

Water Rights

Water Rights are a continuing area of concern for the Company. The laws, precedents, and rules governing them are complex. Because water is becoming progressively more valuable, the legal theories brought forward and the laws proposed are more and more sophisticated and complex. The South Boise Water Co. has rights to divert water from the Boise River for certain periods and for certain purposes. Individual shareholders have a proportionate interest in our water rights, but this interest does not allow them to divert water from the river in their own name. The company has the right to divert and the shareholder is entitled to their portion of the diverted water.

The Company diverts water for irrigation, esthetic, fish and wildlife, conveyance, and mitigation. Irrigation water is applied to the land and thus consumed. Esthetic water is diverted and observed, but is returned to the river. Fish and wildlife water is used to provide living space for aquatic animals and drinking water for land animals. Conveyance water is diverted under another entity's right, but passes through our system, because the owner does not have the physical means to get the water directly from the river. Mitigation water is left in the river by us to make up for water used by the mitigation shareholder. Mitigation shareholders are either outside our service area or use water for a purpose other than irrigation. Those outside our service area take water that would eventually enter the Boise River, and our water left in the river makes up for the water that does not get there.

The Snake River Adjudication, initiated in 1987 and completed in 2014, sets forth our various rights. Our oldest rights are dated 1864, which means that when water is short we are reduced to 60%. Theoretically we could be reduced further, but such a drought has not occurred in the history of the company.

To further protect our diversion rights we have installed a series of gauging points in Loggers Creek. We use these to show that we are using our water and not using too much. If we do not use some water for five years, we can lose it. If we take too much, we must compensate with water from Lucky Peak.

The Company owns 700 acre feet of storage space in Lucky Peak Reservoir. We make a yearly payment toward this purchase, which will complete in 2044. In addition we pay our share of operating costs. Operating costs are currently in negotiation. With other irrigation companies we are asking that flood control use of the reservoir pay its share of operating costs. We can lease our space to others who need the water. We have used this to provide extra income for the company. The risk is that if Lucky Peak does not fill the following year we will not get our full 700 acre feet. We try to save 300-400 acre feet in case of drought the following year.

This year's major challenge to our rights is a challenge to our storage of water in Lucky Peak after a flood control release. It has been the practice for the Corps of Engineers to release water early in order to have space for flood water. This was very effective last year and prevented disastrous flooding during peak flows into the system. The custom has been for the Corps to then fill the reservoir as the flood runoff comes in and to then send us water per our storage contract. The challengers claim that our contract is for the first fill. Their idea is that, if the first fill is then emptied out to prevent flooding, our water is gone. The refill water would then be someone else's. We are fighting the battle legally in alliance with other companies with storage in Lucky Peak. The issue is now at the State Supreme Court level. We hope and expect to win and have a backup plan, but the decision is not in.