United States Department of the Interior

BUREAU OF RECLAMATION
Snake River Area Office
214 Broadway Avenue
Boise, Idaho 83702-7298

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Department of Water Resource
Southern Region

IN REPLY
REFER TO:

PN-3248

December 27, 1999

Subject: Review of Draft Environmental Assessment -- Proposed Burley Irrigation District Facilities Title Transfer

Dear Reviewer:

Enclosed for your review and comment is a copy of the DRAFT ENVIRONMENTAL ASSESSMENT (EA) of the proposed BURLEY IRRIGATION DISTRICT FACILITIES TITLE TRANSFER. This document was prepared in compliance with the National Environmental Policy Act (NEPA). The Bureau of Reclamation (Reclamation) is soliciting public comment on the analysis contained in the draft EA.

The Burley Irrigation District (District) is essentially the Southside Pumping Division (Division), of the Minidoka Project, Idaho. Reclamation began construction of the Southside Pumping Division in 1905 and delivered the first water to a portion of the 48,000-acre district in 1909. Since 1926, the District has been solely responsible for the care, operation and maintenance of Division's facilities. In 1992, the District made the final payment on the last of the repayment contracts for construction of various features that constitute the Minidoka Project's distribution, conveyance and storage system.

On November 3, 1998, the President signed Public Law 105–351 (112 Stat. 3219-3221), which required the Secretary of the Interior to transfer title of all federal interests in facilities, land, and certain water rights of the Southside Pumping Division to the District.

This Draft Environmental Assessment provides an analysis of the effects of implementing either the "no action" alternative or the proposed action of transferring title to the District.

Any comments you may have should be sent to Mr. Wes Green, Activity Manager- (PN-3248), U.S. Bureau of Reclamation, 1150 North Curtis Rd. - Suite 100, Boise, Idaho, 83706-1234 by **January 28, 2000.**

Sincerely,

ACTING FOR James Budolfson

Jerrold D. Gregg
Area Manager

Enclosure

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DRAFT

ENVIRONMENTAL ASSESSMENT

BURLEY IRRIGATION DISTRICT FACILITIES TITLE TRANSFER

U.S. BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
SNAKE RIVER AREA OFFICE

DECEMBER 1999

CONTENTS

Figure 1. Location Map, Burley Irrigation District ..... *frontispiece*
1.0 INTRODUCTION 1
1.1 PURPOSE AND NEED FOR THE PROPOSED ACTIONS 1
1.2 LOCATION OF THE PROPOSED ACTIONS 2
1.3 REGULATORY COMPLIANCE 2
1.4 SCOPING AND ISSUES 3
1.5 SIMILAR OR RELATED ACTIONS 3
Figure 2. Burley Irrigation District, Minidoka Project, Idaho. Canals, Laterals, and Drains (circa 1940's) 5

2.0 DESCRIPTION OF THE NO ACTION AND PROPOSED ACTION ALTERNATIVES 7
2.1 ALTERNATIVE A — NO ACTION ALTERNATIVE 7
2.2 ALTERNATIVE B — THE PROPOSED ACTION 7
Facilities 7
Water Rights 7
Storage Contracts 8
Power 8
Costs 8
Limitations and Liability 8

3.0 AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES 9
3.1 HYDROLOGY AND SYSTEM OPERATION 9
Table 3.1-1. Amount and Rate of Flows Allowed for Diversion by The United States 10
3.2 WATER RIGHTS 14
Table 3.2-1. Water Rights Held by Bureau of Reclamation 15
3.3 LAND USE 17
Table 3.3-1. Major crops grown within Burley I.D. 17
Affected Environment 17
Environmental Consequences 18
Table 3.3-2. Lands, Associated Structures, and Equipment Proposed for Title Transfer 19
3.4 WATER QUALITY 20
Affected Environment 20
Environmental Consequences 20
3.5 VEGETATION 22
Affected Environment 22
Table 3.5-1. Common vegetation within Burley I.D. 23
Table 3.5-2. Weeds of concern within Burley I.D. 24
Environmental Consequences 24
3.6 FISH AND WILDLIFE 25
Affected Environment 25
Environmental Consequences 26
3.7 ENDANGERED SPECIES 27
Terrestrial Species 27

Affected Environment 27
Snails 27
Anadromous Fish 27
Environmental Consequences 28
3.8 SOCIOECONOMIC 31
Affected Environment 31
Environmental Consequences 32
3.9 ENVIRONMENTAL JUSTICE 33
Affected Environment 33
Environmental Consequences 33
3.10 CULTURAL RESOURCE PROPERTIES 34
Affected Environmental 34
Historic Resources 34
Archeological Resources 35
Traditional Cultural Properties/Sacred Sites 35
Environmental Consequences 36
Mitigation of Historic Resources 36
Mitigation of Archeological Resources 36
Mitigation of Traditional Cultural Properties/Sacred Sites 36
3.11 Indian Trust Assets 37
Affected Environment 37
Environmental Consequences 37

4.0 COORDINATION AND CONSULTATION 39
4.1 AGENCY CONSULTATION 39
4.2 TRIBAL CONSULTATION 39
4.3 PUBLIC INVOLVEMENT 40

CONTRIBUTORS 41

REFERENCES 43
U.S. Government 43
Other Entities 44
Personal Communications 44

GLOSSARY — ABBREVIATIONS, ACRONYMS, AND AGENCIES 45

TABLES

Table 3.1-1. Amount and Rate of Flows Allowed for Diversion by The United States 10
Table 3.2-1. Water Rights Held by Bureau of Reclamation 15
Table 3.3-1. Major crops grown within Burley I.D. 17
Table 3.3-2. Lands, Associated Structures, and Equipment Proposed for Title Transfer 19
Table 3.5-1. Common vegetation within Burley I.D. 23
Table 3.5-2. Weeds of concern within Burley I.D. 24

FIGURES

Figure 1. Location Map, Burley Irrigation District ..... *frontispiece*
Figure 2. Burley I.D., Minidoka Project, Idaho; Canals, Laterals, and Drains (circa 1940's) 5

ATTACHMENTS

Attachment A. Public Law 105-351. "An act to authorize the Secretary of the Interior to convey certain facilities of the Minidoka Project to the Burley Irrigation District, and for other purposes."

Attachment B. Burley Irrigation District letter inviting interested parties to an information briefing about the transfer of title (July 1997)

Attachment C. Consultation with U.S. Fish & Wildlife Service

- Letter from FWS to Reclamation regarding Endangered Species (April 1999)
- Letter to FWS from Reclamation regarding a finding of "no impact" on endangered species (December 1999)

Attachment D. Consultation of National Marine Fisheries Service

- Letter from NMFS to Reclamation regarding Endangered Species (October 1999)
- Letter to NMFS from Reclamation regarding a finding of "no impact" on endangered species (December 1999)

Attachment E. Proposed Negotiated Agreement regarding Transfer of Water Rights By and Between the United States of America and Burley Irrigation District and with the Concurrence of Minidoka Irrigation District (December 1999)

Attachment F. Mailing list for (Draft) Environmental Assessment (December 1999)

DRAFT ENVIRONMENTAL ASSESSMENT
BURLEY IRRIGATION DISTRICT
FACILITIES TITLE TRANSFER

1.0 INTRODUCTION

Burley Irrigation District (Burley I.D.) is a political subdivision of the State of Idaho, organized under State law by the landowners served by the U.S. Bureau of Reclamation's Southside Pumping Division, Minidoka Project, Idaho (the Project). Reclamation (then the U.S. Reclamation Service) began construction of the Southside Pumping Division in 1905 and delivered the first water to a portion of the 48,000-acre district in 1909. Since 1926, Burley I.D. has been solely responsible for the operation and maintenance (O&M) of most Project facilities except for the Main South Side ("Gravity") Canal which was retained by Reclamation as reserved works until 1951. Then, for over 30 years, Burley I.D. had an informal agreement with Minidoka Irrigation District (Minidoka I.D.) for O&M. In 1983, a formal agreement was signed giving Burley I.D. responsibilities for the entire system. In 1992, Burley I.D. made the final payment on the last of the repayment contracts for construction of various features that constitute Burley I.D.'s conveyance and storage system.

On November 3, 1998, the President signed Public Law 105–351 (112 Stat. 3219-3221), referred to in this document as the "Transfer Act." The law requires the U.S. Secretary of the Interior (the Secretary) to transfer title of all Federal interests in facilities, land, and certain water rights of the Southside Pumping Division to Burley I.D. The Act states that transfer shall occur not later than 2 years after the date of enactment. A complete copy of the Transfer Act is shown in Attachment A.

1.1 PURPOSE AND NEED FOR THE PROPOSED ACTIONS

The purpose of this environmental assessment (EA) is to provide environmental analysis that would support the decision of the Secretary, through Reclamation, to sign or not sign a Finding of No Significant Impact (FONSI) for the transfer of title for certain Project facilities from the United States government to Burley I.D. The irrigation district proposed the facilities transfer to The Congress with the desire to eliminate duplicative administrative actions performed by Reclamation and Burley I.D. relative to the operation and maintenance (O&M) of the facilities. The decision to transfer title was made by The Congress (P.L. 105–351), but the Act required the Secretary to complete such action as may be required under the National Environmental Policy Act of 1969 (NEPA). The Secretary has determined that the NEPA process shall be used to determine whether or not there are any significant impacts to the environment associated with title transfer. If there are significant environmental impacts, a FONSI cannot legally be signed and then the Secretary is required by law to prepare an Environmental Impact Statement (EIS) and a Record of Decision. The ROD would complete compliance with NEPA.

1.2 Location of the Proposed Actions

The Southside Pumping Division, which constitutes the Burley I.D., is located in south-central Idaho, south of the Snake River, entirely within Cassia County, and adjacent to the towns of Burley and Declo (see figure 1, the Location Map). The irrigation district boundaries encompass approximately 88 sections of land and about 48,000 acres are irrigated. There are also approximately 7,100 acres of Minidoka I.D. lands that are served by the Main South Side Canal.

1.3 Regulatory Compliance

Various laws and executive orders apply to the Proposed Action. A summary of the major ones follows.

National Environmental Policy Act — Under NEPA, Reclamation is responsible for determining if the Proposed Action might have significant effects to the environment. If Reclamation determines that effects would not be significant, a FONSI will be prepared. A FONSI would permit transfer of title to proceed without preparation of an EIS.

Endangered Species Act — The Endangered Species Act (ESA) requires all Federal agencies to ensure that their actions do not jeopardize the continued existence of "listed" species or adversely modify designated critical habitat. As part of the "Section 7" process under the ESA, an agency must request a list of listed species from the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS); the latter is responsible for listed species inhabiting the oceans and anadromous fish. From the list, an agency (in this case Reclamation) must evaluate impacts to listed species. Consultation is required if the proposed action may affect a listed species.

National Historic Preservation Act — The National Historic Preservation Act (NHPA) of 1966 requires that Federal agencies complete inventories and site evaluation actions to identify cultural resources that may be eligible to the National Register of Historic Places (National Register), and then ensure those resources "are not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly." Federal regulations entitled "Protection of Historic Properties" (36 CFR 800) defines the process for implementing requirements of the NHPA, including consultation with the appropriate State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation.

Executive Order 13007, Indian Sacred Sites — Executive Order 13007 (dated May 24, 1996) instructs Federal agencies to promote accommodation of access to and protect the physical integrity of American Indian sacred sites. A "sacred site" is a specific, discrete, narrowly delineated location on Federal land. An Indian tribe must identify a site as sacred by virtue of its established religious significance to, or ceremonial use by an Indian religion; such identification can also be made by an Indian individual determined to be an appropriately authoritative representative of an Indian religion. However, the tribe or authoritative representative must inform the agency of the existence of such a site.

Executive Order 12898, Environmental Justice — Environmental justice means the fair treatment of people of all races, income, and cultures with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment implies that no person or group of people should shoulder a disproportionate share of negative environmental impacts resulting from the execution of environmental programs. Executive Order 12898 (dated February 11, 1994) provides that each Federal agency, to the greatest extent practicable and permitted by law, make achieving environmental justice part of its mission by addressing, as appropriate, disproportionately high and adverse human health or environmental effects on minority populations and low income populations.

1.4 Scoping and Issues

A public information gathering meeting was held by Burley I.D. on August 6, 1997 in Burley, Idaho. A letter was sent to local, State, Tribal, and Federal entities announcing the meeting (attachment B). Twenty-three individuals signed the attendance sheet, with more than half of the attendees representing irrigation districts, State, or Federal agencies. No Tribal representatives attended.

Concerns raised at the meeting were primarily related to valuations of property and that the U.S. Treasury would experience a diminishment in funds if the Proposed Action were to occur. Another concern was the potential impact this title transfer could have on water quality and quantity, especially as it relates to endangered species.

1.5 Similar or Related Actions

There are three other potential transfer-of-title actions in progress within Reclamation's Snake River Area Office administrative boundaries. The process being followed for each potential transfer is similar to that of the Burley I.D. transfer-of-title action. However, the legal basis for each of these other actions is based on language in the respective project authorization.

- The Nampa-Meridian Irrigation District (Boise Project) is seeking title to distribution, conveyance and drainage facilities, and rights-of-way; the district is not seeking water rights.

- The American Falls Reservoir District No. 2 (Minidoka Project) is seeking ownership of the Milner-Gooding Canal; the district is not requesting transfer of water rights.

- The Fremont-Madison Irrigation District (Minidoka Project) is seeking transfer of all related facilities. These include Cross Cut Diversion Dam, Grassy Lake Dam, Cascade Creek Diversion Dam, Island Park Dam, all related conveyance facilities, and water rights.

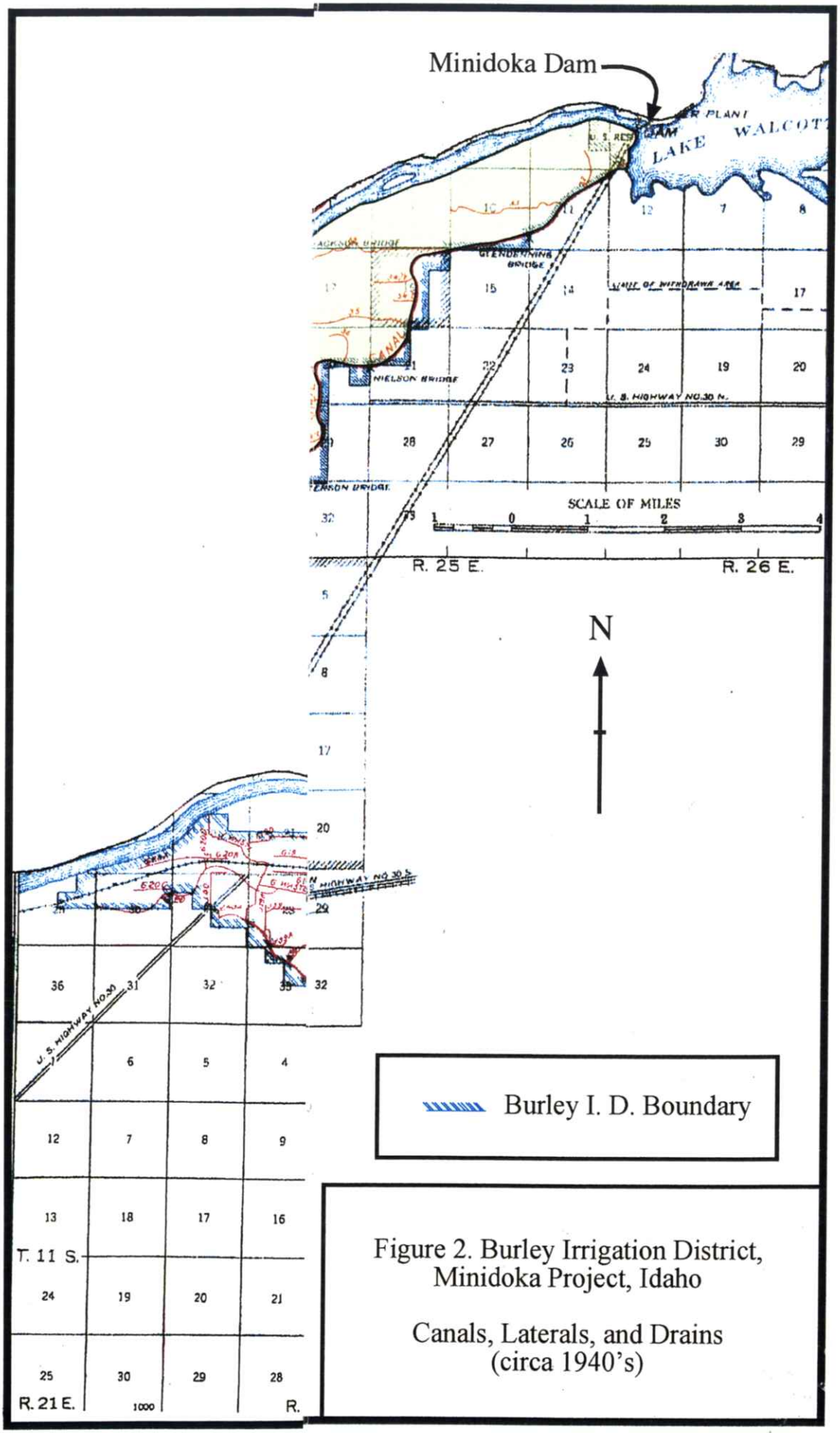


Figure 2. Burley Irrigation District, Minidoka Project, Idaho

Canals, Laterals, and Drains (circa 1940's)

2.0 DESCRIPTION OF THE NO ACTION AND PROPOSED ACTION ALTERNATIVES

There are only two alternatives that will be addressed in this assessment. These are the "No Action" and the "Proposed Action" of title transfer as described in the Transfer Act (P.L. 105–351). The analysis of these two alternatives will show any differences in the environmental effects based on ownership of the facilities. The Transfer Act clearly states the interests that are to be transferred to Burley I.D. For this reason, it is not reasonable to assess the effect of alternatives that analyze partial transfer.

2.1 ALTERNATIVE A — NO ACTION ALTERNATIVE

Under the No Action alternative, the Secretary would not execute the necessary documents that would transfer title to Burley I.D. The operation of Burley I.D., the irrigation district's relationship with Reclamation, and Reclamation's oversight of Burley I.D. would continue in the future as it has in the past. Burley I.D. would continue to be subject to all Reclamation regulations, but would also be eligible for assistance programs, such as "rehabilitation and betterment" loans. This No Action alternative cannot be implemented as the Transfer Act requires that title transfer occur. However, this alternative forms the basis for analyzing the effects of the Proposed Action.

2.2 ALTERNATIVE B — THE PROPOSED ACTION

The Proposed Action would implement the Transfer Act (P.L. 105–351). This law directs the Secretary to convey to Burley I.D., by quitclaim deed or patent, all rights and interest of the U.S. government in acquired lands and easements associated with the Southside Pumping Division of the Minidoka Project. The major provision of the Transfer Act are described below.

