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**DEPARTMENT OF
WATER RESOURCES**

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ORIGINAL

Attorneys for Thompson Creek Mining Company

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CREATING THE
UPPER SALMON RIVER BASIN WATER
DISTRICT (DESIGNATED AS WATER
DISTRICT NO. 170) FOR ADMINISTRATION
OF RIGHTS TO THE USE OF SURFACE
WATER AND GROUND WATER IN
ADMINISTRATIVE BASINS 71 & 72

**PETITION FOR RECONSIDERATION OF
FINAL ORDER CREATING WATER
DISTRICT NO. 170**

**I.
INTRODUCTION**

Thompson Creek Mining Company ("Thompson Creek"), through Scott L. Campbell, its counsel of record, hereby submits this Petition for Reconsideration of the Final Order Creating Water District No. 170, issued by the Director of the Idaho Department of Water Resources on March 6, 2005. This Petition for Reconsideration ("Petition") is brought pursuant to Idaho Code Section 67-5246(4) and Idaho Administrative Code IDAPA 37.01.01.740.02 a.

II. DISCUSSION

The statutory authority of the Director to create a water district is circumscribed in Idaho Code Section 42-604. As a public official of the State of Idaho, the Director possesses only those powers and authorities explicitly conferred by legislative enactment or as extended by reasonable clarifications of statutory authority in duly adopted rules and regulations.¹ *Beker Industries v. Georgetown Irrigation District*, 101 Idaho 187, 610 P.2d 546 (1980); IDAHO CODE § 42-603. Since the Director has not adopted rules or regulations concerning the creation of water districts, his authority is confined by the specific language of Idaho Code Section 42-604, and the related provisions of Chapter 6, Title 42, Idaho Code.

A. Idaho Code Section 42-604

The relevant provisions of Idaho Code Section 42-604 describe the procedural and substantive parameters for the creation of a water district by the Director. The portions of the statute which are directly relevant state:

The director may create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order ***if such action is required in order to properly administer uses of the water resource***. Copies of the order shall be sent by regular mail to all holders of rights to the waters affected by the order. The director's order is subject to judicial review as provided in section 42-1701A, Idaho Code.

Id. (emphasis added)

Nothing in the administrative record created before or provided to the affected water users at the Public Hearing for Proposed Water District supports a determination by the Director that creation of the water district is ***“required in order to properly administer uses of***

¹ Additionally, the Director's authority is extended to include the applicable interpretations of the relevant statutes and rules or regulations by the Idaho Appellate Courts.

the water resource.” Nor could there be any legitimate administrative record justification for such a determination with respect to the water rights of Thompson Creek.

B. Thompson Creek – U.S. Forest Service Settlement

Thompson Creek has been a party to the Snake River Basin Adjudication Consolidated Subcase No. 75-13316, which produced the “SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho” throughout the course of the litigation over the U.S. Forest Service water right claims for instream flow federal reserved water rights. Thompson Creek and the U.S. Forest Service settled their disputes in the Consolidated Subcase as documented in the Stipulation and Joint Motion for Order Approving Stipulation and Dismissing Objections, dated May 29, 1998 (Exhibit A).² This stipulation received a complete review by all of the parties to the Consolidated Subcase proceeding and, despite opposition to the settlement by the State of Idaho (the only objector to it), the SRBA District Judge issued an Order approving the stipulation on June 16, 1998 (Exhibit B).

The stipulation and the subsequent Order specifically subordinated any water rights ultimately obtained by the U.S. Forest Service to the water rights of Thompson Creek. *See* Stipulation, pp. 3-4; Order, pp. 1-2, ¶ 2

Following the conclusion of the Thompson Creek / U.S. Forest Service Settlement (“Thompson Creek Settlement”) in June 1998, litigation continued among the remaining parties until the SRBA District Judge issued the Order Approving Stipulation and Entry of Partial Decrees on November 16, 2004, (Exhibit C), and the Amended Order Approving Stipulation and Entry of Partial Decrees on November 17, 2004 (Exhibit D). As this last Order makes clear,

² All exhibit letters reference the exhibits to the Written Comments of Thompson Creek Mining Company, dated November 18, 2005, and previously filed with the Department, unless otherwise specifically designated.

Thompson Creek did not sign and was not a party to the Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees (Exhibit E). In fact, Thompson Creek filed a timely objection to the Stipulation and Joint Motion which was resolved by agreement as to the form of the final Order. *See* Exhibit D, p. 1. More importantly, this Order specifically provides:

2. The Stipulation is hereby approved, provided, that the provisions of paragraph 2 of the Stipulation (“paragraph 2”) that address administration of water rights are covenants among the signatory parties only and shall not be binding on this Court or non-signatory parties with regard to administration of water rights by IDWR. The Court retains jurisdiction for the purpose of resolving disputes among the signatory parties regarding implementation and enforcement of the Stipulation. The provisions of paragraph 2 shall not affect the rights of Thompson Creek or any other non-signatory party to participate in and object to any motion for interim administration, ***proceeding for creation of a water district***, or other administrative action or other judicial proceeding affecting their water rights or their use, diversion, or measurement of water; ***nor shall the provisions of paragraph 2 affect the disposition or review of such proceedings.***

Id. (emphasis added).

By virtue of these provisions alone, Thompson Creek believes that the Director cannot reasonably or legally determine that the creation of the proposed water district is ***“required in order to properly administer uses of the water resource.”*** This is particularly true with regard to Thompson Creek’s water rights, because of the specific subordination of the U S Forest Service instream flow water rights under the Thompson Creek Settlement and because of the clear language of the Court’s Order, “nor shall the provisions of paragraph 2 affect the disposition or review of such proceedings.”

Because of the subordination provisions of the Thompson Creek Settlement, no administration of the Thompson Creek water rights is necessary ***“to properly administer uses of the water resource.”*** No such administration was deemed necessary by the Director before the

“SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho.”

See Notice of Public Information Meeting and Hearing (Exhibit E).

Based upon the clear prohibition of the last sentence of paragraph 2 of the Order of November 17, 2004 (Exhibit D), the Director may not rely upon the terms of the so-called “SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho,” to justify a decision to create the proposed water district. *See* Exhibit E, p. 2. In fact, the only possible justification for the creation of the water district by the Director is that agreement. As a non-party with specifically reserved rights, pursuant to the SRBA District Court Order of November 17, 2004 (Exhibit D), Thompson Creek believes that the Director has no legally supportable basis for creation of the proposed water district. Such an action would violate that Order and would not be supportable under the statutory language of Idaho Code Section 42-604. This position is further supported by the testimony of all of the witnesses at the November 9, 2005 hearing, who uniformly stated that the existing water districts in the region were sufficient and there was no valid reason for the creation of the new “umbrella” water district proposed by the Director. *See* Transcript of Hearing (Exhibit F).

C. SRBA District Court Order Of November 17, 2004 Precludes The Director’s Reliance Upon Specific Actions Agreed Upon By The State Of Idaho

The provisions of the Order Approving Stipulation and Entry of Partial Decrees, entered by the SRBA District Court on November 17, 2004, specifically preclude “the provisions of paragraph 2 [of the Stipulation and Joint Motion for Order Approving Stipulation]” from “affect[ing] the disposition or review of such proceeding [involving the creation of a water district].” Based upon this clear language of the Order, none of the actions described in paragraph 2 of the Stipulation and Joint Motion for Order Approving Stipulation (“Stipulation”) can be relied upon by the Idaho Department of Water Resources (the “Department”) in its

determination in granting a Final Order Creating Water District No. 170 ("Final Order").

