

MAR 29 2006

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DEPARTMENT OF
WATER RESOURCES

BRIAN L. McMAHAN, ISB NO. 3724
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Attorneys for Claimants Nikkel

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase	91-65; 65-02937B
	)		
Case No. 39576	)		
	)		
	)		
	)		
	)	MOTION TO AMEND PARTIAL	
	)	DECREE	
	)		

COME NOW the holders of the above-referenced water rights, in the subcase listed above, by and through undersigned counsel of record, pursuant to IRCP 60(b) and the other applicable provisions of the SRBA, and move this Court to amend the partial decree in the above-referenced subcase to include the separate stream administration provisions applicable to Boulder Creek and its tributaries, and to include the above-referenced subcase number in this Court's Partial Decree Pursuant to IRCP 54(b) for General Provisions In Basin 65. This Motion is based on the Court's file in this matter, including, but not limited to, the telephonic status conference held on March 7, 2006, the letter from Brian L. McMahan to IDWR dated January 9, 2006, and IDWR's response letter to Brian L. McMahan dated February 14, 2006, copies of which are attached hereto for the Court's convenience. At said status conference on March 7th, both the IDWR and the U.S. Department of Justice (Bureau of Reclamation) indicated no objection to this Motion.

Due to the status conference on this matter already being held on March 7, 2006, and due to the above-referenced water right holders' desire to keep costs in this matter to a minimum, no further hearing is requested on this Motion. However, undersigned counsel will participate in a further hearing telephonically if the Court deems such a hearing necessary.

RESPECTFULLY SUBMITTED this 27th day of March, 2006.

MILLEMANN, PITTENGER, McMAHAN &
PEMBERTON, LLP

By: Brian L. McMahon
BRIAN L. McMAHAN

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing MOTION TO AMEND PARTIAL DECREE was mailed March 27th, 2006, with sufficient first class postage to the following:

IDWR
Attn: Susan Hamlin
PO Box 83720
Boise, Idaho 83720-0098

State of Idaho
Office of the Attorney General
P.O. Box 444449
Boise, Idaho 83711-4449

United States Department of Justice
550 West Fort Street, MSC 033
Boise, Idaho 83724

Dana Hofstetter
608 Franklin Street
Boise, Idaho 83702

Angela Schaer Kaufmann
P.O. Box 829
Boise, Idaho 83701-0829

Brian L. McMahon
BRIAN L. McMAHAN

FAXED
1/9/06
-m

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January 9, 2006

TIME SENSITIVE MATERIAL - - PLEASE OPEN IMMEDIATELY

VIA FACSIMILE: (208) 287-6700 and
VIA U.S. MAIL

Susan Hamlin
State of Idaho
Office of the Attorney General
PO Box 83720
Boise, Idaho 83720-0098

✓ -m

*Re: Proposed Partial Decree for General Provisions in Basin 65/Separate Streams
Administration*

Dear Susan:

This letter will follow the various communications that I have had with you and with Becky Harvey over the past few months regarding the SRBA Court's proposed Partial Decree for General Provisions in Basin 65, particularly the Separate Streams Administration provisions of that proposed partial decree. As you know, the SRBA Court has appointed Theodore R. Booth as Special Master regarding these matters, and a hearing date has been set for March 7, 2006. Accordingly, your consideration of this letter and the resolution of these matters is of some urgency.

As you know, on behalf of certain of my clients, I have filed an objection with the SRBA Court due to the fact that some water right numbers are missing from the Boulder Creek matrix contained in the proposed Partial Decree. The reasons for my objection are set forth in this letter.

The proposed Order of Partial Decree correctly states that "General Provision No. 3 also arises from the Payette River Adjudication. The recommended general provision appears on page 174 of April 26, 1979, *Proposed Findings of Water Rights in the Payette River Drainage Basin*." A copy of said page 174 is attached to this cover letter for your easy reference and, as it states, all of Boulder Creek and its tributaries are to enjoy separate stream administration.

However, the proposed Partial Decree accompanying the proposed Order of Partial Decree is deficient because it: (1) states that the listed water rights "will be administered

separately from all other surface water rights in Basin 65 (when, in fact, the word "surface" should not be found there); and (2) it omits some water rights found in the tributaries to Boulder Creek, specifically the following that I am aware of:

65-2934C	65-2943X
65-2943J	65-2937B
65-2943K	65-2937A
65-2943L	65-06957
65-2943P	65-10371
65-2943R	65-02513
65-2943B	65-10372
65-2943Q	65-02916

The above-listed water rights represent approximately 1275 AF of water that has been omitted from the proposed Partial Decree. These water rights are located on either Louie Creek or Jug Creek. Both of those creeks are tributaries to Boulder Creek (see attached topographic maps). See also Figure 1 from the Payette River Adjudication (copy attached) which expressly acknowledges that Louie Lake, Louie Creek and Jug Creek are tributaries to Boulder Creek.

In addition to the above-listed rights, in her letter to the SRBA Court dated September 16, 2005, Dana Hofstetter identified four water rights that may need to be added to the appropriate matrix in the proposed Partial Decree.

