

DATE: ¹² 8 August 2013

TO: Sawtooth Law Offices, PLLC

FROM: NAMPA & MERIDIAN IRRIGATION DISTRICT

License Agreement(s) Approved
Board Meeting 16 July 2013

Operation and Easement Agreement
Idaho Department of Fish & Game
Instrument #2013-036811

33 pages

63-7879

63-9194

63-32695

63-32695A

63-32695B

63-33739

2013-036811

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CHRIS YAMAMOTO

CANYON COUNTY RECORDER

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EASEMENT

NAMPA & MERIDIAN IRRIGATION

OPERATIONS AND EASEMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 11th day of July, 2013, by and between NAMPA & MERIDIAN IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho ("NMID"), and the IDAHO DEPARTMENT OF FISH & GAME, an agency of the State of Idaho, ("IDFG").

WITNESSETH:

WHEREAS, IDFG owns, operates and maintains the Nampa Fish Hatchery and six ground water wells ("IDFG Wells") and pumps ("IDFG Wells Pumps") on the real property owned by IDFG ("Nampa Fish Hatchery Property") more particularly described in the "Legal Description - Nampa Fish Hatchery Property" attached hereto as **Exhibit A** and by this reference made a part hereof.

WHEREAS, IDFG owns, operates and maintains recreational fishing ponds commonly known as the "Wilson Springs Ponds" on the real property owned by IDFG ("Wilson Springs Ponds Property"), consisting of three parcels more particularly described in the "Legal Description - Wilson Springs Ponds Property" attached hereto as **Exhibit B** and by this reference made a part hereof.

WHEREAS, NMID owns two ground water wells ("Patterson Wells") on the real property owned by NMID ("Patterson Wells Property") more particularly described in the "Legal Description - Patterson Wells Property" attached hereto as **Exhibit C** and by this reference made a part hereof. IDFG owns the pumps that divert water from the Patterson Wells ("Patterson Wells Pumps").

WHEREAS, NMID owns the Bray Lateral, a manmade irrigation ditch that was constructed and is owned, operated, and maintained by NMID as an integral part of NMID's irrigation and drainage works and system, together with an easement therefor (as more particularly described in Section 8 below) to convey irrigation and drainage water, to operate, clean, maintain, and repair the Bray Lateral, and to access the Bray Lateral for those purposes. The Bray Lateral crosses and intersects IDFG's Nampa Fish Hatchery Property and IDFG's Wilson Springs Ponds Property as shown in **Exhibit D**, attached hereto and by this reference made a part hereof.

WHEREAS, NMID owns the Wilson Drain, a manmade irrigation drain that was constructed and is owned, operated, and maintained by NMID as an integral part of NMID's irrigation and drainage works and system, together with an easement therefor (more particularly described in Section 8 below) to convey irrigation and drainage water, to operate, clean,

maintain, and repair the Wilson Drain, and to access the Wilson Drain for those purposes. The Wilson Drain crosses and intersects IDFG's Wilson Springs Ponds Property as shown in **Exhibit D**.

AND, WHEREAS, NMID and IDFG or IDFG's predecessor-in-interest entered into the following three agreements pertaining to the diversion, use, and delivery of water under water right nos. 63-32695A and 63-32695B, 63-7879, and 63-9194:

- A. License Agreement dated December 18, 1973 between NMID and Byron V Anderson and Sonya J Anderson, ("IDFG's predecessor-in-interest"), recorded as Canyon County Instrument No. 720649 (the "1973 Agreement");
- B. Supplement to License Agreement dated July 5, 1989, between NMID and IDFG's predecessor-in interest, recorded as Canyon County Instrument No. 8912645 (the "1989 Agreement"); and
- C. License Agreement dated September 24, 1991 recorded as Canyon County Instrument No. 9119419 (the "1991 Agreement").

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, agreements, and conditions hereinafter set forth, the parties agree as follows:

1. **Purpose of Agreement.** NMID and IDFG acknowledge and agree that their respective uses of water from the Patterson Wells and the IDFG Wells are interrelated. By entering this Agreement, NMID and IDFG intend to clarify the terms and conditions under which their respective water rights will be diverted and delivered.
2. **NMID-IDFG Agreements Superseded.** This Agreement supersedes and replaces the 1973 Agreement, the 1989 Agreement, and the 1991 Agreement in their entirety.
3. **Recitals Incorporated.** The recitals stated above are contractual in nature and are not mere recitals, and are hereby incorporated into this Agreement.
4. **Water Rights, Water Uses, and Drainage.**
 - a. **Stipulation to Elements of the Partial Decrees.** NMID and IDFG agree to enter into Standard Form 5 ("SF5") settlement agreements in the SRBA regarding water right nos. 63-32695A, 63-32695B, 63-7879, and 63-9194. NMID and IDFG agree and stipulate that the SF5s will describe the elements of these water rights as per the attached **Exhibit E**.
 - b. **NMID's Late Claim No. 63-33739.** On January 31, 2013, NMID filed a Motion to File Late Claim for water right no. 63-33739. In the event water right no. 63-33739 is decreed, NMID hereby subordinates water right no. 63-33739 to IDFG's junior water

right nos. 63-7879, 63-9194, and 63-11256. NMID agrees that a condition, enforceable by IDWR, that subordinates water right no. 63-33739 to IDFG's water right nos. 63-7879, 63-9194, and 63-11256 and their progeny will appear on the face of the partial decree for water right no. 63-33739.

- c. **IDFG Water Rights and Uses.** IDFG's beneficial use of water on the Nampa Fish Hatchery Property occurs pursuant to IDFG water right nos. 63-7879 and 63-9194. The source of water right nos. 63-7879 and 63-9194 is ground water diverted from the Patterson Wells and the IDFG Wells.
- d. **NMID Water Rights and Uses.** NMID's use of water pursuant to water right nos. 63-32695A and 63-32695B occurs within NMID boundaries. Diversion of water under water right nos. 63-32695A and 63-32695B is measured at the Bray Lateral Weir ("Bray Lateral Weir.") The source of NMID's water right nos. 63-32695A and 63-32695B is ground water diverted from the Patterson Wells, the IDFG Wells, and several small artesian springs arising upstream of the Bray Lateral Weir.
- e. **NMID and IDFG Uses of Water.** NMID agrees that IDFG may use water diverted from the Patterson Wells in the Nampa Fish Hatchery for fish propagation prior to NMID's use of the water for irrigation. IDFG agrees that NMID may use water diverted from the IDFG Wells for the purpose of irrigation after the water has been used by IDFG for fish propagation.
- f. **Change In Water Rights.** Neither party may transfer any of the points of diversion listed in water right nos. 63-32695A, 63-32695B, 63-7879, and 63-9194 to a different location, or make any other change to the water rights that may affect either party's rights or obligations under this Agreement, without the express prior written consent of the other party. Neither party may modify the water conveyance system described in Section 5 without the express prior written consent of the other party.
- g. **Well Interference Action.** In recognition that IDFG's and NMID's uses of the Patterson Wells and IDFG Wells are interrelated, both IDFG and NMID agree not to bring a well interference action against the other.
- h. **IDFG Drainage to the Bray Lateral and the Wilson Drain.** NMID agrees that IDFG may drain and discharge water from the Patterson Wells, the IDFG Wells, and the Wilson Springs Ponds to the Bray Lateral and/or to the Wilson Drain as provided herein. IDFG shall reduce or suspend draining or discharging water into the Bray Lateral and/or the Wilson Drain upon verbal notice from NMID in accordance with Section 14 to prevent flooding or damage to the Bray Lateral and/or the Wilson Drain.

