

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-32602

Priority: February 12, 2007

Maximum Diversion Rate: 0.48 CFS
Maximum Diversion Volume: 215.0 AF

This is to certify, that C L BUTCH OTTER
1009 S STAR RD
STAR ID 83669

has applied for a permit to appropriate water from:

Source: GROUND WATER

Tributary: BOISE RIVER

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>	<u>ANNUAL VOLUME</u>
WILDLIFE STORAGE	01/01 to 12/31		215.0 AF
AESTHETIC STORAGE	01/01 to 12/31		215.0 AF
RECREATION STORAGE	01/01 to 12/31		215.0 AF
IRRIGATION	03/01 to 11/15	0.48 CFS	

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NE1/4SW1/4	Sec. 18, Twp 04N, Rge 01W, B.M., ADA County
GROUND WATER	NE1/4SW1/4	Sec. 18, Twp 04N, Rge 01W, B.M., ADA County
GROUND WATER	L6 (NW1/4SE1/4)	Sec. 18, Twp 04N, Rge 01W, B.M., ADA County

PLACE OF USE: WILDLIFE STORAGE

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 01W 18									X					X			
														L 6			

PLACE OF USE: AESTHETIC STORAGE

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 01W 18									X					X			
														L 6			

PLACE OF USE: RECREATION STORAGE

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 01W 18									X					X			
														L 6			

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 63-32602

PLACE OF USE: IRRIGATION

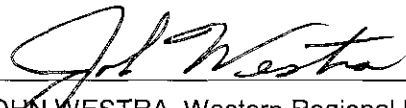
Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N 01W 18			1.1						37.6			5.1	2.1	13.0			58.9
												L 5	L 7	L 6			

Total Acres: 58.9

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **December 01, 2009**.
2. Subject to all prior water rights.
3. This right is limited to the irrigation of 24 acres within the place of use described above in a single irrigation season.
4. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
5. 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 & Boise River District.
6. Water stored under this right is subject to fluctuations of the water table caused by changes in the flow of local streams and by diversions under prior ground water rights. This right does not guarantee the maintenance of any particular ground water level.
7. This right does not authorize construction of a well.
8. To mitigate for the depletion of water and injury to senior right holders resulting from the use of this right, the right holder shall retain 31 shares representing 0.62 cfs under Pioneer Ditch Company Water Right 63-183. Moreover, the official record for Water Right 63-183 will reflect a 0.62 cfs portion to remain in the Boise River for mitigation of this right.
9. Storage is for one excavated pond not to exceed a total capacity of 215 acre feet and a total surface area of 7 acres.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 9th day of December, 2008.


 JOHN WESTRA, Western Regional Manager

TOOTHMAN-ORTON ENGINEERING COMPANY

CONSULTING ENGINEERS, SURVEYORS AND PLANNERS

9777 CHINDEN BOULEVARD

BOISE, IDAHO 83714-2008

208-323-2288 • FAX 208-323-2399

RECEIVED

DEC 24 2008

WATER RESOURCES
WESTERN REGION

December 22, 2008

Mr. John Westra, Western Regional Manager
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082

Re: Preliminary Order - Water Right Permit No. 63-32602

Dear Mr. Westra:

Thank you for your time on Dec. 19 answering my questions on the above referenced permit.

Based on our conversation, I understand approval condition #4 that requires a measuring device applies to the 0.48 cfs irrigation diversion component of the permit.

We also discussed how the permit would be modified at time of proof of beneficial use for licensing if, for some reason not known at this time, the permit holder is not able to irrigate all 24 acres authorized in the permit. I understand that the 0.48 cfs irrigation diversion in the permit would be reduced to reflect the actual irrigated acres (at 0.02 cfs/acre) and the Pioneer Ditch Company water right No. 63-183 would be administratively changed to reduce the 0.62 cfs mitigation water accordingly and revert an equal amount to irrigation diversion under water right No. 63-183. It is understood that evaporation losses in the pond will continue to be mitigated regardless of the number of acres actually irrigated at time of licensing.

Please advise if my understanding of our conversation is incorrect.

Sincerely,
Toothman-Orton Engineering Company



Steven E. Holt, P.E.

cc: C.L. "Butch" Otter

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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

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

December 9, 2008

C L BUTCH OTTER
1009 S STAR RD
STAR ID 83669

RE: Permit No. 63-32602

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.

Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should complete and submit this form immediately.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

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,

for 
John Westra
Western Regional Manager

Enclosure(s)

cc: TOOTHMAN-ORTON ENGINEERING CO

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2008 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.

63-32602

**C L BUTCH OTTER
1009 S STAR RD
STAR ID 83669**

**TOOTHMAN-ORTON ENGINEERING CO
ATTN STEVEN E HOLT PE
9777 CHINDEN BLVD
BOISE ID 83714-2008**



**Jean Hersley
Office Specialist II**

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (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 issuance 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.



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

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

December 10, 2008

Pioneer Ditch Company
PO Box 70
Star ID 83669

Rex Barrie
Boise River Watermaster
PO Box 767
Star ID 83669

Steve Holt
Toothman-Orton Engineering
9777 Chinden Blvd
Boise ID 83714

RE: Permit #63-32602 – CL Otter

Deer Parties:

Attached for reference are copies of permit #63-32602 and Pioneer Ditch Company LTD right #63-183. Right #63-183 was modified to mitigate the use of the Otter permit.

Should you have any questions please contact me at the Western Regional Office
Phone #334-2190

Sincerely,

John VanOrder
IDWR Office Specialist

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-183

WATER RIGHT NUMBER: 63-183

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	PIONEER DITCH CO LTD PO BOX 70 STAR, ID 83669 (208)286-7481

Priority Date: 06/01/1870

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
MITIGATION	03/01 to 11/15	0.680 CFS	
IRRIGATION	03/01 to 11/15	25.040 CFS	
	<u>Total Diversion:</u>	25.720 CFS	

Location of Point(s) of Diversion

BOISE RIVER	L3 (NE1/4NW1/4)	Sec. 14, Twp 04N, Rge 01W, B.M.
ADA County		

Place of Use

IRRIGATION																										
Twp Rge Sec		NE		NW		SW		SE		NE		NW		SW		SE		NE		NW		SW		SE		Totals
		NE		NW		SW		SE		NE		NW		SW		SE		NE		NW		SW		SE		

Total Acres: 1283.1

MITIGATION same as IRRIGATIONConditions of Approval:

1. 135 The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.
2. F01 WATER IS DELIVERED THROUGH THE PIONEER CANAL
3. K06 This right is limited to the irrigation of 1283.1 acres within the boundary of Pioneer Ditch Co. Ltd in a single irrigation season.
4. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
5. T07 The right holder shall accomplish the change authorized by Transfer 71198 within one year of the date of the approval.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-183

6. THIS RIGHT IS DESIGNATED NO 49 IN THE STEWART DECREE AND THE BOISE RIVER WATER MASTERS RECORDS
7. 155 This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.
8. R05 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. S45 Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.
10. F05 RIGHT NO. 63-31937 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.
11. Mitigation use in the amount of 0.06 is for the consumptive use of water under Right 63-31890.
Mitigation use in the amount of 0.62 cfs is for the consumptive use of water under Right 63-32602.
12. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

Dates and Other Information:

Decreed Date: 11/13/2007
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number: 39576
Judicial District: FIFTH
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

MEMORANDUM

TO: File

FROM: Steve Lester 

DATE: December 3, 2008

RE: Application 63-32602

The application can be approved based on mitigation provided by the Pioneer Ditch Company. See Application Attachment A for consultant's explanation of the proposed development.

Also see database comments and legal notice remarks for some details about this 1:1 pond swap plus some irrigation from shallow ground water tributary to the Boise River.

The mitigation plan includes leaving ditch shares in the river and using shallow ground water for the pond and for reduced irrigation in lieu of direct diversion from the Boise River just downstream from the Star Bridge. Mitigation was needed when the application was filed but is not necessarily required at this time. However, mitigation is useful here to replace direct use of surface water. Watermaster regulation of this new priority can be administered on the basis of the mitigation right 1870 priority (fully deliverable).

Irrigation storage/irrigation from storage is not applicable to this situation as explained in the file.

Approval will include a formal change to right no. 63-183 for the ditch company.

Suggested Conditions of Approval

1. Standard conditions.
2. Allow 1 year.
3. Watermaster controls – 01J for irrigation P/D, N/A for pond P/D since there are no diversion works to control for pond; R05 for district 63. Also see Watermaster's comments.
4. Does not authorize construction of any wells.
5. Limited to 24 acres within PPOU.

