

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

RIGHT NUMBER: 63-2109

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
BUREAU OF RECLAMATION
REGIONAL DIRECTOR PN CODE-3100
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: MASON CREEK

TRIBUTARY: BOISE RIVER

QUANTITY: 104.800 CFS

PRIORITY DATE: 06/02/1909

POINT OF DIVERSION:

T03N R01W S34 SWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	104.800 CFS

PLACE OF USE:

69495 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.

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

Place of Use is within lands of the Nampa-Meridian Irrigation District.

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.

The name of the United States of America Acting through the Bureau of Reclamation appears in the name and address sections of this Partial Decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The Irrigation Organization (Nampa & Meridian Irrigation District) acts on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and Nampa & Meridian Irrigation District for the benefit of the landowners entitled to receive distribution of this water from Nampa & Meridian Irrigation District. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by Nampa & Meridian Irrigation District, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and Nampa & Meridian Irrigation District.

Sent to
SO 9-15-09

The source of this water right is natural flow and/or waste water in Mason Creek and does not include any water that is delivered out of the New York Canal to Nampa & Meridian Irrigation District pursuant to existing rights and/or contracts between the Claimant and Nampa & Meridian Irrigation District. The place of use for this right is the lands of Nampa & Meridian Irrigation District. This right is used by the United States to fulfill, in part, the obligation for delivery of water by the United States under existing contract(s) and no additional contract(s) or compensation is necessary for the delivery of this right to the lands of NMID.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Mason Creek Remarks (Water Right No. 63-2109)

The source of this water right is natural flow and/or waste water in Mason Creek and does not include any water that is delivered out of the New York Canal to Nampa & Meridian Irrigation District pursuant to existing rights and/or contracts between the Claimant and Nampa & Meridian Irrigation District. The place of use for this right is the lands of Nampa & Meridian Irrigation District. This right is used by the United States to fulfill, in part, the obligation for delivery of water by the United States under existing contract(s) and no additional contract(s) or compensation is necessary for the delivery of this right to the lands of NMID.

Gen

U.S. v. Pioneer Irrigation District, 2007 Ida. LEXIS 57, 157 P.3d 600 (2007); Storage Ownership language (modified).

The name of the United States of America Acting through the Bureau of Reclamation appears in the name and address sections of this Partial Decree. However, as a matter of Idaho Constitutional and Statutory Law, title to the use of the water is held by the consumers or users of the water. The Irrigation Organization (Nampa & Meridian Irrigation District) acts on behalf of the consumers or users to administer the use of the water for the landowners in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and Nampa & Meridian Irrigation District for the benefit of the landowners entitled to receive distribution of this water from Nampa & Meridian Irrigation District. The interest of the consumers or users of the water is appurtenant to the lands within the boundaries of or served by Nampa & Meridian Irrigation District, and that interest is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and Nampa & Meridian Irrigation District.

GEN

Ready for JFS

Shurte, Jan

From: Gehlert, David (ENRD) [David.Gehlert@usdoj.gov]
Sent: Friday, October 09, 2009 9:01 AM
To: Williams, Ray
Cc: Spencer, Nick; Shurte, Jan
Subject: RE: SRBA Subcase No. 63-2109 (BOR)

Ray, We just completed our review and find the SF-5 acceptable. I've signed it and it will go out in today's mail. Dave

From: Williams, Ray [mailto:Raymond.Williams@idwr.idaho.gov]
Sent: Thursday, October 08, 2009 12:34 PM
To: Gehlert, David (ENRD)
Cc: Spencer, Nick; Shurte, Jan
Subject: SRBA Subcase No. 63-2109 (BOR)

Dave,

There is a status conference coming up for this subcase on October 13, so I wanted to check in with you concerning the SF5 that I sent to you on September 16. Was the SF5 acceptable to the Bureau?

Thanks,

Ray

10/9/2009

STATUS CONFERENCE NOTES:

RIGHT NO. 63-2109

DATE: 6-9-09

BOR had a meeting w/ NMIS & the Board.

Still meeting to discuss Mason ~~that to~~ Creek as the source or Boise R.

as the source? Re-scheduled for 10-13-09.

Watch out on this one because orig. map looks like it (Reddenburg) dumps into Mason Creek mixing with the wastewater & should use the Justice language.

Plus they will need to prove that the Mason Cr. is not part of the source.

Need more time for all to look at

08/17/2006

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

RIGHT NUMBER: 63-2109
NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: MASON CREEK TRIBUTARY: BOISE RIVER

QUANTITY: 104.800 CFS

PRIORITY DATE: 06/02/1909

POINT OF DIVERSION:
T03N R01W S34 SWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	104.800 CFS

PLACE OF USE:

69467 ACRES TOTAL

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

Place of Use is within lands of the Nampa-Meridian Irrigation District.

