State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 57-11629

Priority: May 21, 2003

Maximum Diversion Volume: 12.0 AF

This is to certify, that JUNAYO RANCH LTD PARTNERSHIP
1087 RIVER ST #230
BOISE ID 83702

has applied for a permit to appropriate water from:

Source: MACKS CREEK **Tributary:** REYNOLDS CREEK

and a permit is APPROVED for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	ANNUAL VOLUME
WILDLIFE STORAGE	01/01 to 12/31	12.0 AF
STOCKWATER STORAGE	01/01 to 12/31	12.0 AF

LOCATION OF POINTS OF DIVERSION:

MACKS CREEK	SE¼SW¼	Sec. 13, Twp 02S, Rge 04W, B.M., OWYHEE County
MACKS CREEK	SE¼SW¼	Sec. 13, Twp 02S, Rge 04W, B.M., OWYHEE County
MACKS CREEK	NW¼SE¼	Sec. 13, Twp 02S, Rge 04W, B.M., OWYHEE County

PLACE OF USE: WILDLIFE STORAGE & STOCKWATER STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02S 04W 13												X		X			

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 01, 2006.**
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. The right holder shall maintain adequate conveyance capacity to deliver Macks Creek flows downstream by the watermaster of Water District 57R.
5. The measuring devices that have been installed on Cottle Creek and on Macks Creek upstream from Lower Macks Creek dam and on Macks Creek downstream from the 3 ponds shall be maintained to provide the watermaster suitable control for the delivery of prior water rights downstream from the ponds.
6. Stockwater use is for 500 head of cattle.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 7th day of May, 2004.

KARL J DREHER, Director

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 57-11629 IN THE NAME OF JUNAYO RANCH, LIMITED PARTNERSHIP	)))))	**PRELIMINARY ORDER**

This matter having come before the Idaho Department of Water Resources ("Department") in the form of a protested application for permit and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On May 21, 2003, Junayo Ranch, Limited Partnership ("applicant") submitted Application for Permit No. 57-11629 ("application") to the Department proposing the diversion and storage of 12 acre feet ("AF") of water from Macks Creek tributary to Reynolds Creek to be used year-round for stockwater and wildlife storage purposes. The applicant proposes 2 points of diversion located in the SE1/4SW1/4 and one point of diversion in the NW1/4SE1/4 Section 13, T2S, R4W, B.M. and to store the water in 3 ponds located in the same tracts.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. The Department published notice of the application that was subsequently protested by Elias Jaca, Richard Brandau and Tom Hook Ranches ("protestants").

3. On February 24, 2004, the Department conducted a hearing in the matter. The applicant was present and was represented by Lori Dingel. The protestants were present and agreed that Tom Hook of Tom Hook Ranches would participate as a full party in the hearing on behalf of the protestants.

4. Issues the Department can consider in this matter are as follows:

a. Whether the appropriation will reduce the quantity of water under existing water rights;
b. Whether the water supply itself is insufficient for the purpose for which it is sought to be appropriated;
c. Whether the application is made in good faith, or is made for delay or speculative purposes;
d. Whether the applicant has sufficient financial resources with which to complete the work involved therein;

e. Whether the proposed appropriation will conflict with the local public interest; and

f. Whether the proposed appropriation is contrary to conservation of water resources within the state of Idaho.

At the hearing, the protestants stipulated that issues d. and f. above were not of concern to them.

5. Exhibits premarked, offered and accepted as a part of the record are as follows:

Applicant's Exhibits:

1. Application for Permit No. 57-11629
2. Order of Partial Decree for Rotation Irrigation General Provision in Basin 57 (Reynolds Creek)
3. Schematic showing Macks Creek and reservoirs
4. Photograph – Measuring Device on Macks Creek Diversion
5. Photograph – New pipe to measure Cottle Creek
6. Photograph – Outlet from Lower Macks Creek reservoir
7. Photograph – New screw valve from Lower Macks Creek Reservoir
8. Photograph – Control Structure
9. Photograph – Measuring device below Macks Creek reservoir
10. Photograph – Outlet from control structure to bypass third pond
11. Photograph – Ditch around third pond
12. Photograph – Gates diverting water around third pond
13. Revised schematic showing Macks Creek and reservoirs
14. Tollgate Watershed, May 1, 2003 – Hydrographs
15. Reynolds Creek Average Monthly Streamflow – 1964 to 1987
16. Summary of Macks Creek runoff – 1964 to 1987
17. Junayo Ranch water rights
18. Letter dated January 18, 1995 to Owen Orndorff from David R. Tuthill

Protestant's Exhibits:

A. Photographs of Reynolds Creek
B. Amended Partial Decree for water right 57-11516 in the name of Junayo Ranch, Ltd Partnership
C. Letter dated July 1, 1994, to Owen Orndorff from David R. Tuthill together with schematics identified as Figure 1 and Figure 2, and a letter dated January 5, 1995 to David R. Tuthill from Owen Orndorff
D. Letter dated December 28, 1994, to Owen Orndorff from David R. Tuthill

6. The three ponds described in the application are existing ponds and are all located below the Lower Macks Creek dam and reservoir ("Lower Macks Creek dam"). Two of the ponds (pond 1 and pond 2) were constructed about 10 years ago for the purpose of catching seepage from Lower Macks Creek dam and the third and most downstream pond (pond 3) was constructed during the summer of 2003. Pond 1 fills with ground water originating below Lower Macks Creek dam and is not filled by a direct diversion of surface water from Macks Creek.

7. Water rights associated with Lower Macks Creek dam are owned by the applicant and are described as follows:

Identification No:	**57-7525**
Source:	Macks Creek tributary to Reynolds Creek
Priority:	April 17, 1990
Annual volume:	250 AF
Point of diversion:	NESESW Section 13, T2S, R4W, B.M.
Use:	Irrigation
Irrig. from storage:	March 15 to November 15
Irrigation Storage:	November 15 to March 15
Place of use:	56 acres in parts of sections 13 and 24, T2S, R4W, B.M.

Identification No:	**57-7583**
Source:	Macks Creek tributary to Reynolds Creek
Priority:	January 14, 1994
Annual volume:	90 AF
Point of diversion:	NESESW Section 13, T2S, R4W,B.M.
Use:	Irrigation
Irrig. from storage:	March 15 to November 15
Irrigation Storage:	November 15 to March 15
Place of use:	68 acres in parts of sections 13 and 24, T2S, R4W, B.M.

8. Measuring devices have been installed on Cottle Creek and on Macks Creek upstream from Lower Macks Creek dam and on Macks Creek downstream from Lower Macks Creek dam and the three ponds described in the application. Natural flow does not need to be diverted into pond 1 or into pond 3 to be passed down the Macks Creek channel.

9. The applicant has installed a 4 foot diameter culvert and a 6 foot diameter culvert as outlets from the impoundment behind pond 2 in order to bypass large flows of water from the Macks Creek drainage into pond 3 to be discharged to Macks Creek through the rock lined spillway channel on pond 3. There is also a 15 inch diameter pipe outlet from pond 2 that discharges water to a field to the northeast of the pond or that can be used to route water from pond 2 and discharge it to Macks Creek below pond 3.

10. Pond 1 was originally built to serve as a sediment impoundment structure on Macks Creek. Pond 2 is primarily used as a regulating pond for the distribution of

stored water and natural flow in Macks Creek. Pond 3 also impounds silt carried in the water in Macks Creek. The ponds provide water for livestock that the applicant winters near the ponds.

11. Pond 1 has fish in it and pond 3 may be stocked with fish.

12. In most years there is flow in the Reynolds Creek drainage in excess of existing water rights that can be stored under this application. (See Applicant's Exhibits 15 and 16).

13. One basis for the protests appears to be the provisions of a stipulation entered into by the parties during the Reynolds Creek Adjudication, and included in a final decree issued March 18, 1988 by the Third Judicial District Court in Owyhee County Civil Case No. 3456. The cited provisions of the stipulation relate to the storage of excess water by users in the Upper Reynolds Creek basin including storage of water by the applicant. The effect of the language ensured that the Upper Reynolds Creek water users did not exceed their historic use of excess water, thereby preventing injury to Lower Reynolds Creek water users.

14. Subsequently, in the Snake River Basin Adjudication ("SRBA") the SRBA district court struck General Provision 2 regarding "excess flow" water in the Reynolds Creek basin from the Director's Report for Basin 57. General Provision 2 was identical to the stipulation entered into by the parties in the Reynolds Creek Adjudication. The Idaho Supreme Court later held that the "excess flow" portion of General Provision 2 did not establish a water right in the excess water. State v. Idaho Conservation League, 131 Idaho 329, 955 P.2d 1108 (1998). The right to use excess flow in Reynolds Creek by the upper users has been determined by the SRBA district court in individual water rights. These water rights have all elements necessary, including a priority date and quantity, to deliver these water rights in accordance with the prior appropriation doctrine.

15. The watermaster stated that she could not efficiently deliver more water than about 3 cfs through the system of the applicant to waterusers below the dams and ponds on Macks Creek. The watermaster also stated that she believed engineered plans should be required for the impounding structures on the ponds and that as-built plans should be certified in connection with the structures.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in pertinent part as follows:

> In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not

sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, ... the director of the department of water resources may reject such application and refuse issuance of a permit therefor... .

2. The stipulated language from the Reynolds Creek Adjudication in Owyhee County Civil Case No. 3456 related to the storage of excess water by users in the Upper Reynolds Creek basin, including storage of water by the applicant, was not approved as a general provision in the SRBA. State v. Idaho Conservation League, 131 Idaho 329, 955 P.2d 1108 (1998). Thus, the stipulated language does not provide a basis for a protest to this application.

3. The measuring devices that have been installed on Cottle Creek and on Macks Creek upstream from Lower Macks Creek dam and on Macks Creek downstream from Lower Macks Creek dam and downstream from the three ponds are adequate to measure the delivery of natural flow rights through the reservoirs and ponds to waterusers downstream from the ponds.

4. The 3 outlets from pond 2 consisting of a 15 inch diameter culvert a 4 foot diameter culvert and a 6 foot diameter culvert are adequate to pass flow in Macks Creek downstream to earlier priority water rights.

5. There is an established water district in the Reynolds Creek drainage with an elected watermaster who distributes water during times of shortage in the order of priority to those entitled to its use. Use of water as proposed in the application will not reduce the quantity of water under existing water rights.

6. The water supply itself is sufficient for the wildlife and stockwater purposes intended.

7. The application was made in good faith and was filed with the Department at the request of the Department as a part of the settlement conditions of a Notice of Violation previously issued by the Department in connection with pond 3.

8. The ponds and distribution system described in the application have been constructed and are operable. The applicant has sufficient financial resources with which to complete the project.

9. The ponds proposed in the application will reduce the silt load carried in Macks Creek, will provide water for fish and wildlife, and do not conflict with the local public interest.

10. Storage of water for use later in the year when water availability has decreased is a common practice in Idaho and is not contrary to the conservation of water resources within Idaho.

11. The Department should approve the application with certain conditions.

ORDER

IT IS THEREFORE hereby ORDERED that Application for Permit No. 57-11629 in the name of Junayo Ranch, Limited Partnership is APPROVED subject to the following conditions:

1. Proof of construction of diversion works and application of water to beneficial use shall be submitted to the Department on or before April 1, 2006.

2. Use of water under this right is subject to all prior water rights.

3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

4. The right holder shall maintain adequate conveyance capacity to deliver Macks Creek flows downstream by the watermaster of Water District 57R.

5. The measuring devices that have been installed on Cottle Creek and on Macks Creek upstream form Lower Macks Creek dam and on Macks Creek downstream from the 3 ponds shall be maintained to provide the watermaster suitable control for the delivery of prior water rights downstream from the ponds.

6. Stockwater use is for 500 head of cattle.

Signed this 15th day of March, 2004.

L. GLEN SAXTON, P.E.
Hearing Officer

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 10th day of March, 2004, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Junayo Ranch
Limited Partnership
Owen W. Orndorff
1087 W River Street Suite 230
Boise, Idaho 83702

Elias Jaca
13576 State Hwy 78
Nampa, Idaho 83651

Tom Hook Ranches
817 Blaine Avenue
Melba, Idaho 83641

Richard Brandau
9902 Wilson Cemetary Lane
Wilson, Idaho 83641

Victoria Wigle

Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

Ident. No. 57-11629

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MAY 21 2003
WATER RESOURCES
WESTERN REGION

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JAN 15 2004
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant Junaso Ranch Limited Partnership Phone 208-343-8880
   Mailing address 1087 River Street Boise Idaho 83702
2. Source of water supply Macks Creek which is a tributary of Reynolds
3. Location of point of diversion is Township 25 Range 4W Sec. 13, in the ____ ¼, SE of SW ¼, NW of NE ¼, Govt. Lot ____, B.M., Owyhee County;
   additional points of diversion if any: 2 pts - Above - 3 Ponds
4. Water will be used for the following purposes:
   Amount 12 AF (cfs or acre-feet per annum) for Stockwater, Wildlife Storage purposes from Jan 1 to December 31 (both dates inclusive)
   Amount ____ (cfs or acre-feet per annum) for ____ purposes from ____ to ____ (both dates inclusive)
   Amount ____ (cfs or acre-feet per annum) for ____ purposes from ____ to ____ (both dates inclusive)
   Amount ____ (cfs or acre-feet per annum) for ____ purposes from ____ to ____ (both dates inclusive)
   Amount ____ (cfs or acre-feet per annum) for ____ purposes from ____ to ____ (both dates inclusive)
   Amount ____ (cfs or acre-feet per annum) for ____ purposes from ____ to ____ (both dates inclusive)
5. Total quantity to be appropriated is (a) 12 AF (cubic feet per second) and/or (b) ____ (acre feet per annum)
6. Proposed diverting works:
   a. Describe type and size of devices used to divert water from the source Ponds and Earth Dams
   b. Height of storage dam highest is 76 feet; active reservoir capacity 12AF inclusive of AFII Three acre-feet; total reservoir capacity ____ acre-feet
   c. Proposed well diameter is ____ inches; proposed depth of well is ____ feet
   d. Is ground water with a temperature of greater than 85°F being sought? ____
   e. If well is already drilled, when? ____; Drilling firm ____;
   Well was drilled for (well owner) ____; Drilling Permit No. ____
7. Time required for completion of works and application of water to proposed beneficial use is 2 years (*minimum 1 year*)
8. Description of proposed uses (*if irrigation only, go to item 9*):
   a. Hydropower; show total feet of head and proposed capacity in kW. ____
   b. Stockwatering; list number and kind of livestock. Cattle 500 cows, and calves, and Bulls
   c. Municipal; show name of municipality. ____
   d. Domestic; show number of households. ____
   e. Other; describe fully. ____

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9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
25	4W	13												S		S			

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. NONE

11. a. Who owns the property at the point of diversion? Juniper Ranch Limited Partnership

b. Who owns the land to be irrigated or place of use? SAME

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: SEE ATTACHMENT

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Signature of Applicant (and title, if applicable)
General Partner, Juniper Ranch Limited Partnership

Received by JFW Date 5/21/03 Time 11:20 AM Preliminary check by DAN
Fee $ 100.00 Receipted by JFW # W030493 Date 5/21/03
Publication prepared by AF Date 7-16+23-03 Published in CA
Publication approved _____ Date 8-4-03

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ATTACHMENT

Application For Permit
Junayo Ranch/Owen Ordorff

RE: Construction of 3 ponds

Three ponds have been constructed in sucession just downstream of Macks Creek Dam #57-7525 on the Junayo Ranch in Owyhee County.

#1 Pond & Dam
The facility is located just downstream of the Macks Creek Dam toe; it is upstream of the service and emergency spillways confluence with the creek. The source of water is seepage from the embankment toe.
Approx. Dimensions:

Embankment length--- 300 ft
Dam Hyd Height----- 8 ft
Pond dimensions----- 300 ft X 300ft

Surface Area-------2 ac.
Storage Volume--- 6.4 ac-ft
Spillway width ----12 ft

#2 Pond & Dam
The purpose of this facility is for irrigation re-diversions from Macks and Reynolds Creeks to various fields. The embankment also serves as a field road crossing. The pond could potentially store seepage and spillway overflow from the large Macks Creek facility; storage is minimal.

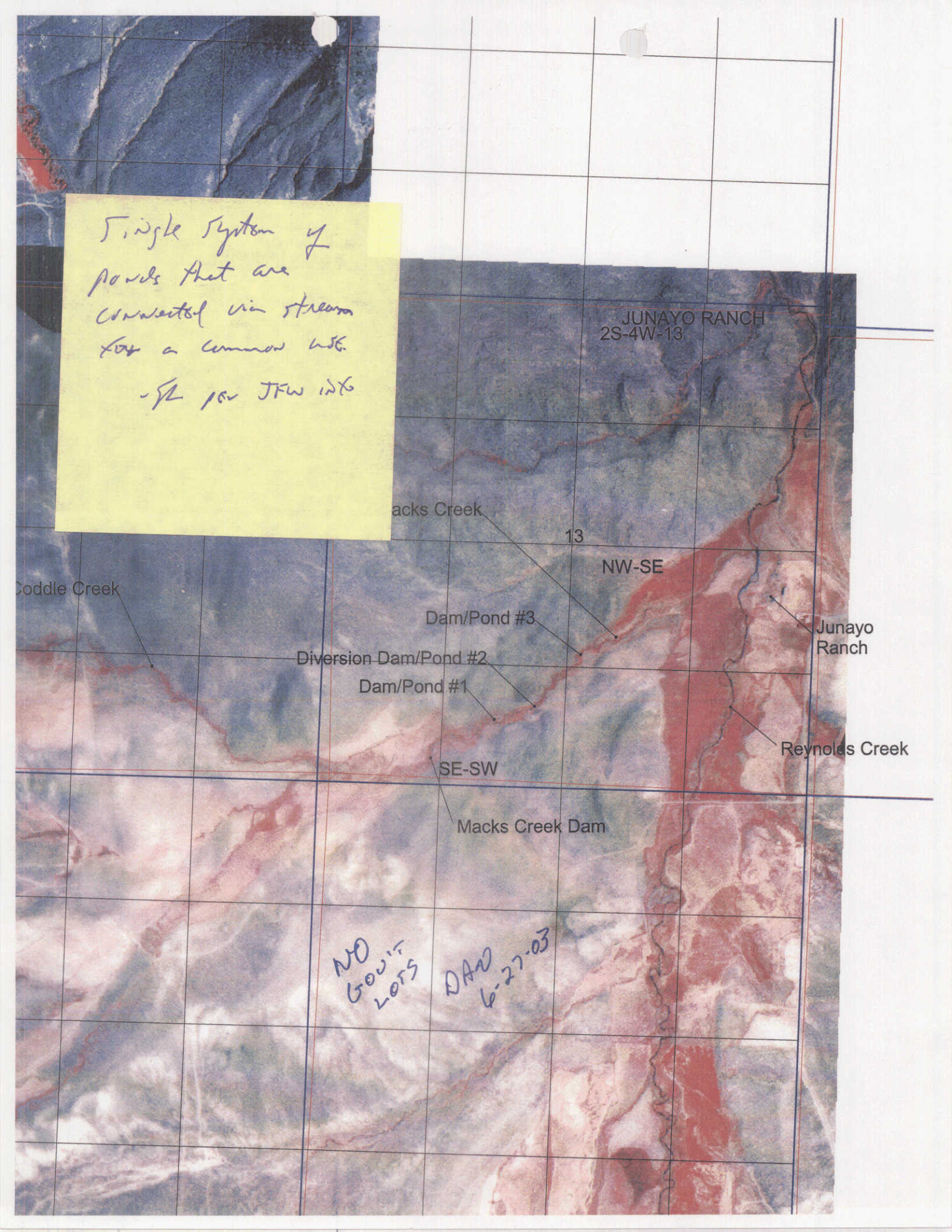
Embankment length--- 100 ft
Dam Hyd. Height------ 4 ft
Pond Dimensions------ 150 ft X 100 ft

Surface Area ---.3 ac
Storage Volume--- .5 ac-ft
Spillway---------- 5 ft CMP

#3 Pond & Dam
The pond headwaters are just downstream of pond #2. Sources are seepage and spillway overflow the large Macks Creek Dam.

Embankment length—200 ft
Dam Hyd Height ---- 7 ft
Pond Dimensions ---- 200 ftX 300 ft

Surface Area ---1.4 ac
Storage Volume--- 2.8 Ac-ft
Spillway length--- 50 ft



Single system of ponds that are connected via stream for a common use.

- SL for JFW inc

NO GOVT LOTS

DAM 6-27-03

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REQUEST TO PROCESS

COMPLETE REQUEST IF YOU WANT YOUR APPLICATION TO BE PROCESSED USING ONE OF THE THREE ALTERNATIVES BELOW

Name of Applicant: Jumpoff Ranch Limited Partnership

Mailing Address: 1087 Rivers Street, Boise Idaho 83702

Application No. (if known): _____

___ IN LOCAL PUBLIC INTEREST

Yes, I want my application processed and before it is advertised, I will amend my application to demonstrate that the proposed appropriation is in the local public interest including the need to preserve flows in the Snake River during the migration periods of anadromous fish.

___ PROPOSE MITIGATION NOW

Yes, I want my application processed and before it is advertised, I will amend my application to include proposed mitigation to offset anticipated depletions in the Snake River during periods of anadromous fish migration.

X WILL AGREE TO MITIGATION IN THE FUTURE IF NECESSARY

Yes, I want my application processed at this time, and I will accept a condition of approval that will require mitigation should the Director of the Idaho Department of Water Resources determine that mitigation is necessary to offset depletions from this appropriation to flows in the Snake River during periods of anadromous fish migration. I understand that mitigation is not required now but may be needed in the future. I also understand that the Director will not require mitigation until I have an opportunity to review the process by which the need for mitigation is established and the amount of water required is quantified.

Signature: General Partner Jumpoff Ranch Limited Partnership

Date: 5/21/03

Please return this form to:

Idaho Dept. of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

CERTIFICATE OF LIMITED PARTNERSHIP AGREEMENT

The undersigned, being desirous of forming a limited partnership in pursuance of the statutes of the State of Idaho authorizing their formation do hereby make and severally sign the following certificate, in duplicate original for that purpose:

1. The name under which the partnership is to be conducted is Junayo Ranch Limited Partnership.

2. The character of the business is ranching operations, and other business which relates or is incidental thereto, including stock breeding, raising, selling, buying and ranching.

3. The principal place of business is to be located at Suite 1405, Idaho First Plaza, Boise, Idaho 83702. The initial registered agent shall be Owen H. Orndorff at the address set forth below.

4. The names of the general partner and limited partner are:

Owen H. Orndorff	General Partner	101 S. Capitol Blvd. Suite 1405 Idaho First Plaza Boise, Idaho 83702
Harvey H. Orndorff	Limited Partner	4300 Junayo Lane Kuna, Idaho 83634

5. The term for which the partnership is to exist is perpetual or as may be terminated according to the agreement.

6. The amount of cash and a description of and the agreed value of other property contributed by each limited partner is:

JAN 18 3 54 PM '88
SECRETARY OF STATE

Name of Limited Partner	Cash Contribution	Description of Other Property	Agreed Value of Other Property
Harvey H. Orndorff	-0-	Contribution of real and personal property located in Ada County and Owyhee County	$600,000
General Partner			
Owen H. Orndorff		Assumption of certain secured indebtedness on partnership property	$600,000

7. The share of the profits or other compensation by way of income which each limited partner shall receive by reason of his contribution:

Harvey H. Orndorff - 50% of net income together with a cumulative preference of $20,000 on any income.

8. Right is given to limited partner to substitute limited partner in his place upon the terms and conditions of the limited partnership agreement.

9. Right is given to partners to admit additional limited partners according to the terms of the limited partnership agreement.

10. Right is not given to any remaining general partner to continue the business on the death, retirement or insanity of the general partner.

11. Right is not given the limited partner to demand and receive property other than cash in return for his contribution.

IN WITNESS WHEREOF we have hereunto set our hand and seal this 18th day of January, 1988.

GENERAL PARTNER

OWEN H. ORNDORFF

LIMITED PARTNER

HARVEY H. ORNDORFF

State of Idaho)
)ss.
County of Ada)

On this 18th day of January, 1988, before me, a Notary Public in and for said State, personally appeared Owen H. Orndorff, General Partner of Junayo Ranch Limited Partnership, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

Notary Public for Idaho
Residing at Boise
Commission Expires: 8-21-88

State of California)
)ss.
County of RIVERSIDE)

On this 13TH day of January, 1988, before me, a Notary Public in and for said State, personally appeared Harvey H. Orndorff, Limited Partner of Junayo Ranch Limited Partnership, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

Notary Public for California
Residing at 277 TAVA LN. PALM DESERT
Commission Expires: 6-11-90

OFFICIAL SEAL
JERC[illegible]
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
RIVERSIDE COUNTY
My Comm Expires June 11, 1990

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

RICHARD BRANDAU
9902 WILSON CEMETARY LN
WILSON ID 83641

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Richard Brandau ☐ Agent ☑ Addressee

B. Received by (Printed Name) RICHARD BRANDAU C. Date of Delivery 1-15-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☑ No

RECEIVED JAN 2 2 2004 Department of Water Resources

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 2264 2158 57-11629

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TOM HOOK RANCHES
13576 STATE HWY 78
MELBA ID 83641

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Tom Hook ☐ Agent ☑ Addressee

B. Received by (Printed Name) Tom Hook C. Date of Delivery 1-15-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RECEIVED JAN 2 2 2004 Department of Water Resources

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 2264 2141 57-11629

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

ELIAS JACA
817 BLAINE AVE
NAMPA ID 83651

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Inez Jaca ☑ Agent ☐ Addressee

B. Received by (Printed Name) Inez Jaca C. Date of Delivery 1-16-04

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☑ No

RECEIVED JAN 2 2 2004 Department of Water Resources

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 2264 2172 57-11629

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

JONAYO RANCH
LIMITED PARTNERSHIP
OWEN W ORNDORFF
1087 W RIVER ST STE 230
BOISE ID 83702

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) Shannon Morgan C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☑ No

RECEIVED JAN 2 2 2004 Department of Water Resources

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7099 3220 0006 2264 2165 57-11629

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WESTERN REGION

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO

NOW STARTING RIGHT SIDE OF FILE

JUNAYO RANCH

Limited Partnership

General Partner
OWEN H. ORNDORFF

Limited Partner
Harvey H. Orndorff
(1918-1992)

Murphy, Idaho
Kuna, Idaho

Mailing Address
Suite 230
1087 West River Street
Boise, Idaho 83702

RECEIVED
AUG 4 2004
DEPARTMENT OF WATER RESOURCES

August 3, 2004

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Boise, ID 83706

Re: Address Change for Junayo Ranch, LTD Partnership

To whom it may concern:

The purpose of this letter is to advise you of an address correction for Junayo Ranch LTD Partnership. The correct address is:

Junayo Ranch LTD Partnership
1087 West River Street, Suite 230
Boise, ID 83702

It has come to my attention that some of your files do not have the "West" reference before River Street. Thank you for you assistance in this matter.

Very truly yours,

Owen H. Orndorff
General Partner

OHO/dr

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 7, 2004

JUNAYO RANCH LTD PARTNERSHIP
1087 RIVER ST #230
BOISE ID 83702

RE: Permit No. 57-11629

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed a least sixty days prior to the commencement of work in the stream.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a $100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-327-7946.

Sincerely,

Shelley W. Keen

Shelley W. Keen
Water Rights Supervisor

SWK:klt

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2004 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 57-11629

JUNAYO RANCH LTD PARTNERSHIP
1087 RIVER ST #230
BOISE ID 83702

Kari Lynn Townsend
Secretary

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 16, 2004

RE: In the Matter of Application for Permit No. 57-11629 in the name of Junayo Ranch, Limited Partnership

Dear Interested Parties:

The Department of Water Resources has issued the enclosed **Preliminary Order** pursuant to section 67-5245, Idaho Code. The enclosure is an informational sheet on responding to preliminary orders issued by the Idaho Department of Water Resources.

If you have any questions, please call (208) 327-7910.

Sincerely,

Victoria Wigle

Victoria Wigle
Administrative Assistant to the Director

Encl.
c: IDWR Western Regional Office

State of Idaho
Department of Water Resources

ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATION FOR PERMIT NO. 57-11629 IN THE NAME OF JUNAYO RANCH LTD

Date: February 24, 2004

Time: 10:00 a.m.

Location: Owyhee County Courthouse
Highway 78
Murphy, ID 83650

Hearing Officer: L. Glen Saxton

** *Please Print* **

NAME	ADDRESS	REPRESENTING (Applicant, Protestant)
Tom Hook	13576 Hwy 78, Melba	Protestant WATERMASTER 57R
Connie M. Brandau	9902 Wilson Cem Ln, Wilson, ID	83641
Richard Brandau	9902 Wilson Cem Ln, Wilson Id	83641
ELIAS JACA	817 BLAINE AVE NAMPA, Id.	PROTESTANT
David Shaw	1106 N Cole Rd, Ste C, Boise 704	Protestant
Tom Benson	10943 Salmon Cr. Rd. Murphy	
JACKIE BENSON	10943 Salmon Creek Rd	murphy
Jerry Hoogland	13528 Reynolds Creek Rd	wilson ID 83641
Brad Huff	13201 Boulder Pasture	Guffey, ID 83641
WEN ORNDORFF	1087 River Street	BOISE 83702
LORI DINGEL	"	"

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 25, 2004

Junayo Ranch
Limited Partnership
Owen W. Orndorff
1087 W River Street Suite 230
Boise, Idaho 83702

Richard Brandau
9902 Wilson Cemetary Lane
Wilson, Idaho 83641

Elias Jaca
817 Blaine Avenue
Nampa, Idaho 83651

Tom Hook Ranches
13576 State Hwy 78
Melba, Idaho 83641

RE: APPLICATION FOR PERMIT NO. 57-11629 - JUNAYO RANCH, LTD

Dear Parties:

Enclosed for your records is a copy of Protestant's Exhibits C and D that were accepted as a part of the record in the hearing conducted on February 24, 2004 in Murphy, Idaho for the above referenced application.

Sincerely,

L. Glen Saxton, P.E.
Hearing Officer

LGS:vw
Encl.

Protestant's Exhibits







Department of Water Resources
PROTESTANT'S
Exhibit A
Date Admitted 2/24/2004

1B

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

AMENDED

In Re SRBA)
)
Case No. 39576)
)

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

Water Right 57-11516

2002 APR -1 PM 2:39

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: JUNAYO RANCH LTD PARTNERSHIP
1087 W RIVER ST, STE 230
BOISE, ID 83702

SOURCE: MACKS CREEK TRIBUTARY: REYNOLDS CREEK

QUANTITY: 15.00 CFS

PRIORITY DATE: 09/21/1911

POINT OF DIVERSION: T02S R04W S27 NWNE Within Owyhee County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	02-15 TO 07-15	15.00 CFS

PLACE OF USE: Irrigation Within Owyhee County

T02S R04W S13	SWSW 12.0		
S14	SESE 1.0		
S23	NENE 2.0	NWNE 9.0	
	SWNE 6.0		

30.0 Acres Total

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

THIS RIGHT SHALL NOT BE DELIVERED IF THE FLOW AT THE UPPER BASIN TOLLGATE WEIR (T3S, R4W, S24, SESW) IS AT OR LESS THAN 37 CFS, OR THE FLOW AT THE OUTLET WEIR (T2S, R4W, S12, NESE) IS AT OR LESS THAN 57 CFS

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.

R. Burdick

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

Department of Water Resources
PROTESTANT'S
Exhibit B
Date Admitted 2/24/2004

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 1, 1994

RECEIVED JUL - 5 1994

Department of Water Resources
PROTESTANT'S
Exhibit C
Date Admitted 2/24/2004

OWEN ORNDORFF
JUNAYO RANCH LTD PARTNERSHIP
1087 RIVER ST #230
BOISE ID 83702

RE: Pre-permitting Inspection, Water Right Application No. 57-07583

Dear Mr. Orndorff:

On Thursday, May 19, 1994 a field inspection was conducted at the Macks Creek Reservoir sites by Cindy Hodges of this office and Connie Brandau, Watermaster of Reynolds Creek Water District 57R. The purpose of the inspection was to determine measuring device requirements for the Macks Creek Reservoirs, with respect to the above application for additional storage in the lower reservoir, in order to ensure adequate Watermaster control over priority deliveries in the Reynolds Creek drainage.

The field inspection found that the Lower Macks Creek Reservoir, in Section 13, T02S R04W, is being operated in conjunction with an upper, off-stream reservoir on Macks Creek in Section 23, an off-stream reservoir on Reynolds Creek in Section 18, T02S R03W, and decreed live flow rights from Macks Creek, Cottle Creek and Reynolds Creek (see Figure 1, attached). Both the Macks Creek and the Cottle Creek drainages are within the jurisdiction of Reynolds Creek Water District 57R and are subject to regulation by the Watermaster. Any flows arising in either of these tributary streams may be called on to satisfy senior downstream water rights in Reynolds Creek.

For onstream impoundments with junior storage rights, measuring devices are required both above and below the impoundment during regulatory periods so that incoming surface flows may be passed through the reservoir by the Watermaster for deliveries below. Because Cottle Creek confluences with Macks Creek in Section 13 just above the Lower Macks Creek Reservoir, inflows from both drainages must be accounted for during watermaster regulatory periods.

On the day of the field inspection, the inflow above the Upper Macks Creek Reservoir in Section 23 was estimated at approximately 15 miner's inches, or 0.3 cfs. An inflow estimate for Cottle Creek was not obtained. From Watermaster records for May 19, only the first 18 priority ranked rights were being satisfied from available flows in Reynolds Creek. Also from Watermaster records, the Junayo and McKee rights diverted above the lower reservoir are ranked 22, 47, 52 and 54. All flows originating above Upper Macks Creek Reservoir should have been turned into the Macks Creek channel on that day to help satisfy downstream rights.

Also on the day of the inspection, a redwood measuring device was found under construction in the canal downstream from the Lower Macks Creek Reservoir outlet #1. Wooden headwalls had been erected but no weir blade had been installed.

The partial structure was not level, and if the installation is completed without being properly leveled, the measuring device will not be considered satisfactory. The device is positioned to measure the outflow from outlet #1, but it is not in a location which will properly measure return flows to Macks Creek. A similar device for outlet #2 was not inspected, as flows discharged from this point are not directly tributary back to Macks Creek.

A new cement headwall and screw gate were being installed immediately below the redwood weir at outlet #1 to provide a turnout from the outlet canal. However, flows which were being turned out of the canal on the day of the inspection were not being returned to the Macks Creek channel but into a lateral ditch serving Junayo Ranch lands. Because there is no control structure or measuring device at this location, the Watermaster is not being allowed sufficient control over the routing of these flows.

The Macks Creek system is unique in that stored flows in the lower reaches of Macks Creek provide an opportunity for irrigation flow exchange, allowing irrigation to continue on lands in upper reaches of Macks Creek which have junior priority live flow rights and which would not, under strict priority delivery, normally be able to receive water after May or June of each year. Live flows appropriated above the reservoir for this irrigation must be replaced or compensated by a release of stored flows to Macks Creek. This exchange is acceptable to both IDWR and the Watermaster provided that 1) all measuring devices are in place, and 2) the Macks Creek storage permits are modified to reflect the use of the exchanged storage water on the upper lands.

Accordingly, a minimum of three measuring devices and one control structure will be required to satisfy the concerns of the Watermaster and the conditions of all pending water rights relevant to the Macks Creek Reservoirs. If flow exchange is to continue, appropriate action must also be taken to modify existing water right storage permits. The required measuring sites and modifications are as follows (see Figure 1 for approximate locations):

- An inflow measurement device is to be located in the upper Macks Creek diversion ditch in NE Section 27 or SE Section 22, T02S R04W, at a site to be approved by IDWR and/or the Reynolds Creek Watermaster. After spring runoff and during typical regulatory periods when measurement must occur, the upper reach of Macks Creek appears to be completely dewatered by the upper diversion. It is not necessary to turn flows back to the dry channel for measurement so long as all incoming flows pass through the device. Measuring device capacity should be at least equal to average runoff flows after March 15 of each year. Before March 15 and before the Watermaster is called to duty, excess flows may be spilled to the Macks Creek channel to avoid washing out the device.

- An inflow measurement device is to be located in the Cottle Creek channel in Section 15, T02S R04W, above all McKee diversions and at a site to be approved by IDWR and/or the Reynolds Creek Watermaster. If only one diversion is used from Cottle Creek and if summer diversion conditions are similar to the Macks Creek diversion, the device may also be located within the diversion ditch.

- An outflow measurement device is to be located in the Macks Creek channel below the lowest Macks Creek dam in SESW Section 13, T02S R04W. The device must be situated below a control structure which is also required. The control structure is to be situated at the head of the existing Junayo Macks Creek diversion, and must have the ability to control the routing of flows turned out of the #1 outlet canal to either the Macks Creek channel or to the Junayo ditch. The canal turnout gate, the control structure and the measuring device must all have the capacity to divert and measure flows of up to 13 cfs, the rated capacity of outlet #1.

