

38
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MAR 08 1994

Department of Water Resources
-Adjudication Bureau

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.

Case No. 39576

The State of Idaho, ex rel. R. Keith
Higginson in his official capacity as
Director of the Idaho Department
of Water Resources,

STANDARD FORM 4

MOTION TO FILE A LATE
NOTICE OF CLAIM

Petitioner,

94-03-0006

vs.

The United States; the State of Idaho; and
all Claimants to the Use of Water From
the Snake River Basin Water System,

Respondents.

INSTRUCTIONS FOR USE

This form must be used to ask permission to file a late notice of claim in a reporting area where the director's report has been filed. This form has been adopted by the court in *SRBA Administrative Order* (amended June 21, 1993), Section 4A, which may be consulted for further information.

This motion requires you to 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.

You may copy or reproduce this form. If you do, the text must be on the front and back of each page exactly as it appears here. Fill out the form completely and attach all fees or the court will not accept the motion for filing. The Verification and Certificate of Mailing must be completed. Check each box to verify you have followed the court's instructions.

- ☒ As required by the court, I have read the *SRBA Administrative Order 1, Rules of Procedure* (amended June 21, 1993).

My name is Estate of Orvil Adams, Eva Lambert, Personal Representative

My address is Route 1, Box 20, Mackay, ID 83251

My phone number is: Work _____ Home (208) 588-2290

I am an attorney representing Estate of Orvil Adams

My name is Dana L. Hofstetter

My address is Holland & Hart, P.O. Box 2527, Boise, ID 83701

My phone number is (208) 342-5000

The water right number I want to file a late notice of claim for is A34-02316B

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

Orvil Adams passed away in November, 1993. In the years before his death he suffered from emphysema, asthma, and a heart condition.

He was unable to work for a period before his death and had been house-ridden part of this time. After her appointment, the

Personal Representative of the Estate promptly took action to remedy the failure to file.

As required by the court, I am providing legal and factual documentation for my claimed use of water. The documents I am providing are: (You must describe the documents and attach a readable copy.)

License for Water Right No. 34-02316

Affidavit of Ely Sayer

SRBA Claim No. A34-02316B

I have attached:

- ☒ A fully completed notice of claim (available from the Idaho Department of Water Resources (IDWR)).
- ☒ A claim filing fee and a late claim fee. IDWR may charge this fee pursuant to I.C. §§ 42-1414 and 42-1408A(j). To determine the 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 \$ 123.00.
- ☒ A court appearance fee in the amount of \$58.00 in the form of a check made payable to: *SRBA*. Persons filing a motion for late notice of claim do not become a party or claimant in the SRBA simply by filing this motion.

Follow these instructions regarding the hearing on this motion.

1. Contact 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 June 21, 1994 at 1:30 p.m.

(Insert Date and Time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

VERIFICATION
(Must be completed)

State of Idaho

County of Custer

Eva Lambert,
Personal Representative,
Estate of Orvil Adams, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the person or entity filing this motion and I have read the motion, know its contents and that the statements are true to the best of my knowledge and belief.

Eva Lambert
Signature of person filing form

Eva Lambert, Personal Representative,
Estate of Orvil Adams

By: Dana Hofstetter
Attorney signing in representative capacity
Dana L. Hofstetter
Holland & Hart

Subscribed and sworn-to before me on March 31, 1994
(Insert Date)

Jeff Lundberg
Notary Public for Idaho
Residing at: Marblehead, Id.
My Commission expires: 3/19/97

INSTRUCTIONS FOR MAILING

You must mail the form, including all attachments, to the Clerk of the SRBA Court and to the parties identified in the Certificate of Mailing. FAX filings will not be accepted by the SRBA Clerk of the Court.

You must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I certify that on March 7, 1994, 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
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, Idaho 83711-4449

3. One copy to:

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83734



Signature of person or attorney mailing the form

State of Idaho

License and Certificate of Water Right

Water License No. G-25356 Priority Dec. 24, 1954 Amount 1.6 c.f.s.
 THIS IS TO CERTIFY that GEORGE ADAMS

of Mackay, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated December 24, 1954; that Permit No. G-25356 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 1.6 second feet, was issued thereunder on November 6, 1959, showing that said works were completed on the 10 day of September, 1959; and that on the 10 day of September, 1959 GEORGE ADAMS of Mackay, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of a right to the use of the waters of a well a tributary of subterranean flow for the purpose of irrigation & domestic use under Use Permit No. G-25356 of the Department of Reclamation, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume 11 of Licenses, at Page 6807, on the 6 day of November, 1959; The right hereby confirmed dates from December 24, 1954;

The Point of Diversion is located in the NW 1/4 NE 1/4, Sec. 5, Tp. 6 N., R. 25 E., B.M. Custer County. That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 1.6 cubic feet per second.

