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**WATER RESOURCES
WESTERN REGION**

Attorneys for Boise Project Board of Control

**BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 63-34614 (Micron
Technology, Inc.)

**BOISE PROJECT BOARD OF CONTROL'S
RESPONSE TO SUEZ'S MOTION FOR
PARTIAL SUMMARY JUDGMENT
CONCERNING CONDITION 908**

INTRODUCTION

COMES NOW, the Boise Project Board of Control through its attorneys of record and hereby responds to Suez's Motion for Partial Summary Judgment Concerning Condition 908.

This proceeding involves an application by Micron for a 12 cfs water right with two purposes. One purpose is 12 cfs for recharge and one purpose is for 5 cfs for direct industrial use. The total quantity is 12 cfs. The water right application would bear a priority date of 2018, the date of the application, if approved. Boise Project Board of Control filed a protest to ensure that its water rights were protected in any water right that might be awarded to Micron, given that Micron intends to divert the water from the Boise River below the New York Canal's Diversion Dam. To the extent that Micron's right would require water to be released past the Diversion Dam that otherwise would be available to Boise Project and its member-irrigation districts, there is a potential for an impact to the water rights of the Boise Project's districts. *See generally United States v. Pioneer Irrigation Dist.* 144 Idaho 106, 157 P.3d 600 (2007).

THE 908 FLOOD CONTROL CONDITION IS WELL ESTABLISHED IN BASIN 63.

The Boise Project, the Ditch Companies and Micron have all agreed upon a slightly revised version of Condition 908 which would authorize Micron to divert water from the Boise River under certain conditions. This agreement between the Parties is similar to an agreement that the Boise Project and other Protestors entered into with Suez's predecessor, United Water, to ensure that water was being diverted only during the flood control season. The 908 remark or condition has been added to other Micron and Simplot water rights and was recently included by the Director in a water right permit awarded to Elmore County after a contested case hearing. Elmore County sought to appropriate flood flows only and agreed not to interfere with reservoir rights.

Suez did not protest Elmore County's application, but filed a late petition to intervene. Permit No. 63-34348 (July 26, 2018). Suez's Petition did not raise flood control releases as a basis of its intervention despite Elmore County's avowed intent to divert only flood releases. Suez did not assert that the 908 flood release condition was illegal or ambiguous in that proceeding. *Id.* Suez's Petition was denied as untimely and potentially disruptive. Order (August 10, 2018). Suez was allowed to participate as a public witness. *Id.* Suez gave motion that it would participate as a public witness through one of its Vice-Presidents. Notice (Nov. 6, 2018). Suez, however, chose not to provide any testimony.

In the Elmore County proceeding, the Water Master explained that flood flows were "anything above demand on the river." Tr. p. 1373. No one contended otherwise or that there was any ambiguity in the flood release terminology.

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The modified 908 condition is attached as an Exhibit to the Ditch Company's response to Suez's motion. The Boise Project requests that the hearing officer adopt the proposed settlement terms and reject Suez's motion.

SUEZ HAS NO RIGHT TO INTERFERE WITH A SETTLEMENT OF A PROTEST
BETWEEN APPLICANT AND PROTESTANT WHEN THE SETTLEMENT DOES NOT
HARM SUEZ OR ITS WATER RIGHTS.

Throughout the proceedings leading up to Suez's Summary Judgment Motion, Suez has repeatedly stated to the Department and Parties that Suez will not interfere with an agreement between consenting Parties as to conditions placed upon Micron's water right. Despite those repeated representations, Suez now has the temerity to demand that the Parties can not agree to the 908 condition that the Director just authorized under Elmore County's permit and indeed to the same condition Suez's predecessor agreed to in 2001. Suez apparently believes that Suez is better situated to determine what conditions other entities can agree to on their own separate water rights. Completely missing from Suez's motion is any explanation of how Suez is adversely affected by the agreement that Micron willingly has entered into.

Suez contends that this 908 condition should not be treated as a standard condition because Suez objects to the condition being inserted into a future right Suez might seek to obtain. First of all this 908 condition is freely entered into by Micron. It is not imposed on an unwilling appropriator. *See* Micron response. Suez's purported concern about the 908 condition is conjecture that Suez would be forced to accept the same condition. The "concern" is also speculative.

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Suez's conjecture about conditions on rights that Suez might acquire in the future is speculative because Suez agreed with Boise Project as part of the settlement of Suez's IMAP proceeding that

"Suez will not seek any new appropriation of ground water or natural flow surface water from the Boise River Basin to reduce or fill the 'gap' between its water rights portfolio and its RAFN. The 'gap' is currently quantified at 40.29 cfs and estimated to be the additional amount (beyond the currently authorized 330.5/8 cfs, of water rights, degrees, permits, and other long-term (non-rental) entitlements) that will need to be acquired to meet peak demands in the year 2065."

A copy of the settlement agreement is attached hereto.

This Settlement Agreement enabled Suez to capture its existing portfolio (which is far more than its current needs) and protect those rights for RAFN purposes. In return, Suez agreed that it would not acquire any new natural flow rights from the Boise River for decades. Consequently, the "concern" that Suez evinces for its future water rights rings hollow and provides no legal basis to oppose Micron's voluntary agreement to condition its water rights using the 908 condition.

Second, Suez has provided no legal rationale explaining why Suez has the ability to overrule the individual parties to a water right contest when the applicant itself is willing to enter into an agreement to limit or condition its water rights. Conditions on water rights are well established in this state and there is no reason that a private party cannot agree as a condition of obtaining a water right to limit the exercise of that water right to something less than would be authorized under the prior appropriation doctrine. The Supreme Court made this abundantly clear in the landmark Swan Falls decision. *Idaho Power Co. v. State*, 104 Idaho 575, 661 P.2d 741 (1983).

The record here makes it clear that Idaho Power voluntarily agreed to have the subordination clause inserted in the Hells Canyon licenses. We find nothing in the law of this state which precludes a person from voluntarily obtaining less than the

full panoply of rights associated with the ownership of real property. Agreements not to assert ownership rights to their fullest are common in today's society, e.g. restrictive covenants and equitable servitudes. Whatever merits such an argument may have with regard to subordination clauses forced upon an unwilling appropriator by the FPC or the state, we need not decide. We hold only that a voluntary subordination agreement is not in violation of Idaho's water law, and therefore we find no conflict between our state water law and the language of the subordination clause inserted in the Hells Canyon licenses.

Id at 587, P.2d at 763 (emphasis added).

While the Swan Falls Decision is in the context of a voluntary subordination. The Court's language clearly applies to any voluntary limitation of a property interest.

Suez mounts a claim that the 908 condition which authorizes Micron to exercise water rights during flood control operations is illegal because it supposed violates the prior appropriation doctrine by putting on additional conditions. Even supposing this claim is true, since Micron is voluntarily agreeing to the condition on its water rights, there is nothing illegal about the 908 condition. *Idaho Power Co. v. State, supra*.

THE 908 CONDITION IS CLEAR, UNDERSTANDABLE TO THE WATER MASTER AND PROVIDES NOTICE TO THE WATER RIGHT HOLDER WHEN THE RIGHTS CAN BE EXERCISED.

That United Water understood exactly what the 908 condition it is own water right means is abundantly clear in the United Water's application for water right 63-31409. There United Water explained that it only sought to divert "when water is available in the river in excess of demand by senior diverters." Am. App 63-31409, Attachment A, p.1. United Water explained, based on releases from Lucky Peak that it would only take release in excess of irrigation demand, Salmon flow augmentation and releases for stream flow maintenance. *Id.* p.3. Lest there be any doubt, United Water attached Exhibit 2 showing flows actually released from Lucky

Peak. While Suez might try to manufacture a controversy today, there is no confusion what flood release meant twenty years ago and there is none now.

Suez objects to the 908 condition on the grounds that it is too ambiguous to be enforceable and somehow in conflict with the Refill water rights. It is legally baffling how Suez can say that the 908 condition is ambiguous (as it repeatedly does) and at the same time claim that Suez is entitled to Summary Judgment because the condition is ambiguous (as it repeatedly claims). This legal non-sequitor cannot withstand even the slightest scrutiny.

Summary Judgment is only appropriate when contractual language is unambiguous as a matter of law. *Greenwald v. Western Surety Co.*, 164 Idaho 929, 939, 436 P.3d 1278, 1288 (2019); *Hap Taylor & Sons, Inc. v. Summerwind Partners LLC*, 157 Idaho 600, 610, 338 P.3d 1204, 1214 (2014). When the terms are ambiguous summary judgment must be denied. *Id.*

A contract is only ambiguous if these are conflicting reasonable interpretations or the language is nonsensical. A party's subjective intent is immaterial. *Dickinson Frozen Foods v. J.R. Simplot Co.*, 164 Idaho 669, 685, 434 P.3d 1275, 1291 (2019). Disagreement over interpretation of language does not make the language ambiguous. *Alexander v. Stibal*, 161 Idaho 253, 260 385 P.3d 431, 438 (2016). In other words, Suez does not get to conjure ambiguity out of thin air or ignore the well established and well understood meaning of flood release in the Boise River, simply by claiming it is confused.

