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Boise, ID 83702-7310
Telephone: 208.343.3434
Facsimile: 208.343.3232

Attorneys for the City of Boise and Ada County

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. 39576

Subcase No: **63-03618**

**AFFIDAVIT OF ERIKA E. MALMEN IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

STATE OF IDAHO)
 : ss.
County of Ada)

ERIKA E. MALMEN, being first duly sworn upon oath, deposes and says:

1. I am one of the attorneys of record for Participants City of Boise and Ada County, and as such have personal knowledge of the facts stated herein.
2. Attached hereto as Exhibit A is a true and correct copy of the United States of America's Notice of Claim to a Water Right Acquired under State Law for Water Right No. 63-03618.
3. Attached hereto as Exhibit B is a true and correct copy of the Idaho Department of Water Resources Adjudication Recommended Right Report for Water Right No. 63-03618.

4. Attached hereto as Exhibit C is a true and correct copy of the Water Right License for Water Right No. 63-03618.

5. Attached hereto as Exhibit D is a true and correct copy of the Notice of Application for Amendment published in *The Idaho Statesman*, July 19, 26, 1990.

6. Attached hereto as Exhibit E is a true and correct copy of the United States' December 11, 1990 Application for Amendment of a Permit.

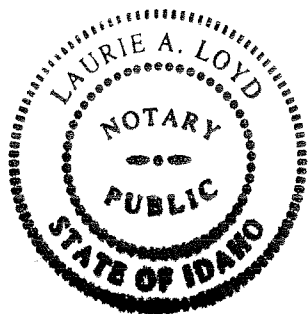
7. Attached hereto as Exhibit F is a true and correct copy of the Memorandum Decision and Order Granting Amendment to Permit dated June 5, 1987.

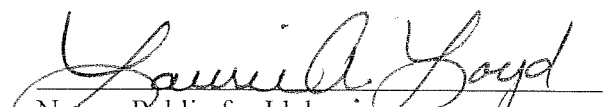
8. Attached hereto as Exhibit G is a true and correct copy of the SRBA Subcase Summary Report for 63-03618.

FURTHER YOUR AFFIANT SAYETH NOT.


ERIKA E. MALMEN

SUBSCRIBED AND SWORN to before me this 15th day of October 2007.




Notary-Public for Idaho
Residing at Bowser
My Commission Expires 9/19/2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Idaho that, on this 15th day of October, 2007, he/she/they caused to be served on the person(s) listed below in the manner shown:

AFFIDAVIT OF ERIKA E. MALMEN IN SUPPORT OF MOTION

FOR SUMMARY JUDGMENT

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

Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 736-2121 ☐
Overnight Mail ☐

State of Idaho
c/o Natural Resources Div. Chief
Attorney General's Office
P.O. Box 44449
Boise, Idaho 83711-4449

Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 334-2690 ☐
Overnight Mail ☐

United States of America
US Department of Justice
Envir. & Nat. Resources
550 West Fort Street, MSC 033
Boise, Idaho 83724

Hand Delivery ☐
U.S. Mail ☒
Facsimile: _____ ☐
Overnight Mail ☐

Director
Idaho Dept. of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Hand Delivery ☐
U.S. Mail ☒
Facsimile: _____ ☐
Overnight Mail ☐

Scott L. Campbell
P.O. Box 829
Boise, Idaho 83701-0829

Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 385-5384 ☐
Overnight Mail ☐

Albert P. Barker
Shelley M. Davis
P.O. Box 2139
Boise, Idaho 83701-2139

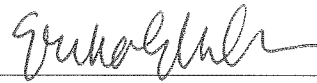
Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 334-6034 ☐
Overnight Mail ☐

Jerry A. Kiser
620 West Hayes
Boise, Idaho 83702

Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 336-1027 ☐
Overnight Mail ☐

Daniel V. Steenson
S. Bryce Farris
P.O. Box 2773
Boise, Idaho 83701-2773

Hand Delivery ☐
U.S. Mail ☒
Facsimile: (208) 342-4657 ☐
Overnight Mail ☐



Erika E. Malmen

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A63-03618
Date Received: 7/ 7/1989
Receipt No: X111111
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: UNITED STATES OF AMERICA, ACTING THROUGH 208-378-5155
Address: REGIONAL DIRECTOR, PN REGION
BUREAU OF RECLAMATION
1150 N CURTIS RD
BOISE ID 83706-1234

2. Date of Priority: JAN 1, 1955

3. Source: BOISE RIVER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
02N	03E	11		SE	NE		ADA

5. Description of diverting works:
LUCKY PEAK DAM OUTLET WORKS & GENERATORS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION STORAGE	01/01	12/31			140750.00
IRRIGATION FROM STORAGE	03/15	11/15			140750.00
MIN. INSTREAM FLOW STOR	01/01	12/31			152300.00
MIN. INS. FLOW FROM STOR	01/01	12/31			152300.00
FLOOD CONTROL STORAGE	01/01	12/31			13950.00

7. Total Quantity Appropriated is:
C.F.S. (and/or) 307000.00 A.F.A.

8. Total consumptive use is 111950.0 Acre Feet Per Annum.

9. Non-irrigation uses:
13,950 ac-ft FLOOD CONTROL, MINIMUM FLOW 152,300 ac-ft

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JUL 25 1994

10. Place of Use:

Township Range Section 1/4 of 1/4 Lot Use Acres

11. Place of use in counties:

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:

A63-05263

14. Remarks:

P/U IS BOISE FEDERAL RECLAMATION PROJECT LANDS
JOINT USE-- 278,200 ac-ft (13,950 ac-ft FLOOD CONTROL)
INACTIVE CAPACITY-- 28,800 ac-ft
BANK STORAGE-- 17,000 ac-ft (REFER TO RIGHT #63-5263)
TOTAL CAPACITY-- 324,000 ac-ft
224,886 IRR AC
MULTIYEAR STORAGE PROJECT

15. Basis of Claim: PERMIT

Water Right Number: R1183

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

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JUL 25 1994

State of Idaho)
) SS.
County of _____)

Subscribed and sworn (or affirmed) before me this _____ day

of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

MICROFILMED

JUL 25 1994

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A63-03618
Date Received: 6/22/1988
Receipt No: _____
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: UNITED STATES OF AMERICA, ACTING THROUGH 208-334-1165
Address: REGIONAL DIRECTOR, P.N. REGION
BUREAU OF RECLAMATION
BOX 043-550 WEST FORT STREET
BOISE, ID 83724

2. Date of Priority: JAN 01, 1955

3. Source: BOISE RIVER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
02N	03E	11	SE NE		ADA

5. Description of diverting works:
LUCKY PEAK DAM OUTLET WORKS & GENERATORS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION STORAGE	01/01	12/31			140750.00
IRRIGATION FROM STORAGE	03/15	11/15			140750.00
MIN. INSTREAM FLOW STOR	01/01	12/31			152300.00
MIN. INS. FLOW FROM STOR	01/01	12/31			152300.00
FLOOD CONTROL STORAGE	01/01	12/31			13950.00

7. Total Quantity Appropriated is:
C.F.S. (and/or) 307000.00 A.F.A.

8. Total consumptive use is 111950.0 Acre Feet Per Annum.

9. Non-irrigation uses:
13,950 ac-ft FLOOD CONTROL, MINIMUM FLOW 152,300 ac-ft

A63-03618

Page 1

Date: 05/09/89

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JUL 25 1994

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
----------	-------	---------	------------	-----	-----	-------

11. Place of use in counties:

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:

A63-05263

14. Remarks:

P/U IS BOISE FEDERAL RECLAMATION PROJECT LANDS
JOINT USE-- 278,200 ac-ft (13,950 ac-ft FLOOD CONTROL)
INACTIVE CAPACITY-- 28,800 ac-ft
BANK STORAGE-- 17,000 ac-ft (REFER TO RIGHT #63-5263)
TOTAL CAPACITY-- 324,000 ac-ft
224,886 IRR AC
MULTIYEAR STORAGE PROJECT

15. Basis of Claim: PERMIT

Water Right Number: R1183

8

[Close](#)IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

10/08/2007

WATER RIGHT NO. 63-3618

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	UNITED STATES OF AMERICA ACTING THROUGH BUREAU OF RECLAMATION REGIONAL DIRECTOR PN CODE-3100 1150 N CURTIS RD STE 100 BOISE, ID 83706-1234 (208)378-5306

Priority Date: 04/12/1963

Basis: License

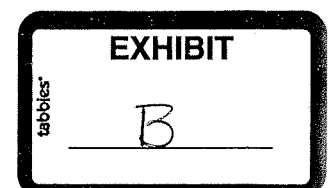
Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION STORAGE	01/01	12/31		111950 AFA
IRRIGATION FROM STORAGE	03/01	11/15		111950 AFA
RECREATION STORAGE	01/01	12/31		28800 AFA
STREAMFLOW MAINTENANCE STORAGE	01/01	12/31		152300 AFA
STREAMFLOW MAINTENANCE FROM STORAGE	01/01	12/31		152300 AFA
Total Diversion			293050 AFA	

Location of Point(s) of Diversion:

--	--	--	--	--	--



BOISE RIVER SENE Lt 7 Sec. 11 Township 02N Range 03E ADA County

Place(s) of use: Large POU Info

Conditions of Approval:

1.		The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.
2.		IRRIGATION FROM STORAGE -- LANDS IRRIGATED IN THE BOISE VALLEY IN ADA, CANYON, PAYETTE, AND GEM COUNTIES, IDAHO; MALHEUR COUNTY, OREGON; AND THE FOLLOWING TRACTS IN ADA, BOISE AND ELMORE COUNTIES, IDAHO:
3.		IRRIGATION STORAGE, STREAMFLOW MAINTENANCE STORAGE, AND RECREATION STORAGE -- LUCKY PEAK RESERVOIR. STREAMFLOW MAINTENANCE FROM STORAGE -- WITHIN THE CHANNEL OF THE BOISE RIVER FROM LUCKY PEAK DAM DOWNSTREAM TO THE CONFLUENCE WITH THE SNAKE RIVER. Recreation storage (inactive storage) shall not be released from storage for a beneficial use.
4.		The Bureau of Reclamation and Idaho Department of Fish and Game shall provide joint written instructions to the Department, for conveyance to the watermaster, regarding release of the Lucky Peak streamflow maintenance storage water.
5.		Maximum Volume Annually Diverted to Storage And Released from Storage: 293,050.0 AF The reservoir storage capacity is 293,050 acre feet when filled to elevation 3055.0 and measured at the upstream face of the dam. Lucky Peak Reservoir has 13,950 acre feet of capacity for flood control purposes in addition to the volume of water authorized for storage under this right.
6.	C18	THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

Dates:

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 63

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-03618

Priority: April 12, 1963

Maximum Volume Annually Diverted to
Storage And Released from Storage: 293,050.0 AF