Description and location of use:

TWP.	RANGE	SECTION	FORTY-ACRE TRACT	NO. ACRES DESCRIBED IN PERMIT	NO. ACRES ACTUALLY IRRIGATED
6 N.	25 E.	5	NW 1/4 NE 1/4 (Lot 2) SW 1/4 NE 1/4	43 40	43 40
Total number of acres to be irrigated:					83

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this 6th day of November, 1959

Geo. H. Carter
 State Reclamation Engineer.

State of Idaho
License and Certificate of
Water Right

Water License No. 9-25356
To GEORGE ADAMS
Kackay, Idaho
Source of Supply a well
Custer County
Amount 1.6 Sec. Ft.
Point of Diversion NW 1/4, Sec. 5,
T. 6 N., R. 25 E.
Place of Use IMPLINED (L. to 2), SW 1/4,
Sec. 5, T. 6 N., R. 25 E., B. M.
Purpose Irrigation & domestic
Date of Priority Dec. 21, 1954
Recorded NOV 21 1959
In Book 11 of Licenses, Page 6807

No. 11,3702
State of Idaho } ss.
County of Custer }
This instrument was filed for
record at the request of
George Adams
at 8 o'clock A. M.
December 14, 1959
and duly recorded in Vol. 4
of Microfilm and Records
Page 265
Records of Custer County, Idaho
Harold Ogden
County Recorder.
By _____ Deputy
True 4/20
Adams
George

Attorneys for the Estate of Orvil Adams

In Re SRBA
Case No. 39576

RTU - ELI

ELY SAYER, being first duly sworn on oath, hereby deposes and says:

3. During the 1950s and continuing until about 10 years ago, I farmed and ranched property located about one mile from

Orvil Adams' land in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 5, Township 6 North, Range 25 East, Custer County, Idaho. I continue to own and reside on land located about 4 miles from Orvil Adams' above-described property.

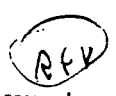
4. Since the 1950s, my activities have taken me past Orvil Adams' property regularly.

5. I recall Orvil Adams having the well drilled on his property. After drilling the well, Orvil Adams used it every year to the present for the purpose of irrigating his property.

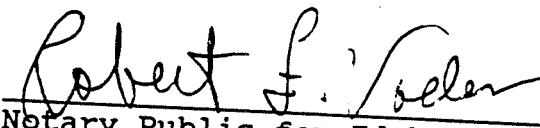
Further your Affiant sayeth not.

DATED this 2 day of March, 1994.


Ely Sayer

 ELI

Subscribed and sworn to before me this 2 day of March, 1994.


Notary Public for Idaho
Residing at Madley
My Commission Expires 11/9/94

37177/35528.3901

**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 A34-02316B

Date Received _____

Receipt Number _____

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

Please type or print clearly

1. Name of Claimant (s) Estate of Orvil S. Adams Phone (208) 588-2290
Eva Lambert, Personal Representative

Mailing Address Rte 1, Box 20, Mackay, Idaho Zip 83251

2. Date of Priority (Only one (1) per claim) December 24, 1954

3. Source of water supply (a) Ground Water
which is tributary to (b) _____

4. a. Location of existing point of diversion is: Township 6N Range 25E Section 5,
NW 1/4 of NW 1/4 of NE 1/4, Govt. Lot, 2 B.M., County of Custer

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 _____

ending point 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. Well, pump and sprinkler system.

