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DEPARTMENT OF
WATER RESOURCES

Edmund C. Goodman, ISB No. 10288
HOBBS, STRAUS, DEAN & WALKER, LLP
516 SE Morrison Street
Suite 1200
Portland, OR 97214
Tel: 503.242.1745
Fax: 503.242.1072
Email: egoodman@hobbsstraus.com

Attorneys for Shoshone-Bannock Tribes

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	**Subcase Nos.: Attachment A**
Case No. 39576	**DECLARATION OF EDMUND CLAY GOODMAN IN SUPPORT OF MEMORANDUM IN SUPPORT OF JOINT MOTION TO MODIFY PARTIAL DECREES FOR PURPOSES OF DIVERSION RATE AND "RESET" ADMINISTRATIVE REMARKS**

I, Edmund Clay Goodman, upon personal knowledge of the facts and circumstances recited herein, declare and state:

1. I am over the age of 18 years, and I am one of the attorneys representing the Shoshone-Bannock Tribes in this case.

2. I submit this Declaration in support of the Tribes' Memorandum in Support of Joint Motion to Modify Partial Decrees for Purposes of Diversion Rate and "Reset" Administrative Remarks in the above-captioned action.

3. I have attached five Exhibits, marked A-E, to this Declaration and have referenced the same in the attached Memorandum.

4. I hereby certify that the following, attached Exhibits are complete, true and correct copies of the original documents:

Exhibit A: The 1990 Fort Hall Indian Water Rights Agreement by and between the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, the State of Idaho, the United States, and Certain Idaho Water Users (July 1990) ("Fort Hall Agreement").

Exhibit B: Memorandum of Agreement between the Bureau of Reclamation and the Bureau of Indian Affairs Related to the Water Supply for the Michaud Division of the Fort Hall Indian Reservation, Idaho (April 25, 1957) ("Michaud Contract").

Exhibit C: Gary Spackman, Director IDWR, *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (October 5, 2017).

Exhibit D: Letter to Lyle Swank, Water District 01 Watermaster, from Gary Spackman, Director IDWR, *Re: Reset of Reservoir Water Rights and Recharge* (Oct. 27, 2017).

Exhibit E: Gary Spackman, Director IDWR, *Order re Statement of Issues and Responses; Order Adopting Deadlines; Amended Notice of Status Conference* (January 3, 2018).

DECLARATION UNDER PENALTY OF PERJURY

I, Edmund Clay Goodman, declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 30th day of October, 2019.

Edmund C. Goodman, ISB No. 10288
HOBBS, STRAUS, DEAN & WALKER, LLP
516 SE Morrison Street
Suite 1200
Portland, OR 97214
Tel: 503.242.1745

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 2019, I served a true and correct copy of the foregoing **DECLARATION OF EDMUND CLAY GOODMAN IN SUPPORT OF MEMORANDUM IN SUPPORT OF JOINT MOTION TO MODIFY PARTIAL DECREES FOR PURPOSES OF DIVERSION RATE AND "RESET" ADMINISTRATIVE REMARKS** and its related exhibits on the persons listed below by U.S. Mail:

Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

U.S. Bureau of Reclamation
Regional Director, PN Region
1150 N. Curtis Rd., Ste. 100
Boise, ID 83706-1234

Jerry R. Rigby
P.O. Box 250
Rexburg, ID 83440-0250

Craig Hobdey
P.O. Box 176
Gooding, ID 83330-0176

Randall C. Budge
T.J. Budge
P.O. Box 1391
Pocatello, ID 83201

U.S. Department of Justice
Division of Env. & Natural Resources
550 W. Fort Street, MSC 033
Boise, ID 83706-1234

Idaho Attorney General's Office
Natural Resources Division
P.O. Box 83720
Boise, ID 83720-0010

Kirk Bybee
P.O. Box 4169
Pocatello, ID 83201

Sarah A. Klahn
2701 Lawrence St., Ste 113
Denver, CO 80205

Sarah W. Higer
Idaho Power Company
P.O. Box 70
Boise, ID 83707

Albert P. Barker
P.O. Box 2139
Boise, ID 83701-2139

Andrew Waldera
P.O. Box 7985
Boise, ID 83707

Charles F. McDevitt
P.O. Box 1543
Boise, ID 83701-1543

Chris M. Meyer
Michael P. Lawrence
P.O. Box 2720
Boise, ID 83701-2720

Eleanor Manning, Paralegal

ATTACHMENT A

01-219
01-2064
01-2068
01-4055
01-10042
01-10043
01-10045
01-10620
01-10621A
01-10621B
01-10622
01-10623
21-02156
21-01455
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21-13161
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WATER RESOURCES

THE 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT

* * *

By and Between

THE SHOSHONE-BANNOCK TRIBES
OF THE FORT HALL INDIAN RESERVATION,
THE STATE OF IDAHO, THE UNITED STATES,
and CERTAIN IDAHO WATER USERS

THE 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT

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THE 1990
FORT HALL INDIAN
WATER RIGHTS AGREEMENT

ARTICLES OF AGREEMENT BY AND BETWEEN THE SHOSHONE-BANNOCK TRIBES OF THE FORT HALL INDIAN RESERVATION, THE STATE OF IDAHO, THE UNITED STATES, AND CERTAIN IDAHO WATER USERS.

In settlement of litigation involving claims made by the United States on behalf of the Shoshone-Bannock Tribes to water rights in the Upper Snake River Basin and its tributaries, the parties agree as follows:

ARTICLE 1. TITLE

These Articles of Agreement collectively comprise, and may be cited as, "The 1990 Fort Hall Indian Water Rights Agreement" or the "Agreement."

ARTICLE 2. PURPOSE

All parties to this Agreement seek to secure, and pledge their honor to maintain, peaceful settlements of conflicts over water among the parties in the Snake River Basin in Idaho.

ARTICLE 3. PREAMBLE

3.1 The State of Idaho, pursuant to Idaho Code § 42-1406A (Supp. 1989) has commenced in the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls a general adjudication of the rights to the use of the water from that portion of the Snake River Basin located within the State of Idaho.

3.2 H. Con. Res. 16, 48th Idaho Leg., 1st Sess. (1985) directed the State to engage in good faith, government-to-government

negotiations with the Shoshone-Bannock Tribes to settle the nature and extent of the Tribes' water rights reserved under the Winters Doctrine within the Snake River Basin in Idaho to avoid litigation.

3.3 The Tribes have a long-standing tradition of favoring negotiation as a means of resolving conflicts. Cong. Globe, 40th Cong., 3d Sess., p. 803, col. 1 (February 2, 1869).

3.4 The policy of the Congress and the federal Executive Branch is to facilitate negotiations among Indian tribes, states, private water users and federal agencies to avoid litigation. 55 Fed. Reg. 9223 (March 12, 1990).

3.5 Executive Order Nos. 85-9 and 87-9 provide that it is in the interest of the State of Idaho to settle through negotiated agreements, if possible, all claims for water rights reserved under federal law. These executive orders further instructed the Idaho Water Resource Board to represent the State and to provide for the effective involvement of interested Idaho water users and other members of the public in the negotiations.

3.6 The Fort Hall Business Council requested, by resolution dated July 17, 1985, that the United States, consistent with federal trust responsibilities to the Tribes, assist and participate in the negotiations leading to this Agreement.

3.7 The Tribes and the State agreed in a Memorandum of Understanding dated August 30, 1985, to commence good

faith, government-to-government negotiations as early as October 15, 1985. On January 10, 1986, the Tribes, the State and the United States agreed to extend that August 30, 1985 Memorandum of Understanding. The parties subsequently entered into a Technical Studies Agreement establishing a methodology to review the Tribes' reserved water rights claims and to identify matters for further discussion and analysis.

3.8 On October 31, 1985, the Idaho Water Resource Board appointed an Ad Hoc Committee to recommend how best to provide for the effective involvement of interested Idaho water users and other members of the public in the negotiations. That committee submitted its recommendation for review by the Idaho Water Resource Board on December 6, 1985 and for action by negotiators on December 10, 1985. Based upon the recommendation of the committee, the Board designated the Committee of Nine as a party to the negotiations to represent the Idaho water users' interests and established a notice procedure to notify the general public of negotiation meetings. On December 10, 1985 the United States, the Tribes and the State agreed to the Board's proposal providing for open meetings and public participation in the negotiations.

3.9 On May 19, 1987, the Tribes, the State, and the United States, joined by a committee of private water users, executed a Second Memorandum of Understanding, which provided for the continuation of the negotiations.

3.10 This Agreement is the culmination of negotiations undertaken by the parties since 1985.

ARTICLE 4. DEFINITIONS

The following definitions apply for the purposes of this Agreement:

4.1 "Acre foot" or "AF" means the amount of water necessary to cover one acre of land to a depth of one foot and is equivalent to 43,560 cubic feet or 325,851 gallons of water.

4.2 "Acre feet per year" or "AFY" means the number of acre feet of water used from January 1 to December 31.

4.3 "Allotted lands" means lands within or without the exterior boundaries of the Fort Hall Indian Reservation, which were allotted to individual Indians in accordance with applicable Tribal/federal agreement and federal statutes, and which are presently owned by Indians in restricted fee or trust status, and which are located in the counties of Bannock, Bingham, Caribou, and Power. The applicable Tribal/federal agreement and statutes include:

.1 the Agreement of May 14, 1880, ratified by Act of February 23, 1889, ch. 203, 25 Stat. 687; and

.2 the Act of March 3, 1911, ch. 210, 36 Stat. 1058, 1063.

4.4 "American Falls Reservoir" means a water storage facility of the federal Minidoka Project authorized by the Secretary of the Interior under the Reclamation Act of 1902, 32 Stat. 388-390 (April 23, 1904); examined and reported upon by a

Board of Army Engineers and approved by the President on January 5, 1911, in accordance with the Act of June 25, 1910, 36 Stat. 835-836; and initially constructed in 1927 and subsequently replaced under the authority of the Act of December 28, 1973, Pub. L. 93-206, 87 Stat. 904-905.

4.5 "Annual diversion volume" means the maximum volume of water in AFY that can be diverted or stored by the holder of a water right.

4.6 "Annual volume of consumptive use" means the maximum volume of water in AFY that can be consumptively used by the holder of a water right.

4.7 "Basis of right" refers to the legal authority pursuant to which the water right is established or the document by which the right is evidenced.

4.8 "Beneficial use" means any use of water for DCMI, irrigation, hydropower generation, recreation, stockwatering, fish propagation and instream flow uses as well as any other uses that provide a benefit to the user of the water.

4.9 "Blackfoot Reservoir" means a water storage facility of the Federal Blackfoot Project authorized by the Act of March 1, 1907, ch. 2285, 34 Stat. 1015, 1024; the Act of April 30, 1908, ch. 153, 35 Stat. 70, 78; Act of April 14, 1910, ch. 140, 36 Stat. 269, 274; and the Act of May 24, 1922, ch. 199, 42 Stat. 552, 568.

4.10 "Ceded lands" means those lands within the Reservation as originally established under the Second Treaty of Fort

Bridger of July 3, 1868, 15 Stat. 673 and companion executive orders of June 14, 1867, 1 C. Kappler 835-837 (1904), and July 30, 1869, 1 C. Kappler 838-839 (1904) and as fixed by the federal survey of 1873 that were ceded by the Tribes to the United States pursuant to the following Tribal/federal agreements:

.1 Agreement of May 14, 1880, ratified by the Act of February 23, 1889, ch. 203, 25 Stat. 687;

.2 Agreement of July 18, 1881, ratified by the Act of July 3, 1882, ch. 268, 22 Stat. 148;

.3 Agreement of May 27, 1887, ratified by the Act of September 1, 1888, ch. 936, 25 Stat. 452; and

.4 Agreement of February 5, 1898, ratified by the Act of June 6, 1900, ch. 813, 31 Stat. 692.

4.11 "Committee of Nine" or "Committee of Nine of Water District 01" means the advisory committee of Water District 01.

4.12 "Consumptive use" means the amount of water that does not remain in the water system after use or is not returned to the water system through return flows or seepage, whether or not treatment for purpose of maintaining water quality is required before the water may be returned to the water system, but does not include water lost through evaporation from storage.

4.13 "Cubic feet per second" or "CFS" means a rate of water discharge equivalent to approximately 448.63 gallons per minute.

4.14 "DCMI" means domestic, commercial, municipal and industrial uses excluding hydroelectric generation. Domestic use means the diversion of water by one or more individuals, family units or households for drinking, cooking, laundering, sanitation and other personal comforts and necessities, stockwatering, and for the irrigation of a family lawn, garden or orchard not exceeding one-half acre of area per household. Industrial and commercial use means the use of water for any purpose that benefits an industrial or commercial enterprise. Industrial and commercial use of water include, but are not limited to, agricultural spraying, irrigation of plants in greenhouses, industrial cooling, mining, energy production, commercial recreation, and losses associated with any industrial or commercial operation. Municipal use means the delivery and use of water through an investor-owned, mutually-owned, tribally-owned or publicly-owned water utility or delivery system for all uses usual and ordinary to such systems. Such use includes but is not limited to uses of water for domestic, irrigation of lawns and gardens, commercial, industrial, fire protection, irrigation and other uses in park and recreation facilities, and street washing.

4.15 "Director" means the Director of the Idaho Department of Water Resources or any successor.

4.16 "Diversion" means the removal of water from its natural course or location by means of a ditch, canal, flume,

bypass, pipeline, conduit, well, pump, or other act of man, or the impoundment of water in a reservoir for rediversion.

4.17 "Diversion rate" means the maximum rate in CFS at which water may be diverted at a point of diversion.

4.18 "Fee lands" means lands within the exterior boundaries of the Reservation held in fee with all federal restrictions on alienation removed.

4.19 "Fort Hall Indian Reservation" or "Reservation" means those lands within the boundaries of the Reservation, as originally established under the Second Treaty of Fort Bridger of July 3, 1868, 15 Stat. 673, and companion executive orders of June 14, 1867, 1 C. Kappler 835-837 (1904), and July 30, 1869, 1 C. Kappler 838-839 (1904), as fixed by the federal survey of 1873 that have not been ceded by the Tribes to the United States pursuant to the following Tribal/federal agreements:

.1 Agreement of May 14, 1880, ratified by the Act of February 23, 1889, ch. 203, 25 Stat. 687.

.2 Agreement of July 18, 1881, ratified by the Act of July 3, 1882, ch. 268, 22 Stat. 148.

.3 Agreement of May 27, 1887, ratified by the Act of September 1, 1888, ch. 936, 25 Stat. 452, excepting those lots within the Pocatello Townsite which were not ceded by such agreement.

.4 Agreement of February 5, 1898, ratified by the Act of June 6, 1900, ch. 813, 31 Stat. 672, excepting Allotment Nos. T-8, 45, 46, 48, 50, 61, and 71 owned

by the Tribes or held in restricted fee or trust status for the Tribes by the United States.

4.20 "Fort Hall Indian Irrigation Project" means the federal project constructed, in part, to provide water for the irrigation of lands on the Reservation. The following federal statutes authorized the Fort Hall Indian Irrigation Project:

.1 Act of August 15, 1894, ch. 290, 28 Stat. 286, 305.

.2 Act of March 1, 1907, ch. 2285, 34 Stat. 1015, 1024.

.3 Act of April 30, 1908, ch. 153, 35 Stat. 70, 78.

.4 Act of April 4, 1910, ch. 140, 36 Stat. 269, 274.

.5 Act of May 24, 1922, ch. 199, 42 Stat. 552, 56.

.6 Act of May 9, 1924, ch. 151, 43 Stat. 117.

.7 Act of June 30, 1948, ch. 767, 62 Stat. 1167.

