

RECEIVED
APR 15 2008
DEPARTMENT OF
WATER RESOURCES

Michael C. Creamer (ISB #4030)
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
mcc@givenspursley.com

SUPPORT DATA
IN FILE # 63-132

*Attorneys for Ron Sali and
Ron Sali Properties, Inc., Profit Sharing Plan*
S:\CLIENTS\4419\54\Sali Response to Hart-Davis MSI.DOC

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE**

In Re SRBA

Case No. 39576

Subcase Nos. 63-00132, 63-00133,
63-00134, 63-00134A, 63-00134B,
63-00186A, 63-00186B, 63-17205 and
63-31772

**RON SALI'S AND RON SALI
PROPERTIES, INC., PROFIT
SHARING PLAN'S RESPONSE TO
HART-DAVIS DITCH COMPANY'S
MOTION FOR SUMMARY
JUDGMENT**

COMES NOW, Ron. Sali and Ron Sali Properties, Inc., Profit Sharing Plan ("Sali"), by and through their attorneys of record, Givens Pursley LLP, and, pursuant to the Second Supplemental Trial Scheduling Order filed December 31, 2007, hereby file their Response to Hart-Davis Ditch Company's Motion for Summary Judgment.

Sali's response addresses one significant issue raised by Hart-Davis Ditch Company's ("Hart-Davis") memorandum in support of its motion for summary judgment; namely the issue

RON SALI'S AND RON SALI PROPERTIES, INC., PROFIT SHARING PLAN'S RESPONSE TO
HART-DAVIS DITCH COMPANY'S MOTION FOR SUMMARY JUDGMENT - 1

of the extent to which a ditch company can withhold consent to a shareholder's request to change or transfer the shareholder's water right delivered by a mutual ditch and represented by ditch company shares. Hart-Davis is correct that consent from the ditch company is required, but its silence with respect to the grounds for the giving or withholding of consent suggests that Hart-Davis may believe its consent can be withheld unilaterally and arbitrarily. Sali urges the Court to recognize that Idaho statutes requiring a ditch company's consent before a water right holder can change or transfer his water right do not eliminate the requirements that consent cannot be unreasonably withheld and that a shareholder is entitled to transfer his or her water rights provided no other water users are injured.

A long line of Idaho decisions and decisions of other prior appropriation states recognize that the water user served by a canal company or irrigation district who actually places the water to beneficial use is the true owner of the water rights diverted and delivered through a common canal. The most recent confirmation of this in Idaho is the case of *United States of America v. Pioneer Irrig. Dist., et al.*, 144 Idaho 106, 157 P.3d 600 (2007) (as a matter of Idaho constitutional and statutory law, title to the use of the water is held by the consumers or users of the water, and the delivery entity at most serves as the water right owner's trustee).

This right held by the beneficial user of water is a real property right that can be conveyed together with or apart from the land to which it is appurtenant. *Reno v. Richards*, 32 Idaho 1, 178 P. 81 (1918); *In re: Robinson*, 61 Idaho 462, 103 P.2d 693 (1940); *Crow v. Carlson*, 107 Idaho 461, 690 P.2d 916 (1984). *Robinson* held that the water right can be made appurtenant to other lands so long as the transfer does not injure other appropriators. 61 Idaho at 469. See also, *First Security Bank of Blackfoot v. State*, 49 Idaho 740, 291 P. 1064 (1930) ("one of the valuable incidents of [a water right] which an owner cannot be deprived is the right

to use it where he will and to change its place of use, providing always that by reason of such change in the place of use the rights of others are not adversely affected.)

Where the water right is represented by shares of stock in a water delivery entity, Idaho Code § 42-108 does require the water delivery organization's consent to the transfer. But this consent authority needs to be read together with the Idaho court's recognition of the inherent right of the water right owner to transfer, provided other water rights are not injured. *Hard v. Boise City Irrig. & Land Co.*, 9 Idaho 589, 76 P. 331 (1904); *In re: Johnson*, 50 Idaho 573, 300 P. 492 (1931); *Colthorp v. Mountain Home Irrig. Dist.*, 66 Idaho 173, 157 P.2d 1005 (1945). An alleged "injury" to a ditch by a transfer is not an injury to a water rights (i.e., increased cost among remaining ditch users for overall operation and maintenance), and is not a recognized injury. See, *In re: Johnson*, 50 Idaho at 579-80 (the ditch right and water right are two separate species of property, ... and there is no injury resulting from the failure of a water right holder to continue using the canal in common with others).

Historically, shareholders in Boise Valley canals were able to move their water rights out of one canal and into another or change their diversion to a private point of diversion with relative ease—a fact that is readily apparent from a review of historical Idaho Department of Water Resources water right and transfer files for the various Boise River canals. This allowed, for example, for early settlers who learned that their bottomlands were too gravelly to be irrigable, to move their rights out of one ditch company system and into another so that the water could be delivered to more productive ground. See e.g., *In re: Robinson, supra* (Supreme Court recognizes right of shareholder in North Side Canal Company to change the place of use of his water right to more productive lands provided no other rights are injured).

Moreover, conditions can almost always be imposed on a transfer by a ditch company to insure that the water rights of other shareholders on the ditch are not injured.¹ One of the most common conditions on such transfers is the requirement that the water right holder leave his or her proportionate share of ditch conveyance losses in the ditch after the transfer. Provided reasonable conditions can be imposed to protect other water rights in the ditch, the ditch company's consent cannot be withheld so as to deprive a shareholder of his or her inherent right of transfer.

In light of the foregoing, Sali would caution that while the Court can recognize a ditch company's statutory right under I.C. § 42-108 to consent to water right transfers by their shareholders, that right cannot be unreasonably exercised. Any order the Court issues on the State's or Hart-Davis' cross-motions for summary judgment should not suggest that a ditch company's consent could be withheld where no injury to other water right owners will occur or where reasonable conditions can be imposed to prevent injury.

DATED this 14th day of April, 2008.

GIVENS PURSLEY LLP

By: 

Michael C. Creamer
Attorneys for Ron Sali and
Ron Sali Properties, Inc., Profit Sharing Plan

¹ Such conditions would be distinct from conditions that IDWR might impose under I.C. § 42-222 to prevent injury to other water right holders who are not shareholders.

Certificate of Service

I hereby certify that on this 14th day of April, 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Director of IDWR
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Mace-Catlin Ditch Company
Represented by:
Jon C. Gould
Ringert Clark Chartered
455 S. Third
PO Box 2773
Boise, ID 83701-2773
Fax No.: (208) 342-4657

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Hart-Davis Ditch Company, Inc.
Represented by:
S. Bryce Farris
Ringert Clark Chartered
455 S. Third
PO Box 2773
Boise, ID 83701-2773
Fax No.: (208) 342-4657

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, ID 83716

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

State of Idaho
Represented by:
Natural Resources Div. Chief
Idaho Attorney General's Office
PO Box 44449
Boise, ID 83711-4449

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Lawrence G. Wasden
Clive J. Strong
David J. Barber
Office of the Attorney General
Natural Resources Division
700 W. Jefferson St., 210 Statehouse
PO Box 83720
Boise, ID 83720-0010

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Special Master Ted Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-3707

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile


Michael C. Creamer

COPY

RECEIVED

APR 15 2008

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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	)	Subcase Nos. 63-00132, 63-00133 & 63-00134
	)	
	)	STATE OF IDAHO DEPARTMENT OF PARKS AND
	)	RECREATION'S AMENDED LIST OF EXHIBITS
Case No. 39576	)	
	)	
	)	

The State of Idaho, Department of Parks and Recreation, (hereinafter the "IDP&R"),
through counsel, submits the following Exhibit List.¹

IDP&R Exhibit 1: Stewart Decree, which was entered in *Farmer's Cooperative Ditch Co. v. Riverside Irrigating Dist, et al.*, *aff'd* 14 Idaho 450 (1908); *Order Denying Motion for a New Trial rev'd*, 16 Idaho 525 (1909).

IDP&R Exhibit 2: Excerpts from MTPs for Township 4 North, Range 1 East, B.M. Township 4 North, Range 1 West, B.M.

¹ This list of exhibits uses the following additional abbreviations: (a) "MTP" means Master Title Plat and (b) "IDL" means the State of Idaho, Department of Lands.

- IDP&R Exhibit 3: Affidavit of David J. Barber Dated March 13, 2008.
- IDP&R Exhibit 4: Chain of Title for Parcel 2.1.
- IDP&R Exhibit 5: Chain of Title for Parcel 5.1.
- IDP&R Exhibit 6: Chain of Title for Parcel 5.2.
- IDP&R Exhibit 7: Chain of Title for Parcel 5.3.
- IDP&R Exhibit 8: Chain of Title for Parcel 5.4.
- IDP&R Exhibit 9: Chain of Title for Parcel 5.5.
- IDP&R Exhibit 10: Chain of Title for Parcel 6.1.
- IDP&R Exhibit 11: Chain of Title for Parcel 6.2.
- IDP&R Exhibit 12: Chain of Title for Parcel 7.1.
- IDP&R Exhibit 13: Chain of Title for Parcel 7.2.
- IDP&R Exhibit 14: Chain of Title for Parcel 8.
- IDP&R Exhibit 15: Chain of Title for Parcel 9.1.
- IDP&R Exhibit 16: 10/5/1869. United States to William B. Francis. [SRBA60161].
- IDP&R Exhibit 17: 7/15/1871. United States to Truman C. Catlin. [SRBA60163].
- IDP&R Exhibit 18: 7/15/1871. United States to Franklin C. Robertson. Instrument No. 121172. 5/Deeds/322. [SRBA60164].
- IDP&R Exhibit 19: 7/15/1871. United States to Joseph E. Woods. [SRBA60165].
- IDP&R Exhibit 20: 3/20/1875. United States to William B. Francis. [SRBA60168].
- IDP&R Exhibit 21: 11/21/1877. W. B. Francis to W. L. Thurman. 7/Deeds/508. [SRBA60179].
- IDP&R Exhibit 22: 12/7/1878. Franklin C. Robertson to Polete Mace. Instrument No. 35071. 87/Deeds/227. [SRBA60180].
- IDP&R Exhibit 23: 10/28/1885. William L. Thurman and Victoria Thurman to Martha E. McCarty. 11/Deeds/329. [SRBA60186].

- IDP&R Exhibit 24: 3/16/1887. Joseph E. Woods and Elisabeth Woods to T. C. Catlin. 12/Deeds/255. [SRBA60191].
- IDP&R Exhibit 25: 9/3/1887. United States to Polete Mace. Instrument No. 35070. 4/Patents/377. [SRBA60192].
- IDP&R Exhibit 26: 4/24/1893. Martha E. McCarty to Truman C. Catlin. 26/Deeds/37. [SRBA60197].
- IDP&R Exhibit 27: 12/30/1926. Estate of Polete Mace to Charles P. Mace, Frank Mace, Grover Mace, Benjamin Mace, and Wesley Mace. Instrument No. 123893. 178/Deeds/29. [SRBA60358].
- IDP&R Exhibit 28: 12/31/1926. Charles P. & Mary Mace, Frank & Josie A. Mace, Benjamin & Grace J. Mace, and Wesley & Rosa Mace to Grover Mace. Instrument No. 123977. 177/Deeds/68. [SRBA60362].
- IDP&R Exhibit 29: 12/31/1926. Charles P. & Mary Mace, Frank & Josie A. Mace, Benjamin & Grace J. Mace, and Grover & Cora B. Mace to Wesley Mace. Instrument No. 123978. 177/Deeds/69. [SRBA60363].
- IDP&R Exhibit 30: 12/31/1926. Charles P. & Mary Mace, Grover & Cora B. Mace, Benjamin & Grace J. Mace, and Wesley & Rosa Mace to Frank Mace. Instrument No. 123978. 177/Deeds/67. [SRBA60361].
- IDP&R Exhibit 31: 12/31/1926. Frank & Josie A. Mace, Grover & Cora B. Mace, Benjamin & Grace J. Mace, and Wesley & Rosa Mace to Charles P. Mace. Instrument No. 123978. 177/Deeds/65. [SRBA60359].
- IDP&R Exhibit 32: 12/31/1926. Charles P. & Mary Mace, Frank & Josie A. Mace, Grover & Cora B. Mace, and Wesley & Rosa Mace to Benjamin Mace. Instrument No. 123978. 177/Deeds/66. [SRBA60360].
- IDP&R Exhibit 33: 3/15/1928. Estate of T. C. Catlin to Karl Fischer. Instrument No. 129718. 182/Deeds/389. [SRBA60366].
- IDP&R Exhibit 34: 3/15/1928. Karl Fischer to A. G. Coker. 182/Deeds/391. [SRBA60367].
- IDP&R Exhibit 35: 11/19/1929. Agreement between Karl Fischer, Charles P. & Mary Mace, Frank & Josie A. Mace, Benjamin & Grace J. Mace, Wesley & Rosa Mace, Grover & Cora B. Mace, and A. G. & Margaret C. Coker. Instrument No. 137565. 12/Contracts/192. [SRBA60369].
- IDP&R Exhibit 36: 11/20/1929. Karl Fischer to State of Idaho. Instrument No. 137566. 191/Deeds/16. [SRBA60370].

- IDP&R Exhibit 37: 2/28/1992. IDL to IDP&R. Instrument No. 9215747. [SRBA60635].
- IDP&R Exhibit 38: 2/8/1994. IDL to IDP&R. (Correction Deed). Instrument No. 94026232. [SRBA60661].
- IDP&R Exhibit 39: 9/11/1995. IDP&R to IDP&R. Instrument No. 95065465. [SRBA60679].
- IDP&R Exhibit 40: 12/7/1995. IDP&R to Ron & Sharon E. Taylor. Instrument No. 95091510. [SRBA60682].
- IDP&R Exhibit 41: 4/21/1997. Ron & Sharon E. Taylor to Todd & Cassy Lindsey. Instrument No. 97033421. [SRBA60699].
- IDP&R Exhibit 42: 2/12/1953. Letter to Edward Woozley, State Land Commissioner, from Idaho State Board of Correction.
- IDP&R Exhibit 43: 2/28/1995. Memo from Stanley F. Hamilton, Director of IDL, to Philip E. Batt, Governor.
- IDP&R Exhibit 44: Transfer No. 179, Certificate of Change in Point of Diversion of Decreed Water Right.
- IDP&R Exhibit 45: Affidavit of Charles C. Smith Dated March 13, 2008.
- IDP&R Exhibit 46: 2/5/2007. Todd & Cassy Lindsey to E, LLC. Instrument No. 107018316.
- IDP&R Exhibit 47: Affidavit of David J. Barber Dated April 14, 2008.
- IDP&R Exhibit 48: Certificate of Administrative Action of Mace-Catlin Mutual Ditch Company, Incorporated, File Number C128566, dated April 9, 2008.
- IDP&R Exhibit 49: Affidavit of David M. Ricks Dated April 14, 2008.

////

////

////

////

////

////

RESPECTFULLY SUBMITTED this 14th day of April 2008.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO



DAVID J. BARBER
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 14th day of April 2008, I caused to be served the original and/or copy of the STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S AMENDED LIST OF EXHIBITS on each of the following persons by the indicated method:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
☒ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to the following persons:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

Mace Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Rd
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
919 S. Linder Rd.
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 345-8800
- ☐ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General

COPY

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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	)	Subcase Nos. 63-00132, 63-00133, & 63-00134
	)	
	)	IDP&R EXHIBIT 49: AFFIDAVIT OF DAVID M.
	)	RICKS DATED APRIL 14, 2008
Case No. 39576	)	
	)	
	)	

STATE OF IDAHO)
)
County of Ada)

DAVID M. RICKS, being first duly sworn upon oath, deposes and states:

1. I am a competent adult over the age of eighteen years and the statements made herein are based upon my own personal knowledge of the events described.

2. I started my career with the State of Idaho after earning a BBA degree from Boise State University with a major in accounting. I worked many years in the Department of Health and Welfare in various capacities among which were Budget Director, Controller, Bureau Chief

IDP&R EXHIBIT 49: AFFIDAVIT OF DAVID M. RICKS
 DATED APRIL 14, 2008

in Medicaid, Assistant Administrator and Administrator in the Division of Veterans Services. I have over 30 years of experience in state government, much of it involving budgeting, project, and construction management.

3. I am presently the Division Administrator for the Division of Management Services for the Idaho Department of Parks and Recreation (hereinafter the "IDP&R"). Among my other duties overseeing the Department's Fiscal operation, Information/Technology, and Grants Programs, I oversee the Department's Development group involved with construction projects in our parks. I am also custodian of the records regarding development at each state park.

4. The IDP&R completed a comprehensive inventory of its water rights for the real property that it administers throughout the State of Idaho within the last year. This inventory was not completed earlier because of funding and staffing issues.

5. Records in my office provide the following history of past development of the Eagle Island state park. (i) The State of Idaho purchased the Eagle Island State Park site in 1929 for a penitentiary farm. The site was operated as a penitentiary farm until 1977. (ii) In 1983 the IDP&R developed the site as a park to include a water slide, picnic areas, equestrian center, restrooms, concessions, swimming areas and trails. (iii) A master plan was completed in 2000, which included a comprehensive inventory of the natural systems and the human systems. This inventory included a detailed analysis of the site's climate, wildlife, topography, soils, hydrology, adjacent uses, historical and cultural resources.

6. I became involved with the Eagle Island Development in my present capacity when developing the SFY 2007 Governor's Budget Request working with Governor Kempthorne and his staff. A task force was created, and it developed a new Master Plan for the

Eagle Island State Park in 2006. It recommended the creation of a series of lakes (120 acres) and channels tying together the urban and natural functions of the park. The park will provide for year-round recreation opportunities, with the north portion of the park having the highest concentration of uses and the more auto-dependent uses. These include a new "grand entrance" off State Street and a bridge across the North Channel of the Boise River. The bridge and other park improvements will be designed to minimize the effects of flood waters on the park and adjacent properties.

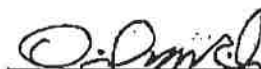
7. The north portion of the Eagle Island State Park under the 2006 Master Plan will include camping areas, kayak/canoe launching sites, picnic areas, a world class natural resource education center and an amphitheater. At the heart of the park, the existing water slide and beach areas will remain, with a large shelter set in an ornamental garden that will provide opportunities for a variety of scheduled events.

8. The southern portion of the Eagle Island State Park under the 2006 Master Plan will continue to be more remote, undeveloped and encourage a natural experience of the park with passive uses, such as trails, meadows and informal picnic areas. The 2006 Master Plan will also increase wildlife habitat through the preservation of existing wetlands, development of new wetlands and a perimeter forest planting reminiscent of the groves of black cottonwood trees in the park.

9. I have identified two primary concerns regarding the IDP&R ownership of the three water rights for the Hart Davis Ditch Company and the Mace-Catlin Mutual Ditch Company, Incorporated. First, will the IDP&R continue to pay its assessments for operation and maintenance of the diversion structures and ditches? The IDP&R intends to do so, if the Legislature continues to appropriate monies for such expenses. The limitation stated is always a

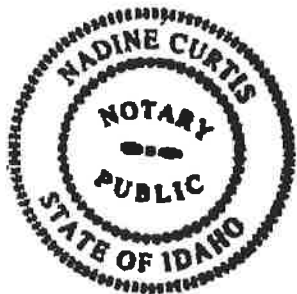
limitation for any state agency. Second, will the IDP&R deliver at the western edge of its property sufficient water into the Hart Davis ditch for the other users down ditch from Eagle Island State Park? The IDP&R intends to do so. The second concern does not apply to the Mace-Catlin Mutual Ditch Company, Inc., since the IDP&R is the last user on that ditch system.

10. Further your affiant sayeth naught.



DAVID M. RICKS

SUBSCRIBED AND SWORN to before me this 14th day of April 2008.



NOTARY PUBLIC FOR IDAHO

Residing at Boise, Idaho

My Commission expires Sept. 14, 2013

CERTIFICATE OF SERVICE

I certify that on this 14th day of April 2008, I caused to be served the original and copies of this IDP&R EXHIBIT 49: AFFIDAVIT OF DAVID M. RICKS DATED APRIL 14, 2008 on the following persons by the indicated methods:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to the following persons:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Mace Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Rd
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
919 S. Linder Rd.
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 345-8800
- ☐ Statehouse Mail

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

Not Applicable

A handwritten signature in cursive script, reading "David J. Barber", written over a horizontal line.

DAVID J. BARBER
Deputy Attorney General

COPY

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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	)	Subcase Nos. 63-00132, 63-00133, & 63-00134
	)	
	)	IDP&R EXHIBIT 47: AFFIDAVIT OF DAVID J.
	)	BARBER DATED APRIL 14, 2008
Case No. 39576	)	
	)	
	)	

STATE OF IDAHO)
County of Ada)

DAVID J. BARBER, being first duly sworn upon oath, deposes and states:

1. I am a competent adult over the age of eighteen years and the statements made herein are based upon my own personal knowledge of the events described.
2. I am a deputy attorney general assigned to the Snake River Basin Adjudication, hereinafter the "SRBA," and have been so assigned since the commencement of the SRBA on

November 19, 1987. Generally, my assignments in the SRBA focused on the federal reserved water right claims and related matters, including a quiet title action in U.S. District Court regarding ownership of islands within the Snake River Islands Unit of the Deer Flat National Wildlife Refuge. Those assignments changed at the end of May 2001, when Mr. Peter Ampe resigned his position in the office and moved to another state. While I still had some pending federal reserved water right matters at the time, I was assigned Mr. Ampe's previous role of assisting state agencies in the SRBA.

3. The State of Idaho filed its complaint on September 16, 1997 in State of Idaho et al. v. United States of America et al, CIV97-0426-S-BLW. This matter was an action under 28 U.S.C. § 2409a to quiet title to certain islands within the Snake River Islands Unit of the Deer Flat National Wildlife Refuge, it was in response to the claim of the United States to a federal reserved water right for the islands in the Snake River Islands Unit of the Deer Flat National Wildlife Refuge. I was the lead attorney assigned to this case. This matter was very challenging from a technical perspective because it required the State of Idaho to develop a methodology to determine whether certain islands had formed in the bed of the Snake River before or after the date of statehood, July 3, 1890. Administration of contracts for technical studies for this matter involved a great deal of time. This matter was resolved by a settlement and entry of a final judgment in August 2002.

4. The resolution of the quiet title action provided me the time to focus on the needs of the various state agencies in the SRBA. I identified the ownership of the water rights for the Idaho Department of Parks and Recreation (hereinafter the "IDP&R") at Eagle Island State Park as an issue. I concluded that existing file documents could not resolve the basis for ownership in the Hart Davis Ditch Company or in the Mace-Catlin Mutual Ditch Company, Incorporated of

the water rights providing water to Eagle Island State Park. I began a more detailed historical research in May 2003. This research began by obtaining from the BLM the master title plats for Township 4 North, Range 1 East and for Township 4 North, Range 1 West, both in Boise Meridian. Ordinary townships under the public land survey system measure six miles on each side and consist of thirty-six sections with an area of one-square mile for each section. A master title plat illustrates the boundaries of each patent that disposed of the public domain to a private person. I obtained copies of each patent on file with the BLM for lands within relevant parts of Eagle Island. For ease of reference, I then assigned parcel numbers from one through fourteen for relevant lands within Eagle Island. IDP&R Exhibit 2 is a true and correct copy of excerpts from the MTP for Township 4 North, Range 1 East and for Township 4 North, Range 1 West, both in Boise Meridian. The assignment of parcel numbers appears on these excerpts. I then began to research at the Ada County Recorder's office the ownership of relevant parcels.

5. Mr. Pete Ampe was employed as a deputy attorney general from March 3, 1997 through May 25, 2001. I could find no evidence that Mr. Ampe ever identified the ownership of the water rights at Eagle Island as an issue to investigate. During his tenure at the Office of the Idaho Attorney General, Mr. Ampe did provide me very valuable assistance in the quiet title action over the ownership of the islands within the Snake River Islands Unit of the Deer Flat National Wildlife Refuge. My recollection is that his assistance to me in the quiet title action was often interrupted by his assistance to particular state agencies and that he was a very hard worker and valuable employee of the Office of the Idaho Attorney General.

6. Mr. Ampe had a big job during his representation of state agencies for some fairly obvious reasons. First, the State of Idaho is the second largest landowner in the state. That land ownership meant that a large variety of claims needed to be reviewed for a variety of state

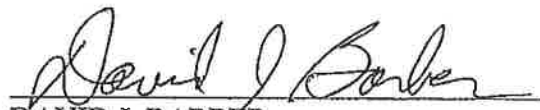
agencies, including the Idaho Department of Fish and Game, Idaho Department of Lands, and Idaho Department of Parks and Recreation. Second, the review of director's reports as they were reported to the SRBA was also a major task. Simply put, this work load required Mr. Ampe to prioritize his review and work. Since Basin 63 was down the list of basins to be reported, it did not receive the attention that earlier basins received.

7. I initiated the research on the chains of title because existing file documents did not explain the basis for ownership by the various ditch companies. Because this research had been independently initiated, I undertook the research on an as time permitted basis. When the research progressed and did not explain the present claim of ownership by the various ditch companies, I expanded the scope of the research, which I did several times. Ultimately, I collected almost six hundred deeds and spent several hundred hours of time with the research. Deputy Attorney General Clive J. Strong and I discussed the research, and he recommended to me that the IDP&R obtain review by a third party who had experience in title examination. That review would assist in finishing the research project that I had begun and would assure that all critical legal documents in the public record had been found. The Office of the Idaho Attorney General then executed a professional services contract with Mr. Charles C. Smith to provide that review.

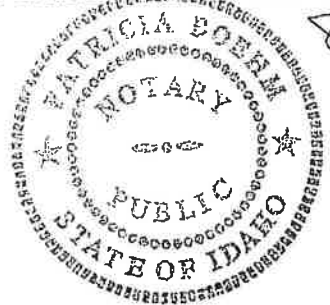
8. Prior to my assignment to the state agencies, the issue of ownership of the water rights at Eagle Island State Park had not been identified as a matter for investigation. I attribute that failure to at least two reasons: First, the IDP&R had not developed a comprehensive inventory of its water rights at the time of initial claims taking. Second, the failure to develop a comprehensive inventory was primarily a funding and staffing issue. After my assignment, I identified the ownership issue prior to May 2003 as a matter for further research, but, I did not

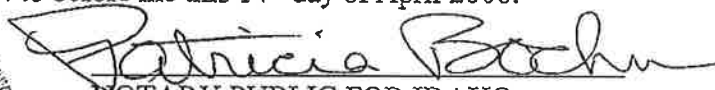
have sufficient information to recommend to my client to make the claim in May 2003. I have had to conduct research in recorder's offices many times during my legal career, including research in at least three different states. That experience has taught me that a document can be very difficult to find for a variety of reasons, including the following: (1) the indices do not correctly list the document; (2) the name of the grantee changed from the date of title acquisition to the date of a title disposition grant, and the indices do not index the document under both names; or (3) the location of where a document is recorded changes over time. During the research that I conducted in this matter, the problems posed by the first and second reasons all occurred. The existence of those problems in conducting research has made me very cautious about making definitive claims about the non-existence of a document in the public record. When the objection deadline approached in 2006, I recommended that an objection to ownership be filed, and the IDP&R concurred. At that point in time, the filing of a separate motion to file late notice of claim would have only served to confuse and to delay the proceedings procedurally.

9. Further your affiant sayeth naught.


DAVID J. BARBER

SUBSCRIBED AND SWORN to before me this 14th day of April 2008.




NOTARY PUBLIC FOR IDAHO
Residing at Boise ID
My Commission expires 11/16/09

CERTIFICATE OF MAILING

I certify that on this 14th day of April 2008, I caused to be served the original and copies of this IDP&R EXHIBIT 47: AFFIDAVIT OF DAVID J. BARBER DATED APRIL 14, 2008 on the following persons by the indicated methods:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
☒ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to the following persons:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

Mace Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warms Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Rd
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
919 S. Linder Rd.
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 345-8800
- ☐ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General

State of Idaho

Office of the Secretary of State

**CERTIFICATE OF ADMINISTRATIVE ACTION
OF
MACE-CATLIN MUTUAL DITCH COMPANY, INCORPORATED**

File Number C 128566

I, BEN YSURSA, Secretary of State of the State of Idaho, hereby certify that I am the custodian of the corporation records of this State.

I FURTHER CERTIFY That the record of this office show that the above-named corporation was incorporated under the laws of Idaho on April 22, 1999.

I FURTHER CERTIFY That administrative action was taken on July 8, 2004, for failure to comply with annual requirements, and that said corporation is not now and has not been authorized to transact business as a subsisting corporation in the State of Idaho since the date of administrative action.

Dated: April 9, 2008



Ben Yursa

SECRETARY OF STATE

By

A large, stylized handwritten signature of Ben Yursa, consisting of a large loop followed by a series of smaller loops and a final flourish.

IDP&R Exhibit 48: Certificate of Administrative Action of Mace-Catlin Mutual Ditch

Company, Incorporated, File Number C128566, dated April 9, 2008.

RECEIVED

APR 15 2008

DEPARTMENT OF
WATER RESOURCES

JON C. GOULD (ISB #6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Mace-Catlin Mutual Ditch Company, Inc.

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 NOS. 63-134, 63-132, 63-133,
) 63-134A, 63-134B, 63-186A, 63-186B,
) 63-17205 and 63-31772
)

) MACE-CATLIN MUTUAL DITCH
) COMPANY'S RESPONSE TO STATE OF
) IDAHO, DEPARTMENT OF PARKS
) RECREATION'S MOTION FOR
) SUMMARY JUDGMENT
)

COMES NOW Mace-Catlin Mutual Ditch Company (hereinafter "Mace-Catlin"), by and through its counsel of record, Ringert Clark, Chartered, submits to this Court, pursuant to Rule 56 of the Idaho Rules of Civil Procedure and pursuant to the Second Supplemental Trial Scheduling Order filed December 21, 2007, its *Response to State of Idaho, Department of Parks Recreation's Motion for Summary Judgment*.

BACKGROUND

The issues raised by the State in its Motion for Summary Judgment before the Court have been thoroughly briefed. Mace-Catlin's *Memorandum in Support of Motion for Summary Judgment* provides this Court with the legal basis for denying the State's Motion for Summary Judgment.

MACE-CATLIN MUTUAL DITCH COMPANY'S RESPONSE TO STATE'S MOTION FOR SUMMARY
JUDGMENT - Page 1

COPY

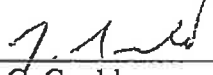
Mace-Catlin, therefore incorporates its Memorandum herein as if restated in whole along with Affidavit of Jon C. Gould, Affidavit of Mel Carlson, the claims of Mace-Catlin and the pleadings and documents on file with this Court.

V. CONCLUSION

For the foregoing reasons, this Court should deny State of Idaho's Motion for Summary Judgment.

DATED this 11 th day of April, 2008.

RINGERT CLARK, CHARTERED

By: 
Jon C. Gould
Attorney for Mace-Catlin Mutual Ditch Company

CERTIFICATE OF MAILING

I hereby certify that service of the within and foregoing document was made this 14th day of April, 2008, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

State of Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali and Ron Sali Properties

Represented by:
Michael C. Creamer
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720

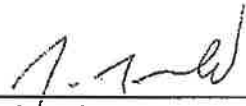
Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

State of Idaho
Department Natural Resources
P.O. Box 44449
Boise, Idaho 83711-4449

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Hart Davis Ditch Company
c/o S. Bryce Farris
Ringert Clark Chartered
P.O. Box 2773
Boise, Idaho 83701



Jon C. Gould

RECEIVED

APR 15 2008

DEPARTMENT OF
WATER RESOURCES

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Hart-Davis Ditch Company, Inc.

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

In Re SRBA

Case No. 39576

)
) SUBCASE NO. 63-132, 63-00133,
) 63-00134, 63-00134A, 63-00134B,
) 63-00186A, 63-00186B, 63-17205, and
) 63-31772
)

) HART DAVIS DITCH COMPANY'S
) COMPANY'S RESPONSE TO STATE OF
) IDAHO, DEPARTMENT OF PARKS
) RECREATION'S MOTION FOR
) SUMMARY JUDGMENT
)

COMES NOW Hart Davis Ditch Company's (hereinafter "Hart Davis"), by and through its counsel of record, Ringert Clark, Chartered, submits to this Court, pursuant to Rule 56 of the Idaho Rules of Civil Procedure and pursuant to the Second Supplemental Trial Scheduling Order filed December 21, 2007, its *Response to State of Idaho, Department of Parks Recreation's Motion for Summary Judgment*.

BACKGROUND

The issues raised by the State in its Motion for Summary Judgment before the Court have been thoroughly briefed. Hart Davis's *Memorandum in Support of Motion for Summary Judgment* provides this Court with the legal basis for denying the State's Motion for Summary Judgment. Hart Davis,

HART DAVIS DITCH COMPANY'S RESPONSE TO STATE'S MOTION FOR SUMMARY
JUDGMENT - Page 1

COPY

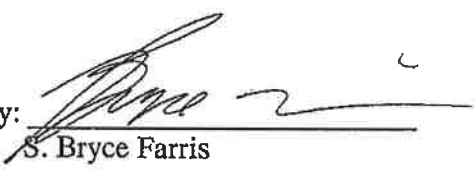
therefore incorporates its Memorandum herein as if restated in whole along with Affidavit of S. Bryce Farris, Affidavit of Ron Rippey, the claims of Hart Davis and the pleadings and documents on file with this Court.

V. CONCLUSION

For the foregoing reasons, this Court should deny State of Idaho's Motion for Summary Judgment.

DATED this 11th day of April, 2008.

RINGERT CLARK, CHARTERED

By: 

S. Bryce Farris

Attorney for Hart Davis Ditch Company

CERTIFICATE OF MAILING

I HEREBY CERTIFY that service of the within and foregoing document was made this 11th day of April, 2008, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

State of Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali and Ron Sali Properties
Represented by:
Michael C. Creamer
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720

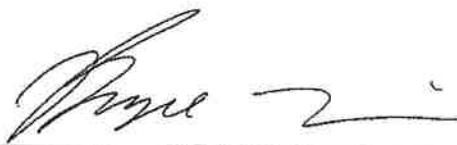
Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

State of Idaho
Department Natural Resources
P.O. Box 44449
Boise, Idaho 83711-4449

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Mace Catlin Ditch Company
c/o Jon C. Gould
Ringert Clark Chartered
P.O. Box 2773
Boise, Idaho 83701



S. Bryce Farris

RECEIVED

APR 10 2008

DEPARTMENT OF
WATER RESOURCES

2008 APR -9 AM 11:15

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

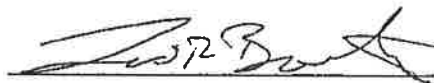
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA) Subcases 63-00132, 63-00133, 63-00134,
Case No. 39576) 63-00134A, 63-00134B, 63-00186A,
) 63-00186B, 63-17205, and 63-31772
)
) ORDER SETTING MANDATORY
) SETTLEMENT CONFERENCE AND
) APPOINTING SPECIAL MASTER
) BILYEU AS SETTLEMENT
) MODERATOR

On March 20, 2008, the State of Idaho, Department of Parks and Recreation, by and through Deputy Attorney General David Barber, filed a *Motion for Mandatory Settlement Conference*. The matter was heard on April 8, 2008. Based upon the contents to the motion and the comment of the participants at the hearing, the *Motion* is granted. Special Master Bilyeu is appointed as settlement moderator.

The settlement conference will be held on **Thursday, April 24, 2008 at 10:00 AM Mountain Time at the IDWR Western Region Office, 2735 Airport Way, Boise, Idaho**. Each party and IDWR is required to be present with the individual having full settlement authority on every aspect of the contested subcases. Partnerships, corporations, limited partnerships, unincorporated associations and all governmental entities must have a responsible officer or partner with settlement authority in attendance, in addition to their attorney of record, unless written authority to settle has been given to the attorney and is presented to the Settlement Moderator.

Dated 4/9/08



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING MANDATORY SETTLEMENT CONFERENCE AND APPOINTING SPECIAL MASTER BILYEU AS MODERATOR was mailed on April 09, 2008, with sufficient first-class postage to the following:

MACE CATLIN DITCH CO

Represented by:
JON C GOULD
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE, ID 83701

RON SALI

RON SALI & RON SALI PROPERTIES
RON SALI PROPERTIES INC

Represented by:
MICHAEL C CREAMER
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

STATE OF IDAHO DEPARTMENT OF

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

HART-DAVIS DITCH CO INC

Represented by:
S. BRYCE FARRIS
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

RON SALI PROPERTIES INC

PROFIT SHARING PLAN
100 N 9TH STE 200
BOISE, ID 83702-5700
Phone: 208-344-4224

RON SALI

919 S LINDER RD
EAGLE, ID 83616-5513

COPY

RECEIVED

APR 10 2008

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General.
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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	)	Subcase Nos. 63-00132 and 63-00133
	)	
	)	NOTICE OF SERVICE AND CERTIFICATE OF
	)	SERVICE
Case No. 39576	)	
	)	
	)	
	)	

NOTICE OF SERVICE

The State of Idaho served on the 9th day of April, 2008, the original of the STATE OF IDAHO DEPARTMENT OF PARKS AND RECREATION'S FIRST SUPPLEMENTAL RESPONSE TO FIRST SET OF DISCOVERY REQUESTS SERVED BY THE MACE-CATLIN MUTUAL DITCH COMPANY, INCORPORATED, on the Mace-Catlin Mutual Ditch Company, Incorporated by hand delivery to the following person at the following address:

Mace-Catlin Mutual Ditch
Company, Incorporate
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

DATED this 9th day of April 2008.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on this 9th day of April 2008, I caused to be served the original and/or copy of this NOTICE OF SERVICE AND CERTIFICATE OF SERVICE on each of the following persons by the indicated method:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to the following persons:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Mace Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

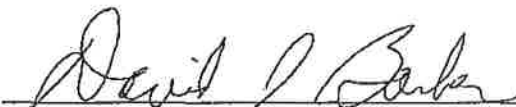
- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General

RECEIVED

MAR 21 2008

DEPARTMENT OF
WATER RESOURCES

2008 MAR 20 PM 02:35
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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	)	ORDER SETTING HEARING	
	)		
Case No. 39576	)		
	)	SUBCASE NOS: 63-00132	63-00133
		63-00134	63-00134A 63-00134B
		63-00186A	63-00186B 63-17205
		63-31772	

Please be advised that Special Master THEODORE R BOOTH
has set for hearing the MOTION FOR EXPEDITED HEARING; MOTION FOR
MANDATORY SETTLEMENT CONFERENCE.

TUESDAY, APRIL 08, 2008 at 11:30 AM (MT)

SRBA
DISTRICT COURT
253 3RD AVENUE NORTH
TWIN FALLS, ID

Parties may participate by telephone by dialing the number
225-383-1099 and when prompted entering the code 675342.

IT IS SO ORDERED.

