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DEPARTMENT OF  
WATER RESOURCES

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| DISTRICT COURT - SRBA<br>Fifth Judicial District<br>County of Twin Falls - State of Idaho |
| AUG 13 2014                                                                               |
| By _____<br>Clerk                                                                         |
| Deputy Clerk                                                                              |

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     | ) | REVISED PARTIAL FINAL CONSENT    |
|                | ) | DECREE DETERMINING THE RIGHTS    |
|                | ) | OF THE SHOSHONE-BANNOCK TRIBES   |
|                | ) | TO THE USE OF WATER IN THE UPPER |
|                | ) | SNAKE RIVER BASIN                |
| Case No. 39576 | ) |                                  |
|                | ) |                                  |
|                | ) |                                  |

The District Court of the Fifth Judicial District in and for the County of Twin Falls entered on November 19, 1987 its Commencement Order commencing the Snake River Basin Adjudication ("SRBA"). The Shoshone-Bannock Tribes of the Fort Hall Reservation (the "Tribes"), the State of Idaho (the "State"), the United States of America (the "United States"), and certain Idaho Water Users entered into the 1990 Fort Hall Indian Water Rights Agreement ("Agreement") in settlement of claims made by the United States on behalf of the Tribes to water rights in the Upper Snake River Basin, and the Agreement was submitted to this Court in lieu of a claim as provided by Idaho Code Section 42-1409(6) (1990). The Northside Canal Company agreed by Resolution dated July 19, 1990, to receive natural flow water from Sand Creek in exchange for making storage water available to the Tribes as required by the Agreement.

The United States and the State agreed upon claims submitted for the non-Indian portion of the Fort Hall Irrigation Project and the Fort Hall Agency, Bureau of Indian Affairs.

The Director of the Idaho Department of Water Resources ("IDWR") filed a Director's Report setting forth all water rights that are the subject of this Decree, and the period for filing objections to the Agreement expired, with any objections having been resolved. Notice and an opportunity to be heard was provided to all parties in this case

pursuant to the docket sheet procedures contained in SRBA Administrative Order No. 1, and the Court heard argument from the parties to the Agreement in support of its approval.

A Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin ("Consent Decree") was issued by the SRBA District Court on August 2, 1995. The Consent Decree ratified, confirmed, and approved the provisions of the Agreement between the Tribes, the State, the United States, and certain Idaho Water Users over which this Court had jurisdiction. The Consent Decree is consolidated in Subcase 92-22.

On August 24, 2005, this Court entered an Order Amending Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin to Correct Clerical Error, I.R.P.C. 60(a) ("Order Amending Consent Decree"). Water right nos. 29-00231, 29-00238, 29-00239, and 29-12049 were amended as set forth in the Appendix Containing Amendments to Consent Decree attached to the Order Amending Consent Decree.

On August 9, 2013, this Court issued an Order Granting Joint Motion to Include Subordination Remark on Water Right No. 27-11375 and Certain Blackfoot Natural Flow Water Rights. The Order directed that the Consent Decree be amended to include a list of water rights entitled to the protection under Paragraph 27-11375.x.d<sup>1</sup> as Attachment E to the Consent Decree and that the first two sentences of Paragraph 27-11375.x.d of the Consent Decree be amended to read as follows:

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 under water rights listed on Attachment E to the Consent Decree and under *de minimis* domestic and stock water rights with a priority date earlier than January 1, 1990,~~ will continue to receive their full legal entitlement under state law. "De minimis domestic water" for purposes of this paragraph means (a) the use of water for homes, organization camps, public campgrounds, livestock and for any purpose in connection therewith, including irrigation

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<sup>1</sup> Paragraph x.d of water right no. 27-11375 has been relabeled paragraph 11.d in the Partial Decree of this water right. All references to paragraph x.d of water right no. 27-11375 herein, in the Partial Decrees in Attachment E, in the Blackfoot River Water Management Plan and in the Blackfoot River Equitable Adjustment Settlement Agreement now refer to paragraph 11.d of Partial Decree no. 27-11375.

of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen (sic) (13,000) gallons per day, or 14.5 acre-feet per year or less for storage, or (b) and other uses, if the total use does not exceed a diversion rate of four one-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day. Domestic rights shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitation set forth in (b) above. "De minimis stock water right" for purposes of this paragraph means the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day or 14.5 acre-feet per year or less for storage. The parties will specifically enumerate all rights protected by this provision once the SRBA decree for this basin becomes final.

The Order also directed that a remark be inserted in the "Other Provisions Necessary for Definition or Administration" section of each water right entitled to the protection of Paragraph 27-11375.x.d stating: "This water right is entitled to the protections of paragraph x.d of water right 27-11375."

On August 9, 2013 this Court entered an Order Granting Joint Motion to Approve Blackfoot Equitable Adjustment Settlement Agreement. The Order directed that the Consent Decree be amended to incorporate the Blackfoot River Equitable Adjustment Settlement Agreement between the 1990 Fort Hall Water Rights Agreement parties and the Basin 27 Water Users as Attachment F to the Consent Decree. The Order also directed that the third and fourth sentences of Paragraph 27-11375.x.d of the Consent Decree be amended to read as follows:

These state created water rights listed on Attachment E 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. The Blackfoot River Equitable Adjustment Settlement Agreement Pursuant to the 1990 Fort Hall Indian Water Rights Settlement Agreement set forth in Attachment F provides for an equitable adjustment to this water right in the event the Primary Volume diversions under the partial decrees listed on Attachment E exceed 45,000 AFY.

On August 9, 2013, this Court entered an Order Amending in Part Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of

Water in the Upper Snake River Basin amending the Consent Decree to include Attachments E and F and amending Paragraph 27-11375.x.d to conform with its Order Granting Joint Motion to Include Subordination Remark on Water Right No. 27-11375 and Certain Blackfoot Natural Flow Water Rights and Order Granting Joint Motion to Approve Blackfoot Equitable Adjustment Settlement Agreement.

On August 9, 2013, this Court entered an Order of Amended Partial Decrees amending the partial decrees entitled to the protection of paragraph 27-11375.x.d to include the following language to the “Other Provisions Necessary for Definition or Administration” section of the respective Partial Decrees: “This water right is entitled to the protections of paragraph .x.d of water right 27-11375.”

This Court also issued several orders regarding the Tribes’ Bannock Creek water rights. On October 16, 2013 this Court issued an Order Granting State of Idaho’s Motion to Amend Paragraph 29-12049.x.a and Paragraph 29-12848.x.a<sup>2</sup> of the Fort Hall Consent Decree. The Order amended paragraph 29-12049.x.a. and 29-12848.x.a. to read:

The Tribes and the United States shall exercise this right in a manner that ensures persons with water rights 29-00476, 29-00477, 29-00480, 29-10990 and 29-13215 ~~decreed in the Bannock Creek Decree [United States v. Daniels (D. Idaho April 9, 1907)]~~ and that are confirmed in the SRBA will continue to receive their full legal entitlement under state law.

On January 30, 2014, this Court issued an Order Granting Joint Motion for Accounting of all Ground Water Rights Entitled to the Protections of Paragraph 29-12052.x.c<sup>3</sup> of the Fort Hall Consent Decree. The Order amended paragraph 29-12052.x.c to read:

The Tribes and United States shall exercise this water right in a manner that ensures persons diverting ground water

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<sup>2</sup> Paragraph x.a of water right nos. 29-12049 and 29-12848 has been relabeled paragraph 11.a in the Partial Decrees of those water rights. All references to paragraph x.a of water right nos. 29-12049 or 29-12848 herein now refer to paragraph 11.a of Partial Decree nos. 29-12049 or 29-12848.

<sup>3</sup> Paragraph x.c of water right no. 29-12052 has been relabeled paragraph 11.c in the Partial Decree of this water right. All references to paragraph x.c of water right no. 29-12052 herein and in the Partial Decrees of water right nos. 29-2458A, 29-2470, 29-2509, 29-2565, 29-4349, 29-7110, 29-7272, 29-7291, 29-7630, 29-10549, 29-13708, 29-13709, 29-13949, 29-13950, 29-13951, 29-13952, 29-13984, 29-13985 now refer to paragraph 11.c of water right no. 29-12052.

~~from the Bannock Creek drainage basin prior to January 1, 1990, whose rights are decreed in the SRBA under partial decrees 29-2458A, 29-2470, 29-2509, 29-2565, 29-4349, 29-7110, 29-7272, 29-7291, 29-7630, 29-10549, 29-13708, 29-13709, 29-13949, 29-13950, 29-13951, 29-13952, 29-13984, 29-13985 and under *de minimis* domestic and stock water rights with a priority date earlier than January 1, 1990, will continue to receive their full legal entitlement under state law. “*De minimis* domestic water right” for the purposes of this paragraph means (a) the use of water for homes, organization camps, public campgrounds, livestock, and for any purpose in connection therewith including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or 14.5 acre-feet per year or less for storage, or (b) any other uses, if the total use does not exceed a diversion rate of four one-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day. Domestic rights shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitation set forth in (b) above. “*De minimis* stock water right” for purposes of this paragraph means the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day or 14.5 acre-feet per year or less for storage. The parties will specifically enumerate all rights protected by this provision once the SRBA Decree for this basin becomes final.~~

The Order also directed that a remark be inserted in the “Other Provisions Necessary for Definition or Administration” section of each water right entitled to the protection of Paragraph 29-12052.x.c stating: “This water right is entitled to the protections of paragraph x.c. of water right 29-12052.”

Paragraph 29-12052.x.c also provides:

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.

As of the date of issuance of this Revised Partial Decree, there are insufficient measurement data to determine whether the diversions under state-created water rights enjoying the benefit of subordination (the protected rights) are diverting more than 2,400 AFY. However, based upon the number of acres irrigated by the protected rights, the 2,400 AFY diversion amount is likely to be exceeded. Therefore, this Court retains jurisdiction for the purpose of addressing any request for an equitable adjustment.

The District Court now finds as follows:

1. The Agreement is a fair and equitable settlement of all water right claims of the United States for the Tribes in the Upper Snake River Basin, for the Bureau of Indian Affairs, Fort Hall Agency, and for the Fort Hall Irrigation Project; and
2. The modifications approved by this Court since entry of the Consent Decree do not alter the intent of the Agreement; and
3. The Agreement does not adversely affect the interests of persons not party to the Agreement; and
4. A Revised Consent Decree incorporating all modifications to the Consent Decree will avoid potential confusion in the future and will facilitate the incorporation of the Agreement into the Final Unified Decree.

THEREFORE IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Revised Consent Decree shall supersede the Consent Decree and that the provisions of The 1990 Fort Hall Indian Water Rights Agreement for which this court has jurisdiction are ratified, confirmed, and approved as follows:

I. DEFINITIONS

The following definitions apply for the purposes of this Decree:

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.

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

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.
11. "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.
12. "Cubic feet per second" or "CFS" means a rate of water discharge equivalent to approximately 448.8 gallons per minute.
13. "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 includes, but is 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.

14. "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 redirection.
15. "Diversion rate" means the maximum rate in CFS at which water may be diverted at a point of diversion.
16. "Fort Hall Agency" means the component of the United States Department of the Interior, Bureau of Indian Affairs, located on the Fort Hall Indian Reservation.
17. "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, 71 and 72 owned by the Tribes or held in restricted fee or trust status for the Tribes by the United States.

Attachment A, which is incorporated herein by reference, shows the boundaries of the Fort Hall Indian Reservation.

18. “Fort Hall Irrigation Project” (also referred to as the “Fort Hall Indian Irrigation Project” in the Agreement) 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 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.

Attachment B, which is incorporated herein by reference, shows the exterior boundaries of the Fort Hall Irrigation Project.

- 19. “Grays Lake” means the storage facility used to store water for the benefit of the Fort Hall Irrigation Project.
- 20. “Impairment in the quality of water,” applicable only in the context of a change in water right no. 01-10223, 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.

21. "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.
22. "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.
23. "Injury to a water right," applicable only in the context of a change of water right no. 01-10223, 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.
24. "Instream flow" means a quantity of water in a stream reach to maintain or to enhance the integrity of an ecosystem.
25. "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.
26. "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.
27. "Michaud Division" means that division of the Fort Hall Irrigation Project authorized by the Act of August 31, 1954, ch. 1159, 68 Stat. 1026.
28. "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., 1<sup>st</sup> Sess., by the Secretary of the Interior, and reauthorized by section 1 of the Act of September 30, 1950, ch. 1114, 64 Stat. 1083.

29. "Period of use" means the time of the year when water may be used for a particular purpose.
30. "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 any political subdivision or instrumentality thereof, or any other public or private entity.
31. "Place of use" means the location where water is used.
32. "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.
33. "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.
34. "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.
35. "Project lands" means those lands that are served by the Fort Hall Irrigation Project. Current project lands are shown on Attachment B.
36. "Priority date" means the priority date assigned to the water right.
37. "Purpose of use" means the nature of use of the water right.
38. "Reservation Watermaster" means the Tribal officer or any successor designated to administer the Tribal Water Code.

39. "Right number" means the number assigned to each decreed water right for purposes of identification. The first two numerals of the right number indicate hydrologic basin number assigned by IDWR.
40. "Secretary" means the Secretary of the United States Department of the Interior or a duly authorized representative thereof.
41. "Snake River Watermaster" means the Watermaster of Water District 01 or any successor.
42. "Source" means the named or described source of water within the water system.
43. "Stock water" means the use of water solely for livestock or wildlife consumption including associated losses.
44. "Transfer" means any change in a point of diversion, place of use, period of use or purpose of use for a water right.
45. "Tribal water right(s)" means those water rights confirmed and recognized in this Decree 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.
46. "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.
47. "Upper Snake River Basin" means that portion of the Snake River Basin upstream from the Hells Canyon Dam, FERC Project No. 1971.
48. "Water system" means all rivers, streams, lakes, springs, groundwater, or other water sources within the Snake River Basin within the State of Idaho.
49. "Winters Doctrine" means the federal legal principles announced by the United States Supreme Court in Winters v. United States, 207 U.S. 564 (1908).

II. WATER RIGHTS HELD BY THE UNITED STATES FOR THE USE AND BENEFIT OF THE SHOSHONE-BANNOCK TRIBES OF THE FORT HALL INDIAN RESERVATION IN THE UPPER SNAKE RIVER BASIN

A. THE FOLLOWING LIST OF PARTIAL DECREES CONSTITUTE THE TRIBAL WATER RIGHTS:

| Source/Basin                        | Surface Water         | Ground Water | Storage  | Basis of Right   |
|-------------------------------------|-----------------------|--------------|----------|------------------|
| SNAKE RIVER/<br>SAND CREEK          | 01-10223              | —            | —        | Federal Reserved |
| ROSS FORK CREEK                     | 27-11373              | —            | —        | Federal Reserved |
| LINCOLN CREEK                       | 27-11374              | —            | —        | Federal Reserved |
| BANNOCK CREEK                       | 29-00466              | —            | —        | Federal Reserved |
|                                     | 29-00467              |              | —        | Federal Reserved |
|                                     | 29-00469              |              | —        | Federal Reserved |
|                                     | 29-00470              |              | —        | Federal Reserved |
|                                     | 29-00471              | 29-12052     | —        | Federal Reserved |
|                                     | 29-00472              | —            | —        | Federal Reserved |
|                                     | 29-00473              |              | —        | Federal Reserved |
|                                     | 29-00474              |              | —        | Federal Reserved |
|                                     | 29-12049              |              | —        | Federal Reserved |
|                                     | 29-12848              |              | —        | Federal Reserved |
| PORTNEUF RIVER/<br>JEFF CABIN CREEK | 29-12050              | —            | —        | Federal Reserved |
| MINK CREEK                          | 29-12051              | —            | —        | Federal Reserved |
| TOPONCE CREEK                       | 29-00231              | —            | —        | Federal Reserved |
|                                     | 29-00238              | —            | —        | Federal Reserved |
|                                     | 29-00239              | —            | —        | Federal Reserved |
| BLACKFOOT RIVER                     | 27-11375 <sup>1</sup> | —            | —        | Federal Reserved |
|                                     | —                     | —            | 27-02007 | State Law        |
| GRAYS LAKE                          | —                     | —            | 25-02160 | State Law        |
| RESERVATION                         | —                     | 27-11376     | —        | Federal Reserved |

<sup>1</sup> Including Attachments E and F to this Revised Consent Decree.

B. FEDERAL CONTRACT STORAGE SPACE HELD BY THE UNITED STATES FOR 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 percent (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 Irrigation

Project. These federal contract storage rights were equivalent in 1990 to the following storage space in American Falls and Palisade Reservoirs:

American Falls Reservoir: 46,931 AF

Palisades Reservoir: 83,900 AF

2. The Tribes shall be entitled to use storage water accrued to the federal contract storage space listed in Section II.B.1 not used, exchanged, or rented for instream flows for river reaches on or adjacent to the Reservation.
3. The federal contract referred to in Section II.B.1 above, and the Memorandum of Agreement between the Bureau of Reclamation and the Bureau of Indian Affairs Relating to a water supply for Michaud Division of the Fort Hall Irrigation Project as approved April 25, 1957, a copy of which is attached hereto as Attachment D, is included in the Agreement and referenced here for purposes of acknowledging that it describes a part of the Tribal water supply.

C. GENERAL PROVISIONS APPLICABLE ONLY TO WATER RIGHTS HELD BY THE UNITED STATES FOR THE BENEFIT OF THE SHOSHONE-BANNOCK TRIBES OF THE FORT HALL INDIAN RESERVATION

1. 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 to maintain or to enhance the integrity of an ecosystem.
2. The Tribes may transfer or lease within the Reservation all or any portion of the Tribal water rights, if the transfer or lease:
  - .1 is to any beneficial use,
  - .2 does not exceed the maximum diversion rate notwithstanding 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 water right nos. 27-11373, 27-11374, and 29-12050, where the place of use is specifically restricted by this Decree, and

- .6 does not change the source, except as permitted by water right nos. 27-11373, 27-11374 and 27-11375.
3. The Tribes may change the points of diversion and periods of use of water right no. 01-10223 provided the change:
  - .1 is to any beneficial use,
  - .2 does not exceed the maximum diversion rate notwithstanding 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.
4. 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 no. 01-10223, 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.
5. Any person claiming that a change in a point of diversion or period of use of water right no. 01-10223 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.
6. Except as provided in Article 7.3 of the Agreement, no Tribal water rights may be sold, leased, rented, transferred or otherwise used off the Reservation.
7. Stock watering may occur anywhere on Indian lands from any part of the water system on Indian lands and may be used year round as a part of each water right defined in this Decree except no diversion from a point off the Reservation for stock water shall be made during the non-irrigation season.
8. The Tribes have the right to generate hydropower incidental to water delivery for the other purposes specified in this Decree as well as pursuant to paragraph II.C.2.

9. 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 right(s) that provide a water supply for the Indian lands.
10. Except for the Snake River and the Blackfoot River, the administration of water rights within the Reservation shall be 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 shall 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 have adopted a Tribal Water Code approved by the Secretary. The Tribal Water Code provides, in part, for:
    - .i a Reservation Watermaster,
    - .ii Tribal Water Commission to manage the Tribal water delivery systems on the Reservation, and
    - .iii monitoring of and enforcement of Tribal water rights.
  - .4 The United States shall administer the distribution of the Fort Hall Irrigation Project water rights and the Fort Hall Agency water rights from the point the water is delivered to the project facilities.
  - .5 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 Irrigation Project water rights.
  - .6 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 paragraph II.C.10.5. The State may accompany the Tribes and the United States.
  - .7 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 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.

