

RECEIVED**AUG 09 2016****DEPARTMENT OF
WATER RESOURCES****STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES****ASSIGNMENT OF PERMIT**

To change the ownership of a permit

I, City of Boise, Parks & Recreation Dept., hereby assign to Barber Mill Investments, LLC
 of, 12601 W. Explorer Dr., Suite 200, Boise, ID 83713 New owner(s)
 New owner's address including city, state and ZIP (208) 287-0518
 Phone

All my right, title, and interest in and to Permit No(s): _____ to
 appropriate the public waters of the State of Idaho.

OR (for partial assignments)

The following described portion of my right, title, and interest in and to Permit Number(s):

63-33341 (Split into 63-33341 & 63-34258), to appropriate the public waters of the State of Idaho.

Describe in detail the portion of the permit assigned, listing the number of acres in each 40 acre subdivision, point of diversion location, and amount of the water in cubic feet per second.

A 13-acre portion of the place of use within a 54-acre portion of the permissible place of use. The permissible place of use assigned is specifically described as follows: T3N, R3E, S19, SWSW (6 ac), SESW L5 (23 ac), SWSE (13 ac); S30, NWNE (8 ac), NENW (4 ac). GIS shapefiles are available from SPF Water Engineering on request (208-383-4140); Point of Diversion - T3N, R3E, S30, Lot 8 (SENE); Diversion Rate - 0.26 cfs

Does the new permit holder own the property at the:

Point of diversion? ☐ Yes ☒ No
 Place of use? ☒ Yes ☐ No

If no, describe the arrangement enabling the new owner to access the point of diversion and/or the place of use:

Access to the point of diversion is granted in the attached "Water Share and Water Supply Agreement" between the City of Boise and Barber Mill Investments, dated March 31, 2011 (see Article C)

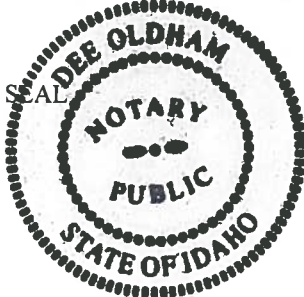
Dated this 8th day of August, 2016.

Permit holder _____ Title (if applicable) _____ Permit holder _____ Title (if applicable) _____

State of Idaho _____)
 County of Ada _____) ss

SUPPORT DATA**IN FILE # 63-33341**

On this 8th day of August, 2016, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he/she/they executed the same.



Dee Oldham
 Notary Public

My commission expires: December 2, 2020

WATER SHARE AND WATER SUPPLY AGREEMENT

THIS WATER SHARE AND WATER SUPPLY AGREEMENT ("Agreement") is made and entered into this 3/5/ day of March, 2011, between THE SOUTH BOISE MUTUAL IRRIGATION CO. LTD, an Idaho non-profit corporation ("SBMIC"), and the CITY OF BOISE CITY, an Idaho municipal corporation, by and through its Department of Parks & Recreation ("City"), and BARBER MILL INVESTMENTS, LLC, an Idaho limited liability company ("BMI").

RECITALS

A. SBMIC owns those certain Boise River water rights decreed in the Snake River Basin Adjudication as water right numbers 63-242B, 63-243F, 63-243G, 63-280, 63-281, 63-282, 63-283A, 63-284A and 63-2392E (the "SBMIC Water Rights"). SBMIC also holds contracts that entitle it to water stored in the Boise River reservoir system. SBMIC holds and delivers the Water Rights and storage water entitlements for the use and benefit of its shareholders.

B. SBMIC delivers water to its shareholders in accordance with the number of company shares ("Share(s)") held at the rate of one miner's inch per Share, subject to the company's rules and regulations.

C. The City owns a 77-acre park site known as Marianne Williams Park ("Park"), located on the north side of the Boise River adjacent to Harris Ranch in the Barber Valley of which approximately 27 acres will be irrigated and that will include ponds with a total water surface area of approximately 6 acres.

