

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

AMENDED

Ident. Number 63-4927
Date Received: 6/19/1990
Receipt No: T017346
Received By:

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

STATE OF IDAHO Phone: (208)334-3700

DEPT OF FISH & GAME
PO BOX 25
BOISE ID USA 83707

2. Date of Priority: 05/02/1964

3. Source: DUFF LANE POND Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
04N	02W	9	NW SW	CANYON	

5. Description of diverting works:

Recreational fishing pond, recreational fish propagation.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
RECREATION STORAGE			01/01 12/31	
10				

7. Total Quantity Appropriated is:
10 A.F.A.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
04N	02W	9	NW SW	RECREATION STORAGE	

11. Place of use in counties: CANYON

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

13. Other Water Rights Used:

14. Remarks:

Claim amended per Fish & Game 11/19/09.

15. Basis of Claim: Beneficial Use

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 Organizations:

I do solemnly swear or affirm that I am _____ of
Title

_____, that I have signed the foregoing
Organization

document in the space below as _____ of
Title

_____, and that the statements contained in the
Organization
foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization

Date

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this
of _____ 20__

Notary Public

Residing at _____

My commission Expires _____

RECEIVED

NOV 19 2009

SRBA Form No.42-1409-1 (Internet 2/09)

WATER RESOURCES
WESTERN REGIONIN 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 SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 63-04927

Date Received: _____

Receipt No: _____

Received By: _____

AMENDED
NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) State of Idaho, Dept. of Fish & Game Phone (208) 334-3700Mailing Address P.O. Box 25 Boise ID ZIP 83707
Street or Box City State2. Date of Priority (Only one (1) per claim) May 2, 1964
Month Day Year (YYYY)3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Duff Lane Pond
which is tributary to (b) Sinks4. a. Location of Point of Diversion is: Township 04N, Range 02W, Section 09,
NW, 1/4 of SW, 1/4 Govt. Lot _____, BM., County of Canyon

Parcel (PIN) no. _____

Additional points of diversion if any: _____

If available, GPS Coordinates _____

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

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

Govt. Lot _____, BM., County of _____

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

Govt. Lot _____, BM., 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. Recreational fishing pond, recreational fish propagation

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Recreation Storage purposes from 01-01 to 12-31 amount _____ or 10.0

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) _____ (cfs) and/or (b) 10.0 (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) Recreational fishing pond, recreational fish propagation

9. 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.

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	02W	09										X							

Parcel (PIN) no(s). _____

Total number of acres irrigated _____

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

11. Do you own the property listed above as place of use? Yes (✓) No ()

If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

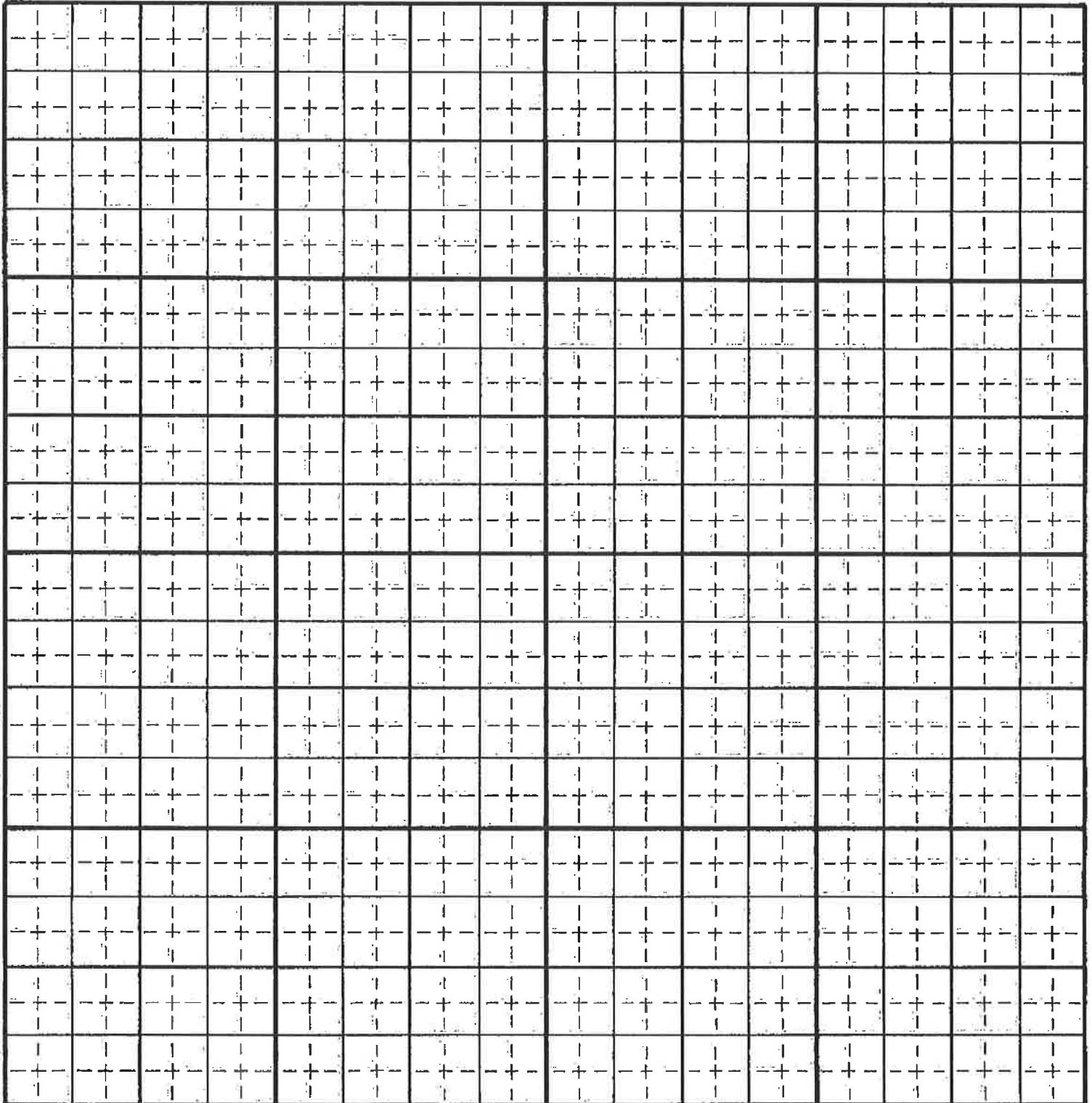
_____ or None (✓)

13. Remarks: _____

Last Name _____ Identification No. _____

Map of Project: Attach aerial photograph or topographic map showing clearly the point of diversion, place of use, section number, township, and range number, unless unavailable. Otherwise sketch the elements above on the grid below.

Scale: 2 Inches equals 1 mile



Last Name _____ Identification No. _____

14. Basis of Claim (Check One) Beneficial Use (☒) Posted Notice (☐) License (☐) Permit (☐) Decree (☐)

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number 63-04927

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices 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: See Poole Affidavit filed in SRBA (6-10-2009)

For Individuals: I/We do solemnly swear or affirm under penalty of perjury 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 under penalty of perjury that I am

Deputy Attorney General of Idaho Dept. of Fish & Game,
Title Organization

that I have signed the foregoing document in the space below as

Deputy Attorney General of Idaho Dept. of Fish & Game,
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent  Date 10/18/2009

Title and Organization Deputy Attorney General, Idaho Dept. of Fish & Game

16. Notice of Appearance:

Notice is hereby given that I, David I. Stanish, will be acting as attorney at law of 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  Date 11/18/2009

Address Natural Resources Division, Office of Attorney General

P.O. Box 83720, Boise, ID 83720

Last Name _____ Identification No. _____

208

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: A63-04927
Date Received: 6/19/1990
Receipt No: T017346
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: STATE OF IDAHO
Address: DEPT. OF FISH & GAME
P.O. BOX 25
BOISE, ID

83707

2. Date of Priority: AUG 10, 1971

3. Source: POND

Trib. to: BOISE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	02W	9	NW	SW			CANYON

5. Description of diverting works:
RES. & PIT

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
FISH PROP. STORAGE	01/01	12/31			10.00

