

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 63-5354
Date Received: 6/9/2003
Receipt No: C069323 & W030564
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

CITY OF BOISE
DEPT OF AVIATION & PUBLIC TRANSPORTATION
PO BOX 500
BOISE ID USA 83701

Phone: (208)384-3901

2. Date of Priority: 01/01/1900

3. Source: GROUND WATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
03N	02E	30	SE NE	ADA	

5. Description of diverting works:

At one time, multiple homes were located on the parcel that currently has an address of 3205 S Curtis. All buildings have been demolished and wells currently not used. City purchased the property in September 1986.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
MUNICIPAL	01/01	12/31	0.18	

7. Total Quantity Appropriated is:
0.18 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

SCANNED
APR 29 2008

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
03N	02E	30	NE	NE	MUNICIPAL	
			SW	NE	MUNICIPAL	
			SE	NE	MUNICIPAL	

11. Place of use in counties: ADA

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

3 points of diversion (wells) known to be on the property.

Corrected claim received 6/25/2003.

15. Basis of Claim: Beneficial Use

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEMCIVIL CASE NUMBER: 39576
Ident. Number 63-5354
Date Received 6-9-03
Receipt Number W030564 / C069323NOTICE OF CLAIM RECEIVED
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

JUN 09 2003

WATER RESOURCES
WESTERN REGIONWATER RESOURCES
WESTERN REGION

Please type or print clearly

1. Name of Claimant (s) City of Boise Dept of Aviation and Public Transportation Phone (208) 384-3901Mailing Address PO Box 500 Boise, ID Zip 837012. Date of Priority (Only one (1) per claim) 1/1/19003. Source of water supply (a) groundwater
which is tributary to (b) _____4. a. Location of existing point of diversion is: Township 3N Range 2E Section 30,SE 1/4 of NE 1/4 of 1/4, Govt. Lot, _____ B.M., County of AdaAdditional points of diversion if any: 3 points of diversion (wells) known to be on the property

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.at one time multiple homes
were located at on the parcel that currently has an address
of 3205 S. Curtis. All buildings have been demolished and wells
currently not used. City purchased the property in September
1986.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Municipal purposes from 1/1 to 12/31 amount .18 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) .18 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
34B	3N	2E	30	M		M	M												

Total number of acres irrigated _____

11. In which county (ies) are lands listed above as place of use located? Ada

12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

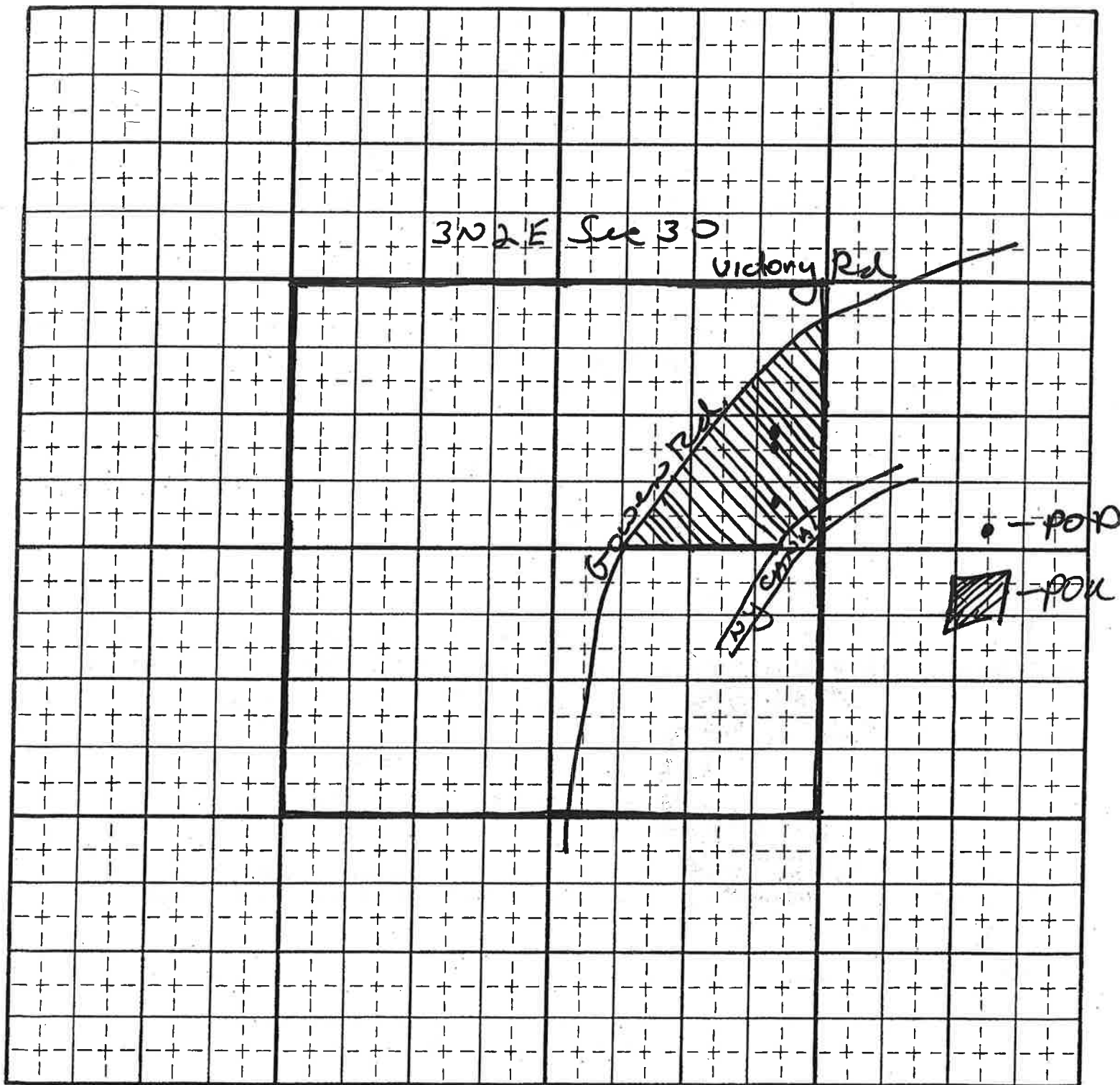
13. Describe any other water rights used at the same place and for the same purposes as described above. _____ or None ()

14. Remarks: See #5

Last Name _____ Ident No. _____

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile



Last Name _____ Ident No. _____

15. Basis of Claim (check one) Beneficial Use X Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number 63-05354
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

16. Signature (s)
(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____
wish to receive and pay a small annual fee for monthly copies of the docket sheet.
Number of attachments _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
and correct.

Signature of Claimant (s) _____ Date _____
_____ Date _____

For Organizations: I do solemnly swear or affirm that I am DIRECTOR _____
Title
of BOISE AIRPORT _____, that I have signed the foregoing
Organization
document in the space below as DIRECTOR _____ of BOISE AIRPORT _____
Title Organization
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____

DIRECTOR, BOISE AIRPORT

Date

4/25/03

State of Idaho/or _____)
County of ADA) SS.

Subscribed and sworn (or affirmed) before me this

25th

day of

April

2003

Notary Public _____

Helen J. King

Residing at _____

BOISE

My Commission Expires _____

January 21, 2004

Please Print Name

17. Notice of Appearance

Notice is hereby given that _____ will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

Last Name _____ Ident. Number _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

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ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

CITY OF BOISE
DEPT OF AVIATION & PUBLIC
PO BOX 500
BOISE ID USA 83701

POD is missing.

✓ sent back 6/13/03
for correction.

-3901

2. Date of Priority: 01/01/1900

3. Source: GROUND WATER Trib.

POD - listed in different
area on claim - compared
to attached map.
1/4 1/4 different.

4. Point of Diversion:

Township Range Section

1/4

03N

02E

30

NE

NE

ADA

pe

5. Description of diverting works:

At one time, multiple homes were located on the parcel that currently has an address of 3205 S Curtis. All buildings have been demolished and wells currently not used. City purchased the property in September 1986.

6. Water is used for the following purposes:

Purpose
MUNICIPAL

From To C.F.S.
01/01 12/31 0.18

(or) A.F.A

7. Total Quantity Appropriated is:
0.18 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
----------	-------	---------	------------	-----	-----	-------

11. Place of use in counties:

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

3 points of diversion (wells) known to be on the property.

15. Basis of Claim: Beneficial Use

**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. 63-5354
	)	
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/ OBJECTOR:

City of Boise

Department of Aviation & Public Transportation

 12/7/09

Erika E. Malmen Date
Attorney for Claimant/Objector

STANDARD FORM 5 – Water Right No. 63-5354

IDWR Concurrence:

~~Jan Shurte~~
Water Rights Supervisor

Andrea L. Courtney
Deputy Attorney General
Attorney for IDWR

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

RIGHT NUMBER: 63-5354

NAME AND ADDRESS: CITY OF BOISE
DEPT OF AVIATION & PUBLIC TRANSPORTATION
PO BOX 500
BOISE ID 83701

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.180 CFS
130.300 AFY

~~The quantity of water under this right shall not exceed 13,000 gallons per day.~~

PRIORITY DATE: 01/01/1939 1900

POINT OF DIVERSION:

T03N R02E S30 NENE Within ADA County

T03N R02E S30 NENE Within ADA County

T03N R02E S30 NENE Within ADA County

PURPOSE AND
PERIOD OF USE:PURPOSE OF USEPERIOD OF USEQUANTITY

DOMESTIC

01/01 12/31

0.180 CFS
130.30 AFY

PLACE OF USE:

DOMESTIC in ADA CountyT03N R02E S30 NENET03N R02E S30 SWNET03N R02E S30 SENE

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

~~The quantity of water decreed for this water right is not a determination of historical beneficial use.~~

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 - Beneficial Use

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:

CITY OF BOISE
DEPT. OF AVIATION & PUBLIC TRANSPORTATION
Represented by:
ERIKA E. MALMEN
1111 W. JEFFERSON STREET, SUITE 500
P.O. BOX 737
BOISE, ID 83702-0737

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

Signature of person or attorney mailing the form

Sent to S.O. 12/2/09

SF5 Right No. 63-5354

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

RIGHT NUMBER: 63-5354

NAME AND ADDRESS: CITY OF BOISE
DEPT OF AVIATION & PUBLIC TRANSPORTATION
PO BOX 500
BOISE ID 83701

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.180 CFS
130.300 AFY

~~The quantity of water under this right shall not exceed 13,000 gallons per day.~~

PRIORITY DATE: 01/01/1939 ~~1900~~

POINT OF DIVERSION:

T03N R02E S30 NENE Within ADA County

T03N R02E S30 NENE Within ADA County

T03N R02E S30 NENE Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
DOMESTIC	01/01 12/31	0.180 CFS <u>130.30 AFY</u>

PLACE OF USE: DOMESTIC in ADA County

T03N R02E S30 NENE

T03N R02E S30 SWNE

T03N R02E S30 SENE

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

~~The quantity of water decreed for this water right is not a determination of historical beneficial use.~~

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 - Beneficial Use

SF5 Right No. 63-5354

Shurte, Jan

From: Malmen, Erika E. (Perkins Coie) [EMalmen@perkinscoie.com]
Sent: Wednesday, November 25, 2009 2:00 PM
To: Courtney, Andrea; Shurte, Jan
Cc: Maynard, Robert (Perkins Coie); Matt Wilde
Subject: SRBA/City of Boise/63-5354

Happy Thanksgiving, ladies!

I am pleased to inform you that the City will accept the proposal we spoke about on the phone in regard to 63-5354. I know you like to prepare the SF5, so please go ahead and get started on that at your earliest convenience. I'll plan on participating in the December 1 status conference to let SM Booth know we've reached agreement. I certainly don't expect that you'll have the SF5 ready by then. Thanks so much for all your hard work and patience in this process. I'm also pleased to note that this is the LAST City of Boise right at issue in the SRBA. Cheers! Erika

Erika E. Malmen | **Perkins Coie LLP**
1111 West Jefferson Street, Suite 500
Boise, Idaho 83702-5391
PHONE: 208.343.3434
FAX: 208.343.3232
E-MAIL: emalmen@perkinscoie.com

* * * * *

IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with Treasury Department and IRS regulations, we inform you that, unless expressly indicated otherwise, any federal tax advice contained in this communication (including any attachments) is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of (i) avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein (or any attachments).

* * * * *

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Create SF5

12/1/2009

STATUS CONFERENCE NOTES:

RIGHT NO. 63-5354

DATE: 12-1-09

All agreed on settlement - Domestic
use - see notes. WFS needs to
be prepared and sent asap.