Dated: MARCH 20, 2008

/S/ THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

Page 1 3/20/08

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the ORDER SETTING HEARING was mailed on MARCH 20, 2008, with sufficient first-class postage to the following:

MACE CATLIN DITCH CO

Represented by:

JON C GOULD

RINGERT CLARK CHARTERED

PO BOX 2773

BOISE, ID 83701

RON SALI

RON SALI & RON SALI PROPERTIES

RON SALI PROPERTIES INC

Represented by:

MICHAEL C CREAMER

601 W BANNOCK ST

PO BOX 2720

BOISE, ID 83701-2720

Phone: 208-388-1200

STATE OF IDAHO DEPARTMENT OF

Represented by:

NATURAL RESOURCES DIV CHIEF

STATE OF IDAHO

ATTORNEY GENERAL'S OFFICE

PO BOX 44449

BOISE, ID 83711-4449

HART-DAVIS DITCH CO INC

Represented by:

S. BRYCE FARRIS

455 S THIRD ST

PO BOX 2773

BOISE, ID 83701-2773

Phone: 208-342-4591

DIRECTOR OF IDWR

PO BOX 83720

BOISE, ID 83720-0098

RON SALI PROPERTIES INC

PROFIT SHARING PLAN

100 N 9TH STE 200

BOISE, ID 83702-5700

Phone: 208-344-4224

RON SALI

919 S LINDER RD

EAGLE, ID 83616-5513

(Order Setting Hearing)

Page 2 3/20/08

/S/ DIANA R DELANEY

Deputy Clerk

COPY

RECEIVED

MAR 21 2008

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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	)	Subcase Nos. 63-00132, 63-00133, 63-00134,
	)	63-00134A, 63-00134B, 63-00186A,
	)	63-00186B, 63-17205, and 63-31772
	)	
Case No. 39576	)	STATE OF IDAHO DEPARTMENT OF PARKS AND
	)	RECREATION'S MOTION FOR A MANDATORY
	)	SETTLEMENT CONFERENCE WITH OR WITHOUT
	)	A SETTLEMENT MODERATOR, AND REQUEST
	)	FOR EXPEDITED HEARING
	)	

COMES NOW the State of Idaho, Department of Parks and Recreation (hereinafter the "IDP&R"), by and through the undersigned deputy attorney general, and moves the district court for an Order that requires participation in a Mandatory Settlement Conference in accordance with AO1 12 with or without the appointment of a Settlement Moderator. The grounds for this motion are as follows:

1. IDP&R believes that there are significant opportunities for settlement of the present dispute over ownership, and would like to explore those opportunities in a mandatory settlement conference. Settlement would obviously save all parties significant expenses in lieu of a trial.

2. The IDP&R further requests the appointment of a special master as a settlement moderator. However, the IDP&R understands that the calendars of all special masters are full. If a special master is unavailable as a settlement moderator within the next sixty (60) days, then the IDP&R would request that the district court order a mandatory settlement conference within sixty (60) days without the assistance of a settlement moderator.

3. Section 12 of AO1 provides as follows:

Settlement conference may be held at the discretion of the court. Such conferences shall be held in conformance with any pre-trial or scheduling order issued by the court. Parties and their attorneys must be personally present. No one may attend by proxy or by telephone. Each party is required to be present with the individual's possessing full settlement authority on every aspect of the contested subcase.

4. Since the present trial schedule order provides for a tight litigation schedule, this Court needs to consider this motion on an expedited basis. AO1 6(f)(2) provides as follows regarding requests for expedited hearings:

Expedited Hearing – Any party moving for an order to expedite a hearing shall send a copy of the motion and supporting documents to all parties listed in Section 6(e)(2) and each person on the current copy of the *Court Certificate of Mailing for Expedited Hearings* which is available from the Clerk of the SRBA Court.

The certificate of service in this matter demonstrates compliance with AO 6(f)(2).

5. Oral argument by telephone, or otherwise as the Court deems proper, is requested on this motion.

WHEREFORE, the IDP&R requests as follows:

1. That the district court enters an order that does all of the following:
 - (i) appoints another special master as a settlement moderator, if a special master is available within the next sixty (60) days, and
 - (ii) requires all parties to attend a mandatory settlement conference.
2. That the district court set this matter for an expedited hearing.
3. That the district court grants such further or other relief that it deems just and proper.

RESPECTFULLY SUBMITTED this 20th day of March 2008.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO


DAVID J. BARBER
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 20th day of March 2008, I caused to be served the original and/or copy of the STATE OF IDAHO DEPARTMENT OF PARKS AND RECREATION'S MOTION FOR A MANDATORY SETTLEMENT CONFERENCE WITH OR WITHOUT A SETTLEMENT MODERATOR, AND REQUEST FOR EXPEDITED HEARING on all parties listed on the Court's expedited mailing list by U.S. Mail, postage prepaid, and on each of the following persons by the indicated method:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to the following persons:

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 345-8800
- ☐ Statehouse Mail

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: (208) 342-4657
- ☐ Statehouse Mail

Mace Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: (208) 342-4657
- ☐ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.

Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Rd
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
919 S. Linder Rd.
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

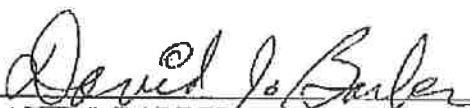
- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General

RECEIVED

MAR 18 2008

DEPARTMENT OF
WATER RESOURCES

JON C. GOULD (ISB #6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Mace Catlin Mutual Ditch Company, Inc.

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

In Re SRBA

Case No. 39576

)
) SUBCASE NO. 63-132, 63-00133,
) 63-00134, 63-00134A, 63-00134B,
) 63-00186A, 63-00186B, 63-17205, and
) 63-31772
)
) NOTICE OF HEARING FOR MACE-
) CATLIN MUTUAL DITCH COMPANY'S
) MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the hearing for Mace-Catlin Mutual Ditch Company's Motion for Summary Judgment will be held on Monday, the 5th day of May, 2008, at 1:30 o'clock p.m. before Special Master Theodore R. Booth, held at the Idaho Supreme Court Building, 451 West State Street, Boise, Idaho.

DATED this 14 day of March, 2008.

RINGERT CLARK CHARTERED

By: J. C. Gould

Jon C. Gould

Attorney for Mace-Catlin Mutual Ditch Co.

NOTICE OF HEARING FOR MACE-CATLIN MUTUAL DITCH COMPANY'S MOTION FOR
SUMMARY JUDGMENT - Page 1

COPY

CERTIFICATE OF MAILING

I hereby certify that service of the within and foregoing document was made this 14th day of March, 2008, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

State of Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali and Ron Sali Properties
Represented by:
Michael C. Creamer
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

State of Idaho
Department Natural Resources
P.O. Box 44449
Boise, Idaho 83711-4449

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Hart-Davis Ditch Company
c/o Bryce Farris
Ringert Clark Chartered
P.O. Box 2773
Boise, Idaho 83705



Jon C. Gould

RECEIVED

MAR 18 2008

DEPARTMENT OF
WATER RESOURCES

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Hart-Davis Ditch Company, Inc.

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

In Re SRBA

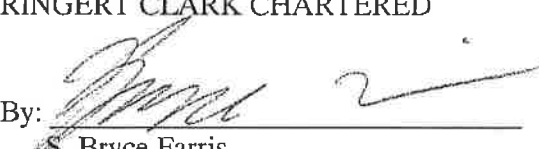
Case No. 39576

)
) SUBCASE NO. 63-132, 63-00133,
) 63-00134, 63-00134A, 63-00134B,
) 63-00186A, 63-00186B, 63-17205, and
) 63-31772
)
) NOTICE OF HEARING FOR
) HART DAVIS DITCH COMPANY'S
) MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that the hearing for Hart-Davis Ditch Company, Inc.'s Motion for Summary Judgment will be held on Monday, the 5th day of May, 2008, at 1:30 o'clock p.m. before Special Master Theodore R. Booth, held at the Idaho Supreme Court Building, 451 West State Street, Boise, Idaho.

DATED this 14th day of March, 2008.

RINGERT CLARK CHARTERED

By: 

S. Bryce Farris

Attorney for Hart-Davis Ditch Company

NOTICE OF HEARING FOR HART DAVIS DITCH COMPANY'S MOTION FOR SUMMARY
JUDGMENT - Page 1

COPY

CERTIFICATE OF MAILING

I hereby certify that service of the within and foregoing document was made this 14th day of March, 2008, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

State of Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali and Ron Sali Properties
Represented by:
Michael C. Creamer
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

State of Idaho
Department Natural Resources
P.O. Box 44449
Boise, Idaho 83711-4449

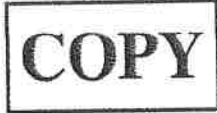
Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Mace Catlin Ditch Company
c/o Bob Kell
1820 Mace Road
Eagle, Idaho 83616



S. Bryce Farris



RECEIVED

MAR 17 2008

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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	)	Subcase Nos. 63-00132, 63-00133, & 63-00134
	)	
	)	STATE OF IDAHO, DEPARTMENT OF PARKS AND
	)	RECREATION'S BRIEF IN SUPPORT OF ITS
Case No. 39576	)	MOTION FOR SUMMARY JUDGMENT
	)	
	)	

COMES NOW the State of Idaho, Department of Parks and Recreation (hereinafter the "IDP&R"), by and through the undersigned deputy attorney general, and submits the STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT in accordance with the SECOND SUPPLEMENTAL TRIAL SCHEDULING ORDER entered on December 21, 2007.

STATE OF IDAHO DEPARTMENT OF PARKS AND RECREATION'S
BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

I. STATEMENT OF THE CASE

i. The Nature of the Proceedings

This controversy relates to the ownership of water right nos. 63-00132 and 63-00133 delivered by the Mace-Catlin Mutual Ditch Company, Incorporated and of water right no 63-00134 delivered by the Hart-Davis Ditch Company, Incorporated.

ii. Course of the Proceedings

The Idaho Department of Water Resources (hereinafter the "IDWR") issued its Director Report for Basin 63, Part II, on December 14, 2005. The last day for filing objections was April 16, 2006. The IDWR recommended water right nos. 63-00132 and 63-00133 in the name of the Mace-Catlin Ditch Company and water right no. 63-00134 in the name of the Hart-Davis Ditch Company, Inc.

The IDP&R filed an objection to water right no. 63-00132 and claimed ownership of 1.6714 c.f.s. of this water right.

The IDP&R filed an objection to water right no. 63-00133 and claimed ownership of 4.918 c.f.s. of this water right.

The IDP&R filed an objection to water right no. 63-00134 and claimed ownership of 3.3 c.f.s. of this water right.

The district court entered its *Second Amended Trial Scheduling Order* on December 21, 2007, which set the date of March 14, 2008 as the last date for filing motions for summary judgment.

////

////

////

iii. Statement of Facts

a. The Stewart Decree water rights.

District Court Judge George Stewart of the then Seventh Judicial District of the State of Idaho in and for the County of Canyon signed on January 18, 1906 a decree in *Farmer's Cooperative Ditch Co. v. Riverside Irrigating Dist, et al.*, *aff'd* 14 Idaho 450 91908); *Order Denying Motion for a New Trial rev'd*, 16 Idaho 525 (1909). This decree is commonly referred to as the "Stewart Decree." IDP&R Exhibit 1 is a true and certified copy of the Stewart Decree.¹ Paragraphs V and VI of that decree state as follows:

V.

That the defendants T. C. CATLIN and POLETTE MACE be and they are hereby awarded the use of the waters of Boise River, diverted from a point on the south bank of said river, on Lot 5, Sec. 17, T. 4 N. R. 1 E. B.M. for use on their lands on Eagle Island, Ada County, Idaho, in the following amount from the following dates:

143 inches, from June 1, 1864; and hereby designated as Right No. 5. [63-132]
393 inches, from June 1, 1871; and hereby designated as Right No. 52. [63-133]
And adjudged to pay \$37.52 costs, in addition to the costs incurred by them.

VI.

That the defendant T. C. CATLIN be and hereby is awarded the use of the waters of Boise River, diverted near the center of the NE¼ of Sec. 18, T. 4 N. R. 1 E. B.M. through what is known as the Davis & Hart ditch, for use upon lands lying under said ditch on Eagle Island, Ada County, Idaho, in the following amount from the following date: 165 inches, from June 1, 1864. [63-134]

IDP&R Exhibit 1: Stewart Decree, at 5.

////

////

¹ IDP&R Exhibit 1 was obtained from the IDWR. The IDWR has made notations on State of Idaho Exhibit 1 to identify each water right with the present water right numbering system. Right no. 5 is designated as water right no. 63-00132, Right no. 52 is designated as water right no. 63-00133, and Right no. 6 is designated as water right no. 63-00134.

////

b. State of Idaho's acquisition of Stewart Decree Water Rights.

The IDP&R began historical research regarding the ownership of water rights at Eagle Island in 2003. This research began at the state office of the United States Department of the Interior, Bureau of Land Management, (hereinafter the "BLM"). The BLM maintains records concerning the ownership and disposal of public lands in Idaho. These records are shown on a document designated as a Master Title Plat, (hereinafter a "MTP"), for each township, which is normally a square shaped piece of land that is six miles on each side with thirty-six sections of one square mile each. The United States issued "patents" for the disposal of public domain lands. Each MTP illustrates the public lands conveyed by each patent. The IDP&R collected the patents disposing of public lands that were relevant to Eagle Island. For ease of reference, parcel numbers 1 through 14 were assigned to the various patents at Eagle Island. Eagle Island includes portions of Township 4 North, Range 1 East, B.M. and Township 4 North Range 1 West, B.M. Excerpts from the MTP for these two townships were used to designate parcels 1 through 14 and are included as IDP&R Exhibit 2. If a specific parcel such as parcel 6 is later subdivided into two parcels, then those several parcels are labeled as parcels 5.1, 5.2, 5.3 etc. IDP&R Exhibit 3: Affidavit of David J. Barber Dated March 13, 2008, at 2.

The chains of title for parcels 6.1, 6.2, 7.1, 7.2, 8 and 9.1 or the partial chains of title for parcels 2.1, 5.1, 5.2, 5.3, 5.4, and 5.5 are relevant to the ownership of water right nos. 63-00132, 63-00133, and 63-00134 and are compiled in IDP&R Exhibits 3 through 14. The partial chains of title for parcels 2.1, 5.1, 5.2, 5.3, 5.4, and 5.5 are for the period from the date of patent to November 19, 1929. True and correct copies of the patents and deeds that support these chains of title for parcels 2.1, 5.1, 5.2, 5.3, 5.4, 5.5, 6.1, 6.2, 7.1, 7.2, 8 and 9.1 are designated as IDP&R

Exhibits 14 through 41 and Exhibit 46. IDP&R Exhibit 45 is the Affidavit of Charles C. Smith Dated March 13, 2008, which verifies the ownership information contained in IDP&R Exhibits 4 through 15. A review of the chains of title for these parcels confirms that Polette C. Mace was the owner of parcels 2.1, 5.1, 5.2, 5.3, 5.4, and 5.5 on January 18, 1906 and that Truman C. Catlin was the owner of parcels 6.1, 6.2, 7.1, 7.2, 8, and 9 on that same date.² Thus, water right no. 63-00134 was appurtenant to parcels 6.1, 6.2, 7.1, 7.3, 8 and 9 on the date the Stewart Decree was signed. Water right nos. 63-00132 and 63-00133 were appurtenant to parcels 2.1, 5.1, 5.2, 5.3, 5.4, 5.5, 6.1, 6.2, 7.1, 7.3, 8 and 9 on the date the Stewart Decree was signed.

Karl Fischer, Charles P. and Mary Mace, Frank and Josie A. Mace, Benjamin and Grace J. Mace, Wesley and Rosa Mace, Grover and Cora B. Mace, and A. G. and Margaret C. Coker, executed an Agreement on November 19, 1929, which divided water right nos. 63-00132 and 63-00133 among the respective parties and which granted water right no. 63-00134 in its entirety to Karl Fischer. A true and certified copy of this Agreement is designated State of Idaho Exhibit 33. The procedure used to divide water right nos. 63-00132 and 63-00133 between the parties can be derived by an analysis of the acreage that each child of Polette Mace received and of the amount of each water right received. The following table provides that analysis:

Name	Acreage	WR # 5	WR # 52	Total WR In inches	Percentage WR # 5	Percentage WR # 52
Charles Mace	30.08	8.03	22.05	30.08	26.6955%	73.3045%
Frank Mace	40.08	10.7	29.38	40.08	26.6966%	73.3034%
Grover Mace	33.14	8.84	24.3	33.14	26.6747%	73.3253%
Wesley Mace	41.29	11	30.26	41.26	26.6602%	73.3398%
Ben Mace	31.24	8.33	22.91	31.24	26.6645%	73.3355%
A. C. Coker	20	5.35	14.65	20	26.75%	73.25%
Average					26.6903%	73.3097%

² Truman C. Catlin owned all of parcel 9 at the time of his death. IDP&R Exhibit 33: 3/15/1928. Estate of T. C. Catlin to Karl Fischer. Instrument No. 129718. 182/Deeds/389. [SRBA60366]. The subdivision of parcel 9 occurred later. IDP&R Exhibit 45: Affidavit of Charles C. Smith Dated March 13, 2008, at 4.

The Agreement described Mr. Fischer's share of these water rights for use on 493.91 acres as follows:

Water right number	Amount in Inches	Amount in C.F.S.
63-00132	90.75	1.815
63-00133	249.45	4.990
63-00134	165	3.300

On November 20, 1929, Mr. Fisher sold parcels 6.1, 6.2, 7.1, 7.2, 8, and 9 to the State of Idaho. Thus, the State of Idaho is the successor to the water rights described in Mr. Fischer's name in the November 19, 1929 agreement.

c. Transfers of the Fischer Real Property

i. Transfer to the Idaho Department of Fish and Game (hereinafter "IDF&G") for the Eagle Fish Hatchery.

The State of Idaho, Department of Correction, acquired the Fischer real property for a prison farm. IDP&R Exhibit 43: 2/28/1995. Memo from Stanley F. Hamilton, Director of IDL to Philip E. Batt, Governor. On June 11, 1943, Warden Poarch, Budget Director Reading, Secretary of State Curtis, and Fish and Game Commissioners Fiscus and Westcott reached agreement to transfer 32.1 acres of the Fischer real property to the IDF&G for a fish hatchery upon payment of two thousand and two hundred and fifty dollars to the State Penitentiary Fund. IDP&R Exhibit 42: Letter dated February 12, 1953 to Edward Woozley, State Land Commissioner, from State Board of Correction. This transfer of jurisdiction also included a transfer of a portion of the water rights as follows:

Right No. 5 8.40 inches

Right No. 52 23.16 inches
 31.56 inches

IDP&R Exhibit 42: Letter dated February 12, 1953 to Edward Woozley, State Land Commissioner, from State Board of Correction, at 5. Later, the IDF&G transferred the point of

diversion for a portion of these water rights to Seven Suckers Ditch. IDP&R Exhibit 44: Transfer No. 179, Certificate of Change in Point of Diversion of Decreed Water Right.

ii. Transfer to the IDP&R for the Eagle Island State Park.

The prison farm on Eagle Island was declared surplus property, and the State Board of Land Commissioners transferred jurisdiction over the real property to the IDP&R at the January 10, 1978 meeting of the State Board of Land Commissioners. IDP&R Exhibit 43: 2/28/1995. Memo from Stanley F. Hamilton, Director of IDL, to Philip E. Batt, Governor. Later, the State of Idaho, Department of Lands, executed a deed to parcels 6, 7, 8, and a portion of parcel 9 to the IDP&R on February 28, 1992 and a correction deed to the IDP&R on February 8, 1994. IDP&R Exhibit 37: 2/28/1992. IDL to IDP&R. Instrument No. 9215747. [SRBA60635]; IDP&R Exhibit 38: 2/8/1994. IDL to IDP&R. (Correction Deed). Instrument No. 94026232. [SRBA60661].

iii. Transfer by the IDP&R to Ron & Sharon E. Taylor.

The IDP&R granted to Ron Taylor and Sharon E. Taylor, husband and wife, on December 7, 1995 the following water rights from the Stewart Decree:

Together with irrigation water rights in the Mace-Catlin Ditch for 24.60 acres located in the NE¼ of the SW¼ of the SW¼, section 18, Township 4N, Range 1E, B.M. (a portion of the water right nos. A63-00133 and A63-00132).

The amount of water right no. 63-00132 apportioned to this land using the average percentage used from the Agreement dated November 19, 1929 would be 6.56 inches or 0.13 c.f.s.; the amount of water right no. 63-00133 apportioned to this land using the average percentage used from the Agreement dated November 19, 1929 would be 18.03 inches or 0.36 c.f.s. The sum of the two amounts would 24.6 inches of water.

The total amount of IDP&R's water rights from the Stewart Decree can be calculated by subtracting the amounts transferred to the IDF&G and to Mr. & Mrs. Ron Taylor. The following table makes these calculations.

Water right number	Amount purchased from Karl Fischer	Amount to IDF&G	Amount to Taylor	Net water Right inches	Net water Right c.f.s.
63-00132	90.75	8.40	6.56	75.79	1.52
63-00133	249.45	23.16	18.03	208.26	4.16
63-00134	165	--	--	165	3.3

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

////

ARGUMENT

I. STANDARD OF REVIEW FOR SUMMARY JUDGMENT.

Summary judgment is appropriate when the pleadings, depositions, affidavits, and admissions of records show that there was no genuine issue of material fact. In making that determination of whether an issue of material fact exists, all disputed facts are liberally construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party. *Garner v. Bartshi*, 139 Idaho 430, 432 80 P.3d 1031, 1034 (2003). Substantive law defines as material those factual disputes that affect the outcome. Disputes about irrelevant matters do not defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

II. THE EVIDENCE ESTABLISHES THAT IDP&R HOLDS RECORD LEGAL TITLE TO PORTIONS OF WATER RIGHT NOS. 63-00132 AND 63-00133 AND TO ALL OF WATER RIGHT NO. 63-00134.

- A. The evidentiary presumption of a recommendation in a Director's Report disappears once a particular element has been rebutted by the evidence.

Idaho Code § 42-1411 sets forth the evidentiary effect of a recommendation in a Director's Report regarding a water right acquired under state law. Idaho Code § 42-1411 states, in part, as follows:

- (4). The director shall file the director's report with the district court, and the director's report shall be part of the record. . . . [T]he director's report . . . shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law.
- (5) Each claimant of a water right acquired under state law has the ultimate burden of persuasion for each element of a water right. . . . [A] claimant of a water right acquired under state law has the burden of going forward with the evidence to establish any element of a water right which is in addition to or inconsistent with the description in a director's report.

Idaho Code § 42-1411 (emphasis added). The Idaho Supreme Court described the evidentiary consequences of Idaho Code § 42-1411 as follows:

STATE OF IDAHO DEPARTMENT OF PARKS AND RECREATION'S
BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

This Court has considered the weight and effect of a director's report. Hagerman Water Right Owners, Inc., 130 Idaho at 736, 947 P.2d at 409 (1997). In Hagerman, the claimants objected to the director's recommendation that the water rights consist of a lesser amount than that claimed. Id. at 738, 947 P.2d at 411. The Court explained that the prima facie status contained in section 42-1411 "constituted a rebuttable evidentiary presumption." Id. at 745, 947 P.2d at 418. The Court then noted that I.R.E. 301 governs presumptions in civil cases. Id. The Court then reasoned that "when an evidentiary presumption arises it shifts only the burden of production. When rebutted, the presumption disappears and the party with the benefit of the presumption retains the burden of persuasion on the issue." Id. Furthermore, "the Director's Report is *prima facie* evidence and the facts contained therein are presumed to be correct until such time as a water claimant produces sufficient evidence to rebut the presumption." Id. **Once the presumption is rebutted, it disappears and the facts upon which the presumption is based are weighed with all other facts that may be relevant."**

McCray v. Rosenkrance, 135 Idaho 509, 20 P.3d 693 (2001). Accordingly, the IDP&R must present sufficient evidence to rebut the presumption that Mace-Catlin Ditch Company, Incorporated owns water right nos. 63-00132 and 63-00133 and that Hart-Davis Ditch Company, Incorporated owns water right no. 63-00134, as stated in the director's report for these water rights.

- B. The evidence in this matter establishes that the State of Idaho acquired legal title to portions of water right nos. 63-00132 and 63-00133 and to all of water right no. 63-00134.

The Stewart Decree was signed on January 18, 1906. Paragraphs V and VI of that decree stated as follows:

V

That the defendants T. C. CATLIN and POLETTE MACE be and they are hereby awarded the use of the waters of Boise River, diverted from a point on the south bank of said river, on Lot 5, Sec. 17, T. 4 N. R. 1 E. B.M. for use on their lands on Eagle Island, Ada County, Idaho, in the following amount from the following dates:

143 inches, from June 1, 1864; and hereby designated as Right No. 5. [63-132]
393 inches, from June 1, 1871; and hereby designated as Right No. 52. [63-133]
And adjudged to pay \$37.52 costs, in addition to the costs incurred by them.

VI

That the defendant T. C. CATLIN be and hereby is awarded the use of the waters of Boise River, diverted near the center of the NE¼ of Sec. 18, T. 4 N. R. 1 E. B.M. **through what is known as the Davis & Hart ditch**, for use upon lands lying under said ditch on Eagle Island, Ada County, Idaho, in the following amount from the following date: 165 inches, from June 1, 1864. [63-134]

Statement of Facts, hereinafter "SOF", at 3.

The Estate of T. C. Catlin sold Mr. Catlin's lands on Eagle Island to Karl Fischer on March 15, 1928. On November 19, 1929, Karl Fischer, Charles P. and Mary Mace, Frank and Josie A. Mace, Benjamin and Grace J. Mace, Wesley and Rosa Mace, Grover and Cora B. Mace, and A. G. and Margaret C. Coker, executed an Agreement, which divided water right nos. 63-00132, 63-00133, and 63-00134 among the respective parties. Mr. Fischer's share of these water rights was as follows:

63-00132:	90.75 inches	1.815 c.f.s.
63-00133:	249.45 inches	4.990 c.f.s.
63-00134:	165 inches	<u>3.300 c.f.s.</u>
		10.105 c.f.s.

Mr. Fischer sold the lands that are within EISP to the State of Idaho on November 20, 1929. SOF at. 4-5. Thus, the State of Idaho acquired legal title to the water rights of Karl Fischer described in the Agreement of November 19, 1929 and the evidentiary presumption of the Director's Report is rebutted. The IDP&R is a successor to the following amounts of those water rights after the subtraction the amounts of small transfers to the IDF&G and to Mr. & Mrs. Ron Taylor:

Water right number	Amount in c.f.s.
63-00132	1.52
63-00133	4.16
63-00134	3.3
Total	8.98 c.f.s.

CONCLUSION

The chains of title for the lands within Eagle Island State Park for the period from the date of patent to November 20, 1929 are simple and straight forward. Those chains of title demonstrate that the IDP&R is the legal successor to 8.98 c.f.s of water right nos. 62-00132, 63-00133, and 63-00134. These chains of title rebut the determination of ownership in the Mace-Catlin Mutual Ditch Company, Inc. for water right nos. 63-00132 and 63-00133 and in Hart Davis Ditch Company, Inc. for water right no. 63-00134. Since no deeds transferring these water rights from the State of Idaho to these ditch companies exist, the district court should determine that the IDP&R owns water right numbers 63-00132, 63-00133, and 63-00134.

RESPECTFULLY SUBMITTED this 14th day of March 2008.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO


DAVID J. BARBER
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that on this 14th day of March 2008, I caused to be served the original and/or copy of the STATE OF IDAHO, DEPARTMENT OF PARKS AND RECREATION'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT on each of the following persons by the indicated method:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to the following persons:

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: 345-8800
- ☐ Statehouse Mail

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Mace Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Rd
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
919 S. Linder Rd.
Eagle, ID 83616-5513

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

RECEIVED
MAR 14 2008
DEPARTMENT OF
WATER RESOURCES

Attorneys for Hart-Davis Ditch Company, Inc.

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 NOS. 63-134, 63-132, 63-133,
) 63-134A, 63-134B, 63-186A, 63-186B,
) 63-17205 and 63-31772
)
) HART DAVIS DITCH COMPANY'S
) MOTION OF SUMMARY JUDGMENT
)
)

COMES NOW Hart Davis Ditch Company (hereinafter "Hart Davis"), by and through its counsel of record, Ringert Clark, Chartered, moves this Court, pursuant to Rule 56 of the Idaho Rules of Civil Procedure and pursuant to the Second Supplemental Trial Scheduling Order filed December 21, 2007, for entry of summary judgment in favor of Hart Davis and dismissing the State of Idaho's objection to water right no. 63-134.

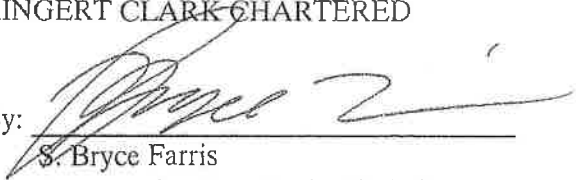
This Motion is based upon: Hart Davis Ditch Company's Memorandum in Support of Motion for Summary Judgment, the Affidavit of S. Bryce Farris, Affidavit of Ron Rippey, the claim of Hart Davis and the pleadings and documents on file with this Court.

Oral argument is requested.

DATED this 13th day of March, 2008.

COPY

RINGERT CLARK CHARTERED

By: 

S. Bryce Farris

Attorney for Hart-Davis Ditch Company

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March, 2008, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
919 South Linden Road
Eagle, Idaho 83616

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

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

Mace Catlin Ditch Company
c/o Bob Kell
1820 Mace Road
Eagle, Idaho 83616


S. Bryce Farris

RECEIVED

MAR 14 2008

DEPARTMENT OF
WATER RESOURCES

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Hart-Davis Ditch Company, Inc.

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 NOS. 63-134, 63-132, 63-133,
) 63-134A, 63-134B, 63-186A, 63-186B,
) 63-17205 and 63-31772
)
) HART DAVIS DITCH COMPANY'S
) MEMORANDUM IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT
)

The Hart-Davis Ditch Company (Hart-Davis), by and through its counsel of record, Ringert Clark Chartered, and hereby submits this Memorandum in Support of its Motion for Summary Judgment.

I. INTRODUCTION

Hart Davis is a ditch company organized and existing in Eagle, Idaho. One of the shareholders of Hart Davis, the State of Idaho Department of Parks (hereinafter "State"), filed an objection to the ownership of a certain water right on the basis that the State independently owns said water right. The State's objection comes more than eighty years after the formation of the Hart Davis, and after eighty years of the State, or its predecessors, being a shareholder of Hart Davis and paying the assessments of Hart Davis. At no time has the water right ever been in the name of the

HART-DAVIS DITCH COMPANY'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - Page 1

State and the State has continued to be a shareholder of Hart Davis and pay the assessments of Hart Davis without laying claim to the ownership of the water right. In fact, the State did not file a claim in the SRBA as to the ownership of the water right, but instead allowed Hart Davis to file the claim and the State now for the first time objects to the ownership by Hart Davis.

The State's position is essentially that there was no conveyance of the water right from the State's predecessor in interest to Hart Davis when the ditch company was formed and therefore the water right is still independently owned by the State. However, any lack of an express conveyance is rebutted by implied conveyance to the ditch company when Hart Davis was formed and the long standing treatment of the State as a shareholder of Hart Davis, subject to the assessments and rules and regulations of Hart Davis. Additionally, the State's long standing acquiescence to the ownership of the water right by Hart Davis bars the State from claiming ownership under a number of legal doctrines, including, laches, estoppel and waiver/abandonment.

Lastly, there are equitable and other considerations the Court should consider in determining whether the State has an independent ownership interest in the water right, including, the implications of essentially providing that every shareholder has a separate, independent interest in the water rights. This would create an administrative nightmare for IDWR and the SRBA split and divide the water rights so that each shareholder receives an independent interest in the portion of the water right appurtenant to each shareholder's land.

The bottom line is that legally and equitably the water rights should be owned by Hart Davis in trust for its shareholders. This Court should grant the Motion of Hart Davis and deny the State's claim to ownership.

II. BACKGROUND

The Hart Davis Ditch Company is a non-profit ditch company organized and existing under the laws of the State of Idaho. Hart Davis was formed in 1924. The water rights which Hart Davis delivers to its shareholders pre-date the formation of the ditch company. Thus, the water rights were perfected by individual landowners prior to 1924. The priority date for the water right in question, 64-134, goes back to June 1, 1864. In approximately 1924 several landowners agreed to consolidate and commingle their water rights and ditch rights together and to form a ditch company.

According to the State's objection, the State purchased property on Eagle Island for a prison farm in 1929. Since 1929, the State has been a shareholder of Hart Davis and "a stock certificate issued to the State of Idaho by the Hart-Davis Ditch Company for 165 shares which covers the 165 inches of water represented in right number 6." See the Attachment to the State of Idaho's objection. Since 1929, the State has paid yearly assessment to Hart Davis representing the 165 shares owned.

In 1989, Hart Davis filed a notice of claim to ownership of water right 63-134. The State did not file a claim to said water right and there is no indication that the State objected to Hart Davis' claim when it was filed. In December of 2005, IDWR recommended water right no. 63-134 in the name of Hart Davis. In April of 2006, the State filed an objection. However, there is no record prior to 2006 of the State claiming outright ownership of water right no. 63-134.

III. STANDARD OF REVIEW

Summary judgment must be granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c); *Friel v. Boise City Housing Authority*, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994). The court liberally construes

HART-DAVIS DITCH COMPANY'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - Page 3

the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences and conclusions in that party's favor. *Friel*, 126 Idaho at 485, 887 P.2d at 30 (citing *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 272, 869 P.2d 1365, 1367 (1994); *Harris v. Dept. of Health and Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992)). If reasonable people could reach different conclusions or draw conflicting inferences from the evidence, a summary judgment motion must be denied. *Stevenson*, 125 Idaho at 272, 869 P.2d at 1367. However, if the evidence reveals no disputed issues of material fact, what remains is a question of law, over which the court exercises free review. *Id.*

IV. ARGUMENT

A. Ditch Company Formation and Ditch Company Law.

A mutual ditch company, such as Hart Davis, is "formed expressly for the purpose of furnishing water to shareholders, not for profit or hire." *Jacobucci v. District Court*, 541 P.2d 667, 671 (Colo. 1975). Many mutual water companies were formed by individual water right holders who pooled assets, incorporated the ditch company and conveyed their water rights to it in return for stock. *See Id.* It therefore follows that the legal title to these rights is in the corporation, **while the equitable title remains in the original owners, or their grantees.** (Emphasis added). Kinney, Clesson S., A Treatise on the Law of Irrigation and Water Rights. Section 1481, p. 2661-62, October 1, 1912. In other words, the ditch company holds the legal title to the property in trust for its respective shareholders, the terms of the trust to be governed by the articles of incorporation, or the by-laws of the same. This is precisely the situation which occurred with the formation of Hart Davis.

The Colorado Supreme Court in *Jacobucci v. District Court*, 541 P.2d 667, 672-73 (Colo. 1975) summarized a mutual ditch corporations ownership interest in the water right(s) used by the

HART-DAVIS DITCH COMPANY'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - Page 4

share holders as follows:

the shares of stock held by the consumers in a mutual ditch corporation represent a specific property interest in a water right. The interest of these shareholders cannot be "defeated or altered by any action of the ditch company or its other shareholders." *United States v. 508.88 Acres of Land*, U.S. District Ct. (D. Colo. May 8, 1973, Unpublished); *Bent v. Second Extension Water Co.*, 51 Cal. App. 648, 197 P. 657 (1921). While the "naked title may stand in the name of [the mutual ditch corporation], the ditch, reservoir, and water rights are actually owned by the farmers who served thereby.

Through treatise and case law it is clear that the mutual ditch corporations hold title to the water right while the shareholder holds the equitable title. As a result, the State's desire to be listed as the water right owner is merely an argument of form over substance.

By forming a ditch company, the members or shareholders agree to consolidate or commingle both their ditch rights and water rights into one entity that operates and manages those rights for the benefits of all the shareholders. The State's predecessor, by joining and forming the ditch company, implicitly agreed to the commingling of the water and ditch rights.

The State's argument, as Hart Davis understands it, is simply that there is no deed or document specifically conveying the water rights to Hart Davis. Hart Davis does not dispute that there is no deed conveying the water rights to it. On the flip side, there is no deed or document specifically reserving the water right when the ditch company was formed. The State points to an agreement in 1929 whereby a number of landowners divided up the water rights in the area of Hart Davis and Mace Catlin, but said agreement occurred after the formation of Hart Davis and if the water rights were already transferred to the ditch company when it formed, then the individuals may very well have lacked the authority to enter the agreement. The agreement is also telling of the apparent uncertainty as to ownership of the water rights because if the State's predecessor actually

owned the water right all this time as the State suggests, then there would be no reason to enter an agreement attempting to clarify the ownership. The bottom line is that the State's assertion that there is no deed or document conveying the water rights to Hart Davis is insufficient to meet the State's burden to overturn IDWR's recommendation. The State is attempting to use the absence of proof or evidence when it has the burden to show that IDWR's recommendation is incorrect.

B. The State is Barred from Claiming Ownership by the Doctrines of Laches, Estoppel, Waiver and/or Abandonment.

All of the aforementioned doctrines are applicable in this case. However, the application of any one of these doctrines defeats the State's objection.

1. Laches.

In *Sears v. Berryman*, 101 Idaho 843, 847, 623 P.2d 455, 459 (1981), the court applied the doctrine of laches and stated that:

The doctrine of laches is a creation of equity and is a species of equitable estoppel. "Long and continuous knowing acquiescence in another's use and enjoyment of a property or privilege may preclude one from subsequently asserting his claim. However, "(l)apse of time is not alone sufficient to defeat a right on the ground of laches. It must be shown that the (claimant) has been misled, to his injury, by the failure of the (holder of the right) to assert its right earlier."

Id. at 848, 623 P.2d at 460. (citations omitted).

In *Hillcrest Irr. Dist. v. Nampa & Meridian Irr. Dist.*, 57 Idaho 403, 408-409, 66 P.2d 115, 117 (1937), the court found the existence of the elements of laches and stated that respondents have stood by, with full knowledge of all the facts, for more than twenty years and allowed the appellant to proceed on the theory that it had valid title and a legal right to divert the water, and in the meantime the appellant has incurred large indebtedness on the strength of its title. The "change of

point of diversion and use, whether regular and legal or not, was actually accomplished and thereafter used and enjoyed adversely.” *Id.*

In this case, the first time the State ever made a claim to ownership of the water right was when it filed its objection in April of 2006. Thus, from 1929 to 2006, or seventy seven (77) years, the State knowingly acquiesced in the ownership by Hart Davis. In direct contradiction to claiming ownership, the State acknowledge it was a shareholder and continued to pay the assessments of the Ditch Company for seventy seven years. Lastly, and possibly most telling of the State’s long acquiescence, is the fact that the State never filed a claim to ownership of the water right in the SRBA. This is the same State of Idaho that is in charge of the SRBA. Instead, the State allowed Hart Davis to file a claim, protect the water right, and now two decades later, the State files an objection.

2. Estoppel.

The doctrine of equitable estoppel requires: (1) a false representation or concealment of a material fact made with actual or constructive knowledge of the truth; (2) that the party asserting estoppel did not and could not have discovered the truth; (3) an intent that the misrepresentation or concealment be relied upon; and (4) that the party asserting estoppel relied on the misrepresentation or concealment to his or her detriment. *Willig v. State, Dept. of Health & Welfare*, 127 Idaho 259, 899 P.2d 969 (1995).

