MEMORANDUM

To: Swan Falls Non-Trust Water File

From: L. Glen Saxton

RE: MEETING - JANUARY 31, 1989

Date: February 2, 1989

On January 31, 1989, Keith Higginson and I met in Rexburg with Richard Smith and four (4) other parties involved with their recently formed pumpers association. The meeting was held at the request of Mr. Smith to discuss the treatment of filings in the non-trust water area.

The discussion was general in nature including the history of petition filing by the Twin Falls Canal Company et. al. and subsequent withdrawal of the petitions. The department explained that the issues were before the department and need to be considered whether there are pending petitions or not. The department explained that our view of the statute provisions was that the director had the authority to take certain actions but not necessarily an obligation.

Potential treatment of pending filings was discussed, but we advised that the final treatment determined to be appropriate would be made available in the form of a written position.

We advised we do not intend to hold public information meetings or go through the rule making process in connection with the non-trust water area.

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 12, 1989

Jeffrey C. Fereday, Esq.
GIVENS, McDEVITT, PURSLEY,
WEBB & BUSER
P.O. Box 2720
Boise, Idaho 83701

Re: Water District 01 - Petition to Enlarge

Dear Jeff:

Enclosed are the copies you requested from the above referenced file. The department policy is to charge postage and copying charges of .25 for the first 10 copies and .10 per copy thereafter. The copy charge for 62 pages is $7.70 plus $2.40 postage for a total of $10.10.

Please send your check for $10.10 to the Department of Water Resources, Attention Roberta Garrett. Thank you.

Sincerely,

Debra L. Cline

DEBRA L. CLINE
Secretary/Records Manager

/dc
cc: Roberta Garrett

Enclosures

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW
142 3rd AVENUE NORTH
P.O. BOX 1906
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THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
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TERRY T. UHLING
TERRY R. McDANIEL
F. BRUCE COVINGTON
JERRY JENSEN
GARY D. SLETTE
CAROLYN M. MINDER
VICKI L. YRAZABAL
BRUCE M. SMITH
G. RICHARD BEVAN
BRAD M. PURDY
GARY L. QUIGLEY

December 13, 1988

Mr. Keith Higginson
Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706

RE: Water District No. 1 and the Snake River Aquifer Petitions

Dear Mr. Higginson:

Enclosed please find an original and one copy of an amendment to each of the above-captioned petitions and a motion for continuance. Because the petitions have already been amended once by enlarging the geographic area proposed for inclusion, your rules provide that the consent or stipulation of the director is necessary before amending a second time. I spoke with Mr. Norm Young earlier this week with regard to these proposed amendments, and he suggested that they be sent for your review. I firmly believe that these amendments are in the best interests of the Idaho Department of Water Resources, the petitioners, and all individuals affected by the petitions. If you agree, I would ask that you sign the stipulations on page 2, and thereafter, return a copy of each to me.

The motion for continuance is in regard to the Department's pre-hearing conference set for January 31, 1989, in Pocatello. The reasons for the request are set forth on page 2 of the motion. If the motion meets with your approval, I would ask that you prepare an appropriate order vacating that hearing. I would be happy to work with Mr. Young to establish a date that would be convenient for everyone.

On behalf of the petitioners, I want to thank you for the effort which the Department has extended, both from an informational as well as a technical standpoint.

Yours truly,

Gary D. Slette

GDS/mw/06631
Enclosures

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9768p/mw/12-12-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

In the Matter of:	
WATER DISTRICT NO. 1 and THE SNAKE RIVER AQUIFER	MOTION FOR CONTINUANCE

* * * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and moves the Director of the Department of Water Resources to vacate and continue the Department's hearings in the above-captioned matters set for January 31, 1989. The reasons for this motion are as follows:

1. The annual meetings of both the Twin Falls Canal Company and the North Side Canal Company will be held during the month of January.

2. One of Petitioners' attorneys has a trial scheduled for mid-January, and preparation for the trial and the pre-hearing conference would work a hardship on Petitioners' counsel.

3. Indian negotiations are proceeding during the month of January to determine the amount of water available to the Shoshone-Bannock tribe. Petitioners' counsel is one of the negotiators, and the combination of preparation for these negotiations and the pre-hearing conference simultaneously would work a hardship on Petitioners' counsel.

4. Petitioners are working to secure approval of a Federal Energy Regulatory Commission license for the Milner Dam Project, and such efforts will conflict with preparation for the pre-hearing conference.

5. Consultants for the Petitioners are unable to adequately prepare exhibits and testimony necessary for presentation at the pre-hearing conference within the current time constraints.

Petitioners respectfully request ninety (90) days advance notice of the time set for the pre-hearing conference.

DATED this 13th day of December, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 1988, I served a copy of the foregoing MOTION FOR CONTINUANCE upon:

Mr. Keith Higginson
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

Attorney for Petitioners

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9766p/mw/12-12-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

In the Matter of:	)
	) SECOND AMENDMENT
	) TO PETITION
	) AND STIPULATION
THE SNAKE RIVER AQUIFER	)
	)

* * * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and amend the above captioned Petition pursuant to Rule 3,4 of the IDWR Rules and Regulations. The Petition is hereby amended to exclude from the proposed moritorium all domestic, commercial, municipal and industrial ("DCMI") uses, as those uses are defined in Rule 2,8

of the Idaho Department of Water Resources Rules and Regulations of Water Appropriation, dated October 1986.

DATED this 13th day of December, 1988.

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

STIPULATION

IT IS SO STIPULATED.

IDAHO DEPARTMENT OF WATER RESOURCES

By _____
Director

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 1988, I served a copy of the foregoing SECOND AMENDMENT TO PETITION upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9767p/mw/12-12-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

In the Matter of:	)	
	)	
	)	SECOND AMENDMENT
WATER DISTRICT NO. 1	)	TO PETITION
	)	AND STIPULATION

* * * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and amend the above captioned Petition pursuant to Rule 3,4 of the IDWR Rules and Regulations. The Petition is hereby amended to exclude from Petitioner's Petition all domestic, commercial, municipal and industrial ("DCMI") uses, as the same are defined in Rule 2, 8

of the Idaho Department of Water Resources Rules and Regulations for Water Appropriation dated October 1986.

DATED this 13th day of December, 1988.

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

STIPULATION

IT IS SO STIPULATED.

IDAHO DEPARTMENT OF WATER RESOURCES

By _____
Director

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 1988, I served a copy of the foregoing SECOND AMENDMENT TO PETITION upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9544p/dcb/10-31-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

In the Matter of:)
)
)
WATER DISTRICT NO. 1) AMENDMENT TO PETITION
)

* * * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and amend the above captioned Petition pursuant to Rule 3,4 of the IDWR Rules and Regulations. The Petition is hereby amended so that Exhibit "A" to the Petition shall include therein any and all lands whose groundwater is tributary to the Snake River above Milner Dam.

DATED this 31st day of October, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 1988, I served a copy of the foregoing AMENDMENT TO PETITION upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9542p/dcb/10-28-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

In the Matter of:	)
	)
	) AMENDMENT TO PETITION
	)
THE SNAKE RIVER AQUIFER	)
	)

* * * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and amend the above captioned Petition pursuant to Rule 3,4 of the IDWR Rules and Regulations. The Petition is hereby amended so that Exhibit "A" to the Petition shall include therein any and all lands

whose groundwater is tributary to the Snake River above Milner Dam.

DATED this 31st day of October, 1988.

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 1988, I served a copy of the foregoing AMENDMENT TO PETITION upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9355p/kk/09-28-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * *

In the Matter of:

THE SNAKE RIVER AQUIFER

REQUEST FOR HEARING

* * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and request the Director of the Department of Water Resources to set a hearing in Twin Falls County, Idaho, to consider Petitioners' Petition

to Establish Moratorium Pursuant to Idaho Code §42-1805(7) and Rule 7.

Petitioners respectfully request thirty (30) days advance notice of the time for such hearing. Furthermore, Petitioners respectfully request that they be permitted to put on evidence and testimony with regard to said Petition.

DATED this 30th day of September, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 1988, I served a copy of the foregoing REQUEST FOR HEARING upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9356p/kk/09-28-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

In the Matter of:

THE ENLARGEMENT OF WATER DISTRICT NO. 1

REQUEST FOR HEARING

* * * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and request the Director of the Department of Water Resources to set a hearing in Twin Falls County, Idaho, to consider Petitioners' Petition For Enlargement of Water District No. 1.

Petitioners respectfully request thirty (30) days advance notice of the time for such hearing. Furthermore, Petitioners respectfully request that they be permitted to put on evidence and testimony with regard to said Petition.

DATED this 30th day of September, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 1988, I served a copy of the foregoing REQUEST FOR HEARING upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9363p/kk/09-28-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * *

In the Matter of:

WATER DISTRICT NO. 1 and
THE SNAKE RIVER AQUIFER

MOTION FOR CONSOLIDATION

* * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and moves the Director of the Department of Water Resources to consolidate the hearings on Petitioners' Petition for Enlargement of Water

District No. 1 and Petitioners' Petition to Establish Moratorium Pursuant to Idaho Code §42-1805(7) and Rule 7.

This Motion is made pursuant to Rule 9, 7 of the State of Idaho, Department of Water Resources, Rules and Regulations.

DATED this 30th day of September, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 1988, I served a copy of the foregoing MOTION FOR CONSOLIDATION upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 1301 North Orchard Street Boise, Idaho 83706-2237 • (208) 334-4440

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

July 14, 1988

Gary D. Slette
Nelson, Rosholt, Robertson,
Tolman & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906

Dear Gary:

Your letter of July 12, 1988, requesting the status of the department's review of the motions requesting either a moratorium on development of ground water tributary upstream from Milner Dam or inclusion of the ground water into Water District 01 has been received. IDWR staff is reviewing the issue of water development in the entire area involved in the Swan Falls controversy and have included in this review the issues raised by the petitions. A draft policy statement has been prepared and is being given inhouse review. It is my intention to distribute for public comment a draft policy statement and implementation plan for addressing the backlog of filings that exist in the area upstream from Swan Falls. The policy statement will address several issues, including the moratorium requests, which impact which filings are to be processed or reprocessed.

While I understand your desire for a prompt response to the petition,the 1982 defacto moratorium on processing applications proposing irrigation or other consumptive uses will remain until the policy statement and implementation plan are in place. The protection you are seeking with the petitions for your clients is provided for the time being by the existing course of action.

You will receive a copy of the draft statement for review and comment. I expect the draft statement to be available in a mater of weeks and to be in a position to adopt a course of action this fall.

Sincerely,

R. KEITH HIGGINSON
Director

RKH:alw

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY T. UHLING
TERRY R. McDANIEL
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VICKI L. YRAZABAL
BRUCE M. SMITH
G. RICHARD BEVAN
MICK HODGES

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TELEPHONE (208) 734-0700

Boise Office
1020 MAIN ST., SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700

July 12, 1988

Mr. Keith Higginson, Director
Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706

Dear Mr. Higginson:

John Rosholt and I were recently discussing the status of the Petition to Establish Moratorium filed with your office on March 9, 1988. As you may recall, I stated in my letter of the same date, that we would withdraw our previously filed Petition to Enlarge Water District No. 1 in the event the Moratorium was established pursuant to the latter petition. I am unaware of any action to date on either of these petitions, particularly the Moratorium Petition. Our clients are certainly aware of the complexity of this issue, however, its consideration and resolution are of paramount importance in the protection of their water rights.

Please advise me at your earliest convenience of the status of the petitions, and what, if anything, we can do to expedite a resolution.

Yours truly,

Gary D. Slette

GDS/kk

cc: Twin Falls Canal Company
North Side Canal Company
American Falls Reservoir District

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
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Boise Office
1020 MAIN ST., SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83702-2139
TELEPHONE (208) 336-0700

March 9, 1988

Mr. Keith Higginson
Director
Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706

Dear Mr. Higginson:

Enclosed please find a Petition to Establish a Moratorium submitted by the Petitioners Twin Falls Canal Company, North Side Canal Company and the American Falls Reservoir District. Please consider this Petition in conjunction with the Affidavit of Charles Brockway dated January 11, 1988.

In the event an order establishing a moratorium is granted pursuant to this Petition, it would be the intention of the Petitioners to withdraw the previously filed Petition to Enlarge Water District No. 1.

Please advise John Rosholt or me with regard to the Department's action on this Petition to Establish a Moratorium. If you have any questions, please feel free to contact either of us at your convenience.

Yours truly,

Gary D. Slette

GDS/kk

cc: Twin Falls Canal Company
North Side Canal Company
American Falls Reservoir District

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY T. UHLING
TERRY R. McDANIEL
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Boise Office
1020 MAIN ST., SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83702-2139
TELEPHONE (208) 336-0700

February 29, 1988

Mr. Keith Higginson, Director
Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706

RE: Moratorium on Ground Water Permits and Applications

Dear Mr. Higginson:

Enclosed please find a draft petition to declare a moratorium on permits and applications to appropriate groundwater within areas wherein groundwater is believed to be tributary to the Snake River. This petition is being sent to you to solicit your comments prior to the actual filing of such a petition. We would anticipate that the previously filed petition to incorporate groundwater wells into Water District No. 1 would be withdrawn with a reservation of right to refile that petition in the event the petition pertaining to the moratorium does not produce the desired results.

Please review this petition and advise John Rosholt or me of your comments at your earliest convenience.

Yours truly,

Gary D. Slette

GDS/kk

Enclosure
cc: Mr. Phil Rassier

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
8436p/kk/02-24-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

In the Matter of:	)
	)
	)
	) PETITION TO ESTABLISH
	) MORATORIUM PURSUANT TO
THE SNAKE RIVER AQUIFER	) IDAHO CODE §42-1805(7)
	) AND RULE 7
	)
	)

* * * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and petition the Director of the Department of Water Resources to establish a moratorium on the issuance of or further action on permits or applications to appropriate ground water in certain areas

hereinafter identified. This petition is made in accordance with Idaho Code §42-1805(7) and Rule 7 of the Idaho Department of Water Resources Rules and Regulations for Water Appropriation (October, 1986), to protect existing vested water rights, and insure compliance with the provisions of Chapter 2, Title 42, Idaho Code, based upon the following:

1. NSCC and TFCC, pursuant to certain water rights on the Snake River, divert water from Milner Dam during the irrigation season for the purposes of irrigating in excess of 350,000 acres located in portions of Twin Falls, Jerome, Elmore and Gooding Counties. Their Snake River water rights have priority dates beginning October 11, 1900. AFRD and NSCC, pursuant to contract with the United States of America, have acquired certain rights to stored water from the American Falls Reservoir for the use and benefit of lands within NSCC and TFCC, and the shareholders thereof. When Snake River waters are not being diverted pursuant to senior natural flow rights, the water is stored in the American Falls Reservoir. Additionally, TFCC and NSCC have a storage right in Milner Reservoir, which reservoir stores Snake River water when the same is not diverted pursuant to prior natural flow rights.

2. Petitioners NSCC, TFCC and AFRD seek this order establishing a moratorium on the issuance of or further action on permits or applications in the cross-hatched geographical area depicted on Exhibit "A" (hereinafter referred to as the "area proposed for inclusion") because of the substantial interest of the Petitioners' water right and water supplies due to the withdrawal of ground water in the area proposed for

inclusion. While there are other consumptive diversions or future consumptive diversions that could affect the water rights of Petitioners, the area proposed for inclusion includes at this time only those sub-basins which most directly affect Petitioners' rights.

The following is a statement of the direct and substantial interest of the petitioners:

(a) TFCC and NSCC jointly have a right to divert up to 3400 c/f/s of water from the Snake River at Milner Dam under priority of October 11, 1900, which is the earliest flow right on the Snake River below the Abderdeen Springfield diversion. Certain other rights with priority dates of 1905 and later give TFCC and NSCC a total right of diversion of up to approximately 7,000 c/f/s of water at Milner Dam. Essentially, all available natural flow of the Snake River below Blackfoot is diverted by TFCC, NSCC and other agricultural diverters during the irrigation season after the spring flood, if any.

(b) Because of research on ground water supplies conducted during the Swan Falls controversy, TFCC, NSCC, and AFRD have been made aware of hydrologic data regarding tributary ground water upstream of Milner Dam and below Blackfoot on the Snake River. IDWR has designated the boundary of the area in which ground water is presumed to be tributary to the Snake River upstream of Milner Dam, which presumption is contained in Rule 1, 5, 1, 2 of the IDWR Rules and Regulations of Water Appropriation, dated October 1986. The westerly boundary of the area presumed tributary to the Snake River

upstream of Milner Dam is depicted in Attachment "A" of said Rules.

(c) The ground water extracted or proposed to be extracted from any well in the area proposed for inclusion (Exhibit "A") is part of the common water supply that is tributary to the Snake River above Milner Dam.

(d) Any consumptive diversion of ground water within the area proposed for inclusion will affect and reduce the flow of water in the Snake River. Furthermore, such diversions will reduce water supplies available for irrigation to TFCC and NSCC in direct proportion to the amount consumed, acre foot for acre foot.

(e) If consumptive ground water diversions within the area proposed for inclusion do not reduce irrigation season flows pursuant to paragraph (d) hereinabove, such diversions will alternatively reduce water supplies available for storage in American Falls Reservoir for the benefit of AFRD and NSCC, in direct proportion to the amount consumed, acre foot for acre foot. The TFCC and NSCC storage right in Milner Reservoir would most likely be impaired as well.

(f) Future extraction of ground water within the area proposed for inclusion will affect the flow of water in the Snake River and will reduce the quantity of water available under existing water rights.

3. In order that NSCC and TFCC may protect their rights in the flows of the Snake River above Milner Dam, and in order for AFRD and NSCC to protect its storage right at the American Falls Reservoir, it is necessary for them to seek this

order granting a moratorium suspending the issuance of or further action on permits or applications.

4. TFCC, NSCC and AFRD seek an order declaring a moratorium on the issuance of or further action on permits or applications in the area proposed for inclusion. Petitioners request that the order include the cancellation or modification of permits for which proof of beneficial use has not yet been submitted pursuant to Rule 7,2,1 of the Department's Rules. The basis for such order is the negative effect of consumptive ground water withdrawals on the flow of water in the Snake River and the impairment of NSCC's and TFCC's water rights and water supplies and AFRD's and NSCC's storage right in American Falls Reservoir, and TFCC's and NSCC's storage right in Milner Reservoir that would occur if such order is not executed and enforced.

5. If a hearing on this Petition is required, NSCC, TFCC and AFRD would propose to participate by presenting evidence as they deem necessary.

WHEREFORE, TFCC, NSCC and AFRD pray that the Idaho Department of Water Resources, pursuant to Idaho Code §42-1805(7) and Rule 7 of the Idaho Department of Water Resources Rules and Regulations for Water Appropriation, establish a moratorium suspending the further issuance of or action upon permits or applications in the area proposed for inclusion.

DATED this ____day of February, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By:_____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of February, 1988, I served a copy of the foregoing PETITION TO ESTABLISH MORATORIUM PURSUANT TO IDAHO CODE §42-1805(7) AND RULE 7 upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 1301 North Orchard Street Boise, Idaho 83706-2237 • (208) 334-4440

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

February 1, 1988

John A. Rosholt, Esq.
Gary D. Slette, Esq.
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P.O. Box 1906
Twin Falls, Idaho 83303-1906

Re: Petition to Enlarge Water District No. 1

Gentlemen:

I recently received your petition to enlarge Water District No. 1. Needless to say, the petition raises a number of interesting and complex legal and administrative issues. After much discussion with the Department's legal staff and hydrology people, I believe the best course of action at this time is to arrange a meeting to discuss your client's expectations and the potential difficulties which may arise in acting on the petition.

Please let me know when you would be available for a discussion of this matter.

Very truly yours,

R. KEITH HIGGINSON, Director
Department of Water Resources

RKH:dc

JOHN A. ROSHOLT
GARY D. SLETTE
Nelson, Rosholt, Robertson,
Tolman & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906
Telephone: (208) 734-0700
8125p/kk/01-07-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

* * * * * * * * * *

IN THE MATTER OF:

THE ENLARGEMENT OF WATER DISTRICT NO. 1

AFFIDAVIT OF CHARLES BROCKWAY

* * * * * * * * * *

STATE OF IDAHO)
) ss.
County of Twin Falls)

CHARLES BROCKWAY, being first duly sworn upon oath, deposes and says:

1. That I am a licensed professional engineer in the State of Idaho, and more specifically, a hydrologist, and am competent to testify to the facts stated herein.

2. That I have studied and am generally familiar with the concepts of a potential interrelationship that may exist between ground water and surface water flows.

3. That I have studied and am familiar with the Snake River Aquifer and the flow of the Snake River in Idaho.

4. That it is my opinion, based on such research and study, that consumptive ground water extraction within the cross-hatched area of Exhibit "A" attached hereto, and by this reference incorporated herein, will ultimately affect the flow of water in the Snake River and its tributaries and will decrease the amount of water that is available for irrigation diversion in the summer and irrigation water storage in the winter.

5. That it is my opinion that the State of Idaho should regulate and recognize the conjunctive use of ground and surface waters as being in the best interests of the people of the State.

FURTHER sayeth your Affiant naught.

CHARLES BROCKWAY

SUBSCRIBED AND SWORN To before me this 11th day of January, 1988.

GARY D. SLETTE
NOTARY PUBLIC - STATE OF IDAHO
Residing at Twin Falls, ID
Lifetime Commission

NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls
My Commission Expires Lifetime

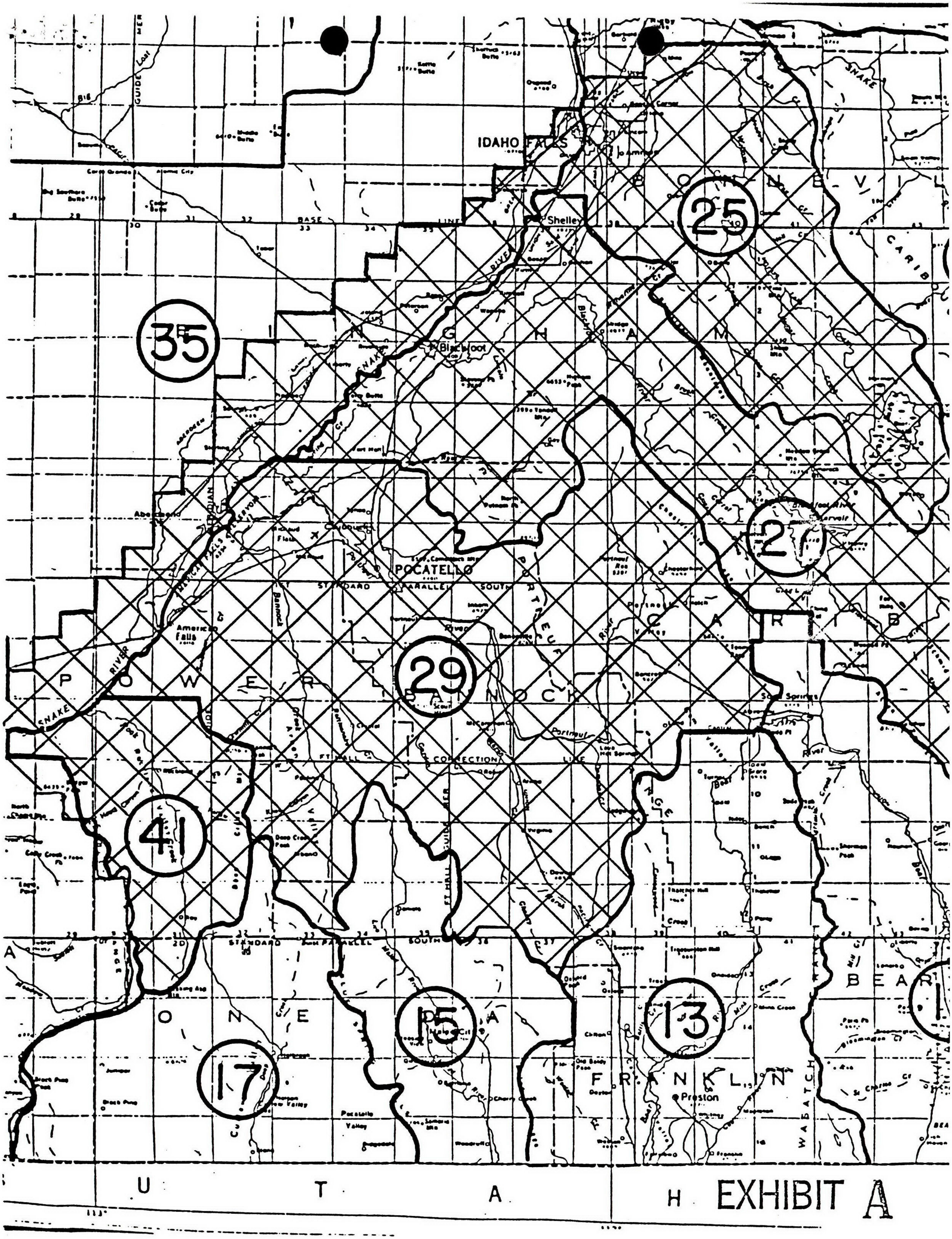
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 1988, I served a copy of the foregoing AFFIDAVIT OF CHARLES BROCKWAY upon:

Idaho Department of Water Resources
Statehouse
450 West State Street
Boise, Idaho, 83720

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

Gary D. Slette


IDAHO FALLS
Shelley
Blackfoot
POCATELLO
American Falls
Preston
SNAKE RIVER
BASE LINE
STANDARD PARALLEL SOUTH
25
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B O N N E V I L
B I N G H A M
P O W E R
C A R I B
O N E I D A
F R A N K L I N
BEAR
WASATCH
U T A H

EXHIBIT A

WD 01 ENLARGEMENT PETITION DISCUSSION LIST
THURSDAY, FEBRUARY 18, 1988
1:00 P.M.

1. Legal Basis for Enlargement

2. Technical Basis for Enlargement

3. IDWR Procedures for Addressing:

   -- Meeting
   -- Request for Additional Information
   -- Preliminary Evaluation
   -- Ruling
   -- Hearing

4. Sufficiency of Petition

   -- Area and Uses Included
   -- Timing Relative to Adjudication

5. Other Methods of Satisfying Canal Companies' Objectives

   -- Future Uses -- (Protest)
   -- Present Uses -- (Adjudication)

For Your Comment?

Ncy

JOHN A. ROSHOLT
GARY D. SLETTE
Nelson, Rosholt, Robertson,
Tolman & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906
Telephone: (208) 734-0700
8114p/kk/01-05-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

* * * * * * * * * *

IN THE MATTER OF:	)
	)
	) PETITION OF NORTH SIDE
	) CANAL COMPANY, TWIN FALLS
THE ENLARGEMENT OF WATER	) CANAL COMPANY AND THE
DISTRICT NO. 1	) AMERICAN FALLS RESERVOIR
	) DISTRICT FOR ENLARGEMENT
	) OF A WATER DISTRICT

* * * * * * * * * *

COME NOW, the North Side Canal Company and the Twin Falls Canal Company (hereinafter "NSCC" and "TFCC" respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, by and through their attorneys, Nelson, Rosholt, Robertson, Tolman & Tucker, Chartered, and hereby petition the Department of Water Resources (hereinafter "IDWR") for an order enlarging Water District No. 1 by incorporating the ground water supply in the

geographical area depicted in Exhibit "A" attached hereto, and by this reference incorporated herein, into Water District No. 1. This petition is made and filed pursuant to Idaho Code §42-237a.

I.

