

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: A63-09642
Date Received: 10/05/1989
Receipt No: C 012020
Received By: JS

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

208-362-1930

1. Name: MIDDLE FORK ASSOC.
Address: C/O GREG AUCH
11477 HIGHLANDER ROAD
BOISE, ID

83709

2. Date of Priority: NOV 06, 1980

3. Source: UNNAMED CREEK
PHIFER CREEK
GROUNDWATER

Trib. to: BOISE RIVER, MIDDLE FORK
BOISE RIVER, MIDDLE FORK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
05N	09E	2		SE	SE		ELMORE
		3		NW	NE		ELMORE
				SW	NE		ELMORE
06N	09E	35		SW	NE		ELMORE
				NE	SE		ELMORE
		36		SW	SW		ELMORE

5. Description of diverting works:
DITCHES & PIPELINES FROM CREEKS & PIPELINE FROM WELL.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
MINING	01/01	12/31		1.000	
DOMESTIC	01/01	12/31		0.040	

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

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

MINING, MILLING & ASSOCIATED USES, DOMESTIC FOR MINING PERSONNEL
A63-09642 Page 1 Date: 10/05/89

MICROFILMED

AUG 24 1992

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05N	09E	2	NE	NW		MINING	
			NW	NW		MINING	
			SW	NW		MINING	
			SE	NW		MINING	
		3	NE	NE		MINING	
			NW	NE		MINING	
			SW	NE		MINING	
			SE	NE		MINING	
		35	SW	NE		MINING	
			SE	NE		MINING	
			SE	NW		MINING	
			NE	SW		MINING	
06N	09E	NE	SE		MINING		
		NW	SE		MINING		
		SW	SE		MINING		
		SE	SE		MINING		

11. Place of use in counties: ELMORE

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:
N/A

14. Remarks:
DOMESTIC USE FROM WELL AND CREEKS HAS EXISTED SINCE PREVIOUS TO APPLICATION, POSSIBLY FROM EARLY 1950'S. ALL SOURCES OF WATER ARE USED WITHIN THE SAME SYSTEM FOR PLACER MINING, DOMESTIC FOR PERSONNEL AND ASSOCIATED USES. LAND FOR PLACE OF USE IS PART OF BOISE NATIONAL FOREST, MANAGED BY THE USFS.

15. Basis of Claim: PERMIT

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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Organizations:

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

Middle Fork Associates, that I have signed the foregoing Organization

document in the space below as Member of _____ Title

Middle Fork Associates and that the statements contained in the Organization

foregoing document are true and correct.

Carl P. Turner
Signature of Authorized Agent

Member Middle Fork Assoc.
Title and Organization

October 5, 1989
Date

State of Idaho)
County of ADA) SS.

Subscribed and sworn (or affirmed) before me this 5th day

of OCTOBER 1989

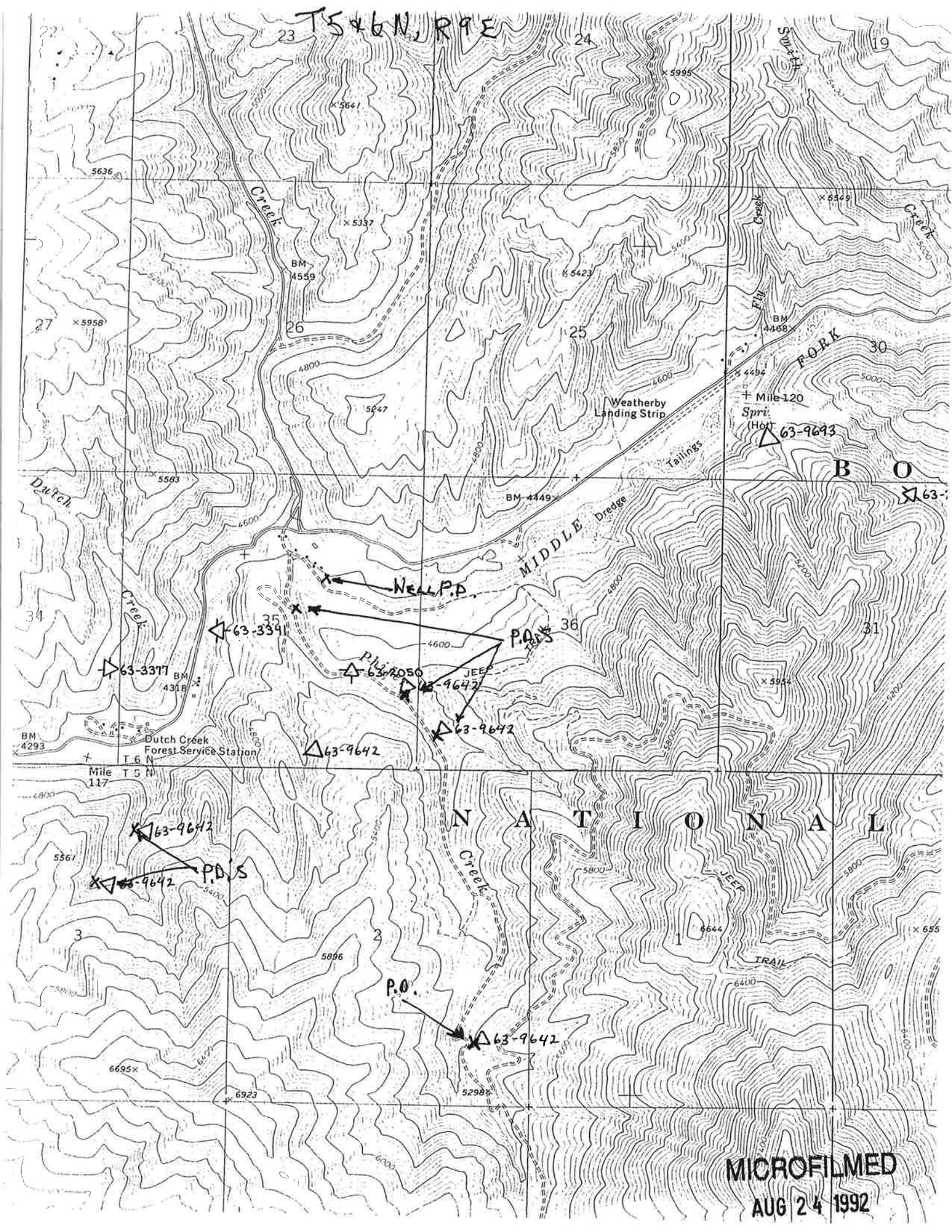
James E. Suthy
Notary Public

Seal

Residing at Boise, ID

My Commission Expires 11/08/1994

T546N, R9E



MICROFILMED

AUG 24 1992

~~STATUTORY APPROPRIATION PROCESS.~~

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: ~~Permit~~ License

**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. 63-9642

STANDARD FORM 5

STIPULATED ELEMENTS OF A
WATER RIGHT

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

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

CLAIMANT(s):

Middle Fork Associates

R. D. Himberger 6/9/04
Richard Himberger Date
Attorney for Middle Fork Associates

OBJECTOR(s):

USDA Forest Service

David Negri 6/9/04
David Negri Date

IDWR Concurrence:

Jan Shurte 6-10-04
Jan Shurte Date

Nick Spencer Date

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

RIGHT NUMBER: 63-9642

NAME AND ADDRESS:

MIDDLE FORK ASSOC
C/O GREG AUCH
11477 HIGHLANDER RD
BOISE ID 83709

SOURCE:

Source:

GROUND WATER

PHIFER CREEK

~~UNNAMED STREAM~~

Tributary:

MIDDLE FORK BOISE RIVERMIDDLE FORK BOISE RIVER~~MIDDLE FORK BOISE RIVER~~

QUANTITY:

0.440 CFS ~~1.000 CFS~~77.600 AFY

PRIORITY DATE:

11/06/1980

POINT OF DIVERSION:

~~T05N R09E S2 SESE Within ELMORE County~~
~~T05N R09E S3 NWNE Within ELMORE County~~
~~T05N R09E S3 SWNE Within ELMORE County~~
~~T06N R09E S35 NESE Within ELMORE County~~
T06N R09E S35 SWNE Within ELMORE County
T06N R09E S36 SWSW Within ELMORE CountyPURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

MINING

04/01 11/010.440 CFS 77.60 AFY~~1/01 12/31~~~~1.000 CFS~~

PLACE OF USE:

MINING

within ELMORE County

~~T05N R09E S02 NENW~~

T05N R09E S02 NWNW Lot 4

~~T05N R09E S02 SWNW~~~~T05N R09E S02 SENW~~~~T05N R09E S03 NENE~~~~T05N R09E S03 NWNE~~~~T05N R09E S03 SWNE~~~~T05N R09E S03 SENE~~

T06N R09E S35 SWNE

T06N R09E S35 SENE

T06N R09E S35 SENW

T06N R09E S35 NESW

T06N R09E S35 NESE

T06N R09E S35 NWSE

T06N R09E S35 SWSE

T06N R09E S35 SESE

T06N R09E S36 SWNET06N R09E S36 SWNWT06N R09E S36 SENWT06N R09E S36 NESWT06N R09E S36 NWSW

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

The points of diversion and places of use for this water right are on National Forest System land, further the places of use are on unpatented placer mining claims known as Wishful No. 1, Wishful No. 2, and Wishful No. 3.

This water right is only for use on the mining claims listed above for mining purposes authorized under state and federal law.

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

~~THIS RIGHT IS CONDITIONED UPON COMPLETION OF THE APPROPRIATION IN ACCORDANCE WITH THE STATUTORY PROCEDURE FOR APPROPRIATION OF WATER RIGHTS. THIS RIGHT REMAINS SUBJECT TO ALL CONDITIONS SET FORTH IN THE PERMIT UPON WHICH THIS RIGHT IS BASED, AND WILL BE SUBJECT TO ALL CONDITIONS SET FORTH IN THE LICENSE ISSUED BY IDWR UPON COMPLETION OF THE STATUTORY APPROPRIATION PROCESS.~~

EXPLANATORY MATERIAL:

BASIS OF CLAIM - License

~~BASIS OF CLAIM — Permit~~

DN

CERTIFICATE OF MAILING

I certify that on June____, 2004, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

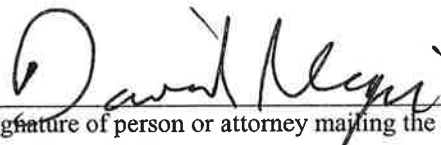
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

United States of America
US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

Middle Fork Associates
C/O Richard D. Himberger
Himberger Law Offices
575 E. Parkcenter Boulevard, Suite 100
Boise, ID 83706

IDWR Repository
P.O. Box 83720
Boise, ID 83720-00098



Signature of person or attorney mailing the form

Shurte, Jan

From: Walker, Kay
Sent: Thursday, June 03, 2004 1:11 PM
To: Shurte, Jan
Subject: RE: Shapefile for 63-9642

You can update the recommendation shape from my shape. Go into your CVR and open arcview, do a process update, call in the water right shapes and when you find the shape for the file (with the water right layer open) update your shape. Let me know if this works for you. This is how I do it when I am updating my shapes from SRBA recommendations. Otherwise, I can update it after the partial decree is issued (when it is a water right) which wouldn't bother me at all except trying to remember to do it when all is said and done...

Non-granny

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

From: Shurte, Jan
Sent: Thursday, June 03, 2004 12:32 PM
To: Walker, Kay
Subject: Shapefile for 63-9642

Hi Kay,

What would you say if I asked you for the shapefile for 63-9642 from your licensing? In the recommendation layer all we have are the nominal shapes for the old version 1 and instead of recreating the wheel I could use your shapefile for our recommendation. I know that's selfish, however, it would aid water allocation in the long run because the recommendation, when decreed, will supercede the water right and the shapefile will transfer across. So, if my shapefile matches your shapefile, you win. How's that for a lot of (you know what) to try and take you into it.

Granny

Shurte, Jan

From: Shurte, Jan
Sent: Thursday, June 03, 2004 11:16 AM
To: Harvey, Becky; Spencer, Nick; Walker, Kay; 'sspencer@fs.fed.us'; 'dnegri@fs.fed.us'; 'rdh@himbergerlaw.com'
Subject: Revision of SF5 for 63-9642 - Middle Fork Associates

Attached is the revised SF5 for Middle Fork Associates. I have corrected an error in the Twp listed in the place of use for Sec. 36. The twp previously shown was 5N and should have been 6N. Steve Spencer has graciously agreed to get the signatures on this revised SF5. I apologize for this inconvenience and hope that all is ok now.

Jan Shurte
Water Rights Supervisor
Adjudication Section



63-9642 Middle
Fork Assoc SF5....

