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Attorneys for Minidoka Irrigation District

**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

Case No. 39567

) Subcase Nos.: (see attached Exhibit A)

)

)

)

)

)

5

)

STATE OF IDAHO

)

) ss.

County of Twin Falls

)

TRAVIS L. THOMPSON, being first duly sworn upon oath, deposes and hereby states as follows:

1. I am an attorney representing Milner Irrigation District, North Side Canal Company and Twin Falls Canal Company in the above-captioned matter. I am over the age of 18 and state the following based upon my own personal knowledge. All documents referenced below were retrieved from the Idaho Department of Water Resources, the SRBA Court, or from the exhibits attached to *Supplemental Director's Report Regarding City of Pocatello's Basin 29 State-Based Water Rights*.

2. Attached hereto as Exhibit A is a true and correct copy of the Presiding Judge's *Memorandum Decision and Order of Partial Decree* and attached exhibit issued in subcase no. 91-00005 on February 27, 2002.

3. Attached hereto as Exhibit B is a true and correct copy of the water right license issued for water right #29-07770.

4. Attached hereto as Exhibit C is a true and correct copy of the application for permit for water right #29-07770.

5. Attached hereto as Exhibit D are true and correct copies of the water right license #01-07099 held by the City of Burley for "irrigation" purposes; water right license #47-08180 held by the City of Twin Falls for "commercial" purposes; water right license #27-07385 held by the City of Blackfoot for "irrigation" purposes; and water right license #01-2049 held by the City of Idaho Falls for "power" purposes.

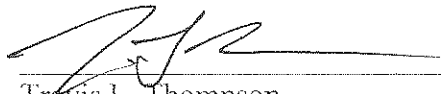
6. Attached hereto as Exhibit E is a true and correct copy of the Director's Report for water right #34-10030.

7. Attached hereto as Exhibit F is a true and correct copy of the *Standard Form 5* filed in subcase no. 34-10030.

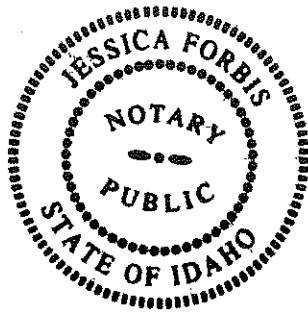
8. Attached hereto as Exhibit G is a true and correct copy of IDWR's "Water Use Code" list.

Further you affiant sayeth nought.

DATED this 12th day of December, 2006.


Travis L. Thompson

SUBSCRIBED AND SWORN to before me this 12 day of December, 2006.



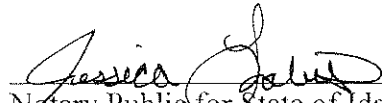

Notary Public for State of Idaho
Residing at Twin Falls, Idaho.
Commission Expires: 4/3/12

EXHIBIT A

Subcase Numbers

29-00271

29-00272

29-00273

29-07118

29-07119

29-07431

29-07770

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of December, 2006, I served the foregoing SECOND AFFIDAVIT OF TRAVIS L. THOMPSON upon the following:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Josephine P. Beeman
Beeman & Associates, P.C.
409 W. Jefferson Street
Boise, ID 83702

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Attorneys for City of Pocatello

Sarah A. Klahn
WHITE & JANKOWSKI, LLP
511 16th Street, Suite 500
Denver, CO 80202

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Attorneys for City of Pocatello

David Barber
Natural Resources Division
IDAHO ATTORNEY GENERAL'S OFFICE
P.O. Box 44449
Boise, ID 83711-4449

☒ U.S. Mail, Postage Prepaid
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Attorneys for State of Idaho

Environment & Natural Resources Division
U.S. DEPARTMENT OF JUSTICE
550 W. Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Attorneys for United States of America

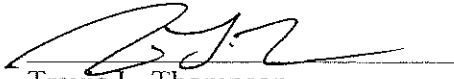

Travis L. Thompson

Exhibit A

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 91-00005
	)	
Case No. 39576	)	BASIN WIDE ISSUE NO. 5
	)	
	)	CONNECTED SOURCES GENERAL
	)	PROVISION (Conjunctive Management)
	)	
	)	MEMORANDUM DECISION AND ORDER
	)	OF PARTIAL DECREE
	)	

I. SETTLEMENT OF ISSUES

On August 27, 2001, the participating parties to Basin-Wide Issue 5 (hereinafter "Parties") filed a *Settlement Agreement and Stipulation for Entry of Agreed Findings of Fact, Conclusions of Law, and Partial Judgment on Basin-Wide Issue 5* ("**Stipulation**").¹ The Idaho Department of Water Resources ("IDWR") concurred with the **Stipulation**. As a result, the Court vacated the September 24, 2001, trial date. In the **Stipulation**, the Parties agreed to the form of the conjunctive management general provision to be used by IDWR in submitting Director's Reports within each basin, and to be used by the Court in issuing a partial decree for conjunctive management within each basin. A copy of the form of the conjunctive management general provision stipulated to by the Parties is attached hereto as "Exhibit A."

