

RECEIVED**APR 23 2001**

Department of Water Resources

**AGREEMENT OF WATER RIGHT OWNERS
REGARDING MUD LAKE WATER DELIVERY**

This Agreement, entered into between Mud Lake Water Users Inc., Dobson Ranch Partnership, Level Canal Company, Jalene and Keith Shuldberg, husband and wife, Van and Joan Burtenshaw, husband and wife, Don and Beverly Burtenshaw, husband and wife and Independent Water Users of Mud Lake, Inc. and all of their successors in interest ("Parties"), is made in reference to the following facts:

RECITALS

- A. Mud Lake is a natural lake located in Basin 31 as designated by the Idaho Department of Water Resources (IDWR), near the town of Mud Lake, Idaho. The storage capacity of the lake has been increased by construction of a dike raising the level of the water body. Mud Lake serves as a storage reservoir for certain water rights that are listed on Attachment "A" hereto. The Parties to this Agreement represent the entirety of water right owners who own water rights delivered from Mud Lake; who own surface water rights stored and delivered from Mud Lake; and who own ground water rights that are pumped into and delivered from Mud Lake.
- B. The Parties have filed claims in the Snake River Basin Adjudication and enter into this Agreement in order to preserve and clarify the historical delivery practice of water from Mud Lake upon which they have all relied.
- C. The water rights that are affected by this Agreement are listed in Attachment "A" hereto and incorporated herein by this reference.

- D. The historical practice contained in this Agreement originated from two prior court decrees, *Suave v. Abbott*, Equity Decree No. 635 (D. Idaho 1931) and *Owsley Canal Co. v. Bauerle*, Decree No. 1739 (Jefferson County Ct. 1940).

AGREEMENT

The Parties agree and stipulate to the delivery of Mud Lake water as described below.

1. Statement of Purpose

The purpose of this Agreement is to memorialize the historical practices of distributing water from Mud Lake. This Agreement shall apply to all water rights diverted or rediverted out of Mud Lake reflected in the water rights list attached as Attachment "A".

2. Definitions

The parties specifically acknowledge, understand and agree to the formulas, foundations, calculations and conclusions set out and described within these Definitions under Section 2 of this Agreement.

A. Mud Lake: For purposes of this Agreement, Mud Lake is defined as Mud Lake or its tributaries at points affected by the backwaters of Mud Lake which includes Mud Lake and Camas Creek downstream of township 7 north, range 35 east section 25, southwest quarter of the southwest quarter of the southeast quarter.

B. Divertable Volume: Water in Mud Lake above the elevation of 4773.99 feet, National Geodetic Vertical Datum of 1929.

C. Allotment Sheet: An accounting system consisting of the following: (1)

"Allotment" section which records volumes deliverable to holders of surface water rights; (2) "Well Balance" section which records volumes deliverable to holders of ground water rights; and (3) "Inflow/Outflow Accounting" section, which records evaporation and other losses, inflows, outflows, and mass-balance calculations. (See Attachment "B" as an Example)

D. Early Season Pumped Ground Water: Ground water diverted to storage in Mud Lake prior to May 1, under water right numbers: 31-332, 31-11339, 31-11429, 33-11430, 31-11432 under a plan approved by the Watermaster. The amount of water diverted is accounted for in the Well Balance section of the Allotment Sheet.

E. Provisional Allotment: The Provisional Allotment is the volume of water anticipated to be deliverable to holders of surface water rights diverted from Mud Lake. This is computed as the Divertable Volume of Mud Lake on May 1, less Early Season Pumped Ground Water contributions, plus water delivered prior to May 1, plus the anticipated natural inflows to Mud Lake for the current irrigation season.

F. Final Allotment: The Final Allotment is the actual volume of water deliverable to holders of surface water rights diverted from Mud Lake. This is computed as the Divertable Volume of Mud Lake on May 1, less Early Season Pumped Ground Water contributions, plus water delivered prior to May 1, plus the actual natural inflows to Mud Lake from May 1 to the date of the calculation of the Final Allotment. The Final Allotment is calculated when natural inflows to

Mud Lake from Camas Creek have ceased and no further natural inflows are anticipated from Camas Creek.

G. Individual Allotment: The portion of the Provisional or Final Allotment allocated to an individual water user, according to the priority date and the sum of the volume of his/her surface water rights diverted out of Mud Lake.