It is hereby certified that US DEPT OF INTERIOR
BUREAU OF RECLAMATION
PN REGIONAL OFFICE
1150 N CURTIS RD SUITE 100
BOISE ID 83706-1234 has complied with the terms and conditions of the
permit, issued pursuant to Application for Permit dated April 12, 1963; and has submitted Proof of
Beneficial Use on September 22, 1986. An examination indicates that the works have a capacity to divert
307,000 af of water to storage from:

SOURCE

BOISE RIVER

Tributary: SNAKE RIVER

and a water right has been established as follows:

BENEFICIAL USEPERIOD OF USEANNUAL
DIVERSION VOLUME

IRRIGATION FROM STORAGE	03/01 to 11/15	111,950.0 AF
IRRIGATION STORAGE	01/01 to 12/31	111,950.0 AF
RECREATION STORAGE (INACTIVE STORAGE)	01/01 to 12/31	28,800.0 AF
STREAMFLOW MAINTENANCE STORAGE	01/01 to 12/31	152,300.0 AF
STREAMFLOW MAINTENANCE FROM STORAGE	01/01 to 12/31	152,300.0 AF

LOCATION OF POINT OF DIVERSION:BOISE RIVER L7 SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 11, Twp 2N, Rge 3E, B.M. ADA CountyPLACE OF USE:

IRRIGATION FROM STORAGE -- LANDS IRRIGATED IN THE BOISE VALLEY IN ADA, CANYON,
PAYETTE, AND GEM COUNTIES, IDAHO; MALHEUR COUNTY, OREGON; AND THE
FOLLOWING TRACTS IN ADA, BOISE AND ELMORE COUNTIES, IDAHO:

Twp Rge Sec	NE				NW				SW				SE			
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
02N 03E 11	X												X			
	L4															
02N 03E 12						X				X						
						L2										
02N 04E 4										X						
02N 04E 5		X	X				X						X	X	X	X
		L2	L8				L6									
02N 04E 6			X						X		X	X	X	X		X
										L8	L9		L6			L11
02N 04E 7		X	X		X			X	X	X				X		
					L1				L4							
03N 04E 5				X												
03N 04E 11				X									X			
													L1			
03N 04E 12							X			X						
									L1							
03N 04E 22					X		X	X								
					L3											
03N 04E 32	X	X											X	X		
	L1												L5	L10		

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NOV 12 2002

SCA

APR

EXHIBIT

tabbles

C

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-03618

PLACE OF USE CONTINUED:

IRRIGATION STORAGE, STREAMFLOW MAINTENANCE STORAGE, AND RECREATION STORAGE
-- LUCKY PEAK RESERVOIR

STREAMFLOW MAINTENANCE FROM STORAGE -- WITHIN THE CHANNEL OF THE BOISE RIVER
FROM LUCKY PEAK DAM DOWNSTREAM TO THE CONFLUENCE WITH THE SNAKE RIVER.

CONDITIONS OF APPROVAL

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 63 or its successor.
2. The Bureau of Reclamation and Idaho Department of Fish and Game shall provide joint written instructions to the Department, for conveyance to the watermaster, regarding release of the Lucky Peak streamflow maintenance storage water.
3. The reservoir storage capacity is 293,050 acre feet when filled to elevation 3055.0 and measured at the upstream face of the dam.
4. Lucky Peak Reservoir has 13,950 acre feet of capacity for flood control purposes in addition to the volume of water authorized for storage under this right.
5. Recreation storage (inactive storage) shall not be released from storage for a beneficial use.
6. The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.

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 27TH day of SEPTEMBER, 2002.

Acting for


KARL J. DREHER
Director

MICROFILMED

NOV 12 2002

SCANNED

APR 01 2003

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 63-03618

RECEIVED

SEP 27 2002

Department of Water Resources

Priority: April 12, 1963

Maximum Volume Annually Diverted to
Storage And Released from Storage: 293,050.0 AF

Comes now US DEPT OF INTERIOR
BUREAU OF RECLAMATION
PN REGIONAL OFFICE
1150 N CURTIS RD STE 100

BOISE ID 83706-1234 and represents to the Director of the Idaho Department
of Water Resources that it is the owner and holder of Permit to Appropriate the Public Waters of the
State of Idaho No. 63-03618, and requests that the permit be changed as follows:

SOURCE

BOISE RIVER

Tributary: SNAKE RIVER

BENEFICIAL USE

IRRIGATION FROM STORAGE

IRRIGATION STORAGE

RECREATION STORAGE (INACTIVE STORAGE)

STREAMFLOW MAINTENANCE STORAGE

STREAMFLOW MAINTENANCE FROM STORAGE

PERIOD OF USE

03/01 to 11/15

01/01 to 12/31

01/01 to 12/31

01/01 to 12/31

01/01 to 12/31

**ANNUAL
DIVERSION VOLUME**

111,950.0 AF

111,950.0 AF

28,800.0 AF

152,300.0 AF

152,300.0 AF

LOCATION OF POINT OF DIVERSION:BOISE RIVER L7 SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 11, Twp 2N, Rge 3E, B M. ADA County**PLACE OF USE:**

IRRIGATION FROM STORAGE -- LANDS IRRIGATED IN THE BOISE VALLEY IN ADA, CANYON,
PAYETTE, AND GEM COUNTIES, IDAHO; MALHEUR COUNTY, OREGON; AND THE
FOLLOWING TRACTS IN ADA, BOISE AND ELMORE COUNTIES, IDAHO:

Twp Rge Sec	NE				NW				SW				SE			
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
02N 03E 11	X L4												X			
02N 03E 12						X L2				X						
02N 04E 4										X						
02N 04E 5		X L2	X L8				X L6						X	X	X	X
02N 04E 6			X						X		X L8	X L9	X L6	X		X L11
02N 04E 7		X	X		X L1			X	X L4					X		
03N 04E 5				X												
03N 04E 11				X									X L1			
03N 04E 12						X			X L1							
03N 04E 22					X L3	X	X									
03N 04E 32		X L1	X											X L5	X L10	

MICROFILMED

NOV 12 2002

SCANNED

APR 01 2002

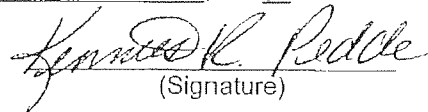
State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 63-03618

PLACE OF USE CONTINUED:

IRRIGATION STORAGE, STREAMFLOW MAINTENANCE STORAGE, AND RECREATION STORAGE
-- LUCKY PEAK RESERVOIR.