- For flow exchanges, amendments must be filed for the above application and for water right permit no. 57-07525, to add irrigation from storage in Section 23. Currently, these filings show storage in lower Macks Creek Reservoir and irrigation from storage below the reservoir in Sections 13 and 24 only. Filing fees for each amendment are $50.00.

Additional measuring devices may also be required in the future if the currently required devices cannot adequately address the present concerns, or if unforeseen system constraints do not allow sufficient compensatory flow passage. These devices would likely increase overall system flexibility, and may be installed with prior approval at the following sites:

- Measurement devices may be located at one or two central irrigation return flow collection sites just prior to discharge into Reynolds Creek. With adequate quantification, credit for return flows could be given against the required compensatory discharges from Lower Macks Creek Reservoir.

- An outflow measurement device may be installed below the outlet of the Reynolds Creek Reservoir in Section 18, T02S R03W. If sufficient compensatory releases are not possible from Lower Macks Creek Reservoir, or if use of all available discharge is desired directly from Lower Macks Creek Reservoir, the required releases could be made from the Reynolds Creek Reservoir.

The Department has requested the installation of proper measuring devices above and below the Macks Creek Reservoir system on at least two occasions (May 3 and November 29, 1993 file correspondences). The last correspondence required those devices be present by March 15, 1994. At the time of the May 19 inspection, no measuring devices were present above the Macks Creek reservoir, and devices below the reservoir were improperly placed. No further significant work had been completed by June 1, 1994, the projected finish date of the project.

Until work on all required measuring devices is satisfactorily completed, IDWR will take no further action toward approval of the above permit. Exchanged flows in excess of the available capacity of Upper Macks Creek Reservoir (Section 23) will not be allowed until amendments have been filed and approved. In addition, no licenses will be issued pursuant to the outstanding water right permits for Upper or Lower Macks Creek or Reynolds Creek Reservoirs, until all water right permitting and dam safety issues have been addressed at all locations.

Please contact Cindy Hodges of this office prior to the installation of the necessary measuring devices or to file amendments.

Sincerely,

David R. Tuthill, Jr., P. E.
Manager, Western Region Office

Enclosure

cc: Carl Myers, Myers Engineering
Mike Stubblefield, IDWR
Connie Brandau, 57R Watermaster

SYSTEM SCHEMATIC - MACKS CREEK
5/19/94

Figure 1.

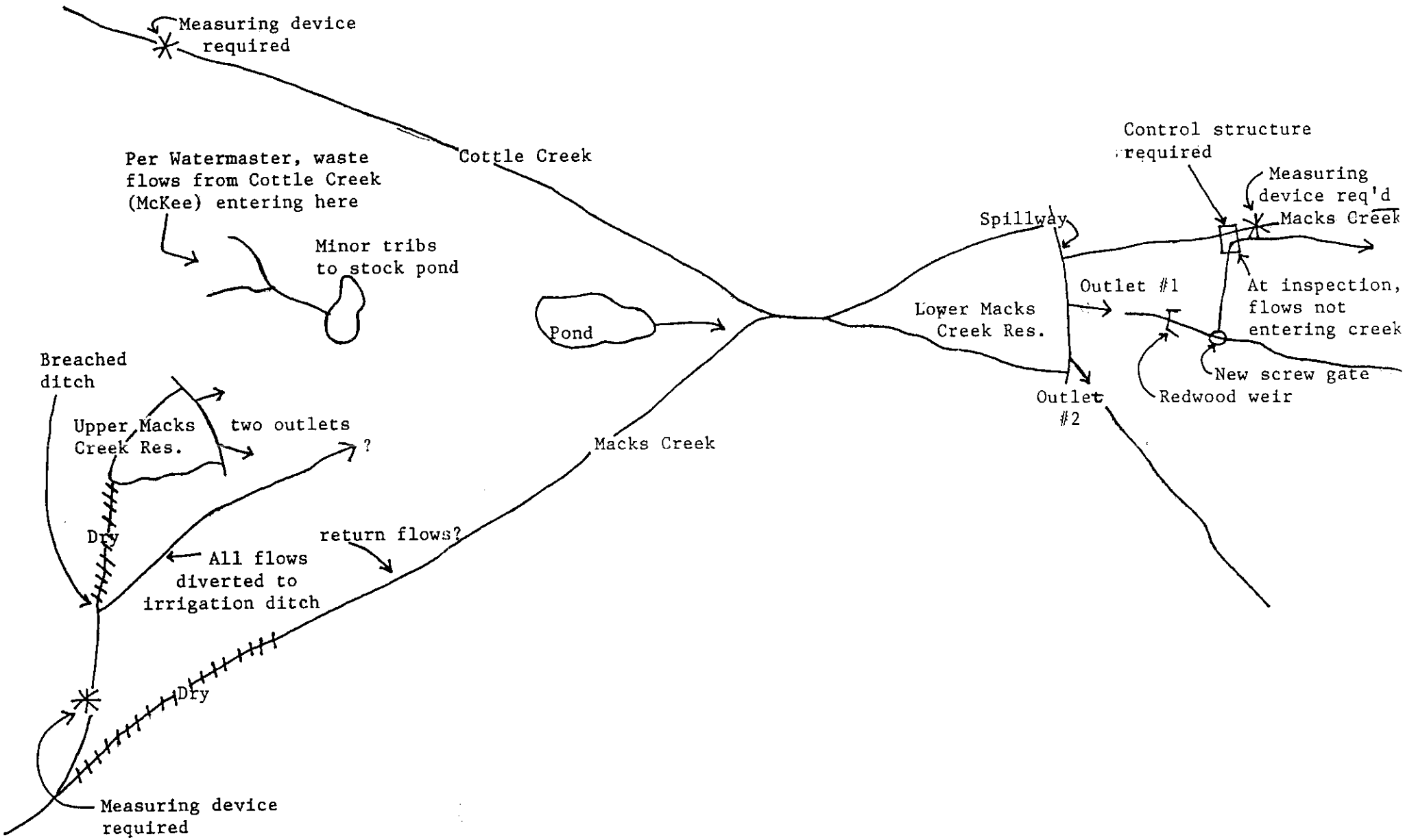
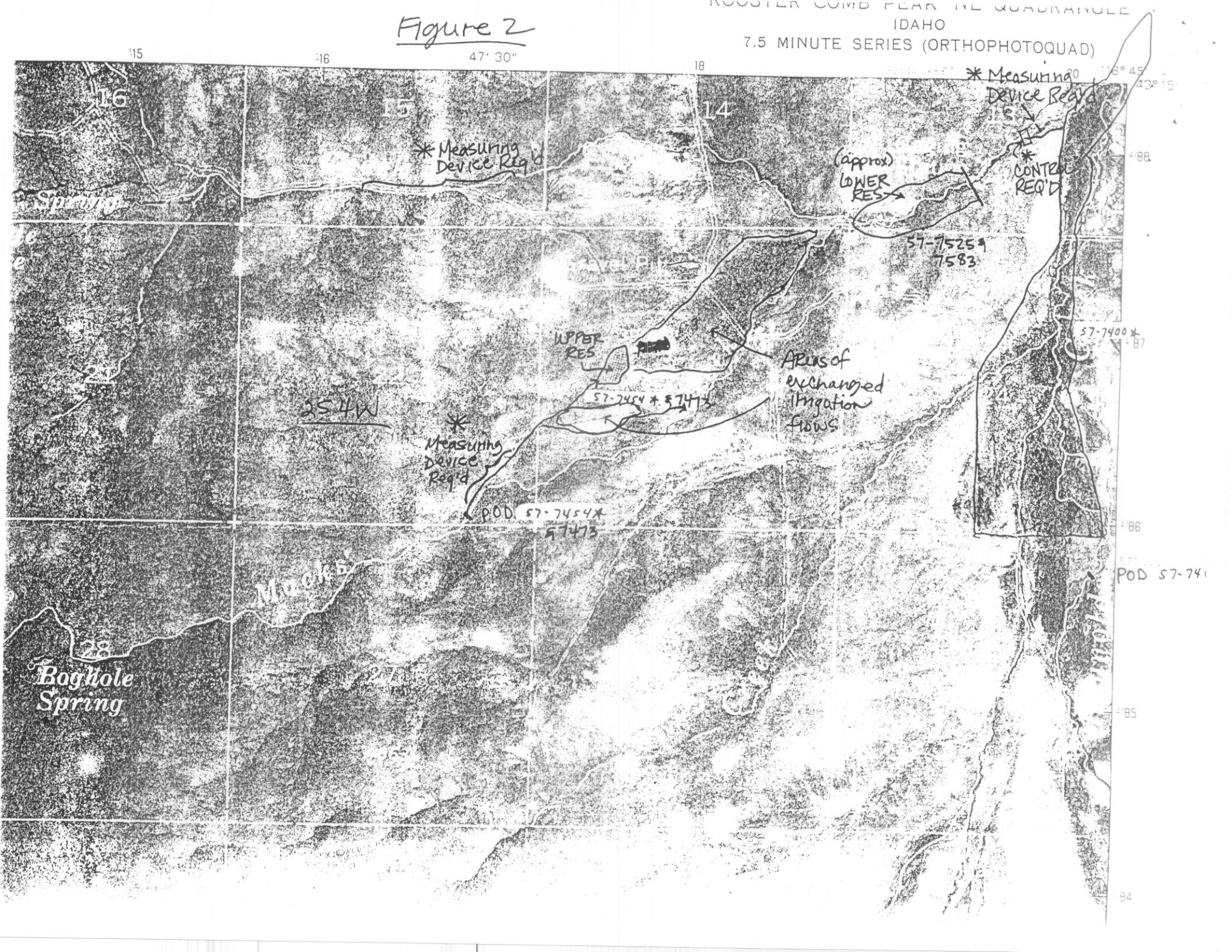


Figure 2


ROOSTER COMB PEAK NE QUADRANGLE
IDAHO
7.5 MINUTE SERIES (ORTHOPHOTOQUAD)
47' 30"
15
16
18
20
16° 45'
43° 15'
16
15
14
13
24
25
28
27
25 4W
* Measuring Device Req'd
* Measuring Device Req'd
* CONTROL REQ'D
(approx) LOWER RES
57-7525 & 7583
UPPER RES
57-7454 & 7473
Areas of exchanged Irrigation flows
* Measuring Device Req'd
POD 57-7454 & 7473
57-7400
POD 57-74
Bog Hole Spring
88
87
86
85
84

JUNAYO RANCH

Limited Partnership

General Partner
OWEN H. ORNDORFF

Limited Partner
Harvey H. Orndorff



Mailing Address
Suite 230
1087 West River Street
Boise, Idaho 83702

Murphy, Idaho
Kuna, Idaho

January 5, 1995

Mr. David R. Tuthill, Jr.
Manager, Western Region Office
Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: Macks Creek Reservoir

Dear Mr. Tuthill:

With respect to your December 28, 1994 letter following up our July 27, 1994 meeting and conversations in May of 1994, I'm disappointed that the Department has been unable to focus on addressing these issues sooner. I have attached your July 1, 1994 letter to which many issues remain unanswered. As you are aware, the seasons have substantially changed and much of the work we discussed on Macks Creek can only be done in the fall.

In any case, your letter of December 28, 1994, requires further clarification in order that these matters can be resolved on a satisfactory basis:

1. With respect to the type and location of measuring devices discussed in paragraph 2 of page 2, we had in our July meeting discussions as to what type of measuring device given the wide variation of flows in Macks Creek. Connie Brandau and I subsequent to the July meeting discussed a form of portable measuring device that could be installed in a ditch. Perhaps Connie Brandau could call me or Don Eason at the Ranch (495-1120) with the preferred locations and where I could buy the portable measuring devices if such devices were satisfactory to the Department.

2. With respect to the large new Macks Creek dam, Ron Yoshikane has been finishing the installation of a reservoir measuring scale and measuring devices in each outlet. Together with finishing the rock facing and spillway work requested by Mike Stubblefield, I am hopeful the dam construction will be final.

3. With respect to the quoted language in the Stipulation cited on page 2, such language only refers to storage that existed as of the date of the Stipulation. The

large Macks Creek dam was permitted initially in 1990 and to my knowledge no timely objection to any pending water right has been filed. In any case, it is my understanding that on-season water cannot be stored and must be discharged once the water master comes on duty to fulfill lower rights consistent with the Stipulation.

4. The storage facility section referred to on page 3 concerned only existing facilities whose capacities have not been increased consistent with the Stipulation. In any case, all parties to the Stipulation and the Department had notice of the new reservoirs and to my knowledge there has been no objection. My guess is that no objection has been timely filed because all lower Reynolds users obtain significant benefits from the waste water discharged from the new Macks Creek reservoir.

On page 3 of the July 1, 1994 letter, you discuss a flow exchange filing. It would be helpful if we could discuss how to correctly complete the forms for appropriate filing incorporating if necessary the resolution of the measuring devices and locations we otherwise agree upon.

With respect to actual flows to be measured, I note with some concern the Department's willingness to "average" flows knowing the data show huge, short term run offs and very limited flows thereafter. Consistent with this, the field study of May 19, 1994, conducted by the Department showed 0.3 cfs one and one-half miles upstream from the old gauging station and apparently no measurable flow at Cottle Creek. Junayo Ranch will obviously comply with whatever is necessary but I hope that a balanced measuring program can be adopted that recognizes that at some level of flows in upper Macks Creek and Cottle Creek no flows can reach the lower users.

I believe that the Water Master and Don Eason (or me) can hopefully resolve locations and weir types. With respect to the filing, perhaps we should meet to complete the form and otherwise schedule and further inspection at some appropriate time. I'm anxious to resolve the Department's concerns as soon as possible.

Very truly yours,

Owen H. Orndorff

OHO/sm
Encl.
cc: Don Eason
Connie Brandau

State of Idaho
DEPARTMENT OF WATER RESOURCES

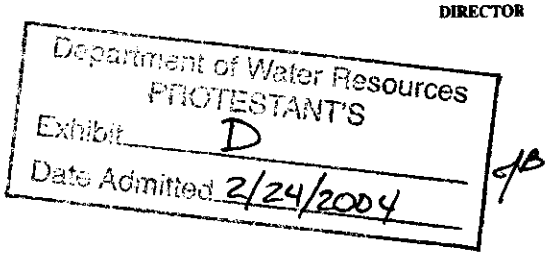
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 28, 1994

OWEN ORNDORFF
JUNAYO RANCH LTD PARTNERSHIP
1087 RIVER ST #230
BOISE ID 83702



RE: Macks Creek Reservoirs

Dear Mr. Orndorff:

Since our last meeting of July 27, 1994, we have reviewed the portion of the "Stipulation by Certain Defendants for Entry of Decree Adjudicating Water Rights" which addresses the administration and delivery of the Reynolds Creek water rights as listed in the proposed finding. The language from this portion of the stipulation was included verbatim in the 1988 Reynolds Creek Decree. As such, it applies to all users in the entire basin.

You indicated during our meeting that measuring device requirements do not or should not apply to the diversions on Macks and Cottle Creeks which are located above the Lower Macks Creek Reservoir. Conclusion of Law #19 in the Reynolds Creek Proposed Findings clearly requires all users of irrigation water rights to install and maintain lockable controlling works and measuring devices at their points of diversion. At no place in the stipulation nor within the final decree can we find language to the contrary. The presence of reservoirs within the Macks Creek drainage does not alter or exempt the measuring device requirement.

You stated that the measuring device requirement needs to be enforced uniformly throughout the Reynolds Creek Water District. We agree. On September 12, we spoke with Watermaster Connie Brandau and asked her where the measuring and/or control device discrepancies were occurring within her administrative area. Besides the Macks and Cottle Creek drainages, there are no devices present on Dobson Creek at the Seven High diversion, on Babbington Creek at the Rueck diversion(s), or on Salmon Creek at the Boston diversion(s), where Junayo Ranch is leasing land. In addition, some devices on the Bass Ranch are unsatisfactory. Ms. Brandau acknowledges that both the Babbington and Salmon Creek drainages are generally dry by the time she is called to duty, but indicates that Macks and Cottle Creeks typically flow for at least a few weeks during the delivery period. On Babbington and Salmon Creeks, devices will be required only if diversions are desired after the Watermaster is called. Measuring device infractions in all other locations will be enforced prior to the 1995 irrigation season.

The determination and regulation of compensatory outflows from Lower Macks Creek Dam based on negotiated flows, as proposed in Carl Myers' letter of July 18, 1994, is not acceptable. Direct accountability of flows through physical measurements is the only practical and equitable method of ensuring priority deliveries. At a certain point as flows diminish each year, the passage of flows through Lower Macks Creek Dam will become futile to the fulfillment of downstream rights, and regulation of Macks Creek may cease at that time. Perhaps a better position to negotiate should be the flow at which a futile downstream call may be determined.

The measuring device requirements for Macks and Cottle Creeks, as set forth in my July 1, 1994 letter still appear to be appropriate. Mr. Myers' letter cites data collected at the Lower Macks Creek Dam site which shows that average runoff flows in March are 6.88 cfs, in April are 6.05 cfs, and in May are 2.47 cfs. If the Watermaster is called to duty on March 15, there can be 4 to 6 weeks of appreciable flows in an average year in the Macks and Cottle Creek drainages which could be delivered, all or in part, to downstream rights. In April alone, at an average rate of flow of 6.05 cfs, 360 acre-feet of water could be generated within the Macks Creek drainage. We consider this to be a significant amount of water which is worthy of delivery.

Further study of the stipulation revealed additional inconsistencies which must be resolved before any new rights are issued to Junayo Ranch. Paragraph 6 of the stipulation states:

> "Junayo Ranch...agrees that its water rights other than No. 57-02325 and No. 57-07040 do not entitle it to divert water to storage during the irrigation season, even thought it may be physically possible to divert water into its storage facilities during the irrigation season, and that no diversion to storage is authorized under their rights Nos. 57-02325 and 57-07040 during the irrigation season unless all prior water rights on Reynolds Creek are being satisfied."

The intent of this passage is to avoid storage of those irrigation season flows which might be beneficially used downstream in priority order. Diversions authorized under right nos. 57-02325 and 57-07040 from Reynolds Creek have been conditioned by the stipulation and may be regulated at the Reynolds Creek Reservoir diversion. Diversions to storage from Macks or Cottle Creeks during the irrigation season are not presently authorized by decreed rights or permits currently held by you. Without measuring devices, there is no accountability regarding storage within the Macks Creek drainage. Please provide information which would exempt you from the obligation to show accountability for Macks Creek diversions.

Paragraph 5 of the stipulation states:

> "The Upper Users shall not increase the capacities of their diversion facilities or their storage facilities as the capacities of those facilities existed on June 22, 1987, or were authorized by water permits issued, or applications for permits filed with the Director, prior to October 14, 1987."

Permits no. 57-07525, 57-07532, and application for permit no. 57-07583 were all submitted after October 14, 1987. Each proposes a development or an expansion of a facility which was not in place by June 22, 1987. Please explain why development under these rights would not be in opposition to the stipulation contained within the Reynolds Creek decree as related to new storage development with dates of priority after October 14, 1987.

Unless we are notified to the contrary, we will expect that all required measuring and control devices on Macks and Cottle Creeks be installed at the specified locations within two days after the Watermaster is called to duty. If these devices are not installed, no irrigation diversions from Macks or Cottle Creeks will be allowed by the Watermaster. All available flows will be passed through Lower Macks Creek Dam, based on the Watermaster's best estimate of inflow.

We invite you to submit any further comments or interpretation of this measurement requirement analysis.

Sincerely,

David R. Tuthill, Jr., P. E.
Manager, Western Region Office

DRT:ch

cc: Connie Brandau, Watermaster
Carl Myers

End Of
Exhibits

MEMORANDUM

To: L. Glen Saxton

From: Karl J. Dreher

RE: APPOINTMENT AS HEARING OFFICER - PROCEDURE RULE 410

Date: February 23, 2004

You are hereby appointed as hearing officer and are authorized to represent the Department as provided by IDAPA Rule 37.01.01410 (Procedure Rule 410) in the following matter:

IN THE MATTER OF APPLICATION FOR PERMIT NO. 57-11629 IN THE NAME OF JUNAYO RANCH LTD

Date: February 24, 2004

Time: 10:00 a.m.

Location: Owyhee County Courthouse
Courtroom
Murphy, Idaho

no $
Fee

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FEB 18 2004
WATER RESOURCES
WESTERN REGION

RECEIVED
FEB 23 2004
Department of Water Resources

Feb. 17, 2004

To: Idaho Dept. of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705

From: West Reynolds Irrigation District
10619 Youngs Ln
Melba, ID 83641

Re: Protest of permit application 57-11629 Junayo Ranch LTD Partnership

West Reynolds Irrigation District, who are members that use the Upper ditch and the Pump ditch for the delivery of their Reynolds Creek water rights. Those members with water rights in Reynolds Creek are Jerry Benson, Goering & D. Muller, Rose & Dan Muller, Johnston, Jerry Muller, Tom Hook, Jaca Family Prt. L.P., Dean Young, and Goering & C. Hook. We are requesting permission to protest at this late date, and participate in the hearing for Junayo Ranch LTD Partnership's application 57-11629.

West Reynolds Irrigation District objects to Junayo Ranch LTD Partnership's permit application 57-11629:

(a) this application for permit for diversions to storage reduces the quantity of water available to the existing water rights on Reynolds Creek.

(b) this application for permit reduces the supply of water necessary to satisfy existing water rights of the owners listed above. Applicant is requesting three points of diversion from Macks Creek, a tributary to Reynolds Creek, and the application lists no dates for when the diversions are allowed. The three ponds already constructed are capable of holding more than twelve-acre feet of water. This application apparently allows for a continuous diversion to permanently maintain twelve-acre feet.

(c) this application is not made in good faith. The ponds for storage have already been constructed, and only now, after a protest by the watermaster to the Idaho Department of Water Resources, did the applicant apply for a permit.

(e) this application is in conflict with the local public interest. All of the water right owners on Reynolds Creek, including Junayo Ranch LTD Partnership have worked together to establish and resolve early season and high-flow water rights on Reynolds Creek, in the Reynolds Creek Adjudication, and in the Snake River Basin Adjudication. This application forces conflict upon the water-users on Reynolds Creek as to whether the permit interferes with the flow

triggering the break between high-flow water and the delivery to the "lower users".

The proposed complicated method of measurement on Macks Creek diversions, and the three more proposed diversions, places a huge expense on the prior water right owners for payment of the watermaster to follow the measured water through that system. If the director of the IDWR approves of this application, his order must include a method of water measurement that is simple and efficient for the watermaster, and require permanent measuring devices on Macks Creek.

(f) this application does not conserve water resources within the State of Idaho. It allows for more exposed surface area on the storage ponds that is evaporated away.

Dan P. Miller
W. Dean Young
Martin Jaca

JUNAYO RANCH

Limited Partnership

General Partner
OWEN H. ORNDORFF

Limited Partner
Harvey H. Orndorff
(1918-1992)



Murphy, Idaho
Kuna, Idaho

Mailing Address
Suite 230
1087 West River Street
Boise, Idaho 83702

RECEIVED
FEB 2004
Department of Water Resources

February 12, 2004

RECEIVED
Department of Water Resources

L. Glen Saxton
1301 N. Orchard
Boise, Idaho 83706-2237

Re: Permit No. 57-11629

Dear Mr. Saxton:

Pursuant to the Administrative Rules of the Idaho Department of Water Resources, Rule of Procedure 37.01.01.606, enclosed are the Applicant's Exhibits 1 through 18, which Junayo Ranch Limited Partnership intends to introduce at the hearing scheduled on February 24, 2004, beginning at 10:00 a.m. Also enclosed is the Proof of Service pursuant to Rule 37.01.01.303.

Very truly yours,

Owen H. Orndorff
General Partner

OHO/dr
Enclosures
cc: Elias Jaca
Tom Hook
Richard Brandau

Applicant's Exhibits

L. Glen Saxton
Presiding Officer

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 57-11629 IN THE NAME OF JUNAYO RANCH LIMITED PARTNERSHIP	)))))	**EXHIBITS 1 THROUGH 18 OF APPLICANT JUNAYO RANCH LIMITED PARTNERSHIP**

APPLICANT'S INDEX OF EXHIBITS

Exhibit 1	Application for Permit dated May 21, 2003
Exhibit 2	Order of Partial Decree for Rotation Irrigation General Provision in Basin 57 (Reynolds Creek) dated November 20, 2002
Exhibit 3	System Schematic – Macks Creek
Exhibit 4	Measuring Device on Macks Creek Diversion
Exhibit 5	New Pipe to Measure Cottle Creek
Exhibit 6	Outlet from Lower Macks Creek Reservoir
Exhibit 7	New Screw Valve from Lower Macks Creek Reservoir
Exhibit 8	Control Structure
Exhibit 9	Measuring Device below Lower Macks Creek Reservoir
Exhibit 10	Outlet from Control Structure to Bypass Third Pond
Exhibit 11	Ditch Around Third Pond
Exhibit 12	Gates Diverting Water Around Third Pond
Exhibit 13	Revised System Schematic Showing Two Prior Ponds and Third Pond's By-Pass
Exhibit 14	Tollgate Watershed Runoff for 1965-2002
Exhibit 15	Reynolds Creek Average Monthly Streamflow at Outlet Weir for March-June 1964-1987
Exhibit 16	Combined Macks Creek and Cottle Creek Runoff for March-June 1964–1987 at ARS Gauging Station
Exhibit 17	List of Existing Junayo Ranch Macks Creek Water Rights
Exhibit 18	Letter from Department of Water Resources to Junayo Ranch dated January 18, 1995

Ident. No. _____

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MAY 21 2003
WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant Jungo Ranch Limited Partnership Phone 208-343-8880
   Mailing address 1087 River Street Boise Idaho 83702
2. Source of water supply Macks Creek which is a tributary of Reynolds
3. Location of point of diversion is Township 2S Range 4W Sec. 13, in the SE of SW ¼, NW of NE ¼, Govt. Lot _____, B.M., Owyhee County;
   additional points of diversion if any: _____
4. Water will be used for the following purposes:
   Amount 12 AF (cfs or acre-feet per annum) for Stockwater, Wildlife Storage purposes from Jan 1 to December 31 (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)
5. Total quantity to be appropriated is (a) 12 AF (cubic feet per second) and/or (b) _____ (acre feet per annum)
6. Proposed diverting works:
   a. Describe type and size of devices used to divert water from the source Ponds and Earth Dams
   _____
   b. Height of storage dam highest is 76 feet; active reservoir capacity 12AF inclusive of All Three acre-feet; total reservoir capacity _____ acre-feet
   c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
   d. Is ground water with a temperature of greater than 85°F being sought? _____
   e. If well is already drilled, when? _____; Drilling firm _____;
   Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 2 years (*minimum 1 year*)
8. Description of proposed uses (*if irrigation only, go to item 9*):
   a. Hydropower; show total feet of head and proposed capacity in kW. _____
   b. Stockwatering; list number and kind of livestock. Cattle 500 cows, and calves, and Bulls
   c. Municipal; show name of municipality. _____
   d. Domestic; show number of households. _____
   e. Other; describe fully. _____
   _____

Department of Water Resources
APPLICANT'S
Exhibit 1
Date Admitted 2/24/2004

EXHIBIT 1

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MAY 21 2003
WATER RESOURCES
WESTERN REGION

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
25	4W	13												S		S			

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. NONE

11. a. Who owns the property at the point of diversion? Durango Ranch Limited Partnership

b. Who owns the land to be irrigated or place of use? SAME

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: SEE ATTACHMENT

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Signature of Applicant (and title, if applicable)
General Partner, Durango Ranch Limited Partnership

Received by JFW Date 5/21/03 Time 11:20 AM Preliminary check by _____
Fee $ 100.00 Receipted by JFW # W030493 Date 5/21/03
Publication prepared by _____ Date _____ Published in _____
Publication approved _____ Date _____

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MAY 2 1 2003
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WESTERN REGION

ATTACHMENT

Application For Permit
Junayo Ranch/Owen Ordorff

RE: Construction of 3 ponds

Three ponds have been constructed in sucession just downstream of Macks Creek Dam #57-7525 on the Junayo Ranch in Owyhee County.

#1 Pond & Dam
The facility is located just downstream of the Macks Creek Dam toe; it is upstream of the service and emergency spillways confluence with the creek. The source of water is seepage from the embankment toe.
Approx. Dimensions:
Embankment length--- 300 ft
Dam Hyd Height----- 8 ft
Pond dimensions----- 300 ft X 300ft

Surface Area-------2 ac.
Storage Volume--- 6.4 ac-ft
Spillway width ----12 ft

#2 Pond & Dam
The purpose of this facility is for irrigation re-diversions from Macks and Reynolds Creeks to various fields. The embankment also serves as a field road crossing. The pond could potentially store seepage and spillway overflow from the large Macks Creek facility; storage is minimal.

Embankment length--- 100 ft
Dam Hyd. Height------ 4 ft
Pond Dimensions------ 150 ft X 100 ft

Surface Area ---.3 ac
Storage Volume--- .5 ac-ft
Spillway---------- 5 ft CMP

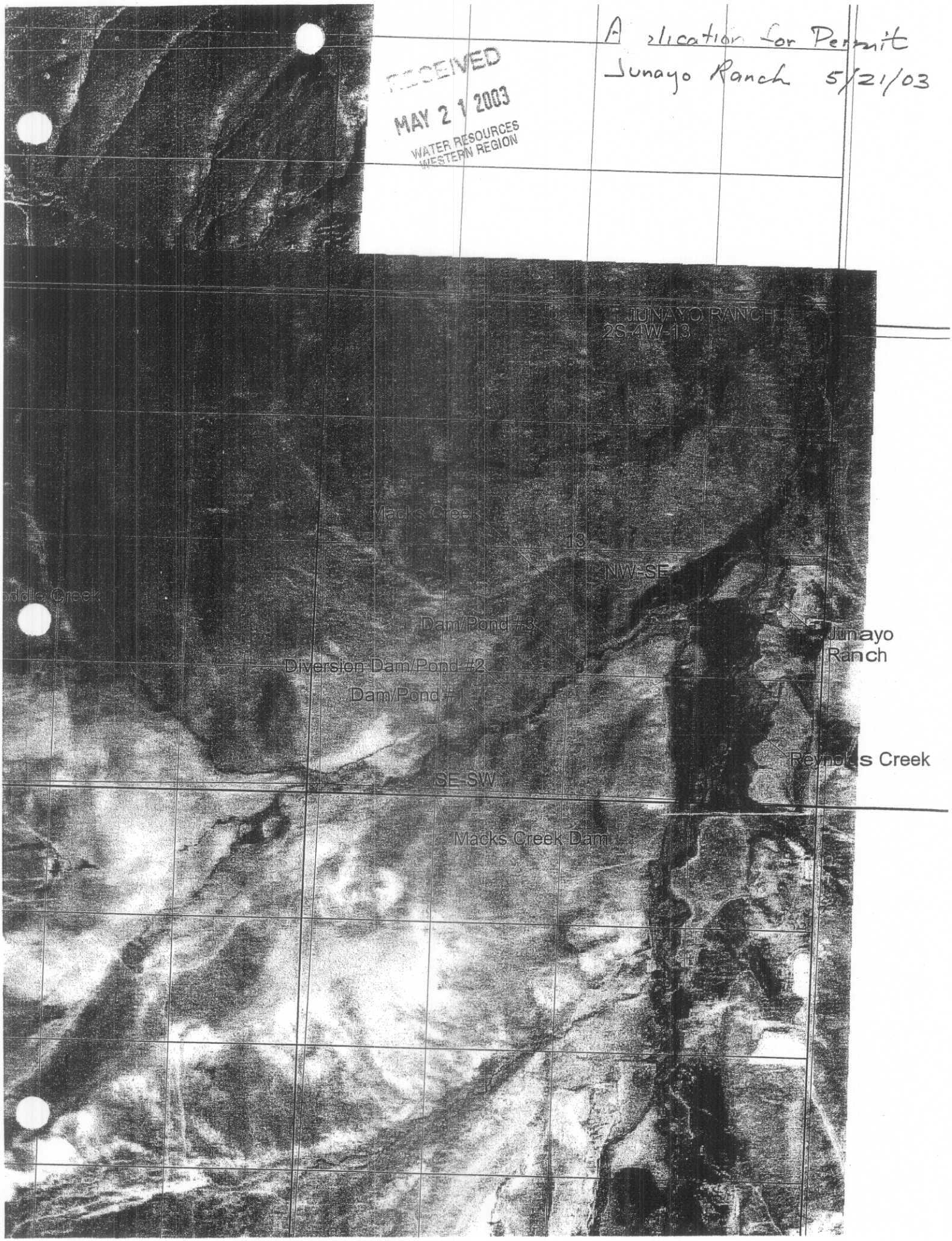
#3 Pond & Dam
The pond headwaters are just downstream of pond #2. Sources are seepage and spillway overflow the large Macks Creek Dam.

Embankment length—200 ft
Dam Hyd Height ---- 7 ft
Pond Dimensions ---- 200 ftX 300 ft

Surface Area ---1.4 ac
Storage Volume--- 2.8 Ac-ft
Spillway length--- 50 ft

Application for Permit
Junayo Ranch 5/21/03

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WESTERN REGION

REQUEST TO PROCESS

COMPLETE REQUEST IF YOU WANT YOUR APPLICATION TO BE PROCESSED USING ONE OF THE THREE ALTERNATIVES BELOW

Name of Applicant: Jungo Ranch Limited Partnership

Mailing Address: 1087 Rivers Street, Boise Idaho 83702

Application No. (if known): _____

___ IN LOCAL PUBLIC INTEREST

Yes, I want my application processed and before it is advertised, I will amend my application to demonstrate that the proposed appropriation is in the local public interest including the need to preserve flows in the Snake River during the migration periods of anadromous fish.

___ PROPOSE MITIGATION NOW

Yes, I want my application processed and before it is advertised, I will amend my application to include proposed mitigation to offset anticipated depletions in the Snake River during periods of anadromous fish migration.

_X_ WILL AGREE TO MITIGATION IN THE FUTURE IF NECESSARY

Yes, I want my application processed at this time, and I will accept a condition of approval that will require mitigation should the Director of the Idaho Department of Water Resources determine that mitigation is necessary to offset depletions from this appropriation to flows in the Snake River during periods of anadromous fish migration. I understand that mitigation is not required now but may be needed in the future. I also understand that the Director will not require mitigation until I have an opportunity to review the process by which the need for mitigation is established and the amount of water required is quantified.

Signature: General Partner Jungo Ranch Limited Partnership

Date: 5/21/03

Please return this form to:

Idaho Dept. of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

Idaho Department of Water Resources Receipt

Receipt ID W030493

Payment Amount $100.00 **Date Received** 5/21/2003 11:22:19 AM **Region** Western **Status**

Payment Type Check **Check Number** 8099

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MAY 21 2003
WATER RESOURCES
WESTERN REGION

Payer OWEN ORNDORFF

Comment Application for Permit

Fee Detail

Amount	Description	Fund	FD	PCA	SO
$100.00	PERMITS	0229	21	62103	1155

J. Weston, Western Reg.

Signature Line (Dept. Representative)

County of Twin Falls - State of Idaho
NOV 20 2002
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	)	Subcase 91-00005-57
	)	
Case No. 39576	)	ORDER OF PARTIAL DECREE FOR ROTATION IRRIGATION GENERAL PROVISION IN BASIN 57 (Reynolds Creek)

On September 11, 2002, Special Master Cushman issued a ***Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law, For General Provisions in Basin 57 Designated as Basin-Wide Issue 5-57*** (**"*Special Master's Report*"**). No motions to alter or amend, or challenges were filed to the ***Special Master's Report***, and the time for filing the same has expired.

Pursuant to I.R.C.P. 53(e)(2) and ***SRBA Administrative Order 1***, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the ***Special Master's Report*** and wholly adopts them as its own.

Therefore, IT IS ORDERED that the ***Rotation Irrigation General Provision*** for Basin 57 is hereby decreed as set forth in the attached ***Partial Decree for Rotation Irrigation in Basin 57*** .

Dated: November 20, 2002

R Burdick

ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

Department of Water Resources
APPLICANT'S
Exhibit 2
Date Admitted 2/24/2004
KB

SCANNED
NOV 26 2002
EXHIBIT 2

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
NOV 20 2002
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	)	Subcase 91-00005-57
	)	
Case No. 39576	)	PARTIAL DECREE FOR
	)	ROTATION IRRIGATION GENERAL
	)	PROVISION IN BASIN 57 (Reynolds Creek)

Rotation Irrigation General Provision for the

Use of Water in the Reynolds Creek Basin

A historical practice of rotation irrigation during times of water shortage has allowed for more efficient use of water in the Reynolds Creek Basin. This practice applies only to a water right that has more than one point of diversion, or to contiguous parcels of property owned by the same person(s) or entity where there are multiple water rights with multiple points of diversion. Under these conditions, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights and applied to a place of use decreed for multiple water rights, so long as the places of use are contiguous and owned by the same owner. The amount of water that may be diverted is determined according to priority. This practice results in the point of diversion or the place of use for a specific water right or multiple water rights owned by the same person(s) or entity being different from the point of diversion and/or the place of use listed in the Director's Report.

