

NOTICE OF MEETING

AND

AGENDA

SCANNED

JUL 27 2023

1997

Committee of Nine Meeting  
Wednesday, December 17, 1997 - 1:30 p.m.  
Burley Inn  
Burley, Idaho

Exhibit

- 1:30 Call to Order - Introduce Guests - Kramer  
Minutes of October 30, 1997 - Alberdi ..... 1
- 1:35 Financial Report - Raybould
- 1:40 Water Reports, Watershed and Reservoir Operations - Carlson & Beus
- 1:50 SRBA Report - Clark
  - A. Report of Coalition Meetings 12/10/97 - Clark
  - B. Progress on Federal Claims
  - C. Smith Springs & Irrigation Season
- 2:00 Salmon and Steelhead Recovery
  - A. Habitat Conservation Plan - Report on 12/5/97 Meeting - Moss ..... 2
- 2:10 ITCH, Recharge, and 1998 Legislative Agenda - IDWR
- 2:20 USBR Issues (Rigby, Salenik, Beckmann, Gregg, & Brawley)
  - Consultation - Snake River Reservoirs ..... 3
  - Cumulative Impacts Study
- 2:40 Other Issues
  - A. Reclamation Project Transfer - Ling
- 2:50 Old Business
  - A. Issues Overview
  - B. Western Water Policy Review
- 3:00 New Business
- 3:05 Adjourn

SCANNED  
JUL 27 2023

Chairman Don Kramer called the meeting to order at 10:03 A. M. The individuals in attendance are included on the attached list.

The minutes of the July 16, 1997 meeting were approved on the motion made by Dale Rockwood and seconded by Paul Bergmann.

#### FINANCIAL REPORT

Treasurer Dell Raybold presented the preliminary year end financial report. In comparison to previous years our expenditures are up due to the Federal Government and Nez Perce Indian Tribe filing on water. The preliminary budget for the next year will be ready for review in December. The Treasurer asked the attorneys to prepare estimates for the next year. The Rental Pool accounting was reviewed as well; a copy of the financial report is attached. The financial report was accepted on a motion made by Paul Bergmann and seconded by Claude Storer.

#### WATER REPORT

Mike Beus reported the drawn down on Jackson Lake Reservoir had been made and the reservoir is currently at 642,000 acre feet as we go into winter operations. Palisades Reservoir is still nearly full and will be operated in this fashion as the forth-coming winter storms or lack of will dictate future water management decisions. American Falls Reservoir has the least carry over but with the track record at American Falls and the reservoirs ability to fill in the spring our concern is what the affects of El Nino maybe. Current carry over is 71% for the reservoir system. Mike is not sure what El Nino's affects will be and assured water users a conservative approach will be used as we proceed into the winter, but Mike's forecast is for a dry winter followed by a wet spring.

#### IDAHO WATER ALLIANCE

Dan McFadden and Terry Huddleston representing IWA addressed the group telling about the Alliance's mission and desire to broaden the base of membership from Eastern Idaho. IWA primary focus is to facilitate aquifer recharge. Both speakers states numerous sites are available and the public is supportive of recharge. Huddleston reported on a recent meeting the Alliance had with the Governor. The Governor asked IWA to identify how broad the support is for recharge and requested a plan identifying locations and construction cost to initiate recharge. Another meeting is scheduled to present this information to the Governor. Huddleston asked the Committee for support in aquifer recharge from the group to include in his presentation to the Governor. A discussion followed

from the membership questioning Huddleston about the plan. Several members of the Committee wanted specific information before granting support, but all members supported the concept of recharge. In conclusion, Paul Bergmann moved and Dale Rockwood seconded the Committee write a letter to the Governor supporting the importance and concept of aquifer recharge in the various sites identified. A follow up request from Director Dreher asked the Committee to support the IDWR's flood control project on the Big Wood River which will require \$230,000 from the State's general fund. The Committee unanimously approved the Director's request.

## SRBA REPORT

Roger Ling updated the group on the Deer Flats claims. Negotiations are continuing while preparations are being made for litigation as we head toward filing a summary judgement. One of the remaining issues is the way in which the water rights language will be stated. Deer Flat would not received a federal reserve water right but a state water right reserved to the IDWR Board. Another condition for settlement would stipulate we would get credit for flow augmentation water. Roger further stated the meetings are creating understanding and progress is being made; however, groundwater users are junior and affected, but the groundwater users express little concern.

Jerry Rigby reported on the activities with the Forest Service Claims. Rigby's efforts are paralleling the state's actions on the federal filing with only a few filing remain. Rigby commented the impacts to water users above Milner Dam are minimal.

John Rosholt reported on progress with the Nez Perce claims. The tribe has filed on all the water to assure the tribe the sixteen million fish that allegedly migrated up the Snake River would have sufficient water to continue to migrate as the fish once did. Rosholt stated litigation is inevitable. Deposition on all Nez Perce tribal members over fifty years old on cultural, fish, environment, as well as historical information will be recorded. Rosholt further reported bundling all these issues made the claims very hard to deal with.

Stan Clark reported he is very pleased with the progress John Simpson is making gathering information and depositions on the Nez Perce claims. The ERO group has been beneficial in preparing the case. Clark expressed the state is not ready and need to focus more resources to the effort.

Norm Semanko updated the group on various SRBA general provisions and various basin wide issues. Director Karl Dreher commented on the Supreme Courts recent decisions that he did not agree with.

## SALMON AND STEEL HEAD RECOVERY

DeWitt Moss updated the committee on the recovery of the salmon. Moss stated the record flows of water in 1997 never met the target flows in Oregon. The water language of Kempthorne's ESA Bill will not have state sovereignty of water rights. The issue of water rights may have to be left out of the revised ESA Bill.

## HENRY'S LAKE EXCHANGE

Del Raybold reported Nature Conservancy purchased a ranch at Henry's Lake for a fishery. The Conservancy worked with local water users and the USBR to exchange water for the fishery. Through the exchange all players have satisfied their needs.

## USBR ISSUES AND UPDATES

Eileen Salenik project manager reminded the group of forthcoming SR3 public meetings.

Rich Rigby reported on the status of Consultation. The Corps of Engineers has requested a million-acre feet in the future for flow augmentation. Studies will be conducted and various alternatives including removal of the four lower dams will be considered along with the additional water being considered.

Steve Brawley reported on recharging in the Milner-Gooding Canal and the environmental assessment on the canal relative to snails. The only protest is from the Idaho Fish and Game; Brawley asked for assistance on how to proceed.

Steve also reported on the Pilgrim Creek Study. He thanked the North Side Canal Company for their prompt inexpensive repairs the company performed at Pilgrim Creek. It appears at no further work maybe required as the streambed may be stabilizing.

## ITCH and RECHARGE –IDWR

Director Karl Dreher reported progress is being made on the Snake River Eastern Snake Plain Aquifer Groundwater Study. To complete the study USBR will need to provide a person. Following a discussion with USBR personnel it was understood the bureau will provide an individual to assist and there will not be a need to approach the legislature for staff funding.

Ron Carlson reported on various topics including water right filings in the Rexberg Decree that might need to be filed in Wyoming. In other matters Carlson reported ground water pumpers want to participate if it is legal to help with legal expenses on protecting state water rights against Federal Claims. In summary, Carlson stated the flood of 1997 was similar to the Teton flood.

## OTHER IDAHO ISSUES

DeWitt Moss reported on River Governance stating that facts do not justify additional flows, as the additional flows are not saving the salmon.

Roger Ling reported on BID's progress on title transfer. One issue is the opposition from the USBR to allow the water right for the project to be transferred to BID.

## OLD BUSINESS

Chairman Kramer reminded the committee to review the issue paper and the need for future discussions on the various topics.

John Rosholt agreed to write a resolution in appreciation and loss of Al Inman who was killed in a USBR chartered aircraft from the committee and presents it to Al's widow.

## ADJOURNMENT

The committee went into executive session at 2:35 P.M. and returned at 3:17P.M. at which time the meeting was adjourned.

STATE OF IDAHO  
**WATER DISTRICT 1**

Ronald Carlson  
Watermaster  
(208) 525-7172

900 N. Skyline Drive  
Idaho Falls, Idaho 83402

Committee of Nine

November 3, 1997

Governor Philip E. Batt  
Office of the Governor  
PO Box 83720  
Boise, ID 83720-0034

Dear Governor Batt:

Re: Recharge

Our state has been active in recent years in support of using excess water to recharge groundwater aquifers. A couple of years ago our Legislature authorized \$1 million in State monies to be spent to lease water from water banks and to pay for its conveyance to recharge sites. A water year like 1997, reinforces the wisdom of a continuing recharge program. Not only can recharge help alleviate flood flows, it provides protection for future irrigation and other water uses.

While we are aware that not all waterusers support recharge, we want to advise you that the Committee of Nine continues in support of the State's effort and IDWR's current study to identify the best sites and secure conveyancing agreements with irrigation entities.

I've been asked to advise that the Committee of Nine also supports continued funding of IDWR for this effort, including the State's matching share to undertake an engineering feasibility study for the Little Wood River Re-evaluation Study.

