



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

February 4, 2010

Bruce M. Smith
950 W. Bannock, Suite 520
Boise, ID 83702

RE: SRBA Subcase No. 63-20041 (Boise City Canal Co.)

Dear Bruce:

I am enclosing a revised SF5 for your review and signature. If the SF5 is acceptable, please sign on the indicated signature line, initial the revised recommendation and return the original to me. I will obtain the remaining signatures and file the SF5 with the SRBA Court.

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

Sincerely,

A handwritten signature in blue ink that reads "Ray Williams".

Ray Williams
Paralegal

Enclosure

SESSION

Subcase No. 63-20041

STANDARD FORM 5

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.

Boise City Canal Company

Bruce M. Smith **Date**
Attorney for Claimant/Objector/Respondent

STANDARD FORM 5 – 63-20041

OBJECTORS:

Bureau of Reclamation

Boise Project Board of Control

David W. Gehlert, USDOJ, Date
Attorney for Objector

Albert P. Barker Date
Attorney for Objector

RESPONDENT:

State of Idaho

Michael C. Orr 2/1/10

Michael C. Orr Date
Attorney for Respondent

IDWR Concurrence:

Jan Shurte 1-26-10

Jan Shurte Date
Water Rights Supervisor

Nicholas B. Spencer 1-25-10

Nicholas B. Spencer Date
Deputy Attorney General
Attorney for IDWR

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

RIGHT NUMBER: 63-20041

NAME AND ADDRESS: BOISE CITY CANAL CO
PO BOX 2157
BOISE ID 83701-2157

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 36.370 CFS
46.440 AFY

NBS
[Signature]
MCO

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: 06/01/1866

POINT OF DIVERSION:

T03N R02E S14 SENE Within ADA County
T03N R02E S24 NWNE Lot 1 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
AESTHETIC	03/01 11/15	6.350 CFS
DIVERSION TO STORAGE	03/01 11/15	6.350 CFS
AESTHETIC STORAGE	03/01 11/15	46.44 AFY
STOCKWATER	03/01 11/15	0.170 CFS
MUNICIPAL	03/01 11/15	0.680 CFS
IRRIGATION	03/01 11/15	29.340 CFS

Diversion for irrigation, stockwater, and municipal 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 Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

~~THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESE, THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE, NWSE, SWSE, SESE, THE VETERANS PARK SLOUGH POND LOCATED IN T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS DESCRIBED ABOVE.~~

H135
J
MCO

During March and November 1 through November 15 water may be diverted for aesthetic use at Julia Davis Pond or into storage for later use at the Pond. If during those periods measured or calculated Boise River Flows at the point of diversion are less than 240 cfs, (1) diversion of water under this right shall be limited to 1 cfs and (2) the total volume diverted shall be limited to 25 acre feet during March, and 12.5 acre feet from November 1 through November 15. 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.

PLACE OF USE:

AESTHETIC in ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
<u>T03N R02E S13</u>	<u>SWNW</u>	T03N R02E S13 Lot 2	SESW
<u>T04N R02E S32</u>	<u>NESE</u>	T04N R02E S32 Lot 1	SWSE
<u>T04N R02E S32</u>	<u>SESE</u>		

AESTHETIC STORAGE in ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
<u>T03N R02E S13</u>	<u>SWNW</u>	T03N R02E S13 Lot 2	SESW
<u>T04N R02E S32</u>	<u>NESE</u>	T04N R02E S32 Lot 1	SWSE
<u>T04N R02E S32</u>	<u>SESE</u>		

STOCKWATER same as AESTHETIC
MUNICIPAL same as AESTHETIC

1467 ACRES TOTAL ~~915 ACRES TOTAL~~

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 1467 ~~915~~ ACRES WITHIN THE BOUNDARY OF THE BOISE CITY CANAL COMPANY

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.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

THIS RIGHT IS DESIGNATED AS NO 33 IN THE STEWART DECREE AND THE RECORDS OF THE BOISE RIVER WATER MASTER

RIGHT 63-31937 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE AS T03N, R02E, S24, NWNE, LOT 1.

THE STOCKWATER COMPONENT IS INCIDENTAL TO THE IRRIGATION COMPONENT

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

THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 63-165K AND 63-165L
WATER IS DELIVERED THROUGH THE BOISE CITY CANAL

THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND
CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM
SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESW;
THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE,
NWSE, SWSE, SESW; THE VETERANS PARK SLOUGH POND LOCATED IN
T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT
DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH
THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS
COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS
DESCRIBED ABOVE.

THE MUNICIPAL COMPONENT IS USED WITHIN THE SERVICE AREA OF
UNITED WATER

NBS
J MCO

CERTIFICATE OF MAILING

I certify that on _____, 2010, 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:

BOISE PROJECT BOARD OF CONTROL
Represented by:
ALBERT P. BARKER
1010 W. JEFFERSON, STE. 102
P.O. BOX 2139
BOISE, ID 83701-2139

BOISE CITY CANAL CO.
Represented by:
BRUCE M. SMITH
950 W. BANNOCK, STE. 520
BOISE, ID 83702

STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIVISION CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
P.O. BOX 44449
BOISE, ID 83711-4449

USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL 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