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.

Dated: November 20, 2002

ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

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Department of Water Resources

2002 SEP 11 AM 9:37
DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
FILED

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: 91-0005-57
Case No. 39576	SPECIAL MASTER'S REPORT AND RECOMMENDATION
	FINDINGS OF FACT AND CONCLUSIONS OF LAW
	FOR GENERAL PROVISIONS IN BASIN 57 DESIGNATED AS BASIN-WIDE ISSUE 5-57

I.
INTRODUCTION

This *Special Master's Report* pertains to the general provisions recommended by the Idaho Department of Water Resources (IDWR) regarding the distribution of water rights in the Reynolds Creek Basin located in IDWR administrative Basin 57. These general provisions were previously designated by the SRBA District Court as Basin-Wide Issue 5-57, and the matter was referred to this Special Master for a recommendation.

II.
FINDINGS OF FACT

1. The water right claims in the Reynolds Creek Basin were initially recommended in the 1992 *Director's Report, Part I, Reporting Area 2 (Basin 57)*. An *Amended Director's Report* for these rights was issued in 1995 following the 1994

amendments to the adjudication statutes. The 1995 *Amended Director's Report* also recommended General Provision 2, which provided for the administration of water rights on the Reynolds Creek Basin water system. General Provision 2 is based on language contained in a stipulation that was incorporated into the ***Reynolds Creek Decree*** filed March 23, 1988, Third Judicial District of Idaho for Owyhee County. A general adjudication for Reynolds Creek was commenced in 1978 to determine the respective water rights in that basin. A final decree was issued in 1988. The ***Reynolds Creek Decree*** determined the respective rights of water users in the Reynolds Creek Basin and also decreed rights to "excess water" and the practice of rotation irrigation between water users based on the stipulation of the parties.

2. The term "excess water" refers to a condition occurring during spring run-off when the flow of Reynolds Creek is high and contains more water than can be used under the established rights during periods of high flows. The stipulation on which General Provision 2 was based represented the resolution of an historical dispute between the water users in the Upper Reynolds Creek Basin and the water users in the Lower Reynolds Creek Basin. General Provision 2 delineated under what conditions Upper Basin water users are permitted to divert water in excess of their respective water rights or "excess water."

3. Historically, irrigators in the Reynolds Creek Basin also implemented a system of rotation irrigation during times of shortage. Seasonal fluctuations of water flows in the Reynolds Creek Basin are highly variable. A system of rotation irrigation provides for efficient use of the water between users given the attendant circumstances. General Provision 2 also provided for the historical practice of rotation irrigation during times of shortage.

4. On December 21, 1995, the SRBA District Court designated Basin-Wide Issue 5, which concerned whether certain recommended general provisions, including those recommended in Basin 57, were necessary to define or efficiently administer water rights. By *Order* dated April 26, 1996, the SRBA District Court ruled that the general provisions recommended in Basin 57 were not necessary to define or efficiently administer water rights. The District Court also ruled that the period of use element for irrigation rights

5

should be "irrigation season" as opposed to specific dates. The Supreme Court reversed the decision of the District Court concerning the period of use element and remanded the remaining general provisions for evidentiary hearings. *See A&B Irr. Dist. v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1998).

5a)

5. The SRBA District Court, in a separate *Order*, also ruled that the general provisions regarding "excess water" were not necessary for the definition or efficient administration of water rights. The decision was appealed and the Idaho Supreme Court ruled that the "excess flow" portion of General Provision 2 omitted the necessary elements of a water right and therefore did not establish a water right. However, the Supreme Court ruled that General Provision 2 may be necessary for the efficient administration of water rights in the Reynolds Creek Basin. *State of Idaho v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998).

6. On remand, IDWR filed a *Supplemental Directors Report, Reporting Area 2, IDWR Basin 57, Reporting Revision of the Following: Period of Use (for irrigation water uses)*, recommending specific dates for the irrigation rights in Basin 57. At the close of the objection and response period, the SRBA District Court issued a series of orders consolidating, separating, and re-designating the issues on remand according to administrative basin. Those remaining issues pertaining to Basin 57 were re-designated as Basin-Wide Issue 5-57. Because the issues regarding period of use were fact specific to individual water rights, and could no longer be resolved collectively as "irrigation season," the subcases where objections were filed to the period of use element were referred to this Special Master for resolution on an individual basis. The issues regarding General Provision 2 remained under the Basin Wide 5-57 designation.

5-57

7. Also following remand in *State of Idaho v. Idaho Conservation League*, the parties claiming use of "excess water" under General Provision 2 filed individual late claims for the "excess water" in an attempt to comply with the holding of the Supreme Court. IDWR recommended these late claims in a March 5, 2001, late claims report. Following the objection and response period the contested claims were referred this Special Master on December 21, 2001. The individual late claims for the "excess water" were either uncontested or any objections have now been resolved via SF-5's.

8. Because the "excess water" issue was no longer being pursued as a general provision, this Special Master ordered that IDWR prepare a *Supplemental Director's Report* recommending the remaining portions of General provision 2, if any, that were necessary in light of the individual claims for the "excess water." IDWR filed its *Supplemental Director's Report* on June 19, 2002. According to the *Supplemental Report*, the only remaining portion of General Provision 2 recommended following the filing of the individual late claims is portions of paragraph 5(b), which address the historical practice of rotation irrigation. This recommendation is set forth in **EXHIBIT A**. No objections were filed to this recommendation.

9. This Special Master finds that a general provision on the practice of rotation irrigation as set forth in **EXHIBIT A** is necessary to define, and for the efficient administration of, water rights in the Reynolds Creek Basin in Basin 57. This practice allows for the efficient administration of water rights during times of water shortages in light of the unique circumstances in the Reynolds Creek Basin.

10. The remaining provisions contained in General Provision 2, which address "excess water" are not necessary to either define or administer water rights in the Reynolds Creek Basin because separate claims have been filed for the use of "excess water." IDWR's recommendations for these rights contain all the elements of a water right. Accordingly, the issue of "excess water" no longer needs to be addressed via a general provision.

11. Prior to the individual late claims being filed for the "excess water," IDWR's recommendations in the *Supplemental Directors Report, Reporting Area 2, IDWR Basin 57, Reporting Revision of the Following: Period of Use (for irrigation water uses)* for the period of use element for water rights in the Reynolds Creek Basin also contained the following "subordination language".

> DIVERTING WATER BEFORE OR AFTER THE PERIOD OF USE UNDER THIS RIGHT IS ALLOWED PROVIDED:
> A. THE WATERS SO DIVERTED ARE APPLIED TO A BENEFICIAL USE, AND
> B. THE EXISTING RIGHTS AND FUTURE APPROPRIATIONS ARE FIRST SATISFIED.

This "subordination language" was recommended in an attempt to satisfy the issues raised by the Idaho Supreme Court in *State of Idaho v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998), regarding "excess water." However, because the use of "excess water" is no longer being recommended as a general provision, this Special Master finds that the subordination language is no longer necessary and should not be included in the *Special Master's Report and Recommendation* or *Partial Decree*.

III.

CONCLUSIONS OF LAW

1. The filing of the director's report constitutes *prima facie* evidence of the nature and extent of a water right. I.C. § 42-1411(4). In addition, IDWR's role in the SRBA is that of an independent expert and technical assistant who assures that claim to water rights acquired under state law are accurately reported. I.C. § 42-1401B(1996). Accordingly, when IDWR files an expert's report pursuant to I.R.E. 706, said report provides evidentiary value on which this Special Master is entitled to rely.

2. Idaho Code § 42-1411 provides that the director of IDWR shall prepare a report on the water system. "The director may include such general provisions in the director's report, as the director deems appropriate and proper, to define and to administer all water rights." I.C. § 42-1411 (1996). "The decree shall also contain an express statement that the partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights." I.C. § 42-1412(6). In *A & B Irrigation District v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1998), the Idaho Supreme Court stated:

> A general provision is a provision that is included in a water right decree regarding the administration of water rights that applies generally to water rights, is not an element of the water right, or is necessary for the efficient administration of the water rights decreed. A general provision is an administrative provision that generally applies to water rights but it need not apply to every water right.

Id. at 421, 958 P.2d at 578 (citations omitted).

3. Historical practices of administration of water rights can be the basis for a general provision. In *State v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998), the Idaho Supreme Court held that a general provision based on historical administrative practices could be necessary for the efficient administration of a water right "because it avoids controversy among the water rights holders by clearly notifying them of the mechanism [of administration].".
Id. at 334-35, 955 P.2d at 1113-14.

4. The practice of rotation irrigation is not contrary to law. In *State v. Nelson*, 131 Idaho 12, 951 P.2d 943 (1998), the Idaho Supreme Court acknowledged that a similar practice of rotation for credit should be included as a general provision if necessary for the efficient administration of water. The SRBA District Court also issued a *Partial Decree* for rotation for credit in Basin 34 based on historical practices and the unique conditions in Basin 34. ***Order of Partial Decree for General Provision in Administrative Basin 34, Subcase No. 91-00005-34*** (May 9, 2001).

5. In *State v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998), in addressing General Provision 2, including the provision on rotation that is being recommended herein, the Idaho Supreme Court held that General Provision 2 should be included as a general provision necessary for the efficient administration of water rights. Although the portions of General Provision 2 dealing with the use of "excess water" are no longer being recommended by IDWR, those portions of General Provision 2 which pertain to rotation irrigation are the same as those upheld by the Supreme Court.

6. This Special Master concludes as a matter of law that the general provision on rotation irrigation as set forth in **EXHIBIT A** is necessary to define, and for the efficient administration of, water rights in the Reynolds Creek Basin.

7. This Special Master concludes as a matter of law that the remaining portions of General Provision 2 as originally recommended by IDWR are no longer necessary to define water rights or for the efficient administration of water rights in the Reynolds Creek Basin and should not be included as a general provision.

8. This Special Master concludes as a matter of law that the "subordination language" included in the *Supplemental Director's Report* for the period of use element

for those parties in the Reynolds Creek Basin claiming "excess water," is no longer necessary and should not be included in the *Special Master's Report and Recommendation* or *Partial Decree*.

IV.

RECOMMENDATION

Therefore, based on the file and the record herein and the foregoing findings of fact and conclusions of law IT IS RECOMMENDED that the general provision as set forth in **EXHIBIT A** attached hereto be included as a general provision in Basin 57, and that the SRBA District Court issue a partial decree thereon. The only other general provision applicable to Basin 57 is the general provision on connected sources, which was previously decreed February 27, 2002, as part of Basin-Wide Issue 5. IT IS FURTHER RECOMMENDED that the "subordination language" contained in the *Supplemental Director's Report* for the period of use element not be included in the *Special Master's Report and Recommendation* or the ***Partial Decrees*** ultimately issued for any Reynolds Creek water rights.

Dated 9/11/02

THOMAS R. CUSHMAN
Special Master for the
Snake River Basin Adjudication

2. A historical practice of rotation irrigation during times of water shortage has allowed for more efficient use of water in the Reynolds Creek basin. This practice applies only to a water right that has more than one point of diversion, or to contiguous parcels of property owned by the same person(s) or entity where there are multiple water rights with multiple points of diversion. Under these conditions, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights and applied to a place of use decreed for multiple water rights, so long as the places of use are contiguous and owned by the same owner. The amount of water that may be diverted is determined according to priority. This practice results in the point of diversion or the place of use for a specific water right or multiple water rights owned by the same person(s) or entity being different from the point of diversion and/or the place of use listed in the Director's Report.

EXHIBIT A

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION; FINDINGS OF FACT AND CONCLUSIONS OF LAW; FOR GENERAL PROVISIONS IN BASIN 57 DESIGNATED AS BASIN-WIDE ISSUE 5-57 was mailed September 11, 2002, with first class postage to the following:

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SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NO. 91-5- 57
(BASIN-WIDE ISSUE 5-57)

In Re SRBA
Twin Falls County Civil Case No. 39576
Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
Donald V. Shaff, Adjudication Supervisor

June 14, 2002

I. INTRODUCTION

The Director of the Idaho Department of Water Resources ("IDWR" or "the Department") submits this Supplemental Director's Report Regarding Subcase No. 91-5-57 (Basin-wide Issue 5-57), in accordance with Idaho Code § 42-1412(4) and Administrative Order 1. This report is submitted in response to Special Master Cushman's *Order Requesting Supplemental Director's Report ("706 Report") on General Provision 2 (Reynolds Creek)* and *Order Setting Hearing* dated March 27, 2002 which requests that IDWR submit a Supplemental Director's Report, explaining whether General Provision 2 is necessary to define or efficiently administer the water rights on Reynolds Creek in light of the "excess water" late claims, whether General Provision 2 needs to be modified, how General Provision 2 affects the distribution of water on Reynolds Creek, and the basis of General Provision 2. See Attachment 1 for a map of the Reynolds Creek basin.

This report was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill Jr., Adjudication Bureau Chief for IDWR. The following IDWR employees have knowledge of the information contained in portions of this report: Donald V. Shaff, Jan Shurte and David R. Tuthill, Jr., Adjudication Bureau Chief.

II. PROCEDURAL HISTORY

The water rights on Reynolds Creek were initially recommended in the 1992 Director's Report, Part I, Reporting Area 2 (Basin 57). An Amended Director's Report was issued in 1995, pursuant to the 1994 amendments to the adjudication statutes. The

1995 Director's Report amended the preamble of the Basin 57 report which included the general provisions. General Provision 2[1] included language from the "*Stipulation by Certain Defendants for Entry of Decree Adjudication Water Rights*" which was incorporated in the Reynolds Creek Decree, filed March 23, 1988, Third Judicial District of Idaho, Owyhee County. General Provision 2 is provided in Attachment 2.

On December 21, 1995, the SRBA District Court designated Basin-Wide Issue 5 which concerned whether certain general provisions were necessary for the definition of or for the efficient administration of water rights. By Order dated April 26, 1996, the SRBA District Court determined that the general provisions recommended in Basin 57 were not necessary to define or efficiently administer water rights and ruled that the period of use for irrigation rights should be "irrigation season." This decision was appealed and the Supreme Court reversed the decision of the SRBA District Court concerning season of use and remanded the remaining general provisions for evidentiary hearings. *A&B Irrigation District v. Idaho Conservation League,* 131 Idaho 411, 414, 958 P.2d 568, 571 (1998).

In a separate ruling, the SRBA District Court struck from the Director's Report for Basin 57 a general provision regarding "excess flow" water in the Reynolds Creek basin. The State of Idaho and various water users appealed to the Idaho Supreme Court in *State of Idaho, et al. v. Idaho Conservation League, et al.*, 131 Idaho 329, 955 P.2d 1108 (1998). The Court held that the "excess flow" portion of General Provision 2 did

[1]The Amended Director's Report for Basin 57 was filed in 1995 and included 3 General Provisions. General Provision 2 of the Amended Director's Report was taken verbatim from the Stipulation as it was incorporated in the Reynolds Creek decree. Only paragraph numbers 3 though 6 of the Stipulation were incorporated into the Reynolds Creek decree. Subsequently, paragraphs 3 through 6 were incorporated as General Provision 2, and numbered as such, in the Basin 57 Amended Director's Report, filed in 1995.

not establish a water right in the excess water, but that General Provision 2 may be necessary for the administration of water in the Reynolds Creek basin. *Id.* at 333 and 335, 955 P.2d at 1112 and 1114.

III. REYNOLDS CREEK HISTORY

The excess water issue which, in part, developed into General Provision 2, has a long history. The *Bernard* decree of 1899[2] and the *Benson* decree of 1973[3] were used to deliver water in Lower Reynolds Creek. Water was delivered in the Upper Reynolds Creek area according to the *Gifford* decree of 1911[4]. The Reynolds Creek basin was administered as one water district until about 1916 when it was split into two water districts, 57-A, Upper Reynolds Creek, and 57-J, Lower Reynolds Creek.

Disagreement between water users, the use of excess water by the Upper Reynolds Creek users, and the lack of coordination in the delivery of water in the two water districts prompted some of the Lower Reynolds Creek users to petition the Commissioner of Reclamation[5] to consolidate the districts into one. The petition was denied in 1942 due to lack of stream records and information regarding operating conditions.

In 1972, the Department of Water Administration[6] filed a *Petition For Determination of Water Rights* on Reynolds Creek. The District Court, Third Judicial

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[2] *Bernard v. Smith, et al.*, Decree (Idaho 3rd Dist., December 1, 1899).
[3] *Benson et al. v. Brandau, et al.*, Judgment and Decree , Civil Case No. 3353 (Idaho 3rd Dist., September 13, 1973).
[4] *Gifford, et al. v. Babington, et al.*, Decree, Civil Case No. 366 (Idaho 7th Dist., September 11, 1911).
[5] Now known as the Idaho Department of Water Resources (IDWR).
[6] The name was changed to IDWR in 1978.

District, Owyhee County, denied the petition due to lack of showing of public interest and necessity.

After the Benson decree was issued by the court in 1973, some of the Reynolds Creek water users petitioned the Department of Water Administration to operate the creek as one water district under the control of one watermaster. At some point in 1973-1974 and after the *Benson* decree was issued, J.H. Nettleton, an Upper Reynolds Creek water user, filed a lawsuit against the Department of Water Administration challenging, among other things, the Department's administration of Reynolds Creek basin as one water district.

The District Court, Third Judicial District, Owyhee County ruled for the Department upon their Motion for Summary Judgment and stated that it was immaterial whether there were one or two water districts because the watermaster of 57-A (Upper Reynolds Creek) had to recognize the priorities in district 57-J (Lower Reynolds Creek) that were adjudicated, decreed or otherwise legally determined to be valid water rights, *Nettleton v. Higginson*, Memorandum Decision on Defendant's Motion for Summary Judgment at 2, Civil Case No. 3456 (Idaho Third Dist., March 20, 1975).

Nettleton appealed the District Court's decision to the Idaho Supreme Court. The Court held,

> After receiving all of the claims and the evidence supporting such claims, the respondent must then decide whether there are sufficient uncontested rights to develop a workable plan for water distribution. If not, then the respondent should proceed with an adjudication pursuant to I.C. 42-1406 before combining these two districts into one. *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977).[7]

[7] Water Districts 57-A and 57-J were combined by order of the Department issued on December 2, 1975.

The Court further held that decreed and adjudicated rights are superior to constitutional rights in times of shortage and IDWR has authority to create a water district. The Idaho Supreme Court reversed and remanded the case back to the district court to order IDWR to conduct a hearing.

The District Court entered an Order directing IDWR to conduct a public hearing to determine whether an adjudication is necessary to combine the water districts. During the hearing held in 1977, IDWR determined that the existing decrees did not provide sufficient information for orderly water distribution of Reynolds Creek water under one district. Therefore, IDWR decided to proceed with the Reynolds Creek general adjudication.

The Reynolds Creek Adjudication commenced in 1978 and a final decree was issued in 1988. A stipulation between defendants resolved all of the objections by private claimants and was incorporated in the Reynolds Creek decree. A portion of the stipulation was incorporated as Basin 57 General Provision 2 in IDWR's Director's Report filed in the SRBA.

IV. DISCUSSION

This report will discuss whether General Provision 2 is still necessary for the administration of water, and if so, how General Provision 2 will affect water distribution on Reynolds Creek. This report also proposes modifications to General Provision 2.

A. WHETHER GENERAL PROVISION 2 IS NECESSARY FOR THE EFFICIENT ADMINISTRATION OR DEFINITION OF WATER RIGHTS

The legal standard for a general provision is found in Idaho Code § 42-1411(3) which states, "the Director may include such general provisions in the director's report, as the director deems appropriate and proper, to define and to administer all water rights." The requirements are further delineated in Idaho Code § 42-1412(6) which provides in part that "the decree shall also contain an express statement that the partial decree is subject to such general provisions necessary for the definition of the rights, or for the efficient administration of the water rights." This statute was interpreted by the Supreme Court in *A & B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1998). The Supreme Court stated "a general provision should be included in a water right decree if such general provision is 'necessary' to define or efficiently administer water rights." Id. at 414, 958 P.2d at 571. Whether a general provision is "necessary" is a question of law and fact. Id.

Only a portion of General Provision 2 meets the standard for a general provision. General Provision 2 as it was originally recommended by IDWR contains 4 substantive paragraphs. The first paragraph is numbered 3 and paragraph 5 has two subsets, 5(a) and 5(b). A discussion of each of the paragraphs of General Provision 2 is provided below with an analysis regarding whether the specific paragraphs meet the established standards for a general provision. Attachment 3 is a table of the original and modified General Provision 2 in strikeout/underline format.

Paragraph 3 of General Provision 2 – use of excess water

Prior to the SRBA, paragraph 3 of General Provision 2 was needed to protect the Upper Reynolds Creek water users' historic use of the excess water from calls by Lower Reynolds Creek water users. This provision ensured that the Upper Reynolds Creek water users did not exceed their historic use of the excess water, thereby injuring Lower Reynolds Creek water users. However, late claims for excess water rights were filed by Upper Reynolds Creek water users and recommended by IDWR in the SRBA.[8] Included in IDWR's recommendations of these excess water rights are specific conditions about when the water right is deliverable.[9] These excess water rights are not deliverable unless the weir measurements that are found in the excess water recommendations are met. Inclusion of this language in the pertinent water right obviates the need to include this paragraph as a general provision.

Paragraph 4 of General Provision 2 – when the watermaster may be called

Paragraph 4 describes when the watermaster may be called in the Reynolds Creek basin. Idaho Code §§ 42-602 – 619 governs the creation of water districts and the duties of the watermaster. The statutes provide sufficient detail regarding the watermaster's duties. A water district (District 57-R) already exists for the Reynolds Creek basin. Therefore, paragraph 4 of General Provision 2 is no longer needed.

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[8] The following excess water right late claims were filed and recommended by IDWR: 57-11557, 57-11558, 57-11559, 57-11560, 57-11561, 57-11562, 57-11563, 57-11564, 57-11571, 57-11572, 57-11573, 57-11574, 57-11593 and 57-11594.

[9] The following language is found in the excess water recommendations under Other Provisions Necessary For Definition Or Administration Of This Water Right: "This Right Shall Not Be Delivered If The Flow At The Upper Basin Tollgate Weir (T03S, R04W, S24, SESW) Is At Or Less Than 37 cfs, Or The Flow At The Outlet Weir (T02S, R04W, S12, NESE) Is At Or Less Than 57 cfs."

Paragraph 5(a) of General Provision 2 – storage of Reynolds Creek water

Paragraph 5(a) describes the procedures that governed storage of Reynolds Creek water, and particularly, storage of excess water. This paragraph is no longer needed because the excess water rights recommended in the SRBA do not include storage rights. In addition, Idaho Code §§ 42-201 - 248 control the permit application and protest conditions that are described in the remainder of this paragraph.

Paragraph 5(b) of General Provision 2 – rotation practice

Paragraph 5(b) of General Provision 2 describes a historical rotation practice for irrigation during times of water shortage. The rotation practice should be preserved as a Basin 57 General Provision and is discussed in more detail later in the report.

Paragraph 6 of General Provision 2 – Junayo Ranch storage rights

Paragraph 6 discusses when Junayo Ranch (an Upper Reynolds Creek user) has the right to divert water for storage during the irrigation season under its decreed water rights 57-2325 and 57-7040 and its permit numbers 57-7454, 57-7472, and 57-7473. This paragraph is no longer needed as a Basin 57 General Provision because Paragraph 6 is included in its entirety in the recommendations for water right numbers 57-2325 and 57-7040. Permit numbers 57-7454, 57-7472 and 57-7473, for which the proofs of beneficial use were filed after the commencement of the SRBA and therefore, are not part of the SRBA, are being finalized administratively. The storage component of Paragraph 6 will be incorporated in the licensed rights, further making this general provision unnecessary.

B. HOW GENERAL PROVISION 2 WILL AFFECT WATER DISTRIBUTION ON REYNOLDS CREEK

Water distribution in the Reynolds Creek basin will not be adversely affected by the proposed change to the original general provision because all sections of the former General Provision 2 except Paragraph 5(b) are either governed by Idaho statute or IDWR administrative procedures, or are incorporated into the SRBA in the individual water right. Former Paragraph 5(b) should remain as a general provision as modified below. If the modified General Provision 2 is adopted, the intent of the Reynolds Creek Adjudication and the irrigation practice developed by water users for nearly 100 years in the Reynolds Creek basin are preserved.

C. PROPOSED MODIFICATIONS TO GENERAL PROVISION 2

General Provision 2 is necessary and proper and should be included for Basin 57 as modified below[10]:

A historical practice of rotation irrigation during times of water shortage has allowed for more efficient use of water in the Reynolds Creek basin. This practice applies only to a water right that has more than one point of diversion, or to contiguous parcels of property owned by the same person(s) or entity where there are multiple water rights with multiple points of diversion. Under these conditions, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights and applied to a place of use decreed for multiple water rights, so long as the places of use are contiguous and owned by the same owner. The amount of water that may be diverted is determined according to the specific water right's priority. This practice results in the point of diversion or the place of use for a specific water right or multiple water rights owned by the same person(s) or entity being different from the point of diversion and/or the place of use listed in the Director's Report.

[10] See Attachment 3 for a table of the original and modified General Provision 2.

The rotation practice described above is unique to the Reynolds Creek basin and provides for the most efficient use of water during times of water shortage. Tributaries in the surrounding hills and mountains comprise the source of water for Reynolds Creek. There are periods of time during each year when there is insufficient water flowing in Reynolds Creek to satisfy the water rights in the Reynolds Creek basin.

The rotation practice set forth in modified General Provision 2 allows a water right owner to use the water when available anywhere on his property provided it is part of a contiguous place of use recommended under any of his water rights. The rotation practice also allows the water right owner to divert from any of his points of diversion, which are most practical and efficient though they may deviate from what is recommended for an individual water right. This rotation practice has occurred for decades.

Modified General Provision 2 meets the standard for general provisions as established by statute and case law because it both defines the water rights and is necessary for the efficient administration of the water rights within the Reynolds Creek basin. This general provision further defines the water rights because it allows a water right to be diverted from a point of diversion that may differ from the point of diversion associated with that water right. It also further defines the water rights because it allows a water right to be used on a different place of use than the place of use specifically recommended for that water right.

Included as Attachment 4 is a complete set of the General Provisions the Department recommends be included in the Basin 57 decrees. The Order of Partial Decree for the General Provision on Connected Sources in Basin 57 was issued February

27, 2002 and IDWR includes it as General Provision 1 in Attachment 4 for illustrative purposes only. Only General Provision 2 as modified herein is being recommended at this time.

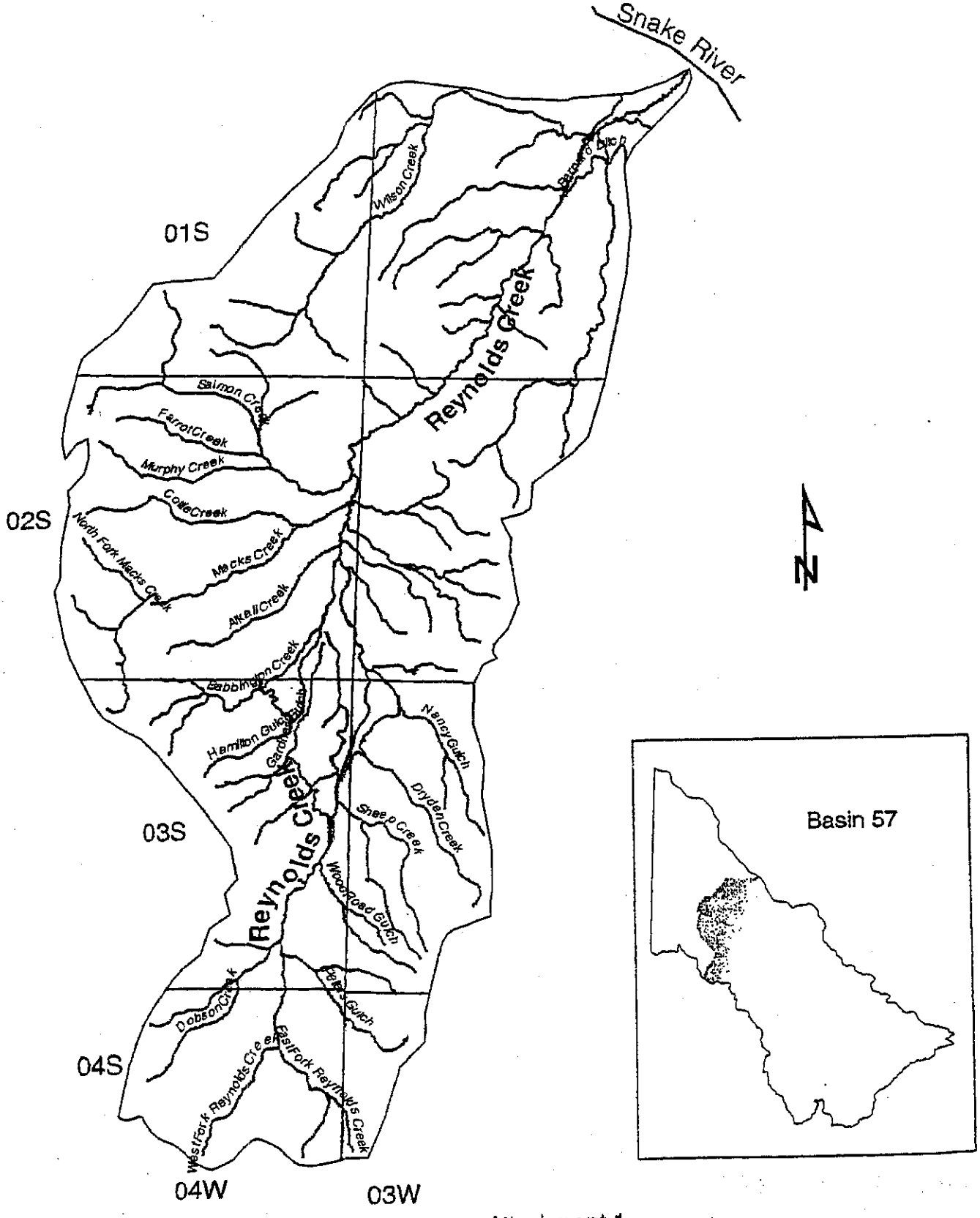
V. CONCLUSION

Decades of contention between the Lower and Upper Reynolds Creek water users culminated in the stipulation incorporated in the Reynolds Creek final decree and ultimately in the Director's Report Basin 57 General Provision 2. Many of the procedures described in General Provision 2 are currently governed by Idaho statute and IDWR procedures. To further protect the water users and facilitate the administration of water distribution within the Reynolds Creek basin, sections of General Provision 2 have been incorporated in the Director's Reports of individual water rights. Therefore, General Provision 2 is no longer necessary in its original form. However, Paragraph 5(b) of General Provision 2 (as modified above), which describes the historical rotation practice, is necessary for the definition of the water rights and for the efficient administration of water rights within the Reynolds Creek basin.

Submitted this 14 day of June, 2002.

Donald V. Shaff
Adjudication Supervisor

Reynolds Creek Drainage Basin



Attachment 1

GENERAL PROVISION 2: ADMINSITRATION OF RIGHTS TO WATER FROM THE REYNOLDS CREEK WATER SYSTEM.

The following language is from the "Stipulation by Certain Defendants for Entry of Decree Adjudicating Water Rights", incorporated in the decree filed March 23, 1988, in the Reynolds Creek Adjudication, Owyhee County Civil No. 3456. The boundaries of the Reynolds Creek water system are shown in Figure 1. This language addresses the administration of water rights from the Reynolds Creek water system and was included verbatim herein [explanatory language is added in brackets]:

3. There shall be two different methods of administering the water rights in Reynolds Creek, dependent upon whether there is "excess" water in Reynolds Creek at a given time, with "excess" water being defined as the amount of water in excess of 37 cfs flowing in Reynolds Creek at the Upper Basin Tollgate weir, hereinafter identified, at any time when the flow at the Outlet weir, hereinafter identified, is more than 57 cfs. The Upper Basin Tollgate weir is located on Reynolds Creek in the SE¼SW¼ of Section 24, Township 3 South, Range 4 West, B.M., and the Outlet weir is located on Reynolds Creek in the NE¼SE¼ of Section 12, Township 2 South, Range 4 West, B.M., Owyhee County, Idaho.

(a) Distribution During Periods of Water Shortage. During any period when the flow at the Upper Basin Tollgate weir is at or less than 37 cfs, or the flow at the Outlet weir is at or less than 57 cfs, the Upper Reynolds Creek Basin and the Lower Reynolds Creek Basin shall be administered as one water district under one watermaster, in accordance with the water rights set forth in the Findings [list of recommended water rights for the Reynolds Creek water system, and any subsequent permits or licenses which have been or may be issued by the Department of Water Resources.

(b) Distribution During Periods of Excess Water. When the flow of water at the Outlet weir is more than 57 cfs, the Lower Users shall not have the right to object to the diversion by the Upper Users of water in excess of the amounts specified for their respective water rights in the Findings, or to require that the Upper Users limit their diversions to the amounts specified for their respective water rights in the Findings. The intent of this provision is that the Upper Users shall have the first opportunity to use "excess" water, so long as the flow of water at the Outlet weir is more than 57 cfs.

4. A watermaster may be called on at any time during the irrigation season, notwithstanding that there may be "excess" water flowing in Reynolds Creek at or above the Outlet weir.

5(a). The Upper Users shall not store excess water during the irrigation season, except as such storage is authorized and recognized in the Findings, or storage for which licenses are subsequently issued under water permits numbers 57-7400, 57-7454, 57-7472 or 57-7473 to the extent, if any, that those permits authorize storage during the irrigation season, and Junayo Ranch Limited Partnership (Junayo Ranch), holder of those permits, acknowledges that no excess water feature or element is included in or authorized by those permits. The Upper Users shall not increase the capacities of their diversion facilities or their storage facilities as the capacities of those facilities existed on June 22, 1987, or were authorized by water permits issued, or applications for permits filed with the Director, prior to October 14, 1987. Any Lower User who makes an application for permit to appropriate waters of Reynolds Creek for storage purposes shall not have the right to

require any Upper User to cease diverting any "excess" water in order to satisfy the new storage right which might be acquired pursuant to any such application. The Lower Users reserve the right, among themselves, to protest any application by another Lower User for a permit to appropriate water of Reynolds Creek for storage purposes. The intent of this paragraph, as between the Upper Users and the Lower Users, is to furnish the Lower Users an opportunity to store any "excess" water, as defined herein, which remains available when the Upper Users are diverting water to the extent of the capacity of their presently existing facilities. The parties to this Stipulation do not intend hereby to establish or set the priorities or quantities of any rights to excess water, or to establish that any presently perfected right does or does not include or authorize the use of excess water.

5(b). The parties to this Stipulation acknowledge an historical practice of rotation irrigation during times of water shortage. Where a water right has more than one point of diversion, or where there are multiple water rights with multiple points of diversion in a single ownership, the amount of water that may be diverted is determined according to priority. However, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights in a single-land ownership. This practice results in the point of diversion or the place of use for specific water right in a single-land ownership being different from the point of diversion and/or the place of use listed in the Director's findings. However, the water is diverted and applied to a point of diversion and place of use listed for that single ownership in the Director's findings. A single ownership is to be determined based upon contiguous places of use decreed to a single entity in this adjudication. This practice has allowed for the more efficient use of the water during times of shortage on the ranches as they are now owned. This practice will not be disturbed by the parties to this Stipulation.

6. Junayo Ranch, for itself and as successor in interest to C. T. Ranch Company and Junayo Ranch Company, former Upper Users, agrees that its water rights other than No. 57-2325 and No. 57-7040 do not entitle it to divert water to storage during the irrigation season, even though it may be physically possible to divert water into its storage facilities during the irrigation season, and that no diversion to storage is authorized under their rights Nos. 57-2325 and 57-7040 during the irrigation season unless all prior water rights on Reynolds Creek are being satisfied. Junayo Ranch further agrees that (1) storage capacity under permit No. 57-7454 shall not exceed twenty-five acre feet per annum (25 AFA) [AFY], (2) storage under any permit issued pursuant to application No. 57-7473 shall not exceed fifty acre feet per annum (50 AFA), (3) storage under permit No. 57-7454 combined with storage under any permit issued pursuant to application No. 57-7473 shall not exceed seventy-five acre feet per annum (75 AFA), and storage under any permit issued pursuant to application No. 57-7472 shall not exceed ten acre feet per annum (10 AFA) for the storage pond identified in that application, and Junayo Ranch further agrees that the condition or conditions imposed by the Director of the Idaho Department of Water Resources in any water permit now held by Junayo Ranch, or in any permit issued to Junayo Ranch pursuant to an application identified in this Stipulation, or any condition with respect to any such water permit, now held or hereafter issued to Junayo Ranch, imposed by this Stipulation or by an agreement between it and all of the other parties to this Stipulation, shall be carried forward into any supplemental decree entered in this action or any decree entered in any other action adjudicating the rights to the use of the waters of Reynolds Creek.

