

173
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____
2009 OCT 30 AM 10 12

**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. 63-31633
)
)
)
)
)
)

STANDARD FORM 5

**STIPULATED ELEMENTS OF A
WATER RIGHT**

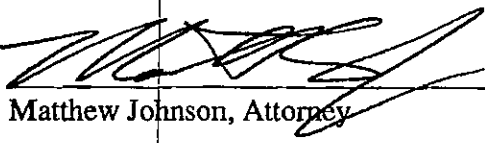
This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary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

CLAIMANTS

Richard E. and Lorraine S. Kushlan

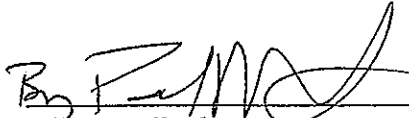

Matthew Johnson, Attorney

10/20/2009
Date

STANDARD FORM 5 - 63-31633

OBJECTOR

Wilder Irrigation District

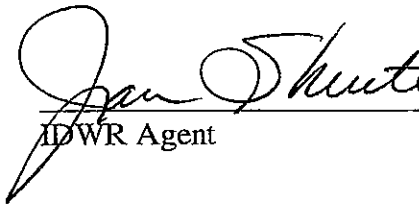

Albert P. Barker, Attorney 10/20/09
Date

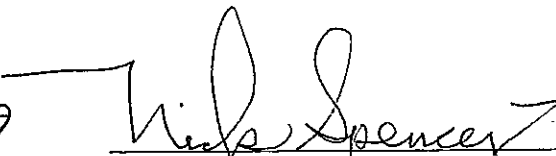
RESPONDENT

United States on behalf of
Bureau of Reclamation

David Gehlert Date
Attorney, U.S. Department of Justice
Environment and Natural Resources
Division

IDWR Concurrence:


IDWR Agent 10-27-09
Date


Nicholas Spencer 10-28-09
Deputy Attorney General Date

CERTIFICATE OF MAILING

I certify that on Oct 29, 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

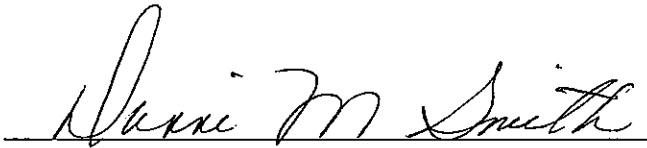
2. Copies to:

LORRAINE S KUSHLAN
RICHARD E KUSHLAN
Represented by:
MATTHEW A JOHNSON
5700 E FRANKLIN RD, STE 200
NAMPA, ID 83687-7901

WILDER IRRIGATION DISTRICT
Represented by:
PAUL L ARRINGTON
113 MAIN AVE W, STE 303
PO BOX 485
TWIN FALLS, ID 83303-0485

USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC O33
BOISE, ID 83724

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098


Signature of person or attorney mailing the form

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

RIGHT NUMBER: 63-31633

NAME AND ADDRESS: RICHARD E KUSHLAN
18397 PRIDE LN
CALDWELL ID 83607LORRAINE S KUSHLAN
18397 PRIDE LN
CALDWELL ID 83607

SOURCE: LOWER EMBANKMENT DRAIN

TRIBUTARY: SNAKE RIVER

QUANTITY: 0.060 CFS

PRIORITY DATE: 04/01/1949

POINT OF DIVERSION:

T04N R04W S35 NWSESW Within CANYON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/01 11/15	0.060 CFS

PLACE OF USE: IRRIGATION in CANYON County

T04N R04W S35 NESW 3.00

3 ACRES TOTAL

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

The source of this water right includes waste water. The 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 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.~~

While the Lower Embankment Drain is a natural water way, it is also a federal facility and has been utilized as part of the Boise Project since 1908 as invoked by the United States through its reservation authority provided by the Act of August 30, 1890 (43 U.S.C. 945). As a federal facility, the Lower Embankment Drain, to the extent allowed by law, may be rerouted, piped, or its flow of water interrupted if determined appropriate to better serve Boise Project purposes.

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.

PLH
may
J
NBS

SF5 Right No. 63-31633

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Right Nos. 63-4256C, 63-4256E and 63-31634 are also diverted through point of diversion described above.

Parcel No. R3660401B0

SF5 Right No. 63-31633