Respectfully,

Committee of Nine

By: \_\_\_\_\_  
Chairman

DK:bh

cc: Clarence Parr  
Karl Dreher

11039701.DK

Committee of Nine  
 October 30, 1997  
 Pocatello Airport

<u>Name</u>	<u>Organization</u>
Don Kramer	Committee of Nine
Vince Alberdi	TFCC
Ray Rigby	Committee of Nine
Dale Rockwood	Committee of Nine
Claude Storer	Committee of Nine
Stan Clark	Attorney, Committee of Nine,
Don Hale	Committee of Nine
Roger Ling	Attorney
John Roshoslt	Attorney
Norm Semanko	Committee of Nine/TFCC/NSCC
Dell Raybold	Committee of Nine
Dale Swensen	FMID
Paul Berggren	Committee of Nine
Leonard Beck	Committee of Nine
Mike Beus	SRAO USBR
Bill Thompson	Milner Irrigation District
Ted Diehl	NSCC
Dennis Heaps	NSCC
Dan McFaddan	IWA
Terry Huddleston	IWA
Steve Brawley	USBR-Burley
Randy Bingham	Burley Irrigation Dist.
DeWitt Moss	Committee of Nine
Ron Carlson	WDOU
Darrell Beckman	USBR-Boise
Ray Rigby	Atty-Comm. Of Nine
Kent Fletcher	Atty. MID
Lynn Harmon	AFRD #2
Russ Woolley	AFRD#1
Eileen Salenik	USBR Regional Office
Don Hale	Committee of Nine
Rich Rigby	USBR-Boise
Sue Lowry	Wyoming St. Engineer's Office
Laird Noh	Id. St. Senate
Mike Mathews	US Senator-Larry Craig
Jerry Rigby	Atty/UVCo.9
Tom Tawsen	Progressive Irrg. Dist.
Jack Hamilton	Progressive Irrg. Dist.
Bob Barrie	Farmers Friend Canal
Tim Deeg	Am.Falls/Aberdeen Water Dist.
Georgia Dixon	US Senator-Larry Craig
Tom Dayley	Id.Farm Bureau
Terrell Sorensen	FID-IWUA
Lionel Boyer	Shoshone-Bannock Tribes
Don Dixon	Rep. Mike Crapo
Karl Dreher	Id. Dept. Water Res.

**IWUA ESA Roundtable  
HCP Meeting  
December 5, 1997  
Boise, ID**

The meeting was convened at 10:00 a.m. at the Doubletree Downtowner by Sherl Chapman. Also present were DeWitt Moss, Shawn Del Yursa, Clive Strong, Vern Case, Jo Beeman, Steve Herndon, Scott Campbell, Mark Limbaugh, John Rosholt, Jim Tucker, Norm Semanko and other invited parties.

DeWitt Moss gave a report on his discussions with NMFS about the possibility of entering into a Habitat Conservation Plan (HCP) or other agreement(s) regarding ESA and other issues. NMFS would like to see irrigators, Idaho Power Company and the State involved.

Norm Semanko reported on his investigation of the HCP being negotiated by the Mid-Columbia River Public Utility Districts. A summary is attached.

After discussion of the pros and cons of entering into negotiations with NMFS, it was decided that a draft Memorandum of Agreement (MOA) with NMFS should be drafted and circulated for comments in the next few weeks. If we can come to agreement among ourselves, we should present the MOA to NMFS for their consideration. Items which should be included in the MOA include bringing the Tribes to the table to discuss their claims in the SRBA. This is based upon the fact that NMFS has a trust responsibility to the Tribes. Other concerns expressed included the possibility of bringing the Port of Lewiston and Dworshak into the process.

Norm Semanko was asked to circulate a draft to the attorneys for review and comment. A draft will be sent to Scott Campbell, Clive Strong, Shawn Del Yursa, Steve Herndon, Jim Tucker, Jo Beeman and Don Olowinski. The draft will also be circulated to the Committee on Nine attorneys not present at the meeting.

It was decided that the IWUA ESA Roundtable group should meet periodically to discuss ESA and other issues. The meeting was adjourned at 12:00 noon.



Summary of the  
Mid-Columbia River  
Public Utility Districts'  
Habitat Conservation Plan Effort<sup>1</sup>

Advantages of HCP Effort. Limits future exposure; mitigation costs less in the long-run; regulatory certainty in the face of future ESA listings; presumption for FERC relicensing; and positive relationship with regulatory agencies.

Disadvantages of HCP Effort. Brings your activities to the attention of NMFS (if they didn't already know); can't use the process to change federal dam operations; a reopener provision is included in the HCP (15 years); and didn't get as broad of an agreement as originally wanted.

General. The HCP is for 50 years (standard); just covers anadromous fish under ESA; calls for adjustments to hydro operations; establishes a fund for voluntary habitat improvements by landowners on tributaries (e.g., convert ditch to pipe to use less water); will develop hatcheries to benefit Tribes; started 4 years ago, but almost done with drafting; steelhead listing helped tip the scales in favor of finishing the HCP effort.

What is involved/required. Need biologists (the PUDs have 3), attorneys (to draft agreements) and a good facilitator (the PUDs paid \$180 per hour for a facilitator over the past 1½ yrs.); other consultants are helpful, but not necessarily required; difficulty in getting the State of Washington involved initially (the PUDs met with their Congressional Delegation to get State support); invited broad participation (NWPPC, BPA, the Corps, etc.); the state fish and wildlife agency is involved; the state department of ecology will only grant a 5-year water quality certification (CWA § 401) with a rollover if conditions do not change; EPA is not involved; FERC assigned a representative to observe the HCP process/negotiations; the Tribes (Yakamas and Colvilles) are absolutely necessary because of federal trust responsibility to the Tribes, but their involvement has slowed the process down; environmentalists (Lori Bodi, American Rivers) have been very supportive; NMFS representatives are very tough negotiators; need policy level people to make decisions; drafting details are a concern (e.g., what triggers the reopener provision in the HCP); some difficulty on both sides in keeping discussions focused (the question that should be asked is: "How can our operations take salmon?"); the Federal government won't provide money for the HCP and no compensation for hydropower losses; one PUD (Grant) is in a separate camp from other two (Chelan & Douglas); Grant is perceived as having reneged on an earlier part of the agreement; NMFS does not insist on all 3 PUDs being on same track; the Tribes want Grant involved (Grant had agreed to provide almost 100% of hatchery monies - 55% of tributary fund); can't get muddled down in scientific debates - need to compromise/decide; stay firm and reach agreeable compromise; will need to go out for NEPA analysis/public comment - expected to take one year; the entire process will have taken approximately 5 years once the NEPA work is done.

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<sup>1</sup> This summary is based on information gathered from telephone interviews with: Dick Nason, Chelan County PUD, Chief of Fish & Wildlife; Malcolm McClellan, attorney for Chelan County PUD; Dennis Rohr, consultant for Chelan and Douglas County PUDs; and Bob Clubb, Douglas County PUD, Chief of Environmental Affairs and Licensing.



# United States Department of the Interior

## BUREAU OF RECLAMATION

Pacific Northwest Region  
1150 North Curtis Road  
Boise, Idaho 83706-1234

IN REPLY REFER TO:

PN-1070  
ADM-1.10

NOV 28 1997

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Mr. Dale Swenson  
PO Box 15  
St Anthony ID 83445

Mr. Norm Semanko  
Rosholt, Robertson & Tucker  
PO Box 1906  
Twin Falls ID 83303

Mr. Sherl Chapman  
Idaho Water Users Association  
410 S Orchard Ste 144  
Boise ID 83705

Subject: Update on Upper Snake River ESA Consultations

Ladies and Gentlemen:

Much has been happening in the areas of endangered species, flow augmentation, and consultation on operations of the upper Snake River since we last discussed these issues with you. The purpose of this letter is to provide an update in these three areas.

### General Endangered Species Act News

The Snake River steelhead was listed as threatened by the National Marine Fisheries Service (NMFS) in August and this listing went into effect in mid-October. We anticipated the listing when we agreed to consult in May and don't expect any modifications to our consultation as a result.

Earlier this year, the U.S. Army Corps of Engineers (COE) initiated a feasibility study and Environmental Impact Statement (EIS) process on lower Snake River juvenile salmon migration. The study focuses on how their four lower Snake River dams can be changed to improve survival and recovery prospects for Snake River salmon stocks listed under the Endangered Species Act (ESA). This study is scheduled to be completed in late 1999. The COE will be using a regional/public process to develop information for a decision that is biologically, economically and socially acceptable. The alternatives being analyzed include the current dam configuration and operation, natural river drawdown, major system improvements at the dams such as surface collectors, and enhanced transportation. Flow augmentation is being considered as a component of these alternatives, including the natural river drawdown alternative.

As part of the COE study, various levels of flow augmentation from the upper Snake River are being assessed. Reclamation has been asked to cooperate with the COE in analyzing the economic and environmental impacts of any flow augmentation measures, including the impacts of additional water from Idaho. *This study is not a part of the Upper Snake River Basin consultation on operations and maintenance and does not ask for or require any commitments for delivery of additional water.*

In June, the Fish and Wildlife Service (FWS) proposed listing the Columbia and Klamath populations of bull trout. A decision on listing is due in June 1998. As many of you are aware, there are bull trout populations in Anderson Ranch, Arrowrock, and Lucky Peak reservoirs in the Boise River; Deadwood reservoir in the Payette River system; and Beulah reservoir in eastern Oregon. The Upper Snake River Basin consultation on operations and maintenance will include an analysis of bull trout effects related to the projects.

Senator Kempthorne introduced an Endangered Species Act Reauthorization bill in the Senate. Since this bill has bipartisan and Administration support, passage is possible. We do not see any immediate changes affecting the ESA consultation process should this bill become law.