Further, the doctrine of quasi estoppel is distinguished from equitable estoppel “in that no concealment or misrepresentation of existing facts on the one side, no ignorance or reliance on the other, is a necessary ingredient. The doctrine of quasi estoppel applies when it would be unconscionable to allow a party to assert a right which is inconsistent with its prior position.” *Id.* at

261, 899 P.2d at 971. (citations omitted).

As previously mentioned, the State sat back and allowed the ownership of this water right to be recognized in the name of Hart Davis for more than seventy years. The State did not file a claim in the SRBA and allowed Hart Davis to file claims to protect the water right. The State as being in charge of the SRBA had knowledge of Hart Davis' claim, which was filed in 1989, and the State as a shareholder of Hart Davis, had knowledge of the claim. It would be inequitable and unconscionable to allow the State to now come in for the first time in 2006 and claim ownership.

3. Waiver and/or Abandonment.

In *Jenkins v. State, Dep't of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982), the court stated that:

Abandonment is a common law doctrine involving the occurrence of (1) an intent to abandon and (2) an actual relinquishment or surrender of the water right. Forfeiture, on the other hand, is predicated upon the statutory declaration that all rights to use water are lost where the appropriator fails to make beneficial use of the water for a continuous five year period. I.C. § 42-222(2).

Id. at 387, 647 P.2d at 1260 (quoting *Sears v. Berryman*, 101 Idaho 843, 847, 623 P.2d 455, 459 (1981)).

"Intent to abandon must be proved by clear and convincing evidence of unequivocal acts, and mere non-use of a water right, standing alone, is not sufficient for a per se abandonment." *Id.* at 387-388, 647 P.2d at 1260-1261. The court's identify the loss of water right by intent as abandonment. However, while not specifically recognized the doctrine of waiver is similar. "Waiver is a voluntary, intentional relinquishment of a known right or advantage. Waiver is foremost a question of intent." *Seaport Citizens Bank v. Dippel*, 112 Idaho 736, 735 P.2d 1047 (Ct.App. 1987). The intention to waive must clearly appear and the doctrine of implied waiver by silence is disfavored. This same

element of intent creates a distinction between implied waiver and estoppel. The distinction between an implied waiver and estoppel is that for a case of implied waiver there must be: some conduct on the part of the person waiving from which it may be inferred that the person waiving intended to waive; in other words, affirmative action on the part of the person waiving indicating an intention to waive some benefit or advantage; whereas, in estoppel a barrier is simply set up regardless of the parties' intentions which precludes on from asserting a right which he would otherwise have but for the matters and things pleaded by the way of estoppel. *Id.* at 739, 735 P.2d at 1050.

In this case, the State or its predecessor joined Hart Davis. By doing so, the State agreed to commingle whatever rights it may have held in the ditch or the water rights. Those rights would then be collectively held by the ditch company for the benefit of its shareholders. There is no dispute that the State has been a shareholder for more than seventy years, paid the assessments of the ditch company for more than seventy years and abandoned or waived its right to outright ownership of the water rights for the past seventy years.

C. Practical Implications of the State's Argument.

Hart Davis' position is that while title to the water right should remain in the name of Hart Davis, the State and the other shareholders continue to hold equitable title. If the State's argument is accepted then each shareholder would own a separate water right for a fraction of the shares represented. The State's position creates several practical implications that the Court should consider as part of its decision.

1. Granting the State's Request Will Wreak Havoc on the Water Users

In *East Jordan Irrigation Co., v. Morgan*, the Utah Supreme Court recognized the chaos that would result if individual shareholders would or could possess the legal right to administer the water

to which they may be entitled by another manner or means than those supplied by the mutual ditch company. *East Jordan Irrigation Co. v. Morgan*, 860 P.2d 310, 315, 218 Utah Adv. Rep. 62 (1993). In that case East Jordan Irrigation Company was appealing the State engineer's decision allowing a shareholder in East Jordan to change the point of diversion of a portion of East Jordan's water without the company's consent. The court noted that allowing the shareholder the right to manage water delivery would ultimately lead to a state of inextricable discord and confusion among the owners of water rights. *Id.* The Utah court reversed the state engineer's decision.

In *Consolidated People's Ditch Co. V. Foothill Ditch Co.*, the California court held that a shareholder does not have the right to change its point of diversion over the objection of the company. *Consolidated People's Ditch Co. V. Foothill Ditch Co.*, 269 P. 915 (Cal. 1928). In *Consolidated*, the court stated that to recognize such a right "would necessarily be to admit the possession of similar rights in each and every stockholder in each of said corporations to go and do likewise, and it is too plain for argument that such an admission would result in a state of inextricable discord and confusion among the owners of water rights of various sorts [all over California]. The creation or threatened danger of such a consequence would of itself supply a sufficient reason for the use of the injunctive processes of the court in the way of its prevention." *Id.* at 921.

Havoc would invariably ensue if every shareholder in the corporation were to attempt to govern the corporate affairs as they relate to the appropriation of waters. Ultimately, water companies, such as Hart Davis, could well be destroyed by complete changes in diversion points or water use.

2. State Can Not Change the Elements of the Water Right if it Injures Others.

Whether the State remains a shareholder with an equitable interest in the water rights or it owns the water rights outright, it still cannot change the elements of the water rights if it injures other shareholders or the ditch company. In other words, even if the State's objection is successful and the State is listed as the owner of portions of the water rights in question, the State cannot change any elements of the water rights appurtenant to its property if those changes would injure the ditch company or any of the other shareholder. Furthermore, Idaho Code § 42-108, in recognizing the mutual ditch company shareholder's dependency upon one another, states:

The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; **if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district. (Emphasis added).**

Other jurisdiction, as noted above in *East Jordan* and *Consolidated People's Ditch Co.*, have held that a shareholder does not have the right to change its point of diversion over the objection of the company. Therefore, the State's objection becomes either moot or merely an argument of form over substance because the State's ability to change the elements of the water right is the same regardless of whether it owns the water right outright or the ditch company holds the water right in trust. However, significant detrimental impacts to the administration of the water rights may result.

3. Approving the State's Objection Could Cause a Significant Administrative Burden.

The State is requesting this Court to venture down a very slippery slope. Issuing a water right to each and every member of every ditch company would be a very laborious task that could inundate the IDWR and the SRBA. Hart Davis does not dispute that such a task could not be accomplished by IDWR and the SRBA, but there is no reason to create such an administrative nightmare. Land subdivision and changing ownerships would require numerous and continual administrative actions to transfer water rights and split existing water rights. As the land is subdivided, the number of owners will increase. Increase in owners will result in an increase in administrative demands. Additionally, the frequency of ownership changes will also likely increase. The administrative burden that could result if the state's objection is granted will not improve the distribution or delivery of the water but may have a detrimental impact.

4. State Would Continue to Be Liable for Ditch Maintenance and Operation Assessments

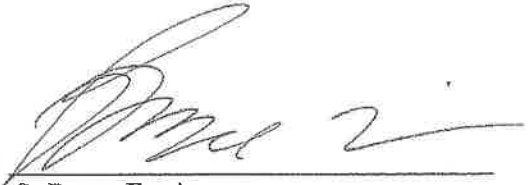
Lastly, if the State's objection is successful, the State would still be liable for ditch maintenance and operation assessments. The State's objection, if successful, would not change the State's obligation to the ditch company, may cause chaos in delivery of water for the ditch company, may cause a significant administrative burden on the regulatory agency and the courts, and will not provide the state with any additional ability to change the elements of the water right.

V. CONCLUSION

For the above stated reasons, Hart Davis respectfully requests that this Court grant its motion for summary judgment and deny the State's objection.

DATED this 13 day of March, 2008.

RINGERT CLARK CHARTERED

By: 
S. Bryce Farris
Attorney for Hart-Davis Ditch Company

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2008, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

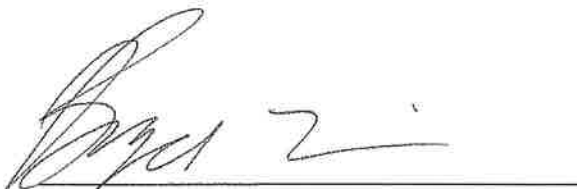
Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
919 South Linden Road
Eagle, Idaho 83616

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

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

Mace Catlin Ditch Company
c/o Bob Kell
1820 Mace Road
Eagle, Idaho 83616


S. Bryce Farris

RECEIVED

MAR 14 2008

DEPARTMENT OF
WATER RESOURCES

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Hart-Davis Ditch Company, Inc.

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 NOS. 63-134, 63-132, 63-133,
) 63-134A, 63-134B, 63-186A, 63-186B,
) 63-17205 and 63-31772
)

) AFFIDAVIT OF RON RIPPEY
) IN SUPPORT OF MOTION
) FOR SUMMARY JUDGMENT
)

STATE OF IDAHO)
) ss.
County of Ada)

Ron Rippey, being first duly sworn upon his oath, deposes and says that:

1. That I am a board member for Hart Davis Ditch Company (hereinafter "Hart Davis"), in this matter and make this Affidavit based upon my personal knowledge and am competent to testify to the matters contained herein.

2. I have been a shareholder of Hart Davis since the 1960s and a board member since the 1980s. I am familiar with and I have reviewed the books and records of Hart Davis from its organization in the 1920s to present.

3. To the best of my knowledge, the State of Idaho (hereinafter "State") has owned 165 shares of Hart Davis and has been a shareholder since prior to the 1960s. In reviewing the records

AFFIDAVIT OF RON RIPPEY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - Page 1

and books of Hart Davis, to the best of my knowledge, the State has paid the assessments of Hart Davis each and every year the State has been a shareholder. I am not aware of any delinquent assessments of the State, nor any claim by the State that it did not owe the assessments. In particular, the State has paid the assessments of Hart Davis since the time I have been a board member to present.

4. In or about 1989, Hart Davis filed a Notice of Claim to Water Right for water right no. 63-134. I was on the board for Hart Davis at this time and I participated in some discussions with IDWR regarding the preparation and filing of the Notice of Claim. I am not aware of the State providing any objection or notice that Hart Davis should not file the Notice of Claim to said water right. Hart Davis has an annual meeting every year, including 1989, and to the best of my knowledge the State has never asserted outright ownership of water right no. 63-134 at any annual meeting and there is nothing in the records or minutes of Hart Davis in which the State asserts outright ownership of water right no. 63-134. The first time Hart Davis was made aware that the State objected to the ownership of water right no. 63-134 was in 2006 when the State filed an objection in the SRBA.

DATED this 10 day of March, 2008.

By

Ron Rippey
Ron Rippey

Sworn to and subscribed before me this 10th day of March, 2008.



[Signature]
Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires: 7/25/10

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2008, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

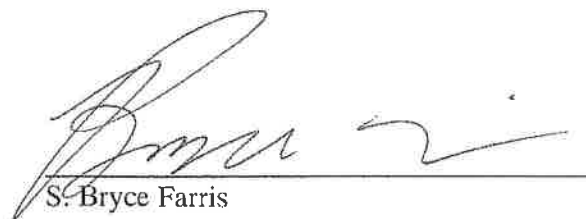
Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

Ron Sali
919 South Linden Road
Eagle, Idaho 83616

Mace Catlin Ditch Company
c/o Bob Kell
1820 Mace Road
Eagle, Idaho 83616

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



S. Bryce Farris

RECEIVED

MAR 14 2008

DEPARTMENT OF
WATER RESOURCES

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Hart-Davis Ditch Company, Inc.

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 NOS. 63-134, 63-132, 63-133,
) 63-134A, 63-134B, 63-186A, 63-186B,
) 63-17205 and 63-31772
)
) AFFIDAVIT OF S. BRYCE FARRIS
) IN SUPPORT OF MOTION
) FOR SUMMARY JUDGMENT

STATE OF IDAHO)
) ss.
County of Ada)

S. Bryce Farris, being first duly sworn upon his oath, deposes and says that:

1. That I am an attorney of record for Hart Davis Ditch Company (hereinafter "Hart Davis"), in this matter and make this Affidavit based upon my personal knowledge and am competent to testify to the matters contained herein.

2. I certify that the attached, as Exhibit A, is a true and correct photocopy of the Articles of Incorporation of Hart Davis, which were provided by the State of Idaho (hereinafter "State").

3. I certify that the attached, as Exhibit B, is a true and correct photocopy of the Notice of Claim to Water Right for water right no. 63-134, submitted by the Hart Davis in 1989.

AFFIDAVIT OF S. BRYCE FARRIS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - Page
1

COPY

4. I certify that the attached, as Exhibit C, is a true and correct photocopy of IDWR's recommendation for water right no. 63-134 in the name of Hart Davis dated December 12, 2005.

5. I certify that the attached, as Exhibit D, is a true and correct photocopy of the State's Standard Form 1 Objection to water right no. 63-134.

6. I certify that the attached, as Exhibit E, is a true and correct photocopy of an Agreement dated November 19, 1929 and provided by the State in response to discovery requests.

DATED this 3rd day of March, 2008.

RINGERT CLARK CHARTERED

By

S. Bryce Farris

Sworn to and subscribed before me this 5th day of March, 2008.



Kim A. White

Notary Public for Idaho

Residing in Boise, Idaho

My Commission Expires: 8/6/10

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2008, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:

Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

Ron Sali
919 South Linden Road
Eagle, Idaho 83616

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

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

Mace Catlin Ditch Company
c/o Bob Kell
1820 Mace Road
Eagle, Idaho 83616

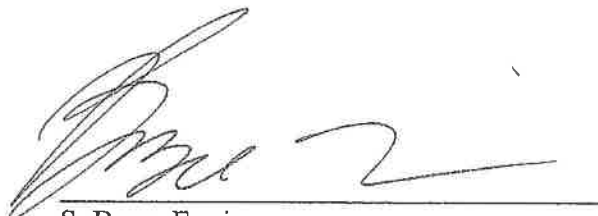

S. Bryce Farris

Exhibit A

ARTICLES OF INCORPORATION
of the
HART - DAVIS DITCH COMPANY.

KNOW ALL MEN BY THESE PRESENTS: That we, whose names are subscribed hereto, do in pursuance of Title XXXVII, Chapter 186, of the Compiled Statutes of the State of Idaho, and all Amendments thereto, hereby organize, constitute and associate ourselves, and such other persons as may hereafter become associated with us, into a body politic corporate, and to that end execute the following articles of incorporation, and we hereby set forth and declare as follows, to wit:

1. The name of this corporation shall be the "Hart-Davis Ditch Company. "

2. The purpose for which this corporation is formed is to build, enlarge, repair, operate, construct and maintain irrigating ditches and canals, flumes and reservoirs, and buy and sell water and water rights in Ada County, State of Idaho, and to own, hold and convey water through ditches, laterals and canals for the purposes of husbandry, irrigation, and domestic uses and purposes, for the sole and only benefit of the respective stockholders in this corporation.

3. The office and principal place of business of this corporation is established at J.M. Silver's, ^{residence} in Ada County, State of Idaho.

4. The term for which this corporation is to exist is fifty years from and after the date of the incorporation thereof.

5. The officers of said corporation shall be three in number, and consist of a President, Secretary, and Treasurer.

6. The President, Secretary, and Treasurer of said corpora-

tion, together with two members to be elected from among the stockholders as members of such Board, shall constitute the Board of Directors of said corporation.

7. The amount of capital stock of said corporation shall be \$ 24,900.00, divided into 498 shares, of the par value of \$ 50.00 per share.

8. The amount of the capital stock actually subscribed in said corporation, and the amount of the respective subscription thereto are as follows, to wit:

(Name)	(Residence)	(Amount)
<u>J.M.Silver,</u>	<u>Ada County,</u>	<u>1 share</u>
<u>D.W.Shaffier,</u>	<u>Ada County,</u>	<u>1 share</u>
<u>John Rader,</u>	<u>Ada County,</u>	<u>1 share</u>
<u>M.F.Kunkler,</u>	<u>Ada County,</u>	<u>1 share</u>
<u>Thomas Williams,</u>	<u>Ada County,</u>	<u>1 share</u>

9. The officers and Board of Directors of said corporation shall be elected at each annual meeting of the stockholders thereof, by a majority of the paid-up capital stock of said corporation, either in person, or by proxy; and shall be elected to fill their respective offices as follows, to wit:

President; term of office, one year.

Secretary; term of office, one year.

Treasurer; term of office, one year.

Members of Board of Directors; term of office, one year.

10. The time, place, and manner of holding annual stockholders' meetings, and all meetings of the Board of Directors, shall be regulated by the by-laws of said corporation, to be hereinafter made and adopted by said corporation.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 10th day of March, 1924.

J. M. Silver
D. H. Shaffer
John Rader

State of Idaho

ss

County of Ada

On this 10th day of March, 1924, before me, P. E. Cavaney, a Notary Public, personally appeared J. M. Silver
D. H. Shaffer, and John Rader

known to me to be the persons whose names are subscribed to the wit in Articles of Incorporation, and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 10th day of March, 1924.

 Notary Seal

P. E. Cavaney
Notary Public for Idaho,
Residing at Boise.

State of Idaho

SS

County of Ada

I, John Rader,

being first duly sworn, upon my oath depose and say that I am one of the incorporators of the foregoing corporation, and my name is subscribed to the within Articles of Incorporation, and that I am a resident of the State of Idaho.

Subscribed and sworn to before
me this 10th day of March, 1924.

O. E. Carver
Notary Public for Idaho,
Residing at Boise.

State of Idaho, }
COUNTY OF ADA } SS.

CERTIFICATE

I, STEPHEN UTTER, Ex-Officio Recorder in and for Ada County, State of Idaho, do hereby certify that the annexed is a full, true and correct copy of certain Articles of Incorporation of the
"Hart-Davis Ditch Company"

Numbered 2414 as the same appears in my office.

In Witness Whereof, I have hereunto set my hand and affixed my official Seal this 14th day of April 19 24.

By James Chord Deputy.
Stephen Utter
Ex-Officio Recorder.

Exhibit B

EX 4

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A63-00134
Date Received: 9/11/1989
Receipt No: W005863
Received By: EW

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: HART-DAVIS DITCH CO., INC. 208-939-0284
Address: C/O LORNA HIBBARD
1320 LINDER RD.
EAGLE, ID 83616

2. Date of Priority: JUN 01, 1864

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	01E	18	NE	NE			ADA

5. Description of diverting works:
DIVERSION DAM, SLOUGH TO CULVERT, DITCH, GRAVITY FLOW

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	3.300		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	01E	7	SW	SW		IRR	8.0
Section Acres							8.0

A63-00134

Page 1

Date: 09/11/89

MICROFILMED
AUG 14 1992

10. Place of Use: Continued

Total Acres 843.0

11. Place of use in counties: ADA

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

13. Other Water Rights Used:
A63-00186

14. Remarks:
LANDS ON EAGLE ISLAND. P/D INCOMPLETE IN DECREE.
THERE MAY BE ADDITIONAL LANDS IRRIGATED.

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date:

FARMERS CO-OP DITCH CO.
Decree Plaintiff

vs

RIVERSIDE IRR. DIST.
Decree Defendant

MICROFILMED

AUG 14 1992

MICROFILMED

AUG 14 1992

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: 1

For Organizations:

I do solemnly swear or affirm that I am Secretary of
Port Davis Nitch Co., Inc. that I have signed the foregoing
document in the space below as Sec of
Port Davis Nitch Co. and that the statements contained in the
foregoing document are true and correct.

Linda A. Werner
Signature of Authorized Agent
Sec Port Davis Nitch
Title and Organization
9/11/89
Date

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 11 day
of Sept. 19 89
Linda A. Werner
Notary Public

Seal

Residing at Linda A. Werner
Residing at Boise, Idaho
My Commission Expires December 8, 1994

MICROFILMED
AUG 14 1992

Exhibit C

Ex 5

12/12/2005

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

RIGHT NUMBER: 63-134

NAME AND ADDRESS: HART-DAVIS DITCH CO INC
C/O JIM BRESZINSKY
1111 TROUT RD
EAGLE ID 83616

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 3.300 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1964

POINT OF
DIVERSION: T04N R01E S17 NWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	3.300 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

498 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.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 498 ACRES WITHIN THE BOUNDARY OF HART-DAVIS DITCH COMPANY.

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 - Decreed

THIS RIGHT IS DESIGNATED AS RIGHT NO. 6 IN THE STEWART DECREE AND THE BOISE RIVER WATER MASTERS RECORDS.
RIGHT NO. 63-31772 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE.
RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
WATER IS DELIVERED THROUGH THE HARTON DAVIS CANAL.

Exhibit D

SRBA



41588

Ex6

COPY

704 APR 21 AM 10:19

FILED

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

In Re SRBA

A. Subcase Number: 63-00134

(Insert water right number)

Case No. 39576

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho, Department of Parks and Recreation
Address: 5657 Warm Springs Avenue
Boise, Idaho 83716
Daytime Phone: (208) 334-2400

Name and Address of Attorney, if any:

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER (ISB # 2597)
Deputy Attorney General
Attorney Address: Office of the Attorney General
700 W. Jefferson, Room 210
P.O. Box 44449
Boise, ID 83711-4449
Attorney Phone No. (208) 334-2400

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: HART-DAVIS DITCH CO INC
Address: c/o Jim Breszinsky
1111 Trout Rd
Eagle, ID 83616

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☒ Name and Address
Should be: State of Idaho, Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716
2. ☐ Source
Should be: _____
3. ☐ Quantity
Should be: _____
4. ☐ Priority Date
Should be: _____
5. ☐ Points of Diversion
Should be: _____
6. ☐ Instream Flow Description
Should be: Not applicable.
7. ☐ Purpose(s) of Use
Should be: _____
8. ☐ Period of Year
Should be: _____
9. ☒ Place of Use
Should be: The IDP&R lands need to be described as the place of use.

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

The State of Idaho acquired the real property on Eagle Island for a prison farm in 1929. When the State of Idaho closed the prison farm, the Idaho Department of Parks and Recreation, (hereinafter "IDP&R"), and the Idaho Department of Fish and Game, (hereinafter "IDF&G"), acquired most of the old prison farm.

William E. Welsh, Watermaster for the Boise River, prepared a "Statement of Water Rights for Eagle Island Penitentiary Farm on Boise River," which summarized the water rights acquired by the State of Idaho on Eagle Island. A copy of this Statement is attached. Water Right No. 63-134 was originally designated as right no. 6 in the Stewart Decree. The State of Idaho owned the entire 330 c.f.s. of water right no. 6. The IDP&R has not found any transfer of the water right to the Hart-Davis Ditch Co.

F.

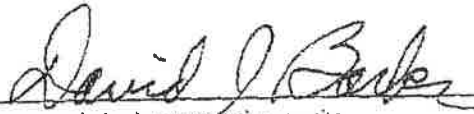
VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

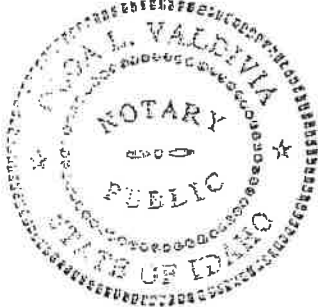
DAVID J. BARBER, Deputy Attorney General, duly sworn, upon oath, deposes and says:

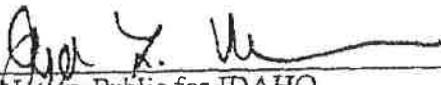
That the State of Idaho, Department of Parks & Recreation, in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, Department of Parks & Recreation which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER
Deputy Attorney General


By Attorney signing in representative capacity

Subscribed and sworn to before me on: April 20, 2006
(Insert Date)




Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: 2/8/2012

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on April 20, 2006, I caused the original and the copies of this objection, including all attachments, to be served on the following persons by the method designated:

1. Original to:

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

FEDERAL EXPRESS
OVERNIGHT DELIVERY

2. One copy to the owner of the water right at the following address:

HART-DAVIS DITCH CO. INC.
c/o Jim Breszinsky
1111 Trout Rd
Eagle, ID 83616

U.S. MAIL

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

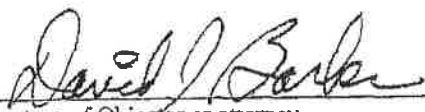
STATEHOUSE MAIL

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

U.S. MAIL

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

(not applicable)



Signature of Objector or attorney
Mailing on Objector's behalf

Attachment I

STATEMENT OF WATER RIGHTS FOR EAGLE ISLAND PENITENTIARY FARM ON BOISE RIVER

By Wm. E. Welsh, Watermaster, Boise River

In the case of the Farmers' Cooperative Ditch Company vs. the Riverside Irrigation District, Ltd., et al, commonly referred to as the Stewart Decree, are found the following awards:

Number	Date	Name	Amount Decreed Second Feet	Inches
5	6-1-64	Catlin & Mace	2.86	143
6	6-1-64	T. C. Catlin	3.30	165
52	6-1-71	Catlin & Mace	7.86	393

Upon examining an agreement now on file in the office of the Secretary of State which was entered into by the various parties of interest in the Catlin & Mace Ditch just immediately prior to the time of the purchase of the Penitentiary Farm by the State of Idaho, I find that rights numbers 5 and 52 were divided among these various users as follows: Also right Number 6.

Name	Inches	Date of Priority	Number
Charles P. Mace and Mary Mace	8.03	June 1, 1864	5
Charles P. Mace and Mary Mace	22.05	June 1, 1871	52
Frank Mace and Josie A. Mace	10.70	June 1, 1864	5
Frank Mace and Josie A. Mace	29.38	June 1, 1871	52
Benjamin Mace and Grace J. Mace	8.33	June 1, 1864	5
Benjamin Mace and Grace J. Mace	22.91	June 1, 1871	52
Wesley Mace and Rosa Mace	11.00	June 1, 1864	5
Wesley Mace and Rosa Mace	30.26	June 1, 1871	52
Grover Mace and Cora B. Mace	8.84	June 1, 1864	5
Grover Mace and Cora B. Mace	24.30	June 1, 1871	52
A. G. Coker and Margaret G. Coker	5.35	June 1, 1864	5
A. G. Coker and Margaret G. Coker	14.65	June 1, 1871	52
Karl Fischer, A Bachelor	90.75	June 1, 1864	5

Name	Inches	Date of Priority	Number
Karl Fischer, A Bachelor	249.45	June 1, 1871	52
Karl Fischer, A Bachelor	165.00	June 1, 1864	6

It is also noted that there is in this same file a stock certificate issued to the State of Idaho by the Hart-Davis Ditch Company for 165 shares which covers the 165 inches of water represented in right number 6. The abstract on file in the office of the Secretary of State shows that the State of Idaho purchased the T. C. Catlin Farm as described in the agreement referred to above from Karl Fischer, together with all water rights appurtenant thereto.

Therefore, the water rights now belonging to the State of Idaho for the Eagle Island Penitentiary Farm are as follows:

Number	Date	Name	Amount Decreed Second Feet	Inches
5	June 1, 1864	Catlin & Mace	1.815	90.75 ✓
6	June 1, 1864	T. C. Catlin	3.30	165.00
52	June 1, 1871	Catlin & Mace	<u>4.99</u>	<u>249.5</u>
		TOTAL	10.105	505.25

Exhibit E

Karl Fischer

To

Instrument Number 127565

Chas. P. Mace et al

Dated November 19, 1928

AGREEMENT

THIS AGREEMENT, Made and entered into by and between Karl Fischer, a bachelor; and Charles P. Mace and Mary Mace, husband and wife; Frank Mace and Josie A. Mace, husband and wife; Benjamin Mace and Grace J. Mace, husband and wife; Wesley Mace and Rosa Mace, husband and wife; Grover Mace and Cora B. Mace, husband and wife; and A. G. Coker and Margaret O. Coker, husband and wife; all of Eagle, in Ada County, Idaho; W I T N E S S E T H ;

THAT WHEREAS, the above named parties are the owners of those certain lands on Eagle Island, in Ada County, Idaho, referred to in that certain decree, dated January 18, 1906, rendered and entered by the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Owyhee, which decree was recorded March 30, 1906, at 10:40 A.M., in Book 55 of Deeds, at page 351, records of Ada County, Idaho, they being the successors in interest to certain lands of T. O. Catlin and Pollette Mace, therein referred to, and which said decree by reference is hereby made a part of this agreement; and

WHEREAS, by said decree the said T. O. Catlin and Pollette Mace were awarded the use of the waters of the Boise River, diverted from a point on the South Bank of said River, on Lot Five (5), Section Seventeen (17), Township Four (4) North, Range One (1) West N.M., for use upon their lands on Eagle Island, in Ada County, Idaho, in the following amounts, from the following dates, to-wit:

143 inches from June 1, 1864, designated as right No. 5, in said action; and
393 inches from June 1, 1871, designated as right No. 52 in said action;

AND WHEREAS, the parties herein are the successors in interest of said T.O. Catlin and Pollette Mace, in and to said lands therein referred to, and are now the owners thereof;

NOW, THEREFORE, for the valuable consideration of the definite allocation to said several lots, tracts, and parcels of land hereinafter described of said water, pursuant to said decree, the said parties hereto mutually agree to allocate, assign, transfer and convey the above described water rights referred to in said decree as follows, to-wit:

TO CHARLES P. MACE AND MARY MACE, HIS WIFE:

5.05 miners inches of the waters of Boise River of a priority of June 1, 1864, designated as right No. 5, in the above mentioned decree, and 32.05 miners inches of the waters of Boise River of a priority of June 1, 1871, designated as Right No. 52, in the above mentioned decree, the same being a part of the water right awarded in the above referred to decree, said water right to be appurtenant to the following described lands belonging to said Charles P. Mace and Mary Mace, his wife, to-wit:

Commencing at a point on the one-half section line 9.52 chains west of the one-fourth section corner common to sections seventeen (17) and eighteen (18), Township Four (4) North, Range One (1) East of Boise Base and Meridian; thence North 1° 52' East a distance of 10.80 chains to a stone marked area on top, thence North 49° 25' West a distance of 1.70 chains to a point, thence South 25° 08' West a distance of 3.80 chains to a point, thence South 62° 23' West a distance of 4.00 chains to a point;

thence South 27° 38' West a distance of 3.41 chains to a stone marked cross on top; thence South 1° 52' West a distance of 39.28 chains to a stone marked cross on top; thence North 58° 07' East a distance of 1.00 chain to a point; thence North 71° 52' East a distance of 2.00 chains to a point; thence North 83° 54' East a distance of 4.49 chains to a stone marked cross on top; thence North 1° 52' East a distance of 32.72 chains to the place of beginning, containing 30.08 acres, more or less.

TO FRANK MACE AND JOSIE A. MACE, HIS WIFE:

10.70 miners inches of the waters of Boise River of a priority of June 1, 1864, designated as right No. 5, in the above mentioned decree, and 29.38 miners inches of the waters of Boise River of a priority of June 1, 1871, designated as Right No. 52, in the above mentioned decree, the same being a part of the water right awarded in the above referred to decree, said water right to be appurtenant to the following described lands belonging to the said Frank Mace and Josie A. Mace, his wife, to-wit:

Commencing at a point on the one-half section line 16.72 chains west of the one-fourth section corner common to sections seventeen (17) and eighteen (18), Township Four (4) North, Range One (1) East of the Boise Base and Meridian; thence North 1° 52' East a distance of 4.92 chains to a stone marked cross on top; thence South 27° 30' West a distance of 6.08 chains to a point; thence South 59° 38' West a distance of 3.00 chains to a point, thence South 76° 28' West a distance of 3.30 chains to a point, thence North 75° 47' West a distance of 1.60 chains to a stone marked cross on top, thence South 1° 52' West a distance of 41.50 chains to a stone marked cross on top; thence South 86° 09' East a distance of 5.89 chains to a point, thence North 13° 43' East a distance of 9.09 chains to a point, thence North 78° 22' East a distance of 0.70 chains to a point, thence North 58° 07' East a distance of 1.80 chains to a stone marked cross on top; thence North 1° 52' East a distance of 34.36 chains to the place of beginning, containing 40.08 acres, more or less.

TO BENJAMIN MACE AND GRACE J. MACE, HIS WIFE:

8.33 miners inches of the waters of Boise River of a priority of June 1, 1864, designated as right No. 5, in the above mentioned decree, and 22.91 inches of the waters of Boise River of a priority of June 1, 1871, designated as Right No. 52, in the above mentioned decree, the same being a part of the water right awarded in the above referred to decree, said water right to be appurtenant to the following described lands belonging to said Benjamin Mace and Grace J. Mace, his wife, to-wit:

Commencing at a point 2.10 chains south along the section line and 0.73 chains South 74° 03' West from the one-fourth section corner common to Sections Seventeen (17) and Eighteen (18), Township Four (4) North, Range One (1) East of Boise Base and Meridian; thence South 74° 03' West a distance of 4.17 chains to a point; thence North 52° 42' West a distance of 4.50 chains to a point; thence North 5° 12' West a distance of 2.50 chains to a point; thence North 33° 48' East a distance of 3.40 chains to a point; thence North 63° 33' East a distance of 2.00 chains to a point; thence North 18° 03' East a distance of 1.35 chains to a point; thence North 49° 22' West a distance of 5.30 chains to a stone marked cross on top; thence South 1° 52' West a distance of 43.52 chains to a stone marked cross on top; thence North 83° 54' East a distance of 2.21 chains to a point; thence North 78° 54' East a distance of 4.30 chains to a point; thence South 75° 21' East a distance of 3.96 chains to a stone marked cross on top; thence North 0° 25' East a distance of 12.42 chains to a stone marked cross on top; thence North 88° 15' West a distance of 0.51 chains to a stone marked cross on top; thence South 1° 52' West a distance of 17.78 chains to a stone marked cross on top the place of

TO WESLEY MACE AND ROSA MACE, HIS WIFE:

11.00 miners inches of the waters of Boise River of a priority of June 1, 1864, designated as right No. 5, in the above mentioned decree, and 30.26 miners inches of the waters of Boise River of a priority of June 1, 1871, designated as Right No. 52, in the above mentioned decree, the same being a part of the water right awarded in the above referred to decrees, said water right to be appurtenant to the following described lands belonging to said Wesley Mace and Rosa Mace, his wife, to-wit:

Commencing at a stone on the East and West one-half Section line 32.89 chains West of the one-fourth section corner common to Sections Seventeen (17) and Eighteen (18), Township Four (4) North, Range One (1) East of Boise Base and Meridian, thence West a distance of 4.08 chains to a stone marked cross on top; thence South $1^{\circ} 02'$ West a distance of 37.84 chains to a stone marked cross on top; thence South $69^{\circ} 09'$ East a distance of 11.82 chains to a stone marked cross on top; thence North $1^{\circ} 02'$ East a distance of 41.50 chains to a stone marked cross on top; thence North $75^{\circ} 47'$ West a distance of 5.40 chains to a point; thence North $41^{\circ} 02'$ West a distance of 1.43 chains to a stone marked cross on top, the place of beginning, containing 41.26 acres more or less.

TO GROVER MACE AND CORA B. MACE, HIS WIFE:

8.84 miners inches of the waters of Boise River of a priority of June 1, 1864, designated as right No. 5, in the above mentioned decree, and 24.30 miners inches of the waters of Boise River of a priority of June 1, 1871, designated as right No. 52, in the above mentioned decree, the same being a part of the water right awarded in the above referred to decrees, said water right to be appurtenant to the following described lands belonging to said Grover Mace and Cora B. Mace, his wife, to-wit:

Commencing at a stone marked cross on top 2.10 chains South and 0.73 chains South and 0.73 chains South $74^{\circ} 03'$ West from the one-fourth section corner common to Sections seventeen (17) and Eighteen (18), Township Four (4) North, Range One (1) East of Boise Base and Meridian; thence South a distance of 17.78 chains to a stone marked cross on top; thence South $88^{\circ} 15'$ East a distance of 20.03 chains to a stone marked cross on top; thence North $1^{\circ} 25'$ East a distance of 11.04 chains to a stone marked cross on top; thence North $65^{\circ} 05'$ West a distance of 4.00 chains to a point; thence North $30^{\circ} 17'$ West a distance of 2.30 chains to a point; thence North $75^{\circ} 17'$ West a distance of 2.00 chains to a point; thence South $69^{\circ} 58'$ West a distance of 1.40 chains to a point; thence North $68^{\circ} 02'$ West a distance of 2.50 chains to a point; thence North $73^{\circ} 17'$ West a distance of 2.00 chains to a point; thence North $04^{\circ} 02'$ West a distance of 2.10 chains to a point; thence North $95^{\circ} 50'$ West a distance of 5.48 chains to a point on the section line, thence South $74^{\circ} 03'$ West a distance of 0.93 chains to a stone marked cross on top, the place of beginning, containing 38.14 acres, more or less.

TO A. G. OCKER AND MARGARET O. OCKER, HIS WIFE:

8.35 miners inches of the waters of Boise River of a priority of June 1, 1864, designated as right No. 5, in the above mentioned decree, and 14.65 miners inches of the waters of Boise River of a priority of June 1, 1871, designated as right No. 52, in the above mentioned decree, the same being a part of the water right awarded in the above referred to decrees, said water right to be appurtenant to the following described lands belonging to said A. G. Ocker and Margaret O. Ocker, his wife, to-wit:

Commencing at a point on the one-half section line 32.00 chains East of the West one-fourth section corner of Section 18, Township 4 North, Range 1 East D.M., thence

north a distance of 20.04 chains to rock marked cross on top, South 67° 00' East a distance of 0.00 chains to a point, thence South 67° 00' East a distance of 2.00 chains to a point, thence South 68° 00' East a distance of 2.00 chains to a point, thence South 11° 30' East a distance of 2.00 chains to a point, thence, South 16° 15' East a distance of 2.90 chains to a point, thence South 33° 45' East a distance of 2.00 chains to a point, thence South 33° 45' East a distance of 2.00 chains to a point, thence South 24° 30' East a distance of 1.00 chains to a point, thence South 33° 00' East a distance of 3.60 chains to a point, thence South 3° 15' West a distance of 2.60 chains to a point, thence South 13° 45' West a distance of 11.90 chains to a point, thence South 9° 30' West a distance of 3.30 chains to a point, thence South 20° 45' East a distance of 4.00 chains to a rock marked cross on top, thence west on one-half section line a distance of 11.00 chains to an iron bar 1 1/4 inches by four (4) feet long driven in ground, the place of beginning, all in Section 18, Township Four (4) North, Range One (1) East Boise Meridian, containing 20 acres, more or less;

TO KARL FISCHER, A BACHELOR;

90.75 miners inches of the waters of Boise River of a priority of June 1, 1864, designated as right No. 5, in the above mentioned decree, and 249.45 miners inches of the waters of Boise River of a priority of June 1, 1871, designated as Right No. 52, in the above mentioned decree; and 165 miners inches of the waters of Boise River of a priority of June 1, 1864, designated as Right No. 6, in the above mentioned decree, the same being a part of the water right awarded in the above referred to decrees, said water right to be appurtenant to the following described lands belonging to said Karl Fischer, a bachelor, to-wit:

Lots Six (6), Seven (7) and Eight (8), The West Half of the Southeast Quarter (W $\frac{1}{2}$ SE $\frac{1}{4}$), and the Northeast Quarter of the Southeast Quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$), of Section Thirteen (13), and Lots One (1) and Two (2), of Section Twenty-Four (24), all in Township Four (4) North, Range One (1) East B.M., containing 276.66 acres, more or less; and

Lots Three (3), Four (4), Five (5), Ten (10) and Eleven (11), and the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$), of Section Eighteen (18), Township Four (4) North, Range One (1) East Boise Meridian, containing 237.25 acres, more or less;

excepting therefrom twenty (20) acres, more or less of said Lot Three (3), as described in that certain deed dated March 16, 1928, and recorded March 16, 1928, at 4:11 P.M., in Book 122 of Deeds at page 391, records of Ada County, Idaho.

