

WATER DISTRICT 1 ANNUAL MEETING

Title 42, Chapter 6 of the Idaho Code provides the legal mechanism by which the use of water can be regulated. The first step in this process is for the director of the Department of Water Resources to create a water district. The director took this action in 1919 to establish Water District 1. Each year it is the responsibility of the water users within the district to meet, as provided by law, to elect a watermaster, set the budget for the ensuing year, and pass such resolutions as are necessary and helpful in assuring an orderly and equitable distribution system. The results of the actions taken by water users of Water District 1 at their annual meeting are summarized as follows:

The annual meeting of Water District 1 was held on March 7, 2017, in Idaho Falls, Idaho. Lyle Swank was elected the watermaster for the ensuing year.

The following people were elected as members of the Committee of Nine:

Albert Lockwood, Chairman; Rodney Dalling, Vice-Chairman; Darrel Ker, Treasurer; Jennifer Ellis; Dan Shewmaker; Alan Kelsch; Brent Bowen; Mike Rasmussen; and Luke Hicks.

Alternates: Dale Swenson, Secretary; Scott Breeding; DeWitt Marshall; Keith Salisbury; Louis Thiel; Dave Chapple; Roger Clark; Ron Kowitz; and Sean Maupin.

Advisory members: Arnold Woolstenhulme, Randy Brown, Lynn Harmon, and Harold Mohlman.

The principle resolutions adopted at the annual meeting were as follows:

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WATER DISTRICT 1 2017 RESOLUTIONS

1. ANNUAL MEETING OF WATER DISTRICT

BE IT RESOLVED, That the annual Water District 1 meeting shall be held on the first Tuesday of March of each year unless the director and Committee of Nine should find it necessary to change the meeting date.

BE IT FURTHER RESOLVED, That the water users of Water District 1 waive mailed notice of the annual meeting and direct publication of the meeting notice for two (2) consecutive weeks in at least three newspapers located throughout the water district. Nevertheless, Water District 1 will attempt reasonable notice of the annual meeting.

BE IT FURTHER RESOLVED, that in addition to all requirements of the Idaho Open Meetings Law, the agenda for the annual meeting shall be posted on the website maintained by the Water District, so long as the website is operable, not less than forty-eight (48) hours prior to the annual meeting and all minutes of the annual meeting shall be posted on the website maintained by the Water District within a reasonable time after the annual meeting.

2. WATERMASTER

BE IT RESOLVED, That the watermaster shall use reasonable technology available to accurately distribute natural flow and storage water supplies pursuant to Chapters 6 and 8, Title 42, Idaho Code, and will use his available resources to assure that no water user or group of water users divert or use water not provided by their legal rights to the water supply; or properly supplied through leases or rentals in accordance with the rental pool procedures; that the watermaster maintain accurate records of water delivered to each water user; and

That the watermaster shall, by using available measured data and the best available estimates where data is unavailable, accurately allocate the estimated expenses of delivering water of the district to each ditch, canal company, irrigation district or other water user as provided by law; and

That the watermaster shall prepare the Annual Watermaster's Report as required by Idaho Code §42-606 and a proposed budget for the succeeding year as required by Idaho Code §42-615; and

That the watermaster shall investigate ways to expand and maintain automation where it can effectively improve management, reduce personnel costs, travel costs, or result in cost or water savings for water users of Water District 1, or assure better and more current data; and

That the watermaster of Water District 1 is hereby designated manager of the Rental Pool for the Committee of Nine; and

That the watermaster shall not deliver water to any ditch, canal company or other water user until receipt of the amount due and payable from such user is paid.

3. TREASURER

BE IT RESOLVED, That the duly elected treasurer of Water District 1 shall keep a complete, accurate and permanent record of all monies received by and disbursed for and on behalf of the district or the advisory committee. The water district treasurer shall deposit all monies of the district and advisory committee in a depository which complies with the public depository law as contained in Chapter 1, Title 57, Idaho Code; and

That before undertaking the duties of the office, the water district treasurer shall take and subscribe to an oath before an officer authorized by the laws of the state to administer oaths, to faithfully perform the duties of the office, and shall file the oath with the director of the Idaho Department of Water Resources (IDWR); and

That the water district treasurer of Water District 1 shall have the right to collect any charges due and unpaid, by civil action, said action to be brought in any court of competent jurisdiction, in the name of the water district treasurer to whom such charges are payable, and in addition to the amount found due, together with interest and costs, may also recover such sum as the court may adjudge reasonable as attorney fees in said action; and

That the water district treasurer shall only disburse monies from the water district account upon submission of a written voucher approved by the watermaster for expenses incurred for water district purposes related to the delivery of water or by voucher approved by the chairman of the advisory committee for activities pursuant to resolutions adopted by the water users from district funds or funds retained pursuant to Idaho Code §42-613A; and

That the water district treasurer shall prepare a statement of the financial affairs of the district at the end of each fiscal year and shall file the statement with the director of the IDWR; and

That in the discharge of the above duties of the treasurer, he may seek staff assistance as needed.

4. ELECTION OF WATERMASTER AND TREASURER

BE IT RESOLVED:

- a. Watermaster. That Lyle Swank be elected watermaster, and be authorized to hire a full-time staff of a deputy, two assistants, a financial assistant, a data specialist, and such other assistants as provided by the adopted budget. The watermaster may hire additional assistants as authorized in Idaho Code §42-609, in an emergency. The watermaster shall serve for a term of one year and upon a determination of necessity therefore, an extension of that term as provided by the director of the Idaho Department of Water Resources (IDWR) for a period of time determined necessary by the director. A certified copy of the minutes containing this resolution and the oath of the watermaster shall be sent to the IDWR.
- b. Treasurer. That the Treasurer shall be a current member or alternate of the Committee of Nine, and shall serve a term of one year, or until a successor is elected or appointed. The treasurer's compensation and expenses shall be set by the Committee of Nine, but not to exceed the sum provided in the 2017 Water District 1 budget. Darrel Ker is hereby elected Water District 1 Treasurer.

5. BUDGET

WHEREAS, The water users of Water District 1 meeting in regular annual session find it necessary to confirm the continuation of the following "on-going" resolutions which direct the watermaster and the treasurer of the district in certain aspects of Water District 1 operations;

NOW, THEREFORE, BE IT RESOLVED, That the budget of Water District 1 adopted at the annual meeting shall become the basis for the aggregate amount to be assessed and collected from all water users in the district for the succeeding year. The actual deliveries for the past irrigation season or seasons will be the basis for the allocation of said expenses to the individual water users, canal companies, and irrigation districts. The amount assessed shall constitute a final determination of the amount due for that year, pursuant to Idaho Code § 42-612(5); and

That the treasurer shall establish and maintain a general account and shall cause all monies received to be deposited and shall make all disbursements as necessary to conduct the business of the water district; and

The budget for Water District 1 for the 2017 year beginning November 1, 2016 be as follows:

WD01 Proposed Budget - 2017

	2016 BUDGET	2016 ACTUAL	Proposed 2017 BUDGET
INCOME			
ASSESSMENTS	935,000 ¹	934,920 ¹	1,010,000 ¹
RENTAL ADMINISTRATIVE FEE	205,000	291,587	208,000
STREAMGAGING INCOME	114,024 ²	113,594 ²	118,000 ²
INTEREST	56,000 ³	59,965 ³	56,000 ³
MISCELLANEOUS INCOME	0	4,655	45,000 ⁴
	<u>1,310,024</u>	<u>1,404,721</u>	<u>1,437,000</u>
NET INCOME/LOSS	-647,905	-287,906	-586,870

1 Includes UV Expenses to be billed to UV users

2 Reimbursed from USBR, Fremont-Madison, Fall River Hydro, IDWR, and City of Idaho Falls

3 Actual Budgetary Basis of Accounting

4 Cloud Seeding (IGWA \$25,000 toward Idaho Power and \$20,000 toward HCRC&D)

WD01 Proposed Budget - 2017

	2016 BUDGET	2016 ACTUAL	2017 BUDGET
EXPENSES			
<u>HYDROGRAPHERS/RIVER RIDERS/WD1</u>			
TETON BASIN	23,000	17,487	24,000
IDAHO FALLS HYDROGRAPHER	3,000	2,660	3,000
LOWER VALLEY	4,000	3,227	4,000
HENRYS FORK	10,400	9,945	12,000
TETON RIVER	7,700	7,271	7,800
RIGBY RIVER RIDER	5,600	5,563	5,900
HEISE	5,300	5,032	5,500
BLACKFOOT	9,000	7,717	9,200
SWAN VALLEY	4,100	2,319	4,100
UPPER FALLS	2,900	3,373	3,600
WILLOW CRK	5,200	5,170	5,400
IDAHO FALLS RIVER RIDER	1,350	1,259	1,400
MILNER	555	546	570
TOTAL	82,105	71,569	86,470
<u>PERSONNEL EXPENSES</u>			
RETIREMENT	4,750	8,622	7,400
SOCIAL SECURITY	8,500	7,463	8,500
MILEAGE	61,000	56,881	61,000
STATE INSURANCE FUND	4,600	6,181	5,000
EMPLOYMENT INSURANCE	1,500	582	1,500
MISC. HYDROGRAPHER EXP	2,000	3,707	4,000
MISC. PERSONNEL EXPENSES	600	949	1,000
TREASURER SALARY	3,600	3,600	3,600
TREASURER MILEAGE	3,100	1,030	900
TOTAL	89,650	89,015	92,900
<u>PROGRAM EXPENSES</u>			
AUTOMATION	60,000	8,378	60,000
MEASUREMENT EQUIPMENT	7,000	644	7,000
HYDROMET O & M	60,000	62,255	60,000
			287,000
STREAMGAGING	288,103	281,135	297,600
WATER RIGHT ACCOUNTING DOCS, BILLING	15,000	1,123	15,000
WATER DISTRIBUTION PROGRAMING	10,000	427	10,000
TOTAL	440,103	353,962	449,600
<u>EQUIPMENT EXPENSES</u>			
COMPUTER/OFFICE EQUIPMENT	2,500	240	2,500
TELEPHONE	2,600	2,228	2,600
TOTAL	5,100	2,468	5,100

WD01 Proposed Budget - 2017

	2016 BUDGET	2016 ACTUAL	2017 BUDGET
<u>MISCELLANEOUS EXPENSES</u>			
IWUA	500	500	500
POSTAGE	6,000	4,600	5,500
SUPPLIES	2,000	2,463	2,500
RECORD STORAGE	300	225	300
BANK CHARGES	100	10	100
AUDIT	8,000	8,250	8,250
MEETINGS	6,500	6,026	6,500
MISC DUES/MEMBERSHIPS	650	1,505	650
TOTAL	<u>24,050</u>	<u>23,579</u>	<u>24,300</u>
<u>WATERMASTER</u>			
IDWR CONTRACT	750,921	683,746	777,500
TRAVEL	9,000	8,743	9,000
TOTAL	<u>759,921</u>	<u>692,489</u>	<u>786,500</u>
TOTAL WATER DISTRICT 1 OPERATIONS BUDGET	<u><u>1,400,929</u></u>	<u><u>1,233,082</u></u>	<u><u>1,444,870</u></u>
OTHER COMMITTEE OF NINE APPROVED EXPENDITURES			
<u>COMMITTEE OF NINE - APPROVED BY RESOLUTION</u>			
ATTORNEYS	150,000	123,882	175,000
CONSULTANTS/ARCHIVIST	43,000	17,756	20,000
FAMILY FARM ALLIANCE	5,000	5,000	5,000
LEGISLATIVE INTERNSHIP	3,000	3,272	3,000
CLOUDSEEDING	35,000	25,659	55,000
IWRB CLOUDSEEDING BY AIRPLANE	200,000	200,000	200,000
WATER EDUCATION	1,000	0	1,000
COMMITTEE OF NINE - MEETINGS/TRAVEL	45,000	37,430	45,000
TOTAL	<u>482,000</u>	<u>412,999</u>	<u>504,000</u>
TOTAL WATER DISTRICT BUDGET	<u><u>1,882,929</u></u>	<u><u>1,646,081</u></u>	<u><u>1,948,870</u></u>
<u>UPPER VALLEY FEES</u>	75,000 ⁵	46,546 ⁵	75,000 ⁵
TOTAL BUDGET W/ UV FEES	<u><u>1,957,929</u></u>	<u><u>1,692,627</u></u>	<u><u>2,023,870</u></u>

5 Charges covered by the Upper Valley Water Users

6. INTERIM BUDGET

WHEREAS, Water District 1 changed its fiscal year to begin November 1 and end October 31 of each year; and

WHEREAS, The annual meeting of Water District 1 at which the annual budget is adopted is the first Tuesday in March, leaving the water district to operate for just over four months without a budget.

