

RECEIVED

SEP 23 2004

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested:

Application for Transfer No. 70887, filed by Brackett Ranches, Ltd. involving Water Claim No. 51-12898A.

2. Name of protestant:

**United States of America, acting through Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83401**

3. Protestant Representative for service:

Fredric W. Price, Water Rights Specialist

4. Service mailing address:

**United States of America, acting through Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83401**

5. Service telephone #:

**Telephone #: (208) 373-3831
FAX #: (208) 373-3839
Email: Fred_Price@blm.gov**

6. Basis of protest (including statement of facts and law upon which the protest is based):

The place of use, NWNW, Section 11, T.14S., R.10E., listed on the Application for Transfer No. 70887, is not in agreement with the Stipulation and Joint Motion for Order Approving Stipulation, dated November 6, 2002, issued in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls. The Application for Transfer No. 70887, seeks to add a place of use describing federal public land, NWNW, Section 11, T.14S., R.10E., for which no authorization has been issued by the United States to conduct said use of federal public land for stockwater purposes by the applicant.

*R# 5027052
9/20/04
MB*

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Department of Water Resources
Southern Region

7. What would resolve your protest?

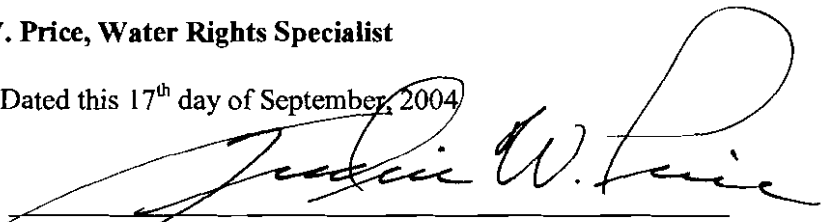
Amend the Application for Transfer No. 70887, to omit the place of use describing federal public land within the NWNW, Section 11, T.14S., R.10E. The applicant may have meant to include NENW, Section 11, T.14S., R.10E.

I hereby, acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

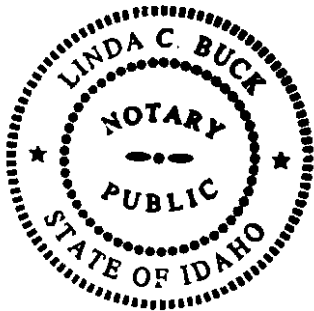
Protestant: **United States of America, acting through Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709**

Protestant's Representative: **Fredric W. Price, Water Rights Specialist**

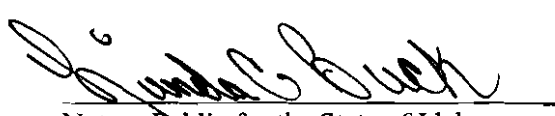
Dated this 17th day of September, 2004


Fredric W. Price, Water Rights Specialist

On this 17th day of September 2004, before me Linda C. Buck, a notary public, personally appeared Fredric W. Price, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that he executed the same.



(Seal)


Notary Public for the State of Idaho
Residing at: Mountain Home, Idaho
My Commission Expires: December 21, 2005

NOTE: A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

CERTIFICATE OF SERVICE

I certify that on September 17, 2004, I served a true and correct copy of the foregoing Protest of Application for Transfer No. 70887, upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

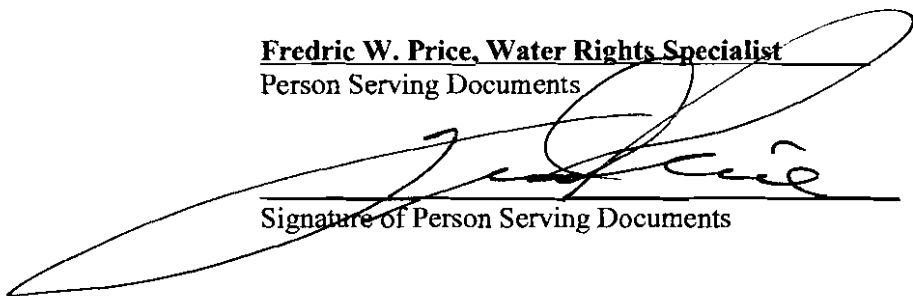
Original to: **Office Manager
Idaho Department of Water Resources
Southern Regional Office
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301**