.8 Act of September 30, 1950, ch. 1114, 64 Stat. 1083.

.9 Act of August 31, 1954, ch. 1159, 68 Stat. 1026.

.10 Act of August 17, 1961, Pub. L. 87-154, 75 Stat. 390.

4.21 "Grays Lake" means the storage facility used to store water for the benefit of the Fort Hall Indian Irrigation Project.

4.22 "Idaho Department of Water Resources" or "IDWR" means the executive agency of the State of Idaho created by Idaho Code § 42-1701 (1977), or any successor agency.

4.23 "Idaho Water Resource Board" or "IWRB" means the Idaho State Water Resource Agency constituted in accordance with Idaho Const. art XV, § 7, or any successor agency.

4.24 "Impairment in the quality of water," applicable only in the context of a change in the water right described in

Article 7.1.1 pursuant to Article 7.6, means a diminishment in the quality of water being diverted for a water right to the extent that it is no longer useful for its intended purpose.

4.25 "Indian" means any person who:

.1 is a member of a tribe recognized as eligible for special programs and services provided by the United States because of the person's status as an Indian; or

.2 is recognized as an Indian person under Tribal law; or

.3 holds or is recognized by the Secretary as eligible to hold restricted trust property on the Reservation.

4.26 "Indian lands" means all lands within the exterior boundaries of the Reservation that are held in trust for the Tribes or owned by Indians and those lands outside the exterior boundaries of the Reservation held in trust by the United States for the Tribes or an enrolled member thereof.

4.27 "Injury to a water right," applicable only in the context of a change of the water right described in Article 7.1.1 pursuant to Article 7.6, means a diminishment in quantity or an impairment in the quality of water available to a senior or a junior water right holder as a consequence of a change, except that no water right holder is required to continue to waste water for the benefit of any other water right holders.

4.28 "Instream flows" means a quantity of water in a stream reach to maintain or to enhance the integrity of an ecosystem.

4.29 "Irrigation use" means application of water to the land surface or root zone of the soil for the purpose of producing crops, lawn or landscaping on that land.

4.30 "Michaud Contract" means that Memorandum Agreement of April 25, 1957 between the Bureau of Reclamation and the Bureau of Indian Affairs relating to the Water Supply for the Michaud Division of the Fort Hall Indian Reservation.

4.31 "Michaud Division" means that division of the Fort Hall Indian Irrigation Project authorized by the Act of August 31, 1954, ch. 1159, 68 Stat. 1026.

4.32 "Other rights" means other water rights used on all or a portion of the lands listed as the place of use for the water right described.

4.33 "Palisades Reservoir" means a water storage facility of the federal Minidoka Project initially authorized under the provisions of the federal reclamation laws by the presentation to the President and the Congress of the report of December 9, 1941, H.R. Doc. No. 457, 77th Cong., 1st Sess., by the Secretary of the Interior, and reauthorized by section 1 of the Act of September 30, 1950, ch. 1114, 64 Stat. 1083.

4.34 "Parties" means the United States, the State of Idaho, the Tribes, and the Committee of Nine of Water District 01.

4.35 "Period of use" means the time of the year when water may be used for a particular purpose.

4.36 "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the state

of Idaho or any political subdivision or instrumentality thereof, the United States or any political subdivision or instrumentality thereof, an Indian tribe or political subdivision or instrumentality thereof, or any other public or private entity.

4.37 "Place of use" means the location where water is used.

4.38 "Point of diversion" or "POD" means any location at which water is diverted from the water system. A numeral to the right of the legal description indicates the number of existing points of diversion within a tract.

4.39 "Point of injection" means any location at which water that has been diverted from the water system is placed back into the water system. A numeral to the right of the legal description indicates the number of existing points of injection within a tract.

4.40 "Point of rediversion" means the location at which water that has been diverted from the water system and then placed back into the water system is again diverted from the water system. A numeral to the right of the legal description indicates the number of existing points of rediversion within a tract.

4.41 "Priority date" means the priority date assigned to the water right.

4.42 "Purpose of use" means the nature of use of the water right.

4.43 "Rent" means a temporary legal conveyance by the Tribes of the right to use storage water pursuant to Idaho Code

§ 42-1761 for a fixed period of time during which ownership of the federal contract storage right is retained for the benefit of the Tribes.

4.44 "Reservation Watermaster" means the Tribal officer or any successor designated to administer the Tribal Water Code.

4.45 "Right number" means the number assigned to each decreed water right for purposes of identification. The first two numerals of the right number indicate the department's hydrologic basin number assigned by IDWR.

4.46 "Secretary" means the Secretary of the United States Department of the Interior or a duly authorized representative thereof.

4.47 "Shoshone-Bannock Water Bank" means the Tribal water bank established pursuant to Idaho Code § 42-1761 to provide for rental of stored water outside the Reservation.

4.48 "Snake River Basin Adjudication" or "SRBA" means Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987 entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System, which was commenced pursuant to Idaho Code § 42-1406A (Supp. 1989).

4.49 "Snake River Watermaster" means the Watermaster of Water District 01 or any successor.

4.50 "Source" means the named or described source of water within the water system.

4.51 "State" means the State of Idaho.

4.52 "Stockwater" means the use of water solely for livestock or wildlife consumption including associated losses.

4.53 "Transfer" means any change in a point of diversion, place of use, period of use or purpose of use for a water right.

4.54 "Tribal water right(s)" means those water rights confirmed and recognized in this Agreement in Articles 6 and 7 as rights held in trust for the Tribes by the United States, including those rights so held for the benefit of individual Indians on Indian lands.

4.55 "Tribes" or "Tribal" means the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation in Idaho as the collective successors-in-interest of Indian signatories to the Second Treaty of Fort Bridger of July 3, 1868, 15 Stat. 673, and subsequent Tribal/federal agreements.

4.56 "United States" means the United States of America.

4.57 "Upper Snake River Basin" means that portion of the Snake River Basin upstream from the Hells Canyon Dam, the lowest of the three dams authorized as FERC Project No. 1971.

4.58 "Water District 01" means the instrumentality created by the Director of the IDWR pursuant to Idaho Code § 42-604 (1977).

4.59 "Walton Right" means a water right claim asserted by a non-Indian based upon the decision in Colville Confederated Tribes v. Walton, 647 F.2d 42 (9th Cir. 1981).

4.60 "Water system" means all rivers, streams, lakes, springs, groundwater or other water sources within the Snake River Basin within the State of Idaho.

4.61 "Winters Doctrine" means the federal legal principles announced by the United States Supreme Court in Winters v. United States, 207 U.S. 564 (1908).

ARTICLE 5. PARTIES AND AUTHORITY

5.1 The Governor has authority to execute this Agreement pursuant to Idaho Const. art. IV, § 5 and Idaho Code § 67-802 (Supp. 1989).

5.2 The Attorney General, or any duly designated official of the Office of the Idaho Attorney General, has authority to execute this Agreement pursuant to his authority to settle litigation as provided for in Idaho Const. art. IV, § 1, and Idaho Code § 64-1401 (Supp. 1989).

5.3 The Idaho Water Resource Board has authority to execute this Agreement pursuant to Idaho Code § 1734(3) (Supp. 1989) and Executive Order Nos. 85-9 and 87-9.

5.4 The Fort Hall Business Council has authority to execute this Agreement on behalf of the Tribes pursuant to the following:

.1 The sovereign powers reserved by and for the Tribes in the Second Treaty of Fort Bridger of July 3, 1868, 15 Stat. 673 as well as subsequent Tribal/federal agreements; and

.2 Article VI, Section 1(a) of the Tribes' 1936 Constitution and Bylaws, as amended.

5.5 The Secretary has authority to execute this Agreement on behalf of the United States Department of the Interior and in his trust capacity for the Tribes pursuant to Article I,

§ 8, Clause 3 and Article II, § 2, Clause 2 of the Constitution of the United States, as well as 25 U.S.C. §§ 2 and 9 (1982) and 43 U.S.C. § 1457 (1982).

5.6 The United States Attorney General, or any duly designated official of the United States Department of Justice, has authority to execute this Agreement on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-517 (1982).

5.7 The Committee of Nine executes this Agreement as an advisory committee of Water District 01.

5.8 Each signer for the United States, Tribes, and State, by executing this Agreement, represents and states that the signer has taken or will take the necessary administrative and legal action to procure the actual authority to bind the signer's principal.

ARTICLE 6. TRIBAL WATER RIGHTS FOR PRESENT AND FUTURE USE

6.1 The basis for the rights to use waters arising on, under, flowing across, adjacent to, or otherwise appurtenant to the Reservation to satisfy the purposes of the Reservation as set forth in the Second Treaty of Fort Bridger of July 3, 1868 and companion executive orders of June 14, 1867 and July 30, 1869, is the Winters Doctrine. The basis for these rights is reaffirmed in the following acts and agreements between the Tribes and the United States:

.1 Agreement of May 14, 1880, ratified by the Act of February 23, 1889, ch. 203, 25 Stat. 687.

.2 Agreement of July 18, 1881, ratified by the Act of July 3, 1882, ch. 268, 22 Stat. 148.

.3 Agreement of May 27, 1887, ratified by the Act of September 1, 1888, ch. 936, 25 Stat. 452.

.4 Agreement of February 5, 1898, ratified by the Act of June 6, 1900, ch. 813, 31 Stat. 692.

.5 Act of May 9, 1924, ch. 151, 43 Stat. 117.

6.2 The parties hereto find and agree that the Tribal water rights for the present and future uses in the Upper Snake River Basin amount to a right to divert up to 581,031 AFY from the Snake River Basin for present and future irrigation, DCMI, instream flow, hydropower and stock water uses as set forth in Article 7 of this Agreement. Nonuse of all or any part of the Tribal water rights shall not be construed as a relinquishment, forfeiture or abandonment of the rights.

ARTICLE 7. LIST OF TRIBAL WATER RIGHTS

The parties agree that water supplied from the following sources shall constitute the Tribal water rights:

7.1 Surface water use rights:

.1 Right No. A01-10223

.i Source: Snake River/Sand Creek

.ii Annual Diversion Volume: 100,000 AFY increasing to 115,000 AFY as (1) future reservation lands are irrigated from this source, or (2) as corresponding amounts of the water rights for the ceded lands of the Fort

Hall Indian Irrigation Project are relinquished by the United States.

.iii Diversion Rate: 390.00 CFS increasing to 470.00 CFS at the same relative rate as the volume in ii. above.

.iv Annual Volume of Consumptive Use: 60,986 AFY

.v Priority Date: June 14, 1867

.vi Points of Diversion:

SESWNE Sec 31 Twp 1N Rge 37E BM

(Snake River into Reservation Canal)

NENWNW Sec 7 Twp 2S Rge 37E BM

(Sand Creek into Reservation Canal)

Points of Injection:

NESWSE Sec 24 Twp 2S Rge 36E BM

(Reservation Canal into Blackfoot River)

Points of Rediversion:

NENENE Sec 13 Twp 3S Rge 35E BM

(Blackfoot River into Fort Hall Main Canal)

NWNENW Sec 14 Twp 3S Rge 35E BM

(Blackfoot River into North Canal)

Future points of diversion may be developed in accordance with Articles 7.6, 7.7 and 7.8.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 14,687 present and 8,672 future acres for a total of 23,359 acres.

.ix Basis of Right: Winters Doctrine

.x Remarks:

.a The rate of diversion for this water right shall be measured at the head of the Reservation Canal located in SESWNE Sec 31 Twp 1N Rge 37E B.M.

.b The volume of diversion for this water right shall be measured at the Drop located in SENWSE Sec 13 Twp 2S Rge 36E BM downstream from the point at which Sand Creek empties into the Reservation Canal.

.c This right combined with the other rights described in Articles 7.1.18, 7.1.19 and 7.1.20 provide the water supply for up to 53,828 acres from the combined water sources but none of the limitations of diversion rate or volume shall be exceeded for this right in providing the water supply.

.d The available inflow to the Reservation Canal upstream from the Drop, including Sand Creek, shall be counted as part of this water right up to the demand of the North and Main Canals. The parties recognize that the water flow available from Sand Creek fluctuates to such extremes that only approximately 85

percent (85%) of the flows from Sand Creek needed to meet the demand of the North and Main Canals would normally be useable as a part of this water right with the Equalizing Reservoir rehabilitated and maintained at 5,000 acre-feet active capacity. The cost of rehabilitating and maintaining the Equalizing Reservoir are estimated at between $5 and $15 million initially and $150,000 per year based upon 1989 costs. To avoid these great costs, the parties agree that the portion of Sand Creek that was used with the control afforded by the Equalizing Reservoir under conditions existing in 1989 shall continue to be used when the Snake River is under regulation by the Snake River Watermaster and will be considered part of this water right. When the Snake River is under regulation by the Snake River Watermaster fifteen percent (15%) of the computed Sand Creek flows, when returned to the Snake River through the Blackfoot River because of lack of control with the present Equalizing Reservoir, shall be considered as natural flow credited to

downstream water users and for which no exchange of storage will be made under this Agreement. All of the remaining Sand Creek water not diverted through the Main and North Canals because of the physical limitations of the Equalizing Reservoir, in excess of fifteen percent (15%) up to 50,000 AFY as determined by gaging, when the Snake River is under regulation by the Snake River Watermaster shall be delivered to the North Side Canal Company in exchange for an equal amount of storage water from Palisades or Jackson Lake Reservoirs. The actual storage water from Palisades or Jackson Lake Reservoirs will be released to meet the Snake River diversion requirements of the Tribes that would have been met by Sand Creek. This water shall be deemed the first storage water released from the American Falls Reservoir for the North Side Canal Company.

.2 Right No. A27-11373

.i Source: Ross Fork Creek/Ross Fork Basin groundwater

.ii Annual Diversion Volume: 5,000 AFY

.iii Diversion Rate: 29.07 CFS

.iv Annual Volume of Consumptive Use: 3,320 AFY

.v Priority Date: June 14, 1867

.vi Existing Points of Diversion:

SENWNE Sec 4, SESENE Sec 10, SENWSW Sec 17, SWSESW Sec 21, NESWNW Sec 34 all in Twp 5S Rge 36E BM

NWNWSE Sec 31 (2 POD), SWSWSE Sec 33 all in Twp 4S Rge 36E BM

NENENE Sec 36 Twp 4S Rge 35E BM

Future Points of Diversion may be developed as needed within the Ross Fork Creek basin to utilize this water right within the Ross Fork Creek basin.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 1,503 present and future acres.

.ix Basis of Right: Winters Doctrine

.x Remarks:

.a The Tribes shall have the option of using surface water or groundwater diverted within the Ross Fork Creek basin to satisfy this right, in whole or in part, provided that any diversions of surface water or groundwater by the Tribes in excess of 5,000 AFY from the Ross Fork Creek Basin shall be charged against the

Tribal groundwater right set forth in Article 7.2.1 of this Agreement.

.3 Right No. A27-11374

.i Source: Lincoln Creek/Lincoln Creek Basin groundwater

.ii Annual Diversion Volume: 5,700 AFY

.iii Diversion Rate: 33.00 CFS

.iv Annual Volume of Consumptive Use: 3,768 AFY

.v Priority Date: June 14, 1867

.vi Existing Points of Diversion:

NENESE Sec 25 Twp 3S Rge 36E BM

NENWSE Sec 31 Twp 3S Rge 36E BM

Future points of diversion may be developed as needed within the Lincoln Creek Basin to utilize this water right within the Lincoln Creek drainage basin.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 1,701 present and future acres.