D. BMI owns a 54-acre site adjacent to the Park that BMI intends to develop for commercial, residential and other mixed uses, approximately 13 acres of which will be irrigated.

This new development is called "Barber Station."

E. City and BMI desire to divert water from the Boise River through a diversion structure (herein called the "Walling Diversion") for irrigation at Marianne Williams Park and Barber Station. The City filed Application for Permit No. 63-33341 with the Idaho Department of Water Resources ("IDWR") to irrigate 40 acres in the Park and Barber Station with a diversion rate of 0.8 cfs. The City and BMI anticipate assigning a portion of the permit to BMI sufficient to allow the irrigation of 13 acres by BMI in Barber Station. In order for IDWR to process Application for Permit 63-33341, the City must submit a mitigation plan that identifies a portion of an existing, senior right(s) in the Boise River that will no longer be irrigated in lieu of the new use proposed in the Application.

F. The City filed Application for Permit No. 63-33052 with IDWR to divert shallow ground water into ponds in the Park that will intercept shallow ground water that is tributary to the Boise River. In order for IDWR to process Application for Permit 63-33052, the City must submit a mitigation plan that identifies a portion of an existing, senior right(s) in the Boise River that will no longer be irrigated in lieu of the new use proposed in the Application.

G. The City and BMI seek to obtain Shares and to use the water associated with those Shares as mitigation for the water rights to be obtained pursuant to Applications for Permit Nos. 63-33341 and 63-33052 by leaving the portion of SBMIC's water rights associated with the acquired Shares undiverted in the Boise River.

H. The City and BMI desire to obtain, and SBMIC desires to convey, a sufficient number Shares to allow the use of water under SBMIC's Water Rights for the mitigation use contemplated by the City and BMI at the Park and Barber Station.

I. The parties enter this Agreement to establish terms and conditions to accomplish the following: (1) acquisition of Shares by the City and BMI; and (2) modification of SBMIC's Water Rights to state that the appropriate portion is assigned to mitigation for Applications for Permit Nos. 63-33341 and 63-33052.

NOW, THEREFORE, for and in consideration of the promises and of the covenants, agreements and conditions hereinafter set forth, the parties agree each with the other as follows:

A. ACQUISITION OF SBMIC SHARES

1. Acquisition of Shares. The City and BMI shall acquire from SBMIC, and SBMIC shall convey to the City and BMI, the number of Shares sufficient to mitigate for Applications for Permit Nos. 63-33341 and 63-33052. The parties anticipate, as indicated in the attached mitigation plans, that the City and BMI will acquire a total of 46 Shares: i) 40 Shares to mitigate the irrigation Permit No. 63-33341, 27 of which will be acquired by the City and 13 of which will be acquired by BMI; and ii) 6 Shares to be acquired by the City to mitigate the pond Permit No 63-33052. [The final number of Shares to be conveyed shall be reduced in the event IDWR issues a Final Approval (defined below in Section B.2.) of each of the permit applications that requires less mitigation than contemplated in the attached mitigation plans.] The conveyance of the Shares shall occur in two phases. In the first phase (the "Municipal Closing," the City will acquire 6 Shares within 30 days of Final Approval (defined below in Section B.2.) of Application for Permit No. 63-33052. The second conveyance of Shares (the "Irrigation Closing") shall occur within 30 days of Final Approval (defined below in Section B.2.) of Application for Permit No. 63-33341.