Copies to: **Brackett Ranches Ltd.
c/o Bert Brackett
Flat Creek Ranch
Rogerson, Idaho 83302**

**John Ash, Natural Resource Specialist
Bureau of Land Management
LOWER SNAKE RIVER DISTRICT
Jarbidge Field Office
2620 Kimberly Road
Twin Falls, Idaho 83301**

**Lin Buck, Water Rights Assistant
Bureau of Land Management
IDAHO STATE OFFICE
1387 South Vinnell Way
Boise, Idaho 83709**

Fredric W. Price, Water Rights Specialist
Person Serving Documents


Signature of Person Serving Documents

September 17, 2004
Date

Enclosure:
Water Rights Delegation of Authority
Stipulation and Joint Motion for Order Approving Stipulation, dated November 6, 2002

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENTIdaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657In Reply Refer To:
7250/1230 (933) P*July 27, 2001*EMS
Instruction Memorandum No. ID-2001-063
Expires: 09/30/2002

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SEP 20 2004

Department of Water Resources
Southern Region

To: ICT

From: State Director

Subject: Water Rights Delegation of Authority

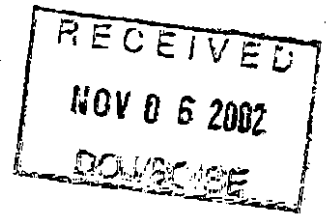
Idaho State Office 1203 - Delegation of Authority Manual Supplement is amended to add adelegated authority to both the Deputy State Director for Resource Services and the Branch Chief for Lands and Minerals to negotiate and settle Snake River Basin Adjudication (SRBA) waterrights issues. The SRBA water rights team leader (Gary Madenford) and senior water rightsspecialist (Fred Price) will continue to have authority to represent the BLM regarding all waterrights issues.

This delegation is effective immediately. The Idaho Delegation of Authority Supplement will berevised to reflect these changes.

Contact Jimmie Buxton if you have comments or questions regarding this issue.

Signed by:	Authenticated by:
Martha G. Hahn	Susanna M. Henry
Staff Assistant (ID-933)	

cc:
ISO Water Rights Team
Larry Brown, DOJ Attorney
Mel Matlock (950)
Bill Ferry, Field Solicitor - Boise

Names of Parties Serving Document:

UNITED STATES OF AMERICA

C.E. BRACKETT CATTLE CO.
 BERT & PAULA BRACKETT
 BRACKETT LIVESTOCK, INC.
 BRACKETT RANCHES, LTD

Attorneys' Names and Addresses:

THOMAS L. SANSONETTI
 United States Department of Justice
 Assistant Attorney General
 Environment and Natural Resources Division

LARRY A. BROWN
 United States Department of Justice
 Environment and Natural Resources Division
 General Litigation Section
 550 West Fort Street, MSC 033
 Boise, Idaho 83724
 Ph: (202) 305-0435
 FAX: (202) 305-0274

CRAIG A. PRIDGEN
 McQuaid, Metzler, Bedford, & Van Zandt
 221 Main Street, 16th Floor
 San Francisco, California 94105-1936
 Ph: (415) 905-0200
 FAX: (415) 905-0202

ROGER D. LING
 Ling, Nielsen & Robinson
 P.O. Box 396
 Rupert, Idaho 83350
 Ph: (208) 436-4717
 FAX: (208) 436-6804

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

In Re SRBA

) Subcase Numbers: See Attached Exhibits
) A, B, C, and D 51 - 15711
)

Case No. 39576

) STIPULATION AND JOINT MOTION
) FOR ORDER APPROVING
) STIPULATION

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STIPULATION

The United States of America, by and through the United States Department of the Interior, Bureau of Land Management (hereinafter "BLM") and, C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd., by and through their respective undersigned counsel, hereby stipulate and agree as follows:

1. C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd., stipulate and agree to dismiss objections, motions to file late objections, and/or motions to set-aside partial decree in all subcases listed on attached Exhibit A.