The Northwest Power Planning Council recently held up fishery funding from Bonneville Power Administration for all new State and Tribal hatcheries and has asked Secretary Babbitt to assist in evaluating the operations of all Federal hatcheries in the region. Most of the recent scientific reviews question the value and potential impact to wild stocks of production hatcheries.

### Flow Augmentation

As you know, we have been delivering 427,000 acre-feet of water to augment salmon flows as instructed under the Biological Opinion of 1995 (BiOp) issued by NMFS for operations of the Federal Columbia River Power System. The validity of this BiOp and our operation to provide the 427,000 acre-feet was upheld in a final decision by Judge Marsh in October, 1997.

Two categories of reservoir storage have been used to provide water since flow augmentation began in 1991; water rented from water users under state authorized processes, and water from uncontracted Reclamation space (as opposed to space contracted to water user entities) held in project reservoirs. Water from uncontracted space has been used for flow augmentation in accordance with Idaho Code § 1763B. *A cornerstone of Reclamation's policy with respect to Snake River flow augmentation has been to acquire the water from willing sellers and in accordance with state water law.* In addition, Reclamation has acquired some natural flow rights in eastern Oregon to help meet the BiOp flow augmentation requirement. We plan to continue providing the 427,000 acre-feet under the BiOp through 1999.

In 1996, Oregon natural flow rentals constituted about 15,800 acre-feet of the approximately 427,000 acre-feet provided. In February, 1997 Reclamation completed the permanent acquisition of some 17,650 acre-feet of natural flow water rights from Skyline Farms. Water provided from Oregon reduces the water needed from Idaho reservoirs.

The following amounts of water have been provided for flow augmentation:

<u>Year</u>	<u>Acre-feet</u>
1991	201,525
1992	90,000
1993	424,588
1994	428,112
1995	427,235
1996	422,641
1997	427,000

Reclamation has coordinated releases with the Idaho Department of Water Resources and the Oregon Water Resources Department. The timing and volume of releases have been carefully coordinated with local watermasters and other affected water users to ensure that water released from project reservoirs or rented natural flows has been over and above the amounts needed by valid water right holders. Reclamation has also taken steps to ensure to the fullest extent possible, that reservoir releases are conducted in a manner to protect local resources.

An example of local resource protection is Cascade Reservoir, where augmentation releases have been split between the April 15 and August 30 augmentation period and the following winter. Under this operation, the Idaho Power Company "shapes" releases from Brownlee Reservoir during the summer and followed by a Reclamation release of an equivalent amount of water later in the year. This reduces the water quality and resident fish impacts at Cascade, provides for fall and winter flows down the Payette, assists Idaho Power Company in their operation for fall chinook below Hell's Canyon dam, and ultimately provides the same amount of water for flow augmentation.

#### Snake River Consultation

We are making much progress on the interim consultation process we began last spring. We are using the data gathering capabilities of the Snake River Resources Review (SR3) to the extent possible. We also intend to use as much data from published and unpublished reports provided by the Idaho Fish and Game, Oregon Department of Fish and Wildlife, and other entities as is practical to determine the impacts of our present operations and maintenance on ESA species, including listed, proposed, and candidate species known to reside in our reservoirs and in rivers influenced by their operations.

We are on a timeline to produce a draft Biological Assessment (BA) in early January 1998. Once that document is assembled, we will provide a limited period for review by water users, fish and wildlife agencies, tribes, and any others that request a review and can provide timely comments. We intend to provide a final BA to FWS and NMFS this winter. The enclosed outline of the draft BA is included to give you an indication of the kinds of information we have

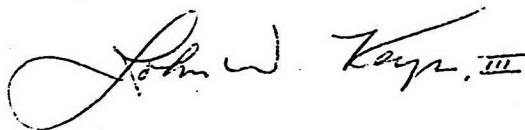
been gathering and a tentative format that will best illustrate our project operations and maintenance and the impacts to ESA listed or proposed species.

Once the FWS and NMFS have the final BA, and if it is determined that the proposed operations are likely to adversely affect listed species, then FWS or NMFS would have 90 days to prepare their Biological Opinion. The Biological Opinion may include an "Incidental Take" statement. This statement generally includes measures that an agency should take to reduce the impact of an action on a listed species. In situations where we know what action causes the impacts, we are usually required to develop and implement remedies to mitigate the impacts. In some instances, we may be asked to conduct studies to provide information regarding species' ecological needs.

In closing, let me say that the one thing the agency biologists and managers agree on is that there is no single cause of decline in endangered salmon populations. One of the frustrating parts about efforts to protect salmon is that the parties involved all argue that their action doesn't create an impact, but that something else (harvest regulation, watersheds, hatcheries, etc.) should be regulated more.

We will continue to participate in discussions about salmon recovery with the State of Idaho and the other salmon managers and will continue to comply with our responsibilities under the BiOp. I urge you, also, to remain involved and engaged in this process.

Sincerely,

A handwritten signature in cursive script that reads "John W. Keys, III". The signature is written in dark ink and is positioned above the typed name.

John W. Keys, III  
Regional Director

Enclosure.

**BIOLOGICAL ASSESSMENT OUTLINE  
FOR  
UPPER SNAKE RIVER BASIN CONSULTATION**

ESA Section 7 Consultation on the  
Bureau of Reclamation's Water Project Interim Operations and Maintenance Program  
Upstream From Lower Granite Dam

**I. Overview**

- A. Introduction (purpose, need, and actions that Reclamation is consulting on)
- B. Background
  - 1. ESA listing of Snake River salmon runs
  - 2. Reclamation consultation link to decision on COE Lower Snake dams
- C. Historical perspective on agricultural development above Lower Granite Dam with resulting changes in hydrologic conditions
  - 1. Developmental history of non-Federal irrigated agriculture in Upper Snake Basin
  - 2. Changes in natural hydrograph from non-Federal irrigated agriculture
  - 3. Development history of Federal irrigation projects
  - 4. Changes in hydrograph pursuant to development of Federal projects
- D. Biological Assessment content and scope
  - 1. Request for consultation
  - 2. Proposed action
  - 3. Geographical area of coverage
  - 4. Species and critical habitat
  - 5. Consultation process

**II. Description of Proposed Action**

- A. Introduction
- B. Discussion of BA appended materials utilized to describe Reclamation's proposed action

C. General description of the proposed action operating facilities (both reserved and transferred works)

1. Snake Basin above Milner Dam
2. Boise/Payette River Basins
3. Eastern Oregon basin
4. Other relevant Reclamation projects

D. General water project operations and maintenance

1. Reserved and transferred works
2. Water supply forecasting and coordination
3. Principal system operating strategies
  - a. Required operations
  - b. Other incidental operating considerations
4. Coordination with other entities
5. Facilities maintenance requirements

E. Snake Basin salmon flow augmentation (describe water acquisition program and management of the 427 KAF under the 1995 BiOp)

F. Examples of non-discretionary and discretionary operations and maintenance

**III. Previous and Ongoing ESA Section 7 Consultations in Project Area**

**IV. Non-Federal Contemporaneous and Cumulative Actions in Proposed Action Area**

**V. Species Account and Affects Analysis**

- A. Introduction
- B. Terminology utilized
- C. Summary of ESA listed, proposed, and candidate species to be evaluated in this BA
- D. ESA listed, proposed, and candidate species considered, but determined not to be present in project areas or not affected by project operations
- E. Assessment of ESA listed species
  1. Bald eagle
    - a. Status, Life History, and Habitat Requirements
    - b. Environmental Baseline Conditions in Project area
      - (1) Snake River Basin above Milner Dam
      - (2) Boise/Payette River Basins
      - (3) Little Wood Reservoir, Lewiston Orchards Project, and the Mann Creek Project
      - (4) Eastern Oregon basins
    - c. Effects of the Proposed Action
      - (1) Snake River Basin above Milner Dam
      - (2) Boise/Payette River Basins

- (3) Little Wood Reservoir, Lewiston Orchards Project, and the Mann Creek Project
    - (4) Eastern Oregon basins
  - d. Summary effects determination for bald eagle (including summary matrix and bald eagle map)
- 2. Peregrine falcon
  - a. Status, Life History, and Habitat Requirements
  - b. Environmental Baseline Conditions in Project area
    - (1) Snake River Basin above Milner Dam
    - (2) Boise/Payette River Basins
    - (3) Little Wood Reservoir, Lewiston Orchards Project, and the Mann Creek Project
    - (4) Eastern Oregon basins
  - c. Effects of the Proposed Action
    - (1) Snake River Basin above Milner Dam
    - (2) Boise/Payette River Basins
    - (3) Little Wood Reservoir, Lewiston Orchards Project, and the Mann Creek Project
    - (4) Eastern Oregon basins
  - d. Summary effects determination for peregrine falcon (including summary matrix and peregrine falcon map)
- 3. Grizzly bear
  - a. Status, Life History, and Habitat Requirements
  - b. Environmental Baseline Conditions in Project area--  
Snake River Basin above Milner Dam
  - c. Effects of the Proposed Action--  
Snake River Basin above Milner Dam
  - d. Summary effects determination for grizzly bear (including summary matrix and grizzly bear map)
- 4. Middle Snake River snails (2 - 4 species)
  - a. Status, Life History, and Habitat Requirements
  - b. Environmental Baseline Conditions in Project area
    - (1) Snake River Basin above Milner Dam
    - (2) Snake River Basin below Milner Dam
  - c. Effects of the Proposed Action
    - (1) Snake River Basin above Milner Dam
    - (2) Snake River Basin below Milner Dam
  - d. Summary effects determination for snails (including summary matrix and snail map)