The names and addresses of the petitioners are as follows:

Twin Falls Canal Company
P. O. Box 326
Twin Falls, Idaho 83301

North Side Canal Company
921 North Lincoln Avenue
Jerome, Idaho 83338

American Falls Reservoir District
1035 North Lincoln Avenue
Jerome, Idaho 83338

II.

NSCC and TFCC, pursuant to certain water rights on the Snake River, divert water from Milner Dam during the irrigation season for the purposes of irrigating in excess of 350,000 acres located in portions of Twin Falls, Jerome, Elmore and Gooding Counties. Their Snake River water rights have priority dates beginning October 11, 1900. AFRD and NSCC, pursuant to contract with the United States of America, have acquired certain rights to stored water from the American Falls Reservoir for the use and benefit of lands within NSCC and TFCC, and the shareholders thereof. When Snake River waters are not being diverted pursuant to senior natural flow rights, the water is stored in the American Falls Reservoir. Additionally, TFCC and NSCC have a storage right in Milner

Reservoir, which reservoir stores Snake River water when the same is not diverted pursuant to prior natural flow rights.

III.

Petitioners NSCC, TFCC and AFRD seek this order incorporating the ground water supply of the cross-hatched geographical area depicted on Exhibit "A" (hereinafter referred to as the "area proposed for inclusion") into Water District No. 1 because of the substantial interests of the Petitioners and the possible effects on the Petitioners' water right and water supplies due to the withdrawal of ground water in the area proposed for inclusion. While there are other consumptive diversions or future consumptive diversions that could affect the water rights of Petitioners, the area proposed for inclusion includes at this time only those sub-basins which most directly affect Petitioners' rights.

The following is a statement of the direct and substantial interest of the petitioners:

1. TFCC and NSCC jointly have a right to divert up to 3400 c/f/s of water from the Snake River at Milner Dam under priority of October 11, 1900, which is the earliest flow right on the Snake River below Blackfoot. Certain other rights with priority dates of 1905 and later give TFCC and NSCC a total right of diversion of up to approximately 7,000 c/f/s of water at Milner Dam. Essentially, all available natural flow of the Snake River below Blackfoot is diverted by TFCC, NSCC and other agricultural diverters during the irrigation season after the spring flood, if any.

2. Because of research on ground water supplies conducted during the Swan Falls controversy, TFCC, NSCC, and AFRD have been made aware of hydrologic data regarding tributary ground water upstream of Milner Dam and below Blackfoot on the Snake River. IDWR has designated the boundary of the area in which ground water is presumed to be tributary to the Snake River upstream of Milner Dam, which presumption is contained in Rule 1, 5, 1, 2 of the IDWR Rules and Regulations of Water Appropriation, dated October 1986. The westerly boundary of the area presumed tributary to the Snake River upstream of Milner Dam is depicted in Attachment "A" of said Rules.

3. The ground water extracted or proposed to be extracted from any well in the area proposed for inclusion (Exhibit "A") is part of the common water supply that is tributary to the Snake River above Milner Dam.

4. Any consumptive diversion of ground water within the area proposed for inclusion will affect and reduce the flow of water in the Snake River within Water District No. 1. Furthermore, such diversions will reduce water supplies available for irrigation to TFCC and NSCC in direct proportion to the amount consumed, acre foot for acre foot.

5. If consumptive ground water diversions within the area proposed for inclusion do not reduce irrigation season flows pursuant to paragraph 4 hereinabove, such diversions will alternatively reduce water supplies available for storage in American Falls Reservoir for the benefit of AFRD and NSCC, in direct proportion to the amount consumed, acre foot for acre

foot. The TFCC and NSCC storage right in Milner Reservoir would most likely be impaired as well.

6. Future extraction of ground water within the area proposed for inclusion will affect the flow of water in the Snake River and will reduce the quantity of water available under existing water rights.

IV.

In order that NSCC and TFCC may protect their rights in the flows of the Snake River above Milner Dam, and in order for AFRD and NSCC to protect its storage right at the American Falls Reservoir, it is necessary for them to seek this order incorporating the common ground water supply into Water District No. 1, which would permit administration of those rights in accordance with the provisions of Title 42, Idaho Code.

V.

NSCC, TFCC and AFRD seek an order from the IDWR enlarging Water District No. 1 by incorporating the common ground water supply in the area proposed for inclusion into Water District No. 1. The basis for such order is the negative effect of consumptive ground water withdrawals on the flow of water in the Snake River and the impairment of NSCC's and TFCC's water rights and water supplies and AFRD's and NSCC's storage right in American Falls Reservoir, and TFCC's and NSCC's storage right in Milner Reservoir that would occur if such order is not executed and enforced.

VI.

If a hearing on this Petition is required, NSCC, TFCC and AFRD would propose to participate by presenting evidence as they deem necessary.

WHEREFORE, NSCC, TFCC and AFRD pray that this Petition for Enlargement of Water District No. 1 be granted.

DATED this 13th day of January, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

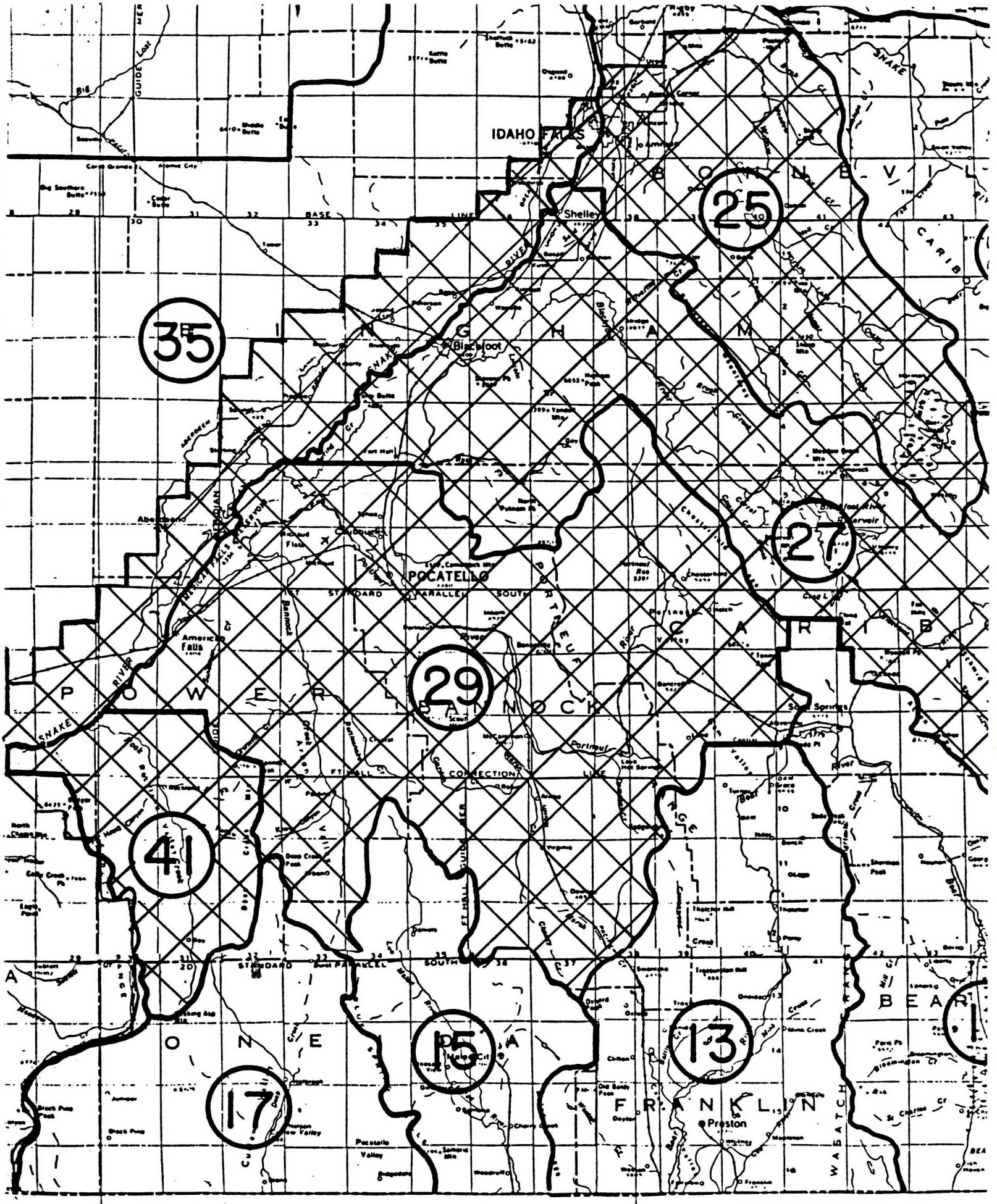
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 1988, I served a copy of the foregoing PETITION OF NORTHSIDE CANAL COMPANY, TWIN FALLS CANAL COMPANY AND THE AMERICAN FALLS RESERVOIR DISTRICT FOR AN ORDER ENLARGING A WATER DISTRICT upon:

Idaho Department of Water Resources
Statehouse
450 West State Street
Boise, Idaho, 83720

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners


IDAHO FALLS
Shelley
Blackfoot
POCATELLO
American Falls
Preston
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BONNEVILLE
BINGHAM
CARIBOU
POWER
BANNOCK
CASSIA
ONEIDA
FRANKLIN
BEAR
UTAH
SNAKE RIVER
PORTNEUF
WABASH
EXHIBIT A

JOHN A. ROSHOLT
GARY D. SLETTE
Nelson, Rosholt, Robertson,
Tolman & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906
Telephone: (208) 734-0700
8125p/kk/01-07-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

* * * * * * * * * *

IN THE MATTER OF:

THE ENLARGEMENT OF WATER DISTRICT NO. 1

AFFIDAVIT OF CHARLES BROCKWAY

* * * * * * * * * *

STATE OF IDAHO)
) ss.
County of Twin Falls)

CHARLES BROCKWAY, being first duly sworn upon oath, deposes and says:

1. That I am a licensed professional engineer in the State of Idaho, and more specifically, a hydrologist, and am competent to testify to the facts stated herein.

2. That I have studied and am generally familiar with the concepts of a potential interrelationship that may exist between ground water and surface water flows.

3. That I have studied and am familiar with the Snake River Aquifer and the flow of the Snake River in Idaho.

4. That it is my opinion, based on such research and study, that consumptive ground water extraction within the cross-hatched area of Exhibit "A" attached hereto, and by this reference incorporated herein, will ultimately affect the flow of water in the Snake River and its tributaries and will decrease the amount of water that is available for irrigation diversion in the summer and irrigation water storage in the winter.

5. That it is my opinion that the State of Idaho should regulate and recognize the conjunctive use of ground and surface waters as being in the best interests of the people of the State.

FURTHER sayeth your Affiant naught.

Charles Brockway
CHARLES BROCKWAY

SUBSCRIBED AND SWORN To before me this 11th day of January, 1988.

GARY D. SLETTE
NOTARY PUBLIC - STATE OF IDAHO
Residing at Twin Falls, ID
Lifetime Commission

NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls
My Commission Expires Lifetime

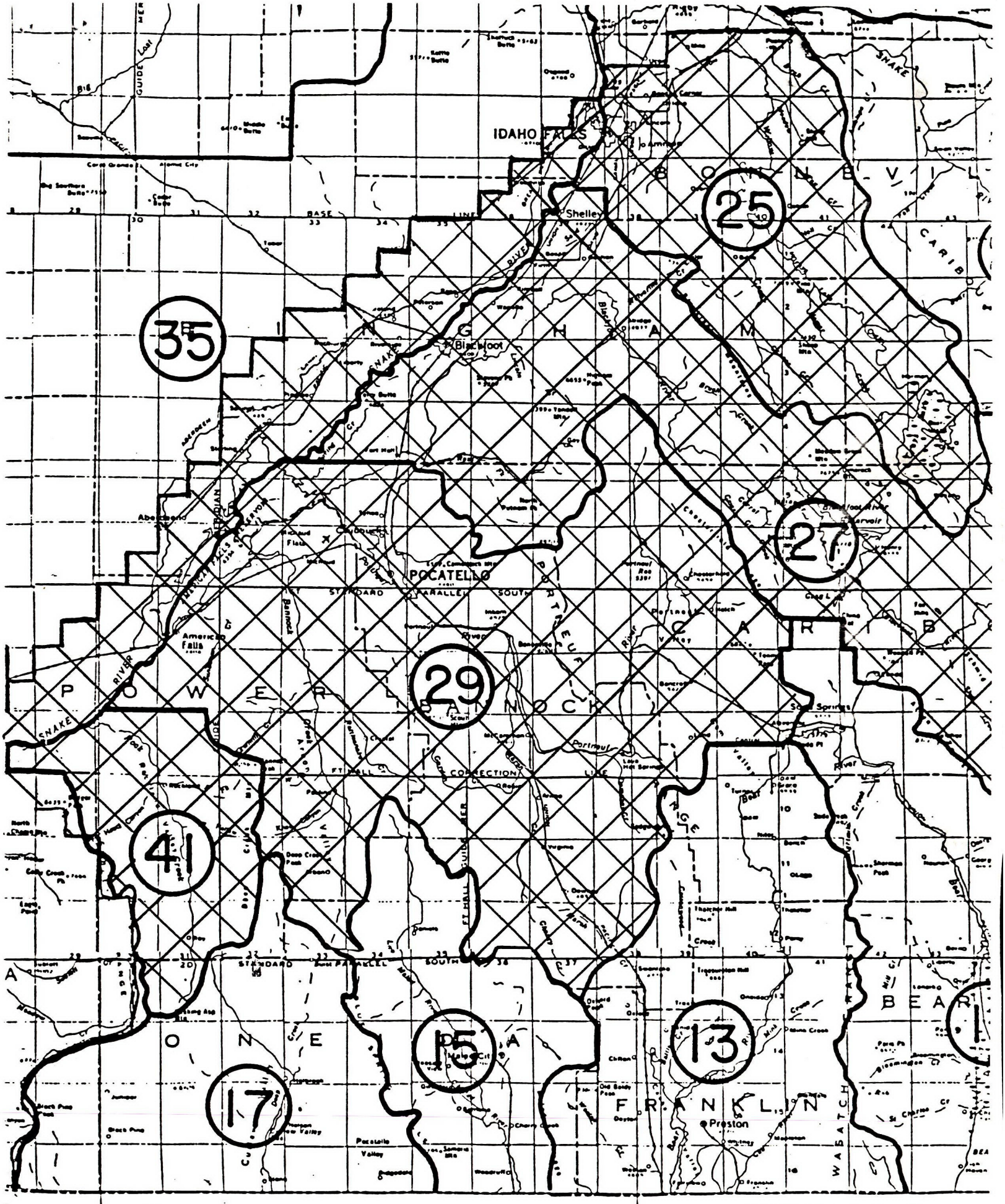
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 1988, I served a copy of the foregoing AFFIDAVIT OF CHARLES BROCKWAY upon:

Idaho Department of Water Resources
Statehouse
450 West State Street
Boise, Idaho, 83720

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

Gary D. Slette


IDAHO FALLS
Shelley
Blackfoot
POCATELLO
American Falls
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BONNEVILLE
BINGHAM
CARIBOU
POWER
BANNOCK
ONEIDA
FRANKLIN
BEAR
UTAH
EXHIBIT A

BOISE - - A pre-hearing conference which was planned to be held in Pocatello on January 31 has been changed to an information meeting according to R. Keith Higginson, Director of the Idaho Department of Water Resources. The reason for the change is that the petitions filed by the Twin Falls Canal Company, North Side Canal Company and the American Falls Reservoir District asking for an expansion of Water District No. 01 or for a moratorium on any new permits from ground water development in the area upstream from Milner Dam have been withdrawn.

With the withdrawal of the protests, the Department wants to advise the interested public of its planned approach to addressing the issues raised by the petitions. The public meeting will be held at 9:00 am on Tuesday, January 31 in Room of the Student Union Building at Idaho State University in Pocatello.

The Department will review the provisions of several sections of the Idaho Code which relate to the organization of Water Districts and requirements for the protection of prior water rights as applications are considered for new uses. The public is invited to participate in these discussions, Higginson said.

_DRA0:[WATERA.WRUSERS.WRSTATE.WRSAXTON]NONTR.PRESREL;3

draft 01-09-89 lgs

- NEWS RELEASE -

FOR IMMEDIATE RELEASE

Contact Person: Norman C. Young
334-7910

BOISE -- A pre-hearing conference ~~scheduled~~ which was planned for January 31, 1989, at Pocatello in connection with petitions filed by three water delivery organizations has been cancelled according to R. Keith Higginson, director of the Idaho Department of Water Resources (IDWR).

The petitions filed by the Twin Falls Canal Company, North Side Canal Company and the American Falls Reservoir District requested IDWR to issue an order enlarging Water District No. 1 (Upper Snake River) by incorporating the groundwater supply within the cross hatched area (non-trust water area) shown on the map below. The petitions also sought a moratorium on the issuance of or further action on permits or applications to appropriate ground water in the same area.

The pre-hearing conference was cancelled, since the petitioners withdrew the petitions from further consideration on January 6, 1989, according to Higginson.

WHY NOT GO AHEAD WITH A ~~PUBLIC~~ MEETING TO DISCUSS WATER MANAGEMENT IN THE SNAKE RIVER BASIN upstream FROM MILNER DAM.

DICK Simms

9:00 AM
ROOM
STUDENT UNION BUILDING
IDAHO STATE UNIVERSITY

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered
ATTORNEYS AT LAW
142 3rd AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

THOMAS G. NELSON
JOHN A. ROSHOLT
J. EVAN ROBERTSON
STEVEN K. TOLMAN
JAMES C. TUCKER
TERRY T. UHLING
TERRY R. McDANIEL
F. BRUCE COVINGTON
JERRY JENSEN
GARY D. SLETTE
CAROLYN M. MINDER
VICKI L. YRAZABAL
BRUCE M. SMITH
G. RICHARD BEVAN
BRAD M. PURDY
GARY L. QUIGLEY

Boise Office
1020 MAIN ST., SUITE 400
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

FACSIMILE TELEPHONE
(208) 736-0041

DATE: 1/6/89

TO: Keith Higginson

FROM: J. Rosholt

DOCUMENT:

RE:

NO. OF PAGES INCLUDING THIS ONE: 3

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9824p/mw/1-6-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

In the Matter of:	)
	)
WATER DISTRICT NO. 1	) WITHDRAWAL OF PETITIONS
and	)
THE SNAKE RIVER AQUIFER	)

* * * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and hereby withdraw the following:

a. Petition of North Side Canal Company, Twin Falls Canal Company and the American Falls Reservoir District for Enlargement of a Water District, dated January 13, 1988.

b. Amendment to Petition referenced in paragraph "a", above, dated October 31, 1988.

c. Second Amendment to Petition referenced in paragraph "a", above, and Stipulation dated December 13, 1988.

d. Petition to Establish Moratorium Pursuant to Idaho Code §42-1805(7) and Rule 7 dated March 9, 1988.

e. Amendment to Petition referenced in paragraph "d", above, dated October 31, 1988.

f. Second Amendment to Petition referenced in paragraph "d", above, and Stipulation dated December 13, 1988.

g. Motion for Consolidation of Petitions referenced in paragraphs "a" and "d", above, dated September 30, 1988.

Petitioners' withdrawal of the Petitions, and all Amendments or Motions related thereto, is without prejudice.

DATED this 6 day of January, 1989.

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

By: John A. Rosholt
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 6 day of January, 1989, I served a copy of the foregoing WITHDRAWAL OF PETITIONS upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

John A. Rosevear
Attorney for Petitioners

MEMORANDUM

To: Alan Robertson

From: L. Glen Saxton

RE: EXISTING STUDIES IN THE NON-TRUST WATER AREA

Date: January 18, 1989

As you probably know, the petitions filed by Twin Falls Canal Company, the North Side Canal Company and American Falls Reservoir District relative to the additional development of ground water in the non-trust water area above Milner Dam have been withdrawn from further consideration before the department.

The withdrawal of the petitions, however, does not mean that the issue of interference of ground water rights with surface water rights has gone away and does not need to be addressed by the department.

The Director has the authority in the Idaho Code to implement measures advocated by the petitioners, if such measures are determined to be appropriate and needed. Since the issue of injury to prior rights has been specifically raised, the department probably has an obligation to look further look into the issue even though such a review is not being driven by pending petitions.

The matter of "studies" keeps coming up. There apparently is a lot of existing data which has already been collected. Norm and I would like a briefing which would address the following questions as well as on other related issues or questions which are pertinent.

1. Could a "meaningful" study of the affect of ground water diversion upon existing surface water rights be conducted using existing data that is available? By meaingful, I mean is it likely that the data would show that there has been injury to prior surface water rights by the groundwater pumpers. A general conclusion that any groundwater pumped and consumptively used just decreases the flow in the Snake River by that amount is not meaningful for our purposes.

2. If not meaningful, what type of study would be?

In either case above,

3. How long would a study take?

4. What would be the cost?

5. Who should conduct the study?

6. Does the department have the expertise and personnel to conduct the study or data review?

7. Is Ron Carlson's data which essentially says there has been no measurable decrease in the surface water flow above Milner Dam attributable to ground water diversions supportable?

We will appreciate an initial briefing on this matter as soon as you have reviewed it, since the department needs to soon develop a proposed action plan on the issue.

c: Norm Young

Draft Letters: Gary D. Slette

Gary D. Slette

Dear Gary:

Thank you for sending me a copy of the Momorandum which you apparently prepared for the Directors of the Twin Falls Canal Co., North Side Canal Co. and American Falls Reservoir District.

If the intent of the memorandum was to correctly and completely provide a summary of the discussion which took place among us it misses the mark, however. I would hope that you would report these corrected or additional discussions to your Directors.

1) I have never used the terminology "absolutely and unqualifiedly" when referring to the relationship between surface and ground water resources in the Snake River basin upstream from Milner Dam. You will recall that I used the analogy of a bathtub and indicated that there is so much water in the system and that surface and ground water are directly or indirectly interconnected and that if X acre feet are withdrawn from the system by a well there will be X acre feet less water available. This at some point in time and some location will decrease the flow out of the basin as measured at Milner ~~but~~ the amount of effect from the operation of an individual well could never be measured.

(which depending upon

2) You will also recall that we spent some time discussing the history of irrigation development in Southern Idaho and pointing to the fact that the ground water component of that development was made openly and with the full knowledge of all, including your clients. In fact, we pointed out that we all used to pride ourselves in the fact that we were expanding irrigation in the state at the rate of up to 25,000 acres of new land per year. This was some measure of the economic vitality of the state and everyone cheered as our "progress" was reported.

3) We also discussed the legal consequences of possible inclusion of ground water within Water District 01 before the ground water rights had been adjudicated. Particularly with regard to the rights established by the pumpers through many years of successful, open and unopposed operation with the full knowledge of your clients. We talked about adverse water right. We even gave examples of how tributary stream water rights had been treated in our recommendations to the court in the Lemhi adjudication in which we recommended that since the tributaries had operated independent of the mainstem rights that they had established a right to continue to do so which should and was recognized by the court.

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 11, 1989

Gary D. Slette
Nelson, Rosholt, Robertson
Tolman & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906

Dear Gary:

Thank you for sending me a copy of the memorandum which you apparently prepared for the directors of the Twin Falls Canal Co., North Side Canal Co. and American Falls Reservoir District.

If the intent of the memorandum was to correctly and completely provide a summary of the discussion which took place among us, it misses the mark, however. I would hope that you would report these corrected or additional discussions to your directors.

1) I have never used the terminology "absolutely and unqualifiedly" when referring to the relationship between surface and ground water resources in the Snake River basin upstream from Milner Dam. You will recall that I used the analogy of a bathtub and indicated that there is so much water in the system and that surface and ground water are directly or indirectly interconnected and that if X acre feet are withdrawn from the system by a well there will be X acre feet less water available. This, at some point in time and some location, will decrease the flow out of the basin as measured at Milner which depending upon timing may or may not affect other rights. The amount of effect from the operation of an individual well could never be measured.

2) You will also recall that we spent some time discussing the history of irrigation development in southern Idaho and pointing to the fact that the ground water component of that development was made openly and with the full knowledge of all, including your clients. In fact, we pointed out that we all used to pride ourselves in the fact that we were expanding irrigation in the state at the rate of up to 25,000 acres of new land per year. This was some measure of the economic vitality of the state and everyone cheered as our "progress" was reported.

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4) You failed to acknowledge that in our discussion of our responsibility to protect prior water rights that all permits are conditioned "subject to prior rights" and that that might be all that was required of us, and that we indicated that we also had the responsibility to protect the right to appropriate water and that there is considerable water which annually flows over Milner Dam and is, therefor, unappropriated.

5) We also discussed the dynamics of the hydrologic system of the surface and ground water of the Snake River upstream from Milner Dam and the tremendous quantity of water which is involved and the fact that depletion of the ground water component during dry years is probably offset and balanced during the next average or wet year when the system refills itself.

6) We also discussed the question of what constitutes injury if a natural flow right is backed up by ownership of storage water and whether your clients could document any injury.

My point, Gary, is that your memorandum seems to give the impression that the discussion which took place covered only the points you have included. In fact, it was much more far reaching and the options available to the department to address the issues were neither fully explored or limited as a result of the discussion. Also the decision to withdraw your petitions was one which you indicated you were considering but not one which we encouraged or discouraged. In fact, I asked that you consider continuing the moratorium petition until the pre-hearing conference to allow the issues to be identified and aired. We acknowledge what the statutes say but there may be some disagreement as to their interpretation.

I hope that the above comments would also be conveyed to your directors.

Sincerely,

Norman C. Young

for R. KEITH HIGGINSON
Director

RKH:alw

4) You failed to acknowledge that in our discussion of our responsibility to protect prior water rights that all permits are conditioned "subject to prior rights" and that that might be all that was required of us and that we indicated that we also had the responsibility to protect the right to appropriate water and that there is considerable water which annually flows over Milner Dam and is, therefor, unappropriated.

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I hope that the above comments would also be conveyed to your Directors.

In fact I asked that you consider continuing the moratorium petition until the pre-hearing conference to allow the issues to be identified and aired.

6) We also discussed the question of what constitutes injury of a natural flow right is backed up by ownership of storage water, and whether your clients could document injury.

and the options available to the dept to address the issues were neither fully explored or limited as a result of the discussion.

M E M O R A N D U M

TO: Twin Falls Canal Company Board of Directors
North Side Canal Company Board of Directors
American Reservoir District Board of Directors

FROM: Gary D. Slette

DATE: January 9, 1988

RE: Snake River Aquifer Petitions

On Thursday, January 5, John Rosholt and I met with Keith Higginson, Norm Young and Glen Saxton. Our petitions were discussed generally, and John Rosholt pointed out that it was his interpretation that the Idaho Code required the departmental director to expand the water district or declare a moratorium on his own initiative. Higginson acknowledged the responsibility to act of his own volition regarding the enlargement of the district. He recalled having stated to both canal company boards that the extraction of groundwater in the non-trust water area "absolutely and unqualifiedly" affected the surface flows. That is the only condition required to be fulfilled before including groundwater in the water district. His major concern with the enlargement issue, however, is not knowing the extent of the impact of groundwater extraction on surface flows. The statute, however, provides for incorporation of groundwater when it is determined that groundwater extraction affects surface flows, regardless of the extent of impact.