The term flood release is clear. It means releases from the reservoir greater than the downstream demand. Rex Barrie Declaration; Tr. pg.1474 (B63 hearing) Tr. p. 1373 (Elmore County hearing). When the flood control rule curves require releases under the Water Control Manual may be a complex calculation, but that is not the question. What is important is whether more water is being released from Lucky Peak than demand for senior water rights. *Id.*

Suez's claim that the department cannot administer the 908 condition is also unsupported, as Suez admits. The Department of Water Resources has provided an explanation of how the 908 conditions will be incorporated into the accounting program, following the decreeing of the refill water rights, Refill 1 and Refill 2 (63-33734A and 63-3374B). The Department through Matt Anders has incorporated provisions into the accounting program to allow the Department and the Water Master to know when rights with a 908 condition are eligible to be diverted under the priority doctrine and the accounting program. While Suez may claim that it is confused about the operations of the accounting program and the 908 conditions, the Department has determined that the right can be administered post-refill settlement. Suez claims to be dissatisfied with the Department's explanation, but that does not change the fact that the Department has determined how the 908 condition and the Refill water rights co-exist.

THE STIPULATION TO SETTLE IS EMINENTLY SENSIBLE AND ADMINISTRABLE.

Suez focuses upon one set of circumstances involving 908 and Refill 1, but ignores the vast majority of the circumstances of when water is otherwise be available to be diverted under the 908 condition under Micron's water right. Suez proclaims its "concern" for Micron that Micron might be precluded from diverting when the Refill 1 right is in priority. The objectors and Micron have come to an agreement that, under those circumstance, Micron is allowed to divert water for the direct industrial use (5.0 cfs) either when Refill 1 is in priority or when water is being released for flood control, giving Micron greater flexibility. That provision only applies to the direct use industrial right and not to the recharge right, however. We explain below why that is the case.

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Under the current accounting program, there are three seasons of reservoir fill when water can be diverted: (1) under the base right of the reservoirs, (2) the Refill 1 right and (3) the Refill 2 right. Whenever water is being accounted for under the base rights of the reservoirs, Micron's right is not in priority. That is true even if water is being released by the Corps of Engineers for flood control purposes. The 908 condition provides greater flexibility to recognize that Micron is able to divert this flood water, even when the base rights are in priority as long as more water is being released from the reservoirs than is necessary to supply senior downstream demand below Lucky Peak.

Refill 1 is similar up to point. Under Refill 1, the storage rights are in priority up to 3.6 million acre feet. However, the Refill 1 right is subordinate to certain uses and not subordinate to other uses. The Refill 1 storage right would be subordinate to Micron's industrial, direct use. Refill 1 is not subordinate to the ground water recharge portion of Micron's right. Consequently, when Refill 1 is in priority and accruing water to storage accounts, Micron would not be able to divert water for its recharge right. However, condition 908 recognizes that Micron can divert water for its recharge right during the time period when Refill 1 is in priority if water is being released from Lucky Peak for flood control in excess of downstream irrigation demand.

The third scenario is when Refill 2 comes in to priority. Refill 2 comes into priority when Reclamation advises the Department that it wishes to "turn on" Refill 2. This "turn on" is intended to take place during a time frame at the end of the storage season when the threat of junior demands might impact the ability to fill the reservoir system to capacity. Under the scenario when Refill 2 is "turned on," neither of the uses under the Micron right would be in priority and this new Micron right could not be exercised. It is theoretically possible that there could be flood control releases at the same time as Refill 2 is in operation but that is not how

Refill 2 is designed to be utilized, so that eventuality is extremely unlikely.

As the Hearing Officer can see, the agreement between Micron and the irrigators is an agreement that both fully protects the irrigators' rights and their storage water rights but also gives Micron additional flexibility to divert water when water is being released for flood control.

Suez seems to assert that there is no way to know what water is being released for flood control and therefore 908 is meaningless. This is nonsense. The 908 conditions specifically refers to flood control releases occurring under the Water Control Manual that has been established for the Boise River Reservoir System. The Water Master has testified that he is well aware of what water is available for diversions as a flood release. The Water Control Manual reference in the 908 condition to flood control means those periods of time when the releases from Lucky Peak for flood control are greater than the demand for irrigation. Barrie Declaration; Hearing Tr. p. 1474. Suez's claim that it can divert under 908 any time between January 1 and the day of allocation, is absurd and supported by nothing other than its assertion.

It appears that Suez is attempting, through this proceeding, to do something which it was unable to accomplish in the 63 Refill case, stamp its "free river concept" onto Idaho Water law. Neither the SRBA Court, nor the Director has ever endorsed Suez's "free river" theory. The Boise River is not a free river or a "free for all" allowing people to take water whenever they want, as long as they contend there is available water.

The Water Master clearly knows what flood control release means. He knows how much water is being released for flood control. He knows the irrigation demand. He knows the difference between the two on a daily basis. Barrie Declaration. Suez's assertion that it can exercise a right with a 908 condition whenever it feels like between January 1 and July 1 is at

odds with how the Director and the Water Master administer water under the accounting program, including administration of 908 conditions.

CONCLUSION

The hearing officer should reject Suez's Motion. Suez can not prevent a voluntary agreement by a water user to condition its water right. Suez is not harmed in any way. This water right with the modified 908 condition does not affect Suez's senior rights.

The hearing officer should reject Suez's attempt to use this proceeding to upset the Department's accounting program and to re-define flood control releases.

Dated this 16th day of July, 2020.

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July, 2020, I caused to be served a true and correct copy of the foregoing **BOISE PROJECT BOARD OF CONTROL'S RESPONSE TO SUEZ' MOTION FOR PARTIAL SUMMARY JUDGMENT CONCERNING CONDITION 908** by the method indicated below, and addressed to each of the following:

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Albert P. Barker

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1 is flow in the river, the first thing that the
2 watermaster does is credit that to the users based upon
3 the priority of water rights given to them by the
4 Department; right?

5 A. The natural flow, yes.

6 Q. Yes, the natural flow. And then the next
7 sentence, the last part of that paragraph suggests that
8 what happens is if the diverter is using more water
9 than his natural-flow right allows, what happens then?

10 A. If there's flood-control operations --

11 Q. No. Not when there's flood control.

12 A. Oh, in the first paragraph?

13 Q. In the first paragraph.

14 A. Okay. In the first paragraph any diversion
15 in excess of the available natural flow is charged to
16 their storage account.

17 Q. Okay. It's charged to their storage
18 account. So let's say they have 10 cfs right and
19 they're diverting 15 cfs, that additional daily rate of
20 5 cfs would accrue at 10 acre-feet to their -- per day
21 to their storage account?

22 A. That's correct.

23 Q. Okay. And then the Water Control Manual
24 says, "But we're going to do things differently when
25 we're in flood control"; right?

1 against their storage account.

2 Q. There's no charge against their storage
3 account when the water is on flood control?

4 A. That's right.

5 Q. When the release is above the irrigation
6 demand?

7 A. Yes.

8 Q. And so what is -- do you have an
9 understanding of what surplus to the Boise River means?

10 A. I believe it's just that, it's water in
11 excess of what's needed to meet the demand for water
12 users.

13 Q. So this is what the Department wrote how it
14 was going to operate water rights in the Boise when it
15 added this language to the flood-control manual.

16 Is that the way the accounting program
17 actually works?

18 A. No, it isn't.

19 Q. Okay. So tell me how the accounting
20 program deviates from the Department's instructions in
21 the Water Control Manual.

22 A. It deviates in a couple of ways. The most
23 pertinent one here is every water right is limited to
24 their diversion rate irrespective of flood control.
25 And if more water is diverted, it's charged as storage.

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1 A. That's right. That's right.

2 Q. And when the Water Control Manual talks
3 about flood control, what is it talking about?

4 A. It's talking about those periods
5 flood-control releases are greater than or equal to the
6 demand for irrigation.

7 Q. No, I just mean in general. What does
8 flood control mean under the Water Control Manual
9 that's referred to here in this section?

10 A. There's extra water in the system over and
11 above what's needed to meet the demand for diversions.

12 Q. Okay. And those releases are made by the
13 Corps and the -- or the Bureau under this flood-control
14 manual here; right?