NOW, THEREFORE, BE IT RESOLVED, By Water District 1 meeting in regular annual session, that Water District 1 adopts a continuing budget of 40% of the current annual budget for the district to operate under between November and the annual meeting.

BE IT FURTHER RESOLVED, That the continuing budget approved by Water District 1 may be amended by the Committee of Nine provided it shall reasonably represent the budget resolution the Committee of Nine will propose to the water users at the next annual meeting.

7. MINIMUM CHARGES FOR WATER DELIVERY

WHEREAS, It is the watermaster's responsibility to assure the proper delivery of both natural flow and storage supplies to all water users; and

WHEREAS, The normal water district cost of delivering water to many water users is greater than their normal assessments would be based upon their total annual use of water.

NOW, THEREFORE, BE IT RESOLVED, That the watermaster of Water District 1 is hereby authorized to assess a \$75.00 minimum charge for every diversion within his jurisdiction when the pro rated charge to the water user is less than the minimum charge.

8. FILING OF ANNUAL MEETING MINUTES, BUDGET AND RESOLUTIONS

BE IT RESOLVED, That copies of the minutes of the annual meeting, the approved budget, and resolutions 2, 3, 4, 5, 6 and 7 adopted at the annual meeting of the water users of Water District 1 shall be filed with the secretary of said meeting and thereupon he shall immediately prepare and file a certified copy thereof with the director of the Idaho Department of Water Resources and a certified copy with the county auditors of Bonneville, Teton, and Fremont Counties in accordance with Idaho Code §42-612 and §42-617.

9. COOPERATIVE PROGRAM

WHEREAS, Water District 1 employee compensation has not been adequate to keep pace with inflation and other increasing costs, especially when compared to the private sector; and

WHEREAS, Engineers, hydrologists and other specialized, technical positions at Water District 1 are important for dealing with the critical water issues facing the district including the administration of the rental pool; and

WHEREAS, Water District 1 needs the ability to attract and keep sufficient new employees for these technical positions due in large part because of the wide difference in salary when compared to the private sector; and

WHEREAS, Water District 1 has previously not been allowed to adjust employee compensation due to the current Memorandum of Understanding which classifies them as “state employees”; and

WHEREAS, Due to a recent change in Idaho law which now allows Water District 1 to compensate its employees over and above the limits they would otherwise receive under the present rates for their particular classifications as state employees.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 hereby grants the authority to the Committee of Nine to create a standing Compensation/MOU Sub-Committee of the Committee of Nine to work with the Director of Idaho Department of Water Resources (IDWR), which shall then make recommendations to the Committee of Nine for its consideration to adjust employee compensation for Water District 1 employees taking into account the expertise, specialization and technical training for each employee, compared with salaries offered in the private sector, as limited by the budgeted amount for employee compensation authorized by the water users of Water District 1.

BE IT FURTHER RESOLVED, That except for the modifications described herein, the water users of Water District 1 continue the cooperative program with the IDWR as outlined in the Memorandum of Understanding originally dated March 4, 1979 as amended on March 2, 1993, and as further amended from time to time with approval by the Committee of Nine, signed by the chairman of the Committee of Nine and the director of IDWR, a copy of which is attached hereto as Exhibit A and made a part hereof as if set out at length herein.

BE IT FURTHER RESOLVED, That based upon the above criteria and the recommendations of the Compensation Sub-Committee (MOU Committee), as approved by the Committee of Nine, the water users of Water District 1 hereby authorize the following salaries of Water District 1 employees, which include the salaries and raises currently proposed by IDWR, to be effective and implemented as

soon as practical but not later than IDWR implements salary adjustments, upon adoption of this Resolution by the water users:

10. WATER DISTRICT PROPERTY

BE IT RESOLVED, That the watermaster is hereby authorized to acquire, hold and dispose of such real and personal property, equipment and facilities in the name of the water district as necessary for the proper distribution of water and shall provide that all such real and personal property shall remain in the custody of the watermaster and the watermaster's successor.

11. COMMITTEE OF NINE

BE IT RESOLVED, That the Committee of Nine be designated to be the advisory committee under Idaho Code §42-605 and be continued with nine regular members selected by their respective districts and approved by the water users at the annual meeting of Water District 1. The member representing the Burley and Minidoka Irrigation Districts and the member representing the West side and East side of the Henrys Fork District shall be alternated between the two districts as they agree. Alternates for each committee member may be approved in the same manner as regular committee members at the annual meeting. Advisors to the Committee of Nine may consist of a representative from the United States Bureau of Reclamation, the Teton Basin, the AFRD #2, A & B Irrigation District, the Wyoming State Engineer, or others as approved by the Committee of Nine.

BE IT FURTHER RESOLVED, That the Committee of Nine shall elect from the regular committee members a Chairman, and Vice-Chairman for terms of two (2) years unless the position is vacated. These positions shall rotate, alternating among representatives of the following three (3) areas (each area determining which representatives shall serve as the officer from its area): Those representatives from districts below American Falls Reservoir; those representatives from districts in the Blackfoot and South Fork area; and those representatives from the Idaho Falls and Henrys Fork area. Members elected shall transition through the offices identified (except for the office of Treasurer which would rotate through the districts but not necessarily succeed to the Vice Chairman and Chairman). If at any time a member duly elected becomes unable to serve, his or her position shall be filled by a member identified as a substitute from the identified district.

BE IT FURTHER RESOLVED, That the Committee of Nine shall as needed, organize sub-committees, staffed with regular committee members or their alternates who shall make recommendations to the Committee of Nine. The United States Bureau of Reclamation representative and the Watermaster of Water District 1 shall serve as advisors to the rental pool subcommittee. The Chairman shall chair the Resolutions sub-committee. The Vice-Chairman shall chair the Rental Pool sub-committee. The Treasurer shall chair the Finance sub-committee. The sub-committees shall be staffed at the desires of the Chairman in consultation with the Vice-Chairman with the intent that each area be represented.

BE IT FURTHER RESOLVED, That in addition to all requirements of the Idaho Open Meetings Law, so long as the Water District website is operable, the notices for all regular meetings of the Committee of Nine and its subcommittees shall be posted on the website maintained by the Water District not less than five (5) days before the meeting; unless an emergency exists, the notices for all special meetings of the Committee of Nine and its subcommittees shall be posted on the website maintained by the Water District not less than twenty-four (24) hours before the meeting; agendas for all regular meetings of the Committee of Nine and its subcommittees shall be posted on the website maintained by the Water District not less than forty-eight (48) hours before the meeting; agendas for all special meetings of the Committee of Nine and its subcommittees shall be posted on the website maintained by the Water District not less than twenty-four (24) hours before the meeting; and, all minutes of the regular and special meetings of the Committee of Nine and its subcommittees shall be posted on the website maintained by the Water District within a reasonable time after a meeting.

12. CREDENTIALS

WHEREAS, The water users of Water District 1 have historically specified that "no person be elected to membership and service on the Committee of Nine ... unless he be a land owner and a water user...;" and

WHEREAS, A "Person" shall include an individual or a duly authorized person from an "Entity" which is defined as a cooperative; corporation; sole proprietorship; unincorporated association; limited liability company; partnership; trust; estate; and body politic.

NOW, THEREFORE, BE IT RESOLVED, That water users and landowners shall be defined as follows:

- a. A Person who owns an irrigated farm that is comprised of more than twenty (20) irrigated acres that has a valid surface water right deliverable by the Water District 1 Watermaster; and
- b. A Person who currently or in the past receives over 50 percent of his annual income from farming activities;

13. AUTHORITY OF COMMITTEE OF NINE

WHEREAS, The members of the Committee of Nine, as the water district's advisory committee, are elected to represent the general interest of the water users, and as such each Committee of Nine district shall be limited to one vote by either its regular Committee of Nine member or its approved alternate.

NOW, THEREFORE, BE IT RESOLVED, That the Committee of Nine is hereby authorized to:

- a. Advise and consult with the watermaster and director on matters related to water resources management and water distribution;
- b. Serve as the standing resolutions committee for all meetings of the water district;
- c. Take those actions necessary to represent and protect the interests of the water users of the water district and to authorize the expenditure of additional funds when necessary;
- d. Employ such legal, engineering, technical and clerical services that may be deemed necessary by the Committee of Nine to fulfill its responsibilities to the water users of the water district;
- e. Make and execute such contracts and agreements as may be deemed necessary or convenient;
- f. Do such other things, as the committee shall deem to be beneficial to the water users of the water district.
- g. To appoint such other persons as advisors to any subcommittee as deemed necessary by the Chairman in consultation with the Vice-Chairman.

BE IT FURTHER RESOLVED, That the Committee of Nine is hereby ratified as the local committee for the rental of stored water under Idaho Code §42-1765.

14. APPROVAL OF EXPENSES BY COMMITTEE OF NINE

WHEREAS, The Committee of Nine has been selected by the water users of Water District 1 to represent their collective interests.

NOW, THEREFORE, BE IT RESOLVED, That the Committee of Nine be authorized to modify the budget and approve the expenditure of funds held by the water district for the following purposes:

- a. Unanticipated expenses of the water district;

- b. Necessary improvements to the water district's facilities;
 - c. Educational projects designed to increase public awareness in the area of water distribution, water rights and water conservation;
 - d. Other public projects designed to assist in the adjudication, conservation or more efficient distribution of water;
 - e. Involvement in legislative, legal and agency deliberations on issues identified in the resolutions and such other matters involving water quantity and quality which could affect water users of the water district, including naming the Committee of Nine as a party in legal actions involving the Endangered Species Act, the Clean Water Act, and the negotiation and administration of federal and tribal claims filed in the Snake River Basin Adjudication and settlements, and further, to expend funds as are necessary that may exceed the budgeted amounts for such expenditures and then approved by the Committee of Nine;
 - f. To reimburse advisory committee members in accordance with the policy attached hereto as Exhibit B or as approved by the Committee of Nine;
 - g. Items authorized in resolution number 13.
15. INDEMNIFICATION OF COMMITTEE OF NINE MEMBERS

WHEREAS, The Committee of Nine has been selected by the water users of Water District 1 to represent their collective interests; and

WHEREAS, The Committee of Nine is highly involved in legislative, legal and agency deliberations on water quantity and water quality issues that could affect water users of the water district, including naming the Committee of Nine as a party in legal actions.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 authorizes the district to have the power to indemnify any person who was or is a party or is threatened to be made party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the district) by reason of the fact that he is or was a member of the Committee of Nine, an alternate, or appointee of the committee, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the district, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo

contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the district, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

BE IT FURTHER RESOLVED, That the water users of Water District 1 authorizes the district to have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the district to procure a judgment in its favor by reason of the fact that he is or was a member of the Committee of Nine, a director, officer, employee or agent of the district, or is or was serving at the request of the district as a member of the Committee of Nine, an alternate, or appointee of the committee against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the district and excerpts that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the district unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

BE IT FURTHER RESOLVED, That to the extent that a past or present member of the Committee of Nine, an alternate, or appointee of the committee has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection (a) or (b) hereof, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

BE IT FURTHER RESOLVED, That the water users of Water District 1 authorize the district to have the power to purchase and maintain insurance on behalf of any person who is or was a member of the Committee of Nine, an alternate, or appointee of the committee against any liability asserted against him and incurred by him in any capacity or arising out of his status as such, whether or not the district would have the power to indemnify him against such liability under the provisions of this section.