Unfortunately, the Department has completely ignored the proscriptions of this language of the Order of November 17, 2004

Specifically, the following "findings of fact" paragraphs in the Final Order are actions directly dependent upon, and the consequence of, the language of paragraph 2 of the Stipulation which was specifically prohibited by the SRBA District Court in its order mandating that "nor shall the provisions of paragraph 2 affect the disposition or review of such proceedings." The following findings of fact are defective and unfounded on that basis: 1, 2, 5, 6, 9, 10, 11, and 14.

Additionally, the findings of fact of the Final Order completely ignores the substantial evidence in the administrative record before the Department in this matter. These findings ignore the testimony of virtually all of the witnesses at the public hearing in Challis, Idaho, criticizing the proposed action of the Department to create the Upper Salmon River Water District as a direct consequence of the Wild and Scenic Rivers Settlement Agreement entered into by the State of Idaho, the United States of America, and various other private parties. These substantial comments of impacted water users include the Written Comments of Thompson Creek, submitted to the Department on November 18, 2005. *See also*, Transcript of Hearing (Exhibit F).

III. THE DIRECTOR'S CONCLUSIONS OF LAW ARE UNSUPPORTED BY THE FINDINGS OF FACT

The conclusions of law contained in the Final Order are a combination of references to Idaho statutory law and responses to the testimony and written comments of water users who will be adversely affected by the creation of the water district. Conclusions of law

numbers 1 and 2 inaccurately rely upon Code Sections 42-226 and 42-237a (a-g) for the proposition they authorize the regulation of surface waters by the Director. The cited code sections pertain solely to ground water.

Conclusion of law number 4 misstates the statutory authority of the Director of the Department. Specifically, the Director “may create . . . a water district or combine two (2) or more water districts by entry of an order if such action is required in order to properly administer uses of the water resource.” IDAHO CODE § 42-604. Additionally, under the specific language of that section, it “shall not apply to streams or water supplies whose priority of appropriation have not been adjudicated by the courts having jurisdiction thereof.” Since all of the water rights within the proposed water district boundaries have not been adjudicated, the Director may not utilize his authorities under Idaho Code Section 42-604, to create the Upper Salmon River Water District. *See* Exhibit H, attached hereto.

Conclusion of law number 5 is also a misstatement of the law. Idaho Code Section 42-1417 does not “authorize the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code” by action of a district court having jurisdiction over water rights in a general water rights adjudication. Instead, a district court may issue an order of interim administration after certain circumstances have been satisfied, however, the creation of the water district is specifically subject to the statutory requirements of Chapter 6, Title 42, Idaho Code. *See* IDAHO CODE § 42-1417(4). The action of the district court granting a motion for interim administration has no direct bearing upon the formation of a water district except that the court must issue an order allowing interim administration before the Director of the Department may proceed to consider formation a water district pursuant to Chapter 6, Title 42, Idaho Code. Additionally, the provisions of the Order of November 17, 2004, regarding paragraph 2 of the

Stipulation, prohibits reliance upon the interim administration procedures before the SRBA District Court in the context of this proceeding to create a water district.

**IV.
THE SECTION OF THE FINAL ORDER CREATING WATER DISTRICT NO. 170
ENTITLED “RESPONSE TO TESTIMONY AND WRITTEN COMMENTS”
INAPPROPRIATELY INSERTS ADDITIONAL FACTUAL DEVELOPMENT NOT
OTHERWISE CONTAINED IN THE ADMINISTRATIVE RECORD**

The following paragraphs of the “Conclusions of Law” and “Response to Testimony or Written Comments” contained in the Final Order inappropriately adds evidence to the administrative record which otherwise does not exist: Paragraphs 6, 7, 8, 9, and 10. More specific criticisms of individual paragraphs follow

Paragraph 15 inappropriately includes references to items specifically excluded by the Order of November 17, 2004, referencing paragraph 2 of the Stipulation. Additionally, paragraph 15 inappropriately adds factual testimony which otherwise is not contained within the administrative record.

Paragraph 16 improperly relies upon information contained in the SRBA District Court Order Granting Interim Administration and the State’s Motion for Interim Administration. This information was specifically excluded from consideration in this proceeding by the Order of November 17, 2004. Additionally, paragraph 16 relies upon statements in the Department’s Notice of Hearing to support the determination of the Director that “creation of the proposed water district” is necessary “to efficiently administer water rights and protect senior water rights.” Reliance upon the Department’s Notice of Hearing to support the conclusion that then supports the statement that the “public record supports a determination that creation of a water district is ‘required in order to properly administer uses of the water resource,’” constitutes boot-strapping to support conclusions which are not supported by factual information in the

administrative record. A Notice of Hearing of an administrative agency cannot reasonably be considered factual support in the administrative record to justify an agency action.

In paragraph 17, the Final Order inaccurately cites the prior written comments of Thompson Creek, yet also ignores the fundamental position of Thompson Creek that the clear language of the Order of November 17, 2004, precludes the Department from relying upon the actions agreed to in paragraph 2 of the Stipulation to justify the creation of a water district

Paragraph 18 inaccurately misstates the legal import of the SRBA District Court Order of November 17, 2004, and completely ignores the prohibitive language which precludes utilization of the actions agreed to in the provisions of paragraph 2 of the Stipulation from “affecting the disposition of a proceeding for creation of water district ” Additionally, paragraph 18 of the Final Order improperly relies upon the determination of the SRBA District Court that interim administration could proceed. This determination by the SRBA District Court has no direct bearing upon creation of a water district, in fact, the Court’s Order of November 17, 2004, specifically prohibits reliance upon such actions by virtue of the prohibitive language referring to paragraph 2 of the Stipulation.

Paragraph 20 of the Final Order inaccurately and improperly supplements the administrative record and does not constitute a conclusion of law to the extent of apparent testimony of the Director where the Order states: “[t]he Director is relying on the authority provided by Idaho Code § 42-604 for the creation of the proposed water district, not the provisions of the SRBA Wild and Scenic Rivers Agreement as alleged by Thompson Creek.” In fact, the administrative record is replete with an unbroken chain of evidence demonstrating that the Director’s action to create the proposed water district is a direct consequence of that agreement. *See, e.g.,* Exhibit F and Exhibits I and J, attached hereto.

Additionally, the following statements constitute inappropriate supplementation of the administrative record and factual record development outside the proper administrative hearing context:

As stated in Finding 3, all of the water rights claimed in Basins 71 and 72 have been reported or partially decreed in the SRBA as required under Idaho Code § 42-1417. The Director proposes creation of a water district in Basins 71 and 72 for the reasons provided in the States' motion for Order of Interim Administration of Water Rights, and the Director's Notice of Hearing

Final Order, p. 10, ¶ 20. Additionally, in this regard, the last sentence of this quote constitutes direct testimony of the Director and is improper supplementation of the administrative record in this matter. This also violates the Order of November 17, 2004, by relying on actions agreed to in paragraph 2 of the Stipulation.

Paragraph 21 of the Final Order inaccurately misstates the written comments of Thompson Creek with respect to this issue. In its written comments, at page 4, Thompson Creek stated, "Thompson Creek believes that the Director cannot reasonably or legally determine that the creation of the proposed water District is '*required in order to properly administer uses of the water resource*.'" This is particularly true with regard to Thompson Creek's water rights because of the specific subordination of the U.S. Forest Service instream flow water rights under the Thompson Creek Settlement and because of the clear language of the Court's Order of November 17, 2004, "nor shall the provisions of paragraph 2 affect the disposition or review of such proceedings."

Additionally, paragraph 22 of the Final Order misstates the arguments presented by Thompson Creek with regard to the validity of creation of a water district. Further, the last sentence in paragraph 22 constitutes improper supplementation of the administrative record and is testimony of the Director of the Department without being sworn under oath.

