

Gary and Helen DeMoss  
Bray Lake Ranch  
P.O. Box 61  
Bliss, ID 83314  
(208)352-4385 or (208)539-5853

October 13, 2006

Re: Information on Dry Creek for Basin 37 water right objections

We are enclosing information that we hope will give you a better understanding of Dry Creek.

- So you can see the part of Dry Creek we divert from and how it relates to where you are located, we have highlighted a large map. A second map showing Dry Creek decreed right's place of use is attached to a listing of decreed rights on Dry Creek and the rights remaining.
- A recent search at the Gooding County Courthouse came up with some additional documents pertaining to Dry Creek Decree 2791. These refer to and agree upon the type of creek Dry Creek is, and that it does not interfere with the use of the waters of Big Wood River or any other river. If you would like a copy of the decree and the rest of the case, just let us know.
- At the initial hearing, Dan Steenson asked if there were any Dry Creek measurements available. Aside from records we have on filling Bray Lake, the only actual measurement on Dry Creek we have found was made by Brockway Engineering in May 1999 for a Dry Creek Partners mitigation project. We have enclosed the page pertaining to the measurement.

In speaking to Bill Novinger of Dry Creek Partners, they relinquished their 8 cfs Dry Creek water right since they felt there wasn't enough to use. When asked if it was safe to say that on a dry year, if a downstream user made a call on Dry Creek, would there be any possibility of Dry Creek water making it downstream - he said no. On a dry year they still experience some flooding, but it is from the Black Canyon Drainage which comes in below our diversion. Bill Novinger said he would be available to discuss Dry Creek if anyone wants to talk to him directly (208)934-4600 or cell phone (208)308-4600.

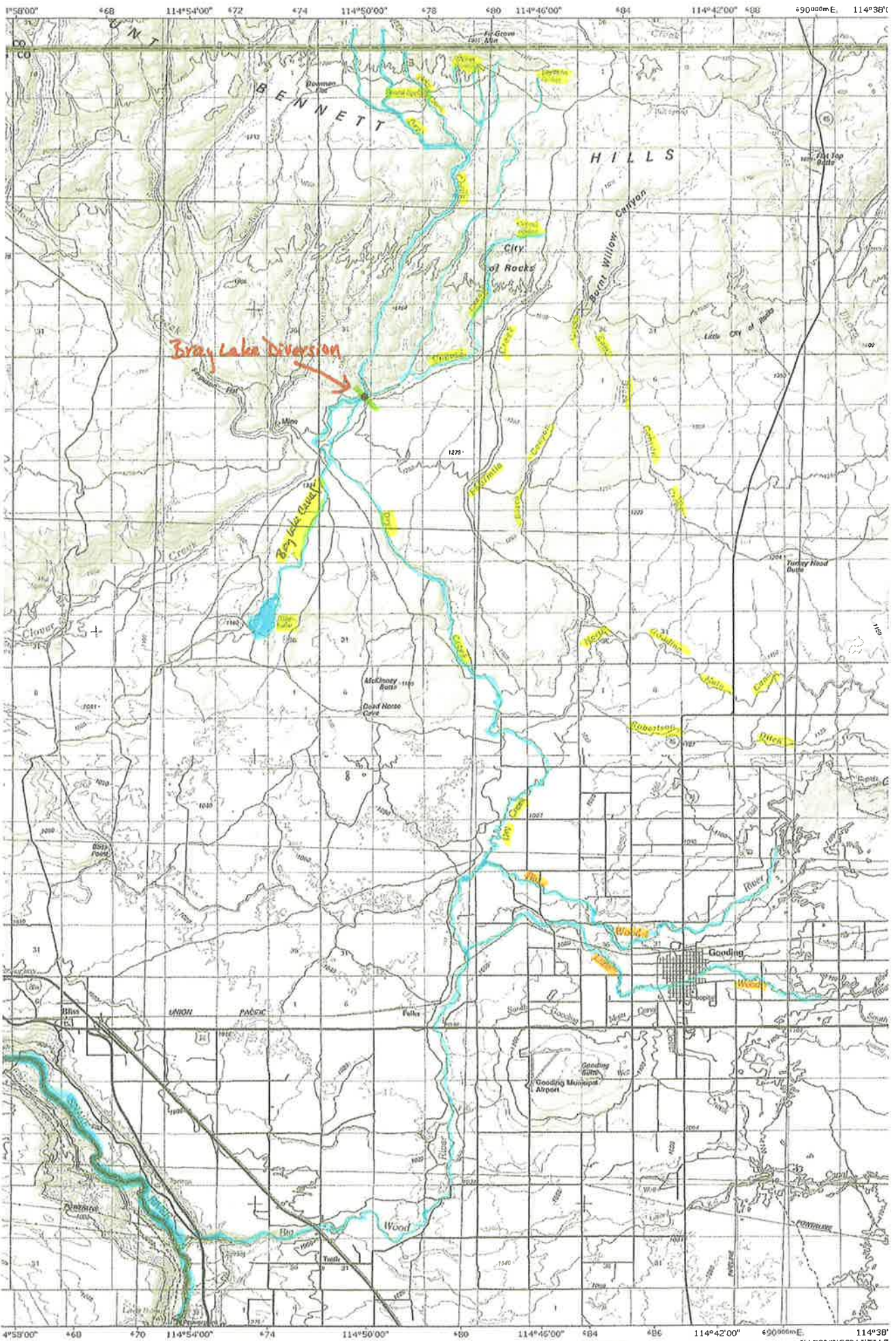
Pat O'Maley still holds a 3 cfs Dry Creek water right. You can get his opinion on Dry Creek at 934-0939.

Please call if you have any questions or would like us to drive you up to the Bray Lake Dry Creek diversion.

Sincerely,

*Gary DeMoss Helen DeMoss*

Gary and Helen DeMoss



Map was printed from a seamless mosaic of detailed USGS maps at the Map Machine  
National Geographic Holdings, Inc. As with all maps, inaccuracies may exist  
without notification. Their accuracy is not associated with the use of this map.

TN / MN

Scale 1 : 100,000



1 Idaho City  
2 Sun Valley  
3 Arco

NAD83/WGS84 UTM Z

\$ 9.95



RECEIVED  
AUG 25 2005  
DEPARTMENT OF  
WATER RESOURCES

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING.

HOWARD H. KELSO,

Plaintiff,

-vs-

LEONARD STROUT,

Defendant.

DECREE

Now on this 8<sup>th</sup> day of August, 1945, the above matter came duly on hearing in court being in regular session; the Honorable D. H. Sutphen, Judge, present and presiding. The plaintiff, Howard H. Kelso, present in person and by his attorneys, Bissell & Bird, and the defendant not being present.

Whereupon the defendant heretofore filed a demurrer, which said demurrer was by the said defendant withdrawn, and defendant refused to plead further; And whereas, the said defendant by his attorneys aforesaid having refused to plead further, upon motion of the plaintiff, the default of the defendant for failure to plead was duly entered, and the matter came duly on for hearing as on default.

Whereupon plaintiff introduced his evidence and rested.

The defendant by the making of such default having waived the making of findings of fact and conclusion of law; and the court being fully advised in the premises it is hereby ordered, adjudged, and decreed that the plaintiff and defendant are the joint owners of that certain artificial reservoir, commonly known as the Bray's Lake Reservoir, located on Sections 25, 26, 35, 36, Twp. 4 S. R. 13 E. 1 M. The boundary lines of such said reservoir being shown by the map submitted with the reservoir filing originally filed in the United States Land Office, Hailey, Idaho, and now on file in the United States Land Office at Blackfoot, Idaho. Said file being denominated as reservoir file map, Hailey Land Office, #162, which said map is hereby especially referred to and

SCANNED

AUG 25 2005

made a part of this decree with the same force and effect as if actually attached hereto.

Together with that certain ditch which diverts water from Dry Creek into the said Bray's Lake Reservoir, which said ditch diverts water from Dry Creek at a point near the SE corner of Sec. 6, Twp. 4 S.R. 14 E.M., and then extending in a southwesterly direction approximately five miles to the said Bray's Lake Reservoir at a point in the NW 1/4 Sec. 25, Twp. 4 S.R. 14 E.M.

That the plaintiff is the owner of an undivided one-fifth interest in and to said reservoir and ditch, and of the right to use one-fifth of the water diverted by said canal and impounded in said reservoir.

That said defendant, Leonard Strout, is the owner of four-fifths interest in said reservoir, ditch and water.

That the water so diverted from Dry Creek is impounded and reservoired during the high water season, or flood water season of Dry Creek, to be used and applied to the irrigation of the lands of plaintiff and defendant during the irrigation season of each year, beginning on April 1, and ending October 31, of each year.

That it is necessary, in order to irrigate the lands of the plaintiff and defendant that such water aforesaid be impounded in said reservoir, and diverted during the irrigation season for use upon the lands of the plaintiff and defendant.

It is ordered, adjudged, and decreed, that in order to administer the said ditch, reservoir, and impounded water, that it is essential and necessary that a suitable person be appointed to divide and distribute the water aforesaid during each irrigating season to the plaintiff and defendant in accordance with their rights aforesaid. To wit; one-fifth to the plaintiff and four-fifths to the defendant. It is further ordered, adjudged, and decreed that the expense of maintaining the diversion ditch, reservoir structure, control works, and diversion works from said reservoir, be apportioned

and assessed to and against the plaintiff and the defendant in accordance with their several interests. That is to say, that the plaintiff shall pay one-fifth of such expenses including the salary of the person designated by the court as watermaster, and that the defendant shall pay four-fifths of such expenses.

It is further ordered, adjudged, and decreed that some suitable person shall be, by the court, designated and appointed as watermaster for the irrigation season of 1945. And that A. H. Henderson of Bliss, Idaho, be appointed as such watermaster to serve in such capacity until the first day of April 1946. That the said Henderson, or in case of his refusal to act as such watermaster, then such person who is by the court appointed to so act, shall make a preliminary estimate of the necessary costs and expenses of maintaining and operating said ditch and reservoir for the irrigation season of the year, 1945. And that before either party is entitled to withdraw water from said Bray's Lake Reservoir, he shall pay to the said Henderson, or such other person who may be appointed, his proportion of the estimated costs of such operation.

It is further ordered, adjudged, and decreed that the court shall retain jurisdiction of this action, for the purpose of enforcing this decree, and that on or before the opening of the irrigating season of each succeeding year, the court may appoint some suitable person as watermaster to operate and control said water, ditch, and reservoir for the ensuing years. Said appointment be made upon request of either party upon five days notice.

It is further ordered, adjudged, and decreed that the defendant and his successors in interest, and the plaintiff and his successors in interest be perpetually enjoined and restrained from withdrawing any stored water from said reservoir during the non-irrigating season, viz: between October 31 and April 1 each year hereafter. And from, in any way, interfering with the watermaster in performing his duties. That the person appointed by this court to take charge of, manage, regulate, and control such reservoir, and

the waters therein, be and hereby is empowered to look and keep locked and regulate the discharge gate from said reservoir during the irrigation season. Such person be further empowered to deliver to the plaintiff and defendant their proportionate share of the water impounded in said reservoir, during the irrigation season of each year hereafter. That such person be further authorized and empowered to manage, repair, and clean and maintain such diversion ditch and such reservoir; to demand and receive of the plaintiff one-fifth of the expenses incurred in such operation and demand and receive four-fifths of such expenses so incurred from the defendant. That the person appointed shall be and here is authorized and empowered to withhold and refuse to make delivery of water to either party hereto until such estimated costs of maintenance apportioned to each party for the current year shall have been paid.

Dated at Gooding, Idaho this 8<sup>th</sup> day of May, 1945.

  
District Judge

SCANNED

AUG 25 2005

**IN THE DISTRICT COURT**

Of the Fourth Judicial District of the State of Idaho,

In and for the County of Gooding

HOWARD H. KELSO

Plaintiff

vs.

LEONARD STROUT

Defendant

Case No. 3656

I, the undersigned, Clerk of the District Court of the Fourth Judicial District of said State, in and for said County, do hereby certify the foregoing to be a true copy of the judgment entered in the above entitled action, and recorded in Judgment Book 7 of said Court, page 270. And I further certify that the foregoing papers hereto annexed constitute the Judgment Roll in said action.

WITNESS my hand and the seal of said Court this 20th

day of August, A. D. 1915.

Bert Bowler

Clerk.

By

Deputy Clerk.

SCANNED

AUG 25 2005

3656

SEVERT SWENSON, JR.  
SWENSON, BOTIMER & SCOGGIN  
ATTORNEYS AT LAW  
122 FOURTH AVENUE WEST  
GOODING, IDAHO 83330  
Telephone (208) 934-8414

*Mailed to Court  
June 24-86*

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

HOWARD H. KELSO,  
Plaintiff,

vs.

LEONARD STROUT,  
Defendant.

CASE NO. \_\_\_\_\_

MOTION FOR APPOINTMENT  
OF WATERMASTER

COMES NOW, Idaho State Bank, the successor in interest of Leonard Strout, and moves the Court for the appointment of a watermaster as provided in the original decree. Idaho State Bank moves and requests that David Miller be appointed as the watermaster.

It is further moved that this appointment continue on a year to year basis, subject to annual review by the parties, and that the parties have the authority to meet and appoint any successor watermaster without further application to this court.

DATED: May 21, 1986.

*S. Donald Rowe*  
S. Donald Rowe  
Idaho State Bank

SEVERT SWENSON, JR.  
SWENSON, BOTIMER & SCOGGIN  
ATTORNEYS AT LAW  
122 FOURTH AVENUE WEST  
GOODING, IDAHO 83330  
Telephone (208) 934-8414

DISTRICT COURT  
GOODING CO. IDAHO  
FILED

'86 JUL 15 AM 11:33

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

HOWARD H. KELSO,  
Plaintiff,  
vs.  
LEONARD STROUT,  
Defendant.

CASE NO.

3656

STIPULATION OF PARTIES  
FOR APPOINTMENT OF  
WATERMASTER

COMES NOW, Donald T. Bray, successor in interest of Howard Kelso, and the Idaho State Bank, the successor in interest of Leonard Strout, and stipulate and agree as follows:

1. That David Miller be appointed by the Court as watermaster of Bray Lake Reservoir with all the authority and duties as set forth in the decree.
2. That the Court's appointment be a continuing one, unless he resigns or is removed for cause by the parties hereto.
3. That the Court grant the parties the right by unanimous vote to hereafter appoint the watermaster without application to this Court in the manner provided by the statutes governing water districts.

DATED:

9 July 1986

Donald T. Bray

DATED:

20 July 1986

Donald Rowe  
Idaho State Bank

## AFFIDAVIT

BE IT ACKNOWLEDGED, that Le Roy Strout  
 of Gooding Idaho

the undersigned

deponent, being of legal age, does hereby depose and say under oath as follows:

My Grand Father, Leonard Strout was the original owner of  
 Bray Lake Ranch. He had some cattle & horses & leased Pasture Fall Pasture  
 for horse & cattle feed. He also raised up to 100 head of Hogs, through the  
 at a time. All this live stock was watered primarily from Bray Lake water  
 from the north & south pastures & some ponds.

And I affirm that the foregoing is true except as to statements made upon information and  
 belief, and as to those I believe them to be true.

Witness my hand under the penalties of perjury this 3 day of April, 2006  
 (year).

Signature of Witness

Signature of Deponent

Name of Witness

Name of Deponent

Address of Witness

310 19th Ave W Gooding Id 83330  
 Address of Deponent

STATE OF Idaho  
 COUNTY OF Gooding }

On April 3rd, 2006 before me, the undersigned, personally appeared Le Roy Strout  
 , personally known to me (or proved to me  
 on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument  
 and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
 his/her/their signature(s) on the instrument the person(s), on the entry upon behalf of which the person(s) acted,  
 executed the instrument.

WITNESS my hand and official seal.

Signature Donna Omas  
 Residing at Gooding, Idaho  
 Commission Expires 6-9-2006

DONNA OMAS  
 NOTARY PUBLIC  
 STATE OF IDAHO

Affirm ☒ Known ☐ Unknown ☐  
 ID Produced ☐

(Seal)

SEVERT SWENSON, JR.  
SWENSON, BOTIMER & SCOGGIN  
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122 FOURTH AVENUE WEST  
GOODING, IDAHO 83330  
Telephone (208) 934-8414

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

HOWARD H. KELSO,

Plaintiff,

vs.

LEONARD STROUT,

Defendant.

CASE NO. 3656

ORDER

THE COURT having reviewed the Stipulation of the parties and  
the original decree filed herein;

IT IS HEREBY ORDERED AS FOLLOWS:

1. That David Miller is hereby appointed watermaster of Bray  
Lake Reservoir with all powers and duties set forth in the origi-  
nal decree.

2. That this appointment shall continue on a year to year  
basis unless such watermaster resigns or is removed from the  
position by the parties hereto.

3. That all subsequent watermasters shall be selected by  
the parties in conformance with the laws governing the same  
without the necessity of application to this Court.

DATED: August 4, 1986.

*Philip M. Becker*  
District Judge

## 1932 Decree #2791 Dry Creek Water Rights

| <u>Priority</u> | <u>Right #</u> | <u>CFS</u> | <u>Owner</u>                               |
|-----------------|----------------|------------|--------------------------------------------|
| 2/1/1917        | 37-856         | 32.0       | Strout/DeMoss                              |
| 2/1/1917        | 37-857         | 8.0        | Crist/Bray                                 |
| 5/1/1886        | 37-858         | 1.4        | Crist                                      |
| 3/1/1914        | 37-859         | 10.0       | Schreiber/ Dry Creek Partners<br>O'Maley 3 |
| 1/1/1905        | 37-860         | 10.0       | Peterson-Leanau SS                         |
| 3/1/1886        | 37-861         | .6         | Peterson/Pensco                            |
| 4/1/1902        | 37-1186        | 8.0        | Peterson/Pensco                            |
| Decree Total    |                | 70.0 CFS   |                                            |

## Current Recommended Rights Remaining From 2791

|          |        |         |
|----------|--------|---------|
| 37-856   | 32 CFS | DeMoss  |
| 37-857   | 8      | Bray    |
| 37-859   | 3      | O'Maley |
| 37-861   | .6     | Pensco  |
| 37-1186  | 8.0    | Pensco  |
| 51.6 CFS |        |         |

The only other water rights on Dry Creek and streams draining into upper Dry Creek are held by the United States for stockwater,



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR THE COUNTY OF GOODING.