City of Boise conference call 11-9-09

- 1- Offered .18 cfs for domestic (no change to municipal), 365 days per year for a total of 130 af.
- 2- Do not believe there was an accomplished transfer due to the city purchasing the property in 1986. Purchase of homes and land was due to noise control for the airport and the well has not been used since that date for any use. The accomplished transfer statute appears to apply to uses that were begun prior to 1987 not with the ownership of the property and non-use.
- 3- Will await to hear from Erika Malmen as to whether the city wishes to pursue the municipal change in nature of use or will take the settlement offer.
- 4- The point of diversion in the NENE, S. 30 is correct.
- 5- City can apply for a new permit for municipal at this point – moratorium over. Kay confirmed that during the moratorium municipal use was approvable, however, for the City of Boise if it was for irrigation of a park it could not be approved due to the moratorium.
- 6- If the City accepts the settlement and applies for an App. For Transfer then the allocations staff would have to take into consideration whether that was an enlargement of use or not. May be able to transfer for domestic use in a city building or restrooms, etc.

Call participants – Jan Shurte, Andrea Courtney, Ray Williams – IDWR and Erica Malmen, Attorney representing the City of Boise.

Next status conference is 12-1-09 at 9:00 am.

Shurte, Jan

From: Shurte, Jan
Sent: Friday, September 04, 2009 2:43 PM
To: Courtney, Andrea; Williams, Ray
Cc: Shurte, Jan
Subject: City of Boise - 63-5354

Hi there,

I know your gone today, but maybe we can talk early Tuesday morning. This is one of those very difficult decisions to make. I feel that it is not a municipal water right and cannot shake that. It was developed for 4 homes and 7 acres of irrigation with a 1900 priority date (original statutory claim filed by the landowner in 6/1984).

The fact that the City purchased it in 1986, yet did not use it as a municipal use because it was not connected to any municipal system, does not allow for recommending it under an accomplished transfer as a municipal use. The statutory change that provided for reasonably anticipated future needs did not come into affect until sometime in the 1990's maybe even 2000? So, let's face it, it is just not historically a municipal use and the law does not cover it changing to one. There is also the fact that the claim was filed in 2003 and if we look back 5 years prior to that, 1998, it was not being used at that time and had not been for years, so the tolling of forfeiture in the SRBA does not come into affect. They can file new applications for permit for municipal use in Basin 63 now and when the SRBA claim was filed there was a moratorium.

So, let's tell them we will go with domestic use for .18 cfs, 1/1/1939 priority date since that's what they can prove for the 4 homes. I noticed that their amended objection states no af amount, however, in Erica's letter she talks about a 130.32 afa amount. This is the usual .18 cfs X 1.98 X 365 days. For a groundwater use we are required to show an af amount and since they are claiming this as a non-de minimus use, we do not have to limit it to 13,000 gpd and could recommend the 130.32 afa. However, it will still have to remain a domestic use. The 1939 priority date also justifies the greater diversion rate and af amount based on the fact that a drilled well could have been there at that time.

Then, they can file a new application for permit for municipal purposes at this location when they get ready to use it for a municipal use. What do you think? If this goes to trial is there something legal I am leaving out?

Jan

9/4/2009

RECEIVED
AUG 06 2009

WATER RESOURCES
WESTERN REGION

RECEIVED

AUG 04 2009

DEPARTMENT OF
WATER RESOURCES

Perkins
Coie

1111 West Jefferson Street, Suite 500

Boise, ID 83702-5391

PHONE: 208.343.3434

FAX: 208.343.3232

www.perkinscoie.com

Erika E. Malmen

EMAIL: EMalmen@perkinscoie.com

August 3, 2009

VIA U.S. MAIL

Ms. Andrea Courtney, Esq.
Deputy Attorney General
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

Re: **City of Boise Water Right No. 63-05354 / Client-Matter No. 31699-0004**

Dear Ms. Courtney:

Pursuant to our phone conversation, I am enclosing for your review the following documents:

1. 1958 aerial photograph;
2. 1939 aerial photograph;
3. 1938 Parcel Map;
4. 1985 Water Rights Proof Reading report; and
5. Ada County original Patent Map showing approximate settlement dates.

Two issues that we discussed include maximum diversion rate(s) and a possible AFA limitation. I included the Water Rights Proof Reading report to address diversion rate capabilities. My calculation indicates that a diversion rate of .18 cfs translates into approximately 130.32 AFA. Please verify my calculation and give me a call once you've had an opportunity to review the enclosed materials. Many thanks for your cooperation.

Very truly yours,



Erika E. Malmen

EEM:kjg

Enclosures

cc: Matt Wilde, City of Boise (w/encls.)

31699-0004/LEGAL16610036.1

ANCHORAGE • BEIJING • BELLEVUE • BOISE • CHICAGO • DENVER • LOS ANGELES • MADISON
MENLO PARK • PHOENIX • PORTLAND • SAN FRANCISCO • SEATTLE • SHANGHAI • WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Hi, Jan -
ANDREA ASKED ME TO
GET THIS CITY OF BOISE
INFO TO YOU -
THANKS! RAY

WRR100
63-5354

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS PROOF READING REPORT

PAGE 1
20-NOV-1985 13:28:05

01 WATER RIGHT NUMBER - 63-5354

02 OLD (O) NUMBER -

03001 - NELSON LAST NAME

04001 - DELBERT LEROY FIRST NAME

05001 - C ORIG. OWNER

06 ADD LINE 1 - 3205 S. CURTIS RD.

07 ADD LINE 2 -

08 ADD LINE 3 -

09 CITY - POISE

10 STATE - ID 11 ZIP - 83705

12 STAGE - S STATUTORY CLAIM

13 STATUS -

SOURCE

14001 - GROUNDWATER

TRIBUTARY OF

15001 -

16 DIVERSION MEANS -

17 COUNTY - 01 ADA

18 DIVERSION CAPACITY - .000

19 TOTAL DIVERSION RATE - .180

20 TOTAL DIVERSION VOLUME - .00

21 WATER DISTRICT -

TRACT	SEC	TWN	RNG	LOT	RFLG	STREAM	INDEX	FIELDS
22001 - NENE	23001 - 30	24001 - 03N	25001 - 02E	26001 - 27001 -	28001 - 0	0.0	0.0	0.0
						0.0	0.0	0.0

29 NON-IRRIGATION USE - S/20 RANGE D/4 HOMES

USE CODE / USE	TWN	RNG	SEC	TRACT	ACRES	LOT
30001 - 01 IRRIGATION	31001 - 03N	32001 - 02E	33001 - 30	34001 - NENE	35001 - 07	36001 -
						TOTAL ACRES: 7

PERIOD FROM	PERIOD TO	USE CODE / USE	WATER USE	DIVERSION RATE	DIVERSION VOLUME
37001 - 0315	38001 - 1115	39001 - 01 IRRIGATION	40001 -	0.080	41001 - 0.00
37002 - 0101	38002 - 1231	39002 - 04 STOCKWATER	40002 -	0.020	41002 - 0.00
37003 - 0101	38003 - 1231	39003 - 43 DOMESTIC	40003 -	0.080	41003 - 0.00

42 DECREE PLAINTIFF NAME -

43 DECREE DEFENDANT NAME -

REMARKS

44001 -

APPROVAL CONDITIONS: 45001 -

46 OTHER RIGHTS FOR SAME USE -

DATES	DATES	FLAGS
47 PRIORITY - 1-JAN-1900	55 LICENSE -	63 TRANSFER/AMENDED -
48 PROOF DUE -	56 APPL RECEIVED -	64 DLE/CAREY ACT -
49 PROOF MADE -	57 FIELD EXAM MADE -	65 FLAG_1 -
50 APPROVE/DENIED -	58 DECREE -	66 FLAG_2 -
51 PROTESTED -	59 START WORK -	67 FLAG_3 -
52 HEARING -	60 ORDER SHOW CAUSE -	

WRR100
63-5354

IDAH0 DEPARTMENT OF WATER RESOURCES
WATER RIGHTS PROOF READING REPORT

PAGE 2
20-NOV-1985 13:28:05

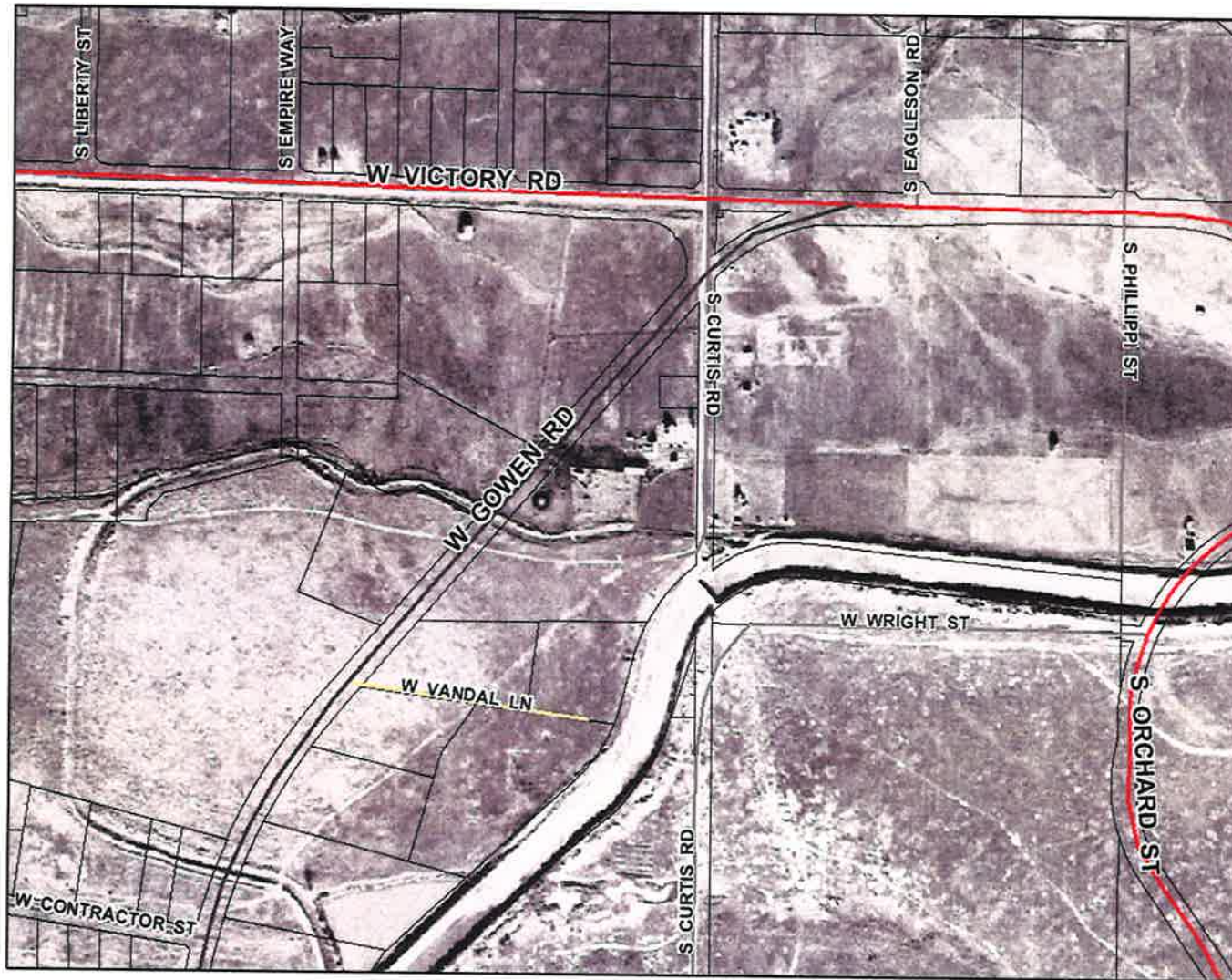
- - - - - D A T E S - - - - - D A T E S - - - - - F L A G S - - - - -

53 VERIFIED -
54 LAST UPDATE - 31-JUL-1994

61 DATE_1 -
62 DATE_2 -

2/7/86
VERIFIED JKN

1939 SOIL CONS. AERIAL



Legend

Major Streets

- MINOR ARTERIAL
- MAJOR COLLECTOR
- SECTION
- PRINCIPAL ARTERIAL
- INTERSTATE
- Other

Minor Streets

- LOCAL
- PARKS
- PRIVATE
- RESIDENTIAL
- Other

Street Names (minor)

- Parcels

Ada-OQ1939

- Water
- Schools
- Parks
- City Limits

- Kuna
- Boise
- Garden City
- Eagle
- Star
- Meridian

0 600 1200 1800 ft.

