

1. I am an attorney representing A&B, BID, Milner, NSCC, and TFCC in the above-captioned matter. I am over the age of 18 and state the following based upon my own personal knowledge.

2. Attached hereto as Exhibit A are true and correct copies of the *Notices of Claim* filed by the U.S. Bureau of Reclamation (water right 1-10034, 1-10482) and A&B Irrigation District (1-10225, 1-10237, 1-10238, 1-10239, 1-10240, and 1-10241).

3. Attached hereto as Exhibit B are true and correct copies of IDWR's recommendations for water rights 1-10034, 1-10225, 1-10237, 1-10238, 1-10239, 1-10240, 1-10241, and 1-10482 .

4. Attached hereto as Exhibit C is a true and correct copy of excerpts of the transcript of the deposition of Ronald D. Carlson taken in this matter on October 7, 2008.

5. Attached hereto as Exhibit D is a true and correct copy of excerpts of the transcript of the deposition of Anthony Olenichak taken in this matter on October 6, 2008.

6. Attached hereto as Exhibit E is a true and correct copy of excerpts of the transcript of the deposition of Lyle Swank taken in this matter on October 8, 2008.

7. Attached hereto as Exhibit F is a true and correct copy of the January 14, 2005 water delivery call (with exhibit A only attached) filed by SWC with the Idaho Department of Water Resources.

8. Attached hereto as Exhibit G is a true and correct copy of excerpts of the Director's May 2, 2005 *Amended Order* issued *In the Matter of Distribution of Water to Water Rights Held by or for the Benefit of A&B Irrigation District et al.* ("SWC Delivery Call case").

9. Attached hereto as Exhibit H is a true and correct copy of an excerpt from IGWA's Exhibit 4000 (entitled *Summary of Positions on Director's Orders Related to the*

Surface Water Coalition Delivery Call) filed in the SWC Delivery Call case before IDWR on September 26, 2007.

10. Attached hereto as Exhibit I is a true and correct copy of excerpts from IGWA's *Proposed Findings of Fact and Conclusions of Law* filed in the SWC Delivery Call case on December 21, 2007.

11. Attached hereto as Exhibit J is a true and correct copy of excerpts from the Hearing Officer's *Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation* filed in the SWC Delivery Call case on April 29, 2008.

12. Attached hereto as Exhibit K is a true and correct copy of excerpts from IGWA's *Memorandum in Support of its Exceptions to Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation* filed in the SWC Delivery Call case on June 24, 2008.

13. Attached hereto as Exhibit L is a true and correct copy of excerpts of the Director's *Final Order Regarding Surface Water Coalition Delivery Call* filed in the SWC Delivery Call case on September 5, 2008.

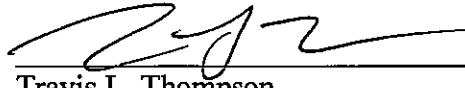
14. Attached hereto as Exhibit M is a true and correct copy of excerpts of IGWA's *Memorandum in Response to Plaintiffs' Motions for Summary Judgment* filed in *AFRD #2 v. IDWR*, Gooding County District Court, Fifth Jud. Dist., Case No.05-600.

15. Attached hereto as Exhibit N are true and correct copies of the affidavits of publication filed in *Aberdeen Springfield Canal Company et al. v. Henry Eagle*, Fremont County District Court, 12th Jud. Dist., Case No. 6117.

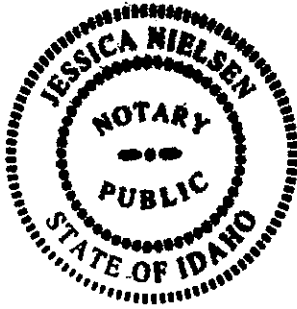
16. Attached hereto as Exhibit O are true and correct copies of excerpts of the *Notices of Claim* filed for water rights 1-7, 1-8, 1-9, and 1-14.

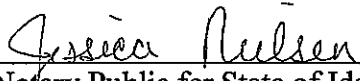
Further you affiant sayeth naught.

DATED this 29th day of July, 2009.


Travis L. Thompson

SUBSCRIBED AND SWORN to before me this 29 day of July, 2009.




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

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2009, I served a true and correct copy of the foregoing *Third Affidavit of Travis L. Thompson* on the following by the method indicated:

Clerk of the SRBA Court
253 Third Ave. North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

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

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

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

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort St., MSC 033
Boise, Idaho 83724

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

IDWR Repository
P.O. Box 83720
Boise, Idaho 83720-0098

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

Jerry Rigby
25 N. 2nd E.
P.O. Box 250
Rexburg, Idaho 83440-0250

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

Robert Harris
1000 Riverwalk Dr., Suite 200
P.O. Box 50130
Idaho Falls, Idaho 83405

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

Randy C. Budge
Candice M. McHugh
Racine Olson
101 S. Capitol Blvd, Suite 208
Boise, Idaho 83702

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

Craig Hobday
125 5th Ave.
P.O. Box 176
Gooding, Idaho 83330

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

Sarah A. Klahn
White & Jankowski, LLP
Kittredge Building
511 16th St., Suite 500
Denver, CO 80202

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

A. Dean Tranmer
City of Pocatello
P.O. Box 4169
Pocatello, Idaho 83201

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

William A. Parsons
137 W. 13th St.
P.O. Box 910
Burley, Idaho 83318

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

Adam T. Devoe
James S. Lochhead
Brownstein, Hyatt & Farber, PC
410 17th Street, 22nd Flr.
Denver, CO 80202

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

Josephine P. Beeman
409 W. Jefferson St.
Boise, Idaho 83702

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

Patrick D. Brown
Hutchinson & Brown, LLP
104 Lincoln St.
P.O. Box 207
Twin Falls, Idaho 83303-0207

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

H. Evan Call
4373 Cold Water Rd.
American Falls, Idaho 83211

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

Bret Anderson
Robyn Anderson
322 E. Main
Burley, Idaho 83318

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



Travis L. Thompson

Attachment 1

1-4
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1-13
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1-16
1-209
1-210
1-211A
1-211B
1-212
1-213
1-214A
1-214B
1-219
1-2050
1-2061
1-10225
1-10034
1-10237
1-10238
1-10239
1-10240
1-10241
1-10482

Exhibit A

RECEIVED

JAN 13 2006

DEPARTMENT OF
WATER RESOURCES

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: A01-10034

Date Received:

Receipt No:

Received By: _____

AMENDED NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: UNITED STATES OF AMERICA, ACTING THROUGH 208-378-5306
Address: REGIONAL DIRECTOR, P.N. REGION ATTN: PN-3100
BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD, SUITE 100
BOISE, ID 83706-1234

2. Date of Priority: DEC 14, 1909

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
09S	25E	1				7	MINIDOKA
			SE		SW		CASSIA

5. Description of diverting works:

MINIDOKA DAM - MINIDOKA AND BURLEY IRRIGATION DISTRICT

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION STORAGE	01/01	12/31			95,200.00
IRRIGATION FROM STORAGE	03/15	11/15			95,200.00

7. Total Quantity Appropriated is:

C.F.S. (and/or) 220,200.00 A.F.A.

Total reservoir capacity is 220,200 acre feet when filled to elevation 4245.0 and measured at the upstream face of the dam.

Water temporarily held under this right may be subsequently administered and accounted for as delivery of natural flow under other water rights upstream of Milner Dam and not as storage under this right, when determined by the watermaster, Committee of Nine, and the Bureau of Reclamation that such administration and accounting will promote the

conservation of storage water upstream of Milner Dam.

8. Total consumptive use is 95,200.0 Acre Feet Per Annum.

9. Non-irrigation uses

POWER

10. Place of Use:

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

Place of use for irrigation storage is Lake Walcott Reservoir; provided, however, that water under this right may be temporarily held in the unoccupied space of any of the reservoirs upstream of Milner Dam when determined by the watermaster, Committee of Nine, and the Bureau of Reclamation that such temporary storage will promote the conservation of storage water upstream of Milner Dam.

11. Place of use in counties:

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

13. Other Water Rights Used:

01-00219, 01-00007, 01-00008, 01-00211A, 01-00214A

14. Remarks:

P/U 125,994.79 ACRES WITHIN BURLEY AND MINIDOKA IRRIGATION DISTRICTS, INCLUDING EXPANSION.

48,000 ACRES BURLEY AND 77,994.79 ACRES MINIDOKA (MINIDOKA INCLUDES 511.70 ACRES GOVERNMENT LAND).

RESERVOIR SUMMARY STATEMENT

TOTAL SURFACE AREA	11,850 ACRES AT ELE. 4245
DEAD SPACE	0 ACRE FEET
INACTIVE SPACE	115,000 ACRE FEET
ACTIVE SPACE	95,200 ACRE FEET
JOINT USE/FLOOD CONTROL	0 ACRE FEET
TOTAL NORMAL RESERVOIR CAPACITY	210,200 ACRE FEET
SURCHARGE	10,000 ACRE FEET
TOTAL RESERVOIR CAPACITY	220,200 ACRE FEET
BANK STORAGE	30,000 ACRE FEET

NO WINTER WATER OR NON-WINTER WATER SAVING DISTINCTIONS AT MINIDOKA DAM.

CONSUMPTIVE USE 3 ACRE FEET/ACRE

DRAIN PUMPS USED WITHIN THE BOUNDARIES OF THE DISTRICTS FOR REUSE OF RETURN FLOWS.

15. Basis of Claim: DECREED

Case Number:
Court :
Decree date:

TWIN FALLS CANAL CO.
Decree Plaintiff

vs

CHARLES N. FOSTER
Decree Defendant

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 wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations: I do solemnly swear or affirm that I am Area Manager of
Title

Snake River Area Office Bureau of Reclamation, that I have signed the foregoing
Organization

document in the space below as Area Manager of Snake River Area Office Bureau of Reclamation
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent *James H. Ray*

Title and Organization Area Manager, Snake River Area Office Bureau of Reclamation

Date 01-13-06

State of Idaho)

)

County of Ada)

Subscribed and sworn (or affirmed) before me this 13th day of JANUARY 2006

Notary Public *Helene Tomaszewski*

Residing at Boise, Idaho

My Commission Expires 01-16-2008

Please Print Name

17. Notice of Appearance:

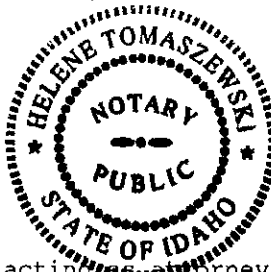
Notice is hereby given that I, _____ will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

Last Name _____ Ident. Number _____



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: A01-10482
Date Received: 11/28/2005
Receipt No:
Received By: MWH

LATE NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: UNITED STATES OF AMERICA, ACTING THROUGH 208-378-5306
Address: REGIONAL DIRECTOR, P.N. REGION ATTN: PN-3100
BUREAU OF RECLAMATION
1150 NORTH CURTIS ROAD, SUITE 100
BOISE, ID 83706-1234

2. Date of Priority: APR 01, 1940

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
09S	25E	1	NE	NE	SW	3	MINIDOKA

5. Description of diverting works:

WELL, PUMP, PIPE, SPRINKLERS, GRAVITY - MINIDOKA DAM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	10/31	2.000		

7. Total Quantity Appropriated is:

2.000 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 99.0 Acre Feet Per Annum.

9. Non-irrigation uses:

NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
08S	25E	36	SE	SE		IRR	1.0
09S	25E	1			5	IRR	4.0
			NW	NE		IRR	9.0
			NE	NW		IRR	7.0
					7	IRR	4.0
					8	IRR	8.0
					Section		33.0
					Total		33.0

11. Place of use in counties: MINIDOKA

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

01-04048

14. Remarks:

5. TWO - PUMPS WITH 400 GPM CAPACITY EACH TO 8" PIPE AND SPRINKLER SYSTEM.

THE WATER IS PUMPED DIRECTLY OUT OF LAKE WALCOTT.

PRESIDENTIAL EXECUTIVE ORDERS NOS. 1032 DATED FEBRUARY 25, 1909, 1486 DATED FEBRUARY 21, 1912, 5375 DATED JUNE 23, 1930, 7417 DATED JULY 17, 1936, AND 8600 DATED NOVEMBER 20, 1940, RESERVED AND SET APART, SUBJECT TO THE BUREAU OF RECLAMATION USES UNDER THE PROVISIONS OF THE ACT APPROVED JUNE 17, 1902 (32 STAT. 388) AND TO ANY OTHER VALID EXISTING RIGHTS, THE MINIDOKA RESERVOIR SITE (AND THEREFORE THE WATER THEREON) FOR THE USE AS A PRESERVE AND BREEDING GROUND FOR BIRDS AND OTHER WILDLIFE.

15. Basis of Claim: CONSTITUTIONAL/BENEFICIAL USE

Case Number:

Court :

Decree date:

Decree Plaintiff vs Decree Defendant

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 wish to receive and pay a small annual fee for monthly copies of the docket sheet.

For Organizations: I do solemnly swear or affirm that I am Snake River Area Office Manager
Title

of The Bureau of Reclamation, that I have signed the foregoing
Organization

document in the space below as Manager of Snake River Area Office, Bureau of Reclamation
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent [Signature]

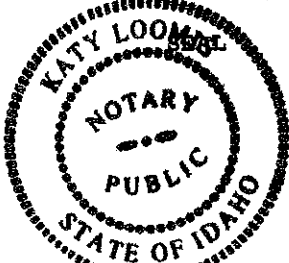
Title and Organization Manager, Snake River Area Office, Bureau of Reclamation

Date 11/15/05

State of Idaho)

County of Ada)

Subscribed and sworn (or affirmed) before me this 15th day of November



Notary Public Katy Loomis

Residing at Boise

My Commission Expires 10/17/2009

Please Print Name Katy Loomis

17. Notice of Appearance:

Notice is hereby given that I, will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed blow.

Signature _____

Address _____

Last Name _____ Ident. Number _____

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 1-10225
Date Received: 4/11/1990
Receipt No: S011959
Received By: *DI*

5027986

AMENDED NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

A & B IRRIGATION DISTRICT Phone: (208)436-3152
PO BOX 675
RUPERT ID USA 83350-0675

RECEIVED
SEP 15 2005
Department of Water Resources
Eastern Region

2. Date of Priority: 04/01/1984

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

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
10S	21E	24	SE SW SW	JEROME	

5. Description of diverting works:

UNIT A PUMPING PLANT, SIX RELIFT PUMPS - A&B IRRIGATION DIST.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/01	11/01	22.41	

7. Total Quantity Appropriated is:
22.41 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Place of use is within the service area boundary of A & B Irrigation District.

11. Place of use in counties: JEROME, MINIDOKA

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

13. Other Water Rights Used:

14. Remarks:

THIS CLAIM IS FOR 1120.7 EXPANDED ACRES UNDER THE A PORTION (SURFACE WATER PORTION) OF THE A & B IRRIG. DIST. (1984 PRIORITY 001-00014 LISTS THE ORIGINAL ACRES BEFORE THE ADDITIONAL SPREAD ACRES.

THE TRACT DESIGNATIONS ARE IDENTIFIED IN THE COLUMN FOR "LOTS" WITH THIS CODE:

TRACT-LOT#	TRACT-LOT	TRACT-LOT	IDENTIFICATION---
LOT A-99	L-89	FARM UNIT C-----81 B-98	M-88 FARM UNIT D-----80
C-97	N-87	FARM UNIT E-----79	D-96 O-86 FARM UNIT F,G,H-
78	E-95	P-85 KASWORM-----77	F-94 Q-
84	KINCAID-----76	G-93 R-83	LOTS 1 & 2-----75 H-
92	S-82	LOTS 4,5,6,7,8,9,10--74	J-91 NELSON-----
---	73	K-90	OUTSIDE ACRES---72 & 50

SCHOOL SECTION 36--N1/2--71

" " 36--S1/2--70

WISECAVER-----69

FARM UNIT

A-----68

SORENSEN-----67

STEINMETZ-----66

URIE-----

-----65 OTHER RIGHTS USED ON THE A PORTION OF THE DISTRICT: STORAGE RIGHTS 01-02064F, 01-02068F NATURAL FLOW RIGHTS 01-00014, 01-02060A, 01-10224 CLAIMS A01-10237, -10238, -10239, -10240, & -10241 ARE CLAIMS FOR EXPANSIONS WITH EARLIER PRIORITY DATES.

This claim is based upon an enlargement of Right No. 1-14 pursuant to Section 42-1426, Idaho Code.

This claim is for an enlargement of 1120.7 acres within the place of use described for this claim.

This claim was amended on 9/9/2005 to add 186.8 acres to place of use.

15. Basis of Claim: Beneficial Use

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 Organizations:

I do solemnly swear or affirm that I am Manager of _____ Title

A+B Irrigation District that I have signed the foregoing Organization document in the space below as Manager of Title

A+B Irrigation District and that the statements contained in the Organization foregoing document are true and correct.

Signature of Authorized Agent

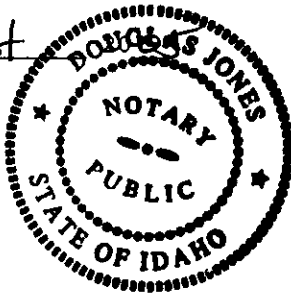
Mgr. A+B Irrigation Title and Organization

9-14-05 Date

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 14th

of Sept



Douglas Jones Notary Public

Residing at Buhl ID

My commission Expires 8/8/2007

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: A01-10237

Date Received: 4/11/1990

Receipt No: 5013471

Received By: *[Signature]*

EXHIBIT 10-10-10

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: A & B IRRIGATION DISTRICT 208-436-3152
Address: P.O. BOX 675
RUPERT ID 83350
2. Date of Priority: APR 1, 1960
3. Source: SNAKE RIVER Trib. to: COLUMBIA RIVER
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
10S	21E	12	NE	NW	SW	R	JEROME
		24	SE	SW	SW		JEROME

5. Description of diverting works:
UNIT A PUMPING PLANT, SIX RELIFT PUMPS - A&B IRRIGATION DIST.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.200		39.00

7. Total Quantity Appropriated is:
0.190 C.F.S. (and/or) 39.00 A.F.A.

8. Total consumptive use is 29.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	21E	12	SW	NW	93	IRR	7.9
			SE	NW	93	IRR	0.6
			NE	SW	93	IRR	0.6
			NW	SW	93	IRR	0.6

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	9.7
					Total Acres	9.7

11. Place of use in counties: JEROME

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

13. Other Water Rights Used:
A01-00014

14. Remarks:

THIS CLAIM REPRESENTS THE EXPANDED ACRES SUPPLIED BY THE "A" PART (SURFACE WATER PORTION) OF THE A & B IRRIGATION DISTRICT WITH A PRIORITY DATE OF 4/1/1960. THIS CLAIM IS FOR LAND IN TRACT C OF TSP. 10S, RNG 21E, SEC 12 OF THE TRACT DESIGNATION OF THE A & B IRRIGATION DISTRICT.

OTHER RIGHTS USED ON THE A PORTION OF THE DISTRICT:

STORAGE RIGHTS 01-02064F, 01-02068F

NATURAL FLOW RIGHTS 01-00014, 01-02060A, 01-10224

A01-10225 DEFINES THE EXPANDED ACRES CLAIMED (933.9 ACRES), WITH A PRIORITY DATE OF 1984, AND CLAIMS A01-10237, -10238, -10239, -10240, & -10241 ARE FOR CLAIMS WITH EARLIER PRIORITY DATES.

15. Basis of Claim: BENEFICIAL USE

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 Organizations:

I do solemnly swear or affirm that I am PRESIDENT of
Title
A&B IRRIGATION DISTRICT, that I have signed the foregoing
Organization
document in the space below as PRESIDENT of
Title

A&B IRRIGATION DISTRICT and that the statements contained in the
Organization
foregoing document are true and correct.

[Signature]
Signature of Authorized Agent

PRESIDENT - A&B IRRIGATION DISTRICT
Title and Organization

MAY 21, 1992
Date

State of Idaho)
County of MINIDOKA) SS.

Subscribed and sworn (or affirmed) before me this 21st day
of MAY 19 92

[Signature]
Notary Public

Seal

Residing at RUPERT, ID

My Commission Expires 3-21-96

17. Notice of Appearance:

Notice is hereby given that I, ROGER D. LING will be
Print Name
acting as attorney at law on behalf of the claimant signing above, and that
all notices required by law to be mailed by the director to the claimant
signing above should be mailed to me at the address listed below.

Signature [Signature]

Address P.O. BOX 396 RUPERT, ID 83450

Date MAY 21, 1992

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: **A01-10238**
Date Received: 6/24/1991
Receipt No: S013471
Received By: [Signature]

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: A & B IRRIGATION DISTRICT 208-436-3152
Address: P.O. BOX 675
RUPERT ID 83350

2. Date of Priority: APR 1, 1962

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
10S	21E	24	SE	SW	SW		JEROME

5. Description of diverting works:
UNIT A PUMPING PLANT, SIX RELIFT PUMPS - A&B IRRIGATION DIST.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.620		124.00

7. Total Quantity Appropriated is:
0.620 C.F.S. (and/or) 124.00 A.F.A.

8. Total consumptive use is 93.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
10S	22E	4	SW	SW	90	IRR	0.1
			SE	SW	90	IRR	10.1
			NE	SE	90	IRR	4.5
			NE	SE	95	IRR	6.0
			SW	SE	90	IRR	3.6

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	22E	4	SE	SE	90	IRR	6.6
Section Acres							30.9
Total Acres							30.9

11. Place of use in counties: JEROME

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

13. Other Water Rights Used:
A01-00014

14. Remarks:

THIS CLAIM REPRESENTS EXPANDED ACRES OF THE "A" PART (SURFACE WATER PORTION) OF THE A & B IRRIG. DIST. WITH A 1962 PRIORITY. A01-00014 LISTS THE ORIGINAL ACRES BEFORE THE ADDITIONAL SPREAD ACRES. THIS CLAIM COVERS EXPANDED ACRES TRACTS K & E OF SECS. 3 & 4, TSP 10S. RNG 22E. IN THE A&B IRRIGATION DISTRICT TRACT DESIGNATIONS.

A01-10225 DEFINES THE 933.9 EXPANDED ACRES CLAIMED ON THE "A" PORTION OF THE DISTRICT WITH A 1984 PRIORITY DATE, AND CLAIMS A01-10237, -10238, -10239, -10240, -10241 ARE FOR CLAIMS WITH EARLIER PRIORITY DATES.

OTHER RIGHTS USED ON THE A PORTION OF THE DISTRICT:
STORAGE RIGHTS 01-02064F, 01-02068F
NATURAL FLOW RIGHTS 01-00014, 01-02060A, 01-10224

15. Basis of Claim: BENEFICIAL USE

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 Organizations:

I do solemnly swear or affirm that I am PRESIDENT of
Title

A&B IRRIGATION DISTRICT, that I have signed the foregoing
Organization
document in the space below as PRESIDENT of
Title

A&B IRRIGATION DISTRICT and that the statements contained in the
Organization
foregoing document are true and correct.

Larry Mason
Signature of Authorized Agent

PRESIDENT-A&B IRRIGATION DISTRICT
Title and Organization

MAY 21, 1992
Date

State of Idaho)
County of MINIDOKA) SS.

Subscribed and sworn (or affirmed) before me this 21st day
of MAY 19 92

Diana Warburton
Notary Public

Seal

Residing at RUPERT, ID

My Commission Expires 3-21-96

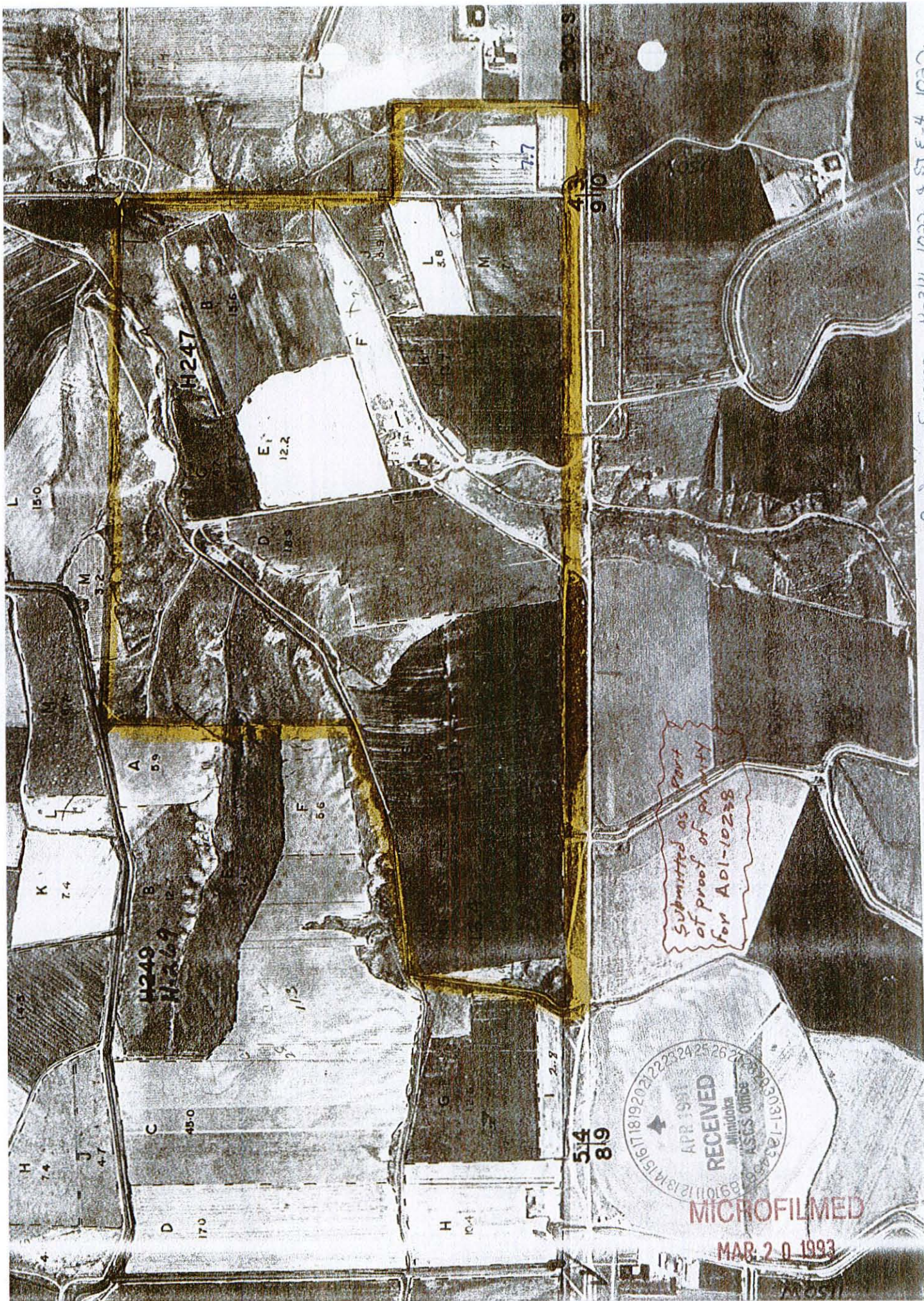
17. Notice of Appearance:

Notice is hereby given that I, ROGER D. LING will be
Print Name
acting as attorney at law on behalf of the claimant signing above, and that
all notices required by law to be mailed by the director to the claimant
signing above should be mailed to me at the address listed below.

Signature Roger D. Ling

Address P.O. BOX 396 RUPERT, ID 83350

Date MAY 21, 1992



Barbara Swane K-3/4 1022 & STE-4 1022

1962

A01-10238

verified photocopy of Official ASCS photography
from: Sept. 8, 1962 to Anne Frederiksen P.A. of Minnoka County ASCS April 18, 1991

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: A01-10239
Date Received: 4/11/1990
Receipt No: _____
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: A & B IRRIGATION DISTRICT 208-436-3152
Address: P.O. BOX 675
RUPERT, ID 83350

2. Date of Priority: APR 1, 1967

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
10S	21E	24	SE	SW	SW		JEROME

5. Description of diverting works:
UNIT A PUMPING PLANT, SIX RELIFT PUMPS - A&B IRRIGATION DIST.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.240		48.00

7. Total Quantity Appropriated is:
0.240 C.F.S. (and/or) 48.00 A.F.A.

8. Total consumptive use is 36.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	NOV 1994
09S	22E	21	SW	SE	95	IRR	2.0
			SE	SE	95	IRR	2.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres	
					Section Acres	4.0	
		28	SW	NE	95	IRR	3.9
			SE	NE	95	IRR	4.0
					Section Acres	7.9	
					Total Acres	11.9	

11. Place of use in counties: MINIDOKA

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

13. Other Water Rights Used:
A01-00014

14. Remarks:

THIS CLAIM IS FOR 11.9 EXPANDED ACRES UNDER THE "A" PORTION (SURFACE WATER PORTION) OF THE A & B IRRIGATION DISTRICT WITH A PRIORITY DATE OF 4/1/1967. THIS CLAIM IS FOR LAND IN TRACT "E" OF TSP. 09S, RNG 22E, SEC 22 OF THE TRACT DESIGNATION OF THE A & B IRRIGATION DISTRICT.

OTHER RIGHTS USED ON THE A PORTION OF THE DISTRICT:

STORAGE RIGHTS 01-02064F, 01-02068F

NATURAL FLOW RIGHTS 01-00014, 01-02060A, 01-10224

A01-10225 DEFINES 933.9 EXPANDED ACRES CLAIMED ON THE "A" DIVISION OF THE DISTRICT WITH A PRIORITY DATE OF 1984. CLAIMS NUMBERED A01-10237, -10238, -10239, -10240, & -10241 ARE FOR CLAIMS WITH EARLIER EXPANSION PRIORITY DATES.

15. Basis of Claim: BENEFICIAL USE

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: _____

MICROFILMED

NOV 02 1994

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): Angela D. Thompson Date: 6/26/91
Margaret - Mrs. Thompson Date: 6

State of Idaho)
County of Minidoka) SS.