H. Individual Allotment Balance: The Individual Allotment less the volume of withdrawals (including withdrawals made prior to May 1) and the cumulative total of the proportionate share of losses to date charged against the allotment.

I. Well Balance: The volume of stored water in Mud Lake that has been added to Mud Lake from ground water from May 1 to November 1 or that has been added to Mud Lake from Early Season Pumped Ground Water.

J. Individual Well Balance: The portion of the Well Balance allocated to an individual water user according to the additions made from that user's well(s), under that user's ground water right(s) less the volume of withdrawals (including withdrawals made prior to May 1) and the cumulative total of the proportionate share of losses charged against the allotment.

K. Positive Balance: An Individual Allotment Balance or Individual Well Balance with a value greater than zero.

L. Watermaster: The individual defined by Idaho Code § 42-605.

3. Terms

The Parties voluntarily enter into this Agreement regarding the delivery of water from Mud Lake. Water District 31 through the Watermaster shall deliver water from Mud

Lake as follows:

- A. Maintain an Allotment Sheet to show the ownership of Individual Allotment water and Well Balance water. Well Balances shall be recorded beginning with the date when pumping of wells is first authorized or May 1, whichever is earlier. Allotment Balances shall be computed beginning May 1. The Allotment Sheet shall be maintained through November 1.
- B. Account for ground water flowing without pumping into Mud Lake after November 1 and prior to May 1 as natural inflow to Mud Lake. This amount of ground water shall not be carried in any Well Balance or Individual Well Balance. Owners of wells capable of flowing without pumping into Mud Lake shall allow such wells to flow subject to the discretion and control of the Watermaster, and shall allow such water to accumulate in Mud Lake, prior to May 1 and after October 31.
- C. Credit all ground water from wells, whether artesian or pumped, delivered through Mud Lake from May 1 to November 1, to the Individual Well Balance of the water user owning the well(s) and ground water right(s) under which the water is diverted.
- D. Credit Early Season Pumped Ground Water to the Individual Well Balance(s) of the water user(s) owning the well(s) and water right(s) 31-332, 31-11339, 31-11429, 31-11430, and 31-11432.
- E. Calculate on May 1 of each year, the Provisional Allotment and allocate the Provisional Allotment to the Individual Allotments of water rights. Record the

Individual Allotments on the Individual Allotment Balance section of the Allotment Sheet. Adjust every fifteen days after May 1 the Individual Allotment Balances according to records of evaporation and other losses, and records of diversions. At the same time adjust the Well Balance and Individual Well Balances according to records of evaporation and other losses, measured ground water inflows, and records of diversions.

F. Maintain records of natural inflows to Mud Lake from Camas Creek.

Recalculate every fifteen days after May 1 the Provisional Allotment and Individual Allotments if necessary to correspond to actual natural inflows and revised anticipated natural inflows.

G. Calculate the Final Allotment at such time as Camas Creek ceases to contribute water to Mud Lake, and no further contributions are anticipated in the current irrigation season, and recalculate the Individual Allotments.

H. Recalculate the Provisional or Final Allotment and Individual Allotments at such time that all Individual Allotments cannot be completely filled, to prevent injury to holders of senior surface water rights.

I. Proportion every fifteen days after May 1 all evaporation and other losses according to the volume of water recorded in each respective Individual Allotment Balance or Individual Well Balance and charge these losses against the Individual Allotment Balance or Individual Well Balance.

J. Positive Balances shall not be carried forward past November 1.

K. Inadvertent overdrafts of Individual Allotments or Individual Well Balances

identified at the end of the irrigation season shall be carried forward to the subsequent irrigation season's Allotment Sheet and charged against the Individual Allotment Balance or Individual Well Balance on May 1. Overdrafts of Individual Allotments or Individual Well Balances are not authorized.

L. The water user(s) shall not withdraw more than 35 percent of the Individual Allotment in any calendar month if the Watermaster under the direction of IDWR determines that injury will occur to other water users. All Allotment water, whenever used, including water used prior to May 1 and after September 1, shall be charged against the water user's Individual Allotment Balance.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding on the date following their respective signatures.

MUD LAKE WATER USERS, INC.