Paragraph 23 improperly relies upon the order of the SRBA District Court authorizing interim administration of water rights; reliance specifically prohibited by the Order of November 17, 2004

**V.
CERTAIN FINAL ORDER PROVISIONS CONFLICT WITH STATE LAW**

Certain provisions of the Final Order also directly conflict with the requirements of Idaho state law. Specifically, the provisions of paragraph 27c. mandate that:

the Upper Salmon Water District created by this order shall include the following organizational features:

c. Selection of a Water District Advisory Committee that includes, but need not be limited to, representation from advisory committees of existing water districts.

Id. This provision conflicts directly with Idaho Code Section 42-605(6) which provides that water users have the sole discretionary authority regarding selecting an advisory committee. That code provision states, in pertinent part:

At such meeting the water users *may* choose an advisory committee to be composed of members selected as *may* be determined at the meeting, which committee shall serve as advisors to the director and the watermaster in matters pertaining to the distribution of water within the district. The advisory committee *may* be authorized to carry out policies as set forth in resolutions duly adopted by the water users at the annual meeting or at a special meeting.

IDAHO CODE § 42-605(6) (emphasis added). Because of this language, the determination of the water users to form an advisory committee is not subject to a mandatory order from the Director of the Department. Accordingly, the provisions of subsection c. of paragraph 27 of the Final Order constitute an illegal attempt to expand the authority of the Director beyond the clear provisions of Idaho state law.

Additionally, paragraph 27d directly conflicts with the provisions of Idaho Code Section 42-605(3). Paragraph 27d. mandates the

appointment of deputy watermasters by the watermaster, with approval by the Director. Deputy watermasters shall work pursuant to instructions of the watermaster. Deputy watermasters may be other Department employees, or watermasters elected by sub-districts.

Id. This directly conflicts with the specific language of Idaho Code Section 42-605(3) which states:

at the meeting of the water users of a district there shall be elected a watermaster for such district, who *may be* authorized to employ such other regular assistants *as the water users shall deem necessary* and who upon appointment by the Director of the Department of Water Resources shall be responsible for distribution of water within said water district and the *water users shall*, prior to the election of such watermaster and *approval* of the appointment of assistants, fix the compensation to be paid them during the time actually engaged in the performance of their duties.

Id. (emphasis added). The Director of the Department has no authority to require the appointment of deputy watermasters by the watermaster. Such authority lies solely with the water users of the water district, pursuant to Idaho Code Section 42-605(b).

Paragraph 27e. of the Final Order improperly attempts to expand the legal authority of the Director of the Department. It states:

water rights not included in an existing water district shall be assessed the cost for operating the Upper Salmon Water District directly by the water district watermaster, unless the rights are located within a sub-district that is subsequently created by the Director

Id. There is nothing in Chapter 6, Title 42 of the Idaho Code that authorizes assessment of costs for operating a water district upon water rights which are not included in the existing water

district. This provision of the Final Order is an unlawful attempt by the Director to legislate new Idaho law

Paragraph 27b. improperly attempts to amend Idaho law by providing for the creation of “sub-districts of the Upper Salmon Water District.” Idaho Code Section 42-604 only authorizes the Director to “create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts . . .” There is no provision in the Idaho Code which provides for the creation of “sub-districts” of a water district

Paragraph 27f. likewise improperly attempts to rewrite Idaho law. There is no authority under Idaho law for the so-called “sub-districts” described in paragraph 27f. Additionally, there is no authority under Idaho state law to allow “sub-districts” to “collect assessments to pay the pro-rata expenses of the Upper Salmon Water District.”

Paragraph 27g. is not authorized under Idaho law.

The “Order” portion of the Final Order suffers from the same defects as described above. Specifically, the Order is not based upon Idaho law or is in violation of the specific requirements of Idaho law. Additionally, the Order violates the provisions of the Order of November 17, 2004, as discussed above.

Paragraph 2 of the Order section illegally provides for the creation of “sub-districts” of the newly created Water District No. 170. Paragraph 2 also mandates the election of a “sub-district watermaster.” A “sub-district watermaster” is not authorized by Idaho state law. However, to the extent a “watermaster” may be selected, such action is a determination which is solely within the discretion of the water users of a water district, pursuant to Idaho Code Section 42-605(3). Additionally, subsection 2 of paragraph 2 of the Final Order mandates the

“selection of an advisory committee.” Again, such a decision is within the sole discretion of water users of a water district. *See* IDAHO CODE § 42-605(6).

Paragraph 3 of the Order section, improperly requires the “select[ion of] an advisory committee.” Such action is solely within the authority of the water users of a water district, pursuant to Idaho Code Section 42-605(6).

Paragraph 5 of the Order section improperly imposes the responsibility upon the water users for all costs associated with installation of measuring devices and controlling works in any future order issued by the Director of the Department. Such prospective mandatory imposition of costs, for as yet unspecified “separate orders,” illegally expands the authority of the Director of the Department.

VI. CONCLUSION

Virtually all of the factual determinations, legal conclusions, and orders contained in the Final Order Creating Water District No. 170 are the direct consequence of the Wild and Scenic Rivers Settlement Agreement and the action of the State of Idaho to enter into that settlement. The Order of November 17, 2004 of the SRBA District Court specifically precludes utilization of actions agreed to in paragraph 2 of the Stipulation which appears to be the sole basis for the creation of the water district by the Director of the Idaho Department of Water Resources in the Final Order Creating Water District No. 170. Consequently, the fundamental underpinnings of the Final Order are fatally flawed.

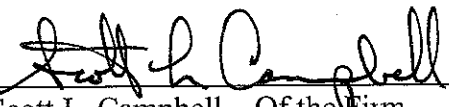
Moreover, the administrative record created by the Department in the public hearing process does not support, but directly contradicts, the findings of fact and conclusions of law contained in the Final Order. The administrative record overwhelmingly demonstrates that the affected water users in the proposed water district do not believe the proposed water district

is necessary, that the Wild and Scenic Rivers Settlement Agreement is not a legitimate basis for the creation of the proposed water district, and that the elevated costs of administration of water within the proposed water district, attributable directly to the Wild and Scenic Rivers Settlement, should not be borne solely by existing water users in the area. This is particularly true since the proposed water district is a requirement agreed to by the State of Idaho in the Wild and Scenic Rivers Settlement Agreement; driven by the claims of the United States of America which is not contributing one cent to the costs of administration of the proposed water district, yet the additional costs for monitoring and enforcement are being driven solely by the terms of the settlement agreement. This course of action by the Department is contrary to Idaho law and is fundamentally unfair.

Thompson Creek respectfully requests that the Director of the Department seriously reconsider the implications and the content of the Final Order Creating Water District No. 170, and issue a revised order which does not create the Upper Salmon River Water District

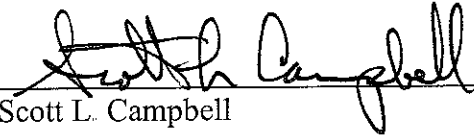
DATED this 17th day of March, 2006.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Scott L. Campbell – Of the Firm
Attorneys for Thompson Creek Mining
Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of March, 2006, the above and foregoing **PETITION FOR RECONSIDERATION OF FINAL ORDER CREATING WATER DISTRICT NO. 170** was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho. Each individual or entity on the service list was served by placing a copy of the **PETITION FOR RECONSIDERATION OF FINAL ORDER CREATING WATER DISTRICT NO. 170** in the United States mail, postage prepaid and properly addressed.