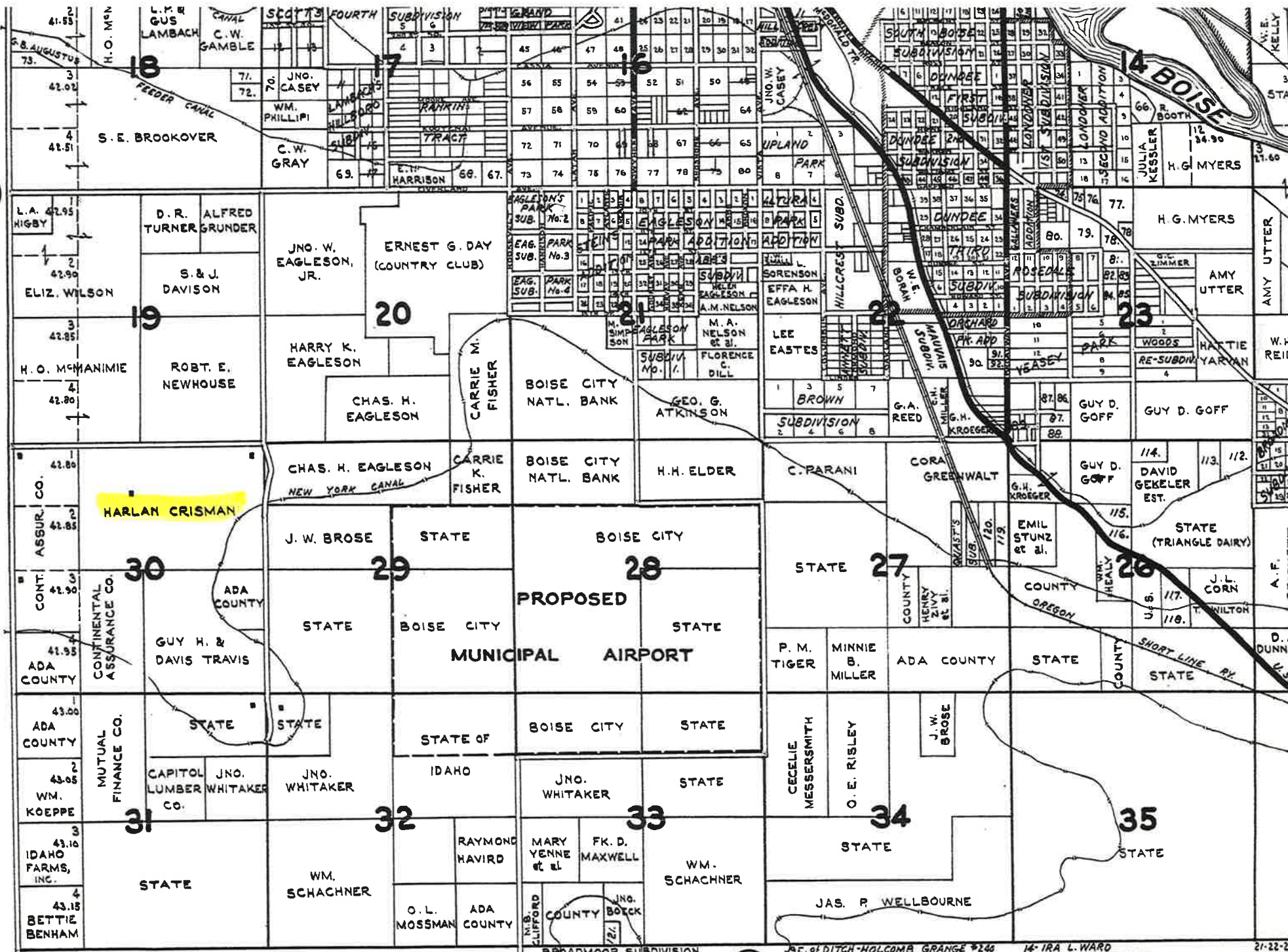
Map center: 43° 34' 19.5" N, 116° 15' 16.3" W



Scale: 1:6,461

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

14



1938

BROADMOOR SUBDIVISION
Sec 24-25.
1-2-W.H. REED
3-6-JNO. NAGEL
7-8-GERTRUDE OSBORNE

22

35-51 DITCH-HOLCOMB GRANGE #240
3 W. " - J.J. McQUEEN
10-J.S. DICK
11-12-ROSE A. DICK
13-15-32-ALVIN SEELYE

14-IRA L. WARD
16-17-JENNIE L. CLARK
18-19-BOISE V.A.F. EMPLOYEES
FARM CREDIT UNION
20-LEE EASTES

21-22-2
24-28-1
25-T.L.
26-27-
29-ED.
30-31-C



NENE, SWNE, SENE of T3N R2E 30
Boise, ID
November 20, 1958
copyright 2006 VAP

ADMINISTRATOR'S MEMORANDUM

To: Regional Offices
Water Allocation Bureau

App. Processing No. 18
Licensing No. 1

From: Jeff Peppersack 

Re: **PROCESSING APPLICATIONS AND AMENDMENTS AND DETERMINING
BENEFICIAL USE FOR NON-RAFN MUNICIPAL WATER RIGHTS**

Date: October 19, 2009

This memorandum supersedes Application Processing Memo No. 18 dated November 5, 1979 and Licensing Memo No. 1 dated April 7, 1975.

The 1996 Municipal Water Rights Act recognized common law practices (case law) for growing communities to provide for a municipal water supply for reasonably anticipated future needs (RAFN). There are times when a municipal provider will choose to file an application to appropriate water solely for water needed in the short-term without the burden of demonstrating future needs over an established planning horizon. This memorandum provides guidance to Department staff when permitting and determining the extent of beneficial use for licensing purposes for non-RAFN municipal water right permits.

This guidance provided in this memo pertains to the review and processing of permits to be issued after the date of this memorandum. Existing permits issued prior to the date of this memorandum should be handled on a case-by-case basis when determining beneficial use for licensing purposes. Determination of beneficial use for permits pre-dating this memorandum may depend on the date the permit was issued in relation to the 1996 Municipal Water Rights Act and/or any specific intent to limit the beneficial use that could be developed under the permit at the time it was issued.

PAST DEPARTMENT POLICY AND PRACTICE

Prior to the 1996 Municipal Water Rights Act, the Department acknowledged the need for some flexibility in licensing water rights due to the growth of municipalities and other small communities under two concepts as described below.

Installed Capacity for Municipalities

An incorporated city or a municipal provider serving an incorporated city could perfect a water right based on the maximum instantaneous diversion rate for the pumping system that was installed and operational during the development period of the permit (limited by the permitted amount), even if the city did not beneficially use the entire capacity during the development period of the permit. Note that even though a municipal system may have included multiple wells and pumps, the Department typically licensed a water right based on the diversion capacity of an individual well and pump listed as a single point of diversion on the water right. The Department typically did not review the overall

system capacity and evaluate the new well as an additional increment of diversion capacity or beneficial use under the entire system due to that point of diversion.

When licensing a municipal water right, the Department did not include an annual volume limit on the license. In addition, the place of use was described as the city limits and was allowed to change as the city limits expanded. A city's water use under a license could expand over time as demand for water increased by pumping the maximum rate over longer periods that may have included storage tanks to provide for higher peak demands.

Stub-in Practice for Subdivisions

For unincorporated cities and other small communities that did not qualify as municipalities, and therefore could not obtain a municipal water right, the Department could only license water rights for domestic and associated irrigation, commercial and other uses based on actual diversion and application of the water to beneficial use accomplished during the authorized development period of the permit. The Department provided some flexibility in determining beneficial use for domestic purposes in subdivision developments under the "stub-in" practice. Under the "stub-in" practice, the Department issued water right licenses for domestic purposes in subdivisions if the water diversion and distribution systems were in place, including a service line to each lot, even if water had not yet been put to beneficial use on all the buildable lots. The Department's stub-in practice recognized that the full build out of a subdivision can take longer than the number of years the Department could authorize for completion of a water appropriation project. By issuing a water right license for domestic uses that were yet to be completed, the Department avoided a parade of individual water right filings as each lot was sold. The stub-in practice also helped subdivision developers obtain financing by providing some assurance to lending institutions that a development project would not fail due to water right availability issues that may have arisen as the individual lots were built out over time. The Department's stub-in practice was applied to each home that would individually qualify as a domestic use as defined in Section 42-111(1)(a), Idaho Code.

The stub-in practice was not applied in all subdivision development situations. For example, suppose the Department issued a permit for development of 100 homes in a subdivision and proof was submitted for 100 homes based on the stub-in practice. Many years later, the Department completes an exam and finds only 20 homes were built and using water. The remaining lots remained vacant and undeveloped except for the stubbed-in service line. The Department would only issue a license based on the actual diversion and use of water because sufficient time would have passed to complete development of the subdivision.

1996 MUNICIPAL WATER RIGHTS ACT

The 1996 Municipal Water Rights Act allows municipal providers to obtain water rights for RAFN. Full completion of diversion works and beneficial use is not required during the development period of the permit, under specific conditions (see Application Processing Memo No. 63). The Municipal Water Rights Act also expanded the types of entities that can qualify for municipal water rights and defined expanding service areas for those entities. See Section 42-202B, Idaho Code for definitions.

To appropriate water for RAFN, the municipal provider carries an extra evidentiary burden to establish a planning horizon and to submit population and other planning data in support of the anticipated needs within the planning horizon. If a municipal provider seeks a water right for RAFN, the planning horizon and supporting data cannot be inconsistent with its comprehensive land use plans.

Furthermore, water rights for RAFN cannot be granted to a municipal provider in areas overlapped by conflicting comprehensive land use plans.

Municipal providers can receive the full benefit of the 1996 Municipal Water Rights Act if they file an application for RAFN and demonstrate future needs over an established planning horizon consistent with requirements in Chapter 2, Title 42, Idaho Code. The intent of a municipal provider to seek water for RAFN must be documented with the application for municipal use.

There are times when a municipal provider will choose to file an application to appropriate water solely for use to meet needs in the short-term (limited up to 5 years with possible extension up to an additional 5 years pursuant to Section 42-204, Idaho Code) without the burden of demonstrating future needs over an established planning horizon. The Department considers the definitions for "municipality," "municipal provider," "municipal purposes," and "service area" from the 1996 Municipal Water Rights Act to apply to non-RAFN permits. The following sections provide guidance to Department staff when permitting and determining the extent of beneficial use for licensing purposes for non-RAFN municipal water right permits. Note that some small community water systems (less than 10 homes) do not qualify as municipal providers and would still be subject to licensing under the past stub-in practices described above as a domestic use.

INCORPORATED CITIES AND MUNICIPAL PROVIDERS SERVING INCORPORATED CITIES

Incorporated cities, or municipal providers serving incorporated cities ("city" or "cities") have historically benefitted from common law practices allowing for appropriation of water and acquisition of water rights for long-term growth. Municipal providers in this category may include a city incorporated under Section 50-102, Idaho Code, an entity regulated by the Public Utilities Commission serving water to an incorporated city, or a Water District or Water and Sewer District established pursuant to Chapter 32, Title 42, Idaho Code serving an incorporated city. The 1996 Municipal Water Rights Act does not prohibit the Department from issuing a non-RAFN permit or license to a city without a volume limitation. Issuing a permit and license without a volume limitation would provide for some limited growth, consistent with pre-existing common law practices for municipalities.

Application for Permit

An applicant for a non-RAFN municipal application must demonstrate short-term needs to justify the amount of water required for appropriation. This information should be requested pursuant to the additional information requirements provided under Water Appropriation Rule 40.05.d.i:

Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.

The applicant must also demonstrate that the new appropriation is not intended for RAFN by providing total system capacity and existing demand within the municipal service area and comparing that capacity and demand to the entire municipal portfolio of water rights. If existing municipal water rights exceed existing demand and short-term needs, then an application for RAFN would be necessary for an additional appropriation of water. If the applicant desires additional points of diversion without

the need for a new appropriation of water, then an application for transfer to change existing rights would be appropriate.

An applicant for a permit not proposing municipal use for RAFN cannot later amend the application to gain the benefits of a RAFN permit without first demonstrating future needs over an established planning horizon consistent with requirements in Chapter 2, Title 42, Idaho Code. Pursuant to Section 42-211, Idaho Code, an amendment to an application to gain the benefits of a RAFN permit shall be republished and the priority date shall be changed to the date of the application for amendment.

Permit

The permit should not be limited by volume except under circumstances where a volume limitation is necessary to protect the water source or, in the case of an amendment of permit, when the original permit was issued or intended for a use other than municipal. The rate of flow must be reasonable when considered against the water flows available from the source (e.g., it may not be in the public interest to dewater a stream to satisfy the municipal needs). The place of use can be described generally for the service area as defined under Section 42-202B, Idaho Code.