On August 30, 2001, this Court issued an *Order to Show Cause Why General Provision Should Not Be Partially Decreed In Accordance With Stipulation of the Parties* ("**Order to Show Cause**"). The **Order to Show Cause** was heard in open court on December 18, 2001, at the Snake River Basin Courthouse in Twin Falls, Idaho. On December 19, 2001, this Court issued a *First Order Re: Order to Show Cause* ("**First Order**"). The **First Order** precluded all parties to Basin-Wide Issue 5, and all parties to the Snake River Basin Adjudication, with the

¹ The United States did not sign the **Stipulation**.

exception of the United States, from asserting that this Court should not enter the general provision in the manner set forth in the *Stipulation*.

On December 31, 2001, pursuant to the schedule set forth in the *First Order*, the United States filed a *Motion for Clarification*, together with a memorandum in support thereof. On January 11, 2002, the State of Idaho, Twin Falls Canal Company, *et al.*, Pioneer Irrigation District *et al.*, the North Snake Ground Water District, and the Aberdeen-American Falls Ground Water District, *et al.*, filed or joined in objections to the United States' *Motion*. Oral argument on the United States' *Motion* was heard in open court on January 22, 2002.

On February 27, 2002, this Court issued an *Order on United States' Motion for Clarification (Second Order Re: Order to Show Cause)*, addressing the issues concerning the general provision raised by the United States. The United States' *Motion* was ultimately denied.

II.

REVIEW AND ACCEPTANCE OF AGREEMENT BY THE COURT

A. ROLE OF COURT.

Although the agreement reached by the parties represents final settlement of all pending issues, the Court is still charged with the duty of reviewing the contents of the agreement to ensure compliance with the law. In other words, the Court is not required to "rubberstamp" either the recommendations contained in the director's report or any agreement reached by the parties to the extent they are contrary to law. *State v. United States*, 128 Idaho 246, 258-59, 912 P.2d 614, 626-27 (1995). The Court's role however, is somewhat limited because a trial was not conducted on the merits and the Court is not required by statute to conduct an evidentiary hearing in order to accept a stipulation as final resolution. *Memorandum Decision and Order on Challenge*, subcases 36-00061, *et al.* (Sept. 27, 1999) ("*Morris*") at 17. Thus, the Court's review is limited to the existing record.

B. APPLICABLE LAW.

1. Evidentiary Value of Director's Report and/or Agreement of the Parties.

Idaho Code § 42-1411(4) provides that the filing of the director's report shall "constitute prima facie evidence of the nature and extent of the water rights" I.C. § 42-1411(4) (2000). Additionally, as applied to settlement agreements, IDWR's role in the SRBA "is an independent

expert and technical assistant [who] assure[s] that claims to water rights acquired under state law are accurately reported” I.C. § 42-1401B(1) (1996). Therefore, when IDWR’s representative signs a *Standard Form 5* or otherwise signs off on an agreement and states that its contents are true, IDWR’s concurrence provides evidentiary value on which the Court is entitled to rely. *Morris* at 14.

2. Legal Authority and the Basis for General Provisions.

Idaho Code § 42-1411 provides that the director of IDWR shall prepare a report on the water system. “The director may include such general provisions in the director’s report, as the director deems appropriate and proper, to define and administer all water rights.” I.C. § 42-1411 (2000). “The decree shall also contain an express statement that the partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights.” I.C. § 42-1412(6). In *A & B Irrigation District v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1998), the Idaho Supreme Court stated:

A general provision is a provision that is included in a water right decree regarding the administration of water rights that applies generally to water rights, is not an element of the water right, or is necessary for the efficient administration of the water rights decreed. A general provision is an administrative provision that generally applies to water rights but it need not apply to every water right.

Id. at 421, 958 P.2d at 578 (citations omitted).

