

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

Transfer No. 80552

# COPY

## MINIMUM REQUIREMENTS CHECKLIST

TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at [www.idwr.idaho.gov](http://www.idwr.idaho.gov).

Name of Applicant(s) Island Woods Homeowners Association, Inc.

**Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.**

**Yes** **N/A** \* Means the item is always required and must be included with the application.

- ☒ \* Completed Application for Transfer of Water Right form, Part 1.
- ☒ \* Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ \* Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded.
- ☐ ☒ Complete and attach an Application for Transfer Part 2B for each water right for which only a portion is proposed to be changed through this transfer application.
- ☒ \* Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ \* Correct fee submitted with transfer application form. (Fee schedule is on website and instructions for application for transfer.)

**Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-10.**

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the applicant as the current water right owner. \*\*
- ☐ ☒ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s).\*\*  
\*\* Additional fee(s) required for water right ownership changes; see fee schedule.
- ☒ ☐ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☒ ☐ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☒ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at [www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm](http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm).
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ \* #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☒ ☐ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.
- ☒ ☐ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See ~~Part 3B~~ Part 1A.2) Additional fee required for proposed changes to nature of use; see fee schedule.
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☒ #9 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. (Attachment WSB)
- ☒ ☐ #10 Other. Please describe: See Part 1A.2 Narrative and Exhibits attached hereto.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 1**

RECEIVED  
NOV 25 2015  
DEPARTMENT OF WATER RESOURCES  
WESTERN REGION  
NOV 24 2015

Name of Applicant(s) Island Woods Homeowners Association, Inc. Phone (208) 939-6000

Mailing address PPO Box 193, Eagle, Idaho 83616 Email \_\_\_\_\_

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative Shelley Davis, Barker Rosholt & Simpson Phone 208 336-0700

Mailing address PO Box 2139, Boise, ID 83701 Email smd@idahowaters.com

- ☒ Send all correspondence for this application to the representative and not to the applicant.  
OR
- ☐ Send original correspondence to the applicant and copies to the representative.
- ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.  
OR
- ☒ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4. #3**

**I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.**

\_\_\_\_\_  
Signature of Applicant or Authorized Representative      Print Name and Title if applicable      Date

\_\_\_\_\_  
Signature of Applicant or Authorized Representative      Print Name and Title if applicable      Date

**A. PURPOSE OF TRANSFER**

1. ☒ Change point of diversion      ☐ Add diversion point(s)      ☒ Change place of use  
☒ Change nature of use      ☐ Change period of use      ☐ Other \_\_\_\_\_
2. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**.  
See Part 1A.2 attached hereto  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

## APPLICATION FOR TRANSFER OF WATER RIGHT PART 1 Continued

**B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.**

| 1.                                                                          | Right Number | Amount<br>(cfs/ac-ft) | Nature of Use        | Period of Use | Source & Tributary       |
|-----------------------------------------------------------------------------|--------------|-----------------------|----------------------|---------------|--------------------------|
| All or Part<br><input checked="" type="checkbox"/> <input type="checkbox"/> | 63-32594     | ac-ft                 | aesthetic storage    | 1/1 to 12/31  | groundwater; Boise River |
| <input checked="" type="checkbox"/> <input type="checkbox"/>                |              | 0.23 cfs              | irrigation           | 3/1 to 11/15  | groundwater; Boise River |
| <input checked="" type="checkbox"/> <input type="checkbox"/>                |              | 0.23 cfs              | diversion to storage | 3/1 to 11/15  | groundwater; Boise River |
| <input checked="" type="checkbox"/> <input type="checkbox"/>                | 63-32596     | ac-ft                 | aesthetic storage    | 1/1 to 12/31  | groundwater; Boise River |
| <input checked="" type="checkbox"/> <input type="checkbox"/>                |              | 0.55 cfs              | irrigation           | 3/1 to 11/15  | groundwater; Boise River |
| <input checked="" type="checkbox"/> <input type="checkbox"/>                |              | 0.55 cfs              | diversion to storage | 3/1 to 11/15  | groundwater; Boise River |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |                      | to            |                          |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |                      | to            |                          |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |                      | to            |                          |

Total authorized under rights 0.78 cfs and/or 326 acre-feet.

2. Total amount of water proposed to be transferred or changed 0.78 cubic feet per second and/or 326 acre-feet per year.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)  
☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA.  
 Label it **Attachment #5**.

| New ? | Lot | ¼  | ¼  | ¼ | Sec | Twp | Rge | County | Source      | Local name or tag # |
|-------|-----|----|----|---|-----|-----|-----|--------|-------------|---------------------|
|       | 6   | NE | SW |   | 16  | 4N  | 1E  | Ada    | groundwater |                     |
|       | 6   | SE | SW |   | 16  | 4N  | 1E  | Ada    | groundwater |                     |
|       | 5   | NW | SW |   | 16  | 4N  | 1E  | Ada    | groundwater |                     |
|       |     |    |    |   |     |     |     |        |             |                     |
|       |     |    |    |   |     |     |     |        |             |                     |

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

| Twp                              | Rge | Sec | NE ¼ |    |    |    | NW ¼ |    |    |    | SW ¼ |    |    |    | SE ¼ |    |     |    | Acre Totals |
|----------------------------------|-----|-----|------|----|----|----|------|----|----|----|------|----|----|----|------|----|-----|----|-------------|
|                                  |     |     | NE   | NW | SW | SE | NE   | NW | SW | SE | NE   | NW | SW | SE | NE   | NW | SW  | SE |             |
| 4N                               | 1E  | 16  |      |    |    |    |      |    |    |    | 5.5  | 9  | 8  |    |      |    | 0.5 |    | 23          |
|                                  |     | 16  |      |    |    |    |      |    |    |    | J    | J  | J  |    |      |    |     |    |             |
|                                  |     | 21  |      |    |    |    | J    | 2  |    |    |      |    |    |    |      |    |     |    | 2           |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |     |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |     |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |     |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |     |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |     |    |             |
| Total Acres (for irrigation use) |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |     |    | 25          |

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

## APPLICATION FOR TRANSFER OF WATER RIGHT PART 1 Continued

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:  
Naturally occurring shallow groundwater fills 12 ponds in the subdivision, and 3 of those ponds re-divert water for the pressurized irrigation system. Of the 39 acres under water rights, only approximately 25 acres to be irrigated.  
Will accommodate whatever measuring device or lockable controlling works should they be required in future.

- b. Who owns the property at the point(s) of diversion? Applicant  
 If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:  
 \_\_\_\_\_  
 \_\_\_\_\_

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?  
 If yes, ☐ attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: N/A

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?  
 If yes, ☐ complete Attachment WSB.
- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:  
No effect on the land.  
 \_\_\_\_\_  
 \_\_\_\_\_

- f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- g. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- |                                     |                                     |                                                                                               |
|-------------------------------------|-------------------------------------|-----------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | undergone a period of five or more consecutive years of non-use,                              |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | currently leased to the Water Supply Bank,                                                    |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | currently used in a mitigation plan limiting the use of water under the right, or             |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | currently enrolled in a Federal set-aside program limiting the use of water under the rights? |

If yes, describe:

The developer transferred water rights to the HOA without any information concerning the development of the irrigation and pond system. There is buried pipeline and although there are two potential surface water connectivity for the existing irrigation and aesthetic uses it cannot be determined with certainty at this time.





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## **Part 1A.2**

### **Narrative Description**

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## Part 1A.2

### Narrative Description Re Application for Transfer

Island Woods HOA is the owner of two surface water rights from the Boise River, 63-32594 & 63-32596, with a combined delivery of 0.78 cfs of water for 39 acres of property. Prior to the development of the subdivision by Dennis Baker and B.W. Inc., the land was irrigated as pasture. In the development of the land, in or about 1992, B.W. Inc., sought approval for the excavation of twelve (12) shallow groundwater ponds, covering approximately 16.3 acres—three (3) of which acted as a point of diversion for the irrigation of roughly twenty-five (25) acres of common area in the subdivision. The application consisted of Application for Permit No. 63-11900 for shallow ground water tributary to the Boise River; Application for Transfer No. 67986 to use a portion of water right 63-196 to mitigate consumptive use from the ponds; and Stream Channel Permit No 63-S-912 to authorize return flows. *See IDWR Backfiles.*

In correspondence dated October 26, 2004, IDWR acknowledged that the applications were unresolved for multiple reasons—but primarily attributable to “internal details” of IDWR, ownership changes, and/or disposition of original water rights 63-196 & 63-197 in the SRBA. *See Exhibit A* attached hereto.

In a memorandum dated February 10, 2005, the department indicated that the Permit Application 63-11900 and Transfer Application 67986 (previously 4273) were void, and that the department was awaiting full recognition of the aforementioned rights for a smoother transfer process. *See Exhibit B*, attached hereto. Water rights 63-196 & 63-197 were split and partially decreed in the SRBA in 2008 and exist as 63-32594 & 63-32596.

Historically, based on the Stewart Decree and subsequent water master records, right no. 63-32594 was decreed as no. 64 in the Stewart Decree and its original point of diversion was Thurman Mill Slough, however, subsequently according to the water master records, that appears to have been moved to New Dry Creek. Right no. 63-32596 was no. 118 in the Stewart Decree its’ original point of diversion was listed as the Conway & Hamming ditch. *See Exhibit C.*

Island Woods HOA is now seeking to finalize what B.W. Inc. (and Mr. Baker), and the Department started previously, which is the transferring of its surface water irrigation rights into its naturally occurring shallow groundwater rights for aesthetic uses, diversion to storage, and irrigation purposes. Island Woods HOA proposes that its rights maintain its priority date.

As proposed, Island Woods consumptive use will be covered during the irrigation season by a reduction of acres in the underlying water rights, while consumptive use outside of the irrigation season will be negligible—noting that with the development of the subdivision consumptive use would decline. *See Exhibit D.*

The naturally occurring shallow groundwater fills twelve (12) ponds, with a surface area total of approximately 16.3 acres and average depth of around 20 feet. Three (3) of the ponds act as a point of diversion to re-divert water to the pressurized irrigation system for the common area. Instead of the decreed use for 39 acres, irrigation is for approximately 23.7 acres.

The 25 acres of irrigation will be one-for-one, because they are the same use. The remaining 14 acres are offered to mitigate for the 16.3 acres of pond surface. The 16.3 acres of pond surface have an average precipitation deficit of 2.15 feet per year (*Allen, Richard G. and Clarence W. Robison, 2006 (revised 2007). **Evapotranspiration and Consumptive Irrigation Requirements for Idaho**, Research Technical Completion Report, Kimberly Research and Extension Center, University of Idaho, Moscow, ID*), which is 35 ac-ft per year. Prior to development, the land was maintained as pasture. The consumptive use of pasture grass (low management) is an average of 2.5 feet per year. 14 acres of pasture grass (low maintenance) has an average consumptive use rate of 35 ac-ft per year and fully compensates for the 16.3 acres of pond surface (35 ac-ft per year). *Exhibit E* contains the Precipitation Deficit tables cited.

# Exhibit A

Exhibit A



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

FAX (208) 334-2348

**DIRK KEMPTHORNE**  
Governor

**KARL J. DREHER**  
Director

October 26, 2004

DENNIS BAKER  
BW INC  
250 S BEECHWOOD STE 120  
BOISE ID 83709

**Re: Water Rights for Island Woods Subdivision Water Amenity Ponds**

Dear Mr. Baker:

In 1992 you filed the following applications on behalf of B. W. Incorporated to develop a water amenity system of ponds for the Island Woods Subdivision on Eagle Island:

- Application for Permit No. 63-11900 to appropriate shallow ground water tributary to the Boise River to initially fill the ponds
- Application for Transfer No. 67986 to use a portion of Boise River decreed irrigation water right 63-196 to mitigate consumptive use from the ponds
- Application for Stream Channel Permit No. 63-S-912 to authorize return flows from the ponds to the river.

*pond status unknown*

The applications have remained unresolved for a number of reasons. The lack of progress in this matter is primarily attributed to internal details of the Idaho Department of Water Resources (IDWR) processes instead of any lack of good faith efforts by the applicant. I sent you a letter a couple years ago using the address from the application records. The letter was returned as undeliverable. It was not until lately that a new address was identified for your company. Several critical factors have prompted this letter to you after the long delay in resolving the water right scenario for the subdivision ponds: probable ownership changes for the property and associated water rights, the disposition of older water rights 63-196 and 63-197 for the property via the Snake River Basin Adjudication (SRBA) process, and the use of surface and/or ground water for the ponds but not in compliance with authorized water rights.

Apparently the subdivision has historically been irrigated with decreed irrigation rights 63-196 and 63-197 from the Boise River. Additionally, B. W. Inc. secured licensed

October 26, 2004

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water right 63-11467 to provide domestic and irrigation water to the subdivision from drilled wells. That license became part of the United Water Idaho Inc. municipal water rights. Municipal rights can serve the subdivision. None of these water rights authorize the use of surface water or shallow ground water for ponds in the subdivision.

Most likely, your company does not retain any ownership interest in the subdivision and does not want nor need to pursue the necessary water right approvals for the ponds. It is not clear who currently owns the surface water irrigation rights for the site. SRBA claims were filed in 1989 by Lois Joplin to protect the irrigation water rights from the river (63-196 and 63-197). United Water owns the ground water right from the wells (63-11467). Homeowners own individual lots in the subdivision. An active homeowners association has been identified for the subdivision based on information from the Idaho Secretary of State "business entity registration" on the Internet.

Based on typical encounters with scenarios such as this, it is reasonable to conclude that water rights to fill and maintain the ponds should be held by the homeowners association. Alternately, ownership of, and/or responsibility for, the ponds could include another entity that maintains the ponds on behalf of the homeowners. In any event, the owner or otherwise responsible entity needs to address SRBA concerns and eventual water right approval for the water amenity in the subdivision.

The SRBA process is currently focused on Ada County. It is expected that preliminary SRBA recommendations will be made by next spring, and a Director's Report summarizing Ada County water rights developed and used by late 1987 should be reported to the SRBA Court by next summer. The ponds cannot be part of the SRBA process since they were developed after 1987. Current owners of Boise River water rights 63-196 and 63-197 should file ownership changes with IDWR to assure proper inclusion in the SRBA process and the final disposition of those rights by the Court. Additionally, ownership changes for water rights are required under Idaho law.

By copy of this letter, the homeowners association is invited to explore the idea of filing an ownership change for SRBA claims 63-196 and 63-197 to protect those older irrigation rights. An ownership change for those rights is not required if Lois Joplin still owns those rights. The SRBA does not apply to municipal right 63-11467 since it was developed after 1987.

Successful conclusion of the SRBA process is the most immediate water right issue facing the subdivision. Following that step, securing water right protection for the ponds should be addressed. It is possible to pursue both steps simultaneously but perhaps that is overly complicated at this time. The water right owner's interests are probably best served by pursuing the SRBA process and then tackling water right approval for the ponds.

October 26, 2004

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**Several options are available for various parties at this time as discussed below.**

1. B. W. Inc. can withdraw Application nos. 63-11900, 67986 and 63-S-912 by submitting a letter of withdrawal to IDWR. In that event, IDWR will contact the current owner(s), once determined, of Boise River water rights 63-196 and 63-197 and discuss water right issues for the ponds.
2. B. W. Inc. can assign Application nos. 63-11900, 67986 and 63-S-912 to the current property owner(s). As previously noted, the homeowners association is a likely candidate. The first application can be assigned with the enclosed form. The other two applications can be assigned using a notarized letter. There are no fees associated with the assignment action. Assignments will remove B. W. Inc. from the subdivision scenario regarding the necessary water right protection for the ponds.
3. Application nos. 63-11900, 67986 and 63-S-912 will be voided if B. W. Inc. chooses not to complete either of those steps by December 31, 2004. A reply from B. W. Inc. is not needed in that case.
4. The current owner(s) of water rights 63-196 and 63-197 should file an ownership change with IDWR to update SRBA claim records. There is no fee to do this. These water rights are considered appurtenant to the place of use described by the rights unless the rights were specifically withheld during any real property transaction (sale, gift etc.). While individual subdivision lot owners could file individual ownership changes for prorated portions of the water rights, a more efficient and manageable approach is for an entity, e.g., homeowners association, to do this on behalf of individual lot owners.

Regardless of the B. W. Inc. decision for the three applications associated with the ponds, IDWR will contact the current owner(s) of water rights 63-196 and 63-197 once that ownership is determined. IDWR will work with the current owner(s) to resolve water right issues for the subdivision ponds.

**Summary**

- B. W. Inc. can decide what to do with Application nos. 63-11900, 67986 and 63-S-912 by the end of this year.
- The current owner(s) of SRBA claims 63-196 and 63-197 should file an ownership change with IDWR by the end of this year to protect those 1877 Boise River irrigation rights.

October 26, 2004

Page 4

- IDWR will coordinate its SRBA work with the owners of record for SRBA claims. The owners of record are those parties listed in the claims. SRBA work will continue this winter and through next summer before concluding with a Director's Report to the SRBA Court. The eventual outcome of the SRBA process will affirm, deny or modify the validity and extent of those irrigation rights.
- IDWR will coordinate the necessary steps to address water right protection for the ponds in the subdivision. Most likely, this follow up will begin in earnest after IDWR completes its SRBA work for the older irrigation water rights. Use of water for the ponds must be treated as an illegal diversion of water subject to enforcement actions by IDWR if water right protection for the ponds cannot eventually be obtained. This office will work with current owners to avoid such enforcement actions as much as possible.

Thank you for your patience is sorting through this long letter. Please call me at 334-2190 if you would like to discuss this in more detail.

Sincerely,



Steve Lester  
Water Rights Supervisor

Enclosure

Copy (without enclosure):

Mark Walton, Island Woods Homeowners Association  
Lois Joplin, SRBA Claimant for 63-196 and 63-197  
Jeff Fereday, Attorney at Law, Givens Pursley LLP  
Scott Rhead, United Water Idaho Inc.

# Exhibit B

Exhibit B

RECEIVED

FEB 14 2005

DEPARTMENT OF  
WATER RESOURCES

**MEMORANDUM**

TO: Gary Spackman and Erv Ballou *Gary*  
FROM: Steve Lester *SL*  
DATE: February 10, 2005  
RE: B W Inc. Applications for Island Woods Subdivision

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This memo is addressed to both of you regarding water right and stream channel applications filed many years ago for a pond project at Island Woods Subdivision on Eagle Island. See my 10/26/04 letter for a summary of the background in this matter.

As noted in that letter, it is too late in the day to arrive at a water rights solution before SRBA recommendations are made for Ada County. The recommended path was to allow SRBA to do it work and then revisit the water rights. The current homeowner association contact is Mark Walton, 938-6076. I talked to him recently, and he is working on an ownership change for decreed rights 63-196 and 63-197 associated with the subdivision. I imagine the eventual SRBA result will be full recognition of those rights, clearing the way for a smoother transfer process for all concerned.

Once the notice of error process is completed for SRBA recommendations, I will work with the association regarding the necessary water right coverage for shallow ground water ponds already developed at the subdivision. The good news is that we are much better now at covering ponds than we were in the past (unfortunately from too much practice in recent years!). This situation is set for call up early this summer to resume working on pond issues. Walton said the association concurs with that approach.

Instead of voiding the stream channel application in the 1/24/05 order, it seemed better to forward that file to Erv. SCA issues can be looked into at his discretion. I'll be sure to remind the association not to overlook that when the water rights for ponds are revisited.

The January 2005 order is now final (no petition filed). Transfer Application 67986 (previously 4273) and Permit Application 63-11900 are void. Application status for both filings was changed to "void" in the database.

I hope this approach meets with your approval. It's not ideal but seemed best under the circumstances. Please let me know if you have concerns about this plan.

Copy: Kimberly Brown for SRBA Claims

# Exhibit C

Exhibit C

**ISLAND WOODS HOA RIGHT NO.**

**63-32594**

**STEWART DECREE NO. 64**

LXIV.

That the defendant Isham Joplin be, and he is hereby awarded the use of the waters of Boise River, diverted at a point in SE 1/4 of NE 1/4 of Sec. 5, T. 3 N. R. 2 E. B.M., through what is known as the Thurman Mill Slough, for use upon the E. 1/2 of SE 1/4 of Sec. 21, and SW 1/4 of SW 1/4 of Sec. 22, all in T. 4 N. R. 1 E. B.M., in the following amount and from the following date;

120 inches, from June 1, 1880, and hereby designated as Right No. 75. And be adjudged to pay \$8.40 costs in addition to the costs incurred by him.

LXV.

That the defendant JOSEPH GOBLE be, and he is hereby awarded the use of the waters of Boise River, diverted from said river at a point in SE 1/4 of NE 1/4 of Sec. 5, T. 3 N. R. 2 E. B.M., through what is known as the Thurman Mill Slough, for use upon the SW 1/4 of SE 1/4 of Sec. 22, T. 4 N. R. 1 E. B.M., in the following amount from the following date;

45 inches, from Oct. 20, 1880, and hereby designated as Right No. 76. And be adjudged to pay \$3.15 costs in addition to the costs incurred by him.

LXVI..

That the defendant SUSIE CAMPBELL be, and she is hereby awarded the use of the waters of Boise River, diverted from said river at a point in SE 1/4 of NE 1/4 of Sec. 5, T. 3 N. R. 2 E. B.M., through what is known as the Thurman Mill Slough, for use upon the following described tract of land; commencing at the NE corner of Sec. 27, T. 3 N. R. 1 E. B.M., and running thence south along the section line between sections 26 and 27 in said township and range to the bottom of the foot of the bluff that runs east and west through the NE 1/4 of NE 1/4 of said section 27, running thence in a westerly direction, following the bottom or foot of said bluff to the west line of said NE 1/4 of NE 1/4 of said section 27, thence north along said line to the NW corner of said NE 1/4 of NE 1/4 of section 27 thence east

## STEWART DECREE

CHART NO. 1

## BOISE RIVER

| NUMBER | DATE       | NAME                               | AMOUNT DECREED |        | DEPT. OF WATER<br>ADMINISTRATION |
|--------|------------|------------------------------------|----------------|--------|----------------------------------|
|        |            |                                    | SEC. FT.       | INCHES |                                  |
| 46     | 6-1-1869   | MASON CREEK DITCH CO.              | 37.20          | 1860   | 63-0179                          |
| 47     | 6-1-1869   | T. W. BOONE                        | 3.50           | 175    | 63-0180                          |
| 48     | 6-1-1870   | W. J. HAMMING                      | 2.60           | 130    | 63-0182                          |
| 49     | 6-1-1870   | PIONEER CANAL                      | 25.72          | 1286   | 63-0183                          |
| 50     | 6-1-1870   | BARBER LUMBER CO.                  | 2.24           | 112    | 63-0184                          |
| 51     | 6-1-1870   | THOMAS ANDREWS                     | 1.30           | 65     | 63-0129                          |
| 52     | 6-1-1871   | CATLIN & MACE                      | 7.86           | 393    | 63-0133                          |
| 53     | 6-1-1871   | PETER MEEVES                       | 1.80           | 90     | 63-0185                          |
| 54     | 6-1-1871   | MIDDLETON HILL DITCH CO.           | 33.70          | 1685   | 63-0125                          |
| 55     | 6-1-1872   | J. F. YARYAN                       | .70            | 35     | 63-0142                          |
| 56     | 6-1-1872   | J. F. YARYAN                       | 1.40           | 70     | 63-0143                          |
| 57     | 6-1-1872   | MARY C. DAVIS                      | 4.40           | 220    | 63-0186                          |
| 58     | 6-1-1872   | EDWARD N. HART                     | 3.30           | 165    | 63-0187                          |
| 59     | 6-1-1874   | T. W. BOONE                        | 2.20           | 110    | 63-0181                          |
| 60     | 6-1-1875   | FARMERS COOPERATIVE DITCH CO.      | 10.00          | 500    | 63-0188                          |
| 61     | 6-1-1876   | EDWARD & MARY CLARK                | 2.30           | 115    | 63-0192                          |
| 62     | 6-1-1876   | JOHN CECIL                         | .44            | 22     | 63-0193                          |
| 63     | 6-1-1877   | THOMAS AIKENS                      | 5.20           | 260    | 63-0194                          |
| 64     | 6-1-1877   | W. H. CONWAY                       | .90            | 45     | 63-0196                          |
| 65     | 6-1-1877   | MIDDLETON WATER CO.                | 114.08         | 5704   | 63-0198                          |
| 66     | 7-1-1877   | PERRAULT & JOHNSON (POWER)         | 200.00         | 10000  | 63-0162                          |
| 67     | 5-1-1878   | NAMPA MERIDIAN IRRIGATION DISTRICT | 170.00         | 8500   | 63-0199                          |
| 68     | 6-1-1878   | JOHN MAMMON                        | 4.20           | 210    | 63-0175                          |
| 69     | 6-1-1878   | JULIA MAMMON                       | 3.36           | 168    | 63-0201                          |
| 70     | 6-1-1878   | CHARLES ALLEN                      | 8.80           | 440    | 63-0202                          |
| 71     | 6-1-1878   | R. H. STOCKTON                     | 4.40           | 220    | 63-0203                          |
| 72     | 6-1-1879   | NEW DRY CREEK DITCH CO.            | 31.32          | 1566   | 63-0205                          |
| 73     | 6-1-1879   | D. HUMFORD                         | 4.00           | 200    | 63-0208                          |
| 74     | 6-1-1880   | SMITH STOCKTON                     | 1.76           | 88     | 63-0209                          |
| 75     | 7-1-1880   | ISHAM JOPLIN                       | 2.40           | 120    | 63-0210                          |
| 76     | 10-20-1880 | JOSEPH GOBLE                       | .90            | 45     | 63-0211                          |
| 77     | 10-29-1880 | FRANKLIN DITCH CO.                 | 27.60          | 1380   | 63-0167                          |
| 78     | 6-1-1882   | ALLEN V. WEBSTER                   | .90            | 45     | 63-0140                          |
| 79     | 6-1-1882   | SUSIE CAMPBELL                     | .60            | 30     | 63-0212                          |
| 80     | 6-1-1882   | J. T. BARBER                       | 1.60           | 80     | 63-0213                          |
| 81     | 6-1-1882   | SONORA JOPLIN                      | 3.40           | 170    | 63-0214                          |
| 82     | 6-1-1882   | S. W. HUTCHINSON                   | .44            | 22     | 63-0217                          |
| 83     | 6-1-1882   | JOHNSON                            | .44            | 22     | 63-0218                          |
| 84     | 6-1-1882   | ANDREW J. JOPLIN                   | 2.86           | 143    | 63-0219                          |
| 85     | 6-1-1882   | JAMES L. GRAHAM                    | 2.20           | 110    | 63-0220                          |
| 86     | 6-1-1883   | FARMERS COOPERATIVE DITCH CO.      | 20.00          | 1000   | 63-0189                          |
| 87     | 6-1-1883   | FRANCIS M. JOPLIN                  | .90            | 45     | 63-0221                          |
| 88     | 6-1-1883   | W. A. BLACK                        | 12.00          | 600    | 63-0222                          |
| 89     | 11-9-1883  | EUREKA DITCH CO. NO. 2             | 21.70          | 1085   | 63-0223                          |
| 90     | 6-1-1884   | PIONEER IRRIGATION DISTRICT        | 53.10          | 2655   | 63-0371                          |

## STEWART AND BRYAN DECREES GROUPED UNDER CANAL HEADINGS

CHART NO. 9

| NAME OF CANAL | CHANGE IN<br>P. OF D. | TRANSFER | PRIORITY |          | AMOUNT DECREED    |                                  |                 |        | TOTAL<br>SEC. FT. |
|---------------|-----------------------|----------|----------|----------|-------------------|----------------------------------|-----------------|--------|-------------------|
|               |                       |          | NO.      | DATE     | STEWART<br>DECREE | INTERVENORS<br>STEWART<br>DECREE | BRYAN<br>DECREE | INCHES |                   |
| NEW DRY CREEK |                       |          | 72       | 6-1-1879 | 31.32             |                                  |                 | 1566   |                   |
|               |                       |          | 99       | 6-1-1886 | 15.22             |                                  |                 | 761    |                   |
|               |                       |          | 97       | 6-1-1888 | 7.86              |                                  |                 | 393    |                   |
|               |                       |          | 129-A    | 4-1-1897 |                   | .54                              |                 | 27     |                   |
|               |                       |          | 73-A     | 4-1-1880 |                   | .54                              |                 | 27     |                   |
|               |                       |          | 74-A     | 6-1-1880 |                   | 1.816                            |                 | 90.8   |                   |
|               |                       |          | 85-C     | 5-1-1883 |                   | .2292                            |                 | 11.16  |                   |
|               |                       |          | 85-E     | 5-1-1883 |                   | .385                             |                 | 19.25  |                   |
|               |                       |          | 124-A    | 5-1-1893 |                   | .825                             |                 | 41.25  |                   |
|               |                       | 300      | 3)       | 6-1-1864 |                   |                                  |                 |        |                   |
|               |                       | 300      | 54)      | 6-1-1871 | .95               |                                  |                 | 17.5   |                   |
|               |                       | 300      | 120)     | 6-1-1891 |                   |                                  |                 |        |                   |
|               |                       | 301      | 3)       | 6-1-1864 |                   |                                  |                 |        |                   |
|               |                       | 301      | 54)      | 6-1-1871 | 1.54              |                                  |                 | 77     |                   |
|               |                       | 301      | 120)     | 6-1-1891 |                   |                                  |                 |        |                   |
|               | 64                    |          | 102      | 6-1-1888 | .20               |                                  |                 | 10     |                   |
|               | 140                   |          | 85-D     | 5-1-1883 |                   | .07                              |                 | 3.5    |                   |
|               | 151*                  |          | 124-A    | 5-1-1893 |                   | .135*                            |                 | 6.75*  |                   |
|               | 161                   |          | 103      | 6-1-1888 | .65               |                                  |                 | 32.5   |                   |
|               | 174                   |          | 103      | 6-1-1888 | .24               |                                  |                 | 12     |                   |
|               |                       | 719      | 90       | 5-1-1866 | .54               |                                  |                 | 27     |                   |
|               | 1009*                 |          | 73-A     | 4-1-1880 |                   | .10*                             |                 | 5*     | 62.0842           |
|               |                       |          |          |          |                   |                                  |                 |        |                   |
| NEW UNION     |                       |          | 14       | 6-1-1865 | 13.76             |                                  |                 | 688    | 13.76             |