Gerald Messerli 4-17-01
Gerald Messerli, President Date signed

DOBSON RANCH PARTNERSHIP

Andy Dobson 4-17-01
Andy Dobson, Partner Date Signed

LEVEL CANAL COMPANY

Wilfried Schmitt 4-17-01
Wilfried Schmitt, President Date signed

JALENE SHULDBERG

Jalene Shuldberg 4-17-01
Jalene Shuldberg Date signed

KEITH SHULDBERG

Keith Shuldberg 4-17-01
Keith Shuldberg Date signed

JOAN BURTENSHAW

Joan Burtenshaw 4/17/01
Joan Burtenshaw Date signed

VAN BURTENSHAW

Van Burtenshaw 4/17/01
Van Burtenshaw Date signed

BEVERLY BURTENSHAW

Beverly Burtenshaw 4-17-01
Beverly Burtenshaw Date signed

DON BURTENSHAW

Don Burtenshaw 4-17-01
Don Burtenshaw Date signed

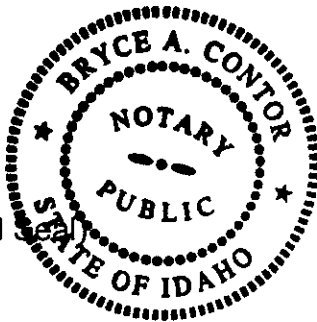
INDEPENDENT WATER USERS OF MUD LAKE, INC.

Andy Dobson 4-17-01
Andy Dobson, President Date signed

ACKNOWLEDGMENTS

STATE OF IDAHO)
) ss.
County of Felimon)

I, Bryce A. Contor, a notary public, do hereby certify on this 17th day of April, 2001, personally appeared before me **Gerald Messerli** who, being by me first duly sworn, declared that he is the President of Mud Lake Water Users, Inc. and that he signed this **AGREEMENT OF WATER RIGHT OWNERS REGARDING MUD LAKE WATER DELIVERY** in his official capacity, and that the statements contained herein are true.

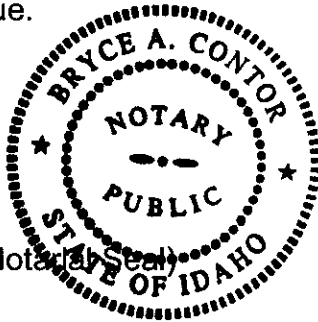


(Notarial Seal)

Bryce A. Contor
Notary Public for Idaho
Residing at Mud Lake ID
My Commission expires 10/14/2005

STATE OF IDAHO)
) ss.
County of Felimon)

I, Bryce A. Contor, a notary public, do hereby certify on this 17th day of April, 2001, personally appeared before me **Andy Dobson** who, being by me first duly sworn, declared that he is a Partner of Dobson Ranch Partnership and that he signed this **AGREEMENT OF WATER RIGHT OWNERS REGARDING MUD LAKE WATER DELIVERY** in his official capacity, and that the statements contained herein are true.

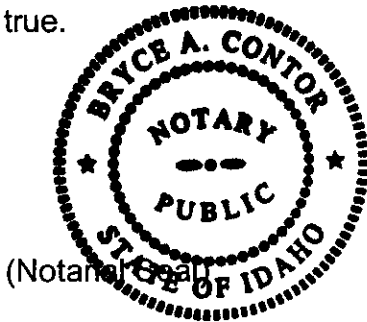


(Notarial Seal)

Bryce A. Contor
Notary Public for Idaho
Residing at Mud Lake ID
My Commission expires 10/14/2005

STATE OF IDAHO)
) ss.
County of Teton)

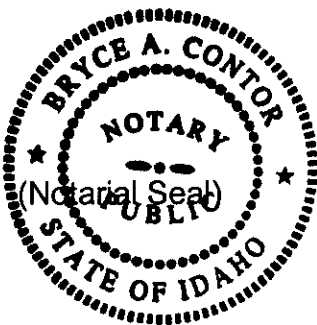
I, Bryce A. Contor, a notary public, do hereby certify on this 17 day of April, 2001, personally appeared before me **Wilfried Schmitt** who, being by me first duly sworn, declared that he is the President of Level Canal Company and that he signed this **AGREEMENT OF WATER RIGHT OWNERS REGARDING MUD LAKE WATER DELIVERY** in his official capacity, and that the statements contained herein are true.