5. **Water Conveyance System Description.** The conveyance of water utilized pursuant to water right nos. 63-7879, 63-9194, 63-32695A, and 63-32695B is described as follows. The property and facilities described below are shown in **Exhibit D**.

a. **Diversions from the Patterson Wells and the IDFG Wells.**

- i. **Diversions into the Nampa Hatchery.** Water from the Patterson Wells and the IDFG Wells is diverted into the Nampa Fish Hatchery raceways, then discharged from the raceways into a settling pond (the "Nampa Fish Hatchery Pond") located east of South Powerline Road on the Nampa Fish Hatchery Property.
- ii. **Diversion Directly to the Bray Lateral.** A control gate and a pipe that crosses under East Locust Road are capable of diverting water from the Patterson Wells directly into the Bray Lateral ("Patterson Wells Discharge Pipe").

b. **Nampa Fish Hatchery Pond Outlets.** Water can be conveyed from the Nampa Fish Hatchery Pond through the following two outlet structures:

- i. **Primary Hatchery Outlet.** An outlet conveys water from the northwestern portion of the Nampa Fish Hatchery Pond underneath South Powerline Road. After passing under the road, the water enters a concrete control structure (the "Primary Hatchery Outlet") capable of conveying water into the Wilson Springs Ponds and/or discharging it into the Wilson Drain. The Primary Hatchery Outlet is described in sheets 2 of 14 and 5 of 14 of the plans that were prepared by IDFG and approved by NMID in the 1991 Agreement entitled "Wilson Springs Pond Development Project for Idaho Department of Fish & Game, Site Plan," bearing engineer stamp dated April 3, 1990 ("Wilson Springs Ponds Plans"). The Wilson Springs Ponds Plans have been delivered to NMID's water superintendent, and are in his possession in his offices. They are also on file with the IDFG Engineering Bureau and at the IDFG Southwest Region Office. They are hereby incorporated by this reference.
 - ii. **Secondary Hatchery Outlet.** An outlet structure consisting of a valve gate and culvert is capable of conveying water from the northeast side of the Nampa Fish Hatchery Pond directly into the Bray Lateral (the "Secondary Hatchery Outlet").
- c. **Wilson Springs Ponds Outlet.** Water conveyed from the Primary Hatchery Outlet into the Wilson Springs Ponds flows northwest through the Wilson Springs Ponds. At the northwest corner of the Wilson Springs Ponds water passes through rolling fish screens and over dam boards before entering a second concrete control structure. ("Wilson Springs Ponds Outlet"). From the Wilson Springs Ponds Outlet, the water may be discharged into the Wilson Drain and/or conveyed to the Bray Lateral. The Wilson Springs Ponds Outlet is described in sheets 4 of 14, 6 of 14, 7 of 14 and 8 of 14 of the Wilson Springs Ponds Plans.

- d. **Bray Lateral Weir.** From the Wilson Springs Ponds Outlet, water conveyed into the Bray Lateral flows a short distance to the Bray Lateral Weir. NMID water right nos. 63-32695A and 63-32695B will be measured by NMID at the Bray Lateral Weir utilizing a recognized and verified measurement technique acceptable to both IDFG and NMID. The measurement device will be calibrated at intervals agreed to by NMID and IDFG. Reasonable efforts will be made by NMID and IDFG to communicate with each other to resolve concerns that may arise regarding measurements taken at the Bray Lateral Weir.
6. **Water Conveyance System Operation.** During the irrigation season, as defined by NMID's water right nos. 63-32695A and 63-32695B, NMID and IDFG shall control, operate and maintain the water conveyance system as follows to ensure delivery of water required by NMID under water right nos. 63-32695A and 63-32695B, up to 24 cfs, to the Bray Lateral Weir:
- a. **General Operation:**
 - i. **Patterson and IDFG Well Diversions.** IDFG shall control, operate, and maintain the Patterson Wells Pumps and the IDFG Wells Pumps to divert water from the Patterson Wells and from the IDFG Wells into the Nampa Fish Hatchery.
 - ii. **Patterson Wells Discharge Pipe.** NMID shall control, operate, and maintain the Patterson Wells Discharge Pipe. NMID shall not use the Patterson Wells Discharge Pipe except as provided in 6.b.vi.
 - iii. **Nampa Fish Hatchery.** IDFG shall control, operate and maintain the Nampa Fish Hatchery raceways and the Nampa Fish Hatchery Pond.
 - iv. **Primary Hatchery Outlet.** IDFG shall control, operate, and maintain the Primary Hatchery Outlet. Prior to adjusting water flow through the Primary Hatchery Outlet, IDFG shall provide NMID verbal notice, in accordance with Section 14, to confirm that NMID will continue to receive the quantity of water it requires.
 - v. **Secondary Hatchery Outlet.** NMID shall control, operate, and maintain the Secondary Hatchery Outlet. NMID shall not use the Secondary Hatchery Outlet except as provided for in section 6.b.v.
 - vi. **Wilson Springs Ponds Outlet.**
 - (a) **NMID Control.** NMID shall control and operate the Wilson Springs Ponds Outlet concrete control structure in a manner that will not adversely affect IDFG's management of or cause physical damage to the Wilson Springs Ponds Property.

- (b) **IDFG Control.** IDFG shall control and operate the Wilson Springs Ponds Outlet rolling screens and dam boards. IDFG shall maintain the Wilson Springs Ponds Outlet rolling screens, dam boards, and concrete control structure.
- b. **Operation when NMID is not Receiving up to 24 cfs.** In the event NMID is not receiving the quantity of water it requires, NMID and IDFG shall make the following adjustments to ensure delivery of up to 24 cfs, measured at the Bray Lateral Weir:
 - i. **NMID Adjustments.** NMID shall have the discretion to determine which of the following conveyance works to adjust:
 - (a) the Wilson Springs Ponds Outlet concrete control structure, and/or
 - (b) the outlet from the Bray Lateral to the Wilson Drain located upstream from the Bray Lateral Weir.NMID may make such adjustments without providing notice to IDFG.
 - ii. **NMID Notice to IDFG.** If NMID's adjustments referenced in section 6.b.i. do not provide NMID the quantity of water it requires, NMID shall provide IDFG verbal notice, in accordance with Section 14, that adjustments to conveyance structures under IDFG's control are needed.
 - iii. **IDFG Adjustments.** Within 24 hours after receiving notice from NMID pursuant to section 6.b.ii, IDFG shall make adjustments to the conveyance and diversion works under its control to ensure that NMID receives the water it requires. IDFG shall have the discretion to determine which of the following conveyance works, or combination thereof, to adjust:
 - (a) the Primary Hatchery Outlet; and/or
 - (b) the Wilson Springs Ponds Outlet dam boards.

If adjustments to the IDFG-controlled conveyance works under Section 6.b.iii (a)-(b) do not deliver to NMID the water it requires, IDFG shall increase the diversion of water from the Patterson Wells and/or the IDFG Wells to deliver the quantity of water NMID requires, and NMID shall reimburse IDFG for power costs in accordance with Section 7.c.