11. This Decree does not resolve the administration of water rights from the Blackfoot River. The Blackfoot River Water Management Plan, a copy of which is attached hereto as Attachment G, is referenced here solely for the purpose of acknowledging that it describes a mutually agreed plan for the administration of Blackfoot natural flow water rights.
12. The administration of water rights from the Snake River shall be 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 paragraphs II.C.10.1, and II.C.10.4.
  - .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 shall 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 Irrigation Project water rights from the water system. The State may accompany the party inspecting the monitoring device or diversion.

13. The Tribes or the United States shall 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) 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 .ii above; and
- .viii The nature of use of the Tribal water right at the location described in .ii above.

.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 water right no. 01-10223 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 paragraph II.C.10.7 provided that no notice will be required for transfers, leases or new uses of 0.04 CFS or 2.2 AFY or less.

14. The State shall 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 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.

15. 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.

### III. WATER RIGHTS HELD BY THE UNITED STATES FOR USE ON NON-INDIAN OWNED LANDS WITHIN THE FORT HALL IRRIGATION PROJECT AND FOR THE BUREAU OF INDIAN AFFAIRS, FORT HALL AGENCY

#### A. THE FOLLOWING LIST OF PARITAL DECREES SHALL CONSTITUTE THE WATER RIGHTS FOR NON-INDIAN OWNED LANDS WITHIN

THE FORT HALL IRRIGATION PROJECT AND FOR THE BUREAU OF  
INDIAN AFFAIRS, FORT HALL AGENCY:

| Source / Basin            | Surface Water         | Ground Water | Storage  | Basis of Right   |
|---------------------------|-----------------------|--------------|----------|------------------|
| Bannock Creek Basin       | 29-12558 <sup>1</sup> | —            | —        | State Law        |
|                           | —                     | 29-12561     | —        | State Law        |
|                           | —                     | 29-12562     | —        | State Law        |
| SNAKE RIVER               | 01-10248              | —            | —        | State Law        |
| SAND CREEK                | 27-11560              | —            | —        | State Law        |
| BLACKFOOT RIVER           | —                     | —            | 27-11561 | State Law        |
|                           | 27-11562              | —            | —        | State Law        |
|                           | 27-11563              | —            | —        | State Law        |
|                           | —                     | 27-11565     | —        | State Law        |
| GRAYS LAKE                | —                     | —            | 25-13615 | State Law        |
| GRAYS LAKE & MEADOW CREEK | 25-13616              | —            | —        | State Law        |
| PORTNEUF RIVER BASIN      | —                     | 29-12563     | —        | State Law        |
|                           | —                     | 29-12564     | —        | State Law        |
|                           | —                     | 29-12565     | —        | State Law        |
| MICHAUD PROJECT           | —                     | 29-12559     | —        | Federal Reserved |
|                           | —                     | 29-12560     | —        | Federal Reserved |
| FORT HALL AGENCY          | —                     | 27-11564     |          | Federal Reserved |

<sup>1</sup> Including Attachment C to this Revised Consent Decree.

B. GENERAL PROVISION APPLICABLE ONLY TO WATER RIGHTS  
HELD BY THE UNITED STATES FOR USE ON NON-INDIAN OWNED  
LANDS WITHIN THE FORT HALL IRRIGATION PROJECT AND FOR  
THE BUREAU OF INDIAN AFFAIRS, FORT HALL AGENCY

- Nothing in the Decree prohibits the transfer of any state law water right herein decreed in this Section III, in accordance with applicable or successor Idaho Code provisions.

IV. GENERAL PROVISIONS APPLICABLE TO ALL RIGHTS IN THIS DECREE

1. The Court hereby recognizes and respects the parties' disclaimers and reservations of rights contained in Article 11 and elsewhere in the 1990 Agreement.
2. 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. Neither the Agreement nor this Decree shall be used as precedent for any other federal reserved water right claim.
3. The description of the water rights in the partial decrees referenced in Section II.A and III.A above, shall govern in the event of a conflict with the description of the water rights contained in the Agreement.
4. Nonuse of all or any part of the federal reserved water rights shall not be construed as a relinquishment, forfeiture, or abandonment of the rights.
5. The parties to the Agreement and this Decree have relied upon the terms and conditions of the Michaud Contract, which the United States and/or the Tribes entered into as part of the authorization of the Michaud Division. Articles 7.3.3 and 7.3.4 of the Agreement refer to the exchange of water for delivery and use of federal contract storage water on the Michaud Division lands. This exchange, delivery and use of federal contract storage water shall be in accordance with and limited by Section 3(b) of the Michaud Act and all the provisions of Articles 8 and 15 of the Michaud Contract. Except as expressly provided by Article 7.3.4 of the Agreement, nothing in the Agreement or in this Decree alters the Michaud Contract.
6. Nothing in this Decree is intended to limit the authority of the United States to redesignate lands within the Fort Hall Irrigation Project under applicable statutes and regulations as eligible to receive project water.
7. This Decree supersedes all prior decrees, except as otherwise provided in this decree, as they relate to the rights to the use of water held by or for the Shoshone-Bannock Tribes, including but not limited to the following:
  - .1 United States v. Daniels, (D. Idaho April 9, 1907).

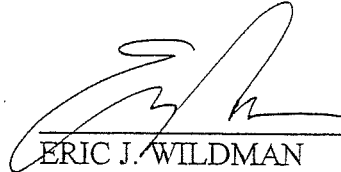
.2 United States v. Hibner, 27 F.2d 909 (D. Idaho, E.D. 1928).

.3 Smith v. City of Pocatello, Bannock County Case No. 6669.

.4 Rexburg Decree

8. The water rights described in this Decree are in full satisfaction of all water rights or claims to water rights of the Shoshone-Bannock Tribes, its members, and its allottees within the Upper Snake River basin as well as on behalf of all water rights or claims of the United States for the Shoshone-Bannock Tribes, its members, and its allottees within the Upper Snake River basin. This Decree is also in full satisfaction of all water rights or claims to water rights by the United States for the Bureau of Indian Affairs, Fort Hall Agency and the Fort Hall Irrigation Project.
9. Each of the parties, to the Snake River Basin Adjudication, their agents, servants, employees, attorneys, counselors, heirs, administrators, successors, and assigns, and every person or persons acting by, or under, or in assistance of them or any of them, be and they are hereby forever and perpetually restrained and enjoined from in any manner using the waters from the sources described in this Consent Decree, in any other quantity or in any other manner than is herein set out, defined, and decreed, and each of the parties shall respect the superior rights of all others adjudicated in the SRBA.

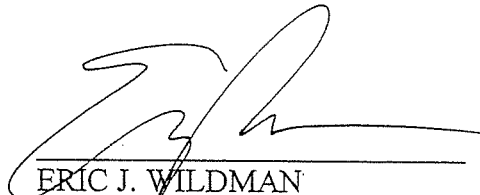
DATED this 12<sup>th</sup> day of August, 2014

  
ERIC J. WILDMAN  
Presiding Judge  
Snake River Basin Adjudication

54(b) CERTIFICATE

With respect to the issues determined by the above Revised Partial Final Consent Decree it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

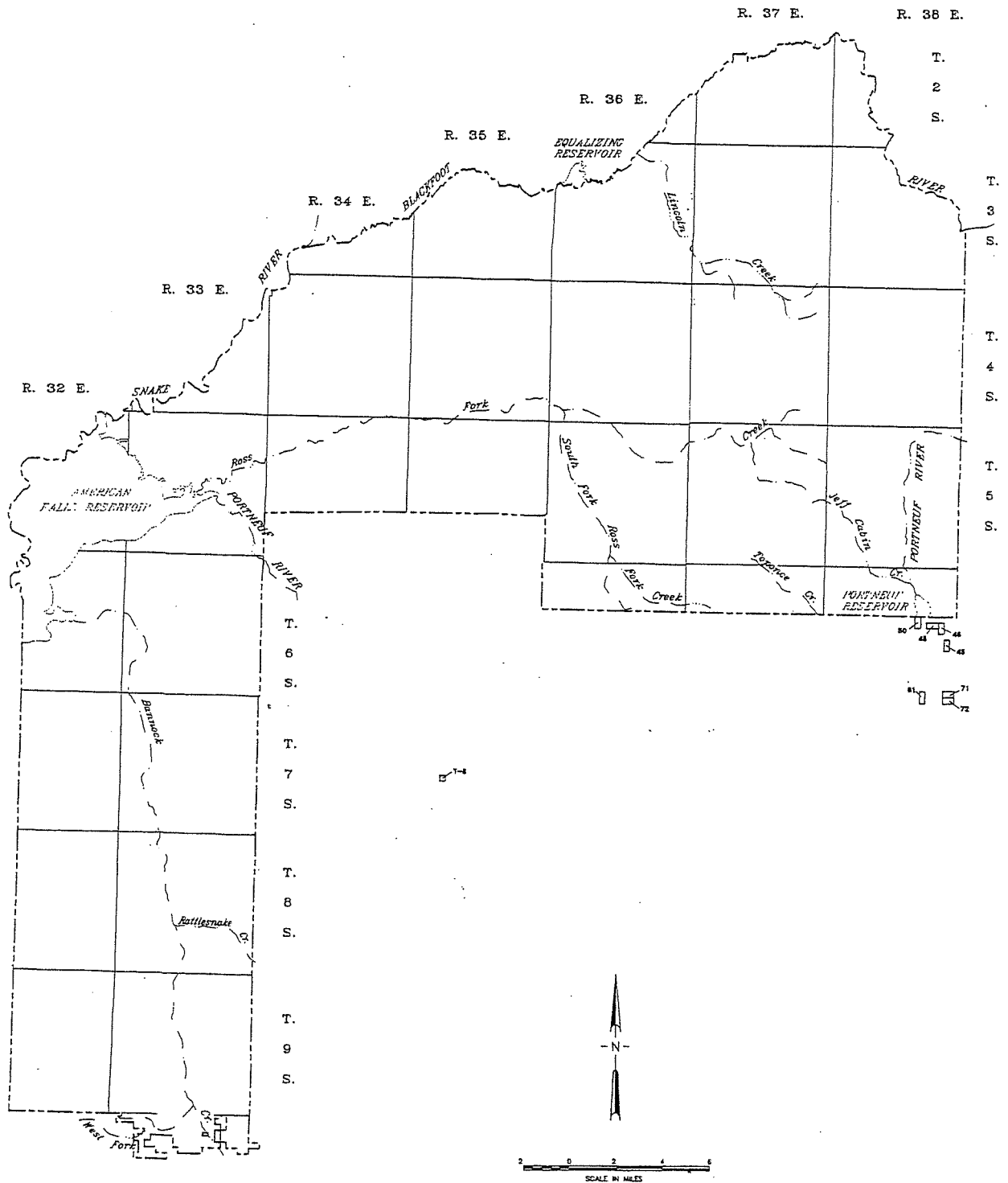
DATED this 12<sup>th</sup> day of August, 2014

  
ERIC J. WILDMAN  
Presiding Judge  
Snake River Basin Adjudication



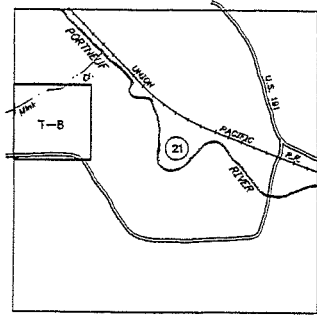
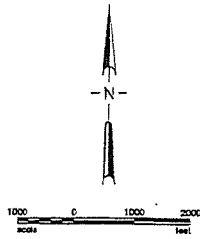
# ATTACHMENT A

## FORT HALL INDIAN RESERVAITON BOUNDARY

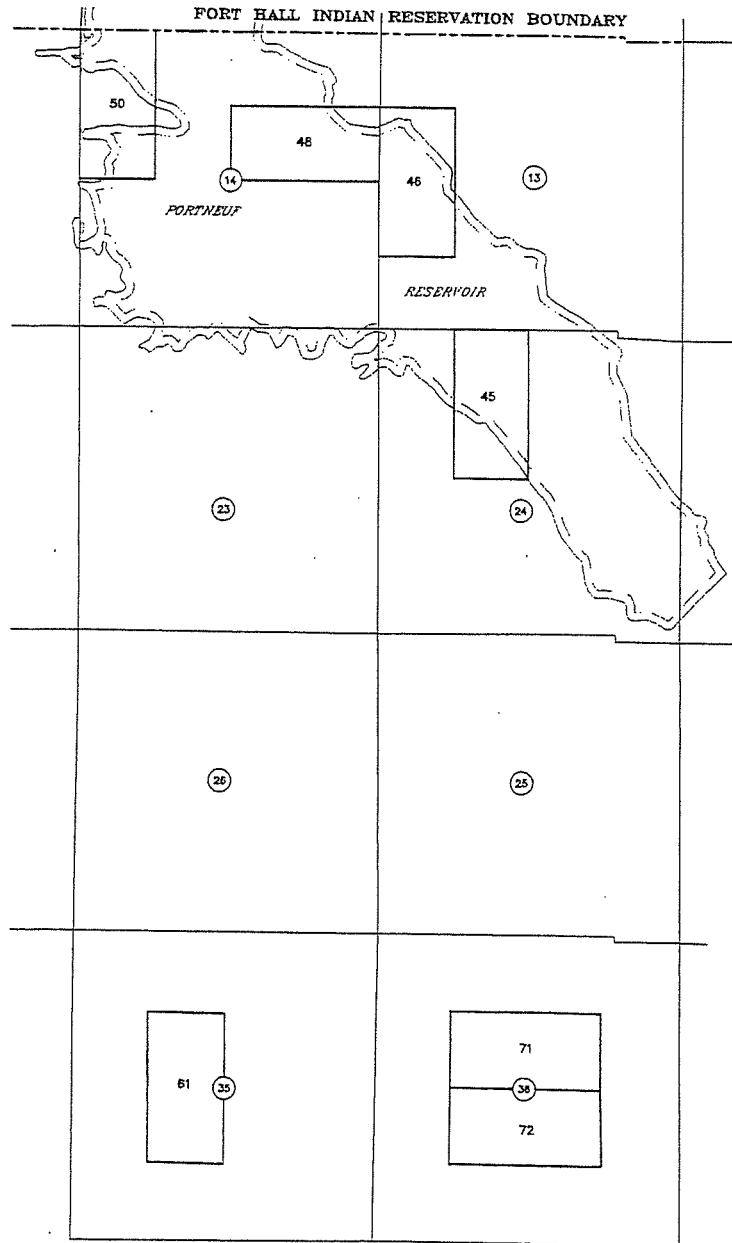


ATTACHMENT 'A' TO THE PARTIAL FINAL CONSENT DECREE  
 DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES  
 TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN.

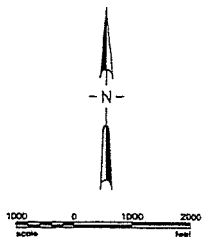
FORT HALL RESERVATION BOUNDARY



T.  
7  
S.



T.  
6  
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R. 38 E.

R. 39 E.

ATTACHMENT "A" TO THE PARTIAL FINAL CONSENT DECREE  
DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES  
TO THE USE OF WATER IN TO THE UPPER SNAKE RIVER BASIN.

