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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

IDWR REPORT,
preceded 11/20/2002
COURT ORDERS

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 2¹ 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

¹The 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 through 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 1899² and the *Benson* decree of 1973³ were used to deliver water in Lower Reynolds Creek. Water was delivered in the Upper Reynolds Creek area according to the *Gifford* decree of 1911⁴. 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 Reclamation⁵ 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 Administration⁶ filed a *Petition For Determination of Water Rights* on Reynolds Creek. The District Court, Third Judicial

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.

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 below¹⁰:

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.

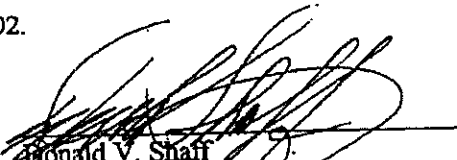
Included as Attachment 4 is a complete set of the General Provisions the Department recommends be included in the Basin 57 decrees. The Order of Partial Decree for the General Provision on Connected Sources in Basin 57 was issued February

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.

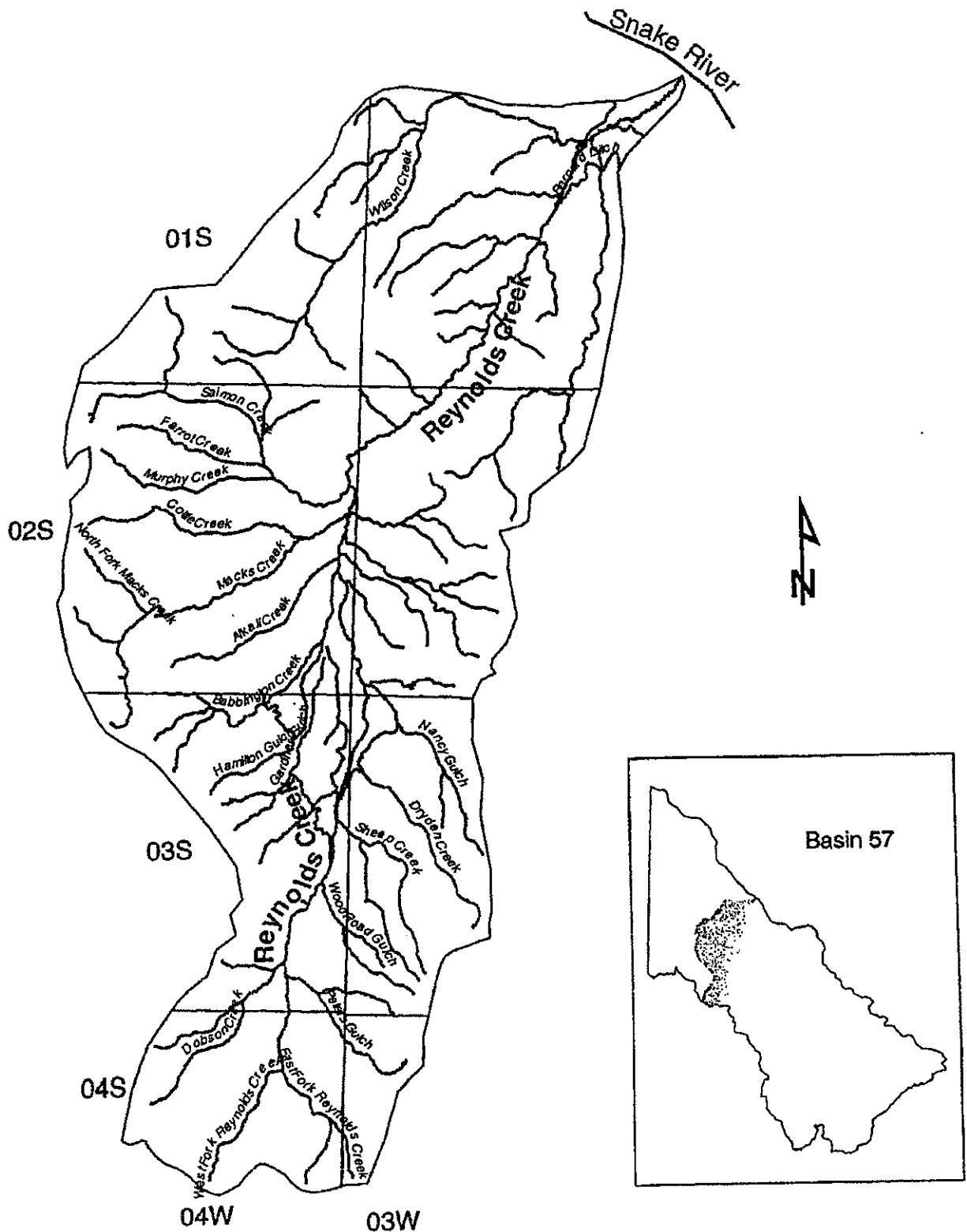
V. CONCLUSION

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



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Attachment 1

GENERAL PROVISION 2: ADMINISTRATION 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 SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, Township 3 South, Range 4 West, B.M., and the Outlet weir is located on Reynolds Creek in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ 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
<p>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]:</p>	<p>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]:</p>
<p>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.]</p>	<p>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.]</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>
<p>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</p>	<p>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</p>

¹ Only paragraph numbers 3 through 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 protect 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 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:

<u>Water Right No.</u>	<u>Source</u>
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:

<u>Water Right No.</u>	<u>Source</u>
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 in 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
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P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

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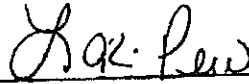
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