

Shurte, Jan

From: Ted Booth [tbooth@srba.state.id.us]
Sent: Friday, April 30, 2010 4:50 PM
To: Shurte, Jan
Subject: 63-20041

Jan, as we discussed on the phone, please insert the word "irrigation" between the words "the" and "place" in the digital boundary remark for this water right.

Ted

Done on 5-5-10.

OBJECTORS:

Bureau of Reclamation

Boise Project Board of Control

David W. Gehlert, USDOJ, Date
Attorney for Objector

Albert P. Barker Date
Attorney for Objector

RESPONDENT:

State of Idaho

Michael C. Orr Date
Attorney for Respondent

IDWR Concurrence:



Jan Shurte Date
Water Rights Supervisor



Nicholas B. Spencer Date
Deputy Attorney General
Attorney for IDWR

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-20041

NAME AND ADDRESS: BOISE CITY CANAL CO
PO BOX 2157
BOISE ID 83701-2157

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 36.370 CFS
46.440 AFY

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.

PRIORITY DATE: 06/01/1866

POINT OF DIVERSION:

T03N R02E S14 SENE Within ADA County

T03N R02E S24 NWNE Lot 1 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
AESTHETIC	03/01 11/15	6.350 CFS
DIVERSION TO STORAGE	03/01 11/15	6.350 CFS
AESTHETIC STORAGE	03/01 11/15	46.44 AFY
STOCKWATER	03/01 11/15	0.170 CFS
MUNICIPAL	03/01 11/15	0.680 CFS
IRRIGATION	03/01 11/15	29.340 CFS

Diversion for irrigation, stockwater, and municipal 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.

~~THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESW, THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE, NWSE, SWSE, SESW, THE VETERANS PARK SLOUGH POND LOCATED IN T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS DESCRIBED ABOVE.~~

H135
Jc

During March and November 1 through November 15 water may be diverted for aesthetic use at Julia Davis Pond or into storage for later use at the Pond. If during those periods measured or calculated Boise River Flows at the point of diversion are less than 240 cfs, (1) diversion of water under this right shall be limited to 1 cfs and (2) the total volume diverted shall be limited to 25 acre feet during March, and 12.5 acre feet from November 1 through November 15. Measured or calculated Boise River flows at the point of diversion shall be based on gauged Lucky Peak Dam discharge minus the gauged diversion to the New York Canal.

PLACE OF USE:

AESTHETIC in ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
<u>T03N R02E S13</u>	<u>SWNW</u>	T03N R02E S13 Lot 2	SESW
<u>T04N R02E S32</u>	<u>NESE</u>	T04N R02E S32 Lot 1	SWSE
<u>T04N R02E S32</u>	<u>SESE</u>		

AESTHETIC STORAGE in ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
<u>T03N R02E S13</u>	<u>SWNW</u>	T03N R02E S13 Lot 2	SESW
<u>T04N R02E S32</u>	<u>NESE</u>	T04N R02E S32 Lot 1	SWSE
<u>T04N R02E S32</u>	<u>SESE</u>		

STOCKWATER same as AESTHETICMUNICIPAL same as AESTHETIC1467 ACRES TOTAL 915 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 1467 915 ACRES WITHIN THE BOUNDARY OF THE BOISE CITY CANAL COMPANY

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.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

THIS RIGHT IS DESIGNATED AS NO 33 IN THE STEWART DECREE AND THE RECORDS OF THE BOISE RIVER WATER MASTER

RIGHT 63-31937 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE AS T03N, R02E, S24, NWNE, LOT 1.

THE STOCKWATER COMPONENT IS INCIDENTAL TO THE IRRIGATION COMPONENT

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 63-165K AND 63-165L WATER IS DELIVERED THROUGH THE BOISE CITY CANAL

THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESW, THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE, NWSE, SWSE, SESW, THE VETERANS PARK SLOUGH POND LOCATED IN T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS DESCRIBED ABOVE.

THE MUNICIPAL COMPONENT IS USED WITHIN THE SERVICE AREA OF UNITED WATER

NBS



CERTIFICATE OF MAILING

I certify that on _____, 2010, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
P.O. BOX 2707
TWIN FALLS, IDAHO 83303-2707

2. Copies to:

BOISE PROJECT BOARD OF CONTROL
Represented by:
ALBERT P. BARKER
1010 W. JEFFERSON, STE. 102
P.O. BOX 2139
BOISE, ID 83701-2139

BOISE CITY CANAL CO.
Represented by:
BRUCE M. SMITH
950 W. BANNOCK, STE. 520
BOISE, ID 83702

STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIVISION CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
P.O. BOX 44449
BOISE, ID 83711-4449

USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR
P.O. BOX 83720
BOISE, ID 83720-0098

Signature of person or attorney mailing the form

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-9126

WATER RIGHT NUMBER: 63-9126

Owner Type Name and Address
 Current Owner STATE OF IDAHO
 DEPT OF PARKS & RECREATION
 STATEHOUSE MAIL
 PO BOX 83720
 BOISE, ID 83720-0065
 (208)334-4199

*add a point of diversion
to BECC @ our well.*

Priority Date: 03/10/1978

Basis: Decreed

Status: Active

Source Tributary
 GROUND WATER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DIVERSION TO STORAGE	11/01 to 03/31	0.450 CFS	
RECREATION STORAGE	11/01 to 03/31		7.50 AF
IRRIGATION	03/15 to 11/15	0.280 CFS	63.00 AF
	<u>Total Diversion:</u>	0.450 CFS	70.50 AF

Location of Point(s) of Diversion

GROUND WATER NE1/4SE1/4 Sec. 32, Twp 04N, Rge 02E, B.M.
 ADA County

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	02E	32													9.0			5.0	14.0

Total Acres: 14

Conditions of Approval:

1. J01 PROPERTY IS ALSO KNOWN AS VETERANS MEMORIAL PARK.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
3. USE FOR RECREATION STORAGE INCLUDES ICE SKATING AND USE FOR WINTER WATER FOWL.
4. PARCEL NO. S0632417605.

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 63-9126

Remarks:

Comments:

Water Supply Bank:

Copy of map for Bureau
10/28/2005

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-20041
NAME AND ADDRESS: BOISE CITY CANAL CO
PO BOX 2157
BOISE ID 83701-2157

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 36.370 CFS
46.44 AFY

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.

PRIORITY DATE: 06/01/1866

POINT OF DIVERSION:
T03N R02E S14 SENE Within ADA County
T03N R02E S24 NWNE Lot 1 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
AESTHETIC	03/01 11/15	6.350 CFS
DIVERSION TO STORAGE	03/01 11/15	6.350 CFS
AESTHETIC STORAGE	03/01 11/15	46.44 AFY
STOCKWATER	03/01 11/15	0.170 CFS
MUNICIPAL	03/01 11/15	0.680 CFS
IRRIGATION	03/01 11/15	29.340 CFS

Waiting for
language from
Bureau

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.

THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESW; THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE, NWSE, SWSE, SESW; THE VETERANS PARK SLOUGH POND LOCATED IN T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS DESCRIBED ABOVE.