15 A. Correct. Yes.

16 Q. And then it goes on to say that "When the
17 flood-control releases are greater than the demand for
18 irrigation water, the entire release is considered
19 surplus to the Boise River." Okay.

20 A. Okay.

21 Q. So what does that mean?

22 A. That means that if that person that had the
23 10 cfs right was diverting 15 and previously had been
24 charged for 5 cfs of storage, now could divert the
25 entire 15 and it would not -- there would be no charge

1 But also flood-control releases are often considered
2 storage releases in the accounting program.

3 Q. So stop right there.

4 A. Yeah.

5 Q. So tell me, how does the accounting program
6 consider storage releases -- or flood-control releases
7 as storage releases?

8 A. If the reservoir water rights are still in
9 priority in the accounting program, meaning they have
10 not paper-filled, and water is being bypassed so it's
11 not being stored or space is actually being evacuated,
12 either one, the excess water in the river to the
13 accounting program appears as storage water being
14 released and not as natural flow available for
15 diversion.

16 Q. And under those circumstances under the
17 accounting program, who's entitled to take that water?

18 A. It would be the storage spaceholders that
19 wanted to use some of their storage allotment.

20 Q. And a junior water user -- a junior
21 natural-flow right would not be able to take that water
22 that's stored water released?

23 A. Unless they had storage, that's correct.

24 Q. Right. And is that -- how is that, the way
25 the program works, inconsistent with how the Department

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1 A. Yes, sir. Diversion Dam operated by the
2 Bureau of Reclamation, as well as Barber Dam, which is
3 owned by Ada County, and operated by Enel Green Power.
4 Q. I guess if I use the term "flood flows,"
5 what's your understanding of that?
6 A. That's anything above demand on the river.
7 Q. And we're referring, obviously, to the Boise
8 River, Basin 63?
9 A. Yes, sir.
10 Q. Is it safe to say, any unappropriated water
11 within the Boise basin is the flood flows, if I use that
12 term?
13 A. I would say, under the state regulations,
14 there could be.
15 Q. And so these hydroelectric facilities, do they
16 operate when unappropriated water goes through them; do
17 you know?
18 A. To the best of my knowledge, they do.
19 Q. Your administration within the Boise basin,
20 can you explain, or are there different areas within the
21 basin that you administer or regulate differently?
22 A. No, they are all administered. The water
23 rights that we currently are administering are all
24 administered according to Idaho Code.
25 Q. Do you have any understanding of a break at

1 application?
2 A. It was an attempt to divert water out of the
3 Boise basin to provide water to the Mountain Home area.
4 Q. Did you understand that part of the
5 application was to use some existing Mountain Home
6 Irrigation District facilities?
7 A. No, I did not.
8 Q. Did you understand that part of the proposed
9 application was to put water into Little Camas?
10 A. No, I did not.
11 Q. Have you reviewed any of that information, or
12 reviewed whether or not that's part of the application?
13 A. No, I have not.
14 Q. Okay. Have you ever been to Little Camas
15 Reservoir?
16 A. Yes, I have.
17 Q. And how often, or on which occasions?
18 A. I have been there many times. In my capacity
19 as Boise River watermaster, I have probably been there a
20 dozen times.
21 Q. In your duties and experience as the Boise
22 River watermaster, are you familiar with measuring canal
23 systems?
24 A. Yes, I am.
25 Q. Are you familiar with kind of generally

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1 Star Bridge, or Middleton Bridge relating to the
2 administration of the Boise River?
3 A. Yes, I do.
4 Q. And what's that understanding?
5 A. Typically, below the Star Bridge, there is
6 enough return flow from the drains that come into the
7 Boise to supply that need below the Star Bridge. So
8 we're -- we don't have to release quite as much water
9 past what's referred to as the Middleton gage, to meet
10 the demand that's needed on the lower portion of the
11 river.
12 Q. And are there water users that have water
13 rights below, obviously, Star Bridge?
14 A. Yes, sir.
15 Q. And they are relying on those return flows
16 that contribute to that water available to them?
17 A. Yes, they are.
18 Q. Are you familiar with the application at issue
19 today, Elmore County's application?
20 A. Yes, I am.
21 Q. How are you familiar with Elmore County's
22 application?
23 A. I opposed the application when it was first
24 presented to me by the Department.
25 Q. And what was your understanding of the

1 looking at a canal system, and having an idea how much
2 capacity it may have?
3 A. Yes, I do.
4 Q. Have you looked at the outfall from Little
5 Camas into the Mountain Home Irrigation District canal?
6 A. Yes, I have.
7 Q. How often have you done that?
8 A. I have probably been at that site no less than
9 six times.
10 Q. Based on your experience, do you have an
11 estimation as far as the capacity of that canal?
12 A. Yes, looking at that, just physically looking
13 at it without taking any measurements or anything else,
14 I would guess that it would not exceed 50 cubic feet per
15 second.
16 Q. Now, I'm wanting him to look at Boise City
17 Exhibit 2. I don't know if that binder is in front of
18 him or behind him.
19 THE HEARING OFFICER: Which exhibit was that?
20 MR. FARRIS: Boise City Exhibit 2.
21 THE HEARING OFFICER: Thank you.
22 Q. (BY MR. FARRIS) Okay. Mr. Barrie, you are
23 looking at Boise City Exhibit 2?
24 A. Yes, sir.
25 Q. Do you recognize that document?

ATTACHMENT A

United Water Application for Permit February 4, 2002

By this application, United Water seeks a permit for a municipal water right from the Boise River to supply a new drinking water treatment facility (the "Columbia Plant"). This new facility is necessary to serve the year-round municipal needs of the Treasure Valley's expanding population, primarily new growth in the eastern and southern portions of the Boise area where ground water supplies may be insufficient to meet current and anticipated municipal needs. The geographical location of the Columbia Plant, however, is such that it can supply water to any portion of United Water's interconnected delivery system.

United Water will build the Columbia plant in phases, with the first phase planned for completion in 2004. Under current plans and projections, additional production capacity will be added in 2006 and third expansion will occur in 2009, bringing the plant up to full designed capacity of 20.0 cfs. United Water will deliver water to the Columbia Plant via an existing river intake and pumping station adjacent to the Highway 21 bridge that United Water shares with Micron Technology, Inc. United Water has an existing delivery pipeline in place, along with related easements, through the Highway 21 right-of-way that will be extended to the plant site. A map of the plant location, river intake and pipeline is attached as Exhibit 1.

This permit seeks a water right to allow United Water to divert and use surface flows for the Columbia Plant when water is available in the river in excess of demand by senior diverters. United Water has consulted with Lee Sisco, Boise River Watermaster, to confirm that water is available for appropriation under this permit. The flow records at Lucky Peak indicate that water is available for this right during most years. See Exhibit 2.

United Water anticipates that the Columbia Plant at times will directly treat and deliver all 20.0 cfs diverted from the Boise River to its municipal customers. At other times when water under this right is available and United Water is using other sources or water rights to meet demand, United Water proposes to inject treated water into the aquifer underlying the Southeast Boise Ground Water Management Area (the "Boise-Fan Aquifer") as part of an aquifer storage and recovery ("ASR") project.

United Water will file a separate permit and associated mitigation plan to divert water out of the Boise-Fan Aquifer. United Water, in conjunction with the Department, has been instrumental in studying the Boise-Fan Aquifer. These studies confirm that the

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Rule .05(d) (information about sufficiency of water supply): Exhibit 3 contains water flow information in the Boise River for the years 1994 through 2000. Notations on the charts indicate days during each of these years when the right sought by this permit would have been available for diversion. Per conversations with Lee Sisco, Boise River Watermaster, spring and summertime flows of approximately 4100 cfs in the Boise River satisfy all existing water rights. An additional 400-500 cfs of recorded flow is assumed to be salmon release flows in June and July. In the winter months, this proposed right would be in priority at flows above the 150 to 250 cfs minimum streamflow released from storage. As Exhibit 2 shows, water is available under this right during many years.

Rule .05(d)(i) (information about water requirements of proposed project): United Water has filed its Integrated Municipal Application Package (IMAP) with the Department. The IMAP provides details of the projected population and water demand in United Water's system over the next 50 years, documenting that the peak municipal demand that United Water will be expected to meet will increase by approximately 150 cfs over the next 50 years. The Columbia Plant, and this proposal to divert 20.0 cfs from the Boise River are a part of United Water's program to meet this future demand.

Rule .05(d)(ii) (information about aquifer properties): The Boise-Fan Aquifer that UWID intends to use for its ASR project is well studied. Relatively impermeable subsurface structural features separate the aquifer from the Boise River and other aquifers underlying the Boise area. The Boise-Fan Aquifer itself, however, is composed primarily of alluvial fan deposits, providing for transmissivity and storativity features favorable for aquifer storage.