STREAMFLOW MAINTENANCE FROM STORAGE -- WITHIN THE CHANNEL OF THE BOISE RIVER
FROM LUCKY PEAK DAM DOWNSTREAM TO THE CONFLUENCE WITH THE SNAKE RIVER.

Permit holder asserts that no one will be injured by such change and that such change will be made at
permit holder's own risk. Signed this 27th day of September, 2002.


(Signature)

MICROFILM

NOV 12 2002

SCANNED

APR 01 2003

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT

(For Licensing Purposes)
WATER RIGHT NO. 63-03618

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = 50.00 Received by JM # C064818 Date 9/27/02

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, Karl J. Dreher, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 63-03618 with the following:

CONDITIONS OF APPROVAL

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 63 or its successor.
2. The Bureau of Reclamation and Idaho Department of Fish and Game shall provide joint written instructions to the Department, for conveyance to the watermaster, regarding release of the Lucky Peak streamflow maintenance storage water.
3. The reservoir storage capacity is 293,050 acre feet when filled to elevation 3055.0 and measured at the upstream face of the dam.
4. Lucky Peak Reservoir has 13,950 acre feet of capacity for flood control purposes in addition to the volume of water authorized for storage under this right.
5. Recreation storage (inactive storage) shall not be released from storage for a beneficial use.
6. The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.

Witness my hand this 27TH day of SEPTEMBER, 2002.

Acting for Karl J. Dreher
KARL J. DREHER
Director

MICROFILMED
NOV 12 2002

SCANNED
APR 01 2003

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707

LEGAL ADVERTISING INVOICE

Account Name Idaho Department of Water Resources				Account Number 47628		Amount Due 61.32	
Address 2735 Airport Way			City/State Boise ID			Zip 83705	
Ordered By G. Garrett		P.O. Number		Rate nt		Run Dates July 19, 26, 1990	
Identification Notice of Application for Amendment 63-3618				Estimated Inches		Real Inches	
1 Number of Affidavits Requested						Legal Number 6096	

NOTICE OF APPLICATION FOR AMENDMENT

Notice is hereby given that Permit No. 63-3618 in the name of the United States Bureau of Reclamation was filed on 4/12/1963 for the diversion of 307,000 acre-feet from the Boise River with a point of diversion at Lucky Peak Dam within the SE 1/4 NE 1/4, Sec. 11, T. 2N., R. 3E., to be used for irrigation within the irrigation system of the Boise Valley.

On 2/14/1985 the permit was amended to change the nature of use to describe 111,950 acre-feet storage for irrigation from 1/1 to 12/31, 111,950 acre-feet irrigation from storage from 3/15 to 11/15.

152,300 acre-feet storage for streamflow maintenance from 1/1 to 12/31, 152,300 acre-feet streamflow maintenance from storage from 1/1 to 12/31, and 28,800 acre-feet storage for recreation from 1/1 to 12/31, for a total of 293,050 acre-feet.

The permit holder now proposes to amend the permit by allowing 32,500 acre-feet of streamflow maintenance water to be used for irrigation of lands served under existing storage water contracts in the Boise River system during the 1990 season. This temporary amendment is intended to expire as soon as the streamflow maintenance water is repaid prior to the 1991 irrigation season.

Any protest against the approval of the proposed amendment must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705 on or before August 6, 1990. If protests are received, a hearing will be scheduled to be held on August 14, 1990. Copies of the Application for Amendment and associated explanatory documents are available upon request.

R. Keith Higginson
Director
July 19, 26, 1990

DEC 11 1990

6096

Debbie Richards

being duly

sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto; that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended, for

☒ consecutive weekly ☐ consecutive daily ☐ single ☐ odd skip

insertion(s) beginning with the issue of July 19, 1990

and ending with the issue of July 26, 1990

Debbie Richards

STATE OF IDAHO)

ss.

COUNTY OF ADA)

On this 26th day of July, 1990, before me, a Notary Public, personally appeared Debbie Richards

known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Jeanne M. Hawk
Notary Public for Idaho

Residing at Boise, Idaho

My commission expires: 4/19

EXHIBIT

D

Ident. No. 63-3618

STATE OF IDAHO

ent, No. 63-3618

APPROVED

JUL 11 1890

APPLICATION FOR AMENDMENT OF A PERMIT

Department of Water Resources
Western Regional Office

To change the point of diversion and/or the place of use.

The United States of America acting through the Project Superintendent,
Central Snake Project Office,
Bureau of Reclamation

Comes now Bureau of Reclamation

Phone 334-1460

of (address) 214 Broadway, Boise, Idaho 83702, and represents to the

Director of the Idaho Department of Water Resources:

delegated

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. R-1183/63-3618, and requests that the permit and permit map be changed as follows:

1. Point of diversion: SE 1/4 NE 1/4, Section 11, Township 2N, Range 3E, B.M.,
County of Ada. Other points of diversion: Secondary diversions from
the Boise River at various points downstream from Lucky Peak Reservoir.