There may be other water right numbers that are missing from one or more of the matrixes contained in the proposed Partial Decree, but the above numbers are the ones I am aware of to date.

As the SRBA has progressed, three separate Director's Reports for Basin 65 have been filed. In each of those Reports it has been recognized that Boulder Creek and its tributaries are among the various streams that "shall be administered separately from all other water rights in Basin 65 in accordance with the prior appropriation doctrine as established by Idaho Law". Again please note that not only are Boulder Creek and all of its tributaries listed, but also there is no reference to administration separate from other surface water rights; rather, it is stated that the administration will be separate from all other water rights in Basin 65. A copy of the third Director's Report for Basin 65 is attached for your easy reference.

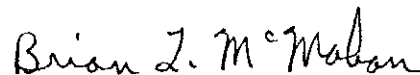
Subsequently, as you know, the Bureau of Reclamation ("BOR") filed its objections to the separate streams administration provisions, but, even in its letter to claimants dated August 8, 2002, the BOR acknowledged that the SRBA general provision regarding separate streams administration "would provide water rights in twelve named tributaries of the Payette River to be administered separately from all other water rights in Basin 65." Again, there is no reference to certain specific water rights on those twelve named tributaries, and again there is no reference to surface water rights; rather, all water rights in the twelve named tributaries are to be administered separately, and they are to be administered separately from all water rights in Basin 65, not just other surface water rights. A copy of the BOR's August 8, 2002, letter is attached for your ease of reference.

In short, all of the parties, as well as the Courts involved in the Payette River Adjudication and the Snake River Basin Adjudication, have acknowledged that separate streams administration applies to all water rights on the named streams and their tributaries. The above-listed rights are located on streams that are tributaries to Boulder Creek. Therefore, they should be listed in the Boulder Creek Matrix of the proposed Partial Decree. Likewise, the lead-in language of the proposed Partial Decree regarding General Provision No. 3 should be modified so that the word "surface" is deleted and it is stated that the water rights listed in the various matrixes will be administered separately from all other water rights in Basin 65.

To resolve this matter, as you know, Special Master Ted Booth, in his letter to me dated October 18, 2005, suggested the filing of a joint motion and stipulation by my clients and the BOR agreeing to add the missing water right numbers to the list, and moving to issue amended partial decrees in the subcases to include the BOR settlement language. However, he also indicated that "concurrence by IDWR would also be essential." Accordingly, the purpose of this letter is to request IDWR's concurrence in modifying the proposed Partial Decree and the affected subcase partial decrees as set forth above in this letter. If IDWR is willing to concur, then we can discuss further the best way to approach the BOR to get the joint motion and stipulation filed, as suggested by Special Master Booth.

Because we now have less than two months until the SRBA Court's scheduled hearing on this matter, and because we still need to get BOR's cooperation in this matter, please give this matter priority and your earliest consideration. I look forward to your prompt response. Thank you.

Sincerely,



BRIAN L. McMAHAN

BLM/mm

Cc w/ Enclosures:

John and David Carey

Jug Creek Reservoir, Inc., P.O. Box 106, McCall, Idaho 83638

Boulder Irrigation Company, c/o George Duncan, P.O. Box 450, McCall, Idaho 83638

Dana Hoffstetter, 608 West Franklin Street, Boise, Idaho 83702

Director of IDWR, P.O. Box 83720, Boise, Idaho 83720-0098

Chief, Natural Resources Division, Office of the Idaho Attorney General,
P.O. Box 44449, Boise, Idaho 83711-4449

US Department of Justice, Environment and Natural Resources Division, 550 West Fort
Street, MSC 033, Boise, Idaho 83724



beneficial use prior to May 20, 1971, for surface waters and prior to March 25, 1963, for groundwater sources. Nonreserved water rights acquired after these dates must be based upon statutory compliance. All existing water rights of the United States within the Payette River Drainage Basin, whether consumptive or nonconsumptive, are recommended herein.

3) An adjudication of water rights should recognize the past history of water use in the area. Since there exist numerous and separate decrees on tributaries to the Payette River, and since users on these stream systems have distributed their waters under direction of a watermaster independently and without regard for prior uses on the Payette River proper, the water users on those tributaries or water sources have adversely or prescribed any prior right to demand water from the tributary streams to fill rights on the Payette River proper. For the purposes of water distribution in the Payette River Drainage Basin, water rights from the following sources, to the extent recommended herein, are not considered junior to water rights from the Payette River:

1. Big Willow Creek, tributary to Payette River, and tributaries,
2. Boulder Creek, tributary to Cascade Reservoir, and tributaries,
3. Campbell Creek, tributary to Cascade Reservoir, and tributaries,
4. Lake Fork Creek, tributary to Cascade Reservoir, and tributaries,
5. Little Willow Creek, tributary to Payette River, and tributaries,
6. Porter Creek, tributary to Payette River, and tributaries,
7. Richards Creek, tributary to South Fork Payette River, and tributaries,
8. Rock Creek (Richards Creek), tributary to Cascade Reservoir, and tributaries,
9. Scriver Creek, tributary to Middle Fork Payette River, and tributaries,
10. Squaw Creek, tributary to Payette River, and tributaries,
11. Warm Springs Creek, tributary to Middle Fork Payette River, and tributaries,
12. Willow Creek, tributary to Cascade Reservoir, and tributaries.