BE IT FURTHER RESOLVED, That the indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a member of the Committee of Nine, an alternate, or appointee of the committee, and shall inure to the benefit of the heirs, and personal representatives of such a person.

16. ATTORNEYS FEES

WHEREAS, The Committee of Nine has been elected and recognized as the advisory committee of Water District 1 since 1919; and

WHEREAS, Idaho Code §42-612 authorizes the water users to budget for costs of the advisory committee in implementing resolutions adopted by the water users of the district; and

WHEREAS, The funding for advisory committee expenses associated with implementing resolutions adopted by the water users for other than the payment of salary and operating expenses of the watermaster and assistants shall come from funds available pursuant to section Idaho Code §42-613A; and

WHEREAS, Idaho Code §42-619(8) provides the treasurer of the water district shall only disburse moneys from the water district account upon submission of a written voucher approved by the watermaster for expenses incurred for purposes related to water delivery or by a voucher approved by the chairman of the advisory committee for activities pursuant to specific resolutions adopted by the water users from district funds; and

WHEREAS, The accounting of the water district would better comply with accounting standards if all legal firms hired by the Committee of Nine complied with certain standard procedures.

NOW, THEREFORE, BE IT RESOLVED, By the water users of Water District 1, that the following procedures be implemented to govern the relationship between legal firms employed by the Committee of Nine, as follows:

- a. That legal firms may hereafter only be hired by the Committee of Nine at a regular or special meeting on such conditions as the Committee might prescribe in an employment contract; and
- b. That legal firms shall execute an employment contract with the Committee of Nine of Water District 1 which shall list those items (resolutions) that have been previously designated as work for the Committee of Nine by that firm, which contract shall have a fee schedule for said firm's work attached; and
- c. That each firm shall itemize the work accomplished on each resolution assigned to the firm and the time spent thereon during the previous billing period on its monthly statements to the Committee of Nine, and all expenses and costs advanced during the month, including the payment of filing fees and other expenses; and
- d. That each firm will work on a standard hourly rate for services performed by attorneys and paralegals working on any authorized matter according to

the hourly rates approved in the employment contracts. Each firm may reevaluate hourly rates as of January 1 each year but shall not increase rates without Committee of Nine approval; and

- e. That for each new issue arising under existing water user resolutions that one or more of the designated firms are asked to become involved in by a Committee of Nine motion and resolution, the Committee of Nine shall, to the extent possible, designate the scope of work and desired result, shall place a limit on the fees and costs charged at the time of issue designation, and shall at the time such limit is reached, review the work accomplished and, if necessary re-authorize work beyond the previously stated limit for fees and costs.

17. CONTINGENCY FUND-WATER RENTALS

WHEREAS, The watermaster from time to time finds that storage has been used in excess of entitlements; and

WHEREAS, These "excess uses" require an allocation of rental pool storage; and

WHEREAS, Discussions and petitions regarding these excess storage uses can be time-consuming and can result in delays in making payments to rental pool participants.

NOW, THEREFORE, BE IT RESOLVED, That the Committee of Nine is authorized to maintain \$400,000 of the funds generated through the administrative fee placed on water rentals for the purpose of assuring rental pool participants can be paid in accordance with the Water District 1 Rental Pool Procedures.

BE IT FURTHER RESOLVED, That all monies collected for excess use rental charges, plus all appropriate interest and penalties, shall be first used to replace monies spent from this account.

18. CONDITIONS TO DELIVERY OF WATER

WHEREAS, It is in the interest of all water users to have the water rights within Water District 1 delivered by priority; and

WHEREAS, The accounting system now used by Water District 1 requires that each diversion have assigned to it a specific list of decreed, licensed, and storage entitlements; and

WHEREAS, Those diversions which have no decreed, licensed or permitted water rights will necessarily be taking storage water any time a diversion takes place.

NOW, THEREFORE, BE IT RESOLVED, That no diversion under a decree, license or permit, shall be allowed unless the list of rights for that diversion are

found in the watermaster's records or proper arrangements have been made to procure an adequate water supply prior to the start of the irrigation season.

19. SPECIAL ASSESSMENTS-UPPER VALLEY WATER USERS

WHEREAS, The water users located above Blackfoot, excluding irrigation entities which have duly and timely opted out of the upper valley legal services assessments by retaining their own individual counsel, (upper valley) have chosen to collectively retain legal counsel; and

WHEREAS, It is their desire to have the watermaster assess the upper valley water users for these legal services and other appropriate and reasonable expenses associated with representation of the collective interests in the upper valley in proportion to their water use unless an alternative method is adopted.

NOW, THEREFORE, BE IT RESOLVED, that the watermaster hereby be authorized to assess canals located above Blackfoot (excluding irrigation entities which have duly and timely opted out of the upper valley legal services assessments by retaining their own individual counsel) for legal fees and other appropriate expenses associated with representing the collective interest of the upper valley, including a Treasurer if required.

BE IT FURTHER RESOLVED, That such charges may not exceed the amount budgeted during the current year and that the assessments will be made in proportion to their water use or in a manor acceptable to and approved by representatives of the water users of the upper valley.

BE IT FURTHER RESOLVED, That the water district treasurer shall maintain said amounts in a separate account and that payment there from shall ONLY be made when authorized by the Upper Valley budget or the upper valley Committee of Nine members.

20. RENTAL POOL PROCEDURES OF COMMITTEE OF NINE

BE IT RESOLVED, That the following Water District 1 Rental Pool Procedures be approved by Water District 1 and submitted for approval by the Idaho Water Resource Board as follows:

See the Rental Pool Section.

21. WATER DISTRICT 1 POLICY POSITION

WHEREAS, There are currently many issues that potentially can change water distribution patterns and water supplies in Idaho; and

WHEREAS, Water users are now being asked to fund experts and attorneys in preparation for negotiations and/or litigation; and

WHEREAS, The water users of Water District 1 and their representatives, the Committee of Nine, wish to have a clear representation of the position of Snake River irrigators, and establish the following as the guiding principles in any and all negotiations and litigation:

- a. Administration of water rights that have been or will be adjudicated in the Snake River Basin Adjudication (SRBA) must recognize traditional distribution and water management;
- b. The zero minimum flow at Milner, as established in the state water plan be recognized as the Water District 1's position, and that there can be no call for deliveries of Snake River water below Milner by downstream interests;
- c. Releases of Snake River water past Milner must be consistent with state law and limited to annual arrangements approved by the Committee of Nine and Idaho Water Resource Board;
- d. Any changes in upstream water rights that would allow Snake River water to be transferred below Milner shall be by Committee of Nine agreement only or will be vigorously opposed.

NOW, THEREFORE, BE IT RESOLVED, By the water users of Water District 1, that the Committee of Nine is authorized to allocate sufficient funds to protect and defend these principles in negotiations with individuals, entities, the federal government and/or Indian tribes in challenging and defending claims in the SRBA or other necessary litigation.

22. ADMINISTRATION

WHEREAS, Idaho is a priority doctrine state where historically water has been developed and used in the various areas of the state; and

WHEREAS, The state has established administrative units in the form of water districts to distribute available water supplies; and

WHEREAS, Water within these administrative units has been distributed without respect to rights that might have been established by downstream users; and

WHEREAS, Upstream water users have not challenged or objected to the development of downstream water rights under the representation that their rights would not be subject to calls by water rights that exist outside of the state established administrative boundaries.

NOW, THEREFORE, BE IT RESOLVED, By the water users of Water District 1, that the Committee of Nine be authorized to expend the resources necessary to establish in the Snake River Basin Adjudication (SRBA) that past administration

represents a vital element of a water right and must be preserved in the adjudication of rights in the SRBA.

23. ENDANGERED SPECIES – SALMON

BE IT RESOLVED, That the water users of Water District 1 oppose any plan to use natural flow or stored water from the upper Snake River basin for drawdown or flow augmentation in the lower Snake and Columbia Rivers which use is contrary to the laws of the state of Idaho and the Nez Perce Water Rights Settlement Agreement of 2004 or is in breach of any contract between spaceholders and the United States Bureau of Reclamation or is an abrogation of any such contract.

BE IT FURTHER RESOLVED, That any such water acquired for salmon recovery purposes be as per the Nez Perce Water Rights Settlement Agreement and specifically the Snake River Component.

BE IT FURTHER RESOLVED, That such acquisitions must be in compliance with the Water District 1 Rental Pool Procedures which identify that impacts from such water acquisitions for flow augmentation shall be mitigated by the United States and with clear preference for the rental process over permanent acquisition.

BE IT FURTHER RESOLVED, That the water users of Water District 1 continue in support of the Nez Perce Water Rights Settlement Agreement.

BE IT FURTHER RESOLVED, That the water users of Water District 1 oppose designating flow augmentation for salmon migration as a beneficial use in Idaho.

24. ENDANGERED SPECIES ACT

WHEREAS, The Federal Endangered Species Act (ESA) is clearly designed to support maintaining endangered or threatened species through artificial propagation; and

WHEREAS, Special interest groups use the ESA to obstruct beneficial water resource projects; and

WHEREAS, The appropriate federal agencies do not adequately or appropriately administer the ESA; and

WHEREAS, Recovery plans for threatened and endangered species is a federal obligation but can be delegated to or developed in cooperation with states.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 support revision and amendment of the ESA of 1973 to:

- a. Require simultaneous recovery plans with listing decisions;

- b. Require that the agency specify only reasonable and prudent alternatives contained in approved recovery plans if alternatives are needed to avoid jeopardy;
- c. Require the agency to include economic considerations as well as scientific data in a determination of the value of listing a species for either threatened or endangered status;
- d. Provide that cooperative agreements between federal, state and local agencies, and water supply entities shall be deemed a substitute for listing for habitat conservation or recovery plans;
- e. Preclude the Secretary of Interior from designating by regulation waters to which the United States exercises sovereignty as critical habitat that would impact non-federal waters or entities;
- f. No provision or program of the ESA shall be construed or applied to authorize a taking or deprivation of any state created interest in water or water right.

25. CLEAN WATER ACT

WHEREAS, The United States Congress is presently considering reauthorization of the Clean Water Act (CWA); and

WHEREAS, Such reauthorization may significantly impact the water users in Water District 1.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 urge Congress and the administration to incorporate the following principles in any activities regarding the CWA:

- a. That neither the United States Army Corps of Engineers (USACE) nor Environmental Protection Agency (EPA) nor any other federal agency or officer shall utilize any provision or program under the CWA to allocate or reallocate water quantity under water rights acquired pursuant to state law as part of any program that seeks to require specified levels of assimilative capacity, dilution water or instream flows;
- b. No provision or program of the CWA shall be construed or applied to authorize a taking of any interest in water created pursuant to state law;
- c. That section 404 protections and allowances for water dependant activities should be expanded, particularly with regard to permitting for facilities, which are related to the exercise of state created water rights. Section 404

should continue to include the de minimus exception to the “discharge of dredged material” and the exemption of “incidental fallback”;

- d. The USACE should adopt simplified procedures for issuing general and nationwide permits and for transferring 404 permit authority to states. Certain categories of water such as headwaters, isolated waters, and certain intrastate waters should be excluded from permit requirements;
- e. The USACE or EPA may not prohibit or in any way restrict or condition water diversions, depletions, or the consumptive use of water or water rights, which are authorized or decreed under state law;
- f. Section 404 and wetland jurisdiction should be limited so that it does not apply to water surfaces and water related vegetation areas created artificially incidental to irrigation, hydropower and water supply projects. Any new rules or regulations or amendment of existing rules or regulations that are promulgated by EPA or the USACE regarding their authority over “waters of the United States,” should expressly acknowledge the term “navigable” as directed by the United States Supreme Court in *Solid Waste Agency of Northern Cook County v. Corp.* and *Rapanos v. United States*;
- g. Reasonable best management practices should be incorporated in the law as the programs to be pursued for non-point sources;
- h. Maintain the provisions of the CWA that exempt irrigation delivery or conveyance systems and return flows from point source regulation. Existing non-point sources shall remain as non-point sources under any program adopted under the CWA. Entities owning such irrigation delivery or conveyance facilities shall be permitted to control or regulate the quality of such return flows and to develop cooperative programs with water users;
- i. That any proposed total maximum daily loads regulation should be subject to public review and comment as provided for by state law before implementation;
- j. Water contained in canals, laterals, pipes, and drain ditches, seep tiles, and other irrigation and water delivery facilities should not be considered “waters of the United States” by EPA, the USACE, Idaho Department of Environmental Quality and other federal and state agencies;
- k. That neither the USACE nor EPA nor any other federal agency or officer shall utilize any provision or program under the CWA to require National Pollutant Discharge Elimination System (NPDES) permits for inter- or intra-basin water transfers and that the agencies adopt regulations exempting such water transfers from NPDES permits.