## STEWART AND BRYAN DECREES GROUPED UNDER CANAL HEADINGS

CHART NO. 3

| NAME OF CANAL      | CHANGE IN<br>P. OF D. | TRANSFER | PRIORITY |            | STEWART<br>DECREE | AMOUNT DECREED    |                 |        | TOTAL<br>SEC. FT. |
|--------------------|-----------------------|----------|----------|------------|-------------------|-------------------|-----------------|--------|-------------------|
|                    |                       |          | NO.      | DATE       |                   | STEWART<br>DECREE | BRYAN<br>DECREE | INCHES |                   |
| SIEDENBERG         |                       |          | 9        | 6-1-1865   | 13.42             |                   |                 | 671    |                   |
|                    |                       | 105*     | 9        | 6-1-1865   | .50*              |                   |                 | 25*    |                   |
|                    |                       | 717*     | 9        | 6-1-1865   | .64*              |                   |                 | 32*    | 12.28             |
| THURMAN MILL       |                       |          | 7        | 6-1-1864   | 3.30              |                   |                 | 165    |                   |
|                    |                       |          | 10       | 6-1-1865   | 1.20              |                   |                 | 60     |                   |
|                    |                       |          | 11       | 6-1-1865   | .66               |                   |                 | 33     |                   |
|                    |                       |          | 36       | 6-1-1868   | 14.10             |                   |                 | 705    |                   |
|                    |                       |          | 37       | 6-1-1868   | 3.70              |                   |                 | 185    |                   |
|                    |                       |          | 42       | 6-1-1869   | 1.60              |                   |                 | 80     |                   |
|                    |                       |          | 55       | 6-1-1872   | .70               |                   |                 | 35     |                   |
|                    |                       |          | 56       | 6-1-1872   | 1.40              |                   |                 | 70     |                   |
|                    |                       |          | 62       | 6-1-1876   | .44               |                   |                 | 22     |                   |
|                    |                       |          | 75       | 6-1-1880   | 2.40              |                   |                 | 120    |                   |
|                    |                       |          | 76       | 10-20-1880 | .90               |                   |                 | 45     |                   |
|                    |                       |          | 78       | 6-1-1882   | .90               |                   |                 | 45     |                   |
|                    |                       |          | 79       | 6-1-1882   | .60               |                   |                 | 30     |                   |
|                    |                       |          | 81       | 6-1-1882   | 2.60              |                   |                 | 130    |                   |
|                    |                       |          | 84       | 6-1-1882   | 1.50              |                   |                 | 75     |                   |
|                    |                       |          | 87       | 6-1-1883   | .90               |                   |                 | 45     |                   |
|                    |                       |          | 128      | 7-1-1895   | .66               |                   |                 | 33     |                   |
|                    |                       | 412*     | 81       | 6-1-1882   | .40*              |                   |                 | 20*    |                   |
|                    |                       | 736*     | 37       | 6-1-1868   | 1.00*             |                   |                 | 50*    |                   |
|                    |                       | 871*     | 36       | 6-1-1868   | .286*             |                   |                 | 14.4*  |                   |
|                    |                       | 872*     | 36       | 6-1-1868   | .22*              |                   |                 | 11*    |                   |
|                    |                       | 3973*    | 36       | 6-1-1868   | .814*             |                   |                 | 40.7*  | 34.838            |
| UPPER CENTER POINT |                       |          | 23       | 6-1-1865   | 3.20              |                   |                 | 160    |                   |
|                    |                       |          | 24       | 6-1-1865   | 2.40              |                   |                 | 120    |                   |
|                    |                       |          | 25       | 6-1-1865   | 3.94              |                   |                 | 197    |                   |
|                    |                       |          | 26       | 6-1-1865   | 1.60              |                   |                 | 80     |                   |
|                    |                       |          | 27       | 6-1-1865   | 1.58              |                   |                 | 79     |                   |
|                    | 71*                   |          | 24       | 6-1-1865   | .80*              |                   |                 | 40*    |                   |
|                    | 85*                   |          | 24       | 6-1-1865   | .50*              |                   |                 | 25*    |                   |
|                    | 148                   |          | 96       | 10-1-1887  | 3.00              |                   |                 | 150    |                   |
|                    | 159*                  |          | 24       | 6-1-1865   | .10*              |                   |                 | 5*     |                   |
|                    | 289                   |          | 89       | 11-9-1883  | .50               |                   |                 | 25     | 14.82             |

\*SUBTRACT

**ISLAND WOODS HOA RIGHT NO.**

**63-32596**

**STEWART DECREE NO. 118**

## STEWART DECREE

CHART NO. 1

## BOISE RIVER

| NUMBER | DATE       | NAME                               | AMOUNT DECREED |        | DEPT. OF WATER<br>ADMINISTRATION |
|--------|------------|------------------------------------|----------------|--------|----------------------------------|
|        |            |                                    | SEC. FT.       | INCHES |                                  |
| 91     | 6-1-1884   | RIVERSIDE IRRIGATION DISTRICT      | 20.00          | 1000   | 63-0226                          |
| 92     | 10-17-1884 | SETTLERS CANAL CO.                 | 99.06          | 4953   | 63-0230                          |
| 93     | 6-1-1886   | NEW DRY CREEK DITCH                | 15.22          | 761    | 63-0206                          |
| 94     | 6-1-1886   | THOMAS DAVIS                       | 13.40          | 670    | 63-0121                          |
| 95     | 1-23-1887  | WM. C., L. & E. YOUNG              | 4.00           | 200    | 63-0232                          |
| 96     | 10-1-1887  | AMERICAN DITCH ASSOCIATION         | 47.80          | 2390   | 63-0233                          |
| 97     | 6-1-1888   | NEW DRY CREEK DITCH CO.            | 7.86           | 393    | 63-0207                          |
| 98     | 6-1-1888   | A. V. LINDER                       | 4.00           | 200    | 63-0234                          |
| 99     | 6-1-1888   | LEVI SMITH                         | 1.30           | 65     | 63-0235                          |
| 100    | 6-1-1888   | CHARLOTTE CALHOUN                  | 1.40           | 70     | 63-0236                          |
| 101    | 6-1-1888   | ED. J. LINDER                      | 1.46           | 73     | 63-0237                          |
| 102    | 6-1-1888   | LIZZIE EVERETT                     | 1.20           | 60     | 63-0238                          |
| 103    | 6-1-1888   | JESSE WILSON                       | 1.40           | 70     | 63-0239                          |
| 104    | 6-1-1888   | THOMAS ANDREWS                     | .90            | 45     | 63-0130                          |
| 105    | 7-1-1888   | FARMERS COOPERATIVE DITCH CO.      | 50.00          | 2500   | 63-0190                          |
| 106    | 8-20-1888  | NANPA MERIDIAN IRRIGATION DISTRICT | 370.84         | 18542  | 63-0200                          |
| 107    | 5-1-1889   | CHARLES H. MILLER                  | .06            | 3      | 63-0240                          |
| 108    | 5-1-1889   | LOOMIS L. HOSLEY                   | .02            | 1      | 63-0241                          |
| 109    | 5-1-1889   | S. J. UTTER & C. B. TAYLOR         | 2.40           | 120    | 63-0242                          |
| 110    | 5-1-1889   | SOUTH BOISE MUTUAL IRRIGATION CO.  | 6.00           | 300    | 63-0243                          |
| 111    | 5-1-1889   | ESTATE OF J. H. GALLAGHER          | 2.94           | 147    | 63-0244                          |
| 112    | 5-1-1889   | ANNIE H. FOGARTY                   | .05            | 2.5    | 63-0245                          |
| 113    | 5-1-1889   | GRACE CALL                         | .10            | 5      | 63-0246                          |
| 114    | 5-1-1889   | SAMUEL H. CANFIELD                 | .03            | 1.5    | 63-0247                          |
| 115    | 6-1-1889   | SONORA JOPLIN                      | .06            | 3      | 63-0215                          |
| 116    | 6-1-1889   | SONORA JOPLIN                      | 1.20           | 60     | 63-0216                          |
| 117    | 9-1-1890   | PIONEER IRRIGATION DISTRICT        | 200.00         | 10000  | 63-0224                          |
| 118    | 6-1-1891   | W. H. CONWAY                       | 2.20           | 110    | 63-0197                          |
| 119    | 6-1-1891   | THOMAS DAVIS                       | .54            | 27     | 63-0122                          |
| 120    | 6-1-1891   | MIDDLETON MILL DITCH CO.           | 17.00          | 850    | 63-0126                          |
| 121    | 6-1-1891   | THOMAS ANDREWS                     | 3.50           | 175    | 63-0131                          |
| 122    | 6-1-1891   | SETTLERS CANAL CO.                 | 73.44          | 3672   | 63-0231                          |
| 123    | 6-1-1891   | THOMAS AIKEN                       | .80            | 40     | 63-0195                          |
| 124    | 5-1-1893   | RIVERSIDE IRRIGATION DISTRICT      | 80.00          | 4000   | 63-0227                          |
| 125    | 6-1-1894   | R. H. STOCKTON                     | 1.76           | 88     | 63-0204                          |
| 126    | 7-2-1894   | FARMERS UNION DITCH CO.            | 110.00         | 5500   | 63-0248                          |
| 127    | 5-1-1895   | CHARLES REIN & JANE KEON           | 1.00           | 50     | 63-0249                          |
| 128    | 7-1-1895   | MATHEW CASEY                       | .66            | 33     | 63-0250                          |
| 129    | 7-1-1896   | FARMERS COOPERATIVE DITCH CO.      | 83.50          | 4175   | 63-0191                          |
| 130    | 10-1-1899  | RIVERSIDE IRRIGATION DISTRICT      | 20.00          | 1000   | 63-0228                          |
| 131    | 3-23-1900  | NEW YORK CANAL CO.                 | 219.10         | 10955  | 63-0251                          |
| 132    | 5-17-1900  | CANYON DITCH CO.                   | 10.00          | 500    | 63-0369                          |
| 133    | 6-1-1901   | RIVERSIDE IRRIGATION DISTRICT      | 70.00          | 3500   | 63-0229                          |
| 134    | 10-25-1901 | CANYON DITCH CO.                   | 5.54           | 277    | 63-0252                          |
| 135    | 4-1-1904   | PIONEER IRRIGATION DISTRICT        | 56.34          | 2817   | 63-0225                          |

## STEWART AND BRYAN DECREES GROUPED UNDER CANAL HEADINGS

CHART NO. 3

| NAME OF CANAL               | CHANGE IN<br>P. OF D. | TRANSFER | PRIORITY<br>NO. | DATE       | AMOUNT DECREED    |                                  |                 | TOTAL<br>SEC. FT. |
|-----------------------------|-----------------------|----------|-----------------|------------|-------------------|----------------------------------|-----------------|-------------------|
|                             |                       |          |                 |            | STEWART<br>DECREE | INTERVENORS<br>STEWART<br>DECREE | BRYAN<br>DECREE |                   |
| CALDWELL HIGH LINE          |                       |          | 34              | 6-1-1866   | 15.40             |                                  |                 | 770               |
|                             |                       |          | 46              | 6-1-1869   | 37.20             |                                  |                 | 1860              |
|                             |                       |          | 77              | 10-29-1880 | 27.60             |                                  |                 | 1380              |
|                             | 29*                   |          | 46              | 6-1-1869   | 1.00*             |                                  |                 | 50*               |
|                             |                       |          |                 |            |                   |                                  |                 | 79.20             |
| CAMPBELL (CANYON DITCH CO.) |                       |          | 132             | 5-17-1900  | 10.00             |                                  |                 | 500               |
|                             |                       |          | 134             | 10-25-1901 | 5.54              |                                  |                 | 277               |
|                             |                       | 38       | 96              | 10-1-1887  | 12.10             |                                  |                 | 605               |
|                             |                       | 105      | 9               | 6-1-1865   | .50               |                                  |                 | 25                |
|                             |                       |          |                 |            |                   |                                  |                 | 28.14             |
| CANYON COUNTY               |                       |          | 35              | 6-1-1867   | 75.80             |                                  |                 | 3790              |
|                             |                       |          | 35-A            | 6-1-1867   |                   | 1.76                             |                 | 88                |
|                             | 29                    |          | 46              | 6-1-1869   | 1.00              |                                  |                 | 50                |
|                             | 36*                   |          | 35              | 6-1-1867   | .38*              |                                  |                 | 19*               |
|                             | 54*                   |          | 35              | 6-1-1867   | 1.11*             |                                  |                 | 55.5*             |
|                             | 59                    |          | 31              | 6-1-1866   | 2.60              |                                  |                 | 130               |
|                             | 75                    |          | 35              | 6-1-1867   | .50               |                                  |                 | 25                |
|                             | 147                   |          | 35              | 6-1-1867   | .20               |                                  |                 | 10                |
|                             |                       |          |                 |            |                   |                                  |                 | 80.37             |
| CONWAY & HAMMING            |                       |          | 48              | 6-1-1870   | 2.60              |                                  |                 | 130               |
|                             |                       |          | 64              | 6-1-1877   | .90               |                                  |                 | 45                |
|                             |                       |          | 118             | 6-1-1891   | 2.20              |                                  |                 | 110               |
|                             |                       |          |                 |            |                   |                                  |                 | 5.70              |
| DAVIS<br>(LITTLE DAVIS)     |                       |          | 94              | 6-1-1886   | 13.40             |                                  |                 | 670               |
|                             |                       |          | 119             | 6-1-1891   | .54               |                                  |                 | 27                |
|                             |                       |          |                 |            |                   |                                  |                 | 13.94             |
| EUREKA NO. 1                |                       |          | 13              | 6-1-1865   | 33.32             |                                  |                 | 1666              |
|                             |                       |          |                 |            |                   |                                  |                 | 33.32             |

**Exhibit**  
**D**

SD-0420-2  
MODIFY RECORD

Idaho Department of Water Resources  
Modify Comment

Date: 12/29/93  
Time: 13:44:18

Water Right Number: 63-11900

Comment Date: 12/29/1993 User ID: LESTER

Subject: MORATORIUM UPDATE & RECOMMENDATION TO PROCESS APPLICATION\_\_\_\_\_

The application has been held pending applicant's ability to deal with consumptive use restrictions in the moratorium. A fresh look at this situation reveals that this is similar to several other filings in which an application is requested to be exempted from the moratorium based on reducing acres under an existing right to provide consumptive component in new right. Reduced irrigation in existing right will be quantified in licensing of new right. Review of 1987 NAPP photo X-8-SW shows that P/U in application has been irrigated by surface or sub-surface means. Excavating sites to develop shallow ground water will not increase wetted area in P/U. Consumptive use will be covered in irrig. season by a reduction of acres in 63-00196 & 197. Consumptive use outside of irrigation season from this wetted area will be negligible (& no increase in wetted area before & after development occurs due to numerous homes & paved area in subdivision - if anything, consumptive use will decline as development proceeds).\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(ENTER=Continue/Exit) (Gold2=Update) (Gold3=Delete) (Gold4=Prev) (Gold5=Next)

# **Exhibit E**

# ET<sub>Idaho</sub> --- Evapotranspiration and Consumptive Irrigation

## Water Requirements for Idaho

Please send suggestions for improving this site to [robison@kimberly.uidaho.edu](mailto:robison@kimberly.uidaho.edu) Copyright 2007, University of Idaho.

### Boise WSFO Airport (NWS NOAA--101022 )

Statistics based on 30 years between 1974 to 2004

For a different land cover or crop click on the above link.

You can highlight this table and copy via the clipboard to a Microsoft Excel or OpenOffice spreadsheet to plot or otherwise work with this data.

| Grass Pasture - low management                                   |        |       |       |      |      |      |      |      |      |       |       |       |                             |        |
|------------------------------------------------------------------|--------|-------|-------|------|------|------|------|------|------|-------|-------|-------|-----------------------------|--------|
| Precipitation Deficit ( <a href="#">Click here for a graph</a> ) |        |       |       |      |      |      |      |      |      |       |       |       |                             |        |
|                                                                  | Jan    | Feb   | Mar   | Apr  | May  | Jun  | Jul  | Aug  | Sep  | Oct   | Nov   | Dec   | Growing Season <sup>a</sup> | Annual |
| Mean                                                             | mm/day |       |       |      |      |      |      |      |      |       |       |       | mm                          |        |
| Monthly <sup>b</sup>                                             | -0.17  | 0.09  | 0.52  | 2.50 | 3.76 | 4.91 | 5.37 | 4.37 | 2.57 | 1.06  | -0.50 | -0.38 | 760                         | 739    |
| 15-Day Moving Average <sup>c</sup>                               | -0.17  | 0.02  | 0.46  | 2.57 | 3.81 | 5.00 | 5.44 | 4.29 | 2.52 | 1.04  | -0.51 | -0.36 |                             |        |
| 7-Day Moving Average <sup>d</sup>                                | -0.17  | 0.07  | 0.48  | 2.50 | 3.77 | 4.98 | 5.40 | 4.35 | 2.52 | 1.04  | -0.55 | -0.38 |                             |        |
| 3-Day Moving Average <sup>e</sup>                                | -0.17  | 0.09  | 0.52  | 2.49 | 3.76 | 4.95 | 5.37 | 4.37 | 2.55 | 1.05  | -0.51 | -0.38 |                             |        |
| Standard Deviation                                               | mm/day |       |       |      |      |      |      |      |      |       |       |       | mm                          |        |
| Monthly                                                          | 0.47   | 0.18  | 0.84  | 0.82 | 1.43 | 0.77 | 0.62 | 0.54 | 0.81 | 0.83  | 0.55  | 0.59  | 69                          | 69     |
| 15-Day Moving Average                                            | 0.52   | 0.29  | 0.83  | 0.99 | 1.36 | 0.99 | 0.56 | 0.69 | 1.02 | 0.79  | 0.71  | 0.55  |                             |        |
| 7-Day Moving Average                                             | 0.68   | 0.51  | 1.13  | 1.45 | 1.91 | 1.44 | 0.90 | 1.10 | 1.44 | 1.16  | 1.06  | 0.79  |                             |        |
| 3-Day Moving Average                                             | 0.90   | 0.76  | 1.61  | 2.17 | 2.63 | 2.13 | 1.50 | 1.63 | 2.00 | 1.60  | 1.51  | 1.13  |                             |        |
| 20% Exceedance                                                   | mm/day |       |       |      |      |      |      |      |      |       |       |       | mm                          |        |
| Monthly                                                          | 0.04   | 0.24  | 0.83  | 3.10 | 4.41 | 5.68 | 5.68 | 4.65 | 3.06 | 1.61  | -0.11 | 0.02  | 803                         | 781    |
| 15-Day Moving Average                                            | 0.20   | 0.47  | 1.77  | 4.14 | 5.68 | 6.20 | 6.43 | 5.21 | 3.87 | 2.33  | 0.51  | 0.26  |                             |        |
| 7-Day Moving Average                                             | 0.38   | 0.88  | 2.58  | 5.14 | 6.62 | 7.05 | 6.89 | 6.05 | 5.14 | 3.15  | 0.86  | 0.36  |                             |        |
| 3-Day Moving Average                                             | 0.56   | 1.10  | 3.19  | 6.47 | 8.62 | 8.85 | 8.70 | 7.78 | 6.63 | 4.33  | 1.20  | 0.54  |                             |        |
| 80% Exceedance                                                   | mm/day |       |       |      |      |      |      |      |      |       |       |       | mm                          |        |
| Monthly                                                          | -0.37  | -0.07 | 0.12  | 1.73 | 3.24 | 3.93 | 4.95 | 4.07 | 1.97 | 0.50  | -0.97 | -0.88 | 699                         | 691    |
| 15-Day Moving Average                                            | -0.91  | -0.31 | -0.67 | 0.89 | 1.67 | 3.07 | 4.31 | 2.93 | 0.87 | -0.44 | -1.87 | -1.51 |                             |        |

|                                                                                           |        |       |       |       |       |       |      |       |       |       |       |       |            |
|-------------------------------------------------------------------------------------------|--------|-------|-------|-------|-------|-------|------|-------|-------|-------|-------|-------|------------|
| 7-Day Moving Average                                                                      | -2.04  | -0.92 | -2.13 | -1.01 | -0.33 | 1.40  | 2.92 | 2.11  | -0.20 | -2.01 | -2.96 | -2.36 |            |
| 3-Day Moving Average                                                                      | -4.62  | -2.00 | -3.51 | -3.89 | -4.89 | -1.97 | 1.09 | 0.73  | -4.35 | -4.60 | -5.72 | -4.49 |            |
| <b>Ave Highest ET</b>                                                                     | mm/day |       |       |       |       |       |      |       |       |       |       |       | --         |
| 15-Day Moving Average <sup>f</sup>                                                        | 0.14   | 0.30  | 1.17  | 3.43  | 4.87  | 5.80  | 6.03 | 4.95  | 3.31  | 1.79  | 0.28  | 0.13  |            |
| 7-Day Moving Average <sup>g</sup>                                                         | 0.31   | 0.68  | 1.80  | 4.37  | 5.93  | 6.63  | 6.57 | 5.82  | 4.31  | 2.49  | 0.59  | 0.25  |            |
| 3-Day Moving Average <sup>h</sup>                                                         | 0.44   | 0.99  | 2.52  | 5.48  | 7.32  | 8.07  | 8.12 | 7.38  | 5.72  | 3.34  | 0.92  | 0.40  |            |
| <b>Ave Lowest ET</b>                                                                      | mm/day |       |       |       |       |       |      |       |       |       |       |       | --         |
| 15-Day Moving Average <sup>f</sup>                                                        | -0.48  | -0.19 | -0.17 | 1.68  | 2.66  | 4.06  | 4.87 | 3.65  | 1.72  | 0.37  | -1.09 | -0.78 |            |
| 7-Day Moving Average <sup>g</sup>                                                         | -1.01  | -0.61 | -1.04 | 0.44  | 0.96  | 2.69  | 3.97 | 2.85  | 0.82  | -0.54 | -2.00 | -1.39 |            |
| 3-Day Moving Average <sup>h</sup>                                                         | -2.09  | -1.45 | -2.59 | -1.90 | -1.95 | 0.42  | 2.47 | 1.57  | -0.93 | -2.05 | -3.88 | -2.76 |            |
| <b>Special normal distribution parameters for monthly, seasonal, and annual intervals</b> |        |       |       |       |       |       |      |       |       |       |       |       | --         |
| Skew                                                                                      | -0.89  | -0.41 | 0.33  | -0.09 | -0.33 | -0.49 | 0.04 | -0.19 | -0.45 | -0.18 | -0.75 | -0.14 | 0.07 -0.71 |
| Kurtosis                                                                                  | 2.51   | 3.68  | 1.16  | 2.95  | 1.21  | 2.42  | 0.64 | 1.03  | 3.30  | 0.64  | 3.05  | 0.50  | 2.85 3.33  |

<sup>a</sup> Growing Season: This is usually the time from green up or planting in the spring to a killing frost or harvest in the fall. It is not applicable for entries without a growing season and will be blank.

<sup>b</sup> Mean of the average daily value for month

<sup>c</sup> Mean of the fourteen 15-day period averages contained in the month

<sup>d</sup> Mean of the twenty three 7-day period averages contained in the month

<sup>e</sup> Mean of the twenty seven 3-day period averages contained in the month

<sup>f</sup> Mean of the highest/lowest 15-day period average in month

<sup>g</sup> Mean of the highest/lowest 7-day period average in month

<sup>h</sup> Mean of the highest/lowest 3-day period average in month

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This work and report were prepared by the University of Idaho Research and Extension Center at Kimberly, Idaho under contract with the Idaho Department of Water Resources. Work was supported by funding from IDWR and the Idaho Agricultural Experiment Station and Idaho Engineering Experiment Station. The authors gratefully acknowledge the long-term evapotranspiration data collection and long-standing advice provided by Dr. James L. Wright, USDA-ARS Kimberly

(ret.), the more than two decades of high quality agricultural weather data collection by the U.S. Bureau of Reclamation AgriMet system, and the very long-standing, routine data collection by the hundreds of cooperative weather station volunteers across the state who, for more than one-hundred years, have faithfully observed daily air temperature and precipitation.

The citation for the evapotranspiration data used from this site should be: *Allen, Richard G. and Clarence W. Robison, 2006 (Revised 2007). Evapotranspiration and Consumptive Irrigation Water Requirements for Idaho, Research Technical Completion Report, Kimberly Research and Extension Center, University of Idaho, Moscow, ID.*

Questions regarding the data should be addressed to Clarence W. Robison or Richard G. Allen, University of Idaho, Kimberly Research and Extension Center, 3793 North 3600 East, Kimberly, ID 83341. Telephone (208)-423-6610

# ET<sub>Idaho</sub> --- Evapotranspiration and Consumptive Irrigation

## Water Requirements for Idaho

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### Boise WSFO Airport (NWS NOAA--101022 )

Statistics based on 30 years between 1974 to 2004

For a different land cover or crop click on the above link.

You can highlight this table and copy via the clipboard to a Microsoft Excel or OpenOffice spreadsheet to plot or otherwise work with this data.

| Open water - shallow systems (ponds, streams)  |        |       |      |      |      |      |      |      |      |      |       |       |                             |        |
|------------------------------------------------|--------|-------|------|------|------|------|------|------|------|------|-------|-------|-----------------------------|--------|
| Precipitation Deficit (Click here for a graph) |        |       |      |      |      |      |      |      |      |      |       |       |                             |        |
|                                                | Jan    | Feb   | Mar  | Apr  | May  | Jun  | Jul  | Aug  | Sep  | Oct  | Nov   | Dec   | Growing Season <sup>a</sup> | Annual |
| Mean                                           | mm/day |       |      |      |      |      |      |      |      |      |       |       | mm                          |        |
| Monthly <sup>b</sup>                           | 0.64   | -0.09 | 0.84 | 2.04 | 2.90 | 4.14 | 4.70 | 4.03 | 2.71 | 1.60 | -0.27 | -0.61 | 654                         | 654    |
| 15-Day Moving Average <sup>c</sup>             | 0.65   | -0.31 | 0.78 | 2.05 | 3.00 | 4.26 | 4.77 | 3.96 | 2.63 | 1.64 | -0.27 | -0.58 |                             |        |
| 7-Day Moving Average <sup>d</sup>              | 0.67   | -0.19 | 0.81 | 2.01 | 2.92 | 4.22 | 4.75 | 3.99 | 2.62 | 1.59 | -0.31 | -0.61 |                             |        |
| 3-Day Moving Average <sup>e</sup>              | 0.65   | -0.11 | 0.84 | 2.03 | 2.90 | 4.19 | 4.71 | 4.02 | 2.68 | 1.59 | -0.28 | -0.62 |                             |        |
| Standard Deviation                             | mm/day |       |      |      |      |      |      |      |      |      |       |       | mm                          |        |
| Monthly                                        | 0.70   | 0.76  | 1.26 | 0.88 | 1.79 | 0.81 | 0.65 | 0.77 | 0.91 | 1.06 | 0.73  | 1.12  | 102                         | 102    |
| 15-Day Moving Average                          | 0.85   | 1.02  | 1.25 | 1.07 | 1.61 | 1.03 | 0.60 | 0.82 | 1.20 | 1.01 | 0.92  | 0.96  |                             |        |
| 7-Day Moving Average                           | 1.21   | 1.35  | 1.55 | 1.63 | 2.17 | 1.53 | 0.85 | 1.11 | 1.61 | 1.41 | 1.20  | 1.23  |                             |        |
| 3-Day Moving Average                           | 1.62   | 1.72  | 2.05 | 2.34 | 2.86 | 2.15 | 1.35 | 1.51 | 2.11 | 1.85 | 1.64  | 1.65  |                             |        |
| 20% Exceedance                                 | mm/day |       |      |      |      |      |      |      |      |      |       |       | mm                          |        |
| Monthly                                        | 0.18   | 0.46  | 1.58 | 2.73 | 3.75 | 4.90 | 5.07 | 4.53 | 3.49 | 2.12 | 0.24  | -0.07 | 743                         | 743    |
| 15-Day Moving Average                          | 0.40   | 0.97  | 2.15 | 3.60 | 4.95 | 5.46 | 5.48 | 4.86 | 3.90 | 2.75 | 1.08  | 0.46  |                             |        |
| 7-Day Moving Average                           | 0.67   | 1.50  | 2.83 | 4.41 | 5.64 | 5.92 | 5.87 | 5.20 | 4.35 | 3.16 | 1.40  | 0.61  |                             |        |
| 3-Day Moving Average                           | 0.84   | 1.83  | 3.66 | 5.19 | 6.35 | 6.71 | 6.40 | 5.64 | 4.85 | 3.68 | 1.80  | 0.84  |                             |        |
| 80% Exceedance                                 | mm/day |       |      |      |      |      |      |      |      |      |       |       | mm                          |        |
| Monthly                                        |        | -0.60 | 0.01 | 1.25 | 2.47 | 3.10 | 4.38 | 3.47 | 1.81 | 1.02 | -0.95 | -1.20 | 555                         | 555    |

|                                                                                           |        |       |       |       |       |       |      |       |      |      |       |       |       |       |
|-------------------------------------------------------------------------------------------|--------|-------|-------|-------|-------|-------|------|-------|------|------|-------|-------|-------|-------|
|                                                                                           | 1.08   |       |       |       |       |       |      |       |      |      |       |       |       |       |
| 15-Day Moving Average                                                                     | 2.05   | -1.35 | -1.45 | 0.25  | 0.91  | 2.26  | 3.54 | 2.31  | 0.34 | 0.28 | -1.90 | -1.87 |       |       |
| 7-Day Moving Average                                                                      | 3.64   | -2.88 | -2.94 | -2.19 | -1.24 | 0.38  | 2.16 | 1.43  | 1.12 | 2.27 | -3.02 | -3.57 |       |       |
| 3-Day Moving Average                                                                      | 6.37   | -5.93 | -5.53 | -5.12 | -6.11 | -3.11 | 0.50 | -0.24 | 4.73 | 4.79 | -5.30 | -6.98 |       |       |
| <b>Ave Highest ET</b>                                                                     | mm/day |       |       |       |       |       |      |       |      |      |       |       | --    |       |
| 15-Day Moving Average <sup>f</sup>                                                        | 0.19   | 0.50  | 1.70  | 3.07  | 4.05  | 5.04  | 5.24 | 4.56  | 3.45 | 2.38 | 0.56  | 0.24  |       |       |
| 7-Day Moving Average <sup>g</sup>                                                         | 0.50   | 1.12  | 2.39  | 3.88  | 4.95  | 5.64  | 5.61 | 5.00  | 4.01 | 3.00 | 0.91  | 0.44  |       |       |
| 3-Day Moving Average <sup>h</sup>                                                         | 0.71   | 1.57  | 3.06  | 4.65  | 5.74  | 6.29  | 6.12 | 5.39  | 4.60 | 3.36 | 1.41  | 0.66  |       |       |
| <b>Ave Lowest ET</b>                                                                      | mm/day |       |       |       |       |       |      |       |      |      |       |       | --    |       |
| 15-Day Moving Average <sup>f</sup>                                                        | 1.39   | -0.77 | 0.01  | 1.12  | 1.77  | 3.33  | 4.17 | 3.38  | 1.87 | 0.82 | -0.95 | -1.22 |       |       |
| 7-Day Moving Average <sup>g</sup>                                                         | 2.55   | -1.83 | -1.17 | -0.44 | -0.06 | 1.90  | 3.35 | 2.70  | 0.68 | 0.33 | -1.89 | -2.12 |       |       |
| 3-Day Moving Average <sup>h</sup>                                                         | 4.57   | -3.54 | -3.15 | -3.04 | -3.14 | -0.49 | 1.60 | 1.14  | 1.41 | 2.10 | -3.76 | -4.00 |       |       |
| <b>Special normal distribution parameters for monthly, seasonal, and annual intervals</b> |        |       |       |       |       |       |      |       |      |      |       |       | --    |       |
| Skew                                                                                      | 0.06   | -1.02 | -0.06 | 0.04  | -0.47 | -0.66 | 0.12 | -0.36 | 1.03 | 0.16 | -0.79 | -0.38 | -0.20 | -0.19 |
| Kurtosis                                                                                  | 0.72   | 4.61  | 0.71  | 3.18  | 1.24  | 2.52  | 0.60 | 0.97  | 3.77 | 0.83 | 3.35  | 1.28  | 2.94  | 2.94  |

<sup>a</sup> Growing Season: This is usually the time from green up or planting in the spring to a killing frost or harvest in the fall. It is not applicable for entries without a growing season and will be blank.