Facilities — Included in this transfer are the pumping plants, canals, drains, laterals, roads, pumps, checks, headgates, transformers, pumping plant substations, and buildings. Also to be transferred are other improvements, appurtenances to the land, or those used for the delivery of water from the headworks (but not the headworks themselves) of the "Southside Canal" (Main South Side Canal) at the Minidoka Dam to land in Burley I.D. Figure 2 shows the main canals, laterals, and drains within the boundaries of Burley I.D. which would be transferred under the Proposed Action. The electric transmission lines used to transmit electric power for the operation of the pumping facilities were owned by the Bonneville Power Administration and have already been transferred to Burley I.D.

Water Rights — The Transfer Act says that the Secretary shall also transfer to Burley I.D. "all natural flow, waste, seepage, return flow, and ground-water rights held in the name of the United States." This shall be through an agreement among Burley I.D., Minidoka I.D., and the Secretary, in accordance with the laws of the State of Idaho. These water rights will be —

(1) for the benefit of the Minidoka Project or specifically for Burley I.D.;
(2) for use on lands within Burley I.D.; and
(3) as set forth in contracts between the United States and Burley I.D. or in the decree of June 20, 1913 of the District Court of the Fourth Judicial District of the State of Idaho, in

and for the County of Twin Falls, in the case of *Twin Falls Canal Company v. Charles N. Foster, et al.*, and commonly referred to as the "Foster Decree."

The Transfer Act states that any rights that are presently held for the benefit of lands within both the Minidoka I.D. and Burley I.D. "...shall be allotted in such manner so as to neither enlarge nor diminish the respective rights of either district in such water rights as described in contracts between Burley [I.D.] and the United States" [subsection (c)(1)(C)]. It also says implementation of this title transfer "shall not impair the integrated operation of the Minidoka Project, affect any other adjudicated rights, or result in any adverse impact on any other Project water user" [subsection (c)(1)(c)].

Storage Contracts — The Secretary shall provide an allocation to Burley I.D. of storage space in Minidoka Reservoir, American Falls Reservoir, and Palisades Reservoir, as described in Burley Contract Nos. 14-06-100-2455 and 14-06-W-48. These allocations are subject to the obligation of Burley I.D. to continue to assume and satisfy its allocable costs of operation and maintenance associated with the storage facilities operated by Reclamation.

Power — The Secretary shall continue to provide Burley I.D. with Project reserved power from the Minidoka, Palisades, Black Canyon, and Anderson Ranch Reclamation Powerplants in accordance with the terms of the existing contracts, including any renewals as provided in such contracts.

Costs — The first $80,000 in administrative costs of transfer of title and related activities shall be paid in equal shares by the U.S. government and Burley I.D., and any additional amount of administrative costs shall be paid by the U.S. government.

Limitations and Liability — Nothing in this transfer shall affect the right of Minidoka I.D. to the joint use of the gravity portion of the Main South Side Canal, subject to compliance by the Minidoka I.D. with the terms and conditions of a contract between Burley I.D. and Minidoka I.D., and any amendments or changes made by agreement of the irrigation districts.

Effective on the date of conveyance of the Project facilities, the U.S. government shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the conveyed facilities, except for damages caused by acts of negligence committed by the U.S. government or by its employees, agents, or contractors prior to the date of conveyance. Nothing in this alternative shall be deemed to increase the liability of the U.S. government beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. 2671 *et seq.*).

3.0 AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

Environmental subjects that were not analyzed — Soil, air, and geologic resources will not be affected in any manner by the transfer or non-transfer of title. Recreation within Burley I.D. is incidental to the primary agricultural purposes of the district. There are no developed recreation opportunities in the area. No analysis of these subjects will be conducted. In addition, there are no known hazardous materials and/or wastes along the conveyance system. However, since the structures proposed for transfer were built prior to 1979, it is possible they contain lead-based paint and/or asbestos. Burley I.D. will accept the buildings as they are and will assume liability for any necessary clean-up actions.

3.1 HYDROLOGY AND SYSTEM OPERATION

Early history — Irrigation in the Upper Snake River system began in the 1860's with the coming of settlers from Utah; accompanying these cooperative projects were the establishment of the earliest water rights in this area of Idaho. In 1889–90, the U.S. Geological Survey investigated possibilities for additional irrigation in Idaho, including examination of the sagebrush desert on both sides of the river westward from the (eventual) site of the Minidoka Dam and its reservoir.[1] The *Reclamation Act of 1902* became law in June; by November, the Secretary had withdrawn land in the Minidoka Tract from public entry; that land became eligible for settlement; a public notice was issued; and homesteaders filed for farms after signing a contract with the United States to repay all construction costs to the Reclamation Fund under the terms of the Reclamation Act.

The Minidoka Project was authorized by the Secretary in April 1904, and Minidoka Dam was constructed 1904–06. Headwaters storage began in 1905 with the erection of a temporary Jackson Lake dam. The canals were constructed in 1908; a pumping unit for the South Side was built 1908–09; farmers on the South Side received their first irrigation water in May 1909. The U.S. "Reclamation Service" was issued water rights licenses for the Burley I.D. and Minidoka I.D. by the State of Idaho in 1903, 1908, and 1909. Reclamation signed separate contracts with each district in 1926 for storage space to supplement the natural flow rights. Before that time, the storage was part of the Federal project or held by others through the Warren Act.

The U.S. government holds water rights to divert part of the natural flow of the Snake River and other rights to store water of the Snake River in reservoirs. These rights were acquired under the laws of the State of Idaho and are used for irrigating lands within the Minidoka Project. The U.S. government has no direct involvement in the physical distribution of water for Burley I.D. and Minidoka I.D. Because the natural flow water rights held by the U.S. government are designated for irrigated lands and is appurtenant to that land under state law, there would be no change in the distribution area when title is transferred to Burley I.D. Table 3.1-1 shows the water rights assigned to the Federal government.

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[1] The reservoir is named Lake Walcott after Charles Doolittle Walcott, director of USGS from 1894–1907 and subsequently Secretary of the Smithsonian Institution.

TABLE 3.1-1. AMOUNT AND RATE OF FLOWS ALLOWED FOR DIVERSION BY THE UNITED STATES

Water Right †	Permit No. †	License No. †	Foster Decree ‡
A01-00211 (1,726 cfs) Priority March 26, 1903	**No. 66** (2,600 cfs) Priority March 26, 1903	**No. 66** (1,726 cfs) Priority March 26, 1903	**Right No. 3** (1,726 cfs) Priority March 26, 1903
A01-00214 (1,000 cfs) Priority August 6, 1908	**No. 4126** (3,000 cfs) Priority August 6, 1908	**No. 4126** (888 cfs) Priority June 16, 1911	**Right No. 6** (1,000 cfs) Priority August 6, 1908
A45-00512	**No. 4798** (150 cfs)	**No 45-02064** (150 cfs) Priority July 16, 1910	**Right No. 8** (150 cfs) Priority April 10, 1909

† Number assigned by the Idaho Department of Water Resource
‡ Number assigned by Idaho's 5th Judicial District in *Foster*

Allocation of storage space — The Transfer Act requires that the Secretary provide Burley I.D. with storage space in three of Reclamation's Snake River reservoirs "as described" in two specific contracts between Burley I.D. and Reclamation.

The first concerns "Storage Capacity in American Falls and Palisades Reservoirs, and Related Matters" (Burley Contract No. 14–6–100–2455; signed December 1952). Of the many parts of the document, of primary interest in this matter is section 17. It essentially swaps almost 326,000 acre-feet of previously established storage rights in Jackson Lake Reservoir to American Falls Reservoir. Of this total, about 140,000 acre-feet were allocated to the "South Side Pumping Division" (Burley I.D.) and about 186,000 acre-feet to the "Gravity Division" (Minidoka I.D.).

The second is an "Amendatory Contract with the Burley I.D. Concerning Operation and Maintenance of Project Works, Water Supply, Power Supply, Final Determination of New Power Projects, and Related Matters" (Burley Contract No. 14–06–W–48; signed June 1962). Section 6 set forth the division of natural flow rights from the Snake River, allocating 38 percent to the "South Side Pumping Division" (Burley I.D.) and 62 percent to the "Gravity Division" (Minidoka I.D.). Section 7 clarified the right to store in Lake Walcott.

State authority and water distribution — State law, as presented in the "Idaho Code" (I.C.), contain extensive chapters ("Titles") regarding water and irrigation. The director of the Idaho Department of Water Resources (IDWR) is responsible for the distribution of water from all natural water sources within a "water district" and all water is distributed in accordance with the doctrine of prior appropriation and the Federal contracts that the Districts have entered into with The United States through the Bureau of Reclamation. The state has been divided into water districts with a watermaster for each district. The watermaster is responsible for the distribution of decreed water rights within the respective district, supervised by the IDWR director. Idaho Water District 1 comprises the upper Snake River area, including all of the Minidoka Project. A watermaster for District 1 has been selected by the members of all irrigation entities within the water district.

Idaho law provides that a watermaster shall release water from a reservoir into a river in accordance with the directions given by the owner of the reservoir; in this matter Reclamation is the owner of Lake Walcott. The watermaster, responding to a request from an irrigation district, is also

responsible for releasing the appropriate amount of water through the headgates into the irrigation conveyance system. Once in the main canal, the irrigation district delivers the water to the irrigators that requested the water, who then apply the water onto their land. It is also the duty of a watermaster to ensure that only those entitled to the stored water are the ones to receive it.

Irrigation district structure — Irrigation districts are formed in accordance with Idaho Code. The purposes of an irrigation district are limited and are fully controlled by the owners of the land to which the district water rights are appurtenant. Formation of an irrigation district begins with the presentation of a petition to the board of county commissioners. This is followed by various procedures and hearings, including a ratification election by the owners of the land to be included within the irrigation district. If the ratification passes, the commissioners are required to declare an irrigation district formed.

Once an irrigation district is formed, a board of directors is elected by the landowners to conduct the district's affairs. The board has the power and responsibility to, among other things, establish equitable by-laws, rules and regulations for the distribution and use of water among its district members. The board also has the right to acquire all lands, water rights, and other property necessary for the construction, use, supply, maintenance, repair and improvement of canals or canal works.

The water rights required for the irrigation of the lands of the district, together with the rights-of-way for canals and ditches and all other property acquired, are declared for a "public use" subject to the regulation and control of the State.

An irrigation district board is authorized and empowered to take "conveyance or other assurances" for all property acquired for the purpose of irrigation. This includes the right and responsibility to institute and maintain any and all actions and proceedings, suits at law and in equity, necessary or proper to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by Title 43 of the Idaho Code (which governs irrigation districts).

A board may sell or transfer the real property of a district whenever it declares (by resolution) that it no longer has use for the property. However, the sale of a Federal or State license or permit may not be made until such a resolution has been published in a newspaper of "general circulation" in the district at least weekly for 4 consecutive weeks. Then, if within 15 days after the first publication, 10 percent of the qualified member irrigators in the district petition for an election, an election approving said sale or transfer of such license or permit shall be held.

Minidoka I.D. operations — The Main North Side Canal originates at its diversion structure (head gates) near the right abutment of Minidoka Dam. At the headworks, the canal's capacity is about 1,700 cfs. It serves the 90 percent of the Minidoka I.D. on the north side of the Snake River. The remaining 10 percent of the district's area is served by the Main South Side Canal. Deliveries to Minidoka I.D. lands on the south side of the Snake River are made into small lateral ditches and individual farm turnouts along the canal.

Burley I.D. operations — The Main South Side Canal diverts through a gated structure in the embankment of Minidoka Dam south of the spillway, and it serves all 48,000 acres of Burley I.D. lands. At its head, the canal has capacity of 1,325 cfs; on average, about 1,200 cfs is utilized by Burley I.D. A very detailed map of the Burley I.D. conveyance system is shown in figure 2.

Since its founding, the 70-year-old Burley I.D. has operated its portion of the Minidoka Project distribution system. This operation includes advising the District 1 watermaster of the amount of water required to irrigate Burley I.D. lands, a day-to-day determination. When the natural flow water rights are insufficient to provide an adequate supply of water for irrigation within Burley I.D., stored water that has accrued to the allocated space in Reclamation storage facilities is delivered to meet demand.

To provide irrigation delivery to all parts of the Burley I.D. system, the water must be "lifted" (using pumps) up to three times for a total of about 90 feet. The Main South Side Canal conveys water about 12 miles to the First Lift Pumping Station (First Lift.) In order to ensure a steady flow to the pumps (which are considered the last "diversion" on the Main South Side Canal), a margin of additional flow must be maintained (called "waste" because it is not "used"). In order to avoid the "overtopping" of the canal if power to the pumps were to be interrupted, water ("spill") must be able to return to the river.[2] The "F" wasteway-spillway, located just upstream from First Lift, provides the channel to return "waste" and "spill" to the river.

Each lift is about 30 feet in elevation. At First Lift, water from the Main South Side Canal is lifted to feed the "G" Canal and the Second Lift Pumping Station. At Second Lift, the water is lifted to feed "H" Canal and the Third Lift Pumping Station. At Third Lift, the water is lifted to the "J" Canal, the highest elevation of the carriage facilities in the Burley I.D. system.

Natural flows from Marsh Creek can enter the conveyance system at "G", "H", and/or "J" Canals, at points where Marsh Creek siphons under the respective canal. Marsh Creek water is occasionally available when local rain reduces irrigation demand upstream or when rapid snowmelt increases supplies. During flood conditions, Marsh Creek flows are allowed into the canals to reduce the potential of downstream flooding. In periods of drought, pumps divert return flows from upstream irrigation.

Under the Proposed Action, the transferred water rights would be used for irrigation of the same lands, in the same season, and using the same points of diversion as if there was no change (the "No Action" alternative) However, water or energy conservation measures could affect rates of diversion and return flows; this could take place no matter who owns the water rights. Conserved water goes to the next junior appropriator in the system.

Rates of diversion are limited by the amount of water available under the combined water rights and by canal capacities. So even though different crops have different water requirements, with or without title transfer, the ability to supply water to a higher-demand crop would be still be limited by the existing maximum diversion rates and the length of the season.

Dividing the waters — Depending on the relative distribution of the crops being grown, economic forces, and other factors involved in farming, one of the two districts may be utilizing a greater or lesser share of its natural flow right at a given time. The direct diversion of natural flows and (later in the season) contract storage water of each district are accounted for daily. At the end of the

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[2] Under the *Foster Decree*, this "waste" water and "return" water are counted as an "offset" to contract storage water; this is explained below in section **3.2 Water Rights**.

irrigation season, Reclamation divides storage use according to a formula agreed upon by the two districts. A simplified illustration of the conveyance system may be seen in figure 1, the Location Map.

Alternative A. No Action — Under the No Action alternative, there would be no change in the operation of the upper Snake River storage system.

Alternative B. Proposed Action — Transfer of title for the water rights now held by the U.S. government for Burley I.D. will have no effect on system operations. Burley I.D.'s natural flow water rights are currently used to the maximum extent possible and are considered "consumptive." Title transfer would not increase any consumptive use of water from the natural flow rights. Therefore, any potential change of use of this water, such as from irrigation to "municipal and industrial" use would not affect system operations nor decrease the quantity of water in the Snake River system.

3.2 WATER RIGHTS

Overview — Burley I.D. requested from Congress and was granted in the Transfer Act the title to several water rights held in the name of the Bureau of Reclamation for benefit of lands lying within the Minidoka Project. Table 3.2-1 below provides information about these rights; a narrative description for each right follows the table.

In 1913, the Foster Decree determined the priority of water rights on the reach of the Snake River from the upper end of Lake Walcott downstream to the Malad (or Big Wood) River.[3] *Foster* granted six natural flow water rights to the Secretary for the Minidoka Project, three of these rights are shared by Burley I.D. and Minidoka I.D. The source of this water is the Snake River, and the purpose is for use on the Burley I.D. and Minidoka I.D. lands.

Foster affirmed the rights previously "licensed" by the State and added the "return flow credits." The decree granted the districts the joint right to divert a total of about 2,726 cfs of "natural flow" water directly diverted from the Snake River at Lake Walcott. Later an additional 430 cfs was added by the so-called Eagle Decree.[4]

The storage contracts between the two irrigation districts and the U.S. government provide when the maximum amount of water was not available to both divisions, 62 percent of the water would go to the "Gravity Division" (Minidoka I.D.) and 38 percent to the "South Side Pumping Division" (Burley I.D.). The natural flow waters are diverted from Lake Walcott, which is part of Reclamation's upper Snake River system. The direct diversion, natural flow water is normally available on an intermittent basis from mid-April through mid-June; during after that period, the Project draws irrigation water from its contract storage space when water is not available under the natural flow, direct diversion water rights. A description of the availability of these natural flow rights under various conditions would require many variables and would lack clarity. However, for example, during the one of the driest water years on record (1977), the rights were only filled for about ten days during May and June.

The Proposed Action, which includes the transfer of the natural flow water rights, changes the trustee of the water rights to Burley I.D. from the U.S. government. With either trustee, the water rights are held for the benefit of the lands within the irrigation district.

The Burley I.D. board has indicated its intent to retain these water rights for the benefit of its members. Because the natural flow water rights that are to be transferred to Burley I.D. are insufficient to fully irrigate the lands of the District, there is little likelihood that any portion of these rights would ever be sold or transferred. There is also little likelihood that the landowners within the district would ever approve such a sale or transfer if one were to be proposed by the board of directors.

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[3] This was the area of jurisdiction of the 5th Judicial District County in Twin Falls.

[4] *Burley Irrigation District, et al. vs. Henry W. Eagle*, Watermaster [of then-Water District No. 36] (July 19, 1963), in the 5th Judicial District, Twin Falls, Idaho.

TABLE 3.2-1. WATER RIGHTS HELD BY BUREAU OF RECLAMATION

SRBA Claim No.	Rate (cfs)	Priority Date	Type	Comment
HELD JOINTLY FOR BURLEY I.D. AND MINIDOKA I.D.				
A01-00211†	1,726	March 26, 1903	natural flow	P.O.D. at Snake River
A01-00214†	1,000	August 6, 1908	natural flow	P.O.D. at Snake River
— †	Foster gains; varies annually	June 19, 1909	return flow	An "offset" (credit) to the Minidoka Project contract storage water
HELD SOLELY FOR BURLEY I.D.				
A01-04047 ‡	—	June 19, 1909	ground water	Ground-water recharge storage claim under I.C. §42-228 with P.O.D of shallow wells and drains
A45-00512 †	150	April 9, 1909	natural flow	P.O.D. at Marsh Creek
A45-10389 ‡	0.12	June 19, 1909	ground water	First Lift (plus 2 houses)
A45-10390 ‡	0.24	June 19, 1909	ground water	Second Lift (plus 5 houses)
A45-10391 ‡	0.08	June 19, 1909	ground water	Third Lift (plus a wash house)

† Foster Decreed Water Rights held by the Bureau of Reclamation
‡ Partial Decreed or Claims in the Snake River Basin Adjudication held by the Bureau of Reclamation.