- iv. **24-Hour Response Time.** If, within 24 hours after NMID provides verbal notice to IDFG pursuant to Section 6.b.ii., IDFG fails to make the necessary adjustments as outlined in section 6.b.iii to deliver the quantity of water required by NMID, NMID may adjust the Primary Hatchery Outlet so as to receive the quantity of water it requires, so long as such adjustments do not adversely affect IDFG's management of or cause physical damage to the Wilson Springs Ponds Property.

- v. **Use of the Secondary Hatchery Outlet.** NMID may use the Secondary Hatchery Outlet only after it has provided IDFG verbal notice, in accordance with Section 14, to confirm that the water NMID requires cannot adequately be conveyed through the Primary Hatchery Outlet, and that use of the Secondary Hatchery Outlet will not adversely affect Nampa Fish Hatchery or Wilson Springs Ponds operations and/or result in a violation of IDFG's NPDES permit.
 - vi. **Use of the Patterson Wells Discharge Pipe.** If the water delivery adjustments described in sections 6.b.i through 6.b.v. have been made or requested and NMID does not receive the quantity of water it requires, NMID may use the Patterson Wells Discharge Pipe to deliver such quantity of water to the Bray Lateral Weir so long as doing so will not adversely affect Nampa Fish Hatchery or Wilson Springs Ponds operations.
7. **Water Conveyance System: Maintenance and Costs.** IDFG and NMID shall each use, operate, adjust, maintain, and repair their respective properties and facilities, and the water conveyance and diversion works under their control, as provided in this Agreement, and shall each bear their own costs and expenses associated therewith.
- a. **Patterson Wells Pumps.** IDFG shall pay all costs and expenses associated with the operation, repair, and replacement of the Patterson Wells Pumps, and NMID shall not have any responsibility for such costs and expenses. IDFG shall operate, maintain, repair, and replace the Patterson Well Pumps in such a manner as not to cause any damage to the Patterson Well, and shall pay all costs and expenses associated with repairing such damage caused by IDFG or the Patterson Wells Pumps. With the exception of such damage caused by IDFG or the Patterson Wells Pumps, NMID shall be responsible for costs associated with maintaining, repairing, and replacing the Patterson Wells.
 - b. **IDFG Wells and Pumps.** IDFG shall be responsible for costs associated with maintaining, repairing, and replacing the IDFG Wells and IDFG Wells Pumps.
 - c. **NMID Reimbursement for IDFG and Patterson Wells Pumps Power Costs.** NMID shall reimburse IDFG for power costs incurred by IDFG in operating the IDFG Wells Pumps and/or Patterson Wells Pumps to deliver irrigation water to the Bray Lateral for NMID's use under water right nos. 63-32695A and 63-32695B, when such water would not otherwise be diverted or used by IDFG for fish propagation under water right nos. 63-7879 and 63-9194.
 - d. **Wilson Springs Ponds.** IDFG shall not modify the Wilson Springs Ponds in any way that would interfere with, interrupt, or impede the flow of water to the Bray Lateral such that the amount of water NMID requires cannot be adequately conveyed or modify any of the other facilities described in the Wilson Springs Ponds Plans

referenced in section 5.b.i. that are part of the water conveyance system without NMID's written permission.

- e. **Drainage Costs.** NMID shall operate and maintain the Bray Lateral and the Wilson Drain at its sole cost. So long as this Agreement remains in effect, IDFG shall not be required to pay any cost or proportionate cost for use of or maintenance to, the Bray Lateral and the Wilson Drain.
- f. **Other Costs.** The only charges that may be made by NMID or IDFG to the other related to the diversion, use, or delivery water from the sources identified herein are those that are provided herein, agreed upon in writing by the parties or that are otherwise required by law. NMID hereby expressly waives all amounts due, past due, or which may be due in the future under any of the 1973, 1989, or 1991 NMID-IDFG Agreements.

8. **Easements and Crossings.**

- a. **NMID's Easements for Existing Facilities.** IDFG hereby acknowledges and confirms that NMID possesses the following perpetual easements for existing facilities.
 - i. **Bray Lateral Easement.** NMID has an easement for the Bray Lateral across IDFG's Nampa Fish Hatchery Property and IDFG's Wilson Springs Ponds Property. The Bray Lateral at this location is shown in **Exhibit D**. NMID's Bray Lateral easement includes a sufficient area of land to convey irrigation and drainage water, to operate, clean, maintain, and repair the Bray Lateral, and to access the Bray Lateral for those purposes, and is a minimum of 55 feet, 30 feet on the left looking downstream and 25 feet to the right.
 - ii. **Wilson Drain Easement.** NMID has an easement for the Wilson Drain across IDFG's Wilson Springs Ponds Property. The Wilson Drain at this location is shown in **Exhibit D**. NMID's Wilson Drain easement includes a sufficient area of land to convey irrigation and drainage water, to operate, clean, maintain, and repair the Wilson Drain, and to access the Wilson Drain for those purposes, and is a minimum of 100 feet wide, 50 feet on either side of the centerline.
 - iii. **Gated Access and Roadway Easement.** NMID has an easement for access to the Wilson Springs Ponds Property via an existing gate and roadway. A gate is located on the Wilson Springs Ponds Property on the north end of the gravel public parking lot just west of South Powerline Road. From the gate, a 12 foot wide roadway extends, on the Wilson Springs Ponds Property, north to the Bray Lateral, and then turns

approximately ninety degrees west paralleling the Bray Lateral. The roadway easement ends at the point where it crosses the Wilson Drain. The location of the gate and roadway are shown in **Exhibit F**, attached hereto and by this reference made a part hereof.

- iv. **Turnaround Easement.** NMID has a turnaround easement on the Wilson Springs Ponds Property for purposes of turning vehicles around and for other necessary vehicular activity. The turnaround easement is bounded on the south by the roadway easement, on the east by the Bray Lateral, on the west by the Wilson Drain, and on the north by a fence and gate that mark the Wilson Springs Ponds Property line, as shown in **Exhibit F**. NMID has an easement and right of access through the gate that marks the Wilson Springs Ponds Property line and which allows access downstream to the remainder of the Bray Lateral.
- v. **Easement Maintenance and Repair.** IDFG shall maintain, repair, and replace the gated access, roadway, and turnaround easements at its sole cost.
- b. **NMID Access to IDFG Wells.** IDFG hereby grants to NMID access to the points of diversion listed in water right nos. 63-32695A and 63-32965B located on the IDFG Nampa Fish Hatchery Property when the Nampa Fish Hatchery is not operating for fish production. IDFG will provide timely written notice to NMID of the time period during which IDFG's facilities will not be used for fish production. NMID may not access the IDFG points of diversion located on IDFG's property when or if fish production operations resume. This section authorizes access to the points of diversion only. Any other uses by NMID of the points of diversion on the IDFG Nampa Fish Hatchery Property will be the subject of separate agreement(s).
- c. **IDFG Bray Lateral Crossings.** NMID hereby grants to IDFG the right to continue to cross the Bray Lateral with the following facilities which were authorized by the 1991 Agreement.
 - i. **Culvert Crossing.** IDFG owns a culvert that crosses the Bray Lateral and connects the Southwest Regional Office property, which lies north of the Bray Lateral, with the Wilson Springs Ponds Property, which lies south of the Bray Lateral as shown in **Exhibit F**.
 - ii. **Squash Pipe Crossing.** IDFG owns a squash pipe that allows water to flow from the Wilson Springs Ponds Outlet into the Bray Lateral at the location shown in **Exhibit F**.
 - iii. **Use of Crossings.** IDFG shall conduct its activities with regard to its Bray

Lateral crossings so as not to constitute or cause:

- (a) a hazard to any person or property;
- (b) an interruption or interference with the flow of water in the Bray Lateral;
- (c) an increase in seepage or any other increase in the loss of water from the Bray Lateral;
- (d) the subsidence of soil within or adjacent to the Bray Lateral;
- (e) an interference with NMID's use of its easement to access, operate, clean, maintain, and repair the ditch or canal; and/or
- (f) any other damage to NMID's easement and irrigation works.

iv. **Crossing Maintenance and Repair.**

IDFG shall maintain, repair and clean the Bray Lateral crossings at its sole cost. Upon verbal notice from NMID, IDFG shall remove or repair any Bray Lateral crossing that interferes with NMID's operation and maintenance of the Bray Lateral, or causes or contributes to any of the circumstances enumerated in Section 8.c.iii., or any other damage to the Bray Lateral.