Higginson also acknowledged the somewhat troublesome dual charges of his office, i.e., never denying the right to appropriate and divert, while at the same time, protecting senior water rights. He stated that in order to fulfill the constitutional provision of always allowing the right of appropriation, there must be unappropriated water available for would-be diverters. It is the department's position at this time that there exists insufficient data to show an interference with a senior appropriator's water right. We indicated that Ron Carlson's numbers tended to indicate that interference had been shown to our natural flow rights, and that the injury was manifested by the necessity of calling for storage water.

Norm Young explained that, with regard to our petitions, the department was receiving the most pressure from the Department of Commerce concerning future industrial uses, municipalities, and illegal diverters of groundwater. The latter individuals need their pending applications approved to

the permit stage in order to file a valid adjudication claim. Lacking such approval, those individuals are precluded from filing an adjudication claim which does not bode well for them.

Higginson reiterated his concern that a legislative proposal might be mandated, and hoped that we could work to find an acceptable alternative between the department and the petitioners, since no intervention had yet been filed by any party. John explained that we had considered the option of withdrawing our moratorium petition, in hopes that the director would declare the department's own moratorium pursuant to the statutes. Higginson explained that the department had originally planned for a quasi-moratorium wherein they would reprocess the applications currently pending, at which time the petitioners would be allowed to intervene or protest. We explained that it was our great concern that a groundwater application for domestic purposes would be the first test case, in which it would be practically impossible to show any injury to our water right, and that an untenable precedent would be set. Consideration of all the permits and applications cumulatively, we explained, was the only common sense way to view our posture.

At that stage of the discussion, Keith and Norm acknowledged the responsibility of the department to protect the petitioners' water rights. Keith assured us that if we would withdraw our petitions, the department would continue to deal with the problem, and would not simply forego dealing with the issue. He stated that if withdrawal occurred, the department would consider the institution of a moratorium on the issuance of further permits, during which time rules and regulations would be adopted regarding future appropriation. We believe the department is looking to a condition on all permits which would require a source of replacement water for the amount of groundwater consumptively used. That, basically, is what we could logically have hoped for if we were successful in our petitions.

The bottom line in our analysis is (1) we have succeeded in getting the department's attention, and (2) a potential solution lies in the imposition of such conditions on future groundwater extraction. As a result, we contacted the boards of the petitioners with a recommendation that the petitions be withdrawn without prejudice. "Without prejudice" simply means that we can refile at any time, if we determine that the director is not pursuing the course of action that he represented he would at our meeting. By withdrawing our petitions, we feel that we have not lost anything, that the petitioners are able to take off the "black hat" and shift it to the department where it rightfully belongs, and that the petitioners will save money on legal fees. We realize that Higginson's verbal assurances are anything less than concrete, however, we have retained the option of refiling the petitions. Alternatively, and as John informed him, we would

consider the filing of a mandamus action under the applicable statute, which would compel the director to perform a function required by law. I believe that he would prefer his own solution to one compelled by the district court. Based on our recommendation and the boards' consideration, the decision was made to withdraw the petitions without prejudice. That was done on Friday, the 6th, to avoid a potential intervention which might have precluded our voluntary withdrawal without the intervenor's consent.

It is our posture now to await action by the department with regard to the matter. John indicated that he would be corresponding on a very regular basis with Keith in order to prompt him into the course of action he assured us at the meeting.

END/mw
0811m

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9824p/mw/1-6-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * *

In the Matter of:	)	
	)	
WATER DISTRICT NO. 1	)	WITHDRAWAL OF PETITIONS
	)	
and	)	
	)	
THE SNAKE RIVER AQUIFER	)	
	)	

* * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and hereby withdraw the following:

a. Petition of North Side Canal Company, Twin Falls Canal Company and the American Falls Reservoir District for Enlargement of a Water District, dated January 13, 1988.

b. Amendment to Petition referenced in paragraph "a", above, dated October 31, 1988.

c. Second Amendment to Petition referenced in paragraph "a", above, and Stipulation dated December 13, 1988.

d. Petition to Establish Moratorium Pursuant to Idaho Code §42-1805(7) and Rule 7 dated March 9, 1988.

e. Amendment to Petition referenced in paragraph "d", above, dated October 31, 1988.

f. Second Amendment to Petition referenced in paragraph "d", above, and Stipulation dated December 13, 1988.

g. Motion for Consolidation of Petitions referenced in paragraphs "a" and "d", above, dated September 30, 1988.

Petitioners' withdrawal of the Petitions, and all Amendments or Motions related thereto, is without prejudice.

DATED this 6 day of January, 1989.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: Sloan A. Rosholt
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 6 day of January, 1989, I served a copy of the foregoing WITHDRAWAL OF PETITIONS upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

John A. Rosholt
Attorney for Petitioners

Magic Valley

Upper Snake water users organize to fight for rights

The Associated Press

REXBURG — Upper Snake River Valley irrigators, organizing to joust with downstream water users over groundwater rights, have agreed their real enemy is Idaho Power Co.

"It's Upper Valley against Lower Valley, and it's pumpers against stream users until all of us are subordinated to the power interests of Idaho Power Co.," said Dell Raybould, a Rexburg farmer who helped organize Thursday's meeting, which attracted nearly 200 people.

The irrigators appointed a five-member committee to fight petitions filed with the Idaho Department of Water Resources by the Twin Falls and North Side canal companies and the American Falls Reservoir District.

The petitions ask for expansion of Water District No. 1 to include administration of groundwater and a moratorium on groundwater permits on any groundwater tributaries to the Snake River above Milner Dam. The water district currently administers only surface water.

The Magic Valley canal companies contend they have priority rights to water being diverted by irrigators in the Upper Valley and that diversions from the groundwater directly reduce flows in the Snake River or in storage reservoirs.

Adding groundwater wells to the water district's authority could double the assessments paid by the current water users, said District Watermaster Ron Carlson. There are about 2,500 wells in the affected area.

"There is no evidence these canal companies have been damaged," Carlson said. Even with increased diversions in the Upper Valley, "stream flows at American Falls and Swan Falls dams have remained stable" or increased slightly, he said.

"Is it serious? It is serious. Every groundwater pumper should feel threatened," said Robert Lee of Rexburg, former chairman of the Idaho Water Resources Board. "There is not a groundwater pumper who would not be shut off in a series of dry years" if the moratorium is granted.

"You have to fight it."

Lee said the North Side and Twin Falls canal companies use an "antiquated system" for delivering water that needs an estimated $65 million in improvements, including reconstruction of Milner Dam.

Their system "wastes tremendous amounts of water ... and they're challenging one of the most efficient irrigation systems in the world," Lee said.

But Richard Smith, a Rexburg Bench farmer and meeting organizer, said competition between consumptive users and hydropower developers is the real issue.

Magic Valley canal companies have entered into an agreement with Idaho Power to finance reconstruction of Milner Dam, while the Federal Energy Regulatory Commissi has approved a license for Idaho Power build a hydroelectric generating plant the Smith said.

The attorneys representing the Magic V ley canal companies also represented Ida Power in the Swan Falls lawsuit.

"Draw your own conclusions from tha Smith said.

Those at the meeting voted unanimou to organize a steering committee, and g it authority to hire an attorney who can an answer with the Department of Water sources and ask for a continuance of a he ing scheduled Jan. 30 in Boise.

A decision from the department is exp ed next year.

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
ATTORNEYS AT LAW
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906

Idaho Department of Water Resources
Attn: Keith Higginson
1301 N. Orchard
Statehouse Mail
Boise, ID 83720

SUMMARY INFORMATION

PETITIONS IN THE NON-TRUST WATER AREA

1. BACKGROUND

- Legislative division at Milner
- Rule adoption - basis and effect
- Physical setting - Location of rights - springs

2. PETITIONS

- Filed by:

  Twin Falls Canal Company
  North Side Canal Company
  American Falls Reservoir District

- Request:

  IDWR to issue an order enlarging Water District No. 1 (Upper Snake River) by incorporating the ground water supply in the area shown in the cross hatched area on the attached map (Non-trust water area).

  A moratorium on the issuance of or further action on permits or applications to appropriate ground water in the same area.

  (The petitions were amended to include all the area from which ground water is tributary upstream from Milner Dam).

- Legal basis:

  Expanding Dist 01
  42-237a (g), Idaho Code.

  Moratorium:
  42-1805(7), Idaho Code.
  Rule 7, Water Appropriation Rules and Regs.

- Impact if ordered:

  - Water District 1

    Expansion of Water District 1 to include the

ROUTING SLIP

DATE 31 Jan 89 TIME

TO: Glen, Norm

REF. No. (if any)

FROM: (show title) Alan

FOR YOUR:
- ☐ Information
- ☐ Approval
- ☐ Signature

REVIEW AND:
- ☐ Call Me
- ☐ See Me
- ☐ Comment & Return
- ☐ Take Proper Action
- ☐ Draft a Reply for Me

PER:
- ☑ Our Conversations
- ☐ Your Request
- ☐ Boss's Request

We discussed the GW study with Chuck B this AM. Will go over it with him in more detail when he's here next time. In general, he was not surprised at the results — believed it was best method available for such an evaluation.

AR.

groundwater users would subject the diversions from wells to regulation which has not occurred in the past.

Regulation likely would result in some groundwater pumping being curtailed in times of scarcity and would involve annual water delivery assessments payable to the water district.

**** Question of how this would work in areas such as the Portnuef or Blackfoot which has a separate water district.

- Moratorium

The effect of a moratorium would be to continue the embargo on new development which would consumptively use water in the non-trust water area above Milner Dam.

The petition also seeks to stop domestic, commercial, municipal and industrial uses which have been receiving approval under the terms of a contract between the state and the Idaho Power Company.

3. WATER DISTRICTS

- Present Water District 1

- Overview of operation

- Operation with background

4. MORATORIUMS

- Can be imposed on both applications and existing permits to protect prior rights.

- Changes ?

5. MEETINGS SCHEDULED

Public information meetings:

December 6, 1988 - Idaho Falls - 7:00 p.m., District Courtroom, Courthouse, 605 N. Capitol St.

December 7, 1988 - Pocatello - 10:00 a.m., Air Terminal Building, Pocatello Airport.

December 7, 1988 - Twin Falls - 7:00 p.m., College of Southern Idaho, Vo-Tech Building, 315 Falls Avenue.

6. PREHEARING CONFERENCE

January 31, 1989 - Pocatello - 9:00 a.m., Idaho State University, Pond Student Union Building located at the corner of 5th and Humboldt St.

Purpose

- Determine and simplify issues.
- Obtain admissions of fact and of documents
- Arrange exchange of exhibits or prepared testimony.
- Limit and consolidate witnesses.
- Clarify procedure at the hearing.

7. HEARING

- Decision will be issued and distributed.

- Exceptions to the decision may be filed.

- Request for rehearing.

- Final decision will be issued.

- Decision can be appealed to the District Court.

8. MISCELLANEOUS

- The petitioner has the initial burden of proof.

- To become a party to the hearing, a request to intervene must be filed with the Director ten (10) cays before the scheduled hearing.

- Evidence on the following matters appear to be pertinent to the ultimate determination on the petitions.

  1. Areas of common groundwater supply in the non-trust water area.

  2. The interconnection or non interconnection of the groundwater supply with surface water flows.

  3. The degree of interference or non-interference of groundwater use on the surface water flow of the Snake River above Milner Dam with respect to timing and amount.

Norm / Glen

Some where in the we have to address the issue raised by Posnett / Slette that the Dir has the responsibility under

42-1805(7) "... to protect existing vested water rights"

&

42-237 ee "... to determine what areas of the state have a common G.W. supply" and "to incorporate such areas in said water district."

Their parting shot when they met with us was that they would be pursuing us until we did our duty under these statutes.

The attached addressed the pending applications but not how to treat the common source issue.

_DRA0:[WATERA.WRUSERS.WRSTATE.WRSAXTON]NONTR.PROC;6

Draft 01-27-89 lgs

MEMORANDUM

To: Norman C. Young

From: L. Glen Saxton

RE: RECOMMENDED PROCESSING PROCEDURE - NON-TRUST WATER AREA

Date:

The potential alternatives for processing applications and permits in the non-trust water area range from processing with no special considerations similar to the pre-Swan Falls era to the issuance of a moratorium rejecting all pending applications, preventing further development on existing permits and closing the non-trust water area to any further appropriation.

The recognition of a few principles and facts may assist in the selection of a reasonable processing approach. The principles include the following:

1. At times, water spills past Milner Dam which ~~means~~ indicates there is unappropriated water in the system during those spill periods. These spills also indicate that the hydrologic system ~~Natural~~ flows from above Milner, by statute, are not required to be managed to deliver any rights below Milner.
2. Inquiries in connection with DCMI filings and for ~~development~~ seeking a change in water source in place which is either not authorized or are the most prevalent received by the department.
3. The Snake River aquifer is so vast and variable that

Rewrite

PERIODICALLY FILLS TO OVER FLOWING. - ANY DEFICIT IN WATER SUPPLY OR DRAWDOWN OF GROUND WATER LEVELS BY USE WHICH EXCEEDS NATURAL Supplies FOR A PERIOD IS ERASED ONCE ~~[illegible]~~ PERIODS AND SPILLS.

attempts at detailed regulation are guesstimates at best and may not serve any useful or practical purpose. (Add comments based an Alan R's study).

4. Injury to prior surface water rights by subsequent ground water appropriators may be detectable with an aggregate of uses, but the effect of an individual new appropriation can not be measured.
5. Because of the prolonged delay associated with the Swan Falls matter and public perception that the agreement would allow further development in the non-trust water area, a straight-forward processing approach in the non-trust water area is needed to preclude additional confusion, allow the department to effectively reduce the backlog of filings and restore public confidence in water management.
6. ~~The~~ A proposed finding in the Snake River Basin adjudication can include provisions relative to the treatment of groundwater rights as related to prior surface water rights. By the time the SRBA is ready to be transmitted to the court, additional data will be available which will be used to address the issue.
7. Water Appropriation Rule 4,2,2,2. provides that applications in the non-trust water area which have been advertised do not need to be readvertised.

8. The opportunity to protest a water right filing as applications are advertised is available to any party.

9. There are consumptive uses of water in the non-trust water area which would have been grandfathered if within the trust water area. These uses have existed for some time and do not represent "new" consumptive uses. Action to force termination of these uses may be required if consideration of some sort is not extended to these uses.

10. Certain groundwater appropriations have been proposed as a replacement supply for lands already irrigated with a surface water supply. In these cases, the overall amount of water in the system is not changed. The surface water is either stored or is directly available to a different water right which otherwise may have had to use its storage water.

General

11. Opposition to new DCMI development is not likely, since the nature of the uses are generally insignificant from a consumptive standpoint and are of benefit to most citizens and the general economy of the state.

My recommendations are as follows:

1. Run the Snake River model assuming that all the permits and applications which propose groundwater as the source in the non-trust water area represent new development to determine the

12. IT IS NOT THE DEPARTMENT'S RESPONSIBILITY TO ASSURE THAT THERE WILL BE NO INTERFERENCE WITH PRIOR WATER RIGHTS. ALL APPLICATIONS ARE APPROVED "SUBJECT TO PRIOR RIGHTS". WE NEED ONLY FIND THAT A PROPOSED APPROPRIATION WILL NOT "...REDUCE THE QUANTITY OF WATER UNDER EXISTING RIGHTS." LACKING A SHOWING OF DIRECT INTERFERENCE AND WITH A FINDING OF REASONABLE CAUSE TO BELIEVE THAT AN APPROPRIATION CAN BE MADE WITHOUT INTERFERENCE WE SHOULD APPROVE A PERMIT TO ALLOW THE APPLICANT TO ATTEMPT AN APPROPRIATION W/O INTERFERENCE.

effect on the flows of the Snake River. This run should be conducted with input or at least recognition from ~~[illegible]~~ knowledgeable hydrologists. This should be a conservative approach, since many of the permits have been developed and not all of those proposed will be fully developed.

2. Do NOT issue any type of moratorium as proposed in the draft policy and implementation plan for the trust water area. The reason is that a moratorium of any type, even a limited or qualified moratorium is generally misunderstood and could result in allegations that have no basis.

3. Existing permits should be allowed to perfect a water right within the usual statutory procedures ~~with the understanding that~~ and the permit holder should be advised that the department will stringently limit time allowed on extension of time submittals for such existing permits.

4. Applications involving non-consumptive or DCMI uses of any magnitude should be processed immediately in compliance with the usual considerations of the statutes and the existing Water Appropriation rules and approved if otherwise approvable. These applications do not need to be processed in order of priority. Readvertisement of those which have already been advertised is not required.

5. Non DCMI applications which are consumptive in nature should also be processed under the existing Water Appropriation

rules and regulations. These filings may be categorized in three groups and processed as follows:

a) Existing Irrigation - (Development before 10-1-84 for which an application was filed by 7-1-85). Process immediately, retain jurisdiction for any augmentation determined necessary in the future. (Purpose is to allow the permit to be claimed in the Snake River Basin Adjudication).

b) Irrigation Conversion - (Proposed change from a surface water source to a groundwater source). Process immediately, retain jurisdiction for any augmentation determined necessary in the future.

c) Supplemental or New Irrigation

Amend Water Appropriation Rule 4,2,2,2. to require advertisement or readvertisement of all applications for supplemental irrigation ~~of~~ or for the irrigation of new land. This will allow parties potentially injured to file a protest.

new items
1. Alan's model Run
2. Short dev. period for permits
3. Emerg Rule for DCMI

_DRA0:[WATERA.WRUSERS.WRSTATE.WRSAXTON]NONTR.PROC;3

Draft 01-25-89 lgs

MEMORANDUM

To: Norman C. Young

From: L. Glen Saxton

RE: PROCESSING PROCEDURE - NON-TRUST WATER AREA

Date:

The n… tives for processing applications and permi… …ter area range from processing with no s… …lar to the pre-Swan Falls era to the … …ecting all pending applications, … …nt on existing permits and closing … …ny further appropriation.

Also draft letter

… principles and facts may assist in … processing approach. The … g:

… past Milner Dam which means there … in the system during those spill … [A]BOVE MILNER BY STATUTE ARE NOT … delivered rights ~~of any~~ & below Milner.

… …ve use development in the … is not likely due to the general …

Rephrase in terms of filings that have been in a period to be p…

… …ake River aquifer is ~~so~~ vast and variable that attempts at detailed regulation are guesstimates at best and may not serve any useful or practical purpose.

4. Damage to prior rights by subsequent appropriators theoretically occurs with each new appropriation but can not be measured with enough precision to justify some sophisticated scheme of regulation with the resources and knowledge of the aquifer presently available.

Rephrase in terms of potential damage by approval decisions

5. ~~There has been so much confusion~~ Because of the prolonged delay associated with the Swan Falls matter, ~~that~~ a straight-forward processing approach in the non-trust water area ~~will~~ is needed to preclude additional confusion, ~~allow~~ the department to effectively reduce the backlog of filings and ~~be a~~ restore public confidence in water management

public perception that the agreement would ~~provide~~ allow further development in the ~~non~~ trust ~~water~~ area.

~~welcome change in Idaho.~~

6. The proposed findings in the Snake River Basin adjudication can include provisions relative to the treatment of groundwater rights as related to prior surface water rights. By the time the SRBA is ready to be transmitted to the court, additional data may be available which ~~could satisfactorily~~ will be used to address the issue.

7. Water Appropriation Rule 4,2,2,2. provides that applications in the non-trust water area which have been advertised do not need to be readvertised.

8. The opportunity to protest a water right filing ~~for~~ applications ~~which have not been~~ advertised is available ~~for use by~~ any party.

9. Opposition to new DCMI development is not likely, since the nature of the uses are generally insignificant from a consumptive standpoint and are of benefit to most citizens of the state.

My recommendations are as follows:

1. Run the Snake River model assuming that all the permits and applications which propose groundwater as the source in the non-trust water area are not developed to determine the effect on the flows of the Snake River. This run should be conducted with input or at least recognition from other knowledgeable hydrologists. This should be a conservative approach since many of the permits have been developed and not all of those permits will be fully developed

2. Do NOT issue any type of moratorium as proposed in the draft policy and implementation plan for the trust water area. The reason is that a moratorium of any type, even a limited or qualified moratorium is generally misunderstood and could result in allegations that have no basis.

3. Existing permits be allowed to perfect a water right within the usual statutory procedures with the understanding that the department will stringently limit time allowed on extension of time submittals for such existing permits.

4. Applications involving non-consumptive or DCMI uses of any magnitude should be processed in compliance with the usual considerations of the statutes and the existing Water Appropriation rules. This may require the adoption of an emergency rule under Section 67-5203(b) which allows the department to adopt such a rule if there is an "imminent peril to

the public health, safety or welfare". In my estimation, failure to approve a municipal use is directly adverse to the health, safety and welfare of a community.

5. Non DCMI applications which are consumptive in nature should also be processed under the existing Water Appropriation rules and regulations. Such approvals should be issued with an additional condition that the Director retains jurisdiction over the exercise of the permit for a 10 year period after the water is first diverted and used to impose additional conditions if determined necessary to protect prior water rights. If a problem does not become apparent in the 10 year period the "sunset" condition language would become of no force nor effect but the "subject to prior right" language would still be effective.

It does not appear to be prudent for the department to delay processing in the non-trust water area for the development of proposed processing strategies, public meetings and the issuance of a plan and policy for the non-trust water area.

— STATEGY FOR NON-TRUST AREA —

— GOAL —

DCMI — PROCESS IMMEDIATELY WITHOUT REGARD FOR PRIORITY
Do not distinguish between SMALL + LARGE DCMI
Do not readvertise those that have been advertised
Recognize, where relevant, that return flows provide an initial increase in river flows
Do not require augmentation or retain jurisdiction

EXISTING IRRIGATION ie. — pre 10/1/84 development with apps filed by 7/1/85
- process immediately
- Retain jurisdiction for Augmentation
- Recognize need for a permit for a valid claim in adjudication.

Irrigation Conversion —
- process immediately
- retain jurisdiction for augmentation
- Recognize initial increase in River flows because of return flows and reduced demand on surface rights

Supplemental irrigation —

New Irrigation

Amend Rule – 4, 1, 2 (?) to require readvertisement of new filings (?)

Provide ~~for~~ opportunity for participation by others – intervene/protest

Process by priority date

_DRA0:[WATERA.WRUSERS.WRSTATE.WRSAXTON]EMRULE.TEXT;2

draft 01-27-89 lgs

BEFORE THE DIRECTOR

OF THE

IDAHO DEPARTMENT OF WATER RESOURCES

NOTICE OF EMERGENCY

RULE MAKING

Notice is hereby given that pursuant to provisions of Section 67-5203(b), Idaho Code, the director of the Idaho Department of Water Resources (director) hereby amends on an emergency basis the existing Water Appropriation Rules and Regulations of the department by changing Rule 4,2,2,2. to require the readvertisement of applications in the non-trust water area even though the applications have been previously advertised. The emergency rule will be effective for 120 days commencing on the date of entry of this notice.

The emergency rule is adopted pursuant to the authority granted the director by Section 42-1805(8), Idaho Code.

DECLARATION

The processing of water right applications in the non-trust water area has been delayed pending a resolution of the Swan Falls water right controversy. Petitions recently filed and subsequently withdrawn in the non-trust water area suggest that the director should provide additional notice of applications in

the non-trust water area for the protection of prior water rights.

Emergency action is necessary to provide immediate consideration of pending applications in the non-trust water area. For this reason, Rule 4,2,2,2. is amended under the authority of Section 42-1805(8), Idaho Code, as follows:

Rule 4,2,2,2. Applications for permit from the Snake River or surface and groundwater sources upstream from Milner Dam which have been advertised and held without action due to the Swan Falls controversy shall be readvertised.

Adopted this ____ day of _____, 1989 at Boise, Idaho.

_____
R. KEITH HIGGINSON
Director

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

M E M O

TO: Glen, Norm DATE: January 30, 1989

FROM: Hydrology

SUBJECT: Effects of development of groundwater permits and applications NW of NCY line.

A study has been run to respond to your request of January 18 and our follow-up discussions. Permits and applications include irrigation developments of approximately 47,000 acres more than were developed in our base study (1980 data). Model predicted effects were:

Years After Development	Changes in Aquifer Discharge			
	Blackfoot-Minidoka		Total	
	(KAF/yr)	(cfs)	(KAF/yr)	(cfs)
15	-6.1	-8	-15	-21
30	-10.0	-14	-32	-44
45	-14.2	-20	-49	-68
60	-16.0	-22	-55	-76

For comparison purposes, total discharge from the Snake Plain aquifer is about six million acre feet per year.

MEMORANDUM

TO: GLEN SAXTON

FROM: TIM LUKE Tim L.

RE: QUANTIFICATION OF APPLICATIONS & PERMITS IN NON-TRUST AREA

DATE: JANUARY 20, 1989

Below is a table which summarizes the number of application and permit filings in the Non-Trust Area which you recently requested.

TYPE OF USE	# OF FILINGS	~~app~~	~~perm~~	Total cfs
IRRIG > 1.00 CFS	515	274	241	
IRRIG <= 1.00 CFS	399	265	134	
DCMI – ~~total~~ cfs = 109.5	188	43	145	
DOMESTIC^	147	29	118	
NON-CONSUMPTIVE	174	33	141	
TOTAL	1423	644	779	

^Domestic uses include filings where rate of diversion for domestic use is 0.04 cfs or less and which may include up to 3.0 acres of irrigation on same filing.

Note: The total number of filings appears much larger than earlier figures becuase filings which were dismissed from litigation by IPCO were not included among the number of filings in Non-Trust Area. Domestic filings were also excluded from earlier estimates (i.e.; those

figures given for Table 1 - Processing Requirements: Draft Implementation Plan). The above figures also include new applications etc... updated since our original computer runs from November 1, 1988. The figures above can be broken down further as to number of applications and permits per category.