Subscribed and sworn (or affirmed) before me this 20th day
of June 1991

Robert V. Worstell
Notary Public

Seal

Residing at Twin Falls, Idaho

My Commission Expires January 18, 1995

MICROFILMED
NOV 02 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: A01-10240
Date Received: 4/11/1990
Receipt No: _____
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: A & B IRRIGATION DISTRICT 208-436-3152
Address: P.O. BOX 675
RUPERT, ID 83350

2. Date of Priority: APR 1, 1968

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
10S	21E	24	SE	SW	SW		JEROME

5. Description of diverting works:
UNIT A PUMPING PLANT, SIX RELIFT PUMPS - A&B IRRIGATION DIST.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	1.180		237.00

7. Total Quantity Appropriated is:
1.180 C.F.S. (and/or) 237.00 A.F.A.

8. Total consumptive use is 178.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	22E	4	NE	SW	90	IRR	0.1
			NE	SE	95	IRR	7.6
			NW	SE	90	IRR	7.2
			SW	SE	90	IRR	7.7
			SE	SE	90	IRR	7.7

MICROFILMED
NOV 02 1994

A01-10240

Page 1

Date: 06/19/91

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	22E	4	SE	SE	95	IRR	0.3
						Section Acres	22.3
		8	NE	NE	97	IRR	1.2
			SE	NE	97	IRR	1.5
						Section Acres	2.7
		9	NW	NE	97	IRR	0.5
			NW	NE	98	IRR	5.2
			SW	NE	95	IRR	15.0
			SW	NE	97	IRR	0.6
			NW	NW	97	IRR	1.1
			SW	NW	97	IRR	4.9
			SE	NW	95	IRR	6.5
			SE	NW	97	IRR	0.4
						Section Acres	34.2
						Total Acres	59.2

11. Place of use in counties: MINIDOKA

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

13. Other Water Rights Used:
A01-00014

14. Remarks:

THIS CLAIM IS FOR 59.2 EXPANDED ACRES SERVED BY THE "A" PART (SURFACE WATER PORTION) OF THE A & B IRRIGATION DISTRICT WITH A PRIORITY DATE OF 4/1/1968.
OTHER RIGHTS USED ON THE A PORTION OF THE DISTRICT:
STORAGE RIGHTS 01-02064F, 01-02068F
NATURAL FLOW RIGHTS 01-00014, 01-02060A, 01-10224
A01-10225 DEFINES THE 933.9 EXPANDED ACRES CLAIMED ON THE "A" PORTION OF DISTRICT WITH A 1984 PRIORITY DATE, AND CLAIMS A01-10237, -10238, -10239, -10240, & -10241 ARE CLAIMS FOR EXPANSIONS WITH EARLIER PRIORITY DATES.

15. Basis of Claim: BENEFICIAL USE

MICROFILMED
NOV 02 1994

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: 6/20/91
Manager - ASB Adjudication Date:

State of Idaho)
) SS.
County of Minidoka)

Subscribed and sworn (or affirmed) before me this 20th day
of June 19 91

Robert V. Horstall
Notary Public

Seal

Residing at Twin Falls, Idaho
My Commission Expires January 16, 1995

MICROFILMED
NOV 02 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: A01-10241

Date Received: 6/24/1991

Receipt No: S013471

Received By: [Signature]

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: A & B IRRIGATION DISTRICT 208-436-3152
Address: P.O. BOX 675
RUPERT ID 83350

2. Date of Priority: APR 1, 1978

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
10S	21E	24	SE	SW	SW		JEROME

5. Description of diverting works:
UNIT A PUMPING PLANT, SIX RELIFT PUMPS - A&B IRRIGATION DIST.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	1.090		218.00

7. Total Quantity Appropriated is:
1.090 C.F.S. (and/or) 218.00 A.F.A.

8. Total consumptive use is 164.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	22E	9	NE	SE	91	IRR	0.8
			SE	SE	91	IRR	1.9

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres	
					Section Acres	2.7	
		10	SW	NW	91	IRR	2.5
			SE	NW	91	IRR	0.4
			NE	SW	90	IRR	4.8
			NE	SW	91	IRR	3.8
			NW	SW	91	IRR	5.6
			SW	SW	90	IRR	2.0
			SW	SW	91	IRR	1.9
			SE	SW	90	IRR	30.0
			SE	SW	91	IRR	0.8
					Section Acres	51.8	
					Total Acres	54.5	

11. Place of use in counties: MINIDOKA

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

13. Other Water Rights Used:
A01-00014

14. Remarks:

THIS CLAIM IS FOR 54.5 EXPANDED ACRES SERVED BY THE "A" PART (SURFACE WATER PORTION) OF THE A & B IRRIGATION DISTRICT WITH A PRIORITY DATE OF 4/1/1978. THIS CLAIM IS FOR LAND IN TRACTS J&K OF TSP. 10S, RNG 22E, SECS 9&10 OF THE TRACT DESIGNATION OF THE A & B IRRIGATION DISTRICT.

OTHER RIGHTS USED ON THE A PORTION OF THE DISTRICT:
STORAGE RIGHTS 01-02064F, 01-02068F
NATURAL FLOW RIGHTS 01-00014, 01-02060A, 01-10224
A01-10225 DEFINES 933.9 EXPANDED ACRES CLAIMED ON THE "A" PORTION OF THE DISTRICT WITH A 1984 PRIORITY DATE, AND CLAIMS A01-10237, -10238, -10239, -10240, & -10241 ARE CLAIMS FOR EXPANSIONS WITH EARLIER PRIORITY DATES.

15. Basis of Claim: BENEFICIAL USE

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 Organizations:

I do solemnly swear or affirm that I am _____ PRESIDENT _____ of
Title

_____ A&B IRRIGATION DISTRICT _____, that I have signed the foregoing
Organization
document in the space below as _____ PRESIDENT _____ of
Title

_____ A&B IRRIGATION DISTRICT _____ and that the statements contained in the
Organization
foregoing document are true and correct.

[Signature]
Signature of Authorized Agent

_____ PRESIDENT-A&B IRRIGATION DISTRICT _____
Title and Organization

_____ MAY 21, 1992 _____
Date

State of Idaho)
County of _____ MINIDOKA _____) SS.

Subscribed and sworn (or affirmed) before me this _____ 21st _____ day
of _____ MAY _____ 19 _____ 92

[Signature]
Notary Public

Seal

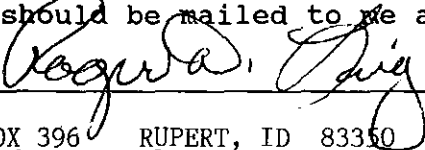
Residing at _____ RUPERT, ID _____

My Commission Expires _____ 3-21-96 _____

17. Notice of Appearance:

Notice is hereby given that I, ROGER D. LING will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that
all notices required by law to be mailed by the director to the claimant
signing above should be mailed to me at the address listed below.

Signature 

Address P.O. BOX 396 RUPERT, ID 83350

Date MAY 21, 1992

A & B Irrigation District

April 26, 1991

Re. Sec. 9 & 10 T 10 S R 22 E Quad 40 S, Tract 3, Sec. 10, Twp. 10 N, R. 22 E.
To whom it may concern

In the summer of 1969, I Larry C. Clark moved on the Alta Theta place (0506 W 4000 S. of ^{Paul} ~~August~~). The place then owned by John Clay Co. of Ogden, Utah.

We did a lot of liming that summer, built a pond about 1 mile E of east side of place. John Clay Co. then filed on the tract water from the Gould River Mackay and Mich. Kennedy places, for the pond to be pumped out of.

In the spring of 1970 we purchased the sprinkling system and sprinkled the whole place, with the exception of a small pasture on the north east and a 20 acre piece on the north east of 10506 W 4000 S., which we now have on.

At that time we watered the whole place.

Larry C. Clark

Sharon A. Harrison
Notary Public

I, Sharon A. Harrison, Notary Public for the State of Utah, do hereby certify that the foregoing is a true and correct copy of the original as filed in my office.

Notary Public
April 20, 1993

Submitted as a
Part of proof of
Priority for
A01-10241

4.3
9110

1050

Verified official ASCS
Photograph - own 1978
Ge. Fredrikson
Soybean Assistant
Minnisoka County ASCS
April H27156 (T233)
(195H)

A
2.5

B
252

15.8

F
11.4

18.9

40.8

60.3

C
4.6

D
6.3

A
135.5

(221H)

A
42.8

400 S.

27.8 9110

16115

H277

H248

A
23.5

+

TIOS

MAR 20 1993

10.5

B

Submitted as a part of
proof of priority
of F 1-1024

4 3
+
9 10

Vertical photograph of
the photograph of flower
simulacrum of the
same flower
May 25, 1968
ASCS
James E. Smith, Jr. P.D.

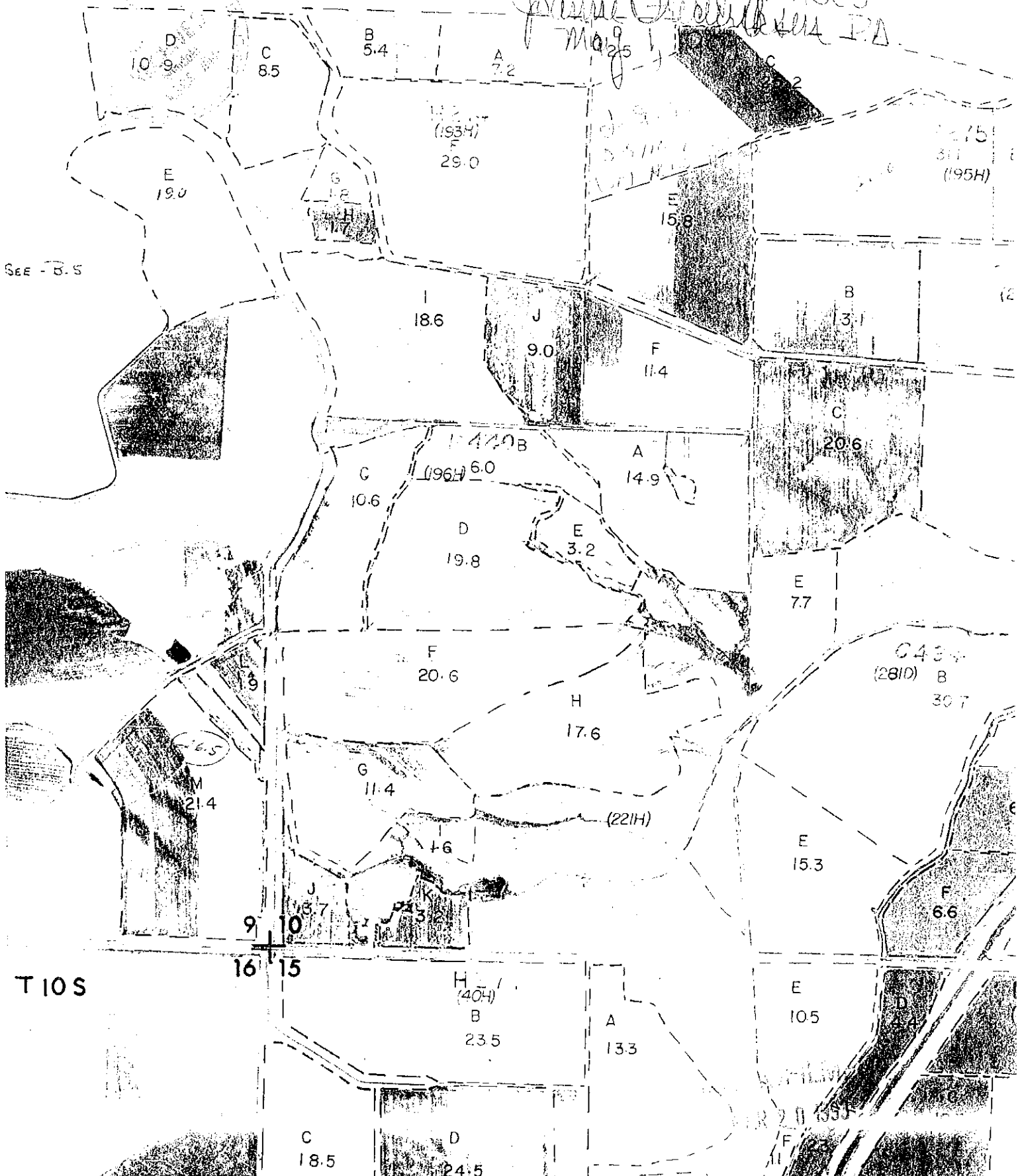


Exhibit B

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

RIGHT NUMBER: 1-10034

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 53,500.00 AFY

Total reservoir capacity is 210,000 acre feet when filled to elevation 4245 and measured at the upstream face of the dam.

PRIORITY DATE: 03/15/1911

POINT OF

DIVERSION: T09S R25E S1 NENESW Lot 3 Within MINIDOKA County

PURPOSE AND

PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION FROM STORAGE	03/15 11/15	53,500.00 AFY
IRRIGATION STORAGE	01/01 12/31	53,500.00 AFY

PLACE OF USE:

Place of use for irrigation storage is Lake Walcott, provided, however, that water under this right may be temporarily held in the unoccupied space of any of the reservoirs upstream of Milner Dam, located at township 10S, range, 21E, sections 28 and 29, when determined by the Department of Water Resources, the Water District advisory committee, and the United States Bureau of Reclamation that such temporary storage will maximize the storage of water upstream of Milner Dam.

Place of use for irrigation from storage is within the following counties: Minidoka and Cassia.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

Although the name of the United States of America acting through the Bureau of Reclamation appears in the Name and Address section of this partial decree, the ownership of this water right is divided. The United States Bureau of Reclamation holds nominal legal title. Beneficial or equitable title to this water right is held in trust by the irrigation organizations, in the quantities and/or percentages specified in the contracts between the Bureau of Reclamation and the irrigation organizations, for the benefit of the landowners entitled to receive distribution of this water from the respective irrigation organizations pursuant to Idaho law. As a matter of law, this interest is appurtenant to the lands within the boundaries of or served by such irrigation organization. The ownership of this water right is derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

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

RIGHT NUMBER: 1-10225

NAME AND ADDRESS: A & B IRRIGATION DISTRICT
PO BOX 675
RUPERT ID 83350-0675

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 22.410 CFS

Use of the rights listed below is limited to a total combined diversion rate of 269.23 cfs. Combined Right Nos.: 1-14, 1-10225, 1-10237, 1-10238, 1-10239, 1-10240, and 1-10241.

PRIORITY DATE: 04/01/1984

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

POINT OF DIVERSION: T10S R21E S24 SESWSW Lot 2 Within JEROME County

PURPOSE AND PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	22.410 CFS

PLACE OF USE:

82610.1 ACRES TOTAL

Place of use is within the boundary of A & B Irrigation District pursuant to Section 43-323, Idaho Code.

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.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

This right is based upon an enlargement of Right No. 1-14 pursuant to Section 42-1426, Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

This right is for an enlargement of 1120.7 acres within the place of use described for this right.

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

RIGHT NUMBER: 1-10237

NAME AND ADDRESS: A & B IRRIGATION DISTRICT
PO BOX 675
RUPERT ID 83350-0675

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 0.190 CFS

PRIORITY DATE: 07/11/1968

POINT OF

DIVERSION: T10S R21E S24 SESWSW Lot 2 Within JEROME County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/15 11/15

0.190 CFS

PLACE OF USE:

82610.1 ACRES TOTAL

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.

Place of use is within the boundary of A & B Irrigation District pursuant to Section 43-323, Idaho Code.

This right is limited to the irrigation of 9.7 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

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

RIGHT NUMBER: 1-10238

NAME AND ADDRESS: A & B IRRIGATION DISTRICT
PO BOX 675
RUPERT ID 83350-0675

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 0.620 CFS

PRIORITY DATE: 07/11/1968

POINT OF

DIVERSION: T10S R21E S24 SESWSW Lot 2 Within JEROME County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/15 11/15

0.620 CFS

PLACE OF USE:

82610.1 ACRES TOTAL

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.

Place of use is within the boundary of A & B Irrigation District pursuant to Section 43-323, Idaho Code.

This right is limited to the irrigation of 30.9 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

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

RIGHT NUMBER: 1-10239

NAME AND ADDRESS: A & B IRRIGATION DISTRICT
PO BOX 675
RUPERT ID 83350-0675

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 0.240 CFS

PRIORITY DATE: 07/11/1968

POINT OF

DIVERSION: T10S R21E S24 SESWSW Lot 2 Within JEROME County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/15 11/15

0.240 CFS

PLACE OF USE:

82610.1 ACRES TOTAL

Place of use is within the boundary of A & B Irrigation District pursuant to Section 43-323, Idaho Code.

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.

This right is limited to the irrigation of 11.9 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

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

RIGHT NUMBER: 1-10240

NAME AND ADDRESS: A & B IRRIGATION DISTRICT
PO BOX 675
RUPERT ID 83350-0675

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1.180 CFS

PRIORITY DATE: 07/11/1968

POINT OF

DIVERSION: T10S R21E S24 SESWSW Lot 2 Within JEROME County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/15 11/15

1.180 CFS

PLACE OF USE:

82610.1 ACRES TOTAL

Place of use is within the boundary of A & B Irrigation District pursuant to Section 43-323, Idaho Code.

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.

This right is limited to the irrigation of 59.2 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

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

RIGHT NUMBER: 1-10241

NAME AND ADDRESS: A & B IRRIGATION DISTRICT
PO BOX 675
RUPERT ID 83350-0675

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1.090 CFS

Use of the rights listed below is limited to a total combined diversion rate of 269.23 cfs. Combined Right Nos.: 1-14, 1-10225, 1-10237, 1-10238, 1-10239, 1-10240, and 1-10241.

PRIORITY DATE: 04/01/1978

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

POINT OF

DIVERSION: T10S R21E S24 SESWSW Lot 2 Within JEROME County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/15 11/15

1.090 CFS

PLACE OF USE:

82610.1 ACRES TOTAL

Place of use is within the boundary of A & B Irrigation District pursuant to Section 43-323, Idaho Code.

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.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

This right is based upon an enlargement of Right No. 1-14 pursuant to Section 42-1426, Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

This right is for an enlargement of 54.5 acres within the place of use described for this right.

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

RIGHT NUMBER: 1-10482

NAME AND ADDRESS: UNITED STATES OF AMERICA ACTING THROUGH
REGIONAL DIRECTOR PN REGION
BUREAU OF RECLAMATION
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 0.540 CFS

PRIORITY DATE: 04/01/1940

POINT OF
DIVERSION: T09S R25E S1 NENESW Lot 3 Within MINIDOKA County

PURPOSE AND
PERIOD OF USE:

	<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
	IRRIGATION	03/15 11/15	0.540 CFS
PLACE OF USE:	<u>IRRIGATION Within MINIDOKA County</u>		
	T08S R25E S36 SESE 0.40	T09S R25E S01 Lot 5 NENE	2.90
	T09S R25E S01 NWNE 6.40	T09S R25E S01 Lot 8 SWNE	10.50
	T09S R25E S01 NENW 6.80	T09S R25E S01 Lot 7 SENW	5.00

32 ACRES TOTAL

This right is limited to the irrigation of 27 acres within the place of use described above in a single irrigation season.

Right Nos. 1-4048 and 1-10482 are limited to the irrigation of a combined total of 32 acres in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Property is also known as Walcott Park.

Exhibit C

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. 1-6
_____)

DEPOSITION OF RONALD DEAN CARLSON

OCTOBER 7, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 diversion identified that the amount of water
2 being delivered to A & B exceeded their 1939
3 right, under what right would that water have been
4 delivered?

5 A. Well, you have to show me an example
6 of that because I don't think it can happen.

7 Q. Well, if that example did occur, would
8 it have been delivered under one of these --

9 A. No --

10 Q. -- claims?

11 A. -- it would not have been.

12 Q. And then under what right would it
13 have been delivered? Or would there have been a
14 right for which it would have been delivered?

15 A. The only possibility that I could
16 think of would be in making the adjustments, it
17 was discovered that there was water going past
18 Milner, so there was water surplussed to the
19 system. We've allowed that surplus water to be
20 used by irrigators who divert storage. And it
21 really isn't under any specific water right. It's
22 just we rezero the books and they get to start
23 over.

24 Q. So under those circumstances, the
25 water district allows an entity to divert water

1 without a water right?

2 A. That's -- that can be true.

3 Q. And is that a circumstance that
4 existed during the time that you were the
5 watermaster?

6 A. Yes.

7 Q. And do you know whether that was a
8 circumstance that existed prior to the time you
9 were the watermaster?

10 A. Yes.

11 Q. So that's something you became aware
12 of when you came on the job that you were informed
13 of from the prior watermaster?

14 A. I don't believe so. They did it
15 entirely different before I became watermaster.
16 So the processes prior to 1978 did not include --
17 or 24/7/365-day-a-year distribution that we
18 implemented in '78.

19 Typically the watermaster sometime in
20 September would just declare the river was no
21 longer under regulation and it became kind of a
22 free-for-all at that point. And to the extent
23 people weren't complaining, they took what water
24 they wanted.

25 Q. So under that circumstance, for

1 example, A & B could have diverted water sometime
2 prior to 1978 under the circumstance of the river
3 not being on regulation?

4 A. I believe that's true.

5 Q. Okay. Do you have any knowledge as to
6 whether or not these SRBA claims filed by A & B
7 are premised upon deliveries prior to the time you
8 were watermaster?

9 A. Well, certainly the priority dates
10 claimed are.

11 Q. Have you reviewed any of the prior
12 black books prior to 1978 to -- which would
13 identify whether or not water was delivered in
14 excess of the 1939 right as natural flow?

15 A. That's not in those earlier black
16 books. What would be in those would be just the
17 period when the watermaster had the river under
18 regulation.

19 Q. So during that period when the river
20 was under regulation, did you have an opportunity
21 to review those black books to determine --

22 A. Yes.

23 Q. -- whether or not the 1939 right was
24 being met and additional natural flow diverted?

25 A. I have -- I can't remember in any of

1 the black books -- I can't remember in any of the
2 black books where the watermaster is delivering
3 1939 priority water rights after it goes on
4 regulation. But that may be a memory problem.

5 Q. Ron, you in your affidavit identify
6 the list on Attachment A as being what you would
7 call high-water or flood-water rights; is that
8 correct?

9 A. That is correct.

10 Q. And that would be water rights that
11 were junior in priority to the Twin Falls and
12 North Side Canal Company water rights 1-209 and
13 1-210; is that correct?

14 A. Yes. Below Blackfoot, that's correct.

15 Q. Okay. On paragraph 10 of your
16 affidavit, you make the statement that's on page 5
17 of your affidavit, second-to-the-last statement,
18 that "Without these remarks they could seek to
19 enlarge the quantity of water that has been
20 historically available by curtailing junior ground
21 water rights."

22 Do you see that statement?

23 A. Yes.

24 Q. Okay. Ron, how would this be
25 accomplished that -- well, let me back up. Strike

1 If an irrigator had natural flow
2 available and storage available and was diverting
3 water for the purposes of the accounting, you
4 accounted as though the natural flow was taken
5 first; correct?

6 A. Yes.

7 Q. And then storage?

8 A. Yes.

9 Q. So as we look at these records dealing
10 with natural flow -- because the records you
11 produced here today deal with natural flow;
12 correct?

13 A. Right.

14 Q. They don't deal with storage
15 diversions; right?

16 A. They do not.

17 Q. Excuse me?

18 A. They do not.

19 Q. Okay. So as we're looking at these,
20 we're dealing with the natural-flow diversions
21 using the assumption that natural flow is being
22 diverted first if water was being diverted by
23 somebody with these priority dates?

24 A. The records I provided show the amount
25 of natural flow that's available for delivery.

1 Q. Okay. Well, I understood that. But
2 what I'm getting at is when you have these
3 priority dates on these sheets, the district is
4 accounting for this as though if someone is
5 diverting under one of these priority dates,
6 they're diverting natural flow first and then
7 storage if they need additional water?

8 A. If they have natural flow available,
9 they deliver it first.

10 Q. Okay. And also when you said that --
11 in your affidavit you said there was no evidence
12 of these beneficial-use claims ever being --

13 A. Delivered.

14 Q. Let me see how you worded it.

15 You say, "The records of Water
16 District 1 confirm the fact that no water has ever
17 been delivered under," and then you list the
18 various claims.

19 Isn't it true that the water delivery
20 records of Water District 1 do not contain
21 beneficial -- the water that would be delivered
22 under a beneficial-use claim?

23 A. That's correct.

24 Q. So the records of Water District 1
25 would never show a beneficial-use claimed

1 delivery; correct?

2 A. Well, said differently, they would
3 never receive water, because all of the water
4 supply that's available in the system is
5 distributed each day by the watermaster. And so
6 those claims would never be in a position to
7 receive water.

8 Q. Except for the circumstances that you
9 talked about with John in which if water went over
10 Milner or if there was excess water in the system,
11 it was being diverted or it could be diverted?

12 A. It could be under those circumstances.

13 Q. And if a water user under those
14 circumstances had diverted the water and put it to
15 beneficial use, that could give rise to a
16 beneficial-use claim; right?

17 A. Certainly.

18 Q. But you wouldn't have those records in
19 your office because you don't keep those kinds of
20 records, do you?

21 A. They would be -- in some cases they
22 would be available. For example, I could go into
23 A & B's diversions and determine if there were
24 ever a case when one of those water rights might
25 have been delivered to them. And frankly, I

1 couldn't find any, at least in the last 30 years.

2 Q. I'd like to know before you prepared
3 this affidavit exactly what you did to prepare for
4 it. What did you review before you prepared this
5 affidavit?

6 A. Well, the basis of the affidavit is,
7 of course, 30 years of water distribution as
8 watermaster and my knowledge of the reservoir
9 display model that we use to play back so people
10 can see whatever happened during a given year.

11 So as far as going back and sitting
12 down and saying, "I need to review something
13 because I want to make my opinion specifically for
14 this affidavit," I didn't do that.

15 Q. Okay. So at the time you made the
16 statements that are contained in this affidavit,
17 you had not reviewed any of the records of the
18 district?

19 A. I had, because we did it as part of
20 the surface water case and other related matters.

21 Q. Okay. So you were relying upon your
22 memory from the surface water case, your
23 deposition in that case --

24 A. Right.

25 Q. -- and your experience?

1 A. Right.
 2 Q. But you didn't specifically go back
 3 into the water delivery records pertaining to
 4 these rights before you wrote this affidavit?
 5 A. I did at the time that the objections
 6 were filed.
 7 Q. Okay. Well, we're going to talk about
 8 that in a second.
 9 So at the time the objections -- well,
 10 let's go ahead and get into it.
 11 At the time the objections were
 12 filed -- you helped with these objections;
 13 correct?
 14 A. I did.
 15 Q. And on most of these water rights, the
 16 only objection was to source; correct?
 17 A. Well, my view is that if there were a
 18 stipulation that said these rights can't make a
 19 call, I would say the water -- the ground water
 20 users ought to just withdraw their objections.
 21 MR. ARKOOSH: You know, I object to the
 22 nonresponsiveness of the answer.
 23 MR. FLETCHER: Yeah, that's an interesting
 24 answer, I was going to point out.
 25 Q. But my question is: These objections,

1 for the most part, were only as to source;
 2 correct?
 3 MR. BUDGE: I object to the form of the
 4 question.
 5 Do you have one that you want him to
 6 look at? There were multiple --
 7 MR. FLETCHER: He --
 8 MR. BUDGE: Just a minute.
 9 There were multiple objections filed
 10 to multiple rights, and there were a total of nine
 11 different objections. So that's a little bit
 12 unfair to --
 13 MR. FLETCHER: Let me rephrase the
 14 question.
 15 MR. BUDGE: If you would, please.
 16 Q. (BY MR. FLETCHER): 1-8, Minidoka
 17 Irrigation District's 1939 right. Okay?
 18 Are you familiar with the objection
 19 you assisted with in that case?
 20 MR. BUDGE: Read this one.
 21 You're referring to the Minidoka
 22 Irrigation right 1-8?
 23 MR. FLETCHER: Uh-huh.
 24 MR. BUDGE: Okay. That objection.
 25 THE WITNESS: Yeah, and that particular one

1 is related to the source of the supply.
 2 Q. (BY MR. FLETCHER): Okay. Now, when
 3 you examined the records, you examined the records
 4 of Water District 1 pertaining to that water right
 5 before that objection was prepared?
 6 A. I did.
 7 Q. And it was your determination that the
 8 only proper objection that could be made was as to
 9 source?
 10 MR. BUDGE: I'd object to the form of the
 11 question.
 12 THE WITNESS: In my view, source was the
 13 issue.
 14 Q. (BY MR. FLETCHER): Okay. Did you
 15 review the priority date for that water right?
 16 A. The '39 priority water right?
 17 Q. Yes.
 18 A. I don't know that I understand the
 19 question.
 20 Q. Did you have any problem with the
 21 recommended priority date for that water right,
 22 April 1 of 1939?
 23 A. My recollection is that that comes
 24 from a previous decree. So I don't have any
 25 objection to the priority date.

1 Q. Okay. Well, what does that mean to
 2 you if it comes from a previous decree?
 3 A. What it means is that there was a
 4 stipulation back in 1939 where water users who
 5 believed they might at some time have high water
 6 that they could use beneficially ahead of
 7 Palisades came in and negotiated a priority date
 8 as part of -- as part of the Palisades project.
 9 Those were not ever, to my knowledge,
 10 based upon beneficial use. They were based upon
 11 just an agreement among the water users.
 12 Q. And once that's decreed, what's your
 13 position concerning the priority date?
 14 A. I have no position. I believe the
 15 priority date's valid.
 16 Q. What about season of use? You
 17 didn't -- there was no season-of-use objection to
 18 these water -- well, to 1-8 specifically. Did you
 19 have a problem with the season of use that was
 20 recommended?
 21 A. No. The only problem I had with them
 22 was the ability that -- the potential ability for
 23 that water right to make a call against ground
 24 water.
 25 Q. Okay. So it's your position that some

1 kind of language should be inserted in these water
2 rights stating they can't make a call against
3 ground water?

4 A. With that, I have no problem.

5 Q. Okay. Have you ever seen a water
6 right that's been issued with that kind of
7 language in it?

8 A. Well, I certainly have seen water
9 rights with -- well, let me back up.

10 If you go through the files of the
11 Department, you will find many water rights where
12 people who had surface water came in and were
13 given a -- and applied for and were granted a
14 ground water right as a second source.

15 The Department's position was you can
16 have an inch per acre from any one source, but in
17 combination it can't exceed 1 miner's inch per
18 acre.

19 So ground water was treated
20 historically as an independent source water. The
21 files are full of those kinds of -- those kinds of
22 rights.

23 So the -- that position of the
24 Department precluded those kinds of conditions
25 being put on permits. It's only in recent years

1 when that issue has been raised, when that kind of
2 a condition might now be appropriate.

3 And so the answer to your question is
4 I don't believe I've ever seen that question, but
5 I would -- or seen that as a condition, but the
6 Department may very well have done it.

7 Q. And I appreciate you getting back to
8 my question.

9 The question is: To your knowledge,
10 have you ever seen that type of condition placed
11 on a water right?

12 A. But when you say "that type of
13 condition," yes, I have. It's similar to a
14 subordination condition that we see for other
15 kinds of uses. And I've seen lots of different
16 subordination conditions.

