

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 63-34123

Priority: July 29, 2015

Maximum Diversion Rate: 0.02 CFS

This is to certify, that ROBERT SCOTT WEST And/Or
ANGELA C WEST
2608 HWY 21
BOISE ID 83716

has applied for a permit to appropriate water from:

Source: SPRING

Tributary: MORES CREEK

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
COMMERCIAL	01/01 to 12/31	0.02 CFS

LOCATION OF POINT(S) OF DIVERSION:SPRING SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 10, Twp 04N, Rge 04E, B.M. BOISE CountyPLACE OF USE: COMMERCIAL

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
04N	04E	10													X				

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **August 01, 2021**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Commercial use under rights 63-7227 and 63-34123 when combined shall not exceed a total diversion rate of 0.02 cfs and a total annual maximum diversion volume of 8.0 af.
5. The right holder shall comply with all provisions of the mitigation plan received 7/19/16. Failure to mitigate as described by the plan of mitigation, while still diverting water under this permit, is cause for the director to cancel a water right permit or revoke a subsequently approved water right license.
6. To mitigate during the non-irrigation season 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 rent three (3) acre feet of storage water from the Water District 63 rental pool November 1 through March 31 each year to be left undiverted in Lucky Peak Reservoir for mitigation purposes. Permit holder shall maintain a record of such rentals and shall provide the record to the Department upon request.

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7. To mitigate during the irrigation season 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 right will be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation purposes.

<u>Right No.</u>	<u>Use Changed to Mitigation by Non-Use Irrigation</u>	<u>Mitigation Rate (cfs)</u>	<u>Mitigation Volume (AF)</u>	<u>Mitigation Acres</u>
63-185B		0.056	5.4	2.8

The land that will no longer be irrigated under this right is located within the service area of South Boise Water Company. Additionally, associated rights 63-148C, 63-150, 63-185A, 63-185B, 63-2392C and 63-2392D for the South Boise Water Company service area will be modified to reduce authorized irrigation acreage by 2.8 acres to prevent enlargement.

If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable at a rate equal to or greater than 60% of the face value due to a shortage of water or a priority call, then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction beyond the 60% level to the mitigation rights.

8. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.
9. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.
10. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.
11. This right does not grant any right-of-way or easement across the land of another.
12. Commercial use is for a water bottling facility.
13. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.

Signed this 28th day of July, 2016.


Nick Miller
Manager, IDWR Western Region

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34123

This map depicts the COMMERCIAL place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



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

0 0.035 0.07 0.14 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

July 28, 2016

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

ROBERT SCOTT WEST
ANGELA C WEST
2608 HWY 21
BOISE ID 83716

RE: Permit No.63-34123

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208)334-2190.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Miller for:", with a stylized initial "N" and a flourish at the end.

Nick Miller
Western Regional Manager

Enclosure(s)

cc: SPF WATER ENGINEERING LLC
SOUTH BOISE WATER CO
WATER DISTRICT 63
RINGERT CLARK CHARTERED

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2016 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 63-34123

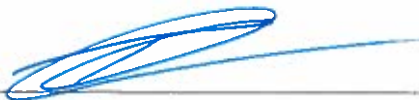
**ANGELA C WEST
ROBERT SCOTT WEST
2608 HWY 21
BOISE ID 83716**

**SPF WATER ENGINEERING LLC
C/O TERRY SCANLAN
300 E MALLARD DR STE 350
BOISE ID 83706**

**REX R. BARRIE
WATERMASTER OF DISTRICT 63
10769 W STATE ST
PO BOX 767
STAR ID 83669**

**SOUTH BOISE WATER CO
PO BOX 6005
BOISE ID 83707**

**RINGERT CLARK CHARTERED
C/O S BRYCE FARRIS
455 S 3RD ST
PO BOX 2773
BOISE ID 83701**



**Rachel Neely
Administrative Assistant**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Miller, Nick

From: Barry Eschen [barryeschen@gmail.com]
Sent: Wednesday, July 27, 2016 2:58 PM
To: Miller, Nick
Cc: Grimm, Angie; Terry Scanlan; Scott West; Dustin Mortimer
Subject: Re: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Nick,

The South Boise Water Company agrees to reduce its acreage for the two waste water rights (63-2392C and 63-2392D) by 2.8 acres to accommodate the mitigation requested by the Wests.

Barry Eschen

On Jul 27, 2016, at 2:32 PM, Miller, Nick <Nick.Miller@idwr.idaho.gov> wrote:

Terry,

In drafting the final approval for the West application, I realized the signed mitigation plan refers only to recording a reduction in acres for South Boise Water Company's four Boise River water rights, and does not include the two waste water rights (63-2392C and 63-2392D). As these rights are from a source tributary to the Boise River, the authorized acreage must be reduced on these rights as well for the mitigation plan to be processed.

I can approve the permit with the existing mitigation plan, but I'd like to put something in the file documenting that the South Boise Water Company is aware that the acreage under those rights will also be reduced by 2.8 acres. For that purpose, an email from Barry Eschen would work for us.

If this approach is alright with South Boise Water Company, and I get an email to that effect today, I can send the approval out tomorrow morning.

Thanks,

Nick.

From: Grimm, Angie
Sent: Tuesday, July 19, 2016 4:43 PM
To: Terry Scanlan; Barry Eschen; Scott West
Cc: Miller, Nick
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Gentlemen,

Angie West dropped the plan off to me moments ago. Nick Miller and I will work to get a final approval out ASAP, hopefully by the end of this week/beginning of next at the latest.

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

From: Terry Scanlan [<mailto:TScanlan@spfwater.com>]
Sent: Tuesday, July 19, 2016 4:25 PM
To: Barry Eschen; Scott West
Cc: Miller, Nick; Grimm, Angie
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Barry –

I think you can send it by mail to Angie Grimm at IDWR Western Region Office, 2735 Airport Way, Boise, 83705. Thanks.

Terry

From: Barry Eschen [<mailto:barryeschen@gmail.com>]
Sent: Tuesday, July 19, 2016 2:32 PM
To: Scott West <west@rockswater.net>
Cc: Terry Scanlan <TScanlan@spfwater.com>; Miller, Nick <Nick.Miller@idwr.idaho.gov>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>
Subject: Re: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Terry and Scott,

I have signed. What should I do with it? I thought Angie West would take it after I signed, but that was an assumption. It turns out I was in back cutting wood when Angie arrived and she gave it to my wife, Maria.

Barry

On Jul 19, 2016, at 9:36 AM, Barry Eschen <barryeschen@gmail.com> wrote:

Scott,

I am home this morning 115 E. Provident. Phone 336-5508

Take Boise Ave. or Park Center to Pennsylvania. Turn north on Myers and go one block and turn left on Provident. Come to the end and bear left into my driveway. My house is red.
Williams Park is next to my home.

See you at your convenience.

Barry

On Jul 19, 2016, at 7:57 AM, Scott West <west@rockswater.net> wrote:

Good morning all. Angie and I have signed a copy. Barry, I will be happy to drop it off with you this morning. Just let me know when and where.

Thanks,
Scott

On Mon, Jul 18, 2016 at 7:08 PM, Terry Scanlan
<TScanlan@spfwater.com> wrote:

Nick

We are eager to move forward also.

1. Attached is a revised mitigation plan to Barry and Scott for their signatures. Changes are tracked in the Word version. The pdf version does not show changes and is provided for signing by Barry and Scott.

- a. Nick and Angie - Let us know ASAP if you see anything in the revised mitigation plan that needs to be changed before it is signed.
- b. Barry and Scott – If possible, let's get this signed by the end of the week.

2. I wonder if it would be appropriate to include a condition that says something like "The mitigation quantities may be adjusted at the time of licensing to be consistent with current Department policy."

Thanks.

Terry

From: Miller, Nick [mailto:Nick.Miller@idwr.idaho.gov]

Sent: Monday, July 18, 2016 5:11 PM

To: Terry Scanlan <TScanlan@spfwater.com>; Grimm, Angie
<Angie.Grimm@idwr.idaho.gov>

Cc: Barry Eschen <barryeschen@gmail.com>; Scott West
<west@rockswater.net>

Subject: RE: Annual Storage Rental for Scott West Mitigation -
Application 63-34123

Terry,

As we discussed before I went on vacation, I'm willing to agree to disagree, and I am eager to move forward.

I do think we should sit down over a beer one of these days and talk this (and other things) through so things go smoother in the future.

As for this application, you asked what you need to do to gain approval. I think the mitigation plan you submitted on May 20, 2016 should be signed and submitted after being amended to reflect 2.8 acres idled and 0.056 cfs committed to mitigation by non-use. That is a mitigation plan we can accept that provides adequate protection against curtailment.

In the meantime, if that works for you, I'll ask Angie to draft an approval so we can finalize conditions of approval without further delay.

Thanks,

Nick.

From: Terry Scanlan [<mailto:TScanlan@spfwater.com>]
Sent: Tuesday, June 28, 2016 10:58 AM
To: Miller, Nick; Grimm, Angie
Cc: Barry Eschen; Scott West
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Nick –

Comments in **red** are inserted below.

Terry

From: Miller, Nick [<mailto:Nick.Miller@idwr.idaho.gov>]
Sent: Monday, June 27, 2016 6:39 PM
To: Terry Scanlan <TScanlan@spfwater.com>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>
Cc: Barry Eschen <barryeschen@gmail.com>; Scott West <west@rockswater.net>
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Terry,

Sorry for taking so long to get back to you on this. You are right, this is difficult to get our collective heads around. I think the main disconnect involves the conversion from a partially consumptive use to a fully consumptive use and the consideration of timing.

I'll address your seven points below and hopefully we'll be closer to a common understanding.