<sup>b</sup> Mean of the average daily value for month

<sup>c</sup> Mean of the fourteen 15-day period averages contained in the month

<sup>d</sup> Mean of the twenty three 7-day period averages contained in the month

<sup>e</sup> Mean of the twenty seven 3-day period averages contained in the month

<sup>f</sup> Mean of the highest/lowest 15-day period average in month

<sup>g</sup> Mean of the highest/lowest 7-day period average in month

<sup>h</sup> Mean of the highest/lowest 3-day period average in month

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Questions regarding the data should be addressed to Clarence W. Robison or Richard G. Allen, University of Idaho, Kimberly Research and Extension Center, 3793 North 3600 East, Kimberly, ID 83341. Telephone (208)-423-6610

## Part 2A

**IDAHO DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 2A**

**Current Water Right No.: 63-32594**

Current Owner: ISLAND WOODS HOMEOWNERS ASSN INC

Priority Date: 6/1/1877

Origin: Water Right

Status: Active

Basis: Decreed

**Source**

BOISE RIVER

**Tributary**

SNAKE RIVER

**Beneficial Use**

IRRIGATION

**From To**

03/01 to 11/15

**Total Diversion**

**Diversion Rate**

0.23 CFS

0.23 CFS

**Annual Volume**

**Location of Point(s) of Diversion**

BOISE RIVER

ADA County

L7(SW1/4SE1/4)

Sec. 16, Twp 04N, Rge 01E B.M.

**Place of Use**

**IRRIGATION Within ADA County**

|                 |       |      |       |               |       |      |       |
|-----------------|-------|------|-------|---------------|-------|------|-------|
| T04N R01E S16   | Lot 6 | NESW | 3.00  | T04N R01E S16 | Lot 5 | NWSW | 14.00 |
| T04N R01E S16   |       | SWSW | 12.00 | T04N R01E S16 | Lot 6 | SESW | 10.00 |
| Total Acres: 39 |       |      |       |               |       |      |       |

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Conditions of Approval:

1. SD1 This right originated as all or part of right no. 64 in the Stewart Decree and the historic Boise River Water Masters records.
2. This right is a split from former right 63-196 .
3. S45 Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoirs dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.
4. 155 This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and proceeding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and proceeding to the earliest, shall be reduced to 60 percent of their decreed quantities.
5. J01 Property is also known as Island Woods Subdivision.
6. 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.

Decreed Date: 2/6/2008

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**IDAHO DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 2A**

**Current Water Right No.: 63-32596**

Current Owner: ISLAND WOODS HOMEOWNERS ASSN INC

Priority Date: 6/1/1891

Origin: Water Right

Status: Active

Basis: Decreed

**Source**

BOISE RIVER

**Tributary**

SNAKE RIVER

**Beneficial Use**

IRRIGATION

**From To**

03/01 to 11/15

**Total Diversion**

**Diversion Rate**

0.55 CFS

0.55 CFS

**Annual Volume**

**Location of Point(s) of Diversion**

BOISE RIVER

ADA County

L7(SW1/4SE1/4)

Sec. 16, Twp 04N, Rge 01E B.M.

**Place of Use**

**IRRIGATION Within ADA County**

|               |       |      |       |               |       |      |       |
|---------------|-------|------|-------|---------------|-------|------|-------|
| T04N R01E S16 | Lot 6 | NESW | 3.00  | T04N R01E S16 | Lot 5 | NWSW | 14.00 |
| T04N R01E S16 |       | SWSW | 12.00 | T04N R01E S16 | Lot 6 | SESW | 10.00 |

Total Acres: 39

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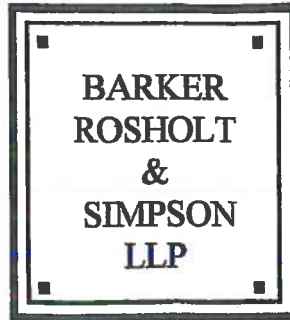
**Conditions of Approval:**

1. 155 This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and proceeding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and proceeding to the earliest, shall be reduced to 60 percent of their decreed quantities.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
3. This right is a split from former right 63-197 .
4. J01 Property is also known as Island Woods Subdivision.
5. SD1 This right originated as all or part of right no. 118 in the Stewart Decree and the historic Boise River Water Masters records.
6. S45 Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoirs dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

Decreed Date: 2/6/2008

# Attachment #3

ALBERT P. BARKER  
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(208) 735-2444 facsimile

Shelley M. Davis  
smd@idahowaters.com

February 19, 2015

**VIA HAND DELIVERY**

Island Woods HOA  
c/o Development Services, Inc.  
Attn: Kathy Claiborne  
9601 W. State St., Ste. 203  
Boise, ID 83714

Re: Engagement for Legal Services

Dear ~~Mr. Munroe~~: *Ms Sandy*

Thank you for contacting our office to assist Island Woods HOA to resolve issues related to its water rights and usage at the Island Woods Subdivision. You have requested that this office take any action necessary to ensure that Island Woods is in compliance with Idaho law concerning the surface and groundwater used on the subdivision property,

*Redacted*

If you agree that I have properly described the scope of services to be provided, and if you agree to the billing terms set forth above, please sign in the place provided below.

Very truly yours,  
**BARKER ROSHOLT & SIMPSON LLP**

*Robin Sandy*  
Dave Munroe *ROBIN SANDY* PRESIDENT

*S. M. Davis*  
Shelley M. Davis

DAVE MUNROE, CONTACT PERSON

# Attachment #7a





# Attachment #7b

Attachment #7b

State of Idaho  
Department of Water Resources

**Water Right**  
**63-32596**

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

01E



0 0.075 0.15 0.3 Miles

- Point of Diversion
- Place Of Use Boundary
- ▬ Townships
- ▬ PLS Sections



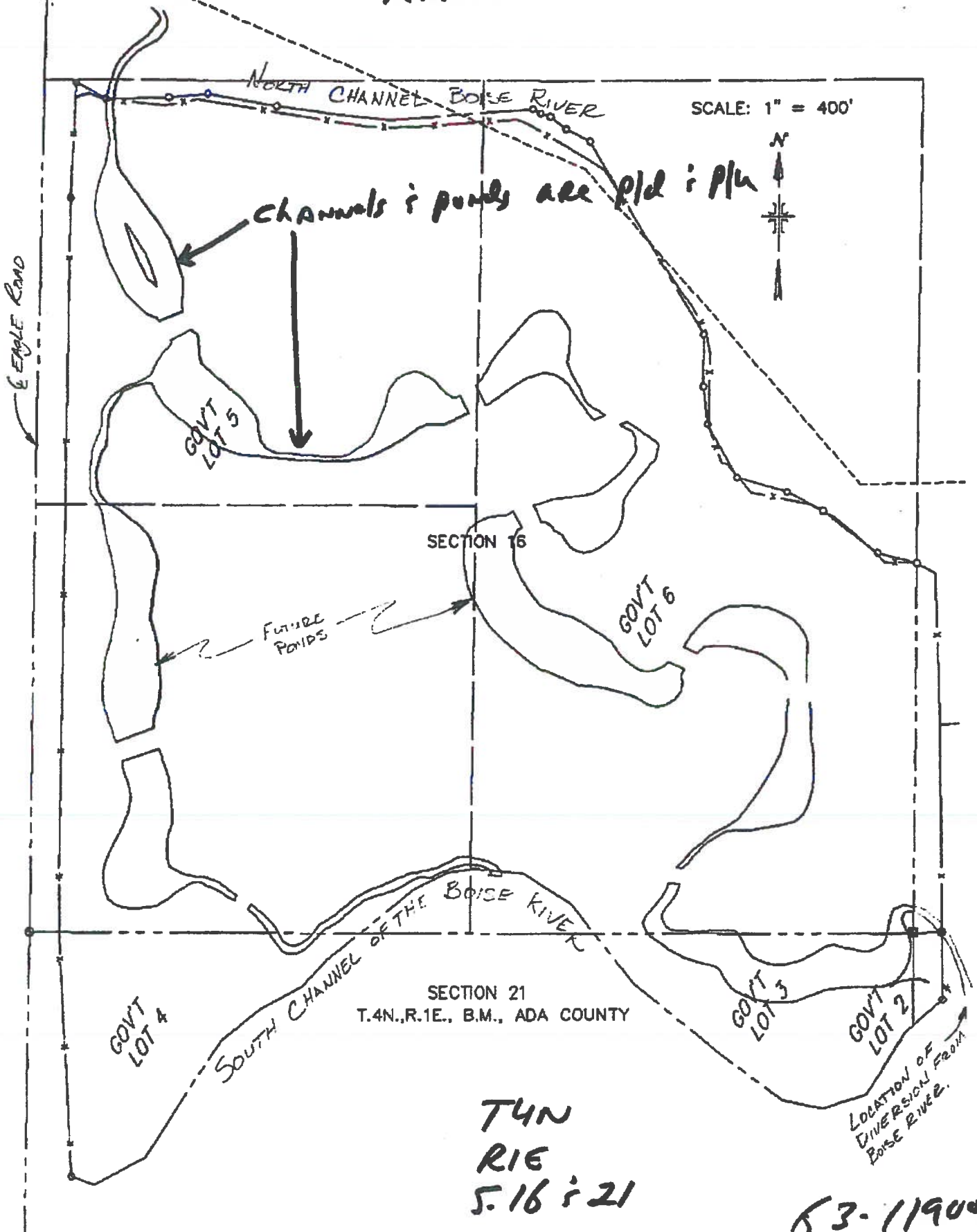
Map produced on August 26, 2015

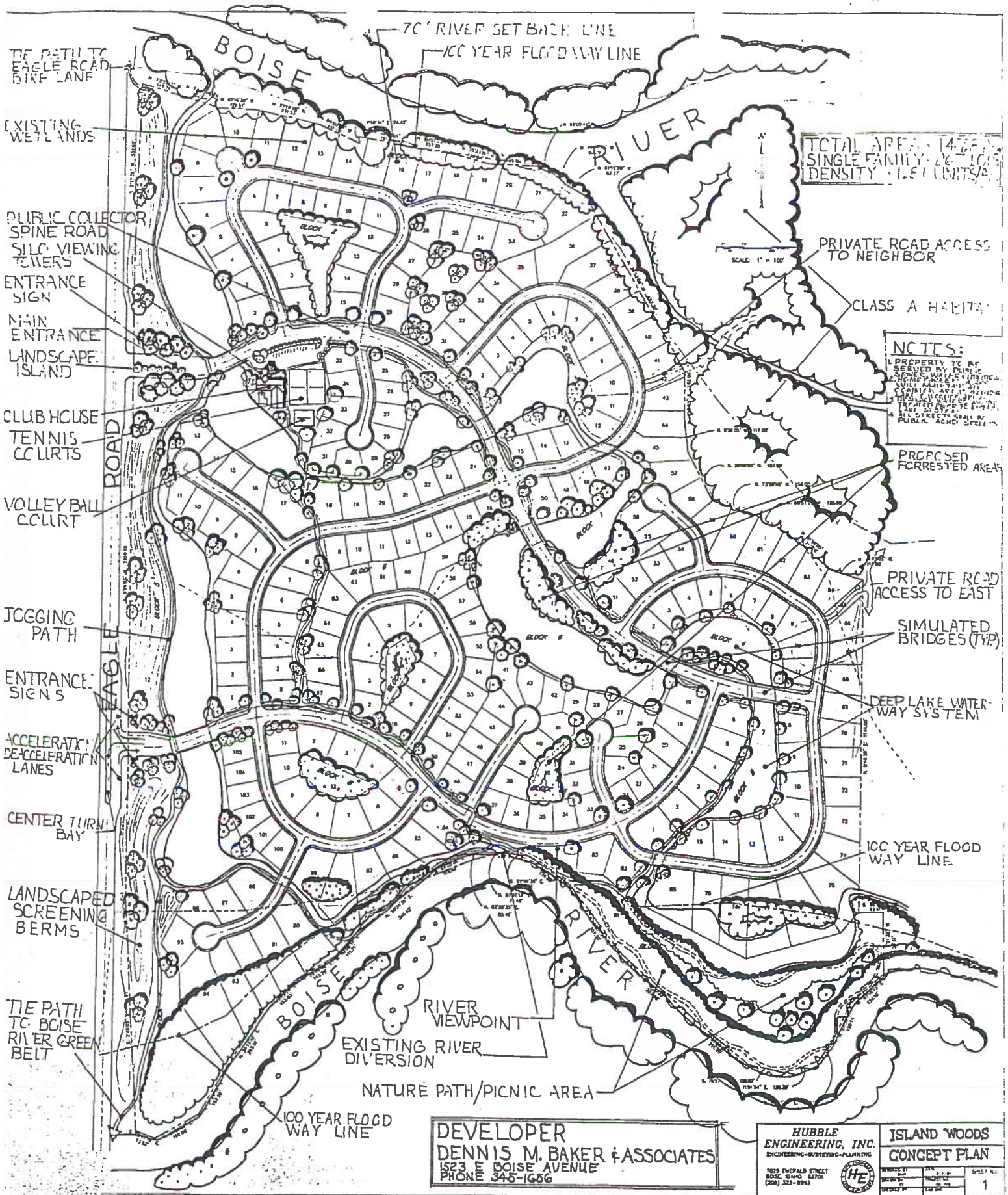
80552



Attachment #8a

# APPLICANT'S MAP





DEVELOPER  
DENNIS M. BAKER & ASSOCIATES  
1523 E BOISE AVENUE  
PHONE 345-1656

HUBBLE  
ENGINEERING, INC.  
ENGINEERING-SURVEYING-PLANNING  
7025 EVERHARD STREET  
BOISE, IDAHO 83704  
(208) 333-8993

ISLAND WOODS  
CONCEPT PLAN  
SHEET NO. 1

## MEMORANDUM

To: Regional Offices  
Water Allocation Bureau

Application Processing Memo # 71  
Transfer Processing Memo # 27

From: Jeff Peppersack 

Re: Describing Mitigation in Water Right Records

Date: November 4, 2015

This memorandum supersedes Application Processing Memorandum #71 and Transfer Processing Memorandum #27 issued May 3, 2010.

Idaho Code § 42-223(10), as amended in 2004, protects water rights from forfeiture if they are not used because they are serving as mitigation for some other water use. The statute states:

**(10) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from the water right being used for mitigation purposes approved by the director of the department of water resources including as a condition of approval for a new water right appropriation approved pursuant to section 42-203A, Idaho Code, a water right transfer approved pursuant to section 42-222, Idaho Code, a water exchange approved pursuant to section 42-240, Idaho Code, or a mitigation plan approved in accordance with rules promulgated pursuant to section 42-603, Idaho Code.**

This statute supports IDWR's recognition of mitigation as a beneficial use. Dedication of a water right for mitigation by not using it is dissimilar to other beneficial uses of water, however, because the beneficial use is a non-use. This dichotomy is reflected in the statute above where a water right is protected for "non-use" when it is "being used for mitigation purposes."

The statutory recognition of mitigation as a defense to forfeiture raises the issue of what processes are necessary to document a mitigation plan in water right records. Mitigation activity takes two possible forms:

- Type I -- Diversion and delivery of replacement water to offset injury or depletion
- Type II -- Non-use of water to offset injury or depletion

Because there are two ways to use water rights for mitigation, it is necessary to distinguish between the two in water right records and processes. "Mitigation by non-use" means that water is not diverted. Rather, the water is left in its naturally occurring location. This contrasts with water that is diverted and delivered as replacement water for depletion caused by some other water use.

The process for obtaining authorization for the mitigation activity depends on which of the mitigation forms is being employed. This memo is intended to help staff identify and distinguish between the processing requirements for mitigation by non-use and the processing requirements for other forms of mitigation. This memorandum does not address mitigation plans for replacement water associated with delivery calls under rules of the Department for Conjunctive Management of Surface and Ground Water Resources, unless addressed through an application for permit, transfer, or exchange.

If water can be diverted pursuant to a valid water right, leaving it in the source stream or in the ground for mitigation purposes is mitigation by non-use. Because of the protection from forfeiture given by Idaho Code § 42-223 and the provision that the director may approve the mitigation plan as a condition of

approval when it accompanies a new application to appropriate water (or application for transfer or exchange), an additional application for transfer or placement of the water right in the Water Supply Bank is not necessary to change the beneficial use of water right to mitigation by non-use.

In contrast, mitigating by releasing water from storage to the stream does not constitute non-use. Likewise, diversion of surface water to a recharge facility and percolating it into the ground as mitigation for a ground water withdrawal is not non-use. These and other forms of Type I mitigation (replacement water) are additional beneficial uses of water that must be authorized by the Department through applications for transfer or exchange, or rentals of water from the Water Supply Bank. The steps for changing a water right so that it serves as Type I mitigation are established by the necessary application process – transfer, exchange, or Water Supply Bank rental.

Because an application process is not necessary for Type II mitigation (non-use), the following steps should be taken for mitigation plans proposing **non-use** of water:

(1) A Type II mitigation plan typically accompanies an application for a new beneficial use of water. The water right or portion of a water right offered for mitigation by non-use must be identified within the application it accompanies. Sufficient information should be submitted with the application for IDWR to determine that the water right or part thereof will not be used. IDWR must verify that the mitigation rights are valid and that the applicant has the authority to commit them to use as mitigation. If necessary, IDWR staff should correspond with the applicant to request the documentation needed for verification of the rights in a manner similar to that employed in transfer processing.

(2) The published legal notice for the application must generally describe the mitigation plan.

(3) Even though “mitigating rights” will not be lost due to non-use, effective water right administration requires IDWR to identify and track the rights and portions of rights that will not be used. The department record of the water right or portion of a water right dedicated to mitigation by non-use will be modified to show “mitigation by non-use” as the purpose of use. Examples of common scenarios are provided later in this memo. A new water right number will not be issued for a portion of a right dedicated to mitigation unless there is a change of ownership for a portion of the right.

(4) If the water right or portion of a water right offered for mitigation is owned by a canal company, irrigation district, or other water delivery entity, the proponent of the mitigation plan must submit an agreement or consent document, signed by an authorized officer of the delivery entity, stating that the delivery entity agrees (a) to the use of its water right for mitigation and (b) that the water right records(s) of IDWR can be changed to reflect the non-use of the water for mitigation purposes. If the consent or agreement states that the delivery entity retains authority to revoke the agreement to allow the non-use of its water for mitigation, IDWR will condition the water right that it is subject to cancellation or revocation if notified by the delivery entity that the water right can no longer be used for mitigation.

### **Additional Processing Guidelines for Common Scenarios**

The following examples may be useful for determining whether a particular mitigation proposal is Type I (replacement water) or Type II (non-use).

#### **Type I - Replacement Water Scenarios**

##### **Scenario #1: Mitigation by Change in Nature of Use of an Existing Right**

The first scenario is where a new permit or exchange is mitigated by changing the nature of use of other pre-existing rights to ground water recharge or some other offsetting direct use. For

example, an application for permit for municipal use of ground water in a moratorium area is offset by the transfer of surface water irrigation rights to ground water recharge via an infiltration basin. Another example would be the diversion and use of water under an existing water right to provide make-up water for the evaporative losses from a pond proposed under a new appropriation. The nature of use of the mitigating right is changed through a transfer to the ultimate purpose of the pond such as aesthetics, wildlife or recreation. A variant of this scenario could be the transfer of storage water to the new use, such as ground water recharge from storage, to accomplish mitigation.

Examples: City of Gooding (Transfer 78927 mitigates for 37-22850)  
Dry Lot LLC (Transfer 74449 mitigates for 37-22252)

### **Scenario #2: Mitigation by Storage Release**

The second scenario is where the injury or depletion caused by uses under a new permit, exchange or transfer will be mitigated by release of storage water under an existing storage right. An example would be the transfer of an existing ground water right authorizing irrigation use to a new location within the ESPA for an industrial use, where release of storage to a specified reach of the Snake River would provide mitigation for an increase in depletion to the reach due to the industrial use. This method is only approvable if the storage supply is reliable and assured either by pre-purchase or through other accepted operation plans within a rental pool. In this situation, a transfer is required to change the nature of use of the storage right to “mitigation by delivery storage” and “mitigation by delivery from storage” because the storage water is released and made available at a specific location in the stream as mitigation for any depletion caused by the new permit, exchange or transfer.

Note that in some cases approval may be granted pursuant to existing rental pool procedures in lieu of a transfer. For storage releases through an existing rental pool, authority to use the water for mitigation purposes is addressed through the rental pool procedures. The official record for the storage right will not require changes in the form of data entry for comments, changes in use or modification of the place of use. Therefore, documentation of the water right file for the mitigating right(s) is not necessary.

Example: RMH Company (Storage releases mitigate for 63-12521)

### **Scenario #3: Continued Diversion to Maintain Shared Conveyance Losses**

The third scenario is where water is proposed to be left in a ditch or canal shared by multiple users to mitigate for injury that would be caused by a) transferring a water right out of the canal or b) non-use of an existing right from the canal for mitigation purposes (Scenario 5). Multiple water users in a common ditch or canal rely on the combined flow of all the water rights to overcome conveyance losses associated with delivery of the rights through the canal for their respective beneficial uses. Under this scenario, injury could occur to other water users if the flow in the canal is reduced due to a transfer or “mitigation by non-use” of one of the rights from the canal because the beneficial use under the remaining rights would be reduced. Injury can be mitigated by continued diversion of a portion of the authorized flow into the canal for conveyance loss.

If a water right is transferred out of the canal or committed to mitigation by non-use, the flow left behind to cover conveyance loss for the beneficial uses of the remaining rights will remain an unchanged part of the original right (i.e. do not change to mitigation use, and the right should not be reduced in volume or acres). The point of diversion for the canal will continue to be described as one of the authorized points of diversion of the right. The order authorizing the transfer out of

the canal or designating a portion of the right to mitigation by non-use will impose a condition describing the requirement to continue diversion of a portion of the authorized diversion rate into the canal to offset injury to other users from the canal.

Example: The Cross Creek Trust 37-4F (The source of 37-4F is ground water, but 0.02 cfs of surface water from the Big Wood River shall continue to be diverted into the Hiawatha Canal for conveyance losses, and 0.07 cfs of surface water remains in the river to mitigate the use of ground water.)

#### **Scenario #4: Mitigation by Delivery (Delivery Call)**

The fourth scenario is where a junior water right holder provides water directly to a senior water right holder who is being injured. For example, fish propagation facility #1 makes a delivery call on right 00-0000 (priority date 1962) to IDWR, which claims that its right is not being fulfilled. The call will cause IDWR to determine if injury is occurring and, if so, order curtailment of ground water right holders junior to 1962. A coalition of ground water appropriators who hold rights junior to right 00-0000 proposes a transfer to mitigate injury to the fish propagation facility, and ultimately prevent curtailment.

The coalition enters into an agreement with a nearby fish hatchery (fish propagation facility #2) to utilize a portion of its water right, and files a transfer proposing to pump and deliver water from springs (near fish propagation facility #2) to the head of an upstream creek near fish propagation facility #1, in order to mitigate material injury to the facility. The transfer requests to change 10 cfs of “fish propagation” use and a portion of the existing “fish propagation” place of use from fish propagation facility #2 to the fish propagation facility #1 site.

In this scenario, the coalition uses spring water to augment creek water, which is fish propagation facility #1’s source. Therefore, this is an example of “mitigation by delivery.” For the 10 cfs involved in the transfer, the point of diversion should be listed as the springs near fish propagation facility #2, but the place of use should be at the point where water is delivered to benefit fish propagation facility #1. The nature of use should be “mitigation by delivery.” The use is described as “mitigation by delivery” instead of “fish propagation” because the junior right holder’s obligation is to provide replacement water, regardless of the ultimate beneficial use which the junior right holder does not control. A variant of this scenario could be the release and delivery of storage water to fish propagation facility #1 to accomplish mitigation. If storage water is used, the nature of use should be “mitigation by delivery storage” and “mitigation by delivery from storage.”

Example: SeaPac of Idaho Inc. (Transfer 79560 modifies Right 36-7072)

## **Type II – Mitigation by Non-use Scenarios**

#### **Scenario #5: Mitigation by Non-use (New Permit or Exchange)**

The fifth scenario is where a new permit or exchange will be mitigated by the non-use of water under other water rights. An application for transfer is not necessary for such a change because non-use is not a change in use. In situations where the new use is mitigated by the non-use of water under other rights, IDWR uses the approval order for the new permit or exchange to approve the mitigation plan and to provide a vehicle for changing the official record for the mitigating right(s) that will no longer be used. The approval order shall include the following standard condition or a similar condition.

To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease <diverting and> using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water rights will be changed to show that <diversion and> use of water is not authorized because the rights, or portion(s) thereof, are being dedicated to mitigation purposes.

| Right No. | Use Changed to<br>Mitigation by Non-use | Mitigation<br>Rate | Mitigation<br>Volume | Mitigation<br>Acres |
|-----------|-----------------------------------------|--------------------|----------------------|---------------------|
| 00-00000  | Use                                     | 00.00              | 00.0                 | 00                  |
| 00-00000  | Use                                     | 00.00              | 00.0                 | 00                  |

The land that will no longer be irrigated under these rights is located within the <XX ¼ XX ¼, Section 00, Township 00 North, Range 00 East, B.M.>

If a specified mitigating right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this <permit or exchange> approval shall be reduced by the same proportion as the reduction to the mitigating right.

When dealing with scenario #5, Department staff will complete data entry for the mitigating right(s) after issuing the approval document for the new permit or exchange. Data entry shall include a comment referring to the reason for the update and the number of the file where the approval order can be found. Data entry shall also include an update to the nature of use for the mitigating right(s) (or portion thereof) to show “mitigation by non-use” as the purpose of use and an update to the place of use to reflect the non-use at the original location. The place of use update should include modification of the place of use shape file(s) to designate the portion of the place of use that will no longer be irrigated. The approving office shall document the water right file for the mitigating right(s) by forwarding a proof report depicting the changes to the WR Permits Section for inserting into the left side of the water right file. The proof report should show the comment described above and the appropriate changes reflecting the mitigation use.

Example: City of Boise (A condition of approval for 63-33341 changes a portion of 63-243G to mitigation by non-use)

#### **Scenario #6: Mitigation by Non-use (Transfer)**

A related scenario is where a transfer is mitigated by the non-use of water under other pre-existing rights. An example would be the transfer of an existing ground water right authorizing irrigation use to a new location within the ESPA for a dairy, where non-use of another irrigation right would provide mitigation for an increase in depletion to a reach of the Snake River. In this situation, the “mitigation by non-use” rights are treated in the transfer processing similar to other associated rights and are altered in the Workflow process for the transfer and included in the approval of the transfer. The nature of use for the mitigating rights will be updated to show “mitigation by non-use” as the purpose of use and the corresponding place of use will be updated as necessary. The mitigating rights do not need to be listed on the transfer application under the rights being transferred and will not be considered in calculation of the application fees.

Transfers in the ESPA that result in increased reach depletions in the Snake River can be mitigated by increased reach gains from other proposed ESPA transfers (offsetting transfers). This type of mitigation requires the transfer applications to be submitted together as part of a plan to mitigate or offset the effects of each individual transfer. This type of mitigation requires unique conditions of approval for the offsetting transfers to address future changes and differences in priority dates between rights to prevent injury in the event of delivery calls. See Transfer Memo No. 24 for additional details.