26. RECHARGE.

WHEREAS, Water levels in the Eastern Snake Plain Aquifer (ESPA), as well as surface water flows, have declined over the past several years due to changes in irrigation delivery operations and practices, drought, and groundwater pumping; and

WHEREAS, These declining water levels and surface water flows may be improved by managed recharge at various locations on the Snake River Plain as determined by the ESPA model and recharge study; and

WHEREAS, Managed recharge is recharge of the ESPA by authorized diversion and use of storage or natural flow water rights in existing irrigation delivery facilities or other designated facilities; and

WHEREAS, At the present time, recharge facilities are available to accommodate recharge to ESPA within Water District 1.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 support continued efforts and funding to identify and implement the most effective managed aquifer recharge sites and projects, which would, replenish ground water levels and surface and spring flows.

BE IT FURTHER RESOLVED, That the water users of Water District 1 support recharge and are ready, willing and able to provide facilities to commence recharge upon clearly defined recommendations or proposals from the state of Idaho and Idaho Water Resource Board (IWRB).

BE IT FURTHER RESOLVED, That the water users of Water District 1 support and urge the IWRB to work with the Committee of Nine, canal companies and irrigation districts on management of the recharge component of the ESPA Comprehensive Aquifer Management Plan.

27. CONTINUED SURFACE WATER DELIVERY OPERATIONS

WHEREAS, Ground water levels and surface water flows may decline by changes to surface water delivery operations, including reduced incidental recharge; and

WHEREAS, Preventing further declining water levels and surface water flows may be accomplished by supporting continued surface water delivery operations, including continued incidental recharge from these operations; and

WHEREAS, Water users in Water District 1 may take actions to improve surface water delivery operations, including implementing conservation or efficiency measures.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 support continued surface water delivery operations, including incidental recharge from these operations.

BE IT FURTHER RESOLVED, That the water users of Water District 1 recognize a water delivery entity's right to change surface water delivery operations, including implementing conservation or efficiency measures.

28. USBR OPERATION & MAINTENANCE (O&M) ACTIVITIES

WHEREAS, The United States Bureau of Reclamation (USBR) operates and maintains important water supply and hydropower facilities throughout Water District 1; and

WHEREAS, Such facilities are aging and may be in need of major maintenance or restoration activities and, in some cases, the high costs of completing these maintenance projects are compounded by governmental, environmental, or endangered species requirements; and

WHEREAS, The USBR plans, budgets, manages, allocates and passes the costs of project O&M and extraordinary maintenance or restoration activities on to their water user customers without significant involvement from the project beneficiaries.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 urge the USBR to:

- a. Work with their contracting spaceholders in formulating O&M budgets and planning for extraordinary maintenance or restoration activities on applicable facilities well in advance of actual expenditures;
- b. Account for and explain to their contracting spaceholders, actual O&M costs incurred for each applicable facility, including budget comparisons and other detailed cost accounting analysis as requested by the contracting spaceholders;
- c. Work with their contracting spaceholders on planning, budgeting, bidding, and managing extraordinary maintenance and renovation activities on applicable facilities in order to contain costs and maximize benefits;
- d. Work with Congress and the Administration to obtain alternative funding sources to assist their contracting spaceholders in covering the added costs of complying with environmental, species protection laws in maintaining and restoring USBR facilities in the West;

- e. Encourage the USBR to only include those costs associated with the actual delivery of water to agricultural purposes in the O&M budgets which are billed to agricultural water users.

29. FLOW AUGMENTATION STUDY

WHEREAS, The National Oceanic and Atmospheric Administration Marine Fisheries Service (NOAA Fisheries) continues to struggle with alternatives that will best recover Idaho's endangered anadromous fish; and

WHEREAS, Augmentation water from Idaho has been the preferred solution of NOAA Fisheries since 1992 and up to 427,000 acre-feet of Idaho storage water has been supplied annually on an interim basis by willing lessors through the Idaho Water Supply Bank, and local rental pools pursuant to Idaho Code §42-1763A and §42-1763B; and

WHEREAS, Current scientific studies continue to indicate that flow augmentation with Upper Snake water provides no meaningful benefit to the fish; and

WHEREAS, The Northwest Power & Conservation Council's Fish and Wildlife Program has been amended to exclude any recommendation for the acquisition of an additional one (1) million acre-feet from the Upper Snake River Basin; and

WHEREAS, Several environmental groups have unsuccessfully filed various actions in federal court, seeking to require that United States Bureau of Reclamation (USBR) and NOAA Fisheries acquire additional water from the Upper Snake; and

WHEREAS, Serious questions exist regarding USBR's ability to deliver an additional one (1) million acre-feet; and

WHEREAS, The acquisition of additional water would be contrary to existing state and federal law and policy; and

WHEREAS, The Northwest Power & Conservation Council, as the result of solicitation of comments on its proposed amendments to the mainstem portion of its Fish and Wildlife Program, has received an update and clarification dated February 10, 2003 from the Independent Scientific Advisory Board (ISAB), which comments include the following:

- a. That the relationship between river flows and salmon production has been reviewed before by the ISAB but many questions remain;
- b. That the whole issue of flow and fish survival requires re-evaluation;
- c. That management alternatives for improving survival of migrating juvenile anadromous fish include many dimensions beyond the current procedures for flow augmentation;

- d. That acceptance of a ‘water budget,’ referred to as ‘flow augmentation’ does not in any way restore original natural flow and the benefit to salmon of these incremental adjustments has not been well quantified;
- e. That the prevailing rationale for flow augmentation is inadequate, and it is neither complete nor comprehensive; and
- f. That the prevailing flow-augmentation paradigm, which asserts that in-river smolt survival will be proportionately enhanced by any amount of added water, is no longer supportable; and

WHEREAS, The acquisition of an additional one (1) million acre-feet would devastate Idaho’s and Water District 1’s economic and social base.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 oppose any efforts by legal action or otherwise to require more water from Idaho above that which is authorized by the Idaho legislature and the Nez Perce Water Rights Settlement Agreement of 2004, and urge that the USBR and NOAA Fisheries reject any proposals to lease or otherwise acquire any additional water for flows from the Upper Snake River Basin above Milner Dam, and that the water users of Water District 1 support the amendment to the Northwest Power & Conservation Council’s Fish and Wildlife Program which eliminated the recommendation to acquire an additional one (1) million acre-feet of water from the Upper Snake River Basin for flow augmentation or any other purpose.

BE IT FURTHER RESOLVED, That the water users of Water District 1 support submitting existing and any necessary additional flow augmentation studies to NOAA Fisheries in the context of comments on proposed recovery plans or draft biological opinions to ensure the best available science is considered by the agency when evaluating the benefits of flow from the Upper Snake River Basin on listed salmonids in the Lower Snake and Columbia Rivers.

30. HYDROELECTRIC PROJECT RELICENSING (Hells Canyon Complex and other facilities)

WHEREAS, The Idaho Power Company and other utilities that supply electricity to water users in Water District 1 are currently in the process of relicensing various hydroelectric projects, including the Hells Canyon Complex; and

WHEREAS, Water users in Water District 1 rely upon a firm supply of power from the Idaho Power Company and other utilities; and

WHEREAS, The Hells Canyon Complex supplies approximately 70% of the hydroelectric power generated by the Idaho Power Company; ~~and-~~

WHEREAS, The State of Oregon has recently asserted that it has authority to require reintroduction of salmon and steelhead above the Hells Canyon Complex

as part of any Section 401 certification under the Clean Water Act necessary for relicensing; and

WHEREAS, The State of Idaho opposes reintroduction and certain issues related to the State of Oregon's position may result in litigation.

NOW, THEREFORE, BE IT RESOLVED, That the water users in Water District 1 are opposed to the study or implementation of the possible introduction of salmon, steelhead, and other nonresident species above the Hells Canyon Complex of hydroelectric dams.

BE IT FURTHER RESOLVED, That the water users of Water District 1 urge the Federal Energy Regulatory Commission (FERC), the state of Idaho and the Idaho Power Company to oppose introduction of the species above the Hells Canyon Complex, or any study of dam removal at Hells Canyon or other locations within the state of Idaho.

BE IT FURTHER RESOLVED, That the water users of Water District 1 oppose the State of Oregon's position to require introduction of salmon and steelhead, or implementation of minimum flows as part of any water quality certification or any other state authorization.

BE IT FURTHER RESOLVED, That the water users of Water District 1 urge the FERC to re-license the Hells Canyon Complex so long as the water rights for said complex are subordinated to all upstream beneficial uses.

31. NOAA FISHERIES SALMON/STEELHEAD LISTINGS/HATCHERY POLICY

WHEREAS, National Oceanic and Atmospheric Administration Marine Fisheries Service (NOAA Fisheries) has certain duties with respect to endangered and threatened anadromous fish in Idaho; and

WHEREAS, NOAA Fisheries first listed Snake River sockeye, fall chinook, and spring/summer chinook, and Snake River steelhead under the Endangered Species Act (ESA) in the 1990s; and

WHEREAS, NOAA Fisheries' listing policies for anadromous fish have been inconsistent with respect to consideration of hatchery reared fish; and

WHEREAS, The ESA listing of the Snake River salmon and steelhead has resulted in the institution of a "flow augmentation" program to provide water from the Upper Snake River Basin above Brownlee Reservoir to the lower Snake and Columbia Rivers for salmon and steelhead migration; and

WHEREAS, Under United States Bureau of Reclamation's "flow augmentation" program, millions of acre-feet of water has been provided from the Upper Snake River Basin reservoirs consistent with various biological opinions; and

WHEREAS, Various entities in the Pacific Northwest have petitioned NOAA Fisheries to delist certain anadromous fish stocks; and

WHEREAS, NOAA Fisheries issued listing determinations for 27 West Coast Salmonid ESUs, including Snake River sockeye, fall and spring/summer chinook, and steelhead, in 2005; and

WHEREAS, NOAA Fisheries also issued a final policy on considering hatchery fish in ESA listing determinations in June 2005; and

WHEREAS, NOAA Fisheries listed Snake River sockeye as “endangered”, and the Snake River fall chinook, spring/summer chinook, and steelhead as “threatened” despite increasing number of returning adult salmon and steelhead over several years; and

WHEREAS, The basis for NOAA Fisheries’ listing determinations did not properly consider hatchery fish in assessing each species’ extinction risk; and

WHEREAS, NOAA Fisheries’ hatchery fish policy and its treatment of hatchery fish in the proposed listing determinations is legally questionable; and

WHEREAS, The continued listing of Snake River salmon and steelhead under the ESA is not in the best interests of the water users of Water District 1.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 urge NOAA Fisheries to revise its hatchery policy and listing determinations for Snake River salmon and steelhead in conformance with the ESA.

BE IT FURTHER RESOLVED, That the water users of Water District 1 urge NOAA Fisheries to remove Snake River salmon and steelhead from the Endangered Species list.

BE IT FURTHER RESOLVED, That the water users of Water District 1 support future efforts by the Idaho Water Users Association and the Coalition for Idaho Water to overturn NOAA Fisheries’ proposed hatchery policy and listing determinations.

