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File in 31-2274

**FACSIMILE TRANSMISSION**

Please deliver to named recipient.

TO: IDWR - Attn: Al Rueberry

FROM: Patti L. Rowland

SUBJECT: Singleton/Hagenbarth Agreement 31-11440

DATE: 9/17/02

PAGES: 6

FAX NO: (208) 525-7177

CLIENT NO: 377.2 Operator: plr

MESSAGE: Hello Al. John Marshall asked if I would send you a copy of the signed Agreement mentioned above. We hope to get it recorded sometime this week. If you need anything else, let me know. Patti

The information contained herein is CONFIDENTIAL, may be subject to the attorney-client privilege and is intended only for the use of the recipient named above. This transmission does not constitute a waiver of privilege. If you have received this transmittal in error, please immediately notify the sender by telephone and return this transmittal to the sender, by U.S. Postal Service at the above address.

PROFILED

SCANNED  
DEC 30 2005

When Recorded Return to:  
John M. Marshall  
Givens Pursley LLP  
277 N. 6<sup>th</sup> Street, Suite 200  
P.O. Box 2720  
Boise, ID 83701-2720

## WATER RIGHTS SETTLEMENT AND SUBORDINATION AGREEMENT

THIS WATER RIGHTS SETTLEMENT AND SUBORDINATION AGREEMENT ("Agreement") is entered into effective the 16<sup>th</sup> day of September, 2002, by and between James F. Hagenbarth, David J Hagenbarth, and Margaret Hagenbarth ("Hagenbarth") and Larry D. Singleton and Robine Singleton ("Singleton").

### RECITALS

a. Hagenbarth either claims or holds water right nos. 31-2274, 31-2275, 31-10245, and 31-10740 (collectively the "Hagenbarth Rights") in the Snake River Basin Adjudication ("SRBA"). The Hagenbarth Rights are stockwater and irrigation water rights from Dry Creek in Clark County, Idaho, for irrigation and stockwater use at the place of use owned by Hagenbarth described in Exhibit A hereto.

b. Singleton has claimed water right 31-11440 in the SRBA for stockwater use from Dry Creek in Clark County, Idaho, on a place of use owned by Singleton and described in Exhibit B hereto.

c. Hagenbarth filed an objection in the SRBA to the Idaho Department of Water Resources recommendation for water right 31-11440. Hagenbarth and Singleton have entered into this Agreement to settle the objection and allow a decree in the SRBA for water right 31-11440 on conditions stated herein.

NOW THEREFORE, in consideration of the above recitals and the warranties, covenants, agreements, terms and conditions set forth below, Hagenbarth and Singleton agree as follows:

1. The parties each represent and warrant to the other that they have the respective legal power, right and authority to enter into this Agreement and to perform the obligations hereunder.

WATER RIGHTS SETTLEMENT AND SUBORDINATION AGREEMENT — 1

C:\MyFiles\377\Idaho wtr rights\2002-09-09 Subordination Agreement DRAFT.doc

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DEC 30 2005

2. The right to divert water under water right 31-11440 shall be, and is hereby, subordinated to the Hagenbarth Rights, however they may be decreed by the court in the SRBA. Additional details of subordination are as follows:

- a. the priority for the water right 31-11440 may not be asserted or relied upon, and shall be ineffective, against the priority of any of the Hagenbarth Rights for any purpose, including the purpose of effecting a delivery call or curtailment or other administration to deliver water to supply any diversion under water right 31-11440; and
- b. no delivery call to serve any diversion under right 31-11440 shall be made, honored, or enforced if it would cause or require, either directly or indirectly, curtailment of, or mitigation from, any of the Hagenbarth Water Rights;
- c. this subordination also shall apply to any use to which any such subordinated portion of the water right 31-11440 may be transferred or changed.
- d. this subordination shall be effective at all times that Dry Creek water ceases to flow beyond a point where Dry Creek's course currently passes under the road in the S½SE of Section 3, Township 12 North, Range 39 East, said road being commonly known as the "A2" County Road and shown on the map attached hereto as Exhibit C.
- e. this subordination does not limit Singleton's ability or right to divert water pursuant to water right 31-11440, with its associated priority date, if water is available at the point of diversion for this right regardless of the effect such diversion has on the Hagenbarth Rights.

