

United States
Department of
Agriculture

Forest
Service

Boise Adjudication Team
Recreation and Lands
Intermountain Region

380 ParkCenter, Suite 330
Boise, ID 83706

Reply to: 2540

Date: March 22, 2001

Allen Merritt
Idaho Department of Water Resources
1341 Fillmore Street, STE 200
Twin Falls, ID 83301

RECEIVED

MAR 23 2001

Department of Water Resources
Southern Region

Dear Allen:

The Forest Service and Marsh Creek Water District 45F have been working together for several months to resolve their protests to transfer application no. 5194 for 45-04114 and application for permit no. 45-07745. We are pleased to report that a settlement has been reached. A Stipulation to Resolve Protests has been prepared and signed by the Counsel for the United States and the Chairman of Marsh Creek Water District 45F and is attached hereto.

We appreciate your patience in allowing us the time to work things out to the satisfaction of the parties. If you have any questions about this matter, please contact Steve Spencer in this office at 331-5944.

Sincerely,



MICHAEL E. COLLETTE
Team Leader
Boise Adjudication Team

Attachment

Cc: Marsh Creek Water District 45F
Roger Ling
Woody Anderson
Bill Levere
Zeke Zimmerman

RECEIVED

MAR 23 2001

Department of Water Resources
Southern Region

Names of Parties Filing Document:

UNITED STATES OF AMERICA

MARSH CREEK WATER
DISTRICT 45 F

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

IN THE MATTER OF THE UNITED	)	
STATES TRANSFER APPLICATION	)	
NO. 5194 FOR 45-04114 AND	)	STIPULATION TO RESOLVE
APPLICATION FOR PERMIT NO. 45-	)	PROTESTS
07745 IN THE NAME OF THE UNITED	)	
STATES FOREST SERVICE	)	

DESCRIPTIVE SUMMARY

This is a stipulation between the United States of America, acting on behalf of the United States Department of Agriculture, Forest Service (hereinafter "Forest Service"), applicant and Marsh Creek Water District 45 F (hereinafter "District") to resolve their protests to transfer number 5194 for water right number 45-04114 and to water right application number 45-07745.

STIPULATION

WHEREAS, it is Forest Service policy to file application for and secure water rights in the name of the United States in accordance with state law for water used by permittees on National Forest System Lands; and

WHEREAS, Pomerelle Ski Area (hereinafter "Pomerelle") is authorized by a special use permit on the Sawtooth National Forest as a recreation resort; and

WHEREAS, the Forest Service filed claim number 45-04114 for water use at Pomerelle in 1980; and

WHEREAS, the Forest Service approved a Master Development Plan in 1997 authorizing new developments at Pomerelle, including snow making that could include three new storage reservoirs with a combined storage capacity of 16.3 acre feet; and

WHEREAS, in the Master Development Plan the Forest Service restricted water diversions from existing surface sources to those already in use and claimed as water right no. 45-04114, as amended; and

WHEREAS, the Forest Service filed transfer application no. 5194 for 45-04114 to add snowmaking places of use; and

WHEREAS, the Forest Service filed application no. 45-07745 for a new water use related to snow making at Pomerelle as described in the application; and

WHEREAS, Marsh Creek Water District #45-F filed a protest to transfer application no. 5194 for 45-04114 and application no. 45-07745; and

WHEREAS, the parties recognize that Pomerelle Ski Area, as authorized by the Forest Service, is an important use of the National Forest System Lands and that continued availability and use of water at Pomerelle in accordance with State Law is in the best interest of the Forest Service, the District, the local community and the general public; and

WHEREAS, it is likely that snow making at Pomerelle will result in an increased snow pack and increase in water produced by snow melting in the spring and summer; and

WHEREAS, the possible increases in water available as a result of snowmaking activities at Pomerelle cannot occur if proposed development does not occur; and

WHEREAS, the water users within the District would be the primary beneficiaries of any increases in water production and that if the estimated benefits do not materialize, water rights would continue to be administered according to state law; and

WHEREAS, the District and the Forest Service wish to resolve the protest to the above referenced application for a water right without litigation expense and delay.

