

COPY

Movant: State of Idaho

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**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. 63-26877
	)	STATE OF IDAHO'S FIRST SET OF DISCOVERY
	)	REQUESTS TO UNITED STATES DEPARTMENT OF
Case No. 39576	)	AGRICULTURE, FOREST SERVICE
	)	
	)	

INTRODUCTION

This document contains the interrogatories, requests for admission, and requests for production being submitted to United States Department of Agriculture, Forest Service. These interrogatories, requests for admissions, and requests for production are made pursuant to and are governed by Rules 26, 33, 34, and 36 of the Idaho Rules of Civil Procedure.

GENERAL INSTRUCTIONS

1. Unless otherwise indicated, these interrogatories, requests for admission, and requests for production refer to the proceeding entitled: Objection to Water Right No. 63-26877.

2. These interrogatories, requests for admission, and requests for production are deemed continuing in nature, and your responses are to be supplemented as additional information and knowledge becomes available or known to you as provided in Rule 26(e) of the Idaho Rules of Civil Procedure.

3. Any reference herein to an individual, partnership, corporation, or other entity, shall include the present and past agents, employees, representatives, and assigns of that individual or entity.

4. If you withhold any information, in whole or in part, which is called for in an interrogatory, request for admission, or request for production on the ground that it is subject to attorney-client privilege or other privilege, identify each person or entity having knowledge of the basis for each claim of privilege or other objection.

5. If, for reasons other than alleged privilege, you do not provide a complete response to any interrogatory, request for admission, or request for production, state with respect to such interrogatory, request for admission, or request for production that a complete response is not provided and state the reason for the incomplete response.

6. Serve the original written answers to these interrogatories and responses to requests with a copy of the notice of serving on David J. Barber, Deputy Attorney General, Statehouse, Room 210, 700 W. Jefferson St., Boise, ID 83720.

INSTRUCTIONS FOR INTERROGATORIES

1. Provide answers to these interrogatories within fifteen (15) days of service by fully setting forth each interrogatory followed by an answer or objection to each interrogatory under oath in accordance with I.R.C.P. 33.

INSTRUCTIONS FOR REQUESTS FOR ADMISSION

1. Provide responses to these requests for admissions, within fifteen (15) days of service of the request in accordance with I.R.C.P. 36.

INSTRUCTIONS FOR REQUESTS FOR PRODUCTION

1. Please produce the documents and things for inspection and copying on the 25th day of February, 2004, at 9:00 a.m., at the Office of the Attorney General, in Room 210 of the Idaho Statehouse, 700 W. Jefferson Street, Boise, Idaho, or such other time and place as may be mutually agreed by the parties. Inspection and copying will be conducted by the undersigned attorneys or their agents and will continue from time to time and from day to day until completed.

2. If you will make the originals of the requested documents available at a subsequent time requested by the State of Idaho, upon reasonable notice, including during the administrative hearing, then the requests for production of documents may be satisfied by mailing true, correct, and legible copies of each and every requested document to David J. Barber, Deputy Attorney General, P.O. Box 44449, Boise, Idaho 83711-4449 within the prescribed time.

3. Each document requested to be produced shall be provided in a manner which preserves its sequential relationship with other documents being produced and shall include the file folder and folder tabs associated with its file location. If the file location is not apparent on the folder and tabs, the document shall be accompanied by information indicating from where the file

was taken and such additional information as is necessary to enable the State of Idaho to determine the document's original pre-production location.