The avoidance of potential controversy in the administration of water rights promotes the efficient administration of water rights and can be a valid basis for a general provision. In *State v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998), the Idaho Supreme Court held that notifying water right holders as to how their rights will be administered in order to avoid future controversy among water right holders is consistent with the efficient administration of a water right and as such can be a justification for a general provision. *Id.* at 334-35, 955 P.2d at 1113-14. Defining the legal as well as the hydrologic relationship between ground and surface water rights can also be the valid basis for a general provision. In *A & B Irr. Dist. v. Idaho Conservation League*, 131 Idaho 411, 422, 958 P.2d 568, 579 (1997), the Idaho Supreme Court acknowledged that to conjunctively manage ground and surface water rights a good understanding of both the hydrological and legal relationship between ground and surface rights

is necessary and that such issues may need to be resolved by administrative general provisions.
Id.

C. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Based upon the record in this subcase, including the December 30, 1999, *Supplemental Director's Report to the SRBA District Court*, the February 24, 2000, evidentiary hearing, and IDWR's concurrence in the *Stipulation*, and the Court's prior analysis regarding the necessity for a general provision on connected ground and surface sources in the Snake River Basin contained in the July 2, 2001, *Order on Cross-Motions for Summary Judgment; Order on Motions to Strike Affidavits*, the Court makes the following findings of fact and conclusions of law:

1. The Court finds that all parties to the SRBA, as defined by *SRBA Administrative Order 1*, 2q., were provided notice of the proceedings on Basin-Wide Issue 5 and were given the opportunity to be heard in the proceedings concerning Basin-Wide Issue 5.

2. The Court finds that a general provision on connected ground and surface sources is necessary to define the water rights decreed by the SRBA District Court by identifying hydraulically connected ground and surface sources for the purposes of administration and defining the legal relationship between connected sources.

3. The Court finds that a general provision on connected ground and surface sources is necessary to efficiently administer the water rights decreed by the SRBA District Court by notifying water right holders as to how their rights will be administered in order to avoid future controversy in the administration of such rights.

4. The Court concludes, as a matter of law, that a general provision on connected ground and surface sources is necessary to define the water rights decreed by the SRBA District Court by identifying hydraulically connected ground and surface sources for the purposes of administration and defining the legal relationship between connected sources.

5. The Court concludes, as a matter of law, that a general provision on connected ground and surface sources is necessary to efficiently administer the water rights decreed by the SRBA District Court by notifying water right holders as to how their rights will be administered in order to avoid future controversy in the administration of such rights.

6. The Court concludes, as a matter of law, that the form and content of general provision on connected ground and surface sources as stipulated by the parties, and concurred with by the Idaho Department of Water Resources, is not contrary to established law. *State v. United States*, 128 Idaho 246, 258-59, 912 P.2d 614, 626-27 (1995).

III. ORDER

Based on the foregoing, the form of the conjunctive management general provision is hereby decreed as set forth in the attached "Exhibit A."

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

IT IS SO ORDERED.

DATED: _____

ROGER S. BURDICK
Presiding Judge
Snake River Basin Adjudication

EXHIBIT A

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)
) PARTIAL DECREE FOR CONNECTED
Case No. 39576) SOURCES IN BASIN ____
) (Conjunctive Management General Provision)

The following water rights from the following sources of water in Basin 36 shall be administered separately from all other water rights in Basin ____ in accordance with the prior appropriation doctrine as established by Idaho law:

Water Right No.

Source

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

Water Right No.

Source

Except as otherwise specified above, all other water rights within Basin ____ 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.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does

hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated _____.

ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

Exhibit B

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 29-07770

Priority: May 21, 1984

Maximum Diversion Rate: 4.46 CFS
Maximum Diversion Volume: 1,120.0 AF

It is hereby certified that CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205 has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated May 21, 1984; and has
submitted Proof of Beneficial Use on March 16, 1990. An examination indicates that the works have a
diversion capacity of 4.46 cfs of water from:

SOURCE

GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
IRRIGATION	4/01 to 10/31	4.46 CFS	1,120.0 AF

LOCATION OF POINT OF DIVERSION:

GROUND WATER NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 12, Twp 06S, Rge 33E, B.M., POWER County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals	
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
06S 33E 1																	5.0	5.0
06S 33E 12	27.0	40.0	40.0	40.0	40.0				40.0	26.0				7.0	15.0			275.0

Total Acres: 280

CONDITIONS OF APPROVAL

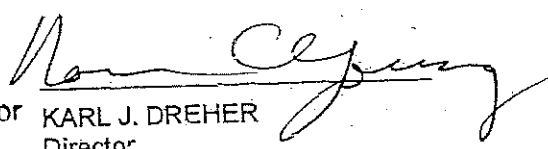
1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
2. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 2ND day of JANUARY, 2003.