5. Snake River Anadromous Fish
  - a. Steelhead
    - (1) Status, Life History, and Habitat Requirements
    - (2) Environmental Baseline Conditions in Lower Snake River
    - (3) Effects of the Proposed Action
  - b. Sockeye salmon
    - (1) Status, Life History, and Habitat Requirements
    - (2) Environmental Baseline Conditions in Lower Snake River
    - (3) Effects of the Proposed Action
  - c. Spring/summer chinook salmon
    - (1) Status, Life History, and Habitat Requirements
    - (2) Environmental Baseline Conditions in Lower Snake River
    - (3) Effects of the Proposed Action
  - d. Fall chinook salmon
    - (1) Status, Life History, and Habitat Requirements
    - (2) Environmental Baseline Conditions in Lower Snake River
    - (3) Effects of the Proposed Action
  - e. Summary effects determination for anadromous fish (including summary matrix and anadromous fish map)

6. Ute ladies' tresses
  - a. Status, Life History, and Habitat Requirements
  - b. Environmental Baseline Conditions in Project area--  
Snake River Basin above Milner Dam
  - c. Effects of the Proposed Action--  
Snake River Basin above Milner Dam
  - d. Summary effects determination for Ute ladies' tresses (including summary matrix and ladies' tresses map)

#### F. Assessment of ESA proposed species

1. Bull trout
  - a. Status, Life History, and Habitat Requirements
  - b. Environmental Baseline Conditions in Project area
    - (1) Boise/Payette River Basins
    - (2) Eastern Oregon basins
  - c. Effects of the Proposed Action
    - (1) Boise/Payette River Basins
    - (2) Eastern Oregon basins
  - d. Summary effects determination for bull trout (including summary matrix and bull trout map)

#### G. Assessment of ESA candidate species

1. Spotted frog

- a. Status, Life History, and Habitat Requirements
- b. Environmental Baseline Conditions in Project area
  - (1) Snake River Basin above Milner Dam
  - (2) Boise/Payette River Basins
  - (3) Little Wood Reservoir, Lewiston Orchards Project, and the Mann Creek Project
  - (4) Eastern Oregon basins
- c. Effects of the Proposed Action
  - (1) Snake River Basin above Milner Dam
  - (2) Boise/Payette River Basins
  - (3) Little Wood Reservoir, Lewiston Orchards Project, and the Mann Creek Project
  - (4) Eastern Oregon basins
- d. Summary effects determination for spotted frog (including summary matrix and spotted frog map)

## 2. Howell's spectacular thelypody

- a. Status, Life History, and Habitat Requirements
- b. Environmental Baseline Conditions in Project area--  
Snake River Basin above Milner Dam
- c. Effects of the Proposed Action--  
Snake River Basin above Milner Dam
- d. Summary effects determination for spectacular thelypody (including summary matrix and thelypody map)

## VI. Summary of Biological Assessment (summary matrix for all species with brief text stating "bottom line" effects for each species)

## VII. Appendix

- A. References Utilized
- B. Combined Reports on Snake Basin above Milner, the Boise/Payette basins, and the eastern Oregon projects
- C. Facilities operations manuals
- D. Hydrological Data
- E. Relevant Correspondence
- F. Public Involvement Process

	BUDGET		Difference
	1997 Budgeted	1998 Budgeted	
<b><u>HYDROGRAPHERS</u></b>			
Teton Basin	\$8,000	8,000	
Idaho Falls	\$4,500	4,500	
Lower Valley	5,000	5,000	
Henry's Fork	22,000	22,000	
Teton River	4,500	4,500	
<b>TOTAL</b>	<b>\$44,000</b>	<b>44,000</b>	
<b><u>RIVER RIDERS</u></b>			
Rigby & Heise Div.	\$6,500	6,500	
Blackfoot Division	3,000	3,000	
Swan Valley	5,500	5,500	
Upper Falls River	1,000	1,000	
Idaho Falls	900	900	
Willow Creek	3,200	3,200	
Milner	360	360	
<b>TOTAL</b>	<b>\$20,460</b>	<b>\$20,460</b>	
<b><u>PROGRAM EXPENSES</u></b>			
Automation	\$15,000	10,000	-5,000
Vitel	35,000	35,000	
Streamgaging	160,000	187,350	+27,350
U of I Studies	4,000	0	-4,000
Recharge		25,000	+25,000
<b>TOTAL</b>	<b>\$214,000</b>	<b>257,350</b>	<b>+43,350</b>
<b><u>EQUIPMENT EXPENSES</u></b>			
Office Equipment	\$1,000	1,000	
Computer, PC's	7,700	5,000	-2,700
Telephone	600	650	+50
<b>TOTAL</b>	<b>\$9,300</b>	<b>6,650</b>	<b>-2,650</b>
<b><u>PERSONNEL EXPENSES</u></b>			
Recharge Coordinator	\$18,600	18,600	
Earl Corless	0	12,000	+12,000
Retirement	6,800	6,800	
Social Security	6,200	6,200	
Mileage	20,000	20,000	
State Insurance Fund	4,800	4,800	
Employment Insurance	700	700	
Health Insurance	1,400	1,400	
Part-time help	2,400	2,400	
Misc. Hydrographer Exp.	1,000	1,000	
Treasurer	5,000	5,000	
<b>TOTAL</b>	<b>\$66,900</b>	<b>78,900</b>	<b>+12,000</b>
<b><u>MISCELLANEOUS EXPENSES</u></b>			
Otto Otter	\$1,000	1,000	
IWUA	1,000	1,000	
Postage	1,500	1,500	
Supplies	2,000	2,000	
Audit	5,000	5,000	
Meetings	3,500	3,500	
Legal Fees	15,000	15,000	
Committee of Nine	30,000	12,000	-18,000
<b>TOTAL</b>	<b>\$59,000</b>	<b>\$41,000</b>	<b>-18,000</b>

<b><u>WATERMASTER</u></b>			
IDWR Contract	\$290,000	321,000	+31,000
Report	3,000	3,000	
Travel	5,000	5,000	
Water Measurement District	200,000	200,000	
<b>TOTAL</b>	<b>\$498,000</b>	<b>529,000</b>	<b>+31,000</b>
<b><u>WD Consultants &amp; Attorneys</u></b>			
Rosholt, Ling, Rigby	\$400,000	400,000	
ERO	100,000	100,000	
Committee of Nine	10,000	10,000	
Watermaster	2,500	2,500	
<b>EXCESS USE</b>	100,000	100,000	
<b>ESA Contingency Fund</b>	50,000	50,000	
<b>Total</b>	<b>1,574,160</b>	<b>1,639,860</b>	<b>+65,700</b>
<b><u>UPPER VALLEY ADD ON</u></b>			
Legal	100,000	187,537	+87,537
<b>TOTAL BUDGET</b>	<b>\$1,674,160</b>	<b>1,827,397</b>	<b>+153,237</b>
<b><u>PROJECTED INCOME</u></b>			
<b><u>BREAKDOWN</u></b>			
Assessments	1,241,451	1,235,885	-5,566
North Measurement Dist.	100,000	100,000	
East Measurement Dist.	100,000	100,000	
Recharge	28,390	65,390	+37,000
Streamgaging	104,319	92,700	-11,619
Upper Valley Direct	100,000	233,422	+133,422
<b>TOTAL</b>	<b>1,674,160</b>	<b>\$1,827,397</b>	<b>+153,237</b>

1997 BUDGET COMPARISON

	1997 Budgeted	WD 1 Charges	Recharge Coordinator	Measuremen t Districts	1997 Actual
<b><u>HYDROGRAPHERS</u></b>					
Teton Basin	\$8,000	5,367			5,367
Idaho Falls	\$4,500	5,251			5,251
Lower Valley	5,000	2,554			2,554
Henry's Fork	22,000	21,240			21,240
Teton River	4,500	5,271			5,271
<b>TOTAL</b>	<b>\$44,000</b>	<b>39,683</b>			<b>39,683</b>
<b><u>RIVER RIDERS</u></b>					
Rigby & Heise Div.	\$6,500	5,115			5,115
Blackfoot Division	3,000	2,450			2,450
Swan Valley	5,500	5,450			5,450
Upper Falls River	1,000	852			852
Idaho Falls	900	825			825
Willow Creek	3,200	2,785			2,785
Milner	360	360			360
<b>TOTAL</b>	<b>\$20,460</b>	<b>17,837</b>			<b>17,837</b>
<b><u>PROGRAM EXPENSES</u></b>					
Automation	\$15,000	0			0
Vitel	35,000	32,500			32,500
Streamgaging	160,000	178,181			178,181
U of I Studies	4,000	0			0
<b>TOTAL</b>	<b>\$214,000</b>	<b>210,681</b>			<b>210,681</b>
<b><u>EQUIPMENT EXPENSES</u></b>					
Office Equipment	\$1,000	178			178
Computer, PC's	7,700	3,817			3,817
Telephone	600	619	189		808
<b>TOTAL</b>	<b>\$9,300</b>	<b>4,614</b>	<b>189</b>		<b>4,803</b>
<b><u>PERSONNEL EXPENSES</u></b>					
Recharge Coordinator	\$18,600		13,996		13,996
Retirement	6,800	4,417	1,638		6,055
Social Security	6,200	4,177	1,071		5,248
Mileage	20,000	15,952	4,860		20,812
State Insurance Fund	4,800	3,306			3,306
Employment Insurance	700	578	146		724
Health Insurance	1,400	0	936		936
Part-time help	2,400	2,400			2,400
Misc. Hydrographer Exp.	1,000	1,588	207		1,795
Treasurer	5,000	3,879			3,879
<b>TOTAL</b>	<b>\$66,900</b>	<b>36,297</b>	<b>22,854</b>		<b>59,151</b>
<b><u>MISCELLANEOUS EXPENSES</u></b>					
Otto Otter	\$1,000	608			608
IWUA	1,000	500			500
Postage	1,500	2,920			2,920
Supplies	2,000	914	175		1,089
Audit	5,000	5,500			5,500
Meetings	3,500	3,379			3,379
Legal Fees	13,000	1,006			1,006
Committee of Nine	30,000	9,870			9,870
<b>TOTAL</b>	<b>\$59,000</b>	<b>24,697</b>	<b>175</b>		<b>24,872</b>