THEREFORE, the parties stipulate and agree as follows:

STIPULATION TO RESOLVE PROTESTS

1. The use of water at Pomerelle must be in accordance with applicable state law and federal policy and that such water rights be held by the United States for use at Pomerelle.
2. The United States has complied with State Law by filing claims, applications for permit and applications for transfer with the Idaho Department of Water Resources for water uses at Pomerelle.
3. Domestic water use at Pomerelle during the summer at a caretakers residence and a bunkhouse be recognized as domestic and administered under state law as any other domestic water use at a residence. This includes that use would not exceed 13,000 gallons per day.
4. The developments approved by the Forest Service in the Master Development Plan for Pomerelle involve water use for snow making as anticipated in application no. 45-07745, specifically the construction of 3 storage reservoirs whose primary source of water will be surface water from melting snow.
5. That for purposes of administration, Pomerelle Spring (aka Ski Run Spring) be considered the primary source of water used at Pomerelle and that Bennett Spring be considered a secondary, backup or supplemental source.
6. The existing diversion of water under claim no. 45-04114 from Bennett Spring to the planned storage reservoirs shall be coordinated with and in accordance with the normal District irrigation season and existing water right priority dates.
7. With respect to number 6 above, when water is available or becomes available during the irrigation season the Water Master of the Water District will administer water rights and water deliveries making water available for approved uses at Pomerelle in accordance with 45-04114 and 45-07745.

8. In accordance with Idaho Code 42-701, appropriate devices be installed to measure the volume of water pumped into the planned reservoirs.
9. The Forest Service and Water District agree to coordinate and improve communications for their mutual benefit with respect to all existing and future (including new plans and proposals) water uses and water supply directly tributary to or effecting water sources within Marsh Creek Water District 45F.
10. The District agrees to withdraw with prejudice its protest to the United States application for transfer no. 5194 for 45-04114 and its protest to the United States application for permit no. 45-07745.
11. This stipulation was reached through negotiations for the purpose of resolving legal disputes, including pending litigation. All parties agree that no offers and/or compromises made in the course of the negotiations shall be construed as admissions against interest or be used in any legal proceeding.
12. All parties agree to bear their own costs and attorney fees in connection with this matter.
13. This stipulation was entered into and executed voluntarily by all parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence.

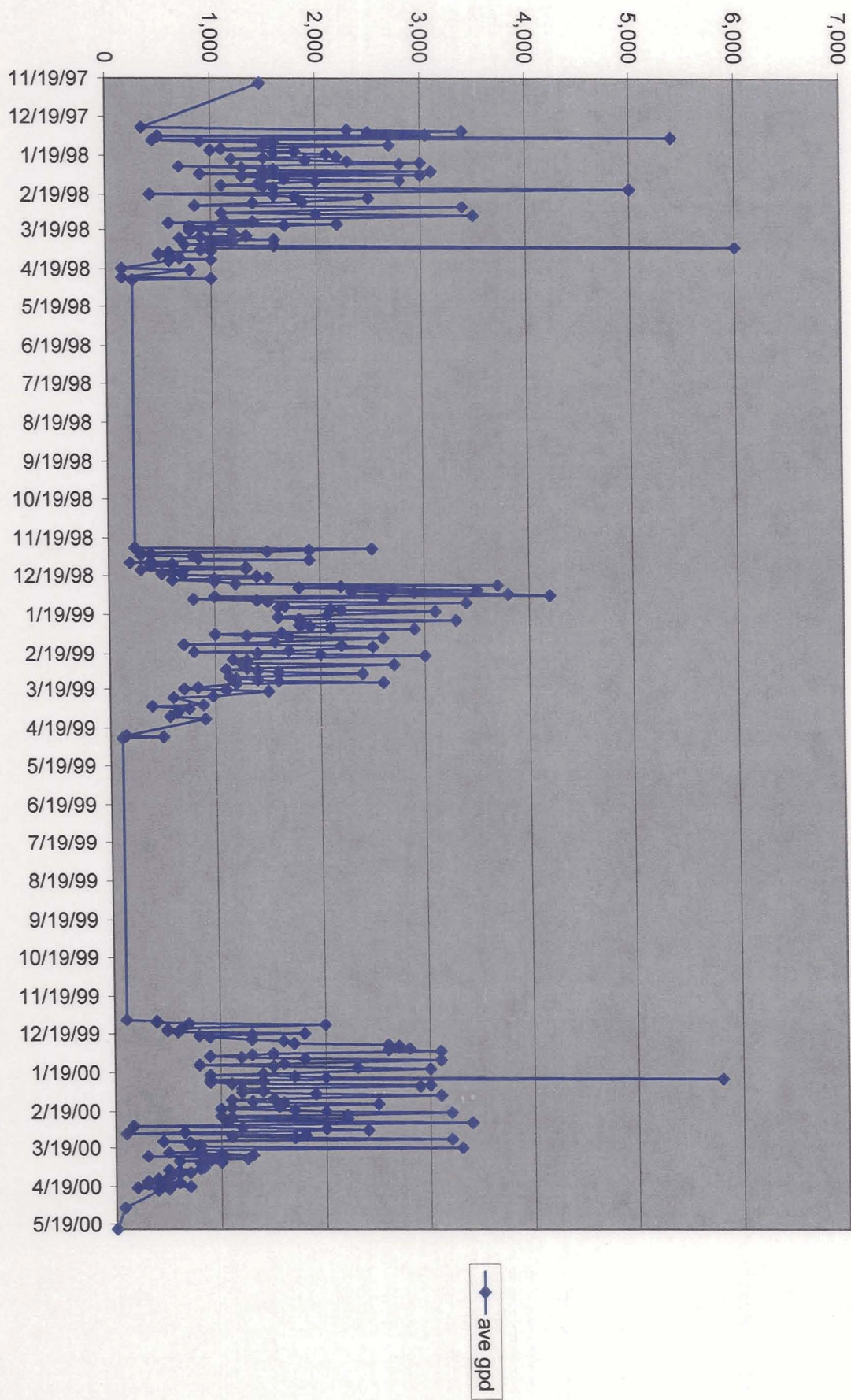
PROTESTANT:

Thomas V. Geary 2/7/01
Thomas V. Geary Date
Chairman, Marsh Creek Water District 45F

CLAIMANT:

[Signature] 2/28/01
RANDALL J. BRAMER Date
United States Of America

Pommerelle average gpd



Date	Reading	delta gal.	date #	delta days	ave gpd
11/19/97	2024		35753		
11/22/97	2068	4400	35756	3	1,467
12/27/97	2189	12100	35791	35	346
12/29/97	2235	4600	35793	2	2,300
12/30/97	2269	3400	35794	1	3,400
12/31/97	2294	2500	35795	1	2,500
1/2/98	2355	6100	35797	2	3,050
1/3/98	2360	500	35798	1	500
1/4/98	2414	5400	35799	1	5,400
1/6/98	2423	900	35801	2	450
1/7/98	2432	900	35802	1	900
1/8/98	2448	1600	35803	1	1,600
1/9/98	2463	1500	35804	1	1,500
1/10/98	2490	2700	35805	1	2,700
1/13/98	2523	3300	35808	3	1,100
1/14/98	2533	1000	35809	1	1,000
1/15/98	2551	1800	35810	1	1,800
1/16/98	2567	1600	35811	1	1,600
1/17/98	2588	2100	35812	1	2,100
1/19/98	2632	4400	35814	2	2,200
1/20/98	2647	1500	35815	1	1,500
1/21/98	2659	1200	35816	1	1,200
1/22/98	2678	1900	35817	1	1,900
1/23/98	2701	2300	35818	1	2,300
1/24/98	2731	3000	35819	1	3,000
1/25/98	2759	2800	35820	1	2,800
1/27/98	2773	1400	35822	2	700
1/28/98	2786	1300	35823	1	1,300
1/29/98	2802	1600	35824	1	1,600
1/30/98	2817	1500	35825	1	1,500
1/31/98	2848	3100	35826	1	3,100
2/2/98	2866	1800	35828	2	900
2/3/98	2896	3000	35829	1	3,000
2/4/98	2909	1300	35830	1	1,300