.ix Basis of Right: Winters Doctrine

.x Remarks:

.a The Tribes shall have the option of using surface water or groundwater diverted within the Lincoln Creek basin to satisfy this right, in whole or in part, provided that any diversions of surface water or

groundwater by the Tribes in excess of 5,700 AFY from the Lincoln Creek basin shall be charged against the Tribal groundwater right set forth in Article 7.2.1 of this Agreement.

.4 Right No. 29-00466

.i Source: Bannock Creek

.ii Annual Diversion Volume: 3,095 AFY

.iii Diversion Rate: 16.25 CFS

.iv Annual Volume of Consumptive Use: 1,842 AFY

.v Priority Date: June 14, 1867

.vi Existing Points of Diversion:

NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 774 present and future acres.

.ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.5 Right No. 29-00467

.i Source: Bannock Creek, West Fork Bannock Creek

.ii Annual Diversion Volume: 629 AFY

.iii Diversion Rate: 3.30 CFS

.iv Annual Volume of Consumptive Use: 374 AFY

.v Priority Date: April 1, 1889

.vi Existing Points of Diversion:

NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 157 present and future acres.

.ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.6 Right No. 29-00468

.i Source: Rattlesnake Creek

.ii Annual Diversion Volume: 571 AFY

.iii Diversion Rate: 3.00 CFS

.iv Annual Volume of Consumptive Use: 340 AFY

.v Priority Date: April 1, 1892

.vi Existing Points of Diversion:

NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 143 present and future acres.

.ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.7 Right No. 29-00469

.i Source: West Fork Bannock Creek

.ii Annual Diversion Volume: 190 AFY

.iii Diversion Rate: 1.00 CFS

.iv Annual Volume of Consumptive Use: 113 AFY

.v Priority Date: May 1, 1894

.vi Existing Points of Diversion:

NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 48 present and future acres.

.ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.8 Right No. 29-00470

.i Source: West Fork Bannock Creek

.ii Annual Diversion Volume: 248 AFY

.iii Diversion Rate: 1.30 CFS

.iv Annual Volume of Consumptive Use: 147 AFY

.v Priority Date: April 1, 1894

.vi Existing Points of Diversion:

NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 62 present and future acres.

.ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.9 Right No. 29-00471

.i Source: Bannock Creek

.ii Annual Diversion Volume: 248 AFY

.iii Diversion Rate: 1.30 CFS

.iv Annual Volume of Consumptive Use: 147 AFY

.v Priority Date: April 1, 1894

.vi Existing Points of Diversion:

NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 62 present and future acres.

.ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and

priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.10 Right No. 29-00472

.i Source: West Fork Bannock Creek

.ii Annual Diversion Volume: 190 AFY

.iii Diversion Rate: 1.00 CFS

.iv Annual Volume of Consumptive Use: 113 AFY

.v Priority Date: April 1, 1898

.vi Existing Points of Diversion:

NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 48 present and future acres.

.ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.11 Right No. 29-00473

.i Source: West Fork Bannock Creek

.ii Annual Diversion Volume: 190 AFY

.iii Diversion Rate: 1.00 CFS

.iv Annual Volume of Consumptive Use: 113 AFY

.v Priority Date: April 1, 1898

.vi Existing Points of Diversion:

NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 48 present and future acres.

.ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.12 Right No. 29-00474

.i Source: West Fork Bannock Creek

.ii Annual Diversion Volume: 190 AFY

.iii Diversion Rate: 1.00 CFS

.iv Annual Volume of Consumptive Use: 113 AFY

.v Priority Date: April 1, 1901

.vi Existing Points of Diversion:

NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 48 present and future acres.

.ix Basis of Right: The basis of the right is the Winters Doctrine with the relative share and priorities of the water allocations determined by the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)].

.x Remarks:

.13 Right No. A29-12049

.i Source: Bannock Creek

.ii Annual Diversion Volume: 18,833 AFY

.iii Diversion Rate: 98.87 CFS

.iv Annual Volume of Consumptive Use: 11,205 AFY

.v Priority Date: June 14, 1867

.vi Existing Points of Diversion:

NENWSE Sec 32 Twp 7S Rge 33E BM

SWSWSE Sec 21, NESWNW Sec 25 (2 POD) all in Twp 8S Rge 33E BM

NWSENE Sec 9, SWNESW Sec 22, SENESW Sec 27 all in Twp 9S Rge 33E BM

NESWSE Sec 6 Twp 7S Rge 33E BM

(3 - 20 HP pumps for Michaud Project)

Future Points of Diversion may be developed within the Bannock Creek basin to utilize this water right within the Bannock Creek drainage basin.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 4,708 present and future acres.

.ix Basis of Right: Winters Doctrine

.x Remarks:

.a The Tribes and the United States agree to exercise this right in a manner that will ensure that persons with water rights decreed in the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)] and that are confirmed in the SRBA continue to receive their full legal entitlement.

.14 Right No. A29-12050

.i Source: Portneuf River/Jeff Cabin Creek

.ii Annual Diversion Volume: 970 AFY

.iii Diversion Rate: 9.70 CFS

.iv Annual Volume of Consumptive Use: 727.50 AFY

.v Priority Date: June 14, 1867

.vi Points of Diversion:

Future Points of Diversion may be developed within the Portneuf River basin upstream from the point the river enters the Portneuf Reservoir in Sec 11 Twp 6S Rge 38E BM for use within the Portneuf River basin.

.vii Purpose and Period of Use:

Irrigation 4/1 - 11/1

.viii Place of Use: 485 present and future acres.

.ix Basis of Right: Winters Doctrine

.x Remarks:

.15 Right No. 29-00231

.i Source: Toponce Creek

.ii Annual Diversion Volume: 259.3 AFY

.iii Diversion Rate: 1.59 CFS

.iv Annual Volume of Consumptive Use: 154.3 AFY

.v Priority Date: February 16, 1869

.vi Points of Diversion: Toponce Creek

.vii Purpose and Period of Use:

Irrigation 1/1 - 12/31

.viii Place of Use: Allotment 61 (NESW, SENW, Sec 35 Twp 6S Rge 38E) for 79.53 acres.

.ix Basis of Right: The Winters Doctrine per the Memorandum Decision in United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928) and

the decree of the United States District Court, Eastern Division, dated April 8, 1929.

.x Remarks:

.16 Right No. 29-00238

.i Source: Toponce Creek

.ii Annual Diversion Volume: 282.5 AFY

.iii Diversion Rate: 1.733 CFS

.iv Annual Volume of Consumptive Use: 168.14 AFY

.v Priority Date: February 16, 1869

.vi Points of Diversion: Toponce Creek

.vii Purpose and Period of Use:

Irrigation 1/1 - 12/31

.viii Place of Use: Allotment 71 (SENW, SWNE, Sec 36 Twp 6S Rge 38E) for 86.67 acres.

.ix Basis of Right: The Winters Doctrine per the Memorandum Decision in United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928) and the decree of the United States District Court, Eastern Division, dated April 8, 1929.

.x Remarks:

.17 Right No. A29-12051

.i Source: Mink Creek

.ii Annual Diversion Volume: 104.3 AFY

.iii Diversion Rate: 0.75 CFS

.iv Annual Volume of Consumptive Use: 62.1 AFY

.v Priority Date: February 26, 1869

.vi Points of Diversion: SWNW Sec 21 Twp 7S Rge 35E BM

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: Allotment T-8 (SWNW Sec 21 Twp 7S Rge 35E BM for 31.75 acres)

.ix Basis of Right: The Winters Doctrine per decree of District Court of the Fifth Judicial District Court of the State of Idaho, in and for the County of Bannock dated June 5, 1926, in Smith v. City of Pocatello, Case No. 6669.

.x Remarks:

.18 Right No. A27-11375

.i Source: Blackfoot River

.ii Annual Diversion Volume: 150,000 AFY

.iii Diversion Rate: 1380 CFS

.iv Annual Volume of Consumptive Use: 79,546 AFY

.v Priority Date: June 14, 1867

.vi Points of Diversion:

SENWNW Sec 7 Twp 2S Rge 38E BM

(Blackfoot River into Little Indian Canal)

NENENE Sec 13 Twp 3S Rge 35E BM

(Blackfoot River into Fort Hall Main Canal)

NWNENW Sec 14 Twp 3S Rge 35E BM

(Blackfoot River into North Canal)

SWSESW Sec. 3 Twp 7S Rge 32E BM

SENWSE Sec. 3 Twp 7S Rge 32E BM

NWNWSW Sec. 2 Twp 7S Rge 32E BM

NESENW Sec. 2 Twp 7S Rge 32E BM

NWNENE Sec. 1 Twp 7S Rge 32E BM

SWNWNW Sec. 6 Twp 7S Rge 33E BM

NESESW Sec. 6 Twp 7S Rge 33E BM

NESESW Sec. 6 Twp 7S Rge 33E BM

SWSWSW Sec. 30 Twp 6S Rge 33E BM

Future Points of Diversion may be developed to divert water from (1) anywhere on the Blackfoot River or (2) ground water within the Reservation as described in Remarks below.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 30,469 present and future acres.

.ix Basis of Right: Winters Doctrine

.x Remarks:

.a If the natural flow of the Blackfoot River is not sufficient to satisfy this right and other rights to divert Blackfoot River natural flow pursuant to state law, the Tribes may satisfy this Winters right by using the other rights described in Articles 7.1.19 and 7.1.20, provided that the combined use in

satisfaction of this Winters right shall not exceed 150,000 AFY.

.b If the diversions under this right exceeds 150,000 AFY, the amount in excess of 150,000 AFY shall be charged against the Tribal water right in Article 7.1.1.

.c This right combined with other rights described in Articles 7.1.1, 7.1.19, and 7.1.20 can be used to irrigate up to 53,828 present and future acres from the combined water sources.

.d The Tribes and United States agree to exercise this water right in a manner that ensures persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive that full legal entitlement under state law. The parties will specifically enumerate all rights protected by this provision once the SRBA decree for this basin becomes final. These state created water rights are estimated to divert not more than 45,000 AFY of water from the Blackfoot River. In the event this estimate of the amount of existing diversions under state created water

rights is exceeded as a result of the decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribal water rights to account for this change.

.e The Tribes and the United States agree to exercise this right in a manner that will not impair the project entitlements of the Fort Hall Indian Irrigation Project water users.

.f If the water supplied under this right and the other rights described in Articles 7.1.19 and 7.1.20 does not provide 150,000 AFY under the terms of this Agreement, the Tribes may divert groundwater within the Reservation under this right, exclusive of the water rights described in Article 7.2, such that the combined water supply from the other rights described in Articles 7.1.19 and 7.1.20 and surface and groundwater under this right yields 150,000 AFY.

.19 Right No. A27-02007

.i Source: Blackfoot River

.ii Annual Diversion Volume: 348,000 AFY

.iii Diversion Rate: Not limited

.iv Annual Volume of Consumptive Use:

Included in the other rights described in Articles 7.1.1 and 7.1.18.

.v Priority Date: September 3, 1907

.vi Points of Diversion:

NWNE Sec 12 Twp 5S Rge 40E BM (Blackfoot River into Blackfoot Reservoir)

Points of Rediversion:

SENWNW Sec 7 Twp 2S Rge 38E BM
(Blackfoot River into Little Indian Canal)

NENENE Sec 13 Twp 3S Rge 35E BM
(Blackfoot River into Fort Hall Main Canal)

NWNENW Sec 14 Twp 3S Rge 35E BM
(Blackfoot River into North Canal)

.vii Purposes and Periods of Use:

Irrigation from Storage	3/15 - 11/15
	348,000 AFY
Storage for Irrigation	1/1 - 12/31
	348,000 AFY

.viii Place of Use: 30,469 present and future acres.

.ix Basis of Right: License acquired pursuant to Fort Hall Indian Irrigation Project Act.

.x Remarks:

.a The rediversion from storage under this right and the other right described in Article 7.1.20 may be used to satisfy the

Blackfoot River natural flow to meet but not exceed the 150,000 AFY Winters entitlement under the water right described in Article 7.1.18. The Tribes may use water from storage under this right in excess of the amount needed to satisfy the Winters entitlement under Article 7.1.18; provided that uses in excess of that amount necessary to satisfy the 150,000 AFY Winters entitlement described in Article 7.1.18 shall be charged against the Tribal water right described in Article 7.1.1.

.b This right combined with other rights described in Articles 7.1.1, 7.1.18, and 7.1.20 can be used to irrigate up to 53,828 present and future acres from the combined water sources.

.c The Tribes and the United States agree to exercise this right in a manner that will not impair the project entitlements of the Fort Hall Indian Irrigation Project water users.

.20 Right No. A25-02160

.i Source: Grays Lake

.ii Annual Diversion Volume: 100,000 AFY

.iii Diversion Rate: Not limited

.iv Annual Volume of Consumptive Use: Included in the other rights described in Articles 7.1.1 and 7.1.18.

.v Priority Date: August 23, 1919

.vi Points of Diversion:

SWSWSW Sec 1 Twp 5S Rge 42E BM
(Grays Lake/Clarks Cut Canal)

Points of Rediversion:

NWNE Sec 12 Twp 5S Rge 40E BM (Blackfoot Reservoir)

SENWNW Sec 7 Twp 2S Rge 38E BM
(Blackfoot River into Little Indian Canal)

NENENE Sec 13 Twp 3S Rge 35E BM
(Blackfoot River into Fort Hall Main Canal)

NWNENW Sec 14 Twp 3S Rge 35E BM
(Blackfoot River into North Canal)

.vii Purposes and Periods of Use:

Irrigation from Storage	3/15 - 11/15 100,000 AFY
Storage for Irrigation	1/1 - 12/31 100,000 AFY

.viii Place of Use: 30,469 present and future acres.

.ix Basis of Right: Permit numbers 14247 and R-161 acquired pursuant to the Fort Hall Indian Irrigation Project Act

.x Remarks:

.a The rediversion from storage under this right and the other right described in Article 7.1.19 may be used to satisfy the Blackfoot River natural flow to meet but not exceed the 150,000 AFY Winters entitlement under the water right described in Article 7.1.18. The Tribes may use water from storage under this right in excess of the amount needed to satisfy the Winters entitlement under Article 7.1.18; provided that uses in excess of that amount necessary to satisfy the 150,000 AFY Winters entitlement described in Article 7.1.18 shall be charged against the Tribal water right described in Article 7.1.1.

.b This right combined with other rights described in Articles 7.1.1, 7.1.18, and 7.1.19 may be used to irrigate up to 53,828 present and future acres from the combined water sources.

.c The Tribes and the United States agree to exercise this right in a manner that will not impair the project entitlements of the Fort Hall Indian Irrigation Project water users.

7.2 Groundwater use rights:

.1 Right No. A27-11376

.i Source: Groundwater within the Reservation

.ii Annual Diversion Volume: 125,000 AFY

.iii Diversion Rate: 813.40 CFS

.iv Annual Volume of Consumptive Use: 93,615 AFY

.v Priority Date: June 14, 1867

.vi Existing Points of Diversion:

SWSESW Sec. 3 Twp 7S Rge 32E BM

SENWSE Sec. 3 Twp 7S Rge 32E BM

NWNWSW Sec. 2 Twp 7S Rge 32E BM

NESENW Sec. 2 Twp 7S Rge 32E BM

NWNENE Sec. 1 Twp 7S Rge 32E BM

SWNWNW Sec. 6 Twp 7S Rge 33E BM

NESESW Sec. 6 Twp 7S Rge 33E BM

NESESW Sec. 6 Twp 7S Rge 33E BM

SWSWSW Sec. 30 Twp 6S Rge 33E BM

Additional existing points of diversion will be identified by February 1, 1991.

Future points of diversion may be developed to utilize this water right on any Indian lands.