**WATERMASTER**

IDWR Contract	\$290,000	305,427			305,427
Report	3,000	1,395			1,395
Travel	5,000	8,676	265		8,941
Water Measurement District	200,000			83,503	83,503
<b>TOTAL</b>	<b>\$498,000</b>	<b>315,498</b>	<b>265</b>	<b>83,503</b>	<b>399,266</b>

**WD Consultants & Attorneys**

Rosholt, Ling, Rigby	\$400,000	317,603			317,603
ERO	100,000	137,453			137,453
Committee of Nine	10,000	2,422			2,422
Watermaster	2,500	76			76

<b>EXCESS USE</b>	100,000	155			155
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<b>ESA Contingency Fund</b>	50,000	0			0
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<b>Total</b>	<b>1,574,160</b>	<b>1,107,016</b>	<b>23,483</b>	<b>83,503</b>	<b>1,214,002</b>
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**UPPER VALLEY ADD ON**

Legal	100,000	45,885			45,885
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<b>TOTAL BUDGET</b>	<b>\$1,674,160</b>	<b>1,152,901</b>	<b>23,483</b>	<b>83,503</b>	<b>1,259,887</b>
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**PROJECTED INCOME****BREAKDOWN**

Assessments	1,241,451	978,065			978,065
North Measurement Dist.	100,000	13,031		43,782	56,813
East Measurement Dist	100,000	11,601		39,721	51,322
Recharge	28,390		23,483		23,483
Streamgaging	104,319	104,319			104,319
Upper Valley Direct	100,000	45,885			45,885
<b>TOTAL</b>	<b>\$1,674,160</b>	<b>1,152,901</b>	<b>23,483</b>	<b>83,503</b>	<b>1,259,887</b>

12/15/97

**Water District 1  
Balance Sheet  
As of November 30, 1997**

Nov 30, '97

<b>ASSETS</b>		
<b>Current Assets</b>		
<b>Checking/Savings</b>		
100 · Petty Cash	50.00	
102 · Cash-Bank of Commerce	12,898.21	
104 · Cash-Merrill Lynch	118,234.50	
110 · ID TREAS-GENERAL-1526	997,847.42	
111 · ML-ERO/LEGAL FEES	163,329.80	
112 · Rental Contingency	97,953.15	
<b>Total Checking/Savings</b>	<b>1,390,313.08</b>	
<b>Accounts Receivable</b>		
120 · Assess.Receivables	124,335.63	
<b>Total Accounts Receivable</b>	<b>124,335.63</b>	
<b>Other Current Assets</b>		
121 · A/R - UV ATTY FEES	38,395.54	
122 · DUE FROM RENTAL POOL	17,256.82	
123 · Due from Eastern WMD	8,883.32	
124 · Due from Northern WMD	5,217.83	
132 · Funds Held By IDWR	13,037.58	
136 · INVENTORY	29,647.66	
140 · EQUIPMENT	23,591.97	
145 · ACCUM DEPRECIATN-EQUP	-15,369.38	
1499 · Undeposited Funds	15,164.06	
<b>Total Other Current Assets</b>	<b>135,825.40</b>	
<b>Total Current Assets</b>	<b>1,650,474.11</b>	
<b>TOTAL ASSETS</b>		<b>1,650,474.11</b>
<b>LIABILITIES &amp; EQUITY</b>		
<b>Liabilities</b>		
<b>Current Liabilities</b>		
<b>Accounts Payable</b>		
200 · Adjudication Payable	57.42	
<b>Total Accounts Payable</b>	<b>57.42</b>	
<b>Other Current Liabilities</b>		
<b>Payroll Liabilities</b>		
Federal Withholding	536.25	
FICA		
Company	411.53	
Employee	411.53	
FICA - Other	76.50	
<b>Total FICA</b>	<b>899.56</b>	
FUTA	1,295.06	
Gross		
Employee	597.33	
<b>Total Gross</b>	<b>597.33</b>	
Medicare		
Company	96.27	
Employee	96.27	
<b>Total Medicare</b>	<b>192.54</b>	
PERSI		
Company	779.53	
Employee	404.67	
<b>Total PERSI</b>	<b>1,184.20</b>	
State Withholding ID	434.06	
SUI		
Company	<b>-181.54</b>	

12/15/97

**Water District 1  
Balance Sheet  
As of November 30, 1997**

	<u>Nov 30, '97</u>
Total SUI	-181.54
2100 · SUIID	
2102 · Company	1,162.43
Total 2100 · SUIID	<u>1,162.43</u>
Total Payroll Liabilities	6,119.89
223 · Palisades Water Users, Inc.	2,950.00
250 · PAYROLL TAXES PAYABLE	753.17
260 · ACC VACATION PAYABLE	17,826.92
Total Other Current Liabilities	<u>27,649.98</u>
Total Current Liabilities	<u>27,707.40</u>
Total Liabilities	27,707.40
Equity	
300 · Operations Fund	1,030,084.00
3900 · Retained Earnings	606,635.53
Net Income	-13,952.82
Total Equity	<u>1,622,766.71</u>
TOTAL LIABILITIES & EQUITY	<u><u>1,650,474.11</u></u>



12/15/97

**Water District 1  
Profit and Loss  
November 1997**

	Nov '97
<b>Ordinary Income/Expense</b>	
<b>Income</b>	
400 · Fee Income	
410 · Delivery	-20.00
<b>Total 400 · Fee Income</b>	-20.00
480 · Dividend/Interest Income	
482 · Interest 1526-General 92	5,784.10
<b>Total 480 · Dividend/Interest Income</b>	5,784.10
490 · Miscellaneous Income	2.66
<b>Total Income</b>	5,766.76
<b>Expense</b>	
<b>Payroll Expenses</b>	
<b>Gross Wages</b>	
East MD Salary	130.20
North MD Salary	2,114.00
WD1 Salaries	4,713.63
<b>X-Medical Expenses</b>	
Medical - North	468.00
<b>Total X-Medical Expenses</b>	468.00
<b>Gross Wages - Other</b>	112.00
<b>Total Gross Wages</b>	7,537.83
<b>Payroll Taxes</b>	
FICA	467.33
FUTA	3.71
Medicare	109.32
<b>PERSI</b>	
Persi - WD1	679.33
PERSI - Other	48.85
<b>Total PERSI</b>	728.18
6502 · SUIID	28.49
<b>Total Payroll Taxes</b>	1,337.03
<b>Total Payroll Expenses</b>	8,874.86
599 · Operating Expenses	
600 · Program Expenses	
610 · Streamgaging	
611 · USGS Coop	
613 · D St. Rental USGS	2,865.67
<b>Total 611 · USGS Coop</b>	2,865.67
<b>Total 610 · Streamgaging</b>	2,865.67
630 · Palisaes Water Users	163.82
<b>Total 600 · Program Expenses</b>	3,029.49
650 · Personnel Expense	
660 · Mileage	
661 · Mileage(Wetzel/VonAchen)	0.00
665 · Mileage (Lindsay)	32.50
667 · Mileage (Richards)	420.00
668 · Mileage (Brown)	120.00
<b>Total 660 · Mileage</b>	572.50
675 · State Insurance Fund Exp.	2,833.00
680 · Hydrographer Misc Exp	2.05
<b>Total 650 · Personnel Expense</b>	3,407.55
700 · Miscellaneous	
725 · Fees for 1526,1620,1621	26.78

12/15/97

**Water District 1  
Profit and Loss  
November 1997**

	<u>Nov '97</u>
<b>Total 700 · Miscellaneous</b>	26.78
<b>750 · Watermaster</b>	
780 · Travel	35.00
<b>790 · MEASUREMENT DISTRICTS</b>	
792 · NORTHERN	
797 · Auto Expense - North	-89.76
792 · NORTHERN - Other	43.00
<b>Total 792 · NORTHERN</b>	<u>-46.76</u>
<b>Total 790 · MEASUREMENT DISTRICTS</b>	<u>-46.76</u>
<b>Total 750 · Watermaster</b>	-11.76
<b>955 · Committee of Nine</b>	
970 · DeWitt Moss	994.80
955 · Committee of Nine - Other	397.86
<b>Total 955 · Committee of Nine</b>	<u>1,392.66</u>
<b>975 · Upper Valley Expense</b>	
980 · Legal & Other Exp.	3,000.00
<b>Total 975 · Upper Valley Expense</b>	<u>3,000.00</u>
<b>Total 599 · Operating Expenses</b>	<u>10,844.72</u>
<b>Total Expense</b>	<u>19,719.58</u>
<b>Net Ordinary Income</b>	<u>-13,952.82</u>
<b>Net Income</b>	<u><u>-13,952.82</u></u>