17 Q. So you believe in this case that the
18 senior water right should be subordinated to the
19 ground water right?

20 A. Either that or there should be a
21 limitation on the source of supply to the supply
22 that was available at the time that the water
23 right was granted, which was spring runoff.

24 Q. So it's your opinion that the priority
25 doctrine, or administering by priority, should not

1 be applied when administering ground water as to
2 surface water?

3 A. Well, clearly I believe that the --
4 the attempt to regulate ground water to supply
5 water to surface water is not appropriate.

6 Q. Well, it's more than that. You
7 believe that the senior surface water water rights
8 should be subordinated to junior ground water
9 rights?

10 A. I'm saying that that is a potential
11 resolution in this matter that makes sense.

12 Q. To the ground water user?

13 A. No. I think to everybody.

14 Q. In paragraph 9, one of the water
15 rights listed there is 1-10034, which is a Bureau
16 of Reclamation claim pertaining to storage at
17 Minidoka Dam, Lake Walcott?

18 A. Yes.

19 Q. Just to clarify a few things, based
20 upon your experience as watermaster, you agree
21 that Lake Walcott holds 95,200 acre-feet of active
22 storage; correct?

23 A. I think that's the right number.

24 Q. And that every year it's delivered?

25 A. That's correct.

1 Q. And can you tell me what priority date
2 it's been delivered under? I mean, do you know?
3 Do you remember?

4 A. I don't remember exactly. I think
5 it's a 1906 priority water right, as I recall.

6 Q. Something like that. Yeah. Okay.

7 A. Or 1909.

8 Q. Yeah. So to that extent, you have no
9 objection to the Lake Walcott storage right?

10 A. Oh, no.

11 Q. And that that right is for the -- held
12 by the Bureau for the benefit of Minidoka
13 Irrigation District and Burley Irrigation
14 District; correct?

15 A. Yes.

16 Q. So tell me what your objection is --
17 did you review all of the Lake Walcott storage
18 claims that were in the -- in the adjudication
19 when you were doing this affidavit?

20 A. I believe I did.

21 Q. So tell me what your objection is to
22 this particular right?

23 A. I just have no evidence that it was
24 ever delivered.

25 Q. Okay. And is it your position that

1 that right should be delivered under the 1909
2 right of storage at Lake Walcott?

3 A. Based on the capacity of that right,
4 yes.

5 Q. Okay. So as far as this particular
6 claim goes in relationship to your objection to
7 the claim, if this is cleaned up so that the Lake
8 Walcott rights show 95,200 -- I'm just
9 representing to you that's what the total capacity
10 is -- with the 1909 priority date, you wouldn't
11 have a problem with that?

12 A. I would not.

13 Q. Okay. I'm getting into your overall
14 theory of high-water rights so that I understand
15 this.

16 Is it your position that any water
17 right other than the most senior water right on a
18 system, if it is curtailed at any time during the
19 year because of lack of water, should be deemed a
20 high-water right?

21 A. No, I don't think I would say that.

22 Q. Okay. So how do you draw the
23 distinction between a high-water right and a
24 junior right that is curtailed during the year
25 because of lack of supply?

1 A. It's dependent upon location. Tony
2 used an example yesterday that -- at Willow Creek.
3 Willow Creek has some of the oldest water rights
4 in the district. 1895 priority water rights on
5 Willow Creek are high-water rights. So as to that
6 specific system, high-water rights are much
7 earlier in priority than they are other places.

8 If you go above Blackfoot, I would
9 probably agree with Tony that 1916 may be a pretty
10 good place to make a cut and say those are
11 high-water rights.

12 Below Blackfoot, it's set by the Twin
13 Falls water right, and it's 1900. And as of 1900,
14 all of the base flow in the river had been
15 appropriated by Twin Falls and North Side to
16 the -- to 3400 second-feet of water.

17 So the base flow has never, to my
18 knowledge, produced that amount of water. So all
19 of those who came later in time said, "We can use
20 some of the water, some of the spring runoff, and
21 we hope to appropriate that and use it
22 beneficially."

23 And that's where those other water
24 rights came from and the reason why they were
25 granted, because there was water available at

1 times for beneficial use during the spring runoff
2 period.

3 Q. Well, doesn't the same circumstance
4 apply above Blackfoot?

5 A. The same circumstance applies, except
6 you don't -- you have an entirely different mix of
7 priorities. You have priorities that go clear
8 back to the late 1870s. And so you will have
9 groups of water users who will share that
10 natural-flow right -- or that natural-flow supply,
11 that base flow supply during the year, unlike the
12 situation that you have below Blackfoot.

13 Q. But in above Blackfoot, for example,
14 each year, you cut back based upon priority;
15 correct?

16 A. Correct.

17 Q. And do you know what the cutoff was
18 this year?

19 A. It's on this list that you have here.

20 Q. Do you have one above Blackfoot there?

21 A. Well, this will indicate for the
22 whole -- for the whole river. It won't be
23 totally -- it will not be totally --

24 Q. Are you talking about Exhibit 6A or
25 7A?

1 A. I'm talking about -- I'm talking about
2 7A -- or 6A. I'm sorry.

3 Q. Okay. Well, 6A shows the gauge at
4 Neeley; correct?

5 A. Yeah. And 6A probably is not -- is
6 not reflective of -- because priorities were, in
7 fact, cut earlier than 1900, but --

8 Q. Let me just throw an assumption out
9 there. Let's assume that the Blackfoot
10 priority -- the above Blackfoot priorities were
11 cut back to 1890 this year.

12 A. Okay.

13 Q. Okay. Wouldn't the water rights after
14 1890, then, under your theory be considered
15 high-flow rights?

16 A. No, because there are times when base
17 flows will be sufficient to fill later priorities.
18 The system is different upstream from Blackfoot in
19 that the supply of natural flow in the system is
20 much more -- is much more variable than it is
21 downstream.

22 And so probably if there were to be a
23 cutoff -- if we wanted to say a cutoff -- I said I
24 could accept 1916. It may very well be 1900 above
25 Blackfoot, too, because by 1900 the natural-flow

1 talk "junior," we're talking about natural flow,
2 not storage -- "in the reaches of the river
3 located below Blackfoot."

4 Q. Okay. So water delivered after June
5 or July in most years under the 1903 right or the
6 1908 right in August, September, October, that is
7 not natural-flow water?

8 A. That is natural-flow water.

9 Q. Okay. So if in most years we can show
10 you that 1903 water is delivered in August,
11 September, or October --

12 A. Uh-huh.

13 Q. -- would you agree that this is a
14 false statement?

15 A. No.

16 Q. Why would this not be a false
17 statement?

18 A. All that says -- all that says is that
19 the river no longer is -- breaks at Blackfoot, and
20 you again have a demand that you can make -- place
21 on the river above Blackfoot. And so the return
22 flows and all those things that are coming in
23 upstream from Blackfoot now get distributed
24 without reference to Blackfoot.

25 Q. But those are natural flows; correct?

1 A. They are.

2 Q. And those natural flows consist then
3 not of spring runoff, do they?

4 A. Yeah, what they consist of then is the
5 fact that people upstream and downstream are
6 curtailing their water use, and so the water
7 rights are no longer demanding that water. And to
8 the extent that you can use it downstream, you get
9 to use it.

10 Q. And they're not made up of runoff --

11 A. Well --

12 Q. -- of spring runoff at that point;
13 correct?

14 A. That's correct.

15 Q. And they're not made up of snowmelt;
16 correct?

17 A. That's correct.

18 Q. They're made up of whatever is in the
19 river at that time?

20 A. That's -- that is true.

21 Q. So this statement is not correct, this
22 statement is a false statement; isn't that true?
23 There is water available to deliver to junior
24 water rights in the reaches of the river below
25 Blackfoot?

1 A. There are some years when there is
2 water available late in the season that can be
3 delivered to junior water rights.

4 Q. Did you examine water delivery records
5 from, say, 1960 through 1976 when you prepared
6 this affidavit?

7 A. I've reviewed those records. I don't
8 know if I did it for this affidavit.

9 Q. Okay. Under water right 1-211A, which
10 is the 1903 priority date, can you disagree with
11 my representation that that water right was
12 delivered 16 out of 17 years during that time
13 period, in August, September, and October?

14 A. Yeah, as a matter of fact, the
15 process -- well, it wasn't delivered because the
16 river wasn't on regulation. It was just a
17 free-for-all for water. So after September 15th,
18 the watermaster usually just says that water --
19 the river is no longer on regulation.

20 Q. So when you say it wasn't delivered,
21 you're saying that the water district doesn't have
22 any records of that?

23 A. No. What I'm saying is that the
24 watermaster at that point allowed whoever wanted
25 to take water and use it, sort of as a

1 free-for-all.

2 Q. But would you disagree that water
3 represented by those rights was diverted by those
4 entities during those years?

5 A. Oh, sure.

6 Q. In August, September, and October?

7 A. Well --

8 Q. Not every year in August, September,
9 October. I'm not trying to mislead you there.
10 But some years all three months?

11 A. Absolutely.

12 Q. Some years September, October? Some
13 years August, September? So water would be
14 available for delivery during that time,
15 natural-flow water to those entities; correct?

16 A. That's correct.

17 Q. So what you think the director should
18 do or the watermaster or someone in the process of
19 administering water is try to determine what makes
20 up the supply of water in the river; correct?

21 A. No. I -- I'm not even sure that I
22 believe that. I just think there need to be
23 appropriate conditions on certain water rights
24 that limit their ability to make a call against
25 other water users.

1 the list. But if it's -- but if the situation's
 2 the same, I guess that would be true, if it's a
 3 late-priority water right. But I don't find it on
 4 the list of objections.
 5 Q. And off the top of my head, I don't
 6 know what the priority year of 0013 is.
 7 MR. SIMPSON: Ron, it's on your Exhibit A.
 8 MR. STANISH: It's '39.
 9 MR. FLETCHER: 100 what? 13?
 10 MR. BAXTER: 1-13.
 11 MR. FLETCHER: It's a decree for Falls
 12 Irrigation District, 1939.
 13 THE WITNESS: Yeah, we didn't object to
 14 that one.
 15 MR. FLETCHER: You did object to the
 16 source.
 17 THE WITNESS: But yes, I believe that it
 18 would apply.
 19 Q. (BY MR. GEHLERT): Earlier in response
 20 to questions from Mr. Fletcher, you talked about
 21 water right 1-10034, which is one of the Lake
 22 Walcott water rights. It's the junior of the two,
 23 219 being the senior one. And you indicated that
 24 you believe that water had been delivered under
 25 the senior water right essentially every year.

1 Is that an accurate --
 2 A. That's accurate.
 3 Q. Are you aware of what the director
 4 recommended for that water right, the senior water
 5 right at Walcott?
 6 A. I'm not.
 7 Q. Okay. If I represent to you that the
 8 director recommended that the quantity be limited
 9 to 41,700 acre-feet, would you say that that was
 10 an error?
 11 A. My assumption is, then, the remainder
 12 of the 90,000 was made up by the second water
 13 right?
 14 Q. That's how I understand the director
 15 to have recommended it out.
 16 A. My -- my belief is, is that that's not
 17 the way we've delivered it.
 18 Q. Okay. And you've been -- your
 19 understanding is that you've been delivering water
 20 under the senior water right and only the senior
 21 right?
 22 A. Right.
 23 Q. And that's why the junior water
 24 right's on your list as never having been
 25 delivered to?

1 A. Right.
 2 Q. Okay. Are you familiar with Walcott
 3 Park?
 4 A. Yes.
 5 Q. And are you familiar with whether it's
 6 irrigated?
 7 A. Yes.
 8 Q. And how it's irrigated?
 9 A. Yes.
 10 Q. Can you describe to me how it's
 11 irrigated?
 12 A. As I recall, there's a small pump that
 13 pumps water for the park.
 14 Q. If I were to represent to you that
 15 there's a 400 gpm pump, does that sound about
 16 right?
 17 A. That sounds right.
 18 Q. Do you know what water right those
 19 pumps divert water under?
 20 A. My recollection is is that it's
 21 storage that comes from the Minidoka project.
 22 Q. Storage from the Minidoka project?
 23 A. Yeah. There's -- as I recall,
 24 there's -- I don't remember there being a water
 25 right sufficient to deliver water to that outside

1 of storage.
 2 And it seems to me a long time ago
 3 there was some arrangements that were made that
 4 allowed -- that provided some amount of storage
 5 for that facility.
 6 Q. A contract or something of that sort?
 7 A. Right. That -- so I think Minidoka or
 8 Burley get charged some amount of storage for
 9 that.
 10 MR. FLETCHER: Can we lodge our objection
 11 now? We move to amend our objection.
 12 MR. SIMPSON: You want to annex that into
 13 your district?
 14 MR. FLETCHER: No. We want the water.
 15 Q. (BY MR. GEHLERT): If I could
 16 represent to you that the Bureau claimed two water
 17 rights for the pumps for Walcott Park.
 18 A. Right.
 19 Q. And the junior of the two appears on
 20 your list. It's 1-10482.
 21 And so that's another water right that
 22 you believe that, to the extent water has been
 23 taken and applied to beneficial use, it's relied
 24 on stored water?
 25 A. Right.

Exhibit D

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. 1-6
_____)

DEPOSITION OF ANTHONY OLENICHAK

OCTOBER 6, 2008

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

1 occurred over the years?

2 A. Yes.

3 Q. Okay. And are those contained within
4 your files within the water district?

5 A. Some of them. I don't know that all
6 of them are.

7 Q. And those would be part of the
8 documents you would rely upon in delivering water
9 to water rights in priority within the water
10 district?

11 A. Yes.

12 MR. SIMPSON: Garrick, if we could take a
13 break for just a moment, I think I'm almost done.
14 I just want to check through a couple documents.

15 (Recess.)

16 MR. SIMPSON: Back on the record.

17 Q. Tony, have you had an opportunity to
18 review your affidavit since you first signed it in
19 August?

20 A. Yes.

21 Q. And do you have a copy of your
22 affidavit with you today?

23 A. I do not. I do not have it in the
24 room with me, no.

25 Q. Okay. Are you aware that on the

1 second page of your affidavit that you identified
2 "high water rights" on the Snake River? Do you
3 recall that?

4 A. I recall a definition of "high water
5 rights," yes.

6 Q. Okay. And I believe it's paragraph 8.
7 I'm handing you the second page of your affidavit.

8 Does that look like the definition you
9 identified for the high-flow rights?

10 A. Yes.

11 Q. My question, Tony, would be that in
12 accordance with that definition, wouldn't every
13 right that is senior to the most senior right on a
14 particular source be high flow if the senior right
15 is the only one that's being met?

16 A. Yes.

17 Q. Okay. So for example, at least with
18 respect to those rights that are delivered above
19 Blackfoot, would it be true that
20 Aberdeen-Springfield with the 1895 right would be
21 essentially a high-flow right in comparison to
22 those other rights above it on the Snake River?

23 A. Yes, some people would think that
24 would be a high-water right. It depends on the
25 perspective. It depends on the canal. It depends

1 upon the comparative rights in the base
2 discipline.

3 Q. Okay. In looking at your definition
4 that you just identified, would it be fair to say,
5 then, that Aberdeen-Springfield and their
6 natural-flow right would be a high-flow right?

7 A. I think some people would consider it
8 a high-flow right. I --

9 Q. Would --

10 A. Generally, 1916 priority is where I
11 draw the line for a high-water right. That seems
12 to be the majority opinion of the water users in
13 the Upper Snake.

14 But if you talk to the deputy
15 watermaster up on Willow Creek, anything senior --
16 or junior to an 1885 priority water right is a
17 high-water right to him because we aren't able to
18 fill those priorities junior to 1885 after the
19 spring snowmelt runoff has been completed.

20 Q. So your definition with respect to a
21 high-flow right would be a water right that would
22 not receive any water after the spring melt or the
23 spring runoff?

24 A. Yes, that's the general case for most
25 years.

1 Q. And do you have a time frame with
2 respect to that description in terms of is it
3 after June 1st or after June 15th or --

4 A. It depends on the year. In some years
5 where we have very poor snowpack, high-water
6 rights, 1921 -- or I should say 1939 rights may
7 not even get filled the entire season.

8 Flood years, 1997, you may fill those
9 rights all the way into July. It varies depending
10 on the water supply and the year.

11 Q. Do you have an understanding of
12 whether the Department of Water Resources has a
13 policy that recognizes different sources of water
14 for the Snake River?

15 A. I don't understand the question.

16 Q. Well, with respect to water rights and
17 identification of water rights and the elements of
18 a water right, do you have an understanding of
19 whether the Department of Water Resources would
20 segregate the Snake River into different sources
21 of water, that is, reach gains versus
22 precipitation versus spring runoff or other
23 sources of water?

24 A. The water that the water district
25 delivers in the water right accounting is the

1 A. Certainly the 1939 and even the 1921
2 storage rights could be high-water rights.

3 Q. Okay. Now, in your -- in your --
4 well, I don't know if this is part of your
5 definition, but in your explanation under
6 paragraph 9, you say that these -- and we're
7 dealing specifically here below Blackfoot at this
8 point. Okay? If you look at paragraph 9, you're
9 talking about water delivery below Blackfoot.

10 You say, "It cuts back to October 11,
11 1900, sometime in June or early July of most
12 years." Okay?

13 Well, what does "most" mean to you
14 when you say that?

15 A. Majority.

16 Q. Okay. So for water rights that come
17 back on in August or September or October of most
18 years, those would not be high-water rights?

19 A. Well, they would be high-water rights
20 in the springtime. In the fall when they come
21 back on, it's not a matter of the natural flow
22 increasing from any additional snowmelt or rain,
23 it's simply a matter of senior rights turning off.

24 Q. Okay. But isn't that how all water
25 rights work? I mean, the senior rights take their

1 plug out of the amount of water that's available
2 and then the juniors take the amount they're
3 entitled to take?

4 A. Yes.

5 Q. And if -- for example, take Twin
6 Falls' 1900 natural-flow right and compare it to
7 MID's 1903 right.

8 MID can never divert Twin Falls' 1900
9 right lawfully; correct?

10 A. Unless there's sufficient water to
11 fill the 1900 right and then any additional water
12 that they would have a right to.

13 Q. Okay. But that additional water is
14 being diverted under the 1903 right; correct?

15 A. Correct.

16 Q. It's not being diverted under the 1900
17 right? It's MID's own 1903 right; correct?

18 A. Right.

19 Q. Or 1908 right or whatever right may be
20 filled at that point in time?

21 A. Right.

22 Q. So when a senior isn't diverting
23 100 percent of their natural-flow right, the
24 junior isn't taking part of that 1900 right, is
25 it? Aren't they diverting under their own right?

1 A. That is correct.

2 Q. Okay. Under paragraph 10 you use the
3 term "primarily," that "The source of supply for
4 high-water rights consists primarily of snowmelt
5 and spring runoff."

6 What does "primarily" mean to you?

7 A. When those water rights are filled,
8 it's generally during the snowmelt runoff. We can
9 see that. There are exceptions to that, like you
10 pointed out. In the fall when senior diversions
11 start to curtail, we can fill some of those junior
12 water rights, which may be defined as high-water
13 rights in the springtime, may not be -- because of
14 high water in the fall, it's just simply a matter
15 of the senior rights being curtailed -- or not
16 curtailed, but just deciding not to divert this
17 water.

18 Q. Under paragraph 10 when you use the
19 term "primarily," does that mean that the
20 high-water right is entirely snowmelt and spring
21 runoff?

22 A. No. But certainly the greatest
23 percentage is due to that.

24 Q. Okay. And so what else is
25 contributing to those high-water rights besides

1 snowmelt and spring runoff?

2 A. If it happens during a time when
3 canals are irrigating, it could be return flows
4 from flood irrigation. It could be spring flows.
5 Those are about the two other secondary most
6 common sources.

7 Q. It could be anything contributing
8 water to the Snake River, basically; isn't that
9 correct?

10 A. Correct.

11 Q. And is there some percentage to
12 determine whether it's primarily snowmelt or
13 spring runoff or -- I mean, how do you know at
14 what point it's primarily snowmelt or spring
15 runoff?

16 A. Well, we can monitor the snowpack, and
17 you can see the snowpack melting. And as the
18 snowpack melts, you can see the water in the
19 rivers rise. So therefore, I'm sure it's due
20 mostly to the melting of the snowpack. We don't
21 sit down each day and determine what the
22 percentage is.

23 Q. So you don't have any history or any
24 records showing what is making up this water
25 that's in the Snake River, whether it's snowpack

1 or whether it's rain or whether it's springs or
2 what it is?

3 A. No, we don't make that determination.

4 Q. Now, the water rights in this case
5 were all recommended -- the source was recommended
6 as Snake River; correct?

7 A. I don't know that for certain.

8 Q. And I'm not trying to stump you there.
9 Just take that as a given.

10 A. Okay.

11 Q. And so as you administer this water
12 right, any of these water rights that are at issue
13 in this case, as someone that's on the firing line
14 on the administration end, are you trying to make
15 a distinction of what the source of the water is
16 that's in the Snake River at the time those water
17 rights are being diverted?

18 A. No. We simply each day calculate the
19 reach gains in the river and divide the water up
20 according to priority. Fill the senior rights
21 first and then the junior rights after the senior
22 rights are filled.

23 Q. Okay. One type of thing that was not
24 mentioned when you were talking to John were
25 beneficial-use rights.

1 Do you administer beneficial-use
2 rights?

3 A. We do not.

4 Q. Okay. So beneficial-use rights could
5 have been diverted or may be diverted, but you're
6 not administering those?

7 A. The water right accounting program
8 only delivers to those decreed, permitted,
9 licensed rights. Any diversion above those rights
10 or outside the priority shows up as a storage
11 diversion.

12 Q. Okay. In your last paragraph of your
13 affidavit in 13, you talk about "...it is assumed
14 that the amount of water taken is under the
15 earliest priority right, then the second earliest
16 water right, then the third earliest water right
17 and so on."

18 Do you mean by each individual water
19 user, do you assume they're diverting their most
20 senior right first? Is that what this means?

21 A. What I took it to mean is that each
22 day we determine the amount of natural flow that's
23 available. We deliver to the senior right that's
24 currently diverting water first. And then if
25 there's remainder water, we deliver the second

1 right. And if there's still a remainder of water,
2 to the third and so on.

3 Q. Okay. So when you use the term "it is
4 assumed," you're saying that's what the program
5 defaults to?

6 A. Correct.

7 Q. Okay. And there's really no other way
8 to do it, is there? I mean, is there some way
9 that Twin Falls, for example, could say "Well, we
10 don't want our 1900 right today, but we'll take
11 our" -- I don't know what you have -- "1908
12 right"? I mean, your program wouldn't handle
13 that, would it?

14 A. That's correct. It's programmed so
15 the earliest right's filled first and then the
16 second right if needed.

17 Q. All right. Are you familiar with the
18 Eagle decree?

19 A. Yes.

20 Q. Are you familiar with the April 1st,
21 1939 water rights under the Eagle decree?

22 A. I think there are rights with that
23 priority in the decree.

24 Q. What's your understanding of those
25 water rights?

1 A. I'm just aware that there are water
2 rights in the Eagle decree, and some of them may
3 be 1939 priorities and if that's the case, they
4 would be in the water right accounting program.

5 Q. Okay. Do you have any idea on how
6 those -- the diversion rates that are in the Eagle
7 decree for those rights was established?

8 A. I assume they just come straight from
9 the decree.

10 Q. Okay. Do you know anything about the
11 history of that decree, how it came to be?

12 A. I don't.

13 Q. Do you know who the parties to the
14 stipulation were that entered -- that resulted in
15 the decree?

16 A. No.

17 Q. Are you familiar with the March 26th,
18 1903 natural-flow rights of Burley Irrigation
19 District and Minidoka Irrigation District?

20 A. I think they have those rights in the
21 accounting program.

22 Q. Okay. Do you know whether or not
23 those rights are delivered almost every year in
24 August, September, or October?

25 A. In October, certainly. September,

1 per day, I believe.

2 Q. And is that handled on a daily basis
3 in the accounting program like other storage
4 rights?

5 A. Yes.

6 Q. And when -- is the water taken out of
7 Lake Walcott handled -- is it handled different in
8 the program than other storage rights in the
9 system?

10 A. No.

11 Q. So -- so it's -- as it's taken out of
12 the reservoir and delivered, it shows up on a
13 daily basis under the accounting program?

14 A. Not as it's being delivered. As it's
15 accruing storage. Once it is filled, the canals
16 that have the rights to that storage are allocated
17 100 percent, or minus evaporation losses.

18 And then the first storage that they
19 use comes out of that Lake Walcott account. Now,
20 physically, Lake Walcott remains full through most
21 of the irrigation season, and the water is
22 exchanged from an upstream reservoir, generally.

23 Q. Okay. Now, in Ron Carlson's
24 affidavit, he claims that the March 1911 right has
25 never been delivered out of Lake Walcott.

1 Are you familiar with that statement?

2 A. I'm not aware of a 1911 water right.

3 Q. Well, that's the 1 -- 1-10034 that I
4 was talking to you about. That's March of 1911.
5 It's for 53,500. It's a component of the 90,000
6 you were talking about.

7 A. I'm not familiar with that right. I
8 was under the assumption the entire right for Lake
9 Walcott was 1909.

10 Q. Okay. So you believe the whole 90,000
11 is under the 1909 right?

12 A. I thought it was.

13 Q. Okay. Maybe that explains the
14 problem.

15 Do you agree with the ground water
16 district's assertion in this case that some kind
17 of notation needs to be made on these water
18 rights?

19 A. No.

20 Q. Why doesn't that need to happen?

21 A. When Water District 1 calculates the
22 amount of natural flow each day, we deliver that
23 based on priority date. There's no distinction
24 between what is high water, whether it's computed
25 from spring water, from snowmelt. We simply

1 deliver according to the priorities and the amount
2 of water in the river system each day.

3 Q. One of the concerns that is expressed
4 by the ground water users is that if some kind of
5 comment isn't made on these water rights that
6 there's a possibility to enlarge these water
7 rights.

8 Is that possible under the water right
9 accounting system?

10 A. I don't know. If it's anything in
11 addition to what we currently have, then that
12 could be an enlargement.

13 Q. Okay. What do you mean if it's
14 anything in addition?

15 A. If it's anything in addition to the
16 water rights we're currently delivering in the
17 water right accounting --

18 Q. Uh-huh.

19 A. -- that would be an enlargement.

20 Q. Well, under your accounting system, as
21 I understand it now, you're taking these off by
22 priority as dependent upon how much water is in
23 the river; correct?

24 A. Correct.

25 Q. Okay. So as long as these water

1 rights are shown in your accounting system under
2 the existing priority dates and under their
3 existing diversion amounts, you would simply track
4 them in that program as they're diverted; correct?

5 A. Yes.

6 Q. Okay. When -- I wanted to jump back
7 to that statement you made earlier that you feel
8 the cutoff date for a high-water right under your
9 terminology is 1916.

10 When this affidavit was sent to you
11 and that 1916 date wasn't in there, did that
12 trouble you?

13 A. No, because, like I also said, it can
14 vary depending on where you're at in the basin.
15 In Willow Creek anything junior to an 1885
16 priority would be a high-water right.

17 1916, that's generally what I hear
18 mostly from water users in the Upper Snake. And
19 so that's kind of the priority I've adopted as the
20 general definition of a high-water right.

21 Q. But in this case you knew all these
22 water rights were out of the Snake River, didn't
23 you?

24 A. All these in No. 12, yes.

25 Q. Well, you didn't know that the ones on

1 A. If American Falls Reservoir is full,
2 the account is full, then American Falls Reservoir
3 District No. 2 will get allocated 100 percent of
4 its storage allocation, minus evaporation losses.

5 Q. Even though it had used -- even though
6 it had diverted water that prior to the date of
7 final fill that would have been labeled storage
8 water?

9 A. Yes. According to the decreed right,
10 if you divert it outside priority or you diverted
11 an amount over what's described in the decree, it
12 would be charged as storage and would come out of
13 your American Falls storage allocation.

14 Q. But when it filled, would it be
15 replaced?

16 A. No. The only time it would be
17 replaced is if we were spilling excess water past
18 Milner. At that time any storage diverted by
19 American Falls Reservoir District No. 2 would be
20 written off.

21 Q. Okay. So who would get to have the
22 unallocated storage in that space?

23 A. The unallocated storage that resides
24 in American Falls would be allocated to upstream
25 reservoir accounts that were unfilled.

1 Q. Those -- okay. And some of those
2 would even be junior upstream reservoir accounts
3 that hadn't filled; is that right?

4 A. Yes. But American Falls would be
5 full, so we couldn't allocate more than
6 100 percent.

7 Q. Why did you propose with the 1-6 right
8 that American Falls Reservoir District No. 2 not
9 be allowed to draft -- to divert water prior to
10 May 1st?

11 A. It can divert water prior to May 1st,
12 according to the decree. But it should be charged
13 to storage.

14 Q. And that proposal of yours was made
15 why?

16 A. To reflect the language in the decree.

17 Q. To reflect the language in the decree
18 or your interpretation of the language in the
19 decree?

20 A. Well, it would be my interpretation of
21 the language in the decree. I felt the decree was
22 not written very clearly.

23 Q. So your recommendation was discussed
24 and rejected?

25 A. I thought it was accepted.

1 Q. Well, I just thought you told
2 Mr. Fletcher that that language was -- your
3 proposal was rejected.

4 A. Well, my -- I think my initial
5 proposal was accepted. And then I later realized
6 after the recommendation came out that I left off
7 a sentence for the provision that the right not be
8 delivered until May 1st unless American Falls
9 Reservoir District was full.

10 The recommendation came out where the
11 period of use began on March 15th, I believe. And
12 that would allow American Falls Reservoir District
13 No. 2 under the recommendation to divert 850 cfs
14 prior to May 1st prior to the reservoir filling.

15 Q. Mr. Simpson discussed with you the
16 definitions in the Watermaster's Handbook.

17 Do you recall that?

18 A. Yes.

19 Q. I'm going to represent to you that in
20 the Watermaster Handbook it provides in a
21 definition that -- of diversion that a diversion
22 is the structure to which water is removed from a
23 water source.

24 Are you familiar with that definition?

25 A. I'm not familiar with it, but I would

1 agree with it.

2 Q. Okay. So when they use the word
3 "source," that in these decrees the word "source,"
4 as Mr. Fletcher and you discussed, would refer to
5 the Snake River; is that correct?

6 A. Yes.

7 Q. Okay. But you've used the word
8 "source" in paragraph 10. You said, "The source
9 of supply for high-water rights on the Snake River
10 consists primarily of snowmelt and spring runoff."