W.L. SCHRIEBER and MRS. W.L. SCHRIEBER,  
husband and wife, J. W. PETERSON and  
MRS. J. W. PETERSON, husband and wife;  
LESTER KANAUSS, a single man, and  
LEONARD E. STROUT and OLGA STROUT, hus-  
band and wife,

Plaintiffs,

vs.

AUGUST CRIST, E. L. CRIST, and ALLEN  
T. CRIST,

Defendants.

For Decree 2791  
ANSWER TO ANSWER AND  
CROSS-COMPLAINT OF THE  
DEFENDANTS

Come now the plaintiffs above named and in answer to the answer  
and cross-complaint of the defendants herein and of each of them  
deny and allege as follows:

-1-

Deny each and every allegation in said complaint contained which  
is not hereinafter specifically admitted.

-2-

Admit that Dry Creek mentioned in said complaint is an inter-  
mittent and seasonable stream and having its source in the foot-  
hills in the Sawtooth Mountains in the Counties of Camas and Good-  
ing, Idaho, and flows thence in a general southerly direction  
through Townships 3, 4 and 5 of Range 14 and at flood times or dur-  
ing times of high water discharges into Big Wood River at a point  
in Section 22, Twp. 5 S. R. 14 E. S. 14 E.; that said Dry Creek is an  
intermittent and seasonable water course and carries water only dur-  
ing a part or portion of the year and that the waters of Dry Creek  
do not ordinarily, during the irrigation season, contribute to the  
flow of Big Wood River and that during the irrigation season  
the use of such waters as may flow into Dry Creek does not in-  
terfere with the use of the waters of said Big Wood River by the

Registers thereof.

-3-

As to whether or not the defendant E. L. Crist is now or has been since the 1st day of May, 1886, the owner or in possession of the property described in paragraph 3, these plaintiffs do not have sufficient knowledge or information to enable them to answer and placing their denial on that ground deny each and every allegation of said paragraph.

-4-

Admit that the land described in paragraph 4 of the answer is agricultural land, arid in its nature, and without the artificial application and use of water thereon is valueless for agricultural purposes but by the artificial application and the use of water thereon becomes productive, useful and valuable for agricultural purposes.

-5-

Admit that one Solan A. Bray made application to the State Engineer's office of the State of Idaho for permit to divert the waters of Dry Creek and to store the same in a reservoir known as Bray Lake and Reservoir and a corporation was formed known as the Bray Lake Reservoir Company, but deny that any of the defendants acquired or have any interest in said reservoir or in the waters stored therein.

WHEREFORE, these plaintiffs pray that the defendants take nothing by their cross-complaint.

  
Attorney for Plaintiffs, Residence and P. O. Address:  
Goulding, Idaho.

STATE OF IDAHO )  
GOODLET COUNTY ) ss

Leonard E. Strout being first duly sworn deposes and says:

That he is one of the plaintiffs named in the above Answer to Answer and Cross-Complaint of the defendants; that he has read said Answer to Answer and Cross-complaint, knows the contents thereof and believes the facts stated therein to be true.

*Leonard E. Strout*

Subscribed and sworn to before me this 29 day of November, 1930.

*Reuben H. Strout*

Notary Public for the State of Idaho,  
Residing at Gooding, Idaho.

RECEIVED  
NOTARY PUBLIC  
GOODING, IDAHO  
NOV 30 1930

*Robert G. Strout*

*Robert G. Strout*  
1930

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR GOODING COUNTY

Wm. . SCHREIBER and MRS. Wm. . SCHREIBER,  
husband and wife, J. W. PETERSON and MRS.  
J. W. PETERSON, husband and wife, LESTER  
KANAUSS, a single man, and LEONARD E. STROUT  
and OLGA STROUT, husband and wife,

Plaintiffs,

vs.

AUGUST CRIST, E. L. CRIST and ALLEN T.  
CRIST,

Defendants.

For Decree 2791  
COMPLAINT

COMPLAINT OF Wm. . SCHREIBER AND MRS. Wm. .  
SCHREIBER, HUSBAND AND WIFE

Come now the plaintiffs, Wm. . Schreiber and Mrs. Wm. . Schrei-  
ber, husband and wife, and complain of the defendants, and allege:

-1-

That the plaintiffs, Wm. . Schreiber and Mrs. Wm. . Schreiber,  
are husband and wife, and are and for sometime past have been  
the owners of the following described real property situate in  
Gooding County, State of Idaho and more particularly described  
as follows, to-wit:

"S $\frac{1}{2}$  of the NW $\frac{1}{4}$  and the SW $\frac{1}{4}$  of Section 3, Township 5 S.  
Range 14 East E. M.; W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 10, Twp.  
5 South Range 14 E. B. M.; SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ , E $\frac{1}{2}$  of the  
SE $\frac{1}{4}$  of Section 4, Township 5 South Range 14 E. B. M.;  
N $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Section 10, Twp. 5 South Range 14 E.  
B. M.; N $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Section 15, Township 5 South  
Range 14 E. B. M."

-2-

That all of the above described land is agricultural land arid  
in its nature and without the artificial application and use of  
water thereon is valueless for agricultural purposes but by the  
artificial application and use of water thereon becomes productive  
and valuable for agricultural purposes.

-3-

That for the purpose of irrigating the above described lands of the plaintiffs, Wm. . Schreiber and Mrs. Wm. . Schreiber, husband and wife and while their predecessors in interest were the owners and in possession thereof, the predecessors in interest of said plaintiffs on or about March 1, 1914, appropriated and used upon said lands and claimed by virtue of such use and appropriation 10 cubic feet per second of time of the waters of a certain stream known as Dry Creek, and more particularly hereinafter described. That ever since said date, said water has been continuously used on said premises for said purposes.

-4-

That said Dry Creek is situate in Gooding County, Idaho and extends and flows in a southerly direction through Townships 3, 4 and 5 of Range 14 and at flood times empties into Big Wood River at a point in Section 22 of Twp. 5 S. R. 14 E. E. M. That said Dry Creek is what is known as a dry stream and its waters, except at flood times, do not reach said Big Wood River or any other river and the use of its water does not affect or interfere with the use of the waters of said Big Wood River or any other river by the appropriators thereof.

-5-

That at the time of making the aforesaid appropriation of water from said Dry Creek, the predecessors in interest of the plaintiffs, Wm. . Schreiber and wife, did by means of dams, ditches and flumes of sufficient size to carry said water, divert the same from said Dry Creek to and upon the above described lands of said plaintiffs and did use the same thereon for irrigation purposes.

-2-

\* Each of the following plaintiffs in this Complaint stated the same paragraph.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

WM. SCHREIBER and MRS. WM. SCHREIBER,  
husband and wife, J. W. PETERSON and  
MRS. J. W. PETERSON, husband and wife,  
LESTER KANAUSS, a single man, and  
LEONARD E. STROUT and OLGA STROUT,  
husband and wife,

Plaintiffs,

vs.

August Crist, E. L. Crist and Allen T.  
Crist,  
Defendants.

DECREE

Case No. 2791.

The above matter came on for hearing before the above court on this 16th day of January, 1932, the plaintiff appearing through their counsel, A. F. James, and the defendants appearing not at all. It appeared that all parties had entered into a written stipulation for the rendition of a decree herein which written stipulation was submitted to the court. Wherefore, by reason of said stipulation it is hereby ordered, adjudged and decreed as follows:

-1-

37 0856 That the plaintiffs, Leonard E. Strout and Olga Strout, husband and wife, be and they are hereby decreed the right to divert from said Dry Creek for storage in said Bray Lake Reservoir, a continuous and perpetual flow of 32 cubic feet per second of time and that said plaintiffs shall be and are hereby deemed the owners of an undivided four-fifths ( $\frac{4}{5}$ ) interest in said reservoir and of the right to take and divert water therefrom with a priority of February 1, 1917, for use upon their lands situate in Gooding County, State of Idaho, more particularly described as follows, to-wit:

NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 9, S $\frac{1}{2}$  of the SE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 4, all in Twp. 5 S. R. 13 E. B. M. containing 160 acres more or less.

A right-of-way application for said Bray Lake Reservoir was filed in the United States Land Office at Hailey, Idaho, June 22, 1914, and

MICROFILMED

JUN 19 1990

the boundary lines of said reservoir are shown by map submitted in connection with said application, the same being map Hailey No. 162.

-2-

37 0857 That the defendants August Crist and Allen T. Crist be and they are hereby decreed the right to divert from said Dry Creek for storage in said Bray Lake Reservoir, a continuous and perpetual flow of 8 cubic feet per second of time and that said defendants shall be and are hereby deemed the owners of an undivided one-fifth (1/5) interest in said reservoir and of the right to take and divert water therefrom with a priority of February 1, 1917 for use upon their lands situated in Gooding County, State of Idaho, more particularly described as follows, to-wit:

SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 28, the W $\frac{1}{2}$  of the NE $\frac{1}{4}$ , the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ , and the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 33, the N $\frac{1}{2}$  of the SW $\frac{1}{4}$  and the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Sec. 34, all in Twp. 4 S. R. 13 E. B. M.

-3-

37 0858 That there be and is hereby decreed to E. L. Crist the right to divert from said Dry Creek 1.4 cubic feet per second of time of the waters thereof with a priority of May 1, 1886 for use upon lands situate in Gooding County, State of Idaho, and more particularly described as follows, to-wit:

W $\frac{1}{2}$  of the NE $\frac{1}{4}$ , E $\frac{1}{2}$  of the NW $\frac{1}{4}$ , NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 7, Twp. 4 S. R. 14 E. B. M.

-4-

37 0859 That there be and is hereby decreed to Wm. Schreiber and Mrs. Wm. Schreiber, husband and wife, the right to divert from said Dry Creek ten (10) cubic feet per second of time of the waters of said creek with a priority of March 1, 1914 for use upon lands situate in Gooding County, State of Idaho, and more particularly described as follows, to-wit:

S $\frac{1}{2}$  of the NW $\frac{1}{4}$  and the SW $\frac{1}{4}$  of Sec. 3, Twp. 5 S. R. 14 E. B. M.; W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 10, Twp. 5 S. R. 14 E. B. M. SE $\frac{1}{4}$  of the NE $\frac{1}{4}$ , E $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 4, Twp. 5 S. R. 14 E. B. M.; N $\frac{1}{2}$  of the NW $\frac{1}{4}$  of Sec. 10, Twp. 5 S. R. 14 E. B. M.; N $\frac{1}{2}$  of the NE $\frac{1}{4}$  of Section 15, Twp. 5 S. R. 14 E. B. M.

MICROFILMED

JUN 19 1990

37 0860 That there be and is hereby decreed to J. W. Peterson and Mrs. J. W. Peterson, husband and wife, and Lester Kanaues, the right to divert from said Dry Creek ten (10) cubic feet per second of time of the waters of said creek with a priority of March 1, 1905, for use upon lands situate in Gooding County, State of Idaho, and more particularly described as follows, to-wit:

E $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 10, SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 10,  
SW $\frac{1}{4}$  of Sec. 11, SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 11, all in Twp.  
5 S. R. 14 E. B. M.

37 0861 That there be and is hereby decreed to J. W. Peterson and Mrs. J. W. Peterson, husband and wife, the right to divert from said Dry Creek six-tenths cubic feet per second of time of the waters of said creek with a priority of March 1, 1886, also 8 second feet of said water with a priority of April 1, 1902, for use upon lands situate in Gooding County, State of Idaho, and more particularly described as follows, to-wit:

SE $\frac{1}{4}$  of the SW $\frac{1}{4}$ , and the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$ , of Sec. 28, W $\frac{1}{2}$  of the NE $\frac{1}{4}$ , N $\frac{1}{2}$  of the SE $\frac{1}{4}$ , SE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Sec. 33, SW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Sec. 34, all in Township Four (4), South Range 14 E.B.M.; Lot Four (4) in Sec. 3, Lot One (1), in Sec. Four (4), Township Five (5) South Range Fourteen (14) E. B. M. 7

GIVEN UNDER MY HAND this 16th day of January, 1932.

D. H. Sutphen, District Judge

Filed January 16, 1932 at 4:50 P.M.

Myrtle P. Enking, Clerk.

By Vera Toone, Deputy.

MICROFILMED

JUN 19 1990

09/15/2005

IDAHO DEPARTMENT OF WATER RESOURCES  
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-856

NAME AND ADDRESS: GARY A DE MOSS  
PO BOX 61  
BLISS ID 83314HELEN DE MOSS  
PO BOX 61  
BLISS ID 83314

SOURCE: DRY CREEK

TRIBUTARY: BIG WOOD RIVER

QUANTITY: 32.000 CFS  
760.000 AFY

All storage uses described by rights 37-7754, 37-2780, 37-2778, 37-856, and 37-857 when combined shall not exceed the reservoir storage capacity of 4365 acre-feet.

The reservoir may be refilled multiple times in a single year.

PRIORITY DATE: 02/01/1917

POINT OF DIVERSION:

T04S R14E S6 SENESE Within GOODING County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u>   | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|-------------------------|----------------------|-----------------|
| DIVERSION TO STORAGE    | 01/01 12/31          | 32.000 CFS      |
| STOCKWATER STORAGE      | 01/01 12/31          | 15.00 AFY       |
| IRRIGATION FROM STORAGE | 04/01 10/31          | 760.00 AFY      |
| STOCKWATER FROM STORAGE | 04/01 10/31          | 15.00 AFY       |
| IRRIGATION STORAGE      | 01/01 12/31          | 760.00 AFY      |

The period of use for the irrigation from storage and stockwater from storage described in this right may be extended to a beginning date of 3/15 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/1 and after 11/01 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than February 18, 2003.

PLACE OF USE:

IRRIGATION FROM STORAGE Within GOODING County

|                          |      |                          |      |      |
|--------------------------|------|--------------------------|------|------|
| T05S R13E S03 Lot 4 NWNW | 28.0 | T05S R13E S03            | SWNW | 32.0 |
| T05S R13E S03 NWSW       | 36.0 | T05S R13E S04 Lot 1 NENE |      | 25.0 |
| T05S R13E S04 Lot 2 NWNE | 1.0  | T05S R13E S04            | SWNE | 11.0 |
| T05S R13E S04 SENE       | 40.0 | T05S R13E S04            | NESW | 27.0 |
| T05S R13E S04 SESW       | 40.0 | T05S R13E S04            | NESE | 38.0 |
| T05S R13E S04 NWSE       | 34.0 | T05S R13E S04            | SWSE | 39.0 |
| T05S R13E S04 SESE       | 21.0 | T05S R13E S09            | NWNE | 32.0 |
| T05S R13E S09 SWNE       | 38.0 | T05S R13E S09            | SENE | 19.0 |
| T05S R13E S09 NENW       | 34.0 | T05S R13E S09            | NWNW | 18.0 |
| T05S R13E S09 SENW       | 40.0 | T05S R13E S09            | NESW | 40.0 |
| T05S R13E S09 SESW       | 40.0 | T05S R13E S09            | NWSE | 25.0 |
| T05S R13E S09 SWSE       | 18.0 | T05S R13E S16            | NWNE | 13.0 |
| T05S R13E S16 NENW       | 40.0 | T05S R13E S16            | NWNW | 39.0 |
| T05S R13E S16 SWNW       | 30.0 | T05S R13E S16            | SENW | 10.0 |

IDAHO DEPARTMENT OF WATER RESOURCES  
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

STOCKWATER FROM STORAGE Within GOODING County

|                          |                          |      |
|--------------------------|--------------------------|------|
| T05S R13E S03 Lot 4 NWNW | T05S R13E S03            | SWNW |
| T05S R13E S03 NWSW       | T05S R13E S04 Lot 1 NENE |      |
| T05S R13E S04 Lot 2 NWNE | T05S R13E S04            | SWNE |
| T05S R13E S04 SENE       | T05S R13E S04            | NESW |
| T05S R13E S04 SESW       | T05S R13E S04            | NESE |
| T05S R13E S04 NWSE       | T05S R13E S04            | SWSE |
| T05S R13E S04 SESE       | T05S R13E S09            | NWNE |
| T05S R13E S09 SWNE       | T05S R13E S09            | SENE |
| T05S R13E S09 NENW       | T05S R13E S09            | NWNW |
| T05S R13E S09 SENW       | T05S R13E S09            | NESW |
| T05S R13E S09 SESW       | T05S R13E S09            | NWSE |
| T05S R13E S09 SWSE       | T05S R13E S16            | NWNE |
| T05S R13E S16 NENW       | T05S R13E S16            | NWNW |
| T05S R13E S16 SWNW       | T05S R13E S16            | SENW |

808 ACRES TOTAL

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

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.

The right holder shall accomplish the change authorized by this transfer by February 18, 2004.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.

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 37-21962  
Date Received:  
Receipt No:  
Received By:

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

1. Name of Claimant(s)

GARY A DE MOSS Phone: (208)352-4385  
PO BOX 61  
BLISS ID 83314

HELEN DE MOSS Phone: (208)352-4385  
PO BOX 61  
BLISS ID 83314

2. Date of Priority: 04/13/1954

3. Source: DRY CREEK Trib. to: BIG WOOD RIVER

4. Point of Diversion:

| Township | Range | Section | 1/4 of 1/4 of 1/4 Lot | County  | Type |
|----------|-------|---------|-----------------------|---------|------|
| 04S      | 14E   | 6       | NE SE                 | GOODING |      |

5. Description of diverting works:

6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S. | (or) A.F.A |
|------------|-------|-------|--------|------------|
| IRRIGATION | 03/15 | 11/15 | 6.60   |            |
| STOCKWATER | 01/01 | 12/31 | 0.02   |            |

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

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

| Township      | Range | Section | 1/4 of 1/4    |    | Lot | Use        | Acres |
|---------------|-------|---------|---------------|----|-----|------------|-------|
| 05S           | 13E   | 3       | NW            | NW | 4   | IRRIGATION | 28    |
|               |       |         | SW            | NW |     | IRRIGATION | 32    |
|               |       |         | NW            | SW |     | IRRIGATION | 36    |
|               |       |         | Section Acres |    |     |            |       |
| 05S           | 13E   | 4       | NE            | NE | 1   | IRRIGATION | 25    |
|               |       |         | NW            | NE | 2   | IRRIGATION | 1     |
|               |       |         | SW            | NE |     | IRRIGATION | 11    |
|               |       |         | SE            | NE |     | IRRIGATION | 40    |
|               |       |         | NE            | SW |     | IRRIGATION | 27    |
|               |       |         | SE            | SW |     | IRRIGATION | 40    |
|               |       |         | NE            | SE |     | IRRIGATION | 38    |
|               |       |         | NW            | SE |     | IRRIGATION | 34    |
|               |       |         | SW            | SE |     | IRRIGATION | 39    |
|               |       |         | SE            | SE |     | IRRIGATION | 21    |
| Section Acres |       |         |               |    | 276 |            |       |
| 05S           | 13E   | 9       | NW            | NE |     | IRRIGATION | 32    |
|               |       |         | SW            | NE |     | IRRIGATION | 38    |
|               |       |         | SE            | NE |     | IRRIGATION | 19    |
|               |       |         | NE            | NW |     | IRRIGATION | 34    |
|               |       |         | NW            | NW |     | IRRIGATION | 18    |
|               |       |         | SE            | NW |     | IRRIGATION | 40    |
|               |       |         | NE            | SW |     | IRRIGATION | 40    |
|               |       |         | SE            | SW |     | IRRIGATION | 40    |
|               |       |         | NW            | SE |     | IRRIGATION | 25    |
|               |       |         | SW            | SE |     | IRRIGATION | 18    |
| Section Acres |       |         |               |    | 304 |            |       |
| 05S           | 13E   | 16      | NW            | NE |     | IRRIGATION | 13    |
|               |       |         | NE            | NW |     | IRRIGATION | 40    |
|               |       |         | NW            | NW |     | IRRIGATION | 39    |
|               |       |         | SW            | NW |     | IRRIGATION | 30    |
|               |       |         | SE            | NW |     | IRRIGATION | 10    |
| Section Acres |       |         |               |    | 132 |            |       |
| Total Acres   |       |         |               |    | 808 |            |       |

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:

37-856, 37-2778, 37-2780, 37-7385B, 37-7754 and 37-21961

14. Remarks:

15. Basis of Claim: Beneficial Use

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do \_\_\_\_\_ do not \_\_\_\_\_ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: \_\_\_\_\_

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_ Date: \_\_\_\_\_

State of Idaho )  
County of \_\_\_\_\_ ) SS.