Response to #1 – Thank you for your patience as we both come to an understanding of this issue. Thank you again. I assume that we can agree to disagree on the items below, but move forward, and then all go out for a beer afterward!

Response to #2 – Yes, you described the proposed mitigation plan accurately. Except that I understand it to be 10 shares per acre or 0.002 cfs per share. As a side note, my review of the rights held by South Boise Water Company leads me to believe the company holds 13.52 cfs of water rights to irrigate 871.28 acres. This supplies only 0.0156 cfs (0.78 miners inches per acre). I assume the balance of the 10-shares per acre to make up a full inch to the acre is storage water? South Boise indicated to me that 10 mitigation shares would equal 0.02 cfs of Boise River water right. Since they are charging a 5:1 premium for mitigation shares compared to irrigation, I assumed that they have flexibility to determine how much Boise River water right a mitigation share represents. To avoid confusion, I suggest that we eliminate discussion of shares and focus on water right cfs. South Boise can work with the applicant to determine how many shares he buys, but the mitigation plan will address the amount of South Boise water right (1865 or 1871 Boise River cfs) that is dedicated to mitigation.

Response to #3 – Your analysis differs from mine in that mine assumes that the portion of the diverted water not consumed by the irrigation would have been available to the junior users anyway, even if there may be some lag in the timing between when it was diverted and when it returns. So, to say that the proposed mitigation plan provides a minimum of 0.009 cfs during the 60% Stewart Decree level seems to be an overstatement. I was simply stating the obvious. $0.020 \text{ cfs available water for diversion} - 0.011 \text{ cfs diverted and consumed} = 0.009 \text{ cfs undiverted and unconsumed}$.

Response to #4 – One of the conveniences we have in the Boise Valley is that most of the mitigation is proposed to use irrigation company rights. Since these rights are protected from forfeiture, we do not have to do an analysis of whether the water rights being offered have been forfeited. The flip side of this is that sometimes we wind up doing a paper exercise that dedicates a water right to mitigation, but affects no actual change in current water use. The reason we can do this is because these irrigation company rights are not subject to partial forfeiture so we are really using a portion of their rights as a hedge against them resuming use of an existing appropriation. In any other case we would (and our memos discuss this) review the specific acres proposed to be idled and ensure they had been irrigated and look at whether they

historically diverted a full 1" to the acre, etc... With that in mind, my analysis was focused on the "theoretical" situation where the company is irrigating their full acreage and requires a full inch of water to each acre. So, under that situation their natural flow rights when cut to 60% only provide 0.6" to the acre and they would need to divert 0.4"/acre of storage water. I thought 1.0" per acre is a maximum diversion, not a requirement to raise a crop, and that the basis of the Stewart Decree was that crops can get by at 6/10ths of an inch? Similarly, Nampa & Meridian standard delivery to Ridenbaugh lands is 5/8th of an inch, Boise Project seeks to supply 3.75 af/ac/year instead of 4.5 af/ac/year, etc., etc. . Since it doesn't make any sense to argue that the natural flow provides more than a proportional share of the water consumed, the natural flow rights offered for mitigation can only provide 60% of the consumptive use during these periods. This analysis does not match the actual situation on the ground, but it doesn't have to - given the peculiarities of ditch company rights. As you correctly point out, the South Boise Water Company diverts nowhere near their full authorized rate of 13.52 cfs for irrigation. Yet, the amount they divert must be sufficient to irrigate whatever acres they are irrigating without needing to rely on much storage water (either the duty of water is less than their rights allow or the number of acres is low enough so even with a 60% cut they have an inch to the acre...). Yet because they have the benefit of being largely immune to partial forfeiture, as discussed above, we look at what they have the potential to divert and use rather than the actual use.

As a side note, the company has, I believe something on the order of 700 acre feet of storage contract in Lucky Peak. The 292 af of storage you noted from the accounting may represent some partial allocation or remaining balance after rental pool activity as that number varies from year to year in the storage reports. Thanks for the correction. My mistake; I should have looked harder at that one.

I don't think I say crops consume less later in the irrigation season. Rather, the fraction of the irrigation consumption provided by the natural flow rights goes down from 100% to 60% and the amount provided by storage water goes up from 0% to 40% when the Stewart Decree kicks in. More mitigation commitment is needed later in the season because the right being offered for mitigation (the natural flow right) is not "worth" as much as it is earlier in the season. Same comment as for #4. On the chart provided with my earlier email, the time where the blue area falls below the green line, but the red area remains above the green line illustrates this. The overall consumption by crops is still high - higher than the consumption by Rox, but natural flow rights are not providing all of that consumption so natural flow rights by themselves for this amount of acres is insufficient to fully protect against curtailment. This is contrasted with early in

the season when the consumptive use provided by natural flow only is greater than Rox proposal (the green line).

Response to #6 – As Angie noted in her email, we discussed it after I sent her my email and we agree that we can put 0.02 on the face of the right due to our rounding standards... but limit the right to 0.011 cfs as a condition.

Response to #7 – You are correct that the proposed mitigation plan provides more volume than the permit application proposes, but it does not provide enough volume at other times. Looking at the chart I provided, you can see that the proposal does over-mitigate for much of the season (the blue area above the green line), but the need is to ensure enough mitigation is provided at all times. As for the 0.034 cfs target, see my response to #3 and note that the proposal is fully consumptive while the right being offered for mitigation is not, so a direct 1:1 diversion rate proposal is not appropriate here.

A general comment is that I think it is bad policy to require over mitigation to protect against every theoretical impact that might possibly occur. You are making life too complicated for IDWR and water users. The mitigation plan as proposed provides almost double the wet water diversion rate required, every day, all season long. It doesn't enlarge the annual diversion volume or annual consumptive use. However, in the interest of getting this completed, I'll now give up and ask that you tell us what we need to do to gain approval. Thanks.

Hope this helps.

Nick.

From: Terry Scanlan [<mailto:TScanlan@spfwater.com>]
Sent: Sunday, June 12, 2016 10:06 AM
To: Grimm, Angie; Miller, Nick
Cc: Barry Eschen; Scott West
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Angie and Nick

I am feeling a little dense about this one, so please bear with me.

1. First off, thanks for taking the time to think through this stuff. Simple on the outside, but complex on the inside! It took me a long time to summarize my thoughts in this email

2. Just to be clear, I understand that the mitigation plan is proposing dry up and non-diversion of 0.034 cfs (at 100% delivery) of South Boise Water Company natural flow Boise water rights (1865 and 1871) to mitigate for a Mores Creek depletion of 0.011 cfs that is 100% consumptive. This natural flow mitigation is occurring during the irrigation season only. Non-irrigation season depletion is being accomplished with storage and has been determined to be adequate. Upon approval, the SBWC rights will reflect that 0.034 cfs of the 1871 and/or 1865 rights are dedicated to mitigation and that the Watermaster will withhold delivery of that portion of the water right. Barry Eschen (South Boise Water Company) has indicated to me that each South Boise share supplies 0.02 cfs per acre for irrigation, and that 17 mitigation shares is equivalent to 1.7 acres of irrigation. So the mitigation plan will list those amounts: 0.034 cfs and 1.7 acres. If you see it differently, then let me know.

3. On every day of the natural flow season, the plan proposes to leave a minimum of 0.020 cfs (0.034 x 60%) in the river, undiverted, to mitigate for a direct daily depletion of 0.011 cfs (5 gpm, totaling 4.9 af depletion per irrigation season). The excess water (mitigation minus depletion) remaining in the river by this water right action ranges from 0.009 to 0.023 cfs depending on river flow. The excess flow benefits the junior water rights on the river.

4. I understand that your calculation for "whole season" suggests that 40 percent of the SBWC supply/consumption is storage. I think that is too high. In 2015, it looks like SBWC storage use was closer to 3% (102 af storage used) of the total SBWC diversions (assuming total annual diversion of 3000 af +/-). The Water District 63 accounting shows that SBWC only has 292 af of storage space, so that the most storage they could use would be about 10% of total diversion. Thus, minimum natural flow would be about 90%. Applying this 90% factor to your whole season calculation changes the result from

$3.5 \text{ af/acre} * 1.7 \text{ acres} * 0.6 (\text{percent of the consumptive use provided by natural flow rights}) = 3.6 \text{ af}$

to
 $3.5 \text{ af/acre} * 1.7 \text{ acres} * 0.9 (\text{percent of the consumptive use provided by natural flow rights}) = 5.4 \text{ af}$

So I think we are OK on whole season volume with 1.7 acres to mitigate 4.9 af of consumption using your calculation. I would note, however, that if a 0.034 cfs portion of the Boise River rights is dedicated to mitigation, then I don't believe it is necessary to consider storage in the calculation at all. I would like your thoughts on this perspective.

5. Your argument regarding timing seems to say that more mitigation flow is needed because late in the year, crops consume less than earlier in the season. I don't follow the logic; you'll need to better explain it to me. The plan provides mitigation flow exceeding daily depletion, without regard to the seasonality of a particular crop. The plan replaces the depletion in terms of rate and timing with wet water.

6. I am concerned with reducing the permit from 0.02 cfs to 0.01 cfs, particularly since the anticipated actual diversion rate is 0.011 which is more than a 0.010 cfs upper permit limit. If we find that there is more spring flow available than 0.011 cfs, and the applicant wants to have higher instantaneous diversion (0.015 or 0.020 cfs), then limiting to 0.01 will be a problem. Perhaps the applicant can use a sliver of his existing water right to cover the extra 0.001 cfs, but it seems odd to limit a permit (rather than a license) in this manner. This might be better addressed by mitigation plan conditions or permit conditions.