.vii Purposes and Periods of Use:

Irrigation	3/15 - 11/15	115,000 AFY
DCMI	1/1 - 12/31	10,000 AFY

.viii Place of Use: 42,592 present and future acres. Present and future DCMI uses on any Indian lands.

.ix Basis of Right: Winters Doctrine

.x Remarks:

.a If the Tribes' combined surface water and groundwater diversions from the Ross Fork Creek basin exceed 5,000 AFY, or the Tribes' combined surface water and groundwater diversions from the Lincoln Creek basin exceed 5,700 AFY, such excesses shall be charged against this Tribal groundwater right.

.b The nine wells used to supplement the surface water portion of the Michaud Division divert water included in this Tribal water right.

.c Lot Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 of Block No. 191; Lot No. 1 of Block 192; Lot Nos. 1, 2, 3, 4, 5, 6, 7, and 8 of Block No. 196; Lot Nos. 19 and 20 of Block No. 341; Lot No. 5 of Block No. 593; and Lot No. 7 of Block No. 599 within the City of Pocatello remain Indian lands and may utilize water under this water right.

.d Allotment Nos. 45, 46, 48, 50, 60 and 71 within the Portneuf River basin may utilize water under this right.

.2 Right No. A29-12052

.i Source: Bannock Creek basin groundwater

.ii Annual Diversion Volume: 23,500 AFY

.iii Diversion Rate: 154.93 CFS

.iv Annual Volume of Consumptive Use: 17,843 AFY

.v Priority Date: June 14, 1867

.vi Points of Diversion:

Future points of diversion may be developed as needed within the Bannock Creek basin to utilize this water right within the Bannock Creek drainage basin.

.vii Purpose and Period of Use:

Irrigation 3/15 - 11/15

.viii Place of Use: 8,704 future acres.

.ix Basis of Right: Winters Doctrine

.x Remarks:

.a The Tribes have the right to the annual yield of the Bannock Creek basin up to a combined surface and groundwater diversion of 48,500 AFY.

.b If the Tribes' combined surface and groundwater diversion from this basin exceeds 48,500 AFY, such excess shall be

charged against the Tribal groundwater right in Article 7.2.1.

.c The Tribes and United States agree to exercise this water right in a manner that ensures persons diverting ground water from the Bannock Creek drainage basin prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive their full legal entitlement under state law. The parties will specifically enumerate the rights protected by this provision once the SRBA decree for this basin becomes final. These state created water rights are estimated to divert not more than 2,400 AFY of water from the ground water of the Bannock Creek drainage basin. In the event this estimate of the amount of existing diversions under state water rights is changed as a result of the decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribal Water Rights to account for this change.

7.3 Federal contract storage water rights held in trust by the United States for the benefit of the Tribes:

.1 The United States holds in trust federal contract storage rights for water that accrues to two and eight thousand and fifty nine ten thousandths percent (2.8059%) of the storage space in American Falls Reservoir and six and nine thousand nine hundred and seventeen ten thousandths per cent (6.9917%) of the storage space in Palisades Reservoir for the benefit of the Tribes and 187.7 acres of other lands served by the Michaud Division of the Fort Hall Indian Irrigation Project. These federal contract storage rights are presently equivalent to the following storage space in American Falls and Palisades Reservoirs:

American Falls Reservoir	46,931 AF
Palisades Reservoir	83,900 AF

.2 The federal contract storage rights described in Article 7.3.1 may be used to irrigate up to 33,938 present and future acres of Indian lands with an annual volume of consumptive use not to exceed 79,542 AFY. Indian lands in excess of 33,938 acres may be irrigated with the water that accrues to the federal contract storage rights described in Article 7.3.1 if no other water rights are injured thereby.

.3 The Tribes and the Secretary agree to continue to exchange storage water from the federal contract storage rights described in Article 7.3.1 for water diverted from the Portneuf River as provided for in

Article 8 of the Michaud Contract. The Tribes may identify the reservoir storage space to be used to provide storage water for this exchange. In the event no specific storage is identified, water from the Palisades storage space shall be the first water to be used for this exchange.

.4 The Tribes shall have the right to create a Shoshone-Bannock Water Bank pursuant to Idaho Code §§ 42-1761 through 42-1765 in order to rent as prescribed in Article 7 for any beneficial use outside the Reservation all or any part of the water accruing to the federal contract storage rights set forth in Article 7.3.1 that is not used on Indian lands as provided in Article 7.3.2 or exchanged pursuant to Article 7.3.3; provided that

.i storage water from Palisades Reservoir is rented and delivered for use within the Snake River Basin anywhere above Milner Dam, and

.ii storage water from the American Falls Reservoir is rented and delivered for use in the Snake River Basin anywhere within Idaho.

.5 The rental of the federal contract storage water rights in Article 7.3.1 through the Shoshone-Bannock Water Bank shall not be subject to any limitation based on the following:

.i any provision of the Michaud Contract except as set forth in Article 7.3.3;

.ii any reduction of the quantity of water available under any other existing water rights since any such reductions are mitigated by the express federal commitments in Article 12.3;

.iii any conflict with the public welfare or local public interest of the citizens of Idaho or the conservation of its water since any such conflicts are mitigated by the express federal commitments in Article 12.3; or

.iv any refill penalty for renting water from American Falls Reservoir below Milner Dam because of the mitigation provided by the express federal commitments in Article 12.3.

.6 The parties agree that the purposes of the Shoshone-Bannock Water Bank are to:

.i put to beneficial use the Tribal water rights set forth in Article 7.3.1;

.ii provide a source of adequate water supplies to benefit new and supplemental water uses;

.iii provide a source of Tribal funding for improving water user facilities and efficiencies;

.iv provide a mechanism for the Tribes to realize the value of their federal contract storage rights resulting from settlement of this litigation; and

.v provide for the continuation of good-faith cooperation among the parties to this Agreement.

The State agrees not to take any action that will interfere with the nature, scope, spirit and purposes of the Shoshone-Bannock Water Bank.

.7 The Shoshone-Bannock Water Bank provided for in Article 7.3.4 shall be operated by a Tribal Rental Pool Committee, which shall consist of the Superintendent of the Minidoka Project, the Snake River Watermaster, the Reservation Watermaster and three individuals designated by the Fort Hall Business Council unless the Tribes, the State and the United States mutually agree otherwise in writing.

.8 The Tribal Rental Pool Committee shall determine and establish priorities for rental of water from the Shoshone-Bannock Water Bank; provided that the Fort Hall Indian Irrigation Project water users shall have a right of first refusal to rent any storage water available for rent pursuant to Article 7.3.4.

.9 The Tribes may elect to assign for rental all or any portion of the water accruing to the federal contract storage rights in Article 7.3.1 that is not rented through the Shoshone-Bannock Water Bank or otherwise used or exchanged pursuant to Article 7 to any water bank created pursuant to state law in the Snake River basin above Milner Dam on the same terms and

conditions as any other water user may assign water to such a water bank.

.10 The parties agree that proceeds from renting all or any part of the federal contract storage rights pursuant to Article 7 shall not be subject to any form of taxation or alienation by the State or the United States, as provided for by legislation required by this Agreement, absent the written consent of the Tribes.

.11 The Tribes' exercise of the right to rent the storage water accruing to the federal contract storage rights described in Article 7.3.1 shall in no event be construed or interpreted as

.i any forfeiture, abandonment, relinquishment, or other loss of all or any part of their federal contract storage rights, or

.ii subject to any constraints on the amount of rental income or other compensation received by the Tribes.

.12 Neither the State nor the United States shall be liable for any financial losses suffered by the Tribes or any other person as a result of any rental of water from the Shoshone-Bannock Water Bank pursuant to Article 7.3.4.

7.4 Instream flows on and adjacent to the Reservation:

.1 In addition to the rental of water for instream flows pursuant to Article 7.3, the Tribes shall be entitled

to use storage water accrued to the federal contract storage space listed in Article 7.3.1 not used, exchanged, or rented pursuant to Article 7.3 for instream flows for river reaches on or adjacent to the Reservation.

.2 The Tribes shall have the right to use the natural flows of all waters arising wholly within and traversing only Reservation lands for instream flows.

.3 The Tribes shall have the right to use up to 15,000 AFY from the storage water rights described in Articles 7.1.19 and 7.1.20 for instream flows in reaches of the Blackfoot River. Prior to releasing water for instream flows in reaches of the Blackfoot River, the Tribes agree to give notice as provided in Article 8.5.

7.5 The Tribes may transfer or lease within the Reservation all or any portion of the tribal water rights set forth in this Article 7, if the transfer:

.1 is to any beneficial use,

.2 does not exceed the maximum diversion rate not withstanding the period of use,

.3 does not exceed the annual volume of diversion,

.4 does not exceed the annual volume of consumptive use,

.5 is to any place of use within the Reservation, except as to the water rights described in Articles 7.1.2, 7.1.3 and 7.1.14, where the place of use is specifically restricted by this Agreement, and

.6 does not change the source, except as permitted by Articles 7.1.2, 7.1.3, and 7.1.18.

7.6 The Tribes may change the points of diversion and periods of use of the water right described in Article 7.1.1 provided the change:

.1 is to any beneficial use,

.2 does not exceed the maximum diversion rate not withstanding the period of use,

.3 does not exceed the annual volume of diversion,

.4 does not exceed the annual volume of consumptive use, and

.5 does not result in an injury to a water right.

7.7 Whenever the Tribes or the United States intend to change or add a point of diversion or change the period of use of all or part of the water right described in Article 7.1.1, the Tribes or the United States will prepare a written Notice of Transfer of this water right. The Tribes or the United States shall serve a copy of the Notice of Transfer on each member of the Intergovernmental Board and shall publish the Notice of Transfer at least once a week for two consecutive weeks in a newspaper printed within the county wherein the point of diversion lies, or in the event no newspaper is printed within that county, then in a newspaper of general circulation therein. The Tribes or the United States shall complete the service and publication at least one hundred and twenty (120) days

prior to the intended change. The Notice of Transfer shall contain the following information:

.1 The amount of water in CFS and/or AFY that is to be changed including any reductions that will occur at any existing points of diversion, if applicable;

.2 The legal descriptions of the locations of any new or changed points of diversion including any points of diversion that will no longer be used, if applicable;

.3 The period of use during which the water will be used as a result of the change including periods during which water will no longer be used or periods during which water use will be reduced as a result of the change; and

.4 A statement that any person who believes that the change will injure a water right shall file a Notice of Objection with the Intergovernmental Board within ten days of the last date of service or publication.

7.8 Any person claiming that a change in a point of diversion or period of use of the Tribal water right in Article 7.1.1 will injure a water right shall first request mediation before the Intergovernmental Board prior to seeking judicial relief.

.1 In any proceeding, the person claiming that a change will injure the objector's water right shall have the burden of proving that an injury will occur.

.2 Upon receipt of any objection, the Intergovernmental Board shall attempt to mediate the dispute. After

reviewing all relevant data and information, the Intergovernmental Board shall make a recommendation regarding the change if there is a consensus. In the event the Intergovernmental Board determines that the proposed change would injure an objector's water right, its recommendation shall address whether it is possible to mitigate the injury in a way that will allow the Tribes to achieve the purposes of the change.

.3 In the event that the Intergovernmental Board fails to mediate the dispute, judicial relief may be sought by the objector.

7.9 Except as provided in Article 7.3, no Tribal water rights or water may be sold, leased, rented, transferred or otherwise used off the Reservation.

7.10 Stock watering may occur anywhere on Indian lands from any part of the water system on Indian lands and may be used year around as a part of each water right defined in this Agreement except no diversion from a point off the Reservation for stockwater shall be made during the non-irrigation season.

7.11 The Tribes have the right to generate hydropower incidental to water delivery for the other purposes specified in this Agreement as well as pursuant to Article 7.5.

7.12 The Tribes may construct, operate and maintain future storage projects or reservoirs located within the Reservation to the extent that such projects are not

inconsistent with the water rights set forth in this Agreement.

7.13 If any allottee or Tribal member is decreed a water right in the SRBA for Indian lands, there shall be a corresponding reduction in the Tribal water rights set forth in Article 7.

7.14 The State shall have the responsibility to deliver the federal contract storage water described in Article 7.3.1 within any established water district.

ARTICLE 8. ADMINISTRATION OF WATER RIGHTS

8.1 The Parties recognize and respect the sovereignty of the Tribes, the State, and the United States, as well as the powers and limitations accompanying the sovereignty of each government. In order to strike a balance among these sovereign interests, the parties, consistent with applicable law, agree to cooperate in administration of water resources to protect the use of all water rights decreed in the SRBA .

8.2 Except for the Snake River and the Blackfoot River, the parties agree to administer water rights within the Reservation as follows:

.1 The Tribes shall administer the distribution of all Tribal water rights within the Reservation.

.2 Upon reasonable notice, the Tribes and the United States agree to provide access to the State to inspect water monitoring devices and diversions within the

Reservation. The Tribes and the United States may accompany the State.

.3 The Tribes shall adopt and submit a Tribal Water Code to the Secretary for approval. The Tribal Water Code shall, in part,

.i provide for a Reservation Watermaster,

.ii establish a Tribal Water Commission to manage the Tribal water delivery systems on the Reservation, and

.iii provide for monitoring of and enforcement of Tribal water rights.

.4 Pending adoption and approval of a Tribal Water Code, the Secretary, as trustee for the Tribes, shall temporarily administer the distribution of the Tribal water rights within the Reservation.

.5 Consistent with Article 8.2.1, the United States shall administer the distribution of the Fort Hall Indian Irrigation Project water rights and the Fort Hall Agency water rights from the point the water is delivered to the project facilities.

.6 The State shall administer the distribution of those rights acquired under state law within the Reservation that are not a part of the Fort Hall Agency, Tribal or Fort Hall Indian Irrigation Project water rights.

.7 Upon reasonable notice and in accordance with applicable law, the Tribes and the United States may inspect water monitoring devices and diversions within

the Reservation for those water rights administered under Article 8.2.6. The State may accompany the Tribes and the United States.

.8 The Tribes or the United States shall install or cause to be installed monitoring devices for administration of Tribal water rights within the Reservation to the same extent as required of other water users in Idaho. The cost of these monitoring devices shall be paid from the funds authorized by Congress as required by Article 13.2. The United States, the Tribes and the State shall monitor those diversions that each party actually administers within the Reservation and report the diversion records each year to the Intergovernmental Board by March 1 of the year after each reporting year.

8.3 Although the water rights from the Blackfoot River have been delivered for over 100 years without any disputes arising between the Tribes, the United States, and the State over administration, the parties heretofore have been unable to agree upon their respective authority to administer water rights from the Blackfoot River. The parties agree to avoid litigation by continuing to administer the water rights decreed in the SRBA from the Blackfoot River as water rights from the Blackfoot River have been administered in the past. The parties also agree as follows:

.1 To prepare and implement a Blackfoot River Water Management Plan to satisfy the purposes set forth in the Attachment;

.2 To install or cause to be installed monitoring devices on all present and future points of diversion from the Blackfoot River; and

.3 To provide access to inspect water monitoring devices and diversions on the Blackfoot River where necessary for administration of rights to divert water from the water system. A party requesting access to a monitoring device shall provide reasonable notice, and the party providing access to the monitoring device or diversion may accompany the inspecting party.

8.4 The parties agree to administer water rights from the Snake River as follows:

.1 The State shall account for and administer the diversion of water from the Snake River by all water users, including the United States and the Tribes, in conformance with the SRBA decree. The State, in administering such waters, shall ensure the delivery to all water users, including the United States and the Tribes, their legal entitlement to water from natural flow and storage. The United States shall be solely responsible for the physical operation of its Snake River diversion facilities in accordance with the Snake River Watermaster's direction. In the event the United States disputes the Snake River

Watermaster's direction regarding the administration of its Snake River diversion, the dispute shall be resolved by the District Court. Distribution of the water after diversion by the United States shall be in accordance with Articles 8.2.1, 8.2.4, 8.2.5, and 8.3.