Subscribed and sworn (or affirmed) before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 20\_\_\_\_

Notary Public

Residing at \_\_\_\_\_

My commission Expires \_\_\_\_\_

Brockway Engineering, C.G. Brockway

An attempt was made to quantify the natural seepage by measuring the discharge in both streams at the approximate future measuring device locations. These measurements were conducted on May 24, 1999 using a pygmy flow meter. The channel sections were uniform and free of obstructions, and the measurements were rated "good" to "excellent" according to USBR standards. The channel substrate of Dry Creek below the confluence, and Black Canyon Creek above the confluence, is generally gravel and sand, with silt in the slower-velocity reaches. The channel of Dry Creek above the confluence is compacted silt with water-eroded features. The flow measurements are summarized below:

|                                                  |          |
|--------------------------------------------------|----------|
| Dry Creek 432 feet above the confluence          | 0.36 cfs |
| Black Canyon Creek 740 feet above the confluence | 2.19 cfs |
| Dry Creek 1120 feet below the confluence         | 2.21 cfs |

The inflow is  $0.36 + 2.19 = 2.55$  cfs, and the outflow is 2.21 cfs, making the natural seepage 0.34 cfs.

Operationally and administratively, it would be desirable to assume a fixed value for the natural seepage, and allow a recharge credit for the amount above this value. It is respectfully requested that IDWR consider this alternative. However, it is recognized that the natural seepage is generally a function of the depth of flow and wetted perimeter, and therefore will likely be greater at higher streamflows. Since only one seepage measurement was possible until higher natural flows arrive next winter or spring, an attempt was made to theoretically estimate a natural seepage vs. inflow relationship. For a seepage rate,  $S$ , a wetted perimeter,  $P$ , a flow depth,  $y$ , and a total discharge in the two streams,  $Q$ , the following assumptions were made:

$$S \propto P$$

$$P \propto y$$

$$Q \propto y^{3/2}$$

The first assumption says that increases in wetted perimeter result directly in increases in seepage. The second assumption implies a vertical-bank or trapezoidal channel, and the third assumption means that the Manning equation is valid and that the channel is wide enough relative to depth so that the hydraulic radius is approximately equal to the flow depth.

With the above assumptions, the relationship between seepage and discharge is

$$S = kQ^{0.6}$$

MICROFILMED  
APR 18 2002

IDWR  
Water Rights Backfile  
37-8894

## **Fritschle, Carter**

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**To:** Jo Beeman (E-mail)  
**Subject:** DeMoss Claim 37-856

Hi Jo,

Further review shows the transfer did not put on any shoulder remarks on 37-856, but gave this right a 3/15 to 11/15 period of use for irrigation from storage and stockwater from storage. I shortened the season based on the Kelso v. Strout decree, and copied the shoulder remark from 37-2778 without realizing it had a direct flow component.

Therefore, I am changing the shoulder remark in 37-856 to read as follows:

The period of use for the irrigation from storage and stockwater from storage described in this right may be extended to a beginning date of 3/15 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/1 and after 11/01 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than February 18, 2003.

Also, I did not find any irrigation rights from the Big Wood River or Malad River downstream from the confluence of Dry Creek and the Big Wood River that are being recommended with beneficial use as the basis of claim. However, I did find a "new" beneficial use right from the Malad River for winter stockwater that was claimed by the Northside Canal Company. The claim number is 37-4241 and it is for 10 cfs with a 10-01-1910 priority date and a period of use of 10-01 to 03-31. I don't know if this would have an impact on the diversion to storage into Bray Lake or not.

Carter

04/27/2005

IDAHO DEPARTMENT OF WATER RESOURCES  
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-856  
NAME AND ADDRESS: GARY A DE MOSS  
PO BOX 61  
BLISS ID 83314  
  
HELEN DE MOSS  
PO BOX 61  
BLISS ID 83314

SOURCE: DRY CREEK TRIBUTARY: BIG WOOD RIVER

QUANTITY: 32.000 CFS  
760.000 AFY

All storage uses described by rights 37-7754, 37-2780, 37-2778, 37-856, and 37-857 when combined shall not exceed the reservoir storage capacity of 4365 acre-feet.

PRIORITY DATE: 02/01/1917

POINT OF DIVERSION:  
T04S R14E S6 SENESE Within GOODING County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u>   | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|-------------------------|----------------------|-----------------|
| DIVERSION TO STORAGE    | 01/01 12/31          | 32.000 CFS      |
| STOCKWATER STORAGE      | 01/01 12/31          | 15.00 AFY       |
| IRRIGATION FROM STORAGE | 03/15 11/15          | 760.00 AFY      |
| STOCKWATER FROM STORAGE | 03/15 11/15          | 15.00 AFY       |
| IRRIGATION STORAGE      | 01/01 12/31          | 760.00 AFY      |

PLACE OF USE: IRRIGATION FROM STORAGE Within GOODING County

|                          |       |               |                          |      |
|--------------------------|-------|---------------|--------------------------|------|
| T05S R13E S03 Lot 4 NWNW | 28.0' | T05S R13E S03 | SWNW                     | 32.0 |
| T05S R13E S03            | NWSW  | 36.0          | T05S R13E S04 Lot 1 NENE | 25.0 |
| T05S R13E S04 Lot 2 NWNE | 1.0   | T05S R13E S04 | SWNE                     | 11.0 |
| T05S R13E S04            | SENE  | 40.0          | T05S R13E S04            | NESW |
| T05S R13E S04            | SESW  | 40.0          | T05S R13E S04            | NESE |
| T05S R13E S04            | NWSE  | 34.0          | T05S R13E S04            | SWSE |
| T05S R13E S04            | SESE  | 21.0          | T05S R13E S09            | NWNE |
| T05S R13E S09            | SWNE  | 38.0          | T05S R13E S09            | SENE |
| T05S R13E S09            | NENW  | 34.0          | T05S R13E S09            | NWNW |
| T05S R13E S09            | SENW  | 40.0          | T05S R13E S09            | NESW |
| T05S R13E S09            | SESW  | 40.0          | T05S R13E S09            | NWSE |
| T05S R13E S09            | SWSE  | 18.0          | T05S R13E S16            | NWNE |
| T05S R13E S16            | NENW  | 40.0          | T05S R13E S16            | NWNW |
| T05S R13E S16            | SWNW  | 30.0          | T05S R13E S16            | SENW |

STOCKWATER FROM STORAGE Within GOODING County

|                          |               |                          |
|--------------------------|---------------|--------------------------|
| T05S R13E S03 Lot 4 NWNW | T05S R13E S03 | SWNW                     |
| T05S R13E S03            | NWSW          | T05S R13E S04 Lot 1 NENE |
| T05S R13E S04 Lot 2 NWNE | T05S R13E S04 | SWNE                     |
| T05S R13E S04            | SENE          | T05S R13E S04            |
|                          |               | NESW                     |

04/27/2005

IDAHO DEPARTMENT OF WATER RESOURCES  
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

|               |      |               |      |
|---------------|------|---------------|------|
| T05S R13E S04 | SESW | T05S R13E S04 | NESE |
| T05S R13E S04 | NWSE | T05S R13E S04 | SWSE |
| T05S R13E S04 | SESE | T05S R13E S09 | NWNE |
| T05S R13E S09 | SWNE | T05S R13E S09 | SENE |
| T05S R13E S09 | NENW | T05S R13E S09 | NWNW |
| T05S R13E S09 | SENW | T05S R13E S09 | NESW |
| T05S R13E S09 | SESW | T05S R13E S09 | NWSE |
| T05S R13E S09 | SWSE | T05S R13E S16 | NWNE |
| T05S R13E S16 | NENW | T05S R13E S16 | NWNW |
| T05S R13E S16 | SWNW | T05S R13E S16 | SENW |

808 ACRES TOTAL

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: Decreed

After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.

The right holder shall accomplish the change authorized by this transfer by February 18, 2004.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

**NOTICE OF ERROR  
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

**YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: June 3, 2005**

Water right number: 37-856

GARY A DE MOSS  
PO BOX 61  
BLISS ID 83314  
Telephone Number: (208)352-4385

HELEN DE MOSS  
PO BOX 61  
BLISS ID 83314  
Telephone Number: (208)352-4385

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source): **PERIOD OF USE. IRRIGATION FROM STORAGE**

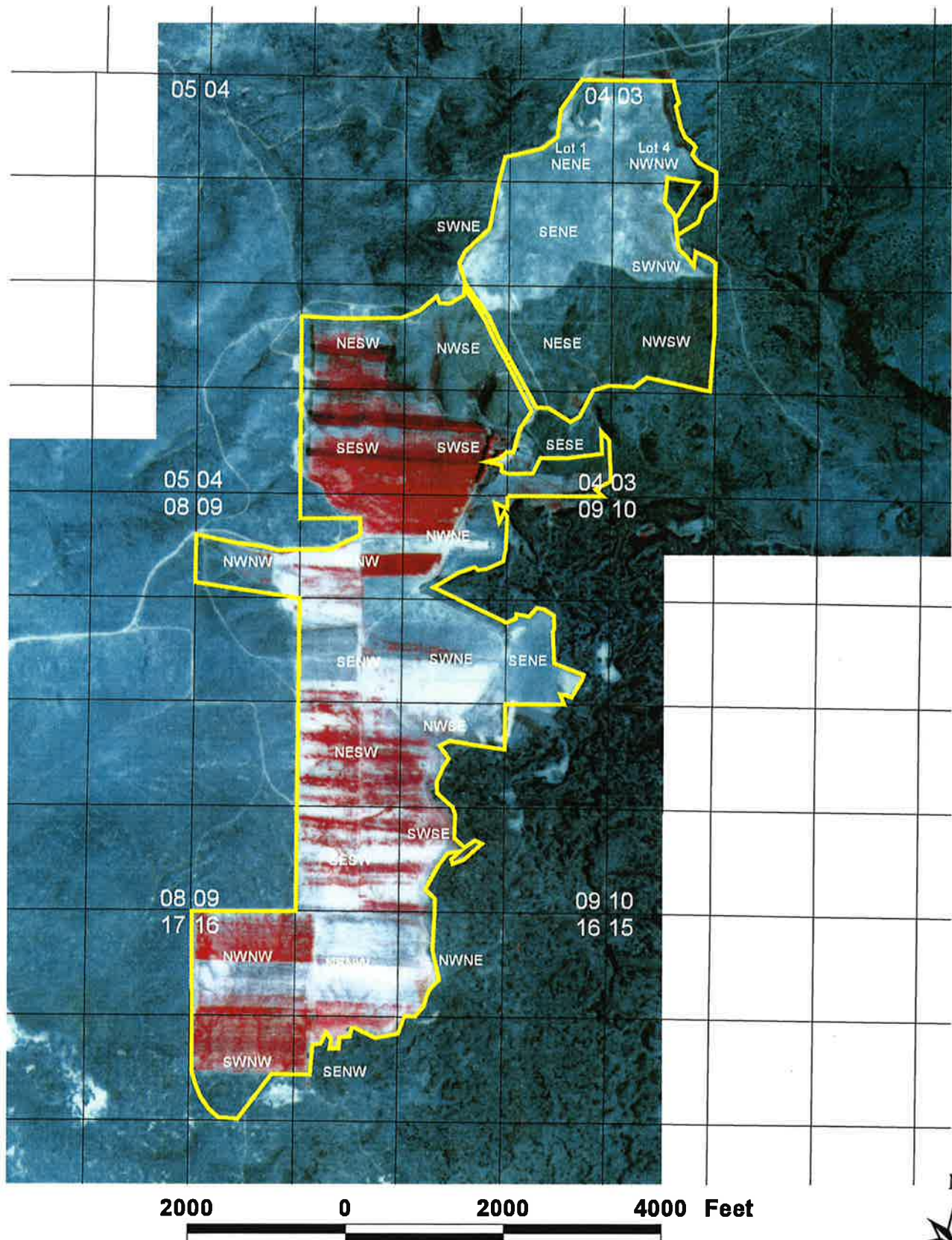
2. Describe the changes you wish to make in the proposed recommendation:  
**Change Period of use from 04/01 - 10/31 TO 03/15 - 11/15**

3. Give a brief explanation as to why you disagree with these portions:  
**OUR TRANSFURE Number 69896 Shows a Period of use of 03/15 - 11/15 for IRRIGATION FROM STORAGE. The transfure was approved ON 2/18/2003. We need the flexibility to grow certified SEED.**  
   I AGREE with this proposed recommendation: no changes need to be made.

DATE: 4/26/05 SIGNATURE: Gary A DeMoss Helen DeMoss  
Please print your name: GARY A DeMOSS Helen DeMoss

IDWR State Office, 322 E. Front St., P.O. Box 83720, Boise, ID 83720-0098

**37-856 37-2778 37-2780 & 37-7754**



**T05S R13E S03  
S04 S09 & S16**

Map prepared by: Carter Fritschle  
Date prepared: 10/09/03  
1987-1988 NAPP photography  
Idaho Department of Water Resources



10/09/2003

## IDAHO DEPARTMENT OF WATER RESOURCES

RIGHT NUMBER: 37-856

NAME AND ADDRESS: GARY A DE MOSS  
PO BOX 61  
BLISS ID 83314

HELEN DE MOSS  
PO BOX 61  
BLISS ID 83314

SOURCE: DRY CREEK                      TRIBUTARY: BIG WOOD RIVER

QUANTITY: 32.000 CFS  
760.000 AFY

All storage uses described by rights 37-7754, 37-2780, 37-2778, 37-856, and 37-857 when combined shall not exceed the reservoir storage capacity of 4365 acre-feet.

PRIORITY DATE: 02/01/1917

POINT OF DIVERSION:

T04S R14E S6 SENESE Within GOODING County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u>   | <u>PERIOD OF USE</u> |       | <u>QUANTITY</u> |
|-------------------------|----------------------|-------|-----------------|
| DIVERSION TO STORAGE    | 01/01                | 12/31 | 32.000 CFS      |
| STOCKWATER STORAGE      | 01/01                | 12/31 | 15.00 AFY       |
| IRRIGATION FROM STORAGE | 04/01                | 10/31 | 760.00 AFY      |
| STOCKWATER FROM STORAGE | 03/15                | 11/15 | 15.00 AFY       |
| IRRIGATION STORAGE      | 01/01                | 12/31 | 760.00 AFY      |

PLACE OF USE:

IRRIGATION FROM STORAGE Within GOODING County

|      |      |     |     |   |      |      |      |      |     |     |      |      |      |
|------|------|-----|-----|---|------|------|------|------|-----|-----|------|------|------|
| T05S | R13E | S03 | Lot | 4 | NWNW | 28.0 | T05S | R13E | S03 |     | SWNW | 32.0 |      |
| T05S | R13E | S03 |     |   | NWSW | 36.0 | T05S | R13E | S04 | Lot | 1    | NENE | 25.0 |
| T05S | R13E | S04 | Lot | 2 | NWNE | 1.0  | T05S | R13E | S04 |     |      | SWNE | 11.0 |
| T05S | R13E | S04 |     |   | SENE | 40.0 | T05S | R13E | S04 |     |      | NESW | 27.0 |
| T05S | R13E | S04 |     |   | SESW | 40.0 | T05S | R13E | S04 |     |      | NESE | 38.0 |
| T05S | R13E | S04 |     |   | NWSE | 34.0 | T05S | R13E | S04 |     |      | SWSE | 39.0 |
| T05S | R13E | S04 |     |   | SESE | 21.0 | T05S | R13E | S09 |     |      | NWNE | 32.0 |
| T05S | R13E | S09 |     |   | SWNE | 38.0 | T05S | R13E | S09 |     |      | SENE | 19.0 |
| T05S | R13E | S09 |     |   | NENW | 34.0 | T05S | R13E | S09 |     |      | NWNW | 18.0 |
| T05S | R13E | S09 |     |   | SENW | 40.0 | T05S | R13E | S09 |     |      | NESW | 40.0 |
| T05S | R13E | S09 |     |   | SESW | 40.0 | T05S | R13E | S09 |     |      | NWSE | 25.0 |
| T05S | R13E | S09 |     |   | SWSE | 18.0 | T05S | R13E | S16 |     |      | NWNE | 13.0 |
| T05S | R13E | S16 |     |   | NENW | 40.0 | T05S | R13E | S16 |     |      | NWNW | 39.0 |
| T05S | R13E | S16 |     |   | SWNW | 30.0 | T05S | R13E | S16 |     |      | SENW | 10.0 |

STOCKWATER FROM STORAGE Within GOODING County

|                     |      |                     |      |
|---------------------|------|---------------------|------|
| T05S R13E S03 Lot 4 | NWNW | T05S R13E S03       | SWNW |
| T05S R13E S03       | NWSW | T05S R13E S04 Lot 1 | NENE |
| T05S R13E S04 Lot 2 | NWNE | T05S R13E S04       | SWNE |
| T05S R13E S04       | SENE | T05S R13E S04       | NESW |

10/09/2003

IDAHO DEPARTMENT OF WATER RESOURCES  
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

|               |      |               |      |
|---------------|------|---------------|------|
| T05S R13E S04 | SESW | T05S R13E S04 | NESE |
| T05S R13E S04 | NWSE | T05S R13E S04 | SWSE |
| T05S R13E S04 | SESE | T05S R13E S09 | NWNE |
| T05S R13E S09 | SWNE | T05S R13E S09 | SENE |
| T05S R13E S09 | NENW | T05S R13E S09 | NWNW |
| T05S R13E S09 | SENW | T05S R13E S09 | NESW |
| T05S R13E S09 | SESW | T05S R13E S09 | NWSE |
| T05S R13E S09 | SWSE | T05S R13E S16 | NWNE |
| T05S R13E S16 | NENW | T05S R13E S16 | NWNW |
| T05S R13E S16 | SWNW | T05S R13E S16 | SENW |

808 ACRES TOTAL

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: Decreed

After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.