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

RIGHT NUMBER: 63-9642

NAME AND ADDRESS:

MIDDLE FORK ASSOC
C/O GREG AUCH
11477 HIGHLANDER RD
BOISE ID 83709

SOURCE:

Source:

GROUND WATER

PHIFER CREEK

~~UNNAMED STREAM~~

Tributary:

MIDDLE FORK BOISE RIVER

MIDDLE FORK BOISE RIVER

~~MIDDLE FORK BOISE RIVER~~

QUANTITY:

0.440 CFS ~~1.000 CFS~~

77.600 AFY

PRIORITY DATE:

11/06/1980

POINT OF DIVERSION:

~~T05N R09E S2 SESE Within ELMORE County~~
~~T05N R09E S3 NWNE Within ELMORE County~~
~~T05N R09E S3 SWNE Within ELMORE County~~
~~T06N R09E S35 NESE Within ELMORE County~~
T06N R09E S35 SWNE Within ELMORE County
T06N R09E S36 SWSW Within ELMORE County

PURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

MINING

04/01 11/01

~~-1/01 12/31~~

0.440 CFS 77.60 AFY

~~1.000 CFS~~

PLACE OF USE:

MINING

within ELMORE County

~~T05N R09E S02 NENW~~

T05N R09E S02 NWNW Lot 4

~~T05N R09E S02 SWNW~~

~~T05N R09E S02 SENW~~

~~T05N R09E S03 NENE~~

~~T05N R09E S03 NWNE~~

~~T05N R09E S03 SWNE~~

~~T05N R09E S03 SENE~~

T06N R09E S35 SWNE

T06N R09E S35 SENE

T06N R09E S35 SENW

T06N R09E S35 NESW

T06N R09E S35 NESE

T06N R09E S35 NWSE

T06N R09E S35 SWSE

T06N R09E S35 SESE

T06N R09E S36 SWNE

T06N R09E S36 SWNW

T06N R09E S36 SENW

T06N R09E S36 NESW

T06N R09E S36 NWSW

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

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EXPLANATORY MATERIAL: BASIS OF CLAIM - License

~~BASIS OF CLAIM - Permit~~



DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

URGENT!

DINA REMPTENAU
GOVERNOR
KARL J. DARSHEN
DIRECTOR

FAX Transmittal Cover Sheet

Number of pages including this one: 2

Date: 6/2/04

To: Tan Shurte

Fax No.: _____

From: Bec. H.

Fax No.: _____

Phone No.: _____

Subject: 63-9642 - Middle Fork Assoc. - Amended SF 5.
Please correct per my e-mail. Thanks!

In Addition: There is now a way to research water rights over the Internet. The system is a graphical or text query system and can be accessed from the IDWR home page:

<http://www.idwr.state.id.us>

From that link, select "Snake River Basin Adjudication" toward the lower left hand of the screen. Then select "Map" or "Text" on the next page.

"TEXT" lets you search water rights via Name, Legal, Source, etc.

Enter in the information you know. Information can be entered under more than one tab. After you have completed entering your information, select "Search"

"MAP" allows you to search water rights graphically.

Use the tools on the Left side of the screen to Zoom in and out. To find out what each button does, hold the cursor over the button for a second. To the Right side of the screen are different layers that can be turned on or off. As you zoom in to your place in question, different layers will appear on the right side of the screen.

A HELP function is available within the application or you can call 1-800-451-4129 or (208)327-7906 for help.

SF5 Right No. 63-9642

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

RIGHT NUMBER: 63 9642 ✓

NAME AND ADDRESS:

MIDDLE FORK ASSOC ✓
C/O GREG AUCH ✓
11477 HIGHLANDER RD ✓
BOISE ID 83709 ✓

SOURCE:

Source:

GROUND WATER ✓

PHIFER CREEK ✓

~~UNNAMED STREAM~~

Tributary:

~~MIDDLE FORK~~ BOISE RIVER ✓~~MIDDLE FORK~~ BOISE RIVER ✓~~MIDDLE FORK~~ BOISE RIVER

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0.440 CFS ✓ ~~1.000 CFS~~

77.600 AFY ✓

PRIORITY DATE:

11/06/1980 ✓

POINT OF DIVERSION:

~~T05N R09E S2 SESE Within ELMORE County~~~~T05N R09E S3 NWNE Within ELMORE County~~~~T05N R09E S3 SWNE Within ELMORE County~~~~T06N R09E S35 NESE Within ELMORE County~~ok
ok
T06N R09E S35 SWNE Within ELMORE County ✓ ^{9W}T06N R09E S36 SWSW Within ELMORE County ✓ ^{phi fer CK}PURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

MINING ✓

04/01 11/01 ✓

~~1/01 12/31~~

0.440 CFS ✓ 77.60 AFY ✓

~~1.000 CFS~~

PLACE OF USE:

MINING

within ELMORE County

~~T05N R09E S02 NENW~~T05N R09E S02 ^{NWNW} Lot 4 ✓~~T05N R09E S02 SNNW~~~~T05N R09E S02 SENW~~~~T05N R09E S03 NENE~~~~T05N R09E S03 NNNE~~~~T05N R09E S03 EWNW~~~~T05N R09E S03 EENE~~~~T06N R09E S35 SWNE~~ ✓~~T06N R09E S35 EENE~~ ✓~~T06N R09E S35 SENW~~ ✓~~T06N R09E S35 NESW~~ ✓~~T06N R09E S35 NESE~~ ✓~~T06N R09E S35 NWSE~~ ✓~~T06N R09E S35 SWSE~~ ✓~~T06N R09E S35 SESE~~ ✓~~T06N R09E S36 SWNE~~ ✓~~T06N R09E S36 SNNW~~ ✓~~T06N R09E S36 SENW~~ ✓~~T06N R09E S36 NESW~~ ✓~~T06N R09E S36 NWSW~~ ✓

SF5 Right No. 63-9642

SF5 Right No. 63-9642

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

add to
sic

The points of diversion and places of use for this water right are on National Forest System land, further the places of use are on unpatented placer mining claims known as Wishful No. 1, Wishful No. 2, and Wishful No. 3.

This water right is only for use on the mining claims listed above for mining purposes authorized under state and federal law.

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.

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EXPLANATORY MATERIAL:

BASIS OF CLAIM - License~~BASIS OF CLAIM - Permit~~

SF5 Right No. 63-9642

Shurte, Jan

From: Harvey, Becky
Sent: Wednesday, June 02, 2004 2:07 PM
To: Shurte, Jan
Cc: Spencer, Nick; Walker, Kay; 'sspencer@fs.fed.us'
Subject: 63-9642 - Middle Fork Associates

Importance: High

Jan -

Kay W. caught a goof on the SF 5 for this water right. The township is wrong in Section 36 - it shows T05N and it should be T06N !!! Steve Spencer is here so I caught him and talked to him about it. I will fax the recommendation print-out to you. We need to get it e-mailed to Steve, David & Richard ASAP. It will be easier to correct it now rather than later. Please call it an Amended SF 5.

Steve Spencer will get signatures on the Amended SF 5.

Thanks!

Becky

Confidentiality Notice: This e-mail may contain confidential and privileged information exempt from disclosure under applicable law. This message is intended only for the use of the individual or individuals identified above. If you have received this message by mistake, please notify the sender immediately by replying to this message. Please delete the message from your system and do not review, disclose, copy, or distribute any information contained or attached to the message. Thank you.

**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

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Standard Form 5

**STIPULATED ELEMENTS
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CLAIMANT:

Middle Fork Associates

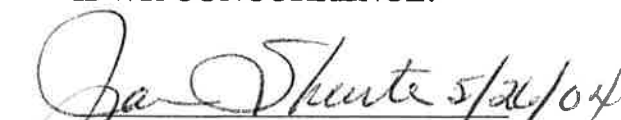
OBJECTORS:

United States on behalf of the
USDA Forest Service

 5/26/04
Richard D. Himberger Date
Attorney for Middle Fork Associates

David L. Negri Date

IDWR CONCURRENCE:

 5/26/04
Jan Shurte Date

ATTORNEY FOR IDWR:

Nicholas B. Spencer Date

CERTIFICATE OF MAILING

I certify that on May ___, 2004, I mailed the original and copies of this form, including all attachments, postage prepaid and addressed as follows:

Original to:

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

Copy to:

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

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

Copies to all parties to the subcase (insert names and addresses here):

Middle Fork Associates
C/O Richard D. Himberger
Himberger Law Offices
575 E. Parkcenter Blvd., Ste. 100
Boise, ID 83706

David L. Negri

2011

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

RIGHT NUMBER: 63-9642

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T06N R09E S35 SWNE

T06N R09E S35 SENE

T06N R09E S35 SENW

T06N R09E S35 NESW

T06N R09E S35 NESE

T06N R09E S35 NWSE

T06N R09E S35 SWSE

T06N R09E S35 SESE

T05N R09E S36 SWNET05N R09E S36 SWNWT05N R09E S36 SENWT05N R09E S36 NESWT05N R09E S36 NWSW

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EXPLANATORY MATERIAL:

BASIS OF CLAIM - License

~~BASIS OF CLAIM — Permit~~

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

RIGHT NUMBER: 63-9642

NAME AND ADDRESS:

MIDDLE FORK ASSOC
C/O GREG AUCH
11477 HIGHLANDER RD
BOISE ID 83709

SOURCE:

Source:

GROUND WATER

PHIFER CREEK

~~UNNAMED STREAM~~

Tributary:

MIDDLE FORK BOISE RIVER

MIDDLE FORK BOISE RIVER

~~MIDDLE FORK BOISE RIVER~~

QUANTITY:

0.440 CFS ~~1.000 CFS~~77.600 AFY

PRIORITY DATE:

11/06/1980

POINT OF DIVERSION:

~~T05N R09E S2 SESE Within ELMORE County~~
~~T05N R09E S3 NWNE Within ELMORE County~~
~~T05N R09E S3 SWNE Within ELMORE County~~
~~T06N R09E S35 NESE Within ELMORE County~~
T06N R09E S35 SWNE Within ELMORE County
T06N R09E S36 SWSW Within ELMORE CountyPURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

MINING

04/01 11/010.440 CFS 77.60 AFY~~1/01 12/31~~~~1.000 CFS~~

PLACE OF USE:

MINING

within ELMORE County

~~T05N R09E S02 NENW~~

T05N R09E S02 NWNW Lot 4

~~T05N R09E S02 SWNW~~~~T05N R09E S02 SENW~~~~T05N R09E S03 NENE~~~~T05N R09E S03 NWNE~~~~T05N R09E S03 SWNE~~~~T05N R09E S03 SENE~~

T06N R09E S35 SWNE

T06N R09E S35 SENE

T06N R09E S35 SENW

T06N R09E S35 NESW

T06N R09E S35 NESE

T06N R09E S35 NWSE

T06N R09E S35 SWSE

T06N R09E S35 SESE

T05N R09E S36 SWNET05N R09E S36 SWNWT05N R09E S36 SENWT05N R09E S36 NESWT05N R09E S36 NWSW

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

The points of diversion and places of use for this water right are on National Forest System land, further the places of use are on unpatented placer mining claims known as Wishful No. 1, Wishful No. 2, and Wishful No. 3.

This water right is only for use on the mining claims listed above for mining purposes authorized under state and federal law.

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

~~THIS RIGHT IS CONDITIONED UPON COMPLETION OF THE APPROPRIATION IN ACCORDANCE WITH THE STATUTORY PROCEDURE FOR APPROPRIATION OF WATER RIGHTS. THIS RIGHT REMAINS SUBJECT TO ALL CONDITIONS SET FORTH IN THE PERMIT UPON WHICH THIS RIGHT IS BASED, AND WILL BE SUBJECT TO ALL CONDITIONS SET FORTH IN THE LICENSE ISSUED BY IDWR UPON COMPLETION OF THE STATUTORY APPROPRIATION PROCESS.~~

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

~~BASIS OF CLAIM — Permit~~

Shurte, Jan

From: Shurte, Jan
Sent: Friday, April 30, 2004 9:18 AM
To: Walker, Kay; Keen, Shelley
Cc: Spencer, Nick
Subject: FW: SF5 for Middle Fork Assoc. - 63-9642

Hi Kay & Shelley,

Nick is planning on meeting with both of you to see if we can get the remarks put on the license and have Glen resign it. The license was done without the remarks per a push from the adjudication side, however, it was not sent out. We were hoping that it could still be changed after the remarks were added on Tuesday so both the license and recommendation match. Nick was going to speak to you about it, I just thought I would give you a heads up.

Thanks,
Jan

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

From: Shurte, Jan
Sent: Friday, April 30, 2004 9:14 AM
To: Harvey, Becky; Spencer, Nick; Steve Spencer (E-mail); David Negri (E-mail); 'rdh@himbergerlaw.com'
Subject: SF5 for Middle Fork Assoc. - 63-9642

Attached is the revised SF5 we met about on Tuesday. Please review and if all is ok with the right holders, then Steve from the USFS should be notified since I believe he was willing to take the packet around for signature. Steve - if that is not correct, we can send it out from here. Let me know if there are any changes to be made.

