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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 76779

NOV 12 2010

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Department of Water Resources
Eastern RegionName of Applicant(s) City of PocatelloPhone 208-234-6149Mailing address P.O. Box 4169, Pocatello, IDEmail dtranmer@pocatello.us

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☒ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☒ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**. See Attachment #2a

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No RepresentativeName of Representative Mike Creamer, Givens Pursely, LLP/Greg Sullivan, P.E. SWE, Inc Phone 208-388-1247/303-861-9700Mailing address 601 W. Bannock St. Boise, ID 83702/1000 Logan St. Denver, CO 80203 Email mcc@givenspursley.comgreg@spronkwater.com

- ☐ Send all correspondence for this application to the representative and not to the applicant.
- OR
- ☒ Send original correspondence to the applicant and copies to the representative.
- ☒ The representative may submit information for the applicant but is not authorized to sign for the applicant.
- OR
- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.



Signature of Applicant or Authorized Representative

Brian Blad, Mayor City of Pocatello
Print Name and Title if applicable

11-2-10
Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☒ Change nature of use ☒ Change period of use ☒ Other Add points of re-diversion (see Attachment #9)
2. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2. See Attachment #9**

SCANNED

NOV 15 2010

76779

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 76779

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

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DEPARTMENT OF
WATER RESOURCES

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at <http://www.idwr.idaho.gov/>.

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

- | | |
|--|---|
| <u>Yes</u> <u>N/A</u> | * Means the item is <u>always required</u> and must be included with the application. |
| ☒ * | Completed Application for Transfer of Water Right form, Part 1. |
| ☒ * | Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative. |
| ☒ * | Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded. |
| ☒ ☐ | Complete and attach an Application for Transfer Part 2B <u>for each water right</u> for which <u>only a portion</u> is proposed to be changed through this transfer application. Part 2B forms are available on the Department's website at:
http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/PDFs_09/WaterRight_TransferApp_Part2B.pdf . |
| ☒ * | Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s). |
| ☒ * | Correct fee submitted with transfer application form. (Fee schedule is on website and instructions for application for transfer.) |

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-9.

- | | |
|--|--|
| ☐ ☒ | #1 If the applicant is a business, partnership, organization, or association, and <u>not</u> currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.) |
| ☒ ☐ | #2a Water Right ownership documentation if Dept. records do not show the transfer applicant as the current water right owner. |
| ☐ ☒ | #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). |
| ☒ ☐ | #3 Documentation of authority to make the change if the applicant is not the water right owner. See Attachment #2a |
| ☐ ☒ | #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.) |
| ☐ ☒ | #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/wrt_default.htm . |
| ☐ ☒ | #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.) |
| ☒ * | #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.) |
| ☒ ☐ | #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. |
| ☐ ☒ | #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) See Attachment #9 |
| ☐ ☒ | #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.) See Attachment #9 |
| ☒ ☐ | #9 Other. Please describe: <u>Report in Support of the City of Pocatello's Application for Transfer of Water Rights</u> |

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☐ No RepresentativeName of Representative Mike Creamer, Givens Pursely, LLP/Greg Sullivan, P.E. SWE, Inc Phone 208-388-1247/303-861-9700Mailing address 601 W. Bannock St. Boise, ID 83702/1000 Logan St. Denver, CO 80203 Email mcc@givenspursley.comgreg@spronkwater.com☐ Send all correspondence for this application to the representative and not to the applicant.OR ☒ Send original correspondence to the applicant and copies to the representative.OR ☒ The representative may submit information for the applicant but is not authorized to sign for the applicant.OR ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

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2. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2. See Attachment #9**

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☐ ☒	29-00053	3,100 af	See note (1) below	01/01 to 12/31	Toponce Cr. & Portneuf R.
☐ ☒	29-00053	164.43 cfs	See note (1) (2) below	01/01 to 12/31	Toponce Cr. & Portneuf R.
☐ ☐	29-00589	3,100 af	See note (1) below	01/01 to 12/31	Portneuf R. & Snake R.
☐ ☐	Note (1): Proposed nature of use: _____				
☐ ☐	Irrigation, municipal, ground water recharge, mitigation, recreation, aesthetic, wildlife, fish propagation and exchange. See Attachment #9 for detailed explanation.				
☐ ☐	Note (2): _____				
☐ ☐	The combined diversion rate under the changed portion and remaining portion of Water Right 29-00053 is _____				
☐ ☐	limited to 164.43 cfs. _____				
☐ ☐	_____ to _____				

Total authorized under rights 164.43 cfs cfs and/or 3,100 ac-ft

2. Total amount of water proposed to be transferred or changed 164.43 cubic feet per second and/or 3,100 acre-feet per annum.

3. Point(s) of Diversion: **Addition of points of re-diversion are proposed. See Attachment #9 for detailed explanation.**

- ☒ No changes to point(s) of diversion are proposed-the following chart is therefore not completed. (Proceed to #4.)
☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed-the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

See attached GIS shapefile of place of use and Attachments #7b and #9.

Total Acres (for irrigation use) _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future: See Attachment #9
- b. Who owns the property at the point(s) of diversion? The PMVCC owns the Chesterfield Reservoir. See 5.b. (cont) below.
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system: _____
The points of diversion will not change. New points of re-diversion will be constructed on property owned by Pocatello or for which Pocatello will obtain the right to use.
- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
If yes, ☒ Attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: The water right is being purchased from the PMVCC, which has represented that the water right has not been encumbered by PMVCC. The lands under PMVCC's irrigation system may be encumbered by PMVCC shareholders.
It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.
- d. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer: _____
No effects are anticipated. See Attachment #9.
- e. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use: _____
The following PMVCC water rights divert at the existing point of diversion and lands: 29-52, 29-4060 & 29-13318.
The following Portneuf Irrigating Company water rights divert at the existing point of re-diversion: 29-51 & 29-11127.
The following Cutler Ditch water rights divert at the existing point of re-diversion: 29-13398 & 29-13400.
The following Marsh Valley Development Inc. water rights divert at the existing point of re-diversion: 29-7578 & 29-7772
- f. To your knowledge, has/is any portion of the water right(s) proposed to be changed:
- Yes No
- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently leased to the Water Supply Bank,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right, or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the rights?

If yes, describe: _____

5.b. (cont). A portion of the Reservoir is located on tribal lands pursuant to an easement and right-of-way agreement. PMVCC will operate the Reservoir to store and deliver the City's water to the Portneuf River.

☒ Complete and attach one copy of Part 2B for each right for which only a portion is proposed to be changed. If the entire right is proposed to be changed, Part 2B is not applicable. Additional copies of the **Part 2B** form can be obtained from any Department office or from the Department's website @ <http://www.idwr.idaho.gov/> , Water Right Transfers, Step 3, or Water Right Forms, Changes in Use. Insert completed Part 2B forms into the application following Part 2A of the same water right.

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 29-00053

Current Owner: PORTNEUF MARSH VALLEY CANAL CO LTD

Priority Date: 7/6/1912

Origin: Water Right

Status: Active

Basis: Decreed

Source		Tributary	
TOPONCE CREEK		PORTNEUF RIVER	
Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION STORAGE	01/01 to 12/31		16410 AF
IRRIGATION FROM STORAGE	04/15 to 09/15		16410 AF
DIVERSION TO STORAGE	09/16 to 04/14	164.43 CFS	
Total Diversion		164.43 CFS	16410 AF

Location of Point(s) of Diversion

TOPONCE CREEK	SW1/4SE1/4SE1/4	Sec. 33,	Twp 06S,	Rge 38E B.M.
CARIBOU County				
TOPONCE CREEK	L3(SW1/4SE1/4NW1/4)	Sec. 22,	Twp 09S,	Rge 37E B.M.
BANNOCK County	(Rediversion)			
TOPONCE CREEK	SW1/4SW1/4SW1/4	Sec. 19,	Twp 06S,	Rge 39E B.M.
CARIBOU County	(Injection)			

Place of Use

IRRIGATION FROM STORAGE Within BANNOCK County

T10S R37E S5	SWNW	T10S R37E S5	SENW
T10S R37E S5	NESW	T10S R37E S5	NWSW
T10S R37E S5	SWSW	T10S R37E S5	SESW
T10S R37E S5	SWSE	T10S R37E S8	SWSE
T10S R37E S8	SESE	T10S R37E S17	NENE
T10S R37E S17	NWNE	T10S R37E S17	SWNE
T10S R37E S17	SENE	T10S R37E S17	NESW
T10S R37E S17	NWSW	T10S R37E S17	SWSW
T10S R37E S17	SESW	T10S R37E S17	NESE
T10S R37E S17	NWSE	T10S R37E S17	SWSE
T10S R37E S17	SESE	T10S R37E S18	NESE
T10S R37E S18	SESE	T10S R37E S19	NENE
T10S R37E S19	SENE	T10S R37E S19	NESE
T10S R37E S19	SESE	T10S R37E S20	NENE
T10S R37E S20	NWNE	T10S R37E S20	SWNE

T10S R37E S20		NENW	T10S R37E S20		NWNW
T10S R37E S20		SWNW	T10S R37E S20		SENW
T10S R37E S20		NESW	T10S R37E S20		NWSW
T10S R37E S20		SESW	T10S R37E S20		NWSE
T10S R37E S20		SWSE	T10S R37E S20		SESE
T10S R37E S28		SWSW	T10S R37E S28		SESW
T10S R37E S28		SWSE	T10S R37E S28		SESE
T10S R37E S29		NENE	T10S R37E S29		NWNE
T10S R37E S29		SWNE	T10S R37E S29		SENE
T10S R37E S29		NENW	T10S R37E S29		NWNW
T10S R37E S29		SWNW	T10S R37E S29		SENW
T10S R37E S29		NESW	T10S R37E S29		NWSW
T10S R37E S29		SWSW	T10S R37E S29		SESW
T10S R37E S29		NESE	T10S R37E S29		NWSE
T10S R37E S29		SWSE	T10S R37E S29		SESE
T10S R37E S30		NENE	T10S R37E S30		SWNE
T10S R37E S30		SENE	T10S R37E S30		SENW
T10S R37E S30		NESW	T10S R37E S30		NESE
T10S R37E S30		NWSE	T10S R37E S30		SWSE
T10S R37E S30		SESE	T10S R37E S32		NENE
T10S R37E S32		NWNE	T10S R37E S32		SWNE
T10S R37E S32		SENE	T10S R37E S32		NENW
T10S R37E S32		SWNW	T10S R37E S32		SENW
T10S R37E S32		NESW	T10S R37E S32		SESW
T10S R37E S32		NESE	T10S R37E S32		NWSE
T10S R37E S32		SWSE	T10S R37E S32		SESE
T10S R37E S33		NENE	T10S R37E S33		NWNE
T10S R37E S33		SWNE	T10S R37E S33		NENW
T10S R37E S33		NWNW	T10S R37E S33		SENW
T10S R37E S33		SWSW	T11S R37E S4		SWNE
T11S R37E S4		SENE	T11S R37E S4	Lot 3	NENW
T11S R37E S4	Lot 4	NWNW	T11S R37E S4		SWNW
T11S R37E S4		SENW	T11S R37E S4		NESW
T11S R37E S4		NWSW	T11S R37E S4		SWSW
T11S R37E S4		SESW	T11S R37E S4		NESE
T11S R37E S4		NWSE	T11S R37E S4		SWSE
T11S R37E S4		SESE	T11S R37E S5	Lot 1	NENE
T11S R37E S5	Lot 2	NWNE	T11S R37E S5		SWNE
T11S R37E S5		SENE	T11S R37E S5	Lot 3	NENW
T11S R37E S5	Lot 4	NWNW	T11S R37E S5		SWNW
T11S R37E S5		SENW	T11S R37E S5		NESW
T11S R37E S5		NWSW	T11S R37E S5		SWSW
T11S R37E S5		SESW	T11S R37E S5		NESE
T11S R37E S5		NWSE	T11S R37E S5		SWSE
T11S R37E S5		SESE	T11S R37E S7		SWSE
T11S R37E S7		SESE	T11S R37E S8		NENE
T11S R37E S8		NWNE	T11S R37E S8		SWNE
T11S R37E S8		SENE	T11S R37E S8		NENW

T11S R37E S8	SENE	T11S R37E S8	NESE
T11S R37E S8	NWSE	T11S R37E S8	SWSE
T11S R37E S8	SESE	T11S R37E S9	NENE
T11S R37E S9	NWNE	T11S R37E S9	NENW
T11S R37E S9	NWNW	T11S R37E S9	SWNW
T11S R37E S9	SENE	T11S R37E S9	NESW
T11S R37E S9	NWSW	T11S R37E S9	SWSW
T11S R37E S9	SESW	T11S R37E S15	NESW
T11S R37E S15	NWSW	T11S R37E S15	SWSW
T11S R37E S15	SESW	T11S R37E S15	NWSE
T11S R37E S15	SWSE	T11S R37E S16	NENE
T11S R37E S16	NWNE	T11S R37E S16	SWNE
T11S R37E S16	SENE	T11S R37E S16	NENW
T11S R37E S16	NWNW	T11S R37E S16	SWNW
T11S R37E S16	SENE	T11S R37E S16	NESW
T11S R37E S16	NWSW	T11S R37E S16	SWSW
T11S R37E S16	SESW	T11S R37E S16	NESE
T11S R37E S16	NWSE	T11S R37E S16	SWSE
T11S R37E S16	SESE	T11S R37E S17	NENE
T11S R37E S17	SENE	T11S R37E S17	NESE
T11S R37E S18	NENE	T11S R37E S20	NWNE
T11S R37E S21	NENE	T11S R37E S21	NWNE
T11S R37E S21	SWNE	T11S R37E S21	SENE
T11S R37E S21	NENW	T11S R37E S21	NWNW
T11S R37E S21	SENE	T11S R37E S21	NESW
T11S R37E S21	NESE	T11S R37E S21	NWSE
T11S R37E S21	SWSE	T11S R37E S21	SESE
T11S R37E S22	NWNE	T11S R37E S22	SWNE
T11S R37E S22	NENW	T11S R37E S22	NWNW
T11S R37E S22	SWNW	T11S R37E S22	SENE
T11S R37E S22	NESW	T11S R37E S22	NWSW
T11S R37E S22	SWSW	T11S R37E S22	SESW
T11S R37E S22	NWSE	T11S R37E S22	SWSE
T11S R37E S27	NWNE	T11S R37E S27	SWNE
T11S R37E S27	NENW	T11S R37E S27	NWNW
T11S R37E S27	SWNW	T11S R37E S27	SENE
T11S R37E S27	NESW	T11S R37E S27	NWSW
T11S R37E S27	SWSW	T11S R37E S27	SESW
T11S R37E S27	NWSE	T11S R37E S27	SWSE
T11S R37E S28	NENE	T11S R37E S28	NWNE
T11S R37E S28	SWNE	T11S R37E S28	SENE
T11S R37E S28	NESW	T11S R37E S28	NWSW
T11S R37E S28	SWSW	T11S R37E S28	SESW
T11S R37E S28	NESE	T11S R37E S28	NWSE
T11S R37E S28	SWSE	T11S R37E S28	SESE
T11S R37E S29	SESE	T11S R37E S32	NENE
T11S R37E S33	NENE	T11S R37E S33	NWNE
T11S R37E S33	SWNE	T11S R37E S33	SENE

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T11S R37E S33	NENW	T11S R37E S33	NWNW
T11S R37E S34	NWNE	T11S R37E S34	SWNE
T11S R37E S34	NENW	T11S R37E S34	NWNW
T11S R37E S34	SWNW	T11S R37E S34	SENW
T11S R37E S34	NESW	T11S R37E S34	NWSW
T11S R37E S34	SWSW	T11S R37E S34	SESW
T11S R37E S34	NWSE	T11S R37E S34	SWSE

Total Acres: 5103.2

Place of Use: IRRIGATION STORAGE same as IRRIGATION FROM STORAGE

Place of Use: DIVERSION TO STORAGE same as IRRIGATION FROM STORAGE

Conditions of Approval:

1. G02 POINT OF INJECTION INTO PORTNEUF RIVER. POINT OF REDIVERSION FROM PORTNEUF RIVER.
2. THIS RIGHT WHEN COMBINED WITH 29-589 IS LIMITED TO A COMBINED TOTAL OF 16410 AFA.
3. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
4. E54 USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 23695 AF. COMBINED RIGHT NOS.: 29-53, 29-589, 29-4060, 29-13319.
5. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
6. C03 RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
7. USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE A USE ON FEDERAL PUBLIC LAND.
8. SUITABLE MEASURING DEVICES SHALL BE INSTALLED ON THE PORTNEUF RIVER ABOVE THE FLOW LINE OF THE PORTNEUF-MARSH VALLEY IRRIGATING COMPANY RESERVOIR AT WHICH POINT THE WATER COMES INTO THE RESERVOIR AT T6S R38E S11 NWSESW AND IMMEDIATELY BELOW THE DAM OF SAID RESERVOIR AT T6S R39E S19 SWSWSW SO THAT THE WATER RELEASED MAY BE MORE ACCURATELY DETERMINED. THE NORMAL FLOW OF THE PORTNEUF RIVER MAY NOT BE OBSTRUCTED BY THE RESERVOIR WITH REFERENCE TO THE AMOUNT OF WATER DELIVERED THROUGH THE RESERVOIR DURING THE IRRIGATING SEASON. NO CHARGE SHALL BE MADE AGAINST THE NORMAL STREAM FLOW FROM THE POINT ABOVE THE RESERVOIR LOCATED AT T 6S R38E S11 NWSESW AND THE POINT BELOW THE RESERVOIR LOCATED AT T6S R39E S19 SWSWSW.
9. E56 USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 5103.2 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-52, 29-53, 29-589, 29-4060, 29-13318, 29-13319.
10. 129 Place of use is within the area served by the Portneuf Marsh Valley Canal Co. LTD.
11. 135 The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.
12. THIS STORAGE WATER RIGHT IS TO BE DELIVERED WITHOUT CONVEYANCE LOSS FROM THE RESERVOIR TO THE POINT OF DIVERSION LOCATED ON THE PORTNEUF RIVER AT T9S R37E SEC 22 SWSW (LOT 3) FOR THE PORTNEUF-MARSH VALLEY CANAL COMPANY'S CANAL THROUGH SAID COMPANY'S DRAINAGE CANAL AND THE PORTNEUF RIVER.