Title transfer of water rights — The water rights held by the Bureau of Reclamation for Burley I.D. and Minidoka I.D. are shown in table 3.2-1. Burley I.D. has requested the apportionment and transfer of the jointly held rights. These transferred water rights would be administered without change from historic practice and would be allotted in a manner so neither to enlarge nor diminish the respective rights of either Burley I.D. or Minidoka I.D. The proposed transfer agreement is shown as attachment E.

The natural flow water rights, along with the associated return flow credits (Foster gains) were described this way.

> "...There are held for the Minidoka Project (Gravity Division and South Side Pumping Division) these amounts of natural flow from the Snake River with these priorities: (1) 1,726 cubic feet per second [cfs], priority date March 26, 1903; (2) 1,000 cfs, priority date August 6, 1908; and (3) The amount of lawful gain in flow coming into the river between the Neeley gage and Milner Dam when stored water is being drawn for the project as measured by the Watermaster from time to time. The total of these three amounts shall be divided on a daily basis, when the maximum amount is not available to both divisions, in these percentages: To the Gravity Division 62%; to the South Side Pumping Division 38%."[5]

It should be noted these seemingly "old" rights are in reality junior to numerous rights on the Snake River because of development prior to the Minidoka Project. These water rights do not

[5] Contract No. 14-06-100-2455 dated June 6, 1962, and Contract No. 14-06-W-48 dated January 25, 1960, between the United States of America and the Burley Irrigation District.

provide a full water supply for Burley I.D. because of their position in the priority ranking. Burley I.D. has "spaceholder contracts" with Reclamation for storage water to supplement the natural flow rights (as does Minidoka I.D.). No storage water rights are being transferred; the spaceholder contracts will continue.

The proposed transfer agreement (attachment E) calls for the formal apportionment of these natural flow rights into "A" (Minidoka I.D.) and "B" (Burley I.D.) portions. For example, the U.S. government would convey Water Right No. A01-00211B to Burley I.D.; the portion of these natural flow water rights not transferred (No. A01-00211A) would stay in the name of the Bureau of Reclamation for the benefit and use on lands within Minidoka I.D. The Transfer Act directs the Secretary not to injure or impact the water rights held for the benefit of Minidoka I.D., not impair the integrated operation of the Minidoka Project, affect any other adjudicated rights, or result in any adverse impact on any other Project water user.

Foster provided authority for the Idaho State Engineer (now the IDWR director) to determine what part of the water flowing in the Snake River at the Minidoka and Milner Dams was storage water reentering the river and what part was natural flow. This is referred to as the "return flow credit" (shown in table 3.2-1 as "Foster gains"). The quantity of return flow credit is computed by the Water District 1 watermaster at the end of each irrigation season based on accounting records of Water District 1 and Reclamation.

The third natural flow water right granted under *Foster* is 150 cfs from Marsh Creek. Burley I.D. is the only irrigation entity which can physically take advantage of this water right. Marsh Creek water is occasionally available when local rain reduces irrigation demand upstream or when rapid snowmelt increases supplies.

In addition to the natural flow water rights, Reclamation holds several domestic ground-water rights for Burley I.D. facilities for domestic use. These are also shown in table 3.2-1.

Alternative A. No Action — Under the No Action alternative, title would remain in the name of Reclamation and the water rights would continue to be administered and delivered by the Idaho Water District 1 watermaster based on historic practice.

Alternative B. Proposed Action — Reclamation would transfer title of natural flow, waste, seepage, return flow, and ground-water rights held in its name to Burley I.D. This alternative provides for a change in the name of the holder of those portions of water rights held in the name of Reclamation for the benefit of lands lying within Burley I.D. but does not change any other element of the water rights. All elements of the water rights remain the same. The water rights will continue to be administered and delivered by the Idaho Water District 1 watermaster based on historic practice. No enlargement or injury will occur. Burley I.D. water rights and contract storage water will continued to be utilized as provided by State law.

3.3 LAND USE

Burley I.D. is located in northern Cassia County in the south-central part of Idaho along the southern side of the Snake River. Irrigation-supported agriculture practices amount to the largest and most important of land uses within northwestern Cassia County (SCS, 1981). This is due to the silt loam soils found in this broad and mildly sloping valley, coupled with the close proximity of Snake River water. Residential and commercial building developments account for the second-largest use; the city of Burley (about 900 acres) is the major development center but occupies less than 2 percent of the land within the boundaries of the irrigation district.

A list of major crops grown on Burley I.D. lands is given in table 3.3-1. In 1998, the year of the data, grains and sugar beet acreage account for more than half of the total land use on Burley I.D.

TABLE 3.3-1. MAJOR CROPS GROWN WITHIN BURLEY I.D.(1998)

Crop	Rank	Acreage	Percent of Burley I.D.
Grains	1	14,000	37
Sugar Beets	2	8,500	22
Potatoes	3	7,000	18
Hay	4	6,000	16
Beans	5	2,500	7

Affected Environment

About 20.2 acres of Reclamation fee title land and 7.5 acres of "withdrawn" land (removed from the public land laws for Project purposes) are proposed for title transfer. These include structures such as irrigation pumping plants, small wood-frame houses and out buildings, and concrete or block maintenance buildings. Additionally, some land associated with various widths and lengths of canals, laterals, drains, and related structures are proposed in the transfer, collectively covering about 23 acres. Table 3.3-2 describes proposed title transfer lands, associated items, and approximate area involved.

The remaining interests in lands are U.S. rights-of-way, authorized by the *Canal Act of August 30, 1890* (Ch. 837, 26 Stat. 371). The lands crossed by these rights-of-way are privately owned. These lands are not part of the title transfer, and therefore are not considered further in this EA.

The only function of the irrigation system has been to convey water. Official uses of Reclamation fee title land, withdrawn land, and U.S. rights-of-way are for purposes of O&M and repair of irrigation and drainage system works. Rights-of-way are open to public use only if the owner of the land through which the right-of-way passes gives permission for its use. For other lands, *Burley I.D. By-Laws and Policies* (1995) generally describes Reclamation and Burley I.D. public use privileges. In general, Reclamation fee title land and withdrawn land are not closed to the public. However, uses

of these areas by the public for recreational purposes are not encouraged for public safety and equipment protection reasons. Still, incidental uses of these lands by members of the public do occur.

Environmental Consequences

Alternative A. No Action — Under the No Action alternative, no changes in the current management, ownership, or use of Reclamation and Burley I.D. lands would occur.

Alternative B. Proposed Action — Land use in Burley I.D. is predominantly agricultural and is likely to remain unchanged because of the Proposed Action. Burley I.D. has no plans to alter present use of all named and associated facilities or equipment listed in table 3.3-2. Public access policy would not change with the Proposed Action. Because use and operation of facilities will remain unchanged, the Proposed Action will not adversely affect land use.

Under the laws of the State of Idaho, the use of all water required for irrigation of the lands of any irrigation district formed under the laws of the State of Idaho, together with the rights-of-way for canals and ditches, sites for reservoirs, ground-water recharge projects, and all other property required and fully carrying out the provisions of Title 43 of the Idaho Code, is declared to be a public use, subject to the regulation and control of the State, in the manner prescribed by law (I.C. 43-304).

TABLE 3.3-2. LANDS, ASSOCIATED STRUCTURES, AND EQUIPMENT PROPOSED FOR TITLE TRANSFER

Location Description	Item	Acres
First Lift Station	■ Pumping plant (concrete) with all associated parts and equipment ■ 6 pumps; 4,390 hp total ■ 2 wood frame houses, about 950 ft^2 each, built in 1911	8.2
Second Lift Station	■ Pumping plant (concrete) with all associated parts and equipment ■ 6 pumps; 3,910 hp total ■ 1 repair shop (concrete) 2,964 ft^2, with associated tools, repair parts, and all equipment ■ 5 wood frame houses, about 950 ft^2 each, built in 1911 ■ 1 wood frame out building	12.0
Third Lift Station	■ Pumping plant (concrete) with all associated parts and equipment ■ 3 pumps; 2,500 hp total ■ 1 cement block out building, 150 ft^2	7.5
Drain Pump Sites, Shallow Wells	■ 8 drain pumps; 135 hp total ■ 9 shallow well pumps; 90 hp total	—
Canals, Laterals, and Drain Ditches	■ 405 miles of rights-of-way for canals, laterals, drains[1] These include: • 33 miles of drains • 13 miles of Southside Gravity Canal • 1.5 miles of "F" wasteway-spillway to Snake River • 1.7 miles of Feeder Canal • 19 miles of "G" Canal • 25 miles of "H" Canal • 29 miles of "J" Canal • 205 miles of laterals • 8 miles of laterals in pipeline	23.0
TOTAL ACRES		**50.7**

[1] The total of 405 miles includes 73 miles of additional road surface to account for canals that have access roads on both sides, as compared to one side only.

Burley I.D. has no foreseeable plans to alter uses of proposed title transfer lands and associated equipment. Further, Burley I.D. is obligated to deliver irrigation water to landowners with water rights within the irrigation district boundaries, and no reasons exist to suggest changes to this practice in the near future. No change would occur to current conditions, eliminating potential future effects of the Proposed Action. Therefore, potentially adverse effects are unlikely to occur from the Proposed Action.

3.4 WATER QUALITY

Irrigation delivery systems are typically made up of canals, laterals, and drains. Of these water conduits, canals and laterals generally convey water to landowner fields for subsequent application, and drains collect the residual after irrigation water has passed through the soil or across field ditches.

Affected Environment — Water passing through Burley I.D. originates from the upper-middle Snake River and is delivered from Lake Walcott behind Minidoka Dam, an impoundment owned and operated by Reclamation (see figure 1, the Location Map). Water diverted from the reservoir are carried to the Burley I.D. distribution network via the Main South Side Canal to the pumping station known as First Lift, about 10 miles downstream from Minidoka Dam. A description of water rights, sources, and quantities can be found in sections **3.1 Hydrology and System Operation** and **3.2 Water Rights.** A draft report detailing the water quality status and other Lake Walcott watershed attributes is available from the Idaho Division of Environmental Quality (IDEQ, 1998).

To assess water quality in drains across the irrigation district, Burley I.D. monitors the flows in selected drains for nutrients, sediment, and bacteria; this is done in cooperation with local, State, and Federal agencies. A water quality report for drains on Burley I.D. is available from the Division of Agricultural Technology of the Idaho Department of Agriculture (IDA). Of six drains tested, nutrient and bacteria levels exceeded recommended EPA or State standards in a majority of the samples (IDA, 1996). On the other hand, total suspended sediments were below recommended maximum levels for all six drains (IDA, 1996). Other information on ground-water quality has been collected for the upper Snake River basin. The Minidoka Study Area (including Burley I.D. and Minidoka I.D.) contained some of the highest nitrate levels (10 mg/L) in ground water for the region (Geological Survey, 1997).

Burley I.D. has an active conservation program and water conservation plan to encourage district landowners and employees to adopt best management practices (Bingham, 1999). These practices help to reduce sediment, nutrient, and chemical runoff and to conserve water. One conservation practice being applied by Burley I.D. that has reduced nutrient discharge into the Snake River is the use of pump-back wells and sediment ponds. Nutrient-laden water is collected near the end of a drain in either a shallow well or pond, and then re-circulated back into a canal or lateral for re-use on lands within the district, instead of discharging back into the river. Sediment trapped in ponds is periodically removed and reapplied to fields. In 1998, there were 10 ponds from which 3,222 acre-feet were pumped back (Bingham, 1999).

Water quality in the canals and drain ditches varies depending on flow rates and season. Not all structures have water quality records. Enhanced structures and management practices have contributed to overall water quality improvements on Burley I.D. (Bingham, 1999).

Environmental Consequences

Alternative A. No Action — The existing water quality management would continue as it has in the past with periodic modifications to keep current with State and Federal laws.

Alternative B. Proposed Action — Burley I.D. is continually improving management and operation of the irrigation water conveyance network, and under the Proposed Action, Burley I.D. would continue this practice. Water quality concerns would still be addressed as needed or required. Adverse impacts to water quality because of the Proposed Action are unlikely. Burley I.D. has no foreseeable plans to alter operations, or in some other way, cause changes that would degrade water quality. Therefore, adverse future effects are unlikely from the Proposed Action.

3.5 VEGETATION

Affected Environment — The lands adjacent to the canals and rights-of-way within Burley I.D. are primarily used for agriculture, including irrigated crops, pasture, and range. Other land uses include homesites, facilities, and roadways. Vegetation in the Project area is highly influenced by these adjacent land uses.

Vegetation in the Project area includes both native and introduced species. Introduced plants in Burley I.D. are invaders, weedy species, or have been intentionally seeded for agricultural purposes. Table 3.5-1 lists species likely to be found within or immediately adjacent to the Project area.

Vegetation Management — Burley I.D. currently manages all vegetation within its rights-of-way and waterways. Weed control is the primary vegetation management concern. Table 3.5-2 lists noxious weeds likely to be found within the Project area. All landowners and managers are required by the State of Idaho to control noxious weeds on their property. The Cassia County Extension Agent identifies Scotch thistle as one of the primary weeds of concern within the Project area (Edwards, 1999). In addition, the *1996 Review of Operations and Maintenance* (by Reclamation) for Burley I.D. identifies kochia as a weed of concern although it is not listed State of Idaho noxious weed.

To control terrestrial and aquatic weeds, Burley I.D. uses both chemical and mechanical methods. Herbicides are the primary means of weed control. Common herbicides used include 2,4-D, Banvel®, Vanquish®, Escort®, and Roundup® (Edwards, 1999). Rodeo® is also used, but only under special circumstances where noxious weeds spread to the waters edge. Magnacide®, Cleargate®, and xylene are being used for control of mosses in the waterways.

Currently, Burley I.D. complies with all State of Idaho noxious weed laws. In addition, the Cassia County Extension Office is developing a county weed plan to be implemented in the near future. The plan will provide recommendations for cooperative efforts in prioritizing weed control efforts. Although Federal lands are not subject to Cassia County weed enforcement mandates, Burley I.D. and Reclamation have and will continue to cooperate in these efforts.

Other management issues include brush control and reseeding of disturbed areas. Brush control may be necessary to maintain a steady, continuous, and unimpeded flow of waterways. Reseeding of disturbed areas is performed to provide soil stability, particularly on sandier soils. Burley I.D. primarily reseeds areas disturbed during improvement maintenance (e.g., following replacement of laterals) using a grass species, typically Kentucky bluegrass or redtop.

TABLE 3.5-1. COMMON VEGETATION WITHIN BURLEY I.D.

COMMON NAME	SCIENTIFIC NAME
Native Species	
Indian ricegrass	*Oryzopsis hymenoides*
Thurber needlegrass	*Stipa thurberiana*
bluebunch wheatgrass	*Agropyron spicatum*
Wyoming big sagebrush	*Artemisia tridentata spp. wyominensis*
horsebrush	*Tetradymia sp.*
rabbitbrush	*Chrysothamnus sp.*
various forbs	various
Introduced Species — *Agricultural*	
sugar beets	*Beta sp.*
wheat	*Triticum sp.*
barley	*Horduem sp.*
potatoes	*Solanum sp.*
corn	*Maize sp.*
dry Beans	*Phaseolus sp.*
alfalfa hay	*Medicago sp.*
various pasture grasses	various
Introduced Species — *Weedy*	
cheatgrass	*Bromus tectorum*
bur buttercup	*Ranunculus testiculatus*
kochia	*Kochia scoparia*
thistle	various
smooth brome	*Bromus inermis*
clasping leaf peppergrass	*Lepidium perfoliatum*
Introduced Species — *Rangeland*	
Siberian wheatgrass	*Agropyron sibericum*
crested wheatgrass	*Agropyron cristatum*
Whitmar bluebunch wheatgrass	*Agropyron spicatum var. Whitmar*
Russian wildrye	*Elymus sp.*
Kentucky bluegrass	*Poa pratensis*
redtop	*Agrostis stolonifera*
Introduced Species — *Aquatic*	
various pond weeds	

TABLE 3.5-2. WEEDS OF CONCERN WITHIN BURLEY I.D.

Common Name	*Scientific Name*
Terrestrial Weeds	
Scotch thistle	*Onopordum acanthium*
Canada thistle	*Cirsium arvense*
Musk thistle	*Carduus nutans*
Russian knapweed	*Centaurea repens*
hoary cress or whitetip	*Candia draba*
perennial peppered or tall whitetip	*Lepidium latifolium*
Kochia	*Kochia scoparia*
Aquatic	
Pond Weeds	Various species

Environmental Consequences

Alternative A. No Action — Under the No Action alternative, there would be no change in the current vegetation quality, distribution, or management practices. Therefore, there would be no impact to the Project area.

Alternative B. Proposed Action — The transfer of title of Reclamation property to Burley I.D. would have no impact to the Project area, as current management practices would remain the same. Burley I.D. would continue to comply with State law to control and eradicate noxious weeds on its rights-of-way and waterways. Any changes to current vegetation would not be different than would occur under No Action. Burley I.D. would continue to cooperate in control of noxious weeds, according to the Cassia County weed control plan. Enforcement of the control of noxious weeds would change from Federal oversight to the State and Cassia County. However, this is enforcement only. Management practices are currently in place to control noxious weeds. These control measures would not change unless new or better procedures are discovered.

Barren areas on unstable soils would be reseeded, as necessary, to prevent soil erosion or water quality degradation. Brush removal may continue to be necessary on occasion to maintain a continuous and unimpeded water flow along ditch banks and waterways and to protect the integrity of the facilities. However, this practice would remain minimal and on an "as needed" basis.

3.6 FISH AND WILDLIFE

Species "listed" under the Endangered Species Act are discussed in section **3.7 Endangered Species** below.

Affected Environment

Potential wildlife habitat, as described in section **3.3 Lands**, consists of canal banks and rights-of-way through the developed agricultural lands (see table 3.3-2). Wildlife found in these areas include birds, mammals, reptiles, amphibians, and fish. All fish and wildlife are managed by the Idaho Department of Fish and Game (IDFG). Hunting and fishing are regulated by IDFG regulations.

Birds — Birds inhabiting the Project area include waterfowl, shorebirds, upland gamebirds, raptors, and passerines (perching or songbirds). Waterfowl are common to the area due to the proximity of the Snake River, a major spring and fall migration stopover and wintering area (Reclamation, 1993). Primary species include Canada goose, mallard, blue-winged teal, western grebe, and green-winged teal (IDFG, 1997). Upland gamebird species are limited due to the agricultural nature of the habitat. However, ring-necked pheasants, mourning doves, and gray partridge may be found in the area (Smith, 1999).