Scott L. Campbell

SRBA

SUBCASE STATUS REPORT

SNAKE RIVER BASIN ADJUDICATION

SUBCASE STATUS REPORT

3/15/06

IWTI42

PAGE: 1

SUBCASE#	DATE FILED	CLAIMANT	STATUS
71-00026A	3-13-2000	USDA FOREST SERVICE	PD ISSUED
71-00026B	3-13-2000	WELP, THEODORE M	PD ISSUED
71-00026C	3-13-2000	GIFFEN, DOROTHY	PD ISSUED
71-00027A	3-13-2000	USDA FOREST SERVICE	PD ISSUED
71-00027B	3-13-2000	WELP, D ELAINE	PD ISSUED
71-00028	2-01-2001	HUMPHREYS, FRED	PD ISSUED
71-00028A	3-15-1999	USDA FOREST SERVICE	PD ISSUED
71-00029	2-01-2001	HUMPHREYS, FRED	PD ISSUED
71-00029A	3-15-1999	USDA FOREST SERVICE	PD ISSUED
71-00030A	3-15-1999	BRADY, J ROBB	PD ISSUED
71-00030B	3-16-1999	WO-HE-LO SUBDIVISION	PD ISSUED
71-00030C	3-16-1999	LAWLER FAMILY TRUST, THE ANDRE	PD ISSUED
71-00030D	3-16-1999	COOK, GEORGE E	PD ISSUED
71-00031A	3-15-1999	BRADY, J ROBB	PD ISSUED
71-00031B	3-16-1999	LAWLER FAMILY TRUST, THE ANDRE	PD ISSUED
71-00031C	3-16-1999	WO-HE-LO SUBDIVISION	PD ISSUED
71-00033A	3-16-1999	MITCHELL, MARY J	PD ISSUED
71-00033B	2-01-2001	HUMPHREYS, FRED	PD ISSUED
71-00033C	3-16-1999	STAHL TRUST, SHARLENE K	PD ISSUED
71-00033E	3-16-1999	BRANIFF, MARGARET L	PD ISSUED
71-00034A	3-16-1999	OSBORN, ALMA MARIE	PD ISSUED
71-00034B	3-16-1999	STANFORD, CHARLOTTE	PD UNDELIVERED
71-00034C	2-01-2001	HUMPHREYS, FRED	PD ISSUED
71-00034D	3-16-1999	BRADY, J ROBB	PD ISSUED
71-00034E	3-16-1999	STAHL TRUST, SHARLENE K	PD ISSUED
71-00034F	3-16-1999	LAUDER, WINSTON	PD ISSUED
71-00034G	3-16-1999	BRANIFF, MARGARET L	PD ISSUED
71-00035A	3-16-1999	BRADY, J ROBB	PD ISSUED
71-00035C		DAY, ERNEST	DECREED DISALLOWED
71-00036A	3-16-1999	FUREY, JACK B	PD ISSUED
71-00036B		ESTATE OF FRED HUMPHREYS	DECREED DISALLOWED
71-00036C	3-16-1999	BRADY, J ROBB	PD ISSUED
71-00037A	3-15-1999	BRADY, J ROBB	PD ISSUED
71-00037B	3-16-1999	LAWLER FAMILY TRUST, THE ANDRE	PD ISSUED
71-00037C	3-16-1999	WO-HE-LO SUBDIVISION	PD ISSUED
71-00038	3-15-1999	BRADY, J ROBB	PD ISSUED
71-00039A	3-16-1999	MAHONEY JR LIFETIME TRUST II,	PD ISSUED
71-00039D	3-16-1999	BRUBAKER, FRED HAROLD	PD ISSUED
71-00039E	3-16-1999	HILL, PAUL	PD UNDELIVERED
71-00039G	3-16-1999	MAHONEY, J MICHAEL	PD ISSUED
71-00039H	3-16-1999	PETERS, JAMES R	PD UNDELIVERED
71-00040A	3-16-1999	MAHONEY JR LIFETIME TRUST II,	PD ISSUED
71-00040D	3-16-1999	BRUBAKER, FRED HAROLD	PD ISSUED
71-00040E	3-16-1999	HILL, PAUL	PD UNDELIVERED
71-00040G	3-16-1999	MAHONEY, J MICHAEL	PD ISSUED
71-00040H	3-16-1999	PETERS, JAMES R	PD UNDELIVERED
71-00041	3-16-1999	USDA FOREST SERVICE	PD ISSUED
71-00042A	3-16-1999	SADLER, MARTHA MAHONEY	PD ISSUED
71-00042B	3-16-1999	USDA FOREST SERVICE	PD ISSUED
71-00043A	3-16-1999	SADLER, MARTHA MAHONEY	PD ISSUED
71-00043B	3-16-1999	USDA FOREST SERVICE	PD ISSUED

EXHIBIT H

71-10751		SHOSHONE-BANNOCK TRIBES	DECREED DISALLOWED
71-10752		SHOSHONE-BANNOCK TRIBES	DECREED DISALLOWED
71-10753		SHOSHONE-BANNOCK TRIBES	DECREED DISALLOWED
71-10754		SHOSHONE-BANNOCK TRIBES	DECREED DISALLOWED
71-10755		SHOSHONE-BANNOCK TRIBES	DECREED DISALLOWED
71-10756		SHOSHONE-BANNOCK TRIBES	DECREED DISALLOWED
71-10757		SHOSHONE-BANNOCK TRIBES	DECREED DISALLOWED
71-10758		SHOSHONE-BANNOCK TRIBES	DECREED DISALLOWED
71-10759		SHOSHONE-BANNOCK TRIBES	DECREED DISALLOWED
71-10760		NORTHWEST BAND OF SHOSHONI	DECREED DISALLOWED
71-10761		USDA FOREST SERVICE	DECREED DISALLOWED
71-10762	3-16-1999	VANDERBILT, WILLIAM H	PD ISSUED
71-10763	2-01-2001	DAY, ERNEST	PD ISSUED
71-10764	2-01-2001	HUMPHREYS, ESTATE OF FRED	PD ISSUED
71-10765	3-16-1999	KEY BANK OF IDAHO TRUSTEE	PD ISSUED
71-10766	3-16-1999	USDA FOREST SERVICE	PD ISSUED
71-10767	3-16-1999	RECINE JR, LOUIS F	PD ISSUED
71-10768	3-16-1999	FUREY, JACK B	PD ISSUED
71-10772	3-16-1999	USDA FOREST SERVICE	PD ISSUED
71-10773	3-16-1999	USDA FOREST SERVICE	PD ISSUED
71-10774	3-16-1999	SMITH TRUST, ROZALYS B	PD ISSUED
71-10852	3-16-1999	MARVEL, JONATHAN H	PD ISSUED
71-10853	3-16-1999	ROGER A BROWNING TRUST	PD ISSUED
71-10854	3-16-1999	BROWNING, KATHERINE A	PD ISSUED
71-10855	12-29-1997	USDA FOREST SERVICE	PD ISSUED
71-10857	12-29-1997	USDA FOREST SERVICE	PD ISSUED
71-10858	12-29-1997	USDA FOREST SERVICE	PD ISSUED
71-10859	10-03-1997	USDA FOREST SERVICE	PD ISSUED
71-10860	10-03-1997	USDA FOREST SERVICE	PD ISSUED
71-10861	10-03-1997	USDA FOREST SERVICE	PD ISSUED
71-10862	10-03-1997	USDA FOREST SERVICE	PD ISSUED
71-10863	10-03-1997	USDA FOREST SERVICE	PD ISSUED
71-10864	10-03-1997	USDA FOREST SERVICE	PD ISSUED
71-10865	10-03-1997	USDA FOREST SERVICE	PD ISSUED
71-10870		ANDERSON, GENE	DECREED DISALLOWED
71-10871	3-16-1999	USDA FOREST SERVICE	PD ISSUED
71-10872	3-16-1999	BROWNING FAMILY TRUST, KENT AN	PD ISSUED
71-10873	3-16-1999	USDA FOREST SERVICE	PD ISSUED
71-10874	3-16-1999	USDA FOREST SERVICE	PD ISSUED
71-10876	7-23-2001	BLICK BROTHERS PARTNERSHIP	PD ISSUED
71-10877	5-29-2001	CARSTENSEN, MARY S	PD ISSUED
71-10886		STATE OF IDAHO	UNOBJECTED TO W/R
71-10887		STATE OF IDAHO	UNOBJECTED TO W/R
71-10888		STATE OF IDAHO	UNOBJECTED TO W/R
71-10889		STATE OF IDAHO	UNOBJECTED TO W/R
71-10890		STATE OF IDAHO	UNOBJECTED TO W/R
71-10891		STATE OF IDAHO	UNOBJECTED TO W/R
71-10892		STATE OF IDAHO	UNOBJECTED TO W/R
71-10893		STATE OF IDAHO	UNOBJECTED TO W/R
71-10894		STATE OF IDAHO	UNOBJECTED TO W/R
71-10895		STATE OF IDAHO	UNOBJECTED TO W/R
71-10896		STATE OF IDAHO	UNOBJECTED TO W/R
72-00001	11-17-2000	PHILPS, RICK	PD ISSUED
72-00002C	11-17-2000	TAYLOR, KATHRIN S	PD ISSUED
72-00004C	11-17-2000	SIMMONS, DWIGHT	PD ISSUED
72-00004D	11-17-2000	HENDERSON, DON	PD UNDELIVERED
72-00004F	11-17-2000	PHILLIPS, ELIZABETH N	PD ISSUED
72-00004G	11-17-2000	BROWN, JOEL	PD ISSUED
72-00004H	11-17-2000	SCHULTZ, HARRY	PD ISSUED
72-00004J	11-17-2000	HAWKINS, JAMES N	PD ISSUED
72-00004K	11-17-2000	BIRD, BYRON R	PD ISSUED
72-00004L	11-17-2000	BIRD, BYRON R	PD ISSUED
72-00004M	11-17-2000	EVANS, KARLENE	PD ISSUED
72-00004N	11-17-2000	ARRABITO, BETTY JO	PD ISSUED
72-00004P	2-15-2000	HAMMOND, WILLIAM L	PD ISSUED
72-00004Q	11-17-2000	PIVA, KAY A	PD ISSUED