Appropriations of water after October 18, 1977, on the above streams or any other water source or stream in the Payette River Drainage Basin, however, are considered to be tributary to the Payette River proper for the purposes of distribution.

Water sources or creeks not included in the listing above are tributary to the Payette River for the purposes of distribution if in fact water from the water source or creek would eventually reach the Payette River.

4) The consumptive use of water for irrigation purposes in the Payette River Drainage Basin has been determined to be dependent upon location of use as shown in Figure 2. The Director of the Department of Water Resources will be guided by this determination in authorizing changes requested pursuant to Section 42-222 Idaho Code or pertinent case law. Regulation of diversion for irrigation purposes by the Department of Water Resources will be on the basis of the rates of diversion herein specified rather than by the acre-feet allotment.

5) The rates of diversion recommended are generally based on .02 CFS (one miner's inch) per acre with consideration given for reasonable losses incurred dependent on the nature of the conveyance system.

23 LINE
MCCALL

DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

116°00'
44°52'30"

5800000 E

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57°30"

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4968

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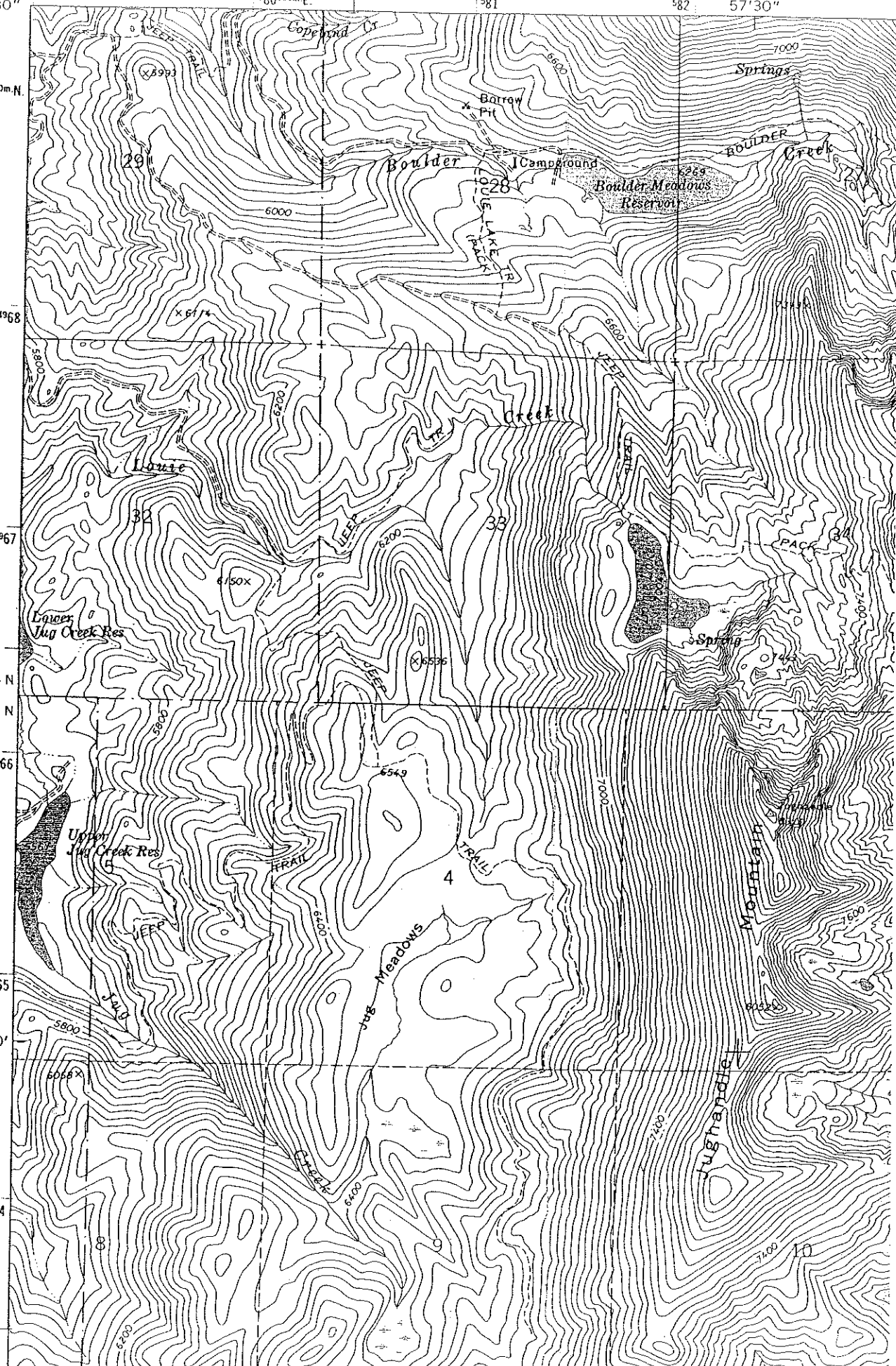
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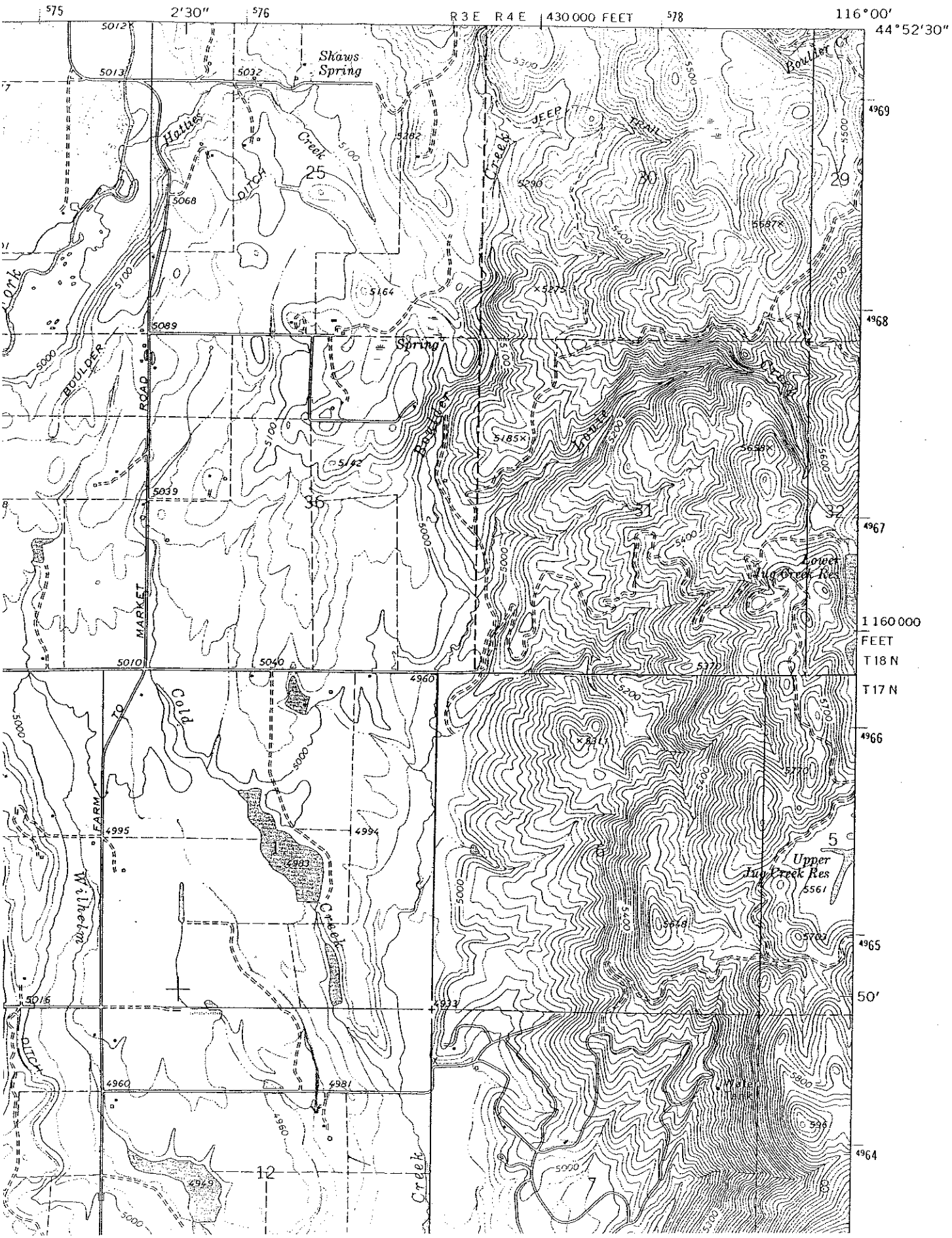
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4964



LAKE FORK QUADRANGLE
IDAHO-VALLEY CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)