7. If the permit is limited to 0.01 cfs, I think there is a valid argument that drying up 1.7 acres and 0.034 cfs of Boise River water right is too much mitigation at a CU of 3.5 af/ac, as it provides a volume of nearly 6.0 af (rather than 4.9 af required) and 0.02 cfs (rather than the 0.01 cfs required). Note that the reason 1.7 acres was chosen as the mitigation target was because 0.034 cfs was needed for adequate diversion rate at 60% to hit the proposed permit rate of 0.02 cfs.

Let me know what you think. Thanks.

Terry

From: Grimm, Angie [<mailto:Angie.Grimm@idwr.idaho.gov>]
Sent: Thursday, June 9, 2016 7:49 AM
To: Terry Scanlan <TScanlan@spfwater.com>
Cc: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: FW: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Terry,

Good morning! Below is Nick Miller's analysis of the draft mitigation proposal you emailed 5/20/16. Based on the analysis, it appears the plan provides adequate mitigation for the non-irrigation season. However, we recommend keeping the irrigation season proposal as it is currently, setting aside 2.8 acres rather than 1.7 acres for mitigation. The 0.01 cfs and 7.2 af amounts sited as approvable are largely based on rounding standards of the Department and the use of 0.011 cfs for your calculations. There is likely a way to authorize the 0.011 cfs and thus 8.0 AF through conditions if not on the face of the permit, provided the mitigation plan is adequate, we're still working through those details. Meanwhile, we welcome you to take a look at the analysis and even perform a similar analysis and let us know what you think/your conclusions.

Regards,
Angie

Angela M. Grimm, P.G.
Water Rights Supervisor
IDWR - Western Region
2735 Airport Way
Boise, ID 83705-5082
[\(208\) 334-2190](tel:2083342190) phone
[\(208\) 334-2348](tel:2083342348) fax

From: Miller, Nick
Sent: Friday, June 03, 2016 2:36 PM
To: Grimm, Angie
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Here is where I landed.

Seems like we should approve the permit for 0.01 cfs and 7.2 AF rather than 0.02 cfs and 8 AF. I say this based on Terry's calculations and the mitigation plan that proposes max diversion

rate of 0.011 cfs. I also think we should go back to a 2.8 acre mitigation plan for the irrigation season.

Non irrigation season the use is 0.01 cfs per day or 2.4 AF/year. This is to be mitigated by maintaining 3.0 AF in annual lease of storage water under a contract. This mitigation is adequate for the non irrigation season.

Irrigation season use is 0.01 cfs/day or 4.9 AF/season. This is to be mitigated by idling 1.7 acres under water right 63-185B. This right is senior to 1877, so we do not consider it to be subject to complete curtailment, but it is subject to 60% cut each year. Further, the natural flow water rights are not fully consumed by irrigation and a portion returns to the system to augment natural flow, yet the proposed use is fully consumptive. If we look at it from a rate perspective, we get:

$0.02 \text{ cfs/acre} * 1.7 \text{ acres} * 0.6(\text{deliverable percent}) = 0.02 \text{ cfs}$. If we consider that the consumptive portion of the 1"/acre duty of water is likely more than 50% during the times of year that rights are typically cut to 60%, then we would conclude the mitigation to be adequate.

If we look at it based on whole season volume perspective, we get:

$3.5 \text{ af/acre} * 1.7 \text{ acres} * 0.6(\text{percent of the consumptive use provided by natural flow rights}) = 3.6 \text{ af}$. This is less than the 4.9 af needed, so we would conclude the mitigation would not be adequate.

The difference between the rate evaluation and the volume evaluation points out that the average consumptive use is less than 50% much of the time. In fact, comparing the headgate diversion volume (1"/acre for 246 days = 9.75 af/acre) to the consumptive volume (3.5 af/acre) suggests an overall consumptive percentage of 36%. This isn't equally distributed across the irrigation season and the consumptive use is up to 70% of the diversion rate at times and less than 10% at others. This underscores the need to consider timing. As an example, I ran the numbers for 2015 using Agrimet ET and the BOIWRA dates for Stewart Decree cuts. Assuming the acres supplemented their natural flow with storage water to maintain a diversion rate of 1" to the acre, here is what I see (using a trailing 10-day average):

<image001.png>

Since they are offering the natural flow as mitigation, you can see that any time the blue area is below the green line, they are not mitigating. You can see that on the shoulders and particularly in

the month of September, the mitigation isn't so protective. Early season may not mean quite so much since folks are typically satisfied (flood releases and all). I'm inclined to ask them to stick with the 2.8 acres as originally proposed and shown in the graph below. It still doesn't completely cover the shoulder seasons, but it provides better protection to other users. We should stick to the concepts we laid out in the Sunroc letter and just tell them that 1.7 acres doesn't protect against injury, but maybe there is value in using this as an example of why timing is important to consider. I'm not suggesting 2015 is some kind of model year; I just happened to have the data on hand. I also don't want to give the impression that a 10-day average is particularly well suited to this kind of analysis; I was just trying to smooth the graph a bit. I do think this is the kind of analysis that could help demonstrate protection if a suitable year were selected.

<image002.png>

From: Grimm, Angie
Sent: Friday, June 03, 2016 7:20 AM
To: Miller, Nick
Subject: FW: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Nick,

Do you have this file? Had a chance to review the mitigation plan? I can't remember where we landed with this one... Please let me know when you have a moment.

Thanks,
Angie

From: Terry Scanlan [<mailto:TScanlan@spfwater.com>]
Sent: Thursday, June 02, 2016 6:17 PM
To: Grimm, Angie
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Hi Angie. Just following up on this mitigation plan. Let me know if you have any suggested changes. I will wait for your final review before getting signatures. Thanks.

From: Terry Scanlan
Sent: Friday, May 20, 2016 11:42 AM
To: 'Grimm, Angie' <Angie.Grimm@idwr.idaho.gov>
Cc: 'Rex Barrie' <waterdistrict63@qwestoffice.net>; Scott West

<west@rockswater.net>; 'barryeschen@gmail.com'
<barryeschen@gmail.com>

Subject: Annual Storage Rental for Scott West Mitigation -
Application 63-34123

Angie –

Following up on our conversations, item 4 of the attached mitigation plan provides my expectation regarding use of the Water District 63 rental pool for mitigation of non-irrigation season diversions of spring water tributary to Mores Creek by Rocks Water under proposed permit 63-34123 and existing water right 63-7227.

Rex and Barry –

Please let us know if you have any comments.

Terry M. Scanlan, P.E., P.G. | Principal Engineer/Hydrogeologist
SPF Water Engineering, LLC
300 E Mallard Drive, Suite 350 | Boise, ID 83706
p. [208.383.4140](tel:208.383.4140) | f. [208.383.4156](tel:208.383.4156) | d. [208.489.2121](tel:208.489.2121)
e. tscanlan@spfwater.com | w. www.spfwater.com

JUL 19 2016

WATER RESOURCES
WESTERN REGION

**PROPOSED MITIGATION PLAN FOR SCOTT AND ANGELA WEST
WATER RIGHT APPLICATION 63-34123 AND DECREEED WATER RIGHT 63-7227**

To the Idaho Department of Water Resources (IDWR):

The South Boise Water Company ("Company") agrees to dedicate 28 mitigation shares representing non-diversion 0.056 cfs of Boise River water right and idled irrigation of 2.8 acres, and storage water held by the Company under a contract with the USBR, to mitigate consumptive use of diversions under the above referenced application and existing decreed water right. Each ten mitigation shares of the Company's water rights equals 1 miners inch or 0.02 cfs of Boise River water right for mitigation of one acre of irrigation at 100% delivery. The Company and Scott and Angela West (West) agree to this mitigation plan as follows:

1. Wests propose year-round diversion of spring water tributary to Mores Creek for commercial uses under water right permit 63-34123 and also under their decreed water right permit 63-7227. Anticipated maximum diversion rate will be 0.011 cfs and maximum diversion volume will be 8.0 acre feet annually ($0.011 \times 365 \times 1.984$), with a maximum of 5.4 acre feet during the irrigation season (8 af $\times$ 246 days/365 days) and 2.6 acre feet during the non-irrigation season (8 af $\times$ 119 days/365 days).
2. The commercial consumptive use of 8 acre feet is equivalent to the consumptive use of 2.5 acres of turf grass (8 acre feet / 3.2 acre feet per acre) in the Company service area based on ET Idaho mean precipitation deficit for the period of April through October calculated using the Boise Airport weather data. Irrigation-season consumption will be 5.4 acre feet and non-irrigation season consumptive use will be 2.6 acre feet.
3. Company water right 63-185B provides natural flow diverted from the Boise River to the Company's place of use. Mitigation for impacts to irrigation-season Boise River natural flows resulting from the Wests' diversions will be provided by idling irrigation of 2.8 acres (0.056 cfs) under the Company's four Boise River rights. To simplify the process, the 0.056 cfs of water for mitigation should be recorded in a single water right, 63-185B with a priority date of June 1, 1871, although reduction in irrigated acres will be recorded in all four Boise River rights. The Boise River Watermaster will not delivery this portion of the water right to the Company headgate while this mitigation plan is in force.
4. The Company's contract for storage of water in Lucky Peak Reservoir will be used to mitigate for impacts of up to 2.6 acre feet per year to non-irrigation-season storage water accruals in Lucky Peak Reservoir through annual lease and rental of 3.0 acre feet of storage water through the Water District 63 rental pool. Each year, the Company shall lease 3 acre feet to the rental pool expressly for this purpose, and each year the West's shall lease 3 acre feet from the rental pool for this purpose. The lease period will occur from November 1 through March 31.
5. The Wests will actively seek to obtain a contract for storage water directly from the Bureau of Reclamation so that annual storage rentals will not be necessary. The Wests have sent a request to the Bureau to participate in the Anderson Dam raise feasibility.
6. Upon IDWR approval of the Wests' application for permit and this mitigation plan, the Company understands IDWR will change the description of 0.056 cfs of water right 63-185B from irrigation

to mitigation. This will protect the unused shares and water right from forfeiture according to I. C. §42-223(10).