The report *Groundwater Conditions and Hydraulic Testing of the Boise-Fan Aquifer or Southeast Boise River Valley, Ada County Idaho* by Edward Squires et. al. provides a detailed analysis of the hydrogeology of the Boise-Fan Aquifer. A copy of this report is available upon request.

Rule .05(e)(i) (copies of deeds, easements, leases and similar documents): See Exhibit 4.

Rule .05(e)(ii) (copies of applications for other needed approvals): United Water is seeking approval of a conditional use permit from Ada County and approvals from the Idaho Department of Environmental Quality for meeting drinking water standards. Both approval processes are ongoing.

Rule .05(f)(i) (financial statement or financial commitment letter): Estimated construction costs are \$12 million. As a public utility regulated by the Public Utilities Commission ("PUC"), United Water is required to meet municipal

200 days

THIS REPORT IS FOR WATER YEAR 1996
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGIONAL OFFICE
FLOW IN C.F.S.
LUC QD

LUCKY PEAK DAM & LAKE ON BOISE RIV NR BOISE

EXHIBIT

2

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	2870.00	232.00	244.00	3010.00	1270.00	6510.00	6010.00	5910.00	9510.00	4160.00	4500.00	4070.00
2	2850.00	233.00	245.00	3010.00	1400.00	6510.00	6010.00	5910.00	9510.00	4190.00	4490.00	4070.00
3	2850.00	233.00	246.00	3010.00	1410.00	6510.00	6010.00	5910.00	9510.00	4370.00	4470.00	4000.00
4	2720.00	232.00	449.00	3020.00	1410.00	6520.00	6010.00	5920.00	9510.00	4460.00	4470.00	3930.00
5	2640.00	232.00	507.00	2680.00	1750.00	6520.00	6010.00	5900.00	9520.00	4610.00	4470.00	3870.00
6	2610.00	236.00	839.00	2510.00	2240.00	6520.00	6010.00	5900.00	9220.00	4700.00	4440.00	3730.00
7	2620.00	240.00	1050.00	2510.00	2810.00	6530.00	6020.00	5920.00	8730.00	4700.00	4420.00	3770.00
8	2620.00	241.00	1050.00	2200.00	3000.00	6510.00	6020.00	6100.00	8520.00	4710.00	4430.00	3770.00
9	2600.00	239.00	1050.00	2010.00	3010.00	6520.00	6020.00	6410.00	8510.00	4700.00	4420.00	3690.00
10	2580.00	240.00	1040.00	1510.00	3000.00	5520.00	6300.00	6710.00	8510.00	4700.00	4430.00	3640.00
11	3570.00	239.00	1180.00	1260.00	3010.00	6510.00	6410.00	6810.00	8620.00	4530.00	4420.00	3610.00
12	1140.00	240.00	1200.00	1260.00	3010.00	6510.00	6240.00	6820.00	9110.00	4530.00	4400.00	3590.00
13	524.00	238.00	1150.00	1260.00	3590.00	6520.00	5990.00	6810.00	9270.00	4500.00	4400.00	3600.00
14	523.00	238.00	1150.00	1250.00	4170.00	6510.00	5920.00	6820.00	9260.00	4500.00	4380.00	3590.00
15	522.00	238.00	1150.00	1250.00	4430.00	6510.00	5920.00	6800.00	9260.00	4500.00	4380.00	3590.00
16	389.00	237.00	1150.00	1260.00	4850.00	6530.00	5920.00	7360.00	9250.00	4490.00	4370.00	3500.00
17	112.00	238.00	1150.00	1050.00	5020.00	6510.00	5900.00	8440.00	9260.00	4500.00	4370.00	3380.00
18	110.00	237.00	1550.00	724.00	5010.00	6520.00	5910.00	8990.00	8990.00	4500.00	4370.00	3260.00
19	323.00	237.00	2140.00	605.00	5180.00	6510.00	5900.00	9010.00	7520.00	4500.00	4370.00	3130.00
20	322.00	238.00	2800.00	606.00	5430.00	6520.00	5910.00	9010.00	6040.00	4500.00	4370.00	3090.00
21	323.00	236.00	3000.00	604.00	5840.00	6510.00	5910.00	9010.00	5000.00	4500.00	4370.00	3100.00
22	323.00	236.00	3010.00	606.00	6360.00	6520.00	5910.00	9010.00	4650.00	4500.00	4380.00	3090.00
23	302.00	236.00	3010.00	607.00	6520.00	6520.00	5900.00	9350.00	4650.00	4500.00	4370.00	2990.00
24	288.00	237.00	3000.00	605.00	6510.00	6520.00	5910.00	9510.00	4650.00	4500.00	4370.00	2900.00
25	295.00	235.00	3020.00	604.00	6520.00	6520.00	5910.00	9510.00	4390.00	4500.00	4370.00	2810.00
26	294.00	234.00	3020.00	605.00	6510.00	6520.00	5910.00	9510.00	4250.00	4500.00	4360.00	2730.00
27	255.00	244.00	3010.00	604.00	6520.00	6520.00	5910.00	9510.00	4220.00	4500.00	4370.00	2640.00
28	234.00	239.00	3010.00	604.00	6510.00	6220.00	5910.00	9510.00	4170.00	4510.00	4240.00	2590.00
29	234.00	239.00	3020.00	605.00	6510.00	6020.00	5900.00	9500.00	4160.00	4500.00	4140.00	2590.00
30	233.00	240.00	3000.00	604.00	6020.00	6020.00	5920.00	9530.00	4150.00	4500.00	4090.00	2540.00
31	232.00		3010.00	872.00	6010.00	6010.00	5920.00	9510.00	4500.00	4500.00	4070.00	

TOT IN DSF 36508.00 7114.00 54450.00 42915.00 122800.00 200220.00 179530.00 240920.00 221930.00 139970.00 135500.00 100920.00

TOT IN AF 72413.62 14110.62 108001.58 85121.91 243573.80 397136.38 356097.75 477864.81 440198.16 277630.50 268764.25 200174.83

AVERAGE 1177.68 237.13 1756.45 1384.35 4234.48 6458.71 5984.33 7771.61 7397.67 4515.16 4370.97 3364.00

MAXIMUM 2870.00 244.00 3020.00 3020.00 5520.00 6530.00 6410.00 9530.00 9520.00 4710.00 4500.00 4070.00

MINIMUM 110.00 232.00 244.00 504.00 1270.00 6010.00 5900.00 4150.00 4160.00 4070.00 2540.00

EXHIBIT 2

203 days

THIS REPORT IS FOR WATER YEAR 1997 BUREAU OF RECLAMATION PACIFIC NORTHWEST REGIONAL OFFICE FLOW IN C.F.S.

