



U.S. Department of Justice

Environment and Natural Resources Division General Litigation Section

David L. Negri
550 West Fort Street, MSC 033
Boise, Idaho 83724

Telephone: 208-331-5943
Telecopier: 208-387-0842
Email: david.negri@usdoj.gov

June 10, 2004

Debbie Lash
Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Re: SRBA Subcase no. 63-09642 - Amended SF5

Dear Ms. Lash:

On May 28, 2004 the parties to SRBA subcase no. 63-09642 filed a Standard Form 5 ("SF5") resolving the subcase. Upon review of the SF5 by IDWR it was discovered that an error had occurred in the attached amended Director's Report that mis-described the township in the place of use. Therefore, the parties have executed this amended SF5 to correct that error.

If you have any questions please contact me at 208-331-5943.

Sincerely,

David L. Negri
United States Department of Justice

cc: Richard D. Humberger, IDWR

Enclosure(s)

**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 No. 39576

Subcase No. 63-9642

STANDARD FORM 5

STIPULATED ELEMENTS OF A
WATER RIGHT

This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

CLAIMANT(s):

Middle Fork Associates

R.D. Himberger 6/9/04
Richard Himberger Date
Attorney for Middle Fork Associates

OBJECTOR(s):

USDA Forest Service

David Negri 6/9/04
David Negri Date

IDWR Concurrence:

Jah Shurte 6-10-04
Jah Shurte Date

Nick Spencer 6-10-04
Nick Spencer Date

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-9642

NAME AND ADDRESS:

MIDDLE FORK ASSOC
C/O GREG AUCH
11477 HIGHLANDER RD
BOISE ID 83709

SOURCE:

Source:

GROUND WATER

PHIFER CREEK

~~UNNAMED STREAM~~

Tributary:

~~MIDDLE FORK BOISE RIVER~~~~MIDDLE FORK BOISE RIVER~~~~MIDDLE FORK BOISE RIVER~~

QUANTITY:

0.440 CFS ~~1.000 CFS~~77.600 AFY

PRIORITY DATE:

11/06/1980

POINT OF DIVERSION:

~~T05N R09E S2 SESE Within ELMORE County~~
~~T05N R09E S3 NWNE Within ELMORE County~~
~~T05N R09E S3 SWNE Within ELMORE County~~
~~T06N R09E S35 NESE Within ELMORE County~~
~~T06N R09E S35 SWNE Within ELMORE County~~
~~T06N R09E S36 SWSW Within ELMORE County~~PURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

MINING

04/01 11/01~~1/01 12/31~~0.440 CFS 77.60 AFY~~1.000 CFS~~

PLACE OF USE:

MINING

within ELMORE County

~~T05N R09E S02 NENW~~
~~T05N R09E S02 NWNW Lot 4~~~~T05N R09E S02 SWNW~~
~~T05N R09E S02 SENW~~
~~T05N R09E S03 NENE~~
~~T05N R09E S03 NWNE~~
~~T05N R09E S03 SWNE~~
~~T05N R09E S03 SENE~~T06N R09E S35 SWNE
T06N R09E S35 SENE
T06N R09E S35 SENW
T06N R09E S35 NESW
T06N R09E S35 NESE
T06N R09E S35 NWSE
T06N R09E S35 SWSE
T06N R09E S35 SESE
T06N R09E S36 SWNE
T06N R09E S36 SWNW
T06N R09E S36 SENW
T06N R09E S36 NESW
T06N R09E S36 NWSW

NBS

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

The points of diversion and places of use for this water right are on National Forest System land, further the places of use are on unpatented placer mining claims known as Wishful No. 1, Wishful No. 2, and Wishful No. 3.

This water right is only for use on the mining claims listed above for mining purposes authorized under state and federal law.

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.

~~THIS RIGHT IS CONDITIONED UPON COMPLETION OF THE APPROPRIATION IN ACCORDANCE WITH THE STATUTORY PROCEDURE FOR APPROPRIATION OF WATER RIGHTS. THIS RIGHT REMAINS SUBJECT TO ALL CONDITIONS SET FORTH IN THE PERMIT UPON WHICH THIS RIGHT IS BASED, AND WILL BE SUBJECT TO ALL CONDITIONS SET FORTH IN THE LICENSE ISSUED BY IDWR UPON COMPLETION OF THE STATUTORY APPROPRIATION PROCESS.~~

EXPLANATORY MATERIAL:

BASIS OF CLAIM - License

~~BASIS OF CLAIM - Permit~~

NBS

[Handwritten signature]
DN
[Handwritten signature]

CERTIFICATE OF MAILING

I certify that on June 10, 2004, 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:

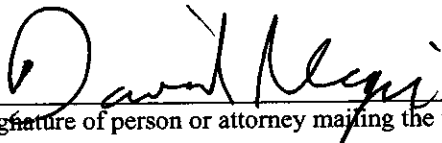
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

United States of America
US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

Middle Fork Associates
C/O Richard D. Himberger
Himberger Law Offices
575 E. Parkcenter Boulevard, Suite 100
Boise, ID 83706

IDWR Repository
P.O. Box 83720
Boise, ID 83720-00098



Signature of person or attorney mailing the form