2. The BLM stipulates and agrees that Bert and Paula Brackett shall have Water Right Number 51-12895A with a priority date not earlier than September 14, 1966; that C.E. Brackett Cattle Co. shall have Water Right Number 51-12896A with a priority date not earlier than September 14 1966; that Brackett Livestock, Inc. shall have Water Right Number 51-12897A with a priority date not earlier than September 14, 1966; and that Brackett Ranches, Ltd. shall have Water Right Number 51-12898A with a priority date not earlier than September 14, 1966. The parties to this stipulation agree that, subject to approval by the parties of the legal descriptions of the places of use, and subject to concurrence by the Idaho Department of Water Resources, the parties shall sign and file with the Snake River Basin Adjudication (hereinafter "SRBA") District Court Standard Forms 5 that will describe stipulated elements of Water Right Numbers 51-12895A, 51-12896A, 51-12897A, and 51-12898A.

3. The BLM agrees that all pipelines, pipeline connections, engineering devices, troughs, reservoirs, and tanks located on the federal public land encompassed by the legal descriptions contained in the Standard Forms 5 for Water Right Numbers 51-12895A, 51-12896A,

51-12897A, and 51-12898A are authorized under existing Cooperative Range Improvement Agreements and the Three Creek Allotment Management Plan (amended May 1973). The BLM further agrees that the pipelines and troughs located on the federal public land within the following legal descriptions are authorized under existing Cooperative Range Improvement Agreements:

T.13S., R.09E., Section 25, NWSW

The BLM further agrees that pipelines and troughs are proposed to be installed and are currently authorized to be located upon the public land within the following legal descriptions under existing Cooperative Range Improvement Agreements:

T.11S., R.08E., Section 10, SENE

T.11S., R.08E., Section 12, SWSW

T.11S., R.08E., Section 15, NWNE

T.11S., R.09E., Section 18, NESW

T.12S., R.09E., Section 25, NWSW

T.12S., R.10E., Section 32, SENW

T.13S., R.10E., Section 31, NENE

T.13S., R.10E., Section 33, SESE

T.13S., R.10E., Section 35, SWSE

T.14S., R.10E., Section 13, NWNW

T.14S., R.10E., Section 24, NENW

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FAX

September 16, 2004

To: John Ash – BLM – Jarbidge Field Office – Fax # (208) 736-2375

From: Lin Buck - BLM - Idaho State Office - Fax # (208) 373-3839

Re: Transfer No. 70887, for Brackett Ranches, Ltd.

Hi John :

Here is a copy of the stipulation. Please review and call me.

The DEADLINE to file a protest is September 20, 2004.

Thank you.



of Pages: ~~4~~¹⁹ (includes coversheet)

4. In accordance with I. C. § 42-222, Brackets shall apply to the Idaho Department of Water Resources for a transfer for water rights to use water from the source known as Pence Spring, located at T15S, R10E, Section 26, SENENE at the following places of use:

T.11S., R.08E., Section 10, SENE

T.11S., R.08E., Section 12, SWSW

T.11S., R.08E., Section 15, NWNE

T.11S., R.09E., Section 18, NESW

T.12S., R.10E., Section 32, SENW

T.13S., R.09E., Section 25, NWSW

T.13S., R.10E., Section 31, NENE

T.13S., R.10E., Section 33, SESE

T.13S., R.10E., Section 34, SESE

T.13S., R.10E., Section 35, SWSE

T.14S., R.10E., Section 02, NWNW

T.14S., R.10E., Section 11, NENW

T.14S., R.10E., Section 13, NWSW

T.14S., R.10E., Section 13, NWNW

T.14S., R.10E., Section 14, NESE

T.14S., R.10E., Section 23, NENW

T.14S., R.10E., Section 24, NENW

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The BLM stipulates and agrees not to protest such transfer, *provided* the transfer is in accordance with State law, and conforms to this stipulation.

5. The parties agree that the definition of "range improvement" shall be the definition given in 43 C.F.R. § 4100.0-5 (1995).