The right holder shall accomplish the change authorized by this transfer by February 18, 2004.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**TRANSFER OF WATER RIGHT**  
**TRANSFER NO. 69896**

This is to certify that: GARY A DE MOSS And/Or HELEN DE MOSS  
PO BOX 61  
BLISS ID 83314  
(208)352-4385

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

**Summary of Water Rights Before the Proposed Change**

| <u>Right</u> | <u>Origin/Basis</u> | <u>Priority</u> | <u>Rate</u> | <u>Volume</u> | <u>Acre Limit</u> | <u>Total Acres</u> | <u>Source</u> |
|--------------|---------------------|-----------------|-------------|---------------|-------------------|--------------------|---------------|
| 37-856       | AJC/Decreed         | 02/01/1917      | 32 cfs      | 760 af        | 160.0             | 160.0              | DRY CREEK     |
| 37-2778      | AJC/License         | 02/26/1957      | 80 cfs      | 1210 af       | 242.0             | 242.0              | DRY CREEK     |
| 37-2780      | AJC/License         | 04/13/1954      | 157 cfs     | 905 af        |                   | 415.0              | DRY CREEK     |
| 37-7754      | AJC/Permit          | 12/14/1978      | 6.26 cfs    | 1565 af       | 313.0             | 313.0              | DRY CREEK     |
| 37-7385B     | WR/Decreed          | 09/20/1974      | 2.53 cfs    | 498.7 af      |                   | 124.0              | GROUND WATER  |

**Purpose of Transfer (Changes Proposed)**

| <u>Current Number</u> | <u>Split</u> | <u>POD</u> | <u>POU</u> | <u>Add POD</u> | <u>Period of Use</u> | <u>Nature of Use</u> |
|-----------------------|--------------|------------|------------|----------------|----------------------|----------------------|
| 37-856                | NO           | YES        | YES        | NO             | NO                   | NO                   |
| 37-2778               | NO           | YES        | YES        | NO             | NO                   | NO                   |
| 37-2780               | NO           | YES        | YES        | NO             | NO                   | NO                   |
| 37-7754               | NO           | YES        | YES        | NO             | NO                   | YES                  |
| 37-7385B              | NO           | NO         | YES        | NO             | NO                   | NO                   |

**Summary of Water Rights After the Approved Change**

| <u>Existing Right</u> | <u>New No. (changed portion)</u> | <u>Transfer Rate</u> | <u>Transfer Volume</u> | <u>Acre Limit</u> | <u>Total Acres</u> | <u>New No. (remaining portion)</u> | <u>Remaining Rate</u> | <u>Remaining Volume</u> | <u>Remaining Acre Limit</u> | <u>Remaining Total Acres</u> |
|-----------------------|----------------------------------|----------------------|------------------------|-------------------|--------------------|------------------------------------|-----------------------|-------------------------|-----------------------------|------------------------------|
| 37-856                | <b>37-856</b>                    | 32.00 cfs            | 760.0 af               | N/A               | 808.0              |                                    | N/A                   | N/A                     | N/A                         | N/A                          |
| 37-2778               | <b>37-2778</b>                   | 80.00 cfs            | 1936.0 af              | 242.0             | 808.0              |                                    | N/A                   | N/A                     | N/A                         | N/A                          |
| 37-2780               | <b>37-2780</b>                   | 157.00 cfs           | 905.0 af               | N/A               | 808.0              |                                    | N/A                   | N/A                     | N/A                         | N/A                          |
| 37-7754               | <b>37-7754</b>                   | 3.23 cfs             | 2504.0 af              | 313.0             | 808.0              |                                    | N/A                   | N/A                     | N/A                         | N/A                          |
| 37-7385B              | <b>37-7385B</b>                  | 2.53 cfs             | 498.7 af               | 124.0             | 808.0              |                                    | N/A                   | N/A                     | N/A                         | N/A                          |
| <b>TOTALS</b>         |                                  | <b>274.76 cfs</b>    | <b>6528.7 af</b>       | <b>679.0*</b>     | <b>808.0</b>       |                                    | <b>N/A</b>            | <b>N/A</b>              | <b>N/A</b>                  | <b>N/A</b>                   |

\*Direct flow irrigation limit; does not limit irrigation from storage use currently authorized on entire place of use.

Detailed Water Right Description(s) attached

Dated this 18<sup>th</sup> day of February, 2003

Chief, Water Allocation Bureau

MICROFILMED

FEB 28 2003

MAR 26 2003

**WATER RIGHT NO. 37-856**  
**As Modified by Transfer No. 69896**

In accordance with the approval of Transfer No. 69896, Water Right No. 37-856 is now described as follows.

**Right Holder:** HELEN DE MOSS  
 PO BOX 61  
 BLISS ID 83314

And/Or

GARY A DE MOSS  
 PO BOX 61  
 BLISS ID 83314

**Priority Date:** February 01, 1917

**Source:** DRY CREEK

**Tributary:** BIG WOOD RIVER

| <u>BENEFICIAL USE</u>   | <u>From</u> | <u>To</u> | <u>Diversion Rate</u> | <u>Volume</u> |
|-------------------------|-------------|-----------|-----------------------|---------------|
| DIVERSION TO STORAGE    | 01/01 to    | 12/31     | 32.00 CFS             |               |
| IRRIGATION FROM STORAGE | 03/15 to    | 11/15     |                       | 760.0 AF      |
| STOCKWATER FROM STORAGE | 03/15 to    | 11/15     |                       | 15.0 AF       |
| IRRIGATION STORAGE      | 01/01 to    | 12/31     |                       | 760.0 AF      |
| STOCKWATER STORAGE      | 01/01 to    | 12/31     |                       | 15.0 AF       |
|                         |             |           | 32.00 CFS             | 760.0 AF      |

**LOCATION OF POINT(S) OF DIVERSION:**

DRY CREEK                      SENESE                      Sec. 6 Twp 04S Rge 14E GOODING County

**PLACE OF USE:** IRRIGATION FROM STORAGE

| Twp Rge Sec | NE   |      |      |      | NW   |      |      |      | SW   |    |      |      | SE   |      |      |      | Totals |
|-------------|------|------|------|------|------|------|------|------|------|----|------|------|------|------|------|------|--------|
|             | NE   | NW   | SW   | SE   | NE   | NW   | SW   | SE   | NE   | NW | SW   | SE   | NE   | NW   | SW   | SE   |        |
| 05S 13E 3   |      |      |      |      |      | 28.0 | 32.0 |      |      |    | 36.0 |      |      |      |      |      | 96.0   |
|             |      |      |      |      |      | L 4  |      |      |      |    |      |      |      |      |      |      |        |
| 05S 13E 4   | 25.0 | 1.0  | 11.0 | 40.0 |      |      |      |      | 27.0 |    |      | 40.0 | 38.0 | 34.0 | 39.0 | 21.0 | 276.0  |
|             | L 1  | L 2  |      |      |      |      |      |      |      |    |      |      |      |      |      |      |        |
| 05S 13E 9   |      | 32.0 | 38.0 | 19.0 | 34.0 | 18.0 |      | 40.0 | 40.0 |    |      | 40.0 |      | 25.0 | 18.0 |      | 304.0  |
| 05S 13E 16  |      | 13.0 |      |      | 40.0 | 39.0 | 30.0 | 10.0 |      |    |      |      |      |      |      |      | 132.0  |

Total Acres: 808

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**WATER RIGHT NO. 37-856**  
**As Modified by Transfer No. 69896**

**PLACE OF USE:** STOCKWATER FROM STORAGE

| Twp Rge Sec | NE      |         |    |    | NW |         |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-------------|---------|---------|----|----|----|---------|----|----|----|----|----|----|----|----|----|----|--------|
|             | NE      | NW      | SW | SE | NE | NW      | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 05S 13E 3   |         |         |    |    |    | X<br>L4 | X  |    |    | X  |    |    |    |    |    |    |        |
| 05S 13E 4   | X<br>L1 | X<br>L2 | X  | X  |    |         |    |    | X  |    |    | X  | X  | X  | X  | X  |        |
| 05S 13E 9   |         | X       | X  | X  | X  | X       |    | X  | X  |    |    | X  |    | X  | X  |    |        |
| 05S 13E 16  |         | X       |    |    | X  | X       | X  | X  |    |    |    |    |    |    |    |    |        |

**PLACE OF USE:** IRRIGATION STORAGE

| Twp Rge Sec | NE      |         |         |         | NW |         |         |    | SW |    |         |    | SE |    |    |         | Totals |
|-------------|---------|---------|---------|---------|----|---------|---------|----|----|----|---------|----|----|----|----|---------|--------|
|             | NE      | NW      | SW      | SE      | NE | NW      | SW      | SE | NE | NW | SW      | SE | NE | NW | SW | SE      |        |
| 04S 13E 25  |         |         |         |         |    |         |         |    |    | X  | X<br>L1 |    |    |    |    |         |        |
| 04S 13E 26  |         |         |         |         |    |         |         |    |    |    |         |    | X  |    |    | X<br>L7 |        |
| 04S 13E 35  | X<br>L1 | X<br>L1 | X<br>L4 | X<br>L5 |    |         |         |    |    |    |         |    |    |    |    |         |        |
| 04S 13E 36  |         |         |         |         |    | X<br>L1 | X<br>L2 |    |    |    |         |    |    |    |    |         |        |

**PLACE OF USE:** STOCKWATER STORAGE

| Twp Rge Sec | NE      |         |         |         | NW |         |         |    | SW |    |         |    | SE |    |    |         | Totals |
|-------------|---------|---------|---------|---------|----|---------|---------|----|----|----|---------|----|----|----|----|---------|--------|
|             | NE      | NW      | SW      | SE      | NE | NW      | SW      | SE | NE | NW | SW      | SE | NE | NW | SW | SE      |        |
| 04S 13E 25  |         |         |         |         |    |         |         |    |    | X  | X<br>L1 |    |    |    |    |         |        |
| 04S 13E 26  |         |         |         |         |    |         |         |    |    |    |         |    | X  |    |    | X<br>L7 |        |
| 04S 13E 35  | X<br>L1 | X<br>L1 | X<br>L4 | X<br>L5 |    |         |         |    |    |    |         |    |    |    |    |         |        |
| 04S 13E 36  |         |         |         |         |    | X<br>L1 | X<br>L2 |    |    |    |         |    |    |    |    |         |        |

**CONDITIONS OF APPROVAL**

1. All storage uses described by rights 37-7754, 37-2780, 37-2778, 37-856, and 37-857 when combined shall not exceed the reservoir storage capacity of 4365 acre-feet.
2. The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
4. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

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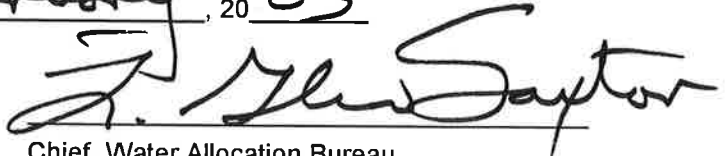
**WATER RIGHT NO. 37-856**  
**As Modified by Transfer No. 69896**

**CONDITIONS OF APPROVAL**

5. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
6. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
7. Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 18<sup>th</sup> day of February, 2003

  
Chief, Water Allocation Bureau

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MAR 26 2003

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FEB 28 2003

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation

RECEIVED

JUN 23 2003

Department of Water Resources

Gooding Division, Minidoka Project - Idaho

Amendatory Contract Between THE UNITED STATES OF AMERICA  
and AMERICAN FALLS RESERVOIR DISTRICT NO. 2

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Contract No. ~~14-06-W~~ - 73

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation

Gooding Division, Minidoka Project - Idaho

Amendatory Contract Between THE UNITED STATES OF AMERICA  
and American Falls Reservoir District No. 2

THIS AMENDATORY CONTRACT, made this *14th* day of *October*  
19*54*, by and between THE UNITED STATES OF AMERICA, hereinafter called the  
United States, acting through the *Assistant* Secretary of the Interior  
and pursuant to the Federal Reclamation Laws, and AMERICAN FALLS RESERVOIR  
DISTRICT NO. 2, hereinafter called the District, an irrigation district  
organized and existing under and by virtue of the laws of the State of  
Idaho, having its principal place of business at Gooding, Idaho,

WITNESSETH, That:

Explanatory Recitals

2. WHEREAS, under authority of the Federal Reclamation Laws, the  
United States is operating certain facilities in common for several divi-  
sions of the Minidoka Federal Reclamation Project, including American Falls  
Dam and Reservoir, and has constructed certain facilities for the benefit  
specifically of the Gooding Division of the Minidoka Project;

3. WHEREAS, the United States and the District, acting pursuant to  
the Federal Reclamation Laws, entered into a contract, dated September 21,  
1927, which contract has been supplemented and amended by contracts dated  
March 1, 1932, and December 7, 1948;

4. WHEREAS, the District is obligated, among other things, to repay to the United States that part of the expenditures made by the United States in the construction of project features which are properly allocable to the Gooding Division;

5. WHEREAS, the District, as the duly authorized representative of the water users involved, desires to enter into an amendatory contract to secure the benefits of the Reclamation Project Act of 1939; and

6. WHEREAS, the Secretary has determined that in his judgment the provisions of this amendatory contract will provide fair and equitable treatment of the repayment problems of the water users of the Gooding Division and will be in keeping with the general purposes of the Reclamation Project Act of 1939;

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby mutually agreed by and between the parties hereto as follows:

Definitions

7. The following terms, whenever used in this contract, shall have the following respective meanings:

(a) "Secretary" shall mean the Secretary of the Interior or his duly authorized representative.

(b) "Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388) and all acts amendatory thereof or supplementary thereto, including without limitation by this enumeration, the Reclamation Project Act of 1939 (53 Stat.

1187) and the act authorizing the execution of this amendatory contract.

(c) "Government-District contract" shall mean the contract of September 21, 1927, as amended and supplemented by the contracts of March 1, 1932, and December 7, 1948.

(d) "Gooding Division" shall mean that portion of the Minidoka Project for which repayment of the construction charge obligation to the United States is assumed by American Falls Reservoir District No. 2.

(e) "Hunt area" shall mean those approximately 8,000 acres of new lands located below the main canal and south of the northerly boundary of township 8 south, ranges 19 and 20 east, Boise meridian.

(f) "Old lands" shall mean the 78,167.1 acres of irrigable lands within the District which, as of the date of this contract, have apportioned thereto a part of the obligation under the Government-District contract under the District's then prevailing orders for the apportionment of benefits and costs, including those 4,263 acres of land designated as "river-right lands".

(g) "New lands" shall mean not to exceed 20,500 acres of irrigable lands as described in public notices Nos. 40, as corrected, 42, and 43, as new lands may be redefined pursuant to the provisions of article 30.

(h) "Reserved works" shall mean the American Falls Reservoir and all incidental and appurtenant works.

(i) "Transferred works" shall mean the Milner-Gooding canal, all ditches and laterals, together with all works appurtenant or incidental to the foregoing facilities, which works were constructed by the United States to serve the lands within the District.

(j) "Watermaster", used in relation to water supply available under this contract, shall mean the officer of the State of Idaho charged by law with the distribution of Snake River water above Milner Dam, or such other officer properly authorized by law and designated by mutual agreement of the Secretary and the Advisory Committee.

(k) "Advisory Committee" shall mean the committee defined by article 45 of this contract, or the Committee's duly authorized representative.

#### Scope and Term of Amendatory Contract

8. This amendatory contract supersedes and takes the place of the Government-District contract, becoming effective on the date of its execution by the Secretary, after approval by the Congress, in accordance with section 7 of the Reclamation Project Act of 1939. Except as to provisions of the Government-District contract which have been fully executed prior to the date of this amendatory contract, which shall remain unaffected thereby, the Government-District contract shall remain effective only to the extent expressly provided in this contract.

Works Built or to be Built by the United States

9. The United States has constructed American Falls Dam and Reservoir on the Snake River, and has substantially completed the irrigation system to serve the lands within the jurisdiction of the District, the latter system comprising:

- (1) The main (Milner-Gooding) canal, having its heading in the north bank of the Snake River near and above Milner Dam and extending northwesterly to the North Gooding Canal of the Big Wood Canal Company.
- (2) Ditches and laterals for distribution of water supplied to new lands lying thereunder and to provide, to the extent required, for the delivery of substitute water into the Big Wood Canal Company system.
- (3) Such structures as were found to be necessary or desirable in connection with said works.
- (4) Such drainage works as were found to be desirable and feasible for the new lands.

The distribution works were constructed, in the case of new lands, with a view to the delivery of water to the highest point which was found to be reasonably economical and feasible on each 160-acre tract determined by the Secretary to be economically irrigable, or to each farm unit as determined by the Secretary, with the point of delivery in the case of farm units containing less than 40 acres of irrigable land being subject to special regulations to be promulgated by the Secretary.