IT BEING MUTUALLY UNDERSTOOD AND AGREED, between the parties hereto that they, and each of them, will clean, repair and maintain the canals, laterals and ditches through which said waters are diverted in proportion to the amount of waters herein allocated to each of said parties; and that the easements of all canals, laterals and ditches heretofore and now existing over the several lands herein described are hereby specifically reserved by each of the parties hereto, together with right to go upon said lands to clean, repair and maintain said canals, laterals and ditches.

IT IS SPECIFICALLY DECLARED, AGREED AND UNDERSTOOD, by and between the parties hereto that this contract is made only for the express purpose of allocating the waters to the specific tracts of land herein described and owned by the parties hereto, making said water appurtenant thereto, and for no other purpose, and does in no wise vary or change the awards or allotments of said decrees herein referred to.

This contract shall be placed of record and shall be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals
this 19th day of November, 1929.

A. O. Coker
Margaret O. Coker
Charles P. Mace
Mary Mace
Frank Mace
Josie A. Mace
Benjamin Mace
Grace J. Mace
Grover Mace
Cora B. Mace
Wesley Mace
Rosa Mace
Karl Fischer

STATE OF IDAHO,)
County of Ada,) ss.

On this 19th day of November, 1929, before me, Claude R. High, a Notary Public for said County and State, personally appeared Karl Fischer, a bachelor; Charles P. Mace and Mary Mace, husband and wife; Frank Mace and Josie A. Mace, husband and wife; Benjamin Mace and Grace J. Mace, husband and wife; Wesley Mace and Rosa Mace, husband and wife; and Grover Mace and Cora B. Mace, husband and wife, known to me to be eleven of the persons whose names are subscribed to the within agreement, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(SEAL)

Claude R. High
Notary Public, State of Idaho,
Residing at Boise, Idaho.
My Commission Expires January 30,
1930.

STATE OF IDAHO,)
County of Ada,) ss.

On this 19th day of November, 1929, before me, Claude R. High, a Notary Public in and for said County and State, personally appeared A. O. Coker and Margaret O. Coker, husband and wife, known to me to be two of the persons whose names are subscribed to the within agreement, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(SEAL)

Claude R. High
Notary Public,
State of Idaho,
Residing at Boise, Idaho.
My Commission Expires
January 30, 1930.

Recorded at request of State of Idaho at 05 minutes past 5 o'clock P.M., this
20 day of Nov., 1929.
Fees \$7.60

Stephen Utter
Recorder.

RECEIVED

MAR 14 2008

DEPARTMENT OF
WATER RESOURCES

JON C. GOULD (ISB #6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Mace-Catlin Mutual Ditch Company, Inc.

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 NOS. 63-134, 63-132, 63-133,
) 63-134A, 63-134B, 63-186A, 63-186B,
) 63-17205 and 63-31772
)
) MACE-CATLIN MUTUAL DITCH
) COMPANY'S MEMORANDUM IN
) SUPPORT OF MOTION FOR SUMMARY
) JUDGMENT

The Mace-Catlin Mutual Ditch Company (Mace-Catlin), by and through its counsel of record, Ringert Clark Chartered, and hereby submits this Memorandum in Support of its Motion for Summary Judgment.

I. INTRODUCTION

Mace-Catlin is a ditch company organized and existing in Eagle, Idaho. One of the shareholders of Mace-Catlin, the State of Idaho Department of Parks (hereinafter "State"), filed objections to the ownership of certain water rights on the basis that the State independently owns said water rights. The State's objection comes nearly fifty years after the formation of the Mace-Catlin, and after years of the State being a shareholder of Mace-Catlin and paying the assessments

of Mace-Catlin. At no time has the water right ever been in the name of the State and the State has continued to be a shareholder of Mace-Catlin and pay the assessments of Mace-Catlin without laying claim to the ownership of the water rights. In fact, the State did not file a claim in the SRBA as to the ownership of the water rights, but instead allowed Mace-Catlin to file the claim and the State now for the first time objects to the ownership by Mace-Catlin.

The State's position is essentially that there was no conveyance of the water right from the State's predecessor in interest to Mace-Catlin when the ditch company was formed and therefore the water right is still independently owned by the State. However, any lack of an express conveyance is rebutted by implied conveyance to the ditch company when Mace-Catlin was formed and the long standing treatment of the State as a shareholder of Mace-Catlin, subject to the assessments and rules and regulations of Mace-Catlin. Additionally, the State's long standing acquiescence to the ownership of the water right by Mace-Catlin bars the State from claiming ownership under a number of legal doctrines, including, laches, estoppel and waiver/abandonment.

Lastly, there are equitable and other considerations the Court should consider in determining whether the State has an independent ownership interest in the water rights, including, the implications of essentially providing that every shareholder has a separate, independent interest in the water rights. This would create an administrative nightmare for IDWR and the SRBA split and divide the water rights so that each shareholder receives an independent interest in the portion of the water right appurtenant to each shareholder's land.

The bottom line is that legally and equitably the water rights should be owned by Mace-Catlin in trust for its shareholders. This Court should grant the Motion of Mace-Catlin and deny the State's claim to ownership.

II. BACKGROUND

The Mace-Catlin Ditch Company is a non-profit ditch company organized and existing under the laws of the State of Idaho. Mace-Catlin adopted by-laws in 1960. The water rights which Mace-Catlin delivers to its shareholders pre-date the formation of the ditch company. Thus, the water rights were perfected by individual landowners prior to 1960. The priority date for the water rights in question, 63-132 and 63-133, goes back to June 1, 1864 and June 1, 1871, respectively.

According to the State's objection, the State purchased property on Eagle Island for a prison farm in 1929. Since 1929, the State has been an apparent shareholder of the predecessor of Mace-Catlin for 340 shares which covers the 340 inches of water it is entitled to use under water right nos. 63-132 and 63-133. Since at least 1960, the State has paid yearly assessment to Mace-Catlin for the 340 shares owned.

In 1989, Mace-Catlin filed a notice of claim to ownership of water right nos. 63-132 and 63-133. The State did not file a claim to said water rights and there is no indication that the State objected to Mace-Catlin's claims when they were filed. In December of 2005, IDWR recommended water right nos. 63-132 and 63-133 in the name of Mace-Catlin. In April of 2006, the State filed objections to both water rights. However, there is no record prior to 2006 of the State claiming outright ownership of water right nos. 63-132 and 63-133 or any portion of those water rights.

III. STANDARD OF REVIEW

Summary judgment must be granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c); *Friel v. Boise*

City Housing Authority, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994). The court liberally construes the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences and conclusions in that party's favor. *Friel*, 126 Idaho at 485, 887 P.2d at 30 (citing *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 272, 869 P.2d 1365, 1367 (1994); *Harris v. Dept. of Health and Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992)). If reasonable people could reach different conclusions or draw conflicting inferences from the evidence, a summary judgment motion must be denied. *Stevenson*, 125 Idaho at 272, 869 P.2d at 1367. However, if the evidence reveals no disputed issues of material fact, what remains is a question of law, over which the court exercises free review. *Id.*

IV. ARGUMENT

A. Ditch Company Formation and Ditch Company Law.

A mutual ditch company, such as Mace-Catlin, is "formed expressly for the purpose of furnishing water to shareholders, not for profit or hire." *Jacobucci v. District Court*, 541 P.2d 667, 671 (Colo. 1975). Many mutual water companies were formed by individual water right holders who pooled assets, incorporated the ditch company and conveyed their water rights to it in return for stock. *See Id.* It therefore follows that the legal title to these rights is in the corporation, **while the equitable title remains in the original owners, or their grantees.** (Emphasis added). Kinney, Clesson S., A Treatise on the Law of Irrigation and Water Rights. Section 1481, p. 2661-62, October 1, 1912. In other words, the ditch company holds the legal title to the property in trust for its respective shareholders, the terms of the trust to be governed by the articles of incorporation, or the by-laws of the same. This is precisely the situation which occurred with the formation of Mace-Catlin.

The Colorado Supreme Court in *Jacobucci v. District Court*, 541 P.2d 667, 672-73 (Colo. 1975) summarized a mutual ditch corporations ownership interest in the water right(s) used by the share holders as follows:

the shares of stock held by the consumers in a mutual ditch corporation represent a specific property interest in a water right. The interest of these shareholders cannot be "defeated or altered by any action of the ditch company or its other shareholders." *United States v. 508.88 Acres of Land*, U.S. District Ct. (D. Colo. May 8, 1973, Unpublished); *Bent v. Second Extension Water Co.*, 51 Cal. App. 648, 197 P. 657 (1921). While the "naked title may stand in the name of [the mutual ditch corporation], the ditch, reservoir, and water rights are actually owned by the farmers who served thereby.

Through treatise and case law it is clear that the mutual ditch corporations hold title to the water right while the shareholder holds the equitable title. As a result, the State's desire to be listed as the water right owner is merely an argument of form over substance.

By forming a ditch company, the members or shareholders agree to consolidate or commingle both there ditch rights and water rights into one entity that operates and manages those rights for the benefits of all the shareholders. It is unclear how water under water right nos. 63-132 and 63-133 was managed prior to the formal organization of Mace-Catlin in 1960. However, an informal ditch company or association, similar to Hart-Davis, likely existed since at least 1924 for operating and managing water right nos. 63-132 and 63-133. The State, and most likely it's predecessor, by joining and forming the ditch company, implicitly agreed to the commingling of the water and ditch rights.

The State's argument, as Mace-Catlin understands it, is simply that there is no deed or document specifically conveying the water rights to Mace-Catlin. Mace-Catlin does not dispute that there is no deed conveying the water rights to it. On the flip side, there is no deed or document specifically reserving the water right when the ditch company was formed. The State points to an

agreement in 1929 whereby a number of landowners divided up the water rights in the area of what is now the Mace-Catlin service area. Water used under the water rights identified in the 1929 agreement is delivered through the Mace-Catlin ditch. The State's assertion that there is no deed or document conveying the water rights to Mace-Catlin is insufficient to meet the State's burden to overturn IDWR's recommendation. The State, since at least 1960, has accepted Mace-Catlin's ownership of the entirety of water right nos. 63-132 and 63-133.

B. The State is Barred from Claiming Ownership by the Doctrines of Laches, Estoppel, Waiver and/or Abandonment.

All of the aforementioned doctrines are applicable in this case. However, the application of any one of these doctrines defeats the State's objection.

1. Laches.

In *Sears v. Berryman*, 101 Idaho 843, 847, 623 P.2d 455, 459 (1981), the court applied the doctrine of laches and stated that:

The doctrine of laches is a creation of equity and is a species of equitable estoppel. "Long and continuous knowing acquiescence in another's use and enjoyment of a property or privilege may preclude one from subsequently asserting his claim. However, "(l)apse of time is not alone sufficient to defeat a right on the ground of laches. It must be shown that the (claimant) has been misled, to his injury, by the failure of the (holder of the right) to assert its right earlier."

Id. at 848, 623 P.2d at 460. (citations omitted).

In *Hillcrest Irr. Dist. v. Nampa & Meridian Irr. Dist.*, 57 Idaho 403, 408-409, 66 P.2d 115, 117 (1937), the court found the existence of the elements of laches and stated that respondents have stood by, with full knowledge of all the facts, for more than twenty years and allowed the appellant to proceed on the theory that it had valid title and a legal right to divert the water, and in the

meantime the appellant has incurred large indebtedness on the strength of its title. The “change of point of diversion and use, whether regular and legal or not, was actually accomplished and thereafter used and enjoyed adversely.” *Id.*

In this case, the first time the State ever made a claim to ownership of the water right was when it filed its objection in April of 2006. Thus, from 1960 to 2006, or forty-six (46) years, the State knowingly acquiesced in the ownership by Mace-Catlin. In direct contradiction to claiming ownership, the State acknowledge it was a shareholder and continued to pay the assessments of the Mace-Catlin for at least forty-six years. Lastly, and possibly most telling of the State’s long acquiescence, is the fact that the State never filed a claim to ownership of the water right in the SRBA. This is the same State of Idaho that is in charge of the SRBA. Instead, the State allowed Mace-Catlin to file a claim, protect the water right, and now two decades later, the State files an objection.

2. Estoppel.

The doctrine of equitable estoppel requires: (1) a false representation or concealment of a material fact made with actual or constructive knowledge of the truth; (2) that the party asserting estoppel did not and could not have discovered the truth; (3) an intent that the misrepresentation or concealment be relied upon; and (4) that the party asserting estoppel relied on the misrepresentation or concealment to his or her detriment. *Willig v. State, Dept. of Health & Welfare*, 127 Idaho 259, 899 P.2d 969 (1995).

Further, the doctrine of quasi estoppel is distinguished from equitable estoppel “in that no concealment or misrepresentation of existing facts on the one side, no ignorance or reliance on the other, is a necessary ingredient. The doctrine of quasi estoppel applies when it would be

unconscionable to allow a party to assert a right which is inconsistent with its prior position.” *Id.* at 261, 899 P.2d at 971. (citations omitted).

As previously mentioned, the State sat back and allowed the ownership of this water right to be recognized in the name of Mace-Catlin. The State did not file a claim in the SRBA and allowed Mace-Catlin to file claims to protect the water right. The State as being in charge of the SRBA had knowledge of Mace-Catlin’s claim, which was filed in 1989, and the State as a shareholder of Mace-Catlin, had knowledge of the claim. It would be inequitable and unconscionable to allow the State to now come in for the first time in 2006 and claim ownership.

3. Waiver and/or Abandonment.

In *Jenkins v. State, Dep’t of Water Resources*, 103 Idaho 384, 647 P.2d 1256 (1982), the court stated that:

Abandonment is a common law doctrine involving the occurrence of (1) an intent to abandon and (2) an actual relinquishment or surrender of the water right. Forfeiture, on the other hand, is predicated upon the statutory declaration that all rights to use water are lost where the appropriator fails to make beneficial use of the water for a continuous five year period. I.C. § 42-222(2).

Id. at 387, 647 P.2d at 1260 (quoting *Sears v. Berryman*, 101 Idaho 843, 847, 623 P.2d 455, 459 (1981)).

“Intent to abandon must be proved by clear and convincing evidence of unequivocal acts, and mere non-use of a water right, standing alone, is not sufficient for a per se abandonment.” *Id.* at 387-388, 647 P.2d at 1260-1261. The court’s identify the loss of water right by intent as abandonment. However, while not specifically recognized the doctrine of waiver is similar. “Waiver is a voluntary, intentional relinquishment of a known right or advantage. Waiver is foremost a question of intent.”

Seaport Citizens Bank v. Dippel, 112 Idaho 736, 735 P.2d 1047 (Ct.App. 1987). The intention to

waive must clearly appear and the doctrine of implied waiver by silence is disfavored. This same element of intent creates a distinction between implied waiver and estoppel. The distinction between an implied waiver and estoppel is that for a case of implied waiver there must be: some conduct on the part of the person waiving from which it may be inferred that the person waiving intended to waive; in other words, affirmative action on the part of the person waiving indicating an intention to waive some benefit or advantage; whereas, in estoppel a barrier is simply set up regardless of the parties' intentions which precludes one from asserting a right which he would otherwise have but for the matters and things pleaded by the way of estoppel. *Id.* at 739, 735 P.2d at 1050.

In this case, the State was a member of Mace-Catlin in 1960 when formal by-laws were drafted and meeting minutes recorded. As a member, the State agreed to commingle whatever rights it may have held in the ditch or the water rights. Those rights would then be collectively held by Mace-Catlin for the benefit of its shareholders. There is no dispute that the State has been a shareholder for more than forty years, paid the assessments of the ditch company for more than forty years and abandoned or waived its right to outright ownership of the water rights for the past forty years.

C. Practical Implications of the State's Argument.

Mace-Catlin's position is that while title to the water right should remain in the name of Mace-Catlin, the State and the other shareholders continue to hold equitable title. If the State's argument is accepted then each shareholder would own a separate water right for a fraction of the shares represented. The State's position creates several practical implications that the Court should consider as part of its decision.

1. Granting the State's Request Will Wreak Havoc on the Water Users

In *East Jordan Irrigation Co., v. Morgan*, the Utah Supreme Court recognized the chaos that would result if individual shareholders would or could possess the legal right to administer the water to which they may be entitled by another manner or means than those supplied by the mutual ditch company. *East Jordan Irrigation Co. v. Morgan*, 860 P.2d 310, 315, 218 Utah Adv. Rep. 62 (1993). In that case East Jordan Irrigation Company was appealing the State engineer's decision allowing a shareholder in East Jordan to change the point of diversion of a portion of East Jordan's water without the company's consent. The court noted that allowing the shareholder the right to manage water delivery would ultimately lead to a state of inextricable discord and confusion among the owners of water rights. *Id.* The Utah court reversed the state engineer's decision.

In *Consolidated People's Ditch Co. V. Foothill Ditch Co.*, the California court held that a shareholder does not have the right to change its point of diversion over the objection of the company. *Consolidated People's Ditch Co. V. Foothill Ditch Co.*, 269 P. 915 (Cal. 1928). In *Consolidated*, the court stated that to recognize such a right "would necessarily be to admit the possession of similar rights in each and every stockholder in each of said corporations to go and do likewise, and it is too plain for argument that such an admission would result in a state of inextricable discord and confusion among the owners of water rights of various sorts [all over California]. The creation or threatened danger of such a consequence would of itself supply a sufficient reason for the use of the injunctive processes of the court in the way of its prevention." *Id.* at 921.

Havoc would invariably ensue if every shareholder in the corporation were to attempt to govern the corporate affairs as they relate to the appropriation of waters. Ultimately, water

companies, such as Mace-Catlin, could well be destroyed by complete changes in diversion points or water use.

2. State Can Not Change the Elements of the Water Right if it Injures Others.

Whether the State remains a shareholder with an equitable interest in the water rights or it owns the water rights outright, it still cannot change the elements of the water rights if it injures other shareholders or the ditch company. In other words, even if the State's objection is successful and the State is listed as the owner of portions of the water rights in question, the State cannot change any elements of the water rights appurtenant to its property if those changes would injure the ditch company or any of the other shareholder. Furthermore, Idaho Code § 42-108, in recognizing the mutual ditch company shareholder's dependency upon one another, states:

The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; **if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district.** (Emphasis added).

Other jurisdiction, as noted above in *East Jordan* and *Consolidated People's Ditch Co.*, have held that a shareholder does not have the right to change its point of diversion over the objection of the company. Therefore, the State's objection becomes either moot or merely an argument of form over substance because the State's ability to change the elements of the water right is the same regardless of whether it owns the water right outright or the ditch company holds the water right in

trust. However, significant detrimental impacts to the administration of the water rights may result.

3. Approving the State's Objection Could Cause a Significant Administrative Burden.

The State is requesting this Court to venture down a very slippery slope. Issuing a water right to each and every member of every ditch company would be a very laborious task that could inundate the IDWR and the SRBA. Mace-Catlin does not dispute that such a task could not be accomplished by IDWR and the SRBA, but there is no reason to create such an administrative nightmare. Land subdivision and changing ownerships would require numerous and continual administrative actions to transfer water rights and split existing water rights. As the land is subdivided, the number of owners will increase. Increase in owners will result in an increase in administrative demands. Additionally, the frequency of ownership changes will also likely increase. The administrative burden that could result if the state's objection is granted will not improve the distribution or delivery of the water but may have a detrimental impact.

4. State Would Continue to Be Liable for Ditch Maintenance and Operation Assessments

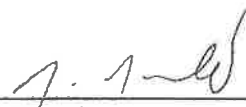
Lastly, if the State's objection is successful, the State would still be liable for ditch maintenance and operation assessments. The State's objection, if successful, would not change the State's obligation to the ditch company, may cause chaos in delivery of water for the ditch company, may cause a significant administrative burden on the regulatory agency and the courts, and will not provide the state with any additional ability to change the elements of the water right.

V. CONCLUSION

For the above stated reasons, Mace-Catlin respectfully requests that this Court grant its motion for summary judgment and deny the State's objection.

DATED this 13 day of March, 2008.

RINGERT CLARK CHARTERED

By: 
Jon C. Gould
Attorney for Mace-Catlin Mutual Ditch Company

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of March, 2008, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

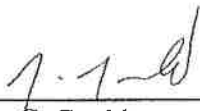
Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
919 South Linden Road
Eagle, Idaho 83616

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

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

Mace Catlin Ditch Company
c/o S. Bryce Farris
PO Box 2773
Boise, Idaho 83701



Jon C. Gould

JON C. GOULD (ISB #6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

RECEIVED

MAR 14 2008

DEPARTMENT OF
WATER RESOURCES

Attorneys for Mace-Catlin Mutual Ditch Company, Inc.

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	)	
	)	SUBCASE NOS. 63-134, 63-132, 63-133,
	)	63-134A, 63-134B, 63-186A, 63-186B,
Case No. 39576	)	63-17205 and 63-31772
	)	
	)	MACE-CATLIN MUTUAL DITCH
	)	COMPANY'S MOTION FOR
	)	SUMMARY JUDGMENT
	)	

COMES NOW Mace-Catlin Mutual Ditch Company (hereinafter "Mace-Catlin"), by and through its counsel of record, Ringert Clark, Chartered, moves this Court, pursuant to Rule 56 of the Idaho Rules of Civil Procedure and pursuant to the Second Supplemental Trial Scheduling Order filed December 21, 2007, for entry of summary judgment in favor of Mace-Catlin and dismissing the State of Idaho's objection to water right nos. 63-132 and 63-133.

This Motion is based upon: Mace-Catlin's Memorandum in Support of Motion for Summary Judgment, the Affidavit of Jon C. Gould, Affidavit of Mel Carlson, the claims of Mace-Catlin and the pleadings and documents on file with this Court.

Oral argument is requested.

DATED this 13th day of March, 2008.

RINGERT CLARK CHARTERED

By: J. C. Gould
Jon C. Gould
Attorney for Mace-Catlin Mutual Ditch Company

CERTIFICATE OF SERVICE

I hereby certify that on this 13 day of March, 2008, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

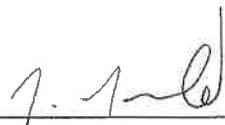
Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
919 South Linden Road
Eagle, Idaho 83616

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

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

Hart Daivs Ditch Company
c/o S. Bryce Farris
P.O. Box 2773
Boise, Idaho 83701



Jon C. Gould

COPY

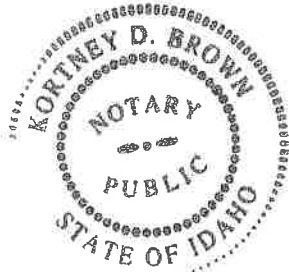
Catlin each and every year the State has been a shareholder. I am not aware of any delinquent assessments of the State, nor any claim by the State that it did not owe the assessments. In particular, the State has paid the assessments of Mace-Catlin since the time I have been a board member to present.

4. In or about 1989, Mace-Catlin filed a Notice of Claim to Water Right for water right nos. 63-132 and 63-133. I am not aware of the State providing any objection or notice that Mace-Catlin should not file the Notice of Claim to said water right. Mace-Catlin has an annual meeting every year, including 1989, and to the best of my knowledge the State has never asserted outright ownership of water right nos. 63-132 or 63-133 or any portion of those water rights at any annual meeting and there is nothing in the records or minutes of Mace-Catlin in which the State asserts outright ownership of water right nos. 63-132 and 63-133. The first time Mace-Catlin was made aware that the State objected to the ownership of water right nos. 63-132 and 63-133 was in 2006 when the State filed an objection to those water right claims in the SRBA.

DATED this __ day of March, 2008.

By Melan Alarba
Mel Carlson

Sworn to and subscribed before me this 13th day of March, 2008.



Kortney Brown
Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires: 2/4/14

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2008, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

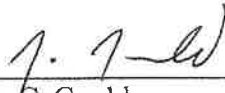
Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
919 South Linden Road
Eagle, Idaho 83616

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

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

Hart Davis Ditch Company
c/o S. Bryce Farris
PO Box 2773
Boise, Idaho 83701



Jon C. Gould

COPY

RECEIVED

FEB 20 2008

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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	)	Subcase Nos. 63-00132, 63-00133, 63-00134,
	)	63-00134A, 63-00134B, 63-00186A,
	)	63-00186B, 63-17205, and 63-31772.
	)	
Case No. 39576	)	AMENDED NOTICE OF TAKING DEPOSITION OF
	)	THE REPRESENTATIVE OF THE MACE-CATLIN
	)	MUTUAL DITCH COMPANY INCORPORATED WHO
	)	HAD PRIMARY RESPONSIBILITY FOR
	)	PREPARATION OF THE NOTICES OF CLAIM FOR
	)	THE MACE-CATLIN MUTUAL DITCH COMPANY
	)	INCORPORATED

TO: MACE-CATLIN MUTUAL DITCH COMPANY INCORPORATED, AND ITS
ATTORNEYS OF RECORD:

Please take notice that the State of Idaho will take the deposition upon oral examination,
pursuant to I.R.C.P. Rule 30(B)(6) of the person or persons designated by the Mace-Catlin

AMENDED NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE
MACE-CATLIN MUTUAL DITCH COMPANY INCORPORATED, WHO HAD PRIMARY
RESPONSIBILITY FOR PREPARATION OF THE NOTICES OF CLAIM FOR THE MACE-
CATLIN MUTUAL DITCH COMPANY INCORPORATED

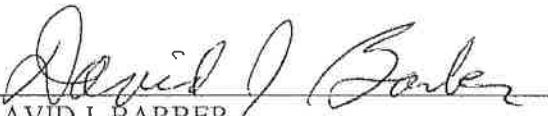
Mutual Ditch Company Incorporated as the representative of the Mace-Catlin Mutual Ditch Company Incorporated , who had primary responsibility for preparation of the original notices of claim for the Mace-Catlin Mutual Ditch Company Incorporated, and any amendments thereto. The deposition will commence at 1:30 p.m. on February 26, 2008, at the offices of RINGERT CLARK, Chtd., 433 South Third St., Boise ID 83701 before a certified court reporter or some other officer authorized to administer oaths. The deposition will continue from day to day until completed.

You are invited to attend and participate in the manner provided for in the Idaho Rules of Civil Procedure.

Dated this 19th day of February 2008.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division


DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

AMENDED NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE
MACE-CATLIN MUTUAL DITCH COMPANY INCORPORATED, WHO HAD PRIMARY
RESPONSIBILITY FOR PREPARATION OF THE NOTICES OF CLAIM FOR THE MACE-
CATLIN MUTUAL DITCH COMPANY INCORPORATED

CERTIFICATE OF SERVICE

I certify that on this 19th day of February 2008, I caused to be served the original and/or copy of this AMENDED NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE MACE-CATLIN MUTUAL DITCH COMPANY INCORPORATED WHO HAD PRIMARY RESPONSIBILITY FOR PREPARATION OF THE NOTICES OF CLAIM FOR THE MACE-CATLIN MUTUAL DITCH COMPANY INCORPORATED on each of the following persons by the indicated method:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to the following persons:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

AMENDED NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE MACE-CATLIN MUTUAL DITCH COMPANY INCORPORATED, WHO HAD PRIMARY RESPONSIBILITY FOR PREPARATION OF THE NOTICES OF CLAIM FOR THE MACE-CATLIN MUTUAL DITCH COMPANY INCORPORATED

Mace Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

AMENDED NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE
MACE-CATLIN MUTUAL DITCH COMPANY INCORPORATED, WHO HAD PRIMARY
RESPONSIBILITY FOR PREPARATION OF THE NOTICES OF CLAIM FOR THE MACE-
CATLIN MUTUAL DITCH COMPANY INCORPORATED

M & M Court Reporting Service, Inc.
421 West Franklin Street
Boise, ID 83701-2636

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: 345-8800
- ☐ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General

AMENDED NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE
MACE-CATLIN MUTUAL DITCH COMPANY INCORPORATED, WHO HAD PRIMARY
RESPONSIBILITY FOR PREPARATION OF THE NOTICES OF CLAIM FOR THE MACE-
CATLIN MUTUAL DITCH COMPANY INCORPORATED

COPY

RECEIVED

FEB 19 2008

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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	)	Subcase Nos. 63-00132, 63-00133, 63-00134,
	)	63-00134A, 63-00134B, 63-00186A,
	)	63-00186B, 63-17205, and 63-31772.
	)	
Case No. 39576	)	NOTICE OF TAKING DEPOSITION OF THE
	)	REPRESENTATIVE OF THE HART-DAVIS DITCH
	)	COMPANY WHO HAD PRIMARY RESPONSIBILITY
	)	FOR PREPARATION OF THE NOTICES OF CLAIM
_____	)	FOR THE HART-DAVIS DITCH COMPANY

TO: HART-DAVIS DITCH COMPANY, AND ITS ATTORNEYS OF RECORD:

Please take notice that the State of Idaho will take the deposition upon oral examination, pursuant to I.R.C.P. Rule 30(B)(6) of the person or persons designated by the Hart-Davis Ditch Company as the representative of the Hart-Davis Ditch Company, who had primary responsibility for preparation of the original notices of claim for the Hart-Davis Ditch Company,

NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE HART-DAVIS
DITCH COMPANY, WHO HAD PRIMARY RESPONSIBILITY FOR PREPARATION OF
THE NOTICES OF CLAIM FOR THE HART-DAVIS DITCH COMPANY

and any amendment thereto. The deposition will commence at 9:00 a.m. on February 26, 2008, at the offices of M&M Court Reporting Service, 421 W. Franklin St. (Downtown), Boise ID 83701 before a certified court reporter or some other officer authorized to administer oaths. The deposition will continue from day to day until completed.

You are invited to attend and participate in the manner provided for in the Idaho Rules of Civil Procedure.

Dated this 15th day of February 2008.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE HART-DAVIS
DITCH COMPANY, WHO HAD PRIMARY RESPONSIBILITY FOR PREPARATION OF
THE NOTICES OF CLAIM FOR THE HART-DAVIS DITCH COMPANY

CERTIFICATE OF SERVICE

I certify that on this 15th day of February 2008, I caused to be served the original and/or copy of this NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE HART-DAVIS DITCH COMPANY WHO HAD PRIMARY RESPONSIBILITY FOR PREPARATION OF THE NOTICES OF CLAIM FOR THE HART-DAVIS DITCH COMPANY (*DUCES TECUM*) on each of the following persons by the indicated method:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to the following persons:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE HART-DAVIS DITCH COMPANY, WHO HAD PRIMARY RESPONSIBILITY FOR PREPARATION OF THE NOTICES OF CLAIM FOR THE HART-DAVIS DITCH COMPANY

Mace Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon C. Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE HART-DAVIS
DITCH COMPANY, WHO HAD PRIMARY RESPONSIBILITY FOR PREPARATION OF
THE NOTICES OF CLAIM FOR THE HART-DAVIS DITCH COMPANY

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

Not Applicable


DAVID J. BARBER
Deputy Attorney General

NOTICE OF TAKING DEPOSITION OF THE REPRESENTATIVE OF THE HART-DAVIS
DITCH COMPANY, WHO HAD PRIMARY RESPONSIBILITY FOR PREPARATION OF
THE NOTICES OF CLAIM FOR THE HART-DAVIS DITCH COMPANY

COPY

RECEIVED
JAN 04 2008
DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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	)	Subcase Nos. 63-132, 63-133, & 63-134
	)	
	)	IDP&R'S AMENDED LIST OF WITNESSES
	)	
Case No. 39576	)	
	)	
	)	
	)	

The State of Idaho, Department of Parks and Recreation, hereinafter the "IDP&R," through counsel, submits the following List of Witnesses that it may call during its case in chief.

David Ricks, IDP&R.

James Thomas, IDP&R.

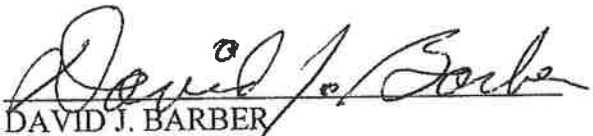
Ron Howerton, Consultant.

Charles C. Smith, Consultant.

DATED this 3rd day of January 2008.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on this 3rd day of January 2008, I caused to be served the original and copies of the IDP&R'S AMENDED LIST OF WITNESSES on the following persons by the indicated methods:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to

Special Master Ted Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☐ Statehouse Mail

Mace-Catlin Mutual Ditch Company
Incorporated
Represented by:
Jon Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warms Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☒ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☐ Statehouse Mail

Ron Sali
919 South Linden Rd.
Eagle, Idaho 83616

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile:
- ☐ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General

COPY

RECEIVED

JAN 04 2008

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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	)	Subcase Nos. 63-132, 63-133, & 63-134
	)	
	)	IDP&R'S AMENDED LIST OF WITNESSES
	)	
Case No. 39576	)	
	)	
	)	
	)	

The State of Idaho, Department of Parks and Recreation, hereinafter the "IDP&R," through counsel, submits the following List of Witnesses that it may call during its case in chief.

David Ricks, IDP&R.

James Thomas, IDP&R.

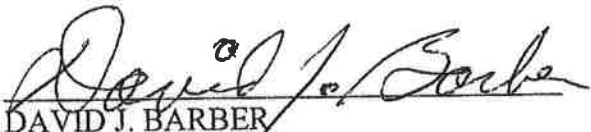
Ron Howerton, Consultant.

Charles C. Smith, Consultant.

DATED this 3rd day of January 2008.

LAWRENCE G. WASDEN
Attorney General

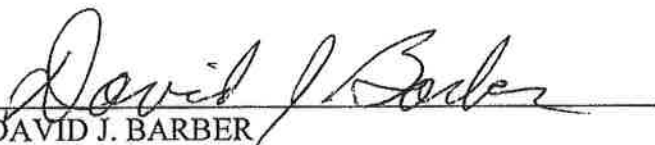
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

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

Not Applicable


DAVID J. BARBER
Deputy Attorney General

9
RECEIVED
DEC 17 2007
DEPARTMENT OF
WATER RESOURCES

2007 DEC 14 AM 10:56
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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

) NOTICE SETTING HEARING
)
)
)

SUBCASE NOS: 63-00132 63-00133
63-00134 63-00134A 63-00134B
63-00186A 63-00186B 63-17205
63-31772

Please be advised that Special Master THEODORE R BOOTH
has set for hearing the CONTINUE HEARING ON MOTION TO MODIFY TRIAL
SCHEDULING ORDER.

FRIDAY, DECEMBER 21, 2007 at 10:30 AM (MT)

SRBA
DISTRICT COURT
253 3RD AVENUE NORTH
TWIN FALLS, ID

Parties may participate by telephone by dialing the number
225-383-1099 and when prompted entering the code 675342.

Dated: DECEMBER 14, 2007

/S/ DIANA R DELANEY
Deputy Clerk
Snake River Basin Adjudication

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

Page 1 12/14/07

CERTIFICATE OF MAILING

I Certify that a true and correct copy of the NOTICE SETTING HEARING was mailed on DECEMBER 14, 2007, with sufficient first-class postage to the following:

MACE CATLIN DITCH CO

Represented by:
JON C GOULD
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE, ID 83701

RON SALI
RON SALI & RON SALI PROPERTIES
RON SALI PROPERTIES INC

Represented by:
MICHAEL C CREAMER
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

STATE OF IDAHO DEPARTMENT OF

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

HART-DAVIS DITCH CO INC

Represented by:
S. BRYCE FARRIS
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

RON SALI PROPERTIES INC
PROFIT SHARING PLAN
100 N 9TH STE 200
BOISE, ID 83702-5700
Phone: 208-344-4224

RON SALI
919 S LINDER RD
EAGLE, ID 83615-5513

RECEIVED

DEC 31 2007

DEPARTMENT OF
WATER RESOURCESDISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

2007 DEC 21 PM 9 18

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 63-00132, 63-00133, 63-00134, 63-00134A,
63-00134B, 63-00186A, 63-00186B, 63-17205, and
63-31772SECOND SUPPLEMENTAL TRIAL
SCHEDULING ORDER

This matter came before the Special Master at the continued Hearing on *Motion To Modify Supplemental Trial/Scheduling Order* held on December 21, 2007. The following dates shall govern the conduct of these subcases through trial:

January 7, 2008	5:00 PM	Disclosure of Witnesses. Disclosure of all witnesses, whether lay or expert, shall be completed by this deadline. All non-disclosed witnesses, except impeachment witnesses, shall be excluded from testifying in the trial unless permitted by the Special Master in the interests of justice. I.R.C.P. 16(e)(6)(J).
February 29, 2008	5:00 PM	Discovery Served and Responses Completed. Deadline for completion of all discovery, meaning that all discovery is served and response is complete, including the taking of depositions of lay and expert witnesses, all interrogatories, request for production/inspections and admissions. Motions to compel should be filed accordingly so as to accommodate this deadline.
March 14, 2008	5:00 PM	Deadline for Motions for Summary Judgment. Any party moving for summary judgment shall file a motion therefor no later than this deadline. Memorandums and affidavits in support or motions for summary judgment shall be filed contemporaneously therewith.

~~PRIVATE~~

April 14, 2008	5:00 PM	Summary Judgment Response Briefs Due. Any responsive briefs and affidavits shall be filed by this deadline.
April 25, 2008	5:00 PM	Summary Judgment Reply Briefs Due. Any reply brief shall be filed by this deadline.
May 6, 2008	5:00 PM	Hearing on Motion for Summary Judgment. Motions for summary judgment shall be heard by this deadline. The moving party should contact the clerk of the Court to arrange for a time and location for oral argument on summary judgment.
June 24, 2008	5:00 PM	Pre-Trial Memorandum and Service of Exhibits. Either party may, but is not required, to file a pre-trial memorandum, which may include the matters set forth in I.R.C.P. 16(e). Each party shall serve by this date on the other parties a copy of the party's exhibits and shall file a Notice of Service of Exhibits with the District Court.
June 30, 2008	5:00 PM	Final Pre-Trial Conference. Pursuant to I.R.P. 16, a final pre-trial conference will be held at the Snake River Basin Adjudication Courthouse, 253 3 rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing 225-383-1099 and when prompted entering the code 675342.
August 6, 7, 8 2008	9:00 AM	Trial. The trial in these subcases will begin on _____, 2008 at 9:00 AM and shall continue each day thereafter until complete. The trial will be held at the Idaho Supreme Court Building, 451 West State Street, Boise, Idaho, in the lower-level conference room.

DATED this 21 day of December 2007.