2/5/98	2924	1500	35831	1	1,500
2/6/98	2941	1700	35832	1	1,700
2/7/98	2969	2800	35833	1	2,800
2/8/98	2989	2000	35834	1	2,000
2/10/98	3018	2900	35836	2	1,450
2/11/98	3029	1100	35837	1	1,100
2/12/98	3044	1500	35838	1	1,500
2/13/98	3060	1600	35839	1	1,600
2/14/98	3110	5000	35840	1	5,000
2/18/98	3127	1700	35844	4	425
2/19/98	3143	1600	35845	1	1,600
2/20/98	3161	1800	35846	1	1,800
2/21/98	3186	2500	35847	1	2,500
2/24/98	3242	5600	35850	3	1,867
2/25/98	3256	1400	35851	1	1,400
2/27/98	3273	1700	35853	2	850
2/28/98	3307	3400	35854	1	3,400
3/5/98	3362	5500	35859	5	1,100
3/6/98	3382	2000	35860	1	2,000
3/7/98	3417	3500	35861	1	3,500
3/11/98	3462	4500	35865	4	1,125
3/12/98	3476	1400	35866	1	1,400
3/13/98	3482	600	35867	1	600
3/14/98	3504	2200	35868	1	2,200
3/15/98	3521	1700	35869	1	1,700
3/16/98	3529	800	35870	1	800
3/17/98	3539	1000	35871	1	1,000
3/18/98	3547	800	35872	1	800
3/19/98	3555	800	35873	1	800
3/20/98	3567	1200	35874	1	1,200
3/23/98	3607	4000	35877	3	1,333
3/24/98	3616	900	35878	1	900
3/25/98	3623	700	35879	1	700
3/26/98	3639	1600	35880	1	1,600
3/27/98	3649	1000	35881	1	1,000
3/28/98	3661	1200	35882	1	1,200
3/30/98	3676	1500	35884	2	750

3/31/98	3692	1600	35885	1	1,600
4/1/98	3752	6000	35886	1	6,000
4/2/98	3762	1000	35887	1	1,000
4/3/98	3771	900	35888	1	900
4/4/98	3781	1000	35889	1	1,000
4/5/98	3787	600	35890	1	600
4/6/98	3792	500	35891	1	500
4/7/98	3797	500	35892	1	500
4/8/98	3803	600	35893	1	600
4/9/98	3810	700	35894	1	700
4/10/98	3817	700	35895	1	700
4/11/98	3827	1000	35896	1	1,000
4/12/98	3833	600	35897	1	600
4/18/98	3842	900	35903	6	150
4/19/98	3850	800	35904	1	800
4/25/98	3859	900	35910	6	150
4/26/98	3869	1000	35911	1	1,000
11/26/98	4397	52800	36125	214	247
11/27/98	4422	2500	36126	1	2,500
11/28/98	4441	1900	36127	1	1,900
11/29/98	4456	1500	36128	1	1,500
11/30/98	4459	300	36129	1	300
12/1/98	4463	400	36130	1	400
12/2/98	4466	300	36131	1	300
12/3/98	4474	800	36132	1	800
12/5/98	4491	1700	36134	2	850
12/6/98	4510	1900	36135	1	1,900
12/7/98	4514	400	36136	1	400
12/8/98	4516	200	36137	1	200
12/9/98	4522	600	36138	1	600
12/10/98	4526	400	36139	1	400
12/11/98	4530	400	36140	1	400
12/12/98	4543	1300	36141	1	1,300
12/13/98	4556	1300	36142	1	1,300
12/14/98	4559	300	36143	1	300
12/15/98	4566	700	36144	1	700
12/16/98	4572	600	36145	1	600

12/17/98	4577	500	36146	1	500
12/18/98	4584	700	36147	1	700
12/19/98	4598	1400	36148	1	1,400
12/20/98	4613	1500	36149	1	1,500
12/21/98	4623	1000	36150	1	1,000
12/22/98	4629	600	36151	1	600
12/23/98	4639	1000	36152	1	1,000
12/25/98	4663	2400	36154	2	1,200
12/26/98	4700	3700	36155	1	3,700
12/27/98	4722	2200	36156	1	2,200
12/28/98	4740	1800	36157	1	1,800
12/29/98	4767	2700	36158	1	2,700
12/30/98	4802	3500	36159	1	3,500
12/31/98	4825	2300	36160	1	2,300
1/1/99	4854	2900	36161	1	2,900
1/2/99	4892	3800	36162	1	3,800
1/3/99	4934	4200	36163	1	4,200
1/4/99	4944	1000	36164	1	1,000
1/5/99	4970	2600	36165	1	2,600
1/6/99	4978	800	36166	1	800
1/7/99	4992	1400	36167	1	1,400
1/8/99	5007	1500	36168	1	1,500
1/9/99	5041	3400	36169	1	3,400
1/12/99	5091	5000	36172	3	1,667
1/13/99	5107	1600	36173	1	1,600
1/14/99	5128	2100	36174	1	2,100
1/15/99	5150	2200	36175	1	2,200
1/16/99	5181	3100	36176	1	3,100
1/19/99	5243	6200	36179	3	2,067
1/20/99	5259	1600	36180	1	1,600
1/21/99	5275	1600	36181	1	1,600
1/22/99	5293	1800	36182	1	1,800
1/23/99	5326	3300	36183	1	3,300
1/26/99	5381	5500	36186	3	1,833
1/27/99	5399	1800	36187	1	1,800
1/28/99	5418	1900	36188	1	1,900
1/29/99	5439	2100	36189	1	2,100

