STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

October 9, 2009

David W. Gehlert
Natural Resources Section
Environment and Natural Resource Division
U.S. Department of Justice
1961 Stout Street – 8th Floor
Denver, CO 80294

RE: SRBA Subcase No. 63-2322 (Bureau of Reclamation)

Dear Dave:

I am enclosing an SF5 for the above-referenced subcase. Please review the document, and if it is acceptable, please sign on the indicated signature line, initial the revised recommendation and return the original SF5 to me. I will obtain the remaining signatures and file it with the SRBA Court.

If you should have any questions or comments, please don't hesitate to contact me at (208) 287-4815.

Sincerely,

Ray Williams
Paralegal

Enclosure

Natural Resources Division - Water Resources Section
P.O. Box 83720, Boise, Idaho 83720-0098
Telephone: (208) 287-4801; Legal FAX: (208) 287-6700

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. 63-2322**
	)	
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:
Bureau of Reclamation

_____

David W. Gehlert Date
Attorney for Claimant

OBJECTIORS:

W.O., LLC

Nampa & Meridian Irrigation Dist.

Dana L. Hofstetter Date
Attorney for Objector

S. Bryce Farris Date
Attorney for Objector

IDWR Concurrence:

Jan Shurte Date
Water Rights Supervisor

Nicholas B. Spencer 10-9-09 Date
Deputy Attorney General
Attorney for IDWR

IDAHO DEPARTMENT OF WATER RESOURCES

RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-2322

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: ELIJAH SLOUGH TRIBUTARY: BOISE RIVER
WILSON SLOUGH TRIBUTARY: BOISE RIVER

QUANTITY: 120.000 CFS

PRIORITY DATE: 10/04/1918

POINT OF DIVERSION:

T03N R03W S12 NENW Within CANYON County

T03N R03W S12 NWSE Within CANYON County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/01 11/15	120.000 CFS

PLACE OF USE:

62140 ACRES TOTAL

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

This right when combined with Right No. 63-2322 can be used to irrigate up to 6,880.73 acres of the 62,140 acres within the boundary of the Black Canyon Irrigation District.

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

The name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address sections of this partial decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The irrigation organizations act on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by such irrigation organizations, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.

NBS

This right remains subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place or manner of wasting it, or to recapture it.

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 water right shall not alter or abrogate any provision of contract executed by the United States or State law regarding Black Canyon Irrigation District or Nampa & Meridian Irrigation District rights and responsibilities to use and make available water developed in drains within their boundaries. NB S

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

CERTIFICATE OF MAILING

I certify that on _____, 2009, 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:

W.O., LLC
Represented by:
DANA L. HOFSTETTER
608 WEST FRANKLIN STREET
BOISE, ID 83702

NAMPA & MERIDIAN IRRIGATION DISTRICT
Represented by:
S. BRYCE FARRIS
RINGERT LAW CHARTERED
455 S. THIRD STREET
P.O. BOX 2773
BOISE, ID 83701-2773

USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR
P.O. BOX 83720
BOISE, ID 83720-0098

_____
Signature of person or attorney mailing the form