7. The applicant and any successors in interest for the application or water rights will hold a certificate for the water shares and pay the Company mitigation assessments for the mitigation shares every year.
8. To the extent development proposed in the West's application is not fully completed, the Company understands this process is reversible by contacting IDWR with appropriate information for water and acres set aside for mitigation to be fully restored to irrigation use.

By: **South Boise Water Company**

Signature:

Barry Eschen

Title:

Board Member

Date:

7-19-16

By:

Scott West

Signature:

[Signature]

Date:

19 July 2016

By:

Angela West

Signature:

Angela C West

Date:

19 July 2016

Grimm, Angie

From: Miller, Nick
Sent: Tuesday, July 19, 2016 8:25 AM
To: Terry Scanlan; Grimm, Angie
Cc: Barry Eschen; Scott West
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Terry,

The revised mitigation plan looks fine. We'll discuss internally whether the proposed condition makes sense to include.

I see Mr. West has signed the plan and so I expect we'll get it this week. I think that would mean we would have an approval drafted either by the end of this week or early next week.

Thanks,

Nick.

From: Terry Scanlan [mailto:TScanlan@spfwater.com]
Sent: Monday, July 18, 2016 7:08 PM
To: Miller, Nick; Grimm, Angie
Cc: Barry Eschen; Scott West
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Nick

We are eager to move forward also.

1. Attached is a revised mitigation plan to Barry and Scott for their signatures. Changes are tracked in the Word version. The pdf version does not show changes and is provided for signing by Barry and Scott.
 - a. Nick and Angie - Let us know ASAP if you see anything in the revised mitigation plan that needs to be changed before it is signed.
 - b. Barry and Scott – If possible, let's get this signed by the end of the week.
2. I wonder if it would be appropriate to include a condition that says something like "The mitigation quantities may be adjusted at the time of licensing to be consistent with current Department policy."

Thanks.

Terry

From: Miller, Nick [mailto:Nick.Miller@idwr.idaho.gov]
Sent: Monday, July 18, 2016 5:11 PM
To: Terry Scanlan <TScanlan@spfwater.com>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>
Cc: Barry Eschen <barryeschen@gmail.com>; Scott West <west@rockswater.net>
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Terry,

As we discussed before I went on vacation, I'm willing to agree to disagree, and I am eager to move forward.

I do think we should sit down over a beer one of these days and talk this (and other things) through so things go smoother in the future.

As for this application, you asked what you need to do to gain approval. I think the mitigation plan you submitted on May 20, 2016 should be signed and submitted after being amended to reflect 2.8 acres idled and 0.056 cfs committed to mitigation by non-use. That is a mitigation plan we can accept that provides adequate protection against curtailment.

In the meantime, if that works for you, I'll ask Angie to draft an approval so we can finalize conditions of approval without further delay.

Thanks,

Nick.

From: Terry Scanlan [<mailto:TScanlan@spfwater.com>]
Sent: Tuesday, June 28, 2016 10:58 AM
To: Miller, Nick; Grimm, Angie
Cc: Barry Eschen; Scott West
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Nick –

Comments in **red** are inserted below.

Terry

From: Miller, Nick [<mailto:Nick.Miller@idwr.idaho.gov>]
Sent: Monday, June 27, 2016 6:39 PM
To: Terry Scanlan <TScanlan@spfwater.com>; Grimm, Angie <Angie.Grimm@idwr.idaho.gov>
Cc: Barry Eschen <barryeschen@gmail.com>; Scott West <west@rockswater.net>
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Terry,

Sorry for taking so long to get back to you on this. You are right, this is difficult to get our collective heads around. I think the main disconnect involves the conversion from a partially consumptive use to a fully consumptive use and the consideration of timing. I'll address your seven points below and hopefully we'll be closer to a common understanding.

Response to #1 – Thank you for your patience as we both come to an understanding of this issue. **Thank you again. I assume that we can agree to disagree on the items below, but move forward, and then all go out for a beer afterward!**

Response to #2 – Yes, you described the proposed mitigation plan accurately. Except that I understand it to be 10 shares per acre or 0.002 cfs per share. As a side note, my review of the rights held by South Boise Water Company leads me to believe the company holds 13.52 cfs of water rights to irrigate 871.28 acres. This supplies only 0.0156 cfs (0.78 miners inches per acre). I assume the balance of the 10-shares per acre to make up a full inch to the acre is storage water?

South Boise indicated to me that 10 mitigation shares would equal 0.02 cfs of Boise River water right. Since they are charging a 5:1 premium for mitigation shares compared to irrigation, I assumed that they have flexibility to determine how much Boise River water right a mitigation share represents. To avoid confusion, I suggest that we eliminate discussion of shares and focus on water right cfs. South Boise can work with the applicant to determine how many

shares he buys, but the mitigation plan will address the amount of South Boise water right (1865 or 1871 Boise River cfs) that is dedicated to mitigation.

Response to #3 – Your analysis differs from mine in that mine assumes that the portion of the diverted water not consumed by the irrigation would have been available to the junior users anyway, even if there may be some lag in the timing between when it was diverted and when it returns. So, to say that the proposed mitigation plan provides a minimum of 0.009 cfs during the 60% Stewart Decree level seems to be an overstatement. I was simply stating the obvious. 0.020 cfs available water for diversion minus 0.011 cfs diverted and consumed = 0.009 cfs undiverted and unconsumed.

Response to #4 – One of the conveniences we have in the Boise Valley is that most of the mitigation is proposed to use irrigation company rights. Since these rights are protected from forfeiture, we do not have to do an analysis of whether the water rights being offered have been forfeited. The flip side of this is that sometimes we wind up doing a paper exercise that dedicates a water right to mitigation, but affects no actual change in current water use. The reason we can do this is because these irrigation company rights are not subject to partial forfeiture so we are really using a portion of their rights as a hedge against them resuming use of an existing appropriation. In any other case we would (and our memos discuss this) review the specific acres proposed to be idled and ensure they had been irrigated and look at whether they historically diverted a full 1" to the acre, etc... With that in mind, my analysis was focused on the "theoretical" situation where the company is irrigating their full acreage and requires a full inch of water to each acre. So, under that situation their natural flow rights when cut to 60% only provide 0.6" to the acre and they would need to divert 0.4"/acre of storage water. I thought 1.0" per acre is a maximum diversion, not a requirement to raise a crop, and that the basis of the Stewart Decree was that crops can get by at 6/10ths of an inch? Similarly, Nampa & Meridian standard delivery to Ridenbaugh lands is 5/8th of an inch, Boise Project seeks to supply 3.75 af/ac/year instead of 4.5 af/ac/year, etc., etc. . Since it doesn't make any sense to argue that the natural flow provides more than a proportional share of the water consumed, the natural flow rights offered for mitigation can only provide 60% of the consumptive use during these periods. This analysis does not match the actual situation on the ground, but it doesn't have to - given the peculiarities of ditch company rights. As you correctly point out, the South Boise Water Company diverts nowhere near their full authorized rate of 13.52 cfs for irrigation. Yet, the amount they divert must be sufficient to irrigate whatever acres they are irrigating without needing to rely on much storage water (either the duty of water is less than their rights allow or the number of acres is low enough so even with a 60% cut they have an inch to the acre...). Yet because they have the benefit of being largely immune to partial forfeiture, as discussed above, we look at what they have the potential to divert and use rather than the actual use.

As a side note, the company has, I believe something on the order of 700 acre feet of storage contract in Lucky Peak. The 292 af of storage you noted from the accounting may represent some partial allocation or remaining balance after rental pool activity as that number varies from year to year in the storage reports. Thanks for the correction. My mistake; I should have looked harder at that one.

I don't think I say crops consume less later in the irrigation season. Rather, the fraction of the irrigation consumption provided by the natural flow rights goes down from 100% to 60% and the amount provided by storage water goes up from 0% to 40% when the Stewart Decree kicks in. More mitigation commitment is needed later in the season because the right being offered for mitigation (the natural flow right) is not "worth" as much as it is earlier in the season. Same comment as for #4. On the chart provided with my earlier email, the time where the blue area falls below the green line, but the red area remains above the green line illustrates this. The overall consumption by crops is still high – higher than the consumption by Rox, but natural flow rights are not providing all of that consumption so natural flow rights by themselves for this amount of acres is insufficient to fully protect against curtailment. This is contrasted with early in the season when the consumptive use provided by natural flow only is greater than Rox proposal (the green line).

Response to #6 – As Angie noted in her email, we discussed it after I sent her my email and we agree that we can put 0.02 on the face of the right due to our rounding standards... but limit the right to 0.011 cfs as a condition.

Response to #7 – You are correct that the proposed mitigation plan provides more volume than the permit application proposes, but it does not provide enough volume at other times. Looking at the chart I provided, you can see that the proposal does over-mitigate for much of the season (the blue area above the green line), but the need is to ensure enough mitigation is provided at all times. As for the 0.034 cfs target, see my response to #3 and note that the proposal is fully consumptive while the right being offered for mitigation is not, so a direct 1:1 diversion rate proposal is not appropriate here.

A general comment is that I think it is bad policy to require over mitigation to protect against every theoretical impact that might possibly occur. You are making life too complicated for IDWR and water users. The mitigation plan as proposed provides almost double the wet water diversion rate required, every day, all season long. It doesn't enlarge the annual diversion volume or annual consumptive use. However, in the interest of getting this completed, I'll now give up and ask that you tell us what we need to do to gain approval. Thanks.

Hope this helps.

Nick.