Thank you,

Jan Shurte
Water Rights Supervisor
Adjudication Section
IDWR Western Region Office



63-9642 Middle
Fork Assoc SF5....

HIMBERGER
LAW OFFICES, CHTD

Richard D. Himberger
Attorney at Law

Admitted to Practice in
Idaho and Washington

Telephone (208) 336-8442
Facsimile (208) 336-1690

575 East Parkcenter Blvd., Suite 100 • Boise, Idaho 83706
rdh@himbergerlaw.com

Shurte, Jan

From: Shurte, Jan
Sent: Friday, April 30, 2004 9:14 AM
To: Harvey, Becky; Spencer, Nick; Steve Spencer (E-mail); David Negri (E-mail); 'rdh@himbergerlaw.com'
Subject: SF5 for Middle Fork Assoc. - 63-9642

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Thank you,

Jan Shurte
Water Rights Supervisor
Adjudication Section
IDWR Western Region Office



63-9642 Middle
Fork Assoc SF5....

SF5 Right No. 63-9642

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

RIGHT NUMBER:	63-9642														
NAME AND ADDRESS:	MIDDLE FORK ASSOC C/O GREG AUCH 11477 HIGHLANDER RD BOISE ID 83709														
SOURCE:	GROUND WATER PHIFER CREEK ~~UNNAMED STREAM~~	TRIBUTARY:	MIDDLE FORK BOISE RIVER MIDDLE FORK BOISE RIVER MIDDLE FORK BOISE RIVER												
QUANTITY:	~~1.000 CFS~~ 0.44 CFS 77.6 AF														
PRIORITY DATE:	11/06/1980														
POINT OF DIVERSION:	~~T05N R09E S2 SESE Within ELMORE County~~ ~~T05N R09E S3 NWNE Within ELMORE County~~ ~~T05N R09E S3 SWNE Within ELMORE County~~ T06N R09E S35 SWNE Within ELMORE County ~~T06N R09E S35 NESE Within ELMORE County~~ T06N R09E S36 SWSW Within ELMORE County														
PURPOSE AND PERIOD OF USE:	<table border="0" style="width: 100%;"> <tr> <th style="text-align: left;"><u>PURPOSE OF USE</u></th> <th style="text-align: left;"><u>PERIOD OF USE</u></th> <th style="text-align: left;"><u>QUANTITY</u></th> </tr> <tr> <td>MINING</td> <td>1/01 ~~12/31~~</td> <td>1.000 CFS</td> </tr> <tr> <td></td> <td>4/01 11/01</td> <td>0.44 CFS</td> </tr> <tr> <td></td> <td></td> <td>77.6 AF</td> </tr> </table>			<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>	MINING	1/01 ~~12/31~~	1.000 CFS		4/01 11/01	0.44 CFS			77.6 AF
<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>													
MINING	1/01 ~~12/31~~	1.000 CFS													
	4/01 11/01	0.44 CFS													
		77.6 AF													
PLACE OF USE:	MINING Within ELMORE County <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> ~~T05N R09E S02~~ NENW ~~T05N R09E S02~~ SENW ~~T05N R09E S03~~ NENE ~~T05N R09E S03~~ SWNE T06N R09E S35 SWNE T06N R09E S35 SENW T06N R09E S35 NESE T06N R09E S35 SWSE ~~T06N R09E S36~~ SWNE ~~T06N R09E S36~~ SENW ~~T06N R09E S36~~ NWSW </td> <td style="width: 50%; vertical-align: top;"> T05N R09E S02 NWNW Lot 4 ~~T05N R09E S02~~ SENW ~~T05N R09E S03~~ NWNE ~~T05N R09E S03~~ SENE T06N R09E S35 SENE T06N R09E S35 NESW T06N R09E S35 NWSE T06N R09E S35 SESE ~~T06N R09E S36~~ SWNW ~~T06N R09E S36~~ NESW </td> </tr> </table>			~~T05N R09E S02~~ NENW ~~T05N R09E S02~~ SENW ~~T05N R09E S03~~ NENE ~~T05N R09E S03~~ SWNE T06N R09E S35 SWNE T06N R09E S35 SENW T06N R09E S35 NESE T06N R09E S35 SWSE ~~T06N R09E S36~~ SWNE ~~T06N R09E S36~~ SENW ~~T06N R09E S36~~ NWSW	T05N R09E S02 NWNW Lot 4 ~~T05N R09E S02~~ SENW ~~T05N R09E S03~~ NWNE ~~T05N R09E S03~~ SENE T06N R09E S35 SENE T06N R09E S35 NESW T06N R09E S35 NWSE T06N R09E S35 SESE ~~T06N R09E S36~~ SWNW ~~T06N R09E S36~~ NESW										
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OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

~~THIS RIGHT IS CONDITIONED UPON COMPLETION OF THE APPROPRIATION IN ACCORDANCE WITH THE STATUTORY PROCEDURE FOR APPROPRIATION OF WATER RIGHTS. THIS RIGHT REMAINS SUBJECT TO ALL CONDITIONS SET FORTH IN THE PERMIT UPON WHICH THIS RIGHT IS BASED, AND WILL BE SUBJECT TO ALL CONDITIONS SET FORTH IN THE LICENSE ISSUED BY IDWR UPON COMPLETION OF THE STATUTORY APPROPRIATION PROCESS.~~

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.

THE POINTS OF DIVERSION AND PLACES OF USE FOR THIS WATER RIGHT ARE ON NATIONAL FOREST SYSTEM LAND, UNPATENTED PLACER MINING CLAIMS KNOWN AS WISHFUL NO.1, WISHFUL NO.2, AND WISHFUL NO.3, IMC NOS. 181283, 181284, AND 181285, RESPECTFULLY.

THIS WATER RIGHT IS ONLY FOR USE ON THE MINING CLAIMS LISTED ABOVE FOR MINING PURPOSES AUTHORIZED UNDER STATE AND FEDERAL LAW.

EXPLANATORY MATERIAL: Permit License

→ FURTHER THE PLACES OF USE ARE ON

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-09642

Priority: November 06, 1980

Maximum Diversion Rate: 0.44 CFS
Maximum Diversion Volume: 77.6 AF

It is hereby certified that MIDDLE FORK ASSOCIATES
C/O JANE STONE
11477 HIGHLANDER
BOISE ID 83709

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated November 06, 1980; and has submitted Proof of Beneficial Use on September 21, 1990. An examination indicates that the works have a diversion capacity of 0.44 cfs of water from:

SOURCE

GROUND WATER
PHIFER CREEK

Tributary: MIDDLE FORK BOISE RIVER
MIDDLE FORK BOISE RIVER

and a water right has been established as follows:

BENEFICIAL USE
MINING

PERIOD OF USE
04/01 to 11/01

DIVERSION RATE
0.44 CFS

**ANNUAL
DIVERSION VOLUME**
77.6 AF

LOCATION OF POINTS OF DIVERSION:

GROUND WATER SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 35, Twp 06N, Rge 09E, B.M., ELMORE County
PHIFER CREEK SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 36, Twp 06N, Rge 09E, B.M., ELMORE County

PLACE OF USE: MINING

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N 09E 2					X												
06N 09E 35			X	X				X	X				X	X	X	X	
06N 09E 36			X				X	X	X	X							

CONDITIONS OF APPROVAL

1. The place of use is also known as Wishful 1, 2 and 3 mining claims.
2. The issuance of this right does not grant any right-of-way or easement across the land of another
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.

Post-it® Fax Note	7671	Date	4-26	# of pages	2
To	JAN. Shurte	From	KAY		
Co./Dept.		Co			
Phone #	Western	Phone #			
Fax #		Fax #			

Page 2

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-09642

4. Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 22nd day of April, 2004.



for
KARL J. DREHER
Director

Spencer, Nick

From: Steven M Spencer [sspencer@fs.fed.us]
Sent: Friday, April 23, 2004 1:39 PM
To: nspencer@idwr.state.id.us
Subject: FW: Revised language covered by Rule 408



tmp.htm

FYI

Steve Spencer (208) 331-5944
Boise Adjudication Team (208) 387-0842 FAX
161 E. Mallard, Suite A e-mail: sspencer@fs.fed.us
Boise, ID 83706

----- Forwarded by Steven M Spencer/R4/USDAFS on 04/23/2004 01:38 PM -----

<sspencer@fs.fed.us> "David.Negri@usdoj.gov" To: "'sspencer@fs.fed.us'"
(Receipt Notification Requested)
<David.Negri@usdoj.gov> (IPM Return Requested)
CC:
04/23/2004 10:13 Subject: FW: Revised language covered by
Rule 408 AM

Himberger's revision

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

From: rdh@himbergerlaw.com [mailto:rdh@himbergerlaw.com]
Sent: Friday, April 23, 2004 12:05 PM
To: Negri, David
Subject: Revised language covered by Rule 408

David,

This e-mail is a continued attempt to settle the case between our clients and is covered by the auspices of Rule 408 of the Rules of Evidence. In this e-mail, I set forth the revised language desired by my clients:

THE POINTS OF DIVERSION AND PLACES OF USE FOR THIS WATER RIGHT ARE ON NATIONAL FOREST SYSTEM LAND. THE WATER RIGHT IS ONLY FOR USE ON MINING CLAIMS AND FOR MINING PURPOSES AUTHORIZED BY FEDERAL AND STATE LAW.

I hope this revised language is acceptable to the Service. Please call me before the telephonic conference.

Richard Himberger

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and other confidential communications that are exempt from disclosure. The information may also be protected by the Federal Electronic Communications Privacy Act. This transmission is intended only for the use of the individual or entity named above, and distribution to, review by or reliance thereon by unauthorized persons is prohibited. All personal messages express views solely of the sender, which are not to be attributed to Himberger Law Offices, Chtd. If you have received this transmission in error, immediately notify us and permanently delete this transmission and any attachments.

(See attached file: tmp.htm)

Spencer, Nick

From: Steven M Spencer [sspencer@fs.fed.us]
Sent: Thursday, April 22, 2004 3:18 PM
To: kwalker@idwr.state.id.us; bharvey@idwr.state.id.us; nspencer@idwr.state.id.us
Cc: Jamie Gough; David L Negri
Subject: 63-09642 Middle Fork Water Right Description



IDWR License
ecommendation.do.

Concerning the description for water right 63-09642, there may be an error/oversight in the first legal location in the POU's where the quarter-quarter stricken (NENW) but the township and range have not been. I have identified this township and range with a double strike through. Then, we would agree with the water right being licensed with the clauses below added to the water right description sent to me earlier today. The clauses have been used in other similar cases in the SRBA and serve to further refine the legal location of the places of use. Then the description on the water right will be more precise, coinciding with the applicants actual mining claims (which are the basis for their water use under state law) as well as describing the land upon which they can legally conduct mining activities on federal land under federal law (their mining claims).

Please note that this same language was offered to Middle Fork through Mr. Himberger last week as a settlement in the SRBA. We have not heard back from them on this matter.

I know there is a desire to have the license approval simultaneous with the SRBA settlement. Although this has not been achieved as of today, I suspect that Mr. Himberger and Middle Fork Associates may not be aware of the departments position on this relationship between the pending license and the desired description of the claim that will ultimately result through the SRBA. That is the purpose for this communication - to attempt to keep both efforts on the same track. If I appear to misunderstand the departments position on this matter, please let me know.

The clauses we would like to see on the water right are:

THE POINT OF DIVERSION AND PLACE OF USE FOR THIS WATER RIGHT ARE ON NATIONAL FOREST SYSTEM LAND, UNPATENTED PLACER MINING CLAIMS KNOWN AS WISHFUL NO.1, WISHFUL NO.2, AND WISHFUL NO.3, IMC NOS. 181283, 181284, AND 181285, RESPECTFULLY.

THIS WATER RIGHT IS ONLY FOR USE ON THE MINING CLAIMS LISTED ABOVE FOR MINING PURPOSES AUTHORIZED UNDER STATE AND FEDERAL LAW.

(See attached file: IDWR License Recommendation.doc)

If you have any questions on the matter, please contact me.