A non-RAFN application for municipal use that includes additional rate justified for fire protection purposes should not be permitted for that additional rate under a municipal use, particularly where the applicant has not sought water for RAFN and offered no evidence to support the future appropriation and use of additional water. Doing so would allow the additional rate to be used for flows that may be required for future long-term growth of the municipality. Additional rate solely for fire protection should be listed as a separate use on the water right or permit to ensure that the rate, if approved, does not create a de facto water right for RAFN.¹

As an example, suppose an application for permit is submitted by a municipality for a non-RAFN municipal use and the application indicates that 3 cfs is required for the regular and continuous needs of the city and an additional 7 cfs is required to provide water for fire protection on an as-needed basis. The Department should not issue a permit for municipal use for 10 cfs, which would allow for additional rate to be used by the city in the future to meet the regular and continuous needs of the city. Instead, if the application is otherwise approvable, the Department should issue a permit for municipal use in the amount of 3 cfs and for fire protection in the amount of 7 cfs.

The complexity of some municipal systems makes it difficult to ascertain, at the time of a field exam, if an additional increment of beneficial use has been developed pursuant to a permit. To facilitate future licensing, the permit should include a condition requiring the permit holder to submit a report in connection with proof of beneficial use that describes how the water diverted under the permit provides an additional increment of capacity for the municipal water system as opposed to an alternate point of diversion for existing municipal water rights. In addition, the report should describe how the beneficial use intended under the permit (i.e. the reason used to justify the new appropriation of water) was accomplished.

¹ Permits and licenses issued for fire protection purposes to fight an existing fire do not require a volume limitation since the volume would be variable and unpredictable for firefighting purposes. A volume limitation is required for fire protection storage where water is stored to fight a future fire.

A permit issued to a municipal provider that does not provide for RAFN cannot be later amended to gain the benefits of an RAFN permit.

License

When licensing a permit for municipal use for an entity serving an incorporated city, the extent of beneficial use established under a non-RAFN permit should be determined based on the installed capacity developed and operational during the development period of the permit and cannot exceed the amount permitted. However, beneficial use may be further limited if the intended use described in the application as justification for the permit was not accomplished. The license should not be limited by volume except under circumstances where the permit was limited for reasons described above. The place of use listed on the license can be described generally for the service area as defined under Section 42-202B, Idaho Code.

When determining the installed capacity for licensing purposes, the entire municipal portfolio of water rights must be considered to determine the actual increase in installed capacity provided by the permit for the municipal use. Note that the installed capacity of the system is not necessarily the sum of the individual capacities for each pump or diversion into the system.

In situations where a new point of diversion authorized under the permit is developed, but an additional increment of capacity or beneficial use is not developed for the municipal system, a license may be issued limiting the diversion rate in combination with other rights in the municipal system to the existing capacity of the municipal system.

OTHER MUNICIPAL PROVIDERS

Municipal providers that do not serve incorporated cities can receive the full benefit of the 1996 Municipal Water Rights Act if they file an application for RAFN, provide qualifications as a municipal provider, and demonstrate future needs over an established planning horizon consistent with requirements in Chapter 2, Title 42, Idaho Code. For such municipal providers, if they choose not to file an application for an RAFN permit, the ability of the municipal provider to acquire a water right for municipal purposes is limited to the amount that can be diverted and beneficially used based on development during the period authorized under a non-RAFN permit, as described below.

Application for Permit

For an application for permit seeking to divert water for domestic use or some combination of domestic and other uses for a subdivision or other multiple ownership service area, the use would be more properly described as municipal use within the service area if the uses fall under the definition of municipal purposes and the applicant would also qualify as a municipal provider pursuant to Section 42-202B, Idaho Code. An exception would be the use of water for fire protection. Additional rate for fire protection should be listed as a separate use to ensure that the rate, if approved, does not become part of the flows under the permit that may be required for future use of the municipal provider (see fire protection discussion above for permits under Incorporated Cities).

An applicant for a non-RAFN municipal application must demonstrate short-term needs to justify the amount of water required for appropriation. This information should be requested pursuant to the additional information requirements provided under Water Appropriation Rule 40.05.d.i:

Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.

The applicant must also demonstrate that the new appropriation is not intended for RAFN by providing total system capacity and existing demand within the municipal service area and comparing to the entire municipal portfolio of water rights. If existing municipal water rights exceed existing demand and short-term needs, then an application for RAFN would be necessary for an additional appropriation of water. If the applicant desires additional points of diversion without the need for a new appropriation of water, then an application for transfer to change existing rights would be appropriate.

An applicant for a permit not proposing municipal use for RAFN cannot later amend the application to gain the benefits of a RAFN permit without first providing qualifications as a municipal provider and demonstrating future needs over an established planning horizon consistent with requirements in Chapter 2, Title 42, Idaho Code. Pursuant to Section 42-211, Idaho Code, an amendment to an application to gain the benefits of a RAFN permit shall be republished and the priority date shall be changed to the date of the application for amendment.

Permit

The permit, if approved, shall include both a rate of flow and an annual volume limitation for the municipal use based on the amount justified. As described above, additional rate justified solely for fire protection should be listed as a separate use on the permit to ensure that the rate, if approved, does not create a de facto water right for RAFN.¹ The place of use can be described generally for the service area as defined under Section 42-202B, Idaho Code.

A permit issued to a municipal provider that does not provide for RAFN cannot be later amended to gain the benefits of an RAFN permit.

License

When licensing a permit for municipal use for a municipal provider that does not serve an incorporated city, the extent of beneficial use established under a non-RAFN permit should be described with both a rate of flow and a volume limitation.² Beneficial use shall be based on development within the service area during the authorized development period of the permit and shall include stubbed-in lots for domestic purposes (i.e. a service line is available for each lot to hook up to the municipal delivery system). The rate should be determined based on the installed capacity if reasonable to serve the needs

² Beneficial Use Rule 35.01.j indicates that "[t]he field examiner does not need to show total volume of water for municipal and fire protection uses on the field report unless the project works provide for storage of water." Although not required on the field exam, any license issued to a municipal provider that does not serve an incorporated city for a non-RAFN municipal use shall include an annual volume limitation based on the amount justified and approved under the permit and beneficially used as described in this memorandum.

within the established service area.³ The annual volume limitation should be determined based on the water requirements for the established service area (including stub-ins). The place of use listed on the license can be described generally for the service area as defined under Section 42-202B, Idaho Code.

As described above for municipal providers serving incorporated cities, when determining the installed capacity for licensing purposes, the entire municipal portfolio of water rights must be considered to determine the actual increase in installed capacity provided by the permit for the municipal use.

In situations where a new point of diversion authorized under the permit is developed, but an additional increment of capacity or beneficial use is not developed for the municipal system, a license may be issued limiting the diversion rate in combination with other rights in the municipal system to the existing capacity of the municipal system.

³ The installed capacity may not represent beneficial use if significantly greater than the diversion required to meet the needs of the developed service area (including stub-ins), even if it does not exceed the amount permitted. For example, if fewer lots are stubbed-in than permitted, the required diversion rate would likely be smaller than the permitted rate.

2. Section 42-111(3) Idaho Code provides that:

Multiple water rights for domestic uses or domestic purposes, as defined in this section, shall not be established or exercised in a manner to satisfy a single combined water use or purpose that would not itself come within the definition of a domestic use or purpose under this section. The purpose of this limitation is to prohibit the diversion and use of water, under a combination of domestic purposes or domestic uses as defined in this section, to provide a supply of water for a use that does not meet the exemption of section 42-227, Idaho Code, and is required to comply with the mandatory application and permit process for developing a right to the use of water pursuant to chapter 2, title 42, Idaho Code.

Recognizing that the statute pertains explicitly to domestic use, how does it apply in this case?

As a related question, some of the City of Boise domestic claims were recommended for approval in the Director's Report for De Minimis Uses based on domestic use, and partial decrees were subsequently issued. The City is now attempting to amend these claims, with a municipal use. Are these water rights not res-judicata?

Draft

04/11/2005

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

RIGHT NUMBER: 63-5354

NAME AND ADDRESS: CITY OF BOISE
DEPT OF AVIATION & PUBLIC TRANSPORTATION
PO BOX 500
BOISE ID 83701

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.180 CFS

PRIORITY DATE: 01/01/1900

POINT OF DIVERSION:

T03N R02E S30 NENE Within ADA County
T03N R02E S30 NENE Within ADA County
T03N R02E S30 NENE Within ADA County

NENE - See Map

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

~~MUNICIPAL~~ DOMESTIC

01/01 12/31

0.180 CFS

PLACE OF USE:

MUNICIPAL Within ADA County

T03N R02E S30

NENE

T03N R02E S30

SWNE

T03N R02E S30

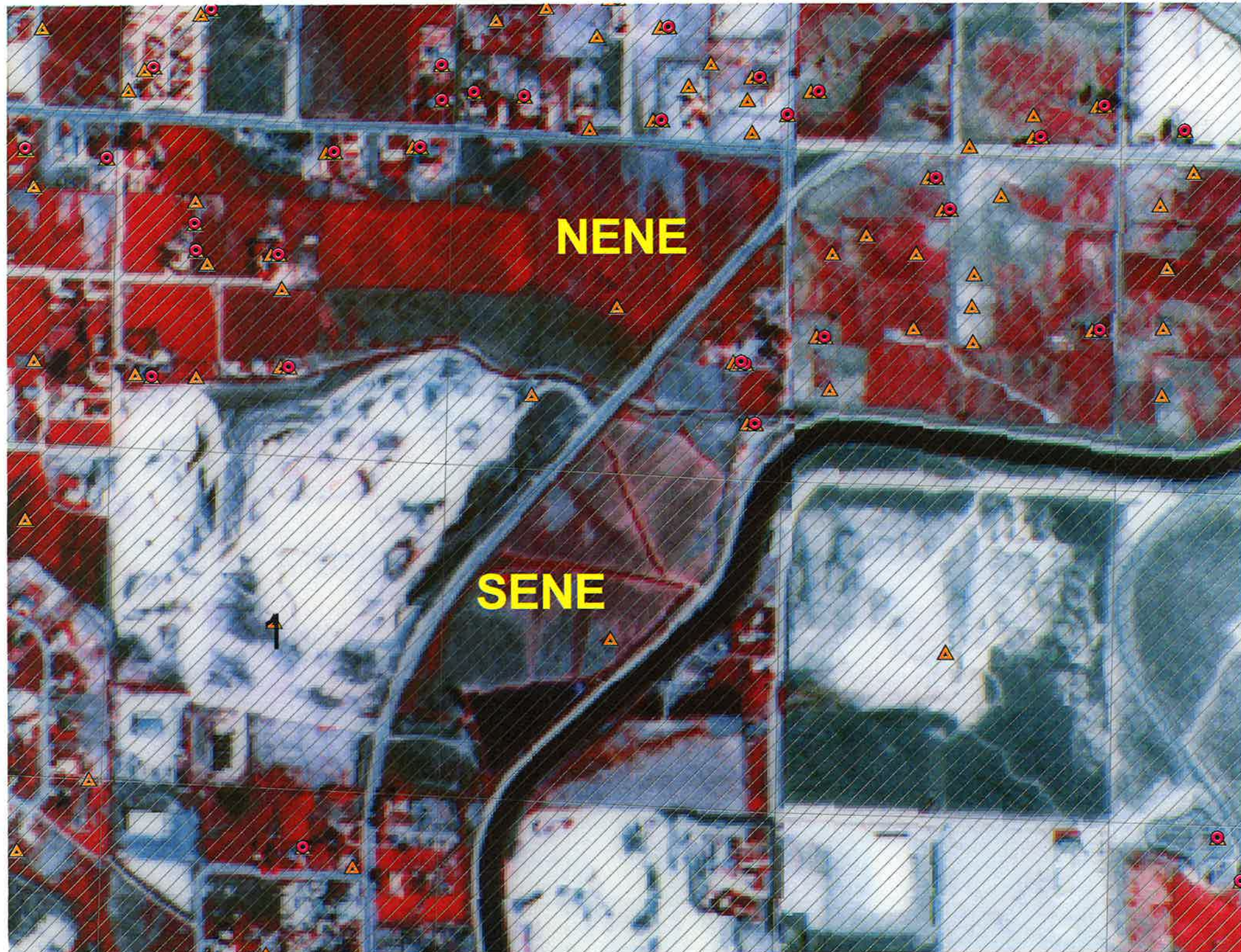
SENE

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: Beneficial Use

App
N11 N13



The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

(Name of Claimant

Telephone No. 312-5854

tributary to

(cfs, gpd, AFA)

(Domestic, Irrigation, Stock, Etc.)