From: Terry Scanlan [<mailto:TScanlan@spfwater.com>]
Sent: Sunday, June 12, 2016 10:06 AM
To: Grimm, Angie; Miller, Nick
Cc: Barry Eschen; Scott West
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Angie and Nick

I am feeling a little dense about this one, so please bear with me.

1. First off, thanks for taking the time to think through this stuff. Simple on the outside, but complex on the inside! It took me a long time to summarize my thoughts in this email
2. Just to be clear, I understand that the mitigation plan is proposing dry up and non-diversion of 0.034 cfs (at 100% delivery) of South Boise Water Company natural flow Boise water rights (1865 and 1871) to mitigate for a Mores Creek depletion of 0.011 cfs that is 100% consumptive. This natural flow mitigation is occurring during the irrigation season only. Non-irrigation season depletion is being accomplished with storage and has been determined to be adequate. Upon approval, the SBWC rights will reflect that 0.034 cfs of the 1871 and/or 1865 rights are dedicated to mitigation and that the Watermaster will withhold delivery of that portion of the water right. Barry Eschen (South Boise Water Company) has indicated to me that each South Boise share supplies 0.02 cfs per acre for irrigation, and that 17 mitigation shares is equivalent to 1.7 acres of irrigation. So the mitigation plan will list those amounts: 0.034 cfs and 1.7 acres. If you see it differently, then let me know.
3. On every day of the natural flow season, the plan proposes to leave a minimum of 0.020 cfs (0.034 x 60%) in the river, undiverted, to mitigate for a direct daily depletion of 0.011 cfs (5 gpm, totaling 4.9 af depletion per irrigation season). The excess water (mitigation minus depletion) remaining in the river by this water right action ranges from 0.009 to 0.023 cfs depending on river flow. The excess flow benefits the junior water rights on the river.
4. I understand that your calculation for "whole season" suggests that 40 percent of the SBWC supply/consumption is storage. I think that is too high. In 2015, it looks like SBWC storage use was closer to 3% (102 af storage used) of the total SBWC diversions (assuming total annual diversion of 3000 af +/-). The Water District 63 accounting shows that SBWC only has 292 af of storage space, so that the

most storage they could use would be about 10% of total diversion. Thus, minimum natural flow would be about 90%. Applying this 90% factor to your whole season calculation changes the result from

$$\begin{aligned} & 3.5 \text{ af/acre} * 1.7 \text{ acres} * 0.6 (\text{percent of the consumptive use provided by natural flow rights}) = 3.6 \text{ af} \\ & \text{to} \\ & 3.5 \text{ af/acre} * 1.7 \text{ acres} * 0.9 (\text{percent of the consumptive use provided by natural flow rights}) = 5.4 \text{ af} \end{aligned}$$

So I think we are OK on whole season volume with 1.7 acres to mitigate 4.9 af of consumption using your calculation. I would note, however, that if a 0.034 cfs portion of the Boise River rights is dedicated to mitigation, then I don't believe it is necessary to consider storage in the calculation at all. I would like your thoughts on this perspective.

5. Your argument regarding timing seems to say that more mitigation flow is needed because late in the year, crops consume less than earlier in the season. I don't follow the logic; you'll need to better explain it to me. The plan provides mitigation flow exceeding daily depletion, without regard to the seasonality of a particular crop. The plan replaces the depletion in terms of rate and timing with wet water.
6. I am concerned with reducing the permit from 0.02 cfs to 0.01 cfs, particularly since the anticipated actual diversion rate is 0.011 which is more than a 0.010 cfs upper permit limit. If we find that there is more spring flow available than 0.011 cfs, and the applicant wants to have higher instantaneous diversion (0.015 or 0.020 cfs), then limiting to 0.01 will be a problem. Perhaps the applicant can use a sliver of his existing water right to cover the extra 0.001 cfs, but it seems odd to limit a permit (rather than a license) in this manner. This might be better addressed by mitigation plan conditions or permit conditions.
7. If the permit is limited to 0.01 cfs, I think there is a valid argument that drying up 1.7 acres and 0.034 cfs of Boise River water right is too much mitigation at a CU of 3.5 af/ac, as it provides a volume of nearly 6.0 af (rather than 4.9 af required) and 0.02 cfs (rather than the 0.01 cfs required). Note that the reason 1.7 acres was chosen as the mitigation target was because 0.034 cfs was needed for adequate diversion rate at 60% to hit the proposed permit rate of 0.02 cfs.

Let me know what you think. Thanks.

Terry

From: Grimm, Angie [<mailto:Angie.Grimm@idwr.idaho.gov>]
Sent: Thursday, June 9, 2016 7:49 AM
To: Terry Scanlan <TScanlan@spfwater.com>
Cc: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: FW: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Terry,

Good morning! Below is Nick Miller's analysis of the draft mitigation proposal you emailed 5/20/16. Based on the analysis, it appears the plan provides adequate mitigation for the non-irrigation season. However, we recommend keeping the irrigation season proposal as it is currently, setting aside 2.8 acres rather than 1.7 acres for mitigation. The 0.01 cfs and 7.2 af amounts cited as approvable are largely based on rounding standards of the Department and the use of 0.011 cfs for your calculations. There is likely a way to authorize the 0.011 cfs and thus 8.0 AF through conditions if not on the face of the permit, provided the mitigation plan is adequate, we're still working through those details. Meanwhile, we welcome you to take a look at the analysis and even perform a similar analysis and let us know what you think/your conclusions.

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

From: Miller, Nick
Sent: Friday, June 03, 2016 2:36 PM
To: Grimm, Angie
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Here is where I landed.

Seems like we should approve the permit for 0.01 cfs and 7.2 AF rather than 0.02 cfs and 8 AF. I say this based on Terry's calculations and the mitigation plan that proposes max diversion rate of 0.011cfs. I also think we should go back to a 2.8 acre mitigation plan for the irrigation season.

Non irrigation season the use is 0.01 cfs per day or 2.4 AF/year. This is to be mitigated by maintaining 3.0 AF in annual lease of storage water under a contract. This mitigation is adequate for the non irritation season.

Irrigation season use is 0.01 cfs/day or 4.9 AF/season. This is to be mitigated by idling 1.7 acres under water right 63-185B. This right is senior to 1877, so we do not consider it to be subject to complete curtailment, but it is subject to 60% cut each year. Further, the natural flow water rights are not fully consumed by irrigation and a portion returns to the system to augment natural flow, yet the proposed use is fully consumptive. If we look at it from a rate perspective, we get:

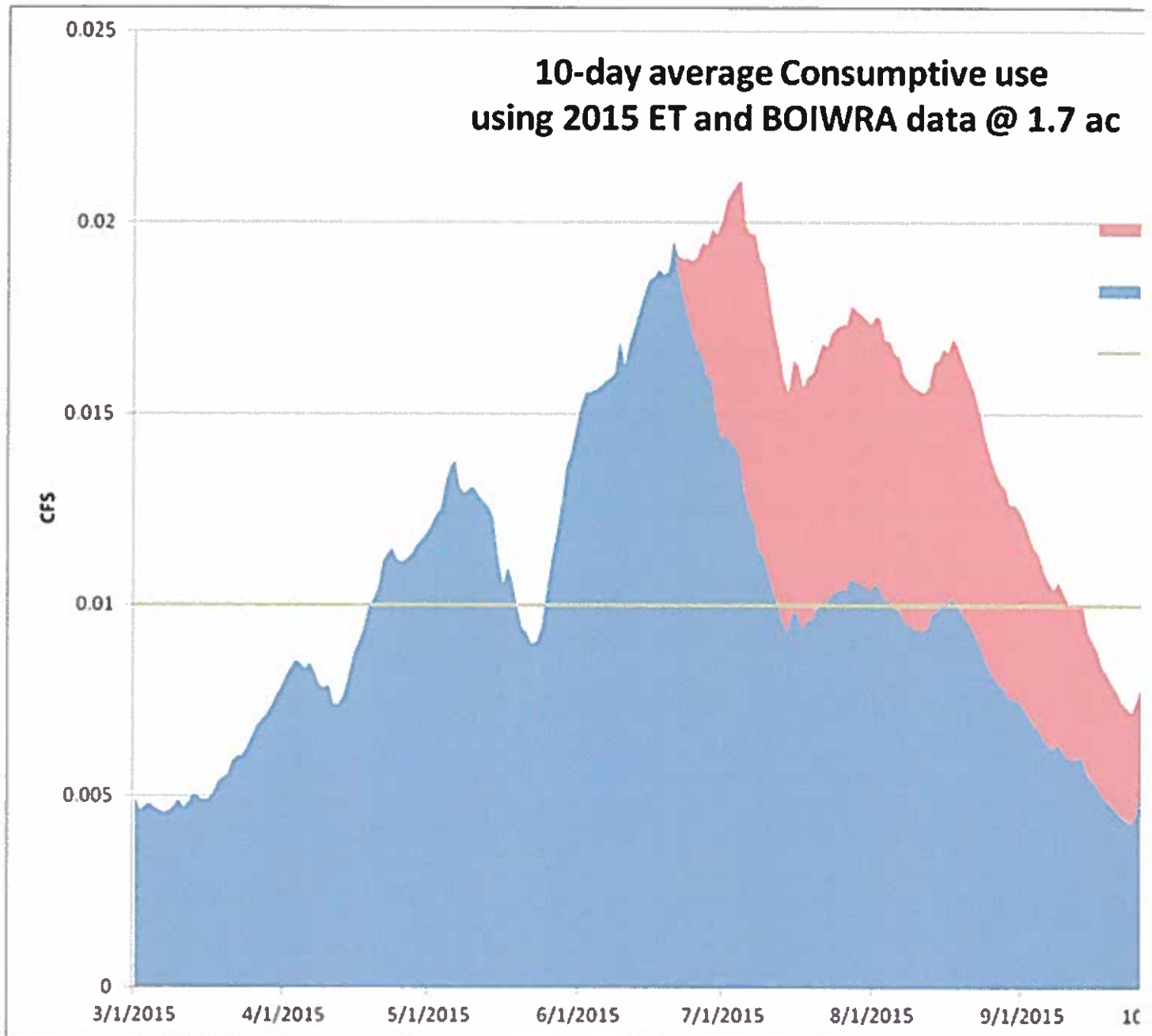
$0.02 \text{ cfs/acre} * 1.7 \text{ acres} * 0.6(\text{deliverable percent}) = 0.02 \text{ cfs}$. If we consider that the consumptive portion of the 1"/acre duty of water is likely more than 50% during the times of year that rights are typically cut to 60%, then we would conclude the mitigation to be adequate.