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SECOND SUPPLEMENT TRIAL SCHEDULING ORDER was mailed on December 28, 2007, with sufficient first-class postage to the following:

MACE CATLIN DITCH CO

Represented by:
JON C GOULD
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE, ID 83701

RON SALI

RON SALI & RON SALI PROPERTIES
RON SALI PROPERTIES INC

Represented by:
MICHAEL C CREAMER
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

STATE OF IDAHO DEPARTMENT OF

Represented by:
NATURAL RESOURCES DIV CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
PO BOX 44449
BOISE, ID 83711-4449

HART-DAVIS DITCH CO INC

Represented by:
S. BRYCE FARRIS
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

RON SALI PROPERTIES INC

PROFIT SHARING PLAN
100 N 9TH STE 200
BOISE, ID 83702-5700
Phone: 208-344-4224

RON SALI

919 S LINDER RD
EAGLE, ID 83615-5513

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

a
RECEIVED
DEC 03 2007
DEPARTMENT OF
WATER RESOURCES

Attorneys for Hart-Davis Ditch Company, Inc.

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

In Re SRBA

Case No. 39576

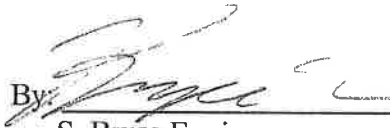
)
) SUBCASE NO. 63-132, 63-00133,
) 63-00134, 63-00134A, 63-00134B,
) 63-00186A, 63-00186B, 63-17205, and
) 63-31772
)

) MOTION TO MODIFY SUPPLEMENTAL
) TRIAL / SCHEDULING ORDER
)
)

COMES NOW Hart-Davis Ditch Company (Hart-Davis), by and through its counsel of record, Ringert Clark Chartered, and moves this Court to modify the Scheduling Order in the above-captioned matter, more specifically, to extend the time for filing and hearing summary judgment motions.

DATED this 30th day of November, 2007.

RINGERT CLARK CHARTERED

By: 

S. Bryce Farris

Attorney for Hart-Davis Ditch Company

COPY

CERTIFICATE OF MAILING

I hereby certify that service of the within and foregoing document was made this 30th day of November, 2007, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

State of Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali and Ron Sali Properties
Represented by:
Michael C. Creamer
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720

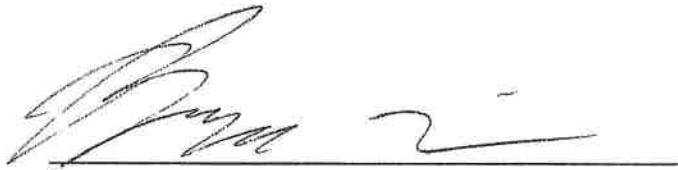
Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

State of Idaho
Department Natural Resources
P.O. Box 44449
Boise, Idaho 83711-4449

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Mace Catlin Ditch Company
c/o Bob Kell
1820 Mace Road
Eagle, Idaho 83616

A handwritten signature in dark ink, appearing to read 'S. Bryce Farris', is written over a horizontal line.

S. Bryce Farris

JON C. GOULD (ISB #6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

2
RECEIVED
NOV 18 2007
DEPARTMENT OF
WATER RESOURCES

Attorneys for Mace-Catlin Mutual Ditch Company

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

In Re SRBA	)	
	)	SUBCASE NO. 63-132 and 63-133
Case No. 39576	)	
	)	MACE-CATLIN DITCH COMPANY'S
	)	ANSWERS TO STATE OF IDAHO'S
	)	FIRST SET OF DISCOVERY REQUESTS
	)	

The Mace-Catlin Mutual Ditch Company (Mace-Catlin), by and through its counsel of record, Ringert Clark Chartered, and hereby responds to the State of Idaho's First Set of Discovery Requests to Mace-Catlin Ditch Company, pursuant to Rules 26, 33 and 34 of the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Mace-Catlin has not completed its own investigations and/or discovery. Accordingly, the answers that follow are based upon the best knowledge, information and belief of Mace-Catlin at this time. Mace-Catlin reserves the right to make any further answers if it appears that any omission or error has been made in connection with these answers or that more accurate information is or has become available. These answers are made without prejudice to Mace-Catlin's right to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

MACE-CATLIN DITCH COMPANY'S ANSWERS TO STATE OF IDAHO'S FIRST SET OF
DISCOVERY REQUESTS - 1

COPY

2. Mace-Catlin objects to the definitions and instructions to the extent that they purport to require discovery answers beyond that required under the Idaho Rules of Civil Procedure. These answers are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these interrogatories.

3. These answers are made subject to all objections as to competence, relevance, materiality, and admissibility. These answers are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such request were asked of or any statement, material, or information provided were made by witnesses present and testifying at the formal hearing or trial on this matter. All such objections are reserved and may be interposed at the time of the hearing or trial on this matter.

4. Mace-Catlin specifically objects to these discovery requests to the extent that they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rules of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not be repeated specifically for each interrogatory to which it applies. Mace-Catlin has, to the extent possible, construed each interrogatory as requesting only information and/or documents not subject to any applicable protection.

5. No incidental or implied admissions are intended. The fact that Mace-Catlin has responded to any discovery request or part thereof should not be taken as an admission that Mace-Catlin accepts that the discovery request or the response or objection thereto constitutes admissible evidence. The fact that Mace-Catlin has responded to all or part of a request is not intended to and

shall not be construed to be a waiver by Mace-Catlin of all or part of any objection to other requests. Mace-Catlin' answers to any discovery requests herein do not constitute a waiver of Mace-Catlin' right to object to any future additional or supplemental requests regarding the same or similar matters.

REQUEST FOR ADMISSION NO. 1: Please admit that Attachment I is a true and correct copy of the Articles of Incorporation of the Mace-Catlin Mutual Ditch Company.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Admit

INTERROGATORY NO. 1: If you deny, in whole or in part, Request for Admission No. 1, then describe in detail the factual and legal basis for your denial.

ANSWER TO INTERROGATORY NO. 1: N/A

REQUEST FOR PRODUCTION NO. 1: If you deny, in whole or in part, Request for Admission No. 1, please produce a true and correct copy of the Articles of Incorporation of the Mace-Catlin Mutual Ditch Company.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: N/A

REQUEST FOR ADMISSION NO. 2: Please admit that the Mace-Catlin Ditch Company was incorporated on April 22, 1999.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Admit

INTERROGATORY NO. 2: If you deny, in whole or in part, Request for Admission No. 2, then describe in detail the factual and legal basis for your denial.

ANSWER TO INTERROGATORY NO. 2: N/A

INTERROGATORY NO. 3: Please identify the present address and telephone number for

the person listed in Attachment I as "Rod Wagner."

ANSWER TO INTERROGATORY NO. 3: Mace-Catlin does not know Roger Wagner's present address and telephone number.

INTERROGATORY NO. 4: Please identify the present address and telephone number for the person listed in Attachment I as "James Worton."

ANSWER TO INTERROGATORY NO. 4: Mace-Catlin does not know James Worton's present address and telephone number.

INTERROGATORY NO. 5: Please identify the present address and telephone number for the person listed in Attachment I as "Charles Lobdell."

ANSWER TO INTERROGATORY NO. 5: Mace-Catlin does not know Charles Lobdel's present address and telephone number.

INTERROGATORY NO. 6: Describe the owners of water right no. 63-132 immediately prior to the incorporation of the Mace-Catlin Mutual Ditch Company on April 22, 1999.

ANSWER TO INTERROGATORY NO. 6: Objection to the extent this Interrogatory calls for a legal conclusion. Notwithstanding said objection and without waiving the same, water right no. 63-132 was owned by Mace-Catlin Ditch Company immediately prior to April 22, 1999.

INTERROGATORY NO. 7: Describe the ownership percentage of each owner of water right no. 63-132 described in Interrogatory No. 6.

ANSWER TO INTERROGATORY NO. 7: Objection to the extent this Interrogatory calls for a legal conclusion. Notwithstanding said objection and without waiving the same, water right no. 63-132 was wholly owned by Mace-Catlin immediately prior to April 22, 1999.

REQUEST FOR PRODUCTION NO. 2: Produce all documents that evidence a transfer of the water right ownership from the owners described in Interrogatory No. 6 to the Mace-Catlin Mutual Ditch Company.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Discovery is ongoing. At this time said documents include corporate documents and minutes of Mace-Catlin, the water right file held by the Idaho Department of Water Resources, the records of the District 63 watermaster, and all assessment notices and payments by the State of Idaho to Mace-Catlin. Exhibit 1 contains the By-Laws of Mace-Catlin Mutual Ditch Company, Incorporated. The Mace-Catlin "record book," which contains meeting minutes from 1965 to 1982, is available for your review by request to Ringert Clark Chartered, care of Jon C. Gould. All recent assessment notices and payments by the State of Idaho to Mace-Catlin can be provided to you upon request

REQUEST FOR PRODUCTION NO. 3: Produce all documents upon which the Mace-Catlin Ditch Company relies for the existence of water right no. 63-132.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Objection. This request is burdensome and will not lead to the discovery of admissible evidence. The existence of water right no. 63-132 is not in question. Notwithstanding said objection and without waiving the same, see Response to Request for Production No. 2.

REQUEST FOR PRODUCTION NO. 4: Produce all documents upon which the Mace-Catlin Ditch Company relies for its ownership of water right no. 63-132.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: See Response to Request for Production No. 2.

REQUEST FOR PRODUCTION NO. 5: Produce all documents that the Mace-Catlin Ditch Company possesses that evidence beneficial water for water right no. 63-132. This production should include records that predate the existence of the Mace-Catlin Ditch Company and that post date its creation on April 22, 1999.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: See Response to Request for Production No. 2.

REQUEST FOR ADMISSION NO. 3: Please admit that the Mace-Catlin Ditch Company does not have any documents that evidence a transfer of any portion of the ownership of water right no. 63-132 from the State of Idaho to the Mace-Catlin Ditch Company.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Mace-Catlin conditionally admits this request because, with the exception of being a shareholder of Mace-Catlin, the State of Idaho has never owned, nor claimed any ownership, of any portion of water right no. 63-132 and thus there would be no documents evidencing a transfer of ownership from the State of Idaho, of that which it did not own nor claim to own, to Mace-Catlin.

REQUEST FOR PRODUCTION NO. 6: If you deny, in whole or in part, Request for Admission No. 3, produce all documents supporting your answer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: N/A.

INTERROGATORY NO. 8: Describe the owners of water right no. 63-133 immediately prior to the incorporation of the Mace-Catlin Mutual Ditch Company on April 22, 1999.

ANSWER TO INTERROGATORY NO. 6: Objection to the extent this Interrogatory calls for a legal conclusion. Notwithstanding said objection and without waiving the same, water right

no. 63-132 was owned by Mace-Catlin Ditch Company immediately prior to April 22, 1999.

INTERROGATORY NO. 9: Describe the ownership percentage of each owner of water right no. 63-133 described in Interrogatory No. 8.

ANSWER TO INTERROGATORY NO. 9: Objection to the extent this Interrogatory calls for a legal conclusion. Notwithstanding said objection and without waiving the same, water right no. 63-133 was wholly owned by Mace-Catlin Ditch Company immediately prior to April 22, 1999.

REQUEST FOR PRODUCTION NO. 7: Produce all documents that evidence a transfer of the water right ownership from the owners described in Interrogatory No. 8 to the Mace-Catlin Mutual Ditch Company.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Discovery is ongoing. At this time said documents include corporate documents and minutes of Mace-Catlin, the water right file held by the Idaho Department of Water Resources, the records of the District 63 watermaster, and all assessment notices and payments by the State of Idaho to Mace-Catlin. Exhibit 1 contains the By-Laws of Mace-Catlin Mutual Ditch Company, Incorporated. The Mace-Catlin "record book," which contains meeting minutes from 1965 to 1982, is available for your review by request to Ringert Clark Chartered, care of Jon C. Gould. All recent assessment notices and payments by the State of Idaho to Mace-Catlin can be provided to you upon request

REQUEST FOR PRODUCTION NO. 8: Produce all documents upon which the Mace-Catlin Ditch Company relies for the existence of water right no. 63-133.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Objection. This request is burdensome and will not lead to the discovery of admissible evidence. The existence of water right

no. 63-133 is not in question. Notwithstanding said objection and without waiving the same, see Response to Request for Production No. 7.

REQUEST FOR PRODUCTION NO. 9: Produce all documents upon which the Mace-Catlin Ditch Company relies for its ownership of water right no. 63-133.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: See Response to Request for Production No. 7.

REQUEST FOR PRODUCTION NO. 10: Produce all documents that the Mace-Catlin Ditch Company possesses that evidence beneficial water for water right no. 63-133. This production should include records that predate the existence of the Mace-Catlin Ditch Company and that post date its creation on April 22, 1999.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10: See Response to Request for Production No. 7.

REQUEST FOR ADMISSION NO. 4: Please admit that the Mace-Catlin Ditch Company does not have any documents that evidence a transfer of any portion of the ownership of water right no. 63-133 from the State of Idaho to the Mace-Catlin Ditch Company.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Mace-Catlin conditionally admits this request because, with the exception of being a shareholder of Mace-Catlin, the State of Idaho has never owned, nor claimed any ownership, of any portion of water right no. 63-133 and thus there would be no documents evidencing a transfer of ownership from the State of Idaho, of that which it did not own nor claim to own, to Mace-Catlin.

REQUEST FOR PRODUCTION NO. 11: If you deny, in whole or in part, Request for

Admission No. 4, produce all documents supporting your answer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: N/A.

REQUEST FOR PRODUCTION NO. 12: Produce the bylaws, minutes, and corporate books of the Mace-Catlin Ditch Company for inspection and copying.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Please see the attached documents. Additional minutes or records will be made available at a mutually agreed time and place for inspection and copying.

INTERROGATORY NO. 10: Please identify each and every person whom you expect to call as a fact witness in the trial of this matter and state the substance of the facts upon which the person is expected to testify.

ANSWER TO INTERROGATORY NO. 10: Discovery is ongoing and Mace-Catlin has not determined the witnesses it may call at any hearing or trial for this matter.

INTERROGATORY NO. 11: Please identify each and every person whom you know has knowledge about water right no. 63-132.

ANSWER TO INTERROGATORY NO. 11: Discovery is ongoing and Mace-Catlin has not determined each and every person whom may have knowledge about this matter this matter. Such persons may include: (1) Mace-Catlin Manager Mel Carlson; (2) Mace-Catlin Board member Bob Kell; (3) Mace-Catlin shareholders; (4) personnel for the Idaho Department of Water Resources, including, but not limited to Mel Shulte and Jan Schurte; (5) employees for the State of Idaho, including, but not limited to employees for the State of Idaho Parks Department and/or Eagle Island Park; and (6) Lee Sisco, the current watermaster for the Boise River. Plaintiff will supplement this

response as necessary.

INTERROGATORY NO. 12: Please identify each and every person whom you know has knowledge about water right no. 63-133.

ANSWER TO INTERROGATORY NO. 12: Discovery is ongoing and Mace-Catlin has not determined each and every person whom may have knowledge about this matter this matter. Such persons may include: (1) Mace-Catlin Manager Mel Carlson; (2) Mace-Catlin Board member Bob Kell; (3) Mace-Catlin shareholders; (4) personnel for the Idaho Department of Water Resources, including, but not limited to Mel Shulte and Jan Schurte; (5) employees for the State of Idaho, including, but not limited to employees for the State of Idaho Parks Department and/or Eagle Island Park; and (6) Lee Sisco, the current watermaster for the Boise River. Plaintiff will supplement this response as necessary.

INTERROGATORY NO. 13: Please identify each and every person whom you expect to call as an expert witness in this matter. For each such person identify, please state the subject matter on which the expert is expected to testify, the substance of the opinions to which the expert is expected to testify, and the underlying facts and data upon which the expert opinions are based.

ANSWER TO INTERROGATORY NO. 13: Discovery is ongoing and Mace-Catlin has not determined or retained an expert witness in this matter. Mace-Catlin will supplement this response as necessary.

REQUEST FOR PRODUCTION NO. 13: Produce every document or tangible item that you intend to offer as an exhibit in the trial of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: Discovery is ongoing and

Mace-Catlin has not determined what if any exhibits it may offer at any hearing or trial for this matter. Mace-Catlin will supplement this response as necessary.

REQUEST FOR PRODUCTION NO. 14: For each person identified in your response to Interrogatory no.13, please produce: (1) a curriculum vitae or resume, including a list of publications authored by that person, if any, as well as any other information which would demonstrate the person's knowledge or qualifications to state the facts or express the opinions to which the person is expected to testify; and (2) all documents containing or evidencing the underlying facts or data described in your response to Interrogatory No. 13.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: See response to Interrogatory No. 13.

INTERROGATORY NO. 14: Identify all persons who assisted in the preparation of the Mace-Catlin Ditch Company's responses to these Interrogatories, Request for Admission and Requests for Production.

ANSWER TO INTERROGATORY NO. 14: Mel Carlson.

DATED this 7th day of November, 2007.

RINGERT CLARK CHARTERED

By: 
Jon C. Gould
Attorney for Mace-Catlin Ditch Company

CERTIFICATE OF SERVICE

I hereby certify that on this 7 day of November, 2007, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

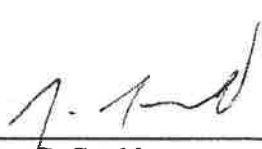
Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

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



Jon C. Gould

BY-LAWS
OF
MACE-CATLIN MUTUAL DITCH COMPANY, INCORPORATED

ARTICLE I
MEETINGS OF THE SHAREHOLDERS

SECTION 1. Shareholders' meetings shall be held at Eagle, Ada County, Idaho, or they may be held at such other place or places as shall be determined from time to time by the Board of Directors, and the place at which such meetings shall be held will be stated in the notice and call for such meetings.

SECTION 2. The annual meeting of the shareholders shall be held, commencing after the initial meeting of the incorporators of March 24, 1999, on the first Monday in the month of March. At this meeting, the directors for the year shall be elected, the officers shall present their annual reports and such other business may be transacted or may come before the meeting.

SECTION 3. At each regular or special shareholders' meeting, each shareholder shall be entitled to one vote, either in person or by proxy, for each share of voting stock standing registered in his or her name at the time of the closing of the transfer books for said meeting and shall have the right to a single vote for each of as many persons as there are directors to be elected.

In voting for the election of directors, each shareholder shall have the right to vote the number of shares of stock owned by him or her of record for each of as many persons as there are directors to be elected or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his or her shares of stock shall equal, or to distribute them on the same principal among as many candidates as he shall see fit: and such directors shall not be elected in any other manner.

Exhibit
1

However, when property receiving water by reason of the Stewart Decree or any portion thereof is subdivided into two (2) or more parcels or results in a subdivision development and the resulting parcels are less than 5 acres in size, such development or land area shall be represented by a single authorized delegate. The number of shares associated with said subdivided or developed land area shall never exceed the number as shown in Article II, Section 8 herein and shall be divided equally among those individuals having an interest in said subdivision development or land area. Said single delegate shall serve as proxy and represent the collective interests of all individuals having an interest in said subdivision development or land area and shall vote each interested party's shares as stipulated by said shareholder.

SECTION 4. Except to the extent prohibited by law, each shareholder entitled to vote may be represented at any regular or special meeting of shareholders by a duly executed proxy which shall be in writing and properly signed, but shall require no other attestation. No proxy shall be recognized unless executed within eleven months of the date of the meeting at which it is presented and the Secretary shall duly note in the minutes of the meeting the names of those shareholders represented by proxy and their respective proxy's name. No officer, director or employee of the corporation shall act as proxy for any other person at any meeting of the shareholders.

SECTION 5. A complete list of the shareholders entitled to vote at the ensuing election, arraigned in alphabetical order, shall be prepared by the Secretary at least five days before the meeting at which such election is to occur, and during the usual hours of business, and during the whole time of said election, shall be open to examination of any shareholder, and said list will for all purposes establish who is a shareholder and how many votes such shareholder is entitled to exercise.

Further, said list shall be final and not subject to change except by majority vote of the Board of Directors.

SECTION 6. Special meetings of the shareholders may be held whenever called by the Board of Directors, or by a majority of the members thereof, or by the President, and shall be called by the President or Vice President upon the request in writing of at least 40 percent of shareholders of the Corporation entitled to vote at such meeting. Calls for special meetings shall state the time, place and object or objects thereof, and no business other than that specified in the call shall be considered at any such meeting.

SECTION 7. A written or printed notice of every regular or special meeting of shareholders stating the time and place, and in case of special meetings, the objects thereof, shall be prepared and mailed by the Secretary, postage prepaid, to the last known post office address of each shareholder at least ten days before the date of any such meeting.

Notice of the time, place and purpose of any meeting of the shareholders shall not be required to be given to any shareholder who shall attend such meeting, in person or by proxy; and if any shareholder, in writing, filed with the records of the meeting, either before or after the holding thereof, shall waive notice of any shareholders' meeting, notice thereof need not be given to him. No notice of an adjourned meeting of the shareholders need be given.

SECTION 8. Except as may otherwise be provided by the Articles of Incorporation, a quorum at any annual or special meeting shall consist of those shareholders who are represented in person or by proxy, as provided by Section 42-2401, Idaho Code, subject to the limitations of Section 30-1-140 Idaho Code.

ARTICLE II

SHARES

SECTION 1. Except as set forth in Article I, Section 3, each individual property owner, corporation or agency who has irrigation rights determined by the Stewart Decree as administered by the State of Idaho, Department of

Water Resources or who has been allotted storage space in Lucky Peak Reservoir under that certain contract between the United States of America, Bureau of Reclamation and Eagle Island Water Users Association, who is a member in good standing thereof, shall be entitled to purchase one (1) share of stock for each and every acre under irrigation upon payment in cash of the sum of one (\$1.00) dollar per share in United States currency.

SECTION 2. The Corporation shall operate and maintain a canal system for the benefit of its shareholders for the delivery of irrigation and stock water to its shareholders. It shall be the shareholders' responsibility to provide the funds necessary and sufficient to the Corporation for its ordinary and usual operation and maintenance expenses. Said expenses shall be determined by the Board of Directors at its annual meeting or at a special meeting called for herein. Assessments for each shareholder shall be made by the Secretary/Treasurer and approved by the Board of Directors prior to being mailed via first class United States postage to each shareholder. Assessments shall become immediately due and payable to the Corporation upon the receipt of said assessment by each shareholder.

SECTION 3. Each shareholder's assessment shall be prorated based upon the number of acres each shareholder has under irrigation. The assessment shall include any water shareholder has used either by decreed rights as determined by the Department of Water Resources or from Lucky Peak Reservoir storage rights as provided for in that certain agreement between the Bureau of Reclamation and Eagle Island Water Users Association.

SECTION 4. The shareholders shall notify the Watermaster of District 63, the amount of water, stored or otherwise, that they will require, either individually, or in groups, as the irrigation season progresses. The notice to the Watermaster shall be given in sufficient time to allow the Watermaster to deliver the water demanded. The Watermaster shall not be obligated to deliver water unless the demand for water shall be accompanied with sufficient payment therefor and as provided in these By-Laws.

SECTION 5. All shareholders of stock shall be subject to assessment in accordance with the laws of the State of Idaho for paying of storage space in Lucky Peak Reservoir subject to the terms of that certain contract between Eagle Island Water Users Association and the United States of America, Bureau of Reclamation; and for the other necessary expenses of the Corporation.

SECTION 6. Each shareholder of the Corporation whose stock has been paid for in full, shall be entitled to a certificate, or certificates, showing the amount of stock of the Corporation standing on the books in his name. Stock certificates shall be issued in numerical order from the Stock Certificate Book, shall bear the serial number and date of issuance, shall be signed by the President and Secretary, shall have affixed thereto the seal of the Corporation, and subject to statutory requirements, shall be in the form prescribed by the Board of Directors. A full record including the name and number of each certificate of stock, as issued, shall be duly recorded by the Secretary in the official Stock Certificate Book.

SECTION 7. Transfers of stock shall be made only upon the transfer books of the Corporation, kept at the office of the Corporation or respective transfer agents designated to transfer the stock, and before a new certificate is issued the old certificates shall be surrendered for cancellation. Before a new certificate is issued, all assessments against the shares therein represented must be fully paid. The secretary shall be allowed a fee of five dollars (US) to be paid by the party making the transfer.

SECTION 8. The following individuals that have irrigation rights as described herein are listed below together with the number of acres each has under irrigation.

<u>OWNER</u>	<u>ACRES</u>	<u>SHARES</u>
1. Jim Warren	100	100.0
2. Steve Rambo	2	2.0
3. Barry Peters	17.5	17.5
4. Don Coffey	10.5	10.5
5. Charles Porter	5	5.0
6. David Powers	28.5	28.5
7. Maxine Mace	30	30.0
8. Herb Carlson	40	40.0
9. Bob Kell	2.5	2.5
10. Charles Lobdell	5	5.0
11. Todd Lindsey	65	65.0
12. Don Newman	20	20.0
13. State of Idaho	315	315.0
14. Will Englund	5	5.0
15. Jon Wroten	27	27.0
16. Janis Meek	13	13.0
17. Kay Johnson & Ann Joslin	5	5.0
18. Mel Dennett	15	15.0
 TOTALS	 706.0 Acres	 706.0 Shares

The price for said stock shall be one dollar (\$1.00) per share, payable within thirty (30) days from the time notice is sent by mail by the Secretary advising that the stock is available for purchase. In the event that any person, corporation or agency authorized to purchase stock in the Corporation, refuses, after notice is given as above provided, to pay for said stock within thirty (30) days after the giving of the notice, the Secretary shall give a second notice to the refusing party, that at a time fixed by the Board of Directors, the refusing party's stock will be sold or otherwise disposed of by the Board of Directors. Within ten (10) days after the giving of said second notice, the Board of Directors may sell, or otherwise dispose of said stock to such person and upon such terms and in such manner as they deem to be just, or the Board may purchase said stock on behalf of the Corporation.

SECTION 9. In the event that that certain contract between the United States of America, Bureau of Reclamation and Eagle Island Water Users

Association regarding Lucky Peak Reservoir storage water is amended or renewed which in any way affects this Corporation or is in conflict with its By-Laws, the By-Laws of this Corporation shall be amended so as to eliminate said conflict(s) and be made to conform to said amendments, changes or renewals thereof, if necessary.

SECTION 10. Registered shareholders only shall be entitled to be treated by the Corporation as the holders in fact of the stock standing in their respective names, and the Corporation shall not be bound to recognize any equitable or other claim to, or interest in, any share on the part of any other persons, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by law.

SECTION 11. In case of loss or destruction of any certificate of stock, another may be issued in its place upon proof of such loss or destruction and upon the giving of a satisfactory bond or indemnity to the Corporation in such sum as the directors may provide, not exceeding double the value of the share.

SECTION 12. At the beginning of each irrigation season, the Secretary shall certify to the Watermaster of District 63, a list of all of the shareholders of the Corporation and the number of acres owned by each of them standing on the books and records of the Corporation at the time of the making of the list. In addition, the Secretary shall certify to the Watermaster of District 63, all transfers of ownership and the number of acres each shareholder of record owns. Only those persons contained on said lists shall be entitled to order water, and then not to exceed the amount of water to which each shareholder is entitled.

ARTICLE III

BOARD OF DIRECTORS

SECTION 1. The management of the affairs, property and interests of the Corporation shall be vested in a Board of Directors consisting of three (3)

members to be selected from among the shareholders of the Corporation at the regular annual meeting of shareholders, and the persons so selected shall constitute the Board of Directors for the ensuing year or until qualified successors are elected.

SECTION 2. The Board of Directors shall have all power and authority conferred upon such Board by law, by the Articles of Incorporation and by these By-Laws, and the Board of Directors is given the power to do all lawful acts and things in furtherance of the business purposes of the Corporation.

SECTION 3. All vacancies in the Board of Directors shall be filled by the remaining director or directors, at any regular or special meeting. A director thus elected to fill any vacancy shall hold office for the unexpired term of his predecessor and until a qualified successor is elected.

SECTION 4. Special meetings of the Board may be called at any time by the President, or in his or her absence or disability, by the Vice President or by any two directors, such call stating the time and place of such meeting and the purposes for which it is to be held.

SECTION 5. Notice of special meetings of the Board of Directors shall be given by the Secretary by mailing notice thereof to each member's last known post office address, postage prepaid, at least five (5) days before the time fixed for such meeting, such notice giving the time, place and objects thereof, and no business shall be transacted at such special meeting, except as shall be indicated in the notice. Notice of any meeting need not be given to a director if he shall waive notice in writing, filed within records of the meeting, either before or after the holding. Any business may be transacted at any meeting at which every director is present, though without notice. Any meeting of the Board shall be a legal meeting, without any notice being given, if all the directors shall be present thereat.

SECTION 6. A majority of the whole Board of Directors shall be necessary to constitute a quorum for the transaction of business, and a majority of the members in attendance at any Board meeting shall, in the presence of a quorum, decide its action, except as otherwise provided in the By-Laws, or in the Articles of Incorporation, or as required by law; provided, however, that after resignation of more than a majority of the directors, the remaining directors, although less than a quorum, may meet and fill vacancies as herein provided.

SECTION 7. The directors shall receive no salary, but shall be paid their expenses actually and necessarily incurred in attending meetings of the Board of Directors. All such expenses shall be approved by the Board of Directors before payment, at a regular meeting of the Board of Directors at which a quorum is present.

ARTICLE IV ASSESSMENTS

SECTION 1. Revenue necessary for the payment of the indebtedness of the Corporation, and for carrying on the business of the Corporation, and for any other purpose which the directors may believe to be in the best interests of the Corporation, in conformity with the laws of the State of Idaho, shall be raised by assessments from time to time as required upon and against the shareholders.

SECTION 2. The directors shall give notice as provided in Section 42-1304, Idaho Code, to the shareholders of any assessments so levied, requiring each shareholder to pay to the Secretary or Treasurer, the amount of said assessment on a date to be fixed in said notice, and upon failure or refusal of the shareholders to pay the amount so assessed, after which a lien shall be recorded at the office of the county recorder against said shareholders property.

Further, as provided in section 42-1307, Idaho Code, in case any assessment, as herein provided for is due and unpaid the Corporation may

sue to collect the same, in the name of its secretary-treasurer as such, in any court of competent jurisdiction, and in addition to the amount due including all penalties and interest, and all costs incurred in said action, may collect a reasonable attorney's fee in such action to be fixed by the court.

Upon satisfactory payment of shareholder's assessment including any penalties, amounts in arrears and all expenses incurred by the Corporation, including recording fees or attorneys fees whether or not a court hearing resulted in any action brought by the secretary-treasurer on behalf of the Corporation, the shareholder shall have the right to be reinstated upon approval of the Board of Directors.

ARTICLE V OFFICERS

SECTION 1. The officers of the Corporation shall be a President, Vice President, Secretary and Treasurer, who shall be elected for one year by the directors at their first meeting, after each annual meeting of the shareholders and who shall hold office until their qualified successors are elected. The President and Vice President shall be elected from among the directors. At the discretion of the Board, the office of Secretary may be united with that of Treasurer and both held by the same person.

The Board of Directors may elect such other officers and appoint such agents as it may deem necessary or expedient, to hold office during its pleasure and to have such authority and perform such duties as shall be prescribed from time to time by the Board.

SECTION 2. PRESIDENT. The President shall preside at all meetings of shareholders and directors and shall have general supervision of the affairs of the Corporation; he or she shall sign all certificates of stock issued by the Corporation; shall sign or countersign, as may be necessary, all such bills, notes, checks, contracts and other instruments as may pertain to the ordinary course of the Corporation's business, and shall

sign, when duly authorized by the Board of Directors, all contracts, deeds, bonds, mortgages and other instruments of a special nature. Except when normal or ordinary expenses of less than \$500.00 are anticipated in which case, the Secretary/Treasure need not secure the President's signature on the check for payment.

SECTION 3. VICE PRESIDENT. The Vice President shall possess all of the powers and perform all the duties of the President, in the event of the death, absence, disability or refusal to act, of that officer, and shall have such other powers and discharge such other duties as may be assigned to him or her from time to time by the Board of Directors.

SECTION 4. SECRETARY. The Secretary shall keep full minutes of all meetings of the shareholders and directors; he or she shall give notice of meetings of shareholders and directors in accordance with provisions of these By-Laws; shall sign, with President, all certificates of stock issued by the Corporation and contracts and other documents requiring the Corporate Seal, shall affix the seal thereto; and shall perform such other duties as may be prescribed by the Board of Directors.

SECTION 5. TREASURER. The Treasurer shall have custody of and be responsible for all moneys and securities of the Corporation; he or she shall keep a full and accurate record of accounts in books belonging to the Corporation, showing the transaction of the Corporation, its accounts, liabilities and financial condition; shall deposit in the name of the Corporation all moneys, checks, and obligation that may come into his or her hands for the Corporation's accounts in such depository or depositories as are designated by the Directors; shall disburse the funds of the Corporations in payment of just demands against the Corporation or in accordance with the general or special discretions of the Board of Directors, taking proper vouchers for such disbursements.

He or she shall submit a full report of the financial condition of the Corporation to the annual meeting of the shareholder's and, generally,

shall perform all duties incident to the position of Treasurer, subject to the control of the Board of Directors.

He or she shall give such bonded indemnity as the Board of Directors may require for the faithful performance of the duties of his office and the restoration to the Corporation, in case of his death, resignation or removal from office, of all books, papers, voucher, money or other property of any kind whatsoever in his or her possession belonging to the Corporation.

SECTION 6. In the case of the absence or inability to act of any officer of the Corporation and of any person herein authorized to act in his or her place, the Board of Directors from time to time may delegate the powers and duties of such office to any other officer, or to any director or to any other person whom it may select.

SECTION 7. Vacancies in any office, arising from any cause, may be filled by the Directors at any regular meeting or any special meeting called for that purpose.

SECTION 8. The salaries of all officers and agents of the Corporation shall be fixed by the Board of Directors.

SECTION 9. Any officer elected by the Board of Directors may be removed at any time, with or without cause, by the affirmative vote of a majority of the whole Board of Directors.

SECTION 10. The Corporation shall provide liability insurance in the form of a bond in the amount of one million dollars indemnifying and insuring the Corporation's Officers and Board of Directors from any liability in the exercise of their duties and responsibilities on behalf of the Corporation and any of its Officers from any and all legal actions including third party actions brought against the Corporation or its Officers due to negligence for any reason whatsoever and in accordance to 30-3-88, Idaho Code.

ARTICLE VI

SECTION 1. The moneys of the Corporation shall be deposited in the name of the Corporation in such depository as may be designated by the Board of Directors and all amounts over \$500.00 shall be withdrawn therefrom only by check signed by the officer or officers designated by resolution of the Board of Directors.

SECTION 2. All books and papers of the Corporation in the possession of the Secretary-Treasurer or other officers of the Corporation shall be subject to inspection by the Directors or other shareholders after a notification period of 24 hours and during regular office hours.

ARTICLE VII

SECTION 1. These By-Laws or portions thereof may be altered, amended or repealed and new By-Laws may be adopted at any regular or special meeting of the shareholders upon a two-thirds vote of the shareholders voting in favor thereof.

ARTICLE VIII

SECTION 1. The seal of the Corporation shall consist of two concentric circles, between which shall appear the name of the Corporation, plus the word "Idaho", and in the center shall be inscribed the "Corporate Seal." An impression of said seal appears on the margin hereof.

We, the undersigned, being of majority of the directors in office of Mace-Catlin Mutual Ditch Company, Incorporated and the Secretary of said Corporation, do hereby certify that the above and foregoing By-Laws were duly and regularly adopted as the Code of By-Laws of said Corporation by the assent of the holders of a majority of the allotted shares of said Corporation on the _____ day of _____, 1999, and that said By-Laws as copied and transcribed above are true and correct.

ATTEST

Secretary

Rod Wagner

Jim Wroten

Charles Lobdell

COPY

RECEIVED

OCT 24 2007

DEPARTMENT OF
WATER RESOURCES

2007 OCT 24 05:11:47
TWIN FALLS CO. ID

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

Water Rights: 63-134A, 63-186A,
63-17205, 63-26995

Case No. 39576

AMENDED NOTICE OF COMPLETED
ADMINISTRATIVE PROCEEDING

IDWR has completed the following administrative proceeding:

- ☒ Address change
☐ Substitution of Party
☐ IC § 42-222

- | | |
|---|--|
| ☐ Point of diversion | ☐ Place of use |
| ☐ Period of use | ☐ Nature of use |
| ☐ Split of water right | ☐ Change in ownership |

- ☐ Other: License Issued

IDWR certifies that it has completed its investigation into the changes to the elements of the water right(s) listed above as set forth in the attached *Amended Director's Report(s)* for said water right(s). No other changes have been made to the elements of these water right(s) except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

DATED: 10-18-07



Signature of IDWR Representative

CERTIFICATE OF MAILING

I certify that on October 22, 2007, I delivered the original and copies of this form, including all attachments, to the following persons, postage prepaid if required and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

Clive Strong
Off ice of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449

United States Dept of Justice
Environment & Natural Resource Div
550 W. Fort St. MSC 033
Boise, ID 83724

3. Copies to all parties to the subcase:

Ron Sali
919 S. Linder Rd.
Eagle, ID 83615-5513

Bryce Farris
Ringert Clark Chtd
P.O. Box 2773
Boise, ID 83701-2773

Michael C. Creamer
Givens Pursley, LLP
P.O. Box 2720
Boise, ID 83701-2720



Signature of person mailing this document

10/18/2007

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION</u>	<u>REASON</u>
63-134A	RON SALI 919 S LINDER RD EAGLE ID 83615-5513	Disallowed	Recommended as Right No. 63-134.

10/18/2007

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION</u>	<u>REASON</u>
63-186A	RON SALI 919 S LINDER RD EAGLE ID 83615-5513	Disallowed	Recommended as Right No. 63-31772.

10/18/2007

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION</u>	<u>REASON</u>
63-17205	RON SALI PO BOX 488 BOISE ID 83701-0488	Disallowed	No beneficial use found.

10/18/2007

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

RIGHT NUMBER: 63-26995

NAME AND ADDRESS: RON SALI
919 S LINDER RD
EAGLE ID 83615-5513

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.230 CFS

The quantity of water under this right shall not exceed 13,000 gallons per day.

PRIORITY DATE: 01/02/1970

POINT OF
DIVERSION:

T04N R01W S14 SENE Within ADA County
T04N R01W S14 NWSE Lot 10 Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.230 CFS

PLACE OF USE: STOCKWATER in ADA County

T04N R01W S14 NESE T04N R01W S14 Lot 10 NWSE

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

The quantity of water decreed for this water right is not a determination of historical beneficial use.

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

Stockwater use is for 1000 range cattle.

RECEIVED

OCT 24 2007

DEPARTMENT OF
WATER RESOURCES

JON C. GOULD (ISB #6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Mace Catlin Ditch Company

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

In Re SRBA

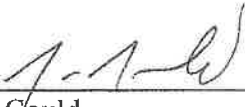
Case No. 39576

)
) SUBCASE NOS. 63-00132, 63-00133
) and 63-00134

)
) NOTICE OF APPEARANCE
)
)

COMES NOW Jon C. Gould, of the firm Ringert Clark Chartered, and hereby gives notice of Ringert Clark Chartered's appearance in the above entitled matter on behalf of the Mace Catlin Ditch Company.