32. AQUATIC HERBICIDES PERMITS

WHEREAS, Many irrigation districts, canal companies, and water delivery entities in Idaho apply aquatic herbicides to their systems to insure safe and efficient delivery of water; and

WHEREAS, Many governmental entities and private companies apply insecticides, herbicides, and pesticides to protect public health and prevent the

spread of pests, insects, and diseases, including recent documented cases of the West Nile virus; and

WHEREAS, Application of these various insecticides, herbicides, and pesticides is vital to crop health and farming operations in the state of Idaho; and

WHEREAS, Application of these herbicides is regulated by the Environmental Protection Agency (EPA) and the Federal Insecticide, Fungicide, Rodenticide and Algacide Act (FIFRA); and

WHEREAS, A 2001 decision in the Ninth Circuit Court of Appeals (*Headwaters v. Talent*) determined that the application of aquatic herbicides into canal systems constitutes a discharge of a pollutant from a point source which requires an National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act (CWA); and

WHEREAS, EPA issued guidance to its regional administrators in March 2002 clarifying that application of aquatic herbicides consistent with the FIFRA label to ensure the passage of irrigation return flow is a nonpoint source activity not subject to NPDES permit requirements under the CWA; and

WHEREAS, A 2003 decision in the Ninth Circuit Court of Appeals (*League of Wilderness Defenders v. Forsgren*) determined that application of aerial pesticides onto national forests constitutes a discharge of a pollutant from a point source which requires an NPDES permit under the CWA; and

WHEREAS, The Ninth Circuit Court of Appeals held that aquatic herbicides, used in compliance with FIFRA label, are not “pollutants” under the CWA and therefore do not require an NPDES permit; and

WHEREAS, In November 2006 EPA issued a final rule exempting certain applications of pesticides, including aquatic herbicides, from NPDES permit requirements; and

WHEREAS, Environmental groups immediately filed suit challenging the legality of EPA’s final rule and these challenges were consolidated in the Sixth Circuit Court of Appeals; and

WHEREAS, The Sixth Circuit Court of Appeals affirmed a prior district court decision invalidating EPA’s final rule in 2009 and the U.S. Supreme Court recently denied a petition for further review; and

WHEREAS, In October 2011 EPA issued a final Pesticide General Permit in compliance with the Sixth Circuit’s Opinion, requiring irrigation entities to conduct extensive reporting and monitoring; and

WHEREAS, such permitting may be carried over or required by the State of Idaho through the Department of Environmental Quality (DEQ) if and when DEQ obtains authority to issue and implement such permits; and

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 support legislation clarifying that application of pesticides and aquatic herbicides directly to “waters of the United States” consistent with the FIFRA label to control pests that are present in or present over such waters, including aquatic weeds, is not subject to permit requirements under the CWA or state law.

BE IT FURTHER RESOLVED, That the water users of Water District 1 oppose any requirements for individual permits for such applications, or any regulatory or third party actions that would threaten the operation of irrigation canals and the delivery of water to any water users in Water District 1.

33. FCRPS 2014 BIOLOGICAL OPINION LITIGATION (NWF v. NMFS)

WHEREAS, In 2014 National Oceanic and Atmospheric Administration Marine Fisheries Service (NOAA Fisheries) released a final biological opinion (BiOp) on the Federal Columbia River Power System (FCRPS) regarding Snake River and Columbia River anadromous fish; and

WHEREAS, Several environmental groups have alleged the 2014 FCRPS BiOp violates various provisions of the Endangered Species Act (ESA), Administrative Procedures Act (APA), and the National Environmental Policy Act (NEPA), and the District Court in Oregon has jurisdiction over plaintiffs’ claims by reason of litigation over prior biological opinions; and

WHEREAS, The court ordered the U. S. Army Corps of Engineers (USACE) to “spill” water at various FCRPS dams throughout the summers of 2005-2014, approximately costing Bonneville Power Administration (BPA) hundreds of millions of dollars in lost power revenues; and

WHEREAS, The court previously issued decisions for injunctive relief, ordering the USACE to continue to “spill” water at various FCRPS dams throughout the summers of 2006-2014, but denied any requests for additional flow augmentation from the Upper Columbia River Basin, recognizing that the “best available science” does not support the claim that flow augmentation is beneficial for listed salmon and steelhead; and

WHEREAS, The water users of Water District 1 do not agree that United States Bureau of Reclamation’s (USBR) Upper Snake River Basin Projects are operated as part of the FCRPS.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 oppose the plaintiffs’ actions in the *NWF v. NMFS* litigation, including any

attempt to combine the separate ESA consultations for the FCRPS and the USBR's Upper Snake River Basin Projects.

BE IT FURTHER RESOLVED, That the water users of Water District 1 oppose any further efforts by NOAA Fisheries or the plaintiffs to impose any further requirements that might directly or indirectly affect water storage or use in the Upper Snake River Basin.

BE IT FURTHER RESOLVED, That the water users of Water District 1 advise the State of Idaho during the ongoing litigation to ensure their interests are adequately protected.

BE IT FURTHER RESOLVED, That the water users of Water District 1 oppose any requests for injunctive or other relief that would result in flow augmentation from the Upper Snake River Basin or additional "spill" at various FCRPS dams, recognizing the increased costs to BPA detrimentally affect the water users of Water District 1 as well.

34. UPPER SNAKE BIOLOGICAL OPINION LITIGATION

WHEREAS, Various environmental groups filed a lawsuit against National Oceanic and Atmospheric Administration Marine Fisheries Service (NOAA Fisheries) and United States Bureau of Reclamation (USBR) in federal district court in Oregon, *American Rivers v. NOAA Fisheries*, alleging that the biological opinion for the USBR's Upper Snake River Basin Projects for 2005-2035 violates the Administrative Procedures Act and the Endangered Species Act (ESA); and

WHEREAS, The plaintiffs have alleged that the operation of USBR's Upper Snake River Projects adversely affects migrating salmon and steelhead through alteration of the hydrograph of the Snake and Columbia Rivers, and by USBR's management actions at the Projects, including water storage and delivery to spaceholders, power generation, flood control, administration of uncontracted space, and releases of water for flow augmentation; and

WHEREAS, The plaintiffs seek an order from the court that would strike down the current biological opinion covering USBR's operations in the Upper Snake River Basin, as well as other injunctive and declarative relief; and

WHEREAS, The plaintiffs' claims for relief threaten the viability of the Nez Perce Water Rights Settlement Agreement that was approved by Congress, the President, the state of Idaho, and the Nez Perce Tribe in 2005; and

WHEREAS, The plaintiffs also sought an order from the court to include USBR's Upper Snake River Projects in NOAA Fisheries' Federal Columbia River Power System (FCRPS) biological opinion; and

WHEREAS, The court refused to order NOAA Fisheries to conduct a single Section 7 consultation for the FCRPS and Upper Snake USBR Projects, however, the court determined the Upper Snake Projects' biological opinion violated the ESA; and

WHEREAS, NOAA Fisheries issued a new biological opinion in May 2008; and

WHEREAS, The plaintiffs may seek injunctive relief against USBR to prevent water delivery to spaceholders within Water District 1 and instead have water sent down the Snake River for listed anadromous fish in 2016 and future years; and

WHEREAS, The plaintiffs' claims threaten the social and economic base of Water District 1 as well as that of other water districts with USBR projects throughout the state of Idaho.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 oppose the plaintiffs' claims against NOAA Fisheries and USBR in *American Rivers v NOAA Fisheries*, as well any future requests for relief including any injunctive relief that would prevent USBR from storing and delivering water to its spaceholders in the Upper Snake River Basin, and continue to monitor the progress of the case and any future ordered remands by the court.

BE IT FURTHER RESOLVED, That the water users of Water District 1 oppose the plaintiffs' continued attempts to have USBR's Upper Snake River Projects included in the FCRPS biological opinion.

35. DOI – WaterSMART Initiative

WHEREAS, The Department of the Interior (DOI) and the United States Bureau of Reclamation (USBR) unveiled a new program in 2003 entitled "Water 2025" also known as "Water for America Initiative" now being referred to as "WaterSMART" aimed at encouraging cooperative planning for preventing future water crises in the West; and

WHEREAS, USBR sponsored several conferences across the West that outlined the program's intended tools to accomplish water management, including (1) conservation, efficiency, and markets, (2) collaboration, (3) improved technology, and (4) removing institutional barriers and increasing interagency cooperation; and

WHEREAS, The "WaterSMART" program is being implemented.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 urge USBR to include additional storage projects as another tool to facilitate and implement the "WaterSMART" program.

BE IT FURTHER RESOLVED, That the water users of Water District 1 encourage USBR to recognize and adhere to contractual obligations and state water law in implementing any aspect of the “WaterSMART” program in the future.

36. SNAIL ESA PETITIONS

WHEREAS, The United States Fish & Wildlife Service (FWS) listed several snail species in the middle Snake River as threatened or endangered in 1992, including the Bliss Rapids snail, the Idaho springsnail, the Utah valvata, the Snake River physa, and the Banbury Springs lanx; and

WHEREAS, The initial Endangered Species Act (ESA) listing determinations were made without comprehensive studies or surveys about the five snail species; and

WHEREAS, These ESA listings may potentially impact water diversion and use throughout the Snake River Basin as well as continued water storage operations in the United States Bureau of Reclamation’s projects above Brownlee Dam, including operations within Water District 1; and

WHEREAS, Recent studies and data collection efforts in the middle Snake River and elsewhere questions the bases for the original listing decisions; and

WHEREAS, The state of Idaho Office of Species Conservation and Idaho Power Company filed a petition to delist the Idaho springsnail in June 2004 on the basis of a taxonomic revision for the species by Dr. Robert Hershler of the Smithsonian Institute; and

WHEREAS, The taxonomic revision reveals the Idaho springsnail, the Jackson Lake springsnail, the Harney Lake springsnail, the Columbia springnail, and another snail species actually constitute the same snail species; and

WHEREAS, Several environmental groups filed a petition to list Jackson Lake springsnail, the Harney Lake springsnail, and the Columbia springsnail in July 2004; and

WHEREAS, In 2007 FWS removed the Idaho springsnail from the federal list of endangered and threatened species and further determined the petition to list the Jackson Lake springsnail, the Harney Lake springsnail, and the Columbia springsnail as threatened or endangered was “not warranted”; and

WHEREAS, The governor of the state of Idaho and various water users in Water District 1 also petitioned to remove the Utah valvata from the federal list of endangered and threatened species; and

WHEREAS, In 2010 FWS removed the Utah valvata snail from the federal list of endangered and threatened species; and

WHEREAS, Removing the three remaining snail species from the ESA endangered and threatened list is in the best interests of all water users in the Snake River Basin.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 support previously filed petitions to delist the snails, including the delisting rule recently issued by FWS for the Idaho springsnail and Utah valvata.

BE IT FURTHER RESOLVED, That the water users of Water District 1 support petitions to de-list the Bliss Rapids snail, the Snake River Physa, and the Banbury Springs lanx, and oppose litigation that would seek to overturn any de-listing rules issued by FWS.

BE IT FURTHER RESOLVED, That the water users of Water District 1 oppose the petition to list the Jackson Lake springsnail, the Harney Lake springsnail, and the Columbia springsnail, and support FWS' finding that listing is not warranted.

BE IT FURTHER RESOLVED, That the water users of Water District 1 continue to monitor and participate in any processes related to the Snake River Physa, including consultation with the U.S. Bureau of Reclamation concerning the operation and maintenance of Minidoka Dam.

37. YELLOWSTONE CUTTHROAT TROUT ESA PETITION

WHEREAS, The Yellowstone cutthroat trout is present in the Upper Snake River drainage in various streams and rivers; and

WHEREAS, The State of Idaho, through the Idaho Department of Fish & Game and the State of Wyoming, through the Wyoming Game & Fish Department, manage and have taken actions to preserve and improve the species' survival; and

WHEREAS, Several environmental groups previously petitioned to list the species under the Endangered Species Act (ESA); and

WHEREAS, On February 14, 2006, after conducting a status review of the species, the United States Fish & Wildlife Service (FWS) issued a proposed rule determining that listing the Yellowstone cutthroat trout as threatened or endangered was not warranted; and

WHEREAS, This final agency decision was not challenged in court by any person or entity; and

WHEREAS, The state of Idaho has released a Yellowstone cutthroat trout management plan; and

WHEREAS, Future listing of the Yellowstone cutthroat trout under the ESA stands to threaten continued water diversion and use in the Snake River Basin, including water storage operations at United States Bureau of Reclamation's Upper Snake Projects above Milner Dam.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 oppose any future petition to list the Yellowstone cutthroat trout as threatened or endangered under the ESA.