Example: Foster Land & Cattle (Reduction of 25-14398 and other rights mitigates for the changes authorized by Transfer 78938)

#### **Scenario #7: Mitigation by Abandonment**

The seventh scenario is where a new permit, exchange, or transfer is mitigated by the abandonment of one or more existing water rights. Abandonment of a water right may provide adequate mitigation if non-use of the right offsets the depletion associated with the proposed use at the appropriate time and location; however, abandonment would not be the most desirable method because, if the permit were approved, the permit holder would not have the ability to rely on the abandoned right to divert out of priority under the permit. Furthermore, abandonment is permanent. Even if the permit is not developed, the abandoned right remains abandoned.

Example: Daniel G. Ward and/or Karla Ward (45-14424 abandoned to mitigate for Transfer 78100)

#### **Undoing a Mitigation Plan**

Occasionally a water use approved on the basis of a mitigation plan is not developed at all. Either the permit lapses or the transfer is not accomplished. In those cases, the mitigation plans must be undone so the mitigating rights can revert to their original beneficial uses. For a mitigation plan authorized in a transfer approval, the Department should undo the mitigation by issuing an order rescinding the transfer approval and returning the mitigating rights to their pre-mitigation beneficial use(s). For a mitigation plan approved without a separate transfer, usually a Type II plan, the Department should undo the mitigation by issuing an order reverting the "mitigation by non-use" designation on the mitigating right to its original beneficial use.

Sometimes a permitted water use is only partly developed, and the approved mitigation is not needed in its entirety. For Type I mitigation approved in a transfer, a new transfer application is required to return the unneeded mitigation to its original beneficial use. For Type II mitigation, the water right license for the mitigated use can be used as the order diminishing the mitigation requirement and reverting some of the "mitigation by non-use" on the mitigating right to its original beneficial use. For this purpose, the Department can modify the approval condition described in Scenario #5, above.

## MEMORANDUM

To: Regional Offices  
Water Allocation Bureau

Application Processing Memo # 72

From: Jeff Peppersack



Re: **Evaluation of Mitigation Plans for Water Right Permits**

Date: November 4, 2015

This memorandum supersedes Application Processing Memorandum #72 issued May 3, 2010.

The purpose of this memorandum is to provide guidance to Department staff regarding the evaluation of mitigation plans submitted with an application for permit to appropriate water. The Department requires mitigation for applications for permit to appropriate water: 1) in areas of the state that are closed to new consumptive appropriations, or 2) where the water supply is not sufficient for the purpose sought and approval of a new appropriation would injure other water rights. This memorandum does not address mitigation plans for replacement water associated with delivery calls under rules of the Department for Conjunctive Management of Surface and Ground Water Resources, unless addressed through an application for permit.

An adequate mitigation plan must replace or offset depletions to a water source at the time, location and quantity that water is depleted due to the new appropriation. Water quality may be another factor for consideration of an adequate mitigation plan. Department staff members have discretion to adapt the requirements set forth in this memorandum according to the nature and complexity of a proposed mitigation plan. A mitigation plan should ultimately ensure protection of other water rights while providing for efficient implementation and administration by the water user and the Department.

### **SPECIAL ADMINISTRATION AREAS REQUIRING MITIGATION**

An area where new appropriations require mitigation is generally designated by a Department order creating a management area or moratorium area to protect existing water rights and/or the local public interest or to foster the conservation of water resources within the state. The order and/or supporting documentation often provides details about the water source and mitigation requirements. The following are examples of areas that may require a mitigation plan to process an application for a new appropriation of water.

**Ground Water Management Area (GWMA) or Critical Ground Water Area (CGWA) –**  
The Director issues an order creating the administrative area because the ground water withdrawals in the area are exceeding (for a CGWA) or near to exceeding (for a GWMA) the average rate of return of annual recharge. The Southeast Boise Groundwater Management Area is an example of a GWMA with a management policy that provides for mitigation. The Director has issued orders creating GWMA's to protect fully appropriated surface water sources where ground water and surface water are considered to be hydraulically connected. The Bear River GWMA is an example; mitigation requirements are specified in the Management Plan associated with the order.

**Moratorium Area** – The Director normally issues an order to prevent further depletions to the water supply in an area. The purpose of a moratorium is to protect the water supply and/or existing water rights by prohibiting new appropriations seeking consumptive use of water. The Eastern Snake River Plain Moratorium Area is an example; the order allows approval of applications where mitigation is provided to offset depletion and injury to other rights.

**Fully Appropriated Source** – Some sources within the state are appropriated to the extent that any new consumptive appropriation of the source would injure existing water rights. Consumptive applications can be approved where mitigation is provided to offset injury to other rights. Surface water in the Bear River basin is an example; an Administrator's Memo provides the direction to Department staff.

**Temporary Administrative Hold Area** – The Director directs staff by memorandum or other informal means to temporarily cease processing new applications to appropriate water due to concerns about further depletions to the water supply and potential injury to existing rights in an area. An "administrative hold" on application processing may result in a significant backlog of applications that have not been processed. An applicant proposing processing ahead of the pending applications must mitigate for the depletion that would result from approval of his out-of-filing-order application. The past administrative hold on processing applications for ground water appropriation in Basin 63 is an example of an administrative hold area.

## **INSUFFICIENT WATER SUPPLY AND INJURY TO OTHER WATER RIGHTS**

Water Appropriation Rule 45.01.a provides criteria for determining whether a proposed use will injure other water rights. The criteria include 1) the reduction of water quantity available under an existing water right, 2) forcing an existing right holder to unreasonable effort or expense to divert, and 3) reduction of water quality available under an existing water right to an unusable extent. Rule 45.01.a.iv provides that "An application that would otherwise be denied because of injury to another water right may be approved upon conditions which will mitigate losses of water to the holder of an existing water right, as determined by the director."

When the Department determines that the source of water is not sufficient to supply the proposed appropriation of water (Rule 45.01.b), and approval would result in injury to other water rights, the applicant may mitigate for the injury to avoid denial of the application by the Department. An example of an insufficient supply where approval may cause injury is where the applicant proposes to appropriate water from a ground water aquifer of limited volume or from a stream with limited flows and a new appropriation would reduce the supply available to existing right holders.

## **ANALYSIS OF DEPLETION**

Development of a mitigation plan requires an analysis of the quantity of water that will be depleted from the source due to the appropriation. It is the applicant's responsibility to ensure that a depletion analysis is completed and submitted with the application. In addition to quantity depleted, the analysis must address the location and timing of the depletion. For complex situations, the services of a qualified professional (engineer, geologist, or hydrologist) may be required for a proper analysis to determine depletion from the source.

The depletion analysis must consider the consumptive nature of the proposed water use. In addition, a proposed use normally considered to be non-consumptive may require mitigation in cases where the water is not returned to the original source or is returned to the original source in a different location. For example, diversion and use of water may be considered consumptive to the source when the water is impounded (e.g. pond fill), when return flow is discharged to a separate source, or when the timing or location of return flow is such that other right holders will be injured.

## **IDENTIFICATION OF SOURCE OF MITIGATION WATER AND TYPE OF PLAN**

Mitigation water may be provided from a variety of water sources, and a mitigation plan may take several forms, but mitigation generally falls into one of two types. Type I is replacement water from an existing water right, and Type II is non-use of water under another water right from the same source or a connected source. See Application Processing Memorandum No. 71 for more discussion of Type I and Type II mitigation and examples of each type.

A mitigation plan must identify the source of water (including water rights) to be used for mitigation and must describe the quantity, method, and location of delivery to ensure that the source is adequately compensated. The plan must include ownership documentation or authority to use the source of water and/or water rights. In addition, the mitigation plan must include information confirming the validity and historic use of any rights to be used for mitigation.

In general, if the applicant proposes to mitigate by diverting and using water differently than authorized under a valid water right, the applicant must file an application for transfer (or rental of natural flow or storage water from the Water Supply Bank or Rental Pool) together with the application for new appropriation and mitigation plan. For more about the filing requirements for particular mitigation scenarios, see Application Processing Memorandum No. 71.

Although rental of water rights from the Water Supply Bank could substitute for a transfer to provide mitigation, rental from the Bank is often a short-term transaction and could provide a source of mitigation water where mitigation is only required on a temporary basis (e.g. filling a pond). For applications seeking to appropriate water for development of subdivisions or other long-term uses with significant investment and reliance on the water supply, a short-term rental may not be used as a source of mitigation water without a long-term source of mitigation water being identified and ready to approve as a condition of a new permit.

A mitigation plan that proposes diversion and use of canal company, irrigation district, or other water delivery entity water rights or non-use of the same would not be acceptable without an application for transfer (for replacement water with changed diversion and use) or written consent (for non-use) from the entity. Non-use of the water right(s) would also require written acknowledgement from the entity that the Department may update their water right record(s) to reflect the mitigation use (see Application Processing Memo No. 71). A mitigation plan which involves use of a conveyance system owned by a canal company, irrigation district or other water delivery entity would also require written consent from the entity for use of the system and a plan for accounting of water deliveries to confirm that mitigation is accomplished.

## EVALUATION OF MITIGATION PLAN

A mitigation plan must offset the depletion of water associated with a new appropriation in quantity, time, and location. The word "location" for ground water means both the land surface site and the aquifer from which the water is being withdrawn. The word "location" for surface water means within a reasonable distance of the point of diversion, taking into account other water right diversions and possible environmental<sup>1</sup> concerns. In this case, "time" means that the positive impacts of mitigation must occur at the same time as the depletions.

A mitigation plan must be supported by technical analysis and/or modeling of the effects of the plan unless instruction is otherwise provided within a management plan (for a GWMA) or order of the Department. For complex situations, the services of a qualified professional (engineer, geologist, or hydrologist) may be required for a proper analysis to demonstrate that the mitigation plan will be adequate.

Evaluation of a mitigation plan by Department staff requires confirmation of the following:

### Depletion from Source

- Identification of source of water being depleted and Special Administration area
- Analysis estimating quantity, timing and location of depletion

### Availability and Adequacy of Mitigation Water

- Source of mitigation water including water right(s)
- Description of plan demonstrating how water is delivered (for Type I - Replacement Water) and how the delivery will be verified or identification of acres or use to be terminated (for Type II - Non-Use of Water) and how mitigation is accomplished. For unregulated surface water sources, one obstacle would be the potential for diversion and use of the mitigation water by junior appropriators, consequently enlarging the use of the junior rights without mitigating for the new appropriation.
- Ownership or authority to use the mitigation source including water right(s) and consent from any water delivery entity for use of water and updates to water right records
- Validity of the water right(s) used for mitigation including analysis of forfeiture, historic use, overlapping rights and availability of water. Historic use must be sufficient to offset the proposed depletion. Mitigation by storage release is only approvable if the storage supply is reliable and assured either by pre-purchase or through other accepted operation plans within a rental pool and if the mitigation water can be delivered at the time and to the location where depletion occurs.<sup>2</sup> To mitigate using certain Boise River rights or any other water rights that receive a percentage cutback prior to full curtailment, the mitigation plan must include an evaluation of the historic cutbacks and provide sufficient water to mitigate even when the usage has been cut but not curtailed. In other words, these rights cannot be taken at their face value for mitigation purposes because they may be only partially available at times.<sup>3</sup> The

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<sup>1</sup> For example, allowing a stream segment to be dried up may not be in the local public interest, even though no water rights are injured.

<sup>2</sup> See memorandum from Tony Olenichak dated August 1, 2008 entitled, "Delivery of Mitigation Storage to Surface Water Diversions" for a discussion of timing and location for delivery of mitigation storage water in Water District #1.

<sup>3</sup> See memorandum from Dan Stanaway dated October 30, 2015 entitled "Analysis of the Availability of Water Rights in the Stewart Decree."

proposed changes to the mitigating rights will not cause further depletion or injury. For example, non-use of a right from a community canal may require leaving a portion to offset conveyance losses.

- Transfer or rental agreement or purchase agreement for water/right as necessary
- Technical analysis or modeling of effects to demonstrate adequacy of the plan. Staff may need to seek review of the analysis from the Department's Hydrology Section.
- Adequacy of mitigation to address delayed impacts if the permit holder/successor ceases to divert and/or is no longer in business
- Suitability of the quality of water relative to the source being compensated

#### **Verification of Mitigation**

- Plan outlining reasonable method for measurement of water and verification of mitigation
- Consultation with Watermaster within a Water District

### **PROCESSING, APPROVAL AND VERIFICATION**

A permit requiring a mitigation plan cannot be processed until a mitigation plan is submitted. The Department must determine the acceptability of the mitigation plan prior to final processing and approval of a permit. Application Processing Memo No. 71 provides Workflow processing guidance for specific mitigation scenarios. Approval conditions should refer to the mitigation plan, state any measuring, monitoring, and reporting requirements, and explain the consequences for failure to comply with the plan.

Permits and licenses will be conditioned to describe or reference mitigated right(s) and mitigating right(s). Permits and licenses issued in accordance with a mitigation plan will include conditions requiring installation and maintenance of measuring devices on the diversion to assure the mitigation water is being delivered in accordance with the approved mitigation plan. Permits and licenses will be conditioned to require reporting in accordance with Chapter 7, Title 42, Idaho Code, as necessary, to document compliance with conditions of the water right and the associated mitigation plan. In complex situations, the Department may require a condition for measurement, reporting, and monitoring by a qualified professional (engineer, geologist, hydrologist) to ensure that the mitigation plan is accomplished. In addition, approvals will be conditioned to require curtailment of the diversion and use of water anytime the mitigation requirements are not met.

Failure of the holder of the right to implement and continuously comply with the requirements of an approved mitigation plan, while continuing to divert and use water, constitutes a violation subject to enforcement action under Sections 42-311, 350, 351, and/or 1701B, Idaho Code. Any approval must be conditioned that failure to mitigate as described by the plan of mitigation, while still diverting water under the permit, is cause for the director to cancel a water right permit or revoke a subsequently approved water right license.

**Grimm, Angie**

---

**From:** Grimm, Angie  
**Sent:** Thursday, September 21, 2017 11:25 AM  
**To:** Marston, Sascha  
**Subject:** C101249 Receipt Change and Partial Refund Request  
**Attachments:** DOC004.pdf

---

Sascha,

Attached is a receipt change and partial refund request memo. Please let me know if you have any questions or need more information.

Thanks,  
Angie

## MEMORANDUM

TO: Sascha Marston  
FROM: Angela Grimm  
DATE: 9/21/17  
RE: C101249 Receipt Change and Partial Refund Request

Barker Rosholt & Simpson paid \$500.00 for a water right transfer application on 11/24/15. The application was incomplete and returned on 5/18/17. In response, Shelley Davis of Barker Rosholt & Simpson filed a water right permit application and requested \$370.00 of the \$500.00 previously submitted be used towards that permit application filing fee and the remainder refunded.

Please change \$370.00 of receipt C101249 from PCA 56105 to PCA 62103 (or state office equivalent PCA for permit applications) and issue a refund of the remaining \$130.00 to:

BARKER ROSHOLT & SIMPSON LLP  
1010 W JEFFERSON ST SUITE 102  
PO BOX 2139  
BOISE ID 83701-2139

TEL. 208-336-0700

### RECEIPT

Receipt no. C101249

Copy: Transfer No. 80552 and Island Woods HOA Inc Permit Appl. of 9/15/17 file

# Receipt Details for ID C101249

|        |                 |         |
|--------|-----------------|---------|
| Status | Adjustment Type | Version |
|        |                 | 1       |

## General Information:

|                                 |                       |        |              |              |
|---------------------------------|-----------------------|--------|--------------|--------------|
| Date Received                   | Date Deposited        | Region | Total Amount | Payment Type |
| 11/24/2015 4:32:20 PM           | 11/25/2015 3:26:10 PM | STATE  | \$500.00     | Check        |
| Payee: BARKER ROSHOLT & SIMPSON |                       |        |              |              |

## Account Information

Check Number 24449

Comment APPLICATION FOR TRANSFER FOR ISLAND WOODS HOA

## Fee Details

|          |             |       |      |             |            |        |
|----------|-------------|-------|------|-------------|------------|--------|
| Amount   | Description | PCA   | Fund | Fund Detail | Subsidiary | Object |
| \$500.00 | TRANSFERS   | 56105 | 0229 | 21          |            | 1155   |

## MEMORANDUM

TO: Transfer No. 80552 File

FROM: Angela Grimm

DATE: September 21, 2017

RE: Transfer Application Status Update

---

The following summarizes the pertinent processing history of Transfer No. 80552:

- 11/24/15 - Incomplete (unsigned) transfer application received.
- Although incomplete, transfer filing data entered into Workflow & assigned App ID 80552.
- 5/18/17 incomplete Transfer No. 80552 returned to applicant with request to sign and return within 30 days or refund will be issued. Alternatively, applicant given opportunity to file permit application and use filing fee received with transfer for permit. Changed status of Transfer No. 80552 from 'Active' to 'Draft' in Workflow.
- 6/19/17 received request for more time to make decision from attorney.
- 6/20/17 request for additional time granted for additional 90 days.
- 9/15/17 received permit application with request to; withdraw transfer, apply portion of transfer filing fee to permit application, and refund remaining fee.
- 9/21/17 changed status of Transfer No. 80552 from 'Draft' to 'See Remarks'. 'See Remarks' status more appropriate than 'Withdrawn' considering the filing was never complete/acceptable.
- 9/21/17 sent request for receipt change and partial refund to fiscal section of IDWR.
- Documents group scanned and profiled to water rights 63-32594 and 63-32596 as "Application for Transfer through Return and Refund Request".

ALBERT P. BARKER  
JOHN A. ROSHOLT  
JOHN K. SIMPSON  
TRAVIS L. THOMPSON  
SHELLEY M. DAVIS  
SCOTT A. MAGNUSON  
JONAS A. REAGAN



1010 W. Jefferson, Suite 102  
Post Office Box 2139  
Boise, Idaho 83701-2139  
(208) 336-0700 telephone  
(208) 344-6034 facsimile  
brs@idahowaters.com

163 2nd Avenue West  
Twin Falls, Idaho 83301-5672  
(208) 733-0700 telephone  
(208) 735-2444 facsimile

COPY

Shelley M. Davis  
smd@idahowaters.com

September 15, 2017

**VIA HAND DELIVERY**

Angela Grimm  
Idaho Department of Water Resources, Western Region  
2735 Airport Way  
Boise, ID 83702-5082

RECEIVED  
SEP 15 2017  
WATER RESOURCES  
WESTERN REGION

Re: Island Woods Homeowners' Association Application for Water Right Permit and  
Withdrawal of Transfer Application No. 80552

Dear Mr. Grimm:

Thank you for assistance in preparing the attached water right application on behalf of the Island Woods Homeowners' Association. Please take notice that the Island Woods Homeowners' Association, with the filing of this application, officially withdraws its' application for transfer no. 80552. Per our discussion, the filing fee for this application is \$370.00. As of now, the Department has on file the HOA's prior transfer application fee of \$500.00. Please credit \$370.00 to the filing of this new application, and refund the remainder, \$130.00, to the Island Woods Homeowners' Association.

Very truly yours,  
**BARKER ROSHOLT & SIMPSON LLP**



Shelley M. Davis

Enc.

**Grimm, Angie**

---

**From:** Grimm, Angie  
**Sent:** Monday, August 14, 2017 11:21 AM  
**To:** 'debimillar@cableone.net'  
**Subject:** Island Woods HOA Inc Transfer Filing No. 78341 - Latest Correspondence  
**Attachments:** DOC012.pdf; DOC013.pdf

Mrs. Millar,

Good morning! Per our phone conversation moments ago, attached are the two most recent letters on file for Island Woods HOA Inc. water right transfer filing no. 78341. I hope this information is helpful for your board meeting. Please let me know if you have any trouble opening the attachments.

Regards,  
Angie

Angela M. Grimm, P.G.  
Water Rights Supervisor  
IDWR - Western Region  
2735 Airport Way  
Boise, ID 83705-5082  
(208) 334-2190 phone  
(208) 334-2348 fax



State of Idaho

## DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

June 20, 2017

ISLAND WOODS HOMEOWNERS ASSOCIATION INC  
C/O SHELLEY DAVIS  
BARKER ROSHOLT & SIMPSON LLP  
PO BOX 2139  
BOISE ID 83701-2139

RE: Transfer Application No. 80552 - Request for Additional Time to Provide Water Right Filing(s)

Dear Shelley:

On June 19, 2017, I received your letter (via email) requesting an additional ninety (90) days to provide a complete transfer filing (or other water right filing) and additional information requested by the Idaho Department of Water Resources (IDWR) via letter dated May 18, 2017. Your request is granted.

**Therefore, the requested water right filing(s) and additional information is due by September 18, 2017.**

On May 18, 2017, Transfer Application No. 80552 for water rights 63-32594 and 63-32596 was returned as an incomplete filing considering the application was not signed. In my May 18, 2017 letter, I indicated I would pursue issuance of a refund for the filing fee if a signed transfer application was not received within thirty (30) days. Based on your letter and our phone conversation this afternoon, I will delay the refund request for another ninety (90) days. This will allow for continued information gathering necessary to determine what water right filing(s) are appropriate for the circumstances. Please contact me at (208) 334-2190 if you have any questions.

Regards,

Angela M. Grimm  
Water Rights Supervisor

**Grimm, Angie**

---

**From:** Shelley Davis <smd@idahowaters.com>  
**Sent:** Monday, June 19, 2017 1:56 PM  
**To:** Grimm, Angie  
**Cc:** Shelley Davis  
**Subject:** Island Woods Transfer Application No. 80552  
**Attachments:** 061917 ltr to IDWR.pdf

RECEIVED

JUN 19 2017  
VIA EMAIL  
WATER RESOURCES  
WESTERN REGION

Dear Angie:

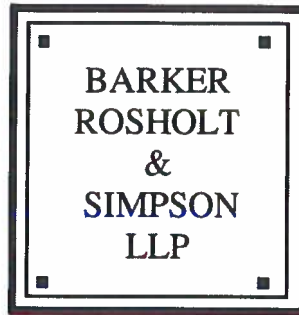
Please see the attached letter requesting an extension of time to respond to your May 18, 2017 information request.

Best Regards,

Shelley M. Davis  
Barker Rosholt & Simpson LLP  
1010 W. Jefferson St., Ste. 102  
Boise, ID 83702  
(208) 336-0700

**CONFIDENTIALITY NOTICE:** This e-mail and its attachments are confidential and may be privileged. If you believe this e-mail has been sent to you in error, please notify the sender immediately and delete this email. Do not deliver, distribute or copy this transmission.

ALBERT P. BARKER  
JOHN A. ROSHOLT  
JOHN K. SIMPSON  
TRAVIS L. THOMPSON  
SHELLEY M. DAVIS  
SCOTT A. MAGNUSON



1010 W. Jefferson, Suite 102  
Post Office Box 2139  
Boise, Idaho 83701-2139  
(208) 336-0700 telephone  
(208) 344-6034 facsimile  
brs@idahowaters.com

163 2<sup>nd</sup> Avenue West  
Twin Falls, Idaho 83301-5672  
(208) 733-0700 telephone  
(208) 735-2444 facsimile

Shelley M. Davis  
smd@idahowaters.com

June 19, 2017

**VIA EMAIL**

Idaho Department of Water Resources  
Western Region  
2735 Airport Way  
Boise, ID 83705-5082

RECEIVED

JUN 19 2017  
VIA EMAIL  
WATER RESOURCES  
WESTERN REGION

Re: Transfer Application No. 80552

Dear Ms. Grimm:

On May 18, 2017, I received a letter from you seeking additional information concerning the above-referenced transfer. This letter is a request for an additional ninety (90) days within which to provide the requested information. Due to the unusually high river conditions, certain testing in order to respond to your letter was unable to be conducted. As Boise River levels are now declining, it is anticipated that the additional work to answer the questions posed should be able to be conducted within 90 days. Please inform me at your earliest convenience whether this request is granted.

Very truly yours,  
**BARKER ROSHOLT & SIMPSON LLP**



Shelley M. Davis

836 836 83616

C3-42

PSRT FIRST-CLASS MAIL  
U.S. POSTAGE PAID  
Boise, ID  
PERMIT# 1



6020170518-143759303

6

RETURN SERVICE REQUESTED

83616



IDAHO DEPARTMENT OF WATER RESOURCES  
2735 Airport Way  
Boise ID 83705-5082  
(208) 334-2190

To  
ISLAND WOODS HOA INC  
PO Box 193  
EAGLE ID 83616

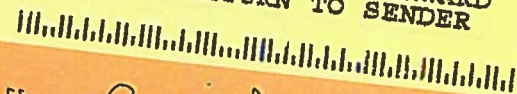
*LA*  
RETURN TO SENDER  
**VACANT**

NIXIE

836162021-1N

05/24/17

RETURN TO SENDER  
VACANT  
UNABLE TO FORWARD  
RETURN TO SENDER



RECEIVED

MAY 30 2017

WATER RESOURCES  
WESTERN REGION

Letter Regarding Application for Transfer No. 552  
Return & Additional Information Request  
Sent 5/18/17.



State of Idaho

## DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

May 18, 2017

ISLAND WOODS HOMEOWNERS ASSOC INC  
C/O SHELLEY DAVIS  
BARKER RSHOLT & SIMPSON  
PO BOX 2139  
BOISE ID 83701

COPY

### RE: Application for Transfer No. 80552 Return & Additional Information Request

Dear Shelley:

The Idaho Department of Water Resources (IDWR) is currently reviewing the above referenced application associated with 12 existing ponds and common area irrigation within Island Woods Subdivision. On 7/19/16, IDWR requested additional information regarding hydraulic connection between the Boise River (current source of rights proposed for transfer) and shallow ground water (source of proposed points of diversion). On 10/3/16, IDWR extended the deadline to submit the requested information to 1/2/17. In that extension letter, I indicated I would review the file further and follow up with another information request, should additional information be necessary. To date, IDWR has not received a response to the initial information request, but I offer this letter as a follow up and request for the same and additional information. Before continued processing of the proposed water right authorization can occur, a complete filing and additional information requested below is needed.

- 1. Complete the application:** The transfer application submitted is not signed. IDWR Transfer Processing Memorandum #24 states a transfer application must include the signature of the applicant or the applicant's authorized representative. Therefore, the original application (enclosed) is being returned as incomplete. **The filing fee will be refunded if a complete transfer application form is not returned within the next thirty (30) days.** The initial filing date of this proposal will be advanced to the date of submittal of a complete application form. However, the filing will be processed as soon as a complete form is received.
- 2. Provide supplemental information regarding hydraulic connection:** The information requested in IDWR's July 2016 information request, must also be received to continue processing. The transfer proposes to change the point of diversion from the Boise River to three shallow ground water ponds considered tributary to the Boise River. Idaho Code §42-222 does not contemplate changes to the source of water rights. However, IDWR Transfer Processing Memorandum #24 policy allows for such changes to points of diversion if there is at least a 50% depletion in the original source when water is diverted from the proposed source. While IDWR acknowledges there is a hydraulic connection between shallow ground water and the Boise River in the area, the applicant must submit information demonstrating whether the connection results in a 50% depletion. Should the applicant still wish to change the point of diversion as currently proposed, additional information demonstrating the degree of hydraulic connection must be submitted.
- 3. Propose adequate mitigation:** The transfer application proposes to change the nature of use for 14 acres of irrigation to aesthetic storage and diversion to storage to off-set the evaporative losses associated with 12 existing excavated ponds that fill with shallow ground water. Retirement of use under a senior Boise River water right is required to off-set the consumptive use associated with new ponds in this area to avoid injury to senior Boise River water rights. The rights proposed for retirement are Stewart Decree rights with 1877 and 1891 priorities. While all Stewart Decree rights are at times curtailed to 60%, rights junior to 1877 are

fully curtailed at some point during the irrigation season most years. Evaporation associated with the ponds is a use that cannot be physically curtailed should the mitigating right be curtailed late in the season. Therefore, retirement of a right with an 1877 or senior priority date is required to off-set the evaporative losses to avoid injury. The applicant's right 63-32594 has an 1877 priority, but when used alone, only provides approximately 11.5 acres ( $0.23 \text{ cfs} \div 0.02 \text{ cfs/ac}$  under system of rights) that may be retired. This would not be enough water to off-set the evaporative losses based on the analysis submitted with the transfer application. Another form of mitigation must be proposed to avoid injury to senior Boise River rights.

4. **Address pond capacity:** In addition to the evaporative losses, the capacity of the 12 ponds within the subdivision needs water right authorization. The transfer application does not propose a nature a use change for this volume of water. Based on the pond dimensions described in the transfer application (16.3 ac surface area and average depth of 20 ft) the capacity of the ponds likely ranges from 131 af to 326 af, depending upon the shape of the ponds (sloped sides or square sides). The capacity of excavated ponds is generally considered non-consumptive and can usually be authorized by a new shallow ground water permit filing.

Considering a new water right permit is likely required (to cover the capacity of the ponds at a minimum), one option to address some of the concerns described above may be to file a new permit application with a mitigation plan that avoids injury through some mitigating practice that completely offsets the impacts (in time, location, and quantity) of the proposed use on the water supply of other users. The mitigation plan should describe the expected depletion to the Boise River from the proposed use(s) and should describe how that depletion will be mitigated at the appropriate quantity and time. IDWR Application Processing Memorandum #71 and #72 describe various types of mitigation and the criteria for evaluating mitigation plans (copies enclosed).

The recommendation to file a new permit application with associated mitigation plan is based largely on the documents on file. Limited consideration has been given to current land use practices or the applicant's intended use or non-use of their Boise River water rights since I do not have that information readily available. I'd be more than happy to meet with you to discuss the current land use and work through any necessary amendments to the transfer application and/or new permit application to facilitate further processing. Please feel free to contact me at (208) 334-2190 or via email at [angie.grimm@idwr.idaho.gov](mailto:angie.grimm@idwr.idaho.gov). I look forward to assisting in facilitation of the necessary water right authorization(s).

Regards,



Angela M. Grimm  
Water Rights Supervisor

Enclosure(s): Original Transfer Application No. 80552, Memo #s 71 and 72

Cc: Island Woods Homeowners Association, Inc.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

Transfer No. 80552

# COPY

## MINIMUM REQUIREMENTS CHECKLIST TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at [www.idwr.idaho.gov](http://www.idwr.idaho.gov).