72-00032J	12-14-2001	YACOMELLA, ANTONY R	PD ISSUED
72-00032K	11-17-2000	CURTIS, LINDA	PD ISSUED
72-00032L	11-17-2000	BAUCHMAN, STEPHEN	PD ISSUED
72-00032N	11-17-2000	ENZENAUER, EVERETTE P	PD ISSUED
72-00032P	11-17-2000	STRICKLER, TED	PD ISSUED
72-00032Q	10-12-2001	WATSON, KENT S	PD ISSUED
72-00047		CITY OF CHALLIS	SET ASIDE PD PENDING
	LAST EVENT/DATE:	PD FILED 11-17-2000	
	NEXT EVENT/DATE:	HEARNG SET 4-18-2006	
72-00048	2-15-2000	CYPRUS THOMPSON CREEK MINING	PD ISSUED
72-00049	11-17-2000	MAHONEY JR LIFETIME TRUST II,	PD ISSUED
72-00051B	2-10-2000	CYPRUS THOMPSON CREEK MINING	PD ISSUED
72-00051D	11-17-2000	USDA FOREST SERVICE	PD ISSUED
72-00051K	11-17-2000	BUTTS, DONNA L	PD ISSUED
72-00051L	2-10-2000	CYPRUS THOMPSON CREEK MINING	PD ISSUED
72-00051M	11-17-2000	SHANNON, MICHAEL D	PD ISSUED
72-00051N	2-10-2000	CYPRUS THOMPSON CREEK MINING	PD ISSUED
72-00056	11-17-2000	GREEN, ROBERTA H	PD ISSUED
72-00057A	11-17-2000	SMITH, JOHN S	PD ISSUED
72-00057B	11-17-2000	SHANNON, MICHAEL D	PD ISSUED
72-00060	10-03-1997	LISONBEE, JUDY	PD ISSUED
72-00065	10-03-1997	WHITTEN, CLAUDIA	PD ISSUED
72-00072	10-03-1997	GASSMAN, SALLY J	PD ISSUED
72-00076	10-03-1997	ROWLES, D GRIDLEY	PD ISSUED
72-00077	12-29-1997	LARSEN, LEE W	PD ISSUED
72-00078	10-03-1997	WINEGARNER, JON	PD ISSUED
72-00080A	11-17-2000	YACOMELLA, THOMAS L	PD ISSUED
72-00080B	11-17-2000	YACOMELLA, MADGE E	PD ISSUED
72-00081	11-17-2000	TUPPER, MICHAEL	PD ISSUED
72-00097A		TAPPAN, SCOT	PD UNDELIVERED
72-00106A		NORRIS, JAY	DECREED DISALLOWED
72-00106C	2-15-2000	STRICKLAND, PATSY L	PD ISSUED
72-00106D	2-15-2000	WALSH, JEROLD P	PD ISSUED
72-00106E	5-31-2000	USDI BLM	PD ISSUED
72-00106F	11-17-2000	JAMES TRUST, CHRISTOPHER W	PD ISSUED
72-00106G		FIRSTFRUITS FOUNDATION	DECREED DISALLOWED
72-00106H	11-17-2000	FIRSTFRUITS FOUNDATION	PD ISSUED
72-00106J	5-31-2000	FIRSTFRUITS FOUNDATION	PD ISSUED
72-00106K	5-31-2000	USDI BLM	PD ISSUED
72-00106L	3-12-2002	NORRIS, JAY	PD ISSUED
72-00106M	3-12-2002	YEO, JEFFREY J	PD ISSUED
72-00109E		NORRIS, JAY	DECREED DISALLOWED
72-00109F	11-17-2000	JAMES TRUST, CHRISTOPHER W	PD ISSUED
72-00109G		FIRSTFRUITS FOUNDATION	DECREED DISALLOWED
72-00109J	5-31-2000	FIRSTFRUITS FOUNDATION	PD ISSUED
72-00109K	5-31-2000	USDI BLM	PD ISSUED
72-00109L	10-09-2001	NORRIS, LINDA	PD ISSUED
72-00109M	10-09-2001	YEO, JEFFREY J	PD ISSUED
72-00110A	11-17-2000	CHALLIS RECREATION AND DEVELOP	PD ISSUED
72-00110B	11-17-2000	CITY OF CHALLIS	PD ISSUED
72-00111A	11-17-2000	CHALLIS RECREATION AND DEVELOP	PD ISSUED
72-00111B	11-17-2000	CITY OF CHALLIS	PD ISSUED
72-00116A	12-18-2001	CHORN, ALBERT R	PD ISSUED
72-00117A	11-17-2000	COBBLEY, ELVIN	PD ISSUED
72-00117B	11-17-2000	HENDERSON, ALAN	PD ISSUED
72-00117C	11-17-2000	LEATON, HAROLD	PD ISSUED
72-00117D	1-06-1998	SMITH JR, O DELL	PD ISSUED
72-00118	10-03-1997	SWIGERT, RUBY	PD ISSUED
72-00123	11-17-2000	CITY OF CHALLIS	PD ISSUED
72-00124	9-06-2001	SHANNON, MICHAEL DAN	PD ISSUED
72-00125B	11-17-2000	HARRIMAN, RICHARD L	PD ISSUED
72-00125C	11-17-2000	TESSMER, ROBERT	PD UNDELIVERED
72-00126A	11-17-2000	WOOD, DEBORAH K	PD ISSUED
72-00133	2-10-2000	THOMPSON CREEK MINING CO	PD ISSUED
72-00134A	11-17-2000	HERRICK, KATHRYN S	PD ISSUED
72-00134B	11-17-2000	BERLAGE, FRANK R	PD ISSUED