11 So you're using the word "source" in a
12 different way, I'm assuming?

13 A. Yes.

14 Q. You're using the word "source" as
15 where the water originates, and the diversion
16 definition uses the word "source" as where the
17 diversion is on a water course; is that correct?

18 A. In my definition, I was referring to
19 the water in the Snake River as being comprised
20 mostly of snowmelt during the times we were
21 filling those high-water rights.

22 Q. But the -- the river or the diversion
23 structure doesn't know where the molecules of
24 water comes from and doesn't segregate the
25 molecules of water, does it?

1 A. No.
 2 Q. And the accounting program doesn't
 3 know and doesn't segregate molecules of water?
 4 A. It only segregates natural flow in
 5 storage.
 6 Q. Okay. So you've come to the
 7 conclusion in paragraph 10 based upon empirical
 8 observation?
 9 A. Yes.
 10 Q. Okay. And what happens in
 11 paragraph 10 has absolutely nothing to do with
 12 administration of water?
 13 A. That's correct.
 14 Q. So what is the purpose of this whole
 15 exercise?
 16 A. I don't know.
 17 Q. Well, you had a reason to sign this
 18 and provide this affidavit, but you don't know
 19 what you were doing or why?
 20 A. The Department asked us to assist
 21 water users in the adjudication in providing them
 22 with information, historical data, and anything to
 23 help them sort out the decree of the water rights.
 24 I assumed that when Candice contacted
 25 me and had these questions, that that would

1 support some argument that she was making. And I
 2 provided that affidavit.
 3 Q. There has been an argument made here
 4 that "Absent a remark that limits whatever rights
 5 we're talking about as high-water rights to a
 6 particular season of use, there will be a
 7 possibility of expansion of those rights."
 8 Are you familiar with that argument?
 9 A. Yes.
 10 Q. Do you agree with that argument?
 11 A. No.
 12 Q. Okay. And why is it you don't agree
 13 with that argument?
 14 A. Historically, when the Department has
 15 issued water rights, they issue them for the full
 16 irrigation season. And the administration, if
 17 there was sufficient water in the system to fill
 18 those water rights, we would. If there wasn't,
 19 then we wouldn't.
 20 They were not based on historically
 21 looking at each day that that water right was
 22 historically filled and restricting the period of
 23 use to those days. We have not done that.
 24 Q. Okay. And so that comes back to
 25 Mr. Fletcher's point that you administer water in

1 priority, and if you're entitled to water in
 2 priority, your water will be there, and if you're
 3 not entitled, it won't be there; is that correct?
 4 A. That's correct.
 5 Q. Okay. So everybody's adequately
 6 protected by administration in priority?
 7 A. Yes.
 8 Q. And that comes back again as well to
 9 Mr. Simpson's point, is that if water rights have
 10 a common source, administration of priority
 11 adequately protects everybody's interest?
 12 A. Yes.
 13 MR. ARKOOSH: Can we take a small break,
 14 please?
 15 (Recess.)
 16 (Exhibit 4 marked.)
 17 Q. (BY MR. ARKOOSH): Mr. Olenichak, I've
 18 handed you what's been marked as Exhibit 4.
 19 Do you recognize that?
 20 A. Yes.
 21 Q. And what is that?
 22 A. It's a Watermaster Handbook. I
 23 believe it was put together by Tim Luke and a few
 24 other people in the IDWR office.
 25 Q. Who are "a few other people"? Did

1 Mr. Carlson participate in that?
 2 A. I don't know if he did or not.
 3 Q. Who is Mr. Carlson?
 4 A. Ron Carlson was the watermaster of
 5 Water District 1 for most of the 18 years I worked
 6 for the water district.
 7 Q. Okay. Is Exhibit 4, the purpose of
 8 Exhibit 4, for the governance of watermasters in
 9 the state?
 10 A. I think the purpose is just a general
 11 directory for watermasters in the state.
 12 Q. Okay. So it would apply to the
 13 watermaster in 01 as well as other watermasters in
 14 the state; is that correct?
 15 A. Correct.
 16 Q. Okay. Would you confirm the
 17 definition of "diversion" that I indicated to you
 18 and read that into the record, please?
 19 A. Do you know which page it's on?
 20 Q. It's in the "d's," and the definition
 21 is towards the front.
 22 MR. SIMPSON: Page 2.
 23 THE WITNESS: "Diversion is the structure
 24 through which water is removed from the water
 25 source. It also refers to the act of removing

Exhibit E

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. 1-6
_____)

DEPOSITION OF LYLE ROBERT SWANK
OCTOBER 8, 2008

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public

1 priority or using storage if they no longer have a
2 valid natural-flow right, that's correct.

3 Q. Okay. And further as a part of your
4 duties, do you ensure that the rental pool is
5 operated properly; that is, to ensure that
6 existing rights and permits are not injured as a
7 result of the operation of the rental pool?

8 A. That's correct.

9 Q. Okay. So if delivery of water through
10 the rental pool, for example, would result in an
11 existing right or permit being deprived of water,
12 that injury would be remediated either through the
13 impact analysis that's done at the end of the year
14 if the party was a participant in the rental pool
15 or through the delivery of direct water to that
16 injured party; correct?

17 A. Yes, either an excess storage use or a
18 delivery of water, that's correct.

19 Q. Okay. I think we have the exhibits
20 from the other day. I think -- I think -- is that
21 Exhibit 4?

22 A. Yes, it is.

23 Q. Okay. Are you familiar with that
24 exhibit?

25 A. Yes, I am.

1 Q. And are you familiar with the
2 definition that the source is identified where the
3 point of diversion of the water is effectuated in
4 that handbook? Perhaps on page 2, 3, or 4.

5 A. Yes.

6 Q. Is that your understanding of what the
7 source of water is for a particular water right is
8 the water that's available at the point of
9 diversion?

10 A. Yes.

11 Q. Would you agree, then, that the point
12 of diversion identifies the source of water for a
13 particular water right? For example, water that's
14 I'll say for Snake River Irrigation District or
15 for an irrigation district that diverts out of the
16 Snake River, that that point of diversion out of
17 the Snake River identifies the Snake River as the
18 source of water for that particular water right?

19 A. Yes, as measured at the closest USGS
20 gauging station.

21 Q. Okay. And in similar fashion -- I
22 mean, for example, the Palisades storage rights in
23 the Palisades Reservoir has as its source of water
24 water entering the headwaters of the reservoir;
25 correct?

1 A. That's correct.

2 Q. And that would be the Snake River
3 identified as the source of that water?

4 A. Yes, that's correct.

5 Q. And so would it be fair to say that
6 you as watermaster wouldn't be concerned
7 necessarily about how that water arrived at the
8 source -- or excuse me, at that point of
9 diversion, but simply that the amount of water
10 available at that point of diversion available for
11 diversion by that water right identifies the
12 source of water available to it?

13 A. Could you repeat that?

14 Q. Well, so you as watermaster look at
15 the amount of water available at the point of
16 diversion that would be available for diversion
17 under priority by the particular water right;
18 correct?

19 A. That's correct.

20 Q. And so the upstream sources of water
21 or upstream tributaries that would then aggregate
22 to the water available at the point of diversion
23 make up the amount of water that's available for
24 that particular water right; correct?

25 A. That's correct.

1 Q. And so the particular sources, if you
2 will, or origins of that water is not of a concern
3 to you in delivering the water to that delivery or
4 to that point of diversion, simply that the water
5 is available and it would be delivered in
6 priority; correct?

7 A. That's correct.

8 (Mr. Harris joins the proceedings.)

9 Q. (BY MR. SIMPSON): So then from a
10 delivery-of-water perspective, if the water is in
11 the river in its natural flow and the right is in
12 priority, to you as watermaster does it matter or
13 is it necessary for you to necessarily know
14 whether the water arrived in the river through
15 snowmelt, return flows, subsurface flows, or
16 precipitation in terms of effectuating delivery to
17 that particular right?

18 A. And I'm sorry. I got lost on that.

19 Q. Well, my question goes to you as the
20 watermaster in carrying out your responsibilities
21 to deliver water: From that delivery-of-water
22 perspective, if the water is in the river in its
23 natural flow and a particular right is in
24 priority, to you as watermaster does it matter or
25 is it necessary for you to know whether the water

1 arrived at that point in the river from snowmelt
2 or subsurface flows or return flows to the river
3 or precipitation, or is it simply that that water
4 is there at the point of diversion and that right
5 is in priority and it's your job to deliver it to
6 the right holder?

7 A. Yeah, our job is to make sure that
8 that water is available at that point of
9 diversion, regardless of how it got there, other
10 than natural flow and storage being split out.

11 Q. Okay. So it's not necessary for you
12 in carrying out your duties to necessarily know
13 how that water arrived at that point in the river
14 in terms of whether its origin is from snowmelt or
15 return flows or subsurface flows; correct?

16 A. That's correct. We just deliver the
17 water based upon the available supplies.

18 Q. Okay. And if it's available by
19 priority and there's a need for it -- that is, it
20 can be put to beneficial use -- you allow or
21 effectuate that delivery; correct?

22 A. Yes.

23 Q. In terms of water deliveries within
24 the water district, is the water district on
25 regulation from Day One of the irrigation season?

1 A. Yes. Well, we have year-round
2 regulation within the district.

3 Q. Sure. During the nonirrigation
4 season, you're storing water and delivering water
5 to any nonirrigation natural-flow rights that
6 would require that water as well; correct?

7 A. Yes. We're accounting for the water
8 on a year-round basis.

9 Q. Okay. And so then during the
10 irrigation season, for example, in delivering
11 water to a senior, there's a presumption that that
12 water -- excuse me, that the senior needs the
13 water to put it to beneficial use; correct?

14 A. That's correct.

15 Q. And if the right or the decree
16 identifies the amount of beneficial use or you
17 determine that the senior does not need the water,
18 do you curtail the senior back in order to deliver
19 the water to downstream juniors?

20 A. No, you don't curtail a senior to
21 deliver a junior right downstream.

22 Q. Not even in the case where the decree
23 or the -- you recognize that the senior doesn't
24 need the water?

25 A. Well, if the senior is not -- has been

1 determined he is not putting the water to
2 beneficial use, then it could become an issue.

3 Q. So if either the decree or some other
4 set of facts identified that the senior could not
5 put that water to beneficial use, in carrying out
6 your duties you would investigate, and if you
7 found that were true, you would curtail the senior
8 back to their level of beneficial use in order to
9 deliver the water downstream to juniors; correct?

10 A. Yeah, either curtailment or I guess if
11 they're exceeding their right, an excess storage
12 use could be charged.

13 Q. Okay. So in administering water and
14 delivering water, in looking at the source of
15 water, isn't it true that if cutting off a junior
16 will deliver water to the senior, that essentially
17 they're relying upon the same source of water?

18 A. That's certainly usually the case. I
19 can't think of a situation where that would not be
20 true right off the top of my head.

21 Q. Okay. Lyle, with respect to the
22 storing of water, is it true that water is stored
23 by priority?

24 A. There's a distinction made between
25 physically storing water or capturing water and

1 the senior water rights being filled.

2 Q. Can you describe that distinction? If
3 you would just briefly describe how water is
4 stored in the Upper Snake in Water District 1.

5 A. Yes. Using our water right accounting
6 program, we deliver the water to the earliest
7 water right that's putting water to beneficial use
8 or storing water in a reservoir.

9 And if there's sufficient water for
10 additional reservoir storage rights if we're in
11 the nonirrigation season, then the next most
12 junior -- sorry. The next most senior water right
13 would then get any additional storage if they were
14 not in -- if it was not a tributary to a more
15 senior right downstream and so forth. It would go
16 by priority and also by location.

17 Q. Okay. And that storage would occur
18 respecting all other existing rights on the river?

19 A. Yes, that's correct.

20 Q. Okay. Is there -- Lyle, is there a
21 distinction between storage and unallocated
22 storage?

23 A. Well, yes. Our water right accounting
24 program does keep track of both the storage that
25 the rights have accrued, and it's not uncommon to

Exhibit F

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

Burley Irrigation District
246 East 100 South
Burley, Idaho 83318

Minidoka Irrigation District
98 West 50 South
Rupert, Idaho 83350

Twin Falls Canal Company
P.O. Box 326
Twin Falls, Idaho 83303-0325

American Falls Reservoir District #2
112 S. Apple St.
Shoshone, Idaho 83352

Milner Irrigation District
5924 East 3610 North
Murtaugh, Idaho 83344

North Side Canal Company
921 N. Lincoln
Jerome, Idaho 83338

January 14, 2005

VIA HAND DELIVERY

Director Karl Dreher
Idaho Department of Water Resources
322 East Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Request for Water Right Administration in Water District 120 (portion of the Eastern Snake Plain Aquifer) / Request for Delivery of Water to Senior Surface Water Rights¹

Dear Director Dreher:

The seven surface water entities listed above (hereinafter collectively referred to as the "Surface Water Coalition"), submit this request for water right administration and delivery of water to their senior natural flow and storage water rights pursuant to Idaho law. Since the Interim Stipulated Agreement expired two weeks ago, and the State of Idaho is entering its sixth year of drought, administration of junior groundwater rights is necessary to satisfy the Coalition's senior surface water rights. Although the Surface Water Coalition requests water right administration for 2005 and beyond, the members remain committed to "good faith" negotiations with groundwater users to find a long-term agreement that will restore their water supplies and stabilize the declining spring flows and aquifer levels.

¹ A list of the relevant surface water rights and priorities is attached as Exhibit A.

The ESPA groundwater model predicts reach gains that will accrue to the Snake River (Neeley to Minidoka; near Blackfoot to Neeley, Shelley to near Blackfoot) as a result of the curtailment of junior groundwater rights. The predicted reach accruals are calculated both in cubic feet per second and acre-feet, and are time-dependant. Whereas depletions to the Snake River caused by junior ground water pumping have occurred over a number of years, the benefits from curtailment will also be realized over a number of years. The water that will accrue to these reaches (Neeley to Minidoka, near Blackfoot to Neeley, and Shelley to Blackfoot) is needed and can be put to beneficial use under the Coalition's senior surface water rights. Whenever natural flow rights are on, the Coalition can use that water under their natural flow rights, and whenever that water would accrue to fill storage rights, the water is likewise needed to satisfy those storage rights.

The extent of injury equals the amount of water diminished and the cumulative shortages in natural flow and storage water which is the result of groundwater depletions. Impacts have been occurring as a result of ground water depletions and reduced reach accruals for several years, resulting in material injury to the water rights of the Surface Water Coalition. Curtailment of junior ground water rights must therefore occur over a period of time unless substantial aquifer recovery occurs as a result of artificial or natural recharge in excess of the present rate of groundwater depletions.

Any and all water that is pumped under junior groundwater rights that would otherwise accrue to the Snake River to satisfy a senior surface water right, as demonstrated by the model, results in a "material injury" to the Surface Water Coalition's senior surface water rights. Each entity's water rights, including a list of the relevant storage rights held by the USBR, is set forth below:

<u>Entity:</u>	<u>Water Rights:</u>
A & B Irrigation District	01-14, 01-2060A, 01-2064F, 01-2068F
AFRD #2	01-6
Burley Irrigation District	01-7, 01-211B, 01-214B
Milner Irrigation District	01-9, 01-17, 01-2050, 01-02064B
Minidoka Irrigation District	01-8, 01-4045A, 01-10187, 01-10188, 01-10189, 01-10190, 01-10191, 01-10192, 01-10193, 01-10194, 01-10195, 01-10196
North Side Canal Company	01-5, 01-16, 01-210A, 01-210B, 01-212, 01-213, 01-215, 01-220, 01-02064C, 01-10042B 01-10043A, 01-0045B, 01-10053A
Twin Falls Canal Company	01-4, 01-10, 01-209, 01-02064A, 01-10042A,

The Eastern Snake Plain Aquifer (ESPA) is defined as an area determined to have a common ground water supply. Rule 50. The water supply in the ESPA is hydraulically connected to the Snake River and tributary water sources at various places to varying degrees. Senior surface water rights above Milner Dam rely upon tributary spring flows and reach gains that occur at various points of the river from Shelley, Idaho downstream to Minidoka Dam (hereinafter referred to as the "American Falls reach") to fill natural flow and storage water rights. These spring flows² and reach gains³ have been in steady decline over the past decade, particularly the last four years, resulting in inadequate water supplies to satisfy senior surface water rights.

Data collected by the United States Bureau of Reclamation (USBR) over the past six years indicates about a 30% reduction in reach gains to the Snake River between Blackfoot and Neeley, a loss of about 600,000 acre-feet. See Exhibit B. The recently recalibrated ESPA ground water model identifies ground water pumping as a major contributor to declines in the source of water fulfilling senior surface water rights. The ground water model demonstrates that pumping under junior groundwater rights results in an approximate steady state annual depletion of 1.1 million acre-feet to the Snake River in the American Falls reach.⁴

Request for Water Right Administration:

A & B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company hereby submit this request for administration of water rights in Water District No. 120 and delivery of water to their respective Snake River natural flow water rights and to the storage water rights held by the USBR in trust for these entities, pursuant to Idaho Code Chapter 6 Title 42 and the Rules for Conjunctive Management of Surface and Ground Water Resources (Idaho Administrative Code Section 37.01.01)⁵.

² Compare the 2004 Spring Creek discharge data against the median discharge data at <http://waterdata.usgs.gov/id/nwis/rt>.

³ According to USBR's preliminary data, the total acre-feet measured in the river between near Blackfoot and Neeley in 2004 was 1,529,549; approximately 30,000 acre-feet higher than what was measured in 2003. Despite this increase, the six-year trend is still decreasing and 2004 measurements were 596,771 acre-feet less than 1999. See Exhibit B.

⁴ See *SNAKE RIVER PLAIN AQUIFER MODEL SCENARIO: Hydrologic Effects of Curtailment of Ground Water Pumping "Curtailment Scenario"* (October 2004, Idaho Water Resources Research Institute Technical Report 04-023) found at <http://www.if.uidaho.edu/~johnson/ifiwrri/projects.html>

⁵ The Coalition notes that the legality of the conjunctive management rules is at issue in *Rim View Trout Company et al. v. Karl J. Dreher et al.*, Case No. CV-03-07551D (Fourth Dist. Ct., Ada County). By order of Judge Sticklen, the *Rim View* litigation is stayed until March 15, 2005 (*Order Approving Stipulation to Stay Proceedings*). In making this request for administration, the Coalition does not admit that the conjunctive management rules are constitutional and hereby reserves the right to challenge the rules as necessary. However, because the constitutionality of the rules is currently at issue in the *Rim View* litigation, the Coalition is not presently raising that issue in this request.

01-10043, 01-10045A

U.S. Bureau of Reclamation 01-284, 01-2064, 01-4052, 01-10042, 01-10053,
01-4055, 01-10044, 01-10045, 01-2068, 01-4056,
01-4057, 01-10043

Members of the Coalition divert water pursuant to the above-listed rights at their respective canals at Minidoka and Milner Dams. The USBR stores water under its water rights at its respective project reservoirs in the Upper Snake River Basin above Milner Dam, including American Falls Reservoir. Members of the Coalition beneficially use the water for irrigation and other purposes.

By reason of the diversion of junior ground water rights located within Water District No. 120 and elsewhere throughout the ESPA, the members of the Surface Water Coalition are suffering material injury. *See Exhibit C.*⁵ Accordingly, A & B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company hereby submit this request for the Watermaster to administer water rights in Water District No. 120 by priority in time in order to supply water to these entities under their senior surface water rights. This request is further supported by the *Petition for Water Right Administration and Designation of the Eastern Snake Plain Aquifer as a Ground Water Management Area*, which is being filed separately but simultaneously with this request.

The fact that the Surface Water Coalition requests administration of their respective water rights through a common document is not intended to be, is not, and should not be construed to be a waiver of the individual rights and benefits accruing to each entity by reason of that particular entity's water rights. Furthermore, even though the Coalition is making a request for water right administration at this time, the Coalition is committed to continued negotiations with ground water users to reach a settlement that will restore spring flows and reach gains and stabilize the ESPA.

Recent History of IDWR's ESPA Management Actions:

The history of actions taken by the Department to manage the ESPA dates back at least to 1992, when the Director issued a *Moratorium Order* on the processing and approval of all applications for permit to appropriate water from all surface and ground water sources in the Snake River Basin upstream of the USGS Weiser gauging station. *See May 15, 1992 Moratorium Order; January 6, 1993 Order Amending Moratorium*

⁵ In the event any entity administering water rights perceives the need for further information concerning "material injury" other than is supplied either on the face of the Surface Water Users' water rights or herein, the undersigned request notification of the same, and a timely and meaningful opportunity to provide such information.

Dated May 15, 1992; and April 30, 1993 Amended Moratorium Order. These moratorium orders were issued, in part, to “protect existing water rights.” At that time, the Director recognized ground water levels in the ESPA had fallen due to a number of factors including the “increased volume of pumping.” *See April 30, 1993 Order* at 1.

Unfortunately, despite the moratorium orders, new permits have been approved, and the ESPA water levels and the Surface Water Coalition’s water rights continue to suffer deleterious effects from ground water pumping. As a result of the declining aquifer levels and water supplies available to satisfy senior surface water rights, the Director designated the American Falls Ground Water Management Area in 2001. This designation specifically recognized the ESPA along the American Falls reach “may be approaching the conditions of a critical ground water area.” *2001 A.F. GWMA Order* at 3. The conditions of the ESPA have not improved since 2001, in fact, aquifer levels and water supplies in the American Falls reach have only diminished.

After the American Falls GWMA designation, interested surface and ground water users finalized an interim agreement to delay the Director’s proposed management of the aquifer. The Interim Stipulated Agreement has stayed aquifer management and water right administration of ground water rights for the past three years.⁶ The three-year stay was intended to provide a time period for negotiations between surface and ground water users and more importantly, to provide time for the recalibration of the ESPA ground water model. The model was and is intended to govern administration of water rights receiving water from the ESPA.

In 2003, during the term of the Interim Stipulated Agreement, the Director issued an order modifying the boundaries of the American Falls GWMA and asserted that the administration provided by that designation was duplicative or unnecessary given the creation of Water District 120.⁷ Administration of water rights within Water District No. 120 could proceed without the notice requirements under the ground water management area statute, I.C. § 42-233b. Therefore, with the completion of the new ESPA groundwater model, the creation of new water districts, and the expiration of the interim agreement, the Coalition is obligated to request immediate water right administration to protect its senior surface water rights.

Although the Surface Water Coalition and interested groundwater users have diligently continued negotiations over the past three years to reach a long-term resolution over the administration of surface and groundwater rights in the ESPA, an agreement has yet to be reached. At the same time, the water supplies in the ESPA have continued to diminish and the Surface Water Coalition’s water rights have continued to be interfered with and curtailed because of reduced spring flows from the ESPA while ground water

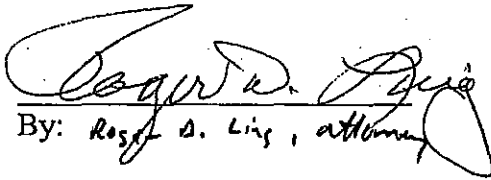
⁶ The one-year extension of the Interim Stipulated Agreement in Water District No. 120 expired on December 31, 2004.

⁷ Twin Falls Canal Company and North Side Canal Company challenged the Director’s order modifying the boundaries of the American Falls GWMA. The contested case has been stayed since April 2004.

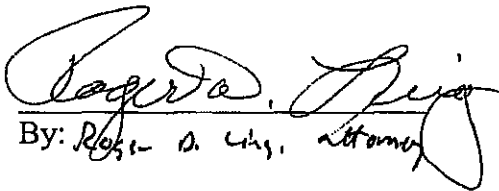
diversions from the ESPA continue to exceed recharge needed to stabilize the ESPA at acceptable ground water elevations.

In making this request that the Director carry through with his statutory duty to administer water rights and based upon representations made to the parties regarding such administration, it is the hope and intent of the Surface Water Coalition that negotiations to find a mediated settlement of the conjunctive management of the resource will continue simultaneously with said administration of ground water rights in the ESPA.

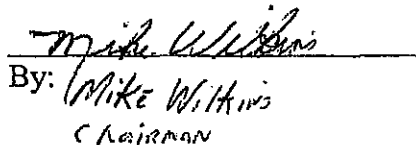
A & B Irrigation District


By: Roger D. Ling, attorney

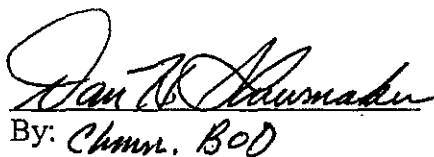
Burley Irrigation District


By: Roger D. Ling, attorney

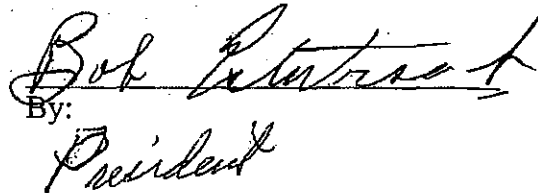
Minidoka Irrigation District


By: Mike Wilkins
Chairman

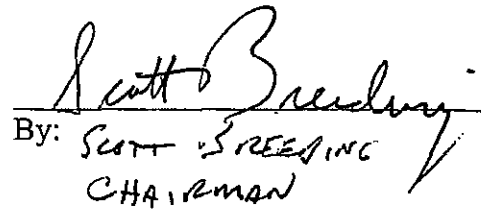
Twin Falls Canal Company


By: Chmn. BOD

American Falls Reservoir District #2


By: President

Milner Irrigation District


By: Scott Breeding
CHAIRMAN

North Side Canal Company

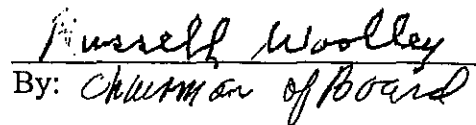

By: Chairman of Board

EXHIBIT “A”

WATER RIGHTS LIST

A & B Irrigation District

1-14	1939-04-01
1-2060A	1955-11-21
1-2064F	1921-03-30
1-2068F	1939-07-28

American Falls Res. Dist. #2

1-6	1921-03-30
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Burley Irrigation District

1-7	1939-04-01
1-211B	1903-03-26
1-214B	1908-08-06

Milner Irrigation District

1-9	1939-04-01
1-17	1931-04-30
1-2050	1939-10-25
1-2064B	1921-03-30
1-4052	1944-06-16

Minidoka Irrigation District

1-8	1939-04-01
1-4045A	1923-05-01
1-10187	1903-03-26
1-10188	1908-08-06
1-10189	1909-12-14
1-10190	1921-03-30
1-10191	1939-04-01
1-10192	1906-08-23
1-10193	1909-12-28
1-10194	1911-06-16
1-10195	1939-04-01
1-10196	1906-08-23

Twin Falls Canal Company

1-4	1915-12-22
1-10	1939-04-01
1-209	1900-10-11
1-2064A	1921-03-30
1-4052	1944-06-16
1-10042A	1921-03-29
1-10043	1921-03-29
1-10045A	1913-05-24

North Side Canal Company

1-5	1915-12-23
1-16	1920-08-06
1-210A	1900-10-11
1-210B	1900-10-11
1-212	1905-10-07
1-213	1908-06-16
1-215	1909-06-02
1-220	1910-06-29
1-2064C	1921-03-30
1-4052	1944-06-16
1-10042B	1921-03-29
1-10043A	1921-03-29
1-10045B	1913-05-24
1-10053A	1921-03-30

(USBR)American Falls Reservoir

1-284	1921-03-30
1-2064	1921-03-30
1-4052	1944-06-16
1-10042	1921-03-29
1-10053	1921-03-30

(USBR)Jackson Lake Reservoir

1-4055	1906-08-23
1-10044	1910-08-18
1-10045	1913-05-24

(USBR)Palisades Reservoir

1-2068	1939-07-28
1-4056	1957-05-03
1-4057	1957-07-03
1-10043	1921-03-29

Exhibit G

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

IN THE MATTER OF DISTRIBUTION OF WATER)
TO VARIOUS WATER RIGHTS HELD BY OR FOR)
THE BENEFIT OF A&B IRRIGATION DISTRICT,)
AMERICAN FALLS RESERVOIR DISTRICT #2,)
BURLEY IRRIGATION DISTRICT, MILNER)
IRRIGATION DISTRICT, MINIDOKA IRRIGATION)
DISTRICT, NORTH SIDE CANAL COMPANY,)
AND TWIN FALLS CANAL COMPANY)
_____)

**AMENDED
ORDER**

This matter is before the Director of the Department of Water Resources ("Director" or "Department") as a result of a letter ("Letter") and petition ("Petition"), both filed with the Director on January 14, 2005, from A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (collectively referred to as the "Surface Water Coalition" or "Coalition"). The Letter and Petition seek the administration and curtailment of ground water rights within Water District No. 120, the American Falls Ground Water Management Area, and areas of the Eastern Snake Plain Aquifer not within an organized water district or ground water management area, that are junior in priority to water rights held by or for the benefit of members of the Surface Water Coalition. The Petition also seeks designation of the Eastern Snake Plain Aquifer as a Ground Water Management Area.

On February 14, 2005, the Director issued an Order in this matter, which provided an initial response to the Letter and Petition filed by the Coalition. Based upon the Director's initial and further consideration of the Letter and Petition, the Director issued an Order on April 19, 2005, superceding the interlocutory portions of the Order of February 14, 2005. Following a status conference conducted by the Director on April 27, 2005, the Director determined that Finding No. 127 should be clarified. The Director now enters the following Findings of Fact, Conclusions of Law, and Amended Order with revisions to Findings No. 124 through No. 127 and No. 129, three additional findings (Findings No. 128, No. 129, and No. 131), corrected numbering of Conclusions of Law No. 47 through No. 53, and revisions to paragraph no. 9 in the Amended Order.

demonstrated by the model, results in a ‘material injury’ to the Surface Water Coalition’s senior surface water rights.” *Id.*

50. The Letter requests “administration of water rights in Water District No. 120 and delivery of water to their respective Snake River natural flow water rights and to the storage water rights held by the USBR in trust for these entities, pursuant to Idaho Code Chapter 6 Title 42 and the Rules for Conjunctive Management of Surface and Ground Water Resources (Idaho Administrative Code Section 37.01.01.)” *Id.* at p. 2.

Petition Filed by the Surface Water Coalition

51. On January 14, 2005, the Surface Water Coalition also filed its Petition captioned *Petition for Water Right Administration and Designation of the Eastern Snake Plain Aquifer as a Ground Water Management Area*. The Petition was filed “pursuant to Rules 30 and 41 of the conjunctive management rules (IDAPA 37.03.11) and Rule 230 of the Department’s rules of procedure (IDAPA 37.01.01)” *Petition* at p. 1.