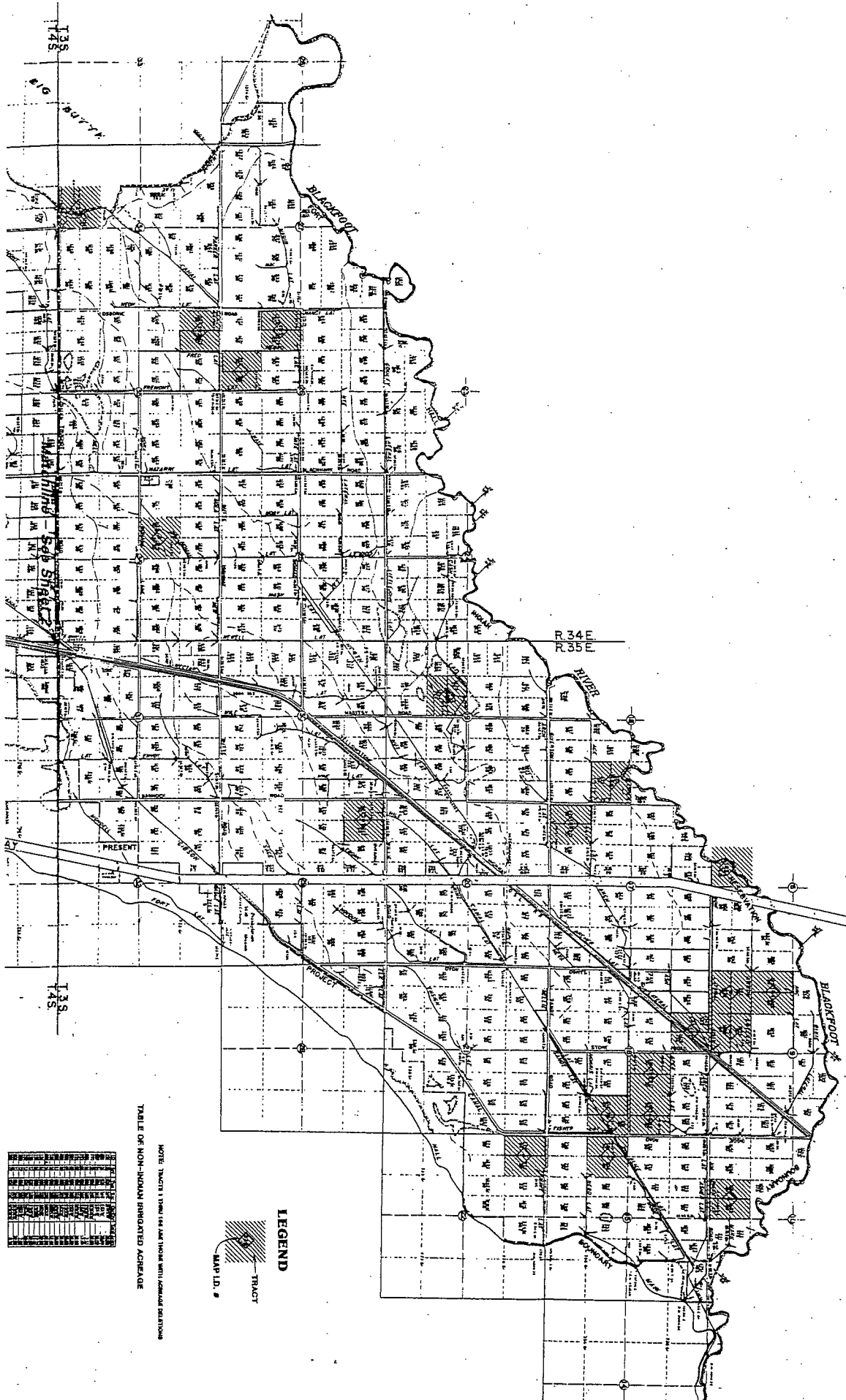
SELECTED INDIAN ALLOTMENTS

Sheet 2 of 2



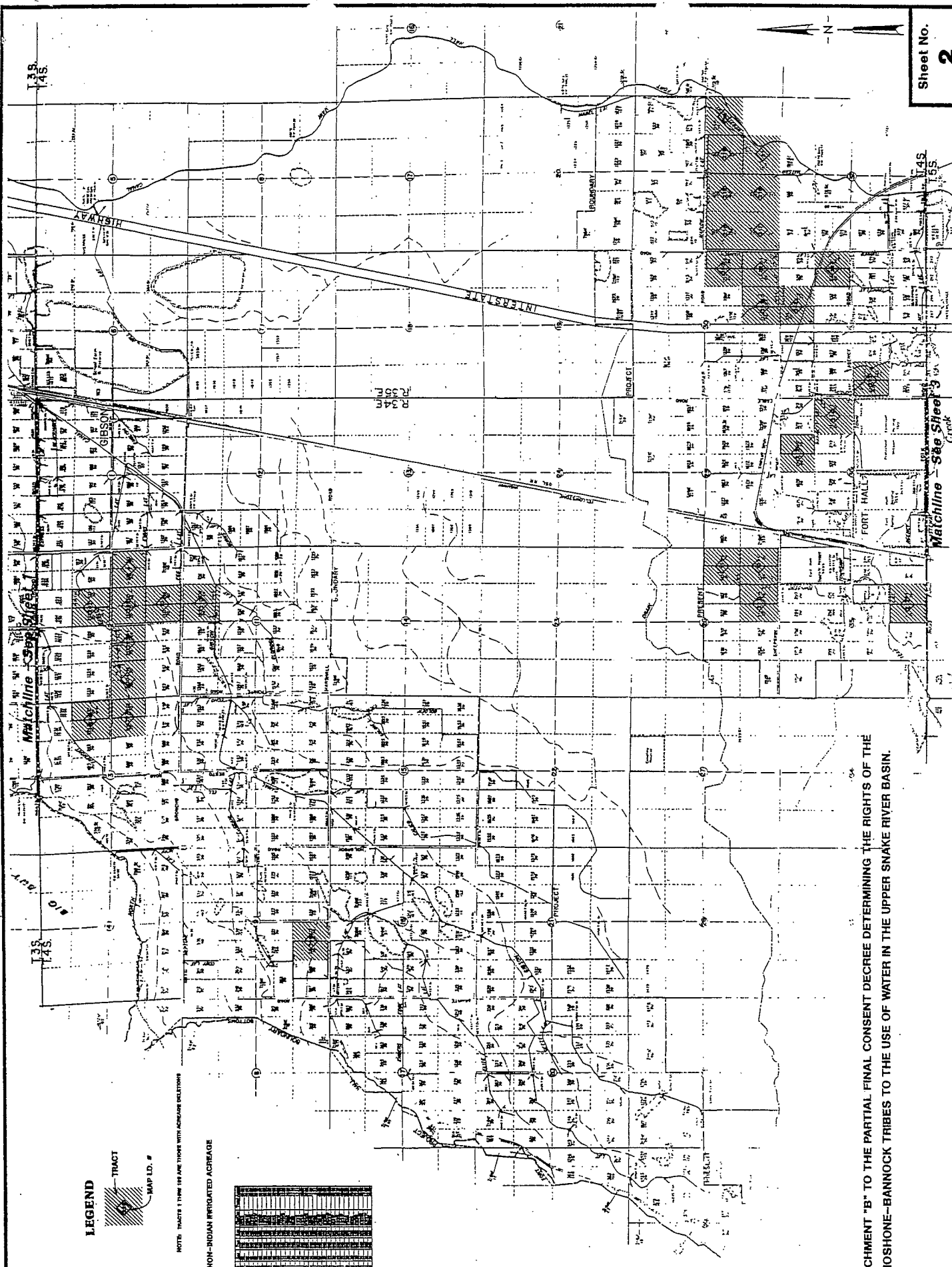
## ATTACHMENT B

### FORT HALL IRRIGATION PROJECT BOUNDARY

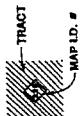


ATTACHMENT 'B' TO THE PARTIAL FINAL CONSENT DECREE DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN

**FT. HALL IRRIGATION PROJECT WITH NON-INDIAN LANDS DELINEATED**



**LEGEND**

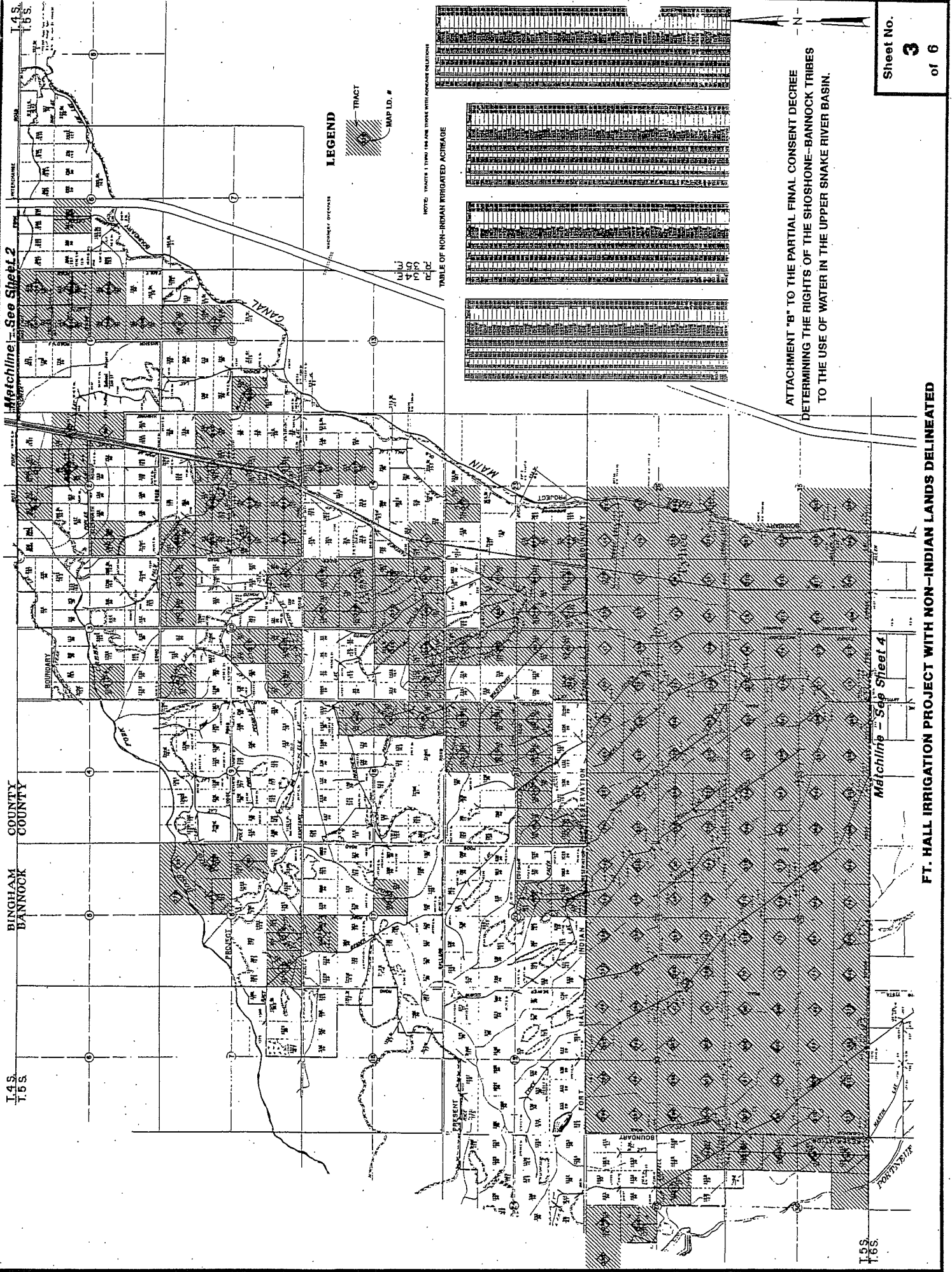


NOTE: TRACTS 1 THRU 100 ARE THOSE WITH AGRICULTURE SELECTIONS

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ATTACHMENT "B" TO THE PARTIAL FINAL CONSENT DECREE DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN.



Matchline - See Sheet 2

BINGHAM COUNTY  
BANNOCK COUNTY

14S  
15S

15S  
16S

Matchline - See Sheet 4

LEGEND

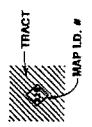
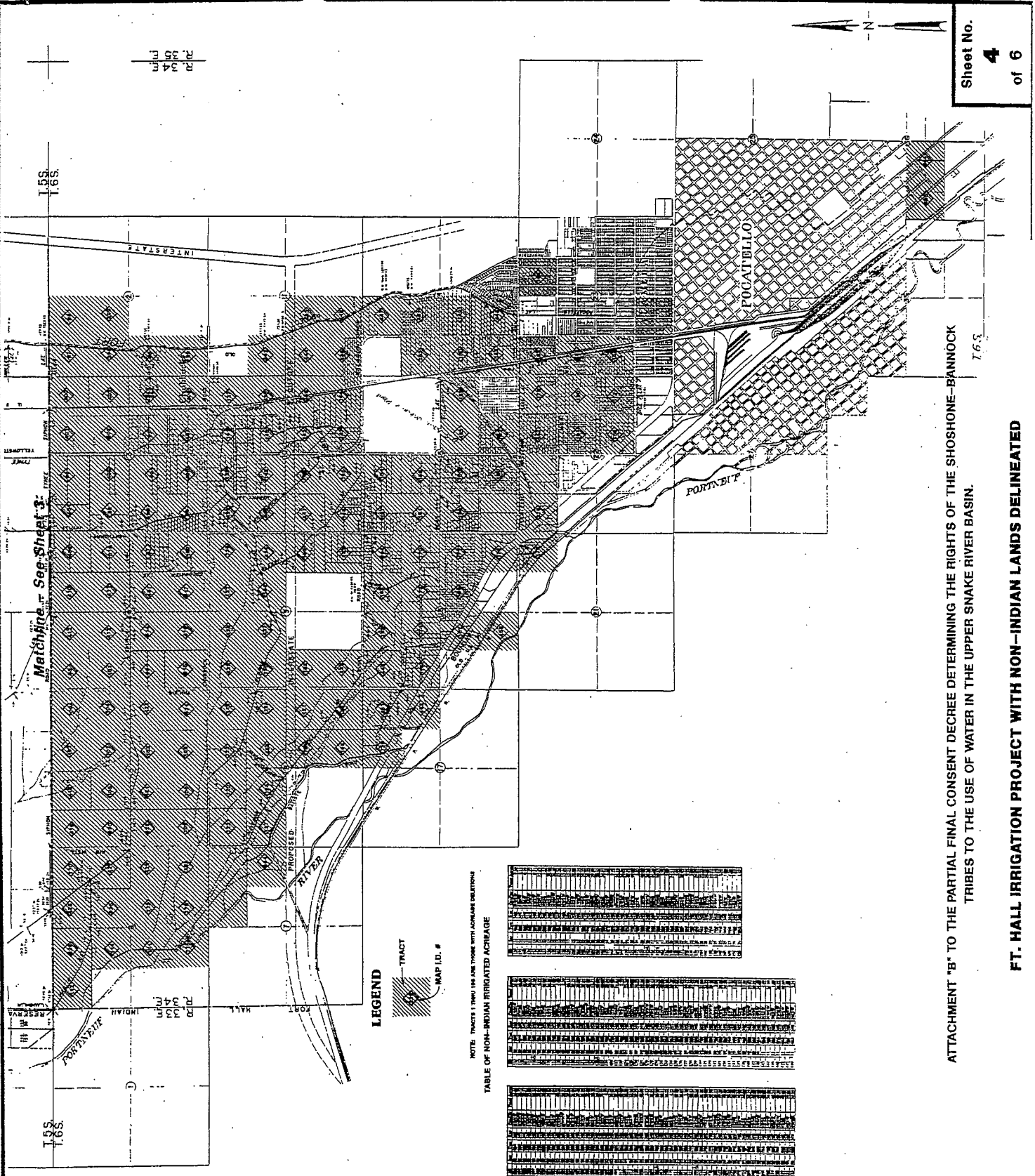
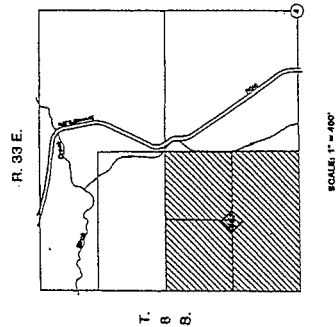
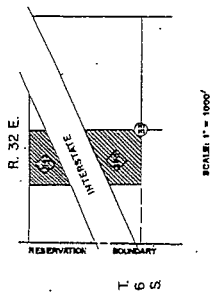
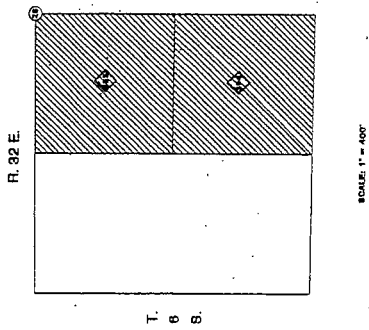


TABLE OF NON-INDIAN IRRIGATED ACRES

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| 43    | 100   | 143   | 100   | 243   | 100   |
| 44    | 100   | 144   | 100   | 244   | 100   |
| 45    | 100   | 145   | 100   | 245   | 100   |
| 46    | 100   | 146   | 100   | 246   | 100   |
| 47    | 100   | 147   | 100   | 247   | 100   |
| 48    | 100   | 148   | 100   | 248   | 100   |
| 49    | 100   | 149   | 100   | 249   | 100   |
| 50    | 100   | 150   | 100   | 250   | 100   |
| 51    | 100   | 151   | 100   | 251   | 100   |
| 52    | 100   | 152   | 100   | 252   | 100   |
| 53    | 100   | 153   | 100   | 253   | 100   |
| 54    | 100   | 154   | 100   | 254   | 100   |
| 55    | 100   | 155   | 100   | 255   | 100   |
| 56    | 100   | 156   | 100   | 256   | 100   |
| 57    | 100   | 157   | 100   | 257   | 100   |
| 58    | 100   | 158   | 100   | 258   | 100   |
| 59    | 100   | 159   | 100   | 259   | 100   |
| 60    | 100   | 160   | 100   | 260   | 100   |
| 61    | 100   | 161   | 100   | 261   | 100   |
| 62    | 100   | 162   | 100   | 262   | 100   |
| 63    | 100   | 163   | 100   | 263   | 100   |
| 64    | 100   | 164   | 100   | 264   | 100   |
| 65    | 100   | 165   | 100   | 265   | 100   |
| 66    | 100   | 166   | 100   | 266   | 100   |
| 67    | 100   | 167   | 100   | 267   | 100   |
| 68    | 100   | 168   | 100   | 268   | 100   |
| 69    | 100   | 169   | 100   | 269   | 100   |
| 70    | 100   | 170   | 100   | 270   | 100   |
| 71    | 100   | 171   | 100   | 271   | 100   |
| 72    | 100   | 172   | 100   | 272   | 100   |
| 73    | 100   | 173   | 100   | 273   | 100   |
| 74    | 100   | 174   | 100   | 274   | 100   |
| 75    | 100   | 175   | 100   | 275   | 100   |
| 76    | 100   | 176   | 100   | 276   | 100   |
| 77    | 100   | 177   | 100   | 277   | 100   |
| 78    | 100   | 178   | 100   | 278   | 100   |
| 79    | 100   | 179   | 100   | 279   | 100   |
| 80    | 100   | 180   | 100   | 280   | 100   |
| 81    | 100   | 181   | 100   | 281   | 100   |
| 82    | 100   | 182   | 100   | 282   | 100   |
| 83    | 100   | 183   | 100   | 283   | 100   |
| 84    | 100   | 184   | 100   | 284   | 100   |
| 85    | 100   | 185   | 100   | 285   | 100   |
| 86    | 100   | 186   | 100   | 286   | 100   |
| 87    | 100   | 187   | 100   | 287   | 100   |
| 88    | 100   | 188   | 100   | 288   | 100   |
| 89    | 100   | 189   | 100   | 289   | 100   |
| 90    | 100   | 190   | 100   | 290   | 100   |
| 91    | 100   | 191   | 100   | 291   | 100   |
| 92    | 100   | 192   | 100   | 292   | 100   |
| 93    | 100   | 193   | 100   | 293   | 100   |
| 94    | 100   | 194   | 100   | 294   | 100   |
| 95    | 100   | 195   | 100   | 295   | 100   |
| 96    | 100   | 196   | 100   | 296   | 100   |
| 97    | 100   | 197   | 100   | 297   | 100   |
| 98    | 100   | 198   | 100   | 298   | 100   |
| 99    | 100   | 199   | 100   | 299   | 100   |
| 100   | 100   | 200   | 100   | 300   | 100   |

ATTACHMENT "B" TO THE PARTIAL FINAL CONSENT DECREE  
DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES  
TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN.

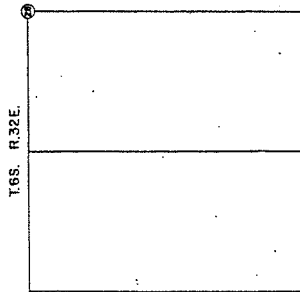




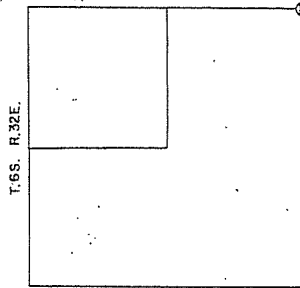
Map D17.1, 1985, 2015 and 418 also include implementation of transboundary rights of 1817 areas referenced in the Non-budhan Negotiated Agreement Articles 1.2.2.

Map D17.3, 2015 and 994 also include implementation of rights for 1028 areas referenced in the Non-budhan Negotiated Agreement Article 1.2.3.

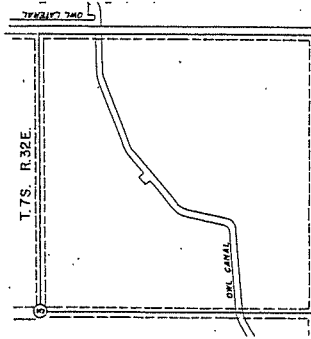
Map D17.207, 2015 and 301 areas referenced in the Non-budhan Negotiated Agreement Article 1.2.5.



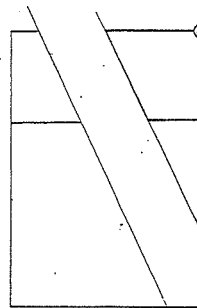
RIGHT NO. 29-12659, R. 32E. T. 6S.  
76.20 acres



RIGHT NO. 29-12659, R. 32E. T. 6S.  
26.38 acres



RIGHT NO. 29-12660, R. 32E. T. 7S.  
163.19 acres



RIGHT NO. 29-12660, R. 32E. T. 6S.  
84.60 acres

NOTE 1: RIGHT NO. 29-1259, GROUND WATER USE ONLY.

