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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.

PROFILED

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SEP 15 2006

☒ 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.

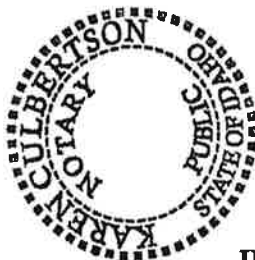
CURT R. THOMSEN being first duly sworn upon oath, deposes and says:
(Insert name of person filing form)

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 al 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:

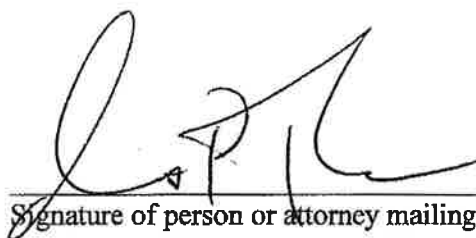
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 33-07159

Priority: November 08, 1983

Maximum Diversion Rate: 0.80 CFS
Maximum Diversion Volume: 578.0 AF

It is hereby certified that NEW ENERGY INC
C/O DAVID SNEDIGAR
1026 E 1000 N
SHELLEY ID 83274

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated November 08, 1983; and has submitted Proof of Beneficial Use on July 22, 1987. An examination indicates that the works have a diversion capacity of 19.51 cfs of water from:

SOURCE

BLACK CREEK

Tributary: LITTLE LOST RIVER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
POWER	01/01 to 12/31	0.80 CFS	578.0 AF

LOCATION OF POINT(S) OF DIVERSION:BLACK CREEK SE $\frac{1}{4}$ SW $\frac{1}{4}$ 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	NE	NW	SW	SE	Totals
10N 27E 20											X						

CONDITIONS OF APPROVAL

1. Use of water under this right shall be non-consumptive. *wh*
2. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required. *wh*
3. The issuance of this right does not grant any right-of-way or easement across the land of another.
4. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right. *wh*
5. The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after December 31, 2021. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised. *AJ*

State of Idaho
Department of Water Resources
Water Right License

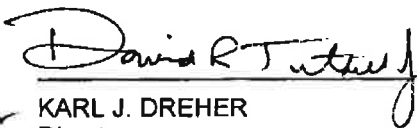
WATER RIGHT NO. 33-07159

CONDITIONS OF APPROVAL CONTINUED

- ✓ EXP 6. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 33.
- ✓ EXP 7. Rights 33-2034, 33-7179, and 33-7178 are also diverted through the point of diversion described above.
- ✓ Q 8. Rights 33-2034, 33-7159, 33-7178, and 33-7179 when combined shall not exceed a total diversion rate of 3.8 cfs.
- ✓ Q 9. Rights 33-87, 33-2034, 33-7093, 33-7159, 33-7177, 33-7178, and 33-7179 when combined shall not exceed a total diversion rate of 14.0 cfs.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 3rd day of August, 2005.


for **KARL J. DREHER**
Director

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 33-7159

Date Received 6-13-2006

Receipt Number C080116, C080117,

C082080

J.R. 9-19-06

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Alan J. "Jake" Amy and/or Afton Amy, husband and wife Phone (208) 767-3374

Mailing Address PO Box 32 - Howe, ID Zip 83244

2. Date of Priority (Only one (1) per claim) 11-08-1983

3. Source of water supply (a) Black Creek
which is tributary to (b) sinks

4. a. Location of existing point of diversion is: Township 10N Range 27E Section 10,
SE 1/4 of SW 1/4 of 1/4, Govt. Lot, B.M., County of Butte

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.

Hydropower project -- Diversion to penstock to power plant.

See attached maps.

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6. Water is claimed for the following purposes: Hydropower generation
(both dates are inclusive) (cfs) (acre feet)
- For Hydropower purposes from 01/01 to 12/31 amount 0.800 or _____
- For _____ purposes from _____ to _____ amount _____ or _____
- For _____ purposes from _____ to _____ amount _____ or _____
- For _____ purposes from _____ to _____ amount _____ or _____
7. Total quantity claimed (a) 0.800 (cfs) and/or (b) _____ (acre feet)
8. Total consumptive use claimed is _____ acre feet per annum. Non-consumptive
9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Hydropower
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	
10N	27E						P												

Total number of acres irrigated N/A non-consumptive
hydropower

11. In which county (ies) are lands listed above as place of use located? Butte
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 ()
14. Remarks: Formal change of ownership from New Energy, Inc. back to Amys is already
on file with IDWR.
See attached info regarding use and licenses.