DCMI NON-TRUST AREA USES

WATER RIGHT	STG	STS	SF	USE	RATE	ACRES
2107387	P		1	43	0.060	
2207554	P		C	10	0.040	
2207556	P		1	10	0.040	
2207558	P		C	10	0.040	
2107187	P		Z	43	0.200	
2107299	P		Z	43	0.220	
2107308	P		Z	43	0.180	
2107314	P		Z	43	0.500	
2107317	P		Z	43	0.060	
2107323	P		Z	43	0.110	
2107324	P		Z	43	0.110	
2107325	P		Z	43	0.100	
2107326	P		Z	43	0.110	
2107327	P		Z	43	0.110	
2107328	P		Z	43	0.120	
2107329	P		Z	43	0.250	
2107330	P		Z	43	0.110	
2107331	P		Z	43	0.060	
2107332	P		Z	43	0.130	
2107333	P		Z	43	0.100	
2107334	P		Z	43	0.160	
2107340	P		Z	43	0.260	
2107341	P		Z	10	0.040	
2107342	P		Z	10	0.080	
2107346	P		Z	43	0.760	
2107351	P		Z	10	0.060	
2107361	P		1	43	0.060	
2107362	P		1	10	0.060	
2107365	P		1	43	0.260	
2107378	P		1	43	0.200	
2107380	P		1	43	0.050	
2107383	P		1	43	0.150	
2207269	P		2	40	2.250	
2207328	P		Z	43	0.110	
2207334	P		Z	43	0.100	
2207350	P		Z	10	0.040	
2207415	P		1	43	0.470	
2207421	P		Z	13	0.200	
2207449	P		Z	04	0.100	
2207497	P		1	04	0.020	
2207520	P		C	10	0.020	
2207529	P		1	40	1.000	
2207534	P		C	10	0.200	
2207536	P		1	10	0.150	
2207539	P		1	10	0.040	
2207541	P		1	10	0.020	
2207543	P		C	43	0.100	
2207544	P		1	10	0.020	
2307025	P		Z	43	0.680	
2307089	P		Z	43	0.170	
2307093	P		Z	43	0.060	
2307094	P		Z	43	0.060	
2307098	P		Z	43	0.330	
2307100	P		Z	43	0.100	
2307101	P		1	43	0.100	

DCMI NON-TRUST AREA USES

WATER RIGHT	STG	STS	SF	USE	RATE	ACRES
2307102	P		1	43	0.180	
2307110	P		1	43	0.080	
2407113	P		Z	07	4.460	
2407163	P		Z	04	0.020	
2407164	P		1	07	0.210	
2407169	P		1	13	0.200	
2507086	P		Z	43	0.360	
2507137	P		Z	43	0.060	
2507148	P		Z	43	2.360	
2507167	P		Z	43	0.460	
2507168	P		2	40	6.690	
2507171	P		Z	04	0.020	
2507191	P		Z	43	3.000	
2507199	P		Z	43	0.120	
2507283	A		C	04	0.200	
2507298	A		1	40	3.350	
2507300	P		Z	04	0.020	
2507320	P		Z	10	0.300	
2507324	A		Z	43	0.080	
2507325	P		1	40	0.890	
2507342	P		Z	10	0.040	
2507361	P		Z	04	0.090	
2507391	P		1	04	0.020	
2507396	P		1	22	0.200	
2507398	P		1	43	1.550	
2507412	P		C	10	0.450	
2507420	P		1	10	0.040	
2507423	A		1	40	8.020	
2507433	P		1	10	0.040	
2707052	P		Z	43	3.340	
2707057	P		Z	07	2.000	
2707058	P		Z	07	2.000	
2707138	P		Z	43	1.200	
2707145	P		Z	07	0.010	
2707258	P		Z	43	0.520	
2707294	P		Z	07	3.000	
2707329	P		1	40	4.000	
2707351	P		Z	43	0.290	
2707384	P		1	40	0.144	
2707386	A		1	40	2.000	
2707417	P		1	07	1.110	
2707420	P		1	40	0.020	
2707428	P		1	40	0.560	
2707439	P		C	10	0.040	
2707440	P		C	13	0.670	
2707441	P		C	13	0.670	
2907242	P		Z	04	0.020	
2907370	P		1	40	1.500	
2907527	P		Z	10	0.400	
2907558	P		Z	43	0.500	
2907634	P		Z	07	0.250	
2907646	P		Z	04	0.020	
2907681	P		Z	43	0.450	
2907692	P		Z	10	0.020	
2907732	P		Z	43	0.080	

DCMI NON-TRUST AREA USES

WATER RIGHT	STG	STS	SF	USE	RATE	ACRES
2907780	P		1	43	0.530	
2907782	P		1	40	7.000	
2907793	P		1	43	0.060	
2907806	P		1	10	0.010	
2907807	P		1	10	0.200	
2907819	P		1	43	2.000	
2907821	P		1	40	3.330	
2907822	P		1	40	1.000	
2907823	P		1	10	0.220	
2907834	P		7	40	1.000	
2207616	A		C	10	0.020	
2507474	A		C	43	0.080	
2207592	A		1	10	0.040	
2307120	A		1	10	0.040	
2507438	A		1	10	0.040	
3507642	P		Z	10	0.050	
3507823	P		Z	04	0.040	
3507841	P		2	40	7.350	
3507904	P		Z	10	1.500	
3507986	P		Z	04	0.020	
3508016	P		Z	04	0.090	
3508041	P		Z	04	0.120	
3508069	P		Z	40	0.700	
3508098	P		Z	43	0.170	
3508127	P		Z	04	0.020	
3508167	P		Z	10	0.060	
3508223	A		7	40	1.500	
3508351	P		1	43	0.100	
3508354	P		7	43	1.700	
3508617	P		1	10	0.040	
3508625	P		1	43	0.060	
3508629	P		1	04	0.030	
2207617	A		1	40	2.200	
3508656	P		1	10	0.010	
3508659	P		C	04	0.110	
3508669	P		1	07	1.000	
3508670	P		1	10	0.040	
4107075	P		1	43	0.060	
2907852	A		1	07	1.500	
2507484	A		C	43	0.100	
2207573	P		C	10	0.080	
2207574	A		C	10	0.290	
2207583	P		1	10	0.040	
2207594	A		C	10	0.040	
2207589	A		1	43	0.080	
2207599	A		1	43	0.080	
2207600	A		1	10	0.060	
2507445	A		7	10	0.040	
2507446	A		1	43	0.060	
2507450	A		C	10	0.040	
2107385	A		C	10	0.040	
2207550	P		1	43	0.060	
2507434	P		C	10	0.040	
2907849	A		1	40	1.000	
2207557	P		1	10	0.020	

DCMI NON-TRUST AREA USES

WATER RIGHT	STG	STS	SF	USE	RATE	ACRES
2207559	P		1	43	0.120	
2307119	P		1	43	0.100	
2507437	P		C	04	0.020	
2207580	P		1	10	0.040	
2907855	A		1	07	0.670	
2207604	A		1	43	0.050	
2207605	A		C	10	0.040	
2507451	A		C	10	0.040	
2507456	A		C	10	0.040	
2507457	A		C	43	0.110	
2507463	A		C	10	0.040	
2107390	A		1	43	0.200	
2507464	A		C	10	0.040	
2507465	A		C	43	0.060	
2507466	A		C	10	0.040	
3508679	A		1	10	1.000	
2507472	A		C	43	0.070	
2507473	A		C	43	0.070	
3508683	A		C	43	0.070	
2507475	A		7	07	1.000	
2207618	A		C	40	0.020	
2207619	A		C	40	0.020	
2207620	A		1	43	0.060	

Total = 109.484

MEMORANDUM

TO: GLEN SAXTON

FROM: TIM LUKE

RE: QUANTIFICATION OF APPLICATIONS & PERMITS IN NON-TRUST AREA

DATE: FEB. 10, 1989

==========

Below is a table which summarizes the number of application and permit filings in the Non-Trust Area which you recently requested.

TYPE OF USE	APPS.	PERMITS	TOTAL	TOTAL ACRES	TOTAL CFS
IRRIG > 1 CFS	175	206	381	208,907	
IRRIG<= 1 CFS	200	123	323	10,339	
DCMI	40	143	183		96.69
TOTAL	415	472	887	219,246	96.69

C. E. BROCKWAY P. E.
ENGINEERING CONSULTANT

Groundwater, Hydrology,
and Hydraulic Engineering

Route 1, Box 186
Kimberly, Idaho 83341

March 20, 1981

Mr. John Coleman
156 Second Avenue West
P.O. Box 525
Twin Falls, ID 83301

Re: Bruce Kunkel - Idaho Power Application

Dear John:

I have reviewed the material which you furnished in support of Mr. Kunkel's application and particularly the review and analysis by Mr. Gerry Crosthwaite.

Generally, Crosthwaite concludes, and I concur, that (1) a significant change in irrigation on the Salmon Falls tract would have to occur before it could be detected in the Snake River, and (2) because of the low rate of groundwater flow toward the river, detection of the effect of groundwater development on the Snake River is almost a futile exercise.

Mr. Crosthwaite has adequately described the hydrogeology of the Salmon Falls-Twin Falls tracta area, however he has presented no evidence that the water consumptively used from Mr. Kunkel's well would not have ultimately contributed to the flow of the Snake River. Well pump tests and data do not suggest that Mr. Kunkel's well is located in other than the regional aquifer system such as a perched water body or artesian system.

All published data support the consensus that the groundwater gradient in the vicinity of Mr. Kunkel's well is toward the north and the flows are tributary to the Snake River. Consumptive groundwater use, once begun, can be expected to continue indefinitely so that a decrease in gain to the Snake River will ultimately occur, however imperceptible.

In my opinion, the groundwater, if not diverted by Mr. Kunkel's well, would ultimately contribute to Snake River flows, and the inability to detect a change in river flow due to that development does not negate the fact that it occurs.

If there is additional information which you feel could support a conclusion that the groundwater flow in the vicinity of Mr. Kunkel's well is not tributary to Snake River, I will be glad to review it.

Sincerely,

C. E. Brockway

C. E. Brockway, P.E.

cc: Mr. Wes Coryell
Mr. John Rosholt

E. G. Crosthwaite
8821 Churchill Rd.
Boise, ID 83709

February 9, 1981

Mr. John R. Coleman, P.A.
156 Second Avenue West
Post Office Box 525
Twin Falls, Idaho 83301

Dear Mr. Coleman:

This letter is in response to your telephone request of January 16, 1981 to comment on the hydrology of the Salmon Falls tract in southern Twin Falls County, Idaho, and the relationship of the tract's surface and ground water with the Snake River and possible effects of small scale ground water development on Snake River. A report published by the U.S. Geological Survey (Crosthwaite, 1969) describes, among other things, the general surface- and ground-water conditions of the tract. The report area included the drainage area of Salmon Falls Creek above the Salmon Falls Dam, the Deep Creek, North Cottonwood Creek, and McMullen Creek drainage areas, but most of the emphasis was on what is commonly known as the Salmon Falls tract. The tract is defined as that area that lies east of the canyon of Salmon Falls Creek, west of the Rock Creek Hills (also known as the South Hills and Cassia Mountains), south of the Twin Falls Highline Canal, and north of the hilly uplands just north of Idaho-Nevada border. Rogerson is about six miles north of the southern boundary of the tract as described in the USGS report.

Overland flow of surface water from the Salmon Falls tract is small, and practically all of that outflow is leakage through the abutments of Salmon Falls Dam. Crosthwaite (1969, p. D18) estimated the outflow below the dam as 6,000 acre-feet annually (8 cfs). The runoff of Deep Creek is stored in two small reservoirs a few miles southwest of Hollister and used for irrigation and stock water. Except for unusual snowmelt or rainfall conditions the channel of Deep Creek is dry from the reservoirs downstream to the crossing of the Highline Canal of the Twin Falls Canal Company. In fact, at some places the channel of Deep Creek has been completely obliterated in this reach by agricultural practices. Similar conditions pertain to the runoff of North Cottonwood Creek east of the Salmon Falls tract where two reservoirs effectively control streamflow with no significant outflow from the tract to Snake River. In summary, for all practical purposes the only surface water that leaves the tract is that in the canyon of Salmon Falls Creek of which most is leakage through the Salmon Falls Dam.

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The USGS report mentioned above (p. D24) states: "The natural discharge of ground water beneath the Salmon Falls tract is by underflow northward into the Snake River and Rock Creek. A small amount discharges into Salmon Falls Creek."

The report used two methods to estimate the amount of average annual ground-water recharge to (and by inference, the discharge from) the tract (p. D19-D21). The estimates were based on the data available at the time the report was prepared. Of the two estimates the one of 115,000 acre-feet (160 cubic feet per second) was thought to be the approximate magnitude of the ground-water recharge. The source of recharge was described as follows:

Infiltration of precipitation on the area	50,000 ac-ft (70 cfs)
Seepage loss from reservoir, canal system and deep percolation from fields	65,000 ac-ft (90 cfs)
Total	115,000 ac-ft (160 cfs)

Except where intercepted by wells, this recharge moves northward toward Snake River. It is interesting to note that more than 55 percent of the estimated average annual recharge is generated by the irrigation project.

The estimate of 160 cfs agrees closely with an estimate of 150 cfs made several years earlier by Mundorff, Crosthwaite, and Kilburn (1964, p. 180).

Between the Salmon Falls tract and the Snake River is another source of ground water tributary to the river. This source is from lands served by the Twin Falls Canal Company.

There is a distinct contrast between the lands of the Salmon Falls tract and those served by the Twin Falls Canal Company. Depending on the available surface-water supply the annual irrigated acreage in the Salmon Falls tract may fluctuate widely. Actual acres irrigated in any one year may range from about 12,000 to more than 30,000. The irrigated lands are not in a compact unit but are scattered through an area exceeding 150,000 to 200,000 acres. The 202,000 acres under the Twin Falls Canal Company are in a compact area with little non-irrigated land intermingled with the irrigated area. The lands have good streamflow and storage rights on the Snake River and receive an adequate water supply almost every year. Because of the differences

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in water supply and distribution of the irrigated lands, the Twin Falls tract contributes such a large amount of ground-water return flow and surface water waste to the Snake River that the volume completely masks the contribution from the Salmon Falls tract.

Mundorff, Crosthwaite, and Kilburn estimated that the ground-water return flow and irrigation waste from the Twin Falls tract was 1,150 cfs in 1955 (p. 180). This estimate did not include 100 cfs from Rock and Dry Creeks. Carter et al (1971, p. 333) reports the subsurface drainage from the Twin Falls tract as 1,000 cfs. Recently the Water Resources Division of the U.S. Geological Survey began a bimonthly series of discharge measurements of water entering the Snake River between Milner Dam and Salmon Falls Creek. The six sets of measurements made between March 1980 and Jan. 1981 give a total average flow of about 800 cfs for Rock Creek, Salmon Falls Creek, and inflow to the reach of the Snake River between the mouths of the two creeks (L.C. Kielstrom, personal communication, Jan. 29, 1981). Presumably, all the measurements and estimates of inflow to the Snake River include water from the Salmon Falls tract. The conclusion is that the Twin Falls tract contributes at least four to five times more water to the Snake River than the Salmon Falls tract.

So far, this report has discussed only ground-water recharge/discharge and nothing has been noted about ground water in storage. Stearns, Crandall, and Steward (1938, p. 129) report that after completion of the Twin Falls tract the water table in one well rose at an average rate of 37 feet per year in less than 5 years. They mention similar large rises in other wells in the tract. By 1920 the average yearly rate of rise had slowed considerably and for the period 1920-29 they compute an average rate of about 4 feet per year. Presumably the widespread construction of drainage wells, drainage tunnels, and tile drains have more or less stabilized the position of the water table at this date. Stearns, Crandall, and Steward estimate that about 6,000,000 acre-feet of water went into permanent ground-water storage in the Twin Falls tract between 1906 and 1928.

Stearns, Crandall, and Steward (1938, p. 180) report a similar rise in the water table in the Salmon Falls tract but it probably was caused principally by seepage from the Twin Falls tract. The water table map of Crosthwaite (1969, p. D22) shows a ground water mound with a gradient sloping both north and south along the Twin Falls Highline Canal from Clover westward. Stearns, Crandall, and Steward estimated that irrigation seepage losses contributed about 174,000 acre-feet to ground water storage in the Salmon Falls

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tract (p. 180). All the evidence indicates that the effects of irrigation development on ground water going into storage and volume of discharge to the Snake River caused by the Twin Falls tract far exceeds that caused by development of the Salmon Falls tract. Thus, a significant change in irrigation practices would have to occur before it could be detected at Snake River. That aspect is considered further in the following paragraphs.

The principal question is what effect will additional ground-water development in the Salmon Falls tract have on the water table. Crosthwaite (1969, p. D21) states "Although withdrawals by irrigation wells cause a large lowering of the water table in the immediate vicinity of the wells, the effect is not large regionally because pumpage is small in comparison with the quantity of ground water in storage." When the term "regionally" in the previous sentence is extended to include the Twin Falls tract, the possible effects of ground-water development in the Salmon Falls tract on ground-water discharge to the Snake River becomes insignificant. Also, according to Crosthwaite (1969, p. D31), only a limited amount of ground water can be developed for irrigation in the Salmon Falls tract because of the generally low permeability of the water-bearing formations. Thus, there is little likelihood for large scale development of ground water.

Another factor which serves to illustrate the insignificant effects of ground-water development in the Salmon Falls tract on inflow to the Snake River is the rate of ground-water movement. Although the rate of movement can be handled only in a theoretical way because of the lack of data, the rate of movement shows that detecting the effects of ground-water development on Snake River flow is almost a futile exercise. However, it would be useful to illustrate the generally slow rate of movement of ground water. One formula for computing flow velocity is $V = \frac{0.925PI}{p}$

where V is feet per year, P is permeability of the water-bearing formation in gallons per day per square foot, I is the slope of the water table in feet per mile, and p is porosity in percent. A P of 500 and p of 25 are thought to be rather common values for water-bearing formations. The slope of the water table between Rogerson and Hollister is on the order of 50 feet per mile. Solving the above equation using these values give a velocity of about 900 feet per year.

In summary, there is only a small potential for ground-water development in the Salmon Falls tract. The effects of development of that potential would have no discernible effect on the flow of the Snake River because much of the

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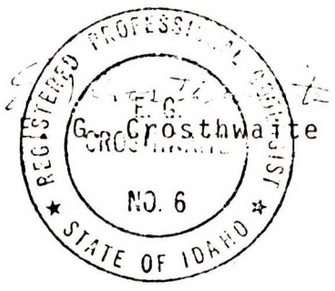
water would be withdrawn from ground-water storage. If the water table beneath the Salmon Falls tract were lowered significantly (an unlikely occurrence), it would require many years for the effect to influence the streamflow of the Snake River.

A list of quoted references is appended to this letter.

Sincerely yours,



G. Crosthwaite

Enc.

Bibliography

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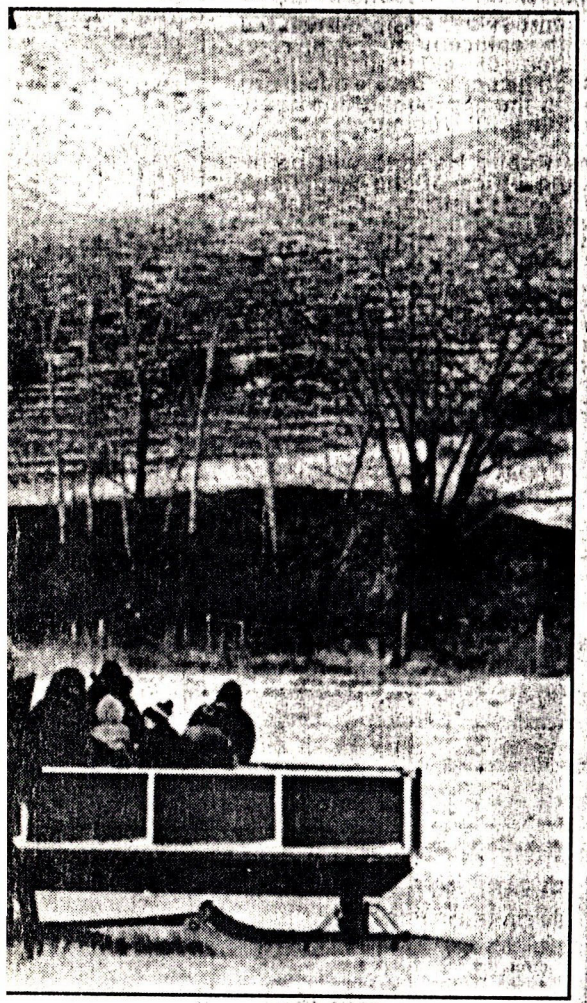
Stearns, H. T., Crandall, Lynn, and Steward, W. G., 1938, Geology and ground-water resources of the Snake River Plain in southeastern Idaho: U.S. Geol. Survey Water-Supply Paper 774.



The Associated Press

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12 west of Helena.

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PLACES
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Lumber Co.,
ı No. 3, 2202
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School, 3434
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hool, 4426

Catalpa Drive
- Pierce Park School, 5015 Pierce Park Lane
- Garden City Hall, 201 E. 50th St.
- Valley View School, 3555 Milwaukee St.
- Ustick School, 4535 Ustick Road
- Fairmont Junior High, 2121 N. Cole Road
- Jackson School, 334 S. Cole Road
- Maple Grove School, 2800 S. Maple Grove Road
- Owyhee School, 3434 Pasadena Drive
- Jefferson School, 3200 S. Latah St.

Farmers: Idaho Power enemy in water fight

The Associated Press

REXBURG — Upper Snake River Valley irrigators, organizing to joust with downstream water users over groundwater rights, have agreed their real enemy is Idaho Power Co.

"It's Upper Valley against Lower Valley, and it's pumpers against stream users until all of us are subordinated to the power interests of Idaho Power Co.," said Dell Raybould, a Rexburg farmer who helped organize a meeting last week that attracted nearly 200 people.

The irrigators appointed a five-member committee to fight petitions filed with the Idaho Department of Water Resources by the Twin Falls and North Side canal companies and the American Falls Reservoir District.

The petitions ask for expansion of Water District No. 1 to include administration of groundwater and a moratorium on groundwater permits on any groundwater tributaries to the Snake River above Milner Dam. The water district currently administers only surface water.

The Magic Valley canal companies contend they have priority rights to water being diverted by irrigators in the Upper Valley and that diversions from the groundwater directly reduce flows in the Snake River or in storage reservoirs.

Adding groundwater wells to the water district's authority could double the assessments paid by the current water users, said District Watermaster Ron Carlson. There are about 2,500 wells in the affected area.

"There is no evidence these canal companies have been damaged," Carlson said. Even with increased diversions in the Upper Valley, "stream flows at American Falls and Swan Falls dams have remained stable" or increased slightly, he said.

"Is it serious? It is serious. Every groundwater pumper should feel threatened," said Robert Lee of Rexburg, former chairman of the Idaho Water Resources Board. "There is not a groundwater pumper who would not be shut off in a series of dry years" if the moratorium is granted.

"You have to fight it."

Lee said the North Side and Twin Falls canal companies use an "antiquated system" for delivering water that needs an estimated $65 million in improvements, including reconstruction of Milner Dam.

Their system "wastes tremendous amounts of water ... and they're challenging one of the most efficient irrigation systems in the world," Lee said.

But Richard Smith, a Rexburg Bench farmer and meeting organizer, said competition between consumptive users and hydropower developers is the real issue.

Magic Valley canal companies have entered into an agreement with Idaho Power to finance reconstruction of Milner Dam, while the Federal Energy Regulatory Commission has approved a license for Idaho Power to build a hydroelectric generating plant there, Smith said.

The attorneys representing the Magic Valley canal companies also represented Idaho Power in the Swan Falls lawsuit.

"Draw your own conclusions from that," Smith said.

Those at the meeting voted unanimously to organize a steering committee, and gave it authority to hire an attorney who can file an answer with the Department of Water Resources and ask for a continuance of a hearing scheduled Jan. 30 in Boise.

A final decision from the department is expected next year.

LEGAL NOTICES

NOTICE TO CREDITORS

CASE NO. 3P-12535

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

In the Matter of the Estate of:

LEROY F. BEATY,
Deceased.

Notice is hereby given that the undersigned has been appointed Personal Representative of the

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9542p/dcb/10-28-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

In the Matter of:	)
	)
	) AMENDMENT TO PETITION
	)
THE SNAKE RIVER AQUIFER	)
	)

* * * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and amend the above captioned Petition pursuant to Rule 3,4 of the IDWR Rules and Regulations. The Petition is hereby amended so that Exhibit "A" to the Petition shall include therein any and all lands

whose groundwater is tributary to the Snake River above Milner Dam.

DATED this 31st day of October, 1988.

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 1988, I served a copy of the foregoing AMENDMENT TO PETITION upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
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Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
8436p/kk/02-24-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

In the Matter of:	
THE SNAKE RIVER AQUIFER	PETITION TO ESTABLISH MORATORIUM PURSUANT TO IDAHO CODE §42-1805(7) AND RULE 7

* * * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and petition the Director of the Department of Water Resources to establish a moratorium on the issuance of or further action on permits or applications to appropriate ground water in certain areas

hereinafter identified. This petition is made in accordance with Idaho Code §42-1805(7) and Rule 7 of the Idaho Department of Water Resources Rules and Regulations for Water Appropriation (October, 1986), to protect existing vested water rights, and insure compliance with the provisions of Chapter 2, Title 42, Idaho Code, based upon the following:

1. NSCC and TFCC, pursuant to certain water rights on the Snake River, divert water from Milner Dam during the irrigation season for the purposes of irrigating in excess of 350,000 acres located in portions of Twin Falls, Jerome, Elmore and Gooding Counties. Their Snake River water rights have priority dates beginning October 11, 1900. AFRD and NSCC, pursuant to contract with the United States of America, have acquired certain rights to stored water from the American Falls Reservoir for the use and benefit of lands within NSCC and TFCC, and the shareholders thereof. When Snake River waters are not being diverted pursuant to senior natural flow rights, the water is stored in the American Falls Reservoir. Additionally, TFCC and NSCC have a storage right in Milner Reservoir, which reservoir stores Snake River water when the same is not diverted pursuant to prior natural flow rights.

2. Petitioners NSCC, TFCC and AFRD seek this order establishing a moratorium on the issuance of or further action on permits or applications in the cross-hatched geographical area depicted on Exhibit "A" (hereinafter referred to as the "area proposed for inclusion") because of the substantial interest of the Petitioners' water right and water supplies due to the withdrawal of ground water in the area proposed for

inclusion. While there are other consumptive diversions or future consumptive diversions that could affect the water rights of Petitioners, the area proposed for inclusion includes at this time only those sub-basins which most directly affect Petitioners' rights.

The following is a statement of the direct and substantial interest of the petitioners:

(a) TFCC and NSCC jointly have a right to divert up to 3400 c/f/s of water from the Snake River at Milner Dam under priority of October 11, 1900, which is the earliest flow right on the Snake River below the Abderdeen Springfield diversion. Certain other rights with priority dates of 1905 and later give TFCC and NSCC a total right of diversion of up to approximately 7,000 c/f/s of water at Milner Dam. Essentially, all available natural flow of the Snake River below Blackfoot is diverted by TFCC, NSCC and other agricultural diverters during the irrigation season after the spring flood, if any.

(b) Because of research on ground water supplies conducted during the Swan Falls controversy, TFCC, NSCC, and AFRD have been made aware of hydrologic data regarding tributary ground water upstream of Milner Dam and below Blackfoot on the Snake River. IDWR has designated the boundary of the area in which ground water is presumed to be tributary to the Snake River upstream of Milner Dam, which presumption is contained in Rule 1, 5, 1, 2 of the IDWR Rules and Regulations of Water Appropriation, dated October 1986. The westerly boundary of the area presumed tributary to the Snake River

upstream of Milner Dam is depicted in Attachment "A" of said Rules.

(c) The ground water extracted or proposed to be extracted from any well in the area proposed for inclusion (Exhibit "A") is part of the common water supply that is tributary to the Snake River above Milner Dam.

(d) Any consumptive diversion of ground water within the area proposed for inclusion will affect and reduce the flow of water in the Snake River. Furthermore, such diversions will reduce water supplies available for irrigation to TFCC and NSCC in direct proportion to the amount consumed, acre foot for acre foot.

(e) If consumptive ground water diversions within the area proposed for inclusion do not reduce irrigation season flows pursuant to paragraph (d) hereinabove, such diversions will alternatively reduce water supplies available for storage in American Falls Reservoir for the benefit of AFRD and NSCC, in direct proportion to the amount consumed, acre foot for acre foot. The TFCC and NSCC storage right in Milner Reservoir would most likely be impaired as well.

(f) Future extraction of ground water within the area proposed for inclusion will affect the flow of water in the Snake River and will reduce the quantity of water available under existing water rights.

3. In order that NSCC and TFCC may protect their rights in the flows of the Snake River above Milner Dam, and in order for AFRD and NSCC to protect its storage right at the American Falls Reservoir, it is necessary for them to seek this

order granting a moratorium suspending the issuance of or further action on permits or applications.