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Storage for irrigation

Amount 111,950 for storage for irrigation purposes from Jan. 1 to Dec. 31 (both dates inclusive)

(cfs or acre feet per annum) Amount 111,950 for Irrigation purposes from Mar. 15 to Nov. 15 (both dates inclusive)

Amount 152,300 for Storage for streamflow maintenance purposes from Jan. 1 to Dec. 31 (both dates inclusive)

Amount 152,300 for Streamflow maintenance from storage purposes from Jan. 1 to Dec. 31 (both dates inclusive)

Amount 28,800 for Storage for recreation purposes from Jan. 1 to Dec. 31 (both dates inclusive)

3. Place of use or land to be irrigated: TOTAL OF 293,050 Acre feet

[illegible]

Total number of acres to be irrigated = 277,000

4. a. Who owns the property at the point of diversion? United States of America
- b. Who owns the land to be irrigated or the place of use? Various Water Users
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Administrator of Federal Reclamation Project.

ADMINISTRATOR OF FEDERAL BUREAU OF INVESTIGATION
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DEC 11 1990

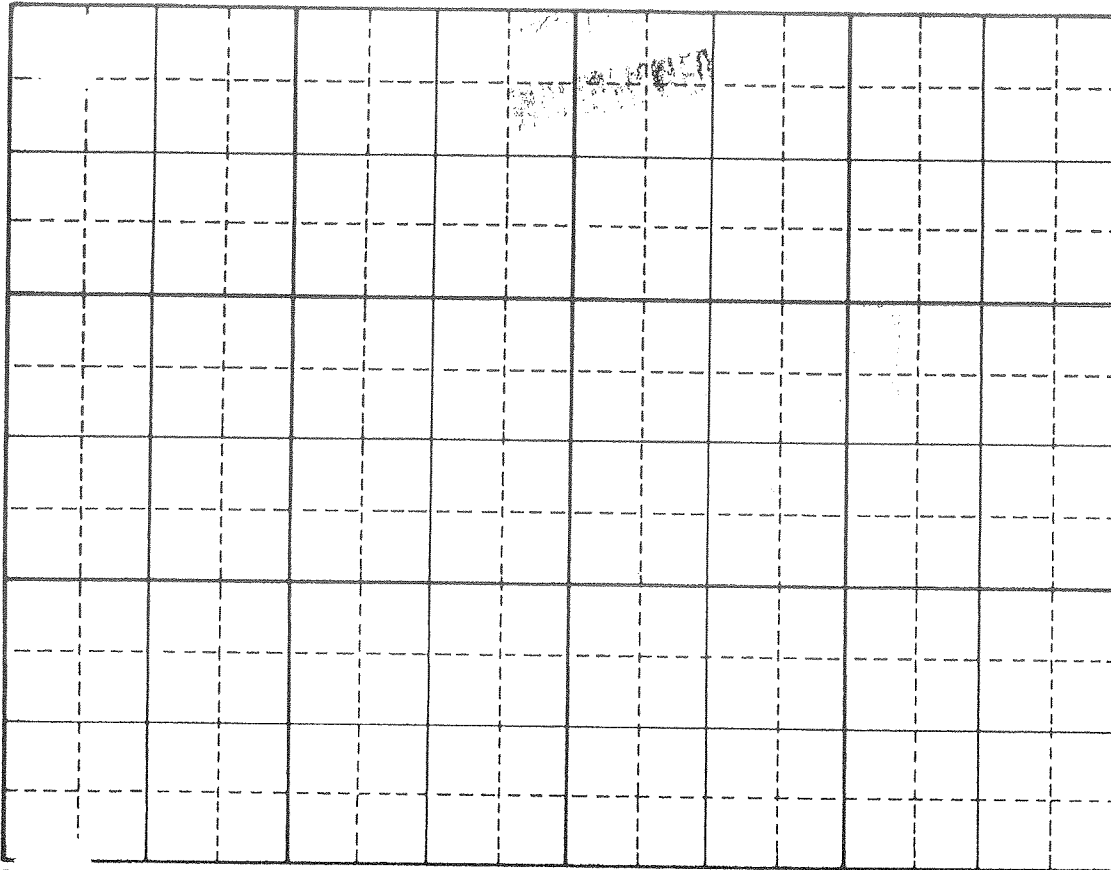
EXHIBIT

tabhloc.

5

Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches.



S. nes equal 1 mile.

That no one will be injured by such change, and that such change will be made at permit holder's own risk.

Signed at Boise, Id, this 11 day of July, 19 90.

[Signature]
(Signature)

Project Superintendent

FOR DEPARTMENT USE ONLY

Preliminary check by DET Fee = \$20.00 W013633 Received by DET Date 8/13/90
Publication prepared by DET Date 7/11/90 Published in Press-Tribune on 7/19 & 7/26/90
Publication dates 7/19/90 & 7/26/90 ID Statesman on 7/18 & 7/25/90

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, L. GLEN SAXTON, of the Department of Water Resources hereby
approves the Application for Amendment of Permit No. 63-1010. See attached sheet
for the conditions of approval. DEC 11 1990

Witness my hand this 19th day of November, 19 90

[Signature]
Chief, Water Alloc. Bureau

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
THE AMENDMENT OF PERMIT NO. 63-3618) MEMORANDUM DECISION AND
IN THE NAME OF THE UNITED STATES OF) ORDER GRANTING AMENDMENT
AMERICA, BUREAU OF RECLAMATION) TO PERMIT DATED JUNE 5, 1987
_____)

This Memorandum Decision and Order is prepared in compliance with a stipulation resolving protests to a previous application for amendment filed for Permit No. 63-3618.

