

11/02/2009

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 22-181C

NAME AND ADDRESS: KENNETH ROY MILLER
5297 THUNDER DR
IDAHO FALLS ID 83406

SOURCE: UNNAMED STREAM

TRIBUTARY: FOX CREEK

QUANTITY: 0.080 CFS

The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 06/01/1891

POINT OF DIVERSION:

T04N R45E S33 SESWNW Within TETON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/15 10/31	0.080 CFS
STOCKWATER	04/15 10/31	0.020 CFS

PLACE OF USE: IRRIGATION in TETON County

T04N R45E S32 SENE 0.10 T04N R45E S33 SWNW 2.70

STOCKWATER same as IRRIGATION

2.8 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Stockwater use is for 15 cow/calf pairs.



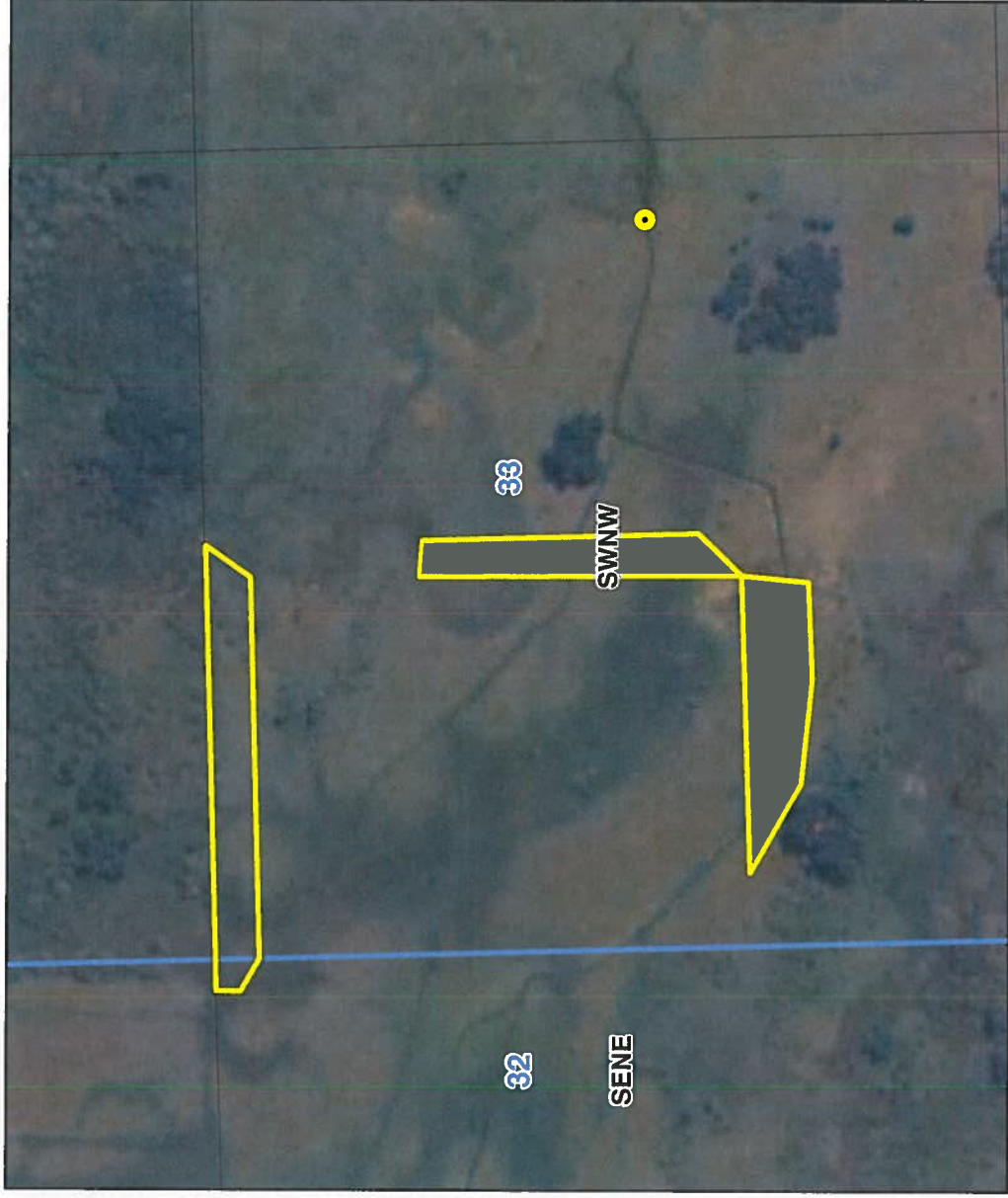
Idaho Department of Water Resources

Adjudication Recommendation

22-181C

(IRRIGATION)

R45E



Legend

Point of Diversion



Place of Use



State Outline



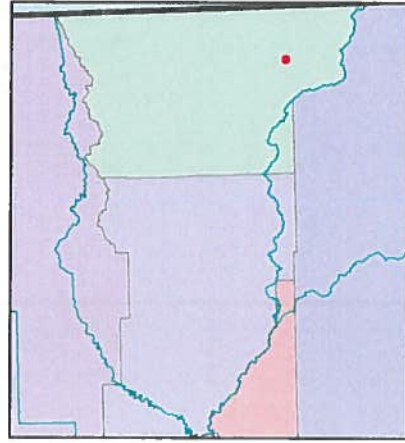
Townships



PLS Sections



Quarter Quarters



Teton County
IDWR Basin 22

Prepared by Michael Holliday
On November 02, 2009
2004 Aerial Photography





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

August 4, 2009

KENNETH ROY MILLER
5297 THUNDER DR
IDAHO FALLS ID 83406

RE: Snake River Basin Adjudication (SRBA)
Late Notice of Claim to a Water Right #22-181C

Dear Mr. Miller:

The Notice of Claim you filed was received from the SRBA Court recently. I have enclosed receipt #C089050 for the fees you paid. Please retain the receipt for your file.