Name of Applicant(s) Island Woods Homeowners Association, Inc.

**Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.**

**Yes** **N/A** \* Means the item is always required and must be included with the application.

- ☒ \* Completed Application for Transfer of Water Right form, Part 1.
- ☒ \* Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ \* Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded.
- ☐ ☒ Complete and attach an Application for Transfer Part 2B for each water right for which only a portion is proposed to be changed through this transfer application.
- ☒ \* Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ \* Correct fee submitted with transfer application form. (Fee schedule is on website and instructions for application for transfer.)

**Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-10.**

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the applicant as the current water right owner. \*\*
- ☐ ☒ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s).\*\*  
\*\* Additional fee(s) required for water right ownership changes; see fee schedule.
- ☒ ☐ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☒ ☐ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☒ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at [www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm](http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm).
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ \* #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☒ ☐ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.
- ☒ ☐ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See ~~Part 3B~~ Part 1A.2) Additional fee required for proposed changes to nature of use; see fee schedule.
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☒ #9 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. (Attachment WSB)
- ☒ ☐ #10 Other. Please describe: See Part 1A.2 Narrative and Exhibits attached hereto.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 1**

RECEIVED  
NOV 25 2015  
RECEIVED  
NOV 24 2015  
DEPARTMENT OF  
WATER RESOURCES  
WESTERN REGION

Name of Applicant(s) Island Woods Homeowners Association, Inc. Phone (208) 939-6000  
Mailing address PPO Box 193, Eagle, Idaho 83616 Email \_\_\_\_\_

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative Shelley Davis, Barker Rosholt & Simpson Phone 208 336-0700  
Mailing address PO Box 2139, Boise, ID 83701 Email smd@idahowaters.com

- ☒ Send all correspondence for this application to the representative and not to the applicant.  
**OR**
- ☐ Send original correspondence to the applicant and copies to the representative.
- ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.  
**OR**
- ☒ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4. #3**

**I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.**

\_\_\_\_\_  
Signature of Applicant or Authorized Representative      Print Name and Title if applicable      Date

\_\_\_\_\_  
Signature of Applicant or Authorized Representative      Print Name and Title if applicable      Date

**A. PURPOSE OF TRANSFER**

1. ☒ Change point of diversion      ☐ Add diversion point(s)      ☒ Change place of use  
☒ Change nature of use      ☐ Change period of use      ☐ Other \_\_\_\_\_
2. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**.  
See Part 1A.2 attached hereto  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

## APPLICATION FOR TRANSFER OF WATER RIGHT PART 1 Continued

**B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.**

| 1.                                                                          | Right Number | Amount<br>(cfs/ac-ft) | Nature of Use        | Period of Use | Source & Tributary       |
|-----------------------------------------------------------------------------|--------------|-----------------------|----------------------|---------------|--------------------------|
| All or Part<br><input checked="" type="checkbox"/> <input type="checkbox"/> | 63-32594     | ac-ft                 | aesthetic storage    | 1/1 to 12/31  | groundwater; Boise River |
| <input checked="" type="checkbox"/> <input type="checkbox"/>                |              | 0.23 cfs              | irrigation           | 3/1 to 11/15  | groundwater; Boise River |
| <input checked="" type="checkbox"/> <input type="checkbox"/>                |              | 0.23 cfs              | diversion to storage | 3/1 to 11/15  | groundwater; Boise River |
| <input checked="" type="checkbox"/> <input type="checkbox"/>                | 63-32596     | ac-ft                 | aesthetic storage    | 1/1 to 12/31  | groundwater; Boise River |
| <input checked="" type="checkbox"/> <input type="checkbox"/>                |              | 0.55 cfs              | irrigation           | 3/1 to 11/15  | groundwater; Boise River |
| <input checked="" type="checkbox"/> <input type="checkbox"/>                |              | 0.55 cfs              | diversion to storage | 3/1 to 11/15  | groundwater; Boise River |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |                      | to            |                          |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |                      | to            |                          |
| <input type="checkbox"/> <input type="checkbox"/>                           |              |                       |                      | to            |                          |

Total authorized under rights 0.78 cfs and/or 326 acre-feet.

2. Total amount of water proposed to be transferred or changed 0.78 cubic feet per second and/or 326 acre-feet per year.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)  
☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA.  
 Label it **Attachment #5**.

| New ? | Lot | ¼  | ¼  | ¼ | Sec | Twp | Rge | County | Source      | Local name or tag # |
|-------|-----|----|----|---|-----|-----|-----|--------|-------------|---------------------|
|       | 6   | NE | SW |   | 16  | 4N  | 1E  | Ada    | groundwater |                     |
|       | 6   | SE | SW |   | 16  | 4N  | 1E  | Ada    | groundwater |                     |
|       | 5   | NW | SW |   | 16  | 4N  | 1E  | Ada    | groundwater |                     |
|       |     |    |    |   |     |     |     |        |             |                     |
|       |     |    |    |   |     |     |     |        |             |                     |

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

| Twp                              | Rge | Sec | NE ¼ |    |    |    | NW ¼ |    |    |    | SW ¼ |    |    |    | SE ¼ |    |     |    | Acre Totals |
|----------------------------------|-----|-----|------|----|----|----|------|----|----|----|------|----|----|----|------|----|-----|----|-------------|
|                                  |     |     | NE   | NW | SW | SE | NE   | NW | SW | SE | NE   | NW | SW | SE | NE   | NW | SW  | SE |             |
| 4N                               | 1E  | 16  |      |    |    |    |      |    |    |    | 5.5  | 9  | 8  |    |      |    | 0.5 |    | 23          |
|                                  |     | 16  |      |    |    |    |      |    |    |    | J    | J  | J  |    |      |    |     |    |             |
|                                  |     | 21  |      |    |    |    | J    | 2  |    |    |      |    |    |    |      |    |     |    | 2           |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |     |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |     |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |     |    |             |
|                                  |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |     |    |             |
| Total Acres (for irrigation use) |     |     |      |    |    |    |      |    |    |    |      |    |    |    |      |    |     |    | 25          |

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT**  
**PART 1 Continued**

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:  
Naturally occurring shallow groundwater fills 12 ponds in the subdivision, and 3 of those ponds re-divert water for the pressurized irrigation system. Of the 39 acres under water rights, only approximately 25 acres to be irrigated.  
Will accommodate whatever measuring device or lockable controlling works should they be required in future.

- b. Who owns the property at the point(s) of diversion? Applicant

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

\_\_\_\_\_

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?  
 If yes, ☐ attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: N/A

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?

If yes, ☐ complete Attachment WSB.

- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:  
No effect on the land.

\_\_\_\_\_

- f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use:

\_\_\_\_\_

- g. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- |                                     |                                     |                                                                                               |
|-------------------------------------|-------------------------------------|-----------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | undergone a period of five or more consecutive years of non-use,                              |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | currently leased to the Water Supply Bank,                                                    |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | currently used in a mitigation plan limiting the use of water under the right, or             |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | currently enrolled in a Federal set-aside program limiting the use of water under the rights? |

If yes, describe:

The developer transferred water rights to the HOA without any information concerning the development of the irrigation and pond system. There is buried pipeline and although there are two potential surface water connectivity for the existing irrigation and aesthetic uses it cannot be determined with certainty at this time.





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## **Part 1A.2**

### **Narrative Description**

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## Part 1A.2

### Narrative Description Re Application for Transfer

Island Woods HOA is the owner of two surface water rights from the Boise River, 63-32594 & 63-32596, with a combined delivery of 0.78 cfs of water for 39 acres of property. Prior to the development of the subdivision by Dennis Baker and B.W. Inc., the land was irrigated as pasture. In the development of the land, in or about 1992, B.W. Inc., sought approval for the excavation of twelve (12) shallow groundwater ponds, covering approximately 16.3 acres—three (3) of which acted as a point of diversion for the irrigation of roughly twenty-five (25) acres of common area in the subdivision. The application consisted of Application for Permit No. 63-11900 for shallow ground water tributary to the Boise River; Application for Transfer No. 67986 to use a portion of water right 63-196 to mitigate consumptive use from the ponds; and Stream Channel Permit No 63-S-912 to authorize return flows. *See IDWR Backfiles.*

In correspondence dated October 26, 2004, IDWR acknowledged that the applications were unresolved for multiple reasons—but primarily attributable to “internal details” of IDWR, ownership changes, and/or disposition of original water rights 63-196 & 63-197 in the SRBA. *See Exhibit A* attached hereto.

In a memorandum dated February 10, 2005, the department indicated that the Permit Application 63-11900 and Transfer Application 67986 (previously 4273) were void, and that the department was awaiting full recognition of the aforementioned rights for a smoother transfer process. *See Exhibit B*, attached hereto. Water rights 63-196 & 63-197 were split and partially decreed in the SRBA in 2008 and exist as 63-32594 & 63-32596.

Historically, based on the Stewart Decree and subsequent water master records, right no. 63-32594 was decreed as no. 64 in the Stewart Decree and its original point of diversion was Thurman Mill Slough, however, subsequently according to the water master records, that appears to have been moved to New Dry Creek. Right no. 63-32596 was no. 118 in the Stewart Decree its’ original point of diversion was listed as the Conway & Hamming ditch. *See Exhibit C.*

Island Woods HOA is now seeking to finalize what B.W. Inc. (and Mr. Baker), and the Department started previously, which is the transferring of its surface water irrigation rights into its naturally occurring shallow groundwater rights for aesthetic uses, diversion to storage, and irrigation purposes. Island Woods HOA proposes that its rights maintain its priority date.

As proposed, Island Woods consumptive use will be covered during the irrigation season by a reduction of acres in the underlying water rights, while consumptive use outside of the irrigation season will be negligible—noting that with the development of the subdivision consumptive use would decline. *See Exhibit D.*

The naturally occurring shallow groundwater fills twelve (12) ponds, with a surface area total of approximately 16.3 acres and average depth of around 20 feet. Three (3) of the ponds act as a point of diversion to re-divert water to the pressurized irrigation system for the common area. Instead of the decreed use for 39 acres, irrigation is for approximately 23.7 acres.

The 25 acres of irrigation will be one-for-one, because they are the same use. The remaining 14 acres are offered to mitigate for the 16.3 acres of pond surface. The 16.3 acres of pond surface have an average precipitation deficit of 2.15 feet per year (*Allen, Richard G. and Clarence W. Robison, 2006 (revised 2007). **Evapotranspiration and Consumptive Irrigation Requirements for Idaho**, Research Technical Completion Report, Kimberly Research and Extension Center, University of Idaho, Moscow, ID*), which is 35 ac-ft per year. Prior to development, the land was maintained as pasture. The consumptive use of pasture grass (low management) is an average of 2.5 feet per year. 14 acres of pasture grass (low maintenance) has an average consumptive use rate of 35 ac-ft per year and fully compensates for the 16.3 acres of pond surface (35 ac-ft per year). *Exhibit E* contains the Precipitation Deficit tables cited.

# Exhibit A

Exhibit A



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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

FAX (208) 334-2348

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

October 26, 2004

DENNIS BAKER  
BW INC  
250 S BEECHWOOD STE 120  
BOISE ID 83709

**Re: Water Rights for Island Woods Subdivision Water Amenity Ponds**

Dear Mr. Baker:

In 1992 you filed the following applications on behalf of B. W. Incorporated to develop a water amenity system of ponds for the Island Woods Subdivision on Eagle Island:

- Application for Permit No. 63-11900 to appropriate shallow ground water tributary to the Boise River to initially fill the ponds
- Application for Transfer No. 67986 to use a portion of Boise River decreed irrigation water right 63-196 to mitigate consumptive use from the ponds
- Application for Stream Channel Permit No. 63-S-912 to authorize return flows from the ponds to the river.

*Handwritten: Final IDWR*

The applications have remained unresolved for a number of reasons. The lack of progress in this matter is primarily attributed to internal details of the Idaho Department of Water Resources (IDWR) processes instead of any lack of good faith efforts by the applicant. I sent you a letter a couple years ago using the address from the application records. The letter was returned as undeliverable. It was not until lately that a new address was identified for your company. Several critical factors have prompted this letter to you after the long delay in resolving the water right scenario for the subdivision ponds: probable ownership changes for the property and associated water rights, the disposition of older water rights 63-196 and 63-197 for the property via the Snake River Basin Adjudication (SRBA) process, and the use of surface and/or ground water for the ponds but not in compliance with authorized water rights.

Apparently the subdivision has historically been irrigated with decreed irrigation rights 63-196 and 63-197 from the Boise River. Additionally, B. W. Inc. secured licensed

October 26, 2004

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water right 63-11467 to provide domestic and irrigation water to the subdivision from drilled wells. That license became part of the United Water Idaho Inc. municipal water rights. Municipal rights can serve the subdivision. None of these water rights authorize the use of surface water or shallow ground water for ponds in the subdivision.

Most likely, your company does not retain any ownership interest in the subdivision and does not want nor need to pursue the necessary water right approvals for the ponds. It is not clear who currently owns the surface water irrigation rights for the site. SRBA claims were filed in 1989 by Lois Joplin to protect the irrigation water rights from the river (63-196 and 63-197). United Water owns the ground water right from the wells (63-11467). Homeowners own individual lots in the subdivision. An active homeowners association has been identified for the subdivision based on information from the Idaho Secretary of State "business entity registration" on the Internet.

Based on typical encounters with scenarios such as this, it is reasonable to conclude that water rights to fill and maintain the ponds should be held by the homeowners association. Alternately, ownership of, and/or responsibility for, the ponds could include another entity that maintains the ponds on behalf of the homeowners. In any event, the owner or otherwise responsible entity needs to address SRBA concerns and eventual water right approval for the water amenity in the subdivision.

The SRBA process is currently focused on Ada County. It is expected that preliminary SRBA recommendations will be made by next spring, and a Director's Report summarizing Ada County water rights developed and used by late 1987 should be reported to the SRBA Court by next summer. The ponds cannot be part of the SRBA process since they were developed after 1987. Current owners of Boise River water rights 63-196 and 63-197 should file ownership changes with IDWR to assure proper inclusion in the SRBA process and the final disposition of those rights by the Court. Additionally, ownership changes for water rights are required under Idaho law.

By copy of this letter, the homeowners association is invited to explore the idea of filing an ownership change for SRBA claims 63-196 and 63-197 to protect those older irrigation rights. An ownership change for those rights is not required if Lois Joplin still owns those rights. The SRBA does not apply to municipal right 63-11467 since it was developed after 1987.

Successful conclusion of the SRBA process is the most immediate water right issue facing the subdivision. Following that step, securing water right protection for the ponds should be addressed. It is possible to pursue both steps simultaneously but perhaps that is overly complicated at this time. The water right owner's interests are probably best served by pursuing the SRBA process and then tackling water right approval for the ponds.

October 26, 2004

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**Several options are available for various parties at this time as discussed below.**

1. B. W. Inc. can withdraw Application nos. 63-11900, 67986 and 63-S-912 by submitting a letter of withdrawal to IDWR. In that event, IDWR will contact the current owner(s), once determined, of Boise River water rights 63-196 and 63-197 and discuss water right issues for the ponds.
2. B. W. Inc. can assign Application nos. 63-11900, 67986 and 63-S-912 to the current property owner(s). As previously noted, the homeowners association is a likely candidate. The first application can be assigned with the enclosed form. The other two applications can be assigned using a notarized letter. There are no fees associated with the assignment action. Assignments will remove B. W. Inc. from the subdivision scenario regarding the necessary water right protection for the ponds.
3. Application nos. 63-11900, 67986 and 63-S-912 will be voided if B. W. Inc. chooses not to complete either of those steps by December 31, 2004. A reply from B. W. Inc. is not needed in that case.
4. The current owner(s) of water rights 63-196 and 63-197 should file an ownership change with IDWR to update SRBA claim records. There is no fee to do this. These water rights are considered appurtenant to the place of use described by the rights unless the rights were specifically withheld during any real property transaction (sale, gift etc.). While individual subdivision lot owners could file individual ownership changes for prorated portions of the water rights, a more efficient and manageable approach is for an entity, e.g., homeowners association, to do this on behalf of individual lot owners.

Regardless of the B. W. Inc. decision for the three applications associated with the ponds, IDWR will contact the current owner(s) of water rights 63-196 and 63-197 once that ownership is determined. IDWR will work with the current owner(s) to resolve water right issues for the subdivision ponds.

**Summary**

- B. W. Inc. can decide what to do with Application nos. 63-11900, 67986 and 63-S-912 by the end of this year.
- The current owner(s) of SRBA claims 63-196 and 63-197 should file an ownership change with IDWR by the end of this year to protect those 1877 Boise River irrigation rights.

October 26, 2004

Page 4

- IDWR will coordinate its SRBA work with the owners of record for SRBA claims. The owners of record are those parties listed in the claims. SRBA work will continue this winter and through next summer before concluding with a Director's Report to the SRBA Court. The eventual outcome of the SRBA process will affirm, deny or modify the validity and extent of those irrigation rights.
- IDWR will coordinate the necessary steps to address water right protection for the ponds in the subdivision. Most likely, this follow up will begin in earnest after IDWR completes its SRBA work for the older irrigation water rights. Use of water for the ponds must be treated as an illegal diversion of water subject to enforcement actions by IDWR if water right protection for the ponds cannot eventually be obtained. This office will work with current owners to avoid such enforcement actions as much as possible.

Thank you for your patience in sorting through this long letter. Please call me at 334-2190 if you would like to discuss this in more detail.

Sincerely,



Steve Lester  
Water Rights Supervisor

Enclosure

Copy (without enclosure):

Mark Walton, Island Woods Homeowners Association  
Lois Joplin, SRBA Claimant for 63-196 and 63-197  
Jeff Fereday, Attorney at Law, Givens Pursley LLP  
Scott Rhead, United Water Idaho Inc.

# Exhibit B

Exhibit B

RECEIVED

FEB 14 2005

DEPARTMENT OF  
WATER RESOURCES

MEMORANDUM

TO: Gary Spackman and Erv Ballou *Gary*  
FROM: Steve Lester *SL*  
DATE: February 10, 2005  
RE: B W Inc. Applications for Island Woods Subdivision

---

This memo is addressed to both of you regarding water right and stream channel applications filed many years ago for a pond project at Island Woods Subdivision on Eagle Island. See my 10/26/04 letter for a summary of the background in this matter.

As noted in that letter, it is too late in the day to arrive at a water rights solution before SRBA recommendations are made for Ada County. The recommended path was to allow SRBA to do it work and then revisit the water rights. The current homeowner association contact is Mark Walton, 938-6076. I talked to him recently, and he is working on an ownership change for decreed rights 63-196 and 63-197 associated with the subdivision. I imagine the eventual SRBA result will be full recognition of those rights, clearing the way for a smoother transfer process for all concerned.

Once the notice of error process is completed for SRBA recommendations, I will work with the association regarding the necessary water right coverage for shallow ground water ponds already developed at the subdivision. The good news is that we are much better now at covering ponds than we were in the past (unfortunately from too much practice in recent years!). This situation is set for call up early this summer to resume working on pond issues. Walton said the association concurs with that approach.

Instead of voiding the stream channel application in the 1/24/05 order, it seemed better to forward that file to Erv. SCA issues can be looked into at his discretion. I'll be sure to remind the association not to overlook that when the water rights for ponds are revisited.

The January 2005 order is now final (no petition filed). Transfer Application 67986 (previously 4273) and Permit Application 63-11900 are void. Application status for both filings was changed to "void" in the database.

I hope this approach meets with your approval. It's not ideal but seemed best under the circumstances. Please let me know if you have concerns about this plan.

Copy: Kimberly Brown for SRBA Claims

# Exhibit C

Exhibit C

**ISLAND WOODS HOA RIGHT NO.**

**63-32594**

**STEWART DECREE NO. 64**

## LXIV.

That the defendant Isham Joplin be, and he is hereby awarded the use of the waters of Boise River, diverted at a point in SE 1/4 of NE 1/4 of Sec. 5, T. 3 N. R. 2 E. B.M., through what is known as the Thurman Mill Slough, for use upon the E. 1/2 of SE 1/4 of Sec. 21, and SW 1/4 of SW 1/4 of Sec. 22, all in T. 4 N. R. 1 E. B.M., in the following amount and from the following date;

120 inches, from June 1, 1880, and hereby designated as Right No. 75. And be adjudged to pay \$8.40 costs in addition to the costs incurred by him.

## LXV.

That the defendant JOSEPH GOBLE be, and he is hereby awarded the use of the waters of Boise River, diverted from said river at a point in SE 1/4 of NE 1/4 of Sec. 5, T. 3 N. R. 2 E. B.M., through what is known as the Thurman Mill Slough, for use upon the SW 1/4 of SE 1/4 of Sec. 22, T. 4 N. R. 1 E. B.M., in the following amount from the following date;

45 inches, from Oct. 20, 1880, and hereby designated as Right No. 76. And be adjudged to pay \$3.55 costs in addition to the costs incurred by him.

## LXVI.

That the defendant SUSIE CAMPBELL be, and she is hereby awarded the use of the waters of Boise River, diverted from said river at a point in SE 1/4 of NE 1/4 of Sec. 5, T. 3 N. R. 2 E. B.M., through what is known as the Thurman Mill Slough, for use upon the following described tract of land; commencing at the NE corner of Sec. 27, T. 3 N. R. 1 E. B.M., and running thence south along the section line between sections 26 and 27 in said township and range to the bottom of the foot of the bluff that runs east and west through the NE 1/4 of NE 1/4 of said section 27, running thence in a westerly direction, following the bottom or foot of said bluff to the west line of said NE 1/4 of NE 1/4 of said section 27, thence north along said line to the NE corner of said NE 1/4 of NE 1/4 of section 27 thence east

## STEWART DECREE

CHART NO. 1

## BOISE RIVER

| NUMBER | DATE       | NAME                               | AMOUNT DECREED |        | DEPT. OF WATER<br>ADMINISTRATION |
|--------|------------|------------------------------------|----------------|--------|----------------------------------|
|        |            |                                    | SEC. FT.       | INCHES |                                  |
| 46     | 6-1-1869   | MASON CREEK DITCH CO.              | 37.20          | 1860   | 63-0179                          |
| 47     | 6-1-1869   | T. W. BOONE                        | 3.50           | 175    | 63-0180                          |
| 48     | 6-1-1870   | W. J. HAMMING                      | 2.60           | 130    | 63-0182                          |
| 49     | 6-1-1870   | PIONEER CANAL                      | 25.72          | 1286   | 63-0183                          |
| 50     | 6-1-1870   | BARBER LUMBER CO.                  | 2.24           | 112    | 63-0184                          |
| 51     | 6-1-1870   | THOMAS ANDREWS                     | 1.30           | 65     | 63-0129                          |
| 52     | 6-1-1871   | CATLIN & MACE                      | 7.86           | 393    | 63-0133                          |
| 53     | 6-1-1871   | PETER MEEVES                       | 1.80           | 90     | 63-0185                          |
| 54     | 6-1-1871   | MIDDLETON MILL DITCH CO.           | 33.70          | 1685   | 63-0125                          |
| 55     | 6-1-1872   | J. F. YARYAN                       | .70            | 35     | 63-0142                          |
| 56     | 6-1-1872   | J. F. YARYAN                       | 1.40           | 70     | 63-0143                          |
| 57     | 6-1-1872   | MARY C. DAVIS                      | 4.40           | 220    | 63-0186                          |
| 58     | 6-1-1872   | EDWARD N. HART                     | 3.30           | 165    | 63-0187                          |
| 59     | 6-1-1874   | T. W. BOONE                        | 2.20           | 110    | 63-0181                          |
| 60     | 6-1-1875   | FARMERS COOPERATIVE DITCH CO.      | 10.00          | 500    | 63-0188                          |
| 61     | 6-1-1876   | EDWARD & MARY CLARK                | 2.30           | 115    | 63-0192                          |
| 62     | 6-1-1876   | JOHN CECIL                         | .44            | 22     | 63-0193                          |
| 63     | 6-1-1877   | THOMAS AIKENS                      | 5.20           | 260    | 63-0194                          |
| 64     | 6-1-1877   | W. H. CONWAY                       | .90            | 45     | 63-0196                          |
| 65     | 6-1-1877   | MIDDLETON WATER CO.                | 114.08         | 5704   | 63-0198                          |
| 66     | 7-1-1877   | PERRAULT & JOHNSON (POWER)         | 200.00         | 10000  | 63-0162                          |
| 67     | 5-1-1878   | NAMPA MERIDIAN IRRIGATION DISTRICT | 170.00         | 8500   | 63-0199                          |
| 68     | 6-1-1878   | JOHN MANNON                        | 4.20           | 210    | 63-0175                          |
| 69     | 6-1-1878   | JULIA MANNON                       | 3.36           | 168    | 63-0201                          |
| 70     | 6-1-1878   | CHARLES ALLEN                      | 8.80           | 440    | 63-0202                          |
| 71     | 6-1-1878   | R. H. STOCKTON                     | 4.40           | 220    | 63-0203                          |
| 72     | 6-1-1879   | NEW DRY CREEK DITCH CO.            | 31.32          | 1566   | 63-0205                          |
| 73     | 6-1-1879   | D. HURFORD                         | 4.00           | 200    | 63-0208                          |
| 74     | 6-1-1880   | SMITH STOCKTON                     | 1.76           | 88     | 63-0209                          |
| 75     | 7-1-1880   | ISHAM JOPLIN                       | 2.40           | 120    | 63-0210                          |
| 76     | 10-20-1880 | JOSEPH GOBLE                       | .90            | 45     | 63-0211                          |
| 77     | 10-29-1880 | FRANKLIN DITCH CO.                 | 27.60          | 1380   | 63-0167                          |
| 78     | 6-1-1882   | ALLEN V. WEBSTER                   | .90            | 45     | 63-0140                          |
| 79     | 6-1-1882   | SUSIE CAMPBELL                     | .60            | 30     | 63-0212                          |
| 80     | 6-1-1882   | J. T. BARBER                       | 1.60           | 80     | 63-0213                          |
| 81     | 6-1-1882   | SONORA JOPLIN                      | 3.40           | 170    | 63-0214                          |
| 82     | 6-1-1882   | S. W. HUTCHINSON                   | .44            | 22     | 63-0217                          |
| 83     | 6-1-1882   | JOHNSON                            | .44            | 22     | 63-0218                          |
| 84     | 6-1-1882   | ANDREW J. JOPLIN                   | 2.86           | 143    | 63-0219                          |
| 85     | 6-1-1882   | JAMES L. GRAHAM                    | 2.20           | 110    | 63-0220                          |
| 86     | 6-1-1883   | FARMERS COOPERATIVE DITCH CO.      | 20.00          | 1000   | 63-0189                          |
| 87     | 6-1-1883   | FRANCIS M. JOPLIN                  | .90            | 45     | 63-0221                          |
| 88     | 6-1-1883   | W. A. BLACK                        | 12.00          | 600    | 63-0222                          |
| 89     | 11-9-1883  | EUREKA DITCH CO. NO. 2             | 21.70          | 1085   | 63-0223                          |
| 90     | 6-1-1884   | PIONEER IRRIGATION DISTRICT        | 53.10          | 2655   | 63-0371                          |

## STEWART AND BRYAN DECREES GROUPED UNDER CANAL HEADINGS

CHART NO. 9

| NAME OF CANAL | CHANGE IN<br>P. OF D. | TRANSFER | PRIORITY<br>NO. | DATE     | AMOUNT DECREED    |                                  |                 | TOTAL<br>SEC. FT. |
|---------------|-----------------------|----------|-----------------|----------|-------------------|----------------------------------|-----------------|-------------------|
|               |                       |          |                 |          | STEWART<br>DECREE | INTERVENORS<br>STEWART<br>DECREE | BRYAN<br>DECREE | INCHES            |
| NEW DRY CREEK |                       |          | 72              | 6-1-1879 | 31.32             |                                  |                 | 1566              |
|               |                       |          | 93              | 6-1-1886 | 15.22             |                                  |                 | 761               |
|               |                       |          | 97              | 6-1-1888 | 7.86              |                                  |                 | 393               |
|               |                       |          | 129-A           | 4-1-1897 |                   | .54                              |                 | 27                |
|               |                       |          | 73-A            | 4-1-1880 |                   | .54                              |                 | 27                |
|               |                       |          | 74-A            | 6-1-1880 |                   | 1.816                            |                 | 90.8              |
|               |                       |          | 85-C            | 5-1-1883 |                   | .2232                            |                 | 11.16             |
|               |                       |          | 85-E            | 5-1-1883 |                   | .385                             |                 | 19.25             |
|               |                       |          | 124-A           | 5-1-1893 |                   | .825                             |                 | 41.25             |
|               |                       | 300      | 3)              | 6-1-1864 |                   |                                  |                 |                   |
|               |                       | 300      | 54)             | 6-1-1871 | .35               |                                  |                 | 17.5              |
|               |                       | 300      | 120)            | 6-1-1891 |                   |                                  |                 |                   |
|               |                       | 301      | 3)              | 6-1-1864 |                   |                                  |                 |                   |
|               |                       | 301      | 54)             | 6-1-1871 | 1.54              |                                  |                 | 77                |
|               |                       | 301      | 120)            | 6-1-1891 |                   |                                  |                 |                   |
|               | 64                    |          | 102             | 6-1-1888 | .20               |                                  |                 | 10                |
|               | 140                   |          | 85-D            | 5-1-1883 |                   | .07                              |                 | 3.5               |
|               | 151*                  |          | 124-A           | 5-1-1893 |                   | .135*                            |                 | 6.75*             |
|               | 161                   |          | 103             | 6-1-1888 | .65               |                                  |                 | 32.5              |
|               | 174                   |          | 103             | 6-1-1888 | .24               |                                  |                 | 12                |
| 1009*         |                       | 713      | 30              | 5-1-1866 | .54               |                                  |                 | 27                |
|               |                       |          | 73-A            | 4-1-1880 |                   | .10*                             |                 | 5* 62.0842        |
|               |                       |          |                 |          |                   |                                  |                 |                   |
| NEW UNION     |                       |          | 14              | 6-1-1865 | 13.76             |                                  |                 | 688 13.76         |