*Look at this
can*

PLACE OF USE:

AESTHETIC Within ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
T03N R02E S13 Lot 2	SESW	T04N R02E S32 Lot 1	SWSE

AESTHETIC STORAGE Within ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
T03N R02E S13 Lot 2	SESW	T04N R02E S32 Lot 1	SWSE

STOCKWATER same as AESTHETIC
MUNICIPAL same as AESTHETIC

915 ACRES TOTAL

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.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF ~~915~~ ¹⁴⁰⁷ ACRES WITHIN THE BOUNDARY OF THE BOISE CITY CANAL COMPANY

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

THIS RIGHT IS DESIGNATED AS NO 33 IN THE STEWART DECREE AND THE RECORDS OF THE BOISE RIVER WATER MASTER

RIGHT 63-31937 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE AS T03N, R02E, S24, NWNE, LOT 1.

THE STOCKWATER COMPONENT IS INCIDENTAL TO THE IRRIGATION COMPONENT

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 63-165K AND 63-165L

WATER IS DELIVERED THROUGH THE BOISE CITY CANAL

THE MUNICIPAL COMPONENT IS USED WITHIN THE SERVICE AREA OF UNITED WATER

TO EXP
POU



3-25-05

Mel

Nick called on Friday with two questions concerning the Boise City Canal Co. treasury shares. First, I'll explain his newest idea vs Bruce Smith's ideas:

Bruce is going on the idea that because the treasury shares were given back to the company and even though they are in the company's control it is not the fault of the company that they have not been used yet and they should still be good.

No! If the company controls, it could only be their fault for not finding new users.

Nick & Dave – not yet through Susan & Phil yet – Now looking at it that if we grant those 700 treasury shares to Boise City Canal Co., we could be setting a precedence for someone to establish a delivery entity amongst some users on the same ditch, return unused shares back to that entity, do not re-lease the shares for use by anyone else and basically set up a speculative scheme to later sell the water to others (or something like that). He has found an appealed court case dating back to 1908 in the Boise River decree proceedings that states that if shares are granted and the people turn the shares back to the company, the company does not re-lease them to new users so they are not used again, then they are lost. Because the Peiper decision did not go back and reference this case as being overturned, Nick feels he could harmonize that court case with his idea that because the shares were returned to the company and not re-leased and reused, we could not then recommend the treasury shares as valid.

So, he has two questions that he will likely call on Monday to ask you:

- 1- In the transfer for Boise City Canal Company where they changed some irrigation use to aesthetic were any of those part of the treasury shares, or was it irrigation rights being previously used (that had shares) and were given up for the aesthetic uses. I suspect they were irrigation rights with shares being used, but we need to check.

Due to aesthetic by accomplishing of use.

- 2- Were, or can you tell, if the 700 treasury shares (or any parts thereof) were turned back to the company within 5 years prior to the date the claims were filed for Boise City Canal Company. If not, then they have not yet been forfeited and that will make a difference.

Don't know - the company has not revealed this info!

We can talk about this if I don't make sense here. I tried to type this right after Nick's call and was interrupted a few times, so feel free to come see me.

Jan

- 4-1-05 - Meeting with Dave, Nick, Jan -*
- 1) *Stay with current recommendation but change season of use for municipal to 3-1 to 11-15.*
 - 2) *If the company provides proof that some treasury shares were surrendered to the company within 5 yrs of the claim date (1-2-1990) we can add one acre per share. (No forfeiture within 5 yrs of filing)*
 - 3) *Nick found a case that indicates BCCC could have to surrender some of their diversion rate. For now the excess diversion is considered carry water in their system.*

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-20041

NAME AND ADDRESS: BOISE CITY CANAL CO
PO BOX 2157
BOISE ID 83701-2157

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 36.370 CFS
46.440 AFY

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.

PRIORITY DATE: 06/01/1866

POINT OF DIVERSION:

T03N R02E S14 SENE Within ADA County

T03N R02E S24 NWNE Lot 1 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
AESTHETIC	03/01 11/15	6.350 CFS
DIVERSION TO STORAGE	03/01 11/15	6.350 CFS
AESTHETIC STORAGE	03/01 11/15	46.44 AFY
STOCKWATER	03/01 11/15	0.170 CFS
MUNICIPAL	03/01 11/15	0.680 CFS
IRRIGATION	03/01 11/15	29.340 CFS

Diversion for irrigation, stockwater, and municipal 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.

~~THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESW, THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE, NWSE, SWSE, SESW, THE VETERANS PARK SLOUGH POND LOCATED IN T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS DESCRIBED ABOVE.~~

During March and November 1 through November 15 water may be diverted for aesthetic use at Julia Davis Pond or into storage for later use at the Pond. If during those periods measured or calculated Boise River flows at the point of diversion are less than 240 cfs, (1) diversion of water under this right shall be limited to 1 cfs and (2) the total volume diverted shall be limited to 25 acre feet during March, and 12.5 acre feet from November 1 through November 15. Measured or calculated Boise River flows at the point of diversion shall be based on gauged Lucky Peak Dam discharge minus the gauged diversion to the New York Canal.

PLACE OF USE:

AESTHETIC in ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
<u>T03N R02E S13</u>	<u>SWNW</u>	T03N R02E S13 Lot 2	SESW
<u>T04N R02E S32</u>	<u>NESE</u>	T04N R02E S32 Lot 1	SWSE
<u>T04N R02E S32</u>	<u>SESE</u>		

AESTHETIC STORAGE in ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
<u>T03N R02E S13</u>	<u>SWNW</u>	T03N R02E S13 Lot 2	SESW
<u>T04N R02E S32</u>	<u>NESE</u>	T04N R02E S32 Lot 1	SWSE
<u>T04N R02E S32</u>	<u>SESE</u>		

STOCKWATER same as AESTHETIC
MUNICIPAL same as AESTHETIC

1467 ACRES TOTAL 915 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 1467 ~~915~~ ACRES WITHIN THE BOUNDARY OF THE BOISE CITY CANAL COMPANY

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.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

SF5 Right No. 63-20041

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

THIS RIGHT IS DESIGNATED AS NO 33 IN THE STEWART DECREE AND THE RECORDS OF THE BOISE RIVER WATER MASTER

RIGHT 63-31937 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE AS T03N, R02E, S24, NWNE, LOT 1.

THE STOCKWATER COMPONENT IS INCIDENTAL TO THE IRRIGATION COMPONENT

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 63-165K AND 63-165L WATER IS DELIVERED THROUGH THE BOISE CITY CANAL

THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESW; THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE, NWSE, SWSE, SESW; THE VETERANS PARK SLOUGH POND LOCATED IN T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS DESCRIBED ABOVE.

THE MUNICIPAL COMPONENT IS USED WITHIN THE SERVICE AREA OF UNITED WATER

Shurte, Jan

From: Williams, Ray
Sent: Thursday, January 21, 2010 3:57 PM
To: Albert Barker; michael.orr@ag.idaho.gov; Stanish, David; bms@msbtlaw.com; Gehlert, David (ENRD)
Cc: Spencer, Nick; Shurte, Jan
Subject: 63- 20041 (Boise City Canal)
Attachments: img-121125502.pdf; img-121162322.pdf

It was recently brought to the attention of the Department that there was a discrepancy between the description of the location of the Veterans Park set forth under the place of use element and that described in one of the explanatory remarks on the original SF5. It appears that a new SF5 will need to be circulated consistent with the attachments to this e-mail.

If you should have any questions or comments, please let us know.