Steve Spencer
Boise Adjudication Team
161 E. Mallard, Suite A
Boise, ID 83706

(208) 331-5944
(208) 387-0842 FAX
e-mail: sspencer@fs.fed.us

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

RIGHT NUMBER: 63-9642

NAME AND ADDRESS: MIDDLE FORK ASSOC
C/O GREG AUCH
11477 HIGHLANDER RD
BOISE ID 83709

SOURCE: GROUND WATER
PHIFER CREEK
~~UNNAMED STREAM~~

TRIBUTARY: MIDDLE FORK BOISE RIVER
TRIBUTARY: MIDDLE FORK BOISE RIVER
TRIBUTARY: ~~MIDDLE FORK BOISE RIVER~~

QUANTITY: ~~1.000 CFS~~
0.44 CFS
77.6 AF

PRIORITY DATE: 11/06/1980

POINT OF DIVERSION:

~~T05N R09E S2 SESE Within ELMORE County~~
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T06N R09E S35 SWNE Within ELMORE County
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T06N R09E S36 SWSW Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MINING	~~1/01 12/31~~	~~1.000 CFS~~
	<u>4/01 11/01</u>	<u>0.44 CFS</u>
		<u>77.6 AF</u>

PLACE OF USE: MINING Within ELMORE County

T05N R09E S02	NENW	T05N R09E S02	NWNW	<u>Lot 4</u>
~~T05N R09E S02~~	~~SWNW~~	~~T05N R09E S02~~	~~SENW~~	
~~T05N R09E S03~~	~~NENE~~	~~T05N R09E S03~~	~~NWNE~~	
~~T05N R09E S03~~	~~SWNE~~	~~T05N R09E S03~~	~~SENE~~	
T06N R09E S35	SWNE	T06N R09E S35	SENE	
T06N R09E S35	SENW	T06N R09E S35	NESW	
T06N R09E S35	NESE	T06N R09E S35	NWSE	
T06N R09E S35	SWSE	T06N R09E S35	SESE	
<u>T06N R09E S36</u>	<u>SWNE</u>	<u>T06N R09E S36</u>	<u>SWNW</u>	
<u>T06N R09E S36</u>	<u>SENW</u>	<u>T06N R09E S36</u>	<u>NESW</u>	
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EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
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THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),
IDAHO CODE.

EXPLANATORY MATERIAL: ~~Permit~~ License

Shurte, Jan

From: Shurte, Jan
Sent: Friday, April 16, 2004 4:17 PM
To: Harvey, Becky; Walker, Kay
Subject: Middle Fork Associates - 63-9642

Hi there,

Attached is the SF5 for the Middle Fork Associates. It reflects the way the license is going to be issued (Kay would you proof this one more time please).

Becky, I did talk with Kay about the situation and that you and I thought it would be best to try and get the license and the SF5 done at the same time. However, I'm not sure how best to do that. I will leave it to you both to work together with Nick.

Thanks a lot for carrying this one for me. See ya later.

Jan



63-9642 Middle
Fork Assoc SF5....

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

RIGHT NUMBER: 63-9642

NAME AND ADDRESS: MIDDLE FORK ASSOC
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BOISE ID 83709

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PHIFER CREEK
~~UNNAMED STREAM~~

TRIBUTARY: MIDDLE FORK BOISE RIVER
TRIBUTARY: MIDDLE FORK BOISE RIVER
TRIBUTARY: ~~MIDDLE FORK BOISE RIVER~~

QUANTITY: ~~1.000 CFS~~
0.44 CFS

PRIORITY DATE: 11/06/1980

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~~T05N R09E S3 NWNE Within ELMORE County~~
~~T05N R09E S3 SWNE Within ELMORE County~~
T06N R09E S35 SWNE Within ELMORE County
~~T06N R09E S35 NESE Within ELMORE County~~
T06N R09E S36 SWSW Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MINING	~~1/01 12/31~~	~~1.000 CFS~~
	<u>4/01 11/01</u>	<u>0.44 CFS</u>

PLACE OF USE: MINING Within ELMORE County

T05N R09E S02	NENW	T05N R09E S02	NWNW Lot 4
~~T05N R09E S02~~	SWNW	~~T05N R09E S02~~	SENW
~~T05N R09E S03~~	NENE	~~T05N R09E S03~~	NWNE
~~T05N R09E S03~~	SWNE	~~T05N R09E S03~~	SENE
T06N R09E S35	SWNE	T06N R09E S35	SENE
T06N R09E S35	SENW	T06N R09E S35	NESW
T06N R09E S35	NESE	T06N R09E S35	NWSE
T06N R09E S35	SWSE	T06N R09E S35	SESE
<u>T06N R09E S36</u>	<u>SWNE</u>	<u>T06N R09E S36</u>	<u>SWNW</u>
<u>T06N R09E S36</u>	<u>SENW</u>	<u>T06N R09E S36</u>	<u>NESW</u>
<u>T06N R09E S36</u>	<u>NWSW</u>		

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SUBJECT TO ALL CONDITIONS SET FORTH IN THE PERMIT UPON WHICH
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THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),
IDAHO CODE.

EXPLANATORY MATERIAL: ~~Permit~~ License

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

Right Number: 63-09642

Name and Address: MIDDLE FORK ASSOC
C/O GREG AUCH
11477 HIGHLANDER RD
BOISE, ID 83709

Source: GROUND WATER
PHIFER CREEK
~~UNNAMED STREAM~~

M.FK BOISE RIVER
BOISE RIVER *MIDDLE FORK*
~~BOISE RIVER~~

Quantity: ~~1.00 CFS~~
0.44 CFS

Priority Date: 11-06-1980

Diversion Point:	~~T05N R09E S02~~	~~SESE~~	Within Elmore County
	S03	~~NWNE~~	
		~~SWNE~~	
	T06N R09E S35	SWNE	
		~~NESE~~	
	S36	SWSW	

Purpose and			
Period of Use:	Purpose of Use	Period of Use	Quantity
	Mining	~~01-01 TO 12-31~~	~~1.00 CFS~~
		<i>4-1 11-1</i>	<u>0.44 CFS</u>

Place of Use:	Mining		Within Elmore County
	T05N R09E S02	~~NENW~~	NWNW <u>LOT 4</u>
		~~SWNW~~	~~SENE~~
	S03	~~NENE~~	~~NWNE~~
		~~SWNE~~	~~SENE~~
	T06N R09E S35	SWNE	SENE
		SENE	NESW
		NESE	NWSE
		SWSE	SESE
	<u>S36</u>	<u>SWNE</u>	<u>SWNW</u>
		<u>SENE</u>	<u>NESW</u>
		<u>NWSW</u>	

Other Provisions Necessary for Definition / Administration of this Water Right:

THIS RIGHT IS CONDITIONED UPON COMPLETION OF THE APPROPRIATION IN ACCORDANCE WITH THE STATUTORY PROCEDURE FOR APPROPRIATION OF WATER RIGHTS. THIS RIGHT REMAINS SUBJECT TO ALL CONDITIONS SET FORTH IN THE PERMIT UPON WHICH THIS RIGHT IS BASED, AND WILL BE SUBJECT TO ALL CONDITIONS SET FORTH IN THE LICENSE ISSUED BY IDWR UPON COMPLETION OF THE STATUTORY APPROPRIATION PROCESS. 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 - Permit → LICENSE

63-9642 MTC.

OK

I have requests to add Mineral Survey & HES Survey #'s. REMARKS

Will ask S.M. for continuance.

Re-set for status conference at 11:00 AM on 10-17-03.

Needs Notice of Intent filed by Claimant w/ USFS office in ID City.

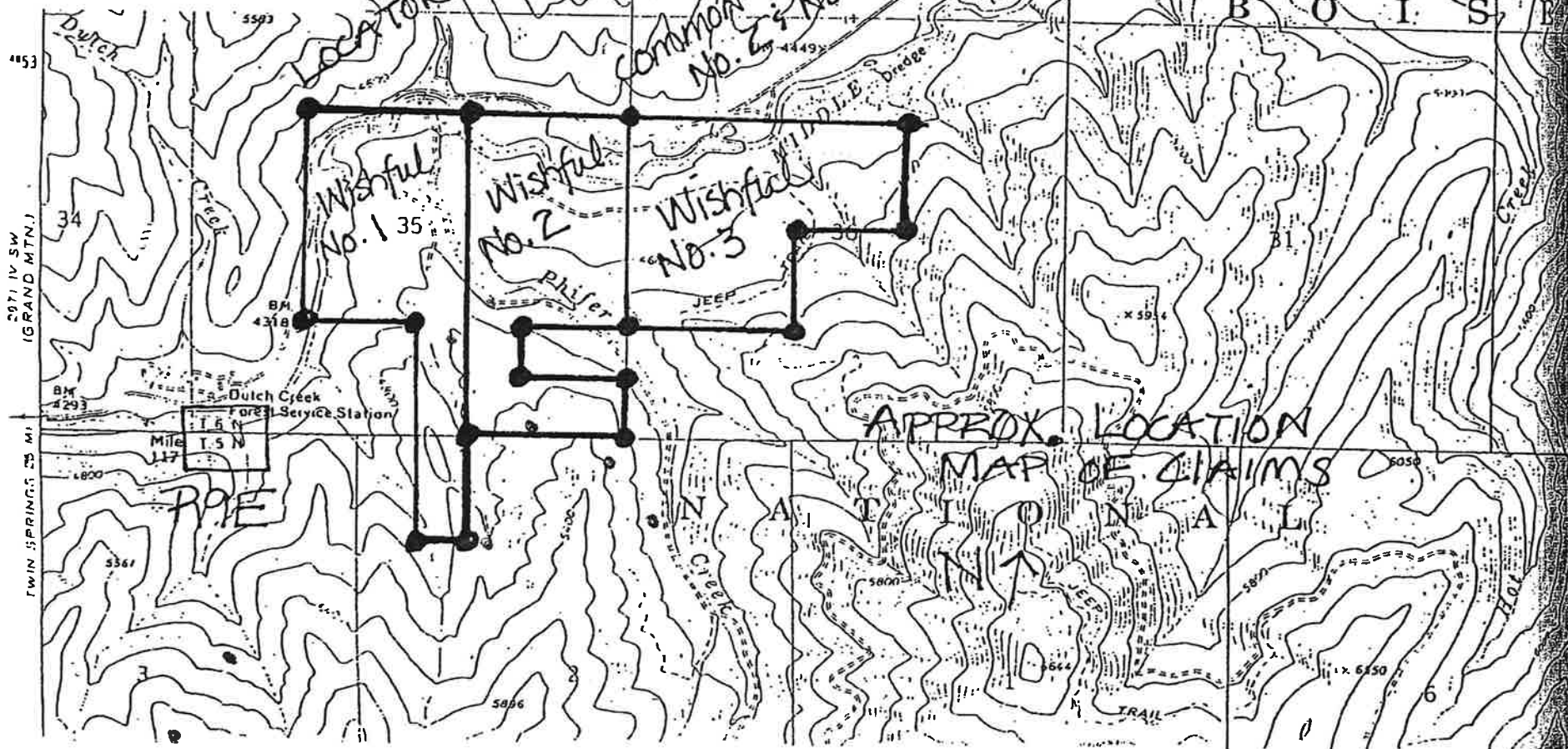
55
50
54
53
14 SW
GRAND MTN.

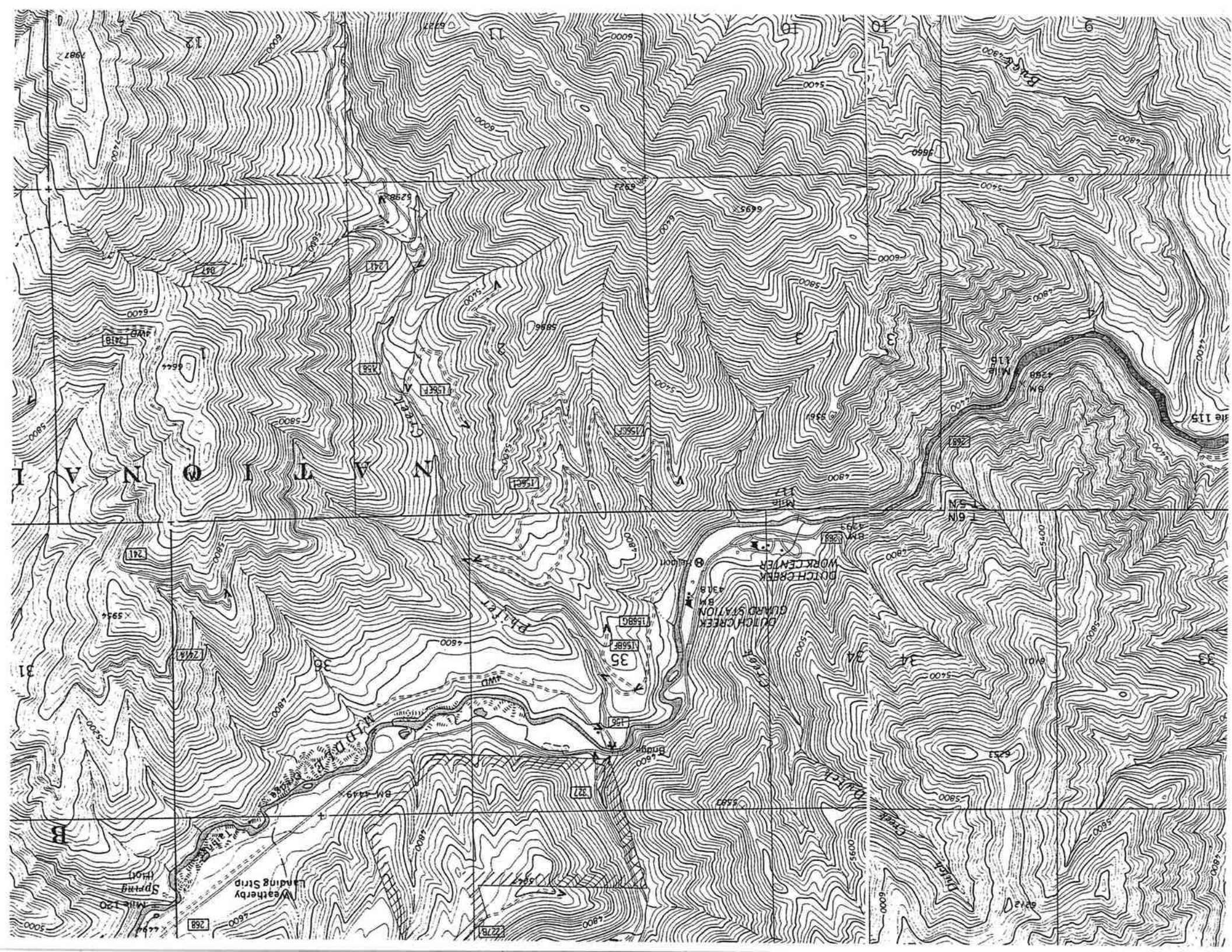
MAP OF

R9E

CLAIMS

- Wishful No.1
- Wishful No.2
- Wishful No.3







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

RECEIVED

APR 25 2003

WATER RESOURCES
WESTERN REGION

April 24, 2003

David L. Negri, Esq.
United States Department of Justice
Environment and Natural Resources Division
General Litigation Section
550 W. Fort St. MSC 033
Boise, Idaho 83724