12/16/97

# WATER DISTRICT 01-RENTAL POOL

## Balance Sheet

As of November 30, 1997

Nov 30, '97

### ASSETS

#### Current Assets

##### Checking/Savings

102 · US BANK	17,462.06
110 · TREAS-1621 - AG	5,391.74
111 · Treas- 1814 - RECHARGE	580,148.58
112 · TREAS-1620 - PWR	377,621.07
114 · TREAS 1722-BOR (2.05)	922,400.46

Total Checking/Savings 1,903,023.91

##### Accounts Receivable

Receivables 10,977.65

Total Accounts Receivable 10,977.65

#### Total Current Assets

1,914,001.56

### TOTAL ASSETS

1,914,001.56

### LIABILITIES & EQUITY

#### Liabilities

##### Current Liabilities

##### Other Current Liabilities

##### Suppliers

204 · 97 SUPPLIERS 234,507.51

##### Total Suppliers

234,507.51

##### Deposits

Deposits - Future Ag Rental 11,800.00  
Deposits - Recharge 577,277.25  
Deposit - BOR (2.05) 918,115.89

Total Deposits 1,507,193.14

##### 205 · PAYABLE-WR BOARD

143,674.37

##### 207 · INTEREST PAYABLE

1722 · BOR (2.05) INTEREST 4,284.57

1621 · AG ACCT - 1621 74.49

1814 · RECHARGE-1814 2,871.33

1620 · BOR - 1620 5,005.30

Total 207 · INTEREST PAYABLE 12,235.69

222 · DUE TO WATER DISTRICT 16,387.64

Total Other Current Liabilities 1,913,998.35

#### Total Current Liabilities

1,913,998.35

#### Total Liabilities

1,913,998.35

#### Equity

3000 · Open Bal Equity 3.21

#### Total Equity

3.21

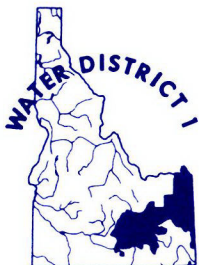
### TOTAL LIABILITIES & EQUITY

1,914,001.56

12/16/97

**WATER DISTRICT 01-RENTAL POOL**  
**Profit and Loss**  
**November 1997**

	<u>Nov '97</u>
<b>Income</b>	
470 · EXCESS USE REVENUE	-595.31
700 · Interest income	
701 · ag-1621 interest	25.16
702 · power-1620 interest	1,762.22
703 · TREASURER 1814 INTEREST	2,884.69
700 · Interest income - Other	4,304.50
<b>Total 700 · Interest income</b>	<u>8,976.57</u>
<b>Total Income</b>	<b>8,381.26</b>
<b>Expense</b>	
1100 · fee on acct 1621 &1620	41.57
1200 · Interest Paid	
1205 · 1722 INTEREST PAID	4,284.57
1203 · Interest Paid - Recharge	2,871.33
1201 · Ag Interest Pd	25.04
1202 · Power Interest Pd	1,754.06
<b>Total 1200 · Interest Paid</b>	<u>8,935.00</u>
1300 · Rental Pool Expenses	
1303 · WD 01 Fee	-595.31
<b>Total 1300 · Rental Pool Expenses</b>	<u>-595.31</u>
<b>Total Expense</b>	<b>8,381.26</b>
<b>Net Income</b>	<u><u>0.00</u></u>



State of Idaho  
**Water District 1**  
900 N. Skyline Dr., Suite A  
Idaho Falls, Idaho 83402-1718

RONALD CARLSON  
WATERMASTER

(208) 525-7172

Fax (208) 525-7177

RECEIVED

MEMORANDUM

DEC 05 1997

Department of Water Resources

IDWR DIRECTOR  
KARL J. DREHER

COMMITTEE OF NINE

CHAIRMAN  
Don Kramer

VICE CHAIRMAN  
Dell Raybould

James Siddoway  
Teton

Paul Berggren  
Blackfoot

Dale Rockwood  
Idaho Falls

DeWitt Moss  
Jerome

Leonard Beck  
Burley

Claude Storer  
Idaho Falls

Don Hale  
Blackfoot

TO: Karl J. Dreher, Director, Idaho Dept. of Water Resources  
Dave Tuthill, Adjudication Bureau Chief, Idaho Dept. of Water Resources

FROM: Tony Olenichak, <sup>J.D.</sup> Deputy Watermaster, Water District #1

DATE: December 1, 1997

RE: Idaho water rights diverting in Wyoming

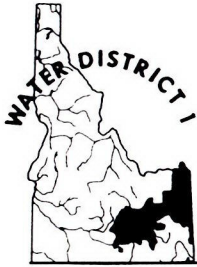
I believe the Idaho Department of Water Resources (IDWR) needs to allow water users diverting water from Wyoming, to a place of use in Idaho, to file a water right claim in the Snake River Basin Adjudication (SRBA). I have been trying to inventory the water rights in the Upper Teton Basin the past two years and have encountered many roadblocks. Idaho District Courts have decreed several water rights from tributaries of the Teton River that have points of diversion in Wyoming. Most of these water rights have not been claimed in the SRBA and the State of Wyoming does not have any record of them. In fact, the IDWR has refused to accept claims from these water users.

The Wyoming State Board of Control has proposed that water users who have Idaho water rights and divert water in Wyoming file claims in the SRBA (see November 17, 1997 letter from Jade Henderson, Wyoming Water Superintendent). A current inventory of the water rights is needed to insure accurate delivery of water rights in the future. The review procedures used by the adjudication staff and subsequent confirmation by the SRBA Court is the best way to verify the elements of these historical water rights.

There are approximately 81 decreed water rights on Teton Creek, Darby Creek, and Leigh Creek that have their entire place of use in Idaho but have canal headgates located in Wyoming. These water rights were decreed by the Idaho Sixth Judicial District Court in *Rexburg Irrigation vs Teton Irrigation* and the Idaho Ninth Judicial District Court in *R.E. Griggs vs Lynn Crandall*, *F.C. Gillette vs Lynn Crandall*, *Leigh Creek Canal vs Lynn Crandall*, *Grand Teton Canal vs Lynn Crandall*, *Garden Water Co vs Lynn Crandall*, *Martell Hansen vs Lynn Crandall*, *Federal Farm Mortgage vs Lynn Crandall*, and *Lowell A. Dalley vs Lynn Crandall*. The water users who own these decreed rights currently do not have any corresponding Wyoming water rights. In addition, there also appears to be additional beneficial use rights or expansions of Idaho decreed rights that have their entire places of use in Idaho and points of diversion in Wyoming. The difficulty in delivering water rights based on the historical Idaho decrees includes: the legal descriptions for the point of diversion were not listed; the places of use were inaccurate, not irrigated, or have been moved; expansions have occurred; and disputes between ownership.

It appears the biggest obstacle for inventorying water rights with points of diversion and places of use in different states is for both states to agree on a procedure to document water rights that is also acceptable to the SRBA Court. Judge Daniel C. Hurlbutt, Jr. has indicated there currently isn't any reason why these water right owners should be denied the right to file claims in the SRBA (see November 26, 1997 correspondence from Judge Hurlbutt). The Wyoming Board of Control has proposed that water users with Idaho water rights and Wyoming point of diversions file in the SRBA. However, the current IDWR policy is to reject any notice of claim which sets forth a point of diversion in Wyoming (Adjudications Memo #9, Item 6).

I have requested the Wyoming Board of Control delay its notification of Idaho water users who divert water from Wyoming that they file claims in the SRBA until you have had a chance to advise them of the IDWR's position in this matter. Copies of my correspondence with the State of Wyoming and the SRBA District Court are attached to this memorandum.



State of Idaho

# Water District 1

RONALD CARLSON  
WATERMASTER

(208) 525-7172

Fax (208) 525-7177

900 N. Skyline Dr., Suite A  
Idaho Falls, Idaho 83402-1718

December 1, 1997

IDWR DIRECTOR  
KARL J. DREHER

COMMITTEE OF NINE

CHAIRMAN  
Don Kramer

VICE CHAIRMAN  
Dell Raybould

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Dale Rockwood  
Idaho Falls

DeWitt Moss  
Jerome

Leonard Beck  
Burley

Claude Storer  
Idaho Falls

Don Hale  
Blackfoot

Jade Henderson, Wyoming Water Superintendent  
Wyoming Board of Control  
Town Hall Rm 2  
PO Box 277  
Cokeville, Wy 83114

RE: Idaho water rights diverting in Wyoming

Dear Jade:

I have reviewed the process, outlined in your November 17, 1997 correspondence, concerning the inventory and recording of water rights which divert water from Wyoming to irrigate lands in Idaho. I strongly agree that both states need a current listing of water users, along with points of diversion, priority dates, and places of use, to adequately manage the water supplies in the Upper Teton Basin.