Bryce A. Contor
Notary Public for Idaho
Residing at Mud Lake ID
My Commission expires 10/14/05

STATE OF IDAHO)
) ss.
County of Teton)

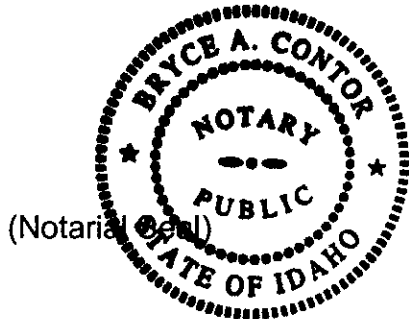
I, Bryce A. Contor, a notary public, do hereby certify on this 17th day of April, 2001, personally appeared before me **Jalene Shuldborg** who, being by me first duly sworn, signed this **AGREEMENT OF WATER RIGHT OWNERS REGARDING MUD LAKE WATER DELIVERY**, and declared that the statements contained herein are true.



Bryce A. Contor
Notary Public for Idaho
Residing at Mud Lake ID
My Commission expires 10/14/05

STATE OF IDAHO)
) ss.
County of Teton)

I, Bryce A. Contor, a notary public, do hereby certify on this 17th day of April, 2001, personally appeared before me **Keith Shuldborg** who, being by me first duly sworn, signed this **AGREEMENT OF WATER RIGHT OWNERS REGARDING MUD LAKE WATER DELIVERY**, and declared that the statements contained herein are true.



Bryce A. Contor
Notary Public for Idaho
Residing at Mud Lake ID
My Commission expires 10/14/2005

STATE OF IDAHO)
) ss.
County of Teton)

I, Bryce A. Contor, a notary public, do hereby certify on this 17th day of April, 2001, personally appeared before me **Joan Burtenshaw** who, being by me first duly sworn, signed this **AGREEMENT OF WATER RIGHT OWNERS REGARDING MUD LAKE WATER DELIVERY**, and declared that the statements contained herein are true.



Bryce A. Contor
Notary Public for Idaho
Residing at Mud Lake ID
My Commission expires 10/14/2005

STATE OF IDAHO)
) ss.
County of Idaho)

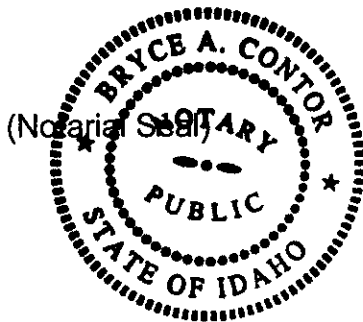
I, Bryce A. Contor, a notary public, do hereby certify on this 17 day of April, 2001, personally appeared before me **Van Burtenshaw** who, being by me first duly sworn, signed this **AGREEMENT OF WATER RIGHT OWNERS REGARDING MUD LAKE WATER DELIVERY**, and declared that the statements contained herein are true.



Bryce A. Contor
Notary Public for Idaho
Residing at Mud Lake ID
My Commission expires 10/14/2005

STATE OF IDAHO)
) ss.
County of Idaho)

I, Bryce A. Contor, a notary public, do hereby certify on this 17th day of April, 2001, personally appeared before me **Beverly Burtenshaw** who, being by me first duly sworn, signed this **AGREEMENT OF WATER RIGHT OWNERS REGARDING MUD LAKE WATER DELIVERY**, and declared that the statements contained herein are true.



Bryce A. Contor
Notary Public for Idaho
Residing at Mud Lake ID
My Commission expires 10/14/2005

STATE OF IDAHO)
County of Clark) ss.

I, Bryce A. Contor, a notary public, do hereby certify on this 17th day of April, 2001, personally appeared before me **Don Burtenshaw** who, being by me first duly sworn, signed this **AGREEMENT OF WATER RIGHT OWNERS REGARDING MUD LAKE WATER DELIVERY**, and declared that the statements contained herein are true.



Bryce A. Contor
Notary Public for Idaho
Residing at Mud Lake ID
My Commission expires 12/14/2005

STATE OF IDAHO)
County of _____) ss.

I, Bryce A. Contor, a notary public, do hereby certify on this 17th day of April, 2001, personally appeared before me **Andy Dobson** who, being by me first duly sworn, declared that he is the President of Independent Water Users of Mud Lake, Inc. and that he signed this **AGREEMENT OF WATER RIGHT OWNERS REGARDING MUD LAKE WATER DELIVERY** in his official capacity, and that the statements contained herein are true.