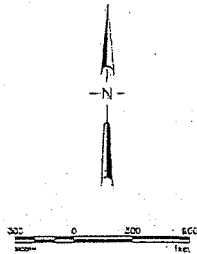
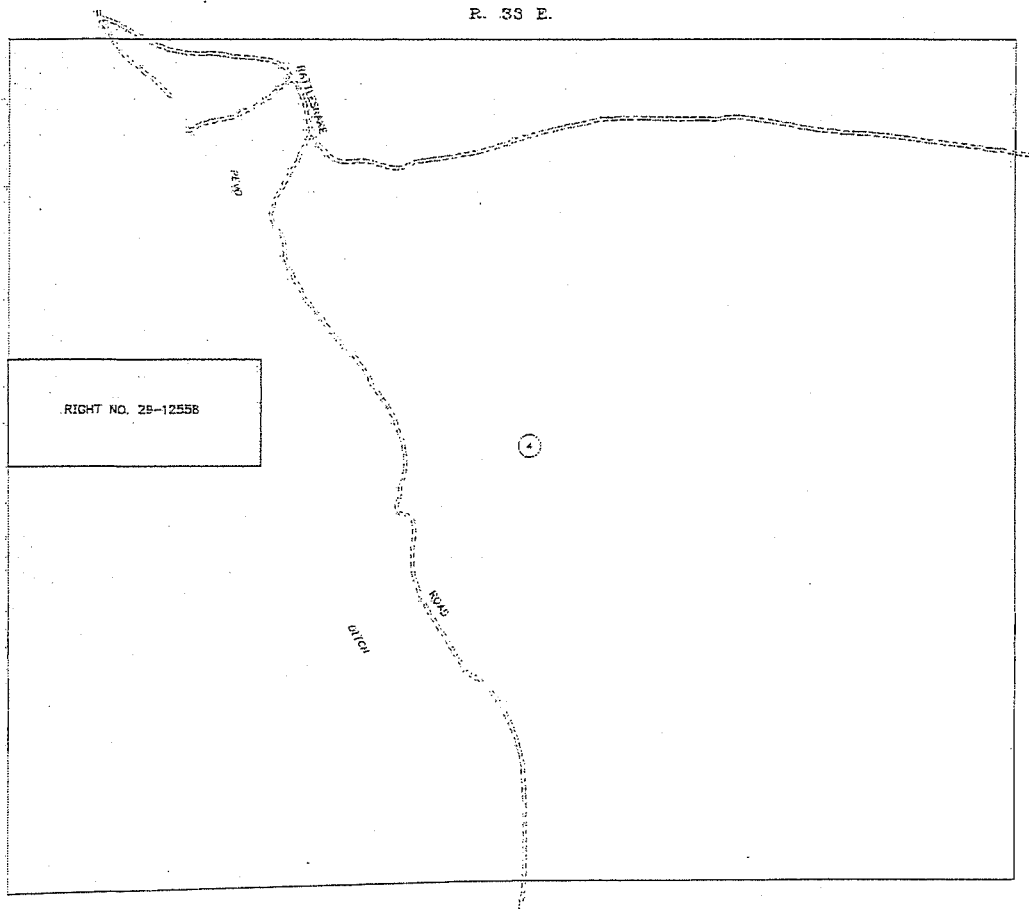
NOTE 2: RIGHT NO. 29-1260, R. 32E. T. 6S. OR GROUND WATER OR  
RIGHT NO. 29-1260, R. 32E. T. 7S. OR GROUND WATER OR  
STORAGE RIGHTS DESCRIBED IN ARTICLE 7.1.1 OF THE 1991 PORT  
HALL INDIAN WATER RIGHTS AGREEMENT.

ATTACHMENT 'B' TO THE PARTIAL FINAL CONSENT DECREE DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK  
TRIBES TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN.



## ATTACHMENT C

### DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN



ATTACHMENT "C" TO THE PARTIAL FINAL CONSENT DECREE  
DETERMINING THE RIGHTS OF THE SHOSHONE-BANNOCK TRIBES  
TO THE USE OF WATER IN THE UPPER SNAKE RIVER BASIN.

RIGHT NO. 29-12556

ATTACHMENT D  
MICHAUD CONTRACT

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  
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

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~~ 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 (c) 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"<sup>1/</sup>, 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

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<sup>1/</sup> 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 identified above, but increases in energy in any year by reason of taking American Falls storage into account as provided in subparagraph (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 downstream reservoirs first. The flow at the Minidoka gage without storage shall be taken to be the normal flow at that gage as shown by that same report. In determining water flows, with and without curtailment of power operations as provided in this article, these assumptions shall be used with respect to units 1 through 6 of the Minidoka powerplant:

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

(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 ( $1\frac{1}{2}\%$ ) to offset evaporation losses. Such charge shall be made as of not later than the end of the ensuing storage season.

(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,<sup>1/</sup> 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

<sup>1/</sup> 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

## ATTACHMENT E

LIST OF BLACKFOOR NATURAL FLOW STATE  
CREATED WATER RIGHTS PROTECTED BY  
PARAGRAPH 27-11375x.d

# ATTACHMENT E

## LIST OF BLACKFOOT NATURAL FLOW STATE CREATED WATER RIGHTS PROTECTED BY PARAGRAPH 27-11375x.d.

|        |        |         |          |          |          |          |          |
|--------|--------|---------|----------|----------|----------|----------|----------|
| 27-1A  | 27-21A | 27-37J  | 27-2003A | 27-7302  | 27-10844 | 27-11997 | 27-12136 |
| 27-1B  | 27-21B | 27-37L  | 27-2003B | 27-7370  | 27-10847 | 27-12000 | 27-12137 |
| 27-2A  | 27-21C | 27-37M  | 27-2008  | 27-7374  | 27-10878 | 27-12002 | 27-12142 |
| 27-2B  | 27-21D | 27-37N  | 27-2009  | 27-10096 | 27-10943 | 27-12003 | 27-12151 |
| 27-3C  | 27-22A | 27-38   | 27-2018  | 27-10116 | 27-10999 | 27-12006 | 27-12152 |
| 27-3D  | 27-22B | 27-39   | 27-2019A | 27-10207 | 27-11016 | 27-12014 | 27-12189 |
| 27-3E  | 27-23B | 27-40   | 27-2026  | 27-10292 | 27-11117 | 27-12015 | 27-12192 |
| 27-3G  | 27-23C | 27-41   | 27-2039  | 27-10296 | 27-11233 | 27-12016 | 27-12198 |
| 27-4AC | 27-23E | 27-45   | 27-2040  | 27-10341 | 27-11236 | 27-12027 | 27-12199 |
| 27-4F  | 27-23F | 27-47   | 27-2041A | 27-10344 | 27-11245 | 27-12028 | 27-12200 |
| 27-4H  | 27-25A | 27-49   | 27-2041B | 27-10357 | 27-11261 | 27-12029 | 27-12201 |
| 27-4L  | 27-25B | 27-50   | 27-2049  | 27-10358 | 27-11262 | 27-12030 | 27-12213 |
| 27-4M  | 27-25C | 27-51A  | 27-2052  | 27-10362 | 27-11269 | 27-12031 | 27-12214 |
| 27-4S  | 27-26A | 27-51B  | 27-2054  | 27-10370 | 27-11271 | 27-12032 | 27-12229 |
| 27-4Y  | 27-26B | 27-52   | 27-2066  | 27-10388 | 27-11273 | 27-12035 | 27-12230 |
| 27-4Z  | 27-26D | 27-54   | 27-2078  | 27-10390 | 27-11317 | 27-12040 | 27-12246 |
| 27-5A  | 27-26E | 27-55A  | 27-2080A | 27-10398 | 27-11330 | 27-12045 | 27-12247 |
| 27-5B  | 27-27D | 27-55B  | 27-2165  | 27-10452 | 27-11334 | 27-12050 | 27-12250 |
| 27-12A | 27-28  | 27-56   | 27-4009  | 27-10505 | 27-11918 | 27-12051 |          |
| 27-12B | 27-29B | 27-73   | 27-4010  | 27-10539 | 27-11919 | 27-12064 |          |
| 27-13A | 27-29C | 27-74   | 27-4058  | 27-10545 | 27-11930 | 27-12068 |          |
| 27-13B | 27-29D | 27-76   | 27-4077  | 27-10550 | 27-11931 | 27-12069 |          |
| 27-14B | 27-29E | 27-85A  | 27-4079  | 27-10552 | 27-11939 | 27-12074 |          |
| 27-14C | 27-35A | 27-88   | 27-4096  | 27-10555 | 27-11940 | 27-12080 |          |
| 27-14D | 27-35B | 27-94   | 27-4097  | 27-10557 | 27-11966 | 27-12081 |          |
| 27-16A | 27-37A | 27-102  | 27-4141  | 27-10657 | 27-11988 | 27-12108 |          |
| 27-16C | 27-37C | 27-104  | 27-4147  | 27-10667 | 27-11989 | 27-12115 |          |
| 27-17  | 27-37F | 27-105  | 27-7008A | 27-10728 | 27-11992 | 27-12116 |          |
| 27-20A | 27-37G | 27-106  | 27-7008B | 27-10756 | 27-11994 | 27-12118 |          |
| 27-20B | 27-37H | 27-2001 | 27-7071  | 27-10790 | 27-11995 | 27-12121 |          |

ATTACHMENT F

BLACKFOOT RIVER EQUITABLE  
ADJUSTMENT SETTLEMENT AGREEMENT  
PURSUANT TO THE 1990 FORT HALL INDIAN  
WATER RIGHTS SETTLEMENT AGREEMENT

**Blackfoot River Equitable Adjustment Settlement Agreement  
Pursuant to the 1990 Fort Hall Indian Water Rights Settlement Agreement**

**Introduction**

This Settlement Agreement ("Agreement") by and between the Shoshone Bannock Tribes ("Tribes"), the United States, the State of Idaho ("State"), the Basin 27 Water Users, and the Committee of Nine, hereinafter referred to as the "Parties" sets forth the terms and conditions of the Equitable Adjustment provided for in paragraph x.d of water right No. 27-11375. This Agreement is an addendum to the Partial Final Consent Decree Determining The Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin, dated August 2, 1995 ("Consent Decree").

**Objective**

This Agreement implements Article 7 of the 1990 Fort Hall Indian Water Rights Agreement ("Fort Hall Agreement"), and Section II of the Consent Decree pertaining to the diversion of Natural Flows from the Blackfoot River pursuant to paragraph x.d of water right No. 27-11375, recognizing the variability of water supplies available on a year-to-year basis. The Parties have developed and agreed to the Blackfoot River Water Management Plan that tracks the use and quantifies all Blackfoot River Basin Natural Flow diversions occurring as a direct result and benefit of paragraph x.d of water right No. 27-11375.

Paragraph x.d. of water right No. 27-11375 "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 Fort Hall Agreement allows the Basin 27 Water Users to continue to divert that amount of water put to beneficial use under state created water rights prior to January 1, 1990. The credit and water accounting system described below, provides Equitable Adjustment Water to the Tribes to offset Basin 27 water diversions protected by paragraph x.d. of water right No. 27-11375 that are in excess of the 45,000 AFY of water from the Blackfoot River. All water right holders in Basin 27, including tribal and non-tribal diverters, are responsible for diverting or calling for only the amount of water needed for authorized beneficial uses. This Agreement, together with the Blackfoot River Water Management Plan approved by the Parties, form the basis for the equitable management of the Blackfoot River drainage and for the equitable adjustment of water right No. 27-11375.

**Definitions**

The following definitions apply for purposes of this Agreement:

- a) "Basin 27 Water Users" mean persons diverting Natural Flow from the Blackfoot River Basin under water rights listed on Attachment E to the Consent Decree and under *de minimis* domestic and stock water rights with a priority date earlier than January 1, 1990. "Basin 27 Water Users" includes the Miners Ditch water

bypassed as mitigation for water right no. 27-7577 in the name of the City of Blackfoot.<sup>1</sup>

- b) "Basin 27 Primary Volume" is the cumulative annual volume of Blackfoot River Basin Natural Flows diverted by the Basin 27 Water Users during the irrigation season as a direct result of being allowed to divert Blackfoot River Basin Natural Flows ahead of the Tribes as provided by the Fort Hall Agreement and described in water right 27-11375.<sup>2</sup> The calculation of the Basin 27 Primary Volume is described in Section 4.i) of the Plan.
- c) "Committee of Nine" means the advisory committee of Water District 01 and any successor thereto.
- d) "*De minimis* domestic water right" for purposes of this Agreement means (a) the use of water for homes, organization camps, public campgrounds, livestock and for any purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen (13,000) gallons per day, or 14.5 acre-feet per year or less for storage, or (b) any other uses, if the total use does not exceed a diversion rate of four one-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day. Domestic rights shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitation set forth in (b) above.
- e) "*De minimis* stock water right" for purposes of this Agreement means the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day or 14.5 acre-feet per year or less for storage.
- f) "Equitable Adjustment Water" is a supplemental water supply provided to the Tribes for the purpose of protecting water right no. 27-11375 if the Basin 27 Primary Volume exceeds 45,000 acre-feet per year and all available credits, consistent with the terms of this Agreement.
- g) "Fort Hall Agreement" means the 1990 Fort Hall Indian Water Rights Agreement executed by the Shoshone-Bannock Tribes of the Fort Hall Reservation, the State, the United States, and the Committee of Nine.

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<sup>1</sup> All or part of 16 water rights may be diverted into the Miners Ditch, none of which are in the name of Miners Ditch nor do they include any designation they are to be bypassed for mitigation purposes. Those 16 water rights are: 27-3G, 27-17, 27-20A, 27-20B, 27-22A, 27-23E, 27-35A, 27-10296, 27-10341, 27-10344, 27-10505, 27-10756, 27-10790, 27-10999, 27-11117, 27-11940.

<sup>2</sup> *De minimis* domestic or stock water rights diverting Blackfoot River Natural Flow with a priority date earlier than January 1, 1990 do not count toward Basin 27 Primary Volume. *Order on January 31, 2012 Joint Status Report Re: Motion for Accounting* ("[D]e minimis domestic and stock use rights will not be counted toward the 45,000 acre-feet per year estimate from the Blackfoot River contained in Paragraph 27-11375x.d of the *Fort Hall Consent Decree*.")

- h) "IDWR" or the "Idaho Department of Water Resources" means the executive agency of the State of Idaho created by Idaho Code § 42-1701, or any successor agency.
- i) "Natural Flow" means the natural flow of the Blackfoot River Basin that is available for diversion, as referred to in section x.d of water right 27-11375 and as specifically defined and calculated in the Plan. When the term "natural flow" is used in this Agreement rather than "Natural Flow" the classic meaning of natural flow is intended as illustrated in Section 4.k) of the Plan.
- j) "Parties" means the Tribes, the United States, the State, the Basin 27 Water Users, and the Committee of Nine.
- k) "Plan" means the Blackfoot River Water Management Plan.
- l) "SRBA District Court" means the District Court of the Fifth Judicial District, State of Idaho, in and for the County of Twin Falls that is assigned Civil Case No. 39576.
- m) "State" means the State of Idaho, admitted to the Union on July 3, 1890.
- n) "Supplemental Equitable Adjustment Water" is an additional supplemental water supply provided to the Tribes for the purpose of protecting and satisfying water right No. 27-11375 if the Basin 27 Primary Volume exceeds 45,000 acre-feet per year, all available credits provided for under paragraph 1 of this Agreement and all Equitable Adjustment Water provided for under paragraph 2 of this Agreement.
- o) "Tribes" or "Tribal" means the Shoshone-Bannock Tribes of the Fort Hall 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.
- p) "United States" means the United States of America acting through the United States Department of the Interior, Bureau of Indian Affairs.
- q) "Water District 01" means the instrumentality created by the Director of the IDWR pursuant to Idaho Code § 42-604 (1992) and any successor thereto.
- r) "Water District 27" means the water district designated by the Director of IDWR pursuant to Idaho Code § 42-604 (1992) for the distribution of water in the Blackfoot River Basin and any successor thereto.
- s) "Watermaster" means the person elected by Water District 27 and appointed by the Director of IDWR to distribute water within Water District 27.

## Terms and Conditions

### 1. Basin 27 Credit Account

The Parties agree to establish and utilize a credit account based on the diversions of Natural Flows of the Blackfoot River Basin by the Basin 27 Water Users as contemplated by provision x.d of water right 27-11375, and permitting the Basin 27 Water Users beneficial use of their water rights. The credit account shall be administered as follows:

- a) Credits are accrued when the total annual Basin 27 Primary Volume diversions are less than 45,000 acre-feet per year (afy). Credit accrual is limited by the natural flow supply of the Blackfoot River basin when the supply is less than 45,000 afy. Credit accrual is calculated as follows:  
*Credit Accrual = (Lesser of 45,000 afy or available natural flow supply) – Basin 27 Primary Volume Diversions*

The total available natural flow supply is described in Section 4.k) of the Plan.

- b) Credits are used if Basin 27 Primary Volume diversions exceed 45,000 acre-feet per year, on an acre-foot for acre-foot basis.
- c) The credit account shall have the following conditions and limitations:
  - 1. Maximum Credit Balance: 40,000 acre-feet
  - 2. Annual Maximum Credit Accrual: 20,000 acre-feet per year
  - 3. Annual Maximum Credit Use: 12,000 acre-feet per year

These conditions are put in place to protect the Tribes' ability to utilize natural flows of the Blackfoot River while enabling the Basin 27 Water Users to continue annually to divert, to the extent of beneficial use, that volume of water as provided for in the Fort Hall Agreement.

- d) The Plan includes an annual accounting of the credit balance, credit accrual, and/or credit use each year, and the Watermaster shall provide the Tribes, Basin 27 Water Users, the Bureau of Indian Affairs, and Committee of Nine with this information prior to January 5<sup>th</sup> of each year. The credit balance at the start of the irrigation season is the available credit for use in that year.
- e) The irrigation season of the calendar year in which this Agreement is adopted by the SRBA District Court shall begin with a credit balance of 20,000 acre-feet.

### 2. Equitable Adjustment Water

A separate Equitable Adjustment Water account will be maintained for the Tribes' diversions under water right no. 27-11375 if the Basin 27 Primary Volume is greater than 45,000 acre-feet per year plus all available credits in any year. The Equitable Adjustment Water is not intended to be utilized on a regular basis, and represents a supplemental water supply for the protection of

water right no. 27-11375, consistent with the terms of this Agreement. The Equitable Adjustment Water account shall be administered as follows:

- a) Equitable Adjustment Water is only available for use if the maximum available credits have been used for the current year.
- b) The Equitable Adjustment Water account shall be replenished at a fixed rate of 1,000 acre-feet per year. The account will be replenished prior to the beginning of the irrigation season.
- c) The Equitable Adjustment Water account shall have a maximum balance of 10,000 acre-feet. The account balance at the start of the irrigation season is the available Equitable Adjustment Water for that irrigation season.
- d) Equitable Adjustment Water will be available to the Tribes on an acre-foot for acre-foot basis in a quantity equal to Basin 27 Primary Volume in excess of a combined 45,000 acre-feet per year plus the maximum available credits that can be used in the current year.
- e) Any Basin 27 Primary Volume diversions in excess of 45,000 acre-feet per year plus available credit for the current year shall not exceed the amount of Equitable Adjustment Water and Supplemental Equitable Adjustment Water available to the Tribes.
- f) The Tribes shall inform the Basin 27 Watermaster if delivery of Equitable Adjustment Water is desired and the points of diversion for receipt of the water.
- g) The Equitable Adjustment Water to be provided to the Tribes shall be supplied by the Committee of Nine from a source and in a manner that allows the Tribes to utilize the water source in a manner consistent with water right no. 27-11375, without the need to construct additional conveyance or diversion works.
- h) Nothing herein precludes the Committee of Nine from implementing actions to increase the supply of Blackfoot River natural flow available to the Tribes. Subject to the mutual consent of the parties to this Agreement, the Parties agree that the obligation of Committee of Nine to provide Equitable Adjustment Water will be reduced to the extent of any increase of the Blackfoot River natural flow available to the Tribes resulting from such actions.
- i) The Plan includes an annual accounting of the Equitable Adjustment Water account balance, Equitable Adjustment Water accrual, and/or Equitable Adjustment Water use each year, and the Watermaster shall provide the Tribes, Basin 27 Water Users, the Bureau of Indian Affairs, and Committee of Nine with this information prior to January 5<sup>th</sup> of each year. The Equitable Adjustment Water account balance at the start of the irrigation season is the amount of Equitable Adjustment Water available for use that same year.

