

Randall C. Budge, ISB No. 1949
Thomas J. Budge, ISB No. 7465
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109

Attorneys for Aberdeen-Springfield Canal Company

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)
)
)
)
)
)
)
)

A. Subcase Nos. 01-23B, 01-297, 35-2543, 35-4246

AFFIDAVIT OF RANDALL C. BUDGE

STATE OF IDAHO)
) ss:
County of Bannock)

Randall C. Budge, being first duly sworn on oath deposes and says:

1. My name is Randall C. Budge and I am now and have been at all times relevant a duly-licensed attorney in the State of Idaho holding Idaho State Bar License No. 1949 and member of the firm of Racine, Olson, Nye, Budge & Bailey, Chartered, attorneys of record for Claimant Aberdeen-Springfield Canal Company.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Idaho Department of Water Resources Recommended Water Rights from the Amended Director's Report dated March 21, 2008, for Water Right Nos. 01-23B, 01-297, 35-2543 and 35-4246.

3. Attached hereto as **Exhibit 2** is a true and correct copy of Claimant Aberdeen-Springfield Canal Company's First Discovery Requests and Notice of Taking Deposition Duces Tecum dated and served upon all objectors on March 5, 2009. No answers have been filed to these discovery requests.

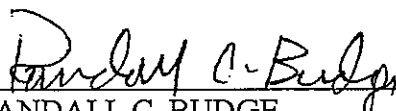
4. The Trial Scheduling Order dated September 2, 2008, resulted from the scheduling conference conducted on August 28, 2008, with the dates set by consensus of the parties as follows:

3/6/09 -	Discovery Deadline
3/27/09 -	Dispositive Motion Deadline
5/21/09 -	Pretrial Conference
6/8/09 -	Trial

Affiant, counsel for Claimant, understood and agreed to this schedule at the 8/28/08 scheduling conference based upon the understanding and belief that the discovery and motion dates were deadlines to submit or file these matters not complete the same. Being more than 90 days before trial, the discovery deadline was contemplated to provide ample time to complete discovery before trial. If the discovery deadline is now interpreted as a deadline to complete discovery, then in effect there will be no discovery and Objectors will be afforded their desired "trial by ambush", Claimant unduly prejudiced by reason of a misunderstanding by its counsel, full and fair trial on the merits potentially thwarted, and the interests of justice undermined.

FURTHER, your Affiant saith not.

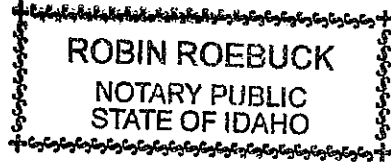
DATED this 26th day of March, 2009.



RANDALL C. BUDGE

Subscribed and sworn to before me, a Notary Public, this 26th day of March, 2009.

[SEAL]



Robin Roebuck
Notary Public for Idaho
Residing at Pocatello.
My commission expires 8/18/2012

EXHIBIT 1

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

3/24/2009

WATER RIGHT NO. 1-23B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ABERDEEN-SPRINGFIELD CANAL CO PO BOX 857 ABERDEEN, ID 83210 (208)397-4192
Attorney	RACINE OLSON NYE COOPER & BUDGE C/O RANDALL C BUDGE PO BOX 1391 POCATELLO, ID 83205 (208)232-6101

Priority Date: 02/06/1895

Basis: Decreed

Status: Active

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

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	1172.1 CFS	
RECHARGE FOR IRRIGATION	04/01	10/31	389.5 CFS	
Total Diversion			1172.1 CFS	

Location of Point(s) of Diversion:

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SNAKE RIVER SENE Lt 14 Sec. 34 Township 01S Range 36E BINGHAM County

Place(s) of use: Large POU Info

Conditions of Approval:

1.	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.
2.	129	Place of use is within the area served by Aberdeen-Springfield Canal Company.
3.	135	The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.
4.	E56	The rights listed below are limited to the irrigation of a combined total of 61,772.6 acres in a single irrigation season. Combined Right Nos.: 1-23B, 1-297, 35-2543, and 35-4246.
5.	C05	Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
6.		The administration of this right is further defined and set forth in the Settlement Agreement Regarding Aberdeen-Springfield Canal Company's Basin 01 Surface Water Rights and Consolidated SRBA Subcase No. 35-2315, recorded as instrument number 563578 in the Bingham County Recorder's Office, Blackfoot, Idaho.
7.		Diversion of this right for the purpose of recharge for irrigation is authorized for a maximum of 17,161.6 acres.
8.	C04	Right includes accomplished change in purpose of use pursuant to Section 42-1425, Idaho Code.