MICROFILMED

JAN 09 2003

Acting for 
KARL J. DREHER
Director

SCANNED

Exhibit C

May 10, 1984

Ident. No. 29-7770

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant City of Pocatello Phone (208) 232-4311 ext. 175

Post office address P. O. Box 4169 Pocatello, ID 83205

2. Source of water supply ground water which is a tributary of _____

3. Location of point of diversion is S.E. $\frac{1}{4}$ of N.E. $\frac{1}{4}$ of Section 12 Township 6 S.

Range 33 E. B.M. _____ Power _____ County, additional points of diversion if any: _____

4. Water will be used for the following purposes:

Amount 5.72 for irrigation purposes from April 1 to Oct. 15 (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated:

a. 5.72 cubic feet per second and/or b. _____ acre-feet per annum.
6.7

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. 20" diameter deep well with
appropriate vertical turbine pump and motor to pump 6.7 cfs.
various sizes of irrigation mainline to accommodate flow.

b. Height of storage dam N/A feet, active reservoir capacity N/A acre-feet; total reservoir
capacity N/A acre-feet, materials used in storage dam: N/A

Period of year when water will be diverted to storage N/A to N/A inclusive.
(Month/Day) (Month/Day)

c. Proposed well diameter is 20 inches; proposed depth of well is 300 feet.

7. Time required for the completion of the works and application of the water to the proposed beneficial
use is 1 years (minimum 1 year - maximum 5 years).

8. Description of proposed uses:

a. If water is not for irrigation:

(1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____
Range _____ B.M. _____

(2) Amount of power to be generated: _____ horsepower under _____ feet of head.

(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water _____

(5) If water is to be used for other purposes describe: DEC 14 1989

RECEIVED

b. If water is for irrigation indicate acreage in each subdivision in the tabulation below:

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6S.	33 E.	12	40	40	40	25	40				40	25			3	15			268
6S.	33 E.	1															9	9	18

Total number of acres to be irrigated 286

c. Describe any other water rights used for the same purposes as described above. None

9. a. Who owns the property at the point of diversion City of Pocatello

b. Who owns the land to be irrigated or place of use City of Pocatello

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing N/A

10. Remarks This permit is being requested so that a well can be drilled on

City owned property to supply irrigation water for a 280 acre farming

operation at the City's proposed sludge management site.. Treated

sludge from the City's wastewater treatment facility will be ~~stored~~ ^{change} as per