2873 IV NW
(FITSUM SUMMIT)



PAYETTE RIVER DRAINAGE BASIN

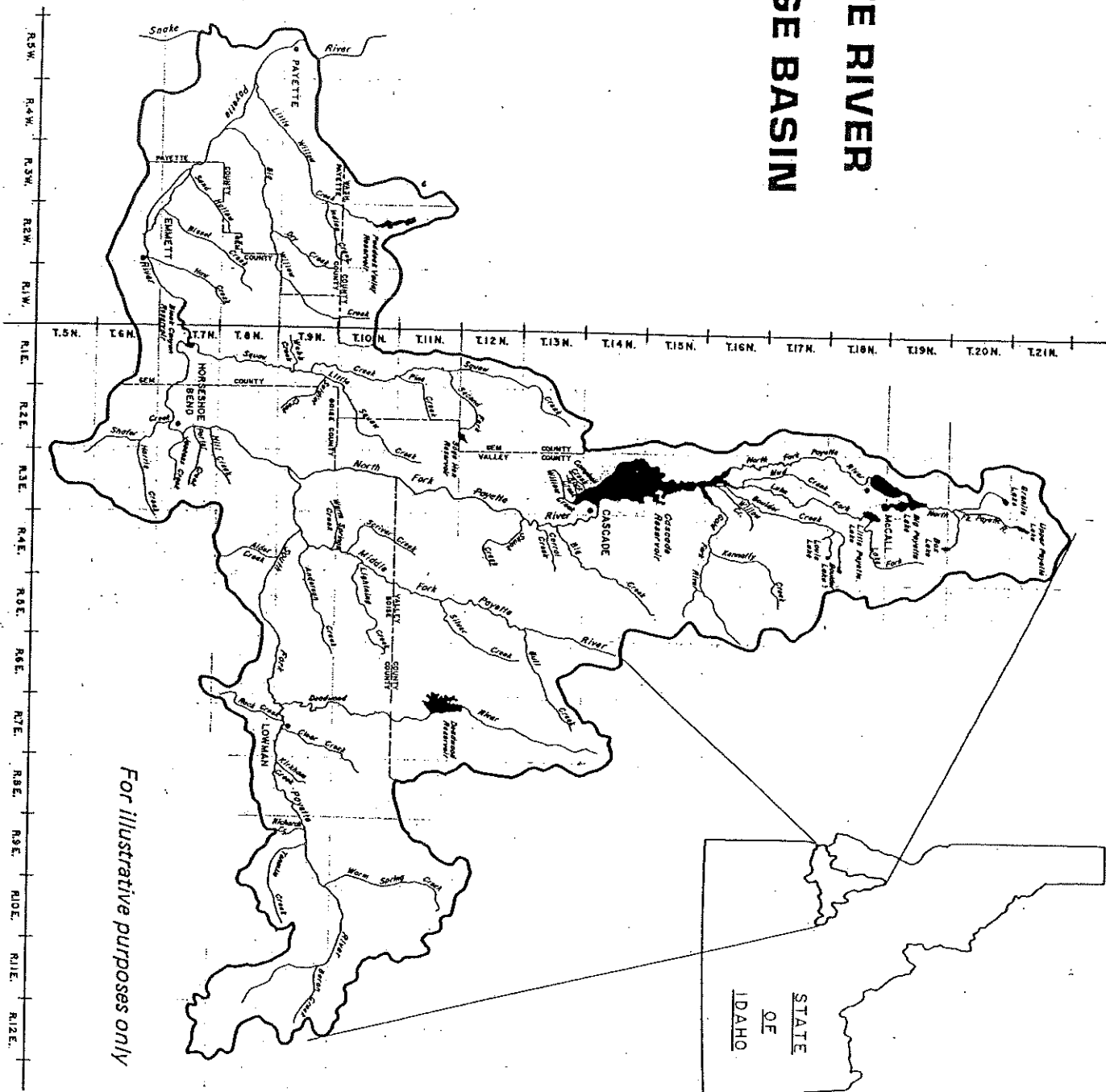


Figure 1.

For illustrative purposes only

BASIN 65 GENERAL PROVISIONS

The Director of the Idaho Department of Water Resources (IDWR) recommends to the Snake River Basin Adjudication (SRBA) District Court that the following general provisions be included in the decree determining rights to water from Basin 65:

- 1) The practice of diverting water during the pre-irrigation and post-irrigation season as well as diverting the so-called "high water" or, "flood water" in addition to the quantified rights described in the recommended decree of water rights (and future rights that may be established pursuant to statutory procedures) are allowed provided:
 - a) The water so diverted is applied to beneficial use.
 - b) The existing quantified rights (including future appropriations of water) are first satisfied.
- 2) The Sevenmile Slough is identified and treated for water delivery purposes as part of the main stem of the Payette River.
- 3) The following water rights from the following sources of water in Basin 65 shall be administered separately from all other water rights in Basin 65 in accordance with the prior appropriation doctrine as established by Idaho law:
 - a) Big Willow Creek, tributary to Payette River, and tributaries,
 - b) Boulder Creek, tributary to North Fork Payette River, and tributaries,
 - c) Campbell Creek, tributary to North Fork Payette River, and tributaries,
 - d) Lake Fork Creek, tributary to North Fork Payette River, and tributaries,
 - e) Little Willow Creek, tributary to Payette River, and tributaries,
 - f) Porter Creek, tributary to Payette River, and tributaries,
 - g) Richards Creek, tributary to South Fork Payette River, and tributaries,
 - h) Rock Creek (Richards Creek), tributary to North Fork Payette River, and tributaries,
 - i) Scriver Creek, tributary to Middle Fork Payette River, and tributaries,
 - j) Squaw Creek, tributary to Payette River and tributaries,
 - k) Warm Springs Creek, tributary to Middle Fork Payette River, and tributaries,
 - l) Willow Creek, tributary to North Fork Payette River, and tributaries.