4. You are requested to provide a response within fifteen (15) days of service in accordance with I.R.C.P. 34.

Definitions:

In answering these interrogatories, requests for admission, and requests for production, all terms used retain their normal meaning. The following terms, in addition to their commonly understood definitions, shall have the following meanings:

- A. The term “**data**,” as used in this document, refers to factual information such as hand and instrument measurements, recordings, estimates, tallies, reports, plans, and observations that are made, obtained from others, or in any way acquired in connection with the water sources and the water usage within the Boise River drainage basin.
- B. The term “**document**” shall be defined in the broadest possible manner and shall, at a minimum, mean any original or copy of words or information, whether produced in original or copy form by printing, typing, recording, retrieval from electronic storage, manual reproduction, or other process regardless of the form. The term “document” includes, but is not limited to, writings, agreements, communication, correspondence, electronic mail messages, reports, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, records, maps, charts, plans, drawings, sketches, photographs, graphs, notes, summaries or records of meetings, conferences or congressional hearings, summaries or reports of investigations or negotiations, opinions or reports of consultants, drafts of any document, phono-records, printouts from electronic storage or other data compilations from which information can be

obtained or translated, if necessary, by the respondent through detection devices into reasonably usable form, marginal comments appearing on any document and all other writing.

C. The term “**identify**” means:

- (1) as to documents, give the date of each such document, the addresser’s name, position, and address, the addressee’s name, position and address, any file, index or other identification number, title and general character of the document, and specify the name, address and position of the person or persons having custody and control thereof. Alternatively, the document may be appended to your answer.
- (2) as to a person, or entity, give the full name, business address and telephone number, home address and telephone number, the person’s current employment, position and duties, the person’s relationship to USFS, and the person’s educational background.
- (3) as to conversations, including telephone communications, or meetings, give:
 - a. the date, place and time such communication occurred;
 - b. the identity of each and every person between whom the communication was transmitted, who was present or who participated in the conversation, and any other person(s) who have knowledge of such communication;
 - c. the place at which such communication occurred, or in the case of telephone conversations, the location of each party; and
 - d. a detailed statement of the substance of what was discussed or what actions were taken.
- (4) as to administrative, judicial, or congressional proceedings, give:
 - a. the caption of the proceeding;

- b. the administrative or judicial tribunal or the name of congressional committee or subcommittee, including the business address and phone number; and
 - c. the date(s) a witness provided testimony.
- D. The term “**IDH&W**” refers to the Idaho Department of Health and Welfare and any agency predecessor in function, including the Idaho Department of Health.
- E. The term “**relied**,” when used in a request for all documents relied upon in the preparation of an answer or response, refers not only to documents containing information supporting the answer or response, but also all documents reviewed, obtained, or prepared by USFS or its employees, agents or contractors in the course of preparing its answer or response.
- F. The term “**USFS**” refers to the Forest Service within the U. S. Department of Agriculture, by and through its authorized agents.

INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR PRODUCTION

Request for Admission No. 1.

Admit that Attachment I is a true and correct copy of STATE OF IDAHO EASEMENT No. 2633.

Request for Admission No. 2.

Admit that the State of Idaho executed on, or about January 15, 1986, STATE OF IDAHO DEED No. 12174 to the UNITED STATES OF AMERICA.

Request for Admission No. 3.

Admit that Attachment II, except for the addition of a Bates label entitled “MAIL 53304,” is a true and correct copy of STATE OF IDAHO DEED No. 12174.

Request for Admission No. 4.

Admit that Attachment II is the only basis for the USFS claim of title to SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East B.M.

Request for Production No. 1.

If Request for Admission No. 4 is denied, please produce all documents that are the basis for the USFS claim of title to SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East B.M.

Request for Production No. 2.

Produce all documents that you contend conveyed title to you for the water rights described in the subcase no. 63-26877.

Request for Admission No. 5.

Admit that the USFS and State of Idaho, Department of Lands, jointly prepared "APPRAISAL REPORT STATE OF IDAHO NO. 7 LAND EXCHANGE ALSO KNOWN AS THORN CREEK NO. 2 FEDERAL AND NONFEDERAL LANDS BOISE AND ELMORE COUNTIES, IDAHO." A true and correct copy of the first page of this document, except for the addition of the Bates Label MAIL 63815, is attached as Attachment III.

Interrogatory No. 1.