2. SBMIC Articles, By-Laws, Proportionate Share of Water. The City and BMI agree to be bound by the Articles of Incorporation, By-Laws and policies and procedures of

SBMIC ("Rules"), as presently constituted and as may be modified or amended from time to time. The City and BMI acknowledge and accept that, as shareholders of SBMIC, they will be entitled to receive only their proportionate share of the water actually available to SBMIC shareholders at any particular point in time pursuant to SBMIC's natural flow rights and storage entitlements, and the City and BMI specifically recognize that SBMIC rights are subject to curtailments by the Boise River Watermaster. In order to ease its record-keeping burden, IDWR has requested that SBMIC identify only a single right out of its water right portfolio for mitigation. Accordingly, the parties agree that SBMIC right 63-243G will be designated for mitigation in IDWR's records. However, even though only the single right is identified in the database, the parties agree that the City and BMI actually share in the delivery of all of SBMIC's water rights and storage and will be treated in the same manner as all other shareholders in sharing the effects of cuts to the delivery of SBMIC's water rights. BMI and the City agree that following the acquisition of the Shares, they shall have an obligation under the Rules to pay annual assessments at the same rates as other shareholders in SBMIC even though SBMIC will not own, operate and maintain the diversion works and transmission facilities that carry water to the Park and Barber Station. BMI and the City further agree and acknowledge that pursuant to the Rules, Shares held for mitigation entitle to the holder to only ½ vote per Share.

3. Ownership, Control and Beneficial Use of Water Rights. SBMIC will continue to hold legal title to the Water Rights represented by the City's and BMI's shares in SBMIC. The City and BMI agree that this Agreement does not confer on them any right to modify or transfer the Water Rights except as provided in this Agreement.

4. Enforcement. The City and BMI agree that the billing address for the Shares held

by BMI will be the same address as the City, and SBMIC may send the bills for assessments associated with BMI's shares to the City. The City agrees that it will pay to SBMIC the assessments levied for the BMI Shares so that SBMIC may look only to the City to collect the assessments levied pursuant to this Agreement. The City and BMI will allocate the assessment amounts between them pursuant to a separate agreement. In the event the City does not pay the annual assessments levied pursuant to the Rules for the Shares conveyed to either the City or BMI pursuant to this Agreement, SBMIC has the right to curtail the diversions at the Walling Ditch contemplated in this Agreement through the following process: If the City and/or BMI has failed to pay its annual assessment within 45 days after the date the assessment is due, SBMIC may send the City and BMI notice of its intent to lock the headgate at the Walling Ditch (the "SBMIC Notice"). The SBMIC Notice must be sent to both the City and BMI. If within 30 days after receipt of the SBMIC Notice, the City and/or BMI continue to fail to pay the past due assessment(s), then SBMIC may, through an agent of its choice, lock the headgate at the Walling Ditch to prevent the diversions contemplated by this Agreement, and the City grants SBMIC a limited license to access the Walling Diversion for this purpose. SBMIC shall promptly remove the lock after the past due assessments are paid.

5. Termination of Mitigation. In the event the City and BMI fail to pay annual assessments for a period of 3 consecutive years, SBMIC shall have the right to cancel the Shares conveyed pursuant to this Agreement (the "Mitigation Shares") and terminate its mitigation obligation through the following process: If the City and BMI have failed to pay the annual assessments for a period of 3 consecutive years, SBMIC may send the City and BMI notice of its intent to cancel the Mitigation Shares (the "Cancellation Notice"). The Cancellation Notice must be sent to both the City and BMI. If within 30 days after receipt of the Cancellation

Notice, the City and/or BMI continue to fail to pay the past due assessment(s), then SBMIC may cancel the Mitigation Shares and record the cancellation in its books. If the Mitigation Shares are cancelled pursuant to the process described above, SBMIC's obligation to leave the portion of its Water Rights in the Boise River for mitigation as contemplated in this Agreement shall cease, and SBMIC may use that portion of its Water Rights dedicated to mitigation for other purposes as it sees fit.