Your Notice of Claim will be investigated and reported to the Court in a future supplemental Director's Report. Please contact me at 208/287-4916 if you have any questions.

Sincerely,

Craig L. Saxton
Water Rights Supervisor
Adjudication Bureau

CLS:ss:state

Enclosure:

Receipt Referenced Above

SCANNED

AUG - 4 2009



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

April 23, 2009

KENNETH MILLER
5297 THUNDER DR
IDAHO FALLS ID 83406

RE: Snake River Basin Adjudication (SRBA)
Motion to File Late Notice of Claim #22-181C and ID Number Change

Dear Mr. Miller:

A copy of the Motion to File Late Notice of Claim you submitted to the SRBA District Court was recently received at IDWR.

Unfortunately, the claim form you completed is not used in the Snake River Basin Adjudication. I have enclosed a computer-generated Notice of Claim for you to sign after you confirm the information I obtained from your 243 claim form is accurate. Please initial any changes you make to your claim.

The Identification Number of your claim has also been changed from 22-181 to 22-181C. No other changes have been made to your claim.

When satisfied with the updated adjudication claim, you need to submit the completed claim to the SRBA District Court with a short cover letter explaining your intent of the attached claim is to replace the original claim attached to your Motion. You will again need to send a copy of any information sent to the Court to each person on the Certificate of Mailing. I have enclosed a Standard Form 4 for your possible use.

Please call me at 208/287-4916 if you have any questions or concerns.