LUCY QD
LUCKY PEAK DAM & LAKE ON BOISE RIV NR BOISE

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	2500.00	242.00	242.00	3090.00	7000.00	7020.00	7720.00	9530.00	7730.00	4290.00	4560.00	4340.00
2	2470.00	243.00	243.00	3590.00	7010.00	7010.00	7790.00	9430.00	7570.00	4280.00	4550.00	4260.00
3	2460.00	243.00	243.00	4080.00	7010.00	7380.00	7790.00	9100.00	7480.00	4280.00	4570.00	4160.00
4	2470.00	242.00	243.00	4420.00	7010.00	7600.00	7900.00	9050.00	7310.00	4290.00	4550.00	4050.00
5	2470.00	242.00	243.00	4680.00	7010.00	7740.00	7900.00	8860.00	7240.00	4280.00	4540.00	3980.00
6	2470.00	242.00	243.00	4930.00	7020.00	7800.00	7910.00	8630.00	7240.00	4280.00	4530.00	3960.00
7	2460.00	243.00	242.00	5340.00	7000.00	7800.00	8040.00	8440.00	7240.00	4280.00	4500.00	3960.00
8	2470.00	244.00	240.00	5840.00	7020.00	7810.00	8230.00	8240.00	7240.00	4290.00	4490.00	3920.00
9	2470.00	243.00	242.00	6350.00	7010.00	7800.00	8380.00	8040.00	7240.00	4280.00	4480.00	3840.00
10	2220.00	244.00	245.00	6510.00	7030.00	7790.00	8470.00	7970.00	7240.00	4290.00	4490.00	3790.00
11	2120.00	243.00	243.00	6510.00	7010.00	7800.00	8510.00	7980.00	7060.00	4250.00	4490.00	3730.00
12	2130.00	243.00	243.00	6510.00	7010.00	7810.00	8570.00	7970.00	6990.00	4240.00	4490.00	3630.00
13	2160.00	243.00	243.00	6510.00	7020.00	7800.00	8610.00	7990.00	7320.00	4240.00	4490.00	3520.00
14	2140.00	244.00	243.00	6520.00	6980.00	7800.00	8810.00	8000.00	7490.00	4510.00	4490.00	3480.00
15	720.00	243.00	243.00	6500.00	7010.00	7800.00	9130.00	7990.00	7500.00	4600.00	4500.00	3450.00
16	485.00	241.00	243.00	6510.00	7010.00	7800.00	9390.00	7980.00	7500.00	4580.00	4490.00	3430.00
17	453.00	241.00	243.00	6500.00	7010.00	7430.00	9650.00	7990.00	7650.00	4590.00	4490.00	3380.00
18	369.00	241.00	243.00	6510.00	7000.00	7400.00	9750.00	7990.00	7900.00	4580.00	4480.00	3350.00
19	337.00	242.00	243.00	6500.00	7020.00	7400.00	9760.00	7990.00	7990.00	4580.00	4520.00	3180.00
20	337.00	243.00	247.00	6500.00	7010.00	7410.00	9770.00	7990.00	8000.00	4590.00	4540.00	3160.00
21	336.00	244.00	243.00	6500.00	7010.00	7400.00	9760.00	7990.00	7650.00	4590.00	4540.00	3150.00
22	336.00	243.00	244.00	6520.00	7010.00	7410.00	9750.00	7990.00	7490.00	4620.00	4540.00	3150.00
23	336.00	242.00	414.00	6510.00	7020.00	7400.00	9660.00	7980.00	6860.00	4640.00	4540.00	3160.00
24	337.00	244.00	669.00	6500.00	7010.00	7410.00	9550.00	7990.00	6150.00	4640.00	4540.00	3160.00
25	338.00	241.00	924.00	6510.00	6990.00	7400.00	9560.00	7980.00	5650.00	4640.00	4540.00	3130.00
26	337.00	246.00	1170.00	6510.00	7010.00	7670.00	9560.00	7990.00	4860.00	4640.00	4540.00	3090.00
27	335.00	243.00	1420.00	6510.00	7000.00	7800.00	9560.00	7980.00	4430.00	4640.00	4510.00	3080.00
28	348.00	243.00	1670.00	6510.00	7010.00	7590.00	9550.00	7980.00	4320.00	4640.00	4470.00	3090.00
29	333.00	242.00	1920.00	6570.00	7210.00	7210.00	9560.00	7970.00	4290.00	4620.00	4460.00	3030.00
30	339.00	243.00	2170.00	6750.00	7310.00	7310.00	9540.00	7820.00	4260.00	4620.00	4470.00	2990.00
31	287.00		2590.00	6950.00	7600.00	7600.00		7740.00	4260.00	4570.00	4470.00	
TOT IN DSF	39373.00	7283.00	18294.00	186240.00	196260.00	234500.00	268210.00	254570.00	204890.00	138480.00	139860.00	105500.00
TOT IN AF	78096.34	14445.83	36286.15	369407.03	389281.72	465130.75	531994.56	504939.59	406399.31	274675.09	277412.31	209259.25
AVERAGE	1270.10	242.77	590.13	6007.74	7009.29	7564.52	8940.33	8211.94	6829.67	4467.10	4511.61	3516.67
MAXIMUM	2500.00	246.00	2590.00	6950.00	7030.00	7810.00	9770.00	9530.00	8000.00	4640.00	4570.00	4340.00
MINIMUM	287.00	241.00	240.00	3090.00	6980.00	7010.00	7720.00	7740.00	4260.00	4240.00	4460.00	2990.00

MIC

EXHIBIT 2

148 days

THIS REPORT IS FOR WATER YEAR 1998
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGIONAL OFFICE
FLOW IN C.F.S.

LUC QD
LUCKY PEAK DAM & LAKE ON BOISE RIV NR BOISE

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	2980.00	150.00	215.00	247.00	243.00	1800.00	3000.00	5370.00	9930.00	6010.00	4530.00	4060.00
2	2970.00	151.00	249.00	243.00	244.00	1800.00	3000.00	5880.00	9930.00	6000.00	4530.00	4060.00
3	2920.00	140.00	251.00	244.00	243.00	1800.00	3000.00	6000.00	9930.00	5870.00	4530.00	4040.00
4	2900.00	147.00	250.00	243.00	249.00	1810.00	3000.00	6010.00	10000.00	5800.00	4510.00	3990.00
5	2900.00	157.00	249.00	243.00	244.00	1800.00	3000.00	6000.00	10100.00	5800.00	4500.00	3980.00
6	2900.00	156.00	250.00	245.00	243.00	1800.00	3200.00	6010.00	10300.00	5610.00	4500.00	3980.00
7	2900.00	157.00	250.00	247.00	244.00	1800.00	3300.00	6010.00	10400.00	5370.00	4510.00	3980.00
8	2880.00	156.00	249.00	246.00	243.00	1800.00	3300.00	6010.00	10600.00	5180.00	4520.00	3920.00
9	2550.00	157.00	248.00	246.00	538.00	1800.00	3420.00	6000.00	10300.00	4850.00	4500.00	3870.00
10	2310.00	156.00	248.00	243.00	802.00	1800.00	3520.00	6000.00	9640.00	4640.00	4510.00	3720.00
11	2280.00	156.00	248.00	242.00	1100.00	1800.00	3330.00	6320.00	8890.00	4600.00	4500.00	3560.00
12	2280.00	156.00	247.00	242.00	1400.00	1800.00	3230.00	6830.00	8150.00	4610.00	4510.00	3420.00
13	2280.00	156.00	248.00	242.00	1700.00	1800.00	3220.00	7580.00	7410.00	4600.00	4510.00	3370.00
14	2120.00	156.00	246.00	244.00	1800.00	1800.00	3150.00	8340.00	6650.00	4600.00	4500.00	3340.00
15	601.00	156.00	245.00	245.00	1800.00	1810.00	3130.00	8940.00	6490.00	4600.00	4500.00	3310.00
16	386.00	155.00	245.00	246.00	1800.00	1800.00	3130.00	9000.00	6340.00	4610.00	4500.00	3300.00
17	400.00	155.00	244.00	246.00	1800.00	1810.00	3120.00	9000.00	6300.00	4600.00	4480.00	3300.00
18	400.00	156.00	244.00	246.00	1800.00	1810.00	3120.00	9010.00	6300.00	4610.00	4480.00	3300.00
19	403.00	156.00	244.00	244.00	1800.00	1800.00	3120.00	9010.00	6300.00	4600.00	4460.00	3300.00
20	334.00	155.00	245.00	245.00	1800.00	1810.00	3300.00	9000.00	6170.00	4600.00	4450.00	3310.00
21	300.00	154.00	244.00	243.00	1800.00	1800.00	3590.00	9000.00	5970.00	4600.00	4450.00	3300.00
22	299.00	155.00	244.00	244.00	1800.00	1800.00	3780.00	9010.00	5840.00	4610.00	4450.00	3300.00
23	301.00	157.00	243.00	247.00	1800.00	2180.00	3980.00	8770.00	5810.00	4600.00	4450.00	3300.00
24	300.00	156.00	244.00	244.00	1800.00	2670.00	4050.00	8600.00	5800.00	4600.00	4450.00	3310.00
25	301.00	156.00	243.00	241.00	1800.00	2810.00	4050.00	8510.00	6130.00	4600.00	4460.00	3250.00
26	301.00	153.00	245.00	243.00	1810.00	2800.00	4050.00	8600.00	7450.00	4610.00	4320.00	3050.00
27	302.00	155.00	245.00	243.00	1800.00	2800.00	4320.00	8680.00	7780.00	4590.00	4160.00	2950.00
28	301.00	155.00	242.00	244.00	1800.00	2800.00	4620.00	8880.00	7500.00	4610.00	4070.00	2920.00
29	301.00	156.00	243.00	244.00	1800.00	2800.00	4750.00	9180.00	6930.00	4580.00	4050.00	2930.00
30	302.00	154.00	245.00	244.00	17	2900.00	5000.00	9740.00	6170.00	4580.00	4060.00	2940.00
31	198.00		246.00	243.00		2950.00		9930.00		4540.00	4050.00	
TOT IN DSF	42900.00	4635.00	7599.00	7556.00	34503.00	64360.00	105780.00	241180.00	235420.00	151680.00	137000.00	104390.00
TOT IN AF	85092.15	9193.52	15072.62	15007.16	68436.70	127658.06	209814.63	478380.53	466955.56	300857.28	271739.50	207057.56
AVERAGE	1383.87	154.50	245.13	244.06	1232.25	2076.13	3526.00	7780.00	7847.33	4892.90	4419.35	3479.67
MAXIMUM	2980.00	157.00	251.00	247.00	1810.00	2950.00	5000.00	9930.00	10600.00	6010.00	4530.00	4060.00
MINIMUM	198.00	140.00	215.00	241.00	243.00	1800.00	3000.00	5370.00	5800.00	4540.00	4050.00	2930.00

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31

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10/10/98 2:00 PM

THIS REPORT IS FOR WATER YEAR 1999
BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGIONAL OFFICE
FLOW IN C.F.S.