B. WATER RIGHT APPLICATIONS

1. Filing and Prosecution of Applications for Permit. As noted above, the City has filed Applications for Permit Nos. 63-33341 and 63-33052 with IDWR. The City and BMI shall diligently prosecute the applications with IDWR. SBMIC shall execute any all other documents required by IDWR or other agencies or entities whose consent may be required to complete the processing of the Applications for Permit, including, without limit, mitigation plans for each of the two rights describing the mitigation contemplated in this Agreement. SBMIC also agrees to cooperate fully with and to aid the City and BMI in every necessary respect, including the supplying of information or documents presently possessed by or readily available to SBMIC, to complete the processing of the applications. The City and BMI shall keep SBMIC fully informed as to the status of the applications.

2. Approval of Applications for Permit. A "Final Approval" of Applications for Permit Nos. 63-33341 and 63-33052 shall occur upon receipt of a final, unappealable IDWR approval of each application with conditions of approval that are acceptable to the City and BMI and mitigation plans that are acceptable to SBMIC. If for any reason a Final Approval of either Application for Permit cannot be obtained, this Agreement may be terminated or modified.

C. DELIVERY SYSTEM. BMI and the City will own and be responsible for the

construction, maintenance and operation of the diversion and transmission facilities used to convey water to the Park and Barber Station.

D. FEES, COSTS AND EXPENSES

1. Preparation, Filing and Prosecution of Applications for Permit. Each party to this Agreement shall pay all attorney and engineering fees, and any other fees, costs, and other expenses incurred by them in preparing, reviewing, and filing the Applications for Permit or this Agreement.

2. Performance. The City and BMI have paid all costs, fees and other expenses involved in the design and construction of the diversion and delivery System to the properties described in the Applications for Permit, and SBMIC shall have no obligation or responsibility whatsoever for payment of any such costs or expenses.

3. Enforcement. Should either party incur costs or attorney fees in connection with efforts to enforce the provisions of this Agreement or any agreement executed pursuant hereto, whether by institution of suit or not, the party rightfully enforcing or rightfully resisting enforcement of such provisions, or the prevailing party in case suit is instituted, shall be entitled to reimbursement for its costs and reasonable attorney fees from the other party.

G. MISCELLANEOUS

1. No Claims Created. Nothing in this Agreement shall create or support a claim of estoppel, waiver, prescription or adverse possession by either party hereto or any third party against either party hereto.

2. Assignment. Neither this Agreement nor any agreement entered into pursuant to this Agreement may be assigned or transferred without the prior written approval of the Parties, which approval shall not be unreasonably withheld.

3. Amendment and Modification. Any amendment or modification of this Agreement must be in writing and signed by all parties to be enforceable.

4. Construction. This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho. This Agreement is not intended for the benefit of any third party and is not enforceable by any third party. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, all remaining provisions of this Agreement shall remain in full force and effect. The parties represent and warrant to each other that they each have authority to enter this Agreement. The catchlines or section headings herein set forth are provided only for the convenience of the parties in locating provisions of the Agreement, and are not intended to be aids in interpretation of any provision of the agreement with respect to which the parties might disagree at some future time, and shall not be considered in any way in interpreting or construing any provision of the Agreement.

5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and its respective successors, assigns, heirs, personal representatives, purchasers, or transferees of any kind. BMI agrees that its transferee and successor to this Agreement shall consist of a property owner's association constituted with the authority to comply with this Agreement and to perform and enforce compliance with SBMIC's regulations, policies and procedures. The association shall be entitled to organize its members, assess for costs, collect assessments and dues and deliver such funds to SBMIC for its ongoing financial obligations to SBMIC, and distribute SBMIC water to and within the subdivision boundary.

6. Notices. Any and all notices, demands, consents and approvals required pursuant to this Agreement shall be hand delivered, or if sent by mail shall be certified, postage prepaid, return receipt requested, addressed to the parties as follows, or to such other addresses as the

parties provide pursuant to the provisions of this paragraph:

The SBMIC Water Company
South Boise Mutual Irrigation Co., LTD
1120 Chamberlin Street
Boise, ID 83706

City of Boise
Attn. Director
Department of Parks & Recreation
1104 Royal Blvd
Boise, ID 83706

Barber Mill Investments, LLC
12601 W. Explorer Dr., #200
Boise, ID 83713

with a copy to:

City of Boise
Legal Department
Post Office Box 500
Boise, Idaho 83701

Notices shall be deemed to have been delivered upon hand deposit in the United States mail as provided above.