Raptors potentially occurring in the Project area include northern harriers, Swainson's hawks , red tailed hawks, Ferruginous hawk, prairie falcon, golden eagle, turkey vulture, and American kestrels. These species are known to forage in developed agricultural areas (IDFG, 1997). A "State species of concern" raptor, the burrowing owl, may also be found in or near agricultural areas. In addition, the bald eagle, a Federally listed "Threatened" species is known to winter along the Snake River and could occasionally be found within the Project area (ICDC, 1999).

Passarines potentially found in the Project area include red-winged blackbirds, western meadowlark, American robin, horned lark and barn swallows. Other species in the area include killdeer, California gulls, magpies, and American crows(IDFG, 1997).

Mammals — Mammals potentially occurring in the Project area are limited due to the developed nature of the surrounding lands. Small mammals include the western harvest mouse , pocket gopher, and deer mouse. Larger species potentially found in the Project area include striped skunks, coyotes, red fox, badgers and an occasional mule deer. These species are all known to inhabit or forage in developed agricultural areas (IDFG, 1997).

Reptiles and Amphibians — Potential reptile and amphibian species occurring in the Project area include the western toad, Pacific tree frog, northern leopard frog, racer, gopher snake, and garter snakes. The diversity and abundance of reptiles and amphibians is expected to be moderate due to the developed nature of the surrounding habitat and the seasonal nature of the irrigation system use (IDFG, 1997).

Fish — Due to the seasonal flow of the irrigation system, and filtering associated with pumping stations, fisheries are minimal within the Project area. Fish are not native to the irrigation system and originate from Lake Walcott, upstream of the diversion at Minidoka Dam. Screens at First Lift prevent larger fish from moving further into the irrigation systems, however smaller fish may be

found throughout the system. Species potentially found include sturgeon, rainbow trout, Utah sucker, Utah chub, speckled dace and red-side shiner (Partridge, 1999).

Environmental Consequences

Alternative A. No Action — Under the No Action alternative, no change in the current management in Burley I.D. would occur. Therefore, there would be no affect to habitat or to the distribution of wildlife or fish found there.

Alternative B. Proposed Action — Under the Proposed Action, no adverse impacts would occur to the distribution or type of fish and wildlife found within Burley I.D. Habitat and current management would remain the same as existing conditions. IDFG would retain management of these resources. Access to and management of the habitat, including water flow, would remain the same.

3.7 ENDANGERED SPECIES

Section 7 of the Endangered Species Act requires all Federal agencies to ensure that their actions do not jeopardize the continued existence of "listed" species or adversely modify designated critical habitat. As part of the Section 7 process, Reclamation requested a list of listed species from the U.S. Fish and Wildlife (FWS) and the National Marine Fisheries Service (NMFS); the latter is responsible for listed species inhabiting the oceans and anadromous fish. These lists are shown as attachments C and D, respectively.

Terrestrial Species — The FWS list (attachment C) is for a large geographic area that includes Burley I.D. lands. Terrestrial species on the list consisted of the gray wolf and bald eagle. These same species were also the subject of a *Biological Opinion* (FWS, 1999) issued to Reclamation on the operation and maintenance activities in the Snake River basin upstream of Lower Granite Dam Reservoir. The conclusion of that report was that Reclamation's O&M of the Snake River facilities would have no effect on the gray wolf and have no adverse affect on the bald eagle within the ½-mile-wide river corridor analyzed in the report. The vast majority of the District lies outside the ½-mile zone, but as it is all crop land or supporting developments, there is no habitat to support either the bald eagle or the gray wolf.

Affected Environment

Snails — Utah valvata snail, Snake River physa, and the Bliss rapids snail were identified on the FWS list. However, two of the snail species do not occur in the Burley I.D. area. The Bliss Rapids snail occurs in the main stem Snake River from about Indian Cove Bridge (river mile [RM] 524) to Twin Falls (RM 610). The Snake River physa occurs between Grand View (RM 487) and Hagerman (RM 573). There is a separate population near Minidoka Dam (RM 675) this population has not been relocated (FWS, 1999).

The Utah valvata, however, does occur in Lake Walcott and in the Snake River downstream from Minidoka Dam. The *Biological Opinion* (FWS, 1999) found that drawdown of Lake Walcott for operation and maintenance is likely to have an adverse affect on a portion of the snail population that occurs in the reservoir. The majority of the population is not affected by the drawdown. The report states that flood operations and routine year-round operations are not likely to adversely affect the Utah valvata in the river between Minidoka Dam and Milner pool.

Anadromous Fish — The listed and proposed anadromous fish species analyzed in this document consist of Snake River steelhead, Snake River sockeye, Snake River spring/summer chinook, and steelhead, chinook salmon, and chum salmon stocks occurring in the Columbia River system. This list was discussed in the NMFS *Biological Opinion* (1999) prepared for Reclamation's operation and maintenance of its Snake River storage facilities.

There are no listed salmon in the vicinity of Burley I.D. point of diversion. However, under the NMFS's *1995 Biological Opinion* on operation of the Federal Columbia River Power System and the *Record of Decision* (Reclamation, 1995), Reclamation is to deliver a total of 427,000 acre-feet per year from storage for flow augmentation to help preserve endangered anadromous fish. The water is to be provided only from willing sellers and in accordance with State water law.

The NMFS *Biological Opinion* (1999) found that continued operation and maintenance of Reclamation's Snake River storage facilities and providing 427,000 acre-feet of water for flow augmentation is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The report made several recommendations relating to "...the surety that sufficient salmon augmentation water can be delivered..." These recommendations pertained only to storage space in the reservoirs and contracts for that space.

Environmental Consequences

Alternative A. No Action

Snails — Under this alternative, there would be no change in the operation and maintenance of Minidoka Dam. The finding that drawdown of the reservoir is likely to adversely affect a portion of the Utah valvata population will not change. Reclamation would continue to comply with the reasonable and prudent measures, including the terms and conditions of the incidental take statement and the recommended conservation measures detailed in the FWS *Biological Opinion* (1999).

Anadromous Fish — In this alternative, the natural flow rights would remain in the name of the U.S. government. In the future, if NMFS should determine that additional flow augmentation was critical to the survival of the endangered fish, Reclamation would likely be the lead action agency with the obligation to secure the water. Under the ESA, if it is deemed necessary to augment such flows, Reclamation would fulfill this need by purchase (willing seller, willing buyer).

Alternative B. Proposed Action

Snails — The transfer of title would not cause a change in operation and maintenance of Minidoka Dam with regards to the drawdown of Lake Walcott, flood control operations, or normal year-round operations of the river downstream of Minidoka Dam. Implementation of the Proposed Action would not have an affect on the Utah valvata.

Anadromous Fish — The change in the title ownership to water rights and facilities has no effect on any on listed species. Any effect on listed species that would occur in the future because of this transfer wold be through the actions by Burley I.D. or others.

In this respect, Reclamation is mindful that ESA Section 7 consultation requires a thorough consideration of not only the direct effects of any proposed action on listed species, but also the indirect effects of future actions caused by, or resulting from the proposed action, and which are "reasonably certain to occur." Likewise, any discussion of "cumulative effects" of future private or State actions in the action area is logically limited to actions "reasonably certain to occur." [6]

The"reasonably certain to occur" standard requires more than "a mere possibility that the action may proceed." For the reasons stated below, Reclamation concludes that the only "reasonably certain to occur" future activities involving the transferred water rights and facilities are a continuation of

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[6] *Preamble to Final Consultation Regulations*, 51 Fed. Reg. 19926, 19933 (1986)

historic irrigation practices to irrigate some 48,000 acres of land within Burley I.D. These activities are addressed in *Biological Assessment* (Reclamation, 1998) and accompanying Operations Descriptions and technical reports.

Prohibition of adverse effects — The Transfer Act provides that there shall be no adverse impact to other water rights or system operations:

> "Any rights that are presently held for the benefit of lands within both the Minidoka Irrigation District and the Burley Irrigation District shall be allotted in such manner as to neither enlarge nor diminish the respective rights of either district in such water rights as described in contracts between Burley and the United States. [section 1(c)(1)(B)]
>
> "The transfer of water rights in accordance with this paragraph shall not impair the integrated operations of the Minidoka Project, affect any other adjudicated rights, or result in any adverse impact on any other project water user." [section 1(c)(1)(C)]

Actions that differ from historic uses of the facilities and water rights are unlikely because they would not be in the self-interests of Burley I.D. landowners. This is shown in statements by Burley I.D. representatives regarding the district's future use of the project facilities and water rights. Burley I.D. manager Randy Bingham, in testimony on the Transfer Act bill before the Senate Committee on Energy and Natural Resources, addressed the district's intended use of the water associated with the natural flow rights to be transferred:

> "We respectfully submit that the transfer of title to the distribution facilities that have been operated and maintained by the irrigation district since 1926 should create no impact in regard to the National Environmental Policy Act of 1969. These are single-purpose facilities; the title transfer will not result in significant changes in the operation and maintenance of the facilities or lands transferred, or land and water use in the foreseeable future. ... The operation and maintenance to the facilities will not change, as the irrigation district, by state law, holds the water rights for the benefit of the lands of the district, and it has a legal obligation to distribute the water equitably to the lands of the district. There are no public aspects of the project or facilities except the obligation to deliver water for the irrigation of lands within the district."

Burley I.D. attorney Roger Ling articulated his view in a March 1, 1999 letter to the Regional Director of NMFS:

> "...The action authorized and to be carried out by [Reclamation] pursuant to [the Transfer Act] involves the execution of a deed to transfer legal title to facilities and water rights controlled, operated, and maintained by Burley for over 70 years. The purpose of the distribution system and water rights to which legal title is to be transferred will not change, as they will continue to be operated by Burley and used for the purposes set forth by law, that is, for the delivery and use of irrigation water for lands within Burly for irrigation."

Public Law 105–351 specifies that the transfer of water rights shall be accomplished through and agreement among the United States, Burley I.D., and Minidoka I.D. The parties have negotiated a water rights transfer agreement (attachment E) which includes the following provision.

"The parties agree that the transfer of water rights to Burley under this agreement and the retention by the United States of a portion of said water rights for Minidoka, including any subsequent conveyance, sale, assignment, or rental of these water rights to others, shall not impair the integrated operation of the Minidoka Project, affect any other adjudicated water rights, or result in any adverse impact on any other Project water user.

The Senate Committee on Energy and Natural Resources addressed its understanding of the transfer as follows:

"...The Committee wants to emphasize that in directing a partition of the right, there is no intention to enlarge or diminish the beneficial rights of either District. The Committee also does not intend that there be any effect on integrated project operations of the Minidoka Project or on any other adjudicated rights or other project water users. The Committee does not believe that the mere transfer of title should have any such effect."

Based on the above evidence, actions that differ from historic uses of the facilities and water rights are not reasonable or logical. Such changes in use are conjecture because they are contrary to the self-interests of Burley I.D. landowners, and they are directly contrary to the intentions clearly stated by the Burley I.D. manager and attorney. Throughout negotiations of the transfer process, Burley I.D. representatives have consistently and steadfastly maintained that they have only one intention — to continue to irrigate lands within the district. There is nothing in the Transfer Act or the water rights transfer agreement that would lead to any other conclusion. The only actions reasonably certain to occur as a result of the transfer is the continued irrigation of lands within Burley I.D.

The transfer of these facilities and water rights to Burley I.D. will have no affect on the water available for flow augmentation for threatened, endangered, and sensitive species and have no effect on the species themselves.

If it is determined in the future that additional water was needed for salmon flow augmentation, the process of obtaining such water would be the same as in the No Action alternative. Because Reclamation manages the upper Snake River storage system, it would be fully involved in this process, in the same manner as in the No Action alternative.

3.8 SOCIOECONOMIC

This section describes and analyzes the general features of the economy, including population, employment, and income that could be affected by the Proposed Action. The primary measures by which socioeconomic impacts are identified include changes to population, employment, and income associated with the Proposed Action. Other factors related to socioeconomics were identified during public meetings. Concern was expressed that the U.S. Treasury would experience a reduction in funds if the Proposed Action were to occur. The following describes the affected environment, outlines the potential environmental consequences, any mitigation efforts, and potential future effects.

Affected Environment — Burley I.D. is located along the Snake River in the northern section of Cassia County. This county is located in south-central Idaho and had a 1998 population of 21,359 (Bureau of the Census, 1999a), about 2 percent of the state's population. The majority of county residents reside in Burley and smaller communities on the Snake River plain. Irrigated agriculture, associated agricultural services, and food processing are major contributors to the county's economy (IDOC, 1999).

In the following description, population, employment, and income estimates are not quoted for the same years. Equal comparisons are made within each area (e.g., employment estimates are compared in the same year). However, these comparisons were not available, in the detail needed, between areas (e.g., population estimates were for 1998, while detailed employment levels were quoted in 1993 numbers).

Total employment in Cassia County was 11,552 in 1993. Of this total, 2,185 employees were involved in the farm and agricultural sectors (IDOC, 1999). Retail trade employment was approximately 2,190 during this same period. These were the highest employment sectors in the county. Cassia County per capita income in 1996 was $18,101, about 99 percent of the state average (Bureau of the Census, 1999b and 1999c).

Burley I.D. Background — Burley I.D. encompasses about 48,000 irrigated acres. Estimated revenue on crop production for Burley I.D. in 1996 was approximately $29.8 million. Leading crops, in terms of gross value, included potatoes ($10 million), sugar beets ($8.4 million), and grain ($6.3 million). (Olsen, 1997)

The Burley I.D. and a majority of its facilities were built on rights-of-way reserved under the Canal Act of 1890 and the 1902 Reclamation Act. As noted previously, Burley I.D. has paid, in full, the costs associated with the construction of these canals, roads, and facilities. Since 1926, Burley I.D. has assumed and maintained total O&M responsibilities for these structures and facilities. In other words, Burley I.D. has paid for the upkeep of the canals and facilities for 73 years from assessments paid by the landowners of the lands within the district.

The U.S. government, through the Bureau of Reclamation, has only held title to these structures and facilities, but has not contributed to their upkeep since 1926 (other than through loans, which have been paid back in full, or through grant programs offered to all irrigation districts — even those not originally constructed with Reclamation help). Other responsibilities of Reclamation included oversight of Burley I.D. compliance with local, State, and Federal regulations.

Electricity for Burley I.D. facilities is provided by Reclamation from its southern Idaho power system (Minidoka, Palisades, Black Canyon, and Anderson Ranch powerplants). In 1961, ownership interests of Burley I.D. in the Minidoka Powerplant were terminated by an agreement with Reclamation. Burley I.D. retained the right to receive Project power from Reclamation facilities, which has been provided at the cost of production. After completion of facility transfer, Burley I.D. will continue to receive Reclamation power.

Environmental Consequences

Alternative A. No Action — Under the No-Action alternative, there would be no change to the socioeconomic conditions of Cassia County.

Alternative B. Proposed Action — The Proposed Action would have no impact on socioeconomic factors within the Project area. Since there would only be a change in title and no change in how the facilities are maintained or operated, there would be no increase or decrease in local population, no change in the employment levels, and no diminishment of income generated from irrigated crops.

Since the time of repayment of all costs to the U.S. Treasury in the early 1920's, Burley I.D. has paid for all subsequent O&M costs. No U.S. taxpayer monies have been used (other than for loans, which have been paid back). Maintenance, operations, and any upgrades have been and will continue to be paid for by Burley I.D. through its landowner assessments. Under the Proposed Action, none of these activities would change.

The continued supply of power would be provided in the same manner as it has been in the past 38 years. Therefore, no change in revenue flows is anticipated.

The proposed action would eliminate duplicative administrative actions currently performed by Reclamation and Burley I.D. in relation to issuance of license agreements and other similar actions.

3.9 ENVIRONMENTAL JUSTICE

Environmental Justice analysis examines disproportionately high or adverse impacts to minority and low-income populations resulting from the implementation of the Proposed Action. These populations are:

- *Minority Populations*: persons of Hispanic, Black, American Indian, Eskimos, Aleut, or Pacific Islander origins.
- *Low-Income Populations*: persons living below the poverty level, based on a total annual income of $12,674 for a family of four as reported in the 1990 census.

Information contained in 1990 and 1996 Census of Populations was used to identify these populations. Although these census data are more than 9 and 3 years old respectively, there are no indications that regional trends have significantly changed these characteristics in Cassia County.

Affected Environment

In 1990, minority populations represented about 15 percent of the total Cassia County population; in comparison, U.S. minority population was about 20 percent (Bureau of the Census, 1990). In 1996, low-income families represented 15.5 percent of Cassia County's total population. During this same time period, 13.7 percent of the U.S. population were in the low-income level (Bureau of the Census, 1999d and 1999e).

Environmental Consequences

Alternative A. No Action — Under the No-Action alternative, there would be no change to current environmental justice issues in Cassia County.

Alternative B. Proposed Action — Since current activities would not change, these populations would not be impacted by the Proposed Action. No jobs will be lost as a result of the action nor will any type of government service currently extended to these populations be cut back.

3.10 CULTURAL RESOURCE PROPERTIES

Affected Environmental

Historic Resources — In 1904, Congress authorized construction of the Minidoka Project. The Project purpose was to provide irrigation water to lands that were very sparsely settled, with existing agriculture limited to pastures and hayfields along the Snake River. Completion of the authorized facilities (dam, powerplant, and north and south side delivery systems) drastically altered the local landscape and the historical development of the area. Ultimately, 120,000 acres of desert land were converted to irrigated agriculture, and a number of towns were platted and developed (including Burley, Rupert, Heyburn, Paul, and Declo). The Minidoka Powerplant also provided surplus electricity to the towns, businesses, and some rural homes in the Project area, making it one of the first rural areas in the United States where electricity was readily available for non-commercial use.

In 1979 the Minidoka Powerhouse was listed on the National Register of Historic Places (National Register). In 1990, the Minidoka Dam and the associated administration building and shop were determined eligible for the National Register. At that time, Reclamation determined that all canals, lift stations, and pumping plants, and other principal works associated with the initial Minidoka Project development that retain integrity of design are also eligible to the National Register under criteria "a", "b", and "c" as defined in 36 CFR 60.4. Additional Project structures or works might also be found eligible upon examination.

The basis for Project facilities being determined eligible for or listed on the National Register is the Minidoka Project's pivotal role in transforming historic development in the Project vicinity, and the more wide-spread impact of marketing the excess electrical power (criterion "a"). Persons who became important as innovative civil engineers were involved in designing Project features (criterion "b"). Innovative or significant engineering design solutions that became standard applications were designed or tested in the powerhouse and lift stations (criterion "c"). Although not yet officially determined so, for ease of reference in following discussions the Minidoka Project structures and facilities will be referred to as a "national register district."

Project structures included in the title transfer are listed in table 3.3-2. In June 1998, Reclamation's cultural resource staff and the Architectural Historian for the Idaho State Historic Preservation Office (SHPO) visited these structures to assess their integrity of design and determine if they contributed to the historic significance of the National Register District.