- j) The irrigation season of the calendar year in which this Agreement is approved by the SRBA District Court shall begin with an Equitable Adjustment Water account balance of 5,000 acre-feet.

### 3. Supplemental Equitable Adjustment Water

In the event that the Basin 27 Water Users' Basin 27 Primary Volume diversions in any year exceed 45,000 acre-feet plus the amount of available credits under paragraph 1 and the Equitable Adjustment Water available under paragraph 2 above, then the Basin 27 Water Users may divert up to an additional 10,000 acre-feet of Basin 27 Primary Volume provided such diversions are offset by the delivery of an equivalent amount of water to the Tribes. The Supplemental Equitable Adjustment Water shall be administered as follows:

- a) The Basin 27 Water Users, the State and the Committee of Nine will each provide or pay for one-third of the 10,000 acre-feet of Supplemental Equitable Adjustment Water. If requested, the Committee of Nine agrees to rent to the Basin 27 Water Users and/or the State their proportionate share of the Supplemental Equitable Adjustment Water at the then prevailing rental pool rate.
- b) The Supplemental Equitable Adjustment Water to be provided to the Tribes shall be supplied from a source and in a manner that allows the Tribes to utilize the water source in a manner consistent with water right No. 27-11375, without the need to construct additional conveyance or diversion works.
- c) The Basin 27 Water Users shall be responsible for notifying the State and the Committee of Nine of the need for delivery of the Supplemental Equitable Adjustment Water and for coordinating delivery of the water to the Tribes.
- d) Nothing herein precludes the State, the Basin 27 Water Users or the Committee of Nine from implementing actions to increase the supply of Blackfoot River natural flow available to the Tribes. Subject to the mutual consent of the parties to this Agreement, the obligation of the Committee of Nine, the State and/or the Basin 27 Water Users to provide Supplemental Equitable Adjustment Water under this paragraph will be reduced to the extent of any increase of the Blackfoot River natural flow available to the Tribes resulting from the actions of a party.

### 4. Exercise of Water Right No. 27-11375

Water right no. 27-11375 shall be exercised pursuant to paragraph x.d, as provided for in the Fort Hall Agreement, to the extent that Basin 27 Primary Volume diversions are less than or equal to the following quantity:

*45,000 afy + annual credit used + Equitable Adjustment Water used + Supplemental Equitable Adjustment Water used*

At any point during the irrigation season when the Basin 27 Primary Volume exceeds the above quantity, provisions of paragraph x.d of water right no. 27-11375 shall be deemed satisfied and all water rights shall be administered in priority.

## **5. Blackfoot River Diversions and Measurements**

The Plan shall govern the diversion, use, and measurement of water. The Parties in conjunction with the Basin 27 Watermaster shall develop a diversion and accounting protocol pursuant to the Plan, which shall track the credit account and provision of Equitable Adjustment Water and Supplemental Equitable Adjustment Water deliveries to the Tribes as follows:

- a) On a weekly basis, the Basin 27 Watermaster will calculate and publish the Basin 27 Primary Volume. When the Primary Volume is within 5,000 acre-feet of 45,000 acre-feet per year plus the available credit for use in the current year, then the Watermaster will notify the Tribes, Basin 27 Water Users, and the Committee of Nine that an Equitable Adjustment Water condition is approaching and take further steps as outlined below.
- b) The Basin 27 Watermaster will make a projection of the following quantities for the coming week: total annual Basin 27 diversions, the cumulative Basin 27 Primary Volume, the use of credits, and any Equitable Adjustment Water or Supplemental Equitable Adjustment Water supply due to the Tribes. These projections shall be based on the pattern of diversions in prior years and the magnitude of diversions occurring the previous week, estimated available natural flow water supplies, and changes in requested Basin 27 diversion demands as per the Plan. The projections shall be provided to the Parties for review.
- c) When, based upon the accounting in subparagraph b) above, a delivery of Equitable Adjustment Water or Supplemental Equitable Adjustment Water is owed to the Tribes in the upcoming week, then that quantity of water shall be provided to the Tribes as governed by paragraphs 6 or 8 below.
- d) This process is repeated until the Tribes have ceased diversions for the year, no further Equitable Adjustment Water and no further Supplemental Equitable Adjustment Water is available, or the Tribes' water right no. 27-11375 is filled.

## **6. Equitable Adjustment Water Delivery to Tribes**

When, based upon the accounting protocol developed and the application of the credit system described above, an Equitable Adjustment Water delivery is owed to the Tribes, then the Tribes and Committee of Nine shall be notified by the Basin 27 Watermaster. The Tribes shall inform the Basin 27 and Water District 01 Watermasters when delivery of the Equitable Adjustment

Water is desired and the points of diversion for receipt of that water. The Committee of Nine shall be obligated to deliver Equitable Adjustment Water at the rates specified by the Tribes over the week, at the identified diversion points consistent with water right no. 27-11375.

#### **7. Equitable Adjustment Water Supply to Tribes**

The Committee of Nine shall take the necessary steps to ensure that a firm supply of water is available to the Tribes on a yearly basis to fulfill any Equitable Adjustment Water obligation. On an annual basis the Committee of Nine will confirm water is available and the source(s) of said supply with the Parties.

#### **8. Supplemental Equitable Adjustment Water Delivery**

- a) Arrangements for the rental and delivery of Supplemental Adjustment Water shall be secured when the Watermaster projects that water supply conditions will likely necessitate the delivery of Equitable Adjustment Water.
- b) When, based upon the accounting protocol described above, the Watermaster projects that water supply conditions will likely necessitate the delivery of Supplemental Equitable Adjustment Water to the Tribes, the Basin 27 Watermaster shall notify the Basin 27 Water Users. The Basin 27 Water Users shall consult with the Tribes to determine when delivery of the Supplemental Equitable Adjustment Water is desired and the points of diversion for receipt of that water consistent with water right No. 27-11375. The Basin 27 Water Users shall notify the State and the Committee of Nine of the need for Supplemental Equitable Adjustment Water. Each party shall then be responsible for providing its proportionate share of the equitable adjustment

#### **9. Savings Clause**

Nothing herein alters or amends the Sand Creek exchange or the mitigation obligations of Mitigation Inc. Mitigation Inc. is the contracting entity that holds the storage contract rights for storage space made available pursuant to Section 5 of the Fort Hall Indian Water Rights Act of 1990, Pub. L. 101-602, 104 Stat. 3059 (November 16, 1990).

#### **10. Binding Effect.**

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

#### **11. Entire Agreement**

This Agreement sets forth all understandings between the Parties with respect to the equitable adjustment provided for water right no. 27-11375. There are no other understandings, covenants, promises, agreements, conditions, either oral or written between the Parties other than those contained herein.

**12. Effect of Headings**

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

**13. Multiple Originals**

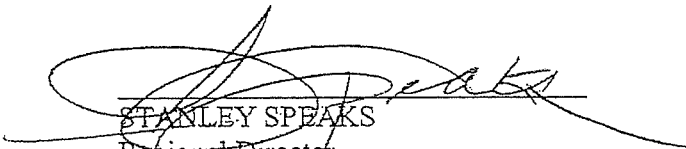
This Agreement is executed in sextuplicate. Each of the six (6) Agreements with an original signature of each Party shall be an original.

**14. Effective Date**

This Agreement shall be effective upon approval by the Fifth Judicial District of the State of Idaho in and for the County of Twin Falls, case no. 39576.

The Parties have executed this Blackfoot River Equitable Adjustment Settlement Agreement on the date next to their respective signatures.

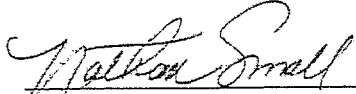
UNITED STATES



STANLEY SPEAKS  
Regional Director  
Pacific Northwest Region  
Bureau of Indian Affairs  
U.S. Department of Interior

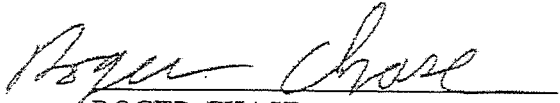
Dated: 7/01/2013

SHOSHONE-BANNOCK TRIBES

  
\_\_\_\_\_  
NATHAN SMALL  
Chairman Shoshone-Bannock Tribes

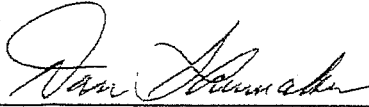
Dated: 7/5/13

STATE OF IDAHO

  
\_\_\_\_\_  
ROGER CHASE  
Chairman, Idaho Water Resource Board

Dated: 7-2-2013

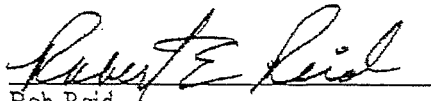
COMMITTEE OF NINE OF WATER DISTRICT 01



DAN SHEWMAKER  
Chairman, Committee of Nine

Dated: 07-02-2013

BASIN 27 ADVISORY BOARD  
OF WATER DISTRICT 27



Bob Reid  
Chairman, Basin 27 Advisory Board

Dated: 7-10-13

## ATTACHMENT G

### BLACKFOOT RIVER WATER MANAGEMENT PLAN PURSUANT TO THE 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT

**BLACKFOOT RIVER WATER MANAGEMENT  
PLAN PURSUANT TO  
THE 1990 FORT HALL INDIAN WATER RIGHTS  
AGREEMENT**

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**BLACKFOOT RIVER WATER MANAGEMENT PLAN PURSUANT TO  
THE 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT**

This Blackfoot River Water Management Plan is developed pursuant to the *1990 Fort Hall Indian Water Rights Agreement* and constitutes an agreed upon plan and program by and between the Shoshone-Bannock Tribes of the Fort Hall Reservation, the State of Idaho, the United States, the Committee of Nine and Water District 27, as represented by the Advisory Committee described in Idaho Code § 42-605(6), for implementation of effective water management in the Blackfoot River Basin. It is made in reference to the following facts.

**RECITALS**

**WHEREAS,**

A. On July 5, 1990, the Shoshone-Bannock Tribes, the State of Idaho, the United States, and certain Idaho Water Users entered into an agreement to settle the water rights claimed by the United States for the benefit of the Shoshone-Bannock Tribes. This Agreement, known as the 1990 Fort Hall Indian Water Rights Agreement, was approved by the legislative branches of these three governments, and on November 16, 1990, the United States Congress enacted Pub. L. 101-602, the Fort Hall Indian Water Rights Settlement Act of 1990.

B. On August 2, 1995, the Presiding Judge of the Snake River Basin Adjudication entered an Order approving the Fort Hall Agreement and decreeing water rights to the United States for the benefit of the Tribes. See Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River.

C. Article 7 of the Fort Hall Agreement and Section II of the Court's Order recognized the Shoshone-Bannock Tribes' right to use water from the Blackfoot River system and Grays Lake.

D. Subsection 8.3 and the Attachment to the Fort Hall Agreement titled "Blackfoot River Water Management Plan, Statement of Purposes, April 20, 1990" provided for the development of a Blackfoot River Water Management Plan.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**1. Purposes**

This Blackfoot River Water Management Plan establishes a comprehensive program to facilitate efficient and accurate measurement and regulation of Basin 27 diversions, to promote transmission of data amongst the Parties, and to develop a computer accounting program that determines the amount of natural flow available to water users on the Blackfoot River.<sup>1</sup>

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<sup>1</sup> This Plan does not address purposes 3-5 or 7-8 of the Blackfoot River Water Management Plan Statement of Purposes dated April 20, 1990 attached to the 1990 Fort Hall Indian Water Rights Agreement. Purposes 4, 5 and 8 of the Attachment pertain to Grays Lake and will be addressed in a future amendment to this Plan. Purposes 3 and 7

Figures 1 and 2 are included at the end of this document to aid the reader with understanding and implementing this Plan. The Figures are included for illustrative purposes and the text of the Plan takes precedence over any discrepancy between the text and the Figures.

## 2. Definitions

The following definitions apply for purposes of this Plan:

- a) "Agreement" means the "Blackfoot River Equitable Adjustment Settlement Agreement" entered into by the Tribes, the United States, the State, the Basin 27 Water Users and the Committee of Nine.
- b) "Basin 27 Water Users" mean persons diverting Natural Flow from the Blackfoot River Basin under water rights listed on Attachment E to the Consent Decree and under *de minimis* domestic and stock water rights with a priority date earlier than January 1, 1990. "Basin 27 Water Users" includes the Miners Ditch water bypassed as mitigation for water right no. 27-7577 in the name of the City of Blackfoot.<sup>2</sup>
- c) "Basin 27 Primary Volume" is the cumulative annual volume of Blackfoot River Basin Natural Flows diverted by the Basin 27 Water Users during the irrigation season as a direct result of being allowed to divert Blackfoot River Basin Natural Flows ahead of the Tribes as provided by the Fort Hall Agreement and described in water right 27-11375.<sup>3</sup> The calculation of the Basin 27 Primary Volume is described in Section 4.i) of this Plan.
- d) "Committee of Nine" means the advisory committee of Water District 01 and any successor thereto.
- e) "*De minimis* domestic water right" for purposes of this Plan means (a) the use of water for homes, organization camps, public campgrounds, livestock and for any purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen (13,000) gallons per day, or 14.5 acre-feet per year or less for storage, or (b) and other uses, if the total use does not exceed a diversion rate of four one-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day. Domestic rights shall not include water for multiple ownership subdivisions, mobile home

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pertain to the internal operations of the Fort Hall Irrigation Project and will be addressed in a separate agreement between the Tribes and the United States.

<sup>2</sup> All or part of 16 water rights may be diverted into the Miners Ditch, none of which are in the name of Miners Ditch nor do they include any designation they are to be bypassed for mitigation purposes. Those 16 water rights are: 27-3G, 27-17, 27-20A, 27-20B, 27-22A, 27-23E, 27-35A, 27-10296, 27-10341, 27-10344, 27-10505, 27-10756, 27-10790, 27-10999, 27-11117, 27-11940.

<sup>3</sup> *De minimis* domestic or stock water rights diverting Blackfoot River Natural Flow with a priority date earlier than January 1, 1990 do not count toward Basin 27 Primary Volume. *Order on January 31, 2012 Joint Status Report Re: Motion for Accounting* ("[D]e minimis domestic and stock use rights will not be counted toward the 45,000 acre-feet per year estimate from the Blackfoot River contained in Paragraph 27-11375x.d of the Fort Hall Consent Decree.")

parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitation set forth in (b) above.

- f) “*De minimis* stock water right” for purposes of this Plan means the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day or 14.5 acre-feet per year or less for storage.
- g) “Director” means the Director of the Idaho Department of Water Resources, or any successor.
- h) “Equitable Adjustment Water” is a supplemental water supply provided to the Tribes for the purpose of protecting water right no. 27-11375 if the Basin 27 Primary Volume exceeds 45,000 ac-ft per year and all available credits, consistent with the terms of the Agreement.
- i) “Fort Hall Agreement” means the 1990 Fort Hall Indian Water Rights Agreement executed by the Shoshone-Bannock Tribes of the Fort Hall Reservation, the State, the United States, and the Committee of Nine.
- j) “Intergovernmental Board” means the three-member Intergovernmental Board established in Article 9 of the Fort Hall Agreement.
- k) “IDWR” or the “Idaho Department of Water Resources” means the executive agency of the State of Idaho created by Idaho Code § 42-1701, or any successor agency.
- l) “Measuring Device Order” means the *Order Requiring Measuring Devices and Controlling Works on the Blackfoot River, Water District 27* entered on April 18, 2008 by IDWR, and subsequent amendments thereto. A true and correct copy of the Measuring Device Order is attached for informational purposes as Attachment I.
- m) “Measuring Device Standards” means the IDWR document entitled “*Minimum Acceptable Standards for Open Channel and Closed Conduit Measuring Devices*” and subsequent amendments thereto. A true and correct copy is attached for informational purposes as Attachment II.
- n) “Natural Flow” means the natural flow of the Blackfoot River Basin that is available for diversion as referred to in section x.d of water right 27-11375 and as specifically defined and calculated in this Plan. When the term “natural flow” is used in this Plan rather than “Natural Flow” the classic meaning of natural flow is intended as illustrated in Section 4.k) of this Plan.
- o) “Parties” means the Tribes, the United States, the State, the Basin 27 Water Users, and the Committee of Nine of Water District 01.

- p) "Plan" means this Blackfoot River Water Management Plan.
- q) "SRBA District Court" means the District Court of the Fifth Judicial District, State of Idaho, in and for the County of Twin Falls that is assigned Civil Case No. 39576.
- r) "State" means the State of Idaho, admitted to the Union on July 3, 1890.
- s) "Supplemental Equitable Adjustment Water" is an additional supplemental water supply provided to the Tribes for the purpose of protecting and satisfying water right No. 27-11375 if the Basin 27 Primary Volume exceeds 45,000 acre-feet per year, all available credits provided for under paragraph 1 of the Agreement and all Equitable Adjustment Water provided for under paragraph 2 of the Agreement.
- t) "Tribes" or "Tribal" means the Shoshone-Bannock Tribes of the Fort Hall 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.
- u) "United States" means the United States of America acting through the United States Department of the Interior, Bureau of Indian Affairs.
- v) "Water District 01" means the instrumentality created by the Director of the IDWR pursuant to Idaho Code § 42-604 (1992) and any successor thereto.
- w) "Water District 27" means the water district designated by the Director of IDWR pursuant to Idaho Code § 42-604 (1992) for the distribution of water in the Blackfoot River Basin and any successor thereto.
- x) "Watermaster" means the person elected by Water District 27 and appointed by the Director of IDWR to distribute water within Water District 27.

### 3. Measurement Program

- a) Improvement Program.  
The Parties shall undertake an on-going program to improve water measurement and delivery throughout the Blackfoot River Basin. IDWR issued the Measuring Device Order in 2008, which required natural flow water users on the Blackfoot River to install and maintain lockable headgates and adequate measuring devices in accordance with the Measuring Device Standards prior to any delivery of water to the water user beginning in 2010. The Watermaster will determine, on a case-by-case basis, the specific improvements needed to facilitate efficient and accurate measurements at each point of diversion within Basin 27 in accordance with the Measuring Device Order. The owner of a point of diversion is responsible for any costs associated with installation and maintenance of lockable headgates and measuring devices and is also responsible for ensuring that the

point of diversion remains in compliance with the Measuring Device Order in the future.

b) Regulation of Basin 27 Points of Diversion.