The Director, based upon his understanding of the law and the information contained in the records of the Department finds, concludes, and orders as follows:

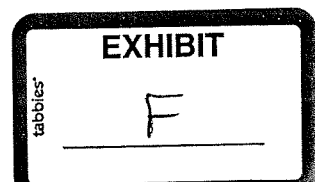
FINDINGS OF FACT

1. Permit No. 63-3618 was amended on February 14, 1985, to change 102,300 acre feet of storage space from irrigation to streamflow maintenance purpose.

2. The applicant proposes in this application for amendment to change the allocation of 25,905 acre feet of storage space in Lucky Peak Reservoir from streamflow maintenance purpose to irrigation purpose.

3. The application was filed by the applicant pursuant to a stipulation between the Bureau of Reclamation (hereafter referred to as "Bureau"), the Boise Project Board of Control, and other irrigation organizations (hereafter referred to as "parties"). The stipulation implicitly incorporates into its text a previous agreement between the Bureau of Reclamation and the Boise Project Board of Control. The contract states ~~that~~ no streamflow

MAR 10 1988



maintenance water will be made available to provide irrigation carry over for the 1988 season. That contract also requires the repayment of the water used for irrigation.

4. Permit No. 63-3618 was amended on May 20, 1987, to temporarily change 44,700 acre feet of storage space in Lucky Peak Reservoir from streamflow maintenance purpose to irrigation purpose.

5. The Department imposed the following conditions to the May 20, 1987 amendment:

2. The 44,700 acre feet must be allocated based on need to those who do not have an adequate water supply from other sources including hold over storage from prior years.
3. Spaceholders who have sold, rented, bartered, or otherwise conveyed water since last irrigation season shall not be eligible to utilize reallocated water.
4. The allocation change approved by this order shall revert to streamflow maintenance after the 1987 irrigation season.

6. In reviewing this Application for Amendment, Dave Tuthill of the Department of Water Resources, asked Carl Padour, Manager, Boise Project Board of Control, about compliance with condition 2, requiring specific distribution to users on the basis of need, and condition 3, requiring denial of use to those who had sold, rented, bartered, or otherwise conveyed water during the last year.

7. Mr. Padour stated that no water had been sold or conveyed from one district (party) to another. He also stated that the districts (parties) had resolved that each needed the water equally, and that the water should be prorated to the

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districts (parties) based on the respective acreage irrigated. The users did not pay additional excess storage costs for the water delivered to them.

8. The Department informed the Bureau that the previous scheme for distribution did not address the needs of individual users, and that prior to approving the change for an additional 25,905 acre feet from streamflow maintenance to irrigation, the Bureau must propose a plan for allocation of the stored water on the basis of need.

9. The Bureau represented to the Department during a meeting on August 4, 1987, that, before any water will be delivered under the present amendment, a party needing additional storage must identify and be willing to pay for the portion of the 25,905 acre feet that is needed to complete the irrigation season.

10. The Bureau also stated that after quantification of water needed by the parties, requests may exceed 25,905 acre feet.

11. Should requests exceed 25,905 acre feet, storage available to each party will be determined by means of a plan of distribution to be prepared by the Bureau. A party must contract with the Bureau for the entire quantity requested, up to the amount available to that party.

12. Parties requesting additional storage will pay operation and maintenance costs for the entire amount of water contracted for whether the water is diverted or not.

13. The proposed amendment will reduce the amount of storage

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remaining in the reservoir at the end of the irrigation season which will cause a decrease in the lake level.

14. The applicant will still be able to release a minimum flow of 80 cubic feet per second in the Boise River which when combined with storage available to the Idaho Department of Fish and Game will provide that a 150 cubic feet per second flow rate will be maintained during the non-irrigation season of 1987-1988.

15. The provisions in the June 26, 1986, contract between the applicant and the Boise Project Board of Control providing for repayment of water temporarily allocated to irrigation under the prior amendment approved May 20, 1987, will allow the minimum stream flow to be maintained during the 1988-1989 non-irrigation season.

CONCLUSIONS OF LAW

1. The issues to be considered in this application for amendment are similar to the issues raised in the previous amendment approved by the Department on May 20, 1987.

2. The Bureau has provided an acceptable plan for supplying water on the basis of need. The plan requires that the parties requesting water must pay an additional fee for excess stored water for all the water for which the parties contract. Payment for all contracted water rather than payment for only the water used will force the parties to more carefully assess their individual needs.

3. The Bureau must propose a plan of allocation for the 25,905 acre feet between the parties should requests exceed the volume available under the Bureau's application for amendment

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which the plan must be approved by the department.

4. To avoid an unnecessary adverse impact on the lake levels and interference with the local public interest, the 25,905 acre feet of water must be used only on land that does not have an adequate water supply from other sources including hold over storage from prior years.

5. This change in allocation from streamflow maintenance to irrigation shall only occur during the 1987 irrigation season and following the irrigation season the 25,905 acre feet of storage shall revert to streamflow maintenance.

ORDER

Therefore the amendment filed on June 5, 1987 on Permit No. 63-3618 is hereby APPROVED with the following conditions:

1. The 25,905 acre feet must be allocated based on need to those who do not have an adequate water supply from other sources including hold over storage from prior years.

2. To insure that condition No. 2 is complied with, the Bureau required by letter request dated July 2, 1987, that the parties desiring water to request in writing and be willing to pay for the additional storage needed and justification for the request.