## STEWART AND BRYAN DECREES GROUPED UNDER CANAL HEADINGS

CHART NO. 3

| NAME OF CANAL      | CHANGE IN<br>P. OF D. | TRANSFER | PRIORITY<br>NO. | DATE       | AMOUNT DECREED    |                                  |                 | TOTAL<br>SEC. FT. |
|--------------------|-----------------------|----------|-----------------|------------|-------------------|----------------------------------|-----------------|-------------------|
|                    |                       |          |                 |            | STEWART<br>DECREE | INTERVENORS<br>STEWART<br>DECREE | BRYAN<br>DECREE | INCHES            |
| SIEGENBERG         |                       |          | 9               | 6-1-1865   | 13.42             |                                  |                 | 671               |
|                    |                       | 105*     | 9               | 6-1-1865   | .50*              |                                  |                 | 25*               |
|                    |                       | 717*     | 9               | 6-1-1865   | .64*              |                                  |                 | 32*               |
|                    |                       |          |                 |            |                   |                                  |                 | 12.28             |
| THURMAN MILL       |                       |          | 7               | 6-1-1864   | 3.30              |                                  |                 | 165               |
|                    |                       |          | 10              | 6-1-1865   | 1.20              |                                  |                 | 60                |
|                    |                       |          | 11              | 6-1-1865   | .66               |                                  |                 | 33                |
|                    |                       |          | 36              | 6-1-1868   | 14.10             |                                  |                 | 705               |
|                    |                       |          | 37              | 6-1-1868   | 3.70              |                                  |                 | 185               |
|                    |                       |          | 42              | 6-1-1869   | 1.60              |                                  |                 | 80                |
|                    |                       |          | 55              | 6-1-1872   | .70               |                                  |                 | 35                |
|                    |                       |          | 56              | 6-1-1872   | 1.40              |                                  |                 | 70                |
|                    |                       |          | 62              | 6-1-1876   | .44               |                                  |                 | 22                |
|                    |                       |          | 75              | 6-1-1880   | 2.40              |                                  |                 | 120               |
|                    |                       |          | 76              | 10-20-1880 | .90               |                                  |                 | 45                |
|                    |                       |          | 78              | 6-1-1882   | .90               |                                  |                 | 45                |
|                    |                       |          | 79              | 6-1-1882   | .60               |                                  |                 | 30                |
|                    |                       |          | 81              | 6-1-1882   | 2.60              |                                  |                 | 130               |
|                    |                       |          | 84              | 6-1-1882   | 1.50              |                                  |                 | 75                |
|                    |                       |          | 87              | 6-1-1883   | .90               |                                  |                 | 45                |
|                    |                       |          | 128             | 7-1-1895   | .66               |                                  |                 | 33                |
|                    |                       | 412*     | 81              | 6-1-1882   | .40*              |                                  |                 | 20*               |
|                    |                       | 736*     | 37              | 6-1-1868   | 1.00*             |                                  |                 | 50*               |
|                    |                       | 871*     | 36              | 6-1-1868   | .288*             |                                  |                 | 14.4*             |
|                    |                       | 872*     | 36              | 6-1-1868   | .22*              |                                  |                 | 11*               |
|                    | 3373*                 | 3373*    | 36              | 6-1-1868   | .814*             |                                  |                 | 40.7*             |
|                    |                       |          |                 |            |                   |                                  |                 | 94.838            |
| UPPER CENTER POINT |                       |          | 23              | 6-1-1865   | 3.20              |                                  |                 | 160               |
|                    |                       |          | 24              | 6-1-1865   | 2.40              |                                  |                 | 120               |
|                    |                       |          | 25              | 6-1-1865   | 3.94              |                                  |                 | 197               |
|                    |                       |          | 26              | 6-1-1865   | 1.60              |                                  |                 | 80                |
|                    |                       |          | 27              | 6-1-1865   | 1.58              |                                  |                 | 79                |
|                    | 71*                   |          | 24              | 6-1-1865   | .80*              |                                  |                 | 40*               |
|                    | 85*                   |          | 24              | 6-1-1865   | .50*              |                                  |                 | 25*               |
|                    | 148                   |          | 96              | 10-1-1887  | 3.00              |                                  |                 | 150               |
|                    | 159*                  |          | 24              | 6-1-1865   | .10*              |                                  |                 | 5*                |
|                    | 289                   |          | 89              | 11-9-1883  | .50               |                                  |                 | 25                |
|                    |                       |          |                 |            |                   |                                  |                 | 14.82             |

\*SUBTRACT

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**ISLAND WOODS HOA RIGHT NO.**  
**63-32596**  
**STEWART DECREE NO. 118**

## STEWART DECREE

CHART NO. 1

## BOISE RIVER

| NUMBER | DATE       | NAME                               | AMOUNT DECREED |        | DEPT. OF WATER<br>ADMINISTRATION |
|--------|------------|------------------------------------|----------------|--------|----------------------------------|
|        |            |                                    | SEC. FT.       | INCHES |                                  |
| 91     | 6-1-1884   | RIVERSIDE IRRIGATION DISTRICT      | 20.00          | 1000   | 63-0226                          |
| 92     | 10-17-1884 | SETTLERS CANAL CO.                 | 99.06          | 4953   | 63-0230                          |
| 93     | 6-1-1886   | NEW DRY CREEK DITCH                | 15.22          | 761    | 63-0206                          |
| 94     | 6-1-1886   | THOMAS DAVIS                       | 13.40          | 670    | 63-0121                          |
| 95     | 1-23-1887  | WM. C., L. & E. YOUNG              | 4.00           | 200    | 63-0232                          |
| 96     | 10-1-1887  | AMERICAN DITCH ASSOCIATION         | 47.80          | 2390   | 63-0233                          |
| 97     | 6-1-1888   | NEW DRY CREEK DITCH CO.            | 7.86           | 393    | 63-0207                          |
| 98     | 6-1-1888   | A. V. LINDER                       | 4.00           | 200    | 63-0234                          |
| 99     | 6-1-1888   | LEVI SMITH                         | 1.30           | 65     | 63-0235                          |
| 100    | 6-1-1888   | CHARLOTTE CALHOUN                  | 1.40           | 70     | 63-0236                          |
| 101    | 6-1-1888   | ED. J. LINDER                      | 1.46           | 73     | 63-0237                          |
| 102    | 6-1-1888   | LIZZIE EVERETT                     | 1.20           | 60     | 63-0238                          |
| 103    | 6-1-1888   | JESSE WILSON                       | 1.40           | 70     | 63-0239                          |
| 104    | 6-1-1888   | THOMAS ANDREWS                     | .90            | 45     | 63-0130                          |
| 105    | 7-1-1888   | FARMERS COOPERATIVE DITCH CO.      | 50.00          | 2500   | 63-0190                          |
| 106    | 8-20-1888  | HANPA MERIDIAN IRRIGATION DISTRICT | 370.84         | 18542  | 63-0200                          |
| 107    | 5-1-1889   | CHARLES H. MILLER                  | .06            | 3      | 63-0240                          |
| 108    | 5-1-1889   | LOONIS L. HOSLEY                   | .02            | 1      | 63-0241                          |
| 109    | 5-1-1889   | S. J. UTTER & C. B. TAYLOR         | 2.40           | 120    | 63-0242                          |
| 110    | 5-1-1889   | SOUTH BOISE MUTUAL IRRIGATION CO.  | 6.00           | 300    | 63-0243                          |
| 111    | 5-1-1889   | ESTATE OF J. H. GALLAGHER          | 2.94           | 147    | 63-0244                          |
| 112    | 5-1-1889   | ANNIE H. FOGARTY                   | .05            | 2.5    | 63-0245                          |
| 113    | 5-1-1889   | GRACE CALL                         | .10            | 5      | 63-0246                          |
| 114    | 5-1-1889   | SAMUEL H. CANFIELD                 | .03            | 1.5    | 63-0247                          |
| 115    | 6-1-1889   | SONORA JOPLIN                      | .06            | 3      | 63-0215                          |
| 116    | 6-1-1889   | SONORA JOPLIN                      | 1.20           | 60     | 63-0216                          |
| 117    | 9-1-1890   | PIONEER IRRIGATION DISTRICT        | 200.00         | 10000  | 63-0224                          |
| 118    | 6-1-1891   | W. H. CONWAY                       | 2.20           | 110    | 63-0197                          |
| 119    | 6-1-1891   | THOMAS DAVIS                       | .54            | 27     | 63-0122                          |
| 120    | 6-1-1891   | MIDDLETON MILL DITCH CO.           | 17.00          | 850    | 63-0126                          |
| 121    | 6-1-1891   | THOMAS ANDREWS                     | 3.50           | 175    | 63-0131                          |
| 122    | 6-1-1891   | SETTLERS CANAL CO.                 | 73.44          | 3672   | 63-0231                          |
| 123    | 6-1-1891   | THOMAS AIKEN                       | .80            | 40     | 63-0195                          |
| 124    | 5-1-1893   | RIVERSIDE IRRIGATION DISTRICT      | 80.00          | 4000   | 63-0227                          |
| 125    | 6-1-1894   | R. H. STOCKTON                     | 1.76           | 88     | 63-0204                          |
| 126    | 7-2-1894   | FARMERS UNION DITCH CO.            | 110.00         | 5500   | 63-0248                          |
| 127    | 5-1-1895   | CHARLES REIN & JANE RECH           | 1.00           | 50     | 63-0249                          |
| 128    | 7-1-1895   | MATHEW CASEY                       | .66            | 33     | 63-0250                          |
| 129    | 7-1-1896   | FARMERS COOPERATIVE DITCH CO.      | 83.50          | 4175   | 63-0191                          |
| 130    | 10-1-1899  | RIVERSIDE IRRIGATION DISTRICT      | 20.00          | 1000   | 63-0228                          |
| 131    | 3-23-1900  | NEW YORK CANAL CO.                 | 219.10         | 10955  | 63-0251                          |
| 132    | 5-17-1900  | CANYON DITCH CO.                   | 10.00          | 500    | 63-0369                          |
| 133    | 6-1-1901   | RIVERSIDE IRRIGATION DISTRICT      | 70.00          | 3500   | 63-0229                          |
| 134    | 10-25-1901 | CANYON DITCH CO.                   | 5.54           | 277    | 63-0252                          |
| 135    | 4-1-1904   | PIONEER IRRIGATION DISTRICT        | 56.34          | 2817   | 63-0225                          |

## STEWART AND BRYAN DECREES GROUPED UNDER CANAL HEADINGS

CHART NO. 3

| NAME OF CANAL               | CHANGE IN<br>P. OF D. | TRANSFER | PRIORITY<br>NO. | DATE       | AMOUNT DECREED    |                                  |                 | TOTAL<br>SEC. FT. |
|-----------------------------|-----------------------|----------|-----------------|------------|-------------------|----------------------------------|-----------------|-------------------|
|                             |                       |          |                 |            | STEWART<br>DECREE | INTERVENORS<br>STEWART<br>DECREE | BRYAN<br>DECREE |                   |
| CALDWELL HIGH LINE          |                       |          | 34              | 6-1-1866   | 15.40             |                                  |                 | 770               |
|                             |                       |          | 46              | 6-1-1869   | 37.20             |                                  |                 | 1860              |
|                             |                       |          | 77              | 10-29-1880 | 27.60             |                                  |                 | 1380              |
|                             | 29*                   |          | 46              | 6-1-1869   | 1.00*             |                                  |                 | 50*               |
|                             |                       |          |                 |            |                   |                                  |                 | 79.20             |
| CAMPBELL (CANYON DITCH CO.) |                       |          | 132             | 5-17-1900  | 10.00             |                                  |                 | 500               |
|                             |                       |          | 134             | 10-25-1901 | 5.54              |                                  |                 | 277               |
|                             |                       | 38       | 96              | 10-1-1887  | 12.10             |                                  |                 | 605               |
|                             |                       | 105      | 9               | 6-1-1865   | .50               |                                  |                 | 25                |
|                             |                       |          |                 |            |                   |                                  |                 | 28.14             |
| CANYON COUNTY               |                       |          | 35              | 6-1-1867   | 75.80             |                                  |                 | 3790              |
|                             |                       |          | 35-A            | 6-1-1867   |                   | 1.76                             |                 | 88                |
|                             | 29                    |          | 46              | 6-1-1869   | 1.00              |                                  |                 | 50                |
|                             | 36*                   |          | 35              | 6-1-1867   | .38*              |                                  |                 | 19*               |
|                             | 54*                   |          | 35              | 6-1-1867   | 1.11*             |                                  |                 | 55.5*             |
|                             | 59                    |          | 31              | 6-1-1866   | 2.60              |                                  |                 | 130               |
|                             | 75                    |          | 35              | 6-1-1867   | .50               |                                  |                 | 25                |
|                             | 147                   |          | 35              | 6-1-1867   | .20               |                                  |                 | 10                |
|                             |                       |          |                 |            |                   |                                  |                 | 80.37             |
| CONWAY & HAMMING            |                       |          | 48              | 6-1-1870   | 2.60              |                                  |                 | 130               |
|                             |                       |          | 64              | 6-1-1877   | .90               |                                  |                 | 45                |
|                             |                       |          | 118             | 6-1-1891   | 2.20              |                                  |                 | 110               |
|                             |                       |          |                 |            |                   |                                  |                 | 5.70              |
| DAVIS<br>(LITTLE DAVIS)     |                       |          | 94              | 6-1-1886   | 13.40             |                                  |                 | 670               |
|                             |                       |          | 119             | 6-1-1891   | .54               |                                  |                 | 27                |
|                             |                       |          |                 |            |                   |                                  |                 | 13.94             |
| EUREKA NO. 1                |                       |          | 13              | 6-1-1865   | 33.32             |                                  |                 | 1666              |
|                             |                       |          |                 |            |                   |                                  |                 | 33.32             |

**Exhibit**  
**D**

SD-0420-2  
MODIFY RECORD

Idaho Department of Water Resources  
Modify Comment

Date: 12/29/93  
Time: 13:44:18

Water Right Number: 63-11900

Comment Date: 12/29/1993 User ID: LESTER

Subject: MORATORIUM UPDATE & RECOMMENDATION TO PROCESS APPLICATION\_\_\_\_\_

The application has been held pending applicant's ability to deal with consumptive use restrictions in the moratorium. A fresh look at this situation reveals that this is similar to several other filings in which an application is requested to be exempted from the moratorium based on reducing acres under an existing right to provide consumptive component in new right. Reduced irrigation in existing right will be quantified in licensing of new right. Review of 1987 NAPP photo X-8-SW shows that P/U in application has been irrigated by surface or sub-surface means. Excavating sites to develop shallow ground water will not increase wetted area in P/U. Consumptive use will be covered in irrig. season by a reduction of acres in 63-00196 & 197. Consumptive use outside of irrigation season from this wetted area will be negligible (& no increase in wetted area before & after development occurs due to numerous homes & paved area in subdivision - if anything, consumptive use will decline as development proceeds).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(ENTER=Continue/Exit) (Gold2=Update) (Gold3=Delete) (Gold4=Prev) (Gold5=Next)

**Exhibit**  
**E**

# ET<sub>Idaho</sub> --- Evapotranspiration and Consumptive Irrigation

## Water Requirements for Idaho

Please send suggestions for improving this site to [kimberly dot uidaho dot edu](mailto:kimberly.uidaho.edu) Copyright 2007, University of Idaho.

### Boise WSFO Airport (NWS NOAA--101022 )

Statistics based on 30 years between 1974 to 2004

For a different land cover or crop click on the above link.

You can highlight this table and copy via the clipboard to a Microsoft Excel or OpenOffice spreadsheet to plot or otherwise work with this data.

| Grass Pasture - low management                 |        |       |       |      |      |      |      |      |      |       |       |       |                             |        |
|------------------------------------------------|--------|-------|-------|------|------|------|------|------|------|-------|-------|-------|-----------------------------|--------|
| Precipitation Deficit (Click here for a graph) |        |       |       |      |      |      |      |      |      |       |       |       |                             |        |
|                                                | Jan    | Feb   | Mar   | Apr  | May  | Jun  | Jul  | Aug  | Sep  | Oct   | Nov   | Dec   | Growing Season <sup>a</sup> | Annual |
| Mean                                           | mm/day |       |       |      |      |      |      |      |      |       |       |       | mm                          |        |
| Monthly <sup>b</sup>                           | -0.17  | 0.09  | 0.52  | 2.50 | 3.76 | 4.91 | 5.37 | 4.37 | 2.57 | 1.06  | -0.50 | -0.38 | 760                         | 739    |
| 15-Day Moving Average <sup>c</sup>             | -0.17  | 0.02  | 0.46  | 2.57 | 3.81 | 5.00 | 5.44 | 4.29 | 2.52 | 1.04  | -0.51 | -0.36 |                             |        |
| 7-Day Moving Average <sup>d</sup>              | -0.17  | 0.07  | 0.48  | 2.50 | 3.77 | 4.98 | 5.40 | 4.35 | 2.52 | 1.04  | -0.55 | -0.38 |                             |        |
| 3-Day Moving Average <sup>e</sup>              | -0.17  | 0.09  | 0.52  | 2.49 | 3.76 | 4.95 | 5.37 | 4.37 | 2.55 | 1.05  | -0.51 | -0.38 |                             |        |
| Standard Deviation                             | mm/day |       |       |      |      |      |      |      |      |       |       |       | mm                          |        |
| Monthly                                        | 0.47   | 0.18  | 0.84  | 0.82 | 1.43 | 0.77 | 0.62 | 0.54 | 0.81 | 0.83  | 0.55  | 0.59  | 69                          | 69     |
| 15-Day Moving Average                          | 0.52   | 0.29  | 0.83  | 0.99 | 1.36 | 0.99 | 0.56 | 0.69 | 1.02 | 0.79  | 0.71  | 0.55  |                             |        |
| 7-Day Moving Average                           | 0.68   | 0.51  | 1.13  | 1.45 | 1.91 | 1.44 | 0.90 | 1.10 | 1.44 | 1.16  | 1.06  | 0.79  |                             |        |
| 3-Day Moving Average                           | 0.90   | 0.76  | 1.61  | 2.17 | 2.63 | 2.13 | 1.50 | 1.63 | 2.00 | 1.60  | 1.51  | 1.13  |                             |        |
| 20% Exceedance                                 | mm/day |       |       |      |      |      |      |      |      |       |       |       | mm                          |        |
| Monthly                                        | 0.04   | 0.24  | 0.83  | 3.10 | 4.41 | 5.68 | 5.68 | 4.65 | 3.06 | 1.61  | -0.11 | 0.02  | 803                         | 781    |
| 15-Day Moving Average                          | 0.20   | 0.47  | 1.77  | 4.14 | 5.68 | 6.20 | 6.43 | 5.21 | 3.87 | 2.33  | 0.51  | 0.26  |                             |        |
| 7-Day Moving Average                           | 0.38   | 0.88  | 2.58  | 5.14 | 6.62 | 7.05 | 6.89 | 6.05 | 5.14 | 3.15  | 0.86  | 0.36  |                             |        |
| 3-Day Moving Average                           | 0.56   | 1.10  | 3.19  | 6.47 | 8.62 | 8.85 | 8.70 | 7.78 | 6.63 | 4.33  | 1.20  | 0.54  |                             |        |
| 80% Exceedance                                 | mm/day |       |       |      |      |      |      |      |      |       |       |       | mm                          |        |
| Monthly                                        | -0.37  | -0.07 | 0.12  | 1.73 | 3.24 | 3.93 | 4.95 | 4.07 | 1.97 | 0.50  | -0.97 | -0.88 | 699                         | 691    |
| 15-Day Moving Average                          | -0.91  | -0.31 | -0.67 | 0.89 | 1.67 | 3.07 | 4.31 | 2.93 | 0.87 | -0.44 | -1.87 | -1.51 |                             |        |

|                                                                                           |        |       |       |       |       |       |      |       |       |       |       |       |            |
|-------------------------------------------------------------------------------------------|--------|-------|-------|-------|-------|-------|------|-------|-------|-------|-------|-------|------------|
| 7-Day Moving Average                                                                      | -2.04  | -0.92 | -2.13 | -1.01 | -0.33 | 1.40  | 2.92 | 2.11  | -0.20 | -2.01 | -2.96 | -2.36 |            |
| 3-Day Moving Average                                                                      | -4.62  | -2.00 | -3.51 | -3.89 | -4.89 | -1.97 | 1.09 | 0.73  | -4.35 | -4.60 | -5.72 | -4.49 |            |
| <b>Ave Highest ET</b>                                                                     | mm/day |       |       |       |       |       |      |       |       |       |       |       | --         |
| 15-Day Moving Average <sup>f</sup>                                                        | 0.14   | 0.30  | 1.17  | 3.43  | 4.87  | 5.80  | 6.03 | 4.95  | 3.31  | 1.79  | 0.28  | 0.13  |            |
| 7-Day Moving Average <sup>g</sup>                                                         | 0.31   | 0.68  | 1.80  | 4.37  | 5.93  | 6.63  | 6.57 | 5.82  | 4.31  | 2.49  | 0.59  | 0.25  |            |
| 3-Day Moving Average <sup>h</sup>                                                         | 0.44   | 0.99  | 2.52  | 5.48  | 7.32  | 8.07  | 8.12 | 7.38  | 5.72  | 3.34  | 0.92  | 0.40  |            |
| <b>Ave Lowest ET</b>                                                                      | mm/day |       |       |       |       |       |      |       |       |       |       |       | --         |
| 15-Day Moving Average <sup>f</sup>                                                        | -0.48  | -0.19 | -0.17 | 1.68  | 2.66  | 4.06  | 4.87 | 3.65  | 1.72  | 0.37  | -1.09 | -0.78 |            |
| 7-Day Moving Average <sup>g</sup>                                                         | -1.01  | -0.61 | -1.04 | 0.44  | 0.96  | 2.69  | 3.97 | 2.85  | 0.82  | -0.54 | -2.00 | -1.39 |            |
| 3-Day Moving Average <sup>h</sup>                                                         | -2.09  | -1.45 | -2.59 | -1.90 | -1.95 | 0.42  | 2.47 | 1.57  | -0.93 | -2.05 | -3.88 | -2.76 |            |
| <b>Special normal distribution parameters for monthly, seasonal, and annual intervals</b> |        |       |       |       |       |       |      |       |       |       |       |       | --         |
| Skew                                                                                      | -0.89  | -0.41 | 0.33  | -0.09 | -0.33 | -0.49 | 0.04 | -0.19 | -0.45 | -0.18 | -0.75 | -0.14 | 0.07 -0.71 |
| Kurtosis                                                                                  | 2.51   | 3.68  | 1.16  | 2.95  | 1.21  | 2.42  | 0.64 | 1.03  | 3.30  | 0.64  | 3.05  | 0.50  | 2.85 3.33  |

<sup>a</sup> Growing Season: This is usually the time from green up or planting in the spring to a killing frost or harvest in the fall. It is not applicable for entries without a growing season and will be blank.

<sup>b</sup> Mean of the average daily value for month

<sup>c</sup> Mean of the fourteen 15-day period averages contained in the month

<sup>d</sup> Mean of the twenty three 7-day period averages contained in the month

<sup>e</sup> Mean of the twenty seven 3-day period averages contained in the month

<sup>f</sup> Mean of the highest/lowest 15-day period average in month

<sup>g</sup> Mean of the highest/lowest 7-day period average in month

<sup>h</sup> Mean of the highest/lowest 3-day period average in month

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This work and report were prepared by the University of Idaho Research and Extension Center at Kimberly, Idaho under contract with the Idaho Department of Water Resources. Work was supported by funding from IDWR and the Idaho Agricultural Experiment Station and Idaho Engineering Experiment Station. The authors gratefully acknowledge the long-term evapotranspiration data collection and long-standing advice provided by Dr. James L. Wright, USDA-ARS Kimberly

(ret.), the more than two decades of high quality agricultural weather data collection by the U.S. Bureau of Reclamation AgriMet system, and the very long-standing, routine data collection by the hundreds of cooperative weather station volunteers across the state who, for more than one-hundred years, have faithfully observed daily air temperature and precipitation.

The citation for the evapotranspiration data used from this site should be: *Allen, Richard G. and Clarence W. Robison, 2006 (Revised 2007). Evapotranspiration and Consumptive Irrigation Water Requirements for Idaho, Research Technical Completion Report, Kimberly Research and Extension Center, University of Idaho, Moscow, ID.*

Questions regarding the data should be addressed to Clarence W. Robison or Richard G. Allen, University of Idaho, Kimberly Research and Extension Center, 3793 North 3600 East, Kimberly, ID 83341. Telephone (208)-423-6610

# ET<sub>Idaho</sub> --- Evapotranspiration and Consumptive Irrigation

## Water Requirements for Idaho

Please send suggestions for improving this site to robison at kimberly dot uidaho dot edu Copyright 2007, University of Idaho.

### Boise WSFO Airport (NWS NOAA--101022 )

Statistics based on 30 years between 1974 to 2004

For a different land cover or crop click on the above link.

You can highlight this table and copy via the clipboard to a Microsoft Excel or OpenOffice spreadsheet to plot or otherwise work with this data.

| Open water - shallow systems (ponds, streams)  |        |       |      |      |      |      |      |      |      |      |       |       |                             |        |
|------------------------------------------------|--------|-------|------|------|------|------|------|------|------|------|-------|-------|-----------------------------|--------|
| Precipitation Deficit (Click here for a graph) |        |       |      |      |      |      |      |      |      |      |       |       |                             |        |
|                                                | Jan    | Feb   | Mar  | Apr  | May  | Jun  | Jul  | Aug  | Sep  | Oct  | Nov   | Dec   | Growing Season <sup>a</sup> | Annual |
| Mean                                           | mm/day |       |      |      |      |      |      |      |      |      |       |       | mm                          |        |
| Monthly <sup>b</sup>                           | 0.64   | -0.09 | 0.84 | 2.04 | 2.90 | 4.14 | 4.70 | 4.03 | 2.71 | 1.60 | -0.27 | -0.61 | 654                         | 654    |
| 15-Day Moving Average <sup>c</sup>             | 0.65   | -0.31 | 0.78 | 2.05 | 3.00 | 4.26 | 4.77 | 3.96 | 2.63 | 1.64 | -0.27 | -0.58 |                             |        |
| 7-Day Moving Average <sup>d</sup>              | 0.67   | -0.19 | 0.81 | 2.01 | 2.92 | 4.22 | 4.75 | 3.99 | 2.62 | 1.59 | -0.31 | -0.61 |                             |        |
| 3-Day Moving Average <sup>e</sup>              | 0.65   | -0.11 | 0.84 | 2.03 | 2.90 | 4.19 | 4.71 | 4.02 | 2.68 | 1.59 | -0.28 | -0.62 |                             |        |
| Standard Deviation                             | mm/day |       |      |      |      |      |      |      |      |      |       |       | mm                          |        |
| Monthly                                        | 0.70   | 0.76  | 1.26 | 0.88 | 1.79 | 0.81 | 0.65 | 0.77 | 0.91 | 1.06 | 0.73  | 1.12  | 102                         | 102    |
| 15-Day Moving Average                          | 0.85   | 1.02  | 1.25 | 1.07 | 1.61 | 1.03 | 0.60 | 0.82 | 1.20 | 1.01 | 0.92  | 0.96  |                             |        |
| 7-Day Moving Average                           | 1.21   | 1.35  | 1.55 | 1.63 | 2.17 | 1.53 | 0.85 | 1.11 | 1.61 | 1.41 | 1.20  | 1.23  |                             |        |
| 3-Day Moving Average                           | 1.62   | 1.72  | 2.05 | 2.34 | 2.86 | 2.15 | 1.35 | 1.51 | 2.11 | 1.85 | 1.64  | 1.65  |                             |        |
| 20% Exceedance                                 | mm/day |       |      |      |      |      |      |      |      |      |       |       | mm                          |        |
| Monthly                                        | 0.18   | 0.46  | 1.58 | 2.73 | 3.75 | 4.90 | 5.07 | 4.53 | 3.49 | 2.12 | 0.24  | -0.07 | 743                         | 743    |
| 15-Day Moving Average                          | 0.40   | 0.97  | 2.15 | 3.60 | 4.95 | 5.46 | 5.48 | 4.86 | 3.90 | 2.75 | 1.08  | 0.46  |                             |        |
| 7-Day Moving Average                           | 0.67   | 1.50  | 2.83 | 4.41 | 5.64 | 5.92 | 5.87 | 5.20 | 4.35 | 3.16 | 1.40  | 0.61  |                             |        |
| 3-Day Moving Average                           | 0.84   | 1.83  | 3.66 | 5.19 | 6.35 | 6.71 | 6.40 | 5.64 | 4.85 | 3.68 | 1.80  | 0.84  |                             |        |
| 80% Exceedance                                 | mm/day |       |      |      |      |      |      |      |      |      |       |       | mm                          |        |
| Monthly                                        | -      | -0.60 | 0.01 | 1.25 | 2.47 | 3.10 | 4.38 | 3.47 | 1.81 | 1.02 | -0.95 | -1.20 | 555                         | 555    |

80552

|                                                                                           |        |       |       |       |       |       |      |       |      |      |       |       |       |       |
|-------------------------------------------------------------------------------------------|--------|-------|-------|-------|-------|-------|------|-------|------|------|-------|-------|-------|-------|
|                                                                                           | 1.08   |       |       |       |       |       |      |       |      |      |       |       |       |       |
| 15-Day Moving Average                                                                     | 2.05   | -1.35 | -1.45 | 0.25  | 0.91  | 2.26  | 3.54 | 2.31  | 0.34 | 0.28 | -1.90 | -1.87 |       |       |
| 7-Day Moving Average                                                                      | 3.64   | -2.88 | -2.94 | -2.19 | -1.24 | 0.38  | 2.16 | 1.43  | 1.12 | 2.27 | -3.02 | -3.57 |       |       |
| 3-Day Moving Average                                                                      | 6.37   | -5.93 | -5.53 | -5.12 | -6.11 | -3.11 | 0.50 | -0.24 | 4.73 | 4.79 | -5.30 | -6.98 |       |       |
| <b>Ave Highest ET</b>                                                                     | mm/day |       |       |       |       |       |      |       |      |      |       |       | --    |       |
| 15-Day Moving Average <sup>f</sup>                                                        | 0.19   | 0.50  | 1.70  | 3.07  | 4.05  | 5.04  | 5.24 | 4.56  | 3.45 | 2.38 | 0.56  | 0.24  |       |       |
| 7-Day Moving Average <sup>g</sup>                                                         | 0.50   | 1.12  | 2.39  | 3.88  | 4.95  | 5.64  | 5.61 | 5.00  | 4.01 | 3.00 | 0.91  | 0.44  |       |       |
| 3-Day Moving Average <sup>h</sup>                                                         | 0.71   | 1.57  | 3.06  | 4.65  | 5.74  | 6.29  | 6.12 | 5.39  | 4.60 | 3.36 | 1.41  | 0.66  |       |       |
| <b>Ave Lowest ET</b>                                                                      | mm/day |       |       |       |       |       |      |       |      |      |       |       | --    |       |
| 15-Day Moving Average <sup>f</sup>                                                        | 1.39   | -0.77 | 0.01  | 1.12  | 1.77  | 3.33  | 4.17 | 3.38  | 1.87 | 0.82 | -0.95 | -1.22 |       |       |
| 7-Day Moving Average <sup>g</sup>                                                         | 2.55   | -1.83 | -1.17 | -0.44 | -0.06 | 1.90  | 3.35 | 2.70  | 0.68 | 0.33 | -1.89 | -2.12 |       |       |
| 3-Day Moving Average <sup>h</sup>                                                         | 4.57   | -3.54 | -3.15 | -3.04 | -3.14 | -0.49 | 1.60 | 1.14  | 1.41 | 2.10 | -3.76 | -4.00 |       |       |
| <b>Special normal distribution parameters for monthly, seasonal, and annual intervals</b> |        |       |       |       |       |       |      |       |      |      |       |       | --    |       |
| Skew                                                                                      | 0.06   | -1.02 | -0.06 | 0.04  | -0.47 | -0.66 | 0.12 | -0.36 | 1.03 | 0.16 | -0.79 | -0.38 | -0.20 | -0.19 |
| Kurtosis                                                                                  | 0.72   | 4.61  | 0.71  | 3.18  | 1.24  | 2.52  | 0.60 | 0.97  | 3.77 | 0.83 | 3.35  | 1.28  | 2.94  | 2.94  |

<sup>a</sup> Growing Season: This is usually the time from green up or planting in the spring to a killing frost or harvest in the fall. It is not applicable for entries without a growing season and will be blank.