(Both dates inclusive)
(Mo., Day) (Mo., Day)

Quantity .08 cfs

Use Domestic

Period of Use From

To 12/31

Quantity 0.08 cfs

Use Irrigation

Period of Use From

To 11/15

Quantity 0.02

Use stock water

Period of Use From

To 12/31

Quantity _____

Use _____

Period of Use From

To _____

(4) 18 cfs TOTAL QUANTITY USED

(cfs, gpd, AFA)

(5) A) Point of diversion: (Location of point where water is diverted from its source)

NE ¼ NE ¼, Sec. 30 Twp. 3N Rge. 2E B.M., County of Ada

Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. *Well - 100' Hand Dug Well. 3/4 HP Pump*

Well - 100' Hand Dug Well. 3/4 HP Pump

Well - 276' Drilled Well, 1 1/2 HP Subm. Pump

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

No. of acres 7

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

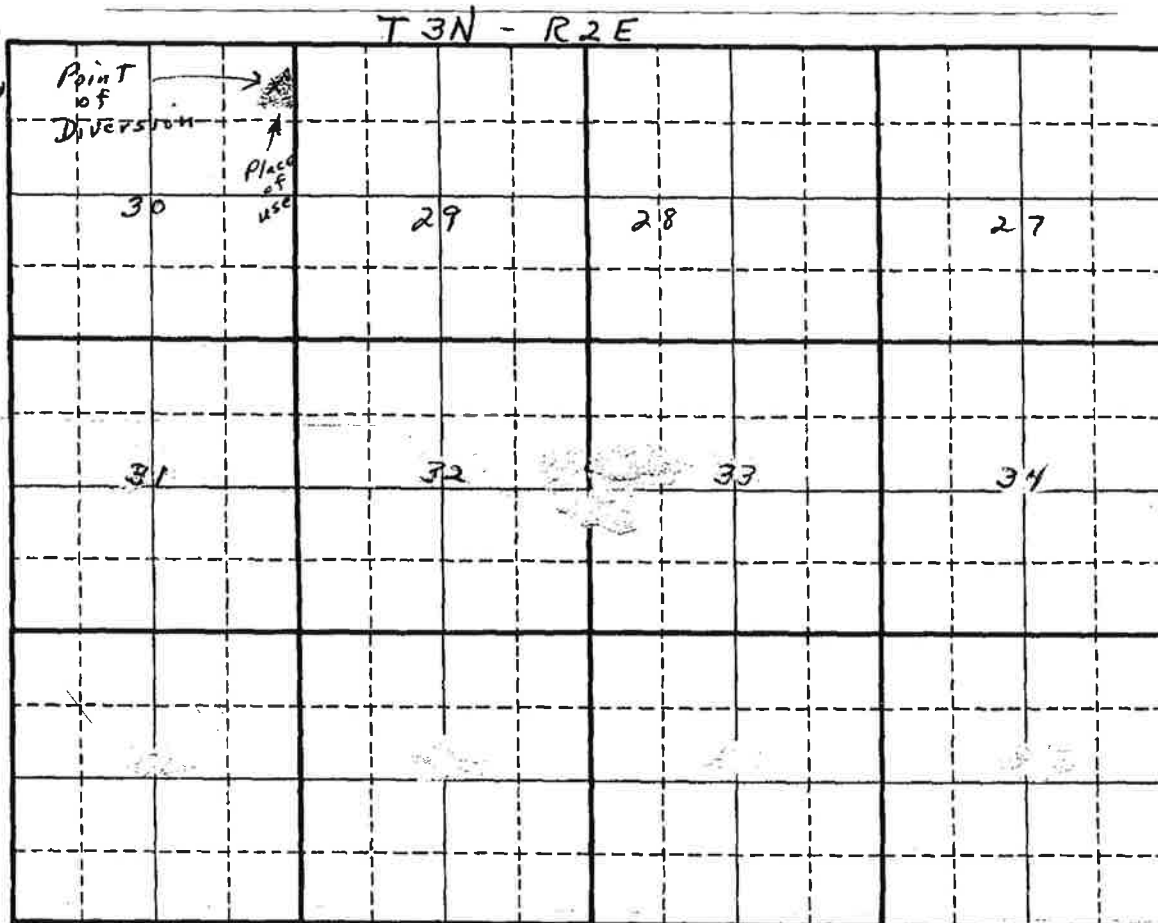
Domestic Use. - 4 single family dwelling

Stock Water = AS required

NOTE: Include here the type and number of stock watered: 20 horses

(7) If you are claiming water as a member of an organization, list name of organization:

(8) Remarks _____



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)

) ss.

County of _____)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Sworn to before me this 26th day of June

(Claimant)

19 84

Notary Public
Residing at Boise, Id.

My commission expires 1-15-88

FOR DEPARTMENT USE ONLY

Received by mn Date 6-27-84 Exception filed by: _____ Date _____
Prelim. check by kh5 Date 6/27/84
100 \$20.00 fee received by JP Date 6/27/84 34445
Published in The Idaho Statesman
Dates 7/26 & 8/2/84

MEMORANDUM

To: Susan Hamlin and Chris Bromley
From: Dave Tuthill
Re: Request for Additional Analysis on Municipal Forfeiture
Date: November 18, 2004

The memorandum from Chris Bromley to Susan Hamlin on municipal forfeiture dated November 1, 2004, provides as follows:

While Idaho courts abhor forfeiture, *Jenkins v. State, Dep't of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982), a water right may be lost if the owner fails to exercise his or her right for a period of five years. Idaho Code § 42-222(2). Municipalities, however, are generally exempt from forfeiture:

A municipality may purchase lands, if that be necessary, to acquire water for its municipal needs, but is not required, after purchase, to irrigate the lands or cause the same to be irrigated, to avoid a loss of the water on a charge of abandonment. To require that would amount to nullifying the power granted to a municipality to acquire and hold water for future needs--an absolute necessity to the life and existence of a municipality.

Bues v. City of Soda Springs, 62 Idaho 1, 4, 107 P.2d 151, 154 (1940).

Therefore, if a municipality owns land for municipal purposes, but has not used its water rights for a period of five years or more, the municipality's non-use is exempt from I.C. § 42-222(2).

This memorandum is prepared as a request for additional analysis, for two reasons:

1. *Bues v. City of Soda Springs* contains the concept that the City purchased the Williams and Wetzel lands and water rights *in order to provide sufficient water for municipal purposes...*

This is different from the City of Boise situation whereby domiciles around the airport were purchased as mitigation for airport noise concerns. I am not aware of any language at the time of purchase of the lands regarding intent to use the water at the domiciles for municipal purposes. Was there any such language in the purchase documents? Might the intent for purchase of the property by the municipality have a bearing on the protection from forfeiture for water rights acquired by the municipality?



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 26, 2003

CITY OF BOISE
DEPT OF AVIATION & PUBLIC TRANSPORTATION
PO BOX 500
BOISE ID 83701

Re: Notice of Claim to a Water Right No. 63-5354

Dear Claimant(s):

Enclosed is your *corrected* copy of the above referenced claim(s), in which you recently filed with the Department.

Please note that the enclosed Notice of Claim to a Water Right is not a determination of your water right. This claim has not yet been verified by this Department. Water rights are established and maintained by beneficial use of water for the uses designated on this claim form dating back to the priority date listed. This claim will be investigated, verified and recommended to the SRBA Court for court decree sometime in the near future. You will be notified prior to the beginning of any verification of this water right.

Thank you for your patience and cooperation. If you have any questions concerning the enclosed claim(s), please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Denise Hatfield".

Denise Hatfield
Office Specialist 1
Adjudication Section
Western Region Office

DH: dh

Enclosure

PUBLIC WORKS DEPARTMENT
CITY HALL



CAROLYN TERTELING-PAYNE
MAYOR

COUNCIL MEMBERS

M. JEROME MAPP
COUNCIL PRESIDENT

JON MASON
COUNCIL PRO TEM

VERNON L. BISTERFELDT
PAULA B. FORNEY
MARYANNE JORDAN
ALAN W. SHEALY

June 18, 2003

Ms. Denise Hatfield
Office Specialist 1
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

RECEIVED

JUN 19 2003

WATER RESOURCES
WESTERN REGION

Dear Ms. Hatfield:

Enclosed is The City of Boise's amended claim for 63-05354. The original Notice of Claim form has been amended and initialed as you indicated. Please call me at 384-3984 if you have any other questions.

Sincerely,

Beth K. Baird
Environmental Programs Coordinator

cc: Helen King, City of Boise, Dept. of Aviation & Public Transportation



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 13, 2003

CITY OF BOISE
ATTN: HELEN KING
DEPT OF AVIATION & PUBLIC TRANSPORTATION
PO BOX 500
BOISE ID 83701

RE: Notice of Claim to a Water Right No. 63-5354

Dear Property Owner(s):

This office has reviewed the Notice of Claim to a Water Right you have submitted (copy enclosed), however, we are returning it to you at this time. Item No. 10, Place of Use, is not completed on page 2 of the claim. Also, the claim indicates the Points of Diversion being located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 30, however the attached map indicates different. Please review the enclosed information, make the necessary corrections and return to this office at your earliest convenience. Be sure to initial any changes made on the original claim.

Thank you for your patience and cooperation. Please feel free to contact this office if you have any questions concerning this letter.

Sincerely,

Denise Hatfield
Office Specialist 1
Adjudication Section
Western Region

DH: dh

Enclosures

REFUND REQUEST

TO: S. Sherman to Log In
 FOR: D. Shaff/D. Allen
 FROM: **Western Region** Date: **6/13/2003**
 SUBJ: Receipt No. **C069323/W030564** (Please attach ARQ2 Receipt copy immediately behind blue form)

RE: PayOR **City of Boise**
 Address **PO Box 500** *attn Beth Baird*
Boise ID 83701

Claimant(s) if NOT Payor _____
 Refund Amount \$ **170-** Claim Location **(Region)** Claimant
 Extension Filed? Y/N **NA** Copy Attached? Y/N **NA**
 Late Fees Paid? Y/N **NA** Late Fee Receipt # _____
 S.O. Verified Ext. by _____ on _____ D.B. Query by _____
 Refund Generated By **(X)** Agent () Claimant
 Refund Category:
 insufficient fees / claim incomplete / withdrawn / o-pmt
** Over paid*
 Date of Last Correspondence (copy attached) _____

Claim No.	Use*	Fees Paid	Correct Fee	Rec't #
See attached list	Domestic / Mun.	\$ 1050-	\$880-	C069323 & W030564
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
_____	_____	\$ _____	_____	_____
Total	_____	\$ _____	\$ _____	_____

***Incomplete claims or insufficient fees for irrigation use will generally NOT be refunded. D.E. claim in AJSP1 at minimum.**

Detailed Reason(s) for Refund Attached Y/N

Over paid for claims.

Region AJ Spvsr. Approval *[Signature]* S.O. AJ Spvsr. Approval _____
 Don Shaff Approval *[Signature]* 6-17-03 Hold _____ To Fiscal *6-17-03*
 Logged *6-17-03*
 Data Base Modified? Y/N **NA** A &/or R Records By _____ on _____

63-5354
63-31692 thru 63-31722

RECEIVED

JUL 07 2003

**WATER RESOURCES
 WESTERN REGION**

Refund Request Attachment

City of Boise Dept of Aviation & Public Transportation

30 Domestic Claims @ \$25 each = \$750 63-31692 through 63-31721

1 Municipal Claim @ \$50 for .12 cfs = \$62 63-31722

1 Municipal Claim @ \$50 for .18 cfs = \$68 63-5354

Total filing fees: \$880

Total fees received: \$1050

Refund amount: \$170

BOISE AIRPORT
JOHN W. ANDERSON A.A.E.
DIRECTOR



CAROLYN TERTEILING-PAYNE
MAYOR

COUNCIL MEMBERS

M. JEROME MAPP
COUNCIL PRESIDENT

JON MASON
COUNCIL PRO TEM

VERNON L. BISTERFELDT
PAULA B. FORNEY
MARYANNE JORDAN
ALAN W. SHEALY

June 6, 2003

RECEIVED

JUN 09 2003

WATER RESOURCES
WESTERN REGION

Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Enclosed you will find 30 Notices of Claim to a Water Right for properties owned by Boise Airport/City of Boise and two municipal claims. Also enclosed is a Boise City check in the amount of \$625.00. You are holding a check for \$425 that our Accounting Office send a few days ago. Together they will cover the \$25 filing fee for each of the 30 notices and the two municipal documents. All have been signed before a notary.

If you have any questions, please call.