Re: SRBA Subcase No. 63-9642 (Middle Fork Associates)

Dear David:

On January 30th the U.S. Forest Service filed an objection to the above-referenced water right recommendation. The recommendation filed in the SRBA Court by the Idaho Department of Water Resources (IDWR) was based on the original water right permit, issued in 1980, and held by claimant Middle Fork Associates. IDWR has now conducted its licensure field examination of that permit and is preparing to issue a license for the water right. Based upon the field examination, and a subsequent amendment to the permit filed by Middle Fork Associates to bring the permit into accordance with the findings of that field examination, the license that IDWR proposes to issue differs considerably from the original permit

I am enclosing a copy of the proposed license for you to review with your client for purpose of determining which parts—if any—of the Forest Service's objection might be obviated by its issuance. If the proposed license completely resolves the objection, the claimant, the United States, and IDWR should be able to enter into a Standard Form 5 describing the right in the SRBA per the terms of the license. If on the other hand the proposed license does not completely resolve the objection, IDWR can correct the proposed license to incorporate any changes to the water right that might result from settlement negotiations or other proceedings in the SRBA.

Summarized below are IDWR's bases for describing certain elements of the water right as shown in the proposed license. These elements are keyed to the elements that the Forest Service listed in its objection.

1. **SOURCE AND POINTS OF DIVERSION.** The proposed license lists these as being both Phifer Creek and ground water. The licensure field examiner found that the ground water source/POD is a six inch artesian well flowing at 31 gpm. This well is located within the boundaries of the Wishful No. 2 unpatented mining claim (see below). It apparently was originally drilled for use by the Weatherby Sawmill, which no longer exists. The examiner found that the water from the well is used for mining sifting and cleanup via 75 feet of 2-inch pvc portable hose. Additionally, the examiner found that water from Phifer Creek is being diverted by means of a five horsepower portable pump through 2000 feet of pvc pipe into a small settling pond, where it is used for material sifting using trommels and jigs. The Phifer Creek POD is located outside the boundaries of the three mining claims in question (see below), presumably on Forest Service land.
2. **QUANTITY.** The proposed license lists the diversion rate as 0.44 cfs. This is the quantity measured by the examiner. The artesian well was measured at 0.07 cfs; the Phifer Creek POD was measured at 165 gpm, or 0.37 cfs. A volumetric limitation also is included on the proposed license. It was calculated using the total instantaneous diversion rate measured from both PODs, diverted constantly for ten hours per day throughout the 215 day season of use. (0.44 cfs x 10 hpd x 215 days)
3. **PRIORITY DATE.** The priority date listed on the proposed license is November 6, 1980, the date of the application for permit. Although at one point the permit did lapse, it subsequently was reinstated.
4. **PLACE OF USE.** The legal description of the place of use lists the quarter quarter sections containing unpatented mining claim nos. 181283, 181284, and 181285, also known as the Wishful 1, 2, and 3. IDWR staff verified with the BLM that these three claims are up to date and in compliance with BLM requirements.

Please review the proposed license and the above summary with your client. Let me know whether this might resolve the Forest Service objection or any part of it.

David L. Negri, Esq.
April 24, 2003
Page 3

Thank you very much. I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink that reads "Nick Spencer". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

NICHOLAS B. SPENCER
Deputy Attorney General
Idaho Department of Water Resources

Enc: 1

Cc: Middle Fork Associates c/o Jane Stone
Kay Walker
Jan Shurte

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-09642

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APR 25 2003

WATER RESOURCES
WESTERN REGION

Priority: November 06, 1980

Maximum Diversion Rate: 0.44 CFS
Maximum Diversion Volume: 77.6 AF

It is hereby certified that MIDDLE FORK ASSOCIATES
C/O JANE STONE
11477 HIGHLANDER
BOISE ID 83709 have complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated November 06, 1980; and have
submitted Proof of Beneficial Use on September 21, 1990. An examination indicates that the works
have a diversion capacity of 0.44 cfs of water from:

SOURCE

GROUND WATER
PHIFER CREEK

Tributary: MIDDLE FORK BOISE RIVER
MIDDLE FORK BOISE RIVER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
MINING	04/01 to 11/01	0.44 CFS	77.6 AF

LOCATION OF POINTS OF DIVERSION:

GROUND WATER	SW $\frac{1}{4}$ NE $\frac{1}{4}$	Sec. 35, Twp 06N, Rge 09E, B.M., ELMORE County
PHIFER CREEK	SW $\frac{1}{4}$ SW $\frac{1}{4}$	Sec. 36, Twp 06N, Rge 09E, B.M., ELMORE County

PLACE OF USE: MINING

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N 09E 2						X L 4											
06N 09E 35			X	X				X	X				X	X	X	X	
06N 09E 36			X				X	X	X	X							

CONDITIONS OF APPROVAL

1. Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.
2. The issuance of this right does not grant any right-of-way or easement across the land of another.

ADDED IN MINING CLAIM NAMES ON DATABASE.

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-09642

3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this _____ day of _____, 2003.

KARL J. DREHER
Director

MEMORANDUM

To: Claim File No. 63-9642

From: Jan Shurte

Subject: Meeting concerning Licensing vs objection

Date: 3-20-03

On this date Lori Graves and I had a teleconference meeting with Kay Walker, Shelley Keen, Nick Spencer and Susan Hamlin-Nygard of the State office concerning the licensing of the above permit in light of the objection filed by the USFS.

This claim was recommended in the SRBA as a permit on September 27, 2002.. The field exam was conducted by Lori Graves on October 11, 2002. An objection was filed by the USFS on the recommended permit objecting to the source, quantity, priority date, point of diversion and place of use. Reasons given were that the mining claims had been declared null and void in 1993 and then may have been relocated in 1998 by BLM. However, many of the pods and pous on the Director's Report are not on the mining claims as the USFS understands them. Even though these are BLM mining claims, the land is located on USFS land.

We believe the reason for the objection is because the claim was recommended exactly like the permit since no exam had yet been done. The permit shows many more 1/41/4's and different 1/41/4's than will be licensed based on the actual field exam. I'm not quite sure why they objected to the priority date?

We decided to send a draft of the license to David Negri attorney for the USFS to see if that would resolve some of the objections. Nick Spencer, attorney for IDWR in Basin 63, Part 1 will write the letter to David Negri and let me know what they decide. Initial hearings have not yet been scheduled for these rights.

RECEIVED

JAN 31 2003

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: 63-09642
STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: United States of America, Acting through the USDA Forest Service
Address: 550 West Fort Street
MSC 033
Boise, Idaho 83724
Daytime Phone: (208) 331-5943

Name and Address of Attorney, if any:

David L. Negri
550 West Fort Street
MSC 033
Boise, Idaho 83724

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

Name: Middle Fork Associates
Address: c/o Greg Auch
11477 Highlander Rd
Boise, ID 83709

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

1. ☐ **Name and Address**
Should be:
2. ☒ **Source**
Should be: See E below.
3. ☒ **Quantity**
Should be: See E below.
4. ☒ **Priority Date**
Should be:
5. ☒ **Point(s) of Diversion**
Should be: See E below.
6. ☐ **Instream Flow Description**
Should be:
7. ☐ **Purpose(s) of Use**
Should be:
8. ☐ **Period of Year**
Should be:
9. ☒ **Places of Use**
Should be: See E below.

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):**

This Directors Report Recommendation is based on a permit to develop water. This water use is for mining claims on National Forest System land. The mining claims were declared null and void and the case files closed by the BLM in 1993. They may have been relocated in 1998, however many PODs and POU's shown on the Directors Report Recommendation are not on the mining claims as we understand them. In addition the quantity appears to be excessive. Claimants may be prospecting, but are not authorized to conduct any mining operations under a plan of operations or notice of intent on National Forest System land.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

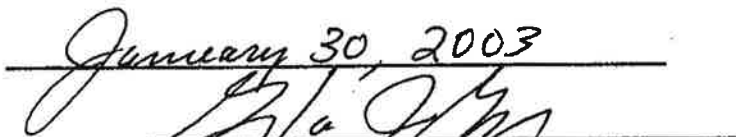
Michael Collette , duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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


(Signature of person filing objections)


(Attorney signing in representative capacity)

Subscribed and sworn before me on:


Gayla J. Gough



Notary Public for: Idaho
Residing at: Kuna, Idaho
Commission Expires: 11/17/2004

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 1/30/03, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

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

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

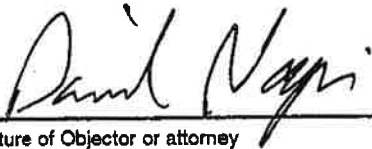
Name: Middle Fork Associates
Address: c/o Greg Auch
11477 Highlander Rd
Boise, ID 83709

3. Copies to:

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

Chief, Natural Resource
Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

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



Signature of Objector or attorney
mailing on Objector's behalf

26

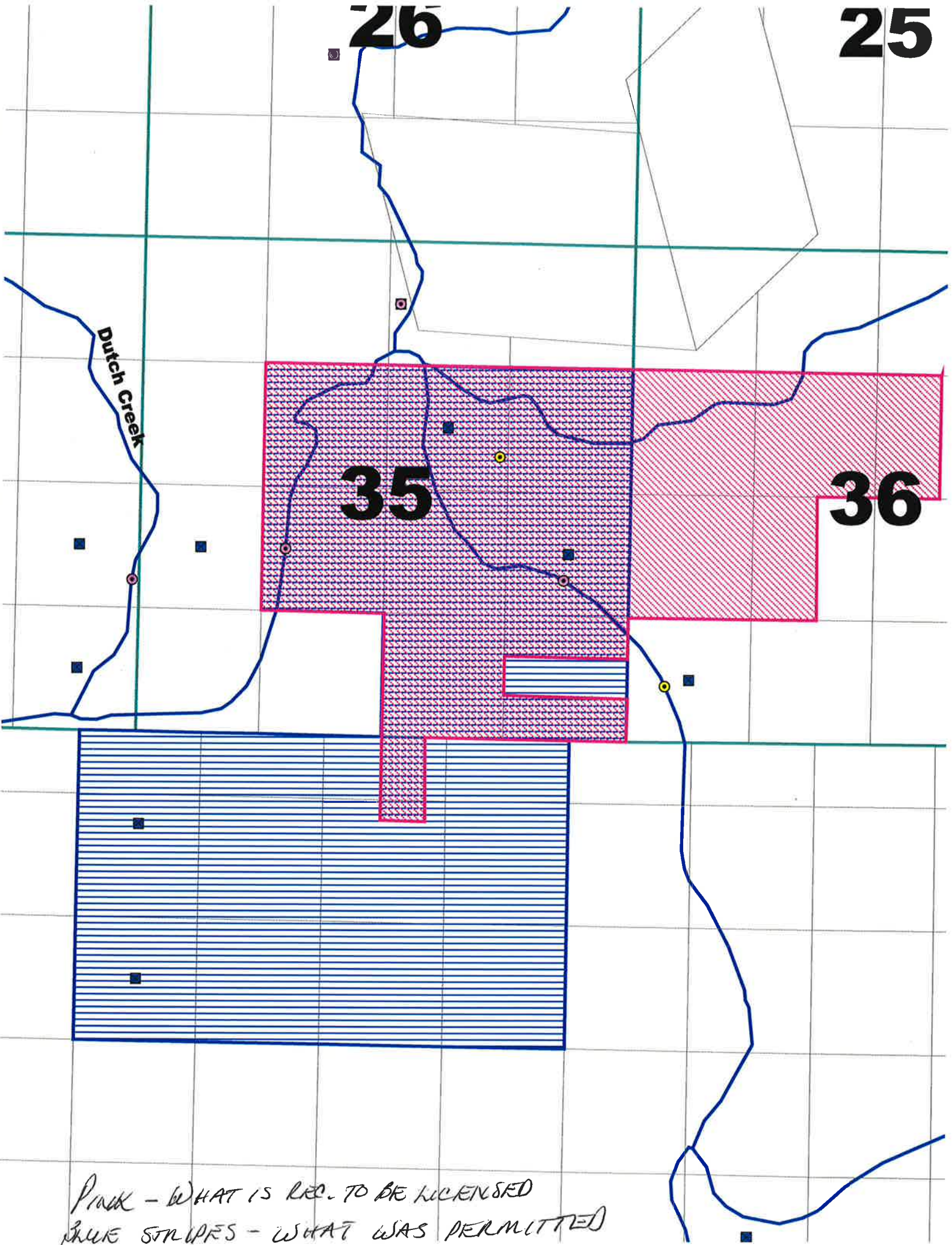
25

Dutch Creek

35

36

Pink - WHAT IS REQ. TO BE LICENSED
BLUE STRIPES - WHAT WAS PERMITTED



MEMORANDUM

TO: File 63-9642

FROM: Kay Walker

RE: History of Permit

Date: March 20, 2003

.....