Last Name Amy Ident No. 33-7159

SCANNED

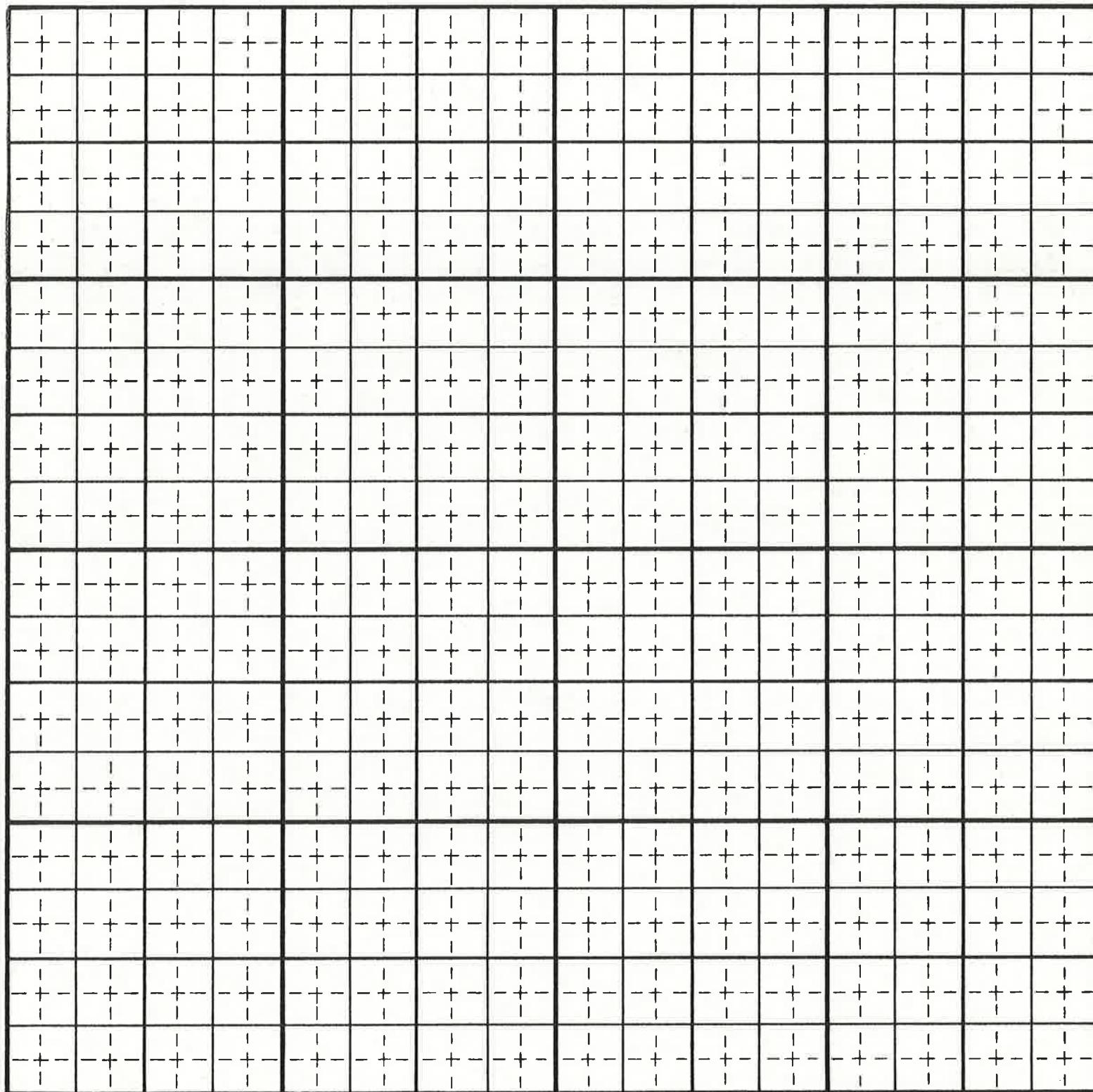
JUN 13 2006

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 maps



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JUN 13 2006

Last Name Amy

Ident No. 33-7159

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number _____
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 _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s)

Alan J. "Jake" Amy
Alan J. "Jake" Amy
Arlon Amy

Date 3-20-06

Date 3-20-06

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 _____

Title

of _____

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 Bonneville) SS.