TABLE OF BASIN 57 GENERAL PROVISION 2 –ORIGINAL AND MODIFIED

Basin 57 General Provisions 2 [1]	Proposed Modified Basin 57 General Provision 2
The following language is from the "Stipulation by Certain Defendants for Entry of Decree Adjudicating Water Rights", incorporated in the decree filed March 23, 1988, in the Reynolds Creek Adjudication, Owyhee County Civil No. 3456. The boundaries of the Reynolds Creek water system are shown in Figure 1. This language addresses the administration of water rights from the Reynolds Creek water system and is included verbatim herein [explanatory language is added in brackets]:	~~The following language is from the "Stipulation by Certain Defendants for Entry of Decree Adjudicating Water Rights", incorporated in the decree filed March 23, 1988, in the Reynolds Creek Adjudication, Owyhee County Civil No. 3456. The boundaries of the Reynolds Creek water system are shown in Figure 1. This language addresses the administration of water rights from the Reynolds Creek water system and is included verbatim herein [explanatory language is added in brackets]:~~
3(a). Distribution During Periods of Water Shortage. During any period when the flow at the Upper Basin Tollgate weir is at or less than 37 cfs, or the flow at the Outlet weir is at or less than 57 cfs, the Upper Reynolds Creek Basin and the Lower Reynolds Creek Basin shall be administered as one water district under one watermaster, in accordance with the water rights set forth in the Findings [list of recommended water rights for the Reynolds Creek water system], and any subsequent permits or licenses which have been or may be issued by the Department of Water Resources. [Upper and Lower Reynolds Creek Basins are illustrated in Figure 1.]	~~3(a). Distribution During Periods of Water Shortage. During any period when the flow at the Upper Basin Tollgate weir is at or less than 37 cfs, or the flow at the Outlet weir is at or less than 57 cfs, the Upper Reynolds Creek Basin and the Lower Reynolds Creek Basin shall be administered as one water district under one watermaster, in accordance with the water rights set forth in the Findings [list of recommended water rights for the Reynolds Creek water system], and any subsequent permits or licenses which have been or may be issued by the Department of Water Resources. [Upper and Lower Reynolds Creek Basins are illustrated in Figure 1.]~~
3(b). Distribution During Periods of Excess Water. When the flow of water at the Outlet weir is more than 57 cfs, the Lower Users shall not have the right to object to the diversion by the Upper Users of water in excess of the amounts specified for their respective water rights in the Findings. The intent of this provision is that the Upper Users shall have the first opportunity to use "excess" water, so long as the flow of water at the Outlet weir is more than 57 cfs.	~~3(b). Distribution During Periods of Excess Water. When the flow of water at the Outlet weir is more than 57 cfs, the Lower Users shall not have the right to object to the diversion by the Upper Users of water in excess of the amounts specified for their respective water rights in the Findings. The intent of this provision is that the Upper Users shall have the first opportunity to use "excess" water, so long as the flow of water at the Outlet weir is more than 57 cfs.~~
4. A watermaster may be called on at any time during the irrigation season, notwithstanding that there may be "excess" water flowing in Reynolds Creek at or above the Outlet weir.	~~4. A watermaster may be called on at any time during the irrigation season, notwithstanding that there may be "excess" water flowing in Reynolds Creek at or above the Outlet weir.~~
5(a). The Upper Users shall not store excess water during the irrigation season, except as such storage is authorized and recognized in the Findings, or storage for which licenses are subsequently issued under water permits numbers 57-7400, 57-7454, 57-7472 or 57-7473 to the extent, if any, that those permits authorize storage during the irrigation season, and Junayo Ranch Limited Partnership (Junayo Ranch), holder of those permits, acknowledges that no excess water feature or element is included in or authorized by those permits. The Upper Users shall not increase the capacities of their diversion facilities or their storage facilities as the capacities of those	~~5(a). The Upper Users shall not store excess water during the irrigation season, except as such storage is authorized and recognized in the Findings, or storage for which licenses are subsequently issued under water permits numbers 57-7400, 57-7454, 57-7472 or 57-7473 to the extent, if any, that those permits authorize storage during the irrigation season, and Junayo Ranch Limited Partnership (Junayo Ranch), holder of those permits, acknowledges that no excess water feature or element is included in or authorized by those permits. The Upper Users shall not increase the capacities of their diversion facilities or their storage facilities as the capacities of those~~

[1] Only paragraph numbers 3 though 6 of the Stipulation were incorporated into the Reynolds Creek decree. Subsequently, paragraphs 3 through 6 were incorporated as General Provision 2, and numbered as such, in the Basin 57 Amended Director's Report, filed in 1995.

facilities existed on June 22, 1987, or were authorized by water permits issued, or applications for permits filed with the Director, prior to October 14, 1987. Any Lower User who makes an application for permit to appropriate waters of Reynolds Creek for storage purposes shall not have the right to require any Upper User to cease diverting any "excess" water in order to satisfy the new storage right which might be acquired pursuant to any such application. The Lower Users reserve the right, among themselves, to protest any application by another Lower User for a permit to appropriate water of Reynolds Creek for storage purposes. The intent of this paragraph, as between the Upper Users and the Lower Users, is to furnish the Lower Users an opportunity to store any "excess" water, as defined herein, which remains available when the Upper Users are diverting water to the extent of the capacity of their presently existing facilities. The parties to this Stipulation do not intend hereby to establish or set the priorities or quantities of any rights to excess water, or to establish that any presently perfected right does or does not include or authorize the use of excess water.

5(b). The parties to this Stipulation acknowledge an historical practice of rotation irrigation during times of water shortage. Where a water right has more than one point of diversion, or where there are multiple water rights with multiple points of diversion in a single ownership, the amount of water that may be diverted is determined according to priority. However, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights in a single-land ownership. This practice results in the point of diversion or the place of use for specific water right in a single-land ownership being different from the point of diversion and/or the place of use listed in the Director's findings. However, the water is diverted and applied to a point of diversion and place of use listed for that single ownership in the Director's findings. A single ownership is to be determined based upon contiguous places of use decreed to a single entity in this adjudication. This practice has allowed for the more efficient use of the water during times of shortage on the ranches as they are now owned. This practice will not be disturbed by the parties to this Stipulation.

6. Junayo Ranch, for itself and as successor in interest to C. T. Ranch Company and Junayo Ranch Company, former Upper Users, agrees that its water rights other than No. 57-2325 and No. 57-7040 do not entitle it to divert water to storage during the irrigation season, even though it may be physically possible to divert water into its storage facilities during the irrigation season, and that no diversion to storage is authorized under their rights Nos. 57-2325 and 57-7040 during the irrigation season unless all prior water rights on Reynolds Creek are being satisfied. Junayo Ranch further agrees that (1) storage capacity under permit No. 57-7454 shall not exceed twenty-five acre feet per annum (25 AFA) [AFY], (2) storage under any permit issued pursuant to application No. 57-7473 shall not exceed fifty acre feet per annum (50 AFA), (3) storage under permit No. 57-7454 combined with

~~facilities existed on June 22, 1987, or were authorized by water permits issued, or applications for permits filed with the Director, prior to October 14, 1987. Any Lower User who makes an application for permit to appropriate waters of Reynolds Creek for storage purposes shall not have the right to require any Upper User to cease diverting any "excess" water in order to satisfy the new storage right which might be acquired pursuant to any such application. The Lower Users reserve the right, among themselves, to protest any application by another Lower User for a permit to appropriate water of Reynolds Creek for storage purposes. The intent of this paragraph, as between the Upper Users and the Lower Users, is to furnish the Lower Users an opportunity to store any "excess" water, as defined herein, which remains available when the Upper Users are diverting water to the extent of the capacity of their presently existing facilities. The parties to this Stipulation do not intend hereby to establish or set the priorities or quantities of any rights to excess water, or to establish that any presently perfected right does or does not include or authorize the use of excess water.~~

~~5(b) The parties to this Stipulation acknowledge an~~ An historical practice of rotation irrigation during times of water shortage has allowed for more efficient use of water in the Reynolds Creek basin. This practice applies only to ~~Where~~ a water right that has more than one point of diversion, or to contiguous parcels of property owned by the same person(s) or entity where there are multiple water rights with multiple points of diversion ~~in a single ownership, the amount of water that may be diverted is determined according to priority~~. Under these conditions ~~However~~, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights ~~in a single-land ownership~~ and applied to a place of use decreed for multiple water rights, so long as the places of use are contiguous and owned by the same owner. The amount of water that may be diverted is determined according to the specific water right' s priority. This practice results in the point of diversion or the place of use for specific water right or multiple water rights owned by the same person(s) or entity ~~in a single-land ownership~~ being different from the point of diversion and/or the place of use listed in the Director's Report ~~findings. However, the water is diverted and applied to a point of diversion and place of use listed for that single ownership in the Director's findings. A single ownership is to be determined based upon contiguous places of use decreed to a single entity in this adjudication. This practice has allowed for the more efficient use of the water during times of shortage on the ranches as they are now owned. This practice will not be disturbed by the parties to this Stipulation.~~

~~6. Junayo Ranch, for itself and as successor in interest to C. T. Ranch Company and Junayo Ranch Company, former Upper Users, agrees that its water rights other than No. 57-2325 and No. 57-7040 do not entitle it to divert water to storage during the irrigation season, even though it may be physically possible to divert water into its storage facilities during the irrigation season, and that no~~

storage under any permit issued pursuant to application No. 57-7473 shall not exceed seventy-five acre feet per annum (75 AFA), and storage under any permit issued pursuant to application No. 57-7472 shall not exceed ten acre feet per annum (10 AFA) for the storage pond identified in that application, and Junayo Ranch further agrees that the condition or conditions imposed by the Director of the Idaho Department of Water Resources in any water permit now held by Junayo Ranch, or in any permit issued to Junayo Ranch pursuant to an application identified in this Stipulation, or any condition with respect to any such water permit, now held or hereafter issued to Junayo Ranch, imposed by this Stipulation or by an agreement between it and all of the other parties to this Stipulation, shall be carried forward into any supplemental decree entered in this action or any decree entered in any other action adjudicating the rights to the use of the waters of Reynolds Creek.	~~diversion to storage is authorized under their rights Nos. 57-2325 and 57-7040 during the irrigation season unless all prior water rights on Reynolds Creek are being satisfied. Junayo Ranch further agrees that (1) storage capacity under permit No. 57-7454 shall not exceed twenty-five acre feet per annum (25 AFA) [AFY], (2) storage under any permit issued pursuant to application No. 57-7473 shall not exceed fifty acre feet per annum (50 AFA), (3) storage under permit No. 57-7454 combined with storage under any permit issued pursuant to application No. 57-7473 shall not exceed seventy-five acre feet per annum (75 AFA), and storage under any permit issued pursuant to application No. 57-7472 shall not exceed ten acre feet per annum (10 AFA) for the storage pond identified in that application, and Junayo Ranch further agrees that the condition or conditions imposed by the Director of the Idaho Department of Water Resources in any water permit now held by Junayo Ranch, or in any permit issued to Junayo Ranch pursuant to an application identified in this Stipulation, or any condition with respect to any such water permit, now held or hereafter issued to Junayo Ranch, imposed by this Stipulation or by an agreement between it and all of the other parties to this Stipulation, shall be carried forward into any supplemental decree entered in this action or any decree entered in any other action adjudicating the rights to the use of the waters of Reynolds Creek.~~

BASIN 57 GENERAL PROVISIONS

The director recommends that the following general provisions be included in the decree determining rights to water from Basin 57:[1]

1. The following water rights from the following sources of water in Basin 57 shall be administered separately from all other water rights in Basin 57 in accordance with the prior appropriation doctrine as established by Idaho law:

Water Right No.	Source
None	None

The following water rights from the following sources of water in Basin 57 shall be administered separately from all other water rights in the Snake River Basin 57 in accordance with the prior appropriation doctrine as established by Idaho law:

Water Right No.	Source
None	None

Except as otherwise specified above, all other water rights with Basin 57 will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law.

2. A historical practice of rotation irrigation during times of water shortage has allowed for more efficient use of water in the Reynolds Creek basin. This practice applies only to a water right that has more than one point of diversion, or to contiguous parcels of property owned by the same person(s) or entity where there are multiple water rights with multiple points of diversion. Under these conditions, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights and applied to a place of use decreed for multiple water rights, so long as the places of use are contiguous and owned by the same owner. The amount of water that may be diverted is determined according to priority. This practice results in the point of diversion or the place of use for a specific water right or multiple water rights owned by the same person(s) or entity being different from the point of diversion and/or the place of use listed in the Director's Report.

[1] The Order of Partial Decree for Connected Sources is Basin 57 was issued February 27, 2002 and IDWR includes the general provision here as General Provision 1 for illustrative purposes only.

CERTIFICATE OF MAILING

I certify that on June 14, 2002 I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

   Clerk of the District Court
   Snake River Basin Adjudication
   253 Third Avenue North
   P. O. Box 2707
   Twin Falls, Idaho 83303-2707

2. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010

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

William and Beatrice Boston
Represented by:
James C. Burnham
P.O. Box 699
161 E. Mallard Dr Ste A
Boise, ID 83701-0699

Jerry Hoagland
Seven High Ranch Inc
Represented by:
John T. Schroeder
P.O. Box 267
Boise, ID 83701-0267

United States of America
Represented by:
United States Dept of Justice
Environment & Natural Resource
550 West Fort Street, MSC 033
Boise, ID 83724

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Goering, Linda L.
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Paul L. Jesenko
HC 79
Melba, ID 83641

Seven High Ranch Inc.
HC 79 Box 44
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Paul & Wanda Jesenko
Hc 79 Box 46
Melba, ID 83641

Ethel & Dan W. Hall
HC 79 Box 48
Melba, ID 83641

Richard H & Connie M. Brandau
HC 79 Box 61
Melba, ID 83641

Betty B. & Henry Brandau
Brandau Farms
HC 79 Box 66
Melba, ID 83641

Sandra J. & Jerry L. Benson
Thomas & Alvin Benson
HC 79 Box 94
Melba, ID 83641

John Romero
HC 88, Box 1045
Murphy, ID 83650

Tom Hook
HC 88 Box 1095
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Junayo Ranch LTD Partnership
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Wichita, KS 67203

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Nampa, ID 83651

Ann E. McKee
812 14th Avenue South
Nampa, ID 83651

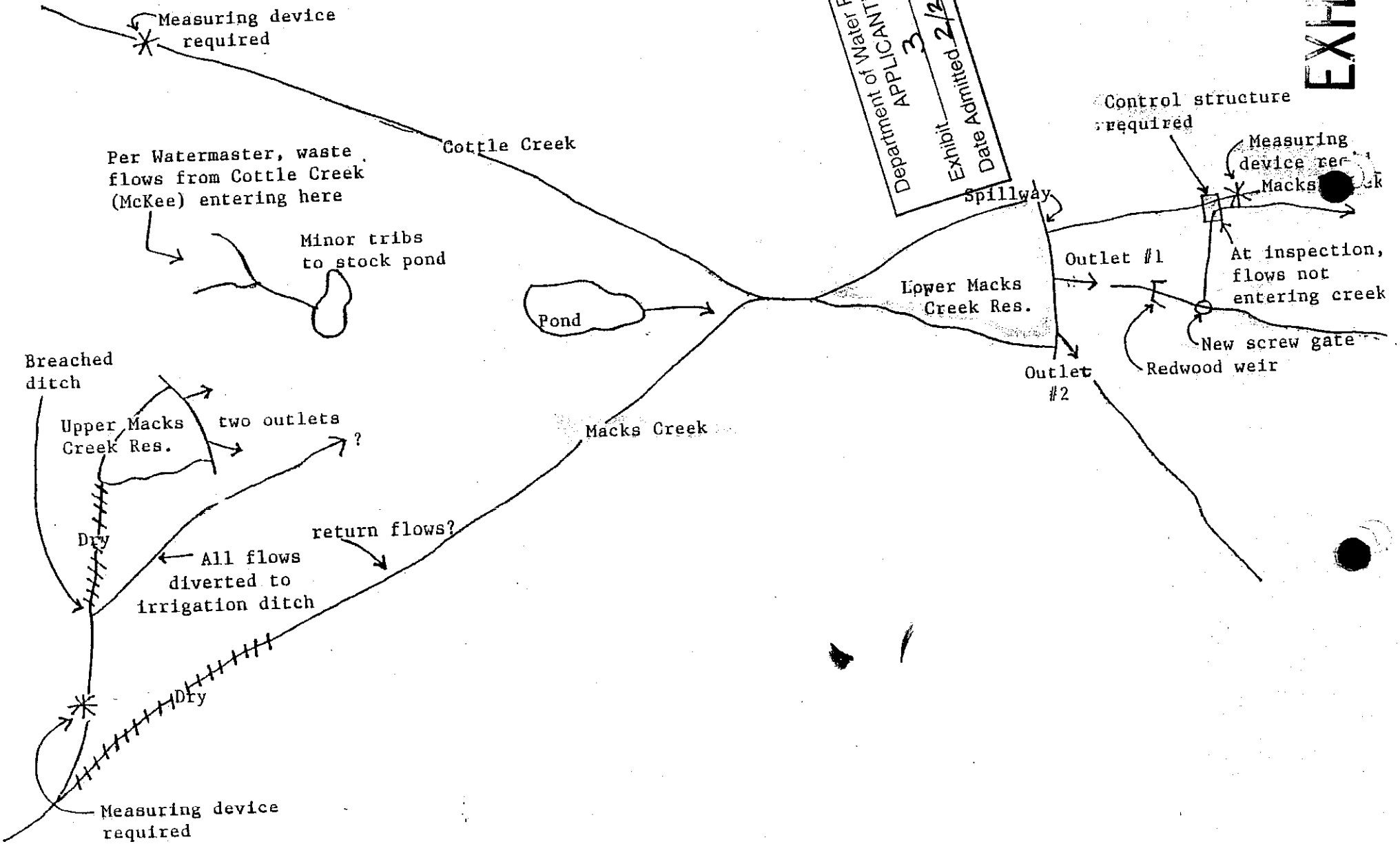
Signature of person or attorney mailing the form

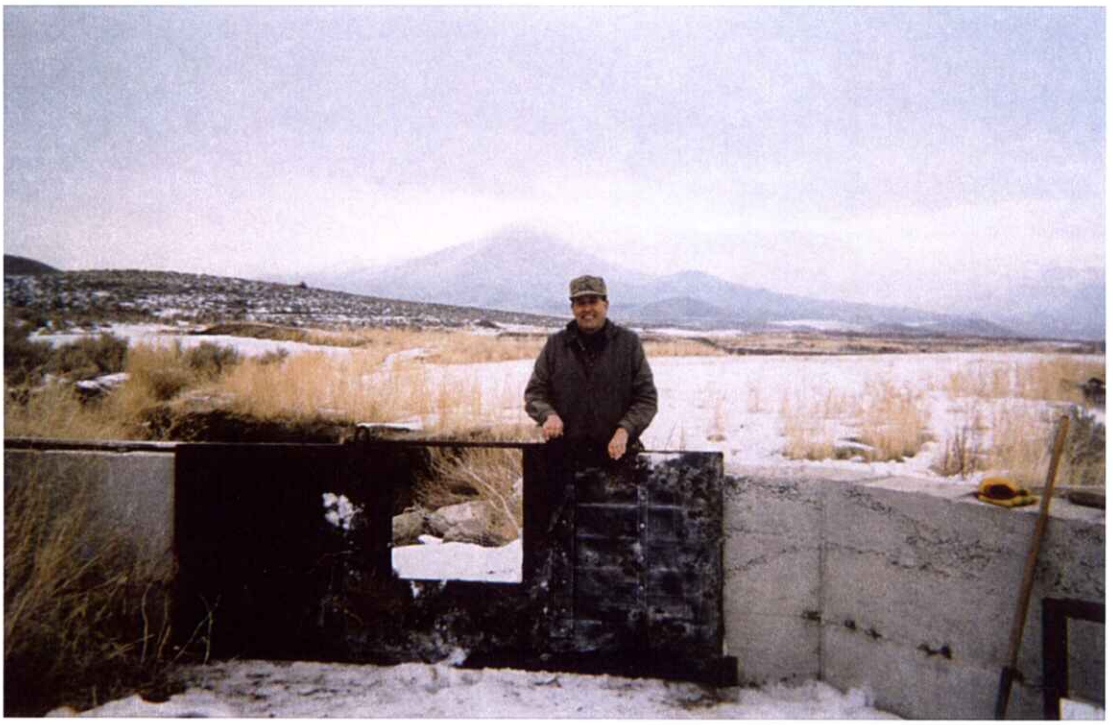
SYSTEM SCHEMATIC - MACKS CREEK
5/19/94

Figure 1.

Department of Water Resources
APPLICANT'S
Exhibit 3
Date Admitted 2/24/2004

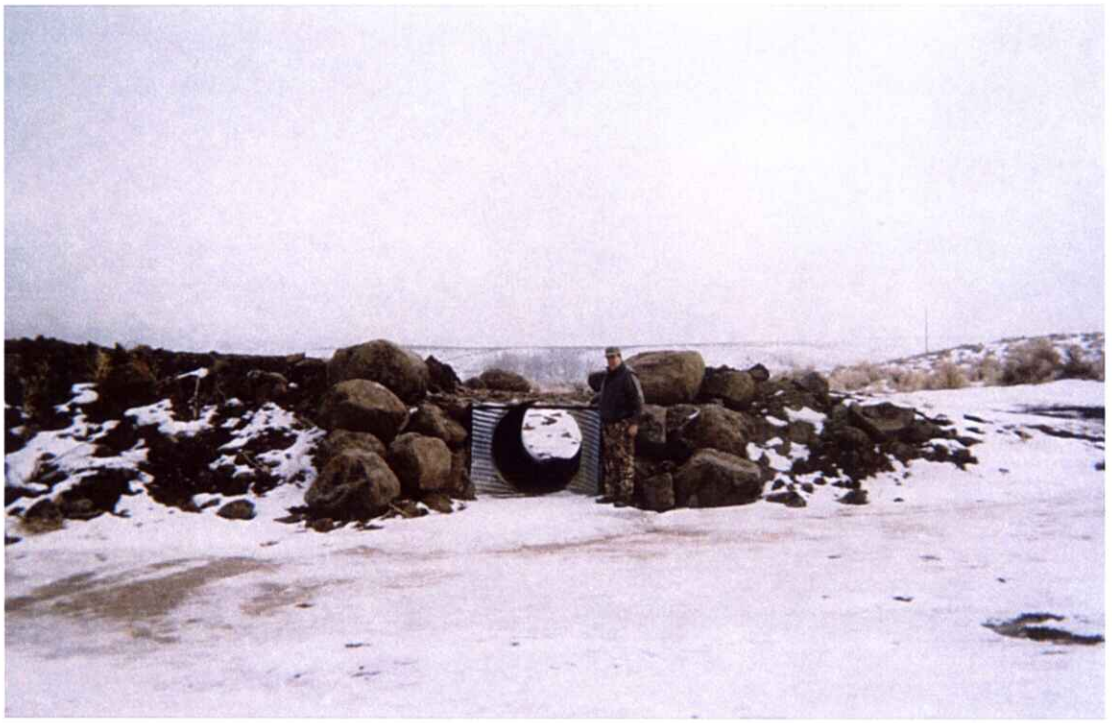
EXHIBIT 3





Department of Water Resources
APPLICANT'S
Exhibit 4
Date Admitted 2/24/2004
1B

EXHIBIT 4



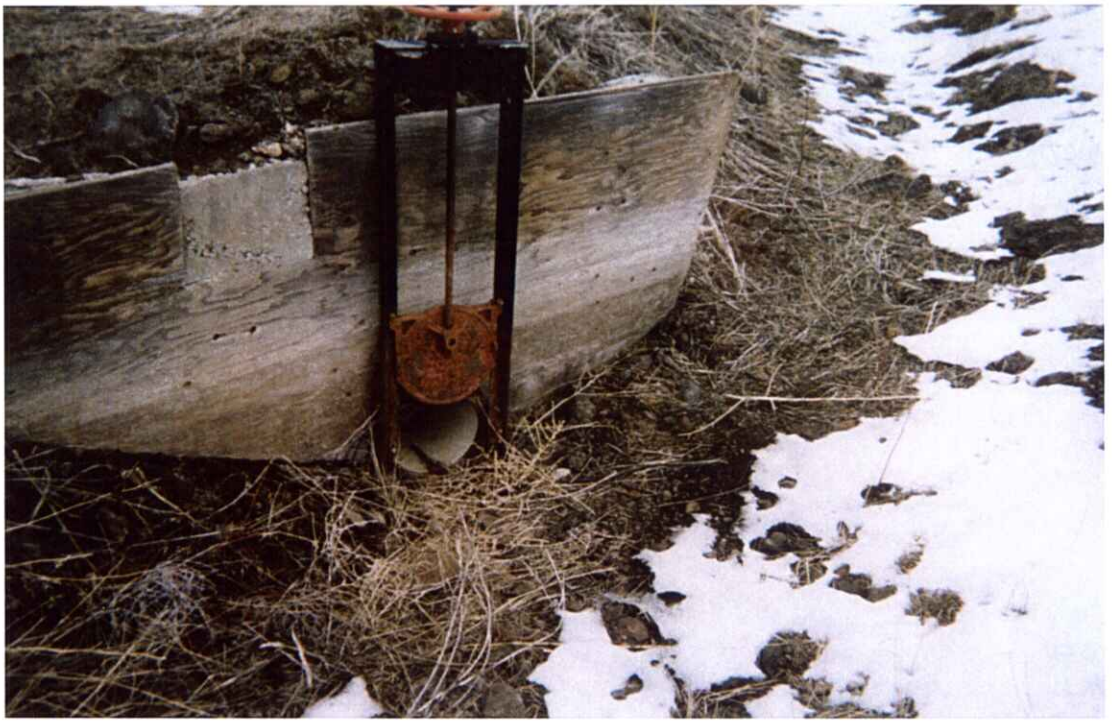
Department of Water Resources
APPLICANT'S
Exhibit 5
Date Admitted 2/24/2004

EXHIBIT 5



Department of Water Resources
APPLICANT'S
Exhibit 6
Date Admitted 2/24/2004

EXHIBIT 6



Department of Water Resources
APPLICANT'S
Exhibit 7
Date Admitted 2/24/2004

GB

EXHIBIT 7



Department of Water Resources
APPLICANT'S
Exhibit 8
Date Admitted 2/24/2004

EXHIBIT 8



Department of Water Resources
APPLICANT'S
Exhibit 9
Date Admitted 2/24/2004
4B

EXHIBIT 9



Department of Water Resources
APPLICANT'S
Exhibit 10
Date Admitted 2/24/2004

EXHIBIT 10



JB
Department of Water Resources
APPLICANT'S
Exhibit 12
Date Admitted 2/24/2004

EXHIBIT 11

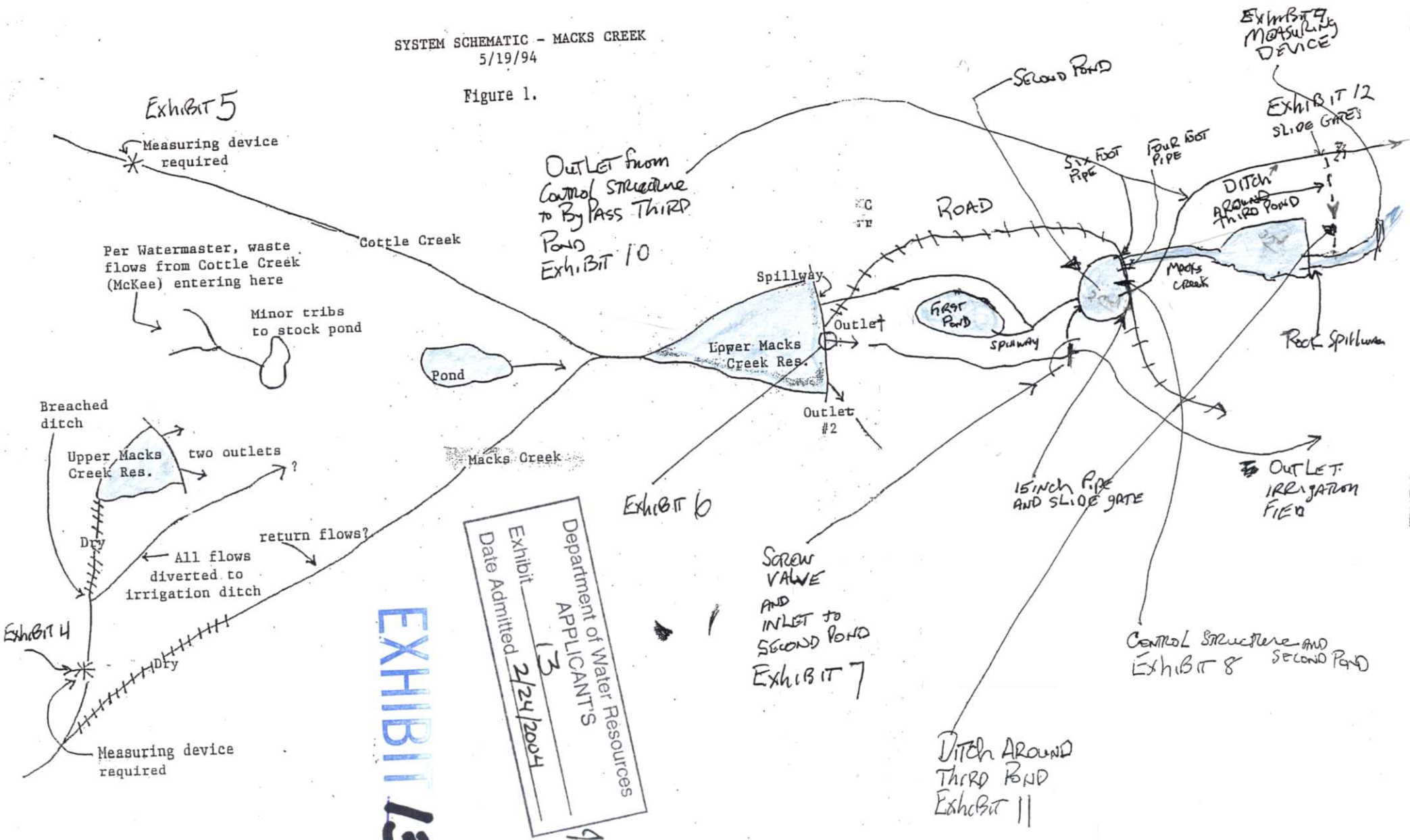


Department of Water Resources
APPLICANT'S
Exhibit 12
Date Admitted 2/24/2004
JB

EXHIBIT 12

SYSTEM SCHEMATIC - MACKS CREEK
5/19/94

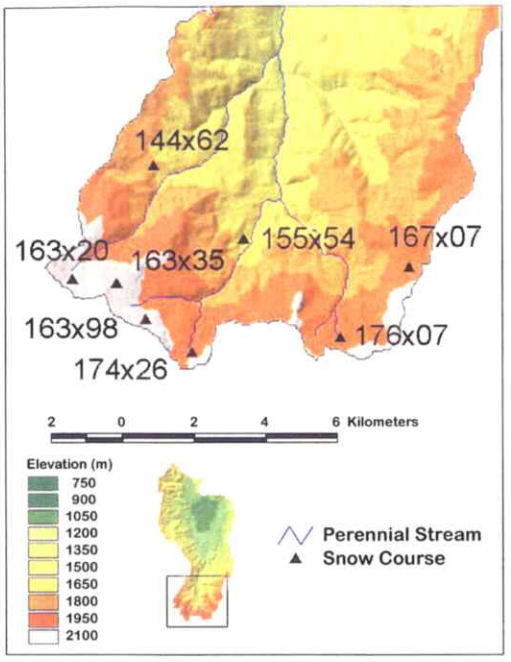
Figure 1.



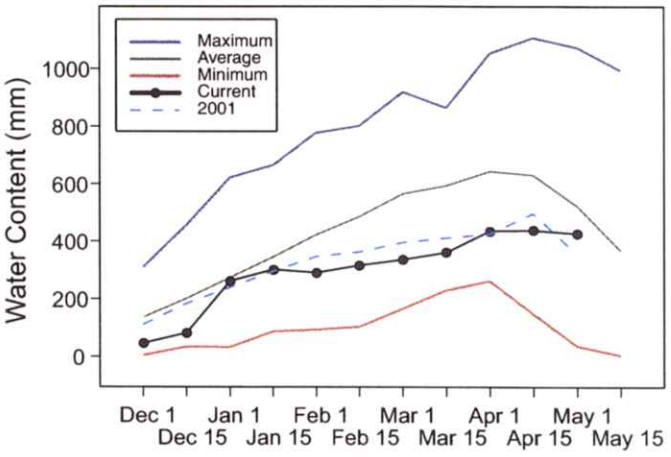
Department of Water Resources
APPLICANT'S
Exhibit 13
Date Admitted 2/24/2004

EXHIBIT 13

Tollgate Watershed
May 1, 2003

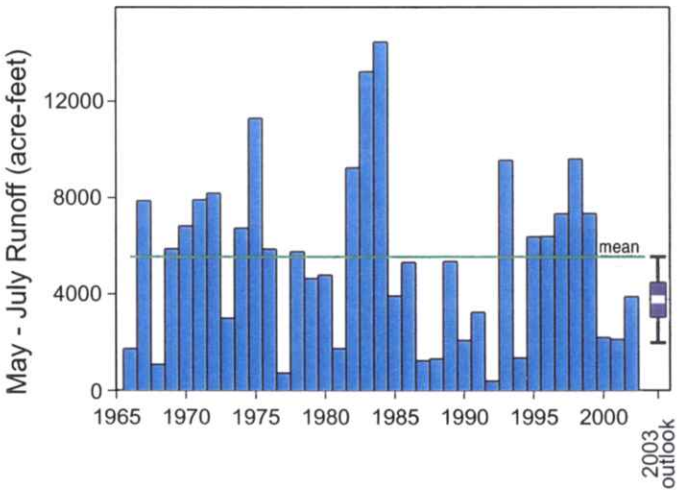


RCEW High Elevation Snow Courses*



** High elevation snow courses are 163x20, 163x35, 163x98, 174x26, and 176x07.*

Tollgate May - July Runoff



Forecast Point	Period	<---- Drier ----- Future Conditions ----- Wetter ----> Chance of Exceeding 90% (acre-feet)	70% (acre-feet)	50% (acre-feet)	% AVG	30% (acre-feet)	10% (acre-feet)	35 yr avg (acre-feet)
Tollgate	May-Jul	1992	3054	3772	70	4490	5552	5539

Department of Water Resources
APPLICANT'S
Exhibit 14
Date Admitted 2/24/2004
1/3

EXHIBIT 14

AVERAGE MONTHLY STREAMFLOW
at OUTLET WEIR
REYNOLDS CREEK EXPERIMENTAL WATERSHED
1964 – 1987 CFS

	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
March	16.79	30.47	14.54	12.64	7.49	31.21	24.06	67.92	160.42	11.88	93.61	48.45	21.87	2.76	57.24	30.27	20.55	11.34	72.26	95.87	81.51	17.72	89.21	17.24
April	53.14	86.74	13.57	10.55	3.52	93.93	21.89	74.32	69.86	41.42	83.93	56.24	51.32	2.59	71.53	14.39	31.20	30.85	108.30	83.25	136.16	52.96	61.68	9.92
May	53.13	90.63	5.43	52.59	2.88	50.45	65.02	71.69	65.36	30.67	55.75	97.46	64.20	4.09	64.89	46.68	43.60	19.47	80.80	169.25	154.20	28.94	58.30	8.69
June	37.57	30.00	2.81	58.74	1.90	19.40	19.87	24.20	48.68	5.49	32.47	67.13	17.31	3.84	17.21	8.24	33.74	9.69	34.02	67.14	92.56	12.08	20.65	6.11

EXHIBIT 15

Department of Water Resources
APPLICANT'S
Exhibit 15
Date Admitted 2/24/2004

SUMMARY of MACKS CREEK MEASURING GAUGE RUNOFF
1964 – 1987 CFS

	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
March	4.68	3.50	1.90	2.18	.90	5.18	3.79	11.42	20.91	1.98	17.62	13.99	5.46	.58	10.91	6.4	3.44	2.56	11.04	19.28	18.24	2.62	12.09	2.33
April	12.48	5.64	1.20	2.43	.57	8.49	2.64	6.57	6.16	8.07	8.47	14.97	8.13	.58	9.51	3.55	2.35	4.24	15.21	11.67	22.76	5.40	3.59	1.33
May	2.4	5.24	.50	2.33	.22	1.31	1.72	1.37	1.56	1.23	1.52	12.20	1.88	.51	3.62	2.44	2.10	1.59	3.27	9.90	8.94	1.07	1.63	.80
June	.83	.99	.11	2.05	.09	.44	.28	.77	1.46	.29	.425	1.52	1.01	.30	.60	.19	2.66	.72	.83	1.09	2.00	.56	.37	.41

EXHIBIT 16

Department of Water Resources
APPLICANT'S
Exhibit 16
Date Admitted 2/24/2004

JUNAYO RANCH
EXISTING WATER RIGHTS

Number	Priority Date	Source	Diversion Rate	Water Uses
57-0262	06/01/1889	Macks Creek	0.90 cfs	Irrigation
57-2085	04/30/1915	Macks Creek	1.36 cfs	Irrigation
57-7454	06/30/1986	Macks Creek	1 cfs 25 acre feet 25 acre feet	Diversion to Storage (11/15 – 3/15) Irrigation from Storage (3/15 – 11/15) Irrigation Storage (1/1 – 12/31)
57-7525	04/17/1990	Macks Creek	250 acre feet	Irrigation from Storage, Irrigation Storage
57-7583	01/14/1994	Macks Creek	90 acre feet	Irrigation from Storage, Irrigation Storage
57-7610	02/17/1995	Macks Creek	200 acre feet	Irrigation from Storage
57-11516	09/21/1911	Macks Creek	15 cfs	Excess Water (2/15 – 7/15)
57-11516	09/21/1911	Macks Creek	15 cfs	Irrigation (1/1 – 12/31)

Department of Water Resources
APPLICANT'S
Exhibit 17
Date Admitted 2/24/2004
4B

EXHIBIT 17

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 18, 1995

Department of Water Resources
APPLICANT'S
Exhibit 18
Date Admitted 2/24/2004

OWEN ORNDORFF
JUNAYO RANCH LTD PARTNERSHIP
1087 RIVER ST #230
BOISE ID 83702

RECEIVED JAN 20

RE: Macks Creek Reservoirs

Dear Mr. Orndorff:

Thank you for your letter dated January 5, 1995. This response is to supply you with information regarding measuring device selection, and to confirm an on-site meeting scheduled at Lower Macks Creek Dam on January 24. This meeting will be attended by IDWR personnel Mike Stubblefield, John Westra and Cindy Hodges, and by Watermaster Connie Brandau.