Decreed Date: 2/15/2008

Total Acres (for irrigation use) 5103.2 ac

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 29-0589

Current Owner: PORTNEUF MARSH VALLEY CANAL CO LTD
Priority Date: 7/6/1912
Origin: Water Right
Status: Active
Basis: Decreed

Source	Tributary		
PORTNEUF RIVER	SNAKE RIVER		
Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION STORAGE	01/01 to 12/31		16410 AF
IRRIGATION FROM STORAGE	04/15 to 09/15		16410 AF
	Total Diversion		16410 AF

Location of Point(s) of Diversion

PORTNEUF RIVER	L4(SW1/4SW1/4)	Sec. 19,	Twp 06S,	Rge 39E B.M.
CARIBOU County				
PORTNEUF RIVER	L4(SW1/4SW1/4SW1/4)	Sec. 19,	Twp 06S,	Rge 39E B.M.
CARIBOU County	(Injection)			
PORTNEUF RIVER	L3(SW1/4SE1/4NW1/4)	Sec. 22,	Twp 09S,	Rge 37E B.M.
BANNOCK County	(Rediversion)			

Place of Use

IRRIGATION FROM STORAGE Within BANNOCK County

T10S R37E S5	SWNW	T10S R37E S5	SENW
T10S R37E S5	NESW	T10S R37E S5	NWSW
T10S R37E S5	SWSW	T10S R37E S5	SESW
T10S R37E S5	SWSE	T10S R37E S8	SWSE
T10S R37E S8	SESE	T10S R37E S17	NENE
T10S R37E S17	NWNE	T10S R37E S17	SWNE
T10S R37E S17	SENE	T10S R37E S17	NESW
T10S R37E S17	NWSW	T10S R37E S17	SWSW
T10S R37E S17	SESW	T10S R37E S17	NESE
T10S R37E S17	NWSE	T10S R37E S17	SWSE
T10S R37E S17	SESE	T10S R37E S18	NESE
T10S R37E S18	SESE	T10S R37E S19	NENE
T10S R37E S19	SENE	T10S R37E S19	NESE
T10S R37E S19	SESE	T10S R37E S20	NENE
T10S R37E S20	NWNE	T10S R37E S20	SWNE
T10S R37E S20	NENW	T10S R37E S20	NWNW
T10S R37E S20	SWNW	T10S R37E S20	SENW

T10S R37E S20	NESW	T10S R37E S20	NWSW
T10S R37E S20	SESW	T10S R37E S20	NWSE
T10S R37E S20	SWSE	T10S R37E S20	SESE
T10S R37E S28	SWSW	T10S R37E S28	SESW
T10S R37E S28	SWSE	T10S R37E S28	SESE
T10S R37E S29	NENE	T10S R37E S29	NWNE
T10S R37E S29	SWNE	T10S R37E S29	SENE
T10S R37E S29	NENW	T10S R37E S29	NWNW
T10S R37E S29	SWNW	T10S R37E S29	SENW
T10S R37E S29	NESW	T10S R37E S29	NWSW
T10S R37E S29	SWSW	T10S R37E S29	SESW
T10S R37E S29	NESE	T10S R37E S29	NWSE
T10S R37E S29	SWSE	T10S R37E S29	SESE
T10S R37E S30	NENE	T10S R37E S30	SWNE
T10S R37E S30	SENE	T10S R37E S30	SENW
T10S R37E S30	NESW	T10S R37E S30	NESE
T10S R37E S30	NWSE	T10S R37E S30	SWSE
T10S R37E S30	SESE	T10S R37E S32	NENE
T10S R37E S32	NWNE	T10S R37E S32	SWNE
T10S R37E S32	SENE	T10S R37E S32	NENW
T10S R37E S32	SWNW	T10S R37E S32	SENW
T10S R37E S32	NESW	T10S R37E S32	SESW
T10S R37E S32	NESE	T10S R37E S32	NWSE
T10S R37E S32	SWSE	T10S R37E S32	SESE
T10S R37E S33	NENE	T10S R37E S33	NWNE
T10S R37E S33	SWNE	T10S R37E S33	NENW
T10S R37E S33	NWNW	T10S R37E S33	SENW
T10S R37E S33	SWSW	T11S R37E S4	SWNE
T11S R37E S4	SENE	T11S R37E S4	NENW
T11S R37E S4	NWNW	T11S R37E S4	SWNW
T11S R37E S4	SENW	T11S R37E S4	NESW
T11S R37E S4	NWSW	T11S R37E S4	SWSW
T11S R37E S4	SESW	T11S R37E S4	NESE
T11S R37E S4	NWSE	T11S R37E S4	SWSE
T11S R37E S4	SESE	T11S R37E S5	NENE
T11S R37E S5	NWNE	T11S R37E S5	SWNE
T11S R37E S5	SENE	T11S R37E S5	NENW
T11S R37E S5	NWNW	T11S R37E S5	SWNW
T11S R37E S5	SENW	T11S R37E S5	NESW
T11S R37E S5	NWSW	T11S R37E S5	SWSW
T11S R37E S5	SESW	T11S R37E S5	NESE
T11S R37E S5	NWSE	T11S R37E S5	SWSE
T11S R37E S5	SESE	T11S R37E S7	SWSE
T11S R37E S7	SESE	T11S R37E S8	NENE
T11S R37E S8	NWNE	T11S R37E S8	SWNE
T11S R37E S8	SENE	T11S R37E S8	NENW
T11S R37E S8	SENW	T11S R37E S8	NESE
T11S R37E S8	NWSE	T11S R37E S8	SWSE

T11S R37E S8	SESE	T11S R37E S9	NENE
T11S R37E S9	NWNE	T11S R37E S9	NENW
T11S R37E S9	NWNW	T11S R37E S9	SWNW
T11S R37E S9	SESW	T11S R37E S9	NESW
T11S R37E S9	NWSW	T11S R37E S9	SWSW
T11S R37E S9	SESW	T11S R37E S15	NESW
T11S R37E S15	NWSW	T11S R37E S15	SWSW
T11S R37E S15	SESW	T11S R37E S15	NWSE
T11S R37E S15	SWSE	T11S R37E S16	NENE
T11S R37E S16	NWNE	T11S R37E S16	SWNE
T11S R37E S16	SENE	T11S R37E S16	NENW
T11S R37E S16	NWNW	T11S R37E S16	SWNW
T11S R37E S16	SESW	T11S R37E S16	NESW
T11S R37E S16	NWSW	T11S R37E S16	SWSW
T11S R37E S16	SESW	T11S R37E S16	NESE
T11S R37E S16	NWSE	T11S R37E S16	SWSE
T11S R37E S16	SESE	T11S R37E S17	NENE
T11S R37E S17	SENE	T11S R37E S17	NESE
T11S R37E S18	NENE	T11S R37E S20	NWNE
T11S R37E S21	NENE	T11S R37E S21	NWNE
T11S R37E S21	SWNE	T11S R37E S21	SENE
T11S R37E S21	NENW	T11S R37E S21	NWNW
T11S R37E S21	SESW	T11S R37E S21	NESW
T11S R37E S21	NESE	T11S R37E S21	NWSE
T11S R37E S21	SWSE	T11S R37E S21	SESE
T11S R37E S22	NWNE	T11S R37E S22	SWNE
T11S R37E S22	NENW	T11S R37E S22	NWNW
T11S R37E S22	SWNW	T11S R37E S22	SESW
T11S R37E S22	NESW	T11S R37E S22	SWSE
T11S R37E S22	SWSW	T11S R37E S22	SWNE
T11S R37E S22	NWSE	T11S R37E S27	NWNW
T11S R37E S27	NWNE	T11S R37E S27	SESW
T11S R37E S27	NENW	T11S R37E S27	SWSE
T11S R37E S27	SWNW	T11S R37E S27	NWNE
T11S R37E S27	NESW	T11S R37E S27	SENE
T11S R37E S27	SWSW	T11S R37E S27	NWSW
T11S R37E S27	NWSE	T11S R37E S27	SESW
T11S R37E S28	NENE	T11S R37E S27	SWSE
T11S R37E S28	SWNE	T11S R37E S28	NWNE
T11S R37E S28	NESW	T11S R37E S28	SENE
T11S R37E S28	SWSW	T11S R37E S28	NWSW
T11S R37E S28	NESE	T11S R37E S28	SESW
T11S R37E S28	SWSE	T11S R37E S28	NWSE
T11S R37E S29	SESE	T11S R37E S28	SESE
T11S R37E S33	NENE	T11S R37E S32	NENE
T11S R37E S33	SWNE	T11S R37E S33	NWNE
T11S R37E S33	NENW	T11S R37E S33	SENE
T11S R37E S34	NWNE	T11S R37E S33	NWNW
		T11S R37E S34	SWNE

T11S R37E S34	NENW	T11S R37E S34	NWNW
T11S R37E S34	SWNW	T11S R37E S34	SENW
T11S R37E S34	NESW	T11S R37E S34	NWSW
T11S R37E S34	SWSW	T11S R37E S34	SESW
T11S R37E S34	NWSE	T11S R37E S34	SWSE

Total Acres: 5103.2

Place of Use: IRRIGATION STORAGE same as IRRIGATION FROM STORAGE

Conditions of Approval:

1. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
3. THIS RIGHT WHEN COMBINED WITH 29-53 IS LIMITED TO A COMBINED TOTAL OF 16410 AFA.
4. THIS STORAGE WATER RIGHT IS TO BE DELIVERED WITHOUT CONVEYANCE LOSS FROM THE RESERVOIR TO THE POINT OF DIVERSION LOCATED ON THE PORTNEUF RIVER AT T9S R37E SEC 22 SWSE (LOT 3) FOR THE PORTNEUF-MARSH VALLEY CANAL COMPANYS CANAL THROUGH SAID COMPANYS DRAINAGE CANAL AND THE PORTNEUF RIVER.
5. 129 Place of use is within the area served by the Portneuf Marsh Valley Canal Co. LTD.
6. E56 USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 5103.2 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-52, 29-53, 29-589, 29-4060, 29-13318, 29-13319.
7. C03 RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
8. 135 The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.
9. USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE A USE ON FEDERAL PUBLIC LAND.
10. C02 RIGHT INCLUDES ACCOMPLISHED CHANGE IN SOURCE PURSUANT TO SECTION 42-1425, IDAHO CODE.
11. G02 POINT OF INJECTION INTO PORTNEUF RIVER. POINT OF REDIVERSION FROM PORTNEUF RIVER.
12. E54 USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 23695 AF. COMBINED RIGHT NOS.: 29-53, 29-589, AND 29-4060, 29-13319.

Decreed Date: 2/15/2008

Total Acres (for irrigation use) 5103.2 ac

Add'l Fee Paid	Date	Received by	Receipt #
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Attachment #2a and #3
Storage Water Agreement

STORAGE WATER AGREEMENT

This Storage Water Agreement ("Agreement") is entered into by and between the City of Pocatello, a municipal corporation ("City") and the Portneuf-Marsh Valley Canal Company, Limited, an Idaho incorporated water users' association ("Company" or "PMVCC"), effective this 3rd day of March, 2010.

RECITALS

A. The Company holds certain decreed natural flow and storage water rights diverted from the Portneuf River and its tributary Toponce Creek. The Company also owns and operates a water delivery system delivering irrigation water from its headgate on the Portneuf River to irrigate approximately 5,103 acres of land within Bannock County, Idaho (the "Water System"). The Company also owns and operates Chesterfield Reservoir, wherein the Company is authorized by its water right decrees to store and release for irrigation uses up to 23,695 acre-feet of water per year from the Portneuf River and its tributary Toponce Creek.

B. The City, through its elected City Council and Mayor, is responsible for, among other things, providing for the health, safety, and welfare of its residents, reliable water supplies and the proper treatment and disposal of wastewater generated by the City and its residents in accordance with state and federal laws.

C. The Company's board of directors ("Board"), upon due approval and authorization by vote of the Company's shareholders, has executed a five-year agreement with the United States Department of Agriculture ("United States"), Natural Resources Conservation Service, NRCS Agreement No. 65-0211-9-019, accepted by its State Conservationist Jeff Burwell on September 9, 2009 (the "Partnership Agreement"). Under the Partnership Agreement, the United States has agreed to provide the Company with financial and technical assistance through the federal Environmental Quality Incentives Program ("EQIP"), Agricultural Water Enhancement Program ("AWEP") and other federal assistance programs ("Federal Assistance") and to fund the reconstruction and/or relocation of portions of the Company's Water System and a water delivery system owned and operated by the Portneuf Irrigation Company to achieve, among other things, improved efficiencies in water deliveries and other benefits for the Company and its shareholders (the "Project").

D. The United States has contracted to provide the Company with \$18,500,000 in Financial Assistance to undertake the Project, which funds are anticipated to be advanced by the United States to the Company in equal installments over a five-year period commencing in 2010.

E. The City desires to purchase from the Company the right to store and beneficially use the first 3,100 acre-feet of storage water yield accruing annually to, or carried over from the prior year in, the Chesterfield Reservoir, it being the parties intent that the Company be obligated

to deliver the purchased water rights for the City's use every year on a firm basis. The total funds to be paid to the Company by the City are in the amount of Six Million Two-Hundred Thousand Dollars (\$6,200,000.00) ("Funds") in the manner set forth herein. The Funds are to be provided by the City in exchange for the Company's incremental conveyance of portions of its storage water rights up to a total of 3,100 acre-feet over a five-year period of time, for the City's use as set forth herein.

F. The City and the Company each expressly acknowledge that the storage water rights and storage water supply represented thereby that are to be acquired by the City pursuant to this Agreement will no longer be available to Company shareholders for irrigation or other purposes, and may not be diverted into the Company's Water System without the City's express written agreement.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, the conditions, covenants, contingencies, representations and warranties given by the parties below, the receipt and sufficiency of which the parties acknowledge, the City and the Company agree as follows:

1. Acquired Storage Water Rights. Upon receipt of the payments set forth in paragraph 4 below, the Company shall convey to the City by separate Warranty Deeds, the right to store and beneficially use the first three thousand one hundred (3,100) acre-feet per year of storage water yield to Chesterfield Reservoir, whether from accrued fill or carryover from the prior year, as authorized to be diverted to storage, stored and delivered from storage under decreed water rights 29-00053 and 29-00589, together with: the appurtenant right to annually store up to 3,100 acre-feet of water within Chesterfield Reservoir; a share of the outlet capacity and conveyance capacity of the Company's Water System from Chesterfield Reservoir to the point of delivery to the City on the Portneuf River sufficient to deliver up to a maximum flow rate of 50 cubic feet per second; to have the 3,100 acre-feet of water released from storage to the Portneuf River, and subject to any necessary authorizations by the Idaho Department of Water Resources concerning the City's use, delivered at a rate of up to 50 cubic feet per second for use by the City in the amounts and at the times as requested by the City (the "Acquired Storage Water Rights"). Said Acquired Storage Water Rights are derived from the Company's total authorized annual storage of sixteen thousand four hundred ten (16,410) acre-feet under water rights 29-00053 and 29-00589, each with a priority date of July 6, 1912, as decreed in the Snake River Basin Adjudication Case No. 39576, Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls.

2. Conveyance by Warranty Deeds. To the extent that the City has performed under this Agreement by advancing funds as set forth below, the Company shall convey to the City by Warranty Deeds free and clear of all liens, claims and encumbrances, the Acquired Storage Water Rights, in annual increments of 620 acre-feet each year thereafter (the "Annual Increments") for a period of five total years.

3. **Escrow of Deeds.** Prior to the first annual installment of funds by the City, the Company shall place into escrow ("Escrow") five fully-executed and acknowledged Warranty Deeds, in substantially the form attached hereto as Exhibit B, each of which upon release will convey to the City one-fifth of the Acquired Storage Water Rights (620 acre-feet). First American Title Company in Pocatello shall serve as the Escrow. The City shall pay all Escrow fees and closing costs associated with this Agreement.

4. **Funds.** In consideration of the conveyance of the Acquired Storage Water Rights to the City, the City shall pay to the Company the total amount of Six Million Two Hundred Thousand Dollars (\$6,200,000.00) in five equal annual installments of One Million Two Hundred Forty Thousand Dollars (\$1,240,000.00) each year as set forth below:

A. The first annual installment shall be delivered to the Company or its designee within fifteen business days of the date on which all of the contingencies set forth in Sections 7(A) and 8 below have been satisfied.

B. Provided the conditions set forth in paragraph 7(B) below have been satisfied by the Company, the remaining annual installments shall thereafter be delivered by the City to the Company or its designee on or before October 1 of each year, until the entirety of the Funds have been advanced by the City, or this Agreement has been terminated by its terms.

5. **Delivery of Fund Advances and Conveyances.** The City shall deliver each advance of funds directly to the Company or its designees through the Escrow. Upon the Escrow's receipt of the Funds, the Escrow shall record the Warranty Deed and deliver it to the City.

6. **Due Diligence Period and Right to Terminate.** The City shall have a due diligence period of ninety (90) days ("Due Diligence Period") commencing on the date that the City and Company have each executed this Agreement during which to satisfy itself, in the City's sole discretion, concerning all aspects of the Project, including without limitation, the reliability and the suitability of the Acquired Storage Water Rights for the City's intended purposes, which may include any and all lawful uses of water under Idaho law. The City may terminate this Agreement upon written Notice to the Company delivered prior to expiration of the Due Diligence Period. In addition to providing the City with the materials listed in Exhibit A hereto, the Company shall cooperate with and assist the City in obtaining information from the United States reasonably necessary for the City to understand the nature, requirements and contingencies, if any, of the Company's agreement with the United States concerning the Project.

7. **Contingencies to City's Advance of Funds.** The City's obligation to advance any Funds under this Agreement is contingent upon the occurrence of all of the following:

A. For First Advance of Funds—Unless waived by the City:

i. Satisfactory completion of the City's due diligence.

ii. Confirmation in the form of a final, unappealable order ("Final Order") issued by the Idaho Department of Water Resources ("Department") that the Acquired Storage Water Rights may be transferred or otherwise used as requested by any transfer application filed with the Department by the City.

iii. All of the Company's representations and warranties contained herein are and remain true and correct as of the date of the first advance.

iv. Delivery of an opinion of the Company's counsel in a form reasonably requested by the City concerning the Company's valid existence, power and due authorizations to enter into and perform this Agreement, and all other material agreements contemplated hereby, and opining that all such agreements are binding on the Company and its shareholders.

v. Satisfaction or waiver by the Company of the contingencies set forth in Section 8 herein.

B. For Subsequent Advances of Funds:

i. All of the Company's representations and warranties contained herein remain true and correct as of the date of the subsequent advance.

ii. To the extent that any transfer approval is required from the Department with respect to any portion of the Acquired Storage Water Rights to be conveyed to the City upon it making a subsequent advance, confirmation in the form of a Final Order issued by the Department that the Acquired Storage Water Rights may be transferred or otherwise used as requested by any transfer application filed with the Department by the City.

iii. Delivery of all information reasonably requested by the City documenting the Company's ongoing satisfactory performance of its obligations under this Agreement and all other material agreements contemplated hereby.

iv. Satisfaction or waiver by the Company of the contingencies set forth in Section 8 herein.

8. Contingencies to Company's Obligation to Convey Acquired Storage Water Rights. Unless waived by the Company, the Company's obligation to convey to the City on an annual basis the Acquired Storage Water Rights is contingent upon the following:

A. The consolidation of the water delivery systems of the Company and Portneuf Irrigating Company into a combined, single delivery system while retaining their separate operating companies, shareholders and water rights.

B. Confirmation in the form of a final, unappealable order ("Final Order") issued by the Idaho Department of Water Resources ("Department") approving any changes in the

respective water rights of the Company and/or Portneuf Irrigating Company's water rights as may be required by the Department to accomplish the combined delivery system.

C. The advance and continued advance of Financial Assistance funds to the Company by the United States under the Partnership Agreement or any other related agreement. If the United States fails to make any of the anticipated annual advances of Financial Assistance to the Company for the Project, the Company shall not be obligated to sell and the City shall not be obligated to purchase the portion of the Acquired Storage Water Rights attributable to such advance for such year.

D. Delivery of an opinion of the City's counsel in a form reasonably requested by the Company concerning the City's valid existence, power and authorization to enter into and perform this Agreement, and all other material agreements contemplated hereby, and opining that all such agreements are binding on the City.

E. Satisfaction or waiver by the City of the contingencies set forth in Section 7 herein.

9. Filing of Transfer Applications. Within a reasonable time and as soon as practicable after the execution of this Agreement by both parties, but not in any event to exceed 180 days, the City and the Company each shall, at their own expense, prepare and file with the Department any Transfer Application(s) required by the Department to accomplish the respective changes to the City's Acquired Storage Water Rights and the Company's retained water rights contemplated by Sections 7(A)(ii) and 8(B) above. The parties agree to provide the other party with a draft of their respective Applications and a reasonable opportunity to review and comment on same prior to filing.

10. Conditions of Storage and Delivery. In addition to any other terms or conditions to which the City and the Company may agree in writing from time to time hereafter, the City and Company agree that:

A. All Acquired Storage Water Rights acquired by the City will be accounted for to a distinct City storage account (the "Pocatello Storage Account"), shall not be subject to charges for evaporation or seepage and shall not be entitled to any "carry-over" rights in the Chesterfield Reservoir from year-to-year, it being the parties' intent that the Company be obligated to deliver 3,100 acre-feet of water for the City's use every year on a firm but "use it or lose it" basis in any given year.