.2 IDWR shall provide the Intergovernmental board, upon request, any Snake River water measurement data or reports gathered or prepared by or for IDWR.

.3 Upon reasonable notice, the State agrees to provide the Tribes and the United States access to inspect water monitoring devices and diversions on the Snake River where necessary for purposes of the administration of Tribal or Fort Hall Indian Irrigation Project water rights from the water system. The State may accompany the party inspecting the monitoring device or diversion.

8.5 Because of the need to provide for cooperative planning and management of water resources, the Tribes or the United States agree to prepare a written Notice of Use of a Tribal water right whenever the Tribes or the United States intend to (1) transfer or lease within the Reservation the right to an existing use, (2) put to use within the Reservation any portion of the Tribal water right which is not in present use, or (3) undertake a combination of (1) and (2).

.1 The Notice of Use shall contain the following information:

.i The Right Number of the Tribal water right(s) described in Articles 7.1.1 through 7.3.1 to be changed or used;

.ii A legal description of the location where the Tribes or the United States will use the water right;

.iii A legal description of the location where the Tribes or the United States will reduce the use of water as a consequence of the transfer and of the point of diversion where the Tribes or the United States will reduce the diversion, if applicable;

.iv The ownership status of the land where the Tribal water right will be used;

.v The legal description of the new point of diversion;

.vi A narrative description of the proposed diversion works such as the size of pumps, ditches, wells, etc.;

.vii The amount of water stated in AFY and in CFS to be used on the location described in Article 8.5.1.ii; and

.viii The nature of use of the Tribal water right at the location described in Article 8.5.1.ii.

.2 Notices involving 25 CFS or more, or 7,500 AFY or more and notices involving any increase in the diversion rate or volume of the right described in Article 7.1.1

shall be served on each member of the Intergovernmental Board at least thirty (30) days prior to the transfer, lease or new use.

.3 Notices involving less than 25 CFS or less than 7,500 AFY shall be served on the Intergovernmental Board annually at the time of the annual report provided for in Article 8.2.8 provided that no notice will be required for transfers, leases or new uses of 0.04 CFS or 2.2 AFY or less.

8.6 The State agrees to provide written notice to the Tribes and the Fort Hall Agency Superintendent whenever an application for a state water right permit is sought for a water use in the Upper Snake River mainstem, the Blackfoot River basin, and the Portneuf River basin. The report shall contain among the following:

.1 the permit number of the state water right applied for;

.2 a legal description of the location of the proposed place of use;

.3 the ownership status of the land where the water will be used, if known;

.4 the legal description of the proposed point of diversion; and

.5 a narrative description of the proposed diversion works, such as the size of the pumps, ditches, wells, etc.

ARTICLE 9. INTERGOVERNMENTAL BOARD

9.1 In recognition of the concerns of separate sovereigns as well as the hydrologic and economic inter-relationships of water use within the Snake River basin, the parties agree to continue cooperative efforts to efficiently manage water resources and to fairly resolve disputes arising under this Agreement without resorting to litigation.

9.2 The parties agree to create a three-member Intergovernmental Board composed of the Chairman of the Fort Hall Business Council, the Director of the Idaho Department of Water Resources, and the Secretary, or their designees.

9.3 The Intergovernmental Board shall assist in the implementation of this Agreement and shall mediate disputes arising among the parties regarding the interpretation of this Agreement.

ARTICLE 10. FINALITY OF SETTLEMENT AGREEMENT

10.1 In lieu of filing claims by or on behalf of the Tribes in the SRBA and pursuant to Idaho Code § 42-1409(3) (Supp. 1989), the parties agree to submit this Agreement to the Director. The Director shall submit this Agreement and an abstract of the water rights listed in this Agreement to the Fifth Judicial District Court of the State of Idaho, in and for the County of Twin Falls pursuant to Idaho Code § 42-1411 (Supp. 1989). Other persons not signatory to this Agreement may file objections.

10.2 At the time the Director submits this Agreement and the abstract of this Agreement to the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls, the State and the United States shall file a motion seeking approval of the water rights in the Agreement as a decree in the SRBA. The parties agree to jointly support and defend this Agreement against any and all objections or other challenges that may arise in any phase of the Adjudication, including any appeals, and in securing any necessary ratification of this Agreement.

10.3 The United States' and Tribal water rights confirmed in this Agreement shall be final and conclusive as to all parties to the Adjudication once the Agreement becomes effective as provided in Article 18.

10.4 The Tribal water rights recognized in Article 7 are in full satisfaction of all water rights or claims to water rights of the Tribes, its members, and its allottees within the Upper Snake River basin. If a member or an allottee is decreed a water right for Indian lands, then a corresponding reduction will be made in the Tribal water rights set forth in Article 7. This Agreement does not apply to state water right claims of Tribal members for non-Indian lands.

ARTICLE 11. DISCLAIMERS AND GENERAL PROVISIONS

11.1 Nothing in this Agreement shall be so construed or interpreted:

.1 To establish any standard to be used for the quantification of federal reserved water rights or any other Indian water claims of any other Indian Tribes in any judicial or administrative proceeding;

.2 To restrict the acquisition or exercise of an appropriative right to the use of water under state law for present Tribal or allotted lands, provided the Tribal water rights confirmed in this Agreement have been fully utilized at the time the application is made, or are not physically available for use through reasonable diversion facilities;

.3 To restrict the power of the United States to reserve, or of the United States or the Tribes to acquire water rights in the future, in accordance with this Agreement and other applicable law;

.4 To limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;

.5 To limit the authority of the United States or the Tribes to administer their respective water rights in accordance with the constitution, statutes, regulations, and procedures of the United States or of the Tribes except as expressly provided herein;

.6 To restrict, enlarge, or otherwise determine the subject matter jurisdiction of any state, tribal or federal court;

.7 To commit or obligate the United States, the State, or the Tribes to expend funds which have not been appropriated and budgeted;

.8 To quantify or otherwise determine Walton Right claims that may be made in the SRBA;

.9 To impair or impede the exercise of any Treaty rights reserved for members of the Tribe pursuant to Article 4 of the Second Fort Bridger Treaty of July 3, 1868, 15 Stat. 673;

.10 To waive or prejudice any contention by any party to this Agreement regarding the location and extent of the Reservation's northern and western boundaries along or within the Snake River and the Blackfoot River, as well as the ownership of the beds and banks of those rivers to the ordinary high water mark;

.11 To preclude the Tribes from participating in future water storage projects in the Upper Snake River basin;

.12 To quantify or otherwise determine any water right claims of the City of Pocatello under the Act of September 1, 1888, ch. 936, § 10, 25 Stat. 452 or the sources from which such claims may be satisfied, provided that in the event the City of Pocatello is determined to be entitled to such a right, such right shall be in addition to the Tribal water rights set forth in this Agreement;

.13 To quantify or otherwise determine any water right claims of the Northwestern Band of Shoshone, if any;

.14 To waive any applicable federal environmental law;

.15 To impair or impede the exercise of any civil or regulatory authority of the Tribes, the State, or the United States; and

.16 To quantify or otherwise determine any water right claims for the United States that are not quantified in this Agreement.

11.2 This Agreement represents a settlement of federal reserved water right claims of the Tribes under the Winters Doctrine that are unique to the Reservation. The parties are unable to agree on whether the reserved water rights doctrine extends to ground water. In order to avoid litigation, however, this Agreement recognizes federal reserved water rights to groundwater for the Tribes as described in Article 7. Because this Agreement is a resolution of a disputed claim, it is not and shall not be used as precedent for any other federal reserved water right claim.

11.3 This Agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding.

11.4 Entry of judgment as set forth above has been consented to by the parties without trial or adjudication of fact or law herein and without the judgment constituting evidence or an admission by any party, with respect to any issue.

11.5 The Tribes and the United States reserve the right to assert federal reserved water right claims for instream flows in the Salmon River basin, the Clearwater River basin, and the Snake River basin below Hells Canyon Dam; however, no such instream flow claims made by the Tribes or the United States on behalf of the Tribes below Hells Canyon Dam shall require water to be supplied from above Hells Canyon Dam to satisfy such claims. All parties to this Agreement agree to engage in good faith negotiations in an attempt to settle these remaining claims.

11.6 The Tribes reserve the right to develop geothermal ground water on the Reservation having a temperature of at least two hundred twelve (212) degrees Fahrenheit in the bottom of a well.

11.7 Performance by the United States of the actions required by this Agreement, including the Congressional authorization and appropriation of any funds for deposit in the Tribal Development Fund described in Article 13 shall be conditioned on the Tribes executing a waiver and release of any and all existing claims against the United States arising in whole or in part from or concerning water rights finally settled by this Agreement, and for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir.

11.8 None of the parties will assert any claim against another party arising out of the negotiation of this Agreement or the entry by the Fifth Judicial District Court of the State

of Idaho in and for the County of Twin Falls of a decree embodying the water rights listed in this Agreement.

11.9 The United States, in its trust capacity for the Tribes only, and the Tribes agree not to object to water right claims filed by non-federal water users within the Upper Snake River basin in the SRBA that have no potential impact on the Tribal water rights set forth in this Agreement.

11.10 The United States and the Tribes agree not to make any claims against, or seek compensation from, any non-federal party to this Agreement for lands or water that have been inundated by the past construction or enlargement of American Falls Reservoir.

ARTICLE 12. PROTECTION OF EXISTING USES

12.1 Nothing in this Agreement alters the water right priorities as established by Section 3(b) of the Michaud Act, or Article 15 of the Michaud Contract, which the United States and/or the Tribes entered into as part of the authorization of the Michaud Division.

12.2 The Secretary shall continue to provide all project water users within the Fort Hall Indian Irrigation Project their project water entitlements pursuant to their project contracts.

12.3 The United States agrees to seek legislation authorizing the Secretary to contract with the Idaho Water Resource Board or another appropriate contracting entity acceptable to the Committee of Nine for the 80,500 acre feet of noncontracted storage space in Ririe Reservoir and the

18,980 acre feet of noncontracted storage space in Palisades Reservoir, provided that such entity makes application for the space within one year of the date such legislation becomes law. This space is estimated to provide on average approximately 45,000 AFY. The legislation shall provide for forgiveness of the repayment obligation associated with the construction cost for the noncontracted storage space; provided the contracting entity shall be responsible for operation and maintenance costs associated with this storage space.

12.4 The parties agree not to unreasonably oppose the efforts of any party to further mitigate the effects of the implementation of this Agreement on existing water users.

ARTICLE 13. CONTRIBUTIONS TO SETTLEMENT

13.1 The United States agrees to seek appropriations to continue to acquire up to 9,000 acres of land and grazing rights at Grays Lake, at a cost not to exceed $5,000,000, for the acquisition of lands, grazing rights and related improvements to enhance the operation and management of the Fort Hall Indian Irrigation Project, particularly through increased storage capacity and retention period of the reservoir, and the operation of the United States Fish and Wildlife Service refuge at Grays Lake.

13.2 The United States agrees to assist the Tribes in implementing a Tribal water management system for the Reservation. The total cost of this federal assistance to the Tribes for this Tribal water management system shall

not exceed $7,000,000. The United States agrees to seek appropriations of the $7,000,000 as follows:

.1 $2,000,000 in the first fiscal year following the effective date of this Agreement as set forth in Article 18, and

.2 an additional $5,000,000 payable over a twenty-year (20-year) period.

13.3 The United States agrees to seek an appropriation of $10,000,000 for a Tribal Development Fund payable in equal amounts of $2,000,000 each fiscal year for each of the five (5) years following the effective date of this Agreement as set forth in Article 18. Under no circumstances shall these funds be distributed on a per capita basis to members of the Tribes.

13.4 Federal financial contributions to this settlement will be budgeted for, subject to the availability of funds, by October 1 of the year following the year of enactment of the authorizing legislation described in Article 18.

13.5 The state will seek an authorization to provide $250,000 of in kind services to assist the Tribes in implementing this Agreement and will seek an appropriation of the monies necessary to pay the filing fees for the Tribes and the United States claims quantified as a part of this Agreement. These fees are estimated to be $250,000.

ARTICLE 14. SUCCESSORS

This Agreement shall bind and inure to the benefit of the respective successors of the parties.

ARTICLE 15. ENTIRE AGREEMENT

15.1 This Agreement sets forth all understandings between the parties with respect to water rights and claims to water rights for the Tribes, its members, and its allottees in the Upper Snake River basin. There are no other understandings--no covenants, promises, agreements, conditions, either oral or written--between the parties other than those contained herein. The parties expressly reserve all rights not granted, recognized or settled by this Agreement.

15.2 Ratification of the water rights set forth in Article 7 is irrevocable; however, the balance of this Agreement may be modified only upon the joint consent of the legislative bodies of the Tribes and the State, and to the extent an interest of the United States may be affected, the Secretary or the United States Attorney General, as appropriate.

ARTICLE 16. EFFECT OF HEADINGS

Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.

ARTICLE 17. MULTIPLE ORIGINALS

This Agreement is executed in quintuplicate. Each of the five (5) agreements with an original signature of each party shall be an original.

ARTICLE 18. EFFECTIVE DATE

18.1 This Agreement shall be effective only when all of the following events have occurred:

.1 This Agreement is executed;

.2 A decree acceptable to the parties quantifying the water rights in this Agreement and the water rights of the United States for the Fort Hall Indian Irrigation Project and for the Bureau of Indian Affairs Fort Hall Agency has been entered by the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls and become final and nonappealable;

.3 Adoption by the Idaho Water Resource Board of the Shoshone-Bannock Water Bank Rules and Regulations consistent with Article 7.3;

.4 All federal and state expenditures required by this Agreement have been authorized;

.5 Ratification of this Agreement by the Legislature of the State of Idaho;

.6 Approval of the Agreement by the general membership of the Shoshone-Bannock Tribes;

.7 The Bureau of Reclamation has entered into a storage contract with the Idaho Water Resource Board or a designee of the Committee of Nine in accordance with Article 12.3; and

.8 Congressional approval of this Agreement.

The parties have executed this Agreement on the date following their respective signatures.

CECIL ANDRUS
Governor, State of Idaho

7-5-90
Date

KESLEY EDMO
Chairman, Shoshone-Bannock Tribal Council

7/5/90
Date

GENE M. GRAY
Chairman,
Idaho Water Resource Board

7-5-90
Date

HOWARD FUNKE
Tribal Attorney
Shoshone-Bannock Tribes

7/5/90
Date

CLIVE J. STRONG for JIM JONES
Attorney General,
State of Idaho

7/5/90
Date

DR. EDDIE F. BROWN
Assistant Secretary for
Indian Affairs

7-10-90
Date

PAUL BERGGREN
Chairman
Committee of Nine

7/9/90
Date

RICHARD B. STEWART
Assistant Attorney General
for Land and Natural Resources
Division
U.S. Department of Justice

7/10/90
Date

BLACKFOOT RIVER WATER MANAGEMENT PLAN
STATEMENT OF PURPOSES
April 20, 1990

A Blackfoot River Water Management Plan shall be developed to assist in the implementation of The 1990 Fort Hall Water Rights Agreement as decreed in the SRBA. This Plan is proposed to encourage the open sharing of data and management resources to assist the effective management of the water resources in the Snake River Basin.

Nothing in the Plan nor in this Statement of Purposes shall be interpreted or implemented to change any portion of the decree in the SRBA.

