

WATER RIGHTS PROBLEMS

Non Compliance

RVHOA, Inc. has two water rights, both of which are in violation of Idaho Code Title 42, IDWR Regulations, and Water Rights Conditions, which must be corrected or stopped.

A. WR 63-9751 Aesthetic Water for Riverside Waterway

1. No headgate, locking nor measuring device at POD in Boise River.
2. Purchase of water for 2011 Irrigation season, as directed by WM63.
3. POU extended east and west beyond the boundary grids set forth in WR.
4. POR changed to 3 separate locations different from the grids set forth in WR.

B. WR 63-9718

1. Irrigation water from Long Lake for the Greenbelt is an illegal misappropriation of Boise River water without a Water Right for Diversion.
2. Irrigation water from Riverside Waterway for the Greenstrip is an illegal use of aesthetic water, unauthorized by the WR and confined to the Greenbelt.
3. Aesthetic Storage water in the Riverside Waterway:
 - a. POU extended east and west beyond the boundary grids set forth in WR.
 - b. POR changed to 3 separate locations different from the grids set forth in WR.

Documents submitted by Don Anton, RVHOA

August 20, 2010

A COMPREHENSIVE STUDY OF ISSUES OF THE GARDEN CITY RIVERSIDE DRIVE WATERWAY

Table of Contents

Introduction	Page 1.
I. General Background Information	Page 1.
A. Water Rights	Page 1.
B. Authority for Issues and Enforcement of Water Rights	Page 1.
C. Salient Chronological Events in the Evolution of the Garden City Riverside Waterway	Page 2.
D. Ownership of Water Rights	Page 3.
II. Problems	Page 4.
A. Immediate	Page 4.
B. Systemic	Page 4.
C. Maintenance	Page 10.
D. Beneficiaries of Water Rights 63-9718 & 63-9751	Page 10.
E. Water Measurement & Usage	Page 11.
F. Projected Waterway Expenses	Page 12.
III. Responsibilities	Page 13.
A. RVHOA Temporary Solution of Immediate Problems by Agreement with WM63/IDWR	Page 13.
B. Garden City has Responsibility for Resolution of Problems	Page 13.
IV. Resolution of Problems	
Recommendations, Suggestions, Directions and Requirements by RVHOA	Page 14.
V. Alternative Actions by RVHOA	Page 14.

August 20, 2010

WATER RIGHTS ISSUES OF THE GARDEN CITY RIVERSIDE WATERWAY

Introduction

The current circumstances have been 30 years in the making. We have spent 6 months of research: interviewing residents, former and current board members, vendors and suppliers, compiling documents, site inspections, photographs of existing conditions, and in conferences with Idaho Department of Water Resources personnel and Water Master, District #63.

We believe that water is the life blood of the Riverside Communities and the Crown Jewel of Garden City. The purpose of this document is to provide an explanation of the issues confronting the Riverside Waterway in conjunction with Idaho water rights and to seek a comprehensive and permanent resolution of them by Garden City. Riverside Village Homeowners Association, Inc.(RVHOAI) has achieved a temporary solution of existing problems, but is unable to do anything more, because of its limited human and financial resources.

I. General Background Information

A. Water Rights(WR)

1. Letter from Idaho Department of Water Resources(IDWR), in 11/09, first knowledge that RVHOAI had any WRs in Boise River and that they were not in compliance.
2. WR 63-9718, from IDWR, for irrigation and aesthetic storage with the Point of Diversion (POD) in Glenwood Lake(Village Lake, Seroptimist Pond, Riverside Lake); 3.21 CFS.
3. WR 63-9751, from IDWR, for aesthetics with POD in the Boise River; 3.21 CFS.

B. Authority for issues and enforcement of Water Rights

1. Idaho Constitution, Article XV, §1. Use of Waters a Public Use; §7. State Water Resource Agency. From the people of Idaho with delegation of authority to the Legislature.
2. Idaho Code, Title 42. From the Legislature with delegation of authority to IDWR.
 - Chapter 1 – Appropriation of Water – General Provisions
 - §42.101 Property in Water
 - §42.103 Rights Acquired by Appropriation
 - §42.108 Change in Point of Diversion; Place, Period or Nature of Use- Under Established Rights.
 - Chapter 2 – Permits, Certificates, Licenses - Survey
 - §42.202 Application to Appropriate Water.
 - §42.202A Notice upon receipt of Application
 - §42.202B Definitions
 - §42.210 Application of Act
 - §42.217 Proof of Application to Beneficial Use
 - §42.219 Issuance of License
 - §42.220 Effect of License
 - §42.222 Change of Point of Diversion, etc..
 - §42.248 Notification of Change in Ownership of a Water Right
 - Chapter 6 – Distribution of Water Among Appropriators
 - §42.602 Director to Supervise Distribution in Districts
 - §42.603 Rules and Regulations
 - §42.604 Creation of Water Districts
 - §42.605A Non Consumptive Water Rights
 - §42.607 Distribution of Water

Chapter 7 – Headgates and Measuring Devices

§42.701 Installation of Controlling Works and Measuring Devices

§42.709 Measurement of Water

Chapter 14 – Adjudication of Water Rights

§42.1408 Service of Notice General Adjudication

§42.1409 Notice of Claim

Chapter 26 – Sale of Water Rights

§42.2604 Water Contracts and Deeds

Chapter 38 – Alteration of Channels and Streams

§42.3801 Legislative Intent-Stream Channel Alteration

3. Idaho Administrative Code, IDAPA 37. From IDWR with delegation of authority to the Director(Staff).

Title .01 Chapter .01 Procedure.

Title .02 Chapter .01 Comprehensive Plan.

Title .02 Chapter .03 Water Supply Bank Rules.

Title .03 Chapter .01 Adjudication.

Title .03 Chapter .02 Beneficial Use.

Title .03 Chapter .08 Water Appropriation.

Title .03 Chapter .11 Conjunctive Management of Surface and Ground Water.