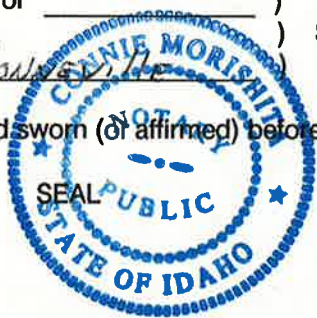
Subscribed and sworn (or affirmed) before me this

20th

day of

March

19 2006



Notary Public

Carrie Morishita

Residing at

Idaho Falls

My Commission Expires

5/23/2009

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, Curt R. Thomsen, Thomsen Stephens Law 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 _____

Address 2635 Channing Way - Idaho Falls, ID 83404

Date _____

Last Name Amy Ident. Number 33-7159

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JUN 13 2006

Copies White-State, Yellow-Claimant

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

SCANNED

SEP 15 2006

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 Bonneville) 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. Army

Notary Public Joyce Alencie
Residing at: Idaho Falls Idaho
My commission expires: 9-12-06

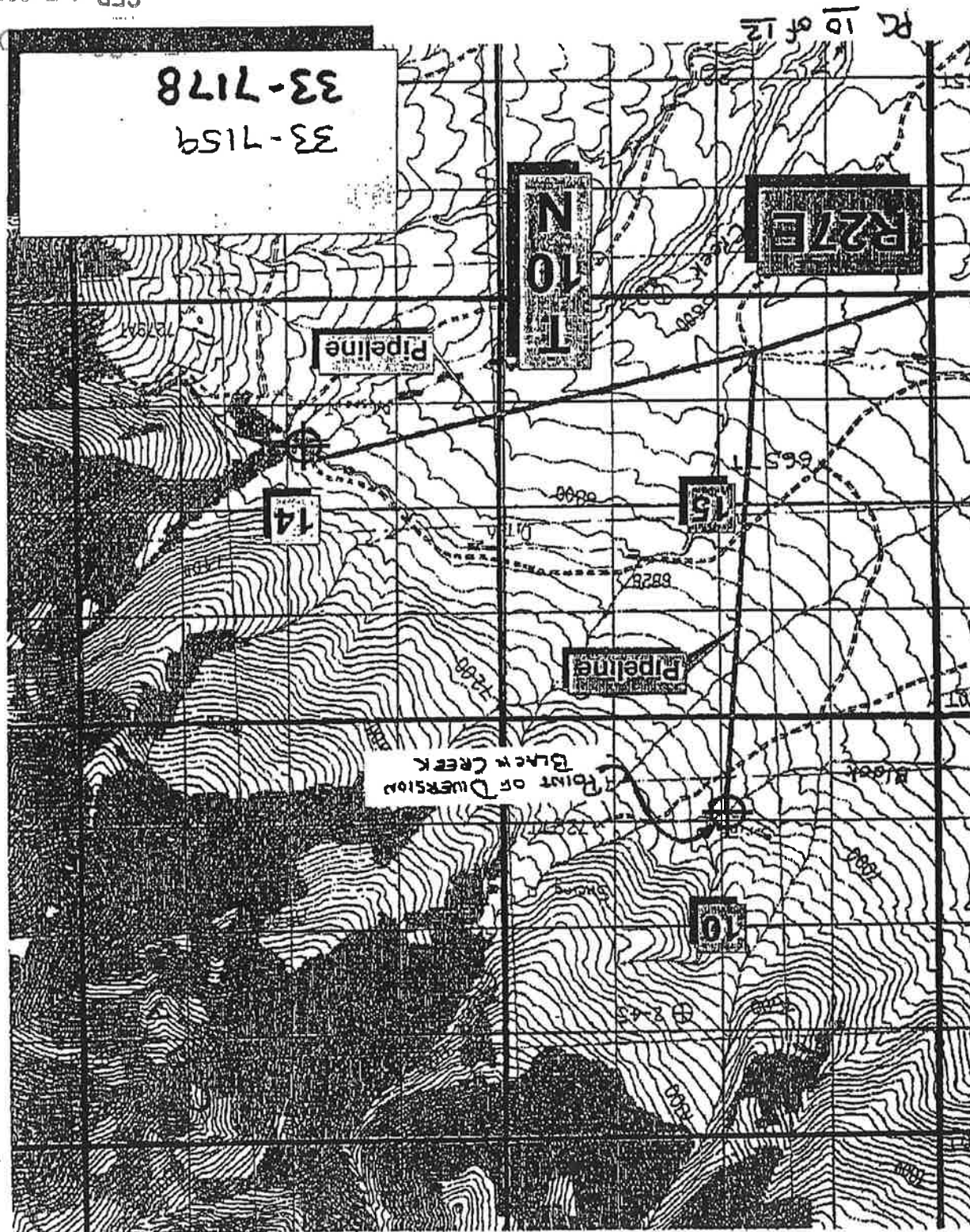
FOR DEPARTMENT USE ONLY

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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SEP 15 2006

SEP 15 2006



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