The purposes of the Plan shall be as follows:

1. Determine the natural flow at each point of diversion on the Blackfoot River.
2. Determine the storage accumulation to Blackfoot Reservoir.
3. Determine the Blackfoot Reservoir storage used for 1) Tribal Lands; 2) non-Indian project lands; 3) instream flows; 4) natural losses and 5) operational losses.
4. Determine the storage accumulation to Grays Lake given any restrictions due to grazing leases.
5. Determine the Grays Lake storage used for 1) Tribal Lands; 2) non-Indian project lands; 3) instream flows; 4) natural losses and 5) operational losses.
6. Determine how gains to the Reservation Canal below the head and above the drop will be measured.
7. Determine when natural flow from the Blackfoot River and gains to the Reservation Canal are not sufficient to meet the Tribal water needs and calls for 1) Blackfoot Reservoir storage or 2) Reservation Canal diversions will be necessary.
8. Determine when water stored in Grays Lake will be moved to the Blackfoot Reservoir given any restrictions due to grazing leases.
9. Distribute Blackfoot River natural flow among the users by priority giving deference to the Tribe's protection of existing non-Indian non-project water users.
10. Deliver Blackfoot Reservoir and Grays Lake Storage to owners.
11. Define the computations that will be used to determine the amount of storage water that is exchanged as a result of the operational limitations of the Equalizing Reservoir to utilize Sand Creek as part of the Tribal water right.

ATTACHMENT

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DEPARTMENT OF
WATER RESOURCES

UNITED STATES
DEPARTMENT OF THE INTERIOR

MEMORANDUM OF AGREEMENT
Between
THE BUREAU OF RECLAMATION
and
THE BUREAU OF INDIAN AFFAIRS
Relating to
Water Supply for
MICHAUD DIVISION OF THE FORT HALL INDIAN RESERVATION, IDAHO

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UNITED STATES
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MEMORANDUM OF AGREEMENT
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Relating to
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MICHAUD DIVISION OF THE FORT HALL INDIAN RESERVATION

1. WHEREAS, the Congressional act, being Public Law 741 as enacted by the 83rd Congress, and approved August 31, 1954 (68 Stat. 1026) authorizing the development of not more than 21,000 acres of irrigable land in the Michaud Division of the Fort Hall Indian Reservation requires that there be made appropriate arrangements and limitations for the water supply for said lands prior to the construction of the irrigation works, and

2. WHEREAS, the parties to this agreement are desirous of making the aforesaid arrangements and limitations;

NOW, THEREFORE, the Bureau of Reclamation, hereinafter called Reclamation, and the Bureau of Indian Affairs, hereinafter called Indian Bureau, with the approval of the Secretary, do hereby and mutually agree as follows:

Definitions

3. The following terms hereinafter used in this agreement shall have the following respective meanings:

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

(b) "Reserved works" shall mean Palisades Dam and Reservoir, American Falls Dam and Reservoir, and all buildings, roads, telephone lines, and other works incidental and appurtenant to those works.

(c) "Irrigation season" shall mean a period of each year beginning April 1 and ending October 31 of that year.

(d) "Storage season" shall mean, with respect to the reservoir involved, the period beginning October 1 of one year and ending during the next year when, as to the particular reservoir, no more water is available for storage.

(e) "Reservoir system" shall mean the existing and authorized Federal reclamation reservoirs on the Snake River and its tributaries down to and including Lake Walcott.

(f) "Upper valley" shall mean the irrigated areas of the Snake River Basin that are served by canals diverting from the Snake River and its tributaries above American Falls Dam.

(g) "Lower valley" shall mean the irrigated areas of the Snake River Basin that are served by canals diverting from the Snake River and its tributaries between American Falls Dam and Milner Dam.

(h) "Watermaster" shall mean the officer of the State of Idaho charged by law with the distribution of Snake River water in the lower and upper valleys, or such other officer properly authorized by law and designated by mutual agreement of the Secretary and the Advisory Committee.

(i) "Advisory Committee" shall mean the committee defined by article 14 of this agreement or its duly authorized representative.

(j) "Delivery" when used herein in relation to stored water, shall mean direct delivery from the reservoir system and delivery accomplished in the manner provided in article 8.

(k) "Michaud Division system" shall mean the irrigation system authorized by the act of August 31, 1954, supra, for the irrigation of not to exceed 21,000 irrigable acres of the Michaud Division of the Fort Hall Indian Reservation.

American Falls and Palisades Storage

4. (a) The water supply to be available under this agreement comprises water accruing to capacity in Palisades Reservoir and in American Falls Reservoir, as more fully defined herein.

(b) Reclamation will operate and maintain the existing American Falls Dam and Reservoir, and will make available to the Indian Bureau stored water accruing to two and eight thousand and fifty-nine ten thousandths per cent (2.8059%) of the active capacity of that reservoir within the limits and on the terms and conditions provided in this agreement. This percentage shall, so long as the reservoir has an active capacity of 1,700,000 acre-feet, be treated as the equivalent of 47,700 acre-feet of active capacity. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

(c) The Indian Bureau 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 Indian Bureau 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 Indian Bureau during an irrigation season shall not exceed the amount that can be stored in the space made available to the Indian Bureau under (b) of this article.

(d) Within the limits of the authorization therefor, Reclamation is now constructing and will complete and operate and maintain Palisades Dam on the Snake River in the vicinity of Irwin, Idaho, to provide a reservoir of an active capacity of about 1,200,000 acre-feet, and related facilities, substantially in accordance with the plans set forth in House Document No. 720, 81st Congress. When the dam and reservoir are ready for the storage and delivery of water for irrigation purposes, the Secretary shall so announce, including a statement of the active capacity that will be available for irrigation storage. The authorized dam will provide a reservoir with an estimated active storage capacity of 1,200,000 acre-feet and, based on that estimated capacity, the use and benefit of six and nine thousand nine hundred and seventeen ten thousandths per cent (6.9917%) of that capacity is allocated hereby to the Indian Bureau. Beginning with the first full irrigation season after the Secretary has announced that the reservoir is ready for storage and delivery of water for irrigation purposes, Reclamation will make available to the Indian Bureau the stored water accruing to that percentage of the active capacity of that reservoir, within the limits and on terms and conditions provided in this agreement. That percentage shall, so long as the reservoir has an active capacity of 1,200,000 acre-feet, be treated as the equivalent of 83,900 acre-feet of active capacity. The latter figure may, however, be adjusted from time to time by agreement between the Secretary and the Advisory Committee whenever there are determinations that the active capacity is other than above stated.

(e) Beginning with the storage season indicated in (d) of this article, the Indian Bureau shall be entitled to have the following storage rights in Palisades Reservoir:

(1) The right to have stored to its credit during each storage season, six and nine thousand nine hundred and seventeen ten thousandths per cent (6.9917%) of all water stored in Palisades Reservoir during that season under the Palisades storage right.

(2) The Palisades storage right under subdivision (1) is subject to the right of others to have stored to their credit during each storage season and with a priority as indicated in article 6, water to which they are entitled through the curtailment of water diversions as provided in that article.

(3) The right to have held over from one irrigation season to the next stored water to which it is entitled.

The total amount of stored water to the Indian Bureau's credit at any time shall not, however, exceed the total amount of space in the reservoir available to the Indian Bureau under this contract, and the Indian Bureau's storage rights in Palisades Reservoir are hereby made subject to the provisions of (g) of this article.

(f) Stored water available under the rights in Palisades and American Falls Reservoirs created by this agreement shall be available for delivery to the Indian Bureau during any irrigation season within these limitations:

Deliveries if made therefrom shall be limited at any time to the amount which can be delivered by means of the Indian Bureau's proportionate share of the outlet capacity, taking into account the requirement of passing through the reservoir water belonging to prior rights and the physical limitations of the existing outlet works.

(g) Under the provisions of the act of September 30, 1950, the active capacity of Palisades Reservoir will be used jointly for irrigation and flood control storage in accordance with the operating plan set forth in House Document No. 720, 81st Congress, and attached hereto as Exhibit A, as that plan is implemented by rules and regulations issued pursuant to section 7 of the act of December 22, 1944 (58 Stat. 890). All the Indian Bureau's storage rights are subject to the operation of the reservoir in accordance with this subarticle. In the event Palisades Reservoir fails to fill during any storage season by reason of such flood control operations, the amount of shortage so attributable shall be prorated equally over all space allocated to storage of water for irrigation, municipal or other miscellaneous purposes and shall be charged against all stored water including that, if any, carried over from prior irrigation seasons.

Temporary Storage and Exchange of Water; Release of Jackson Lake and Palisades Water for Power Production

5. (a) It is the purpose of Reclamation and the water users having storage rights in the reservoir system (including the Indian Bureau) to have the reservoir system so operated as to effect the greatest practicable conservation of water. In keeping with this purpose, the endeavor will be to hold stored water in reservoir system space that is furthest upstream. Water in storage in any of the reservoirs of the system may, however, when the watermaster and the Advisory Committee determine this to be in the interest of water conservation, be held temporarily in unoccupied space in any other reservoir in the system. And the Indian Bureau hereby consents to the making, with the approval of the watermaster, of annual exchanges of stored water among the various reservoirs of the system.

No such temporary holding of water or such annual exchanges shall, however, deprive any entity of water accruing to space held for its benefit.

(b) During any storage season, Reclamation, after consultation with the Advisory Committee, may release stored water from Palisades Reservoir for the maintenance of power production at Palisades Dam powerplant, and may store such water in American Falls Reservoir. The release of such water will be confined, however, in storage seasons when it appears that American Falls, Palisades, and Jackson Lake Reservoirs will fail to fill to water required for the maintenance of a minimum firm power production (estimated to be about 11,000,000 kilowatt-hours per month at an average production of 15,000 kilowatts) and which can be stored in American Falls Reservoir, and no such release shall be made that will preclude the later delivery of water, by exchange or otherwise, to the upper valley entities entitled thereto.

Winter Power Operation; Minidoka Powerplant

6. (a) Reclamation, 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 Reclamation must operate the American Falls and Minidoka Dams so as not to interfere with these third-party rights, it will be the objective of Reclamation 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, Reclamation 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 releases 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 agreement and without relinquishment of any part of the power rights herein described, it is assumed that but for curtailment of operation 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, Reclamation 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 Indian Bureau 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:

(1) Prior to the date when either 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).

(2) 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 (1) or (2) 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"[1/], 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 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

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

in the document identifiedabove, but increases in energy in any year by reason of taking American Falls storage into account as provided in sub-paragraph (3) 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 down-stream 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.

(2) There is a right to use, within the hydraulic capacity of these units, whatever natural flow passes Minidoka Dam during each irrigation season.

(3) 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 Reclamation 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: (1) 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 (2) 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 Indian Bureau's share is made elsewhere in this agreement. 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

7. (a) The Indian Bureau 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 Reclamation 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 provisions 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 B. 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 Indian Bureau hereby consents to such exchange.

(c) In connection with Island Park Reservoir, located on the North (Henrys) Fork of Snake River, Reclamation 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 Indian Bureau hereby agrees that all storage rights held by Reclamation in connection with Island Park Reservoir may be treated as having the same priority as rights under license No. R-590.

(d) In connection with Idaho permit No. 15134, a direct diversion permit with a priority date of March 30, 1921, held in connection with American Falls Reservoir, Reclamation has contracted with American Falls Reservoir District No. 2 to recognize the right of that district to have water license No. 15134 exercised substantially as follows:

> American Falls Reservoir District No. 2 to have the right to divert as natural flow during each irrigation season under water license No. 15134, having a March 30, 1921 priority, as follows: from May 1 of each irrigation season continuing during that season so long as

there is natural flow available for that priority, the first 1,700 cubic feet per second of flow to be available one-half (1/2) to American Falls Reservoir District No. 2 and one-half (1/2) to American Falls Reservoir, 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 American Falls Reservoir District No. 2 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 water license No. 15134. Nothing herein shall prevent American Falls Reservoir District No. 2 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. Water available at American Falls Reservoir for the March 30, 1921 priority under water license No. 15134, other than that to be

available to American Falls Reservoir District No. 2 as above provided, to be available for storage in American Falls Reservoir.

And the Indian Bureau will not oppose an adjudication of a natural flow right of the waters of the Snake River for the benefit of American Falls Reservoir District No. 2 consistent with the foregoing criteria as such adjudication may relate only to the lands and water of the Michaud Division of the Fort Hall Indian Reservation. The contract by the United States with American Falls Reservoir District No. 2, having been negotiated on the basis that that district assume its proportionate share of the obligation for the cost of replacement power under the provisions of article 6, after such contract is confirmed, Reclamation shall make application to the State of Idaho for amendment of water permit No. 15134 and the issuance thereunder with a priority date of March 30, 1921, requiring that the remainder of the right under the permit, 6,300 second-feet, to the extent that such right remains outstanding, be used for storage in American Falls Reservoir. Such right, however, if issued to Reclamation, shall not carry voting privileges in water users meetings under the laws of the State of Idaho. Such application shall, however, leave unaffected water license No. R-269, having a priority date of March 30, 1921.

(e) If Reclamation, under the Federal Reclamation Laws, hereafter constructs storage facilities on the Snake River or its tributaries above Milner Dam in addition to those now constructed or authorized to be constructed to provide water for irrigation purposes, the Indian Bureau recognizes that, notwithstanding the establishment of a storage right for such additional facilities with a priority subsequent to that assigned to

Palisades Dam and Reservoir, Reclamation may hereafter contract with water users organizations which then have storage rights in Palisades Reservoir, to operate not to exceed 300,000 acre-feet of such capacity for the storage of water for irrigation for the benefit of such organizations as though that capacity had a storage right of identical priority with that held for Palisades Dam and Reservoir.

Delivery of Water; Measurement and Losses; Return Flow

8. (a) To the extent that water is pumped from wells and from surface streams that flow into American Falls Reservoir, actual measurements at the well heads and at the discharge lines of other pumping plants delivering water for the said Michaud Division shall be made during each irrigation season. All water provided through the Michaud Division system for the irrigation of lands of the Michaud Division of the Fort Hall Indian Reservation from any and all sources in any irrigation season shall be accounted for as water stored for the Indian Bureau as provided in article 4 and charged thereto, except:

(1) Surface waters that may be available under flood water rights that may be obtained with a priority of not earlier than one year before the priority held for Palisades Reservoir; and

(2) Not to exceed an average annual amount of 22,400 acre-feet, as prescribed by Section 3(b)(1) of said act of August 31, 1954 (Supra) calculated over a ten-year period including the irrigation season just ended and the preceding nine irrigation seasons, from ground water pumped any place in the Michaud Division system. Until a full ten-year period is available, the average shall be for the years of project operation.

Delivery of water to lands of the said Michaud Division that as above provided in this article is chargeable to stored water for any irrigation season, shall be limited, however, to the quantities of stored water available as provided in article 4, and the supply of water available from all sources through the Michaud Division system shall be limited to the irrigation of not to exceed 21,000 acres of land. Lands within the outer boundaries of the Michaud Division, but which do not share in the water supply provided by this agreement, are hereby excluded from any of the benefits of this agreement, of the act of August 31, 1954, and of the Michaud Division system.

(b) The water chargeable to Indian Bureau stored water as provided in this article shall be determined from day to day during the irrigation season of each year. Corresponding credits from day to day shall be given by the watermaster to the water rights, whether natural flow or storage rights, that have been infringed on by pumping for the Michaud Division. The amounts represented by such infringements, to whomsoever they shall accrue, shall be made up out of stored water available to the Indian Bureau under this agreement, from day to day, if necessary. The determination of the charges and the credits hereunder shall be under a formula to be devised by the watermaster, after consultation with the Advisory Committee, taking into account as one factor the so-called Newell formula with respect to the inflow into American Falls Reservoir, as this formula is affected, in the judgment of the watermaster,

by operation of this contract and by other factors that affect the formula. Departures from that formula shall be called to the attention of the Advisory Committee from time to time.