4. Conditions in Permits, Licenses and Transfer (Changes) Approvals, from the Director.

WR 63-9718 Permit issued 7/8/81, License issued 5/7/92.

WR 63-9751 Permit issued 9/14/81, License issued 6/15/94, POD Transfer Approval 11/24/09.

5. Decree, from Idaho District Court #5, of Snake River Basin Adjudication, Twin Falls, ID..

Incorporates the conditions of license in a court decree.

WR 63-9718 issued 2/16/07; WR 63-9751 issued 1/27/10.

C. Salient Chronological Events in the Evolution of the Garden City(GC) Riverside Waterway

1. Before 1980, it seems that Jack Hoke and Elaine Hoke may have owned a large tract of land adjacent Glenwood Street running west along the Boise River, in Garden City(GC).

2. In 1980 Hoke with his land; entered into an agreement with Nile Latta a banker with City Corp (to supply money) Al Marsden (to act as a promoter), Ennis and Williams, who called themselves Riverside Group, GP(RG)(Secretary of State has no record) , and together they acquired additional land from the State Land Board (Agreement). The President of the State Land Board was John V. Evans (Secretary of State, Agreement). Then RG and Genstar Pacific Investments formed a limited partnership, i.e., Riverside Village Associates, LP (RVA)(Secretary of State). The object of these arrangements was to develop a waterway comprised of a series of lakes and ponds in conjunction with the construction and sale of homes adjacent to the waterway(Agreement, IDWR Permit Application).

3. On 8/3/81 Double E Ranch, Inc. became Evans Bros Construction, Inc. (Secretary of State).

4. On 10/15/81 Latta, Ennis and Williams incorporated Riverside Village Association, Inc.(Secretary of State record).

5. In 1981 RVA,LP created Glenwood Lake(IDWR Memo 5/22/81), west of Glenwood street, north of the Boise River and began the development of the Riverside Village subdivision and a series of ponds (IDWR permit application). There was a natural body of water on the land being developed, later apparently called Long Lake.

6. In 1984 John G. Evans was appointed to the GC Planning & Zoning Commission (Resident Testimony).

7. In 1984 John G. Evans may have become an agent for RVA,LP (Notice of Claim '89).

8. In 1985 there was a warranty deed for land from RVA to IFI (Warranty Deed).

9. On 12/2/85 RVA, Inc. forfeited its charter, by State of Idaho (Secretary of State record).
10. In 1986 RVA LP assigned WR 63-9718 & WR63-9751 to Idaho Forest Industries, Inc. (IFI)(Permit Assignment-IDWR).
11. In 1986 John G. Evans became an agent for IFI (IDWR-Beneficial Use Field Report), which apparently was helpful to facilitate the Riverside Village development in GC. He may have also been personally operating a backhoe for IFI in the development of the waterway from the Boise River (Minutes '86)?
12. In 1986 John G. Evans participated in a Beneficial Use Field Report as agent for IFI for 63-9718 and 63-9751(12/16/86)(IDWR-Beneficial Use Field Report).
13. In 1986 it appears that RVA (or IFI) conveyed ownership of Glenwood Lake to GC (see 3/30/87 minutes, 4/29/98 letter).
14. In 1982-1987 apparently, Joe Harris built some homes for RVA in the development and perhaps there were also other builders. (Resident Testimony and deed of record)
15. In 1987 apparently Evans Bros. Constr. Co. (John, David, Richard) began building homes in the development for IFI (perhaps for RVA also?) (IFI/John Evans letter 9/29/86).
16. In 1987 the seventh pond in the waterway was completed. (Resident Testimony)
17. In 1989 John G. Evans as agent for RVA, LP filed WR Ajudication claims for WR63-9718 & 63-9751(IDWR Notice of Claim).
18. From 1987-1994 Evans Bros. Constr. Co. completed construction of several subdivisions, i.e., Riverside Village, Riverside Village North, Woods-1, Woods-4, Silverwoods and others, while simultaneously extending the Riverside Waterway and construction multiple ponds and lakes (IFI/John Evans letter 9/29/86).
19. In 1994 John G. Evans left Evans Bros. Constr. Co. (Residents Testimony, Secretary of State)
20. In 1994 John G. Evans became a GC Councilman. (Resident Testimony)
21. In 1997 RVHOA, Inc. was incorporated.
22. In 1998 IFI conveyed ownership of Long Lake to GC (see 4/98 minutes). Its POD was originally a natural channel from the river prior to 1981, from 1981 to 2004 it was a pipe in the river constructed by the developer and in 2004 it was replaced with another pipe by GC (Residents Testimony).
23. In 1997 Evans Bros. Constr. Co. changed name to Dave Evans Construction, Inc.(Secretary of State).
24. From 1999-2001 Garden City, et al (including IFI, John Evans,agent), were involved in changing the POD for WR63-9751, which was also sought by Richard Evans from Woods-1 subdivision (Resident, Pinnacle Correspondence, Minutes).
25. In December of 2000 IFI, Inc. filed for voluntary dissolution (Secretary of State).
26. In December of 2000 IFI, LLC. filed for organization as a partnership in Idaho (Secretary of State), as a successor in interest to IFI, Inc..
27. In 2001 Dave Evans Construction, Inc. was dissolved (Secretary of State).
28. In 2005 RVA was revoked as an LP(Secretary of State).
29. Apparently John G. Evans continued to develop subdivisions in Eagle along waterways.
30. In 2006 John G. Evans became the Mayor of GC.
31. In 2007 Riverside Communities Co-Op was formed to irrigate the Glenwood Entryway(Rod Bulcher).
32. In 2008 GC became the sole owner of the "Greenbelt"(Nature Trail) (Quitclaim deeds, Atty Gen Ltr.)
33. In 2009 RVHOA received Notice from IDWR of Water Rights, Change of POD and Non-Compliance (IDWR Letter, 11/ 3 /09).