4. TFCC, NSCC and AFRD seek an order declaring a moratorium on the issuance of or further action on permits or applications in the area proposed for inclusion. Petitioners request that the order include the cancellation or modification of permits for which proof of beneficial use has not yet been submitted pursuant to Rule 7,2,1 of the Department's Rules. The basis for such order is the negative effect of consumptive ground water withdrawals on the flow of water in the Snake River and the impairment of NSCC's and TFCC's water rights and water supplies and AFRD's and NSCC's storage right in American Falls Reservoir, and TFCC's and NSCC's storage right in Milner Reservoir that would occur if such order is not executed and enforced.

5. If a hearing on this Petition is required, NSCC, TFCC and AFRD would propose to participate by presenting evidence as they deem necessary.

WHEREFORE, TFCC, NSCC and AFRD pray that the Idaho Department of Water Resources, pursuant to Idaho Code §42-1805(7) and Rule 7 of the Idaho Department of Water Resources Rules and Regulations for Water Appropriation, establish a moratorium suspending the further issuance of or action upon permits or applications in the area proposed for inclusion.

DATED this 9th day of March, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

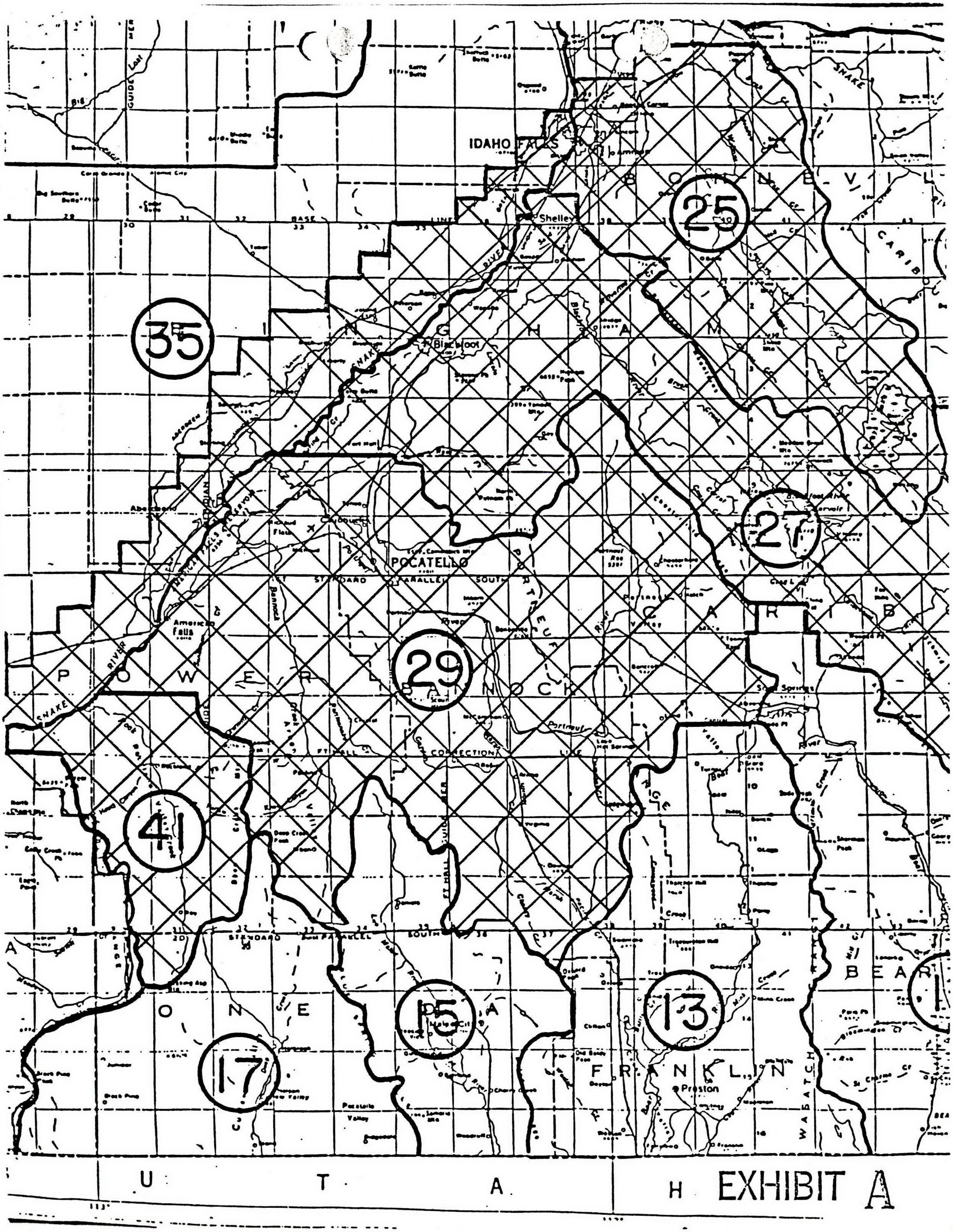
I hereby certify that on this 9th day of March, 1988, I served a copy of the foregoing PETITION TO ESTABLISH MORATORIUM PURSUANT TO IDAHO CODE §42-1805(7) AND RULE 7 upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

EXHIBIT A


IDAHO FALLS
Shelley
Blackfoot
POCATELLO
American Falls
Aberdeen
Preston
B O N N E V I L
I N G H A M
C A R I B
P O W E R
B A N N O C K
O N E I D A
F R A N K L I N
BEAR
WASATCH
SNAKE RIVER
BASE LINE
STANDARD PARALLEL SOUTH
FT HALL CORRECTION LINE
U T A H
25
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17
1

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Telephone: (208) 734-0700
9824p/mw/1-6-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * * *

In the Matter of:	)	
	)	
WATER DISTRICT NO. 1	)	WITHDRAWAL OF PETITIONS
	)	
and	)	
	)	
THE SNAKE RIVER AQUIFER	)	
	)	

* * * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and hereby withdraw the following:

a. Petition of North Side Canal Company, Twin Falls Canal Company and the American Falls Reservoir District for Enlargement of a Water District, dated January 13, 1988.

b. Amendment to Petition referenced in paragraph "a", above, dated October 31, 1988.

c. Second Amendment to Petition referenced in paragraph "a", above, and Stipulation dated December 13, 1988.

d. Petition to Establish Moratorium Pursuant to Idaho Code §42-1805(7) and Rule 7 dated March 9, 1988.

e. Amendment to Petition referenced in paragraph "d", above, dated October 31, 1988.

f. Second Amendment to Petition referenced in paragraph "d", above, and Stipulation dated December 13, 1988.

g. Motion for Consolidation of Petitions referenced in paragraphs "a" and "d", above, dated September 30, 1988.

Petitioners' withdrawal of the Petitions, and all Amendments or Motions related thereto, is without prejudice.

DATED this 6 day of January, 1989.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: John A. Rosholt
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 6 day of January, 1989, I served a copy of the foregoing WITHDRAWAL OF PETITIONS upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

John A. Rosholt
Attorney for Petitioners

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVENOR
R. KEITH HIGGINSON
DIRECTOR

December 28, 1988

Mr. Gary Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN, & TUCKER
142 3rd Avenue North
P.O. Box 1906
Twin Falls, Idaho 83303-1906

Dear Mr. Slette:

RE: Water District No. 1 and the Snake River Aquifer Petitions

I have reviewed the amendment proposed for the above referenced petitions and the request for the continuance of the prehearing conference, but find that some clarification is needed before an appropriate response can be made to the requests.

First, concerning the request to amend the petitions to exclude DCMI uses from the moratorium request, I would like clarification of your intent concerning the following matters:

1) The Swan Falls contract (S-1180) included a similar provision to allow new DCMI uses without regard for Idaho Power's senior rights. This provision was premised upon Idaho Power subordinating the hydropower rights to future DCMI uses and the Water Resource Board's reservation of a block of trust water for exclusive DCMI uses. Is it the petitioners' intent to subordinate their prior irrigation rights to new DCMI uses? If not, how can the department avoid a problem of having approved junior priority DCMI uses ahead of other earlier priority applications that may have a similar or lesser consumptive use of water?

2) The requested amendment suggests a definition of DCMI the same as that now used in the trust water area which limits consumptive use to two acre feet per day. A number of applications are pending for municipal purposes which may exceed this limitation. Is it the petitioners' intent to prevent processing of large municipal applications in the tributary area upstream from Milner?

Concerning the request for postponement of the prehearing conference, I have been continuing the defacto moratorium that has existed since 1982 because of the Swan Falls issue. With the agreement now operative, processing could occur but I have been committing the department's resources to the backlog in the trust water area and marking time in the non-trust water area pending resolution of your petitions. It may be difficult to sustain this approach if action on the petitions is further delayed.

I have not viewed the prehearing conference as requiring the preparation of exhibits and testimony, but rather as a necessary early step needed to identify the issues and parties having an interest in the matter. Delaying identification of parties and issues while the petitioners prepare their case may only serve to further delay the matter because once other affected parties are involved they will need a similar opportunity to prepare. Having an early prehearing conference may allow the various parties to do this preparation simultaneously and on an equal basis.

Further, you had mentioned the possibility of resolving the matter by negotiation and agreement. Identification of parties is needed to facilitate discussion of a solution.

Finally, delaying the prehearing conference could result in efforts by third parties to produce a legislative solution. If legislation is ultimately needed, I would be more comfortable having it occur after the issues were reviewed fully in the administrative process now available.

Based upon these observations, rather than continuing the hearing to a future date, I intend to limit the scope of the conference so that you and representatives of the other parties yet to be identified will not be faced with an unacceptable work load to prepare by January 31, 1989. One possibility for limiting the scope of the conference would be to consider only the moratorium request at this time and hold in abeyance the request to expand the water district. My understanding is that John Rosholt clarified at the Twin Falls information meeting that the expansion of the water district was not intended to affect existing users. If this is a correct understanding, than the same parties (those seeking new rights) would be involved with both petitions and no advantage would be gained by only considering the moratorium. If it is not a correct understanding, then a sequential consideration of the petitions could save existing users from unnecessarily being involved if the moratorium petition is ultimately granted. Another consideration is that the notice requirement can be substantially reduced by not involving existing users initially.

I understand that you have scheduled a meeting with Norm Young and me to discuss these matters at this office at 10:00 a.m. on January 5, 1989. I will enter a ruling on your motion and amendment request following that meeting.

Sincerely,

R. KEITH HIGGINSON
Director

RKH:dc

Parties Attending
Dec 6+7 pub. info. Meetings

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Verl Andrew
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Patrick M. Hendren
Monteview, ID 83435

Brad Jensen
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Rexburg, ID 83440

Byron Jensen
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Grant L. Jensen
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A. Wylie Snarr
Snarr Rd.
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Claude Storer
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Dean Schwendinan
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J. Leight Chantrill
Newdale, ID 83436

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Bill Taylor
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Rexburg, ID 83440

Mary Smith
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Terreton, ID 83450

Dale L. Swensen
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Rigby, ID 83442

Gary Rhodes
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Rigby, ID 83442

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Heyburn, ID 83336

John V. Evans
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Burley, ID 83318

Grant Wyatt
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Burley, ID 83318

Smith Drilling & Pump Co.
328 W. Avenue A
Jerome, ID 83338

Rep. Douglas R. Jones
Rt. 2
Filer, ID 83328

KTFI
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Twin Falls, ID 83301

Janet O'Crowley
Picabo, ID 83348

Bob Jacky
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Jerome, ID 83338

Jack Bell
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Jerome, ID 83338

Dewitt Moss
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Jerome, ID 83338

Kent Klosterman
200 N. 380 W. Paul
Rupert, ID 83350

Hugo Meyer
S. Of City
Filer, ID 83328

Eugene R. Schroeder
S. E. Of Buhl
Buhl, ID 83316

Robert W. Schaer
Buhl, ID 83316

Richard Oneida
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Shoshone, ID 83352

Reid J. Newby
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Shoshone, ID 83352

Bob Burks
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Wendell, ID 83355

Wayne Butler
S. E. Of Hansen
Hansen, ID 83334

Frank Hitchcock
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Twin Falls, ID 83301

Gary Schroeder
S. W. Of Buhl
Buhl, ID 83316

Jake F. Prudek
S. W. Of Buhl
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Bill Watt
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Daryl Neibaur
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Paul, ID 83347

Rep. Mack Neibaur
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Dan Neu
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American Falls, ID 83211

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Pocatello, ID 83201

Howard Conrad
Milner
Murtaugh, ID 83344

Ivan Legler
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Kim Clanssen
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John Scott
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Ted J. Roth
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Charles Brockway
Kimberly, ID 83341

Jane Leeson
Wilderness Society
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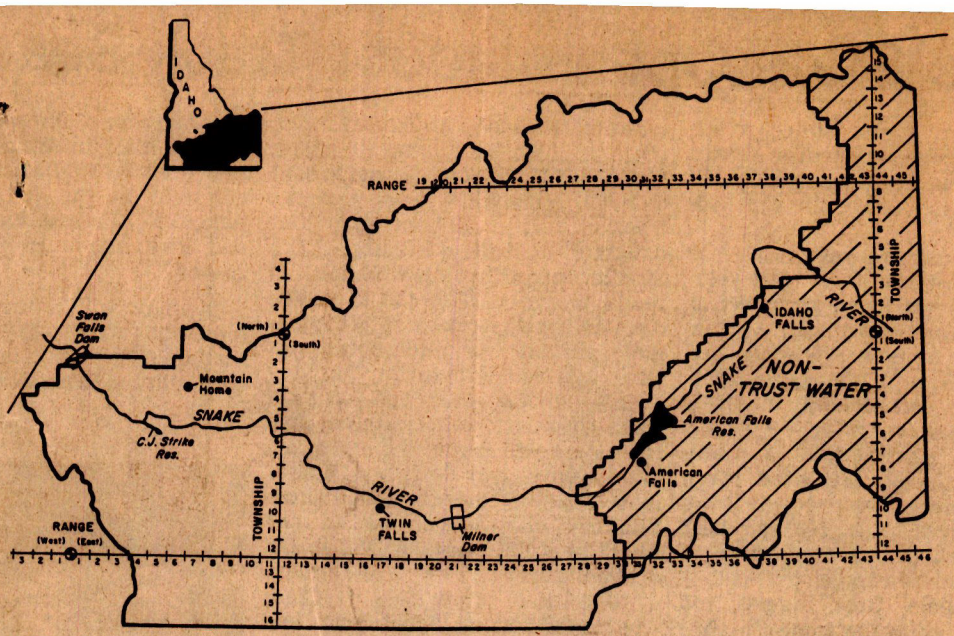
Kent W. Foster
Holden, Kidwell,
Hahn & Crapo
Ida. 1st Nat. Bank Bldg.
P.O. Box 50130
Idaho Falls, ID 83405

Ivan Keglak
Pocatello City Attorney
P.O. Box 4169
Pocatello, ID 83205



NOTICE OF PRE-HEARING CONFERENCE BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES

In the Matter of Petitions Seeking an Order Enlarging Water District No. 1 by Incorporating the Groundwater Supply Upstream from Milner Dam on the Snake River and to Establish a Moratorium on the Issuance of or Further Action on Permits and Applications to Appropriate Ground Water Upstream from Milner Dam

Notice is hereby given that petitions, as amended, have been submitted to the Idaho Department of Water Resources (IDWR) pursuant to section 42-237a, Idaho Code, by the Twin Falls Canal Company, North Side Canal Company and the American Falls Reservoir District seeking an order enlarging Water District No. 1 (Upper Snake River) by incorporating the ground water supply in the area depicted on the map below. The petitions also seek a moratorium pursuant to Section 42-1805(7), Idaho Code, and Rule 7. of the Water Appropriation rules and regulations on the issuance of or further action on permits or applications to appropriate ground water in the same area.

IDWR has scheduled a pre-hearing conference to be held at 9:00 a.m. on January 31, 1989, at the Pond Student Union Building, Idaho State University, corner of 5th and Humboldt, Idaho State University, Pocatello, Idaho for the purpose of determining parties to the hearing, formulating and simplifying issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses, consolidating the examination of witnesses and clarifying the procedure at the hearing to be subsequently scheduled and held.

Public information meetings to explain the potential effect of the petitions will be held prior to the pre-hearing conference as follows:

December 6, 1988 - Idaho Falls - 7:00 p.m., District Courtroom, Courthouse, 605 N. Capitol St.
December 7, 1988 - Pocatello - 10:00 a.m., Air Terminal Building, Pocatello Airport.
December 7, 1988 - Twin Falls - 7:00 p.m., College of Southern Idaho, Vo-Tech Building, 315 Falls Avenue.

Parties potentially affected by the ruling of IDWR on the petitions may become party to the matter by advising the director in writing at least ten (10) days before the pre-hearing conference scheduled on January 31, 1989 that they want to be a party to the proceeding. The mailing address of IDWR is Statehouse Mail, Boise, Idaho 83720.

S/R. KEITH HIGGINSON
Director
December 1, 1988
No. 475

daho State Opens Indoor Track Season

Each year, Idaho State's track am has opened its indoor season ith a meet in December, before the engal athletes leave for the holi- ays.

For the past few years, ISU has eld an intra-squad meet. This year, ne Bengals will open their 1988-89 eason by competing against Utah, ne College of Southern Idaho and ost Utah State at the Aggies' pre- hristmas season open at the Spec- rum in Logan on Friday.

"Overall, it should be a pretty ood meet," said ISU head coach)ave Nielsen. "Some people train or four weeks in the fall and don't ave a meet, so this should help us eep our enthusiasm going."

The Bengals, Utes, Aggies and Eagles are all in the same situation – they are trying to see what their eams can do, and will use the meet as a tuneup for next semester. "Overall, it should be a pretty good meet," Nielsen said. "Amber (NCAA outdoor high jump champion Welty) is all ready to go, and should do well. Yolanda Frazier (former Pocatello High School star and daughter of Buddy Frazier, ISU's director of Affirmative Action) is ready to run well in the 55 meter dash in the first meet of her collegiate career. Our multi-event athletes will compete in the jumping events, so we could end up with some good performances there. Terri (Jones) will run in the 4x800 and 4x200 relays, and Bobbi Jo (Waite) is coming off the Canadian Cross Country championships, so she might be a little tired, so she should do well.

"We have some pole vaulters around the 14½ or 15-foot mark, and they've been working hard," Nielsen continued. "Our half-milers will show strength, and our freshman, Rick Miller, should run well. John Hall and Sam Fambrough should do well in the throwing events, and Henry Evans and Mike Burrell will compete in the long and triple jumps. Mike's been pushing Henry, and they may turn in some good marks."

The meet will be the only one this semester for ISU. The Bengals will host six meets next semester, beginning with the Snake River Open Jan. 14.

Wyoming Sweeps WAC Honors

LITTLETON, Colo. (AP) — Paul Roach, who in two years has led the University of Wyoming to back-to-back Western Athletic Conference football titles, has been named the 1988 WAC Coach of the Year.

The Cowboys swept the league's top honors for 1988. In addition to Roach's second straight Coach of the Year selection, Cowboys quarterback Randy Welniak was named the Offensive Player of the Year, tackle Pat Rabold was the Defensive Player of the Year and running back Dabby Dawson was named Tuesday as the Newcomer of the Year.

The 61-year-old Roach received 14 first-place votes and 30 points in voting by the league's head coaches and athletic directors.

Texas-El Paso's Bob Stull, who led the Miners to 10 victories for the first time in their history, received two first-place votes and 17 points, while Hawaii's Bob Wagner had one first-place nod and four points.

10-3 record in his first season, led the 1988 team to an 11-1 mark — a school record for victories in a season — and a No. 15 national ranking this week. The Cowboys became the first team ever to post back-to-back 8-0 WAC records, and they will make their second straight appearance in the Holiday Bowl on Dec. 30 against Oklahoma State.

Roach is only the fourth WAC coach to claim consecutive honors. Wyoming's Lloyd Eaton, Arizona State's Frank Kush and Brigham Young's LaVell Edwards were the others.

Welniak, a fifth-year senior from Ord, Neb., nudged Utah sophomore quarterback Scott Mitchell for the offensive honors in voting by the head coaches. Welniak had six first-place votes and 14 points to Mitchell's three first-place and nine points. Air Force's Dee Dowis, BYU's Chuck Cutler and Hawaii's Heikoti Fakava each received one

PROOF OF PUBLICATION

STATE OF IDAHO
County of Bannock } ss.

Julie A. Potter

being first duly sworn on oath deposes and says: That she was at all times herein mentioned a citizen of the United States of America, more than 21 years of age, and the Principal Clerk of THE IDAHO STATE JOURNAL, a daily newspaper, printed and published at Pocatello, Bannock County, Idaho, and having a general circulation therein.

That the document or notice, a true copy of which is attached, was published in the said IDAHO STATE JOURNAL, on the following dates, to-wit:

December 1, 19 88	, 19
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, 19	, 19
, 19	, 19
, 19	, 19

That said paper has been continuously and uninterruptedly published in said County for a period of seventy-eight weeks prior to the publication of said notice or advertisement and is a newspaper within the meaning of the laws of Idaho.

Julie A. Potter

STATE OF IDAHO }
COUNTY OF Bannock }

On this 1st day of December in the year of 1988, before me, a Notary Public, personally appeared Julie A. Potter, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statesments therein are true, and acknowledged to me that he executed the same.

Julie L. Larsen
Notary Public for Idaho
Residing at Pocatello
My commission expires: July, 1991

OK 12-8-88

Legals-Legals-Legals

LEGAL NOTICE LEGAL NOTICE LEGAL NOTICE

BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES

NOTICE OF PRE-HEARING CONFERENCE

In the Matter of Petitions Seeking an Order Enlarging Water District No. 1 by Incorporating the Groundwater Supply Upstream from Milner Dam on the Snake River and to Establish a Moratorium on the Issuance of or Further Action on Permits and Applications to Appropriate Ground Water Upstream from Milner Dam

Notice is hereby given that petitions, as amended, have been submitted to the Idaho Department of Water Resources (IDWR) pursuant to section 42-237a, Idaho Code, by the Twin Falls Canal Company, Northside Canal Company and the American Falls Reservoir District seeking an order enlarging Water District No. 1 (Upper Snake River) by incorporating the groundwater supply in the Cross Hatch area depicted on the map below. The petitions also seek a moratorium pursuant to Section 42-1805(7), Idaho Code, and Rule 7. of the Water Appropriation rules and regulations on the issuance of or further action on permits or applications to appropriate ground water in the same area.

IDWR has scheduled a pre-hearing conference to be held at 9:00 a.m. on January 31, 1989, at the Pond Student Union Building, Idaho State University, corner of 5th and Humboldt, Idaho State University, Pocatello, Idaho for the purpose of determining parties to the hearing, formulating and simplifying issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits or prepared expert testimony, limiting the number of witnesses, consolidating the examination of witnesses and clarifying the procedure at the hearing to be subsequently schedule;ed and held.

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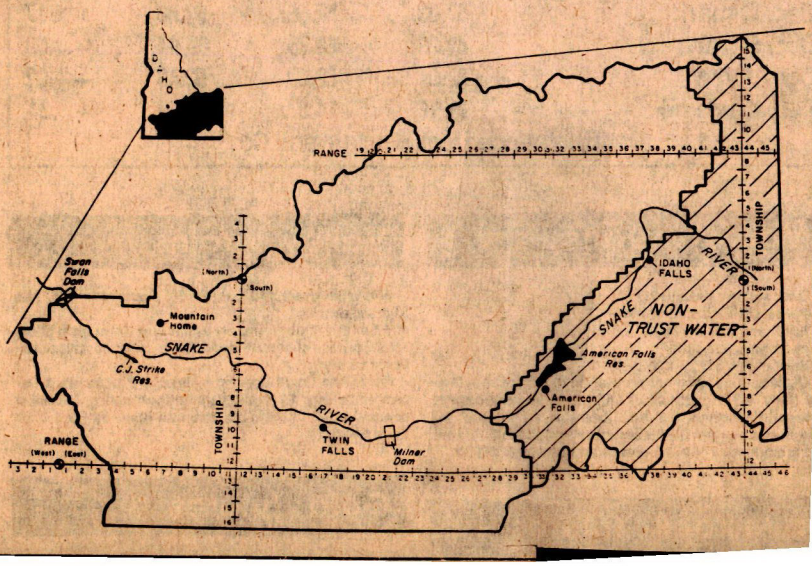
Parties potentially affected by the ruling of IDWR on the petitions may become party to the matter by advising the director in writing at least ten (10) days before the pre-hearing conference scheduled on January 31, 1989 that they want to be a party to the proceeding. The mailing address of IDWR is Statehouse Mail, Boise, Idaho 83720

R. Keith Higginson
Director
PUBLISH: Thursday, December 1, 1988.



Local interest stock quotations

	Close	Chg.			
Albertsons	35 1/8	7/8 +	Micron Tech	15 1/2	+ 3/8
Blu Chp Val Fnd	5 7/8	3/4 -	Moore Fin. Gp.	29 7/8	+ 1/8
ConAgra	28 1/4	+ 3/8	M-K	37 3/8	+ 1/2
Coors	19	-	Premark	29 7/8	+ 1/8
Duff & Phelps	7 7/8	-1/8	Sara Lee	45 1/4 7/8	+ 3/8
First. Sec. Bank	24 1/2	- 1/4	TJ International	25 1/4	—
Harvard Ind.	12 7/8	-	Universal Foods	28 1/4	+ 1 3/4
H.J. Heinz	45 1/8 7/8	+ 1/4	Utah Power	30 7/8	+ 3/8
Idaho Pwr. Co.	22 1/8	+ 1/8	Valhi	11 1/8	+ 3/4
Long. Fiber	75 1/2	—			
Maxtor	7 1/2	+ 3/8			

Quotations from Edward D. Jones & Co.

Closing commodity futures

Month Commodity	High	Low	Close	Change
Dec. live cattle	73.07	72.17	72.32	- .78
Jan. live cattle	73.15	72.25	72.62	- .48
Jan. feeder cattle	82.85	82.12	82.42	- .28
Dec. live hogs	39.95	39.25	39.82	+ .35
Dec. wheat LD	4.25	4.21 1/4	4.24 3/4	+ .01 1/4
Dec. corn	2.61 1/2	2.56 3/4	2.61 1/4	- .04 1/2
Jan. soybeans	7.64 1/2	7.51	7.63 3/4	+ .10
Dec. silver	616.	603.	613.	+ .10
Dec. gold	425.50	420.70	424.80	+ 2.90
Dec. copper	154.50	147.55	153.20	- .30
Jan. platinum	609.40	581.50	608.70	+ 24.30
Mar. sugar	11.27	11.00	11.07	- .23
Dec. Treasury Bills	92.16	92.00	92.14	+ .15
Dec. Treas. Bonds	88.21	87.28	88.15	+ .17
Dec. D-mark	57.93	57.56	57.86	+ .17
Dec. S-franc	69.23	68.75	69.14	+ .08
Dec. J-yen	82.54	82.00	82.49	+ .32
Feb. crude oil	15.16	14.87	15.14	+ .31

Quotations from Sinclair and Co.

Valley beans

Great northerns: Mostly $25.00.
Pintos: Limited $29.00- $30.00.
Small reds: $24.00- $25.00.
Idaho pinks: $26.00.
Small whites: $33.00- $34.00.
Quotations are Idaho prices collected weekly by Bean Market News, U.S. Department of Agriculture. Prices are net to growers, 100 pounds, U.S. No. 1 beans, less Idaho bean tax and storage charges. Quotes current on Nov. 22 Producers desiring more recent price information should contact dealers.

Valley grains

Soft white wheat 3.85, barley 5.65, mixed grain 5.65, oats 5.00, and corn 5.40.