Based upon that field visit, Reclamation determined that a large number of the structures are contributing elements to the National Register District. These include the canals and associated spillways, drops, and other operating features; the three lift stations and the original equipment they contain; the shops at First Lift and Second Lift and the early equipment they contain; and the houses, garages, root cellar, and landscaping features at the Second Lift. All these facilities contribute under criterion "a"; the lift stations also contribute under criteria "b" and "c".

In addition, the collection of houses, garages, root cellar, and landscaping features at the Second Lift are a distinct historic landscape under the National Register District; this includes rock retaining walls constructed by the Civilian Conservation Corps(CCC). Reclamation believes the houses at the First Lift are not contributing structures since they have been extensively remodeled and no longer

have integrity of design and material. Reclamation is formally consulting with the Idaho SHPO about the eligibility of these structures to the National Register.

Archeological Resources — A records and file search conducted at the Idaho SHPO indicates that approximately a dozen professional cultural resource investigations have been carried out within or near Burley I.D. The majority have been intensive ("Class III") archeological surveys related to Idaho Transportation Department construction projects over the past 20 years; other intensive inventories have occurred in response to several pipelines and a fiber optic line.

The files search indicated that five archeological sites are reported within a 2-mile radius of Burley I.D. boundaries. These are sites No. 10CA40, -41, and -42, which are surface flake scatters and depressions outside the west boundary of the irrigation district; and sites No. 10CA628 and -630, which are flake scatters with tools, near the eastern boundary of the irrigation district. One previously recorded archeological site (10CA43) — a surface scatter of chips, artifacts, and animal bone — is within Burley I.D. boundaries; however, that site is not located on any lands associated with the title transfer.

In spring 1999, Reclamation consulted with the Idaho SHPO about the intensity of survey needed of lands included in the title transfer. Reclamation and the SHPO agreed upon the following strategy: a 100 percent survey of Reclamation fee title land, withdrawn, and acquired lands (50.7 acres) and an intensive survey of 20 percent (60 miles) of the 300 linear miles of lateral, drain, and canal easements. Reclamation's Snake River Area Office archeologist completed the survey of those lands soon afterward.

The field surveys did not reveal any archeological sites. The potential for finding archeological sites on the lands proposed for transfer is low, due to an almost complete alteration of the natural land surface from construction and maintenance of the canals, and cultivation of adjacent lands. In addition, most areas included in the title transfer are not in close proximity to natural sources of water where prehistoric sites would most often be found.

Traditional Cultural Properties/Sacred Sites — No traditional cultural properties (TCP's) or sacred sites are known to exist within the boundaries of Burley I.D. Reclamation met separately with the Shoshone-Bannock Tribes and the Shoshone-Paiute Tribes. Each group indicated that the area now comprising Burley I.D. was its aboriginal territory. However, neither group specified TCP's, sacred sites, or sensitive areas harboring such sites. Reclamation also wrote each group and asked if there were concerns over the title transfer with regard to TCP's and sacred sites and, if so, what the specific nature of these concerns might be.

There is no indication that any of the Tribes currently use the lands involved in the title transfer for traditional cultural or religious purposes. The land surface comprising Burley I.D. has been radically transformed over the past century as a result of intensive agricultural development, and the lands involved in the title transfer have been extensively altered by construction and maintenance of associated irrigation systems. The natural and biological features of the land bear little resemblance to those of aboriginal times.

Environmental Consequences

Alternative A. No Action — Implementation of the No Action alternative would result in no new effects to cultural resource properties, since there would be no loss of Federal title.

Alternative B. Proposed Action — On the basis of results obtained from the archeological survey (in which no archeological resources were located on lands included in the title transfer), the Proposed Action transferring legal title of the fee lands, Project structures, and easements to Burley I.D. will have no effect on archeological properties. It is also unlikely that TCP's and sacred sites will be affected by the title transfer given the very low probability that these types of sites are present on the affected lands.

Reclamation holds title to the historic structures included in the title transfer. Federal title provides a measure of protection to these structures. For Federally-owned facilities, before the Government or any other party can implement actions that might damage the historic integrity of the structures, they would be required to seek alternatives that would avoid or minimize adverse effects from their proposed action.

When Project structures become the property of a non-Federal entity, the protection of Federal law no long exists if there is no other Federal tie (such as funding for the action). Therefore, after title transfer, Burley I.D. could alter or destroy any of the historic structures without the requirement to seek alternatives that are less damaging to the historic integrity of the structures. Therefore, transfer of title of the Minidoka Project facilities that are eligible to the National Register is an adverse effect and mitigation is required.

Mitigation of Historic Resources

Alternative A. No Action — As title would not be transferred, cultural properties would remain fully protected under existing Federal regulations and no mitigation is required.

Alternative B. Proposed Action — Historic American Engineering Record (HAER) and/or Historic American Buildings Survey (HABS) documentation will be completed to mitigate the adverse effects of transfer of the National Register-eligible structures to non-Federal ownership. The historic landscape at the Second Lift Station, encompassing the five ditch riders houses, associated outbuildings, and the CCC landscaping features, will be documented through a HABS or HAER report. Reclamation is presently consulting with the Idaho SHPO and the National Park Service (Division of National Register Programs) about the scope and format of the HABS/HAER documentation. The documentation will be completed (at least though the preliminary data-set phase) prior to the date of transfer.

Mitigation of Archeological Resources — No archeological sites have been identified on lands included in the title transfer. Therefore, no mitigation measures are required.

Mitigation of Traditional Cultural Properties/Sacred Sites — No TCP's or sacred sites have been identified within the boundaries of the title transfer area. Therefore, no mitigation measures are required.

3.11 INDIAN TRUST ASSETS

Affected Environment

Indian Trust Assets are legal interests in property held in trust by the U.S. government for Tribes or individuals. Examples of trust assets are lands, minerals, hunting and fishing rights, and water rights. The U.S. government, with the Secretary of the Interior as the trustee, holds many assets in trust for Indian tribes or Indian individuals.

The U.S. government has a trust responsibility to protect and maintain rights reserved by or granted to Tribes or individuals by treaties, statues, and executive orders; these rights are sometime further interpreted through court decisions and regulations. This trust responsibility requires that all Federal agencies, including Reclamation, take all actions reasonably necessary to protect trust assets.

The Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho have trust assets both on and off the Reservation. In the *Treaty of Fort Bridger* (1868), article 4 states "...they [the Shoshoni and the Bannock] shall have the right to hunt on the unoccupied lands of the United States." This has been further interpreted to mean Federal lands.

The Shoshone-Bannock Tribes were notified of the Proposed Action. No specific trust resources have been identified.

Environmental Consequences

Alternative A. No Action — On Federal lands, Reclamation would continue to have a Trust responsibility to the Shoshone-Bannock Tribes to protect the plant life or wildlife the Tribes may identify in the future as being important to them.

Alternative B. Proposed Action — As indicated above no specific trust resources have been identified. However, once out of Federal ownership and if trust resources are identified in the future, plant or wildlife resources important to the Tribes would not be protected by the Federal government.

4.0 COORDINATION AND CONSULTATION

Burley Irrigation District has been pursuing transfer of title of certain Reclamation-held properties and rights-of-way used for operations and maintenance of the district since 1994. A complete record of newspaper articles, and correspondence to and from various individuals, groups, and agencies is maintained by Burley I.D. at its office in Burley, Idaho. Only recent consultation and coordination activities directly related to the Proposed Action are described in this chapter.

4.1 AGENCY CONSULTATION

- U.S. Fish and Wildlife Service, Snake River Basin Office, Boise, Idaho regarding listed species (attachment C)
- National Marine Fisheries Service, Northwest Region, Portland, Oregon regarding listed anadromous species (attachment D)
- Idaho [State] Historical Society Compliance Coordinator (as the SHPO), regarding the archeological survey report.
- Idaho Conservation Data Center, Boise, Idaho, located at the Idaho Department of Fish and Game, regarding U.S. "threatened and endangered" and "State Species of Concern" listings in Burley I.D. area.
- Idaho Department of Fish and Game, Region 4, Jerome, Idaho, regarding fish and wildlife occurrences in Burley I.D. area.
- University of Idaho Cooperative Extension Service of Cassia County, in Burley, regarding noxious weeds in Burley I.D. area.

4.2 TRIBAL CONSULTATION

- Scoping letters to — Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; and Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada (November 30, 1998)

- Government to Government meeting with the Shoshone-Paiute Tribal Council and staff (December 4, 1998).

- Letter to the Shoshone-Paiute Tribal Council and staff; copy to Eastern Nevada Field Office, Bureau of Indian Affairs, Elko NV (March 9, 1999)

- Government to Government meeting with the Fort Hall Business Council (Shoshone-Bannock Tribes) and staff (January 7, 1998)

- Letter to the Fort Hall Business Council (Shoshone-Bannock Tribes) and staff summarizing meeting of January 7; copy to Fort Hall Agency, Bureau of Indian Affairs, Fort Hall ID (April 30, 1999)

- Letter to Fort Hall Business Council (Shoshone-Bannock Tribes) requesting a meeting to discuss Reclamation initiatives that "may be of interest to the Tribes" (September 8, 1999), including Burley Title Transfer; Government to Government meeting with Council and staff (October 15, 1999).

- Letter to the Shoshone-Paiute Tribal Council requesting a meeting to discuss Reclamation initiatives that "may be of interest to the Tribes," including Burley Title Transfer (September 9, 1999).

- Letter to Burns-Paiute General Council requesting a meeting to discuss Reclamation initiatives that "may be of interest to the Tribes," including Burley Title Transfer (September 9, 1999).

- Letter to Nez Perce Tribal Executive Committee requesting a meeting to discuss Reclamation initiatives that "may be of interest to the Tribe," including Burley Title Transfer (September 20, 1999).

4.3 PUBLIC INVOLVEMENT

A public information gathering meeting was held by Burley I.D. on August 6, 1997 in Burley. A letter was sent to local, State, Tribal, and Federal entities announcing the meeting (attachment A). Twenty-three individuals signed the attendance sheet, with more than half of the attendees representing irrigation districts, State, and Federal agencies. No Tribal representatives attended. Concerns raised at the meeting were primarily related to valuations of property, and that the U.S. Treasury would experience a reduction in funds if the Proposed Action were to occur. Another concern was the potential impact this title transfer could have on water quality and quantity, especially as it relates to endangered species.

A public information meeting will be held during the public review period for this Draft EA to discuss the Proposed Action.

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GLOSSARY — ABBREVIATIONS, ACRONYMS, AND AGENCIES

TERM	MEANING
BIA	Bureau of Indian Affairs of the U.S. Department of the Interior
CCC	Civilian Conservation Corp, 1930's Depression-era public works program
CFR	Code of Federal Regulations
cfs	cubic feet per second, a measure of the flow of water
Ch.	chapter, when referring to Federal laws and statutes
EA	Environmental Assessment, as described by ***NEPA***
EIS	Environmental Impact Statement, as described by ***NEPA***
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FONSI	Finding of No Significant Impact, a ***NEPA*** decision document following an ***EA***
Foster, Foster Decree	The case of *Twin Falls Canal Company v. Charles N. Foster, et al.*, (June 20, 1913 in the District Court of the Fourth Judicial District of the State of Idaho). The judicial decree determined the priority of water rights on the Snake River from the Thousand Springs area upriver to the backwaters of Lake Walcott.
FWS	Fish & Wildlife Service of the U.S. Department of the Interior
HABS	Historic American Buildings Survey
HAER	Historic American Engineering Record
hp	horse power, a measure of force
HUC	Hydrologic Unit Code, established by ***USGS***
I.D.	irrigation district
IDA	Idaho Department of Agriculture
IDEQ	Idaho Division of Environmental Quality of the Idaho Department of Health & Welfare
IDFG	Idaho Department of Fish and Game
IDOC	Idaho Department of Commerce
IDWR	Idaho Department of Water Resources
listed	Formally designated as "endangered" or "threatened" by ***FWS*** or ***NMFS*** under the ***ESA***
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act of 1966
NMFS	National Marine Fisheries Service of the U.S. Department of Commerce
O&M	Operation and Maintenance (of irrigation facilities)

TERM	MEANING
P.L.	Public Law (Federal)
Project	The Minidoka Project, referring to Bureau of Reclamation irrigation facilities in the upper Snake River Basin
Reclamation	Bureau of Reclamation of the U.S. Department of the Interior
RM	River mile, measured from the mouth of the Snake River
ROD	Record of Decision, ***NEPA*** decision document following an ***EIS***
SCS	The (former) Soil Conservation Service of the U.S. Department of Agriculture; now the Natural Resources Conservation Service
Secretary	The Secretary of the U.S. Department of the Interior
SHPO	Idaho State Historic Preservation Office or Officer
Stat.	U.S. *Statutes at Large*
TCP	Traditional cultural property
Transfer Act	Public Law 105–351 (112 Stat. 3219-3221), signed by the President November 3, 1997. An act "to authorize the Secretary of the Interior to convey certain facilities of the Minidoka Project to the Burley Irrigation District, and for other purposes." Sometimes informally called "The Minidoka Project Act of 1997."
U.S.C.	United States Code
USBR	U.S. Bureau of Reclamation of the Department of the Interior
USGS	U.S. Geologic Survey of the Department of the Interior

ATTACHMENT A. PUBLIC LAW 105–351

"AN ACT TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO CONVEY CERTAIN FACILITIES OF THE MINIDOKA PROJECT TO THE BURLEY IRRIGATION DISTRICT, AND FOR OTHER PURPOSES"

S. 538

One Hundred Fifth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the twenty-seventh day of January, one thousand nine hundred and ninety-eight

An Act

To authorize the Secretary of the Interior to convey certain facilities of the Minidoka project to the Burley Irrigation District, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONVEYANCE OF FACILITIES.

(a) DEFINITIONS.—In this section:

(1) BURLEY.—The term "Burley" means the Burley Irrigation District, an irrigation district organized under the law of the State of Idaho.

(2) DIVISION.—The term "Division" means the Southside Pumping Division of the Minidoka project, Idaho.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(b) CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall, without consideration or compensation except as provided in this section, convey to Burley, by quitclaim deed or patent, all right, title, and interest of the United States in and to acquired lands, easements, and rights-of-way of or in connection with the Division, together with the pumping plants, canals, drains, laterals, roads, pumps, checks, headgates, transformers, pumping plant substations, buildings, transmission lines, and other improvements or appurtenances to the land or used for the delivery of water from the headworks (but not the headworks themselves) of the Southside Canal at the Minidoka Dam and reservoir to land in Burley, including all facilities used in conjunction with the Division (including the electric transmission lines used to transmit electric power for the operation of the pumping facilities of the Division and related purposes for which the allocable construction costs have been fully repaid by Burley).

(2) COSTS.—The first $80,000 in administrative costs of transfer of title and related activities shall be paid in equal shares by the United States and Burley, and any additional amount of administrative costs shall be paid by the United States.

(c) WATER RIGHTS.—

(1) TRANSFER.—(A) Subject to subparagraphs (B) and (C), the Secretary shall transfer to Burley, through an agreement among Burley, the Minidoka Irrigation district, and the Secretary, in accordance with and subject to the law of the State of Idaho, all natural flow, waste, seepage, return flow, and groundwater rights held in the name of the United States—

(i) for the benefit of the Minidoka Project or specifically for the Burley Irrigation District;

(ii) that are for use on lands within the Burley Irrigation District; and

(iii) which are set forth in contracts between the United States and Burley or in the decree of June 20, 1913 of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Twin Falls, in the case of Twin Falls Canal Company v. Charles N. Foster, et al., and commonly referred to as the "Foster decree".

(B) Any rights that are presently held for the benefit of lands within both the Minidoka Irrigation District and the Burley Irrigation District shall be allotted in such manner so as to neither enlarge nor diminish the respective rights of either district in such water rights as described in contracts between Burley and the United States.

(C) The transfer of water rights in accordance with this paragraph shall not impair the integrated operation of the Minidoka Project, affect any other adjudicated rights, or result in any adverse impact on any other project water user.

(2) ALLOCATION OF STORAGE SPACE.—The Secretary shall provide an allocation to Burley of storage space in Minidoka Reservoir, American Falls Reservoir, and Palisades Reservoir, as described in Burley Contract Nos. 14–06–100–2455 and 14–06–W–48, subject to the obligation of Burley to continue to assume and satisfy its allocable costs of operation and maintenance associated with the storage facilities operated by the Bureau of Reclamation.

(d) PROJECT RESERVED POWER.—The Secretary shall continue to provide Burley with project reserved power from the Minidoka Reclamation Power Plant, Palisades Reclamation Power Plant, Black Canyon Reclamation Power Plant, and Anderson Ranch Reclamation Power Plant in accordance with the terms of the existing contracts, including any renewals thereof as provided in such contracts.

(e) SAVINGS.—

(1) Nothing in this Act or any transfer pursuant thereto shall affect the right of Minidoka Irrigation District to the joint use of the gravity portion of the Southside Canal, subject to compliance by the Minidoka Irrigation District with the terms and conditions of a contract between Burley and Minidoka Irrigation District, and any amendments or changes made by agreement of the irrigation districts.

(2) Nothing in this Act shall affect the rights of any person or entity except as may be specifically provided herein.

(f) LIABILITY.—Effective on the date of conveyance of the project facilities, described in section (1)(b)(1), the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the conveyed facilities, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of conveyance. Nothing in this section shall be deemed to increase the liability of the United States beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. 2671 et seq.).

(g) COMPLETION OF CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall complete the conveyance under subsection (b) (including such action as may be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)) not later than 2 years after the date of enactment of this Act.

(2) REPORT.—The Secretary shall provide a report to the Committee on Resources of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate within eighteen months from the date of enactment of this Act on the status of the transfer, any obstacles to completion of the transfer as provided in this section, and the anticipated date for such transfer.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

ATTACHMENT B

BURLEY IRRIGATION DISTRICT LETTER INVITING INTERESTED PARTIES TO AN INFORMATION BRIEFING ABOUT THE TRANSFER OF TITLE (JULY 1997)

BURLEY IRRIGATION DISTRICT
246 E 100 S
BURLEY, IDAHO 83318

July 21, 1997

Dear Sherl,

You are cordially invited to attend an informational briefing. Burley Irrigation District is in the process of requesting title transfer to the irrigation facilities it is presently operating. The District is holding an informational and input meeting Aug. 6 from 2:00 - 4:00 p.m., at Prices Cafe, 2444 Overland Ave. Burley, Idaho.

Burley Irrigation District is a duly-organized district under the laws of the State of Idaho, and has operated and maintained the Southside Division of the Minidoka Project since 1926. This is a reclamation project originally constructed by the Bureau of Reclamation. Burley Irrigation District has paid all construction charges due to the United States and now seeks to obtain congressional approval for the transfer of legal title to the distribution system that has been under the control, operation and maintenance of the irrigation district since 1926.