D. OWNERSHIP

1. WATER RIGHT 63-9718

a. Riverside Village Associates, LP, a developer made application 4/3/81 for a Permit; approved 7/8/81 (see application). On 6/10/86 RVA,LP, made an Assignment of Permit to IFI, filed with IDWR 6/27/86.

b. Idaho Forest Industries, Inc. (John Evans, Agent), a developer, received Assignment of Permit from RVA,LP 6/10/86, filed with IDWR 6/27/86.

c. John G. Evans, as agent for RVA on 7/14/89 under oath signed a Notice of Claim to a Water Right, and filed that day with the Idaho 5th District Court.

d. Idaho Forest Industries, Inc., was issued a license to this water right on 5/7/92 by IDWR.

e. RVHOAI sent a letter to IDWR stating that the developer for whom John Evans was agent, still had ownership of the water right on 6/29/01. There is no Assignment of License from IFI to RVHOAI on record with IDWR, but RVHOAI was declared the owner of this water right by a Decree on 2/16/07 of the Idaho 5th District Court, and then recognized by IDWR as the owner.

2. WATER RIGHT 63-9751

a. Riverside Village Associates, LP, a developer made application 6/23/81 for a Permit; approved 9/14/81 (see application). On 6/10/86 RVA,LP, made an Assignment of Permit to IFI, filed with IDWR 6/27/86.

b. Idaho Forest Industries, Inc. (John Evans, Agent), a developer, received Assignment of Permit from RVA,LP 6/10/86, filed with IDWR 6/27/86.

c. John G. Evans, as agent for RVA on 7/14/89 under oath signed a Notice of Claim to a Water Right, and filed that day with the Idaho 5th District Court.

d. Idaho Forest Industries, Inc., was issued a license to this water right on 6/15/94 by IDWR.

e. RVHOAI, sent a letter to IDWR stating that the developer for whom John Evans was agent, still had ownership of the water right on 6/29/01. There is no Assignment of License from IFI to RVHOAI on record with IDWR, but RVHOAI was declared the owner of this water right by a Decree on 2/16/07 of the Idaho 5th District Court, and then recognized by IDWR as the owner, and reaffirmed by the same Court in a subsequent Decree on 1/27/10.

II. Problems

A. **Immediate** – 1. The installation of Head Gates, Locking and Measuring Devices at WR 63-9751 Point of Diversion (POD) in the Boise River, as demanded by IDWR/WM63, with construction restricted to the period of low water (October, November, December) and an absolute deadline for completion of 4/1/11 (start of irrigation season). This is a statutory requirement as well as a condition of the WR.

2. Water Allocation and Distribution according to priority, with mandatory purchases of water in the amount of 3.21 CFS for 100 days annually from District 63, at the start of the irrigation season, 4/1/11, as demanded by IDWR/WM63. This is a statutory requirement as well as a condition of the WR.

3. Sanctions: Warnings by IDWR that a failure in compliance with a resolution of the problems in 1. & 2. above, could result in the shut off of all water into the waterway, on 4/1/11.

B. **Systemic** – 1. From its inception to the present IDWR has developed as the premier arbiter and authority for water rights in the State of Idaho. The importance of water in this state has also become of much greater importance with the expansion of industrial, commercial and municipal interests. Consequently, during the 30 years of existence of the Riverside Waterway, regulation of public waterways has become increasingly more stringent and will continue to become more so in the future. It has come to our attention that certain Water Rights Compliance Violations exist in the POD (Point of Diversion), Place of Use (POU), Point of Return (POR) and Long Lake. These conditions apparently were created by the developers RVA,LP, IFI, Inc., their agents John Evans, Evans Bros. Construction, Inc. and GC, in the construction of the Riverside Village Waterway and its extensions. These violations require immediate correction because continued use of these water rights under these conditions is illegal.

2. Sanctions: Warnings have been made by IDWR that failure to correct violations of POD, POU, POR could result in fines and/or loss of the WRs.

3. The following observations of the Water Rights Compliance Violations are based on documentary, pictorial and testimonial evidence gathered in support:

PODs

WR 63-9718 – Seems to be in compliance with the statute, regulations and conditions of the WR. This POD is located at Ada Co.T04,R01E,S24,SWSE,L2 , in Glenwood Lake, where it was constructed in 1981-82, neither a head gate nor locking device was required as a condition of the Permit. In 2000 GC installed a head gate and locking device at this POD. RVHOAI has no easement access (as a condition of the WR) to this POD, although it is in a City Park open to the public.

WR 63-9751 Original was constructed in 1981-82, at Ada Co.T04,R01E,S25,NWNE,L3 , in the Boise River west of Glenwood with an inlet into Glenwood Lake, by the developer RVA,LP without a head gate, locking nor measuring devices and therefore was in a compliance violation of the statute, regulations, and permit conditions, ab initio. No separate outlet was constructed from Glenwood Lake to the Riverside Drive Waterway. RVHOAI had no easement access (as a condition of the WR) to this POD, although it is adjacent to a City Park open to the public and in the Boise River owned by the State. This POD no longer exists.

WR 63-9751 Changed - was constructed in 2000-01, at Ada Co.T04,R01E,S25,NENE,L1 ,in the Boise River east of Glenwood with an inlet into Westmoreland Lake, by GC, et al (which may have included IFI, Inc. and its agent John Evans), without a head gate, locking nor measuring devices and therefore was in a compliance violation of the statute-IC 42-701(1), regulations-IDAPA 37.03.08.50, and IDWR License and Permit conditions, ab initio, which still exists today. RVHOAI has no easement access (as a condition of the WR) to this POD, although it is adjacent to a City Park open to the public and in the Boise River owned by the State. The illegal use of this WR must be corrected or terminated. Decree 1/27/10 has incorrectly used the grids of the original POD?