Thanks,

Ray

From: Shurte, Jan
Sent: Thursday, January 21, 2010 3:24 PM
To: Spencer, Nick; Williams, Ray
Cc: Harris, Lori
Subject:

Attached is the new SF5 proposed for the Boise City Canal Co., 63-20041 right. It was brought to my attention by one of the last to sign the first SF5 that the explanatory condition concerning the 1/41/4 locations of the various aesthetic uses were not all listed in the place of use for aesthetic and aesthetic storage.

I checked the aerial imagery and clarified that we did need to add two 1/41/4s for Veteran's Park slough ponds and one 1/41/4 for a pond at Warm Springs Golf Course. These can be recognized as being the underlined 1/41/4s in the place of use for aesthetic and aesthetic storage use. Also attached are copies of the aerial maps of these locations.

If this looks suitable to you, perhaps Ray could forward this with a new cover page. You could forward this email as a warning. I would have, however, I do not have some of the email addresses needed.

These are the only changes we have made.

Thanks,
Jan

63-20041 - Veteran's Park Slough Ponds (Aesthetic use)



63-20041 - Veteran's Park Slough Ponds (Aesthetic use)



63-20041 - Veteran's Park Slough Ponds (Aesthetic use)

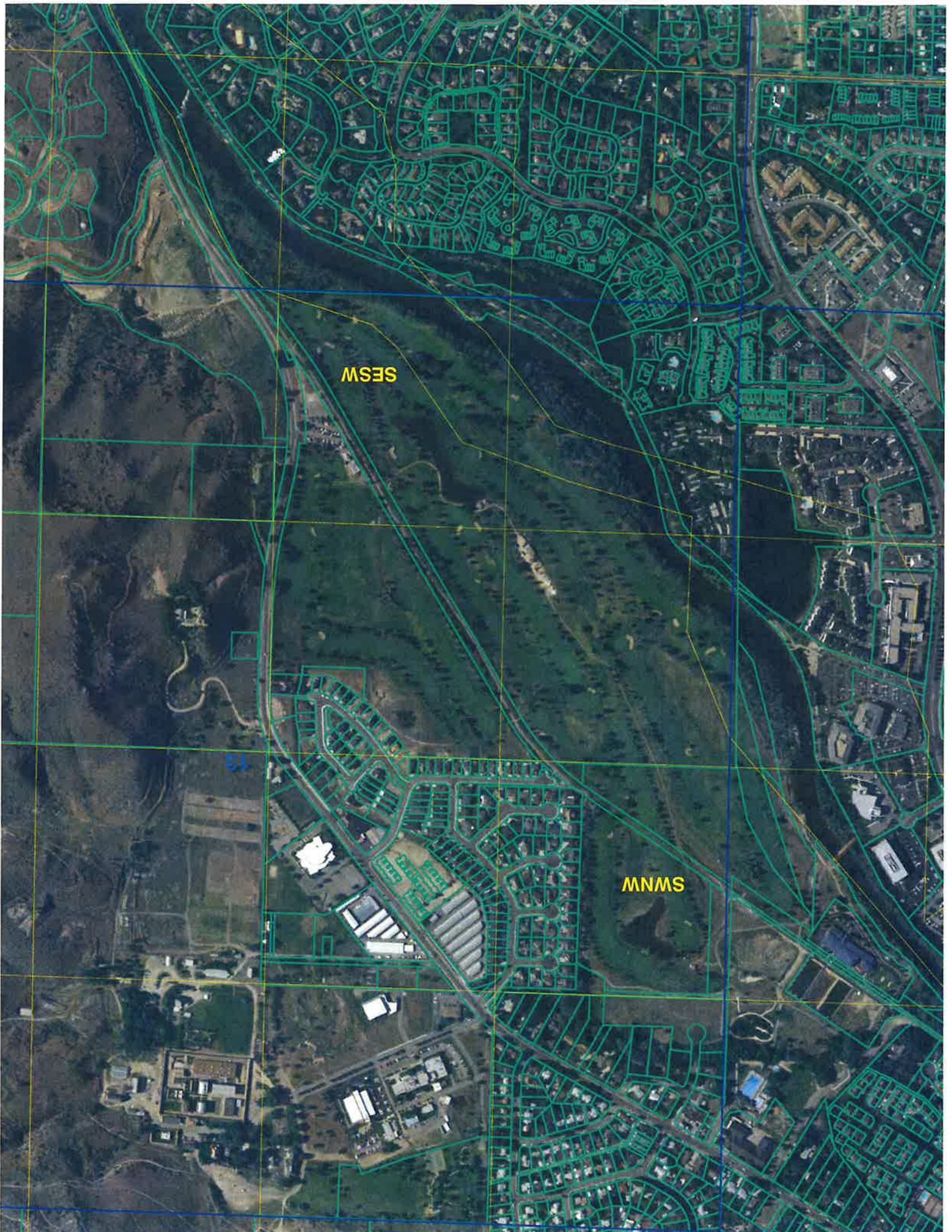


This is an aerial photograph of a landscape, likely a rural or semi-rural area, overlaid with a grid of green and blue lines. The green lines form a complex network of irregular polygons, possibly representing property boundaries or land parcels. A prominent blue line runs diagonally from the upper left towards the lower right. Another blue line runs horizontally across the middle of the image. The labels 'SWNW' and 'SESW' are placed within different sections of the map, and the number '13' is located on the right side. The terrain appears to be a mix of open fields, some buildings, and a road or path running through the center.

SWNW

13

SESW





Shurte, Jan

From: Shurte, Jan
Sent: Thursday, January 21, 2010 8:46 AM
To: Harris, Lori
Cc: Shurte, Jan
Subject: New SF5 for 63-20041
Attachments: img-121094637.pdf

Hi there,

I had a make up day yesterday and had to dart out early and quickly to get some MRI and Cat scan films to the doctor that Jutzy referred Bob to. It's been really a mind blower at our house. Bob is just barely hanging in there, not complaining, just constantly in pain. Hard to watch.

Anyway, I was hoping that you could help me with changing the SF5 for 63-20041, Boise City Canal Co. What happened is that when the AG's office got it they noticed that in the aesthetic remark we put in explanatory that we state Veteran's Park is in 3 1/41/4s and only list the one 1/41/4 in the place of use. I checked it out and it should be all 3. So, I have marked the last SF5 with the changes and what I need is a new one. It actually will not be amended since it has not made it to the SRBA Court yet.

Then, if you will email it back to me, I will send an email with it attached to all the parties that have signed it now (everyone but the AG's office) letting them know a new one is coming and why. I guess once I review it, the SF5 could just be restarted again asap since my email will be done before they get it.

What a bummer, it was almost done. I will call you in a little while to talk about my game plan for getting caught up. If that's ok with you. People seem to be in really bad moods around here today, so I'm hanging in my office.

Thanks Lori,
Jan

Ps – sounds weird now after we talked – I'm just leaving it as it was yesterday. I'm in my crazy mode I guess.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-20041

NAME AND ADDRESS: BOISE CITY CANAL CO
PO BOX 2157
BOISE ID 83701-2157

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 36.370 CFS
46.440 AFY

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.