You are invited to attend a public meeting being called by Burley Irrigation District for the purposes of discussing any environmental issues that any party may feel would be affected by the proposed legislation of Burley Irrigation District. We would urge that you or a representative from your office attend this meeting. Burley Irrigation District is interested in discussing at this meeting environmental concerns that may be identified.

The meeting will include:

A brief history of the construction and operation of the facilities.
A brief overview of the desired request.
A brief discussion of the existing legislation.
Input on what needs to be done to move forward.

We have included a copy of the existing legislation, an overview of the desired request.

Your attendance would be appreciated.

Thank you,

Burley Irrigation District
Board of Directors

ATTACHMENT C

CONSULTATION WITH U.S. FISH & WILDLIFE SERVICE

☐ LETTER FROM FWS TO RECLAMATION REGARDING ENDANGERED SPECIES (APRIL 1999)

☐ LETTER TO FWS FROM RECLAMATION REGARDING AN ANALYSIS OF "NO AFFECT" ON ENDANGERED SPECIES (DECEMBER 1999)

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Snake River Basin Office, Columbia River Basin Ecoregion
1387 South Vinnell Way, Room 368
Boise, Idaho 83709

OFFICIAL FILE COPY
SRAO-EAST
Rec'd APR 2 1 1999
ACTION | INFO CC TO:
To | Initial | Date
2000 | | 4/23
3515
6400
6100
No reply req'd.

April 19, 1999

Memorandum

To: Area Manager, Bureau of Reclamation, Snake River Area Office, Burley, Idaho (Attention: Steven Brawley)

From: for Supervisor, Snake River Basin Office, Boise, Idaho Alison Stella Haas

Subject: Burley Irrigation District Transfer of Title Species List
SP #1-4-99-SP-179 File #1008.0210

The U. S. Fish and Wildlife Service (Service) is providing you with a list of endangered, threatened, proposed, and/or candidate species which may be present in the area of the proposed Burley Irrigation District Transfer of Title project. You requested this list in a letter dated March 26, 1999, received by this office on March 29, 1999. The list fulfills requirements for a species list under Section 7(c) of the Endangered Species Act of 1973 (Act), as amended. If the project decision is not made within 180 days of this letter, regulations require that you request an updated list. Please refer to the number shown on the list (Enclosure) in all correspondence and reports.

Section 7 of the Act requires Federal agencies to assure that their actions are not likely to jeopardize the continued existence of endangered or threatened species. Federal funding, permitting, or land use management decisions are considered to be Federal actions subject to Section 7. If the proposed action may affect a listed species, consultation with the Service is required. Formal consultation must be initiated for any project that is likely to adversely affect a threatened or endangered species. If a project involves a major construction activity and may affect listed species, Federal agencies are required to prepare a Biological Assessment. If a proposed species is likely to be jeopardized by a Federal action, regulations require a conference between the Federal agency and the Service.

If you need any further information, please contact Deb Carter of this office at (208) 378-5261. Thank you for your continued interest in endangered species conservation.

Enclosure

ENCLOSURE

LISTED AND PROPOSED ENDANGERED AND THREATENED SPECIES, AND CANDIDATE SPECIES THAT MAY OCCUR WITHIN THE AREA OF THE BURLEY IRRIGATION DISTRICT TRANSFER OF TITLE PROJECT
FWS-1-4-99-SP-179

LISTED SPECIES	COMMENTS
Gray wolf (LE;XN) (*Canis lupus*)	
Bald eagle (LT) (*Haliaeetus leucocephalus*)	Wintering area
Utah valvata snail (LE) (*Valvata utahensis*)	
Snake River physa snail (LE) (*Physa natricina*)	
Bliss Rapids snail (LT) (*Taylorconcha serpenticola*)	

PROPOSED SPECIES

Lynx (PT)
(*Lynx canadensis*)

CANDIDATE SPECIES

None

The Fish and Wildlife Service has concerns about the following plants and animals. Although these species have no status under the Endangered Species Act, we are concerned about their population status, and threats to their long-term viability. In context with ecosystem-level management, we suggest that you consider these species and their habitats in project planning and review.

Pygmy rabbit
(*Brachylagus idahoensis)*

Townsend's big-eared bat
(Plecotus townsendii)

Western small-footed myotis
(Myotis ciliolabrum)

Western burrowing owl
(Speotyto cunicularia hypugaea)

Ferruginous hawk
(Buteo regalis)

Long-billed curlew
(Numenius americanus)

Trumpeter swan
(Cygnus buccinator)

Idaho dunes tiger beetle
(*Cicindela arenicola*)

GENERAL COMMENTS

GRAY WOLF (*Canis lupus*) -- Since the translocation of wolves from Canada, the population in Idaho south of Interstate Highway 90 is considered "experimental, non-essential" under Section 10(j) of the Endangered Species Act. Under these circumstances, Federal action agencies are required to confer with the Service if their actions are likely to jeopardize the continued existence of gray wolves (see 50 CFR 17.83). Of course, you may opt to confer with the Service regardless of your determination.

United States Department of the Interior

BUREAU OF RECLAMATION
Snake River Area Office
214 Broadway Avenue
Boise, Idaho 83702-7298

IN REPLY
REFER TO:

December 23, 1999

SRA-1000

Mr. Bob Ruesink
State Supervisor
U.S. Fish and Wildlife Service
13875 Vinnell Way - Room 368
Boise, ID 83709

Subject: Transfer of Title to Burley Irrigation District pursuant to Public Law 105-351 (Act of November 3, 1998)

Dear Mr. Ruesink:

This letter is to document the Bureau of Reclamation's (Reclamation) finding of no effect under Section 7 of the Endangered Species Act (ESA), of a proposed transfer of title to Minidoka Project irrigation distribution facilities (diversion works, canals, laterals, and associated features) and natural flow water rights to the Burley Irrigation District (BID). Reclamation makes this determination after a careful reading of the ESA and the implementing regulations, Public Law 105-351, which direct the transfer, and the transfer documents which the Burley Irrigation District has accepted. We desire that you and your staff be fully aware of Reclamation's reasoning in arriving at this determination, and would be pleased to meet and discuss this issue in greater detail at your convenience.

The endangered species list that your office provided to us under Sec 7 of ESA is for a large geographic area that includes Burley I.D. lands. Terrestrial species on the list consisted of the gray wolf and bald eagle. The aquatic species included the Utah valvata snail, Snake River physa, and the Bliss rapids snail.

Given that the proposed action in this instance is a change in the title ownership to water rights and facilities, it is difficult to detect any "direct effects" on listed species. Quite simply, any effect on listed species would only occur, if at all, through future actions by BID or others. In this respect, Reclamation is mindful that ESA Section 7 consultation requires a thorough consideration of not only the direct effects of any proposed action on listed species, but also the indirect effects of future actions caused by, or resulting from the proposed action, and which are "reasonably certain to occur." Likewise, any discussion of "cumulative effects" of future private or State actions in the action area is logically limited to actions "reasonably certain to occur." As stated in the Preamble to the Consultation Regulations, the "reasonably certain to occur"

standard requires more than "a mere possibility that the action may proceed."[1] For the reasons stated below, Reclamation concludes that the only "reasonably certain to occur" future activities involving the transferred water rights and facilities is a continuation of historic irrigation practices to irrigate some 48,000 acres of land within the Burley Irrigation District. These activities are addressed in Reclamation's Biological Assessment and your recent Biological Opinion on the operation and maintenance activities in the Snake River basin upstream of Lower Granite Reservoir, and accompanying operations descriptions.

Pub. L. No. 105-351 provides in subsections 1(c)(1)(B) and 1(c)(1)(C):

(B) Any rights that are presently held for the benefit of lands within both the Minidoka Irrigation District and the Burley Irrigation District shall be allotted in such manner as to neither enlarge nor diminish the respective rights of either district in such water rights as described in contracts between Burley and the United States.

(C) The transfer of water rights in accordance with this paragraph shall not impair the integrated operations of the Minidoka Project, affect any other adjudicated rights, or result in any adverse impact on any other project water user.

The clearest indication of the Burley Irrigation District's expectations for the future use of the project facilities and water rights subject to transfer are statements made directly by District representatives. Burley Irrigation District Manager Randy Bingham, in testimony on the Bill before the Senate Committee on Energy and Natural Resources, addressed BID's intended future use of the water associated with the natural flow rights to be transferred:

> "We respectfully submit that the transfer of title to the distribution facilities that have been operated and maintained by the irrigation district since 1926 should create no impact in regard to the National Environmental Policy Act of 1969. These are single-purpose facilities; the title transfer will not result in significant changes in the operation and maintenance of the facilities or lands transferred, or land and water use in the foreseeable future. . ."
>
> ". . . The operation and maintenance to the facilities will not change, as the irrigation district, by state law, holds the water rights for the benefit of the lands of the district, and it has a legal obligation to distribute the water equitably to the lands of the district. There are no public aspects of the project or facilities except the obligation to deliver water for the irrigation of lands within the district. . ."

In BID attorney Roger Ling's March 1, 1999 letter to you, he articulates his view of the future use of the facilities and water rights:

---

[1]Preamble to Final Consultation Regulations, 51 Fed. Reg. 19926, 19,933 (1986).

> ". . . The action authorized and to be carried out by the BOR pursuant to the congressional act above referred to [P. L. 105-351] involves the execution of a deed to transfer legal title to facilities and water rights controlled, operated, and maintained by Burley for over 70 years. The purpose of the distribution system and water rights to which legal title is to be transferred will not change, as they will continue to be operated by Burley and used for the purposes set forth by law, that is, for the delivery and use of irrigation water for lands within Burley for irrigation. . ."

The Senate Committee addressed its understanding of the transfer as follows:

> ". . . The Committee wants to emphasize that in directing a partition of the right, there is no intention to enlarge or diminish the beneficial rights of either [Burley or Minidoka] District. The Committee also does not intend that there be any effect on integrated project operations of the Minidoka Project or on any other adjudicated rights or other project water users. The Committee does not believe that the mere transfer of title should have any such effect. . ."

Section 1(c)(1)(C) of Pub. L. No. 105-351 specifies that the transfer of water rights shall be accomplished through an agreement among the United States, the Burley Irrigation District, and the Minidoka Irrigation District. Naturally, the Minidoka Irrigation District's only interest in the agreement is to protect its longstanding water use. The three parties have negotiated a water rights transfer agreement, which includes the following provision:

> "The parties agree that the transfer of water rights to Burley under this agreement and the retention by the United States of a portion of said water rights for Minidoka, including any subsequent conveyance, sale, assignment, or rental of these water rights to others, shall not impair the integrated operation of the Minidoka Project, affect any other adjudicated water rights, or result in any adverse impact on any other Project water user.

Finally, we note that any future attempt by BID to change the point of diversion, place of use, period of use, or nature of use of the water rights conveyed to it by Reclamation would require BID to comply with Idaho law governing such water right transfers. For example, IDAHO CODE § 42-108 allows water right changes only if other water rights are not injured by the proposed change. Likewise, IDAHO CODE § 42-222 further limits water right changes by requiring that all of the following criteria be established as a prerequisite to state approval of the proposed change:

1) the change does not constitute an enlargement in use of the original right,
2) the change is consistent with the conservation of water resource within the state of Idaho,
3) the change is in the local public interest, and
4) the new use is a beneficial use of water.

We would observe that it is possible to *imagine* uses that BID *could* make of the facilities and water rights subject to transfer that are different from historic practices. However, such uses do not rise to the standard of "reasonably certain to occur," because they are contrary to longstanding practice, the self interests of the BID landowners, and the intentions clearly stated by the BID manager and attorney, and are highly unlikely to occur given the above cited limitations imposed by Pub. L. No. 105-351 and the water rights transfer agreement. Throughout the transfer process, BID representatives have consistently maintained that they have only one intention, to continue to irrigate lands within the district. There is nothing in the transfer legislation or the water rights transfer agreement that would lead to any other conclusion. The only actions reasonably certain to occur as a result of the transfer is the continued irrigation of lands within the Burley Irrigation District.

We would be pleased to meet at any convenient time to discuss this matter and address any questions contact Dick Bauman, at (307) 739-8765, if you desire a meeting.

Sincerely,

Jerrold D. Gregg
Area Manager

Enclosures:

Water Rights Transfer Agreement
Committee Report
P.L. 105-351
Statement of Manager Randy Bingham
March 1, 1999 letter to Will Stelle from Roger Ling
Draft Environmental Assessment

cc: Mr. Gayle Richins, Chairman, Burley Irrigation District, 246 E 100 S, Burley ID 83318
Mr. Roger D. Ling, Attorney, Burley Irrigation District, Ling, Nielsen, & Robinson, PO Box 396, Rupert ID 83350

ATTACHMENT D

CONSULTATION WITH NATIONAL MARINE FISHERIES SERVICE

☐ LETTER FROM NMFS TO RECLAMATION REGARDING ENDANGERED SPECIES *(OCTOBER 1999)*

☐ LETTER TO NMFS FROM RECLAMATION REGARDING AN ANALYSIS OF "NO AFFECT" ON ENDANGERED SPECIES (DECEMBER 1999)

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
525 NE Oregon Street
PORTLAND, OREGON 97232-2737

F/NWR5

Mr. Steven L. Brawley, Deputy Area Manager
Bureau of Reclamation
Snake River Area Office
1359 Hansen Avenue
Burley, Idaho 83318-1821

Re: Transfer of Title to the Burley Irrigation District

Dear Mr. Brawley:

The National Marine Fisheries Service (NMFS) has received your March 26, 1999, request for a current list of threatened, endangered, and proposed species under the Endangered Species Act (ESA). In particular, your request addresses those species that may be affected by the transfer of title as directed by Public Law 105-351 of all facilities and natural flow, waste, seepage, return flow, and ground water, but not reservoir storage associated with the south Side Pumping Division, Minidoka Project to the Burley Irrigation District (BID).

We have enclosed a list of anadromous fish species that are listed under the Endangered Species Act, those that are proposed for listing, and those that are candidates for listing. The list includes only anadromous species under NMFS jurisdiction found within the Columbia Basin.

If you have any further questions, please contract Eric Ostrovsky of my staff at (503)231-2338.

Sincerely,

Brian J. Brown

Brian J. Brown
Assistant Regional Administrator
Hydro Division

Enclosure

cc: Dick Bauman
Randy Bingham

ENDANGERED, THREATENED, PROPOSED AND CANDIDATE SPECIES UNDER THE NATIONAL MARINE FISHERIES SERVICE JURISDICTION THAT OCCUR IN THE COLUMBIA RIVER BASIN

Listed Species

Snake River Sockeye Salmon	Oncorhynchus nerka
Snake River Fall Chinook Salmon	Oncorhynchus tshawytscha
Snake River Spring/Summer Chinook Salmon	Oncorhynchus tshawytscha
Lower Columbia River Chinook Salmon	Oncorhynchus tshawytscha
Upper Willamette River Chinook Salmon	Oncorhynchus tshawytscha
Upper Columbia River Spring-run Chinook Salmon	Oncorhynchus tshawytscha
Columbia River Chum Salmon	Oncorhynchus keta
Upper Columbia River Steelhead	Oncorhynchus mykiss
Snake River Basin Steelhead	Oncorhynchus mykiss
Lower Columbia River Steelhead	Oncorhynchus mykiss
Upper Willamette Steelhead	Oncorhynchus mykiss
Middle Columbia River Steelhead	Oncorhynchus mykiss

Candidate Species

Lower Columbia River/Southwest Washington Coho Salmon	Oncorhynchus kisutch

United States Department of the Interior

BUREAU OF RECLAMATION
Snake River Area Office
214 Broadway Avenue
Boise, Idaho 83702-7298

IN REPLY
REFER TO:

December 23, 1999

PN-3200
LND-5.00

Mr. Brian Brown
Assistant Regional Administrator for Hydro
National Marine Fisheries Service
525 NE Oregon St. Suite 500
Portland OR 97232

Subject: Transfer of Title to Burley Irrigation District pursuant to Public Law 105-351 (Act of November 3, 1998)

Dear Mr. Brown:

This letter is to document the Bureau of Reclamation's (Reclamation) finding of no effect under Section 7 of the Endangered Species Act (ESA), of a proposed transfer of title to Minidoka Project irrigation distribution facilities (diversion works, canals, laterals, and associated features) and natural flow water rights to the Burley Irrigation District (BID). Reclamation makes this determination after a careful reading of the ESA and the implementing regulations, Public Law 105-351, which direct the transfer, and the transfer documents which BID has accepted. We desire that you and your staff be fully aware of Reclamation's reasoning in arriving at this determination, and would be pleased to meet and discuss this issue in greater detail at your convenience.

In a letter from Mr. Will Stelle to Acting Regional Director Steve Clark on January 7, 1998, NMFS requested involvement in the transfer process. Commissioner of Reclamation Eluid Martinez responded on February 16, 1999, and advised that Reclamation would apprize NMFS of its findings in association with its compliance activities under the National Environmental Policy Act, and provide opportunity for NMFS input.

Given that the proposed action in this instance is a change in the title ownership to water rights and facilities, it is difficult to detect any "direct effects" on listed species. Quite simply, any effect on listed species would only occur, if at all, through future actions by BID or others. In this respect, Reclamation is mindful that ESA Section 7 consultation requires a thorough consideration of not only the direct effects of any proposed action on listed species, but also the indirect effects of future actions caused by, or resulting from the proposed action, and which are

"reasonably certain to occur." Likewise, any discussion of "cumulative effects" of future private or State actions in the action area is logically limited to actions "reasonably certain to occur." As stated in the Preamble to the Consultation Regulations, the "reasonably certain to occur" standard requires more than "a mere possibility that the action may proceed."[1] For the reasons stated below, Reclamation concludes that the only "reasonably certain to occur" future activities involving the transferred water rights and facilities is a continuation of historic irrigation practices to irrigate some 48,000 acres of land within the Burley Irrigation District. These activities are addressed in Reclamation's Biological Assessment on Water Management Operations in the Snake River Basin Above Lower Granite Reservoir, and accompanying operations descriptions.

Pub. L. No. 105-351 provides in subsections 1(c)(1)(B) and 1(c)(1)(C):

(B) Any rights that are presently held for the benefit of lands within both the Minidoka Irrigation District and the Burley Irrigation District shall be allotted in such a manner as to neither enlarge nor diminish the respective rights of either district in such water rights as described in contracts between Burley and the United States.

(C) The transfer of water rights in accordance with this paragraph shall not impair the integrated operations of the Minidoka Project, affect any other adjudicated rights, or result in any adverse impact on any other project water user.