3. The recitals, terms, conditions and covenants contained herein shall run with the land described in Exhibit A and Exhibit B hereto, and shall run with the Hagenbarth Rights and water right 31-11440 and shall be binding upon any person claiming, having or acquiring any right, title or interest in the Hagenbarth Rights, water right 31-11440, the land described in Exhibit A and Exhibit B attached hereto, or in any lot, parcel, portion or subdivision thereof, and upon their successors and assigns.

4. The partial decree for water right 31-11440 shall include a remark in the section entitled "Other Provisions Necessary for Definition or Administration of this Water Right" as follows:

This water right is subject to the terms and conditions of a subordination agreement recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_\_ in the records of Clark County, Idaho.

**WATER RIGHTS SETTLEMENT AND SUBORDINATION AGREEMENT - 2**

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DEC 30 2005

09/10/2002 03:24 40666387

DONEY LAW FIRM

PAGE 04

5. In consideration of this Agreement and the covenants, conditions and terms set forth herein, Hagenbarth agrees to withdraw their objection in the SRBA to the recommendation for water right 31-11440.

6. This Agreement is binding upon and enforceable by the parties hereto and their respective successors and assigns.

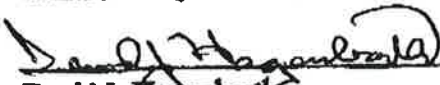
7. Neither party's failure to assert, or to seek enforcement of, any of the covenants, terms or conditions of this Agreement shall constitute a waiver by such party of the breach or default of any such covenant, term or condition unless otherwise expressly agreed to by such non-asserting party in writing.

8. If either party commences litigation for the enforcement, interpretation or rescission of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs.

IN WITNESS WHEREOF, this Agreement has been executed by the parties, in the State of Idaho, as of the effective date set forth above.

HAGENBARTH

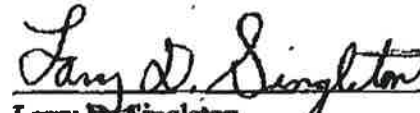
  
James F. Hagenbarth

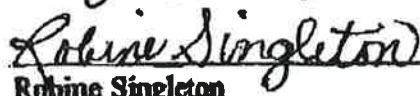
  
David J. Hagenbarth

  
James F. Hagenbarth  
Co-Personal Representative for the Estate  
of Margaret Hagenbarth

  
David J. Hagenbarth  
Co-Personal Representative for the Estate  
of Margaret Hagenbarth

SINGLETON

  
Larry D. Singleton

  
Robine Singleton

State of Montana )

) ss.

County of )

On this 16<sup>th</sup> day of September in the year of 2002, before me, a Notary Public in and for said State, personally appeared James F. Hagenbarth, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Patricia Rawland

Notary Public for Montana

Residing at Dillon, MontanaMy Commission expires 11/1/04

On this 16<sup>th</sup> day of September in the year of 2002, before me, a Notary Public in and for said State, personally appeared David J. Hagenbarth, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Patricia Rawland

Notary Public for Montana

Residing at Dillon, MontanaMy Commission expires 11/1/04

On this 16<sup>th</sup> day of September, in the year of 2002, before me, a Notary Public in and for said State, personally appeared James F. Hagenbarth and David J. Hagenbarth as personal representatives of the Estate of Margaret Hagenbarth, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

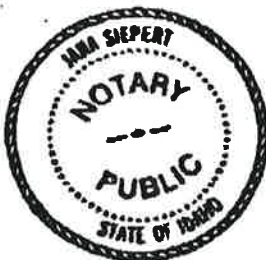
Patricia Rawland

Notary Public for Montana

Residing at Dillon, MontanaMy Commission expires 11/1/04

State of Idaho )  
 ) ss.  
County of Madison )

On this 10 day of September, in the year of 2002, before me, a Notary Public in and for said State, personally appeared Larry D. Singleton, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Dana Siepert  
Notary Public for Idaho  
Residing at Rexburg, ID  
My Commission expires 3-15-2007

State of Idaho )  
 ) ss.  
County of Madison )

On this 10 day of September, in the year of 2002, before me, a Notary Public in and for said State, personally appeared Robine Singleton, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.