7. Total Quantity Appropriated is:
C.F.S. (and/or) 10.00 A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
FISH PROPAGATION

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	02W	9	NW	SW		FIS S	

11. Place of use in counties: CANYON

A63-04927

Page 1

Date: 07/06/90

MICROFILMED
AUG 20 1992

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

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

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 Organizations:

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

Signature of Authorized Agent

Title and Organization

Date

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

#5138
50.14

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: A63-04927
Date Received: 6-19-90
Receipt No: 7017346
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: STATE OF IDAHO
Address: DEPT. OF FISH & GAME
P.O. BOX 25
BOISE, ID

83720
07

2. Date of Priority: AUG 10, 1971

3. Source: POND

Trib. to: BOISE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	02W	9	NW	SW			CANYON

5. Description of diverting works:
RES. & PIT

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
FISH PROP. STORAGE	01/01	12/31			10.00

7. Total Quantity Appropriated is:
C.F.S. (and/or) 10.00 A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	02W	9	NW	SW		FIS S	

11. Place of use in counties: CANYON

A63-04927

Page 1

Date: 02/14/89

MICROFILMED
AUG 20 1992

4/5/1989

SRBA CLAIMS RECEIVING CHECKLIST #2

CLAIMANT'S NAME ID FSG

CLAIM IDENT. NO.

A63-04927DATE RECEIVED 6-19-90

CK # _____

AMOUNT \$ 50.14

YES NO Require Info?

1. Is the name and address complete with zip code? ☒ YES ☐ NO ☐ Require Info? *
2. Is a priority date entered? ☒ YES ☐ NO ☐ Require Info? *
- Is the priority date acceptable in view of mandatory filing dates? ☒ YES ☐ NO ☐ Require Info? *
- See Adjudication Memos #1 and #4 to determine if a Permit is required.
3. (a) Is a source entered? ☒ YES ☐ NO ☐ Require Info? *
- (b) Is a tributary to entered? (if required) ☒ YES ☐ NO ☐ Require Info? *
4. Is the legal description of the p.d. sufficient? ☒ YES ☐ NO ☐ Require Info? *
5. Is there a description of the diverting works? ☒ YES ☐ NO ☐ Require Info? *
6. Are the water uses appropriate for the form? The short form is limited to domestic and stockwater uses with direct diversion. All claims that include storage or instream stockwater must use long form. ☒ YES ☐ NO ☐ Require Info? *
- Is the period of use included? ☒ YES ☐ NO ☐ Require Info? *
- Is a quantity claimed for each use? ☒ YES ☐ NO ☐ Require Info? *
7. Is a total quantity claimed entered? ☒ YES ☐ NO ☐ Require Info? *
8. If required is a consumptive use entered? ☒ YES ☐ NO ☐ Require Info? *
- Is the consumptive use correct? ☒ YES ☐ NO ☐ Require Info? *
9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, see Adjudication Memo # 4. ☒ YES ☐ NO ☐ Require Info? *
10. Is (are) the place(s) of use and purpose(s) indicated? ☒ YES ☐ NO ☐ Require Info? *
11. Is (are) the county(ies) entered? ☒ YES ☐ NO ☐ Require Info? *
12. Is the ownership of p.u. checked? ☒ YES ☐ NO ☐ Require Info? *
13. Are other water rights listed or "none" indicated? ☒ YES ☐ NO ☐ Require Info? *
14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.) ☒ YES ☐ NO ☐ Require Info? *
15. Is the basis of the claim indicated? ☒ YES ☐ NO ☐ Require Info? *
16. If the claimant requested a monthly docket sheet, is payment enclosed? (If yes, describe payment status in "Comments" below.) ☒ YES ☐ NO ☐ Require Info? *
17. Is the claim signed by the claimant, and is the signature appropriate? Organizations must complete the organization block. ☒ YES ☐ NO ☐ Require Info? *
18. Has the claim been signed, sealed, and dated by a notary? ☒ YES ☐ NO ☐ Require Info? *
19. Was this claim filed on time, or was an extension granted? ☒ YES ☐ NO ☐ Require Info? *
20. Is the fee enclosed correct? ☒ YES ☐ NO ☐ Require Info? *
21. If this claim is based on an existing water right, has the identification number been entered? ☒ YES ☐ NO ☐ Require Info? *
22. Should this claim be data entered? ☒ YES ☐ NO ☐ Require Info? *

Claim checked by: RAADate: 7-5-90Claim must be returned to claimant: ☐ (Yes) ☒ (No)Claimant must be notified of modifications: ☐ (Yes) ☒ (No)Receipt Prepared by: RAA
Claim data entered by: RAA
Sent to claimant by: RAADate: _____
Date: _____
Date: _____Checked by: RAADate: 7-6

Comments: _____

MICROFILMED

AUG 20 1992

Amended Director's Report Right No. 63-4927

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

RIGHT NUMBER: 63-4927

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707

SOURCE: POND TRIBUTARY: SINKS

QUANTITY: 10.000 AFY

PRIORITY DATE: 05/02/1964

POINT OF DIVERSION:

T04N R02W S9 NWSW Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
RECREATION STORAGE	01/01 12/31	10.00 AFY

PLACE OF USE: RECREATION STORAGE in CANYON County

T04N R02W S09 NWSW

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use
Source is also known as Duff Land pond.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-4927 V1

WATER RIGHT NUMBER: 63-4927 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	STATE OF IDAHO DEPT OF FISH & GAME PO BOX 25 BOISE, ID 83707 (208)334-3700

Priority Date: 05/02/1964

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
POND	SINKS

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
RECREATION STORAGE	01/01 to 12/31		10.00 AF
	<u>Total Diversion:</u>		10.00 AF

Location of Point(s) of Diversion

POND	NW1/4SW1/4	Sec. 9, Twp 04N, Rge 02W, B.M.
CANYON County		

Place of Use

RECREATION STORAGE Within CANYON County

T04N R02W S09 NWSW

Conditions of Approval:

1. B01 Source is also known as Duff Land pond.
2. C18 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.

Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-4927 V1

Comments:

1. kbrown 3/6/2006 Reason for Disallowal

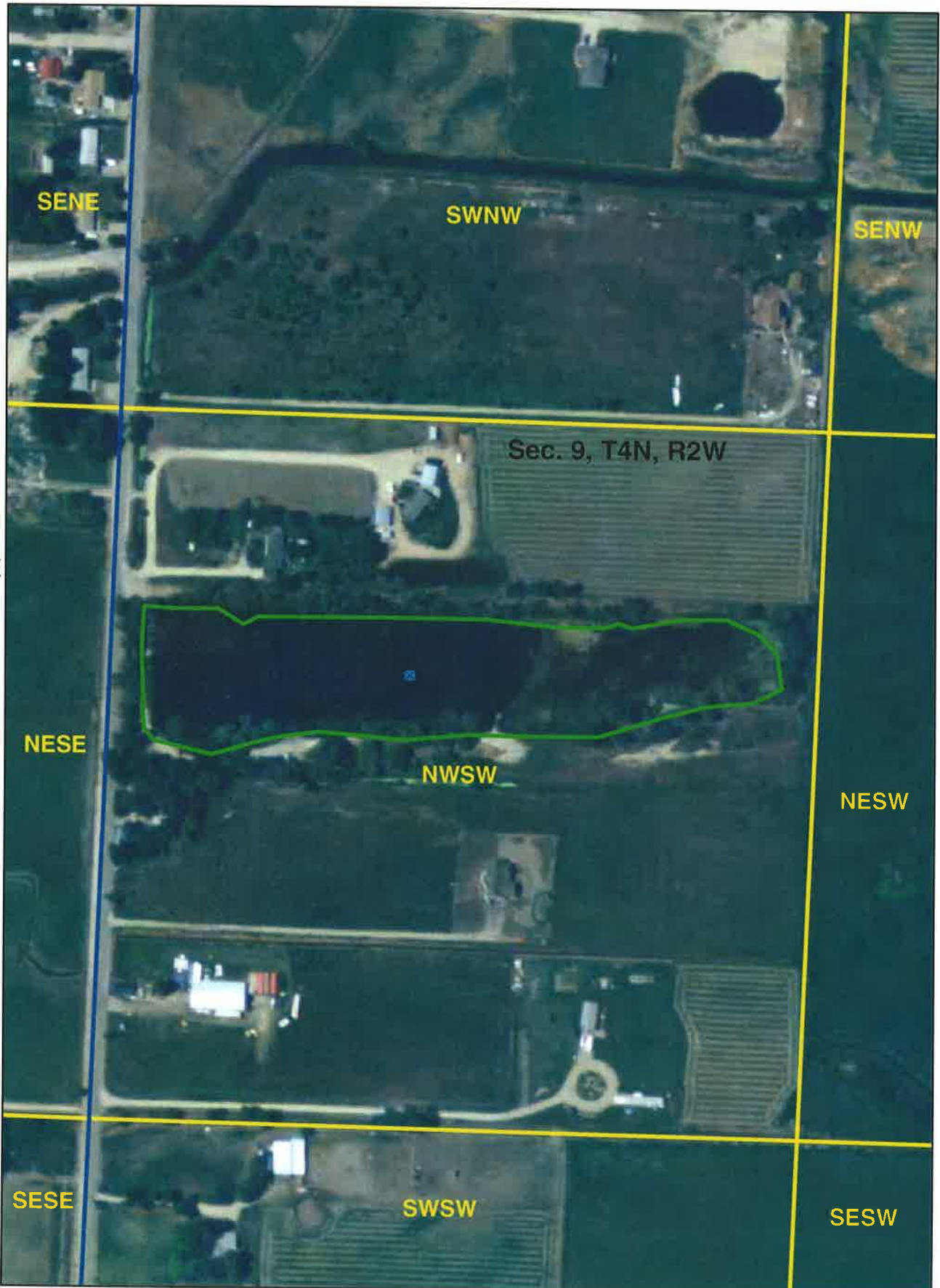
Comment: This claim is in violation of the mandatory permit statute date for surface water rights. As of May 20, 1971, a right to surface water could only be obtained by compliance with the application, permit, and license procedure (42-201). Therefore, with a claimed priority date of 8/10/71, this claim is being disallowed in the SRBA and the claimant must file an application form permit.

2. jshurte 5/14/2010 Obj. Resolution

Comment: Rescinded disallowed decree and filed objection to disallowal. Evidence received from Fish and Game included a memo dated 5/2/64 noting the bass fishing in the pond and how good it was that year and the year before. Accepted that as evidence of recreational use. Amended Directors Report reflects the change in priority and change in purpose of use from fish propagation to recreation storage. The origin of this pond was an excavated gravel pit that filled with water, thus the pond tributary to sinks. After the gravel use it became a fishing pond and the land purchased by Fish and Game.

Water Supply Bank:

Water Right No. 63-4927 - Fish & Game



Shurte, Jan

From: Shurte, Jan
Sent: Friday, May 14, 2010 11:42 AM
To: 'Stanish, David'
Cc: Williams, Ray
Subject: Amended Director's Report 63-4927 Duff Lane Pond
Attachments: ADR 63-4927 Fish & Game.pdf; 63-4927 map.pdf

David,

Attached is a copy of the Amended Director's Report for the above water right in the name of Fish and Game. I am ready to send this to the Court today.

The only change that I made to the amended claim on my recommendation was the source. I had to change it to Pond rather than Duff Lane Pond per Department rules for naming sources using topographic maps. The rule is that if the pond is shown as Duff Lane pond on the topographic map for that area, then we use that name in the source. If not, then it is simply pond. The topographic map does not show a name for this pond, so the source is pond tributary to sinks in this case. I have noted in our records that this was originally a gravel pit that filled with water to explain the source and tributary. Please note that we do add an explanatory remark stating "Source is also known as Duff Lane pond".

Please let me know if you have any questions. Just as an FYI, I used the May 2, 1964 memo for the evidence of priority and as you can see on the map layout attached the legal description is correct as claimed.

Thanks,
Jan

Shurte, Jan

From: Shurte, Jan
Sent: Tuesday, November 17, 2009 1:27 PM
To: 'Stanish, David'
Subject: RE: 63-04927 - Request for review of draft amended claim

The amended claim is consistent with my understanding. We can work with the affidavits submitted for the recreation dating back to 1964 and I will put comments as to why in my review once the amended claim motion is granted by the Court. Thanks for working with us on this one. Jan

From: Stanish, David [mailto:david.stanish@ag.idaho.gov]
Sent: Tuesday, November 17, 2009 10:17 AM
To: Shurte, Jan
Subject: 63-04927 - Request for review of draft amended claim

This communication and its attachments are confidential and/or privileged. If you have received this communication in error, please immediately read the "NOTICE" appended below.

Thanks Jan. I just wanted to confirm my understanding.
Attached is the amended claim that I intend to file. Is it consistent with your understanding of what we discussed at the last hearing?

Sincerely,

David I. Stanish
Deputy Attorney General

Natural Resources Division
Office of Attorney General
700 West State Street
Joe R. Williams Building, Second Floor
P.O. Box 83720
Boise, Idaho 83720

Phone: (208) 334-4549
Facsimile: (208) 854-8072
Email: david.stanish@ag.idaho.gov

NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this notice is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return these papers to us at the address shown above via first class mail.

From: Shurte, Jan [mailto:Jan.Shurte@idwr.idaho.gov]
Sent: Tuesday, November 17, 2009 10:04 AM
To: Stanish, David
Cc: Saxton, Craig
Subject: RE: 63-04927 - Question regarding definition of "Recreation Storage"

David,

I have no problem with listing the purpose of use as "Recreation storage". Fish propagation, in it's strictest meaning is selling fish for profit. Whether or not Fish and Game take the fish from this pond and put in others does not define fish propagation. The ponds are open to the public for recreational fishing.

11/17/2009

The other purpose of the amended claim was to change the priority date to an earlier date than 8/10/1971. It appears you have submitted sufficient evidence that recreational fishing was occurring much earlier than that.

Jan Shurte
Water Rights Supervisor
Western Region Adjudication Section

From: Stanish, David [mailto:david.stanish@ag.idaho.gov]
Sent: Monday, November 16, 2009 1:27 PM
To: Shurte, Jan
Cc: Saxton, Craig
Subject: 63-04927 - Question regarding definition of "Recreation Storage"

This communication and its attachments are confidential and/or privileged. If you have received this communication in error, please immediately read the "NOTICE" appended below.

Jan:

Below you suggested that a "fish propagation" purpose of use (rather than "recreation storage") would be required for IDFG to raise fish under this right for stocking purposes elsewhere: "Fish propagation would be if Fish and Game were growing the fish and transporting them to stock other ponds, or in some way selling them."

Craig Saxton and I discussed this issue in another subcase involving IDFG's Weiser Bass Ponds (67-04450) in which Craig indicated that "recreation storage" would allow IDFG to raise fish and to transplant them to other ponds for recreational purposes. Here is our exchange:

"Does fish stocking for recreational purposes under a "recreation storage" purpose of use allow for raising fish to be transplanted to other ponds for public, non-commercial recreational fishing?"

I know of nothing that would prevent them from stocking fish in the pond or removing fish from the pond.

If IDFG feels your suggested remark, or one similar to it is necessary, I would be agreeable to adding it to the recommendation. All I was saying is that I think, by statute, that IDFG already has the authority to stock fish."

Is your understanding consistent with Craig's as to what "recreation storage" covers? If so, that is the purpose of use that we will use for this right.

Sincerely,

David I. Stanish

Deputy Attorney General

11/17/2009

Natural Resources Division

Office of Attorney General

700 West State Street

Joe R. Williams Building, Second Floor

P.O. Box 83720

Boise, Idaho 83720

Phone: (208) 334-4549

Facsimile: (208) 854-8072

Email: david.stanish@ag.idaho.gov

NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this notice is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return these papers to us at the address shown above via first class mail.

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

From: Shurte, Jan [<mailto:Jan.Shurte@idwr.idaho.gov>]

Sent: Wednesday, October 14, 2009 2:59 PM

To: Stanish, David

Subject: .

Hi David,

Just thought we could recap yesterday's conference and make sure we both understood the next step.