~~during the winter months, then dried during the summer months and~~ ^{letter}

applied to the farm land as fertilizer and soil conditioner. Water ^{11/6/89}

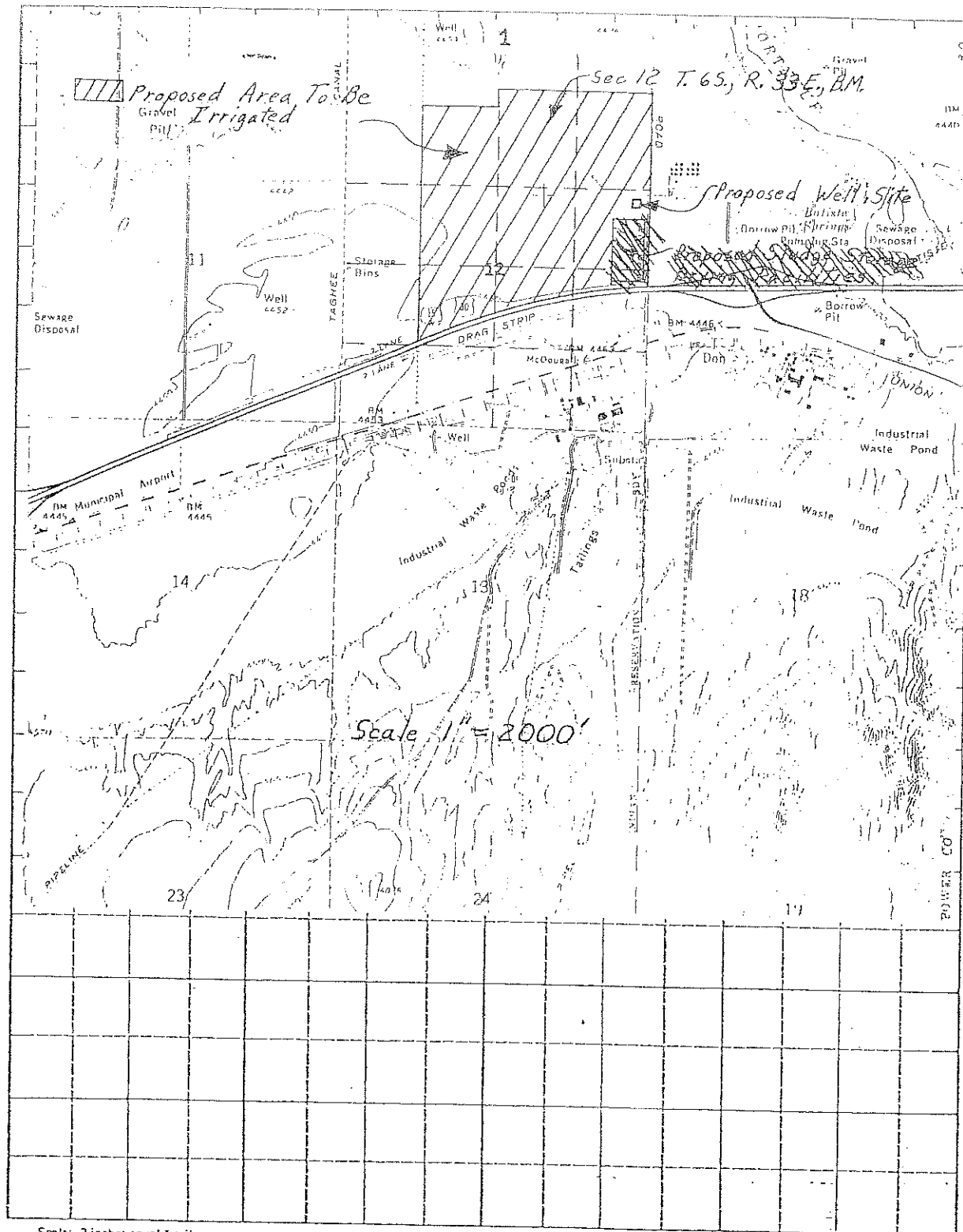
from the well will be necessary to irrigate the various yearly crops.

All surface water runoff will be retained on the site.

10-17-89

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.

See Attached USGS Map



BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

FILED

DEC 14 1989

John C. Postlewaite

(Applicant)

Director of Public Works

Exhibit D

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 47-08180

Priority: December 12, 1988

Maximum Diversion Rate: 0.06 CFS
Maximum Diversion Volume: 2.0 AF

It is hereby certified that CITY OF TWIN FALLS
PO BOX 1907
TWIN FALLS ID 83301-1907 has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated December 12, 1988; and has
submitted Proof of Beneficial Use on July 25, 1989. An examination indicates that the works have a
diversion capacity of 0.06 cfs of water from:

SOURCE

GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
COMMERCIAL	03/01 to 10/31	0.06 CFS	2.0 AF

LOCATION OF POINT OF DIVERSION:

GROUND WATER NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 7, Twp 11S, Rge 17E, B.M., TWIN FALLS County

PLACE OF USE: COMMERCIAL

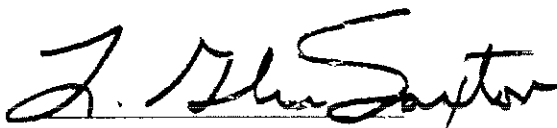
Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S 17E 7				X													

CONDITIONS OF APPROVAL

1. Commercial Use is for a racetrack with restrooms and concession stand.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 2nd day of December, 2004.


for KARL J. DREHER
Director

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 01-07099

Priority: June 20, 1989

Maximum Diversion Rate: 1.19 CFS
Maximum Diversion Volume: 288.0 AF

This is to certify, that CITY OF BURLEY

PO BOX 1090

BURLEY ID 83318

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 20, 1989; and has submitted Proof of Beneficial Use on April 19, 1990. An examination indicates that the works have a diversion capacity of 1.190 cfs of water from:

SNAKE RIVER

tributary to COLUMBIA RIVER

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/01 to 10/15	1.19 CFS	288.0 AF

LOCATION OF POINT(S) OF DIVERSION: Lot 2(NENE), Sec. 21, Township 10S, Range 23E
CASSIA County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
10S	23E	21	NWNE 10	SWNE 19.5	NENW 3.7	
			SWNW 6	SENE 27	NESW 9	
			NWSE 9			84.2

Total number of acres irrigated: 84.2

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right limited to the amount that can actually be beneficially use used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.