Dana Siepert  
Notary Public for Idaho  
Residing at Rexburg, ID  
My Commission expires 3-15-2007

*Eastern*STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

RECEIVED

JUL 01 1999

## TRANSFER OF WATER RIGHT

Department of Water Resources  
Eastern Region

TRANSFER NO. 5452

WATER RIGHT NO(S). 29-02274/29-02338/29-07375

This is to certify that: CITY OF POCATELLO  
PO BOX 4169  
POCATELLO ID 83205

DONE

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

| <u>BENEFICIAL USE</u>                                     | <u>PERIOD OF USE</u> | <u>DIVERSION RATE</u> |
|-----------------------------------------------------------|----------------------|-----------------------|
| Right No. 29-02274 :<br>MUNICIPAL<br>Priority: 06/15/1948 | 01/01 to 12/31       | 21.00 CFS             |
| Right No. 29-02338 :<br>MUNICIPAL<br>Priority: 09/01/1953 | 01/01 to 12/31       | 14.76 CFS             |
| Right No. 29-07375 :<br>MUNICIPAL<br>Priority: 02/24/1977 | 01/01 to 12/31       | 3.34 CFS              |
| TOTAL:                                                    |                      | * 39.10 CFS           |

SOURCE

GROUNDWATER

LOCATION OF POINT(S) OF DIVERSION:

NESE , Sec. 10, Township 06S, Range 33E  
BANNOCK County

NESE , Sec. 12, Township 06S, Range 33E  
POWER County

SWNE , Sec. 15, Township 06S, Range 33E

NWSW , Sec. 15, Township 06S, Range 34E

NENW , Sec. 26, Township 06S, Range 34E

NWSE , Sec. 27, Township 06S, Range 34E

SENE , Sec. 35, Township 06S, Range 34E

SENE , Sec. 35, Township 06S, Range 34E

NWSE , Sec. 35, Township 06S, Range 34E

SESE , Sec. 1, Township 07S, Range 34E

SWSW , Sec. 16, Township 07S, Range 35E  
BANNOCK County

A79 - 11334

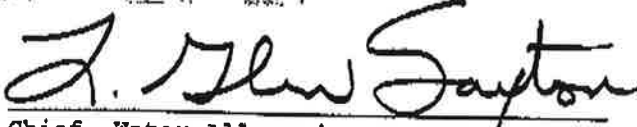
PAGE 2

**TRANSFER NO. 5452**  
**WATER RIGHT NO(S). 29-02274/29-02338/29-07375**

**CONDITIONS OF APPROVAL AND REMARKS**

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.
3. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
4. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
5. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
6. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
7. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
- \* 8. The total instantaneous diversion of water from all points of diversion under Transfer 5452 shall not exceed 39.10 cfs.
9. The well(s) previously used under these rights shall be abandoned in a manner which complies with Department well abandonment rules.
10. Place of use is located within the City of Pocatello and the surrounding service area.
11. Two (2) points of diversion are located within SENE, and three (3) points of diversion are located within NWSE, of S35, T06S, R34E.

Dated this 28 day of June, 1999

  
 Chief, Water Allocation Bureau



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE  
GovernorKARL J. DREHER  
Director**FAX TRANSMITTAL COVER SHEET**

FAX NUMBER (208) 334-2348

DATE: 2/28/02TO: JenFROM: CraigDOCUMENT DESCRIPTION/NOTES: TR 5452TOTAL PAGES SENT: 2 + COVER SHEET

CONTACT: \_\_\_\_\_

BEE MAN & HOFSTETTER, P.C.

Counselors and Attorneys at Law

608 West Franklin Street

P. O. Box 1427

Boise, Idaho 83701-1427

Josephine P. Beeman

Dana L. Hofstetter

Telephone: (208) 388-8900

Facsimile: (208) 388-8400

E-mail: beehof@micron.net

May 11, 1998

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MAY 15 1998

Department of Water Resources  
Eastern Region

Idaho Department of Water Resources

Eastern Regional Office

Attn: Adjudication Bureau

900 North Skyline Drive, Suite A

Idaho Falls, Idaho 83402-1718

Re: Designation of "service area" as place of use  
All SRBA Claims for the City of Pocatello (see attached)

Dear Adjudication Agent:

We request that this letter be included in the adjudication files for the City of Pocatello regarding the designation of place of use for the City's municipal water rights. Specifically, due to statutory amendments in 1996 addressing municipal water rights, the City of Pocatello believes it would be more accurate to describe the place of use of its municipal water rights as "within the service area for the City of Pocatello." This is based upon our review of *Idaho Code* § 42-202B, which provides that the service area can be designated as a place of use for a municipal water right when the service area, although in part outside the corporate limits for the city, is within the city's established planning area and shares a common water distribution system with lands located within the corporate limits. This is true for the City of Pocatello because the areas served outside the corporate limits are within the impact area recognized in the City's comprehensive plan, the State Local Planning Act, and share a common distribution system with lands located within the corporate limits. Although the 1996 statutory change occurred after the filing of the City's municipal water rights in the Snake River Basin Adjudication, the City believes the term "service area" would more accurately define the place of use when these rights are recommended in a Director's Report to the SRBA Court.