Construction Charge Obligation;  
Distribution Between New and Old Lands

10. (a). The District's construction charge obligation as of December 31, 1953, is hereby established as three million four hundred eighty-one thousand twenty-one dollars and twenty-five cents (\$3,481,021.25), as this amount may be increased within the limits provided by (b) of this article. The net obligation as of the effective date of this contract will be this amount, as adjusted, less whatever additional construction charge obligation payments are made prior to the effective date. The amount as of December 31, 1953, is derived as indicated in the following tabulation:

Costs

|                                                                                                                                                                |                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Actual cost of District's share of<br>American Falls Dam and Reservoir .....                                                                                   | \$1,771,989.90      |
| Actual cost of irrigation system as of<br>December 31, 1953, including funded<br>operation and maintenance costs and<br>interest as of December 31, 1953 ..... | <u>4,913,218.29</u> |

TOTAL, being the District's gross initial obligation ... \$6,685,208.19

Less

|                                                                                  |                  |
|----------------------------------------------------------------------------------|------------------|
| North Side Canal Company payment for<br>capacity as recognized in article 16 ... | 281,459.57       |
| Miscellaneous revenues collected and<br>applied as of December 31, 1953 .....    | <u>61,508.53</u> |
| Total revenues collected .....                                                   | 342,968.10       |

|                                                                      |                     |
|----------------------------------------------------------------------|---------------------|
| Construction charge payments made through<br>December 31, 1953 ..... | <u>2,861,218.84</u> |
|----------------------------------------------------------------------|---------------------|

TOTAL payments and revenues ..... 3,204,186.94

NET CONSTRUCTION CHARGE OBLIGATION  
as of December 31, 1953 ..... \$3,481,021.25

This net obligation, subject to adjustment as provided in (b) of this article, is tentatively allocated between old and river-right lands, and new lands as follows:

|                                 |                       |
|---------------------------------|-----------------------|
| Old and river-right lands ..... | \$1,736,889.61        |
| New lands .....                 | <u>1,744,131.64</u>   |
| TOTAL .....                     | <u>\$3,481,021.25</u> |

and this new lands obligation, taking into account the deferments effected by article 8 of the contract of December 7, 1948, is hereby tentatively apportioned among the new land blocks as follows:

|                   |               |
|-------------------|---------------|
| Block No. 1 ..... | \$ 980,642.35 |
| Block No. 2 ..... | 351,350.20    |
| Block No. 3 ..... | 412,139.09    |

(b) Additional costs in a total amount not to exceed five thousand dollars (\$5,000.00) may be incurred after December 31, 1953, in connection with the completion of this contract and to cover costs in connection with the final disposal of public lands within the District and the completion of the transfer of works to the District. A final determination of these costs shall be made as of December 31 of the first full year after the execution of this contract by the Secretary and written notice thereof shall be given promptly to the District.

(c) As of the date costs are finally determined as provided in (b) of this article, there shall be a determination also of the net construction charge obligation as of December 31, 1953, as to these two categories of land:

- (1) Old and river-right lands, and
- (2) New lands.

The amounts allocated to categories (1) and (2) shall be the total cost, as finally determined, less the North Side Canal Company payment and the miscellaneous revenues as applied December 31, 1953, in accordance with the formula for apportionment of water supply provided in article 30 less, for each category, the sum of the construction charge payments made by the District through December 31, 1953, treating all payments made as applicable on the principal of the obligation. There shall be a further determination as to the net construction charge obligation as of December 31, 1953, against each of the three blocks of new lands, these being

- (1) Those covered by Public Notice No. 40, as corrected (herein called Block 1),
- (2) Those covered by Public Notice No. 42 (herein called Block 2), and
- (3) Those covered by Public Notice No. 43 (herein called Block 3),

the net obligation of each block being the amount of new land cost as determined above distributed among the three new land blocks in accordance with the relative irrigable areas as defined in the governing public notices as of the date of the determination, less payments made as to each block through December 31, 1953.

(d) The net construction charge obligation of old and river-right lands determined under (c) above shall be the joint and general obligation of those lands regardless of delinquencies of particular old and

river-right lands in payment to the District of assessments and charges therefor. The District shall adjust annual assessments for payment of the net construction charge obligation so as to provide as nearly as practicable, without regard to delinquencies, for the concurrent payout by each acre of old and river-right land of that portion of the obligation apportioned thereto. Each block of new land shall have initial responsibility for the net construction charge obligation distributed thereto as herein provided, but, notwithstanding such distribution of the new land obligation, the net construction charge obligation of the new lands as a whole shall be the joint and general obligation thereof regardless of delinquencies of particular new lands in the payment to the District of assessments and charges therefor.

Determination of Annual Instalments

11. (a) The basic annual construction charge obligation instalments to be repaid in satisfaction of the respective old and new land obligations as established under article 10 shall be as follows:

(1) Beginning with the instalment for the year 1954 and continuing through the instalment for the year 1958:

For old lands, including river-right lands ..... \$156,335.00

For new lands:

|                  |                 |
|------------------|-----------------|
| Block No. 1 .... | \$ 25,060.00    |
| Block No. 2 .... | 7,670.00        |
| Block No. 3 .... | <u>8,515.00</u> |

New Land Total ..... \$ 41,245.00

this being at the rate of \$2 per acre for the basic irrigable acreage.

(2) Beginning with the instalment for the year 1959:

For old lands, including river-  
right lands ..... \$168,060.00

For new lands:

|                  |                 |
|------------------|-----------------|
| Block No. 1 .... | \$ 26,920.00    |
| Block No. 2 .... | 8,245.00        |
| Block No. 3 .... | <u>9,155.00</u> |

New Land Total ..... \$ 44,320.00

this being at the rate of \$2.15 per acre for the basic  
irrigable acreage.

The foregoing new land instalments for Block No. 1 include the amounts required to effect repayment over the remaining repayment period of the sum of eight thousand seven hundred twenty-two dollars and twenty-three cents (\$8,722.23) (being \$9,023 less the instalment of \$300.77 payable December 31, 1953) heretofore deferred for the benefit of certain of the new lands in that block. The annual construction charge levies against the lands benefited by such deferment shall be appropriately increased to reflect this fact.

(b) The annual instalments under this contract, as they may be adjusted pursuant to the provisions of article 12, shall accrue for each calendar year beginning with the year 1954. Each instalment shall be due and payable one-half (1/2) on March 15 of the year following that for which it is due, and one-half (1/2) on the succeeding June 30. Said instalments shall continue to accrue as against, respectively, the old lands and each block of new lands until the respective obligations as defined in article 10 are paid in full, but the last of the instalments for the old lands and each block of new lands shall not exceed the amount necessary to make the total

of the instalments for each category of land equal the obligations as finally determined under article 10.

Adjustment of Annual Instalments

12. The District's board by written notice given to the Secretary may elect, with respect to future basic annual instalments established under article 11, to adjust further those instalments under the procedure set out in this article. Beginning with the instalment for which the District so elects and thereafter until the construction charge obligation primarily applicable to the lands involved is fully paid, the annual instalment shall be determined by increasing or decreasing the basic annual instalment for that year as established under article 11 as follows:

(a) The total irrigable area within the District as defined in article 30 shall, for the purpose of this article, comprise the "contract unit".

(b) Each calendar year while this article is operative there shall be determination for the contract unit of the "annual returns" and the "normal returns".

(1) "Annual returns" means the amount of gross crop returns per acre for the area in cultivation within the contract unit for any calendar year, except that for the purpose of determining annual returns no acreage or income shall be included from lands cropped which are mutually agreed to be excluded because they are not generally grown in the unit and have gross returns per acre greatly exceeding the average for other crops.

(2) The "normal returns" shall be determined by taking, for the contract unit, the weighted average of annual returns for a ten-year period, covering the calendar year for which normal returns are being determined and the nine calendar years preceding.

(c) Determinations of annual and normal returns for any calendar year will be made on the basis of final figures, as nearly as practicable. The Secretary, however, on or before September 1 of any year will, on the request of the District, provide it with an estimate of these factors for that year. In connection with such a request, the District will provide the Secretary with a preliminary crop report for the year on or before September 1.

(d) Each calendar year while this article is operative there shall be a determination of the per cent of the normal returns for said year by which the annual returns for that year exceed or are less than the normal returns for the contract unit. For each one per cent (1%) or major fraction of one per cent (1%), there shall be an increase or decrease, respectively, of two per cent (2%) in the instalments for that year, as determined under the provisions of article 11 for the old and new lands, respectively; but in no event shall the amount of any adjusted instalment due for the year in question be less than fifteen per cent (15%) of the base instalment for that year, as determined under the provisions of article 11, and in no event shall the amount of the adjusted instalment due for the year in question be more than one hundred seventy-five per

cent (175%) of the base instalment for that year. In no event, however, shall the last instalment payable by the District for either the old lands or the new lands, as provided under the provisions of article 11 and of this article, be in an amount greater than necessary to complete payment of the construction charge obligation involved. The District shall be notified of determinations under this article on or before March 1 of the calendar year following that for which such determinations are made.

Reserved Works; Care, Operation and Maintenance Thereof

13. (a) The District, during the period of operation and maintenance of the reserved works by the United States, shall pay to the United States the share of costs of operation and maintenance thereof, including whatever costs may be incurred in the delivery of water therefrom, which is apportionable to the irrigation storage rights therein and which is allocable to the District's rights defined in article 20. In determining the total costs apportionable annually to the irrigation storage rights in these works there shall be included payments required to be made in accordance with the provisions of article 32, but there shall be excluded whatever amounts are required to be paid as American Falls operation and maintenance charges under the contract of June 15, 1923, between the Idaho Power Company and the United States, as it may hereafter be amended.

(b) Beginning with the 1955 irrigation season, payment of the District's share of operation and maintenance costs of the reserved works shall be made for each calendar year on the basis of annual estimates by the Secretary. The notice of these annual estimates, hereinafter referred

to as the operation and maintenance charge notice, shall contain a statement of the estimated cost of operation and maintenance of the works to be incurred for the calendar year involved, the amount thereof apportionable to the irrigation storage rights therein, and the amount of the District's share of these estimated costs. The operation and maintenance charge notice shall be furnished to the District on or before February 1 of the calendar year for which the notice is issued, but, when requested by the District, a preliminary estimate shall be given at such earlier date as is agreed on in writing. The District shall pay the amount stated in the notice on or before April 1 of the year for which it is issued or such other date as may be agreed on in writing.

(c) Whenever in the opinion of the Secretary funds so advanced will be inadequate to operate and maintain the reserved works, he may give a supplemental operation and maintenance charge notice, stating therein the amount of the District's share of the additional funds required, and the District shall advance that additional amount on or before the date specified in the supplemental notice. If funds advanced by the District under this article exceed the District's share of the actual cost of operation and maintenance of the works for the year for which advanced, the surplus shall be credited on the operation and maintenance charges to become due for succeeding years.

Title to Reserved Works;  
Miscellaneous Revenues

14. (a) Title to the reserved works shall remain in the United States until otherwise provided by the Congress.

(b) Miscellaneous revenues realized in connection with the operation and maintenance of the reserved works and related costs shall be distributed among the irrigation storage rights on the same basis that operation and maintenance costs are distributed, such distribution to be effected annually in connection with the final annual adjustments of operation and maintenance costs.

Title to and Operation of Powerplant;  
Power Revenues

15. (a) Title to American Falls dam powerplant and all works incidental and appurtenant thereto, built or to be built by the United States, shall remain in the United States until otherwise provided by the Congress. The United States, in its operation of this powerplant, will be governed by the provisions of the contract of June 15, 1923, with the Idaho Power Company, as that may be amended, as further limited by the provisions of article 32.

(b) All revenues derived from the sale or other use or disposal of power and energy developed at the American Falls Dam shall be and remain the property of the United States.

Transferred Works;  
Care, Operation and Maintenance Thereof

16. (a) The United States reaffirms the transfer heretofore made to the District of the works constructed by the United States pursuant to the Government-District contract, exclusive of the reserved works, and the District reaffirms its acceptance of the transferred works.

(b) The District shall care for, operate, and maintain the transferred works in such manner that the transferred works will remain in as good and efficient condition, and of equal capacity for the carrying and distribution of irrigation water, as of the date of transfer to the District; and will use all proper methods to secure the economical and beneficial use of irrigation water. The care, operation, and maintenance of the transferred works by the District shall be without cost or expense to the United States.

(c) In the operation of the main canal from the heading in Snake River to mile 3.67, the District shall recognize the rights of the North Side Canal Company, Ltd., to use a portion of the capacity thereof subject to the payment by the latter company of the share of operation and maintenance costs, these being rights and obligations as defined in the contract between the United States and the company dated June 30, 1928. Any revision of the rights and obligations of the company as defined in that contract shall be made only with the approval of the District.

(d) Nothing in this contract shall preclude the District, in connection with its operation of the transferred works, from requiring each water user to operate and maintain laterals between the delivery point for his farm unit and the turnout or a point not more than one-half (1/2) mile, measured by the shortest distance, above the delivery point, whichever is the lesser distance.

Transferred Works—Repairs, Inspections, Title;  
Revenues Therefrom

17. (a) The District shall promptly make any and all repairs required for the proper care, operation, and maintenance of the transferred works. No substantial change in any of the transferred works shall be made by the District without first obtaining the written consent of the Secretary.

(b) The Secretary may cause to be made from time to time, after advance consultation with the District, a reasonable inspection of the transferred works to ascertain whether the terms of this contract are being met by the District. Such inspections shall not exceed one a year and the District shall be provided a report thereof.

(c) Title to the transferred works shall remain in the United States until otherwise provided by the Congress.

(d) Miscellaneous net revenues, if any, realized by the United States in connection with transferred works, including net revenues realized from the disposal under the Act of March 31, 1950 (64 Stat. 39) of lands that were withdrawn specifically for the benefit of the Gooding Division, which under law are to be credited to the Division, shall be credited annually against either operation and maintenance or construction charge instalments, as determined by the Secretary.

Default; Resumption of Control of Transferred Works

18. (a) Should the District, after transfer to it of the transferred works, default in any manner in the performance of any of the provisions of this contract, and should it fail to correct the default within one hundred

eighty (180) days after the request in writing by the Secretary so to do, the United States may take over the operation and maintenance of all or any part of the transferred works. Such operation and maintenance by the United States shall continue until the Secretary determines that the District is again capable of operating and maintaining all or any part of the transferred works then being operated and maintained by the United States, and that all or a part of those works should be transferred to the District. When such determination is made, written notice thereof, together with the effective date of the retransfer which shall be not less than one hundred eighty (180) days after the date of the notice, shall be given to the District, and the District shall accept the operation and maintenance of the portion of the transferred works thus retransferred on the effective date and shall thereafter operate and maintain those works in accordance with this contract.

(b) During any time any of the transferred works are operated and maintained by the United States, the cost of operation and maintenance shall be paid annually in advance by the District to the United States. Such payments shall be on the basis of annual estimates made by the Secretary. Such annual estimates shall contain a statement of the estimated cost of operation and maintenance of the transferred works to be incurred by the United States in the following calendar year. The notice of estimates shall be furnished to the District on or before September 1 of the calendar year preceding the one for which the notice is issued. When the United

States takes over initially the operation and maintenance of any part of the transferred works, the Secretary shall give the District immediately:

(1) Notice of the estimated amount of such charge from the time the United States started operating and maintaining the works to the end of that calendar year; and

(2) A notice to cover the following year when the initial taking over occurs after September 1 of any year.

(c) The District shall pay the amounts set out:—in any notice under (1) above on or before the date or dates fixed by the Secretary; and in any notice under (2) above one-quarter on or before March 15 of the year for which due and three-quarters on or before June 30 of that year or such other dates as may be agreed on in writing. The District shall levy, without delay, whatever special assessments or toll charges are necessary to raise the funds for payment of such amounts.

(d) Whenever funds so advanced will be inadequate to operate and maintain the works being operated by the United States, the Secretary may give a supplemental notice stating therein the amount of additional funds required, and the District shall advance that amount on or before the date specified in the supplemental notice. If funds advanced by the District under this article exceed the actual cost of operation and maintenance for such works for the year for which advanced, the surplus shall be credited on any amounts next to become due from the District.

#### Reserve Fund for Operation and Maintenance

19. (a) The District shall include in the annual operation and maintenance assessment or toll charge levied against the water users an annual

amount per irrigable acre for the accumulation and maintenance of a reserve operation and maintenance fund. The fund shall be accumulated initially or thereafter replenished to an amount which at any time shall be not less than one-third of the average of the then past five (5) years' operation and maintenance levies by the District. The initial accumulation or replenishment shall be accomplished by including in each year's operation and maintenance levy, beginning with the levies for the year 1958, five (5) cents an acre unless a lesser sum will suffice to establish or replenish the fund, but the District may at any time make deposits in the fund in excess of those resulting from such levies.

(b) The fund shall be available only: (1) to meet those costs of operation and maintenance which are in excess of the normal operation and maintenance costs and only after advance notice in writing has been given to the Secretary as to a proposed use, and (2) to meet other operation and maintenance costs when the use of the fund therefor is approved in advance by the Secretary.

(c) This fund shall be maintained by the District, apart from other District funds, in a depository meeting the requirement of the law of the State of Idaho as to deposit of irrigation district funds, or may be invested in United States bonds or in such other securities as are approved by the Secretary.

#### Water Supply

20. (a) The water supply to be available under this contract comprises both water accruing to capacity in American Falls Reservoir and

certain natural flow rights held for the District, both as more fully defined herein.

(b) The United States will operate and maintain the existing American Falls Dam and Reservoir, and will make available to the District stored water accruing to twenty-three and fifty-three hundredths per cent (23.53%) of the active capacity of that reservoir within the limits and on the terms and conditions provided in this contract. This percentage shall, so long as the reservoir has an active capacity of 1,700,000 acre-feet, be treated as the equivalent of 400,000 acre-feet of active capacity. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the District whenever there are determinations that the active capacity is other than above stated.

(c) The District shall be entitled to have delivered to it during each irrigation season its proportionate share of all irrigation water stored in American Falls Reservoir during the storage season ending during or immediately preceding that irrigation season. The District shall also be entitled to have held over from one irrigation season to the next for its use in that next season stored water to which it is entitled, but the total amount of stored water which will be held over for the use of the District during an irrigation season shall not exceed the amount that can be stored in the space made available to the District under (b) of this article. Stored water available under the rights in American Falls Reservoir as defined herein shall be available for delivery to the District during any irrigation season within these limitations:

That deliveries shall be limited at any time to the amount which can be delivered by means of the District's proportionate share of the outlet capacity, taking into account the requirement of passing through the reservoir water belonging to prior rights under the physical limitations of the existing outlet works.