The Watermaster will regulate Basin 27 points of diversion according to the following guidelines. The frequency and method of regulation for each point of diversion is determined by its flow rate and location. All diversion measurement sites shall be located as close as possible to the point of diversion consistent with the Measuring Device Standards.

i) Continuous Monitoring.

The Watermaster shall monitor the following points of diversion through the use of sensors and continuous data-logging equipment:

- A) Smith-Maxwell diversion,
- B) Riverton diversion,
- C) Stevens diversion,
- D) Central diversion,
- E) Miners / Younie Blackfoot River pump diversion,
- F) Miners ground water well diversion(s),
- G) Little Butte diversion,
- H) Eastern Idaho / Blackfoot Slough diversion,
- I) Just Ditch diversion,
- J) Sand Creek Ditch diversion - not included in Basin 27 calculations.

ii) Installation and maintenance responsibility.

The owners of the diversions described in subdivision 3.b)i) are responsible for maintaining the headgates and measurement sections of their respective ditches. Water District 27 shall install and maintain sensors and continuous data-logging equipment at each site identified.

iii) Pumps.

Some natural flow water users divert water from the Blackfoot River or its tributaries through the use of pumps. Water users who use pumps are required to install an adequate measuring device on each pump in accordance with the Measuring Device Order. The Watermaster shall record and report pump diversions at a minimum frequency of once per two weeks.

iv) Non-Continuous Monitoring.

The Watermaster shall monitor and measure manually all other Basin 27 points of diversion. Measurements shall be performed using consistent and accurate methods. All active points of diversion shall be measured at a minimum of once every two weeks. Small variances from this minimum measurement frequency are acceptable if unusual or unique circumstances arise in spite of the Watermaster's best efforts. Non-functional, inactive points of diversion shall be periodically monitored to verify the inactive

status. Daily diversion flow rates shall be determined based on a linear interpolation between manual measurements, unless reliable information sources indicate that another methodology is more appropriate. Diversion data shall be reported on a weekly basis.

v) Rating curves.

Rating curves shall be established and maintained for all sites that utilize water stage data for the estimation of flow rates. Once the rating curve for a site has been established, flow rate and stage measurements will continue to be collected by the Watermaster at least once per month from April to October. Adjustments to the rating curves and shifts in the rating curve relationships will be applied by the Watermaster as appropriate.

c) Regulation of Tribal Points of Diversion.

The Tribes and United States shall monitor the Fort Hall Main Canal, the Fort Hall North Canal, and the Fort Hall Little Indian Canal through the use of sensors and continuous data-logging equipment. The United States and Tribes shall be responsible for maintenance of their respective sensors, data-logging equipment, and gage houses, and shall comply with all measurement and reporting standards provided under Section 3.b). Copies of the measured flow rate data shall be sent to Water District 27 on a weekly basis.

d) Blackfoot River Basin Stream Gaging.

This subdivision identifies those gaging sites and the minimum operation standards that shall constitute the Blackfoot River stream gage system, which will be used to determine the amount of natural flow and storage flow in the Blackfoot River. The description for each gaging site includes six parts. The first part identifies the name of the site. The second part provides the general location of the site in latitude and longitude (NAD 83). The third part describes the period of the year when monitoring data is collected and reported. Small variances from the specified period of the year are acceptable if unusual or unique circumstances arise in spite of the responsible entity's best efforts. The fourth part identifies the operator of the site. The fifth part identifies the entity or entities responsible for the site. Site responsibilities shall include purchase and replacement of measurement equipment, equipment installation, maintenance of equipment and gage houses, and annual operating costs, including rating curve data collection, data processing, and data transmission. The sixth part describes the stream gage type at each site where continuous indicates the use of electronic sensor equipment that has the ability to transmit real-time data to a common data repository, or a gage type as described below. The stream gages are as follows:

- i)      Name:                      Clarks Cut  
          Location:                Lat 43° 00' 20"    Long 111° 29' 37"  
          Monitoring Season:    April through October when Grays Lake water is

- being transported to Blackfoot Reservoir.
- Operator: USGS (Station #13057300)
  - Responsible Entity: United States
  - Gage type: Continuous
  - ii) Name: Blackfoot River near Henry
  - Location: Lat 42° 48' 55" Long 111° 30' 24"
  - Monitoring Season: April through October when irrigation diversions are occurring in Basin 27.
  - Operator: USGS (Station #13063000)
  - Responsible Entity: U.S. Department of the Interior,  
Bureau of Land Management
  - Gage type: Continuous
  - iii) Name: Blackfoot Reservoir Gage
  - Location: Lat 43° 00' 20" Long 111° 43' 00"
  - Monitoring Season: Year round
  - Operator: Idaho Power Company
  - Responsible Entity: Tribes
  - Gage type: Continuous
  - iv) Name: Blackfoot River at Rocky Ford
  - Location: Lat 43° 00' 05" Long 111° 43' 45"
  - Monitoring Season: Year round
  - Operator: Idaho Power Company
  - Responsible Entity: Tribes
  - Gage type: Continuous
  - v) Name: Blackfoot River near Shelley
  - Location: Lat 43° 15' 46" Long 112° 02' 52"
  - Monitoring Season: Year round
  - Operator: USGS (Station #13066000)
  - Responsible Entity: IDWR
  - Gage type: Continuous
  - vi) Name: Blackfoot River at Rich Lane
  - Location: Lat 43° 11' 27" Long 112° 13' 39"
  - Monitoring Season: April through October when irrigation diversions are occurring in Basin 27.
  - Operator: Tribes
  - Responsible Entity: Tribes
  - Gage type: Continuous
  - vii) Name: Blackfoot River below Fort Hall North
  - Location: Lat 43° 10' 06" Long 112° 20' 05"  
Upstream of Corbett Slough Inflow
  - Monitoring Season: April through October when irrigation diversions

- are occurring in Basin 27.
- Operator: USGS (Station #13068300)  
 Responsible Entity: United States  
 Gage type: Continuous
- viii) Name: Blackfoot River Bypass  
 Location: Lat 43° 10' 15" Long 112° 23' 16"  
 Monitoring Season: Year round  
 Operator: USGS (Station #13068495)  
 Responsible Entity: IDWR  
 Gage type: Continuous
- ix) Name: Blackfoot River near Blackfoot  
 Location: Lat 43° 07' 50" Long 112° 28' 36"  
 Monitoring Season: Year round  
 Operator: USGS (Station #13068500)  
 Responsible Entity: IDWR  
 Gage type: Continuous
- x) Name: Meadow Creek near Reservoir  
 Location: Lat 42° 55' 29" Long 111° 30' 53"  
 Monitoring Season: April through October when irrigation diversions  
 are occurring in Basin 27.  
 Operator: Water District 27  
 Responsible Entity: Water District 27  
 Gage type: No equipment; manual flow measurements, once  
 every 2 weeks
- xi) Name: Little Blackfoot River near Reservoir  
 Location: Lat 42° 54' 34" Long 111° 31' 53"  
 Monitoring Season: April through October when irrigation diversions  
 are occurring in Basin 27.  
 Operator: Water District 27  
 Responsible Entity: Water District 27  
 Gage type: No equipment; manual flow measurements, once  
 every 2 weeks
- xii) Name: Corbett Slough near Blackfoot River  
 Location: Lat 43° 10' 23" Long 112° 20' 13"  
 Monitoring Season: April through October when irrigation diversions  
 are occurring in Basin 27.  
 Operator: Water District 27  
 Responsible Entity: Water District 27  
 Gage type: Sensor and datalogger only; no real-time data  
 transmittal; site should be operated under the  
 policies provided in 3.b).

- xiii) Name: Idaho Canal near Blackfoot River<sup>4</sup>
  - Location: Lat 43° 15' 26" Long 112° 08' 42"
  - Monitoring Season: April through October when irrigation diversions are occurring in Basin 27.
  - Operator: Water District 27
  - Responsible Entity: Water District 27
  - Gage type: Sensor and datalogger only; no real-time data transmittal; site should be operated under the policies provided in 3.b).
- xiv) Name: Sand Creek at Wolverine Road
  - Location: Lat 43° 16' 58" Long 112° 09' 36"
  - Monitoring Season: April through October when irrigation diversions are occurring in Basin 27.
  - Operator: Water District 01 (Station #13064500)
  - Responsible Entity: Water District 01
  - Gage type: Continuous
- xv) Name: Reservation Canal at Head
  - Location: Lat 43° 22' 24" Long 112° 09' 14"
  - Monitoring Season: April through October when irrigation diversions from the Snake River are occurring.
  - Operator: Water District 01 (Station #13060500)
  - Responsible Entity: Water District 01
  - Gage type: Continuous
- xvi) Name: Reservation Canal at Drop
  - Location: Lat 43° 14' 37" Long 112° 11' 04"
  - Monitoring Season: April through October when irrigation diversions are occurring in Basin 27 or from the Snake River.
  - Operator: Water District 01 (Station #13065500)
  - Responsible Entity: Water District 01
  - Gage type: Continuous

- e) Changes to Stream Gage System.  
Changes to any of the elements set forth in Section 3.d) shall be subject to review by the Parties. If any of the Parties have concerns that the quality of the gaging program will be affected by the changes, the concerns will be brought to the Intergovernmental Board and subject to the dispute resolution provisions in Section 7 of this Plan. If any of the stream gages listed in Section 3.d) are not

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<sup>4</sup> This gage will be installed prior to the delivery of any injected flows through the Idaho Canal (IF<sub>IdahoCanal</sub>) for delivery to the Basin 27 Water Users or prior to delivery of any Equitable Adjustment Water through the Idaho Canal for Tribal use, whichever occurs first. The Watermaster will, from time to time, make observations and estimates of the discharge amount from the Idaho Canal into the Blackfoot River and record and report those observations in the Water District records and on the data sharing website.

providing data of sufficient quality or at a sufficient frequency to be useful for the purposes set forth in this Plan, any Party may request that the operation standards for the gage be upgraded, with any changes to be approved by the Intergovernmental Board.

f) Data Sharing.

All data collected under Section 3 shall be communicated by the Responsible Entities to a mutually agreed upon website. The data will be made available to the Responsible Entities and will be publicly available. The data shall be communicated at the same frequency at which the data are collected. The website shall contain all real-time stream gage data, Basin 27 and Tribal diversion data (both continuous and non-continuous sites), and elements of the accounting program specified in Section 4. The Director will instruct the Watermaster to, host, develop, and maintain the data sharing website as required in this Plan. See Appendix I for a list of all data contained on the data sharing website.

g) Gage Site Funding.

Each Responsible Entity listed in Section 3.d) shall have the responsibility of funding the installation, if a new site, and the operation of the gage site(s) to which it is assigned. Some of the funding required under this subdivision is contingent upon the appropriation of funds by the appropriate legislative entity. If funds are not available to establish, operate, and maintain a gage site, the Responsible Entity shall inform the other Responsible Entities as soon as possible, and the Responsible Entity shall make efforts to acquire or allocate funding for the site in the future.

#### 4. Accounting Program

a) Accounting program development and maintenance.

The Watermaster, with approval of the Intergovernmental Board, shall develop and maintain a computer accounting program, as required in this plan, that quantifies the amount of natural flow available to water users on the Blackfoot River, the amount of storage water released from the Blackfoot Reservoir, the amount of water imported from Grays Lake, the amount of Snake River water injected into the Blackfoot River, the amount of water diverted from the Blackfoot River and its tributaries, and the Sand Creek Exchange. Once developed and approved, any subsequent changes to calculations and methods employed in the accounting program will require approval of the Intergovernmental Board.

b) Available Flow Calculations.

The accounting program shall calculate the amount of Blackfoot River natural flow available for diversion within the Blackfoot River basin. The accounting program shall also calculate the portion of natural flow that is available for diversion as Natural Flow by Basin 27 Water Users. These natural flow calculations do not provide the true theoretical undepleted flow, but rather the

actual direct flow that is available for diversion by water users at each location including the natural and storage flows from the Blackfoot River that are available for use by the Tribes and the United States. The accounting program calculations of natural flow shall always include calculation of Natural Flow and shall be made for each of the following locations using the equations specified.

The following data symbols are used in this Plan:

IF = amount of Snake River water ordered by the Basin 27 Water Users and injected into the Blackfoot River for their use, calculated as the lesser of the water amount reported to the Watermaster for delivery and the measured amount of water actually being injected

NF = Blackfoot River Basin Natural Flows available for Basin 27 Water User diversion

TSF = Tribal storage flows released from Blackfoot Reservoir that are dedicated for diversion by the Tribes, which may be comprised of storage flow or Blackfoot River natural flow accruing to the Blackfoot River above Blackfoot Dam, or both.

TNF = Tribal natural flows accruing to the Blackfoot River below Blackfoot Dam that are not requested for use by Basin 27 Water Users, and are available for diversion by the Tribes

TS = total Tribal water supply, calculated as the sum of the natural flow (TNF) and storage flow (TSF) supplies from the Blackfoot River system

TSR = Tribal water supply from the Snake River and Sand Creek diverted through the Reservation Canal as measured at the Drop

NISF = non-Indian storage flows released from Blackfoot Reservoir for use by the non-Indian portion of the Fort Hall Irrigation Project under water rights 27-11561 and 25-13615

NISR = non-Indian water supply from the Snake River and Sand Creek diverted for use by the non-Indian portion of the Fort Hall Irrigation Project pursuant to their 1891 Snake River water right (01-10248) and their 1914 Sand Creek water right (27-11560)

RFT<sub>BelowNorth</sub> = Total required flow at the Blackfoot River below Fort Hall North gage site as set forth in Section 4.g)v) below

Q = measured or estimated flow data

Q<sub>BigBlackfoot</sub> = Blackfoot River near Henry

Q<sub>MeadowCk</sub> = Meadow Creek near Reservoir

Q<sub>ClarksCut</sub> = Clarks Cut (Grays Lake Diversion)

$Q_{LBR}$  = Little Blackfoot River near Reservoir  
 $Q_{RockyFord}$  = Blackfoot River at Rocky Ford  
 $Q_{Shelley}$  = Blackfoot River near Shelley  
 $Q_{Additional}$  = Estimated non-measured inflows to Blackfoot Reservoir  
 $Q_{Available}$  = Basin 27 natural flow  
 $V_{Available}$  = Cumulative annual volume of natural flow for an irrigation season  
 $Q_{RichLane}$  = Blackfoot River at Rich Lane  
 $Q_{Drop}$  = Reservation Canal at Drop  
 $Q_{BelowNorth}$  = Blackfoot River below Fort Hall North Canal  
 $Q_{SandCreek}$  = Sand Creek at Wolverine Road  
 $Q_{End}$  = Blackfoot River near Blackfoot  
 $Q_{Bypass}$  = Blackfoot River Bypass  
 $D_{MainCanal}$  = Fort Hall Main Canal diversion  
 $D_{NorthCanal}$  = Fort Hall North Canal diversion  
 $D_{SandCreek}$  = Sand Creek Ditch diversion  
 $D_{MinersWell}$  = Miners ground water diversion(s) to be mitigated by Blackfoot River Natural Flow  
 $D_{LittleIndian}$  = Fort Hall Little Indian Canal diversion  
 $D_{LittleButte}$  = Little Butte Canal diversion of Blackfoot River Natural Flow  
 $D_{ShelleytoRichLane}$  = total Blackfoot River reach gain / loss (loss is positive, gain is negative) between the Shelley and Rich Lane gage sites, including diversions by Basin 27 Water Users of Blackfoot River Natural Flow  
 $D_{ShelleytoBelowNorth}$  = total Blackfoot River reach gain / loss (loss is positive, gain is negative) between the Shelley and below Fort Hall North gage sites, including diversion by Basin 27 Water Users of Blackfoot River Natural Flow  
 $IF_{ResCanal}$  = Net inflows intentionally ordered from the Reservation Canal for use by Basin 27 Water Users.  
 $IF_{IdahoCanal}$  = Net inflows intentionally ordered from the Idaho Canal for use by Basin 27 Water Users.  
 $IF_{CorbettSlough}$  = Net inflows intentionally ordered to be delivered through the Corbett Slough channel for use by Basin 27 Water Users.  
 $DIF_{Used}$  = Diverted flow that had been intentionally injected (IF) for use by entitled Basin 27 Water Users.

i) Blackfoot River at Blackfoot Dam:

$$Q_{IntoReservoir} = Q_{BigBlackfoot} + Q_{LBR} + ((Q_{MeadowCk} - Q_{ClarksCut}) \geq 0) + Q_{Additional}$$

Total Grays Lake imported water in acre-feet equals the sum of all  $Q_{ClarksCut}$  daily values multiplied by 1.9835.

ii) Blackfoot River at Rocky Ford:

$NF_{RockyFord}$  is equal to the amount of Natural Flow requested for discharge by the Watermaster to satisfy the Basin 27 Water User diversion demands below Blackfoot Reservoir, see 4.e) below. The maximum amount that can be requested by the Watermaster is  $Q_{IntoReservoir}$ .

$NISF_{RockyFord}$  is equal to the amount of Blackfoot Reservoir and/or Grays Lake storage requested for release by the non-Indian portion of the Fort Hall Irrigation Project, as described in item 4.b)v) below.

$$TSF_{RockyFord} = Q_{RockyFord} - NF_{RockyFord} - NISF_{RockyFord}$$

iii) Blackfoot River near Shelley:

$TSF_{Shelley} = TSF_{RockyFord}$  for previous day (1 day time lag)

$NISF_{Shelley} = NISF_{RockyFord}$  for previous day (1 day time lag)

$$D_{ShelleytoRichLane} = Q_{Shelley} + Q_{Drop} + IF_{IdahoCanal} - D_{LittleIndian} - Q_{RichLane} - DIF_{UsedRichLaneToRockyFord} - DIF_{UsedAboveReservoir} \text{ for previous day (1 day time lag)}$$

$$RF_{BelowShelley} = D_{ShelleytoRichLane} + D_{LittleButte} + RF_{BelowNorth}$$

( $RF_{BelowNorth}$  is defined in Section 4.g)i))

$$NF_{Shelley} = Q_{Shelley} - TSF_{Shelley} - NISF_{Shelley}$$

$$NF_{BelowShelley} = \text{lesser of } NF_{Shelley} \text{ and } RF_{BelowShelley}$$

$$TNF_{Shelley} = NF_{Shelley} - NF_{BelowShelley}$$

$$TS_{Shelley} = TNF_{Shelley} + TSF_{Shelley}$$

iv) Blackfoot River at Rich Lane:

$$NISF_{RichLane} = NISF_{Shelley}$$

$$NF_{RichLane} = NF_{BelowShelley} - D_{ShelleytoRichLane}$$

$$TS_{RichLane} = TS_{Shelley} - D_{LittleIndian}$$

$$TNF_{RichLane} = (TNF_{Shelley} - D_{LittleIndian}) \geq 0$$

(if greater than zero,  $TNF_{RichLane} = 0$  otherwise)

$$TSF_{RichLane} = TS_{RichLane} - TNF_{RichLane}$$

v) Rocky Ford flows.