NMID shall give verbal notice to IDFG, and shall allow IDFG a reasonable period of time to perform such maintenance, repair, and other work, except that in cases of emergency NMID shall attempt to give such notice as is reasonable under the circumstances. NMID reserves the right to perform any and all work which the IDFG fails or refuses to perform within a reasonable period of time after verbal notice by NMID. IDFG agrees to pay to NMID, on demand, the costs which shall be reasonably expended by NMID for such purposes. Nothing in this paragraph shall create or support any claim of any kind by IDFG or any third party against NMID for failure to exercise the options stated in this paragraph.

- v. **Scope of Authorization.** Nothing herein contained shall be construed to impair the Bray Lateral or NMID's Bray Lateral easement, and all construction and use of NMID's Bray Lateral easement by IDFG shall remain inferior and subservient to NMID's rights use of the Bray Lateral for the transmission and delivery of irrigation water. IDFG shall not excavate, discharge, place any structures, nor plant any trees, shrubs, or landscaping within the NMID's Bray Lateral easement, nor perform any construction or activity within the NMID's easement except as referred to in this Agreement without NMID's prior written permission. Upon verbal notice from NMID, IDFG shall suspend its use of the Bray Lateral easement area when the use of the easement area is required by NMID for maintenance or repair of the Bray Lateral.

- d. **NMID Not Liable for Damages.** IDFG agrees that NMID shall not be liable for any damages which shall occur to any of the Bray Lateral crossings in the reasonable exercise of NMID's rights in the course of performance of maintenance or repair of the Bray Lateral.
 - e. **IDFG Patterson Wells Access.** NMID hereby grants to IDFG access to NMID's Patterson Wells Property for the purposes of operating, maintaining, repairing, and replacing, as necessary, the Patterson Wells Pumps.
9. **Covenants Running with the Land.** The covenants, conditions, and agreements herein contained shall constitute covenants to run with, and running with, all of the lands herein before described and shall be binding on each of the parties hereto and on all parties and all persons claiming under them or either of them, and the advantages hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns.
10. **Applicable Law and Jurisdiction Unaffected.** Neither the terms of this Agreement, nor the parties' exercise of any rights, or the performance of any obligations hereunder, shall be construed or asserted to extend the application of any governmental requirements, or the jurisdiction of any applicable federal, state, or other agency or official, to NMID's ownership, use, operation, or maintenance of the NMID's water rights, land, or irrigation and drainage facilities which governmental requirements, or the jurisdiction of any applicable federal, state, or other agency or official, did not apply prior to, or absent, the execution of this Agreement.
- By entering this Agreement, NMID does not create, or exercise legal or other authority, either express or implied, to regulate, control, or prohibit the discharge or contribution of pollutants or contaminants to any groundwater, waters of the State of Idaho or the United States, or any other destination. Such authority, to the extent that it exists, is possessed and exercised by governmental environmental agencies.
- By entering this Agreement, NMID does not assume any responsibility or liability for any impact upon or degradation of human health or safety or the environment resulting from any activity of IDFG.
11. **Not a Public Dedication.** Nothing contained in this Agreement shall be deemed or construed to constitute a gift or dedication of any portion of the Patterson Wells, the Bray Lateral or the Wilson Drain to or for the benefit of the general public or for any public purpose whatsoever, and nothing in this Agreement shall be deemed to provide that the Patterson Wells, the Bray Lateral, or the Wilson Drain shall be used for any purpose other than as stated herein; it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

12. **No Claims Created.** Nothing in this Agreement shall create or support a claim of estoppel, waiver, prescription, or adverse possession by or for the benefit of either party hereto or any third party against either party hereto.
13. **Construction.** This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho. This Agreement is not intended for the benefit of any third party and is not enforceable by any third party. Nothing in this Agreement shall be construed to entitle either party to bring any action against the other for any injury or damage resulting from fire, flood, storm, earth movement, or other natural occurrence beyond the party's control. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, all remaining provisions of this Agreement not so held invalid or unenforceable shall remain in full force and effect. The captions or section headings are provided for the convenience of the parties in locating the general provisions of this Agreement and shall not be considered in any way in interpreting or construing any provision of this Agreement.
14. **Notice Requirements.** All notices, demands, consents, and approvals required pursuant to this Agreement shall be provided as follows.
- a. **Points of Contact.** IDFG shall provide NMID phone number(s) and email address(es) through which NMID's Water Superintendent may reach IDFG's Fish Hatchery Manager or other responsible IDFG Staff on a 24-hour basis, every day during the irrigation season. NMID shall provide IDFG phone number(s) and email address(es) through which IDFG may reach NMID's Water Superintendent or other responsible NMID staff on a 24-hour basis, every day during the irrigation season.
 - b. **Verbal Notice.** Verbal notice shall be provided by person-to-person contact either by telephone or in-person. If there is no answer when verbal notice is made by telephone, a voice message shall be left and an email must also be sent.
 - c. **Written Notice.** Written notice may be delivered by hand delivery, by mail to the physical addresses below, or by email to email addresses provided by the parties.
 - d. **Physical Addresses.**

Nampa & Meridian Irrigation District
5525 East Greenhurst
Nampa, Idaho 83686

Idaho Department of Fish and Game
Nampa Fish Hatchery
3806 S Powerline Rd.
Nampa, ID 83686