POUs

WR 63-9718 - One of the dual purpose uses of the WR is Irrigation. The Location is at Ada Co. T04N, R01E,S23 SESE L11-1acre; S24 SWSW L 4-3acres,S24 SESW L 3-3acres,S24 SWSE L 2-1acre; S25 NWNE L 3-2acre, S25 NENW L4-1acre = 11acres. Permit Application – 7/8/81 (acres incorrectly allocated by lot), License - 5/7/92, Partial Decree – 2/16/07, Report 11/13/09. A green belt along the Boise River and a dike face. A pipe insert below the lake (Glenwood?) surface. Pump to be located adjacent to the lake and irrigation pipe used to irrigate greenbelt along the river; reference: Permit Application – 7/8/81¶6.a.1..

1. Location - The irrigation system has been inappropriately changed by the developer, et al (illegally without notice, approval nor authority of IDWR, and in violation of IC§42-222) as follows:

a. The **GREENBELT** is no longer irrigated with water from Glenwood Lake(if ever), instead it is now irrigated with water from Long Lake, by a **Long Lake Pump** adjacent to it located on the greenbelt. It is also being used to irrigate some of the homes (private property) along Long Lake. RVHOAI is currently paying the maintenance and electricity expense for the pump. The greenbelt is totally owned by GC and the pump is owned by Garden City by the law of fixtures. There is no water being used from Glenwood Lake for greenbelt/dike face irrigation. There is another section of the Greenbelt which is currently being irrigated by water purchased by RVHOAI from GC. None of which is owned by RVHOAI. East Point on the Greenbelt is currently irrigated by RVHOAI from Aesthetic water in the Waterway by Rivercove Pump, although it has no duty nor responsibility without any ownership.

RVHOAI must transfer the responsibility for irrigation of all of these areas to GC, including the cost of the water, and the power and maintenance of the pumps, because none of the irrigated areas are owned by RVHOAI.

b. **RIVERSIDE DRIVE WATERWAY** is not an authorized place of use for irrigation in the WR. Various owners of private property own real estate along this waterway from Glenwood Street to Arney, but the land in the Green Strip adjacent to Riverside Drive is owned by ACHD as a right of way varying from 15' to 10'. There are four zones along in the Waterway.

Zone #1 The Entryway to Riverside Waterway(outside Riverside Village) on both sides of Riverside Drive from Glenwood to Strawberry Glen (except northside Glenwood to Cottages-private), is being irrigated with Aesthetic Storage water from a Pond on the northside of Riverside Drive at Rivercove. Additionally, the green strip along Riverside Dr. from Strawberry Glen to Riverfront Pl.(except for the RVHOAI clubhouse) , is also being irrigated, from the **Rivercove Pump, with an additional idle electric meter** . This irrigation is not only illegal because it is not authorized by the WR, but RVHOAI has no responsibility to do so because it does not own any of the real estate. The cost to RVHOAI for power and maintenance of the pump was in '08 \$664.81+\$170.00 est., '09 \$698.29+\$170.00 est..

Zone #2 The private property at 4866, 4870 and 4903 Lakeview are being irrigated with Aesthetic Storage water from a Pond on the southside of Riverside Drive at Lakeview. Additionally, the green strip along Riverside Dr. from Riverfront Pl. to 4881 Lakeshore Pl.(except northside by Meadowcreek), is also being irrigated from the **Lakeview Pump**. This irrigation is not only illegal because it is not authorized by the WR, but RVHOAI has no responsibility to do so because it does not own any of the real estate. The cost to RVHOAI for power and maintenance of the pump was in '08 \$347.81+\$170.00 est., '09 \$247.48+\$170.00 est..

After the 2010 irrigation season, no further irrigation can be done by RVHOAI in Zones #1 & #2, because it is illegal. RVHOAI must transfer the responsibility for future irrigation of all of these zones to GC, including the cost of the power and maintenance of the pumps.

Zone #3 The Green Strip from 4881 Lakeshore to 9009 Riverside Dr. on the southside of Riverside Dr. and Silverwoods on the northside is being irrigated by RVHOAI through the purchase of GC water. This is not an illegal use of the WR by the use of city water, but RVHOAI has no responsibility to do so because it does not own any of the real estate, and the cost is exorbitant. This is **GC water from a meter** that has two master controls and also irrigates part of the Greenbelt. Costs in '09 were \$3,036.99.

After the 2010 irrigation season, RVHOAI must transfer the responsibility for irrigation of Zone #3 to GC, including the cost of the water, because none of the irrigated areas are owned by RVHOAI and the cost to continue to do so, is excessive.

Zone #4 This is irrigation for the RVHOAI Pool & Clubhouse through the purchase of **GC water from a meter**. This is not an illegal use of the WR by the use of city water, but RVHOAI has no responsibility to do so for the Green Strip on Riverside Dr. because it does not own the real estate, and the cost is exorbitant. The vacant lot and the curb area along Rivercove should also be eliminated., Costs in '09 were \$584.71.

RVHOAI must transfer the responsibility for future irrigation of the Green Strip, the vacant lot and the curb along Rivercove east to GC, because the cost of city water is excessive.

2. Ownership Irrigation

The greenbelt and dike face: State Department of Lands; the developers of Riverside

Village, et al, i.e., Riverside Village Associates, LP (Marsden, Hoke, Latta, et al) 81-'86; IFI (John Evans, agent)– '87-'98?; and perhaps Garden City in the evolution of the greenbelt? Reference- Permit Application – 7/8/81 ¶9.b.,c..

The greenbelt and dike face are now owned by Garden City– See the Ada Co. Assessor's real estate parcel map and parcel owner's list for ownership. The entryway to Riverside Waterway on both sides of Riverside Drive from Glenwood to Strawberry Glen is owned by various entities, ACHD, homeowners, and GC, and the Pond on the northside of Riverside Drive at Rivercove is owned by RVHOA. The greenstrip along the Riverside Waterway is owned by ACHD from Glenwood to Arney.