The measured flows at Rocky Ford, below the outlet of Blackfoot Reservoir, can consist of four distinct streams of water: (1) Blackfoot River Natural Flows requested to be discharged by the Watermaster to satisfy Basin 27 Water User demands, (2) storage releases from Blackfoot Reservoir and/or Grays Lake for non-Indian users in the Fort Hall Irrigation Project, (3) storage releases from Blackfoot Reservoir and/or Grays Lake (or natural flows passing through the Reservoir) for diversion under the Tribes' Blackfoot River water

rights, and (4) water spilled or released in excess of the downstream demands and in excess of water that can be stored in Blackfoot Reservoir. The Watermaster shall account for these separate streams based on the reported flow at the Rocky Ford gage. The Fort Hall Irrigation Project will inform the Watermaster how the storage releases should be allocated between (2) and (3).

vi) Unmeasured Blackfoot Reservoir gain.

At the present time, additional spring and tributary inflows to the Blackfoot Reservoir ( $Q_{\text{Additional}}$ ) are estimated as 35 cfs of continuous flow. The Parties agree that the estimate of  $Q_{\text{Additional}}$  will be revised 5 years after the date that all of the Upper Basin gage sites become operational, or earlier if the Parties agree. The revised estimate of  $Q_{\text{Additional}}$  will be calculated for each month based on the water balance of Blackfoot Reservoir using the most current 5 years of data.

vii) Natural flow accuracy.

The accuracy and reliability of the above natural flow calculations shall be checked once per year by the Watermaster, who shall recommend adjustments as appropriate. These adjustments to the above natural flow calculations can be made following approval by the Intergovernmental Board.

c) Accounting updates.

The accounting will be updated throughout the irrigation season as data are collected. Revised estimates of natural flow should be updated once per week following the collection of diversion data. Weekly accounting data posted by the Watermaster to the data-sharing website shall indicate the forecasted natural and storage flows for the week following, to be used by water users for scheduling deliveries until new accounting data are posted. Accounting data that is obtained from outside sources such as the USGS will be considered final for purposes of the accounting program as of October 31 of each irrigation season, even if the data are considered "preliminary" by the data collection entity. The natural flow estimates for each of the specified locations will be posted to the data sharing website.

d) Flow allocation.

Based on water rights, priority dates, provision x.d of water right 27-11375 and available water supply, the Watermaster shall assign the amount of allowable diversion for each Basin 27 Water User's point of diversion. The allowable diversion shall be updated weekly and posted to the data sharing website. In addition to storage releases and Snake River/Sand Creek water, the allowable diversion by the Tribes and United States on behalf of the Tribes shall include all natural flows not identified by the Watermaster for the Basin 27 Water Users' allowable diversions.

- i) Administration for storage.

Priority administration of water rights in Basin 27 includes administration with regard to the September 3, 1907 priority date of Blackfoot Reservoir during the storage season. The end of the storage season for Blackfoot Reservoir is identified by the maximum physical fill or the release of flood control flows. During the storage season the Watermaster can request the discharge of natural flow past Blackfoot Dam to meet the needs of any downstream Basin 27 Water User's water rights, as described in Section 4.e), senior to September 3, 1907 and will administer junior water rights to protect the Blackfoot Reservoir storage right.
- ii) Storage fill.

For purposes of this Plan, Blackfoot Reservoir maximum physical storage for the irrigation season will be determined by three (3) consecutive days of storage decline after April 1 of each year. As gaging of reservoir storage and stream flows improves in Basin 27, this method of determining maximum physical storage may need to be modified. Modifications of the Plan are described in Section 7.
- iii) Begin storage.

The beginning of the storage season for Blackfoot Reservoir is the day all Fort Hall Canals are turned off for the irrigation season.
- iv) Storage season.

The term "storage season" as used in these paragraphs 4.d)i) through 4.d)iv) is solely for the purpose of administering junior water rights and does not change the authorized storage season of 1/1 through 12/31 of water right 27-2007.
- e) Blackfoot Dam discharge.

The Watermaster shall inform the Tribes and United States, as part of the weekly accounting report or as needed, of the necessary Natural Flows to be discharged below Blackfoot Dam to satisfy downstream Basin 27 Water User diversions. The Basin 27 Water User diversion requests shall not exceed the natural flow calculated as inflows to the Blackfoot Reservoir, and shall account for tributary inflows below Blackfoot Dam and Snake River inflows (from the Idaho Canal, Reservation Canal, and Corbett Slough) to the extent possible. The Tribes and United States on behalf of the Tribes will have the right to store or otherwise use any available natural flows upstream of Blackfoot Dam, which are not requested by the Watermaster or used by the Basin 27 Water Users above the Blackfoot Reservoir, according to the terms of their water rights. The Tribes and United States shall not be required to discharge any water from the Blackfoot Reservoir for Basin 27 Water Users during the non-irrigation season, November 1 – March 31.

- f) Formula for Blackfoot Dam discharge.  
The Parties agree to develop a formula to assist the Watermaster in determining the necessary discharges from the Blackfoot Dam. Necessary discharges refer to the natural inflow passing through the Blackfoot Reservoir for which the Basin 27 Water Users have a right on any given day. The formula will be incorporated in the accounting program and will establish a relationship between the Natural Flow request from the Blackfoot Dam and the diversion demands of the downstream Basin 27 Water Users.
- i) Formula guidelines.  
The formula to be developed shall be based on the following guidelines for determining Basin 27 Water User discharge requests from the Blackfoot Dam. These guidelines provide the general framework within which a more detailed formula is to be developed.
1. Estimate natural gains and/or losses to the Blackfoot River downstream of Blackfoot Dam. These natural gains and/or losses shall consist of reliable inflows that are likely to be sustained for the subsequent week.
  2. Estimate all Basin 27 Water User diversion demands located below Blackfoot Dam, including main-stem Blackfoot River demands above the Shelley gage site and all Basin 27 Water User demands located below the Shelley gage site.
  3. Determine whether a Basin 27 Water User discharge request is necessary from Blackfoot Dam. If the estimated natural flow supply below Blackfoot Dam is greater than the estimated Basin 27 Water User diversion demands located below Blackfoot Dam, then no Basin 27 Water User discharge request from Blackfoot Dam is necessary. If the estimated natural flow supply is less than the estimated Basin 27 Water User demands, then some Natural Flow deficit exists and some amount of Basin 27 Water User discharge request is likely needed.
  4. Determine the Basin 27 Water User discharge request by comparing the Natural Flow deficit below Blackfoot Dam to the available natural flow supply entering into Blackfoot Reservoir. The Basin 27 Water User discharge request shall be calculated as the lesser of: (1) the natural flows entering into Blackfoot Reservoir ( $Q_{\text{IntoReservoir}}$ ) and (2) the Natural Flow deficit below Blackfoot Dam calculated in Step 4.f)ii) below.

ii) Interim formula.

Until the formula is developed, the Basin 27 Water User discharge requests below Blackfoot Dam shall be based upon the following interim formula:

$$NF_{\text{RockyFord}} = RF_{\text{BelowShelley}} - (Q_{\text{Shelley}} - Q_{\text{RockyFord}} \text{ (for previous day (1 day time lag))}) \pm \text{Diversion Change Requests}$$

$$\text{Provided } NF_{\text{RockyFord}} \leq Q_{\text{IntoReservoir}}$$

1. The Watermaster may use his discretion to determine if the results for a single day's data or an average of no more than 5 days will give the best results for calculating  $NF_{\text{RockyFord}}$ .

2. The Watermaster will verify that 90% of  $NF_{\text{RockyFord}}$  requested below Blackfoot Dam is diverted by the Basin 27 Water User(s) when the water is available at the water user(s) point(s) of diversion. For purposes of computing Basin 27 Primary Volume as described in Section 4.i) of this Plan, the water user(s) requesting additional water below Blackfoot Dam will be charged for no less than 90% of the water requested when available, whether the water is diverted or not, and these charges will be considered daily diversion volumes.

3. The Watermaster will verify that a Basin 27 Water User(s) reducing or ending their diversion(s) has requested a diversion reduction. For purposes of computing Basin 27 Primary Volume as described in Section 4.i) of this Plan, if the water user(s) reducing or ending their diversion(s) did not request the change, and water for diversion is available at their point(s) of diversion, then that water user(s) shall continue to be charged at the rate of diversion prior to the reduction or turn off and these charges will be considered daily diversion volumes.

g) Flow below Fort Hall North Gage.

The Watermaster shall direct the Tribes and United States in advance to maintain a flow rate at the Blackfoot River below Fort Hall North gage site that is greater than or equal to the Basin 27 Water User diversion demands located downstream of the gage site. The equations set forth are based upon the Blackfoot River below Fort Hall North gage site's location upstream of the Corbett Slough inflow into the Blackfoot River.

i) Required flow.

The required flow rate represents the flow rate requested by the Watermaster to satisfy Basin 27 Water User diversion demands for Blackfoot River Natural Flow located downstream of the below Fort Hall North gage site, based on the available flow supply for the Basin

27 Water Users. The required flow rate (RF) shall be calculated as follows:

$$RF_{\text{BelowNorth}} = C_{\text{Loss}}(D_{\text{BelowNorth}}) \leq (NF_{\text{Shelley}} - D_{\text{ShelleytoBelowNorth}})$$

$C_{\text{Loss}}$  = conveyance loss coefficient to account for natural river losses and gains occurring between Blackfoot River below Fort Hall North gage site and the most downstream Basin 27 Water User diversion.

$D_{\text{BelowNorth}}$  = valid Basin 27 Water User diversion demands for Blackfoot River Natural Flow downstream of the Blackfoot River below Fort Hall North gage site, estimated based on the previous five-day average diversions including Miners Ditch mitigation requirements ( $D_{\text{MinersWell}}$ ). Allowance shall be made for all  $IF_{\text{CorbettSlough}}$  injected flows, and those portions of  $IF_{\text{ResCanal}}$  and  $IF_{\text{IdahoCanal}}$  injected flows used to satisfy Basin 27 Water User demand downstream of the below Fort Hall North gage.

$$D_{\text{ShelleytoBelowNorth}} = D_{\text{ShelleytoRichLane}} + Q_{\text{RichLane}} - Q_{\text{BelowNorth}} - D_{\text{MainCanal}} - D_{\text{NorthCanal}} - D_{\text{IFUsedBelowNorthtoRichLane}}$$

ii) Conveyance loss.

The conveyance loss coefficient ( $C_{\text{Loss}}$ ) is not known at this time. The Parties agree to cooperatively develop an accurate estimate of  $C_{\text{Loss}}$  within 5 years of the date of the signature of this plan, which shall be approved by the Intergovernmental Board. In the interim, until a more accurate loss coefficient is developed,  $C_{\text{Loss}}$  shall be estimated as 1.1 and injected flows (IF) shall presume to be delivered without loss in this reach of the Blackfoot River. If the actual loss is determined to be larger than 10% ( $C_{\text{Loss}} > 1.1$ ) the injected flows shall be charged loss at the same rate as determined by  $C_{\text{Loss}}$ .

iii) Flow adjustment.

The Watermaster shall inform the Tribes and United States if the flow rate at the Blackfoot River below Fort Hall North gage site differs from the total required flow rate calculated in 4.g)v) below. The Tribes and United States will adjust the discharges below the Fort Hall North Canal within two days of the Watermaster's notice.

iv) Required flow limit.

The required flow rate at the Blackfoot River below Fort Hall North gage site is limited by the Natural Flow of the Blackfoot River available for use by the Basin 27 Water Users. The required flow rate shall not exceed the available Natural Flow calculated at Shelley gage less the Natural Flow diversions below Shelley to the below Fort Hall North gage site.

v) Total flow.

In addition to  $RF_{\text{BelowNorth}}$  the total discharge passing the Blackfoot River below Fort Hall North gage must include any portions of the  $IF_{\text{IdahoCanal}}$  and  $IF_{\text{ResCanal}}$  injected flows to be diverted and used downstream of the gage,  $IF_{\text{IdahoCanalBelowNorth}}$  and  $IF_{\text{ResCanalBelowNorth}}$ . Initially these injected flows will be presumed to be delivered without loss in the Blackfoot River. If improved measurement and accounting show either of these injected flows experience a 10% or greater loss from their respective point of injection to the below Fort Hall North gage, the water right accounting formulas shall be adjusted to charge these injected flows the actual loss they encounter as they are conveyed to the gage site. The total required flow (RFT) below the Fort Hall North gage shall be calculated as follows:

$$RFT_{\text{BelowNorth}} = RF_{\text{BelowNorth}} + IF_{\text{IdahoCanalBelowNorth}} + IF_{\text{ResCanalBelowNorth}}$$

vi) Make-up flow.

If there are times when the flow rate at the Blackfoot River below Fort Hall North gage is less than the total required flow rate due to over-diversion by the Fort Hall Irrigation Project system, the downstream ditches affected by the shortage shall be entitled to divert, in addition to their water rights, a volume of water equivalent to the volume of the shortage. Any make-up water requested by the Watermaster as part of  $RFT_{\text{BelowNorth}}$  must be requested and diverted within two weeks of the return of the total required flows and, except for the injected flows, will count against the Basin 27 Primary Volume described in Section 4.i).

h) Accounting for injected flows.

The Watermaster shall account for all Snake River injected flows into the Blackfoot River system that are intended for diversion by Basin 27 Water Users. This information shall be updated at least once per week and posted to the data sharing website. Snake River water that is injected into the Blackfoot River for use by specific Basin 27 Water Users (such as shareholders in Snake River canal companies) will be delivered to the appropriate diversions first, before any water is delivered under their Blackfoot River water rights. Deliveries of Snake River water to Basin 27 Water Users are limited to the lesser of the amount of water scheduled for delivery with the Watermaster and the measured flow that is actually injected into the Blackfoot River less any losses as determined above.

i) Basin 27 Primary Volume calculation.

The accounting program shall include equations to calculate the Basin 27 Primary Volume and the calculated value shall be updated weekly and posted to the data sharing website. The Basin 27 Primary Volume represents the cumulative volume

of water diverted by Basin 27 Water Users, located both upstream and downstream of Blackfoot Reservoir, during the irrigation season as a benefit and direct result of being allowed to divert water ahead of the Tribes, as described in the Tribes' Blackfoot River water right 27-11375. The Basin 27 Primary Volume shall be calculated as the sum of daily diversion volumes, for all Basin 27 Water User diversions upstream of the below Fort Hall North gage plus the  $RF_{\text{BelowNorth}}$  quantified as the lesser amount of the Watermaster request or the discharge measured at the below Fort Hall North gage, from the start of the irrigation season to the present day, excluding the following diversions:

- i) Exclude injected flows.  
Diversions of Snake River water intentionally injected into the Blackfoot River for Basin 27 Water User use, which shall be separately accounted for by the Watermaster.
  - ii) Exclude diversions when Fort Hall Canals are off.  
In priority diversions on days when all of the Fort Hall Canals are off and the requested reservoir discharges described in Section 4.e) are zero for the previous day.
  - iii) Exclude in priority diversions.  
Diversions occurring downstream of the Blackfoot Reservoir on days when the Tribes' Blackfoot River water right 27-11375 is delivered and satisfied to the extent of Tribal demand as the senior-most priority water right on the Blackfoot River and there are no discharges from the Blackfoot Dam, other than flood control, spill, or minimum flows, if any, for the previous day. This situation only occurs when  $NF_{\text{RockyFord}} = 0$  for the previous day and  $RF_{\text{BelowNorth}} = 0$  for the current day.
- j) Agreement implementation.  
The Agreement sets forth a procedure for use of credits, Equitable Adjustment Water and Supplemental Equitable Adjustment Water. When the Water District 27 accounting indicates the Basin 27 Primary Volume is approaching 45,000 ac-ft for the year, the Watermaster will post on the data sharing website notice of the use of credits and that the use of Equitable Adjustment Water and Supplemental Equitable Adjustment Water is about to begin. The Watermaster will allow use of the maximum credits, Equitable Adjustment Water, and Supplemental Equitable Adjustment Water provided by the Agreement. The amount of credit, Equitable Adjustment Water, and Supplemental Equitable Adjustment Water available to the Tribes for the current year will be determined in advance as provided by the Agreement. If the Primary Volume at any point during the irrigation season exceeds 45,000 ac-ft plus credit used, Equitable Adjustment Water used, and Supplemental Equitable Adjustment Water used then the provisions of paragraph x.d of water right 27-11375 shall be deemed satisfied for the year and all water rights shall be administered in priority.

k) Credit accrual.

At the end of each year in which the Basin 27 Primary Volume diversion is less than 45,000 ac-ft credit may be accrued as provided by the Agreement. The accrual of credits is computed as the lesser of  $V_{\text{Available}}$  (natural flow in ac-ft) or 45,000 ac-ft minus the Basin 27 Primary Volume diverted for the year. Where:

$$Q_{\text{Available}} = Q_{\text{RichLane}} - Q_{\text{Drop}} - I_{\text{IdahoCanal}} + Q_{\text{IntoReservoir}} (\text{for previous day}) - \\ NF_{\text{RockyFord}} (\text{for previous day}) + \text{Diversions above the Reservoir} (\text{for previous day}) + \\ \text{Diversions between Blackfoot Dam and the Rich Lane Gage} - TSF_{\text{RockyFord}} (\text{for previous day}) - NISF_{\text{RockyFord}} (\text{for previous day}) + D_{\text{LittleIndian}}$$

and is accumulated on a daily basis for the irrigation season from 4-1 to 11-1 as:

$$V_{\text{Available}} = \sum_{4-1}^{11-1} (Q_{\text{Available}} \times 1.9835) \text{ ac-ft}$$

l) Accounting for credit.

The accounting program will keep track of the accrual of credits calculated as described in paragraph k) above as well as the use and remaining balance of credits at all times as required by the Agreement. During periods of credit use the Watermaster will account for credit use on a daily basis and report credit use and the balance remaining on a weekly basis to the data sharing web site. The Watermaster will report the remaining credit balance as specified in the Agreement.

m) Accounting for Equitable Adjustment Water.

The accounting program will keep track of the accrual and use of Equitable Adjustment Water and Supplemental Equitable Adjustment Water at all times as specified in the Agreement. During periods of Equitable Adjustment Water and Supplemental Equitable Adjustment Water use the Watermaster will account for the Equitable Adjustment Water and Supplemental Equitable Adjustment Water use on a daily basis and report Equitable Adjustment Water and Supplemental Equitable Adjustment Water use and balance remaining on a weekly basis to the data sharing web site. The Watermaster will report the remaining Equitable Adjustment Water balance plus the annual accrual as specified in the Agreement.

n) Accounting for  $Q_{\text{Drop}}$ .

The accounting program will also keep a record of the allocation of the  $Q_{\text{Drop}}$  flows, a portion of which are needed to compute the Sand Creek exchange.  $Q_{\text{Drop}}$  is a measured discharge made up of up to 4 distinct streams of water: (1) Snake River natural flow diverted pursuant to the Tribes' 1867 Snake River water right, TSR less any Sand Creek water available to the Tribes. (2) Snake River natural flow diverted pursuant to the Fort Hall Irrigation Project 1891 Snake River water right, NISR less any Sand Creek water available to the non-Indian portion of the

Fort Hall Irrigation Project. (3) Sand Creek consisting of the measured discharge of Sand Creek at Wolverine Road less the amount of water diverted by the Sand Creek Ditch,  $Q_{\text{SandCreek}} - D_{\text{SandCreek}}$ . (4) Snake River injected flows,  $IF_{\text{ResCanal}}$ . The Fort Hall Irrigation Project will inform the Watermaster of the portion of  $Q_{\text{Drop}}$  that will be allocated to (1) and (2) giving due consideration that the sum of the 4 streams of water must equal  $Q_{\text{Drop}}$ .<sup>5</sup>

o) Water Rights.

