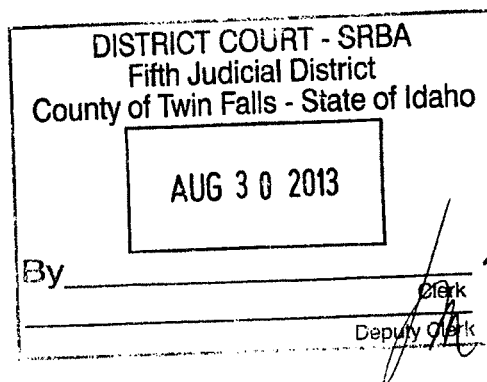


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Deputy Attorney General

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**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

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Subcase No. 29-12049

**AFFIDAVIT OF CARTER FRITSCHLE
IN SUPPORT OF MOTION TO AMEND
PARAGRAPHS 29-12049.X.A AND
29-12848.X.A OF THE FORT HALL
CONSENT DECREE**

STATE OF IDAHO)
) ss.
County of Ada)

I, CARTER FRITSCHLE, being duly sworn upon oath, depose and hereby state as follows:

1. My name is Carter Fritschle and my work address is Idaho Department of Water Resources 322 E. Front St., Boise, ID 83720. My telephone number is 208-287-4917.

AFFIDAVIT OF CARTER FRITSCHLE IN SUPPORT OF MOTION TO AMEND
PARAGRAPHS 29-12049.X.A AND 29-12848.X.A OF THE FORT HALL CONSENT
DECREE – Page 1

2. I am employed by the Idaho Department of Water Resources (“Department” or “IDWR”) and have been so employed for approximately 26 years. I was over the age of eighteen years at the time I was first employed.
3. I am the Manager, Adjudication Section, for the Department. My principal duties include supervising a staff of technical water right professionals and records support personnel. I have been employed in this position since January of 2006.
4. I make the following statements based upon my review of the Department’s records and personal knowledge.
5. Attached hereto as Exhibit A is a true and correct copy from IDWR’s records of the Decree from *United States vs. Daniels* (D. Idaho April 9, 1907) (hereinafter referred to as the “Bannock Creek Decree”). The copy contains references, added by IDWR, to the water rights that IDWR determined were associated with the individuals described in the Bannock Creek Decree.
6. To determine whether the water rights from the Bannock Creek Decree were also decreed in the Snake River Basin Adjudication (“SRBA”), each water right number was researched on the SRBA Court website, www.srba.state.id.us. From the SRBA website, a complete court docket for adjudicated water rights can be accessed through the IWATRS Reports link. Each water right from the Bannock Creek Decree was searched to confirm if a partial decree had been filed. If the water right was not found in the Court’s system, it was then further researched through the Department’s Director’s Report for Basin 29. A word search of the Director’s Report for Basin 29, Irrigation and Other Uses, Allowed Rights, was performed for each water right that was not adjudicated in the SRBA.

7. Water Right Nos. 29-00466, 29-00467, 29-00469, 29-00470, 29-00471, 29-00472, 29-00473, 29-00474 are rights that were decreed to the Shoshone-Bannock Tribes as part of the *Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin* (August 2, 1995). Therefore, they were removed from the list.
8. Water Right No. 29-00479 was decreed as disallowed by the SRBA Court, therefore it was also removed from the list.
9. Water Right Nos. 29-00476, 29-00477, and 29-00480 were decreed in the SRBA.
10. Water Right Nos. 29-00468 and 29-00475, were not decreed in the SRBA. However, as described above, both rights were searched on the Department's Director's Report for Basin 29 where it was discovered that they were combined and recommended as Water Right No. 29-10990. The Partial Decree for Water Right No. 29-10990 was filed with the SRBA Court on January 5, 2005.
11. Water Right Nos. 29-00478 and 29-00481, were not decreed in the SRBA. However, they were searched for in the Department's Director's Report for Basin 29, where it was discovered that both rights were combined and recommended as Water Right No. 29-13215. An Amended Partial Decree was filed with the SRBA Court on April 3, 2006.
12. Through the above described research I determined that Water Right Nos. 29-00476, 29-00477, 29-00480, 29-10990, and 29-13215 were non-Indian water rights decreed in the Bannock Creek Decree that were also decreed in the SRBA and are entitled to the protection of Paragraph 29-12049.x.a and Paragraph 29-12848.x.a.