Portable measuring devices are satisfactory and acceptable to this Department, provided they are adequately sized for the anticipated rates of flow and properly installed. I agree that portable devices would best suit your needs for all three required measurement locations. Attached is information which will help with device selection and sizing.

Although several types of measuring devices may be adapted to non-permanent applications, portable weir plates are by far the simplest to construct, install, and maintain. Other devices such as Parshall flumes are also acceptable. Measuring device sizing is dependant upon the flows which must be measured during the time the Watermaster is on duty. For example, Ms. Brandau has indicated that a maximum combined inflow of 150 miners inches, or 3.0 cfs, is typical above the Macks Creek Reservoirs during regulatory periods. Based on this estimate, rectangular contracted weirs with two foot crest length should be of sufficient size for use above the reservoirs at both the Macks Creek and Cottle Creek diversions. A similar weir with a three foot crest length should be adequate for the location below Lower Macks Creek Dam. Ms. Brandau should be consulted prior to weir sizing to confirm expected peak flows in these drainages during her term of service. Weir sizing information is included on page 8 of the enclosed booklet.

Portable weir plates may be fabricated on-site using steel, aluminum, or wood, so long as the crest is sharpened. Specifications are contained within the enclosed material. If you wish to purchase a manufactured device, we are compiling a list of local manufacturers whom you may contact. That list will be forwarded to you when completed.

EXHIBIT 18

The time in the delivery season when regulated deliveries may cease for the Macks Creek drainage is the time at which measured inflows, when released from Lower Macks Creek Reservoir, would be of no benefit to downstream rights. It is within the Watermaster's jurisdiction to recognize and act upon a futile call for water. Based on Ms. Brandau's previous experience in the Reynolds Creek drainage, I believe that a combined minimum inflow may be defined for Macks and Cottle Creeks which would automatically invoke the futile call. When combined flows fall to this rate each season, regulation may cease for Macks Creek and weirs may be removed, regardless of activity elsewhere in Reynolds Creek. It would be to the advantage of Junayo Ranch and the Watermaster to establish and agree upon this minimum rate of flow based on experience gained during this delivery season.

With regard to requested amendments to your storage permits, Cindy Hodges is preparing draft permit amendment applications which will reflect the exchange of stored and live flows on upper lands. She will bring the partially completed applications to the meeting for your review and action.

With the combined input of all parties attending the upcoming meeting, we look forward to the resolution of all the above issues.

Sincerely,

David R. Tuthill, Jr., P. E.
Manager, Western Region Office

DRT:ch

Enclosures

cc: Connie Brandau, Watermaster
Carl Myers
(no enclosures)

End Of
Exhibits

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 57-11629 IN THE NAME OF JUNAYO RANCH LIMITED PARTNERSHIP	)	**PROOF OF SERVICE**

I HERBY CERTIFY that I have this 12th day of February, 2004, served the foregoing Exhibits 1 through 18 of Applicant Junayo Ranch Limited Partnership upon all parties of record in this proceeding, by delivering a copy thereof in person to:

L. Glen Saxton 1301 N. Orchard St. Boise, Idaho 83706-2237	[ ] [✓] [ ]	U.S. Mail Hand Delivered Overnight Mail

and by mailing a copy thereof, properly addressed with postage prepaid to:

Elias Jaca 817 Blaine Avenue Nampa, Idaho 83651	[✓] [ ] [ ]	U.S. Mail Hand Delivered Overnight Mail
Tom Hook Tom Hook Ranches 13576 State Hwy 78 Melba, Idaho 83641	[✓] [ ] [ ]	U.S. Mail Hand Delivered Overnight Mail
Richard Brandau 9902 Wilson Cemetery Lane Wilson, Idaho 83641	[✓] [ ] [ ]	U.S. Mail Hand Delivered Overnight Mail

Junayo Ranch Limited Partnership

Owen H. Orndorff
General Partner

PROTEST INFORMATION SHEET

APPLICANT: JUNAYO RANCH LIMITED PARTNERSHIP
OWEN W ORNDORFF
1087 W RIVER ST STE 230
BOISE ID 83702

RECEIVED
JAN 15 2004
Department of Water Resources

PH: 208-343-8880

APPLICATION NO: 57-11629

DATE FILED: 5-21-03 **PROTEST DATE: 8-4-03**

PROTESTANT(S) NAME & ADDRESS:

RICHARD BRANDAU 495-2529
9902 WILSON CEMETARY LN
WILSON ID 83641

ELIAS JACA 466-8801
817 BLAINE AVE
NAMPA ID 83651

TOM HOOK RANCHES 495-2267
13576 STATE HWY 78
MELBA ID 83641

Protestant's Attorney Name & Address: Issues:

Applicant - Attorney - Name & Address:

Other: _____

_____

_____

_____

_____

_____

IDAHO DEPARTMENT OF WATER RESOURCES

Water Application Report 57-11629

WATER RIGHT NUMBER: 57-11629

Owner Type	Name and Address
Current Owner	JUNAYO RANCH LTD PARTNERSHIP 1087 RIVER ST #230 BOISE, ID 83702 (208)343-8880

Priority Date: 05/21/2003

Basis:

Status: Active

Source	Tributary
MACKS CREEK	REYNOLDS CREEK

Beneficial Use	From To	Diversion Rate	Annual Volume
WILDLIFE	01/01 to 12/31		12.00 AF
STOCKWATER	01/01 to 12/31		12.00 AF
	Total Diversion:		12.00 AF

Location of Point(s) of Diversion

MACKS CREEK OWYHEE County	SE1/4SW1/4	Sec. 13,	Twp 02S,	Rge 04W, B.M.
MACKS CREEK OWYHEE County	SE1/4SW1/4	Sec. 13,	Twp 02S,	Rge 04W, B.M.
MACKS CREEK OWYHEE County	NW1/4SE1/4	Sec. 13,	Twp 02S,	Rge 04W, B.M.

Place of Use

WILDLIFE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02S 04W 13												X		X			

STOCKWATER

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02S 04W 13												X		X			

IDAHO DEPARTMENT OF WATER RESOURCES

Water Application Report 57-11629

Conditions of Approval:

Remarks:

Comments:

1. dnelson 6/27/2003 Legal Notice Remarks
Comment: Applicant agrees to mitigate consumptive use in the future as needed.

2. dnelson 6/27/2003 Comment/Analysis
Comment: This application is the result of a complaint and settlement agreement concerning the construction of these ponds. Please copy of complaint with the application. This application is for three onstream ponds located on Macks Creek in Owyhee County. The ponds are used solely for stockwater and wildlife. No irrigation use is taken from these ponds. According to Western Regions Dam Safety Specialist, the ponds collect the seepage water from the Macks Creek Reservoir, also owned by the applicant. An irrigation ditch does seem to flow through or to be connected to the ponds, however, the ditch is not connected to ponds per field visits of Dam Safety Specialist. The only overlapping rights are the rights for Macks Creek Reservoir. Therefore, this application seems appropriate to process.

Dates and Other Information:

Application Received Date: 5/21/2003
Application Denied Date:
Last Date of Beneficial Use:
Extension End Date:
Protest Deadline Date:
Number of Protests: 0
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal:
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Application Type: New Appropriation
Applicant Remarks: Three ponds have been constructed in succession just downstream of existing Macks Creek Dam #57-7525 on the Junayo Ranch in Owyhee County. The pond discriptions are in application file.
Other Water Rights: NONE
Time to Complete Works: 2
Transfer Affected Description:
Transfer Affected Contracts:
Old Transfer Number:
Transfer Reason:
Transfer Return Flows:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 57-11629 IN THE NAME OF JUNAYO RANCH LIMITED PARTNERSHIP	)))))	**NOTICE OF HEARING**

On May 21, 2003 Junayo Ranch Limited Partnership filed with the Idaho Department of Water Resources (IDWR) an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Richard Brandau, Elias Jaca and Tom Hook Ranches. The prehearing conference held on December 18, 2003 did not resolve the matter of protest.

The Department has scheduled a hearing for the protest to be held on **Tuesday, February 24, 2004. The hearing will begin at 10:00 am in courtroom no. 2 of the Owyhee County Courthouse, Highway 78, Murphy, Idaho 83650.** The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the department. A copy of the rules may be obtained from IDWR upon request. The presiding officer at the hearing will be L. Glen Saxton.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01.606 requires that you provide a copy of exhibits to each party and to the presiding officer. Copies should be provided at least ten (10) days prior to the hearing.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department at least ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 13th day of January 2004.

John Westra
Western Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 14TH day of January 2004, I mailed a true and correct copy, postage prepaid, of the Notice of Hearing to those listed:

Sue Kreger

Sue Kreger
Administrative Assistant

CERTIFIED MAIL

JUNAYO RANCH LIMITED PARTNERSHIP
OWEN ORNDORFF
1087 W RIVER ST STE 230
BOISE ID 83702

RICHARD BRANDAU
9902 WILSON CEMETARY LN
WILSON ID 83641

ELIAS JACA
817 BLAINE AVE
NAMPA ID 83651

TOM HOOK RANCHES
13576 STATE HWY 78
MELBA ID 83641

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1) Will the proposed appropriation injure other water rights?

2) Is the proposed water supply sufficient for the purpose for which it is sought to be appropriated?

3) Was the application made in good faith or for delay or speculative purposes?

4) Does the applicant have sufficient financial resources with which to complete the proposed project?

5) Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?

6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof on issues 1, 2, 3, 4, & 6 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a preliminary order for the Director's consideration. Parties can file exceptions to a preliminary order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a preliminary order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing please advise the department within ten (10) days prior to the hearing.

JUNAYO RANCH
LIMITED PARTNERSHIP
OWEN W ORNDORFF
1087 W RIVER ST STE 230
BOISE ID 83702

RICHARD BRANDAU
9902 WILSON CEMETARY LN
WILSON ID 83641

ELIAS JACA
817 BLAINE AVE
NAMPA ID 83651

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WILSON ID 83641

ELIAS JACA
817 BLAINE AVE
NAMPA ID 83651

TOM HOOK RANCHES
13576 STATE HWY 78
MELBA ID 83641

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7099 3220 0006 2264 2172

Article Sent To:

ELIAS JACA
817 BLAINE AVE
NAMPA ID 83651

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Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

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RICHARD BRANDAU
9902 WILSON CEMETARY LN
WILSON ID 83641

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JUNAYO RANCH
LIMITED PARTNERSHIP
OWEN W ORNDORFF
1087 W RIVER ST STE 230
BOISE ID 83702

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TOM HOOK RANCHES
13576 STATE HWY 78
MELBA ID 83641

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State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

January 13, 2004

OWYHEE COUNTY COURTHOUSE
HIGHWAY 78
PO BOX 128
MURPHY ID 83650

Re: Conference Room Reservation

This letter is to confirm the conference room reservation made by the Idaho Department of Water Resources for Tuesday, February 24, 2004 at 10:00 a.m.

If you have any questions please call me at 334-2190, Western Region of the Department of Water Resources.

Sincerely,

Sue Kreger

Sue Kreger
Administrative Assistant

MEMORANDUM

RECEIVED
JAN 2004
Department of Water Resources

TO: File

FROM: Steve Lester

DATE: December 31, 2003

RE: Prehearing Conference for Application 57-11629

I conducted the prehearing conference in Murphy on December 18, 2003. All parties attended. The Reynolds Creek Watermaster was also present. I was concerned about the role of the watermaster in the conference. Her husband is a protestant. The watermaster was cautioned to limit her remarks to things directly related to watermaster duties and to not wander too far a field into things such as dam safety, notice of violation and so forth. She was not to act on her husband's behalf at the conference. She respected this cautioning although needed to be reminded of it more than once during the meeting.

The application resulted from a 2003 complaint and notice of violation (NOV) following the complaint. John Westra and Gene Gibson handled the field investigation in this matter and briefed me on the situation prior to the conference. Additionally, I researched the SRBA General Provisions for Basin 57 because Reynolds Creek has a complex history, including a 1988 decree with very detailed general provisions. Some of the provisions were directed at the applicant, Junayo Ranch, and addressed storage in the upper portion of the drainage. Application 57-11629 proposes storage in the upper portion of the drainage.

The application includes three small ponds found just downstream from the Lower Macks Creek Reservoir. That reservoir is covered by 57-7525 and 57-7583. The reservoir met IDWR's dam safety requirements in the July 2003 inspection. Note that Junayo Ranch's pending Application 57-7610 (at State Office for approval) covers an exchange scenario related to storage water in this reservoir but does not add more storage to the picture.

See the diagram attached to the application analysis sheets for an overview of the current situation. The applicant installed Ponds 1 and 2 about 10 ago to deal with seepage from Lower Macks Creek Reservoir. Pond 3 was installed this year. The combined storage of the three ponds is quite small. The applicant stated that the ponds function more for erosion control than for any significant beneficial use of water.

The watermaster expressed concerns about being able to measure and deliver water down Macks Creek without problems that might be associated with the three ponds "being in the way." The watermaster and applicant disagree about the impact the small ponds could cause to downstream delivery of water and disagree about the effectiveness of the bypass

system to route water past the three ponds. The protestants expressed various degrees of concern about injury to senior and downstream rights should the application be approved. They also were bothered by the "build it and then seek approval" approach instead of vice versa as required by Idaho law and IDWR rules. It is not the first time and probably will not be the last time the applicant does this, they said.

Feeling ran high throughout the meeting. The parties hold strong opinions on this and on related matters involving Junayo Ranch. It was clear that a settlement was not going to be reached at the meeting nor was a settlement process going to be developed by the parties. They are ready to thrash it out in a hearing.

The conference concluded with an agreement that a hearing should be scheduled as soon as possible.

The following points will be helpful for the hearing officer:

1. The NOV process for the illegal development of Pond #3 has been concluded. Junayo Ranch has complied with the NOV terms.

2. There is not an outstanding IDWR stream channel or Army Corps of Engineers violation associated with this situation (some of the parties thought otherwise).

3. The watermaster is not a party in this contested case, but her testimony could be helpful if she limits her remarks to watermaster duties. She expressed an interest in representing her husband in the hearing. I provided her a copy of Rule of Procedure 202, Representation of Parties at Hearing. The hearing officer might need to determine if a watermaster can represent a spouse in a hearing. The likelihood of unacceptably blurred lines between protestant and watermaster is very high in this situation.

4. All the protestants used the same language about storage in the upper part of the drainage. The language derives from general provisions in the 1988 Reynolds Creek Decree ("the green book"). The SRBA adopted those provisions verbatim in 1992. But State Office adjudication legal staff (Candice McHugh) confirmed that all but one of the Basin 57 General Provisions were overturned by the November 2002 action of the SRBA Court. The only general provision in place by late 2002 is one for historic rotation practices. This does not negate the protests but does not allow them to be based on outdated general provisions. See the attached information discussing SRBA general provisions in Basin 57 for more detail if needed.

5. The traditional six issues for new appropriations are in play here. Typical concerns such as availability of water and so forth, rather than general provisions for Basin 57, will be the determining factors in a hearing.

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY, BOISE, IDAHO 83705

Re: Application for Permit No. 57-11629 in the Name of Junayo Ranch LTD

Place: Owyhee County Courthouse

Date: December 18, 2003

Conducted by: Steve Lester

NAME	ADDRESS
Owen Orandorff	1087 River Street Boise 83702
* Lori Dingel	1087 W. River St. 208 345 8888
	Boise 83702 208-343-8880
Tom Hurd	13576 Hwy 78, Melba, Id 83641
ELIAS JACA	817 Blaine Ave. Nampa, Idaho 83651
Richard Brandau	9902 Wilson Cemetery Lane Wilson Idaho 83641
Connie Brandau	9902 Wilson Cem. Lane, Wilson ID 83641
** Jerry Hoagland	13528 Reynolds Creek Rd Wilson ID 8364

* Applicant's daughter

** Observer & water user

BASIN 57

GENERAL PROVISIONS IN SRBA

- Effective November 20, 2002, per attached. [1]

- The only General Provision remaining covers historical rotation practices.

- All other General Provisions N/A for Basin 57 in SRBA.

- Note General Provision #10 of the "green book" Reynolds Decree of 1988 (aka General Provision 2 in SRBA) therefore N/A except rotation already noted. See attached for details.

[1] This update provided by Candice McHugh from Adjudication Legal staff, December 17, 2003.

County of Twin Falls • State of Idaho
NOV 20 2002
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	)	**Subcase 91-00005-57**
	)	
Case No. 39576	)	**ORDER OF PARTIAL DECREE FOR ROTATION IRRIGATION GENERAL PROVISION IN BASIN 57 (Reynolds Creek)**

On September 11, 2002, Special Master Cushman issued a ***Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law, For General Provisions in Basin 57 Designated as Basin-Wide Issue 5-57*** (***"Special Master's Report"***). No motions to alter or amend, or challenges were filed to the ***Special Master's Report***, and the time for filing the same has expired.

Pursuant to I.R.C.P. 53(e)(2) and ***SRBA Administrative Order 1***, Section 13f, this Court has reviewed the Findings of Fact and Conclusions of Law contained in the ***Special Master's Report*** and wholly adopts them as its own.

Therefore, IT IS ORDERED that the ***Rotation Irrigation General Provision*** for Basin 57 is hereby decreed as set forth in the attached ***Partial Decree for Rotation Irrigation in Basin 57*** .

Dated: November 20, 2002

ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

SCANNED
NOV 26 2002

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
NOV 20 2002
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	)	**Subcase 91-00005-57**
	)	
Case No. 39576	)	**PARTIAL DECREE FOR**
	)	**ROTATION IRRIGATION GENERAL**
	)	**PROVISION IN BASIN 57 (Reynolds Creek)**

Rotation Irrigation General Provision for the

Use of Water in the Reynolds Creek Basin

A historical practice of rotation irrigation during times of water shortage has allowed for more efficient use of water in the Reynolds Creek Basin. This practice applies only to a water right that has more than one point of diversion, or to contiguous parcels of property owned by the same person(s) or entity where there are multiple water rights with multiple points of diversion. Under these conditions, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights and applied to a place of use decreed for multiple water rights, so long as the places of use are contiguous and owned by the same owner. The amount of water that may be diverted is determined according to priority. This practice results in the point of diversion or the place of use for a specific water right or multiple water rights owned by the same person(s) or entity being different from the point of diversion and/or the place of use listed in the Director's Report.

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.

Dated: November 20, 2002

ROGER BURDICK
Presiding Judge
Snake River Basin Adjudication

SCANNED
NOV 26 2002

RECEIVED
SEP 12 2002
Department of Water Resources

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DISTRICT COURT-SRBA
TWIN FALLS CO. IDAHO
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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: 91-0005-57**
Case No. 39576	**SPECIAL MASTER'S REPORT AND RECOMMENDATION**
	FINDINGS OF FACT AND CONCLUSIONS OF LAW
	FOR GENERAL PROVISIONS IN BASIN 57 DESIGNATED AS BASIN-WIDE ISSUE 5-57

I.
INTRODUCTION

This *Special Master's Report* pertains to the general provisions recommended by the Idaho Department of Water Resources (IDWR) regarding the distribution of water rights in the Reynolds Creek Basin located in IDWR administrative Basin 57. These general provisions were previously designated by the SRBA District Court as Basin-Wide Issue 5-57, and the matter was referred to this Special Master for a recommendation.

II.
FINDINGS OF FACT

1. The water right claims in the Reynolds Creek Basin were initially recommended in the 1992 *Director's Report, Part I, Reporting Area 2 (Basin 57)*. An *Amended Director's Report* for these rights was issued in 1995 following the 1994

amendments to the adjudication statutes. The 1995 *Amended Director's Report* also recommended General Provision 2, which provided for the administration of water rights on the Reynolds Creek Basin water system. General Provision 2 is based on language contained in a stipulation that was incorporated into the ***Reynolds Creek Decree*** filed March 23, 1988, Third Judicial District of Idaho for Owyhee County. A general adjudication for Reynolds Creek was commenced in 1978 to determine the respective water rights in that basin. A final decree was issued in 1988. The ***Reynolds Creek Decree*** determined the respective rights of water users in the Reynolds Creek Basin and also decreed rights to "excess water" and the practice of rotation irrigation between water users based on the stipulation of the parties.

2. The term "excess water" refers to a condition occurring during spring run-off when the flow of Reynolds Creek is high and contains more water than can be used under the established rights during periods of high flows. The stipulation on which General Provision 2 was based represented the resolution of an historical dispute between the water users in the Upper Reynolds Creek Basin and the water users in the Lower Reynolds Creek Basin. General Provision 2 delineated under what conditions Upper Basin water users are permitted to divert water in excess of their respective water rights or "excess water."

3. Historically, irrigators in the Reynolds Creek Basin also implemented a system of rotation irrigation during times of shortage. Seasonal fluctuations of water flows in the Reynolds Creek Basin are highly variable. A system of rotation irrigation provides for efficient use of the water between users given the attendant circumstances. General Provision 2 also provided for the historical practice of rotation irrigation during times of shortage.

4. On December 21, 1995, the SRBA District Court designated Basin-Wide Issue 5, which concerned whether certain recommended general provisions, including those recommended in Basin 57, were necessary to define or efficiently administer water rights. By ***Order*** dated April 26, 1996, the SRBA District Court ruled that the general provisions recommended in Basin 57 were not necessary to define or efficiently administer water rights. The District Court also ruled that the period of use element for irrigation rights

* G.P. 2 = Gen. provision #2 for Reynolds Ck. "Green Book" decree of 1988

should be "irrigation season" as opposed to specific dates. The Supreme Court reversed the decision of the District Court concerning the period of use element and remanded the remaining general provisions for evidentiary hearings. *See A&B Irr. Dist. v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1998).

5. The SRBA District Court, in a separate *Order*, also ruled that the general provisions regarding "excess water" were not necessary for the definition or efficient administration of water rights. The decision was appealed and the Idaho Supreme Court ruled that the "excess flow" portion of General Provision 2 omitted the necessary elements of a water right and therefore did not establish a water right. However, the Supreme Court ruled that General Provision 2 may be necessary for the efficient administration of water rights in the Reynolds Creek Basin. *State of Idaho v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998).

6. On remand, IDWR filed a *Supplemental Directors Report, Reporting Area 2, IDWR Basin 57, Reporting Revision of the Following: Period of Use (for irrigation water uses)*, recommending specific dates for the irrigation rights in Basin 57. At the close of the objection and response period, the SRBA District Court issued a series of orders consolidating, separating, and re-designating the issues on remand according to administrative basin. Those remaining issues pertaining to Basin 57 were re-designated as Basin-Wide Issue 5-57. Because the issues regarding period of use were fact specific to individual water rights, and could no longer be resolved collectively as "irrigation season," the subcases where objections were filed to the period of use element were referred to this Special Master for resolution on an individual basis. The issues regarding General Provision 2 remained under the Basin Wide 5-57 designation.

7. Also following remand in *State of Idaho v. Idaho Conservation League*, the parties claiming use of "excess water" under General Provision 2 filed individual late claims for the "excess water" in an attempt to comply with the holding of the Supreme Court. IDWR recommended these late claims in a March 5, 2001, late claims report. Following the objection and response period the contested claims were referred this Special Master on December 21, 2001. The individual late claims for the "excess water" were either uncontested or any objections have now been resolved via SF-5's.

8. Because the "excess water" issue was no longer being pursued as a general provision, this Special Master ordered that IDWR prepare a *Supplemental Director's Report* recommending the remaining portions of General provision 2, if any, that were necessary in light of the individual claims for the "excess water." IDWR filed its *Supplemental Director's Report* on June 19, 2002. According to the *Supplemental Report,* the only remaining portion of General Provision 2 recommended following the filing of the individual late claims is portions of paragraph 5(b), which address the historical practice of rotation irrigation. This recommendation is set forth in **EXHIBIT A**. No objections were filed to this recommendation.

9. This Special Master finds that a general provision on the practice of rotation irrigation as set forth in **EXHIBIT A** is necessary to define, and for the efficient administration of, water rights in the Reynolds Creek Basin in Basin 57. This practice allows for the efficient administration of water rights during times of water shortages in light of the unique circumstances in the Reynolds Creek Basin.

10. The remaining provisions contained in General Provision 2, which address "excess water" are not necessary to either define or administer water rights in the Reynolds Creek Basin because separate claims have been filed for the use of "excess water." IDWR's recommendations for these rights contain all the elements of a water right. Accordingly, the issue of "excess water" no longer needs to be addressed via a general provision.

11. Prior to the individual late claims being filed for the "excess water," IDWR's recommendations in the *Supplemental Directors Report, Reporting Area 2, IDWR Basin 57, Reporting Revision of the Following: Period of Use (for irrigation water uses)* for the period of use element for water rights in the Reynolds Creek Basin also contained the following "subordination language".

> DIVERTING WATER BEFORE OR AFTER THE PERIOD OF USE UNDER THIS RIGHT IS ALLOWED PROVIDED:
> A. THE WATERS SO DIVERTED ARE APPLIED TO A BENEFICIAL USE, AND
> B. THE EXISTING RIGHTS AND FUTURE APPROPRIATIONS ARE FIRST SATISFIED.

This "subordination language" was recommended in an attempt to satisfy the issues raised by the Idaho Supreme Court in *State of Idaho v. Idaho Conservation League*, 131 Idaho 329, 955 P.2d 1108 (1998), regarding "excess water." However, because the use of "excess water" is no longer being recommended as a general provision, this Special Master finds that the subordination language is no longer necessary and should not be included in the *Special Master's Report and Recommendation* or ***Partial Decree***.

III.

CONCLUSIONS OF LAW

1. The filing of the director's report constitutes *prima facie* evidence of the nature and extent of a water right. I.C. § 42-1411(4). In addition, IDWR's role in the SRBA is that of an independent expert and technical assistant who assures that claim to water rights acquired under state law are accurately reported. I.C. § 42-1401B(1996). Accordingly, when IDWR files an expert's report pursuant to I.R.E. 706, said report provides evidentiary value on which this Special Master is entitled to rely.

2. Idaho Code § 42-1411 provides that the director of IDWR shall prepare a report on the water system. "The director may include such general provisions in the director's report, as the director deems appropriate and proper, to define and to administer all water rights." I.C. § 42-1411 (1996). "The decree shall also contain an express statement that the partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights." I.C. § 42-1412(6). In *A & B Irrigation District v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1998), the Idaho Supreme Court stated:

> A general provision is a provision that is included in a water right decree regarding the administration of water rights that applies generally to water rights, is not an element of the water right, or is necessary for the efficient administration of the water rights decreed. A general provision is an administrative provision that generally applies to water rights but it need not apply to every water right.

Id. at 421, 958 P.2d at 578 (citations omitted).

for those parties in the Reynolds Creek Basin claiming "excess water," is no longer necessary and should not be included in the *Special Master's Report and Recommendation* or ***Partial Decree.***

IV.

RECOMMENDATION

Therefore, based on the file and the record herein and the foregoing findings of fact and conclusions of law IT IS RECOMMENDED that the general provision as set forth in **EXHIBIT A** attached hereto be included as a general provision in Basin 57, and that the SRBA District Court issue a partial decree thereon. The only other general provision applicable to Basin 57 is the general provision on connected sources, which was previously decreed February 27, 2002, as part of Basin-Wide Issue 5. IT IS FURTHER RECOMMENDED that the "subordination language" contained in the *Supplemental Director's Report* for the period of use element not be included in the *Special Master's Report and Recommendation* or the ***Partial Decrees*** ultimately issued for any Reynolds Creek water rights.

Dated 9/11/02

THOMAS R. CUSHMAN
Special Master for the
Snake River Basin Adjudication

2. A historical practice of rotation irrigation during times of water shortage has allowed for more efficient use of water in the Reynolds Creek basin. This practice applies only to a water right that has more than one point of diversion, or to contiguous parcels of property owned by the same person(s) or entity where there are multiple water rights with multiple points of diversion. Under these conditions, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights and applied to a place of use decreed for multiple water rights, so long as the places of use are contiguous and owned by the same owner. The amount of water that may be diverted is determined according to priority. This practice results in the point of diversion or the place of use for a specific water right or multiple water rights owned by the same person(s) or entity being different from the point of diversion and/or the place of use listed in the Director's Report.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT AND RECOMMENDATION; FINDINGS OF FACT AND CONCLUSIONS OF LAW; FOR GENERAL PROVISIONS IN BASIN 57 DESIGNATED AS BASIN-WIDE ISSUE 5-57 was mailed September 11, 2002, with first class postage to the following:

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SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NO. 91-5- 57
(BASIN-WIDE ISSUE 5-57)

In Re SRBA
Twin Falls County Civil Case No. 39576
Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
Donald V. Shaff, Adjudication Supervisor

June 14, 2002

I. INTRODUCTION

The Director of the Idaho Department of Water Resources ("IDWR" or "the Department") submits this Supplemental Director's Report Regarding Subcase No. 91-5-57 (Basin-wide Issue 5-57), in accordance with Idaho Code § 42-1412(4) and Administrative Order 1. This report is submitted in response to Special Master Cushman's *Order Requesting Supplemental Director's Report ("706 Report") on General Provision 2 (Reynolds Creek)* and *Order Setting Hearing* dated March 27, 2002 which requests that IDWR submit a Supplemental Director's Report, explaining whether General Provision 2 is necessary to define or efficiently administer the water rights on Reynolds Creek in light of the "excess water" late claims, whether General Provision 2 needs to be modified, how General Provision 2 affects the distribution of water on Reynolds Creek, and the basis of General Provision 2. See Attachment 1 for a map of the Reynolds Creek basin.

This report was prepared under the supervision of Karl J. Dreher, Director, and David R. Tuthill Jr., Adjudication Bureau Chief for IDWR. The following IDWR employees have knowledge of the information contained in portions of this report: Donald V. Shaff, Jan Shurte and David R. Tuthill, Jr., Adjudication Bureau Chief.

II. PROCEDURAL HISTORY

The water rights on Reynolds Creek were initially recommended in the 1992 Director's Report, Part I, Reporting Area 2 (Basin 57). An Amended Director's Report was issued in 1995, pursuant to the 1994 amendments to the adjudication statutes. The

1995 Director's Report amended the preamble of the Basin 57 report which included the general provisions. General Provision 2[1] included language from the "*Stipulation by Certain Defendants for Entry of Decree Adjudication Water Rights*" which was incorporated in the Reynolds Creek Decree, filed March 23, 1988, Third Judicial District of Idaho, Owyhee County. General Provision 2 is provided in Attachment 2.

On December 21, 1995, the SRBA District Court designated Basin-Wide Issue 5 which concerned whether certain general provisions were necessary for the definition of or for the efficient administration of water rights. By Order dated April 26, 1996, the SRBA District Court determined that the general provisions recommended in Basin 57 were not necessary to define or efficiently administer water rights and ruled that the period of use for irrigation rights should be "irrigation season." This decision was appealed and the Supreme Court reversed the decision of the SRBA District Court concerning season of use and remanded the remaining general provisions for evidentiary hearings. *A&B Irrigation District v. Idaho Conservation League,* 131 Idaho 411, 414, 958 P.2d 568, 571 (1998).

In a separate ruling, the SRBA District Court struck from the Director's Report for Basin 57 a general provision regarding "excess flow" water in the Reynolds Creek basin. The State of Idaho and various water users appealed to the Idaho Supreme Court in *State of Idaho, et al. v. Idaho Conservation League, et al.*, 131 Idaho 329, 955 P.2d 1108 (1998). The Court held that the "excess flow" portion of General Provision 2 did

[1]The Amended Director's Report for Basin 57 was filed in 1995 and included 3 General Provisions. General Provision 2 of the Amended Director's Report was taken verbatim from the Stipulation as it was incorporated in the Reynolds Creek decree. Only paragraph numbers 3 though 6 of the Stipulation were incorporated into the Reynolds Creek decree. Subsequently, paragraphs 3 through 6 were incorporated as General Provision 2, and numbered as such, in the Basin 57 Amended Director's Report, filed in 1995.

not establish a water right in the excess water, but that General Provision 2 may be necessary for the administration of water in the Reynolds Creek basin. *Id.* at 333 and 335, 955 P.2d at 1112 and 1114.

III. REYNOLDS CREEK HISTORY

The excess water issue which, in part, developed into General Provision 2, has a long history. The *Bernard* decree of 1899[2] and the *Benson* decree of 1973[3] were used to deliver water in Lower Reynolds Creek. Water was delivered in the Upper Reynolds Creek area according to the *Gifford* decree of 1911[4]. The Reynolds Creek basin was administered as one water district until about 1916 when it was split into two water districts, 57-A, Upper Reynolds Creek, and 57-J, Lower Reynolds Creek.

Disagreement between water users, the use of excess water by the Upper Reynolds Creek users, and the lack of coordination in the delivery of water in the two water districts prompted some of the Lower Reynolds Creek users to petition the Commissioner of Reclamation[5] to consolidate the districts into one. The petition was denied in 1942 due to lack of stream records and information regarding operating conditions.

In 1972, the Department of Water Administration[6] filed a *Petition For Determination of Water Rights* on Reynolds Creek. The District Court, Third Judicial

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[2] *Bernard v. Smith, et al.,* Decree (Idaho 3rd Dist., December 1, 1899).
[3] *Benson et al. v. Brandau, et al.,* Judgment and Decree , Civil Case No. 3353 (Idaho 3rd Dist., September 13, 1973).
[4] *Gifford, et al. v. Babington, et al.,* Decree, Civil Case No. 366 (Idaho 7th Dist., September 11, 1911).
[5] Now known as the Idaho Department of Water Resources (IDWR).
[6] The name was changed to IDWR in 1978.

District, Owyhee County, denied the petition due to lack of showing of public interest and necessity.

After the Benson decree was issued by the court in 1973, some of the Reynolds Creek water users petitioned the Department of Water Administration to operate the creek as one water district under the control of one watermaster. At some point in 1973-1974 and after the *Benson* decree was issued, J.H. Nettleton, an Upper Reynolds Creek water user, filed a lawsuit against the Department of Water Administration challenging, among other things, the Department's administration of Reynolds Creek basin as one water district.

The District Court, Third Judicial District, Owyhee County ruled for the Department upon their Motion for Summary Judgment and stated that it was immaterial whether there were one or two water districts because the watermaster of 57-A (Upper Reynolds Creek) had to recognize the priorities in district 57-J (Lower Reynolds Creek) that were adjudicated, decreed or otherwise legally determined to be valid water rights, *Nettleton v. Higginson*, Memorandum Decision on Defendant's Motion for Summary Judgment at 2, Civil Case No. 3456 (Idaho Third Dist., March 20, 1975).