SM Booth set November 30th to file an amended claim to change the priority date and a few other things that were all outlined in your objection. I am attaching the form for filing an amended claim - if you already know about this form I'm sorry, I just am not sure. A claim form is also attached that should go along with the Motion to Amend claim form. Amazingly enough, no fee is needed on amended claims unless you

11/17/2009

increase the amount of water or purposes of use, etc. Please note the Standard Form 4 includes both a motion to file a late notice of claim or a motion to file an amended claim. I'm not sure why they combined them, but all you need is to follow along on the motion to amend portion.

If the amended claim is for recreation use in 1964, I don't see a problem recommending the claim. Looking through all the evidence it does appear that recreation has been the use, even if Fish and Game stocked the pond, as long as they stocked it for fishing by local recreationalists. Fish propagation would be if Fish and Game were growing the fish and transporting them to stock other ponds, or in some way selling them.

Once the amended claim is filed, then I have enough information to file an Amended Director's Report and if I come up with some questions, then I will just call you.

Would you like to meet and discuss completing the amended claim or does this help?

Thanks,

Jan

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

From: Stanish, David [<mailto:david.stanish@ag.idaho.gov>]

Sent: Tuesday, October 13, 2009 3:16 PM

To: Shurte, Jan

Subject: 63-04927 - Here's my email address.

This communication and its attachments are confidential and/or privileged. If you have received this communication in error, please immediately read the "NOTICE" appended below.

11/17/2009

Sincerely,

David I. Stanish

Deputy Attorney General

Natural Resources Division

Office of Attorney General

700 West State Street

Joe R. Williams Building, Second Floor

P.O. Box 83720

Boise, Idaho 83720

Phone: (208) 334-4549

Facsimile: (208) 854-8072

Email: david.stanish@ag.idaho.gov

NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this notice is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return these papers to us at the address shown above via first class mail.

11/17/2009

Shurte, Jan

From: Shurte, Jan
Sent: Wednesday, October 14, 2009 2:59 PM
To: 'Stanish, David'
Subject: .

Attachments: Motion to Amend.pdf; SRBA Claim form.pdf



Motion to
Amend.pdf (164 KB)



SRBA Claim
form.pdf (244 KB)

Hi David,

Just thought we could recap yesterday's conference and make sure we both understood the next step.

SM Booth set November 30th to file an amended claim to change the priority date and a few other things that were all outlined in your objection. I am attaching the form for filing an amended claim - if you already know about this form I'm sorry, I just am not sure. A claim form is also attached that should go along with the Motion to Amend claim form. Amazingly enough, no fee is needed on amended claims unless you increase the amount of water or purposes of use, etc. Please note the Standard Form 4 includes both a motion to file a late notice of claim or a motion to file an amended claim. I'm not sure why they combined them, but all you need is to follow along on the motion to amend portion.

If the amended claim is for recreation use in 1964, I don't see a problem recommending the claim. Looking through all the evidence it does appear that recreation has been the use, even if Fish and Game stocked the pond, as long as they stocked it for fishing by local recreationalists. Fish propagation would be if Fish and Game were growing the fish and transporting them to stock other ponds, or in some way selling them.

Once the amended claim is filed, then I have enough information to file an Amended Director's Report and if I come up with some questions, then I will just call you.

Would you like to meet and discuss completing the amended claim or does this help?

Thanks,
Jan

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

From: Stanish, David [mailto:david.stanish@ag.idaho.gov]
Sent: Tuesday, October 13, 2009 3:16 PM
To: Shurte, Jan
Subject: 63-04927 - Here's my email address.

This communication and its attachments are confidential and/or privileged. If you have received this communication in error, please immediately read the "NOTICE" appended below.

Sincerely,

David I. Stanish
Deputy Attorney General

Natural Resources Division
Office of Attorney General
700 West State Street
Joe R. Williams Building, Second Floor
P.O. Box 83720
Boise, Idaho 83720

Phone: (208) 334-4549
Facsimile: (208) 854-8072
Email: david.stanish@ag.idaho.gov

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Adjudication Memorandum

Date: 10-13-09

Right No.(s) 63-4927

From: Jan Shute - Status Conference

Final Order disallowing
Set aside

Amended claim to get the priority date
back prior to May 20, 1971. - 45 days
end of November 30
Amended Director's Rept. - end of January
29th, 2010.

Feb. 2010 docket sheet, objections due March 1st.
If no objections are filed, Melanson will
re recommend to set aside the final
decision, allow the amended Director Report.

RECEIVED

JUN 10 2009

DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA
Case No. 39576

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

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

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

Daytime Phone: (208) 334-2400

Name and Address of Attorney, if any:

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

COPY

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

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

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

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

E. REASONS SUPPORTING OBJECTION(S):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

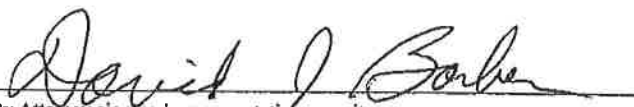
F. VERIFICATION (Must be Completed)

State of Idaho)
County of Ada) ss.

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

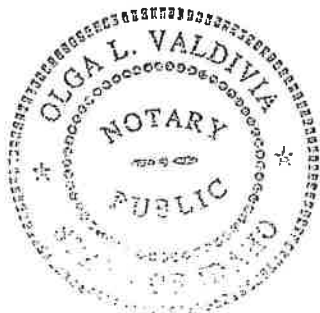
That the State of Idaho, Department of Fish and Game, in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, Department of Fish and Game, which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and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

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


By Attorney signing in representative capacity

Subscribed and sworn to before me on: June 9, 2009

(Insert Date)




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

INSTRUCTIONS FOR MAILING

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

G. CERTIFICATE OF MAILING

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

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707
U.S. MAIL
2. One copy to the owner of the water right at the following address:
STATE OF IDAHO, Department of Fish and Game
600 South Walnut Street
P.O. Box 25
Boise, ID 83707
STATEHOUSE MAIL
3. Copies to:
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098
STATEHOUSE MAIL

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

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


Signature of Objector or attorney
Mailing on Objector's behalf

STATE OF IDAHO
ACQUIRED LANDS

State Acquisition
Identification No.

012

WARRANTY DEED

Printed and for sale by State-Print Company, Boise

367

INSTRUMENT No. 431418

THIS INDENTURE, Made this 10th day of March

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

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

of Caldwell, County of Canyon, State of Idaho

the part les of the first part, and

State of Idaho

of the second part, and to its successors

the part y of the second part.

WITNESSETH, That the said part les of the first part, for and in consideration of the sum of

One and 10/100 --- (\$1.10) DOLLARS,

lawful money of the United States of America,

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

A rectangular parcel of land being all of the S½ of the NW¼SW¼ of Section 9, Township 4 North, Range 2 West, Boise Meridian, and containing 9.8 acres, more or less, excluding a strip of land 12.5 feet wide along the West side of the above described land being present road right of way.

PLATTED
MAR 19 1956
KENNETH STEPHENSON
ASSessor

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

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

File Reference: Recorded as Instrument No 431418 and 431419, in Canyon County. of Land Board Action
This tract Assigned from State Highway Dept. to Fish and Game Dept.
June 5, 1971. See official correspondence behind deeds above.

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

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Walter J. McFarland [Seal]
Willie M. McFarland [Seal]
 [Seal]
 [Seal]

STATE OF IDAHO

County of Canyon

ss.

On this 10th day of March in the year 1956, before me
Wm C. Park, a Notary Public

in and for said State personally appeared Walter J. McFarland and Willie M. McFarland

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

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

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

431418 D-14-8

No. Barrow Pit

WARRANTY DEED

Walter J. McFarland to wit

State of Idaho

Recorded
 Compared
 Ind. Direct
 Ind. Indirect
 978

STATE OF IDAHO

County of Canyon

ss.

I hereby certify that this instrument was filed for record at request of Walter J. McFarland at 30 minutes past 9 o'clock A.M., this 16 day of March, A. D. 1956 in my office and duly recorded in Book 242 of Deeds at page 36.

S. S. FOOTE
 Ex-Officio Recorder.

By Louise Payne Deputy.