Helen King
Administrative Secretary

/hk

Enclosure: as noted

H:\WPC\Leases-Agreements\Correspondence-General\IDOWR water rights trans.wpd

Receipt Details for ID C069323

Status	Adjustment Type	Version
		1

General Information:

Date Received	Date Deposited	Region	Total Amount	Payment Type
5/30/2003 9:53:48 AM	5/30/2003 1:31:04 PM	STATE	\$425.00	Check
Payer		CITY OF BOISE		

Account Information:

Check #	Account #	Credit Card Name	Authorization #
128919			
Card Expiration Date	Credit Card Transaction #		

Comment NOTICE OF CLAIM TO WATER RIGHT CIVIL CASE # 39576

Fee Detail:

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$425.00	ADJUDICATION FILING FEE	41503	0337			1155

Refund(s):

Amount	Payee	Date	Document Number
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See also W030564

Idaho Department of Water Resources Receipt

Receipt ID W030564

Payment Amount \$625.00 Date Received 6/10/2003 1:58:26 PM Region Western Status ☐
Payment Type Check Check Number 129476

Payer CITY OF BOISE

Comment NOTICE OF CLAIM TO A WATER RIGHT - AVIATION DEPT
30 claims @ \$25 each
2 municipal claims (1) @ \$62 & (1) @ \$68

See also C069323

Fee Detail

Amount	Description	Fund	FD	PCA	SO
\$625.00	ADJUDICATION FILING FEE	0337		42503	1155



Signature Line (Dept. Representative)

STATUS CONFERENCE NOTES:

RIGHT NO. 63-5354

DATE: 9-8-09

December 1st

Status Conference - City of
Boise - Andrea not there, so
will contact her in the meantime
concerning my comments.

Shurte, Jan

From: Courtney, Andrea
Sent: Tuesday, October 27, 2009 11:18 AM
To: Shurte, Jan
Cc: Williams, Ray
Subject: FW: Scanned Phil memo to City of Boise re munis

Attachments: DOC.PDF



DOC.PDF (27 KB)

an~

Your discovery of the memo from DRT to Susan and Chris led to my discovery of the attached. It is an email chain from Phil to the then assistant city atty for the City of Boise responding to the latter's questions about the Municipal Water Rights Act and implications for the City's "'future needs' water rights portfolio." I plan to share it with Erika before our phone call so she can digest. The email is dated 1999, before the City bought the property at issue in 63-5354 so the City should have been aware it could have attempted a transfer of the domestic right to muni purpose of use, instead of making an end run in the SRBA.

I checked with Chris and he couldn't find any responsive email/memo to DRT's memo. And there is no such response in the hard file on municipal rights.

I'm almost done reviewing the hard file and then will check out the Admin Memo dated 10/19/09.

Andrea

Rassier, Phil

From: Rassier, Phil
Sent: Monday, November 22, 1999 11:30 AM
To: 'MATT WILDE'
Cc: Anderson, Peter
Subject: RE: Growing Communities Doctrine



Mem_ Boise Mun
Rights.doc

Matt: Attached is a response to your municipal water right questions. I'm sorry for the delay. Hope it is what you need.
Phil

Matt Wilde:

This responds to the questions raised in your e-mail of September 2, 1999 to Peter Anderson regarding "municipal purpose" water rights. The following responses are provided as a follow-up to Peter's CLE presentation and should not be viewed as formal legal guidance on these issues. Your questions and my responses are as follows:

1. **Is a "municipal purpose" under 42-202B different from a municipal use designation for a water right? How do they relate? A municipal purpose use designation seems to provide for a broader use of the water, if there is a difference.**

Response: The definition of "municipal purpose" under I.C. § 42-202B was intended to reflect the traditional uses made of water delivered through a municipal water delivery system. As stated in 42-202B(3), these uses include "water for residential, commercial, industrial, irrigation of parks and open space, and related purposes . . . which a municipal provider is entitled or obligated to supply to all those users within a service area" The providing of water from geothermal sources for heating purposes is specifically excluded from the definition. Generally, one may assume that an existing water right with a "municipal" purpose of use includes all of the uses identified in the new statutory definition. Individual permitted, licensed or decreed water rights may, however, be conditioned so that the right is only available for certain types of municipal uses, e.g., "residential domestic use."

2. **Does the statute allow transfer of current uses (e.g., irrigation, domestic, etc) to municipal purpose use, or does the statute contemplate that the water is held for "future needs" and is not to be used? In other words, is this code only meant for developing "unused water" portfolios, or stockpiled water rights, or does it allow for the use of the water in various ways by the municipality during the planning horizon? 42-202B seems to indicate that the future needs water is permitted to be used.**

Response: The 1996 legislative action approving Senate Bill 1535 (1996 Idaho Sess. Laws 967) included amendments to I.C. §§ 42-202, 42-217, 42-219, and 42-222 as well as adding the new section 42-202B providing definitions of key terms. The general purpose of the legislation was to codify in statutory form certain common law principles considered to apply to municipal water rights. In addition, the legislation defines "municipality" and "municipal provider" in a manner that extends the benefits recognized under the common law to entities other than an incorporated city.

The common law principle codified by the statute is that a municipality may obtain and retain water rights in excess of current needs in reasonable anticipation of future needs. The principle is now codified in I.C. § 42-202(2) (application for permit); I.C. § 42-219 (issuance of license); I.C. § 42-222(1) (transfers); and I.C. § 42-222(2) (forfeiture).

I.C. § 42-202(2) recognizes that a municipality may apply for a new water right permit to secure water for "reasonably anticipated future needs" expected to arise within the planning horizon of the municipality as described in I.C. § 42-202B(5). The municipality would be expected to fully use the newly acquired water right for municipal purposes before the end of the planning horizon period.

I.C. § 42-222(1), as amended, authorizes a municipality to transfer or change the nature of use of an existing water right to municipal purposes with some or all of the right to be held to serve reasonably anticipated future needs consistent with the definition in I.C. § 42-202B(5). Whether the water right could continue to be used for the original purpose until needed for municipal purposes would depend upon how the transfer is approved. If "municipal purposes" is added as an additional permissible purpose of use to an irrigation water right, for example, it would appear that the right could continue to be used for irrigation at the original place of use until needed for the municipal purpose.

3. **Is the statute limiting the holding of "future needs" water limited to UWI? The "municipal provider" language in 42-202B indicates that a "municipality that provides water for municipal purposes to its residents and other users within its service area" will qualify, or a corporation like UWI which can and does supply water for municipal purposes to users within its service area will qualify. The City would qualify under this criteria, it would seem, since it does provide water for some of the listed municipal purposes to the residents of the city.**

Response: The 1996 statutory changes, including I.C. § 42-202B, are general in nature and potentially apply to all "municipal providers" within the state. The city of Boise, as a municipality, comes within the terms of the statutes to the extent the City may provide water for municipal purposes to its residents. The statutes apply to UWI, as your question indicates, because UWI is a corporation holding a franchise to supply water for municipal purposes. The statutes also apply to other corporations or associations that supply water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" for ten (10) or more separate premises or households as described in section 39-103(15), Idaho Code.

Your e-mail states that the City is planning to develop a municipal irrigation system. I assume that the municipal irrigation system would rely upon existing surface water irrigation rights now owned or to be acquired by the City. It is not immediately evident to me what benefit the new statutory provisions provide in this circumstance. There may or may not be a benefit to converting existing irrigation water rights to municipal purpose rights if the intent is that the rights will continue to be used only for irrigation. Converting the irrigation water rights to year-round municipal purpose water rights could have the disadvantage of reducing the volume of water available for use during the irrigation season.

I hope these comments are useful to you. Please let me know if I may be of further assistance.

Phil Rassier

Rassier, Phil

From: MATT WILDE [MWILDE@pobox.ci.boise.id.us]
Sent: Thursday, September 02, 1999 5:18 PM
Subject: Growing Communities Doctrine

Peter:

Thanks for the very informative conference you and Chris spoke at on Tuesday. I was most interested in the untested '96 statute codifying the Growing Communities Doctrine and what Chris called "future needs" water.

I have some very simple questions relating to the code that I am hoping you can answer, if you have the time. The City of Boise is interested in utilizing this very important provision in its planning for the future and would like to work with IDWR to use it in the way the legislature and drafters intended.

1. Is a "municipal purpose" under 42-202B different from a municipal use designation for a water right? How do they relate? A municipal purpose use designation seems to provide for a broader use of the water, if there is a difference.
2. Does the statute allow transfer of current uses (eg irrigation, domestic, etc) to municipal purpose use, or does the statute contemplate that the water is held for "future needs" and is not to be used? In other words, is this code only meant for developing "unused water" portfolios, or stockpiled water rights, or does it allow for the use of the water in various ways by the municipality during the planning horizon? 42-202B seems to indicate that the future needs water is permitted to be used.
3. Is the statute limiting the holding of "future needs" water limited to UWI? The "municipal provider" language in 42-202B indicates that a "municipality that provides water for municipal purposes to its residents and other users within its service area" will qualify, or a corporation like UWI which can and does supply water for municipal purposes to users within its service area will qualify. The City would qualify under this criteria, it would seem, since it does provide water for some of the listed municipal purposes to the residents of the city.

The City is soon planning on having a municipal irrigation system and would fit even better into the definition (if it does not fit now) of municipal provider, based on a new service area.

These are a couple of the issues that we are thinking about. The City is very interested in using these provisions to develop a "future needs" water rights portfolio and in changing the nature of use of some City water rights to municipal purpose use water rights, if possible.

Thanks for looking at this, or at least pointing us in the right direction. We appreciate it.

Matt Wilde
Assistant City Attorney
City of Boise

Pat. 5-12-02.

Pat.

10-3

Helen.

Etta D.
Eagleson.
2-24-05.

7-22-03.

H. Eagleson.

A.B.
Gardner
4-15-11

Andrew B.
Gardner.
Pat 4-15-11.

Pat.
4-25-03

Prosper.
Aveline.

22440
Claude
High

A.C.

Pat

10-26-91

Leo J. Falk.
Et al.
11-24-93.

Eunton.

Pat. A.C.

Edwin. L.

John

2008 OCT 31 PM 12:29
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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	)	ORDER SETTING SUBCASE
	)	FOR SCHEDULING CONFERENCE
Case No. 39576	)	
		SUBCASE NO: 63-05354

The Scheduling Conference for this subcase will be
held as follows:

TUESDAY, JANUARY 27, 2009 at 09:30 AM (MT)
SRBA
253 - 3RD AVENUE NORTH
TWIN FALLS, ID

Parties may participate by telephone by dialing the number
225-383-1099 and when prompted entering the code 675342.

Parties and their attorneys, if any, shall attend the
Scheduling Conference and shall be prepared to discuss the
following matters:

1. Claimant representation and alignment of the parties;
2. Identification of the issues;
3. Admissions of facts and documents;
4. Amendment of pleadings, if required;
5. Discovery and discovery cut-off dates;
6. Expert witnesses, if planned;
7. Pre-trial conference dates;
8. Motions;
9. Settlement/alternative dispute resolution; and
10. Firm trial date.

(continued)

The date for the scheduling conference will not be changed unless a Stipulation to Reset is received by the court fourteen (14) days before the date of the scheduling conference. Parties who wish to change the date of the scheduling conference must do the following:

1. Contact the clerk of the SRBA Court and obtain alternative dates and times (208-736-3011).
2. Contact each party to the subcase(s) or their attorney, if any, and reach an agreement on the alternative date(s) and time(s) provided by the clerk.
3. Prepare a Stipulation to Reset the hearing. The hearing must be reset on one of the dates and times provided by the clerk. The stipulation must specify the date(s) and time(s) agreed to and must contain a statement that you have contacted each party or their attorney and that all have agreed on the alternative date(s) and time(s). The court will send a notice resetting the hearing.
4. If the parties cannot agree on one of the alternative dates and times provided by the clerk, the party wishing to change the date and time must file an Expedited Motion to Reset with the court at least 21 days prior to the scheduled hearing.

IT IS SO ORDERED.

Dated: OCTOBER 31, 2008



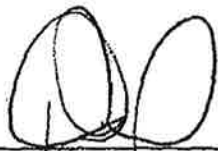
THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING
SUBCASE FOR SCHEDULING CONFERENCE was mailed on OCTOBER 31, 2008,
with sufficient first-class postage to the following:

CITY OF BOISE
CITY OF BOISE, DEPT OF
Represented by:
ERIKA E MALMEN
251 EAST FRONT ST STE 400
BOISE, ID 83702-7310
Phone: 208-343-3434

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


Deputy Clerk

Shurte, Jan

From: Tuthill, Dave
Sent: Sunday, January 11, 2009 11:31 AM
To: Courtney, Andrea
Cc: Shurte, Jan; Williams, Ray
Subject: RE: Municipal vs Domestic - One More Time

Good morning, all.

Yes, I don't have any problem with the alternative proposal that Andrea has suggested. Let's give it a try.

Cheers,

Dave

From: Courtney, Andrea
Sent: Friday, January 09, 2009 5:37 PM
To: Tuthill, Dave
Cc: Shurte, Jan; Williams, Ray
Subject: FW: Municipal vs Domestic - One More Time

Dave~

I've given this subcase a lot of thought and can see a variety of possible resolutions. Because of the options available to the Department, I seek further direction from you. (See below exchange between you and Jan on municipal purpose for the City of Boise's right.)