DATED this 23 day of October, 2007.



Jon C. Gould
Attorney for Mace Catlin Ditch Company

COPY

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2007, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Road
Eagle, Idaho 83616-5513

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



S. Bryce Farris

RECEIVED

OCT 24 2007

DEPARTMENT OF
WATER RESOURCES

JON C. GOULD (ISB #6709)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Mace Catlin Ditch Company

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

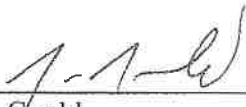
In Re SRBA

Case No. 39576

)
) SUBCASE NOS. 63-00132, 63-00133
) and 63-00134
)
) NOTICE OF APPEARANCE
)
)
)

COMES NOW Jon C. Gould, of the firm Ringert Clark Chartered, and hereby gives notice of Ringert Clark Chartered's appearance in the above entitled matter on behalf of the Mace Catlin Ditch Company.

DATED this 23 day of October, 2007.



Jon C. Gould

Attorney for Mace Catlin Ditch Company

COPY

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2007, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Road
Eagle, Idaho 83616-5513

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



S. Bryce Farris

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

RECEIVED
OCT 10 2007
DEPARTMENT OF
WATER RESOURCES

Attorneys for Hart-Davis Ditch Company, Inc.

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

In Re SRBA

Case No. 39576

)
) SUBCASE NO. 63-134
)

) HART-DAVIS DITCH COMPANY'S
) ANSWERS TO STATE OF IDAHO'S
) FIRST SET OF DISCOVERY REQUESTS
)

The Hart-Davis Ditch Company (Hart-Davis), by and through its counsel of record, Ringert Clark Chartered, and hereby responds to the State of Idaho's First Set of Discovery Requests to Hart-Davis Ditch Company, pursuant to Rules 26, 33, 34 and 36 of the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Hart-Davis has not completed its own investigations and/or discovery. Accordingly, the answers that follow are based upon the best knowledge, information and belief of Hart-Davis at this time. Hart-Davis reserves the right to make any further answers if it appears that any omission or error has been made in connection with these answers or that more accurate information is or has become available. These answers are made without prejudice to Hart-Davis' right to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

2. Hart-Davis objects to the definitions and instructions to the extent that they purport

to require discovery answers beyond that required under the Idaho Rules of Civil Procedure. These answers are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these interrogatories.

3. These answers are made subject to all objections as to competence, relevance, materiality, and admissibility. These answers are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such request were asked of or any statement, material, or information provided were made by witnesses present and testifying at the formal hearing or trial on this matter. All such objections are reserved and may be interposed at the time of the hearing or trial on this matter.

4. Hart-Davis specifically objects to these discovery requests to the extent that they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rules of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not be repeated specifically for each interrogatory to which it applies. Hart-Davis has, to the extent possible, construed each interrogatory as requesting only information and/or documents not subject to any applicable protection.

5. No incidental or implied admissions are intended. The fact that Hart-Davis has responded to any discovery request or part thereof should not be taken as an admission that Hart-Davis accepts that the discovery request or the response or objection thereto constitutes admissible evidence. The fact that Hart-Davis has responded to all or part of a request is not intended to and shall not be construed to be a waiver by Hart-Davis of all or part of any objection to other requests. Hart-Davis' answers to any discovery requests herein do not constitute a waiver of Hart-Davis' right

to object to any future additional or supplemental requests regarding the same or similar matters.

REQUEST FOR ADMISSION NO. 1: Please admit that Attachment I is a true and correct copy of the Articles of Incorporation of the Hart-Davis Ditch Company.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Admit.

INTERROGATORY NO. 1: If you deny, in whole or in part, Request for Admission No. 1, then describe in detail the factual and legal basis for your denial.

ANSWER TO INTERROGATORY NO. 1: N/A.

REQUEST FOR PRODUCTION NO. 1: If you deny, in whole or in part, Request for Admission No. 1, please produce a true and correct copy of the Articles of Incorporation of the Hart-Davis Ditch Company.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: N/A.

REQUEST FOR ADMISSION NO. 2: Please admit that the Hart-Davis Ditch Company was incorporated on April 14, 1924.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Admit.

INTERROGATORY NO. 2: If you deny, in whole or in part, Request for Admission No. 1, then describe in detail the factual and legal basis for your denial.

ANSWER TO INTERROGATORY NO. 2: N/A.

INTERROGATORY NO. 3: Describe the owners of water right no. 63-134 on April 13, 1924, the day immediately prior to the incorporation of the Hart-Davis Ditch Company on April 14, 1924.

ANSWER TO INTERROGATORY NO. 3: Objection to the extent this Interrogatory calls

for a legal conclusion. Notwithstanding said objection and without waiving the same Hart Davis responds as follows: discovery is ongoing and at this time Hart Davis is uncertain as to whom the individual owner of water right no. 63-134 was on April 13, 1924, but Hart Davis believes it was one of the individuals listed in the above-referenced Articles of Incorporation. At this time Hart Davis is uncertain as to which individual listed in said Articles was the prior owner of the property which is now owned by the State of Idaho. Hart Davis will supplement this response as necessary.

INTERROGATORY NO. 4: Describe the ownership percentage of each owner of water right no. 63-134 describe in Interrogatory No. 3 on April 13, 1924, the day immediately prior to the incorporation of the Hart-Davis Ditch Company on April 14, 1924.

ANSWER TO INTERROGATORY NO. 4: See Answer to Interrogatory No. 3.

REQUEST FOR PRODUCTION NO. 2: Produce all documents that evidence a transfer of the water right ownership from the owners described in Interrogatory no. 3 to the Hart-Davis Ditch Company.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Discovery is ongoing. At this time said documents include the corporate documents and minutes of Hart Davis, all assessment notices and payments by the State of Idaho to Hart Davis, the records for the District 63 watermaster, the water right file held by the Idaho Department of Water Resources. These documents are either attached hereto, will be made available for inspection and copying or may be obtained more readily by the State of Idaho than Hart Davis. Hart Davis will supplement this response as necessary.

REQUEST FOR PRODUCTION NO. 3: Produce all documents upon which the Hart-Davis Ditch Company relies for the existence of water right no. 63-134.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Hart Davis objects to the extent this request is not calculated to lead to the discovery of admissible evidence. The existence of water right no. 63-134 is not in dispute. Notwithstanding said objection and without waiving the same: See Response to Request for Production No. 2.

REQUEST FOR PRODUCTION NO. 4: Produce all documents upon which the Hart-Davis Ditch Company relies for its ownership of water right no. 63-134.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: See Response to Request for Production No. 2.

REQUEST FOR PRODUCTION NO. 5: Produce all documents that the Hart-Davis Ditch Company possesses that evidence beneficial water for water right no. 63-134. This production should include records that predate the existence of the Hart-Davis Ditch Company and that post date its creation on April 14, 1924.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Hart Davis objects to the extent this request is not calculated to lead to the discovery of admissible evidence. The beneficial use of water right no. 63-134 is not in dispute. Notwithstanding said objection and without waiving the same: See Response to Request for Production No. 2.

REQUEST FOR ADMISSION NO. 3: Please admit that the Hart-Davis Ditch Company does not have any documents that evidence a transfer of any portion of the ownership of water right no. 63-134 from the State of Idaho to the Hart-Davis Ditch Company.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: Hart Davis conditionally admits this request because, with the exception of being a shareholder of Hart Davis, the State of Idaho has

never owned, nor claimed any ownership, of any portion of water right no. 63-134 and thus there would be no documents evidencing a transfer of ownership of that which the State of Idaho did not own or claim to own.

INTERROGATORY NO. 5: If you deny, in whole or in part, Request for Admission No. 3, then describe in detail the factual and legal basis for your denial.

ANSWER TO INTERROGATORY NO. 5: See response to Request for Admission No. 3.

REQUEST FOR PRODUCTION NO. 6: If you deny, in whole or in part, Request for Admission No. 3, produce all documents supporting your answer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6: See response to Request for Admission No. 3.

REQUEST FOR PRODUCTION NO. 7: Produce the bylaws, minutes, and corporate books of the Hart-Davis Ditch Company for inspection and copying.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Please see the attached documents. Additional minutes or records will be made available at a mutually agreement time and place for inspection and copying.

INTERROGATORY NO. 6: Please identify each and every person whom you expect to call as a fact witness in the trial of this matter and state the substance of the facts upon which the person is expected to testify.

ANSWER TO INTERROGATORY NO. 6: Discovery is ongoing and Hart Davis has not determined the witnesses it may call at any hearing or trial for this matter. Such witnesses may

include the following Board members: Ron Rippey, Jim Breszinsky and Jim Zamzow. Hart Davis will supplement this response as necessary.

INTERROGATORY NO. 7: Please identify each and every person whom you know has knowledge about water right no. 63-134.

ANSWER TO INTERROGATORY NO. 7: Discovery is ongoing and Hart Davis has not determined each and every person whom may have knowledge about this matter this matter. Such persons may include: (1) Hart Davis Board members, Ron Rippey, Jim Breszinsky and Jim Zamzow; (2) Hart Davis shareholders; (3) personnel for the Idaho Department of Water Resources, including, but not limited to Mel Shulte and Jan Schurte; (4) employees for the State of Idaho, including, but not limited to employees for the State of Idaho Parks Department and/or Eagle Island Park; (5) Lee Sisco, the current watermaster for the Boise River; and (6) Tom Nicholson, who is believed to lease certain property from the State of Idaho and who makes payments to Hart Davis for the State of Idaho's assessments. Plaintiff will supplement this response as necessary.

INTERROGATORY NO. 8: Please identify each and every person whom you expect to call as an expert witness in this matter. For each such person identify, please state the subject matter on which the expert is expected to testify, the substance of the opinions to which the expert is expected to testify, and the underlying facts and data upon which the expert opinions are based.

ANSWER TO INTERROGATORY NO. 8: Discovery is ongoing and Hart Davis has not determined or retained an expert witness in this matter. Hart Davis will supplement this response as necessary.

REQUEST FOR PRODUCTION NO. 8: Produce every document or tangible item that you

intend to offer as an exhibit in the trial of this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Discovery is ongoing and Hart Davis has not determined the exhibits it may offer at any hearing or trial for this matter. Such exhibits may include any documents attached to these discovery responses or which will be made available for inspection and copying at a mutually agreeable time and place. Hart Davis will supplement this response as necessary.

REQUEST FOR PRODUCTION NO. 9: For each person identified in your response to Interrogatory no. 8, please produce: (1) a curriculum vitae or resume, including a list of publications authored by that person, if any, as well as any other information which would demonstrate the person's knowledge or qualifications to state the facts or express the opinions to which the person is expected to testify; and (2) all documents containing or evidencing the underlying facts or data described in your response to Interrogatory No. 5.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9: See response to Interrogatory No. 8

INTERROGATORY NO. 9: Identify all persons who assisted in the preparation of the Hart-Davis Ditch Company's responses to these Interrogatories, Request for Admission and Requests for Production.

ANSWER TO INTERROGATORY NO. 9: Ron Rippey, Jim Breszinsky and Jim Zamzow.

DATED this 9th day of October, 2007.

RINGERT CLARK CHARTERED

By: [Signature]
S. Bryce Farris
Attorney for Hart-Davis Ditch Company

STATE OF IDAHO)
) ss
COUNTY OF _____)

VERIFICATION

_____, after being first duly sworn on oath depose and state as follows:

1. That I am the _____ of Hart Davis Ditch Company, and I have reviewed the discovery responses and I believe the responses contained therein to be true and correct to the best of my knowledge.

SUBSCRIBED AND SWORN TO before me this ___ day of October, 2007.

Notary Public for Idaho
Residing: _____,
My Commission Expires: _____

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2007, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
919 South Linden Road
Eagle, Idaho 83616

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

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

Mace Catlin Ditch Company
c/o Bob Kell
1820 Mace Road
Eagle, Idaho 83616


S. Bryce Farris

(Authentication)

A RECORD
of the
ORGANIZATION AND INCORPORATION
of

Harri-Davis Ditch Company

A CORPORATION

duly incorporated under the laws of the state of *Idaho* on the
27th day of *March* A. D. 19*24*, in the _____ of
_____ county of *Belebe*, state of *Idaho*

IN WITNESS WHEREOF, WE, *J. M. Sweet*

being all the original subscribers to the articles of incorporation of said corporation,
for the purpose of the adoption and identification of this book, with the records con-
tained therein, as the original record of said corporation, have hereunto subscribed our
names and caused the corporate seal to be affixed this _____ day of _____

_____, A. D. 19____

(To be signed by all the persons
organizing this corporation.)

LICENSE TO RECEIVE SUBSCRIPTIONS FOR STOCK.

(A license to receive subscriptions for stock, is not required in all states, and in those where it is required the form varies. It should be copied in full below.)

SUBSCRIPTION LIST.

CAPITAL STOCK \$.....

{The form below may be filled out as the original subscription list and signed by all the subscribers; or a subscription agreement on a separate paper may be circulated among the subscribers and signed by each, and afterwards copied below.}

We, the undersigned, hereby severally subscribe for and agree to take the number of shares, set opposite our respective names, of the capital stock of.....

John J. Davis.....

and we severally agree to pay the said corporation for each share, the sum of.....

.....Dollars (\$.....). Dated this.....day of

....., A. D. 19...; at.....in the County of.....

....., and State of.....

NAME

ADDRESS

No. of
Shares

Amount to be Paid

Dollars

Cents

COPY OF CHARTER.

(The charter or articles of incorporation should be copied in full.)

COPY OF CHARTER--Continued.

COPY OF CHARTER—Continued.

CALL AND WAIVER OF NOTICE FOR FIRST MEETING OF STOCKHOLDERS:

(If the stockholders are brought together in their first meeting in pursuance of a notice in the form provided for by law, the call and waiver printed below need not be used. If it is used, care should be taken to see that it is signed by each incorporator and subscriber.)

We, the undersigned, being all the incorporators of Santa Rosa
Hotel Company
 and all of the subscribers to its capital stock entitled to notice of said meeting, do hereby call the first meeting of the stockholders thereof, to be held at Tulsa in the County of Okla and State of Oklahoma at 2 o'clock P. M., on the 16th day of July A. D. 1917, for the organization of said corporation, the election of directors, and the transaction of such other business as may properly come before said meeting, and we hereby waive all requirements as to notice of such meeting and consent to such organization, election of directors, and transaction of business.

Dated this 16th day of March, A. D. 1917 at _____
 in the County of _____, and State of _____

MINUTES OF FIRST MEETING OF STOCKHOLDERS.

The first meeting of the incorporators of Harf-Davis
Litho Company
and the subscribers to its capital stock was held at Des Moines
Iowa
in the _____ of _____ County of _____ and State of _____
at _____ o'clock _____ M., on the _____ day of _____
_____, A. D. 19____, in pursuance of the foregoing call and waiver
of notice

or

in pursuance of notice in writing mailed _____ days before said date, properly addressed
to each incorporator and subscriber, a copy of such notice being as follows:

(The notice should conform to the requirements of the law in the state where it is used.)

_____ called the meeting to order and
stated its object.

On motion duly made and carried _____
was elected chairman, and _____ was
elected secretary.

MINUTES OF FIRST MEETING OF STOCKHOLDERS—Continued.

~~On motion duly made and carried, the directors named in the charter were recognized as the first directors of said corporation.~~

or

On motion duly made and carried, the stockholders proceeded to elect directors of said corporation, and the following named persons, each having received a number of votes representing a majority of the whole number of shares of stock represented at said meeting, were declared duly elected directors of said corporation, to serve until their successors should be duly elected and qualified.

(The statement above should conform to the requirements of the law. If the first directors have been named in the charter, they should be recognized by resolution of the stockholders at this stage in the proceedings; otherwise the first directors should be elected by vote of the stockholders in the usual manner. If the directors are classified the motion should be made to read accordingly.)

The committee for drafting by-laws now having reported and submitted a code of by-laws, the same was discussed and amended, and upon motion duly made and carried, was adopted, as amended, and ordered spread upon the records of this corporation.

or

On motion duly made and carried, the power to make by-laws was delegated to the directors.

(The motion above should conform to the requirements of the law. In some states the stockholders only are authorized to make by-laws, and in others this power may be delegated by them to the directors. In states where the directors are permitted by law to make the by-laws without delegation of the power by the stockholders neither of the above forms is required.)

There being no further business before the meeting, on motion duly made and carried, it was adjourned.

7

Chairman.

Secretary.

CALL AND WAIVER OF NOTICE FOR FIRST MEETING OF DIRECTORS:

(This form should be used in all cases unless a more convenient manner is provided by law for convening the directors in their first meeting.)

We, the undersigned, being all the directors of Acme - Davis
Oil Co. Company

do hereby call the first meeting of such directors to be held in the office of _____

on the _____ day of _____ A. D. 19____, for the purpose of
electing officers and adopting by-laws, and for the transaction of any and all business
pertaining to the affairs of the corporation; and we hereby waive all statutory and by-
law requirements, as to notice of time, place and objects of said meeting, and consent
to such election of officers, adoption of by-laws, and transaction of business.

Dated this _____ day of _____ A. D. 19____, at _____
in the County of _____, and State of _____.

(All the directors
should sign.)

W. H. Davis

MINUTES OF FIRST MEETING OF DIRECTORS.

(Such parts of the following outline of procedure as are not used may be stricken out; and additions may be made as required.)

The first meeting of the Board of Directors of _____
_____ was held at _____
_____ in the _____ of _____ County of _____ and State of _____
_____ at _____ o'clock _____ M. on the _____ day of _____
_____ A. D. 19____, in pursuance of the foregoing call and waiver of
notice.

(If the directors have been convened in some other manner, state in what manner, giving a copy of the notice if one has been used.)

_____ was chosen as temporary Chair-
man and _____ was appointed tem-
porary Secretary of the meeting.

On a roll call of the Directors by the Secretary the following were found to be
present:

A quorum being present, on motion duly made and carried, the Board proceeded
to the election of officers of the Corporation to serve for the ensuing corporate year and
until the election and taking of office of their successors.

The following officers were elected:

President _____
Vice-President _____
Secretary _____
Treasurer _____

The Secretary-elect having been duly sworn, the permanent officers of the cor-
poration took charge of the meeting.

(A few states require that the Secretary-elect be sworn.)

MINUTES OF FIRST MEETING OF DIRECTORS—Continued.

On motion duly made and carried, it was ordered that the Treasurer procure a bond in the sum of.....Dollars conditioned upon the faithful performance of the duties of his office, and submit it to the Board for their approval and acceptance.

On motion duly made and carried, the following were named a committee to draft by-laws and submit them to the board during this meeting:

J. M. [unclear]
.....
.....
.....

On motion duly made and carried, the salary of the President was fixed at.....
.....dollars per year.....
.....not voting upon said motion.

On motion duly made and carried, the salary of the Secretary was fixed at.....
.....dollars per year.....
.....not voting upon said motion.

The committee for drafting by-laws now having reported and submitted a code of by-laws to the board, the same was discussed and amended, and upon motion duly made and carried, was adopted, as amended, and ordered spread upon the records of this corporation.

(The above motion is used if the directors make the by-laws. See note on page 11.)

or

The code of by-laws heretofore adopted at the first meeting of stockholders upon being submitted to the board of directors was re-adopted.

(The above motion should be used if the by-laws were adopted by the stockholders at their first meeting.)

A form of stock certificate having been presented for approval, was by motion adopted as the form of stock certificate of the corporation, and the Secretary was ordered to attach the same on page.....of this record.

The following motions were also duly made and carried:

~~Moved~~, that the President be, and he hereby is, ordered to rent the premises at
.....
.....
at an annual rental of not to exceed.....dollars, such

MINUTES OF FIRST MEETING OF DIRECTORS—Continued.

renting to be.....

said premises to be used for, and being hereby designated as the principal office of this corporation.

Moved that the Treasurer be, and he hereby is, ordered to open a bank account in the name of the corporation with.....

for the deposit of funds belonging to the corporation, such funds to be withdrawn only by check of the corporation, signed by its Treasurer and countersigned by its President.

Moved, that the sum of..... dollars be assessed upon each share of stock of the corporation, and that such assessments be, and hereby are, ordered paid to the Treasurer on or before..... A. D. 19....

Moved, that a seal, bearing the words..... *Hart-Davis Bros*

and identified by an impression thereof on the margin of this page, be, and hereby is, adopted as the seal of this corporation.

Moved, that the Secretary be, and hereby is, instructed to purchase such record books and books of account, stationery and office supplies as may be necessary for the proper administering of the affairs of the corporation.

Moved, that the Secretary be, and hereby is, ordered to file.....

with..... *see index*

for public record, and to..... *10/1/1914*

in accordance with the law in such case made and provided.

(The foregoing motion should direct the Secretary to file such papers with the Secretary of State, or with the Recorder of Deeds of the county in which the corporation intends to do business, or other proper officer; and to take such other steps as may be required by law. It is particularly important that the requirements in this respect should be carefully observed in all cases where a corporation intends to do business in a state other than the state of its incorporation.)

MINUTES OF FIRST MEETING OF DIRECTORS—Continued.

Moved, that the Treasurer be, and hereby is, directed to pay -----

all expenses properly incurred in the organization of the corporation.

MINUTES OF FIRST MEETING OF DIRECTORS--Continued

On motion duly made and carried, the meeting was adjourned.

President.

Secretary.

BY-LAWS.

(The following code of by-laws has been very carefully prepared from an examination of the statutes and decisions in the various states, and the works of standard text book writers. It will be found to conform fully to the requirements of all ordinary cases; and, with only slight additions or changes, can be made to serve the needs of any ordinary corporation. The forms of wording and the terms used are such as have been passed upon by the courts and have a settled meaning, so that all possible ambiguity may be avoided; and in all cases where it has been necessary to enumerate powers and duties, such general terms have been used as to include all proper cases which have not been specifically mentioned. Those sections which are not formally adopted should be stricken out.)

ARTICLE I.

NAME AND LOCATION.

SECTION 1. The name of this corporation shall be Hort-Dur

SEC. 2. Its principal office shall be located at 121 St. Louis

SEC. 3. Other offices for the transaction of business shall be located at such places as the board of directors may from time to time determine.

ARTICLE II.

CAPITAL STOCK.

SECTION 1. The amount of the capital stock shall be \$100,000 dollars, which shall be divided into 100,000 shares, of the value of \$1 dollars each.

SEC. 2. All certificates of stock shall be signed by the President and the Secretary, and shall be sealed with the corporate seal.

SEC. 3. Treasury stock shall be held by the corporation subject to the disposal of the board of directors, and shall neither vote nor participate in dividends.

SEC. 4. The corporation shall have a first lien on all the shares of its capital stock, and upon all dividends declared upon the same, for any indebtedness of the respective holders thereof to the corporation.

SEC. 5. Transfers of stock shall be made only on the books of the corporation; and the old certificate, properly endorsed, shall be surrendered and cancelled before a new certificate is issued. The stock books of the corporation shall be closed against transfers for a period of 10 days before the day of payment of a dividend and for ten days before each annual meeting of stockholders.

SEC. 6. In case of loss or destruction of a certificate of stock, no new certificate

BY-LAWS—Continued.

shall be issued in lieu thereof except upon satisfactory proof to the board of directors of such loss or destruction; and upon the giving of satisfactory security, by bond or otherwise, against loss to the corporation. Any such new certificate shall be plainly marked "Duplicate" upon its face.

ARTICLE III.

STOCKHOLDERS' MEETINGS.

SECTION 1. An annual meeting of the stockholders shall be held at o'clock ~~2~~ M., on the day of October in each year at the principal office of the corporation. *Provided however*, that whenever such day shall fall upon a Sunday, or a legal holiday, the meeting shall be held on the next succeeding business day. At such meeting the stockholders shall elect directors to serve until their successors shall be elected and qualified.

SEC. 2. A special meeting of the stockholders, to be held at the same place as the annual meeting, may be called at any time by the President, and in his absence by the Vice-President; or by the directors. It shall be the duty of the directors, President or Vice-President to call such a meeting whenever so requested by stockholders holding% or more of the capital stock.

SEC. 3. Notice of the time and place of all annual and special meetings shall be mailed by the Secretary to each stockholder days before the date thereof.

SEC. 4. The President, or, in his absence, the Vice-President, shall preside at all such meetings.

SEC. 5. At every such meeting each stockholder shall be entitled to cast one vote for each share of stock held in his name; which vote may be cast by him either in person, or by proxy. All proxies shall be in writing, and shall be filed with the Secretary and by him entered of record in the minutes of the meeting.

~~SEC. 6.~~ SEC. 6. Every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit.

(The above section may be used in those States where cumulative voting is permitted by Statute as in Illinois, Kansas, Maryland, Missouri, New York, New Jersey, Ohio, Virginia, West Virginia, etc. It helps the minority stockholders to secure representation on the managing board.)

BY-LAWS—Continued.

SEC. 7. A quorum for the transaction of business at any such meeting shall consist of a number of members representing a majority of the shares of stock issued and outstanding; but the stockholders present at any meeting, though less than a quorum, may adjourn the meeting to a future time.

SEC. 8. The stockholders shall have power, by a majority vote at any such meeting, to remove any director or officer from office.

ARTICLE IV.

DIRECTORS.

SECTION 1. The business and property of the corporation shall be managed by a board of _____ directors, who shall be elected by the stockholders. Each director shall be a stockholder, and shall receive no compensation for his services as a director. A transfer by a director of all of his stock in the corporation shall operate as a resignation of his office.

SEC. 2. ~~The directors shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the Board of Directors. The directors of the first class shall be elected for a term of one year; the directors of the second class for a term of two years; and the directors of the third class for a term of three years; and at each succeeding annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years so that the term of office of one class of directors shall expire each year.~~

(The object of this provision is to prevent the Board of Directors from entirely changing in any one year, and consequently the corporation being submitted to the management of untried men. This section may be used in those States where a classification of directors is permitted by Statute.)

SEC. 3. The regular meetings of the directors shall be held in the principal office of the corporation immediately after the adjournment of each annual stockholders' meeting; and also on the _____ day of each month at the hour of _____ o'clock ____ M. *Provided however*, that whenever such day shall fall upon a legal holiday, the meeting shall be held on the next succeeding business day.

SEC. 4. Special meetings of the board of directors, to be held in the principal office of the corporation, may be called by the President; and in his absence by the Vice-President; or by any _____ members of the board. By unanimous consent of the directors, special meetings of the board may be held without notice, at any time and place.

BY-LAWS--Continued.

Sec. 6. Notice of all regular and special meetings, except those specified in the second sentence of Section 4 of this article, shall be mailed to each director, by the Secretary, at least-----days previous to the time fixed for the meeting. All notices of special meetings shall state the purposes thereof.

Sec. 6. A quorum for the transaction of business at any regular or special meeting of the directors shall consist of 3 members of the board; but a majority of those present at any regular or special meeting shall have power to adjourn the meeting to a future time.

Sec. 7. The directors shall elect the officers of the corporation, and fix their salaries; such election to be held at the director's meeting following each annual stockholders' meeting. An officer may be removed at any time by a two-thirds vote of the full board of directors.

Sec. 8. Vacancies in the board of directors may be filled by the remaining directors at any regular or special directors' meeting.

Sec. 9. The directors may, by resolution, appoint-----members of the board as an executive committee, to manage the business of the corporation during the interim between meetings of the board.

Sec. 10. At each annual stockholders' meeting the directors shall submit a statement of the business done during the preceding year, together with a report of the general financial condition of the corporation, and of the condition of its tangible property.

ARTICLE V.

OFFICERS.

SECTION 1. The officers of this corporation shall be a President, a Vice-President, a Secretary and a Treasurer, who shall be elected for the term of one year, and shall hold office until their successors are duly elected and qualified. No one shall be eligible to the office of President or Vice-President who is not a director of the corporation; and any such officer who ceases to be a director shall cease to hold office as President or Vice-President as soon as his successor is elected and qualified. The offices of Secretary and Treasurer may be held by one person.

Sec. 2. The President shall preside at all directors' and stockholders' meetings; shall have general supervision over the affairs of the corporation and over the other officers; shall sign all stock certificates and written contracts of the corporation, and countersign all checks; and shall perform all such other duties as are incident to his

BY-LAWS—Continued.

office. In case of the absence or disability of the President, his duties shall be performed by the Vice-President.

SEC. 3. The Secretary shall issue notices of all directors' and stockholders' meetings, and shall attend and keep the minutes of the same; shall have charge of all corporate books, records and papers; shall be custodian of the corporate seal; shall attest with his signature and impress with the corporate seal, all stock certificates and written contracts of the corporation; and shall perform all such other duties as are incident to his office.

SEC. 4. The Treasurer shall have custody of all money and securities of the corporation and shall give bond, in such sum and with such sureties as the directors may require, conditioned upon the faithful performance of the duties of his office. He shall sign all checks of the corporation, shall keep regular books of account and shall submit them, together with all his vouchers, receipts, records and other papers, to the directors for their examination and approval as often as they may require; and shall perform all such other duties as are incident to his office.

ARTICLE VI.

DIVIDENDS AND FINANCE.

SECTION 1. Dividends, to be paid out of the surplus earnings of the corporation, may be declared from time to time by resolution of the board of directors; but no dividend shall be paid that will impair the capital of the corporation.

SEC. 2. The funds of the corporation shall be deposited in such bank or trust company as the directors shall designate, and shall be withdrawn only upon the check or order of the Treasurer, countersigned by the President.

ARTICLE VII.

AMENDMENTS.

SECTION 1. Amendments to these by-laws may be made, ^{as provided} ~~by a vote of the stockholders representing a majority of all the stock issued and outstanding, at any annual stockholders' meeting, or at any special stockholders' meeting, when the proposed amendment has been set out in the notice of such meeting.~~

BY-LAWS—Continued.

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third Street
P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

RECEIVED
OCT 10 2007
DEPARTMENT OF
WATER RESOURCES

Attorneys for Nampa & Meridian Irrigation District

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	)	
	)	Subcase No. 63-134
	)	
Case No. 39576	)	HART DAVIS DITCH COMPANY'S
	)	FIRST SET OF DISCOVERY
	)	REQUESTS TO THE STATE OF IDAHO
	)	

INTRODUCTION

This document contains the interrogatories, requests for admissions, and requests for production being submitted to the State of Idaho for the above-referenced water right. These interrogatories, requests for admissions, and requests for production are made pursuant to and are governed by Rules 26, 33, 34 and 36 of the Idaho Rules of Civil Procedure.

GENERAL INSTRUCTIONS

1. Unless otherwise indicated, these interrogatories, requests for admissions, and requests for production refer to water right no. 63-134.

2. These interrogatories, requests for admission, and requests for production are deemed continuing in nature, and your responses are to be supplemented as additional information and knowledge becomes available or known to you as provided in Rule 26(e) of the Idaho Rules of Civil

HART DAVIS DITCH COMPANY'S FIRST SET OF DISCOVERY REQUESTS TO THE STATE OF
IDAHO - Page 1

Procedure.

3. Any reference herein to an individual, partnership, corporation, or other entity, shall include the present and past agents, employees, representatives, and assigns of that individual or entity.

4. If you withhold any information, in whole or in part, which is called for in and interrogatory or request for production on the ground that it is subject to attorney-client privilege or other privilege, identify each person or entity having knowledge of the bases for each claim of privilege or other objection.

5. If, for reasons other than alleged privilege, you do not provide a complete response to any interrogatory or request for production, state with respect to such interrogatory or request for production that a complete response is not provided and state the reason for the incomplete response.

6. Serve the original written answers to these interrogatories, request for admission, and responses to request with a copy of the notice of service on S. Bryce Farris, Ringert Clark Chartered, P.O. Box 2773, Boise, Idaho 83701.

INSTRUCTIONS FOR INTERROGATORIES

1. Provide answers to these interrogatories within thirty (30) days of service by fully setting forth each interrogatory followed by an answer or objection to each interrogatory under oath in accordance with I.R.C.P. 33.

INSTRUCTIONS FOR ADMISSIONS

1. Provide answers to these request for admission within thirty (30) days of service by fully setting orth each request for admission followed by an answer or objection to each request for admission under oath in accordance with I.R.C.P. 36.

INSTRUCTIONS FOR REQUEST FOR PRODUCTION

1. If you will make the original copies of the requested documents available at a subsequent time requested by Hart Davis Ditch Company, upon reasonable notice, then the requests for production of documents may be satisfied by mailing a true, correct, and legible copy of each and every requested document to S. Bryce Farris, Ringert Clark Chartered, P.O. Box 2773, Boise, ID 83701 within the prescribed time.

2. Each document requested to be produced shall be provided in a manner which preserves its sequential relationship with other documents being produced and shall include the file folder and folder tabs associated with its file location. If the file location is not apparent on the folder and tabs, the document shall be accompanied by information indicating from where the file was taken and such additional information as is necessary to enable Hart Davis Ditch Company to determine the document's original pre-production location.

3. You are requested to provide a response within thirty (30) days of service in accordance with I.R.C.P. 34.

Definitions:

In answering these interrogatories and requests for production, all terms used retain their normal meaning. The following terms, in addition to their commonly understood definitions, shall have the following meanings:

- A. The term "Hart Davis" refers to the Hart Davis Ditch Company.
- B. The term "you" or the "State of Idaho" refers to the Idaho Department of Parks and Recreation, including, but not limited to, Eagle Island Park, or its employees and/or agents.
- C. The term "document" shall be defined in the broadest possible manner and shall, at a

minimum, mean any original or copy of words or information, whether produced in original or copying form by printing, typing, recording, retrieval from electronic storage, manual reproduction, or other process regardless of the form. The term "document" includes, but is not limited to, writings, agreements, communication, correspondence, electronic mail messages, reports, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, records, maps, charts, plans, drawings, sketches, photographs, graphs, notes, summaries or records of meetings,, conferences or congressional hearings, summaries or reports of investigations or negotiations, opinions or reports of consultants, drafts of any document, phono-records, printouts from electronic storage or other data compilations from which information can be obtained or translated, if necessary, by the respondent through detection devices into reasonably usable form, marginal comments appearing on any document and all other writing.

D. The term "identify" means:

- (1) as to documents, give the date of each such document, the addresser's name, position, and address, the addressee's name, position and address, any file, index or other identification number, title and general character of the document, and specify the name, address and position of the person or persons having custody and control thereof. Alternatively, the document may be appended to your answer.
- (2) as to a person, or entity, give the full name, business address and telephone number, home address and telephone number, the person's current employment, position and duties, and the person's educational background.

- (3) as to conversations, including telephone communications, or meetings give:
 - a. the date, place and time such communication occurred;
 - b. the identify of each and every person between whom the communication was transmitted, who was present or who participated in the conversation, and any other person(s) who have knowledge of such communication;
 - c. the place at which such communication occurred, or in the case of telephone conversations, the location of each party; and
 - d. a detailed statement of the substance of what was discussed or what actions were taken.
- (4) as to administrative, judicial, or congressional proceedings, give:
 - a. the caption of the proceeding;
 - b. the administrative or judicial tribunal or the name of the congressional committee or subcommittee, including the business address and phone number; and
 - c. the date(s) a witness provided testimony.

E. The term "relied," when used in a request for all documents relied upon in the preparation of an answer or response, refers not only to documents containing information supporting the answer or response, but also documents reviewed, obtained, or prepared by the Claimant or its employees, agents or contractors in the course of preparing its answer or response.

INTERROGATORIES, REQUESTS FOR ADMISSION, AND
REQUESTS FOR PRODUCTION

REQUEST FOR ADMISSION NO. 1: Please admit that you are a shareholder of Hart

Davis Ditch Company.

INTERROGATORY NO. 1: If you deny, in whole or in part, Request for Admission No. 1, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 1: If you deny, in whole or in part, Request for Admission No. 1, please produce a true and correct copy of any documents and/or deeds which supports your denial.

REQUEST FOR ADMISSION NO. 2: Please admit that since the date you have owned the real property to which water right no. 63-134 is appurtenant, you have paid assessments to Hart Davis Ditch Company for the delivery of said water.

INTERROGATORY NO. 2: If you deny, in whole or in part, Request for Admission No. 2, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 2: If you deny, in whole or in part, Request for Admission No. 2, please produce a true and correct copy of any documents and/or deeds which supports your denial.

REQUEST FOR ADMISSION NO. 3: Please admit that since the date you have owned the real property to which water right no. 63-134 is appurtenant, you have paid assessments to Hart Davis Ditch Company for the operation and maintenance of the ditch which delivers said water.

INTERROGATORY NO. 3: If you deny, in whole or in part, Request for Admission No. 3, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 3: If you deny, in whole or in part, Request for Admission No. 3, please produce a true and correct copy of any documents and/or deeds which

supports your denial.

REQUEST FOR ADMISSION NO. 4: Please admit that since the date you have owned the real property to which water right no. 63-134 is appurtenant, you have paid assessments to Hart Davis Ditch Company for the operation and maintenance of the diversion structure for water right no. 63-134.

INTERROGATORY NO. 4: If you deny, in whole or in part, Request for Admission No. 4, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 4: If you deny, in whole or in part, Request for Admission No. 4, please produce a true and correct copy of any documents and/or deeds which supports your denial.

REQUEST FOR ADMISSION NO. 5: Please admit that prior to 2005 you did not assert ownership of water right no. 63-134.

INTERROGATORY NO. 5: If you deny, in whole or in part, Request for Admission No. 5, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 5: If you deny, in whole or in part, Request for Admission No. 5, please produce a true and correct copy of any documents and/or deeds which supports your denial.

REQUEST FOR ADMISSION NO. 6: Please admit that you did not assert ownership, or file a claim to ownership, of water right no. 63-134 in the Snake River Basin Adjudication.

INTERROGATORY NO. 6: If you deny, in whole or in part, Request for Admission No. 6, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 6: If you deny, in whole or in part, Request for Admission No. 6, please produce a true and correct copy of any documents and/or deeds which supports your denial.

REQUEST FOR ADMISSION NO. 7: Please admit that you are precluded from claiming ownership of water right no. 63-134 under the doctrines of waiver, estoppel and laches.

INTERROGATORY NO. 7: If you deny, in whole or in part, Request for Admission No. 7, then describe in detail the factual and legal basis for your denial.

REQUEST FOR PRODUCTION NO. 7: If you deny, in whole or in part, Request for Admission No. 7, please produce a true and correct copy of any documents and/or deeds which supports your denial.

INTERROGATORY NO. 8: Set forth and describe the last time water right no. 63-134 was beneficially used, how it was used and who owned the property at that time.

INTERROGATORY NO. 9: Set forth and describe when you intend to beneficially use water right no. 63-134 next and what lands you intend to irrigate.

REQUEST FOR PRODUCTION NO. 6: Produce all documents that evidence your claim to ownership of water right no. 63-134.

INTERROGATORY NO. 10: Water right no. 63-134 was recommended by the Idaho Department of Water Resources in the name of Hart Davis Ditch Company, please set forth and describe each and every fact, document or legal basis which you believe supports your contention that you own water right no. 63-134.

INTERROGATORY NO. 11: Please identify each and every person whom you expect to

call as a fact witness in the trial of this matter and state the substance of the facts upon which the person is expected to testify.

INTERROGATORY NO. 12: Please identify each and every person whom you know has knowledge about water right no. 63-134.