The process you outlined requires that water users with Idaho water rights with diversions in Wyoming must petition the Wyoming State Board of Control and file a water right claim in the Snake River Basin Adjudication (SRBA). The review procedures used by the adjudication staff and subsequent confirmation by the Idaho District Court is the best way to verify the validity of historical water rights and water uses in Idaho. However, the current Idaho Department of Water Resources (IDWR) policy is to reject any SRBA claim that sets forth a point of diversion in Wyoming.

I have sent a request to Karl Dreher, IDWR Director, to review the current policy of rejecting claims with Wyoming points of diversion along with a copy of your correspondence outlining the procedures that will be used by the Wyoming Board of Control to inventory water rights in the Upper Teton Basin. I would request you delay your requirement for water users with Wyoming points of diversion to file in the SRBA until Karl Dreher has had a chance to review the policy.

It appears the biggest obstacle for inventorying water rights in the Upper Teton Basin is for both states to agree on a procedure to document water rights with points of diversion and places of use in different states. If the Wyoming Board of Control and the Idaho Department of Water Resources are both willing to have the SRBA determine the historical water rights used in Idaho, perhaps a joint notification from both agencies could be sent to these water users informing them of the filing requirements in order to insure future water deliveries.

Best regards,

Tony Olenichak  
Deputy Watermaster

cc: Karl Dreher, IDWR Director



RECEIVED

NOV 20 1997

JIM GERINGER  
GOVERNORDepartment of Water Resources  
Eastern RegionGORDON W. FASSETT  
STATE ENGINEER*Board of Control*Town Hall Rm 2, PO BOX 277  
COKEVILLE, WY 83114

(307) 279-3441

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ALLAN CUNNINGHAM  
ADJUDICATION OFFICERWILLIAM JONES, SUPERINTENDENT  
WATER DIVISION NO. 1  
MICHAEL WHITAKER, SUPERINTENDENT  
WATER DIVISION NO. 2  
CRAIG COOPER, SUPERINTENDENT  
WATER DIVISION NO. 3  
JADE HENDERSON, SUPERINTENDENT  
WATER DIVISION NO. 4

17 November 1997

Tony Olenichak, Deputy Watermaster  
Idaho Department of Water Resources, Water District 1  
900 North Skyline Drive  
Idaho Falls, ID 83402

Re: Idaho water rights diverting in Wyoming

Dear Tony:

When time has permitted, we have been further researching and pursuing questions discussed at our 2-state "summit" in Pocatello on October 15, 1996. The copy of your memo of February 10, 1997 was most helpful in detailing the twelve Idaho water rights from Teton Creek that divert inside Wyoming.

Without a formal call for priority regulation from within Wyoming, the problem of Idaho rights diverting inside Wyoming has not yet become immediately urgent. However, Wyoming has concluded that every one of the 12 Idaho rights you listed, plus similar diversions on South Leigh Creek, are presently without complete authorization to divert inside Wyoming. Attorney Ray Rigby has contacted Wyoming, in behalf of Idaho appropriators on South Leigh Creek, about seeking authorization to divert Idaho rights within Wyoming. Only one of the 12 Idaho rights on Teton Creek, and a portion of a second, have obtained conditional authorization to divert in Wyoming; but even for those two, the conditions have not been met. Such authorization must also be obtained, and conditions met, by Idaho appropriators on either creek before a legal crisis forces Wyoming to shut off all of these unauthorized diversions.

Rather than stop Idaho appropriators from diverting in Wyoming, we would rather legalize all these diversions consistent with their original apportionments under the interstate Roxanna Decree. The attachment to this letter details the different problems for these Idaho rights on Teton Creek, and the solutions. These principles also apply to South Leigh Creek.

It is our intent to first send notice to the respective canal organizations which service these Idaho lands, advising them of the requirements to petition the Wyoming State Board of Control. We may then follow up with letters to the individual landowners. As part of the petition process, Wyoming will require that all the Idaho rights seeking authorization to divert in Wyoming must go through the Idaho Snake River Basin Adjudication. We can also provide the SRBA with detail of the additional Wyoming rights on Idaho lands.

If you have any suggestions as to this process, we would be interested to hear from you.

Best regards,

Jade Henderson  
Wyoming Water Superintendent

JH/lif

copy: Jeff Fassett, WY State Engineer  
Sue Lowry, WY Interstate Streams  
Loren Smith, WY Asst Supt  
Meredith Wilson, WY Water CommissionerRay Rigby, Attorney  
Ron Carlson, ID Regional Engineer  
Lyle Swank, ID Asst Watermaster  
Dee OBrien, ID River Commissioner



ATTACHMENT (letter to Tony Olenichak)  
Problems and Solutions for Idaho Water Rights Diverting in Wyoming

List of Idaho rights on Teton Creek diverting in Wyoming

22-0144	Grand Teton Canal	1/22/1916 (210 cfs)
22-0626	Grand Teton Canal	1/22/1916 (3.2 cfs)
22-0277	Grand Teton Canal	5/01/1892 (17.23 of 127.2 cfs changed to North Side Canal)
9/17/1948	Central/Rigby Canal	4/11/1896 (1.34 cfs)
3/27/1942	Pratt Ditch	4/01/1894 (all 5.6 cfs changed to North Side Canal)
22-0019	South Side Canal	1/22/1916 (9.6 cfs)
22-0085	South Side Canal	1/22/1916 (2.0 cfs)
22-0080	South Side Canal	1/22/1916 (13.3 cfs)
22-0237	South Side Canal	6/01/1893 (3.2 cfs)
22-0020	Waddell Ditch	1/22/1916 (6.4 cfs)
22-0081	Waddell Ditch	1/22/1916 (10.4 cfs)
22-0567	Waddell Ditch	9/01/1891 (4.0 cfs)

Of these 12 Idaho water rights, those in Grand Teton Canal were apportioned from Idaho's share under the interstate Roxanna Decree. The Central/Rigby Canal right under decree of 9/17/1948 overlaps lands claimed under the 17.23 cfs transfer from Grand Teton Canal, and was decreed after the date of the Roxanna Decree (2/04/1941).

If the Central/Rigby Canal right is to be diverted in Wyoming, its appropriator(s) must petition Wyoming's State Board of Control for change in Point of Diversion and Means of Conveyance, and will be required to define & confirm its entitlement through Idaho's Snake River Basin Adjudication.

The remaining 8 Idaho rights appear to be in Wyoming apportionment canals under the Roxanna Decree, although the transferred Pratt Ditch right was not decreed until 3/27/1942.

Idaho rights in Wyoming apportionment canals

Of these 8 Idaho rights that should apparently be counted (together with Wyoming's various rights) out of Wyoming's half of low Teton Creek flows, only 1 has been given conditional authorization to divert in Wyoming, but the conditions of that transfer and the Roxanna apportionment have not been met. Diversion of this 5.6 cfs Idaho right, decreed in 1942 and later changed from Pratt Ditch to the North Side Pipe Line lateral of North Side Canal, could be shut off because of its failure to be confirmed as being fully entitled to a legal appropriation for 309.5 acres under the laws of Idaho (even though it may be charged against Wyoming's apportionment). Your memo reports these acres as partially outside the lands originally decreed in 1942, and places this right in conflict with 2 other SRBA claims.

The owners of these 309.5 acres transferred from Pratt Ditch to North Side Canal must define & confirm their Idaho rights under SRBA. If they comply, they already have conditional approval to divert in Wyoming and potentially remain accounted from Wyoming's share subject to Wyoming's priority regulation. Should the full transfer not be confirmed under SRBA as a pre-Roxanna right (pre-1941), they may need to petition the Wyoming State Board of Control for an adjustment.

The other 7 Idaho rights in Wyoming apportionment canals (22-0019, 22-0085, 22-0080, 22-0237, 22-0020, 22-0081, 22-0567) also risk being shut off inside Wyoming because they have not received authorization from Wyoming and because they have not confirmed their legal entitlements as required by the Roxanna

Decree. 22-0081 overlaps lands already under 22-0567. Partial overlap exists between 22-0237 & 22-0080, between 22-0237 & 22-0567, and with some lands under Wyoming Permit 7420.

The owners of these rights must petition the Wyoming State Board of Control to authorize their Points of Diversion inside Wyoming, or apply for a new Wyoming water right. Wyoming will require that Idaho rights be defined & confirmed as pre-1941 through the SRBA in order to remain accounted from Wyoming's apportionment subject to Wyoming's priority regulation.

Consistent with the Roxanna Decree, Wyoming will determine the priority regulation of rights supplied under Wyoming's apportionment, and it is likely that any pre-1941 Idaho right seeking recognition thereunder will be treated with a priority dated to the effective date of the interstate Roxanna Decree (2/04/1941).

#### Idaho apportionment changed to a Wyoming canal

Your analysis regarding the Idaho apportionment right, that obtained from Wyoming a conditional change in Point of Diversion, could also threaten severe ramifications on those Idaho water users. If Idaho's position is that an Idaho apportionment water right transferred into a Wyoming apportionment canal must now be charged to Wyoming's apportionment under the Roxanna Decree, then Wyoming must deny diversion of the 17.23 cfs portion of 22-0277 changed from Grand Teton Canal to the Grand Teton Pipe Line lateral of North Side Canal. This transfer was conditional upon it remaining apportioned from Idaho's share. Historically, our 2 water commissioners have jointly accounted this transferred diversion against Idaho's share.