1/30/99	5468	2900	36190	1	2,900
2/2/99	5517	4900	36193	3	1,633
2/3/99	5527	1000	36194	1	1,000
2/4/99	5540	1300	36195	1	1,300
2/5/99	5557	1700	36196	1	1,700
2/6/99	5583	2600	36197	1	2,600
2/9/99	5630	4700	36200	3	1,567
2/11/99	5644	1400	36202	2	700
2/12/99	5666	2200	36203	1	2,200
2/13/99	5691	2500	36204	1	2,500
2/16/99	5742	5100	36207	3	1,700
2/17/99	5750	800	36208	1	800
2/18/99	5764	1400	36209	1	1,400
2/19/99	5784	2000	36210	1	2,000
2/20/99	5814	3000	36211	1	3,000
2/23/99	5849	3500	36214	3	1,167
2/24/99	5862	1300	36215	1	1,300
2/26/99	5887	2500	36217	2	1,250
2/27/99	5914	2700	36218	1	2,700
3/2/99	5953	3900	36221	3	1,300
3/3/99	5964	1100	36222	1	1,100
3/4/99	5978	1400	36223	1	1,400
3/5/99	5994	1600	36224	1	1,600
3/6/99	6018	2400	36225	1	2,400
3/9/99	6052	3400	36228	3	1,133
3/10/99	6064	1200	36229	1	1,200
3/11/99	6078	1400	36230	1	1,400
3/12/99	6094	1600	36231	1	1,600
3/13/99	6120	2600	36232	1	2,600
3/14/99	6132	1200	36233	1	1,200
3/17/99	6157	2500	36236	3	833
3/18/99	6164	700	36237	1	700
3/19/99	6175	1100	36238	1	1,100
3/20/99	6190	1500	36239	1	1,500
3/24/99	6229	3900	36243	4	975
3/25/99	6235	600	36244	1	600
3/31/99	6288	5300	36250	6	883

4/1/99	6292	400	36251	1	400
4/3/99	6307	1500	36253	2	750
4/6/99	6326	1900	36256	3	633
4/9/99	6343	1700	36259	3	567
4/11/99	6361	1800	36261	2	900
4/24/99	6380	1900	36274	13	146
4/25/99	6385	500	36275	1	500
12/7/99	6633	24800	36501	226	110
12/8/99	6637	400	36502	1	400
12/9/99	6641	400	36503	1	400
12/10/99	6648	700	36504	1	700
12/11/99	6668	2000	36505	1	2,000
12/14/99	6687	1900	36508	3	633
12/15/99	6692	500	36509	1	500
12/16/99	6697	500	36510	1	500
12/17/99	6703	600	36511	1	600
12/18/99	6721	1800	36512	1	1,800
12/19/99	6734	1300	36513	1	1,300
12/20/99	6742	800	36514	1	800
12/21/99	6751	900	36515	1	900
12/23/99	6777	2600	36517	2	1,300
12/24/99	6793	1600	36518	1	1,600
12/26/99	6827	3400	36520	2	1,700
12/27/99	6853	2600	36521	1	2,600
12/28/99	6880	2700	36522	1	2,700
12/29/99	6907	2700	36523	1	2,700
12/30/99	6935	2800	36524	1	2,800
12/31/99	6961	2600	36525	1	2,600
1/1/00	6992	3100	36526	1	3,100
1/3/00	7022	3000	36528	2	1,500
1/4/00	7035	1300	36529	1	1,300
1/5/00	7044	900	36530	1	900
1/6/00	7056	1200	36531	1	1,200
1/7/00	7074	1800	36532	1	1,800
1/8/00	7105	3100	36533	1	3,100
1/11/00	7153	4800	36536	3	1,600
1/12/00	7161	800	36537	1	800

