michael Morey, not related or involved in this action, owns about 15 acres of the original Sarah Bowles homestead. Of that, about 5 acres is irrigated below the Jones Spring Creek ditch. The other acreage slopes the wrong way for irrigation water to reach it; however, it receives sub irrigation as a result of the other irrigation going on around it.

Ken Miller, who owns 20 acres of the original Sarah Bowles homestead and rents that to Ryan Kunz, has a little more than 5 acres of his place that is actively flooded from Jones Spring Creek. The rest of his 20 acres is actively irrigated by the HC Bowles Spring. The HC Bowles spring winds its way through Ken's narrow strip and is responsible for the active irrigation of at least another 10 acres. Therefore, I believe the best way to recommend the Bowles rights are as follows:

22-180, decreed to HC Bowles for 2.8 cfs and 1889 priority:

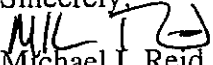
2.0 cfs owned by the Duane Kunz Trust, all water comes from the HC Bowles Spring
0.8 cfs owned by Neil Kunz, water comes both from the HC Bowles spring and Jones spring creek

22-181, decreed to Sarah Bowles for 2.0 cfs and 1891 priority:

0.81 cfs owned by Ryan and Merle Kunz, under 22-13732 and 22-13733
0.8 cfs owned by John Block (claimed as 0.67 cfs under 22-181 B)
0.3 cfs owned by Ken Miller (not yet claimed)
0.09 cfs owned by Mike Morey, formerly the Skip Wright-Clark place.

I have been involved with both the use of this water and the examination of these water rights and I believe the record reflects what I have stated above.

Sincerely,


Michael L. Reid

550 S 450 W
Victor, ID 83455