If Request for Admission No. 5 is denied, please describe the role, if any, of the USFS in preparing the "APPRAISAL REPORT STATE OF IDAHO NO. 7 LAND EXCHANGE ALSO KNOWN AS THORN CREEK NO. 2 FEDERAL AND NONFEDERAL LANDS BOISE AND ELMORE COUNTIES, IDAHO."

Request for Admission No. 6.

Admit that the USFS described the existence of the pond that is created from the water diverted in accordance with subcase no. 63-26877 in the "APPRAISAL REPORT STATE OF IDAHO NO. 7 LAND EXCHANGE ALSO KNOWN AS THORN CREEK NO. 2 FEDERAL AND NONFEDERAL LANDS BOISE AND ELMORE COUNTIES, IDAHO."

Interrogatory No. 2.

Identify each employee with the Idaho City Office of the USFS, or of the Supervisor's Office of the Boise National Forest, that retained a copy of the "APPRAISAL REPORT STATE OF IDAHO NO. 7 LAND EXCHANGE ALSO KNOWN AS THORN CREEK NO. 2 FEDERAL AND NONFEDERAL LANDS BOISE AND ELMORE COUNTIES, IDAHO."

Request for Production No. 3.

Please produce each copy of the "APPRAISAL REPORT STATE OF IDAHO NO. 7 LAND EXCHANGE ALSO KNOWN AS THORN CREEK NO. 2 FEDERAL AND NONFEDERAL LANDS BOISE AND ELMORE COUNTIES, IDAHO" that was identified in response to Interrogatory No. 2.

Interrogatory No. 3.

Please identify the land exchange that included the transfer of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East B.M. to the USFS.

Request for Production No. 4.

Please produce all documents that are related in any way to the basis for the USFS claim of title to SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of section 16, Township 7 North, Range 7 East B.M.

Interrogatory No. 4.

Please identify all employees and all agents of the USFS who assisted the USFS in the land exchange identified in response to Interrogatory No. 2.

Interrogatory No. 5.

Please identify all employees and all agents of the USFS who have knowledge regarding the use of the SW¼SW¼NW¼ of section 16, Township 7 North, Range 7 East B.M. by the IDH&W.

Interrogatory No. 6.

Please identify any other summer camps in the Boise National Forest that the USFS regulates under special use permit.

Request for Production No. 5.

Please produce all files maintained by the USFS regarding the use of the SW¼SW¼NW¼ of section 16, Township 7 North, Range 7 East B.M. by the IDH&W.

Request for Admission No. 7.

Admit that, prior to submitting the objection to subcase no. 63-26877, the USFS had not filed an application for permit or claim to a water right for the use of water now claimed in the SRBA as subcase no. 63-26877.

Request for Admission No. 8.

Admit that the USFS has never used the water claimed in the SRBA as subcase no. 63-26877.

Request for Admission No. 9.

Admit that the USFS knew of the existence of the pond that is created from the water diverted in accordance with subcase no. 63-26877, prior to the date of January 15, 1986.

Request for Admission No. 10.

Admit that STATE OF IDAHO EASEMENT No. 2633 contains the following statement:

“It is understood and agreed that no tree will be cut except by permission of the State Land Commissioner or his authorized agent.”

Request for Admission No. 11.

Admit that IDH&W obtained the permission of the State Land Commissioner in accordance with the provision described in Request for Admission No. 11 for the felling of the trees in connection with the creation of the pond that stores water in accordance with subcase no. 63-26877.

Request for Admission No. 12.

Admit that IDH&W owned water right no. 63-26877 on January 14, 1986.

Request for Admission No. 13.

Admit that STATE OF IDAHO DEED No. 12174 did not transfer water right no. 63-26877 to the USFS.

Interrogatory No. 7.

If Request for Admission No. 14 is denied, please identify the language in STATE OF IDAHO DEED No. 12174 that you contend transferred water right no. 63-26877 to the USFS.

Interrogatory No. 8.

Identify each person whom you may rely on as a witness, expect to call as a witness, or will provide testimony of any kind during the course of this proceeding. For each person so identified, state the substance of his or her expected testimony.