Nettleton appealed the District Court's decision to the Idaho Supreme Court. The Court held,

> After receiving all of the claims and the evidence supporting such claims, the respondent must then decide whether there are sufficient uncontested rights to develop a workable plan for water distribution. If not, then the respondent should proceed with an adjudication pursuant to I.C. 42-1406 before combining these two districts into one. *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977).[7]

[7] Water Districts 57-A and 57-J were combined by order of the Department issued on December 2, 1975.

The Court further held that decreed and adjudicated rights are superior to constitutional rights in times of shortage and IDWR has authority to create a water district. The Idaho Supreme Court reversed and remanded the case back to the district court to order IDWR to conduct a hearing.

The District Court entered an Order directing IDWR to conduct a public hearing to determine whether an adjudication is necessary to combine the water districts. During the hearing held in 1977, IDWR determined that the existing decrees did not provide sufficient information for orderly water distribution of Reynolds Creek water under one district. Therefore, IDWR decided to proceed with the Reynolds Creek general adjudication.

The Reynolds Creek Adjudication commenced in 1978 and a final decree was issued in 1988. A stipulation between defendants resolved all of the objections by private claimants and was incorporated in the Reynolds Creek decree. A portion of the stipulation was incorporated as Basin 57 General Provision 2 in IDWR's Director's Report filed in the SRBA.

IV. DISCUSSION

This report will discuss whether General Provision 2 is still necessary for the administration of water, and if so, how General Provision 2 will affect water distribution on Reynolds Creek. This report also proposes modifications to General Provision 2.

A. WHETHER GENERAL PROVISION 2 IS NECESSARY FOR THE EFFICIENT ADMINISTRATION OR DEFINITION OF WATER RIGHTS

The legal standard for a general provision is found in Idaho Code § 42-1411(3) which states, "the Director may include such general provisions in the director's report, as the director deems appropriate and proper, to define and to administer all water rights." The requirements are further delineated in Idaho Code § 42-1412(6) which provides in part that "the decree shall also contain an express statement that the partial decree is subject to such general provisions necessary for the definition of the rights, or for the efficient administration of the water rights." This statute was interpreted by the Supreme Court in *A & B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1998). The Supreme Court stated "a general provision should be included in a water right decree if such general provision is 'necessary' to define or efficiently administer water rights." Id. at 414, 958 P.2d at 571. Whether a general provision is "necessary" is a question of law and fact. Id.

Only a portion of General Provision 2 meets the standard for a general provision. General Provision 2 as it was originally recommended by IDWR contains 4 substantive paragraphs. The first paragraph is numbered 3 and paragraph 5 has two subsets, 5(a) and 5(b). A discussion of each of the paragraphs of General Provision 2 is provided below with an analysis regarding whether the specific paragraphs meet the established standards for a general provision. Attachment 3 is a table of the original and modified General Provision 2 in strikeout/underline format.

Paragraph 3 of General Provision 2 – use of excess water

Prior to the SRBA, paragraph 3 of General Provision 2 was needed to protect the Upper Reynolds Creek water users' historic use of the excess water from calls by Lower Reynolds Creek water users. This provision ensured that the Upper Reynolds Creek water users did not exceed their historic use of the excess water, thereby injuring Lower Reynolds Creek water users. However, late claims for excess water rights were filed by Upper Reynolds Creek water users and recommended by IDWR in the SRBA.[8] Included in IDWR's recommendations of these excess water rights are specific conditions about when the water right is deliverable.[9] These excess water rights are not deliverable unless the weir measurements that are found in the excess water recommendations are met. Inclusion of this language in the pertinent water right obviates the need to include this paragraph as a general provision.

Paragraph 4 of General Provision 2 – when the watermaster may be called

Paragraph 4 describes when the watermaster may be called in the Reynolds Creek basin. Idaho Code §§ 42-602 – 619 governs the creation of water districts and the duties of the watermaster. The statutes provide sufficient detail regarding the watermaster's duties. A water district (District 57-R) already exists for the Reynolds Creek basin. Therefore, paragraph 4 of General Provision 2 is no longer needed.

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[8] The following excess water right late claims were filed and recommended by IDWR: 57-11557, 57-11558, 57-11559, 57-11560, 57-11561, 57-11562, 57-11563, 57-11564, 57-11571, 57-11572, 57-11573, 57-11574, 57-11593 and 57-11594.

[9] The following language is found in the excess water recommendations under Other Provisions Necessary For Definition Or Administration Of This Water Right: "This Right Shall Not Be Delivered If The Flow At The Upper Basin Tollgate Weir (T03S, R04W, S24, SESW) Is At Or Less Than 37 cfs, Or The Flow At The Outlet Weir (T02S, R04W, S12, NESE) Is At Or Less Than 57 cfs."

Paragraph 5(a) of General Provision 2 – storage of Reynolds Creek water

Paragraph 5(a) describes the procedures that governed storage of Reynolds Creek water, and particularly, storage of excess water. This paragraph is no longer needed because the excess water rights recommended in the SRBA do not include storage rights. In addition, Idaho Code §§ 42-201 - 248 control the permit application and protest conditions that are described in the remainder of this paragraph.

Paragraph 5(b) of General Provision 2 – rotation practice

Paragraph 5(b) of General Provision 2 describes a historical rotation practice for irrigation during times of water shortage. The rotation practice should be preserved as a Basin 57 General Provision and is discussed in more detail later in the report.

Paragraph 6 of General Provision 2 – Junayo Ranch storage rights

Paragraph 6 discusses when Junayo Ranch (an Upper Reynolds Creek user) has the right to divert water for storage during the irrigation season under its decreed water rights 57-2325 and 57-7040 and its permit numbers 57-7454, 57-7472, and 57-7473. This paragraph is no longer needed as a Basin 57 General Provision because Paragraph 6 is included in its entirety in the recommendations for water right numbers 57-2325 and 57-7040. Permit numbers 57-7454, 57-7472 and 57-7473, for which the proofs of beneficial use were filed after the commencement of the SRBA and therefore, are not part of the SRBA, are being finalized administratively. The storage component of Paragraph 6 will be incorporated in the licensed rights, further making this general provision unnecessary.

B. HOW GENERAL PROVISION 2 WILL AFFECT WATER DISTRIBUTION ON REYNOLDS CREEK

Water distribution in the Reynolds Creek basin will not be adversely affected by the proposed change to the original general provision because all sections of the former General Provision 2 except Paragraph 5(b) are either governed by Idaho statute or IDWR administrative procedures, or are incorporated into the SRBA in the individual water right. Former Paragraph 5(b) should remain as a general provision as modified below. If the modified General Provision 2 is adopted, the intent of the Reynolds Creek Adjudication and the irrigation practice developed by water users for nearly 100 years in the Reynolds Creek basin are preserved.

C. PROPOSED MODIFICATIONS TO GENERAL PROVISION 2

General Provision 2 is necessary and proper and should be included for Basin 57 as modified below[10]:

A historical practice of rotation irrigation during times of water shortage has allowed for more efficient use of water in the Reynolds Creek basin. This practice applies only to a water right that has more than one point of diversion, or to contiguous parcels of property owned by the same person(s) or entity where there are multiple water rights with multiple points of diversion. Under these conditions, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights and applied to a place of use decreed for multiple water rights, so long as the places of use are contiguous and owned by the same owner. The amount of water that may be diverted is determined according to the specific water right's priority. This practice results in the point of diversion or the place of use for a specific water right or multiple water rights owned by the same person(s) or entity being different from the point of diversion and/or the place of use listed in the Director's Report.

[10] See Attachment 3 for a table of the original and modified General Provision 2.

The rotation practice described above is unique to the Reynolds Creek basin and provides for the most efficient use of water during times of water shortage. Tributaries in the surrounding hills and mountains comprise the source of water for Reynolds Creek. There are periods of time during each year when there is insufficient water flowing in Reynolds Creek to satisfy the water rights in the Reynolds Creek basin.

The rotation practice set forth in modified General Provision 2 allows a water right owner to use the water when available anywhere on his property provided it is part of a contiguous place of use recommended under any of his water rights. The rotation practice also allows the water right owner to divert from any of his points of diversion, which are most practical and efficient though they may deviate from what is recommended for an individual water right. This rotation practice has occurred for decades.

Modified General Provision 2 meets the standard for general provisions as established by statute and case law because it both defines the water rights and is necessary for the efficient administration of the water rights within the Reynolds Creek basin. This general provision further defines the water rights because it allows a water right to be diverted from a point of diversion that may differ from the point of diversion associated with that water right. It also further defines the water rights because it allows a water right to be used on a different place of use than the place of use specifically recommended for that water right.

Included as Attachment 4 is a complete set of the General Provisions the Department recommends be included in the Basin 57 decrees. The Order of Partial Decree for the General Provision on Connected Sources in Basin 57 was issued February

27, 2002 and IDWR includes it as General Provision 1 in Attachment 4 for illustrative purposes only. Only General Provision 2 as modified herein is being recommended at this time.

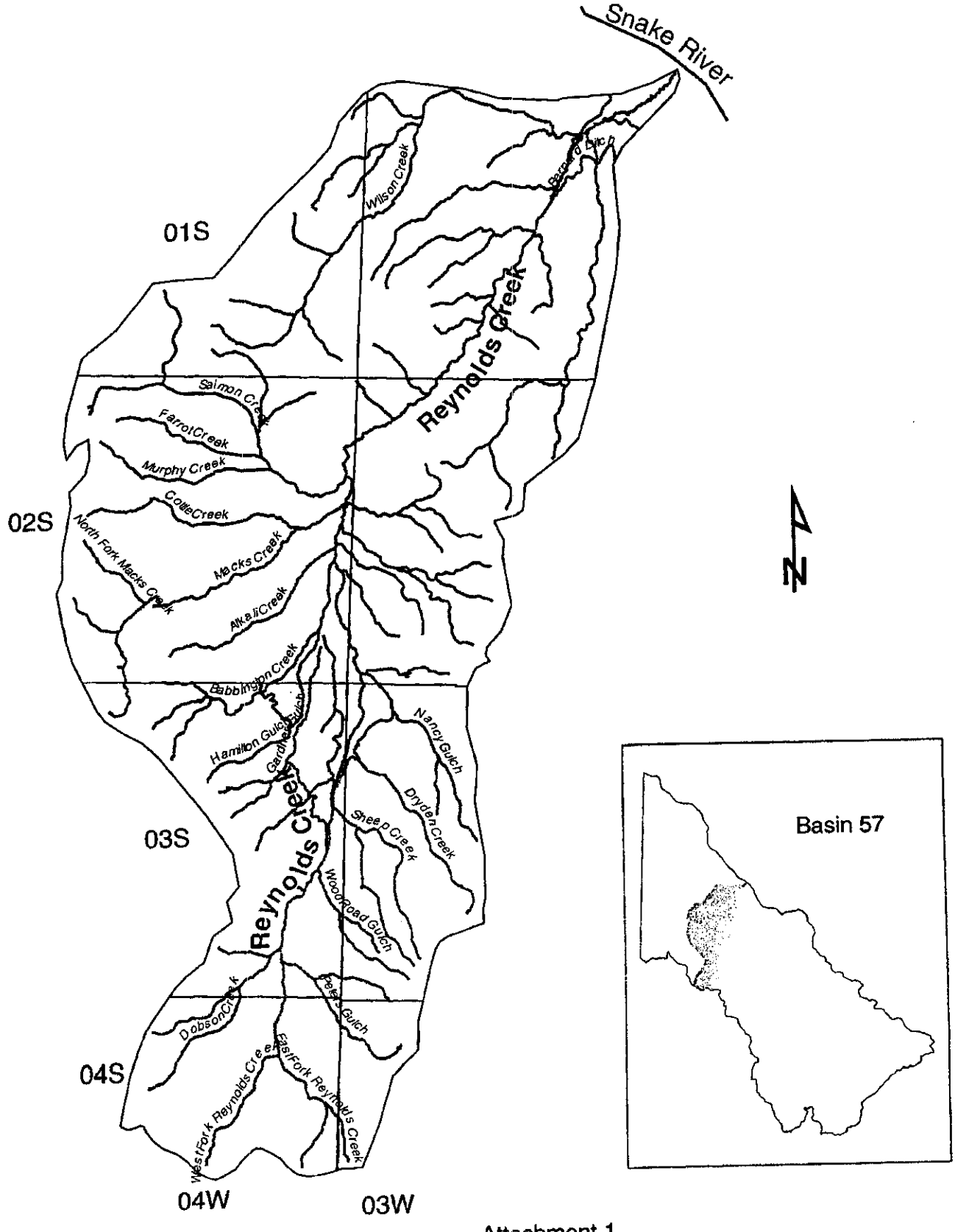
V. CONCLUSION

Decades of contention between the Lower and Upper Reynolds Creek water users culminated in the stipulation incorporated in the Reynolds Creek final decree and ultimately in the Director's Report Basin 57 General Provision 2. Many of the procedures described in General Provision 2 are currently governed by Idaho statute and IDWR procedures. To further protect the water users and facilitate the administration of water distribution within the Reynolds Creek basin, sections of General Provision 2 have been incorporated in the Director's Reports of individual water rights. Therefore, General Provision 2 is no longer necessary in its original form. However, Paragraph 5(b) of General Provision 2 (as modified above), which describes the historical rotation practice, is necessary for the definition of the water rights and for the efficient administration of water rights within the Reynolds Creek basin.

Submitted this 14 day of June, 2002.

Donald V. Shaff
Adjudication Supervisor

Reynolds Creek Drainage Basin



Attachment 1

GENERAL PROVISION 2: ADMINSITRATION OF RIGHTS TO WATER FROM THE REYNOLDS CREEK WATER SYSTEM.

The following language is from the "Stipulation by Certain Defendants for Entry of Decree Adjudicating Water Rights", incorporated in the decree filed March 23, 1988, in the Reynolds Creek Adjudication, Owyhee County Civil No. 3456. The boundaries of the Reynolds Creek water system are shown in Figure 1. This language addresses the administration of water rights from the Reynolds Creek water system and was included verbatim herein [explanatory language is added in brackets]:

3. There shall be two different methods of administering the water rights in Reynolds Creek, dependent upon whether there is "excess" water in Reynolds Creek at a given time, with "excess" water being defined as the amount of water in excess of 37 cfs flowing in Reynolds Creek at the Upper Basin Tollgate weir, hereinafter identified, at any time when the flow at the Outlet weir, hereinafter identified, is more than 57 cfs. The Upper Basin Tollgate weir is located on Reynolds Creek in the SE¼SW¼ of Section 24, Township 3 South, Range 4 West, B.M., and the Outlet weir is located on Reynolds Creek in the NE¼SE¼ of Section 12, Township 2 South, Range 4 West, B.M., Owyhee County, Idaho.

(a) Distribution During Periods of Water Shortage. During any period when the flow at the Upper Basin Tollgate weir is at or less than 37 cfs, or the flow at the Outlet weir is at or less than 57 cfs, the Upper Reynolds Creek Basin and the Lower Reynolds Creek Basin shall be administered as one water district under one watermaster, in accordance with the water rights set forth in the Findings [list of recommended water rights for the Reynolds Creek water system, and any subsequent permits or licenses which have been or may be issued by the Department of Water Resources.

(b) Distribution During Periods of Excess Water. When the flow of water at the Outlet weir is more than 57 cfs, the Lower Users shall not have the right to object to the diversion by the Upper Users of water in excess of the amounts specified for their respective water rights in the Findings, or to require that the Upper Users limit their diversions to the amounts specified for their respective water rights in the Findings. The intent of this provision is that the Upper Users shall have the first opportunity to use "excess" water, so long as the flow of water at the Outlet weir is more than 57 cfs.

4. A watermaster may be called on at any time during the irrigation season, notwithstanding that there may be "excess" water flowing in Reynolds Creek at or above the Outlet weir.

5(a). The Upper Users shall not store excess water during the irrigation season, except as such storage is authorized and recognized in the Findings, or storage for which licenses are subsequently issued under water permits numbers 57-7400, 57-7454, 57-7472 or 57-7473 to the extent, if any, that those permits authorize storage during the irrigation season, and Junayo Ranch Limited Partnership (Junayo Ranch), holder of those permits, acknowledges that no excess water feature or element is included in or authorized by those permits. The Upper Users shall not increase the capacities of their diversion facilities or their storage facilities as the capacities of those facilities existed on June 22, 1987, or were authorized by water permits issued, or applications for permits filed with the Director, prior to October 14, 1987. Any Lower User who makes an application for permit to appropriate waters of Reynolds Creek for storage purposes shall not have the right to

require any Upper User to cease diverting any "excess" water in order to satisfy the new storage right which might be acquired pursuant to any such application. The Lower Users reserve the right, among themselves, to protest any application by another Lower User for a permit to appropriate water of Reynolds Creek for storage purposes. The intent of this paragraph, as between the Upper Users and the Lower Users, is to furnish the Lower Users an opportunity to store any "excess" water, as defined herein, which remains available when the Upper Users are diverting water to the extent of the capacity of their presently existing facilities. The parties to this Stipulation do not intend hereby to establish or set the priorities or quantities of any rights to excess water, or to establish that any presently perfected right does or does not include or authorize the use of excess water.

5(b). The parties to this Stipulation acknowledge an historical practice of rotation irrigation during times of water shortage. Where a water right has more than one point of diversion, or where there are multiple water rights with multiple points of diversion in a single ownership, the amount of water that may be diverted is determined according to priority. However, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights in a single-land ownership. This practice results in the point of diversion or the place of use for specific water right in a single-land ownership being different from the point of diversion and/or the place of use listed in the Director's findings. However, the water is diverted and applied to a point of diversion and place of use listed for that single ownership in the Director's findings. A single ownership is to be determined based upon contiguous places of use decreed to a single entity in this adjudication. This practice has allowed for the more efficient use of the water during times of shortage on the ranches as they are now owned. This practice will not be disturbed by the parties to this Stipulation.

6. Junayo Ranch, for itself and as successor in interest to C. T. Ranch Company and Junayo Ranch Company, former Upper Users, agrees that its water rights other than No. 57-2325 and No. 57-7040 do not entitle it to divert water to storage during the irrigation season, even though it may be physically possible to divert water into its storage facilities during the irrigation season, and that no diversion to storage is authorized under their rights Nos. 57-2325 and 57-7040 during the irrigation season unless all prior water rights on Reynolds Creek are being satisfied. Junayo Ranch further agrees that (1) storage capacity under permit No. 57-7454 shall not exceed twenty-five acre feet per annum (25 AFA) [AFY], (2) storage under any permit issued pursuant to application No. 57-7473 shall not exceed fifty acre feet per annum (50 AFA), (3) storage under permit No. 57-7454 combined with storage under any permit issued pursuant to application No. 57-7473 shall not exceed seventy-five acre feet per annum (75 AFA), and storage under any permit issued pursuant to application No. 57-7472 shall not exceed ten acre feet per annum (10 AFA) for the storage pond identified in that application, and Junayo Ranch further agrees that the condition or conditions imposed by the Director of the Idaho Department of Water Resources in any water permit now held by Junayo Ranch, or in any permit issued to Junayo Ranch pursuant to an application identified in this Stipulation, or any condition with respect to any such water permit, now held or hereafter issued to Junayo Ranch, imposed by this Stipulation or by an agreement between it and all of the other parties to this Stipulation, shall be carried forward into any supplemental decree entered in this action or any decree entered in any other action adjudicating the rights to the use of the waters of Reynolds Creek.

TABLE OF BASIN 57 GENERAL PROVISION 2 –ORIGINAL AND MODIFIED

Basin 57 General Provisions 2 [1]	Proposed Modified Basin 57 General Provision 2
The following language is from the "Stipulation by Certain Defendants for Entry of Decree Adjudicating Water Rights", incorporated in the decree filed March 23, 1988, in the Reynolds Creek Adjudication, Owyhee County Civil No. 3456. The boundaries of the Reynolds Creek water system are shown in Figure 1. This language addresses the administration of water rights from the Reynolds Creek water system and is included verbatim herein [explanatory language is added in brackets]:	~~The following language is from the "Stipulation by Certain Defendants for Entry of Decree Adjudicating Water Rights", incorporated in the decree filed March 23, 1988, in the Reynolds Creek Adjudication, Owyhee County Civil No. 3456. The boundaries of the Reynolds Creek water system are shown in Figure 1. This language addresses the administration of water rights from the Reynolds Creek water system and is included verbatim herein [explanatory language is added in brackets]:~~
3(a). Distribution During Periods of Water Shortage. During any period when the flow at the Upper Basin Tollgate weir is at or less than 37 cfs, or the flow at the Outlet weir is at or less than 57 cfs, the Upper Reynolds Creek Basin and the Lower Reynolds Creek Basin shall be administered as one water district under one watermaster, in accordance with the water rights set forth in the Findings [list of recommended water rights for the Reynolds Creek water system], and any subsequent permits or licenses which have been or may be issued by the Department of Water Resources. [Upper and Lower Reynolds Creek Basins are illustrated in Figure 1.]	~~3(a). Distribution During Periods of Water Shortage. During any period when the flow at the Upper Basin Tollgate weir is at or less than 37 cfs, or the flow at the Outlet weir is at or less than 57 cfs, the Upper Reynolds Creek Basin and the Lower Reynolds Creek Basin shall be administered as one water district under one watermaster, in accordance with the water rights set forth in the Findings [list of recommended water rights for the Reynolds Creek water system], and any subsequent permits or licenses which have been or may be issued by the Department of Water Resources. [Upper and Lower Reynolds Creek Basins are illustrated in Figure 1.]~~
3(b). Distribution During Periods of Excess Water. When the flow of water at the Outlet weir is more than 57 cfs, the Lower Users shall not have the right to object to the diversion by the Upper Users of water in excess of the amounts specified for their respective water rights in the Findings. The intent of this provision is that the Upper Users shall have the first opportunity to use "excess" water, so long as the flow of water at the Outlet weir is more than 57 cfs.	~~3(b). Distribution During Periods of Excess Water. When the flow of water at the Outlet weir is more than 57 cfs, the Lower Users shall not have the right to object to the diversion by the Upper Users of water in excess of the amounts specified for their respective water rights in the Findings. The intent of this provision is that the Upper Users shall have the first opportunity to use "excess" water, so long as the flow of water at the Outlet weir is more than 57 cfs.~~
4. A watermaster may be called on at any time during the irrigation season, notwithstanding that there may be "excess" water flowing in Reynolds Creek at or above the Outlet weir.	~~4. A watermaster may be called on at any time during the irrigation season, notwithstanding that there may be "excess" water flowing in Reynolds Creek at or above the Outlet weir.~~
5(a). The Upper Users shall not store excess water during the irrigation season, except as such storage is authorized and recognized in the Findings, or storage for which licenses are subsequently issued under water permits numbers 57-7400, 57-7454, 57-7472 or 57-7473 to the extent, if any, that those permits authorize storage during the irrigation season, and Junayo Ranch Limited Partnership (Junayo Ranch), holder of those permits, acknowledges that no excess water feature or element is included in or authorized by those permits. The Upper Users shall not increase the capacities of their diversion facilities or their storage facilities as the capacities of those	~~5(a). The Upper Users shall not store excess water during the irrigation season, except as such storage is authorized and recognized in the Findings, or storage for which licenses are subsequently issued under water permits numbers 57-7400, 57-7454, 57-7472 or 57-7473 to the extent, if any, that those permits authorize storage during the irrigation season, and Junayo Ranch Limited Partnership (Junayo Ranch), holder of those permits, acknowledges that no excess water feature or element is included in or authorized by those permits. The Upper Users shall not increase the capacities of their diversion facilities or their storage facilities as the capacities of those~~

[1] Only paragraph numbers 3 though 6 of the Stipulation were incorporated into the Reynolds Creek decree. Subsequently, paragraphs 3 through 6 were incorporated as General Provision 2, and numbered as such, in the Basin 57 Amended Director's Report, filed in 1995.

facilities existed on June 22, 1987, or were authorized by water permits issued, or applications for permits filed with the Director, prior to October 14, 1987. Any Lower User who makes an application for permit to appropriate waters of Reynolds Creek for storage purposes shall not have the right to require any Upper User to cease diverting any "excess" water in order to satisfy the new storage right which might be acquired pursuant to any such application. The Lower Users reserve the right, among themselves, to protest any application by another Lower User for a permit to appropriate water of Reynolds Creek for storage purposes. The intent of this paragraph, as between the Upper Users and the Lower Users, is to furnish the Lower Users an opportunity to store any "excess" water, as defined herein, which remains available when the Upper Users are diverting water to the extent of the capacity of their presently existing facilities. The parties to this Stipulation do not intend hereby to establish or set the priorities or quantities of any rights to excess water, or to establish that any presently perfected right does or does not include or authorize the use of excess water.

5(b). The parties to this Stipulation acknowledge an historical practice of rotation irrigation during times of water shortage. Where a water right has more than one point of diversion, or where there are multiple water rights with multiple points of diversion in a single ownership, the amount of water that may be diverted is determined according to priority. However, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights in a single land ownership. This practice results in the point of diversion or the place of use for specific water right in a single land ownership being different from the point of diversion and/or the place of use listed in the Director's findings. However, the water is diverted and applied to a point of diversion and place of use listed for that single ownership in the Director's findings. A single ownership is to be determined based upon contiguous places of use decreed to a single entity in this adjudication. This practice has allowed for the more efficient use of the water during times of shortage on the ranches as they are now owned. This practice will not be disturbed by the parties to this Stipulation.

6. Junayo Ranch, for itself and as successor in interest to C. T. Ranch Company and Junayo Ranch Company, former Upper Users, agrees that its water rights other than No. 57-2325 and No. 57-7040 do not entitle it to divert water to storage during the irrigation season, even though it may be physically possible to divert water into its storage facilities during the irrigation season, and that no diversion to storage is authorized under their rights Nos. 57-2325 and 57-7040 during the irrigation season unless all prior water rights on Reynolds Creek are being satisfied. Junayo Ranch further agrees that (1) storage capacity under permit No. 57-7454 shall not exceed twenty-five acre feet per annum (25 AFA) [AFY], (2) storage under any permit issued pursuant to application No. 57-7473 shall not exceed fifty acre feet per annum (50 AFA), (3) storage under permit No. 57-7454 combined with

~~facilities existed on June 22, 1987, or were authorized by water permits issued, or applications for permits filed with the Director, prior to October 14, 1987. Any Lower User who makes an application for permit to appropriate waters of Reynolds Creek for storage purposes shall not have the right to require any Upper User to cease diverting any "excess" water in order to satisfy the new storage right which might be acquired pursuant to any such application. The Lower Users reserve the right, among themselves, to protest any application by another Lower User for a permit to appropriate water of Reynolds Creek for storage purposes. The intent of this paragraph, as between the Upper Users and the Lower Users, is to furnish the Lower Users an opportunity to store any "excess" water, as defined herein, which remains available when the Upper Users are diverting water to the extent of the capacity of their presently existing facilities. The parties to this Stipulation do not intend hereby to establish or set the priorities or quantities of any rights to excess water, or to establish that any presently perfected right does or does not include or authorize the use of excess water.~~

~~5(b) The parties to this Stipulation acknowledge an~~ An historical practice of rotation irrigation during times of water shortage has allowed for more efficient use of water in the Reynolds Creek basin. This practice applies only to ~~Where~~ a water right that has more than one point of diversion, or to contiguous parcels of property owned by the same person(s) or entity where there are multiple water rights with multiple points of diversion ~~in a single ownership, the amount of water that may be diverted is determined according to priority~~. Under these conditions ~~However~~, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights ~~in a single land ownership~~ and applied to a place of use decreed for multiple water rights, so long as the places of use are contiguous and owned by the same owner. The amount of water that may be diverted is determined according to the specific water right' s priority. This practice results in the point of diversion or the place of use for specific water right or multiple water rights owned by the same person(s) or entity ~~in a single land ownership~~ being different from the point of diversion and/or the place of use listed in the Director's Report findings. ~~However, the water is diverted and applied to a point of diversion and place of use listed for that single ownership in the Director's findings. A single ownership is to be determined based upon contiguous places of use decreed to a single entity in this adjudication. This practice has allowed for the more efficient use of the water during times of shortage on the ranches as they are now owned. This practice will not be disturbed by the parties to this Stipulation.~~

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storage under any permit issued pursuant to application No. 57-7473 shall not exceed seventy-five acre feet per annum (75 AFA), and storage under any permit issued pursuant to application No. 57-7472 shall not exceed ten acre feet per annum (10 AFA) for the storage pond identified in that application, and Junayo Ranch further agrees that the condition or conditions imposed by the Director of the Idaho Department of Water Resources in any water permit now held by Junayo Ranch, or in any permit issued to Junayo Ranch pursuant to an application identified in this Stipulation, or any condition with respect to any such water permit, now held or hereafter issued to Junayo Ranch, imposed by this Stipulation or by an agreement between it and all of the other parties to this Stipulation, shall be carried forward into any supplemental decree entered in this action or any decree entered in any other action adjudicating the rights to the use of the waters of Reynolds Creek.	~~diversion to storage is authorized under their rights Nos. 57-2325 and 57-7040 during the irrigation season unless all prior water rights on Reynolds Creek are being satisfied. Junayo Ranch further agrees that (1) storage capacity under permit No. 57-7454 shall not exceed twenty-five acre feet per annum (25 AFA) [AFY], (2) storage under any permit issued pursuant to application No. 57-7473 shall not exceed fifty acre feet per annum (50 AFA), (3) storage under permit No. 57-7454 combined with storage under any permit issued pursuant to application No. 57-7473 shall not exceed seventy-five acre feet per annum (75 AFA), and storage under any permit issued pursuant to application No. 57-7472 shall not exceed ten acre feet per annum (10 AFA) for the storage pond identified in that application, and Junayo Ranch further agrees that the condition or conditions imposed by the Director of the Idaho Department of Water Resources in any water permit now held by Junayo Ranch, or in any permit issued to Junayo Ranch pursuant to an application identified in this Stipulation, or any condition with respect to any such water permit, now held or hereafter issued to Junayo Ranch, imposed by this Stipulation or by an agreement between it and all of the other parties to this Stipulation, shall be carried forward into any supplemental decree entered in this action or any decree entered in any other action adjudicating the rights to the use of the waters of Reynolds Creek.~~

BASIN 57 GENERAL PROVISIONS

The director recommends that the following general provisions be included in the decree determining rights to water from Basin 57:[1]

1. The following water rights from the following sources of water in Basin 57 shall be administered separately from all other water rights in Basin 57 in accordance with the prior appropriation doctrine as established by Idaho law:

Water Right No.	Source
None	None

The following water rights from the following sources of water in Basin 57 shall be administered separately from all other water rights in the Snake River Basin 57 in accordance with the prior appropriation doctrine as established by Idaho law:

Water Right No.	Source
None	None

Except as otherwise specified above, all other water rights with Basin 57 will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law.

2. A historical practice of rotation irrigation during times of water shortage has allowed for more efficient use of water in the Reynolds Creek basin. This practice applies only to a water right that has more than one point of diversion, or to contiguous parcels of property owned by the same person(s) or entity where there are multiple water rights with multiple points of diversion. Under these conditions, the full amount of water diverted may be diverted through less than all of the points of diversion decreed for the water right or less than all of the points of diversion decreed for multiple water rights and applied to a place of use decreed for multiple water rights, so long as the places of use are contiguous and owned by the same owner. The amount of water that may be diverted is determined according to priority. This practice results in the point of diversion or the place of use for a specific water right or multiple water rights owned by the same person(s) or entity being different from the point of diversion and/or the place of use listed in the Director's Report.

[1] The Order of Partial Decree for Connected Sources is Basin 57 was issued February 27, 2002 and IDWR includes the general provision here as General Provision 1 for illustrative purposes only.

CERTIFICATE OF MAILING

I certify that on June 14, 2002 I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010

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

William and Beatrice Boston
Represented by:
James C. Burnham
P.O. Box 699
161 E. Mallard Dr Ste A
Boise, ID 83701-0699

Jerry Hoagland
Seven High Ranch Inc
Represented by:
John T. Schroeder
P.O. Box 267
Boise, ID 83701-0267

United States of America
Represented by:
United States Dept of Justice
Environment & Natural Resource
550 West Fort Street, MSC 033
Boise, ID 83724

Earle G. Foote Jr.
Foote, Patricia B.
HC 79 Box 52
Melba, ID 83641

W. Keith Goering II
Goering, Linda L.
HC 79 Box 86
Melba, ID 83641

Paul L. Jesenko
HC 79
Melba, ID 83641

Seven High Ranch Inc.
HC 79 Box 44
Melba ID 83641

Paul & Wanda Jesenko
Hc 79 Box 46
Melba, ID 83641

Ethel & Dan W. Hall
HC 79 Box 48
Melba, ID 83641

Richard H & Connie M. Brandau
HC 79 Box 61
Melba, ID 83641

Betty B. & Henry Brandau
Brandau Farms
HC 79 Box 66
Melba, ID 83641

Sandra J. & Jerry L. Benson
Thomas & Alvin Benson
HC 79 Box 94
Melba, ID 83641

John Romero
HC 88, Box 1045
Murphy, ID 83650

Tom Hook
HC 88 Box 1095
Murphy, ID 83650

Trans Continental Transport In
P.O. Box 7583
Boise, ID 83707

Junayo Ranch Limited Partnership
Junayo Ranch LTD Partnership
1087 River St STE 230
Boise, ID 83702

William A & Beatrice E. Boston
1303 Jackson St
Boise, ID 83705

George & Patricia Earll
J. Lavar & Janet B. Young
HC 79 Box 58
Melba, ID 83641

Walter Smith
HC 79 Box 64
Melba, ID 83641

Calvin C. Johnston
HC 79 Box 88
Melba, ID 83641

Edgar C.Muller
HC 79 Box 94A
Melba, ID 83641

Edgar C. Muller
Gerald E. Muller
Gladys M. Muller
Nelma A. Muller
HC 79 Box 94A
Melba, ID 83641

Bruce & Terry L. Reuck
HC 88 Box 1045
Murphy, ID 83650

Thomas Benson
HC 88 Box 1050
Murphy, ID 83650

Director of IDWR
P O Box 83720
Boise, ID 83720-0098

Austin Melton
1127 N. Custer
Wichita, KS 67203

Elias & Inez Jaca
817 Blaine Ave.
Nampa, ID 83651

Ann E. McKee
812 14th Avenue South
Nampa, ID 83651

Signature of person or attorney mailing the form

Lester, Steve

From: Lester, Steve
Sent: Friday, December 12, 2003 2:47 PM
To: Shaff, Don
Subject: Seeking guidance on Reynolds Creek & Basin 57 General Provision #10

Don:

I'm writing to you since Jan said you are our expert on Reynolds Creek. I will conduct a prehearing conference on 12/18/03 for Junayo Ranch Application 57-11629. The application was filed in May 2003 based on a water complaint and NOV handled by Western Region. The application seeks about 12 af of year around storage for 3 small stock/wildlife ponds on Macks Creek just below the Macks Creek Reservoir authorized under older rights held by Junayo Ranch. Basically the small ponds will collect water below the existing Macks Creek Reservoir and will have a bypass ditch system for the watermaster to route water around the 3 ponds as needed to satisfy senior downstream rights.

My questions to you are:

1) Have the 10/9/92 General Provisions for Basin 57 been revised since then?

2) Is it correct to assume the 1992 provisions were in effect around 1988 when the "green book" of the Reynolds Creek Decree was issued? Meaning that the language of provision 10 was governing new storage proposals initiated after 1987 or 1988?

2) Do you agree that Provision #10 with respect to storage in upper part of Reynolds Creek means don't expand 1987 existing facilities or ones proposed by 1987 but ok to seek new facilities under new priorities provided that a new storage facility is only *filled during the non-irrigation season* (emphasis added) - specifically see section 10.5(a)?

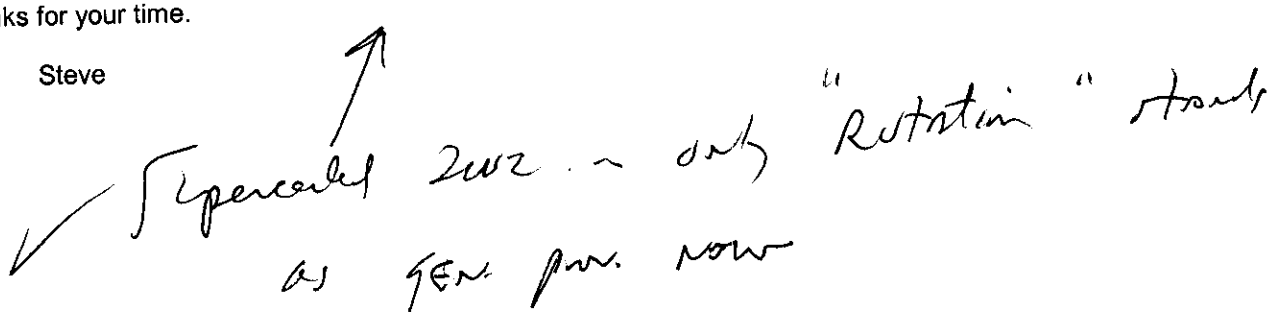
IDWR has approved new storage in upper part of the drainage. For example, Junayo Ranch 57-7525 with 1990 priority and 57-7583 with 1994 priority for new storage at Macks Creek Reservoir noted above. Both of those rights provide a non-irrigation season period to fill the reservoir, consistent with the first sentence of section 10.5(a). It appears year around storage in 57-11629 is not approvable but filling the ponds during the non-irrigation season conceivably could be approved. During the irrigation season, any excess water entering the new ponds would have to flow through for downstream users.

