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DEPARTMENT OF
WATER RESOURCES

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TELEPHONE 436-4717
FAX 436-6804

BRENT T. ROBINSON
JASON D. WALKER

KELLY ARTHUR ANTHON
MICHAEL P. TRIBE

ROGER D. LING, OF COUNSEL

LING, ROBINSON & WALKER

ATTORNEYS AT LAW
615 "H" STREET
P. O. BOX 396
RUPERT, IDAHO 83350-0396

June 2, 2005

Susan Hamblin Nygard
Deputy Attorney General
Department of Water Resources
The Idaho Water Center
322 E. Front St.
P. O. Box 83720
Boise, ID 83720-0098

RE: **Burley Irrigation District SRBA Claims to
Water Right Nos. 01-0211B, 01-0214B, and 01-0007**

Dear Susan:

As we discussed over the telephone, most of the issues involved in the above claims have been resolved. For instance, it has been agreed by Burley Irrigation District to accept 47,818 acres within its place of use, even though many of its records show the project with 48,000 to 49,000 irrigable acres. Issues unresolved include the quantity of the natural flow rights under 01-0211B and 02-0214B. These rights originated from natural flow rights obtained by the Bureau of Reclamation for the Minidoka Project, consisting of Minidoka Irrigation District and Burley Irrigation District. A portion of these rights was conveyed to Burley Irrigation District when we completed a title transfer of the project and the distribution of works of the project. Another issue is the limitation of acres in the Preliminary Recommendation for Water Right No. 01-0211B to 34,563 acres. We believe that the place of use under this right should be the entire acres irrigated. I have enclosed an explanation of our position for your consideration. A summary of my concerns are as follows:

Water Right No. 01-0211B

The quantity of this right should be 1,200 cfs from an original right of 1,726 cfs divided between Burley Irrigation District and Minidoka Irrigation District. I have proposed a remark to show that when the two districts demands are greater than 1,726 cfs, combined, Burley Irrigation District's right will be reduced by an amount equal to Minidoka Irrigation District's demands above their portion of the right, but not a reduction greater than 38% of the 1,726 cfs.

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Place of Use: I have enclosed a short review of certain documents that I think justify showing the place of use as 47,818 acres. This has historically been used for that many acres, and it would disrupt things considerably if it were necessary to make a beneficial use claim for the additional acres. This does not constitute an enlargement or expansion claim in my view.

Water Right No. 01-0214B

I have enclosed a draft of remarks to be attached to this right, which should have a quantity of 544 cfs. I believe corrections have been made as to the points of diversion to include areas where water is pumped directly from the Snake River to serve lands of Burley Irrigation District, which border the Snake River, and the total acres shown as the place of use.

Water Right No. 01-0007

I believe all of the issues have been resolved on this claim, which is a right awarded under the Eagle Decree.

Please contact me if you have any questions.

Very truly yours,


Roger D. Ling

RDL:jb

encs

Water Right No. 01-0211B

Quantity:

This right should be for 1,200 cfs from the Snake River with a priority of March 26, 1903, for use on the lands of Burley Irrigation District. (1200 cfs of 1726 cfs per Deed from U.S.) The right is subject to a remark or other provision, which should provide:

The diversions under this right and Water Right No. 01-0211A shall not exceed 1,726 cfs. If the demands of Burley Irrigation District and the United States Department of the Interior, Bureau of Reclamation, for and on behalf of the North Side Division of the Minidoka Project (Minidoka Irrigation District) for diversions under this right and Water Right No. 01-0211A exceed 1,726 cfs or the flows then available under these rights, the right to divert water under this right by Burley Irrigation District will be reduced to meet the demands of Minidoka Irrigation District for water under this right, but the right under such condition shall not be reduced to less than 38% of the flows then available under this right and Water right No. 01-0211A.

Place of Use:

This right should be limited to the irrigation of 47,818 acres within the place of use described in a single irrigation season, not the 34,563 acres shown in the Preliminary Recommendation. The place of use is justified under the following:

1. The right to use natural flow right of 1726 cfs for the irrigation of all irrigable lands within the Burley Irrigation District and Minidoka Irrigation District. was established by Water License No. 66 granted to the Secretary of Interior by the State Engineer of the State of Idaho on December 20, 1912. The license states in part: “. . . I hereby grant this license to the United States Reclamation Service in trust for the use and benefit of all parties who have established or who may hereafter establish a right to participate in such use and benefit, confirming a perpetual water right dating from March 26, 1903, to the use of 1726 cubic feet per second of time, or so much thereof as may be necessary for irrigation and domestic purposes, . . .” (Emphasis added.)
2. This right to use this natural flow right upon the lands within Minidoka Irrigation District and Burley Irrigation District was confirmed by the Foster Decree of June 20, 1913, Right No. 3, in which the court decreed: “. . . the Secretary of the Interior is hereby awarded the use of the water of the natural flow of the Snake River diverted at Minidoka Dam for use upon the lands lying in the Minidoka Project under the canals of the Minidoka Project in Minidoka and Cassia Counties, Idaho, in the following amount from the following date: 1726 second feet from March 26, 1903, hereby designated as the right No. 3.” (Emphasis added.)

The Foster Decree further provides in part: “It is further ORDERED, ADJUDGED AND DECREED that the rights and priorities hereinbefore determined and awarded be and the same are each of them quieted and confirmed as against each and every party hereto; and furthermore that each and all claims to the waters of the Snake River by each or all aforesaid parties adverse to the rights herein awarded and determined, be and they are hereby held for nought and such parties forever barred from asserting same.”

Water Right No. 01-0214B

Quantity:

This right should be for 544 cfs from the Snake River with a priority of August 6, 1908, for use on the lands of Burley Irrigation District. The right is subject to a remark or other provision, which should provide:

The diversions under this right and Water Right No. 01-0214A shall not exceed 1,000 cfs. If the demands of Burley Irrigation District and the United States Department of the Interior, Bureau of Reclamation, for and on behalf of the North Side Division of the Minidoka Project (Minidoka Irrigation District) for diversions under this right and Water Right No. 01-0214A exceed 1,000 cfs or the flows then available under these rights, the right to divert water under this right by Burley Irrigation District will be reduced to meet the demands of Minidoka Irrigation District for water under this right, but the right under such condition shall not be reduced to less than 38% of the flows available under this right and Water Right No. 01-0214A.