IDWR Adjudication Bureau

Re: City of Pocatello

May 11, 1998

Page 2

The City of Pocatello believes that the SRBA is an appropriate forum to state the municipal place of use as accurately as possible. The statutes adopted in 1996 represent a codification of the common law and are not a change in the law applicable to municipal water rights existing before the statutory codification. I.C. § 42-202(11); Statement of Purpose, S.B. 1535 (Idaho 1996); Meyer, Christopher H., *Municipal Water Rights in Idaho: The Growing Communities Doctrine and Its Recent Codification*, Idaho Water Law News, Vol. 4, No. 1 Spring/Summer 1996, p. 5-6. See *Preliminary Special Master's Report for Water Right 34-10030* (City of Arco), p. 2, n.1 (dated March 18, 1997), *In Re: SRBA* (Twin Falls County Case No. 39576). Since the City's place of use for its municipal water rights has historically also included areas adjacent to the corporate limits, it is appropriate to designate its service area as the place of use in its SRBA claims.

Please call me with any questions regarding this matter.

Sincerely,

BEEMAN & HOFSTETTER, P.C.



Josephine P. Beeman

JPB:ja

Attachment

cc: Dean Tranmer (w/ attachment)

D:\1776\2097

29-02274

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FEB 28 1994

Department of Water Resources

LAW OFFICE

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS  
CHARTERED

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Richard C. Fields  
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FIRST SECURITY BUILDING  
911 WEST IDAHO  
POST OFFICE BOX 829  
BOISE, IDAHO 83701

Telephone (208) 345-2000

Facsimile (208) 385-5384

February 25, 1994

Willis C. Moffatt  
(1907-1980)

\*\*\*\*\*

E. Remm Yorgason  
Office Administrator

Gary T. Dance  
Partner in Charge  
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825 West Center, Suite C  
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Telephone (208) 233-2001

Idaho WATS: 1 (800) 422-2889  
ABA Net 010

Shelley Keen  
Idaho Department of Water Resources  
1301 N. Orchard Street  
Boise, ID 83706

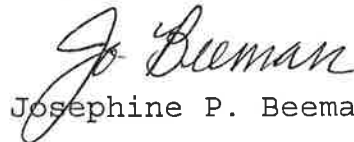
Re: City of Pocatello Reservoir List  
MTBR&F File No. 15863.0000

Dear Shelley:

Enclosed is a copy of the City of Pocatello's reservoir list. Carter Fritschle reviewed the City's SRBA claims last summer and requested the reservoir list to confirm that the City's reservoir and tank storage facilities are capable of being fully recharged by the quantity of water available in a 24 hour period from all of the City's sources of water.

If you have any questions, do not hesitate to call.

Yours very truly,



Josephine P. Beeman

JPB/ljs  
Enclosure  
cc: Dean Tranmer  
Fred Ostler  
Tom Dekker

MICROFILMED

APR 12 1994

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FEB 28 1994  
Department of Water Resources

CITY OF POCA TELLO  
WATER STORAGE CAPACITY

Date: 8-30-93

The following is a summary of storage reservoirs:

| NO. | LOCATION                                                             | DATE | CAPACITY (GAL) | STATUS    |
|-----|----------------------------------------------------------------------|------|----------------|-----------|
| # 1 | Reservoir Yard (NE $\frac{1}{4}$ SW $\frac{1}{4}$ , 2-7S-34E)        | 1891 | 1,500,000      | Abandoned |
| # 2 | Reservoir Yard (NE $\frac{1}{4}$ NW $\frac{1}{4}$ , 2-7S-34E)        | 1892 | 865,000        | Abandoned |
| # 3 | Reservoir Yard (NE $\frac{1}{4}$ NW $\frac{1}{4}$ , 2-7S-34E)        | 1905 | 2,000,000      | Abandoned |
| # 4 | Reservoir Yard (NW $\frac{1}{4}$ NE $\frac{1}{4}$ , 2-7S-34E)        | 1935 | 11,500,000     | Abandoned |
| # 5 | S End Valleyview (SE $\frac{1}{4}$ NE $\frac{1}{4}$ , 33-6S-34E)     | 1950 | 300,000        | In Use    |
| # 6 | Center & I-15 (SE $\frac{1}{4}$ SW $\frac{1}{4}$ , 24-6S-34E)        | 1953 | 300,000        | In Use    |
| # 7 | End E Cedar (SW $\frac{1}{4}$ NE $\frac{1}{4}$ , 24-6S-34E)          | 1955 | 500,000        | In Use    |
| # 8 | Reservoir Yard (SE $\frac{1}{4}$ SW $\frac{1}{4}$ , 35-6S-34E)       | 1961 | 2,000,000      | In Use    |
| # 9 | S End Valleyview (SE $\frac{1}{4}$ NE $\frac{1}{4}$ , 33-6S-34E)     | 1964 | 20,000         | In Use    |
| #10 | Satterfield & Terrace (SW $\frac{1}{4}$ SE $\frac{1}{4}$ , 7-6S-35E) | 1964 | 1,000,000      | In Use    |
| #11 | Center & Apex (SW $\frac{1}{4}$ SE $\frac{1}{4}$ , 19-6S-35E)        | 1973 | 2,000,000      | In Use    |
| #12 | Birdie & Silverwood (SE $\frac{1}{4}$ NW $\frac{1}{4}$ , 30-6S-35E)  | 1973 | 3,000,000      | In Use    |
| #13 | Reservoir Yard (NE $\frac{1}{4}$ NW $\frac{1}{4}$ , 2-7S-34E)        | 1975 | 5,000,000      | In Use    |
| #14 | W End Juniper Hill (NW $\frac{1}{4}$ NE $\frac{1}{4}$ , 13-7S-34E)   | 1978 | 500,000        | In Use    |
| #15 | S End City Creek (NE $\frac{1}{4}$ , 3-7S-34E)                       | 1978 | 3,000,000      | In Use    |
| #16 | Satterfield & Terrace (SW $\frac{1}{4}$ SE $\frac{1}{4}$ , 7-6S-35E) | 1985 | 3,000,000      | In Use    |
| #17 | Airport - 10th Ave. & "B" St.                                        | 1969 | 150,000        | In Use    |

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APR 12 1994

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A29-02274  
Date Received: 3/23/1990  
Receipt No: X777777  
Received By: \_\_\_\_\_

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: SPLIT RIGHT  
Address: N/A, ID 00000-0
2. Date of Priority: JUN 15, 1948
3. Source: GROUNDWATER Trib. to:  
SPLIT RIGHT
4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County  |
|----------|-------|---------|--------|--------|-----|-----|---------|
| 06S      | 34E   | 15      | NW     | SW     |     |     | BANNOCK |
|          |       | 26      | NE     | NW     |     |     | BANNOCK |
|          |       | 27      | NW     | SE     |     |     | BANNOCK |
|          |       | 35      | NW     | SE     |     |     | BANNOCK |
| 07S      | 34E   | 1       | SE     | NE     |     |     | BANNOCK |

5. Description of diverting works:

6. Water is used for the following purposes:

| Purpose   | From | To | C.F.S. | (or) | A.F.A. |
|-----------|------|----|--------|------|--------|
| MUNICIPAL |      |    | 21.000 |      |        |

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

A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

A29-02274

Page 1

Date: 03/23/90

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10. Place of Use:

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

11. Place of use in counties:

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

13. Other Water Rights Used:

14. Remarks:

2 P/D IN SENE, S1, T7S, R34E.

4 P/D IN NWSE, SEC. 35, T6S, R34E.

P/D'S WERE DETERMINED FROM FIELD REPORT.

P/U WITHIN CITY OF POCA TELLO & VICINITY.

CLAIM BENEFICIAL USE DATE 12-31-1926 OF 4.5 CFS      A29-02274A

LICENSED RIGHT 06-15-1948 16.5 CFS      A29-02274B

15. Basis of Claim:

Water Right Number: 20611

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 \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Seal

Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_