Interrogatory No. 9.

Have you, your attorney(s), or anyone else on your behalf, contacted or consulted any person as an expert or consultant (whether in-house, or staff expert, or consultant, or an outside expert or consultant) in any field in any manner whatsoever with respect to the water right claim or the United States' Objection or Response thereto. This includes any person employed by you or your attorney(s) to assist in the preparation of your case, whether that person is or is not at this time expected to testify at trial. If the answer is in the affirmative, state as follows:

- a. The name, address, occupation, job title, and field of expertise for each such person contacted or consulted;
- b. The educational background, work experience, and training of each expert or consultant, retained or non-retained;
- c. The subject matter about which the expert is expected to testify;
- d. The substance of the facts and opinions about which the expert is expected to testify;
- e. The substance of any written or oral reports that were made by each expert, retained or non-retained;
- f. The nature of any field work, investigation, or inquiry made, the subject matter, and the sites investigated by each expert, retained or non-retained;
- g. Whether you intend to have the expert provide testimony as evidence at any stage in this proceeding.

Request for Production No. 6.

Produce all exhibits you may rely upon as evidence at trial and/or as evidence in support of, or in opposition to, dispositive motions.

Interrogatory No. 10.

Please describe all facts that support the USFS claim of ownership of water right no. 63-26877.

Request for Production No. 7.

Produce all documents prepared by any expert or consultant that assisted you in preparing your Objection or will form the basis of expert opinion and/or you may rely upon as fact testimony at trial, in support of dispositive motions, or in opposition to dispositive motions.

Request for Production No. 8.

Produce all documents reviewed by any expert that did form a basis for your Objection or may form the basis for opinion or fact testimony by an expert that you may rely upon at any stage of this proceeding.

Request for Production No. 9.

Produce a detailed resume or *curriculum vitae* for any expert or consultant that you identified in your response to Interrogatory Number 6.

Request for Production No. 10.

Produce all documents that relate in any way to the USFS administration of the following: (i) State Idaho Easement No. 2633 and (ii) Camp Ee-Da-How summer organizational camp.

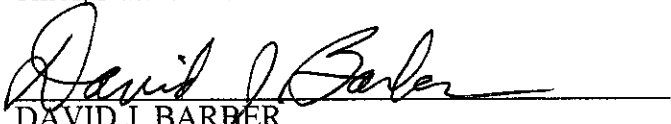
Interrogatory No. 11.

Identify each person who provided information for, or participated in the preparation of the responses to these discovery requests, and identify the specific discovery requests or parts thereof, for which each such person provided information.

DATED this 10th day of February 2004.

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division


DAVID J. BARBER
Deputy Attorney General

ATTACHMENT I

STATE OF IDAHO EASEMENT
No 2633

THIS INDENTURE, made this 22nd day of August, 1962, by and between the STATE OF IDAHO, acting by and through the State Board of Land Commissioners as the party of the first part, and the STATE OF IDAHO, acting by and through the State Department of Health, as the party of the second part;

WITNESSETH: That for and in consideration of the sum of ONE and 00/100 dollar (\$1.00), lawful money of the United States of America, receipt whereof is hereby acknowledged, the party of the first part does hereby grant to the party of the second part an easement for the purpose of constructing and maintaining a recreation area for the Nampa State School of Nampa, Idaho, over and across the following described lands situated in Boise County, State of Idaho, to-wit:

SW1/4NW1/4, Section 16, Township 7 North, Range 7 East, Boise Meridian, containing 10 acres, more or less.

It is understood and agreed that no tree will be cut except by permission of the State Land Commissioner or his authorized agent.

It is also further understood and agreed that in the event the herein described lands are not used for the herein specified purposes for any five year period, the State Board of Land Commissioners may declare such right of way forfeited and the use of the lands will revert back to the State of Idaho or to the record owner of the lands.