This memo is being prepared to detail the history of this permit to assist in resolution of issues identified in the licensing and SRBA processes.

1. November 6, 1980 – Application for Permit filed for use of water for mining purposes. The application proposed diversion of 1.0 cfs from an unnamed creek and Phiifer Creek, tributary to Middle Fork Boise River and a ground water source.
2. December 15, 1980 – Permit issued for development. Proof due 12/1/1985.
3. December 17, 1985 – Extension of time approved allowing 5 more years for development. Extension stated pipeline had been installed, artesian well drilled. Vandals had used chain saw to cut and remove the pipeline that had been installed. Proof due 12/1/1990.
4. September 21, 1990 – Proof of Beneficial use submitted.
5. October 11, 2002 – Field examination conducted to verify use under the permit. Examiner found water could be used from Phiifer Creek and groundwater source. The place of use was found to be different than permitted place of use. The place of use recommended for license was determined by location of un-patented Idaho Mining Claims (also known as Wishful 1, 2 and 3) through BLM state office.
6. December 19, 2002 – Order to Change Measuring Device Requirement issued.
7. January 2, 2003 – Application for Amendment for licensing purposes submitted by permit holder's to change the place of use to that found under mining claims. License prepared and routed to administration for signature. The proposed license was returned to me to gather more information regarding the use on federal lands. I then contacted BLM to inquire about the status of mining claims. The claims were up to date and in compliance with BLM requirements. BLM stated that the mining claims were located on USFS property and forwarded information regarding the licensing of the permit to them for review.

8. January 22, 2003 – Steve Spencer of USFS contacted me and stated they were planning to object to SRBA recommendations. The SRBA had prepared their recommendations on claim as permitted since license had not been issued.

Steve is concerned about future regulation of the two sources to be licensed. He wanted to make sure the right holders did not divert more water from the well, or Phifer Creek, than measured during field exam.

The USFS also has issues with the mining use. The mining claims were declared null and void in 1993 and were "restaked" or "relocated" in 1998.

9. January 29, 2003 – Fred Price, BLM, e-mailed me regarding the mining claims. One problem identified is the name on the water right versus the names on the mining claims. The mining claims are filed in individual names rather than Middle Fork Associates as shown on the permit/proposed license. The individual names identified by mining claims are the same as identified on examination, as members of Middle Fork Associates, with exception of Sayko's. The examination shows Jim and Karen Sayko as members of Middle Fork Associates. The mining claims are in name of James Sayko Sr. and James Sayko Jr.

Mr. Price suggested some conditions in his e-mail that may be useful to resolve some problems if we applied to proposed license.

Summary: The permit holders developed a mining use during the permit development period. Field examination verified beneficial use and permit holders have complied with requirements to receive a water right license.

Adjudication Recommendation Report 63-9642 V1

Owner Type

Current Owner

Priority Date: 11/06/1980

Basis: Permit

Status: Active

Source

GROUND WATER
PHIFER CREEK
UNNAMED STREAM

Tributary

MIDDLE FORK BOISE RIVER
MIDDLE FORK BOISE RIVER

Beneficial Use

MINING

From	To
------	----

1/01 to 12/31

Diversion Rate

1.000 CFS

Annual Volume

Total Diversion: 1.000 CFS

Location of Point(s) of Diversion

PHIFER CREEK ELMORE County	NE1/4SE1/4	Sec. 35, Twp 06N, Rge 09E, B.M.
PHIFER CREEK ELMORE County	SE1/4SE1/4	Sec. 2, Twp 05N, Rge 09E, B.M.
GROUND WATER ELMORE County	SW1/4NE1/4	Sec. 35, Twp 06N, Rge 09E, B.M.
PHIFER CREEK ELMORE County	SW1/4SW1/4	Sec. 36, Twp 06N, Rge 09E, B.M.
UNNAMED STREAM ELMORE County	NW1/4NE1/4	Sec. 3, Twp 05N, Rge 09E, B.M.
UNNAMED STREAM ELMORE County	SW1/4NE1/4	Sec. 3, Twp 05N, Rge 09E, B.M.

Place of Use

MINING

[illegible]

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-9642 V1

06N 09E 35			X	X			X	X			X	X	X	X	
------------	--	--	---	---	--	--	---	---	--	--	---	---	---	---	--

Conditions of Approval:

1. A01 THIS RIGHT IS CONDITIONED UPON COMPLETION OF THE APPROPRIATION IN ACCORDANCE WITH THE STATUTORY PROCEDURE FOR APPROPRIATION OF WATER RIGHTS. THIS RIGHT REMAINS SUBJECT TO ALL CONDITIONS SET FORTH IN THE PERMIT UPON WHICH THIS RIGHT IS BASED, AND WILL BE SUBJECT TO ALL CONDITIONS SET FORTH IN THE LICENSE ISSUED BY IDWR UPON COMPLETION OF THE STATUTORY APPROPRIATION PROCESS.
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:Comments: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: 63
 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

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			01/24/2002	lharris	Active
Source	1/24/2002 1:51:22 PM	lharris			Active

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
Summary	1/24/2002 1:26:51 PM	lharris	(Yes) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (No) 2. Does any evidence indicate a five year period of continuous nonuse occurred that could result in recommending forfeiture or partial forfeiture?

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-9642 V1

Source	1/24/2002 1:51:23 PM	lharris	(No) 1. Is the basis of claim Decree or License? (Yes) 2. Is the basis of claim an Application or Permit? (No) 3. Has the licensed been issued?
--------	----------------------	---------	---

SubCase:

SubCase Number: 63-9642
Class: 1
SF5 Filed Date:
Special Master Recom Signed Date:
Attorney Assigned:
Adjudication Agent: Craig Saxton
Basis of Claim: Permit
Date Filed: 1/31/2003 Objection Status: Active



United States Department of the Interior

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FEB 10 2003

Department of Water Resources

BUREAU OF LAND MANAGEMENT

Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709

In Reply Refer To:
IMC 181283-85 (933)

FEB 06 2003

Kay Walker — *file 63-9642*
State of Idaho
Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Dear Ms. Walker:

On January 24, 2003, my office received your letter stating that the State of Idaho Department of Water Resources (IDWR) is preparing to issue a water right license for the use of water in the mining operations being conducted on the Wishful 1, 2, and 3 unpatented mining claims (IMC 181283-85). You requested a written notice stating that the BLM has no objections to issuance of this water right license.

The Wishful 1, 2, and 3 unpatented mining claims are located within the Boise National Forest. Therefore, the Forest Service is the surface managing agency responsible for any actions which affect these claims.

Your letter is being forwarded to Dick Markley of the Idaho City Ranger District, 3833 Hwy 21, Idaho City, Idaho 83631. If you have any further questions you may contact Mr. Markley at (208) 392-6681.

The Wishful 1, 2, and 3 unpatented claims are currently in compliance with the requirements of the Omnibus Budget Reconciliation Act of August 10, 1993, as amended by the Act of November 5, 2001.

Sincerely,

Diane Hartman
Supervisory Land Law Examiner

cc:

Karen Shilling (ID-933)
Dick Markley, Idaho City Ranger District, 3833 Hwy 21, Idaho City, ID 83631

Walker, Kay

From:
Sent:
To:
Cc:
Subject:

Fred_Price@blm.gov
Wednesday, January 29, 2003 3:29 PM
Walker, Kay
Gary_Madenford@blm.gov
Re: Water Right Permit 63-09642



AmendmentLicense
_.rtf

Kay,

Thank you for providing me a copy of the amendment. You wanted to know if we had any problems with the claim.

1. The claimant (Middle Fork Associates) does not hold any mining claims on federal public land. You mentioned that this water claim is for mining purposes within the Wishful #1, #2, and #3 mining claims. The following persons are listed in our records as having an interest in these mining claims: Greg & Patty Auch, Jane Stone, Yvonne Gerany, James Sayko, Sr., James Sayko, Jr., and Earl Tyner. If the water claim described the claimant name as these "recognized" persons, then that element of the water claim would not be defective.

2. The place of use element describes 40 acre tracts containing portions of the Wishful #1, #2, and #3 mining claims. These mining claims do not encompass the entirety of these legal land descriptions. There is also other public land within these 40 acre tracts that are not within mining claims. It would be improper to use water on federal public land outside of the boundaries of a valid unpatented mining claim. I would not have a problem with how the place of use element is described if the use of water were limited by "additional condition" to within the boundaries of mining claims Wishful #1, #2, and #3.

3. The diversion facilities (PODs) reside on lands owned by the U.S. and administered by the Forest Service. Has the claimant obtained a Special Use Permit from the Forest Service to construct such facilities? If the claimant does not have a Special Use Permit, then the Forest Service may object to a trespass POD. Steve Spencer (331-5944) of the Forest Service Water Rights Team would be a good information source about this.

4. Entitlement: Even though the claimants have mining claims recorded with BLM and their required paperwork is in order, this does not mean that they have a valid mining claim. If there is no vein or lode, then their mining claim is not valid. This determination is not made until such time, if ever, they try to take the mining claim to patent. If they have filed over top of a mining claim that is senior, then again their mining claim is not valid. Aren't there some state requirements that have to be met for mining claims to be valid? Are any of those requirements left to be determined at a later date?

If their mining claims are found to be invalid at some point in the future, then their use of public land would be a trespass. Water rights cannot be established in trespass. Should this water claim be licensed contingent upon the validity of the underlying mining claim? Perhaps remarks similar to those below?:

"This right is contingent upon the validity of the associated mining claim, under state and federal rules, regulations, and laws."

"Licensing of this water claim is not a determination of the validity of the associated mining claim and ultimately this water claim."

Food for thought, hope this assists you,
Fred Price
Water Rights Specialist
BLM, Idaho State Office
(208) 373-3831

"Walker, Kay"
<KWalker@idwr.state.id.us>
<fred_price@BLM.gov>
To: "'fred_price@BLM.gov'"
cc: "Walker, Kay"
Subject: Water Right Permit 63-09642
01/15/03 04:00
PM

Fred: This is a reproduction of a portion of the licensing amendment that the permit holder has submitted. I hope it has enough information on it for you. If not, let me know... Thanks! Kay <<AmendmentLicense_.rtf>>
(See attached file: AmendmentLicense_.rtf)

Walker, Kay

From: Walker, Kay
Sent: Thursday, January 23, 2003 8:21 AM
To: Saxton, Craig; Shurte, Jan
Cc: Walker, Kay
Subject: Permit 63-09642

Hi... I was in the process of licensing this permit, have received the licensing amendment and thought it would be easily licensed. I got it back with questions regarding the ownership and other stuff and contacted BLM to see if the mining claims were in order. BLM said the mining claims were up to date and in compliance with them. The BLM then advised the USFS that we were preparing to license this permit and Steve Spencer called and told me they had already flagged this one for objection. The permit was recommended as permitted and is bar coded to Craig's filing cabinet. The BLM has control over the mining claims but the USFS owns the property the claims are located on. What would be the best action for me to take now? I guess I should hold this one until the objection is filed??? (Steve suggested that an SF5 could be done when the objection is processed which would then allow us to issue the license???) Help, I need guidance on this one..... Kay

Do Not Film Please.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 23, 2003

LYNN MC CLURE
BUREAU OF LAND MANAGEMENT
MINING CLAIMS RECORDATION
2948 VINNELL WAY
BOISE ID 83705

RE: Water Right Permit 63-09642

Dear Ms. McClure:

Pursuant to a voice mail left on my phone yesterday, by Diane Hartman, I am requesting, in writing, that you submit your comments on Mining Claim Nos. 181283, 181284 and 181285, also known as Wishful 1, 2 and 3. We are preparing to issue a water right license for the use of water for these mining claims and want to make sure that the BLM does not have any objection to the licensing of the above referenced water right permit.