INTERROGATORY NO. 13: Please identify each and every person whom you expect to call as an expert witness in this matter. For each such person identify, please state the subject matter on which the expert is expected to testify, the substance of the opinions to which the expert is expected to testify, and the underlying facts and data upon which the expert opinions are based.

REQUEST FOR PRODUCTION NO. 7: Produce every document or tangible item that you intend to offer as an exhibit in the trial of this matter.

REQUEST FOR PRODUCTION NO. 8: For each person identified in your response to Interrogatory no. 13, please produce: (1) a curriculum vitae or resume, including a list of publications authored by that person, if any, as well as any other information which would demonstrate the person's knowledge or qualifications to state the facts or express the opinions to which the person is expected to testify; and (2) all documents containing or evidencing the underlying facts or data described in your response to Interrogatory No. 13.

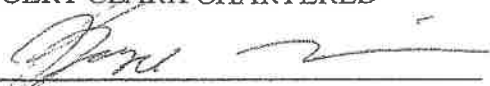
REQUEST FOR PRODUCTION NO. 9: In your Objection to water right no. 63-134, you referenced a Statement of Water Rights for Eagle Island Penitentiary Farm on Boise River. Please produce all documents which may support the Statement of Water Rights for Eagle Island Penitentiary Farm on Boise River, or which are referenced in the Statement of Water Rights for Eagle Island Penitentiary Farm on Boise River, including, but not limited to, "an agreement now on

file", "a stock certificate" for 165 shares and "the abstract" on file in the office of the Secretary of State.

INTERROGATORY NO. 14: Identify all persons who assisted in the preparation of the responses to these Interrogatories, Request for Admission and Requests for Production.

DATED this 9th day of October, 2007.

RINGERT CLARK CHARTERED

By: 

S. Bryce Farris

Attorney for Hart Davis Ditch Company

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2007, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
919 South Linden Road
Eagle, Idaho 83616

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

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

Mace Catlin Ditch Company
c/o Bob Kell
1820 Mace Road
Eagle, Idaho 83616



S. Bryce Farris

RECEIVED

OCT 10 2007

DEPARTMENT OF
WATER RESOURCES

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Hart-Davis Ditch Company, Inc.

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

In Re SRBA

Case No. 39576

)
) SUBCASE NO. 63-134
)
)

) NOTICE OF SERVICE OF
) HART-DAVIS DITCH COMPANY'S
) FIRST SET OF DISCOVERY REQUESTS
) TO THE STATE OF IDAHO
)

COMES NOW Hart-Davis Ditch Company, by and through its counsel of record, Ringert Clark Chartered, and pursuant to Idaho Rules of Civil Procedure, hereby gives notice that on the 9th day of October, 2007, Hart-Davis Ditch Company's First Set of Discovery Requests to the State of Idaho, was served by depositing the original of the foregoing document via U.S. mail to the following:

Lawrence G. Wasden
Clive J. Strong
David J. Barber
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

DATED this 9th day of October, 2007.

RINGERT CLARK CHARTERED

By: 

S. Bryce Farris

Attorney for Hart-Davis Ditch Company

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2007, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

David J. Barber
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Idaho Department of Parks
and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701-2720

Ron Sali
P.O. Box 448
Boise, Idaho 83701-0488

Ron Sali
919 South Linden Road
Eagle, Idaho 83616

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

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

Mace Catlin Ditch Company
c/o Bob Kell
1820 Mace Road
Eagle, Idaho 83616



S. Bryce Farris

S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

RECEIVED
OCT 02 2007
DEPARTMENT OF
WATER RESOURCES

Attorneys for Hart-Davis Ditch Company, Inc.

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

In Re SRBA

Case No. 39576

)
) SUBCASE NO. 63-00132, 63-00133,
) 63-00134, 63-00134A, 63-00134B,
) 63-00186A, 63-00186B, 63-17205,
) and 63-31772
)
) DISCLOSURE OF WITNESSES
)

COMES NOW, The Hart-Davis Ditch Company, Inc. (Hart-Davis), by and through its attorneys of record, Ringert Clark Chartered, and, pursuant to the July 12, 2007, Supplemental Trial Scheduling Order in the above-captioned matter, hereby notify the Court and the parties of the names of the following witnesses that they may call at the trial of this matter. Discovery is ongoing and Hart-Davis reserves the right to supplement this disclosure as necessary. Furthermore, because the course and exigencies of trial practice always involves an element of uncertainty, Hart-Davis reserves the right to call as witnesses in this matter any persons identified in the discovery conducted in this case or who may, between now and trial, become known but whose identity was not previously discovered.

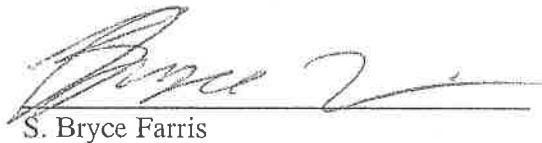
COPY

1. Jim Breszinsky
2. Ron Rippey
3. Jim Zamzow
4. Present Board member of the Hart-Davis Ditch Company, Inc.
5. Past Board members of the Hart-Davis Ditch Company, Inc.
6. Ron Sali
7. Tom Nicholson
8. Employee or agents of Eagle Island Park
9. State of Idaho, Department of Water Resources employees
10. State of Idaho, Department of Parks and Recreation employees
11. Lee Sisco, Boise River Watermaster
12. Past and present members of the Mace Catlin Ditch Company

Hart-Davis Ditch Company, Inc. also reserves the right to call rebuttal witnesses. Lastly, Hart-Davis has not retained an expert witness in this matter at this time.

Dated this 1st day of October, 2007.

RINGERT CLARK, CHARTERED

A handwritten signature in dark ink, appearing to read "S. Bryce Farris", is written over a horizontal line.

S. Bryce Farris
Attorneys for The Hart-Davis Ditch Co., Inc.

CERTIFICATE OF MAILING

I hereby certify that service of the within and foregoing document was made this 1st day of October, 2007, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

State of Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, Idaho 83716

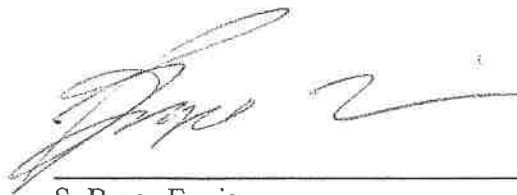
Ron Sali and Ron Sali Properties
Represented by:
Michael C. Creamer
601 W. Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N. 9th Street, Ste. 200
Boise, Idaho 83702-5700

State of Idaho
Department Natural Resources
P.O. Box 44449
Boise, Idaho 83711-4449

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098



S. Bryce Farris

**WITNESS LIST FOR SUBCASE NOS. 63-132, -133, -134,
-134A, -134B, -186A, -186B, -17205, -31772**

**In Re SRBA
Twin Falls County Civil Case No. 39576**

Report to the SRBA District Court

**Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Director
Donald V. Shaff, Adjudication Bureau Chief**

October 1, 2007

The Director of the Idaho Department of Water Resources (IDWR) submits this Witness List in response to the request of Special Master Booth, as set forth in the Supplemental Trial Scheduling Order dated July 11, 2007.

POTENTIAL WITNESSES

The individuals listed below have knowledge pertaining to this subcase and may be requested by the Court or the parties to testify. IDWR reserves the right to utilize all or a portion of the following list of witnesses in this matter:

1. Jan Shurte, Adjudication Water Rights Supervisor,
Western Regional Office
2. Danielle Favreau, GIS Analyst
3. Steve Lester, Water Rights Supervisor, Western
Regional Office

Respectfully submitted this 1st day of October, 2007.


DONALD V. SHAFF
Adjudication Bureau Chief

COPY

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 334-2690

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	)	Subcase Nos. 63-132, 63-133, & 63-134
	)	
	)	STATE OF IDAHO'S LIST OF WITNESSES
	)	
Case No. 39576	)	
	)	
	)	
	)	

The State of Idaho, through counsel, submits the following List of Witnesses that it may call during its case in chief.

David Ricks, Idaho Department of Parks and Recreation.

James Thomas, Idaho Department of Parks and Recreation.

Ron Howerton, Consultant.

DATED this 1st day of October 2007.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on this 1st day of October 2007, I caused to be served the original and copies of the STATE OF IDAHO'S LIST OF WITNESSES on the following persons by the indicated methods:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to

Special Master Ted Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
919 South Linden Rd.
Eagle, Idaho 83616

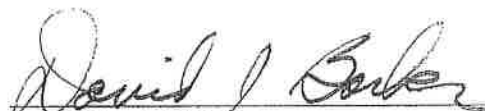
- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Mace Catlin Ditch Company
c/o Bob Kell
1820 Mace Rd.
Eagle, ID 83616

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General

COPY

RECEIVED

SEP 26 2007

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID J. BARBER (ISB #2597)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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	)	Subcase Nos. 63-00132 and 63-00133
	)	
	)	NOTICE OF SERVICE AND CERTIFICATE OF
	)	SERVICE
Case No. 39576	)	
	)	
	)	
	)	

NOTICE OF SERVICE

The State of Idaho served on the 25th day of September, 2007, a copy of the STATE OF IDAHO'S FIRST SET OF DISCOVERY REQUESTS TO MACE-CATLIN MUTUAL DITCH COMPANY on the Mace-Catlin Mutual Ditch Company by U.S. Mail, postage prepaid, addressed to the following persons at the following addresses:

Mace-Catlin Mutual Ditch Company, Inc.
c/o Bob Kell, President
1820 W. Mace Road
Eagle, ID 83616

Mace-Catlin Mutual Ditch Company, Inc.
c/o Bob Kell, President
953 S. Arbor Island Way
Eagle, ID 83616

Mace-Catlin Mutual Ditch Company, Inc.
c/o Rod Wagner, Director
3240 W. Chinden Blvd.
Meridian, ID 83642

The State of Idaho retained the original of the STATE OF IDAHO'S FIRST SET OF DISCOVERY REQUESTS TO MACE-CATLIN MUTUAL DITCH COMPANY in its files in accordance with the Idaho Rules of Civil Procedure.

DATED this 25th day of September 2007.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



DAVID J. BARBER
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on this 25th day of September 2007, I caused to be served the original and/or copy of this NOTICE OF SERVICE AND CERTIFICATE OF SERVICE on each of the following persons by the indicated method:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to the following persons:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☒ Statehouse Mail

Idaho Department of Parks and
Recreation
5657 Warm Springs Avenue
Boise, ID 83716

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☒ Statehouse Mail

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
PO Box 488
Boise, ID 83701-0488

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali Properties, Inc.
Profit Sharing Plan
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Ron Sali
100 N 9th St. Ste 200
Boise, Idaho 83702-5700

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Mace Catlin Mutual Ditch Company
c/o Rod Wagner, Director
3240 W. Chinden Blvd.
Eagle, ID 83616

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Mace Catlin Mutual Ditch Company
c/o Bob Kell
1820 W. Mace Rd.
Eagle, ID 83616

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

Mace Catlin Mutual Ditch Company
c/o Bob Kell, President
953 S. Arbor Island Way
Eagle, ID 83616

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (303) 312-7379
- ☐ Statehouse Mail

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

Not Applicable



DAVID J. BARBER
Deputy Attorney General

2007 JUL 12 AM 10 06

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) Subcase 63-00132, 63-00133, 63-00134, 63-
Case No. 39576) 00134A, 63-00134B, 63-00186A, 63-00186B,
) 63-17205, and 63-31772
)
) SUPPLEMENTAL TRIAL
) SCHEDULING ORDER

This matter came before the Special Master at the Supplemental Scheduling Conference held on July 10, 2007. The following dates shall govern the conduct of this subcase through trial:

October 1, 2007	5:00 PM	Disclosure of Witnesses. Disclosure of all witnesses, whether lay or expert, shall be completed by this deadline. All non-disclosed witnesses, except impeachment witnesses, shall be excluded from testifying in the trial unless permitted by the Special Master in the interests of justice. I.R.C.P. 16(e)(6)(J).
November 16, 2007	5:00 PM	Discovery Served and Responses Completed. Deadline for completion of all discovery, meaning that all discovery is served and response is complete, including the taking of depositions of lay and expert witnesses, all interrogatories, request for production / inspections and admissions. Motions to compel should be filed accordingly so as to accommodate this deadline.
November 30, 2007	5:00 PM	Deadline for Motions for Summary Judgment. Any party moving for summary judgment shall file a motion therefor no later than this deadline. Memorandums and affidavits in support of motions for summary judgment shall be filed contemporaneously therewith.
December 28, 2007	5:00 PM	Summary Judgment Response Briefs Due. Any responsive briefing and affidavits shall be filed by

this deadline.

- January 11, 2008 5:00 PM Summary Judgment Reply Briefs Due.** Any reply briefs shall be filed by this deadline.
- January 22, 2008 5:00 PM Hearing on Motion for Summary Judgment.** Motions for summary judgment shall be heard by this deadline. The moving party should contact the clerk of the Court to arrange for a time and location for oral argument on summary judgment.
- March 21, 2008 5:00 PM Pre-Trial Memorandum.** Either party may, but is not required, to file a pre-trial memorandum, which may include the matters set forth in I.R.C.P. 16(e).
- March 25, 2008 9:30 AM Final Pre-Trial Conference.** Pursuant to I.R.C.P. 16, a final pre-trial conference will be held at the Snake River Basin Adjudication Courthouse, 253 3rd Avenue North, Twin Falls, Idaho. Parties may participate by telephone by dialing 225-383-1099 and when prompted entering the code 675342.
- April 7, 2008 9:00 AM Trial.** The trial in these subcases will begin on April 7, 2008 at 9:00 AM and continue each day thereafter until complete. The trial will be held at the Idaho Supreme Court Building, 451 West State Street, Boise, Idaho, in the lower-level conference room.

Dated July 11, 2007



THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SUPPLEMENTAL TRIAL SCHEDULING ORDER was mailed on July 12, 2007, with sufficient first-class postage to the following:

STATE OF IDAHO DEPARTMENT OF
PARKS & RECREATION
5657 WARM SPRINGS AVE
BOISE, ID 83716
Phone: 208-334-2400

RON SALI PROPERTIES INC
PROFIT SHARING PLAN
100 N 9TH STE 200
BOISE, ID 83702-5700
Phone: 208-344-4224

RON SALI
RON SALI & RON SALI PROPERTIES
RON SALI PROPERTIES INC
Represented by:
MICHAEL C CREAMER
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720
Phone: 208-388-1200

RON SALI
100 N 9TH ST STE 200
BOISE, ID 83701
Phone: 208-344-4224

HART-DAVIS DITCH CO INC
Represented by:
S. BRYCE FARRIS
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

STATE OF IDAHO DEPARTMENT OF
Represented by:
STATE OF IDAHO
700 W JEFFERSON ROOM 210
P O BOX 44449
BOISE, ID 83711-4449
Phone: 208-334-2400

MACE CATLIN DITCH CO
C/O BOB KELL
1820 MACE RD
EAGLE, ID 83616
Phone: 208-939-4618

RON SALI
PO BOX 488
BOISE, ID 83701-0488
Phone: 208-344-4224

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

DEPARTMENT OF
WATER RESOURCES

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: See "E" below.

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

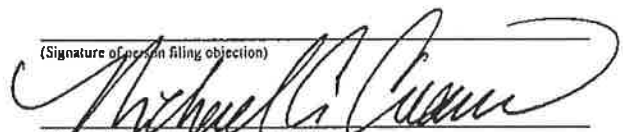
IDWR has incorrectly allocated irrigated and irrigable acres as between Hart-Davis Ditch Co. Inc. and State of Idaho, Department of Parks & Recreation in its amended recommendation.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

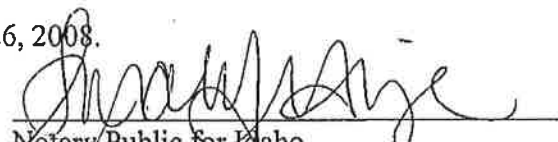
Michael C. Creamer, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on September 26, 2008.




Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 2/27/2010

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on September 26, 2008, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Hart-Davis Ditch Co. Inc.
Address: c/o Jim Breszinsky
1111 Trout Road
Eagle, ID 83616

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

S. Bryce Farris
455 S. Third Street
PO Box 2773
Boise, ID 83701-2773

State of Idaho
Department of Parks & Recreation
Statehouse Mail, P.O. Box 83720
Boise, ID 83720-0065


Signature of Objector or attorney
mailing on Objector's behalf

RECEIVED

SEP 30 2008

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 SRBA

Case No. 39576

A. Subcase 63-134

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Ron Sali and Ron Sali Properties, Inc. Profit Sharing Plan

Address: 100 North 9th Street, Suite 200
P.O. Box 488
Boise, ID 83701-0488

Daytime Phone: (208) 344-4224

Name & Address of Attorney, if any:

Michael C. Creamer / Jeffrey C. Fereday
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: State of Idaho, Department of Parks & Recreation

Address: Statehouse Mail, P.O. Box 83720
Boise, ID 83720-0065

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: Limited to irrigation of no more than 165 acres.

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

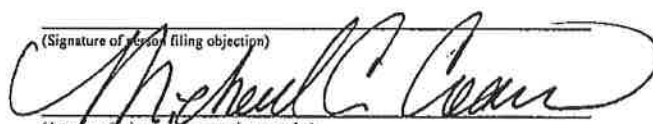
IDWR has incorrectly allocated irrigated and irrigable acres as between Hart-Davis Ditch Co. Inc. and State of Idaho, Department of Parks & Recreation in its amended recommendation.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

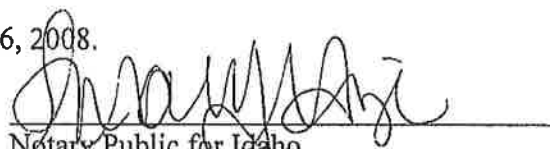
Michael C. Creamer, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on September 26, 2008.




Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 2/27/2010

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on September 26, 2008, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: State of Idaho, Department of Parks & Recreation
Address: Statehouse Mail, P.O. Box 83720
Boise, ID 83720-0065

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

Hart-Davis Ditch Co. Inc.
c/o Jim Breszinsky
1111 Trout Road
Eagle, ID 83616

S. Bryce Farris
455 S. Third Street
PO Box 2773
Boise, ID 83701-2773

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

RECEIVED

SEP 26 2008

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 SRBA
Case No. 39576

A. Subcase 63-31772
(Insert water right no.)

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: HART-DAVIS DITCH COMPANY
c/o Jim Breszinsky
Address: 1111 Trout Road
Eagle, Idaho 83616

Daytime Phone: 208-939-6712

Name & Address of Attorney, if any:
S. Bryce Farris
Ringert Law Chartered
P.O. Box 2773
Boise, ID 83701

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTORS'S REPORT

Name: HART DAVIS DITCH COMPANY
Address: 1111 Trout Road
Eagle, Idaho 83616

COPY

D. I object to the following elements as recommended in the Director's Report. (Please check the Appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: Not Applicable
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: See below.
10. ☐ **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION (S):** The place of use states that the right is limited to 209 acres within the boundary of Hart Davis Ditch Company. The place of use for this right and 63-0134 were for a total of 498 acres prior to the Special Master's decision on the ownership of 63-0134. The Special Master determined that 63-0134 should be in the name of the State of Idaho and the corresponding amount 3.30 cfs and 165 acres should be included for said right(s) for the State of Idaho and then 63-0134 subtracted from the total right and acres previously determined by IDWR for Hart Davis. Accordingly, the place of use for this right should reflect a minimum of 333 acres.

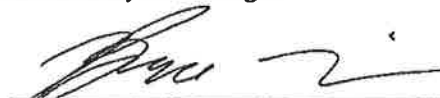
F.

VERIFICATION (must be completed)

State of Idaho)
) ss.
County of Ada)

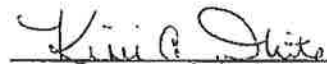
S. Bryce Farris, duly sworn, upon oath, deposes and says:

That I am the attorney for the party/claimant filing this objection, as defined by I. C. §§ 42-1401A (1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.


S. Bryce Farris

Subscribed and sworn to before me on: September 25th, 2008




Notary Public for Adams
Residing at: Boise, Idaho
My Commission Expires: 04/07/10

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will no be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on September 25th, 2008, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the Claimant of the water right at the following address:

Name: Hart Davis Ditch Company
Address: 1111 Trout Road
Eagle, Idaho 83616

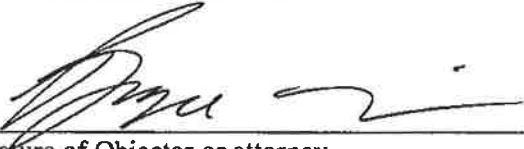
3. Copies to:

Mace Catlin Ditch Company
Represented by Jon C. Gould
Ringert Law Chartered
P.O. Box 2773
Boise, Idaho 83701-2773

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

Ron Sali
Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.
Represented by Michael C. Creamer
601 W. Bannock Street
Boise, Idaho 83701-2720

State of Idaho, Dept. of Parks and Rec.
Represented by:
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449



Signature of Objector or attorney
mailing on Objector's behalf

COPY

RECEIVED

SEP 22 2008

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 SRBA)
)
)
Case No. 39576)
)
)
)
)
)
_____)

A. Subcase Number: 63-33068
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho, Department of Parks and Recreation
Address: 5657 Warm Springs Avenue
Boise, Idaho 83716
Daytime Phone: (208) 334-2400

Name and Address of Attorney, if any:

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER (ISB # 2597)
Deputy Attorney General
Attorney Address: Office of the Attorney General
700 West State Street - 2nd Floor
P.O. Box 44449
Boise, ID 83711-4449
Attorney Phone No. (208) 334-2400

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: STATE OF IDAHO
DEPT OF PARKS & RECREATION
Address: STATEHOUSE MAIL
PO BOX 83720
BOISE, ID 83720-0065

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Points of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: Not applicable.
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____

////

////

////

////

9. ☒ **Place of Use**

Should be:

IRRIGATION in ADA County

T04N R01E S18	LOT 3 (NENW)	9.00	T04N R01E S18	LOT 4 (NWNW)	34.70
T04N R01E S18	LOT 4 (NSWNW)	35.60	T04N R01E S18	LOT 3 (SENW)	29.50
T04N R01E S18	NESW	28.10	T04N R01E S18	NWSW	35.50
T04N R01E S18	SWSW	30.50	T04N R01E S18	SESW	19.80
T04N R01W S13	NENE	25.00	T04N R01W S13	NWNE	15.60
T04N R01W S13	SWNE	23.30	T04N R01W S13	SENE	17.80
T04N R01W S13	NESE	36.80	T04N R01W S13	NWSE	35.80
T04N R01W S13	SWSE	23.50	T04N R01W S13	SESE	37.50
T04N R01W S24	NENE	3.30	T04N R01W S13	NWNE	7.70

449 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 449 acres in a single irrigation season. Combined Right Nos.: 63-134, 63-33068, 63-33070.

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):**

The objection requests correction of an error in the legal description for one quarter-quarter. In addition, the State of Idaho, Department of Parks and Recreation, requests the elimination of "lot numbers" in the legal description for the place of use for the following reasons. (i) The original designation of lot numbers at the time of the survey by the General Land Office was based on two separate channels of the Boise River that have changed dramatically since the time of the original survey by the General Land Office. Consequently, the reference to the original lot numbers at the present time is confusing. (ii) The legal description for the place of use is incomplete in its use of lot numbers. A true and correct copy of IDP&R Exhibit 2 is attached to this objection, which contains excerpts from the Master Title Plat for Township 4 North, Range 1 East B.M. and for Township 4 North, Range 1 West, Boise Meridian. IDP&R Exhibit 2 illustrates that all of the legal description for the place of use would require "lot numbers" except for the one hundred and twenty acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of section 13, Township 4 North, Range 1 West B.M. and the forty acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of section 18, Township 4 North, Range 1 East, B.M. The best solution is to eliminate the use of lot numbers all together in the legal description for the place of use.

F.

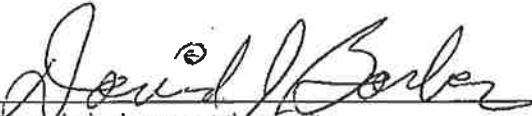
VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

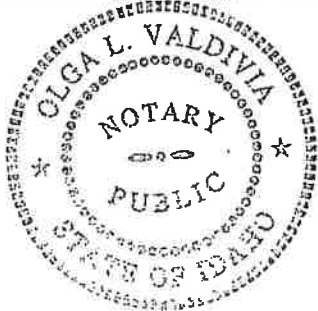
DAVID J. BARBER, Deputy Attorney General, duly sworn, upon oath, deposes and says:

That the State of Idaho, Department of Parks & Recreation, in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, Department of Parks & Recreation which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER
Deputy Attorney General


By Attorney signing in representative capacity

Subscribed and sworn to before me on: September 19, 2008
(Insert Date)




Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: 2/8/2012

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on September 19, 2008, I caused the original and the copies of this objection, including the attachment, to be served on the following persons by the method designated:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707
U.S. MAIL
2. One copy to the owner of the water right at the following address:
State of Idaho
Dept of Parks & Recreation
PO Box 83720
Boise, ID 83720-0065
STATEHOUSE MAIL
3. Copies to:
Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773
U. S. MAIL

Mace-Catlin Mutual Ditch Company
Represented by:
Jon Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773
U. S. MAIL

Ron Sali
PO Box 488
Boise, ID 83701-0488
U.S. MAIL

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.

U.S. MAIL

Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Rd
Eagle, ID 83616-5513

U.S. MAIL

Ron Sali
919 S. Linder Rd.
Eagle, ID 83616-5513

U.S. MAIL

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

U.S. MAIL

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

U.S. MAIL

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

STATEHOUSE MAIL

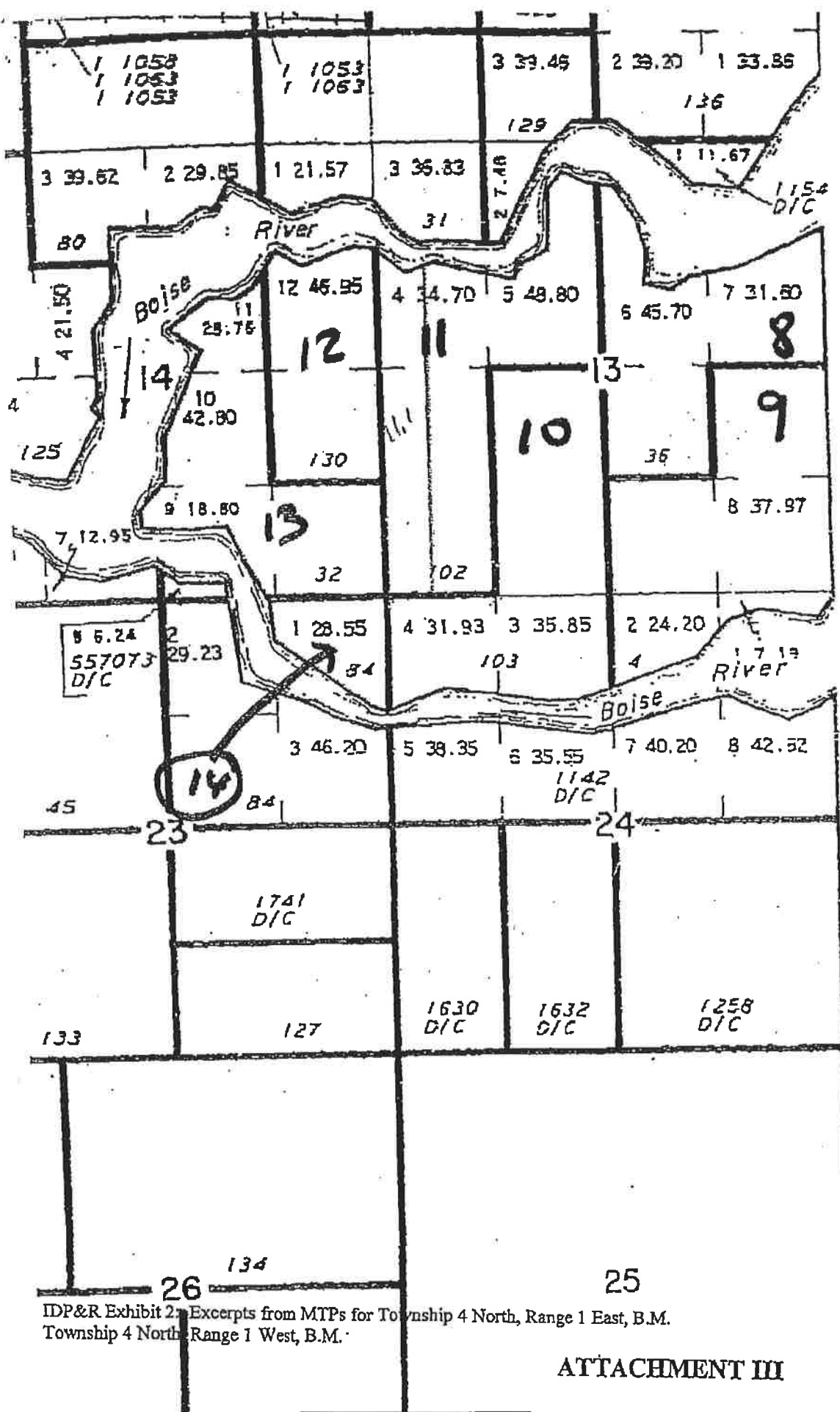
Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

(not applicable)



Signature of Objector or attorney
Mailing on Objector's behalf

4N 1W



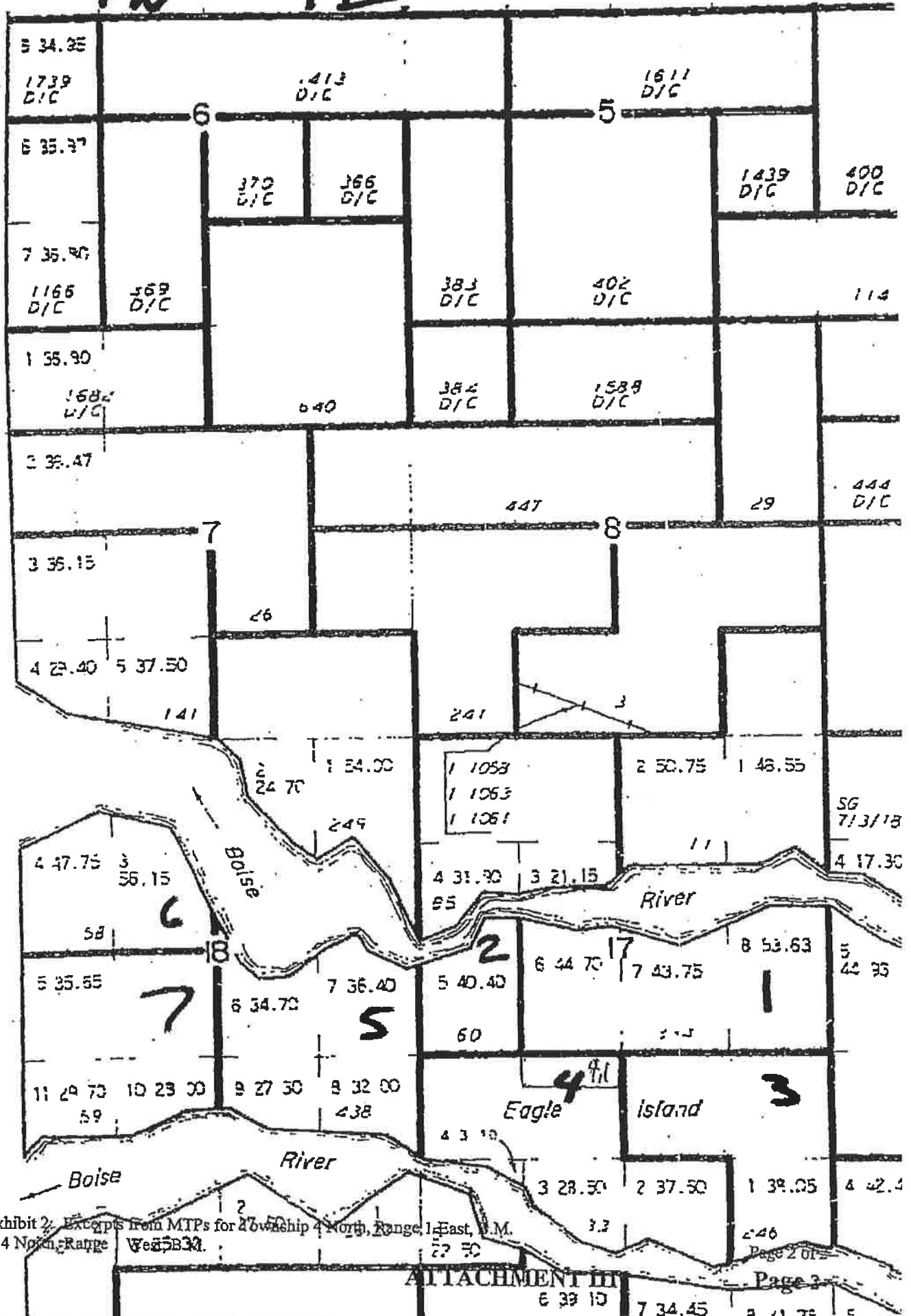
IDP&R Exhibit 2: Excerpts from MTPs for Township 4 North, Range 1 East, B.M.
 Township 4 North, Range 1 West, B.M.

ATTACHMENT III

SRBA 60155

Page 1 of 2
 Page 1

4N 1E



IDP&R Exhibit 2: Excerpts from MTPs for Township 4 North, Range 1 East, N.M.
Township 4 North, Range 1 East, N.M.

ATTACHMENT III

Page 2 of 3

Page 3

COPY

RECEIVED

SEP 22 2008

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 SRBA

Case No. 39576

A. Subcase Number: 63-33070
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho, Department of Parks and Recreation
Address: 5657 Warm Springs Avenue
Boise, Idaho 83716
Daytime Phone: (208) 334-2400

Name and Address of Attorney, if any:

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER (ISB # 2597)
Deputy Attorney General
Attorney Address: Office of the Attorney General
700 West State Street - 2nd Floor
P.O. Box 44449
Boise, ID 83711-4449
Attorney Phone No. (208) 334-2400

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: STATE OF IDAHO
DEPT OF PARKS & RECREATION
Address: STATEHOUSE MAIL
PO BOX 83720
BOISE, ID 83720-0065

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Points of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: Not applicable.
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____

////

////

////

////

////

9. ☒ **Place of Use**
Should be:

IRRIGATION in ADA County

T04N R01E S18	LOT 3 (NENW)	9.00	T04N R01E S18	LOT 4 (NWNW)	34.70
T04N R01E S18	LOT 4 (SWNW)	35.60	T04N R01E S18	LOT 3 (SENE)	29.50
T04N R01E S18	NESW	28.10	T04N R01E S18	NWSW	35.50
T04N R01E S18	SWSW	30.50	T04N R01E S18	SESW	19.80
T04N R01W S13	NENE	25.00	T04N R01W S13	NWNE	15.60
T04N R01W S13	SWNE	23.30	T04N R01W S13	SENE	17.80
T04N R01W S13	NESE	36.80	T04N R01W S13	NWSE	35.80
T04N R01W S13	SWSE	23.50	T04N R01W S13	SESE	37.50
T04N R01W S24	NENE	3.30	T04N R01W S13	NWNE	7.70
449 ACRES TOTAL					

The rights listed below are limited to the irrigation of a combined total of 449 acres in a single irrigation season. Combined Right Nos.: 63-134, 63-33068, 63-33070.

11. **I object because:**

- ☐ This water right should not exist.
☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):**

The objection requests the elimination of "lot numbers" in the legal description for the place of use for the following reasons. (i) The original designation of lot numbers at the time of the survey by the General Land Office was based on two separate channels of the Boise River that have changed dramatically since the time of the original survey by the General Land Office. Consequently, the reference to the original lot numbers at the present time is confusing. (ii) The legal description for the place of use is incomplete in its use of lot numbers. A true and correct copy of IDP&R Exhibit 2 is attached to this objection, which contains excerpts from the Master Title Plat for Township 4 North, Range 1 East B.M. and for Township 4 North, Range 1 West, Boise Meridian. IDP&R Exhibit 2 illustrates that all of the legal description for the place of use would require "lot numbers" except for the one hundred and twenty acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of section 13, Township 4 North, Range 1 West B.M. and the forty acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of section 18, Township 4 North, Range 1 East, B.M. The best solution is to eliminate the use of lot numbers all together in the legal description for the place of use.

F.

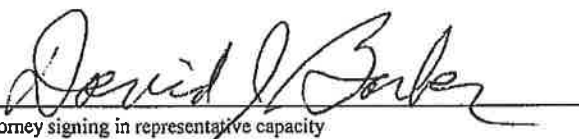
VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

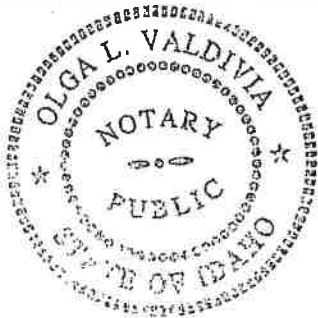
DAVID J. BARBER, Deputy Attorney General, duly sworn, upon oath, deposes and says:

That the State of Idaho, Department of Parks & Recreation, in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, Department of Parks & Recreation which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER
Deputy Attorney General


By Attorney signing in representative capacity

Subscribed and sworn to before me on: September 19, 2008
(Insert Date)




Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: 2/8/2012

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on September 19, 2008, I caused the original and the copies of this objection, including all attachments, to be served on the following persons by the method designated:

1. Original to:

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

U.S. MAIL

2. One copy to the owner of the water right at the following address:

State of Idaho
Dept of Parks & Recreation
PO Box 83720
Boise, ID 83720-0065

STATEHOUSE MAIL

3. Copies to:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

U. S. MAIL

Mace-Catlin Mutual Ditch Company
Represented by:
Jon Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

U. S. MAIL

Ron Sali
PO Box 488
Boise, ID 83701-0488

U.S. MAIL

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.