Bryce A. Contor
Notary Public for Idaho
Residing at Mud Lake ID
My Commission expires 12/14/2005

ATTACHMENT A
TO AGREEMENT OF WATER RIGHT OWNERS
REGARDING MUD LAKE WATER DELIVERY

1. Surface Water Rights Stored In Mud Lake

31	5
31	6
31	19
31	26
31	27
31	34
31	35
31	36
31	37
31	38
31	52
31	65
31	104
31	105
31	134
31	135
31	143
31	144
31	147 A
31	159
31	162
31	163
31	166
31	168
31	169
31	184
31	185
31	186
31	187
31	188
31	189
31	190
31	191
31	192
31	206
31	207
31	208
31	209
31	210
31	211
31	212 A
31	213
31	232
31	237
31	243

31	263
31	344
31	345
31	354
31	355
31	360
31	361
31	363
31	7005
31	10957
31	10958
31	10959
31	10960
31	10961
31	10962
31	11335
31	11337

2. Ground Water Rights Stored In Mud Lake

31	332
31	11339
31	11429
31	11430
31	11432

3. Ground Water Irrigation Rights Delivered Through Mud Lake

31	327
31	328
31	329
31	330
31	331
31	336 B
31	337 B
31	371
31	2239
31	2265
31	2289
31	2290
31	2297
31	2310
31	2317 A
31	2317 B
31	2321
31	2332
31	2341
31	2342
31	2343

31	2344
31	2345
31	2358
31	7005
31	10965 A

200

[illegible]



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

ALAN G. LANCE
April 4, 2001

Mud Lake Water Users, Inc.
C/O Kent Foster
Holden Kidwell Hahn & Crapo
PO Box 50130
Idaho Falls, ID 83405

VIA Email to kfoster@holdenlegal.com

Level Canal Company
C/O Wilfried Schmitt
HC 63 Box 2585
Montevideo ID 83435

Dobson Ranch Partnership
HC 69 Box 2610
Hamer ID 83425

Jalene and Keith Shuldborg
1785 N 1800 E
Hamer ID 83425

Indepedent Water Users of Mud Lake, Inc.
C/O Keith Shuldborg
1785 N 1800 E
Hamer ID 83425

Don and Beverly Burtenshaw
1603 N 1000 E
Terreton, ID 83450

Van and Joan Burtenshaw
1698 N 1300 E
Terreton ID 83450

Dear Claimants:

Enclosed is a draft of the Agreement of Mud Lake Water Owners
Regarding Mud Lake Water Delivery. Please review the document carefully and

discuss it with your attorney. I would like to have full agreement between the water right owners on this Agreement no later than April 19th, 2001 in order to allow the Department to meet its April deadline for filing its Director's Report with the SRBA Court.

The signatories to the agreement are based on information that the Idaho Department of Water Resources has at this time, if there has been a change in who may bind the different entities please let me know as soon as possible.

Thank you for your prompt attention to this matter. If you have any questions please call me at (208) 327-5404.

Very Truly Yours,


Candice M. McHugh
Deputy Attorney General

Enclosures

cc: Greg Shenton, Watermaster
Don Parker, Level Canal Company

DRAFT 4/4/01

AGREEMENT OF WATER RIGHT OWNERS REGARDING MUD LAKE WATER DELIVERY

This Agreement, entered into between Mud Lake Water Users Inc., Dobson Ranch Partnership, Level Canal Company, Jalene and Keith Shuldberg, husband and wife, Van and Joan Burtenshaw, husband and wife, Don and Beverly Burtenshaw, husband and wife and Independent Water Users of Mud Lake, Inc. and all of their successors in interest ("Parties"), is made in reference to the following facts:

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of the Final Allotment. The Final Allotment is calculated when natural inflows to Mud Lake from Camas Creek have ceased and no further natural inflows are anticipated from Camas Creek.

G. Individual Allotment: The portion of the Provisional or Final Allotment allocated to an individual water user, according to the priority date and the sum of the volume of his/her surface water rights diverted out of Mud Lake.

H. Individual Allotment Balance: The Individual Allotment less the volume of withdrawals (including withdrawals made prior to May 1) and the cumulative total of the proportionate share of losses to date charged against the allotment.

I. Well Balance: The volume of stored water in Mud Lake that has been added to Mud Lake from ground water from May 1 to November 1 or that has been added to Mud Lake from Early Season Pumped Ground Water.