PRIORITY DATE: 06/01/1866

POINT OF DIVERSION:

T03N R02E S14 SENE Within ADA County

T03N R02E S24 NWNE Lot 1 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
AESTHETIC	03/01 11/15	6.350 CFS
DIVERSION TO STORAGE	03/01 11/15	6.350 CFS
AESTHETIC STORAGE	03/01 11/15	46.44 AFY
STOCKWATER	03/01 11/15	0.170 CFS
MUNICIPAL	03/01 11/15	0.680 CFS
IRRIGATION	03/01 11/15	29.340 CFS

Diversion for irrigation, stockwater, and municipal 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.

~~THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESW, THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE, NWSE, SWSE, SESW, THE VETERANS PARK SLOUGH POND LOCATED IN T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS DESCRIBED ABOVE.~~

During March and November 1 through November 15 water may be diverted for aesthetic use at Julia Davis Pond or into storage for later use at the Pond. If during those periods measured or calculated Boise River Flows at the point of diversion are less than 240 cfs, (1) diversion of water under this right shall be limited to 1 cfs and (2) the total volume diverted shall be limited to 25 acre feet during March, and 12.5 acre feet from November 1 through November 15. Measured or calculated Boise River flows at the point of diversion shall be based on gauged Lucky Peak Dam discharge minus the gauged diversion to the New York Canal.

PLACE OF USE:

AESTHETIC in ADA County

T03N R02E S10 SESW

T03N R02E S10 Lot 10 SWSE

T03N R02E S13 Lot 2 SESW

T03N R02E S10 NWSE

T03N R02E S10 Lot 11 SESE

T04N R02E S32 Lot 1 SWSE

AESTHETIC STORAGE in ADA County

T03N R02E S10 SESW

T03N R02E S10 Lot 10 SWSE

T03N R02E S13 Lot 2 SESW

T03N R02E S10 NWSE

T03N R02E S10 Lot 11 SESE

T04N R02E S32 Lot 1 SWSE

STOCKWATER same as AESTHETICMUNICIPAL same as AESTHETIC1467 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 1467 945 ACRES WITHIN THE BOUNDARY OF THE BOISE CITY CANAL COMPANY

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.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

THIS RIGHT IS DESIGNATED AS NO 33 IN THE STEWART DECREE AND THE RECORDS OF THE BOISE RIVER WATER MASTER

RIGHT 63-31937 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE AS T03N, R02E, S24, NWNE, LOT 1.

THE STOCKWATER COMPONENT IS INCIDENTAL TO THE IRRIGATION COMPONENT

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 63-165K AND 63-165L

WATER IS DELIVERED THROUGH THE BOISE CITY CANAL

THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESW; THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE, NWSE, SWSE, SESW; THE VETERANS PARK SLOUGH POND LOCATED IN T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS DESCRIBED ABOVE.

THE MUNICIPAL COMPONENT IS USED WITHIN THE SERVICE AREA OF UNITED WATER

MOORE SMITH BUXTON & TURCKE, CHARTERED

ATTORNEYS AND COUNSELORS AT LAW
950 W. BANNOCK STREET, SUITE 520; BOISE, ID 83702
TELEPHONE: (208) 331-1800 FAX: (208) 331-1202 www.msbtlaw.com

LOREN W. ANDERSON
STEPHANIE J. BONNEY[≈]
SUSAN E. BUXTON^{*}
PAUL J. FITZER
JILL S. HOLINKA
BRUCE M. SMITH
PAUL A. TURCKE[°]
CARL J. WITHROE^{»*}

JOHN J. MCFADDEN *of Counsel*
MICHAEL C. MOORE[‡] *of Counsel*

» Also admitted in California
* Also admitted in Oregon
° Also admitted in South Dakota
≈ Also admitted in Utah
‡ Also admitted in Washington

October 15, 2009

Mr. Ray Williams, Paralegal
Office of the Attorney General
Natural Resources Division – Water Resources Section
P.O. Box 83720
Boise, ID 83720-0098

RECEIVED

OCT 16 2009

WATER RESOURCES
WESTERN REGION

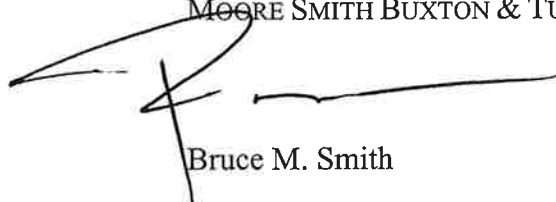
RE: SRBA Subcase No. 63-20041

Dear Mr. Williams:

Enclosed please find the SF5 in the above entitled matter which I have executed on behalf of the Boise City Canal Company. Once the SF5 has been signed by all the parties, kindly provide a copy to my office at the above address. If you have any questions or need further information, please do not hesitate to contact me.

Sincerely,

MOORE SMITH BUXTON & TURCKE, CHARTERED



Bruce M. Smith

BMS/cam
Enclosure(s)

cc: Jan Shurte
Boise City Canal Company

Copy - Orig. being routed.

COPY

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase No. 63-20041
	)	
Case No. 39576	)	
	)	STANDARD FORM 5
	)	
	)	STIPULATED ELEMENTS OF A
	)	WATER RIGHT

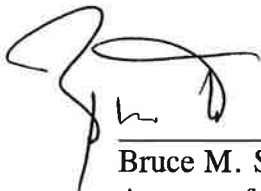
This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

CLAIMANT/OBJECTOR/RESPONDENT:

Boise City Canal Company

 10/13/09
Bruce M. Smith Date
Attorney for Claimant/Objector/Respondent

STANDARD FORM 5 – 63-20041

OBJECTORS:

Bureau of Reclamation

Boise Project Board of Control

David W. Gehlert, USDOJ, Date
Attorney for Objector

Albert P. Barker Date
Attorney for Objector

RESPONDENT:

State of Idaho

David I. Stanish Date
Attorney for Respondent

IDWR Concurrence:

 10-19-09

Jan Shurte Date
Water Rights Supervisor

 10-6-09

Nicholas B. Spencer Date
Deputy Attorney General
Attorney for IDWR

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-20041

NAME AND ADDRESS: BOISE CITY CANAL CO
PO BOX 2157
BOISE ID 83701-2157

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 36.370 CFS
46.440 AFY

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.

PRIORITY DATE: 06/01/1866

POINT OF DIVERSION:

T03N R02E S14 SENE Within ADA County

T03N R02E S24 NWNE Lot 1 Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
AESTHETIC	03/01 11/15	6.350 CFS
DIVERSION TO STORAGE	03/01 11/15	6.350 CFS
AESTHETIC STORAGE	03/01 11/15	46.44 AFY
STOCKWATER	03/01 11/15	0.170 CFS
MUNICIPAL	03/01 11/15	0.680 CFS
IRRIGATION	03/01 11/15	29.340 CFS

Diversion for irrigation, stockwater, and municipal 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.

~~THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND
CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM
SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESE,
THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE,
NWSE, SWSE, SESE, THE VETERANS PARK SLOUGH POND LOCATED IN
T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT
DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH
THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS
COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS
DESCRIBED ABOVE.~~

During March and November 1 through November 15 water may be diverted
for aesthetic use at Julia Davis Pond or into storage for later use at the
Pond. If during those periods measured or calculated Boise River Flows at
the point of diversion are less than 240 cfs, (1) diversion of water under
this right shall be limited to 1 cfs and (2) the total volume diverted shall
be limited to 25 acre feet during March, and 12.5 acre feet from November 1
through November 15. Measured or calculated Boise River flows at the
point of diversion shall be based on gauged Lucky Peak Dam discharge
minus the gauged diversion to the New York Canal.