B. Delivery of storage water from Chesterfield Reservoir to Company shareholders and to the City shall be done in a manner so as not to impair either party's right to storage, delivery and use their respective storage water rights, and neither the Company nor the City will adopt or prescribe any resolutions, rules or procedures that impair the other party's rights to storage, delivery and use of their respective storage water rights.

C. At the City's request, the Acquired Storage Water Rights shall be released from Chesterfield Reservoir and delivered to the Portneuf River at up to a maximum rate of 50 cubic feet per second for purposes as designated by the City in its sole discretion. The City shall be responsible for obtaining all necessary governmental approvals for its use of the Acquired Storage Water Rights, and the Company shall cooperate with the City as may reasonably be required for the City to obtain such approvals.

D. The Company shall deliver the Acquired Storage Water Rights to the Portneuf River for use by the City at either: (1) the headgate of the Company's canal headgate on the Portneuf River in Lot 3, SW1/4 SE1/4 NW1/4 of Section 22, T9S, R37E; or (2) through the Sorenson hydroelectric facility that is located within the Company Water System and which discharges to the Portneuf River in the SE1/4 SE1/4 SW1/4 of Section 20, T9S, R37E (together the "Delivery Points"). The Company, at its election, may deliver the Acquired Storage Water Rights to the City at either of the Delivery Points provided that deliveries through the Sorenson hydroelectric facility can be accomplished legally and without diminution of the water yield to the City.

E. No conveyance losses shall be charged by the Company against deliveries of the Acquired Storage Water Rights between the Chesterfield Reservoir and the Delivery Points. The City shall bear any conveyance losses that may be imposed by the District 29 Watermaster in delivering the Acquired Storage Water Rights downstream of the Delivery Points.

F. The storage and release of water to the City shall be subject to any water supply and operational limitations, together with any other physical restrictions that may pose a threat of physical damage to the Chesterfield Reservoir or the Company's Water System or create unsafe conditions. The foregoing notwithstanding, if operational limitations or physical restrictions exist in the Company's canal system or the Sorensen hydroelectric facility, the Company will deliver the Acquired Storage Water Rights to the City at the headgate of the Company's canal headgate on the Portneuf River in Lot 3, SW1/4 SE1/4 NW1/4 of Section 22, T9S, R37E, and not through the Sorensen hydroelectric facility.

G. The Watermaster and the Company shall provide the City with accounting of the storage, release, and delivery of all Chesterfield Reservoir water. Said accounting shall distinguish use of the Acquired Storage Water Rights from the use of other Chesterfield Reservoir water by the Company. Updated accounting shall be provided to the City monthly including, at a minimum, the contents of the Pocatello Storage Account, and the daily, monthly and year-to-date deliveries of water for the City's use. The City shall be solely responsible for any Watermaster charges connected with the delivery and accounting of its storage water rights.

H. Subject to the terms of this Agreement the City has the right to sell, lease, hypothecate, mortgage, pledge or otherwise deal with or encumber the Acquired Storage Water Rights, to change any element or authorized use of the Acquired Storage Water Rights by transfer, exchange or otherwise, which changes shall not be subject to or require the Company's or its shareholders' prior approval or consent.

I. The City shall have no ownership interest in the Chesterfield Reservoir structure or other physical facilities of the Company's Water System, nor any responsibility for, or obligation or liability associated with, the Company's ownership, operation and/or maintenance of the Chesterfield Reservoir or other portions of its Water system. The Company shall exercise all due care in the operation and maintenance of the Chesterfield Reservoir and its Water System and ensure the continued ability to divert into storage, store, and release the Acquired Storage Water Rights as contemplated by this Agreement. The parties shall each indemnify and hold the other harmless from and against any and all claims, suits, damages or liability arising out of, or in any way related to, their performance or non-performance of their respective obligations under this Agreement.

J. In the event of a catastrophic failure of Chesterfield Reservoir, or the condemnation of, or issuance of a lawful order prohibiting the storage of water in the Chesterfield Reservoir, the parties agree to share on a pro-rata basis in the cost of repairing or reconstructing the Chesterfield Reservoir. The City's pro rata share of such costs shall be equal to the total of its Acquired Storage Water Rights divided by the total useable capacity of the repaired or reconstructed facility. Notwithstanding the foregoing, neither party shall be obligated to repair or reconstruct the Chesterfield Reservoir, or share in such costs, except to the extent desired to maintain their respective storage space.

K. The City and Company recognize that not all operational issues and details that may affect the storage and delivery of the Acquired Storage Water Rights may have been identified or agreed to in this Agreement, and agree to meet with each other within a reasonable time following the closing of the first advance of funds and delivery of deed to discuss the operational issues generally outlined in Exhibit C hereto, and in good faith develop a protocol addressing them for their mutual benefit.

11. Representations and Warranties.

A. By the Company:

i. The Company has all requisite authority and power and has taken all necessary steps and obtained all necessary approvals to voluntarily enter into and perform its obligations under this Agreement.

ii. Neither the Company's execution of this Agreement or its performance of the terms contained herein are prohibited by, or would constitute a breach of any other Agreement by which the Company is bound.

iii. There are no contracts, actions, claims or proceedings pending that affect the Acquired Storage Water Rights;

iv. There are no liens, encumbrances, covenants, conditions or restrictions affecting the Water Rights other than those that previously have been disclosed in writing by the Company to the City;

v. The Company has not assigned or conveyed, or contracted to assign or convey, the Acquired Rights or any claim thereto to any other person or entity;

vi. The Company is not in default of the Partnership Agreement.

B. By the City:

i. The City has all requisite authority and power, and has taken all necessary steps and obtained all necessary approvals to voluntarily enter into and perform its obligations under this Agreement.

12. Right of First Refusal. By this Agreement the City and the Company each grant the other a right of first refusal to the purchase of any storage water rights in Chesterfield Reservoir owned by the City or the Company that are offered for sale in the future by meeting the material terms of any bona-fide offer to purchase same within one hundred eighty days of being presented with such bona-fide offer in writing. However, any proposed sale by the City that is contemplated as incident to or part of a City plan to enhance water quality or otherwise allow its wastewater discharges to satisfy state or federal water quality standards, to provide mitigation, or for any other municipal purpose shall not be subject to this paragraph, it being the intent that if the City has no further need for the storage water rights it proposes to sell and the proposed sale is not contemplated as part of a plan to further a larger municipal purpose, the Company shall have the right of first refusal with respect to such water rights.

13. City Acquisition of Additional Water Rights. Nothing in this Agreement shall be construed to limit the City's future ability to acquire additional water rights held by the Company on a buyer-willing seller basis.

14. Default. Any breach or failure to perform any term, condition, representation or warranty under this Agreement which is not timely cured within ninety (90) days of receipt of written notice thereof shall constitute a default entitling the non-defaulting party to exercise the remedies set forth below.

15. Remedies. The non-defaulting party shall be entitled to specific performance or to terminate this Agreement. For purposes of this Agreement and its enforcement, the term "specific performance" is to be broadly construed to include each of the parties' respective obligations under this Agreement. Before pursuing legal remedies under this paragraph, the Parties agree to first meet and confer in a good faith effort to amicably resolve the dispute or breach, and if necessary to engage in formal mediation provided exigencies do not otherwise preclude mediation.

16. Attorney Fees. In the event of any controversy, claim or dispute between the parties arising from or related to this Agreement or the breach hereof, the prevailing party in any legal action therefor shall be entitled to recover its reasonable costs, expenses and attorney fees from the non-prevailing party; provided that any such action may be brought only by the named parties to this Agreement or their lawful successors or assigns.

17. Notices. Any notice to be given hereunder by either party to the other shall be given in writing by personal delivery or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of the date of personal delivery or three days after the date of mailing. Mailed notices shall be addressed as set forth below, but each party may change the address set forth below by written notice to the other party in accordance with this paragraph.

To Company:
President
PMVCC
P.O. Box 31
Arimo, ID 83214

With Copy to:
Randall C. Budge
Racine, Olson, Nye, Budge & Bailey, Chtd.
201 East Center, Suite A2
P.O. Box 1391
Pocatello, ID 83204-1391

To City:
Mayor
City of Pocatello
911 N. 7th Street
P.O. Box 4169
Pocatello, ID 83205

with a copy to:
Pocatello City Attorney
City of Pocatello
911 N. 7th Street
P.O. Box 4169
Pocatello, ID 83205

18. Additional Documents. The parties agree to execute, deliver and/or provide to the other party any further agreements, documents or information as may reasonably be required to further the parties' intent under this Agreement.

19. Time of the Essence. Time is of the essence of this Agreement.

20. Binding on Successors. This Agreement shall be binding upon the parties and their respective shareholders, assigns and successors in interest.

21. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and

supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

22. Duplicate Counterparts. This Agreement may be signed in duplicate counterparts.

23. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

24. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

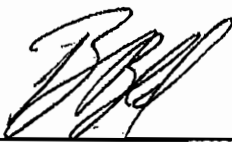
25. Headings. The headings and captions contained in this Agreement are for the convenience of the parties only and are not intended to alter or limit the meaning of the provisions there under.

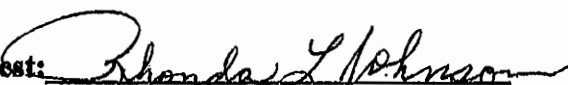
26. Survival. The representations, warranties, covenants and agreements of the Company and the City contained in this Agreement shall survive the closing hereunder.

[end of text]

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and entered into effective as of the date first set forth above.

CITY OF POCA TELLO

By: 
Brian Blad, Mayor

Attest: 
Rhonda Johnson, City Clerk

PORTNEUF-MARSH VALLEY CANAL COMPANY, LIMITED

By:  3-3-10
Ellis Gilbert, President

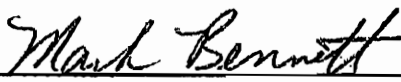
Attest:  3-3-10
Secretary

EXHIBIT A
(Due Diligence Materials to be Furnished by Company)

1. Copies of PMVCC's current articles and bylaws;
2. Copy of PMVCC's most recent audited financial statement;
3. A list and map of the lands/acreages irrigated using water supplied by PMVCC;
4. Identification of any pending or existing litigation involving PMVCC, including nature of dispute and party names;
5. Copies of all Board resolutions related to the Project and/or the Partnership Agreement;
6. Copy of PMVCC AWEF/EQIP requests, Project descriptions submitted to USDA/NRCS and correspondence from USDA/NRCS related to same;
7. Copies of minutes of all meetings, including regular or special board or shareholder meetings where the Project and/or Partnership Agreement were considered, voted on and/or approved;
8. Copies of all current or pending contracts, proposals, requirements, letters of intent, or security agreements, affecting PMVCC's Chesterfield Reservoir, delivery system and/or water rights.
9. Identification of all outstanding loans and/or liens affecting PMVCC water rights or other PVCC assets;
10. Copies of minutes of PMVCC annual or special meetings, annual budgets, annual assessments, water allocation/disposition for years 1989 to present;
11. Reports of all recorded storage volumes 1989-present;
12. Reports of total natural flow and storage diverted to canal system 1989-present;
13. Studies, reports, memoranda or other documentation regarding the historical and present operations of the PMVCC system, including system capacities, operational procedures, accounting protocol, and yields of the PMVCC water supplies.
14. Correspondence between PMVCC and the Idaho Department of Water Resources for years 1989 to present
15. Correspondence between PMVCC and the Water District 29 Watermaster for years 1989 to present.

EXHIBIT B

(Form of Warranty Deed)
WATER RIGHT WARRANTY DEED

FOR VALUE RECEIVED, Portneuf-Marsh Valley Canal Company, Limited an Idaho incorporated water users' association, whose address is 465 South Highway 91, Downey, ID 83234 ("Grantor"), does hereby grant, bargain, sell, and convey unto the City of Pocatello, an Idaho municipal corporation whose address is 911 N. 7th Street, P.O. Box 4169, Pocatello, ID 83205 ("Grantee"), all of Grantor's right, title and interest in and to the following water rights, to wit: the right to divert to storage, store and deliver from storage for beneficial use 620 acre-feet annually of the storage water in Chesterfield Reservoir owned by Grantor and available under Water Right Nos. 29-00053 and 29-00589 with a priority date of July 6, 1912, as decreed in the Snake River Basin Adjudication, Case No. 39576, Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls (the "Water Right");

TOGETHER WITH the right to have the storage water stored in and delivered to Grantee from Chesterfield Reservoir from year-to-year as the first water so stored and delivered and without conveyance loss to the Delivery Points located on the Portneuf River within SE1/4 SE1/4 SW1/4 of Section 20, T9S, R37E, B.M., or within Lot 3, SW1/4 SE1/4 NW1/4 of Section 22, T9S, R37E, B.M..

SUBJECT TO the terms and conditions of the Storage Water Agreement entered into between Grantor and Grantee dated effective _____, 2010.

To Have and to Hold the same unto the Grantee and Grantee's successors and assigns forever. Grantor hereby covenants to and with Grantee and Grantee's successors and assigns, that Grantor is lawfully seized in fee simple of the above-granted Water Right, free from all encumbrances, and Grantor will warrant and forever defend the same against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed this ____ day of _____, 20__.

PORTNEUF-MARSH VALLEY CANAL
COMPANY, LIMITED an Idaho incorporated
water users association

/s/ _____

By:

Its:

NOTARY

EXHIBIT C
(Operations Agreement Elements-
subject to further development, discussion and agreement)

- Delivery Procedures
 - Notification procedures for release of the Acquired Storage Water Rights to the City of Pocatello.
 - Measurement and quantification of delivery of Acquired Storage Water to the Delivery Points.
- Accounting Methodology
 - Measurement and recording of storage accrual to Chesterfield Reservoir and Pocatello Storage Accounts.
 - Measurement and recording of releases and deliveries of the Acquired Storage Water Rights to the City.

Attachment #7a

Location Map

Chesterfield Reservoir Storage Transfer

Attachment #7b

**Original and Proposed Place of Use
Chesterfield Reservoir Storage Transfer**

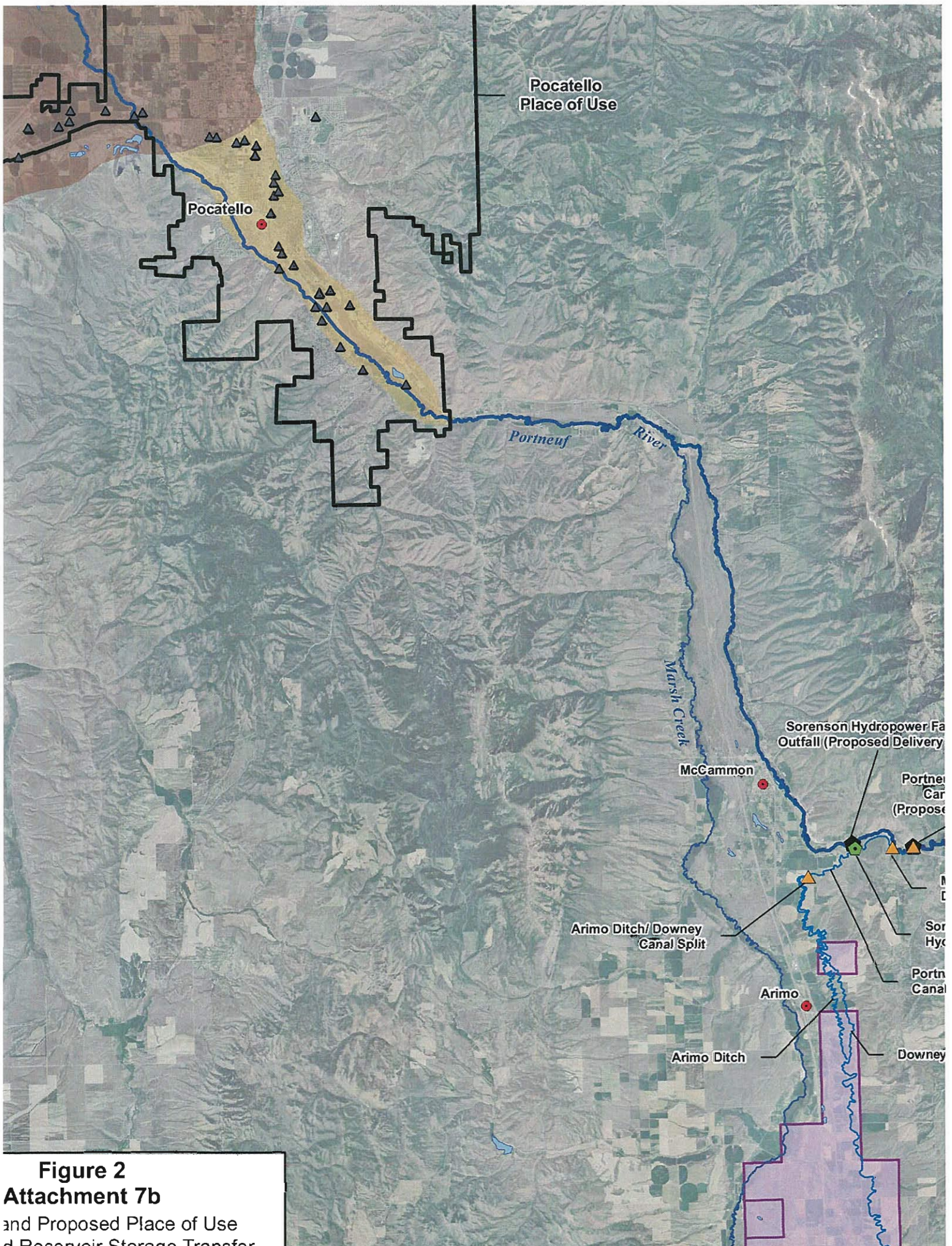


Figure 2
Attachment 7b
and Proposed Place of Use
d Reservoir Storage Transfer

Attachment #9

**Report in Support of the City of Pocatello's Application for
Transfer of Water Rights
Chesterfield Reservoir**

**Report in Support
Of the City of Pocatello's
Application for Transfer of Water Rights

Chesterfield Reservoir**

**Prepared for:

City of Pocatello**

**Prepared by:

Spronk Water Engineers, Inc.
Gregory K. Sullivan, P.E.**

August 30, 2010

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Report in Support Of the City of Pocatello's Application for Transfer of Water Rights

Chesterfield Reservoir

1.0 Introduction

The City of Pocatello ("Pocatello" or "City") provides municipal water service to a population of over 50,000 people in Bannock County. The City encompasses approximately 34 square miles adjacent to the Portneuf River upstream of its confluence with the Snake River at American Falls Reservoir as shown in **Figure 1**.

The primary source of water for the City is ground water pumped from wells constructed in the Lower Portneuf River Valley Aquifer ("LPRVA"). Commercial and industrial development in and around the Pocatello Municipal Airport ("Airport") is supplied from ground water pumped from the Eastern Snake Plain Aquifer ("ESPA"). Other ESPA wells near the Airport are used for irrigation associated with the City's land application treatment of biosolids from the Pocatello Wastewater Treatment Plant ("WWTP"). The City's currently uses approximately 24,000 acre-feet per year, including water used for the biosolids disposal at the Airport.

Pocatello's future water demand for its current Urban Service Boundary ("USB") has been estimated at 43,000 acre-feet (or an additional 19,000 acre-feet per year). To help meet its future water needs, Pocatello entered into a Storage Water Agreement on March 3, 2010 with the Portneuf-Marsh Valley Canal Company ("PMVCC"), a copy of which is included in **Appendix A**. The Storage Water Agreement contemplates that Pocatello may store and use up to 3,100 acre-feet per year of the storage water yield to Chesterfield Reservoir, delivered at a rate of up to 50 cubic feet per second ("cfs"), subject to Pocatello obtaining approvals for the necessary changes to the authorized uses and points of re-diversion for the storage water.