RECEIVED

JAN 21 1993

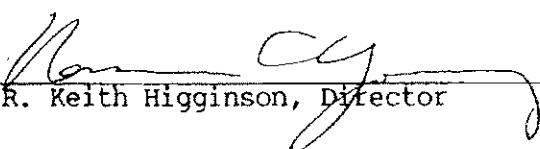
State of Idaho
Department of Water Resources**WATER RIGHT LICENSE**

WATER RIGHT NO. 01-07099

CONDITIONS/REMARKS:

5. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
6. The Director retains jurisdiction of the right and any license subsequently issued to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
7. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.
8. Use of water under this water right will be regulated by the watermaster of State Water District No. 01.
9. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.
10. Water shall not be diverted under this right until supplemental storage water in the amount of 288 acre-feet, comprised of yield from storage owned or storage rented, has been obtained from the upper Snake River water supply bank.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 24TH day of DECEMBER, 1992.

Acting for 
R. Keith Higginson, Director

NOTIFIED

JAN 21 1993

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 27-07385

Priority: November 30, 1983

Maximum Diversion Rate:

1.32 CFS

Maximum Diversion Volume:

264.0 AF

This is to certify, that CITY OF BLACKFOOT
157 N BROADWAY

BLACKFOOT ID 83221 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated November 30, 1983; and has submitted Proof of Beneficial Use on April 27, 1990. An examination indicates that the works have a diversion capacity of 1.870 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/01 to 10/31	1.32 CFS	264.0 AF

LOCATION OF POINT(S) OF DIVERSION: Lot 9(SWNE), Sec. 27, Township 02S, Range 35E
BINGHAM County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
02S	35E	26	NENW 2	Lot 1(NWNW) 13		15
		27	Lot 8(NENE) 7	Lot 9(SWNE) 13	Lot 5(SENE) 31	51

Total number of acres irrigated: 66

CONDITIONS OF APPROVAL AND REMARKS

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount that can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
6. The Director retains jurisdiction of the right to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.

MICROFILMED
AUG 12 1997

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

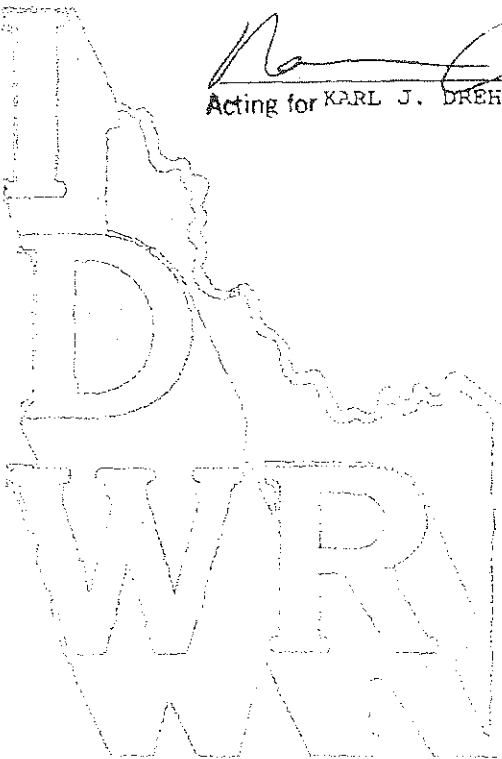
WATER RIGHT NO. 27-07385

CONDITIONS OF APPROVAL AND REMARKS

7. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for the lands above.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 30TH day of JUNE, 1997.


Acting for KARL J. DREHER, Director



MICROFILMED

AUG 12 1997

01-2049

Exhibit E

SRBA DIRECTORS REPORT 34-10030

Return to SRBA Home Page

IWT072 IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 34-10030

Name and Address: CITY OF ARCO
PO BOX 196
ARCO, ID 83213

Source: GROUNDWATER

Quantity: 2.12 CFS

Priority Date: 06-01-1962

Diversion Point: T04N R26E S36 SWSWNE Within Butte County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	Municipal	01-01 TO 12-31	2.12 CFS
			250.00 AFY

Place of Use: See remarks

Place of Use: Municipal
Same as Other Use

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - Beneficial Use

KNOWN AS "CITY PARK WELL"

PLACE OF USE IS LANDS WITHIN CITY LIMITS OF ARCO.