Wheat prices are given daily by Rangens. Other grain prices are an average of several Magic Valley dealer quotations obtained weekly.

Reed Grain Co. of Gooding reported soft white wheat December delivery, $4.12 and dark northern spring, December delivery, $4.35. Quoted f.o.b. Mountain Home by Reed Grain Co. in Gooding.

Livestock futures

Gold futures

C-6 Ti...

Affidavit of Publication

№ 19256

STATE OF IDAHO, }
COUNTY OF TWIN FALLS } ss.

I, Linda Copps McGuire being first duly sworn upon oath, depose and say that I am Print Clerk of the TIMES-NEWS, published daily, at Twin Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for One consecutive time only, ~~commencing with the issue dated~~ , 19 , ~~and ending~~ with the issue dated December 7 19 88

STATE OF IDAHO }
COUNTY OF }

On this 9 day of December in the year of 1988 before me, a Notary Public, personally appeared Linda Copps McGuire known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Deanna Kruse
Notary Public for Idaho

Residing at Twin Falls

My commission expires: 8-19-91

effective February 16, Sunday, and the Twin h newspapers prior to inty continuously and ths, and said TIMES- aper except Saturday, ation under said name

hursday of each week r of any court of com- will be published; and nd in each issue there- ublished.

Guire

9 day of

ruse

inty of Twin Falls, Falls, Idaho

12-7-88
10:00a

Roster of Attendance
Pocatello

	Name	Address	Representing
Paper + Book	Barry Bradley	Box 66 Spring Field, Idaho	Aberdeen Springfield Canal
	Lee Peterson	310 Valdez AF	Falls Irrig Dist
	Dan Neu	316 Lee St	American Falls
Book & paper	Walter Davis Harris	Am Falls 3104 Lamb west	Am Falls
	[illegible]	Pocatello	Idaho State Journal
Send copies of the Petitions	Thomas J. Chester	217 N. 14th Pocatello	Individual
Pet & Book.	Howard Conrad	Murtaugh	Ida Irrigation Pumpers
	Ivan Cegler	902 E. Sherman	City of Pocatello
	Kim Clawson	"	
	Al Johnson	12350 N. Philbin Rd. Poc. Id. 83202	Self
	Gary Gehring	3648 Gehring Rd. Am. Falls, Idaho 83211	Self
	Chuck Buchta	PO 472 American Falls Idaho	
	Carl Hofmeister	123 Polk St. American Falls, Id.	
	Kevin Johns	2698 W 1200 S Aberdeen Id. 83210	
	Alan Funk	2065 S. 2800 W Aberdeen Id 83210	
" "	Ron Funk	3826 Funk Lane Am. Falls Id 83211	
Please send Petitions, book + related	Randy Budge	P.O. Box 1391 Poc., Id. 83201	Id. Irrig. Pumpers assoc
copy of petition	Dana Muir	26 Trail Crk - Poc. ID 83204	
Paper & Book	John Scott	P.O. Box 1001 Poc, Id 83204	KIFI-TV8
Petitions & Book	Sid L. Roth	534 Taylor American Falls, Idaho 83211	
" "	Ted J. Roth	Roth Ranches - 761 - Hutchinson Am. Falls 83211	
" "	Dan Rowe	Funk Irrigation PO Box 359 Am Falls Id. 83211	
	Larry Bethke	2745 Breding Rd Am. Falls, Id 83211	
	Gordon Toon	Funk Irrigation PO Box 359 American Falls, Id 83211	

T.O
D.O

0-27 30 A 4 Lines

12-6-88

Roster of Attendance
Id. Falls

3-Lines
3 blanks
4 lines
2 blanks
9 labels
N page marker

Name	Address	Representing
Dick Effert	Ucon	self
Verl J. Andrew	1260 E 17th St IF	Idaho water wellass.
Dale Smith	Rt #1 Box 22 MOORE, IDA.	SELF
Patrick M. Hender	Monteview	Jefferson Dr.
Brad Jensen	Rexburg	self
Byron Jensen	Rexburg	self
Robert Barrie	IDAHO Falls	FArmers Friend
Grant L. Jensen	Rexburg	Idaho
A. Wylie Snarr	Send copies to comm office 655 N Capital Ave 83402 Idaho Falls	Idaho
Clyde Storer	Idaho Falls	Comm of 9
Dean Schwendiman	Newdale	self
J. Leigh Chantrill	"	Self
Rep. ² J. Reek Hansen	Idaho Falls	self
Jon S. Kennedy	PO Box 30 Idaho Falls, ID	Farm Credit Bank
Send Petition — Bill Taylor	4535 W 81 N IF	Idaho Dr.
Reed D. Murdock	1052 W Hiway 39	Pamper Blackfoot
Del Rockstead	6669 N 55 E	Idaho Falls
Robert L. Martin	4931 N 125 W	I.F.
Jim [illegible]	7618 S 0735 W	Self
Kyan Neubauer	2320 Ross	Idaho Falls
Wayne R. Wolfe	3383 No. Rollandet Ave, City	IDAHO FALLS
Jack Hamilton	4969 N 5 E	Idaho Falls
KENT W. FOSTER	IDAHO FALLS	
Dale Storer	I. F.	
Paul R. Berggren	Blackfoot 224 Berggren Lane	
Reed O. [illegible]	1620 W 3000 N Rexburg	
DAN Nedrow	PO Box 845 Rexburg	

Name	Address	Representing
Mary Smith	P.O Box 427	Rexburg Gleds Fremont-Madison Irrigation Dist
LeRoy Reed	2212 N 35W I.F.	Please Send copy of Mont.
Lyle R. Oldham	P.O. Box 2 Ferreton, Id. 83450	Self. Please send copy
Dale L. Swensen	P.O. Box 15 St. Anthony	Fremont-Madison Irrig Dist.
Ted Hansen	3810 E. 850 N. - Rigby Id.	Great Feeder
Gary Rhodes	538 N 4250 E Rigby Id.	LaBelle Camp

request copy

(4.12)

12-7-88
7:00P

Roster of Attendance
Twin Falls

Name	Address	Representing
Clarence H. Parr	Heyburn	Member Idaho Water Res. Board
John L. Evans	Burley	D. L. Evans Bank
~~[illegible]~~	~~Burley~~	
Grant Pyatt	Burley	
J. Darby Smith	Jerome	Smith Drilling & Pump
Lanting — Jim Lanting	RT-TF1	Salmon River Canal Comp.
Rep. Douglas E. Jones	Rt. 2 Filer	
Cheryl [illegible]	Twin Falls	KTFI
Janet [illegible]	Picabo	Comm. For Idaho's High Desert
Bob [illegible]	Jerome	
Jack Bell	Jerome	
DeWitt Moss	Jerome	North Side Canal Co
Kent Klosterman	Rupert	self
Charles Brockway	Kimberly	Univ. of Idaho
[illegible]	Buhl	Idaho Pumpers Ass.
Hugo E. Meyer	Filer	Clover Pump Co.
Eugene R. Schroeder	Buhl	self
Robert W. Schaer	Buhl	T.F.C.Co Board
Richard Onaindia	Shoshone	A.F.R.D #2
Reid J. Newby	Shoshone	Water District 37 + 37M
Bob Burks	Wendell	N S Canal Co
Wayne Butler	Hansen	Artesian Pumpland
Frank Hitchcock	TF	self
Gary Schroeder	Buhl	self
Jake F. [illegible]	Buhl	self
Bill Watt	"	"

Name	Address	Representing
Sen. Laird Noh	Rt 1, Kimberly	Leg Dist 23 Sen.
Daryl Neibaur	Rt 1 Paul	Self
Rep Mack Neibaur	Rt 1 Paul	Leg. Dist 22
Roger D. Ling	P.O. Box 396, Rupert	Pumping Interests
Dick Marshall	406 East 100 South Jerome 83338	Deep Well Pumper
B. J. Lautz	541 E - 100 S Jerome 83338	Deep Well Owner

LAW OFFICES
HOLDEN, KIDWELL, HAHN & CRAPO

IDAHO FIRST NATIONAL BANK BUILDING
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
TELEFAX (208) 523-9518

WILLIAM S. HOLDEN
FRED J. HAHN
KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
STEPHEN E. MARTIN
CHARLES A. HOMER
GARY L. MEIKLE
CURT R. THOMSEN
MICHAEL D. CRAPO
JAMES D. HOLMAN
GAYLE A. SORENSON
DONALD L. HARRIS
GREGOR S. CHVISUK
RANDALL B. REED
G. LANCE NALDER
J. MICHAEL WHEILER
MARIE T. FEELEY

ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)

R. VERN KIDWELL, OF COUNSEL

December 8, 1988

Mr. Glenn Saxton
Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83706-2337

Dear Glenn:

I wonder if it would be possible for you to furnish me with photocopies of the petitions filed by the Twin Falls Canal Company, Northside Canal Company, and American Falls Reservior District. I would like to get copies not only of the most recent petition, but also the one that was filed some time ago together with any affidavits or briefs or other information that were filed in connection with these documents.

If you will advise us of the cost of the copies, we will be happy to send a check. Thank you for your continuing courtesies.

Yours very truly,

Kent W. Foster

#4015.00
5400g/srr

GOLDEN WEST IDAHO FALLS, INC.
P.O. BOX 488 356-9318 REXBURG, IDAHO 83440

December 6, 1988

Mr. R. Keith Higginson
Director
Idaho Dept. of Water Resources
Statehouse
Boise, ID

Dear Mr. Higginson:

I'm writing to oppose the proposal by the Northside Canal Company, Twin Falls Canal Co., and others to initiate a moratorium on processing water permits for consumptive use in the non "trust area" designated under the Swan Falls Agreement.

1. The proposal should have been discussed as part of the Swan Falls Agreement negotiations. The exclusion of the non-trust area of the Snake River induced many water users to support the Swan Falls Agreement. It is bad faith to request such a major change and should not be approved.

2. There is no evidence to show that ground water pumping in the non-trust water area is adversely affecting downstream water users. The burden of proof should be on the proponents of the charge to present evidence that they are or will be adversely affected by continued ground water pumping in the non-trust water area.

3. In the Rexburg, Newdale, Ashton areas I have detected no declines in ground water levels over the past 15 years. There is absolutely no evidence that continued pumping in these areas will adversely affect river flows.

4. Only when a specific groundwater basin begins to show excessive draw down would there by any reason to investiagte the possible interrelationship between that ground water basin and surface water flows. But I'm not familiar with any ground water basins above Idaho Falls where ground water pumping levels are declining.

5. If the Swan Falls Agreement is to be violated so soon, I would propose that the Legislature void the Agreement. The unnecessary expense for thousands of domestic water users and others who already have valid water rights to file under the adjudication process, the threat by the State that people will lose their water rights if they don't file and the continued delays in processing water permits give support to the view that, we should void the Agreement and go to court. That would not be any more expensive and probably cause less turmoil.

For all of the fore-stated reasons I would hold that there is no basis for a moratorium on processing water permits in the non-trust area.

Sincerely Yours,

Robert R. Lee

Newdale, Idaho
December 2, 1988

Idaho Department Water Resources
1301 N. Orchard St.
Boise, Idaho 83706-2237

Mr. Keith Higginson

Dear Keith:

I have been receiving the Water Resource data publication from Geological Survey for about ten years, and I have studied it each year. The Upper Snake River aquifer has held very near the same level, especially in our area.

In 1948 we drilled a domestic well 600 feet deep. The pump pumped air. We put on another 20 feet pipe and the well has never gone dry since it was drilled. Our irrigation well at the edge of the Trust Water area only draws down 3 feet pumping 14 CFS . I am sure that we are not affecting the aquifer and especially is that true in the Non Trust water area.

How did these companies that have petitioned the Idaho Department of Water Resources conclude that they are or ever will lose any of their water rights or water supply because of pumping from the Non Trust water area?

I think that in as much as the Water Department has the extremely heavy work load, because of adjudication and taking care of issues pertaining to the Swan Falls agreement, much time and study should take place before anything is definite or conclusive.

Our irrigated farms are all family farms and development is done on dry land. We are just trying to stay on our farms. Our irrigation is all done by sprinkler irrigation and the average amount of water used is under 1½ acre feet per acre of ground. All we can raise is Barley, wheat, and potatoes. Alfalfa crop costs too much to raise.

We are on the Canyon Creek Canal which has a 70 CFS decree. We start the season at about 70 CFS flow and ended up this year with one CFS flow per day. Can anyone in the state show a poorer water supply for more than 3000 acres of ground with the acreage of 10,000 acres in the original decree? The average year end of season flow is 7 CFS. You can see why we have to depend on wells for our water supply and we have been stopped from drilling wells. We have one recharge well that recharges the Teton River below the burst Taton Dam. We really need one more large well of 15 CFS capacity to utilize the system that was partly in place when the Teton Dam broke.

We received no money for loses or damages to our system when the dam failed. We had to spend about , at least, $600,000 to complete the irrigation syatem so we could use it.

We need to be optomistic in our planning for the future of our great state. It is nesessary for the State Water Resources Department to take control of our water supply and manage it free of selfish and inconsiderate actions of some water users.

Yours respectfully,

J. Leigh Chantrill

J. Leigh Chantrill
Vice President of Canyon Creek Lateral Ditch, Assoc.

Water pumped at Teton Dam Sight

Final handout (map will be included)

SUMMARY INFORMATION

PETITIONS IN THE NON-TRUST WATER AREA

1. PETITIONS

a) Filed by:

Twin Falls Canal Company
North Side Canal Company
American Falls Reservoir District

b) Request:

IDWR to issue an order enlarging Water District No. 1 (Upper Snake River) by incorporating the ground water supply in the area shown in the cross hatched area on the attached map (Non-trust water area).

A moratorium on the issuance of or further action on permits or applications to appropriate ground water in the same area.

(The petitions were amended on November 3, 1988 to include all the area from which ground water is tributary upstream from Milner Dam). Petitioners have requested a hearing to be held in Twin Falls County.

c) Reason for petitions:

Petitioners are concerned that "Future extraction of ground water within the area proposed for inclusion will affect the flow of water in the Snake River and will reduce the quantity of water available under existing water rights".

Petitioners assert rights of up to approximately 7,000 cfs for diversion at Milner Dam including 3,400 cfs of the earliest right in the reach from near Blackfoot to Milner. Petitioners also assert water storage interests in American Falls and Milner reservoirs.

d) Legal basis:

- Expanding Dist 01 - Section 42-237a (g), Idaho Code, in

pertinent part states:

"In connection with his supervision and control of the exercise of ground water rights the director of the department of water resources shall also have the power to determine what areas of the state have a common ground water supply and whenever it is determined that any area has a ground water supply which affects the flow of water in any stream or streams in an organized water district, to incorporate such area in said water district; and whenever it is determined that the ground water in an area having a common ground water supply does not affect the flow of water in any stream in an organized water district, to incorporate such area in a separate water district to be created in the same manner provided for in section 42-604 of title 42, Idaho Code. The administration of water rights within water districts created or enlarged pursuant to this act shall be carried out in accordance with the provisions of title 42, Idaho Code, as the same have been or may hereafter be amended, except that in the administration of ground water rights either the director of the department of water resources or the watermaster in a water district or the director of the department of water resources outside of a water district shall, upon determining that there is not sufficient water in a well to fill a particular ground water right therein by order, limit or prohibit further withdrawals of water under such right as hereinabove provided, and post a copy of said order at the place where such water is withdrawn; provided, that land, not irrigated with underground water, shall not be subject to any allotment, charge, assessment, levy, or budget for, or in connection with, the distribution or delivery of water."

- Moratorium - Section 42-1805(7), Idaho Code states in pertinent part:

  "After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of Chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan."

- Rule 7, Water Appropriation Rules and Regs:

  7,1,1. The director may cease to approve applications for permit in a designated geographical area upon finding a need to:

- Protect existing water rights;

- Insure compliance with the provisions of Chapter 2, Title 42, Idaho Code; and

- Prevent reduction of flows below a minimum stream flow which has been established by the director or the board pursuant to applicable law.

7,1,2. To the extent a permit has not been developed, the director may cancel, or modify permits for which proof of beneficial use has not been submitted in a designated geographical area as an extension of Rule 7,1.

2. IDWR PROCEDURES

a) Public information meetings:

- December 6, 1988 - Idaho Falls - 7:00 p.m., District Courtroom, Courthouse, 605 N. Capitol St.

- December 7, 1988 - Pocatello - 10:00 a.m., Air Terminal Building, Pocatello Airport.

- December 7, 1988 - Twin Falls - 7:00 p.m., College of Southern Idaho, Vo-Tech Building, 315 Falls Avenue.

b) Prehearing conference

- January 31, 1989 - Pocatello - 9:00 a.m., Idaho State University, Pond Student Union Building located at the corner of 5th and Humboldt St.

- Purpose

  - Determine and simplify issues.
  - Obtain admissions of fact and of documents
  - Arrange exchange of exhibits or prepared testimony.
  - Limit and consolidate witnesses.
  - Clarify procedure at the hearing.
  - Determine date and location for formal hearing.

c) Hearing

- Decision record developed from testimony and exhibits.

- Final decision will be issued by director, IDWR.

- Decision can be appealed to the District Court.

- To become a party to the hearing, a request to intervene must be filed with the director ten (10) days before the scheduled hearing.

GROVER & WALKER
CHARTERED
LAW OFFICES
P. O. BOX 36
RIGBY, IDAHO 83442-0036
(208)745-6653

BLAIR J. GROVER
KEITH M. WALKER

T. HAROLD LEE
(1914-1976)

November 1, 1988

Mr. Norm Young
Acting Director
Department of Water Resources
Statehouse Mail
Boise, Idaho 83720

Re: City of Idaho Falls Application

Dear Norm:

It is my understanding that the Twin Falls Canal Company, the Northside Canal Company and the American Falls Reservoir District have filed a Petition seeking enlargement of Water District No. 1, and a second Petition seeking a moratorium on the development of existing applications. As you know, I represent the Protective Union and would appreciate receiving copies of those Petitions.

Yours very truly,

GROVER & WALKER

BLAIR GROVER

BG:cs
cc: Protective Union

sent 11-4-88

SUMMARY INFORMATION

PETITIONS IN THE NON-TRUST WATER AREA

1. PETITIONS

a) Filed by:

Twin Falls Canal Company
North Side Canal Company
American Falls Reservoir District

b) Request:

IDWR to issue an order enlarging Water District No. 1 (Upper Snake River) by incorporating the ground water supply in the area shown in the cross hatched area on the attached map (Non-trust water area).

A moratorium on the issuance of or further action on permits or applications to appropriate ground water in the same area.

(The petitions were amended on November 3, 1988 to include all the area from which ground water is tributary upstream from Milner Dam). Petitioners have requested a hearing to be held in Twin Falls County.

c) Reason for petitions:

Petitioners are concerned that "Future extraction of ground water within the area proposed for inclusion will affect the flow of water in the Snake River and will reduce the quantity of water available under existing water rights".

Petitioners assert rights of up to approximately 7,000 cfs for diversion at Milner Dam including 3,400 cfs of the earliest right in the reach from near Blackfoot to Milner. Petitioners also assert water storage interests in American Falls and Milner reservoirs.

d) Legal basis:

- Expanding Dist 01 - Section 42-237a (g), Idaho Code, in pertinent part states:

"In connection with his supervision and control of the exercise of ground water rights the director of the department of water resources shall also have the power

to determine what areas of the state have a common ground water supply and whenever it is determined that any area has a ground water supply which affects the flow of water in any stream or streams in an organized water district, to incorporate such area in said water district; and whenever it is determined that the ground water in an area having a common ground water supply does not affect the flow of water in any stream in an organized water district, to incorporate such area in a separate water district to be created in the same manner provided for in section 42-604 of title 42, Idaho Code. The administration of water rights within water districts created or enlarged pursuant to this act shall be carried out in accordance with the provisions of title 42, Idaho Code, as the same have been or may hereafter be amended, except that in the administration of ground water rights either the director of the department of water resources or the watermaster in a water district or the director of the department of water resources outside of a water district shall, upon determining that there is not sufficient water in a well to fill a particular ground water right therein by order, limit or prohibit further withdrawals of water under such right as hereinabove provided, and post a copy of said order at the place where such water is withdrawn; provided, that land, not irrigated with underground water, shall not be subject to any allotment, charge, assessment, levy, or budget for, or in connection with, the distribution or delivery of water."

- Moratorium - Section 42-1805(7), Idaho Code states in pertinent part:

"After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of Chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan."

- Rule 7, Water Appropriation Rules and Regs:

7,1,1. The director may cease to approve applications for permit in a designated geographical area upon finding a need to:

  - Protect existing water rights;

  - Insure compliance with the provisions of Chapter 2, Title 42, Idaho Code; and

  - Prevent reduction of flows below a minimum stream flow which has been established by the director or the board pursuant to applicable law.

7,1,2. To the extent a permit has not been developed, the director may cancel, or modify permits for which proof of beneficial use has not been submitted in a designated geographical area as an extension of Rule 7,1.

2. IDWR PROCEDURES

a) Public information meetings:

- December 6, 1988 - Idaho Falls - 7:00 p.m., District Courtroom, Courthouse, 605 N. Capitol St.

- December 7, 1988 - Pocatello - 10:00 a.m., Air Terminal Building, Pocatello Airport.

- December 7, 1988 - Twin Falls - 7:00 p.m., College of Southern Idaho, Vo-Tech Building, 315 Falls Avenue.

b) Prehearing conference

- January 31, 1989 - Pocatello - 9:00 a.m., Idaho State University, Pond Student Union Building located at the corner of 5th and Humboldt St.

- Purpose

see prior page

① Comm water supply
② Effect flow of streams
③ Protect prior rights
④ Can W.O. operate to protect rights — likewise moratorium

  - Determine and simplify issues.
  - Obtain admissions of fact and of documents
  - Arrange exchange of exhibits or prepared testimony.
  - Limit and consolidate witnesses. — encourage combination of similar interest parties
  - Clarify procedure at the hearing.
  - Determine dates and location for formal hearing.

c) Hearing

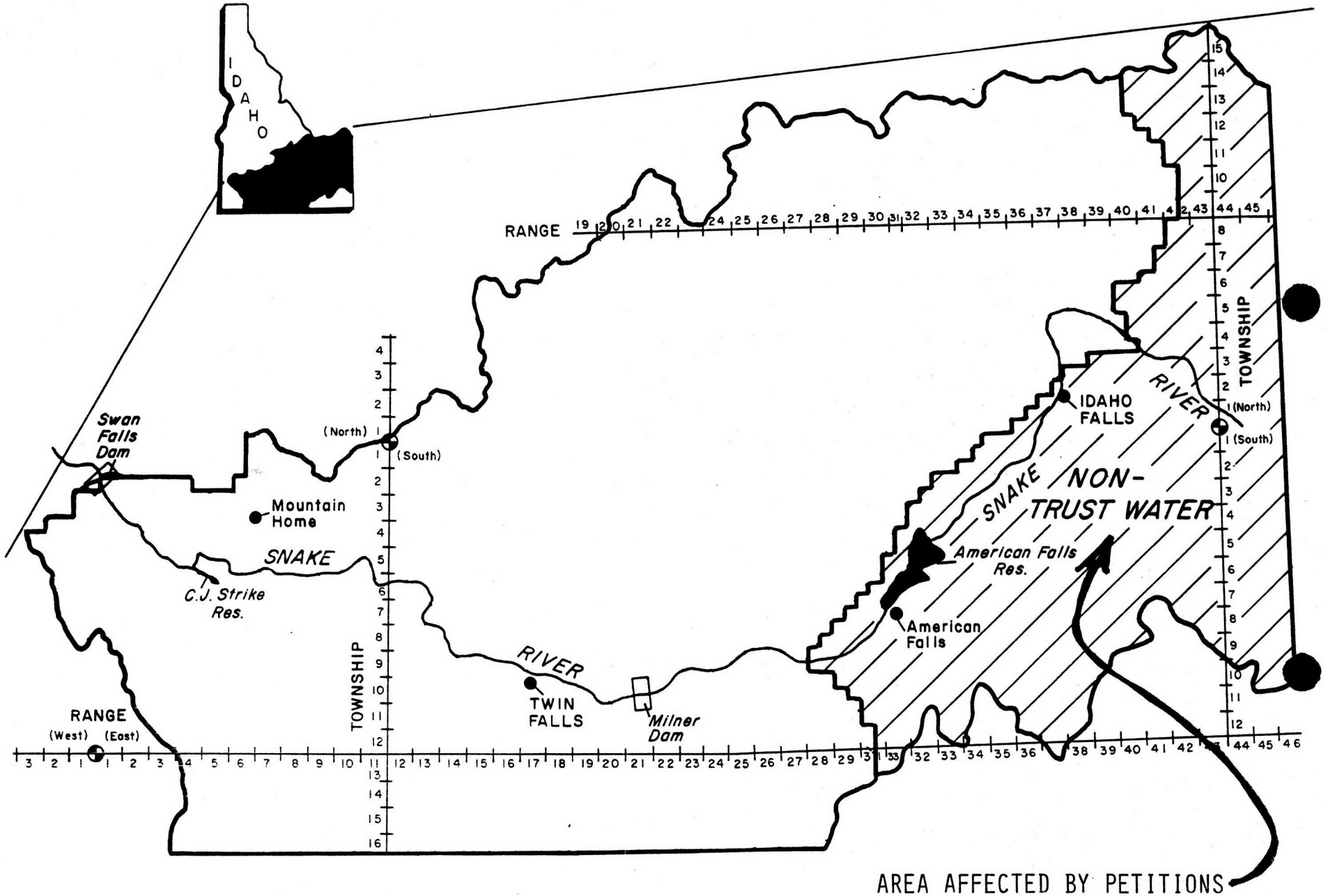
- Decision record developed from testimony and exhibits. ← IDWR decision based upon record

- Final decision will be issued by director, IDWR.

- Decision can be appealed to the District Court.

- To become a party to the hearing, a request to intervene must be filed with the director ten (10) days before the scheduled hearing.

~ Open for questions —



AREA AFFECTED BY PETITIONS

INTER-DEPARTMENT MEMO — 1

FROM Glen

DATE 12-16-85

TO Norm

SUBJECT - Returned is your Non-trust Water area petition file. (We compiled our own file).
- Clipped below this memo are the 2 letters given to us at the I.F. pub info meeting. Should these letters be called to Keith's attn?

Glen

SIGNATURE

DRAFT

November 15, 1988

Contact: Norman C. Young
334-7910

FOR IMMEDIATE RELEASE:

MEETINGS SLATED ON EXPANSION OF WATER DISTRICT 01

Water organizations petition to include groundwater

Public meetings on a petition by three southeastern Idaho water delivery organizations to allow the expansion of Water District 01 in the upper Snake River by including the groundwater supply have been scheduled, according to Keith Higginson, director of the Idaho Department of Water Resources.

The Twin Falls Canal Company, North Side Canal Company, and the American Falls Reservoir District have also petitioned IDWR to impose a moratorium on permits and applications to appropriate groundwater in that area, Higginson said.

"Enlargement of the water district to include the groundwater in District 01 would subject diversion from wells to some regulation which has not occurred in the past," Higginson said. "This could mean curtailed pumping from wells in times of water shortage, and may require annual assessments on water delivery payable to the water district," Higginson said.

At the public meetings, IDWR officials will describe the process by which potentially affected water users can become parties to the pre-~~trial~~ hearing conference on the petitions. A pre-hearing conference on the petitions has been scheduled for Jan. 31, 1989

MAP Reference —

at Idaho State University, Higginson said.

