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 No. 63-31074**
	)	
Case No. 39576	)	
	)	**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):
Barry Marcus

Barry Marcus 9/14/04
claimant Date

OBJECTOR(s):
USDI/Bureau of Reclamation

7/13/04
David Gehlert Date
Trial Attorney, General Litigation Section
U.S. Dept. of Justice

OBJECTOR(s):
Boise Project Board of Control

Albert P. Barker Date
Attorney for Objector(s)

IDWR Concurrence:

Jan Shurte 7/23/04 Date
Adjudication Supervisor

Susan Hamlin Nygard 7/22/04 Date
Deputy Attorney General

CERTIFICATE OF MAILING

I certify that on 9-16-04, 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:

   USDI Bureau of Reclamation
   US Department of Justice
   Environment & Natural Resources
   550 West Fort Street, MSC 033
   Boise, ID 83724

   Albert P. Barker
   Barker, Rosholt & Simpson LLP
   P.O. Box 2139
   Boise, ID 83701-2139

   Barry Marcus
   737 N 7th St
   Boise, ID 83702

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

Dala Walton
Signature of person or attorney mailing the form

STANDARD FORM 5 -- 63-31074

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

RIGHT NUMBER: 63-31074

NAME AND ADDRESS: BARRY MARCUS
737 N 7TH ST
BOISE ID 83702

SOURCE: MORES CREEK TRIBUTARY: BOISE RIVER

QUANTITY: 0.150 CFS

PRIORITY DATE: 12/31/1940

POINT OF DIVERSION: T04N R04E S2 SWSWSW Within BOISE County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/15 11/15	0.150 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir and/or Lake Lowell as decreed in SRBA Case No. 39576.

PLACE OF USE: IRRIGATION Within BOISE County

T04N R04E S02	SWSW	2.0	T04N R04E S11	NWNW	3.0

5 ACRES TOTAL

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

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 - Beneficial Use