(d) The United States will continue to hold Idaho water license No. 15134, a direct diversion permit having a priority date of March 30, 1921, with the District to have rights thereunder as follows:

The right to divert as natural flow thereunder from May 1 of each irrigation season continuing during that season so long as there is natural flow available for that priority one-half of the first 1,700 cubic feet per second of flow, except that in any year in which American Falls Reservoir is full to capacity on April 30 or fills after that date, taking into account any water that may be temporarily stored to its credit in upstream reservoirs, all water diverted by the District within the maximum of 1,700 cubic feet per second during the year prior to the initial storage draft on American Falls Reservoir after the reservoir finally fills in that year shall be considered as natural flow under that license. Nothing herein shall prevent the District from diverting water under said license prior to May 1 of a given irrigation season but all such diversions shall be charged as storage in the event

the reservoir is not full on April 30 of that season or does not fill after April 30 of that season, unless diversions so made are of amounts that, but for the diversions, would have spilled past Milner Dam and have been in excess of amounts required to be so spilled to satisfy third-party rights.

Water available at American Falls Reservoir for the March 30, 1921 priority under water license No. 15134, other than that to be available to the District as above provided, shall be available for storage in American Falls Reservoir.

Points of Delivery of Water;  
Measurement and Losses

21. (a) Stored water to which the District is entitled under this contract will be delivered and measured at the outlets of American Falls Reservoir. The District will bear all losses chargeable to such water between those outlets and the District's point of diversion from the river.

(b) In addition to other specific provisions as to the distribution of losses chargeable to stored water, there shall be charged against stored water held under this contract to the credit of the District at the end of any irrigation season one and one-half per cent ( $1\frac{1}{2}\%$ ) to offset evaporation losses. Such charge shall be made as of not later than the end of the ensuing storage season.

Ordering of Water

22. The ordering of stored water shall be effected by the District by notifying the watermaster, giving notice a reasonable period in advance, of

the amount of water, within the limits of its water entitlements, to be diverted during each day of the irrigation season. The watermaster will be responsible for determining from day to day the amount of stored water required to be released from the various reservoirs of the system to comply with the requirements of the District and all other entities entitled to the delivery of stored water only in response to orders from the watermaster. The watermaster shall be responsible for determining what portion of the District's diversions is chargeable to stored water being held in the reservoir system for the District, and diversions by the District in excess of entitlements shall be charged against stored water subsequently accruing to the District's credit under this contract.

#### Complaints Regarding Water Supply

23. The United States and its officers, agents and employees in charge of American Falls Reservoir and the watermaster will use their best efforts and best judgment to deliver to the District its proportionate share of the water to which it is entitled under this contract. Should the District feel aggrieved because of an alleged mistake or inaccuracy in the delivery of water or in the division of stored water among the parties entitled to such water from the reservoir, the District shall immediately report such alleged mistake or inaccuracy to the watermaster and to the official of the United States in charge of the reservoir. If the watermaster finds that the District's proportionate share of stored water is not being delivered, he will correct the error as early as possible. No liability, however, shall accrue against the United States, its officers, agents or employees, or the

watermaster for damage, direct or indirect, arising by reason of shortages in the quantity of water available through the reservoir system by reason of drouth, inaccuracy in distribution, hostile diversions by third parties, prior or superior claims, accident to or failure of the facilities comprising the reservoir system, whether or not attributable to negligence of officers, agents or employes of the United States, or other similar causes of whatsoever kind. Nor shall the District's obligations to the United States under this contract be reduced by reason of such shortages or interruptions.

Payment of Costs in Delivery and  
Distribution of Stored Water

24. (a) The District shall pay, in addition to its proportionate share of the costs of operation and maintenance of American Falls Reservoir as provided under article 13 of this contract, its proportionate share of all costs of the delivery and distribution of water beyond the outlet works of the reservoir. These costs shall include, with respect to costs incurred by the United States, all costs and expense of whatsoever nature or kind in connection with, growing out of, or resulting from the distribution of stored water, the protection of stored water between the reservoir and the points of diversion from the river including the prevention of diversion of such water by parties not entitled thereto. Whatever costs of this character are incurred by the United States shall be distributed among the District and all others on whose behalf such costs have been incurred on the basis that the operation and maintenance costs of the reservoir are distributed among the

various rights. Unless otherwise agreed in writing by the Secretary and the District, such costs shall be paid annually and for billing purposes shall be included as part of the operation and maintenance costs under article 13 of this contract.

(b) The District shall also pay its proportionate share of the costs incurred by the watermaster in the delivery and distribution of water in accordance with the provisions of article 22 to the extent that those represent costs incurred other than by the activities of the United States in the delivery and distribution of water. The costs will be apportioned and paid in accordance with the provisions of the laws of the State of Idaho.

#### Protection of Water Rights

25. In case any dispute arises as to the character, extent, priority or validity of any of the water rights held in the name of the United States for the benefit of the District in connection with its rights under this contract, the United States may, independently of the District, bring and prosecute judicial proceedings for the determination of such dispute and take all other measures necessary toward the defense and protection of its water rights, and such proceedings may be brought and prosecuted by the District.

#### Waste, Seepage, and Return Flow Waters

26. (a) The United States does not abandon or relinquish any of the waste, seepage, or return flow waters attributable to the irrigation of the lands to which water is supplied under this contract. All such waters are

reserved and intended to be retained for the use and benefit of the United States as a source of supply for the project.

(b) If suitable drainage or return flow water from any part of the project shall at any time be or become available at points where it can be used on lands within the District, the United States may supply such water as a part of the supply to which the lands in the District are entitled.

No Liability for Water Shortage or Interruptions

27. No liability shall accrue against the United States or the District or any of their officers, agents or employees for damage, direct or indirect, arising by reason of shortages in the quantity of water available through the project works or interruptions in water deliveries to lands in the District resulting from drouth, inaccuracy in distribution, hostile diversion, prior or superior claims, accident to or failure of facilities of the project works, whether or not attributable to negligence of officers, agents or employees of the United States or the District, or other causes of whatsoever kind. Nor shall the District's obligations to the United States under this contract be reduced by reason of such shortages or interruptions.

Lands Above Proposed Canal to Benefit  
Equally With Lands Below

28. (a) It is one of the objects of this contract to provide each irrigable acre of the old lands within the District, whether located above or below the main canal, with substantially the same benefits from American Falls storage and other sources available to the District, either directly or indirectly.

(b) To carry out this object, it is agreed that:

- (1) The owners of old lands below the main canal who are entitled to water from the Big Wood or the Little Wood River or Magic Reservoir are deemed to agree that the water from those sources may be used on old lands above the main canal, and to accept in lieu of water from those sources, an equal amount of water from American Falls storage and other sources available to the District, all to the extent necessary to permit the old lands above the main canal to benefit equally, so far as possible, with the old lands below the canal in the water supply made available under this contract.
- (2) Owners of old lands entitled to receive water from Magic Reservoir are deemed to agree that, for the purposes of the provisions of (1) of this subarticle, stored water remaining in Magic Reservoir at the end of any irrigation season shall be pooled with and treated as other water subsequently stored therein which is available for the ensuing irrigation season.
- (3) Owners of old lands below the main canal are deemed to agree that, in the event extreme shortage in the water supply available from the Big Wood and the Little Wood rivers and Magic Reservoir makes it impossible for old lands above the main canal to receive substantially as

much water per irrigable acre as is received by the old lands below the main canal for any irrigation season, the old lands below the canal will not be entitled to the delivery of any water from those sources until the deficiency in the supply received by the old lands above the canal in that season has been offset in subsequent seasons, except during any period that there are waters available in the Big Wood and Little Wood rivers after Magic Reservoir is filled and the then current requirements of the old lands above the canal have been supplied.

(c) All landowners within the District who permit this contract to be executed by the District and confirmed as required under article 47, or who accept any of the benefits of this contract, shall be deemed to have consented and agreed to all the provisions of subarticle (b) of this article. In the event any such landowner refuses to comply with the provisions of that subarticle (b), he shall be denied every benefit accruing under this contract; and the District shall refuse to deliver water to any land of such landowner from the supply made available under this contract until such time as a valid enforceable agreement embodying the terms of subarticle (b) in a manner satisfactory to the Secretary has been entered into between such landowner and the District.

Contract to be Made With Big Wood Canal Company

29. (a) Within six (6) months after the approval of this contract by the Congress, or within such additional time as the Secretary finds to be

proper, the District shall enter into a contract with the Big Wood Canal Company (herein called the Company) amending or superseding the existing contract of May 1, 1928, such contract being herein referred to as the new Company-District contract. Until such time as that action has been taken, the District and the Company will continue to operate under the provisions of the existing contract of May 1, 1928. The new Company-District contract, to be approved in advance by the Secretary, shall conform in substance to the requirements of this article and not be inconsistent with this amendatory contract.

(b) The new Company-District contract shall contain, among other things, the following provisions:

- (1) Concerning the relative responsibilities of the Company and the District for operation of works to serve the various categories of land within the jurisdiction of the District. The agreement on this point shall provide substantially as follows:

That the District will operate and maintain (i) the entire main canal from its heading in Snake River to mile 72, and (ii) the distribution system required to serve the irrigable lands of the Hunt area, and to serve approximately 561.5 acres of new lands in township 5 south, range 14 east, through the so-called Carpenter lateral.

That the Company will operate and maintain the Company's storage, diversion, and distribution system, including works and capacity added to that system under the contract of May 1, 1928, and works and capacity that may hereafter be provided.

- (2) Providing that the District will deliver water made available under this United States-District amendatory contract as follows: (i) to the Company for delivery as required, (ii) into the Big Wood and Little Wood rivers for diversion by river-right lands, and (iii) to new lands where delivery falls to the District's responsibility.
- (3) Providing that the Company will deliver, in accordance with entitlements, water made available under this United States-District amendatory contract (including released water as hereinafter defined) to all old lands (excluding river-right lands) and all new lands other than those to be served by the District. "Released water" shall be defined to mean, in the case of old lands above the main canal, water from the Big Wood and Little Wood rivers and Magic Reservoir which becomes available to such lands by reason of the releases and exchanges effected pursuant to article 28 of this United States-District amendatory contract; and in the

case of old lands below the main canal, water in addition to that required to replace that released under article 28 to old lands above the main canal.

- (4) The right of the District, or the United States while it may be operating the transferred works, to enlarge or improve any part of the Company's water distribution system where required for the carrying out of the amendatory contract between the United States and the District.
- (5) Requiring that there be determined for each year the total cost of operation and maintenance of all the storage, diversion, and distribution works chargeable to both the Company and the District, exclusive of such costs which are allocable to making stored water available to river-right lands and of the costs allocable to those 610.7 acres of Company land not within the jurisdiction of the District; and that the average per irrigable acre cost be derived therefrom by dividing such total annual cost by the total area of the District's new and old lands, excluding river-right lands. In determining total annual costs as herein provided, all costs of operation and maintenance that are properly chargeable against either the Company's or the District's system shall be included, regardless of

whether chargeable initially to the Company or the District.

- (6) Requiring that the respective levies by the Company and the District for operation and maintenance costs shall be adjusted so that the combined annual operation and maintenance levies of the Company and the District against each irrigable acre of old land (excluding river-right lands) and the District's annual operation and maintenance levy against each acre of irrigable new land shall be the same.
- (7) Providing, in connection with the requirements of (5) and (6) above, for adequate working arrangements for budgeting and accounting for anticipated and actual operation and maintenance costs of the systems involved.
- (8) Requiring that the Company shall not deliver water from any source to lands within the District that are delinquent in the payment of operation and maintenance charges to the Company, the District, or the United States, or more than twelve (12) months delinquent in the payment of any construction charge obligation instalment due to the Company, the District, or the United States; that if the Company should be unable so to withhold delivery or should fail to do so, it shall

pay to the District or to the United States, as the case may be, the charges plus accrued penalties owing to the District or the United States which the Company was unable or failed to collect as herein required; and that the District or the United States shall be entitled to withhold delivery of water made available under this contract to the Company in the event the Company is in default on any of its obligations under this provision.

- (9) Requiring the Company, in so far as it has the responsibility for the delivery of any water made available under this United States-District amendatory contract, including "released water" for old lands, make deliveries only to those lands entitled to receive such water, having regard for limitations provided in articles 42 and 43 of this amendatory contract, and any other controlling provisions of the Federal Reclamation Laws.

- (10) Providing that for the purpose of delivery of water made available under this amendatory contract, including "released water", the Company shall be deemed to be the agent of the District and be subject to the same limitations as is the District by reason of the Federal Reclamation Laws and this United States-District amendatory contract.

(11) Requiring that the Company will accept and agree to be bound by all the provisions of this United States-District amendatory contract that are pertinent to the entitlement of lands to water made available under the amendatory contract, including "released water".

(12) Providing that the Company-District contract may be revised from time to time but only with the approval of the Secretary.

(c) If the contract with the Company is not entered into within the period above provided, as it may be extended, the Secretary by giving notice in writing to the District may terminate this amendatory contract. In the event of such termination, the respective obligations of the District and the United States will be governed by the provisions of the Government-District contract.

Irrigable Area; Apportionment of  
Water Supply Thereto

30. (a) The basic irrigable area of the District comprises, as of the date of this contract, the lands against which costs and benefits under the Government-District contract have been apportioned, these being

- (1) 73,904.1 acres of old lands,
- (2) 4,263 acres of river-right lands, and
- (3) 20,500 acres of new lands.

The old and river-right lands are as described in the decree of apportionment, as certified as of February 8, 1928, as amended. The new lands comprise the lands described in public notices Nos. 40, as corrected, 42, and

43, and such additional new lands that may be added to result in a total new land irrigable area, not to exceed 20,500 acres. Any additions of new land within this total shall be made only by agreement between the Secretary and the District's board of directors.

(b) The basic irrigable area as above defined may be revised from time to time by the District's board of directors, with the approval of the Secretary, by the substitution of irrigable lands, acre for acre, or by the addition of irrigable lands, but in no event shall the total irrigable area of old lands (including river-right lands) exceed 78,200 and of new lands exceed 20,500, and no such changes shall alter the District's total obligation nor its distribution between old and new lands. The District may, for purposes of its assessments and of its own internal administration and with the consent of the landowners involved, reduce at any time the then controlling irrigable area in any farm unit, but no such reduction shall alter the District's construction charge obligation hereunder.

(c) The total water supply made available to the District hereunder through the main canal shall be apportioned among the new lands and the old lands (including river-right lands) as follows:

To new lands ..... 32.9%

To old lands, including  
river-right lands ..... 67.1%

this distribution being based on the premise that new lands are to receive of the total supply a share that is in the same proportion to total supply

as 20,500 acres of new land is to the total of the acreage of old lands (including river-right lands) below the main canal and of the new land acreage (20,500). The measure of entitlement to the water supply made available hereunder to each irrigable acre of old lands having a partial supply from the Big Wood Canal Company and of the river-right lands is, as measured against the entitlement of new lands, in the ratio that the apportionment of benefits and costs against the particular acre of such old or river-right land is to such apportionments against each acre of the total new land acreage of 20,500.

Operation and Maintenance Charges;  
Levies and Assessments

31. (a) The provisions of this article are made with the object, among other things, of distributing the operation and maintenance charges equitably among the lands of the District, whether served by the District or the Big Wood Canal Company and whether receiving water directly or by substitution.

(b) There shall be levied, whether by the District or the Company or both, a uniform annual operation and maintenance charge against each irrigable acre within the District, exclusive of the river-right lands. The District's annual operation and maintenance charge against each tract of river-right land shall be that percentage of the uniform charge as the benefits under this contract as apportioned to that tract of land are of the benefits apportioned to each irrigable acre of new land. The payment of such charges shall be required whether or not water is

used. The amount of water in acre-feet per acre from all sources (including water available from Magic Reservoir and the Big Wood and Little Wood rivers), and the rates of delivery therefor, shall be determined by the board of directors with the object, among other things, of providing for a uniform rate of delivery of the water available hereunder.

Winter Power Operations Minidoka Powerplant

32. (a) The United States, in its operation of American Falls and Minidoka dams during the storage season of each year is required to pass through enough water to satisfy existing diversion rights in the stretch of river down to and including Milner Dam and certain power rights below Milner Dam, and has the privilege under an existing decree to use at Minidoka Dam 2,700 cubic feet per second of water for the development of power. While the United States must operate the American Falls and Minidoka dams so as not to interfere with these third-party rights, it will be the objective of the United States in the operation of both its American Falls and Minidoka powerplants to curtail the release of additional water from American Falls Reservoir for power production at those powerplants during the storage season of any year whenever operation of those powerplants to the full extent of their respective water rights for power production would result in loss of irrigation water otherwise storable in the reservoir system. Accordingly, except as it is determined by the Secretary that additional water may be passed through American Falls and Minidoka dams without the loss of water that could be stored for irrigation in the reservoir system, the United States will, during each storage season beginning

October 1, 1952, and continuing so long as the provisions of (c) of this article remain operative, limit the release of water through those dams as follows:

To the amount of water required to provide flows below Minidoka Dam sufficient to meet existing diversion rights in the reach of the river through Milner Dam and the power rights required to be recognized under the provisions of the contract of June 15, 1923, between the United States and the Idaho Power Company (Symbol and No. Ilr-733), as those diversion and power rights may be modified from time to time.

To the extent that it is practicable to do so, the Advisory Committee will be informed in advance of any plans for the release of water in excess of the foregoing limitations; and that Committee will be furnished written reports as of the close of the storage season of each year showing, among other things, the releases actually made and the minimum released required to be made.

(b) Curtailment of releases as provided in (a) of this article will result in there being, in some years, additional water available for storage for irrigation purposes in American Falls, Island Park, and Palisades reservoirs. In any storage season when these reservoirs fail to fill, the saved water attributable to such curtailment shall be credited, first, to Island Park Reservoir to the extent of 45,000 acre-feet without regard to the priority of the storage permits held for that reservoir, and thereafter to American Falls, Island Park, and Palisades reservoirs in the

order of priority of their respective storage permits, the crediting to Island Park Reservoir and to any storage right in any other reservoir (except the lower valley exchanged space in American Falls Reservoir) being contingent on the owners of these rights obligating themselves for their share of the annual payments for power replacement in keeping with the provisions of (e) of this article.