BE IT FURTHER RESOLVED, That the water users of Water District 1 urge the state of Idaho to recognize and protect the water rights and interests of water users in the adoption and implementation of any management plan for the species.

38. CRITICAL HABITAT DESIGNATIONS

WHEREAS, Pursuant to the Endangered Species Act (ESA), NOAA Fisheries and the U.S. Fish & Wildlife Service (FWS) designated or have proposed to designate critical habitat for various plants and animals, including but not limited to Snake River salmon, steelhead, bull trout, and the Western Yellow-billed cuckoo; and

WHEREAS, Certain critical habitat designations cover broad areas unoccupied by the listed plants or animals or are otherwise unnecessary for their survival and recovery; and

WHEREAS, Critical habitat designations have the potential for profound and devastating economic impacts upon various industries in Idaho as documented during the 2005 and 2010 critical habitat designation processes for bull trout; and

WHEREAS, NOAA Fisheries and FWS must adequately consider the economic impacts of its critical habitat designations pursuant to the ESA, including those areas that are not occupied by listed species; and

WHEREAS, NOAA Fisheries and FWS may exclude any area from critical habitat if the benefits of the exclusion outweigh the benefits of inclusion where such exclusion would not result in extinction of the species.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 oppose any critical habitat designations for listed plants or animals by NOAA Fisheries and FWS that are contrary to the purposes of the ESA and that do not adequately consider the economic impacts of such designations on the local economies of the state of Idaho.

BE IT FURTHER RESOLVED, That the water users of Water District 1 encourage NOAA Fisheries to revise and exclude additional waters, including the mainstem Snake River, from its critical habitat designations where the benefits of exclusion outweigh the benefits of inclusion.

BE IT FURTHER RESOLVED, That the water users of Water District 1 oppose any critical habitat designations for listed plants or animals by NOAA Fisheries and FWS that adversely impact the economies of entities that hold contracts to stored water in U.S. Bureau of Reclamation projects.

39. CORPS OF ENGINEERS' POLICY ON 404 PERMITS

WHEREAS, As a result of a settlement agreement entered into between the Seattle District of the U.S. Army Corps of Engineers (USACE) and the National Wildlife Federation, the USACE has asserted that the decision rendered in *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3d 536 (9th Cir. 2001) is binding upon the geographic jurisdiction of the 9th Circuit Court of Appeals, which includes Idaho; and

WHEREAS, The USACE asserts that irrigation ditches, canals, laterals and drains are “waters of the United States” and that, pursuant to Section 404 of the Clean Water Act (CWA), permits (404 permits) are necessary for various types of work on irrigation ditches, canals, laterals and drains, including excavation, piping or lining during the non-irrigation season when those facilities may not contain water; and

WHEREAS, The USACE has asserted that owners and operators of irrigation ditches, canals, laterals, drains and others may be required to obtain 404 permits for certain activities, despite exemptions, protections and allowances in the CWA, 33 United States Code §1344(f), including the exemption “for the construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches”; and

WHEREAS, The United States Supreme Court issued a decision in *Rapanos v. United States* that rejected the USACE’ regulatory definition of “waters of the United States”, and the concurring opinion issued by Justice Kennedy determined that until new regulatory guidance is issued the USACE must first establish, on a case-by-case basis, that a waterbody has a “significant nexus” with a navigable-in-fact waterway before asserting regulatory jurisdiction.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 oppose the assertion by the USACE or other federal or state agency that irrigation ditches, canals, laterals and drains are “waters of the United States”, opposes the view that fails to account for the Supreme Court’s recent decision in *Rapanos v. United States* and opposes the position that a 404 permit is required for the discharge of dredge or fill material into irrigation ditches, canals, laterals and drains that are constructed and used for irrigation or drainage purposes.

BE IT FURTHER RESOLVED, That the water users of Water District 1 oppose any attempts to limit the exemptions, protections or allowances of Section 404 of

the CWA, including the exemption for the construction or maintenance of irrigation ditches, or the maintenance of drainage ditches.

BE IT FURTHER RESOLVED, That the water users of Water District 1 oppose any attempts to designate irrigation ditches, canals, or drains as waters of the United States, including navigable streams, or tributaries of navigable streams.

40. STATE OF IDAHO INVASIVE SPECIES PROGRAM

WHEREAS, Invasive species pose a threat to the State of Idaho, its natural resources, and local economies; and

WHEREAS, Invasive aquatic species like Quagga and Zebra mussels, are especially threatening to the State of Idaho's waterways, water users, and its agricultural economy; and

WHEREAS, The Snake River and Columbia River basins are currently free of such invasive aquatic species; and

WHEREAS, Infestations of Quagga and Zebra mussels are well documented in other states throughout the country, notably the lower Colorado River basin; and

WHEREAS, These species were also recently found in waterbodies in the State of Montana, which poses a particular concern to Idaho water users; and

WHEREAS, The Idaho Legislature enacted the "Idaho Invasive Species Act of 2008" to assist in prevention, early detection, rapid response and eradication of invasive species; and

WHEREAS, Maintaining and even enhancing the existing level of preventive and protective measures implemented by the State of Idaho is vital to all Idaho water users; and

WHEREAS, Supporting and coordinating efforts to prevent the spread of invasive species, especially aquatic invasive species, benefits all Idaho water users.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 supports the State of Idaho's invasive species program and local initiatives to prevent the infestation of invasive species, especially aquatic invasive species.

BE IT FURTHER RESOLVED, That the water users of Water District 1 supports continued legislative funding of the Idaho State Department of Agriculture's program and prevention strategy, including watercraft inspection, monitoring surveys, and outreach/education to boaters.

BE IT FURTHER RESOLVED, That the water users of Water District 1 supports the current inspection and prevention programs, as well as enhancement of such programs to protect Idaho's waterways.

BE IT FURTHER RESOLVED, That the water users of Water District 1 urges and supports coordinated efforts between the states and federal agencies to eradicate aquatic invasive species and prevent their spread to the State of Idaho.

41. WATER QUALITY STANDARDS / TMDLS / ANTIDEGRADATION RULES / IPDES PROGRAM – UPPER SNAKE RIVER BASIN

WHEREAS, The Clean Water Act provides for the state of Idaho, through the Idaho Department of Environmental Quality, and the Shoshone-Bannock Tribes, to formulate water quality standards for various water bodies, and for impaired waters, total maximum daily loads (TMDLs) and implementation plans; and

WHEREAS, The adoption of water quality standards, TMDLs, and antidegradation rules, including litigation over the same, may impact water distribution and storage operations in Water District 1; and

WHEREAS, the State of Idaho, through the Department of Environmental Quality (DEQ) is presently taking steps to obtain primacy from EPA over the issuance and monitoring of pollutant discharge elimination system permits

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 seek to continue the water distribution and storage operations that they have relied upon for their livelihoods, while at the same time working with state and tribal agencies to help address water quality issues in the Upper Snake River Basin.

BE IT FURTHER RESOLVED, That the water users of Water District 1 oppose any state, federal, or tribal water quality regulations, plans, policies, or permits that would negatively impact water distribution and storage operations in Water District 1, including impacts to the water users' water rights and spaceholder contracts.

BE IT FURTHER RESOVLED, That the water users of Water District 1 oppose any litigation by third parties that would seek to change any water quality regulations or plans, policies, permits, including antidegradation rules, that would negatively impact the water users' water rights and spaceholder contracts.

42. EVAPORATION LOSSES FROM RESERVOIRS WITHIN WATER DISTRICT 1

WHEREAS, The reservoirs on the mainstem of the Snake River and its tributaries within Water District 1 are used for the storage of water for irrigation and in the distribution and delivery of natural flow and stored water to water users within Water District 1; and

WHEREAS, It is to the benefit of all water users within Water District 1 to establish a standard accounting procedure for handling evaporation losses from reservoirs within Water District 1.

NOW, THEREFORE, BE IT RESOLVED, That the total evaporation losses determined to occur from all reservoirs shall be proportionately allocated among all allottees or spaceholders receiving water from storage, without regard to the priority for storing water in the respective reservoir or its location.

BE IT FURTHER RESOLVED, That this resolution be recommended to the watermaster of Water District 1 and the director of the Idaho Department of Water Resources for implementation of these accounting procedures.

43. CLOUD SEEDING

WHEREAS, The water resources of the Snake River Basin (both surface and ground) are being stressed by drought, population growth, and increasing demands by agriculture, cities, and recreational activities; and

WHEREAS, Cloud seeding is a water management tool that can augment water supplies for all citizens of Idaho; and

WHEREAS, Water District 1, irrigation districts and canal companies and counties financially supported the cloud seeding program of the High Country Resource Conservation and Development Council (RC&D); and

WHEREAS, the Idaho Water Resource Board in partnership with Idaho Power Company has initiated a cloud seeding program in cooperation with High Country RC&D.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 strongly encourage and support Idaho Power, the Idaho Water Resource Board and the RC&D Council efforts covering the Snake River Basin area in Water District 1 to develop, operate, maintain, and fund a coordinated, scientifically based cloud seeding program during the winter time for the watershed areas of the Snake River including the Henrys Fork and its tributaries.

BE IT FURTHER RESOLVED, That Water District 1 participate with the RC&D Councils by including a budget item for cloud seeding of at least 1/3 of the cost up to \$35,000 (to be reviewed annually) with the balance of program costs coming from the RC&D Councils.

BE IT FURTHER RESOLVED, That Water District 1 participate with the Idaho Water Resource Board by including an additional budget item for cloud seeding of up to \$200,000 (to be reviewed annually) to support the cloud seeding program operated by Idaho Power in cooperation with the Idaho Water Resource Board

with the balance of the program costs coming from the Board or other participants.

BE IT FURTHER RESOLVED, That a copy of this resolution be sent to the High Country, Three Rivers, Mid-Snake, and Wood River RC&D Councils, the Idaho Water Resource Board and Idaho Power Company.

44. WATER MONITORING EXPENSES

WHEREAS, The Idaho Department of Water Resources (IDWR) incurs expenses for monitoring conditions of the Eastern Snake Plain Aquifer (ESPA), updating the ESPA ground water model, updating surface water modeling tools, and updating accounting for water rights; and

WHEREAS, Such tools are essential for water administration for the waters of the state and benefit all residents of the state; and

WHEREAS, Water users recognize that diversions in excess of the water actually consumed occur with most uses, and such excess water becomes the source or a portion of the source of another water right.

NOW, THEREFORE, BE IT RESOLVED, That because the efforts, models and tools of the IDWR are essential to water administration, and beneficial to the entire state of Idaho, the expenses of such efforts should be borne from the general fund of the state.

45. ADDITIONAL STORAGE

WHEREAS, Water is the most precious natural resource of the state of Idaho; and

WHEREAS, Water users of Water District 1 have been experiencing shortages in water availability and deliveries in recent years; and

WHEREAS, Continued, unprecedented drought, population growth and urban development, conjunctive administration, Endangered Species Act requirements and other additional demands are being placed on the already scarce water resources of the state; and

WHEREAS, Idaho stores a small percentage of its annual run-off in comparison with other states; and

WHEREAS, Additional storage would be beneficial for water users of Water District 1 for irrigation, domestic, municipal, commercial, industrial, recreation, flood control, resident fisheries, wildlife and other purposes; and

WHEREAS, New storage reservoirs can take many years to plan, design and construct; and

WHEREAS, The Teton Dam, Minidoka Dam enlargement, Twin Springs Dam, Galloway Dam and Lost Valley Dam have initially been identified by the director of the Idaho Department of Water Resources (IDWR); and

WHEREAS, The U.S. Bureau of Reclamation is presently conducting the Henrys Fork Basin Special Study which is reviewing possible supplemental storage sites.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 encourage the IDWR and the Idaho Water Resource Board, in cooperation with other interested Federal and State agencies, local governments, water users and other citizens, to study potential storage projects, identify those that have the most benefit to the state of Idaho, and develop funding strategies to move forward with the planning, design and construction of those projects.

