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JUN 10 2009

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

A. Subcase Number: 63-04927
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho, Department of Fish and Game
Address: 600 South Walnut St.
P.O. Box 25
Boise, Idaho 83707

Daytime Phone: (208) 334-2400

Name and Address of Attorney, if any:

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER (ISB # 2597)
Deputy Attorney General
Attorney Address: Office of the Attorney General
700 W. State Street, 2nd Floor
P.O. Box 44449
Boise, ID 83711-4449
Attorney Phone No. (208) 334-2400

COPY

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: STATE OF IDAHO
DEPT OF FISH & GAME
Address: PO BOX 25
BOISE, ID 83707

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☒ **Name and Address**
Should be: State of Idaho, Department of Fish and Game, 600 South Walnut St., P.O. Box 25, Boise, Idaho 83707
2. ☒ **Source**
Should be: Duff Lane Pond tributary to Sinks
3. ☒ **Quantity**
Should be: 10 AFY
4. ☒ **Priority Date**
Should be: 05/03/1964
5. ☒ **Point(s) of diversion**
Should be: Township 4 North, Range 2 West, Sec. 9, NW¼SW¼
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: Fish Propagation
8. ☒ **Period of Year**
Should be: 01/01 – 12/31
9. ☒ **Place of Use**
Should be: Township 4 North, Range 2 West, Sec. 9, NW¼SW¼
11. **I object because:**
☐ This water right should not exist.
☒ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

1. Walton C. Poole, Ph.D. (hereinafter "Dr. Poole"), Staff Biologist with the Idaho Department of Fish and Game (hereinafter "IDF&G"), conducted additional research about the State's use and ownership of Duff Lane Pond.

A. Attached to this objection are true and correct copies of the following documents that Dr. Poole obtained from the internet site for the Idaho Department of Lands (<http://gis1/idl.idaho.gov/website/pdlr/>):

Attachment I: Deed Dated March 10, 1956 from Walter J. & Nellie M. McFarland to the State of Idaho. Canyon County Instrument No. 431418.

Attachment II: Letter Dated April 5, 1971 from O. B. White to Gordon C. Trombley.

Attachment III: Letter Dated June 11, 1971 from W. J. Mitchell to O. B. White.

Attachment IV: Letter Dated June 17, 1971 from O. B. White to Gordon C. Trombley.

Attachment V: Letter Dated August 10, 1971 from Jack E. Gillette to Robert L. Salter.

B. Attached to this objection are true and correct copies of the following documents that Dr. Poole obtained from the files of the IDF&G:

Attachment VI: Memo dated May 2, 1964 from William Platts to James C. Simpson.

Attachment VII: Letter Dated February 23, 1971 from John R. Woodworth to Ellis L. Mathes.

2. Attachments I through VII establish the following facts about the State's use and ownership of this site:

- A. Walter J. & Nellie M. McFarland sold the following parcel to the State of Idaho, Department of Highways, on March 10, 1956:

A rectangular parcel of land being all of the S $\frac{1}{2}$ N $\frac{1}{2}$ of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, Township 4 North, Range 2 West, Boise Meridian, and containing 9.8 acres, more or less, excluding a strip of land 12.5 feet wide along the West side of the above described land being present road right of way.

Attachment I: Deed Dated March 10, 1956 from Walter J. & Nellie M. McFarland to the State of Idaho. Canyon County Instrument No. 431418.

- B. The above tract is a former material source, nearly depleted and filled with sub-surface water. The tract is located one mile east and one-quarter mile south of Middleton Highway 44. The resulting pond is now commonly referred to as "Duff Lane Pond."

Attachment II: Letter Dated April 5, 1971 from O. B. White to Gordon C. Trombley.

Attachment VI: Memo dated May 2, 1964 from William Platts to James C. Simpson.

- C. The IDF&G contacted fisherman about fishing in Duff Lane Pond, as early as May 2, 1964 and IDF&G's memo stated as follows:

I sampled the bass population in the Duff Lane Pond and found they are averaging about 11 inches and are in excellent shape. Very few small ones can be observed.

I talked with a fisherman from Boise who was fishing the pond and he informed me that last year he caught about 40 bass from the pond and they averaged about 10 inches. He remarked the bass this year are running about 1 inch larger.

Because the pond is supporting a good fishing population of bass and the pond is easy to seine – maximum depth 7 feet – **I would recommend the pond, for the future be managed for a bass fishery and bass supply for stocking.**

Attachment VI: Memo dated May 2, 1964 from William Platts to James C. Simpson (emphasis added).