6. Mitigation condition re 63-183.

Conditions N/A

- 046, no wells
- 121, already fully mitigated
- 206, annual specific 24 acre irrigation shape would be excessive in this case
- Water bearing zone, P/D below Star.

**WATER RESOURCES
WESTERN REGION**

Account #	DTI#	Identification	Amount:
047628	389976	LEGAL NOTICE APPROPRIATE THE PUBLIC WATERS- OTTER	\$244.40
Attention:	P.O. #	Run Dates	
DENISE BUFFINGTON		SEPTEMBER 18, 25, 2008	
IDAHO DEPT. WATER RESOURCES WEST 2735 AIRPORT WY. BOISE, ID 83705			Number of Lines 3 X 42
			Affidavit 1
			Legal #

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman*, in conformity with Section 60-108, Idaho Code, as amended, for:

TWO

X	consecutive weekly		single
	consecutive daily		odd skip
insertion(s)			

beginning issue of:	SEPTEMBER	18, 2008
ending issue of:	SEPTEMBER	25, 2008

Janice Hildroth

STATE OF IDAHO)
ss

COUNTY OF ADA)

On this 25 day of SEPTEMBER n the year of 2008

before me, a Notary Public, personally appeared before me
Janice Hildreth 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 for Idaho

Residing at: Boise, Idaho

My Commission expires _____

✓ OK

LEGAL NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

63-32602

C L BUTCH OTTER

1009 S STAR RD

STAR ID 83669

Point(s) of Diversion	NESW	S18 T04N
R01W	ADA County	Source GROUND WATER

Tributary To BOISE RIVER

Point(s) of Diversion	NESW	S18 T04N
R01W	ADA County	Source GROUND WATER

Tributary To BOISE RIVER

Point(s) of Diversion	L6 (NWSE)	S18 T04N
R01W	ADA County	Source GROUND WATER

Tributary To BOISE RIVER

Use: IRRIGATION	03/01 To 11/15	0.48 CFS
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Use: WILDLIFE STORAGE	01/01 To 12/31	215 AFA
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Use: RECREATION STORAGE	01/01 To 12/31	215 AFA
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Use: AESTHETIC STORAGE	01/01 To 12/31	215 AFA
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Total Diversion: 0.48 CFS

Date Filed: 02/12/2007

Place Of Use: WILDLIFE STORAGE

T04N R01W S18 NESW NWSE Lot 6

Place Of Use: AESTHETIC STORAGE SAME AS

WILDLIFE STORAGE

Place Of Use: RECREATION STORAGE SAME AS

WILDLIFE STORAGE

Place Of Use: IRRIGATION

T04N R01W S18 SWNE NESW SESW Lot 5 NESE Lot 7 NWSE Lot 6

Number of Acres 58.9

Remark: Proposal includes shallow ground water from 1 to 40 feet deep near the Boise River for a pond covering about 7 acres and for irrigation of 24 acres in a 59 acre place of use. Mitigation is proposed for consumptive use by retiring a 31 acre equivalent of Pioneer Ditch Company shares (0.62 cfs). The shares will remain undiverted in the Boise River. The mitigation right has an 1870 priority date. The site is downstream from the Star Bridge and just west of Star Road on the north side of the river.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 10/06/2008. The protestant must also send a copy of the protest to the applicant.

DAVID R. TUTHILL, JR.,
Director

Pub. Sept.18,25, 2008

0000389976-01

✓ ok DB 10/8/08

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECOMMENDATION OF WATERMASTER

RECEIVED

SEP 23 2008

WATER RESOURCES
WESTERN REGION

Via E-mail

Application No: 63-32502

Applicant's Name: C.L. "Butch" Otter

Watermaster's Recommendation:

a) I do not oppose approval of this application

b) xxxx I do not oppose approval of this application if it is conditioned as

follows: Measurement of flow and reporting to Water

District # 63 should be required. A new account

should be created in the accounting program.

Delivery subject to Stewart decree.

c) I oppose approval of this application for the following reasons:

d) Additional Comment: _____

Dated this 23 day of September, 2008

Water District No. 63

R. R. B...
Watermaster's Signature