Dates:

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 01

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

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

3/24/2009

WATER RIGHT NO. 1-297

Owner Type	Name and Address
Current Owner	ABERDEEN-SPRINGFIELD CANAL CO PO BOX 857 ABERDEEN, ID 83210 (208)397-4192
Attorney	RACINE OLSON NYE COOPER & BUDGE C/O RANDALL C BUDGE PO BOX 1391 POCATELLO, ID 83205 (208)232-6101

Priority Date: 04/01/1939

Basis: Decreed

Status: Active

Source	Tributary
SNAKE RIVER	COLUMBIA RIVER

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	10/31	230 CFS	
Total Diversion			230 CFS	

Location of Point(s) of Diversion:

SNAKE RIVER	SENE Lt 14	Sec. 34	Township 01S	Range 36E	BINGHAM County
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Conditions of Approval:

1.	179	The delivery of water to this right may be subject to procedures described in the United States Bureau of Reclamation "space holder" contracts and the Burley Irrigation Dist. v. Eagle, Supplemental Decree (Idaho 5th Jud. Dist., July 10, 1968) and Aberdeen-Springfield Canal Co. v. Eagle, Supplemental Decree (Idaho 7th Jud. Dist., March 12, 1969) together with the natural-flow and storage deliveries as calculated by the Idaho Department of Water Resources.
2.	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.
3.	C03	Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
4.	129	Place of use is within the area served by Aberdeen-Springfield Canal Company.
5.	135	The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.
6.	E56	The rights listed below are limited to the irrigation of a combined total of 61,772.6 acres in a single irrigation season. Combined Right Nos.: 1-23B, 1-297, 35-2543, and 35-4246.
7.	C05	Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

Other Information:

Owner Name Connector:

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

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

3/24/2009

WATER RIGHT NO. 35-2543

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ABERDEEN-SPRINGFIELD CANAL CO PO BOX 857 ABERDEEN, ID 83210 (208)397-4192
Attorney	RANDALL C BUDGE RACINE OLSON NYE BUDGE & BAILEY CTD PO BOX 1391 POCATELLO, ID 83240-1391 (208)232-6101
Attorney	LING & ROBINSON C/O ROGER D LING PO BOX 396 RUPERT, ID 83350-0396 (208)436-4717

Priority Date: 08/07/1958

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	6 CFS	2547 AFA
Total Diversion			6 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NWNESW	Sec. 11	Township 05S	Range 31E	BINGHAM County
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Place(s) of use: Large POU Info

Conditions of Approval:

1.	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.
2.	129	Place of use is within the area served by Aberdeen-Springfield Canal Company.
3.	135	The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.
4.	E56	The rights listed below are limited to the irrigation of a combined total of 61,772.6 acres in a single irrigation season. Combined Right Nos.: 1-23B, 1-297, 35-2543, and 35-4246.

Dates:

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 120

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

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

3/24/2009

WATER RIGHT NO. 35-4246

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ABERDEEN-SPRINGFIELD CANAL CO PO BOX 857 ABERDEEN, ID 83210 (208)397-4192
Attorney	RANDALL C BUDGE RACINE OLSON NYE BUDGE & BAILEY CTD PO BOX 1391 POCATELLO, ID 83240-1391 (208)232-6101
Attorney	LING & ROBINSON C/O ROGER D LING PO BOX 396 RUPERT, ID 83350-0396 (208)436-4717

Priority Date: 10/15/1934

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	2.44 CFS	155 AFA
Total Diversion			2.44 CFS	

Location of Point(s) of Diversion:

GROUND WATER	SWNW	Sec. 04	Township 06S	Range 31E	BINGHAM County
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Place(s) of use: Large POU Info

Conditions of Approval:

1.	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.
2.	129	Place of use is within the area served by Aberdeen-Springfield Canal Company.
3.	135	The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.
4.	E56	The rights listed below are limited to the irrigation of a combined total of 61,772.6 acres in a single irrigation season. Combined Right Nos.: 1-23B, 1-297, 35-2543, and 35-4246.