7. Recording. Notice of this Agreement shall be recorded on any plats, original, additions thereto, or resubdivisions of the property covered by this Agreement.

8. Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, SBMIC has hereunto caused its corporate name to be subscribed by its officers first hereunto duly authorized by resolution of its Board of Directors, the City has hereunto caused its municipal name to be subscribed and its seal to be affixed by its officers first thereunto duly authorized by resolution of its City Council, and BMI has caused its corporate name to be subscribed by its duly authorized officers, all as of the day and year herein first above written.

THE SOUTH BOISE MUTUAL IRRIGATION CO. LTD

By: [Signature]
Its President

Date: 3/15/11

ATTEST:

By: [Signature]
Its Secretary

Date: 15 March 2011

THE CITY OF BOISE

By: [Signature]
David H. Bieter
Mayor

Date: March 23, 2011

ATTEST:

By: [Signature]
Craig Croner
Interim City Clerk

Date: March 23, 2011



BARBER MILL INVESTMENTS, LLC

By: [Signature]
David W. Turnbull, Manager

Date: March 31, 2011

**MITIGATION PLAN
APPLICATION FOR PERMIT 63-33052**

The City of Boise, Parks and Recreation Department ("Applicant") submits this plan to provide for the mitigation of the consumptive use of ground water that will occur as a result of the storage use proposed by the above referenced permit application. Mitigation is required because the proposed ponds, which will have a surface area of approximately 6 acres, will intercept and evaporate ground water that is tributary to a reach of the Boise River that is fully appropriated by senior rights except during times when upstream reservoirs are being emptied for flood control purposes.

This mitigation plan proposes to mitigate the depletive effects of the proposed ponds on the Boise River by ceasing the irrigation of six acres of irrigation under water right 63-243G, which is held in the name of the South Boise Mutual Irrigation Co., Ltd. ("SBMIC"). Applicant and SBMIC have an agreement whereby Applicant will acquire 6 SBMIC shares, each of which entitle the holder to the delivery of water sufficient to irrigate 1 acre at a rate of one-inch per acre. SBMIC agrees that the 6 acres associated with the 6 shares being acquired by Applicant will no longer be used for irrigation and instead will be used for mitigation of the permit 63-33052, and appropriate remarks on right 63-243G to this effect is authorized. SBMIC and the Applicant agree that the designation of a single water right held by SBMIC for mitigation under this Plan is for administrative convenience only, and that for purposes of actual water administration, Applicant's diversions made pursuant to 63-20041 are mitigated proportionally by all of SBMIC's water rights.

SBMIC has reviewed and approves this mitigation plan.

THE SOUTH BOISE MUTUAL IRRIGATION CO. LTD

By 
Its President

**MITIGATION PLAN
APPLICATION FOR PERMIT 63-33341**

The City of Boise, Parks and Recreation Department ("Applicant") submits this plan to provide for the mitigation of the consumptive use of water that will occur as a result of the irrigation use proposed by the Application for Permit no. 63-33341. Mitigation is required because the reach of the Boise River from which the Applicant proposes to divert under the permit application is fully appropriated by senior rights during the irrigation season except during times when the upstream reservoirs are being emptied for flood control purposes.

