



U.S. Department of Justice

Environment and Natural Resources Division

DWG:DAJ

90-6-2-63c

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July 30, 2007

RECEIVED

AUG 02 2007

DEPARTMENT OF
WATER RESOURCES

via FedEx Mail

Diana R. Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, Idaho 83303-2707

Re: SRBA Case No. 39576
Subcase Nos. 63-149A

Dear Ms. Delaney:

Enclosed is following original document for filing in the above listed subcase.

1. **STANDARD FORM 5 – STIPULATED ELEMENTS OF A WATER RIGHT**

Sincerely,

David A. Jarvis
Paralegal

Enclosure

RECEIVED

AUG 02 2007

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 No. 39576

) Subcase No. 63-149A
)
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STANDARD FORM 5

STIPULATED ELEMENTS OF A
WATER RIGHT

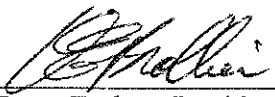
This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary 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):

South Boise Water Co

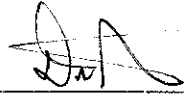

Barry Eschen, President

7-20-07
Date

V. Emmett Brøttier (Current President)

OBJECTOR(s):

USDI/Bureau of Reclamation

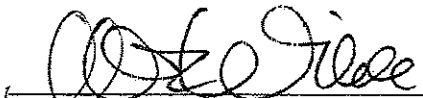

David Gehlert

7/30/07
Date

Trial Attorney, General Litigation Section
U S. Dept. of Justice

OBJECTOR(s):

City of Boise Public Works


Matthew K. Wilde
Attorney for Objector(s)

7/24/07
Date

IDWR Concurrence:


Jan Shurte
Adjudication Supervisor

7-6-07
Date


Nicholas B. Spender
Deputy Attorney General

7-10-07
Date

CERTIFICATE OF MAILING

I certify that on July 30, 2007, 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

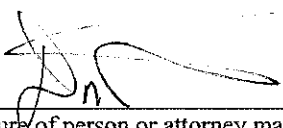
2. Copies to:

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

Matthew K. Wilde
PO Box 500
Boise, ID 83701-0500
Attorney for City of Boise Public Works

South Boise Water Co
P.O. Box 6005
Boise, ID 83707
Attn: Barry Eschen, President

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



Signature of person or attorney mailing the form

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

SF5 RIGHT NO. 63-149A

RIGHT NUMBER: 63-149A

NAME AND ADDRESS:

SOUTH BOISE WATER CO
C/O EVELYN HOLDER SECRETARY
PO BOX 6005
BOISE ID 83707

SOURCE:

Source:

BOISE RIVER

Tributary:

SNAKE RIVER

QUANTITY:

40 000 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition beginning with the latest and preceding to the earliest shall be reduced to 60 percent of their decreed quantities

PRIORITY DATE: 06/01/1865

POINT OF DIVERSION:

103N R02E S24 Lot 5 NENWSE
Within ADA County

103N R03E S19 Lot 6 SWSWSW
Within ADA County

PURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

WILDLIFE

01/01 12/31

40 000 CFS

RESERVOIR

01/01 12/31

40 000 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 Reservoirs 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, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.~~

NBS

MW DL

PLACE OF USE:

WILDLIFE within ADA County

I03N R02E S14 NWNW
I03N R02E S14 SWNW
I03N R02E S14 SENW
I03N R02E S14 Lot 9 NESW
I03N R02E S14 SWSW
I03N R02E S14 Lot 10 NWSE
I03N R02E S14 SWSE
I03N R02E S15 SENW
I03N R02E S15 NESW
I03N R02E S15 NESE
I03N R02E S15 NWSE
I03N R02E S15 SESE
I03N R02E S23 NENE
I03N R02E S23 NWNE
I03N R02E S23 NENW
I03N R02E S23 NWNW
I03N R02E S24 Lot 6 SWNE
I03N R02E S24 Lot 8 NENW
I03N R02E S24 NWNW
I03N R02E S24 Lot 7 SENW
I03N R02E S24 Lot 4 NESE
I03N R02E S24 Lot 5 NWSE
I03N R02E S24 Lot 4 SESE
I03N R03E S19 Lot 6 SWSW

AESIHETIC within ADA County

I03N R02E S14 NWNW
I03N R02E S14 SWNW
I03N R02E S14 SENW
I03N R02E S14 Lot 9 NESW
I03N R02E S14 SWSW
I03N R02E S14 Lot 10 NWSE
I03N R02E S14 SWSE
I03N R02E S15 SENW
I03N R02E S15 NESW
I03N R02E S15 NESE
I03N R02E S15 NWSE
I03N R02E S15 SESE
I03N R02E S23 NENE
I03N R02E S23 NWNE
I03N R02E S23 NENW
I03N R02E S23 NWNW
I03N R02E S24 Lot 6 SWNE
I03N R02E S24 Lot 8 NENW
I03N R02E S24 NWNW
I03N R02E S24 Lot 7 SENW
I03N R02E S24 Lot 4 NESE
I03N R02E S24 Lot 5 NWSE
I03N R02E S24 Lot 4 SESE
I03N R03E S19 Lot 6 SWSW

ACRES TOTAL

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

IF MEASURED OR CALCULATED BOISE RIVER FLOWS AT THE POINT OF DIVERSION ARE LESS THAN 240 CFS DURING NOVEMBER 15 TO MARCH 1, THE DIVERSION OF WATER UNDER THIS RIGHT SHALL BE LIMITED TO 10 CFS. MEASURED OR CALCULATED BOISE RIVER FLOWS AT THE POINT OF DIVERSION SHALL BE BASED ON GAUGED LUCKY PEAK DAM DISCHARGE MINUS THE GAUGED DIVERSION TO THE NEW YORK CANAL.

[Handwritten signature]
MW NBS DL
[Handwritten initials]

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 SUBORDINATE TO THE STORAGE OF WATER IN ARROWROCK RESERVOIR, ANDERSON RANCH RESERVOIR, LUCKY PEAK RESERVOIR AND LAKE LOWELL AND IS ALSO SUBORDINATE TO UPSTREAM IRRIGATION DIVERSIONS FROM THE BOISE RIVER.

[Handwritten signature]
MW NBS DL
[Handwritten initials]

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH THE POINTS OF DIVERSION DESCRIBED ABOVE: 63-148C, 63-150, 63-185A, 63-185B, 63-164C, 63-2392C, 63-2392D, 63-9386B

Use of this right is also subject to the "Settlement Agreement in Snake River Basin Adjudication Subcase No. 63-149A Between Boise City and South Boise Water Company" recorded in the office of the Ada County Recorder on May 22, 2007, as Instrument No. 107073075.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

THIS RIGHT IS A SPLIT FROM FORMER RIGHT 63-149

WATER IS DELIVERED THROUGH THE ROSSI-MILL DITCH AND AN UNNAMED STREAM KNOWN LOCALLY AS LOGGERS CREEK.

THIS RIGHT IS DESIGNATED IN THE STEWART DECREE AS NO 17

[Handwritten signature]
MW NBS DL
[Handwritten initials]