[Return to SRBA Home Page](#)

Exhibit F

103

DEC 16 11 09:24

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

In Re SRBA)

STANDARD FORM 5

Case No. 39576)

SUBCASE NO: 34-10030

PROPOSED ELEMENTS OF A
WATER RIGHT

This form is used to report the proposed elements of one federal reserved water right or one water right acquired under state law. Submission of this form will not result in the automatic issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; and they have been served with sufficient process, according to the law, and have appeared, prosecuted and defended their positions with regard to this water right dispute.

Instructions For Use

A copy of this water right as recommended in the director's report shall be submitted with this form. A statement shall accompany each element of a water right.

Elements where there has been no objection should be listed exactly as they appear in the director's report. The statement as to an uncontested element shall state "as recommended in the director's report."

Contested elements that are the result of an objection filed with the court shall be accompanied by a statement fully describing all facts, documents, expert opinions and law which support the element of the water right (attach additional pages if necessary).

1. The name and address of the claimant is:

CITY OF ARCO
PO BOX 196
ARCO ID 83213

Required Statement: As recommended in the director's report.

2. The source of water is: GROUNDWATER

Required Statement: As recommended in the director's report.

3. The quantity of water used in cubic feet per second or the quantity of water stored in acre-feet per year is:

MUNICIPAL	2.12	CFS
TOTAL QUANTITY:	2.12	CFS

Required Statement: IDWR and the parties stipulate that this is the correct description of the quantity of water.

4. The priority date is: 06/01/1962

Required Statement: As recommended in the director's report.

5. The legal description of the point(s) of diversion is; if the claim is for an instream flow, then a legal description of the beginning and ending points of the claimed instream flow:

T04N R26E S36 SWSWNE

KNOWN AS "CITY PARK WELL"

Required Statement: As recommended in the director's report. The claim is not for an instream flow.

6. The purpose of use is: MUNICIPAL

Required Statement: As recommended in the director's report.

7. The period of year when the water is to be used is:

MUNICIPAL 01-01 to 12-31

Required Statement: As recommended in the director's report.

8. The legal description of the place of use or of the reservation is:

PLACE OF USE IS LANDS WITHIN CITY LIMITS OF ARCO.

Required Statement: As recommended in the director's report. The place of use is located in Butte County, Idaho.

9. The annual volume of consumptive use is: 250.0 AFY

Required Statement: Annual volume of consumptive use was erroneously shown as a diversion volume in the director's report.

10. Other matters necessary to define this water right: Not applicable.

These matters are necessary because: Not applicable.

These matters do not fall within the 9 elements listed above because: Not applicable.

3-- 1-99 11:27 :A

Signature and Address of Parties and their Attorney of Record

I have read this form and know its contents and that the statements are true to the best of my knowledge and belief.

Name: City of Arco

Address: 525 Park Ave., Ste. 2A

City/State/Zip: Idaho Falls, ID 83402

Attorney of Record: Ryan Boyer

Attorney's Signature 3/13/95
Date

Name: Idaho Dept. of Water Resources

Address: P.O. Box 83720

City/State/Zip: Boise, ID 83720-0098

Attorney of Record: Susan E. Hamlin


 Attorney's Signature

3-15-95
 Date

Name: City of Pocatello

Address: P.O. Box 829

City/State/Zip: Boise, ID 83701

Attorney of Record: Josephine P. Beeman

Josephine P. Brennan 3-2-95
Attorney's Signature Date

Name: United States through

Address: Department of Justice of BLM

601 Pennsylvania Ave. NW

City/State: Washington, DC 20004

Attorney of Record: R. Lee Leininger

Attorney's Signature 3-1-95
Date

Court Representative (if necessary)

Date _____

INSTRUCTIONS FOR MAILING

You must mail the form, including all attachments, to the Clerk of the SRBA Court and to the parties identified in the Certificate of Mailing. FAX filings will not be accepted by the SRBA Clerk of the Court.