PLACE OF USE:

AESTHETIC in ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
T03N R02E S13 Lot 2	SESW	T04N R02E S32 Lot 1	SWSE

AESTHETIC STORAGE in ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
T03N R02E S13 Lot 2	SESW	T04N R02E S32 Lot 1	SWSE

STOCKWATER same as AESTHETIC
MUNICIPAL same as AESTHETIC

1467 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 1467 ~~945~~ ACRES WITHIN THE
BOUNDARY OF THE BOISE CITY CANAL COMPANY

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.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

THIS RIGHT IS DESIGNATED AS NO 33 IN THE STEWART DECREE AND THE
RECORDS OF THE BOISE RIVER WATER MASTER

SF5 Right No. 63-20041

RIGHT 63-31937 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE AS T03N, R02E, S24, NWNE, LOT 1.

THE STOCKWATER COMPONENT IS INCIDENTAL TO THE IRRIGATION COMPONENT

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 63-165K AND 63-165L

WATER IS DELIVERED THROUGH THE BOISE CITY CANAL

THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESW; THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE, NWSE, SWSE, SESW; THE VETERANS PARK SLOUGH POND LOCATED IN T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS DESCRIBED ABOVE.

NBS
Bj

THE MUNICIPAL COMPONENT IS USED WITHIN THE SERVICE AREA OF UNITED WATER

CERTIFICATE OF MAILING

I certify that on _____, 2009, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
P.O. BOX 2707
TWIN FALLS, IDAHO 83303-2707

2. Copies to:

BOISE PROJECT BOARD OF CONTROL
Represented by:
ALBERT P. BARKER
1010 W. JEFFERSON, STE. 102
P.O. BOX 2139
BOISE, ID 83701-2139

BOISE CITY CANAL CO.
Represented by:
BRUCE M. SMITH
950 W. BANNOCK, STE. 520
BOISE, ID 83702

STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIVISION CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
P.O. BOX 44449
BOISE, ID 83711-4449

USDI BUREAU OF RECLAMATION
Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR
P.O. BOX 83720
BOISE, ID 83720-0098

Signature of person or attorney mailing the form

STATUS CONFERENCE NOTES:

RIGHT NO. 63-20041

DATE: 10-13-09

SFS is in circulation - At Bruce Smith's office today. If SFS looks right, then all will sign off on it & we'll look good on settling this 3 year old objection. All should go through OK. 90 day tickler set.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-20041

NAME AND ADDRESS: BOISE CITY CANAL CO
PO BOX 2157
BOISE ID 83701-2157

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 36.370 CFS
46.440 AFY

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.

PRIORITY DATE: 06/01/1866

POINT OF DIVERSION:

T03N R02E S14 SENE Within ADA County

T03N R02E S24 NWNE Lot 1 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
AESTHETIC	03/01 11/15	6.350 CFS
DIVERSION TO STORAGE	03/01 11/15	6.350 CFS
AESTHETIC STORAGE	03/01 11/15	46.44 AFY
STOCKWATER	03/01 11/15	0.170 CFS
MUNICIPAL	03/01 11/15	0.680 CFS
IRRIGATION	03/01 11/15	29.340 CFS

Diversion for irrigation, stockwater, and municipal 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.

~~THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND
CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM
SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESW;
THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE,
NWSE, SWSE, SESW; THE VETERANS PARK SLOUGH POND LOCATED IN
T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT
DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH
THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS
COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS
DESCRIBED ABOVE.~~

During March and November 1 through November 15 water may be diverted
for aesthetic use at Julia Davis Pond or into storage for later use at the
Pond. If during those periods measured or calculated Boise River Flows at
the point of diversion are less than 240 cfs, (1) diversion of water under
this right shall be limited to 1 cfs and (2) the total volume diverted shall
be limited to 25 acre feet during March, and 12.5 acre feet from November 1
through November 15. Measured or calculated Boise River flows at the
point of diversion shall be based on gauged Lucky Peak Dam discharge
minus the gauged diversion to the New York Canal.

PLACE OF USE:

AESTHETIC in ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
T03N R02E S13 Lot 2	SESW	T04N R02E S32 Lot 1	SWSE

AESTHETIC STORAGE in ADA County

T03N R02E S10	SESW	T03N R02E S10	NWSE
T03N R02E S10 Lot 10	SWSE	T03N R02E S10 Lot 11	SESE
T03N R02E S13 Lot 2	SESW	T04N R02E S32 Lot 1	SWSE

STOCKWATER same as AESTHETIC
MUNICIPAL same as AESTHETIC

1467 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 1467 915 ACRES WITHIN THE
BOUNDARY OF THE BOISE CITY CANAL COMPANY

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.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

THIS RIGHT IS DESIGNATED AS NO 33 IN THE STEWART DECREE AND THE
RECORDS OF THE BOISE RIVER WATER MASTER

SF5 Right No. 63-20041

RIGHT 63-31937 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE AS T03N, R02E, S24, NWNE, LOT 1.

THE STOCKWATER COMPONENT IS INCIDENTAL TO THE IRRIGATION COMPONENT

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PURPOSE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 63-165K AND 63-165L

WATER IS DELIVERED THROUGH THE BOISE CITY CANAL

THE AESTHETIC COMPONENTS OF THIS RIGHT ARE LIMITED TO AND
CONDITIONED UPON THE CONTINUED EXISTENCE OF THE PONDS AT WARM
SPRINGS GOLF COURSE LOCATED IN T03N, R02E, SEC 13, SWNW, SESW;
THE POND AT JULIA DAVIS PARK LOCATED IN T03N, R02E, SEC 10, SESE,
NWSE, SWSE, SESW; THE VETERANS PARK SLOUGH POND LOCATED IN
T04N, R02E, SEC 32, NESE, SESE, SWSE. THE AESTHETIC COMPONENT
DIVERSION RATE OF 6.35 CFS IS FOR THE FLOW OF WATER THROUGH
THE PONDS DESCRIBED ABOVE WHEN THE PONDS ARE FULL AND THIS
COMPONENT IS CONDITIONED UPON THE EXISTENCE OF THE PONDS
DESCRIBED ABOVE.

THE MUNICIPAL COMPONENT IS USED WITHIN THE SERVICE AREA OF
UNITED WATER

JOHN C. CRUDEN
Acting Assistant Attorney General
Environment and Natural Resources Division
DAVID W. GEHLERT
Natural Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
1961 Stout Street, 8th Floor
Denver, Colorado 80294
Phone: (303) 844-1386
Fax: (303) 844-1350

*See language
2ND PAGE (NEW)
SEE INSERTION BELOW*

Counsel for the United States

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase No. 63-20041
	)	
Case No. 39576	)	STIPULATION TO RESOLVE
	)	OBJECTIONS
	)	
	)	

The United States of America and the Boise Project Board of Control, Objectors, and Boise City Canal Company, Claimant, agree and stipulate to resolve the United States Department of the Interior, Bureau of Reclamation's and Boise Project Board of Control's Objections filed in the above captioned subcase as follows:

The following three paragraphs will be included under the "Purpose and Period of Use" element of any decree issued for this water right:

"Diversion for irrigation, stockwater, and municipal 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 the 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.

During March and November 1 through November 15 water may be diverted for aesthetic use at Julia Davis Pond or into storage for later use at the Pond.

