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DEPARTMENT OF
WATER RESOURCES

Attorneys for Ground Water Districts

**GROUND WATER DISTRICTS STATEMENT OF ISSUES FOR
FEBRUARY 16, 2011 SETTLEMENT CONFERENCE
Subcase Number: 01-02064 et. al
(American Falls Reservoir Issues)**

To: Special Master Theodore Booth, Mediator

The Aberdeen American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Magic Valley Ground Water District, Clark-Jefferson Ground Water District, Fremont-Madison Ground Water District, Madison Ground Water District and North Snake Ground Water District (collectively, the "Ground Water Districts") by and through counsel of record, hereby submit this statement of issues pursuant to the Court's Order. As provided for in the *Order Setting Mandatory Settlement Conference* dated December 10, 2010, this statement of issues is being served on the Special Master Theodore Booth, acting mediator in this matter as well as the parties to these subcases.

Issues to which the Ground Water Districts are parties or have an interest in:

- 1) QUANTITY. The quantity of the reservoir should be limited to the actual physical reservoir capacity which the Ground Water Districts believe is accurately reflected in the current Director's recommendation.
- 2) EARLY PRIORITY. The United States Bureau of Reclamation requests that a portion for the storage water right be administered with a priority date of

3/29/1921 would result in an enlargement of the water right and is an impermissible collateral attack on the license for this water right. The BOR's claim to water right no. 01-10042 constitutes a collateral attack on license no. 01-2064 and should be disallowed as currently recommended by the Director.

- 3) REFILL. The United States Bureau of Reclamation's requests the following remark:

This water right includes the right to refill under the priority date of this water right to satisfy the United States' storage contracts.

This remark would enlarge this water right, change historic administration of Water District 01, injure junior storage right holders and may negatively impact the amount of storage water that would be available for mitigation purposes and should not be allowed.

- 4) HYDROPOWER. Idaho Power's right to hydro-power in American Falls Reservoir is subordinate to water uses for irrigation and other non-hydropower purposes except for 45,000 acre-feet. This issue is already pending on motions for summary judgment.

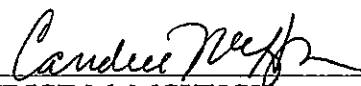
The Ground Water Districts would anticipate some written discovery and possible depositions primarily involving documents and personnel of the United States Bureau of Reclamation prior to filing summary judgment motions regarding the objections to quantity and the refill remark.

The Ground Water Districts would propose the following schedule:

- 1) Discovery completion date 9/30/2011
- 2) Deadline for Motions for Summary Judgment Early November 2011
- 3) Hearing on Motions for Summary Judgment December 2011
- 4) Trial end of March early April 2012

DATED this 4th day of February, 2011.

RACINE, OLSON, NYE, BUDGE &
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By: 
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Attorney for the Ground Water Districts