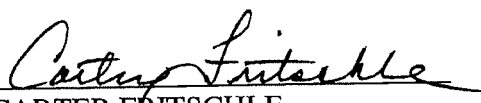
13. Water Right Nos. 29-00476, 29-00477, 29-00480, 29-10990, and 29-13215 contain

the following remark:

This water right will be delivered in accordance with the 1990 Fort Hall Indian Water Rights Agreement and Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of water in the Upper Snake River Basin. The parties agreed to continue the historic water allocations pursuant to the Bannock Creek Decree (the decree in *United States v. Daniels*, (D. Idaho April 9, 1907, unpublished). Directors Reports for the 1990 Fort Hall Indian Water Rights Agreement, p. 8 para. 4. The Tribes and the United States shall exercise this right in a manner that ensures persons with water rights decreed in the Bannock Creek Decree (*United States v. Daniels*, (D. Idaho April 9, 1907)) and that are confirmed in the SRBA continue to receive their full legal entitlement. Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of water in the Upper Snake River Basin, p. 19–20, 25–26, Right Nos. 29-12484 and 29-12049 respectively (Aug 2, 1995). In times of shortage this water right and other water rights decreed in *United States v. Daniels*, (D. Idaho April 9, 1907) shall receive their full legal entitlement despite the federal based natural flow water right nos. 29-12049 and 29-12848.

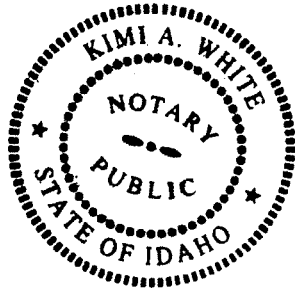
14. The above remark is sufficient to ensure that Water Right Nos. 29-00476, 29-00477, 29-00480, 29-10990, and 29-13215 will be administered so they receive the protections of Paragraph 29-12049.x.a and Paragraph 29-12848.x.a

DATED and SIGNED this 26th day of August, 2013.


CARTER FRITSCHLE
Manager, Adjudication Section

STATE OF IDAHO)
) ss.
County of Ada)

SUBSCRIBED AND SWORN TO before me this 26th day of August,
2013.



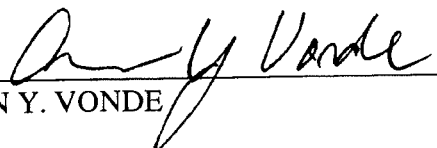
Kimi A. White
NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My Commission Expires: 24/01/16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 2013, I caused to be served a true and correct copy of the foregoing AFFIDAVIT OF CARTER FRITSCHLE IN SUPPORT OF MOTION TO AMEND PARAGRAPHS 29-12049.X.A AND 29-12848.X.A OF THE FORT HALL CONSENT DECREE to the following by the method indicated:

Clerk of the District Court SRBA P.O. Box 2707 Twin Falls, ID 83303	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery
Jeanette Wolfley Special Counsel for Shoshone-Bannock Tribes 706 Paseo Sandia Bernalillo, NM 87004	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-Mail: wolfleyje@gmail.com
Committee of Nine Represented by: John K. Simpson Barker, Rosholt & Simpson LLP 1010 W. Jefferson, Ste 102 P.O. Box 2139 Boise, ID 83702	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-Mail: jks@idahowaters.com
Vanessa Boyd-Willard U.S. Department of Justice Environmental and Natural Resources Division 999 18 th St. South Terrace, Ste. 370 Denver, Co 80202	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☐ E-mail
Russell J. Hayden P.O. Box 598 Soda Springs, ID 83276-0598	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☐ E-mail

Janet Hayball P.O. Box 725 Fort Hall, ID 83203	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☐ E-mail
Barry T. Williams 1277 Mink Creek Rd. Arbon, ID 83212	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☐ E-mail
Dale Bolingbroke P.O. Box 15 Arbon ID 83212	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☐ E-mail
Hans Hayden 3746 Mid Crystal Rd. Arbon ID 83212	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☐ E-mail
Twain Hayden 3747 Mid Crystal Rd. Arbon ID 83212	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☐ E-mail


ANN Y. VONDE

29-0 ✓

IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR THE DISTRICT
OF IDAHO, SOUTHERN DIVISION .

UNITED STATES, and Pocatello Tom,
Snooks Mosho, Emby Pocatello, and
Joe Yupe, on behalf of themselves
and their other members of the Ban-
nock and Shoshone Tribes of Indians;

Complainants

vs.

George Daniels, Tom Williams, J. H.
Daniels, Tom Daniels, Henry Daniels,
David M. Daniels, John Bollenbrooke,
and J. W. Lush:

Respondents;

(In Equity)

DECREE .