Fees, \$ ---

Mail to Boise, Idaho

Page 2

25 Box 99 9

ATTACHMENT I

STATE OF IDAHO

IDAHO BOARD OF
HIGHWAY DIRECTORS

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

WAYNE SUMMERS
EXECUTIVE SECRETARY



E. L. MATHES
STATE HIGHWAY ENGINEER

DEPARTMENT OF HIGHWAYS

P.O. BOX 7129
BOISE, IDAHO 83707

April 5, 1971

Material Source
Cn - 72s
Canyon County

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

Dear Mr. Trombley:

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

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

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

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

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

Very truly yours,

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

O. B. WHITE
Chief Right of Way Agent

vp
Enclosure

Better Highways for a Better Idaho

ATTACHMENT II

Page 1

LEGAL DESCRIPTION

Land situated in Canyon County

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

June 11, 1971

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

Dear Bruce:

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

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

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

Very truly yours,

FOR THE COMMISSIONER

W. J. MITCHELL
Division Chief, Lands

WJM:ab

STATE OF IDAHO

IDAHO BOARD OF
HIGHWAY DIRECTORS

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

WAYNE SUMMERS
EXECUTIVE SECRETARY



E. L. MATHES
STATE HIGHWAY ENGINEER

DEPARTMENT OF HIGHWAYS

P. O. BOX 7129
BOISE, IDAHO 83707

June 17, 1971

Cn-72s
Canyon County

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

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

Dear Mr. Trombley:

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

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

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

Very truly yours,

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

O. B. WHITE
Chief Right of Way Agent

vp
Enclosures

Better Highways for a Better Idaho

ATTACHMENT IV

Page 1

August 10, 1971

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

Dear Bob:

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

The legal description of the property is:

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

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

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

Very truly yours,

JACK E. GILLETTE
Acting Commissioner

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

III R 12A

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

ER-DEPARTMENT MEMO-1

DATE 5-2-64

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

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

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

Sincerely,

Bill

February 23, 1971

Expended Gravel Pond
Duff Lane
Canyon County

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

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

Dear Mr. Mathes:

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

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

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

Sincerely,

IDAHO FISH AND GAME DEPARTMENT

John R. Woodworth
Director

JRW/TDB/ech

cc: Jim Simpson

ATTACHMENT VII

RECEIVED
JUN 10 2009
DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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. 63-04927

**MOTION FOR RELIEF UNDER
I.R.C.P., RULE 60(b) AND
MOTION TO FILE LATE
OBJECTION**

COMES NOW, the State of Idaho, by and through the undersigned deputy attorney general, and moves the Court for relief under I.R.C.P., Rule 60(b) from the *Final Order Disallowing Water Right Claims*, (hereinafter the "*Disallowal Order for Basin 63, Part IIP*") regarding water right no. 63-04927 and for entry of an order allowing the filing of a late objection to the Director's Report recommending disallowal of water right no. 63-04927. The grounds for these motions are as follows:

**MOTION FOR RELIEF UNDER I.R.C.P., RULE 60(b) and
MOTION TO FILE LATE OBJECTION**

COPY

1. The Director of the Idaho Department of Water Resources filed the *Director's Report, Irrigation & Other Claims, Basin 63, Part III* on December 20, 2006 and recommended that water right no. 63-04927 be disallowed because no beneficial use was found. The Idaho Department of Fish and Game (hereinafter "IDF&G") is the claimant for water right no. 63-04927.

2. Walton C. Poole, Ph.D. (hereinafter "Dr. Poole"), IDF&G staff biologist, coordinates with the Office of the Idaho Attorney General regarding the Snake River Basin Adjudication. The IDF&G failed, through inadvertence, mistake, and/or excusable neglect, to file an objection to the recommended disallowal of water right no. 63-04927. *Affidavit of Walton C. Poole, Ph.D. Dated June 9, 2009*, at 2.

3. The Snake River Basin Adjudication District Court (hereinafter the "SRBA District Court") entered on March 19, 2009 its *Final Order Disallowing Water Right Claims* for Basin 63, Part III (hereinafter "*Disallowal Order for Basin 63, Part III*"). Water right no. 63-04927 was on the list of disallowed claims in the *Disallowal Order for Basin 63, Part III*.

4. Water right no. 63-04927 is a water right claimed for fish propagation in Duff Lane Pond near the City of Middleton, Idaho. Dr. Poole conducted additional research regarding the use of this site by IDF&G for fish propagation storage after the SRBA District Court entered its *Disallowal Order for Basin 63, Part III*. Attachments I through VII from this research are attached to his affidavit, and the facts from these documents may be summarized as follows:

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

A rectangular parcel of land being all of the S½N½ of the NW¼SW¼ of Section 9, Township 4 North, Range 2 West, Boise Meridian, and containing 9.8 acres, more or less, excluding a strip of land 12.5 feet wide

along the West side of the above described land being present road right of way.

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

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

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

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

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

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

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

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

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

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

We understand that the Highway Department is the owner of an excavated gravel pit in nonuse located in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, T. 4.

N., R. 2 W., B. M., which has filled with percolating ground waters. The pond at one time was privately stocked with Black Bass and Perch and is presently used by the public as a fishing site.

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

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

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

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

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

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

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

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

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

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

5. Attached hereto is the IDF&G's late *Objection* for the Court's consideration.

6. I.R.C.P. 60(b) provides that a final judgment may be set aside due to mistake, inadvertence, and/or excusable neglect. Here, the failure to find this additional history regarding Duff Land Pond constitutes a mistake, inadvertence, or excusable neglect. Most the information

that is described above was obtained by a search of internet files maintained by the Idaho Department of Lands. The files only became accessible in this manner recently. It is in the best interest of justice that the *Disallowal Order for Basin 63, Part III*, as it concerns water right no. 63-04927, be set aside in accordance with I.R.C.P. 60(b) and that IDF&G be granted leave to file its attached late *Objection*.

7. These motions are supported by the *Affidavit of Walton C. Poole, Ph.D., Dated June 9, 2009*.

8. IDF&G reserves the right to file a memorandum in support of these motions consistent with the Idaho Rules of Civil Procedure.

Oral argument is requested on these matters.

PRAYER FOR RELIEF

WHEREFORE, the State of Idaho, Department of Fish and Game, requests that the Court enter an Order that does all of the following:

1. Sets aside the *Disallowal Order for Basin 63, Part III* as it concerns water right no. 63-04927;
2. Grants the IDF&G leave to file the attached late *Objection*; and
3. Grants such other or further relief that the Court deems appropriate and proper.

////

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////

////

////

////

RESPECTFULLY SUBMITTED this 9th day of June 2009.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division


DAVID J. BARBER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of June, 2009, the foregoing **MOTION FOR RELIEF UNDER I.R.C.P., RULE 60(b) AND MOTION TO FILE LATE OBJECTION** was filed or served on the following persons by the indicated methods:

1. Original to:

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

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to

STATE OF IDAHO, Department of
Fish and Game
600 South Walnut Street
P.O. Box 25
Boise, ID 83707

☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

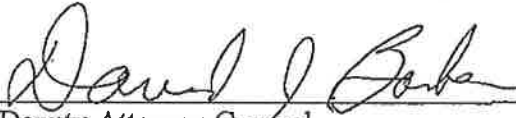
☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

Not Applicable


Deputy Attorney General

COPY

RECEIVED

JUN 10 2009

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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. 63-04927
	)	
	)	AFFIDAVIT OF WALTON C. POOLE, PH.D.
	)	DATED JUNE 9, 2009
Case No. 39576	)	
	)	
	)	
	)	
	)	
	)	
State of Idaho	)	
	)ss	
County of Ada	)	

WALTON C. POOLE, Ph.D. being first duly sworn, deposes and states:

1. I am a staff biologist with the Idaho Department of Fish and Game (IDF&G). I am a competent adult over the age of eighteen years, and the statements made herein are based upon my own personal knowledge of the events described.

2. I was awarded a Bachelor of Science degree in Biology from North Texas State

University in 1971. I was awarded a Masters of Science degree in Biology / Aquatic Ecology from North Texas State University in 1973. I received my doctoral degree in Zoology / Aquatic Ecology from Idaho State University in 1981.