IN WITNESS WHEREOF, the State Board of Land Commissioners has caused these presents to be executed by its President, the Governor of the State of Idaho, and countersigned by the Secretary of State of Idaho and the State Land Commissioner of the State of Idaho.

Countersigned

Arnold Williams
Secretary of State

O. J. Buxton
State Land Commissioner

State of Idaho)
County of Ada) ss

STATE BOARD OF LAND COMMISSIONERS

Robert E. Smylie
Governor of the State of Idaho and
President of the State Board of
Land Commissioners

On this 11 day of Sept, 1962, before me, a notary public in and for said State, personally appeared Robert E. Smylie, known to me to be the Governor of the State of Idaho and President of the State Board of Land Commissioner, Arnold Williams, known to me to be the Secretary of State, and O. J. Buxton, known to me to be the State Land Commissioner, that executed the said instrument and acknowledged to me that such State Board of Land Commissioners and State of Idaho executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last written above

McL. Samblin
Notary Public residing at Boise, Idaho

My commission expires March 5, 1963.

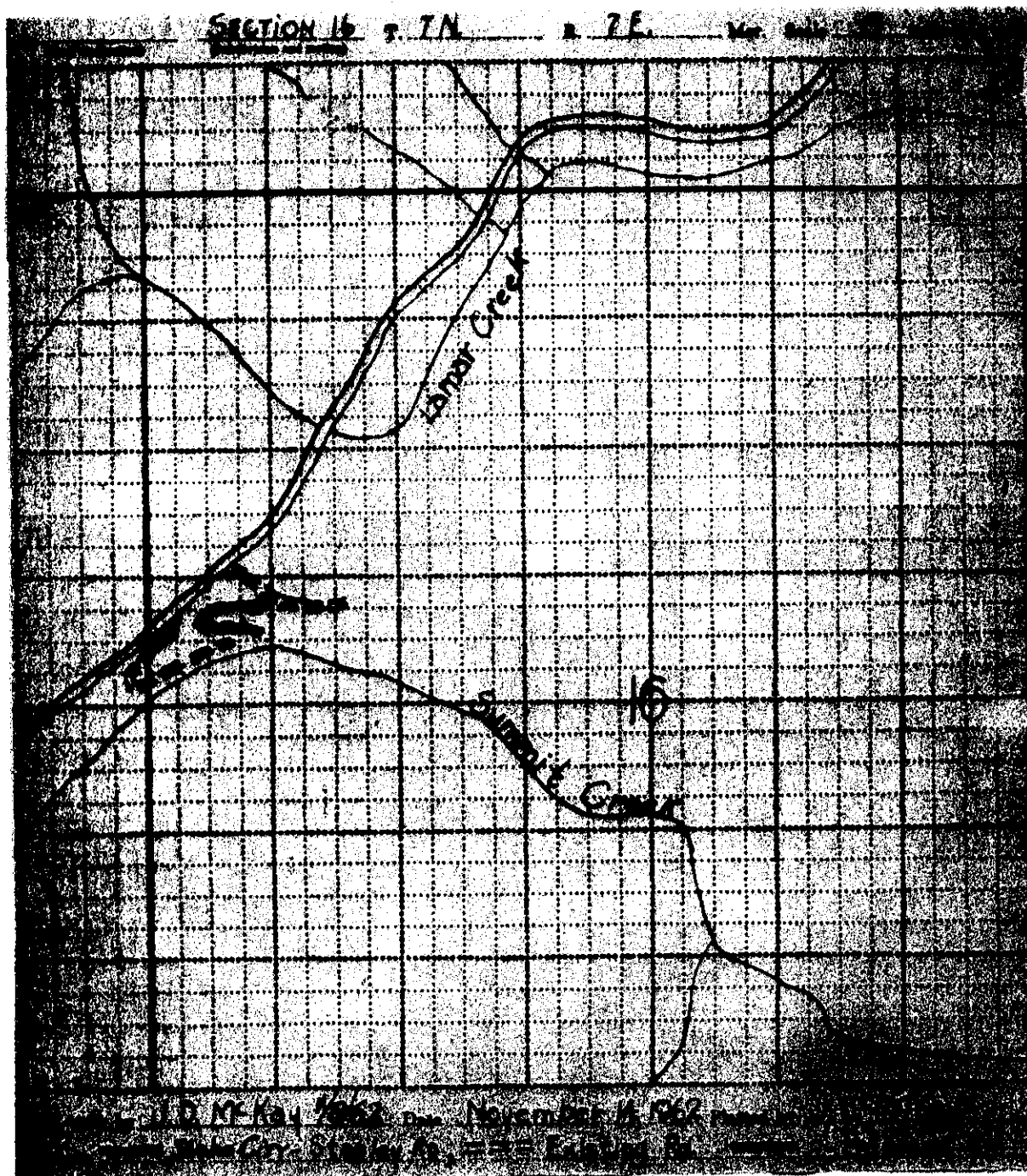
APPENDAGE TO EASEMENT 2633

In granting Easement 2633 to the State of Idaho Board of Health the fact that an access road was need was overlooked and provision for same was omitted from the instrument. This requires only a narrow right of way for a short distance to afford access to the camp area. A plat of the said access road is attached hereto and is hereby made a part of Easement 2633.

STATE OF IDAHO DEPARTMENT OF PUBLIC LANDS

BY: O. J. Burton
State Land Commissioner

April 12, 1963.



ATTACHMENT II

APPRAISAL REPORT
STATE OF IDAHO NO. 7 LAND EXCHANGE
ALSO KNOWN AS THORN CREEK NO. 2
FEDERAL AND NONFEDERAL LANDS
BOISE AND ELMORE COUNTIES, IDAHO

Appraised Jointly:

Boise Appraisal Team - U.S. Forest Service - Region 4