52. In addition to the information presented in the Letter regarding reduction in reach gains, annual depletions to the Snake River, and material injury claimed to the natural flow and storage water rights of the members of the Surface Water Coalition based upon the diversions of ground water under junior rights, the Petition seeks designation of the Eastern Snake Plain as a Ground Water Management Area.

53. The Surface Water Coalition states in paragraph 24 of its Petition that: “Petitioners reserve the right to supplement this petition with additional information as necessary.”

Water Rights Held by or for the Benefit of Members of the Surface Water Coalition

54. The disposition of all of the water rights listed in the Letter and Petition filed by the Surface Water Coalition is pending in the SRBA. Many of the water rights listed in the Letter and Petition are overlapping or redundant. The Department has completed its preliminary examination of the rights claimed by members of the Coalition, other than rights also claimed by the USBR, pursuant to Idaho Code § 42-1410 and has prepared preliminary recommendations for reporting these rights in the SRBA. The preliminary recommendations were mailed to the members of the Coalition on April 15, 2004. Over the coming weeks, the Department will consider any additional information provided by the members of the Coalition concerning the members’ water rights and will prepare its final reporting of these rights for filing with the SRBA District Court. Upon filing of the Director’s Report for water rights in Basin 01, including the rights held by members of the Coalition, the State of Idaho will file a motion with the SRBA District Court seeking authorization for the interim administration of rights in Basin 01 by the Director based on the Director’s Report.

55. The A&B Irrigation District holds the following surface water right as claimed in the SRBA for the diversion of water from the Snake River:

Water Right No.: 01-00014
Basis for Right: Decree
Priority Date: April 1, 1939
Diversion Rate: 267 cfs
Beneficial Use: Irrigation
Place of Use: See Attachment B

56. The Letter and Petition filed by the Surface Water Coalition referred to water rights nos. 01-02060A, 01-02064F, and 01-02068F claimed by the A&B Irrigation District in the SRBA. The current holder of record for these rights is the United States through the USBR. Determination of the interest held by the A&B Irrigation District in each of these rights is pending in the SRBA.

57. The American Falls Reservoir District #2 holds the following surface water right as claimed in the SRBA for the diversion of water from the Snake River:

Water Right No.: 01-00006
Basis for Right: Decree
Priority Date: March 20, 1921
Diversion Rate: 1,700 cfs
Beneficial Use: Irrigation
Place of Use: See Attachment C

58. The Burley Irrigation District holds the following surface water rights as claimed in the SRBA for the diversion of water from the Snake River:

Water Right No.:	01-00007	01-00211B	01-00214B
Basis for Right:	Decree	Decree	Decree
Priority Date:	April 1, 1939	March 26, 1903	August 6, 1908
Diversion Rate:	163.4 cfs	655.88 cfs	380 cfs
Beneficial Use:	Irrigation	Irrigation	Irrigation
Place of Use:	See Attachment D		

59. The Milner Irrigation District holds the following surface water rights as claimed in the SRBA for the diversion of water from the Snake River:

Water Right No.:	01-00009	01-00017	01-02050
Basis for Right:	Decree	Decree	License
Priority Date:	April 1, 1939	April 30, 1931	October 25, 1939
Diversion Rate:	121 cfs	135 cfs	37 cfs
Beneficial Use:	Irrigation	Irrigation	Irrigation
Place of Use:	See Attachment E		

60. The Letter and Petition filed by the Surface Water Coalition referred to water right no. 01-02064B claimed by the Milner Irrigation District in the SRBA. The current holder of record for this right is the United States through the USBR. Determination of the interest held by the Milner Irrigation District in this right is pending in the SRBA.

61. The Minidoka Irrigation District holds the following surface water right as claimed in the SRBA for the diversion of water from the Snake River:

Water Right No.:	01-00008
Basis for Right:	Decree
Priority Date:	April 1, 1939
Diversion Rate:	266.6 cfs
Beneficial Use:	Irrigation
Place of Use:	See Attachment F

62. The Letter and Petition filed by the Surface Water Coalition referred to water rights nos. 01-04045, 01-10187, 01-10188, 01-10189, 01-10190, 01-10191, 01-10192, 1-10193, 01-10194, 01-10195, and 01-10196 claimed by the Minidoka Irrigation District in the SRBA. The basis for water right no. 01-04045 is a beneficial use claim filed pursuant to Idaho Code § 42-243 for which the current holder of record is the Amalgamated Sugar Company. The remaining water rights are based on claims filed in the SRBA under Idaho Code § 42-1409 for which the current holder of record, except for 01-10192 and 01-10193, is the United States through the USBR. Determination of the interest held by the Minidoka Irrigation District in each of these rights is pending in the SRBA.

63. The North Side Canal Company holds the following surface water rights as claimed in the SRBA for the diversion of water from the Snake River:

Water Right No.:	01-00005	01-00016	01-00210A
Basis for Right:	Decree	Decree	Decree
Priority Date:	December 23, 1915	August 6, 1920	October 11, 1900
Diversion Rate:	300 cfs	1,260 cfs	54 cfs
Beneficial Use:	Irrigation	Irrigation	Irrigation

Water Right No.:	01-00210B	01-00212	01-00213
Basis for Right:	Decree	Decree	Decree
Priority Date:	October 11, 1900	October 7, 1905	June 16, 1908
Diversion Rate:	346 cfs	2,250 cfs	890 cfs
Beneficial Use:	Irrigation	Irrig., Irrig. from Storage, Irrig. storage	Irrigation

Water Right No.:	01-00215	01-00220
Basis for Right:	Decree	Decree

Priority Date:	June 2, 1909	June 29, 1910
Diversion Rate:	500 cfs	3,000 cfs
Beneficial Use:	Irrigation	Irrigation

Place of Use:	See Attachment G
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64. The Letter and Petition filed by the Surface Water Coalition referred to water rights nos. 01-02064C, 01-10042B, 01-10043A, 01-10045B, and 01-10053A claimed by the North Side Canal Company in the SRBA. The current holder of record for water right no. 01-02064C is the United States through the USBR. The remaining water rights are based on claims filed in the SRBA under Idaho Code § 42-1409 for which the current holder of record is also the United States through the USBR. Determination of the interest held by the North Side Canal Company in each of these rights is pending in the SRBA.

65. The Twin Falls Canal Company holds the following surface water rights as claimed in the SRBA for the diversion of water from the Snake River:

Water Right No.:	01-00004	01-00010	01-00209
Basis for Right:	Decree	Decree	Decree
Priority Date:	December 22, 1915	April 1, 1939	October 11, 1900
Diversion Rate:	600 cfs	180 cfs	3,000 cfs
Beneficial Use:	Irrigation	Irrigation	Irrigation
Place of Use:	See Attachment H		

66. The Letter and Petition filed by the Surface Water Coalition referred to water rights nos. 01-02064A, 01-10042A, 01-10043, and 01-10045A claimed by the Twin Falls Canal Company in the SRBA. The current holder of record for water right no. 01-02064A is the United States through the USBR. The remaining water rights are based on claims filed in the SRBA under Idaho Code § 42-1409 for which the current holder of record is also the United States through the USBR. Determination of the interest held by the Twin Falls Canal Company in each of these rights is pending in the SRBA.

67. Because sufficient water could not be obtained from the natural and unregulated flow of the Snake River for the full irrigation of lands authorized under the surface water rights held by the members of the Surface Water Coalition as well as surface water rights held by other entities in the Upper Snake River Basin of Idaho with points of diversion at and upstream of Milner Dam, the USBR constructed dams to provide reservoirs to capture and store water from the Snake River when water surplus to irrigation demands was available, generally during the non-irrigation season, for subsequent release to supplement existing water rights for natural flow to help meet irrigation shortages. Additionally, these reservoirs are used to generate power incidental to reservoir releases for irrigation and flood control. Storage reservoirs developed by the USBR include Jackson Lake, Ririe Reservoir, Lake Walcott, American Falls Reservoir, and Palisades Reservoir.

68. The USBR holds the following surface water rights as claimed in the SRBA for diversion of water from the Snake River for irrigation, reservoir storage for irrigation, and reservoir releases for irrigation and incidental power generation under some rights:

Water Right No.:	01-00284	01-02064	01-02068
Basis for Right:	Decree	License	License
Priority Date:	March 30, 1921	March 30, 1921	June 28, 1939
Reservoir:	American Falls	American Falls	Palisades
Storage Volume:	1.7 million acre-feet	1.8 million acre-feet	1.4 million acre-feet

69. The Letter and Petition filed by the Surface Water Coalition referred to water rights nos. 01-04052, 01-04055, 01-04056, 01-04057, 01-10042, 01-10043, 01-10044, 01-10045, and 01-10053 claimed by the USBR in the SRBA. The basis for water rights nos. 01-04052, 01-04055, 01-04056, 01-04057, 01-10042, 01-10043, 01-10044, 01-10045, and 01-10053 are beneficial use claims filed pursuant to Idaho Code § 42-243 or claims filed pursuant to Idaho Code § 42-1409. Determination of each of these rights is pending in the SRBA.

70. The members of the Surface Water Coalition entered into contracts with the USBR for the use of water yielded from storage space in the reservoirs described in Finding No. 67 under the water rights described in Findings Nos. 68 and 69 as follows:

- a. A&B Irrigation District –
46,826 acre-feet of storage space in American Falls Reservoir
90,800 acre-feet of storage space in Palisades Reservoir
Total: 137,626 acre-feet of storage space
- b. American Falls Reservoir District #2 –
393,550 acre-feet of storage space in American Falls Reservoir
- c. Burley Irrigation District –
31,892 acre-feet of storage space in Lake Walcott
155,395 acre-feet of storage space in American Falls Reservoir
39,200 acre-feet of storage space in Palisades Reservoir
Total: 226,487 acre-feet of storage space
- d. Milner Irrigation District –
44,951 acre-feet of storage space in American Falls Reservoir
45,640 acre-feet of storage space in Palisades Reservoir
Total: 90,591 acre-feet of storage space
- e. Minidoka Irrigation District –
186,030 acre-feet of storage space in Jackson Lake
63,308 acre-feet of storage space in Lake Walcott
82,216 acre-feet of storage space in American Falls Reservoir
35,000 acre-feet of storage space in Palisades Reservoir
Total: 366,554 acre-feet of storage space

- f. North Side Canal Company --
 - 312,007 acre-feet of storage space in Jackson Lake
 - 431,291 acre-feet of storage space in American Falls Reservoir
 - 116,600 acre-feet of storage space in Palisades Reservoir
 - Total: 859,898 acre-feet of storage space
- g. Twin Falls Canal Company --
 - 97,183 acre-feet of storage space in Jackson Lake
 - 148,747 acre-feet of storage space in American Falls Reservoir
 - Total: 245,930 acre-feet of storage space

71. Legal title to the water rights described in Findings Nos. 68 and 69 is held by the USBR. The beneficial use of the water provided under the storage water contracts described in Finding No. 70 is made by the landowners within the respective service areas of the members of the Surface Water Coalition.

72. Water that is supplied through the storage contracts described in Finding No. 70 is supplemental to the water rights held by the members of the Surface Water Coalition authorizing the diversion and beneficial use of the natural flow of the Snake River. Members of the Surface Water Coalition rely on their natural flow water rights together with the supplemental water supply resulting from their rights under storage contracts with the USBR, and in some instances supplemental ground water rights, to provide a full water supply for their respective irrigation needs. The actual amount of storage used for irrigation during any given irrigation season varies based upon climatic conditions.

General Findings in Response to Letter and Petition Filed by the Surface Water Coalition

73. The Petition filed by the Surface Water Coalition did not include the names, addresses, and description of the water rights outside of water districts held by ground water users who are alleged by the Coalition to be causing material injury to the surface water rights held by or for the benefit of members of the Coalition, in so far as such information is known by the members of the Coalition or can be reasonably determined by a search of public records, as required by Rule 30.01.b. of the Conjunctive Management Rules.

74. The Surface Water Coalition has since preliminarily identified the names and addresses of approximately 3,000 persons and other entities holding ground water rights that the Coalition allege to be causing material injury to the surface water rights held by or for the benefit of members of the Coalition. On or about April 1, 2005, the Coalition began serving the holders of such ground water rights with its *Petition for Water Right Administration and Designation of the Eastern Snake Plain Aquifer as a Ground Water Management Area* as required by Rule 30.02 of the Conjunctive Management Rules (IDAPA 37.03.11.030.02) and Rule 230 of the Department's rules of procedure (IDAPA 37.01.01.230).

ORDER

The Director enters the following Order in response to the Letter for the reasons stated in the foregoing Findings of Fact and Conclusions of Law.

IT IS HEREBY ORDERED as follows:

1. The watermasters for Water Districts No. 120 and No. 130 are directed to issue written notices by April 22, 2005, or as soon thereafter as practicable, to the holders of consumptive ground water rights in Water Districts No. 120 and No. 130 having priority dates of February 27, 1979, and later and identified to the watermasters by the Department, including consumptive ground water rights for agricultural, commercial, industrial, and municipal uses, excluding in-house culinary uses. The written notices are to advise the holders of such consumptive ground water rights of this Order and to instruct the holders of such rights that they are required to provide replacement water to the members of the Surface Water Coalition as mitigation for out-of-priority depletions, as provided herein, in amounts equal to the annual depletions to the reach gains in the Snake River between the Near Blackfoot Gage and the Minidoka Gage under their rights as determined using the Department's ground water model for the ESPA. The notices are to also advise such right holders that failure to provide sufficient replacement water will result in their diversions being curtailed for the remainder of 2005 or in future years, as provided herein, in accordance with the provisions of Idaho Code §§ 42-602 and 42-607 and the directions and orders of the Director.

2. Holders of ground water rights affected by this Order where the purpose of use is irrigation shall provide the required replacement water through the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, or Bonneville-Jefferson ground water districts. Holders of ground water rights for irrigation that are not members of one of these ground water districts shall be deemed a nonmember participant for mitigation purposes pursuant to H.B. No. 848 (*Act Relating to the Administration of Ground Water Rights within the Eastern Snake River Plain*, ch. 352, 2004 *Idaho Sess. Laws 1052*) and shall be required to pay the ground water district nearest the lands to which the water right is appurtenant for replacement water as mitigation pursuant to Idaho Code § 42-5259.

3. Holders of ground water rights affected by this Order where the purpose of use is commercial, industrial, or municipal may provide the required replacement water through a ground water district as a nonmember participant for mitigation or may separately or jointly provide the required replacement water.

4. The Department shall allocate the amounts of replacement water required as mitigation to members of the Surface Water Coalition. The amount of replacement water required to mitigate diversions of ground water for irrigation shall be provided by the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, or Bonneville-Jefferson ground water districts as follows:

North Snake Ground Water District:	2,400 acre-feet
Magic Valley Ground Water District:	17,800 acre-feet
Aberdeen-American Falls Ground Water District:	58,700 acre-feet
Bingham Ground Water District:	14,900 acre-feet
Bonneville-Jefferson Ground Water District:	7,200 acre-feet

These amounts equal the increase in reach gains in the Snake River between the Near Blackfoot Gage and the Minidoka Gage that would occur over time based on the ground water model simulations described in Finding 127, except for the Aberdeen-American Falls Ground Water District. The required amount of replacement water for the Aberdeen-American Falls Ground Water District is 12.9 percent more than described in Finding 127 to provide replacement water as mitigation for ground water rights for irrigation that are within Water Districts No. 120 and No. 130 but that are not within any of the ground water districts. Nearly all such rights are located east of American Falls Reservoir in an area adjacent to the Aberdeen-American Falls Ground Water District. *See* Finding 130.

5. The required replacement water can be provided over time on an annual basis in amounts at least equal to the increase in reach gains in the Snake River between the Near Blackfoot Gage and Minidoka Gage that would result from curtailment of the affected ground water rights based on simulations using the Department's ground water model for the ESPA. The simulated increase in reach gains in the Snake River from curtailment of affected ground water rights for irrigation in 2005 for the first four years is set forth in Finding 127. The total amount of replacement water provided for mitigation in 2005 shall not be less than 27,700 acre-feet, which equals the amount of the predicted shortage in 2005 set forth in Findings 115 and 116.

6. If all of the replacement water required for mitigation is not provided in 2005, the amount remaining to be provided shall be an obligation for future years and additive to future mitigation requirements, if any, should material injury continue. The amount remaining as a future obligation shall not be cancelled unless the storage space held by the members of the Surface Water Coalition under contract with the USBR fills.

7. The amount of replacement water required, both for 2005 and in future years, can be reduced by foregoing (curtailing) consumptive uses authorized under the affected water rights or other water rights so long as full beneficial use was made under the forgone rights in the prior year.

8. If at any time the mitigation for out-of-priority depletions is not provided as required herein, the associated water rights are subject to immediate curtailment, based on the priorities of the rights, to the extent mitigation has not been provided.

9. As required herein, the North Snake, Magic Valley, Aberdeen-American Falls, Bingham, and Bonneville-Jefferson ground water districts, and other entities seeking to provide replacement water or other mitigation in lieu of curtailment, must file a plan for providing such replacement water with the Director, to be received in his offices no later than 5:00 pm on April 29, 2005. Requests for extensions to file a plan for good cause will be considered on a case-by-case basis and granted or denied based on the merits of any such individual request for extension.

The plan will be disallowed, approved, or approved with conditions by May 6, 2005, or as soon thereafter as practicable in the event an extension is granted as provided in the order granting the extension. A plan that is approved or approved with conditions will be enforced by the Department and the watermasters for Water Districts No. 120 and No. 130 through curtailment of the associated rights in the event the plan is not fully implemented.

10. The Director will monitor water supply requirements and the water supplies available throughout the irrigation season and may issue additional orders or instructions to the watermasters as conditions warrant.

11. The Director will make a final determination of the amounts of mitigation required and actually provided after the final accounting for surface water diversions from the Snake River for 2005 is complete. To the extent less mitigation is provided than was actually required, a mitigation obligation will carry forward to 2006 and be added to any new mitigation determined to be required for 2006. To the extent more mitigation is provided than was actually required, a mitigation credit will carry forward to 2006 and be subtracted from any new mitigation determined to be required for 2006.

12. The Director will make a determination of the extent of injury reasonably likely to occur to members of the Surface Water Coalition from out-of-priority ground water depletions under water rights within water districts annually after April 1, when the USBR and USACE release forecasts for inflow to the Upper Snake River Basin for the period April 1 through July 31, and require mitigation or curtailment as warranted without further demand by members of the Coalition until such time that a permanent mitigation plan may be approved.

13. Mitigation debits and credits resulting from year-to-year mitigation will continue to accrue and carry forward until such time as the storage space held by the members of the Surface Water Coalition under contract with the USBR fills. At that time, any remaining debits and credits will cancel.

14. Mitigation requirements resulting from orders of the Director in response to other pending requests for water rights administration of junior priority ground water rights may be in addition to the mitigation requirements set forth herein.

IT IS FURTHER ORDERED that pursuant to Idaho Code § 67-5247 this Order is made effective upon issuance due to the immediate danger to the public welfare posed by the lack of certainty existing among holders of water rights for the diversion and use of ground water for irrigation from the Eastern Snake Plain Aquifer as to whether water will be available under the priorities of their respective rights during the 2005 irrigation season.

IT IS FURTHER ORDERED that this is a final order of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law pursuant to Idaho Code § 67-5246.

IT IS FURTHER ORDERED that any person aggrieved by this decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days after receipt of written notice of the order, or receipt of actual notice, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Idaho Code § 42-1701A(4).

DATED this 2nd day of May 2005.



KARL J. DREHER
Director

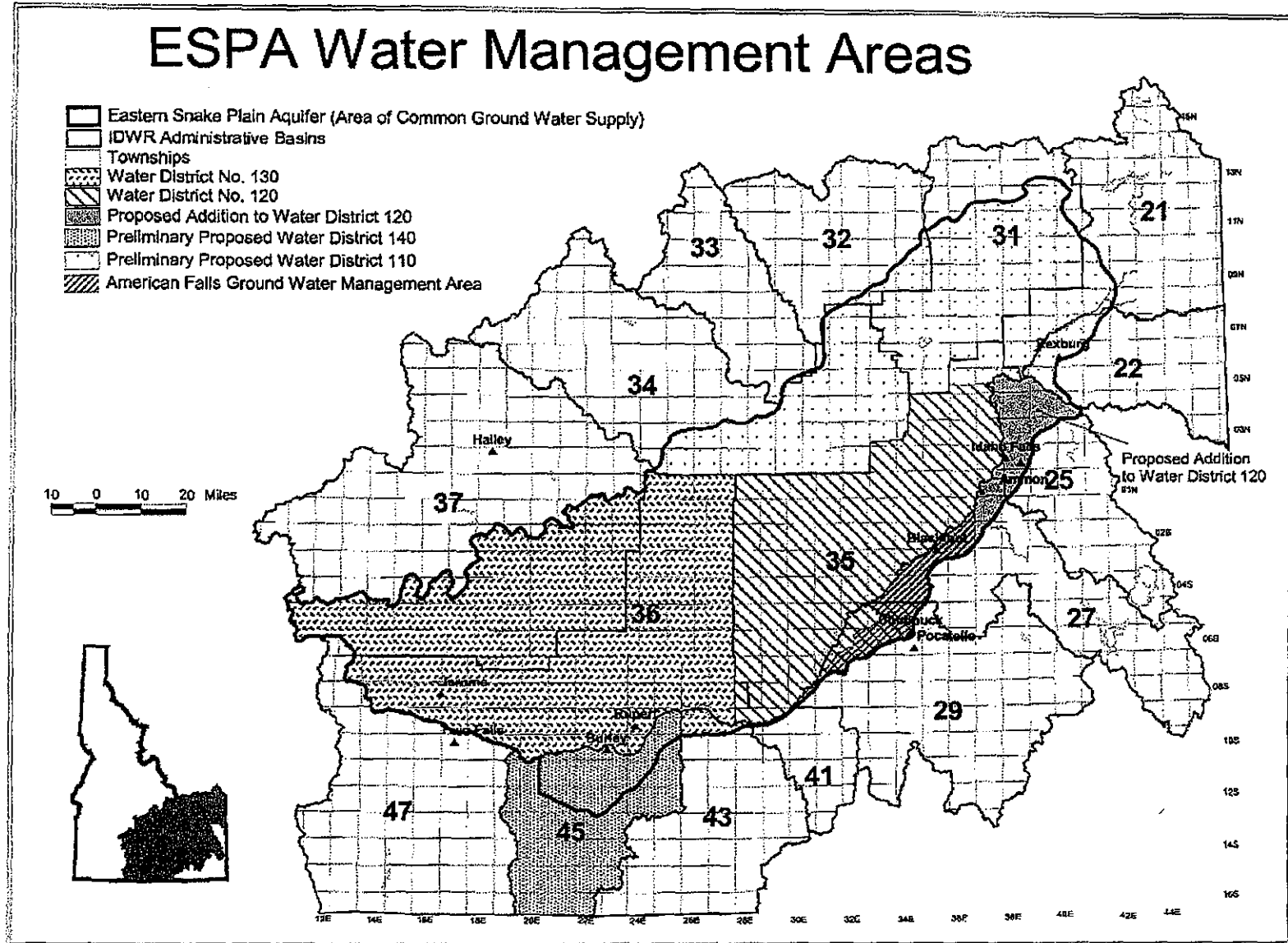


Exhibit H

**IGWA SUMMARY OF POSITIONS
ON DIRECTOR'S ORDERS RELATED TO THE
SURFACE WATER COALITION DELIVERY CALL
EXHIBIT 4000**

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A. AFFIRMATIVE DEFENSES ASSERTED BY GROUNDWATER USERS

1. Local Ground Water Board:

Curtailment orders exceed the Director's authority and are invalid as a matter of law because IDWR failed to form and convene a local ground water board required by Idaho Code § 42-237(b) and § 42-237(d) before any curtailment order was issued.

2. Historical Water Supply:

Senior water right holders are not entitled to a water supply that is enhanced over what was historically available at the time of their original appropriations. The Surface Water Coalition (SWC) wrongfully seeks to establish a water supply greater in quantity and certainty than existed when their rights were established at the expense of groundwater users.

3. Futile Call:

The delivery call results based upon the curtailment orders are speculative and uncertain in quantity and time. The curtailment of ground water users will not result in a useable quantity of water to the senior water right holders because their primary source of supply is not affected by ground water depletion. Thus, curtailing ground water users is futile.

4. Denial of Due Process:

The ground water users' water rights constitute private property rights that cannot be taken or impaired without due process of law. The issuance of the curtailment orders without a hearing, in excess of statutory authority and in violation of Idaho Code § 42-237(b)(d) violates the ground water users' right to due process of law and constitutes a taking in violation of the Constitutions of the State of Idaho and the United States.

B. OUTLINE OF KEY ISSUES FOR DETERMINATION

1. Material Injury:

What constitutes material injury is in dispute and must be determined. The determination of material injury in any year must be based upon the water supply historically available under comparable conditions, the current crop irrigation needs and the senior water right holder's ability to put water to immediate beneficial use without regard to speculative future needs. Ground water users are only responsible for the depletions that they cause that results in material injury to senior water right holders. If a storage water right holder has water to lease to others or to carry-over into the next irrigation season it must be considered a surplus water supply and cannot be the basis for a shortage and material injury claim. The prior appropriation doctrine in Idaho recognizes full economic development of underground resources and if curtailment of junior ground water users will not result in a usable quantity of water by the senior water user then curtailment cannot be ordered.

2. Extent of beneficial use:

Beneficial use without waste is the limit and measure of a water right. A determination must be made of the quantity of water each SWC member is authorized to divert and that can be applied to beneficial use. The quantity shown on the water right is not a guaranteed continuous entitlement, but a maximum limitation, if the water is available. Water availability varies seasonally and annually. When administering water rights, the actual number of irrigated acres, irrigation efficiencies and actual crop needs are considerations necessary to determine what amount of water constitutes a minimum full supply to a senior water right holder.

3. Full water supply:

What constitutes a minimum full supply to each SWC members must be examined and separately determined for natural flow and storage water rights. All available water supplies, including ground water, historic water availability under comparable conditions, yearly and seasonal variability of supply and actual beneficial use all must be considered. Shortages were historically experienced and were planned for by the SWC entities, both before and after the reservoirs were constructed. The SWC is not entitled to secure a guaranteed water supply that is greater in quantity and certainty than historically existed by improperly curtailing ground water users.

4. Storage:

Whether the SWC can compel groundwater users to supply “carry-over” storage for a future use must be determined. If so, the reasonable amount must be established and must consider historical experience. Any impact of ground water diversion on storage supplies resulting in material injury must be established, particularly where the source of storage water is snow and spring run-off.

5. ESPA Ground Water Model:

The reliability and proper use of the ground water model must be determined. The ground water model appears to over predict the effects of ground water pumping on reach gains below Blackfoot. If this is true, it will also over-predict the reach gain increases stemming from curtailing ground water rights.

6. Mitigation Plans:

The groundwater users’ lawful right under the Conjunctive Management Rules to provide replacement water to avoid any curtailment must be confirmed.

Exhibit I

Randall C. Budge, ISB No. 1949
Scott J. Smith, ISB No. 6014
Candice M. McHugh, ISB No. 5908
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
Facsimile: 208-232-6109

Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

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

IN THE MATTER OF DISTRIBUTION OF	)	
WATER TO VARIOUS WATER RIGHTS	)	
HELD BY OR FOR THE BENEFIT OF	)	
A&B IRRIGATION DISTRICT, AMERICAN	)	IGWA'S PROPOSED
FALLS RESERVOIR DISTRICT #2, BURLEY	)	FINDINGS OF FACT AND
IRRIGATION DISTRICT, MILNER	)	CONCLUSIONS OF LAW
IRRIGATION DISTRICT, MINIDOKA	)	
IRRIGATION DISTRICT, NORTH SIDE	)	
CANAL COMPANY AND TWIN FALLS	)	
CANAL COMPANY	)	
_____	)	

COME NOW the Idaho Ground Water Appropriators, Inc. ("IGWA"), Aberdeen American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Clark Jefferson Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, and North Snake Ground Water District (Ground Water Users) on behalf of their respective members, through counsel, and submit the following Proposed Findings of Fact and Conclusions of Law.

12-21-07

incidental recharge from surface water irrigation. Other sources of aquifer recharge include seepage from Snake River and other streams, irrigation, canals and farm fields (about 13%), underflow from tributary basins (about 18%) and rain and snow (about 9%). Therefore, aquifer input is approximately one-third natural inputs and two-thirds irrigation-related inputs. (Exhibit 4100 (*Brendecke Report 12/30/2005*) at 6).

- F18: The source of the natural flow rights historically available to SWC members consists of two components: (a) natural flow of the Snake River that passes Blackfoot during spring runoff periods (aka "flood flow") and (b) reach gain that accrues to the river below Blackfoot. Although the reach gain may be subject to depletion by ground water development, flood flow is not because it consists of spring runoff which flows directly into the river. Other than the October 1900 rights of the Twin Falls Canal Company and the North Side Canal Company and sometimes a small fraction of the March 1903 right of the Minidoka Project, the natural flow water rights of the SWC members are and always have been almost entirely dependent upon flood flows. These post-1903 rights don't have a basis to pursue enhancement of reach gains through curtailment of ground water pumping because they have almost never, since they were first appropriated, been able to utilize those reach gains as a source of supply. Furthermore, even if those reach gains were increased as a result of curtailment, the increased natural flows would first be allocated to the more senior rights of Twin Falls Canal Company and North Side Canal Company. (*Direct Testimony of Brendecke*, at 20-24).
- F19: By 1952, it is estimated that more than 24 million acre feet (MAF) of water had been added to the aquifer as a result of incidental recharge from surface water irrigation waste water. (Exhibit 4100 (*Brendecke Report 12/30/2005*) at 6).
- F20: A&B Irrigation District is composed of a small surface water right and a large ground water right. Part A uses surface storage to irrigate approximately 14,660 acres. Part B uses ground water pumping to supply water to about 50,000 acres. All of A&B's 1939 priority natural flow right is considered to be a "high water right" and only receives water during the spring runoff period after American Falls Reservoir has filled. Historically, the 1939 and 1916 high water rights owned by A&B and other Surface Water Coalition entities were never delivered by the Watermaster prior to 1978 (when Ron Carlson became Watermaster) because they were only on so long as there was "free water" in the river; in other words, so long as there was no need for distribution based on priority. (*Carlson Direct*, at 21-22).
- F21: American Falls Reservoir District #2 (AFRD #2) has very junior surface water rights that are only filled early in the spring. AFRD #2 relies almost entirely on storage in American Falls Reservoir which is implied by the fact that it is organized as a Reservoir District. When high water is available to fill the natural flow right of AFRD #2 it simply has a slightly larger supply than the one anticipated based upon the amount of storage space it accrued in American Falls. Because AFRD #2 water rights are supplied entirely from spring runoff, its water rights are not injured by ground water pumping. (*Carlson Direct*, at 23).