6. C.E. Brackett Cattle Co. stipulates and agrees to dismiss, with prejudice, all federal public land places of use claimed by C.E. Brackett Cattle Co. in Water Right Number 51-12957, and that no partial decree or final decree for Water Right Number 51-12957 shall contain any place of use that describes federal public land.

7. C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd. stipulate and agree to dismiss, with prejudice, all public land places of use described in the water right claims listed on Exhibit B. Private land places of use described in water right claim 51-12918 shall be retained by C.E. Brackett Cattle Co.; private land places of use described in water right claim 51-12933 shall be retained by Brackett Ranches, Ltd.; and, private land places of use described in water right claim 51-12942, 51-12943 and 51-12944 shall be retained by Brackett Livestock, Inc.

8. The BLM and C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd. agree and stipulate that, subject to approval by the parties of the legal descriptions of the points of diversion and places of use, and approval of the priority date, and subject to concurrence by the Idaho Department of Water Resources, the parties shall sign and file with the SRBA District Court Standard Forms 5 that will describe stipulated elements of Water Right Numbers listed on Exhibit C, provided:

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a. The public land places of use described in the water rights listed on Exhibit C, and public land places of use described in water rights resulting from a split of water rights listed on Exhibit C, would be for the purpose of providing water to livestock duly permitted by the BLM to use United States' property for the purpose of livestock grazing pursuant to a valid grazing permit;

b. The use of water for the public land places of use described in the water rights listed on Exhibit C, and public land places of use described in water rights resulting from a split of water rights listed on Exhibit C, shall remain *in situ*; and

c. Partial decrees or final decrees for the public land places of use described in the water rights listed on Exhibit C, and public land places of use described in water rights resulting from a split of water rights listed on Exhibit C, shall not alter in any way the rights of C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd., or their successors in interest, heirs, or assigns under a valid BLM issued grazing permit nor impede the authority of the United States to manage federal public lands.

9. The parties agree that the points of diversion for Water Right Numbers 51-12711, 51-12891, 51-12925 and 51-12954 are located in the State of Nevada. The parties agree that the State of Nevada has commenced the Jarbidge General Stream Adjudication (hereinafter "Jarbidge Adjudication"), and that the points of diversion for Water Right Numbers 51-12711, 51-12891, 51-12925 and 51-12954 are encompassed by the boundary of the Jarbidge Adjudication. The parties stipulate and agree that court proceedings for Water Right Numbers 51-12711, 51-12891, 51-12925 and 51-12954 should be stayed pending adjudication of issues within the jurisdiction of the Nevada State Engineer in the Jarbidge Adjudication. The parties stipulate and agree to join in

a motion to stay SRBA proceedings in Subcase Numbers 51-12711, 51-12891, 51-12925 and 51-12954.

10. The parties stipulate and agree to support the Joint Motion for Order Approving Stipulation set forth below. If for any reason the Court does not approve the Stipulation and issue partial and final decrees for any of the water rights as described above, and as described in the Standard Forms 5 to be filed at a later date, this Stipulation is null and void and shall have no effect, and the parties shall proceed with a determination of their water rights and/or objections under applicable law.

11. The parties agree that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing in this Stipulation, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to show the validity or invalidity of any water right claims made by the parties, or as an admission or concession of wrongdoing or liability, or shall be used in any manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those seeking approval of this Stipulation by the SRBA Court, for interpretation or enforcement of this Stipulation, or for a purpose contemplated by Idaho Rule of Evidence 408. Nothing in this Stipulation shall be construed to commit any federal official to expend funds not appropriated by Congress.

12. This Stipulation was entered into and executed voluntarily by the parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence. This Stipulation comprises the entire agreement and no promise, inducement, or

representation other than herein set forth has been made, offered, and/or agreed upon, and the terms of this Stipulation are contractual and not merely a recital.

13. This Stipulation shall be binding upon any and all successors, assigns, heirs, executors, and administrators of each of the parties.