"These meetings are important so department officials can assess the effect of the petitions if granted, and to solicit comments from those who may be affected by a granting of the petition," Higginson said.

If a new moratorium order were issued, Higginson said, the embargo on new development of consumptive use of water in the non-trust water area above Milner dam would continue. Development in the entire upper Snake river basin upstream from Swan Falls dam has been essentially stopped since 1983 as a result of the Swan Falls controversy, he said.

The petition also seeks to stop domestic, commercial, municipal and industrial uses which have been receiving approval under the terms of the 1985 Swan Falls agreement.

An earlier petition sought only to include a portion of the basin from which ground water is tributary to the Snake River upstream from Milner dam. The latest petition requests inclusion of all of the area from which ground water is tributary from Milner dam, Higginson said.

The public meetings are scheduled as follows:

--Dec. 6 at 7:00 p.m. in Idaho Falls at the District Courtroom, Courthouse, 605 N. Capital St.

--Dec. 7 at 10:00 a.m. in Pocatello at the Air Terminal Building, Pocatello Airport.

--Dec. 7 at 7:00 p.m. in Twin Falls at the College of Southern Idaho Vo-Tech building, 315 Falls Ave.

-30-

NTER-DEPARTMENT MEMO — 1

FROM Gary

DATE

TO

SUBJECT This person wants notice of upcoming hearings on moratorium request:

Jane Leeson
Wilderness Society
413 West Idaho Suite 102
Boise, Id.
83702

Gary
SIGNATURE

Send —
Blaine Thoemke
Notice of
Release —

_DRA0:[WATERA.WRUSERS.WRSTATE.WRSAXTON]LTR.SLETTE;2

draft 12-20-88 lgs

Date

Gary Slette
Nelson, Rosholt, et. al.
P.O. Box 1906
Twin Falls, ID 83303-1906

RE: NON-TRUST WATER AREA PETITIONS

Dear Mr. Slette:

The department has reviewed the motion for continuance and the second amendments to the petitions to enlarge Water District 1 and to establish a moratorium.

It does not appear reasonable to grant a continuance in the scheduling of the pre-hearing conference as you have requested for the following reasons:

1. The original petitions were filed approximately a year ago and require action by the department.
2. The time and place for the pre-hearing conference has been publicized in meetings, press releases and legal notices. There is no practical method to reach all parties who may be planning to attend the pre-hearing conference.
3. You will not have to prepare all exhibits and testimony for the pre-hearing conference as suggested in your motion. The primary purpose of the prehearing conference is to determine parties, procedures and issues to be addressed at the hearing yet to be scheduled.

4. The defacto moratorium in effect in the non-trust water area which is based on the pending petitions is not equitable to parties potentially affected by the petitions.

With respect to the proposed amendments to the petitions which exclude domestic, commercial, municipal and industrial uses (DCMI) from the purview of the petitions, my staff has contacted you to specifically inquire of the intent of the amended petitions. It appeared to department staff that if you were parallelling the action of the Idaho Power Company in the Swan Falls trust water area treatment of DCMI, that you may be intending to subordinate a portion of the petitioners' prior water rights to the future DCMI uses.

You stated this is not your intent and that if the future DCMI uses were determined to injure prior rights, it would be the department's problem to determine which rights were injured and that the rights so affected would be junior to the petitioners. With this position, it appears inconsistant to be petitioning for a moratorium on future new uses on the basis of lack of water availability for appropriation but then excluding certain future uses depending on the nature of the use (DCMI).

Based on the foregoing, the department is not willing to consent or stipulate that the petitions are acceptable. Returned are the second amendments to the petitions. The department also will not approve the motions for continuance.

_DRA0:[WATERA.WRUSERS.WRSTATE.WRSAXTON]LTR.SLETTE;2

Please feel free to contact me if you have questions.

Sincerely,

R. KEITH HIGGINSON
Director

c: S. Region

MEMORANDUM

To: Norman C. Young

From: L. Glen Saxton

RE: COMMENT ON AMENDMENT TO PETITIONS IN THE NON-TRUST WATER AREA

Date: December 15, 1988

Returned is the original of the petition amendments submitted by Gary Slette.

My initial comment on the second amendment of the petitions and the motion for continuance include the following:

1. If groundwater use is incorporated into Water District 1, it is not reasonable to exclude the regulation of DCMI uses. It appears petitioners are suggesting that the department selectively administer uses without regard to priority.

2. The amended petitions propose the exclusion of DCMI uses from the original petition to establish a moratorium in the non-trust water area. From what allocation or block of water can the department rationalize that a new allocation of water is available for a new DCMI use in the non-trust water area unless the petition for a moratorium is ultimately denied? If there is no answer to this question, it appears we should hold ALL DCMI applications until the director rules on the petitions.

3. If the continuance for the pre-hearing conference is delayed from January 31, 1989, as requested, I am concerned about the notice the department has already provided to the public which includes press releases, a legal notice and at public information meetings.

I am of the opinion the department should hold petitioners feet to the fire, since additional delays in the pre-hearing and hearing process damages the persons affected by the petitions, not the petitioners. If we wait 3 months to hold the pre-hearing conference, then another month to hold the hearing, and then another month to issue the decision, we will be into May or June 1989, which is too late for affected parties in the non-trust water area to do any kind of agricultural planning for the irrigation season of 1989.

TO: GLEN 12/19/88
FROM: Phil
RE: Upper Snake Petitions

1. Motion for Continuance

The pre-hearing conference should not require as much preparation as the motion implies. It will not be necessary to have all exhibits and testimony prepared for the conference. The purposes of the conference are to establish the parties and the issues to be addressed at the hearing. It may be necessary to have a second conference shortly before the actual hearing.

2. I agree with your concerns about excluding DCMI uses from the petitions unless it can be justified on a de minimus rationale.

3. What is really needed is a repeal of the language in 42-203B(2) which withholds the benefits of trust water above Milner. This would put some slack back in the system.

4. If other parties have filed appearances in these proceedings they should receive copies of pleadings and orders.

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
8436p/kk/02-24-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * *

In the Matter of:	
THE SNAKE RIVER AQUIFER	PETITION TO ESTABLISH MORATORIUM PURSUANT TO IDAHO CODE §42-1805(7) AND RULE 7

* * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and petition the Director of the Department of Water Resources to establish a moratorium on the issuance of or further action on permits or applications to appropriate ground water in certain areas

hereinafter identified. This petition is made in accordance with Idaho Code §42-1805(7) and Rule 7 of the Idaho Department of Water Resources Rules and Regulations for Water Appropriation (October, 1986), to protect existing vested water rights, and insure compliance with the provisions of Chapter 2, Title 42, Idaho Code, based upon the following:

1. NSCC and TFCC, pursuant to certain water rights on the Snake River, divert water from Milner Dam during the irrigation season for the purposes of irrigating in excess of 350,000 acres located in portions of Twin Falls, Jerome, Elmore and Gooding Counties. Their Snake River water rights have priority dates beginning October 11, 1900. AFRD and NSCC, pursuant to contract with the United States of America, have acquired certain rights to stored water from the American Falls Reservoir for the use and benefit of lands within NSCC and TFCC, and the shareholders thereof. When Snake River waters are not being diverted pursuant to senior natural flow rights, the water is stored in the American Falls Reservoir. Additionally, TFCC and NSCC have a storage right in Milner Reservoir, which reservoir stores Snake River water when the same is not diverted pursuant to prior natural flow rights.

2. Petitioners NSCC, TFCC and AFRD seek this order establishing a moratorium on the issuance of or further action on permits or applications in the cross-hatched geographical area depicted on Exhibit "A" (hereinafter referred to as the "area proposed for inclusion") because of the substantial interest of the Petitioners' water right and water supplies due to the withdrawal of ground water in the area proposed for

inclusion. While there are other consumptive diversions or future consumptive diversions that could affect the water rights of Petitioners, the area proposed for inclusion includes at this time only those sub-basins which most directly affect Petitioners' rights.

The following is a statement of the direct and substantial interest of the petitioners:

(a) TFCC and NSCC jointly have a right to divert up to 3400 c/f/s of water from the Snake River at Milner Dam under priority of October 11, 1900, which is the earliest flow right on the Snake River below the Abderdeen Springfield diversion. Certain other rights with priority dates of 1905 and later give TFCC and NSCC a total right of diversion of up to approximately 7,000 c/f/s of water at Milner Dam. Essentially, all available natural flow of the Snake River below Blackfoot is diverted by TFCC, NSCC and other agricultural diverters during the irrigation season after the spring flood, if any.

(b) Because of research on ground water supplies conducted during the Swan Falls controversy, TFCC, NSCC, and AFRD have been made aware of hydrologic data regarding tributary ground water upstream of Milner Dam and below Blackfoot on the Snake River. IDWR has designated the boundary of the area in which ground water is presumed to be tributary to the Snake River upstream of Milner Dam, which presumption is contained in Rule 1, 5, 1, 2 of the IDWR Rules and Regulations of Water Appropriation, dated October 1986. The westerly boundary of the area presumed tributary to the Snake River

upstream of Milner Dam is depicted in Attachment "A" of said Rules.

(c) The ground water extracted or proposed to be extracted from any well in the area proposed for inclusion (Exhibit "A") is part of the common water supply that is tributary to the Snake River above Milner Dam.

(d) Any consumptive diversion of ground water within the area proposed for inclusion will affect and reduce the flow of water in the Snake River. Furthermore, such diversions will reduce water supplies available for irrigation to TFCC and NSCC in direct proportion to the amount consumed, acre foot for acre foot.

(e) If consumptive ground water diversions within the area proposed for inclusion do not reduce irrigation season flows pursuant to paragraph (d) hereinabove, such diversions will alternatively reduce water supplies available for storage in American Falls Reservoir for the benefit of AFRD and NSCC, in direct proportion to the amount consumed, acre foot for acre foot. The TFCC and NSCC storage right in Milner Reservoir would most likely be impaired as well.

(f) Future extraction of ground water within the area proposed for inclusion will affect the flow of water in the Snake River and will reduce the quantity of water available under existing water rights.

3. In order that NSCC and TFCC may protect their rights in the flows of the Snake River above Milner Dam, and in order for AFRD and NSCC to protect its storage right at the American Falls Reservoir, it is necessary for them to seek this

order granting a moratorium suspending the issuance of or further action on permits or applications.

4. TFCC, NSCC and AFRD seek an order declaring a moratorium on the issuance of or further action on permits or applications in the area proposed for inclusion. Petitioners request that the order include the cancellation or modification of permits for which proof of beneficial use has not yet been submitted pursuant to Rule 7,2,1 of the Department's Rules. The basis for such order is the negative effect of consumptive ground water withdrawals on the flow of water in the Snake River and the impairment of NSCC's and TFCC's water rights and water supplies and AFRD's and NSCC's storage right in American Falls Reservoir, and TFCC's and NSCC's storage right in Milner Reservoir that would occur if such order is not executed and enforced.

5. If a hearing on this Petition is required, NSCC, TFCC and AFRD would propose to participate by presenting evidence as they deem necessary.

WHEREFORE, TFCC, NSCC and AFRD pray that the Idaho Department of Water Resources, pursuant to Idaho Code §42-1805(7) and Rule 7 of the Idaho Department of Water Resources Rules and Regulations for Water Appropriation, establish a moratorium suspending the further issuance of or action upon permits or applications in the area proposed for inclusion.

DATED this 9th day of March, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 1988, I served a copy of the foregoing PETITION TO ESTABLISH MORATORIUM PURSUANT TO IDAHO CODE §42-1805(7) AND RULE 7 upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

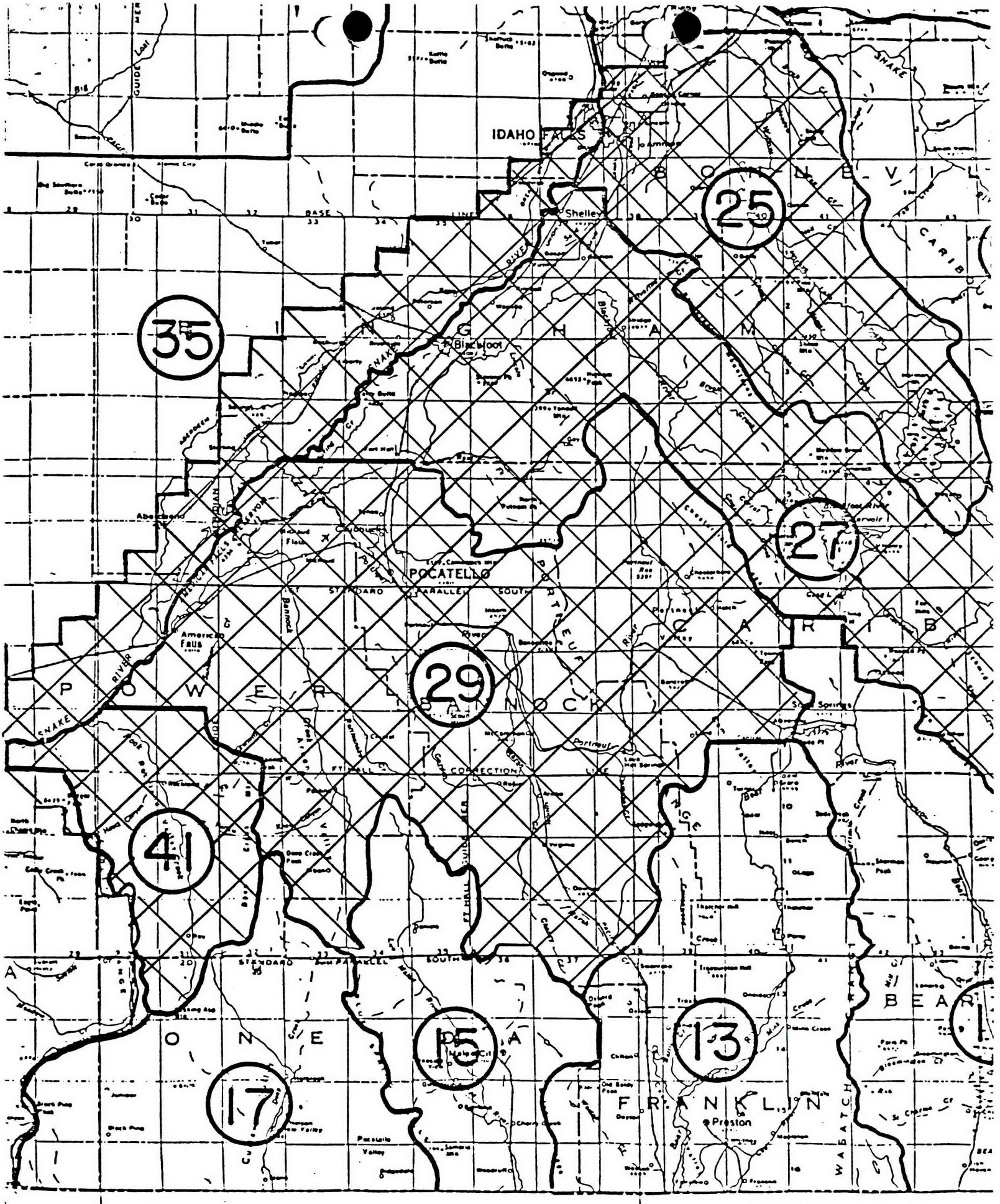

IDAHO FALLS
Shelley
Blackfoot
POCATELLO
American Falls
Preston
25
35
27
29
41
5
13
17
1
BONNEVILLE
BINGHAM
CARIBOU
POWER
BANNOCK
ONEIDA
FRANKLIN
BEAR LAKE
UTAH

EXHIBIT A

JOHN A. ROSHOLT
GARY D. SLETTE
Nelson, Rosholt, Robertson,
Tolman & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906
Telephone: (208) 734-0700
8114p/kk/01-05-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

* * * * * * * * * *

IN THE MATTER OF:	)
	)
	) PETITION OF NORTH SIDE
	) CANAL COMPANY, TWIN FALLS
THE ENLARGEMENT OF WATER	) CANAL COMPANY AND THE
DISTRICT NO. 1	) AMERICAN FALLS RESERVOIR
	) DISTRICT FOR ENLARGEMENT
	) OF A WATER DISTRICT

* * * * * * * * * *

COME NOW, the North Side Canal Company and the Twin Falls Canal Company (hereinafter "NSCC" and "TFCC" respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, by and through their attorneys, Nelson, Rosholt, Robertson, Tolman & Tucker, Chartered, and hereby petition the Department of Water Resources (hereinafter "IDWR") for an order enlarging Water District No. 1 by incorporating the ground water supply in the

geographical area depicted in Exhibit "A" attached hereto, and by this reference incorporated herein, into Water District No. 1. This petition is made and filed pursuant to Idaho Code §42-237a.

I.

The names and addresses of the petitioners are as follows:

Twin Falls Canal Company
P. O. Box 326
Twin Falls, Idaho 83301

North Side Canal Company
921 North Lincoln Avenue
Jerome, Idaho 83338

American Falls Reservoir District
1035 North Lincoln Avenue
Jerome, Idaho 83338

II.

NSCC and TFCC, pursuant to certain water rights on the Snake River, divert water from Milner Dam during the irrigation season for the purposes of irrigating in excess of 350,000 acres located in portions of Twin Falls, Jerome, Elmore and Gooding Counties. Their Snake River water rights have priority dates beginning October 11, 1900. AFRD and NSCC, pursuant to contract with the United States of America, have acquired certain rights to stored water from the American Falls Reservoir for the use and benefit of lands within NSCC and TFCC, and the shareholders thereof. When Snake River waters are not being diverted pursuant to senior natural flow rights, the water is stored in the American Falls Reservoir. Additionally, TFCC and NSCC have a storage right in Milner

Reservoir, which reservoir stores Snake River water when the same is not diverted pursuant to prior natural flow rights.

III.

Petitioners NSCC, TFCC and AFRD seek this order incorporating the ground water supply of the cross-hatched geographical area depicted on Exhibit "A" (hereinafter referred to as the "area proposed for inclusion") into Water District No. 1 because of the substantial interests of the Petitioners and the possible effects on the Petitioners' water right and water supplies due to the withdrawal of ground water in the area proposed for inclusion. While there are other consumptive diversions or future consumptive diversions that could affect the water rights of Petitioners, the area proposed for inclusion includes at this time only those sub-basins which most directly affect Petitioners' rights.

The following is a statement of the direct and substantial interest of the petitioners:

1. TFCC and NSCC jointly have a right to divert up to 3400 c/f/s of water from the Snake River at Milner Dam under priority of October 11, 1900, which is the earliest flow right on the Snake River below Blackfoot. Certain other rights with priority dates of 1905 and later give TFCC and NSCC a total right of diversion of up to approximately 7,000 c/f/s of water at Milner Dam. Essentially, all available natural flow of the Snake River below Blackfoot is diverted by TFCC, NSCC and other agricultural diverters during the irrigation season after the spring flood, if any.

2. Because of research on ground water supplies conducted during the Swan Falls controversy, TFCC, NSCC, and AFRD have been made aware of hydrologic data regarding tributary ground water upstream of Milner Dam and below Blackfoot on the Snake River. IDWR has designated the boundary of the area in which ground water is presumed to be tributary to the Snake River upstream of Milner Dam, which presumption is contained in Rule 1, 5, 1, 2 of the IDWR Rules and Regulations of Water Appropriation, dated October 1986. The westerly boundary of the area presumed tributary to the Snake River upstream of Milner Dam is depicted in Attachment "A" of said Rules.

3. The ground water extracted or proposed to be extracted from any well in the area proposed for inclusion (Exhibit "A") is part of the common water supply that is tributary to the Snake River above Milner Dam.

4. Any consumptive diversion of ground water within the area proposed for inclusion will affect and reduce the flow of water in the Snake River within Water District No. 1. Furthermore, such diversions will reduce water supplies available for irrigation to TFCC and NSCC in direct proportion to the amount consumed, acre foot for acre foot.

5. If consumptive ground water diversions within the area proposed for inclusion do not reduce irrigation season flows pursuant to paragraph 4 hereinabove, such diversions will alternatively reduce water supplies available for storage in American Falls Reservoir for the benefit of AFRD and NSCC, in direct proportion to the amount consumed, acre foot for acre

foot. The TFCC and NSCC storage right in Milner Reservoir would most likely be impaired as well.

6. Future extraction of ground water within the area proposed for inclusion will affect the flow of water in the Snake River and will reduce the quantity of water available under existing water rights.

IV.

In order that NSCC and TFCC may protect their rights in the flows of the Snake River above Milner Dam, and in order for AFRD and NSCC to protect its storage right at the American Falls Reservoir, it is necessary for them to seek this order incorporating the common ground water supply into Water District No. 1, which would permit administration of those rights in accordance with the provisions of Title 42, Idaho Code.

V.

NSCC, TFCC and AFRD seek an order from the IDWR enlarging Water District No. 1 by incorporating the common ground water supply in the area proposed for inclusion into Water District No. 1. The basis for such order is the negative effect of consumptive ground water withdrawals on the flow of water in the Snake River and the impairment of NSCC's and TFCC's water rights and water supplies and AFRD's and NSCC's storage right in American Falls Reservoir, and TFCC's and NSCC's storage right in Milner Reservoir that would occur if such order is not executed and enforced.

VI.

If a hearing on this Petition is required, NSCC, TFCC and AFRD would propose to participate by presenting evidence as they deem necessary.

WHEREFORE, NSCC, TFCC and AFRD pray that this Petition for Enlargement of Water District No. 1 be granted.

DATED this 13th day of January, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 1988, I served a copy of the foregoing PETITION OF NORTHSIDE CANAL COMPANY, TWIN FALLS CANAL COMPANY AND THE AMERICAN FALLS RESERVOIR DISTRICT FOR AN ORDER ENLARGING A WATER DISTRICT upon:

Idaho Department of Water Resources
Statehouse
450 West State Street
Boise, Idaho, 83720

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

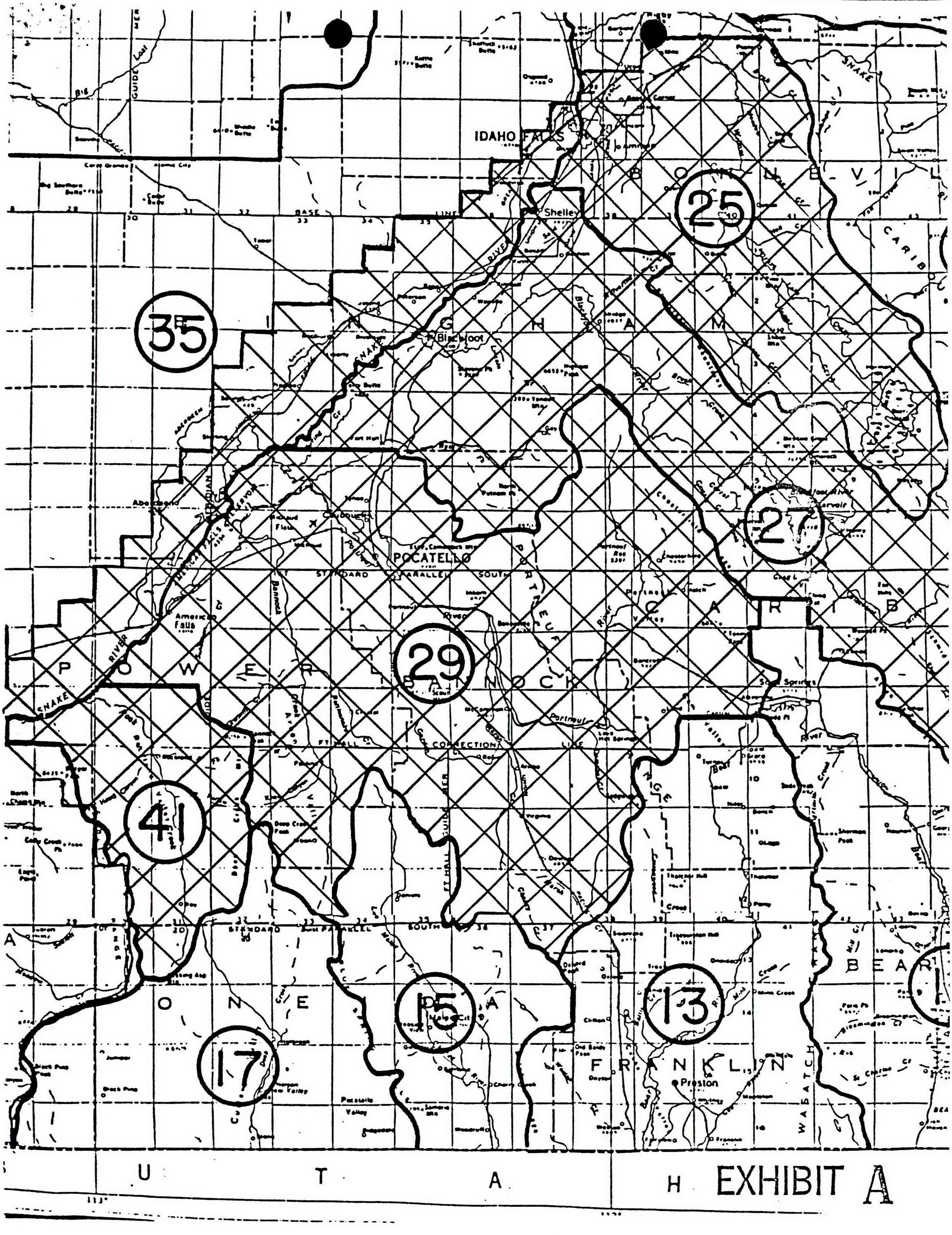

IDAHO FALLS
Shelley
Blackfoot
POCATELLO
American Falls
Soda Springs
Preston
25
35
27
29
41
17
15
13
BASE LINE
STANDARD PARALLEL SOUTH
FT HALL CORRECTION LINE
GUIDE MER
SNAKE RIVER
Portneuf
P O W E R
F R A N K L I N
W A S A T C H
B E A R
U T A H

EXHIBIT A

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
8436p/kk/02-24-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * *

In the Matter of:	
THE SNAKE RIVER AQUIFER	PETITION TO ESTABLISH MORATORIUM PURSUANT TO IDAHO CODE §42-1805(7) AND RULE 7

* * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and petition the Director of the Department of Water Resources to establish a moratorium on the issuance of or further action on permits or applications to appropriate ground water in certain areas

hereinafter identified. This petition is made in accordance with Idaho Code §42-1805(7) and Rule 7 of the Idaho Department of Water Resources Rules and Regulations for Water Appropriation (October, 1986), to protect existing vested water rights, and insure compliance with the provisions of Chapter 2, Title 42, Idaho Code, based upon the following:

1. NSCC and TFCC, pursuant to certain water rights on the Snake River, divert water from Milner Dam during the irrigation season for the purposes of irrigating in excess of 350,000 acres located in portions of Twin Falls, Jerome, Elmore and Gooding Counties. Their Snake River water rights have priority dates beginning October 11, 1900. AFRD and NSCC, pursuant to contract with the United States of America, have acquired certain rights to stored water from the American Falls Reservoir for the use and benefit of lands within NSCC and TFCC, and the shareholders thereof. When Snake River waters are not being diverted pursuant to senior natural flow rights, the water is stored in the American Falls Reservoir. Additionally, TFCC and NSCC have a storage right in Milner Reservoir, which reservoir stores Snake River water when the same is not diverted pursuant to prior natural flow rights.