You must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I certify that on March 15, 1995, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

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

Department of Justice
550 West Fort Street, Box 33
Boise, ID 83724-0663

City of Arco
525 Park Ave., Ste. 2A
Idaho Falls, ID 83402

City of Pocatello
P.O. Box 829
Boise, ID 83701



Signature of person or attorney mailing the form

Exhibit G

Water Use Code	Short Description	Long Description
01	IRR	IRRIGATION
02	IRR S	IRRIGATION STORAGE
03	IRR FS	IRRIGATION FROM STORAGE
04	STOCK	STOCKWATER
05	STOC S	STOCKWATER STORAGE
06	STO FS	STOCKWATER FROM STORAGE
07	INDUST	INDUSTRIAL
08	IND S	INDUSTRIAL STORAGE
09	IND FS	INDUSTRIAL FROM STORAGE
10	COMMER	COMMERCIAL
11	COM S	COMMERCIAL STORAGE
12	COM FS	COMMERCIAL FROM STORAGE
13	MINING	MINING
14	MIN S	MINING STORAGE
15	MIN FS	MINING FROM STORAGE
16	WILDLF	WILDLIFE
17	WILD S	WILDLIFE STORAGE
18	WLD FS	WILDLIFE FROM STORAGE
19	FISH	FISH PROPAGATION
20	FIS S	FISH PROP. STORAGE
21	FIS FS	FISH PROP. FROM STORAGE
22	HEAT	HEATING
23	HEA S	HEATING STORAGE
24	HEA FS	HEATING FROM STORAGE
25	COOL	COOLING
26	COO S	COOLING STORAGE
27	COO FS	COOLING FROM STORAGE
28	POWER	POWER
29	POW S	POWER STORAGE
30	POW FS	POWER FROM STORAGE
31	WAQ	WATER QUAL. IMPROVEMENT
32	WAQ S	WATER QUAL. IMPR. STOR.
33	WAQ FS	WTR QUAL IMPR FROM STOR
34	MIF	MINIMUM INSTREAM FLOW
35	MIF S	MIN. INSTREAM FLOW STOR
36	MIF FS	MIN. INS. FLOW FROM STOR
37	GWR	GROUNDWATER RECHARGE
38	GWR S	GW RECHARGE STORAGE
39	GWR FS	GW RECHARGE FROM STORAGE
40	MUNI	MUNICIPAL
41	MUN S	MUNICIPAL STORAGE
42	MUN FS	MUNICIPAL FROM STORAGE
43	DOMEST	DOMESTIC
44	DOM S	DOMESTIC STORAGE
45	DOM FS	DOMESTIC FROM STORAGE
46	REC	RECREATION

47	REC S	RECREATION STORAGE
48	REC FS	RECREATION FROM STORAGE
49	FIRE	FIRE PROTECTION
50	FIR S	FIRE PROTECTION STORAGE
51	FIR FS	FIRE PROTECT. FROM STORAGE
52	AES	AESTHETIC
53	AES S	AESTHETIC STORAGE
54	AES FS	AESTHETIC FROM STORAGE
55	DIV S	DIVERSION TO STORAGE
56	LAKELM	LAKE LEVEL MAINTENANCE
57	FLD S	FLOOD CONTROL STORAGE
58	AQ HAB	AQUATIC HABITAT
59	FISHAB	FISH HABITAT
60	WILDRV	WILD AND SCENIC RIVER
61	AVGFLOW	AVERAGE ANNUAL FLOW
62	BNKFLO	BANKFUL FLOW
63	BASFLO	BASE FLOW
64	CHN MN	CHANNEL MAINTENANCE
65	RIP MN	RIPARIAN MAINTENANCE
66	100 YR	100 YEAR FLOOD FLOW
67	MULT	MULTIPLE USE
68	F H ST	FISH HABITAT STORAGE
69	F H FS	FISH HABITAT FROM STORAGE
70	STK IS	STOCKWATER
71	STKSIS	STOCKWATER STORAGE
72	STKFSI	STOCKWATER FROM STORAGE
73	STK NI	STOCKWATER
74	STKSNI	STOCKWATER STORAGE
75	STKFSN	STOCKWATER FROM STORAGE
76	DOM IS	DOMESTIC
77	DOMSIS	DOMESTIC STORAGE
78	DOMFSI	DOMESTIC FROM STORAGE
79	DOM NI	DOMESTIC
80	DOMSNI	DOMESTIC STORAGE
81	DOMFSN	DOMESTIC FROM STORAGE
82	FISHIS	FISH PROPAGATION
83	FISHNI	FISH PROPAGATION
84	DIVSNI	DIVERSION TO STORAGE
85	IRRSNI	IRRIGATION STORAGE
86	IRRSIS	IRRIGATION STORAGE
87	MSF	MINIMUM STREAM FLOW
88	MSF S	MIN. STREAM FLOW STORAGE
89	MSF FS	MIN. STR. FLOW FROM STOR.
99	SEE RK	SEE REMARKS