Exhibit J

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

IN THE MATTER OF DISTRIBUTION OF WATER)	
TO VARIOUS WATER RIGHTS HELD BY OR FOR)	
THE BENEFIT OF A&B IRRIGATION DISTRICT,)	OPINION CONSTITUTING
AMERICAN FALLS RESERVOIR DISTRICT #2,)	FINDINGS OF FACT,
BURLEY IRRIGATION DISTRICT, MILNER)	CONCLUSIONS OF LAW
IRRIGATION DISTRICT, MINIDOKA IRRIGATION)	AND RECOMMENDATION
DISTRICT, NORTH SIDE CANAL COMPANY,)	
AND TWIN FALLS CANAL COMPANY)	
_____)	

Hearing was held on the Surface Water Coalition call, and the resulting Director's Orders, commencing January 18, 2008, and concluding February 5, 2008. At issue are the rights and obligations of the Idaho Ground Water Association (IGWA), members of the Surface Water Coalition (SWC), the City of Pocatello, and the United States Bureau of Reclamation (BOR). There is some repetition in the findings of fact and conclusions of law set forth in the various Director's orders and this recommendation. This results from an effort to make this recommendation coherent without repeating verbatim the orders entered by the Directors while defining the major facts, principles and conflicts at issue. This litigation is cast against a background of opposing parties that have high ground from which to plead their cases and either win or lose on positions because there must be decisions based on principles of law and determinations of fact, not because of questionable conduct.

The Surface Water Users have contributed immensely to the development of the State at great expense and risk. The financial commitments they have made to the development and operation of reclamation projects and the continuing improvement of delivery systems are immense. They have opened vast expanses of land to productivity and contributed significantly to the benefit of the State and local communities. They have done so under a state of law that

**OPINION CONSTITUTING FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDATION - 1**

4/29/08

g. The extent to which the requirements of the holder of a senior-priority water right could be met with the user's existing facilities and water supplies by employing reasonable diversion and conveyance efficiency and conservation practices; provided, however, **the holder of a surface water storage right shall be entitled to maintain a reasonable amount of carry-over storage to assure water supplies for future dry years. In determining a reasonable amount of carry-over storage water, the Director shall consider the average annual rate of fill of storage reservoirs and the average annual carry-over for prior comparable water conditions and the projected water supply for the system. (emphasis added).**

h. The extent to which the requirements of the senior-priority surface water right could be met using alternate reasonable means of diversion or alternate points of diversion, including the construction of wells or the use of existing wells to divert and use water from the area having a common ground water supply under the petitioner's surface water right priority.

2. A hindrance to reasonable carry-over storage constitutes material injury. The argument has been made that storage is not a beneficial use of water. The logic of this position is that beneficial use is the measure of a water right, and until there is insufficient water to serve crop needs there is no impingement on beneficial use and no material injury to a water right. The logic has sense to it, but fails. CM Rule 10.14 is broad enough to encompass a storage right, and CM Rule 42.01.g. sets forth the right to carryover storage in enumerating factors that may be considered in determining if there is material injury. Storage water is held to meet crop needs as requirements arise, and that right is protected.

3. Ground water pumping has hindered SWC members in the use of their water rights by diverting water that would otherwise go to fulfill natural flow or storage rights. Once it is established that the Snake River and the Eastern Snake Plain Aquifer are connected the conclusion is inevitable that withdrawal of water from the aquifer reduces flow in the Snake River. At any given time there is a finite amount of water. If it goes one place and is consumed in the growing of crops, it cannot go to another. That does not mean that all water withdrawn from pumping has an adverse effect on surface water users dependent upon the Snake River. Sometimes there is enough water entering the system to fill all needs. In such circumstances conjunctive management is unnecessary or minimal. Times of shortage call the CM Rules into play. The evidence in this case establishes that during recent periods of water shortage ground water pumping has affected the quantity and timing of water available to SWC members. Natural flow rights have been exhausted earlier and storage has been used earlier and more

extensively, limiting the application of water during the irrigation season and diminishing the amount of carryover storage to which the surface water users are entitled.

4. The members of the Surface Water Coalition suffered material injury from ground water pumping in 2004, and it was reasonable to predict material injury in 2005. In determining predicted material injury for 2005 the former Director observed in Finding 109 that none of the members of SWC had “identified lands that are entitled to receive surface water but have not been irrigated or where crops could not be harvested because of shortages in surface water supplies available to members of the Coalition under the members’ various rights. The Coalition simply alleges that material injury is occurring because in recent years members of the Coalition have been unable to divert natural flow at the diversion rates authorized under the members’ rights for as long a period of time as the members otherwise could, but for depletions caused by diversions of ground water under junior priority rights.” However, IDWR staff contacted University of Idaho Agricultural Extension Agents and U.S. Department of Agriculture Farm Service County Directors in Lincoln, Gooding, Jerome, and Twin Falls counties and determined that there were estimated losses of 35% because of shortages in surface water supplies, though not primarily the result of shortages from the Snake River. Findings 110, 111. Reports indicated that “North Side Canal Company has carefully managed water diverted to minimize waste, shareholders have reduced nozzle sizes on sprinkler systems, and that estimated losses in crop production because of shortages in surface water supplies were about 5 percent in 2004.” Finding 112. The FSA Director reported a ten day shut off at the end of May in 2004 for corn growers served by American Falls Reservoir District #2 that had substantial impact on some growers, stressing crops, but yields were near normal. However, the fourth cutting of hay was foregone so that available water could be used to finish corn crops. Estimated crop production losses were to be 15% in 2004. Id. In Jerome County the FSA Director reported that shortages caused only slight declines in crop production. Finding 113. Lands served by the Twin Falls Canal Company had some loss in crop production, the last cutting of hay reduced, and corn crops reduced, though largely because of delayed harvest, not water shortages. Finding 114. What this all adds up to is that water shortages adversely impacted crops and influenced crop decisions, e.g. foregoing a cutting of hay to supply water to corn crops.

Exhibit K

Randall C. Budge, ISB No. 1949
Candice M. McHugh, ISB No. 5908
Scott J. Smith, ISB No. 6014
Thomas J. Budge, ISB No. 7465
RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED
201 E. Center Street
P.O. Box 1391
Pocatello, ID 83201
Telephone: (208) 232-6101
Facsimile: (208) 232-6109

Attorneys for Idaho Ground Water Appropriators, Inc.

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

IN THE MATTER OF DISTRIBUTION)
OF WATER TO VARIOUS WATER)
RIGHTS HELD BY OR FOR THE)
BENEFIT OF A&B IRRIGATION)
DISTRICT, AMERICAN FALLS)
RESERVOIR DISTRICT #2, BURLEY)
IRRIGATION DISTRICT, MILNER)
IRRIGATION DISTRICT, MINIDOKA)
IRRIGATION DISTRICT, NORTH)
SIDE CANAL COMPANY, AND)
TWIN FALLS CANAL COMPANY)
_____)

**IGWA'S MEMORANDUM IN SUPPORT
OF ITS EXCEPTIONS TO OPINION
CONSTITUTING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATION**

COME NOW Idaho Ground Water Appropriators, Inc. and its members ("IGWA") through counsel, and pursuant to Procedure Rule 720.02.b, hereby files *IGWA's Memorandum in Support of Its Exceptions to Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation* ("Memorandum") to the *Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation* filed April 29, 2008, by the Hearing Officer, Justice Gerald F. Schroeder (the "Recommended Order").

Minidoka Irrigation District and 2,907 acres of Burley Irrigation District. Water delivery should be based on acres irrigated, not on shares issued. (Recommended Order at 53).

- Historical information is appropriate to use in the evaluation of the water supply needs of the senior user calling for water. (Recommended Order at 51).
- Twin Falls Canal Company's full headgate delivery is 5/8 inch per share, not 3/4 inch per acre. (Recommended Order at 53).
- The Director has the authority to determine whether or not the calling water right holder is employing reasonable conservation practices and if not, may reduce the amount of water needed by the senior user. (Recommended Order at 56-57).
- The right to reasonable carry-over storage through curtailment does not extend to make up for water that is sold or leased for uses unrelated to the original rights. (Recommended Order at 61, 64). IGWA takes partial exception and asserts that any third party lease, regardless of use or purpose, should not increase the lessors' shortage and thus, increase material injury.
- Replacement water or mitigation plans that underwrite the senior users' water needs are an acceptable form of mitigation. (Recommended Order at 66). Accordingly, the methodology set forth in IGWA's 2007 Replacement Water Plan to Twin Falls Canal Company was clearly validated.

EXCEPTIONS

IGWA takes exception to the following items in the Recommended Order and requests the Director modify the recommendations on these issues accordingly. The following list of exceptions is slightly modified in substance and order from IGWA's Exceptions filed on May 13, 2008.

(1) Material Injury.

No SWC entity suffered material injury because they had sufficient water to meet crop needs and they actually received a supply of water during the recent drought that was greater in quantity and certainty than what was historically available to them.

(2) Aquifer Equilibrium.

The ESPA is at or near equilibrium.

(3) Source of Storage Supply.

Ground water users are only responsible for the depletions they cause that result in material injury to senior water right holders. Ground water pumping cannot affect the timing or amount of snow melt and spring run off which is the source of water for most of the SWC entities and the primary source of storage supplies.

(4) Reasonable Carry-over Storage.

In extended and prolonged periods of drought, reasonable carry-over storage should be zero, especially in light of the fact that predicting reasonable carry-over for more than the next irrigation season would be fraught with error and could result in hording of the water contrary to Idaho law.

(5) AFRD#2 has not Suffered Material Injury.

To the extent that the Recommended Order finds additional injury to AFRD #2, IGWA disputes these findings as being contrary to the weight of the evidence.

(6) Reasonable Conveyance and Diversion Efficiencies.

Twin Falls Canal Company's demand of over 5 acre-feet per acre is unreasonable and curtailing ground water to supply unreasonable conveyance efficiencies is contrary to the Conjunctive Management Rules and Idaho law.

(7) Power Production.

The diversion of water under senior irrigation rights exceeding crop needs early and late in the irrigation season to supply water to junior power production water rights must be considered and must reduce any mitigation obligation of ground water users.

(8) Leases to Third Parties.

Leases to third parties for any reason cannot result in shortage to the SWC entities. If an entity leases water to a third party, that must defeat any finding of material injury to that entity.

(9) Calculation of Evaporation.

When calculating the amount of water available to a storage contract holder, Water District 01 accounting methods include a calculation to account for losses due to evaporation. When determining the amount of water in storage that may be required to be made up by the junior ground water users as reasonable carry-over storage or otherwise, losses due to evaporation bear no relationship to ground water pumping and thus, should not be included in any amount required to be provided by ground water users for any reason.

B. SWC received water greater in quantity and certainty than historically available

The hearing office correctly determined that the quantity contained in a water right is an authorized maximum and not a guaranteed amount available at all times. (cf. Recommended Order at 26, 40, 51, 52 and 67). CM Rule 42.01.a provides that a determination of the amount of water available under a water right requires consideration of the amount of water available in the source when the water rights were first established. In other words, the water right quantity is defined by the beneficial use for which it was originally appropriated and it would not be appropriate to enhance the use of the water right beyond what was historically established. In addition, CM Rule 42.01.c allows consideration of whether or not groundwater pumping affects the timing of when water is available and allows consideration of multi-year impacts. In order to determine whether or not there is an effect on timing of water available to the SWC entities from single or multi-year impact of pumping, examining historical water conditions, prior to and after groundwater development is necessary in order to determine when the SWC entities historically needed and used water. *See also* CM Rule 42.01.e. and g. (“the Director shall consider ... annual carry-over for prior comparable water conditions”). An even more direct statement on point is found in CM Rule 43.03.b, which provides that “[c]onsideration will be given to the history and seasonal availability of water for diversion so as not to require replacement water at times when the surface right historically has not received a full supply, such as during annual low-flow periods and extended drought periods.” Thus, a determination with regard to whether the SWC entities have suffered material injury requires an examination of their respective historical water supplies that existed when their water rights were first established.

The first item of historical import is that, other than the 1900 rights of Twin Falls Canal Company (“TFCC”) and NSCC and sometimes a small fraction of the March 1903 right of the

Minidoka Project, there historically has not been any natural flow available to supply the later priority surface water rights of all other SWC entities. *See* Direct Testimony of Brendecke at 20-24; Direct Testimony of Carlson at 21-27; Testimony of Dreher at 372; Exhibit 4100 at 10-11; and Exhibits 4615, 9723-9729. These post-1903 rights of the SWC entities have no legal basis to curtail groundwater rights to enhance reach gains that have historically never been their source of supply.

The second item of historical import is that, *in dry years long before ground water development*, the SWC entities holding more junior natural flow rights would have anticipated little or no yield and that even the most senior natural flow rights would have anticipated an inability to divert their full decreed amounts. *See* Exhibit 4100 at 11 & 24. Therefore, even before the advent of ground water development, the SWC entities could never have expected their natural flow rights to be satisfied from reach gains in the Snake River arising below Blackfoot. It is unreasonable for the SWC entities to try and do so now through the pending call as such would afford them a water supply greater in quantity and certainty than existed when their rights were established which preceded any groundwater pumping.

The third item of historical import is that, as early as 1946, the SWC entities anticipated continued annual shortages during drought years *even with the development of the reservoir system*. *See* McGrane Testimony at 1407-1408; Exhibit 4100 at 12-13; and Exhibits 4108, 4162, 4164, 7001. Thus, any shortages that occurred in 2005 and 2007 following dry periods was fully expected by the SWC entities without regard to the potential impact of ground water development.

The fourth item of historical import is that a comparison of the 1930 drought which occurred prior to ground water development and the 2000 drought conclusively establishes that

otherwise, the Director should reject the recommendation and find that the ESPA is at or near equilibrium.

(3) Source of Storage Supply

Exception 3. Ground water users are only responsible for the depletions they cause that result in material injury to senior water right holders. Ground water pumping cannot affect the timing or amount of snow melt and spring run off which is the source of water for most of the SWC entities and the principle source of storage supplies.

The Recommended Order correctly determined that TFCC is the only entity of the SWC that is primarily dependent on its natural flow water rights to meet its irrigation needs. (Recommended Order at 10). With a 1900 priority right for 3,000 cfs, TFCC has the largest and most senior surface water right of the SWC entities. It relies primarily upon natural flow to satisfy its irrigation needs and holds only a small storage right. NSCC also has a small 1900 priority right for 400 cfs, but otherwise relies upon storage water. It is undisputed that all other SWC entities primarily rely upon storage water to meet their irrigation requirements. This logically means, as the Recommended Order recognized, that the other SWC entities have relatively junior natural flow water rights that commonly only provide water for their irrigation needs during the runoff period between April and June in years of moderate to good snow pack and that they primarily rely on water from storage. *Id.*

The evidence shows that the source of the natural flow rights historically available to SWC entities consists of two components: (a) natural flow of the Snake River that passes Blackfoot during spring runoff periods (aka "flood flow") and (b) reach gain that accrues to the river below Blackfoot and above Milner. Although the reach gain may be subject to depletion by groundwater development, flood flow is not, because it consists of spring runoff which flows directly into the river from surrounding mountains unaffected by groundwater depletions. During

the normal irrigation season reach gains below Blackfoot to Minidoka total less than the 3400 cfs of the 1900 priority senior water rights owned by TFCC and NSCC. (Dreher Testimony Tr. p. 372: ln 10-18; *Brendecke Direct* at 14, *Carlson Direct* at ; Exhibit 4100). Even if the reach gains between Blackfoot and Neeley were increased as a result of curtailment, the increased natural flows would first be allocated to the more senior water rights of TFCC and NSCC. (Direct Testimony of Brendecke, at 20-24). *See also IGWA Post Hearing Brief and Proposed Findings of Fact and Conclusions of Law* ("Post Hearing Brief") at 11-12. Therefore, only the natural flow rights of TFCC and NSCC can potentially be injured by groundwater depletions affecting reach gains in the Near Blackfoot to Neeley reach during the irrigation season. (*Carlson Direct*, at 12; Dreher testimony Tr. pg. 372, ln 10-18). That being the case, the rights of the other SWC entities have no legal basis to curtail groundwater rights to enhance reach gains that have never been their source of supply or relied upon.

Importantly, the BOR does not have a water delivery call on its water rights which supply the water that fills the various storage facilities on the Snake River. Flood flow from spring rain and snowmelt is the primary source of water that is captured in the BOR storage reservoirs. Inflows to Palisades and Jackson Reservoirs without question cannot physically be affected by ground water pumping because there are no reach gains from the ESPA accruing to the river above those reservoirs. Storable inflows to American Falls Reservoir, which physically include some reach gains from the ESPA, can only be affected by ground water pumping in the winter time because in the irrigation season all reach gains are allocated to the natural flow senior priority water rights held by TFCC and NSCC as discussed above. Although there may be some summertime reach gain decline, it does not appear to be attributable to ground water pumping. (*Brendecke Direct* at 11-14, Exhibit 4145-4148, *see also* Attachment H). As Dr. Brendecke's

Exhibit L

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER)
TO VARIOUS WATER RIGHTS HELD BY OR FOR)
THE BENEFIT OF A&B IRRIGATION DISTRICT,)
AMERICAN FALLS RESERVOIR DISTRICT #2,)
BURLEY IRRIGATION DISTRICT, MILNER)
IRRIGATION DISTRICT, MINIDOKA IRRIGATION)
DISTRICT, NORTH SIDE CANAL COMPANY,)
AND TWIN FALLS CANAL COMPANY)
_____)

**FINAL ORDER REGARDING
THE SURFACE WATER
COALITION DELIVERY CALL**

FINDINGS OF FACT

I. Procedural Background

1. This matter came before the Director of the Department of Water Resources ("Director" or "Department") on January 14, 2005 with the filing of a letter ("Letter") and petition ("Petition") by members of the Surface Water Coalition ("SWC").¹ The Letter and Petition sought administration and curtailment of junior ground water rights and the designation of the Eastern Snake Plain Aquifer ("ESPA") as a Ground Water Management Area.²

2. Intervention in this matter was granted by order of the former Director, Karl J. Dreher, to the following parties: City of Pocatello ("Pocatello"), Idaho Dairymen's Association ("IDA"), Idaho Ground Water Appropriators, Inc. ("IGWA"), State Agency Ground Water Users ("SAGWU"),³ and the United States Bureau of Reclamation ("USBR").

3. On February 14, 2005, the former Director entered the first of a series of orders ("February 2005 Order") in this matter, which provided an initial response to the Letter and Petition. The February 2005 Order was followed by an order issued on May 2, 2005 ("May 2005

¹ The Surface Water Coalition is made up of the A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

² The SWC's request for designation of a Ground Water Management Area was denied by the Director in his initial February 14, 2005 Order ("February 2005 Order"). *February 2005 Order* at 34, ¶ 3. The Hearing Officer did not disturb this conclusion in his April 29, 2008 *Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation*.

³ SAGWU is made up of the departments of Fish & Game, Health & Welfare, Juvenile Corrections, and Transportation.

9/5/08

Order”), which superseded an order issued on April 19, 2005. Based on forecasting from the USBR and the United States Army Corp of Engineers (“USACE”) for the unregulated inflow into the Upper Snake River Basin at the Heise Gage, the May 2005 Order predicted that some members of the SWC would be materially injured by junior ground water pumping and ordered curtailment of junior users in lieu of acceptable replacement water being provided to mitigate for the depletions causing the injury. During the 2005, 2006, and 2007 irrigation seasons, the Director issued seven supplemental orders regarding material injury predictions to the SWC. The foundational findings made by the former Director in the May 2005 Order are the subject of much at issue in this proceeding.

4. Because of requests by the parties for schedule changes, and matters unrelated to the administrative proceeding before the Department, *see American Falls Res. Dist. No. 2 v. Idaho Dept. of Water Resources*, 143 Idaho 862, 875, 154 P.3d 433, 446 (2007), it was not until the summer of 2007 that the parties agreed to a hearing schedule and the appointment of an independent Hearing Officer. *See Order Approving Stipulation and Joint Motion for Rescheduled Hearing* (August 1, 2007).

5. On August 1, 2007, the Director appointed Gerald F. Schroeder to preside as independent hearing officer (“Hearing Officer”) in these matters for the purpose of developing a record and to prepare a recommended order for review by the Director. *Order Appointing Hearing Officer*. The Director “maintain[ed] jurisdiction over the ongoing administration of water rights related to this matter.” *Id.* at 1.

6. On January 16, 2008, a hearing was commenced before the Hearing Officer at the Department. Over the course of approximately fourteen days, evidence and testimony was presented to the Hearing Officer by the Department and participating parties: IGWA, Pocatello, SWC, and USBR. On April 29, 2008, the Hearing Officer entered his *Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation* (“Recommended Order”). In his Recommended Order, the Hearing Officer stated that “Unless modified explicitly or by necessity from the recommendations in this opinion, the findings and conclusions of the Director’s in the various Orders are accepted.” *Recommended Order* at 24. Petitions for reconsideration were filed and considered by the Hearing Officer. *Order Regarding Objections to Recommended Order* (June 10, 2008) (“Response Order”).

II. Exceptions Filed with the Director

7. Exceptions to the Hearing Officer’s orders were filed with the Director by IGWA, Pocatello, SWC, and USBR. The exceptions filed by the parties have been reviewed and considered by the Director. The record developed at the hearing has been reviewed and considered by the Director.

8. Findings of Fact set forth in the Director’s orders in the above-captioned matter, unless expressly discussed and modified herein, are incorporated into this order by reference. Unless discussed, the recommendations of the Hearing Officer are accepted. If an exception is not discussed herein, the Findings of Fact entered previously by the Director and recommendations of the Hearing Officer govern.

III. The Hearing Officer's Recommended Order

A. Replacement Water Plans

9. In his Recommended Order, the Hearing Officer stated that replacement water plans should go through the procedural steps for approval of mitigation plans outlined in Rule 43 of the Department's Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11 ("CM Rules").

The replacement water plan approved by the former Director in the May 5 (sic), 2005 Order and Supplemental Orders is in effect a mitigation plan. However, it does not appear that the procedural steps for approving a mitigation plan were followed. The initial Order was entered in an emergency situation in which there was a call for administration in times of stress on the water supply. It was anticipated that there would be a protocol for the presentation of objections, but litigation over the validity of the Conjunctive Management Rules apparently sidetracked development of the process. At this stage of the proceedings there will be ongoing administration, and the procedural steps for a mitigation plan should be developed. In the absence of a pre-approved mitigation plan, after the Director has made a determination of material injury which would warrant curtailment, a mitigation plan for replacement water or other forms of mitigation may be considered in accordance with the procedural steps of CM Rule 43. If no plan is approved and there is a finding of material injury, curtailment must follow.

Recommended Order at 64-65.

10. The Director agrees with the Hearing Officer that IGWA should file a Rule 43 mitigation plan now that a record has been developed. But the Director also finds it necessary that replacement water plans be an available administrative tool if junior water users are able to provide water to seniors, during the season in which it is needed, in the amount that would have accrued to the senior if curtailment were ordered—thereby making the senior whole during the pendency of the proceedings while not causing irreparable harm to the junior prior to a hearing. Replacement water plans serve a necessary role in the interim period after a delivery call is filed by a senior water user and before a record is developed upon which juniors can base a mitigation plan.

11. In January 2005, the SWC filed its delivery call with the Director. By February, the Director issued his initial order responding to the call but could not predict material injury until the USBR and USACE issued its joint operating forecast. *February 2005 Order* at 33, ¶ 3. Approximately three months later, the Director issued the May 2005 Order. The May 2005 Order was issued prior to a hearing to allow the parties to present evidence and testimony. Based on the Director's review of the delivery call, the predicted forecast, and other information available to him at the time, the Director found that some members of the SWC would be materially injured by junior ground water diversions and ordered involuntary curtailment of junior users holding ground water rights with priorities of February 27, 1979 and later. *May 2005 Order* at 25, ¶ 116; 44, ¶ 53.

12. The Director's order provided, however, that junior ground water users could continue to divert if they provided water in the amount of predicted shortage to members of the SWC that were attributable to their depletions. *Id.* at 45-46, ¶¶ 1-7. To that end, the Director authorized the filing of replacement water plans for approval. *Id.* If a replacement water plan was not received, if the plan was not approved, or if the approved plan did not follow the terms of approval, junior ground water rights would be subject to immediate, involuntary curtailment. *Id.* at 46, ¶ 8. Replacement water plans were filed by IGWA and approved by the Director in each of the years that injury was predicted to members of the SWC.

13. As found by the Hearing Officer, "To date the [storage] system has not run out of water, and it appears there will be water available somewhere to meet irrigators' needs." *Recommended Order* at 6. In its replacement water plans, IGWA has utilized the storage system to provide replacement water to injured members of the SWC.

14. If the Director had required the approval of a Rule 43 mitigation plan as a condition for the junior ground water users to continue diverting after the May 2005 Order, junior ground water users could have been immediately curtailed without a hearing on the SWC delivery call. The curtailment could have been ongoing until IGWA had an understanding of the amount of water owing to members of the SWC under its delivery call, was able to formulate the necessary details for a mitigation plan, and was able to comply with the procedural requirements in Rule 43.

15. Once a record is developed through the hearing process on the delivery call, a formal mitigation plan should be submitted by junior ground water users to mitigate material injury to the senior. Since a Rule 43 mitigation plan serves as a long term solution to material injury to senior water users, it is necessary for junior ground water users to have a proper record upon which to develop the plan because the amount of water sought by the senior in its delivery call may not be the amount attributable to junior ground water depletions. Given the complexities associated with understanding the amount of depletion caused by junior ground water users that results in material injury, junior ground water users would be unable to formulate a Rule 43 mitigation plan that would properly address material injury to senior water users. In the period between the filing of the delivery call and a hearing on the call, the Director should have the discretion not to order curtailment in the absence of a Rule 43 mitigation plan if the Director can quantify material injury to the senior water user. If the junior ground water user is unable to secure and timely provide the predicted shortage in the season of need due to junior ground water depletions, curtailment could follow. Authorizing replacement water plans ensures that the senior water user making the delivery call is made whole during the pendency of the proceeding and the junior is not irreparably harmed prior to a hearing on the call.

B. Timing of Reasonable Carryover

16. In the May 2005 Order, the Director calculated an amount of reasonable carryover for members of the SWC and predicted shortages to that carryover for the 2006 irrigation season. *May 2005 Order* at 26-27, ¶ 118-120. As found by the Hearing Officer,

There has been some confusion caused by the Director's perceived limitation on carryover storage. The Director did not rewrite the contracts the irrigation districts have with BOR or interfere with the right to carryover storage water when available. *The limitation only applies to an amount to be obtained from curtailment or mitigation water from ground water users.* If the irrigation district's needs for carryover can be met without curtailment, there will be zero carryover storage provided by curtailment or replacement. There is still a right to as much carryover as water supplies will provide within the limits of the contract.

Recommended Order at 58 (emphasis added).

17. During the hearing, the former Director stated that the predicted reasonable carryover shortfalls in the May 2005 Order for the 2006 irrigation season should have been supplied by IGWA in the 2005 irrigation season. In the Director's Fifth, Sixth, and Seventh supplemental orders issued in 2007, IGWA has been required to provide any predicted shortfalls to reasonable carryover in the season in which the water can be put to beneficial use.

18. The difficulty in requiring that predicted carryover shortfalls be provided in the irrigation season before the water can be put to beneficial use—some six to twelve months in advance—lies in historical information regarding the reservoir system in the Upper Snake River and has been further emphasized in each year since the SWC filed its delivery call in 2005.

19. As found by the Hearing Officer, "There was an expectation when the reservoirs were built that they would fill approximately two-thirds of the time, and historically they have filled roughly two-thirds of the time." *Recommended Order* at 15. Moreover,

The climate is sometimes generous and sometimes stingy with precipitation, neither of which under the current state of science is predictable for anything more than relatively short terms. Anticipating more than the next season of need is closer to faith than science. Ordering curtailment to meet storage needs beyond the next year is almost certain to require ground water pumpers to give up valuable property rights or incur substantial financial obligations when no need would develop enough times to warrant such action.

....

As indicated, requiring curtailment to reach beyond the next irrigation season involves too many variables and too great a likelihood of irrigation water being lost to irrigation use to be acceptable within the standards implied in AFRD#2.

Id. at 62-63 (emphasis added).

20. In 2005, the Director predicted that certain members of the SWC would experience shortfalls in reasonable carryover in the 2006 irrigation season. *May 2005 Order* at 27, ¶ 120. In 2006, the reservoir space held by members of the SWC mostly filled, thereby obviating any predicted injury to 2006 reasonable carryover. *Third Supplemental Order* at 18-

20, ¶¶ 49, 54-56. No predictions were made as to carryover shortages in 2006 by the former Director for the 2007 irrigation season. In 2007, the Director predicted reasonable carryover shortfalls for 2008, but did not require replacement water to be provided until the 2008 irrigation season. *Fifth Supplemental Order* at 17-18, ¶ 10. In 2008, reservoir space held by members of the SWC again mostly filled.

21. With the amount of fill of the reservoir system, if replacement water for reasonable carryover shortages was provided in 2005 and 2007 for predicted shortages in 2006 and 2008, the water acquired by IGWA would not have been required for use by members of the SWC. It is appropriate to find that replacement water for predicted shortages to reasonable carryover should be provided in the season in which the water can be put to beneficial use, not the season before.

C. Prediction of Material Injury

22. According to the Hearing Officer, “The practicalities of hydrology justify a departure in ground water administration from surface to surface water administration in the interest of irrigators and the public.” *Recommended Order* at 43. The Hearing Officer approved of the former Director’s methodology of establishing a minimum full supply for members of the SWC from which to base his prediction of material injury. “Whether one starts at the full amount of the licensed or decreed right and works down when the full amount is not needed or starts at a base and works up according to need, the end result should be the same.” *Id.* at 44. The Hearing Officer was critical, however, of the former Director’s choice of 1995 as the year for establishing the minimum full supply because “1995 was in the top third of wet years. . . .” *Id.* at 45.