3. If written requests exceed 25,905 acre feet, the Bureau shall submit a plan to the Department for allocation of the limited storage to the parties. The Department reserves the right to approve or disapprove the plan. The criteria for approval or disapproval is whether the plan proposes allocation on the basis of need.

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4. After the plan is accepted by the Department, the parties must pay operation and maintenance costs for all the water contracted for.

5. Spaceholders who have sold, rented, bartered, or otherwise conveyed water since last irrigation season shall not be eligible to utilize reallocated water.

6. The allocation change approved by this order shall revert to streamflow maintenance after the 1987 irrigation season.

Signed this 13TH day of August, 1987.


NORMAN C. YOUNG, Director
Department of Water Resources

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CERTIFICATE OF MAILING

I hereby certify that on the 19th day of August, 1987, I mailed a true and copy of the Memorandum Decision and Order Granting Amendment to Permit by U.S. mail, postage prepaid to: Bureau of Reclamation, 214 Broadway Avenue, Boise, ID 83702.

Jane L. Fox
JANE L. FOX, Receptionist

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SUBCASE SUMMARY REPORT 63-03618

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08-31-2007

SUBCASE SUMMARY REPORT

HTML12

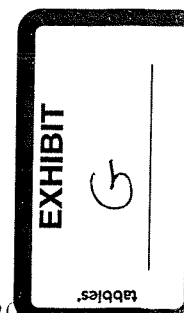
SUBCASE: 63-03618 FILE#: 00941
 CLAIMANT: UNITED STATES OF AMERICA
 REGIONAL DIRECTOR PN REGION
 BUREAU OF RECLAMATION
 1150 N CURTIS RD SUITE 100
 BOISE ID 83706
 STATUS: TRIAL SET SPECIAL MASTER: MELANSON, JOHN M
 WATER SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER
 ISSUES: NAME AND ADDRESS DESCRIPTION
 QUANTITY OF WATER USED
 PURPOSE OF USE DESCRIPTION
 PLACE OF USE OR IRRIGATED ACRES IN EACH 40 A.
 0
 INSTREAM FLOW BEGINNING AND ENDING

**** PARTIES INVOLVED ****

UNITED STATES OF AMERICA	C ATTY: US DEPARTMENT OF JUSTICE
PIONEER IRRIGATION DISTRICT	O ATTY: SCOTT L CAMPBELL
STATE OF IDAHO, DEPT OF F	R ATTY: NATURAL RESOURCES DIV CHIEF
SETTLERS IRRIGATION DISTRICT	O ATTY: SCOTT L CAMPBELL
EUREKA WATER COMPANY	O ATTY: DANIEL V. STEENSON
BALLANTYNE DITCH COMPANY L	O ATTY: DANIEL V. STEENSON
EAGLE ISLAND WATER USERS A	O ATTY: DANIEL V. STEENSON
THURMAN MILL DITCH CO	O ATTY: DANIEL V. STEENSON
BOISE VALLEY IRRIGATION DISTRICT	O ATTY: DANIEL V. STEENSON
SOUTH BOISE WATER COMPANY	O ATTY: DANIEL V. STEENSON
NAMPA & MERIDIAN IRRIGATION	O ATTY: DANIEL V. STEENSON
NEW DRY CREEK DITCH COMPANY	O ATTY: DANIEL V. STEENSON
BOISE PROJECT BOARD OF CON	O ATTY: ALBERT P BARKER
FARMERS UNION DITCH COMPANY	O ATTY: JERRY A. KISER
CANYON COUNTY WATER COMPANY	O ATTY: JERRY A. KISER
MIDDLETON IRRIGATION ASSN	O ATTY: JERRY A. KISER
MIDDLETON MILL DITCH COMPANY	O ATTY: JERRY A. KISER
ADA COUNTY & BOARD OF ADA	O ATTY: SUSAN D. THOMAS
CITY OF BOISE	O ATTY: ROBERT A. MAYNARD

**** ROA ENTRIES ****

01-14-2003	OBJ	01 F/B PIONEER IRRIGATION DISTRICT	RB	04-04-2003	0001
01-14-2003	OBJ	02 F/B SETTLERS IRRIGATION DISTRICT			0002
01-30-2003	OBJ	03 F/B EUREKA WATER COMPANY			0003
01-30-2003	OBJ	04 F/B BALLENTYNE DITCH COMPANY			0004
01-30-2003	OBJ	05 F/B EAGLE ISLAND WATER USERS ASSN			0005
01-30-2003	OBJ	06 F/B THURMAN MILL DITCH CO			0006
01-30-2003	OBJ	07 F/B BOISE VALLEY IRRIGATION DITCH			0007
01-30-2003	OBJ	08 F/B SOUTH BOISE WATER COMPANT			0008