15. **Sufficient Appropriation.** IDFG shall request sufficient appropriations of funds by the Idaho State Legislature to enable IDFG to fulfill its obligations under this Agreement. However, it is understood and agreed that IDFG is a governmental agency and this Agreement shall not be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State Legislature as may exist from time to time. IDFG reserves the right to terminate this Agreement if, in its sole judgment, the Idaho State Legislature fails, neglects, or refuses to appropriate sufficient funds to satisfy any liability of IDFG hereunder or if the executive branch of the State of Idaho mandates any cuts or holdbacks in IDFG's spending. Notice of termination under this provision shall be made in writing and shall be effective immediately upon receipt.
16. **Force Majeure.** If either party is delayed, hindered, or prevented from performing any act required hereunder by reason of any act of God; strike, lockout; labor trouble; inability to procure materials; failure of power; restrictive government laws or regulations enacted after the date of this Agreement which precludes the activities the subject of this Agreement; riot; insurrection; war; escalation of hostilities; or other reason beyond the party's control making performance impossible, then performance of that act, and that act only, shall be excused for the reasonable period of the delay; provided that the party works diligently to eliminate the delay.
17. **Duty of Reasonable Care and Apportionment of Liability.** IDFG and NMID shall each exercise reasonable care in the performance of their respective obligations under this Agreement, and in their use, operation, adjustment, maintenance, and repair of their respective properties and facilities, and the water conveyance and diversion works under their control as provided herein in such a manner as not to cause damage to, or unreasonably interfere with, one another.
- IDFG and NMID each shall be responsible only for the acts, omissions, or negligence of its own officials, employees, or agents. Each party will defend claims that arise solely from alleged wrongful acts, omissions, or negligence of the defending party, its officials, employees, or agents in the course of this Agreement. Each party shall promptly notify the other party of any claim arising under this Agreement and shall cooperate fully with the defending party or its representatives in the defense of such claim.
18. **Indemnification.** To the extent permitted by law including I.C. § 59-1015, IDFG shall indemnify NMID, its officers, agents, and employees from and against any and all liability, claims, damages, losses, expenses, actions, attorney's fees, and suits whatsoever caused by or arising out of IDFG's negligent or wrongful performance, acts, or omissions under this Agreement. Nothing contained herein shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby expressly reserved.
19. **Changes in IDFG Property Ownership or Operations.** IDFG acknowledges that the water supplied by the Patterson Wells and the IDFG Wells to lands within NMID is essential to the proper irrigation of those lands, and that the owners of those lands have

the right to receive, and that NMID has the duty to deliver, such water to those lands during the irrigation season. Accordingly, IDFG agrees to consider entering additional agreements and/or granting additional easements to NMID that may be necessary or advisable to assure that NMID will continue to receive the water it requires from the Patterson Wells and the IDFG Wells if Nampa Fish Hatchery Operations cease or ownership changes.

20. **No personal liability.** IDFG and NMID understand and agree that in no event shall any official, officer, employee or agent of NMID, IDFG or of the State of Idaho be personally liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, this Agreement, express or implied.
21. **Enforcement of Agreement.** NMID and IDFG recognize that this Agreement provides mutual benefits relating to the use of water and property the subject of this Agreement. In the event that any dispute arises among the parties as to the interpretation of and/or compliance by any party with the obligations of this Agreement the parties agree to engage in good faith negotiations in an effort to resolve the dispute. If the dispute cannot be resolved through good faith negotiations, prior to initiating administrative or judicial proceedings, the party claiming default shall provide notice of default to the other party identifying the nature of the default and any specific action which such party believes necessary to cure such default, and providing ten (10) days to cure such default, or such reasonable time for cure if a cure cannot reasonably be effected within such ten (10) day period providing such movement toward cure is diligent. Either party may bring an action for damages or specific performance.
22. **Attorney Fees.** Should either party incur costs or attorney fees in connection with efforts to enforce any breach or violation of the provisions of this Agreement (excluding the provision of an initial notice or the request for consent of the other party as provided for herein), whether by institution of suit or otherwise, the party rightfully enforcing or rightfully resisting enforcement of such provisions, or the prevailing party in case suit is instituted, shall be entitled to reimbursement for its costs and reasonable attorney fees from the other party.
23. **Assignment.** This Agreement may not be assigned or transferred without the prior written approval of the other party, which approval shall not be unreasonably withheld or delayed.
24. **Duplicate Originals.** This Agreement may be executed in duplicate. Each of the Agreements with original signatures of each party shall be deemed an original.

IN WITNESS WHEREOF, NMID has hereunto caused its corporate name to be subscribed by its officers first hereunto duly authorized by resolution of its Board of Directors and IDFG has hereunto caused its name to be subscribed and its seal to be affixed by its Director.

DATED: 16 July 2013

NAMPA & MENDOTA IRRIGATION DISTRICT



By [Signature]
Its President

ATTEST:

[Signature]
Its Secretary

DATED: July 31, 2013

IDAHO DEPARTMENT OF FISH AND GAME

By [Signature]
Director, Idaho Department of Fish and Game

STATE OF IDAHO)
)ss.
COUNTY OF CANYON)

On this 16 day of July, 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Graham Paterson and Daren R. Coon, known to me to be the President and Secretary, respectively, of NAMPA & MERIDIAN IRRIGATION DISTRICT, the irrigation district that executed the foregoing instrument and acknowledged to me that such irrigation district executed the same.

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

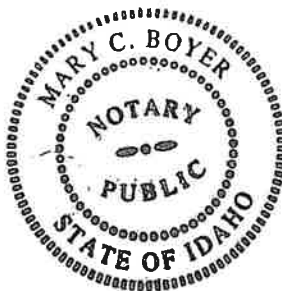


Sandra M. Kuckler
Notary Public for Idaho
Residing at Caldwell, Idaho
My Commission Expires: 16 July 2018

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

On this 31st day of July, 2013, before me, the undersigned, a notary public in and for said state, personally appeared Virgil Moore, and _____, known to me to be the Director of the Idaho Department of Fish and Game who executed the forgoing instrument.

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



Mary C. Boyer
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: My Commission Expires August 31, 2017

EXHIBIT A

LEGAL DESCRIPTION – NAMPA FISH HATCHERY PROPERTY

A portion of the Southwest Quarter of the Southwest Quarter of Section 2, Township 2 North, range 2 West B.M. described as commencing at the Southwest corner of said Southwest Quarter of Section 2, Township 2 North, range 2 West B.M., thence East along the South line of said Section to the center of the drain ditch as now located; thence Northwesterly along the center of said drain ditch a distance of 22 rods; thence East from the center of said drain ditch, as now located, a distance of 22 feet; thence Northwesterly and parallel with said drain ditch to a point 100 feet from the North boundary line of said Southwest Quarter of Section 2, Township 2 North, Range 2 West B.M., thence West to the West line of said Southwest Quarter of the Southwest Quarter; thence South along the West boundary line of said Southwest Quarter of the Southwest Quarter to the point of beginning, being approximately 13.75 acres.

EXHIBIT B

LEGAL DESCRIPTION – WILSON SPRINGS PONDS PROPERTY

The Wilson Springs Ponds property consists of three parcels more particularly described as follows:

1. This parcel is a portion of the Southeast Quarter of the Southeast Quarter of Section 3, Township 2 North, Range 2 West, Boise Meridian, Canyon County, Idaho more particularly described as follows: Commencing at the Northwest corner of the said Southeast Quarter of the Southeast Quarter; thence South $89^{\circ} 42' 57''$ East (formerly South $89^{\circ} 42' 12''$ East) along the North boundary of the said Southeast Quarter of the Southeast Quarter a distance of 199.25 feet to the TRUE POINT OF BEGINNING; thence continuing South $89^{\circ} 42' 57''$ east (formerly South $89^{\circ} 42' 12''$ East) along the said North boundary a distance of 666.39 feet to a point which is North $89^{\circ} 42' 57''$ West a distance of 453.00 feet from the Northeast corner of the said Southeast Quarter of the Southeast Quarter, said point being on the centerline of Wilson Drain; thence 763.60 feet (formerly South $32^{\circ} 02' 40''$ East a distance of 763.39 feet): thence North $89^{\circ} 49' 55''$ West (formerly North $89^{\circ} 50' 30''$ West) along the South boundary of the said Southeast Quarter of the Southeast Quarter a distance of 85.00 feet; thence North $0^{\circ} 01' 18''$ West along a line which is parallel with said East boundary a distance of 635.78 feet; thence North $10^{\circ} 06' 09''$ West a distance of 36.08 feet; thence South $88^{\circ} 05' 25''$ West (formerly South $88^{\circ} 07'$ West) a distance of 557.03 feet; thence North $0^{\circ} 01' 18''$ West (formerly North) along a line which is parallel with the said East boundary a distance of 301.46 feet; thence South $89^{\circ} 29' 37''$ West (formerly $89^{\circ} 28' 20''$ West) a distance of 469.10 feet; thence North $0^{\circ} 11' 51''$ East along a line parallel with the West boundary of the said Southeast Quarter of the Southeast Quarter a distance of 373.31 feet to the TRUE POINT OF BEGINNING.
2. That part of the Southeast Quarter of the Southeast Quarter of Section 3, Township 2 North, range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows: Beginning at the South 1/16 corner of the East line of the above section, which corner is further described as being 1,317.15 feet North of the Southeast corner of the Section 3; thence West 453 feet to a point in the center of the drain ditch (shown of record as Wilson Drain Ditch); thence Southwesterly up the center of the drain ditch 770 feet, more or less, to a point 48 feet West of the above described East line; thence East 48 feet to the section line; thence North along the section line 643.15 feet to the POINT OF BEGINNING.
3. Northeast Quarter of the Southeast Quarter of Section 3, Township 2 North, Range 2 West, Boise Meridian, Canyon County, Idaho.