Dates:

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number: 120

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

EXHIBIT 2

Randall C. Budge, ISB No. 1949
Thomas J. Budge, ISB No. 7465
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109

Attorneys for Aberdeen-Springfield Canal Company

**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)

A. Subcase Nos. 01-23B, 01-297, 35-2543, 35-4246

NOTICE OF TAKING DEPOSITION DUCES TECUM

- TO: (1) Objectors Twin Falls Canal Company, A&B Irrigation Company, North Side Canal Company, Burley Irrigation District and Milner Irrigation District, and their attorneys of record, John K. Simpson, Travis L. Thompson, Paul Arrington:
- (2) Objector Minidoka Irrigation District and its attorney of record, W. Kent Fletcher:

PLEASE TAKE NOTICE that the Claimant Aberdeen-Springfield Canal Company, by and through its counsel of record, Randall C. Budge of Racine, Olson, Nye, Budge & Bailey, Chartered, pursuant to Idaho Rules of Civil Procedure 26 and 30(a), will take the testimony on oral examination of all of the expert and lay witnesses identified by each of the above-named objecting parties as witnesses in the matter of the Water Rights of Aberdeen-Springfield Canal Company identified in the above-referenced subcases for purposes of the trial scheduled to commence on June 8, 2009,

before a duly authorized court reporter and notary public. Examination will commence on April 1, 2009 and continue day to day until completed at our offices at 201 E. Center Street, Pocatello, Idaho. The exact dates and times for each witness will be arranged between counsel once the objecting parties have disclosed their witnesses and confirmed their available schedules for deposition.

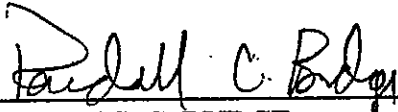
Pursuant to Rule 30(b)(1) of the Idaho rules of Civil Procedure, the deponent is required to bring to the deposition the following items and documents:

1. All records and documents identified in Claimant's Requests for Production of documents of this date filed herein.

This deposition shall be taken pursuant to Idaho rules of Civil Procedure.

DATED this 5th day of March, 2009.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED



RANDALL C. BUDGE
Attorney for Claimant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of March, 2009, I caused to be served the original and copies of the foregoing document to the following persons by the indicated methods:

Original to:	Clerk of the District Court Snake River Basin Adjudication P.O. Box 2707 253 Third Avenue North Twin Falls, Idaho 83303-2707	U.S. Mail and Email
--------------	--	---------------------

Copy to the Claimant:

Aberdeen-Springfield Canal Company P.O. Box 857 Aberdeen, Idaho 83210	U.S. Mail and Email
---	---------------------

Copy to each of the parties and their attorneys:

John K. Simpson/Travis L. Thompson Barker Rosholt & Simpson LLP P.O. Box 485 Twin Falls, Idaho 83303-0485	U.S. Mail and Email
--	---------------------

Twin Falls Canal Company P.O. Box 326 Twin Falls, Idaho 83303-0326	U.S. Mail
--	-----------

A&B Irrigation District P.O. Box 675 Rupert, Idaho 83350-0675	U.S. Mail
---	-----------

North Side Canal Company 921 N. Lincoln Avenue Jerome, Idaho 83338	U.S. Mail
--	-----------

Burley Irrigation District 246 E. 100 S. Burley, Idaho 83318	U.S. Mail
--	-----------

Milner Irrigation District 5294 E. 3610 N. Murtaugh, Idaho 83344	U.S. Mail
--	-----------

W. Kent Fletcher
Attorney at Law
P.O. Box 248
Burley, Idaho 83318

U.S. Mail & Email

Minidoka Irrigation District
98 W. 50 S.
Rupert, Idaho 83350

U.S. Mail

Copies to: IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

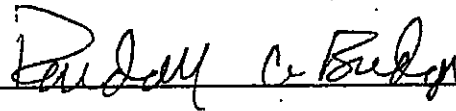
U.S. Mail

United States Department of Justice
Environment and Natural Resource Div.
550 W. Fort Street, MSC 033
Boise, Idaho 83724

U.S. Mail

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

U.S. Mail

A handwritten signature in cursive script, reading "David C. Budge", is written over a horizontal line.

Randall C. Budge, ISB No. 1949
Thomas J. Budge, ISB No. 7465
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
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Telephone: 208-232-6101
Fax: 208-232-6109

Attorneys for Aberdeen-Springfield Canal Company

**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	)	
	)	A. Subcase Nos. 01-23B, 01-297, 35-2543, 35-4246
Case No. 39576	)	
	)	CLAIMANT'S FIRST DISCOVERY REQUESTS
	)	
	)	
	)	
	)	
	)	

- TO:** (1) Objectors Twin Falls Canal Company, A&B Irrigation Company, North Side Canal Company, Burley Irrigation District and Milner Irrigation District, and their attorneys of record, John K. Simpson, Travis L. Thompson, Paul Arrington:
- (2) Objector Minidoka Irrigation District and its attorney of record, W. Kent Fletcher:

COMES NOW Claimant Aberdeen-Springfield Canal Company (hereinafter "Claimant"), by and through counsel, and pursuant to I.R.C.P. Rules 33, 34 and submit the following Interrogatories and Requests for Production of Documents to each of the above-named Objectors. You are directed to Answer and Respond to the following Interrogatories and Requests for Production of Documents within fifteen (15) days of service upon you. Further, these Interrogatories

are deemed to be continuing and should you at any time acquire additional information you are to supplement these Interrogatories.