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 - License

*Add
Attached
remarks +
underlines
No omissions*

Shurte, Jan

From: Albert Barker [apb@idahowaters.com]
Sent: Monday, August 17, 2009 3:30 PM
To: Shurte, Jan
Cc: McGarry, Elizabeth G
Subject: FW: RE: Mason Creek - 63-2109

Attachments: Mason Creek Remark4.pdf



Mason Creek
emark4.pdf (19 KB)

Jan attached is some remark language from NMID on this right that is acceptable to BOR and Board of Control. Do you want to run this by the Department and, if acceptable there, start the SF5 process?

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

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-----Original Message-----

From: Bryce Farris [mailto:bryce@ringertlaw.com]
Sent: Monday, July 20, 2009 1:51 PM
To: McGarry, Elizabeth G
Cc: David.Gehlert@usdoj.gov; Albert Barker
Subject: RE: RE: Mason Creek - 63-2109

Gail:

Thank you for the response. Attached is a revised draft of the language which incorporates BOR's additional language and continues to clarify that "no additional contract(s) or compensation is necessary for the delivery of this right to the lands of NMID." Please let me know if you have any objection to this latest draft. As always, please contact me should you have any questions. Thanks,

S. Bryce Farris
Attorney at Law
RINGERT LAW CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, ID 83701
Tel: (208) 342-4591
Fax: (208) 342-4657
bryce@ringertlaw.com

-----Original Message-----

From: McGarry, Elizabeth G [mailto:EMcgarry@usbr.gov]
Sent: Monday, July 20, 2009 12:10 PM
To: Bryce Farris
Cc: David.Gehlert@usdoj.gov; Albert Barker
Subject: Fwd: RE: Mason Creek - 63-2109

Bryce,

I have been discussing with Board of Control - We think this is considered project water and that the following clause should be inserted:

"this right is used by the United States to fulfill, in part, the obligation for delivery of water by the United States under existing contract(s)."

This would replace the following clause of your draft: "Claimant and NMID agree that there shall be no need for a contract or the payment of compensation for the delivery of this right to the lands of NMID."

We are o.k. with clause re: place of use being the Nampa and Meridian ID.

Gail

>>> "Bryce Farris" <bryce@ringertlaw.com> 3/9/2009 9:21:16 AM >>>

The recommendation currently provides that the place of use is Nampa & Meridian Irrigation District?

-----Original Message-----

From: Elizabeth McGarry [mailto:EMCGARRY@pn.usbr.gov]

Sent: Sunday, March 08, 2009 9:55 PM

To: Bryce Farris

Cc: David.Gehlert@usdoj.gov

Subject: Fwd: Mason Creek - 63-2109

Bryce, We think of that water as part of the supply for the Boise Project and thus would like the language to reflect that, rather than stating in the decree that it is earmarked for Nampa Meridian.

Gail

>>> "Bryce Farris" <bryce@ringertlaw.com> 2/19/2009 11:19 AM >>>

Gail:

Attached please find the proposed remark for the above-referenced water right. I have also included the remark relating to the 91-63 ownership decision and modified it only so that it is specific as to Nampa & Meridian Irrigation District. Please let me know if the remark is acceptable to BOR and, as always, please contact me should you have any questions.

Thanks,

S. Bryce Farris

Attorney at Law

RINGERT LAW CHARTERED

455 S. Third Street

P.O. Box 2773

Boise, ID 83701

Tel: (208) 342-4591

Fax: (208) 342-4657

bryce@ringertlaw.com

Subcase No.: 63-2109 (BOR)

DATE	TIME	ACTION	INITIAL
6-9-09	10:30	TELEPHONE STATUS CONFERENCE (SM BOOTH IN CT; DAVID NEGRI, GAIL MCGARRY, BRYCE FARRIS, AL BARKER, JAN SHURTLES, NBS).	
		SPLIT TITLE ISSUE IS NOW RESOLVED: PARTIES AND IDWR ALL AGREE US V. PIONEER SPLIT TITLE LANGUAGE CAN GO ONTO THIS RIGHT.	
		GAIL AND BRYCE NEED ADD'L TIME TO CONTINUE NEGOTIATING THE SOURCE ISSUE [NY CANAL V. MASON CREEK.]	
		AL BARKER SAYS SUBORDINATION ISSUE IS RESOLVED IN SENSE THAT IF SOURCE IS NY CANAL, SUBORDINATION LANGUAGE IS NECESSARY AND EXISTING SUBORDINATION LANGUAGE IS OKAY; IF SOURCE IS MASON CREEK, NO SUBORDINATION LANGUAGE IS NECESSARY.	
		SM SETS NEXT TSC FOR 10-13-09 @ 10:00 A.M.	