1/13/00	7176	1500	36538	1	1,500
1/14/00	7199	2300	36539	1	2,300
1/15/00	7229	3000	36540	1	3,000
1/19/00	7285	5600	36544	4	1,400
1/20/00	7294	900	36545	1	900
1/21/00	7311	1700	36546	1	1,700
1/22/00	7331	2000	36547	1	2,000
1/23/00	7389	5800	36548	1	5,800
1/24/00	7398	900	36549	1	900
1/25/00	7412	1400	36550	1	1,400
1/26/00	7421	900	36551	1	900
1/27/00	7432	1100	36552	1	1,100
1/28/00	7462	3000	36553	1	3,000
1/29/00	7491	2900	36554	1	2,900
1/31/00	7515	2400	36556	2	1,200
2/1/00	7529	1400	36557	1	1,400
2/2/00	7543	1400	36558	1	1,400
2/3/00	7555	1200	36559	1	1,200
2/4/00	7574	1900	36560	1	1,900
2/5/00	7605	3100	36561	1	3,100
2/8/00	7650	4500	36564	3	1,500
2/9/00	7661	1100	36565	1	1,100
2/10/00	7674	1300	36566	1	1,300
2/11/00	7690	1600	36567	1	1,600
2/12/00	7715	2500	36568	1	2,500
2/14/00	7746	3100	36570	2	1,550
2/15/00	7757	1100	36571	1	1,100
2/16/00	7767	1000	36572	1	1,000
2/17/00	7784	1700	36573	1	1,700
2/18/00	7804	2000	36574	1	2,000
2/19/00	7836	3200	36575	1	3,200
2/21/00	7880	4400	36577	2	2,200
2/22/00	7890	1000	36578	1	1,000
2/23/00	7901	1100	36579	1	1,100
2/24/00	7923	2200	36580	1	2,200
2/26/00	7944	2100	36582	2	1,050
2/27/00	7978	3400	36583	1	3,400

3/1/00	7983	500	36586	3	167
3/2/00	7995	1200	36587	1	1,200
3/3/00	8015	2000	36588	1	2,000
3/4/00	8039	2400	36589	1	2,400
3/6/00	8052	1300	36591	2	650
3/7/00	8053	100	36592	1	100
3/8/00	8071	1800	36593	1	1,800
3/9/00	8082	1100	36594	1	1,100
3/10/00	8099	1700	36595	1	1,700
3/11/00	8131	3200	36596	1	3,200
3/13/00	8140	900	36598	2	450
3/14/00	8147	700	36599	1	700
3/15/00	8154	700	36600	1	700
3/16/00	8162	800	36601	1	800
3/17/00	8170	800	36602	1	800
3/18/00	8203	3300	36603	1	3,300
3/20/00	8219	1600	36605	2	800
3/21/00	8227	800	36606	1	800
3/22/00	8232	500	36607	1	500
3/23/00	8242	1000	36608	1	1,000
3/24/00	8255	1300	36609	1	1,300
3/25/00	8258	300	36610	1	300
3/27/00	8283	2500	36612	2	1,250
3/28/00	8292	900	36613	1	900
3/29/00	8298	600	36614	1	600
3/30/00	8308	1000	36615	1	1,000
3/31/00	8316	800	36616	1	800
4/3/00	8341	2500	36619	3	833
4/4/00	8349	800	36620	1	800
4/5/00	8354	500	36621	1	500
4/6/00	8360	600	36622	1	600
4/7/00	8367	700	36623	1	700
4/8/00	8373	600	36624	1	600
4/10/00	8383	1000	36626	2	500
4/11/00	8388	500	36627	1	500
4/12/00	8392	400	36628	1	400
4/13/00	8396	400	36629	1	400

4/14/00	8399	300	36630	1	300
4/15/00	8405	600	36631	1	600
4/16/00	8408	300	36632	1	300
4/17/00	8413	500	36633	1	500
4/18/00	8420	700	36634	1	700
4/19/00	8422	200	36635	1	200
4/20/00	8427	500	36636	1	500
4/21/00	8431	400	36637	1	400
5/5/00	8442	1100	36651	14	79
5/22/00	8443	100			