140 days

EXHIBIT 2

LUCKY PEAK DAM & LAKE ON BOISE RIV NR BOISE
LUC QD

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	2931.89	241.22	236.78	169.85	133.14	5503.79	6791.71	5203.76	4602.07	4629.25	4498.63	3979.15
2	2856.49	195.45	236.71	169.90	153.67	5494.58	6792.43	5195.09	4556.98	4562.50	4508.92	3942.68
3	2838.83	127.73	237.70	170.15	152.61	5827.82	6794.57	5197.20	5044.01	4547.33	4496.48	3892.31
4	2821.98	331.85	241.66	170.73	153.00	6335.22	6793.73	5203.10	5288.53	4543.45	4496.05	3871.62
5	2796.11	236.91	243.23	171.23	153.22	6826.13	7298.66	5197.85	5293.34	4547.68	4497.35	3868.51
6	2820.06	235.97	244.76	170.98	155.12	7336.00	7590.76	4398.93	5292.01	4509.81	4501.00	3871.65
7	2822.74	233.43	241.73	169.86	154.06	7494.93	7585.90	4899.33	5299.89	4487.53	4464.09	3849.88
8	2585.51	235.43	241.79	169.60	153.10	7495.41	7594.98	4895.78	5297.10	4595.11	4453.87	3844.57
9	2354.01	235.55	241.02	170.00	152.93	7497.47	7603.80	4901.52	5704.73	4644.47	4448.33	3828.25
10	1884.81	234.30	242.33	170.43	153.38	7486.90	7608.04	4705.78	6276.40	4647.92	4432.36	3786.39
11	1853.83	231.84	242.02	169.44	152.59	7502.22	7575.10	4599.27	6504.51	4656.00	4420.02	3777.23
12	1856.22	232.46	242.28	169.66	153.60	7471.55	7566.28	4599.49	6494.83	4656.26	4403.45	3770.06
13	1822.70	236.06	240.87	170.30	220.20	7499.09	7589.46	4601.30	6490.22	4651.50	4383.08	3755.00
14	1251.79	238.74	241.97	168.77	251.26	7499.43	7595.33	4591.74	6494.59	4645.12	4373.64	3749.20
15	1133.06	238.12	242.40	169.49	252.16	7500.59	7399.45	4594.37	6494.23	4611.01	4364.79	3753.86
16	1077.90	237.47	240.92	168.90	585.68	7501.27	7092.79	4600.54	6497.35	4598.10	4371.29	3738.37
17	1076.93	240.18	240.13	171.23	1099.01	7495.80	7001.20	4597.29	6490.80	4601.25	4367.09	3640.28
18	1078.56	238.23	191.77	169.76	1703.84	6985.15	7003.68	4594.42	6496.53	4589.48	4358.42	3595.86
19	590.99	240.53	171.04	170.15	2305.61	6687.38	7003.42	4596.89	6494.38	4597.26	4342.17	3598.75
20	302.21	241.13	170.83	168.64	2906.61	6697.28	6796.59	4602.26	6502.95	4596.64	4345.18	3596.94
21	299.28	240.43	172.14	168.93	3523.29	6697.33	6560.16	4603.58	6499.34	4592.70	4350.83	3580.31
22	301.29	241.49	173.04	123.97	4153.27	6704.99	6503.74	4597.46	6499.42	4598.17	4344.33	3540.70
23	261.24	241.61	173.11	148.80	4750.24	6693.98	6496.25	4596.09	6487.97	4565.48	4278.15	3485.75
24	241.64	238.82	172.35	148.91	5327.27	6702.98	6500.59	4596.14	6495.82	4542.17	4189.56	3444.36
25	241.82	239.46	170.14	149.16	5495.64	6691.69	6502.01	4598.31	6165.50	4546.87	4112.30	3415.95
26	240.57	239.46	170.55	151.00	5492.90	6694.79	6298.75	4597.28	5996.00	4528.08	4069.87	3425.99
27	174.89	237.01	171.10	149.00	5499.17	6699.23	6057.23	4594.33	5995.05	4518.56	4052.68	3420.26
28	345.41	235.53	170.81	150.00	5503.14	6690.89	5729.41	4601.29	5732.79	4505.94	4049.56	3317.94
29	240.92	236.14	170.36	150.00	6761.63	5335.72	5335.72	4597.21	5239.45	4490.62	4046.30	3169.29
30	240.69	236.84	170.04	150.00	6793.38	5194.86	5194.86	4594.83	4794.94	4495.86	4044.86	3112.31
31	241.55		170.67	149.00	6785.51			4600.65		4501.75	4019.27	
TOT IN DSF	41585.92	7069.39	6516.25	5037.84	50887.71	214054.42	206256.63	146953.09	177561.73	141802.88	134083.92	109613.43
TOT IN AF	82485.68	14022.13	12924.98	9992.56	100935.77	424576.94	409110.03	291481.47	352193.69	281266.00	265955.47	217418.23
AVERAGE	1341.48	235.65	210.20	162.51	1817.42	6904.98	6875.22	4740.42	5918.72	4574.29	4325.29	3653.78
MAXIMUM	2931.89	331.85	244.76	171.23	5501.14	7502.22	7608.04	5203.76	6504.51	4656.26	4508.92	3979.15
MINIMUM	174.89	127.73	170.04	123.97	133.14	5494.58	5194.86	4591.74	4596.98	4487.53	4019.27	3112.31

MICROFILM

2000 10 2000

EXHIBIT 2

THIS REPORT IS FOR WATER YEAR 2000 BUREAU OF RECLAMATION PACIFIC NORTHWEST REGIONAL OFFICE FLOW IN C.F.S.

70 days

LOC QD
LUCKY PEAK DAM & LAKE ON BOISE RIV NR BOISE

DAY	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
1	3077.39	230.47	245.01	243.56	243.84	244.17	2993.80	5370.91	4501.07	4228.09	4022.31	3819.63
2	3119.88	220.26	243.97	242.97	242.41	242.93	2999.59	5168.89	4498.83	4226.45	4024.82	3795.84
3	3084.58	145.33	245.24	245.94	243.34	243.39	2997.20	4968.32	4503.69	4212.36	4025.70	3799.00
4	3088.27	254.00	244.30	247.27	243.34	246.99	2995.51	4765.49	4502.61	4197.92	4024.87	3800.46
5	3087.43	251.00	244.70	246.93	242.95	250.30	2993.38	4567.89	4502.97	4170.59	4025.29	3712.26
6	3093.90	244.30	243.42	245.04	242.43	486.07	3250.27	4498.26	4703.78	4160.26	4031.93	3636.26
7	2809.27	243.45	243.02	245.58	243.31	803.44	3666.48	4501.54	4931.84	4149.06	4027.14	3607.93
8	2617.65	243.79	245.59	245.94	256.59	1102.08	3799.14	4430.80	4837.18	4148.55	4019.51	3501.12
9	2586.78	241.00	244.04	247.92	242.75	1403.26	3795.49	4337.25	4596.72	4151.39	4019.76	3448.79
10	2589.76	244.03	243.96	247.81	242.41	1497.70	4058.79	4233.20	4507.54	4145.28	4026.63	3445.35
11	2524.37	243.22	245.29	248.25	243.36	1501.64	4394.90	4197.11	4507.28	4131.95	4023.01	3412.48
12	2144.84	242.84	244.96	246.27	243.99	1501.78	4697.71	4198.93	4369.33	4126.84	4018.80	3376.45
13	2136.09	243.06	244.09	243.78	245.76	1835.92	4930.59	4204.80	4165.96	4124.39	4024.32	3371.03
14	2144.01	243.02	245.30	245.52	243.78	1833.00	4994.33	4206.86	4029.22	4117.81	4023.93	3361.40
15	674.18	244.13	243.88	244.35	243.76	1500.77	5007.52	4137.46	4126.38	4128.34	4154.78	3353.82
16	367.16	243.18	243.57	243.82	243.43	1501.35	4998.80	4065.71	4198.70	4116.29	4226.81	3341.51
17	366.35	242.43	243.98	244.51	244.00	1501.84	5197.60	4015.79	4202.49	4122.12	4222.39	3348.58
18	366.23	243.12	244.46	244.86	242.34	1501.84	5433.53	3998.56	4202.65	4119.97	4227.12	3348.64
19	367.04	244.26	244.32	245.74	243.18	1500.02	5498.26	4001.51	4204.33	4103.78	4218.53	3332.63
20	367.21	242.67	245.86	246.02	244.72	1500.54	5498.09	4002.78	4235.67	4100.65	4221.62	3331.01
21	367.44	243.63	243.57	244.43	243.55	1704.04	5484.15	3999.58	4245.17	4060.92	4212.29	3321.73
22	367.90	243.66	244.83	243.49	243.18	1933.05	5502.92	3998.16	4255.04	4052.48	4225.51	3324.37
23	367.29	244.02	242.69	244.49	243.20	1999.91	5504.88	4001.98	4248.48	4047.18	4217.83	3325.34
24	368.18	244.61	243.18	244.96	244.57	2671.90	5492.27	4000.44	4251.79	4049.22	4217.78	3322.32
25	352.51	246.06	245.10	243.71	244.40	2996.31	5497.62	3999.89	4248.98	4031.15	4118.57	3300.99
26	336.64	244.44	243.91	244.09	243.18	2992.65	5498.56	4009.36	4250.50	4035.35	4072.89	3300.56
27	336.72	242.65	244.76	244.71	244.07	3001.36	5502.25	4004.05	4250.37	4013.26	4069.79	3248.84
28	337.53	243.34	244.15	244.44	243.97	2997.79	5497.90	3999.62	4242.96	4021.05	4042.06	3220.79
29	337.92	243.31	243.76	244.52	244.56	3000.38	5507.15	4005.67	4253.29	4025.07	3985.29	3224.53
30	338.23	243.77	244.29	242.83	244.81	3000.88	5498.81	3999.54	4250.04	4017.68	3945.86	3227.56
31	270.20		243.68	243.65		3005.15		4336.59		4018.15	3893.04	