Idaho Department of Lands

ATTACHMENT III

STATE OF IDAHO DEED

No. 12174

For and in consideration of the exchange of National Forest System land by conveyance from the UNITED STATES OF AMERICA to the STATE OF IDAHO of certain lands to-wit: Lots 1, 2 except State Highway 21 Survey, Lots 7, 8 except State Highway 21 Survey, Lots 9, 10 and 12, SE1/4NE1/4, SE1/4SW1/4 in Section 25; that portion of Lot 5 south and east of Mineral Survey 1629, except State Highway 21 Survey in Section 26; E1/4NE1/4, less Mineral Survey 1629 in Section 35, Township 5 North, Range 4 East, Boise Meridian; S1/4NW1/4, E1/4SW1/4, S1/4SE1/4 in Section 2; SE1/4NE1/4, E1/4NE1/4SE1/4, E1/4NW1/4NE1/4SE1/4, SE1/4SE1/4 in Section 3; N1/4NE1/4 in Section 10; E1/4NW1/4NE1/4, S1/4NE1/4, W1/4NW1/4, N1/4SE1/4 in Section 11; SE1/4NE1/4 less Mineral Survey 2106 in Section 18; SW1/4NE1/4, S1/4NW1/4, NE1/4SW1/4, NW1/4SE1/4 in Section 28; N1/4N1/4, SE1/4NE1/4 in Section 29; S1/4NE1/4, SE1/4NW1/4, NE1/4SW1/4, NE1/4SE1/4 in Section 30, Township 5 North, Range 5 East, Boise Meridian, containing 1,677.84 acres, more or less, in Boise County, State of Idaho, under the provisions of the Act of Congress of March 1, 1911, as amended (16 U.S.C. 516), the Act of Congress of October 21, 1976 (90 Stat. 2743: 43 U.S.C. 1716), and in accordance with Section 58-138, Idaho Code, The State of Idaho does bargain, sell, convey and quitclaim unto the UNITED STATES OF AMERICA and its assigns the following described real property located in Boise and Elmore Counties, State of Idaho:

Township 1 South, Range 8 East

Section 16: Lot 5

Township 6 North, Range 5 East

Section 21: E1/4

Section 27: SW1/4NW1/4

Section 28: E1/4, N1/4NW1/4, SE1/4NW1/4, NE1/4SW1/4

Township 7 North, Range 7 East

Section 16: SW1/4NE1/4NE1/4, S1/4SE1/4NE1/4NE1/4,
NW1/4NE1/4, S1/4NE1/4, NW1/4,
NE1/4SW1/4, SE1/4

containing 1,349.50 acres, more or less. Acquiring agency is the Forest Service, Department of Agriculture.