Chesterfield Reservoir is located near the headwaters of the Portneuf River as shown in **Figure 1**, and has a capacity of 20,405 acre-feet. The water stored in the reservoir is used for irrigation by the shareholders of the PMVCC through Portneuf-Marsh Valley Canal (a.k.a. "Downey

Canal” or “Downey Ditch”), which diverts water from the Portneuf River approximately 33 miles downstream of the reservoir.

This report provides supporting information for Pocatello’s application for transfer of the 3,100 acre-feet of storage water in Chesterfield Reservoir to be being acquired from the PMVCC under the Storage Water Agreement. The report is included as **Attachment #9** to Pocatello’s Application for Transfer of Water Rights being filed with the Idaho Department of Water Resources (“IDWR”).

2.0 Description of Water Rights to be Transferred

Pursuant to the Storage Water Agreement, Pocatello has contracted to acquire the first 3,100 acre-feet of yield to Water Right Nos. 29-53 and 29-589 in Chesterfield Reservoir (“Acquired Storage Water Rights”). Purchase of the storage water is contingent on successfully transferring Acquired Storage Water Rights to municipal and other water uses by the City. After the transfer process is completed, Pocatello will obtain title to the subject water in five annual installments of 620 acre-feet. Pursuant to the Storage Water Agreement, the PMVCC will deliver the water from Chesterfield Reservoir at a maximum rate of 50 cfs to a point at or near the headgate of the Portneuf-Marsh Valley Canal located approximately three miles east of McCammon as shown in **Figure 1**. The storage water deliveries will then be transported further down the Portneuf River to Pocatello for use by the City.

The 3,100 acre-feet of storage yield being acquired by Pocatello represents 18.9 percent of the 16,410 acre-feet of storage authorized under a July 6, 1912 priority from Toponce Creek under Water Right 29-53 and from the Portneuf River under Water Right 29-589.

Water Right 29-53 allows diversions from Toponce Creek to Chesterfield Reservoir via the Toponce Creek Feeder Canal at a rate of up to 164.43 cfs from September 16 through April 14. Water Right 29-589 allows Portneuf River water to be diverted to storage year-round in the reservoir under the same 1912 priority date as Water Right 29-53. The combined storage under

Water Rights 29-53 and 29-589 is limited to 16,410 acre-feet. The stored water may be delivered downstream on the Portneuf River for re-diversion at the Portneuf-Marsh Valley Canal between April 15 and September 15. According to a long-standing practice confirmed in the partial decrees entered in the Snake River Basin Adjudication (“SRBA”), water is delivered from the reservoir without conveyance loss to the point of re-diversion at the Portneuf-Marsh Valley Canal. The points of diversion, storage, and re-diversion are shown in **Figure 1**.

In addition to the 1912 storage water rights, the PMVCC owns another storage water right that is not the subject of the City’s transfer application. This additional storage right is for 7,285 acre-feet with a priority date of April 1, 1949, and was appropriated when the reservoir was enlarged to its current size.

The water stored in Chesterfield Reservoir is in addition to the PMVCC’s natural flow water rights for 176.85 cfs under Water Right Nos. 29-52 (December 18, 1907 priority) and 29-13318 (August 7, 1932 priority). The PMVCC natural flow water rights are also not the subject of the City’s transfer application.

A summary of all of the PMVCC water rights is provided in **Table 1**, and copies of the partial decrees are included in **Appendix B**.

3.0 Description of PMVCC Operations

The outlet gate of Chesterfield Reservoir is closed on September 16 and water is diverted to storage from the Portneuf River. Diversions to storage from Toponce Creek via the Toponce Creek Feeder Canal generally commence after September 16 depending on the supply available in the creek and the demands of senior downstream irrigation users on Toponce Creek. Diversion to storage continue through the fall, winter, and spring until the demands of downstream natural flow water rights require the natural flow be passed to the downstream irrigators. After the storage season ends, the Watermaster determines the inflow accruing to the

reservoir and requires the inflow to be passed through the reservoir by adjustments to the reservoir outlet gate.

Natural flow diversions from the Portneuf River to the Portneuf-Marsh Valley Canal typically begin in late April or May depending on weather conditions. The natural flow water right for the Portneuf-Marsh Valley Canal is relatively junior compared to other Portneuf River natural flow irrigation water rights. As a result, natural flow diversions by the PMVCC are typically curtailed for the benefit of the senior water rights after the spring runoff ebbs in the early summer.

When the natural flow supply becomes insufficient to meet the irrigation water demands of the PMVCC shareholders, water is released from Chesterfield Reservoir to supplement the natural flow supply. Water is delivered from Chesterfield Reservoir to the Portneuf-Marsh Valley Canal headgate without conveyance loss in accordance with a long-standing practice that was confirmed in the partial decrees for the PMVCC.

The first three miles of the Portneuf-Marsh Valley Canal are shared with Portneuf Irrigating Company (“PIC”), which is the owner and operator of the Arimo Ditch. The shared portion of the canal is sometimes referred to as the “Big Canal.” The PMVCC operates the Big Canal, and delivers water to the headgate of the Arimo Ditch as shown in **Figure 1**. At this point, the Big Canal splits into the Downey Ditch and the Arimo Ditch. The two canals run parallel to one another in a southerly direction. The Arimo Ditch supplies irrigation water to lands south of McCammon for several miles between the ditch and Marsh Creek. The Downey Canal continues further south to the town of Downey and delivers water for irrigation of approximately 5,100 acres as shown in **Figure 2**.

The water level elevation in Chesterfield Reservoir is measured by a staff gage located on the face of the dam, and is read daily during the irrigation season. The stage measurements are converted to storage volumes using a stage-capacity relationship last updated in 1997 (IDWR,

1997). Releases from storage are measured in a Parshall flume located a short distance downstream of the reservoir outlet.

Several years ago the point of diversion for the Cutler Ditch was changed to the Portneuf-Marsh Valley Canal. Water is now diverted into the Portneuf-Marsh Valley Canal under the Cutler Ditch water rights and is then delivered to the Cutler Ditch through the Sorenson Hydropower Facility via an inverted siphon across the Portneuf River for irrigation of the Cutler Ditch lands on the north side of the Portneuf River.

Diversions of the PMVCC, PIC, and Cutler Ditch water rights through the Big Canal are measured in a Parshall flume located about one mile from the river headgate. Another Parshall flume measures the amount of water delivered into the Arimo Ditch. There are several PIC shareholders who receive their water out of the Big Canal before it splits into the Downey Canal and the Arimo Ditch, and these deliveries are also tabulated. Deliveries to the Cutler Ditch are measured in a flow meter on the inverted siphon pipe.

The daily diversions for the Portneuf-Marsh Valley Canal are computed by the Watermaster as the total measured flow in the Big Canal minus the measured deliveries to the Arimo Ditch, minus the deliveries to the PIC shareholders that take deliveries from the Big Canal, minus the deliveries to the Cutler Ditch.

Table 2 summarizes historical monthly PMVCC diversions, including natural flow and storage water, for the period from 1988 through 2009. Annual diversions averaged 17,112 acre-feet, and ranged from 8,525 acre-feet in 1992 to 26,464 acre-feet in 2006.

Table 3 summarizes the historical storage contents in Chesterfield Reservoir at the beginning and end of the irrigation season from 1997 through 2009 as contained in the PMVCC records. The annual change in storage contents from the beginning of the season to the end of the season

was computed from the storage records¹. The annual change in storage contents through the irrigation season averaged 7,816 acre-feet, and ranged from 3,125 acre-feet in 2005 to 17,061 acre-feet in 2007.

4.0 Proposed Change of Acquired Storage Water Rights

Pursuant to its transfer application, Pocatello proposes to change the period of use, the place of use, the points of re-diversion, and the nature of use of the 3,100 acre-feet of Acquired Storage Water Rights. This section of the report describes the changes proposed by Pocatello.

4.1 Period of Use

Pocatello proposes to change the period of use of the Acquired Storage Water Rights to January 1 through December 31. Pocatello does not propose to change the period when water is diverted to storage, only the times when the Acquired Storage Water Rights may be released from storage for the City's use.

4.2 Place of Use

Pocatello proposes to change the place of use of the Acquired Storage Water Rights from the PMVCC service area to those areas within the City limits, areas currently served by City, and areas that may be served by the City in the future. As part of its planning process, the City has identified an "Area of City Impact" within which the City currently, or may in the future, provide municipal services (including water). The City has also identified an Airport Service Boundary where municipal services area provided to the Airport facilities and to the surrounding development. Finally, the City has designated a Biosolids Program Area that includes additional lands near the Airport that are relevant to the City's future planning.

For purposes of the transfer application, the proposed place of use for Acquired Storage Water Rights is specified as the combined area represented by the Area of City Impact, the Airport Service Boundary, and the Biosolids Program Area. The proposed Pocatello place of use is

¹ The change in storage contents reflects releases for irrigation use and evaporation losses.

outlined in **Figure 1**. This area is subject to change in the future, and Pocatello will submit GIS shape files to IDWR reflecting any changes to the place of use as they occur.

4.3 Points of Re-diversion

Pocatello proposed to take delivery of the Acquired Storage Water Rights from the PMVCC near the headgate of the Portneuf-Marsh Valley Canal at either the Sorenson Hydropower Facility, which discharges from the Portneuf-Marsh Valley Canal to the Portneuf River approximately two miles downstream from the river headgate, or at the existing streamflow gage in the Portneuf River that is used to measure the required bypass flow when the Sorenson Hydropower Facility is operating. These two locations are referred to as the “Delivery Points,” and are shown in **Figure 1**.

After being measured at either of the Delivery Points, deliveries of the Acquired Storage Rights will be conveyed down the Portneuf River for re-diversion at various points depending on the proposed use of the water. The points of re-diversion will be located along a reach of the Portneuf River generally within the proposed place of use, and would be constructed on land owned by Pocatello, or for which Pocatello has otherwise obtained a right of access. The reach of the Portneuf River where the points of re-diversion are proposed to be located is referred to as the “Re-diversion Reach,” and is shown in **Figure 1**. The Re-diversion Reach could be extended further upstream or downstream in the future in the event the City’s water service area is modified.

Additional discussion of the potential diversion facilities to be developed to enable the City’s use of the Acquired Storage Rights is provided in Section 4.4.

4.4 Nature of Use

Pocatello proposes to change the nature of use of the Acquired Storage Rights from irrigation to include the following uses: municipal, ground water recharge, mitigation, recreation, aesthetic, wildlife, fish propagation, exchange, and leases to others. The City will also use the Acquired

Storage Water Rights for irrigation (the current decreed nature of use) of parks, golf courses, open space, and for irrigation of farms as part of the City's Biosolids Program near the Airport. Descriptions of each of these uses are provided below.

4.4.1 Municipal Use

Pocatello proposes to use the Acquired Storage Water Rights for all municipal purposes, including residential, commercial, industrial, irrigation of parks and open space, and related purposes. After being measured at either of the Delivery Points, deliveries of the Acquired Storage Rights will be shepherded downstream to Pocatello where the water will be re-diverted for municipal use. The 3,100 acre-feet of storage water is intended to be used to meet the City's current water requirements, and/or the City's reasonably anticipated future needs as identified in the City's Draft Water System Master Plan (*See* Section 5 below).

One or more points of diversion will be constructed within the Re-diversion Reach shown in **Figure 1**. To use the Acquired Storage Water Rights directly within its culinary system, it will be necessary for Pocatello to construct a water treatment facility. The City has not yet identified a specific location for the water treatment facility, nor the point that water would be diverted from the Portneuf River. After treatment, water would be delivered through the City's water distribution system for municipal use throughout the City's service area.

In addition to municipal use through the City's central water distribution system, deliveries of the Acquired Storage Water Rights may be re-diverted at other locations for irrigation of parks, golf courses, and other open space. Water may also be delivered to areas served by the City for commercial, industrial and related municipal uses.

Pocatello proposes to use and reuse return flows from initial municipal use of the Acquired Storage Water Rights to extinction. Accounting will be developed to compute the portion of the City's treated effluent discharged to the Portneuf River that is comprised of return flows from the

use of the Acquired Storage Water Rights. The accounting will include tabulation and computation of the following information:

1. Daily amount of water re-diverted under the Acquired Storage Water Rights
2. Computation of the daily municipal use of the Acquired Storage Water Rights as a percentage of the total daily municipal use of water supplied to the City's central distribution system.
3. Daily discharge of treated effluent to the Portneuf River at the Pocatello Wastewater Treatment Plant
4. Computation of the portion of the daily discharge of treated effluent arising from use of the Acquired Storage Water Rights by multiplying the daily discharge of treated effluent by the daily percentage of the City's municipal use represented by the Acquired Storage Water Rights.

The treated effluent return flows from the Acquired Storage Water Rights may be exchanged to storage in the City's Palisades Reservoir account, exchanged up the Portneuf River to the City's point(s) of re-diversion, or may be left in the river for mitigation use (see Section 4.4.4), or recreation, wildlife, and aesthetic uses (see Section 4.5.5).

4.4.2 Ground Water Recharge

Recent studies indicate that the City's use of ground water from the LPRVA may be approaching the natural recharge supply to the aquifer, particularly in dry periods. This has resulted in water level declines in portions of the aquifer. One method of enhancing the water supply capacity of the LPRVA would be through managed recharge of the LPRVA with deliveries from the Acquired Storage Water Rights and other water sources.

The transfer application seeks approval to re-divert the Acquired Storage Water Rights into infiltration basins that are excavated to connection with the aquifer for storage and later recovery (this is commonly known as "Aquifer Storage and Recovery," or "ASR"). The Acquired Storage Water Rights could provide a dependable source of recharge water, and would allow the City to bank the recharged water for later withdrawal by the City's LPRVA wells.

The infiltration basin(s) would be constructed in location overlying the Portneuf River Valley Aquifer in areas determined to be geologically suitable for recharge. Potential locations for the infiltration basins were identified in a 2009 draft report prepared for the City regarding the feasibility of various water supply alternatives (MWH, 2009), and are shown in **Figure 1**. One or more diversion facilities would be constructed within the Re-diversion Reach and water would be delivered through these facilities to the infiltration basins to recharge the LPRVA. The volume of water that is recharged would be measured and recorded.

4.4.3 Irrigation Use

There are approximately 1,600 acres in and around the Airport that are irrigated from City-owned wells in conjunction with the City's Biosolids Management Plan ("Biosolids Program") in accordance with an NPDES permit. This program involves land application of treated biosolids that result from the City's municipal wastewater treatment process. Records of irrigation use associated with the Biosolids Program indicate typical annual irrigation application rates of approximately 3.0 acre-feet per acre. This translates to a current annual demand of approximately 4,800 acre-feet per year for irrigation of 1,600 acres. Additional irrigation water will be required for the City's Biosolids Program as the City develops.

The ESPA wells that are the source of the irrigation water supply for the Biosolids Program have priority dates ranging from 1939 to 1984. These wells are subject to possible curtailment as a result of delivery calls from downstream water rights under the IDWR Conjunctive Management Rules. The Acquired Storage Water Rights would provide a dependable alternative water supply for irrigation of the lands in the Biosolids Program, in the event the Biosolids Program Wells were curtailed, or if additional lands are brought into the program.

In addition to the irrigation use associated with the Biosolids Program, the Acquired Storage Water Rights may be used for irrigation of parks, golf courses, and other open space in areas

that are served by the City. These uses may be considered to be municipal and therefore are also listed in the discussion of municipal uses in Section 4.4.1.

4.4.4 Mitigation Use

At the present time, all of the City's water needs are supplied by ground water withdrawn from wells in the LPRVA and the ESPA. The priority dates for the wells range from 1924 to 1992 as shown in **Table 4**. During recent years there have been delivery calls made by users downstream on the Snake River that have resulted in IDWR issuing curtailment orders applied to users of ESPA wells with priorities junior to certain priority dates. To date, only wells in the ESPA have been subject to the curtailment orders. However, it is possible that the administrative boundaries could be changed in the future making the City's LPRVA wells subject to curtailment as a result of delivery calls from downstream Snake River water users.

In addition, Pocatello may decide to construct additional wells in the ESPA or LRPVA in the future to meet its anticipated future demand. The City proposes to use the Acquired Storage Water Rights for mitigation as necessary to support issuance of permits for construction of new wells.

Pocatello seeks approval to use the Acquired Storage Water Rights for mitigation of impacts to downstream users resulting from IDWR's administration of a valid delivery call. The Acquired Storage Water Rights would be used for mitigation by leaving the water in the Portneuf River where it could mitigate any injury to senior water rights attributable to depletions to the surface flows of the Snake River resulting from the operation of the City's wells that are subject to a curtailment order. Each acre-foot of the Acquired Storage Water Rights left in the stream would count one-for-one toward the City's mitigation obligation.

While it is understood that it may not be necessary to obtain approval of a change of water rights in order to use an irrigation water right for mitigation purposes, and that such use can occur

simply by non-use of the original water right, to be prudent, the City is seeking approval to use the Acquired Storage Water Rights for mitigation purposes.

Before the Acquired Storage Water Rights are actually used for mitigation of existing wells or new wells, the City would file an application for approval of a Mitigation Plan pursuant to the IDWR's Conjunctive Management Rules. The mitigation plan would describe the details of the wells to be mitigated, including quantification of the timing, location, and amount of the mitigation requirements, and how the Acquired Storage Water Rights would be used to meet the mitigation obligation.

4.4.5 Recreation, Aesthetic, Wildlife, Fish Propagation Uses

The flow of the Portneuf River through Pocatello typically peaks during the spring as a result of snowmelt runoff. Flows typically decline through the late spring and summer as the runoff ebbs and as a result of upstream irrigation uses. During the summer, streamflows at the USGS gage in Pocatello typically range from 50 cfs to 150 cfs, but have fallen below 10 cfs in dry years.

The City seeks approval to have the storage water delivered to the Re-diversion Reach to enhance streamflows during periods of low flow, typically during the summer and fall for recreation, aesthetic, wildlife, and fish propagation purposes.

4.4.6 Exchange to Palisades Reservoir

Pocatello seeks approval to exchange the Acquired Storage Water Right to storage in the City's Palisades Reservoir space-holder account. Pocatello's Palisades Reservoir Contract with the U.S. Bureau of Reclamation ("BOR") allocates 4.1667 percent of the active storage capacity of Palisades Reservoir to the City, and this is equivalent to 50,000 acre-feet of storage capacity. The City's storage allocation is filled under the 1939 Palisades Reservoir storage priority, which is the most junior of the large storage water rights on the Snake River. As a result, Pocatello's Palisades Reservoir does not fill in dry years. During times when Pocatello's Palisades Reservoir space does not fill, Pocatello may leave the Acquired Storage Water Rights in the Portneuf River

to flow downstream to the Snake River, and in exchange, would divert a like amount of water to storage in Palisades Reservoir. Once stored in Palisades Reservoir, the water could be used for various purposes including municipal, irrigation, mitigation, and other uses.

4.4.7 Leases to Others

Pocatello may lease the Acquired Storage Water Rights to others for irrigation, mitigation, hydropower production, flow augmentation, recharge, or other uses within the Portneuf River basin and/or in the Snake River basin, as allowed by Idaho law. If and when leases to others are contemplated, an application for approval of the lease would be filed with IDWR.

5.0 Pocatello's Reasonably Anticipated Future Demand

Through its planning efforts, the City's has identified a need for additional water supplies to help meet the City's current and future water demands. The proposed transfer of the Acquired Storage Water Rights is one source of water to meet the City's water needs. This section of the report describes Pocatello's current and projected water requirements, the water supply available from the City's current sources, and the additional water supply that will need to be developed to meet future demands.

5.1 Pocatello's Current Water Use

Pocatello currently provides water for municipal purposes within the City's Urban Service Boundary (a subset of the Area of City Impact) and within the Airport Service Boundary. In addition, water is provided for irrigation use near the Airport as part of the Biosolids Program. The City's current annual water use is approximately 24,000 acre-feet per year. This includes 19,000 acre-feet per year for municipal uses, and 5,000 acre-feet per year for the Biosolids Program.

