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APR 11 2006

DEPARTMENT OF
WATER RESOURCES

George E. And Cheryl F. Colwell

Dana L. Hofstetter, ISB#3687
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, ID 83702
(208) 424-7800
(208) 424-8774 (Facsimile)

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

In Re SRBA	)	Subcase No. 65-22762
	)	
Case No. 39576	)	
	)	Affidavit of Dana L. Hofstetter
	)	
	)	
	)	
_____	)	

STATE OF IDAHO	)
	) ss:
COUNTY OF ADA	)

Dana L. Hofstetter, being first duly sworn deposes and states:

(1) I am Dana L. Hofstetter, the attorney of record for George and Cheryl Colwell in this proceeding.

- (2) Attached hereto as exhibits are true and correct copies of the following documents from my files:

Exhibit A: Basin 65, Part III SRBA Director's Report Excerpt and Notice dated September 10, 2001.

Exhibit B: September 2002 Stipulation for Basin 65 General Provision No. 3 (Separate Streams) Addition of Two Water Rights to "Attachment A" List, Subcase Nos. 65-22616 and 65-22617.

Exhibit C: *Payette Adjudication* Separate Streams provision.

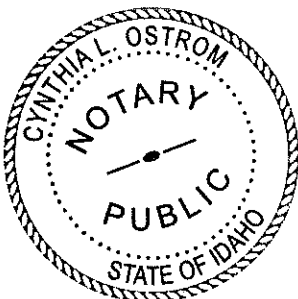
- (3) I filed the Objection in this Subcase on May 14, 2004. I do not recall why I did not object to this water right's exclusion from the Separate Streams list in the Director's Report for Late Claims which was filed on March 9, 2004. It apparently was my practice at the time to object to exclusion from the Separate Streams list for any omitted right from a Separate Streams source. I likely overlooked this matter since the regular Standard Form 1 (Objection) does not include a category for objecting to Separate Streams matters.

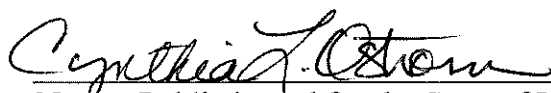
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 7th day of April, 2006.


DANA L. HOFSTETTER

SUBSCRIBED AND SWORN to before me this 7th day of April, 2006.




Notary Public in and for the State of Idaho
Residing at: *Boise, Idaho*
My Commission Expires: *10/8/2010*

CERTIFICATE OF SERVICE

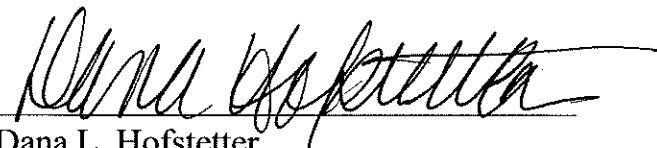
I hereby certify that on the **7th day of April, 2006**, I caused to be served copies of the foregoing **AFFIDAVIT OF DANA L. HOFSTETTER** by the methods indicated below:

Gail McGarry
U. S. Bureau of Reclamation
1150 North Curtis Road, Suite 100
Boise, Idaho 83706
✕ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

U.S. Dept. of Justice
Environment & Natural Resources
550 W. Fort St., MSC 033
Boise, ID 83724
✕ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
✕ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Chief, Natural Resources Division
Office of the Attorney General
P. O. Box 44449
Boise, Idaho 83711-4449
✕ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

4001.1/6853



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 10, 2001

RE: Water Rights in Reporting Area 15, Basin 65
Snake River Basin Adjudication (SRBA)

Dear Water Right Claimant(s):

Please find enclosed the Idaho Department of Water Resources recommendations for your water right(s) in Basin 65 for the Payette River drainage basin. We have also enclosed instructions for reviewing (1) your recommended water right(s), and (2) other recommended right(s) in your area. Water rights for nearly all domestic and/or stockwater rights were recommended separately in an earlier report, and most of those now have been decreed by the SRBA Court.