(c) 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 agreement to the credit of the Indian Bureau at the end of any irrigation season one and one-half per cent (1½%) to offset evaporation losses. Such charge shall be made as of not later than the end of the ensuing storage season.

(d) The Indian Bureau shall make no claim on behalf of the United States or of any individual, community or band of Indians of any surface return flows from the Michaud Division after they enter American Falls Reservoir, except as they are recaptured before leaving the Division, and are used directly on the land of that Division. Nor shall any such claim be made for underground flows except to the extent covered by paragraph (a) of this article. Return flows hereby relinquished, whether surface or underground, shall be credited either to the river or to the reservoir in accordance with the relative priorities heretofore or hereafter established under the laws of the State of Idaho.

Ordering of Water

9. Under the plan of development adopted by the Indian Bureau, there will normally be no direct delivery from the Snake River of either natural flow or stored water. Therefore, the provisions of article 8 will govern as to the rights to water, whether charges therefor shall be against natural flow or stored water, matters of replacement of waters from storage, and related problems. If, on occasion, however, there is need for direct delivery of stored water to the Indian Bureau, this shall be effected by the Indian Bureau notification to the watermaster,

a reasonable period in advance, of the amount of water within its entitlements as stated in this agreement to be delivered for lands of the Michaud Division.

Complaints Regarding Water Supply

10. Reclamation and its officers, agents and employees in charge of American Falls and Palisades Reservoirs and the watermaster will use their best efforts and best judgment to deliver to the Indian Bureau its proportionate share of the water to which it is entitled under this agreement. Should the Indian Bureau 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 reservoirs, the Indian Bureau shall immediately report such alleged mistake or inaccuracy to the watermaster and to the official of Reclamation in charge of the reservoir. If the watermaster finds that the Indian Bureau's proportionate share of stored water is not being delivered, he will correct the error as early as possible.

Indian Bureau's Storage Cost Obligation

11. (a) The water supply costs associated with the storage space provided in this agreement for the Indian Bureau is two hundred eleven thousand, three hundred nine and seventy-nine one-hundredths dollars ($211,309.79) for American Falls Reservoir and a maximum of seven hundred fifty-five thousand one hundred dollars ($755,100.00) for Palisades Reservoir, being a total maximum obligation of nine hundred sixty-six thousand four hundred nine and seventy-nine one-hundredths dollars ($966,409.79).

(b) The water supply costs for Palisades Reservoir included in the obligation above stated are based upon the sum of seven hundred fifty-five thousand one hundred dollars ($755,100.00), this being determined at the rate of nine dollars ($9.00) per acre-foot of capacity and on the assumption that the reimbursable construction costs of the Palisades Project finally allocated to joint facilities equal or exceed the sum of twenty-three million two hundred one thousand one hundred dollars ($23,201,100). If the reimbursable joint facility construction costs, as finally determined, are less than twenty-three million two hundred one thousand one hundred dollars ($23,201,100.00), and as a result, the amount of joint facility costs allocated to irrigation are less than the amount expected so to be allocated according to the Secretary's report of July 1, 1949,[1/] the amount of the reduction shall be proportioned between irrigation construction costs assigned to be repaid by the water users and those assigned for repayment from power revenues on the basis of the amounts of estimated irrigation construction costs so assigned in the Secretary's report of July 1, 1949. The amount of reduction, if any, when determined by the Secretary, shall be distributed equally as a credit against the construction charge obligation of all space the costs of which are allocated to irrigation. The total amount of credit and the portion thereof to which the Indian Bureau is entitled shall be announced in writing by the Secretary promptly after final construction costs are determined and the allocations

1/ Of the estimated joint facility construction costs, $21,724,400 were allocated to irrigation under the report approved and adopted by the Secretary on July 1, 1949 (H. Doc. No. 720, 81st Congress).

thereof are made. In no event, however, shall the credit be such as to reduce the Indian Bureau's construction charge obligation on account of Palisades space to less than six hundred fifty thousand two hundred twenty-five dollars ($650,225.00), this being at the rate of seven dollars and seventy-five cents ($7.75) per acre-foot of capacity as stated in this agreement.

(c) Upon execution and approval of this Memorandum of Agreement by the Secretary of the Interior, the Bureau of Reclamation shall transfer to the accounts of the Indian Bureau on a nonappropriation cost transfer voucher the amount of $861,534.79 on account of its storage cost obligation which includes the minimum amount of $650,225.00 on account of Palisades Reservoir space. In the event that there is a determination in accordance with the provisions of paragraph (b) of this article that the cost of such space in Palisades Reservoir exceeds this minimum amount, Reclamation shall notify the Indian Bureau of this determination and thereafter the Bureau of Reclamation shall transfer to the Indian Bureau on a nonappropriation cost transfer voucher such additional costs. The Indian Bureau further agrees that the cost apportioned to it on account of its storage cost obligation for American Falls and Palisades Reservoirs shall be considered to be a part of the appropriation limitation of $5,500,000 as provided for in Section 7 of Public Law 741, 83rd Congress, approved August 31, 1954.

Reserved Works; Care, Operation and Maintenance Thereof

12. (a) The Indian Bureau, during the period of operation and maintenance of the reserved works by Reclamation, shall pay to Reclamation 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 Indian Bureau's rights defined in article 4. 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 6, 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) With respect to the determination under (a) of this article of the costs for Palisades Dam and Reservoir, there shall be determined from time to time by the Secretary, after consultation with the Advisory Committee, the basis for distributing among the various purposes which by law are to be served by the dam and reservoir the costs of operation and maintenance thereof and the basis for assigning those costs for repayment. In determining the such total costs annually apportioned to the irrigation storage rights there shall be deducted from the total annual cost of operation and maintenance of the dam and reservoir, those costs which are determined to be property chargeable to other purposes served by the reservoir and for which other provision for repayment, in whole or in part, is made pursuant to law. The costs apportionable to the irrigation storage rights in Palisades Dam and Reservoir shall be distributed annually to all storage space that is made available for irrigation purposes.

(c) Payment of the Indian Bureau'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 Reclamation. 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 Indian Bureau's share of these estimated costs. The operation and maintenance charge notice shall be furnished to the Indian Bureau on or before February 1 of the calendar year for which the notice is issued, but a preliminary estimate shall be given by June 1 of the preceding year. The Indian Bureau shall transfer to Reclamation 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.

(d) Whenever in the opinion of Reclamation funds so advanced will be inadequate to operate and maintain the reserved works, a supplemental operation and maintenance charge notice may be given, stating therein the amount of the Indian Bureau's share of the additional funds required, and the Indian Bureau shall advance that additional amount on or before the date specified in the supplemental notice. If funds advanced by the Indian Bureau under this article exceed its 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.

Payment of Costs in Delivery and Distribution of Stored Water

13. (a) The Indian Bureau shall pay, in addition to its proportionate share of the cost of operation and maintenance of American Falls Reservoir and Palisades Reservoir as provided under the preceding article of this agreement, its proportionate share of all costs of the delivery and distribution of water beyond the outlet works of the delivering reservoirs. These costs shall include, with respect to costs incurred

by Reclamation, all costs and expenses 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 Reclamation shall be distributed among the Indian Bureau 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 Reclamation and the Indian Bureau, such costs shall be paid annually and for billing purposes shall be included as part of the operation and maintenance costs under the preceding article 12 of this agreement.

(b) The Indian Bureau 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 9 to the extent that those represent costs incurred other than by the activities of Reclamation 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.

Advisory Committee

14. (a) In its operation and maintenance of the various Federal dams and reservoirs on the Snake River, the United States has contracted with the various water users organizations having a 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 agreement specifically require consultation with that Committee. The representative of Reclamation will meet with the Advisory Committee from time to time, but not less often than two times each year 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, Region 1, Bureau of Reclamation, 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 agreement 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.

Statutory Limitations on Water Supply

15. (a) In accordance with the act of August 31, 1954 (68 Stat. 1026), this agreement (except for the flood water rights referred to in article 8) with respect to the water supply for the irrigation of the lands of the Michaud Division of the Fort Hall Indian Reservation,

(1) hereby limits that supply to (i) the yield of the space in Palisades and American Falls Reservoirs, as set out in this agreement, and (ii) to the supply obtained by the pumping of ground water of not more than 22,400 acre-feet as an average calculated at the end of an irrigation season including the irrigation season just ended and the preceding irrigation seasons up to a maximum of nine; and

(2) hereby provides the consent to a priority in time and right in such beneficial consumptive uses of the waters of the Snake River, and its tributaries, as are established under the laws of the State of Idaho, prior to August 31, 1954, as against any use of the water arising on or flowing through the Fort Hall Bottoms within the Fort Hall Indian Reservation, including, but not limited to, the intercepted flow of Ross Fork Creek, the Portneuf River below Pocatello, Big Jimmy Creek, Big Spring Creek, and Clear Creek.

And the United States, with the construction, operation and maintenance of said works of the Michaud Division of the Fort Hall Indian Reservation, hereby waives any of its rights, exclusive of the rights provided in this

agreement, to the use of the waters arising on or flowing through the Fort Hall Bottoms, including, but not limited to, the intercepted flow of Ross Fork Creek, the Portneuf River below Pocatello, Big Jimmy Creek, Big Spring Creek and Clear Creek, for the irrigation of the lands of said Michaud Division. Except as provided herein, nothing in this agreement shall affect any rights in and to the waters of the Fort Hall Indian Reservation or the Snake River and its tributaries.

(b) The limitations imposed in the statute and in (a) of this article 15, are made for the benefit both of Reclamation and water users' organizations contracting with Reclamation for storage capacity in the reservoir system, and for water users having natural flow rights below the points of diversion for the Michaud Division by the Indian Bureau. No modification in these limitations, or in other provisions of this agreement intended to effect the purposes of Section 3 of the Act of August 31, 1954, shall be made without the contractual approval of all the water users and water users' organizations for the benefit of whom these limitations are imposed.

Additional Agreements

16. It is recognized that from the power and energy to be generated at the Palisades powerplant, a supply will be provided for the operation of the pumping plant of the Michaud Division of the Fort Hall Indian Reservation and that revenues from the sale of surplus energy will be made available for a portion of the return of that project's cost. These matters are to be the subject of a separate agreement.

Powerplant Operations

17. Notwithstanding provisions to the contrary in this agreement, the Indian Bureau recognizes that:

(1) The United States, in its operation of the American Falls Dam powerplant will be governed by the provisions of the contract of June 15, 1923 with the Idaho Power Company, as that may be amended, and as further limited by the provisions of article 6.

(2) The United States, in its operation of the Palisades Dam powerplant, will be governed by the provisions of article 4 and these criteria, among others: that the plant shall be operated so as to hold to a practicable minimum the loss of water that would otherwise be available for storage in the reservoir system for irrigation purposes; and that, until such time as a reregulating reservoir has been put into operation, wide fluctuations in the release of water to meet peak power loads will, during irrigation seasons, be confined to periods when this can be done without substantial variation from the flows that would otherwise be present in the river below the dam.

(3) The operation of the Palisades Dam powerplant, during a five-year period (but not beyond the end of the national defense emergency as declared by Proclamation of the President, No. 2914 dated December 16, 1950, 3 CFR 1950 Supp., p. 71), beginning with the date when the first unit of that plant is first placed in service, may be in the following manner:

> In addition to normal operation at other times within the limits provided by this agreement, the plant may be operated to produce an average of

60,000 kilowatts (217,440,000 kilowatt-hours) during the period October through February of each storage season when the flow of the river at the dam is equal to or greater than for those months of the median year during the period 1928 through 1947 whenever such operation is required in the judgment of the Defense Electric Power Administrator, or his successors in functions, to help meet certified defense loads served from power systems with which the plant is interconnected, directly or indirectly.

Miscellaneous Revenues

18. (a) Having regard for the allocations of investment and repayment responsibilities, miscellaneous revenues realized in connection with the operation and maintenance of Palisades Dam and Reservoir and related costs shall be distributed annually as follows:

Twenty per cent (20%) to be distributed among the Indian Bureau and other parties having storage rights in the reservoir on the same basis that operation and maintenance costs are distributed.

Eighty per cent (80%) to remain the property of the United States.

(b) Miscellaneous revenues realized in connection with the operation and maintenance of the reserved works and related costs, except those in (a) of this article, 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.

Limitation of Area of Lands in non-Indian Ownership for Which Water is Furnished

19. As prescribed by the Federal Reclamation Laws, water made available hereunder shall not be delivered to non-Indian lands of more than one-hundred-sixty (160) irrigable acres in the beneficial ownership of any one person or other entity, or more than three-hundred-twenty (320) irrigable acres in beneficial ownership of a husband and wife as tenants in common or as community property, except that delivery may be made to lands held in excess of this limitation in accordance with the provisions of section 46 of the Act of May 25, 1926 (44 Stat. 649), as amended by the Act of July 11, 1956 (70 Stat. 524).

Contingent on Appropriations or Allotment of Funds

20. The expenditure of any money or the performance of any work by the agencies who are parties hereto are contingent on funds required therefor having been made available by the Congress.

Effective Date and Term of Agreement

21. This agreement will become effective on the date of its approval by the Secretary of the Interior and will remain in force until terminated by the Secretary of the Interior. It is anticipated that the first year of water delivery on the Michaud Division of the Fort Hall Indian Reservation will be calendar year 1960. Interim use of the storage capacity described

in this agreement may be made under the Reclamation Laws until that time or any extension of such date. The Indian Bureau is to notify Reclamation not later than January 1, 1960, of any change which will extend the time when water is to be first delivered. The payments required under articles 11, 12 and 13 of this agreement will not commence until the year in which water is delivered.

Right of Appeal from Action Taken Pursuant to The Terms of This Agreement

22. In carrying out this Memorandum of Agreement should an action be taken by one party which the other party disputes an opportunity shall be afforded to such party to protest such action, and in the event proper adjustment of the difference between the parties cannot be reached, the objecting party shall have the right to appeal in writing to the Secretary of the Interior. A copy of any such appeal shall be furnished to the other party, who will likewise have the right to present his views in writing to the Secretary of the Interior for decision. The decision of the Secretary in any such appeals shall be final and binding on all the parties.

E. G. Nielsen
Assistant Commissioner, Bureau of Reclamation

W. Barton Greenwood
Deputy Commissioner, Bureau of Indian Affairs

Approved: April 25, 1957

Fred G. Aandahl
Asst. Secretary of the Interior

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DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION REGARDING STORAGE RESET IN WATER DISTRICT 01 FILED BY MILNER IRRIGATION DISTRICT	Docket No. P-WRA-2017-002 **NOTICE OF PREHEARING CONFERENCE; ORDER SETTING DEADLINE FOR PETITIONS TO INTERVENE**

BACKGROUND

On August 18, 2017, Milner Irrigation District ("Milner") submitted a letter to the Idaho Department of Water Resources ("Department") asserting the "fall storage 'reset' for purposes of water right administration" in Water District 01 "is not authorized in the current storage water right partial decrees, including the Lake Walcott storage right (1-219)" and "has in effect curtailed Milner's natural flow water right 1-17 (November 14, 1916 priority date) in recent years." Milner requests "the Water District and Director ensure Milner receives the appropriate natural flow as required by Idaho law."

Milner's letter is a petition as defined by the Department's Rule of Procedure 230. *See* IDAPA 37.01.01.230. The Director will conduct formal proceedings to address the petition in accordance with the Department's Rule of Procedure 104 (IDAPA 37.01.01.104). The Director will schedule a prehearing conference and order that petitions to intervene be filed by the day prior to the prehearing conference pursuant to the Department's Rule of Procedure 352 (IDAPA 37.01.01.352).