72-13311	5-07-2004	USDI BLM	PD ISSUED
72-13313	5-07-2004	USDI BLM	PD ISSUED
72-13315	5-07-2004	USDI BLM	PD ISSUED
72-13317	5-07-2004	USDI BLM	PD ISSUED
72-13319	5-07-2004	USDI BLM	PD ISSUED
72-13321	5-07-2004	USDI BLM	PD ISSUED
72-13323	5-07-2004	USDI BLM	PD ISSUED
72-13327	5-07-2004	USDI BLM	PD ISSUED
72-13329	5-07-2004	USDI BLM	PD ISSUED
72-13331	5-07-2004	USDI BLM	PD ISSUED
72-13333	5-07-2004	USDI BLM	PD ISSUED
72-13335	5-07-2004	USDI BLM	PD ISSUED
72-13337	5-07-2004	USDI BLM	PD ISSUED
72-13339	5-07-2004	USDI BLM	PD ISSUED
72-13343	5-07-2004	USDI BLM	PD ISSUED
72-13345	5-07-2004	USDI BLM	PD ISSUED
72-13347	5-07-2004	USDI BLM	PD ISSUED
72-13349	5-07-2004	USDI BLM	PD ISSUED
72-13351	5-07-2004	USDI BLM	PD ISSUED
72-13357	5-07-2004	USDI BLM	PD ISSUED
72-13359	5-07-2004	USDI BLM	PD ISSUED
72-13361	5-07-2004	USDI BLM	PD ISSUED
72-13363	5-07-2004	USDI BLM	PD ISSUED
72-13365	5-07-2004	USDI BLM	PD ISSUED
72-13367	5-07-2004	USDI BLM	PD ISSUED
72-13381	5-07-2004	USDI BLM	PD ISSUED
72-13383	5-07-2004	USDI BLM	PD ISSUED
72-13385	5-07-2004	USDI BLM	PD ISSUED
72-13387	5-07-2004	USDI BLM	PD ISSUED
72-13391	5-07-2004	USDI BLM	PD ISSUED
72-13393	5-07-2004	USDI BLM	PD ISSUED
72-13395	5-07-2004	USDI BLM	PD ISSUED
72-13415	5-07-2004	USDI BLM	PD ISSUED
72-13417	5-07-2004	USDI BLM	PD ISSUED
72-13421	5-07-2004	USDI BLM	PD ISSUED
72-13423	5-07-2004	USDI BLM	PD ISSUED
72-13425	5-07-2004	USDI BLM	PD ISSUED
72-13427	5-07-2004	USDI BLM	PD ISSUED
72-13433	5-07-2004	USDI BLM	PD ISSUED
72-13451	5-07-2004	USDI BLM	PD ISSUED
72-13457	5-07-2004	USDI BLM	PD ISSUED
72-13459	5-07-2004	USDI BLM	PD ISSUED
72-13461	5-07-2004	USDI BLM	PD ISSUED
72-13463	5-07-2004	USDI BLM	PD ISSUED
72-13471	5-07-2004	USDI BLM	PD ISSUED
72-13475	5-07-2004	USDI BLM	PD ISSUED
72-13501	5-07-2004	USDI BLM	PD ISSUED
72-13503	5-07-2004	USDI BLM	PD ISSUED
72-13509	5-07-2004	USDI BLM	PD ISSUED
72-13513	5-07-2004	USDI BLM	PD ISSUED
72-13557	5-07-2004	USDI BLM	PD ISSUED
72-13559	5-07-2004	USDI BLM	PD ISSUED
72-13569	5-07-2004	USDI BLM	PD ISSUED
72-13597	5-07-2004	USDI BLM	PD ISSUED
72-13599	5-07-2004	USDI BLM	PD ISSUED
72-13603	5-07-2004	USDI BLM	PD ISSUED
72-13607	5-07-2004	USDI BLM	PD ISSUED
72-13611	5-07-2004	USDI BLM	PD ISSUED
72-13617	2-10-2006	USDI BLM	M/R/R FILED
	LAST EVENT/DATE:	M R&R FILED	2-10-2006
	NEXT EVENT/DATE:	CHALNG DUE	3-28-2006
72-13619		USDI BLM	REFERRED UNOBJECTED
	LAST EVENT/DATE:	HEARNG HELD	2-07-2006
	NEXT EVENT/DATE:	STATUS SET	8-08-2006
72-13651		USDI BLM	REFERRED UNOBJECTED
	LAST EVENT/DATE:	HEARNG HELD	2-07-2006

NEXT EVENT/DATE: STATUS SET

8-08-2006

72-13653	5-07-2004	USDI BLM	PD ISSUED
72-13655	5-07-2004	USDI BLM	PD ISSUED
72-13667	5-07-2004	USDI BLM	PD ISSUED
72-13683	5-07-2004	USDI BLM	PD ISSUED
72-13687	5-07-2004	USDI BLM	PD ISSUED
72-13721	5-07-2004	USDI BLM	PD ISSUED
72-13755	5-07-2004	USDI BLM	PD ISSUED
72-13767	5-07-2004	USDI BLM	PD ISSUED
72-13769	5-07-2004	USDI BLM	PD ISSUED
72-13773	5-07-2004	USDI BLM	PD ISSUED
72-13777	5-07-2004	USDI BLM	PD ISSUED
72-13783	5-07-2004	USDI BLM	PD ISSUED
72-13785	5-07-2004	USDI BLM	PD ISSUED
72-13787	5-07-2004	USDI BLM	PD ISSUED
72-13789	5-07-2004	USDI BLM	PD ISSUED
72-13793	5-07-2004	USDI BLM	PD ISSUED
72-13795	5-07-2004	USDI BLM	PD ISSUED
72-13803	5-07-2004	USDI BLM	PD ISSUED
72-13807	5-07-2004	USDI BLM	PD ISSUED
72-13813	5-07-2004	USDI BLM	PD ISSUED
72-13815	5-07-2004	USDI BLM	PD ISSUED
72-13821	5-07-2004	USDI BLM	PD ISSUED
72-13825	5-07-2004	USDI BLM	PD ISSUED
72-13829	5-07-2004	USDI BLM	PD ISSUED
72-13859	5-07-2004	USDI BLM	PD ISSUED
72-13863	5-07-2004	USDI BLM	PD ISSUED
72-13885	5-07-2004	USDI BLM	PD ISSUED
72-13887	5-07-2004	USDI BLM	PD ISSUED
72-13893	5-07-2004	USDI BLM	PD ISSUED
72-13897	5-07-2004	USDI BLM	PD ISSUED
72-13899	5-07-2004	USDI BLM	PD ISSUED
72-13903	5-07-2004	USDI BLM	PD ISSUED
72-13905	5-07-2004	USDI BLM	PD ISSUED
72-13907	5-07-2004	USDI BLM	PD ISSUED
72-13911	5-07-2004	USDI BLM	PD ISSUED
72-13929	5-07-2004	USDI BLM	PD ISSUED
72-13931	5-07-2004	USDI BLM	PD ISSUED
72-13933	5-07-2004	USDI BLM	PD ISSUED
72-13945	5-07-2004	USDI BLM	PD ISSUED
72-13947	5-07-2004	USDI BLM	PD ISSUED
72-13981	5-07-2004	USDI BLM	PD ISSUED
72-13997	5-07-2004	USDI BLM	PD ISSUED
72-14013	5-07-2004	USDI BLM	PD ISSUED
72-14015	5-07-2004	USDI BLM	PD ISSUED
72-14019	5-07-2004	USDI BLM	PD ISSUED
72-14021	5-07-2004	USDI BLM	PD ISSUED
72-14027	5-07-2004	USDI BLM	PD ISSUED
72-14033	5-07-2004	USDI BLM	PD ISSUED
72-14037	5-07-2004	USDI BLM	PD ISSUED
72-14039	5-07-2004	USDI BLM	PD ISSUED
72-14041	5-07-2004	USDI BLM	PD ISSUED
72-14047	5-07-2004	USDI BLM	PD ISSUED
72-14059	5-07-2004	USDI BLM	PD ISSUED
72-14061	5-07-2004	USDI BLM	PD ISSUED
72-14067	5-07-2004	USDI BLM	PD ISSUED
72-14069	5-07-2004	USDI BLM	PD ISSUED
72-14071	5-07-2004	USDI BLM	PD ISSUED
72-14073	5-07-2004	USDI BLM	PD ISSUED
72-14075	5-07-2004	USDI BLM	PD ISSUED
72-14079	5-07-2004	USDI BLM	PD ISSUED
72-14081	5-07-2004	USDI BLM	PD ISSUED
72-14095	5-07-2004	USDI BLM	PD ISSUED
72-14097	5-07-2004	USDI BLM	PD ISSUED
72-14101	5-07-2004	USDI BLM	PD ISSUED
72-14103	5-07-2004	USDI BLM	PD ISSUED