(c) For the purposes of this contract and without relinquishment of any part of the power rights herein described, it is assumed that but for curtailment of operations as provided in (a) of this article, units 1 through 6 of the Minidoka powerplant would be operated during the storage season of each year to the maximum extent practicable within the limits of the power rights therefor (2,700 second-feet as decreed by the District Court of the Fourth Judicial District of Idaho on June 20, 1913, in the case of Twin Falls Canal Company v. Charles N. Foster, et al.) and that in consequence of operations under this article there may be losses in the production of power and energy at that plant. To offset such losses, the United States will, as nearly concurrently as practicable, make replacement by the delivery of power and energy into the Minidoka power system at the Minidoka powerplant from other interconnected Federal powerplants being operated under the Federal Reclamation Laws. Payment for such replacement power and energy shall be made by the District and all other contractors having reservoir rights benefiting from the water savings resulting from operations under the provisions of (a) of this article in annual amounts determined as follows:

- (i) Prior to the date when either the American Falls powerplant or Palisades dam powerplant is first in service, the payment for any year shall be the product, in dollars, of the then controlling average annual replacement requirement, in kilowatt-hours, times four mills (\$0.004).
- (ii) Beginning with the date when either the American Falls powerplant or Palisades dam powerplant is first in service, the payment for any year shall be the product, in dollars, of the then controlling average annual replacement requirement, in kilowatt-hours, times the price per kilowatt-hour, figured at 100 per cent load factor, under the then existing rate schedule for the sale of firm power and energy from the plant or plants involved.

In determining replacement requirements under this article, no account is intended to be taken, by way of offset or otherwise, of the effect of any reservoir system storage operations on the seventh unit of the Minidoka powerplant.

(d) The replacement requirements for the year ending September 30, 1953, shall be 5,699,000 kilowatt-hours, being the average annual replacement requirement for the period beginning October 1, 1931, and ending September 30, 1951. The average annual replacement requirement under either (i) or (ii) of (c) above for the year ending September 30,

1954, shall be the average of the annual replacement requirements for each year of the 20-year period ending September 30, 1953, and for each 12-month period after September 30, 1954, shall be the average of the annual replacement requirements of each year of the 20-year period ending on September 30 of the prior year. In deriving this average there shall be used, as annual net power production losses for each year, the annual figures for the years through September 30, 1951, as shown in Table 1 of the document entitled "Criteria and Methods for Determination of Certain Minidoka Powerplant Production Losses From Restrictions on Use of Water Rights", and for each year thereafter, a net power production loss calculated on the basis of the comparison of (1) the total energy that could have been produced by units 1 through 6 of the Minidoka powerplant based on the water flows actually recorded at the U.S.G.S. Minidoka gaging station (hereinafter called the Minidoka gage), corrected as hereinafter provided, and (2) the energy which theoretically could have been generated at those units with the flows at the Minidoka gage without a curtailment in winter power operation as provided in this article and exclusive of irrigation storage releases. Using conclusions reached as to flows and heads, the power loss calculations will be made by utilizing the power production curves shown in drawing No. 17-100-139, as revised, incorporated by reference in the document identified above, but increases in energy in any year by reason of taking

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1/ Duplicate originals of this document shall be filed with the water-master of District No. 36, the officer of the United States in charge of the Minidoka Project, and the Burley Irrigation District.

American Falls storage into account as provided in subparagraph (iii) of this subarticle (d) shall be accounted for as compensating offset up to but not exceeding energy losses accruing in that year by reason of curtailment in power operations under this article.

To correct flows under (1) above, all storage releases except American Falls shall be excluded and the measure of American Falls storage passing the Minidoka gage shall be the increase in storage at that gage over that computed at the Blackfoot gaging station as shown in the annual report entitled "Water Distribution and Hydrometric Work, District 36, Snake River, Idaho", the latter further corrected for any American Falls storage that may have been present by reason of having been stored temporarily upstream and that portion of Palisades storage which was diverted above the Minidoka gage. In measuring American Falls storage, it shall be assumed that storage is released from downstream reservoirs first. The flow at the Minidoka gage without storage shall be taken to be the normal flow at that gage as shown by that same report. In determining water flows, with and without curtailment of power operations as provided in this article, these assumptions shall be used with respect to units 1 through 6 of the Minidoka powerplant:

- (1) There is a right for power production to maintain a flow of 2,700 second-feet at Minidoka Dam during the storage season of each year in accordance with the decree entered June 20, 1913, supra, if that flow, disregarding the storage of saved water in the reservoir

system under the provisions of this article, would be available at Minidoka Dam.

- (ii) There is a right to use, within the hydraulic capacity of these units, whatever natural flow passes Minidoka Dam during each irrigation season.
- (iii) Although there is no right to have water stored under American Falls Reservoir rights released for power production, during the period that such storage is being released for irrigation there will be more energy produced by these units than is attributable to the natural flow rights therefor, which shall be taken into account as a compensating offset as provided above in this subarticle (d).

To determine controlling power heads, the effective power head for any period shall be derived on the basis of recorded forebay and tailwater elevations for that period.

The foregoing criteria for determinations of annual net power production losses may be changed from time to time but only if the changes are made in writing with the approval of the Secretary, the Advisory Committee, and the boards of directors of both the Burley and Minidoka irrigation districts. Determinations as to net power production losses for each year and the average annual replacement requirement under this article shall be made by a committee of three comprising the State Watermaster of District No. 36, a representative to be selected by the Burley and Minidoka irrigation districts and the North Side Canal Company, Ltd., and the officer of

the United States in charge of the Minidoka Project, but, should that committee fail to make a determination for any year by January 1 of the year for which the determination is required, it may be made by the Secretary.

(e) The annual payment determined as provided in this article shall be apportioned among the benefiting reservoirs as follows: (i) prior to the first full storage season during which Palisades Reservoir is in operation, eighty-eight per cent (88%) to American Falls Reservoir and twelve per cent (12%) to Island Park Reservoir; and (ii) beginning with the first full storage season of Palisades operation, seventy-eight per cent (78%) to American Falls, twelve per cent (12%) to Island Park, and ten per cent (10%) to Palisades. The amount apportioned to each reservoir shall be accounted for as part of the operation and maintenance costs for which provisions for payment for the District's share is made elsewhere in this contract. The amount apportioned to American Falls Reservoir shall be distributed equally over all space available for irrigation storage, excluding the lower valley exchanged space but including in lieu thereof the upper valley exchanged space in Jackson Lake Reservoir.

(f) If the owners of any storage rights to benefit from the operation of this article fail to obligate themselves for their share of the annual payments for power replacement hereunder, the saved water creditable to such rights and the power replacement costs chargeable thereto shall be redistributed according to a formula to be agreed on in writing between the Advisory Committee and the Secretary. Such formula shall, however, be as nearly consistent as practicable with the formula that would control but for such redistribution.

Consent to Special Storage Rights, to Permanent Exchange,  
and to Priority of Certain Storage Rights

33. (a) The District hereby consents to the granting to holders of storage capacity in Palisades and American Falls reservoirs, within the limitations of capacity available to them, special storage rights, which shall be prior in time to storage rights held by the United States for American Falls Reservoir, on the following conditions and limitations:

- (1) To those water users or water users organizations who, directly or indirectly, contract to curtail storage season diversions for not less than one hundred fifty (150) consecutive days out of each storage season, within these maxima as to total special storage rights:

For water users and water users organizations diverting above American Falls Dam - 135,000 acre-feet.

For water users and water users organizations diverting between American Falls and Milner Dam - 8,000 acre-feet, exclusive of the rights described in (2) of this article.

- (2) To the North Side Canal Company, Ltd., and the Twin Falls Canal Company, the right to store during the months of November through March of any storage season water that would otherwise accrue to them within these rights:

The rights of the North Side Canal Company, Ltd., and of the Twin Falls Canal Company, respectively, to

divert at Milner Dam for domestic and livestock uses during those months as follows:

North Side Canal Company, Ltd. 126,000 acre-feet

Twin Falls Canal Company ..... 150,000 acre-feet

within this limitation:

If, taking account of all storable water whether stored or not, Palisades and American Falls reservoirs fail to fill during any storage season, any water diverted during that storage season by the North Side Canal Company, Ltd., in excess of 126,000 acre-feet (but not to exceed the amount of deficiency in fill), and by the Twin Falls Canal Company in excess of 150,000 acre-feet (but not to exceed the amount of deficiency in fill), will be charged as of the end of that storage season against the allotment of American Falls storage to these respective companies.

This limitation in the case of the North Side Canal Company, Ltd., shall become operative from the date Palisades Reservoir is ready for operation, but in the case of the Twin Falls Canal Company need not be made operative until the first year in which that company exercises the special storage provision to which consent is here given.

(b) Certain water users organizations owning storage rights in American Falls Reservoir have agreed or will agree, in connection with the

acquisition of additional reservoir rights in Palisades or American Falls Reservoir, to accept in exchange for a portion of their American Falls Reservoir rights certain storage rights in Jackson Lake Reservoir below elevation 6752 feet above sea level (U.S.G.S. datum), the provisions for such exchange being substantially as set out in the document entitled "Basic Provisions Incorporated or to be Incorporated in Contracts With Water Users Organizations to Govern the Permanent Exchange of Certain American Falls and Jackson Lake Storage Rights", attached hereto as Exhibit A. The rights to be held in American Falls Reservoir as a result of this exchange, comprising nineteen and seventy-five hundredths per cent (19.75%) of the active capacity in that reservoir, are identified collectively as the lower valley exchanged space. The District hereby consents to such exchange.

(c) In connection with Island Park Reservoir, located on the North (Henrys) Fork of Snake River, the United States holds water license No. R-590, with a priority date of March 14, 1935, and license No. R-686, with a priority date of June 12, 1940. Notwithstanding the later priority of license No. R-686, the District hereby agrees that all storage rights held by the United States in connection with Island Park Reservoir may be treated as having the same priority as rights under license No. R-590.

(d) Nothing in this article nor any other provision of this amendatory contract is intended to grant, or shall be construed as granting, to any holder of storage capacity in American Falls Reservoir rights in the reservoir that encroach on or that impair rights of the District to the use of its proportionate share of American Falls Reservoir capacity as defined in article 20.

#### Computation of Costs

34. The costs which enter into the District's obligation hereunder shall embrace all expenditures of whatsoever kind in relation to the function for which the charge is made, including, but without limitation by reason of this enumeration, cost of surveys and investigations, labor, property, material and equipment, engineering, legal, superintendence, administration, overhead, general expenses, inspection, special services, and damage claims of all kinds whether or not involving the negligence of officers, agents or employees of the United States, but shall be exclusive of amounts which the law does not require to be repaid and which the Secretary determines as a matter of policy are to be treated as nonreimbursable.

#### General Obligations; Levies Therefor

35. (a) The District shall cause to be levied and collected all necessary assessments and charges, and will use all of the authority and resources of the District to make all payments to the United States when due and to meet its obligations under this contract.

(b) The respective obligations of the old lands (including river-right lands) and the new lands for charges coming due under this contract, other than the construction charge obligation, shall be a general obligation of all District lands. The old lands shall not, however, be obligated in any way or be held liable for any delinquencies as to the construction charge obligation under this contract against any of the new lands, and the

new lands shall not be held liable for any delinquencies as to the construction charge obligation under this contract against the old lands.

All Benefits Conditioned Upon Payment

36. (a) Should the District fail to levy the assessments, tolls, or other charges against any lands in the District required to be levied to meet the District's obligation to the United States under this contract, or, having levied, should the District be prevented from collecting such assessments, tolls or other charges by any judicial proceedings, or otherwise fail to collect them, such lands shall not be entitled to receive water from the supply made available hereunder, and the District, except as otherwise ordered by a court of competent jurisdiction, shall not deliver water to such lands from such water supply unless and until arrangements for its delivery satisfactory to the Secretary have been made.

(b) As to any such lands the District is hereby authorized, as a fiscal agent of the United States, to collect whatever charges may be required under the delivery arrangements made as provided in this article. Payment shall be required as a condition precedent to the delivery of water. Collections so made by the District shall be paid promptly to the United States in the manner directed by the Secretary.

(c) No action taken by the Secretary under the provisions of this article shall in any manner relieve the District of the obligations assumed by it under this contract.

Refusal to Deliver Water in Case of Default

37. No water available to the District under this contract shall be delivered to or for the District if the District is in arrears in the

advance payment of operation and maintenance charges owed to the United States, if any, or more than twelve (12) months in arrears in the payment of construction charge obligation instalments, or more than twelve (12) months in arrears in the payment of any other amount owed to the United States under this contract. The District shall refuse to deliver water to lands or parties who are in arrears in the advance payment of operation and maintenance charges due from such lands or parties to the United States or to the District, or to lands or parties who are in arrears more than twelve (12) months in the payment of amounts due from such lands or parties to the United States or the District to the United States under this contract. The provisions of this article are not exclusive and shall not in any manner prevent the United States from exercising any other remedy given by this contract or by law to enforce the collection of any payments due under the terms of this contract.

Inspection and Other Charges to be Paid by the District

38. (a) On or before April 1 of each year, from the effective date of this amendatory contract until the District's construction charge obligations to the United States are repaid in full, the following costs for each calendar year, ending on the preceding December 31, shall be paid:

- (1) The cost of all inspections under the provisions of article 17.
- (2) The cost of any crop censuses and investigations made under the provisions of article 40.

(3) Other costs for such work as is required to be performed in connection with the administration of this contract by the United States and which is required by the Federal Reclamation Laws to be charged to the District.

(b) To the extent possible, services for which costs are required hereunder to be charged to the District shall be undertaken only after first informing the District of the services involved and their probable costs. The first payment under this article shall be due and payable on April 1 of the year following the first full calendar year after the effective date of this contract, and shall cover the calendar year ending the preceding December 31, but the determinations of costs hereunder shall not include items of cost that have accrued and for which the District has made other arrangements for payment or satisfaction.

#### Penalty for Delinquency in Payment

39. Every instalment or charge required to be paid to the United States under this contract which shall remain unpaid after it has become due and payable shall bear interest at the rate of one-half per cent (1/2%) per month from the date of delinquency. The District shall impose, on delinquencies in the payment of assessments and other charges levied by it to meet its obligations under this contract, such penalties as it is authorized to impose under the laws of the State of Idaho.

#### Crop Returns and Census

40. (a) The District shall keep an accurate record of all crops produced on lands within the District. The District shall furnish the

United States each year a report covering such crops on or before December 31.

(b) Should the District elect to adjust the annual instalments under the provisions of article 12, at such times as the Secretary deems it necessary or desirable, but only after first consulting with the District, he may cause a crop census to be taken and an investigation of the per-acre income to be made on all or any part of the lands in the District. Such a census and investigation shall be for the purpose of checking the crop reports furnished to the United States by the District and furnishing an independent source of information as to the agricultural income from the lands in the District. In connection with such a census or investigation, the Secretary may require information to be given under oath. In the event any water user refuses to give such information when requested to do so by the Secretary's authorized representative, the representative may estimate the crop production and per-acre income of such water user. Estimates so made shall be given the same weight as though based on information under oath by the water user in adjusting the annual sum to be paid by the District under this contract.

Books, Records, and Reports; Access Thereto

41. The District shall maintain a modern set of books of account showing all financial transactions of the District, and furnish such financial statements and reports as may be required from time to time. Subject to applicable Federal laws and regulations, the secretary of the District, or his representative, shall have full and free access at all reasonable

times to the account books and official records of the Bureau of Reclamation relating to the construction, operation, and maintenance of the project and the status of the accounts concerning the District's payments of construction and operation and maintenance charges, with the right at any time during office hours to make copies thereof. Subject to applicable state laws and regulations, the proper representatives of the United States shall have similar rights in respect to the account books and records of the District.

Limitations on Land Sale Prices;  
Duration of Recordable Contracts

42. (a) The provisions of this article shall be applicable only to sales and contracts for the sale of new lands located in the Hunt area, and shall remain effective as to those lands only until December 31, 1957.

(b) No part of the water supply made available under this contract shall be delivered to or for any of the Hunt area lands except those whose owners for themselves, their heirs, successors, and assigns, have heretofore executed and delivered recordable contracts in the form required under the terms of the Government-District contract, or shall hereafter execute and deliver recordable contracts in a form to be approved by the Secretary (herein called the new form contract), accepting the terms and conditions of this contract and agreeing that their lands shall be bound by all the terms and conditions of this contract, and particularly the terms set out in this article and in article 43 with respect to excess land.

(c) The amount in dollars by which the price fixed in any future sale of the Hunt area lands exceeds the sum of

- (1) The appraised value of the lands as determined by the appraisal provided for in this article;
- (2) The appraised value of the improvements thereon, if any, and
- (3) The costs of sale, expressly limited to the cost of abstract of title or title insurance, attorney fees, recording fees and sales commission, not exceeding five per cent (5%) of the sale price,

shall be deemed for the purpose of this article as the incremental value of said land.

(d) An appraisal of the irrigable lands within the Hunt area was made by a board of appraisers in 1928, copies of which appraisal are available in the District's office and in the Regional Office of the Bureau of Reclamation. As to any given tract of land, this appraisal, as it may have been revised prior to the effective date of this contract, shall govern until a reappraisal has been made as herein provided. At the request of the landowner, lands and improvements, whether or not covered by the original appraisal, may be appraised or reappraised by a board of appraisers to comprise three members, one appointed by the Secretary, one by the District, and a third member to be selected by the other two, upon payment to the District of the cost of making such appraisal or reappraisal. The appraisal or reappraisal shall be on the following basis:

- (1) The irrigable land will be appraised at its current full fair market value.

- (2) Improvements, comprising buildings and other structures, including fences, wells, and springs; and perennial plantings such as trees, lawns, and shrubbery; and other betterments considered by the board of appraisers to be of value to the farm being appraised, shall be appraised on the basis of their current full fair market value in connection with the lands on which they are situated.

All future appraisals shall be furnished to the United States for approval by the Secretary under such rules and regulations as adopted by the Secretary. In the event the lands or improvements being appraised or reappraised are covered by only an old form of recordable contract, the landowner may be required to execute a new form of contract as a condition to the approval of the current appraisal or reappraisal.

(e) Upon the sale of any land covered by a recordable contract within the Hunt area, the vendor or vendee thereof shall file with the secretary of the District a statement executed by both under oath describing the land and showing the amount of the purchase price of said land and giving the details of said transaction; and after any sale, transfer, or trade of such land, no water shall be furnished to said lands until such statement has been filed and any payments herein provided for have been made to the District. Any such sale, trade, or transfer shall not be made unless there shall be provided a sufficient money consideration to make any payments to the District as herein provided, and the right of such tract of land to receive water from the works constructed by the United States shall be

suspended until either the land shall be reconveyed to the former owner or payment made to the District as herein provided.

(f) If any of the lands of the Hunt area are sold at an increment in value, as herein defined, the vendor shall pay to the District, or the vendee shall pay to the District out of the money, so far as is practicable, which would otherwise have been payable to the vendor, an amount equal to fifty per cent (50%) of such incremental value. Such payment when made shall be credited on the books of the District to such tract of land so transferred as an advance payment of future construction charge installments in the following manner:

On any construction charge assessments made by the District by reason of this contract, the credit to be applied on the assessments in the order in which they become due.