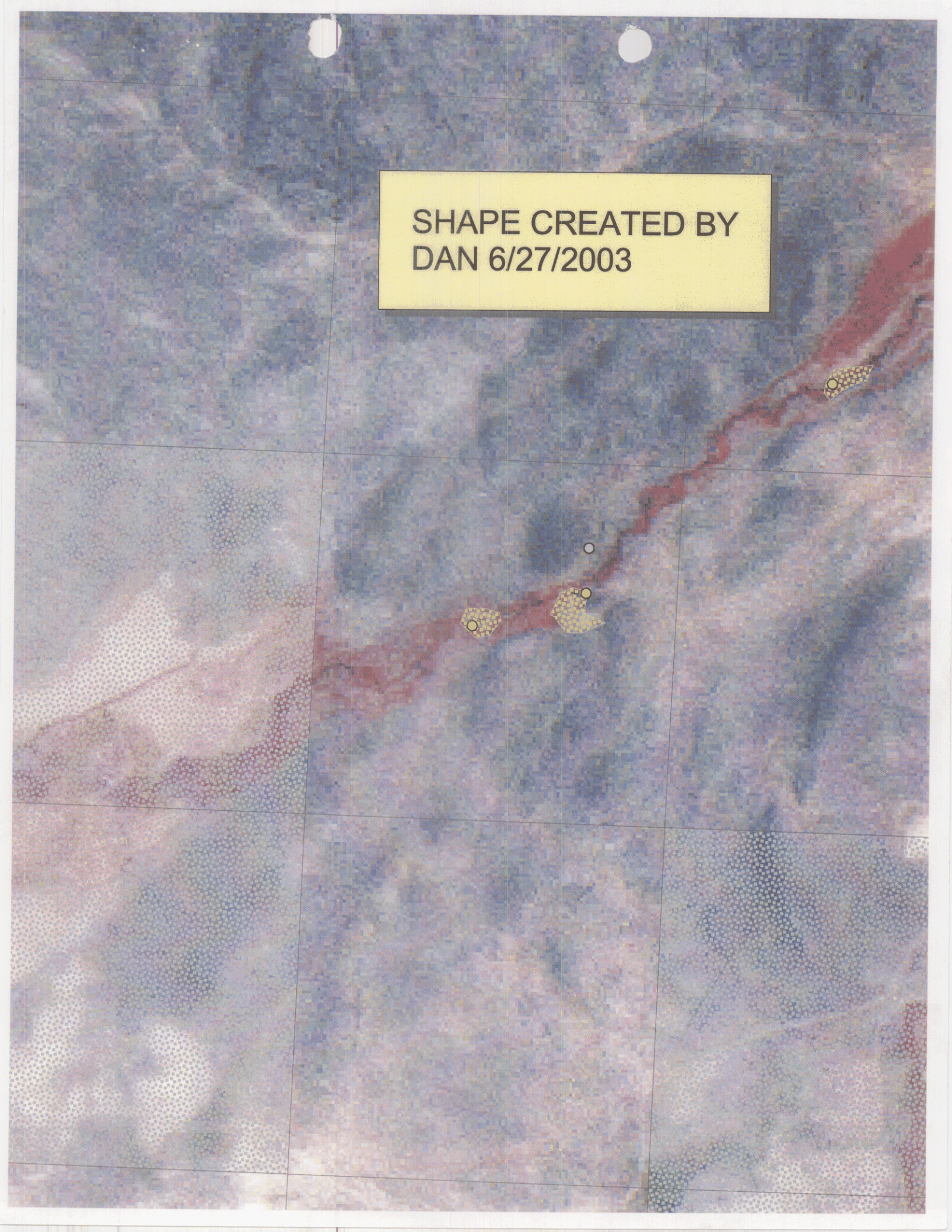
Is this a correct interpretation of provision 10? Given that our emails are public record, it seems prudent to add that your answer should not be considered a pre-determination that the application should or should not be approved ... the application process will ultimately resolve the issues.

Any guidance you can provide before December 18 will be very helpful. Please feel free to consult Allocation &/or Adjudication Bureau Chiefs &/or legal staff if that would be helpful.

Thanks for your time.

Steve

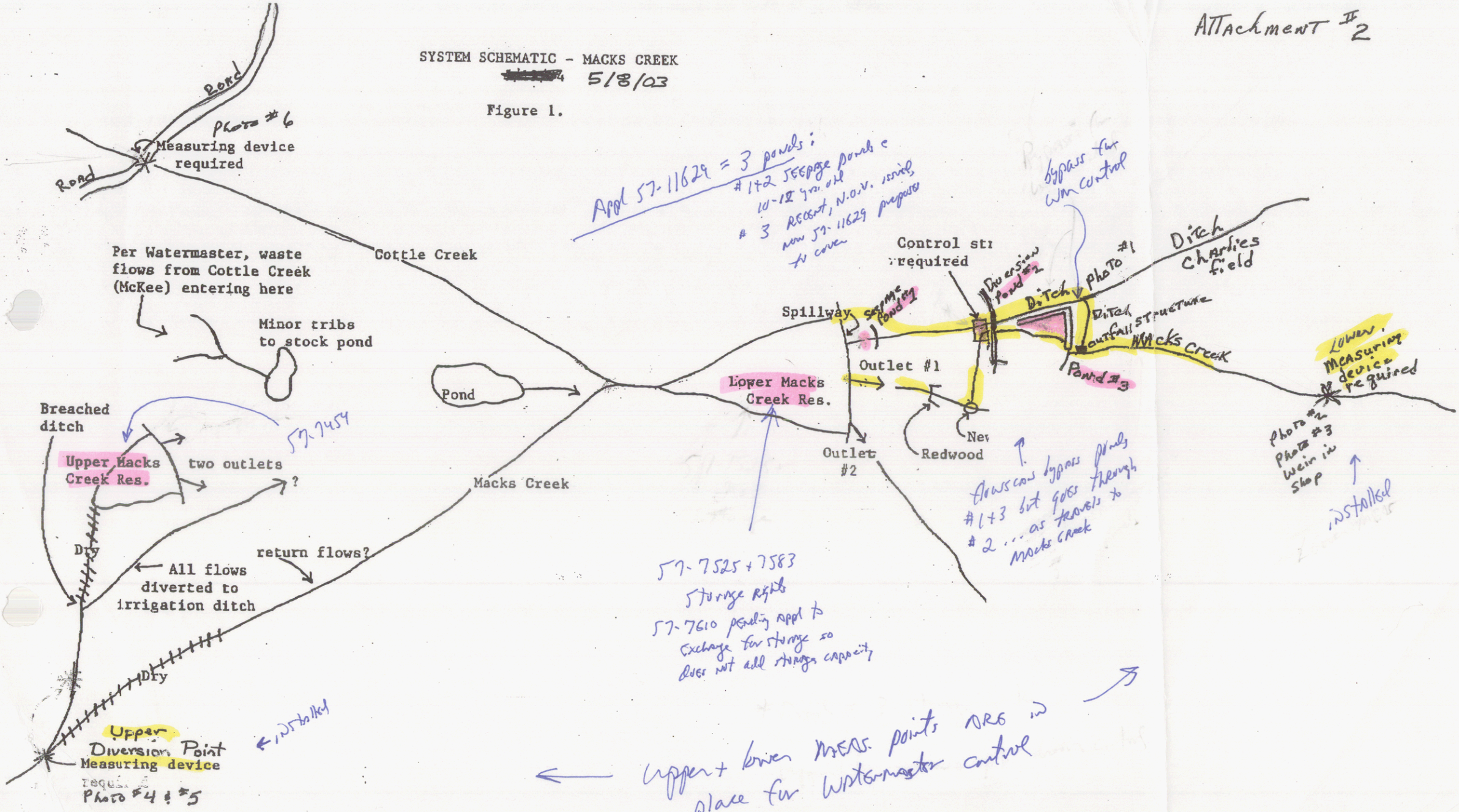



SHAPE CREATED BY
DAN 6/27/2003

ATTACHMENT #2

SYSTEM SCHEMATIC - MACKS CREEK
[redacted] 5/8/03

Figure 1.



State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 23, 2003

Owen H. Orndorff
Junayo Ranch Limited Partnership
1087 West River Street
Suite 230
Boise, Idaho 83702

RE: Notice of Violation # 57-S-38
Idaho Code § 42-3803, § 42-351, and § 42-1701B

Dear Mr. Orndorff:

The Idaho Department of Water Resources (IDWR) has determined that Junayo Ranch Limited Partnership and/or Owen H. Orndorff (Junayo) are in violation of: (1) Idaho Code § 42-3801 *et seq.* (Stream Protection Act) and (2) Idaho Code § 42-351(Illegal Diversion & Use of Water). The violations are associated with (1) the causing of unauthorized fill material to be deposited below the ordinary high water mark in Macks Creek, tributary to Reynolds Creek, within Section 13, Township 02S, Range 04W; (2) alteration of a stream channel without a permit; and (3) the diversion of water to and/or impoundment of water behind three dams built in Macks Creek without a water right. The above-described action(s) constitutes a violation of I.C. § 42-3803. Without modifications to the constructed facilities, the watermaster for water district no. 57-A cannot properly deliver water to other users diverting water from Reynolds Creek.

Under Idaho Code § 42-1701B, the director of IDWR may commence an administrative enforcement action to restore the area where construction occurred, mitigate for damages to stream banks and other water rights, and assess a monetary civil penalty not to exceed $10,000.00 to remedy the damage caused by the violation.

Therefore, pursuant to Idaho Code § 42-1701B, IDWR requires that Junayo complete the following:

(1) Install a weir at the upper Macks Creek diversion on or before Friday, May 30, 2003.

(2) Remove all necessary boards from the Cottle Creek check structure (at the road crossing) for flow measurement by May 30, 2003. Junayo will permanently repair the pipe in the fall of 2003.

(3) Armor/stabilize the by-pass ditch outfall structure (parallels lower embankment downstream) where water delivered to satisfy downstream rights discharges back into Macks Creek. The construction related to the bypass outfall structure must be completed by May 30, 2003.

(4) Install the lower weir in Macks Creek just downstream from the bypass ditch outfall structure at the location identified during the May 8, 2003 field inspection with IDWR and the watermaster. The temporary installation must be completed on or before May 30, 2003. The lower weir shall be permanently installed during the fall of 2003.

(5) Rock armor the upstream side of the lower pond spillway. Remove any logs associated with the embankment construction. Complete as soon as possible, but no later than the fall of 2003.

(6) File an application to appropriate water, as necessary, for the three ponds located downstream of the main Macks Creek Reservoir by July 1, 2003.

(7) If a water right permit is not approved for the three ponds by October 31, 2003, Junayo and IDWR will evaluate the dam for pond no. 3 and the stream channel of Macks Creek above and below the dam for pond no. 3 to determine actions that must be taken by Junayo to protect the structure from failure and to protect the stream channel from erosion during a possible high water event during the winter of 2003-2004 and the spring of 2004. IDWR will document the conclusions of the evaluation and deliver a copy to Junayo. Junayo shall complete any necessary work set forth in the conclusions within one month from the date of delivery of the written conclusions to Junayo. Delivery will be complete upon mailing by U.S. Mail, email, fax, or by personal service.

(8) If a water right permit is rejected/denied for the three ponds, Junayo shall restore the stream channel and release unauthorized water storage by completing the following measures within one month after an order rejecting/denying the application becomes final:

(i) The fill material used for the dam for pond #3 in Macks Creek shall be pulled back so no fill material can enter the stream channel at high flows.

(ii) All areas in the stream channel disturbed by the removal of the fill material sloping towards the stream channel shall be revegetated with perennial grasses, forbs and woody perennial vegetation suited to the site, to reduce erosion, restore bank cover, fish and wildlife habitat and inhibit the invasion of noxious weeds.

(iii) An on-site review will be made after the removal of the fill material and after the first growing season to determine if additional planting or replanting will be required.

Junayo shall pay a monetary civil penalty in the amount of four thousand dollars ($4,000.00) for the violations set forth above. Payment of the monetary civil penalty will be suspended during the pendency of the above activities. If a water right permit for the uses described above is granted, the suspended penalty will be excused upon completion, within the specified times, of items one through seven listed above. If a water right permit for the above-described uses is rejected/denied, the suspended penalty will be excused upon completion of items one through eight listed above, all within the specified deadlines. If the items listed above are not completed before the specified deadlines, Junayo shall pay the suspended penalties to IDWR.

If you object to any provision in this notice, you may request a compliance conference to discuss the violation with IDWR. Your written request must be received at this office within 15 days of receipt this notice. Failure to comply with the requirements of this notice will be cause for IDWR to initiate a civil enforcement action through the Attorney General in district court.

If you have any questions, please contact Gene Gibson or Gary Spackman at 334-2190 or the Western Regional office, 2735 Airport Way, Boise, Idaho 83705-5082.

Sincerely,

Gary Spackman

GS:gg

cc: IDOL, IDFG, IDHW-DEQ, C of E (Boise), Ervin Ballou, John Homan

CONSENT

Respondent acknowledges in general the facts set forth and accepts fully the terms and conditions of this Order. These terms shall become effective upon execution by the parties. Respondent waives any right to contest this Order and consents to the issue hereof.

Signed this ___ day of _____, 2003.

_____
Owen Orndorff
Junayo Ranch Limited Partnership

MEETING MEMORANDUM
Junayo Ranch- Orndorff
Date: 5/8/03
From: J. Westra, Western Reg.
G. Gibson, Western Reg.

Participants: Owen Orndorff
J. Westra
G. Gibson
Connie Brandau, Watermaster
Rex Evans Junayo Ranch Manager

RE: Reynolds Creek Water District
Watermaster delivery of natural Macks Creek flow to senior rights downstream

On 5/8/03 Gene Gibson and John Westra met Owen Orndorff and Connie Brandau, Watermaster at the Junayo Ranch. The Water District board accompanied the Watermaster, but were told they were not invited to the meeting, and immediately left.

The group traveled to the lower portion of Macks Creek downstream of the Macks Creek Dam. No further work had been done by the contractor since the Department's last visit on 5/24. Participants walked the ditch delivery system to get an understanding of storage and natural flow water delivery to the ranch. Macks Creek natural flow will continue to be diverted from the large dam lower outlet ditch to the 2nd pond via ditch headgate. The flow will then be diverted thru a approx.15" headgate/pipe to a lateral ditch on the north side of the new #3 pond. The lateral also provides natural flow from Reynolds Creek to irrigate parcel known as Charlie's field (north of creek bed). Mr. Orndorff has recently constructed a lateral junction with one headgate/ditch to Charlie's field, and another headgate/ditch to route flow back into Macks Creek. The new ditch is not stable and will eroded quickly at the outfall area in the Macks Creek channel. Mr. Orndorff agreed to armor the area to prevent erosion and increase needed ditch capacity. See photo #1.

The #3 dam embankment/spillway construction were inspected and discussed. Mr. Orndorff agreed to remove the logs from the spillway section, and rock armor the upstream area of the spillway to provide stability in the short term. This was not an approval for dam construction or storage, only for interim protection.

Mr. Orndorff then led the group to the Macks Creek lower weir site. The site is ideal with an adequate stilling pool. The weir is in the ranch shop, and will be install temporarily as soon as possible. A permanent structure will be constructed later this fall. The Watermaster will have easy access to the site by vehicle for measurement. Approx. 1+ cfs was flow was at the site.

The group then traveled to the upper Macks Creek diversion point. A permanent concrete weir/diversion structure is at the location. The weir blade was not installed, but nearby. An approx. 16" and 12" headgates divert water to laterals serving the meadows and Junayo Reservoir #2. The Watermaster will have to close the gates for a short period to obtain creek flow measurement. The site is adequate; the Ranch Manager will install the weir blade as soon as possible. Approx. 2.4 cfs flow was estimated. See photo #

A board check structure/pipe is located at a road crossing on Coddle Creek. The site is suitable for measurement if several boards were removed and leveled. At present the creek flow is flowing around the pipe. The Ranch Manager will attempt to make a temporary repair to get flow back in the pipe. Permanent repairs will be made this fall. Waste water from a junior right flows into the creek upstream, but the Watermaster stated the user is normally shut off when she is called for regulation. Therefore, this is not an issue. Approx. flow was estimated at 1 cfs. All agreed this would be a suitable measurement point.

At the conclusion of the tour, the group discussed what actions needed to be addressed. Mr. Orndorff's contractor (Chuck) has been dealing with a family illness, and was not available. Mr. Orndorff will contact him as soon as possible, and make arrangements to have the work completed. The Watermaster will make creek measurements on Sat, May 10 to rebalance deliveries. All agreed to the actions and deadlines outlined in the draft letter to Mr. Orndorff attached.

Attachments:
#1 Site Photos
#2 Site Sketch
#3 Draft Letter

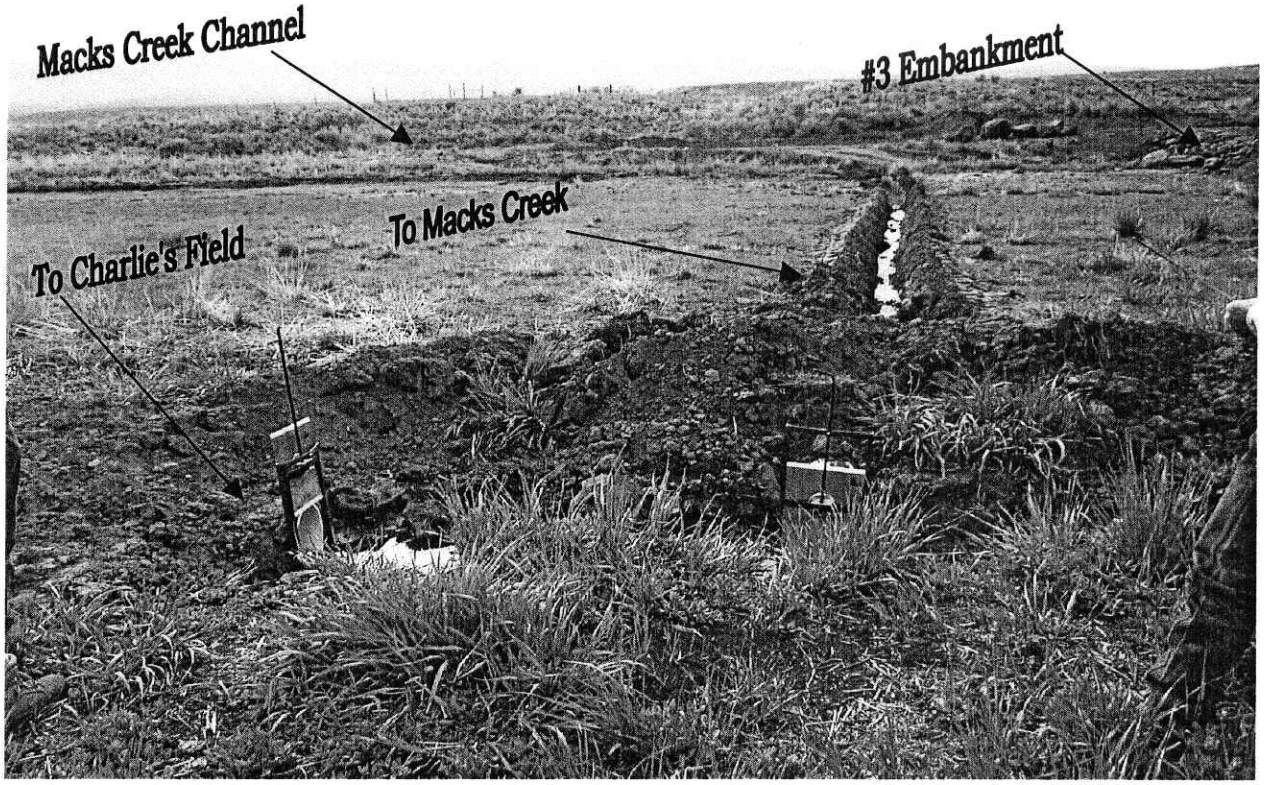


Photo #1: Lateral Junction on northside of Macks Creek (just downstream of #3 embankment.)



Photo #2: Lower weir site in Macks Creek, site has ideal stilling pool.

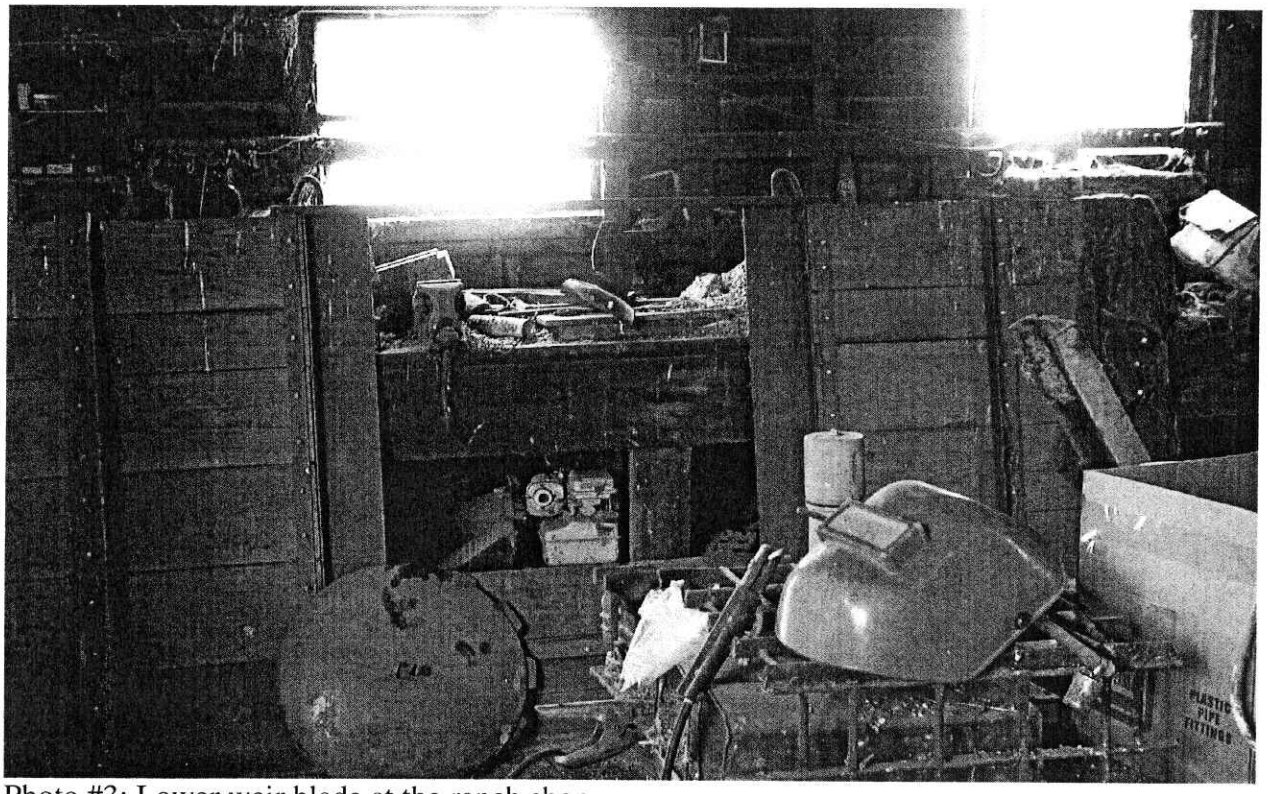


Photo #3: Lower weir blade at the ranch shop.

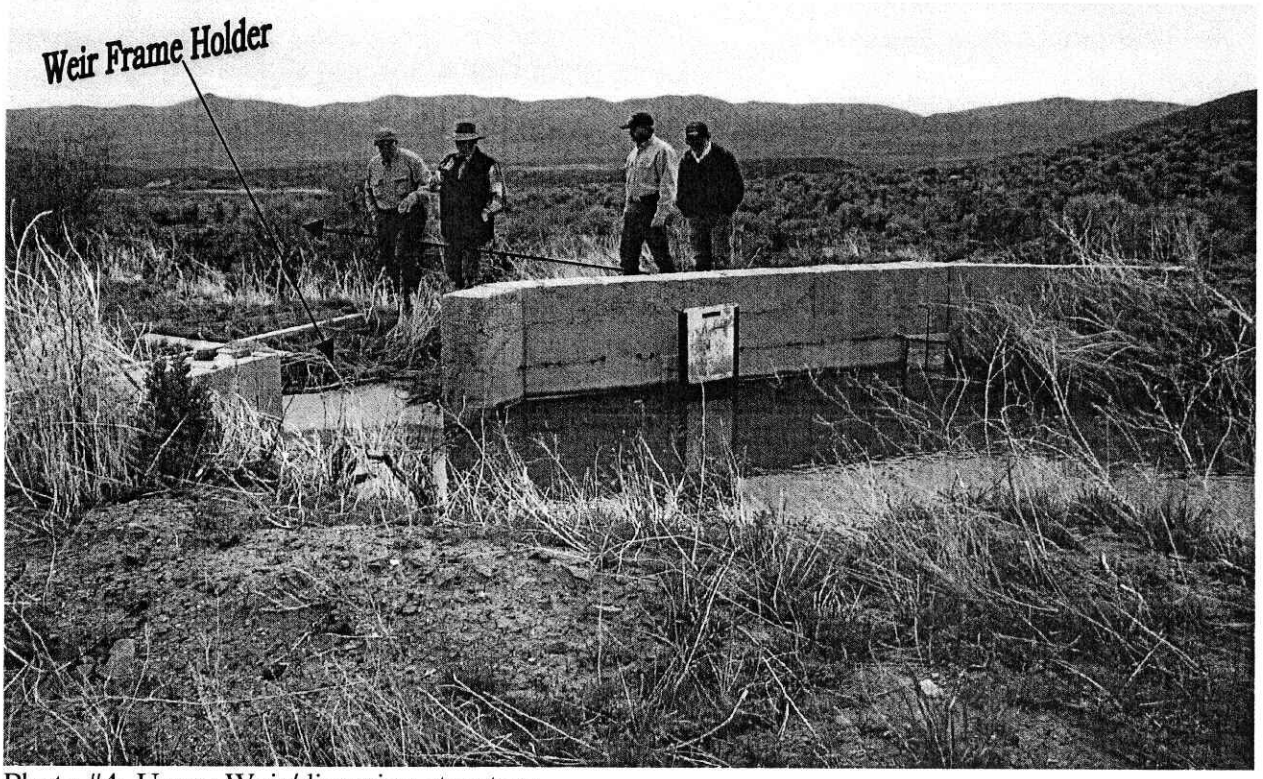


Photo #4: Upper Weir/diversion structure

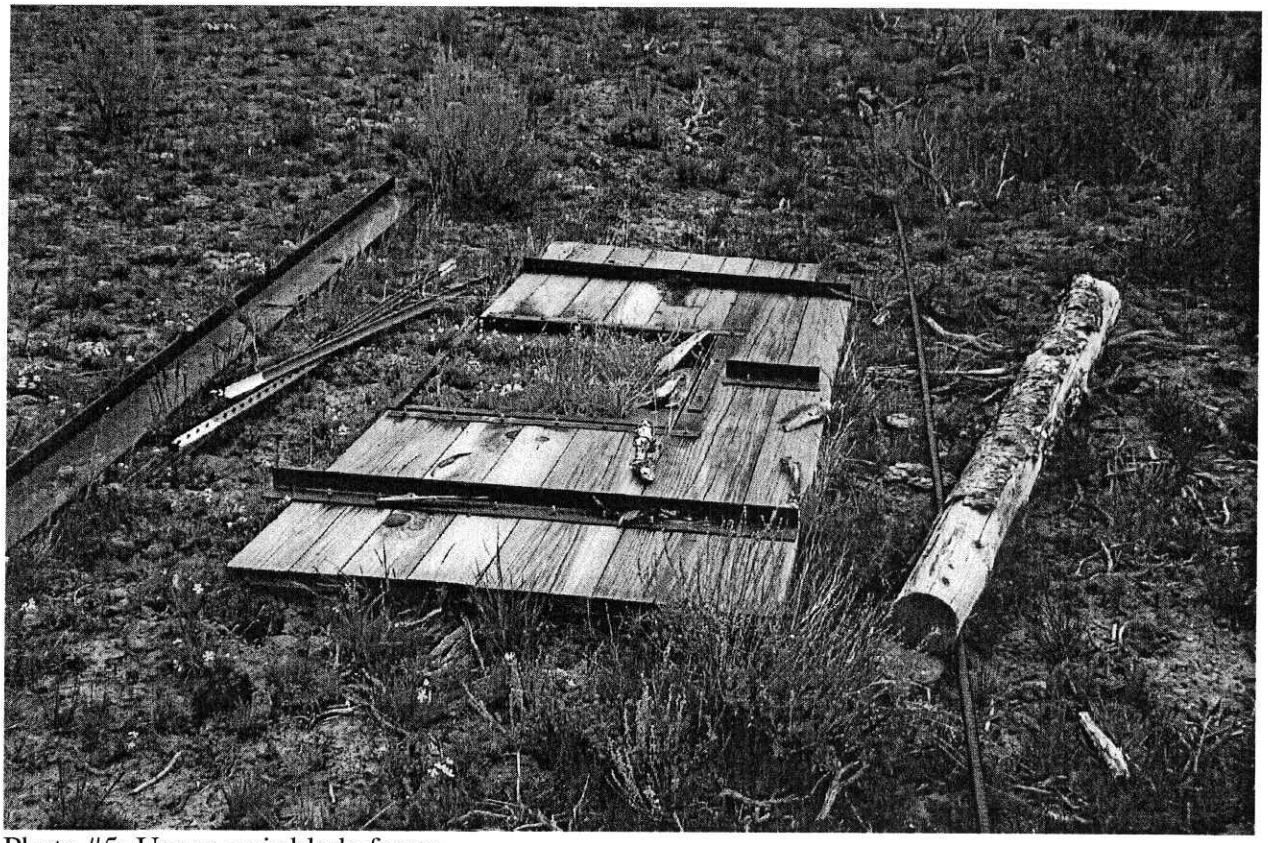


Photo #5: Upper weir blade frame



Photo #6: Coddle Creek check structure @ road crossing.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 57-11629 IN THE NAME OF JUNAYO RANCH LIMITED PARTNERSHIP	**NOTICE OF PREHEARING CONFERENCE**

On May 21, 2003 Junayo Ranch Limited Partnership filed with the Idaho Department of Water Resources (IDWR) an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Richard Brandau, Elias Jaca and Tom Hook Ranches.

IDWR has set the contested case for a prehearing conference to be held on **Thursday, December 18, 2003 at 10:00 a.m. in courtroom no. 2 of the Owyhee County Courthouse, Highway 78, Murphy, Idaho 83650.** The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

The conference will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the IDWR at least ten (10) days prior to the conference.

Dated this 14th day of October 2003.

Steve Lester

CERTIFICATE OF MAILING

I hereby certify that on the 16TH day of October 2003, I mailed a true and correct copy, postage prepaid, of the Notice of Prehearing Conference to the applicant(s) and protestant(s) listed:

Sue Kreger
Administrative Assistant

JUNAYO RANCH LIMITED PARTNERSHIP
1087 RIVER ST
BOISE ID 83702

RICHARD BRANDAU
9902 WILSON CEMETARY RD
WILSON ID 83641

ELIAS JACA
817 BLAINE AVE
NAMPA ID 83651

TOM HOOK RANCHES
13576 STATE HWY 78
MELBA ID 83641

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1) Will the proposed appropriation injure other water rights?

2) Is the proposed water supply sufficient for the purpose for which it is sought to be appropriated?

3) Was the application made in good faith or for delay or speculative purposes?

4) Does the applicant have sufficient financial resources with which to complete the proposed project?

5) Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?

6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof on issues 1, 2, 3, 4, & 6 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a preliminary order for the Director's consideration. Parties can file exceptions to a preliminary order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a preliminary order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing please advise the department within ten (10) days prior to the hearing.

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 14, 2003

JUNAYO RANCH LIMITED PARTNERSHIP
1087 RIVER ST
BOISE ID 83702

Re: Application for Permit No. 57-11629

Dear Applicant:

Enclosed is a copy of a protest filed against the issuance of a permit pursuant to the above-referenced application.

The following are the criteria the department must consider in either approving or denying an application for permit (per Section 42-203A, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?
6. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

Enclosed is a Notice of Prehearing Conference scheduled for Thursday, December 18, 2003 at the Owyhee County Courthouse, Highway 78, Murphy, Idaho 83650. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

The department suggests you contact the protestant(s) directly in an effort to determine what is in dispute in the application and to attempt to resolve the protest. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

Please contact this office if you have questions regarding this procedure.

Sincerely,

Steve Lester

SL:sk

Enclosure: Copy of protest(s)
Notice of Prehearing Conference

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 15, 2003

RICHARD BRANDAU
9902 WILSON CEMETARY RD
WILSON ID 83641

ELIAS JACA
817 BLAINE AVE
NAMPA ID 83651

TOM HOOK RANCHES
13576 STATE HWY 78
MELBA ID 83641

Re: Application for Permit No. 57-22629 in the Name of Junayo Ranch Limited Partnership

Dear Protestant:

This office acknowledges receipt of your protest to the issuance of a permit pursuant to the above referenced application.

The following are the criteria the department must consider in either approving or denying an application for permit (Section 42-203A, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purposes intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?
6. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

Enclosed is a Notice of Prehearing Conference scheduled for Thursday, December 18, 2003 at the Owyhee County Courthouse, Highway 78, Murphy, Idaho 83650. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

The department suggests you contact the applicant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest prior to the prehearing conference. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

If this office can be of further assistance, please contact us.

Sincerely,

Steve Lester

SL:sk
Encl: Copy of Application
Notice of Prehearing Conference

W030795

Tom Hook Ranches
13576 State Hwy 78
Melba, ID 83641

July 31, 2003

RECEIVED
AUG 04 2003
WATER RESOURCES
WESTERN REGION

RE: Protest Application 57-11629

I protest permit application 57-11629 by Junayo Ranch for the following reasons:

In the District Court of the Third Judicial District of the State of Idaho, in and for Owyhee County, PROPOSED FINDING OF WATER RIGHTS IN THE REYNOLDS CREEK DRAINAGE BASIN Civil Case No 3456, dated 5-24-88, commonly referred to by IDWR as "The Green Book" is contained a stipulation which on page 4, 5(a) states: The Upper Users shall not store excess water during the irrigation season, except as such storage is authorized and recognized in the Findings, or storage for which licenses are subsequently issued under water permits numbers 57-7400, 57-7454, 57-7472 or 57-7473 to the extent, if any, that those permits authorize storage during the irrigation season, and Junayo Ranch Limited Partnership (Junayo Ranch), holder of those permits, acknowledges that no excess water feature or element is included in or authorized by those permits. The Upper Users SHALL NOT INCREASE THE CAPACITIES OF THEIR DIVERSION FACILITIES OR THEIR STORAGE CAPACITIES AS THE CAPACITIES OF THOSE FACILITIES EXISTED ON JUNE 22, 1987--- At the bottom of page 6, at 6, it states that Junayo Ranch agrees that the conditions imposed by the Director of the IDWR in any water permit, now held by, issued to OR HEREAFTER ISSUED to Junayo Ranch shall be carried forward into any decree entered in any other action adjudicating the rights to the use of the water of Reynolds Creek. (Define whether or not the decree in this civil case is applicable to permit application 57-11629.)

The application for storage of water from 1/2 to 12/31 (which includes the irrigation season) will effect my water rights, all of the other downstream senior irrigation water rights, and also the partial decree to the Reynolds Creek "high flow rights" in the SRBA.

The storage facilities proposed in this application have already been constructed without the proper engineering oversight, drafting, consideration of safety, documentation, legal noticing or timely permit application. The dams are already higher that the maximum 7 feet proposed in the application. It is my understanding that Mr. Orndorff was issued a cease and desist order, that the Army Corp of Engineers came out to look at the construction and that the dams would be removed because of improper construction.