IDWR and the Watermaster shall enforce all Basin 27 water rights in accordance with the elements of their rights, i.e., priority, period of use, and quantity, as listed in their partial and final decrees, and in accordance with the terms of the Agreement. On days when flood control flows are passing the Snake River near Milner gage and natural flow water is available in the Blackfoot River downstream of the Fort Hall North Canal and the requested reservoir discharges described in Section 4.e) are zero for the previous day, water rights will not be enforced for the diversions located downstream of the Fort Hall North Canal.

5. Sand Creek Exchange

a) Implementation.

The Parties agree to implement the Sand Creek Exchange as provided for in the Fort Hall Agreement and described in paragraph x.d of water right 01-10223. The measurements and equations necessary to implement the Sand Creek Exchange are available under the terms of this Plan.

b) Calculation method.

The volume of water credited to the Tribes under the Sand Creek Exchange will be calculated as an after-the-fact accounting procedure, and credited water may be diverted from the Snake River through the Reservation Canal at any time during the irrigation season. The exchange calculations and provision of credited water will be completed on a weekly basis and posted to the data sharing website referenced in Section 3.f). Exchange credits will not be carried over from year to year.

c) Exchange reset.

In those years in which Water District 01 resets all storage use accounts, water right volume limits, and exchange accounts to zero, including the Tribal volume limits, calculated at the Reservation Canal at the Drop gage, the Sand Creek Exchange account will also be reset to zero on the same date.

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<sup>5</sup> It is possible the Tribes or the non-Indian project water users could obtain storage from the Snake River for diversion through the Reservation Canal and the Drop for use on the Fort Hall Irrigation Project. Storage diversions could be substituted for or added to the streams (1) and (2) diversions without changing the allocation process described in n).

d) Calculations.

The daily volume of Sand Creek Exchange water shall be calculated based upon a comparison of the measured Sand Creek flows, the excess Blackfoot River flows below the Tribes' diversions, the Blackfoot River flows near the mouth, and the Tribes' diversion demands. The total annual volume of Sand Creek Exchange is limited to 50,000 acre-feet per year. The Sand Creek Exchange shall be calculated based on the following equations.

i) Excess flows bypassing the Tribes' diversions:

$$\begin{aligned} \text{Excess} &= (Q_{\text{BelowNorth}} - RFT_{\text{BelowNorth}} - (Q_{\text{SandCreek}} - D_{\text{SandCreek}}) \times 15\%) \\ &\geq 0 \\ &\text{Never less than 0.} \end{aligned}$$

ii) Diversion demands of the Fort Hall Main and North Canals:

$$\text{Tribal Demand} = (D_{\text{MainCanal}} + D_{\text{NorthCanal}}) - \text{NISF} - \text{NISR}$$

iii) Sand Creek flows available for exchange:

$$\text{Sand Creek} = (Q_{\text{SandCreek}} - D_{\text{SandCreek}}) \times 85\%$$

iv) Blackfoot River flows near the confluence with Snake River:

$$\text{Blackfoot River} = Q_{\text{End}} + Q_{\text{Bypass}} - D_{\text{MinersWell}} \text{ (accounting for 12-hour lag time)}$$

v) Sand Creek Exchange calculation:

$$\text{Exchange} = \text{lesser of (1) Excess, (2) Tribal Demand, (3) Sand Creek, or (4) Blackfoot River}$$

e) Review in 5 years.

The Sand Creek Exchange calculations shall be reconsidered within 5 years after implementation of the Sand Creek Exchange to validate the equations provided in Section 5.d) and to determine if changes are needed. The Parties agree to cooperatively develop any necessary changes to the calculations, and any consensus changes shall be approved by the Intergovernmental Board.

## 6. Equalizing Reservoir and Little Butte Canal

Due to the construction of the Equalizing Reservoir, the Little Butte Canal was asked to abandon its headgate on the Blackfoot River and begin to divert water out of the Equalizing Reservoir pool. Sedimentation in the Equalizing Reservoir can make it so that the Little Butte Canal is unable to divert water through its headgate. The United States and Tribes agree to work with Water District 27 to improve the Little Butte Canal diversion structure(s) and to operate the Equalizing Reservoir in such a way that the Little Butte Canal is provided an adequate supply of water at its headgate throughout the irrigation season.

**7. Review of Plan / Resolution of Disputes**

The Parties shall periodically review at a meeting of the Fort Hall Intergovernmental Board the status of the programs described in this Plan and shall provide recommendations, based upon the best available data and good science, for any changes in the programs to the Watermaster, the Director, the United States and the Tribes, taking into account the recommendations of the Parties' technical experts. The Parties agree that all disputes and objections regarding the implementation of this Plan will be taken up at the annual Intergovernmental Board meeting. Modifications to this Plan will be based on mutual agreement of the Parties.

**8. Points of Contact**

To effectively carry out the provisions of this Blackfoot River Management Plan, each Party will designate a representative who will serve as the point of contact to communicate and coordinate the implementation of this Plan.

**9. Applicable Law**

- a) This Blackfoot River Management Plan shall be construed and enforced pursuant to the Fort Hall Agreement and relevant decrees entered by the SRBA District Court. Nothing in this plan shall be interpreted or implemented to change any portion of any decree entered in the SRBA.
- b) The United States' and the State of Idaho's agreement is subject to the terms of applicable federal and state law, including the Anti-Deficiency Act - 31 U.S.C. § 1341 and similar requirements of state law. Nothing contained in this Agreement shall be construed to require the obligation, appropriation or expenditure of any money from the U.S. Treasury or the State General Fund. The Parties acknowledge that the federal or state agencies shall not be required under this Plan to expend any appropriated funds unless and until an authorized official of the relevant agency affirmatively acts to commit to such expenditures in writing.

**10. Binding Effect.**

This Plan shall bind and inure to the benefit of the respective successors of the Parties.

**11. Effect of Headings**

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

**12. 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.

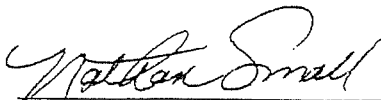
**13. Effective Date**

This Plan shall be effective upon signature by the Parties and approval by the Director.

**14. Signatures**

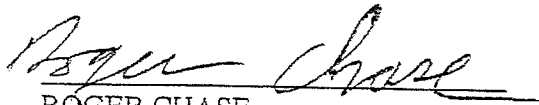
The Parties have executed this Blackfoot River Water Management Plan on the date following their respective signatures.

SHOSHONE-BANNOCK TRIBES

  
\_\_\_\_\_  
NATHAN SMALL  
Chairman, Shoshone-Bannock  
Tribal Council

Dated: 7/5/13

STATE OF IDAHO

Handwritten signature of Roger Chase in black ink, written over a horizontal line.

ROGER CHASE  
Chairman, Idaho Water Resource Board

Dated: 7-2-2013

UNITED STATES

  
STANLEY SPEAKS  
Regional Director  
Pacific Northwest Region  
Bureau of Indian Affairs  
U.S. Department of Interior

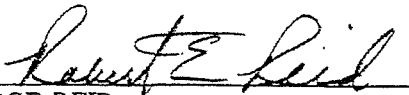
Dated: 7/01/2013

COMMITTEE OF NINE OF WATER DISTRICT 01

  
\_\_\_\_\_  
DAN SHEWMAKER  
Chairman, Committee of Nine

Dated: 09-02-2013

BASIN 27 ADVISORY COMMITTEE  
FOR WATER DISTRICT 27

  
BOB REID  
Chairman, Basin 27 Advisory Committee

Dated: 7-9-13

Figure 1

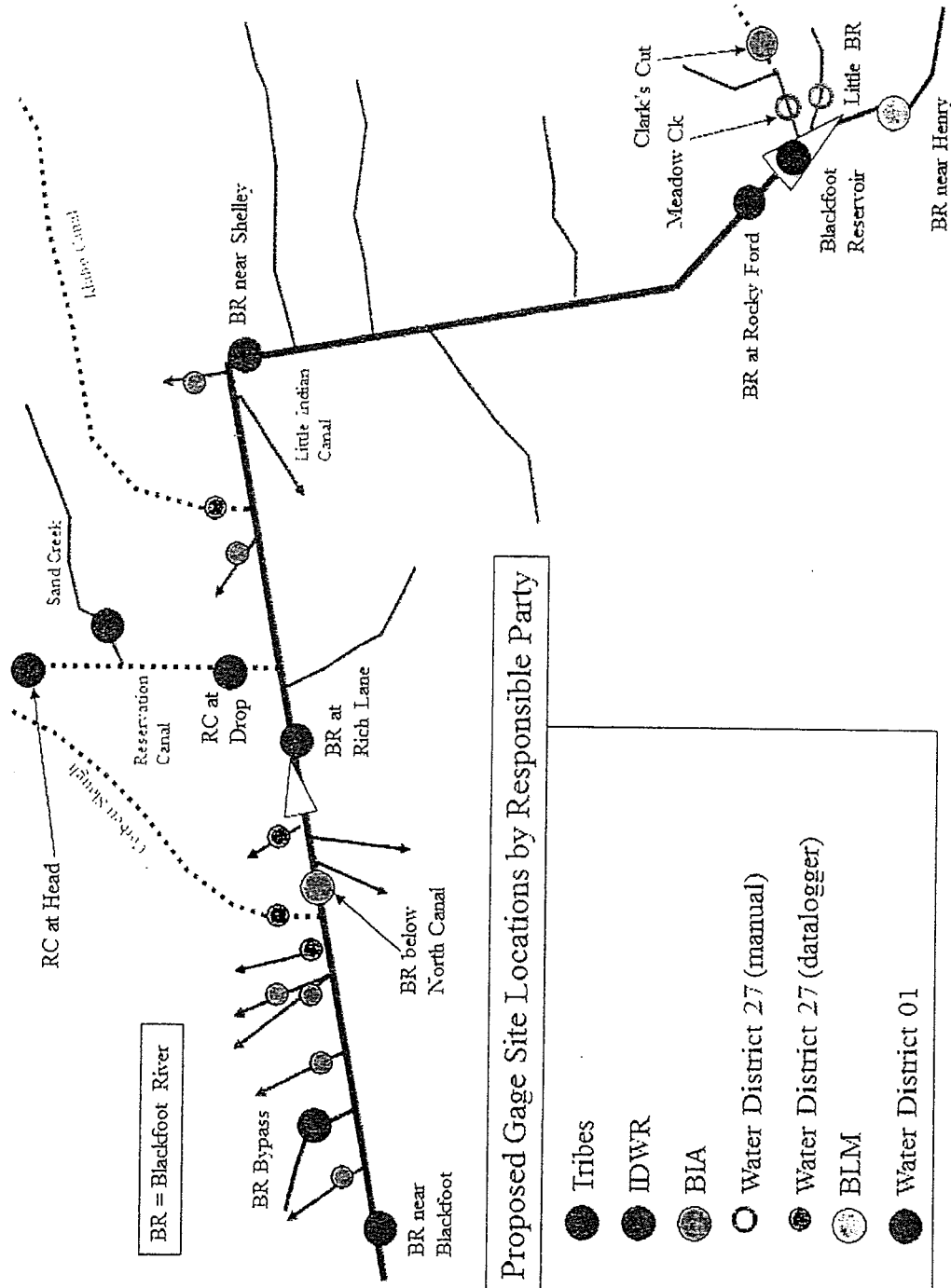
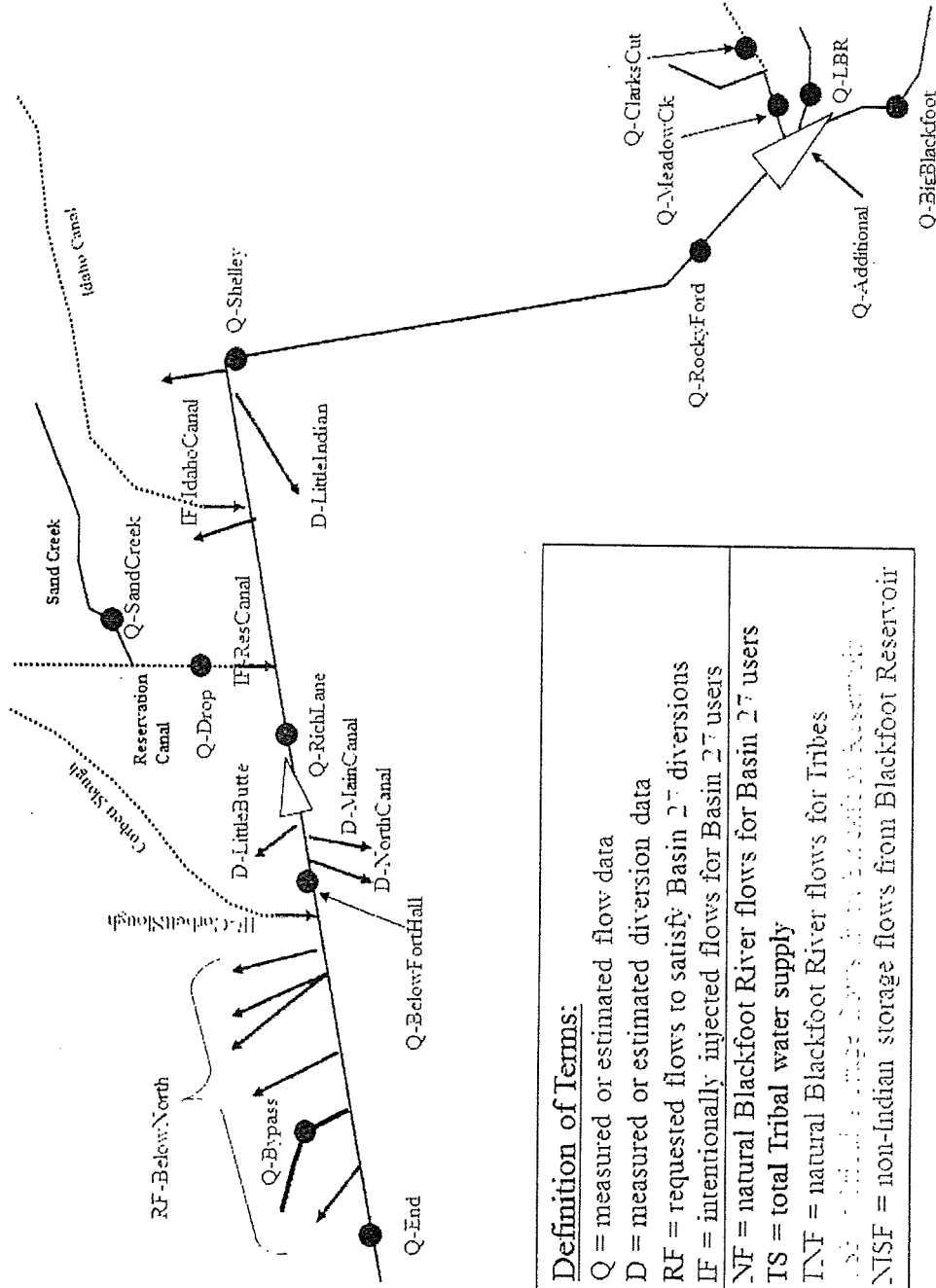


Figure 2



Definition of Terms:

|                                                          |
|----------------------------------------------------------|
| Q = measured or estimated flow data                      |
| D = measured or estimated diversion data                 |
| RF = requested flows to satisfy Basin 27 diversions      |
| IF = intentionally injected flows for Basin 27 users     |
| NF = natural Blackfoot River flows for Basin 27 users    |
| TS = total Tribal water supply                           |
| TNF = natural Blackfoot River flows for Tribes           |
| NISF = non-Indian storage flows from Blackfoot Reservoir |

## APPENDIX I

### Contents of Data Sharing Website

All data from the stream gages identified in Section 3.d) of the Plan. Those gages include the following:

- Clarks Cut
- Blackfoot River near Henry
- Blackfoot Reservoir Gage
- Blackfoot River at Rocky Ford
- Blackfoot River near Shelley
- Blackfoot River at Rich Lane
- Blackfoot River below Fort Hall North
- Blackfoot River Bypass
- Blackfoot River near Blackfoot
- Meadow Creek near Reservoir
- Little Blackfoot River near Reservoir
- Corbett Slough near Blackfoot River
- Idaho Canal near Blackfoot River
- Sand Creek at Wolverine Road
- Reservation Canal at Head
- Reservation Canal at Drop
- Additional unmeasured flow into Blackfoot Reservoir

All diversion data identified in Sections 3.b) and 3.c) including the following:

- Smith-Maxwell diversion
- Riverton diversion
- Stevens diversion
- Central diversion
- Miners / Younie Blackfoot River pump diversion
- Miners ground water well diversion(s)
- Little Butte diversion
- Eastern Idaho / Blackfoot Slough diversion
- Just Ditch diversion
- Sand Creek Ditch diversion
- Fort Hall Little Indian Canal
- Fort Hall Main Canal
- Fort Hall North Canal
- Non-continuous measurements of diversion data provided for in Section 3.b)iv)

Quantities calculated within the accounting program identified in Section 4.

- $Q_{\text{IntoReservoir}}$
- Total Grays Lake imported water in acre-feet
- $NF_{\text{RockyFord}}$
- $NISF_{\text{RockyFord}}$

$T_{SF_{RockyFord}}$   
 $T_{SF_{Shelley}}$   
 $N_{ISF_{Shelley}}$   
 $D_{ShelleytoRichLane}$   
 $R_{F_{BelowShelley}}$   
 $N_{F_{Shelley}}$   
 $N_{F_{BelowShelley}}$   
 $T_{NF_{Shelley}}$   
 $T_{S_{Shelley}}$   
 $N_{ISF_{RichLane}}$   
 $N_{F_{RichLane}}$   
 $T_{S_{RichLane}}$   
 $T_{NF_{RichLane}}$   
 $T_{SF_{RichLane}}$   
 The natural flow available for diversion as provided in Section 4.d)  
 Projected natural flow for the following week as provided in Section 4.c)  
 Injected flows for use by the Basin 27 Water Users and account for injected flow use  
 $R_{F_{BelowNorth}}$   
 $C_{Loss}$   
 $D_{BelowNorth}$   
 $D_{ShelleytoBelowNorth}$   
 $R_{FT_{BelowNorth}}$   
 Primary Volume and exclusions identified in Sections 4.i)i) through 4.i)iii)  
 Available credit at the beginning of the irrigation season  
 Credit use  
 Remaining credit balance  
 $Q_{Available}$   
 $V_{Available}$   
 Credit accrual at the end of the irrigation season  
 Available Equitable Adjustment Water at the beginning of the irrigation season  
 Equitable Adjustment Water use  
 Remaining Equitable Adjustment Water balance  
 Equitable Adjustment Water accrual at the end of the irrigation season  
 The allocation of  $Q_{Drop}$  as provided for in Section 4.n)  
 Diversions made pursuant to Section 4.o)

Calculation of the Sand Creek Exchange as provide for in Section 5.

Excess flows bypassing the Tribes' diversions  
 Diversion demands of the Fort Hall Main and North Canals  
 Sand Creek flows available for exchange  
 Blackfoot River flows near the confluence with Snake River  
 Sand Creek Exchange calculation