3. Purpose/Use – See Permit Application¶ 4. Aesthetics, Irrigation; ¶8.a.(5) to provide a continuous flow of waterway. No water is to be extracted and water that is diverted will be discharged into the river after it leaves waterway. This amount of water is required to keep the waterway flowing and prevent stagnant algee water from developing; ¶ 10-(1) to develop a lake-stream system (Ponds) along Riverside Drive for aesthetic purposes; (2) **GREENBELT AND DIKE FACE TO BE IRRIGATED.**

Aesthetic Storage and Irrigation: See License -5/7/92, Partial Decree – 2/16/07, WR Report 11/13/09.

No application was ever filed with IDWR as required by IC ¶42-222 to modify or for a variance in the POU of this WR by the developers, Garden City nor anyone else.

4. IDWR Conditions – 1. WR is appurtenant to POR, 2. IDWR determination of water loss to priority holders shall be replaced as determined by IDWR, 3. Non use of WR for 5 years may be forfeiture, 4. No more than .04 CFS per acre, nor 4.5 afa per acre – See License-5/7/92; 5. **POU FOR IRRIGATION IS A GREENBELT** – See License-5/7/92, WR Report 11/13/09; 6. Subordinate to all prior WR on Boise River – See Permit Application – 7/8/81, License - 5/7/92, Partial Decree – 2/16/07, Report 11/13/09.

5. When and Who Changed Irrigation POU – 1987- continuing through the present? By IFI(John Evans agent), Evans Bros. Constr. Co, Garden City, et al?

The changes were made without notice to IDWR nor its approval or authorization in non compliance with the statute IC 42-222, Regulations IDAPA 37.03.08.50, and Permit/License Conditions.. The irrigation from the Aesthetic Use component water of this WR is illegal and must be terminated, unless corrected.

WR 63-9718 - One of the dual purpose uses of the WR is Aesthetic Storage. The POU is located at Ada Co. T04,R01E,S24,SWSW,L4,SESW,L3, including Glenwood Lake (if the POD must be included in the POU- S24,SWSE,L2)?, ending at the 9th Pond in the Riverside Dr. Waterway at the westend.(The decree of 2/16/07 incorrectly states the grids as S25,SWSW,L4, instead of S24). It was changed from the 9th Pond and extended to the west downstream through 3 additional ponds in RV subdivision and multiple subdivisions to: 1. At Ada Co.T04,R01E,S23,SENE; generally described as a channel on private property 9364 Pebblebrook, accessible from 9261 Baystream, in Woods-4 subdivision, to the Boise River; 2. At Ada Co.T04,R01E,S23,SWNE; generally described as a channel to a New Dry Creek Ditch Co. canal with multiple endings; 3. At Ada Co.T04,R01E,S23,SENW; to the Boise River, and generally described as a Greenbelt/Nature Trail Bridge channel owned by GC.

Additionally, Aesthetic Storage water in the Waterway has been and is used for irrigation illegally in violation of the water right.

These extensions were done from 1987-2001, by the developer IFI, Inc. and its agents John Evans, Evans Bros. Constr., Inc.. The changes were made without notice to IDWR nor its approval or authorization in non compliance with the statute IC 42-222, Regulations IDAPA 37.03.08.50, and

Permit/License Conditions.. The extensions of the Aesthetic Use component water of this WR is illegal and must be terminated, unless corrected.

WR 63-9751 The purpose and use of the WR is Aesthetics. The POU is located at Ada Co. T04,R01E, S25NWNE,L3, S24,SWSW,L4, S24,SESW,L3, S24,SWSE,L2 including Glenwood Lake ending at the 9th Pond in the Riverside Dr. Waterway at the westend.(The Transfer Approval of 11/24/09 incorrectly states the grids as S25,NENW,L3, INSTEAD OF S25,NWNE,L3). It was changed from the 9th Pond and extended to the west downstream through 3 additional ponds in RV subdivision and multiple subdivisions to: 1. At Ada Co.T04,R01E,S23,SENE; generally described as a channel on private property 9364 Pebblebrook, accessible from 9261 Baystream, in Woods-4 subdivision, to the Boise River; 2. At Ada Co.T04,R01E,S23,SWNE; generally described as a channel to a New Dry Creek Ditch Co. canal with multiple endings; 3. At Ada Co.T04,R01E,S23,SENW; to the Boise River, and generally described as a Greenbelt/Nature Trail Bridge channel owned by GC.

It was also extended to the east to include Westmoreland Lake, to T04,R01E,S25,NENE,L1.

Additionally, Aesthetic Storage water in the Waterway has been and is used for irrigation illegally in violation of the water right.

These extensions were done from 1987-2001, by the developer IFI, Inc. and its agents John Evans, Evans Bros. Constr., Inc., and GC. The changes were made without notice to IDWR nor its approval or authorization in non compliance with the statute IC 42-222, Regulations IDAPA 37.03.08.50, and Permit/License Conditions.. The extension of and the irrigation from the Aesthetic Purpose water of this WR are illegal and must be terminated, unless corrected.

PORs

WR 63-9718 – Original POR as described in the IDWR Permit, was constructed by the developer RVA,LP at Ada Co.T04,R01E,S23,NWSE,L2 (see Permit '81, Claim Notice '89), in Riverside Creek, to the Boise River, 1981-86; POR appears to have been changed by the developer IFI, Inc. and its agents John Evans, Evans Bros. Constr., Inc., 1987- 1998? to its current status with three PORs: 1. At Ada Co.T04,R01E,S23,SENE; generally described as a channel on private property 9364 Pebblebrook, accessible from 9261 Baystream, in Woods-4 subdivision, to the Boise River; 2. At Ada Co.T04,R01E,S23,SWNE; generally described as a channel to a New Dry Creek Ditch Co. canal with multiple endings; 3. At Ada Co.T04,R01E,S23,SENW; to the Boise River, and generally described as a Greenbelt/Nature Trail Bridge channel owned by GC.

The changes were made without notice to IDWR nor its approval or authorization in non compliance with the statute IC 42-222, Regulations IDAPA 37.03.08.50, and License Conditions. The illegal use of this WR must be corrected or terminated.