NEW

If during those periods measured or calculated Boise River Flows at the point of diversion are less than 240 cfs, (1) diversion of water under this right shall be limited to 1 cfs and (2) the total volume diverted shall be limited to 25 acre-ft during March, and 12.5 acre-ft from November 1 through November 15. Measured or calculated Boise River flows at the point of diversion shall be based on gauged Lucky Peak Dam discharge minus the gauged diversion to the New York Canal

SEND
TO EXP.

The aesthetic components of this right are limited to and conditioned upon the continued existence of the ponds at Warm Springs Golf Course located in T03N, R02E, Sec 13, SWNW, SESW; the Pond at Julia Davis Park located in T03N, R02E, Sec 10 SESE, NWSE, SWSE, SESW; the Veterans Park slough pond located in T04N, R02E, Sec 32 NESE, SESE, SWSE, The Aesthetic Component diversion rate of 6.35 cfs is for the flow of water through the ponds described above when the ponds are full and this component is conditioned upon the existence of the ponds described above.

This stipulation is being filed in order to narrow the issues before the SRBA court by settling the issues between BOR, the Boise Project Board of Control and the claimant. BOR and The Boise Project will remain parties solely for the limited purpose of ensuring that this stipulation is applied appropriately in any future Standard Form 5, Special Master's Report, or Partial Decree.

This stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation. This stipulation does not create a precedent for settlement of any other disputes or objections.

This stipulation was entered into and executed voluntarily by all the parties in good faith, and without any fraud, misunderstanding, misrepresentation, duress, or undue influence.

All parties agree to bear their own costs and attorney fees.

CLAIMANT:
BOISE CITY CANAL CO.

Bruce Smith
Attorney for Claimants

DATED: _____

OBJECTOR:
UNITED STATES OF AMERICA

David Gehlert
Attorney for the United States

DATED: _____

OBJECTOR
BOISE PROJECT BOARD OF CONTROL

Albert Barker
Attorney for Boise Project Board of Control

DATED: _____

Shurte, Jan

From: Shurte, Jan
Sent: Tuesday, September 15, 2009 3:45 PM
To: Spencer, Nick
Cc: Shurte, Jan; Williams, Ray
Subject: RE: BCCC

Yes sir, please do. You're right, if the BOR and BPBC are not amenable to the aesthetic statement being in the explanatory remarks, then they do not have to sign the SF5. I'll start on this one tomorrow. OK?

Jan

From: Spencer, Nick
Sent: Tuesday, September 15, 2009 3:41 PM
To: Shurte, Jan
Subject: FW: BCCC

I think this is enough assurance to enable you to go forward with the SF-5. If Bruce should somehow be mistaken about the BOR and BPBOC we'll find out when Gehlert and/or Barker decline to sign the SF-5. Can I tell Bruce you will go to work on it? NBS

From: Bruce M. Smith [mailto:BMS@msbtlaw.com]
Sent: Tuesday, September 15, 2009 3:16 PM
To: Spencer, Nick
Subject: FW: BCCC

BOR and BUREC are ok with the aesthetics as a remark so it looks ok to prepare the sf5s that way. Think we can go forward? Bruce

From: Albert Barker [mailto:apb@idahowaters.com]
Sent: Tuesday, September 15, 2009 12:15 PM
To: Bruce M. Smith
Cc: Gehlert, David (ENRD); McGarry, Elizabeth G
Subject: RE: BCCC

Bruce –

We and Reclamation are Ok with putting with the paragraph dealing with the March and Nov 1-15 water use into a remark.

Albert P. Barker
 Barker Rosholt & Simpson LLP
 (208) 336-0700

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

From: Bruce M. Smith [mailto:BMS@msbtlaw.com]
Sent: Thursday, September 10, 2009 3:08 PM
To: Albert Barker
Subject: BCCC

Al—Your office says you are traveling so hope you might pick this up. We have resolved all issues on BCCC water rights and have accepted the language the BOR/BOC proposed except putting the aesthetic use paragraph about Julia Davis ponds as a remark rather than in the body of the water right. IDWR is ok with doing that because no other aesthetic right

9/22/2009

has been treated that way. Dave Gehlert is checking with Gail on this and says he doesn't see why it would be an issue. I would like the IDWR to prepare SF5 so we can resolve this one but we don't want anyone to be surprised by the remark. Would that be ok with you? Thanks Bruce

9/22/2009

Shurte, Jan

From: Bruce M. Smith [BMS@msbtlaw.com]
Sent: Friday, September 11, 2009 2:07 PM
To: Spencer, Nick
Cc: Shurte, Jan; Williams, Ray
Subject: RE: 63-20041 - Boise City Canal Co.

Thanks –you do great work

From: Spencer, Nick [mailto:Nick.Spencer@idwr.idaho.gov]
Sent: Friday, September 11, 2009 11:36 AM
To: Bruce M. Smith
Cc: Shurte, Jan; Williams, Ray
Subject: RE: 63-20041 - Boise City Canal Co.

Sounds like a plan. I just got off the phone with Diana Delaney. As I had thought, the trial for next week has been vacated. She says this was done on the record by SM Booth at one of the prior hearings, and because it was done on the record the court never sent out written notice. So, the next scheduled court proceeding is a continuation of the scheduling conference on October 13th. NBS

From: Bruce M. Smith [mailto:BMS@msbtlaw.com]
Sent: Thursday, September 10, 2009 3:03 PM
To: Spencer, Nick
Cc: Williams, Ray; Shurte, Jan
Subject: RE: 63-20041 - Boise City Canal Co.

Nick—I just talked to Dave Gehlert who is traveling. He doesn't think the paragraph move is a big deal but will check with Gail. Al is traveling so I will send him an email. If they are ok we can go forward with SF5. Thanks for help. I know you are busy. Bruce

From: Spencer, Nick [mailto:Nick.Spencer@idwr.idaho.gov]
Sent: Thursday, September 10, 2009 11:48 AM
To: Bruce M. Smith
Cc: Williams, Ray; Shurte, Jan
Subject: RE: 63-20041 - Boise City Canal Co.

Hi Bruce.

I am sorry to hear you are having trouble getting hold of the BOR. Actually, is it not Al Barker for the Boise Project Board of Control who has been taking the lead on the season of use objection to this right? Al is much easier to get hold of than the BOR folks tend to be.

I think you need to get Al on board with putting the "aesthetic use" descriptor in the explanatory material section of the water right description before we prepare the SF-5. The reason I suggest this is twofold: (1) I get the distinct impression that Al thinks the as-yet unsigned season of use agreement is a done deal, and if you surprise him with an SF-5 showing something different than what is contained in the agreement I would bet that his reaction is more likely to be negative than if you broach the matter to him on the phone or in an e-mail, and (2) Jan is swamped and is too busy to prepare draft SF-5s that might not get signed, so we would prefer that she not prepare the document until we have verbal agreement from all the parties as to what is to go on the SF-5 and where it is going to go.

If it will help feel free to let Al know that IDWR is on board for putting the remark in question into explanatory material for the reason that we view it as informational in nature; but that up in the purpose and period of use section it could be construed as a limitation on the aesthetic use of a nature that to my knowledge has not been imposed on any other

9/22/2009

aesthetic use rights. I'd be glad to tell Al that myself if you'd like.