(g) Any lease or crop-share contract of lands in the Hunt area containing an option to purchase or other provision for transfer of title will be treated as an agreement to sell, and any rental payments or crop-share payments therein provided shall be considered as part of the purchase price at the time of said transfer.

(h) The District shall employ suitable means to determine by monthly inspections the transfers of lands and agreements to sell involving lands of the Hunt area, and it shall refuse delivery of water to any such lands until the conditions of this article have been complied with in full. The District, during the time the United States is operating the transferred works of the Hunt area, shall notify the United States of any such lands to

which water should be refused, and shall furnish to the Secretary any information and reports requested by him under such rules and regulations as may be established by the Secretary.

Lands for Which Water is Furnished;  
Limitations on Area

43. (a) The water delivered under the terms of this contract shall be used solely for distribution by the District to water users for irrigation and domestic uses incidental thereto.

(b) The District (and the United States while it is operating and maintaining the transferred works) will operate the irrigation system to the end of making available to each irrigable acre of land in the District, during each irrigation season, that quantity of water to which it is entitled.

(c) Pursuant to the provisions of the Federal Reclamation Laws, water made available hereunder shall not be delivered to more than one hundred sixty (160) irrigable acres in the ownership of any one person or other entity, except that if irrigable lands in excess thereof have been acquired by foreclosure or other process of law, by conveyance in satisfaction of mortgages, by inheritance or devise, water therefor may be furnished temporarily for a period not to exceed five (5) years after the effective date of such acquisition or such longer period as may be approved by the Secretary, and except that delivery may be made to lands held in excess of this limitation if the excess lands are covered by a recordable contract made in accordance with the provisions of section 46 of the Act of May 25, 1926 (44 Stat. 649). In the case of an individual either having

stock in two or more corporations which have title to irrigable lands within the District, or owning irrigable lands in his own name and having stock in a corporation or corporations which have irrigable lands within the District, the individual's proportionate stockholdings in such corporations shall be regarded as proportionate interests in the corporations' landholdings for the purposes of the application of the acreage limitation stated in this article. The limitation stated in this subarticle shall cease to operate when the construction charge obligation hereunder to the United States has been paid in full. It shall cease also as to the land in any one ownership when the construction charge obligation hereunder allocable to such land has been fully paid to the United States.

Termination or Modification of Excess  
Land Provisions

44. (a) In the event there is a repeal of the so-called excess land provisions of the Federal Reclamation Laws, article 43 of this contract will no longer be of any force or effect, and, in the event these provisions are amended in material respects, the United States will, at the request of the District, negotiate amendments of this article in order to conform them to the excess land provisions of the law as so amended.

(b) Article 43 will no longer be of force or effect if there is a determination by a court of final jurisdiction, binding on all necessary parties, declaring the provisions of these articles to be of no force or effect.

(c) For the purposes of this article, the provisions of article 43 are hereby agreed to be severable from the other provisions of this contract.

Advisory Committee

45. (a) In its operation and maintenance of the various Federal dams and reservoirs on the Snake River including and upstream from Lake Walcott, the United States has contracted with the various water users organizations having storage capacity in that system to consult from time to time with the Advisory Committee on the various matters as will have a substantial bearing on the determination of the amount of stored water to be available in the various reservoirs and on the costs of operation and maintenance of those reservoirs which are required to be borne by the space allocated to irrigation storage. The consultation shall include such matters as under this contract specifically require consultation with that Committee, so long as the District is represented on the Committee. The representative of the United States will meet with the Advisory Committee from time to time, but not less often than two times each year beginning with the calendar year 1954, at such dates and places as may be fixed by the Advisory Committee.

(b) Informal memoranda concerning working arrangements for the carrying out of the provisions of this article may be entered into from time to time between the Regional Director or other designated representative of the Secretary and the Advisory Committee.

(c) Beginning January 1, 1953, the Advisory Committee is agreed to be the Committee of Nine, as that committee may be constituted from time to time. The Committee of Nine shall continue to function as the Advisory Committee under this contract until a different representative

body has been designated by a vote of the majority of the water users voting at any regular annual meeting of the water users of District No. 36 held as provided by law. Further designations of bodies to serve as the Advisory Committee may be made from time to time by this same election process.

#### Performance of Work With Contributed Funds

46. (a) At the request of the District, the United States, at its option, pursuant to the Act of March 4, 1921 (41 Stat. 1367, 1404), may perform with funds contributed by the District any construction or maintenance work within the authority of the District but which is not otherwise provided for by this contract. If the United States determines that it will undertake any such work, funds therefor shall be advanced by the District as directed by the Secretary. The advance shall be accompanied by a certified copy of a resolution of the District's board of directors describing the work to be done and authorizing its performance by the United States with the District's funds.

(b) After completion of any work so undertaken, the United States shall furnish the District with a statement of the cost of the work done. Any unexpended balance of the funds advanced will be refunded to the District or applied as otherwise directed by the District.

#### Confirmation of Contract

47. The execution of this contract shall be authorized or ratified by the qualified electors of the District at an election held for that purpose. The District, after the election and upon the execution of this

contract, shall promptly secure a final decree of the proper court of the State of Idaho approving and confirming this contract and decreeing and adjudging it and the apportionment of benefits made thereunder to be lawful, valid, and binding on the District. The District shall furnish to the United States certified copies of such decrees and of all pertinent supporting records.

#### Changes in District Organization

48. While this contract is in effect, no changes shall be made in the District, either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district, by proceedings to dissolve or otherwise, except with the consent of the Secretary evidenced in writing.

#### Rules and Regulations; Determinations of Fact

49. (a) The Secretary reserves the right to make, after consultation with the District's board of directors, such rules and regulations, consistent with this contract, as are proper and necessary to carry out its true intent and meaning, and as are necessary and proper to cover any details of the administration or interpretation which are not covered by its express terms. The District shall observe such rules and regulations.

(b) The District's board of directors may also from time to time make such rules and regulations as it regards as desirable for the administration of its responsibilities under this contract and as are not inconsistent with this contract and the rules and regulations of the Secretary made as herein provided.

(c) In the event the District questions any factual determination made by any representative of the Secretary as required in the administration of this contract, any findings as to the facts in dispute thereafter made by the Secretary shall be made only after consultation with the District's board of directors.

#### Notices

50. Any notice, demand or request required or authorized by this contract shall be deemed properly given, except where otherwise herein specifically provided, if mailed, postage prepaid, to the Project Superintendent (the present "project officer"), Bureau of Reclamation, Burley, Idaho, on behalf of the United States, and to the Secretary, American Falls Reservoir District No. 2, Gooding, Idaho, on behalf of the District. The designation of the person to be notified or the address of such person may be changed at any time by similar notice.

#### Discrimination Against Employees or Applicants for Employment Prohibited

51. The District shall not discriminate against any employee or applicant for employment because of race, creed, color or national origin, and shall require an identical provision to be included in contracts relating to the performance of this contract. This provision, however, does not refer to, extend to, or cover the activities of the District which are not related to or involved in the performance of this contract.

#### Employment of Manager or Superintendent

52. Until the construction charge obligations under article 10 of this contract have been paid in full, the District shall employ as manager

or superintendent a competent irrigation engineer, or other person who has had at least three (3) years' experience as a manager or superintendent in the operation of works similar to the transferred works of the District. The employment of such manager or superintendent shall be subject to the approval of the Secretary. Upon notice by the Secretary that any manager or superintendent employed by the District is unsatisfactory in that capacity, the District will promptly terminate the employment of such person, and will employ one that is satisfactory.

Contingent on Appropriations or Allotment of Funds

53. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by the Congress or the allotment of Federal funds, shall be contingent on such appropriations or allotments being made. The failure of the Congress to appropriate funds, or the failure of any allotment of funds, shall not, however, relieve the District from any obligations theretofore accrued under this contract, nor give the District the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case such funds are not so appropriated or allotted.

Assignments Prohibited;  
Successors and Assigns Obligated

54. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract, or any part thereof, or interest therein, shall be valid until approved by the Secretary.

Officials Not to Benefit

55. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

By Fred T. Randak  
Assistant Secretary of the Interior

(SEAL)

AMERICAN FALLS RESERVOIR DISTRICT NO. 2

Attest:

Pauline Cantabook  
Secretary

By E. J. Wood  
President of its Board of Directors

STATE OF IDAHO

)

SS.

On this 15th day of September, 1954

E. G. Gooding

Lurlene Eastabrooks to me

known to be, respectively, the President and the Secretary of the Board of Directors of American Falls Reservoir District No. 2, the corporation that executed the within and foregoing instrument.

They acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein

mentioned; and on oath stated that they were authorized to execute.

said instrument and that the seal affixed is the seal of said cor-

poration.

IN WITNESS WHEREOF, I set my hand and affix my official

seal the day and year first above written.

Notary Public in and for the  
State of Idaho  
Residing at

(SEAL)

Gooding, Idaho.

My commission expires

March 8, 1955.

DISTRICT OF COLUMBIA : ss.

I, Harold L. Byrd, a notary public in and for the District of Columbia, do hereby certify that Fred G. Aandahl, Assistant Secretary of the Interior, who executed the foregoing contract with American Falls Reservoir District No. 2, dated October 14, 1954, personally appeared before me, the said Fred G. Aandahl being personally known to me as the person who executed the said contract on behalf of the United States of America, and acknowledged the same to be his act and deed.

Given under my hand and seal this 14th day of October, 1954

*Harold L. Byrd*  
Notary Public in and for the  
District of Columbia

(SEAL)

My commission expires May 14, 1957

RECEIVED

JUN 23 2003

Department of Water Resources

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Gooding Division, Minidoka Project, Idaho

Contract No.  
14-06-100-6031

COMPANY-DISTRICT CONTRACT AMONG THE UNITED STATES OF AMERICA,  
AMERICAN FALLS RESERVOIR DISTRICT NO. 2,  
AND BIG WOOD CANAL COMPANY

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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation

Contract No.  
14-06-100-6031

Gooding Division, Minidoka Project, Idaho

Company-District Contract Among  
THE UNITED STATES OF AMERICA,  
AMERICAN FALLS RESERVOIR DISTRICT NO. 2  
and  
BIG WOOD CANAL COMPANY

THIS CONTRACT, made this 1st day of June 1962, among  
THE UNITED STATES OF AMERICA, hereinafter called the United States, acting  
through the Secretary of the Interior and pursuant to the Federal  
Reclamation Laws, AMERICAN FALLS RESERVOIR DISTRICT NO. 2, hereinafter  
called the District, an irrigation district organized and existing under  
and by virtue of the laws of the State of Idaho and having its principal  
place of business at Gooding, Idaho, and the BIG WOOD CANAL COMPANY, here-  
inafter styled the Company, a corporation organized under the laws of the  
State of Idaho and having its principal place of business at Shoshone,  
Idaho,

WITNESSETH, THAT:

Explanatory Recitals

2. WHEREAS, the parties entered into a joint use and operating  
agreement dated May 1, 1928, which was supplemented by the contract of  
February 1, 1933; and

3. WHEREAS, the District and the United States have entered into  
an amendatory repayment contract dated October 14, 1954, which contemplates  
a revision of the agreement of May 1, 1928; and

4. WHEREAS, it is the desire of the parties to supersede the existing contract of May 1, 1928, as amended, by a new Company-District contract as contemplated by the arrangements embodied in the amendatory contract of October 14, 1954;

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby mutually agreed by and between the parties hereto as follows:

Definitions

5. The following terms, whenever used in this contract, shall have the following respective meanings:

(a) "Secretary" shall mean the Secretary of the Interior or his duly authorized representative.

(b) "Federal Reclamation Laws" shall mean the Act of June 17, 1902 (32 Stat. 388) and all acts amendatory thereof or supplementary thereto, including without limitation by this enumeration, the Reclamation Project Act of 1939 (53 Stat. 1187) and the act authorizing the execution of the amendatory contract.

(c) "Amendatory contract" shall mean the contract of October 14, 1954, contract No. 14-06-W-73, which is recorded in Lincoln County, Idaho in Book 5 of Agreements at page 485, in Jerome County, Idaho in Book 154 at page 361, and in Gooding County in Book 6 of Agreements at page 66.

(d) "Hunt area" shall mean those approximately 8,000 acres of new lands located below the main canal and south of the northerly boundary of township 8 south, ranges 19 and 20 east, Boise meridian.

(e) "Old lands" shall mean the 78,167.1 acres of irrigable lands within the District which, as of the date of the amendatory contract, have apportioned thereto a part of the obligation under the Government-District contract, as defined in the amendatory contract, under the District's then prevailing orders for the apportionment of benefits and costs, including those 4,263 acres of land designated as "river-right lands".

(f) "New lands" shall mean not to exceed 20,500 acres of irrigable lands as described in public notices Nos. 40, as corrected, 42, and 43, as new lands may be redefined pursuant to the provisions of article 30 of the amendatory contract.

(g) "Transferred works" shall mean the Milner-Gooding canal, all ditches and laterals, together with all works appurtenant or incidental to the foregoing facilities, which works were constructed by the United States to serve the lands within the District.

#### Scope and Term of Company-District Contract

6. This Company-District contract supersedes and takes the place of the contract of May 1, 1928, as amended and supplemented by the contract of February 1, 1933, becoming effective on the date of its execution by the Secretary, after approval by the Secretary, in accordance with provisions of article 29 of the amendatory contract. Except as to provisions of the contract of May 1, 1928, which have been fully executed prior to the date of this contract, which shall remain unaffected thereby, the contract of May 1, 1928 shall remain effective only to the extent expressly provided in this contract.

#### Responsibilities for Operation of Works

7. The relative responsibilities of the Company and the District for operation of works to serve the various categories of land within the jurisdiction of the District shall be as follows:

- (1) That the District will operate and maintain (i) the entire main canal from its heading in Snake River to mile 72, and (ii) the distribution system required to serve the irrigable lands of the Hunt area, and to serve approximately 561.5 acres of new lands in township 5 south, range 14 east, through the so-called Carpenter lateral.

- (2) The Company will operate and maintain the Company's storage, diversion, and distribution system including works and capacity added to that system under the contract of May 1, 1928, and works and capacity that may hereafter be provided.

Water Delivery

8. (a) The District will deliver water made available under the amendatory contract as follows: (i) to the Company for delivery as required, (ii) into the Big Wood and Little Wood rivers for diversion by river-right lands, and (iii) to new lands where delivery falls to the District's responsibility.

(b) The Company will deliver, in accordance with entitlements, water made available under the amendatory contract (including released water as hereinafter defined) to all old lands (excluding river-right lands) and all new lands other than those to be served by the District. "Released water" shall be defined to mean, in the case of old lands above the main canal, water from the Big Wood and Little Wood rivers and Magic Reservoir which becomes available to such lands by reason of the releases and exchanges effected pursuant to article 28 of the amendatory contract; and in the case of old lands below the main canal, water in addition to that required to replace that released under article 28 to old lands above the main canal.

Modification of Company's System

9. The District, or the United States while it may be operating the transferred works, shall have the right to enlarge or improve any part of the Company's water distribution system where required for the carrying out of the amendatory contract between the United States and the District.

Joint Operation and Maintenance Cost  
Determinations and Adjustment of Levies

10. (a) There shall be determined for each year the total estimated cost of operation and maintenance of all the storage, diversion, and distribution works chargeable to both the Company and the District, exclusive of such costs which are allocable to making stored water available to river-right lands and of the costs allocable to those 610.7 acres of Company land not within the jurisdiction of the District; and the average per irrigable acre cost shall be derived therefrom by dividing such total annual cost by the total area of the District's new and old lands, excluding river-right lands. In determining total annual costs as herein provided, all costs of operation and maintenance that are properly chargeable against either the Company's or the District's system shall be included, regardless of whether chargeable initially to the Company or the District.

(b) The respective levies by the Company and the District for operation and maintenance costs shall be adjusted so that the combined annual operation and maintenance levies of the Company and the District against each irrigable acre of old land (excluding river-right lands) and the District's annual operation and maintenance levy against each acre of irrigable new land shall be the same.

(c) In connection with the requirements of (a) and (b) above, adequate working arrangements for budgeting and accounting for anticipated and actual operation and maintenance costs of the systems involved shall be provided by the Company and the District.

Refusal to Deliver Water in Case of Default

11. The Company shall not deliver water from any source to lands within the District that are delinquent in the payment of operation and maintenance charges to the Company, the District, or the United States, or more than twelve (12) months delinquent in the payment of any construction charge obligation installment due to the Company, the District, or the United States; if the Company should be unable so to withhold delivery or should fail to do so, it shall pay to the District or to the United States, as the case may be, the charges plus accrued penalties owing to the District or the United States which the Company was unable or failed to collect as herein required; and the District or the United States shall be entitled to withhold delivery of water made available under this contract to the Company in the event the Company is in default on any of its obligations under this provision.

Company to Observe Limitations on Areas  
Entitled to Receive Water

12. The Company, in so far as it has the responsibility for the delivery of any water made available under the amendatory contract, including "released water" for old lands, shall make deliveries only to those lands entitled to receive such water, having regard for limitations provided in articles 42 and 43 of the amendatory contract, and any other controlling provisions of the Federal Reclamation Laws.

Company to Be Agent of District

13. For the purpose of delivery of water made available under this amendatory contract, including "released water", the Company shall be deemed to be the agent of the District and be subject to the same limitations as is the District by reason of the Federal Reclamation Laws and the amendatory contract.

Pertinent Amendatory Contract Provisions Binding

14. The Company hereby accepts and agrees to be bound by all the provisions of the amendatory contract that are pertinent to the entitlement of lands to water made available under the amendatory contract, including "released water".

Amendment of Contract

15. This Company-District contract may be revised from time to time but only with the approval of the Secretary.

Discrimination Against Employees or Applicants  
for Employment Prohibited

16. In connection with the performance of work under this contract, the Company, in this article termed the contractor, agrees as follows:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff

or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting

agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The contractor will include the provisions of the foregoing subarticles (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contingent on Appropriations or Allotment of Funds

17. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by the Congress or the allotment of Federal funds, shall be contingent on such appropriations or allotments being made. The failure of the Congress to appropriate funds, or the failure of any allotment of funds, shall not, however, relieve the District or the Company from any obligations theretofore accrued under this contract, nor give the District or the Company the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case such funds are not so appropriated or allotted.

Assignments Prohibited;  
Successors and Assigns Obligated

18. The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this contract, or any part thereof, or interest therein, shall be valid until approved by the Secretary.

Officials Not to Benefit

19. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.