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. 63-5334**
	)	
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):
Osprey Land Co.

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:

David R. Tuthill Jr 7/23/04
Jan Shurte Date
for Adjudication Supervisor

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

CERTIFICATE OF MAILING

I certify that on 9-16, 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:

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

Osprey Land Co
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 – 63-5334

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

RIGHT NUMBER: 63-5334

NAME AND ADDRESS: OSPREY LAND CO
737 N 7TH ST
BOISE ID 83702

SOURCE: MINNEHA CREEK — TRIBUTARY: MORES CREEK
MORES CREEK — TRIBUTARY: BOISE RIVER

QUANTITY: 1.940 CFS
221.60 AFY

Diversion from Mores Creek under this right is limited to those times water is available for diversion under this right and priority from Minneha Creek. Availability of water from Minneha Creek shall be determined based on the lesser of the flow in Minneha Creek at the authorized point of diversion or at the mouth of Minneha Creek. The total instantaneous diversion of water from all points of diversion under this right shall not exceed 1.94 cfs.

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.

The total instantaneous diversion of water from all points of diversion under Rights 63-5332 and 63-5334 shall not exceed 2.14 cfs, nor total combined annual volume of 266.6 af.

The portion of Right 63-5334 used for conveyance losses limited to diversion from Minneha Creek is 1.02 cfs.

PRIORITY DATE: 08/15/1889

POINT OF DIVERSION: T05N R04E S35 NWNESW Within BOISE County

T05N R04E S36 NWSE Within BOISE County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/15 11/15	1.940 CFS 207.00 AFY
STOCKWATER	01/01 12/31	0.030 CFS 14.60 AFY

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 Arrowrock Reservoir, Lucky Peak Reservoir and/or Lake Lowell as decreed in SRBA Case No. 39576.

The period of use for the irrigation described in this approval may be

extended to a beginning date of 3/1 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 5/1 and after 10/1 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.

PLACE OF USE: IRRIGATION Within BOISE County

T04N R04E S02 Lot 2	NWNE	10.0	T04N R04E S02	SWNE	10.0
T04N R04E S02	SENE	4.0	T04N R04E S02 Lot 3	NENW	10.0
T05N R04E S35	NWSW	5.0	T05N R04E S35	SWSW	15.0
T05N R04E S35	SESW	5.0	T05N R04E S35	SWSE	1.0

STOCKWATER same as IRRIGATION

60 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 63-5332 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 56 ACRES IN A SINGLE IRRIGATION SEASON.

This right is limited to the irrigation of 46 acres within the place of use described above in a single irrigation season.

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.

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

The right holder shall designate one person who is responsible for monitoring and recording the flow rates measured and diverted from the various sources and points of diversion from the sources described by these water rights. Every year the main address and telephone number of the person responsible for monitoring and recording shall be sent to the Department of Water Resources prior to the irrigation season. Any change in the responsible person must be sent to the department within one week following the change. The notice of the responsible person must also reference the water rights that are being monitored and recorded.

The person in charge of monitoring and recording the diversion of water must submit measurement records for the first two (2) years of water use. Following the first two years of water use, reports need not be submitted to the department unless specifically required by subsequent written request by the department.

STOCKWATER, 70 RANGE CATTLE

SOURCE IS ALSO KNOWN AS MINNEHAHA CREEK.

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. 63.

The right holder shall maintain lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

Failure of the right holder to comply with the conditions of Transfer 69538 is

cause for the Director to rescind approval of the transfer.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion. Measuring devices shall also be installed and maintained at a) the mouth of Corral Creek where it discharges into Mores Creek and b) the mouth of Minneha Creek where it discharges into Mores Creek.