Finally, I have a call into Diana Delaney at the SRBA Court about next week's trial. I am pretty sure the court intended to vacate that trial, because it has scheduled the subcase for a scheduling conference on October 13th and it makes no sense to hold a scheduling conference after the trial. I think the court simply overlooked entering an order vacating the trial and will do so when I explain the situation to Diana. I will let you know what she says.

NBS

From: Bruce M. Smith [mailto:BMS@msbtlaw.com]
Sent: Wednesday, September 09, 2009 7:58 AM
To: Shurte, Jan
Cc: Spencer, Nick; Williams, Ray
Subject: RE: 63-20041 - Boise City Canal Co.

Jan/Nick—Let's do a call to get this done. The board is agreeable to the one inch value and I have tried to reach the BOR about the aesthetic language but no word yet. I'm inclined to get the SF5 done—use the one inch—put the aesthetic language as a remark—leave the rest of BOR language as is-- and circulate. Parks and Rec are no longer an issue. What do you think? Bruce

From: Shurte, Jan [mailto:Jan.Shurte@idwr.idaho.gov]
Sent: Monday, August 31, 2009 4:11 PM
To: Bruce M. Smith
Cc: Spencer, Nick; Williams, Ray
Subject: 63-20041 - Boise City Canal Co.

Hi Bruce,

First thing I would like to tell you is that tomorrow's final pretrial conference at 10:30 for Boise City Canal Co. has been cancelled. Nick spoke with SM Booth today and considering our settlement discussions he cancelled it.

Secondly, we would like to know what has been decided amongst the Board Members from your meeting last week and Nick's email concerning the $\frac{3}{4}$ " vs the 1" per acre. It is true that it will not make a difference of acres lost when transferring the water rights. I still need some statement from the canal company concerning the fact that their shares are actually $\frac{3}{4}$ " per acre rather than 1" per acre to make that recommendation.

Lastly, Al Barker sent me a copy of the stipulation that Boise City Canal Co. entered into concerning the Purpose and Period of Use portions of the right. It shows three paragraphs with the aesthetic paragraph being one of them. It looks like we will have to leave the aesthetic paragraph as worded in the stipulation in the decreed portion of the water right after all.

We may need to have a conference call with Nick or we can set up a meeting to go over these points, whatever is convenient for you. Just let me know.

Thanks,
 Jan

9/22/2009

Shurte, Jan

From: Spencer, Nick
Sent: Thursday, September 10, 2009 11:48 AM
To: Bruce M. Smith
Cc: Williams, Ray; Shurte, Jan
Subject: RE: 63-20041 - Boise City Canal Co.

Hi Bruce.

I am sorry to hear you are having trouble getting hold of the BOR. Actually, is it not Al Barker for the Boise Project Board of Control who has been taking the lead on the season of use objection to this right? Al is much easier to get hold of than the BOR folks tend to be.

I think you need to get Al on board with putting the "aesthetic use" descriptor in the explanatory material section of the water right description before we prepare the SF-5. The reason I suggest this is twofold: (1) I get the distinct impression that Al thinks the as-yet unsigned season of use agreement is a done deal, and if you surprise him with an SF-5 showing something different than what is contained in the agreement I would bet that his reaction is more likely to be negative than if you broach the matter to him on the phone or in an e-mail, and (2) Jan is swamped and is too busy to prepare draft SF-5s that might not get signed, so we would prefer that she not prepare the document until we have verbal agreement from all the parties as to what is to go on the SF-5 and where it is going to go.

If it will help feel free to let Al know that IDWR is on board for putting the remark in question into explanatory material for the reason that we view it as informational in nature; but that up in the purpose and period of use section it could be construed as a limitation on the aesthetic use of a nature that to my knowledge has not been imposed on any other aesthetic use rights. I'd be glad to tell Al that myself if you'd like.

Finally, I have a call into Diana Delaney at the SRBA Court about next week's trial. I am pretty sure the court intended to vacate that trial, because it has scheduled the subcase for a scheduling conference on October 13th and it makes no sense to hold a scheduling conference after the trial. I think the court simply overlooked entering an order vacating the trial and will do so when I explain the situation to Diana. I will let you know what she says.

NBS

From: Bruce M. Smith [mailto:BMS@msbtlaw.com]
Sent: Wednesday, September 09, 2009 7:58 AM
To: Shurte, Jan
Cc: Spencer, Nick; Williams, Ray
Subject: RE: 63-20041 - Boise City Canal Co.

Jan/Nick—Let's do a call to get this done. The board is agreeable to the one inch value and I have tried to reach the BOR about the aesthetic language but no word yet. I'm inclined to get the SF5 done—use the one inch—put the aesthetic language as a remark—leave the rest of BOR language as is-- and circulate. Parks and Rec are no longer an issue. What do you think? Bruce

From: Shurte, Jan [mailto:Jan.Shurte@idwr.idaho.gov]
Sent: Monday, August 31, 2009 4:11 PM
To: Bruce M. Smith
Cc: Spencer, Nick; Williams, Ray
Subject: 63-20041 - Boise City Canal Co.

Hi Bruce,

First thing I would like to tell you is that tomorrow's final pretrial conference at 10:30 for Boise City Canal Co. has been cancelled. Nick spoke with SM Booth today and considering our settlement discussions he cancelled it.

9/10/2009

Secondly, we would like to know what has been decided amongst the Board Members from your meeting last week and Nick's email concerning the $\frac{3}{4}$ " vs the 1" per acre. It is true that it will not make a difference of acres lost when transferring the water rights. I still need some statement from the canal company concerning the fact that their shares are actually $\frac{3}{4}$ " per acre rather than 1" per acre to make that recommendation.

Lastly, Al Barker sent me a copy of the stipulation that Boise City Canal Co. entered into concerning the Purpose and Period of Use portions of the right. It shows three paragraphs with the aesthetic paragraph being one of them. It looks like we will have to leave the aesthetic paragraph as worded in the stipulation in the decreed portion of the water right after all.

We may need to have a conference call with Nick or we can set up a meeting to go over these points, whatever is convenient for you. Just let me know.

Thanks,
Jan

9/10/2009

Shurte, Jan

From: Bruce M. Smith [BMS@msbtlaw.com]
Sent: Wednesday, September 09, 2009 7:58 AM
To: Shurte, Jan
Cc: Spencer, Nick; Williams, Ray
Subject: RE: 63-20041 - Boise City Canal Co.

Jan/Nick—Let's do a call to get this done. The board is agreeable to the one inch value and I have tried to reach the BOR about the aesthetic language but no word yet. I'm inclined to get the SF5 done—use the one inch—put the aesthetic language as a remark—leave the rest of BOR language as is-- and circulate. Parks and Rec are no longer an issue. What do you think? Bruce

From: Shurte, Jan [mailto:Jan.Shurte@idwr.idaho.gov]
Sent: Monday, August 31, 2009 4:11 PM
To: Bruce M. Smith
Cc: Spencer, Nick; Williams, Ray
Subject: 63-20041 - Boise City Canal Co.

Hi Bruce,

First thing I would like to tell you is that tomorrow's final pretrial conference at 10:30 for Boise City Canal Co. has been cancelled. Nick spoke with SM Booth today and considering our settlement discussions he cancelled it.