Signed Tom Hook
Tom Hook

Dated Aug 01, 2003

W030797 K4

Richard Brandau
9902 Wilson Cemetery Lane
Wilson, ID 83641

RECEIVED
AUG 04 2003
WATER RESOURCES
WESTERN REGION

July 31, 2003

IDWR, Western Region
2735 Airport Way
Boise, ID 83705

RE: Protest Application 57-11629

I protest permit application 57-11629 by Junayo Ranch for the following reasons:

In the District Court of the Third Judicial District of the State of Idaho, in and for Owyhee County, **PROPOSED FINDING OF WATER RIGHTS IN THE REYNOLDS CREEK DRAINAGE BASIN** Civil Case No 3456, dated 5-24-88, commonly referred to by IDWR as "The Green Book" is contained a stipulation which on page 4, 5(a) states: The Upper Users shall not store excess water during the irrigation season, except as such stoage is authorized and recognized in the Findings, or storage for which licenses are subsequently issued under water permits numbers 57-7400, 57-7454, 57-7472 or 57-7473 to the extent, if any, that those permits authorize storage during the irrigation season, and Junayo Ranch Limited Partnership (Junayo Ranch), holder of those permits, acknowledges that no excess water feature or element is included in or authorized by those permits. The Upper Users **shall not increase the capacities of their diversion facilities or their storage capacities as the capacities of those facilities existed on June 22, 1987----** At the bottom of page 6, at 6. it states that Junayo Ranch agrees that the conditions imposed by the Director of the IDWR in any water permit, now held by, issued to **or hereafter issued** to Junayo Ranch shall be carried forward into any decree intered in any other action adjudicating the rights to the use of the water of Reynolds Creek.

The application for storage of water from 1/1 to 12/31 (which includes the irrigation season) will effect my water rights, all of the other downstream senior irrigation water rights, and also the partial decree to the Reynolds Creek "high flow rights" in the SRBA.

The storage facilities proposed in this application have already been constructed without the proper engineering oversight, drafting, consideration of safety, documentation, legal noticing or timely permit application. The dams are already higher than the maximum 7 feet proposed in the application. It is my understanding that Mr. Orndorff was issued a cease and desist order, that the Army Corp of Engineers came out to look at the construction and that the dams would be removed because of improper construction.

The instablity of the structures jeoprodizes the safety of my home and my ranch.which is the first place downstream from Junayo Ranch.

Signed Richard Brandau Dated 7-31-2003
Richard Brandau

Enclosed is check #8127 for $25.00

W030796 KG

JACA LAND IX and LIVESTOCK Co.

RECEIVED
AUG 04 2003
WATER RESOURCES
WESTERN REGION

Elias Jaca
817 Blaine Avenue
Nampa, Idaho 83651

IDWR, Western Region
2735 Airport Way
Boise, Idaho 83705

RE: Protest Application 57-11629

I protest permit application 57-11629 by Junayo Ranch for the following reasons:

In the District Court of the Third Judicial District of the State of Idaho, in and for Owyhee County, PROPOSED FINDING OF WATER RIGHTS IN THE REYNOLDS CREEK DRAINAGE BASIN Civil Case No. 3456, dated 5-24-88, commonly referred to by IDWR as "The Green Book" is contained a stipulation which on page 4, 5(a) states: The Upper Users shall not store excess water during the irrigation season, except as such storage is authorized and recognized in the Findings, or storage for which licenses are subsequently issued under water permits numbers 57-7400, 57-7454, 57-7472, or 57-7473 to the extent, if any, that those permits authorize storage during the irrigation season, and Junayo Ranch Limited Partnership (Junayo Ranch), holder of those permits, acknowledges that no excess water feature or element is included in or authorized by those permits. The Upper Users SHALL NOT INCREASE THE CAPACITIES OF THEIR DIVERSON FACILITIES OR THEIR STORAGE CAPACITIES AS THE CAPACITIES OF THOSE FACILITIES EXISTED ON JUNE 22, 1987---. At the bottom of page 6, at 6. It states that Junayo Ranch agrees that the conditions imposed by the Director of the IDWR in any water permit , now held by, issued to or hereafter issued to Junayo Ranch shall be carried forward into any decree intered in any other action adjudicating the rights to the use of the water of Reynolds Creek.

The application for storage of water from 1/1 to 12/31 (which includes the irrigation season) will effect my water rights, all of the other downstream senior irrigation water rights, and also the partial decree to the Reynolds Creek "high flow rights" in the SRBA. The storage of water during irrigation season will effect my "high flow rights" in the SRBA when downstream irrigation water rights call for their water rights.

Signed---Elias Jaca---
Elias Jaca

Dated---August 1, 2003---

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

October 15, 2003

OWYHEE COUNTY COURTHOUSE
HIGHWAY 78
PO BOX 128
MURPHY ID 83650

Re: Conference Room Reservation

This letter is to confirm the conference room reservation made by the Idaho Department of Water Resources for Thursday, December 18, 2003 at 10:00 a.m.

If you have any questions please call me at 334-2190, Western Region of the Department of Water Resources.

Sincerely,

Sue

Sue Kreger
Administrative Assistant

The Owyhee Avalanche

P.O. BOX 97 • HOMEDALE, ID 83628 • 208/337-4681

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss
COUNTY OF OWYHEE)

RECEIVED
AUG 0 1 2003
WATER RESOURCES
WESTERN REGION

I, Joe E. Aman, being first duly sworn, depose and say:

1. That I am a citizen of the United States of America, and at all times hereinafter mentioned was and now over the age of twenty-one years, not a party to nor interested in the proceedings hereinafter mentioned.

2. That during the time of the publication of the notice hereinafter mentioned, I was and now am the publisher of The Owyhee Avalanche, a newspaper of general circulation printed and published weekly, on Wednesday of each and every week, in the City of Homedale, County of Owyhee and State of Idaho.

3. That the said The Owyhee Avalanche has been printed and published continuously and uninterruptedly in said County during a period of more than seventy-eight weeks prior to the first publication of the attached notice.

4. That said notice of which a printed copy, taken from said newspaper, is hereto affixed, was published in the regular issue thereof, and not a supplement thereto, in

said newspaper, in TWO (2)
(consecutive) calendar weekly issue(s) of said newspaper, in the following date(s):

JULY 16, 23, 2003

SIGNED:

STATE OF IDAHO)
COUNTY OF OWYHEE)
)

On this 16th day of July in the year of 2003 before me, a Notary Public, personally appeared JOE E. AMAN known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

JENNIFER S. THEIT NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho

Residing at Homedale, Idaho

My commission expires: January 3, 2009

The following application(s) have been filed to appropriate the public waters of the State of Idaho: 57-11629

JUNAYO RANCH LTD PARTNERSHIP
1087 RIVER ST #230
BOISE ID 83702
Point(s) of Diversion SESW S13 T02S R04W OWYHEE County Source MACKS CREEK Tributary To REYNOLDS CREEK
Point(s) of Diversion SESW S13 T02S R04W OWYHEE County Source MACKS CREEK Tributary To REYNOLDS CREEK
Point(s) of Diversion NWSE S13 T02S R04W OWYHEE County Source MACKS CREEK Tributary To REYNOLDS CREEK
Use: STOCKWATER 01/01 To 12/31 12 AFA
Use: WILDLIFE 01/01 To 12/31 12 AFA
Total Diversion: 12 AFA
Date Filed: 05/21/2003
Place Of Use: WILDLIFE T02S R04W S13 SESW NWSE
Place Of Use: STOCKWATER 02S R04W S13 SESW NWSE
Remark: Applicant agrees to mitigate consumptive use in the future as needed.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of $25.00 for each application on or before 08/04/2003. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER,
Director

7/16,23/03

Connie Brandau, Watermaster 57-R
9902 Wilson Cemetery Lane
Wilson, ID 83641

RECEIVED
AUG 0 1 2003
WATER RESOURCES
WESTERN REGION

July 29, 2003

Sue Taylor
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: Recommendation for Water Right Application 57-11629

---

b) I do not oppose approval of this application (these applications) if it is (they are) conditioned as follows:

I would not oppose approval of the application for each separate structure if it were applied for individually and they were limited as follows:

a) I would not oppose the stockwater right application for the first existing pond below the Lower Macks Creek Reservoir if it were limited to 7 feet in height and did not store live flow water. The water right application would be for seep water only, from the Lower Macks Creek Reservoir

b) I would not oppose the stockwater right application for the second existing pond below the Lower Macks Creek Reservoir if it were limited to 7 feet in height and did not store live flow water. The water right application would be for seep water only, from the Lower Macks Creek Reservoir

c) I would not oppose the stockwater right application for the third partially constructed pond below the Lower Macks Creek Reservoir if it were limited to 7 feet in height; had an overflow/spillway capacity of sufficient size and armoring as that of the main Lower Macks Creek Reservoir spillway since those waters will be the same spilled waters; does not store live flow water;

d) The live flow waters released out of Lower Macks Creek Reservoir are routed so as to bypass all of the stockwatering ponds below Lower Macks Creek Reservoir and flow to the Macks Creek drainage measuring device through an **UNRESTRICTED OPEN DITCH**.

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c) I oppose approval of this application (No. 57-11629) for the following reasons:

1) This application includes three separate storage facilities and should have separate applications especially in light of the fact that the Mr. Orndorff has made the statement that they will be used to catch only the "seep water" from the Lower Macks Creek

Reservior. Points i... ...re: a) the pond immediately belo... ... main reservoir is the only one to fill by seep water alone; b) the second pond can be filled with either over flow seep water, previously stored water or live flow water; c) the third parcially constructed pond could have water from stored Macks Creek waters, live water via the spillway overlow, live flow designated for downstream delivery or live flow waters via the irrigation ditch out of Reynolds Creek.

2) The pre-permitting inspection pertaining to Water Right Application No. 57-07583 conducted on May 19, 1994 and the correspondance from IDWR to Owen Orndorff/Junayo Ranch LTD Partnership stated "The purpose of the inspection was to detemine measuring device requirements for the Macks Creek reservoirs, with respect to the above application for additionsl storage in the lower reservoir, in order to ensure adequate Watermaster control over priority deliveries in the Reynolds Creek drainage." See ATTACHEMENT A: IDWR letter Dated 7/1/94 which includes the **SYSTEM SCHEMATIC - MACKS CREEK** DATED 5/19/94 Figure 1. The correspondance specifically identified the measuring devices required to satisfy the concerns of the watermaster **"and the conditions of all pending water rights relevant to the Macks Creek Reservoirs."** A May 21, 1997 on-site inspection by IDWR showed that Mr. Orndorf had caused the original release Outlet #1 to be modified in such a way to divert waters away from the Macks Creek stream channel and into a system of irrigation ditchworks PHOTO #22.



The inspection also revealed that the measuring devices specified as part of the permitting process for 57-07583 had not been completed. As of April 21, 2003 those

structures have had not been **satisfactorily** constructed and/or installed. PHOTOS - INDEX #11, #13, #14







3) The ponds that are in existance (constructed after 1994 and before 2003) saturate the base of the Lower Macks Creek Reservoir therefore undermining its stability. PHOTO #15



4) During the construction of the third, and most recent, dam Mr. Orndorff has allowed/ordered the two previously existing ponds to be raised which has extended the dam base of the second pond into the spillway overflow channel allowing it to be undercut by the spilled water. PHOTO #8



4) The Lower Macks Creek north side overflow channel circumvents the two existing ponds below the Lower Macks Creek Reservoir. BUT the overflow channel flows directly into the partially constructed proposed facility which obstructs the Macks Creek stream channel, restricting the live flow waters from downstream delivery. In addition the live flow irrigation water from Renolds Creek to the "Charlie Field" flows above the new structures backwaters and along the base of the north side earthen dam works rendering it unstable. PHOTO #17



5) During the on site inspections in May and June of 2003 Mr. Orndorff proposed an extensive network of ditches and flow control headgates to circumvent the three ponds referred to in this application to return the live flow waters to the main Macks Creek stream channel. The additional time required to regulate and administer would be a financial burden born not by Mr. Orndorff, but by the patrons of the entire district. (See proposed solution listed under recommendation b.)

6) The live flow irrigation water out of Reynolds Creek, for which Mr. Orndorff has no storage right on the Macks Creek drainage has to be diverted around the backwaters of the newest pond and piped across Macks Creek above the pond to reach its point of application. This would allow Mr. Orndorff to be able to store the live flow irrigation water in the newest pond either intentionally or by an accidental ditch plug and/or break. See PHOTO #17 above.

7) Observations and estimated measurements taken on May 8, 2003 concluded that approximately 170 minors inches (3.40 CFS) of water should have been being released that day from the Lower Macks Creek Reservoir to satisfu downstream senior water rights. The existing ditches and headgates by which the live flow waters of Macks Creek could have been returned to the main stream channel were restricted by a six inch pipe and slam gate. Any more than approximately 36 inches of water which that pipe will handle PHOTO #12 has to overflow out of the ditch, go into and fill two ponds before reaching the main stream channel. The unauthorized, parcially contructed storage facility across the Macks Creek drainage further restricts downstream water delivery.



8) Mr. Orndorff has stated that the height of the storage dam (s) will be seve (7) feet at the highest, yet the existing dams are in excess of the limit he has asked for. The culverts under the roads (which are built across the top of the dams) are themselves six feet in diameter. PHOTO #16



9) It would seem to me that since Mr. Orndorff already has a 1995 irrigation and storage right (No. 57-07583) for water for 200 acres in the same unfenced area as the new proposed storage facilities, they are unnecessary for stockwater. The rest of District 57-R would be better served if he were to apply for stockwatering rights out of the existing reservoir.

---

d) Additional Comment:

In summary: The construction of additional storage facilities below the Main Macks Creek Reservoir interfere with the live flow irrigation water deliveries to downsteam users. The additional network of ditches and headgates re-routing the live stream flows around and/or through the proposed storage ponds and irrigation water delivery ditches creates added time and therefore costs to the patrons of District 57-R. Junayo Ranch LLC has a history of disregard of the protocol of water delivery and the construction of the newest storage ponds facillitates the incidental, accidental or intentional misuse of SRBA appropriated waters. Therefore I would recommend that the application for permit 57-11629, as submitted, not be approved.

Respectfully,

Connie Brandau

Connie Brandau
Watermaster District 57-R

cc: Jerry Hoagland, Secretary 57-R

ATTACHMENT A

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

July 1, 1994

RECEIVED JUL - 5 1994

OWEN ORNDORFF
JUNAYO RANCH LTD PARTNERSHIP
1087 RIVER ST #230
BOISE ID 83702

RE: Pre-permitting Inspection, Water Right Application No. 57-07583

Dear Mr. Orndorff:

On Thursday, May 19, 1994 a field inspection was conducted at the Macks Creek Reservoir sites by Cindy Hodges of this office and Connie Brandau, Watermaster of Reynolds Creek Water District 57R. The purpose of the inspection was to determine measuring device requirements for the Macks Creek Reservoirs, with respect to the above application for additional storage in the lower reservoir, in order to ensure adequate Watermaster control over priority deliveries in the Reynolds Creek drainage.

The field inspection found that the Lower Macks Creek Reservoir, in Section 13, T02S R04W, is being operated in conjunction with an upper, off-stream reservoir on Macks Creek in Section 23, an off-stream reservoir on Reynolds Creek in Section 18, T02S R03W, and decreed live flow rights from Macks Creek, Cottle Creek and Reynolds Creek (see Figure 1, attached). Both the Macks Creek and the Cottle Creek drainages are within the jurisdiction of Reynolds Creek Water District 57R and are subject to regulation by the Watermaster. Any flows arising in either of these tributary streams may be called on to satisfy senior downstream water rights in Reynolds Creek.

For onstream impoundments with junior storage rights, measuring devices are required both above and below the impoundment during regulatory periods so that incoming surface flows may be passed through the reservoir by the Watermaster for deliveries below. Because Cottle Creek confluences with Macks Creek in Section 13 just above the Lower Macks Creek Reservoir, inflows from both drainages must be accounted for during watermaster regulatory periods.

On the day of the field inspection, the inflow above the Upper Macks Creek Reservoir in Section 23 was estimated at approximately 15 miner's inches, or 0.3 cfs. An inflow estimate for Cottle Creek was not obtained. From Watermaster records for May 19, only the first 18 priority ranked rights were being satisfied from available flows in Reynolds Creek. Also from Watermaster records, the Junayo and McKee rights diverted above the lower reservoir are ranked 22, 47, 52 and 54. All flows originating above Upper Macks Creek Reservoir should have been turned into the Macks Creek channel on that day to help satisfy downstream rights.

Also on the day of the inspection, a redwood measuring device was found under construction in the canal downstream from the Lower Macks Creek Reservoir outlet #1. Wooden headwalls had been erected but no weir blade had been installed.

The partial structure was not level, and if the installation is completed without being properly leveled, the measuring device will not be considered satisfactory. The device is positioned to measure the outflow from outlet #1, but it is not in a location which will properly measure return flows to Macks Creek. A similar device for outlet #2 was not inspected, as flows discharged from this point are not directly tributary back to Macks Creek.

A new cement headwall and screw gate were being installed immediately below the redwood weir at outlet #1 to provide a turnout from the outlet canal. However, flows which were being turned out of the canal on the day of the inspection were not being returned to the Macks Creek channel but into a lateral ditch serving Junayo Ranch lands. Because there is no control structure or measuring device at this location, the Watermaster is not being allowed sufficient control over the routing of these flows.

The Macks Creek system is unique in that stored flows in the lower reaches of Macks Creek provide an opportunity for irrigation flow exchange, allowing irrigation to continue on lands in upper reaches of Macks Creek which have junior priority live flow rights and which would not, under strict priority delivery, normally be able to receive water after May or June of each year. Live flows appropriated above the reservoir for this irrigation must be replaced or compensated by a release of stored flows to Macks Creek. This exchange is acceptable to both IDWR and the Watermaster provided that 1) all measuring devices are in place, and 2) the Macks Creek storage permits are modified to reflect the use of the exchanged storage water on the upper lands.

Accordingly, a minimum of three measuring devices and one control structure will be required to satisfy the concerns of the Watermaster and the conditions of all pending water rights relevant to the Macks Creek Reservoirs. If flow exchange is to continue, appropriate action must also be taken to modify existing water right storage permits. The required measuring sites and modifications are as follows (see Figure 1 for approximate locations):

- An inflow measurement device is to be located in the upper Macks Creek diversion ditch in NE Section 27 or SE Section 22, T02S R04W, at a site to be approved by IDWR and/or the Reynolds Creek Watermaster. After spring runoff and during typical regulatory periods when measurement must occur, the upper reach of Macks Creek appears to be completely dewatered by the upper diversion. It is not necessary to turn flows back to the dry channel for measurement so long as all incoming flows pass through the device. Measuring device capacity should be at least equal to average runoff flows after March 15 of each year. Before March 15 and before the Watermaster is called to duty, excess flows may be spilled to the Macks Creek channel to avoid washing out the device.

- An inflow measurement device is to be located in the Cottle Creek channel in Section 15, T02S R04W, above all McKee diversions and at a site to be approved by IDWR and/or the Reynolds Creek Watermaster. If only one diversion is used from Cottle Creek and if summer diversion conditions are similar to the Macks Creek diversion, the device may also be located within the diversion ditch.

- An outflow measurement device is to be located in the Macks Creek channel below the lowest Macks Creek dam in SESW Section 13, T02S R04W. The device must be situated below a control structure which is also required. The control structure is to be situated at the head of the existing Junayo Macks Creek diversion, and must have the ability to control the routing of flows turned out of the #1 outlet canal to either the Macks Creek channel or to the Junayo ditch. The canal turnout gate, the control structure and the measuring device must all have the capacity to divert and measure flows of up to 13 cfs, the rated capacity of outlet #1.

- For flow exchanges, amendments must be filed for the above application and for water right permit no. 57-07525, to add irrigation from storage in Section 23. Currently, these filings show storage in lower Macks Creek Reservoir and irrigation from storage below the reservoir in Sections 13 and 24 only. Filing fees for each amendment are $50.00.

Additional measuring devices may also be required in the future if the currently required devices cannot adequately address the present concerns, or if unforeseen system constraints do not allow sufficient compensatory flow passage. These devices would likely increase overall system flexibility, and may be installed with prior approval at the following sites:

- Measurement devices may be located at one or two central irrigation return flow collection sites just prior to discharge into Reynolds Creek. With adequate quantification, credit for return flows could be given against the required compensatory discharges from Lower Macks Creek Reservoir.

- An outflow measurement device may be installed below the outlet of the Reynolds Creek Reservoir in Section 18, T02S R03W. If sufficient compensatory releases are not possible from Lower Macks Creek Reservoir, or if use of all available discharge is desired directly from Lower Macks Creek Reservoir, the required releases could be made from the Reynolds Creek Reservoir.

The Department has requested the installation of proper measuring devices above and below the Macks Creek Reservoir system on at least two occasions (May 3 and November 29, 1993 file correspondences). The last correspondence required those devices be present by March 15, 1994. At the time of the May 19 inspection, no measuring devices were present above the Macks Creek reservoir, and devices below the reservoir were improperly placed. No further significant work had been completed by June 1, 1994, the projected finish date of the project.

Until work on all required measuring devices is satisfactorily completed, IDWR will take no further action toward approval of the above permit. Exchanged flows in excess of the available capacity of Upper Macks Creek Reservoir (Section 23) will not be allowed until amendments have been filed and approved. In addition, no licenses will be issued pursuant to the outstanding water right permits for Upper or Lower Macks Creek or Reynolds Creek Reservoirs, until all water right permitting and dam safety issues have been addressed at all locations.

Please contact Cindy Hodges of this office prior to the installation of the necessary measuring devices or to file amendments.

Sincerely,

David R. Tuthill, Jr., P. E.
Manager, Western Region Office

Enclosure

cc: Carl Myers, Myers Engineering
Mike Stubblefield, IDWR
Connie Brandau, 57R Watermaster

SYSTEM SCHEMATIC - MACKS CREEK
5/19/94

Figure 1.

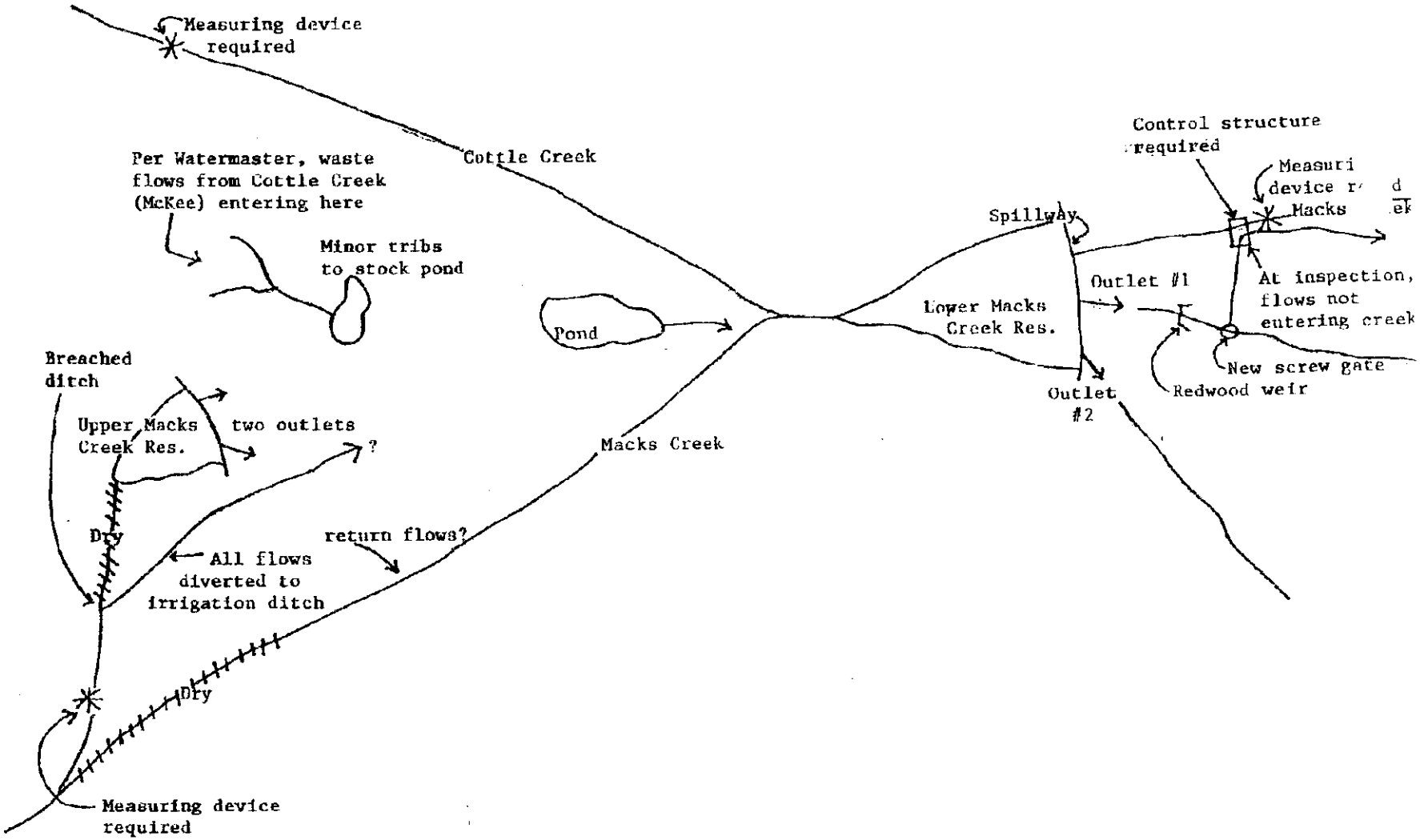
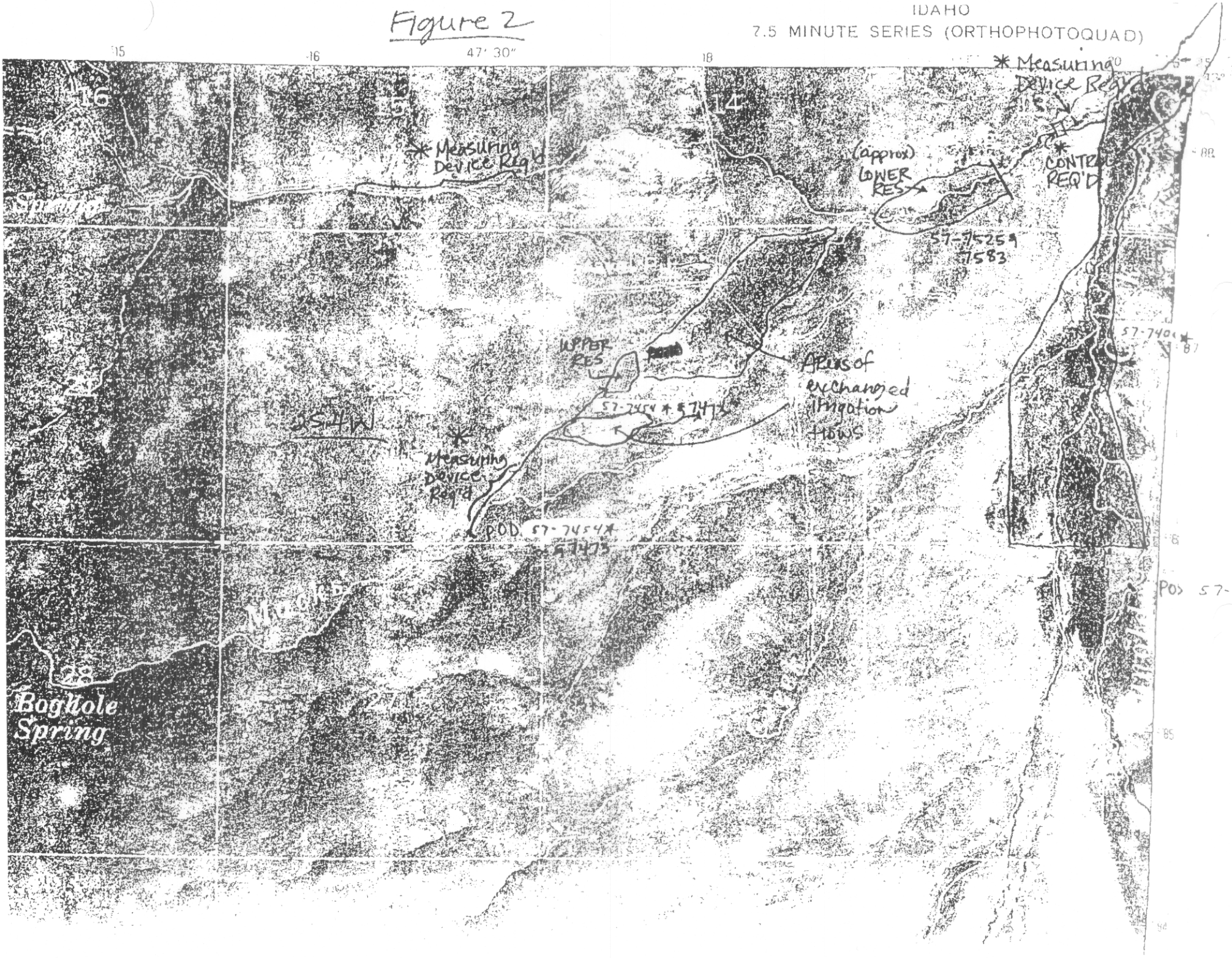


Figure 2


IDAHO
7.5 MINUTE SERIES (ORTHOPHOTOQUAD)
47° 30"
15
16
18
20
16
14
* Measuring Device Req'd
(approx) LOWER RES
CONTR REQ'D
57-7525
7583
57-740
UPPER RES
POD
Areas of exchanged Irrigation Flows
57-7454
57473
25 4W
* Measuring Device Req'd
POD 57-7454
57473
POD 57-74
28
Boghole Spring

Taylor, Sue

To: IDFG (E-mail)
Subject: COMMENT LETTERS

July 15, 2003

ERIC LEITZINGER, IDFG
PO BOX 25
BOISE ID 83707

Dear Sir:

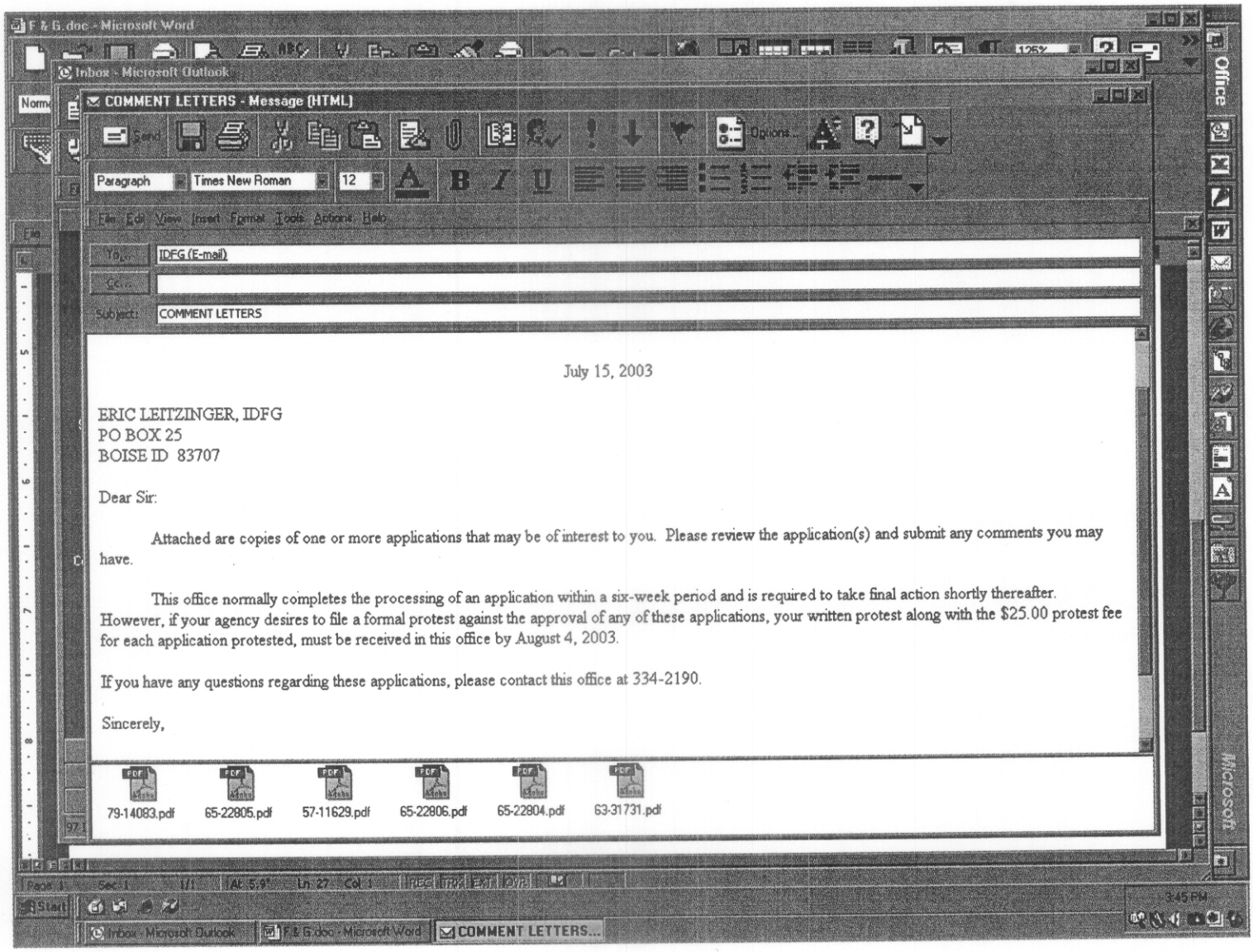
Attached are copies of one or more applications that may be of interest to you. Please review the application(s) and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if your agency desires to file a formal protest against the approval of any of these applications, your written protest along with the $25.00 protest fee for each application protested, must be received in this office by August 4, 2003.

If you have any questions regarding these applications, please contact this office at 334-2190.

Sincerely,

Sue Taylor
ID Dept Water Resources


F & G.doc - Microsoft Word
Inbox - Microsoft Outlook
COMMENT LETTERS - Message (HTML)
Send
Options...
Paragraph
Times New Roman
12
File Edit View Insert Format Tools Actions Help
To...
IDFG (E-mail)
Cc...
Subject:
COMMENT LETTERS
July 15, 2003
ERIC LEITZINGER, IDFG
PO BOX 25
BOISE ID 83707
Dear Sir:
Attached are copies of one or more applications that may be of interest to you. Please review the application(s) and submit any comments you may have.
This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if your agency desires to file a formal protest against the approval of any of these applications, your written protest along with the $25.00 protest fee for each application protested, must be received in this office by August 4, 2003.
If you have any questions regarding these applications, please contact this office at 334-2190.
Sincerely,
79-14083.pdf
65-22805.pdf
57-11629.pdf
65-22806.pdf
65-22804.pdf
63-31731.pdf
Office
Microsoft
Start
Inbox - Microsoft Outlook
F & G.doc - Microsoft Word
COMMENT LETTERS...
3:45 PM

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

July 15, 2003

CORPS OF ENGINEERS
304 N 8TH ROOM 140
BOISE ID 83702-5820

Re: Water Right Application

Enclosed is a copy of an application(s) which may be of interest to you. Please review the application(s) submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the $25.00 protest fee must be received in this office by August 4, 2003.

If you have any questions regarding the application, please contact this office.

Sincerely,

Sue Taylor

Encl. Copy of Application

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

July 15, 2003

CONNIE BRANDAU
HC 79 BOX 61
MELBA ID 83641

Re: Application(s) for Water Right

Dear Watermaster:

Enclosed are copies of one or more applications. Also enclosed is a form for your recommendation concerning these application(s).

Please review the application(s). We must have your comments within two weeks. If you have any questions or need information, feel free to contact this office at 334-2190.

Sincerely,

Sue

Sue Taylor
Idaho Department of Water Resources
2735 Airport Way
Boise ID 83705
334-2190 phone
334-2348 fax

July 11, 2003

Legal Notice Department
OWYHEE AVALANCHE
PO BOX 97
HOMEDALE ID 83628

RE: Application for Permit No. 57-11629

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 08/04/2003. Your cooperation is appreciated.

Sincerely

Sue Taylor
Senior Secretary
ID Dept Water Resources
2735 Airport Way
Boise ID 83705

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

57-11629

JUNAYO RANCH LTD PARTNERSHIP
1087 RIVER ST #230
BOISE ID 83702

Point(s) of Diversion SESW S13 T02S R04W OWYHEE County Source MACKS CREEK
Tributary To REYNOLDS CREEK

Point(s) of Diversion SESW S13 T02S R04W OWYHEE County Source MACKS CREEK
Tributary To REYNOLDS CREEK

Point(s) of Diversion NWSE S13 T02S R04W OWYHEE County Source MACKS CREEK
Tributary To REYNOLDS CREEK

Use: STOCKWATER	01/01 To 12/31	12 AFA
Use: WILDLIFE	01/01 To 12/31	12 AFA
Total Diversion:		12 AFA

Date Filed: 05/21/2003

Place Of Use: WILDLIFE

T02S R04W S13 SESW NWSE

Place Of Use: STOCKWATER

T02S R04W S13 SESW NWSE

Remark: Applicant agrees to mitigate consumptive use in the future as needed.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of $25.00 for each application on or before 08/04/2003. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published in the Owyhee Avalanche on July 16 and 23, 2003.