I understand, through previous conversations, that the mining claims are up-to-date and in compliance with all BLM requirements. We request that you submit written notice that you have no objection to IDWR issuing a water right license for this mining operation since it is located on public land. I have previously e-mailed a copy of the amendment, submitted for licensing purposes, to Fred Price so he could review the place of use for these claims.

Please submit your comments within 2 weeks of the date of this letter so we can proceed with the licensing of the permit if you have no objection. If you need further information, please feel free to contact me at 327-7944.

Sincerely,

KAY WALKER
Sr. Water Resource Agent

KW:k

MEMORANDUM

TO: File 63-09642

FROM: KAY WALKER *KW*

RE: Proposed License

Date: January 22, 2003

.....

Steve Spencer of the USFS called me this afternoon regarding the licensing of this permit. The BLM forwarded information regarding the licensing to the USFS. This permit has been recommended in the SRBA as permitted and the USFS is planning on objecting to the recommendation. They have no problem with the mining use; the right holders let their mining claims lapse in the early 90's and re-filed in 1998 for the mining claims.

Steve wondered if we might want to split this right for each source so that the right holders could not divert more from the well, or from Phifer Creek, than measured during our field exam. I told him that since the permit had been issued with multiple sources, we would probably license without splitting the right.

MEMORANDUM

TO: File 63-09642

FROM: KAY WALKER *KW*

RE: Conversation with BLM

Date: January 15, 2003

.....

I talked with Lynn McClure of the BLM, Mining Claims Recordation section (373-3885) this afternoon regarding the mining claims under this right. Lynn checked the status of the claims and found them to be up-to-date and *valid*. Lynn was going to check with the water resource section of BLM to find out if they contested the ownership of this right. I requested a written notice from BLM regarding the status of the claims and their views on the ownership of the water right. I gave Lynn my e-mail address so they could respond to my request.

*Fixed Price
per 01/15/03
(fees up to date,
in compliance, land not patented)*

Comment Report

63-9642

1. Igraves 10/28/2002 Field Report Narrative

Comment: A 6 inch inch artesian well, free flowing 31 gpm at 78 degrees, is used for mining sifting and clean-up via 75 feet of 2 inch pvc portable hose.

3. kwalker 1/15/2003 Use of well water

Comment: I called Lori this afternoon to find out about the use of the well water for mining purposes. She said that it is noted in her exam, which I found in the first paragraph of the narrative (see above). She also said that the hose from the well leads to a dug out pit which is where they sift the gravels in their mining operation. They also use the well water to clean up their equipment when done with it. Lori further mentioned that the bathtub was brought into this place by some campers or hunters. The owners of the mining claims did not have a problem with the hunters and campers using the well water.

2. kwalker 1/15/2003 Water Quality Condition

Comment: This permit was issued with a condition requiring settling ponds to reduce silt load in the return water. In review of our current policy on water quality, compliance is required prior to diversion and use of water and, once development is completed, continued compliance falls under the jurisdiction of appropriate government agency (DEQ).

Current Policy:

Used statewide on applicable uses of water such as commercial, industrial, mining, fish propagation, etc., and whenever water quality may be an issue. Per Judge Woods 12/29/99 decision on facility volume, etc., the use of the condition on permits and transfers is an appropriate way to address local public interest concerns. However, once the right is vested (licensed), water quality falls under the jurisdiction of DEQ. Therefore, use of this condition on licenses should occur only under special circumstances. Previously condition 081. Modified 12/26/02 to clarify that compliance is required prior to diversion and use of water and, once completed, continued compliance falls under the jurisdiction of the appropriate government agency.

IDAHO DEPARTMENT OF WATER RESOURCES 01/24/2002
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

Water Right 63-9642

NAME AND ADDRESS: MIDDLE FORK ASSOC
C/O GREG AUCH
11477 HIGHLANDER RD
BOISE ID 83709

SOURCE: GROUND WATER
PHIFER CREEK
UNNAMED STREAM

TRIBUTARY:
TRIBUTARY: MIDDLE FORK BOISE RIVER
TRIBUTARY: MIDDLE FORK BOISE RIVER

QUANTITY: 1.00 CFS

PRIORITY DATE: 11/06/1980

POINT OF DIVERSION:

T05N R09E S2 SESE Within ELMORE County
T05N R09E S3 NWNE Within ELMORE County
T05N R09E S3 SWNE Within ELMORE County
T06N R09E S35 SWNE Within ELMORE County
T06N R09E S35 NESE Within ELMORE County
T06N R09E S36 SWSW Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MINING	1/01 12/31	1.000 CFS

PLACE OF USE: MINING Within ELMORE County

T05N R09E S02	NENW	T05N R09E S02	NWNW
T05N R09E S02	SWNW	T05N R09E S02	SENW
T05N R09E S03	NENE	T05N R09E S03	NWNE
T05N R09E S03	SWNE	T05N R09E S03	SENE
T06N R09E S35	SWNE	T06N R09E S35	SENE
T06N R09E S35	SENW	T06N R09E S35	NESW
T06N R09E S35	NESE	T06N R09E S35	NWSE
T06N R09E S35	SWSE	T06N R09E S35	SESE

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

THIS RIGHT IS CONDITIONED UPON COMPLETION OF THE APPROPRIATION IN ACCORDANCE WITH THE STATUTORY PROCEDURE FOR APPROPRIATION OF WATER RIGHTS. THIS RIGHT REMAINS SUBJECT TO ALL CONDITIONS SET FORTH IN THE PERMIT UPON WHICH THIS RIGHT IS BASED, AND WILL BE SUBJECT TO ALL CONDITIONS SET FORTH IN THE LICENSE ISSUED BY IDWR UPON COMPLETION OF THE STATUTORY APPROPRIATION PROCESS.

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: Permit

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WESTERN REGION ADJUDICATION SECTION
CLAIM VERIFICATION FIELD EXAM SHEET
(Use with the ECVR)**

CLAIM NO(s). A63-~~88~~ 9642

1. No Change NAME IS SAME ✓
NEW OWNER: _____
No Change ADDRESS _____
NEW ADDRESS: _____

2. No Change - DATE OF PRIORITY: Completed evidence submitted ✓
Incomplete - Claimant should be asked during the exam when was water first
used and submit proof of date of priority.

Priority date, per claimant, is: _____
(If the priority date, based on your exam, seems questionable, explain below.)

3. No Change — SAME SOURCE ✓
Source is different than that claimed:

Source found: _____

4. No Change — POINT OF DIVERSION ✓
Point of diversion is different than the claim and/or new P/D's:

Township _____ Range _____ Section _____ 1/4 _____ 1/4 _____ 1/4 _____
Township _____ Range _____ Section _____ 1/4 _____ 1/4 _____ 1/4 _____

5. No Change - DESCRIPTION OF DIVERTING WORKS ✓
Incomplete description, list below:

C18

A01

6. No Change - WATER USES ✓
Different uses, (list uses found):

NO DOMESTIC ON PERMIT

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

7. No Change - TOTAL VOLUME

Incomplete on claim, the total is, Amount _____ CFS _____ AFA

Changes found, the new total is, Amount _____ CFS _____ AFA

8. No Change - NON-IRRIGATION USES:

Changes Exam found:

Domestic # of homes: _____ Stock # _____ List types: _____

Additional comments: NO DOMESTIC USE ON PERMIT

9. No Change — PLACE OF USE: (If changed, list below.)

Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____
Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____
Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____
Use: _____	Township _____	Range _____	Section _____	1/4 _____	1/4 _____

Remarks: (Comments pertinent to field examination) See additional attachment

Claimant originally indicated to IDWR allocation staff
(L. Graves) that they would not pursue this permit. Later
changed their minds, but not in time for field exam
this year. Recommend as permit.

SYSTEM DIAGRAM INCLUDED

(NA)

Shown on GIS Layout

CK IF IN OFFICE EXAM ✓

DATE EXAM CONDUCTED: 01/22/2002

FIELD EXAMINER: MARIA MINICUCCI

Print Name

Maria Minicucci
Signature

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report

WATER RIGHT NO. 63-9642

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MIDDLE FORK ASSOC C/O EARL C TYNER 4619 FREEMONT ST BOISE, ID 83706

Priority Date: 11/06/1980
Status: Active

<u>Source</u>	<u>Tributary to</u>
UNNAMED STREAM ✓	MIDDLE FORK BOISE RIVER
PHIFER CREEK ✓	MIDDLE FORK BOISE RIVER
GROUND WATER ✓	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>	<u>Subuse Code</u>
MINING ✓	1/01	12/31 ✓	1 CFS		
Total Diversion			1 CFS ✓		

Location of Point(s) of Diversion:

✓SESE ✓	Sec. 02	Township 05N	Range 09E	ELMORE County
✓NWNE ✓	Sec. 03	Township 05N	Range 09E	ELMORE County
✓SWNE ✓	Sec. 03	Township 05N	Range 09E	ELMORE County
✓SWNE ✓	Sec. 35	Township 06N ✓	Range 09E	ELMORE County
✓NESE ✓	Sec. 35	Township 06N	Range 09E	ELMORE County
✓SWSW ✓	Sec. 36	Township 06N	Range 09E	ELMORE County

Place(s) of use:

Place of Use Legal Description: MINING

ELMORE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
✓ 05N	09E	2		✓NENW			✓NWNW			✓SWNW			✓SENEW	
		3		✓NENE			✓NWNE			✓SWNE			✓SENE	
✓ 06N		35		✓SWNE			✓SENE							
				✓SENW										
				✓NESW										
				✓NESE			✓NWSE			✓SWSE			✓SESE	

Conditions of Approval:

- 001 A measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.
- 004 The issuance of this right does not grant any right-of-way or easement across the land of another.
- 005 Use of water under this right is subject to control by the watermaster of State Water District No. 63.
- 09D Water used under this right if discharged into a natural channel shall meet Idaho Water Quality Standards.

Remarks:

- General Settling ponds shall be installed which are capable of reducing the silt load in the return water to such a level that the quantity of the receiving waters will not be impaired for other beneficial uses.

Dates:

Proof Due Date: 12/01/1990
Proof Made Date: 09/21/1990
Approved Date: 12/15/1980
Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Application Received Date:
Protest Deadline Date:
Number of Protests: 0
Field Exam Date::
Date Sent to State Off:
Date Received at State Off:

Other Information:

Receipt Number(s):
State or Federal:
Owner Name Connector:
Water District Number: 63
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 20, 2002

MIDDLE FORK ASSOCIATES
C/O JANE STONE
11477 HIGHLANDER
BOISE ID 83709

RE: Water Right Permit No. 63-09642

Dear Permit Holders:

The Department of Water Resources is reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms the extent of development that has been established in compliance with the terms of the permit. The examiner who verified your water use reported that certain elements of the permit have been developed differently than described on your permit. Changes that do not increase the authorized use of water under the permit can be requested and approved in accordance with Section 42-211, Idaho Code. Before a license can be issued, your permit must be amended to depict your water use as it was actually developed.

Based on the examiner's report, the following elements were developed differently than described on your permit:

✓ **Place of Use**

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license when it is issued. Please review the amendment form carefully. If you concur with the information presented, please sign the form and return it with the \$50.00 filing fee within 14 days.

We have also enclosed a copy of an Order to Change Measuring Device Requirement for this permit, based on the request submitted by Mr. Auch and discussions with the Boise River Watermaster. If you have any questions, please call me at 208-327-7944.

Sincerely,

KAY WALKER
Sr. Water Resource Agent

Enclosures

LICENSE REVIEW CHECKLIST

Permit No. 63-9642 Date: 12-19-2007 Reviewer: Kay Walker

Change/OK

Name/Address OK

Source OK

Point of Diversion: OK

Does change clarify original intended source? If no, void permit.

