



State of Idaho

## DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: [www.idwr.state.id.us](http://www.idwr.state.id.us)

EASTERN REGION

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

October 25, 2004

HAROLD JONES  
4 BIRCH CREEK RD  
RIGBY ID 83442

RE: New Recommendation on Claims #25-56E & 25-61A

Dear Harold:

Included with this letter are two new Preliminary Director's Reports for your water rights from Willow Creek. These reports replace the two reports you received in August of this year. You may recall at the public meeting held September that Max Cooper and John Moore insisted they historically received Willow Creek water thru Progressive Irrigation District by exchanging it with Snake River water from the Anderson Canal. They indicated that your predecessor, Mr. Durtschi, also received Willow Creek water based on exchange for at least a portion of your property. Information we subsequently received from Progressive Irrigation District revealed Mr. Durtschi was historically billed for 0.64 cfs (32 miners inches) of exchange water. To reflect this historical practice I have modified the recommendations for 25-56E and 25-61A. The new recommendation for 25-56E describes the exchange and a place of use in T03N R39E Sec11 SWSW. While the new recommendation for 25-61A indicates diversion directly Willow Creek with a place of use in T03N R39E Sec14 NW. The layouts attached to each report illustrate the place of use.

After a careful review of each Preliminary Director's Report complete the Notice Error Reply and return it to this office. If you have questions feel free to call me.

Respectfully,

Ernest Carlsen  
Water Rights Supervisor

Enclosures (4)  
emc

EXHIBIT A

# DEPARTMENT OF WATER RESOURCES

Claim No.: 25-61A



0 1320 2640 3960 5280 6600 Feet

- Point of diversion.shp
- Place of use.shp
- Township/Range
- Sections
- QQ



GIS Place of Use Illustration  
1987/1988 NAPP Photography  
Prepared by: E. Carlsen  
Date: October 2004

STATE OF IDAHO            )  
                              ) ss.  
County of Bonneville    )

ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 1979, before me,  
the undersigned a Notary Public in and for said State, personally  
appeared STANLEY COOPER and BERTHA COOPER, husband and wife, known  
to me to be the persons whose names are subscribed to the within and  
foregoing instrument and acknowledged to me that they executed  
the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
my official seal the day and year in this certificate first above  
written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at Idaho Falls, Idaho  
My Commission Expires:

(SEAL)

STATE OF IDAHO            )  
                              ) ss.  
County of Bonneville    )

ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 1979, before me, the  
undersigned, a Notary Public in and for said State, personally  
appeared GLORA DEAN DURTSCHI and A. H. DURTSCHI, husband and wife,  
known to me to be the persons whose names are subscribed to the  
within and foregoing instrument and acknowledged to me that they  
executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
my official seal the day and year in this certificate first above  
written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at Idaho Falls, Idaho  
My Commission Expires:

(SEAL)

## AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_ day of September, 1979, by and between the PROGRESSIVE IRRIGATION DISTRICT, hereinafter referred to as the "District", and ALFRED MOORE and LUCILLE MOORE, husband and wife, STANLEY COOPER and BERTHA COOPER, husband and wife, and A. H. DURTSCHI and GLORA DEAN DURTSCHI, husband and wife, hereinafter collectively referred to as the "Waterusers",

## WITNESSETH:

WHEREAS, the Waterusers own certain decreed water rights in Willow Creek for use on their lands in Bonneville County, Idaho, which said water rights are more particularly described on Exhibit A which is attached hereto and made a part hereof; and,

WHEREAS, the District owns and operates a system of canals located near Waterusers' lands in Bonneville County Idaho; and,

WHEREAS, it has been more convenient for the Waterusers to take water for use on their lands from the District's canals rather than from Willow Creek; and,

WHEREAS, the District has been satisfied to allow the Waterusers to take their water out of the District's canal so long as the Waterusers left their decreed water in Willow Creek for use by the District; and,

WHEREAS, the parties wish to formalize this practice, to establish a fair charge to be paid by Waterusers to the District for the service provided by the District in delivering water for the Waterusers' use and to provide for a periodic review thereof;