5.2 Pocatello's Future Water Demand

The City's most recent water demand estimates are contained in the City's 2006 Draft Water System Master Plan report (MWH, 2006). The future water demand for build-out of the Urban

Service Boundary (“USB”) was estimated at approximately 43,000 acre-feet per year. Depending on the future rate of growth, build-out of the USB is expected to occur between 2040 and 2070. This represents a planning horizon of approximately 40 to 60 years, and is reasonable for municipal water supply planning purposes. The forecast water demand associated with build-out of the USB does not include additional water demand for (a) build-out of the Area of City Impact, (b) municipal uses at the Airport, (c) irrigation water uses associated with the Biosolids Program, and (d) water needed for mitigation purposes. The City’s voluminous Water System Master Plan can be provided on request.

5.3 Pocatello’s Existing Supply

Pocatello’s existing water supply is provided from ground water pumped from the Lower Portneuf River Valley Aquifer (“LPRVA”) for its City municipal uses and from the Eastern Snake Plain Aquifer (“ESPA”) for its Airport and Biosolids Program water uses. The City also owns senior surface water rights on Mink Creek and Gibson Jack Creek, and the BOR contract for 50,000 acre-feet in Palisades Reservoir. The yield from each of these sources is described below.

1. LPRVA Wells - According to preliminary analysis by Dr. John Welhan of the Idaho Geological Survey, current withdrawals from the LPRVA may be exceeding the safe yield of the aquifer. Additional study of the aquifer, including development of a ground water model, has been discussed to better assess the long-term aquifer capacity. Based on this information, the City is not currently planning on increasing pumping from the LPRVA to meet increased future water demands without augmenting the aquifer supply through recharge or other means.
2. Surface Water Rights - The City’s surface water rights on Mink Creek and Gibson Jack Creek were the original sources of water for Pocatello. The yield of the City’s Mink Creek and Gibson Jack Creek varies considerably from year to year depending on runoff from the source watersheds, with relatively little yield available in dry years.

3. Palisades Reservoir Contract – As described above, the yield to Pocatello's Palisades Reservoir space is uncertain from year to year because of the relatively junior 1939 storage priority for the reservoir. During the recent drought in the Snake River basin, Palisades storage space went three consecutive years (2002-2004) with essentially no yield and five consecutive years (2001-2005) with partial or zero yield. The City's Palisades Reservoir water could be a source of additional water either through development of a surface water supply system (conveyance from the Snake River or diversion from the Portneuf River by exchange), or to mitigate pumping from existing or new wells. However, due to the unreliable yield, the City's Palisades Contract is not sufficient, in and of itself, to meet the City's future demands. Assuming that a single 50,000 acre-foot allocation in an average or wet year would need to supply a demand for five consecutive years with no additional allocation after the first year, the reliable yield of the Palisades supply would be less than 10,000 acre-feet per year, allowing for evaporation losses.

5.4 Pocatello's Additional Water Supply Requirements

The additional water supply needed by Pocatello to meet its future water demands is estimated to be in excess of 14,000 acre-feet per year. This estimate is based on (a) the forecast future water demand from the City's 2006 Draft Master Plan (43,000 acre-feet), (b) assuming that Pocatello's current water use represents the safe yield of the LPRVA (19,000 acre-feet), and that Palisades Reservoir would provide no more than 10,000 acre-feet of additional reliable yield. Additional water (in excess of 14,000 acre-feet per year) will be necessary to meet water demands for areas outside the USB, the irrigation water demands for the City's Biosolids Program, and to meet possible mitigation requirements associated with the City's existing ground water uses.

6.0 Portneuf River Conveyance Losses

The partial decrees for Chesterfield Reservoir provide that water is delivered from the reservoir for diversion at the Portneuf-Marsh Valley Canal without assessment of a conveyance loss. Pocatello's legal counsel has advised that the City should be entitled to the benefit of this

condition in the delivery of the Acquired Storage Water Rights to the vicinity of the Portneuf-Marsh Valley Canal headgate.

An analysis has been performed of the flows of the Portneuf River between the USGS gages at Topaz and at Pocatello to determine what, if any, transit loss should be assessed in delivering the Acquired Storage Water Rights from the Delivery Points near the Portneuf-Marsh Valley Canal headgate downstream to Pocatello. The study period for the analysis was from 1988 through 2007

Streamflow records were tabulated for the Portneuf River gages at the Topaz and at Pocatello, and the Marsh Creek near McCammon. Diversion records for the major Portneuf River irrigation ditches between the Topaz and Pocatello gages were obtained from IDWR. The major irrigation ditches included the Downey Ditch, Arimo Ditch, McCammon Ditch and the Cutler Ditch. Diversions downstream of the Cutler Ditch were not included in the analysis. The gain or loss between the gages was calculated using the following water balance equation:

$$\text{Gain/loss} = Q_{\text{Pocatello}} + \text{Diversions} - Q_{\text{Topaz}} - Q_{\text{Marsh Creek}}$$

Where: Q = recorded flow at gage

Diversions = recorded intervening ditch diversions

A positive value indicates a gain in streamflow and a negative value indicates a loss. Note that diversions after September 15 were not recorded prior to 2005 in the Water District records, and the absence of these records results in underestimate of gains (or overestimate of losses).

Table 5 summarizes the results of the analysis from 1988 through 2007. On an annual basis, there is generally a net annual gain in streamflow. The analysis showed gains in every year of the 20-year study period, except for 1992 when there was a computed loss of 832 acre-feet, or approximately 1.1 percent of the Topaz gage flows. The Portneuf River gained an average of

38,230 acre-feet during the study period, which represents about 33 percent of the flow at the Topaz gage. Gains during the irrigation season (Apr-Sep) averaged 24,823 acre-feet, and gains during the non-irrigation season (Oct-Mar) averaged 13,407 acre-feet.

The results of the gain analysis indicate that the Portneuf River from the Topaz gage to the Pocatello gage is a gaining stream, therefore, it is expected that there would be little or no transit loss in delivering the Acquired Storage Water Rights to Pocatello except for temporary bank storage.

In addition to performing the transit loss analysis, the Watermasters for Water District 29 (Steve Hebden) and Water District 29D (Marshall Wheatley) were interviewed to obtain information regarding the water uses in the reach of the Portneuf River between the town of McCammon and Pocatello. The Watermasters reported that there are numerous small diversions in the reach, primarily for irrigation uses. Almost all of these users pump water out of the river for their use. Mr. Hebden reported that during his tenure as Watermaster he had never seen the Portneuf River dry up anywhere between McCammon and Pocatello, and that there was sufficient water in the river to satisfy the demands of the users between McCammon and Pocatello. Consequently, the City does not anticipate difficulties in administering delivery of the 3,100 acre-feet of storage down the Portneuf River during either the irrigation season or non-irrigation season.

7.0 Administration of Transferred Water Rights

Pursuant to the Storage Water Agreement, the PMVCC will deliver the Acquired Storage Water Rights to Pocatello at rates of up to 50 cfs near the headgate of the Portneuf Marsh Valley Canal. As described above, the water will be measured at either of two Delivery Points (at a gage in the Portneuf River or measured through the Sorenson Hydropower Facility). After being measured at the Delivery Points, the water will be left in the Portneuf River to flow downstream for use by the City through facilities constructed in the Re-diversion Reach generally within the current and future boundaries of areas served water by Pocatello.

The following terms and conditions are proposed regarding the use of the Acquired Storage Water Rights by Pocatello:

1. The Acquired Storage Water Rights will be used for municipal, ground water recharge, mitigation, recreation, aesthetic, wildlife, fish propagation, and exchange purposes within the City's current and future service area, including extraterritorial service provided by the City.
2. The Acquired Storage Water Rights will be delivered by the PMVCC to Pocatello at the Delivery Points located near the PMVCC Canal headgate.
3. Diversions to storage from Toponce Creek under the City's portion of Water Right 29-53 through the Toponce Feeder Canal will be limited to a total diversion rate of 164.43 cfs when combined with diversions under the remaining portion of Water Right 29-53 owned by the PMVCC.
4. Annual diversions to storage under the City's portion of Water Rights 29-53 and 29-589 will be limited to a total of 16,410 acre-feet when combined with diversions under the remaining portion of Water Rights 29-53 and 29-589 owned by the PMVCC.
5. The water measured at the Delivery Points will be left in the Portneuf River to flow downstream to Pocatello, and no transit should be assessed in delivering the water to Pocatello.
6. Annual delivery and use of water by Pocatello shall be limited to no more than 3,100 acre-feet per year at a rate of flow not to exceed 50 cfs.
7. Flows at the Delivery Points and Re-diversion Points will be measured and recorded daily. Records of the daily measurements will be summarized into monthly and annual totals and will be submitted annually to IDWR as part of the water use reporting submitted by the Watermasters for Water District 29 and 29D.
8. Pocatello will pay appropriate costs for the Watermaster services based on normal assessment procedures.

8.0 References

The following information was relied upon in preparing this report. Copies of the documents are available upon request.

City of Pocatello, GIS Shapefiles of City Boundaries.

City of Pocatello, NPDES Permit No. ID-002178-4, map, Pocatello Biosolids Beneficial Recycling/Reuse Site Agricultural Sites for Land Application.

District Court of the Fifth Judicial District of the State of Idaho, Order of Partial Decree, *Nunc Pro Tunc*, For Irrigation Delivery Entity Using Digital Boundary Description; I.C. §§ 42-202B(2), 42-219(2), 42-1411(2)(h) For Water Rights: 29-00052, 29-00053, 29-04060, 29-00589 and 29-13318 (Portneuf Marsh Valley Irrigation Co.)

Idaho Department of Water Resources, Partial Decree for Water Right 29-7578.

Idaho Department of Water Resources, Partial Decree for Water Right 29-7772.

Idaho Department of Water Resources, Partial Decree for Water Right 29-51.

Idaho Department of Water Resources, Partial Decree for Water Right 29-11127.

Idaho Department of Water Resources, Partial Decree for Water Right 29-13398.

Idaho Department of Water Resources, Partial Decree for Water Right 29-13400.

Idaho Department of Water Resources, GIS mapping data.

Idaho Department of Water Resources, Water District 29 Daily Diversion and Streamflow Records.

Idaho Department of Water Resources, Letter to Portneuf-Marsh Valley Canal Co. Re: Chesterfield Reservoir Capacity Survey, January 27, 1997.

MWH, City of Pocatello Water System Master Plan and Development of Water System Model, Draft, August, 2006.

MWH, Draft Feasibility Evaluation of Water Supply Augmentation Alternatives – Phase 2 For the City of Pocatello, October, 2009

Personal Communication with Steve Hebden, Water Master for District 29.

Personal Communication with Marshall Wheatley, Water Master for Water District 29D.

Personal Communication with Ron Jolley, PMVCC Board Member.

Personal Communication with Eric Olson, PMVCC Superintendent.

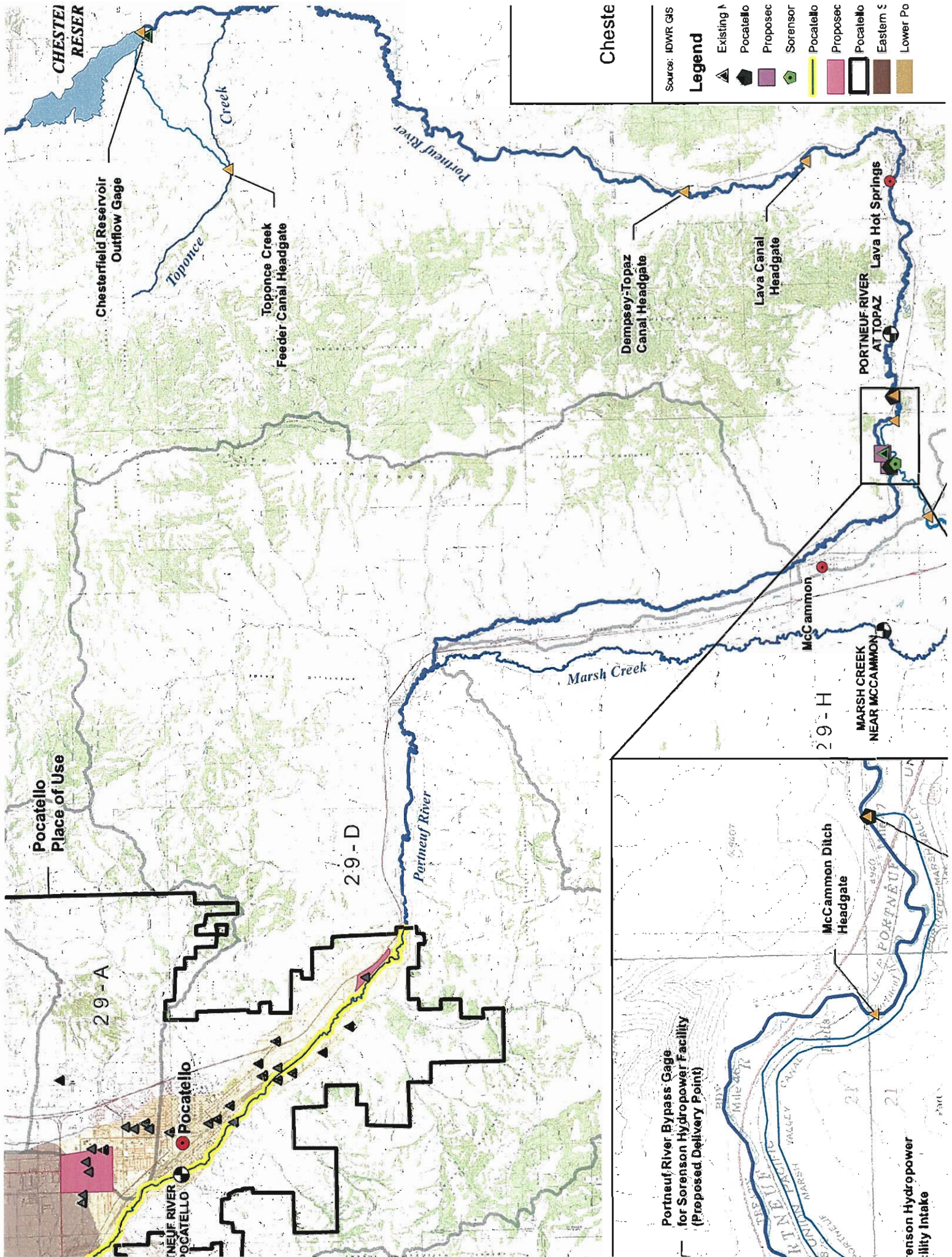
Personal Communication with Dean Tranmer, Pocatello City Attorney.

Personal Communication with Justin Armstrong, Water Superintendent.

United States Department of the Interior, Bureau of Reclamation, Minidoka and Palisades Projects, Idaho, Contract With City of Pocatello Concerning Storage Capacity in Palisades Reservoir, and Related Matters, Contract No. 14-06-100-1825, January 8, 1960.

Welton, J., Water Balance and Pumping Capacity of the Lower Portneuf River Valley Aquifer, Bannock County, Idaho, July, 2006.

Figures



Chester

Source: IDWR GIS

Legend

- Existing A
- Pocatello
- Proposed
- Sorenson
- Pocatello
- Proposed
- Pocatello
- Eastern S
- Lower Po

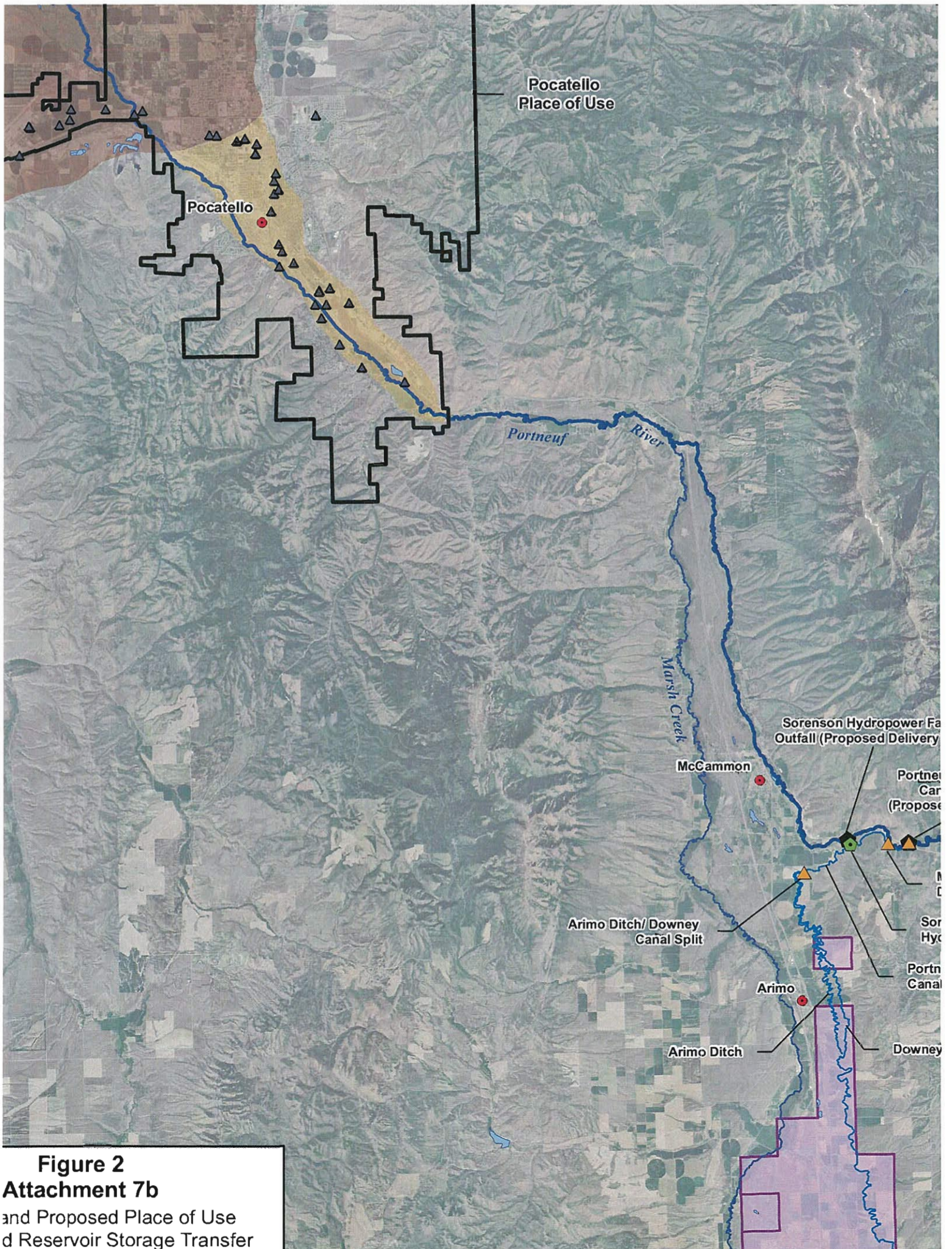


Figure 2
Attachment 7b
and Proposed Place of Use
d Reservoir Storage Transfer

Tables

Table 1

**Summary of Water Rights
Portneuf-Marsh Valley Canal Company**

	Water Right No.	Source	Priority Date	Rate (cfs)	Annual Volume (ac-ft)	Diversion Season	Use Season
Natural Flow	29-52	Portneuf River	12/18/1907	176.85	n/a	4/15 - 9/15	4/15 - 9/15
	29-13318	Portneuf River	8/7/1932	176.85	n/a	4/1 - 10/31	4/1 - 10/31
Storage	29-53	Toponce Creek	7/6/1912	164.43	16,410	9/16 - 4/14	4/15 - 9/15
	29-589	Portneuf River	7/6/1912	n/a	16,410	1/1 - 12/31	4/15 - 9/15
	29-4060	Portneuf River Toponce Creek	4/1/1949	n/a	7,285	1/1 - 12/31	4/01 - 9/15

Source: Snake River Basin Adjudication Partial Decree.