2. Petitioners NSCC, TFCC and AFRD seek this order establishing a moratorium on the issuance of or further action on permits or applications in the cross-hatched geographical area depicted on Exhibit "A" (hereinafter referred to as the "area proposed for inclusion") because of the substantial interest of the Petitioners' water right and water supplies due to the withdrawal of ground water in the area proposed for

inclusion. While there are other consumptive diversions or future consumptive diversions that could affect the water rights of Petitioners, the area proposed for inclusion includes at this time only those sub-basins which most directly affect Petitioners' rights.

The following is a statement of the direct and substantial interest of the petitioners:

(a) TFCC and NSCC jointly have a right to divert up to 3400 c/f/s of water from the Snake River at Milner Dam under priority of October 11, 1900, which is the earliest flow right on the Snake River below the Abderdeen Springfield diversion. Certain other rights with priority dates of 1905 and later give TFCC and NSCC a total right of diversion of up to approximately 7,000 c/f/s of water at Milner Dam. Essentially, all available natural flow of the Snake River below Blackfoot is diverted by TFCC, NSCC and other agricultural diverters during the irrigation season after the spring flood, if any.

(b) Because of research on ground water supplies conducted during the Swan Falls controversy, TFCC, NSCC, and AFRD have been made aware of hydrologic data regarding tributary ground water upstream of Milner Dam and below Blackfoot on the Snake River. IDWR has designated the boundary of the area in which ground water is presumed to be tributary to the Snake River upstream of Milner Dam, which presumption is contained in Rule 1, 5, 1, 2 of the IDWR Rules and Regulations of Water Appropriation, dated October 1986. The westerly boundary of the area presumed tributary to the Snake River

upstream of Milner Dam is depicted in Attachment "A" of said Rules.

(c) The ground water extracted or proposed to be extracted from any well in the area proposed for inclusion (Exhibit "A") is part of the common water supply that is tributary to the Snake River above Milner Dam.

(d) Any consumptive diversion of ground water within the area proposed for inclusion will affect and reduce the flow of water in the Snake River. Furthermore, such diversions will reduce water supplies available for irrigation to TFCC and NSCC in direct proportion to the amount consumed, acre foot for acre foot.

(e) If consumptive ground water diversions within the area proposed for inclusion do not reduce irrigation season flows pursuant to paragraph (d) hereinabove, such diversions will alternatively reduce water supplies available for storage in American Falls Reservoir for the benefit of AFRD and NSCC, in direct proportion to the amount consumed, acre foot for acre foot. The TFCC and NSCC storage right in Milner Reservoir would most likely be impaired as well.

(f) Future extraction of ground water within the area proposed for inclusion will affect the flow of water in the Snake River and will reduce the quantity of water available under existing water rights.

3. In order that NSCC and TFCC may protect their rights in the flows of the Snake River above Milner Dam, and in order for AFRD and NSCC to protect its storage right at the American Falls Reservoir, it is necessary for them to seek this

order granting a moratorium suspending the issuance of or further action on permits or applications.

4. TFCC, NSCC and AFRD seek an order declaring a moratorium on the issuance of or further action on permits or applications in the area proposed for inclusion. Petitioners request that the order include the cancellation or modification of permits for which proof of beneficial use has not yet been submitted pursuant to Rule 7,2,1 of the Department's Rules. The basis for such order is the negative effect of consumptive ground water withdrawals on the flow of water in the Snake River and the impairment of NSCC's and TFCC's water rights and water supplies and AFRD's and NSCC's storage right in American Falls Reservoir, and TFCC's and NSCC's storage right in Milner Reservoir that would occur if such order is not executed and enforced.

5. If a hearing on this Petition is required, NSCC, TFCC and AFRD would propose to participate by presenting evidence as they deem necessary.

WHEREFORE, TFCC, NSCC and AFRD pray that the Idaho Department of Water Resources, pursuant to Idaho Code §42-1805(7) and Rule 7 of the Idaho Department of Water Resources Rules and Regulations for Water Appropriation, establish a moratorium suspending the further issuance of or action upon permits or applications in the area proposed for inclusion.

DATED this 9th day of March, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

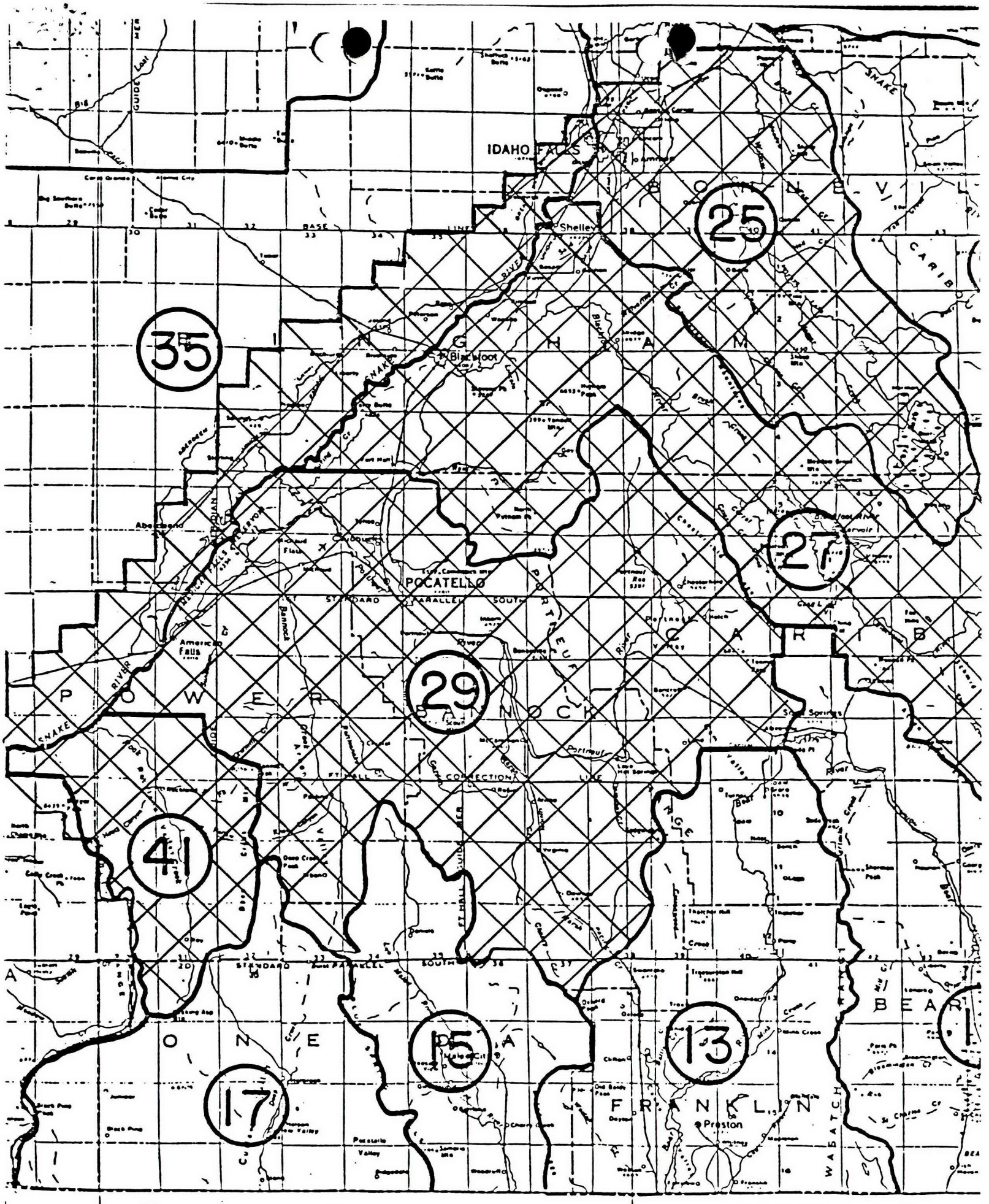
CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 1988, I served a copy of the foregoing PETITION TO ESTABLISH MORATORIUM PURSUANT TO IDAHO CODE §42-1805(7) AND RULE 7 upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners


IDAHO FALLS
Shelley
Blackfoot
POCATELLO
American Falls
Preston
25
35
27
29
41
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17
1
BONNEVILLE
BINGHAM
CARIBOU
POWER
BANNOCK
ONEIDA
FRANKLIN
BEAR LAKE
UTAH

EXHIBIT A

WD 01 ENLARGEMENT PETITION DISCUSSION LIST
THURSDAY, FEBRUARY 18, 1988
1:00 P.M.

Petition
GROUND WATER SUPPLY ADDED
42-2379 (42-604)
GW AFFECTS SURFACE WATER IN ORGANIZED DISTRICT
EXTRACTED OR PROPOSED TO BE EXTRACTED

1. Legal Basis for Enlargement

2. Technical Basis for Enlargement

3. IDWR Procedures for Addressing:

Rules
-- Meeting
-- Request for Additional Information
-- Preliminary Evaluation
-- Ruling
-- Hearing

BOUNDARY PROBLEMS
DOES NOT INCLUDE
~~RATE PROTEST~~
~~FEES~~ No. of K AREAS

4. Sufficiency of Petition

-- Area and Uses Included
-- Timing Relative to Adjudication

5. Other Methods of Satisfying Canal Companies' Objectives

-- Future Uses -- (Protest)
-- Present Uses -- (Adjudication)

6. PURPOSE OF PETITION -

7. Pending applications

FOR YOUR
Comment?
Ney

PETITION TO ENLARGE WD 01

1. BASIS FOR PETITION
   HYDROLOGIC CONNECTION
   COVERS ONLY TRIBUTARY G.W.
   DOES NOT COVER ALL TRIBUTARY WATER
   SOME RIGHTS UNADJUDICATED

JOHN A. ROSHOLT
GARY D. SLETTE
Nelson, Rosholt, Robertson,
Tolman & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906
Telephone: (208) 734-0700
8125p/kk/01-07-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

* * * * * * * * * *

IN THE MATTER OF:

THE ENLARGEMENT OF WATER DISTRICT NO. 1

AFFIDAVIT OF CHARLES BROCKWAY

* * * * * * * * * *

STATE OF IDAHO)
) ss.
County of Twin Falls)

CHARLES BROCKWAY, being first duly sworn upon oath, deposes and says:

1. That I am a licensed professional engineer in the State of Idaho, and more specifically, a hydrologist, and am competent to testify to the facts stated herein.

2. That I have studied and am generally familiar with the concepts of a potential interrelationship that may exist between ground water and surface water flows.

3. That I have studied and am familiar with the Snake River Aquifer and the flow of the Snake River in Idaho.

4. That it is my opinion, based on such research and study, that consumptive ground water extraction within the cross-hatched area of Exhibit "A" attached hereto, and by this reference incorporated herein, will ultimately affect the flow of water in the Snake River and its tributaries and will decrease the amount of water that is available for irrigation diversion in the summer and irrigation water storage in the winter.

5. That it is my opinion that the State of Idaho should regulate and recognize the conjunctive use of ground and surface waters as being in the best interests of the people of the State.

FURTHER sayeth your Affiant naught.

Chas Brockway
CHARLES BROCKWAY

SUBSCRIBED AND SWORN To before me this 11th day of January, 1988.

GARY D. SLETTE
NOTARY PUBLIC - STATE OF IDAHO
Residing at Twin Falls, ID
Lifetime Commission

NOTARY PUBLIC FOR IDAHO
Residing at Twin Falls
My Commission Expires Lifetime

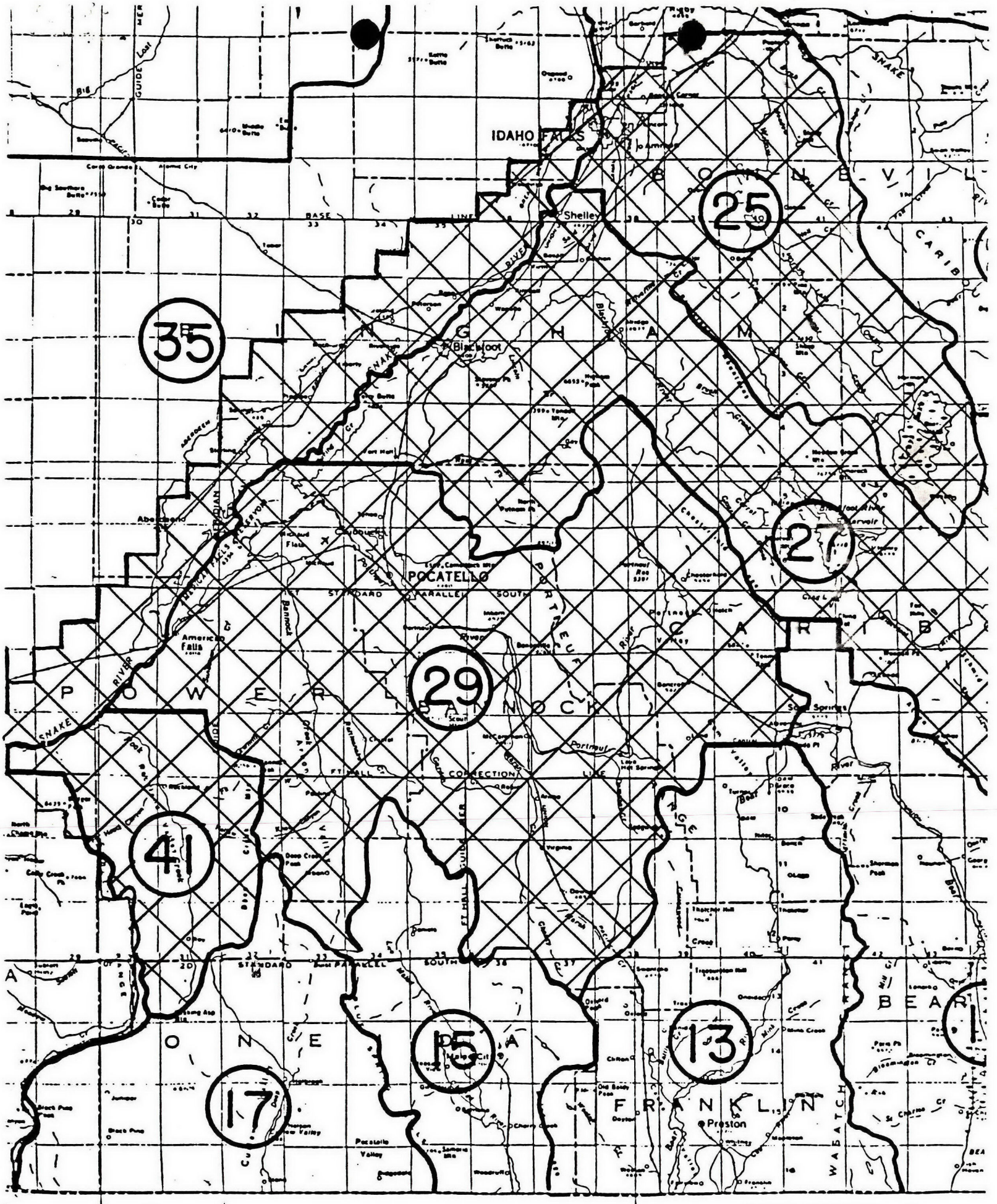
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 1988, I served a copy of the foregoing AFFIDAVIT OF CHARLES BROCKWAY upon:

Idaho Department of Water Resources
Statehouse
450 West State Street
Boise, Idaho, 83720

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

Gary D. Slette


IDAHO FALLS
Shelley
Blackfoot
POCATELLO
American Falls
Preston
25
35
27
29
41
15
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17
1
U T A H
EXHIBIT A

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9544p/dcb/10-31-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * *

In the Matter of:)
)
)
WATER DISTRICT NO. 1) AMENDMENT TO PETITION
)

* * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and amend the above captioned Petition pursuant to Rule 3,4 of the IDWR Rules and Regulations. The Petition is hereby amended so that Exhibit "A" to the Petition shall include therein any and all lands whose groundwater is tributary to the Snake River above Milner Dam.

DATED this 31st day of October, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 1988, I served a copy of the foregoing AMENDMENT TO PETITION upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

John A. Rosholt
Gary D. Slette
NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER
P. O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
9542p/dcb/10-28-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

* * * * * * * * * *

In the Matter of:	)	
	)	
	)	AMENDMENT TO PETITION
	)	
THE SNAKE RIVER AQUIFER	)	
	)	

* * * * * * * * * *

COMES NOW Nelson, Rosholt, Robertson, Tolman & Tucker, counsel for the Petitioners, Twin Falls Canal Company and the North Side Canal Company (hereinafter "TFCC" and "NSCC", respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, and amend the above captioned Petition pursuant to Rule 3,4 of the IDWR Rules and Regulations. The Petition is hereby amended so that Exhibit "A" to the Petition shall include therein any and all lands

whose groundwater is tributary to the Snake River above Milner Dam.

DATED this 31st day of October, 1988.

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 1988, I served a copy of the foregoing AMENDMENT TO PETITION upon:

Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho, 83706

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners

JOHN A. ROSHOLT
GARY D. SLETTE
Nelson, Rosholt, Robertson,
Tolman & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906
Telephone: (208) 734-0700
8114p/kk/01-05-88

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

* * * * * * * * * * *

IN THE MATTER OF:	)
	)
	) PETITION OF NORTH SIDE
	) CANAL COMPANY, TWIN FALLS
THE ENLARGEMENT OF WATER	) CANAL COMPANY AND THE
DISTRICT NO. 1	) AMERICAN FALLS RESERVOIR
	) DISTRICT FOR ENLARGEMENT
	) OF A WATER DISTRICT

* * * * * * * * * * *

COME NOW, the North Side Canal Company and the Twin Falls Canal Company (hereinafter "NSCC" and "TFCC" respectively), both of which are Carey Act operating companies organized and existing under the laws of the State of Idaho, and the American Falls Reservoir District (hereinafter "AFRD"), a political subdivision of the State of Idaho formed pursuant to Chapter 1 of Title 43 of the Idaho Code, by and through their attorneys, Nelson, Rosholt, Robertson, Tolman & Tucker, Chartered, and hereby petition the Department of Water Resources (hereinafter "IDWR") for an order enlarging Water District No. 1 by incorporating the ground water supply in the

geographical area depicted in Exhibit "A" attached hereto, and by this reference incorporated herein, into Water District No. 1. This petition is made and filed pursuant to Idaho Code §42-237a.

I.

The names and addresses of the petitioners are as follows:

Twin Falls Canal Company
P. O. Box 326
Twin Falls, Idaho 83301

North Side Canal Company
921 North Lincoln Avenue
Jerome, Idaho 83338

American Falls Reservoir District
1035 North Lincoln Avenue
Jerome, Idaho 83338

II.

NSCC and TFCC, pursuant to certain water rights on the Snake River, divert water from Milner Dam during the irrigation season for the purposes of irrigating in excess of 350,000 acres located in portions of Twin Falls, Jerome, Elmore and Gooding Counties. Their Snake River water rights have priority dates beginning October 11, 1900. AFRD and NSCC, pursuant to contract with the United States of America, have acquired certain rights to stored water from the American Falls Reservoir for the use and benefit of lands within NSCC and TFCC, and the shareholders thereof. When Snake River waters are not being diverted pursuant to senior natural flow rights, the water is stored in the American Falls Reservoir. Additionally, TFCC and NSCC have a storage right in Milner

DIRECT FLOW STORAGE ?

Reservoir, which reservoir stores Snake River water when the same is not diverted pursuant to prior natural flow rights.

III.

Petitioners NSCC, TFCC and AFRD seek this order incorporating the ground water supply of the cross-hatched geographical area depicted on Exhibit "A" (hereinafter referred to as the "area proposed for inclusion") into Water District No. 1 because of the substantial interests of the Petitioners and the possible effects on the Petitioners' water right and water supplies due to the withdrawal of ground water in the area proposed for inclusion. While there are other consumptive diversions or future consumptive diversions that could affect the water rights of Petitioners, the area proposed for inclusion includes at this time only those sub-basins which most directly affect Petitioners' rights.

The following is a statement of the direct and substantial interest of the petitioners:

1. TFCC and NSCC jointly have a right to divert up to 3400 c/f/s of water from the Snake River at Milner Dam under priority of October 11, 1900, which is the earliest flow right on the Snake River below Blackfoot. Certain other rights with priority dates of 1905 and later give TFCC and NSCC a total right of diversion of up to approximately 7,000 c/f/s of water at Milner Dam. Essentially, all available natural flow of the Snake River below Blackfoot is diverted by TFCC, NSCC and other agricultural diverters during the irrigation season after the spring flood, if any.

2. Because of research on ground water supplies conducted during the Swan Falls controversy, TFCC, NSCC, and AFRD have been made aware of hydrologic data regarding tributary ground water upstream of Milner Dam and below Blackfoot on the Snake River. IDWR has designated the boundary of the area in which ground water is presumed to be tributary to the Snake River upstream of Milner Dam, which presumption is contained in Rule 1, 5, 1, 2 of the IDWR Rules and Regulations of Water Appropriation, dated October 1986. The westerly boundary of the area presumed tributary to the Snake River upstream of Milner Dam is depicted in Attachment "A" of said Rules.

3. The ground water extracted or proposed to be extracted from any well in the area proposed for inclusion (Exhibit "A") is part of the common water supply that is tributary to the Snake River above Milner Dam.

4. Any consumptive diversion of ground water within the area proposed for inclusion will affect and reduce the flow of water in the Snake River within Water District No. 1. Furthermore, such diversions will reduce water supplies available for irrigation to TFCC and NSCC in direct proportion to the amount consumed, acre foot for acre foot.

5. If consumptive ground water diversions within the area proposed for inclusion do not reduce irrigation season flows pursuant to paragraph 4 hereinabove, such diversions will alternatively reduce water supplies available for storage in American Falls Reservoir for the benefit of AFRD and NSCC, in direct proportion to the amount consumed, acre foot for acre

foot. The TFCC and NSCC storage right in Milner Reservoir would most likely be impaired as well.

6. Future extraction of ground water within the area proposed for inclusion will affect the flow of water in the Snake River and will reduce the quantity of water available under existing water rights.

IV.

In order that NSCC and TFCC may protect their rights in the flows of the Snake River above Milner Dam, and in order for AFRD and NSCC to protect its storage right at the American Falls Reservoir, it is necessary for them to seek this order incorporating the common ground water supply into Water District No. 1, which would permit administration of those rights in accordance with the provisions of Title 42, Idaho Code.

V.

NSCC, TFCC and AFRD seek an order from the IDWR enlarging Water District No. 1 by incorporating the common ground water supply in the area proposed for inclusion into Water District No. 1. The basis for such order is the negative effect of consumptive ground water withdrawals on the flow of water in the Snake River and the impairment of NSCC's and TFCC's water rights and water supplies and AFRD's and NSCC's storage right in American Falls Reservoir, and TFCC's and NSCC's storage right in Milner Reservoir that would occur if such order is not executed and enforced.

VI.

If a hearing on this Petition is required, NSCC, TFCC and AFRD would propose to participate by presenting evidence as they deem necessary.

WHEREFORE, NSCC, TFCC and AFRD pray that this Petition for Enlargement of Water District No. 1 be granted.

DATED this 13th day of January, 1988.

NELSON, ROSHOLT, ROBERTSON,
TOLMAN & TUCKER

By: _____
Attorneys for Petitioners

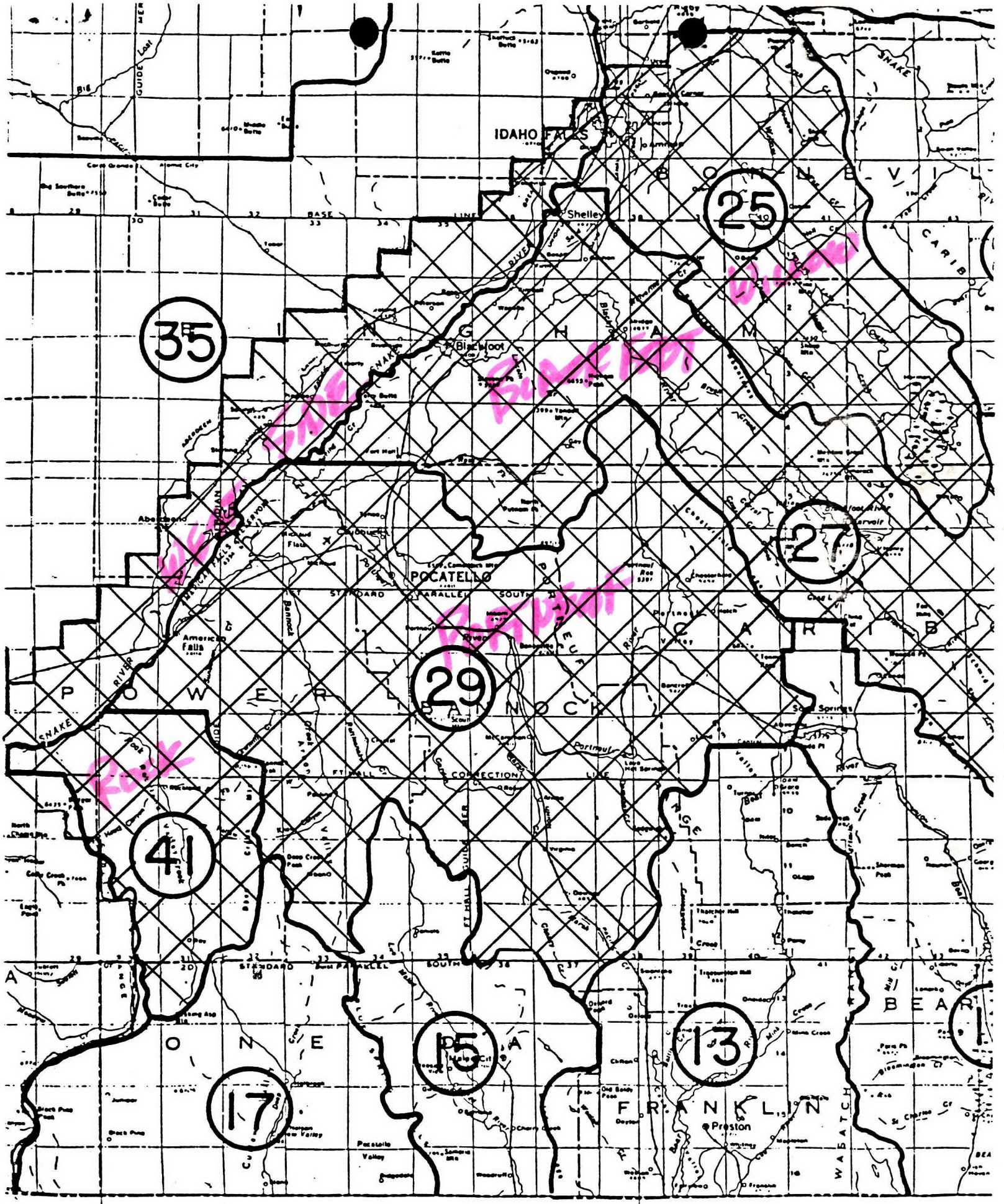
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 1988, I served a copy of the foregoing PETITION OF NORTHSIDE CANAL COMPANY, TWIN FALLS CANAL COMPANY AND THE AMERICAN FALLS RESERVOIR DISTRICT FOR AN ORDER ENLARGING A WATER DISTRICT upon:

Idaho Department of Water Resources
Statehouse
450 West State Street
Boise, Idaho, 83720

by depositing the same in the United States mail, postage prepaid, in an envelope addressed as stated in the above-captioned heading.

_____
Attorney for Petitioners


IDAHO FALLS
Shelley
Blackfoot
POCATELLO
American Falls
Preston
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U T A H
EXHIBIT A