EXHIBIT C

LEGAL DESCRIPTION – PATTERSON WELLS PROPERTY

A part of Section 11, Township 2 North, Range 2 West, Boise Meridian, more particularly described as follows: to-wit: Commencing at the Northwest corner of Section 11, Township 2 West of the Boise meridian; thence North 89°57' East 749.7 feet along the North line of the said Section 11, to a point in the centerline of the pavement, the INITIAL POINT; thence continuing North 89°57' East 49.7 feet to the centerline of the Bray Pick Up Lateral; thence continuing North 89°57' East 49.7 feet, to a point; thence South 36°24' East 70.6 feet parallel to and 40 feet from the centerline of the said Lateral to a point; thence South 53°36' West 40 feet to a point in the centerline of the said Lateral; thence continuing South 53°36' West 40 feet to a point; thence North 36°24' West 129.4 feet, parallel to and 40 feet from the centerline of the said Lateral, to the INITIAL POINT

EXHIBIT D

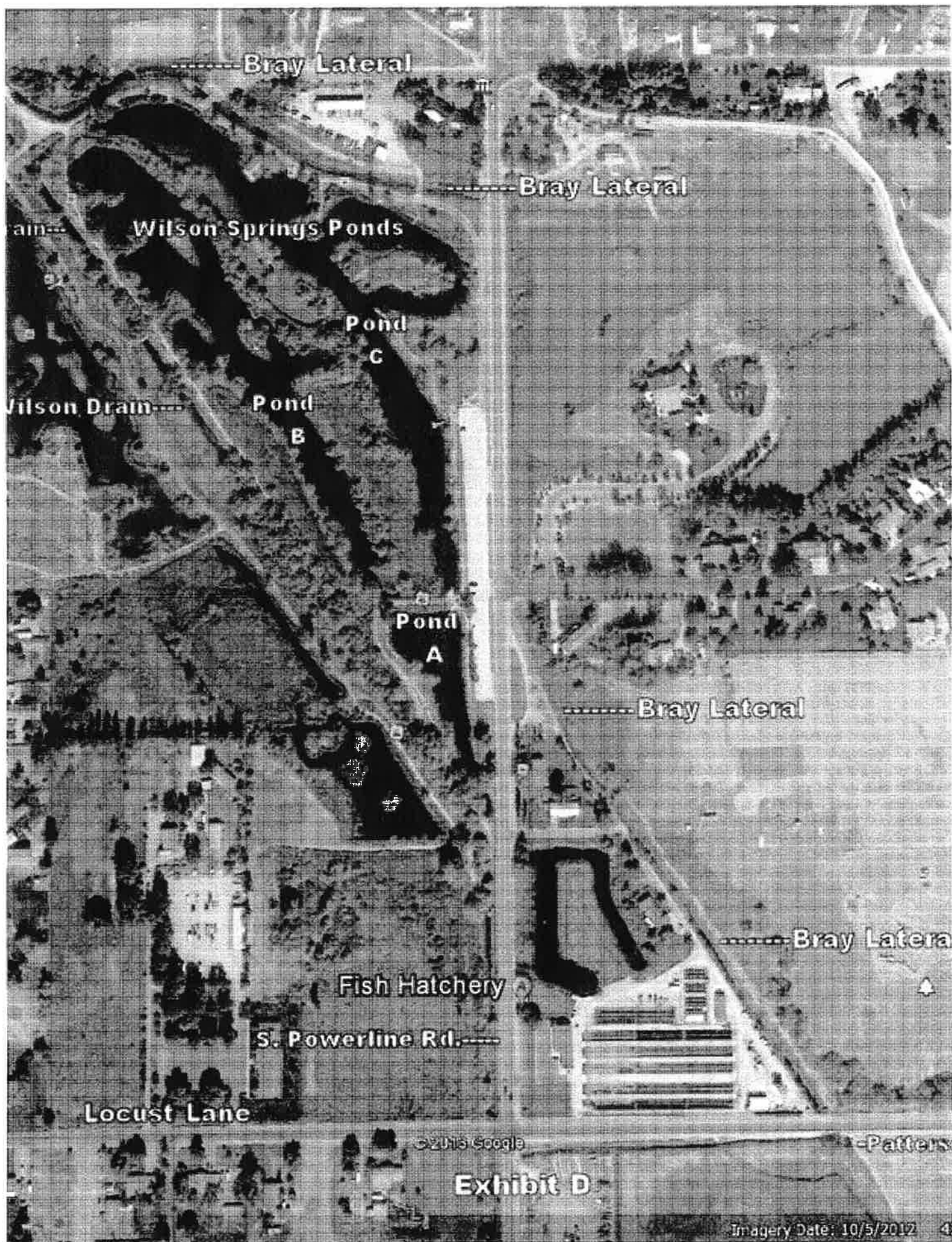
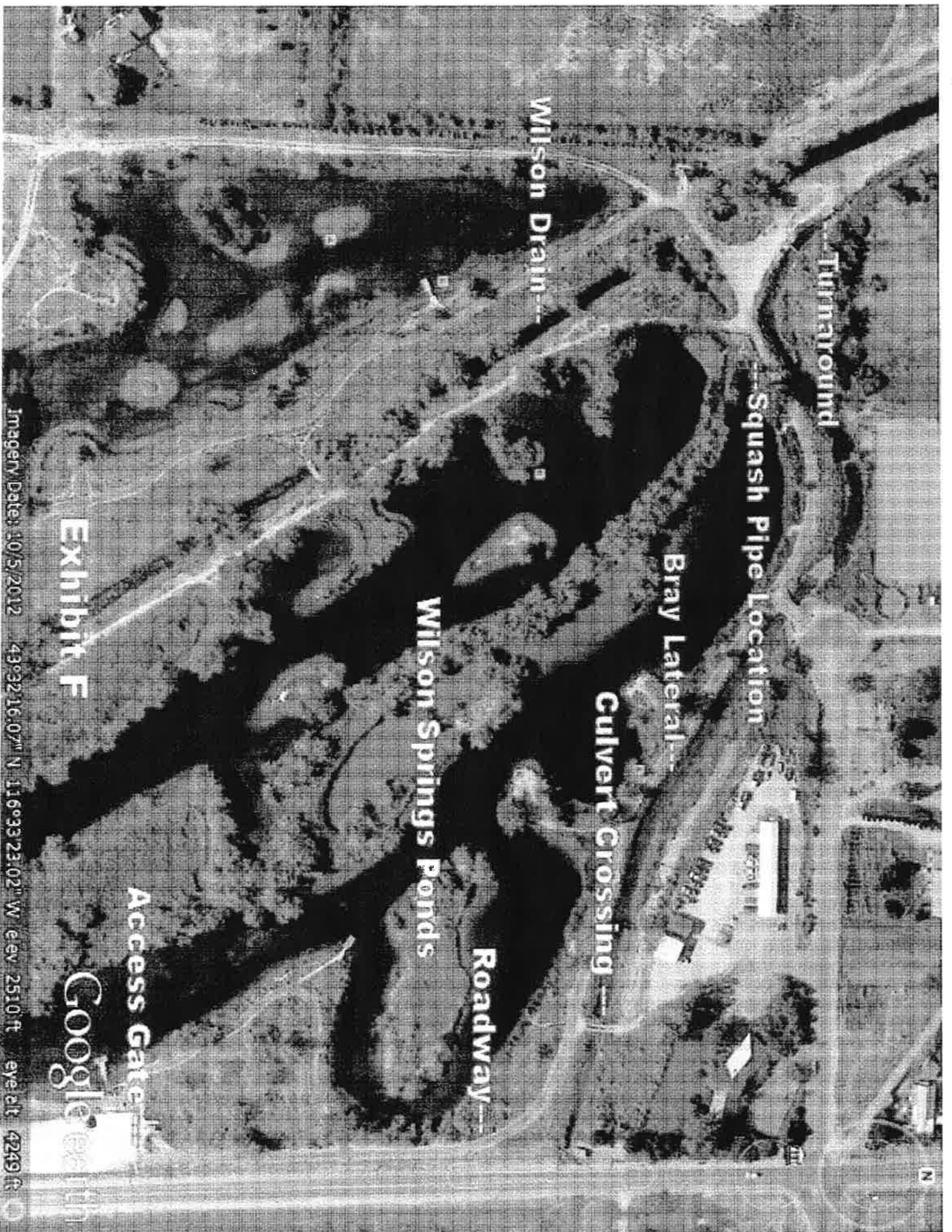