If we look at it based on whole season volume perspective, we get:

$3.5 \text{ af/acre} * 1.7 \text{ acres} * 0.6(\text{percent of the consumptive use provided by natural flow rights}) = 3.6 \text{ af}$. This is less than the 4.9 af needed, so we would conclude the mitigation would not be adequate.

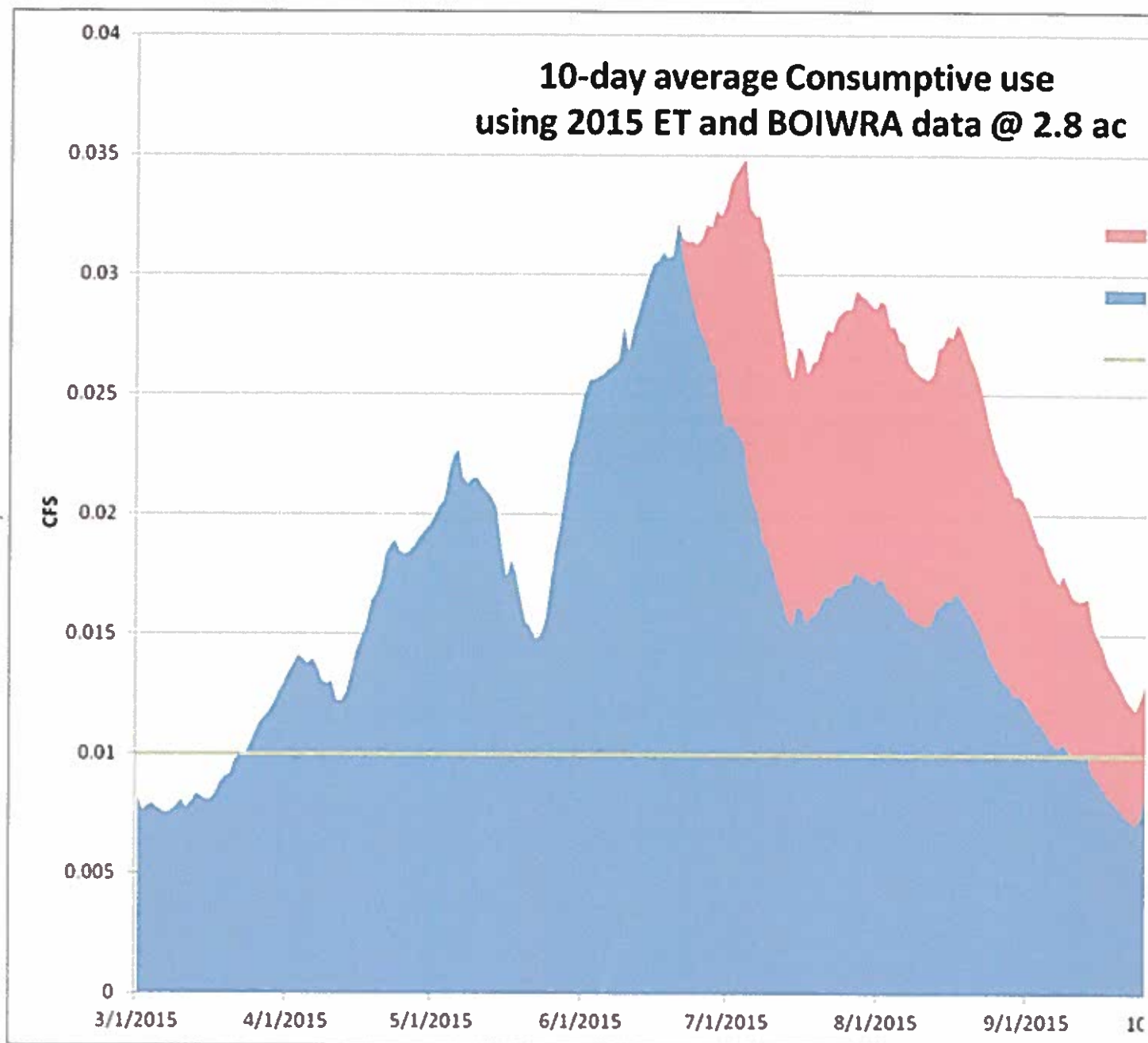
The difference between the rate evaluation and the volume evaluation points out that the average consumptive use is less than 50% much of the time. In fact, comparing the headgate diversion volume (1"/acre for 246 days = 9.75 af/acre) to the consumptive volume (3.5 af/acre) suggests an overall consumptive percentage of 36%. This isn't equally distributed across the irrigation season and the consumptive use is up to 70% of the diversion rate at times and less than 10% at others. This underscores the need to consider timing. As an example, I ran the numbers for 2015 using Agrimet ET and the BOIWRA dates for Stewart Decree cuts. Assuming the acres supplemented their natural flow with storage water to maintain a diversion rate of 1" to the acre, here is what I see (using a trailing 10-day average):

10-day average Consumptive use using 2015 ET and BOIWRA data @ 1.7 ac



Since they are offering the natural flow as mitigation, you can see that any time the blue area is below the green line, they are not mitigating. You can see that on the shoulders and particularly in the month of September, the mitigation isn't so protective. Early season may not mean quite so much since folks are typically satisfied (flood releases and all).

I'm inclined to ask them to stick with the 2.8 acres as originally proposed and shown in the graph below. It still doesn't completely cover the shoulder seasons, but it provides better protection to other users. We should stick to the concepts we laid out in the Sunroc letter and just tell them that 1.7 acres doesn't protect against injury, but maybe there is value in using this as an example of why timing is important to consider. I'm not suggesting 2015 is some kind of model year; I just happened to have the data on hand. I also don't want to give the impression that a 10-day average is particularly well suited to this kind of analysis; I was just trying to smooth the graph a bit. I do think this is the kind of analysis that could help demonstrate protection if a suitable year were selected.



From: Grimm, Angie
Sent: Friday, June 03, 2016 7:20 AM
To: Miller, Nick
Subject: FW: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Nick,

Do you have this file? Had a chance to review the mitigation plan? I can't remember where we landed with this one... Please let me know when you have a moment.

Thanks,

Angie

From: Terry Scanlan [<mailto:TScanlan@spfwater.com>]
Sent: Thursday, June 02, 2016 6:17 PM
To: Grimm, Angie
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Hi Angie. Just following up on this mitigation plan. Let me know if you have any suggested changes. I will wait for your final review before getting signatures. Thanks.

From: Terry Scanlan
Sent: Friday, May 20, 2016 11:42 AM
To: 'Grimm, Angie' <Angie.Grimm@idwr.idaho.gov>
Cc: 'Rex Barrie' <waterdistrict63@qwestoffice.net>; Scott West <west@rockswater.net>; 'barryeschen@gmail.com' <barryeschen@gmail.com>
Subject: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Angie –

Following up on our conversations, item 4 of the attached mitigation plan provides my expectation regarding use of the Water District 63 rental pool for mitigation of non-irrigation season diversions of spring water tributary to Mores Creek by Rocks Water under proposed permit 63-34123 and existing water right 63-7227.

Rex and Barry –

Please let us know if you have any comments.

Terry M. Scanlan, P.E., P.G. | Principal Engineer/Hydrogeologist

SPF Water Engineering, LLC
300 E Mallard Drive, Suite 350 | Boise, ID 83706
p. 208.383.4140 | f. 208.383.4156 | d. 208.489.2121
e. tscanlan@spfwater.com | w. www.spfwater.com

**PROPOSED MITIGATION PLAN FOR SCOTT AND ANGELA WEST
WATER RIGHT APPLICATION 63-34123 AND DECREEED WATER RIGHT 63-7227**

To the Idaho Department of Water Resources (IDWR):

The South Boise Water Company ("Company") agrees to ~~utilize-dedicate 17-28~~ mitigation shares ~~under representing non-diversion 0.056 cfs of~~ Boise River water ~~right right 63-185B with a priority date of 6/1/1871 and idled irrigation of 2.8 acres,~~ and storage water held by the Company under a contract with the USBR, to mitigate consumptive use of diversions under the above referenced application and existing decreed water right. ~~Ten-Each ten~~ mitigation shares of the Company's water rights equals 1 miners inch or 0.02 cfs ~~of Boise River water right~~ for mitigation of one acre of irrigation at 100% delivery. The Company and Scott and Angela West (Westes) agree to this mitigation plan as follows:

1. Westes propose year-round diversion of spring water tributary to Mores Creek for commercial uses under water right permit 63-34123 and also under their decreed water right permit 63-7227. Anticipated maximum diversion rate will be 0.011 cfs and maximum diversion volume will be 8.0 acre feet annually ($0.011 \times 365 \times 1.984$), with a maximum of 5.4 acre feet during the irrigation season (8 af x 246 days/365 days) and 2.6 acre feet during the non-irrigation season (8 af x 119 days/365 days).
2. The commercial consumptive use of 8 acre feet is equivalent to the consumptive use of 2.5 acres of turf grass (8 acre feet / 3.2 acre feet per acre) in the Company service area based on ET Idaho mean precipitation deficit for the period of April through October calculated using the Boise Airport weather data. Irrigation-season consumption will be 5.4 acre feet ~~(equivalent to 1.7 acres)~~ and non-irrigation season consumptive use will be 2.6 acre feet.
3. Company water right 63-185B provides natural flow diverted from the Boise River to the Company's place of use. Mitigation for impacts to irrigation-season Boise River natural flows resulting from the Westes' diversions will be provided by idling irrigation of ~~1-72.8~~ acres (~~0.034 056~~ cfs) under the Company's four Boise River rights. To simplify the process, the ~~0.034-056~~ cfs of water for mitigation should be recorded in a single water right, 63-185B ~~with a priority date of June 1, 1871,~~ although reduction in irrigated acres will be recorded in all four Boise River rights. The Boise River Watermaster will not delivery this portion of the water right to ~~the~~ Company headgate while this mitigation plan is in force.
4. The Company's contract for storage of water in Lucky Peak Reservoir will be used to mitigate for impacts of up to 2.6 acre feet per year to non-irrigation-season storage water accruals in Lucky Peak Reservoir through annual lease and rental of 3.0 acre feet of storage water through the Water District 63 rental pool. Each year, the Company shall lease 3 acre feet to the rental pool expressly for this purpose, and each year the West's shall lease 3 acre feet from the rental pool for this purpose. The lease period will occur from November 1 through March 31.
5. The Westes will actively seek to obtain a contract for storage water directly from the Bureau of Reclamation so that annual storage rentals will not be necessary. The Westes have sent a request to the Bureau to participate in the Anderson Dam raise feasibility.
6. Upon IDWR approval of the Westes' application for permit and this mitigation plan, the Company understands IDWR will change the description of ~~0.034-056~~ cfs of water right 63-185B from

irrigation to mitigation. This will protect the unused shares and water right from forfeiture according to I. C. §42-223(10).

7. The applicant and any successors in interest for the application or water rights will hold a certificate for the water shares and pay the Company mitigation assessments for the mitigation shares every year.
8. To the extent development proposed in the West's application is not fully completed, the Company understands this process is reversible by contacting IDWR with appropriate information for water and acres set aside for mitigation to be fully restored to irrigation use.

By: **South Boise Water Company**

Signature: _____

Title: _____

Date: _____

By: **Scott West**

Signature: _____

Date: _____

By: **Angela West**

Signature: _____

Date: _____

**PROPOSED MITIGATION PLAN FOR SCOTT AND ANGELA WEST
WATER RIGHT APPLICATION 63-34123 AND DECREEED WATER RIGHT 63-7227**

To the Idaho Department of Water Resources (IDWR):

The South Boise Water Company ("Company") agrees to dedicate 28 mitigation shares representing non-diversion 0.056 cfs of Boise River water right and idled irrigation of 2.8 acres, and storage water held by the Company under a contract with the USBR, to mitigate consumptive use of diversions under the above referenced application and existing decreed water right. Each ten mitigation shares of the Company's water rights equals 1 miners inch or 0.02 cfs of Boise River water right for mitigation of one acre of irrigation at 100% delivery. The Company and Scott and Angela West (West) agree to this mitigation plan as follows:

1. Wests propose year-round diversion of spring water tributary to Mores Creek for commercial uses under water right permit 63-34123 and also under their decreed water right permit 63-7227. Anticipated maximum diversion rate will be 0.011 cfs and maximum diversion volume will be 8.0 acre feet annually ($0.011 \times 365 \times 1.984$), with a maximum of 5.4 acre feet during the irrigation season (8 af x 246 days/365 days) and 2.6 acre feet during the non-irrigation season (8 af x 119 days/365 days).
2. The commercial consumptive use of 8 acre feet is equivalent to the consumptive use of 2.5 acres of turf grass (8 acre feet / 3.2 acre feet per acre) in the Company service area based on ET Idaho mean precipitation deficit for the period of April through October calculated using the Boise Airport weather data. Irrigation-season consumption will be 5.4 acre feet and non-irrigation season consumptive use will be 2.6 acre feet.
3. Company water right 63-185B provides natural flow diverted from the Boise River to the Company's place of use. Mitigation for impacts to irrigation-season Boise River natural flows resulting from the Wests' diversions will be provided by idling irrigation of 2.8 acres (0.056 cfs) under the Company's four Boise River rights. To simplify the process, the 0.056 cfs of water for mitigation should be recorded in a single water right, 63-185B with a priority date of June 1, 1871, although reduction in irrigated acres will be recorded in all four Boise River rights. The Boise River Watermaster will not delivery this portion of the water right to the Company headgate while this mitigation plan is in force.
4. The Company's contract for storage of water in Lucky Peak Reservoir will be used to mitigate for impacts of up to 2.6 acre feet per year to non-irrigation-season storage water accruals in Lucky Peak Reservoir through annual lease and rental of 3.0 acre feet of storage water through the Water District 63 rental pool. Each year, the Company shall lease 3 acre feet to the rental pool expressly for this purpose, and each year the West's shall lease 3 acre feet from the rental pool for this purpose. The lease period will occur from November 1 through March 31.
5. The Wests will actively seek to obtain a contract for storage water directly from the Bureau of Reclamation so that annual storage rentals will not be necessary. The Wests have sent a request to the Bureau to participate in the Anderson Dam raise feasibility.
6. Upon IDWR approval of the Wests' application for permit and this mitigation plan, the Company understands IDWR will change the description of 0.056 cfs of water right 63-185B from irrigation

to mitigation. This will protect the unused shares and water right from forfeiture according to I. C. §42-223(10).

7. The applicant and any successors in interest for the application or water rights will hold a certificate for the water shares and pay the Company mitigation assessments for the mitigation shares every year.
8. To the extent development proposed in the West's application is not fully completed, the Company understands this process is reversible by contacting IDWR with appropriate information for water and acres set aside for mitigation to be fully restored to irrigation use.