This cause came on for hearing, this the 20th day of March,
1907, before the Hon. James H. Beatty, presiding, and was heard upon
the bill, answers, cross-bills, exhibits, agreements of the parties,
proof in the cause and arguments of counsel;

And it appearing to the court that the true names of the
above named defendants are, George Daniels, Thomas J. Williams, John
M. Daniels, Thomas D. Daniels, Henry Daniels, David M. Daniels, John
Bollingbroke and J. W. Lush;

And it further appearing that by order of this court, duly
made and entered on the 6th day of October, 1904, Jeannette Price,
Sarah E. Daniels David Bolingbroke, Mary E. Bolingbroke, Gertrude
Daniels, George Bradley, (whose true name is George W. Bradley) Henry
Meadows (whose true name is J. H. Meadows) Ed Verley, (whose true
name is W. E. Verley), John Snyder, (whose true name is W. C. Snyder),
T. E. Davis, (whose true name is D. T. Davis), Charles Bailey, John
Gibbons, Thomas Givvons, Julius Aberture, and William Orin, were
brought into said action as parties thereto:

And it further appearing that all of said last named
parties so brought in as aforesaid, were duly served with process in
said cause, and the said Jeannette Price, Sarah E. Daniels, Mary E.
Bolingbroke, Gertrude Daniels, George W. Bradley, J. H. Meadows,
W. E. Verley, and W. C. Snyder thereafter duly appeared by their
respective counsel and filed their several answers and cross-bills
herein;

And it further appearing that the said D. T. Davis, Charles
Bailey, John Gibbons, Thomas Gibbons, Julius Aberture and William Orin,
have failed to file any plea, demurrer, or answer, and the time for
such appearance and plea having expired, a judgment pro confesso was
duly entered against said last named parties, and the bill of com-
plaint and the several cross-bills taken as confessed by them;

And it further appearing that the bill filed herein and the
several cross-bills, were and are for the purpose of quieting the
title and right of the several parties to said action, to the use of
the waters of Bannock Creek, and its tributaries, streams lying within
Oneida County, State of Idaho;

IT IS THEREFORE ADJUDGED, ORDERED AND DECREED AS FOLLOWS:

That the United States of America, as guardian and trustee
of the Bannock and Shoshone tribes of Indians, occupying the Fort
Hall Indian Reservation, in the State of Idaho, and said complaint

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EXHIBIT A

23 0466 Indians are entitled, at all times, for the use and benefit of said Indians, for irrigating the lands lying adjacent to said Bannock Creek, and for domestic and stock purposes, to sixteen and one-fourth cubic feet flow per second of time of the waters of said Bannock Creek and its tributaries, a stream flowing through the western part of the Fort Hall Indian Reservation and into the Portneuf River, in Oneida County, State of Idaho; said right to date from the 1st day of April, 1887, and to be the first and prior right to all other rights to the use of the waters of said stream; and in addition to the above allowance, the said complainants are allowed an additional one inch for each additional acre of land, over and above what they now have in cultivation, which they shall cause to be put into cultivation within two years from the First day of May, 1907, but not to exceed one hundred inches, or their equivalent two cubic feet flow per second of time. That subject to said prior rights of the complainants as above decreed, it is further ordered, adjudged and decreed, that the defendants, as among themselves, shall be allowed and decreed any of the waters of said creeks and streams remaining after complainants shall have received their amount, above decreed to them, as follows, to-wit: the said David M. Daniels and Gertrude Daniels, husband and wife, are entitled, at all times, for the irrigation of the lands hereinafter described and for stock purposes thereon, to the use of three and three-tenths (3.3) cubic feet per second of time of the waters of said Bannock Creek and its tributaries, said right to date from the 1st day of April, 1889, said water to be diverted from said stream and its tributaries as follows; four-fifths of one cubic foot per second of time to be diverted from what is known as the main channel of said Bannock Creek, flowing north and south, through the lands of the said David M. Daniels and Gertrude Daniels, hereinafter described, and two and one-half per second of time of what is known as the West Fork of said Bannock Creek; all of said water to be used upon and become appurtenant to the following described lands, the community property of the said David M. Daniels and Gertrude Daniels, to-wit: The West half of the southwest quarter, the southwest quarter of the northwest quarter, and lot four of section two; and the east half of the southeast quarter and the south half of the northeast quarter, and lot one of section three; all in Township ten, south of Range thirty-three East of Boise Meridian in Oneida County, State of Idaho:

29 0467

29 0468 That said Thomas D. Daniels and Sarah Daniels, husband and wife, are entitled, at all times, for the irrigation of the lands hereinafter described, and for stock purposes thereon, to the use of four cubic feet per second of time of the waters of said Bannock Creek and its tributaries; said right to date and said water to be diverted as follows: three cubic feet per second of time to be diverted from Rattlesnake Creek, a tributary of said Bannock Creek, and to date from the 1st day of April, 1892, and one cubic foot per second of time to be diverted from

29 0469 the West Fork of said Bannock Creek, and to date from the 1st day of May 1894; all of said water to be used upon and become appurtenant to the following described lands, the community property of said Thomas D. Daniels and Sarah Daniels, to-wit: The northeast quarter of the northwest quarter and the north half of the northeast quarter of section thirteen, and the southeast quarter of the southeast quarter of section twelve, in Township ten, South of Range thirty-three East of Boise Meridian; and the northwest quarter, and the southwest quarter of the northeast quarter of section eleven, and the southeast quarter of the southwest quarter of section two, in said Township and Range; in Oneida County, State of Idaho;

29 0470 That said Jeannette Price, is entitled, at all times, for the irrigation of her lands hereinafter described, and for domestic and stock purposes thereon, to the use of one and three-tenths (1.3) cubic feet per second of time, of the waters of the West Fork of said Bannock Creek, her right to date from the 1st day of April, 1894, to be used upon and become appurtenant to the following described lands, to-wit: The South half of the southeast quarter and the northwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section four, in Township ten, South of Range thirty-three East of Boise Meridian, in Oneida County, Idaho;

29 0471 That the said Henry Daniels is entitled, at all times for the irrigation of his lands hereinafter described, and for domestic and

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of the northeast quarter, and the northeast quarter of the northeast quarter of section seven, and the northwest quarter of the northwest quarter of section eight, in Township ten, South of Range thirty-four East of Boise Meridian, in Oneida County, Idaho;

29 0478 That said W. C. Snyder is entitled, at all times, for the irrigation of his lands hereinafter described, and for domestic and stock purposes thereon, to the use of one and one-fifth cubic feet per second of time of the waters of said Rattlesnake Creek, a tributary of said Bannock Creek, said right to date from the 29th day of September, 1902, to be used upon and become appurtenant to the following described lands, to-wit: The northeast quarter of the northwest quarter and the north half of the northeast quarter and the southeast quarter of the northeast quarter of section seventeen, in Township nine, South of Range thirty-four East of Boise Meridian, in Oneida County, Idaho;

29 0479 That said George W. Bradley is entitled, at all times, for the irrigation of his lands hereinafter described, and for domestic and stock purposes thereon to the use of two-fifths of one cubic foot per second of time of the waters of said Rattlesnake Creek, a tributary of said Bannock Creek, said right to date from the 6th day of May, 1902, to be used upon and become appurtenant to the following described lands, to-wit: The northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter section ten, in Township ten, South of Range thirty-four east of Boise Meridian, in Oneida County, Idaho;

29 0480 That said J. H. Meadows is entitled, at all times, for the irrigation of his lands hereinafter described, and for domestic and stock purposes thereon, to the use of three-fifths of one cubic foot per second of time of the waters of said Rattlesnake Creek, a tributary of Bannock Creek, said right to date from the 1st day of October, 1903, to be used upon and become appurtenant to the following described lands, to-wit: The east half of the southwest quarter of section eight, in Township nine, South of Range thirty-four East of Boise Meridian, in Oneida County State of Idaho;

29 0481 That said W. E. Verley is entitled at all times, for the irrigation of his lands hereinafter described, and for domestic and stock purposes thereon, to the use of three-fifths of one cubic foot per second of time, of the waters of said Rattlesnake Creek, a tributary of said Bannock Creek, said right to date from the 1st day of October, 1903, to be used upon and become appurtenant to the following described lands, to-wit: The southeast quarter of the southeast quarter of section six, and the northeast quarter of the northeast quarter of section seven, in Township nine, South of Range thirty-four East of Boise Meridian, in Oneida County, State of Idaho.

That any of the foregoing respondents and cross-complainants, who are entitled to the use of any of the waters of said Bannock Creek or its tributaries, as herein decreed, may pool or unite the waters so decreed to them respectively, and use the same jointly or alternately, or in any manner that will secure the greatest benefits and best results in the use of said water, so that the waters so united or pooled, do not exceed in the aggregate the amount so decreed to the parties entering into such arrangements.