BE IT FURTHER RESOLVED, That the water users of Water District 1 urge the Governor and Legislature of the state of Idaho to allocate state funding and commit additional resources as necessary to assist in carrying out these objectives.

46. IDWR FUNDING

WHEREAS, State funding for the Idaho Department of Water Resources (IDWR) has not been adequate to keep pace with inflation and other increasing costs, especially when compared to other state agencies and the private sector; and

WHEREAS, Engineers, hydrologists and other specialized, technical positions at the IDWR are important for dealing with the critical water issues facing the state of Idaho, including urbanization, conjunctive administration and environmental demands; and

WHEREAS, The IDWR has lost several valuable employees and struggles to attract and keep sufficient new employees for these technical positions due in large part because of the wide difference in salary when compared to other state agencies and the private sector; and

WHEREAS, Unless the IDWR is adequately funded it cannot carry out its mandated responsibilities or shoulder new responsibilities as the water resources of the state become more valuable and scarce.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 support adequate funding for the IDWR, in order to bring the agency to parity with other state agencies and the private sector.

47. IWRB COMPREHENSIVE AQUIFER MANAGEMENT PLAN (CAMP)

WHEREAS, In 2006 the Idaho Legislature passed Senate Concurrent Resolution No. 136 requesting the Idaho Water Resource Board (IWRB) to prepare and submit a CAMP for the Eastern Snake Plain Aquifer (ESPA); and

WHEREAS, The IWRB with the assistance of Idaho Department of Water Resources and a stakeholder advisory committee completed the CAMP and IWRB approved it on January 29, 2009; and

WHEREAS, The stated goal of the CAMP is to “Sustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively managing a balance between water use and supplies”; and

WHEREAS, The objectives of the CAMP are to: 1) increase predictability for water users by managing for a reliable supply; 2) create alternatives to administrative curtailment; 3) manage overall demand for water within the Eastern Snake Plain; 4) increase recharge to the aquifer; and 5) reduce withdrawals from the aquifer; and

WHEREAS, The CAMP seeks to effect a total long-term water budget change in the ESPA by 600,000 acre-feet over a 20-year period, with a 200-300,000 acre-feet change within the first 10 years; and

WHEREAS, Implementation of the CAMP and its proposed actions is dependent upon adequate funding, including funding from the state of Idaho; and

WHEREAS, Many water users in Water District 1 have an interest in the sustainability of the ESPA to ensure water supplies for their water rights; and

WHEREAS, The governor of the state of Idaho, Legislative leadership of the state of Idaho, and the IWRB remains committed to the CAMP; and

WHEREAS, The Idaho Water Resource Board following the request of the Governor of the State of Idaho is developing a water resource sustainability policy; and

WHEREAS, Now is the time for all members of the CAMP, including the implementation committee members, to continue to work on a long-term funding mechanism and process for prioritizing and selecting projects on the ESPA in the future.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 continue to support IWRB’s efforts in formulating and implementing the CAMP for the benefit of the ESPA, the development and implementation of the sustainability policy and support further discussions to resolve the funding issues.

BE IT FURTHER RESOLVED, That the water users of Water District 1 support and urge the state of Idaho to fund the state's portion of the CAMP for purposes of its implementation.

BE IT FURTHER RESOLVED, That the water users of Water District 1 support and urge the IWRB to work with the Committee of Nine and water users of Water District 1 on development and implementation of projects.

48. RIRIE RESERVOIR FLOOD CONTROL RULE CURVES

WHEREAS, The flood control rule curves for Ririe Reservoir were developed prior to the time Ririe storage space was contracted; and

WHEREAS, The storage space in Ririe Reservoir is now contracted to Mitigation, Inc., an entity formed to mitigate the impacts to Upper Snake water users including but not limited to the advancement of water right priority date from 1891 to 1867 pursuant to water right number 01-10223 caused by the 1990 Fort Hall Indian Water Rights Agreement, and contracted space has proven to be unreliable and difficult to fill; and

WHEREAS, Pursuant to the United States Army Corp of Engineers' (USACE) Standing Operating Procedures Reservoir Regulation: Ririe Dam the enacting legislation allows for modification of flood control rule curves as additional information becomes available; and

WHEREAS, The Standard Operating Procedures state the flood control objective of Ririe Dam is "to provide adequate storage space in the reservoir to regulate stream flow downstream insofar as possible to a non-damaging level, and yet still provide a near full reservoir at the end of the flood season for irrigation and other project purposes"; and

WHEREAS, Conditions in the Willow Creek basin have changed since the flood control rule curves were developed, including the establishment of an annual maintenance schedule to keep Willow Creek Canal, Sand Creek Canal and the Willow Creek Floodway channel free of ice during the winter; and

WHEREAS, The current flood control rule curves do not rely upon current or updated hydrologic conditions on Willow Creek; and

WHEREAS, The Standard Operating Procedures require cooperation between the United States Bureau of Reclamation (USBR), USACE, Idaho Department of Water Resources, the Water District 1 Watermaster, water users, fish & game, local interests and others in order to provide maximum benefits for the region; and

WHEREAS, The water users of Water District 1 are dependent upon available water supplies and adjusting the flood control rule curves would increase the reliability of contracted storage supplies in Ririe Reservoir; and

WHEREAS, The USBR and USACE have completed the Phase I Study of Proposed Modifications of Flood Control Operations of Ririe Reservoir, which has shown how the re-evaluation of winter flood control operations could retain flood control benefits while also providing valuable storage benefits during some years, under the Alternative B; and

WHEREAS, The USBR has completed a 2014 Environmental Assessment Ririe Winter Storage Study for Ririe Dam and Reservoir, which compares No Action to Alternative 1 with a finding of no adverse natural resource or socioeconomic impact.

WHEREAS, Legislation has been introduced in Congress to improve and update the Ririe Reservoir winter Flood Control Rule Curves to improve the water supplies of the water users.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 encourage the USBR and the USACE to change the flood control rule curves in Phase 2 of the Ririe Reservoir Study based on the hydrologic analysis completed in Phase 1 of the study to better match the current conditions in the Willow Creek basin and to allow for a more dependable contracted storage supply in Water District 1 and providing for full mitigation of the impacts resulting from the 1990 Fort Hall Indian Water Rights Agreement;

BE IT FURTHER RESOLVED, That the water users of Water District 1 supports changing, including reauthorization legislation if necessary, the Ririe Reservoir Project to properly balance Ririe Reservoir water and irrigation supplies with adequate flood control operations.

BE IT FURTHER RESOLVED, That the water users of Water District 1 encourage the Idaho Water Users Association and the Idaho State Legislature to support Water District 1 efforts to change the Ririe Reservoir Flood Control Rule Curves.

49. RESERVOIR & RIVER OPERATIONS

WHEREAS, The Committee of Nine has formed a reservoir and river coordination sub-committee, with the acceptance of the United States Bureau of Reclamation (USBR), to meet with and receive updates on winter releases at Palisades Reservoir; and

WHEREAS, The fill of Palisades Reservoir is critical to the overall operations of the Water District 1's canal companies and irrigation districts; and

WHEREAS, The State of Idaho and Water District 01 recognizes that power production and use of power head is subordinate to irrigation storage rights; and

WHEREAS, Concerns have been raised over the USBR's winter operations at Palisades Reservoir and the effect those operations have on the availability of water for all uses including flow augmentation; and

WHEREAS, The past operations have shown additional involvement and discussion of sub-committee members may provide additional information necessary for successful fill operations in Palisades Reservoir.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 urge the USBR to incorporate recommendations from the sub-committee to the fullest extent possible consistent with other governing requirements to ensure a fill of Palisades Reservoir.

50. FAMILY FARM ALLIANCE

WHEREAS, The Family Farm Alliance is a national grass roots organization dedicated to supporting agriculture and water users both in Idaho and across the nation; and

WHEREAS, The Family Farm Alliance participates in lobbying Congress and raising awareness as to important agricultural issues, including water supply and water projects in Idaho.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 include a budget item to support participation in the Family Farm Alliance and support the Committee of Nine appointment of a person to represent the interests of Water District 1 to the Family Farm Alliance.

51. SUPPORT OF OPERATIONS FORUM UNDER– 2009 REAFFIRMATION AGREEMENT OF THE SWAN FALLS SETTLEMENT

WHEREAS, The Upper Snake River Advisory Committee (Operations Forum) was created in 2011 pursuant to the further Swan Falls Settlement Agreements in the SRBA in order to address more efficient river and reservoir operations in Water District 1; and

WHEREAS, The Operations Forum is comprised of representatives from the State and major stakeholders which own storage waters, natural flow waters and power rights at and above Milner Dam in Water District 1; and

WHEREAS, The Operations Forum concept is supported by the water users of Water District 1 provided the water users rights are fully protected; and

WHEREAS, The Operations Forum does not supersede existing water rights of decreed or storage reservoir rights to maximize water supplies in the upper snake river.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 support the Operations Forum created pursuant to the 2009 Reaffirmation Agreement of the Swan Falls Settlement Agreements in the SRBA and authorize designated Water District 1 members to attend and fully participate in the meetings of the Operations forum.

BE IT FURTHER RESOLVED, That the duly designated Water District 1 members to the Operations Forum shall have no authority to bind water users of Water District 1 or the Committee of Nine without the express written authorization of the Committee of Nine or the water users of water users of Water District 1 through resolution.

52. USBR PROPOSED CHANGES TO RECLAMATION MANUAL

WHEREAS, In 2011 the United States Bureau of Reclamation (USBR) began a process to revise and make changes to certain policy's in its Reclamation Manual as set forth in PEC 09, PEC 05, PEC 09-01, and PEC 05-01; and

WHEREAS, USBR asserts that water used for "irrigation" purposes must meet a criteria of commercial agricultural use on over 10 acres; and

WHEREAS, USBR's draft policies and its implementation may adversely affect existing water use under existing contracts between water users in Water District 1 and USBR; and

WHEREAS, USBR'S draft policies may not be in accord with existing state law, concerning land and water use.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 oppose any effort by USBR to adopt or implement new policies that would adversely affect the water users' interests, including the use of their storage water rights.

53. LEGISLATIVE INTERNSHIP

WHEREAS, The Idaho Water Users Association (IWUA) sponsors a legislative intern; and

WHEREAS, Water District 1 has helped support and sponsor a legislative intern through cooperation with IWUA in the past.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 support IWUA's legislative internship program by including a budget item to help sponsor a legislative intern.

54. WATER SAFETY

WHEREAS, Water District 1 has previously provided support for the state Otto Otter Program and other water safety education programs; and

WHEREAS, The Idaho Water Users Association (IWUA) has a water safety program including financial support for media awareness in Idaho; and

WHEREAS, Water Safety is an ongoing concern.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 support water safety and education throughout Idaho.

55. BLACKFOOT RIVER EQUITABLE ADJUSTMENT SETTLEMENT AGREEMENT

WHEREAS, The 1990 Fort Hall Indian Water Rights Agreement was signed by and between the Shoshone-Bannock Tribes, the United States, the State of Idaho, and the Committee of Nine (Parties); and

WHEREAS, The Blackfoot River Equitable Adjustment Settlement Agreement (Agreement) was approved by the Committee of Nine and was signed by and between the Parties and sets forth the terms and conditions of the equitable adjustment provided for in paragraph x.d of water right no. 27-11375; and

WHEREAS, The Agreement is an addendum to the Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin dated August 2, 1995; and

WHEREAS, The Agreement calls for a Blackfoot River Water Management Plan (WMP), which has been developed and signed by the Parties to the Agreement; and

WHEREAS, The Director of the Department of Water Resources issued a *Final Order Regarding Instructions to the Watermasters for Water District Nos. 1 and 27 (ORDER)*, ordering the Watermasters of Water District Nos. 1 and 27 to administer and distribute water in their respective water districts in accordance with the provisions of the WMP, effective as of the 2014 irrigation season.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 hereby recognize the approval of the Agreement and WMP.