By: **South Boise Water Company**

Signature: _____

Title: _____

Date: _____

By: **Scott West**

Signature: _____

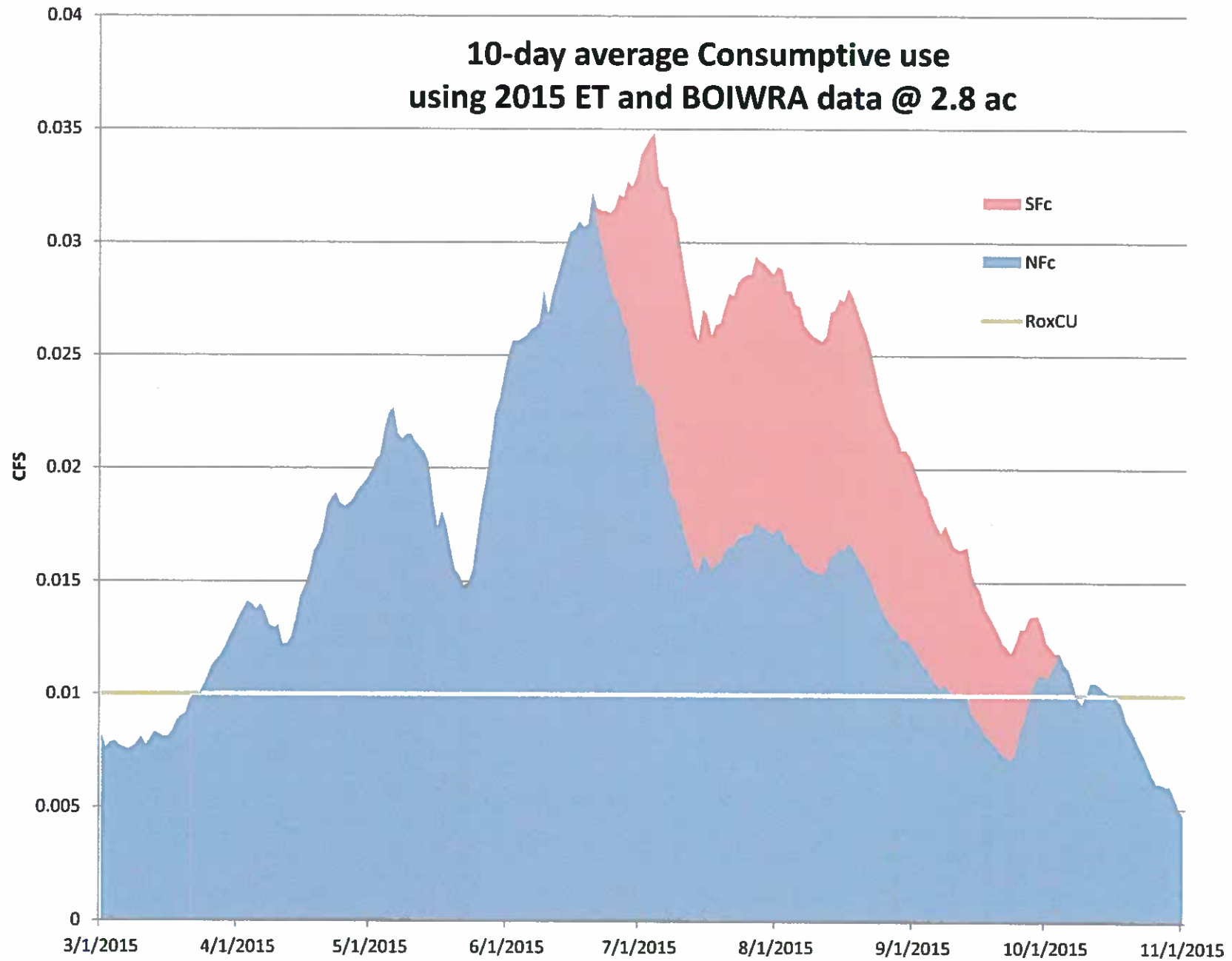
Date: _____

By: **Angela West**

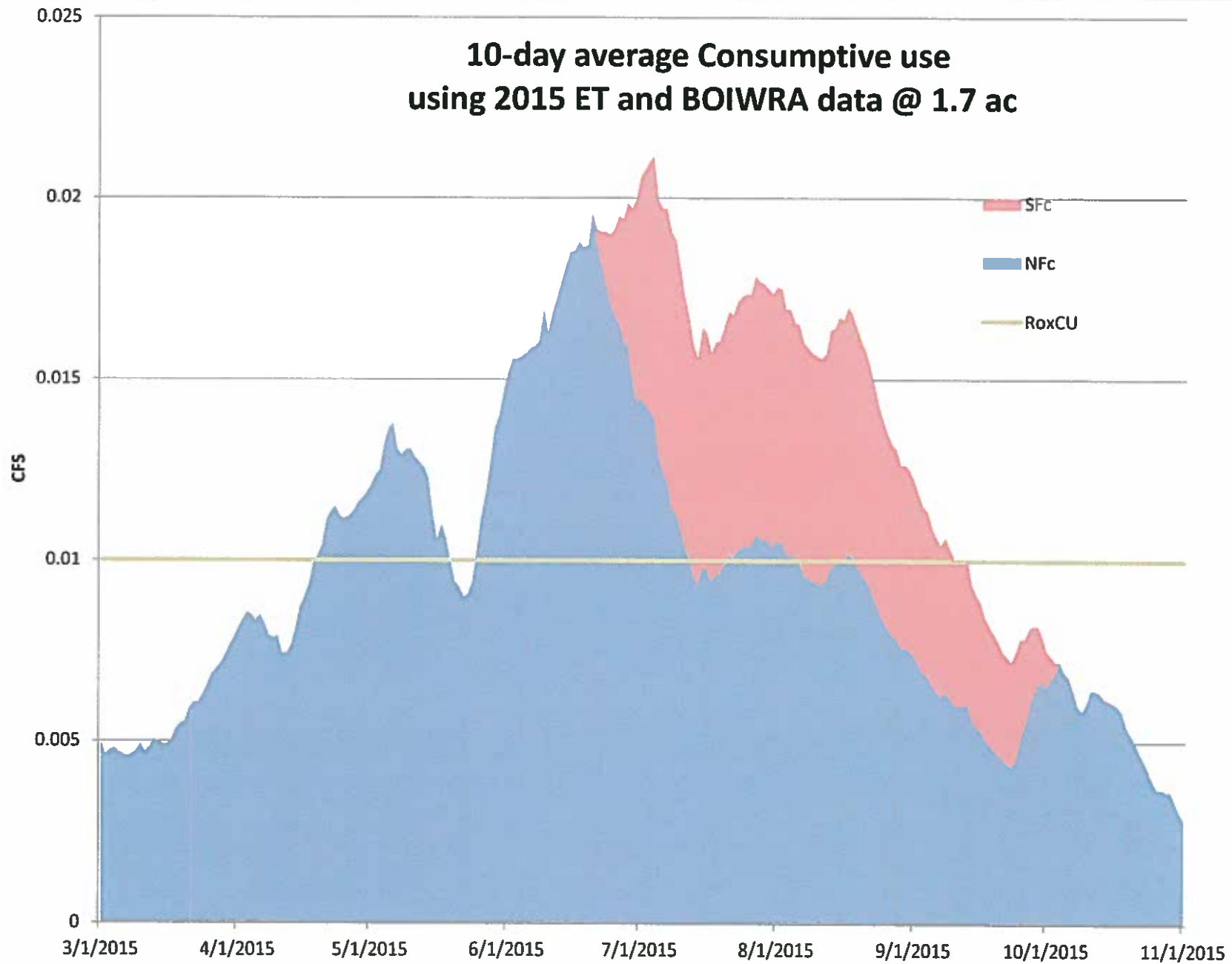
Signature: _____

Date: _____

**10-day average Consumptive use
using 2015 ET and BOIWRA data @ 2.8 ac**



**10-day average Consumptive use
using 2015 ET and BOIWRA data @ 1.7 ac**



Grimm, Angie

From: Terry Scanlan [TScanlan@spfwater.com]
Sent: Monday, May 23, 2016 8:23 AM
To: Rex Barrie; Grimm, Angie
Cc: 'Scott West'; barryeschen@gmail.com; Cresto, Liz; Stanaway, Dan
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Thanks Rex. Upon approval of the application and implementation of the mitigation plan, Scott will notify you and submit the rental pool lease agreement. If you get a chance in the meantime, please send us a current version of the Rental Pool Lease Agreement form.

From: Rex Barrie [mailto:waterdistrict63@qwestoffice.net]
Sent: Monday, May 23, 2016 7:37 AM
To: Terry Scanlan <TScanlan@spfwater.com>; 'Grimm, Angie' <Angie.Grimm@idwr.idaho.gov>
Cc: 'Scott West' <west@rockswater.net>; barryeschen@gmail.com; Liz Cresto <liz.cresto@idwr.idaho.gov>; dan.stanaway@idwr.idaho.gov
Subject: RE: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Terry,

The Rocks will need to start reporting weekly diversion to my office as soon as they start. This will be added to the accounting system to track flows and priority dates.

Also thy will need to submit a Rental Pool Lease Agreement prior to start up.

Rex R. Barrie
Boise River Watermaster

From: Terry Scanlan [mailto:TScanlan@spfwater.com]
Sent: Friday, May 20, 2016 11:42 AM
To: Grimm, Angie
Cc: Rex Barrie; Scott West; barryeschen@gmail.com
Subject: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Angie –

Following up on our conversations, item 4 of the attached mitigation plan provides my expectation regarding use of the Water District 63 rental pool for mitigation of non-irrigation season diversions of spring water tributary to Mores Creek by Rocks Water under proposed permit 63-34123 and existing water right 63-7227.

Rex and Barry –

Please let us know if you have any comments.

Terry M. Scanlan, P.E., P.G. | Principal Engineer/Hydrogeologist
SPF Water Engineering, LLC
300 E Mallard Drive, Suite 350 | Boise, ID 83706
p. 208.383.4140 | f. 208.383.4156 | d. 208.489.2121
e. tscanlan@spfwater.com | w. www.spfwater.com

Grimm, Angie

From: Barry Eschen [barryeschen@gmail.com]
Sent: Friday, May 20, 2016 8:34 PM
To: Terry Scanlan
Cc: Grimm, Angie; Rex Barrie; Scott West; Dustin Mortimer; LeeAnn Garton
Subject: Re: Annual Storage Rental for Scott West Mitigation - Application 63-34123

Terry,

Looks fine to me. I am sharing it within the company.

Barry

> On May 20, 2016, at 11:42 AM, Terry Scanlan <TScanlan@spfwater.com> wrote:
>
> <Mitigation Plan 2016-05-20.pdf>

Grimm, Angie

From: Terry Scanlan [TScanlan@spfwater.com]
Sent: Friday, May 20, 2016 11:42 AM
To: Grimm, Angie
Cc: Rex Barrie; Scott West; barryeschen@gmail.com
Subject: Annual Storage Rental for Scott West Mitigation - Application 63-34123
Attachments: Mitigation Plan 2016-05-20.pdf

Angie –

Following up on our conversations, item 4 of the attached mitigation plan provides my expectation regarding use of the Water District 63 rental pool for mitigation of non-irrigation season diversions of spring water tributary to Mores Creek by Rocks Water under proposed permit 63-34123 and existing water right 63-7227.

Rex and Barry –

Please let us know if you have any comments.

Terry M. Scanlan, P.E., P.G. | Principal Engineer/Hydrogeologist

SPF Water Engineering, LLC

300 E Mallard Drive, Suite 350 | Boise, ID 83706

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The Idaho World

P.O. Box 50248
Boise, ID 83705
(208) 429-1606

RECEIVED

MAY 05 2016

WATER RESOURCES
WESTERN REGION

State of Idaho)
County of Boise)

Theresa Hart, being duly sworn, deposes and says: that she is the Editor of THE IDAHO WORLD, a weekly newspaper published at Idaho City, in the County of Boise and the State of Idaho; the said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Idaho City; that the advertisement, a copy of which is hereto attached, was published in said newspaper once a week for two (2) consecutive weeks in the entire and regular issue of every number of said paper during the period and time of publication and was published in the newspaper and not a supplement; that said paper has been established and regularly and continuously published for more than seventy eight weeks past previous to the first publication of this notice. Such notice was published with the issue beginning with Apr 20, 2016 and ending with the issue of Apr 27, 2016.

Theresa Hart

State of Idaho)
County of Ada)

On this 3 day of May in the year 2016, before me, a notary public, personally appeared Theresa Hart known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Notary Public

Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires 09/26/2019

The following application has been filed to appropriate the public waters of the State of Idaho:

63-34123
ROBERT SCOTT WEST
ANGELA C WEST
2608 HWY 21
BOISE, ID 83716
Point of Diversion SWNESE S10 T04N
R04E BOISE County Source SPRING
Tributary MORES CREEK
Use: COMMERCIAL 01/01 to 12/31
0.02 CFS
Total Diversion: 0.02 CFS

Date Filed: 7/29/2015
Place of Use: COMMERCIAL
T04N R04E S10 NESE

Mitigation is proposed for consumptive use.

✓ OK RN 5/13/16

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov/WaterManagement/WaterRights. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 5/9/2016. The protestant must also send a copy of the protest to the applicant.
GARY SPACKMAN, Director
Published in the Idaho World 4/20 and 4/27/2016

NATHAN BRANAHL
NOTARY PUBLIC
STATE OF IDAHO