Change (P39/P49) Add (P45/P44) Feds (P40)

W32 (multiple in 1/4/1/4)

W36 (overlap)

W59 (subdivision description)

Place of Use change

Change (P41/P49) Add (P41/P44) Feds (P43)

W60 (subdivision description)

W27 (ppu acre limit)

Overlaps: Right(s):

File reviewed Profile reports printed

P/D & P/U amend (P37) Feds (P48)

Rate of Diversion:

Permitted rate 1.0 cfs

Fee Limit 1.0 cfs

Measured 0.44 cfs

Theoretical cfs

Recommended Total Diversion Rate 0.44

Water Uses OK

Change (P46)

Irrigation cfs af

Stockwater cfs af

Domestic cfs af

Mining 0.44 cfs 77.6 af

cfs af

Total cfs af

Season of Use per new Standards

Irrigation - overlap (R58-R61, R62-R65, R66-R69)

supp. Gw (WB7/065/104)

overlap spec combined rts (W35)

<1 acre (W31)

Domestic (W01/wb5/070/071/075)

Power (W42 or W43/025/027/R22 or R23)

Fish (042)

Fire (077)

Water Quality (106/R07)

Payette - (W22/047/27A)

Stockwater for US (R37)

Volume Determination

cfs x 1.9835 x days = af (vs) acres x (FHR) = af

Remarks:

Additional Conditions 63

Watermaster Control

GW Measurement/Measuring Device

Other

Trust R55 - remove 051)

Non-trust (048)

GW Dist? _____

Water Msmt. Dist? _____

Crit. GWMA? _____

GWMA? _____

Government Lots? _____

Advance Priority? yes

no

If yes, explain why below.

SRBA Claim? yes - pending

Adjust memo _____

Amend Letters

P87, S06

Second Amendment Notice

P44 S06

- Lori added the tributary to gw because well is ~~right~~ by the stream and any overflow goes back into stream per phone con. 12/19 KW

MEMORANDUM

TO: File 63-09642

FROM: KAY WALKER 

RE: Measuring Device Condition

Date: December 19, 2002

Lee Sisco called me this morning regarding the measuring device requirement on this permit. Mr. Auch had contacted him yesterday to see what could be done. Lee says there is no regulation occurring in the area of this diversion and until the SRBA is completed there would be no regulation unless problems come up. Lee suggested that we change the condition to require a device be installed in the future when it is determined a device is necessary.

RECEIVED
DEC 18 2002

Department of Water Resources

December 18, 2002

Kay Walker
State of Idaho
Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

RE: Permit Number 63-09642

Dear Ms. Walker:

Middle Fork Corporation is requesting removal of the requirement for a measuring device for permit number 63-09642. Field examiner Laurie Graves was able to conduct the time fill measurement without a measuring device September 2002. I have also been in contact with Lee Sisco, watermaster of Water District No. 63 and there is no monitoring of the water in this area at this time. If monitoring is started in this area a monitoring device may need to be installed at that time. Mr. Sisco also said he will be contacting you regarding this permit.

If this does not fulfill your request for permit number 63-09642 and you need more information please do not hesitate to contact me at 208-362-1930 or Jane Stone at 208-462-4006.

Sincerely,



Greg Auch
Middle Fork Association



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 19, 2002

MIDDLE FORK ASSOCIATION
C/O JANE STONE
11477 HIGHLANDER
BOISE ID 83709

RE: Permit No. 63-09642

Dear Permit Holders:

We are reviewing the above referenced permit so we can issue a license for the mining use that was developed. In a review of our file we notice that you have not complied with a condition of approval of the permit. The condition we are referring to is on your permit as follows:

A measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.

Our field examiner found no measuring device on your diversions and we must resolve this issue before a license can be issued. Pursuant to Section 42-219(6), Idaho Code, if the conditions of approval on a permit are not complied with, we may issue an order voiding the permit or issue a license for only a portion of the uses developed under the permit. You have a couple of options that you can take to resolve this problem. You could either submit documentation that you have complied with this condition and our examiner was not informed of the compliance at the time of the exam; install the measuring devices, as required on your permit; or request removal of this requirement from your permit. If you request removal of the requirement you should also submit documentation that this request would be acceptable to the watermaster of Water District No. 63.

We will withhold further action on this permit for 30 days from the date of this letter in order to allow you time to respond. If we do not receive a response from you within this time period we will assume you are not interested in pursuing a water right license and will take action as suggested above.

If you have any questions in regard to this matter, please do not hesitate to contact me at 208-327-7944.

Sincerely,

KAY WALKER
Sr. Water Resource Agent

Walker, Kay

From: Walker, Kay
Sent: Monday, November 18, 2002 1:12 PM
To: Graves, Lori
Cc: Walker, Kay
Subject: No compliance with measuring device condition

Lori: Attached is a copy of the letter I had to send out to the Middle Fork Assn. No. 63-9642... I wanted to let you know that they are getting the letter and that you should be asking them to submit a request for removal when you do the field work so we can just prepare an order when the exam gets over here. The rules and regs (37.03.02.02.d) state that an exam is not acceptable unless the measuring device requirement has been formally waived by the director. I would appreciate it if you could get the ball rolling by telling them to submit a request to remove or install the device, whichever case applies. In this case, if Lee tells them they don't need one and we have that in writing, a request for removal of the condition along with Lee's statement, we can remove so we can issue license. Hope this makes sense ----- Kay



63-9642 md,wd.doc

Do Not Film, please -

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No: 63-9642

Exam Date: 10/11/02

1. Current Owner: MIDDLE FORK ASSOC
C/O JANE STONE
11477 HIGHLANDER
BOISE ID 83709
(208)462-4006
2. Accompanied by: Jane Stone, Greg Auch
Phone No:
Address:
Relationship to Permit Holder:

3. **SOURCE**GROUND WATER
PHIFER CREEK**TRIBUTARY**MIDDLE FORK BOISE RIVER
MIDDLE FORK BOISE RIVER**B. OVERLAP REVIEW**

1. Other water rights with the same place of use:
2. Other water rights with the same point of diversion:

C. DIVERSION AND DELIVERY SYSTEM1. **LOCATION OF POINT(S) OF DIVERSION:**

GROUND WATER	SW1/4NE1/4	Sec. 35,	Twp 06N,	Rge 09E, B.M.
ELMORE County				
PHIFER CREEK	SW1/4SW1/4	Sec. 36,	Twp 06N,	Rge 09E, B.M.
ELMORE County				

Method of Determination: GPS Reading, Topo, Exam

2.

PLACE OF USE: MINING

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	09E	2						X											
								L 4											
06N	09E	35			X	X				X	X				X	X	X	X	
06N	09E	36			X				X	X	X	X							

Method of Determination: BLM Mining Claim File

3. ☐ Y ☐ Delivery System Diagram Attached (required). Indicate all major components and distances between components. Indicate weir size/pipe as applicable.
- ☐ Y ☐ Map Attached Showing Location(s) of point(s) of diversion and place(s) of use (required). Scale must be 1:24,000 or greater.
- ☐ Y ☐ Aerial Photo Attached (required for irrigation of 10+ acres).
- ☐ Y ☐ Photo of Diversion and System Attached

4.

<u>Well or Diversion ID No.*</u>	<u>Motor Make</u>	<u>Hp</u>	<u>Motor Serial No.</u>	<u>Pump Make</u> Artesian ☐	<u>Pump Serial No. or Discharge Size</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

*Code to correspond with No. on map and aerial photo

D. FLOW MEASUREMENTS

1.

<u>Measurement Equipment</u>	<u>Type</u>	<u>Make</u>	<u>Model No.</u>	<u>Serial No.</u>	<u>Size</u>	<u>Callb. Date</u>
5 gal bucket	_____	_____	_____	_____	_____	_____
55 gal barrel	_____	_____	_____	_____	_____	_____

2. Measurements: 5 gal in 9.6 sec
55 gal in 20 sec

E. FLOW CALCULATIONS

_____ Additional Computation Sheets Attached

Measured Method:

Well: $\frac{5 \text{ gal} \times 60 \text{ sec}}{9.6 \text{ sec}} = 31.2 \text{ gpm} = .07 \text{ cfs}$

Creek: $\frac{55 \text{ gal} \times 60 \text{ sec}}{20 \text{ sec}} = 165 \text{ gpm} = .37 \text{ cfs}$

F. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$$

$$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation season}) \times 1.9835 =$$

$$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} =$$

2. Volume Calculations for Other Uses:

Required: $196 \text{ gpm} \times 60 \text{ min/hr} \times 10 \text{ hrs/dy} \times 215 \text{ dys/yr} = 77.6 \text{ afa}$

325850

Potential: $.44 \text{ cfs} \times 215 \text{ dys/yr} \times 1.9835 = 187.6$ **G. NARRATIVE/REMARKS/COMMENTS**

A 6 inch artesian well, free flowing 31 gpm at 78 degrees, is used for mining sifting and clean-up via 75 feet of 2 inch pvc portable hose. The well was originally drilled for Weatherby Sawmill, which no longer exists. No records were found on the well construction. The well is also used to fill a porcelain bathtub used by campers and hunters for clean-up. The well is not valved and is located approximately 50' above the Middle Fork of the Boise River.

At the time of the exam, 2000 feet of above ground pipe, starting at 6 inch and graduating down to 2 inch, was used to divert Phifer Creek water to a .2 af settling pond. The pipe primarily followed the drainage to the settling pond. The applicants stated that they divert the water from the settling pond via 5 hp portable pump and pvc pipe if they need to use it in other areas of their mining operation. According to the applicants, the primary use of the water is for material sifting which involves the use of trommels and jigs. The portable pump, trammels and jigs were not on site at the time of the exam. Applicants stated that gold prices dictate the amount the claims are worked. Currently gold prices are low. They also stated that vandalism is a major problem since the claims are located on public lands, which explains why everything is portable.

Lynn McClure with BLM verified that the Middle Fork Associates had Idaho Mining Claim No.s 181283, 181284 and 181285, aka Wishful 1, 2 and 3. The claims are not patented and limited to locatable minerals, which include gold, silver, ore etc. The claims are restricted from removing salable minerals, which include rock, gravel, top soil etc. Because the claims are not patented, BLM owns the property. The recommended P/U represents the three mining claims' P/U on file with BLM. The area listed in the NWNW S2 appears to lie in Gov Lts 4 and 5.

Members of Middle Fork Associates include: Patty and Greg Auch
Earl Tyner
Jane Stone
Jim and Karen Sayko
Evoyne Gerany

Have conditions of permit approval been met? ____Yes ____X__No Measuring devices were not found.

H. RECOMMENDATIONS**1. Recommended Amounts**

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
MINING	04/01 to 11/01	0.440 CFS	77.60 AF
	<u>Totals:</u>	0.440 CFS	77.60 AF

2. Recommended Amendments

☒ Change P.D. as reflected above ____Add P.D. as reflected above ____None

☒ Change P.U. as reflected above ____Add P.U. as reflected above ____Other

I. AUTHENTICATION

Field Examiner's Name _____ Date _____

Reviewer _____ Date _____

26

25

Weather
Landing Strip

BM 4449

Middle Bridge

36

Artesian Well P/D

Discharge Pond

Phifer Creek P/D

Phifer

Dutch Creek
Forest Service Station

N A T I

Creek

RECEIVED

JUL 28 2003

Department of Water Resources

Richard D. Himberger
HIMBERGER LAW OFFICES, CHTD.
575 East ParkCenter Blvd., Suite 100
Boise, Idaho 83706
Telephone: (208) 336-8442
Fax No.: (208) 336-1690
ISB # 5038

Attorney for Middle Fork Association

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

NOTICE OF APPEARANCE

Case No. 39576

SUBCASE NO. 63-09642

YOU WILL PLEASE TAKE NOTICE that Richard D. Himberger of Himberger Law
Offices, Chtd. hereby enters the appearance as attorney of record for Middle Fork Association in
the above-entitled action and requests service of any and all documents filed in this case as
counsel for Middle Fork Association.

DATED this 21st day of July, 2003.

HIMBERGER LAW OFFICES, CHTD.

By: R. D. Himberger
Richard D. Himberger— Of the Firm

NOTICE OF APPEARANCE- 1

COPY

Himberger Law Offices, Chtd.
575 E. Park Center Blvd., Ste. 100
Boise, Idaho 83706
(208) 336-8442

1
2 **CERTIFICATE OF SERVICE**

3
4 I HEREBY CERTIFY that on the 21st day of July 2003, I caused to be served a true and
5 correct copy of the foregoing **Notice of Appearance** by depositing the same in the United States
6 Mail, postage prepaid, and addressed to the following:
7

8 United States of America
9 Represented by:
10 David Negri
11 US Department of Justice
12 Environment & Natural Resource
13 550 West fort Street, MSC 033
14 Boise, Idaho 83724

15
16 Middle Fork Association
17 C/O Jane Stone
18 11477 Highlander Road
19 Boise, Idaho 83709

20
21 Director of IDWR
22 P.O. Box 83720
23 Boise, Idaho 83720-0098

24
25 Chief, Natural Resource Division
26 Office of the Attorney General
27 State of Idaho
28 P.O. Box 44449
Boise, Idaho 83711-4449

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