TOT IN DSF 44392.98 7189.05 7572.88 7597.03 7076.37 51502.43 139187.50 132226.92 130824.86 127343.59 126610.17 102961.23

TOT IN AF 88053.47 14259.48 15020.81 15068.71 14035.98 102155.06 276078.41 262272.09 259491.11 252586.00 251131.28 204223.61

AVERAGE 1432.03 239.63 244.29 245.07 244.01 1661.37 4639.58 4265.38 4360.83 4107.86 4084.20 3432.04

MAXIMUM 3119.88 254.00 245.86 248.25 256.59 3005.15 5507.15 5370.91 4931.84 4228.09 4227.12 3819.63

MINIMUM 270.20 145.33 242.69 242.83 242.34 243.93 2993.38 3998.16 4029.22 4013.26 3893.04 3220.79

MOORE
SEP 20 2004

IMAP SETTLEMENT AGREEMENT BETWEEN BOISE PROJECT ET AL. AND SUEZ

Boise Project Board of Control, Big Bend Irrigation District, Boise-Kuna Irrigation District, and Wilder Irrigation District ("Irrigation Entities") and SUEZ Water Idaho Inc. ("SUEZ") (collectively "Parties") enter into this IMAP Settlement Agreement ("*Agreement*").

RECITALS

1. **IMAP proceeding.** On May 4, 2001, SUEZ (then known as United Water Idaho Inc.) filed a set of applications with the Idaho Department of Water Resources ("IDWR") entitled *In the Matter of Integrated Municipal Application Package ("IMAP") of SUEZ Water Idaho Inc., Being a Collection of Individual Applications for Transfers of Water Rights and Applications for Amendment of Permits*. The IMAP is intended to quantify SUEZ's reasonably anticipated future needs ("RAFN") pursuant to the Municipal Water Rights Act of 1996 and thereby to protect its existing portfolio of rights from forfeiture during its planning horizon. The IMAP also seeks to integrate SUEZ's water rights portfolio by making each of its wells an alternate point of diversion ("APOD") for every ground water right (except those associated with its Ranney collectors).

2. **Protests.** The Irrigation Entities and others protested SUEZ's IMAP application.

3. **IMAP stay and relaunch.** The IMAP was stayed by order of IDWR on December 18, 2003. On July 6, 2012, nearly a decade later, following issuance of partial decrees to SUEZ in the Snake River Basin Adjudication ("SRBA"), IDWR approved SUEZ's motion to lift the stay in the IMAP proceeding.

4. **Recent pleadings.** On March 16, 2018, the Boise Project Board of Control filed its *Motion for Summary Judgment to Limit Planning Horizon* (“MSJ”). On April 26, 2018, the Irrigation Entities and SUEZ jointly submitted a *Notice of Withdrawal of Discovery and Stipulation Regarding Scope of Protest* (“Stipulation”).

5. **Narrowing of issues.** As reflected in the *Stipulation*, the Parties have resolved concerns over all issues presented by the IMAP (including APODs, the quantification of RAFN, and the need for a reopener provision) except for the issue of the duration of the planning horizon as reflected in the *MSJ*. The Parties then engaged in further discussions aimed at addressing and resolving the Irrigation Entities’ concerns over the duration of the 50-year planning horizon sought by SUEZ.

6. **Basis of agreement.** SUEZ has a substantial portfolio of water rights, permits, and other entitlements. Based on current projections, that portfolio will enable SUEZ to meet its RAFN through the year 2058. In order to resolve the Irrigation Entities’ protests, SUEZ proposed to sharply limit its ability to fill the “gap” between its portfolio of water rights and other entitlements and its anticipated water needs at the end of its 50-year planning horizon. Based on those limitations, described below, the Boise Project Board of Control agreed to withdraw its MSJ and the Irrigation Entities agreed to withdraw their protests of the IMAP, as set out in the *Stipulated and Conditional Withdrawal of Protest* (“*Withdrawal of Protest*”) filed in this matter.

7. **Private agreement.** At an IMAP status conference on May 31, 2018, the Parties were advised by the Hearing Officer and IDWR staff that it is unlikely that IDWR would be able or willing to attach conditions to the IMAP water rights that impose limitations on new appropriations. The Hearing Officer and IDWR staff suggested that it would be more

appropriate for the Irrigation Entities and SUEZ to enter into a private side agreement to establish those limitations. Accordingly, the Parties have entered into this *Agreement* the terms of which are set out below.

TERMS OF AGREEMENT

If SUEZ obtains final approval for its 50-year planning horizon and the RAFN quantification (370.87 cfs) set out in the SUEZ's *Master Water Plan for the Years 2015 to 2065* ("*Master Water Plan*"), SUEZ and the Irrigation Entities agree as set out in Paragraph Nos. 8 through 25 below. If that condition is not met, the Parties are released from this *Agreement* and from the *Stipulation*.

8. **Restriction on new appropriations.** SUEZ will not seek any new appropriation of ground water or of natural flow surface water from the Boise River basin to reduce or fill the "gap" between its water rights portfolio and its RAFN. The "gap" is currently quantified at 40.29 cfs and estimated to be the additional amount (beyond the currently authorized 330.58 cfs of water rights, decrees, permits, and other long-term (non-rental) entitlements) that will need to be acquired to meet peak demand in the year 2065.

9. **Aquifer improvement projects.** In some instances, it may be helpful to SUEZ to undertake aquifer improvement projects with water diverted under water rights it owns. In these projects, water under another valid existing water right owned by SUEZ is injected or otherwise placed in an aquifer for water quality, system efficiency, or storage purposes. It may then be necessary for SUEZ to obtain a new water right (i.e., appropriation) to divert a corresponding quantity of water (i.e., to take out the water previously placed in the aquifer). Under these arrangements, the new appropriation would not result in any net increase in SUEZ's system-wide authority to divert, because the water placed in the aquifer already was owned by SUEZ.

Whether viewed as mitigation or storage, the result does not increase the overall quantity of water SUEZ is entitled to divert and provide to its customers. Accordingly, Paragraph No. 8 does not prohibit such undertakings so long as the result does not increase SUEZ's overall system-wide effective diversion authority. In contrast, a new appropriation of ground or surface water for injection into the aquifer and subsequent removal would be prohibited under Paragraph No. 8.

10. Changes and conveyances. Paragraph No. 8 does not prohibit SUEZ from changing or conveying its water rights, permits, or other entitlements through transfer, exchange, purchase, sale, lease, or otherwise so long as the effect does not increase SUEZ's overall system-wide effective diversion authority.