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Minimum Standards for Operation of Water Districts

The following minimum standards apply to water districts created in the Upper Salmon River Basin (USRB) or the Eastern Snake Plain Aquifer (ESPA) for the purpose of ensuring fair and accurate water rights administration, under the supervision and direction of the Idaho Department of Water Resources (IDWR). These standards are established in accordance with the provisions of Title 42, Idaho Code, particularly Chapter 6. Water Districts formed for this purpose shall meet the following minimum standards:

1. Conduct a Water District meeting at least once per year in accordance with Section 42-605, Idaho Code and provide a certified copy of the minutes to IDWR.
2. Set a budget with sufficient funds to provide for accomplishment of all minimum standards described herein.
3. Establish resolutions necessary for conducting meetings, collecting assessments and delivering water within the Water District.
 - a. Watermaster shall serve all year.
 - b. Voting/Assessment procedures including those for non-consumptive uses.
 - c. Water not to be delivered if assessment not paid.
 - d. Watermaster shall acquire and hold property for district.
 - e. Annual meeting dates and locations.
 - f. Method for choosing advisory board.
4. Select an Advisory Committee.
5. Coordinate with IDWR.
 - a. Water District meetings
 - b. Advisory Committee meetings.
 - c. Coordination meetings with IDWR, users, & Fed. Govt. representatives
 - d. Special events.
6. Provide an annual statement of Water District finances, and provide for independent financial audits of Water District finances in accordance with minimum requirements of Section 67-450B.
7. Elect a watermaster that meets the following standards:
 - a. Ability to manage the Water District office, including preparation and maintenance of district budgets, preparation and collection of assessments, and to hire, train and supervise all employees of the Water District.
 - b. Ability to operate, or supervise the operation of, all office and field equipment utilized by the Water District.
 - c. Ability to analyze water measurement data, and to apply the data to make water delivery determinations in accordance with IDWR guidelines.
 - d. Ability to coordinate with IDWR in receipt and transmittal of all pertinent water right and water use data or information.
 - e. Ability to analyze spatial data, including use of GIS for monitoring irrigated place of use, calculating area, incorporating GPS data.
 - f. Ability to conduct water rights administration enforcement actions:
 - i. Distribute water to rights in accordance with IDWR direction using information provided by IDWR based upon decrees, partial decrees, Director's Reports, permits, licenses and transfers.

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- ii. Until otherwise instructed (after a determination by IDWR that diversion and use of a junior ground water user is injuring a senior water right or upon adoption of ESPA rules) administration of ground water rights will not be based upon priority. (ESPA)
 - iii. Curtail out-of-priority diversions determined by IDWR to be causing injury to senior water rights that are not covered by a stipulated agreement or a mitigation plan approved by IDWR. (ESPA)
 - iv. Distribute water to Federal Reserved water rights in accordance with Wild and Scenic River agreement/stipulation (USRB)
 - v. Curtail unauthorized or excessive diversions.
 - 1. Use a database compatible to IDWR, including a functional spatial interface, to assist in the location and tracking of illegal diversions.
 - 2. Be capable of regulating water rights by both point of diversion and place of use.
 - 3. Be capable of assisting IDWR to issue and follow-up on Notices of Violation as required, and following other curtailment provisions in accordance with instructions issued by IDWR.
 - vi. Curtail diversions for which assessments have not been paid
 - g. Ability to conduct Water District reporting, in a format and medium approved by IDWR (or in accordance with instructions from IDWR) including:
 - i. Quarterly reporting for diversions in the USWD
 - ii. An annual report, showing:
 - 1. Water usage of each water user, by diversion.
 - 2. Expenses and budget for the Water District, plus apportionment of expenses among users
 - 3. Unauthorized and excessive diversions.
 - 4. Other information as deemed necessary by the Director of IDWR.
 - iii. A proposed and adopted annual budget for the following year, including an annual work plan.
 - iv. Posting Water District information to the Internet, in coordination with IDWR
 - h. Expectancy to work longer hours during the irrigation season.
 - i. Ability to maintain good working relationships with water users, advisory committee, IDWR and other agencies
 - j. Ability to communicate orally (large meetings) and in writing
 - i. Participate in and/or coordinate periodic meetings with IDWR, water district advisory committee, water users, and representatives of the federal government regarding management goals and progress of the district and implementation of the Wild and Scenic Rivers agreement/stipulation.
8. Provide for the acquisition and maintenance of the following:
- a. An office to provide an address for the district with adequate space for employees, equipment and district activities. The office shall comply with applicable safety and access requirements.
 - b. Office equipment
 - i. Standard office equipment (furniture, file storage, copier).
 - ii. Communication equipment.
 - 1. Telephone, facsimile, answering machine.
 - 2. Internet access with DSL or better connection.

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3. Interconnection with IDWR Wide Area Network.
- iii. Automation equipment (Maintain, operate, and be proficient in computer software and hardware that is compatible with IDWR systems).
 1. PCs with minimum speed of 500MHz.
 2. Windows 2000 XP Operating System or newer.
 3. Office 2000 or XP Software or newer.
 4. ArcView 3.2 or ArcGIS 8.0 or newer.
 5. Global Positioning System receivers with capability to download information that is compatible with ArcView or ArcGIS.
 6. PC compatible printers with color capability.
- b. Field equipment.
 - i. Transportation (4X4 trucks).
 - ii. Communication (cell phone)
 - iii. Measurement.
 1. Surface water (AA and Pygmy Meters, or other current meters acceptable to IDWR, with topsetter rod, display devices, or data loggers).
 2. Ground water.
 - a. Portable non-invasive flow measurement device such as Polysonic Transit-Time meter, and pipe thickness gage or meter.
 - b. Portable depth to water probes (steel tape and electronic) for use in wells.
 3. Periodically calibrate flow-measuring equipment in a manner acceptable to IDWR.
 4. Measure and record diversions under water rights and depths to water in an approved monitoring network with a frequency rights administration acceptable to IDWR.
9. Elect a treasurer that meets the following standards:
 - a. Ability to establish and supervise an automated accounting system.
 - b. Ability to develop or utilize a system compatible with systems used by IDWR that will provide for updating ownership records utilized by both the Water District and IDWR.
 - c. Ability to ensure that billing is conducted in a fair and equitable manner.
 - d. Ability to prepare a financial statement of the district at the end of each year and file with IDWR.
 - e. Ability to oversee collection of assessments.
 - f. Ability to work with watermaster to pay district obligations.
10. Comply with all applicable employment requirements (IRS, FICA, Workman's Comp, etc)

Luke, Tim

From: Bob Loucks [bloucks@salmoninternet.com]
Sent: Monday, September 26, 2005 1:59 PM
To: Tim Luke
Cc: Dave Tuthill; Karl Dreher
Subject: Fw: Creation of Upper Salmon Water District

I didn't have you fellows email addresses at the time I sent this. S/Bob Loucks

----- Original Message -----

From: Bob Loucks
To: Bob Foster
Cc: Carl Ellsworth ; Janet McFarland ; Dede O'Neal ; R.J. Smith ; Rick Sager ; Trish Dowton ; Shannon Williams
Sent: Monday, September 26, 2005 11:35 AM
Subject: Creation of Upper Salmon Water District

Folks,

The next meeting of the steering committee for this project has been set for October 4, at 7:00 p.m. at the Challis Forest Office. Attached is the results of some discussion of this proposal by representatives of WD73, WD74, WD74W, and WD75.