23. “[T]here should be adjustments if the process of establishing a base different from the licensed amount is to be utilized in future administration. These might well have been addressed but for the interruption of the process by challenges to the validity of the Conjunctive Management Rules and the consequent uncertainty in the process.” *Id.* at 44-45. Adjustments for climate variability are necessary in using the minimum full supply methodology. *Id.* at 45-46.

24. “The use of the term ‘minimum full supply’ has become a lightning rod of discontent for all parties.” *Id.* at 51. The Director agrees that the term minimum full supply should be changed. In order to be more consistent with the CM Rules, the term that will replace minimum full supply is reasonable in-season demand.

25. Because of the need for ongoing administration, the Director will issue a separate, final order before the end of 2008 detailing his approach for predicting material injury to reasonable in-season demand and reasonable carryover for the 2009 irrigation season. An opportunity for hearing on the order will be provided.

D. ESPA Ground Water Model

26. Once the Director calculated the amount of water predicted to not be available to the SWC, the Hearing Officer found that the Director properly used the ESPA ground water model to arrive at a priority date that would “remediate the material injury” in the impacted reach of the Snake River. *Recommended Order* at 32. Junior ground water users can only be responsible for replacing the amount of water that the ESPA ground water model predicts would accrue to a particular reach of the Snake River as a result of curtailment. *May 2005 Order* at 27-28, ¶¶ 123-124. The Hearing Officer also found that the ESPA ground water model represents the best science available for purposes of conjunctive administration and that the Director properly applied a ten percent margin of error to avoid curtailing junior ground water users “who might have no effect on enhancing reach gains.” *Id.* at 33.

27. Findings of Fact later determined to be Conclusions of Law are herein made as Conclusions of Law.

CONCLUSIONS OF LAW

1. Conclusions of Law set forth in the Director’s orders in the above-captioned matter, unless expressly discussed and modified herein, are incorporated into this order by reference. Unless discussed, the recommendations of the Hearing Officer are accepted. If an exception is not discussed herein, the Conclusions of Law entered previously by the Director and recommendations of the Hearing Officer govern.

2. The independent Hearing Officer in this matter was appointed by the Director pursuant to IDAPA 37.01.01.410, -413, and the provisions of chapter 52, title 67, Idaho Code. According to IDAPA 37.01.01.720, “Recommended Orders,” “Recommended orders are orders issued by a person other than the agency head that will become a final order of the agency only after review of the agency head (or the agency head’s designee) pursuant to Section 67-5244, Idaho Code.

3. Idaho Code § 67-5244(3), “Review of recommended orders,” states that “The agency head on review of the recommended decision shall exercise all the decision-making power that he would have had if the agency head had presided over the hearing.”

4. “The agency’s experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.” Idaho Code § 67-5251; IDAPA 37.01.01.600.

5. Idaho Code § 42-602 states that “The director of the department of water resources shall have discretion and control of the distribution of water from all natural sources . . . The director of the department of water resources shall distribute water . . . in accordance with the prior appropriation doctrine.” According to the Hearing Officer, “It is clear that the Legislature did not intend to grant the Director broad powers to do whatever the Director might think right. However, it is clear also that the Legislature [in Idaho Code § 42-602] did not intend to sum up water law in a single sentence of the Director’s authority.” *Recommended Order* at

38. The Idaho Supreme Court has recently stated, "Given the nature of the decisions which must be made in determining how to respond to a delivery call, there must be some exercise of discretion by the Director." *American Falls* at 875, 154 P.3d at 446.

6. While replacement water plans are not listed in the CM Rules, the former Director appropriately exercised his discretion in authorizing the process as an interim measure for providing mitigation to senior water users before the Director could conduct a hearing to determine the extent of material injury. The CM Rules apply when a delivery call is made by a senior surface or ground water user against the holder of a junior ground water right. CM Rule 20.04. CM Rule 20.03 states:

These rules integrate the administration and use of surface and ground water in a manner consistent with the traditional policy of reasonable use of both surface and ground water. The policy of reasonable use includes the concepts of priority in time and superiority in right being subject to conditions of reasonable use as the legislature may by law prescribe as provided in Article XV, Section 5, 7, Idaho Constitution, and full economic development as defined by Idaho law. An appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water as described in this rule.

7. CM Rule 42 lists eight factors that may be considered by the Director in determining whether junior ground water rights are causing material injury to senior water rights. As affirmed by the Hearing Officer, "Contrary to the assertions of the Surface Water Coalition, depletion does not equate to material injury. Material injury is a highly fact specific inquiry that must be determined in accordance with IDAPA conjunctive management rule 42." *May 2005 Order* at 43, ¶ 47.

8. CM Rule 10.14 defines the term "Mitigation Plan" as follows: "A document submitted by the holder(s) of a junior-priority ground water right and approved by the Director as provided in Rule 043 that identifies actions and measures to prevent, or compensate holders of senior-priority water rights for, material injury caused by the diversions and use of water by the holders of junior-priority ground water rights within an area of common ground water supply."

9. CM Rule 43 lists the necessary requirements for a mitigation plan. One factor that the Director may consider in his review of the plan is "Whether the mitigation plan will provide *replacement water*, at the time and place required by the senior-priority water right, *sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy the rights of diversion from the surface or ground water source.*" CM Rule 43.03.b (emphasis added).

10. The authority of the Director to allow junior ground water users to continue diverting after the delivery call was filed by the SWC and before a record was developed upon which to base a mitigation plan is rooted in the principle that if a senior water user can be made whole during the pendency of the proceeding, curtailment of the junior, which would result in

irreparable harm prior to a hearing, should not be ordered. This concept was illustrated by the former Director during cross-examination by an attorney for the Surface Water Coalition:

Q: So a replacement water provision is merely a subset of a kind of mitigation plan?

A: Yes. To some extent. But—and I believe we talked about this in my deposition as well. There's some confusion over the use of the word "mitigation plan" in the rules, versus the more general use of the word mitigation.

A junior can always replace his depletions to the system and not face curtailment. Why? Because if he actually replaces his depletion, there is no injury. He doesn't cause injury if he's replaced his depletion. And yet, that's a form of mitigation, but it's not the kind of mitigation plan that's envisioned under the rules.

And so what we were devising here in this May 2d Order was along the lines of this most general type of mitigation rather than a formal mitigation plan that's called for under the rules.

Q: Well, if I understand correctly, from what you told me in the deposition, that there's a couple of general propositions. A junior rightholder in a prior appropriation state has a right it recognizes that in times of scarcity the right may be curtailed?

A: Correct.

Q: Okay. And then if replacement water is not provided up front, then they'll have to curtail, or if there's not a mitigation plan they'll have to curtail; isn't that correct?

A: Yes, that's correct.

Q: Then you've accepted replacement water plans, but those had to be submitted for director approval or there would be the remedy of curtailment subsequent to the order; is that correct?

A: That was for the purpose of ensuring that the senior surface rightholders were, in fact, going to receive what it is I thought they needed to receive in order for the out-of-priority diversion to continue.

Q: But those subsets—oh, excuse me. I'll rephrase this.
Those replacement water plans, even though they require director approval, in your view, were not mitigation plans that required the due process divisions that are in Rule 43, I believe.

A: Correct. Because the due process under the approach that I had outlined came in a subsequent hearing.

Transcript, Volume 1, pages 161-163.

11. As stated in *American Falls*, "Typically the integration of priorities means limiting groundwater use for the benefit of surface water appropriators because surface water generally was developed before groundwater. The physical complexities of integrating priorities often have parallels in the administration of solely surface water priorities. The complications are just more frequent and dramatic when groundwater is involved." *American Falls* at 877, 154 P.3d at 448 (citing Douglas L. Grant, *The Complexities of Managing Connected Surface and Ground Water Under the Appropriation Doctrine*, 22 Land & Water L. Rev. 63, 73 (1987)).

12. If the Director had not authorized replacement water plans but instead required the filing of a Rule 43 mitigation plan, junior ground water users could have been curtailed from the time the May 2005 Order was issued until a plan was filed and an order on the plan issued. If junior ground water rights had been curtailed, the SWC would have realized some benefit from increased reach gains in the Snake River. However, unlike curtailment in a surface water to surface water delivery call, curtailment in a conjunctive management call would not provide immediate and complete relief. "When water is diverted from a surface stream, the flow is directly reduced, and the reduction is soon felt by downstream users unless the distances involved are great. When water is withdrawn from an aquifer, however, the impact elsewhere in the basin or on a hydrologically connected stream is typically much slower." *Id.* (citing Douglas L. Grant, *The Complexities of Managing Connected Surface and Ground Water Under the Appropriation Doctrine*, 22 Land & Water L. Rev. 63, 74 (1987)). "Curtailment of the ground water user may well not put water into the field of the senior surface water user in time to remediate the damage caused by a shortage, whereas the curtailment is devastating to the ground water user and damaging to the public interest which benefits from a prosperous farm economy." *Recommended Order* at 43.

13. By authorizing replacement water plans, injured members of the SWC were made whole during the season of need by IGWA securing surface water for use by the SWC. Because ground water does not return to the system as quickly as surface water, injured members of the SWC received more water during the season of need through the replacement plan process than they would have received through curtailment. Junior and senior water rights are valuable real property rights that are afforded the protections of due process. Idaho Code § 55-101(1). "It is the pride of this republic that no man can be deprived of his property without due process of law, and the poorest citizen can find redress for an unlawful injury caused by his wealthy neighbor by appealing to the courts of his county." *Hill v. Standard Mining Co.*, 12 Idaho 223, 239, 85 P. 907, 911-12 (1906). Had junior ground water users been involuntarily curtailed without the ability to provide replacement water, junior ground water users would have been irreparably harmed prior to a hearing on the delivery call filed by the SWC.

14. Now that a record has been developed, IGWA should file a Rule 43 mitigation plan to mitigate material injury to the SWC. But during the time between the filing of a delivery call by a senior water user and the development of a record, it was proper for the former

ORDER

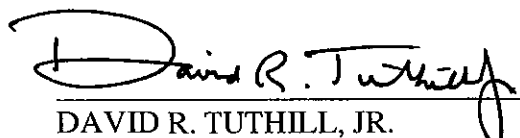
Based upon and consistent with the foregoing, the Director hereby orders as follows:

That the findings of fact and conclusions of law entered herein, and the findings of facts and conclusions of law entered by the former Director and the Hearing Officer in these matters, unless discussed and modified in this FINAL ORDER, are hereby accepted. All other requests for relief, unless specifically discussed herein are hereby denied.

That this is a FINAL ORDER of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law pursuant to Idaho Code § 67-5246.

IT IS FURTHER ORDERED that pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by the final order or orders previously issued by the Director in this matter may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which a hearing was held, the final agency action was taken, the party seeking review of the order resides, or the real property or personal property that was the subject of the agency action is located. The appeal must be filed within twenty-eight (28) days: (a) of the service date of the final order; (b) of an order denying petition for reconsideration; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

DATED this 5th day of September 2008.


DAVID R. TUTHILL, JR.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September 2008, the above and foregoing, was served by the method indicated below, and addressed to the following:

TOM ARKOOSH
CAPITOL LAW GROUP
PO BOX 2598
BOISE ID 83701-2598
(208) 424-8873
tarkoosh@capitolawgroup.net

(x) U.S Mail, Postage Prepaid
() Facsimile
(x) E-mail

W. KENT FLETCHER
FLETCHER LAW OFFICE
PO BOX 248
BURLEY ID 83318-0248
(208) 878-2548
wkf@pmt.org

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

ROGER D. LING
LING ROBINSON
PO BOX 396
RUPERT ID 83350-0396
(208) 436-6804
rdl@idlawfirm.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

JOHN ROSHOLT
TRAVIS THOMPSON
BARKER ROSHOLT
113 MAIN AVE WEST STE 303
TWIN FALLS ID 83301-6167
(208) 735-2444
jar@idahowaters.com
tlr@idahowaters.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

JOHN SIMPSON
BARKER ROSHOLT
PO BOX 2139
BOISE ID 83701-2139
(208) 344-6034
jks@idahowaters.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

RANDY BUDGE
CANDICE MCHUGH
RACINE OLSON
PO BOX 1391
POCATELLO ID 83204-1391
rcb@racinelaw.net
cmm@racinelaw.net

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

SARAH KLAHN
WILLIAM A HILLHOUSE II
KELLY SNODGRASS
WHITE JANKOWSKI
511 16TH ST STE 500
DENVER CO 80202
sarahk@white-jankowski.com
billh@white-jankowski.com
kellys@white-jankowski.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

DEAN TRANMER
CITY OF POCATELLO
P.O. BOX 4169
POCATELLO, ID 83205
dtranmer@pocatello.us

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

KATHLEEN CARR
U.S. DEPT INTERIOR
960 BROADWAY STE 400
BOISE ID 83706
(208) 334-1378

(x) U.S. Mail, Postage Prepaid
() Facsimile
() E-mail

MATT HOWARD
US BUREAU OF RECLAMATION
1150 N CURTIS ROAD
BOISE ID 83706-1234
(208) 378-5003
mhoward@pn.usbr.gov

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

MICHAEL C. CREAMER
GIVENS PURSLEY
601 W BANNOCK
PO BOX 2720
BOISE ID 83701-2720
mcc@givenspursley.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

MICHAEL GILMORE
ATTORNEY GENERAL'S OFFC
PO BOX 83720
BOISE ID 83720-0010
(208) 334-2830
mike.gilmore@ag.idaho.gov

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

LYLE SWANK
IDWR
900 N SKYLINE DR
IDAHO FALLS ID 83402-6105
(208) 525-7177
lyle.swank@idwr.idaho.gov

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

ALLEN MERRITT
CINDY YENTER
IDWR
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3033
(208) 736-3037
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

JOSEPHINE BEEMAN
BEEMAN & ASSOC.
409 W JEFFERSON
BOISE ID 83702
(208) 331-0954
jo.beeman@beemanlaw.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

TERRY UHLING
JR SIMPLOT CO
999 MAIN STREET
BOISE ID 83702
tuhling@simplot.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

JAMES TUCKER
IDAHO POWER CO
1221 W IDAHO ST
BOISE ID 83702
jamestucker@idahopower.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

JAMES LOCHHEAD
ADAM DEVOE
BROWNSTEIN HYATT
410 17TH ST 22ND FLOOR
DENVER CO 80202
jlochhead@bhf-law.com
adevoe@bhf-law.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

Exhibit M

Jeffrey C. Fereday (Idaho State Bar # 2719)
Michael C. Creamer (Idaho State Bar # 4030)
John M. Marshall (Idaho State Bar # 5628)
Christopher H. Meyer (Idaho State Bar # 4461)
Brad V. Sneed (Idaho State Bar # 6254)
GIVENS PURSLEY LLP
601 Bannock Street, Suite 200
P.O. Box 2720
Boise, ID 83701-2720
Telephone: (208) 388-1200
Facsimile: (208) 388-1300

Attorneys for Idaho Ground Water Appropriators, Inc.

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

AMERICAN FALLS RESERVOIR DISTRICT
#2, A & B IRRIGATION DISTRICT, BURLEY
IRRIGATION DISTRICT, MINIDOKA
IRRIGATION DISTRICT, AND TWIN FALLS
CANAL COMPANY,

Plaintiffs,

and

THOUSAND SPRINGS WATER USERS
ASSOCIATION, INC., RANGEN, INC.,
CLEAR SPRINGS FOODS, INC.

Plaintiff-Intervenors,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and KARL DREHER, its
Director,

Defendants

and

IDAHO GROUND WATER
APPROPRIATORS, INC.

Defendant-Intervenor.

Case No. CV-2005-600

**IGWA'S MEMORANDUM IN
RESPONSE TO PLAINTIFFS'
MOTIONS FOR
SUMMARY JUDGMENT**

RECEIVED DEC 06 2005

Boise Irrigation and Land Co. v. Stewart, 10 Idaho 38, 48, 77 P. 25, 27 (1904) (emphasis added).

The right to appropriate water to “beneficial uses” extends the priority protection to the usufruct, not to the water itself.

It may be conceded that the waters of the state belong to the public, and that the private right which the individual acquires by appropriation or purchase is usufructuary only, and further that at any given time the extent of his reasonable need is the measure of the maximum amount he is entitled for the time being to divert from the stream or to receive and use.

Caldwell v. Twin Falls Salmon River L. & W. Co., 225 F. 584, 595 (1915) (emphasis added).

The existence of a water right, whether decreed or licensed, is one thing, but its exercise as against other water rights is quite another. This area of water law is called administration. Administration has nothing to do with determining the existence or elements of the right, with “readjudicating” the entitlement, or with “looking behind” the decree, as Plaintiffs continuously argue in their challenge of the Rules. Rather, if the Director is to “equally guard all the various interests involved,” he must have authority to determine whether and how to curtail a valid, vested water right so that water will go to a more senior user who needs it. As a matter of a constitutional and statutory mandate, this requires a determination of whether beneficial use is occurring.

B. Plaintiffs ask this Court to ignore the actual language of section 42-607 and other portions of Chapter 6.

Plaintiffs also argue that the Rules impermissibly fail to provide for the “immediate administration required by the . . . water distribution statutes, I. C. §§ 42-602, 607.” *See, e.g.*, Plaintiffs’ Br. at 22. Plaintiffs’ argument is not supported by the plain language of these provisions or Idaho’s prior appropriation doctrine.

Exhibit N

CIVIL NO. 6117
ORDER DIRECTING
PUBLICATION OF NOTICE
OF PENDENCY OF ACTION
IN THE DISTRICT COURT OF
THE TWELFTH JUDICIAL
DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE
COUNTY OF FREMONT

ABERDEEN-SPRINGFIELD CANAL COMPANY, a corporation, et al, Plaintiffs, vs. HENRY EAGLE, Watermaster, Water District No. 36 State of Idaho, Defendant.

NOTICE IS HEREBY GIVEN that on the 21st day of February, 1967, an action was filed in the District Court of the Twelfth Judicial District of the State of Idaho, in and for the County of Fremont, pursuant to Idaho Code Section 42-1405, seeking a supplemental adjudication of the waters of the Snake River and its tributaries.

This action seeks a court decree which will supplement two existing court decrees in the Upper Snake River Valley, entitled (1) "Rexburg Irrigation Company, et al, plaintiffs vs. Teton Irrigation Canal Company et al, defendants, entered in the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Fremont, on the 19th day of December, 1910, and signed by District Judge J. M. Stevens," and (2) "Woodville Canal Company, plaintiff, vs. Clark and Edwards Canal and Irrigating Company, et al, defendants, entered in the United States District Court for the State of Idaho, Eastern Division on the 25th day of June, 1929, and signed by District Judge Charles C. Cavanah.

1. Count One seeks a decree which will adjudicate the water of the Snake River and its tributaries to the following companies, districts and persons in the following amounts (listed below as cubic feet per second of time) with a priority date of April 1, 1939:

Main River, Upper Valley
Aberdeen-Springfield Canal Compa-

ny, 220; Rebecca Holden, 6; Blackfoot Irrigation Co., 100; Bramwell Ditch Co., 4; Butler Island Canal Co., 16; Butte & Market Lake Canal Co., 120; Clark and Edwards Canal Co., 5; Corbett Slough Ditch Co., 13; Danskin Ditch Co., 80; Dilts Irrigation Co., Ltd., 6; Dewey Fox, 6.

Harrison Canal and Irrigation Co. 55; Marvon M. Newby, 6; Idaho Irrigation District, 130; Marvin M. Jackson, 5; William S. Holden, 8; Ted Blossch, Marvel Johnson and V. E. Hier, 4; LaBelle Irrigation Co., 30; Liberty Park Irrigation Co., 20; Long Island Irrigation Co., 35; Robert D. Mackay, 4; John L. Nelson, Adrian Nelson, Enven Scott, Velma Anderson and Laura Anderson, 5; New Sweden Irrigation District, 220; Carl Johnson, 4; Utah-Idaho Sugar Co., 21; Progressive Irrigation District, 80; Reid Canal Co., 35.

Riverside Ditch Co., 50; Shattuck Irrigation Co., 16; Sam Sakaguchi, 2; Snake River Valley Irrigation District, 100; Texas Slough Irrigating Canal Co., 20; R. Duwayne Scott, 9; West LaBelle Irrigation Co., 35; Ja-

AFFIDAVIT OF PUBLICATION
The Rigby Star

STATE OF IDAHO,

ss.

County of Jefferson

I, Hope B. Jones, do solemnly swear that I am the printer of THE RIGBY STAR, a weekly newspaper as defined by Idaho Codes annotated section 58-106 as amended, and that said newspaper is a weekly newspaper, printed and published at Rigby, Jefferson County, Idaho, having a general circulation in said county and that said newspaper has been printed and published as a weekly newspaper, in said county for more than 78 consecutive weeks prior to the first publication of the attached notice.

And affiant further says that said attached notice, advertisement or publication as per clipping attached, was published in said newspaper in the regular and entire issue thereof, and not in any supple-

ment issue thereof, for Three consecutive issues thereof; first publication having been made on the

23rd day of March, 1967
and the last publication on the

6th day of April, 1967

And affiant further says that at the times herein mentioned said newspaper was made up of at least four pages of at least five columns each, printed from type matter, of at least seventeen and three-fourths inches depth; and that there are at least two hundred bona fide subscribers in Jefferson County.

Hope B. Jones

Subscribed in my presence and sworn to before me this 6th

day of April, 1967
(SEAL)

R. H. Fournier
Notary Public for the State of Idaho,
Residence and P.O. Address Rigby Idaho.

My commission expires _____, 19__

Publication Fee: \$_____

MY COMMISSION EXPIRES JULY 15, 1969

Enterprise Irrigation District, 29; Ralph D. Miller, 6; Farmers Friend Canal Co., Ltd., 9; Salem Union Canal Co., 15; Egin Irrigating Co., 23; Independent Canal Co., Ltd., 35; Pincock-Byington Canal Co., 38; Pincock-Garner Ditch Company, 4; Fall River Irrigation Co., 32; St. Anthony Union Canal Co., 24; Consolidated Farmers Canal Company, 70; Wilford Irrigation and Mfg. Co., 50

D. F. Richards, 10; D. V. Hagenbarth, 6; Al Frazier, 2; Saurey-Sommer Ditch by LeRoy Saurey, 9; Farmers Own Ditch Co., 12; Teton Irrigation and Mfg. Company, 9; George Bauer, Benjamin Stewart, Andrew Stewart, Annie Wright, Boyd Hollist and Alice P. Birch, operating as Stewart Canal, 30.

2. Count Two requests that the Court ratify, confirm, approve and decree binding upon all the parties hereto the following paragraphs which are common to each amended contract entered between the parties hereto and the United States of America Bureau of Reclamation for the Minidoka and Palisades Projects, Idaho, to-wit:

A. Saving of Winter Water; Special Storage Right.

B. Consent to American Falls, Jackson Lake Exchange and Re-definition of Jackson Storage Rights.

C. Temporary Storage and Exchange of Water; Release of Jackson Lake and Palisades Water for Power Production.

D. Priority of Certain Existing and Future Water Rights.

That this cause will be brought on for hearing in open court at 2:00 o'clock P. M. on the 19th day of April, 1967, at which time any person may appear and defend against said rights as above set out.

IT IS FURTHER ORDERED that Notice of the Pendency and purpose of said action be published once a week for three successive weeks in the following newspapers:

Fremont County Chronicle-News, Rexburg Standard and Journal, The Rigby Star, Teton Valley News, The Post-Register, The Blackfoot News.

Dated this 14 day of March, 1967.

Willard C. Burton, District Judge of the Twelfth Judicial District of The State of Idaho.

Pub.: Mar. 23, 30, Apr. 6, 1967

pany, et al, plaintiffs, vs. Teton
Irrigation Co. Company, et al,
defendants, entered in the Dis-
trict Court of the Sixth Judicial
District of the State of Idaho, in
and for the County of Fremont,
on the 19th day of December,
1910, and signed by District Judge
J. M. Stevens, and the Wood-
ville Canal Company, plaintiff,
vs. Clark & Edwards Canal and
Irrigating Company, et al,
defendants, entered in the United
States District Court for the
State of Idaho, Eastern Division,
on the 25th day of June, 1929,
and signed by District Judge
Charles C. Cavanaugh.

1. Count One seeks a decree
which will adjudicate the water
of the Snake River and its trib-
utaries to the following compan-
ies, districts and persons in the
following amounts (listed below
as cubic feet per second of time)
with a priority date of April 1,
1933:

Main River, Upper Valley	
Aberdeen-Springfield	
Canal Company	230
Rebecca Holden	6
Blackfoot Irrigation Co.	100
Bramwell Ditch Co.	4
Butler Island Canal Co.	16
Butte & Market Lake	
Canal Co.	120
Clark & Edwards	
Canal Co.	5
Corbett Slough Ditch	
Co.	13
Danskin Ditch Co.	80
Dilts Irrigation Co., Ltd.	6
Dewey Fox	6
Harrison Canal &	
Irrigation Co.	55
Marvon M. Newby	6
Idaho Irrigation District	130
Marvin M. Jackson	5
William S. Holden	8
Ted Bloch, Marvel	
Johnson and V. E. Hier	4
LaBelle Irrigation Co.	30
Liberty Park Irrigation Co.	20
Long Island Irrigation Co.	35
Robert D. Mackay	4
John L. Nelson, Adrian	
Nelson, Elven Scott	
Velma Anderson and	
Laura Anderson	5
New Sweden Irrigation	
District	220
Carl Johnson and Co.	4
Utah Idaho Sugar Co.	21
Prater and Development	
Company	80
Red Canal Company	35
Snake River Valley	
Irrigation Co.	50
Snake River Valley	
Irrigation Co.	16
Snake River Valley	
Irrigation Co.	2
Snake River Valley	
Irrigation Co.	100
Snake River Valley	
Irrigation Co.	20
Snake River Valley	
Irrigation Co.	9
Snake River Valley	
Irrigation Co.	35
Snake River Valley	
Irrigation Co.	2

Henrys Fork and Tributaries

The Blackfoot News
Dated this 14 day of May,
1967.

(S) Willard C. Burton
District Judge of the Twelfth
Judicial District of The
State of Idaho
March 24, 31 and April 7
(312)

AFFIDAVIT of PUBLICATION

County of Bingham
State of Idaho

} ss.

I, Drury R. Brown do solemnly

swear that I am the publisher of
The Blackfoot News which is a daily newspaper of gen-
eral circulation published each day except Saturday and
Sunday at Blackfoot, Bingham County, Idaho, said news-
paper having been so published at Blackfoot aforesaid
for more than one year past; that said newspaper here-
tofore complied with all the provisions of Chapter 154 of
the Sessions Laws of Idaho of 1933, approved March 11,
1933, and duly designated, pursuant to law, a particular
day of the week as the day on which legal notices re-
quired by law or by the order of any Court of compe-
tent jurisdiction within the State of Idaho shall be pub-
lished to-wit: Friday of each week; that the notice at-
tached hereto and which is a part of this affidavit and
part of the proof of publication was, published in said

Friday issue of said newspaper 3 consecutive
weeks, the first publication having been made on
the 24th day of March, 1967,

and the last publication having been made on the
7th day of April, 1967; that said
notice was published in the regular and entire issue of
every number of the paper as aforesaid during the per-
iod and time of publication, and that notice was pub-
lished in the newspaper and not in a supplement.

Subscribed and sworn to before me this 7th

day of April, 1967

Sharon J. Olson
Notary Public for the State of Idaho,
Residing at Blackfoot, Idaho

My commission expires

January 10th, 1969

Ralph D. Miller	6
Farmers Friend Canal Co., Ltd.	9
Salem Union Canal Co.	15
Egin Irrigating Co.	23
Independent Canal Co., Ltd.	35
Pincock-Byington Canal Co.	38
Pincock-Garner Ditch Company	4
Fall River Irrigation Co.	32
St. Anthony Union Canal Co.	24
Consolidated Farmers Canal Company	70
Willford Irrigation & Mfg. Co.	50
D. F. Richards	10
D. V. Hagenbarth	6
Al Frazier	2
Saurey-Sommer Ditch by LeRoy Saurey	9
Farmers Own Ditch Co.	12
Teton Irrigation & Mfg. Company	9
George Bauer, Benjamin Stewart, Andrew Stewart, Annie Wright, Boyd Hollist and Alice P. Birch, operating as Stewart Canal	30

IN THE DISTRICT COURT
OF THE TWELFTH
JUDICIAL DISTRICT
OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF
FREMONT

Civil No. 6117
ORDER DIRECTING PUBLICA-
TION OF NOTICE OF PENDEN-
CY OF ACTION

ABERDEEN - SPRINGFIELD
CANAL COMPANY, a corpora-
tion, et al, Plaintiffs,

vs.

HENRY EAGLE, Watermaster,
Water District No. 36, State of
Idaho, Defendant.

NOTICE IS HEREBY GIVEN
that on the 21st day of February,
1967, an action was filed in the
District Court of the Twelfth Ju-
dicial District of the State of Ida-
ho, in and for the County of Fre-
mont, pursuant to Idaho Code
Section 42-1405, seeking a sup-
plemental adjudication of the
waters of the Snake River and its
tributaries.

This action seeks a court de-
cree which will supplement two
existing court decrees in the Up-
per Snake River Valley, entitled
(1) "Rexburg Irrigation Com-

2. Count Two requests that the
Court ratify, confirm, approve
and decree binding upon all the
parties hereto the following para-
graphs which are common to each
amended contract entered be-
tween the parties hereto and the
United States of America Bureau
of Reclamation for the Minidoka
and Palisades Projects, Idaho,
to-wit:

A. Saving of Winter Water;
Special Storage Right;

B. Consent to American Falls-
Jackson Lake Exchange and Re-
definition of Jackson Lake Stor-
age Rights;

C. Temporary Storage and Ex-
change of Water; Release of Jack-
son Lake and Palisades Water
for Power Production;

D. Priority of Certain Exist-
ing and Future Water Rights.

That this cause will be brought
on for hearing in open court at
2:00 o'clock p.m. on the 19th day
of April, 1967, at which time
any person may appear and de-
fend against said rights as above
set out.

IT IS FURTHER ORDERED
that Notice of the Pendency and
purpose of said action be pub-
lished once a week for three
successive weeks in the follow-
ing newspapers:

Fremont County Chronicle -
News

Rexburg Standard & Journal

The Rigby Star

Teton Valley News

The Post-Register

**AFFIDAVIT OF
PUBLICATION**

State of Idaho }
County of Fremont } ss.