01-30-2003	OBJ 09 F/B NAMPA & MERIDIAN IRRIGATION DI			0009
01-30-2003	OBJ 10 F/B NEW DRY CREEK DITCH CO			0010
01-31-2003	AMENDED OBJ 01 F/B PIONEER IRRIGATION DIST	RB	04-04-2003	0001
01-31-2003	AMENDED OBJ 02 F/B SETTLERS IRRIGATION DIST	RB	04-04-2003	0002
01-31-2003	OBJ 11 F/B BOISE PROJECT BOARD OF CONTROL			0011
01-31-2003	OBJ 12 F/B FARMERS UNION DITCH COMPANY			0012
01-31-2003	OBJ 13 F/B CANYON COUNTY WATER COMPANY			0013
01-31-2003	OBJ 15 F/B MIDDLETON MILL DITCH COMPANY			0015
01-31-2003	OBJ 14 F/B MIDDLETON IRRIGATION ASSN			0014
03-10-2003	CASE MANAGEMENT REPORT FILED			
03-10-2003	ORIGINAL CLAIM FROM IDWR FOR U.S.			
03-10-2003	ORIGINAL CLAIM FROM IDWR FOR SETTLERS			
03-10-2003	ORIGINAL CLAIM FROM IDWR FOR BALLENTYNE			
04-03-2003	RESPONSE TO OBJ 0008 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0004 F/B STATE OF IDAHO, ID D			0001
04-03-2003	RESPONSE TO OBJ 0007 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0005 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0003 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0009 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0010 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0006 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0015 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0014 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0012 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0013 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0001 F/B STATE OF IDAHO, DEPT			0001
04-03-2003	RESPONSE TO OBJ 0002 F/B STATE OF IDAHO, DEPT			0001
06-19-2003	MOTION TO CONSOLIDATE AND MEMORANDUM IN	MG	06-23-2003	
	SUPPORT OF MOTION TO CONSOLIDATE COMMON			
	ISSUE IN SUBCASES LISTED IN ATTACHMENT A			
06-23-2003	ORDER SEPARATING AND CONSOLIDATING COMMON		06-23-2003	
	ISSUE FROM SUBCASES IN "EXHIBIT A";A01 11			
	AND 16, IRCP 42; ORDER RESCINDING ORDER OF			
	REFERENCE TO SPECIAL MASTER AS TO CONSOLI-			
	DATED ISSUE; ORDER DESIGNATING ISSUE AS			
	CONSOLIDATED SUBCASE 91-63; NOTICE OF			
	SCHEDULING AND STATUS CONFERENCE ON			
	CONSOLIDATED ISSUE			
10-12-2004	ORDER OF REFERENCE APPOINTING THEODORE R.			
	BOOTH SPECIAL MASTER			
	ASSIGNED MASTER WAS: 703 CUSHMAN, THOMAS R			
03-02-2006	ORDER SETTING STATUS CONFERENCE	HS	04-18-2006	1000
03-22-2006	ORDER VACATING EVENT ON 04182006 AT 1000			
03-22-2006	ORDER SETTING STATUS CONFERENCE	US	05-02-2006	1000
05-02-2006	HEARING HELD	HH	05-02-2006	1000
05-02-2006	MINUTES			
05-03-2006	ORDER STAYING PROCEEDINGS PENDING COMPLETION			
	OF APPEAL IN CONSOLIDATED CASE 91-63			
09-08-2006	WITHDRAWAL OF OBJECTION F/B SOUTH BOISE WATER	MF	09-08-2006	
	OBJ TO INSTREAM(6) AND PURPOSE (7)WITHDRAWN			
06-28-2007	ORDER RESCINDING ORDER OF REFERENCE AND ORDER			
	SETTING SCHEDULING AND STATUS CONFERENCE ON			
	REMAINING ISSUES			
06-28-2007	SCHEDULING AND STATUS CONFERENCE	HH	07-17-2007	0200
07-17-2007	HEARING HELD	HH	07-17-2007	0200
07-17-2007	MINUTES			
07-18-2007	ORDER REQUIRING SUBMITTAL OF UNAVAILABLE			
	DATES			
	SUBMITTAL DUE: 08/01/07	ZB	08-01-2007	0500
07-20-2007	NOTICE OF UNAVAILABLE DATES FOR PIONEER &			

SETTLERS IRRIGATION DISTRICTS

07-20-2007	NOTICE OF UNAVAILABLE DATES F/B FARRIS		
07-23-2007	NOTICE OF UNAVAILABLE DATES F/B JERRY KISER		
07-25-2007	NOTICE OF UNAVAILABLE DATES F/B BARKER		
07-26-2007	UNITED STATES' SUBMISSION OF UNAVAILABLE DATES		
08-02-2007	REQUEST FOR SERVICE LIST UPDATE		
08-03-2007	ORDER SETTING TRIAL DATE, FINAL PRE-TRIAL CONFERENCE, DISCOVERY DEADLINES, SETTLEMENT CONFERENCE AND SCHEDULING PRE-TRIAL MOTIONS I.R.C.P. 16	TS	04-16-2008 0900
	MOTION/BRIEF/AFFIDAVITS DUE: 09/10/07	MB	09-10-2007 0500
	ANSWER BRIEF/AFFIDAVITS DUE: 09/24/07	BB	09-24-2007 0500
	REPLY BRIEF DUE: 10/08/07	BB	10-08-2007 0500
	SUMMARY JUDGMENT HEARING SET: 10/16/2007	HS	10-16-2007 0300
	WITNESS DISCLOSURES DEADLINES		
	LAY WITNESSES: 12/14/07	ZZ	12-14-2007 0500
	EXPERT WITNESSES - CLAIMANT: 01/10/08	ZZ	01-10-2008 0500
	OBJECTORS: 01/25/08	ZZ	01-25-2008 0500
	REBUTTAL: 02/11/08	ZZ	02-11-2008 0500
	FINAL PRE-TRIAL CONFERENCE: 03/18/08	PS	03-18-2008 0300
08-07-2007	(FAX FILED) MOTION TO PARTICIPATE (F/B CITY OF BOISE)	MF	08-07-2007
08-23-2007	(FAX FILED) MOTION TO PARTICIPATE (F/B ADA COUNTY/BOARD OF COUNTY COMMISSIONERS)	MF	08-23-2007
08-30-2007	NOTICE SETTING HEARING ON MOTIONS TO PARTICIPATE	HS	09-04-2007 0330

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