6. Water is claimed for the following purposes:

(both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from 4/01 to 11/01 amount 0.44 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.44 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 57.5 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use:

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 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
6N	25E	5		23															23
				(lot 2)															

Total number of acres irrigated 23

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

12. Do you own the property listed above as place of use? Yes x 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.

or None (X)

14. Remarks:

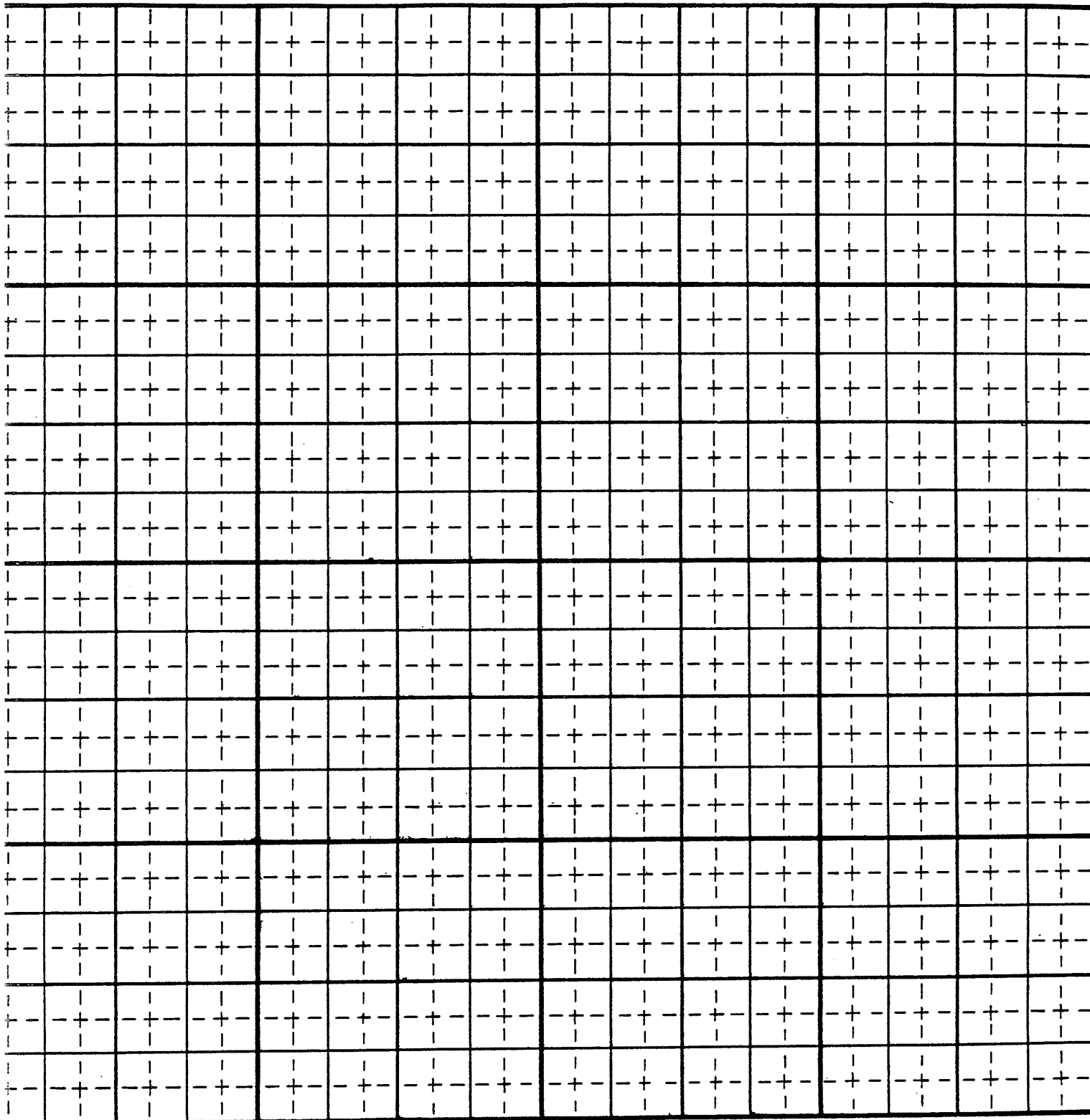
Last Name Adams Ident No. A34-03216B

Copies: White -State, Yellow-Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