Table 2

**Historical Monthly Diversions
Portneuf-Marsh Valley Canal
1988 - 2009
(acre-feet)**

Year	Apr	May	Jun	Jul	Aug	Sep	Total
1988	0	3,749	4,711	2,023	0	0	10,483
1989	0	0	6,050	5,659	3,648	1,301	16,657
1990	0	4,957	3,919	6,998	139	0	16,013
1991	0	1,609	4,074	5,576	3,939	0	15,198
1992	0	4,923	3,602	0	0	0	8,525
1993	0	0	4,096	6,137	4,177	1,646	16,056
1994	0	5,052	5,119	5,423	1,980	0	17,574
1995	0	2,249	3,447	6,667	5,453	1,232	19,048
1996	0	0	4,485	6,617	4,086	1,525	16,713
1997	0	0	3,289	6,105	4,062	2,660	16,116
1998	0	0	3,481	6,742	4,885	2,368	17,477
1999	0	0	2,896	6,510	4,689	1,605	15,699
2000	0	3,104	6,189	5,891	4,536	817	20,537
2001	0	6,450	6,565	5,611	1,331	0	19,958
2002	238	6,197	6,272	5,652	0	0	18,359
2003	1,220	5,703	3,573	0	0	0	10,496
2004	668	5,888	3,711	2,344	0	0	12,611
2005	0	1,363	2,875	6,719	3,318	1,353	15,627
2006	0	4,714	5,952	6,546	5,493	3,759	26,464
2007	615	6,861	6,734	5,947	3,817	754	24,727
2008	0	4,155	5,875	6,478	4,358	805	21,672
2009	0	3,906	2,239	5,901	5,369	3,041	20,456
Avg	125	3,222	4,507	5,252	2,967	1,039	17,112
Min	0	0	2,239	0	0	0	8,525
Max	1,220	6,861	6,734	6,998	5,493	3,759	26,464

Notes

Diversions after September 15 were typically not recorded until approximately 2005.

Source: Daily diversion records for Water District 29.



Table 3

**Summary of Chesterfield Reservoir Storage Records
1997 - 2009**

Date	(1,2) Beg of Season Gage Height (feet)	(1) End of Season Gage Height (feet)	(3) Beg of Season Storage (ac-ft)	(3) End of Season Storage (ac-ft)	(4) Storage Used (ac-ft)
1997	46.6	38.8	20,405	11,757	8,648
1998	42.6	37.3	15,554	10,448	5,106
1999	43.1	39.9	16,107	12,784	3,323
2000	46.6	33.3	20,405	7,438	12,967
2001	43.0	35.9	15,995	9,317	6,679
2002	33.9	17.5	7,847	1,083	6,764
2003	29.1	0.0	4,967	0	4,967
2004	31.1	16.3	6,061	875	5,186
2005	27.0	16.1	3,969	844	3,125
2006	46.6	39.8	20,405	12,688	7,717
2007	46.6	25.5	20,405	3,345	17,061
2008	37.1	17.1	10,281	1,011	9,270
2009	46.6	36.2	20,405	9,552	10,853
Avg			14,062	6,242	7,820
Max			20,405	12,784	17,061
Min			3,969	0	3,125

Notes:

- (1) Beginning and End of Season gage height reported by Ron Jolley, PMVCC Board member, from PMVCC minutes.
- (2) When reservoir was reported full, 46.6 gage height is assumed, based on the 1997 Chesterfield Reservoir stage-capacity curve.
- (3) Beginning and End of Season storage volume determined from the reported gage height and the 1997 Chesterfield Reservoir stage-capacity curve.
- (4) Storage Used computed as the End of Season Storage minus the Beg of Season Storage.

Summary of Water Rights City of Pocatello

Water Right	Priority Date	Diversion Rate (cfs)	Historical Well No. or Source	Aquifer
SURFACE WATER RIGHTS				
29-271	2/26/1869	3.22	Mink Creek	N/A
29-4222	6/16/1898	5.00	Gibson Jack Creek	N/A
29-272	10/1/1901	0.56	Mink Creek	N/A
29-273	10/1/1917	1.218	Mink Creek	N/A
CITY INTERCONNECTED WELLS AND WATER RIGHTS				
29-13558	7/16/1924		Alameda 1	LPRVA
		1.34		
29-13559	12/31/1925	0.96	Alameda 2	LPRVA
29-13560	12/31/1926	9.13	1(5)	LPRVA
			2 (2.45 cfs)	LPRVA
			3 (4.23 cfs)	LPRVA
29-13561	8/31/1931	4.23	4	LPRVA
29-13562	12/31/1936	2.45	6	LPRVA
29-13637	12/31/1940	4.46	7	LPRVA
29-4221	6/1/1945	2.67	26	LPRVA
29-2274	6/15/1948	9.69	8	LPRVA
			9	LPRVA
			10	LPRVA
Tr 5452			44	LPRVA
29-11348	8/31/1951	4.90	28	LPRVA
29-13639	10/22/1952	3.68	22	LPRVA
29-2338	9/1/1953	9.53	12	LPRVA
			13	LPRVA
			15	LPRVA
29-4224	9/15/1955	3.89	21	LPRVA
29-4226	12/31/1955	0.22	14	LPRVA
29-4225	8/15/1956	4.44	23	LPRVA
29-2401	10/16/1958	12.22	13	LPRVA
			16	LPRVA
			18	LPRVA
29-11339	12/31/1961	3.36	Alameda 6	LPRVA
			Alameda 7	LPRVA
29-4223	10/1/1962	0.21	33	LPRVA
29-2499	10/10/1964	4.10	27	LPRVA
29-7106	11/6/1972	3.90	29	LPRVA
29-7322	4/25/1976	17.06	30 (5.58 cfs)	LPRVA
			31(8.03 cfs)	LPRVA
			32 (3.46 cfs)	ESPA
29-7375	2/24/1977	2.23	15	LPRVA
29-7782	1/18/1985	7.00	34	LPRVA
29-8086	3/26/1992	4.00	36	LPRVA
AIRPORT INTERCONNECTED WELLS AND WATER RIGHTS				
29-13638	12/31/1940	2.20	39	ESPA
29-7450	6/13/1978	3.34	35	ESPA
BIOSOLIDS PROGRAM WATER RIGHTS				
29-2255D	5/22/1939	0.482	2	ESPA
29-11344	12/31/1942	1.92	40	ESPA
29-2259	6/20/1944	2.60	Pit Road	ESPA
29-2255F	9/16/1949	0.40	2	ESPA
29-7073	9/30/1971	1.49	3	ESPA
29-7118	4/11/1973	4.01	42	ESPA
29-7119	4/11/1973	6.00	41	ESPA
29-7770	5/21/1984	4.46	WPC	ESPA
OTHER WATER RIGHTS				
29-2354	8/27/1954	0.28	Restlawn Cemetery	LPRVA
29-2382	12/21/1956	3.82	17	LPRVA
29-13636	10/16/1958	0.80	19	ESPA
29-7502	7/6/1979	0.10	Restlawn Cemetery	LPRVA
29-7222	8/22/1974	1.00	43	ESPA
29-7431	12/29/1977	9.28	Wastewater	N/A

Notes:

LPRVA = Lower Portneuf River Valley Aquifer

ESPA = Eastern Snake Plain Aquifer

Table 5

**Summary of Portneuf River Gain Analysis
Topaz to Pocatello
1988 - 2007**

Year	(1) Topaz Gage (ac-ft)	(2) Diversions (ac-ft)	(3) Marsh Crk Gage (ac-ft)	(4) Pocatello Gage (ac-ft)	(5) Gain/Loss (ac-ft)	(6) Gain/Loss (% Topaz)
1988	104,320	37,928	48,431	123,973	9,150	8.8%
1989	122,860	38,962	53,743	154,751	17,110	13.9%
1990	101,309	39,991	44,686	117,247	11,242	11.1%
1991	101,859	35,868	46,051	131,528	19,486	19.1%
1992	75,748	29,001	31,869	77,784	-832	-1.1%
1993	113,776	37,655	54,328	196,694	66,245	58.2%
1994	88,087	40,596	36,897	104,345	19,957	22.7%
1995	112,905	45,662	50,972	169,542	51,327	45.5%
1996	155,322	36,501	66,441	247,329	62,067	40.0%
1997	213,052	36,925	71,569	328,472	80,776	37.9%
1998	172,043	38,649	64,363	290,186	92,429	53.7%
1999	156,585	37,312	57,742	247,029	70,014	44.7%
2000	121,390	44,589	43,671	153,876	33,404	27.5%
2001	85,509	42,547	34,888	97,568	19,719	23.1%
2002	92,205	41,511	31,964	111,229	28,571	31.0%
2003	72,888	36,425	23,561	78,556	18,533	25.4%
2004	79,657	35,141	33,491	94,444	16,437	20.6%
2005	103,832	38,536	47,021	147,138	34,821	33.5%
2006	166,322	51,836	64,497	252,260	73,275	44.1%
2007	98,981	51,973	39,726	127,610	40,877	41.3%
Averages						
Annual	116,932	39,880	47,295	162,578	38,230	32.7%
Irrigation Season (Apr-Sep)	70,233	39,880	22,110	77,285	24,823	35.3%
Non-Irrig Season (Oct-Mar)	46,700	0	25,186	85,293	13,407	28.7%

Notes:

- (1) Portneuf River at Topaz (USGS No. 13073000).
- (2) Sum of diversions for the Portneuf Marsh-Valley Canal, Arimo Ditch, McCammon Ditch, and Cutler Ditch.
- (3) Marsh Creek near McCammon (USGS No. 13075000).
- (4) Portneuf River at Pocatello (USGS No. 13075500).
- (5) Gain/Loss = Pocatello Gage + Diversions - Topaz Gage - Marsh Creek Gage.
Positive value indicates a gain in streamflow between the Topaz gage and the Pocatello gage.
- (6) (Gain/Loss) ÷ Topaz Gage.

Appendix A

Storage Water Agreement

STORAGE WATER AGREEMENT

This Storage Water Agreement ("Agreement") is entered into by and between the City of Pocatello, a municipal corporation ("City") and the Portneuf-Marsh Valley Canal Company, Limited, an Idaho incorporated water users' association ("Company" or "PMVCC"), effective this 3rd day of March, 2010.

RECITALS

A. The Company holds certain decreed natural flow and storage water rights diverted from the Portneuf River and its tributary Toponce Creek. The Company also owns and operates a water delivery system delivering irrigation water from its headgate on the Portneuf River to irrigate approximately 5,103 acres of land within Bannock County, Idaho (the "Water System"). The Company also owns and operates Chesterfield Reservoir, wherein the Company is authorized by its water right decrees to store and release for irrigation uses up to 23,695 acre-feet of water per year from the Portneuf River and its tributary Toponce Creek.

B. The City, through its elected City Council and Mayor, is responsible for, among other things, providing for the health, safety, and welfare of its residents, reliable water supplies and the proper treatment and disposal of wastewater generated by the City and its residents in accordance with state and federal laws.

C. The Company's board of directors ("Board"), upon due approval and authorization by vote of the Company's shareholders, has executed a five-year agreement with the United States Department of Agriculture ("United States"), Natural Resources Conservation Service, NRCS Agreement No. 65-0211-9-019, accepted by its State Conservationist Jeff Burwell on September 9, 2009 (the "Partnership Agreement"). Under the Partnership Agreement, the United States has agreed to provide the Company with financial and technical assistance through the federal Environmental Quality Incentives Program ("EQIP"), Agricultural Water Enhancement Program ("AWEP") and other federal assistance programs ("Federal Assistance") and to fund the reconstruction and/or relocation of portions of the Company's Water System and a water delivery system owned and operated by the Portneuf Irrigation Company to achieve, among other things, improved efficiencies in water deliveries and other benefits for the Company and its shareholders (the "Project").

D. The United States has contracted to provide the Company with \$18,500,000 in Financial Assistance to undertake the Project, which funds are anticipated to be advanced by the United States to the Company in equal installments over a five-year period commencing in 2010.

E. The City desires to purchase from the Company the right to store and beneficially use the first 3,100 acre-feet of storage water yield accruing annually to, or carried over from the prior year in, the Chesterfield Reservoir, it being the parties intent that the Company be obligated

to deliver the purchased water rights for the City's use every year on a firm basis. The total funds to be paid to the Company by the City are in the amount of Six Million Two-Hundred Thousand Dollars (\$6,200,000.00) ("Funds") in the manner set forth herein. The Funds are to be provided by the City in exchange for the Company's incremental conveyance of portions of its storage water rights up to a total of 3,100 acre-feet over a five-year period of time, for the City's use as set forth herein.

F. The City and the Company each expressly acknowledge that the storage water rights and storage water supply represented thereby that are to be acquired by the City pursuant to this Agreement will no longer be available to Company shareholders for irrigation or other purposes, and may not be diverted into the Company's Water System without the City's express written agreement.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, the conditions, covenants, contingencies, representations and warranties given by the parties below, the receipt and sufficiency of which the parties acknowledge, the City and the Company agree as follows:

1. Acquired Storage Water Rights. Upon receipt of the payments set forth in paragraph 4 below, the Company shall convey to the City by separate Warranty Deeds, the right to store and beneficially use the first three thousand one hundred (3,100) acre-feet per year of storage water yield to Chesterfield Reservoir, whether from accrued fill or carryover from the prior year, as authorized to be diverted to storage, stored and delivered from storage under decreed water rights 29-00053 and 29-00589, together with: the appurtenant right to annually store up to 3,100 acre-feet of water within Chesterfield Reservoir; a share of the outlet capacity and conveyance capacity of the Company's Water System from Chesterfield Reservoir to the point of delivery to the City on the Portneuf River sufficient to deliver up to a maximum flow rate of 50 cubic feet per second; to have the 3,100 acre-feet of water released from storage to the Portneuf River, and subject to any necessary authorizations by the Idaho Department of Water Resources concerning the City's use, delivered at a rate of up to 50 cubic feet per second for use by the City in the amounts and at the times as requested by the City (the "Acquired Storage Water Rights"). Said Acquired Storage Water Rights are derived from the Company's total authorized annual storage of sixteen thousand four hundred ten (16,410) acre-feet under water rights 29-00053 and 29-00589, each with a priority date of July 6, 1912, as decreed in the Snake River Basin Adjudication Case No. 39576, Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls.

2. Conveyance by Warranty Deeds. To the extent that the City has performed under this Agreement by advancing funds as set forth below, the Company shall convey to the City by Warranty Deeds free and clear of all liens, claims and encumbrances, the Acquired Storage Water Rights, in annual increments of 620 acre-feet each year thereafter (the "Annual Increments") for a period of five total years.

3. **Escrow of Deeds.** Prior to the first annual installment of funds by the City, the Company shall place into escrow ("Escrow") five fully-executed and acknowledged Warranty Deeds, in substantially the form attached hereto as Exhibit B, each of which upon release will convey to the City one-fifth of the Acquired Storage Water Rights (620 acre-feet). First American Title Company in Pocatello shall serve as the Escrow. The City shall pay all Escrow fees and closing costs associated with this Agreement.

4. **Funds.** In consideration of the conveyance of the Acquired Storage Water Rights to the City, the City shall pay to the Company the total amount of Six Million Two Hundred Thousand Dollars (\$6,200,000.00) in five equal annual installments of One Million Two Hundred Forty Thousand Dollars (\$1,240,000.00) each year as set forth below:

A. The first annual installment shall be delivered to the Company or its designee within fifteen business days of the date on which all of the contingencies set forth in Sections 7(A) and 8 below have been satisfied.

B. Provided the conditions set forth in paragraph 7(B) below have been satisfied by the Company, the remaining annual installments shall thereafter be delivered by the City to the Company or its designee on or before October 1 of each year, until the entirety of the Funds have been advanced by the City, or this Agreement has been terminated by its terms.

5. **Delivery of Fund Advances and Conveyances.** The City shall deliver each advance of funds directly to the Company or its designees through the Escrow. Upon the Escrow's receipt of the Funds, the Escrow shall record the Warranty Deed and deliver it to the City.

6. **Due Diligence Period and Right to Terminate.** The City shall have a due diligence period of ninety (90) days ("Due Diligence Period") commencing on the date that the City and Company have each executed this Agreement during which to satisfy itself, in the City's sole discretion, concerning all aspects of the Project, including without limitation, the reliability and the suitability of the Acquired Storage Water Rights for the City's intended purposes, which may include any and all lawful uses of water under Idaho law. The City may terminate this Agreement upon written Notice to the Company delivered prior to expiration of the Due Diligence Period. In addition to providing the City with the materials listed in Exhibit A hereto, the Company shall cooperate with and assist the City in obtaining information from the United States reasonably necessary for the City to understand the nature, requirements and contingencies, if any, of the Company's agreement with the United States concerning the Project.

7. **Contingencies to City's Advance of Funds.** The City's obligation to advance any Funds under this Agreement is contingent upon the occurrence of all of the following:

A. For First Advance of Funds—Unless waived by the City:

i. Satisfactory completion of the City's due diligence.

ii. Confirmation in the form of a final, unappealable order ("Final Order") issued by the Idaho Department of Water Resources ("Department") that the Acquired Storage Water Rights may be transferred or otherwise used as requested by any transfer application filed with the Department by the City.

iii. All of the Company's representations and warranties contained herein are and remain true and correct as of the date of the first advance.

iv. Delivery of an opinion of the Company's counsel in a form reasonably requested by the City concerning the Company's valid existence, power and due authorizations to enter into and perform this Agreement, and all other material agreements contemplated hereby, and opining that all such agreements are binding on the Company and its shareholders.

v. Satisfaction or waiver by the Company of the contingencies set forth in Section 8 herein.

B. For Subsequent Advances of Funds:

i. All of the Company's representations and warranties contained herein remain true and correct as of the date of the subsequent advance.

ii. To the extent that any transfer approval is required from the Department with respect to any portion of the Acquired Storage Water Rights to be conveyed to the City upon it making a subsequent advance, confirmation in the form of a Final Order issued by the Department that the Acquired Storage Water Rights may be transferred or otherwise used as requested by any transfer application filed with the Department by the City.

iii. Delivery of all information reasonably requested by the City documenting the Company's ongoing satisfactory performance of its obligations under this Agreement and all other material agreements contemplated hereby.

iv. Satisfaction or waiver by the Company of the contingencies set forth in Section 8 herein.

8. Contingencies to Company's Obligation to Convey Acquired Storage Water Rights. Unless waived by the Company, the Company's obligation to convey to the City on an annual basis the Acquired Storage Water Rights is contingent upon the following:

A. The consolidation of the water delivery systems of the Company and Portneuf Irrigating Company into a combined, single delivery system while retaining their separate operating companies, shareholders and water rights.

B. Confirmation in the form of a final, unappealable order ("Final Order") issued by the Idaho Department of Water Resources ("Department") approving any changes in the

respective water rights of the Company and/or Portneuf Irrigating Company's water rights as may be required by the Department to accomplish the combined delivery system.

C. The advance and continued advance of Financial Assistance funds to the Company by the United States under the Partnership Agreement or any other related agreement. If the United States fails to make any of the anticipated annual advances of Financial Assistance to the Company for the Project, the Company shall not be obligated to sell and the City shall not be obligated to purchase the portion of the Acquired Storage Water Rights attributable to such advance for such year.

D. Delivery of an opinion of the City's counsel in a form reasonably requested by the Company concerning the City's valid existence, power and authorization to enter into and perform this Agreement, and all other material agreements contemplated hereby, and opining that all such agreements are binding on the City.

E. Satisfaction or waiver by the City of the contingencies set forth in Section 7 herein.

9. Filing of Transfer Applications. Within a reasonable time and as soon as practicable after the execution of this Agreement by both parties, but not in any event to exceed 180 days, the City and the Company each shall, at their own expense, prepare and file with the Department any Transfer Application(s) required by the Department to accomplish the respective changes to the City's Acquired Storage Water Rights and the Company's retained water rights contemplated by Sections 7(A)(ii) and 8(B) above. The parties agree to provide the other party with a draft of their respective Applications and a reasonable opportunity to review and comment on same prior to filing.