- D. John R. Woodworth, Director of the Idaho Fish and Game Department, wrote on February 23, 1971 the State Highway Engineer about Duff Lane Pond. He stated:

We understand that the Highway Department is the owner of an excavated gravel pit in nonuse located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 4 N., R. 2 W., B. M., which has filled with percolating ground waters. The pond at one time was privately stocked with Black Bass and Perch and is presently used by the public as a fishing site.

One of our Biologists, Mr. Bill Webb, reports that the area is in need of policing for litter and that the pond has been used to some extent as a dump area for used tires. . . . Should the Highway Department consider this pit to be expended or surplus to its needs, the Fish and Game Department would be willing to pay the cost of disposal, . . . and to pay to the Highway Department the sum of \$10.00.

Attachment VII: Letter Dated February 23, 1971 from John R. Woodworth to Ellis L. Mathes.

- E. The Idaho Board of Highway Directors agreed to the transfer at their regular meeting on March 23, 1971.

Attachment II: Letter Dated April 5, 1971 to John R. Woodworth from O. B. White.

- F. The State Land Board approved this transfer at their meeting on June 8, 1971.

Attachment III: Letter Dated June 11, 1971 from W. J. Mitchell to O. B. White.

Attachment IV: Letter Dated June 17, 1971 from O. B. White to Gordon C. Trombley.

- G. The IDF&G was notified of this transfer in a letter dated August 10, 1971.

Attachment V: Letter Dated August 10, 1971 from Jack E. Gillette to Robert L. Salter.

H. The newly discovered evidence described above shows a use of Duff Lane Pond as a source of Black Bass for fish propagation by the IDF&G prior to May 20, 1971.

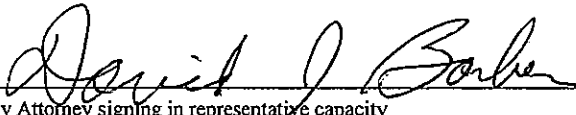
F. VERIFICATION (Must be Completed)

State of Idaho)
County of Ada) ss.

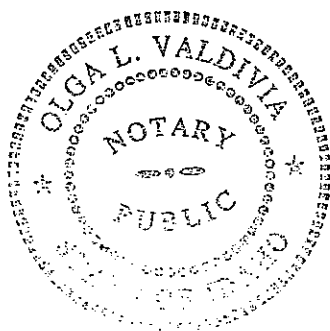
DAVID J. BARBER, Deputy Attorney General, duly sworn, upon oath, deposes and says:

That the State of Idaho, Department of Fish and Game, in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, Department of Fish and Game, which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER
Deputy Attorney General


By Attorney signing in representative capacity

Subscribed and sworn to before me on: June 9, 2009
(Insert Date)




Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: 2/8/2012

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

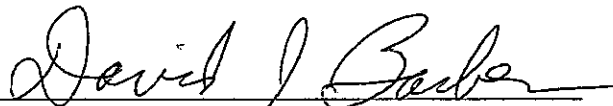
G. CERTIFICATE OF MAILING

I certify that on June 9, 2009, I caused the original and the copies of this objection, including all attachments, to be served on the following persons by the method designated:

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
U.S. MAIL
2. One copy to the owner of the water right at the following address:
STATE OF IDAHO, Department of Fish and Game
600 South Walnut Street
P.O. Box 25
Boise, ID 83707
STATEHOUSE MAIL
3. Copies to:
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098
STATEHOUSE MAIL

United States Department of Justice
Environment and Natural Resource Division
550 W. Fort Street, MSC 033
Boise, ID 83724
U.S. MAIL

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449
(not applicable)


Signature of Objector or attorney
Mailing on Objector's behalf

012

WARRANTY DEED

Printed and for sale by Sym-Tark Company, Boise

367

INSTRUMENT No. 431418

THIS INDENTURE, Made this 10th day of March

in the year of our Lord one thousand nine hundred and fifty-six, between

Walter J. McFarland and Nellie M. McFarland, his wife,

of Caldwell, County of Canyon, State of Idaho

the part 1es of the first part, and

State of Idaho

of ~~Caldwell~~, ~~County of Canyon~~, ~~State of Idaho~~

the part y of the second part.

WITNESSETH, That the said part 1es of the first part, for and in consideration of the sum of One and 40/100 (\$1.40) DOLLARS,

lawful money of the United States of America,

to them in hand paid by the said part y of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said part y of the second part, and to its ^{SUCCESSORS} ~~heirs~~ and assigns forever, all of the following described real estate, situated in ~~Caldwell~~, County of ~~Canyon~~, State of Idaho, to-wit:

A rectangular parcel of land being all of the S¹/₄N¹/₄SW¹/₄ of Section 9, Township 4 North, Range 2 West, Boise Meridian, and containing 9.8 acres, more or less, excluding a strip of land 12.5 feet wide along the West side of the above described land being present road right of way.



TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said part 1es of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the part y of the second part, and to its ^{SUCCESSORS} ~~heirs~~ and assigns forever and the said part 1es of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said part y of the second part, its ^{SUCCESSORS} ~~heirs~~ and assigns, against the said part 1es of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

File Reference: Recorded as Instrument No 431418 and 431419 in Canyon County.
This tract assigned from State Highway Dept. to Fish and Game Dept. by Land Board Action
June 8, 1971. See official correspondence behind deeds above.

IN WITNESS WHEREOF, The said part 123 of the first part ha ve hereunto set their hands and seal 3 the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Walter M. McFarland [Seal]
 Nellie M. McFarland [Seal]
 [Seal]
 [Seal]

STATE OF IDAHO

County of Canyon

ss.

On this 10th day of March in the year 1906, before me
 Wm C. Park, a Notary Public

In and for said State personally appeared Walter M. McFarland and Nellie M. McFarland

known to me to be the person 3 whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Wm C. Park
 Notary Public for the State of Idaho,
 Residing at Boise, Idaho

431418 D-14-8

No. Borrow Pit

WARRANTY DEED

Walter M. McFarland

to wit

-TO-

State of Idaho

Dated _____
 Recorded _____
 Indexed _____
 Filed _____
 9/18

STATE OF IDAHO

County of Canyon

ss.

I hereby certify that this instrument was filed

for record at request of

Walter M. McFarland

at _____ minutes past _____

o'clock A. M., this _____ day

of March, A. D. 1906

in my office and duly recorded in Book 242

of Deeds at page 36

S. S. FOOTE

Ex-Officio Recorder.

By Lavonia Payne Deputy.

Fees, \$ _____

Mail to Boise, Idaho

Page _____

25 BY 919 9

STANDARD COMPANY, BOISE

ATTACHMENT I

STATE OF IDAHO

IDAHO BOARD OF
HIGHWAY DIRECTORS

HOWARD B. THOMASON - CHAIRMAN
LLOYD F. BARRON - VICE CHAIRMAN
JOHN G. FANNING - MEMBER

WAYNE SUMMERS
EXECUTIVE SECRETARY



E. L. MATHES
STATE HIGHWAY ENGINEER

DEPARTMENT OF HIGHWAYS

P.O. BOX 7129
BOISE, IDAHO 83707

April 5, 1971

Material Source
Cn - 72s
Canyon County

Mr. Gordon C. Trombley
State Land Commissioner
Department of Public Lands
State Capitol Building
Boise, Idaho

Dear Mr. Trombley:

Enclosed herewith is a copy of the legal description of a 9.8 acre tract located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9 Township 4 N., Range 2 W., Boise Meridian, which is one mile east and one-quarter mile south of Middleton on Highway 44.

The tract is a former material source, nearly depleted and filled with sub-surface water.

Idaho Fish and Game have asked if title could be conveyed to them so that efforts could be made to police the area and stock the pond with fish.

The Highway Board at its meeting March 23, 1971, declared the property surplus to Department needs and approved transfer at nominal value.

May we please have Land Board approval for conveyance of the site to the Fish & Game Department, after usual public hearing for objections?

Very truly yours,

A handwritten signature in cursive script, appearing to read "O. B. White".

O. B. WHITE
Chief Right of Way Agent

vp
Enclosure

Better Highways for a Better Idaho

LEGAL DESCRIPTION

Land situated in Canyon County

A rectangular parcel of land being all of the $S\frac{1}{2}N\frac{1}{2}$ of the $NW\frac{1}{4}SW\frac{1}{4}$ of Section 9, Township 4 North, Range 2 West, Boise Meridian, and containing 9.8 acres, more or less, excluding a strip of land 12.5 feet wide along the Westerly side of the above described land being present road right of way.

June 11, 1971

Mr. O. B. White
Chief R/W Agent
Building Mail

Dear Bruce:

The State Land Board at their meeting June 8, 1971 approved the transfer of that certain property in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 9, Township 4N, Range 2W.B.M. to the jurisdiction of the Fish and Game Department as requested in your letter of April 5, 1971. Your reference to this tract is Material Source, CN-72s, Canyon County.

Transfer is being made under authority of Section 58-332 of Idaho Code, and we do not think a public hearing is required for transfer to another State agency.

Please forward to us the Deed which you now hold to the property in the name of the State. This Deed will be forwarded on th the Fish and Game Department by us with official notification of the transfer.