The clearest indication of the Burley Irrigation District's expectations for the future use of the project facilities and water rights subject to transfer are statements made directly by District representatives. Burley Irrigation District Manager Randy Bingham, in testimony on the Bill before the Senate Committee on Energy and Natural Resources, addressed BID's intended future use of the water associated with the natural flow rights to be transferred:

> "We respectfully submit that the transfer of title to the distribution facilities that have been operated and maintained by the irrigation district since 1926 should create no impact in regard to the National Environmental Policy Act of 1969. These are single-purpose facilities; the title transfer will not result in significant changes in the operation and maintenance of the facilities or lands transferred, or land and water use in the foreseeable future. . ."
>
> ". . . The operation and maintenance to the facilities will not change, as the irrigation district, by state law, holds the water rights for the benefit of the lands of the district, and it has a legal obligation to distribute the water equitably to the lands of the district. There are no public aspects of the project or facilities except the obligation to deliver water for the irrigation of lands within the district. . ."

---

[1]Preamble to Final Consultation Regulations, 51 Fed. Reg. 19926, 19,933 (1986).

In BID attorney Roger Ling's March 1, 1999 letter to you, he articulates his view of the future use of the facilities and water rights:

> ". . . The action authorized and to be carried out by the BOR pursuant to the congressional act above referred to [P. L. 105-351] involves the execution of a deed to transfer legal title to facilities and water rights controlled, operated, and maintained by Burley for over 70 years. The purpose of the distribution system and water rights to which legal title is to be transferred will not change, as they will continue to be operated by Burley and used for the purposes set forth by law, that is, for the delivery and use of irrigation water for lands within Burley for irrigation. . ."

The Senate Committee addressed its understanding of the transfer as follows:

> ". . . The Committee wants to emphasize that in directing a partition of the right, there is no intention to enlarge or diminish the beneficial rights of either [Burley or Minidoka] District. The Committee also does not intend that there be any effect on integrated project operations of the Minidoka Project or on any other adjudicated rights or other project water users. The Committee does not believe that the mere transfer of title should have any such effect. . ."

Section 1(c)(1)(C) of Pub. L. No. 105-351 specifies that the transfer of water rights shall be accomplished through an agreement among the United States, the Burley Irrigation District, and the Minidoka Irrigation District. Naturally, the Minidoka Irrigation District's only interest in the agreement is to protect its longstanding water use. The three parties have negotiated a water rights transfer agreement, which includes the following provision:

> "The parties agree that the transfer of water rights to Burley under this agreement and the retention by the United States of a portion of said water rights for Minidoka, <u>including any subsequent conveyance, sale, assignment, or rental of these water rights to others</u>, shall not impair the integrated operation of the Minidoka Project, affect any other adjudicated water rights, or result in any adverse impact on any other Project water user."

Finally, we note that any future attempt by BID to change the point of diversion, place of use, period of use, or nature of use of the water rights conveyed to it by Reclamation would require BID to comply with Idaho law governing such water right transfers. For example, IDAHO CODE § 42-108 allows water right changes only if other water rights are not injured by the proposed change. Likewise, IDAHO CODE § 42-222 further limits water right changes by requiring that all of the following criteria be established as a prerequisite to state approval of the proposed change:

1) the change does not constitute an enlargement in use of the original right,
2) the change is consistent with the conservation of water resource within the state of Idaho,
3) the change is in the local public interest, and
4) the new use is a beneficial use of water.

We would observe that it is possible to *imagine* uses that BID *could* make of the facilities and water rights subject to transfer that are different from historic practices. However, such uses do not rise to the standard of "reasonably certain to occur," because they are contrary to longstanding practice, the self interests of the BID landowners, and the intentions clearly stated by the BID manager and attorney, and are highly unlikely to occur given the above cited limitations imposed by Pub. L. No. 105-351 and the water rights transfer agreement. Throughout the transfer process, BID representatives have consistently maintained that they have only one intention, to continue to irrigate lands within the district. There is nothing in the transfer legislation or the water rights transfer agreement that would lead to any other conclusion. The only actions reasonably certain to occur as a result of the transfer is the continued irrigation of lands within the BID.

We would be pleased to meet at any convenient time to discuss this matter and address any questions you may have, in keeping with Commissioner Martinez' February 16, 1999 letter. Please contact Dick Bauman, at (307) 739-8765, if you desire a meeting.

Sincerely,

Jerrold D. Gregg
Area Manager

Enclosures

Water Rights Transfer Agreement
Committee Report
Pub. L. No. 105-351
Statement of Manager Randy Bingham
March 1, 1999 letter to Will Stelle from Roger Ling
Draft Environmental Assessment

cc: Mr. Will Stelle
Regional Director
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Chairman
Burley Irrigation District
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Burley Irrigation District
Ling, Nielsen, & Robinson
PO Box 396
Rupert ID 83350
(w/enclosures to each)

ATTACHMENT E

PROPOSED NEGOTIATED AGREEMENT REGARDING TRANSFER OF WATER RIGHTS BY AND BETWEEN THE UNITED STATES OF AMERICA AND BURLEY IRRIGATION DISTRICT AND WITH THE CONCURRENCE OF MINIDOKA IRRIGATION DISTRICT

THE BURLEY WATER RIGHTS TRANSFER AGREEMENT

BY AND BETWEEN

THE UNITED STATES OF AMERICA AND

BURLEY IRRIGATION DISTRICT AND WITH THE CONCURRENCE

OF MINIDOKA IRRIGATION DISTRICT

THE BURLEY WATER RIGHTS TRANSFER AGREEMENT

TABLE OF CONTENTS

Page

TITLE 1

PURPOSE 1

PARTIES & AUTHORITIES 1

DEFINITIONS 1

PREAMBLE 3

TERMS OF AGREEMENT 4
- Article 1. CONVEYANCE OF WATER RIGHTS TO BURLEY 4
- Article 2. WATER RIGHTS NOT ENLARGED OR DIMINISHED 4
- Article 3. TRANSFER NOT TO IMPAIR OPERATIONS 4
- Article 4. NO WARRANTY 4
- Article 5. WATER RIGHTS AND WATER RIGHT CLAIMS CONVEYED 4
  - A. Natural Flow Water Rights. 4
    - 1. Water Right No. A01-00211 4
      - a. Water Right No. A01-00211B 5
      - b. Water Right No. A01-00211A 6
    - 2. Water Right No. A01-00214. 7
      - a. Water Right No. A01-00214B 7
      - b. Water Right No. A01-00214A 8
    - 3. Water Right No. A45-00512 9
      - a. Water Right No. A45-00512 9
  - B. Foster Decree Return Flows 9
    - 1. Allocation of Foster Decreed Return Flows Credits 9
  - C. Domestic & Stock Groundwater Rights 10
    - 1. Water Right No. A45-10389 10
    - 2. Water Right No. 45-10391 10
  - D. Snake River Basin Adjudication Claims (SRBA) 10
    - 1. Domestic Water Right Claim No. A45-10390 10
    - 2. Groundwater Right Claim No. A01-04047 10
    - 3. Groundwater and Wastewater Recaptured by Burley 11
- Article 6. EFFECTUATION OF CONVEYANCE OF 11
  - A. Quitclaim Deed for Water Rights 11
  - B. Quitclaim Deed for Water Right Claims 11
- Article 7. (MINIDOKA PROJECT) OPERATIONAL SYSTEM DISPUTES 11
- Article 8. DISCLAIMER 12
- Article 9. RELEASE/INDEMNIFICATION 12

Article 10. FULL UNDERSTANDING OF THE PARTIES 12
Article 11. RESERVATION OF RIGHTS NOT GRANTED 12
Article 12. INTERPRETATION 12
Article 13. CONTRACT DISPUTES ACT DOES NOT APPLY 12
Article 14. GOOD FAITH AGREEMENT 12
Article 15. BINDING ON SUCCESSORS 13
Article 16. EFFECTIVE DATE 13

ATTACHMENTS

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
CONTRACT & WATER CONVEYANCE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND
BURLEY IRRIGATION DISTRICT AND WITH THE CONCURRENCE
OF MINIDOKA IRRIGATION DISTRICT

TITLE

The articles of this contract collectively comprise, and may be cited as "the Burley Water Rights Transfer Agreement."

PURPOSE

The purpose of this contract and agreement is to effectuate the transfer of water rights as provided by the Minidoka Project Act of 1997, Public Law 105–351.

PARTIES & AUTHORITIES

THIS CONTRACT, made under the provisions of the Act of June 17, 1902 (32 Stat. 388) and Acts amendatory thereof and supplementary thereto, together hereinafter called the "Federal Reclamation Laws," and the provisions of Public Law 105–351 entitled "The Minidoka Project Act of 1997," by and between THE UNITED STATES OF AMERICA, hereinafter called "The United States," acting through the Secretary of the Interior, and the BURLEY IRRIGATION DISTRICT, hereinafter called "Burley," and the MINIDOKA IRRIGATION DISTRICT, hereinafter called "Minidoka," both of which are irrigation districts organized and existing under the laws of the State of Idaho and having their principal place of business at Burley and Rupert, Idaho, respectively.

DEFINITIONS

The following terms, whenever used in this contract, shall have the respective meanings:

"Basis of Right" refers to the legal authority pursuant to which the water right is established.

"Boundary" means the perimeter of the area within which an irrigation district may, under the laws of the State of Idaho, deliver water for the irrigation of district lands.

"Bureau of Reclamation" means the Pacific Northwest Region of the Bureau of Reclamation, an agency of the Department of the Interior.

"Irrigation use" means the application of water to the surface or root zone of the soil for the purpose of producing crops, lawns or landscaping of that land.

"Minidoka Reservoir" means Lake Walcott.

"Nature of use" means the particular application of beneficial use to which a water right may be used.

"Place of use" means the location where the water is used.

"Point of diversion" or POD means any location at which water is diverted from the water system.

"Priority date" means the priority date assigned to the water right.

"Purpose of use" means the nature of use of the water right.

"Quantity" means the volume or rate of diversion of water attributable to the water right.

"Secretary" means Secretary of the Department of the Interior or his duly authorized representative.

"Season of use" means the time period in which a water right may be used.

"Snake River Basin Adjudication" or SRBA means Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987 entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System.

"Storage rights" means water rights obtained under state law and held by The United States to store water, a portion of which is allocated to Burley to irrigate land within its boundaries as provided by Contracts 14-06-100-2455 and 14-06-W-48 of The United States as amended and supplemented.

"Transfer" means any change in a point of diversion, place of use, period of use or purpose of use for a water right.

"Water System" means all rivers, streams, lakes, springs, groundwater or other water sources within the Snake River Basin.

PREAMBLE

The United States under the Federal Reclamation Laws, has heretofore constructed the Minidoka Project including the Southside Pumping Division which serves the lands of Burley and the Gravity Division which serves the lands of Minidoka, all in the State of Idaho; and

The United States has acquired certain rights to water from the State of Idaho which are held by The United States for beneficial use on lands within the Southside Pumping Division and the Gravity Division of said Minidoka Project for the benefit of lands within Burley and Minidoka; and

The Minidoka Project Act of 1997 directs the Secretary of the Interior to convey to Burley for use on lands within Burley, through an agreement among Burley, Minidoka, and the Secretary, and in accordance with and subject to the law of the State of Idaho, all natural flow, waste, seepage, return flow, and ground water rights held in the name of The United States for the benefit of the Minidoka Project, or specifically for Burley, rights that are for use on lands within Burley, which are set forth in contracts between The United States and Burley or in the decree of June 20, 1913 of the District Court for the Fourth Judicial District of the State of Idaho, in and for the County of Twin Falls, commonly referred to as the Foster Decree; and

The Minidoka Project Act of 1997 directs that any project water rights (non-storage) that are presently held for the benefit of lands within both Minidoka and Burley shall be allotted in such manner to neither enlarge nor diminish the respective rights as described in the aforementioned contracts and decree; and

The Minidoka Project Act of 1997 also requires that this conveyance of water rights not impair the integrated operation of the Minidoka Project, affect any other adjudicated rights or result in any adverse impact on any other project water user; and

The Secretary of the Interior is also directed by the Minidoka Project Act of 1997 to allocate storage space to Burley from Minidoka Reservoir, American Falls Reservoir and Palisades Reservoir as described in The United States' Reclamation Contracts No. 14-06-100-2455 and 14-06-W-48 subject to the obligation of Burley to continue to assume and satisfy its allocable costs of operation and maintenance associated with the storage facilities operated by the Bureau of Reclamation; and

Burley contemplates the continued irrigation of 48,000 acres of land within the boundary of the Burley Irrigation District after title transfer both with the natural flow and storage water rights; and

It is the intention of the parties to this contract to carry out the terms and intent of the Minidoka Project Act of 1997.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein stated and in accordance with state and federal law, it is hereby agreed between the parties hereto as follows:

Article 1. CONVEYANCE OF WATER RIGHTS TO BURLEY

The United States conveys to Burley the following water rights described herein, portions of water rights and claims to water rights described herein, and all subject to the conditions agreed to by the parties as provided in this Agreement.

Article 2. WATER RIGHTS NOT ENLARGED OR DIMINISHED

The parties agree that the conveyance of the water rights and claims are not intended to either enlarge or diminish the respective rights of Burley or Minidoka described in contracts between Burley and The United States and Minidoka and The United States.

Article 3. TRANSFER NOT TO IMPAIR OPERATIONS

The parties agree that the transfer of water rights to Burley under this agreement and the retention by the United States of a portion of said water rights for Minidoka, including any subsequent conveyance, sale, assignment, or rental of these water rights to others, shall not impair the integrated operation of the Minidoka Project, affect any other adjudicated water rights, or result in any adverse impact on any other Project water user.

Article 4. NO WARRANTY

The United States does not warrant that there are no senior water rights or claims senior to the water rights being conveyed under this Agreement.

Article 5. WATER RIGHTS AND WATER RIGHT CLAIMS CONVEYED

A. Natural Flow Water Rights.

1. Water Right No. A01-00211

This natural flow water right held by The United States has a priority date of March 26, 1903, for the diversion of 1,726 cfs from the Snake River for the irrigation of lands within the Minidoka

Project, under the canals of the Minidoka Project in Minidoka and Cassia Counties, Idaho.[1] The United States conveys a portion of this right to Burley (hereafter A01-00211B) and retains a portion of the right for Minidoka (hereafter A01-00211A) to be used as provided by contract with The United States.

a. The water right conveyed to Burley, Right No. A01-00211B, is defined with the following elements:

Source is the Snake River.

Priority Date is March 26, 1903.

Quantity is for the diversion of a maximum of 1200 cfs from the Snake River. Burley, Minidoka and the United States will continue to negotiate flexible operational deliveries during each irrigation season to maximize efficient and shared operations. In the event Burley and the Secretary of the Interior on behalf of Minidoka do not agree on a distribution of water that the districts are collectively entitled to under rights A01-00211B and A01-00211A, for whatsoever reason, the water will be divided proportionately with Burley entitled to the delivery of water equivalent to thirty-eight percent (38%) and Minidoka entitled to the delivery of sixty-two percent (62%) of the total water available under said rights up to a maximum of 1726 cfs.[2]

Season of Use is a period each year beginning April 1 and ending October 31 of that year.

Nature of Use is for irrigation.

Place of Use is 48,000 acres within the boundary of Burley.

Points of Diversion are

Township 9 South, Range 25 East of the Boise Meridian, Cassia County, Idaho
Section 1: SWSESW

Township 10 South, Range 22 East of the Boise Meridian, Cassia County, Idaho
Section 19: SWSW, SESE
Section 22: SENE
Section 23: NWSW

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[1] This natural flow water right was established by decree of the Fourth Judicial District of Idaho on June 20, 1913 in the case of Twin Falls Canal Co. v. Charles N. Foster as Right No. 3 of the United States at p. 31.

[2] This percentage division of water rights is in accordance with the Repayment Contract between the United States and Burley, No. 14-06-100-2455, dated June 6, 1962.

Township 10 South, Range 23 East of the Boise Meridian, Cassia County, Idaho
Section 19: NENE
Section 21: NENE
Section 22: SWSW

Township 10 South, Range 24 East of the Boise Meridian, Cassia County, Idaho
Section 30: SESE

b. The right retained by The United States for the benefit of Minidoka, A01-00211A, pursuant to contract 14-06-100-1833 shall be defined with the following elements:

Source is the Snake River.

Priority Date is March 26, 1903.

Quantity is for the diversion of water under both this right held by The United States for Minidoka and Right No. A01-00211B held by Burley and shall not exceed 1,726 cfs. In the event Burley and the Secretary of the Interior on behalf of Minidoka do not agree on a distribution of water that the districts are collectively entitled to under rights A01-00211A and A01-00211B, for whatsoever reason, the water will be divided proportionately with Burley entitled to the delivery of water equivalent to thirty-eight percent (38%) and Minidoka entitled to the delivery of sixty-two percent (62%)of the total water available under said rights up to a maximum of 1726 cfs.[3]

Season of Use is a period each year beginning April 1 and ending October 31 of that year.

Nature of Use is for irrigation of acreage as provided by contract with The United States.

Place of Use is within the boundary of Minidoka for acres as provided by contract with The United States.

Points of Diversion are

Township 9 South, Range 25 East of the Boise Meridian, Minidoka County, Idaho
Section 1: SESENW Lot 7, SWSESW

Township 10 South, Range 23 East of the Boise Meridian, Minidoka County, Idaho
Section 26: SENW, lots 5 and 6

[3] This percentage division of water rights is in accordance with the Repayment Contract between the United States and Minidoka, No. 14-06-100-1833, dated February 2, 1960.

2. Water Right No. A01-00214.

This natural flow water right held by The United States has a priority date of August 6, 1908, for the diversion of 1,000 cfs from the Snake River for the irrigation of lands within the Minidoka Project.[4] The United States conveys a portion of this right to Burley (hereafter A01-00214B) and retains a portion of the right for Minidoka (hereafter A01-00214A).

a. The water right to be conveyed to Burley, A01-00214B, shall be defined with the following elements:

Source is the Snake River.

Priority Date is August 6, 1908.

Quantity is for the diversion of a maximum of 544 cfs from the Snake River. Burley, Minidoka and the United States will continue to negotiate flexible operational deliveries during each irrigation season to maximize efficient and shared operations. In the event Burley and the Secretary of the Interior on behalf of Minidoka do not agree on a distribution of water that the districts are collectively entitled to under rights A01-00214B and A01-00214A, for whatsoever reason, the water will be divided proportionately with Burley entitled to the delivery of water equivalent to thirty-eight percent (38%) and Minidoka entitled to the delivery of sixty-two percent (62%) of the total water available under said rights up to a maximum of 1000 cfs.[5]

Season of Use is only from a period each year beginning April 1 and ending October 31 of that year.

Nature of Use is for irrigation.

Place of Use is 48,000 acres within the boundary of Burley.

Points of Diversion are

Township 9 South, Range 25 East of the Boise Meridian, Cassia County, Idaho
Section 1: SWSESW

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[4] This natural flow water right was established by decree of the Fourth Judicial District of Idaho on June 20, 1913 in the case of Twin Falls Canal Co. v. Charles N. Foster as Right No. 6 of the United States at p. 32.