Note that you have 120 days in which to review your water rights or those of other claimants and to file any objection to our recommendations. Information on the other water rights can be found at the county courthouses in Emmett, Payette, Weiser, Idaho City, and Cascade, and at all the Idaho Department of Water Resources offices (see addresses in enclosures).

If the SRBA Court does not receive an objection to our recommendation from you and no other party objects to your water right, your water right will be decreed the first part of next year as recommended. You will receive your decree from the SRBA Court.

Completion of the SRBA is important for the future of water management in Idaho. We invite you to contact our regional offices with any questions you have about your water right(s) or this adjudication process.

Sincerely,

Karl J. Dreher
Director

Enclosures

RECEIVED SEP 19 2001

EXHIBIT A
PAGE 1

NOTICE OF FILING OF DIRECTOR'S REPORT FOR IDWR REPORTING AREA 15, BASIN 65, PART III FOR IRRIGATION AND OTHER WATER RIGHTS

The Director of the Idaho Department of Water Resources (IDWR) has filed with the Snake River Basin Adjudication (SRBA) District Court the Director's Report for irrigation and other water rights in IDWR Reporting Area 15, Basin 65, Part III. A map of the area covered by this Director's Report is attached to this Notice. This Director's Report contains the Director's recommendation to the SRBA court as to how each of your claimed water rights should be decreed in the SRBA.

This Director's Report includes claims for irrigation and other uses, including some small domestic and stock water uses. The Director's Report for most small domestic and stockwater rights for IDWR Basin 65 was sent to the SRBA court and individual water users on April 6, 1998. Some small domestic and stockwater claims were withheld from the earlier report. If a claim for small domestic and stockwater was withheld from last year's report, it is reported in this Director's Report.

Included with this Notice is the Director's recommendation for your water rights claimed in the SRBA not previously recommended in the small domestic and stockwater report. IDWR is providing individual reports like this one to all claimants of irrigation and other water rights in your area. A complete copy of the Director's Report, listing all of these irrigation and other rights claimed under state law and "dual based" claims by the federal government, is available at the SRBA courthouse in Twin Falls and the locations listed on the third and fourth pages of this notice. Copies of the report can be made, but you may be charged for copying and mailing.

INSTRUCTIONS FOR REVIEWING YOUR OWN WATER RIGHT

The description of your right which is enclosed is only the Director's recommendation to the SRBA Court on your water right. The Court will decide how it will decree your water right. You are free to agree or disagree with the Director's recommendation. If you agree with the Director's recommendation you do not need to do anything, pending further notice as described below. If you disagree with the Director's recommendation, you need to file an objection as described below.

INSTRUCTIONS FOR REVIEWING THE WATER RIGHTS OF OTHERS

The complete Director's Report contains recommendations to the SRBA Court on your water right and all other irrigation and other rights in your area. The Court will decide how it will decree all water rights. The Director's recommendations in the full report are listed in two sections of the report:

- 1) **List of Recommended Water Rights** -- Water right recommendations are listed numerically by water right number.

- 2) **List of Claims Recommended to Be Disallowed** -- Water rights recommended to be disallowed are listed numerically by water right number. A short statement of the reason for IDWR's recommendation for disallowance is provided.

Also included in the complete Director's Report are descriptions of the United States' claims under federal law that have also been claimed under a state law basis. These are called "dual based" claims. The Director does not investigate the federal portion of these claims and makes no recommendation whether they should be granted or not.

If you want to review someone else's water right you need to look at the complete Director's Report, which is available at the SRBA courthouse in Twin Falls and the locations listed on the third page of this notice. Copies of the report can be made, but you may be charged for copying and mailing.

INSTRUCTIONS FOR TAKING A WATER RIGHT CLAIM TO COURT

What do I do if I disagree with a recommendation?

If you disagree with any element of the recommendation for your water right or anyone else's water right and want to be heard in court, file an objection with the SRBA Court. Objections must be made on the standard objection form available from any IDWR office or from the SRBA Court. You may also download a copy of the objection form from the SRBA Web Site at www.srba.state.id.us.

Your objection must be **received** by the SRBA Court on or before **January 18, 2002**.