In addition, according to your memo the transferred portion of 22-0277 cannot be confirmed as entitled to a full 17.23 cfs for all 1288 acres, is partly overlapped by the Central/Rigby right decreed in 1948, and there are no claims filed under SRBA to define any of 22-0277. Therefore, this 17.23 cfs does not meet the other condition of the transfer: that it must be fully entitled to a legal appropriation under the laws of Idaho.

These Idaho appropriators must define & confirm their 22-0277 right through SRBA. Once that is accomplished, they already have conditional approval to divert in Wyoming if their diversion remains accounted from Idaho's share subject to Idaho's priority regulation. Should this full transfer not be confirmed under SRBA, they may need to petition the Wyoming State Board of Control for an adjustment.

In recognizing Idaho apportionments diverting in Wyoming, the Wyoming water commissioner's control of those diversions can be according to Idaho's priority regulation instructions, as provided in the Roxanna Decree.

#### Idaho rights remaining in the Idaho apportionment canal

The remainder of 22-0277, along with the 2 other Grand Teton Canal rights 22-0144 & 22-0626, likewise appear to be currently excluded from Idaho's SRBA because they divert inside Wyoming. Neither have they sought authorization from Wyoming to divert within Wyoming. 22-0144 has overlap with land descriptions under 22-0277.

In order to avoid being shut off in Wyoming, these Grand Teton Canal diversions must petition the Wyoming State Board of Control to authorize their Point of Diversion in Wyoming, or apply for a new Wyoming water right. Wyoming will require that Grand Teton Canal diversions remain apportioned out of Idaho's share, and that Idaho rights confirm through SRBA their legal entitlements as required by the Roxanna Decree.

In recognizing Idaho apportionments diverting in Wyoming, the Wyoming water commissioner's control of those diversions can be according to Idaho's priority regulation instructions, as provided in the Roxanna Decree.

#### Lands irrigated from Teton Creek without a water right from either state

Two pieces of Idaho land are irrigated from Wyoming diversions on Teton Creek without the benefit of a Wyoming water right, and without being described under any of your 12 listed Idaho rights. 120 acres owned by Christensen Family Trust in the N $\frac{1}{2}$ S $\frac{1}{2}$  of Section 30, T5N R46E, appear to be under sideroll from Waddell Ditch; while 100 acres owned by Hibbert Farms in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  and E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31 and the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 32, T5N R46E, appear to be under sideroll from South Side Canal.

Such lands that do not have Idaho rights on Teton or South Leigh creeks pre-dating the 1941 Roxanna Decree will likely need to apply for a new Wyoming water right.

#### Post-1941 Wyoming rights for Idaho lands

Wyoming has issued 2 permits through North Side Canal for additional lands in Idaho since the Roxanna Decree in 1941. Both of these new permits were specifically conditioned as being valid only if charged against Idaho's apportionment. (The 44-acre permit is further invalidated by overlapping lands named under the 5.6 cfs transfer from Pratt Ditch.)

Since your analysis indicates that these Idaho lands will not be supplied under Idaho's apportionment, Wyoming will deny diversion for these respective 116 and 44 acres whenever there is a call for regulation within Wyoming's apportionment on Teton Creek.

#### Summary

Regardless from which state's apportionment they are accounted under the interstate Roxanna Decree, all of these Idaho lands irrigated from Teton Creek diversions within Wyoming presently risk being shut off in Wyoming. (The same holds true for Idaho rights on South Leigh Creek diverting inside Wyoming.) The general requirements for these Idaho water rights under the Roxanna Decree to gain Wyoming authorization, as detailed more specifically above, involves petitioning Wyoming's State Board of Control and going through Idaho's Snake River Basin Adjudication.

With Wyoming's irrigation duty of 70 acres for each 1 cfs, and these Idaho rights ranging from 115 to 33.5 to unknown acreages, it is suggested that perhaps the SRBA should consider whether a more uniform flow rate is appropriate on the rights within the Teton and South Leigh basins.

On any stream, Wyoming may not automatically accept Idaho priorities that seek diversion inside Wyoming (except for those confirmed rights that are under Idaho's apportionment of the interstate Roxanna Decree and subject to Idaho's priority regulation schedule).

Wyoming has already sent notification to users in either state who have Wyoming rights under South Side Canal or Dalley-Hullett Ditch but have yet to legalize their changes into different ditches. (Some of these lands under Wyoming Permit 7420 have an overlapping Idaho right under 22-0080, and may be required to relinquish their Idaho claim.) All other Wyoming rights appear to be in order, diverted through their legal ditch.

Soon to be notified are Idaho water users under the Roxanna Decree without authorization to divert in Wyoming, along with Christensen Family Trust and Hibbert Farms who are apparently irrigating some lands without any water rights at all.

DISTRICT COURT  
SNAKE RIVER BASIN ADJUDICATION  
STATE OF IDAHO



DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
(208) 736-3011  
FAX (208) 736-2121

November 26, 1997

SRBA CHAMBERS  
P.O. BOX 2707  
TWIN FALLS, IDAHO 83303-2707

Tony Olenichak  
Deputy Water Master  
State of Idaho Water District 1  
900 North Skyline Drive, Suite A  
Idaho Falls, ID 83402-1718

Dear Mr. Olenichak,

I write to respond to your November 25, 1997, letter asking whether the SRBA District Court has issued an opinion concerning the acceptance of SRBA claims for water rights decreed by Idaho District Courts which have points of diversion outside the state of Idaho, specifically in Wyoming.

The SRBA District Court has not been presented with this issue, nor has it issued any opinion on whether or not water rights with points of diversion outside the state of Idaho can be claimed in the SRBA. Therefore, whatever policy IDWR may have adopted about such claims in the SRBA is not based on any decision of this court.

You have indicated that this specific question arises concerning 55 previously decreed Idaho water rights and cite the specific Idaho District Court decrees. While I cannot guess whether any claimants in the SRBA would challenge the jurisdiction of the SRBA court to decree those 55 previously decreed rights, it is inconceivable to me that those people holding decreed water rights could be denied the right to file claims in the SRBA. Of course, by filing claims in the SRBA, I make no comment or decision about whether they can or will be decreed by the SRBA Court. I am only saying that these people with previously decreed rights do have a right to file their claim in the SRBA and present their claim to the court if it is either not recommended by IDWR or challenged by another water user.

I will send a copy of this letter to Karl J. Dreher, Director of the Idaho Department of Water Resources, inviting his review and comment.

Thank you for your inquiry and if I can be of further service to you on this or any other aspect of the SRBA, please contact me at your convenience.

Sincerely yours,

Daniel C. Hurlbutt, Jr.  
Presiding Judge  
Snake River Basin Adjudication

H/dd

cc: Karl J. Dreher



State of Idaho

# Water District 1

RONALD CARLSON  
WATERMASTER

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900 N. Skyline Dr., Suite A  
Idaho Falls, Idaho 83402-1718

November 25, 1997

IDWR DIRECTOR  
KARL J. DREHER

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VICE CHAIRMAN  
Dell Raybould

James Siddoway  
Teton

Paul Berggren  
Blackfoot

Dale Rockwood  
Idaho Falls

DeWitt Moss  
Jerome

Leonard Beck  
Burley

Claude Storer  
Idaho Falls

Don Hale  
Blackfoot

SRBA District Court  
PO Box 2707  
Twin Falls, ID 83303-2707

RE: Idaho Water Rights diverted in Wyoming

Dear Sir or Madame:

I'm seeking information as to whether or not the SRBA District Court has issued an opinion concerning the acceptance of SRBA claims of water rights decreed by Idaho District Courts but have points of diversion just across the state line in Wyoming. Specifically, I'm concerned about the tributaries to the Teton River in Basin 22. There are several water rights in this area that have their entire place of use in Idaho but have flood irrigation system headgates located upstream across the state line in Wyoming (below Wyoming water users). Water District 1 and the Wyoming Water Superintendent have historically delivered these rights based on Idaho District Court decrees and the *Roxana Canal Company vs. Charles Daniels* decree issued by the U.S. District Court.

It appears there are 55 decreed water rights on Teton Creek and Leigh Creek that have their entire place of use in Idaho but have canal headgates located in Wyoming. These water rights were decreed by the Sixth Judicial District Court of Idaho in *Rexburg Irrigation Co. vs Teton Irrigation Co.* and the Ninth Judicial District Court of Idaho in *R.E. Griggs vs Lynn Crandall*, *F.C. Gillette vs Lynn Crandall*, *Leigh Creek Canal Co. vs Lynn Crandall*, *Grand Teton Canal Co. vs Lynn Crandall*, *Martell Hansen vs Lynn Crandall*, *Federal Farm Mortgage Corp. vs Lynn Crandall*, and *Lowell A. Dalley vs Lynn Crandall*. The water users who own these decreed rights currently do not have any corresponding Wyoming water rights. The Wyoming Water Superintendent has asked me to comment on a process they plan to implement requesting that these water users file water right claims in the SRBA before seeking future authorization to divert water from Wyoming for their current usage in Idaho.

The Idaho Water Resources Department (IDWR) currently has a policy to reject any SRBA claim with a point of diversion in Wyoming. I assume this IDWR policy is based on an opinion issued by the SRBA District Court but have been unable to find any supporting documentation. Could you send me any documentation which prohibits water users who have Idaho decreed water rights and Idaho places of use (but have points of diversion in Wyoming) from filing water right claims in the SRBA so I may respond to the Wyoming Water Superintendent's inquiry?

Sincerely,

Tony Olenichak  
Deputy Watermaster