WR 63-9751 Original POR as described in the IDWR License/Permit, was constructed by the developer RVA,LP at Ada Co.T04,R01E,S23,NESE,L1, in Riverside Creek, to the Boise River, 1981-86; POR appears to have been changed by the developer IFI, Inc. and its agents John Evans, Evans Bros. Constr., Inc., 1987- 1998? to its current status with three PORs: 1. At Ada Co.T04,R01E,S23,SENE; generally described as a channel on private property 9364 Pebblebrook, accessible from 9261 Baystream, in Woods-4 subdivision, to the Boise River; 2. At Ada Co.T04,R01E,S23,SWNE; generally described as a channel to a New Dry Creek Ditch Co. canal with multiple endings; 3. At Ada Co.T04,R01E,S23,SENW; to the Boise River, and generally described as a Greenbelt/Nature Trail Bridge channel owned by GC.

The changes were made without notice to IDWR nor its approval or authorization in non compliance with the statute IC 42.222, IC 42.701, Regulations IDAPA 37.03.08.50, and License

Conditions. Moreover, neither the original nor the changed PORs had/has measuring devices as required by Conditions in the License/Permit. The illegal use of this WR must be corrected or terminated.

Greenbelt & LONG LAKE

1. The Greenbelt a/k/a Nature Trail is a path running along the northside of the Boise River through Riverside Village and other subdivisions to the west. It is owned by Garden City.
2. Long Lake is a body of water between the homes in Riverside Village and the Greenbelt. It apparently was natural, fed by an inlet from the Boise River at its east end and returning to it via 2 outlets, at its west end. In the past the inlet became blocked with debris and ultimately a POD was installed in the River between 1981-86 as a pipe by RVA,LP, then in 2002 replaced by a larger pipe with a concrete box by GC, 600 feet to the east.
3. Part of the Greenbelt and all of Long Lake were deeded to GC in 1998 by the developer IFI, agent John Evans-see RVHOAI minutes 11/97. The remainder of the Greenbelt was deeded to GC in 2008-9 by RVHOA, Woods-1, and IFI, Inc./IFI,LLC.
4. It is unknown if Garden City has a WR to remove any water by diversion from the Boise River? Not according to the letter of 12/22/97 from Steve Lester, IDWR, nor is there any water right shown for GC on the IDWR website listings. IC 42-103, IC 42-3801.
It is unknown whether Garden City ever applied for or obtained the approval and authorization of the IDWR to construct the POD? IC 42-202.
The POD was constructed without a head gate or locking or measuring devices. IC 42-701.
5. One of Uses granted under WR 63-9718 is for the irrigation of the Greenbelt. This is no longer being done (if ever), because Garden City has substituted its water from Long Lake.
6. East Point of the Greenbelt at Strawberry Glen and Riverside Dr., is currently irrigated by RVHOA,I, from the **Rivercove Pump** which also irrigates the Entryway and the Green Strip from Strawberry Glen to Riverfront Pl., using Aesthetic water from the Waterway(despite the fact that water to irrigate is to come directly from Glenwood Lake). After the 2010 irrigation season, no further irrigation will be done by RVHOAI, because it no longer has any ownership of the Greenbelt and therefore no duty, obligation nor responsibility to continue to do so.

East Point to 4776 Riverine on the Greenbelt is not irrigated.

Water from Long lake is being used to irrigate the Greenbelt, from 4776 Riverine to 4833 Lakesedge . Water from this lake is also being used to irrigate the lawns of all of the homes along the shoreline from 4776 Riverine to 4869 Lakeview, as well as a two homes at 4850 4862 Lakeview and two parking islands (circles) in the street in Riverside Village. This irrigation is facilitated by the **Long Lake Pump** located adjacent to the lake on the Greenbelt. The pump was purchased by the developer, but has become the property of Garden City by virtue of the law of fixtures, since there was no written agreement to the contrary. The expense of the electricity and the maintenance to operate that pump is currently being paid by RVHOAI. After the 2010 irrigation season, no further irrigation from this pump will be done by RVHOAI, because GC now owns all of the Greenbelt, the homes being irrigated are private property, and there is no duty, obligation nor responsibility to continue to do so. Cost: '09- \$508.95 per annum.

The greenbelt from 4833 Lakesedge to 4863 Lakemont is apparently not currently being irrigated, although piping and sprinklers are installed to do so.

There is another section of the Greenbelt from 4863 Lakemont to 9009 Riverside which is currently being irrigated by water purchased from GC by RVHOAI. After the 2010 irrigation season, no

further irrigation will be done by RVHOAI, because it has no duty, obligation nor responsibility to continue to do so, and the cost is excessive.

C. MAINTENANCE

Continued Perpetual Maintenance of the Lakes, Ponds, Creeks and any other bodies of water related to GC Riverside Waterways along the Boise River, to accommodate IDWR and provide for aesthetics, , community enhancement, beauty and irrigation, for the benefit of the Riverside Communities and Garden City. GC is deriving benefit from both WR 63-9718 and 63-9751 in the waterway and the Green Strip along Riverside Drive, the Greenbelt (Nature trail) along the River and from the illegal extension of the waterway upstream to its parks and lakes as well as through the downstream subdivisions along Riverside Drive.

Maintenance includes, but is not limited to:

- | | |
|--|--|
| I. POD & Pipes. | VII. Wildlife. |
| II. Changes in River. | VIII. Community beautification and aesthetics. |
| III. Continuous Flow through ponds to the River. | IX. Vandalism. |
| IV. Obstructions and blockages in the Waterway. | X. Compliance with Laws and Regulations governing Public Waters. |
| V. Noxious weeds. | XI. Irrigation. |
| VI. Water Quality. | |

D. Beneficiaries of Water Rights 63-9718 & 63-9751

Water from these water rights flows to some of the following beneficiaries, while others derive secondary water through ground percolation, but the beneficiaries in all three of the following categories receive the benefits of aesthetic beauty, and the continuity of a contiguous community linked by the Riverside Waterway:

Primary

These entities receive direct benefit from the water in the waterway, the aesthetic beauty and as part of the Riverside Community in providing the ambiance to make it a desirable place to live, along with an enhanced real estate value.