What do I do if someone else objects to my water right recommendation?

If someone files an objection to your water right, or anyone else's water right, you may file a response to that objection. Responses to objections must be made on the standard response form available from any IDWR office or from the SRBA Court.

Your response must be **received** by the SRBA Court on or before **March 22, 2002**.

What do I do if I want to participate in the court case on someone else's water right?

If you want to be involved in the court case on any water right in the Director's Report, you must file either an objection or a response by the dates listed above.

What happens if there are no objections to a water right?

After the deadline for filing objections, IDWR will file a list of all water right recommendations with no objections. The SRBA Court will hear the uncontested recommendations on **June 18, 2002, at 1:30 P.M.** at the **SRBA Courthouse**. Partial decrees will be issued following this hearing.

How will I know about the proceedings on water right recommendations to which objections were filed?

A notice will be mailed to you for court dates on your water right or for those where you filed an objection or a response. You will not receive notice of court dates on any other water right recommendations.

Additional information regarding water right claims can be found on the SRBA Web Site at www.srba.state.id.us.

Note: The SRBA Court publishes a monthly Docket Sheet listing all objections and responses filed. It does not list court dates for individual water right cases, but provides general information helpful to all participants in the SRBA.

The Docket Sheet is available at your county courthouse and all IDWR offices, or you may subscribe by contacting the SRBA Court or IDWR. The annual subscription fee is \$7.50. The Docket Sheet is also available on the SRBA Web Site at www.srba.state.id.us.

CHANGES OF ADDRESS OR OWNERSHIP DURING THE SRBA COURT CASE

You must contact your regional IDWR office with your address change or if the ownership of your water right changes. Failure to notify IDWR may result in the loss of your water rights.

ADDITIONAL INFORMATION

If you have questions about the SRBA, public information brochures are available at any IDWR office. Maps and aerial photography of this reporting area, as well as assistance in using the maps and the photography, are available at the IDWR Eastern Region office in Idaho Falls. You are also welcome to call IDWR at any of its offices or the SRBA Court. You may also want to consider contacting an attorney to assist you.

**Snake River Basin Adjudication
District Court**

253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707
(208) 736-3011

Idaho Department of Water Resources

1301 North Orchard
Box 83720
Boise, Idaho 83720-0098
(208) 327-7906
(800) 451-4129

**Idaho Department of Water Resources
Western Region**

2735 Airport Way
Boise, Idaho 83705-5082
(208) 334-2190

**Idaho Department of Water Resources
Northern Region**

1910 Northwest Blvd., Suite 210
Coeur d'Alene, ID 83814-2615
(208) 765-1450

**Idaho Department of Water Resources
Southern Region**

1341 Fillmore, Suite 200
Twin Falls, Idaho 83301-3380
(208) 736-3033

**Idaho Department of Water Resources
Eastern Region**

900 North Skyline, Suite A
Idaho Falls, Idaho 83402-3653
(208) 525-7161

Boise County Courthouse
415 Main Street
Idaho City, ID 83631

Gem County Courthouse
415 E. Main
Emmett, ID 83672

Payette County Courthouse
1130 3rd Avenue North
Payette, ID 83661

Valley County Courthouse
219 Main
Cascade, ID 83611

Washington County Courthouse
256 E. Court
Weiser, ID 83672

DEFINITIONS OF THE ELEMENTS OF YOUR WATER RIGHT

RIGHT NUMBER: Your water right is identified by a number assigned by IDWR. The first two digits identify IDWR's administrative basin number; for example, 33.

NAME AND ADDRESS: Your name and address should appear here. IDWR will use the most recent name and address in their records for the water right.

SOURCE: The name and/or type of the source where you divert your water. For example: "*groundwater*," "*unnamed spring*," "*Common Creek*."

QUANTITY: The amount of water recommended in either cubic feet per second (cfs) and/or the volume of water in acre feet per year (AFY).

PRIORITY DATE: The date used to determine the priority of your right in relation to other rights using water from the same source.