14. Each party shall bear their own costs and attorney fees.

15. This Stipulation shall become effective upon execution by all of the Parties.

JOINT MOTION FOR ORDER APPROVING STIPULATION

The United States and C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd. request the Court to approve the foregoing Stipulation, and to Order that subcases, places of use, objections, motions to file late objections, and motions to set-aside partial decrees be dismissed with prejudice in accordance with this Stipulation and its exhibits.

The Order sought by this motion is fully in accordance with Idaho law. Such an Order would serve to facilitate the settlement between the BLM and C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd., thus streamlining the SRBA process. The provisions of Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court, are directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

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Wherefore, the United States and C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd. respectfully request that this Court grant this motion in all respects. The United States and C.E. Brackett Cattle Co., Bert and Paula Brackett, Brackett Livestock, Inc., and Brackett Ranches, Ltd. further request oral argument of this matter.

DATED this 31st day of October 2002.

Respectfully submitted:

UNITED STATES OF AMERICA

C.E. BRACKETT CATTLE CO.
BERT & PAULA BRACKETT
BRACKETT LIVESTOCK, INC.
BRACKETT RANCHES, LTD



Larry A. Brown
Of Attorneys for the United States



Craig A. Pridgen
Of Attorneys for Bracketts



Roger D. Ling
Of Attorneys for Bracketts

State of Idaho)
) ss
County of Ada)

LARRY A. BROWN, duly sworn, upon oath, deposes and says:

That I am the party filing this Stipulation, and/or that I am the attorney for the party, and that I have read this Stipulation, know its contents and believe that the statements are true to the best of my knowledge.

Larry A. Brown

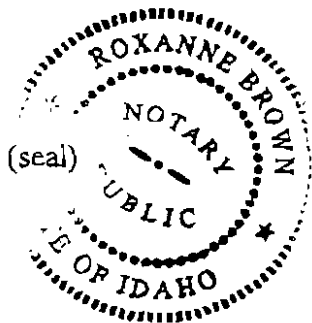
Larry A. Brown
United States Department of Justice
Environment and Natural Resources Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724
(202) 305-0435

Counsel for the United States of America

Subscribed and sworn before me on: October 31st, 2007

Roxanne Brown

Notary Public for: State of Idaho
Residing at: Boise, ID
Commission expires: 5/11/2008

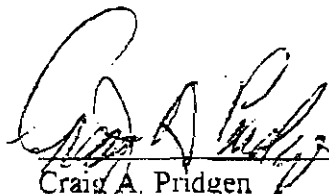


State of Idaho)
County of Ada) ss.

CRAIG A. PRIDGEN, duly sworn, upon oath, deposes and says:

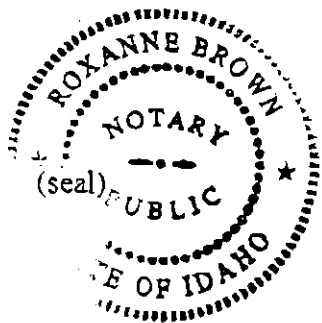
That I am the party filing this Stipulation, and/or that I am the attorney for the party, and that I have read this Stipulation, know its contents and believe that the statements are true to the best of my knowledge.

Dated October 31, 2002


Craig A. Pridgen
McQuaid, Metzler, Bedford, & Van Zandt, LLP
221 Main Street, Seventh Floor
San Francisco, CA 94105-1936
Ph: (415) 905-0200
Counsel for C.E. Brackett Cattle Co., Bert and
Paula Brackett, Brackett Livestock, Inc., and
Brackett Ranches, Ltd.

Subscribed and sworn before me on:

October 31, 2002




(name of notary)
Notary Public for: State of Idaho
Residing at: Boise, ID
Commission expires: 5/11/2008

State of Idaho)
) ss.
County of Manda)

JASON D. WALKER

ROGER D. LING, duly sworn, upon oath, deposes and says:

That I am the party filing this Stipulation, and/or that I am the attorney for the party, and that I have read this Stipulation, know its contents and believe that the statements are true to the best of my knowledge.

Dated 11/1/02

Jason D. Walker
~~Roger D. Ling~~ Jason D. Walker
Ling, Nielsen & Robinson
P.O. Box 396
Rupert, ID 83350
Ph: (208) 436-4717
Counsel for C.E. Brackett Cattle Co., Bert and
Paula Brackett, Brackett Livestock, Inc., and
Brackett Ranches, Ltd.