Exhibit D



Turnaround

Squash Pipe Location

Bray Lateral

Culvert Crossing

Roadway

Wilson Springs Ponds

Wilson Drain

Access Gate

Exhibit F

Google Earth

Imagery Date: 10/5/2012 43°32'16.07" N 116°33'23.02" W elev 2510 ft eye alt 4249 ft

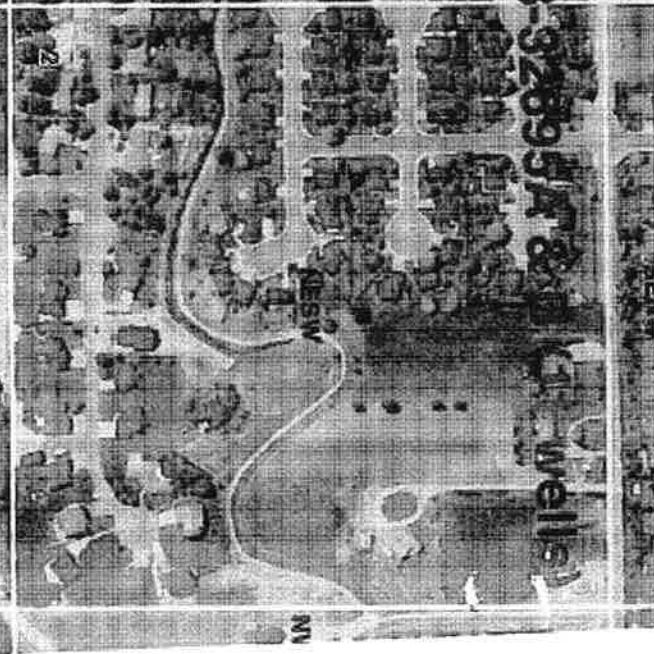
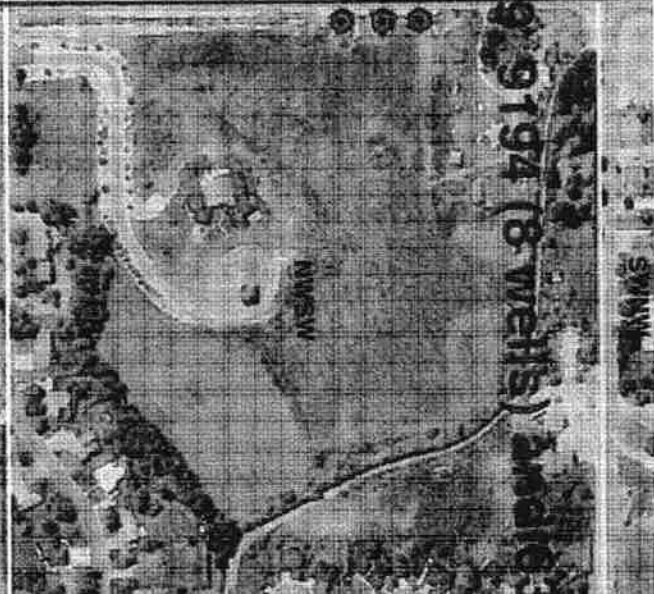
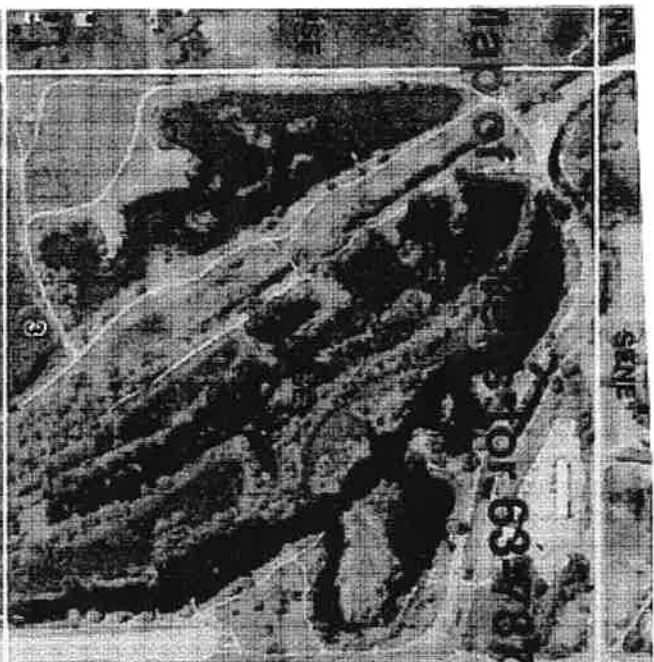


EXHIBIT E

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-7879
NAME AND ADDRESS: STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707

SOURCE: GROUND WATER TRIBUTARY:
QUANTITY: 25.000 CFS
18,099.000 AFY

The rights listed below are limited to a total combined diversion rate of 30 cfs.
Combined Right Nos.: 63-7879, 63-9194, 63-32695A and 63-32695B.