You make a very good point that the City faces forfeiture. If pushed to trial, the Department has a number of arguments and facts to highlight, including 1) there is a lack of evidence sufficient to support both the priority date for a groundwater right (1900) and the claimed quantity (.18 cfs), 2) the Department's recommendation of domestic purpose for the .18cfs is defensible because of the remark that states the recommendation was not a determination of historical beneficial use; 3) the discovery through the objection resolution process that indeed there was non-use since the City's purchase of the land in '86, supporting a revised recommendation or finding at trial of forfeiture; and 4) arguments re:the inapplicability of the reasonably anticipated future needs defense (i.e., RAFN protection not enacted until 1996; RAFN protection not automatic, but only available through permit/licensing procedure and after providing specific planning horizon and other information to the Department for consideration).

That said, would you be willing to consider an alternative proposal for the City's consideration? Specifically, would the Department be willing to recommend a municipal purpose of use for .04 cfs with 1.2 AFY quantity for this right? I do not know if the City would find that acceptable because of the lesser quantity and the volume amount, but it does get the City the purpose it so wants and maybe the partial "win" would be sufficient for the City. The Special Master assigned to this subcase is Booth so we know that while he's exceptionally intelligent, he may fashion some sort of relief at trial that we had not considered.

Please let Jan and Ray know your thoughts as I am out on Monday and may not be back until after the maternity leave. If you have additional questions, I've spoken with Jan, Ray and Garrick about the nuts and bolts of this subcase.
 Andrea

From: Shurte, Jan
Sent: Thursday, November 20, 2008 10:02 AM
To: Courtney, Andrea
Subject: RE: Municipal vs Domestic - One More Time

I'll wait to hear from you. Jan

From: Courtney, Andrea
Sent: Wednesday, November 19, 2008 10:25 AM
To: Shurte, Jan

4/3/2009

Subject: FW: Municipal vs Domestic - One More Time

Jan~

Before you talk with Erika about this, I want to look into a couple of things. I'm intrigued by Dave's answers -- very helpful. I'll get back to you.

Andrea

From: Tuthill, Dave

Sent: Tuesday, November 18, 2008 9:25 PM

To: Shurte, Jan

Cc: Courtney, Andrea

Subject: RE: Municipal vs Domestic - One More Time

Hi, Jan.

No problem to ask this questions -- I am just happy that you are carrying the ball on these!

I have responded below.

Cheers,

Dave

Hi Dave,

I am sorry to bother you with this again. However, Erika Malmen had a point that I would like to pass by you just in case. This is on one of the City of Boise's recommendations that were on the homes out by the airport, purchased by the City for noise control.

This particular recommendation was originally claimed as a stat. claim for domestic and irrigation for a private owner. The land was purchased by the City of Boise in 1986 at which time the uses were discontinued. They filed the aj claim for municipal use in 2003. We recommended it for domestic only with the 13,000 gpd limiters) Erika's argument is that they purchased the property to maintain it for "reasonably anticipated future needs" as a municipal provider in 1986. She continues to state that because they bought the property in 1986, and they are a municipal provider, that it constitutes an accomplished transfer and we should recommend the right as municipal. **DRT Response: Just the fact that the municipality purchased the water right does not change the use to municipal any more than their purchase of Swan Falls would change the hydropower water right to municipal. Also, the statutory change that provides for "reasonably anticipated future needs" was not done until the 1990s.**

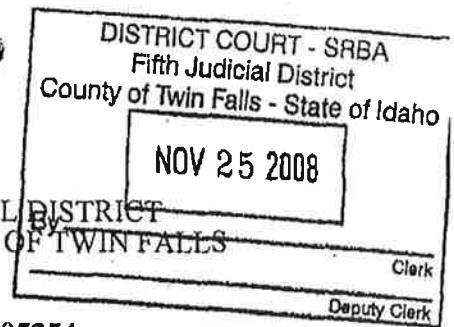
I know we spoke of this previously in our meeting with her, however, I'm not so sure she put it quite this way. I would ask the legal staff, but I think you have a better idea on the City of Boise and it's domestic/irrigation airport rights vs municipal than they do right now. It does not appear from what Erika states that the water has been used since they purchased it in 1986. They filed the claim in 2003, seventeen years after they purchased the property and abandoned the system. I just do not know if the municipal statute covers the holding of the water right for reasonably anticipated future needs, avoiding abandonment, and making it a municipal right for the City of Boise. In 42-223(2) it does state that a defense to forfeiture is that a water right held by a municipal provider cannot be forfeited for nonuse unless the planning horizon specified in the license is no longer needed to meet reasonably anticipated future needs. Since this was a stat. claim and then an adjudication claim for municipal there is no talk of any planning horizons.

Erika does not seem to want to move on this one. I will go to trial on it if we have to, I just want to be sure. I know you have bigger and far worse things, so I am trying to keep my questions down for you on these recommendations. **DRT Response: Yes, this is important enough to go to trial for. I would add that the City does have some exposure here -- the Court could potentially find that the rights were forfeited (see when the municipal protection was added -- I think that it was at least 5 years after 1986).**

Thanks,
Jan

4/3/2009

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 No: 63-05354

AMENDED OBJECTION

B. NAME AND ADDRESS OF PERSON OBJECTION

Name: City of Boise, Dept. of Aviation & Public Transportation
Address: P.O. Box 500, Boise, Idaho 83701

Name & Address of Attorney, if any:

Robert A. Maynard
Erika E. Malmen
Perkins Coie LLP
251 East Front Street, Suite 400
Boise, Idaho 83702-7310
Telephone: (208) 343-3434

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

Name: City of Boise, Dept. of Aviation & Public Transportation
Address: P.O. Box 500, Boise, Idaho 83701

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:
2. ☐ **Source**
Should be:
3. ☒ **Quantity**
Should be: .18 cfs with no gpd/AFA limitation.
4. ☐ **Priority Date**
Should be:

5. ☐ **Point of Diversion**
Should be:
6. ☐ **Instream Flow Beginning and Ending Point**
Should be:
7. ☒ **Purpose(s) of Use**
Should be: Municipal.
8. ☐ **Period of Year**
Should be:
9. ☒ **Place of Use**
Should be: Identified as the Boise City Municipal Service Area.
10. ☐ **I object because:**
☐ This water right should not exist.
☐ This water right was not recommended, but should be recommended with the elements described above.

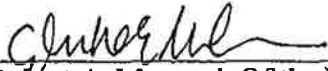
E. REASONS SUPPORTING OBJECTION(S):

There is no basis for the 13,000 gal/per day limitation and such limitation is inappropriate for a municipal water right. The City purchased the property in 1986 and holds the appurtenant water right for municipal use. Accordingly, the purpose of use should be recommended as municipal pursuant to applicable law.

The recommendation does not identify a place of use ("POU"). The POU should be identified as the Boise City Municipal Service Area.

DATED: November 14th, 2008

PERKINS COIE LLP

By: 
Robert A. Maynard, Of the Firm
Erika E. Malmen, Of the Firm
Attorneys for City of Boise and
Ada County

F. VERIFICATION (must be completed)

STATE OF IDAHO)
 : ss.
County of Ada)

Erika E. Malmen, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Erika E. Malmen

SUBSCRIBED AND SWORN to before me this 14th day of November, 2008.





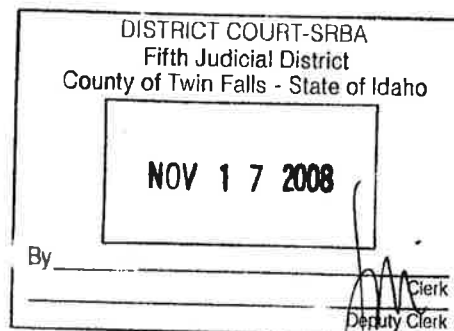
Notary Public for Idaho
Residing at Meridian, Idaho
My Commission Expires February 5, 2013

2024

ORIGINAL

Robert A. Maynard, Bar No. 5537
RMaynard@perkinscoie.com
Erika E. Malmen, Bar No. 6185
EMalmen@perkinscoie.com
PERKINS COIE LLP
251 East Front Street, Suite 400
Boise, ID 83702-7310
Telephone: 208.343.3434
Facsimile: 208.343.3232

Attorneys for City of Boise



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: **63-05354**

**MOTION FOR LEAVE TO FILE
AMENDED OBJECTIONS AND
MEMORANDUM IN SUPPORT**

Claimant/Objector City of Boise ("City"), a body politic of the State of Idaho, by and through its counsel of record, Perkins Coie LLP, hereby moves the Court pursuant to Rule 1 a & b of Snake River Basin Adjudication ("SRBA") Administrative Order 1 ("AO1") and Rule 15(a) of the Idaho Rules of Civil Procedure ("IRCP") for Leave to File Amended Objections and Memorandum in Support. A copy of the Amended Objections is attached hereto as "Exhibit A" and incorporated herein by reference.

MEMORANDUM IN SUPPORT

A. Background

The City timely filed a Notice of Claim to a Water Right ("Notice") for the above-referenced water right/subcase, claiming municipal use and municipal place of use for

diversion of .18 cfs of groundwater from three (3) points of diversion. The Idaho Department of Water Resources ("IDWR") Director's Report recommended that water right number 63-05354 be partially decreed for domestic use with a diversion rate of .18 cfs limited to 13,000 gallons per day. The Director's Report did not identify a place of use for this water right.

The City timely filed objections to the Director's Report as to the point of diversion and place of use elements. Although the City did not specifically object to the purpose and quantity of use,¹ the City's Notice claimed municipal purpose of use and the City verbally notified IDWR of its objection to the domestic purpose of use recommendation at the June 20, 2008 Initial Hearing. Recently, the City was able to confirm that the Director's Report correctly identifies the three (3) points of diversion associated with water right number 63-05354. IDWR has expressed a willingness to continue discussions with the City based on the content of the City's Amended Objections. There are no pending substantive deadlines or trial date set for this subcase.

B. Applicable Law

IRCP 15(a) provides that leave to amend or supplement a pleading shall be "freely given when justice so requires." In granting a motion to file amended objections, the SRBA Court acknowledged that "Rule 15(a) established a rather lenient legal standard for amending pleadings." *In Re: SRBA Case No. 39576 (Subcase 37-154C et. al.) Re: Order Granting Motion to Amend Objections*, p. 4 (October 10, 2008). The purpose of IRCP 15(a) is "[f]irst, to allow the best chance for each claim to be determined on its merits rather than on some procedural technicality; and, second, to relegate pleadings to the limited role of providing

¹ The quantity is necessarily at issue because there is generally no gallon per day or acre feet per annum limitation for municipal-use water.

parties with notice of the nature of the pleader's claim and to the facts that have been called into question." *Clark v. Olsen*, 110 Idaho 323, 326, 715 P.2d 993, 996 (1986)(external citations omitted).

C. Argument

In this subcase, the City timely filed its Notice and objections and has engaged in several discussions with IDWR centered on resolution of the purpose of use element. The Amended Objections simply provide clarity for the administrative record in this subcase and do not constitute new information. Allowing the Amended Objections will enable this water right to be adjudicated properly on its merits, which is consistent with IRCP 15(a), case law interpreting it, and the SRBA. IDWR, although not a party that can be prejudiced in the first instance, was given timely notice of the City's objections to the purpose of use element. Accordingly, the Amended Objections should come as no surprise to IDWR.

The City's position has been consistent that the water right at issue is a municipal water right and should be partially decreed as such. By allowing the Amended Objections, the Court, City and IDWR will be better able to focus on resolving the contested elements of water right number 63-05354. The City makes this Motion in good faith and without intent to cause undue delay.

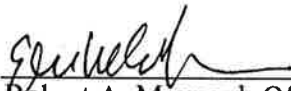
D. Conclusion

Justice requires this Court to grant the City's Motion because (1) the City made IDWR aware of these additional or amended objections at the Initial Hearing and at every opportunity thereafter; (2) the record should be clarified to accurately reflect the elements of water right number 63-05354 at issue; (3) there are no pending deadlines at this time; and (3) no prejudice will occur to any party because the City is the only party to this subcase. The

City is not requesting oral argument. Counsel for the City has contacted counsel for IDWR and IDWR does not oppose this Motion.