NOTICE OF PREHEARING

The Director hereby notifies water users that a prehearing conference will be held in this matter on **November 13, 2017, at 1:30 p.m. (MDT)**, at the Department's State Office, located at 322 E. Front Street, 6th Floor, Director's Conference Room, Boise, Idaho 83702. The presiding officer will be the Director, Gary Spackman.

Milner and those seeking to intervene must be represented at the prehearing conference in person or by telephone. If participating by telephone, **please dial 1-720-279-0026 and enter the following guest code when prompted: 544840#**.

The prehearing conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the Department, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department or at https://adminrules.idaho.gov/rules/current/37/0101.pdf.

The prehearing conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please contact Kimi White at (208) 287-4815, no later than five (5) days prior to the conference.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that petitions to intervene in this matter must be filed with the Department by **November 12, 2017**, in accordance with the Department's Rules of Procedure 350-352. *See* IDAPA 37.01.01.350-352.

DATED this 5th day of October 2017.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October 2017, I served a true and correct copy of the foregoing document by electronic mail and U.S. mail, postage prepaid to the following:

Travis L. Thompson
Barker Rosholt & Simpson, LLP
P.O. Box 63
Twin Falls, Idaho 83303-0063
tlt@idahowaters.com

Lyle Swank
Water District 01Watermaster
900 N. Skyline Dr., Ste A
Idaho Falls, ID 83402-1718
lyle.swank@idwr.idaho.gov

I FURTHER CERTIFY that, on this 5th day of October 2017, a true a correct copy of the foregoing was served by U.S. mail on water users at their last known addresses listed in the document titled "Additional Service List in the Matter of the Petition Regarding Storage Reset in Water District 01 filed by Milner Irrigation District" dated October 5, 2017, and posted to the Department's website at: https://idwr.idaho.gov/legal-actions/administrative-actions/milner-petition.html.

Kimi White

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

October 27, 2017

Transmitted via U.S. Mail and E-mail

Lyle Swank
Water District 01 Watermaster
900 N. Skyline Drive Suite A
Idaho Falls, ID 83402-1718
lyle.swank@idwr.idaho.gov

Re: Reset of Reservoir Water Rights and Recharge

Dear Lyle,

The Bureau of Reclamation has informed IDWR and spaceholders that adherence to the winter water savings provisions of storage contracts will not be required during the fall and winter of 2017/2018 and the winter and spring of 2017/2018. The Bureau of Reclamation anticipates that 800 cubic feet per second (cfs) will be available to divert from the Snake River above American Falls Reservoir for managed recharge.

I understand that all of the water rights authorizing onstream storage of Snake River water and tributary water (hereafter referred to as "Snake River water") were satisfied in 2017. I also understand that Water District 01 staff reset the onstream Snake River storage water rights to again be eligible for distribution for additional storage on September 15, 2017. As a result, Water District 01 has been distributing available natural flow to the Snake River onstream storage water rights.

Currently, the water rights authorizing storage of water in American Falls Reservoir have not been satisfied.

The decreed water rights authorizing onstream storage of Snake River water identify a season of use of January 1 through December 31. The question of how the season of use defined by the decrees interacts with a reset date earlier than January 1 is the subject of a contested case now pending before the Director.

Without having received evidence in the contested case to determine when a reset date might be appropriate, the Director must consult the four corners of the storage right decrees to determine the season of use for these rights. The decrees identify a season of use of January 1 through December 31. As a result, the Water District 01 should not have reset the reservoir rights to start accruing again prior to January 1.

This letter instructs you to recharacterize any flow accrued to the Snake River Reservoirs subsequent to September 15, 2017, as natural flow that was available for diversion by junior water rights. Delivery of water to satisfy the onstream Snake River Reservoir water rights shall begin on January 1, 2018.

If you have questions about this instruction, please call me. Thanks.

Sincerely,

Gary Spackman

cc: Albert Lockwood, Chairman, Committee of Nine
Brian Patton, IDWR

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION REGARDING STORAGE RESET IN WATER DISTRICT 01 FILED BY MILNER IRRIGATION DISTRICT	Docket No. P-WRA-2017-002 **ORDER RE: STATEMENTS OF ISSUES AND RESPONSES; ORDER ADOPTING DEADLINES; AMENDED NOTICE OF STATUS CONFERENCE**

BACKGROUND

On August 18, 2017, Milner Irrigation District ("Milner") submitted a letter to the Idaho Department of Water Resources ("Department") asserting the "fall storage 'reset' for purposes of water right administration" in Water District 01 "is not authorized in the current storage water right partial decrees, including the Lake Walcott storage right (1-219)" (December 14, 1909 priority date) and "has in effect curtailed Milner's natural flow water right 1-17 (November 14, 1916 priority date) in recent years." Milner requests "the Water District and Director [of the Department] ensure Milner receives the appropriate natural flow as required by Idaho law."

On October 5, 2017, the Director issued a *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* explaining that Milner's letter is a petition as defined by the Department's Rule of Procedure 230 (*see* IDAPA 37.01.01.230); scheduling a prehearing conference for November 13, 2017; and ordering petitions to intervene be filed by November 12, 2017.[1]

On November 20, 2017, the Director issued an *Order Requesting Staff Memorandum; Order Adopting Deadlines; Notice of Status Conference; Notice of Hearing*. The Director ordered a December 8, 2017, deadline for parties "to submit to the Director a statement of issues the party believes the Director should address in this contested case;" a December 15, 2017, deadline "for any party to submit to the Director a response to statements of issues;" and a December 5, 2017,

[1] The Department received and granted petitions to intervene filed by the Shoshone-Bannock Tribes; the Coalition of Cities (i.e. Bliss, Buhl, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, and Wendell); the Upper Valley Storage Holders (i.e. Fremont Madison Irrigation District, North Fork Reservoir Company; Idaho Irrigation District and New Sweden Irrigation District); the City of Pocatello; the Surface Water Coalition (i.e. A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company); Idaho Power Company; Aberdeen-Springfield Canal Company; the City of Idaho Falls; Palisades Water Users, Inc.; and the U.S. Bureau of Indian Affairs.

deadline "for the Director to issue an order regarding the parties' statements of issues and responses."

On December 8, 2017, the Department received statements of issues from the Shoshone-Bannock Tribes ("Tribes"); the City of Pocatello ("Pocatello"); the Surface Water Coalition ("SWC"); the U.S. Bureau of Indian Affairs ("BIA"); the Upper Valley Storage Holders ("UVSH"); the City of Idaho Falls ("Idaho Falls"); and Palisades Water Users, Inc. ("PWUI").

On December 15, 2017, the Department received responses to the statements of issues from Aberdeen-Springfield Canal Company; the BIA; the Coalition of Cities[2]; Pocatello; Idaho Falls; PWUI; the Tribes; the SWC; and the UVSH.

ANALYSIS

The Director will first respond to PWUI's suggestion that this contested case is not the proper forum to address issues raised by Milner's petition. The Director will then pose the threshold legal question that must be answered in this case.

A. This contested case is the proper forum to address issues raised by Milner's petition.

As stated above, Milner's petition asserts the "fall storage 'reset' for purposes of water right administration" in Water District 01 "is not authorized in the current storage water right partial decrees." Milner requests "the Water District and Director ensure Milner receives the appropriate natural flow as required by Idaho law." Milner's petition requires the Director to determine whether the procedures utilized by Water District 01 for resetting the accounting system's reservoir water right accrual volumes for federal onstream reservoirs are consistent with the storage water right partial decrees.

PWUI suggests this contested case is not "the proper forum for this action" and "this matter should be decided on judicial review before Judge Wildman in the SRBA Court." The Director disagrees. Idaho Code § 42-602 "gives the Director broad powers to direct and control distribution of water from all natural water sources within water districts." *In re SRBA*, 157 Idaho 385, 393, 336 P.3d 792, 800 (2014). Idaho Code § 42-1420(1) states that "decree[s] entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system." "[T]he Director has a 'clear legal duty' to distribute water according to decreed water rights." *City of Blackfoot v. Spackman*, 162 Idaho 302, 396 P.3d 1184, 1191 (2017)." "[T]he Director's clear duty to act means that the Director uses his information and discretion to provide each user the water it is decreed. And implicit in providing each user its decreed water would be determining when the decree is filled or satisfied." *In re SRBA*, 157 Idaho at 393-94, 336 P.3d at 800-01. It is the Director's duty to interpret water right

[2] In its response, the Coalition of Cities' states its petition to intervene "erroneously listed the City of Buhl and omitted the City of Shoshone." *Coalition of Cities' Response to Statement of Issues and Request to Substitute City of Shoshone for City of Buhl as an Intervenor* (Dec. 15, 2017). The Coalition of Cities asks the Director to substitute the City of Shoshone for the City of Buhl as an intervenor. Hereafter, the Coalition of Cities will be comprised of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell.

partial decrees in the first instance. *See id.* at 394, 336 P.3d at 801.[3] Further, the Department's Rule of Procedure 104 authorizes the Director to conduct formal proceedings to address petitions. IDAPA 37.01.01.104. This contested case is the proper forum to address issues raised by Milner's petition.

B. Threshold legal question.

In responding to Milner's petition, the Director must determine whether Water District 01's procedures for resetting the accounting system's reservoir water right accrual volumes for federal onstream reservoirs are consistent with the storage water right partial decrees. The Director's interpretation of water right partial decrees must begin with the plain language of the decrees. *See U.S v. Black Canyon Irr. Dist*, Docket No. 44635, 2017 Idaho (Dec. 21, 2017); *City of Blackfoot v. Spackman*, 162 Idaho 302, 396 P.3d 1184, 1190 (2017); *Rangen, Inc. v. Idaho Dep't of Water Res.*, 159 Idaho 798, 367 P.3d 193, 201 (2016). The threshold legal question the Director must answer in this contested case is whether the plain language of the "period of use" element of the storage water right partial decrees for federal onstream reservoirs in Water District 01 that specifies "1/1 to 12/31" as the time period for "irrigation storage" requires that the reset date for those rights be January 1. The Director will order deadlines for the parties to submit briefs on this question pursuant to the Department's Rule of Procedure 564 (IDAPA 37.01.01.564).

If the plain language of the storage water right partial decrees for federal onstream reservoirs in Water District 01 does not require a January 1 reset date, the Director may consider other issues raised by the parties in their statements of issues and responses. An important issue would be: If the Director is authorized to reset the accounting system's onstream reservoir water right accrual volumes on a date other than January 1, what information is relevant to establish a reset date other than to January 1?[4] Further, if the partial decrees do not require a January 1 reset date, the parties will have an opportunity to submit additional information regarding the history of storage water right administration and accounting in response to the December 1, 2017, staff memorandum prepared by Tony Olenichak. *See SWC Statement of Issues* at 4 (Dec. 8, 2017).[5]

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[3] PWUI suggests the Director can consider whether he abused his discretion "regarding accounting methodologies." The courts, not the Director, review the Director's exercise of his discretion in challenges brought pursuant to the Idaho Administrative Procedure Act. *In re SRBA*, 157 Idaho at 394, 336 P.3d at 801.

[4] In response to Pocatello's suggestion that the Director should consider in this contested case "[h]ow any change in the reservoir reset date from the historical practice will affect the administration of AFRD's water right no. 1-6," the Director notes that he already issued a *Final Order Regarding Instructions to Water District 01 Watermaster*, In the Matter of Water Right No. 1-6 (Feb. 11, 2013). In that final order, which was not challenged, the Director instructed the watermaster of Water District 01 how to administer and account for water right no. 1-6 pursuant to the elements of the partial decree for that water right.

[5] Mr. Olenichak's staff memorandum is "properly considered' in this contested case pursuant to the Department's Rule of Procedure 602 (IDAPA 37.01.01.602). *See Statement of Issues of Palisades Water Users, Inc. and the City of Idaho Falls* at 8 (Dec. 8, 2017).

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that, pursuant to the Department's Rule of Procedure 564 (IDAPA 37.01.01.564), the parties must submit briefs regarding whether the plain language of the "period of use" element of the storage water right partial decrees for federal onstream reservoirs in Water District 01 that specifies "1/1 to 12/31" as the time period for "irrigation storage" requires that the reset date for those rights be January 1.

IT IS FURTHER ORDERED that the following deadlines are ADOPTED:

January 19, 2018	**Deadline for parties to submit opening briefs regarding the threshold legal question articulated herein.**
January 26, 2018	**Deadline for parties to submit response briefs.**
February 9, 2018	**Deadline for Director to issue order regarding the parties' briefs on the threshold legal question.**

AMENDED NOTICE OF STATUS CONFERENCE

The Director hereby notifies the parties that the status conference scheduled in this matter for January 12, 2018, is rescheduled for **February 14, 2018, at 10:00 a.m. (MDT)**, at the Department's State Office, located at 322 E. Front Street, 6th Floor, Director's Conference Room, Boise, Idaho 83702.

All parties must be present at the status conference in person or by telephone. If participating by telephone, **please dial 1-720-279-0026 and enter the following guest code when prompted: 544840#**.

The status conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the Department, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department or at https://adminrules.idaho.gov/rules/current/37/0101.pdf.

The status conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please contact Kimi White at (208) 287-4815, no later than five (5) days prior to the conference.

DATED this 3rd day of January 2018.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January 2018, I served a true and correct copy of the foregoing document by U.S. mail, postage prepaid to the following:

Travis L. Thompson
Barker Rosholt & Simpson, LLP
P.O. Box 63
Twin Falls, Idaho 83303-0063
tlt@idahowaters.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Sarah A. Klahn
Mitra M. Pemberton
White & Jankowski, LLP
511 Sixteenth Street, Suite 500
Denver, Colorado 80202
sarahk@white-jankowski.com
mitrap@white-jankowski.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

William Bacon
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, Idaho 83203
bbacon@sbtribes.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Edmund Clay Goodman
Hobbs, Straus, Dean & Walker LLP
806 SW Broadway, Suite 900
Portland, Oregon 97205
egoodman@hobbstraus.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

John K. Simpson
Travis L. Thompson
Jonas A. Reagan
Barker Rosholt & Simpson, LLP
P.O. Box 63
Twin Falls, Idaho 83303-0063
jks@idahowaters.com
tlt@idahowaters.com
jar@idahowaters.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Chris M. Bromley
Candice McHugh
McHugh Bromley, PLLC
380 S. 4th Street, Suite 103
Boise, Idaho 83702
cbrombley@mchughbromley.com
cmchugh@mchughbromley.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Jerry R. Rigby
Rigby, Andrus & Rigby Law, PLLC
25 North Second East
Rexburg, Idaho 83440
jrigby@rex-law.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

John K. Simpson
Barker Rosholt & Simpson, LLP
P.O. Box 2139
Boise, Idaho 83701-2139
jks@idahowaters.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

W. Kent Fletcher
Fletcher Law Office
P.O. Box 248
Burley, Idaho 83318
wkf@pmt.org

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Norman M. Semanko
Parsons Behle & Latimer
800 West Main Street, Suite 1300
Boise, Idaho 83702
nsemanko@parsonsbehle.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Robert L. Harris
D. Andrew Rawlings
Holden, Kidwell, Hahn & Crapo, PLLC
P.O. Box 50130
Idaho Falls, Idaho 83405
rharris@holdenlegal.com
arawlings@holdenlegal.com

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Duane Mecham
U.S. Department of the Interior
Bureau of Indian Affairs
805 SW Broadway, Suite 600
Portland, Oregon 97205
duane.mecham@sol.doi.gov

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Lyle Swank
Water District 01
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718
lyle.swank@idwr.idaho.gov

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☒ Email

Kimi White