[5] This percentage division of water rights is in accordance with the Repayment Contract between the United States and Burley, No. 14-06-100-2455, dated June 6, 1962.

Township 10 South, Range 22 East of the Boise Meridian, Cassia County, Idaho
Section 19: SWSW, SESE
Section 22: SENE
Section 23: NWSW

Township 10 South, Range 23 East of the Boise Meridian, Cassia County, Idaho
Section 19: NENE
Section 21: NENE
Section 22: SWSW

Township 10 South, Range 24 East of the Boise Meridian, Cassia County, Idaho
Section 30: SESE

b. The right retained by The United States for the benefit of Minidoka, A01-00214A, pursuant to contract 14-06-100-1833 shall be defined as follows:

Source is the Snake River.

Priority Date is August 6, 1908.

Quantity is for the diversion of water under both this right held by The United States for Minidoka and Right No. A01-00214B held by Burley shall not exceed 1,000 cfs. In the event Burley and the Secretary of the Interior on behalf of Minidoka do not agree on a distribution of water that the districts are collectively entitled to under rights A01-00214A and A01-00214B, for whatsoever reason, the water will be divided proportionately with Burley entitled to the delivery of water equivalent to thirty-eight percent (38%) and Minidoka entitled to the delivery of sixty-two percent (62%) of the total water available under said rights up to a maximum of 1000 cfs.[6]

Season of Use is from a period each year beginning April 1 and ending October 31 of that year.

Nature of Use is for irrigation of acreage as provided by contract with The United States.

Place of Use is within the boundary of Minidoka as provided by contract with The United States.

Points of Diversion are

Township 9 South, Range 25 East of the Boise Meridian, Minidoka County, Idaho

[6] This percentage division of water rights is in accordance with the Repayment Contract between the United States and Minidoka, No. 14-06-100-1833, dated February 2, 1960.

Section 1: SESENW Lot 7, SWSESW

Township 10 South, Range 23 East of the Boise Meridian, Minidoka County, Idaho
Section 26: SENW, lots 5 and 6

3. Water Right No. A45-00512

This is a natural flow water right held by The United States with a priority date of April 9, 1909, for the diversion of 150 cfs from Marsh Creek for the irrigation of land of the Minidoka Project within Burley.[7]

a. Right No. A45-00512 is conveyed to Burley subject to the following elements:

Source is from Marsh Creek, a tributary of the Snake River.

Priority Date is March 26, 1903.

Amount is for the diversion of 150 cfs.

Season of Use is a period each year beginning April 1 and ending October 31 of that year.

Nature of Use is for irrigation.

Place of Use is 48,000 acres within the boundary of Burley.

Points of Diversion are

Township 10 South, Range 24 East of the Boise Meridian, Cassia County, Idaho
Section 27: SENE, SESE
Section 28: NWSE
Section 36, SENE, SWNW

Township 10 South, Range 25 East of the Boise Meridian, Cassia County, Idaho
Section 30: SESE, SWSE

B. Foster Decree Return Flows

1. Allocation of Foster Decreed Return Flows Credits

[7] This natural flow water right was established by decree of the Fourth Judicial District of Idaho on June 20, 1913 in the case of Twin Falls Canal Co. v. Charles N. Foster as Right No. 8 of the United States at p. 33.

In reliance upon the Foster Decree (Twin Falls Canal Company v. Charles N. Foster, et al., in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Twin Falls, dated June 20, 1913), the United States claims a credit against the use of stored water for increased flows in the Snake River attributable to the operation of the Gravity Division and the Southside Pumping Division of the Minidoka Project as determined by the State Engineer of the State of Idaho (Director, Idaho Department of Water Resources), or his duly authorized agent.

The United States conveys that portion of the right arising from the operation of the Southside Division (approximately thirty-eight percent (38%)) to Burley. The use and accounting of the return flow shall continue in a manner that will not injure the rights of the Minidoka Project or its water users. Current practice for the division of the right considers the proportionate diversions of Burley and Minidoka after ad hoc agreements on the monthly division of waste and losses from the Minidoka Southside Canal. If Burley and Minidoka fail to agree on the division of waste and loss or on the procedure to be used, thirty-eight percent (38%) of the credit will accrue to Burley, and sixty-two percent (62%) to Minidoka.

C. Domestic & Stock Groundwater Rights

1. Water Right No. A45-10389

This Snake River Basin Adjudication (SRBA) partial decreed water right has a priority date of June 19, 1909, for the diversion of 0.12 cfs of ground water for domestic purposes. The United States conveys the entire right to Burley.

2. Water Right No. 45-10391

This SRBA partial decreed water right has a priority date of June 19, 1909, for the diversion of 0.08 cfs of ground water for domestic purposes. The United States conveys the entire right to Burley.

D. Snake River Basin Adjudication Claims (SRBA)

1. Domestic Water Right Claim No. A45-10390

The United States filed for a statutory beneficial use claim in the SRBA. It has a priority date of June 19, 1909, for the diversion of 0.24 cfs of ground water for domestic purposes. The United States conveys its claim to water right, No. 45-10390, to Burley. However, Burley shall then be responsible for its ultimate confirmation as a water right in the SRBA proceedings.

2. Groundwater Right Claim No. A01-04047

The United States has filed for a groundwater recharge storage claim in the SRBA. It has a priority date of June 19, 1909, and is for the diversion of groundwater and Snake River surface water

for the purpose of recharging and storage of groundwater. Because this water right is still necessary to sustain pumping flows for the B Unit of the Northside Pumping Division of the Minidoka Project and any change in ownership could injure project operations, The United States shall retain this right if decreed in the SRBA for the benefit of Minidoka Project Operations, except as provided by the following section.

3. Groundwater and Wastewater Recaptured by Burley

The United States conveys to Burley its interest in water withdrawn from wells or captured by drains within Burley's boundaries that are used for either the purpose of improving or preserving the utility of land by draining them or for the purpose of recovering groundwater resulting from irrigation by Burley for further irrigation use on or drainage of lands to which the water rights of Burley are appurtenant.

Article 6. EFFECTUATION OF CONVEYANCE OF WATER RIGHTS & CLAIMS

A. Quitclaim Deed for Water Rights

The Secretary conveys to Burley the above enumerated water rights pursuant to the attached quitclaim deed signed by the Secretary or his designee granting to Burley all right, title and interest of The United States in the above described water rights subject to the conditions contained herein upon execution of this contract.

B. Quitclaim Deed for Water Right Claims

The Secretary conveys the above enumerated water right claims pursuant to the attached quitclaim deed signed by the Secretary or his designee granting to Burley all right, title and interest of The United States in said water rights subject to the conditions contained herein and by the terms of this agreement.

Article 7. (MINIDOKA PROJECT) OPERATIONAL SYSTEM DISPUTES

It is the intent of the parties to maintain current-day system operations into the future. Should there be a future dispute pertaining to the interpretation or enforcement of this agreement that results in an impasse, the parties agree to negotiate utilizing a mutually agreeable third party facilitator before resorting to legal proceedings. None of the parties waive its right to elect an appropriate legal forum. All parties agree to pay their own costs and attorney fees.

Article 8. DISCLAIMER

This contract in no way constitutes a representation or a warranty by The United States that it is transferring any water rights or claims other than usufructary rights that were obtained under Idaho state law.

Article 9. RELEASE/INDEMNIFICATION

Burley agrees to release and indemnify The United States from all past or future claims by landowners within Burley that arise from the transfer of these water rights to Burley.

Article 10. FULL UNDERSTANDING OF THE PARTIES

This Agreement is the result of negotiations wherein each party was represented and advised by legal counsel. It expresses the full and complete understanding of the parties in regards to the transfer of relevant Minidoka project water rights. No other promises, conditions, covenants or agreements exist either orally or in writing in regard to the transfer of ownership of these water rights. This Agreement cannot be modified or assigned except by a writing signed by all the parties.

Article 11. RESERVATION OF RIGHTS NOT GRANTED

The parties expressly reserve all rights not granted, recognized or settled by this Agreement.

Article 12. INTERPRETATION

This Agreement is only intended to modify any inconsistent terms in prior agreements that apply to the water rights conveyed herein.

Article 13. CONTRACT DISPUTES ACT DOES NOT APPLY

This Agreement is a federal contract entered into under Federal Law but since it is not for a procurement of: services, property, or construction, or for the disposal of personal property, it is not a contract subject to the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613).

Article 14. GOOD FAITH AGREEMENT

This Agreement is entered into and executed voluntarily by all parties in good faith and without exertion of duress or undue influence.

Article 15. BINDING ON SUCCESSORS

This Agreement shall become effective as provided in Article 16. Once it is effective it shall be binding upon the parties and shall inure to the benefit of the respective successors of the parties.

Article 16. EFFECTIVE DATE

This Agreement shall be effective only when all of the following events have occurred:

1) The Agreement is executed;

2) A record of decision is executed by the Bureau of Reclamation in compliance with the National Environmental Policy Act.

3) Minidoka Irrigation District concurs with the terms of this water rights agreement by its signature below;

IN WITNESS WHEREOF, the parties hereto have executed this contract on the date of their respective signatures.

THE UNITED STATES OF AMERICA

By:_____
For the Secretary of the Interior

Date:_____

BURLEY IRRIGATION DISTRICT

By:_____
President

Date:_____

ATTEST:

_____
Secretary

CONCURS:
MINIDOKA IRRIGATION DISTRICT

By:_____
President

Date:_____

ATTEST:

_____
Secretary

STATE of Idaho)
)
County of)

On this ___ day of _____, ____, personally appeared before me _____, to me known to be the official of The United States of American that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

_____
Notary Public in and for the
State of Idaho
Residing at:
My commission expires:

(SEAL)

STATE of Idaho)
)
County of)

On this ___ day of _____, ____, personally appeared before me _____, to me known to be the official of The Burley Irrigation District that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said District, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

_____
Notary Public in and for the
State of Idaho
Residing at:
My commission expires:

(SEAL)

STATE of Idaho)
)
County of)

On this ___ day of _____, ____, personally appeared before me _____, to me known to be the official of The Minidoka Irrigation District that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said District, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

_____
Notary Public in and for the
State of Idaho
Residing at:
My commission expires:

(SEAL)

ATTACHMENT F

MAILING LIST FOR
DRAFT ENVIRONMENTAL ASSESSMENT
BURLEY IRRIGATION DISTRICT
FACILITIES TITLE TRANSFER

BURLEY I.D. FACILITIES TITLE TRANSFER *ENVIRONMENTAL ASSESSMENT* MAILING LIST

ENVIRONMENTAL ORGANIZATIONS

Golden Eagle Audubon Society
Box 8261
Boise ID 83707

Marv Hoyt
Greater Yellowstone Coalition
1740 E. 17th
Pocatello ID 83201

Jan Brown
Henry's Fork Foundation
Box 61
Island Park ID 83429

Jan Brown & Dale Swenson, Co-chairs
Henry's Fork Watershed Council
Box 852/604 Main Street
Ashton ID 83420

Scott Brown, State Issues Director
Idaho Conservation League
Box 844
Boise ID 83701

Idaho Outdoor Association
Box 15943
Boise ID 83715

Greg Edson, President
Idaho Outfitters & Guides Association
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Boise ID 83702

Marti Bridges, Water Quality Director
Idaho Rivers United
Box 633
Boise ID 83701

John Marvel
Idaho Watershed Project
Box 1602
Hailey ID 83333

Idaho Wildlife Federation
Box 6426
Boise ID 83707

Franz Camenzind
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Box 2728
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Land and Water Fund of the Rockies, Idaho Office
Box 1612
Boise ID 83701

Lou Lunte, (acting) State Director
The Nature Conservancy
Idaho Field Office
Box 165
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Andy Brunelle
Trout Unlimited, Idaho Chapter
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Boise ID 83701

Kathy Buchner, Director
Trout Unlimited, Wyoming Council & Jackson Hole Chapter
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Jackson, WY 83001

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WaterWatch of Oregon, Inc.
213 SW Ash Street Suite 208
Portland OR 97204

Beth Fries, Program Coordinator
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United States Senator
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Boise ID 83702-5833

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United States Senator
2539 Channing Way
Idaho Falls ID 83404

Office of Hon. Larry E. Craig
United States Senator
250 S. 4th Ave, Room 216
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490 Memorial #103
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304 N. Eighth Street, Room 338
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Attn: Don Dixon
Office of Hon. Michael Crapo
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Idaho Falls ID 83404

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United States Senator
450 S. 4th Ave. Room 207
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Attn: Linda Norris
Office of Hon. Michael Crapo
United States Senator
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Twin Falls ID 83301

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Bonneville Power Administration
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Portland OR 97208

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Bureau of Indian Affairs
Area Office
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Portland OR 97232-4169

(Acting) Superintendent
Bureau of Indian Affairs
Eastern Nevada Field Office
1555 Shoshone Circle
Elko, NV 89801

Mr. Eric LaPointe, Superintendent
Bureau of Indian Affairs
Fort Hall Agency
Box 220
Fort Hall ID 83203

Mr. Gordon Cannon, Superintendent
Bureau of Indian Affairs
Warm Springs Agency
Box 1239
Warm Springs, OR 97761

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Burley Field Office
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Burley ID 83318

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Bureau of Land Management
Idaho State Office
1387 S Vinnell Way
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961 E. Minidoka Dam
Rupert ID 83350

Fish & Wildlife Service
Snake River Basin Office
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Boise ID 83709

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Neil King, Superintendent
National Park Service
Hagerman Fossil Beds National Monument
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William P. LeVere, Forest Supervisor
Sawtooth National Forest
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Burley ID 83318

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Courthouse
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Cassia County Historical Society, Inc.
Box 331
Burley ID 83318

Cassia County Planning & Zoning Commission
Courthouse
Burley ID 83318

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Acequia ID 83310

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1401 Overland Avenue
Burley ID 83318

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Declo ID 83323

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941 — 18th Street
Heyburn ID 83336

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Dennis K. Smith, Mayor
City of Oakley
Box 266
Oakley ID 83346

Debbie Wood, City Clerk
City of Paul
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Paul ID 83347

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Idaho Association of Soil Conservation
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Shoshone ID 83352-0802

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Kimberly ID 83341

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Hagerman ID 83332

Big Wood Canal Co.
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Blackfoot Irrigation Company
1111 East Airport
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Box 536
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Betty Chase, Secretary-Treasurer
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Butte & Market Lake Canal Co.
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Newdale ID 83436

Clark & Edwards Canal
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Rigby ID 83442

Clement Brothers
Lewisville ID 83431

Corbett Slough Ditch Company
78 North 100 West
Blackfoot ID 83221

Craig-Mattson Canal Co.
113 North 4925 East
Rigby ID 83442

Danskin Ditch Company
16 North 800 West
Blackfoot ID 83221

Dilts Irrigation Company, Ltd.
504 North 4200 East
Rigby ID 83442

Eastern Idaho Water Company
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Blackfoot ID 83221

Enterprise Canal Company
13241 North 105 East
Idaho Falls ID 83401-5362

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Teton ID 83451-9802

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American Falls ID 83211

Farmers Friend Irrigation Company
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Ririe ID 83443-0394

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St. Anthony ID 83445-0015

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Idaho Falls ID 83401

Hillsdale Irrigation District
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Eden ID 83325

Idaho Irrigation District
496 East 14th Street
Idaho Falls ID 83404-5965

Jerry Hall, Secretary-Treasurer
Island Irrigation Company
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Rigby ID 83442

King Hill Irrigation District
P.O. Box 428
King Hill ID 83633

Aladene J. Rhodes, Secretary-Treasurer
LaBelle Irrigating Company
528 N 4250 East
Rigby ID 83442

Lenroot Canal Company
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Rexburg ID 83440

Liberty Park Irrigation Company
5293 S. 4300 West
Rexburg ID 83440

Long Island Irrigation Company
729 N. 3800 East
Rigby ID 83442-5046

Lowder Slough Canal Company
4483 E. 400 North
Rigby ID 83442

Milner Irrigation District
Route 1
Murtaugh ID 83344

Minidoka Irrigation District
Route 1, Box 8
Rupert ID 83350

Nampa & Meridian Irrigation District
1503 First Street S.
Nampa ID 83651-4395

New Lava Ditch Company, Ltd.
66 E. River Road
Blackfoot ID 83221

New Sweden Irrigation District
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Idaho Falls ID 83402

J. W. Jones, Secretary
North Rigby Irrigation & Canal Co.
480 N 4000 East
Rigby ID 83442

North Side Canal Company, Ltd.
921 N. Lincoln
Jerome ID 83338

North Side Pumping Company
921 N. Lincoln
Jerome ID 83338-1829

Oakley Canal Co.
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Oakley ID 83346

Osgood Canal Company, Inc.
9310 N. 35th West
Idaho Falls ID 83402

William Taylor
Owners Mutual Irrigation Co.
Box 51780
Idaho Falls ID 83405

Palisades Water Users, Inc.
900 N. Skyline Drive, Suite A
Idaho Falls ID 83402

Parks & Lewisville Irrigation Co., Inc.
368 N. 3600 East
Lewsiville ID 83431-5036

Parsons Ditch Company
72 S. 700 West
Blackfoot ID 83221

Peoples Canal & Irrigation Company
1050 West Highway 39
Blackfoot ID 83221-5307

Poplar Irrigation District
13245 N. 160 East
Rigby ID 83442

Progressive Irrigation District
2585 N. Ammon Road
Idaho Falls ID 83401

Reid Canal Company
2731 W. 6800 South
Rexburg ID 83440-4449

Rigby Canal & Irrigation Company
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Rigby ID 83442

Riverside Canal Company
376 W. 150 North
Blackfoot ID 83221-6928

Rudy Irrigation Canal Company, Ltd.
Box 376
Rigby ID 83442-0376

Salmon River Canal Company
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Twin Falls ID 83301

Snake River Valley Irrigation District
221 South Emerson Avenue
Shelley ID 83724

Southwest Irrigation District
Box 668
Burley ID 83318

Sunnydell Irrigation District
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Texas Slough Irrigating Canal Co.
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Rexburg ID 83440-3619

Trego Ditch Company
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Vince Alberdi, Manager
Twin Falls Canal Company
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Water District #1
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Lawrence Stander, President
Wearyrick Ditch Company
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Blackfoot ID 83221

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1111 E. Airport
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Rigby ID 83442-5153

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Idaho Falls ID 83402

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Idaho Falls Id 83401

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Dale Baker, Plant Manger
J.R. Simplot Company
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Box 676
Heyburn ID 83336

Stan Siewert, Plant Manger
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Ethanol Plant
Box 676
Heyburn ID 83336

Attn: Plant Manger
Kraft U.S.A.
311 S. Oneida Street
Rupert ID 83350

Douglas S. Jones, Marketing Director
Magic Valley Foods
Box 475
Rupert ID 83350

Attn: Plant Manger
McCain Foods
Plant Office
218 W. Highway 30
Burley ID 83318