3. I began working for the Idaho Department of Fish and Game in May 2006 in the Natural Resources Policy Bureau as a Staff Biologist. One of my duties is to coordinate with the Office of the Attorney General for the State of Idaho regarding water rights claimed by the IDF&G in the Snake River Basin Adjudication. I have executed affidavits that were filed in the Snake River Basin Adjudication in proceedings related to water right nos. 63-4679 and 67-4450.

4. The IDF&G, due to mistake, inadvertence, and/or excusable neglect, failed to file an objection to the recommended disallowal of water right no. 63-04927.

5. I received and reviewed the *Final Order Disallowing Water Right Claims*, (hereinafter the "*Disallowal Order for Basin 63, Part III*") in March 2009. I requested Deputy Attorney General David J. Barber to take all necessary action to reverse the disallowal of water right no. 63-04927. He requested that I undertake additional research about the history of water right no. 63-04927.

6. Attached to this affidavit are true and correct copies of the documents, listed below, that I obtained from the internet site for the Idaho Department of Lands (<http://gis1/idl.idaho.gov/website/pdlr/>). My understanding is that the deeds became available on this internet site in about 2007 and that these documents may have been previously available by conducting research in the local recorder's office or in the office of the Department of Lands where some of the records were stored.

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

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

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

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

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

7. Attached to this affidavit are true and correct copies of the following documents from the files of the IDF&G:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Further your affiant sayeth naught.

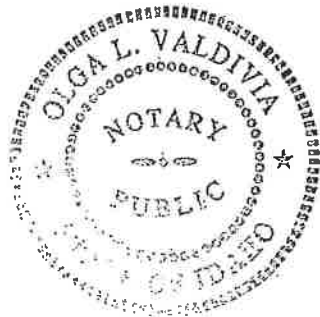


WALTON C. POOLE, PH.D.

Staff Biologist

Idaho Department of Fish and Game

Subscribed and sworn (or affirmed) to before me, a notary public in and for the State of Idaho this 9th day of June 2009.




Notary Public for Idaho
Residing at Boise, ID
My Commission expires: 2/5/2012

CERTIFICATE OF SERVICE

I certify that on this 9th day of June 2009, I caused to be served the original and/or copy of this AFFIDAVIT OF WALT C. POOLE, PH.D., DATED JUNE 9, 2009 on each of the following persons by the indicated methods:

1. Original to:

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

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to

STATE OF IDAHO, Department of
Fish and Game
600 South Walnut Street
P.O. Box 25
Boise, ID 83707

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☐ Statehouse Mail

Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

Not Applicable



DAVID J. BARBER
Deputy Attorney General

STATE OF IDAHO
ACQUIRED LANDS

State Acquisition
Identification No.

012

WARRANTY DEED

Printed and for sale by Symm-York Company, Boise

INSTRUMENT No. 431418

367

THIS INDENTURE, Made this 10th day of March

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

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

of Caldwell, County of Canyon, State of Idaho

the part les of the first part, and

State of Idaho

of the second part, and to its successors

the part y of the second part.

WITNESSETH, That the said part les of the first part, for and in consideration of the sum of One and 40/100 --- (1 40/100) DOLLARS,

lawful money of the United States of America, to them in hand paid by the said part y of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do, grant, bargain, sell, convey and confirm unto the said part y of the second part, and to its successors and assigns forever, all of the following described real estate, situated in Canyon, County of Canyon, State of Idaho, to-wit:

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

PLATTED
MAR 10 1956
KENNETH STEPHENSON
REGISTER

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

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

File Reference: Recorded as INSTRUMENT No 431418 and 431419, in Canyon County. of Land Board Action
This tract Assigned from State Highway Dept. to Fish and Game Dept.
June 9, 1971. See official correspondence behind deeds above.

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

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

Walter J. McFarland [Seal]
 Miller M. McFarland [Seal]
 [Seal]
 [Seal]

STATE OF IDAHO

County of Canyon

ss.

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

in and for said State personally appeared Elizabeth J. McFarland and Miller M. McFarland

known to me to be the person 3 whose name 5 are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

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

431418 D-14-8

No. Borrow Pit

WARRANTY DEED

Walter J. McFarland

to wit

-TO-

State of Idaho

Recorded	Indexed	Int. Direct	928
STATE OF IDAHO			
County of Canyon			
Dated	10th March 1906		

I hereby certify that this instrument was filed

for record at request of
 Elizabeth J. McFarland
 at 30 minutes past 9
 o'clock A.M., this 16 day
 of March, A.D. 1906
 in my office, and duly recorded in Book 272
 of Deeds at page 36.

S. S. FOOTE
 Ex-Officio Recorder.

By Lavonia Payne Deputy.

Filed to Boise, Idaho

25 BY 479 9

ATTACHMENT I

STATE OF IDAHO

IDAHO BOARD OF
HIGHWAY DIRECTORS

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

WAYNE SUMMERS
EXECUTIVE SECRETARY



E. L. MATHES
STATE HIGHWAY ENGINEER

DEPARTMENT OF HIGHWAYS

P.O. BOX 7129
BOISE, IDAHO 83707

April 5, 1971

Material Source
Cn - 72s
Canyon County

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

Dear Mr. Trombley:

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

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

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

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

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

Very truly yours,

A handwritten signature in cursive script that reads "O. B. White".

O. B. WHITE
Chief Right of Way Agent

vp
Enclosure

Better Highways for a Better Idaho

ATTACHMENT II

Page 1

LEGAL DESCRIPTION

Land situated in Canyon County

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

June 11, 1971

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

Dear Bruce:

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

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

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

Very truly yours,

FOR THE COMMISSIONER

W. J. MITCHELL
Division Chief, Lands

WJM:ab

STATE OF IDAHO

IDAHO BOARD OF
HIGHWAY DIRECTORS

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

WAYNE SUMMERS
EXECUTIVE SECRETARY



E. L. MATHES
STATE HIGHWAY ENGINEER

DEPARTMENT OF HIGHWAYS

P. O. BOX 7129
BOISE, IDAHO 83707

June 17, 1971

Cn-72s
Canyon County

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

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

Dear Mr. Trombley:

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

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

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

Very truly yours,

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

O. B. WHITE
Chief Right of Way Agent

vp
Enclosures

Better Highways for a Better Idaho

ATTACHMENT IV

Page 1

August 10, 1971

C
O
P
V
Mr. Robert L. Salter
Acting Director
Idaho Fish and Game Department
Building Mail

Dear Bob:

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

The legal description of the property is:

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

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

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

Very truly yours,

JACK E. GILLETTE
Acting Commissioner

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

JTR 12A

FROM William Platts

INTER-DEPARTMENT MEMO—1

TO James C. Simpson

DATE 5-2-64

SUBJECT Buff Lane Pond - Middleton

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

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

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

Sincerely,

Bill

February 23, 1971

Expended Gravel Pond
Duff Lane
Canyon County

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

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

Dear Mr. Mathes:

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

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

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

Sincerely,

IDAHO FISH AND GAME DEPARTMENT

John R. Woodworth
Director

Woodworth

JRW/TDB/ech
cc: Jim Simpson
Bill Webb

ATTACHMENT VII

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-4927 V1

WATER RIGHT NUMBER: 63-4927 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	STATE OF IDAHO DEPT OF FISH & GAME PO BOX 25 BOISE, ID 83707 (208)334-3700

Priority Date: 08/10/1971

Basis:

Status: **Disallowed**

<u>Source</u>	<u>Tributary</u>
POND	BOISE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
FISH PROPAGATION STORAGE	1/01	12/31		10.00 AF
	<u>Total Diversion:</u>			10.00 AF

<u>Location of Point(s) of Diversion</u>			
POND	NW1/4SW1/4	Sec. 9,	Twp 04N, Rge 02W, B.M.
CANYON County			

Place of Use
FISH PROPAGATION STORAGE

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	02W	9											X						

Conditions of Approval:

1. P11 **No lawful appropriation shown:** There are a number of circumstances in which a claim is proposed to be disallowed on this basis. This is most commonly included for a claim based on beneficial use or posted notice that is proposed to be disallowed because the right claimed is not within an exception to the mandatory permit statute, and beneficial use of water prior to the mandatory permit statute was not confirmed. This is also included where a claim is proposed to be disallowed because the claim is to water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication.
2. C18 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.
3. P01 **No lawful appropriation shown.**

Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 63-4927 V1

Comments:

1. kbrown 3/6/2006 Reason for Disallowal

Comment: This claim is in violation of the mandatory permit statute date for surface water rights. As of May 20, 1971, a right to surface water could only be obtained by compliance with the application, permit, and license procedure (42-201). Therefore, with a claimed priority date of 8/10/71, this claim is being disallowed in the SRBA and the claimant must file an application form permit.