That the said D. T. Davis, Charles Bailey, John Gibbons, Thomas Gibbons, Julius Aberture and William Orin, have no right title, interest or claim in or to the use of any of the waters of said Bannock Creek, or its tributaries, and are hereby forever enjoined from in any manner diverting or using the same to the injury of any of the parties to whom the rights to the use of said waters are herein decreed;

That each and every of the parties hereto, their agents, servants, employees, attorneys, counselors, heirs, administrators, successors and assigns, and all and every person or persons acting by, or under, or in assistance of them or any of them, be and they are hereby forever and perpetually restrained and enjoined from in any manner using the waters of said Bannock Creek or any of its tributaries, in any other quantity or in any other manner than is herein set out, defined and decreed, and each of the parties hereto shall respect the superior rights of all others under this decree. This decree must be construed in connection with the opinion filed herewith in this cause.

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stock purposes thereon, to the use of one and three tenths (1.3) cubic feet per second of time, of the waters of the West Fork of said Bannock Creek, his right to date from the 1st day of April, 1894, to be used upon and become appurtenant to the following described lands, to-wit: The south half of the northwest quarter and the northwest quarter of the southwest quarter of section three, and the northeast quarter of the southeast quarter of section four, Township ten, South of Range thirty-three East of Boise Meridian, in Oneida County, Idaho;

29 0472 That said George Daniels is entitled, at all times, for the irrigation of his lands hereinafter described, and for domestic and stock purposes thereon, to the use of one cubic foot per second of time, of the waters of said West Fork of said Bannock Creek, said right to date from the 1st day of April, 1898 to be used upon and become appurtenant to the following described lands, to-wit: The southwest quarter of section five, in township ten, south of Range thirty-three, East Boise Meridian, in Oneida County, State of Idaho;

29 0473 That the said John M. Daniels, is entitled at all times, for the irrigation of his lands hereinafter described, and for domestic and stock purposes thereon, to the use of one cubic foot per second of time, of the waters of said West Fork of said Bannock Creek, said right to date from the 1st day of April, 1898, to be used upon and become appurtenant to the following described lands, to-wit: The west half of the southwest quarter of section four, and the north half of the northwest quarter of section nine, in Township ten, South of Range thirty-three, East of Boise Meridian, in Oneida County, Idaho;

29 0474 That the said Thomas J. Williams is entitled at all times, for the irrigation of his lands hereinafter described, and for domestic and stock purposes thereon, to the use of one cubic foot per second of time of the waters of said West Fork of said Bannock Creek, said right to date from the 1st day of April, 1901, to be used upon and become appurtenant to the following described lands, to-wit: the Northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter, and the south half of the northeast quarter of section four, in Township ten, South of Range thirty-three East of Boise Meridian, in Oneida County, State of Idaho;

29 0475 That the said J. W. Lusk is entitled at all times, for the irrigation of his lands hereinafter described, and for domestic and stock purposes thereon, to the use of one and one-fifth (1.2) cubic feet per second of time of the waters of Rattlesnake Creek, a tributary of said Bannock Creek, said right to date from the 1st day of April, 1892, to be used upon and become appurtenant to the following described lands, to-wit: The southeast quarter of the northeast quarter and the northeast quarter of the southeast quarter of section thirteen, in Township ten, South of Range thirty-three East of Boise Meridian, in Oneida County, State of Idaho;

29 0476 That said John Bolinbroke is entitled at all times, for the irrigation of his lands hereinafter described, and for domestic and stock purposes thereon, to the use of two cubic feet per second of time of the waters of said Rattlesnake Creek, a tributary of said Bannock Creek, said right to date from the 1st day of April, 1892, to be used upon and become appurtenant to the following described lands, to-wit: Lot four and the southeast quarter of the southwest quarter of section seven, and the northeast quarter of the northwest quarter, and the northwest quarter of the northeast quarter of section eighteen, in Township ten, South of Range thirty-four East of Boise Meridian, in Oneida County, Idaho;

29 0477 That said David Bolingbroke and Mary E. Bolingbroke, husband and wife, are entitled at all times, for the irrigation of their lands hereinafter described, and for domestic and stock purposes thereon, to the use of seven-tenths of one cubic feet per second of time, of the waters of said Rattlesnake Creek, a tributary of said Bannock Creek, their right to the use of the same to date from the 1st day of April, 1897, to be used upon and become appurtenant to the following described lands, the community property of the said David and Mary E. Bolingbroke, to-wit: Lot three and the northeast quarter of the southeast quarter, and the northwest quarter of the southeast quarter, and the south half

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That the costs herein shall be paid by the respective parties in the amount which each of them has incurred.

Done in open Court on this the 9 day of April, 1907.

Jas. M. Beatty, District Judge.

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