SEE ATTACHMENT "A" FOR WATER RIGHT NUMBERS

- 4) The following water rights from the following sources of water in Basin 65 shall be administered separately from all other water rights in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law:

SOURCE

None

WATER RIGHT NUMBER:

None

- 5) Except as otherwise specified above, all other water rights within Basin 65 will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law.

**ATTACHMENT A
PART III**

Page 1

WATER SOURCE: BIG WILLOW CREEK AND TRIBUTARIES

65- 1967	65- 2501	65- 3128	65- 7136	65- 10533
65- 1981	65- 2601	65- 3247	65- 7603	65- 10534
65- 1983	65- 3124A	65- 3248	65- 7789	65- 10535
65- 2043	65- 3124X	65- 4486A	65- 9076	65- 10536
65- 2204	65- 3125	65- 4486B	65- 9533	65- 10537
65- 2422	65- 3126	65- 4983	65- 9534	65- 11247
65- 2500	65- 3127	65- 7061	65- 9535	65- 11343

WATER SOURCE: BOULDER CREEK AND TRIBUTARIES

65- 22150	65- 22514	65- 22558	65- 22588
65- 22437	65- 22515	65- 22587	65- 22590

WATER SOURCE: CAMPBELL CREEK AND TRIBUTARIES

65- 22157

WATER SOURCE: LAKE FORK CREEK AND TRIBUTARIES

65- 3202X	65- 22337	65- 22509	65- 22556
65- 3203	65- 22461	65- 22511	65- 22557

WATER SOURCE: LITTLE WILLOW CREEK AND TRIBUTARIES

65- 64	65- 2240	65- 3133	65- 5925	65- 22232
65- 1970	65- 2973	65- 3134	65- 6302	65- 22233
65- 1971	65- 3130	65- 3135	65- 7546	
65- 2067	65- 3131	65- 3618	65- 8991	
65- 2149	65- 3132	65- 5773	65- 11284	

WATER SOURCE: PORTER CREEK AND TRIBUTARIES

65- 3103	65- 10746	65- 10773	65- 22279	65- 22328
65- 3104B	65- 10770	65- 10953	65- 22280	65- 22329
65- 3104C	65- 10771	65- 11369	65- 22327	65- 22330

WATER SOURCE: SQUAW CREEK AND TRIBUTARIES

65- 37	65- 125	65- 212B	65- 280	65- 292	65- 383
65- 87	65- 131	65- 215	65- 282	65- 347	65- 384
65- 92	65- 155	65- 216	65- 283	65- 365	65- 386
65- 92A	65- 156	65- 251	65- 284	65- 368	65- 393
65- 117	65- 203	65- 252	65- 286	65- 372	65- 395
65- 122	65- 211	65- 273	65- 291	65- 373	65- 422

ATTACHMENT A PART III

Page 2

WATER SOURCE: SQUAW CREEK AND TRIBUTARIES - CONTINUED

65- 429	65- 3035	65- 3088B	65- 9538	65- 18442	65- 22446
65- 437	65- 3036	65- 3088X	65- 9539	65- 18737	65- 22447
65- 462	65- 3037	65- 3089A	65- 10449	65- 21736	65- 22452
65- 476	65- 3038A	65- 3089D	65- 10473	65- 21737	65- 22480
65- 501	65- 3038B	65- 3089E	65- 10507	65- 21738	65- 22484
65- 537	65- 3039	65- 3089G	65- 10652	65- 22066	65- 22485
65- 2124	65- 3040A	65- 3091A	65- 10653	65- 22104	65- 22502
65- 2135	65- 3040B	65- 3091X	65- 11166A	65- 22109	65- 22532
65- 2379	65- 3041B	65- 3092	65- 11166B	65- 22128	65- 22534
65- 2891	65- 3041D	65- 3093	65- 11169	65- 22129	65- 22574
65- 2897	65- 3041X	65- 3094A	65- 11217	65- 22230	65- 22575
65- 2945	65- 3043	65- 3094C	65- 11248	65- 22253	65- 22576
65- 2948	65- 3044	65- 3094D	65- 11254	65- 22265	65- 22578
65- 2965B	65- 3045A	65- 3095A	65- 11256	65- 22266	65- 22579
65- 3004	65- 3045X	65- 3095X	65- 11257A	65- 22267	65- 22596
65- 3005A	65- 3046	65- 3096	65- 11257B	65- 22298	65- 22597
65- 3005X	65- 3047	65- 3099	65- 11257C	65- 22316	65- 22600
65- 3006A	65- 3048	65- 3358A	65- 13071	65- 22317	65- 22603
65- 3006B	65- 3049	65- 3358B	65- 13871	65- 22318	65- 22604
65- 3007	65- 3050	65- 3444	65- 17885	65- 22320	65- 22605
65- 3008	65- 3051	65- 3445	65- 17888	65- 22321	65- 22606
65- 3010A	65- 3052	65- 3447	65- 17892	65- 22322	65- 22607
65- 3010X	65- 3053	65- 4055	65- 17893	65- 22323	65- 22608
65- 3011	65- 3054	65- 4056	65- 17894	65- 22373	65- 22609
65- 3012	65- 3055	65- 5613	65- 17895	65- 22395	65- 22610
65- 3013	65- 3056	65- 5614	65- 17896	65- 22398	65- 22611
65- 3016	65- 3057	65- 7048B	65- 17897	65- 22401	65- 22612
65- 3017	65- 3060	65- 7185	65- 17898	65- 22404	
65- 3019	65- 3061	65- 7237	65- 17899	65- 22405	
65- 3020	65- 3062	65- 7338	65- 17900	65- 22406	
65- 3021	65- 3063	65- 7444B	65- 17901	65- 22407	
65- 3022	65- 3064	65- 7445B	65- 17902	65- 22408	
65- 3023	65- 3065	65- 7526A	65- 17903	65- 22410	
65- 3024	65- 3066	65- 7526B	65- 17909	65- 22411	
65- 3025A	65- 3067	65- 7527	65- 17910	65- 22412	
65- 3026	65- 3069	65- 7574	65- 17911	65- 22413	
65- 3027	65- 3073	65- 7588	65- 17912	65- 22414	
65- 3028	65- 3077	65- 7803A	65- 17913	65- 22416	
65- 3029	65- 3078A	65- 7803B	65- 17916	65- 22417	
65- 3030	65- 3078X	65- 8427	65- 17918	65- 22418	
65- 3031	65- 3084	65- 9092A	65- 17925	65- 22419	
65- 3032	65- 3086	65- 902B	65- 17926	65- 22420	
65- 3033	65- 3087	65- 9093	65- 17930	65- 22442	
65- 3034	65- 3088A	65- 9094	65- 18408	65- 22445	