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K. Positive Balance: An Individual Allotment Balance or Individual Well Balance with a value greater than zero.

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- C. Credit all ground water from wells, whether artesian or pumped, delivered through Mud Lake from May 1 to November 1, to the Individual Well Balance of the water user owning the well(s) and ground water right(s) under which the water is diverted.
- D. Credit Early Season Pumped Ground Water to the Individual Well Balance(s) of the water user(s) owning the well(s) and water right(s) 31-332, 31-11339, 31-11429, 31-11430, and 31-11432.
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Individual Allotments on the Individual Allotment Balance section of the Allotment Sheet. Adjust every fifteen days after May 1 the Individual Allotment Balances according to daily records of evaporation and other losses, and daily records of diversions. At the same time adjust the Well Balance and Individual Well Balances according to daily records of evaporation and other losses, daily measured ground water inflows, and daily records of diversions.

F. Maintain daily records of natural inflows to Mud Lake from Camas Creek. Recalculate every fifteen days after May 1 the Provisional Allotment and Individual Allotments if necessary to correspond to actual natural inflows and revised anticipated natural inflows.

G. Calculate the Final Allotment at such time as Camas Creek ceases to contribute water to Mud Lake, and no further contributions are anticipated in the current irrigation season, and recalculate the Individual Allotments.

H. Recalculate the Provisional or Final Allotment and Individual Allotments at such time that all Individual Allotments cannot be completely filled, to prevent injury to holders of senior surface water rights.

I. Proportion every fifteen days after May 1 all evaporation and other losses according to the volume of water recorded in each respective Individual Allotment Balance or Individual Well Balance and charge these losses against the Individual Allotment Balance or Individual Well Balance.

J. Positive Balances shall not be carried forward past November 1.

K. Inadvertent overdrafts of Individual Allotments identified at the end of the

irrigation season shall be carried forward to the subsequent irrigation season's Allotment Sheet and charged against the Individual Allotment Balance or Individual Well Balance on May 1. Overdrafts of Individual Allotments are not authorized.

L. The water user(s) shall not withdraw more than 35 percent of the Individual Allotment in any calendar month if the Watermaster under the direction of IDWR determines that injury will occur to other water users. All water, whenever used, including water used prior to May 1 and after September 1, shall be charged against the water user's Individual Allotment Balance.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding on the date following their respective signatures.

MUD LAKE WATER USERS, INC.

Gerald Messerli, President Date signed

DOBSON RANCH PARTNERSHIP

Andy Dobson, Partner Date Signed

LEVEL CANAL COMPANY

Wilfried Schmitt, President Date signed

JALENE SHULDBERG

Jalene Shuldberg Date signed

KEITH SHULDBERG

Keith Shuldberg Date signed

JOAN BURTENSHAW

Joan Burtenshaw Date signed

VAN BURTENSHAW

Van Burtenshaw Date signed

BEVERLY BURTENSHAW

Beverly Burtenshaw Date signed

DON BURTENSHAW

Don Burtenshaw Date signed

INDEPENDENT WATER USERS OF MUD LAKE, INC.

Andy Dobson, President Date signed

ATTACHMENT A
TO AGREEMENT OF WATER RIGHT OWNERS
REGARDING MUD LAKE WATER DELIVERY

1. Surface Water Rights Stored In Mud Lake

31	5
31	6
31	19
31	26
31	27
31	34
31	35
31	36
31	37
31	38
31	52
31	65
31	104
31	105
31	134
31	135
31	143
31	144
31	147 A
31	159
31	162
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31	210
31	211
31	212 A
31	213
31	232
31	237
31	243

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31	360
31	361
31	363
31	7005
31	10957
31	10958
31	10959
31	10960
31	10961
31	10962
31	11335
31	11337

2. Ground Water Rights Stored In Mud Lake

31	332
31	11339
31	11429
31	11430
31	11432

3. Ground Water Irrigation Rights Delivered Through Mud Lake

31	327
31	328
31	329
31	330
31	331
31	336 B
31	337 B
31	371
31	2239
31	2265
31	2289
31	2290
31	2297
31	2310
31	2317 A
31	2317 B
31	2321
31	2332
31	2341
31	2342
31	2343

31	2344
31	2345
31	2358
31	7005
31	10965 A