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
Summary			02/28/2006	lharris	Disallowed
Contacts	3/6/2006 10:43:10 AM	kbrown			Disallowed
Summary			03/06/2006	kbrown	Disallowed

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
Contacts	3/6/2006 10:43:11 AM	kbrown	(No) 1. Do you want to schedule an appointment? Comment for 1: Disallowed.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-4927 V1

Summary	3/6/2006 10:46:38 AM	kbrown	(No) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (No) 3. Is the water being used for all of the purposes claimed and to the extent claimed? (No) 4. Is any portion of the claim be recommended? (Yes) 6. Is an additional remark and/or condition required? (Yes) 7. Would you like to view the recommended right? (No) 8. Is this a split or combined right? (No) 9. Do you have documents you would like to attach or link to the file? (Yes) 10. Would you like to set the verification date?
Summary	2/28/2006 9:37:52 AM	lharris	(No) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (Yes) 3. Is the water being used for all of the purposes claimed and to the extent claimed?

Water Supply Bank:

DISALLOWED

Page 1

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report 63-4927

WATER RIGHT NUMBER: 63-4927

Owner Type Name and Address
Current Owner STATE OF IDAHO
 DEPT OF FISH & GAME
 PO BOX 25
 BOISE, ID 83707
 (208)334-3700

Priority Date: 08/10/1971
Basis: Statutory Claim
Status: Active

Source Tributary
POND BOISE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
FISH PROPAGATION STORAGE	1/01	to 12/31		10.00 AF
	<u>Total Diversion:</u>			10.00 AF

Location of Point(s) of Diversion
POND NW1/4SW1/4 Sec. 9, Twp 04N, Rge 02W, B.M.
 CANYON County

Place of Use
FISH PROPAGATION STORAGE

Twp	Rge	Sec	NE	NW	SW	SE	Totals
04N	02W	9	NE NW SW SE	NE NW SW SE	NE NW SW SE	NE NW SW SE	
				X			

Conditions of Approval:

Remarks:

Comments:

DISALLOWED — claim is in violation of the
5/20/71 mandatory permit statute
date for surface water rights.

ADD P11 — No lawful appropriation found.
#701
Conditions

(in office review)

DISALLOWED

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION FIELD REPORT**

Prior to Field Exam

- ☒ Copy of Claim, claim has been signed, sealed, and dated by notary?
- ☒ Check fees paid \$50.4
- ☐ Well logs (if needed)
- ☐ Copy of topo or NAPP
- ☐ Check of Govt. Lots, if needed, Govt. Plat/Tax lot information
- ☐ Check POD & POU overlap, see below – include overlapping right for exam
- ☐ Evidence of Priority – if none, talk with claimant

CLAIMANT INFORMATION – verify contact information is completeClaim No(s) A 63-4927Owner: Dept. of Fish & Game Phone No. _____Current Address: P.O. Box 25, Boise 83707

- ☐ No change NAME IS THE SAME
- ☐ NEW OWNER _____
- ☐ No change Address
- ☐ NEW ADDRESS _____
- ☐ How long owned property? _____

Accompanied by: N/A**PRIORITY DATE**

- ☐ No change – Complete evidence submitted or not necessary
- ☐ Incomplete – Claimant should be asked when water was first used and submit proof of date.
- ☐ Priority date is acceptable/within mandatory filing dates?

Priority date, per claimant, is: 8/10/71

(If priority date, based on your exam, seems questionable, explain below.)

ADD –
POI #
P11
Conditions

As of May 20, 1971, a right to surface water can be obtained only by compliance with the application, permit, and license procedure (§ 42-201). Therefore, this claim

Source: _____ Tributary to _____

- ☐ No Change – SAME SOURCE
- ☐ Source found is different than claimed: _____

POINT OF DIVERSION

- ☐ No change
- ☐ POD found is different than claimed: _____
- ☐ If different, when did POD change? _____

is disallowed and the claimant must file an application for permit.

DIVERSION AND DELIVERY SYSTEM

Points of Diversion:

ID #	Govt Lot #	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks GPS ID

Description of diverting works

OVERLAP REVIEW

Other water rights with the same point of diversion: _____

Does overlap add acres or uses to existing system, increase rate of flow or volume, or other? Explain:

WATER USES

- ☐ No change
- ☐ Different Uses

Use _____ From _____ To _____ Amount _____ CFS _____ AFA _____

Use _____ From _____ To _____ Amount _____ CFS _____ AFA _____

Use _____ From _____ To _____ Amount _____ CFS _____ AFA _____

TOTAL VOLUME – Groundwater only

- ☐ Incomplete on claim, the total is, Amount _____ CFS _____ AFA _____
- ☐ Changes found, the new total is, Amount _____ CFS _____ AFA _____
- ☐ More than 1" per Acre? Yes _____ (claimant must complete excess flow sheet)

NON-IRRIGATION USES:

- ☐ No change
- ☐ Changes Exam found: Domestic # of homes _____ Stock # _____
- Types _____ Additional comments: _____

PLACE OF USE:

- ☐ No Change
- ☐ Changes shown below:

Place of Use			NE				NW				SW				SE				Totals
TWP	RGE	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Overlap with other water rights: _____

Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain:

Delivery System Narrative: _____

Well or Diversion Identification No GPS ID	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge size

FLOW MEASUREMENTS:

Attach appropriate documents

NARRATIVE/REMARKS/COMMENTS

JUSTIFICATION FOR DISALLOWAL-

This claim is in violation of the 5/20/1971
mandatory permit statute date for surface
water rights.

AFTER EXAM THE FILE SHOULD CONTAIN:

- ☐ Completed claim checklist
- ☐ Photographs of POD's and POU
- ☐ GPS readings
- ☐ Completed map and or GIS layout showing POD's and POU

DATE EXAM CONDUCTED: 3.6.06 (in office review)

FIELD EXAMINER: Kimberly Brown

DISALLOWED

**IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM POU REVIEW REPORT
ADJUDICATION CLAIM NUMBER: 63-4927**

02/28/2006

1

Right #	Type	Twp	Rge	Sec	QQ	Q	Lot	Purpose of Use	Acres/Total	Name
-163	Claim	04N	02W	9	NW	SW		IRRIGATION	30/4015.5	CANYON COUNTY WATER CO LTD
179B	Claim	04N	02W	9	NW	SW		IRRIGATION	30/4015.5	CANYON COUNTY WATER CO LTD
2406	Claim	04N	02W	9	NW	SW		IRRIGATION	40/29248	DRAINAGE DIST NO 2
21761	Claim	04N	02W	9	NW	SW		IRRIGATION	30/3986.2	CANYON COUNTY WATER CO LTD
21762	Claim	04N	02W	9	NW	SW		IRRIGATION	30/3514.5	CANYON COUNTY WATER CO LTD
2406	Water Right	04N	02W	9	NW	SW		IRRIGATION	40/29248	DRAINAGE DIST NO 2
27297	Water Right	04N	02W	9	NW	SW		STOCKWATER		JOE E HURLEY
4927	Claim	04N	02W	9	NW	SW		FISH PROPAGATION STORAGE		STATE OF IDAHO
4927	Water Right	04N	02W	9	NW	SW		FISH PROPAGATION STORAGE		STATE OF IDAHO
27297	Water Right	04N	02W	9	NW	SW		DOMESTIC		JOE E HURLEY
27664	Water Right	04N	02W	9	NW	SW		DOMESTIC		CHARLES L DYER

Receipt Details for ID T017346

Status	Adjustment Type	Version
	Adjusted Receipt	1

General Information:

Date Received	Date Deposited	Region	Total Amount	Payment Type
6/19/1990 4:19:46 PM	6/19/1990	Electronically Transmitt	\$17,466.30	Electronically Transr
Payer	DEPT. OF FISH AND GAME			

Account Information:

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

Comment FISH & GAME ADJUDICATION CLAIMS

Fee Detail:

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$17,466.30	FISH & GAME ADJUDICATION CLAIMS	410162	9337	0 0		6490

Refund(s):

Amount	Payee	Date	Document Number
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Water Right Information:

Basin Number	Sequence Number	Split Suffix	Amount	Type
79	2073		\$70.00	Claim
81	2020		\$2,050.00	Claim
83	2015		\$300.00	Claim
83	2023		\$62.66	Claim
35	7725		\$55.53	Claim
77	4181		\$117.00	Claim
86	2029		\$110.00	Claim
86	2038		\$59.34	Claim

51	4047	\$61.42	Claim
2	7004	\$1,297.00	Claim
63	2635	\$90.00	Claim
63	2850	\$75.70	Claim
63	4638	\$404.00	Claim
63	4639	\$60.00	Claim
63	4640	\$206.00	Claim
63	4717	\$188.00	Claim
63	4926	\$60.72	Claim
63	4927	\$50.14	Claim
63	9218	\$826.00	Claim
65	12126	\$250.00	Claim
67	4450	\$50.17	Claim
51	7299	\$25.00	Claim
36	4227	\$25.00	Claim
63	4338	\$465.11	Claim
36	7836	\$80.00	Claim
36	7855	\$250.00	Claim
37	2782	\$55.19	Claim
35	8654	\$150.00	Claim
63	4679	\$91.51	Claim
77	4180	\$150.00	Claim
77	4179	\$132.00	Claim
75	4154	\$54.00	Claim
27	4012	\$53.60	Claim
75	2138	\$25.00	Claim
35	4254	\$218.26	Claim
21	4007	\$52.32	Claim
21	4008	\$51.07	Claim
21	7151	\$50.77	Claim
23	7004	\$300.00	Claim
35	4253	\$95.52	Claim
35	4255	\$196.26	Claim
35	4256	\$219.50	Claim
71	10174	\$58.00	Claim
71	10175	\$58.00	Claim
71	10176	\$58.00	Claim
71	10178	\$58.00	Claim

71	10180	\$58.00	Claim
71	10181	\$58.00	Claim
71	10182	\$58.00	Claim
71	10183	\$58.00	Claim
71	10184	\$58.00	Claim
71	10185	\$58.00	Claim
71	10186	\$58.00	Claim
71	10187	\$58.00	Claim
71	10188	\$58.00	Claim
72	10497	\$58.00	Claim
72	10498	\$58.00	Claim
72	10500	\$58.00	Claim
72	10501	\$58.00	Claim
72	10502	\$58.00	Claim
72	10503	\$58.00	Claim
72	10504	\$58.00	Claim
72	10505	\$58.00	Claim
72	10506	\$58.00	Claim
72	10507	\$58.00	Claim
72	10508	\$58.00	Claim
72	10509	\$58.00	Claim
72	10510	\$58.00	Claim
72	10511	\$58.00	Claim
72	10512	\$58.00	Claim
72	10513	\$58.00	Claim
72	10514	\$58.00	Claim
72	10515	\$58.00	Claim
72	10516	\$58.00	Claim
72	10517	\$58.00	Claim
72	10518	\$58.00	Claim
72	10519	\$58.00	Claim
72	10520	\$58.00	Claim
72	10521	\$58.00	Claim
72	10522	\$58.00	Claim
72	10523	\$58.00	Claim
72	10524	\$58.00	Claim
72	10525	\$58.00	Claim
72	10526	\$58.00	Claim

72	10527	\$58.00	Claim
72	10528	\$58.00	Claim
72	10529	\$58.00	Claim
72	10530	\$58.00	Claim
72	10531	\$58.00	Claim
72	10532	\$58.00	Claim

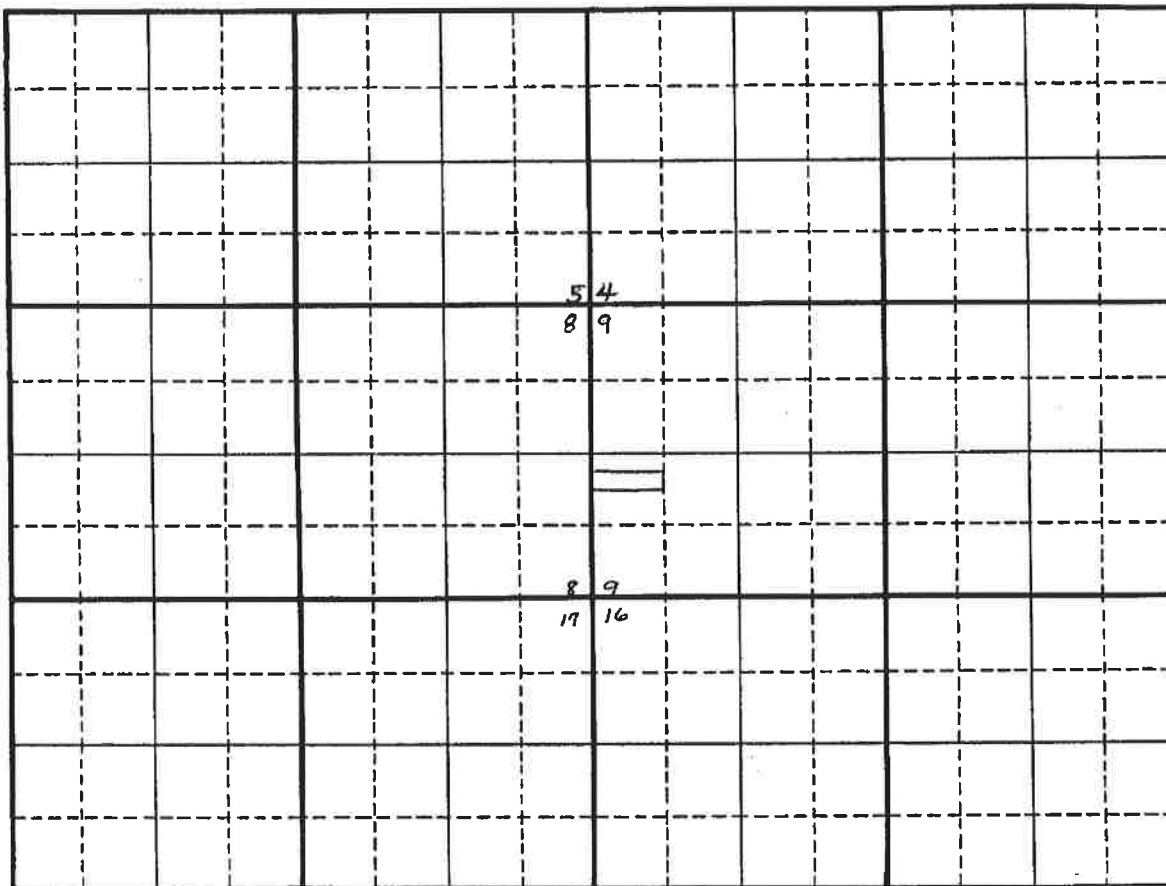
[Print Report](#)

CLAIM TO A WATER RIGHT

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

(7) If you are claiming water as a member of an organization, list name of organization: Idaho Department of Fish and Game

(8) Remarks _____



Scale: 2 Inches equal 1 mile.

TAN, R2W

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)
County of Ada) ss.

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 20th day of October, 1982.

John McKinley
(Claimant)

Nancy Bundlinger
Notary Public
Residing at Boise

My commission expires May 24, 1986

FOR DEPARTMENT USE ONLY
Received by [Signature] Date 10-27-82 Exception filed by: _____ Date _____
Prelim. check by [Signature] Date 10-28-82
\$20.00 fee received by [Signature] Date 11/3/82
Published in Boise Tribune
Dates 11/5 & 11/6/82

Forwarded to claimant by: _____ Date _____