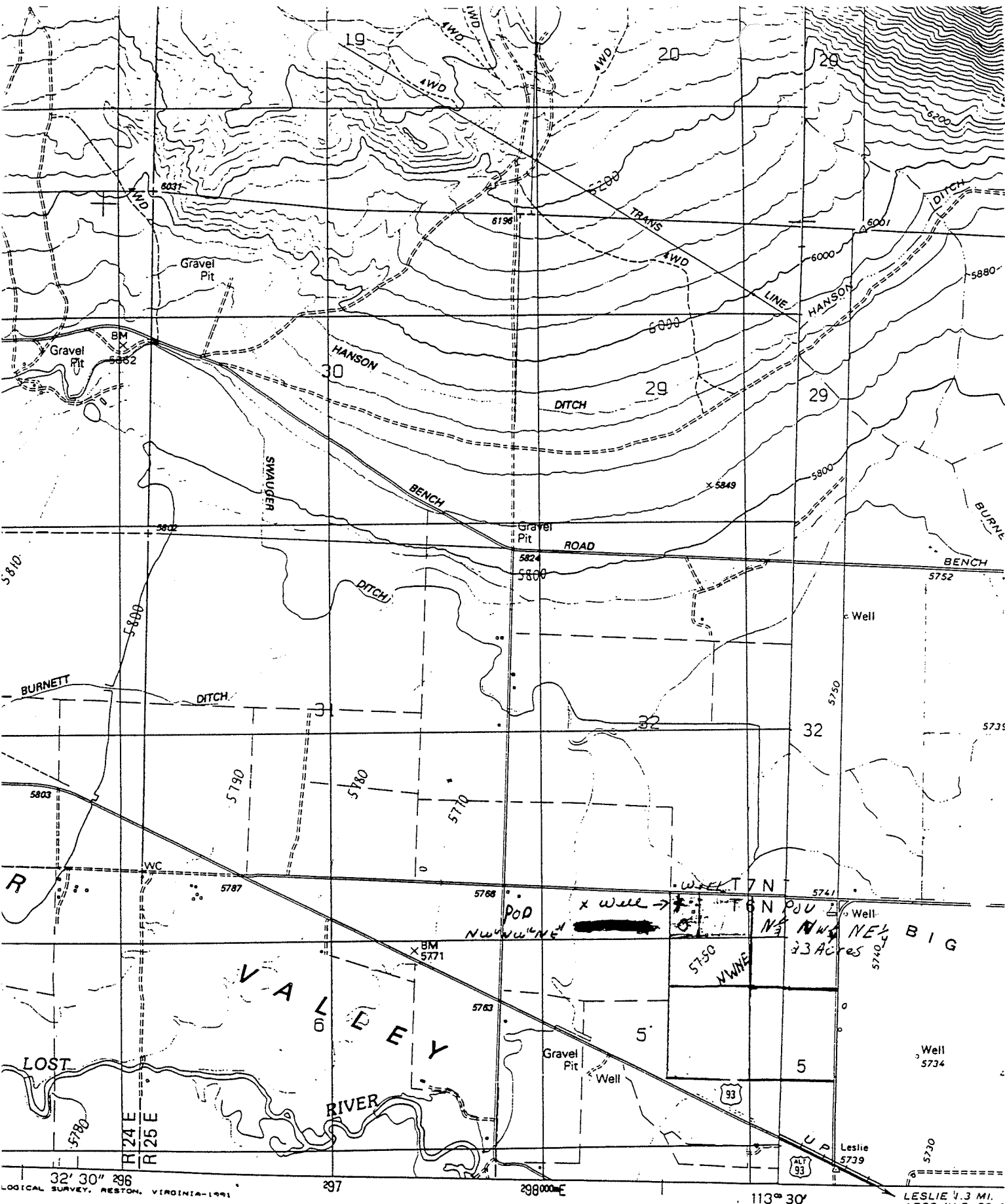
See Attached Map



Last Name Adams

Ident No. A34-2316B

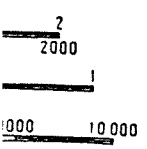
Copies: *White-State, Yellow-Claimant*



SRBA Claim No. A34-02316B

Improved Road
 Unimproved Road
 Trail

Mapped, edited, and published
 Control by USGS and USC&GS
 Topography by photogrammetric me
 photographs taken 1967. Field ch
 Polyconic projection. 1927 North



QUADRANGLE LOCATION

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License ☒ Permit _____
Decree _____
If applicable provide IDWR Water Right Number G-25356
Court _____ Case Number _____ 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 1 attached map and 1 Letter Testamentary
For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.
Signature of Claimant (s) Eva Lambert Date January 31-1994
Eva Lambert, Personal Representative
Estate of Orvil S. Adams Date _____