<sup>b</sup> Mean of the average daily value for month

<sup>c</sup> Mean of the fourteen 15-day period averages contained in the month

<sup>d</sup> Mean of the twenty three 7-day period averages contained in the month

<sup>e</sup> Mean of the twenty seven 3-day period averages contained in the month

<sup>f</sup> Mean of the highest/lowest 15-day period average in month

<sup>g</sup> Mean of the highest/lowest 7-day period average in month

<sup>h</sup> Mean of the highest/lowest 3-day period average in month

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This work and report were prepared by the University of Idaho Research and Extension Center at Kimberly, Idaho under contract with the Idaho Department of Water Resources. Work was supported by funding from IDWR and the Idaho Agricultural Experiment Station and Idaho Engineering Experiment Station. The authors gratefully acknowledge the long-term evapotranspiration data collection and long-standing advice provided by Dr. James L. Wright, USDA-ARS Kimberly (ret.), the more than two decades of high quality agricultural weather data collection by the U.S. Bureau of Reclamation AgriMet system, and the very long-standing, routine data collection by the hundreds of cooperative weather station volunteers across the state who, for more than one-hundred years, have faithfully observed daily air temperature and precipitation.

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## Part 2A

Page \_\_\_\_\_ of \_\_\_\_\_

**IDAHO DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 2A**

**Current Water Right No.:** 63-32594

**Current Owner:** ISLAND WOODS HOMEOWNERS ASSN INC

**Priority Date:** 6/1/1877

**Origin:** Water Right

**Status:** Active

**Basis:** Decreed

**Source**

BOISE RIVER

**Tributary**

SNAKE RIVER

**Beneficial Use**

IRRIGATION

**From To**

03/01 to 11/15

Total Diversion

**Diversion Rate**

0.23 CFS

0.23 CFS

**Annual Volume**

**Location of Point(s) of Diversion**

BOISE RIVER

ADA County

L7(SW1/4SE1/4)

Sec. 16, Twp 04N, Rge 01E B.M.

**Place of Use**

**IRRIGATION Within ADA County**

|               |       |      |       |               |       |      |       |
|---------------|-------|------|-------|---------------|-------|------|-------|
| T04N R01E S16 | Lot 6 | NESW | 3.00  | T04N R01E S16 | Lot 5 | NWSW | 14.00 |
| T04N R01E S16 |       | SWSW | 12.00 | T04N R01E S16 | Lot 6 | SESW | 10.00 |

Total Acres: 39

Page \_\_\_\_\_ of \_\_\_\_\_

Conditions of Approval:

1. SD1 This right originated as all or part of right no. 64 in the Stewart Decree and the historic Boise River Water Masters records.
2. This right is a split from former right 63-196 .
3. S45 Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoirs dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.
4. 155 This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and proceeding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and proceeding to the earliest, shall be reduced to 60 percent of their decreed quantities.
5. J01 Property is also known as Island Woods Subdivision.
6. 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.

Decreed Date: 2/6/2008

Page \_\_\_\_\_ of \_\_\_\_\_

**IDAHO DEPARTMENT OF WATER RESOURCES  
APPLICATION FOR TRANSFER OF WATER RIGHT  
PART 2A**

**Current Water Right No.:** 63-32596

**Current Owner:** ISLAND WOODS HOMEOWNERS ASSN INC

**Priority Date:** 6/1/1891

**Origin:** Water Right

**Status:** Active

**Basis:** Decreed

**Source**

BOISE RIVER

**Tributary**

SNAKE RIVER

**Beneficial Use**

IRRIGATION

**From To**

03/01 to 11/15

**Total Diversion**

**Diversion Rate**

0.55 CFS

0.55 CFS

**Annual Volume**

**Location of Point(s) of Diversion**

BOISE RIVER

ADA County

L7(SW1/4SE1/4)

Sec. 16, Twp 04N, Rge 01E B.M.

**Place of Use**

**IRRIGATION Within ADA County**

|               |       |      |       |               |       |      |       |
|---------------|-------|------|-------|---------------|-------|------|-------|
| T04N R01E S16 | Lot 6 | NESW | 3.00  | T04N R01E S16 | Lot 5 | NWSW | 14.00 |
| T04N R01E S16 |       | SWSW | 12.00 | T04N R01E S16 | Lot 6 | SESW | 10.00 |

Total Acres: 39

Page \_\_\_\_\_ of \_\_\_\_\_

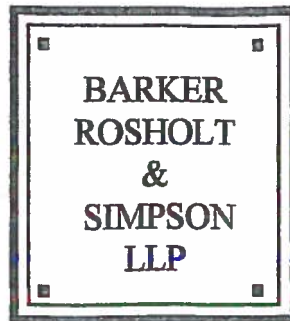
Conditions of Approval:

1. 155 This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and proceeding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and proceeding to the earliest, shall be reduced to 60 percent of their decreed quantities.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
3. This right is a split from former right 63-197 .
4. J01 Property is also known as Island Woods Subdivision.
5. SD1 This right originated as all or part of right no. 118 in the Stewart Decree and the historic Boise River Water Masters records.
6. S45 Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoirs dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

Decreed Date: 2/6/2008

# Attachment #3

ALBERT P. BARKER  
JOHN A. ROSHOLT  
JOHN K. SIMPSON  
TRAVIS L. THOMPSON  
SHELLEY M. DAVIS  
PAUL L. ARRINGTON  
SCOTT A. MAGNUSON



1010 W Jefferson, Suite 102  
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Boise, Idaho 83701-2139  
(208) 336-0700 telephone  
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brs@idahowaters.com

195 River Vista Place, Suite 204  
Twin Falls, Idaho 83301-3029  
(208) 733-0700 telephone  
(208) 735-2444 facsimile

Shelley M. Davis  
smd@idahowaters.com

February 19, 2015

**VIA HAND DELIVERY**

Island Woods HOA  
c/o Development Services, Inc.  
Attn: Kathy Claiborne  
9601 W. State St., Ste. 203  
Boise, ID 83714

Re: Engagement for Legal Services

Dear ~~Mr. Munroe~~: *Ms Sandy*

Thank you for contacting our office to assist Island Woods HOA to resolve issues related to its water rights and usage at the Island Woods Subdivision. You have requested that this office take any action necessary to ensure that Island Woods is in compliance with Idaho law concerning the surface and groundwater used on the subdivision property,

*Redacted*

If you agree that I have properly described the scope of services to be provided, and if you agree to the billing terms set forth above, please sign in the place provided below.

Very truly yours,  
**BARKER ROSHOLT & SIMPSON LLP**

*Robin Sandy*  
Dave Munroe *ROBIN SANDY* PRESIDENT

*S. M. Davis*  
Shelley M. Davis

DAVE MUNROE, CONTACT PERSON

# Attachment #7a



# Island Woods Homeowners Association Irrigation and Ponds

T4N, R1E, Section 16  
Ada County, Idaho

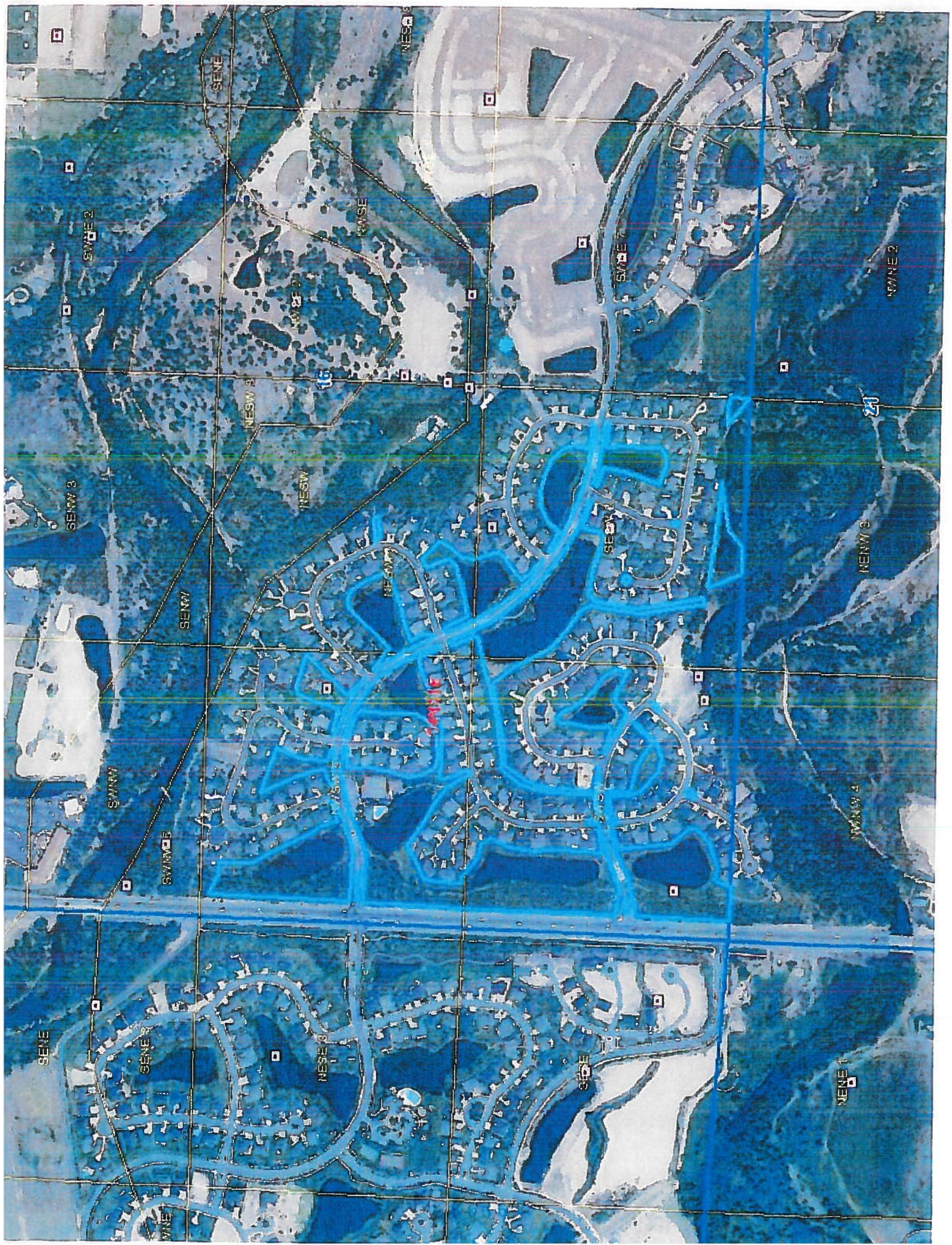
Figure 1  
Island Wood Subdivision

- Legend
- pump station
  - ponds
  - iwhoa irrig



**ERO**  
ERO Resources Corp.  
3314 Grace Street  
Boise, ID 83703  
(208) 373-7983  
Fax: (208) 373-7985

Prepared for: IDWR  
File: z:\Projects\3145 - Dennis Baker  
Date: April 9, 2009



# Attachment #7b

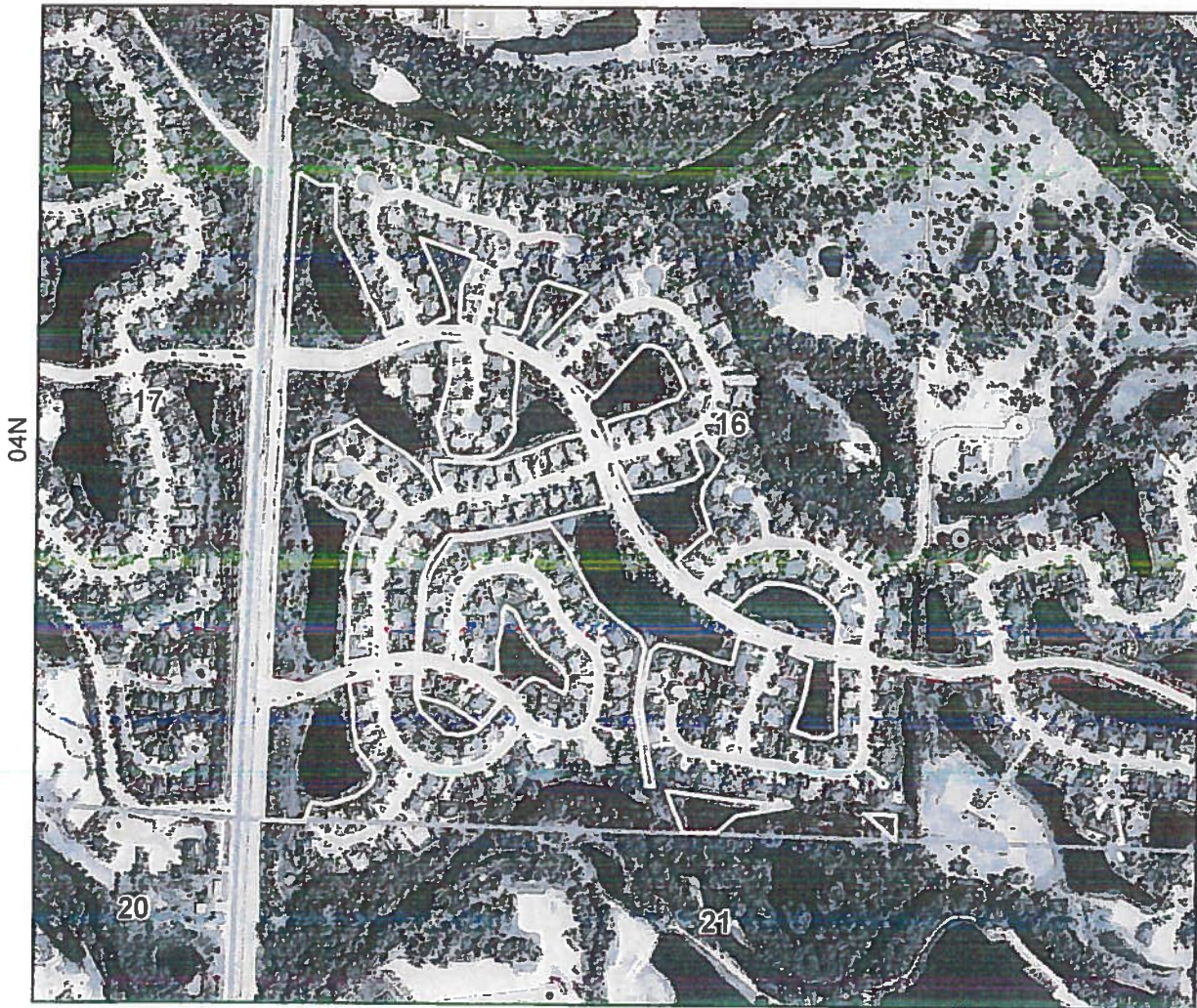
State of Idaho  
Department of Water Resources

**Water Right**  
**63-32596**

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

01E



0 0.075 0.15 0.3 Miles

- ⊙ Point of Diversion
- Place Of Use Boundary

-  Townships
-  PLS Sections





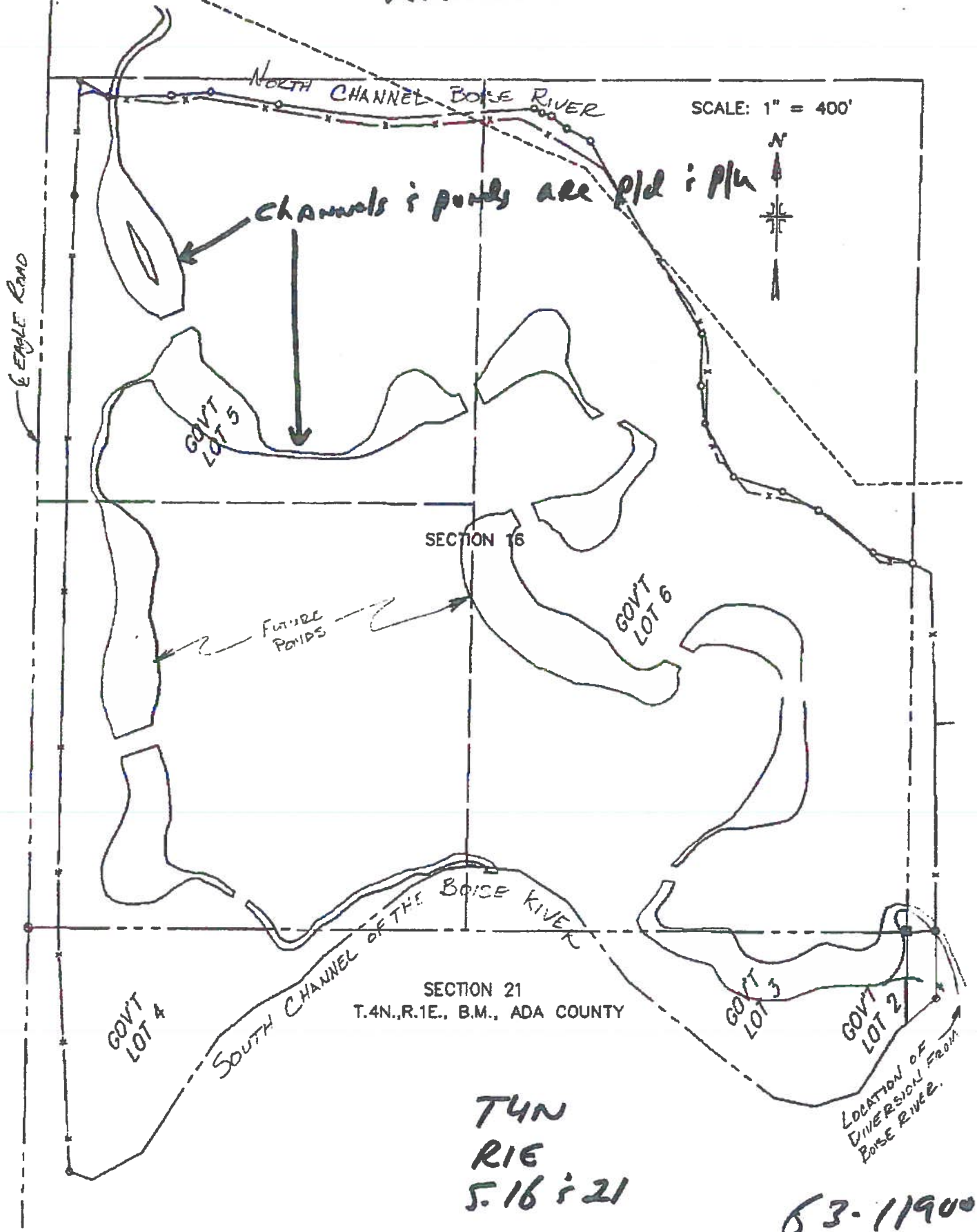
## Legend

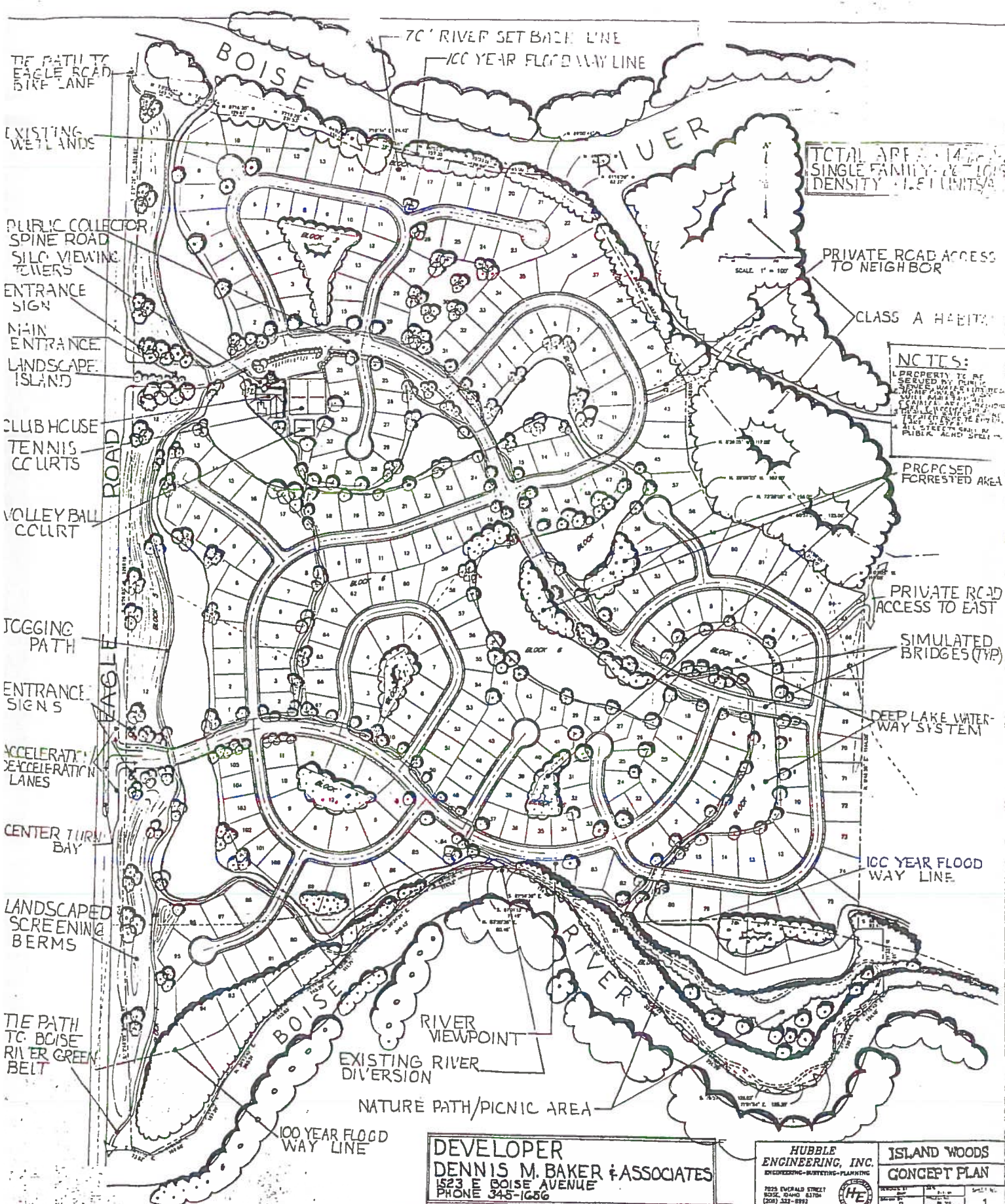
-  ESPA
-  GCDB Township/Range
-  GCDB Section
-  GCDB Quarter-Quarter
-  Counties



Attachment #8a

# APPLICANT'S MAP





TOTAL AREA: 14.5 AC  
SINGLE FAMILY RESIDENTIAL  
DENSITY: 1.5 UNITS/AC

**NOTES:**  
1. PROPERTY TO BE SERVED BY TRUNK LINE WATER MAINS. ALL LOTS SHALL BE SERVED BY TRUNK LINE WATER MAINS. ALL LOTS SHALL BE SERVED BY TRUNK LINE WATER MAINS. ALL LOTS SHALL BE SERVED BY TRUNK LINE WATER MAINS.

**DEVELOPER**  
**DENNIS M. BAKER & ASSOCIATES**  
1523 E BOISE AVENUE  
PHONE 345-1656

**HUBBLE ENGINEERING, INC.**  
ENGINEERING-BUSINESS-PLANNING  
7025 EVERARD STREET  
BOISE, IDAHO 83704  
(208) 333-8992

| ISLAND WOODS<br>CONCEPT PLAN |      |    |      |
|------------------------------|------|----|------|
| REVISED BY                   | DATE | BY | DATE |
|                              |      |    |      |
|                              |      |    |      |
|                              |      |    |      |
| SHEET NO.                    |      |    | 1    |

## MEMORANDUM

To: Regional Offices  
Water Allocation Bureau

Application Processing Memo # 71  
Transfer Processing Memo # 27

From: Jeff Peppersack 

Re: Describing Mitigation in Water Right Records

Date: November 4, 2015

This memorandum supersedes Application Processing Memorandum #71 and Transfer Processing Memorandum #27 issued May 3, 2010.

Idaho Code § 42-223(10), as amended in 2004, protects water rights from forfeiture if they are not used because they are serving as mitigation for some other water use. The statute states:

**(10) No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from the water right being used for mitigation purposes approved by the director of the department of water resources including as a condition of approval for a new water right appropriation approved pursuant to section 42-203A, Idaho Code, a water right transfer approved pursuant to section 42-222, Idaho Code, a water exchange approved pursuant to section 42-240, Idaho Code, or a mitigation plan approved in accordance with rules promulgated pursuant to section 42-603, Idaho Code.**

This statute supports IDWR's recognition of mitigation as a beneficial use. Dedication of a water right for mitigation by not using it is dissimilar to other beneficial uses of water, however, because the beneficial use is a non-use. This dichotomy is reflected in the statute above where a water right is protected for "non-use" when it is "being used for mitigation purposes."

The statutory recognition of mitigation as a defense to forfeiture raises the issue of what processes are necessary to document a mitigation plan in water right records. Mitigation activity takes two possible forms:

- Type I -- Diversion and delivery of replacement water to offset injury or depletion
- Type II -- Non-use of water to offset injury or depletion

Because there are two ways to use water rights for mitigation, it is necessary to distinguish between the two in water right records and processes. "Mitigation by non-use" means that water is not diverted. Rather, the water is left in its naturally occurring location. This contrasts with water that is diverted and delivered as replacement water for depletion caused by some other water use.

The process for obtaining authorization for the mitigation activity depends on which of the mitigation forms is being employed. This memo is intended to help staff identify and distinguish between the processing requirements for mitigation by non-use and the processing requirements for other forms of mitigation. This memorandum does not address mitigation plans for replacement water associated with delivery calls under rules of the Department for Conjunctive Management of Surface and Ground Water Resources, unless addressed through an application for permit, transfer, or exchange.

If water can be diverted pursuant to a valid water right, leaving it in the source stream or in the ground for mitigation purposes is mitigation by non-use. Because of the protection from forfeiture given by Idaho Code § 42-223 and the provision that the director may approve the mitigation plan as a condition of

approval when it accompanies a new application to appropriate water (or application for transfer or exchange), an additional application for transfer or placement of the water right in the Water Supply Bank is not necessary to change the beneficial use of water right to mitigation by non-use.

In contrast, mitigating by releasing water from storage to the stream does not constitute non-use. Likewise, diversion of surface water to a recharge facility and percolating it into the ground as mitigation for a ground water withdrawal is not non-use. These and other forms of Type I mitigation (replacement water) are additional beneficial uses of water that must be authorized by the Department through applications for transfer or exchange, or rentals of water from the Water Supply Bank. The steps for changing a water right so that it serves as Type I mitigation are established by the necessary application process – transfer, exchange, or Water Supply Bank rental.