U.S. MAIL

Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Rd
Eagle, ID 83616-5513

U.S. MAIL

Ron Sali
919 S. Linder Rd.
Eagle, ID 83616-5513

U.S. MAIL

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

U.S. MAIL

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

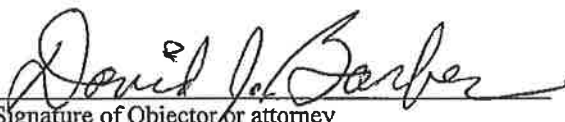
U.S. MAIL

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

STATEHOUSE MAIL

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

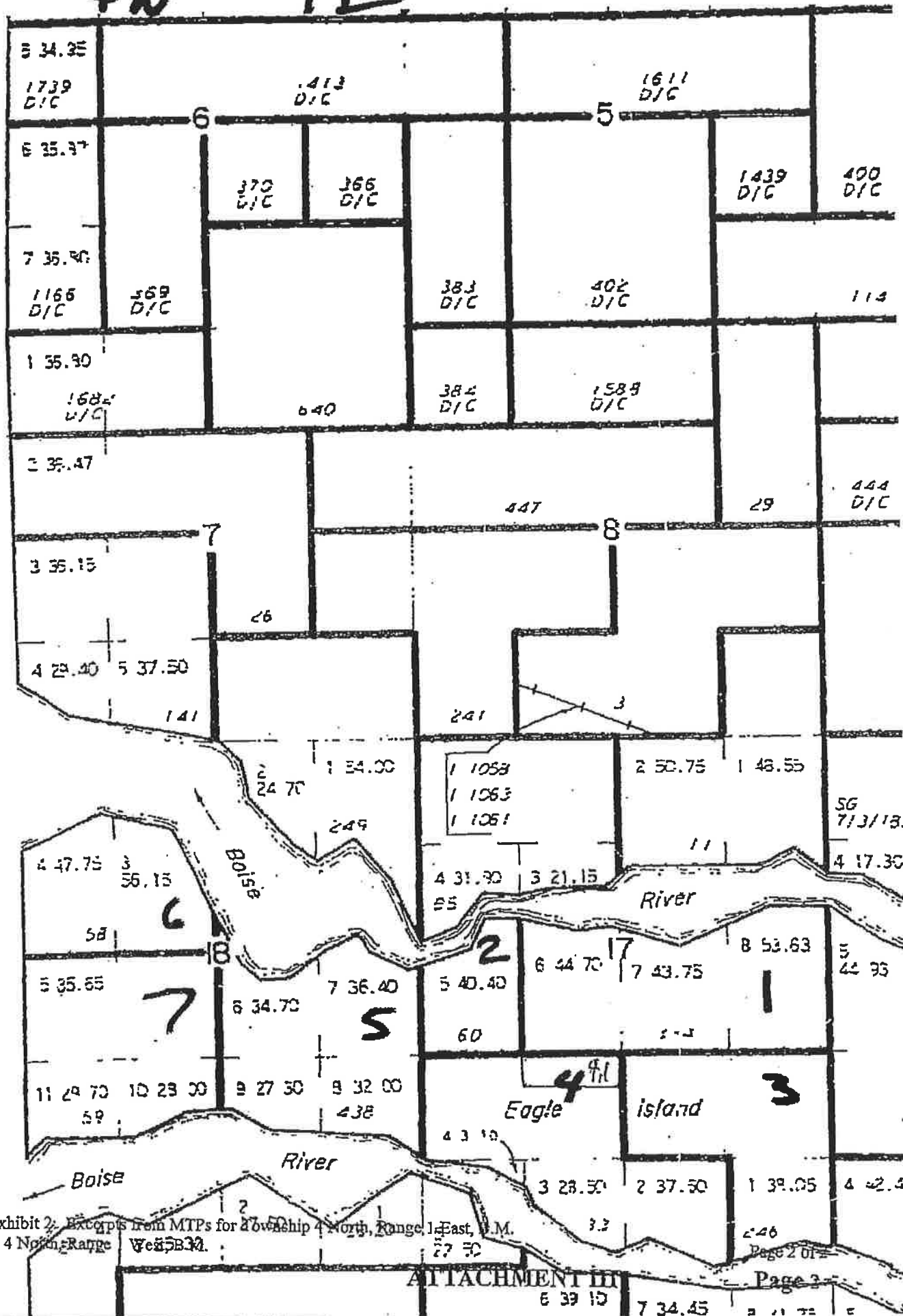
(not applicable)


Signature of Objector or attorney
Mailing on Objector's behalf

IDP&R Exhibit 2: Excerpts from MTPs for Township 4 North, Range 1 East, B.M.
Township 4 North, Range 1 West, B.M.

ATTACHMENT III

1 E



IDP&R Exhibit 2: Excerpts from MTPs for Township 4 North, Range 1 East, W.M.
Township 4 North, Range 1 East, W.M. 5B30.

ATTACHMENT ID

Page 3.

COPY

RECEIVED

SEP 22 2008

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 SRBA

Case No. 39576

A. Subcase Number: 63-00134

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: State of Idaho, Department of Parks and Recreation
Address: 5657 Warm Springs Avenue
Boise, Idaho 83716
Daytime Phone: (208) 334-2400

Name and Address of Attorney, if any:

Attorney Name: LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER (ISB # 2597)
Deputy Attorney General
Attorney Address: Office of the Attorney General
700 West State Street - 2nd Floor
P.O. Box 44449
Boise, ID 83711-4449
Attorney Phone No. (208) 334-2400

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: STATE OF IDAHO
DEPT OF PARKS & RECREATION
Address: STATEHOUSE MAIL
PO BOX 83720
BOISE, ID 83720-0065

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Points of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: Not applicable.
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____

////

////

////

////

////

9. ☒ **Place of Use**
Should be:

IRRIGATION in ADA County

T04N R01E S18	~~LOT 3~~ (NENW)	9.00	T04N R01E S18	~~LOT 4~~ (NWNW)	34.70
T04N R01E S18	~~LOT 4~~ (SWNW)	35.60	T04N R01E S18	~~LOT 3~~ (SENE)	29.50
T04N R01E S18	NESW	28.10	T04N R01E S18	NWSW	35.50
T04N R01E S18	SWSW	30.50	T04N R01E S18	SESW	19.80
T04N R01W S13	NENE	25.00	T04N R01W S13	NWNE	15.60
T04N R01W S13	SWNE	23.30	T04N R01W S13	SENE	17.80
T04N R01W S13	NESE	36.80	T04N R01W S13	NWSE	35.80
T04N R01W S13	SWSE	23.50	T04N R01W S13	SESE	37.50
T04N R01W S24	NENE	3.30	T04N R01W S13	NWNE	7.70
449 ACRES TOTAL					

The rights listed below are limited to the irrigation of a combined total of 449 acres in a single irrigation season. Combined Right Nos.: 63-134, 63-33068, 63-33070.

11. **I object because:**

- ☐ This water right should not exist.
☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):**

The objection requests the elimination of "lot numbers" in the legal description for the place of use for the following reasons. (i) The original designation of lot numbers at the time of the survey by the General Land Office was based on two separate channels of the Boise River that have changed dramatically since the time of the original survey by the General Land Office. Consequently, the reference to the original lot numbers at the present time is confusing. (ii) The legal description for the place of use is incomplete in its use of lot numbers. A true and correct copy of IDP&R Exhibit 2 is attached to this objection, which contains excerpts from the Master Title Plat for Township 4 North, Range 1 East B.M. and for Township 4 North, Range 1 West, Boise Meridian. IDP&R Exhibit 2 illustrates that all of the legal description for the place of use would require "lot numbers" except for the one hundred and twenty acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of section 13, Township 4 North, Range 1 West B.M. and the forty acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of section 18, Township 4 North, Range 1 East, B.M. The best solution is to eliminate the use of lot numbers all together in the legal description for the place of use.

F.

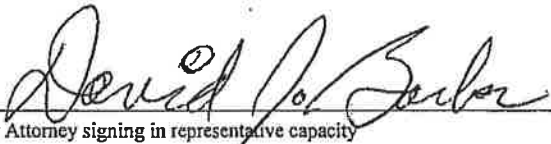
VERIFICATION (Must be Completed)

State of Idaho)
County of Ada) ss.

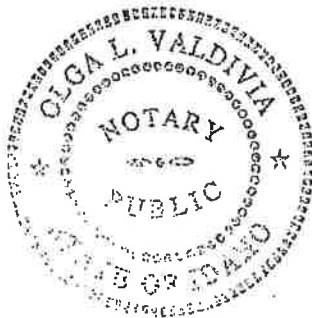
DAVID J. BARBER, Deputy Attorney General, duly sworn, upon oath, deposes and says:

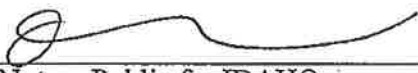
That the State of Idaho, Department of Parks & Recreation, in its proprietary capacity is filing this objection and that I am a Deputy Attorney General authorized to represent the State of Idaho, Department of Parks & Recreation which is a party/claimant in this proceeding, as defined by I.C. § 42-1401A(1) and (7), and I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID J. BARBER
Deputy Attorney General


By Attorney signing in representative capacity

Subscribed and sworn to before me on: September 19, 2008
(Insert Date)




Notary Public for IDAHO
Residing at: BOISE, ID
My commission expires: 2/8/2012

INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on September 19, 2008, I caused the original and the copies of this objection, including the attachment, to be served on the following persons by the method designated:

1. Original to:

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

U.S. MAIL

2. One copy to the owner of the water right at the following address:

State of Idaho
Dept of Parks & Recreation
PO Box 83720
Boise, ID 83720-0065

STATEHOUSE MAIL

3. Copies to:

Hart-Davis Ditch Company
Represented by:
S. Bryce Farris
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

U. S. MAIL

Mace-Catlin Mutual Ditch Company
Represented by:
Jon Gould
RINGERT CLARK
455 South Third St.
PO Box 2773
Boise, ID 83701-2773

U. S. MAIL

Ron Sali
PO Box 488
Boise, ID 83701-0488

U.S. MAIL

Ron Sali & Ron Sali Properties
Ron Sali Properties, Inc.

U.S. MAIL

Represented by:
Michael C. Creamer
GIVENS PURSELY
601 W. Bannock St.
PO Box 2720
Boise, ID 83701-2720

Ron Sali Properties, Inc.
Profit Sharing Plan
919 S. Linder Rd
Eagle, ID 83616-5513

U.S. MAIL

Ron Sali
919 S. Linder Rd.
Eagle, ID 83616-5513

U.S. MAIL

Special Master Theodore Booth
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

U.S. MAIL

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

U.S. MAIL

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

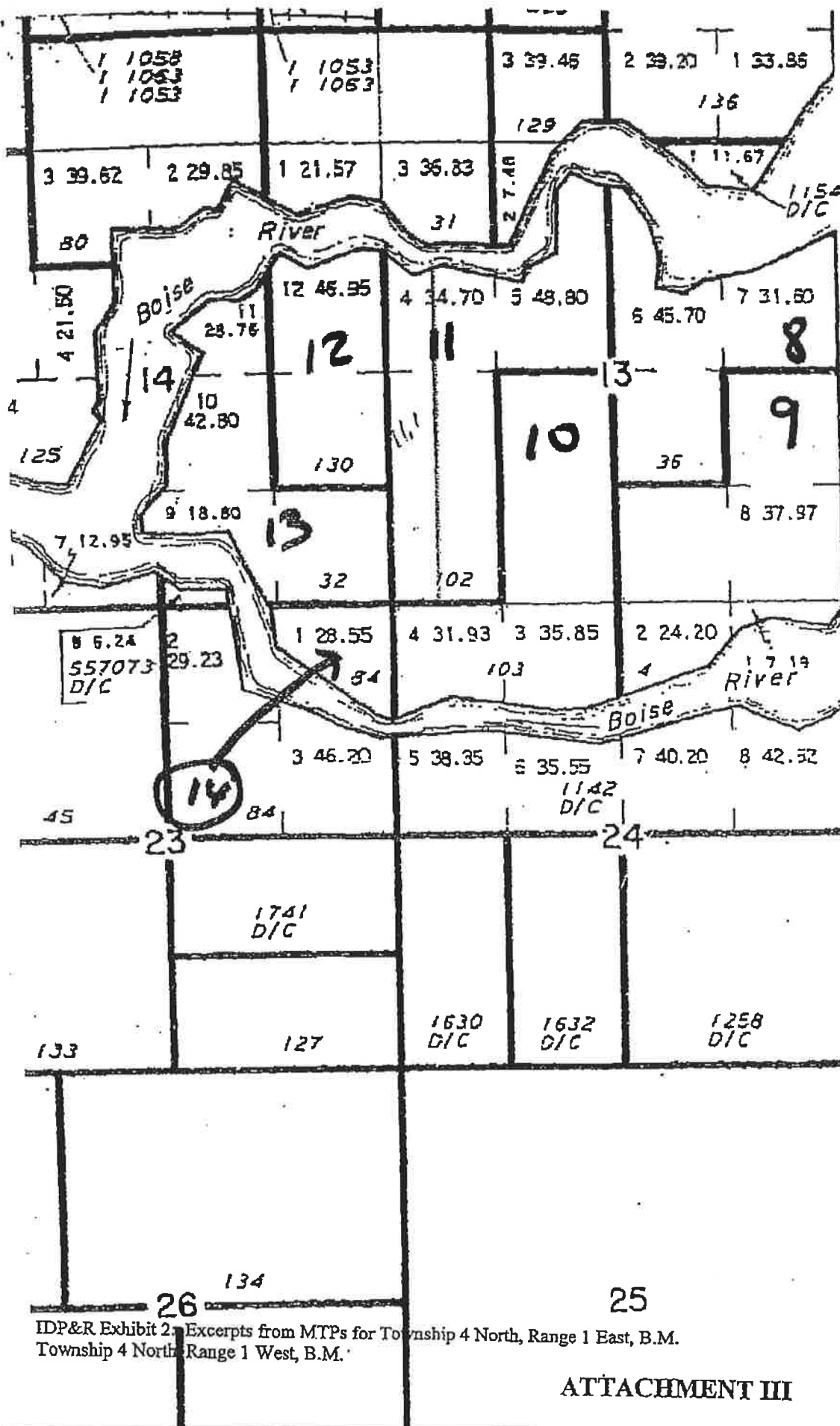
STATEHOUSE MAIL

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

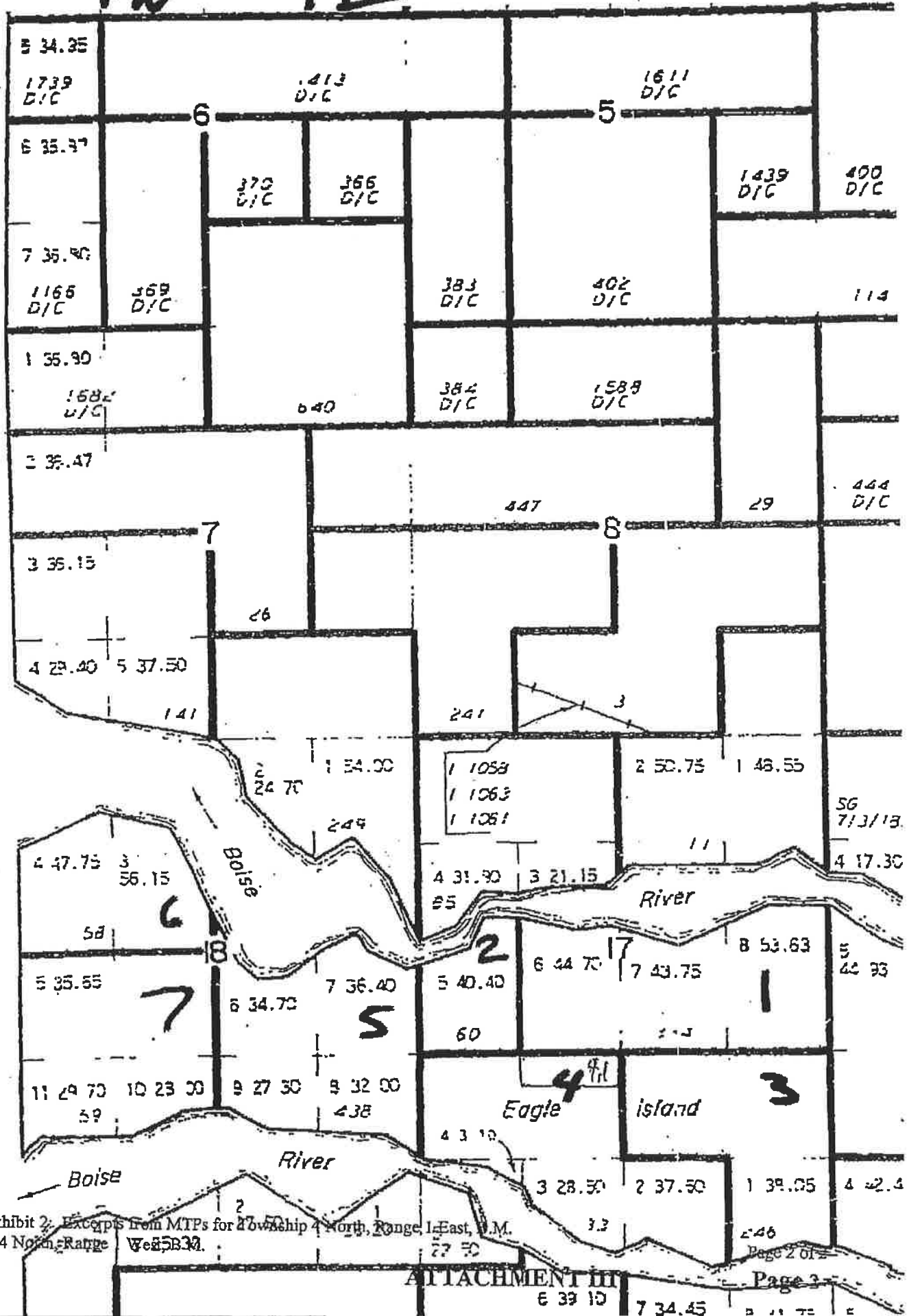
(not applicable)



Signature of Objector or attorney
Mailing on Objector's behalf



1 E



AMENDED DIRECTOR'S REPORTS

Subcase Nos. 63-132, 63-133 & 63-134

In Re SRBA

Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
David R. Tuthill, Jr., Director
Donald V. Shaff, Adjudication Bureau Chief

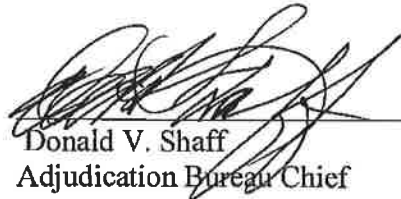
August 29, 2008

DESCRIPTIVE SUMMARY

These are Amended Director's Report submitted by the Director of the Idaho Department of Water Resources ("IDWR").

DISCUSSION

On June 4, 2008, Special Master Booth issued a *Memorandum Decision and Order on Cross Motions for Summary Judgment, Request for Amended Director's Reports from IDWR and Order Vacating Trial and Setting Status Conference*. Based upon that Order, the Director submits the attached Amended Director's Reports for filing with the Court.



Donald V. Shaff
Adjudication Bureau Chief

08/14/2008

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION</u>	<u>REASON</u>
63-132	MACE CATLIN DITCH CO C/O BOB KELL 1820 MACE RD EAGLE ID 83616	Disallowed	Recommended as 63-33067 and 63-33068.

08/14/2008

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION</u>	<u>REASON</u>
63-133	MACE CATLIN DITCH CO C/O BOB KELL 1820 MACE RD EAGLE ID 83616	Disallowed	Recommended as 63-33069 and 63-33070.

08/14/2008

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

RIGHT NUMBER: 63-134

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF PARKS & RECREATION
STATEHOUSE MAIL
PO BOX 83720
BOISE ID 83720-0065

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 3.300 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1864

POINT OF
DIVERSION:

T04N R01E S17 NWNW Within ADA County

PURPOSE AND
PERIOD OF USE:PURPOSE OF USEPERIOD OF USEQUANTITY

IRRIGATION

03/01 11/15

3.300 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

IRRIGATION in ADA County

T04N R01E S18 Lot 3 NENW	9.00	T04N R01E S18 Lot 4 NWNW	34.70
T04N R01E S18 Lot 4 SWNW	35.60	T04N R01E S18 Lot 3 SENW	29.50
T04N R01E S18 NESW	28.10	T04N R01E S18 NWSW	35.50
T04N R01E S18 SWSW	30.50	T04N R01E S18 SESW	19.80
T04N R01W S13 NENE	25.00	T04N R01W S13 NWNE	15.60
T04N R01W S13 SWNE	23.30	T04N R01W S13 SENE	17.80
T04N R01W S13 NESE	36.80	T04N R01W S13 NWSE	35.80
T04N R01W S13 SWSE	23.50	T04N R01W S13 SESE	37.50
T04N R01W S24 NENE	3.30	T04N R01W S24 NWNE	7.70

449 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 449 acres in a single irrigation season. Combined Right Nos.: 63-134, 63-33068, 63-33070.

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 - Decreed

THIS RIGHT IS DESIGNATED AS RIGHT NO. 6 IN THE STEWART DECREE AND THE BOISE RIVER WATER MASTERS RECORDS.

RIGHT NO. 63-31772 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.

WATER IS DELIVERED THROUGH THE HARTON DAVIS CANAL.

08/14/2008

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

RIGHT NUMBER: 63-382B

NAME AND ADDRESS: MACE CATLIN DITCH CO
C/O BOB KELL
1820 MACE RD
EAGLE ID 83616

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 0.440 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/14/1912

Pursuant to a call in times of scarcity, this right is senior to Bryan decreed Right Nos. 63-297, 63-372, 63-301, 63-294, 63-296, 63-298, 63-295, 63-302, 63-367, 63-373, 63-299, 63-304, 63-303 and any future splits of these rights.

POINT OF
DIVERSION:

T04N R01E S16 SESWSW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/01 11/15

0.440 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

230.5 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.

Total acres authorized for irrigation under Rights 63-33067, 63-33069 and 63-382B are a total of 230.5 acres.

This right is limited to the irrigation of 230.5 acres within the boundary of the Mace-Catlin Ditch Company.

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 - Decreed

WATER IS DELIVERED THROUGH THE MASON-CATLIN CANAL

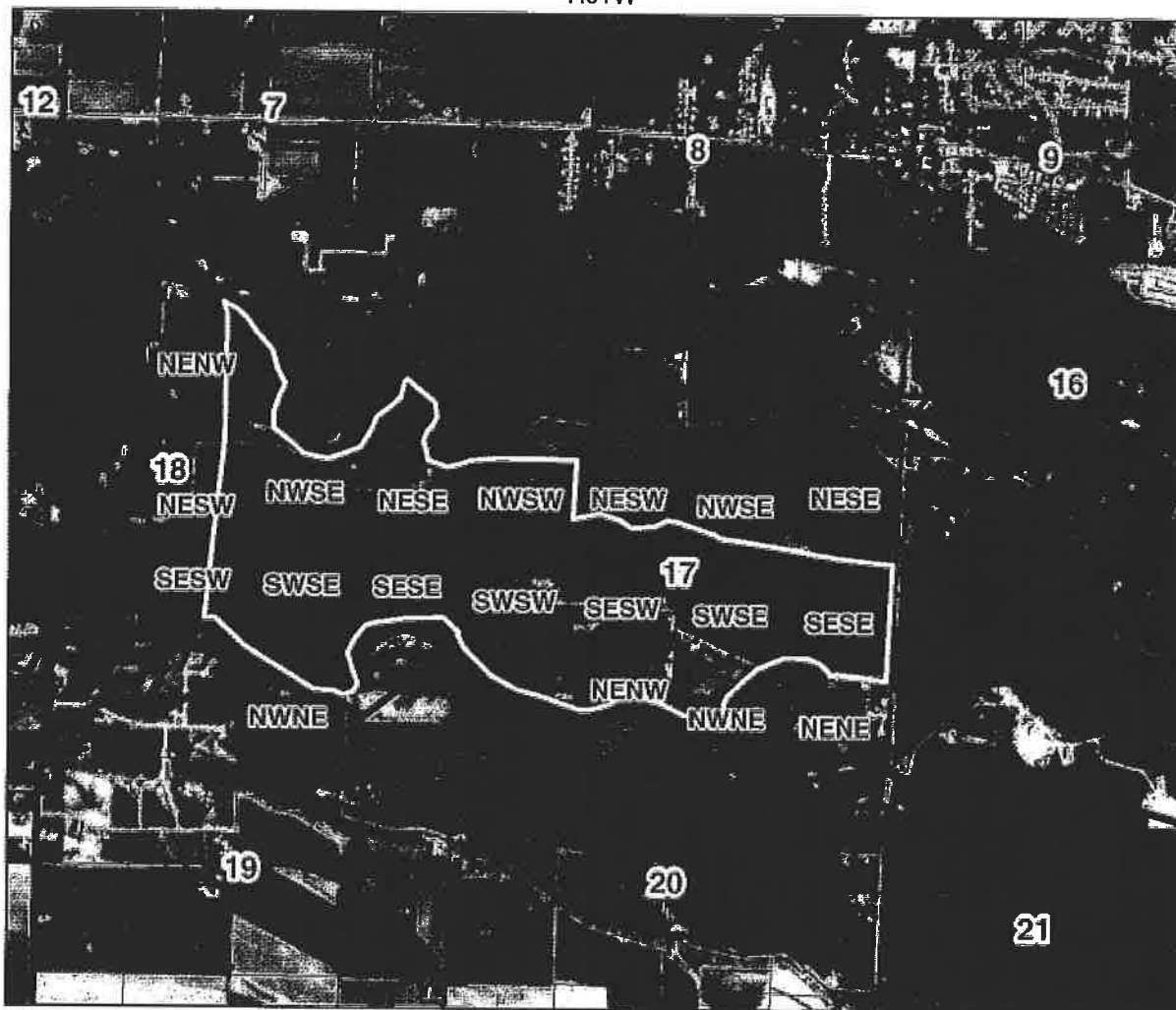
THE FOLLOWING RIGHTS ARE DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 63-33067, 63-33068, 63-33069, 63-33070, 63-382B, 63-31312, 63-31313.

DESIGNATED AS RIGHT NO 138 IN THE STEWERT DECREE AND THE BOISE RIVER WATER MASTERS RECORDS

Total acres authorized for irrigation under Rights 63-33067, 63-33069, and 63-382B are reduced by 1.0 acre per approval of Transfer 72169, and 14.5 acres under Transfer 72596, to a total of 230.5 acres based on the acres claimed under these rights in the Snake River Basin Adjudication.

63-382B, 63-33067, 63-33069
Water Service Area Boundary for Mace Catlin Ditch Co
August 12, 2008

NO4N



A number line representing a distance of 1 mile. The line is divided into 8 equal segments by tick marks. The segments are numbered 1 through 7 above the line. The line is labeled '0' at the start, '0.25' at the first tick, '0.5' at the second tick, and '1 Miles' at the end.

 Place Of Use Boundary
 Townships
 PLS Sections
 Quarter Quarters



08/14/2008

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

RIGHT NUMBER: 63-31772

NAME AND ADDRESS: HART-DAVIS DITCH CO INC
C/O JIM BRESZINSKY
1111 TROUT RD
EAGLE ID 83616

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 6.660 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1872

POINT OF
DIVERSION:

T04N R01E S17 NWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/01 11/15

6.660 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

209 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.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 209 ACRES WITHIN THE BOUNDARY OF HART-DAVIS DITCH COMPANY.

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 - Decreed

RIGHT NO. 63-134 IS ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE.

THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 63-186 AND 63-187.

THIS RIGHT IS DESIGNATED AS RIGHT NOS. 57 AND 58 IN THE STEWART DECREE AND THE BOISE RIVER WATER MASTERS RECORDS.

WATER IS DELIVERED THROUGH THE HART-DAVIS DITCH

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.

63-31772

R01W



08/14/2008

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

RIGHT NUMBER: 63-33067

NAME AND ADDRESS: MACE CATLIN DITCH CO
C/O BOB KELL
1820 MACE RD
EAGLE ID 83616

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 1.170 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.

PRIORITY DATE: 06/01/1864

POINT OF
DIVERSION:

T04N R01E S16 SESWSW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/01 11/15	1.170 CFS
AESTHETIC STORAGE	01/01 12/31	45.20 AFY
DIVERSION TO STORAGE	03/01 11/15	0.310 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE: AESTHETIC STORAGE in ADA County

T04N R01E S17	SWSW	T04N R01E S17	SESW
230.5 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 within the boundary of the Mace-Catlin Ditch Company.

Total acres authorized for irrigation under Rights 63-33067, 63-33069 and 63-382B are a total of 230.5 acres.

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 - Decreed

Total acres authorized for irrigation under Rights 63-33067, 63-33069, and 63-382B are reduced by 1.0 acre per approval of Transfer 72169, and 14.5 acres under Transfer 72596, to a total of 230.5 acres based on the acres claimed under these rights in the Snake River Basin Adjudication.

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.

Rights 63-33067, 63-4695, 63-31312 and 63-31313 under Transfer No. 72596 authorize the combined total diversion of water for aesthetic storage in the amount of 42.2 af to be used for replacement of losses caused by evaporation from 14.5 acres total surface area of seven (7) aesthetic ponds authorized for aesthetic storage under right 63-32235.

DESIGNATED AS RIGHT NO 5 IN THE STEWERT DECREE AND THE BOISE RIVER WATER MASTERS RECORDS

This right is a split from former right 63-132.

The right holder shall accomplish the change authorized by Transfer 72596 within three years of the date of this approval.

WATER IS DELIVERED THROUGH THE MASON-CATLIN CANAL

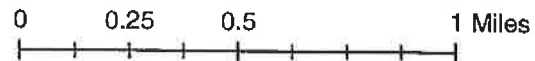
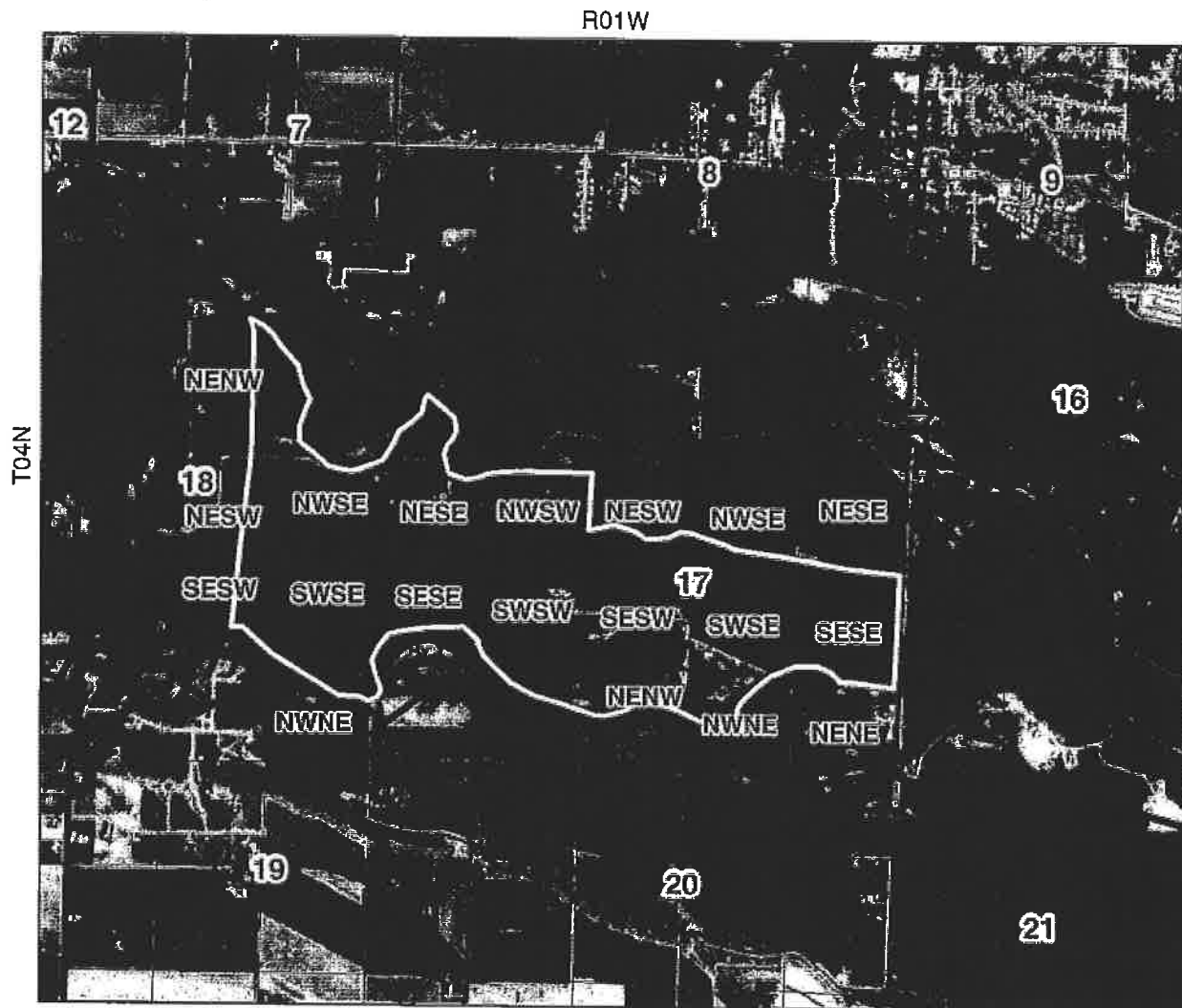
The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

THE FOLLOWING RIGHTS ARE DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 63-33067, 63-33068, 63-33069, 63-33070, 63-382B, 63-31312, 63-31313.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Transfer 72169 authorizes the diversion of water for aesthetic storage in the amount of 3.0 af to be used for replacement of losses caused by evaporation from one acre total surface area of one aesthetic pond authorized for aesthetic storage under right 63-32151.

State of Idaho
 Department of Water Resources
Water Right Recommendation
 63-382B, 63-33067, 63-33069
 Water Service Area Boundary for Mace Catlin Ditch Co
 August 12, 2008



Legend

-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters



08/14/2008

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

RIGHT NUMBER: 63-33068

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF PARKS AND REC STATEHOUSE MAIL
PO BOX 83720
BOISE ID 83720-0065

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 1.520 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1864

POINT OF
DIVERSION:

T04N R01E S16 SESWSW Within ADA County

PURPOSE AND
PERIOD OF USE:PURPOSE OF USEPERIOD OF USEQUANTITY

IRRIGATION

03/01 11/15

1.520 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

IRRIGATION in ADA County

T04N R01E S18 Lot 3 NENW	9.00	T04N R01E S18 Lot 4 NWNW	34.70
T04N R01E S18 Lot 4 NWNW	35.60	T04N R01E S18 Lot 3 SENW	29.50
T04N R01E S18 NESW	28.10	T04N R01E S18 NWSW	35.50
T04N R01E S18 SWSW	30.50	T04N R01E S18 SESW	19.80
T04N R01W S13 NENE	25.00	T04N R01W S13 NWNE	15.60
T04N R01W S13 SWNE	23.30	T04N R01W S13 SENE	17.80
T04N R01W S13 NESE	36.80	T04N R01W S13 NWSE	35.80
T04N R01W S13 SWSE	23.50	T04N R01W S13 SESE	37.50
T04N R01W S24 NENE	3.30	T04N R01W S24 NWNE	7.70

449 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 449 acres in a single irrigation season. Combined Right Nos.: 63-134, 63-33068, 63-33070.

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 - Decreed

WATER IS DELIVERED THROUGH THE MASON-CATLIN CANAL

THE FOLLOWING RIGHTS ARE DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 63-33067, 63-33068, 63-33069, 63-33070, 63-382B, 63-31312, 63-31313.

This right is a split from former right 63-132.

DESIGNATED AS RIGHT NO 5 IN THE STEWERT DECREE AND THE BOISE RIVER WATER MASTERS RECORDS

08/14/2008

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

RIGHT NUMBER: 63-33069

NAME AND ADDRESS: MACE CATLIN DITCH CO
C/O BOB KELL
1820 MACE RD
EAGLE ID 83616

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 3.630 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1871

POINT OF
DIVERSION:

T04N R01E S16 SESWSW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	3.630 CFS
Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.		

PLACE OF USE:

230.5 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.

This right is limited to the irrigation of 230.5 acres within the boundary of the Mace-Catlin Ditch Company.

Total acres authorized for irrigation under Rights 63-33067, 63-33069 and 63-382B are a total of 230.5 acres.

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 - Decreed

This right is a split from former right 63-133.

WATER IS DELIVERED THROUGH THE MASON-CATLIN CANAL

DESIGNATED AS RIGHT NO 52 IN THE STEWERT DECREE AND THE BOISE RIVER WATER MASTERS RECORDS

THE FOLLOWING RIGHTS ARE DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 63-33067, 63-33068, 63-33069, 63-33070, 63-382B, 63-31312, 63-31313.

Total acres authorized for irrigation under Rights 63-33067, 63-33069, and 63-382B are reduced by 14.5 acre per approval of Transfer 72596 to a total of 230.5 acres based on the acres claimed under these rights in the Snake River Basin Adjudication.

August 12, 2008

12 7 8 9
 16
 18
 NENW
 NESW NWSE NESE NWSW NESW NWSE NESE
 SESW SWSE SESE SWSW SESW 17 SWSE SESE
 NWNE NENW NWNE NENE
 19 20 21

Place Of Use Boundary

 Townships

 PLS Sections

 Quarter Quarters

DRAFT



08/14/2008

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

RIGHT NUMBER: 63-33070

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF PARKS & RECREATION
STATEHOUSE MAIL
PO BOX 83720
BOISE ID 83720-0065

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 4.160 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1871

POINT OF
DIVERSION:

T04N R01E S16 SESWSW Within ADA County

PURPOSE AND
PERIOD OF USE:PURPOSE OF USEPERIOD OF USEQUANTITY

IRRIGATION

03/01 11/15

4.160 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

IRRIGATION in ADA County

T04N R01E S18 Lot 3 NENW	9.00	T04N R01E S18 Lot 4 NWNW	34.70
T04N R01E S18 Lot 4 SWNW	35.60	T04N R01E S18 Lot 3 SENW	29.50
T04N R01E S18 NESW	28.10	T04N R01E S18 NWSW	35.50
T04N R01E S18 SWSW	30.50	T04N R01E S18 SESW	19.80
T04N R01W S13 NENE	25.00	T04N R01W S13 NWNE	15.60
T04N R01W S13 SWNE	23.30	T04N R01W S13 SENE	17.80
T04N R01W S13 NESE	36.80	T04N R01W S13 NWSE	35.80
T04N R01W S13 SWSE	23.50	T04N R01W S13 SESE	37.50
T04N R01W S24 NENE	3.30	T04N R01W S24 NWNE	7.70

449 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 449 acres in a single irrigation season. Combined Right Nos.: 63-134, 63-33068, 63-33070.

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 - Decreed

THE FOLLOWING RIGHTS ARE DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 63-33067, 63-33068, 63-33069, 63-33070, 63-382B, 63-31312, 63-31313.

DESIGNATED AS RIGHT NO 52 IN THE STEWERT DECREE AND THE BOISE RIVER WATER MASTERS RECORDS

WATER IS DELIVERED THROUGH THE MASON-CATLIN CANAL

This right is a split from former right 63-133.

CERTIFICATE OF SERVICE

I certify that on August 29, 2008, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

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

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☒ Facsimile
☒ E-mail

2. Copies to:

Director of IDWR
P.O. Box 83720
Boise, ID 83720-0098

Ron Sali & Sali Properties
Represented by:
Michael C. Creamer
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

State of Idaho, Dept. of Parks and Rec.
Represented by:
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83734

Hart-Davis Ditch Co., Inc.

Represented by:

S. Bryce Farris
455 S. Third Street
P.O. Box 2773
Boise, ID 83701-2773

Mace Catlin Ditch Co.

Represented by:

Jon C. Gould
Ringert Clark Chartered
P.O. Box 2773
Boise, ID 83701

Ada County Courthouse

200 W. Front Street
Boise, ID 83702-7300



Signature of Person Mailing Form