11. Contracting for storage and willing-seller acquisitions. Paragraph No. 8 (which only applies to new appropriations) does not prohibit SUEZ from reducing or filing its "gap" (i.e., increasing its system-wide authorization to divert more than the currently authorized 330.58 cfs referenced in Paragraph No. 8) by contracting for storage or by acquiring licensed, decreed, or permitted water rights or other entitlements (or portions thereof) held by others through purchase, sale, lease, rental, agreement, contribution, gift, bequest, or devise.

12. Notice regarding acquisition of permits. The clarification of Paragraph No. 8 set out in Paragraph No. 11 allows the acquisition of permits held by others to fill the "gap," because SUEZ often expands its certificated area (aka service area) to include new developments or other areas to which existing water rights (including permits) are appurtenant. Like all municipal providers, SUEZ may be expected or required to acquire these water rights (including permits) as part of the expansion of service. SUEZ agrees to give advance notice to the Irrigation Entities of all acquisitions of a water right permit or interest therein. This notice requirement reflects good

faith commitments made by the Parties to each other in the spirit of cooperation. It is not intended to be enforced through judicial or administrative proceedings.

13. Reductions in authorized quantity. SUEZ's agreement to Paragraph No. 8 is premised upon its existing portfolio and the "gap" analysis set out in SUEZ's *Master Water Plan* at pages 35-42. As explained there, the "gap" analysis is based on all water rights, permits, and other entitlements in SUEZ's portfolio and assumes that SUEZ's existing permits will be licensed at the permitted quantities. In the event that any of SUEZ's permits are not licensed at the permitted quantities or if for any other reason any existing water right, permit, or entitlement counted in the "gap" analysis in the *Master Water Plan* is reduced in quantity, the limitation on new appropriations set out in Paragraph No. 8 shall be relaxed but only to the extent of allowing SUEZ to seek new appropriations to make up for the reduction in the effective quantity of existing water rights, permits, and other entitlements described in the *Master Water Plan*.

14. Licensing of permits. Conditioned upon satisfaction of the other terms of this *Agreement* and in the *Withdrawal of Protest* filed in this matter, the Irrigation Entities agree to take no action in opposition to SUEZ's efforts to obtain licenses for its existing permits at the permitted quantities to meet its RAFN.

15. Duration. The limitations on new appropriations set out above shall remain in effect for 20 years. If analysis and evidence undertaken during the next "reopener" or other proceeding entailing re-evaluation or modification of SUEZ's RAFN indicates a material change to the modeled "gap" quantity presented in its *Master Water Plan for the Years 2015 to 2065*, the Irrigation Entities stipulates that they will attempt to negotiate and pursue a mutually agreeable resolution of any concerns they have in response to the changed circumstances with Suez and other interested parties. In the event the Parties are unable to reach a mutually agreeable

resolution, any Party may petition the Idaho Department of Water Resources to initiate a contested case to resolve the dispute.

16. Contact information. Notice to Irrigation Entities required under this *Agreement* shall be provided in writing or by email to:

Shelley M. Davis, Esq.
Barker Rosholt & Simpson LLP
PO Box 2139
Boise, ID 83701-2139
smd@idahowaters.com

or to such other representative of Irrigation Entities as it shall designate in writing or by email.

Notice to SUEZ required under this *Agreement* shall be provided in writing or by email to:

Marshall Thompson
Vice President and General Manager
SUEZ Water Idaho Inc.
8248 W Victory Rd
Boise, ID 83709
marshall.thompson@suez-na.com

or to such other representative of SUEZ as it shall designate in writing or by email.

17. Cooperation and communication. In order to facilitate and enhance cooperation and communication between the Parties, the Parties agree to meet informally from time to time upon the request of either Party. These meetings are intended to provide an ongoing opportunity for constructive dialog on issues of mutual concern regarding water supply infrastructure, public policy, and long term planning to meet the municipal water needs of their customers. These meetings will be attended by staff of the respective Parties and such others as the Parties may invite. This provision reflects the Parties' efforts to improve lines of communication, but noncompliance with this provision shall not be deemed a breach of this *Agreement*.

18. Legal counsel. In negotiating this *Agreement*, the Parties have consulted and been represented by their respective legal counsel.

19. Modification. This *Agreement* may be modified by the Parties by mutual agreement at any time. To be effective, such modifications shall be memorialized and acknowledged by both Parties in a writing and/or email(s).

20. Enforcement. In the event of a material breach of this *Agreement* (except for the notice requirement in Paragraph 12 and the cooperation requirement in Paragraph 17), the non-breaching Party may seek judicial enforcement by way of specific enforcement or other appropriate relief. However, such breach will not result in nullification of the withdrawal of the *MSJ* or protests as provided in the *Withdrawal of Protest* filed in this matter.

21. No third party rights. This *Agreement* is entered into solely for the benefit of the Parties. The *Agreement* creates no third party rights.

22. Authorization. Each of the undersigned represent that they are authorized to enter into this *Agreement* on behalf of the Party they represent.

23. Counterparts. This *Agreement* may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same *Agreement*.

24. Effective date. This *Agreement* shall be effective only if executed by both Parties. The effective date shall be the last date shown on the signature blocks below.

25. Renewal. This *Agreement* shall remain in effect for twenty years from the effective date, and may be renewed for additional ten-year periods upon agreement of the Parties.

BOISE PROJECT BOARD OF CONTROL

Date: 7-3-2018

By: Richard Durrant
Richard Durrant
Chairman

BIG BEND IRRIGATION DISTRICT

Date: _____

By: _____
Ben Witte
Chairman

BOISE-KUNA IRRIGATION DISTRICT

Date: 7-3-18

By: Kenneth Cole
Kenneth Cole
Chairman

WILDER IRRIGATION DISTRICT

Date: _____

By: _____
Diane Gooding
Chairman

SUEZ WATER IDAHO INC.

Date: _____

By: _____
Gregory P. Wyatt
Vice President and General Manager

BOISE PROJECT BOARD OF CONTROL

Date: _____

By: _____

Richard Durrant
Chairman

BIG BEND IRRIGATION DISTRICT

Date: 7/3/18

By: Neil Allison

~~Ben Witte~~ Neil Allison
Chairman

BOISE-KUNA IRRIGATION DISTRICT

Date: _____

By: _____

Kenneth Coles
Chairman

WILDER IRRIGATION DISTRICT

Date: _____

By: _____

Diane Gooding
Chairman

SUEZ WATER IDAHO INC.

Date: _____

By: _____

Gregory P. Wyatt
Vice President and General Manager

BOISE PROJECT BOARD OF CONTROL

Date: _____

By: _____
Richard Durrant
Chairman

BIG BEND IRRIGATION DISTRICT

Date: _____

By: _____
Ben Witte
Chairman

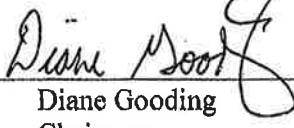
BOISE-KUNA IRRIGATION DISTRICT

Date: _____

By: _____
Kenneth Coles
Chairman

WILDER IRRIGATION DISTRICT

Date: _____

By: _____

Diane Gooding
Chairman

SUEZ WATER IDAHO INC.

Date: _____

By: _____
Gregory P. Wyatt
Vice President and General Manager

Albert P. Barker, ISB #2867
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Boise Project Board of Control

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 63-34614 (Micron
Technology, Inc.)

DECLARATION OF REX BARRIE

1. I am the Water Master for Water District 63. I have served in that capacity since 2008.
2. I am familiar with the accounting system in Water District 63, flood control operations and the Water Control Manual.
3. In years when flood control releases are necessary, I am in daily communication with the Corps of Engineers, Bureau of Reclamation and the larger users downstream of Lucky Peak. Because of the downstream users have water rights generally senior to the reservoirs, releases that are called for by the downstream users are priority releases. Water District 63 considers flood control releases to be that amount of water released from Lucky Peak over and above the downstream irrigation demand and the target flow at the Middleton gauge.

4. The incremental release above irrigation demand and target flow at the Middleton gauge is the water that is available for diversion under water rights with conditions authorizing exercise of the right during flood releases when authorized by the Water Master.

I declare under penalty of perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

Dated this 16th day of July, 2020.

Rex Barrie

Albert P. Barker, ISB #2867
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

RECEIVED

JUL 17 2020

**WATER RESOURCES
WESTERN REGION**

Attorneys for Boise Project Board of Control

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 63-34614 (Micron
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4. The incremental release above irrigation demand and target flow at the Middleton gauge is the water that is available for diversion under water rights with conditions authorizing exercise of the right during flood releases when authorized by the Water Master.

I declare under penalty of perjury pursuant to the laws of the State of Idaho that the foregoing is true and correct.

Dated this 15 day of July, 2020.


Rex Barrie