1. Garden City Westmoreland Park Lake
2. Garden City Glenwood Lake (a/k/a Riverside Pond, Village Lake, Seroptomist Lake)
3. Chuck Story (Stormer,LLC; WCO Holdings,LLC; Riverwood,LLC)
4. RVHOAI
5. Riverside Village North (a/k/a North Shore)
6. Silverwoods Point
7. Woods-1
8. Woods-4
9. New Dry Creek Ditch Company
- 10.ACHD
- 11.GC Riverside Waterway

Secondary

These subdivisions receive the secondary benefit of ground water from the waterway and the direct benefit from the aesthetic beauty and as part of the Riverside Community in providing the ambiance to make it a desirable place to live , along with an enhanced real estate value.

1. The Cottages
2. Meadow Creek

Indirect

These subdivisions receive the benefit of the waterway from the aesthetic beauty and as part of the Riverside Community in providing the ambiance to make it a desirable place to live, along with an enhanced real estate value.

1. The Gables
2. River Pines
3. Osprey Meadows
4. River Ranch

E. Water Measurement and Usage

IDWR limits water appropriation at any POD on Boise River to 3.21CFS.

There is no Combined Limit Condition for WR63-9718 nor WR63-9751, so each is entitled to 3.21CFS for a combined total of 6.42CFS, per IDWR, but it is impractical because the rate of flow in the Boise River is not great enough to accommodate this amount.

There was no objection by IDWR to the installation of another outlet from Glenwood Lake for WR63-9751 aesthetic water for the Riverside Dr. Waterway.

WR 63-9718:

3.21CFS -.44 for Irrigation = 2.77CFS for Aesthetic Storage, from Glenwood Lake; the irrigation component of .44 is included in the 3.21CFS per IDWR/WM63.

I. Application Approval – 7/8/81

Rate of Diversion for irrigation – 0.02 CFS per acre.

II. License – 5/7/92

1. Maximum diversion volume is the amount that can be beneficially used. It may be adjusted.
2. WR is appurtenant to the POU.
3. WR is forfeited by 5 years of non use.
4. Provides 0.04 CFS per acre, 4.5 AFA per acre.
5. If IDWR determines there is a loss of water, it shall be replaced in a manner acceptable to it.
6. The irrigation shall be of a greenbelt.
7. Irrigation 0.44 CFS – 49.5 AF
Aesthetic Storage 3.21 CFS – 78.0 AF
Totals 3.21 CFS – 127.5 AF
8. 11 acres irrigated.

III. Partial Decree – 2/16/07 & WR Report – 11/13/09

1. Irrigation 0.44 CFS – 49.5 AF
Aesthetic Storage 3.21 CFS – 78.0 AF
Totals 3.21 CFS – 127.5 AF
2. 11 acres irrigated.

ORIGINAL

WR 63-9751

I. Application Approval – 9/4/81

Rate of Diversion – 0.02 CFS per acre; 3.0+3.0= 6.0CFS?

II. Profile Report – 2/16/94

Diversion Rate – 3.21 CFS – 2324 AFA
Diversion Capacity – 3.21 CFS.

III. License – 6/15/94

Diversion Rate – 3.21 CFS.

IV. WR Report – 3/1/01

Diversion Rate – 3.21 CFS – 2324 AFA
Diversion Capacity – 3.21 CFS.

V. Partial Decree – 2/16/07

Quantity 3.21 CFS – 2324 AFA

VI. WR Report – 11/13/09

Diversion Rate – 3.21 CFS – 2324 AFA

VII. Amended Partial Decree – 1/27/10

Quantity 3.21 CFS – 2324 AFA

CHANGED

WR 63-9751

3.21CFS = 3.21CFS for Aesthetics, from the Boise River.

I. Application to Transfer – 3/12/01 (Never signed, Never approved by IDWR)

Aesthetic 3.21 CFS

II. Notice of Transfer – 7/5-12/01

Use aesthetic -0- acres 3.21 CFS – 2324 AFA.

III. Transfer Approval – 11/24/09

Diversion Rate – 3.21 CFS – 2324 AFA

Miscellaneous – Water Distribution

1. There has been no determination (in writing) by the IDWR Director that WR63-9751 is consumptive, per IDWR.
3. Meters are needed to determine if there is a consumptive use, per IDWR. Apparently RVHOAI is being directed or ordered to install meters before the Director can make a determination as he is required to do by IC542-605A, per IDWR?
4. We will be charged for loss of water from transpiration evaporation even if it is for aesthetic use and it must be measured by a meter at the POR, per WM63?

F. PROJECTED WATERWAY EXPENSES

Annual

1. RVHOAI waterway general expense (NC Services)	\$3,700
2. RVHOAI Water Master expense	1,000
3. 3 Pumps – Maintenance	500 Estimate
4. 3 Pumps – Power + 1 Extra Meter	4,600
5. Monthly fee for WM63 4/1 to 11/1 -\$50 =	350
6. IDWR/WM63 Water Purchase- 3.21 CFS-100days only, maybe 180 days	9,000 / 16,200
7. Water Purchases from GC	<u>3,037</u>
	\$22,187/ 29,387

Installations

1. Locking Gate and Measuring Devices	\$15,000
2. Irrigation Meters at 3 Pumps	3,000
3. Measuring Device at PORs	5,000 Estimate
4. ?Additional Outlet from Glenwood Lake to Waterway	<u>20,000/50,000 Est.</u>
	<u>\$43,000/73,000</u>
	\$65,187/94,387

Total in 2010

Future Maintenance

?