This mitigation plan proposes to mitigate the depletive effects on the Boise River of the proposed irrigation use of 40 acres by ceasing the irrigation of a corresponding number of acres of irrigation under water right 63-243G, which is held in the name of the South Boise Mutual Irrigation Co., Ltd. ("SBMIC"). Applicant and SBMIC (or assigns) have an agreement whereby Applicant will acquire 40 SBMIC shares, each of which entitle the holder to the delivery of water sufficient to irrigate 1 acre at a rate of one-inch per acre. SBMIC agrees that the 40 acres associated with the 40 shares being acquired by Applicant will no longer be used for irrigation and instead will be used for mitigation of the permit 63-33341, and appropriate remarks on right 63-243G to this effect is authorized. SBMIC and the Applicant agree that the designation of a single water right held by SBMIC for mitigation under this Plan is for administrative convenience only, and that for purposes of actual water administration, Applicant's diversions made pursuant to 63-33341 are mitigated proportionally by all of SBMIC's water rights.

SBMIC has reviewed and approves this mitigation plan.

THE SOUTH BOISE MUTUAL IRRIGATION CO. LTD

By 
Its President



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

August 25, 2016

BARBER MILL INVESTMENTS LLC
12601 W EXPLORER DR STE 200
BOISE ID 83713

Re: Assignment of Permit for Water Permit No. 63-33341 (Split into 63-33341 and 63-34258)

Dear Water Right Holder(s):

The Department acknowledges the receipt of correspondence changing ownership of the above referenced water permit to you. The Department has modified its records to reflect the change in ownership and has enclosed a computer-generated report for your records.

As requested on the Assignment of Permit, the original permit was divided into two parts. When a portion of the original water permit has been conveyed to another and the original permit has been split, then the original number remains the same and a new number is issued to the new portion. Each split contains only the portion of the original right for each separate owner. Enclosed is a copy of this new water right for your records. Please refer to this number when corresponding with our office.

Your portion of this water permit has a specified point of diversion, nature of use and place of use. If you plan on changing the nature of use, place of use, or point of diversion under this permit, including adding a new point of diversion, then an Amendment of Permit on your portion of this right is required. Please contact this office for further information on the Amendment of Permit form or you can find the forms at www.idwr.idaho.gov. If you do not plan on changing any items on your water right, then no further action is required at this time.

Thank you again for your patience and cooperation. If you have any questions concerning the enclosed information, please feel free to contact this office.

Sincerely,

Jean Hersley
Technical Records Specialist I

Enclosures

c: SPF Water Engineering LLC
Water District No. 63



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

August 25, 2016

CITY OF BOISE
DEPT OF PARKS & RECREATION
1104 ROYAL BLVD
BOISE ID 83706-2898

Re: Assignment of Permit for Water Permit No. 63-33341 (Split into 63-33341 and 63-34258)

Dear Water Right Holder(s):

We have received and processed an Assignment of Permit for a portion of your original water permit referenced above. This assignment resulted in a split of your original water permit.

When a portion of the original water permit has been conveyed to another and the original permit has been split, then the original number remains the same and a new number is issued to the new portion. Each split contains only the portion of the original right for each separate owner. Enclosed is an updated copy of this water right for your records. Please refer to this number when corresponding with our office.

Thank you again for your patience and cooperation. If you have any questions concerning the enclosed information, please feel free to contact this office.

Sincerely,

A handwritten signature in black ink that reads "Jean Hersley".

Jean Hersley
Technical Records Specialist I

Enclosures

c: Water District No. 63
SPF Water Engineering LLC

Shaul, Sarah

From: Marston, Sascha
Sent: Tuesday, August 09, 2016 2:10 PM
To: Shaul, Sarah
Subject: RE: Change Receipt Description

It is fixed.

From: Shaul, Sarah
Sent: Tuesday, August 09, 2016 1:22 PM
To: Marston, Sascha
Subject: Change Receipt Description

Sascha,

Can you please change the description for receipt C102356? I choose Permits but the actual description needs to be Assignments.

Best Regards,
Sarah Shaul
Technical Records Specialist
sarah.shaul@idwr.idaho.gov
208-287-4958

Idaho Department of Water Resources (IDWR)
322 E. Front Street
P.O. Box 83720
Boise, ID 83720-0098
208-287-4800
www.idwr.idaho.gov