10. Conditions of Storage and Delivery. In addition to any other terms or conditions to which the City and the Company may agree in writing from time to time hereafter, the City and Company agree that:

A. All Acquired Storage Water Rights acquired by the City will be accounted for to a distinct City storage account (the "Pocatello Storage Account"), shall not be subject to charges for evaporation or seepage and shall not be entitled to any "carry-over" rights in the Chesterfield Reservoir from year-to-year, it being the parties' intent that the Company be obligated to deliver 3,100 acre-feet of water for the City's use every year on a firm but "use it or lose it" basis in any given year.

B. Delivery of storage water from Chesterfield Reservoir to Company shareholders and to the City shall be done in a manner so as not to impair either party's right to storage, delivery and use their respective storage water rights, and neither the Company nor the City will adopt or prescribe any resolutions, rules or procedures that impair the other party's rights to storage, delivery and use of their respective storage water rights.

C. At the City's request, the Acquired Storage Water Rights shall be released from Chesterfield Reservoir and delivered to the Portneuf River at up to a maximum rate of 50 cubic feet per second for purposes as designated by the City in its sole discretion. The City shall be responsible for obtaining all necessary governmental approvals for its use of the Acquired Storage Water Rights, and the Company shall cooperate with the City as may reasonably be required for the City to obtain such approvals.

D. The Company shall deliver the Acquired Storage Water Rights to the Portneuf River for use by the City at either: (1) the headgate of the Company's canal headgate on the Portneuf River in Lot 3, SW1/4 SE1/4 NW1/4 of Section 22, T9S, R37E; or (2) through the Sorenson hydroelectric facility that is located within the Company Water System and which discharges to the Portneuf River in the SE1/4 SE1/4 SW1/4 of Section 20, T9S, R37E (together the "Delivery Points"). The Company, at its election, may deliver the Acquired Storage Water Rights to the City at either of the Delivery Points provided that deliveries through the Sorenson hydroelectric facility can be accomplished legally and without diminution of the water yield to the City.

E. No conveyance losses shall be charged by the Company against deliveries of the Acquired Storage Water Rights between the Chesterfield Reservoir and the Delivery Points. The City shall bear any conveyance losses that may be imposed by the District 29 Watermaster in delivering the Acquired Storage Water Rights downstream of the Delivery Points.

F. The storage and release of water to the City shall be subject to any water supply and operational limitations, together with any other physical restrictions that may pose a threat of physical damage to the Chesterfield Reservoir or the Company's Water System or create unsafe conditions. The foregoing notwithstanding, if operational limitations or physical restrictions exist in the Company's canal system or the Sorensen hydroelectric facility, the Company will deliver the Acquired Storage Water Rights to the City at the headgate of the Company's canal headgate on the Portneuf River in Lot 3, SW1/4 SE1/4 NW1/4 of Section 22, T9S, R37E, and not through the Sorensen hydroelectric facility.

G. The Watermaster and the Company shall provide the City with accounting of the storage, release, and delivery of all Chesterfield Reservoir water. Said accounting shall distinguish use of the Acquired Storage Water Rights from the use of other Chesterfield Reservoir water by the Company. Updated accounting shall be provided to the City monthly including, at a minimum, the contents of the Pocatello Storage Account, and the daily, monthly and year-to-date deliveries of water for the City's use. The City shall be solely responsible for any Watermaster charges connected with the delivery and accounting of its storage water rights.

H. Subject to the terms of this Agreement the City has the right to sell, lease, hypothecate, mortgage, pledge or otherwise deal with or encumber the Acquired Storage Water Rights, to change any element or authorized use of the Acquired Storage Water Rights by transfer, exchange or otherwise, which changes shall not be subject to or require the Company's or its shareholders' prior approval or consent.

I. The City shall have no ownership interest in the Chesterfield Reservoir structure or other physical facilities of the Company's Water System, nor any responsibility for, or obligation or liability associated with, the Company's ownership, operation and/or maintenance of the Chesterfield Reservoir or other portions of its Water system. The Company shall exercise all due care in the operation and maintenance of the Chesterfield Reservoir and its Water System and ensure the continued ability to divert into storage, store, and release the Acquired Storage Water Rights as contemplated by this Agreement. The parties shall each indemnify and hold the other harmless from and against any and all claims, suits, damages or liability arising out of, or in any way related to, their performance or non-performance of their respective obligations under this Agreement.

J. In the event of a catastrophic failure of Chesterfield Reservoir, or the condemnation of, or issuance of a lawful order prohibiting the storage of water in the Chesterfield Reservoir, the parties agree to share on a pro-rata basis in the cost of repairing or reconstructing the Chesterfield Reservoir. The City's pro rata share of such costs shall be equal to the total of its Acquired Storage Water Rights divided by the total useable capacity of the repaired or reconstructed facility. Notwithstanding the foregoing, neither party shall be obligated to repair or reconstruct the Chesterfield Reservoir, or share in such costs, except to the extent desired to maintain their respective storage space.

K. The City and Company recognize that not all operational issues and details that may affect the storage and delivery of the Acquired Storage Water Rights may have been identified or agreed to in this Agreement, and agree to meet with each other within a reasonable time following the closing of the first advance of funds and delivery of deed to discuss the operational issues generally outlined in Exhibit C hereto, and in good faith develop a protocol addressing them for their mutual benefit.

11. Representations and Warranties.

A. By the Company:

i. The Company has all requisite authority and power and has taken all necessary steps and obtained all necessary approvals to voluntarily enter into and perform its obligations under this Agreement.

ii. Neither the Company's execution of this Agreement or its performance of the terms contained herein are prohibited by, or would constitute a breach of any other Agreement by which the Company is bound.

iii. There are no contracts, actions, claims or proceedings pending that affect the Acquired Storage Water Rights;

iv. There are no liens, encumbrances, covenants, conditions or restrictions affecting the Water Rights other than those that previously have been disclosed in writing by the Company to the City;

v. The Company has not assigned or conveyed, or contracted to assign or convey, the Acquired Rights or any claim thereto to any other person or entity;

vi. The Company is not in default of the Partnership Agreement.

B. By the City:

i. The City has all requisite authority and power, and has taken all necessary steps and obtained all necessary approvals to voluntarily enter into and perform its obligations under this Agreement.

12. Right of First Refusal. By this Agreement the City and the Company each grant the other a right of first refusal to the purchase of any storage water rights in Chesterfield Reservoir owned by the City or the Company that are offered for sale in the future by meeting the material terms of any bona-fide offer to purchase same within one hundred eighty days of being presented with such bona-fide offer in writing. However, any proposed sale by the City that is contemplated as incident to or part of a City plan to enhance water quality or otherwise allow its wastewater discharges to satisfy state or federal water quality standards, to provide mitigation, or for any other municipal purpose shall not be subject to this paragraph, it being the intent that if the City has no further need for the storage water rights it proposes to sell and the proposed sale is not contemplated as part of a plan to further a larger municipal purpose, the Company shall have the right of first refusal with respect to such water rights.

13. City Acquisition of Additional Water Rights. Nothing in this Agreement shall be construed to limit the City's future ability to acquire additional water rights held by the Company on a buyer-willing seller basis.

14. Default. Any breach or failure to perform any term, condition, representation or warranty under this Agreement which is not timely cured within ninety (90) days of receipt of written notice thereof shall constitute a default entitling the non-defaulting party to exercise the remedies set forth below.

15. Remedies. The non-defaulting party shall be entitled to specific performance or to terminate this Agreement. For purposes of this Agreement and its enforcement, the term "specific performance" is to be broadly construed to include each of the parties' respective obligations under this Agreement. Before pursuing legal remedies under this paragraph, the Parties agree to first meet and confer in a good faith effort to amicably resolve the dispute or breach, and if necessary to engage in formal mediation provided exigencies do not otherwise preclude mediation.

16. Attorney Fees. In the event of any controversy, claim or dispute between the parties arising from or related to this Agreement or the breach hereof, the prevailing party in any legal action therefor shall be entitled to recover its reasonable costs, expenses and attorney fees from the non-prevailing party; provided that any such action may be brought only by the named parties to this Agreement or their lawful successors or assigns.

17. Notices. Any notice to be given hereunder by either party to the other shall be given in writing by personal delivery or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of the date of personal delivery or three days after the date of mailing. Mailed notices shall be addressed as set forth below, but each party may change the address set forth below by written notice to the other party in accordance with this paragraph.

To Company:
President
PMVCC
P.O. Box 31
Arimo, ID 83214

With Copy to:
Randall C. Budge
Racine, Olson, Nye, Budge & Bailey, Chtd.
201 East Center, Suite A2
P.O. Box 1391
Pocatello, ID 83204-1391

To City:
Mayor
City of Pocatello
911 N. 7th Street
P.O. Box 4169
Pocatello, ID 83205

with a copy to:
Pocatello City Attorney
City of Pocatello
911 N. 7th Street
P.O. Box 4169
Pocatello, ID 83205

18. Additional Documents. The parties agree to execute, deliver and/or provide to the other party any further agreements, documents or information as may reasonably be required to further the parties' intent under this Agreement.

19. Time of the Essence. Time is of the essence of this Agreement.

20. Binding on Successors. This Agreement shall be binding upon the parties and their respective shareholders, assigns and successors in interest.

21. Entire Agreement; Modification; Waiver. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and

supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

22. Duplicate Counterparts. This Agreement may be signed in duplicate counterparts.

23. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

24. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

25. Headings. The headings and captions contained in this Agreement are for the convenience of the parties only and are not intended to alter or limit the meaning of the provisions there under.

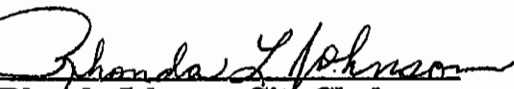
26. Survival. The representations, warranties, covenants and agreements of the Company and the City contained in this Agreement shall survive the closing hereunder.

[end of text]

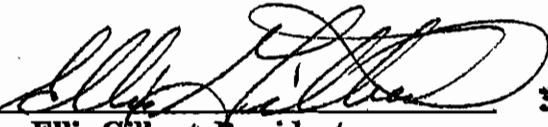
IN WITNESS WHEREOF the parties have caused this Agreement to be executed and entered into effective as of the date first set forth above.

CITY OF POCATELLO

By: 
Brian Blad, Mayor

Attest: 
Rhonda Johnson, City Clerk

PORTNEUF-MARSH VALLEY CANAL COMPANY, LIMITED

By:  3-3-10
Ellis Gilbert, President

Attest:  3-3-10
Secretary

EXHIBIT A
(Due Diligence Materials to be Furnished by Company)

1. Copies of PMVCC's current articles and bylaws;
2. Copy of PMVCC's most recent audited financial statement;
3. A list and map of the lands/acreages irrigated using water supplied by PMVCC;
4. Identification of any pending or existing litigation involving PMVCC, including nature of dispute and party names;
5. Copies of all Board resolutions related to the Project and/or the Partnership Agreement;
6. Copy of PMVCC AWEF/EQIP requests, Project descriptions submitted to USDA/NRCS and correspondence from USDA/NRCS related to same;
7. Copies of minutes of all meetings, including regular or special board or shareholder meetings where the Project and/or Partnership Agreement were considered, voted on and/or approved;
8. Copies of all current or pending contracts, proposals, requirements, letters of intent, or security agreements, affecting PMVCC's Chesterfield Reservoir, delivery system and/or water rights.
9. Identification of all outstanding loans and/or liens affecting PMVCC water rights or other PVCC assets;
10. Copies of minutes of PMVCC annual or special meetings, annual budgets, annual assessments, water allocation/disposition for years 1989 to present;
11. Reports of all recorded storage volumes 1989-present;
12. Reports of total natural flow and storage diverted to canal system 1989-present;
13. Studies, reports, memoranda or other documentation regarding the historical and present operations of the PMVCC system, including system capacities, operational procedures, accounting protocol, and yields of the PMVCC water supplies.
14. Correspondence between PMVCC and the Idaho Department of Water Resources for years 1989 to present
15. Correspondence between PMVCC and the Water District 29 Watermaster for years 1989 to present.

EXHIBIT B

(Form of Warranty Deed)
WATER RIGHT WARRANTY DEED

FOR VALUE RECEIVED, Portneuf-Marsh Valley Canal Company, Limited an Idaho incorporated water users' association, whose address is 465 South Highway 91, Downey, ID 83234 ("Grantor"), does hereby grant, bargain, sell, and convey unto the City of Pocatello, an Idaho municipal corporation whose address is 911 N. 7th Street, P.O. Box 4169, Pocatello, ID 83205 ("Grantee"), all of Grantor's right, title and interest in and to the following water rights, to wit: the right to divert to storage, store and deliver from storage for beneficial use 620 acre-feet annually of the storage water in Chesterfield Reservoir owned by Grantor and available under Water Right Nos. 29-00053 and 29-00589 with a priority date of July 6, 1912, as decreed in the Snake River Basin Adjudication, Case No. 39576, Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls (the "Water Right");

TOGETHER WITH the right to have the storage water stored in and delivered to Grantee from Chesterfield Reservoir from year-to-year as the first water so stored and delivered and without conveyance loss to the Delivery Points located on the Portneuf River within SE1/4 SE1/4 SW1/4 of Section 20, T9S, R37E, B.M., or within Lot 3, SW1/4 SE1/4 NW1/4 of Section 22, T9S, R37E, B.M..

SUBJECT TO the terms and conditions of the Storage Water Agreement entered into between Grantor and Grantee dated effective _____, 2010.

To Have and to Hold the same unto the Grantee and Grantee's successors and assigns forever. Grantor hereby covenants to and with Grantee and Grantee's successors and assigns, that Grantor is lawfully seized in fee simple of the above-granted Water Right, free from all encumbrances, and Grantor will warrant and forever defend the same against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed this ____ day of _____, 20__.

PORTNEUF-MARSH VALLEY CANAL
COMPANY, LIMITED an Idaho incorporated
water users association

/s/ _____
By:
Its:

NOTARY

EXHIBIT C
(Operations Agreement Elements-
subject to further development, discussion and agreement)

- Delivery Procedures
 - Notification procedures for release of the Acquired Storage Water Rights to the City of Pocatello.
 - Measurement and quantification of delivery of Acquired Storage Water to the Delivery Points.
- Accounting Methodology
 - Measurement and recording of storage accrual to Chesterfield Reservoir and Pocatello Storage Accounts.
 - Measurement and recording of releases and deliveries of the Acquired Storage Water Rights to the City.

Appendix B

**SRBA Partial Decrees
Portneuf-Marsh Valley Canal Company**

RECEIVED

FEB 19 2008

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB 15 2008

By _____ 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

Case No. 39576

) ORDER OF PARTIAL DECREE, *NUNC*
) *PRO TUNC*, FOR IRRIGATION
) DELIVERY ENTITY USING DIGITAL
) BOUNDARY DESCRIPTION; I.C. §§ 42-
) 202B(2), 42-219(2), 42-1411(2)(h)
)
) For Water Rights: 29-00052, 29-00053,
) 29-04060, 29-00589 and 29-13318
) (Portneuf Marsh Valley Irrigation Co.)
)

I.

FINDINGS AND CONCLUSIONS

1. The above-captioned water rights are five of the thirty-four water rights that are subject to the *Portneuf River Settlement Agreement* filed on April 22, 2005, and the *Addendum Agreement* filed December 17, 2007. On February 10, 2006, a *Special Master's Report and Recommendation* was filed for the above water rights in accordance with the *Portneuf River Settlement Agreement*. Thereafter *Partial Decrees* were issued for most but not all of the thirty-four water right claims. *Partial Decrees* had not yet been issued for the above-captioned water right claims. On March 23, 2006, a *Motion to Alter or Amend Order of Partial Decrees* was filed with respect to the *Portneuf River Settlement Agreement* and included all thirty-four claims. As a result outstanding *Partial Decrees* subject to the *Agreement* were not issued. On December 17, 2007, this Court entered an *Order Dismissing Motion to Alter or Amend Partial Decrees and Amending Partial Decrees to Include Addendum Agreement to Prior Portneuf River Settlement Agreement* but overlooked issuing the remaining *Partial Decrees*. Therefore it is the intent of the Court to issue the *Partial Decrees nunc pro tunc* to December 17, 2007, to correct the oversight.

2. The above-captioned water right is for an irrigation purpose of use and satisfy one of the following statutory criteria: (1) used in conjunction with an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more; (2) the place of use for the water rights is located within an irrigation district organized pursuant to the laws of the state of Idaho; or (3) the water rights are for an irrigation project developed by an association, company, corporation or the United States to divert and deliver or distribute surface water under any annual charge or rental for beneficial use by more than five (5) water users in an area less than twenty-five thousand (25,000) acres.

3. Effective July 1, 2002, the Idaho Legislature approved the use of a Geographic Information System (GIS) for describing the place of use (digital boundary) for water rights meeting the above-stated criteria. See I.C. §§ 42-219(2)(2003) and 42-1411(2)(h)(2003). The GIS mapping technology allows the geographic area encompassing the place of use for a water right to be particularly identified and visually displayed in a map overlay format through the aid of computer technology. In incorporating a digital boundary into a partial decree, the electronic or digital data is what is actually decreed as opposed to the visually displayed map ultimately generated from the data. The data is stored on a CD-ROM. The Court finds that the GIS mapping technology maintained by IDWR complies with the standards for spatial accuracy set forth in I.C. § 42-202B (2)(2003). See *Notice of Filing Affidavit of Michael Ciscell Re: Digital Boundary*, filed October 17, 2003.

II. ORDER

1. Therefore, IT IS ORDERED that the above-captioned water rights are hereby **decreed** as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*. This *Order* is being entered *nunc pro tunc* to December 17, 2007.

2. IT IS FURTHER HEREBY ORDERED that the data comprising the digital boundary shall be stored on a CD-ROM medium, which shall be issued in duplicate original. The SRBA District Court will retain one original together with the original *Partial Decree*, and IDWR will retain the other original. The map depicting the place of use attached to the *Partial Decree* is intended for illustrative purposes only.

3. IT IS FURTHER HEREBY ORDERED that upon request, the claimant can obtain a copy of the CD-ROM from IDWR at no cost, although GIS software will still be required to access the data. Subsequent administrative changes to the place of use shall also be stored in a digital format and kept on file and maintained by IDWR. IDWR shall maintain all computer software and/or hardware necessary for reducing the data to a usable format that is accessible to the general public, including access through the IDWR Internet website (www.idwr.state.id.us) or its successor Uniform Resource Locator (URL).

DATED February 15, 2008.

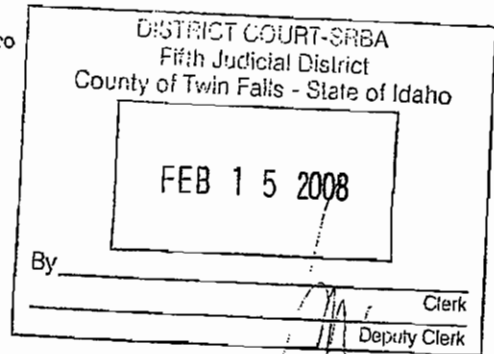


JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

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)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-00052



NAME AND ADDRESS: PORTNEUF MARSH VALLEY CANAL CO
C/O ELLIS GILBERT
2777 E HAWKINS RD
DOWNEY, ID 83234

SOURCE: PORTNEUF RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 176.85 CFS

USE OF THIS RIGHT WITH RIGHT NO. 29-13318 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 176.85 CFS.