III. Responsibilities

A. RVHOA Temporary Solution of Immediate Problems by Agreement with WM63/IDWR

On 5/9/10 there was a negotiation meeting with WM63, attempting a temporary solution to the IDWR demands, which was initially rejected, but subsequently there was an acceptance of our offer by IDWR. On 5/11/10 RVHOA B of D voted unanimously to approve the temporary solution of the payment of approximately \$2,100 for .44CFS (150 acre feet for 100 days) of water for the 2010 irrigation season, with a delay to install a locking head gate and measuring device at WR 63-9751 POD and measuring devices at POR; and a delay in the water purchase of 3.21 CFS, until the 2011 irrigation season.

B. GARDEN CITY HAS THE RESPONSIBILITY FOR RESOLUTION OF PROBLEMS

We believe Garden City has the permanent responsibility for the maintenance and preservation of the riverside waterway and for the irrigation in the adjacent riverside communities, because:

1. GC committed to install and maintain (perpetually) the changed POD for WR 63-9751, to which it assumed the responsibility in writing and by witness statements – '99-'01.
2. GC contracted with Pinnacle Engineering and Matco Construction Co. for the construction of the changed POD for WR 63-9751, in the Boise River east of the Glenwood Bridge.
3. GC provided the supervision and direction for the construction of the changed POD, through its Public Works Director, Randy Dearden and paid the cost of it.
4. GC participated with the developer to construct the WR 63-9751 changed POD.
5. IFI, Inc.(agent John Evans) was the developer and owner of the WR when the change was constructed.
6. GC installed the changed POD illegally, because it was w/o approval and authorization from IDWR and w/o a locking gate or measuring device as required by law unless waived by the Director of IDWR, which he did not do.
7. RVHOAI did not submit an officially signed application requesting the change of the POD, and IFI the actual owner of the WR did not submit any application.
8. GC illegally changed the POU when the changed POD was constructed by including Westmoreland Lake.
9. GC owns all the land surrounding the WR 63-9751 changed POD and the WR 63-9718 original POD for ingress and egress and RVHOAI has no easement.
10. GC has not fully accepted its responsibility for the irrigation of the Greenbelt (Nature Trail), which it now owns in its entirety, including the pump which was installed by the developer on the Greenbelt.
11. GC has not fully accepted its responsibility for irrigation of homes from Long Lake, which it owns.
12. GC has not accepted its responsibility for the irrigation of the entryway to Riverside Drive (some of which it owns) and which is now being done illegally as an unauthorized POU.
13. GC has not accepted its responsibility for the irrigation of the Green Strip along Riverside Drive on right of way owned by ACHD and which is now being done illegally as an unauthorized POU.
14. GC is deriving benefit from both WR 63-9718 and 63-9751 in Westmoreland Lake, Glenwood Lake and the Greenbelt.
15. GC is deriving benefit from both WR 63-9718 and 63-9751 in the waterway and the Green Strip along Riverside Drive for aesthetics, community enhancement and beauty.
16. GC is deriving benefit from both WR 63-9718 and 63-9751, from the illegal extension of the waterway through the downstream subdivisions along Riverside Drive for aesthetics, , community enhancement beauty and perhaps irrigation.
17. GC installed the locking gate at the POD for WR 63-9718.
18. GC apparently illegally constructed a POD in the Boise River for Long Lake in 2004?(Rex Barrie, site inspection, photographs).

19. GC does not appear to have a WR for the Long Lake POD?(Rex Barrie, None on IDWR website)
20. GC failed to install another outlet from Glenwood Lake to the Riverside Waterway for WR63-9751 when it constructed the POD for that WR in 2000-'01.
21. GC acquired ownership of Glenwood Lake from RVA,LP in '86? Long Lake from IFI in '98, and Westmoreland Lake from the Idaho Lands Board in '99?

IV. Resolution of Problems

Recommendations, Suggestions, Directions and Requirements by RVHOAI

Garden City has the responsibility for the perpetual maintenance and the preservation of the Riverside Waterway for the adjacent communities, by doing the following:

1. GC installs locking head gate and measuring devices on WR 63-9751-POD.
2. GC purchases annually 3.21 CFS of water from WM63 for WRs compliance.
3. GC installs an additional pipe from Glenwood Lake to waterway(ponds) for WR 63- 9751.
4. GC installs measuring devices at the POR, all waterway pumps, and any other place so designated by IDWR/WM63.
- 5 . GC maintains waterway for WR 63-9718 and WR 63-9751, including, but not limited to:
 - I. POD & Pipes.
 - II. Changes in River.
 - III. Continuous Flow through ponds to the River.
 - IV. Obstructions and blockages in the Waterway.
 - V. Noxious weeds.
 - VI. Water Quality.
 - VII. Wildlife.
 - VIII. Community beautification and aesthetics.
 - IX. Vandalism.
 - X. Compliance with Laws and Regulations governing Public Waters.
 - XI. GC will be responsible in perpetuity, for all Irrigation of all areas from the Waterway, Long Lake and GC Water, including the Greenbelt, Green Strip, Entryway and all other areas now being irrigated, for the installation and maintenance of all pumps, sprinkling systems and piping required for said irrigation and for the payment of the power expenses to operate the pumps.
6. **WR 63-9718 and WR 63-9751 ownership will be assigned by RVHOAI to GC.**
7. **All our requirements must be provided for and enforced a by a Written Contract.**

V. Alternative Actions by RVHOAI

Faced with two deadlines: 1. Construction season, October –December, for construction of POD devices in Boise River, 2. Beginning of Irrigation season 4/1/11; RVHOA has the following options if GC fails to act, because it is unable to furnish the human or financial resources:

1. Ignore IDWR WRs demands and acquiesce in the Shut Off all water to the Riverside Waterway by IDWR, and stop all irrigation.
2. Voluntary shut off all the water and stop all irrigation.
3. Abandon the WRs, and stop all irrigation.
4. Initiate an Informal Proceeding with IDWR, but the cost may be prohibitive.

Prepared and Respectfully Submitted by
Donald C. Anton
Cornel Van Dam
For Riverside Village Homeowners Association, Inc.