INTERROGATORIES

INTERROGATORY NO. 1: Please set forth the name, address and phone number of each person who is providing the information to answer each respective interrogatory.

INTERROGATORY NO. 2: Please state the name and address of each person you intend to call as a witness at the trial of this matter and the substance of each person's expected testimony.

INTERROGATORY NO. 3: Identify by name and address each and every person you intend to call as an expert at the trial of this matter and for each such person the following:

- a. The scientific, technical or other specialized knowledge possessed by such person.
- b. The knowledge, skill, experience, training and education which qualifies such person as an expert.
- c. All facts and data upon which the expert bases his opinion.
- d. All opinions and inferences to which the expert may testify and the reasons therefor.

INTERROGATORY NO. 4: Do you contend that you own water rights which will be injured if the Claimant's Water Right Nos. 01-23B, 01-297, 35-2543 and 35-4246 are partially decreed as recommended in the Director's Report? If your answer is yes, please answer the following for each water right you contend is injured:

- a. Indicate the water right number;
- b. Provide a copy of each water right or describe the priority date, quantity, point of diversion, place of use and acres irrigated;

c. Please describe precisely and in detail how you believe your water rights will be injured.

INTERROGATORY NO. 5: With respect to each of Claimant's water right claims and the elements of each right to which you have objected as identified in the Standard Form 1 Objection, please state precisely and in detail:

- a. The reasons supporting each objection;
- b. What you believe each element should be;
- c. All evidence you intend to present at trial in support of your objection;
- d. The name, address and phone number of each witness who will testify with respect to each objection and a capsule summary of the testimony to be presented;
- e. A description of all exhibits you will present at trial in support of your objections.

REQUESTS FOR PRODUCTION OF DOCUMENTS

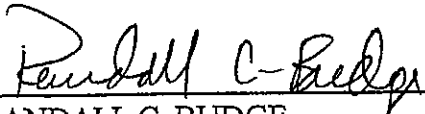
REQUEST FOR PRODUCTION NO. 1: Please produce all documents which pertain to and/or which you base your answer to the above interrogatories.

REQUEST FOR PRODUCTION NO. 2: Produce a copy of all documents which you intend to present as exhibits at the time of trial.

REQUEST FOR PRODUCTION NO. 3: Produce a copy of all documents which support your contention your water rights will be injured if Claimant's Water Right Nos. 01-23B, 01-297, 35-2543 and 35-4246 are partially decreed as recommended in the Director's Report.

DATED this 5th day of March, 2009.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED



RANDALL C. BUDGE
Attorney for Claimant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 5th day of March, 2009, I caused to be served the original and copies of the foregoing document to the following persons by the indicated methods:

Original to:	Clerk of the District Court Snake River Basin Adjudication P.O. Box 2707 253 Third Avenue North Twin Falls, Idaho 83303-2707	U.S. Mail and Email
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Copy to each of the parties and their attorneys:

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Twin Falls Canal Company P.O. Box 326 Twin Falls, Idaho 83303-0326	U.S. Mail
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A&B Irrigation District P.O. Box 675 Rupert, Idaho 83350-0675	U.S. Mail
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North Side Canal Company 921 N. Lincoln Avenue Jerome, Idaho 83338	U.S. Mail
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Burley Irrigation District 246 E. 100 S. Burley, Idaho 83318	U.S. Mail
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Milner Irrigation District 5294 E. 3610 N. Murtaugh, Idaho 83344	U.S. Mail
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W. Kent Fletcher
Attorney at Law
P.O. Box 248
Burley, Idaho 83318

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Minidoka Irrigation District
98 West 50 South
Rupert, Idaho 83350

U.S. Mail

Copies to: IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

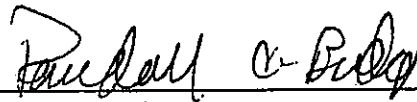
U.S. Mail

United States Department of Justice
Environment and Natural Resource Div.
550 W. Fort Street, MSC 033
Boise, Idaho 83724

U.S. Mail

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

U.S. Mail

A handwritten signature in cursive script, appearing to read "Paul A. Budge", is written over a horizontal line.