Please forward this email to any of the following people for which you have an email address - Jack Challis, Jim Hawkins, Wayne Baker, Tim Luke, Gary Chamberlain, Sen. Don Burtenshaw, and anyone else that you think might have a specific interest. Shannon - will you please print a copy and leave it at NAPA auto parts where Bill Gattung will pick it up.

S/Bob Loucks

EXHIBIT J

CREATION OF Upper Salmon WATER DISTRICT (USWD)
September 26, 2005

FACTS: The State of Idaho and the Federal Government have agreed, in a stipulated agreement, in the Snake River Basin Adjudication (SRBA) to the following conditions with respect to USWD:

- 1) Within six months after issuance of the Partial Decree for the Wild & Scenic River water right, the parties will file a petition with the SRBA court for interim administration of water rights in basins 71 and 72.
- 2) IDWR will establish a water district (USWD) for the Upper Salmon River Basin. USWD shall initially consist of WD71 and WD72.
- 3) Within six months of filing the Director's Report for basins 73, 74, and 75, the parties will file a petition with the SRBA court for interim administration of water rights in those basins and IDWR will incorporate those basins into USWD.
 - A – Existing Water Districts within the basin will be converted to subdistricts within the USWD
 - B – Other subdistricts will be formed as deemed necessary to accomplish the purposes of the USWD.
 - C – Creation of the USWD shall involve full participation by water users in the area and the existing water districts will have an important role.

FACTS: The State of Idaho and the Federal Government have agreed, in a stipulated agreement, in the Snake River Basin Adjudication (SRBA) to the following conditions with respect to duties of the USWD watermaster:

- 1) IDWR and the USWD watermaster shall conduct a systematic inventory of diversions.
- 2) IDWR will evaluate the staffing requirement for operation of the USWD and will identify needs for subdistricts and deputy watermasters as required
- 3) IDWR will collect and report diversion data on a quarterly basis; except that; during times of shortage, IDWR and the watermaster will ensure that diversion data will be collected and reported on a daily basis as necessary to properly administer water rights.
- 4) IDWR will require installation of lockable controlling works and measurement devices for any existing diversion if it is determined that the water right holder is refusing or failing to comply with IDWR's or the watermaster's instructions and will pursue appropriate civil enforcement action as provided in Idaho Code.

PROPOSAL BY TIM LUKE (IDWR) – Tim proposes that the USWD watermaster be appointed (or elected) by the waterusers in the USB and that he become their employee. He suggested that IDWR would fund the position for two years (2006 and 2007) and that after that time, the waterusers would fund the position

Tim further proposed that each sub-basin (71, 72, 73, 74, and 75) should have a deputy watermaster and that the watermaster in each existing WD within each of the sub-basins should be a deputy to that deputy watermaster.

OBJECTIONS BY REPRESENTATIVES OF WD 73, 74, 74W AND 75 – After conferring with representatives of WD73 (Ted O’Neal, Stan Dowton), WD74 and WD74W (Carl Ellsworth, James Whittaker, Bruce Mulkey, R J. Smith, Bob Loucks) and WD75 (Dave McFarland, Bill Gattung), we offer the following objections:

- 1) The proposed structure builds a bureaucracy with layers of watermasters, deputy watermasters, and deputies to the deputies (to be paid for by the waterusers), but adds nothing to the actual administration of water rights within existing Water Districts;
- 2) Most of the activities of the USWD watermaster are involved with implementing the stipulations of the agreement between the State of Idaho and the Federal Government;
- 3) The stipulated agreement as to duties of the USWD watermaster virtually requires that this person be an employee of IDWR.

COUNTERPROPOSAL

- 1) The USWD watermaster should be a direct employee of IDWR. We suggest that the job description of the existing employee (Bob Foster) at Salmon be re-written in such a way that one-half his time be devoted specifically to the duties of the USWD watermaster. This will entail no additional expense to the State of Idaho or to waterusers within the Upper Salmon River Basin.
 - A – Duties should include those stipulated by the SRBA agreement;
 - B – USWD watermaster should be specifically charged with training deputy watermasters.
 - C – USWD watermaster should be specifically charged with supervising deputy watermasters. He should ensure (by random inspection) that deputies have inspected headgates and measuring devices within their respective sub-districts, prior to the initiation of the irrigation season, and that the installation of infrastructure and ongoing maintenance meet criteria for proper measurement.
 - D – USWD watermaster, in consultation with the Deputy Watermasters, should agree on which diversions require measuring devices.
 - E – USWD watermaster should be specifically charged, upon notification by a Deputy, with issuing notices of violation and ensuring that they are enforced.
 - F – To facilitate communication among IDFG, waterusers, and interested agencies, the USWD watermaster, will establish and publish a uniform system of identifying each specific diversion within each sub-basin (example within Pratt Creek, PC-1, PC-2, etc).
 - G – USWD watermaster will establish a spreadsheet database, by diversion, listing the decreed water rights by priority date.
- 2) Sub-Districts – After filing the Directors Report with the SRBA Court in Basins 73, 74, and 75, IDWR should form, in consultation with the affected waterusers, sub-districts covering all irrigated lands not currently in a water district. Current inactive Water Districts (example WD74-J) should be included in an active existing Water District (example WD74).
- 3) Deputy Watermasters – A deputy watermaster will be elected in every sub-district.

- a The deputy watermaster will be administratively responsible to the USWD watermaster.
 - b In consultation with the USWD watermaster, the deputy will determine the frequency with which each diversion in his sub-district will be visited and quantity recorded - some may be annual, some may be monthly, some bi-weekly, some weekly, some daily.
 - c After determining the workload to meet the minimum expectations of the deputy watermaster job in his specific sub-district, the Deputy Watermaster will present a budget sufficient to compensate the expected expenses (salary, workmen's compensation insurance, mileage, etc.)
 - d The Deputy Watermasters will be compensated by the waterusers within their respective sub-districts.
 - e Deputy Watermasters will submit the required reports (stipulated by the USWD watermaster and in such form as furnished by him) in a timely manner.
- 4) **Other Matters** – There appears to be general agreement that all diversions require a lockable (defined as adjustable and capable of being shut completely off) headgate. In our experience, most waterusers don't steal water. Rick Sager reports that within WD74, there are only three headgates that he has to lock to prevent illegal water diversion. At most headgates, simply affixing a tag is sufficient. There appears to also be general agreement that most diversions, especially on tributary streams require an approved measuring device. The USWD watermaster should work with the Deputy Watermasters to determine which diversions do not require a measuring device. The expectation should be that a diversion requires a measuring device, unless it is specifically exempted by the USWD watermaster.

This information is presented in the hope that is useful in establish the Upper Salmon Water District. We believe that the ultimate structure of the proposed district needs to be determined up-front. In that way, the expectations of the State of Idaho, the Federal Government and the affected waterusers can be met with the least cost.

Compiled by Bob Loucks