TO HAVE AND TO HOLD the above-described premises and parcels of land and granted real property unto the said United States of America and its assigns forever, subject only to the following:

1. Rights-of-way thereon reserved to the United States for ditches and canals constructed by the authority of the United States (Act of August 30, 1890; 26 Stat. 391; U.S.C. 945) on all lands.

2. State of Idaho Easement No. 384 granted to State of Idaho, and its assigns, on March 20, 1933, for highway purposes, a strip of land two hundred (200) feet in width, and traversing the NE1/4NW1/4, and W1/4NW1/4 of Section 16, Township 7 North, Range 7 East, 8.M.

MAIL



53304

3. State of Idaho Easement No. 1097 granted to Idaho Power Company on June 2, 1952 for distribution line purposes, a strip of land twenty (20) feet in width, and traversing the N $\frac{1}{4}$ N $\frac{1}{4}$, SE $\frac{1}{4}$ N $\frac{1}{4}$, and E $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 6 North, Range 5 East, B.M.

4. State of Idaho Easement No. 2633 granted to State of Idaho, acting by and through the State Department of Health on August 22, 1962 for the purpose of constructing and maintaining a recreation area and access road for Nampa State School being described as the SW $\frac{1}{4}$ SW $\frac{1}{4}$ N $\frac{1}{4}$ of Section 16, Township 7 North, Range 7 East, B.M.

5. State of Idaho Easement No. 2718 granted to the United States of America, and its assigns on August 29, 1963, for road purposes, a strip of land 66 feet in width, and traversing the NE $\frac{1}{4}$, NE $\frac{1}{4}$ N $\frac{1}{4}$ and SW $\frac{1}{4}$ N $\frac{1}{4}$ of Section 16, Township 7 North, Range 7 East, B.M.

6. State of Idaho Easement No. 4303 granted to Mountain States Telephone and Telegraph Company on September 21, 1972, for underground telephone cable purposes, a strip of land ten (10) feet in width, and traversing the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 6 North, Range 5 East, B.M.

IN WITNESS WHEREOF, I JOHN V. EVANS, the Governor of the State of Idaho, have hereunto signed my name and caused the Great Seal of the State of Idaho and the Seal of the Board of Land Commissioners to be hereunto affixed, this 15th day of January, 1986.


Governor of Idaho and President of the
State Board of Land Commissioners

COUNTERSIGNED:


Secretary of State

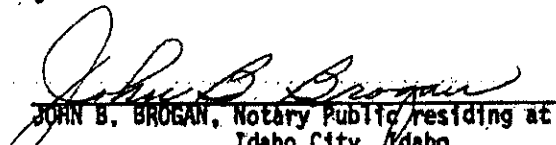


COUNTERSIGNED:


Director, Department of Lands
DFM

STATE OF IDAHO }
County of Ada } ss.

On this 15th day of January, in the year 1986, before me a Notary Public in and for said State, personally appeared JOHN V. EVANS, known to me to be the Governor of the State of Idaho, and PETE T. CENARRUSA, known to me to be the Secretary of State of the State of Idaho, and STANLEY F. HAMILTON, known to me to be the Director of the Department of Lands of the State of Idaho, who executed said instrument and acknowledged to me that such State of Idaho executed the same.


JOHN B. BROGAN, Notary Public residing at
Idaho City, Idaho

My Bond expires August 25, 1986.