WATER SOURCE: WILLOW CREEK AND TRIBUTARIES

65- 22589



United States Department of the Interior

BUREAU OF RECLAMATION

Pacific Northwest Region

1150 North Curtis Road, Suite 100

Boise, Idaho 83706-1234

IN REPLY
REFER TO:

PN-3100

WTR-1.10

AUG 08 2002

Subject: Notice to Recipients of Objections to Claims in the Snake River Basin
Adjudication Which Include the Separate Stream General Provision

Dear Claimant:

As you know, the U.S. Bureau of Reclamation (Reclamation) has concerns about the "separate streams" provision that the Idaho Department of Water Resources (IDWR) recommended in the Snake River Basin Adjudication (SRBA) that would apply to your water right. That general provision would provide water rights in 12 named tributaries of the Payette River to be administered separately from all other water rights in Basin 65. In order to raise those concerns, Reclamation had to object to your water right, and every other water right located on a stream designated for administration separately from the mainstem of the Payette River.

The purpose of this letter is to ask you to consider a settlement offer that would resolve Reclamation's objection and would avert the need for any further legal proceedings by you. Representatives from Reclamation, the State of Idaho Office of the Attorney General (AG), and IDWR have developed this proposal to submit to you and other similarly situated claimants. The settlement offer is enclosed for your consideration. As you will note, representatives from Reclamation, the AG, and IDWR have signed the settlement since the resolution satisfies Reclamation's concerns, while IDWR believes it protects water rights as currently utilized, and any future water rights and uses envisioned within the separate stream administration.

Reclamation's main concern in filing the objection to the separate stream provision was both to protect the operations of Reclamation's Cascade Reservoir and to meet its irrigation contractors' demands. As water rights are currently utilized within the separate stream reaches, Reclamation is able to do both of those things except possibly in drought water years. Reclamation is willing to accept the separate streams provision as currently applied to your water right. However, the settlement protects Reclamation's right to protest any future development of water rights or future transfers of water rights within a separate stream basin in the event there could be an injury to Reclamation's water rights. The terms of this settlement provide that nothing in the separate stream general provision shall preclude any other person or entity from demonstrating that such change in use would cause injury to its water right or from receiving any relief provided by law in the event of injury.

IDWR and Reclamation are holding two information meetings to answer questions and further explain the settlement offer. If you have any questions, we recommend that you attend one of

these meetings for further information. These meetings will be held at the following times and locations:

August 26, 2002, 7:00 PM
Emmett High School Atrium
721 W 12th
Emmett, Idaho

August 27, 2002, 7:00 PM
American Legion Hall
105 N Mill Road
Cascade, Idaho

Please read the enclosed settlement agreement. If you would like more information regarding the settlement, please attend one of the above meetings. If it is acceptable to you, please sign the settlement agreement and mail it so that it will be received by September 16, 2002, using the enclosed postage paid envelope to: Bureau of Reclamation, Attention: Dala Walton - SRA-6434, Snake River Area Office - East, 1359 Hansen Avenue, Burley ID 83318-1821. You may also submit your settlement agreement in person at the meeting. If a signed settlement offer is not received by Reclamation by September 16, 2002, the objection to your water right will be referred to an SRBA Special Master for hearing.

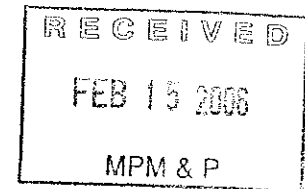
It is important that you consider the options available to you. Reclamation and IDWR will work together to expedite the processing of this settlement so that your water right within the SRBA can be decreed as expeditiously as possible. I look forward to seeing you in Emmett or Cascade. If you cannot attend and have questions, please feel free to contact Reclamation employee Dala Walton at (208) 678-0461 ext 23; or IDWR employee Roxanne Brown at (208) 327-7925.