Because an application process is not necessary for Type II mitigation (non-use), the following steps should be taken for mitigation plans proposing **non-use** of water:

- (1) A Type II mitigation plan typically accompanies an application for a new beneficial use of water. The water right or portion of a water right offered for mitigation by non-use must be identified within the application it accompanies. Sufficient information should be submitted with the application for IDWR to determine that the water right or part thereof will not be used. IDWR must verify that the mitigation rights are valid and that the applicant has the authority to commit them to use as mitigation. If necessary, IDWR staff should correspond with the applicant to request the documentation needed for verification of the rights in a manner similar to that employed in transfer processing.
- (2) The published legal notice for the application must generally describe the mitigation plan.
- (3) Even though “mitigating rights” will not be lost due to non-use, effective water right administration requires IDWR to identify and track the rights and portions of rights that will not be used. The department record of the water right or portion of a water right dedicated to mitigation by non-use will be modified to show “mitigation by non-use” as the purpose of use. Examples of common scenarios are provided later in this memo. A new water right number will not be issued for a portion of a right dedicated to mitigation unless there is a change of ownership for a portion of the right.
- (4) If the water right or portion of a water right offered for mitigation is owned by a canal company, irrigation district, or other water delivery entity, the proponent of the mitigation plan must submit an agreement or consent document, signed by an authorized officer of the delivery entity, stating that the delivery entity agrees (a) to the use of its water right for mitigation and (b) that the water right records(s) of IDWR can be changed to reflect the non-use of the water for mitigation purposes. If the consent or agreement states that the delivery entity retains authority to revoke the agreement to allow the non-use of its water for mitigation, IDWR will condition the water right that it is subject to cancellation or revocation if notified by the delivery entity that the water right can no longer be used for mitigation.

### **Additional Processing Guidelines for Common Scenarios**

The following examples may be useful for determining whether a particular mitigation proposal is Type I (replacement water) or Type II (non-use).

#### **Type I - Replacement Water Scenarios**

##### **Scenario #1: Mitigation by Change in Nature of Use of an Existing Right**

The first scenario is where a new permit or exchange is mitigated by changing the nature of use of other pre-existing rights to ground water recharge or some other offsetting direct use. For

example, an application for permit for municipal use of ground water in a moratorium area is offset by the transfer of surface water irrigation rights to ground water recharge via an infiltration basin. Another example would be the diversion and use of water under an existing water right to provide make-up water for the evaporative losses from a pond proposed under a new appropriation. The nature of use of the mitigating right is changed through a transfer to the ultimate purpose of the pond such as aesthetics, wildlife or recreation. A variant of this scenario could be the transfer of storage water to the new use, such as ground water recharge from storage, to accomplish mitigation.

Examples: City of Gooding (Transfer 78927 mitigates for 37-22850)  
Dry Lot LLC (Transfer 74449 mitigates for 37-22252)

### **Scenario #2: Mitigation by Storage Release**

The second scenario is where the injury or depletion caused by uses under a new permit, exchange or transfer will be mitigated by release of storage water under an existing storage right. An example would be the transfer of an existing ground water right authorizing irrigation use to a new location within the ESPA for an industrial use, where release of storage to a specified reach of the Snake River would provide mitigation for an increase in depletion to the reach due to the industrial use. This method is only approvable if the storage supply is reliable and assured either by pre-purchase or through other accepted operation plans within a rental pool. In this situation, a transfer is required to change the nature of use of the storage right to "mitigation by delivery storage" and "mitigation by delivery from storage" because the storage water is released and made available at a specific location in the stream as mitigation for any depletion caused by the new permit, exchange or transfer.

Note that in some cases approval may be granted pursuant to existing rental pool procedures in lieu of a transfer. For storage releases through an existing rental pool, authority to use the water for mitigation purposes is addressed through the rental pool procedures. The official record for the storage right will not require changes in the form of data entry for comments, changes in use or modification of the place of use. Therefore, documentation of the water right file for the mitigating right(s) is not necessary.

Example: RMH Company (Storage releases mitigate for 63-12521)

### **Scenario #3: Continued Diversion to Maintain Shared Conveyance Losses**

The third scenario is where water is proposed to be left in a ditch or canal shared by multiple users to mitigate for injury that would be caused by a) transferring a water right out of the canal or b) non-use of an existing right from the canal for mitigation purposes (Scenario 5). Multiple water users in a common ditch or canal rely on the combined flow of all the water rights to overcome conveyance losses associated with delivery of the rights through the canal for their respective beneficial uses. Under this scenario, injury could occur to other water users if the flow in the canal is reduced due to a transfer or "mitigation by non-use" of one of the rights from the canal because the beneficial use under the remaining rights would be reduced. Injury can be mitigated by continued diversion of a portion of the authorized flow into the canal for conveyance loss.

If a water right is transferred out of the canal or committed to mitigation by non-use, the flow left behind to cover conveyance loss for the beneficial uses of the remaining rights will remain an unchanged part of the original right (i.e. do not change to mitigation use, and the right should not be reduced in volume or acres). The point of diversion for the canal will continue to be described as one of the authorized points of diversion of the right. The order authorizing the transfer out of

the canal or designating a portion of the right to mitigation by non-use will impose a condition describing the requirement to continue diversion of a portion of the authorized diversion rate into the canal to offset injury to other users from the canal.

Example: The Cross Creek Trust 37-4F (The source of 37-4F is ground water, but 0.02 cfs of surface water from the Big Wood River shall continue to be diverted into the Hiawatha Canal for conveyance losses, and 0.07 cfs of surface water remains in the river to mitigate the use of ground water.)

#### **Scenario #4: Mitigation by Delivery (Delivery Call)**

The fourth scenario is where a junior water right holder provides water directly to a senior water right holder who is being injured. For example, fish propagation facility #1 makes a delivery call on right 00-0000 (priority date 1962) to IDWR, which claims that its right is not being fulfilled. The call will cause IDWR to determine if injury is occurring and, if so, order curtailment of ground water right holders junior to 1962. A coalition of ground water appropriators who hold rights junior to right 00-0000 proposes a transfer to mitigate injury to the fish propagation facility, and ultimately prevent curtailment.

The coalition enters into an agreement with a nearby fish hatchery (fish propagation facility #2) to utilize a portion of its water right, and files a transfer proposing to pump and deliver water from springs (near fish propagation facility #2) to the head of an upstream creek near fish propagation facility #1, in order to mitigate material injury to the facility. The transfer requests to change 10 cfs of "fish propagation" use and a portion of the existing "fish propagation" place of use from fish propagation facility #2 to the fish propagation facility #1 site.

In this scenario, the coalition uses spring water to augment creek water, which is fish propagation facility #1's source. Therefore, this is an example of "mitigation by delivery." For the 10 cfs involved in the transfer, the point of diversion should be listed as the springs near fish propagation facility #2, but the place of use should be at the point where water is delivered to benefit fish propagation facility #1. The nature of use should be "mitigation by delivery." The use is described as "mitigation by delivery" instead of "fish propagation" because the junior right holder's obligation is to provide replacement water, regardless of the ultimate beneficial use which the junior right holder does not control. A variant of this scenario could be the release and delivery of storage water to fish propagation facility #1 to accomplish mitigation. If storage water is used, the nature of use should be "mitigation by delivery storage" and "mitigation by delivery from storage."

Example: SeaPac of Idaho Inc. (Transfer 79560 modifies Right 36-7072)

## **Type II – Mitigation by Non-use Scenarios**

#### **Scenario #5: Mitigation by Non-use (New Permit or Exchange)**

The fifth scenario is where a new permit or exchange will be mitigated by the non-use of water under other water rights. An application for transfer is not necessary for such a change because non-use is not a change in use. In situations where the new use is mitigated by the non-use of water under other rights, IDWR uses the approval order for the new permit or exchange to approve the mitigation plan and to provide a vehicle for changing the official record for the mitigating right(s) that will no longer be used. The approval order shall include the following standard condition or a similar condition.

To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease <diverting and> using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water rights will be changed to show that <diversion and> use of water is not authorized because the rights, or portion(s) thereof, are being dedicated to mitigation purposes.

| Right No. | Use Changed to<br>Mitigation by Non-use | Mitigation<br>Rate | Mitigation<br>Volume | Mitigation<br>Acres |
|-----------|-----------------------------------------|--------------------|----------------------|---------------------|
| 00-00000  | Use                                     | 00.00              | 00.0                 | 00                  |
| 00-00000  | Use                                     | 00.00              | 00.0                 | 00                  |

The land that will no longer be irrigated under these rights is located within the <XX ¼ XX ¼, Section 00, Township 00 North, Range 00 East, B.M.>

If a specified mitigating right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this <permit or exchange> approval shall be reduced by the same proportion as the reduction to the mitigating right.

When dealing with scenario #5, Department staff will complete data entry for the mitigating right(s) after issuing the approval document for the new permit or exchange. Data entry shall include a comment referring to the reason for the update and the number of the file where the approval order can be found. Data entry shall also include an update to the nature of use for the mitigating right(s) (or portion thereof) to show "mitigation by non-use" as the purpose of use and an update to the place of use to reflect the non-use at the original location. The place of use update should include modification of the place of use shape file(s) to designate the portion of the place of use that will no longer be irrigated. The approving office shall document the water right file for the mitigating right(s) by forwarding a proof report depicting the changes to the WR Permits Section for inserting into the left side of the water right file. The proof report should show the comment described above and the appropriate changes reflecting the mitigation use.

Example: City of Boise (A condition of approval for 63-33341 changes a portion of 63-243G to mitigation by non-use)

#### **Scenario #6: Mitigation by Non-use (Transfer)**

A related scenario is where a transfer is mitigated by the non-use of water under other pre-existing rights. An example would be the transfer of an existing ground water right authorizing irrigation use to a new location within the ESPA for a dairy, where non-use of another irrigation right would provide mitigation for an increase in depletion to a reach of the Snake River. In this situation, the "mitigation by non-use" rights are treated in the transfer processing similar to other associated rights and are altered in the Workflow process for the transfer and included in the approval of the transfer. The nature of use for the mitigating rights will be updated to show "mitigation by non-use" as the purpose of use and the corresponding place of use will be updated as necessary. The mitigating rights do not need to be listed on the transfer application under the rights being transferred and will not be considered in calculation of the application fees.

Transfers in the ESPA that result in increased reach depletions in the Snake River can be mitigated by increased reach gains from other proposed ESPA transfers (offsetting transfers). This type of mitigation requires the transfer applications to be submitted together as part of a plan to mitigate or offset the effects of each individual transfer. This type of mitigation requires unique conditions of approval for the offsetting transfers to address future changes and differences in priority dates between rights to prevent injury in the event of delivery calls. See Transfer Memo No. 24 for additional details.

Example: Foster Land & Cattle (Reduction of 25-14398 and other rights mitigates for the changes authorized by Transfer 78938)

#### **Scenario #7: Mitigation by Abandonment**

The seventh scenario is where a new permit, exchange, or transfer is mitigated by the abandonment of one or more existing water rights. Abandonment of a water right may provide adequate mitigation if non-use of the right offsets the depletion associated with the proposed use at the appropriate time and location; however, abandonment would not be the most desirable method because, if the permit were approved, the permit holder would not have the ability to rely on the abandoned right to divert out of priority under the permit. Furthermore, abandonment is permanent. Even if the permit is not developed, the abandoned right remains abandoned.

Example: Daniel G. Ward and/or Karla Ward (45-14424 abandoned to mitigate for Transfer 78100)

#### **Undoing a Mitigation Plan**

Occasionally a water use approved on the basis of a mitigation plan is not developed at all. Either the permit lapses or the transfer is not accomplished. In those cases, the mitigation plans must be undone so the mitigating rights can revert to their original beneficial uses. For a mitigation plan authorized in a transfer approval, the Department should undo the mitigation by issuing an order rescinding the transfer approval and returning the mitigating rights to their pre-mitigation beneficial use(s). For a mitigation plan approved without a separate transfer, usually a Type II plan, the Department should undo the mitigation by issuing an order reverting the "mitigation by non-use" designation on the mitigating right to its original beneficial use.

Sometimes a permitted water use is only partly developed, and the approved mitigation is not needed in its entirety. For Type I mitigation approved in a transfer, a new transfer application is required to return the unneeded mitigation to its original beneficial use. For Type II mitigation, the water right license for the mitigated use can be used as the order diminishing the mitigation requirement and reverting some of the "mitigation by non-use" on the mitigating right to its original beneficial use. For this purpose, the Department can modify the approval condition described in Scenario #5, above.

## MEMORANDUM

To: Regional Offices  
Water Allocation Bureau

Application Processing Memo # 72

From: Jeff Peppersack



Re: **Evaluation of Mitigation Plans for Water Right Permits**

Date: November 4, 2015

This memorandum supersedes Application Processing Memorandum #72 issued May 3, 2010.

The purpose of this memorandum is to provide guidance to Department staff regarding the evaluation of mitigation plans submitted with an application for permit to appropriate water. The Department requires mitigation for applications for permit to appropriate water: 1) in areas of the state that are closed to new consumptive appropriations, or 2) where the water supply is not sufficient for the purpose sought and approval of a new appropriation would injure other water rights. This memorandum does not address mitigation plans for replacement water associated with delivery calls under rules of the Department for Conjunctive Management of Surface and Ground Water Resources, unless addressed through an application for permit.

An adequate mitigation plan must replace or offset depletions to a water source at the time, location and quantity that water is depleted due to the new appropriation. Water quality may be another factor for consideration of an adequate mitigation plan. Department staff members have discretion to adapt the requirements set forth in this memorandum according to the nature and complexity of a proposed mitigation plan. A mitigation plan should ultimately ensure protection of other water rights while providing for efficient implementation and administration by the water user and the Department.

### **SPECIAL ADMINISTRATION AREAS REQUIRING MITIGATION**

An area where new appropriations require mitigation is generally designated by a Department order creating a management area or moratorium area to protect existing water rights and/or the local public interest or to foster the conservation of water resources within the state. The order and/or supporting documentation often provides details about the water source and mitigation requirements. The following are examples of areas that may require a mitigation plan to process an application for a new appropriation of water.

**Ground Water Management Area (GWMA) or Critical Ground Water Area (CGWA) –**  
The Director issues an order creating the administrative area because the ground water withdrawals in the area are exceeding (for a CGWA) or near to exceeding (for a GWMA) the average rate of return of annual recharge. The Southeast Boise Groundwater Management Area is an example of a GWMA with a management policy that provides for mitigation. The Director has issued orders creating GWMA's to protect fully appropriated surface water sources where ground water and surface water are considered to be hydraulically connected. The Bear River GWMA is an example; mitigation requirements are specified in the Management Plan associated with the order.

**Moratorium Area** – The Director normally issues an order to prevent further depletions to the water supply in an area. The purpose of a moratorium is to protect the water supply and/or existing water rights by prohibiting new appropriations seeking consumptive use of water. The Eastern Snake River Plain Moratorium Area is an example; the order allows approval of applications where mitigation is provided to offset depletion and injury to other rights.

**Fully Appropriated Source** – Some sources within the state are appropriated to the extent that any new consumptive appropriation of the source would injure existing water rights. Consumptive applications can be approved where mitigation is provided to offset injury to other rights. Surface water in the Bear River basin is an example; an Administrator's Memo provides the direction to Department staff.

**Temporary Administrative Hold Area** – The Director directs staff by memorandum or other informal means to temporarily cease processing new applications to appropriate water due to concerns about further depletions to the water supply and potential injury to existing rights in an area. An "administrative hold" on application processing may result in a significant backlog of applications that have not been processed. An applicant proposing processing ahead of the pending applications must mitigate for the depletion that would result from approval of his out-of-filing-order application. The past administrative hold on processing applications for ground water appropriation in Basin 63 is an example of an administrative hold area.

## **INSUFFICIENT WATER SUPPLY AND INJURY TO OTHER WATER RIGHTS**

Water Appropriation Rule 45.01.a provides criteria for determining whether a proposed use will injure other water rights. The criteria include 1) the reduction of water quantity available under an existing water right, 2) forcing an existing right holder to unreasonable effort or expense to divert, and 3) reduction of water quality available under an existing water right to an unusable extent. Rule 45.01.a.iv provides that "An application that would otherwise be denied because of injury to another water right may be approved upon conditions which will mitigate losses of water to the holder of an existing water right, as determined by the director."

When the Department determines that the source of water is not sufficient to supply the proposed appropriation of water (Rule 45.01.b), and approval would result in injury to other water rights, the applicant may mitigate for the injury to avoid denial of the application by the Department. An example of an insufficient supply where approval may cause injury is where the applicant proposes to appropriate water from a ground water aquifer of limited volume or from a stream with limited flows and a new appropriation would reduce the supply available to existing right holders.

## **ANALYSIS OF DEPLETION**

Development of a mitigation plan requires an analysis of the quantity of water that will be depleted from the source due to the appropriation. It is the applicant's responsibility to ensure that a depletion analysis is completed and submitted with the application. In addition to quantity depleted, the analysis must address the location and timing of the depletion. For complex situations, the services of a qualified professional (engineer, geologist, or hydrologist) may be required for a proper analysis to determine depletion from the source.

The depletion analysis must consider the consumptive nature of the proposed water use. In addition, a proposed use normally considered to be non-consumptive may require mitigation in cases where the water is not returned to the original source or is returned to the original source in a different location. For example, diversion and use of water may be considered consumptive to the source when the water is impounded (e.g. pond fill), when return flow is discharged to a separate source, or when the timing or location of return flow is such that other right holders will be injured.

## **IDENTIFICATION OF SOURCE OF MITIGATION WATER AND TYPE OF PLAN**

Mitigation water may be provided from a variety of water sources, and a mitigation plan may take several forms, but mitigation generally falls into one of two types. Type I is replacement water from an existing water right, and Type II is non-use of water under another water right from the same source or a connected source. See Application Processing Memorandum No. 71 for more discussion of Type I and Type II mitigation and examples of each type.

A mitigation plan must identify the source of water (including water rights) to be used for mitigation and must describe the quantity, method, and location of delivery to ensure that the source is adequately compensated. The plan must include ownership documentation or authority to use the source of water and/or water rights. In addition, the mitigation plan must include information confirming the validity and historic use of any rights to be used for mitigation.

In general, if the applicant proposes to mitigate by diverting and using water differently than authorized under a valid water right, the applicant must file an application for transfer (or rental of natural flow or storage water from the Water Supply Bank or Rental Pool) together with the application for new appropriation and mitigation plan. For more about the filing requirements for particular mitigation scenarios, see Application Processing Memorandum No. 71.

Although rental of water rights from the Water Supply Bank could substitute for a transfer to provide mitigation, rental from the Bank is often a short-term transaction and could provide a source of mitigation water where mitigation is only required on a temporary basis (e.g. filling a pond). For applications seeking to appropriate water for development of subdivisions or other long-term uses with significant investment and reliance on the water supply, a short-term rental may not be used as a source of mitigation water without a long-term source of mitigation water being identified and ready to approve as a condition of a new permit.

A mitigation plan that proposes diversion and use of canal company, irrigation district, or other water delivery entity water rights or non-use of the same would not be acceptable without an application for transfer (for replacement water with changed diversion and use) or written consent (for non-use) from the entity. Non-use of the water right(s) would also require written acknowledgement from the entity that the Department may update their water right record(s) to reflect the mitigation use (see Application Processing Memo No. 71). A mitigation plan which involves use of a conveyance system owned by a canal company, irrigation district or other water delivery entity would also require written consent from the entity for use of the system and a plan for accounting of water deliveries to confirm that mitigation is accomplished.

## EVALUATION OF MITIGATION PLAN

A mitigation plan must offset the depletion of water associated with a new appropriation in quantity, time, and location. The word "location" for ground water means both the land surface site and the aquifer from which the water is being withdrawn. The word "location" for surface water means within a reasonable distance of the point of diversion, taking into account other water right diversions and possible environmental<sup>1</sup> concerns. In this case, "time" means that the positive impacts of mitigation must occur at the same time as the depletions.

A mitigation plan must be supported by technical analysis and/or modeling of the effects of the plan unless instruction is otherwise provided within a management plan (for a GWMA) or order of the Department. For complex situations, the services of a qualified professional (engineer, geologist, or hydrologist) may be required for a proper analysis to demonstrate that the mitigation plan will be adequate.

Evaluation of a mitigation plan by Department staff requires confirmation of the following:

### Depletion from Source

- Identification of source of water being depleted and Special Administration area
- Analysis estimating quantity, timing and location of depletion

### Availability and Adequacy of Mitigation Water

- Source of mitigation water including water right(s)
- Description of plan demonstrating how water is delivered (for Type I - Replacement Water) and how the delivery will be verified or identification of acres or use to be terminated (for Type II - Non-Use of Water) and how mitigation is accomplished. For unregulated surface water sources, one obstacle would be the potential for diversion and use of the mitigation water by junior appropriators, consequently enlarging the use of the junior rights without mitigating for the new appropriation.
- Ownership or authority to use the mitigation source including water right(s) and consent from any water delivery entity for use of water and updates to water right records
- Validity of the water right(s) used for mitigation including analysis of forfeiture, historic use, overlapping rights and availability of water. Historic use must be sufficient to offset the proposed depletion. Mitigation by storage release is only approvable if the storage supply is reliable and assured either by pre-purchase or through other accepted operation plans within a rental pool and if the mitigation water can be delivered at the time and to the location where depletion occurs.<sup>2</sup> To mitigate using certain Boise River rights or any other water rights that receive a percentage cutback prior to full curtailment, the mitigation plan must include an evaluation of the historic cutbacks and provide sufficient water to mitigate even when the usage has been cut but not curtailed. In other words, these rights cannot be taken at their face value for mitigation purposes because they may be only partially available at times.<sup>3</sup> The

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<sup>1</sup> For example, allowing a stream segment to be dried up may not be in the local public interest, even though no water rights are injured.

<sup>2</sup> See memorandum from Tony Olenichak dated August 1, 2008 entitled, "Delivery of Mitigation Storage to Surface Water Diversions" for a discussion of timing and location for delivery of mitigation storage water in Water District #1.

<sup>3</sup> See memorandum from Dan Stanaway dated October 30, 2015 entitled "Analysis of the Availability of Water Rights in the Stewart Decree."

proposed changes to the mitigating rights will not cause further depletion or injury. For example, non-use of a right from a community canal may require leaving a portion to offset conveyance losses.

- Transfer or rental agreement or purchase agreement for water/right as necessary
- Technical analysis or modeling of effects to demonstrate adequacy of the plan. Staff may need to seek review of the analysis from the Department's Hydrology Section.
- Adequacy of mitigation to address delayed impacts if the permit holder/successor ceases to divert and/or is no longer in business
- Suitability of the quality of water relative to the source being compensated

#### **Verification of Mitigation**

- Plan outlining reasonable method for measurement of water and verification of mitigation
- Consultation with Watermaster within a Water District

### **PROCESSING, APPROVAL AND VERIFICATION**

A permit requiring a mitigation plan cannot be processed until a mitigation plan is submitted. The Department must determine the acceptability of the mitigation plan prior to final processing and approval of a permit. Application Processing Memo No. 71 provides Workflow processing guidance for specific mitigation scenarios. Approval conditions should refer to the mitigation plan, state any measuring, monitoring, and reporting requirements, and explain the consequences for failure to comply with the plan.

Permits and licenses will be conditioned to describe or reference mitigated right(s) and mitigating right(s). Permits and licenses issued in accordance with a mitigation plan will include conditions requiring installation and maintenance of measuring devices on the diversion to assure the mitigation water is being delivered in accordance with the approved mitigation plan. Permits and licenses will be conditioned to require reporting in accordance with Chapter 7, Title 42, Idaho Code, as necessary, to document compliance with conditions of the water right and the associated mitigation plan. In complex situations, the Department may require a condition for measurement, reporting, and monitoring by a qualified professional (engineer, geologist, hydrologist) to ensure that the mitigation plan is accomplished. In addition, approvals will be conditioned to require curtailment of the diversion and use of water anytime the mitigation requirements are not met.

Failure of the holder of the right to implement and continuously comply with the requirements of an approved mitigation plan, while continuing to divert and use water, constitutes a violation subject to enforcement action under Sections 42-311, 350, 351, and/or 1701B, Idaho Code. Any approval must be conditioned that failure to mitigate as described by the plan of mitigation, while still diverting water under the permit, is cause for the director to cancel a water right permit or revoke a subsequently approved water right license.



State of Idaho

## DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

October 3, 2016

ISLAND WOODS HOMEOWNERS ASSOCIATION INC  
C/O SHELLEY DAVIS  
BARKER ROSHOLT & SIMPSON LLP  
PO BOX 2139  
BOISE ID 83701-2139

RE: Transfer Application No. 80552 - Request for Additional Time to Provide Additional Information

Dear Shelley:

On September 29, 2016, I received your letter requesting an additional ninety (90) days to provide information requested by the Idaho Department of Water Resources (IDWR) via letter dated July 19, 2016 regarding Transfer Application No. 80552 for water rights 63-32594 and 63-32596. Your request is granted. Therefore, the requested information is due by **January 2, 2017**.

The application was assigned to Nick Van Dyke for processing. Unfortunately, Nick resigned in September. Therefore, I will be reviewing the file. Once I've completed an initial review, I may be in contact to clarify the previous request or request additional information. I hope to complete my initial review within the next thirty (30) days and will contact you if necessary to clarify Nick's request or request additional information. Please contact me at (208) 334-2190 if you have any questions.

Regards,

Angela M. Grimm, P.G.

Water Rights Supervisor

ALBERT P. BARKER  
JOHN A. ROSHOLT  
JOHN K. SIMPSON  
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(208) 735-2444 facsimile

Shelley M. Davis  
smd@idahowaters.com

September 27, 2016

**RECEIVED**

**SEP 29 2016**

**WATER RESOURCES  
WESTERN REGION**

**VIA US MAIL**

Idaho Department of Water Resources  
Western Region  
2735 Airport Way  
Boise, ID 83705-5082

Re: Transfer Application No. 80552

To Whom it May Concern:

On July 19, 2016, I received a letter from Mr. Van Dyke seeking additional information concerning the above-referenced transfer. This letter is a request for an additional ninety (90) days within which to provide the requested information. Please inform me at your earliest convenience whether this request is granted.

Very truly yours,  
**BARKER ROSHOLT & SIMPSON LLP**



Shelley M. Davis



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

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July 19, 2016

C. L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

BARKER ROSHOLT & SIMSPON LLP  
SHELLEY DAVIS  
W JEFFERSON SUITE 102  
P. O. BOX 2139  
BOISE ID 83701-2139

**RE: Application for Transfer No. 80552**

Shelley,

I'm writing in regards to the above referenced transfer application, filed on behalf of Island Woods Homeowners Association. The application seeks to change the nature of use for a portion of two Boise River water rights (63-32594 and 63-32596). It is also intends to fully change the source of both rights from surface to ground water. The conversion will cover the evaporative losses from twelve (12) shallow ground water ponds and pressurized irrigation from three (3) of the ponds for roughly twenty five (25) acres of common area in the subdivision.

As we discussed recently, there is an item at hand that may complicate this proposal. This is the conversion of the two surface water rights to ground water. Based on Department guidance the applicant must show there is at least 50 percent depletion in the original source from depletion at the proposed point of diversion within 24 hours. I have enclosed the relevant page of the Department's administrative memorandum (titled Transfer Processing No. 24). An analysis is needed to show this connection.

To promote the processing of this application, please address and submit any analysis, documentation, application amendments, and/or applicable material within ninety **(90)** days. If you have any questions regarding this matter, please feel free to contact me at (208) 334-2190 or at [nick.vandyke@idwr.idaho.gov](mailto:nick.vandyke@idwr.idaho.gov)

Sincerely,

Nicholas Van Dyke  
Sr. Water Resource Agent

Enclosure

ALBERT P. BARKER  
JOHN A. ROSHOLT  
JOHN K. SIMPSON  
TRAVIS L. THOMPSON  
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Shelley M. Davis  
smd@idahowaters.com

November 25, 2015

**VIA HAND DELIVERY**

Shelley Keen  
Idaho Water Center  
322 East Front Street  
Boise, ID 83702

Re: Island Woods HOA – Transfer Application

Dear Mr. Keen:

After several trips to view the Island Woods property and attempt to identify the surface water source that serves the ponds on the property, we have been unable to definitively identify the source. However, in addition to a visual inspection, Rex Barrie has confirmed that the HOA pays Water District 63 for delivery of water from the Conway-Hamming lateral, and further, they were required to participate with another property owner to install a measuring weir at the diversion for the Mace lateral. I have enclosed the HOA's records concerning those payments with this letter.

I look forward to talking with you about this application soon.

Very truly yours,  
**BARKER ROSHOLT & SIMPSON LLP**

Shelley M. Davis

Cc: Dave Munroe, Island Woods HOA w/enc.

RECEIVED

NOV 24 2015

DEPARTMENT OF  
WATER RESOURCES

**Island Woods HOA**  
**All Transactions for Water District # 63**  
**All Transactions**

| Type         | Num  | Date       | Account               | Amount  |
|--------------|------|------------|-----------------------|---------|
| Check        | 3898 | 02/04/2015 | 1000 · Checking-W...  | -100.00 |
| Check        | 3723 | 02/05/2014 | 1000 · Checking-W...  | -50.00  |
| Check        | 3556 | 02/04/2013 | 1000 · Checking-W...  | -50.00  |
| Check        | 3406 | 02/02/2012 | 1000 · Checking-W...  | -50.00  |
| Check        | 3258 | 02/02/2011 | 1000 · Checking-W...  | -50.00  |
| Check        | 3098 | 02/03/2010 | 1000 · Checking-W...  | -30.38  |
| Check        | 2959 | 02/05/2009 | 1000 · Checking-W...  | -44.16  |
| Check        | 2801 | 02/13/2008 | 1000 · Checking-W...  | -21.40  |
| Check        | 2658 | 03/05/2007 | 1000 · Checking-W...  | -13.77  |
| Check        | 2493 | 02/24/2006 | 1000 · Checking-W...  | -25.04  |
| Check        | 2328 | 03/04/2005 | 1000 · Checking-W...  | -27.82  |
| Check        | 2156 | 03/12/2004 | 1000 · Checking-W...  | -5.56   |
| Check        | 1232 | 03/06/2003 | WAMU - Working ...    | -15.33  |
| Check        | 3352 | 04/28/2001 | Key Bank - Working... | -16.06  |
| <b>Total</b> |      |            |                       |         |

**Island Woods HOA**  
**All Transactions for Mace Enterptises**  
**All Transactions**

| Type         | Num  | Date       | Account              | Amount    |
|--------------|------|------------|----------------------|-----------|
| Check        | 3461 | 07/01/2012 | 1000 - Checking-W... | -1,000.00 |
| Check        | 3164 | 07/08/2010 | 1000 - Checking-W... | -1,170.00 |
| <b>Total</b> |      |            |                      |           |