Very truly yours,

FOR THE COMMISSIONER

W. J. MITCHELL
Division Chief, Lands

WJM:ab

STATE OF IDAHO

IDAHO BOARD OF
HIGHWAY DIRECTORS

HOWARD B. THOMASON - CHAIRMAN
LLOYD F. BARRON - VICE CHAIRMAN
JOHN G. FANNING - MEMBER

WAYNE SUMMERS
EXECUTIVE SECRETARY



E. L. MATHES
STATE HIGHWAY ENGINEER

DEPARTMENT OF HIGHWAYS

P.O. BOX 7129
BOISE, IDAHO 83707

June 17, 1971

Cn-72s
Canyon County

Mr. Gordon C. Trombley
State Land Commissioner
Idaho Department of Public Lands
Capitol Building
Boise, Idaho

Attn: Mr. W. J. Mitchell
Division Chief, Lands

Dear Mr. Trombley:

The State Land Board at their meeting June 8, approved transfer of property in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 9, T. 4 N., R. 2 W., B.M., known on our records as Cn-72, to the Fish and Game Department.

At your request we enclose the two deeds whereby the State acquired the property. Please proceed with the transfer.

We also have an Owners Title Insurance Policy. Should there be any title question, please give us the following reference number; D-14-8b.

Very truly yours,

A handwritten signature in cursive script, appearing to read "O B White".

O. B. WHITE
Chief Right of Way Agent

vp
Enclosures

Better Highways for a Better Idaho

August 10, 1971

Mr. Robert L. Salter
Acting Director
Idaho Fish and Game Department
Building Mail

Dear Bob:

At a regularly scheduled meeting on June 8, 1971, the State Board of Land Commissioners transferred jurisdiction of a 9.8 acre tract identified as Material Source CN-72s, Canyon County from the State Highway Department to the Idaho Fish and Game Department.

The legal description of the property is:

A rectangular parcel of land being all of the S $\frac{1}{2}$ N $\frac{1}{2}$ of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, Township 4 North, Range 2 West, Boise Meridian, and containing 9.8 acres, more or less, excluding a strip of land 12.5 feet wide along the West side of the above described land being present road right of way.

We are enclosing herewith photocopies of a Warranty Deed from Walter J. and Nellie M. McFarland, and a Quitclaim Deed from Norman and Ruth Siverts, both of said Deeds conveying this property to the State of Idaho. The original copies of the Deeds are on file in our Acquisition Deed Book.

Please assume jurisdiction and management of this tract as of this date.

Very truly yours,

JACK E. GILLETTE
Acting Commissioner

WJM:JEG:ab
cc: Bruce White
State Highway Dept.

ITR 12A

FROM William Platts
TO James C. Simpson
SUBJECT Buff Lane Pond - Middleton

INTER-DEPARTMENT MEMO—1

DATE 5-2-64

JCS

I sampled the bass population in the Duff Lane Pond and found they are averaging about 11 inches and are in excellent shape. Very few small ones can be observed.

I talked with a fisherman from Boise who was fishing the pond and he informed me that last year he caught about 40 bass from the pond and they averaged about 10 inches. He remarked the bass this year are running about 1 inch larger.

Because the pond is supporting a good fishing population of bass and the pond is easy to seine - maximum depth 7 feet - I would recommend the pond, for the future, be managed for a bass fishery and bass supply for stocking.

Sincerely,

Bill

February 23, 1971

Expended Gravel Pond
Duff Lane
Canyon County

Mr. Ellis L. Mathes
State Highway Engineer
P. O. Box 7129
Boise, Idaho 83707

Attention: O. B. White, R/W Division Engineer

Dear Mr. Mathes:

We understand that the Highway Department is the owner of an excavated gravel pit in nonuse located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 4 N., R. 2 W., B. M., which has filled with percolating ground waters. The pond at one time was privately stocked with Black Bass and Perch and is presently used by the public as a fishing site.

One of our Biologists, Mr. Bill Webb, reports that the area is in need of policing for litter and that the pond has been used to some extent as a dump area for used tires. He suggested that the Idaho Fish and Game Department attempt to acquire this pit. Should the Highway Department consider this pit to be expended or surplus to its needs, the Fish and Game Department would be willing to pay the cost of disposal, by having the disposal cost billing such as advertising sent directly to this Department, and to pay to the Highway Department the sum of \$10.00.

Should the Highway Department determine that they still need the site, we would like for them to consider granting a free-use license to the Fish and Game Department for an indefinite period of time, subject to entry by the Highway Department for excavation of gravel bearing materials. In return the Idaho Fish and Game Department would post the area to dumping, attempt to police the ground area and rehabilitate the fishery.

Sincerely,

IDAHO FISH AND GAME DEPARTMENT

John R. Woodworth
Director

JRW/TDB/ech
cc: Jim Simpson
Bill Webb

ATTACHMENT VII

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