POINT OF DIVERSION: The legal location where you divert water from its source; generally described as 1/4 1/4 sections down to a 40-acre tract, or smaller. Other legal descriptions that might be used are: government lots, block, subdivision, parcel numbers, townsite names, mining claim information, homestead entry surveys and other survey information.

PURPOSE OF USE: The general category of the type of use you can make of your water. Typical purposes of use include irrigation, domestic, and stock watering.

PERIOD OF USE: The period of time during the year when you can use the water for your right.

PLACE OF USE: The legal location where you use your water right; generally described as 1/4 1/4 sections down to a 40-acre tract. Other legal descriptions that might be used are: government lots, block, subdivision, parcel numbers, townsite names, mining claim information, homestead entry surveys and other survey information.

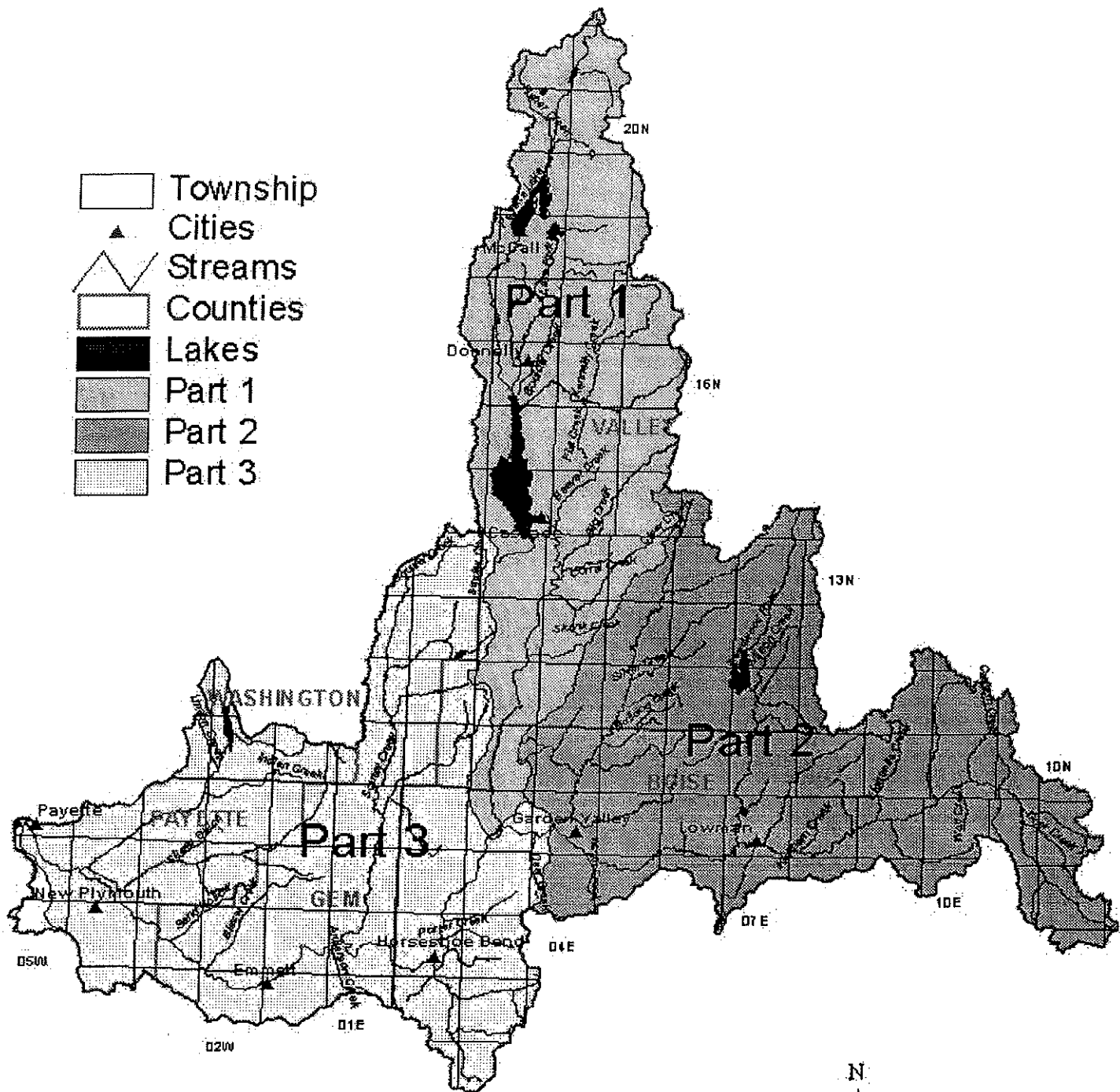
BASIS OF CLAIM: The method that was used to establish your claim. Examples include prior decree, posted notice, beneficial use (historical) method, license, permit.