For Organizations: I do solemnly swear or affirm that I am _____ Title _____
of _____, that I have signed the foregoing
Organization
document in the space below as _____ of _____
Title Organization
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 Custer) SS.
Subscribed and sworn (or affirmed) before me this 31st day of January 1994
SEAL Notary Public Lita M. Lundy
Residing at Mackay, Idaho
My Commission Expires 3/19/97
Please Print Name

17. Notice of Appearance:
Notice is hereby given that I, Dana L. Hofstetter will be acting as attorney at law on behalf of the claimant signing 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 Dana Hofstetter
Address P.O. Box 2527, Boise, ID 83701
Date 3/6/94

DEC 20 8 46 AM '93

G. MICHAEL LEE
Attorney at Law
P.O. Box 1010
Challis, Idaho 83226
208/879-2444

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER
MAGISTRATES DIVISION

IN THE MATTER OF THE ESTATE OF)
)
)
)
ORVIL S. ADAMS,)
)
)
Deceased.)

Probate No. SP-93-32
LETTERS: TESTAMENTARY

Eva Lambert was duly appointed and qualified as General
Personal Representative by the Magistrate acting as Registrar
with all authority pertaining thereto.

Administration of the estate is unsupervised.

These letters are issued to evidence the appointment,
qualification, and authority of the said personal
representative.

WITNESS, my signature and the Seal of this Court, this
20th day of December, 1993.

/s/ Charles L. Ross
Magistrate

STATE OF IDAHO)
COUNTY OF CUSTER) SS

I hereby certify that the foregoing is a
full, true and correct copy of the original
on file in this office.

Ethel M. Peck
CLERK OF THE DISTRICT COURT
by Ann Branson
Date December 20, 1993

HOLLAND & HART
ATTORNEYS AT LAW

DENVER
DENVER TECH CENTER
COLORADO SPRINGS
ASPEN
BILLINGS
BOISE
CHEYENNE
JACKSON
WASHINGTON, D.C.

SUITE 1400
WEST ONE PLAZA
BOISE, IDAHO 83702-7714
MAILING ADDRESS
P.O. BOX 2527
BOISE, IDAHO 83701-2527

TELEPHONE (208) 342-5000
FACSIMILE (208) 343-8869

Dana L. Hofstetter

March 7, 1994

RECEIVED

MAR 14 1994

Department of Water Resources
Adjudication Bureau

Clerk of the District Court
Snake River Basin Adjudication
ATTENTION: Diana
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

Re: Motion to File a Late Notice of Claim
Estate of Orvil Adams - Claim No. A34-02316B

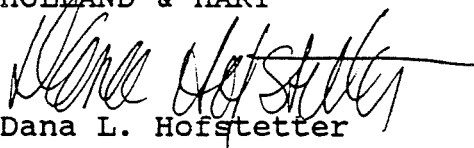
Dear Diana:

As discussed on the telephone with my secretary, enclosed is a new signature page for the Motion to File a Late Notice of Claim with reference to the above-captioned SRBA matter. Please replace the signature page that is now with the pleading. The former page did not have my signature.

Should you have any questions or need any additional documentation, please call.

Sincerely,

HOLLAND & HART


Dana L. Hofstetter

DLH:cd

Enclosure

cc: Chief, Natural Resources Division
United States Department of Justice
(both with enclosure)

37529/35528.3901

I have attached:

- ☒ A fully completed notice of claim (available from the Idaho Department of Water Resources (IDWR)).
- ☒ A claim filing fee and a late claim fee. IDWR may charge this fee pursuant to I.C. §§ 42-1414 and 42-1408A(j). To determine the 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 \$ 123.00.
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(Insert Date and Time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

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(Must be completed)

State of Idaho

County of Custer

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Personal Representative,
Estate of Orvil Adams, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the person or entity filing this motion and I have read the motion, know its contents and that the statements are true to the best of my knowledge and belief.

Eva Lambert
Signature of person filing form

Eva Lambert, Personal Representative,
Estate of Orvil Adams

By: Dana Hofstetter
Attorney signing in representative capacity
Dana L. Hofstetter
Holland & Hart

Subscribed and sworn-to before me on March 3, 1994
(Insert Date)

Dana Hofstetter
Notary Public for Idaho
Residing at: Markey Id.
My Commission expires: 3/19/97