Secondly, we would like to know what has been decided amongst the Board Members from your meeting last week and Nick's email concerning the $\frac{3}{4}$ " vs the 1" per acre. It is true that it will not make a difference of acres lost when transferring the water rights. I still need some statement from the canal company concerning the fact that their shares are actually $\frac{3}{4}$ " per acre rather than 1" per acre to make that recommendation.

Lastly, Al Barker sent me a copy of the stipulation that Boise City Canal Co. entered into concerning the Purpose and Period of Use portions of the right. It shows three paragraphs with the aesthetic paragraph being one of them. It looks like we will have to leave the aesthetic paragraph as worded in the stipulation in the decreed portion of the water right after all.

We may need to have a conference call with Nick or we can set up a meeting to go over these points, whatever is convenient for you. Just let me know.

Thanks,
 Jan

*Nick is going to email Bruce
 concerning contacting the BPBC
 rather than the BOR concerning
 the agreement & whether or not it is
 pending upon putting the aesthetic
 remark in app or leaving in general.*

9/9/2009

9-9-09

Shurte, Jan

From: Albert Barker [apb@idahowaters.com]
Sent: Sunday, August 30, 2009 4:57 PM
To: Shurte, Jan
Cc: Spencer, Nick; Williams, Ray
Subject: RE: Season of Use Language for Boise City Canal Co. - 63-20041
Attachments: #245889-v1-Julia_Davis_Draft_Stip_63-20041.doc

This is what I have and I understand from DOJ and BCCC it has been agreed to by all the parties. All you would need is the 3 paragraphs in the stipulation. The rest of the discussion about staying in as a party would no longer be necessary.

Albert P. Barker
Barker Rosholt & Simpson LLP
(208) 336-0700

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

From: Shurte, Jan [mailto:Jan.Shurte@idwr.idaho.gov]
Sent: Friday, August 28, 2009 10:02 AM
To: Albert Barker
Cc: Spencer, Nick; Williams, Ray
Subject: Season of Use Language for Boise City Canal Co. - 63-20041

Hi Al,

I have in my notes that the Boise Project Board of Control, BOR and Boise City Canal Co. came to a settlement on what language to use for the season of use objections. For some reason I cannot find a copy of that language – could be because this has been going on forever with other objections.

Would you please send me a copy of the stipulated language so I can include it in the SF5 when this is settled. It should be settled within the next couple of weeks, I hope.

Thanks,
Jan

8/31/2009

STATUS CONFERENCE NOTES:

RIGHT NO. 63-20041

DATE: 7-14-09

Status Conf. - 63-20041-

Druce Smith - Boise City Canal Co.

BOR - Matt Howard

Michael Orr - State of Idaho

Al Barker - Boise Project Board of Control

Basically, Nick explained that we had a settlement conf. on 6/24/09 w/ Druce Smith

✓ we had reached a settlement

[Oct. 13th at 11:30 AM. - STATUS CONF. ^{NEXT}]

at that time concerning the # of acres for this it. The senior decision which was the reason for this decision on the # of acres was challenged & interpreted as when the ~~leases~~ returned the shares to the company, then the company had control of the water, however, in this case it is treasury shares that are in the company. If they could they would have people using them, however, there have to be purchased. It was decided that the ditch company did not have control of these shares being used or not & should not be penalized for it. Also, as in Settler's

Shurte, Jan

From: Shurte, Jan
Sent: Tuesday, July 14, 2009 1:08 PM
To: Spencer, Nick
Cc: Williams, Ray
Subject: RE: BCCC

Hi Nick,

The boundaries of the ditch company encompass 2700 acres of total land. That is irrigated and all. So, at least the boundary is big enough. Some old Boise businessmen live within this ditch company's boundaries so I am sure he wants it to look as good as can be even if the outcome is the same in the end.

Jan

From: Spencer, Nick
Sent: Friday, July 10, 2009 5:28 PM
To: Shurte, Jan
Cc: Williams, Ray
Subject: FW: BCCC

fyi. What are your thoughts about increasing the acres but decreasing the per acre diversion rate? It seems to me that if we were going to agree to that we would have to put some kind of a remark in the POU and/or quantity section specifying that the per acre diversion rate is limited to 3/4ths inch per acre in order to prevent enlargement of the historic use. If we did that the right would then be crosswise with what Bruce said at our meeting was the current standard of one inch per acre. I think that what we agreed on at the meeting--the number of acres is based on an inch per acre current standard--is justifiable on the basis that it is not an enlargement in use because there was in effect an accomplished transfer that dried up acres in order to increase the per acre diversion rate on the remaining acres from 3/4ths inch to one inch per acre. But if we recognize the historic per acre diversion rate of 3/4th on an inch per acre, if they want to increase it to an inch per acre wouldn't they today need to file a transfer application to concentrate the water on fewer acres? Is my thinking out to lunch? NBS

From: Bruce M. Smith [mailto:BMS@msbtlaw.com]
Sent: Friday, July 10, 2009 5:03 PM
To: Spencer, Nick
Cc: Bruce M. Smith
Subject: BCCC

Nick—Next Tuesday I'm supposed to be out of town with my family. For the BCCC status conference can you just ask for 90 days extension so we can work out remaining detail? I talked to Jan and asked if we can use the .75"/acre figure instead of 1" for the irrigation number. That would put us at 1833 acres for irrigation. We'd keep the 6 cfs aesthetic and would put the comment in the remark section, not the decree. Bruce

7/14/2009

STATUS CONFERENCE NOTES:

RIGHT NO. 63-20041

DATE: 6-2-09

SOU OBJECTION

Season of use issue for BOR and Boise Project Board of Control w/ Boise City Canal has resolved the objections on the Season of Use. Will stipulate & remain in the case in order to make sure their language will be included in the partial decree. Will keep trial on calendar until ship comes in w/ order to vacate

David Barber because he represents Park & Rec & this aesthetic remark references the Veterans Park so he will need to continue to be a party. If the aesthetic remark is the referenced conditioned in Bruce Smith's objection.

Bruce may want a Summary Judgement One Party Subcase due to the factual nature of the # of acres. The aesthetic remark is in question also. Settlement conf. w/ Bruce, Nick, Ray, Dave B. & myself tentatively scheduled to discuss acres & shares returned to company. Scheduling conf. rescheduled to 7/14/09.

CONVERSATION MEMORANDUM

DATE: 4-21-09

WATER RIGHT NO. 63-20041

CALLER: Nick Spencer

Present status is that the objection to this right was the # of acres rather than the CFS or AF. We recommended the full amount of the decree - which would include the water for the 779 shares. Where the deduction comes is the # of acres allowed in their P94 which is 915 acres based on the company's record of 500 +/- acres being irrigated + 400 shares to United Water or 400 acres totaling 915 acres. The Ripper Decision states a ditch company can count shares that shareholders do not use, however, if the shares are returned to the ditch company to be sold, such as the 779 shares were returned to Bas City, then if the shares are not sold they could be forfeited. Trial set for 5/21/09

004 obj.
49 BOR

9/25/07

43-20041

Boise City Canal
Co's obj. & its own
water right:

Correct quantity for
the water right:

Quail Hollow Golf
Course - Involved
with the quantity
as an alternative
source - possibly
using Boise City Canal
Co Water for Quail
Hollow to get them out
of the loop in the
Whitling Edwards
~~case~~ case, plus
use some of the 779
shares?

project involving 779 shares -
not being included in this
part. Please back to Idaho Co.
for Malin memo