DUAL BASED CLAIMS: In some cases, the federal government has claimed one right under two theories: a state basis and a federal law basis. Both theories will be reported on one form for that single water right. In most cases, the priority dates are different and will be listed separately. The federal law basis is separately indicated in a box such as this:

* *

IDWR does not investigate or make recommendations regarding federal law based claims.

Basin 65



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

Page 1

PART III

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 *

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WATER RESOURCES
WESTERN REGION

GARRICK L. BAXTER
Idaho State Bar No. 6301
Deputy Attorney General
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Telephone: (208) 372-7900
Fax: (208) 327-5400

Attorney for IDWR

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 NOS.: 65-22616 and 65-22617
	)	
	)	STIPULATION FOR BASIN 65 GENERAL
	)	PROVISION NO. 3 (SEPARATE STREAMS),
Case No. 39576	)	ADDITION OF TWO WATER RIGHTS TO
	)	"ATTACHMENT A" LIST
	)	

Descriptive Summary

This is a stipulation to resolve Island Capitol LLC's objection to the Idaho Department of Water Resources Director's Report recommendation to water right numbers 65-22616 and 65-22617.

Stipulation

In order to resolve a dispute over the above captioned water rights, the Idaho Department of Water Resources (IDWR) and Island Capitol, LLC, (the objector and claimant), by and through its attorney of record, Dana Hofstetter, hereby stipulate and agree as follows:

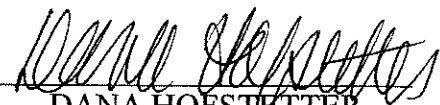
1. That on or about September 18, 2001, IDWR filed its Director's Report for Basin 65, Part III. (Hereinafter referred to as Director's Report).

2. That the Director's Report included General Provision 3 (commonly, known as the "Separate Streams" General Provision) and a list of water rights and associated sources identified as "Attachment A" which were to be administered separately as provided in General Provision No. 3.
3. That water right numbers 65-22616 and 65-22617 from source Boulder Creek tributary to North Fork Payette River should have been listed on "Attachment A", but were not.
4. That water right numbers 65-22616 and 65-22617 be added to the "Attachment A" list and be administered separately pursuant to the language in General Provision 3.
5. IDWR and Island Capitol have indicated their concurrence with the addition of water right numbers 65-22616 and 65-22617 from source Boulder Creek tributary to North Fork Payette River to "Attachment A" for General Provision 3 by signing this Stipulation.
6. This stipulation does not resolve the objection filed by the United States of America acting through the Department of Interior, Bureau of Reclamation (USDI/BOR) to General Provision 3 (separate streams administration). The USDI/BOR objection will be resolved separate and apart from this stipulation.
7. This stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and IDWR and Island Capitol agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding,

and that this agreement is not and shall not be used as precedent for any other claim to a water right.

8. This stipulation was entered into and executed voluntarily by IDWR and Island Capitol in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence.

IT IS SO AGREED:

By: 
DANA HOFSTETTER
Attorney for Island Capitol, LLC
Claimant/Objector

Dated: August 28, 2002

IDWR Concurrence:

By: 
GARRICK L. BAXTER
Deputy Attorney General for
IDWR

Dated: 9/4/02

By: 
Senior Water Right Agent

Dated: 9-9-02

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. Scriber 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-foot 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.