DATED: November 14th, 2008

PERKINS COIE LLP

By: 
Robert A. Maynard, Of the Firm
Erika E. Malmen, Of the Firm
Attorneys for City of Boise

CERTIFICATE OF SERVICE

I, the undersigned, certify that on November 14th, 2008, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Rules of Procedure, to the following person(s):

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 736-2121 ☐
Overnight Mail ☐

Director
Idaho Dept. of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 287-6700 ☐
Overnight Mail ☐

State of Idaho
c/o Natural Resources Div. Chief
Attorney General's Office
P.O. Box 44449
Boise, Idaho 83711-4449

Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 334-2690 ☐
Overnight Mail ☐



Erika E. Malmen

Exhibit A

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 No: 63-05354

AMENDED OBJECTION

B. NAME AND ADDRESS OF PERSON OBJECTION

Name: City of Boise, Dept. of Aviation & Public Transportation
Address: P.O. Box 500, Boise, Idaho 83701

Name & Address of Attorney, if any:

Robert A. Maynard
Erika E. Malmén
Perkins Coie LLP
251 East Front Street, Suite 400
Boise, Idaho 83702-7310
Telephone: (208) 343-3434

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

Name: City of Boise, Dept. of Aviation & Public Transportation
Address: P.O. Box 500, Boise, Idaho 83701

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:
2. ☐ **Source**
Should be:
3. ☒ **Quantity**
Should be: .18 cfs with no gpd/AFA limitation.
4. ☐ **Priority Date**
Should be:

5. ☐ **Point of Diversion**
Should be:
6. ☐ **Instream Flow Beginning and Ending Point**
Should be:
7. ☒ **Purpose(s) of Use**
Should be: Municipal.
8. ☐ **Period of Year**
Should be:
9. ☒ **Place of Use**
Should be: Identified as the Boise City Municipal Service Area.
10. ☐ **I object because:**
☐ This water right should not exist.
☐ This water right was not recommended, but should be recommended with the elements described above.

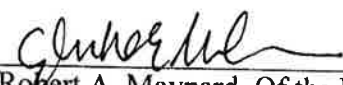
E. REASONS SUPPORTING OBJECTION(S):

There is no basis for the 13,000 gal/per day limitation and such limitation is inappropriate for a municipal water right. The City purchased the property in 1986 and holds the appurtenant water right for municipal use. Accordingly, the purpose of use should be recommended as municipal pursuant to applicable law.

The recommendation does not identify a place of use ("POU"). The POU should be identified as the Boise City Municipal Service Area.

DATED: November 14th, 2008

PERKINS COIE LLP

By: 
Robert A. Maynard, Of the Firm
Erika E. Malmen, Of the Firm
Attorneys for City of Boise and
Ada County

F. VERIFICATION (must be completed)

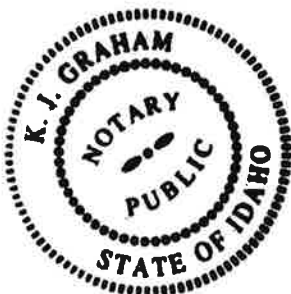
STATE OF IDAHO)
 : ss.
County of Ada)

Erika E. Malmén, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.


Erika E. Malmén

SUBSCRIBED AND SWORN to before me this 14th day of November, 2008.




Notary Public for Idaho
Residing at Meridian, Idaho
My Commission Expires February 5, 2013

Shurte, Jan

From: Shurte, Jan
Sent: Thursday, October 30, 2008 4:43 PM
To: Courtney, Andrea
Cc: Shurte, Jan
Subject: RE: More Friday hearings re:B63

Andrea,

Wanted to whip out a quick memo for the City of Boise. Basically, we are not going to change to municipal because these wells are not serving anyone for the City of Boise now and they never have been. They were a part of the airport noise control area, thus purchased by the City of Boise and abandoned. We are leaving 63-5254 as domestic because there was a domestic use for 63-5254 until 2002. The original claim on this one was for .32 cfs making it over the exempt domestic use and requiring evidence of priority. No evidence was submitted, so it was recommended as exempted domestic for .23 cfs. Erika is aware that we need some evidence of priority to up the diversion rate and remove the 13,000 gpd conditions, yet it will still remain domestic. She was going to try and get some evidence. For 63-5354 we are also sticking with the Domestic use as the file indicates the City bought the property in 1986 at which time it was abandoned. So, the wells were never used for anything other than domestic – tolling of forfeiture helped with both of these. We agreed to put in the place of use and correct the point of diversion. If she can submit some type of evidence of priority then we could remove the 13,000 gpd limiter on this one. So we are waiting to see what she wants to do.

She did ask me why the original statutory claims filed in 1983 and 1984 could not be used as affidavits since they are notarized. I sent her a copy out of our old claim investigation manual which states that a statutory claim is evidence of beneficial use only as of the date the statutory claim was filed. We will see what she wants to do tomorrow.

Jan

From: Courtney, Andrea
Sent: Wednesday, October 29, 2008 4:31 PM
To: Shurte, Jan
Subject: More Friday hearings re:B63

Jan~

For the City of Boise, Erika Malmen's subcases, we've got a status conf on -5254 & -5324. For the latter, she was going to submit ev of priority. For the former, I think you wanted to talk with Tuthill about municipal purpose. Updates?
As for the Hunters Point Golf Community subcases, Renea sent John Marshall an email asking for an update on his client's readiness to withdraw its objections now that the NCAPs have been filed.
That takes care of Halloween.
Andrea

Shurte, Jan

From: Tuthill, Dave
Sent: Wednesday, August 13, 2008 1:13 PM
To: Shurte, Jan
Subject: RE: City of Boise - Domestic vs. Municipal

You bet, Jan -- I like your idea of the two of us meeting with Erica. At the least we will be able to convey our thinking on this issue. Also our adj attorney who is assigned to this case should attend. Just schedule it on Outlook and I'll be there.

Thanks, Dave

-----Original Message-----

From: Shurte, Jan
Sent: Tuesday, August 12, 2008 2:32 PM
To: Tuthill, Dave
Subject: RE: City of Boise - Domestic vs. Municipal

Dave --

The city wants to pursue a municipal water right based on the fact that they were a municipality when the property was purchased (1986) even though it has not been used as a municipality. Erica Malmen, attorney, cited the code that states municipalities can hold water rights to meet reasonably anticipated future needs. I think she also took it that when they purchased the property as a municipality it automatically became a municipal future use. They purchased it in 1986 prior to the beginning of the adj if that makes any difference.

So, the special master set it for 10-31 status conference. Is there anyway we could have a meeting with Erica Malmen, attorney to explain why we did not recommend domestic vs. municipal on these type of rights between now and then. Her point of view makes some sense, yet so does ours. Otherwise, it will end up for the court to decide and maybe you can explain it better to Ms. Malmen (very nice attorney) and hold off a trial. If this is too much, just let me know.

Thanks,
 Jan

Ps -- I know your busy, so tell me no if you can't between now and 10-31.

From: Tuthill, Dave
Sent: Tuesday, August 12, 2008 10:21 AM
To: Shurte, Jan
Subject: RE: City of Boise - Domestic vs. Municipal

Sorry, Jan -- I am just getting to your email... Looks like you are off and running today on this.

My understanding is that if the original use would have been considered to be municipal at the time of filing, we could consider it to be municipal now. For example, if a city park, owned by the city, was originally filed as an irrigation use but now it is claimed as a municipal use, we can consider it to be a municipal use. (If a license was issued that limited the af, that limitation would still apply.)

Hope this helps... Good luck!

Yes, all is well with me -- I hope that Jennifer is continuing to improve!!

Dave

-----Original Message-----

From: Shurte, Jan
Sent: Monday, August 11, 2008 12:51 PM

10/26/2009

To: Tuthill, Dave

Subject: City of Boise - Domestic vs. Municipal

Hi Dave,

I have a bunch of status conferences tomorrow and the City of Boise is among them. Their attorney called to ask about one of them and I have it in my notes to discuss it with you. It was a statutory claim originally for 4 homes, 7 acres of irrigation and a little stock. They claimed it as municipal with the remarks that "at one time multiple homes were located on the parcel that currently has an address of 3205 S. Curtis. All buildings have been demolished and well currently not used. City purchased property in 9/86.

We recommended it as domestic with N11 and N13 on it. Limited to 13,000 gpd. They objected to the domestic not being municipal and our pou not being a municipal pou. Can you tell me in your words what the reasoning was when we recommended municipal for a city vs. domestic and municipal for a city vs. irrigation on an old irrigation right. For the life of me I can't remember your exact words and I need them for tomorrow to say at the status conference. If you don't get back to me, I will just say that it was domestic up until 1986 and currently not being used, so no accomplished transfer type thing. I know there was more to it than that, but at least that will get me by.

I know all is tough over there, hope your still feeling good about it all. Just the article today was interesting.

Thanks,
Jan

10/26/2009

RECEIVED

MAY 26 2008

DEPARTMENT OF
WATER RESOURCES

2008 MAY 23 PM 03:36
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

ORDER SETTING SUBCASE(S)
FOR INITIAL HEARING

SUBCASE NOS: 63-05254 63-05354
63-07179 63-12312

subcase will be held before

20, 2008 at 01:30 PM (MT)
COURT BUILDING
E STREET

1 parties are required to
ent authority.

all have an opportunity
the Idaho Department of
objector in an attempt
in the claim and the
all information you
and/or objection. If
the Initial Hearing,
for trial within 45
YOU INTEND TO AMEND YOUR
THE INITIAL HEARING.

filed with the court by
not be vacated.

*Need to change POD to NENE +
ORNE. add place of use which
would be ORNE 8/21/08 TSV
NENE, ORNE, SWANE, 0.30 RZE*

*Discussed w/ Erica
Malmer at a mtg.
w/ PRT and on
this one we are sticking
w/ our recommendation
since they were domestic
when the claim was
filed & have never been
a part of the municipal
system. I order to be
able to rec. as domestic
w/o disallowing all had
to put N11 & D113 on
this. See Dave's email
also.*

10/31/08 S.C.

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

Page 1 5/22/08

(continued)

Dated: MAY 23, 2008

/S/ THEODORE R. BOOTH

Special Master

Snake River Basin Adjudication

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING
SUBCASE(S) FOR INITIAL HEARING was mailed on MAY 23, 2008 _____,
with sufficient first-class postage to the following:

CITY OF BOISE
CITY OF BOISE, DEPT OF
Represented by:
ROBERT A. MAYNARD
PERKINS COIE LLP
251 E FRONT ST, STE 400
BOISE, ID 83702-7310
Phone: 208-343-3434

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

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,

Case No. 63-5354

STANDARD FORM 1 OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTION

Name: City of Boise, Dept. of Aviation & Public Transportation

Address: P.O. Box 500, Boise, Idaho 83701

Daytime Phone: _____

Name & Address of Attorney, if any:

Robert A Maynard
Perkins Coie LLP
251 East Front Street, Suite 400
Boise, Idaho 83702-7310
Telephone: (208) 343-3434

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

Name: City of Boise, Dept. of Aviation & Public Transportation

Address: P.O. Box 500, Boise, Idaho 83701

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

I ☐ **Name and Address**

Should be: _____

- 2 ☐ **Source**
Should be: _____
- 3 ☐ **Quantity**
Should be: _____
- 4 ☐ **Priority Date**
Should be: _____
- 5 ☒ **Point of Diversion**
Should be: Verified with amended claim 6/25/03
- 6 ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
- 7 ☐ **Purpose(s) of Use**
Should be: _____
- 8 ☐ **Period of Year**
Should be: _____
- 9 ☒ **Place of Use**
Should be: identified as the Boise City Municipal Service Area
- 10 ☐ **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): The recommendation does not identify a place of use. The POU should be identified as the City Municipal Service Area.

R

VERIFICATION (must be completed)

STATE OF IDAHO)
 : ss
County of Ada)

Robert A Maynard, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I C §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge

Robert A. Maynard

Robert A. Maynard

SUBSCRIBED AND SWORN to before me this 19 day of June, 2007



Laurie A. Loyd
Notary Public for Idaho
Residing at Boise
My Commission Expires 9/19/2010

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 19, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

1 Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P O Box 2707
Twin Falls, ID 83303-2707

2 One copy to the claimant of the water right at the following address:

Name: NIP

Address: _____

3 Copies to:

IDWR Document Depository
P O Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
P O Box 44449
Boise, ID 83711-4449

Robert A. Maynard
Robert A Maynard

10/30/2006

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

RIGHT NUMBER: 63-5354

NAME AND ADDRESS: CITY OF BOISE
DEPT OF AVIATION & PUBLIC TRANSPORTATION
PO BOX 500
BOISE ID 83701

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.180 CFS

The quantity of water under this right shall not exceed 13,000 gallons per day.

PRIORITY DATE: 01/01/1900

POINT OF DIVERSION:

T03N R02E S30 NENE Within ADA County

T03N R02E S30 NENE Within ADA County

T03N R02E S30 NENE Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

DOMESTIC

01/01 12/31

0.180 CFS

PLACE OF USE:

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

The quantity of water decreed for this water right is not a determination of historical beneficial use.

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 - Beneficial Use