PRIORITY DATE: 12/18/1907

POINT OF DIVERSION: T09S R37E S22 LOT 3 (SWSENN) Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 09-15	176.85 CFS

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
EARLY AS APRIL 1 AND MAY CONTINUE TO AS LATE AS OCTOBER 31,
PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
OF WATER BEFORE APRIL 15 AND AFTER SEPTEMBER 15 UNDER THIS
REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED
EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN
THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE:

5103.2 ACRES TOTAL

PLACE OF USE IS WITHIN THE AREA SERVED BY THE PORTNEUF MARSH
VALLEY CANAL CO. LTD.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 5103.2 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-52, 29-53, 29-589,
29-4060, 29-13318.

THE BOUNDARY ENCOMPASSING THE PLACE OF USE FOR THIS WATER RIGHT
IS DESCRIBED WITH A DIGITAL BOUNDARY AS DEFINED BY I.C. SECTION
42-202B(2) AND AUTHORIZED PURSUANT TO I.C. SECTION 42-1411 (2)(h)
THE DATA COMPRISING THE DIGITAL BOUNDARY ARE INCORPORATED HEREIN
BY REFERENCE AND ARE STORED ON A CD-ROM DISK ISSUED IN DUPLICATE
ORIGINALS ON FILE WITH THE SRBA DISTRICT COURT AND THE IDAHO
DEPARTMENT OF WATER RESOURCES. A MAP DEPICTING THE PLACE OF USE
IS ATTACHED HERETO TO ILLUSTRATE THE PLACE OF USE DESCRIBED BY
THE DIGITAL BOUNDARY.

USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE A USE ON
FEDERAL PUBLIC LAND.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE OPERATION AND ADMINISTRATION OF THIS WATER RIGHT IS
SUBJECT TO THE TERMS AND CONDITIONS OF THE PORTNEUF RIVER
SETTLEMENT AGREEMENT, BASIN 29: PORTNEUF RIVER FILED WITH
THE SRBA DISTRICT COURT APRIL 22, 2005, AND THE ADDENDUM TO THE
AGREEMENT FILED DECEMBER 17, 2007.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY

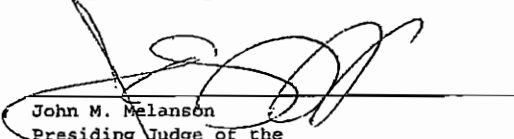
SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

OTHER PROVISIONS (continued)

DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, 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 or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



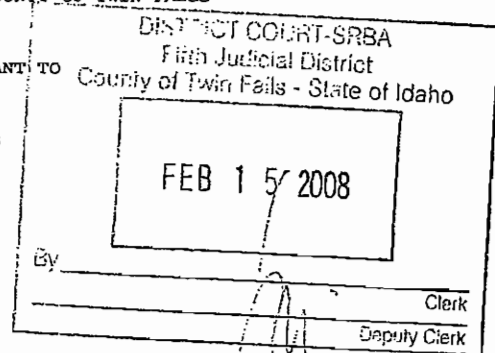
John M. Melanson
Presiding Judge of the
~~Snake River~~ Basin Adjudication

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)
)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 29-00053



NAME AND ADDRESS: PORTNEUF MARSH VALLEY CANAL CO
C/O ELLIS GILBERT
2777 E HAWKINS RD
DOWNEY, ID 83234

SOURCE: TOPONCE CREEK TRIBUTARY: PORTNEUF RIVER

POINT OF INJECTION INTO PORTNEUF RIVER. POINT OF REDIVERSION
FROM PORTNEUF RIVER.

QUANTITY: 164.43 CFS
16410.00 AFY

THIS RIGHT WHEN COMBINED WITH 29-589 IS LIMITED TO A COMBINED
TOTAL OF 16410 AFA.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 23695 AF. COMBINED RIGHT NOS.: 29-53,
29-589, 29-4060.

PRIORITY DATE: 07/06/1912

POINT OF DIVERSION: T06S R38E S33 SWSSE Within Caribou County
R39E S19 SWSWSW (Injection)
T09S R37E S22 LOT 3 (SWSSE) (Rediversion) Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation Storage	01-01 TO 12-31	16410.00 AFY
	Irrigation from Storage	04-15 TO 09-15	16410.00 AFY
	Diversion to Storage	09-16 TO 04-14	164.43 CFS

PLACE OF USE:

5103.2 ACRES TOTAL

PLACE OF USE IS WITHIN THE AREA SERVED BY THE PORTNEUF MARSH
VALLEY CANAL CO. LTD.

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 5103.2 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-52, 29-53, 29-589,
29-4060, 29-13318.

USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE A USE ON
FEDERAL PUBLIC LAND.

THE BOUNDARY ENCOMPASSING THE PLACE OF USE FOR THIS WATER RIGHT
IS DESCRIBED WITH A DIGITAL BOUNDARY AS DEFINED BY I.C. SECTION
42-202B(2) AND AUTHORIZED PURSUANT TO I.C. SECTION 42-1411 (2) (h)
THE DATA COMPRISING THE DIGITAL BOUNDARY ARE INCORPORATED HEREIN
BY REFERENCE AND ARE STORED ON A CD-ROM DISK ISSUED IN DUPLICATE
ORIGINALS ON FILE WITH THE SRBA DISTRICT COURT AND THE IDAHO
DEPARTMENT OF WATER RESOURCES. A MAP DEPICTING THE PLACE OF USE
IS ATTACHED HERETO TO ILLUSTRATE THE PLACE OF USE DESCRIBED BY
THE DIGITAL BOUNDARY.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

SUITABLE MEASURING DEVICES SHALL BE INSTALLED ON THE PORTNEUF
RIVER ABOVE THE FLOW LINE OF THE PORTNEUF-MARSH VALLEY
IRRIGATING COMPANY RESERVOIR AT WHICH POINT THE WATER COMES INTO
THE RESERVOIR AT T6S R38E S11 NWSESW AND IMMEDIATELY BELOW THE
DAM OF SAID RESERVOIR AT T6S R39E S19 SWSWSW SO THAT THE WATER

OTHER PROVISIONS (continued)

RELEASED MAY BE MORE ACCURATELY DETERMINED. THE NORMAL FLOW OF THE PORTNEUF RIVER MAY NOT BE OBSTRUCTED BY THE RESERVOIR WITH REFERENCE TO THE AMOUNT OF WATER DELIVERED THROUGH THE RESERVOIR DURING THE IRRIGATING SEASON. NO CHARGE SHALL BE MADE AGAINST THE NORMAL STREAM FLOW FROM THE POINT ABOVE THE RESERVOIR LOCATED AT T 6S R38E S11NWSEW AND THE POINT BELOW THE RESERVOIR LOCATED AT T6S R39E S19 SWSWSW.

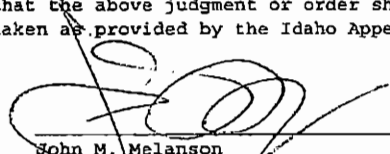
THIS STORAGE WATER RIGHT IS TO BE DELIVERED WITHOUT CONVEYANCE LOSS FROM THE RESERVOIR TO THE POINT OF DIVERSION LOCATED ON THE PORTNEUF RIVER AT T9S R37E SEC 22 SWSSEW (LOT 3) FOR THE PORTNEUF-MARSH VALLEY CANAL COMPANY'S CANAL THROUGH SAID COMPANY'S DRAINAGE CANAL AND THE PORTNEUF RIVER.

THE OPERATION AND ADMINISTRATION OF THIS WATER RIGHT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE PORTNEUF RIVER SETTLEMENT AGREEMENT, BASIN 29: PORTNEUF RIVER FILED WITH THE SRBA DISTRICT COURT APRIL 22, 2005, AND THE ADDENDUM TO THE AGREEMENT FILED DECEMBER 17, 2007.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

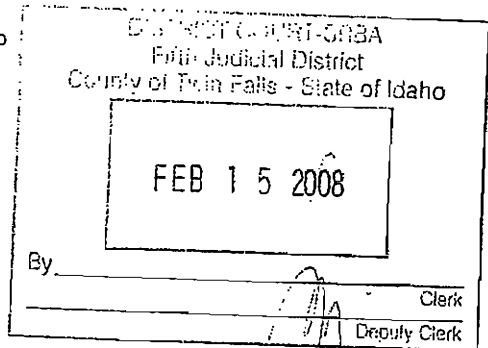
With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment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



John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 29-04060



NAME AND ADDRESS: PORTNEUF MARSH VALLEY CANAL CO
C/O ELLIS GILBERT
2777 E HAWKINS ROAD
DOWNEY, ID 83234

SOURCE: PORTNEUF RIVER TRIBUTARY: SNAKE RIVER
TOPONCE CREEK TRIBUTARY: PORTNEUF RIVER

POINT OF INJECTION INTO PORTNEUF RIVER. POINT OF REDIVERSION
FROM PORTNEUF RIVER.

QUANTITY: 7285.00 AFY

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 23695 AF. COMBINED RIGHT NOS.: 29-53,
29-589, 29-4060.

PRIORITY DATE: 04/01/1949

POINT OF DIVERSION: T06S R38E S33 SWSESE Within Caribou County
R39E S19 LOT 4 (SWSWSW) (Injection)
LOT 4 (SWSW)
T09S R37E S22 LOT 3 (SWSENW) (Rediversion) Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation Storage	01-01 TO 12-31	7285.00 AFY
	Irrigation from Storage	04-01 TO 09-15	7285.00 AFY

PLACE OF USE:

5103.2 ACRES TOTAL
PLACE OF USE IS WITHIN THE AREA SERVED BY THE PORTNEUF MARSH
VALLEY CANAL CO. LTD.
USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 5103.2 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-52, 29-53, 29-589,
29-4060, 29-13318.
USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE A USE ON
FEDERAL PUBLIC LAND.
THE BOUNDARY ENCOMPASSING THE PLACE OF USE FOR THIS WATER RIGHT
IS DESCRIBED WITH A DIGITAL BOUNDARY AS DEFINED BY I.C. SECTION
42-202B(2) AND AUTHORIZED PURSUANT TO I.C. SECTION 42-1411(2)(h).
THE DATA COMPRISING THE DIGITAL BOUNDARY AS INCORPORATED HEREIN
BY REFERENCE AND ARE STORED ON A CD-ROM DISK ISSUED IN DUPLICATE
ORIGINALS ON FILE WITH THE SRBA DISTRICT COURT AND THE IDAHO
DEPARTMENT OF WATER RESOURCES. A MAP DEPICTING THE PLACE OF USE
IS ATTACHED HERETO TO ILLUSTRATE THE PLACE OF USE DESCRIBED BY
THE DIGITAL BOUNDARY.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS STORAGE WATER RIGHT IS TO BE DELIVERED WITHOUT CONVEYANCE
LOSS FROM THE RESERVOIR TO THE POINT OF DIVERSION LOCATED ON THE
PORTNEUF RIVER AT T9S R37E S22 SWSESW (LOT 3) FOR THE PORTNEUF-
MARSH VALLEY CANAL COMPANYS CANAL THROUGH SAID COMPANYS DRAINAGE
CANAL AND THE PORTNEUF RIVER.

THE OPERATION AND ADMINISTRATION OF THIS WATER RIGHT IS
SUBJECT TO THE TERMS AND CONDITIONS OF THE PORTNEUF RIVER

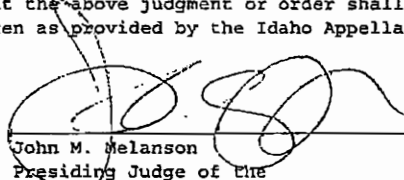
OTHER PROVISIONS (continued)

SETTLEMENT AGREEMENT, BASIN 29: PORTNEUF RIVER FILED WITH THE SRBA DISTRICT COURT APRIL 22, 2005, AND THE ADDENDUM TO THE AGREEMENT FILED DECEMBER 17, 2007.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, 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 or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

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)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-00589

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB 15 2008

By _____ Clerk
_____ Deputy Clerk

NAME AND ADDRESS: PORTNEUF MARSH VALLEY CANAL CO
C/O ELLIS GIBLERT
2777 E HAWKINS RD
DOWNEY, ID 83234

SOURCE: PORTNEUF RIVER TRIBUTARY: SNAKE RIVER

POINT OF INJECTION INTO PORTNEUF RIVER. POINT OF REDIVERSION
FROM PORTNEUF RIVER.

QUANTITY: 16410.00 AFY

THIS RIGHT WHEN COMBINED WITH 29-53 IS LIMITED TO A COMBINED
TOTAL OF 16410 AFA.
USE OF THE RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED
ANNUAL DIVERSION VOLUME OF 23695 AF. COMBINED RIGHT NOS.: 29-53,
29-589, AND 29-4060.

PRIORITY DATE: 07/06/1912

POINT OF DIVERSION: T06S R39E S19 LOT 4 { SWSW) Within Caribou County
LOT 4 (SWSWSW) (Injection)
T09S R37E S22 LOT 3 (SWSSEW) (Rediversion) Within Bannock County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Irrigation Storage 01-01 TO 12-31 16410.00 AFY
Irrigation from Storage 04-15 TO 09-15 16410.00 AFY

PLACE OF USE:

5103.2 ACRES TOTAL
USE OF WATER UNDER THIS RIGHT DOES NOT INCLUDE A USE ON
FEDERAL PUBLIC LAND.
USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 5103.2 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-52, 29-53, 29-589,
29-4060, 29-13318.
THE BOUNDARY ENCOMPASSING THE PLACE OF USE FOR THIS WATER RIGHT
IS DESCRIBED WITH A DIGITAL BOUNDARY AS DEFINED BY I.C. SECTION
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IS ATTACHED HERETO TO ILLUSTRATE THE PLACE OF USE DESCRIBED BY
THE DIGITAL BOUNDARY.
PLACE OF USE IS WITHIN THE AREA SERVED BY THE PORTNEUF MARSH
VALLEY CANAL CO. LTD.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS STORAGE WATER RIGHT IS TO BE DELIVERED WITHOUT CONVEYANCE
LOSS FROM THE RESERVOIR TO THE POINT OF DIVERSION LOCATED ON THE
PORTNEUF RIVER AT T9S R37E SEC 22 NWNESEW (LOT 3) FOR THE
PORTNEUF-MARSH VALLEY CANAL COMPANYS CANAL THROUGH SAID COMPANYS
DRAINAGE CANAL AND THE PORTNEUF RIVER.

SUITABLE MEASURING DEVICES SHALL BE INSTALLED ON THE PORTNEUF
RIVER ABOVE THE FLOW LINE OF THE PORTNEUF-MARSH VALLEY IRRIGATING

OTHER PROVISIONS (continued)

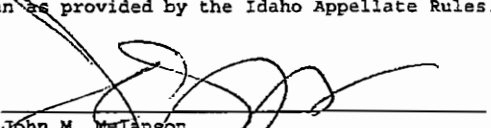
COMPANY RESERVOIR AT WHICH POINT THE WATER COMES INTO THE RESERVOIR AT T6S R38E S11 NWSESW AND IMMEDIATELY BELOW THE DAM OF SAID RESERVOIR AT T6S R39E S19 SWSWSW SO THAT THE WATER RELEASED MAY BE MORE ACCURATELY DETERMINED. THE NORMAL FLOW OF THE PORTNEUF RIVER MAY NOT BE OBSTRUCTED BY THE RESERVOIR WITH REFERENCE TO THE AMOUNT OF WATER DELIVERED THROUGH THE RESERVOIR DURING THE IRRIGATING SEASON. NO CHARGE SHALL BE MADE AGAINST THE NORMAL STREAM FLOW FROM THE POINT ABOVE THE RESERVOIR LOCATED AT T6S R38E S11 NWSESW AND THE POINT BELOW THE RESERVOIR LOCATED AT T6S R39E S19 SWSWSW.

THE OPERATION AND ADMINISTRATION OF THIS WATER RIGHT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE PORTNEUF RIVER SETTLEMENT AGREEMENT, BASIN 29: PORTNEUF RIVER FILED WITH THE SRBA DISTRICT COURT APRIL 22, 2005, AND THE ADDENDUM TO THE AGREEMENT FILED DECEMBER 17, 2007.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, 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 or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

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)
)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 29-13318

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

FEB 15 2008

By _____ Clerk
_____ Deputy Clerk

NAME AND ADDRESS: PORTNEUF MARSH VALLEY CANAL CO
C/O ELLIS GILBERT
2777 E HAWKINS ROAD
DOWNEY, ID 83234

SOURCE: PORTNEUF RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 176.85 CFS

USE OF THIS RIGHT WITH RIGHT NO. 29-52 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 176.85 CFS.

PRIORITY DATE: 08/07/1932

POINT OF DIVERSION: T09S R37E S22 LOT 3 (SWSNW) Within Bannock County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	176.85 CFS

PLACE OF USE:

5103.2 ACRES TOTAL
PLACE OF USE IS WITHIN THE AREA SERVED BY THE PORTNEUF MARSH
VALLEY CANAL CO. LTD.
USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 5103.2 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-52, 29-53, 29-589,
29-4060, 29-13318.
THE BOUNDARY ENCOMPASSING THE PLACE OF USE FOR THIS WATER RIGHT
IS DESCRIBED WITH A DIGITAL BOUNDARY AS DEFINED BY I.C. SECTION
42-202B(2) AND AUTHORIZED PURSUANT TO I.C. SECTION 42-1411(2)(h).
THE DATA COMPRISING THE DIGITAL BOUNDARY AS INCORPORATED HEREIN
BY REFERENCE AND ARE STORED ON A CD-ROM DISK ISSUED IN DUPLICATE
ORIGINALS ON FILE WITH THE SRBA DISTRICT COURT AND THE IDAHO
DEPARTMENT OF WATER RESOURCES. A MAP DEPICTING THE PLACE OF USE
IS ATTACHED HERETO TO ILLUSTRATE THE PLACE OF USE DESCRIBED BY
THE DIGITAL BOUNDARY.

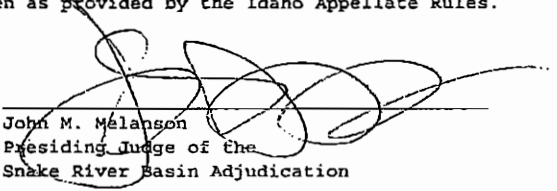
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE OPERATION AND ADMINISTRATION OF THIS WATER RIGHT IS
SUBJECT TO THE TERMS AND CONDITIONS OF THE PORTNEUF RIVER
SETTLEMENT AGREEMENT, BASIN 29: PORTNEUF RIVER FILED WITH THE
SRBA DISTRICT COURT APRIL 22, 2005, AND THE ADDENDUM TO THE
AGREEMENT FILED DECEMBER 17, 2007.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, 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 or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

Department of Water Resources
Boundary of Service Area for
PORTNEUF MARSH VALLEY CANAL CO LTD

T10S R37E

29-52, 29-53, 29-589,
29-4060 and 29-13318

Service Area
Township/Range
Section

GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: E. Carlsen
Date: November 2005

0 1 2 3 4 Miles

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER OF PARTIAL DECREES, NUNC PRO TUNC, FOR IRRIGATION DELIVERY ENTITY USING DIGITAL BOUNDARY DESCRIPTION was mailed on February 15, 2008, with sufficient first-class postage to the following:

MC CAMMON DITCH CO LTD

Represented by:
JAMES A. SPINNER
PO BOX 6009
POCATELLO, ID 83205
Phone: 208-232-4471

LAVA IRRIGATION CO INC

Represented by:
JERRY R. RIGBY
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

PORTNEUF MARSH VALLEY CANAL CO

Represented by:
RANDALL C BUDGE
201 E CENTER, STE A2
PO BOX 1391
POCATELLO, ID 83204-1391
Phone: 208-232-6101

PORTNEUF IRRIGATING COMPANY

Represented by:
RANDOLPH CALVIN STONE
PO BOX 910
BURLEY, ID 83318
Phone: 208-878-8382

USDI BLM

Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

DIRECTOR OF IDWR

PO BOX 83720
BOISE, ID 83720-0098

KENNETH D ANDRUS

6948 E OLD OREGON TRAIL RD
LAVA HOT SPRINGS, ID 83246
Phone: 208-776-5380