PRIORITY DATE: 10/19/1973

POINT OF DIVERSION:

T02N R02W S2 SWSW Within CANYON County
~~T02N R03W S11 NWNW Within CANYON County~~
~~2 points of diversion located in T02N, R03W, S11, NWNW~~
~~6 points of diversion located in T02N, R03W, S2, SWSW.~~
T02N R02W S2 SWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S11 NWNW Within CANYON County
T02N R02W S11 NWNW Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
FISH PROPAGATION	01/01 12/31	25.000 CFS 18,099.00 AFY

PLACE OF USE: FISH PROPAGATION in CANYON County
T02N R02W S02 SWSW

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Exhibit E

This water right is also the subject of an operational agreement effective
, between Nampa & Meridian Irrigation District and the Idaho
Department of Fish and Game, and recorded in the _____ County
Recorder's Office as Instrument No. _____.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

~~Modifications to or variance from this license must be made within the limits~~
~~of Section 42-222, Idaho Code, or the applicable Idaho law.~~

The facility volume is 101,356 cubic feet.

The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.

Right Nos. 63-9194, 63-32695A and 63-32695B are also diverted through the points of diversion described above.

Measuring devices of a type approved by this Department shall be maintained at the point of diversion and point of effluent discharge.

~~This water right is appurtenant to the described place of use.~~

~~Use of water under this right is subject to policies set forth in the State of Idaho Water Plan, including Policy No. 5G.~~

~~The facility volume is 101,356 cubic feet~~

The issuance of this right does not grant any right-of-way or easement across the land of another.

Return water shall be treated to insure that the effluent meets Idaho Water Quality Standards.

~~This right is subject to all prior water rights and may be forfeited by five years of non-use.~~

Right No. 63-32695B is an enlargement of this right pursuant to Section 42-1426
Idaho Code.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-9194

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 5.000 CFS
3,620.000 AFY

The rights listed below are limited to a total combined diversion rate of 30 cfs.
Combined Right Nos.: 63-7879, 63-9194, 63-32695A and 63-32695B.

PRIORITY DATE: 12/08/1978

POINT OF DIVERSION:

~~T02N R03W S3 NWNW Within CANYON County~~

T02N R02W S2 SWSW Within CANYON County

~~6 points of diversion located in T02N, R02W, S2, SWSW.~~~~3 points of diversion located in T02N, R02W, S11, NWNW~~T02N R02W S2 SWSW Within CANYON CountyT02N R02W S2 SWSW Within CANYON CountyT02N R02W S2 SWSW Within CANYON CountyT02N R02W S2 SWSW Within CANYON CountyT02N R02W S2 SWSW Within CANYON CountyT02N R02W S11 NWNW Within CANYON CountyT02N R02W S11 NWNW Within CANYON County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USEPERIOD OF USEQUANTITY

FISH PROPAGATION

01/01 12/31

5.000 CFS
3,620.00 AFY

PLACE OF USE:

FISH PROPAGATION in CANYON County

T02N R02W S02

SWSW

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

~~This water right is also the subject of an operational agreement effective _____, between Nampa & Meridian Irrigation District and the Idaho Department of Fish and Game, and recorded in the _____ County Recorder's Office as Instrument No. _____.~~

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

~~AGREEMENT WITH NAMPA-MERIDIAN IRRIGATION DIST. FOR USE OF WELLS SEE FILE #63-7879 NON-IRRIGATION USES: FISH/4 VATS 3'-5' X 3' X 13', 16 RACEWAYS 3' X 5' X 50', 3 RACEWAYS 3' X 13' X 200'.~~

~~Modifications to or variance from this license must be made within the limits of Section 43-222, Idaho Code, or the applicable Idaho law.~~

Measuring devices of a type approved by this Department shall be maintained at the point of diversion and point of effluent discharge.

The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.

Return water shall be treated to insure that the effluent meets Idaho Water Quality Standards.

Right Nos. 63-7879, 63-32695A and 63-32695B are also diverted through the points of diversion described above.

~~This water right is appurtenant to the described place of use.~~

The issuance of this right does not grant any right-of-way or easement across the land of another.

~~This right is subject to all prior water rights and may be forfeited by five years of non-use~~

The facility volume is 101,356 cubic feet

~~A measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.~~

~~Use of water under this right is subject to policies set forth in the State of Idaho Water Plan, including Policy No. 5G.~~

SF5 Right No. 63-32695A

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-32695A
NAME AND ADDRESS: NAMPA & MERIDIAN IRRIGATION DISTRICT
1503 FIRST ST SOUTH
NAMPA ID 83651

SOURCE: GROUND WATER TRIBUTARY:
QUANTITY: 16.000 CFS
8,251.000 AFY

The rights listed below are limited to a total combined diversion rate of 30 cfs.
Combined Right Nos.: 63-7879, 63-9194, 63-32695A and 63-32695B.

PRIORITY DATE: 06/06/1962

POINT OF DIVERSION:

T02N R02W S2 NWSW Within CANYON County
T02N R02W S2 NWSW Within CANYON County
T02N R02W S2 NWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S11 NWNW Within CANYON County
T02N R02W S11 NWNW Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	16.000 CFS 8,251.00 AFY

PLACE OF USE:

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

This right when combined with Right Nos. 63-198AJ, 63-199B, 63-200B, 63-2392B, 63-2968, 63-30181 & 63-32695B can be used to irrigate up to 69,495 acres within the boundary of the Nampa & Meridian Irrigation District.

SF5 Right No. 63-32695A

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

This water right is also the subject of an operational agreement effective _____, between Nampa & Meridian Irrigation District and the Idaho Department of Fish and Game, and recorded in the _____ County Recorder's Office as Instrument No. _____.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Right Nos. 63-7879, 63-9194 and 63-32695B are also diverted through the six points of diversion in the SWSW, S2, Twp. 02N, Rge. 02W, and the two points of diversion in the NWNW, S11, Twp. 02N, Rge. 02W.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-32695B

NAME AND ADDRESS: NAMPA & MERIDIAN IRRIGATION DISTRICT
1503 FIRST ST SOUTH
NAMPA ID 83651

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 8.000 CFS
4,125.000 AFY

The rights listed below are limited to a total combined diversion rate of 30 cfs.
Combined Right Nos.: 63-7879, 63-9194, 63-32695A and 63-32695B.

PRIORITY DATE: 05/03/1974

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

POINT OF DIVERSION:

T02N R02W S2 NWSW Within CANYON County
T02N R02W S2 NWSW Within CANYON County
T02N R02W S2 NWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
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T02N R02W S2 SWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S2 SWSW Within CANYON County
T02N R02W S11 NWNW Within CANYON County
T02N R02W S11 NWNW Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	8.000 CFS 4,125.00 AFY

PLACE OF USE:

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

SF5 Right No. 63-32695B

This right when combined with Right Nos. 63-198AJ, 63-199B, 63-200B, 63-2392B, 63-2968, 63-30181 and 63-32695A can be used to irrigate up to 69,495 acres within the boundary of the Nampa & Meridian Irrigation District.

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

This water right is also the subject of an operational agreement effective _____, between Nampa & Meridian Irrigation District and the Idaho Department of Fish and Game, and recorded in the _____ County Recorder's Office as Instrument No. _____.

This right is based upon an enlargement of Right No. 63-7879 pursuant to Section 42-1426, Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Right Nos. 63-7879, 63-9194 and 63-32695A are also diverted through the six points of diversion in the SWSW, S2, Twp. 02N, Rge. 02W, and the two points of diversion in the NWNW, S11, Twp. 02N, Rge. 02W.

EXHIBIT F