Subscribed and sworn before me on:

November 1, 2002

Luedean Reichert
(name of notary)

Notary Public for:

Residing at:

Commission expires:

11-24-06

LUEDEAN REICHERT
NOTARY PUBLIC
STATE OF IDAHO

The Idaho Department of Water Resources **CONCURS** in this Stipulation.

Dated: 10/31/02

Roxanne Brown

Roxanne Brown
Senior Water Rights Agent

Approved as to form:

Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this Nov. 1 day of ~~October~~ 2002, I served a true and correct copy of the foregoing **STIPULATION AND JOINT MOTION FOR ORDER APPROVING STIPULATION**, by depositing a copy thereof in the U.S. mail, postage prepaid, or via hand delivery or facsimile where indicated, upon the following:

Original to:

Clerk of the Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies to:

U.S. Department of Justice
General Litigation Section
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

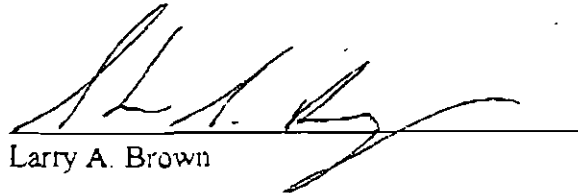
IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Craig A. Pridgen
McQuaid, Metzler, Bedford, & Van Zandt, LLP
221 Main Street, Seventh Floor
San Francisco, CA 94105-1936

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

David J. Barber, Deputy Attorney General
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

Roger D. Ling
Ling, Nielsen & Robinson
P.O. Box 396
Rupert, ID 83350



Larry A. Brown

EXHIBIT A

51-02281	51-11904	51-12091	51-12485
51-02283	51-11905	51-12904	51-12491
51-02289	51-11907	51-12097	51-12495
51-02299	51-11908	51-12108	51-12499
51-02300	51-11911	51-12109	51-12501
51-02301	51-11912	51-12114	51-12502
51-02302	51-11915	51-12115	51-12503
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51-02358	51-11928	51-12349	51-12543
51-02360	51-11931	51-12350	51-12715
51-02361	51-11933	51-12352	51-12823
51-02393	51-11936	51-12353B	51-12826
51-04062	51-11939	51-12360	51-12834
51-04063	51-11941	51-12369	51-12835
51-04064	51-11945	51-12372	
51-04065	51-11950	51-12374	
51-04066	51-11953	51-12375	
51-04067	51-11954	51-12376	
51-04068	51-11955	51-12377	
51-04070	51-11958	51-12383	
51-04071	51-11959	51-12433	
51-04079	51-11969	51-12434	
51-04082	51-11971	51-12436	
51-07171	51-11972	51-12437	
51-11290	51-11974	51-12438	
51-11884	51-11975	51-12439	
51-11886	51-11976	51-12440	
51-11888	51-11979	51-12442	
51-11889	51-11980	51-12443	
51-11890	51-11981	51-12448	
51-11891	51-11984	51-12449	
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51-11901	51-12079	51-12453	
51-11902	51-12088	51-12460	
51-11903	51-12090	51-12484	

EXHIBIT B

51-04097
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EXHIBIT C

51-12901
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Idaho Department of Water Resources Receipt

Receipt ID S027052

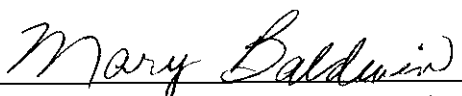
Payment Amount	\$25.00	Date Received	9/20/2004 11:44:25 AM	Region	Southern	Status	
Payment Type	Check	Check Number	294				

Payer USDI - BUREAU OF LAND MANAGEMENT

Comment PROTEST-T# 70887--BRACKETT RANCHES, #51-12898A, ETC.

Fee Detail

Amount	Description	Fund	FD	PCA	SO
\$25.00	PROTESTS	0229	21	64103	1155


Signature Line (Dept. Representative)