L.B. HUNSAKER

being first duly sworn, upon his oath, deposes and says:

That he is the OWNER of The Chronicle-News, a newspaper as defined by Idaho Codes Annotated, section 58-106, as amended, and that said newspaper is a weekly newspaper printed and published at St. Anthony, in Fremont County, Idaho, having a general circulation in said county, and that said newspaper has been printed and published as a weekly newspaper in said county for more than 78 consecutive weeks prior to the first publication of the attached notice, advertise-

ment or publication of

NOTICE

And affiant further says that said notice, advertisement or publication, as per clipping attached, was published in said newspaper, in the regular and entire issue thereof, and not in any supplement issue thereof,

for THREE consecutive issues thereof; first publication

having been made on the 23

day of MARCH, 1967,

and the last publication on the

6 day of APRIL

1967.

And affiant further says that at the times herein mentioned said newspaper was made up of at least four pages of at least five columns each, printed from type matter, of at least seventeen and three-fourths inches deep.

L.B. Hunsaker
Subscribed in my presence and

sworn to before me this

day of

196.....

Notary Public for the State of Idaho, residence and post office address: St. Anthony, Idaho.

**OF THE TWELFTH
JUDICIAL DISTRICT OF
THE STATE OF IDAHO,
IN AND FOR THE
COUNTY OF FREMONT
ABERDEEN - SPRING-
FIELD CANAL COMPANY,
a corporation, et al,**

Plaintiffs,

- vs -
**HENRY EAGLE,
Watermaster,
Water District No. 36,
State of Idaho,**

Defendant.

Civil No. 6117
**ORDER DIRECTING
PUBLICATION OF NOTICE
OF PENDENCY OF ACTION**

NOTICE IS HEREBY GIVEN that on the 21st day of February, 1967, an action was filed in the District Court of the Twelfth Judicial District of the State of Idaho, in and for the County of Fremont, pursuant to Idaho Code Section 42-1405, seeking a supplemental adjudication of the waters of the Snake River and its tributaries.

This action seeks a court decree which will supplement two existing court decrees in the Upper Snake River Valley, entitled (1) "Rexburg Irrigation Company, et al, plaintiffs, vs. Teton Irrigation Canal Company, et al, defendants, entered in the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Fremont, on the 19th day of December, 1910, and signed by District Judge J. M. Stevens," and (2) "Woodville Canal Company, plaintiff, vs. Clark & Edwards Canal and Irrigating Company, et al, defendants, entered in the United States District Court for the State of Idaho, Eastern Division, on the 25th day of June, 1929, and signed by District Judge Charles C. Cavanah.

1. Count One seeks a decree which will adjudicate the water of the Snake River and its tributaries to the following companies, districts and persons in the following amounts (listed below as cubic feet per second of time) with a priority date of April 1, 1939:

**Main River, Upper Valley
Aberdeen - Springfield Canal
Company 230
Rebecca Holden 6
Blackfoot Irrigation Co. 100
Bramwell Ditch Co. 4
Butler Island Canal Co. 16
Butte & Market Lake Canal
Co. 120
Clark & Edwards Canal
Co. 5
Corbett Slough Ditch Co. 13
Danskin Ditch Co. 80
Ditto Irrigation Co. 100**

**Consolidated Farmers Canal
Company 70
Wilford Irrigation & Mfg. Co.
50
D. F. Richards 10
D. V. Hagenbarth 5
Al Frazier 2
Saurey - Sommer Ditch by De-
Roy Saurey 9
Farmers Own Ditch Co. 12
Teton Irrigation & Mfg. Com-
pany 9
George Bauer, Benjamin Ste-
wart, Andrew Stewart, An-
nie Wright, Boyd Hollist and
Alice P. Birch, operating as
Stewart Canal 30**

2. Count Two requests that the Court ratify, confirm, approve and decree binding upon all the parties hereto the following paragraphs which are common to each amended contract entered between the parties hereto and the United States of America Bureau of Reclamation for the Minidoka and Palisades Projects, Idaho, to-wit:

A. Saving of Winter Water Special Storage Right;

B. Consent to American Falls - Jackson Lake Exchange and Re - definition of Jackson Lake Storage Rights;

C. Temporary Storage and Exchange of Water; Release of Jackson Lake and Palisades Water for Power Production;

D. Priority of Certain Existing and Future Water Rights.

That this cause will be brought on for hearing in open court at 2:00 o'clock P.M. on the 19th day of April, 1967, at which time any person may appear and defend against said rights as above set out.

IT IS FURTHER ORDERED that Notice of Pendency and purpose of said action be published once a week for three successive weeks in the following newspapers:

Fremont County Chronicle-News
Rexburg Standard & Journal
The Rigby Star
Teton Valley News
The Post-Register
The Blackfoot News

Dated this 14 day of March, 1967.

/s/ Willard C. Burton
District Judge of the
Twelfth Judicial District of
The State of Idaho

(C.N. MARCH 23, 30, APRIL 6, '67)

Harrison Canal & Irrigation Co.	55
Marvon M. Newby	6
Idaho Irrigation District	130
Marvin M. Jackson	5
William S. Holden	8
Ted Blossch, Marvel Johnson and V. E. Hier	4
LaBelle Irrigation Co.	30
Liberty Park Irrigation Co.	20
Long Island Irrigation Co.	33
Robert D. Mackay	4
John L. Nelson, Adrian Nelson, Erven Scott, Velma Anderson and Laura Anderson	5
New Sweden Irrigation District	220
Carl Johnson	4
Utah-Idaho Sugar Co.	21
Progressive Irrigation District	80
Reid Canal Co.	35
Riverside Ditch Co.	50
Shattuck Irrigation Co.	16
Sam Sakaguchi	2
Snake River Valley Irrigation District	100
Texas Slough Irrigating Canal Co.	20
R. Duwayne Scott	9
West LaBelle Irrigation Co.	35
James A. Croft	2
Henry's Fork and Tributaries	
Enterprise Irrigation District	29
Ralph D. Miller	6
Farmers Friend Canal Co., Ltd.	9
Salem Union Canal Co.	15
Egin Irrigating Co.	23
Independent Canal Co., Ltd.	35
Pincock - Byington Canal Co.	38
Pincock - Garner Ditch Company.	4
Fall River Irrigation Co.	32
St. Anthony Union Canal Co.	24

**The REXBURG STANDARD and
The REXBURG JOURNAL
REXBURG, IDAHO**

Affidavit of Publication

STATE OF IDAHO }
County of Madison } ss.

I, Annette Porter
being first duly sworn, depose and say,
that I am the printer of THE REXBURG

Standard, a newspaper printed and
published weekly at Rexburg, Madison
County, Idaho; and I do solemnly swear
that the

**Order Directing Publication
of Notice**

a copy of which notice appears attached
hereto, was published in the regular and
entire issue of said newspaper, and not in

any supplement issue thereof for three
consecutive issues, the first publication hav-

ing been made on March 21, 1967
and the last publication having been made

on April 4, 1967

Further, that said newspaper is one of
general circulation in said county; that it
is a legal newspaper, conforming to legal
specifications under the Idaho Statutes; that
it has at least two hundred bona fide sub-
scribers living within the county of publica-
tion; and that it has been continuously and
uninterruptedly published in said county dur-
a period of seventy-eight consecutive weeks
prior to the first publication of the said not-
ice.

Annette Porter

~~~~~

Subscribed to and sworn to before me

this 4th day of April, 1967

John C. Porter
Notary Public.

(SEAL)

My commission expires 6-5-68

Idaho, in and for the County
of Fremont, on the 19th day
of December, 1910, and signed
by District Judge J. M. Stevens,"
and (2) "Woodville Canal Com-
pany, plaintiff, vs. Clark & F-
wards Canal and Irrigating Com-
pany, et al, defendants, entered
in the United States District
Court for the State of Idaho,
Eastern Division, on the 25th day
of June, 1929, and signed by
District Judge Charles C. Ca-
vanah.

1. Count One seeks a decree
which will adjudicate the water
of the Snake River and its tri-
butaries to the following com-
panies, districts and persons in
the following amount (listed be-
low as cubic feet per second of
time) with a priority date of
April 1, 1939:

Main River Upper Valley
Aberdeen-Springfield Canal
Company 230
Rebecca Holden 6
Blackfoot Irrigation Co. 100
Bramwell Ditch Co. 4
Butler Island Canal Co. 16
Butte & Market Lake Canal
Company 120
Clark & Edwards Canal Co. 5
Corbett Slough Ditch Co. 13
Danskin Ditch Co. 80
Dilts Irrigation Co., Ltd. 6
Dewey Fox 6
Harrison Canal & Irrigation
Company 55
Marvyn M. Newby 6
Idaho Irrigation District 130
Marvin M. Jackson 5
William S. Holden 8
Ted Bloesch, Marvel Johnson
and V. E. Hier 4
LaBelle Irrigation Co. 30
Liberty Park Irrigation Co. 20
Long Island Irrigation Co. 35
Robert D. Mackay 4
John L. Nelson, Adrian Nelson,
Erven Scott, Velma Anderson
and Laura Anderson 5
New Sweden Irrigation
District 220
Carl Johnson 4
Utah-Idaho Sugar Co. 21
Progressive Irrigation
District 80
Reid Canal Co. 35
Riverside Ditch Co. 50
Shattuck Irrigation Co. 16
Sam Sakaguchi 2
Snake River Valley Irrigation
District 100
Texas Slough Irrigating
Canal Co. 20
R. Duwayne Scott 9
West LaBelle Irrigation Co. 35
James A. Croft 2
Henrys Fork and Tributaries
Enterprise Irrigation District 29
Ralph D. Miller 6
Farmers Friend Canal Co., Ltd. 9
Salem Union Canal Co. 15
Egin Irrigating Co. 23
Independent Canal Co., Ltd. 35
Pincock-Byington Canal Co. 38
Pincock-Garner Ditch
Company 4
Fall River Irrigation Co. 32
St. Anthony Union Canal Co. 24
Consolidated Farmers
Canal Company 70

D. V. Hagenbarth 6
Al Frazier 2
Saurey-Sommer Ditch by
LeRoy Saurey 9
Farmers Own Ditch Co. 12
Teton Irrigation & Mfg.
Company 9

George Bauer, Benjamin Ste-
wart, Annie Stewart, Annie
Wright, Boyd Hollist and
Alice P. Bitch operating as
Stewart Canal 30

2. Count Two requests that
the Court ratify, confirm, ap-
prove and decree binding upon
all the parties hereto the fol-
lowing paragraphs which are
common to each amended con-
tract entered between the parties
hereto and the United States
of America Bureau of Reclama-
tion for the Minidoka and Pal-
isades Projects, Idaho, to-wit:

A. Saving of Winter, Water;
Special Storage Right;
B. Consent to American Falls-
Jackson Lake Exchange and
Re-definition of Jackson Lake
Storage Rights;
C. Temporary Storage and Ex-
change of Water; Release of
Jackson Lake and Palisades
Water for Power Production;
D. Priority of Certain Exist-
ing and Future Water Rights.
That this cause will be
brought on for hearing in open
court at 2:00 o'clock P.M. on
the 19th day of April, 1967, at
which time any person may ap-
pear and defend against said
rights as above set out.

IT IS FURTHER ORDERED
that Notice of the Pendency and
purpose of said action be pub-
lished once a week for three
successive weeks in the follow-
ing newspapers:

Fremont County Chronicle -
News
Rexburg Standard & Journal
The Rigby Star
Teton Valley News
The Post-Register
The Blackfoot News
Dated this 14th day of March,
1967.

— Willard C. Burton
District Judge of the
Twelfth Judicial District of
The State of Idaho
(Publ. March 21, 28, April 4,
1967).

**ORDER DIRECTING PUBLICA-
TION OF NOTICE OF PEN-
DENCY OF ACTION**

IN THE DISTRICT COURT
OF THE TWELFTH JUDICIAL
DISTRICT OF THE STATE OF
IDAHO, AND FOR THE
COUNTY OF FREMONT.

Civil No. 6117

ABERDEEN - SPRINGFIELD
CANAL COMPANY, a corpora-
tion, et al,

Plaintiffs,

HENRY EAGLE, Watermast-
er, Water District No. 36,
State of Idaho,

Defendant.

NOTICE IS HEREBY GIVEN
that on the 21st day of February,
1967, an action was filed in
the District Court of the
Twelfth Judicial District of the
State of Idaho, in and for the
County of Fremont, pursuant
to Idaho Code Section 42-1405,
seeking a supplemental adjudica-
tion of the waters of the Snake
River and its tributaries.

This action seeks a court de-
cree which will supplement two
existing court decrees in the
Upper Snake River Valley,
entitled (1) "Rexburg Irrigation
Company, et al, plaintiffs, vs.
Teton Irrigation Canal Com-
pany, et al, defendants, entered

AFFIDAVIT OF PUBLICATION

State of Idaho, ss.
County of Teton

I, Eleanor Hermes
being first duly sworn depose and say

that I am the Publisher
of the Teton Valley News, a newspaper as defined by Idaho Codes Annotated, Section 58-106, as amended, and that said newspaper is a weekly newspaper printed and published at Driggs, in Teton County, Idaho, having a general circulation in said county, and that said newspaper has been printed in said county for more than 78 consecutive weeks prior to the first publication of the attached notice, advertisement or publication of

Notice of Pendency of Action

And affiant further says that said attached notice, advertisement or publication, as per clipping attached, was published in said newspaper, in the regular and entire issue thereof, and not in any supplement issue thereof,

for 3 consecutive issues thereof; first publication having been made on

the 23 day of March

19 67

and last publication on the 6

day of April, 19 67

And affiant further says that at the times herein mentioned said newspaper was made up of at least four pages of at least five columns each, printed from type matter, of at least seven-teen and three-fourths inches deep.

Eleanor Hermes

Subscribed in my presence and sworn

to before me this 6 day of

April, 19 67

(SEAL) Notary Public for the State of Idaho, residence and postoffice address, Driggs, Idaho.

My Commission expires

Earl G. Sewall, Notary Public

My Commission Expires May 1, 1969

[Signature]

ORDER DIRECTING PUBLICATION OF NOTICE OF PENDENCY OF ACTION

Civil No. 6117

IN THE DISTRICT COURT OF
THE TWELFTH JUDICIAL
DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE
COUNTY OF FREMONT

ABERDEEN - SPRINGFIELD)
CANAL COMPANY, a cor-)
poration, et al,)

Plaintiffs,)

vs.)

HENRY EAGLE, Watermas-)
ter, Water District No. 36,)
State of Idaho,)

Defendant.)

NOTICE IS HEREBY GIVEN that on the 21st day of February, 1967, an action was filed in the District Court of the Twelfth Judicial District of the State of Idaho, in and for the County of Fremont, pursuant to Idaho Code Section 42-1405, seeking a supplemental adjudication of the waters of the Snake River and its tributaries.

This action seeks a court decree which will supplement two existing court decrees in the Upper Snake River Valley, entitled (1) "Rexburg Irrigation Company, et al plaintiffs, vs. Teton Irrigation Canal Company, et al, defendants entered in the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Fremont, on the 19th day of December, 1910, and signed by District Judge J. M. Stevens," and (2) "Woodville Canal Company, plaintiff, vs. Clark & Edwards Canal and Irrigating Company, et al, defendants, entered in the United States District Court for the State of Idaho, Eastern Division, on the 25th day of June, 1929, and signed by District Judge Charles C. Cavanah."

1. Count One seeks a decree which will adjudicate the water of the Snake River and its tributaries to the following companies, districts and persons in the following amounts (listed below as cubic feet per second of time) with a priority date of April 1, 1939:

Main River, Upper Valley Aberdeen - Springfield Canal

Company	230
Rebecca Holden	6
Blackfoot Irrigation Co.	100
Bramwell Ditch Co.	4
Butler Island Canal Co.	18
Butte & Market Lake Canal Co.	120
Clark & Edwards Canal Co.	5
Corbett Slough Ditch Co.	13
Danskin Ditch Co.	80
Dilts Irrigation Co., Ltd.	6
Dewey Fox	6
Harrison Canal & Irrigation Co.	55
Marvon M. Newby	6
Idaho Irrigation District	130
Marvin M. Jackson	5
William S. Holden	8
Ted Bloesch, Marvel Johnson and V. E. Hier	4
LaBelle Irrigation Co.	30
Liberty Park Irrigation Co.	20

Farmers Own Ditch Co. 12
Teton Irrigation & Mfg. Company 9

George Bauer, Benjamin Stewart, Andrew Stewart, Annie Wright, Boyd Hollist and Alice P. Birch, operating as Stewart Canal 30

2. Count Two requests that the Court ratify, confirm, approve and decree binding upon all the parties hereto the following paragraphs which are common to each

son, Erven Scott, Velma Anderson and Laura An- derson	5	Reclamation for the Palisades Projects, Idaho, to
New Sweden Irrigation Dis- trict	220	A. Saving of Winter Water; cial Storage Right;
Carl Johnson	4	B. Consent to American Jackson Lake Exchange;
Utah-Idaho Sugar Co.	21	Re-definition of Jackson Storage Rights;
Progressive Irrigation Dis- trict	80	C. Temporary Storage and change of Water; R
Reid Canal Co.	35	of Jackson Lake and sades Water for Power
Riverside Ditch Co.	50	duction;
Shattuck Irrigation Co.	16	D. Priority of Certain E
Sam Sakaguchi	2	and Future Water Righ
SNAKE RIVER VALLEY IRRIGA- TION DISTRICT	100	That this cause will be b
Texas Slough Irrigating Can- al Co.	20	on for hearing in open co
R. Duwayne Scott	9	2:00 o'clock P.M. on the 19
West LaBelle Irrigation Co.	35	of April, 1967, at which tin
James A. Croft	2	person may appear and
Henry's Fork and Tributaries		against said rights as abo
Enterprise Irrigation District	29	out.
Ralph D. Miller	6	IT IS FURTHER ORI
Farmers Friend Canal Co., Ltd.	9	that Notice of the Penden
Salem Union Canal Co.	15	purpose of said action b
Egin Irrigating Co.	23	lished once a week for thr
Independent Canal Co., Ltd.	35	cessive weeks in the fo
Pincock-Byington Canal Co.	38	newspapers:
Pincock-Garner Ditch Com- pany	4	Fremont County Chronic
Fall River Irrigation Co.	32	Rexburg Standard & Jo
St. Anthony Union Canal Co.	24	The Rigby Star
Consolidated Farmers Canal Company	70	Teton Valley News
Wilford Irrigation & Mfg. Co.	50	The Post-Register
D. F. Richards	10	The Blackfoot News
D. V. Hagenbarth	6	Dated this 14th day of
Al Frazier	2	1967.
Saurey-Sommer Ditch by Le. Roy Saurey	9	/s/ Willard C. Bu
		District Judge of t
		Twelfth Judicial D
		The State of Idaho
		Pub. March 23, 30, Apr. 6

Exhibit O

RECEIVED

MAY 25 2005

IN THE DISTRICT ~~Department of Water Resources~~ JUDICIAL DISTRICT OF THE STATE OF IDAHO,
~~Southern Region~~ 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 1-7
Date Received: 9/14/1989
Receipt No: 427702
Received By: *[Signature]*

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

BURLEY IRRIGATION DIST Phone: (208) 678-2511
246 E 100 S
BURLEY ID USA 83318

RECEIVED

JUN 09 2005

Department of Water Resources
Eastern Region

2. Date of Priority: 04/01/1939

3. Source: SNAKE RIVER

Trib. to: COLUMBIA RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot				County	LOCAL NAME
10S	22E	19	NW	SE	SE	01	CASSIA	CAREY
09S	25E	1	SW	SE	SW		CASSIA	DAM
10S	22E	22		NE	NW	03	CASSIA	COORS
10S	22E	30	SW	SE	SE	01	CASSIA	HERBERT
10S	23E	21		NE	NE	02	CASSIA	BURLEY AIRPORT
10S	23E	22		NW	SW	02	CASSIA	BURLEY GOLF COURSE
10S	22E	21		NW	NW	04	CASSIA	ANDERSON (SIMPLOT)
10S	22E	21		NW	NE	02	CASSIA	ANDERSON (SIMPLOT)
10S	23E	19		NW	NE	02	CASSIA	PEVEY

5. Description of diverting works:

MINIDOKA DAM & PUMPS

6. Water is used for the following purposes:

Purpose
IRRIGATION

From To
4/15 10/15

C.F.S.
163.4

(or) A.F.A

7. Total Quantity Appropriated is:
163.4 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

This claim is for 47,818 acres within the boundary of the Burley Irrigation District.

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:

14. Remarks:

A measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.

IRR. ACRES NOT STATED WITHIN BURLEY IRR. DISTRICT.

TRANS. 3246.

A TOTALIZING METER OF A TYPE APPROVED BY THE DEPT. SHALL BE PERMANENTLY INSTALLED ON THE DIVERSION PTS.

USING PUMPS TO DIVERT WATER.

COORS PUMP: NESENW 22, T10S, R22E.

CAREY PUMP: NWSESE 19, T10S, R22E.

SOUTHSIDE MAIN CANAL: SWSESW 1, T9S, R25E.

LARGE CLAIM REPRESENTED BY CLAIM SUFFIXES Z0 & Z1.

CONFORMED ATTORNEY MAILING ADDRESS DMS

5-25-2005, DJ: CLAIM AMENDED TO RECORD INCREASE IN ACRES AND POINTS OF DIVERSION.

15. Basis of Claim: Decreed

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: _____

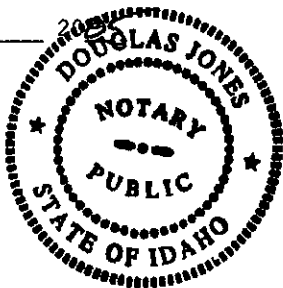
For Organizations:

I do solemnly swear or affirm that I am Manager of
Title
Burley Irrigation District, that I have signed the foregoing
Organization
document in the space below as Manager of
Title
Burley Irrigation District and that the statements contained in the
Organization
foregoing document are true and correct. Douglas Jones
Signature of Authorized Agent
Manager Burley Irrigation District
Title and Organization
May 25, 2005
Date

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 25th

of May 2005



Douglas Jones
Notary Public

Residing at Buhl ID

My commission Expires 8/8/2007

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 A01-10195
Date Received _____
Receipt Number ~~8001~~ 5010024 40n

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

OCT 12 1990

Department of Water Resources
Southern Region Office

Please type or print clearly

1. Name of Claimant (s) Minidoka Irrigation District Phone (209) 436-3188
Mailing Address Route #1 Box 8, Rupert, Idaho Zip 83350

2. Date of Priority (Only one (1) per claim) 4/1/39

3. Source of water supply (a) Snake River
which is tributary to (b) Columbia River

4. a. Location of existing point of diversion is: Township 9 S. Range 25 E. Section 1,
SE 1/4 of SW 1/4 of 1/4, Govt. Lot, 7 B.M., County of Cassia and Minidoka
/Cassia County /Minidoka County
Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates , Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.

Minidoka Dam and Minidoka Irrigation District canals,
laterals, wells, pumps, headgates and delivery system.

MICROFILMED

MAR 19 1993

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 4/1 to 11/1 amount 266.60 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 266.60 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Domestic - de minimus domestic use

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
			SEE ATTACHMENTS																

Total number of acres irrigated 77,484

11. In which county (ies) are lands listed above as place of use located? Minidoka and Cassia

12. Do you own the property listed above as place of use? Yes _____ No X

If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

Storage rights in Jackson Lake, Palisades, American Falls, Lake or None ()
Walcott and natural and return flows under Twin Falls Canal vs.

Remarks: Foster, Burley Irrigation District vs. Eagle, water rights
number 4126 and 4799.

14. Remarks:

Last Name Minidoka
Irrigation Ident No. _____

MINIDOKA
MAR 19 1993
Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____

Decree X

If applicable provide IDWR Water Right Number _____

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant Burley Irrigation District vs. Henry Eagle

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 34

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date _____

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am Attorney _____ Title _____

of Minidoka Irrigation District _____, that I have signed the foregoing
Organization

document in the space below as Attorney _____ of Minidoka Irrigation District _____
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent *Kent Fletcher*

Title and Organization Attorney - Minidoka Irrigation Dist Date 10/11/89

State of Idaho/or _____)
County of Cassia) SS.

Subscribed and sworn (or affirmed) before me this 11th day of October 1989

SEAL

Notary Public *Sharon O Janner*

Residing at Rupert, Idaho

My Commission Expires 12/1/94

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, Kent Fletcher will be acting as attorney at law on behalf of the claimant signing above and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature *Kent Fletcher*

Address P.O. Box 910, Burley, Idaho 83318

Date 10/11/89

Last Name Minidoka Irrigation Ident. Number _____

MICROFILMED

MAR 19 1993 Yellow-Claimant

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

RECEIVED

AUG 11 1989

Ident. Number: A01-00009
Date Received: 8/02/1989
Receipt No: 5008827
Received By: ADW

Department of Water Resources
Southern Region Office
**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name: MILNER IRRIGATION DISTRICT 208-432-5560
Address: RT. 1
MURTAUGH, ID 83344
2. Date of Priority: APR 01, 1939
3. Source: SNAKE RIVER Trib. to: COLUMBIA RIVER
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
10S	21E	29	NE	SE	SE		TWIN FALLS
5. Description of diverting works:
MILNER DAM RESERVOIR TO PUMPS TO CANAL SYSTEM
6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	121.000		
7. Total Quantity Appropriated is:
121.000 C.F.S. (and/or) A.F.A.
8. Total consumptive use is 40905 Acre Feet Per Annum.
9. Non-irrigation uses:
NONE
10. Place of Use: see A01-00017

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
----------	-------	---------	--------	-----	-----	-----	-------
11. Place of use in counties: TWIN FALLS and CASSIA
12. Do you own the property listed above as place of use? NO

A01-00009

Page 1

Date: 08/02/89

MICROFILMED

MAR 20 1993

1. Other Water Rights Used:
SEE REMARKS

A01-00017, A45-04171, A01-00009, A01-02050,
A45-00463, A01-02064B, A01-02068D.

14. Remarks:

P/U WITHIN LANDS SERVED BY MILNER IRRIGATION DISTRICT.
P/D AT PUMPS IN MILNER POOL.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

BURLEY IRR. DIST. ET AL
Decree Plaintiff

vs

HENRY EAGLE
Decree Defendant

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 Organizations:

do solemnly swear or affirm that I am President of
Title
Milner Irrigation District, that I have signed the foregoing
Organization

document in the space below as " President of
Title

Milner Irrigation District and that the statements contained in the
Organization
foregoing document are true and correct.

Ronald M. Fowler
Signature of Authorized Agent

President, Milner Irrigation Dist.
Title and Organization

8-9-89

Date

State of Idaho)
County of Cassia) SS.
Twin Falls)

Subscribed and sworn (or affirmed) before me this 9th day

of August 19 89

Arthur J. Farland
Notary Public

Seal

Residing at Murfrough

My Commission Expires 3/31/96

17. Notice of Appearance:

Notice is hereby given that I, Gary D. Slette will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature

[Signature]

Nelson, Resholt, Robertson, Tolman & Tucker

Address P.O. Box 1906, Twin Falls, ID 83303

Date 8-9-89

Last Name Milner Irr. Dist. Ident. Number _____

Copies White-State, Yellow-Claimant

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

RECEIVED

APR 11 1990

Ident. Number: A01-00014
Date Received: 4/11/1990
Receipt No: S011959
Received By: A. V. J.

Department of Water Resources
Southern Region Office
**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name: A & B IRRIGATION DISTRICT 208-436-3152
Address: P.O. BOX 675
RUPERT ID 83350

2. Date of Priority: APR 1, 1939

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
10S	21E	24	SE	SW	SW		JEROME

5. Description of diverting works:
UNIT A PUMPING PLANT, CANAL, LATERALS & 6 RELIFT PUMPS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	267.000		

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

8. Total consumptive use is 47040.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
09S	21E	25	SE	SW	99	IRR	10.5
			NE	SE	99	IRR	19.9
			NW	SE	99	IRR	3.6
			SW	SE	99	IRR	28.4
			SE	SE	99	IRR	36.4

10. Place of Use: Continued

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

Section Acres	14.0
---------------	------

Total Acres	14655.7
-------------	---------

11. Place of use in counties: JEROME, MINIDOKA

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

13. Other Water Rights Used:
SEE REMARKS

14. Remarks:

P/U WITHIN A & B IRRIGATION SERVICE AREA.
STORAGE RIGHTS 01-02064 & 02068 AND SURFACE WATER RIGHTS
01-02060, 10224 & 10225 ALSO USED ON ACRES.
01-10225 REPRESENTS EXPANDED ACRES CLAIMED.

DISTRICT "TRACT" DESIGNATIONS ARE IDENTIFIED IN THE COLUMN FOR
"LOT" WITH THIS CODE:

TRACT	LOT	TRACT	LOT	IDENTIF.	LOT
A	99	K	90	FARM UNIT C	81
B	98	L	89	FARM UNIT D	80
C	97	M	88	FARM UNIT E	79
D	96	N	87	FARM UNITS F,G,H	78
E	95	O	86	KASWORM	77
F	94	P	85	KINCAID	76
G	93	Q	84	LOTS 1 & 2	75
H	92	R	83	LOTS 4 THRU 10	74
J	91	S	82	NELSON	73
				"OUT" AREAS	72
				SCHOOL SECT. 36	
				NORTH 1/2	71
				SOUTH 1/2	70
				WISECAVER	69
				FARM UNIT A	68
				SORENSEN	67
				STEINMETZ	66
				YOUREE	65

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: 7/10/1968

BURLEY IRR. DIST. ET AL
Decree Plaintiff

HENRY EAGLE
vs Decree Defendant

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 Organizations:

I do solemnly swear or affirm that I am _____ PRESIDENT _____ of
Title

A&B IRRIGATION DISTRICT, that I have signed the foregoing
Organization
document in the space below as _____ PRESIDENT _____ of
Title

A&B IRRIGATION DISTRICT and that the statements contained in the
Organization
foregoing document are true and correct.

J. Ann Moore
Signature of Authorized Agent

PRESIDENT - A&B IRRIGATION DISTRICT
Title and Organization

MAY 21, 1992
Date

State of Idaho)
County of MINIDOKA) SS.

Subscribed and sworn (or affirmed) before me this 21st day
of MAY 19 92

Diana Johnston
Notary Public

Seal

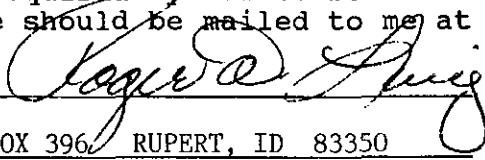
Residing at RUPERT, ID

My Commission Expires 3-21-96

17. Notice of Appearance:

Notice is hereby given that I, ROGER D. LING will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that
all notices required by law to be mailed by the director to the claimant
signing above should be mailed to me at the address listed below.

Signature 

Address P.O. BOX 396 RUPERT, ID 83350

Date MAY 21, 1992