Sincerely,



E. Gail McGarry
Program Manager, Water Rights
and Acquisition

Enclosures



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

February 14, 2006

Brian L. McMahan
Millemann, Pittenger, McMahan and Pemberton, LLP
Attorneys at Law
706 N. 1st
P.O. Box 1066
McCall ID 83638

Re: Proposed Partial Decree For General Provisions in Basin 65 -
Separate Stream General Provision

Dear Mr. McMahan:

I have received your letter dated January 9, 2006. You have requested that your clients' water rights in the Boulder Creek drainage be added to the Basin 65 Proposed Partial Decree for the Separate Stream General Provision water rights numbers listed in the attachment. The proposed Partial Decree for General Provisions in Basin 65 are set for a status conference before SRBA Special Master Booth on March 7, 2006.

As background to this issue, IDWR recommended the Separate Stream General Provision in the Director's Reports filed for Basin 65 during the years 1999 to 2001. The basis for developing the Separate Stream General Provision was from language in the Payette River Adjudication Decree. The list of sources of water in the Payette Adjudication Decree incorporated independent water districts where the water master for the independent district administered the water sources separate from and without regard for the main stem. The Department used this listing of sources of water from the Payette Adjudication Decree to generate the list of water right numbers that would be attached to the Separate Stream General Provision recommendation in the SRBA.

When this water rights list was generated, approximately during the years of 1998-1999, IDWR did not have the benefit of spatial search capabilities using GIS (Geographical Information Systems) for spatially locating the points of diversion. The GIS data layer of recommended points of diversion was not fully functional at IDWR until sometime after June of 2000. Thus the list was developed using our best technology at the time, which was tabular data search based on the source and tributaries. As the water rights that you have brought to our attention are from sources of water that are *tributaries to tributaries to the Boulder Creek* drainage, they would not necessarily filter out using our search capabilities and technology at that time. Although IDWR used the best search capabilities to generate the list at that time, IDWR now has a more finite and detailed data search capability using the GIS technology.

With the GIS technology, the Department is able to generate a more refined list to research *tributaries to tributaries to Boulder Creek*. Based on the recent review using our latest technology, as well as historical delivery practices, the Department concluded that some water rights from various sources that are *tributaries to tributaries to Boulder Creek* could be added to the separate stream list, if parties and the Court agree. IDWR can concur to add the following water rights, with irrigation purpose of use, to the Separate Stream General Provision list. These water right numbers are as follows:

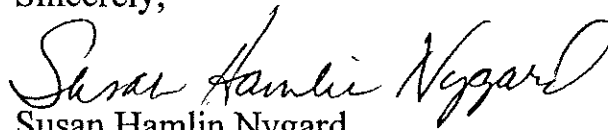
Right number	Source/Trib	Purpose of Use
65-2513	Unnamed Stream/Boulder Creek	Irrigation
65-2916	Louie Lake/Louie Creek	Irrigation Storage Irrigation from Storage
65-2934C	Jug Creek/Louie Creek	Irrigation Storage Irrigation from Storage
65-2943B	Jug Creek/Louie Creek	Irrigation Storage Irrigation from Storage
65-2943J	Jug Creek/Louie Creek	Irrigation from Storage Irrigation Storage
65-2943K	Jug Creek/Louie Creek	Irrigation from Storage Irrigation Storage
65-2943L	Jug Creek/Louie Creek	Irrigation from Storage Irrigation Storage
65-2943P	Jug Creek/Louie Creek	Irrigation from Storage Irrigation Storage
65-2943Q	Jug Creek/Louie Creek	Irrigation from Storage Irrigation Storage
65-2943R	Jug Creek/Louie Creek	Irrigation from Storage

Right number	Source/Trib	Purpose of Use
		Irrigation Storage
65-2943X	Jug Creek/Louie Creek	Irrigation Storage Irrigation from Storage
65-2937A	Jug Creek/Louie Creek	Irrigation Storage Irrigation from Storage
65-2937B	Jug Creek/Louie Creek	Irrigation Storage Irrigation from Storage
65-5678	Unnamed Stream/ Bear Creek	Irrigation
65-8257A	Spring/Wilhelm Creek	Irrigation
65-8257B	Spring/Wilhelm Creek	Irrigation

You will note the last three water rights are not rights you requested to add to the list; however, they are similarly situated in the Boulder Creek area and are irrigation rights. IDWR reviewed the whole Boulder Creek drainage and believes that these other three water rights should also be added to the list if it is revisited by the SRBA Court.

If you have further questions, please do not hesitate to call me.

Sincerely,



Susan Hamlin Nygard

Deputy Attorney General

Idaho Department of Water Resources

cc: David Gehlert, DOJ
E. Gail McGarry, Bureau of Reclamation
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Angela Schaer Kaufmann
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Don Shaff, IDWR