NOW, THEREFORE, for and in consideration of the mutual terms and conditions contained herein, the parties hereto do hereby agree as follows:

STATE OF IDAHO            )  
                              ) ss.  
County of Bonneville    )

ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of PROGRESSIVE IRRIGATION DISTRICT, the corporation that executed the within and foregoing instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at Idaho Falls, Idaho  
My Commission Expires:

(SEAL)

STATE OF IDAHO            )  
                              ) ss.  
County of Bonneville    )

ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 1979 before me, the undersigned, a Notary Public in and for said State, personally appeared ALFRED MOORE and LUCILLE MOORE, husband and wife, known to me to be the persons whose names are subscribed to the within and foregoing instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at Idaho Falls, Idaho  
My Commission Expires:

(SEAL)

1. TERM:

That the terms of this Agreement shall commence as of the date hereof, and, except as otherwise provided herein, shall terminate on the 31st day of December, 1983.

2. WILLOW CREEK RIGHTS:

That Waterusers shall not divert any of their water right in Willow Creek, which is described in Exhibit A, during the term of this Agreement.

3. USE OF WILLOW CREEK RIGHTS:

That the District may divert and use Waterusers' Willow Creek water right, which is described in Exhibit A, during the term of this Agreement.

4. DELIVERY TO WATERUSERS:

That the District will deliver an amount of water equal to Waterusers' water described on Exhibit A to the Waterusers' lateral ditch headgate on a prorata basis equal to that of members of the District, e.g., if water being delivered to District members must be reduced by 10% then the water delivered by the District to the Waterusers will similarly be reduced by 10%.

5. PAYMENT:

That Waterusers shall pay the District for its service an amount equal to 20% of the charge assessed by the District against its members, and the same shall be payable by the Waterusers at the times and in the manner prescribed by law for District members.

6. TERMINATION:

That either party may terminate this Agreement by giving the other party written notice of his intention to do so no earlier than October 1, 1983, and no later than December 31, 1983. In the event neither party terminates this Agreement in the manner prescribed

Stanley Cooper

Bertha Cooper

A. H. Durtschi

Gloria Dean Durtschi

WATERUSERS

above, the same shall continue for an additional term of 5 years on the same terms and conditions as contained herein, with the exception that notice of termination must be given between October 1st and December 31st of the final year of the extended term.

7. NOTICE:

That any and all notices and payments required under the terms of this Agreement may be given by District to Waterusers in care of the following name and address:

and any notices and payments required by this Agreement to be given or made by Waterusers to District may be given and made in care of the following name and address:

The Progressive Irrigation District  
P. O. Box 2093  
Idaho Falls, Idaho 83401

or at any other address subsequently furnished in writing by either party. All such notices shall be by certified mail, postage prepaid, and shall be deemed given as of the date of their postmark.

8. WAIVER:

That waiver by District of any breach of any term or condition herein contained shall not be deemed to be a waiver of such term or condition or any subsequent breach of the same or any other term or condition herein contained.

9. ASSIGNMENT:

That Waterusers shall not assign this Agreement, nor any interest herein, without the prior written consent of the District. The District shall not unreasonably withhold such consent to assignment.

10. ATTORNEY'S FEES:

That in the event of default or breach by either party and the other party is required, in the exercise of reasonable

business judgment, to bring an action for enforcement of this Agreement, the party successful in any such action shall be entitled to a reasonable attorney's fee, together with expenses and costs of the action.

11. NO ADVERSE RIGHTS:

That neither party shall acquire any right to the property of the other except as prescribed in this Agreement, i.e., by performing in accordance with the terms and conditions of this Agreement the District shall acquire no adverse right to Waterusers' Willow Creek water, and the Waterusers shall acquire no adverse right to carry water in the District's canal system.

12. BINDING EFFECT:

That all of the terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of all heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

THE PROGRESSIVE IRRIGATION DISTRICT

By \_\_\_\_\_  
Its:

THE DISTRICT

\_\_\_\_\_  
Alfred Moore

\_\_\_\_\_  
Lucille Moore