56. OPPOSITION TO CONDEMNATION OF IRRIGATION AND DRAINAGE FACILITIES AND WATER RIGHTS

WHEREAS, Canal companies, irrigation districts, and other similar organizations located within Water District 1 have provided essential, reliable and affordable delivery and drainage of irrigation water throughout history; and

WHEREAS, Cities and irrigation entities within Water District 1 have a long, proud tradition of solving complex water resource problems in a cooperative fashion for the benefit of their respective residents and water users; and

WHEREAS, Certain recent disputes have arisen between irrigation entities and municipalities in other areas of the state, prompting litigation and other problems relating to this issue; and

WHEREAS, The governmental power of eminent domain may only be exercised when taking property through condemnation is necessary for public uses, and should not be abused; and

WHEREAS, Eminent domain litigation to condemn all of the property rights and facilities of irrigation entities is an abuse of the governmental power of taking property for public uses.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 authorize the Committee of Nine to take necessary steps, and encourage and support affiliated organizations and related associations to take necessary steps, to stop and prevent the abuse of governmental power, -- at the federal, state and local levels of government -- in taking existing irrigation and drainage facilities, water rights and storage water from irrigation entities in Water District 1 and the state of Idaho through the use of eminent domain.

57. COLUMBIA RIVER TREATY

WHEREAS, The Columbia River Treaty (enacted in 1964) is an international agreement between Canada and the United States of America for the cooperative development and operation of the water resources of the Columbia River Basin for the benefit of flood control and power; and

WHEREAS, The Treaty has no end date but either party may terminate most of the provisions as early as September 2024 with a minimum ten years' written notice, which would be 2014; and

WHEREAS, Current assured flood control operating procedures will end in 2024, independent of the Treaty termination decision; and

WHEREAS, Certain issues related to flood control, ecosystem function, or changes to Columbia River and its tributaries river operations could detrimentally affect water users in Idaho, including within Water District 1.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 oppose any efforts related to the Columbia River Treaty process that would impose additional operating or flood control conditions on the Upper Snake River Basin or violate the spirit and intent of the 2004 Snake River Water Rights Settlement Agreement.

BE IT FURTHER RESOLVED, That the water users of Water District 1 participate through the Committee of Nine and its advisors in the Columbia River Treaty process to protect their water right interests in the Upper Snake River Basin.

58. WESTERN YELLOW BILLED CUCKOO ESA LISTING

WHEREAS, In 2014 the U.S. Fish & Wildlife Service (“FWS”) listed the western distinct population segment of the yellow-billed cuckoo as threatened under the Endangered Species Act in the Western United States, Canada, and Mexico and proposed to designate certain critical habitat in Idaho.

NOW, THEREFORE, BE IT RESOLVED, That the water users of Water District 1 oppose the listing of the western yellow-billed-cuckoo under the ESA, as well as designation of critical habitat in Idaho.

BE IT FURTHER RESOLVED, That the water users of Water District 1 investigate and evaluate alternatives to listing that would protect the water users’ interests in the Upper Snake River Basin.

BE IT FURTHER RESOLVED, That the water users of Water District 1 support and request the State of Idaho Office of Species Conservation to investigate, evaluate, and take appropriate actions to delist the species and preclude designation of critical habitat in Idaho.

59. STORAGE DIVERSION REPORTING

WHEREAS, It is the watermaster’s responsibility to assure the proper distribution of natural flow to all water users; and

WHEREAS, Diversions in Water District 1 may deliver water for rentals, groundwater conversions, recharge, and for other entities not entitled to receive natural flow while the diversion’s water rights are in priority; and

WHEREAS, The watermaster must have an accurate record of the daily volume of storage diverted to lands or purposes that should not be receiving natural flow to ensure that the system’s natural flow is distributed accurately to all diversions;

NOW, THEREFORE, BE IT RESOLVED, That any diversion carrying storage water for purposes or lands not entitled to receive the diversion's natural flow while the diversion's natural flow water rights are in priority must report their daily volume of storage diverted to the watermaster to ensure proper natural flow distribution to Water District 1 diversions; and

BE IT FURTHER RESOLVED, That storage water for purposes or lands not entitled to receive a diversion's natural flow will not be assigned to the diversion in the Water District 1 final water right accounting if the daily storage deliveries are not reported for the diversion.

60. NEW CONSUMPTIVE WATER USES

WHEREAS, the Eastern Snake Plain Aquifer (ESPA) has experienced declines in certain areas of the aquifer; and

WHEREAS, the decline in aquifer levels and storage has also affected spring flows and reach gains in certain reaches of the Snake River in Water District 1; and

WHEREAS, surface water users within Water District 1 have experienced water shortage conditions in various years due to reduced natural flows and storage availability; and

WHEREAS, surface water and ground water users are taking actions to rehabilitate the aquifer, including through settlement agreements and mitigation plans; and

WHEREAS, the Idaho Water Resource Board is taking actions to rehabilitate the aquifer through recharge and other programs, including the NRCS Regional Conservation Partnership Program (RCPP); and

WHEREAS, increased consumptive uses of water in and adjacent to Water District 1 including those for irrigation that increase the total number of acres authorized for irrigation from storage have the potential to further stress the water supplies of Water District 1 water users.

NOW THEREFORE BE IT RESOLVED, That the water users of Water District 1 develop necessary policies and rental pool procedures to address new consumptive water uses including those for irrigation that increase the total number of acres authorized for irrigation from storage that could reduce the water supply and injure existing water rights in Water District 1.

BE IT FURTHER RESOLVED, That the water users of Water District 1 urge the Idaho Water Resource Board to evaluate and if necessary develop new policies

and rules to address new consumptive uses of water that could impact water supplies in Water District 1.

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

This memorandum of understanding is entered into by and between the Director of the Department of Water Resources, (hereinafter called the Director) and the water users of Water District No. 1, Upper Snake River, (hereinafter called Water District No. 1) acting through the Water District advisory committee known as the Committee of Nine.

WHEREAS, the statutes of the State of Idaho provide for the Director to have direction and control of the distribution of the waters of the state to those holding valid rights to the use thereto; and

WHEREAS, the Water District No. 1 authorized the Committee of Nine, as advisors to, and elected representatives of the water district, by resolution duly adopted at the March 2, 1993, annual meeting of the water users of the district to enter this memorandum of understanding continuing a cooperative program with the Director to provide watermaster services for Water District No. 1 and

WHEREAS, the Committee of Nine will, among other things, serve as advisors to the Director and the watermaster in matters relating to the distribution of the natural flow and stored water within the district:

NOW, THEREFORE, the Director agrees to provide the following services to Water District No. 1, effective upon the execution of this memorandum of understanding and to continue to provide the services from year-to-year as herein provided upon election of the regional manager of the Department as watermaster and the adoption of a budget by the water users at the annual water district meeting authorizing expenditures in accordance with the purposes of this memorandum of understanding:

- 1) To provide watermaster services to Water District No. 1 for the period from the effective date of this memorandum until the end of any subsequent water district year as agreed to by the water users of Water District No. 1 at their annual meeting and the director of the Department. Such watermaster services will be provided under the direction of the regional manager of the Department's Eastern Region consistent with the provisions of Title 42, Idaho Code.

- 2) To provide the equivalent of 2/3 of a person year of the Regional manager as watermaster throughout the Water District year and to provide any additional part time

or full time employees as necessary for the water distribution operations of Water District No. 1 in accordance with its adopted budget.

3) To provide office space as necessary for operation of Water District No. 1 and to provide Department vehicles for use by full-time employees of the Department, to conduct Water District business, and to share the use of other Department equipment and facilities as are necessary to equitably distribute the waters to the users within Water District No. 1.

WATER DISTRICT NO. 1 agrees as follows:

1) To pay the Department, on an advance basis, sufficient funds to cover the costs of operations incurred in providing watermaster services to Water District No. 1 provided, however, that reimbursement for the watermaster shall not exceed 2/3 of the personnel costs of the regional manager and provided further that all other costs incurred in conducting Water District No. 1 business will be paid in full. Indirect costs will be paid at the rate approved by the Department of the Interior Inspector General and current at the time of the water district annual meeting. The approved indirect rate shall be reduced in recognition of the Department's statutory responsibility to supervise water distribution by subtracting in the indirect calculation any personnel costs included for the Director and the Administrator of the Water Management Division.

Mileage and per diem costs will be based upon the rate provided by state law for state employees.

The Department will credit the District for a portion of the District's expenditures to the U.S. Geological Survey for the cooperative streamgaging program. The amount credited each year will be one-half (1/2) the amount the district pays for that year to the U.S. Geological Survey for operation of certain streamgages the Director determines are needed for data collection purposes needed by the Department other than and in addition to the District's water distribution data needs.

THE PARTIES mutually agree that:

1) The regional manager and any other persons directly employed by the Department as classified state employees, performing duties on behalf of Water District No. 1 under this memorandum will only perform duties necessary to:

MEMORANDUM OF UNDERSTANDING - 2

a) Deliver and account for distribution of natural flow and stored water within the District,

b) Provide assistance to the Committee of Nine in operating the local rental pool. This assistance will include accepting applications to put water into the pool and to rent water from the pool, receipting and depositing funds associated with the bank, providing information on the water in the bank and rentals therefrom. The Committee of Nine, or its designated subcommittee will determine the water leases and rentals and approve all disbursements of rental pool money.

c) Prepare reports and proposed budgets as required by Title 42, Idaho Code.

d) Provide technical assistance and information to the Committee of Nine and the Department relative to the water distribution and water banking duties of the watermaster.


The Committee of Nine will make other arrangements for representation and management of any other interests of the water users within the Water District as directed at the annual meeting.

2) The director of the Department and the chairman of the Committee of Nine shall consult annually prior to the end of the water district's fiscal year concerning the continuation of this memorandum and any need for modification of it.

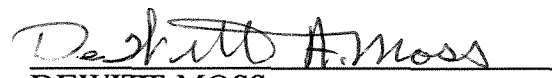
3) This memorandum of understanding will continue from year to year and can be amended or terminated at any time by agreement of the director of the Department and Water District No. 1, on the recommendation of the Committee of Nine.

4) This memorandum of understanding supersedes and replaces the memorandum of understanding dated March 3-4, 1979.

5) Nothing in this agreement will act to change, modify, or release either party of any obligation or responsibility otherwise provided by contract or by law.


R. KEITH HIGGINSON
Director
Department of Water Resources

Date: 3/04/93


DEWITT MOSS
Chairman
Committee of Nine/Water District No. 1

Date: 3/10/93

EXHIBIT B

COMMITTEE OF NINE

MEETING REIMBURSEMENT RULES

1. All Committee of Nine expenses must be approved by chairman.
2. All requests for reimbursement must be on a form approved form by the Watermaster with copies of receipts attached.
3. Reimbursement is intended only for official Committee of Nine and sub-committee meetings called by chairman or vice-chairman, or other meetings approved in advance by Committee of Nine.
4. Reimbursement shall include per diem (\$125/day), mileage (at the IDWR rate), meals, travel, and room (if necessary).

Because of extra duties outside scheduled meetings, the chairman shall receive an additional \$25/day for each meeting.

5. Reimbursement is intended for Committee of Nine members and appointed officers who contribute their time. If the Committee of Nine approves per diem and reimbursement for a member who is being paid for his time from a different source, reimbursement shall be made to the employer.
6. Advisors and/or alternates to regular Committee of Nine meetings shall not be authorized per diem and reimbursement for regular Committee of Nine meetings but shall be reimbursed if they serve on a special Committee of Nine sub-committee, or attend other meetings approved by the Committee of Nine.