Sincerely,

Craig L. Saxton
Water Rights Supervisor
Adjudication Bureau

CLS:ss:state
Enclosures:

243 Claim Form (Returned)
Computer-generated SRBA Claim Form 22-181C
Standard Form 4

Copy:
SRBA District Court w/o Enclosures

SCANNED
APR 23 2009

Hearing: 7-21-09

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 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:

VERIFICATION (Must be completed)

State of Idaho

County of Teton

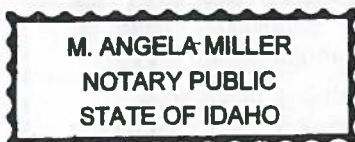
Kenneth Roy Miller, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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.

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

COANNED

MAY 26 2009

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: C089050

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	10
04N	45E	33	SW	NW	STOCKWATER	
			SW	NW	IRRIGATION	5
					Section Acres	5
					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. Upiler

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

SCANNED

MAY 26 2009

May 18, 2009

RECEIVED

MAY 26 2009

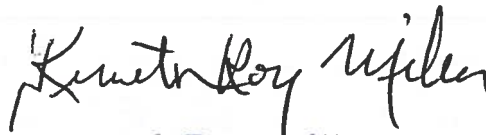
DEPARTMENT OF
WATER RESOURCES

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 black ink, appearing to read "Kenneth Roy Miller". The signature is fluid and cursive, with the first name "Kenneth" and last name "Miller" being the most legible parts.

Kenneth Roy Miller

SCANNED

MAY 26 2009

RECEIVED
JUL 27 2009
DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Claim No. 22-181
DISTRICT COURT ERBA
Fifth Judicial District
County of Twin Falls - State of Idaho

APR - 9 2009

CLAIM TO A WATER RIGHT

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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

SCANNED

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										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: _____

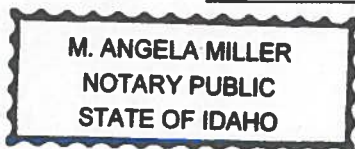
8. **Map** -- Attach an 8½"x11" map clearly identifying the point of diversion and the place of use by 40-acre subdivisions, section, township and range of the public land survey system. (A photocopy of a USGS 7½ minute topographic quadrangle map is preferred.) Attach an **aerial photograph** of the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

State of Idaho)
) ss.
 County of Teton)

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. Ayler
 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 _____

SCANNED

JUL 28 2009

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.

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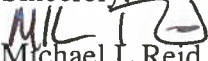
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22-181, decreed to Sarah Bowles for 2.0 cfs and 1891 priority:

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0.8 cfs owned by John Block (claimed as 0.67 cfs under 22-181 B)
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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

SCANNED

JUL 28 2009

RECEIVED

JUL 27 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

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JUL 24 2009

By _____ Clerk
_____ Deputy Clerk

In Re SRBA

Subcase: 22-00181C

Case No. 39576

ORDER GRANTING MOTION TO FILE
LATE NOTICE OF CLAIM

On April 9, 2009, Kenneth Miller filed a *Motion to File Late Notice of Claim* for the above-captioned water right. Hearing was held on the *Motion* on July 21, 2009. This *Motion* complied with all procedural requirements under *SRBA Administrative Order 1*, and no objections were made to this late Notice of Claim.

THEREFORE, IT IS ORDERED, that the *Motion to File a Late Notice of Claim* for the above-captioned water right is **granted**.

The original Notice of Claim, as well as any attached filing fees, and a copy of this **Order** will be forwarded to the Idaho Department of Water Resources for further action. Following investigation by the Idaho Department of Water Resources, recommendation for the claim will be reported in the next *Late Claims Director's Report* which is issued on an annual basis. This modifies the provisions of *SRBA Administrative Order 1* 4d(2)(h).

IT IS SO ORDERED.

Dated July 24, 2009.


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE LATE NOTICE OF CLAIM was mailed on July 24, 2009, with sufficient first-class postage to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

KENNETH MILLER
5297 THUNDER DR
IDAHO FALLS, ID 83406
Phone: 307-248-0600

ORDER

Page 1 7/24/09

FILE COPY FOR 00766

Deputy Clerk

SCANNED

JUL 28 2009